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THIS INDEX is based on a consolidation of contents entries appearing in the January—June issues of the **Federal Register** together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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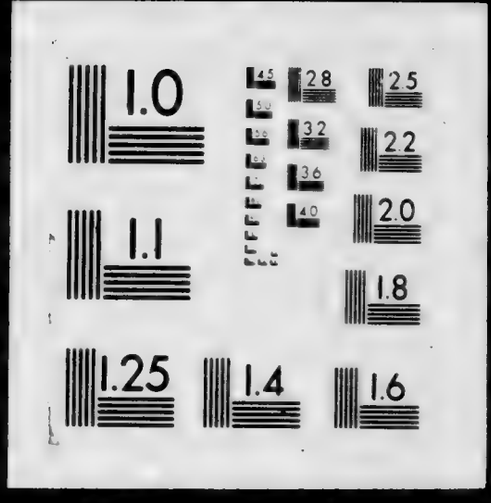
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO–368–A25; DA–95–01]

Milk in the Pacific Northwest Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds two counties to the Pacific Northwest milk marketing area and modifies the component pricing provisions of the order.

EFFECTIVE DATE: February 1, 1997.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address Connie_M_Brenner@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Interested persons were invited to present evidence on the probable regulatory and informational impact of the hearing proposals considered in this proceeding on small businesses or to suggest modifications of the proposals for the purpose of tailoring their applicability to small businesses. In addition, in order to properly assess the impact on small businesses, information relating to the impact of the amendments contained in this rule has been obtained from the market administrator.

During August 1996, the representative month for determining producer approval of this action, 1,297 dairy farmers were producers under the Pacific Northwest order. Of these, 808 would be considered small businesses, having under 326,000 pounds of milk production for the month. Of the dairy farmers in the small business category, 219 produced under 100,000 pounds of milk, 328 produced between 100,001 and 200,000 pounds of milk, and 261 produced between 200,001 and 326,000 pounds of milk during August.

Of the 489 producers producing in excess of 326,000 pounds of milk during August 1996, 178 produced between 326,001 and 500,000 pounds of milk, 186 produced between 500,001 and 1,000,000 pounds of milk, and 125 producers produced at least 1,000,001 pounds of milk.

In terms of total dollars, the negative impact on producer returns resulting from the multiple component pricing amendments generally would be less on small producers than it would be on large producers. However, the effect of the amendments on each individual producer would depend on the relative protein, other nonfat solids, and butterfat content of the producer's milk production rather than on the volume of its production.

The effect of the multiple component pricing amendments on handlers, both large and small, would depend on how they use the milk they receive from producers. Handlers' cost of milk used in manufactured products would be reduced by approximately 10 cents per hundredweight, depending upon the component content of the milk. The cost of milk used in fluid products would be unchanged. In addition to butterfat tests, handlers would be required to report protein tests and "other solids" tests instead of nonfat solids tests of producer receipts. Because most of this testing is done using infra-red analysis equipment, there should be little additional cost connected with the testing and reporting of the protein component and the "other solids" component.

Of the 23 dairy plants pooled under the Pacific Northwest milk order during August 1996, 15 would be considered to be operated by small businesses on the basis of having fewer than 500

employees. Eight of the pool plants were operated by handlers having more than 500 employees.

Expansion of the marketing area to include the two remaining Olympic Peninsula counties would have no effect on producers and would result in the regulation of no additional handlers. Four handlers who currently distribute fluid milk products into the two counties would be benefitted by a reduction in their recordkeeping and reporting burden. Sales outside the marketing area are required to be reported separately for the purpose of determining a handler's pool status. The addition of these two counties to the marketing area will remove the requirement that these handlers keep separate records and file reports about sales in these counties. Two of the handlers affected would be considered to be small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued June 15, 1995; published June 21, 1995 (60 FR 32282).

Extension of Time for Filing Briefs: Issued October 12, 1995; published October 23, 1995 (60 FR 54315).

Extension of Time for Filing Briefs: Issued November 2, 1995; published November 9, 1995 (60 FR 56538).

Recommended Decision: Issued August 19, 1996; published August 23, 1996 (61 FR 43474).

Final Decision: Issued November 21, 1996; published November 29, 1996 (61 FR 60639).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. The authority citation for 7 CFR Part 1124 reads as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1124.2 is amended by revising the list of Washington counties to read as follows:

§ 1124.2 Pacific Northwest marketing area.

* * * * *

Washington counties:

Adams, Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla. Whatcom, Whitman and Yakima.

* * * * *

3. Section 1124.30 is amended by revising paragraphs (a)(1) (i) and (ii), and (c) (1) through (3) to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

(ii) Milk received from a cooperative association pursuant to §1124.9(c), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) received from producers;

(2) The utilization of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) for which it is the handler pursuant to §1124.9(b); and

(3) The quantities of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) delivered to each pool plant pursuant to §1124.9(c).

* * * * *

4. Section 1124.31 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat, protein and solids-not-fat other than protein (other solids) contained in such milk, and the number

of days on which milk was delivered by the producer during the month;

* * * * *

(b) * * *

(1) The total pounds of milk received from each producer and the pounds of butterfat, protein and solids-not-fat other than protein (other solids) contained in such milk;

* * * * *

5. Section 1124.50 is amended by revising paragraph (f) introductory text, paragraph (g), and adding a new paragraph (h) to read as follows:

§ 1124.50 Class and component prices.

* * * * *

(f) The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the total of:

* * * * *

(g) The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(h) The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of producer milk pooled under Part 1124 for the month, as determined by the Market Administrator. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

6. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

On or before the 5th day of each month, the market administrator shall announce publicly the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month; and

(i) The butterfat differential for the preceding month.

7. Section 1124.60 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n), revising the section heading, the undesignated center heading preceding the section heading, paragraph (e), redesignated paragraphs (g) introductory text, (g)(3), the phrase "assigned to shrinkage" in paragraph (h) introductory text to "assigned to inventory", (h)(3), and (h)(6), and adding a new paragraph (f) to read as follows:

Producer Price Differential

§ 1124.60 Handler's value of milk.

* * * * *

(e) Multiply the protein price for the month by the pounds of protein associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of protein shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) Multiply the other solids price for the month by the pounds of other solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of other solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of other solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(g) With respect to skim milk and butterfat overages assigned pursuant to §1124.44(a)(15), (b) and paragraph (g)(6) of this section:

* * * * *

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

* * * * *

(h) * * *

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

* * * * *

(6) Subtract the Class III value of the milk at the previous month's protein, other milk solids, and butterfat prices;

* * * * *

8. Section 1124.61 is amended by revising the section heading, introductory text, and paragraphs (a), (d) and (e) to read as follows:

§1124.61 Producer price differential.

A producer price differential per hundredweight of milk for each month shall be computed by the market administrator as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to §1124.60 (a) through (c) and (g) through (n) for all handlers who filed the reports prescribed by §1124.30 for the month and who made the payments pursuant to §1124.71 for the preceding month; and

(2) Add the values computed pursuant to §1124.60 (d), (e) and (f); and subtract the values obtained by multiplying the handlers" total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

* * * * *

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to §1124.60(k); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the producer price differential.

9. Section 1124.62 is removed, and Section 1124.63 is redesignated as Section 1124.62 and revised, including the section heading to read as follows:

§1124.62 Announcement of the producer price differential and a statistical uniform price.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

10. Section 1124.71 is amended by revising paragraph (a)(1), the reference "§1124.73(a)(2) (i), (ii), and (iii);" in paragraph (b)(1) to "§1124.73(a)(2) (ii) through (iv);" and paragraph (b)(3) to read as follows:

§1124.71 Payments to the producer-settlement fund.

* * * * *

(a) * * *

(1) The total handler's value of milk for such month as determined pursuant to §1124.60; and

* * * * *

(b) * * *

(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to §1124.60(k).

* * * * *

11. Section 1124.73 is amended by revising paragraphs (a)(2) (ii) through (vi), (c) introductory text, (c)(1), the reference "paragraph (a)(2) (i) through (iii) of this section" in paragraphs (c)(2) and (d)(2) to "paragraph (a)(2) (i) through (iv) of this section", (f)(2), and adding paragraph (a)(2)(vii) to read as follows:

§1124.73 Payments to producers and to cooperative associations.

* * * * *

(a) * * *

(2) * * *

(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;

(iii) Add the amount that results from multiplying the other solids price for the month by the total pounds of other solids in the milk received from the producer;

(iv) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the producer price differential for the month as adjusted pursuant to §1124.74(a);

(v) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(vi) Subtract proper deductions authorized in writing by the producer; and

(vii) Subtract any deduction required pursuant to § 1124.86 or by statute; and

* * * * *

(c) Each handler shall pay to each cooperative association which operates a pool plant, or to the cooperative's duly authorized agent, for butterfat, protein and other solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids received during the first 15 days of the month at not less than the butterfat, protein, and other milk solids prices, respectively, for the preceding month; and

* * * * *

(f) * * *

(2) The total pounds of milk delivered by the producer, the pounds of butterfat, protein and other solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

* * * * *

§ 1124.74 [Amended]

12. Section 1124.74(c) is amended by revising, in two locations, the phrase "weighted average differential price" to "producer price differential".

§ 1124.75 [Amended]

13. Section 1124.75 is amended by adding the phrase "or statistical uniform price" after the words "estimated uniform price" in the second sentence of paragraph (a)(1)(i), and by revising the phrase "estimated uniform price" in the first sentence of paragraph (b)(4) to "statistical uniform price".

§ 1124.85 [Amended]

14. Section 1124.85 is amended by revising the reference "§ 1124.60(h) and (j)" in paragraph (b) to "§ 1124.60(i) and (k)".

Dated: December 30, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–33390 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 96–97]

Selection and Compensation of Federal Home Loan Bank Employees

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending the provisions of its regulations governing the selection and compensation of employees of the Federal Home Loan Banks (Banks) in order to streamline regulatory requirements and transfer specific functions currently performed by the Finance Board to the board of directors of each Bank. The final rule requires a Bank to obtain prior Finance Board approval of the appointment of a new President, but permits a Bank to reappoint an incumbent President without prior Finance Board approval. The final rule also gives the Banks broad authority to set Bank Presidents' salaries within established caps and authorizes the Banks to make incentive payments to their Presidents based on each Bank's performance and on fulfillment of its mission. The devolution of authority to the Banks is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Fisher, Director, Office of Resource Management, (202) 408–2586; or David Guy, Associate General Counsel, (202) 408–2536, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Selection of Employees

Section 12(a) of the Federal Home Loan Bank Act (Bank Act) provides that each Bank may select, employ, and fix the compensation of Bank employees, subject to the approval of the Finance Board. *See* 12 U.S.C. 1432(a). Section 932.40 of the Finance Board's regulations, which governs the selection of Bank employees, provides that officers, legal counsel, and employees of a Bank shall be elected or appointed in accordance with the Bank's bylaws. *See* 12 CFR 932.40. Each Bank's bylaws are subject to the approval of the Finance Board. *See* 12 U.S.C. 1432(a). Under each Bank's bylaws, a Bank elects or appoints its President subject to Finance Board approval.

Section 932.40 also sets forth conflicts of interest prohibitions applicable to full-time officers or employees of a Bank, and to counsel retained by a Bank. *See* 12 CFR 932.40. These provisions generally prohibit a Bank employee from acting on behalf of a member or other institution insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), except under specified circumstances and with the consent of the FSLIC. Existing § 932.40 extends this prohibition to counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, unless the Finance Board consents to such representation. *See id.*

B. Compensation

1. Bank Presidents

Under section 12(a) of the Bank Act, the compensation of all Bank employees is subject to Finance Board approval. *See* 12 U.S.C. 1432(a). However, under its existing regulation on Bank employee compensation, *prior* Finance Board approval is required only for compensation of a Bank's President. *See* 12 CFR 932.41(a). Section 932.41 of the Finance Board's existing compensation regulation requires the board of directors of each Bank annually to adopt and submit to the Finance Board for its

approval an appropriate resolution showing the contemplated compensation of its President. *See id.*

In setting the compensation of their Presidents, the Banks are governed by the Bank Presidents' Compensation Plan (Compensation Plan), adopted by the Finance Board on November 19, 1991, as amended from time to time. *See* Bd. Res. No. 91–565 (as amended). The Compensation Plan establishes base salary guidelines, merit increase (to base salary) guidelines, and criteria for incentive payments for Bank Presidents. The Compensation Plan requires each Bank annually to submit for Finance Board approval recommendations for merit increases to its President's base salary and proposed incentive payments.

2. Other Bank Employees

Section 932.41(b) of the Finance Board's existing compensation regulation permits a Bank to fix the compensation of officers other than the President without prior Finance Board approval, provided that such compensation is within ranges established by the Finance Board and the total limits for such compensation in the Bank's approved budget. *See* 12 CFR 932.41(b). Each Bank may establish the amount and form of compensation for all other employees (including legal counsel) within the limits set forth in the Bank's approved budget. *See id.* Section 932.41(b) also prohibits a Bank from paying a bonus to any director, officer, employee, or other person. *See id.*

In Resolution No. 84–390, dated July 25, 1984, the Finance Board's predecessor agency, the Federal Home Loan Bank Board (FHLBB), established a cap on compensation of Bank employees other than the President, providing that the salary of the second-highest-paid Bank officer may not exceed 80 percent of the Bank President's salary. This resolution currently remains in effect. *See* 12 U.S.C. 1437 note.

II. Proposed Rulemaking

On August 16, 1996, the Finance Board published for public comment a notice of proposed rulemaking, which proposed to amend §§ 932.40 and 932.41 of its regulations to clarify the scope of the Banks' discretion in selecting and fixing the compensation of Bank Presidents and other Bank employees. *See* 61 FR 42570 (Aug. 16, 1996) (proposed rule). The proposed rule also included amendments to § 941.9 of the Finance Board's regulations to codify the Finance Board's existing practice regarding the annual appointment and compensation of the Director of the Office of Finance (OF) and other OF employees. *See id.* The proposed rule provided for a 60-day comment period.

The Finance Board received letters from a total of 49 commenters, including all 12 Banks, a joint Bank committee on Bank Presidents' compensation, 32 Bank members, 2 not-for-profit housing organizations, one advocacy group, and one individual. The commenters generally supported the concept of transferring to the individual Banks more authority to determine the compensation of Bank employees and, in particular, the Bank Presidents. However, various commenters stated that the Banks should have more authority in this area than would be allowed under the proposed rule. Commenters also generally supported giving the Banks more control over the appointment of Bank Presidents than would be permitted under the proposed rule.

A discussion of the relevant comments is included below in the Analysis of the Final Rule. Where no comments were received on a particular regulatory provision, or a provision was not considered controversial, and the Finance Board has determined to adopt the provision as proposed, the provision generally is not discussed in this preamble. The Finance Board is deferring action on the portions of the proposed rule pertaining to the selection and compensation of OF employees and benefits until a later date.

III. Analysis of the Final Rule

A. Selection of Employees

1. Bank Presidents

Section 932.40(a) of the proposed rule codified the Finance Board's existing practice of approving the appointments of Bank Presidents for one-year terms. The preamble to the proposed rule interpreted the one-year appointment requirement to prohibit a President from holding over upon expiration of his or her term of office, and to supersede the existing provisions in the Banks' by-laws allowing for the holdover of Bank Presidents.

Twenty-two commenters opposed requiring Finance Board approval of the initial appointment and the reappointment of Bank Presidents. Many commenters believed that the Finance Board should rely on the boards of the Banks to appoint the Bank Presidents, given that the boards are duly elected by the members and appointed by the Finance Board, and the Banks are for-profit, privately capitalized institutions owned by their stockholders. According to some commenters, requiring Finance Board approval of reappointment also may discourage qualified candidates from seeking the Presidencies. Several commenters recommended that the Bank's boards be permitted to enter into multi-year employment contracts with their Presidents.

Ten commenters opposed requiring Finance Board approval of the reappointment of Bank Presidents, but these commenters either supported or would not necessarily object to the Finance Board having a role in approving the initial appointment of Bank Presidents.

While the Banks may be characterized as for-profit, privately capitalized institutions owned by their stockholders, the Banks exist primarily to carry out a public purpose: the promotion and expansion of housing finance. *See* 12 U.S.C. § 1422a(a)(3)(B)(ii). Therefore, a Bank's President is charged with representing and furthering not only the interests of the Bank's stockholders but also the interests of the public. The Bank Act provides that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. *See id.* § 1422a(a)(3)(A). The other statutory duties of the Finance Board are to: supervise the Banks; ensure that they carry out their housing finance mission; and ensure that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* § 1422a(a)(3)(B).

The Finance Board believes that retaining approval authority over a Bank's selection of its highest officer is necessary to carry out the Finance Board's statutory duties. Therefore, § 932.40(a) of the final rule requires a Bank to obtain prior Finance Board approval of the appointment of a new President. However, a Bank may reappoint an incumbent President without prior Finance Board approval. For purposes of clarity and completeness, § 932.40(a) also restates the statutory requirements in sections 2B(a)(2) and 12(a) of the Bank Act providing, respectively, that: (1) a Bank President may be suspended or removed by the Finance Board for cause, which shall be communicated in writing to the President and the Bank, and (2) a Bank President serves at the pleasure of the Bank. *See id.* §§ 1422b(a)(2), 1432(a).

Twenty-four commenters opposed elimination of a Bank President's ability to holdover on the ground that, among other things, this may lead to a situation where a Bank is without leadership if the Finance Board fails to approve a new President. By requiring prior

Finance Board approval only of new Bank Presidents, the final rule allows for the holdover of an incumbent Bank President.

2. Other Bank Employees

Section 932.40(b) of the final rule adopts the language of the proposed rule providing that a Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Finance Board approval.

3. Conflicts of Interests

Proposed § 932.40(c) updated the conflicts of interest provisions in existing § 932.40 by eliminating references to the FSLIC, which was abolished by Congress in 1989. *See id.* § 1437 note. The proposed rule retained, in substance, the existing requirement that a Bank employee shall not act in any capacity for certain specified institutions whose interests are likely to be in conflict with the interests of the Bank. Specifically, proposed § 932.40(c) prohibited a Bank employee from being employed by, or acting in any other capacity for, a Bank member or an institution eligible to make application to become a Bank member. The final rule adopts proposed § 932.40(c), without change.

B. Compensation of Bank Employees

1. Base Salaries

a. *Bank Presidents.* The proposed rule permitted each Bank to establish the base salary of its President within specific ranges, based on the Bank's asset size, and to pay yearly merit increases, up to a maximum rate set by the Finance Board. The general consensus of the commenters was that the boards of directors of the Banks should be permitted to set compensation for all Bank employees, including the Presidents, provided such compensation is reasonable and comparable to what is being paid in the marketplace. Commenters generally opposed Finance Board control over the compensation of the Bank Presidents, except to the extent that it relates to safety and soundness of the Banks. Commenters made a variety of arguments in support of these positions, including: (1) The establishment of detailed requirements governing compensation for Bank Presidents is not necessary to ensure that the Banks operate safely and soundly; (2) a Bank's strategic advantage of being a regionally based entity able to experiment with new ways to meet local housing needs is hindered by nationally mandated compensation goals; (3) placing the compensation issue in the hands of a regulator is contrary to the intent and mission of the Banks, which are for-profit, shareholder-owned enterprises, and creates a conflict of interest for the Finance Board in its capacity as a regulator; and (4) codifying the Bank Presidents' salaries in regulation politicizes the compensation process and treats the Presidents like public, rather than private sector employees. Several commenters recommended that the Finance Board adopt the approach of other federal bank regulatory agencies that limit compensation only for executives of institutions with safety and soundness problems.

The Finance Board finds merit in the ideas that detailed regulatory requirements for the compensation of Bank Presidents do not necessarily further the goal of ensuring the safe and sound operation of the Banks, and that a Bank should have flexibility to establish compensation goals that encourage the Bank to address local housing needs. The Finance Board also agrees that management functions, such as the establishment of employee compensation, should be in the hands of the Banks to the maximum extent feasible.

However, the Finance Board disagrees with the idea that it should approach the regulation of Bank employee compensation in the same manner as regulators of private entities, such as commercial banks and savings associations, which are not government chartered corporations. Although the primary duty of the Finance Board is to ensure the financial safety and soundness of the Banks, the Finance Board also has a statutory mandate to ensure that the Banks carry out their programmatic purposes in the area of housing finance. *See id.* § 1422a(a)(3)(A), (B)(ii). Unlike the institutions regulated by other federal bank regulators, the Banks exist primarily to serve the public interest. *See id.* § 1422a(a)(3)(B)(ii). Consequently, the Finance Board has an interest in exercising some control over the compensation of Bank Presidents, not only to ensure the safety and soundness of the Banks, but also to ensure that the programmatic goals of the Banks are met.

The Finance Board currently determines the salary ranges for Bank Presidents using a comparability model based on the salaries of the chief operating officers (COO) of private financial subsidiaries of similar asset size and geographic location, offset by staff size. The preamble to the proposed rule specifically requested comment on the appropriate universe of entities that should be used in establishing the comparability of the Bank Presidents' salaries. For instance, it has been suggested that the salaries of the Bank Presidents should be comparable to the salaries of the Presidents (or their equivalent) of the Federal Reserve Banks, other segments of the financial services industry, or other federally or state-created entities with similar size, functions, and mission. The Bank Presidents' Compensation Committee (Compensation Committee), which is comprised of persons appointed from each of the 12 Banks, retained Hewitt Associates, LLC, to review the proposed rule. The Hewitt Associates study (Hewitt study) concluded, among other things, that the banking industry is the appropriate comparator group for the Bank Presidents in setting compensation, and that the chief executive officer (CEO) of a bank subsidiary is a more appropriate match than a COO of a subsidiary.

Most of the Banks' comments on this issue are in accord with the conclusions of the Hewitt study. Several Banks and the Hewitt study concluded that an offset based on asset base and staff size should be used in the development of compensation levels. The two Bank members that addressed this issue believed that Bank Presidents' compensation should be comparable with the salaries of CEOs of organizations of similar size, scope, and risk.

In light of the public purpose of the Banks, the issue for the Finance Board in determining comparability of compensation is not how the Bank Presidents are different from comparable positions in the private sector, but how the Bank Presidents are different from comparable positions with governmental or quasi-governmental entities.

The Hewitt study concluded that the Federal Reserve Banks (FRBs) are not an appropriate comparator group for the Banks because the Banks are profit-driven in that they are owned by their members, who are entitled to dividends. Further, the Banks operate in a competitive environment and must market their services to members and prospective customers. In addition, the Banks make statutorily mandated annual payments of $300 million to the Resolution Funding Corporation, *see* 12 U.S.C. 1441b, and at least $100 million to the Affordable Housing Program, *see id.* § 1430(j).

In contrast to the Banks, the FRBs' primary mission is governmental, and the FRBs do not manage an investment portfolio. One Bank commenter stated that the FRBs are not appropriate

comparators for the Banks on this issue because: (1) they carry out governmental monetary and regulatory functions; (2) their boards are advisory in nature; (3) their stock pays a fixed return; and (4) their profits are returned to the Department of the Treasury.

In recognition of the expressed arguments against detailed regulatory requirements for Bank Presidents' compensation, the final rule does not adopt those provisions in the proposed rule prescribing salary ranges and merit increase rates. The final rule provides for the Finance Board, on an annual basis, to determine and publish by November 30 individual caps on the base salaries payable to each of the Banks' Presidents for the subsequent calendar year. The base salary cap for each Bank President shall be based on the average base salary of a CEO of a subsidiary financial institution in the Bank's primary metropolitan statistical area with an asset size comparable to that of the Bank, as of June of the prior year, reduced by five percent and rounded to the nearest $5,000. The five percent reduction is intended to reflect the public purpose of the Banks. Each Bank shall establish, on an annual basis, a reasonable base salary for its President, not to exceed 100 percent of the applicable base salary cap published by the Finance Board. However, those Bank Presidents whose currently approved and recommended base salaries for 1997 exceed the 1997 cap will not experience any reduction in base salary. These Presidents' base salaries will be capped at their current levels until the annual cap set by the Finance Board for the Bank exceeds the 1997 base salary currently approved and recommended for the President by the Bank's board of directors. By January 2 of each year, a Bank must report to the Finance Board the approved base salary of its President for that year.

b. *Other Bank Employees.* The proposed rule permitted each Bank to establish base salaries for employees other than the President without prior Finance Board approval, provided such salaries are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses, such as similar financial institutions, with similar duties and responsibilities. Section 932.41(b)(2) adopts the provisions of the proposed rule, with the additional requirement that no employee's base salary shall exceed the base salary of the Bank President. This is intended to ensure the effectiveness of the cap on the Bank President's salary.

2. Incentive Payments

a. *Bank Presidents.* The proposed rule required incentive payments to Bank Presidents to be based solely on the performance of the Bank, rather than on the President's individual performance. The proposed rule established specific criteria on which a Bank President's incentive payment is to be based, and required the boards of directors of the Banks to establish numerical performance targets and measures to be used in determining a Bank President's incentive payment. Specifically, the proposed rule provided that at least 20 percent of any incentive payment for a Bank President must be based on certain specified criteria illustrating the Bank's emphasis on the portion of its mission involved with support for member credit activities; at least 30 percent of any incentive payment must be based on certain specified criteria illustrating the Bank's emphasis on additional support for housing and community development finance; and the remaining portion of the incentive payment must be based on the Bank's performance in achieving other objectives established by the Bank's board of directors.

The proposed rule provided that performance targets must be set at such a level as to show an improvement in the Bank's performance over the prior year or an extraordinary achievement in attaining the designated target. In order to obtain the maximum incentive payment, the proposed rule required a Bank President to achieve 150 percent of the performance target for a given incentive criterion.

Nine Banks specifically opposed the setting of standard criteria for incentive payments throughout the Bank System. Commenters recommended that each Bank's board of directors be permitted to establish incentive payment criteria in order to ensure a complete reflection of the issues the boards believe are critical. Several Banks commented that there is no logical relationship between meeting 150 percent of a performance target and an outstanding level of performance.

The final rule gives the Banks more flexibility to determine the basis for incentive payments to Bank Presidents, but retains the requirements that such payments be based solely on the performance of the Bank and that they be based in part on the Bank's measured progress in the achievement of its mission.

Section 932.41(c)(2) of the final rule provides that at least fifty percent of the Bank President's incentive payment must be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the Bank's achievement of its housing finance mission, which shall include substantial consideration of growth in innovative products directed at unmet credit needs, growth in pre-committed Community Investment Program (CIP) advances, growth in non-advance credit support and risk management products for members, as well as growth in advances, including long-term advances. Pre-committed CIP advances means CIP advances provided in support of new CIP lending activity, not refinancings of existing CIP-eligible loans.

The remaining portion of the incentive payment must be based on the extent to which the Bank meets reasonable numerical performance targets related to the achievement of goals established by the Bank's board of directors, in its discretion. By January 31 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt a resolution establishing the performance measures and targets on which such incentive payment will be based. Any incentive payment made to a Bank President shall be based solely upon the extent to which a Bank achieves the performance targets established by the board of directors.

The preamble to the proposed rule requested comments on the appropriateness and the reasons for limiting a Bank President's total incentive payment to a maximum percentage of base salary, at some point in the range between zero and 37.5 percent. Under the existing Bank President's Compensation Plan, prior to the most recent amendment, the maximum incentive payment payable to a Bank President was 37.5 percent of base salary. The Compensation Plan was amended on July 25, 1996, to limit an incentive payment to 31.25 percent of base salary. *See* Bd. Res. 96–54 (July 25, 1996).

Eight Banks opposed the 31.25 percent and 37.5 percent limits on incentive payments as arbitrary and not reflective of marketplace conditions. Several Banks commented that their boards should be permitted to set limits on incentive compensation based on the industry-wide average. Commenters also stated that the Banks should be permitted to determine the appropriate mix between base salary and incentive compensation for their employees. The final rule attempts to provide the added flexibility recommended by commenters.

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The final rule provides that a Bank may establish an incentive payment program or programs for its employees. The maximum incentive payment to a Bank President may not exceed the difference between that President's base annual salary approved by the Bank and 125 percent of the annual base salary cap, as published by the Finance Board. The effect of this provision is to limit a Bank President's total cash compensation payable in salary and incentive compensation to 125 percent of the amount of the base salary cap established by the Finance Board for that Bank.

The proposed rule prohibited a Bank from making any incentive payment to its President if the most recent examination of the Bank by the Finance Board identified an unsafe or unsound practice or condition with regard to the Bank. The Finance Board specifically requested comment on whether there are other events or conditions that should result in a prohibition on incentive payments to Bank Presidents.

Several Banks opposed the prohibition on incentive payments based on examination findings because such a practice would make the examination process more adversarial and potentially could deny a President an incentive payment based on an examination finding that may be reversed upon appeal. One Bank and the Compensation Committee recommended clarifying that if an examination finding of an unsafe or unsound practice or condition is subsequently resolved in favor of the Bank, the Bank's board will be allowed to pay a Bank President an incentive payment retroactively. The final rule makes this clarification.

The Finance Board wishes to make clear that the proposed rule does not require a Bank to make incentive payments, but if a Bank chooses to make such payments, it must meet the requirements of § 932.41(c).

b. *Other Bank Employees.* The final rule adopts the provisions of the proposed rule authorizing the Banks to make incentive payments to employees other than the Bank Presidents that are reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. The final rule also provides that incentive payments for employees other than the Bank President shall be based on the extent to which an employee meets objective performance targets related to performance criteria established by the Bank's board of directors under the Bank's incentive compensation program or programs. The final rule limits the incentive payment opportunities for employees other than the President such that the total incentive payment opportunity, expressed as a percentage of base salary, for an employee other than the Bank President shall not exceed the total incentive payment opportunity, expressed as a percentage of base salary, allowable for the Bank President.

3. Benefits

The proposed rule authorized the Banks to establish certain kinds of benefits plans for their employees and to provide benefits pursuant to such plans without prior Finance Board approval. The Finance Board is deferring action on the portions of the proposed rule governing benefits until a later date.

4. Severance Payment Plans

The proposed rule authorized the Banks to establish nondiscriminatory severance plans that provide benefits upon involuntary termination other than for cause, voluntary resignation, or early retirement, provided that total benefits paid do not exceed one year of employee base compensation.

Nine Banks believed that the Banks should be permitted to set their own severance policies, without the limitation that severance payments not exceed 12 months of base compensation. Commenters suggested that severance payments to employees who are discharged for cause may be warranted in some circumstances, and that the "for cause" exception could result in litigation over whether a Bank had cause to terminate an employee. One Bank objected to the denying severance to an employee in the case of early retirement.

The final rule retains the 12-month rule as a reasonable limitation on severance payments. In addition, the restriction on severance payments to employees terminated for cause is removed. The final rule provides for severance payments to be made in cases of involuntary termination. Thus, the final rule continues the restriction on severance payments for early retirees on the ground that severance payment plans are intended to provide for income replacement in the event of involuntary termination.

5. Change-of-Control Agreements

The Finance Board requested comments on whether the Banks should be permitted to enter into change-of-control arrangements with certain senior officers. Change-of-control agreements, so-called "golden parachutes," typically are entered into with senior management and provide for guaranteed, and often enhanced, severance in the event of termination of employment following some period after a change of control.

All 12 Banks believed change-of-control agreements are important to maintaining the safety and soundness of a Bank in cases where merger or consolidation is imminent, and that the Banks' boards should be permitted to enter into and determine the terms of change-of-control agreements with Bank officers.

While the Finance Board is not opposed to the use of change-of-control agreements in the appropriate situation, the Finance Board is not authorizing the Banks to have such agreements with their employees at this time. The Finance Board will take into consideration the need for such agreements should events arise that would make change-of-control agreements relevant.

IV. Effective Date

The Finance Board has approved this final rule to become effective immediately upon publication, on the ground that, as described above, the final rule relieves restrictions placed on the Banks by the existing provisions of §§ 932.40 and 932.41 of its regulations. Therefore, the thirty-day delay in the effective date that otherwise would be required by section 552 of the Administrative Procedures Act is not applicable to this final rule. *See* 5 U.S.C. 553(d)(1).

V. Regulatory Flexibility Act

The final rule applies only to the 12 Banks, which do not come within the meaning of "small entities," as defined by the Regulatory Flexibility Act (RFA). 5 U.S.C. 601. Therefore, in accordance with the RFA, the Finance Board hereby certifies that final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 932

Conflict of interests, Federal home loan banks.

Accordingly, chapter IX, title 12, subchapter B, Code of Federal Regulations, is hereby amended as follows:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for Part 932 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

2. Section 932.40 is revised to read as follows:

§ 932.40 Selection.

(a) *Bank Presidents.* Each Bank may appoint a President, subject to the following limitations:

(1) No appointment of a new Bank President shall be effective until approved by the Finance Board;

(2) A President shall serve at the pleasure of the Bank; and

(3) A President may be suspended or removed by the Finance Board for cause, which shall be communicated in writing to the President and the Bank.

(b) *Bank employees other than the President.* Each Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Finance Board approval.

(c) *Prohibition on employment contracts.* A Bank shall not enter into an employment contract with an employee.

(d) *Conflicts of interest.* A Bank employee shall not also be employed by, or otherwise act in any capacity for, a member or an institution eligible to make application to become a member.

3. Section 932.41 is revised to read as follows:

§ 932.41 Compensation.

(a) *Definitions.* The following definitions apply for purposes of this section:

Bonus means a payment to an employee, other than base salary and benefits, that is not based on performance.

Incentive payment means a direct or indirect transfer of funds by a Bank to a Bank employee, in addition to base salary, based on the employee's on-the-job performance.

Nondiscriminatory means that the plan, contract or arrangement in question applies to all employees of a Bank who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as base salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis.

Payment. (1) the term *payment* means:

(i) Any direct or indirect transfer of any funds or any asset;

(ii) Any forgiveness of any debt or other obligation; and

(iii) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of, or arrangement for, any letter of credit or other instrument for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(A) The determination, after such date, of the liability for the payment of such amount; or

(B) The liquidation, after such date, of the amount of such payment.

(2) The term *payment* does not mean:

(i) Reimbursement of an employee by the Bank for necessary and customary expenses incurred by the employee in the scope of his or her employment while carrying out the business of the Bank; or

(ii) Benefits.

Severance pay plan means a severance pay plan or arrangement as that term is defined in the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1002(1)) (ERISA) and regulations thereunder which is nondiscriminatory and which provides for payment of severance benefits to all eligible employees upon involuntary termination, provided that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the twelve (12) months immediately preceding termination of employment.

(b) *Base salaries of Bank employees.*—(1) *Bank President.* (i) The Finance Board annually will determine and publish by November 30 caps on the base salary paid to the Bank President for the subsequent calendar year for each of the 12 Banks.

(ii) The base salary cap for each Bank shall be based on the average base salary of a chief executive officer of a subsidiary financial institution in the Bank's primary metropolitan statistical area with an asset size comparable to that of the Bank, as of June of the prior year, reduced by five percent and rounded to the nearest $5,000.

(iii) Each Bank shall establish, on an annual basis, a reasonable base salary for its President, not to exceed 100 percent of the applicable base salary cap published by the Finance Board, except that for a Bank President whose approved base salary for the calendar year 1997 exceeds the cap published by the Finance Board for 1997, the Bank shall establish, on an annual basis, a reasonable base salary not exceeding the greater of the Bank President's approved base salary for the calendar year 1997 or the base salary cap published by the Finance Board for the year.

(iv) By January 31 of each year, a Bank must report to the Finance Board the approved base salary of its President for that year.

(2) *Other Bank employees.* Each Bank shall establish base salaries for employees other than the President that are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities, provided that no employee's base salary shall exceed the base salary of the Bank President.

(3) *Documentation.* Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' base salaries.

(c) *Incentive payments for Bank employees.*—(1) *In general.* A Bank may establish an incentive payment program or programs for its employees.

(2) *Bank President.* (i) The maximum incentive payment to a Bank President may not exceed the difference between that President's base annual salary approved by the Bank and 125 percent of the annual base salary cap, as published by the Finance Board.

(ii) At least fifty percent of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the Bank's achievement of its housing finance mission, which shall include substantial consideration of growth in innovative products directed at unmet credit needs, growth in pre-committed Community Investment Program advances, growth in non-advance credit support and risk management products for members, as well as growth in advances, including long-term advances. The remaining portion of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to achievement of goals established by the board of directors, in its discretion.

(iii) Any incentive payment made to a Bank President shall be based solely upon the extent to which a Bank achieves the performance targets established by the board of directors.

(iv) By January 31 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt a resolution establishing the performance measures and targets on which such incentive payment will be based.

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(v) By March 1 of each year, the board of directors of each Bank making any incentive payment to its President for the prior year shall adopt and submit to the Finance Board a resolution showing the results for the individual performance measures and the amount of the incentive payment to the Bank President for the prior year.

(vi) A Bank shall not make any incentive payment to its President if the most recent examination of the Bank by the Finance Board identified an unsafe or unsound practice or condition with regard to the Bank, provided that if the finding of an unsafe or unsound practice or condition subsequently is resolved in favor of the Bank by the Finance Board, the Bank may pay its President the incentive payment that he or she otherwise would have received.

(3) *Incentive payments for other Bank employees.* (i) Each Bank may make incentive payments to employees other than the President, provided that such incentive payments are reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' incentive payments.

(ii) The total incentive payment opportunity, expressed as a percentage of base salary, for an employee other than the Bank President shall not exceed the total incentive payment opportunity, expressed as a percentage of base salary, allowable for the Bank President.

(iii) An incentive payment for an employee other than the Bank President shall be based on the extent to which the employee meets objective performance targets related to performance criteria established by the Bank's board of directors under the Bank's incentive compensation program or programs.

(d) *Severance plans.* A Bank may make payments in the nature of severance to its President and to other Bank employees only pursuant to a severance pay plan.

(e) *General limits on payments.* (1) No Bank shall make any payment to a Bank employee, except as provided in this section.

(2) The total amount of base salaries, incentive payments, and benefits paid to Bank employees shall be within the limit set forth in the Bank's approved budget. The board of directors of each Bank shall review annually the compensation for its employees, including appropriate documentation, prior to approving the Bank's annual budget.

(f) *Prohibition on bonuses.* A Bank shall not pay any employee or other person a bonus.

(g) *Determination of employee status.* A Bank shall not treat an employee as an independent contractor in order to avoid complying with the requirements of this section.

By the Board of Directors of the Federal Housing Finance Board.

Dated: December 20, 1996.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–33329 Filed 12–31–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–09–AD; Amendment 39–9872; AD 97–01–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA24, PA28R, PA30, PA32R, PA34, and PA39 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supersedes AD 95–20–07, which currently requires repetitively inspecting the main gear sidebrace studs for cracks on certain The New Piper Aircraft, Inc. (Piper) PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes, and replacing any cracked main gear sidebrace stud. This AD retains the repetitive inspection and possible replacement requirements of AD 95–20–07; specifies in the "Applicability" section of the AD that certain Model PA34–200T airplanes could contain a certain main gear sidebrace assembly configuration that is not affected; and incorporates additional modification and replacement options. This AD results from additional information received by the Federal Aviation Administration (FAA) after the issuance of AD 95–20–07 on the design and service history of the affected airplanes concerning this subject. The actions specified by this AD are intended to prevent a main landing gear collapse caused by main gear sidebrace stud cracks, which could result in loss of control of the airplane during landing operations.

EFFECTIVE DATE: February 7, 1997.

ADDRESSES: Information that applies to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes was published in the **Federal Register** on April 25, 1996 (61 FR 18299). The action proposed to supersede AD 95–20–07 with a new AD that would (1) retain the requirement of repetitively inspecting the main gear sidebrace assembly, and replacing any cracked main gear sidebrace stud. This includes the inspection-terminating replacement contained in AD 95–20–07; (2) specify in the "Applicability" section of the current AD that certain Piper Model PA34–200T airplanes could incorporate a main gear sidebrace assembly containing the 5/8-inch stud, part number (P/N) 78717–02, with a two-piece bushing, P/N 67026–09, and would not be affected by the proposed AD; and (3) incorporate, as an option, an inspection-terminating modification for Piper PA28R, PA32R, and PA34 series airplanes. This modification consists of reaming the existing two-piece bushings, P/N 67026–6, to an inside diameter of .624-inch to .625-inch, rechamfering the bushing, and installing the 5/8-inch stud, P/N 78717–02.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received from one commenter.

Comment Issue No. 1: Include a Specific FAA-Approved Parts Manufacture Approval (PMA) in the AD as Replacement Parts

The commenter, Webco Aircraft (Webco), states that it holds a PMA for main gear sidebrace studs to equip the Piper Models PA24, PA24–250, PA24–260, PA24–400, PA30, and PA39 airplanes. Webco requests that the FAA

reference these main gear sidebrace studs in the AD.

The FAA does not concur. FAA policy is to not reference PMA parts in AD's, unless the FAA determines that the unsafe condition applies to the PMA parts. If these Webco parts are installed, then the actions of this AD would not apply because the parts are an FAA-approved equivalent to the Piper main gear sidebrace studs that, when installed, eliminate the repetitive inspection requirement of the AD.

Comment Issue No. 2: Additional Information Added to the AD

Webco recommends that the FAA add cautionary information to the AD on reaming and chamfering the existing two-piece bushings, P/N 67026–6, on the Piper PA–28R, PA–32R, and PA–34 series airplanes. Webco states that the manufacturing and service limits for the P/N 67026–6 bushings are so close that reaming could induce gouges that are deeper than the minimum dimension specified by The New Piper Aircraft, Inc. Webco also recommends that the FAA incorporate specific guidance into the AD, emphasizing that only the head side of the bushing requires chamfering to accommodate the radius in the shank of the sidebrace stud.

The FAA concurs that additional guidance on chamfering the bushing would be helpful and has reworded the AD to incorporate the commenter's specific recommendation.

The FAA does not concur that more guidance is needed on reaming the bushings. The proposal specifies reaming the inside diameter of the bushings to a dimension of .624-inch to .625-inch. If the bushing is reamed to a dimension other than that specified in the AD, then compliance with the AD would not be accomplished.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the incorporation of guidance on chamfering the bushings and minor editorial corrections. The FAA has determined that the incorporation and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 13,200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the required inspection on U.S. operators is estimated to be $3,960,000. This figure represents the total cost of the required initial inspection, and does not reflect costs for any of the required repetitive inspections or possible replacements. The FAA has no way of determining how many main gear sidebrace studs may need replacement or how many repetitive inspections each owner/operator may incur over the life of the airplane.

In addition, this AD requires the same inspections required by AD 95–20–07. The only difference between this AD and AD 95–20–07 is the addition of an inspection-terminating modification option. This AD does not provide any additional cost impacts over that already required by AD 95–20–07.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–20–07, Amendment 39–9386, and by adding a new AD to read as follows:

97–01–01 The New Piper Aircraft, Inc.: Amendment 39–9782; Docket No. 96–CE–09–AD. Supersedes AD 95–20–07, Amendment 39–9386.

Applicability: The following airplane models and serial numbers, certificated in any category:

1. All serial numbers of Models PA24, PA24–250, PA24–260, PA24–400, PA30, and PA39 airplanes;

2. The following model and serial number airplanes that are not equipped with a Piper part number (P/N) 78717–02 main landing gear sidebrace stud in both right and left main landing gear sidebrace bracket assemblies:

Model	Serial Nos.
PA28R–180 ..	28R–30002 through 28R–31135, and 28R–7130001 through 28R–7130013.
PA28R–200 ..	28R–35001 through 28R–35820, and 28R–7135001 through 28R–7635539.
PA28R–201 ..	28R–7737002 through 28R–7737096.
PA28R–201T	28R–7703001 through 28R–7703239.
PA32R–300 ..	32R–7680001 through 32R–7780444.
PA84–200	all serial numbers.
PA34–200T ..	34–7570001 through 34–7770372.

Note 1: P/N 78717–02 sidebrace stud was installed at manufacture on Piper Model PA34–200T airplanes, serial numbers 34–7670325 through 34–7770372.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially as follows, and thereafter as specified in the body of this AD:

1. For the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T

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airplanes: Within the next 100 hours time-in-service (TIS) after the effective date of this AD or, if the main gear sidebrace stud has already been inspected or replaced as specified in this AD, within 500 hours TIS after the last inspection or replacement, whichever occurs later.

2. For the affected Models PA24, PA24–250, PA24–260, PA24–400, PA30, and PA39 airplanes: Within the next 100 hours TIS after the effective date of this AD or, if the main gear sidebrace stud has already been inspected or replaced as specified in this AD, within 1,000 hours TIS after the last inspection or replacement, whichever occurs later.

To prevent main landing gear (MLG) collapse caused by main gear sidebrace stud cracks, which could result in loss of control of the airplane during landing operations, accomplish the following:

Note 3: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Remove both the left and right main gear sidebrace studs from the airplane in accordance with the instructions contained in the Landing Gear section of the maintenance manual, and inspect each main gear sidebrace stud for cracks, using Type I (fluorescent) liquid penetrant or magnetic particle inspection methods. Figure 1 of this AD depicts the area of the sidebrace stud shank where the sidebrace stud is to be inspected.

Note 4: All affected Models PA24 and PA24–250 airplanes were equipped at manufacture with P/N 20829–00 main gear sidebrace studs. All affected Models PA24–260, PA24–400, PA30, and PA39 airplanes were equipped at manufacture with P/N 22512–00 main gear sidebrace studs. The Appendix included with this AD contains information on determining the P/N of the bracket assembly (which contains the main gear side brace stud) on the affected PA28R, PA32R, and PA34 series airplanes.

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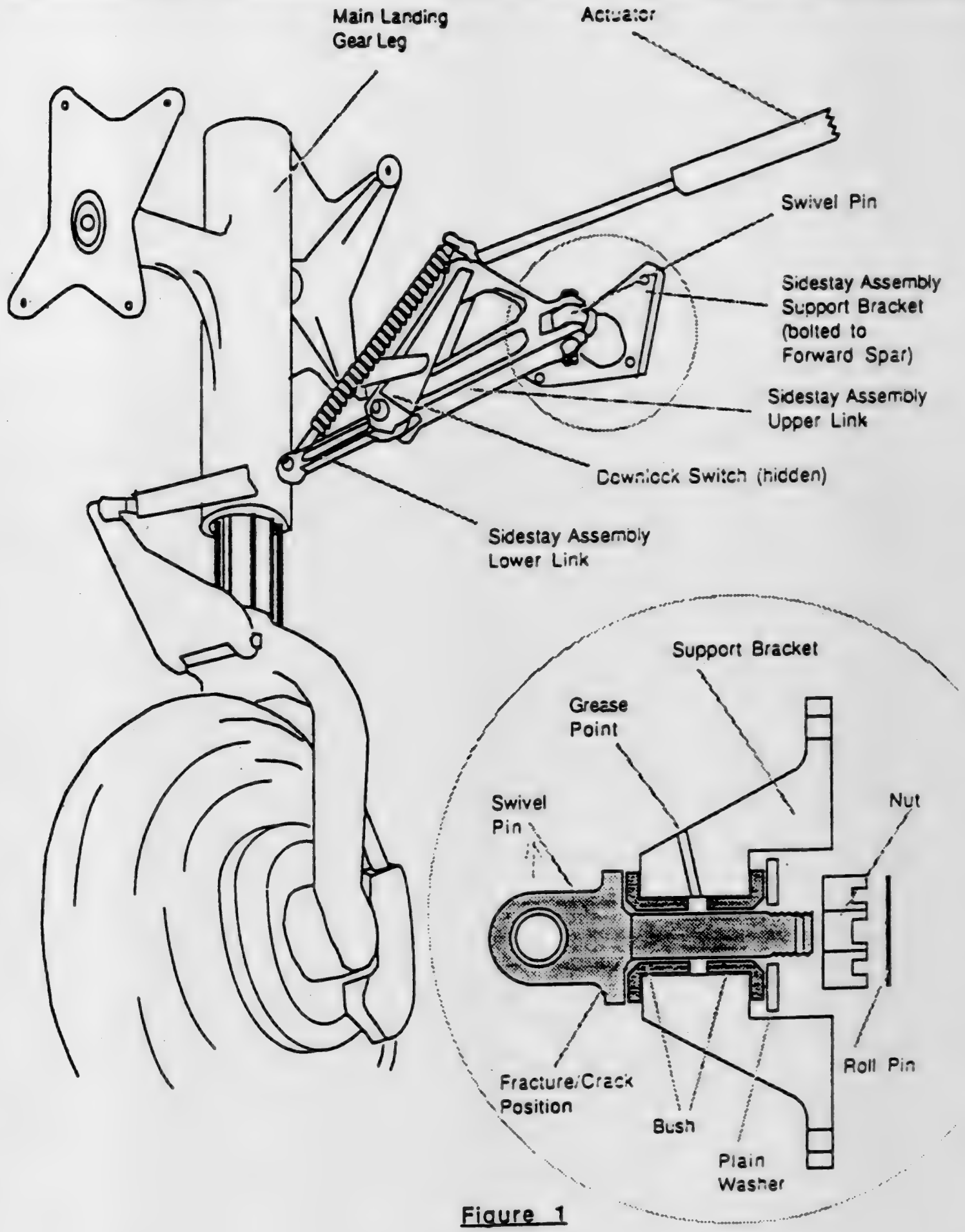

Figure 1

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(1) For any main gear sidebrace stud found cracked, prior to further flight, replace the cracked stud with an FAA-approved serviceable part (part numbers referenced in the table in paragraph (b) of this AD or FAA-approved equivalent) in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and accomplish one of the following, as applicable:

(i) Reinspect and replace (as necessary) as specified in paragraph (b) of this AD; or

(ii) For the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes, the P/N 95299–00 or 95299–02 main gear sidebrace studs are no longer manufactured. Install a new main gear sidebrace stud bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable. No repetitive inspections will be required by this AD for these affected airplane models when this bracket assembly is installed; or

(iii) For the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes, ream the existing two-piece bushings, P/N 67026–6, to an inside diameter of .624-inch to .625-inch, chamfer the head side of the bushing to accommodate the radius in the shank of the main gear sidebrace stud, and install the 5/8-inch stud, P/N 78717–02. No repetitive inspections will be required by this AD when this action is accomplished. If the bushings cannot be reamed while installed in the bracket (i.e., the bushings are loose), then install a main gear sidebrace bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable. No repetitive inspections will be required by this AD when this bracket assembly is installed.

(2) For any main gear sidebrace stud not found cracked, prior to further flight, reinstall the uncracked stud in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect and replace (as necessary) as specified in paragraph (b) of this AD.

(b) Reinspect both the left and right main gear sidebrace studs, using Type I (fluorescent) liquid penetrant or magnetic particle inspection methods. Replace any cracked stud or reinstall any uncracked stud as specified in paragraphs (a)(1) and (a)(2) of this AD, respectively:

Part No. installed	TIS inspection interval (hours)	Model airplanes installed on
20829–00 (Piper parts) or FAA-approved equivalent	1,000	PA24 and PA24–250.
22512–00 (Piper parts) or FAA-approved equivalent	1,000	PA24–260, PA24–400, PA30, and PA39.
95299–00 or 95299–02 (Piper parts) or FAA-approved equivalent	500	PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34-200, and PA34–200T.

Note 5: Accomplishing the actions of this AD does not affect the requirements of AD 77–13–21, Amendment 39–3093. The tolerance inspection requirements of that AD still apply for Piper PA24, PA30, and PA39 series airplanes.

(c) Owners/operators of the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes may accomplish one of the following at any time to terminate the repetitive inspection requirement of this AD:

(1) Install a main gear sidebrace bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable, which contains the 5/8-inch diameter main gear sidebrace stud, P/N 78717–02, and the one-piece bushing, P/N 67026–12; or

(2) Ream the existing two-piece bushings, P/N 67026–6, to an inside diameter of .624-inch to .625-inch, chamfer the head side of the bushing to accommodate the radius in the shank of the main gear sidebrace stud, and install the 5/8-inch stud, P/N 78717–02. If the bushings cannot be reamed while installed in the bracket (i.e., the bushings are loose), then install a main gear sidebrace bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO. Alternative methods of compliance approved in accordance with AD 95–20–07, Amendment 39–9386, are considered approved as alternative methods of compliance with this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Information related to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment supersedes AD 95–20–07, Amendment 39–9386.

(h) This amendment (39–9782) becomes effective on February 7, 1997.

Appendix to AD 97–01–01 Information To Determine Main Gear Sidebrace Stud Assembly Part Number (P/N)

—The P/N 95643–00/-01/-02/-03 bracket assembly contains the 9/16-inch diameter main gear sidebrace stud, P/N 95299–00/-02, and a two-piece bushing, P/N 67026–6.

—The P/N 95643–06/-07/-08/-09 bracket assembly contains the 5/8-inch diameter main gear sidebrace stud, P/N 78717–02, and a one-piece bushing, P/N 67026- 12.

—Both the one-piece and the two-piece bushing have a visible portion of the bushing flange, i.e., bushing shoulder.

—Whether a one-piece or two-piece bushing is installed may be determined by measuring the outside diameter of the bushing flange with a micrometer (jaws of the caliper must be 3/32-inch or less). The two- piece bushing will have an outside diameter of 1.00 inch and the one-piece bushing will have an outside diameter of 1.128 to 1.130 inches. This measurement is not valid for the following airplanes:

Model	Serial Nos.
PA28R–180 ..	28R–30004 through 28–31270.
PA28R–200 ..	28R–35001 through 28R–35820, and 28R–7135001 through 28R–7135062.

The main gear sidebrace studs on these airplanes will require removal to determine the P/N installed.

—The one-piece bushing contains a visible chamfer in the center of the bushing, and the chamfer in the two-piece bushing is not visible when the stud is installed.

—If P/N 95643–00/–01/–02/–03 bracket assembly is installed or the above information cannot be utilized, the main gear sidebrace stud will need to be removed from the bracket to determine the shank diameter and main gear sidebrace stud P/N.

—P/N 95299–00 and P/N 95299–02 main gear sidebrace studs are 9/16-inch in diameter.

—P/N 78717–00 main gear sidebrace studs are 5/8-inch in diameter.

—P/N 95643–00/–01/–02/–03 bracket assembly may have been modified to accommodate the 5/8-inch diameter main gear sidebrace stud, P/N 78717–02.

—The embossed number of 95363 on the bracket forging is not the bracket assembly P/N.

Issued in Kansas City, Missouri, on December 23, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–33231 Filed 12–31–96; 8:45 am]

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14 CFR Part 39

[Docket No. 96–NM–266–AD; Amendment 39–9871; AD 96–26–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to include procedures that will enable the flight crew to take appropriate action to maintain control of the airplane during an uncommanded yaw or roll condition, and to correct a jammed or restricted flight control condition. This amendment is prompted by an FAA determination that such procedures currently are not defined adequately in the AFM for these airplanes. The actions specified in this AD are intended to ensure that the flight crew is advised of the potential hazard associated with a jammed or restricted flight control condition and of the procedures necessary to address it.

DATES: Effective January 17, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Les Berven, Flight Test Pilot, Flight Test Branch, ANM–160S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2666; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: As part of its Continuing Operational Safety Program, the FAA has become aware of new information related to the safety of Boeing Model 737 series airplanes. Recent tests of the main rudder power control unit (PCU), conducted at Boeing, demonstrated a potential failure scenario that was previously unknown. These tests revealed that, if the secondary slide of the PCU jams in certain positions, rudder pedal input can cause deformation in the linkage leading to the primary and secondary slides of the servo valve of the main rudder PCU. This situation could result in rudder deflection in the opposite direction of the rudder command, and a jammed rudder.

Other Relevant Rulemaking

The conditions described previously were addressed previously in AD 96–23–51, amendment 39–9818 (61 FR 59317, November 22, 1996), which is applicable to all Boeing Model 737 series airplanes. That AD requires repetitive tests to verify proper operation of the rudder power control unit (PCU), and replacement of the PCU, if necessary. The actions specified by that AD are intended to prevent rudder motion in the opposite direction of the rudder command.

FAA's Findings

As a result of analysis related to the previously prescribed tests, the FAA finds that certain procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for Model 737 series airplanes to enable the flight crew to take appropriate action to maintain control of the airplane during an uncommanded yaw or roll condition, and to correct a jammed or restricted flight control condition. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to ensure that the flight crew is advised of the potential hazard associated with a jammed or restricted flight control condition and of the procedures necessary to address it. This AD requires revising the AFM to include procedures that will enable the flight crew to take appropriate action to maintain control of the airplane during an uncommanded yaw or roll condition, and to correct a jammed or restricted flight control condition.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–266–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-26-07 BOEING: Amendment 39-9871. Docket 96-NM-266-AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with jammed or restricted flight controls and of the procedures necessary to address it, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following recall item, which will enable the flight crew to take appropriate action to maintain control of the airplane during an uncommanded yaw or roll condition. This may be accomplished by inserting a copy of this AD in the AFM.

"UNCOMMANDED YAW OR ROLL

RECALL

Maintain control of the airplane with all available flight controls. If roll is uncontrollable, immediately reduce angle of attack and increase airspeed. Do not attempt to maintain altitude until control is recovered. If engaged, disconnect autopilot and autothrottle."

(2) Revise the section entitled "JAMMED FLIGHT CONTROLS" of the Normal Procedures Section (for Model 737-100 and -200 series airplanes) or the Non-Normal Procedures Section (for Model 737-300, -400, and -500 series airplanes), as applicable, of the FAA-approved AFM to include the following procedures, which will enable the flight crew to take appropriate action to maintain control of the airplane and to correct a jammed or restricted flight control condition. This may be accomplished by inserting a copy of this AD in the AFM.

"JAMMED FLIGHT CONTROLS

JAMMED OR RESTRICTED ELEVATOR OR AILERON:

In the event of a jammed elevator or aileron, do not hesitate to apply additional force to maintain control of the airplane. Do not turn off any flight control switches unless the faulty control is positively identified. Manual trim may be used to offload control forces.

JAMMED OR RESTRICTED RUDDER:

If the rudder pedals will not move to the pilot commanded position, or if the pedals are deflected in one direction and jammed, maintain control of the airplane with all available flight controls. Disengage the autopilot and autothrottle. Use maximum force (combined effort by both pilots) to overpower the rudder system.

After establishing control of the aircraft, check rudder pedal position. If the rudder pedals have centered, accomplish a normal descent, approach, and landing. If the rudder pedals remain jammed and are deflected to a degree that significantly affects the controllability of the airplane, select System B flight control switch to STBY RUD. If this action clears the jam/deflection, make a normal approach and landing, noting that rudder control may be limited. If moving the System B flight control switch to STBY RUD does not clear the jam, select System A flight control switch to off. If pedals do not center, select System B flight control switch to off. Make approach and landing with flaps 15 at V_{REF} flaps 15. The crosswind capability of the airplane will be greatly reduced.

YAW DAMPER:

The yaw damper is a separate control and provides a limited rudder movement in opposition to the yaw rate of the airplane. Rudder (yaw damper) indicator displacement indicates yaw damper operation. Yaw damper light illuminates amber when the yaw damper is not engaged.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on January 17, 1997.

Issued in Renton, Washington, on December 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-33104 Filed 12-30-96; 10:25 am]

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Office of the Secretary

14 CFR Part 382

49 CFR Part 27

[Docket No. 46872 and 45657]

RIN 2105-AB62

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air travel

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Correction to final regulations.

SUMMARY: On November 1, 1996, the Department of Transportation published final rules amending its regulations implementing Air Carrier Access Act and section 504 of the Rehabilitation Act. This document corrects certain editorial errors in that document. The

corrections do not affect the substance of the ammendments.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD)

SUPPLEMENTARY INFORMATION:

Background

The Department is making editorial corrections to its November 1, 1996, final rule (61 FR 56409), amending 49 CFR parts 27 and 14 CFR part 382, which implement section 504 of the Rehabilitation Act and the Air Carrier Access Act. The final rule concerned such subjects as lifts for small commuter aircraft, airport terminal accessibility, and passengers with communicable diseases.

Need for Correction

As published, the document contains errors which may prove to be misleading and are in need of correction. First, the title of an amendment to the Air Carrier Access Act regulation's "Provision of services and equipment" section is misnumbered (61 FR 56422). It reads "§ 382.49"; it should read "§ 382.39." Second, in the amendment to § 382.39(a)(2) (61 FR 56423), the word "commuter" in the final sentence is unnecessary and may be confusing, and should be deleted. In the same sentence, the words "fewer than 30" should be changed to "30 or fewer." Third, in the amendment to the section 504 rule (61 FR 56424), § 27.72(c)(2) inadvertantly included the word "rule" in three places, and we are deleting it.

Correction of Publication

Accordingly, the publication on November 1, 1996, of the final regulations amending 14 CFR part 382 and 49 CFR part 27, which were the subject of FR Doc. 96–28084, is corrected as follows:

1. On page 56422, in the third column, following amendatory instruction 4, the title of the amended section is corrected to read as follows:

§ 382.39 Provision of services and equipment.

2. On page 56423, in the first column, the last sentence of the amended § 382.39(a)(2) is corrected by removing the word "commuter" and changing the words "fewer than 30" to "30 or fewer."

3. On page 56424, in the third column, the first sentence of new § 27.72(c)(2) is corrected by removing the word "rule" in three places: after the words "December 2, 1998", after the words "December 2, 1999", and after the words "December 4, 2000."

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 96–33339 Filed 12–31–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8704]

RIN 1545–AR31

Definition of Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definitions of subpart F income and foreign personal holding company income of a controlled foreign corporation and the allocation of deficits for purposes of computing the deemed-paid foreign tax credit. These regulations are necessary to provide guidance that coordinates with previously published guidance under section 954. These regulations will affect United States shareholders of controlled foreign corporations.

DATES: These regulations are effective January 2, 1997.

For specific dates of applicability, see §§ 1.952–1(f)(5), 1.952–2(c)(1), 1.954–2(b)(3) and 1.960–1(i)(6).

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1995, proposed regulations (IL–75–92) amending the Income Tax Regulations (26 CFR Part 1) under sections 952, 954(c) and 960 of the Internal Revenue Code (Code) were published in the **Federal Register** (60 FR 46548). In final regulations under section 954 (TD 8618), also published on that date (60 FR 46500), a provision relating to the treatment of tax-exempt interest under the foreign personal holding company income rules was reserved. The proposed regulations provided rules for the treatment of tax-exempt interest and also provided guidance under sections 952 and 960 to coordinate with the final regulations. No public hearing was requested or held. One written comment was received on the proposed regulations. After consideration of this comment, the proposed regulations are adopted as final regulations without amendment.

Explanation of Provisions

Sections 1.952–1(e) and (f) and 1.960–1(i)

Sections 1.952–1(e) and (f) and 1.960–1(i) are unchanged from the proposed regulations.

Sections 1.952–2(c)(1) and 1.954–2(b)(3)

Under § 1.954–2T(b)(6), interest income that was exempt from tax under section 103 was included in the foreign personal holding company income of the controlled foreign corporation. However, the net foreign base company income that was attributable to tax-exempt interest was treated as tax-exempt interest in the hands of the United States shareholder upon a deemed distribution under subpart F and therefore excluded for regular tax purposes but potentially subject to the alternative minimum tax. Section 1.954–2(b)(3), as proposed and finalized, amends the rule in the temporary regulations to provide that foreign personal holding company income includes interest income that is exempt from tax under section 103. The tax-exempt interest would not retain its character as such in the hands of the United States shareholder upon a deemed distribution under subpart F. As a result of the treatment of tax-exempt interest in these final regulations, Rev. Rul. 72–527 (1972–2 C.B. 456) is obsoleted.

A commentator argued that treatment of tax-exempt interest in the proposed regulations was contrary to section 103. This comment was rejected. The Code does not specifically address how section 103 applies in the context of subpart F. Although § 1.952–2 provides that, in general, U.S. tax principles apply in computing subpart F income, this regulation makes certain Code provisions inapplicable when necessary to serve the purposes of subpart F. See § 1.952–2(c)(1).

Section 1.954–1(d)(4)(iii)

The example in § 1.954–1(d)(4)(iii) is amended to correct a mathematical error.

Section 1.954–2(g)(2)

The regulations are amended to clarify that income derived in the trade or business of trading foreign currency

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is not excluded from foreign personal holding company income under the business needs exception. A technical correction is made to § 1.954–2(g)(2)(ii)(B)(*2*).

Section 1.957–1(c)

Technical corrections are made to § 1.957–1(c) *Examples 8* and *9*.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Barbara Felker and Valerie Mark of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.960–1 also issued under 26 U.S.C. 960(a). * * *

Par. 2. Section 1.952–1 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(e) *Application of current earnings and profits limitation*—(1) *In general.* If the subpart F income (as defined in section 952(a)) of a controlled foreign corporation exceeds the foreign corporation's earnings and profits for the taxable year, the subpart F income includible in the income of the corporation's United States shareholders is reduced under section 952(c)(1)(A) in accordance with the following rules. The excess of subpart F income over current year earnings and profits shall—

(i) First, proportionately reduce subpart F income in each separate category of the controlled foreign corporation, as defined in § 1.904–5(a)(1), in which current earnings and profits are zero or less than zero;

(ii) Second, proportionately reduce subpart F income in each separate category in which subpart F income exceeds current earnings and profits; and

(iii) Third, proportionately reduce subpart F income in other separate categories.

(2) *Allocation to a category of subpart F income.* An excess amount that is allocated under paragraph (e)(1) of this section to a separate category must be further allocated to a category of subpart F income if the separate category contains more than one category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*). In such case, the excess amount that is allocated to the separate category must be allocated to the various categories of subpart F income within that separate category on a proportionate basis.

(3) *Recapture of subpart F income reduced by operation of earnings and profits limitation.* Any amount in a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*) that is reduced by operation of the current year earnings and profits limitation of section 952(c)(1)(A) and this paragraph (e) shall be subject to recapture in a subsequent year under the rules of section 952(c)(2) and paragraph (f) of this section.

(4) *Coordination with sections 953 and 954.* The rules of this paragraph (e) shall be applied after the application of sections 953 and 954 and the regulations under those sections, except as provided in § 1.954–1(d)(4)(ii).

(5) *Earnings and deficits retain separate limitation character.* The income reduction rules of paragraph (e)(1) of this section shall apply only for purposes of determining the amount of an inclusion under section 951(a)(1)(A) from each separate category as defined in § 1.904–5(a)(1) and the separate categories in which recapture accounts are established under section 952(c)(2) and paragraph (f) of this section. For rules applicable in computing post-1986 undistributed earnings, see generally section 902 and the regulations under that section. For rules relating to the allocation of deficits for purposes of computing foreign taxes deemed paid under section 960 with respect to an inclusion under section 951(a)(1)(A), see § 1.960–1(i).

(f) *Recapture of subpart F income in subsequent taxable year*—(1) *In general.* If a controlled foreign corporation's subpart F income for a taxable year is reduced under the current year earnings and profits limitation of section 952(c)(1)(A) and paragraph (e) of this section, recapture accounts will be established and subject to recharacterization in any subsequent taxable year to the extent the recapture accounts were not previously recharacterized or distributed, as provided in paragraphs (f) (2) and (3) of this section.

(2) *Rules of recapture*—(i) *Recapture account.* If a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*) is reduced under the current year earnings and profits limitation of section 952(c)(1)(A) and paragraph (e) of this section for a taxable year, the amount of such reduction shall constitute a recapture account.

(ii) *Recapture.* Each recapture account of the controlled foreign corporation will be recharacterized, on a proportionate basis, as subpart F income in the same separate category (as defined in § 1.904–5(a)(1)) as the recapture account to the extent that current year earnings and profits exceed subpart F income in a taxable year. The United States shareholder must include his pro rata share (determined under the rules of § 1.951–1(e)) of each recharacterized amount in income as subpart F income in such separate category for the taxable year.

(iii) *Reduction of recapture account and corresponding earnings.* Each recapture account, and post-1986 undistributed earnings in the separate category containing the recapture account, will be reduced in any taxable year by the amount which is recharacterized under paragraph (f)(2)(ii) of this section. In addition, each recapture account, and post-1986 undistributed earnings in the separate category containing the recapture account, will be reduced in the amount of any distribution out of that account (as determined under the ordering rules of section 959(c) and paragraph (f)(3)(ii) of this section).

(3) *Distribution ordering rules*—(i) *Coordination of recapture and*

distribution rules. If a controlled foreign corporation distributes an amount out of earnings and profits described in section 959(c)(3) in a year in which current year earnings and profits exceed subpart F income and there is an amount in a recapture account for such year, the recapture rules will apply first.

(ii) *Distributions reduce recapture accounts first.* Any distribution made by a controlled foreign corporation out of earnings and profits described in section 959(c)(3) shall be treated as made first on a proportionate basis out of the recapture accounts in each separate category to the extent thereof (even if the amount in the recapture account exceeds post-1986 undistributed earnings in the separate category containing the recapture account). Any remaining distribution shall be treated as made on a proportionate basis out of the remaining earnings and profits of the controlled foreign corporation in each separate category. See section 904(d)(3)(D).

(4) *Examples.* The application of paragraphs (e) and (f) of this section may be illustrated by the following examples:

Example 1. (i) A, a U.S. person, is the sole shareholder of CFC, a controlled foreign corporation formed on January 1, 1998, whose functional currency is the u. In 1998, CFC earns 100u of foreign base company sales income that is general limitation income described in section 904(d)(1)(I) and incurs a (200u) loss attributable to activities that would have produced general limitation income that is not subpart F income. In 1998 CFC also earns 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A), and 100u of foreign personal holding company income that is dividend income subject to a separate limitation described in section 904(d)(1)(E) for dividends from a noncontrolled section 902 corporation. CFC's subpart F income for 1998, 300u, exceeds CFC's current earnings and profits, 100u, by 200u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to CFC's current earnings and profits of 100u, all of which is included in A's gross income under section 951(a)(1)(A). The 200u of CFC's 1998 subpart F income that is not included in A's income in 1998 by reason of section 952(c)(1)(A) is subject to recapture under section 952(c)(2) and paragraph (f) of this section.

(ii) For purposes of determining the amount and type of income included in A's gross income and the amount and type of income in CFC's recapture account, the rules of paragraphs (e) (1) and (2) of this section apply. Under paragraph (e)(1)(i) of this section, the amount by which CFC's subpart F income exceeds its earnings and profits for 1998, 200u, first reduces from 100u to 0 CFC's subpart F income in the general limitation category, which has a current year deficit of (100u) in earnings and profits. Next, under paragraph (e)(1)(iii) of this section, the remaining 100u by which CFC's 1998 subpart F income exceeds earnings and profits is applied proportionately to reduce CFC's subpart F income in the separate categories for passive income (100u) and dividends from the noncontrolled section 902 corporation (100u). Thus, A includes 50u of passive limitation/foreign personal holding company income and 50u of dividends from the noncontrolled section 902 corporation/foreign personal holding company income in gross income in 1998. CFC has 100u in its general limitation/foreign base company sales income recapture account attributable to the 100u of foreign base company sales income that is not included in A's income by reason of the earnings and profits limitation of section 952(c)(1)(A). CFC also has 50u in its passive limitation recapture account, all of which is attributable to foreign personal holding company income, and 50u in its recapture account for dividends from the noncontrolled section 902 corporation, all of which is attributable to foreign personal holding company income.

(iii) For purposes of computing post-1986 undistributed earnings, the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Under § 1.960–1(i), the general limitation deficit of (100u) is allocated proportionately to reduce passive limitation earnings of 100u and noncontrolled section 902 dividend earnings of 100u. Thus, passive limitation earnings are reduced by 50u to 50u (100u passive limitation earnings/200u total earnings in positive separate categories × (100u) general limitation deficit=50u reduction), and the noncontrolled section 902 corporation earnings are reduced by 50u to 50u (100u noncontrolled section 902 corporation earnings/200u total earnings in positive separate categories × (100u) general limitation deficit=50u reduction). All of CFC's post-1986 foreign income taxes with respect to passive limitation income and dividends from the noncontrolled section 902 corporation are deemed paid by A under section 960 with respect to the subpart F inclusions (50u inclusion/50u earnings in each separate category). After the inclusion and deemed-paid taxes are computed, at the close of 1998 CFC has a (100u) deficit in general limitation earnings (100u subpart F earnings + (200u) nonsubpart F loss), 50u of passive limitation earnings (100u of earnings attributable to foreign personal holding company income − 50u inclusion) with a corresponding passive limitation/foreign personal holding company income recapture account of 50u, and 50u of earnings subject to a separate limitation for dividends from the noncontrolled section 902 corporation (100u earnings − 50u inclusion) with a corresponding noncontrolled section 902 corporation/foreign personal holding company income recapture account of 50u.

Example 2. (i) The facts are the same as in *Example 1* with the addition of the following facts. In 1999, CFC earns 100u of foreign base company sales income that is general limitation income and 100u of foreign personal holding company income that is passive limitation income. In addition, CFC incurs (10u) of expenses that are allocable to its separate limitation for dividends from the noncontrolled section 902 corporation. Thus, CFC's subpart F income for 1999, 200u, exceeds CFC's current earnings and profits, 190u, by 10u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to CFC's current earnings and profits of 190u, all of which is included in A's gross income under section 951(a)(1)(A).

(ii) For purposes of determining the amount and type of income included in A's gross income and the amount and type of income in CFC's recapture accounts, the rules of paragraphs (e) (1) and (2) of this section apply. While CFC's general limitation post-1986 undistributed earnings for 1999 are 0 ((100u) opening balance + 100u subpart F income), CFC's general limitation subpart F income (100u) does not exceed its general limitation current earnings and profits (100u) for 1999. Accordingly, under paragraph (e)(1)(iii) of this section, the amount by which CFC's subpart F income exceeds its earnings and profits for 1999, 10u, is applied proportionately to reduce CFC's subpart F income in the separate categories for general limitation income, 100u, and passive income, 100u. Thus, A includes 95u of general limitation foreign base company sales income and 95u of passive limitation foreign personal holding company income in gross income in 1999. At the close of 1999 CFC has 105u in its general limitation/foreign base company sales income recapture account (100u from 1998 + 5u from 1999), 55u in its passive limitation/foreign personal holding company income recapture account (50u from 1998 + 5u from 1999), and 50u in its dividends from the noncontrolled section 902 corporation/foreign personal holding company income recapture account (all from 1998).

(iii) For purposes of computing post-1986 undistributed earnings in each separate category, the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Thus, post-1986 undistributed earnings (or an accumulated deficit) in each separate category are increased (or reduced) by current earnings and profits or current deficits in each separate category. The accumulated deficit in CFC's general limitation earnings and profits (100u) is reduced to 0 by the addition of 100u of 1999 earnings and profits. CFC's passive limitation earnings of 50u are increased by 100u to 150u, and CFC's noncontrolled section 902 corporation earnings of 50u are decreased by (10u) to 40u. After the addition of current year earnings and profits and deficits to the separate categories there are no deficits remaining in any separate category. Thus, the allocation rules of § 1.960–1(i)(4) do not apply in 1999. Accordingly, in determining the post-1986 foreign income taxes deemed paid by A, post-1986 undistributed earnings in each separate category are unaffected by earnings in the other categories. Foreign taxes deemed paid under section 960 for 1999 would be determined as follows for each separate category: with respect to the inclusion of 95u of foreign base company sales income out of general limitation earnings, the section 960 fraction is 95u inclusion/0 total earnings; with respect to the inclusion of 95u of passive limitation income

the section 960 fraction is 95u inclusion/150u passive earnings. Thus, no general limitation taxes would be associated with the inclusion of the general limitation earnings because there are no accumulated earnings in the general limitation category. After the deemed-paid taxes are computed, at the close of 1999 CFC has a (95u) deficit in general limitation earnings and profits ((100u) opening balance + 100u current earnings −95u inclusion), 55u of passive limitation earnings and profits (50u opening balance + 100u current foreign personal holding company income −95u inclusion), and 40u of earnings and profits subject to the separate limitation for dividends from the noncontrolled section 902 corporation (50u opening balance + (10u) expense).

Example 3. (i) A, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation whose functional currency is the u. At the beginning of 1998, CFC has post-1986 undistributed earnings of 275u, all of which are general limitation earnings described in section 904(d)(1)(I). CFC has no previously-taxed earnings and profits described in section 959(c)(1) or (c)(2). In 1998, CFC has a (200u) loss in the shipping category described in section 904(d)(1)(D), 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A), and 125u of general limitation manufacturing earnings that are not subpart F income. CFC's subpart F income for 1998, 100u, exceeds CFC's current earnings and profits, 25u, by 75u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to CFC's current earnings and profits of 25u, all of which is included in A's gross income under section 951(a)(1)(A). The 75u of CFC's 1998 subpart F income that is not included in A's income in 1998 by reason of section 952(c)(1)(A) is subject to recapture under section 952(c)(2) and paragraph (f) of this section.

(ii) For purposes of determining the amount and type of income included in A's gross income and the amount and type of income in CFC's recapture account, the rules of paragraphs (e) (1) and (2) of this section apply. Under paragraph (e)(1) of this section, the amount of CFC's subpart F income in excess of earnings and profits for 1998, 75u, reduces the 100u of passive limitation foreign personal holding company income. Thus, A includes 25u of passive limitation foreign personal holding company income in gross income, and CFC has 75u in its passive limitation/foreign personal holding company income recapture account.

(iii) For purposes of computing post-1986 undistributed earnings in each separate category the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Under § 1.960–1(i), the shipping limitation deficit of (200u) is allocated proportionately to reduce general limitation earnings of 400u and passive limitation earnings of 100u. Thus, general limitation earnings are reduced by 160u to 240u (400u general limitation earnings/500u total earnings in positive separate categories × (200u) shipping deficit=160u reduction), and passive limitation earnings are reduced by 40u to 60u (100u passive earnings/500u total earnings in positive separate categories × (200u) shipping deficit=40u reduction). Five-twelfths of CFC's post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by A under section 960 with respect to the subpart F inclusion (25u inclusion/60u passive earnings). After the inclusion and deemed-paid taxes are computed, at the close of 1998 CFC has 400u of general limitation earnings (275u opening balance + 125u current earnings), 75u of passive limitation earnings (100u of foreign personal holding company income − 25u inclusion), and a (200u) deficit in shipping limitation earnings.

Example 4. (i) The facts are the same as in *Example 3* with the addition of the following facts. In 1999, CFC earns 50u of general limitation earnings that are not subpart F income and 75u of passive limitation income that is foreign personal holding company income. Thus, CFC has 125u of current earnings and profits. CFC distributes 200u to A. Under paragraph (f)(3)(i) of this section, the recapture rules are applied first. Thus, the amount by which 1999 current earnings and profits exceed subpart F income, 50u, is recharacterized as passive limitation foreign personal holding company income. CFC's total subpart F income for 1999 is 125u of passive limitation foreign personal holding company income (75u current earnings plus 50u recapture account), and the passive limitation/foreign personal holding company income recapture account is reduced from 75u to 25u.

(ii) CFC has 150u of previously-taxed earnings and profits described in section 959(c)(2) (25u attributable to 1998 and 125u attributable to 1999), all of which is passive limitation earnings and profits. Under section 959(c), 150u of the 200u distribution is deemed to be made from earnings and profits described in section 959(c)(2). The remaining 50u is deemed to be made from earnings and profits described in section 959(c)(3). Under paragraph (f)(3)(ii) of this section, the dividend distribution is deemed to be made first out of the passive limitation recapture account to the extent thereof (25u). Under paragraph (f)(2)(iii) of this section, the passive limitation recapture account is reduced from 25u to 0. The remaining distribution of 25u is treated as made out of CFC's general limitation earnings and profits.

(iii) For purposes of computing post-1986 undistributed earnings, the rules of section 902 and 960, including the rules of § 1.960–1(i), apply. Thus, the shipping limitation accumulated deficit of (200u) reduces general limitation earnings and profits of 450u and passive limitation earnings and profits of 150u on a proportionate basis. Thus, 100% of CFC's post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by A under section 960 with respect to the 1999 subpart F inclusion of 125u (100u inclusion (numerator limited to denominator)/100u passive earnings). No post-1986 foreign income taxes remain to be deemed paid under section 902 in connection with the 25u distribution from the passive limitation/foreign personal holding company income recapture account. One-twelfth of CFC's post-1986 foreign income taxes with respect to general limitation earnings are deemed paid by A under section 902 with respect to the distribution of 25u general limitation earnings and profits described in section 959(c)(3) (25u inclusion/300u general limitation earnings). After the deemed-paid taxes are computed, at the close of 1999 CFC has 425u of general limitation earnings and profits (400u opening balance + 50u current earnings—25u distribution), 0 of passive limitation earnings (75u recapture account + 75u current foreign personal holding company income—125u inclusion—25u distribution), and a (200u) deficit in shipping limitation earnings.

(5) *Effective date.* Paragraph (e) of this section and this paragraph (f) apply to taxable years of a controlled foreign corporation beginning after March 3, 1997.

Par. 3. In § 1.952–2, paragraph (c)(1) is revised to read as follows:

§ 1.952–2 Determination of gross income and taxable income of a foreign corporation.

* * * * *

(c) *Special rules for purposes of this section—(1) Nonapplication of certain provisions.* Except where otherwise distinctly expressed, the provisions of subchapters F, G, H, L, M, N, S, and T of chapter 1 of the Internal Revenue Code shall not apply and, for taxable years of a controlled foreign corporation beginning after March 3, 1997, the provisions of section 103 of the Internal Revenue Code shall not apply.

* * * * *

Par. 4. In § 1.954–1, the *Example* in paragraph (d)(4)(iii) is revised to read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(d) * * *
(4) * * *
(iii) * * *

Example. During its 1995 taxable year, CFC, a controlled foreign corporation, earns royalty income, net of taxes, of $100 that is foreign personal holding company income. CFC has no expenses associated with this royalty income. CFC pays $50 of foreign income taxes with respect to the royalty income. For 1995, CFC has current earnings and profits of $50. CFC's subpart F income, as determined prior to the application of this paragraph (d), exceeds its current earnings and profits. Thus, under paragraph (d)(4)(ii) of this section, the amount of CFC's only net item of income, the royalty income, will be limited to $50. The remaining $50 will be subject to recharacterization in a subsequent taxable year under section 952(c)(2). Because the amount of foreign income taxes paid with respect to this net item of income is $50, the effective rate of tax on the item, for purposes of this paragraph (d), is 50 percent ($50 of taxes/$50 net item + $50 of taxes). Accordingly, an election under paragraph (d)(5) of this section may be made to exclude

the item of income from the computation of subpart F income.

* * * * *

Par. 5. In § 1.954–2, paragraphs (b)(3), (g)(2)(ii)(B)(*1*)(*i*) and (g)(2)(ii)(B)(*2*) are revised to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(b) * * *

(3) *Treatment of tax exempt interest.* For taxable years of a controlled foreign corporation beginning after March 3, 1997, foreign personal holding company income includes all interest income, including interest that is described in section 103 (see § 1.952–2(c)(1)).

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) * * *

(*i*) Arises from a transaction (other than a hedging transaction) entered into, or property used or held for use, in the normal course of the controlled foreign corporation's trade or business, other than the trade or business of trading foreign currency;

* * * * *

(*2*) The foreign currency gain or loss arises from a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to a transaction or property that satisfies the requirements of paragraphs (g)(2)(ii)(B)(*1*) (*i*) through (*iii*) of this section, provided that any gain or loss arising from such transaction or property that is attributable to changes in exchange rates is clearly determinable from the records of the CFC as being derived from such transaction or property. For purposes of this paragraph (g)(2)(ii)(B)(*2*), a hedging transaction will satisfy the aggregate hedging rules of § 1.1221–2(c)(7) only if all (or all but a de minimis amount) of the aggregate risk being hedged arises in connection with transactions or property that satisfy the requirements of paragraphs (g)(2)(ii)(B)(*1*) (*i*) through (*iii*) of this section, provided that any gain or loss arising from such transactions or property that is attributable to changes in exchange rates is clearly determinable from the records of the CFC as being derived from such transactions or property.

* * * * *

Par. 6. Section 1.957–1 is amended by:

1. Removing the last sentence of paragraph (c) *Example 8* and adding two sentences in its place.

2. Revising the last sentence of paragraph (c) *Example 9.*

The addition and revision read as follows:

§ 1.957–1 Definition of controlled foreign corporation.

* * * * *

(c) * * *

Example 8. * * * JV was a controlled foreign corporation on the following day because over 50 percent of the total value in the corporation was held by a person that was a United States shareholder under section 951(b). See § 1.951–1(f).

Example 9. * * * JV became a controlled foreign corporation on the following day because over 50 percent of the total value in the corporation was held by a person that was a United States shareholder under section 951(b).

* * * * *

Par. 7. In § 1.960–1, paragraph (i) is added to read as follows:

§ 1.960–1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

* * * * *

(i) *Computation of deemed-paid taxes in post-1986 taxable years*—(1) *General rule.* If a domestic corporation is eligible to compute deemed-paid taxes under section 960(a)(1) with respect to an amount included in gross income under section 951(a), then, such domestic corporation shall be deemed to have paid a portion of the foreign corporation's post-1986 foreign income taxes determined under section 902 and the regulations under that section in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) *Ordering rule for computing deemed-paid taxes under sections 902 and 960.* If a domestic corporation computes deemed-paid taxes under both sections 902 and 960 in the same taxable year, section 960 shall be applied first. After the deemed-paid taxes are computed under section 960 with respect to a deemed income inclusion, post-1986 undistributed earnings and post-1986 foreign income taxes in each separate category shall be reduced by the appropriate amounts before deemed-paid taxes are computed under section 902 with respect to a dividend distribution.

(3) *Computation of post-1986 undistributed earnings.* Post-1986 undistributed earnings (or an accumulated deficit in post-1986 undistributed earnings) are computed under section 902 and the regulations under that section.

(4) *Allocation of accumulated deficits.* For purposes of computing post-1986 undistributed earnings under sections 902 and 960, a post-1986 accumulated deficit in a separate category shall be allocated proportionately to reduce post-1986 undistributed earnings in the other separate categories. However, a deficit in any separate category shall not permanently reduce earnings in other separate categories, but after the deemed-paid taxes are computed the separate limitation deficit shall be carried forward in the same separate category in which it was incurred. In addition, because deemed-paid taxes may not exceed taxes paid or accrued by the controlled foreign corporation, in computing deemed-paid taxes with respect to an inclusion out of a separate category that exceeds post-1986 undistributed earnings in that separate category, the numerator of the deemed-paid credit fraction (deemed inclusion from the separate category) may not exceed the denominator (post-1986 undistributed earnings in the separate category).

(5) *Examples.* The application of this paragraph (i) may be illustrated by the following examples. See § 1.952–1(f)(4) for additional illustrations of these rules.

Example 1. (i) A, a U.S. person, is the sole shareholder of CFC, a controlled foreign corporation formed on January 1, 1998, whose functional currency is the u. In 1998 CFC earns 100u of general limitation income described in section 904(d)(1)(I) that is not subpart F income and 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A). In 1998 CFC also incurs a (50u) loss in the shipping category described in section 904(d)(1)(D). CFC's subpart F income for 1998, 100u, does not exceed CFC's current earnings and profits of 150u. Accordingly, all 100u of CFC's subpart F income is included in A's gross income under section 951(a)(1)(A). Under section 904(d)(3)(B) of the Internal Revenue Code and paragraph (i)(1) of this section, A includes 100u of passive limitation income in gross income for 1998.

(ii) For purposes of computing post-1986 undistributed earnings under sections 902, 904(d) and 960 with respect to the subpart F inclusion, the shipping limitation deficit of (50u) is allocated proportionately to reduce general limitation earnings of 100u and passive limitation earnings of 100u. Thus, general limitation earnings are reduced by 25u to 75u (100u general limitation earnings/200u total earnings in positive separate categories × (50u) shipping deficit = 25u reduction), and passive limitation earnings are reduced by 25u to 75u (100u passive earnings/200u total earnings in positive separate categories × (50u) shipping deficit = 25u reduction). All of CFC's post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by A under section 960 with respect to the 100u subpart F inclusion of passive income (75u inclusion (numerator limited to denominator

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under paragraph (i)(4) of this section)/75u passive earnings). After the inclusion and deemed-paid taxes are computed, at the close of 1998 CFC has 100u of general limitation earnings, 0 of passive limitation earnings (100u of foreign personal holding company income — 100u inclusion), and a (50u) deficit in shipping limitation earnings.

Example 2. (i) The facts are the same as in *Example 1* with the addition of the following facts. In 1999, CFC distributes 150u to A. CFC has 100u of previously-taxed earnings and profits described in section 959(c)(2) attributable to 1998, all of which is passive limitation earnings and profits. Under section 959(c), 100u of the 150u distribution is deemed to be made from earnings and profits described in section 959(c)(2). The remaining 50u is deemed to be made from earnings and profits described in section 959(c)(3). The entire dividend distribution of 50u is treated as made out of CFC's general limitation earnings and profits. See section 904(d)(3)(D).

(ii) For purposes of computing post-1986 undistributed earnings under section 902 with respect to the 1999 dividend of 50u, the shipping limitation accumulated deficit of (50u) reduces general limitation earnings and profits of 100u to 50u. Thus, 100% of CFC's post-1986 foreign income taxes with respect to general limitation earnings are deemed paid by A under section 902 with respect to the 1999 dividend of 50u (50u dividend/50u general limitation earnings). After the deemed-paid taxes are computed, at the close of 1999 CFC has 50u of general limitation earnings (100u opening balance—50u distribution), 0 of passive limitation earnings, and a (50u) deficit in shipping limitation earnings.

(6) *Effective date.* This paragraph (i) applies to taxable years of a controlled foreign corporation beginning after March 3, 1997.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 11, 1996.

Donald C. Lubick,

Assistant Secretary of the Treasury.

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26 CFR Parts 31 and 602

[TD 8706]

RIN 1545–AR67

Electronic Filing of Form W–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Form W–4, Employee's Withholding Allowance Certificate. The final regulations authorize employers to establish electronic systems for use by employees in filing their Forms W–4. The regulations provide employers and employees with guidance necessary to comply with the law. The regulations affect employers that establish electronic systems and their employees.

EFFECTIVE DATE: These final regulations are effective January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Karin Loverud, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1435. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is 20 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 15, 1994, a notice of proposed rulemaking [EE–45–93] containing proposed regulations relating to Form W–4, Employee's Withholding Allowance Certificate, was published in the **Federal Register** (59 FR 18057).

On December 21, 1994, temporary regulations (TD 8577) clarifying the existing proposed regulations were published in the **Federal Register** (59 FR 65712). A notice of proposed rulemaking (EE–45–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (59 FR 65740).

Written comments responding to these notices were received. Public hearings were requested and were held on July 15, 1994, and November 7, 1995.

After consideration of all the comments, the proposed regulations under section 3402(f) are adopted as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Revisions and Summary of Comments

1. Relationship between paper and electronic Forms W–4

A withholding exemption certificate (Form W–4) may be in either paper or electronic form. Therefore, an employee will furnish a Form W–4 to the employer either on paper or electronically. To clarify that an electronic Form W–4 has the same status as a paper Form W–4, the final regulations make minor revisions to § 31.3402(f)(5)–1, Form and contents of withholding exemption certificates. Further, the final regulations appear as § 31.3402(f)(5)–1(c), rather than in a separate regulations section limited to electronic forms.

2. Electronic filing by all employees.

The existing proposed and temporary regulations require employers that establish electronic systems to provide employees with the option of filing paper or electronic Forms W–4. Several commentators requested that employers be allowed to adopt systems under which all employees file Forms W–4 electronically. These commentators stated that a system under which all employees file electronically would reduce employer burden in terms of costs and time (for example, eliminate maintenance of duplicative paper and electronic systems). Similarly, it would reduce employee burden in terms of time and choosing a filing option.

The IRS and Treasury want to assist in reducing burdens on both employers and employees and to make it as easy as possible for employers to adopt less burdensome systems. The final regulations permit an employer to adopt a system under which all employees file Forms W–4 electronically. The IRS and Treasury expect, however, that an employer will make a paper option reasonably available upon request to any employee who has a serious objection to using the electronic system or whose access to, or ability to use, the system may be limited (for example, as a result of a disability). The paper option would be satisfied, for example, if the employer informs employees how they can obtain a paper Form W–4 and where they should submit the completed paper Form W–4. The IRS and Treasury also expect that employers will comply with all applicable law

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governing the workplace and terms and conditions of employment, such as the Americans with Disabilities Act (42 U.S.C. 12112(a)). Compliance with these regulations does not guarantee that a system for filing Forms W–4 electronically is in compliance with those applicable laws.

3. Electronic Forms W–4

Several commentators recommended that electronic systems be allowed for all Forms W–4 without exception. The prior proposed and temporary regulations specifically exclude (1) Forms W–4 required upon commencement of employment (initial Form W–4), and (2) Forms W–4 required to be furnished to the IRS by employers because more than 10 withholding exemptions are claimed or, if the employee is expected to earn more than $200 per week, exemption from withholding is claimed.

Initial Form W–4. Section 3402(f)(2)(A) of the Internal Revenue Code (Code) requires a new employee to furnish the employer with a signed withholding exemption certificate. Section 6061 requires all Forms W–4 to be signed. See discussion below under *"5. Signature Under Penalties of Perjury"* and § 301.6061–1(b), which states that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. The final regulations permit electronic systems to include Forms W–4 required upon commencement of employment.

Forms W–4 claiming more than 10 exemptions or exemption from withholding. Section 31.3402(f)(2)–1(g) requires employers to submit to the IRS copies of certain Forms W–4 furnished to them by their employees. The Forms W–4 required to be submitted are those on which the employee claims either (1) more than 10 withholding exemptions, or (2) exemption from withholding (and the employee is expected to earn more than $200 per week).

Under § 31.3402(f)(2)–1(g)(5), if the IRS determines that a Form W–4, a copy of which was submitted to the IRS, is defective, the IRS will notify in writing both the employer and the employee. (The notice is referred to as a "lock-in letter.") A Form W–4 is defective if (1) the IRS determines that the Form W–4 contains a materially incorrect statement, or (2) following communication with the employee, the IRS lacks sufficient information to determine whether the certificate is correct. The lock-in letter issued by the IRS advises the employer that the employee either is not entitled to claim exemption from withholding or is not entitled to claim more withholding exemptions than the number specified by the IRS in the notice, or both. If the employee subsequently files a new Form W–4, the employer may withhold on the basis of that new Form W–4 only if the new Form W–4 is consistent with the lock-in letter. The employer must continue to withhold on the basis of that advice until the IRS revokes in writing its lock-in letter.

The final regulations permit electronic systems to include Forms W–4 on which employees claim more than 10 withholding exemptions or exemption from withholding. However, the IRS and Treasury expect that electronic systems, alone or in conjunction with the rest of an employer's payroll system, will ensure compliance with the advice contained in a lock-in letter. For instance, an electronic system can ensure compliance with a lock-in letter by prohibiting an employee for whom a lock-in letter was issued from filing any electronic Form W–4 or prohibiting the employee from claiming more withholding exemptions than the number specified in the IRS notice. Additionally, an employer may choose to require any employee to file a paper Form W–4 if the employee wishes to claim more than 10 withholding exemptions or exemption from withholding.

4. Submission of Certain Forms W–4 to IRS

Section 31.3402(f)(2)–1(g) requires employers to submit to the IRS copies of Forms W–4 on which the employee claims either more than 10 withholding exemptions or exemption from withholding (and the employee is expected to earn more than $200 per week). Generally, the copies are sent quarterly to the IRS along with the employer's Form 941, Employer's Quarterly Federal Tax Return. Copies can also be submitted earlier and more often to the employer's IRS service center.

Employers that establish electronic systems will satisfy the requirement of § 31.3402(f)(2)–1(g) if they furnish the Form W–4 information on magnetic media. Before using magnetic media, employers must submit Form 4419, Application for Filing Information Returns Magnetically/Electronically, to request authorization. Rev. Proc. 92–80 (1992–2 C.B. 465) contains specifications for filing Forms W–4 on magnetic tape and on 5¼- and 3½-inch magnetic diskettes. Electronic transmission of Form W–4 information to the IRS is not yet available.

5. Signature Under Penalties of Perjury

Section 6061 of the Code requires that any return, statement, or other document required to be made under any provision of the Code or regulations be signed. Section 6065 requires that any such document contain or be verified by a written declaration that it is made under the penalties of perjury. These requirements apply to all Forms W–4, including those filed electronically, and are reflected in § 31.3402(f)(5)–1(c)(iii) of the final regulations.

Although sections 6061 and 6065 apply to all Forms W–4, the IRS and Treasury are concerned that some electronic systems established under the temporary regulations may not include a signature under penalties of perjury. The final regulations, therefore, include guidance on the perjury statement and the electronic signature.

For certain Forms W–4, the final regulations treat the signature-under-penalties-of-perjury-statement requirement as satisfied until January 1, 1999. This special rule applies only if the system precludes the electronic filing of Forms W–4 required upon commencement of employment and Forms W–4 claiming more than 10 withholding exemptions or exemption from withholding. Moreover, the special rule applies only to Forms W–4 filed electronically before the earlier of (1) January 1, 1999, or (2) the first date on which the employer's electronic system permits the filing of Forms W–4 required upon commencement of employment or Forms W–4 claiming more than 10 withholding exemptions or exemption from withholding.

The IRS and Treasury will consider written comments pertaining to the provisions relating to signatures under penalties of perjury. Submissions should be sent to: CC:DOM:CORP:R (TD 8706), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (TD 8706), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

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6. Employer Retention of Forms W–4 and Predecessor and Successor Employers

One commentator requested guidance concerning the period for which paper Forms W–4 are required to be retained under § 31.6001–1(e) after the employer establishes an electronic system and in predecessor-employer/successor-employer situations. Electronic Forms W–4 have the same status as paper Forms W–4. Therefore, guidance that applies to paper Forms W–4 also applies to electronic Forms W–4. For further information, see Rev. Proc. 91–59 (1991–2 C.B. 841) (information regarding the retention of records using a variety of automatic data processing systems); and section 5 of Rev. Proc. 96–60 (1996–53 I.R.B.) (predecessor/successor situations).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry for section 31.3402(f)(5)–1 to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 31.3402(f)(5)–1 also issued under 26 U.S.C. 3402 (i) and (m). * * *

Par. 2. Section 31.3402(f)(5)–1 is amended as follows:

1. Headings are added to paragraphs (a) and (b).
2. The fourth sentence of paragraph (a) is revised.
3. Paragraph (c) is added.
4. The authority citation which follows the end of the section is removed.

The revisions and additions read as follows:

§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificates.

(a) *Form W–4.* * * * Blank copies of paper Forms W–4 will be supplied to employers upon request to the Internal Revenue Service. * * *

(b) *Invalid Form W–4.* * * *

(c) *Electronic Form W–4*—(1) *In general.* An employer may establish a system for its employees to file withholding exemption certificates electronically.

(2) *Requirements*—(i) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of employee access that result in the filing of a Form W–4. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and filing the Form W–4 is the employee identified in the form.

(ii) *Same information as paper Form W–4.* The electronic filing must provide the employer with exactly the same information as the paper Form W–4.

(iii) *Jurat and signature requirements.* The electronic filing must be signed by the employee under penalties of perjury.

(A) *Jurat.* The jurat (perjury statement) must contain the language that appears on the paper Form W–4. The electronic program must inform the employee that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form W–4. The instructions and the language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(B) *Electronic signature.* The electronic signature must identify the employee filing the electronic Form W–4 and authenticate and verify the filing. For this purpose, the terms "authenticate" and "verify" have the same meanings as they do when applied to a written signature on a paper Form W–4. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W–4 submission.

(iv) *Copies of electronic Forms W–4.* Upon request by the Internal Revenue Service, the employer must supply a hardcopy of the electronic Form W–4 and a statement that, to the best of the employer's knowledge, the electronic Form W–4 was filed by the named employee. The hardcopy of the electronic Form W–4 must provide exactly the same information as, but need not be a facsimile of, the paper Form W–4.

(3) *Effective date*—(i) *In general.* This paragraph applies to all withholding exemption certificates filed electronically by employees on or after January 2, 1997.

(ii) *Special rule for certain Forms W–4.* In the case of an electronic system that precludes the filing of Forms W–4 required on commencement of employment and Forms W–4 claiming more than 10 withholding exemptions or exemption from withholding, the requirements of paragraph (c)(2)(iii) of this section will be treated as satisfied if the Form W–4 is filed electronically before January 1, 1999.

§ 31.3402(f)(5)–2T [Removed]

Par. 3. Section 31.3402(f)(5)–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by:

1. Removing the entry for 31.3402(f)(5)–2T from the table.
2. Revising the entry for 31.3402(f)(5)–1 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB Control No.
. . . . .	
31.3402(f)(5)–1	1545–0010 1545–1435

CFR part or section where identified and described	Current OMB Control No.
. . . . .	

Approved: December 12, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–32669 Filed 12–31–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 53

[TD 8705]

RIN 1545–AU65

Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing that disqualified persons and organization managers liable for Internal Revenue Code section 4958 excise taxes are required to file Form 4720. The regulations also specify the filing date for returns for the period to which the new excise taxes applied retroactively. These excise taxes are imposed on excess benefit transactions between disqualified persons, as statutorily defined, and sections 501(c)(3) and (4) organizations, except for private foundations.

DATES: These regulations are effective January 2, 1997.

For dates of applicability, see § 53.6071–1T(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Phyllis Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Foundation and Similar Excise Taxes regulations (26 CFR part 53) under sections 6011 and 6071. These regulations provide guidance relating to the requirement of a return to accompany payment of section 4958 excise taxes and the time for filing that return. These rules were first published in Notice 96–46 (1996–39 I.R.B. 7) (September 23, 1996).

Taxpayer Bill of Rights 2, Public Law 104–168, 110 Stat. 1452 (TBOR2), enacted July 30, 1996, added section 4958 to the Code. As described more fully below, section 4958 imposes excise taxes on excess benefit transactions. Section 4958 taxes apply retroactively to excess benefit transactions occurring on or after September 14, 1995. The taxes do not, however, apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

An "excess benefit transaction" subject to tax under section 4958 is any transaction in which an economic benefit is provided by an organization described in section 501(c)(3) (except for a private foundation) or 501(c)(4) directly or indirectly to, or for the use of, any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. A "disqualified person" is any person who was, at any time during the 5-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the affairs of the organization. Disqualified persons also include family members and certain entities in which at least 35 percent of the control or beneficial interest are held by persons described in the preceding sentence. An "organization manager" is any officer, director, trustee, or any individual having powers or responsibilities similar to those of any officer, director, or trustee.

Section 4958 imposes three taxes. The first tax is equal to 25 percent of the excess benefit amount, and is to be paid by any disqualified person who engages in an excess benefit transaction. The second tax is equal to 200 percent of the excess benefit amount, and is to be paid by any disqualified person if the excess benefit transaction is not corrected within the taxable period. The third tax is equal to 10 percent of the excess benefit amount, and is to be paid by any organization manager who knowingly participates in an excess benefit transaction. The maximum amount of this third tax with respect to any one excess benefit transaction may not exceed $10,000. These regulations prescribe Form 4720 for calculating and paying the first and third taxes described above.

TBOR2 also amended section 6033(b) to require section 501(c)(3) organizations to report the amounts of the taxes paid under section 4958 with respect to excess benefit transactions involving the organization, as well as any other information the Secretary may require concerning those transactions. Section 6033(f) also was amended to impose the same reporting requirements on section 501(c)(4) organizations. Those amendments to section 6033 only apply to organizations' returns for taxable years beginning after July 30, 1996. These and other TBOR2 amendments to the reporting requirements for section 501(c)(3) and (4) organizations are reflected on IRS Forms 990 and 990–EZ beginning with the 1996 versions.

Explanation of Provisions

The regulations provide that disqualified persons and organization managers, as defined in sections 4958(f)(1) and (2), who are liable for section 4958 excise taxes on excess benefit transactions, as defined in section 4958(c)(1), are required to file a return on Form 4720. The general rule is that returns will be due on or before the 15th day of the fifth month following the close of the disqualified person's or organization manager's taxable year. The regulations also provide that returns on Form 4720 for taxable years ending after September 13, 1995, and on or before July 30, 1996, will be due on or before December 15, 1996. See Notice 96–46 (1996–39 I.R.B. 7) (September 23, 1996).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Phyllis Haney, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 53.6011–1 [Amended]

Par. 2. In § 53.6011–1, paragraph (b) is amended by:

1. Removing from the first sentence, the language "or 4955(a)," and adding ", 4955(a), or 4958(a)," in its place.

2. Removing from the last sentence, the language "or 4955(a)," and adding ", 4955(a), or 4958(a)," in its place.

Par. 3. Section 53.6071–1T is added to read as follows:

§ 53.6071–1T Time for filing returns (temporary).

(a) through (e) [Reserved]. For further guidance see § 53.6071–1(a) through (e).

(f) *Taxes imposed on excess benefit transactions engaged in by organizations described in sections 501(c)(3) (except private foundations) and 501(c)(4)*—(1) *General rule.* A Form 4720 required by § 53.6011–1(b) for a disqualified person or organization manager liable for tax imposed by section 4958(a) shall be filed by that person on or before the 15th day of the fifth month following the close of such person's taxable year.

(2) *Special rule for taxable years ending after September 13, 1995, and on or before July 30, 1996.* A Form 4720 required by § 53.6011–1(b) for a disqualified person or organization manager liable for tax imposed by section 4958(a) on an excess benefit transaction occurring in such person's taxable year ending after September 13, 1995, and on or before July 30, 1996, is due on or before December 15, 1996.

Dated: December 10, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–32376 Filed 12–31–96; 8:45 am]

BILLING CODE 4830–01–U

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statute; California

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Determination of substantially identical state statute.

SUMMARY: The Department of the Treasury is announcing that it has reviewed the State of California's recently enacted law adopting Revised Article 8 of the Uniform Commercial Code—Investment Securities ("Revised Article 8") and determined that the state statute is substantially identical to the uniform version of Revised Article 8 for purposes of interpreting the rules in 31 CFR Part 357, Subpart B (the "TRADES" regulations). Therefore, the portion of the TRADES rule requiring application of Revised Article 8 if a state has not adopted Revised Article 8 will no longer be applicable for California.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Walter T. Eccard, Chief Counsel (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel (202) 219–3320.

SUPPLEMENTARY INFORMATION: On August 23, 1996, the Department published a final rule to govern securities held in the commercial book-entry system, now referred to as Treasury/Reserve Automated Debt Entry System ("TRADES"). 61 FR 43626.

In the commentary to the final regulations, Treasury stated that for the 28 states that had by then adopted Revised Article 8, the versions enacted were "substantially identical" to the uniform version for purposes of the rule. Therefore for those states, that portion of the TRADES rule requiring application of Revised Article 8 was not invoked. Treasury also indicated in the commentary that as additional states adopted Revised Article 8, notice would be provided in the **Federal Register** as to whether the enactments were substantially identical to the uniform version so that the federal application of Revised Article 8 would no longer be in effect for those states. Treasury adopted this approach in an attempt to provide certainty in application of the rule in response to public comments. This, the first such notice, addressed California's recent adoption of Article 8.

Treasury has reviewed the California enactment and concluded that the variations in California's statute from Revised Article 8 are minor. Therefore, Treasury has concluded that the California enactment is substantially identical to Revised Article 8. Accordingly, if either § 357.10(b) or § 357.11(a) directs a person to California, the provisions of §§ 357.10(c) and 357.11(d) of the TRADES rule are not applicable.

Dated: December 20, 1996.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 96–33274 Filed 12–31–96; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–788–F]

RIN 0938–AH12

Medicare Program; Electronic Cost Reporting for Skilled Nursing Facilities and Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule adds the requirement that, for cost reporting periods ending on or after February 1, 1997, most skilled nursing facilities and home health agencies must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This rule also allows a delay or waiver of this requirement where implementation would result in financial hardship for a provider. The provisions of this rule allow for more accurate preparation and more efficient processing of cost reports.

DATES: This final rule is effective February 1, 1997. This rule is applicable for cost reporting periods ending on or after February 1, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Talbott, (410) 786–4592.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, under the Medicare program, skilled nursing facilities (SNFs) and home health agencies (HHAs) are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provide that no payments will be made to a provider unless it has furnished the

information, requested by the Secretary, needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth in Federal regulations at 42 CFR 413.20 and 42 CFR 413.24.

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with the reporting period based on the provider's accounting year. Additionally, under § 412.52, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at §§ 413.20 and 413.24.

Section 1886(f)(1)(B)(i) of the Act required the Secretary to place into effect a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On May 25, 1994, we published a final rule with comment period in the **Federal Register** implementing the electronic cost reporting requirement for hospitals (59 FR 26960). On June 27, 1995, we published a final rule that responded to comments on the May 25, 1994 final rule with comment period (60 FR 33123).

II. Provisions of the Proposed Regulations

On December 5, 1995, we published a proposed rule in the **Federal Register** (60 FR 62237) that proposed to require SNFs and HHAs to submit cost reports in a standardized electronic format for cost reporting periods beginning on or after October 1, 1995. We also proposed that if a SNF or HHA believes that implementation of the electronic submission requirement would cause a financial hardship, it may submit a written request for a waiver or a delay of these requirements.

We stated that we essentially would apply the current hospital electronic cost reporting requirements to SNFs and HHAs. Hospitals participating in Medicare must submit cost reports in a uniform electronic format for cost reporting periods beginning on or after October 1, 1989. These hospital cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals were initially required to submit a hard copy of the full cost report, which was later changed to a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the hospital's administrator or chief financial officer certifying the accuracy of the electronic file (§ 413.24(f)(4)(iii)). Further, to preserve the integrity of the electronic file, we specified procedures regarding the processing of the electronic cost report once it is submitted to the intermediary. In addition, the provider's electronic program must be able to disclose that changes have been made to the provider's as-filed cost report. We proposed to apply these same hospital electronic cost reporting requirements to SNFs and HHAs.

In the proposed rule, we discussed in detail the benefits of requiring electronic cost reports for SNFs and HHAs. The use of electronically prepared cost reports will be beneficial for SNFs and HHAs because the cost reporting software for these reports will virtually eliminate computational errors and substantially reduce preparation time. The use of cost reporting software will also save time when the provider discovers that it needs to change individual entries in the cost report.

III. Discussion of Public Comments

We received six timely comments in response to the proposed rule. The majority of the commenters supported our proposal but had some questions and concerns regarding its implementation. A summary of these comments and our responses follow:

Waivers and Exclusions

Comment. Several commenters requested clarification of the requirement for granting a waiver of electronic filing due to financial hardship. While some commenters suggested that we develop a defined set of criteria for determining when the requirement for electronic filing would impose a financial hardship on a provider, others supported our proposal of a case-by-case review of waiver requests. One commenter suggested that, in addition to financial hardship, waivers should be automatically granted for providers with low Medicare utilization.

Commenters supporting case-by-case review advised us to remain flexible in making determinations of financial hardship until we have the experience and data to determine whether set criteria are necessary. Another commenter supporting our proposal noted that most providers have, or have access to, a computer and recommended that as part of a waiver request, a provider should be required to include a statement certifying that it does not own, rent, or have access to a computer.

Commenters opposing case-by-case review were concerned that, based on hospitals' experiences with electronic filing, few waivers would be granted. These commenters asserted that it would be best to establish specific criteria for the waiver process.

Response. We do not believe that the development of specific criteria for waiver requests is appropriate. For example, a characteristic such as a provider's size alone may not necessarily be a reliable indicator that electronic cost reporting would impose a financial hardship since even the smallest SNFs and HHAs are quite likely to already be using computer equipment. Thus, we believe that an individualized review of each waiver request based on the totality of the provider's financial situation would be the most effective method for making determinations. Factors that we may consider in determining whether to grant a waiver include whether the provider has access to a computer, the provider's size, level of Medicare utilization, and financial status.

Regarding the commenters— concern that, like hospitals, few waivers will be granted for SNFs and HHAs, we wish to point out that the small number of electronic reporting waivers granted to hospitals is attributed to the small number of hospitals that have requested them. We have received only 10 waiver electronic reporting requests from hospitals (of approximately 7,000 hospitals required to file electronically) since we implemented electronic reporting. All 10 hospitals have been granted waivers. We note that hospitals must request the waiver every year. We anticipate receiving numerous requests from SNFs and HHAs. There are large differences in the financial structure between hospitals and long-term care providers. Hospitals provide many services that are not provided by SNFs and HHAs. Additionally, virtually all hospitals have, or have access to, computer equipment, which may or may not be the case for SNFs and HHAs. As we did with hospitals, we anticipate granting hardship waivers for providers with low Medicare utilization and

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providers with reimbursement systems that would be too costly to program (for example, all inclusive rate providers who are not required to file electronically). Each waiver request will be handled on a case-by-case basis and waivers will be granted when a provider has documented appropriately its financial hardship.

We note that if a provider subject to the requirements and not granted a hardship exemption does not submit its cost report electronically, Medicare payments to that provider may be suspended under the provisions of sections 1815(a) and 1833(e) of the Act. These sections of the Act provide that no Medicare payments will be made to a provider unless it has furnished the information, requested by the Secretary, that is needed to determine the amount of payments due the provider under the Medicare program. Section 405.371(d) provides for suspension of Medicare payments to a provider by the intermediary if the provider fails to submit information requested by the intermediary that is needed to determine the amount due the provider under the Medicare program. The general procedures that are followed when Medicare payment to a provider is suspended for failure to submit information needed by the intermediary to determine Medicare payment are located in section 2231 of the Medicare Intermediary Manual (HCFA Pub. 13). Those procedures include timeframes for "demand letters" to providers. Demand letters remind providers to file timely and complete cost reports and explain possible adjustments of Medicare payments to a provider and the right to request a 30-day extension of the due date.

Comment. One commenter suggested that, to avoid unnecessary administrative costs and delays, the fiscal intermediary instead of HCFA should have responsibility for granting waiver requests.

Response. We believe that our process for making waiver determinations is the most efficient and will allow each provider seeking a waiver to receive an individualized review of its request. As explained later, we have extended the deadline for filing waiver requests. The revised process specifies that the waiver request, including supporting documentation, must be submitted to a provider's intermediary no later than 30 days after the end of the provider's cost reporting period. The intermediary will review the request and forward it, with a recommendation for approval or denial, to the HCFA central office within 30 days of its receipt of the request. HCFA central office will either approve or deny the request by response to the intermediary within 60 days of receipt of the request from the intermediary.

Comment. Some commenters expressed concern with the proposed deadline for filing waiver requests of 120 days before the end of the provider's cost reporting period. One commenter noted that the deadline should not be set before the end of the reporting period because the level of Medicare utilization can vary from month to month. Another commenter suggested that the time limits be modified to be more accommodating until HCFA has further experience with the impact of electronic cost reporting on SNFs and HHAs.

Response. We have reconsidered our proposed policy in light of these comments and the fact that we have decided to extend the due date for filing electronic cost reports in this final rule (as discussed under the section on "Implementation Date"). We agree with the commenters that it is appropriate to allow providers a longer time period within which to submit waiver requests. We have revised § 413.24(f)(4)(v) to provide that a provider may submit a written request for delay or waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period.

Comment. One commenter suggested that in lieu of a waiver, we should allow the hardware and software costs as "below the line" cost expenses by modifying the Medicare cost report to allow the provider to enter the software costs directly into reimbursable costs and to treat the hardware similarly, as a capital expense.

Response. The use of electronic cost reporting software and the costs associated with it is similar to a provider hiring an accounting firm to complete its cost report. We do not make separate payments for these types of costs; rather we include the costs as administrative and general costs. Similarly, for those providers that have to purchase computer equipment, in accordance with existing regulations governing payment of provider costs, Medicare will pay for the cost of the equipment as an overhead cost.

Comment. One commenter inquired about the effect of the rule on hospital-based HHAs. The commenter asked if hospital-based facilities will be required to submit a separate cost report. Another commenter requested clarification as to whether providers under the prospective payment system would be required to file electronically. Specifically, the commenter asked that we clarify our statement in the proposed rule that a SNF that furnishes fewer than 1,500 Medicare covered days in a cost reporting period would not be subject to the electronic cost reporting requirement (60 FR 62238).

Response. The electronic cost reporting provision will only apply to those providers that are required to file a full Medicare cost report. Providers that are required to file less than a full cost report (that is, low or no Medicare utilization) will not file electronically but will be required to request a waiver of the requirement to file electronically. Hospital-based SNFs and HHAs file electronically through the hospital, would continue to do so, and would not file separately as a result of this regulation. We did not intend to exclude SNFs that are paid prospectively and that file their cost reports on Form 2540S. While § 413.321 defines the Form 2540S as a simplified cost reporting form, the form does not meet the definition of a less than full cost report as discussed above. Absent a waiver, these SNFs will be required to file their cost reports electronically. Software will be available from HCFA and from commercial vendors that meet the requirements for electronic filing.

Implementation Date

Comment. Commenters were concerned that the proposed implementation date for filing electronic cost reports beginning on or after October 1, 1995, was too aggressive and would not allow sufficient time for providers with short period cost reports to file electronically.

Response. We agree that the proposed implementation date should be revised. The new effective date will be timed to coincide with the completion of the installment of and training on the free software and electronic specifications. We anticipate that the software will be ready for distribution in time for providers to become accustomed to using it before they submit their cost reports for cost reporting periods ending on or after February 1, 1997. Thus, we are revising the implementation date to require SNFs and HHAs to begin filing their cost reports electronically for cost reporting periods ending on or after February 1, 1997. We believe that this revised implementation date will avoid prolonged extensions for short period cost reports. We also believe that providers with cost reporting periods ending on February 1, 1997 (and who thus must file their cost reports by June 30, 1997), will have ample time to do what is needed to file an electronic cost report by June 30, 1997.

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Cost Reporting Software

Comment. One commenter inquired about how providers will be paid for the cost of the electronic cost reporting software. Other commenters questioned the adequacy of the software offered by HCFA and its efficiency in performing electronic filing. These commenters' concerns were based on the difficulties experienced by hospitals in using the cost reporting software provided by HCFA. Another commenter suggested that the software be available at least 6 months before the implementation date for electronic filing to allow providers time to install the software and train staff. Additionally, one commenter advised that free software should be available for SNFs under the prospective payment system. Finally, commenters suggested that we develop software for billing and for the Provider Cost Report Reimbursement Questionnaire (Form 339).

Response. HCFA will provide software, free of charge, to any provider that requests it. Alternatively, providers may purchase the software from any HCFA-approved software vendor. To obtain the free software, providers may contact their intermediaries or send a written request to the following address: Health Care Financing Administration, Division of Cost Principles and Reporting, Room C5–02–23, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850. We note that, as with the cost of computer equipment, Medicare will pay for the cost of the software as an overhead cost through the cost report based on Medicare utilization.

Regarding commenters' concerns about the adequacy of the cost reporting software, we note that while there were some difficulties with application of the free software for hospitals, the hospital cost report is extremely complex and requires extensive reporting for a number of Medicare services that are not provided by SNFs and HHAs. Thus, we do not anticipate having similar types of problems with cost reporting software for SNFs and HHAs because these providers generally file less complicated cost reports. The free software will not be developed to compete with commercial software packages. Rather, the software offered by HCFA will enable a provider with access to a computer to meet the requirements by filing an electronic data set to the fiscal intermediary in order to generate a cost report. We expect that the software will be a series of input screens that are designed to assimilate the cost reporting forms. Once the prescribed data are entered, these same data can be forwarded to the intermediary to produce a completed cost report. As stated above, we anticipate that the software will be ready for distribution in time to allow providers to install the software and train staff.

While we do not currently require that providers submit bills in an electronic format, we strongly encourage electronic billing. We note that fiscal intermediaries can accept electronic bills prepared with commercially available software that meets Medicare specifications. Fiscal intermediaries also provide free software for submission of Medicare billing data. Providers should contact their intermediary's electronic billing department for information about this software. Additionally, we are currently in the process of developing a software package for the Form 339.

Audit Adjustments

Comment. One commenter questioned the provision in proposed § 413.24(f)(4)(iii), which requires that the fiscal intermediary must return the as-filed cost report to the provider for correction if it does not pass all specified edits. The commenter believed that requiring intermediaries to send rejected cost reports back to the provider would impose a burden because the provider would have to do a complete review of the cost report in order to identify and correct the error. The commenter suggested that we allow the intermediary discretion in determining whether to send a cost report back to the provider.

Response. This section provides that the intermediary must reject a cost report that does not pass all specified edits. This provision is not intended to prohibit the intermediary from making audit adjustments to the provider's cost report. Rather, an intermediary must reject a cost report that fails a "level one" edit (for example, when the settlement amount on the hard copy cost report and the amount contained in the electronic file are different). Cost reports that fail level one edits result in incorrect settlement data that cannot be corrected by the intermediary for legal reasons. The cost report is the submission of the provider and must maintain its originality throughout the cost report settlement process.

Comment. One commenter recommended that intermediaries not require providers to submit more than one hard copy of the cost report in addition to the electronic file.

Response. During a transition period, we will require providers to submit a hard copy of the completed full cost report forms in addition to the electronic file (as we did for hospitals). Requiring a hard copy will allow the provider and the intermediary to compare data on the hard copy cost report to data in the electronic file to ensure accuracy and proper programming. Once providers and intermediaries become accustomed to the use of the electronic cost reporting software, we will no longer require that a hard copy of the full cost report be filed. After the transition period, SNFs and HHAs subject to the electronic reporting requirement will be required to file a hard copy of the one-page settlement sheet, a statement of certain worksheet totals found in the electronic file, and a statement signed by their administrator or chief financial officer certifying the accuracy of the electronic file.

IV. Provisions of the Final Rule

In this final rule we are adopting the provisions as proposed with three revisions. Specifically, in response to a public comment, we are revising § 413.24(f)(4) (ii) and (iv) to change the implementation date. These sections now provide that, effective for cost reporting periods beginning on or after February 1, 1997, SNFs and HHAs must submit cost reports in a standardized electronic format. Additionally, we are revising § 413.24(f)(4)(v) to clarify that providers with low or no Medicare utilization may request a waiver of electronic cost reporting. We are making another revision to § 413.24(f)(4)(v) to specify that a provider may submit a written request for a delay or a waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period.

V. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a final rule such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers and small businesses that distribute cost-report software to providers are considered small entities. HCFA's intermediaries are not considered small entities for purposes of the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604

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of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

As stated above, under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. This final rule will require SNFs and HHAs, like hospitals, to submit their Medicare cost reports in a standardized electronic format. We anticipate that this requirement will take effect for cost reporting periods ending on or after February 1, 1997, meaning that the first electronic cost reports will be due June 30, 1997.

Currently, approximately 75 percent of all SNFs and HHAs submit a hard copy of an electronically prepared cost report to the intermediary. We believe that the provisions of this final rule will have little or no effect on these providers, except to reduce the time involved in copying and collating a hard copy of the report for intermediaries. In addition to the 75 percent of providers that currently use electronic cost reporting, this rule will not affect those providers that do not file a full cost report and, as stated above, will not be required to submit cost reports electronically.

This final rule may have an impact on those providers who do not prepare electronic cost reports, some of whom may have to purchase computer equipment, obtain the necessary software, and train staff to use the software. However, as discussed below, we believe that the potential impact of this final rule on those providers who do not prepare electronic cost reports will be insignificant.

First, a small number of providers that do not submit electronic cost reports may have to purchase computer equipment to comply with the provisions of this final rule. However, even among the 25 percent of SNFs and HHAs that do not submit electronically prepared cost reports, we believe that most providers already have access to computer equipment, which they are now using for internal record keeping purposes, as well as for submitting electronically generated bills to their fiscal intermediaries, for example. Thus, we do not believe that obtaining computer equipment will be a major obstacle to electronic cost reporting for most providers. For those providers that will have to purchase computer equipment, we note that, in accordance with current regulations governing payment of provider costs, Medicare will pay for the cost of the equipment as an overhead cost.

We recognize that a potential cost for providers that do not submit electronic cost reports will be that of training staff to use the software. Since most SNFs and HHAs currently use computers, we do not believe that training staff to use the new software.will impose a large burden on providers. An additional cost will be the cost of the software offered by commercial vendors. However, providers could eliminate this cost by obtaining the free software from HCFA.

The requirement that hospitals submit cost reports in a standardized electronic format has been in place since October 1989. Since that time, the accuracy of cost reports has increased and we have received very few requests for waivers. Additionally, we have not received any comments from the hospital industry indicating that the use of electronic cost reporting is overly burdensome. We believe that electronic cost reporting will be equally effective for SNFs and HHAs, with the benefits (such as increased accuracy and decreased preparation time) outweighing the costs of implementation for most providers.

In conclusion, we have determined that this final rule will not have a significant effect on SNF and HHA costs because these providers will not be required to collect any additional data beyond that which the regulations currently specify; cost reporting software is available at no cost from HCFA to any provider that requests it; most SNFs and HHAs have some type of computer equipment through which they currently prepare electronic cost reports; and a waiver of the electronic cost reporting requirement will be available to providers for whom the requirement will impose a financial hardship. We note that, as with the cost of computer equipment, Medicare will pay for the cost of the software as an overhead cost through the cost report based on Medicare utilization. Therefore, SNFs and HHAs will only be affected to the extent that, absent a waiver, they will be required to submit cost reports in a standardized electronic format to their intermediary. A provider that does not comply with the provisions of this rule, as specified in the preamble, will be subject to sections 1815(a) and 1833(e) of the Act, which provide that no payments will be made to a provider unless it has furnished the information requested by the Secretary that is needed to determine the amount of payments due the provider under Medicare.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget (OMB).

VI. Collection of Information Requirements

The overall information collection and recordkeeping requirements associated with filing HHA costs reports (HCFA Form 1728) have been approved by OMB through October 1997 (OMB approval number 0938–0022). Additionally, OMB has approved the overall information collection and record keeping requirement associated with filing SNF costs reports (HCFA Form 2540) through May 1999 (OMB approval number 0938–0463).

This final rule does not require SNFs and HHAs to report any information on the electronic cost report that is not already required in the Medicare cost reports currently submitted by these providers. Although this regulation does not impose any new information collection requirements per se, the new electronic format requires HCFA to resubmit the information collection requirements to OMB for approval.

We estimate that the number of hours each provider will save by submitting an electronically prepared cost report instead of manually preparing and photocopying the cost report will be about 4.5 hours for each affected HHA and 9 hours for each affected SNF. Assuming that approximately 25 percent of all SNFs and HHAs will be affected, that is, roughly 3,000 SNFs and 2,000 HHAs, we estimate that SNFs will save approximately 27,000 hours per year completing cost reports and HHAs will save about 9,000 hours per year.

This final rule does not need to be reviewed by OMB under the Paperwork Reduction Act of 1995.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. Section 413.1 is amended by redesignating paragraphs (a)(1)(ii) (C) through (J) as paragraphs (a)(1)(ii) (D) through (K), respectively, and adding a new paragraph (a)(1)(ii)(C) to read as follows:

§ 413.1 Introduction.

(a) *Basis, scope, and applicability.*

(1) *Statutory basis.* * * *

(ii) *Additional requirements.* * * *

(C) Sections 1815(a) and 1833(e) of the Act provide the Secretary with authority to request information from providers to determine the amount of Medicare payment due providers.

* * * * *

3. Section 413.24 is amended by redesignating existing paragraphs (f)(4)(i) through (f)(4)(iv) as paragraphs (f)(4)(ii) through (f)(4)(v); adding a new paragraph (f)(4)(i); and revising redesignated paragraphs (f)(4)(ii) through (f)(4)(v) to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) *Cost reports.* * * *

(4) *Electronic submission of cost reports.* (i) As used in this paragraph, "provider" means a hospital, skilled nursing facility, or home health agency.

(ii) Effective for cost reporting periods beginning on or after October 1, 1989, for hospitals, and cost reporting periods ending on or after February 1, 1997, for skilled nursing facilities and home health agencies, a provider is required to submit cost reports in a standardized electronic format. The provider's electronic program must be capable of producing the HCFA standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and the data required to pass specified edits, is forwarded to the fiscal intermediary for processing through its system.

(iii) The fiscal intermediary stores the provider's as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a "working copy" of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, final settlement, etc). The provider's electronic program must be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary rejects the cost report and returns it to the provider for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iv) Effective for cost reporting periods ending on or after September 30, 1994, for hospitals, and cost reporting periods ending on or after, February 1, 1997, for skilled nursing facilities and home health agencies, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. During a transition period, skilled nursing facilities and home health agencies must submit a hard copy of the completed cost report forms in addition to the electronic file. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

> I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted cost report and the Balance Sheet Statement of Revenue and Expenses prepared by _____ (Provider Name(s) and Number(s)) for the cost reporting period beginning _____ and ending _____ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(v) A provider may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship or if the provider qualifies as a low or no Medicare utilization provider. The provider must submit a written request for delay or waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period. The intermediary reviews the request and forwards it, with a recommendation for approval or denial, to HCFA central office within 30 days of receipt of the request. HCFA central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 27, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–33093 Filed 12–31–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 110]

RIN 2127–AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: On November 27, 1996, NHTSA published a final rule requiring vehicles with air bags to have new warning labels. The preamble to the notice stated that one of the labels, the removable label, would have the following statement: "Children *Can* Be KILLED or INJURED by Passenger Air Bag." (emphasis added) Two other labels, the sun visor warning label and the child seat label, also include statements indicating that death or injury *can* occur. Due to a typographic error, the figure in the regulatory text for the removable label indicates that the label should read: "Children *May* Be KILLED or INJURED by Passenger Air Bag." (emphasis added). This notice corrects that error.

DATES: *Effective Date:* The amendments made in this rule are effective January 2, 1997.

Petition Dates: Any petitions for reconsideration must be received by NHTSA no later than February 18, 1997.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mary Versailles, Office of Safety Performance Standards, NPS–31, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590; telephone

(202) 366–2057; facsimile (202) 366–4329; electronic mail "mversailles@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION: On November 27, 1996, NHTSA published a final rule amending 49 CFR 571.208 to require vehicles with air bags to have new warning labels. The preamble to the notice stated that one of the labels, the removable label, would have the following statement: "Children *Can* Be KILLED or INJURED by Passenger Air Bag." (emphasis added) Two other labels, the sun visor warning label and the child seat label, also include statements indicating that death or injury *can* occur. Due to a typographic error, the figure in the regulatory text for the removable label indicates that the label should read: "Children *May* Be KILLED or INJURED by Passenger Air Bag." (emphasis added). This notice corrects that error.

Vehicles manufactured on or after February 25, 1997 (90 days after publication of the final rule) must be equipped with the new warning labels. Because NHTSA is aware that many manufacturers have begun preparations to comply with the new rule, and because it would be difficult for manufacturers to comply by February 25 if they were to start that process over again, NHTSA has decided to allow manufacturers to use either "can" or "may" in the text of the removable label until September 1, 1997. For vehicles manufactured on or after September 1, 1997, the removable label must use the word "can."

NHTSA finds for good cause that this final rule can be made effective in less than 30 days. This rule corrects a typographic error in the regulatory language of the November 27, 1996, final rule. This notice should therefore be effective on the same date as the earlier rule.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This document is part of an action that was determined to be "significant" under the Department of Transportation's regulatory policies and procedures. However, this notice does not impose any new requirements on manufacturers. It simply corrects a typographic error.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Further, this final rule will not alter the economic impacts of the November 1996 final rule. As explained above, this rule will not have an economic impact on any manufacturers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S4.5.1(e) introductory text and by adding new paragraph (e)(iv) to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(e) *Label on the dash.* Each vehicle manufactured on or after February 25, 1997 that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(2)(i) through S4.5.1(e)(2)(iv).

* * * * *

(iv) For vehicles manufactured before September 1, 1997, the label shown in Figure 7 may be modified by replacing the word "can" with the word "may" in the statement: "Children can be killed or injured by passenger air bag."

* * * * *

§ 571.208 [Amended]

3. Section 571.208 is amended by replacing figure 7 with a new figure 7 as follows:

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

BILLING CODE 4910-59-P

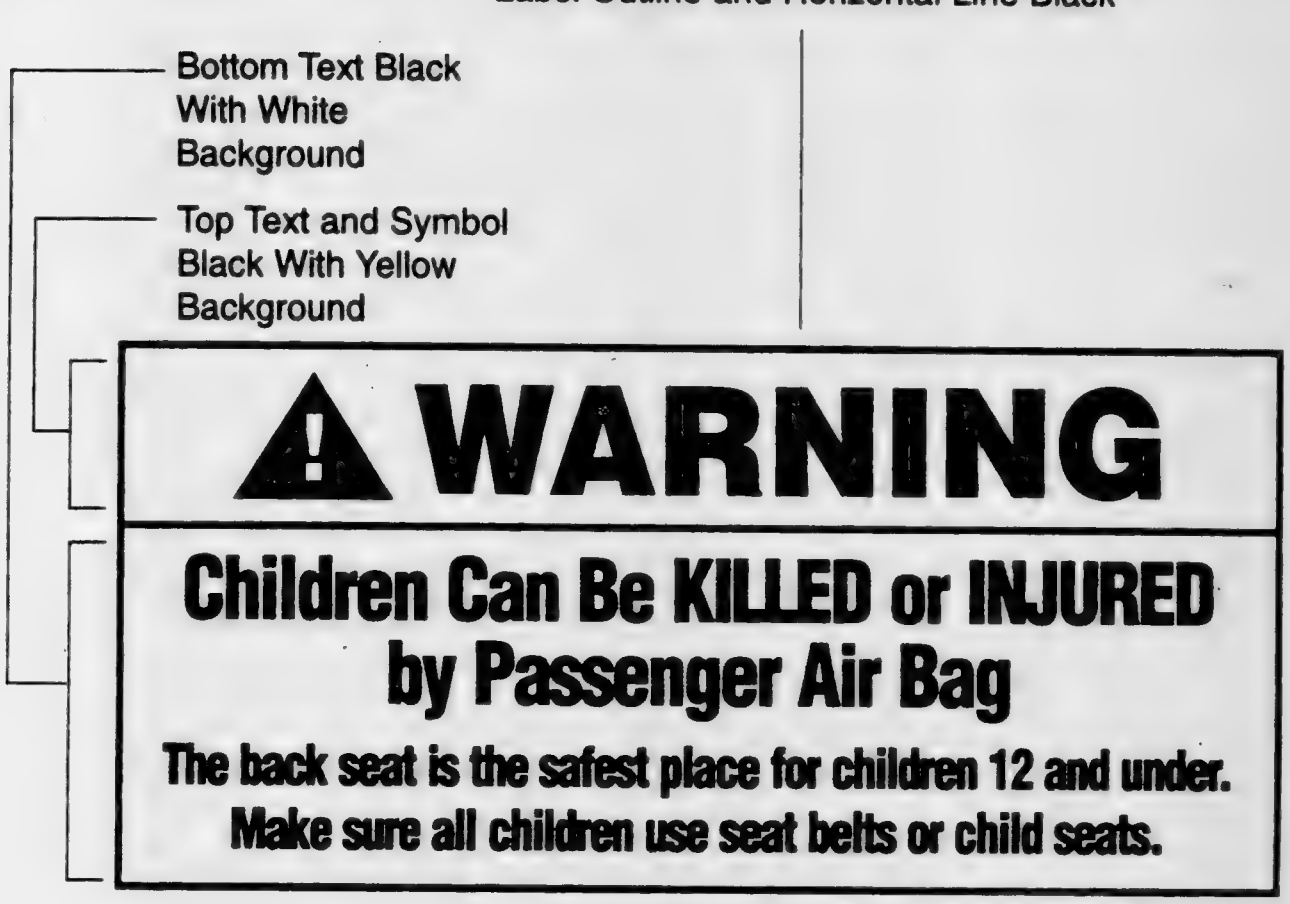

Figure 7. Removable Label on Dash.

[FR Doc. 96–33308 Filed 12–31–96; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 950605147–6368–05; I.D. 040996D]

RIN 0648–AH33

Final List of Fisheries for 1997

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), NMFS updates its final List of Fisheries (LOF) for 1997. The LOF classifies fisheries as Category I, II, or III, based on their level of incidental mortalities and serious injuries of marine mammals. The LOF informs the public of the level of interactions with marine mammals in various U.S. commercial fisheries and which fisheries are subject to certain provisions of the MMPA, such as the requirement to register for Authorization Certificates. The registration of several fisheries under this program, referred to as the Marine Mammal Assessment Program (MMAP), has been successfully integrated with other existing registration or permitting systems. NMFS also amends the instructions for registration in part 229.

EFFECTIVE DATES: The amendments to part 229 are effective December 27, 1996. As of December 27, 1996, the effective period of the List of Fisheries for 1996 (60 FR 67063, Dec. 28, 1995) is extended to February 28, 1997. The changes to the List of Fisheries for 1997 are effective March 1, 1997.

ADDRESSES: Information and registration material for the region in which a fishery occurs, and reporting forms, may be obtained from the following addresses: NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla; NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702; NMFS, MMAP, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits office; NMFS–PMRD, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99082.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Chief, Marine Mammal Division, Office of Protected Resouces, 1315 East-West Hwy, Silver Spring, MD 20910 and Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Steven Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION: Publication of the LOF, which places all U.S. commercial fisheries into three categories based on their levels of incidental mortality and serious injury of marine mammals, is required by section 118 of the MMPA. Background information on the history of the LOF and a discussion of the fishery classification criteria are provided in the proposed LOF for 1997 (61 FR 37035, July 16, 1996). The fishery classification criteria are specified in the implementing regulations for section 118 of the MMPA (50 CFR part 229).

Registration Requirements for Vessels Participating in Category I and II Fisheries

Vessel or gear owners participating in Category I or II fisheries must register under the MMPA, as required by 50 CFR 229.4. Registration under the MMPA is administered by NMFS regional offices. Thus, the procedures and fees associated with registration differs between Regions. Under 50 CFR 229.4, the granting and administration of Authorization Certificates is to be integrated and coordinated with existing state and Federal fishery license, registration, or permit systems and related programs, whenever possible. Alternative registration programs have been or are being implemented in the Alaska Region, Northwest Region, and Northeast Region. Special procedures and instructions for registration in these Regions are provided in the next section (see Region-Specific Registration Requirements).

If the granting and administration of authorizations has not been integrated with state licensing, registration, or permitting systems, owners of vessels or gear must obtain registration packets from the NMFS Region in which their fishery operates. NMFS Regional Offices will endeavor to send these packets to known participants in Category I or II fisheries; however, it is the responsibility of fishers to ensure that these packets are obtained and submitted to NMFS at least 30 days in advance of fishing. The registration packet will typically include an MMAP registration form, a list of those fisheries in each region that require authorization in order to incidentally kill or injure marine mammals (Category I and II fisheries), and an explanation of the management regime, including instructions on reporting requirements. The registration packet may also include an explanation of the changes in the fishery classification criteria, guidance on deterring marine mammals, and a reminder that intentional lethal takes of marine mammals are no longer permitted except under certain specific conditions.

Vessel owners must submit the registration form and a $25 fee to the NMFS Regional Office in which their fishery operates. NMFS will send the vessel owner an Authorization Certificate, program decals, and reporting forms within 60 days of receiving the registration form and application fee.

If the granting and administration of authorizations under 50 CFR 229.4 is not integrated or coordinated with existing fishery licenses, registrations, or related programs, requests for registration forms and completed registration forms should be sent to the NMFS Regional Offices listed in this notice under **ADDRESSES.**

Procedures for registering in each NMFS region are outlined in the following section.

Region-Specific Registration Requirements for Category I and II Fisheries

Alaska Region MMAP Registration for 1997

In 1997, registration in the MMAP for fishing vessels or set net permit holders participating in Alaska Category II fisheries will be integrated with the Alaska Department of Fish and Game (ADF&G) system for registering commercial vessels and permitting set net fishing. The information required for MMAP registration will be obtained by NMFS directly from ADF&G and will be automatically incorporated into the NMFS MMAP database. Vessel owners must indicate on their ADF&G vessel registration form which Category II fishery they intend to participate in during 1997. If a fishery is not indicated, the vessel will not be registered in the MMAP. Registered vessel owners and set net operators will then be sent an MMAP certificate for 1997, an MMAP decal, a program information sheet, marine mammal injury and mortality reporting forms, and a written statement to be signed and returned to NMFS indicating whether any marine mammals had been injured or killed during the vessel's commercial fishing operations in 1996. The vessel or set net MMAP certificate will not be considered valid until the statement indicating any injuries or mortalities to marine mammals during 1996 fishing operations is returned to NMFS. There will be no fee charged for MMAP registration for 1997.

Northwest Region (NWR) MMAP Registration for 1997

In the Northwest Region, the States of Washington and Oregon have agreed to continue their assistance in issuing Authorization Certificates for Category I and II fishers as part of the fishing license renewal process. There will be no additional charge to the fishers for this service, and the registration instructions will remain the same for 1997 as they were in 1996.

Southwest Region (SWR) MMAP Registration for 1997

SWR is in the process of integrating MMAP registration for Category I and II fisheries that occur in California with the California Department of Fish and Game's commercial fishery permit registration program. However, this integration will not be completed before 1998. For this reason, Category I and II vessel owners in California will continue to register with SWR. In December 1996, vessel owners who engaged in a Category I or II fishery in 1996 will receive a registration packet in the mail. Any Category I or II vessel owner who has not received an application package by December 1, 1996, may request one from NMFS SWR (see **ADDRESSES**).

Southeast Region (SER) MMAP Registration for 1997

SER is in the process of integrating MMAP registration for Category I and II fisheries that occur in the southeast U.S. Atlantic Ocean with existing fishery registration programs. However, this integration will not be completed before 1998.

The only state fisheries in Category I or II that are under SER jurisdiction occur in North Carolina. State fishers in North Carolina should expect to receive a registration packet in the mail. If a fisher plans to participate in any state or Federal fishery in Category I or II and a registration packet is not received, fishers should contact SER (see **ADDRESSES**).

Northeast Region (NER) MMAP Registration for 1997

NER is integrating MMAP registration with state and Federal permitting processes for the following fisheries: Gulf of Maine, U.S. mid-Atlantic lobster fishery, Atlantic squid, mackerel, butterfish trawl, and the New England multispecies sink gillnet fishery (including but not limited to species as defined in the Northeast Multispecies Fishery Management Plan, dogfish, and monkfish). The Category I sink gillnet fishery includes regulated and non-regulated fisheries. Participants in the

federally regulated segment, the multispecies sink gillnet fishery, will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal multispecies sink gillnet permit and who fish with sink gillnet for non-regulated species (dogfish and monkfish) are required to submit an MMAP registration form and processing fee to NMFS.

Federally permitted participants in the squid, mackerel, butterfish trawl fishery will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal squid, mackerel, butterfish trawl permit and who trawl for those species are required to submit an MMAP registration form and processing fee to NMFS.

State and Federally permitted participants in the lobster trap/pot fishery will be registered in the MMAP automatically through integration with other permitting processes. The integrated registration process is expected to be completed prior to the effective date of this final rule. NMFS expects to issue information packages to permitted fishers by March 1, 1997.

For all participants in fisheries for which NMFS has integrated registration with permitting processes, the requirements to submit a registration form and fee and to post an MMAP decal on the vessel will be waived in 1997. A general certificate will be issued and will only be valid if presented with a valid state or Federal fishing permit.

All fishers who plan to participate in any other Category I and II fisheries in the NER must register under the MMAP by submitting a registration or renewal form and the processing fee to NMFS.

Reporting: Vessel owners or operators, or fishers (in the case of non-vessel fisheries), in Category I, II, or III, fisheries must comply with 50 CFR 229.6 and report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported. Instructions for submission of reports are found at 50 CFR 229.6(a).

Observers: Fishers participating in Category I and II fisheries may be required, upon request, to accommodate an observer aboard their vessels. Observer requirements may be found at 50 CFR 229.7.

Responses to Comments

NMFS received 15 comments on the proposed LOF. Many comments were lengthy and raised many points of concern. Key issues and concerns are summarized and responded to as follows:

General Comments

Comment 1: Timely data flow from the regional Fishery Science Centers is important. In some cases, incidental take data are 2 or more years behind. In addition, NMFS should focus on developing updated stock assessments along with revised Potential Biological Removal (PBR) levels. Failure to provide timely information on mortality or abundance can result in incorrect categorization of fisheries and unnecessary risk to marine mammal populations.

Response: NMFS agrees that the LOF should strive to classify commercial fisheries based on the best scientific data available and that NMFS should provide, when possible, updated mortality and serious injury estimates and updated PBR levels for each LOF.

Estimates of incidental mortality and serious injury that are based on observer data and used in the LOF are typically 2 years old. For instance, the proposed LOF for 1998, which will be developed in early 1997, will be based on mortality and serious injury estimates from 1996. This data lag is unavoidable because of the time required for entry and analysis of observer data and the time required to propose and finalize a new LOF. NMFS is aware that some estimates of mortality and serious injury of marine mammals in observed fisheries are more than 2 years old, will continue to work towards improving both the estimates and the timeline in which they are provided.

New draft Stock Assessment Reports (SARs), which include revised estimates of stock-specific and fishery-specific mortality and serious injury, and revised abundance estimates and associated PBR levels, are expected to be made available to the public in the near future. If final SARs are not available when the proposed LOF for 1998 is developed, NMFS will base the proposed LOF for 1998 on the information provided in the draft SARs.

Comment 2: Several commenters believed that the reclassification of a fishery from Category III to either Category II or I in the LOF would automatically result in the implementation of an observer program for that fishery.

Response: The final regulations implementing section 118 of the MMPA require that vessels in fisheries classified in Category I or II to provide accommodations for observers if requested by NMFS (50 CFR 229.7(b)). Neither the regulations nor the MMPA require that NMFS place observers on all vessels participating in all fisheries classified in Category I or II. While information collected by observers aboard vessels usually provides the most accurate description of the level of serious injury and mortality to marine mammals incidental to commercial fishing operations, monitoring of commercial fishing operations may also be accomplished via alternative monitoring programs.

Comment 3: Annual reporting requirements need to be more specific about the condition of live marine mammal releases. NMFS needs to gather detailed information on "released unharmed," "injury," "serious injury," or "incidental mortality." A simple check box with "yes" or "no" to the question of killed or injured will continue to create problems with NMFS' assessment of the estimated level of "serious injury and/or incidental mortality" with any accuracy. NMFS has yet to determine what distinguishes an injury from a serious injury and how it relates to survivability of released marine mammals. Both NMFS and Congress acknowledge that encounters with marine mammals do not always result in "injury", "serious injury", or "incidental mortality".

Response: As stated by the commenter, NMFS recognizes that not all accidental encounters between commercial fishing vessels or gear and marine mammals result in injuries, serious injuries, or mortalities.

NMFS has provided considerable guidance as to what constitutes an injury, because fishers must be provided with criteria in order to determine whether an incidental interaction with a marine mammal constitutes an injury and whether a report of interaction needs to be submitted to NMFS. An injury is defined in 50 CFR 229.2 as

> * * * a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

The definition of serious injury is more general. It is recognized that not all incidental injuries to marine mammals are serious or are likely to result in a mortality. Serious injury is defined in 50 CFR 229.2 as "any injury that will likely result in mortality."

NMFS anticipates that the types of injuries that constitute serious injuries may be species-specific and fishery-specific. Interim guidelines were developed by the Northeast Region in order to address the serious injury and mortality of large whales incidental to the lobster pot fishery. The response to comment 19 describes these interim guidelines. National guidelines for determining which injuries should be considered serious and likely to result in mortality will be developed by NMFS in 1997 and will be made available for public comment.

Comment 4: Observers should be placed on vessels when NMFS has questions about the level of serious injury and/or incidental mortality in a particular fishery. Current fishery designations do not reflect the realities of fishery interactions; they only reflect what fisheries NMFS has chosen to concentrate on observing thus far.

Response: The classification of commercial fisheries in the LOF is based on current information on the level of serious injury and mortality of marine mammals incidental to commercial fisheries. NMFS disagrees that current fishery designations only reflect what fisheries NMFS has observed to date. There are several fisheries whose classification in Category II has been justified by using something other than observer data, such as the Southeast Alaska salmon purse seine fishery, the North Carolina stop net fishery, and the mid-Atlantic coastal gillnet fishery.

Comment 5: Time should be spent in the productive capacity of research and development for a technological solution in the areas of documented take.

Response: NMFS agrees. Each year, NMFS allocates funding to improve gear technology in order to reduce serious injuries and mortalities of protected species.

Comment 6: A Category I listing focuses considerable attention on the fishery and gear types in question. This attention translates into regulatory and legislative action to mandate nontrivial measures to reduce or eliminate the risk to the endangered species in question. Such attention and actions should be commensurate with the demonstrated real risk, so that unwarranted costs and hardships are not imposed on people and businesses that have no impact on the whales.

Response: Fisheries placed in Category I in the LOF are those that have been determined to have frequent incidental serious injuries and mortalities of marine mammals. Because the fishery classification criteria are defined relative to a stock's PBR level and because the PBR level for some marine mammal stocks, particularly endangered marine mammal stocks, are very low, some commercial fisheries that incur a few (i.e., 1 to 5) serious injuries or mortalities of these marine mammals, will be classified in Category I.

The LOF itself does not impose changes in fishery management that impact commercial fishers. Generally, reduction of serious injuries and mortalities incidental to commercial fisheries will be addressed by the Take Reduction Team (TRT) process. The MMPA requires that NMFS convene TRTs that include representatives of all impacted constituents. These Teams develop Take Reduction Plans (TRPs) which have the short-term objective of reducing serious injury and mortality levels to the PBR levels of the involved stocks, and the long-term objective of reducing serious injury and mortality levels to the Zero Mortality Rate Goal. Proposed regulations resulting from TRPs will be published in the **Federal Register**, and comments on the methods that NMFS proposes to use to reduce interactions between marine mammals and commercial fisheries will be solicited at that time.

Comment 7: For practical purposes, Congress apparently intended Category I to indicate a frequent incidence of serious injury and mortality. However, in a sleight of language that makes citizens so wary of their government, the definition of "frequent" makes it possible to call something "frequent" that any practical person would call remote.

Response: Pursuant to the MMPA, Category I, II, and III fisheries are those that incur frequent, occasional, or have a remote likelihood of incidental serious injuries and mortalities of marine mammals, respectively. Congress did not provide a definition of "frequent," "occasional," or "remote likelihood" in the MMPA. The final regulations implementing section 118 defined Category I, II, and III fisheries and thereby defined "frequent," "occasional," and "remote likelihood" based on the number of marine mammals seriously injured or killed incidental to commercial fishing operations relative to the marine mammal stock's PBR level.

NMFS' fishery classification criteria allow the agency to consider the level of serious injury and mortality incidental to commercial fishing on a stock-specific basis using a "weakest stock" approach. The population level and status of each marine mammal stock is specific to that stock. Thus, the level of impact each marine mammal population can withstand while allowing the population to attain its optimum sustainable population (OSP) level is also stock-specific. For instance, because the estimated minimum population size of North Atlantic right whales is 295 animals, the number of animals that can be removed from the population by commercial fishing while allowing the population to attain OSP is 0.4. In contrast, because the minimum population size of the Oregon/Washington coastal stock of harbor seals is 28,322, the number of animals that can be removed from this population by commercial fishing while allowing the population to attain OSP is 1,699. Thus, a small take of right whales (under 1 per year) would have a significant negative effect on the population, while a similar level of take of the Oregon/Washington stock of harbor seals would not. NMFS' chosen approach to the classification criteria allows it to focus management actions where fishery interactions have a significant negative effect on a marine mammal population.

Comment 8: If the MMPA programs succeed in protecting marine mammals, their numbers will increase, and logically, so will fishery interactions with them. It is not only possible, but virtually guaranteed, that no matter what commercial fishermen do to minimize interactions, they will interact with more and more animals until an active deterrent is in general use.

Response: The fishery classification criteria in the final regulations implementing section 118 are defined relative to a marine mammal stock's PBR level. Thus, if the population of a particular stock of marine mammal increases, the PBR level would be expected to increase as well. Consequently, commercial fisheries could anticipate that a higher number of incidental serious injuries and mortalities could be authorized, provided that the level relative to the PBR level remains constant or decreases.

Comment 9: It appears that marine mammal takes by fishermen of other countries fishing in proximity to the concerned stocks will be considered as "uncontrollable mortality" and will come "off the top" before NMFS sets the PBR level.

Response: The calculation of a PBR level for transboundary marine mammal stocks was considered on a case-by-case basis. General guidelines for migratory and non-migratory stocks were developed but were not applied in those instances where the guidelines were inconsistent with what is known about the biology of the marine mammal stock of concern. For migratory stocks, PBR level calculations are generally based upon the portion of the stock found in waters under U.S. jurisdiction or the proportion of the year that a migratory stock spends in waters under U.S. jurisdiction, and mortalities from foreign fisheries were generally included in the estimate of total mortality but not in the estimate of mortality incidental to U.S. fishing operations. For non-migratory stocks, the PBR level was calculated based on the abundance estimate of the stock residing in U.S. territorial waters and the Exclusive Economic Zone (EEZ). Restricting PBR level calculations in such a manner was considered appropriate because NMFS can only regulate incidental mortality and serious injury with respect to fishing activities under U.S. jurisdiction. Mortality and serious injury incidental to foreign fishing operations outside the U.S. EEZ generally do not affect the status of the stock (strategic vs. non-strategic) and are not included in the estimate of fishing mortality; thus, incidental takes of marine mammals by foreign fishing vessels should not affect the classification of U.S. commercial fisheries and will not affect the ability of U.S. commercial fishers to compete with foreign fishers.

Comments on Fisheries in the Northeast Region

Comments on the Gulf of Maine Mackerel Trawl Fishery

Comment 10: The commenter questioned NMFS' allegation that significant effort is not expected in the Gulf of Maine mackerel trawl fishery. As fisheries are coming under effort restrictions for groundfish in the Gulf of Maine, more effort is likely in herring and mackerel fisheries, as these stocks are more abundant. Although this fishery may not merit a separate listing from the combined trawl fishery for squid, mackerel, and butterfish, attention needs to be paid to the likely increase in effort.

Response: Since a new listing for the Atlantic squid, mackerel, and butterfish trawl was created in the 1996 LOF, the listing for the Gulf of Maine mackerel trawl fishery is duplicative and has been deleted in the 1997 LOF. The squid, mackerel, butterfish trawl fishery is retained in Category II in the 1997 LOF. NMFS anticipates that additional information on effort in this fishery will be available from fishing vessel and dealer logbooks. NMFS agrees that there is potential for expansion of the mackerel trawl fishery since the stock is currently considered underexploited. However, because the economic viability of this fishery is uncertain, effort may not increase appreciably in the near future.

Fishers who hold a Federal permit for the squid, mackerel, butterfish fishery will be registered automatically under the new integrated registration system. Fishers who participate in the state component of this fishery must obtain registration materials from NMFS and must submit the completed registration and a $25 fee to be authorized under the MMPA (see instructions under Registration).

Comments on the Finfish Aquaculture Fishery

Comment 11: Harbor seals should be added as interacting with the Finfish Aquaculture Fishery.

Response: The addition of harbor seals as an interacting stock is due to the entanglement of harbor seals in aquaculture pens. NMFS has no further information to indicate any marine mammal stocks other than harbor seals interacting with this fishery during the 1990–1994 period.

Offshore Monkfish Bottom Gillnet Fishery

Comment 12: The offshore monkfish bottom gillnet fishery should be divided into components of the Northeast Multispecies sink gillnet fishery and the U.S. Mid-Atlantic coastal gillnet fishery.

Response: NMFS agrees. This change will impact several vessels that were using sink gillnet gear but were not required to be permitted under the Multispecies Fishery Management Plan (FMP) because they were targeting monkfish and/or dogfish, which are not currently included under the Multispecies FMP. Monkfish was listed as a target species in the 1996 LOF for the Northeast Multispecies sink gillnet fishery but not for the Mid-Atlantic gillnet fishery. Fishers who hold a Federal permit for the multispecies sink gillnet fishery will be registered automatically under the new integrated registration system. Fishers who target only monkfish and do not have a Federal multispecies permit must obtain registration materials from NMFS and must submit the completed registration and a $25 fee to be authorized under the MMPA (see instructions under Registration).

Comment 13: It was not reflected in the proposed LOF that any interactions between the offshore monkfish bottom gillnet fishery and marine mammals were recorded in the course of observation from the observer program, nor were anecdotal reports provided. Why is the monkfish bottom gillnet fishery being subjected to the requirements of the MMPA? If there have been reports of interactions with marine mammals in the course of the fishing operations of the sink gillnet dogfish and monkfish fisheries, then these reports should be presented in the **Federal Register** as sufficient to classify them as the proposed rule states. Without that documentation, this fishery is being classified for unjust and unsound scientific reasoning until such fact and proof come forward.

Response: NMFS recognizes that quantitative information was not provided in the proposed LOF in support of the combination of the offshore monkfish bottom gillnet fishery with the New England multispecies sink gillnet fishery in Category I or with the U.S. mid-Atlantic coastal gillnet fishery in Category II, depending on the geographic location in which the fisher operates. As indicated in the proposed LOF, the offshore monkfish bottom gillnet fishery should be combined with the New England multispecies sink gillnet fishery or the U.S. mid-Atlantic coastal gillnet fishery, primarily because the offshore monkfish gillnet fishery uses tied-down sink gillnet gear, which is similar to the gear type used for flounder in the multispecies fishery, and thus, is an extension of current fisheries already in existence and is not a separate fishery. Vessels occasionally set strings of nets for monkfish in the same area and on the same trip as strings of nets set for groundfish. Thus, because the gear is similar, there is no practical distinction between the fisheries.

Comments on the Classification of the Lobster Pot Fishery

A. Comments regarding the data used to classify the fishery.

Comment 14: What is the definition of "serious injury" as it pertains to the lobster pot fishery classification and who determines whether the injury was serious?

Response: See response to comment 3 regarding the definitions of "injury" and "serious injury" under 50 CFR 229.2.

National guidelines for determining what constitutes a serious injury have not been established. The Atlantic Scientific Review Group (SRG), which

advises the agency on the science used by NMFS to manage marine mammals in the Atlantic Ocean, recommended that all instances where marine mammals are released alive from fishing gear be considered serious injuries until documentation to the contrary has been produced.

In the absence of national guidelines and because interim criteria for serious injury were urgently needed to address the impact of the lobster pot fishery to right and humpback whales, the Northeast Region utilized interim criteria for determining what constitutes a serious injury to large whales. The criteria developed by the Northeast Region and used in the classification of the lobster fishery were not as conservative as the Atlantic SRG has recommended.

According to the definition of injury, animals entangled in fishing gear, or released with gear trailing, are considered injured. For the analysis of the level of impact incidental to the lobster pot fishery, an injury was considered serious if it met any of the following criteria: (a) Entanglement did or could interfere with feeding (e.g., cinching loop around snout or gear through baleen); (b) entanglement did or could interfere with mobility (e.g., whale anchored, flippers pinned, flukes weighed down, gear apparently preventing whale from getting to the surface to breathe); or (c) entanglement resulted in substantial wounds (e.g., deep cuts, tendon/ligament or bone damage), that may result in loss of appendages or debilitating infection. A secondary consideration used in the analysis was whether the growth of a juvenile animal could cause further injury by a cinching entanglement on any part of its body as it increased in size.

In some cases, records of serious injury entanglements used for this analysis described whales which were disentangled. In cases of significant entanglements, the injuries were considered serious unless NMFS could confirm with reliable information that the whale was completely freed of gear, and that the whale did not incur residual serious injuries.

If necessary, these guidelines will be changed to ensure consistency with the national guidelines.

Comment 15: The lobster fishery was placed in Category I because of one entanglement of a right whale in 26 years. Because this constitutes a rare interaction, it is inappropriate to place this fishery in Category I.

Response: NMFS disagrees that the interaction between northern right whales and the lobster pot fishery should be considered rare. The lobster fishery was placed in Category I in the proposed LOF based on 1 serious injury or mortality of a northern right whale in 5 years. This animal was first seen entangled in lobster gear on December 21, 1993, and stranded dead in July of 1995. In addition, since the publication of the proposed LOF, NMFS identified a second record (July 9, 1993) as a serious injury of a right whale in lobster pot gear. Thus, the placement of the lobster pot fishery in Category I in this final LOF is based on two mortalities or serious injuries of right whales, one that was first seen on 12/21/93 and a second that was first seen on 7/9/93 (see Table 1).

NMFS considered only data from 1990 to 1994 in this analysis. NMFS used 21 records of serious injury and mortality incidental to the lobster fishery for this analysis (see Table 1). Of the records NMFS considered suitable for this analysis, lobster pot gear was responsible for the serious injury or mortality of two right whales, 9 humpback whales, and 7 minke whales. In addition, NMFS has records of two additional humpback whales and one minke whale that could be seriously injured; these records are currently under evaluation. NMFS also has records of 25 other whale entanglements collected between 1990 and 1994 that were excluded from this analysis due to insufficient information on gear type, species identification, or degree of injury. It is likely that some percentage of those entanglements represent serious injury and/or mortality due to entanglement in lobster gear.

NMFS is using opportunistic data to classify the lobster pot fishery. Opportunistic reports provided by sources such as NMFS, the New England Aquarium, and private citizens cannot be extrapolated to provide a total estimate of serious injury and mortality incidental to this fishery. The true level of incidental serious injury and mortality incidental to this fishery is unknown but may be higher than that reported here.

The total observed serious injury or mortality of right whales incidental to the lobster pot fishery for 1990 to 1994 is 0.4 animals per year; the PBR level for the northern right whale stock is 0.4 animals. Thus, because the total fishery-related incidental mortality and serious injury for all commercial fisheries is above 10 percent of the PBR level for this stock, and because the average take for the past 5 years is greater than or equal to 50 percent of the PBR level (2 animals in 5 years equals 0.4 animals per year; this is equivalent to the PBR level for this stock), placement in Category I is justified, based on impact to northern right whales.

In addition to the serious injury and mortality of northern right whales incidental to the lobster pot fishery, 11 humpback whales were seriously injured or killed by lobster pot gear between 1990 and 1994. This level of serious injury and mortality of humpback whales averages to 1.8 animals per year, which represents 19 percent of the PBR level for that stock (PBR level = 9.7). This level of incidental serious injury and mortality would justify placement of the lobster pot fishery in Category II. In addition to the records of serious injuries and mortalities of large whales in lobster gear used in this analysis, NMFS has data which show that large whale (right, humpback, minke) entanglement in U.S. lobster gear has occurred historically and has continued since 1994, which is the last year of data used in this analysis.

Refer to the response to comment 7 for a discussion of the stock-specific approach of the fishery classification criteria.

TABLE 1: NMFS RECORD OF SERIOUS INJURY AND/OR MORTALITY OF LARGE WHALES INCIDENTAL TO THE GULF OF MAINE, U.S. MID–ATLANTIC LOBSTER TRAP/POT FISHERY FOR 1990–1994*

Date Sighted**	Species	Sighting Location	Description of gear and evidence of serious injury/mortality	Outcome***
7/9/93	North Atlantic right whale.	Georges Bank	Lobster buoy, warp, swivel plus swordfish driftnet; tail of juvenile cut 8" on both sides from lobster line; partially healed and re-cut by net; wrapped in net; partially disentangled 7/9 by driftnet fisher; remainder removed 8/7 by disentanglement team ; re-sighted 9/93 in NY in shallow water; presumed dead from entanglement injuries.	Serious injury.

TABLE 1: NMFS RECORD OF SERIOUS INJURY AND/OR MORTALITY OF LARGE WHALES INCIDENTAL TO THE GULF OF MAINE, U.S. MID–ATLANTIC LOBSTER TRAP/POT FISHERY FOR 1990–1994*—Continued

Date Sighted**	Species	Sighting Location	Description of gear and evidence of serious injury/mortality	Outcome***
12/21/93	North Atlantic right whale.	Georgia	Lobster trap trawl rig (line with secondary lines spliced in perpendicularly); mostly floating poly line, also sinking poly/dacron line w/wooden toggle; green poly groundline imbedded 3" into bone at right flipper insertion & through baleen; 6–8 wraps around flipper; dark warp on back; juvenile; stranded dead 7/95 in RI.	Serious injury.
4/10/90	Humpback whale	Massachusetts	Lobster gear; fisher observed free-swimming whale dragging hundreds of yards of gear and cut most off.	Injury+.
6/18/90	Humpback whale	Massachusetts	Flipper of free-swimming whale entangled in lobster warp; trailing blue and orange float; may have had line through mouth.	Serious injury.
7/4/90	Humpback whale	New Hampshire	Lobster line & orange buoy; whale may have shaken some of the pots; juvenile; last seen trailing buoy.	Serious injury.
8/1/91	Humpback whale	Massachusetts	Gillnet, lobster (including pot) & tuna gear, grappling hook; trailing 50' of netting; gear around mouth & tail; emaciated & tired; could not swim with tail; freed 8/11/91 by disentanglement team; juvenile; in bad shape; sighted over next week swimming slowly.	Serious injury.
8/24/91	Humpback whale	New York	Lobster trap trawl rig; at least 12 pots & 2 high-flyers; lobster line over flipper and fluke,; swimming impaired/atypical; distressed/labored breathing; mostly stayed just below surface; heading toward land; juvenile animal; disentangled.	Serious injury.
10/3/91	Humpback whale	Massachusetts	Lobster trap trawl w/2 buoys; line tight around tail; free-swimming; not in immediate danger but close to shore; cut free by local lobsterman (not his gear) & headed out to see; unknown whether trailing gear; juvenile.	Injury+.
4/22/93	Humpback whale	New Hampshire	Lobster line around tail stock & flukes; whale thin; unknown if gear trailing; probably same whale freed by disentanglement team on 4/24/93; thin and weak; some healing around line; juvenile animal.	Serious injury.
6/13/93	Humpback whale	New Hampshire	Pot warp wrapped around flippers & body; some bleeding on right; line trailing; calf of the year; fresh wounds.	Serious injury.
8/11/93	Humpback whale	Maine	Lobster & sink gillnet; reported by lobsterman; gear over back & through mouth; anchored; partially disentangled by diver; left gear through mouth at hinge; whale swam away; juvenile animal.	Serious injury.
8/19/93	Humpback whale	Maine	Lobster gear in mouth & around tail stock; semi-anchored; labored breathing/wheezing.	Serious injury.
8/11/94	Humpback whale	Maine	Probable single trap lobster gear wrapped around or draped over flipper; heavy density of pots in area; at least partially disentangled by lobsterman (not his gear).	Serious injury.
6/25/90	Minke whale	Maine	Lobster gear around tail stock; line around pectoral fins and in mouth; stranded alive as a result of entanglement injuries; old entanglement; emaciated; heavy barnacle load; lesions; tail deformed; juvenile.	Serious injury.
8/16/90	Minke whale	Massachusetts	Trailing lobster gear; looked bad	Injury+.
8/28/91	Minke whale	Maine	Lobster trap lines through mouth and around tail; lobsterman found dead whale in his gear; juvenile animal.	Mortality.
10/23/91	Minke whale	New Hampshire	Juvenile whale held in place by multiple lines leading to lobster trap trawls; partially disentangled.	Serious injury.
8/22/92	Minke whale	Maine	Juvenile whale found floating dead; wrapped in lobster gear	Mortality.
9/21/92	Minke whale	Maine	Line from lobster gear strapping mouth shut	Mortality.
9/3/93	Minke whale	New Hampshire	Net and lobster gear around tail and trailing; labored/struggling	Serious injury.
7/2/94	Minke whale	Maine	Lobster lines (3 pair traps involved); line through mouth; one line around lower jaw; chafing on tail; whale brought up dead with traps.	Mortality.

*In addition to these 21 reports, NMFS also received 25 records of large whale entanglement for the 1990–1994 period that were excluded from this analysis due to insufficient information on degree of injury, gear type, or species identification. It is likely that some percentage of these entanglement records represent serious injury or mortality due to lobster gear. The 25 records that were excluded include right, humpback, minke, fin, and unidentified whales.

** The date sighted and location provided in the table are not necessarily when or where the serious injury or mortality occurred; rather, this information indicates when and where the whale was first seen entangled in the gear that ultimately resulted in serious injury or death to the animal. Recent records indicate that the difference between these two points can be substantial for both time and location.

*** See response to comment 19 for a description of the guidelines used to determine what constituted a serious injury with respect to large whale takes in this fishery.

+ This injury may constitue a serious injury. NMFS is evaluating these records to determine the extent of the injury and whether it should be considered a serious injury.

Comment 16: The commenter included a list of entanglements and indicated that it is inappropriate to propose to reclassify the lobster pot fishery based on the one right whale entanglement because the gear cannot be traced to the lobster fishery. The gear recovered from the animal in question was identified as "unidentified line".

Response: The list to which the commenter refers was a draft list that was not prepared by NMFS. Information provided to NMFS by public commenters is very helpful but cannot be used to justify the placement of a fishery in a specific category in the LOF until the information has received scrutiny and approval by NMFS scientific, management, and headquarters staff.

The whale that the commenter refers to was sighted on December 21, 1993, off Georgia. When the gear was first removed from the whale, it was described as lobster gear, although it consisted only of line and a wooden toggle. When the gear was transferred to and examined by NMFS, this initial assessment was confirmed based on the type of line and arrangement of knots and splices. Since the publication of the proposed LOF, the gear has been examined and the assessment confirmed by a lobster industry representative. Consequently, the final reclassification of the lobster fishery into Category I is based on two serious injuries or mortalities of northern right whales. As previously stated, if no right whales had been seriously injured or killed, a classification in Category II would be justified based on the 9 serious injuries or mortalities of humpback whales and 6 serious injuries or mortalities of minke whales.

Comment 17: The commenter questions the statistical validity of the calculations by which the conclusion was reached that the lobster fishery exceeded the threshold limits for Category I. Because of the small numbers involved, a statistically valid analysis would indicate that there is a very high probability that the lobster fishery does not exceed the threshold for Category I.

Response: A statistical analysis of this data is not necessary, because the reported serious injury and mortality of two right whales in 5 years (1990–1994) results in a minimum average annual level of serious injury and mortality of 0.4 per year (2/5 = 0.4). Fisheries placed in Category I are those that have incidental serious injury and mortality of a particular stock of marine mammals that is greater than or equal to 50 percent of the PBR level for that stock. In the case of right whales, PBR level = 0.4, so 50 percent of the right whale PBR level = 0.2. Because two serious injuries or mortalities of right whales were reported in this fishery during 5 years, the minimum serious injury/mortality level of 0.4 right whales per year qualifies the lobster fishery as a Category I fishery.

Comment 18: The commenter indicated that it was inappropriate to classify the New England lobster pot fishery based on the recovery of pot gear from a right whale in waters off Georgia.

Response: Although the entangled right whale was first sighted swimming off Georgia, the initial location of entanglement cannot be determined. The whale was identified as an individual that, in addition to using the calving grounds off Georgia and Florida, has also been seen in Cape Cod Bay and in the Bay of Fundy. Whales have been known to swim great distances trailing gear.

Comment 19: NMFS was very conservative in its use of entanglement reports and this may result in an underestimate of the entanglement rate.

Response: NMFS agrees that the rate of annual serious injury and mortality determined through stranding and other reports probably underestimates the total level of serious injury and mortality that occurs incidental to this fishery. NMFS uses stranding and other reports to provide a minimum rate of serious injury and mortality incidental to particular commercial fisheries. This minimum rate cannot be extrapolated to a total estimate of annual serious injury and mortality.

Comment 20: Given the size of the lobster pot fishery and the very few reports of any interaction with whales over a twenty-six year period, logic would dictate that the lobster fishery is best described as having a remote likelihood of interaction. In reality, given all the lines that have always been present in the water for all these years, and the total lack of any significant interaction with whales, we believe the lobster fishery has been a very friendly neighbor to the whales.

Response: See response to Comment 15.

Comment 21: Most experts on whales do not believe that the lobster fishery merits a Category I designation. While some may voice concern with regard to vertical buoy lines going to the surface, they admit that the entanglement possibility is a rare occurrence. They also cannot explain how a whale can get entangled in such line.

Response: See response to comment 15.

Comment 22: Whale watch boat captains report that they have seen schools of whales "feeding" and "frolicking" among buoy lines and have never seen one become entangled.

Response: NMFS appreciates the reports that are received from whale watch boat captains, as they may provide information on relative seasonal distribution of the animals. The observation provided by the commenter documents that whales are known to use areas where lobster gear is fished. However, few of the entanglements that eventually lead to serious injury or mortality are observed at the time of initial occurrence. Many of the sightings of entangled whales either anchored in or trailing gear come from whale watch vessels, and these reports are valuable to NMFS.

See response to Comment 15 for additional discussion.

Comment 23: The elevation of the lobster pot fishery to Category I is supported by the information on large whale entanglements.

Response: NMFS agrees.

B. Comments Regarding the Combination of the Inshore and Offshore Lobster Trap/Pot Fisheries, the Description of the Lobster Trap/Pot Fishery and the Overlap with Documented Ranges of Marine Mammals.

Comment 24: The breadth and scope of the range of the lobster pot fishery is neither documented nor described in sufficient detail so as to distinguish the area of the fishery most likely to have interactions with the marine mammals of concern. Without this distinction, there is great assumption without sufficient scientific support to lump all participants and areas involved in this fishery into Category I.

Response: In a future LOF, NMFS may investigate whether it is possible to separate certain geographic segments of the lobster fishery relative to potential for whale entanglement. Data are not currently available to conduct this analysis. Most of the quantitative distribution surveys concentrate on shelf-edge rather than nearshore waters. Some qualitative sighting data are available in addition to historic records from whaling stations. NMFS' strategy for separating geographic segments of the lobster fishery would involve conducting an analysis of information on whether marine mammals known to become entangled in lobster gear occur in waters where and when the fishery occurs and then attempting to determine whether the rate of occurrence is sufficiently low to reduce the probability of entanglement. Many of the whale entanglements in lobster gear involve juvenile animals. Juvenile whales tend to explore inshore areas

and have been known to swim up into rivers (e.g., Delaware, Susquehanna, and Potomac Rivers). Humpback whales, in particular, have often been sighted feeding very close to shore and inside harbors.

Comment 25: A tremendously large portion of the fishery operates in near shore, shallow waters, inside the documented range of the marine mammals mentioned in the **Federal Register** notice, making this an absurd and unnecessary administrative burden on these fishermen with registration requirements.

Response: See response to comment 24.

Comment 26: The inshore and offshore components should be combined into a single fishery. The differences in gear that is used in the inshore and offshore fishery for lobster is neither significant enough to affect the potential to kill or seriously injure marine mammals, nor is the marine mammal distribution such that either inshore or offshore gear has a greater likelihood of entangling marine mammals.

Response: The relative potential for serious injury or mortality of marine mammals in various types of lobster gear is unknown. Very little information is available that describes the behavior of the whales which resulted in entanglement, particularly for those entanglements that occur at depth. It may be possible to separate out certain fisheries that occur in bays or sounds if it can be determined that marine mammal species that are known to become entangled in lobster gear do not occur in those areas. However, that information is not available at this time. See response to Comment 25 for additional discussion.

Comment 27: The proposed LOF indicated that the decision to combine the inshore and offshore lobster pot fisheries is based on "new information received about the prosecution of the lobster fishery." Contrary to the implication in the **Federal Register** notice, the practical distinction between the offshore and inshore lobster pot fisheries is not based on the distinction between state waters and the EEZ. The proposed LOF is erroneous in stating that the number of pots and number and size of associated lines and surface gear increase as distance from shore increases.

Response: The description in the proposed LOF was intended to refer to the number of traps fished in a string and the number of traps fished per vessel, not to the total number of traps fished inshore versus offshore. NMFS recognizes that the size of the fleet that fishes a considerable distance from shore in the EEZ is much smaller than that which fishes closer to shore in the EEZ and in state waters.

Comment 28: Although there are no sharp or practical distinctions between the gear types and vessel sizes used in the inshore lobster pot fishery and the offshore lobster pot fishery, there are sharp geographic distinctions that can be made, particularly in coastal New Hampshire and Maine. Because there has been only one right whale sighting inside the 100m bathymetric contour (excluding Jeffreys Ledge), the available data support a classification of Category III for the lobster fishery that occurs in the State waters of New Hampshire and Maine. In addition, although there are right whale aggregations at the Great South Channel and Cape Cod Bay/Stellwagen Bank/Jeffreys Ledge and in the lower Bay of Fundy and Browns Bank on the Scotian Shelf, there are large areas of inshore lobster grounds in between where the data suggest that the risk of serious injury/mortality from entanglement in lobster gear is non-existent.

Response: NMFS disagrees with the commenter's interpretation of right whale distribution. More than one right whale has been sighted inside the 100m contour. Although concentrations of right whales apparently only exist in certain areas of the Gulf of Maine, the whales likely transit many of the other areas at some point while moving between concentration areas. Information from satellite tracking indicates whales may cover large distances over short periods of time. See response to Comments 24 and 26 for discussion of geographical separation of the lobster fishery. Absent the evidence of right whale serious injury and mortality, the evidence of humpback and minke whale mortality and serious injury from 1990–1994 in the areas of Maine and New Hampshire to which the commenter refers would support a Category II listing rather than Category III.

Comment 29: Due to its geographical location and fishing methods employed, a practical operational distinction separates Long Island Sound from other waters where the lobster fishery is prosecuted. To remain consistent with plans for a separate fishery management area in Long Island Sound, and because right whales, humpback whales, and minke whales do not occur in Long Island sound, the lobster pot fishery in Long Island Sound should be separated from the U.S. mid-Atlantic Inshore Lobster Trap/Pot fishery and identified as a separate fishery in Category III. It makes no sense to have inshore Long Island Sound lobster pot fishermen from Connecticut or New York comply with the same registration requirements as imposed on lobstermen who actually fish in New England waters inhabited by endangered cetaceans. Specifically, lobstermen fishing exclusively in the waters of Long Island Sound west of a line running from Watch Hill, RI, to Orient Point, NY, should be excluded from the Category I designation.

Response: See response to Comments 24, 25, and 26. NMFS does not have good information on the extent to which whales use Long Island Sound. However, humpback, minke, right, and fin whales have been sighted inside the line mentioned by the commenter. Most sighting surveys conducted in the western U.S. Atlantic Ocean did not cover inshore waters such as Long Island Sound, Delaware Bay, and Chesapeake Bay; rather, effort was concentrated on the continental shelf. NMFS may consider a geographic separation of the lobster fishery in a future LOF.

Comment 30: The lobster pot fishery should be restricted in areas of New England where endangered whales feed and mate. Recategorizing the territory that the whales inhabit from Category III to Category I would be beneficial to the endangered types of whales. It is a tragedy when any of these whales are entangled in trap lines, and enough have died already.

Response: Reclassification of the lobster fishery will not result directly in additional protection for marine mammals. Any such measures will be developed utilizing other management measures such as the promulgation of regulations in order to implementat the Large Whale TRP.

C. Comments on the Use of Alternate Management Regimes and Monitoring Programs.

Comment 31: Several commenters supported the use of monitoring systems, such as enhanced stranding and disentanglement network reporting, or additional gear marking requirements, in lieu of the implementation of an observer program for the lobster pot fishery. Other alternatives include the use of shipboard and aerial surveys to monitor fishing activity and whale distributions, particularly in critical habitat areas and known summer ranges in the northern Gulf of Maine. In addition, observer programs are unlikely to result in an increased understanding of interactions between marine mammals and lobster gear, as many entanglements may occur when the vessel is not present.

Response: NMFS agrees that alternatives to traditional observer

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programs are likely to be more effective in monitoring marine mammal serious injuries or mortalities incidental to the lobster pot fishery. Such an alternative observer program is likely to include some of the components recommended, such as aerial surveillance, enhanced reporting of entanglements, etc. Although NMFS may schedule some low level of observer coverage in this fishery, the agency anticipates that several suggestions for alternative monitoring programs may be recommended by the Large Whale TRT. This Team, which consists of representatives of the Federal government, affected state governments, environmental groups, and the affected commercial fisheries, is charged with developing the Large Whale TRP by early 1997.

Comment 32: NMFS should develop an approach for monitoring serious injuries and mortalities of large whales in the lobster pot fishery which allows fishermen to become partners in the effort to protect this species, rather than victims in pursuit of what may be an unattainable goal.

Response: NMFS agrees. Representatives of the commercial lobster pot fishery currently participate in the Large Whale Take Reduction Team, which is charged with developing a plan that will reduce incidental serious injuries and mortalities of large whales. NMFS anticipates that many thoughtful, productive methods for addressing this issue will result from these meetings.

D. Comments on Coordinating Registration Under the MMAP with Existing State or Federal Registration Systems.

Comment 33: All lobstermen required to register under the MMPA (Category I and II) should be registered via an integration of state lobster licensing lists with NMFS MMPA registration requirements. If we allow our data processing systems managers to collaborate on this issue, we can avoid an enormous redundancy in applications for, and administration of, the required permits.

Response: NMFS agrees. Integration of registration under the MMPA with registration in existing Federal and state permitting systems greatly reduces the amount of paperwork that must be completed by the commercial fisher and handled by NMFS. Because of the reduced paperwork burden on NMFS, an integrated system often results in a reduction or elimination of the $25 fee otherwise required for registration under the MMPA. The NER will endeavor to integrate the registration of the commercial lobster pot fishers with state and Federal permitting systems.

Comment 34: Integration of registration with the state fishery registration system of Maine will be difficult, if not impossible, because licensing issues are controlled by the Legislature and coordination would require the passage of law, and because of the expense of registering 7,000 commercial lobster fishers.

Response: Integration of state registration systems with registration under the MMPA would not necessarily require that individual states change their licensing practices. NMFS will work closely with the states to develop an integrated registration program that causes the least impact to the state fishery management programs while ensuring that the legislative mandates of registration under the MMPA are fulfilled.

Comments on Other Fisheries

Comment 35: There has been a recent increase in effort in fishing for hagfish in the Gulf of Maine. This is a staked gear fishery that may bear monitoring for potential interactions with marine mammals.

Response: NMFS agrees that effort in the hagfish pot fishery has increased in New England waters and that the range of the fishery may overlap that of marine mammals known to become entangled in pot gear. Unlike the American eel fishery, the hagfish fishery in the Gulf of Maine primarily occurs in waters too deep for staked gear. The hagfish fishery uses gear that is rigged similar to lobster gear but uses barrels instead of pots. NMFS currently has no records of serious injuries or mortalities of marine mammals incidental to this fishery. NMFS expects to examine the locations and manner in which this fishery is prosecuted in order to determine whether the fishery should be proposed for reclassification based on analogy with the lobster pot fishery or other fisheries.

Comment 36: NMFS should pay additional attention to the proliferation of aquaculture permits in the Gulf of Maine, as some gear may pose an entanglement risk to marine mammals. For example, if top-down systems of shellfish aquaculture are used, they may pose the same types of entanglement risk that is posed by lobster gear. In addition, blue fin tuna grow-out activities should be monitored, as serious problems with entanglement of small cetaceans and pinnipeds have occurred in the deeper waters of Australia, where this technology is already in use.

Response: NMFS appreciates the information on the Australian tuna project. Federal bluefin tuna regulations do not currently authorize aquaculture or grow-out operations. Such activities may be conducted on a limited scale with a specific letter of authorization consistent with the Atlantic tuna regulations (50 CFR part 285) and the provisions of 50 CFR 600.745. U.S. Coast Guard and Army Corps of Engineers requirements also would apply. Depending on the scale and duration of the activity, an Environmental Assessment could be required, in which case the impacts on protected species would be assessed and public comment would be sought. The referenced pilot project is currently being examined in this regard.

Comment 37: The Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fisheries for swordfish, tuna, and sharks should be separated into three separate fisheries in the LOF. This action has been requested since 1991. Separation of the Atlantic longline fisheries would be consistent with NMFS' proposed action to separate the Oregon swordfish/blue shark surface longline fishery into the Oregon swordfish floating longline fishery and the Oregon blue shark floating longline fishery. In addition, separation of these fisheries by fishing region would facilitate establishing a standardized process for monitoring effort, estimating serious injury and incidental mortality rates, and evaluating the effectiveness of reduction methods.

Response: The proposed LOF for 1997 clearly indicates that the rationale for separating the two longline fisheries permitted by the state of Oregon is to remain consistent with changing state registration practices (see 61 FR 37035; especially 37038). This change was not proposed based on a change in the level of serious injury or mortality of marine mammals incidental to the fishery. NMFS will consider making changes to the LOF to parallel current state or federal fishery registration practices, as it greatly facilitates integration of state or federal fishery registration with registration in the MMAP.

At this time, there is no scientific or management reason to separate the Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fishery into separate fisheries in the LOF. The fishery is managed under the Atlantic Tunas Convention Act (ATCA) consistent with the recommendations of the International Committee for the Conservation of Atlantic Tunas (ICCAT), which has a very broad scope. This stems from the wide distribution of the target species in the pelagic longline

fishery, which migrate seasonally between the Northern U.S. Atlantic Ocean, the Caribbean, and the Gulf of Mexico. The marine mammals incidentally seriously injured and killed in this fishery are also found across all of these areas. Although some vessels operate on a more regional basis, the fishery typically follows the target species across these different regions. Because the fishery statistics are already collected on a regional basis, dividing the pelagic longline fishery into different segments would not alter the way in which effort and take data are monitored. The TRP involving this fishery does not affect the fishery in the Gulf or Caribbean, and observers are placed onboard these fisheries to monitor target species catch for the purposes of reporting to ICCAT, regardless of the fishery's classification under the MMPA. Therefore, maintaining this as one fishery does not place undue burden upon the fishery or undue "blame" for marine mammal takes in a regional area. Alternatively, if the fishery was divided into three separate fisheries, many fishers would have to register under two or three different fisheries.

Comment 38: The category designation of the Atlantic Ocean, Caribbean, and Gulf of Mexico pelagic longline fishery should be reassessed based on more accurate information. The current classification is based on pilot whale interactions which occur when the pilot whale preys upon dead tuna. If the reported number of hooks was used for calculating this estimate, NMFS must consider that a hook in the Gulf of Mexico and a similar hook at the Grand Banks have a very different likelihood of interacting with a particular marine mammal species.

Response: The estimated level of effort used in determining the total estimated serious injury and mortality of marine mammals incidental to this fishery is based on the number of sets (not hooks) and is the same data set used for estimating levels of catch for target species used by NMFS to report to ICCAT. Pilot whales and other species known to interact with this fishery occur in all areas where the fishery is prosecuted. For the purpose of the LOF, it is immaterial whether the serious injury or mortality occurred as a result of predation or attempted predation or if the serious injury or mortality occurred as a result of some other action on the part of the marine mammal. New information on the level of incidental serious injury and mortality in this fishery was not provided in the draft SARs for 1996, and thus information on the level of marine mammal serious injury and mortality in the pelagic longline fishery is unlikely to be available for the development of the proposed LOF for 1998. Constituents interested in obtaining more recent information should provide public comments on the draft SARs for 1996.

Comment 39: The category III designation for the Gulf of Maine, U.S. Mid-Atlantic tuna, shark, and swordfish hook and line/harpoon fishery should be reevaluated. As NMFS noted in the proposed LOF, information may be available to confirm the type of gear that entangled a humpback whale near Jeffrey's Ledge in 1995. These sources of information should be investigated.

Response: NMFS may revisit the classification of this fishery in the proposed LOF for 1998. At that time, NMFS hopes to have additional documentation on several entanglement records and on which segments of this fishery present an entanglement risk to marine mammals. The record to which the commenter refers documents the entanglement of a humpback whale in a bait gillnet set for live bait to be used in the tuna hand line fishery. While this entanglement could be considered an injury, NMFS determined that the entanglement did not constitute a serious injury, as the buoy line was apparently draped over the whale's flipper rather than wrapped around it.

Comment 40: Several of the gillnet and trap fisheries are proposed to remain in Category III in the absence of data indicating interactions, despite the fact that all of these fisheries are using gear types known to interact with marine mammals in areas where the fishing effort overlaps with marine mammal species that are known to become entangled in those types of gear. Lack of observer coverage or the extremely slow pace of data flowing from the Northeast Fisheries Science Center should not become a bar to providing monitoring of these fisheries.

Response: NMFS has no new information on the level of serious injury and mortality of marine mammals incidental to the majority of these fisheries at this time. New information on the level of serious injuries and mortalities of marine mammals incidental to the U.S. mid-Atlantic coastal gillnet fishery and the North Carolina inshore gillnet fishery is likely to become available by June 1997. These data will be evaluated and used, if appropriate, to propose changes to the LOF for 1998.

NMFS will reevaluate other fisheries in a future proposed LOF as data become available.

Comments on the Definitions of Various U.S. North Atlantic Trawl Fisheries

Comment 41: While the divisions and category designations of the North Atlantic trawl fisheries are generally supported, because the Gulf of Maine, South Atlantic, and Gulf of Mexico Herring Trawl fishery may co-occur with pilot whales and may be interacting with harbor porpoise, this fishery may need to be considered for designation as a Category II fishery.

Response: The herring trawl fishery which is currently listed in Category III is a coastal herring trawl fishery. At this time, NMFS has no evidence indicating that marine mammals have been seriously injured or killed incidental to this fishery.

Comment 42: The estimated number of five vessels in the Gulf of Maine, South Atlantic, and Gulf of Mexico herring trawl fishery may not be correct, as there have been reports of a larger number of vessels fishing in the Jeffrey's Ledge area.

Response: No updates on the number of participants are available for this final LOF. NMFS will update the tabular listing of number of participants in each fishery and the list of marine mammal stocks involved for the proposed LOF for 1998.

Comments on Fisheries in the Southwest Region

Comment 43: Reclassification of the California squid purse seine fishery to Category II is supported based on the increase in fishing effort, the presence of pilot whales in the area, and historical evidence of serious injury and mortality in the fishery.

Response: NMFS agrees. The fishery has been placed in Category II.

Justification for the Categorization of Commercial Fisheries

The following are justifications for the final categorization of commercial fisheries into Category I, II, or III based on the classification scheme defined in the final rule implementing section 118 (60 FR 45086, August 30, 1995). Justifications are presented only for those fisheries addressed in the proposed LOF for 1997 (61 FR 37035, July 16, 1996).

Commercial Fisheries in the Atlantic Ocean

U.S. Atlantic Tuna Purse Seine Fishery

As discussed in the proposed LOF for 1996, humpback and minke whales have been encircled by tuna purse seines. However, the whales were released and did not incur injury or mortality. Thus, no changes in the

classification of this fishery were proposed. In 1996, NMFS observers recorded that eight marine mammals were encircled incidental to this fishery. All animals incidentally encircled were released alive and uninjured. Since NMFS observers have recorded the encirclement of marine mammals, NMFS will carefully monitor this fishery to determine why marine mammals are being encircled, and will propose that the fishery be reclassified if serious injuries or mortalities become a concern.

This listing replaces a listing for the bluefin tuna purse seine fishery, which had been inadvertently omitted, and is made more general to include additional target species such as yellowfin tuna.

Gulf of Maine Mackerel Trawl Fishery

This fishery is a Category III state fishery that uses similar gear to target the same species as targeted in the Atlantic squid, mackerel, and butterfish trawl fishery. A separate listing of the Gulf of Maine mackerel trawl fishery is duplicative of the Atlantic squid, mackerel, butterfish trawl listing and is hereby deleted from the LOF. Commercial fishers participating in the state fishery for mackerel should, therefore, register under the MMPA as a Category II fishery (see information under Registration).

Finfish Aquaculture Fishery

NMFS has received four reports of harbor seal serious injury and mortality incidental to this fishery between 1990–1994. These data result in an average of 0.8 mortalities of harbor seals per year. Although the actual level of serious injury and mortality in this fishery is unknown, the reported serious injury and mortality level is less than 1 percent of the PBR level for the harbor seal. Therefore, this fishery is retained in Category III. The harbor seal (Western North Atlantic stock) is hereby added as a species which incurs injury and/or mortality incidental to the finfish aquaculture fishery.

U.S. North Atlantic Coastal Gillnet Fisheries

The southernmost boundary of the Northeast multispecies sink gillnet fishery and the northernmost boundary of the Mid-Atlantic gillnet fishery are modified to be consistent with the Multispecies Fishery Management Plan (FMP). This boundary extends south from the southern shoreline of Long Island along 72° 30′ W. Long. This change eliminates an overlap in the vicinity of Rhode Island and Martha's Vineyard.

Offshore Monkfish Bottom Gillnet

This fishery is divided geographically and placed with two other gillnet fisheries. The northern portion of the fishery is absorbed into the New England multispecies sink gillnet fishery in Category I and the southern portion with the Mid-Atlantic gillnet fishery in Category II. The monkfish fishery uses bottom gillnet gear that has been observed to cause mortality of marine mammals. In addition, several of the areas where bottom gillnet gear is used to target monkfish are known to be high-use areas for marine mammals.

Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery

Two records of serious injury or mortality of northern right whales, 7 records of serious injury and/or mortality of minke whales, and 10 records of serious injury and mortality of humpback whales were reported in this fishery from 1990–1994. These data represent a serious injury and mortality rate of 0.4 (100 percent of PBR level) per year for right whales, 1.8 (19 percent of PBR level) per year for humpback whales, and 1.4 (7 percent of PBR level) per year for minke whales. The above rates are greater than 1 percent but less than 50 percent of the PBR level for humpback and minke whales, but greater than 50 percent of the PBR level for right whales. Therefore, this fishery is placed in Category I in the 1997 LOF.

Opportunistic reports of free-swimming or stranded animals entangled in lobster pot gear were used to justify the placement of this fishery in Category I. However, it should be noted that opportunistic reports of this type provide a minimum estimate of mortality due to a particular source. These data cannot be extrapolated to provide a total estimated level of serious injury or mortality.

Northern right whale, humpback whale, and minke whale are added as marine mammal stocks that incur injury and/or mortality incidental to the lobster trap/pot fishery.

Trawl Fisheries

In the proposed LOF for 1997, NMFS requested public comments on alternative definitions of the trawl fisheries in the Northeast to better reflect current fishing practices. No public comments providing additional information on the fisheries were received. In a future LOF, NMFS may propose to redefine several of the trawl fisheries according to gear type rather than target species to parallel current fishery management practices and to facilitate more efficient data analysis.

U.S. Atlantic Large Pelagics Pair Trawl Fishery

A petition to consider pair trawl gear as an authorized gear type in the Atlantic tuna fishery was denied in 1996 because the tuna stocks the fishery targets are either fully- or over-utilized at this time (61 FR 48661, September 16, 1996). Because this fishery has not been authorized under ATCA (16 U.S.C. 971 et seq.), it has been removed from the LOF. Should the fishery be authorized in the future, NMFS will review the level of serious injury and mortality that occurred incidental to this fishery between 1992 and 1996 to determine the appropriate classification in the LOF.

Commercial Fisheries in the Pacific Ocean

Oregon Swordfish Floating Longline Fishery

The swordfish longline fishery is being separated from the Oregon blue shark longline fishery to ensure that registration under the MMPA remains consistent with the existing state licensing systems. This fishery will be retained in Category II.

Oregon Blue Shark Floating Longline Fishery

The blue shark longline fishery is being separated from the Oregon swordfish longline fishery to ensure that registration under the MMPA remains consistent with the existing state licensing systems. This fishery will be retained in Category II.

California Squid Purse Seine Fishery

No observer data are available for consideration in classification of this fishery. Between 1989 and 1995, California squid purse seine fishers reported short-finned pilot whale harassment during deterrence attempts, but there were no accounts of pilot whales being injured or killed either by deterrence or gear. The California squid purse seine fishery is currently classified as a Category III fishery. However, the Pacific Scientific Review Group, established under section 117 of the MMPA, recommended that the squid purse seine fishery be monitored with an observer program because of documentation of previous interactions between this fishery and short-finned pilot whales and a lack of current information about marine mammal mortalities and serious injuries incidental to this fishery.

Short-finned pilot whales were once common off Southern California, especially near Santa Catalina Island (Barlow et al. 1995). In early spring, short-finned pilot whales occurred in

inshore waters of California, coincident with the arrival of spawning squid, their main prey source. Dohl et al. (1980) estimated that a resident population of 400 short-finned pilot whales with a seasonal increase of up to 2000 individuals occurred in California waters. Short-finned pilot whales essentially disappeared from the area after the strong 1982–83 El Nino event and few sightings were made between 1984–92 (Barlow et al. 1995). However, short-finned pilot whales appear to have returned to California waters as indicated by recent sighting events and incidental mortality in the drift gillnet fishery for thresher shark and swordfish (average annual mortality = 20). Results from ship surveys in 1993 off California indicate that the estimated abundance of short-finned pilot whales in California/Oregon/Washington is approximately 1,000 animals (NMFS unpublished data). Barlow et al. (1995) concluded that the California/Oregon/Washington short-finned pilot whale population was a "strategic" stock under the MMPA.

Historically, incidental mortality of pilot whales occurred in the squid purse seine fishery in southern California. Twelve pilot whales were observed and reported entangled incidental to this fishery during the 1980 season (Miller et al. 1983). Miller et al. (1983) also reported that pilot whales were occasionally shot in the squid purse fishery when lethal deterrence was legal. Heyning and Woodhouse (1994) analyzed stranding data between 1975–90 and documented that 14 short-finned pilot whales stranded or were found floating dead (most during the late 1970s). They concluded that these pilot whales were probably incidentally killed in the squid purse seine fishery. All animals that were examined had stomachs full of market squid: none of those stranded had evidence of bullet holes, and commercial squid boats were reported to have been working those areas at the time.

Currently, the majority of the purse seine vessels that purse seine offshore California for mackerel, tuna, and anchovy (a Category II fishery) use the same gear to fish for squid in the winter off southern California (California Department of Fish and Game, unpublished data). Although the number of purse seine vessels has remained relatively stable in southern California with approximately 65 squid purse seine vessels in operation, over the last few years, squid purse seine effort and landings have increased.

The regulations implementing section 118 classify all fisheries based on the best available information on incidental mortality and serious injury of marine mammals. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals in commercial fisheries, the Assistant Administrator will determine whether taking is "occasional" (Category II) by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the areas.

Due to the possible increase of short-finned pilot whales in California waters, coincidence of the fishery and short-finned pilot whales in southern California waters, historic incidental taking in the California purse seine fishery, and impacts to the short-finned pilot whale stock from other fisheries, NMFS is categorizing the California squid purse seine fishery in Category II.

Other Changes to the List of Fisheries

Southeastern U.S. Coastal Gillnet

The Southeast U.S. Atlantic coastal gillnet fishery is deleted from this final LOF. With the exception of certain gillnet fisheries already included separately on the LOF (e.g., Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet fishery, Gulf of Mexico coastal gillnet fishery, Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet fishery, Southeastern U.S. Atlantic shark gillnet fishery), coastal Atlantic gillnet fisheries no longer exist south of North Carolina, due to state gillnet bans. Coastal gillnet fisheries in North Carolina are either included in the U.S. mid-Atlantic coastal gillnet fishery, or the North Carolina inshore gillnet fishery.

Gulf of Maine, Southern North Atlantic, Gulf of Mexico Coastal Herring Trawl Fishery

The Gulf of Maine, Southern North Atlantic, Gulf of Mexico coastal herring trawl fishery is revised as the Gulf of Maine, U.S. mid-Atlantic coastal herring trawl fishery. Although purse seine fisheries for "herring-like" fish such as menhaden and sardine exist in the southeastern U.S., there are no southeastern trawl fisheries targeting these species. In addition, true herring are not found in southeastern U.S. waters.

Summary of Changes to the LOF for 1997

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to that provided in the LOF for 1996 and thus, the majority of the LOF for 1996 remains valid in 1997. The following summarizes the changes in fishery classification, fishery definition, elimination of fisheries, and species that incur incidental injury or mortality that are made final by this LOF for 1997. For a compiled list of the categorization of all U.S. commercial fisheries, contact the Office of Protected Resources (see **ADDRESSES**).

Commercial Fisheries in the Pacific Ocean

Category III to Category II:

The "California squid purse seine fishery" is moved from Category III to Category II.

Fishery definitions:

The "Oregon swordfish/blue shark surface longline fishery" is separated into the "Oregon swordfish floating longline fishery" and the "Oregon blue shark floating longline fishery". Both fisheries are retained in Category II.

Removals of fisheries from the LOF:

The "Oregon swordfish/blue shark surface longline fishery" is removed from the LOF.

Additions to the list of species that incur incidental injury or mortality to a particular fishery:

Short-finned pilot whales are added to the list of species that incurs injury or mortality incidental to the California squid purse seine fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Category III to Category I and fishery definition:

The "Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot fishery" and the "Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot fishery" are combined and referred to as the "Gulf of Maine, U.S. mid-Atlantic Lobster trap/pot fishery." This fishery is moved from Category III to Category I.

Fishery definition:

The "Gulf of Maine mackerel trawl" fishery, which is a Category III fishery, is combined with the "Atlantic squid, mackerel, butterfish trawl fishery" in Category II.

The geographic separation between the "New England multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish)" and the "U.S. mid-Atlantic coastal gillnet" is changed from 70°40′ W. long to 72°30′ W. long.

The offshore monkfish gillnet fishery, which was in Category III, is combined with either the "New England multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny

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dogfish and monkfish)", which is in Category I, or the "U.S. mid-Atlantic coastal gillnet fishery", which is in Category II, depending on where the monkfish is targeted.

Additions of Fisheries to the LOF:

The "U.S. Atlantic tuna purse seine" is added to Category III in the LOF.

Removals of Fisheries in the LOF:

The "Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot fishery" and the "Gulf of Maine, U.S. mid-Atlantic offshroe lobster trap/pot fishery" are removed from the LOF.

The U.S. Atlantic large pelagics pair trawl is deleted from the LOF.

The "Gulf of Maine mackerel trawl" fishery is deleted from Category III in the LOF.

The "Offshore monkfish gillnet fishery" is deleted from Category III in the LOF.

Additions to the list of species that incur incidental injury or mortality to a particular fishery:

The North Atlantic stock of harbor seals is added as a stock that incurs injury or mortality incidental to the "Finfish aquaculture" fishery.

Other Changes to the LOF

Participants in Category I or II fisheries are required to register under the MMAP. In order to provide additional flexibility for integrated registration systems so that, if key MMPA Authorization Certificate registration information is supplied through integration with state systems, interjurisdictional fisheries programs, and federally managed fisheries, individual fishers would not be required to fill out forms or submit registration information but automatically would be issued registrations and Authorization Certificates.

The benefits of integrating MMPA registration with existing fishery registration or permit programs are clear. Integration results in a reduction in paperwork that must be completed by the fisher, a reduction in paperwork that must be completed by NMFS, and reduced staff burdens for NMFS. In some cases, integration has resulted in the elimination of the MMPA registration fee of $25.

Classification

This action has been determined to be not significant for the purposes of E.O. 12866.

When this LOF for 1997 was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This final LOF determines which vessel owners must register under the MMPA, and which commercial fishers must report marine mammal mortalities and injuries within 48 hours of returning to port, as required by the section 118 implementing regulations. These collection of information requirements have been approved by OMB, and the OMB control numbers and public reporting burdens are as follows: reports of marine mammal injury or mortality (0.15 hours per report) under 0648–0292, and registration requirements (0.25 hours per registration) under 0648–0293.

The estimated response times include the time needed for reviewing instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections-of-information. Send comments regarding these burden estimates, or any other aspects of these collections-of-information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: December 26, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.4, paragraphs (a),(b), and (e) are revised to read as follows:

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the **Federal Register** announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the **Federal Register** announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state

commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used.

(vi) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(3) If a notice is published in the **Federal Register** announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

* * * * *

(e) *Issuance.* (1) Unless an integrated registration program is in place, NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§ 229.6 and 229.7.

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injuried during the current or previous calendar year.

(2) If an integrated registration program has been established, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt. In order for a Authorization Certificate to be valid, the certification must be signed and dated by the owner or an authorized representative of the owner.

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Proposed Rules

Federal Register

Vol. 62, No. 1

Thursday, January 2, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 443 and 457

RIN 0563–AA78

Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Corn Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of hybrid corn seed. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Hybrid Seed Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current hybrid corn seed crop insurance regulation to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 3, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 3, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Hybrid Corn Seed Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of hybrid corn seed that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the pubic for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer of Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage

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report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The producer must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.152, Hybrid Corn Seed Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring hybrid corn seed found at 7 CFR part 443 (Hybrid Seed Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 443 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove part 443 and reserve that part.

This rule makes minor editorial and format changes to improve the Hybrid Corn Seed Crop Insurance Regulation's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring hybrid corn seed as follows:

1. Section 1—Add definitions for the terms *adjusted yield, bushel, certified seed test, county yield, FSA, field run, good farming practices, hybrid corn seed processor contract, insurable interest, interplanted, local market price, minimum guaranteed payment, planted acreage, planting pattern, practical to replant, seed amount,* and *written agreement* for clarification.

2. Section 2—Unit division provisions are amended to include a producer's reporting responsibilities to qualify for optional units. In addition, section 2(e)(4)(ii) clarifies that non-irrigated acreage that is not part of a field in which a center pivot irrigation system is used may qualify as a separate optional unit. This makes unit division consistent with other row crops. Also, clarifies that optional units are available if the hybrid corn seed processor contract specifies that it is a specific number of acres that are under contract and not a specified amount of production.

3. Section 4—Change the contract change date to November 30 in order to maintain an adequate time period between the contract change date and the revised cancellation date.

4. Section 5—Change the cancellation and termination dates to March 15. This change is necessary to standardize the cancellation and termination dates with the sales closing dates which were changed to 30 days earlier for spring planted crops to comply with the requirements of the Federal Crop Insurance Reform Act of 1994.

5. Section 6—Require the producer to certify that a hybrid corn seed processor contract has been executed and certify the amount of any minimum guaranteed payment from the seed company. Certification of a hybrid corn seed processor contract on or before the acreage reporting date is needed to establish insurability of the crop before a loss is likely and ensures a market for the crop. The producer must also certify to any minimum guaranteed payment under the contract because a minimum guaranteed payment will affect insurance premium and the amount of indemnity.

6. Section 7(c)—Specify conditions under which a seed producer who is also a seed company can establish an insurable interest in the insured crop. There is an inherent conflict of interest when the producer is also the processor who will provide the records of the producer. These conditions are needed to ensure the eligibility of the processor for crop insurance.

7. Section 8(c)—Clarify that any acreage damaged prior to the final planting date must be replanted unless it is not practical to replant.

8. Section 9(b)—Specify that the calendar date for the end of the insurance period is October 31. The current policy language refers to the date contained in the Actuarial Table.

9. Section 11(a)—Clarify the size of representative crop samples required when damage is discovered.

10. Section 12(e)—Clarify the types of production that will be considered seed production to count.

11. Section 12(g)—Change the adjustment level for high-moisture shelled hybrid corn seed from 15.5 percent to 15.0 percent. This change is consistent with changes in provisions for insuring field corn. Moisture adjustment calculations for ear corn are also changed. The current policy states "the weight of ear corn to equal one bushel of shelled corn will be increased 2 pounds for each percentage point of moisture in excess of 14.0 percent." This conversion factor is changed to 1.5 pounds for each percentage point of moisture in excess of 14.0 percent because research has shown the existing formula overcompensates insureds for high moisture seed corn. The proposed provisions also allow use of the seed company's moisture conversion charts if the charts were used to determine the "approved yield."

12. Section 14. Add provisions for providing insurance coverage by written agreement. FCIC has a longstanding policy of permitting certain modification of the insurance contract by written agreement for some policies.

This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for, and duration of, written agreements.

List of Subjects in 7 CFR Parts 443 and 457

Crop insurance, Hybrid seed crop insurance regulations, Hybrid corn seed.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 443 and 457 as follows:

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 443 continues to read as follows:

Authority: 7 U.S.C 1506(l) and 1506(p).

2. The subpart heading preceding § 443.1 is revised to read as follows:

Subpart—Regulations for the 1986 through 1997 Crop Years.

3. Section 443.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 443.7 The application and policy

* * * * *

(d) The application for the 1986 through 1997 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37 and 400.38). The provisions of the Hybrid Seed Crop Insurance Regulations for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

4. 7 CFR part 457 is amended by adding a new § 457.152 to read as follows:

§ 457.152 Hybrid Corn Seed Crop Insurance Provisions

The Hybrid Corn Seed Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Hybrid Corn Seed Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Adjusted yield—The yield per acre that results from multiplying the approved yield by the coverage level percentage.

Amount of insurance per acre—The number of dollars determined by multiplying the county yield for the coverage level you select by the price election you select, and subtracting any minimum guaranteed payment. If the minimum guaranteed payment is stated in a unit of measure other than dollars, it will be converted to a dollar amount by multiplying the number of bushels guaranteed by the price election you selected.

Approved yield—The yield per acre that a specific type or variety is expected to produce determined from yield records provided by the seed company or other acceptable information.

Bushel—Fifty-six pounds avoirdupois of shelled corn, 70 pound avoirdupois of ear corn, or the number of pounds determined under the seed company's normal conversion chart when the company's conversion chart is used to determine the approved yield and the claim for indemnity.

Certified seed test—A warm germination test performed according to specifications of the "Rules for Testing Seeds" of the Association of Official Seed Analysts.

Commercial hybrid corn seed—The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field corn crop for grain.

County yield—A yield contained in the Actuarial Table that is used to calculate your amount of insurance.

Days—Calendar days.

Dollar value per bushel—The value determined by dividing your amount of insurance for timely planted acreage by the adjusted yield.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Female parent plants—Corn plants that are grown for the purpose of producing commercial hybrid corn seed and have had their stamens removed.

Field run—Commercial hybrid corn seed production before it has been processed or screened.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full amount of insurance per acre.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the amount of insurance, or are required by the hybrid corn seed processor contract and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Combining, threshing or picking of the female parent plants to obtain commercial hybrid corn seed.

Hybrid corn seed processor contract—A written agreement between the hybrid corn seed crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid corn seed produced from such plants to the seed company;

(b) The seed company's promise to purchase all the commercial hybrid corn seed produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid corn seed or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges) to be acceptable for the purpose of this policy.

Inadequate germination—Germination of less than 80 percent of the commercial hybrid corn seed as determined by using a certified seed test on clean seed.

Insurable interest—Your share of the financial loss that occurs in the event seed production is reduced by a cause of loss defined under this crop insurance contract.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated acreage planted to the insured crop.

Late planted—Acreage planted to the insured crop during the late planting period.

Late planting period—The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date.

Local market price—The cash price offered by buyers in the aree for any production from the female parent plants that is not considered commercial hybrid corn seed under the terms of this policy.

Male parent plants—Corn plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment—A minimum amount (usually stated in dollars or bushels) specified in your hybrid corn seed processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed amount—The dollar amount obtained by multiplying the number of bushels of non-seed production to count by

the local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection for the unit.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. The insured crop must be planted in rows wide enough to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting pattern—The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants, two consecutive rows of male parent plants.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting to the insured crop will allow the crop to adequately pollinate and attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area. Determinations of practical to replant will take into consideration the planting dates specified in the hybrid corn seed processor contract in accordance with section 8(c).

Prevented planting—Inability to plant:

(a) The female parent plant seed with proper equipment by:

(1) The final planting date designated in the Special Provisions for the insured crop in the county; or

(2) The end of the late planting period; or

(b) The male parent plant seed with proper equipment at a time sufficient to assure adequate pollination of the female parent plants in accordance with the production management practices of the seed company.

You must have been unable to plant the female or male parent plant seed due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Sample—For the purpose of the certified seed test, at least 3 pounds of field run shelled corn for each variety of commercial hybrid corn seed grown on the unit.

Seed amount—The dollar amount obtained by multiplying the number of bushels of seed production to count for each type or variety of commercial hybrid corn seed grown on the unit by the applicable dollar value per bushel for that type or variety, and totaling the products of each type or variety.

Seed company—A corporation that possesses all licenses for marketing commercial hybrid corn seed required by the state in which it is domiciled or operates, and which possesses or has contracted facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest.

Seed production—All seed produced by female parent plants with a germination rate of at least 80 percent, as determined by a certified seed test.

Shelled corn—Kernels that have been removed from the cob.

Timely planted—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Variety—The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units only if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(b) Optional units are available if the hybrid corn seed processor contract specifies that it is a specific number of acres that are under contract and not a specified amount of production.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your amount of insurance.

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a unique FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the hybrid corn seed in the county insured under this policy unless the Special Provisions provide different price elections by type or variety, in which case you may select one price election for each hybrid corn seed type or variety designated in the Special Provisions. The price election you choose for each type or variety must have the same percentage relationship to the maximum price offered by us for each type or variety. For example, if you choose 100 percent of the maximum price election for one specific type or variety, you must also choose 100 percent of the maximum price election for all other types or varieties.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) are not applicable to this contract.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the

Basic Provisions (§ 457.8), the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must:

(a) Report, by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid corn seed processor contract and, if applicable, report the amount of any minimum guaranteed payment.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are grown under a hybrid corn seed processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid corn seed in accordance with the requirements of the hybrid corn seed processor contract; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid corn seed;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(b) An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a hybrid corn seed processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid corn seed producer who is also a commercial hybrid corn seed company may be able to establish an insurable interest if the following requirements are met:

(1) The seed company must be a corporation and have an insurable interest in the hybrid corn seed crop;

(2) The Board of Directors of the seed company must have instituted a corporate resolution that sets forth essentially the same terms as a hybrid corn seed processor contract. Such corporate resolution will be considered a contract under the terms of the hybrid corn seed crop insurance policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may only be insured under the Coarse Grains Crop Provisions; and

(4) Our inspection of the storage and drying facilities determines that they satisfy the requirements for a seed company.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), we will not insure any acreage:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid corn seed processor contract; or

(c) Of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least 90 percent of the adjusted yield, unless such acreage is replanted or we agree that it is not practical to replant. If we determine that it is practical to replant and the seed company will not extend the planting date stipulated in the hybrid corn seed processor contract, we will delete the affected acreage from your report of acreage, and that acreage will not be insured under these crop provisions.

9. Insurance Period

(a) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches after:

(1) The female parent plant seed is completely planted in accordance with the hybrid corn seed processor contract and the production practices of the seed company, on or before the final planting date designated in the Hybrid Corn Seed Special Provisions, except as allowed in section 13(c); and

(2) The male parent plant seed is completely planted in accordance with production practices for the variety being produced.

(b) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is the October 31 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss not insured against under section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date set by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid corn seed processor contract or production management practices of the seed company;

(4) Inadequate germination, even if it's the result of an insured cause of loss, unless you have provided adequate notice under section 11(b)(1) and the crop is inspected and the loss is appraised by us before harvest is completed; or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least one complete planting pattern of the male and female parent plant rows, and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid corn seed processor contract.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective amount of insurance per acre;

(2) Subtracting the total of production to count for the seed amount and the non-seed amount from the result of section 12(c)(1); and

(3) Multiplying the result of section 12(c)(2) by your share.

(d) The total production (bushels) to count from all insurable acreage on the unit will include all seed and non-seed production as specified in section 12 (e) through (g) below.

(e) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the adjusted yield for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the

commercial hybrid corn seed as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(g);

(iv) Immature appraised production;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) Harvested production that you deliver as commercial hybrid corn seed to the seed company stated in your hybrid corn seed processor contract, regardless of quality, unless the production has inadequate germination.

(f) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(e). Any such production may be adjusted in accordance with section 12(g).

(g) For the purpose of determining the quantity of mature production:

(1) Shelled commercial hybrid corn seed will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 15 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 15 percent.

(2) The weight of ear corn required to equal one bushel of shelled corn seed will be increased 1.5 pounds for each full percentage point of moisture in excess of 14 percent, and any portion of a percentage point will be disregarded. The moisture content of ear corn will be determined from a shelled sample of the ear corn.

(3) When records of commercial hybrid corn seed production provided by the seed company have been adjusted to a shelled corn basis of 15.0 percent moisture and 56 pound avoirdupois bushels, sections 12(g) (1) and (2) above will not apply to harvested production. In such cases, records of the seed company used for determining the next year's approved yield will be used to determine the amount of production to count; provided, such production records are calculated on the same basis as that used to determine the approved yield.

13. Late Planting and Prevented Planting

(a) In lieu of provisions contained in the Basic Provisions (§ 457.8) regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 13(c)), and acreage you were prevented from planting (see section 13(d)). These coverages provide reduced amounts of insurance. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided, no premium will be due, and no indemnity will be paid for such acreage.

(b) You must provide written notice to us not later than the acreage reporting date if you were prevented from planting.

(c) Late Planting

(1) For hybrid corn seed acreage planted during the late planting period, the amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent per day for the 1st through the 10th day; and

(ii) Two percent per day for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of hybrid corn seed continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting hybrid corn seed, you may elect:

(i) To plant hybrid corn seed during the late planting period. The amount of insurance for such acreage will be determined in accordance with section 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be 40 percent of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is $300 per acre, your prevented planting amount of insurance would be $120 per acre ($300 multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with section 12; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) An amount of insurance equal to 20 percent of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is $300 per acre, your prevented planting amount of insurance would be $60 per acre ($300 multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Amounts of insurance for timely, late, and prevented planting acreage within a unit will be combined to determine the amount of insurance for the unit. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 185 acres of the same type and variety of which 150 acres are occupied by the female parent plants. (The acreage occupied by the male parent plants (35 acres) is not insurable, and is not eligible for coverage under this section.) The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting amount of insurance. The amount of insurance for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre amount of insurance for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre amount of insurance for timely planted acreage by 93 percent, and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(A) Forty percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(B) Twenty percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This paragraph (B) is not applicable, and prevented planting coverage is not available under these crop provisions, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 13(d)(1)(iii)).

Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 acres in the unit.

(3) You must have the inputs available to plant and produce the intended crop with the expectation of at least producing the approved yield. Proof that these inputs were available may be required.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for hybrid corn seed for the 1998 crop year, prevented planting coverage will begin on the 1998 sales closing date for hybrid corn seed in the county. If the coverage remains in effect for the 1999 crop year (is not terminated or canceled during or after the 1998 crop year), prevented planting coverage for the 1999 crop year began on the 1998 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The number of acres planted to hybrid corn seed on the FSA Farm Serial Number during the previous crop year; or

(B) One-hundred percent of the simple average of the number of acres planted to hybrid corn seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) A prevented planting amount of insurance will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (d)(2)(iii)(A) of this section, or a substitute crop allowed in paragraph (d)(2)(iii)(B) of this section), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of hybrid corn seed acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of hybrid corn seed on one optional unit and 40 acres of hybrid corn seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (*i.e.*, 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

14. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on December 20, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–33067 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96–906–4PR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Reapportionment of Membership on the Texas Valley Citrus Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reapportion the membership of the 15-member Texas Valley Citrus Committee (committee) established under the Federal marketing order regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This action would provide for more equitable representation between cooperative and independent producers and handlers. This reapportionment would reduce the number of cooperative producer member positions from four to two and provide independent producers with those two positions, thus, increasing independent producer membership to seven positions. In addition, the number of cooperative handler member positions would be reduced from two to one, thereby increasing independent handler membership to five positions.

DATES: Comments must be received by February 3, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, Fax # (210) 682–5942; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 690–3670, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 906 (7 CFR Part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. If adopted, this proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 17 handlers of oranges and grapefruit who are subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This proposed rule would reapportion the membership of the committee. This action is intended to provide for equitable and balanced representation between cooperative and independent producers and handlers and would not impose additional costs or burdens on producers and handlers.

Therefore, the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Pursuant to section 906.18 of the order, the committee consists of 15 members. Each member has an alternate. Nine of the members are producers and six are handlers. Section 906.122 of the order's rules and regulations provides that the nine producer representatives be allocated so that four members represent cooperative marketing organizations, hereinafter referred to as cooperative producers, and five members represent independent marketing organizations, hereinafter referred to as independent producers. Section 906.122 further provides that the six handler representatives on the committee be allocated so that two members represent cooperative marketing organizations, hereinafter referred to as cooperative handlers, and four represent independent marketing organizations, hereinafter referred to as independent handlers.

Section 906.19 provides for a three-year term of office for committee members and their alternates. The terms of office of the committee are staggered so that one-third of the terms end every third year. Members and alternates serve in their designated positions during the portion of the term of office for which they are selected or until their respective successors are selected and have qualified.

Section 906.21 of the order authorizes the committee, with the Secretary's

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approval, to reapportion membership between cooperative producer and handler members and independent producer and handler members as necessary to assure equitable representation on the committee. Such changes are authorized in order to reflect structural changes within the industry and changes in the amount of fruit handled by cooperative handlers in relation to fruit handled by independent handlers.

On August 27, 1996, the committee met to discuss, among other issues, committee representation and to determine whether any changes were warranted to foster more equitable representation. Changes in the Texas citrus industry have resulted in a reduction of the number of cooperative handlers in that industry subsequently resulting in a decrease in the amount of fruit handled by cooperative handlers. According to the committee's records, there were four cooperative organizations operating until 1984, prior to a freeze in the production area. From 1985 to 1995, there were two cooperative organizations handling Texas citrus. Presently, only one cooperative handler remains in operation.

As the number of cooperative handlers has decreased, so has the volume of fresh fruit accounted for by cooperatives. At the time committee membership was last reapportioned in 1969, cooperatives accounted for about 30 percent of fresh fruit shipments and about 45 percent of fruit harvested (which includes processed citrus). The volume of fresh fruit shipments accounted for by cooperatives has declined since that time, particularly after the last two freezes.

The committee is concerned that the cooperative segment of the industry is currently over-represented on the committee and that committee representation no longer reflects the current structure of the industry. The present situation has recently made it difficult to acquire cooperative representation on the committee, which could lead to potential problems in the future.

This proposed rule would change the composition of the committee by reducing cooperative producer positions on the committee from four to two, and increasing independent producer member positions from five to seven. In addition, cooperative handler representation would be reduced from two member positions to one, and independent handler positions would be increased from four to five. The proposed change would bring committee representation more in line with the Texas citrus industry's current structure. This change was unanimously recommended by the committee at its August 27 meeting.

The committee further recommended that current committee members complete their current terms of office where possible and new members be nominated where applicable to provide for full three-year terms of office for unexpired terms. Presently, the term of office of one of the four cooperative producer members expires on July 31, 1997, and three expire on July 31, 1999. The 1997 position, in addition to one of the 1999 positions, would be relinquished to independent producers. Also, there are presently two cooperative handler members, one of whose terms expires on July 31, 1998, and the other on July 31, 1999. One of those positions would be relinquished to independent handlers. The three terms of office relinquished to the independents would terminate on July 31 of the appropriate term. Determination of which cooperative producer and handler members currently serving unexpired terms would remain in their respective positions would be made by lot at the committee's subsequent nomination meetings.

The Texas citrus industry has historically demonstrated a policy of maintaining equitable representation among cooperative and independent producers and handlers. When the order was promulgated in 1960, two of the nine producer member positions and one of the six handler positions were allocated to cooperative members. In 1969, committee membership was reallocated to the present apportionment to reflect changes in the composition of the industry.

Cooperative producer member positions were increased from two to four and cooperative handler representation was increased from one to two. The changes also provided for a reduction in the number of independent producer and handler positions. Following the two major freezes, only one cooperative handler remains in operation. The committee recommended returning to the order's original apportionment to accommodate the shift in production. Reducing the total number of cooperative positions to three would bring representation closer in line with the proportion of fresh fruit shipments accounted for by the cooperative. Therefore, the committee's recommendation to revert to the committee's original apportionment would be achieved by removing § 906.122, which would result in reallocation of cooperative and independent producers and handlers to that reflected in § 906.18 of the order. Section 906.122, which provides that the production area be considered as one district for purposes of committee representation, would not be affected by this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.122 is removed.

Dated: December 26, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–33328 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0955]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation B (Equal Credit Opportunity). The revisions would implement recent amendments to the Equal Credit Opportunity Act (ECOA). These amendments create a legal privilege for information developed by creditors as a result of "self-tests" that they voluntarily conduct to determine the level of their compliance with the ECOA. The Department of Housing and Urban Development will be publishing for comment a substantially similar proposal to revise the regulations implementing the Fair Housing Act.

DATES: Comments must be received on or before January 31, 1997.

ADDRESSES: Comments should refer to Docket No. R–0955, and may be mailed

to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: James A. Michaels, Senior Attorney, or Manley Williams, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR Part 202).

On September 30, 1996, the President signed into law amendments to the ECOA as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (1996 Act). Section 2302 of the 1996 Act creates a legal privilege for information developed by creditors through "self-tests" that are conducted to determine the level or effectiveness of their compliance with the ECOA, provided that appropriate corrective action is taken to address any possible violations that may be discovered. Privileged information may not be obtained by a government agency or credit applicant for use in an examination or investigation relating to fair lending compliance, or in any civil proceeding in which a violation of the ECOA is alleged. The 1996 Act also provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction.

The Act directs the Board to issue implementing regulations, including a definition of what constitutes a "self-test." After consultation with the federal agencies responsible for enforcing the ECOA and with the Department of Housing and Urban Development (HUD), the Board is publishing proposed rules to implement the 1996 Act's amendments to the ECOA. The 1996 Act also establishes a privilege for creditor self-testing under the Fair Housing Act (42 U.S.C. 3601 *et seq*). HUD will be publishing for comment substantially similar rules to implement the amendments to the Fair Housing Act.

II. Proposed Regulatory Provisions

The proposed amendment to Regulation B would implement the 1996 Act by defining what constitutes a privileged self-test. The Board proposes to define a "self-test" as any program, practice, or study that creates data or factual information about the creditor's compliance with the ECOA that is not available or derived from loan files or other records related to credit transactions. This includes but is not limited to the practice of using fictitious loan applicants (testers). The privilege would apply to the factual evidence generated by the self-test as well as any analysis or conclusions contained in reports prepared about the self-test. A self-test would not include any collection of data required by law or a creditor's review or evaluation of loan files.

The Board expects to publish a final rule in March 1997, which would become effective 30 days later. The 1996 Act provides that once the rule is issued, self-tests will become privileged even if they were conducted before the regulation's effective date. As an exception to this, self-tests previously conducted will not become privileged on the regulation's effective date if a court action or administrative proceeding has already commenced against the creditor alleging a violation of the ECOA or Regulation B or the Fair Housing Act. In addition, a self-test previously conducted will not become privileged on the regulation's effective date if any part of the report or results has already been disclosed.

III. Section-by-Section Analysis

Section 202.15 Incentives for Self-Testing and Self-Correction

15(a) General Rule

Proposed paragraph 15(a) states the general rule that the report or results of a creditor's self-test are privileged if the conditions specified in this rule are satisfied. The privilege applies whether the creditor conducts the self-test or employs the services of a third party. A self-test must, however, be conducted voluntarily, self-tests that are required by a government authority (including those conducted pursuant to a judicial order) would not qualify for the privilege. Similarly, any collection of data required by law would not be considered voluntary under this section. The privilege for self-testing is in addition to and independent of any other privilege that may exist, such as the attorney-client privilege or the privilege for attorney work product.

This paragraph would also implement the requirement imposed by the 1996 Act that a creditor take appropriate corrective action to address any possible violations identified by the self-test in order for the privilege to apply. A creditor must take whatever actions are reasonable in light of the scope of the possible violations to fully remedy both their cause and effects. This may include both prospective and retroactive relief. Guidance on a creditor's responsibility for taking appropriate corrective action is provided under paragraph 15(c).

Although corrective actions are required when a possible violation is found, a self-test is also privileged when it does not identify any possible violations and no corrective action is necessary. The Board believes that the effectiveness of the privilege as an incentive to self-test would be significantly undermined if it only applied when violations were discovered. If that were the case, the mere assertion of the privilege would be tantamount to an admission that violations had occurred. Under such circumstances, some creditors might be reluctant to use self-testing in light of the fact that the mere assertion of the privilege might prompt the filing of legal claims.

The Board also notes that a creditor's determinations about the type of corrective action needed, or a finding that no corrective action is required, would not be conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, it would be necessary to assess the need for corrective action or the type of corrective action that is appropriate based on a review of the self-testing results. Such an assessment might be accomplished by an adjudication where a judge may conduct an *in camera* inspection of the privileged documents.

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Under the statute, the privilege applies only if the creditor has already taken or is in the process of taking appropriate corrective action. In some cases, the issue of whether certain information is privileged may arise before the corrective actions are fully underway. The rule requires, at a minimum, that the creditor establish a plan for corrective action, a means for monitoring the creditor's progress in implementing the plan, and activity to begin carrying out the plan. A schedule may be imposed by the court or agreed to by an agency or the other parties affected. A creditor's failure to fully implement planned corrective action may be cause for subsequently reevaluating whether the privilege applies.

15(b) Self-test defined

15(b)(1) Definition

Proposed paragraph 15(b)(1) states what constitutes a "self-test" for purposes of this rule. The 1996 Act does not define "self-test" and authorizes the Board to define by regulation the practices to be covered by the privilege. The Board proposes to define a "self-test" as any program, practice, or study used to create data or factual information about the creditor's compliance with the ECOA and Regulation B that is not available and cannot be derived from loan or application files or other records related to credit transactions. This definition of self-test includes but is not limited to the practice of using testers. For example, self-testing would also include a survey of mortgage customers conducted by a creditor for fair lending purposes, or a program specially designed to test loan officers' knowledge about fair lending laws.

In establishing the self-testing privilege, the Congress sought to encourage lenders to undertake voluntary efforts to assess their compliance with fair lending laws. The proposed definition is an incentive for creditors to use self-testing to monitor the pre-application stage of the loan process in particular; the pre-application process does not typically produce the type of documentation that lends itself to traditional file reviews. The privilege serves as an incentive by assuring that evidence of possible discrimination voluntarily gathered through a self-test will not be used against a creditor, provided the creditor takes appropriate corrective actions for any discrimination that is found. Although the legislative history focuses on the traditional use of matched-pair testers, it also recognizes that other testing methods may also be useful.

Under the proposed rule, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new factual evidence that otherwise would not be available from credit records. The proposed rule does not define "self-test" so broadly as to include all types of self-evaluation or self-assessment performed by a creditor. Self-evaluations involving creditor reviews of loan or application files, and reviews of HMDA data or similar types of records (such as broker or loan officer compensation records) that do not produce new data or factual evidence about a creditor's compliance would not be covered by the privilege. Accordingly, a compilation of data or a regression analysis derived from the data in existing loan files would not be privileged.

Although a broader definition encompassing such audits or evaluations would be within the Board's rulemaking authority under the statute, the Board does not believe that this broader definition of self-test is necessary. Principles of sound lending dictate that a creditor have adequate policies and procedures in place to ensure compliance with applicable laws and regulations, and that lenders adopt appropriate audit and control systems. These may take the form of compliance reviews, file analyses, the use of second-review committees, or other methods that examine creditor records kept in the ordinary course of business. Notwithstanding any evaluation performed by the creditor, the underlying loan records are themselves subject to examination by the regulatory and enforcement agencies and must usually be disclosed to a private litigant alleging a violation. The Board believes that creditors already have adequate incentive to conduct such routine compliance reviews and file analyses as a good business practice and to avoid or minimize potential liability for violations.

Insured financial institutions also have an incentive to conduct such audits to assist the regulatory agencies in streamlining the bank examination process and thereby minimizing the burden and costs associated with that process. A broader definition of self-test would allow creditors to withhold information relating to self-audits from a regulatory agency. At this time, the Board does not believe it is necessary to extend the privilege to audits of existing business records, which could have an unintended negative effect on the levels of cooperation between creditors and the regulatory agencies. The Board solicits public comment, however, on the scope of the proposed definition of "self-test" and whether a broader definition would adversely affect the ability of supervisory or enforcement agencies or private parties to obtain needed information or whether it would provide needed incentive for creditor monitoring and self-correction.

In order to qualify for the privilege, a self-test must be designed and conducted to assess the level and effectiveness of the creditor's compliance with the rules prohibiting discrimination or discouraging loan applications on a prohibited basis. Testing for compliance with the other regulatory requirements of Regulation B is not privileged. For example, a test to determine whether adverse action notices are mailed within applicable time limits would not be privileged. A self-test designed for other purposes, such as a self-test designed to observe employees' efficiency and thoroughness in meeting customer needs, is not covered by the privilege even if evidence of discrimination is uncovered incidentally.

15(b)(2) Examples

Proposed paragraph 15(b)(2) gives examples of some activities that would and would not be included as self-tests for purposes of this section.

15(b)(3) Types of information covered

Under the 1996 Act, the privilege covers the report or results of a self-test. Proposed paragraph 15(b)(3) clarifies that this includes any data generated by the self-test and any analysis of such data, and any workpapers or draft documents.

15(b)(4) Types of information not covered

The 1996 Act does not prohibit an agency or applicant from requesting information about whether a creditor has conducted a self-test. Proposed paragraph 15(b)(4) clarifies the right of a government agency or private litigant to obtain sufficient information about the existence of the self-test, including its scope or the methodology used in conducting the test, to determine whether to challenge a creditor's claim of privilege. The 1996 Act provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction. The Board expects such challenges to be resolved according to the laws and procedures used for other types of privilege claims. This may include the use of *in camera* proceedings, the filing of documents and pleadings with the court under seal,

or the production of documents to other parties under an appropriate protective order that limits the purpose for which they may be used.

15(c) Appropriate corrective action

Proposed paragraph 15(c) clarifies that a determination of whether a creditor has taken appropriate corrective action must be made on a case-by-case basis. Under the statute, an issue regarding the sufficiency of the corrective action may be resolved in a court or administrative law proceeding. A creditor must take whatever actions are reasonable given the nature and scope of the possible violations to fully remedy both their cause and effects. To determine the appropriate corrective action, the creditor must: (1) identify the policies or practices that are the cause of the possible violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and (2) assess the extent and scope of any possible violation, by determining the stages of the application process and the areas of operations likely to be affected by those policies or practices, and the particular branches or offices involved.

The Board proposes to provide additional guidance in the Official Staff Commentary to Regulation B, by including a list of sample corrective actions, including both prospective and retroactive relief. Not all of the listed corrective measures would be appropriate in every case. Comments are solicited on this approach.

In 1994, the Interagency Task Force on Fair Lending, representing the ten federal agencies responsible for implementing and enforcing the fair lending laws, issued a policy statement on credit discrimination (59 FR 18266, 18270–71 (April 15, 1994)). That policy statement advised lenders that discover discriminatory practices as a result of a self-test to "make all reasonable efforts to determine the full extent of the discrimination and its cause" and to "determine whether the practices were grounded in defective policies, poor implementation or control of those policies, or isolated to a particular area of the lender's operations." The policy statement also provided a list of prospective and retroactive corrective actions that might be appropriate depending on the circumstances.

The proposed regulation and revisions to the Official Staff Commentary substantially follow the discussion of self-testing and the list of sample corrective actions set out in the Interagency Policy Statement. Appropriate corrective action may include, but is not limited to, one or more of the following:

1. Identifying persons whose applications may have been inappropriately processed; offering to extend credit if the applications were improperly denied; compensating applicants for damages, both out-of-pocket and compensatory; and notifying them of their legal rights.

2. Correcting institutional polices or procedures that may have contributed to possible discrimination, and adopting new policies as appropriate;

3. Identifying and then training and/or disciplining the employees involved;

4. Developing outreach programs, marketing strategies, or loan products to more effectively serve segments of the lender's markets that may have been affected by the possible discrimination; and

5. Improving audit and oversight systems to avoid a recurrence of the possible violations.

A creditor must take corrective action that is commensurate with the scope of the discrimination and is specifically tailored to address the particular type of problem identified by the self-test. For example, if self-testing reveals that minority applicants do not receive the same level of assistance during the pre-application stage, but reveals no discrepancy in loan decisions, underwriting criteria or credit terms for loan applications that were actually filed, it may be sufficient for a creditor to take prospective action relating to the creditor's policies and employee training. On the other hand, if a self-test reveals that loan officers treat the submission of loan applications by minorities differently by quoting more onerous loan terms such as larger down-payments or higher interest rates, in addition to prospective action (such as outreach efforts) retroactive relief may also be required; appropriate corrective action would include a review of existing loan files to determine if minority borrowers were actually granted loans on less favorable terms.

15(d)(1) Scope of privilege

Proposed paragraph 15(d)(1) explains the nature of the qualified privilege afforded by the new law. This paragraph states that privileged documents may not be obtained by a government agency for use in an examination or investigation relating to fair lending compliance, or by a government agency or applicant (including prospective applicants alleging they were discouraged from pursuing an application on a prohibited basis) in any civil proceeding in which a violation of the ECOA or Regulation B is alleged. There may be other proceedings where the privilege would not apply, for example, if the documents were sought in litigation unrelated to fair lending issues. Comment is solicited on how the rule should apply to state agencies for purposes of the ECOA.

15(d)(2) Loss of privilege

Proposed paragraph 15(d)(2) describes the circumstances that would result in documents losing their privileged status. As provided in the 1996 Act, the results or report of a self-test, including any data generated by the self-test, will not be considered privileged under this section once the creditor has voluntarily disclosed all or part of the contents to any government agency, loan applicant, or the general public. This is explained in proposed paragraph 15(d)(2)(i).

If a creditor elects to rely on the self-testing results as a defense to alleged violations of the ECOA in court or administrative proceedings, the privilege would not apply if the documents are sought in connection with those proceedings—the disclosure would be treated as a voluntary disclosure under this paragraph. This loss of privilege is covered in proposed paragraph 15(d)(2)(ii). However, a creditor's involuntary production of records in response to a judicial order does not evidence the creditor's intent to give up the privilege. Accordingly, if such disclosures are made in a limited fashion that does not constitute a disclosure to the general public, for example under a protective order, that disclosure would not affect the privileged status of the documents.

The 1996 Act provides that the report or results of a self-test are not privileged if they are disclosed by a person with lawful access to the report or results. The statute draws no distinction based on whether the person was authorized by the creditor to make the particular disclosure.

The Board solicits comments on whether it should establish by regulation an exception to the general rule in paragraph 15(d)(2)(i), whereby creditors could voluntarily share privileged information with a federal or state bank supervisory agency or law enforcement agency without causing the information to lose its privileged status when it is subsequently sought by private litigants. However, such disclosures would cause the documents or information to lose their privileged status with respect to all supervisory or enforcement agencies. The purpose of the exception would be to encourage greater cooperation between creditors and enforcement agencies in monitoring compliance and to encourage creditors

to seek guidance from the agencies in developing appropriate corrective action.

As noted above, a creditor's claim of privilege may be challenged in an appropriate court or administrative law proceeding. Proposed paragraph 15(d)(2)(iii) addresses the situation where a creditor seeks to assert the privilege but fails or is unable to produce information pertaining to the self-test that is necessary for determining whether the privilege applies. The results or report of a self-test would not be privileged in such cases. The judge may determine in each case whether the creditor has met its burden of producing the relevant evidence.

15(d)(3) Limited use of privileged information

Proposed paragraph 15(d)(3) implements the statutory provision that allows for a limited use of privileged documents. The report or results of a privileged self-test may be obtained and used for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. The production of privileged documents for this purpose does not evidence the creditor's intent to give up the privilege. If such disclosures are made in a limited fashion that does not constitute a disclosure to the general public, the disclosure would not affect the privileged status of the documents.

A finding by a government agency, as part of a bank examination or investigation, that discrimination has occurred would not constitute an adjudication for this purpose. If such findings lead to a formal adjudication or an admission by the creditor, the limited use of privilege documents under this paragraph would apply.

The 1996 Act also provides that information disclosed for purposes of determining a penalty or remedy may be used only for the particular proceeding in which the adjudication or admission is made. Accordingly, parties who obtain such information are prohibited from any further dissemination and the judge in that proceeding may issue an appropriate order.

15(e) Record retention

Proposed paragraph 15(e) provides that a creditor has a duty to retain self-testing records for a limited time. This retention is necessary to facilitate a determination about whether the results or report of the self-test are privileged or for the purpose of determining the appropriate penalty or remedy when a violation has been adjudicated or admitted. The Board proposes to adopt the same standard for the retention of self-testing records as applies to other records, which must be retained for 25 months.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0955. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3.5 inch or 5.25 inch computer diskettes, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

The comment period ends on January 31, 1997. Normally the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). In this case, the 1996 Act directs the Board to prescribe final regulations by March 31, 1997. The Board believes that an abbreviated comment period is necessary in order to meet this schedule.

V. Regulatory Flexibility Analysis

The proposed amendments implement the legal privilege created by the 1996 Act for certain information that creditors may voluntarily develop about their compliance with the fair lending laws through self-testing. The regulation does not impose any significant regulatory requirements on creditors. Consequently, the proposed amendments are not likely to have a significant impact on institutions' costs, including the costs to small institutions.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.3506), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget (OMB). 5 CFR 1320 Appendix A.1. Comments on the collection or disclosure of information associated with this regulation should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Regulation B applies to individuals and businesses that regularly extend credit or participate in the decision of whether or not to extend credit. This includes all types of creditors. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation B only for state member banks. Any estimates of paperwork burden for other financial institutions would be provided by the federal agency or agencies that supervise those lenders. There are 1,028 state member banks that are respondents and/or recordkeepers, with an estimated average frequency of 4,765 responses per bank each year. The current estimated burden for Regulation B ranges from fifteen seconds to five minutes per response. The combined annual burden for all state member banks under Regulation B is estimated to be 129,015 hours.

The collection of information requirements in the proposed regulation are found in 12 CFR 202.15(e). The recordkeepers are for-profit financial institutions, including small businesses. Records relating to self-tests must be retained for at least twenty-five months. The purpose is to facilitate the determination about whether the results or report of a creditor's self-test are privileged. The recordkeeping burden associated with the proposal consists of the additional effort necessary to retain self-testing records; it does not include the effort necessary to conduct and document the self-test.

The privilege for information developed through self-tests is intended to serve as an incentive for lenders to undertake voluntary efforts to assess their compliance with fair lending laws. The Federal Reserve welcomes comments that would help it estimate the number of state member banks that would use self-testing under the proposal. At a typical state member bank that conducts one self-testing program per year, it is estimated to take between one and eight hours (or an average of two hours) for the additional effort to retain the relevant records. Some portion of banks that conduct self-tests will find errors in compliance and will have to take appropriate corrective action. The amount of time needed would depend on the nature and scope of the possible violation. The Federal Reserve estimates that the recordkeeping associated with corrective action would take an additional two to twenty hours, with an average of eight recordkeeping burden hours annually. There is estimated to be no annual cost burden over the annual hour burden, and no capital or start up costs.

Because the records would be maintained at state member banks, no

issue of confidentiality under the Freedom of Information Act arises.

Comments are also invited on: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation B is 7100–0201.

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for Part 202 would continue to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.15 would be added to read as follows:

§ 202.15 Incentives for self-testing and self-correction

(a) *General rule.* If a creditor voluntarily conducts or authorizes a third party to conduct a self-test, the report or results of the self-test are privileged as provided in this section if the creditor has taken or is taking appropriate corrective action to address any possible violations identified by the self-test. A self-test required by any government authority is not privileged.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions; and

(ii) Is used to determine the extent or effectiveness of the creditor's compliance with the regulation's prohibition on discrimination in § 202.4 or the prohibition on discouraging applications for credit in § 202.5(a).

(2) *Examples.* Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers). Self-testing does not include the collection of data required by law or by any government authority, or a creditor's review or evaluation of loan files.

(3) *Types of information covered.* The privilege applies to the report or results of a self-test, including any data generated by the self-test and any analysis of such data, and any workpapers or draft documents.

(4) *Types of information not covered.* The privilege does not cover information about whether a creditor has conducted a self-test, or information concerning the scope of or the methodology used in conducting the self-test.

(c) *Appropriate corrective action.* Whether a creditor has taken or is taking appropriate corrective action will be determined on a case-by-case basis. A creditor must take whatever action is reasonable in light of the scope of the possible violations to fully remedy both their cause and effects. Corrective action includes both prospective and retroactive relief, as may be appropriate. To determine the appropriate corrective action, the creditor must:

(1) Identify the policies or practices that are the likely cause of the possible violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and

(2) Assess the extent and scope of any possible violation, by determining the stages of the application process, the areas of the creditor's operations likely to be affected by the policies or practices identified, and the particular branches or offices involved.

(d)(1) *Scope of privilege.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the act or the regulations in this part; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 202.5(a)) in any proceeding or civil action in which a violation of the act or regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the self-test:

(i) Voluntarily discloses all or any part of the report or results of the self-test or any privileged information to an applicant or government agency or to the public; or

(ii) Refers to or describes the report or results of the self-test or any privileged information as a defense to charges that the creditor has violated the act or the regulations in this part; or

(iii) If the creditor fails or is unable to produce required records or information pertaining to the self-test that are necessary to determine whether the privilege applies.

(3) *Limited use of privileged information.* Notwithstanding the provisions of paragraph (d)(1) of this section, the report or results of a privileged self-test may be obtained and used by an applicant or government agency for the sole purpose of determining a penalty or remedy for a violation of the act or this regulation that has been adjudicated or admitted. Disclosures made for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made, and remains privileged under paragraph (d)(1) of this section.

(e) *Record retention.* For 25 months after a self-test has been conducted, the creditor shall retain information about the self-test, including any corrective action taken to address possible violations identified by the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In that case, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the agency or court order.

3. Supplement I to Part 202 would be amended by adding *Section 202.15—Incentives for Self-Testing and Self-Correction,* to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.15—Incentives for Self-Testing and Self-Correction

15(a) General rule

1. The privilege for self-testing is in addition to and independent of any other privilege that may exist, such as the attorney-client privilege or the privilege for attorney work product.

2. Although corrective actions are required when a possible violation is found, a self-test that identifies no possible violations and requires no corrective action is also

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privileged. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results. Such an assessment might be accomplished by an adjudication where a judge conducts an in camera inspection of the privileged documents.

3. The privilege applies only if the creditor has taken or is taking the appropriate corrective action. In some cases, the issue of whether certain information is privileged may arise before the corrective actions are fully underway. The rule requires, at a minimum, that the creditor establish a plan for corrective action, a means for monitoring the creditor's progress in implementing the plan, and activity to begin carrying out the plan. A schedule may be imposed by the court or agreed to by an agency or the other parties affected.

15(b) Self-test defined

15(b)(1) Definition

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. A "self-test" includes but is not limited to the practice of using fictitious loan applicants (also known as testers or mystery shoppers). For example, self-testing would also include a survey of mortgage customers conducted by a creditor for fair lending purposes or a program specially designed to test loan officers' knowledge about fair lending laws. Self-evaluations involving creditor reviews of loan files, and reviews of HMDA data or similar types of records (such as broker or loan officer compensation records) do not produce new information about a creditor's compliance and would not be covered by the privilege. Accordingly, a compilation of data or a regression analysis derived from the data in existing loan files would not be privileged.

2. To qualify for the privilege, a self-test must be designed and conducted to assess the level and effectiveness of the creditor's compliance with the rules prohibiting discrimination or discouraging loan applications on a prohibited basis. Self-testing for compliance with other regulatory requirements of Regulation B is not privileged.

15(c) Appropriate corrective action

1. A creditor must take whatever action is reasonable in light of the scope of the possible violations to fully remedy both their cause and effects. Appropriate corrective action may include, but is not limited to, one or more of the following:

i. Identifying persons whose applications may have been inappropriately processed; offering to extend credit if the applications were improperly denied; compensating applicants for damages, both out-of pocket and compensatory; and notifying them of their legal rights;

ii. Correcting institutional polices or procedures that may have contributed to possible discrimination, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to more effectively serve segments of the lender's markets that may have been affected by the possible discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the possible violations.

15(d)(2) Loss of privilege

Paragraph 15(d)(2)(iii)

1. A creditor's claim of privilege may be challenged in an appropriate court or administrative law proceeding. The results or report of a self-test are not privileged if the creditor fails or is unable to produce the relevant information pertaining to the self-test that is necessary for determining whether the privilege applies. A judge may determine in each case whether the creditor has met its burden of producing the relevant evidence.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32919 Filed 12–31–96; 8:45 am]

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12 CFR Part 213

[Regulation M; Docket No. R–0952]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The proposed revisions primarily implement amendments to the act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which streamline the advertising disclosures for lease transactions. In addition, the proposal contains several technical amendments that would be made to the regulation.

DATES: Comments must be received by February 7, 1997.

ADDRESSES: Comments should refer to Docket No. R–0952, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Obrea O. Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667. Users of Telecommunications Device for the Deaf *only* may contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on the Consumer Leasing Act and Regulation M

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. Under the act, lessors are required to provide uniform cost and other information about consumer lease transactions.

The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA. An official staff commentary interprets the regulation.

The Board recently completed a review of Regulation M, pursuant to its policy of periodically reviewing its regulations, and approved a final rule in September 1996 substantially revising the regulation to update the disclosure requirements and to carry out more effectively the purposes of the Act (61 FR 52246, October 7, 1996).

II. Proposed Regulatory Provisions

This proposed rulemaking contains a few technical amendments to the regulation. For example, the model clause for providing a description of the leased property is added and the example of an annual charge as an other charge is deleted on the open- and closed-end model forms. All the proposed technical amendments are discussed in detail in the section-by-section analysis.

In the September 1996 final rule, the advertising provisions implemented amendments to the CLA contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160), allowing a toll-free number or a print advertisement to substitute for certain lease disclosures in radio commercials (which was expanded in the final rule to television commercials).

The advertisement provisions were amended and streamlined on September 30, 1996, when the Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (the 1996 Act). The Board's proposed rule implements the statutory changes, which are discussed in detail below in § 213.7.

III. Section-by-Section Analysis

Section 213.4 Content of disclosures

4(n) Fees and Taxes

In the September 1996 final rule, paragraph 4(n) of this section stated that the lessor must disclose the total dollar amount of all official and license fees, registration, title, or taxes required to be paid "to the lessor" in connection with the lease. Adding "paid to the lessor" narrowed the scope of the disclosure from the previous requirement. No substantive change to the requirement was intended. Thus, the phrase "to the lessor" would be deleted from this section.

4(o) Insurance

The Board proposes to revise the captions for paragraph 4(o) (1) and (2) to change the focus from voluntary and required insurance. The new captions more accurately reflect the requirement for the insurance disclosure—that insurance obtained through the lessor or through a third party, regardless of whether it is required or voluntary, must be disclosed.

Section 213.5 Renegotiations, Extensions, and Assumptions

5(d) Exceptions

Under Regulation M, new disclosures generally are required where a covered lease transaction is renegotiated or extended; however, under paragraph 5(d)(1) new disclosures are not required if the "lease charge" is reduced in a renegotiation or an extension of an existing lease. This exception was moved from the official staff commentary to the regulation in the final rule approved in September 1996. For clarity and consistency in terminology throughout the regulation, the Board proposes to replace the term "lease charge" with the term "rent charge."

Section 213.7 Advertising

The advertising provisions in Regulation M currently require additional disclosure if an advertisement states any of the following terms: the amount of any payment; the number of required payments; or a statement of any capitalized cost reduction or other payment required prior to or at consummation, or that no payment is required. Under the amendments to the CLA contained in the 1996 Act, an advertisement that states the number of required payments would no longer trigger additional disclosures.

The 1996 Act also changes the items that must be disclosed (to the extent applicable) when a triggering term is stated in an advertisement. The current disclosures and the changes made by the 1996 Act are as follows:

(1) That the transaction advertised is a lease. No change was made in this disclosure.

(2) The total amount due at lease signing, or that no payment is required. This disclosure has been expanded to also include amounts due at delivery if delivery occurs after consummation.

(3) The number, amounts, due dates or periods of scheduled payments, and total of such payments under the lease. The total of scheduled payments is eliminated as a required disclosure.

(4) A statement of whether or not the lessee has the option to purchase the leased property, and where the lessee has the option to purchase at the end of the lease term, the purchase-option price. This disclosure has been eliminated entirely.

(5) A statement of the amount, or the method for determining the amount, of the lessee's liability (if any) at the end of the lease term. This disclosure has been eliminated entirely.

(6) For an open-end lease, a statement of the lessee's liability (if any) for the difference between the residual value of the lease property and its realized value at the end of the lease term. This disclosure was simplified to require a short statement that an additional charge may be imposed.

The 1996 Act also adds as an additional disclosure of a statement on whether or not a security deposit is required.

7(b) Clear and Conspicuous Standard

7(b)(1) Amount Due at Lease Signing

The general rule in this paragraph states that any reference to a charge that is part of the total amount due at lease signing may not be more prominent than the disclosure of the total amount due at lease signing. The amount of any capitalized cost reduction (or no capitalized cost reduction) is provided as an example of an amount that is a part of the total amount due at lease signing. The Board proposes to delete this example from this paragraph and to move it to the official staff commentary.

7(d) Advertisement of Terms That Require Additional Disclosure

7(d)(1) Triggering Terms

Pursuant to the 1996 Act, the Board proposes to delete paragraph 7(d)(1)(ii). Merely stating in an advertisement the number of required lease payments, for example, "36 payments," no longer "triggers" the additional disclosures in paragraph 7(d)(2). Paragraph 7(d)(1)(iii) would be redesignated as paragraph 7(d)(1)(ii).

7(d)(2) Additional Terms

An advertisement stating any item listed in paragraph 7(d)(1) is required to state the additional disclosures in paragraph 7(d)(2), as applicable. As discussed previously, the 1996 Act amends many of the required additional disclosures in this paragraph. The following proposed changes implement the statutory amendments.

The 1996 Act expands the disclosure of the total amount due at lease signing in paragraph 7(d)(2)(ii) to include "amounts paid at delivery, whichever occurs later." Prior to the amendments, a delivery charge paid after consummation was not included in the total amount due at lease signing in § 213.4(b) or in this section. Under the proposed changes to implement the statutory amendment, the delivery charge would be included in the total even if it was paid after consummation. The Board does not propose to expand the disclosure under § 213.4 to parallel the new advertising rule.

The total of scheduled payments disclosure from paragraph 7(d)(2)(iii), all of paragraph 7(d)(2)(iv), and all of paragraph 7(d)(2)(v) will be deleted. A statement of whether or not a security deposit is required is added by the statute and proposed as paragraph 7(d)(iv). For an open-end lease, the amended statute requires a statement that an extra charge may be imposed at the end of the lease term; the regulatory provision is redesignated as paragraph 7(d)(2)(v).

7(f) Alternative Disclosures—Television or Radio Advertisements

7(f)(1) Toll-Free Number or Print Advertisement

The 1996 Act deletes the "total of scheduled payments" as a required additional disclosure under section 184(a), the general advertising disclosures, but not in section 184(c),

which governs radio advertisements. Section 105(a) of the TILA provides that the Board's regulations "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the CLA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith." The Board does not believe that the Congress intended to require more disclosures for radio advertisements than other advertisements. Accordingly, the Board proposes to delete the disclosure of the "total of scheduled payments" from section 184(c) on radio advertisements pursuant to its exception authority under section 105(a).

Appendices

Lessors are required to provide a description of leased property under the CLA and § 213.4(a) of Regulation M. The Board proposes to amend the model forms for open- and closed-end leases disclosures to add among the nonsegregated disclosures a model clause for describing leased property.

The Board proposes to amend the model forms for open- and closed-end leases by deleting "annual tax" as an example of an other charge. Third-party fees or charges paid to the lessor but not retained by the lessor such as taxes are not included in the "other charges" disclosure.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0952 and, when possible, should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

The comment period ends on February 7, 1997. Normally, the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The proposed regulatory revisions primarily implement changes in the law made by the 1996 Act that streamline the advertising provisions and, in addition, make a few technical changes to Regulation M. The Board believes that it is desirable to ensure that a final rule takes effect along with the final rule approved in September 1996, which requires issuing a final rule by April 1, 1997. Accordingly, the Board is providing an abbreviated comment period.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation M. Overall, the amendments are not expected to have any significant impact on small entities. The proposed regulatory revisions, primarily required to implement the 1996 Act, ease compliance by streamlining the advertising provisions. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The respondents are individuals or businesses that regularly lease, offer to lease, or arrange for the lease of personal property under a consumer lease. The purpose of the disclosures associated with Regulation M is to ensure that lessees of personal property receive meaningful information that enables them to compare lease terms with other leases and, where appropriate, with credit transactions. Records, required to evidence compliance with the regulation, must be retained for twenty-four months. The revisions to the collection of information requirements in this proposed rule are found in 12 CFR 213.4, 213.5, and 213.7 and appendices A–1 and 2.

Regulation M applies to all types of financial institutions, not just state member banks. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation M only for state member banks. Any estimates of paperwork burden for institutions other than state member banks affected by the amendments would be provided by the federal agency or agencies that supervise those lessors. The Federal Reserve has found that few state member banks engage in consumer leasing and that while the prevalence of leasing has increased in recent years, it has not increased substantially among state member banks. It also has found that among state member banks that engage in consumer leasing, only a very few advertise consumer leases.

The proposed revisions to §§ 213.4 and 213.5 are estimated to have no effect on the hour burden that the regulation imposes. The proposed revisions to § 213.7, while more substantive, are expected to have no net effect on the hour burden.

The current hour burden for state member banks, as of the September 1996 final rule, is estimated to be eighteen minutes for the disclosures and twenty-five minutes for advertising. It is estimated that there will be 310 respondents and an average frequency of 120 responses per respondent each year. The total amount of annual hour burden at all state member banks is estimated to be 11,179 hours. Start-up cost burden associated with the September 1996 final rule was estimated to be $12,000 per respondent, amounting to a total of $3,720,000 for state member banks. The Federal Reserve estimates that this amount is sufficient to cover any costs of the proposed rule.

The disclosures made by lessors to consumers under Regulation M are mandatory (15 U.S.C. 1667 *et seq.*). Because the Federal Reserve does not collect any information, no issue of confidentiality under the Freedom of Information Act arises. Consumer lease information in advertisements is available to the public. Disclosures of the costs, liabilities, and terms of consumer lease transactions relating to specific leases are not publicly available.

An agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. Section 213.4 would be amended as follows:

a. Paragraph (n) would be revised; and

b. The headings of Paragraphs (o)(1) and (o)(2) would be revised.

The revisions read as follows:

§ 213.4 Content of disclosures.

* * * * *

(n) *Fees and taxes.* The total dollar amount for all official and license fees, registration, title, or taxes required to be paid [to the lessor] in connection with the lease.

(o) *Insurance.* * * *

(1) [*Voluntary insurance.*] ►*Through the lessor.*◄ * * *

(2) [*Required insurance.*] ►*Through a third party.*◄ * * *

* * * * *

3. Section 213.5 would be amended by revising paragraph (d)(1) to read as follows:

§ 213.5 Renegotiations, extensions, and assumptions.

* * * * *

(d) *Exceptions.* * * *

(1) A reduction in the [lease] ►rent◄ charge;

* * * * *

4. Section 213.7 would be amended as follows:

a. Paragraph (b)(1) would be revised;

b. Paragraph (d) would be revised.

The revisions read as follows:

§ 213.7 Advertising.

* * * * *

(b) *Clear and conspicuous standard.* * * *

(1) *Amount due at lease signing.* Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the total amount due at lease signing under paragraph (d)(2)(ii) of this section [, such as the amount of any capitalized cost reduction (or no capitalized cost reduction is required),] shall not be more prominent than the disclosure of the total amount due at lease signing.

* * * * *

(d) *Advertisement of terms that require additional disclosure*—(1) *Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment; ►or◄

[(ii) The number of required payments; or]

[(iii)] ►(ii)◄ A statement of any capitalized cost reduction or other payment required prior to or at consummation, or that no payment is required.

(2) *Additional terms.* An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount due at lease signing ►or delivery, whichever is later◄, or that no payment is required;

(iii) The number, amounts, ►and◄ due dates or periods of scheduled payments[, and total of such payments] under the lease;

[(iv) A statement of whether or not the lessee has the option to purchase the leased property, and where the lessee has the option to purchase at the end of the lease term, the purchase-option price. The method of determining the purchase-option price may be substituted in disclosing the lessee's option to purchase the leased property prior to the end of the lease term;]

[(v)] ►(iv)◄ A statement of ►whether or not a security deposit is required◄ [the amount, or the method for determining the amount, of the lessee's liability (if any) at the end of the lease term that] ; and

[(vi)] ►(v)◄ A statement [of the lessee's liability] ►that an extra charge may be imposed at the end of the lease term where the lessee is liable◄ (if any) for the difference between the residual value of the leased property and its realized value at the end of the lease term.

* * * * *

5. Appendix A to part 213 is amended by revising Appendix A–1 and Appendix A–2 to read as follows:

Appendix A to Part 213—Model Forms

* * * * *

BILLING CODE 6210–01–P

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ Lessee(s) _____

Amount Due at Lease Signing	Monthly Payments	Other Charges (not part of your monthly payment)	Total of Payments (The amount you will have paid by the end of the lease)
(Itemized below)* $ _____	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Disposition fee (if you do not purchase the vehicle) $_____ [[Annual tax] _____] _____ _____ Total $_____	$ _____ You will owe an additional amount if the actual value of the vehicle is less than the residual value.

*** Itemization of Amount Due at Lease Signing**

Amount Due At Lease Signing:		How the Amount Due at Lease Signing will be paid:	
Capitalized cost reduction	$ _____	Net trade-in allowance	$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____		
Registration fees	_____		
_____	_____		
Total	$ _____	Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior loan or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost	-	_____
Adjusted capitalized cost. The amount used in calculating your base monthly payment	=	_____
Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment	-	_____
Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term	=	_____
Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	_____
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge	=	_____
Lease term. The number of months in your lease	+	_____
Base monthly payment	=	_____
Monthly sales/use tax	+	_____
_____	+	_____
Total monthly payment	=$	_____

Rent and other charges. The total amount of rent and other charges imposed in connection with your lease $ _____.

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

End of Term Liability. (a) The residual value ($ _____) of the vehicle is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the residual value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus.] If the actual value of the vehicle is less than the residual value, you will be liable for any difference up to $ _____ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if:
1. Excessive use or damage [as described in paragraph ____] [representing more than normal wear and use] resulted in an unusually low value at the end of the term.
2. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.
3. You voluntarily agree with us after the end of the lease term to make a higher payment.
Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. We must also pay your attorney's fees.
(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____ .

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____ .

Late Payments. The charge for late payments is: _____ .

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ Lessee(s) _____

Amount Due at Lease Signing (Itemized below)*	**Monthly Payments**	**Other Charges** (not part of your monthly payment)	**Total of Payments** (The amount you will have paid by the end of the lease)
$ _____	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Disposition fee (if you do not purchase the vehicle) $ _____ [[Annual tax] _____] _____ _____ Total $ _____	$ _____

*** Itemization of Amount Due at Lease Signing**

Amount Due At Lease Signing:		**How the Amount Due at Lease Signing will be paid:**	
Capitalized cost reduction	$ _____	Net trade-in allowance	$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____		
Registration fees	_____		
_____	_____		
Total	$ _____	Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior loan or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost	−	_____
Adjusted capitalized cost. The amount used in calculating your base monthly payment	=	_____
Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment	−	_____
Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term	=	_____
Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	_____
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge	=	_____
Lease term. The number of months in your lease	÷	_____
Base monthly payment	=	_____
Monthly sales/use tax	+	_____
_____	+	_____
Total monthly payment	=$	_____

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease.

_____

Late Payments. The charge for late payments is: _____

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

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By order of the Board of Governors of the Federal Reserve System, December 17, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32496 Filed 12–31–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–41]

Proposed Amendment to Class E Airspace; Fort Stewart, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Fort Stewart, GA. A GPS RWY 32R Standard Instrument Approach Procedure (SIAP) has been developed for Wright AAF. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

DATES: Comments must be received on or before February 10, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–41, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Fort Stewart, GA. A GPS RWY 32R SIAP has been developed for Wright AAF. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[Amended]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Fort Stewart, GA [Revised]

Fort Stewart, Wright AAF, GA (lat. 31°53′21″N, long. 83°49′48″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Wright AAF.

* * * * *

Issued in College Park, Georgia, on December 13, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–33378 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–246018–96]

RIN 1545–AU49

Recomputation of Life Insurance Reserves

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the definition of life insurance reserves. The proposed regulations permit the taxpayer or the IRS to recompute certain reserves if those reserves were initially computed or estimated on other than an actuarial basis. The proposed regulations affect both life insurance companies and property and casualty insurance companies. This document also contains a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by April 2, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for Thursday, April 17, 1997, at 10 a.m. must be received by Thursday, March 27, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–246018–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–246018–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Commissioner's conference room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, N.W. Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ann Cammack, (202) 622–3970; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

To qualify as a life insurance reserve for purposes of Part I of subchapter L of the Internal Revenue Code, a reserve must satisfy various requirements, including the requirement in section 816(b)(1)(A) and § 1.801–4(a)(1) that it be "computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest." Qualifying as a life reserve under section 816(b) has various consequences. Life reserves are included in the numerator and denominator of the reserve ratio test of section 816(a), which is used to determine when an insurance company is taxed as a life insurance company under Part I of subchapter L. Increases in life reserves as defined in section 816(b) are taken into account under section 807(c)(1). In addition, life reserves as defined in section 816(b) are considered part of a nonlife company's unearned premiums under section 832(b)(4).

Two circuits have construed former section 801(b)(1)(A), which was recodified as section 816(b)(1)(A) in 1984, to prevent reserves held with respect to life, annuity or noncancellable accident and health policies but not computed or estimated using actuarial tables from qualifying as life reserves. The IRS also has held that life reserves must be computed or estimated using actuarial tables under former section 801(b)(1)(A). *See, e.g.*, Rev. Rul. 69–302 (1969–2 C.B. 186). The Claims Court, in contrast, has concluded that the statute and regulation do not necessarily require the insurance company to compute its life reserves using actuarial tables, when a different method results in reserves that "reasonably approximate" actuarial reserves.

Rev. Rul. 69–302 held that not only were life reserves required to be computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, but that reserves for credit life insurance contracts could not be retroactively recomputed in a manner that would enable them to qualify as life reserves. Neither of the cases cited in Rev. Rul. 69–302, however, addressed the question of whether taxpayers or the Commissioner could recompute reserves based on information that was available at the end of the applicable taxable year. Two subsequent cases came to opposite conclusions on this issue.

The reserve ratio test of section 816(a) was intended to distinguish between life and nonlife insurance companies based on the nature of each company's business, as measured by its reserves. This purpose is not achieved, however, if a company that only issues life insurance, annuity or noncancellable accident and health contracts can elect to be taxed as a nonlife company by failing to use mortality and morbidity tables and assumed rates of interest in computing or estimating its reserves for some of those contracts.

Explanation of Provisions

Proposed § 1.801–4(g)(1) provides that if an insurance company does not compute or estimate its reserves for certain contracts on the basis of mortality or morbidity tables and assumed rates of interest, then the taxpayer or the Commissioner may recompute those reserves on the basis of mortality or morbidity tables and assumed rates of interest. This regulation will apply to reserves for contracts involving, at the time with respect to which the reserves are computed, life, accident or health contingencies, if such reserves were not initially computed in accordance with the requirements of section 816(b)(1)(A).

Proposed § 1.801–4(g)(2) provides that if the taxpayer or the Commissioner recomputes reserves pursuant to § 1.801–4(g)(1), the reserves satisfy the section 816(b)(1)(A) requirement that a life reserve be computed or estimated using actuarial tables and assumed rates of interest. Assuming that these amounts satisfy the other requirements of section 816(b), the recomputed amounts will be considered life insurance reserves under section 816(b), and the recomputed reserves will be included in both the numerator and the denominator of the reserve ratio test under section 816(a). In addition, the reserves for such contracts will be taken into account under section 807(c)(1) and will be used to compute a nonlife company's unearned premiums under section 832(b)(4).

Proposed § 1.801–4(g)(3) provides that for purposes of section 816(b)(4) and § 1.801–3(i), which provide that the mean of the beginning and end of year reserves will be used for purposes of section 816 (a), (b) and (c), the reserves on a life insurance, annuity or noncancellable accident and health contract must be recomputed for both the beginning and the end of the year.

Proposed § 1.801–4(g)(4) requires that no information acquired after the date as of which the beginning of year reserves were initially computed or estimated may be taken into account in recomputing those reserves under paragraph (g)(1). It also requires that no information acquired after the date as of

which the end of year reserves were initially computed or estimated may be taken into account in recomputing those reserves under paragraph (g)(1).

The IRS is considering whether to issue guidance under section 816, including regulations regarding the definition of "total reserves" under section 816(c) as well as redesignating and revising the regulations issued under prior law section 801. The IRS invites comments on this matter.

Proposed Effective Date

Proposed § 1.801–4(g) would be effective with respect to returns filed for taxable years beginning after the publication of the final regulations.

Effect on Other Documents

The IRS will modify, clarify, or obsolete publications as necessary to conform with this regulation as of the date of publication in the **Federal Register** of the final regulations. *See e.g.*, Rev. Rul. 69–302 (1969–2 C.B. 186). The IRS solicits comments as to whether other publications should be modified or obsoleted.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, April 17, 1997 in the Commissioner's conference room, room 3313, Internal Revenue Service Building at 10:00 a.m. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by March 27, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and 8 copies) by March 27, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Ann B. Cammack, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.801–4 is amended by adding a new paragraph (g) to read as follows:

§ 1.801–4 Life insurance reserves.

* * * * *

(g) *Recomputation of life insurance reserves—(1) General.* If an insurance company does not compute or estimate its reserves for contracts involving, at the time with respect to which the reserves are computed, life, accident or health contingencies, on the basis of mortality or morbidity tables and assumed rates of interest, then the taxpayer or the Commissioner may recompute reserves for those contracts on the basis of mortality or morbidity tables and assumed rates of interest.

(2) *Effect of recomputation.* If reserves are recomputed pursuant to paragraph (g)(1) of this section, the recomputed reserves satisfy the requirements of section 816(b)(1)(A).

(3) *Mean reserve.* For purposes of section 816(b)(4) and § 1.801–3(i), if reserves are recomputed pursuant to paragraph (g)(1) of this section for a taxable year, the reserves must be recomputed for both the beginning and the end of the taxable year.

(4) *Subsequently acquired information.* No information acquired after the date as of which a reserve was initially computed or estimated may be taken into account in recomputing that reserve under paragraph (g)(1) of this section.

(5) *Effective date.* This section is applicable with respect to returns filed for taxable years beginning after the date final regulations are filed with the Office of the Federal Register.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 96–32855 Filed 12–31–96; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[REG–209839–96]

RIN 1545–AU60

Determination of Earned Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the requirement that insurance companies other than life insurance companies reduce by 20 percent their deductions for increases in unearned premiums. This requirement was enacted as part of the Tax Reform Act of 1986. These regulations are necessary in order to provide guidance to nonlife insurance companies that are subject to the 20 percent reduction rule. This document also contains a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by April 2, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for April 30, 1997 at 10:00 a.m. must be received by April 2, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209839–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209839–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting

comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gary Geisler, (202) 622–3970; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A nonlife insurance company's underwriting income equals its premiums earned on insurance contracts during the taxable year less its losses incurred and its expenses incurred. For taxable years beginning on or after January 1, 1993, a company's premiums earned on insurance contracts during the taxable year is an amount equal to the gross premiums written on insurance contracts during the taxable year, less return premiums and premiums paid for reinsurance, plus 80 percent of unearned premiums at the end of the prior taxable year, less 80 percent of unearned premiums at the end of the current taxable year.

The gross premiums written for an insurance or reinsurance contract is the total amount charged by the insurance company for the insurance coverage provided under the contract, including amounts charged covering the company's expenses and overhead. Written premiums are generally recorded for the full term of coverage for the year in which the contract is issued. Upon recording a written premium, the company establishes an unearned premium liability to reflect the portion of the written premium which relates to the unexpired portion of the insurance coverage.

The term "unearned premium" historically referred to the portion of the gross premiums written that would have to be returned to the policyholder upon cancellation of the policy and that was in direct proportion to the unexpired term of the policy. *See, e.g., Buckeye Union Casualty Co.* v. *Commissioner*, 448 F.2d 228, 230 (6th Cir. 1971), *aff'g* 54 T.C. 13, 20 n.5 (1970). Cases and rulings expanded this definition to include premiums paid for a future benefit, the cost of which was fixed when the policy was issued. *See, e.g., Massachusetts Protective Ass'n.* v. *United States*, 114 F.2d 304 (1st Cir. 1940); *C.P.A. Co.* v. *Commissioner*, 7 T.C. 912 (1946) (nonlife company), *acq.* 1947–1 C.B. 1; Rev. Rul. 55–705, 1955–2 C.B. 280. *But cf. Bituminous Casualty Corp.* v. *Commissioner*, 57 T.C. 58 (1971), *acq. in result* 1973–2 C.B. 1 (stating in dictum that "unearned premiums" had a substantially broader definition than the one developed in the cases and rulings cited above).

Prior to 1987, the increase in unearned premiums during the taxable year was deducted from gross premiums written in the computation of premiums earned. For example, if a company on September 1st issued a one-year fire insurance policy with a premium of $1,200, the company on that date would record a gross written premium of $1,200 and establish a $1,200 unearned premium reserve. On December 31st, the company would have earned one-third of the premium, $400, but would have an $800 unearned premium reserve liability for the remaining eight months of coverage to be provided in periods after the close of the taxable year. The subtraction of the full amount of unearned premiums from the gross written premium "generally reflect[ed]" the accounting conventions (often referred to as "statutory accounting principles") used to prepare the annual statement for state insurance regulatory purposes. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–354 (1986), 1986–3 C.B. (Vol. 4) 354; S. Rep. No. 313, 99th Cong., 2d Sess. 495 (1986), 1986–3 C.B. (Vol. 3) 495; H.R. Rep. No. 426, 99th Cong., 1st Sess. 668 (1985), 1986–3 C.B. (Vol. 2) 668.

A nonlife company generally deducts expenses incurred in the taxable year in which the expenses are reported on the company's annual statement. These expenses include premium acquisition expenses attributable to unearned premiums.

In 1986, Congress determined that the combination of deferring unearned premiums and currently deducting premium acquisition expenses attributable to unearned premiums under the accounting conventions used to prepare a nonlife insurance company's annual statement resulted in a mismatch of income and expense. Congress decided to require a better measurement of income for Federal income tax purposes. H.R. Rep. No. 426, 1986–3 C.B. (Vol. 2) at 669; S. Rep. No. 313, 1986–3 C.B. (Vol. 3) at 496. Rather than require a nonlife company to capitalize and amortize premium acquisition expenses, Congress reduced by 20 percent the current deduction for unearned premiums. See section 832(b)(4)(B); 2 H.R. Conf. Rep. No. 841, 1986–3 C.B. (Vol. 4) at 354–55; S. Rep. No. 313, 1986–3 C.B. (Vol. 3) at 495–98; H.R. Rep. No. 426, 1986–3 C.B. (Vol. 2) at 668–70. This reduction in unearned premiums is sometimes referred to as the "20 percent haircut." The acceleration of income as a result of the 20 percent haircut is intended to be roughly equivalent to denying current deductibility for a portion of the premium acquisition expenses.

Congress intended the 20 percent haircut to apply to all amounts (other than life insurance reserves and title insurance reserves) that were considered unearned premiums for Federal income tax purposes as of 1986. The House Report states that "[a]ll items which are included in unearned premiums under section 832(b) of present law are subject to this reduction in the deduction." H.R. Rep. No. 426, 1986–3 C.B. (Vol. 2) at 669. In describing the House bill, the Conference Report reiterates that "[a]ll items which are included in unearned premiums under section 832(b) of present law are subject to this reduction in the deduction" and describes the Senate amendment as "the same as the House bill, except that life insurance reserves which are included in unearned premium reserves under section 832(b)(4) are not subject to this reduction." 2 H.R. Conf. Rep. No. 841, 1986–3 C.B. (Vol. 4) at 354–55. The Report's description of the Conference agreement states that the agreement "follows the Senate amendment" but "provides special treatment of title insurance unearned premium reserves." Id. See sections 832(b) (7) and (8) for the rules applicable to life insurance and title insurance reserves.

Following the imposition of the 20 percent haircut on unearned premiums, the National Association of Insurance Commissioners (NAIC) revised the statutory accounting principles used to prepare a nonlife insurance company's annual statement. In general, these changes permitted a nonlife company to defer recording written premiums and/or to reduce the amount of unearned premiums reported on the company's annual statement. The affected items included advance premiums, additional premiums on retrospectively rated insurance policies, and the reporting of written premiums for workers' compensation policies and certain other casualty policies where the covered risk varies over the policy term.

Prior to 1989, advance premiums were required to be reported in written premiums and unearned premiums on the annual statement for the year in which the advance premiums were received. However, statutory accounting principles now permit advance premiums to be accumulated in a suspense account and reported as a write-in liability on the annual

statement. A company electing to use this alternative treatment would not report advance premiums in either written premiums or unearned premiums on the annual statement until the effective date of the underlying coverage.

Statutory accounting principles also required a nonlife insurance company to record an estimated liability for payment of return premiums under retrospectively rated insurance policies (retro credits) as part of the unearned premium liability. Estimates of additional premiums due from insureds under these policies (retro debits) historically were not taken into account except as an offset to the company's estimated liability for payment of retro credits. Thus, retro debits were not permitted to be shown as assets on the annual statement, and generally were not included in written premiums prior to the year in which the company billed the policyholder for these additional premiums. Beginning in 1988, however, the NAIC permitted retro debits to be shown in an insurance company's admitted assets, subject to certain limitations. The NAIC currently has under consideration a proposal that would require retro credits to be recorded as a write-in liability on the annual statement, rather than as part of unearned premiums. This proposal would also permit retro credits and retro debits to be taken into account either as adjustments to written premiums or as adjustments to earned premiums for purposes of determining underwriting income on the annual statement.

A nonlife insurance company ordinarily reports the full amount of premiums provided in a casualty insurance policy (including any deferred premium installments) in written premiums and unearned premiums for the year in which the policy is issued. However, for workers' compensation policies and certain other casualty policies where the covered risk varies over the policy term, some but not all state insurance regulators permit written premiums to be recorded based on installment billings to the policyholder. If the insurance company issues these policies throughout the year, and the premiums for the policies are billed monthly, the portion of the total written premiums that would be shown as unearned premiums is substantially smaller than would be the case if the written premiums and unearned premiums were determined based on the entire policy term. The NAIC currently has under consideration proposed guidance that would require the full amount of the premiums provided in all casualty insurance policies to be reported in written premiums and unearned premiums on the effective date of the related coverage.

Section 832(b)(1)(A) provides that a nonlife insurance company's income is computed on the basis of the underwriting and investment exhibit of the annual statement approved by the NAIC. Some companies assert that section 832(b)(1)(A) limits application of the 20 percent haircut to the amount of unearned premiums reported on the annual statement. Under this approach, a company that elects for annual statement purposes to report advance premiums as a write-in liability, to offset unearned premiums by retro debits, or to include deferred premiums on policies covering fluctuating risks in written premiums only when billed to the insured, reduces the amount of unearned premiums subject to the 20 percent haircut.

The existing regulations under § 1.832–4(a)(2) state that "[t]he underwriting and investment exhibit[,] * * * insofar as it is not inconsistent with the provisions of the Code will be recognized and used as a basis for [computing the net income of a nonlife insurance company]." However, the regulations recognize that not all items of the exhibit "reflect * * * income as defined in the Code." Where statutory accounting principles permit a company to elect among alternative accounting practices, one or more of which do not clearly reflect income as defined by the Code, the company is required for Federal tax purposes to use a method that clearly reflects income. Section 446(b) and § 1.446–1(a)(2). Furthermore, an accounting practice used on the annual statement, although specifically mandated by statutory accounting principles, is not used for purposes of computing taxable income if that practice is inconsistent with the Code.

Overview of Proposed Regulations

The proposed regulations define gross premiums written, return premiums, and unearned premiums for tax purposes. The proposed regulations also provide rules for determining when gross premiums written, return premiums, and unearned premiums are taken into account for tax purposes. In this manner, the proposed regulations ensure that items such as advance premiums and retrospective premium adjustments are treated consistently for purposes of the 20 percent haircut on unearned premiums.

Explanation of Provisions

The starting point for determining a nonlife insurance company's premiums earned for tax purposes is the "gross premiums written on insurance contracts during the taxable year." Proposed § 1.832–4(a)(4)(i) defines "gross premiums written on insurance contracts" as the total amounts charged by the insurance company for insurance coverage under insurance or reinsurance contracts issued or renewed during the taxable year. Thus, "gross premiums written" includes collected and uncollected premiums.

Proposed § 1.832–4(a)(4)(ii) addresses the treatment of retro debits, which reflect estimates of additional premiums to be received from the insured or the reinsured based on the insurance company's loss experience during expired coverage periods. Thus, retro debits represent additional gross premiums written rather than offsets to the unearned premium liability for unexpired coverage periods. Treating retro debits as offsets to unearned premiums would reduce the acceleration of income under the 20 percent haircut, and would allow some companies with retro debits exceeding their unearned premiums to report a lesser amount of earned premiums for Federal income tax purposes than for annual statement reporting purposes. This result is contrary to the Congressional intent to accelerate the rate at which premiums are earned for tax purposes in order to correct the mismatching of income and expenses on the annual statement. Accordingly, proposed § 1.832–4(a)(4)(ii) requires retro debits to be included in gross premiums written regardless of the manner in which the retro debits are reported on the underwriting exhibit of the annual statement.

Under section 832(b)(4)(A), an insurance company reduces the amount of gross premiums written on insurance contracts during the taxable year by return premiums and premiums paid for reinsurance. Proposed § 1.832–4(a)(5)(i) defines return premiums as amounts paid or credited to the policyholder in accordance with the terms of an insurance contract, other than policyholder dividends or claims and benefit payments. Thus, return premiums include amounts paid or credited to the policyholder with respect to endorsements and modifications of the terms of coverage of an insurance contract. Return premiums also include amounts returned or credited to the policyholder on cancellation of an insurance contract, including the unearned portion of any deferred or uncollected premiums previously included by the company in gross premiums written and unearned premiums. Finally, return premiums

include amounts contractually required to be returned to the ceding company under a reinsurance contract.

The proposed regulations modify the treatment of retro credits under existing law for purposes of determining earned premiums. Since 1943, § 1.832–4(a)(3)(ii) has provided that the liability for return premiums under a retrospectively rated policy is included in a nonlife company's unearned premiums for tax purposes. Although retro credits were included in unearned premiums in 1986, these amounts are based on an insured's loss experience during expired coverage periods, for which the company has already earned the premium. For this reason, proposed § 1.832–4(a)(5)(ii) provides that a nonlife company's provision for payment of a retro credit generally is included in return premiums that reduce gross premiums written. However, proposed § 1.832–4(a)(6)(iv) gives a company the option to include retro credits in unearned premiums to which the 20 percent haircut applies.

The proposed regulations provide timing rules with respect to when a company reports gross premiums written and unearned premiums for tax purposes. Proposed § 1.832–4(a)(7) requires a company to report gross premiums written with respect to an insurance or reinsurance contract for the earlier of the taxable year which includes the effective date of the contract or the taxable year in which all or a part of the gross premium for the contract is received. Thus, the company must report gross premiums written with respect to an insurance contract for the year in which it collects an advance premium. By requiring advance premiums to be included in gross premiums written and unearned premiums, regardless of the manner in which the advance premiums are recorded on the annual statement, the proposed regulations ensure that the treatment of a nonlife insurance company's advance premiums conforms with the treatment of advance premiums of a life insurance company under section 807(e)(7).

The NAIC is considering proposed guidance that would require the premium for the entire term of a property and casualty insurance contract to be recorded as written premium on the effective date of the contract. The proposed NAIC guidance rejects the previous NAIC position that permitted written premiums for workers' compensation policies and certain other casualty policies where the covered risk varies over the policy term to be recorded when billed. For this reason, the method of reporting gross premiums written for workers' compensation policies and certain other casualty insurance policies covering fluctuating risks is reserved in the proposed regulations.

Proposed Effective Date

The proposed regulations are proposed to apply to the determination of premiums earned for insurance contracts issued or renewed in taxable years beginning after the date on which final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entitles, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, April 30, 1997 in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 2, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and 8 copies) by April 2, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Gary Geisler, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.832–4 is amended as follows:

1. Paragraph (a)(3) is revised.
2. Paragraphs (a)(4) and (a)(5) are redesignated as (a)(9) and (a)(10).
3. New paragraphs (a)(4) through (a)(8) are added.

The additions and revisions read as follows:

§ 1.832–4 Gross income.

(a) * * *

(3) *Premiums earned.* The determination of premiums earned on insurance contracts during the taxable year begins with the insurance company's gross premiums written on insurance contracts during the taxable year, reduced by return premiums and ceded reinsurance premiums. Subject to the exceptions in sections 832(b)(7), 832(b)(8), and 833(a)(3), this amount is increased by 80 percent of the unearned premiums at the end of the preceding taxable year, and is decreased by 80 percent of the unearned premiums at the end of the taxable year.

(4) *Gross premiums written*—(i) *In general.* An insurance company's "gross premiums written on insurance contracts during the taxable year" are the total amounts charged by the insurance company for insurance coverage under insurance or reinsurance contracts issued or renewed by the company during the taxable year.

(ii) *Debits on retrospectively rated insurance policies.* Gross premiums written include an insurance company's estimate of the gross additional premiums to be received from the insured or the reinsured with respect to the expired portion of a retrospectively rated insurance or reinsurance contract

(retro debits). The retro debits are reported for the taxable year in which the amounts can be reasonably estimated based on information used to compute the insurance company's loss reserves. An insurance company adjusts gross premiums written to reflect payments from the insured or the reinsured with respect to retro debits, as well as changes in the estimate of retro debits.

(5) *Return premiums*—(i) *In general.* Return premiums are amounts paid or credited to the policyholder in accordance with the terms of an insurance contract, other than policyholder dividends or claims and benefit payments. For example, return premiums include amounts returned or credited to the policyholder based on modifications of the terms of an insurance contract. Return premiums also include amounts contractually required to be returned to the ceding company pursuant to a reinsurance contract.

(ii) *Credits on retrospectively rated insurance policies.* Except as provided in paragraph (a)(6)(iv) of this section, return premiums include an insurance company's estimate of the gross liability for return premiums to be paid or credited to the insured or the reinsured with respect to the expired portion of a retrospectively rated insurance or reinsurance contract (retro credits). The retro credits are included in return premiums for the taxable year in which the insurance company's liability to pay or credit these amounts can be reasonably estimated based on information used to compute the company's loss reserves. An insurance company adjusts return premiums to reflect payments made or amounts credited to the insured or the reinsured with respect to retro credits, as well as changes in the estimate of retro credits.

(iii) *Unpaid premiums on cancelled policies.* If an insurance contract is cancelled, an insurance company includes in return premiums the unearned portion of any deferred or uncollected premiums previously included in gross premiums written and unearned premiums.

(6) *Unearned premiums*—(i) *In general.* The unearned premium for an insurance or reinsurance contract is the portion of the gross premiums written which is attributable to future insurance coverage to be provided under the contract. An insurance company makes an appropriate adjustment to its unearned premiums for an insurance or reinsurance contract if the contract is reinsured with, or retroceded to, another insurance company.

(ii) *Special rules.* In computing "premiums earned on insurance contracts during the taxable year," the amount of unearned premiums includes—

(A) Life insurance reserves (as defined in section 816(b), but computed in accordance with section 807(d));

(B) In the case of a mutual flood or fire insurance company described in section 832(b)(1)(D) (with respect to contracts described in that section) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all its policies were terminated at that time;

(C) In the case of an interinsurer or reciprocal underwriter which reports unearned premiums on its annual statement net of premium acquisition expenses, the unearned premiums on the company's annual statement increased by the portion of premium acquisition expenses allocable to those unearned premiums;

(D) In the case of a title insurance company, its discounted unearned premiums (computed in accordance with section 832(b)(8)); and

(E) Amounts treated as unearned premiums pursuant to the optional treatment provided in paragraph (a)(6)(iv) of this section.

(iii) *Method of determining unearned premiums.* If the risk of loss under an insurance or reinsurance contract arises uniformly over the contract period, the unearned premium attributable to the portion of the insurance coverage which has not expired is computed on a pro rata basis. If the risk of loss does not arise uniformly over the contract period, the insurance company may consider the pattern or incidence of the risk in determining the portion of the gross premium written which is attributable to the portion of the insurance coverage which has not yet expired.

(iv) *Option to include retro credits in unearned premiums.* An insurance company may include retro credits in unearned premiums under section 832(b)(4) for its first taxable year beginning after the date on which final regulations are published in the **Federal Register**. Any company exercising this option must apply it consistently to all retro credits with respect to retrospectively rated insurance or reinsurance contracts issued or renewed during the taxable year and all subsequent years.

(7) *Method of reporting gross premiums written*—(i) *In general.* An insurance company reports gross premiums written with respect to an insurance or reinsurance contract for the earlier of the taxable year which includes the effective date of the contract or the taxable year in which all or a part of the gross premium for the contract is received.

(ii) *Method of reporting gross premiums written on policies covering fluctuating risks.* [Reserved]

(iii) *Examples.* The provisions of this paragraph (a)(7) are illustrated by the following examples:

Example 1. (i) IC is a nonlife insurance company which, pursuant to section 843, files its returns on a calendar year basis. On July 1, 1998, IC issues a fire insurance policy to A, an individual. The policy provides coverage for a one-year term beginning on July 1, 1998 and ending on June 30, 1999. The premium provided in the policy is $500, which may be paid either in full on the policy effective date or in quarterly installments of $125. A selects the installment payment option. As of December 31, 1998, the policy issued to A remains in force, and IC has collected a total of $250 of installment premiums from A. Assume IC has issued no other policies.

(ii) For the taxable year ending December 31, 1998, IC reports the $500 premium provided in A's policy in gross premiums written under section 832(b)(4)(A). IC also claims a reduction under section 832(b)(4)(B) for 80% of the $250 of unearned premiums ($200) associated with the policy at the end of the taxable year.

Example 2. (i) The facts are the same as *Example 1*, except that the term of coverage for the fire insurance policy issued to A begins on January 1, 1999 and ends on December 31, 1999. On December 15, 1998, IC receives $125 from A and agrees to apply this amount as the first premium installment due on the policy.

(ii) Under paragraph (a)(7)(i) of this section, IC reports gross premiums written for the policy issued to A for the taxable year in which the advance premium is received. Thus, for the taxable year ending December 31, 1998, IC includes $500 in its gross premiums written under section 832(b)(4)(A). IC also claims a reduction under section 832(b)(4)(B) for 80% of the $500 of unearned premiums ($400) associated with the policy at the end of the taxable year.

(8) *Effective date.* Paragraphs (a)(3) through (a)(7) of this section are applicable with respect to the determination of premiums earned for insurance contracts issued or renewed during taxable years beginning after the date on which final regulations are published in the **Federal Register**.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 96–32520 Filed 12–31–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 301

[REG–248770–96]

RIN 1545–AU64

Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to joint returns, property exempt from levy, interest, penalties, offers in compromise, and the awarding of costs and certain fees. The proposed regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and a conforming amendment made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The proposed regulations affect taxpayers with respect to filing of returns, interest, penalties, court costs, and payment, deposit, and collection of taxes.

DATES: Written comments and requests for a public hearing must be received by April 2, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–248770–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–248770–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington DC. Finally, taxpayers may submit comments electronically via the INTERNET by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Beverly A. Baughman, (202) 622–4940 regarding joint returns and penalties; Robert A. Miller, (202) 622–3640 regarding levy; Donna J. Welch, (202) 622–4910 regarding interest; Thomas D. Moffitt, (202) 622–7900 regarding court costs; and Kevin B. Connelly, (202) 622–3640 regarding compromises (not toll-free numbers). Concerning submissions, Evangelista Lee, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, D.C. 20224. Comments on the collection of information should be received by March 3, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 301.7430–2(c)(3)(i)(B). This information is required to obtain an award of reasonable administrative costs. This information will be used to determine if a taxpayer is entitled to an award of reasonable administrative costs. The collection of information is required to obtain the award. The likely respondents are individuals, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 10 hours.

The estimated annual burden per respondent: 15 minutes.

Estimated number of respondents: 38.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations and the Regulations on Procedure and Administration (26 CFR parts 1 and 301, respectively) relating to joint returns under section 6013, levy under section 6334, interest under section 6601, the failure to file penalty under section 6651, the failure to deposit penalty under section 6656, compromise under section 7122, and awards of costs and certain fees under section 7430. These sections were amended by the Taxpayer Bill of Rights 2 (TBOR2) (Pub. L. 104–168, 110 Stat. 1452 (1996)) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, 110 Stat. 2105 (1996)). The changes made by TBOR2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are reflected in the proposed regulations.

Explanation of Provisions

Interest and Penalties

Section 6601 requires a taxpayer to pay interest on late payments of tax. However, sections 6601(e)(2) and 6601(e)(3) provide an interest-free period if a taxpayer pays the tax due within a certain number of days after the date of the notice and demand for payment. Sections 303(a) and 303(b)(1) of TBOR2 amended sections 6601(e)(2) and 6601(e)(3) to extend this interest-free period. Therefore, § 301.6601–1(f) of the proposed regulations extends the interest-free period from 10 days to 21 calendar days after the date of the notice and demand (10 business days if the amount for which the notice and demand is made equals or exceeds $100,000) with respect to any notice and demand made after December 31, 1996. The proposed regulations also define business day and calendar day for purposes of § 301.6601–1(f).

Section 6651(a)(3) imposes a penalty on any person who fails to pay the amount of tax that is required to be shown on a return but that is not so shown. However, a penalty-free period is provided if a taxpayer pays the tax due within a certain number of days after the date of the notice and demand for payment. Section 303(b)(2) of TBOR2 amended section 6651(a)(3) to extend the penalty-free period. Therefore, proposed § 301.6651–1(a)(3) extends the penalty-free period from 10

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days to 21 calendar days after the date of the notice and demand (10 business days if the amount for which the notice and demand is made equals or exceeds $100,000) with respect to any notice and demand made after December 31, 1996. In addition, the proposed regulations amend section 301.6651–1(a)(3) to conform with changes made by section 1502(b) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085 (1986)) to repeal the special coordination rule under section 6651(c)(1)(B).

Section 6651(a)(2) imposes a penalty on any person who fails to pay the amount of tax shown on a return by the payment due date (including extensions). Pursuant to section 6020(b), if a taxpayer does not file a tax return, the Secretary can make a substitute return for the taxpayer. Prior to TBOR2, a taxpayer with a substitute return was not subject to a section 6651(a)(2) penalty because the substitute return was not treated as a return for purposes of the penalty. See Rev. Rul. 76–562, 1976–2 C.B. 430. Section 1301 of TBOR2 amended section 6651 to apply the section 6651(a)(2) failure to pay penalty to returns prepared by the Secretary pursuant to section 6020(b). Thus, for returns due (determined without regard to extensions) after July 30, 1996, proposed § 301.6651–1(g) provides that a taxpayer with a substitute return may be subject to a failure to pay penalty under section 6651(a)(2).

Section 6656 imposes a penalty for failure to deposit taxes with a government depository by the prescribed due date. Section 304 of TBOR2 amended section 6656 to provide exceptions to the failure to deposit penalty for first time depositors of employment taxes. Accordingly, § 301.6656–3(a) of the proposed regulations provides that in the case of first time depositors of employment taxes, the Secretary will generally waive the penalty for failure to deposit if (1) the failure to deposit is inadvertent based on all the facts and circumstances, (2) the depositing entity meets certain net worth requirements, (3) the failure to deposit occurs during the first quarter the depositing entity is required to deposit any employment tax, and (4) the return for the employment tax is filed on time.

In addition, proposed § 301.6656–3(b) provides that the Secretary may abate any penalty for failure to make deposits if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository. Proposed § 301.6656–3 applies to deposits required to be made after July 30, 1996.

Joint Returns

Prior to TBOR2, married individuals making an election under section 6013(b) to file a joint return after filing a separate return for the same taxable year were required to pay the full amount of the tax shown on the joint return at or before the time of filing the joint return. With respect to taxable years beginning after July 30, 1996, section 402 of TBOR2 amended section 6013(b) to permit married individuals who previously filed separate returns to file joint returns for the same taxable year without paying the full amount of tax shown on the joint return. Accordingly, § 1.6013–2(b)(1) of the proposed regulations provides that the full payment requirement applies only to taxable years beginning on or before July 30, 1996.

Levy and Compromise

Section 6334 lists the items of property that are exempt from levy by the IRS. Section 502 of TBOR2 amended section 6334 to (1) increase the dollar amount exempt from levy under section 6334(a)(2) and provide that this exemption amount applies to all taxpayers, not just heads of a family; (2) increase the dollar amount exempt from levy under section 6334(a)(3); and (3) provide a yearly inflation adjustment for the dollar amounts exempt from levy. In addition, section 110(l)(6) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, in a conforming amendment, amended section 6334(a)(11)(A) to delete the language "(relating to aid to families with dependent children)".

Accordingly, § 301.6334–1(a)(2) of the proposed regulations increases from $1,650 ($1,550 in the case of levies issued during 1989) to $2,500 the amount exempt from levy for fuel, provisions, furniture, and personal effects, and makes this exemption applicable to all taxpayers, not just taxpayers who are heads of a family. The proposed regulations also increase from $1,100 ($1,050 in the case of levies issued during 1989) to $1,250 the amount exempt from levy for books and tools of a trade, business, or profession. These changes are effective with respect to levies issued after December 31, 1996. In addition, for calendar years beginning after 1997, § 301.6334–1(e) of the proposed regulations provides an inflation adjustment for the exemption amounts described above and for rounding to the nearest multiple of $10.

Prior to the enactment of TBOR2, section 7122(b) required the General Counsel of the Treasury or his delegate to file an opinion with the Secretary whenever the Secretary compromised a case, unless the compromise involved a civil case in which the unpaid amount of the tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) was less than $500. Effective July 30, 1996, section 503 of TBOR2 amended section 7122 to raise the dollar threshold for mandatory review of compromises of civil cases by the General Counsel of the Department of Treasury or his delegate from $500 to $50,000. Accordingly, § 301.7122–1(e) of the proposed regulations provides that for compromises accepted on or after July 30, 1996, no opinion is required if the unpaid amount of tax is less than $50,000.

Awarding of Costs and Certain Fees

In general, under section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or a civil proceeding if the proceeding relates to the determination, collection, or refund of any tax, interest, or penalty. Prior to TBOR2, the taxpayer had the burden of proving that the position of the United States was not substantially justified. Section 701 of TBOR2 amended section 7430(c)(4) to place on the government the burden of proving that the position of the United States is substantially justified. Under TBOR2, the position of the government will be presumed not to be substantially justified if the IRS did not follow its applicable published guidance. Section 701 defines applicable published guidance.

The proposed regulations reflect these changes. Further, § 301.7430–5(c)(3) of the proposed regulations clarifies that in the definition of applicable published guidance, "regulations" means final and temporary regulations. The proposed regulations also clarify the period during which and the issues upon which the position of the United States is presumed to be not substantially justified.

Section 702 of TBOR2 amended section 7430(c)(1) to increase the allowable hourly rate of an award of attorney's fees and provide for a yearly inflation adjustment and rounding. Sections 301.7430–2 and 301.7430–4 of the proposed regulations reflect these changes.

Finally, section 703 of TBOR2 amended section 7430(b)(1) to clarify that any failure to agree to an extension of the statute of limitations will not affect the determination of whether a taxpayer has exhausted administrative

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remedies as a prerequisite to recovery of attorney's fees. Although this is consistent with an example in the prior regulations (Example 4, § 301.7430–1(f)), the proposed regulations add § 301.7430–1(b)(4) to reflect the statutory language.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past only an average of 38 taxpayers per year, the majority of whom were individuals, have filed a request to recover administrative costs. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Beverly A. Baughman and Donna J. Welch, Office of Assistant Chief Counsel (Income Tax and Accounting), Robert A. Miller and Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), and Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6013–2 [Amended]

Par. 2. Section 1.6013–2(b)(1) is amended by removing the language "Unless" and adding "Beginning on or before July 30, 1996, unless" in its place.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.6334–1 is amended by:

1. Revising paragraph (a)(2).
2. Removing the language "$1,100 ($1,050 for levies issued prior to January 1, 1990)" from paragraph (a)(3) and adding "$1,250" in its place.
3. Removing the language "(relating to aid to families with dependent children)" from paragraph (a)(11)(i).
4. Redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e).
5. Revising newly designated paragraph (f).

The additions and revisions read as follows:

§ 301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $2,500 in value.

* * * * *

(e) *Inflation adjustment.* For any calendar year beginning after December 31, 1997, each dollar amount referred to in paragraphs (a)(2) and (a)(3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1996" for "calendar year 1992" in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

(f) *Effective date.* Generally, these provisions are applicable with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraphs (a)(2), (a)(3), (a)(11)(i) and (e) of this section are applicable with respect to levies issued after December 31, 1996.

Par. 5. Section 301.6601–1 is amended by:

1. Revising paragraphs (f)(3) and (f)(4).
2. Redesignating paragraph (f)(5) as paragraph (f)(6) and adding new paragraph (f)(5).

The additions and revisions read as follows:

§ 301.6601–1 Interest on underpayments.

* * * * *

(f) * * *

(3) Interest will not be imposed on any assessable penalty, addition to the tax, or additional amount if the amount is paid within 21 calendar days (10 business days if the amount stated in the notice and demand equals or exceeds $100,000) from the date of the notice and demand. If interest is imposed, it will be imposed only for the period from the date of the notice and demand to the date on which payment is received. This paragraph (f)(3) is applicable with respect to any notice and demand made after December 31, 1996.

(4) If notice and demand is made after December 31, 1996, for any amount and the amount is paid within 21 calendar days (10 business days if the amount equals or exceeds $100,000) from the date of the notice and demand, interest will not be imposed for the period after the date of the notice and demand.

(5) For purposes of paragraphs (f)(3) and (f)(4) of this section—

(i) The term *business day* means any day other than a Saturday, Sunday, legal holiday in the District of Columbia, or a statewide legal holiday in the state where the taxpayer resides or where the taxpayer's principal place of business is located. With respect to the tenth

business day (after taking into account the first sentence of this paragraph (f)(5)(i)), see section 7503 relating to time for performance of acts where the last day falls on a statewide legal holiday in the state where the act is required to be performed.

(ii) The term *calendar day* means any day. With respect to the twenty-first calendar day, see section 7503 relating to time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday.

* * * * *

Par. 6. Section 301.6651–1 is amended by:

1. Revising paragraph (a)(3).
2. Adding paragraph (g).

The additions and revisions read as follows:

§ 301.6651–1 Failure to file tax return or to pay tax.

(a) * * *

(3) *Failure to pay tax not shown on return.* In the case of failure to pay any amount of any tax required to be shown on a return specified in paragraph (a)(1) of this section that is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of the notice and demand (10 business days if the amount for which the notice and demand is made equals or exceeds $100,000) with respect to any notice and demand made after December 31, 1996, there will be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the district director or the director of the service center to be due to reasonable cause and not to willful neglect. The amount added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

* * * * *

(g) *Treatment of returns prepared by the Secretary*—(1) *In general.* A return prepared by the Secretary under section 6020(b) will be disregarded for purposes of determining the amount of the addition to tax for failure to file any return pursuant to paragraph (a)(1) of this section. However, the return prepared by the Secretary will be treated as a return filed by the taxpayer for purposes of determining the amount of the addition to tax for failure to pay the tax shown on any return and for failure to pay the tax required to be shown on a return that is not so shown pursuant to paragraphs (a)(2) and (a)(3) of this section, respectively.

(2) *Effective date.* This paragraph (g) applies to returns the due date for which (determined without regard to extensions) is after July 30, 1996.

Par. 7. Section 301.6656–3 is added to read as follows:

§ 301.6656–3 Abatement of penalty.

(a) *Exception for first time depositors of employment taxes*—(1) *Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

(i) The failure is inadvertent;

(ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);

(iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and

(iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

(c) *Effective date.* This section applies to deposits required to be made after July 30, 1996.

Par. 8. Paragraph (e) of § 301.7122–1 is revised to read as follows:

§ 301.7122–1 Compromises.

* * * * *

(e) *Record*—(1) *In general.* If an offer in compromise is accepted, there will be placed on file the opinion of the Chief Counsel of the IRS with respect to the compromise, with the reasons for the opinion, and including a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(2) *Exception.* For compromises accepted on or after July 30, 1996, no opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $50,000. However, the compromise will be subject to continuing quality review by the Secretary.

* * * * *

§ 301.7430–0 [Amended]

Par 9. Section 301.7430–0 is amended by:

1. Adding under the heading § 301.7430–1, a caption (b)(4) to read "(4) Failure to agree to extension of time for assessments.".

2. Adding under the heading § 301.7430–5, a caption (c)(3) to read "(3) Presumption.".

Par. 10. Section 301.7430–1 is amended by adding paragraph (b)(4) to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(b) * * *

(4) *Failure to agree to extension of time for assessments.* Any failure by the prevailing party to agree to an extension of the time for the assessment of any tax will not be taken into account for purposes of determining whether the prevailing party has exhausted the administrative remedies available to the party within the IRS.

* * * * *

Par. 11. Section 301.7430–2 is amended by:

1. Removing the language "7430(c)(4)(B)(ii)" from the third sentence of paragraph (b)(2) and adding "7430(c)(4)(C)(ii)" in its place.

2. Revising paragraph (c)(3)(i)(B).

3. Removing the language "If more than $75" from paragraph (c)(3)(ii)(C) and adding "In the case of administrative proceedings commenced after July 30, 1996, if more than $110" in its place.

The revision reads as follows:

§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the IRS in the administrative proceeding was not substantially justified. For administrative proceedings commenced after July 30, 1996, if the taxpayer alleges that the IRS did not follow any applicable published guidance, the statement must identify all applicable published guidance that the taxpayer

alleges that the IRS did not follow. For purposes of this paragraph (c)(3)(i)(B), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters. Also, for purposes of this paragraph (c)(3)(i)(B), the term *administrative proceeding* includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430–3(c).

* * * * *

Par. 12. Section 301.7430–4 is amended by:

1. Removing the language "$75" from paragraph (b)(3)(i) and adding ", in the case of proceedings commenced after July 30, 1996, $110" in its place.
2. Revising paragraph (b)(3)(ii).
3. Removing the language "$75" from the first, second, and third sentences of paragraph (b)(3)(iii)(B) and adding "$110" in its place.
4. Removing the language "$75" from paragraph (b)(3)(iii)(C) and adding "$110" in its place.
5. Removing the language "$75" from the third sentence of the example in paragraph (b)(3)(iii)(D) and adding "$110" in its place.
6. Removing the language "$75" from the second and third sentences of paragraph (c)(2)(ii) and adding "$110" in its place.

The revision reads as follows:

§ 301.7430–4 Reasonable administrative costs.

* * * * *

(b) * * *

(3) * * *

(ii) *Cost of living adjustment.* The IRS will make a cost of living adjustment to the $110 per hour limitation for fees incurred in any calendar year beginning after December 31, 1996. The cost of living adjustment will be an amount equal to $110 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (substituting "calendar year 1995" for "calendar year 1992" in section 1(f)(3)(B)). If the dollar limitation as adjusted by this cost-of-living increase is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

* * * * *

Par. 13. Section 301.7430–5 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (c)(3).

The addition and revision read as follows:

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party only if—

(1) The position of the IRS was not substantially justified;

(2) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

* * * * *

(c) * * *

(3) *Presumption.* If the IRS did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the IRS, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (c)(3), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if issued to the taxpayer, private letter rulings, technical advice memoranda, and determination letters. Also, for purposes of this paragraph (c)(3), the term *administrative proceeding* includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430–3(c).

* * * * *

Par. 14. Section 301.7430–6 is revised to read as follows:

§ 301.7430–6 Effective date.

Sections 301.7430–2 through 301.7430–6, other than §§ 301.7430–2 (b)(2), (c)(3)(i)(B), (c)(3)(ii)(C), and (c)(5); §§ 301.7430–4 (b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430–5 (a) and (c)(3), apply to claims for reasonable administrative costs filed with the IRS after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is applicable March 23, 1993. Section 301.7430–0, §§ 301.7430–2 (b)(2), (c)(3)(i)(B), and (c)(3)(ii)(C); §§ 301.7430–4 (b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430–5 (a) and (c)(3) are applicable for administrative proceedings commenced after July 30, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32380 Filed 12–31–96; 8:45 am]

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26 CFR Parts 1 and 602

[REG–209494–90]

RIN 1545–A051

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 41 of the Internal Revenue Code of 1986 describing when computer software which is developed by (or for the benefit of) a taxpayer primarily for the taxpayer's internal use can qualify for the credit for increasing research activities. The proposed regulations reflect a change to section 41 made by the Tax Reform Act of 1986. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of topics to be discussed at the public hearing scheduled for May 13, 1997 must be received by April 22, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209494–90), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209494–90), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lisa J. Shuman or Robert B. Hanson, 202–622–3120; concerning submissions and the hearing, Christina Vasquez, 202–622–7180 (not toll-free numbers).

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SUPPLEMENTARY INFORMATION:

Background

Section 41 of the Internal Revenue Code provides a credit against tax for increasing research activities. Eligibility for the credit is determined in part on the definition of *qualified research* under section 41(d)(1). Section 231 of the Tax Reform Act of 1986 (the 1986 Act), 1986–3 C.B. 1, 87, established a new definition of *qualified research* for purposes of the research credit. Qualified research was narrowed to require that research be undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in developing a new or improved business component of the taxpayer. In addition, research is eligible for the credit only if substantially all of the activities of the research constitute elements of a process of experimentation for a new or improved function, performance, or reliability or quality. Treasury and the IRS request comments on the appropriate explanation of the terms used in the definition of qualified research under the 1986 Act, in particular, the term *process of experimentation*.

Section 231 of the 1986 Act also specified that expenditures incurred in certain research, research-related, and non-research activities are to be excluded from eligibility for the credit without reference to the general requirements for credit eligibility. Under section 41(d)(4)(E) of the Code, except to the extent provided in regulations, qualified research does not include research with respect to computer software developed by (or for the benefit of) the taxpayer primarily for the taxpayer's own use (internal-use software), other than for use in (1) an activity which constitutes qualified research, or (2) a production process whose development meets the requirements in section 41(d)(1) for qualified research (as where the taxpayer is developing robotics and software for the robotics for use in operating a manufacturing process, and the taxpayer's research costs of developing the robotics are eligible for the credit).

The legislative history indicates that Congress intended to limit the credit for the costs of developing internal-use software to software meeting a high threshold of innovation. In particular, Congress intended that regulations would permit internal-use software to qualify for the credit only if, in addition to satisfying the general requirements for credit eligibility, the taxpayer can establish that the following three-part test is satisfied: the software is innovative (as where the software results in a reduction in cost, or improvement in speed, that is substantial and economically significant); the software development involves significant risk (as where the taxpayer commits substantial resources to the development of the software and there is substantial uncertainty, because of technical risk, that such resources would not be recovered in a reasonable period of time); and the software is not commercially available for use by the taxpayer (as where the software cannot be purchased, leased, or licensed and used for the intended purpose without modifications that would satisfy the first two requirements). See H.R. Rep. No. 841, 99th Cong., 2d Sess. II–73. Thus, Congress did not intend that the three-part test in the legislative history would apply in lieu of the general requirements for credit eligibility but, rather, intended that the general requirements for credit eligibility of section 41(d) also would have to be satisfied. See H.R. Rep. No. 841 at II–73.

The legislative history indicates, however, that Congress did not intend the internal-use software exclusion in section 41(d)(4)(E) to apply to research related to the development of a new or improved package of software and hardware developed as a single product of which the software is an integral part, and that is used directly by the taxpayer in providing technological services to customers in its trade or business (as where a taxpayer develops together a new or improved high technology medical or industrial instrument containing software that processes and displays data received by the instrument, or where a telecommunications company develops a package of new or improved switching equipment plus software to operate the switches). See H.R. Rep. No. 841 at II–74.

Congress intended that regulations incorporating the three-part test in the legislative history as an exception to the exclusion from the definition of qualified research under section 41(d)(4)(E) would be effective on the same date section 41(d)(4)(E) became effective. In Notice 87–12 (1987–1 C.B. 432), the IRS stated that regulations to be issued under section 41(d)(4)(E) would be effective for taxable years beginning after December 31, 1985.

Explanation of Provisions

The proposed regulations follow the legislative history and provide that internal-use software that meets the general requirements of section 41(d), is innovative, involves significant economic risk, and is not commercially available for use by the taxpayer is not excluded from eligibility for the research credit under section 41(d)(4)(E). Under the proposed regulations, this is a facts and circumstances test. Treasury and the IRS request comments on facts and circumstances, other than those factors enumerated in the legislative history, to be considered in determining whether internal-use software satisfies the three-part test.

Proposed Effective Dates

The amendments are proposed to be effective for taxable years beginning after December 31, 1985.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 13, 1997, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit (in the manner described in the **ADDRESSES** portion of this preamble) comments and an outline of the topics to be discussed and the time to be devoted to each topic by April 22, 1997.

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A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.41–4 also issued under 26 U.S.C. 41(d)(4)(E). * * *

Par. 2. Section 1.41–0 is amended by revising the entry for § 1.41–4 to read as follows:

§ 1.41–0 Table of contents.

* * * * *

§ 1.41–4 Qualified research for taxable years beginning after December 31, 1985.

(a) through (d) [Reserved].
(e) Internal-use computer software.
(1) General rule.
(2) Requirements.
(3) Computer software and hardware developed as a single product.
(4) Primarily for internal use.
(5) Special rule.
(6) Application of special rule.
(7) Effective date.

* * * * *

Par. 3. Section 1.41–4 is revised to read as follows:

§ 1.41–4 Qualified research for taxable years beginning after December 31, 1985.

(a) through (d) [Reserved].

(e) *Internal-use computer software*—(1) *General rule.* Research with respect to computer software that is developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use is eligible for the research credit only if the software satisfies the requirements of paragraph (e)(2) of this section. Generally, research with respect to computer software is not eligible for the research credit where software is used internally, for example, in general and administrative functions (such as payroll, bookkeeping, or personnel management) or in providing noncomputer services (such as accounting, consulting, or banking services).

(2) *Requirements.* The requirements of this paragraph (e)(2) are—

(i) The software satisfies the requirements of section 41(d)(1);

(ii) The software is not otherwise excluded under section 41(d)(4) (other than section 41(d)(4)(E)); and

(iii) One of the following conditions is met—

(A) The taxpayer uses the software in an activity that constitutes qualified research (other than the development of the internal-use software itself);

(B) The taxpayer uses the software in a production process that meets the requirements of section 41(d)(1); or

(C) The software satisfies the special rule of paragraph (e)(5) of this section.

(3) *Computer software and hardware developed as a single product.* This paragraph (e) does not apply to the development costs of a new or improved package of computer software and hardware developed together by the taxpayer as a single product, of which the software is an integral part, that is used directly by the taxpayer in providing technological services in its trade or business to customers. In these cases, eligibility for the research credit is to be determined by examining the combined hardware-software product as a single product.

(4) *Primarily for internal use.* All relevant facts and circumstances are to be considered in determining if computer software is developed primarily for the taxpayer's internal use. If computer software is developed primarily for the taxpayer's internal use, the requirements of this paragraph (e) apply even though the taxpayer intends to, or subsequently does, sell, lease, or license the computer software.

(5) *Special rule.* Computer software satisfies the special rule of this paragraph (e)(5) only if the taxpayer can establish that—

(i) The software is innovative (as where the software results in a reduction in cost, or improvement in speed, that is substantial and economically significant);

(ii) The software development involves significant economic risk (as where the taxpayer commits substantial resources to the development and there is a substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period); and

(iii) The software is not commercially available for use by the taxpayer (as where the software cannot be purchased, leased, or licensed and used for the intended purpose without modifications that would satisfy the requirements of paragraphs (e)(5) (i) and (ii) of this section).

(6) *Application of special rule.* In determining if the special rule of paragraph (e)(5) of this section is satisfied all of the facts and circumstances are considered. The special rule allows the costs of developing internal-use software to be eligible for the research credit only if the software meets a high threshold of innovation. The facts and circumstances analysis takes into account only the results attributable to the development of the new or improved software independent of the effect of any modifications to related hardware or other software. The weight given to any fact or circumstance will depend on the particular case.

(7) *Effective date.* This paragraph (e) is applicable for taxable years beginning after December 31, 1985.

§§ 1.41–0A through 1.41–8A [Removed]

Par. 4. Sections 1.41–0A through 1.41–8A and the undesignated centerheading preceding these sections are removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (c) is amended by removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.41–4A	1545–0074
1.41–4 (b) and (c)	1545–0074
. . . . .	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96–32671 Filed 12–31–96; 8:45 am]
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26 CFR Part 53

[REG–247862–96]

RIN 1545–AU66

Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing regulations that provide that disqualified persons and organization managers liable for section 4958 excise taxes are required to file Form 4720. The regulations also specify the filing date for returns for the period to which the new excise taxes apply retroactively. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by April 2, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–247862–96), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–247862–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax—regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Phyllis Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Foundation and Similar Excise Taxes Regulations (26 CFR part 53) relating to sections 6011 and 6071. The final regulations contain rules relating to the requirement of a return to accompany payment of section 4958 excise taxes; the temporary regulations prescribe the time for filing that return.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

These rules were first published in Notice 96–46 (1996–39 I.R.B. 7) (September 23, 1996). The new section 4958 excise taxes were added by section 1311 of the Taxpayer Bill of Rights 2, Public Law 104–168, 110 Stat. 1452, enacted July 30, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Phyllis Haney, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 53.6071–1 is amended by adding paragraph (f) to read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(f) [The text of paragraph (f) of this section is the same as the text of § 53.6071–1T(f) published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32377 Filed 12–31–96; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–191, RM–8088]

Television Broadcasting Services; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies the application for review jointly filed by the University of Southern Colorado and Sangre De Cristo Communications, Inc. of the *Report and Order*, 60 FR 37041 (July 19, 1995) in this proceeding which denied petitioners' joint petition to exchange their television channel assignments. The Commission determined that its rules did not require an exchange under the circumstances and that the requested exchange would not be granted because a short-spacing waiver granted to the noncommercial licensee KTSC(TV), largely on the grounds that it would extend noncommercial service, was not appropriate for the commercial licensee (KOAA-TV).

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 93–191, adopted November 21, 1996, and released December 16, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–33340 Filed 12–31–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961217360–6360–01; I.D. 112596C]

RIN 0648–AI62

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limits for Tanner Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 41 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This rule would adjust the prohibited species catch (PSC) limits for Tanner crab (*Chionoecetes bairdi*) (*C. bairdi*) in Zones 1 and 2 of the Bering Sea. This measure is necessary to protect the *C. bairdi* stock in the Bering Sea, which has declined to a level that presents a serious conservation problem. Changes to the previously proposed 1997 *C. bairdi* prohibited species bycatch allowances for the Bering Sea and Aleutian Islands management area (BSAI) trawl fisheries are also proposed to reflect the proposed adjustment to the *C. bairdi* PSC limits. This measure is intended to accomplish the objectives of the FMP.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.;* Magnuson-Stevens Act) and is implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Bering Sea crab stocks currently are at relatively low levels, based on recent NMFS bottom trawl survey data. Recruitment and exploitable biomass of Bering Sea Tanner crab (*C. bairdi*) stocks are near historically low levels. The 1995 Tanner crab season produced only 4.5 million lb (2,017 mt) for the 196 vessels participating. This amount is the lowest catch since the fishery reopened in 1988. Preliminary 1996 survey data indicate that the stock decline will continue.

Crab is a bycatch species in the groundfish fisheries. An objective of the FMP is to minimize the impact of groundfish fisheries on crab and other prohibited species, while providing for rational and optimal use of the region's fishery resources. All gear types used to catch groundfish have some potential to catch crab incidentally, but the large majority of crab bycatch occurs in trawl fisheries.

The Council initiated several analyses in January 1995 to examine measures to further limit crab bycatch in the groundfish fisheries. Proposed alternatives included a reduction of existing crab bycatch limits (with an option that the limits be based on crab abundance) and establishment of bycatch limits for snow crab (*C. opilio*).

At its January 1996 meeting, the Council requested that a suite of crab bycatch management measures be examined in one package, so that the impacts of these measures could be analyzed in a comprehensive manner. An additional option of establishing PSC limits for Tanner crab based on abundance thresholds was proposed by the Alaska Crab Coalition in January 1996 and was added to the analysis at the request of the Council.

At its April 1996 meeting, the Council modified the alternatives to include reduced PSC limits for Tanner crab and snow crab. In June 1996, the Council formed an industry work group to review proposed PSC limits for Tanner and snow crab. This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met August 29–30, 1996, and came to a consensus on PSC limits for *C. bairdi* crab. The agreement negotiated by affected industry groups resulted in a proposal for an annual specification of PSC limits for *C. bairdi* based on the total abundance of *C. bairdi* as indicated by the most recent NMFS bottom trawl survey.

At its September 1996 meeting, the Council endorsed the industry work group agreement and took final action on *C. bairdi* PSC limits under Amendment 41 to the FMP. The Council also encouraged the industry work group to continue to pursue an agreement for an appropriate PSC limit for *C. opilio* crab that could be presented to the Council in the near future. Adjustment of the *C. bairdi* PSC Limit.

Amendment 41 would modify the current *C. bairdi* PSC limits of 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2 and provide for the annual specification of the revised PSC limits, based on the total estimated abundance of *C. bairdi* as follows:

Zone	Abundance	PSC limit (number of animals)
1	0–150 million crabs.	0.5% of abundance.
	150–270 million crabs.	750,000.
	270–400 million crabs.	850,000.
	over 400 million crabs.	1,000,000.
2	0–175 million crabs.	1.2% of abundance.
	175–290 million crabs	2,100,000.
	290–400 million crabs.	2,550,000.
	over 400 million crabs.	3,000,000.

Based on the abundance of *C. bairdi* estimated from the 1996 NMFS trawl survey (185 million crabs), the PSC limit for *C. bairdi* in 1997 would be 750,000 crabs in Zone 1 and 2,100,000 crabs in Zone 2. Details of and justification for the proposed PSC limit adjustments under Amendment 41 are as follows:

C. bairdi PSC limits for U.S. trawl vessels in specified BSAI fisheries were first established in 1986 by emergency

rule (51 FR 20652, June 6, 1986) and extended in 1987 under Amendment 10 to the FMP (52 FR 8592; March 19, 1987). In 1987 and 1988, the *C. bairdi* PSC limits were the subject of negotiations between groundfish, crab, and halibut fishery representatives under the premise that measures to limit bycatch of one prohibited species may impact the bycatch rates of another prohibited species. Determination of the PSC limits began with the best available scientific information on the abundance and distribution of the specified crab and halibut species and their rate of bycatch in fisheries for certain species of groundfish. These determinations were reviewed and debated in meetings of the Council's Bycatch Committee. Based on this process, the *C. bairdi* PSC limits were established in 1989 at 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2 (54 FR 32642; August 9, 1989). Regulations at § 679.21(e) provide for the apportionment of these PSC limits among trawl fisheries during the annual specification process as fishery-specific bycatch allowances. When a fishery attains its specified bycatch allowance, the zone is closed to that fishery.

The bycatch of *C. bairdi* in the 1995 BSAI groundfish fisheries totaled 2.3 million crabs (923,000 in Zone 1 and approximately 1.3 million in Zone 2), which is reduced significantly from 4.3 million in 1992. About 98 percent of the *C. bairdi* bycatch occurs in the trawl fisheries. The yellowfin sole fishery accounts for most of the Tanner crab bycatch, followed by the rock sole/flathead sole/other flatfish fisheries. Bycatch is highest in NMFS statistical area 509 in Zone 1 and statistical area 513 in Zone 2. Large numbers of Tanner crab also are consistently taken in statistical areas 517 and 521 in Zone 2. Data indicate that the recent level of Tanner crab bycatch in trawl fisheries (1992–95 average of 3.06 million) is high relative to the 1978–87 average of 2.06 million.

The Council's proposed adjustment to the *C. bairdi* PSC limits is an effort to protect further the stocks of Bering Sea Tanner crab by limiting the incidental take of this species when the stock is depressed. The proposed criteria for the annual specification of the *C. bairdi* PSC limits were developed by the Council-appointed industry work group. Although the industry work group did not make recommendations for *C. opilio* PSC limits, the group will meet in the future and attempt to reach consensus on this issue.

Economic Considerations

Estimates based on the Bering Sea simulation model using 1993 and 1994 fishery data indicate that the proposed management measure would lead to a slight decrease in the net benefits to the Nation over the status quo. The approximately $1.2 million decrease in net benefits using 1993 data and approximately $2.2 million decrease in net benefits using 1994 data would have resulted in decreases of 0.4 percent and a 0.8 percent, respectively, of the net benefits to the Nation, had the proposed measure been effective during those years. However, given a certain level of uncertainty inherent in the data, and in the model procedures, these predicted changes in net benefits to the Nation are not great enough to indicate an actual change from the status quo.

Implementation of the proposed measure, along with area closures proposed to protect red king crab under Amendment 37 (61 FR 65985, December 16, 1996; final rule cite), may have cumulative effects on groundfish trawl fisheries. As noted by the Council's Scientific and Statistical Committee, time and area closures cause temporal and spatial shifts in groundfish fishery effort. With each additional bycatch restriction, options for the groundfish trawl fleets are reduced, resulting in effort shifts that could increase the bycatch of other prohibited species. However, these tradeoffs will occur with any protection closure that may be implemented. Proposed Changes to the Proposed 1997 Prohibited Species Bycatch Allowances for the BSAI Trawl Fisheries.

As part of the annual BSAI groundfish specification process, the Council recommended PSC allowances for the BSAI trawl fisheries at its September 1996 meeting. NMFS published in the **Federal Register** the proposed 1997 BSAI groundfish specifications that include the PSC allowances for the trawl fisheries (61 FR 60076, November 26, 1996). Table 7 of the proposed 1997 PSC allowances for the BSAI trawl fisheries would be amended as follows to reflect the proposed adjustments to the *C. bairdi* PSC limits:

TABLE 7.—PROPOSED 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES OF C. BAIRDI, TANNER CRAB FOR THE BSAI TRAWL FISHERIES

Trawl fisheries	Zone 1	Zone 2
	(number)	
Yellowfin sole	187,500	1,071,000
Rocksole/flathead sole/otherflat	318,750	357,000

TABLE 7.—PROPOSED 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES OF C. BAIRDI, TANNER CRAB FOR THE BSAI TRAWL FISHERIES—Continued

Trawl fisheries	Zone 1	Zone 2
Turbot/arrowtooth/sablefish	0	0
Rockfish	0	6,300
Pacific cod	187,500	182,700
Pollock/Atka mackerel/other	56,250	483,000
Total	750,000	2,100,000

These fishery bycatch allowances reflect the same relative 1997 fishery apportionments of the *C. bairdi* PSC limits as those proposed by the Council at its September 1996 meeting.

Classification

This proposed rule to implement Amendment 41 has been preliminarily determined to be adequate to put before the public for comment. At this time, NMFS has not determined that the FMP amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. In 1995 there were 156 trawl vessels in the BSAI. Those trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this proposed action. Most catcher vessels harvesting groundfish off Alaska are considered small entities and would be affected by the reduced *C. bairdi* PSC limits. The economic impact on small entities that would result from reduced PSC limits could result in a reduction in annual gross revenues of more than 5 percent and would have a significant economic impact on a substantial number of small entities. The 132 trawl catcher vessels that harvested BSAI groundfish in 1993 are considered small entities. Many of these vessels could be affected by the proposed reduced PSC limits, based on the best available information. A copy of this analysis is

available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.21, paragraph (e)(1)(iii) is removed, paragraphs (e)(1)(iv) through (vii) are redesignated as paragraphs (e)(1)(iii) through (vi), respectively, and paragraph (e)(1)(ii) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * * * *

(e) * * *

(1) * * *

(ii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* Tanner crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* Tanner crab as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(ii)(A) and (B) of this section.

(A) *Zone 1.* When the total abundance of *C. bairdi* Tanner crabs in Zone 1 is:

(*1*) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance.

(*2*) Over 150 million to 270 million animals, the PSC limit will be 750,000 animals.

(*3*) Over 270 million to 400 million animals, the PSC limit will be 850,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 1,000,000 animals.

(B) *Zone 2.* When the total abundance of C. bairdi Tanner crabs in Zone 2 is:

(*1*) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance.

(*2*) Over 175 million to 290 million animals, the PSC limit will be 2,100,000 animals.

(*3*) Over 290 million to 400 million animals, the PSC limit will be 2,550,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 3,000,000 animals.

* * * * *

[FR Doc. 96–33369 Filed 12–30–96; 9:45 am]

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Notices

Federal Register
Vol. 62, No. 1
Thursday, January 2, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by March 3, 1997 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave., S.W., Washington, DC 20250, Telephone (202) 720–9653.

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, "Planning and Performing Construction and Other Development."

OMB Number: 0575–0042.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables the Rural Housing Service to effectively administer the policies, methods and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary Of Agriculture to extend financial assistance to construct, improve, repair, replace or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe and sanitary living conditions and adequate farm buildings and other structures in rural areas.

Section 506 of the Act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban-Rural Recovery Act of 1983 amended Section 509 (a) and Section 515 to require residential buildings and related facilities comply with the standards prescribed by the Secretary of Agriculture, the standards prescribed by the Secretary of Housing and Urban Development, or the standards prescribed in any of the nationally recognized model building codes.

Similar authorizations are contained in Section 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended.

In several sections of both acts, loan limitations are established as percentages of development cost, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken economically and will not be of elaborate or extravagant design or materials.

Other information collection is required to conform to numerous Public Laws applying to all federal agencies, such as: Civil Rights Acts of 1964 and 1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act; and to conform to Executive Orders governing use of federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies loan/grant and to monitor the prudent use of federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 29,369.

Estimated Number of Responses per Respondent: 14.03.

Estimated Total Annual Burden on Respondents: 139,632 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720–9734.

Comments

Comments and invited on: (a) whether the proposed collection of information is necessary for the proper performance of the function of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, Washington, DC 20250–0753. All responses to this notice will be summarized and included in the request for OMB approval. All comment will also become a matter of public record.

Dated: December 20, 1996.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

Dated: December 20, 1996.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: December 20, 1996.

Wally Beyer,

Administrator, Rural Utilities Service.

Dated: December 23, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–33327 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–XV–U

Federal Crop Insurance Corporation

Termination of the Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of termination.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice that it will terminate the current (1995/1997) Standard Reinsurance Agreement effective as of June 30, 1997.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: E. Heyward Baker, Acting Director, Reinsurance Services Division, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, Room 6727–S, Washington, D.C. 20250, telephone (202) 720–4232.

SUPPLEMENTARY INFORMATION: In accordance with section V.J. of the Standard Reinsurance Agreement, this action is necessary to provide FCIC sufficient time to address proposed changes for the 1998 Standard Reinsurance Agreement, including those recommended by the crop insurance industry and the Office of Management and Budget and proposed in the President's 1998 budget proposal. FCIC also intends to address reinsurance for Crop Revenue Coverage and catastrophic risk protection policies.

Accordingly, the FCIC herewith gives notice that it will terminate the current (1995/1997) Standard Reinsurance Agreement effective June 30, 1997.

Signed in Washington, D.C. on December 27, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–00059 Filed 12-30-96; 12:08 pm]

BILLING CODE 3410–FA–P

Forest Service

Revision of the Land and Resource Management Plan for the Cibola National Forest and Kiowa, Rita Blanca, Black Kettle and McClellan Creek National Grasslands, Located in Colfiax, Harding, Mora, Union, Catron, Sierra, Socorro, Bernalillo, Sandoval, Lincoln, Torrance, Valencia, McKinley and Cibola Counties, NM; Gray, Hemphill, and Dallam Counties, Texas; Roger Mills and Cimarron Counties, OK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), the Regional Forester for the Southwestern Region gives notice of the agency's intent to prepare an Environmental Impact Statement for the Revised Cibola National Forest Land and Resource Management Plan (Forest Plan). According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10-year cycle. The existing Cibola Forest Plan was approved on July 15, 1985, and has eight amendments.

The responsible official for approving the Forest Plan revision is Charles W. Cartwright, Jr., Regional Forester, Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102. The Forest Supervisor, Cibola National Forest, is delegated responsibility for preparing the Environmental Impact Statement.

DATES: Comments concerning the scope of the analysis should be received in writing by March 11, 1997.

ADDRESSES: Send written comments to Jeanine A. Derby, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico, 87113–1001.

FOR FURTHER INFORMATION CONTACT: Jimmy E. Hibbetts, Planning Staff or Barney Lyons, Team Leader, (505) 761–4650.

SUPPLEMENTARY INFORMATION: The Land and Resource Management Plan defines the long-term direction for managing the Cibola National Forest and the Kiowa, Rita Blanca, Black Kettle and McClellan Creek National Grasslands. The revised Forest Plan will take an ecological approach to achieve multiple-use management of the National Forest and National Grasslands.

The Cibola National Forest identified revision topics through a process by examining the Forest Plan and determining items that need to be changed. The Five Year Evaluation and Monitoring Reports for 1986 to 1990 and 1991 to 1996 were also used to identify revision topics. This process included a number of public meetings, newsletters and meetings with local government officials and interest groups. Over 3000 letters were sent to Congressional, governmental, and tribal agencies, organizations, businesses, and individuals. These contacts all aided in identifying the revision topics. Criteria was used to screen potential changes into five possible categories of action:

Revision Topics
Implementation Topics
Legislation Topics
Topics for responsible Government Entities
Research Topics

The Revision Topics are those areas of the Forest Plan, identified through monitoring, evaluation and public involvement, where a potential need for change was identified. The Revision Topics are:

Balancing Land Capability with Resource Demand
Watershed Condition Assessment and Water Uses, Rights, Quality, and Availability Assessment
Biological Diversity
Native American Collaboration
Land Grant Community Collaboration
Land Uses
Oil and Gas Leasing
Population Growth and Social Demographics
Rural Community Economics

Scenery Management Systems
Urban Interface
Wilderness Management
Recreation Management
Fire Management
Response to Legal Mandates
Access Management
Range Management

The Cibola National Forest intends to examine the primary decisions made in the Forest Plan by addressing the preliminary issues and focusing on revision topics. The following five significant preliminary issues have been identified through public comments:

Biological Consequences of Forest Management
Livestock Grazing
Recreation/Wilderness/Travel Management
Watershed Conditions
Balancing Land Capability with Resources Demands

The primary decisions to be made in the Forest Plan are:

(a) Establishment of Forest-wide multiple-use goals and objectives, including a description of the desired condition of the National Forest and Grasslands and identification of the quantities that are expected to be produced or provided during the RPA planning period (36 CFR 219.11(b)).

(b) Establishment of multiple-use prescriptions and associated standards and guidelines for each management area including proposed and probable management practices such as planned timber sale programs (36 CFR 219.11(c)).

(c) Establishment of monitoring and evaluation requirements (36 CFR 219.11(d)).

(d) Establishment of Forest-wide standards and guidelines to fulfill the requirements of 16 U.S.C. 1604 (The National Forest Management Act) applying to the future activities (resource integration requirements (36 CFR 219.13 through 219.27)).

(e) Establishment of land administratively available for oil and gas leasing and the stipulations that must be applied to specific lease areas in order that the Bureau of Land Management can authorize leases for oil and gas production, subject to review (36 CFR 228.102(d) and 228.102(e)).

(f) Establishment of land suitable for timber production, grazing capability and suitability and other resource activities (16 USC 1604(k) 36 CFR 29.14, 219.15, 219.20 and 219.21).

(g) Recommendations for the establishment of wilderness and other special designations such as research natural areas (36 CFR 219.17(a) and 219.25).

Alternatives required by implementing regulations of the National Forest Management Act will be considered during the planning process. An alternative addressing the Resource Planning Act program tentative resource objectives, a "no- action" alternative that reflects the current level of goods and services, and a wide range of alternatives will be developed to respond to issues, management concerns or resource opportunities identified during the planning process (40 CFR 1501.7, 1502.14(c)).

The Forest Service continues to invite comments and suggestions from Federal, State, and local agencies, Native American tribes, individuals and organizations on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. Public meetings will be conducted throughout the planning process and newsletters will be sent out periodically.

Forest Service personnel will describe and explain the preliminary alternatives the agency has identified and the process of environmental analysis and disclosure to be followed. Written comments are encouraged. Additional meetings with individuals or groups may be arranged by contacting Karen Carter, Public Affairs Officer, (505) 761–4650.

The Draft Environmental Impact Statement and proposed Revised Forest Plan should be available for public review in May 1999. After a minimum comment period of 90 days, the Final Environmental Impact Statement and Revised Forest Plan should be completed by March 2000.

The 90 day public comment period on the Draft Environmental Impact Statement will commence on the day the Environmental Protection Agency publishes a "Notice of Availability" in the **Federal Register**.

It is very important that those interested in this proposed action participate at that time. To be the most helpful, written comments on the Draft Environmental Impact Statement should be as specific as possible and may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statements (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the national Environmental Policy Act at 40 CFR 1503.3). Please note that comments you make on the Draft Environmental Impact Statement will be regarded as public information.

In addition, Federal court decisions have established that reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Environmental objections that could have been raised at the draft stage may be waived or dismissed by the courts if not raised until after completion of the Final Environmental Impact Statement (*City of Angoon* v. *Hodel*, (9th Circuit, 803 F.2d 1018, 1022 (1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

Dated: December 26, 1996.

Robert V. Clayton,
Acting Regional Forester.

[FR Doc. 96–33331 Filed 12–31–96; 8:45 am]
BILLING CODE 3410–11–M

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on January 16, 1997, in Newport, Oregon, at the Hatfield Marine Science Center (Meeting Room 9/Fireside Room), 2030 S. Marine Science Drive, Newport, OR. The meeting will begin at 9:00 a.m. and continue until 3:45 p.m. Agenda items to be covered include: (1) evaluation of the PAC (where we are and future direction), (2) Adaptive Management Area Subcommittee recommendations, and (3) open public forum. All Oregon Coast Provincial Advisory Committee meetings are open to the public. An "open forum" is scheduled at 9:15 a.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest

Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: December 20, 1996.

James R. Furnish,

Forest Supervisor.

[FR Doc. 96–33318 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designations for the Kankakee (IL) Area and the States of California and Washington

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Kankakee Grain Inspection, Inc. (Kankakee), the California Department of Food and Agriculture (California), and the Washington Department of Agriculture (Washington) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1997.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1996, **Federal Register** (61 FR 40191), GIPSA asked persons interested in providing official services in the geographic areas assigned to Kankakee, California, and Washington to submit an application for designation. Applications were due by September 2, 1996. Kankakee, California, and Washington, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Kankakee, California, and Washington were the only applicants for the respective areas, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Kankakee, California, and Washington are able to provide official services in the geographic areas for which they applied. Effective February 1, 1997, and ending January 31, 2000, Kankakee, California, and Washington are designated to provide official services in the geographic areas specified in the August 1, 1996, **Federal Register**.

Interested persons may obtain official services by contacting Kankakee at 815–932–2851, California at 916–654–0743, and Washington at 360–902–1827.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 23, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–33325 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Jamestown (ND), Sioux City (IA), and Tischer (IA) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Grain Inspection, Inc. (Jamestown), will end July 31, 1997, according to the Act, and the designations of Sioux City Inspection and Weighing Service Company (Sioux City), and A.V. Tischer and Son, Inc. (Tischer), will end June 30, 1997, according to the Act. GIPSA is asking persons interested in providing official services in the Jamestown, Sioux City, and Tischer areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before January 31, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Jamestown, main office located in Jamestown, North Dakota, to provide official inspection services under the act on August 1, 1994. GIPSA designated Sioux City, main office located in Sioux City, Iowa, and Tischer, main office located in Fort Dodge, Iowa, to provide official inspection services under the act on July 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Jamestown ends on July 31, 1997, according to the act, and the designations of Sioux City and Tischer end on June 30, 1997.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the State of North Dakota, is assigned to Jamestown.

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County; the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line

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northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Coop Elevator, Fessenden, Farmers Union Elevator, and Manfred Grain, both in Manfred, all in Wells County (located inside Grand Forks Grain Inspection Department, Inc.'s, area); and Norway Spur, and Oakes Grain, both in Oakes, Dickey County (located inside North Dakota Grain Inspection Service, Inc.'s, area).

Jamestown's assigned geographic area does not include the following grain elevators inside Jamestown's area which have been and will continue to be serviced by the following official agency: Minot Grain Inspection, Inc.: Benson Quinn Company, Underwood; and Missouri Valley Grain Company, Washburn, all in McLean County.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the States of Iowa, Nebraska, and South Dakota, is assigned to Sioux City.

In Iowa:

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59;

Bounded on the East by U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 south to the southern Sac County line;

Bounded on the South by the Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and

Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Nebraska:

Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20), and Thurston Counties.

In South Dakota:

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River;

Bounded on the East by the Big Sioux River; and

Bounded on the South and West by the Missouri River.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the State of Iowa, is assigned to Tischer.

Bounded on the North by Iowa-Minnesota State line from U.S. Route 71 east to U.S. Route 169;

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20; U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; and

Bounded on the West by U.S. Route 71 north to the Iowa-Minnesota State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Co-op Elevator, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s, area); and West Bend Elevator Co., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County (located inside D. R. Schaal Agency's area).

Interested persons, including Jamestown, Sioux City, and Tischer, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Jamestown geographic area is for the period beginning August 1, 1997, and ending July 31, 2000. Designation in the Sioux City and; Tischer geographic areas is for the period beginning July 1, 1997, and ending June 30, 2000. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 23, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–33326 Filed 12–31–96; 8:45 am]

BILLING CODE 3410–EN–F

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Tuesday and Wednesday, January 14–15, 1997 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 14, 1997

9:00–11:00 AM Ad Hoc Committee on Bylaws and Statutory Review
11:00–Noon Planning and Budget Committee
1:30–5:00 PM ADAAG Revision—Discussion of Issues (Closed Meeting)

Wednesday, January 15, 1997

8:30–10:00 AM Long-Range Planning Group
10:00–Noon Technical Programs Committee
1:30–3:30 PM Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the November 13, 1996 Board Meeting.
- Planning and Budget Committee Report.
- Technical Programs Committee Report.
- Ad Hoc Committee on Bylaws and Statutory Review Report.
- Play Facilities Regulatory Negotiation Committee Report.
- ADAAG Revision-Rulemaking Process and Schedule.
- Telecommunications Access Advisory Committee Report.

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All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

David Capozzi,

Director, Office of Technical and Information Services.

[FR Doc. 96–33125 Filed 12–31–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 960924272–6272–01]

RIN 0693–ZA13

Announcing Development of a Federal Information Processing Standard for Advanced Encryption Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A process to develop a Federal Information Processing Standard (FIPS) for Advanced Encryption Standard (AES) incorporating an Advanced Encryption Algorithm (AEA) is being initiated by the National Institute of Standards and Technology (NIST). As the first step in this process, draft minimum acceptability requirements and draft criteria to evaluate candidate algorithms are being published for comment. Also announced for comment are draft submission requirements. An open, public workshop on the draft minimum acceptability requirements, evaluation criteria and submission requirements has also been scheduled. It is intended that the AES will specify an unclassified, publicly disclosed encryption algorithm capable of protecting sensitive government information well into the next century.

The purpose of this notice is to solicit views from the public, manufacturers, voluntary standards organizations, and Federal, state, and local government users so that their needs can be considered in the process of developing the AES.

DATES: Comments must be received on or before April 2, 1997.

The AES Evaluation Criteria/ Submission Requirements Workshop will be held on April 15, 1997, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Written comments should be sent to Director, Computer Systems Laboratory, Attn: FIPS for AES Comments, Technology Building, Room A231, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Electronic comments may be sent to AES@nist.gov.

Comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Records and Reference Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC, 20230.

The AES Criteria Workshop will be held at the Green Auditorium, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland. Copies of the comments submitted will be available at the Workshop. For planning purposes, advance registration is encouraged. To register, please fax your name, address, telephone, fax and e-mail address to 301–948–1233 (Attn: AES Criteria Workshop) by April 10, 1997. Registration will also be available at the door. The workshop will be open to the public.

FOR FURTHER INFORMATION CONTACT: Edward Roback, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899; telephone 301–975–3696 or via fax at 301–948–1233. Technical inquiries regarding the proposed draft evaluation criteria and draft submission requirements should be addressed to Miles Smid, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899; telephone 301–975–2938 or via fax at 301–948–1233.

SUPPLEMENTARY INFORMATION: This work effort is being initiated pursuant to NIST's responsibilities under the Computer Security Act of 1987, the Information Technology Management Reform Act of 1996, Executive Order 13011, and OMB Circular A–130.

NIST recognizes that many institutions, both within and outside the Federal Government, have considerable investments in their current installed base of encryption equipment implementing the Data Encryption Algorithm, specified in the Data Encryption Standard (DES, Federal Information Processing Standard 46–2). DES was first approved in 1977 and was most recently reaffirmed by the Secretary in 1993, until December 1998. In 1993 the following statement was included in the standard:

"At the next review (1998), the algorithm specified in this standard will be over twenty years old. NIST will consider alternatives which offer a higher level of security. One of these alternatives may be proposed as a replacement standard at the 1998 review."

It is NIST's review that a multi-year transition period will be necessary to move toward any new encryption standard and that DES will continue to be of sufficient strength for many applications. NIST will consult with all interested parties so that a smooth transition can be accomplished.

In order to provide a basis for the evaluation of encryption algorithms submitted to be considered as the AEA for incorporation into the FIPS for AES, evaluation criteria will be used to review submitted algorithms. Comments on the draft criteria (and, at the appropriate time, or candidate algorithms) from voluntary consensus standards organizations are particularly encouraged.

Proposed Draft Minimum Acceptability Requirements and Evaluation Criteria

The draft minimum acceptability requirements and evaluation criteria are:

A.1 AES shall be publicly defined.

A.2 AES shall be a symmetric block cipher.

A.3 AES shall be designed so that the key length may be increased as needed.

A.4 AES shall be implementable in both hardware and software.

A.5 AES shall either be (a) freely available or (b) available under terms consistent with the American National Standards Institute (ANSI) patent policy.

A.6 Algorithms which meet the above requirements will be judged based on the following factors:

(a) Security (i.e., the effort required to cryptanalyze),

(b) Computational efficiency,

(c) Memory requirements,

(d) Hardware and software suitability,

(e) Simplicity,

(f) Flexibility, and

(g) Licensing requirements.

Comments are being sought on these draft minimum acceptability criteria and evaluation criteria, suggestions for other criteria, and relative importance of each individual criterion in the evaluation process. Criteria will be finalized by NIST following the criteria workshop.

Proposed Draft Submission Requirements

In order to provide for an orderly, fair, and timely evaluation of candidate algorithm proposals, submission requirements will specify the procedures and supporting documentation necessary to submit a candidate algorithm.

B.1 A complete written specification of the algorithm including all necessary mathematical equations, tables, and parameters needed to implement the algorithm.

B.2 Software implementation and source code, in ANSI C code, which will compile on a personal computer. This code will be used to compare software performance and memory requirements with respect to other algorithms.

B.3 Statement of estimated computational efficiency in hardware and software.

B.4 Encryption example mapping a specified plaintext value into ciphertext.

B.5 Statement of licensing requirements and patents which may be infringed by implementations of this algorithm.

B.6 An analysis of the algorithm with respect to known attacks.

B.7 Statement of advantages and limitations of the submitted algorithm.

(end of draft submission requirements)

Since both the evaluation criteria and submission requirements have not yet been set, candidate algorithms should NOT be submitted at this time.

Dated: December 16, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–32494 Filed 12–31–96; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[Docket No. 960322092–6367–04; I.D. 122696A]

RIN 0648–ZA19

Gulf of Mexico Sustainable Fisheries Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to the Interjurisdictional Fisheries Act of 1986 (IFA), the Secretary of Commerce (Secretary) declared fishery resource disasters in the Northeast, Northwest, and the Gulf of Mexico (Gulf) on August 2, 1995. Emergency aid totaling $15 million was made available for the Gulf, $5 million of which has been committed for financial assistance to commercial fishermen who suffered uninsured fishing vessel or gear damage or loss caused by hurricanes, floods, or their aftereffects that occurred from August 22, 1992, through December 31, 1995. NMFS now proposes to allocate the remaining $10 million to the five Gulf states' fisheries resources agencies for projects or other measures designed to alleviate the long-term effects of the disasters on the Gulf's fishery resources and associated habitat. Pursuant to the IFA, NMFS must provide notice and an opportunity for public comment on any terms, limitations, and conditions that are established as prerequisites for receiving IFA Federal assistance funds. This notice describes those terms, limitations, and conditions, and requests public comment.

DATES: Comments must be submitted on or before January 30, 1997.

ADDRESSES: Comments regarding this proposed program should be sent to the National Marine Fisheries Service, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Buck Sutter, (813) 570–5324.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Secretary declared fishery resource disasters in the Pacific Northwest, New England, and the Gulf. With respect to the Gulf, the Secretary's disaster declaration (Declaration) cited multiple impacts. Non-point source nutrients and debris entering the Gulf as a result of the Mississippi River floods in 1993 and 1994 caused severe hypoxia, a condition where the excess nutrients react to deplete the water of necessary oxygen, which spread to massive areas in the Gulf and threatened marine life and coastal resources. The flood debris created underwater hazards for commercial fishermen who suffered damaged or lost gear and vessels. In addition, the Secretary cited hurricanes that harmed fisheries habitat and engendered substantial economic damage and social disruption. Because of these impacts, the Secretary made $15 million available for the Gulf of Mexico for disaster relief.

On June 10, 1996, NMFS published a final notice describing the Gulf of Mexico Fisheries Disaster Program (FDP), which committed up to $5 million of the available $15 million for direct grants to commercial fishermen who suffered uninsured fishing vessel or gear damage or loss caused by the hurricanes, floods, or their aftereffects (61 FR 29350, June 10, 1996; 61 FR 55132, Oct. 24, 1996).

Section 308(d) of the IFA allows the Secretary to help persons engaged in commercial fisheries by providing assistance indirectly through state and local government agencies. Therefore, the Secretary proposes to use the remaining $10 million in Gulf disaster assistance for projects or other measures to alleviate the long-term impacts on Gulf fishery resources and associated habitat from conditions cited in the August 2, 1995, Declaration. Because the impacts varied from state to state, a determination has been made to provide this assistance through the five Gulf state fisheries resources agencies, as they are in the best position to determine how the funds can be used.

This notice proposes the criteria that will be used by NOAA to fund state disaster assistance proposals and provides opportunity for public comment. NMFS will publish a final notice that will address public comments submitted on this notice and establish the final criteria for the state grants. States will also be notified and required to comply with all existing Federal assistance requirements. Once NMFS determines that a state's proposal(s) complies with all applicable terms, limitations, and conditions, NMFS will enter into a financial assistance agreement with that state for the administration of each project.

After consultations with appropriate state officials and review of available information regarding the impacts of disasters that occurred from August 23, 1992, through December 31, 1995, NMFS has decided upon the following apportionment of funds: Alabama—$1 million; Florida—$2.25 million; Louisiana—$4.5 million; Mississippi—$1 million; and Texas—$1.25 million.

I. Criteria

In order to be considered for funding, a state proposal must adhere to the following criteria:

1. The proposed project(s) must be consistent with the original intent of the Secretary's disaster declaration and the IFA (i.e., each project must address conditions resulting from nutrients and debris entering the Gulf as a result of floods and/or hurricanes or hurricane-strength storms from August 23, 1992, through December 31, 1995).

2. Projects must address the long-term benefit of the fishery resource and associated habitat and must seek to create healthy, sustainable fisheries in the Gulf of Mexico.

3. Projects must not duplicate existing Federal, state, or local projects. However, they may augment or allow the maintenance of effort of existing projects, provided that those projects are consistent with all other criteria. In other words, separate funds may be used to maintain existing projects.

4. Projects that primarily involve new data collection must show a clear relationship between that project and

long-term benefits to the fishery resource that are attainable without additional funding. A new data collection project that would not provide sufficient useful information to help Gulf fisheries unless the project received additional funding would not qualify under this program.

Projects that would qualify under these criteria might include restoration/development of hurricane or flood-damaged habitat, enhancement of stocks that declined due to hypoxia or habitat loss, or fishing capacity reduction projects to alleviate the excess capacity targeting the depleted stocks and to mitigate the financial harm suffered by fishermen who targeted these stocks.

II. Determinations and Administration

All state grant proposals will be reviewed by the Department of Commerce, NOAA, and NMFS. Final project selections will be made by NMFS ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations. If a proposal is accepted, NOAA will enter into a financial assistance agreement with the submitting state.

Catalogue of Federal Domestic Assistance

The Program is listed in the "Catalogue of Federal Domestic Assistance" under No. 11.452, Unallied Industry Projects.

Classification

This proposed program has been determined to be not significant for the purposes of E.O. 12866. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

I certify that this notice would not have a significant economic impact on a substantial number of small entities. Pursuant to this program, a total of $10 million will be divided among five states to design a program of assistance to eligible industry participants. As each state has flexibility to design its own implementation of the program, the funds to be allocated to each state are likely to be spent on numerous varied projects. Some projects might provide direct financial benefits to fishermen while other projects might involve environmental restoration and research, which are designed to benefit the fishery directly, and only indirectly benefit fishermen. Given the extensive universe of potential applicants, the limited funds available, and the wide range of potential projects, it is unlikely that 20 percent or more of the industry will be affected to an extent in excess of 5 percent of gross revenues. As the program is meant to benefit the industry, it is also unlikely that the action will precipitate a 10 percent increase in compliance cost for 20 percent or more of industry participants, or cause 2 percent of fishery participants to cease operations.

Therefore, an initial Regulatory Flexibility Act analysis was not prepared.

Authority: Public Law 99–659 (16 U.S.C. 4107 *et seq.*); Public Law 102–396; Public Law 104–134.

Dated: December 26, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–33368 Filed 12–31–96; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–198–000]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 26, 1996.

Take notice that on December 20, 1996, Gulf States Transmission Corporation (GSTC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain pro forma tariff sheets to be effective January 1, 1997.

GSTC states that the purpose of the filing is to reflect changes to comply with Order No. 582, issued September 28, 1995 in Docket No. RM95–3–000.

GSTC states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–33321 Filed 12–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 503, 1971, 1975, 2061, 2726, 2777, 2778—Idaho]

Idaho Power Company; Notice of Public Meeting

December 26, 1996.

On Tuesday, February 4, 1997, in Boise, Idaho, the Federal Energy Regulatory Commission staff will host a public meeting to solicit input from federal and state agencies, Indian tribes, non-governmental organizations, and the public on how the Commission should conduct the cumulative effects analysis for the relicensing of eight of the Idaho Power Company's Snake River hydroelectric projects.

The eight projects are: Bliss (P–1975), Lower Salmon Falls (P–2061), Upper Salmon Falls (P–2777), Shoshone Falls (P–2778), C.J. Strike (P–2055), Upper and Lower Malad (P–2726), Hells Canyon (P–1971), and Swan Falls (P–503). These projects, located on a 360-mile-long reach of the mainstem Snake River in Idaho, have existing licenses that will expire between December 1997 and June 2010.

The meeting will be held at: Boise Centre on the Grove, 850 W. Front Street, Waters Room, 10:00 a.m. to 4:00 p.m.

The meeting will be recorded by a court reporter.

To help focus discussions at the public meeting, the Commission will mail a discussion paper titled "*Approaches to Cumulative Analysis for the Snake River Basin Relicensing,*" to all entities on the Snake River Relicensing Collaborative Team mailing list and the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects mailing list. Copies of the discussion paper will also be available at the public meeting.

For further information please contact Mr. Alan Mitchnick at (202) 219–2826.

Lois D. Cashell,

Secretary.

[FR Doc. 96–33322 Filed 12–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3099–000]

Midwest Energy, Inc.; Notice of Filing

December 26, 1996.

Take notice that on November 27, 1996, Midwest Energy, Inc. (Midwest),

tendered for filing an Amended Energy Purchase Agreement for Market Based Sales Service between Midwest and the City of Colby, Kansas.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 30, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–33342 Filed 12–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–271–008 and RP94–227–008]

Transwestern Pipeline Company; Notice of Refund Report

December 26, 1996.

Take notice that on December 20, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing a Report of Refunds showing refunds that were made to Transwestern's customers on December 2, 1996 pursuant to Section 1 of the Stipulation and Agreement (Settlement) filed in the referenced docket on May 21, 1996, and approved by the Commission on October 16, 1996.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–33323 Filed 12–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–788–000, et al.]

Wisconsin Pubilc Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 24, 1996.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER97–788–000]

Take notice that on December 13, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Western Resources. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER97–789–000]

Take notice that on December 13, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER97–790–000]

Take notice that on December 13, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for The Power Company of America, LP (The Power Company). Boston Edison requests that the Service Agreement become effective as of December 1, 1996.

Edison states that it has served a copy of this filing on The Power Company and the Massachusetts Department of Public Utilities.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER97–791–000]

Take notice that on December 13, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 9, 1996, with Sonat Power Marketing L.P. (Sonat) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Sonat as an eligible customer under the Tariff.

PP&L requests an effective date of December 13, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Sonat and to the Pennsylvania Public Utility Commission.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER97–792–000]

Take notice that on December 13, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Firm Point-to-Point Transmission Service with Aquila Power Corporation.

Pursuant to 18 CFR 35.11, PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective December 6, 1996.

A copy of this filing was caused to be served upon Aquila Power Corporation as noted in the filing letter.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER97–793–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under LG&E's Open Access Transmission Tariff.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER97–794–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and PanEnergy Power Services under Rate GSS.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER97–795–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Wisconsin Electric Power Company under LG&E's Open Access Transmission Tariff.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER97–796–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Wabash Valley Power Association under LG&E's Open Access Transmission Tariff.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER97–797–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Cinergy Services, Inc. under LG&E's Open Access Transmission Tariff.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER97–798–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and American Electric Power Service Corporation under LG&E's Open Access Transmission Tariff.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Public Service Company

[Docket No. ER97–799–000]

Take notice that on December 16, 1996, Central Illinois Public Service Company (CIPS), submitted nineteen service agreements, dated between November 1, 1996 and December 16, 1996, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: AES Power, Inc., American Electric Power Services Corp., Carolina Power & Light Co., Central Illinois Light Co., Cinergy Services, Inc., Duke/Louis Dreyfus L.L.C., Engelhard Power Marketing, Illinois Power Co., Illinova Power Marketing Division, Jpower, Inc., Kentucky Utilities Co., Koch Power Services, Inc., MidCon Power Services Corp., QST Energy Trading Inc., Tennessee Power Co., Virginia Electric and Power Co., Western Resources, Wisconsin Electric Power Co. and Wisconsin Power and Light Co.

CIPS requests an effective date of November 16, 1996 for these service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the foregoing customers and the Illinois Commerce Commission.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Company

[Docket No. ER97–800–000]

Take notice that on December 16, 1996, Montaup Electric Company (Montaup), filed (1) executed unit sales service agreements under Montaup FERC Electric Tariff, Original Volume No. III; and (2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC electric tariff, Original Volume No. IV. The service agreements under both tariff are between Montaup and following companies (buyers):

1. TransCanada Power Corp. (TPC)
2. PanEnergy Power Services, Inc. (PTMS)
3. Eastern Power Distribution, Inc. (EPD)
4. Federal Energy Sales, Inc. (FES)
5. Coral Power, L.L.C. (CORAL)
6. Equitable Power Sources Company (EPSC)
7. Baltimore Gas & Electric Co. (BG&E)
8. Southern Energy Marketing, Inc. (Southern Energy)
9. CPS Utilities (CPS)

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of December 16, 1996. No transactions have occurred under any of the agreements.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER97–801–000]

Take notice that on December 16, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Electric Clearinghouse, Inc. (ECT).

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER97–802–000]

Take notice that on December 16, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a Form of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing Western Resources as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of December 5, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER97–803–000]

Take notice that on December 16, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing an amendment to its FPC Rate Schedule 29, Supplement 2 which tracks a retail rate increase approved by the Vermont Public Service Board.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective according to its terms. In support of its request Central Vermont states that allowing the amendment to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER97–804–000]

Take notice that on December 16, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Coral Power L.L.C. FPL requests an effective date of December 20, 1996.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–33320 Filed 12–31–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP95–194–001, CP95–194–003, CP96–027–000, and CP96–027–001]

Northern Border Pipeline Company; Natural Gas Pipeline Company of America; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Northern Border Project and Notice of Public Meetings

December 26, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed by Northern Border Pipeline Company (Northern Border) and Natural Gas Pipeline Company of America (Natural) in the above-referenced dockets, collectively referred to as the Northern Border Project.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would have limited environmental impact.

The DEIS assesses the potential environmental effects of the construction and operation of the following facilities:

Northern Border

- About 390.0 miles of new natural gas pipeline;
- About 303,500 horsepower (hp) of new compression;
- 9 new and 1 modified meter stations, 5 new pig launcher/receivers, 1 new office/warehouse building, and 16 new and 9 modified valves; and
- 13 new communication towers.

Natural

- About 85.7 miles of new natural gas pipeline;
- About 9,000 hp of new compression; and
- 3 new pig launcher/receivers and 17 new or modified valves.

The purpose of the proposed facilities would be to transport up to 1,226.3 million cubic feet per day of natural gas from producing regions in Canada and the Williston Basin in Montana and North Dakota to natural gas shippers and local distribution companies in the Midwest, primarily the Chicago area.

Specific Comment Request

The staff has identified and evaluated two system alternatives to the proposed combined facilities between Harper, Iowa and Chicago, Illinois, the Amarillo and Iowa/Illinois System Alternatives. To assist the staff in its evaluation of the system alternatives, we request specific comments on the impacts and benefits of using each of the alternatives as compared to the applicants' proposals. Area residents, local or state governments, and Northern Border and Natural are asked to comment on whether the Amarillo and/or the Iowa/Illinois System Alternatives are reasonable and practical and preferable to the combined proposed facilities between Harper and Chicago. Comments should also specifically address any impacts on project timing and related costs/benefits.

Comment Procedure

Written Comments

Any person wishing to comment on the DEIS may do so. Written comments must be received on or before February 18, 1997, reference Docket No. CP95–194–001, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

A *copy* of the written comments should also be sent to the FERC Project Manager identified below.

Public Meeting Schedule

Three public meetings to receive comments on the DEIS will be held at the following times and locations:

Date	Time	Location
Feb. 4, 1997	7:00 p.m ..	Channahon, IL.
Feb. 5, 1997	7:00 p.m ..	Princeton, IL.
Feb. 6, 1997	7:00 p.m ..	Walcott, IA.

The meeting in Channahon, Illinois will be held at the Channahon Junior High School. The meeting in Princeton, Illinois will be held at the Bureau County Metro Center. The meeting in Walcott, Iowa will be held at the American Legion.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the DEIS. Anyone who would like to speak at the public meetings may get on the speakers list by contacting the FERC Project Manager or signing-up at the public meetings. Priority will be given to persons representing groups. Transcripts will be made of the meetings.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final environmental impact statement (FEIS) will be published and distributed. The FEIS will contain the staff's responses to timely comments received on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the DEIS have been mailed to federal, state, and local agencies,

public interest groups, interested individuals, newspapers, and parties to this proceeding.

For additional procedural information or a limited number of copies of this DEIS contact: Ms. Laura Turner, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, 888 First Street, N.E., RM 7M–02, Washington, DC 20426, (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 96–33324 Filed 12–31–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30072M; FRL–5579–1]

Pesticide Tolerance Processing Fees Deposit Fund

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA announces that, as a result of the passage of the Food Quality Protection Act on August 3, 1996, all fees related to pesticide tolerance activities are being deposited in the Reregistration and Expedited Processing Fund. The current fee schedule for tolerance activities has not been changed.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Iantha Gilmore, Resource Management Staff, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office Location and telephone number: Room 700-D, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–305–6127); e-mail: gilmore.iantha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 408(m) of the Federal, Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of August 3, 1996, the EPA announces that all fees related to tolerance activities collected under 40 CFR 180.33 are, as of the date of this notice, being deposited in the Reregistration and Expedited Processing Fund.

The current tolerance fee regulations (40 CFR 180.33) were promulgated under the former section 408(o) of the FFDCA and were deposited to the Tolerance Fee Fund. The new section 408(m) uses almost identical language to that used in the earlier section 408(o), except that section 408(m) specifies that tolerance fees are to be deposited into the Reregistration and Expedited Processing Fund. Because the two sections are otherwise nearly identical, tolerance fees will continue for now to be subject to the existing fee schedule in 40 CFR 180.33.

EPA anticipates that this fee schedule will be sufficient to provide, equip, and maintain an adequate tolerance assessment program over the short term. For the longer term, EPA is currently engaged in a public process to determine how best to implement all the provisions of the new FFDCA section 408. If, at the completion of this process, EPA concludes that any changes in EPA's tolerance assessment program requires a change in the existing tolerance fee structure, EPA will revise the fee schedule accordingly.

Until the above public process is completed, the current procedure for increasing the fee structure to reflect the annual increase for civilian Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan area will continue. When these automatic adjustments are made, a new fee schedule will be published as a final rule in the **Federal Register** to become effective 30 days or more after publication.

In the meantime, all deposits and fees required by the regulations in 40 CFR part 180 must be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees must be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. The payments should be labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance.

The actual letter or petition along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7505C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

Dated: December 19, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–33298 Filed 12–31–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5673–3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the sole settling party's liability for certain response costs incurred by EPA at the Monroe Township Landfill Superfund Site in Monroe Township, New Jersey.

DATES: Comments must be provided on or before February 3, 1997.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the Monroe Township Landfill Superfund Site: Browning-Ferris Industries of South Jersey, Inc., Settling Party, U.S. EPA Index No. II-CERCLA–96–0110.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: William C. Tucker, Esq. (212) 637–3139.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Monroe Township Landfill Superfund Site located in Monroe Township, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise and settle certain claims for costs incurred by the United States.

Browning-Ferris Industries of South Jersey, Inc. will pay a total of $100,000 under the settlement to reimburse EPA

for certain response costs incurred at the Monroe Township Landfill Superfund Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from the Office of Regional Counsel, EPA Region II, 290 Broadway—17th Floor, New York, NY 10007.

Dated: December 16, 1996.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 96–33345 Filed 12–31–96; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Comprehensive Child Development Program Cohort 1 Longitudinal Follow Up Study.

OMB No: New Request.

Description: The purpose of this collection is to obtain longitudinal data from CCDP participant and control group families regarding the health and development of their children, economic and social well-being of the parents, and self-sufficiency of the family.

Respondents: CCDP participant and control group parents and children; teachers of CCDP participant and control group children; social and health services delivery personnel from each of the eight study sites.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	
				1997	1999
Parent Interviews	1,325	1	2.08	2760	2760
Direct Child Assessments	1,325	1	0.58	0	773
Teacher Assessments	600	1	0.68	406	406
Service Delivery System Survey	40	1	0.42	17	17

Estimated Total Annual Burden Hours (1997): 3,183; (1999): 3,956.

Additional Information: Copies of the proposed collection of information may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 16, 1996.

Robert Sargis,

Acting Report Clearance Officer.

[FR Doc. 96–33346 Filed 12–31–96; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 96F–0489]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by February 3, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4529) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 3, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the

Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 5, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–33343 Filed 12–31–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0493]

Gerard T. O'Brien; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gerard T. O'Brien has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry.

DATES: Written comments on the petitioner's environmental assessment by February 3, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7A4530) has been filed by Gerard T. O'Brien, 2162 Skyline Dr., Gainesville, GA 30501. The petition proposes to amend the food additive regulations to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry.

FAP 7A4530 was submitted to the agency on September 24, 1987, as FAP 7A4045. On March 9, 1992, because of continued deficiencies in the petition, which the agency had not filed, FDA notified the petitioner that it would not continue its review of this petition. Information concerning microbiological and chemical studies, which the agency had requested in several letters to the petitioner, had not been submitted. These studies were needed to demonstrate the bactericidal effectiveness of the petitioned use of the additive and the dietary exposure to oxidation products that might be formed on the chicken during processing. Therefore, FDA planned no further review.

Since that time, the agency has been corresponding with the petitioner and has still not received the requested information. In a September 18, 1995, letter to FDA the petitioner asked whether he had exhausted his administrative remedies. Before receiving a response from FDA, the petitioner filed a lawsuit against the agency. After the dismissal of this lawsuit, the agency responded to the petitioner's original question in an October 16, 1996, letter saying that the petitioner had not exhausted his administrative remedies and that he could either file a new petition that would include the supplemental information requested by the agency or send a written request to FDA asking the agency to file the petition as submitted in accordance with § 171.1(i)(1) (21 CFR 171.1(i)(1)). The petitioner responded in a November 4, 1996, letter indicating that he wants FDA to approve the proposed use of this additive and does not intend to supplement the petition. Therefore, FDA is filing the petition as submitted, in accordance with § 171.1(i)(1). The agency has assigned a new number (FAP 7A4530) to this petition for administrative purposes.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the original petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 3, 1997 submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 12, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–33380 Filed 12–31–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0353]

Determination of Regulatory Review Period for Purposes of Patent Extension; DIFFERIN Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DIFFERIN Solution and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

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A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DIFFERIN Solution (adapalene). DIFFERIN Solution is indicated for the topical treatment of acne vulgaris. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DIFFERIN Solution (U.S. Patent No. 5,212,303) from Centre International de Recherches Dermatologiques (CIRD), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 24, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DIFFERIN Solution represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DIFFERIN Solution is 2,814 days. Of this time, 1,651 days occurred during the testing phase of the regulatory review period, while 1,163 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 18, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on September 18, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 26, 1993. The applicant claims March 19, 1993, as the date the new drug application (NDA) for DIFFERIN Solution (NDA 20–338) was initially submitted. However, FDA records indicate that NDA 20–338 was submitted on March 26, 1993.

3. *The date the application was approved*: May 31, 1996. FDA has verified the applicant's claim that NDA 20–338 was approved on May 31, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 13 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 3, 1997 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 1, 1997 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 20, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–33381 Filed 12–31–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0449]

Current Science and Technology on Fresh Juices; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 3, 1997, the comment period on the notice that appeared in the **Federal Register** of November 27, 1996 (61 FR 60290). The notice announced a meeting to review the current science, including technological and safety factors, relating to fresh juices and to consider any measures necessary to provide safe fruit juices. The agency is taking this action in response to several requests for an extension of the comment period.

DATES: Written comments by February 3, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, (FAX) 202–205–4970, (Internet) CMD@FDACF.SSW.DHHS.GOV.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 27, 1996 (61 FR 60290), FDA requested information and data on: (1) Appropriate good manufacturing practices (GMP's) in juice processing; (2) identification of critical control points in juice processing under a Hazard Analysis and Critical Control Point System (HACCP); (3) whether pasteurization of fresh juices is appropriate or necessary; (4) sanitizers that are available to control pathogens of concern; (5) alternative available food additives that will ensure safety of fresh juices; (6) any new technologies/intervention strategies that are becoming available that appear to be effective in the control of *E. coli 0157:H7* or other pathogens of concern; and (7) the advice that should be given to consumers on fresh and other juice products. Interested persons were given until January 3, 1997, to submit written comments on the notice.

FDA received several requests for an extension of the comment period. After careful consideration, FDA has decided to extend the comment period to February 3, 1997, to facilitate the submission of relevant information on the above topics.

Interested persons may, on or before February 3, 1997, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be

identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–33382 Filed 12–31–96; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 60 FR 65350, December 19, 1995) is amended to reflect the realignment of the Office of Surveillance and Biometrics, Center for Devices and Radiological Health (CDRH), Office of Operations, in the Food and Drug Administration (FDA).

The functional statements of the Office of Surveillance and Biometrics have been modified to include participation in research and consultation on health economics and cost effectiveness methodology issues. In addition, program management activities have been elevated to the immediate office which will tighten the span of control within the Office.

Under section HF–B, Organization:

1. Delete the subparagraph *Program Management Staff (HFWH2), Center for Devices and Radiological Health (HFW),* in its entirety.

2. Delete the subparagraphs *Office of Surveillance and Biometrics (HFWH)* in their entirety and insert the following new subparagraphs under *Office of Surveillance and Biometrics (HFWH),* reading as follows:

Office of Surveillance and Biometrics. Advises, coordinates, and provides consultation to the Center Director and other Agency officials including the Commissioner on Center programs and policies concerning premarket review activities, postmarket management activities, surveillance and biometrics programs and activities, and regulatory matters for medical devices and radiological products.

Establishes policy for surveillance programs. Designs, develops, and implements a Center program to acquire device experience information; identifies and analyzes device problems; develops solution strategies to such problems; and tracks programs or solution implementations.

Provides statistical, epidemiological, and biometric services, and conducts research in support of the operating and scientific programs of the Center.

Represents the Center with other governmental agencies (Federal, State, and International), industry, and consumer organizations on issues related to the activities of the Office including postmarket management activities.

Provides consultation to Center Offices on health economics and cost effectiveness methodology issues pertaining to claims for medical devices.

Plans, develops, and implements office administrative support and services including program planning, financial management, extramural and collaborative efforts, procurement, travel, personnel administration, employee development and training, employee evaluations, recognition programs, property management, and facility space management.

3. Delete the subparagraphs *Issues Management Staff (HFWH1)* in their entirety and insert the following new subparagraphs under paragraph *Issues Management Staff (HFWH1), Center for Devices and Radiological Health (HFW),* reading as follows:

Issues Management Staff (HFWH1). Directs and monitors the analysis, resolution, development and solution implementation of postmarket issues; presents these issues to the CDRH, FDA, other agencies, and foreign governments as appropriate. Coordinates and disseminates information on developing issues and solution strategies within CDRH, FDA, and with other agencies and foreign governments as appropriate.

Provides and coordinates input on postmarket concerns and perspectives in support of Center initiatives, including encouragement and facilitation of the use of postmarket data available within the Center.

Develops and directs systems that track and monitor CDRH's postmarket surveillance issues; documents the recommendations, resolutions, and solution monitoring, and produces final reports for review by Center management.

Directs the preparation of issue papers and other reports or studies to promote the resolution of public health issues; coordinates these analyses with subject matter experts throughout CDRH, FDA and other Department of Health and Human Services agencies as required.

Represents CDRH's postmarketing surveillance concerns at industry, trade, professional, Agency, and international meetings. Develops and delivers speeches and papers, and acts as the Center's liaisons for postmarket issues.

4. **Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: November 27, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–33383 Filed 12–31–96; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in January.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301)443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: January 9, 1997, 9:00 a.m.–12:00 Noon.

Place: Doubletree Hotel—Room: Presidential II, 1750 Rockville Pike, Rockville, Maryland.

Closed: January 9, 1997, 9:00 a.m. until 12:00 Noon.

Panel: Cooperative Agreement with the National Association of State Alcohol and Drug Directors (NASADAD) GFA No. AS 97–0001.

Contact: Katie Baas, Room 17–89, Parklawn Building, Telephone: (301) 443–2592 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

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Dated: December 27, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 96–33379 Filed 12–31–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Upalco Replacement Project

AGENCIES: The Department of the Interior (Department) and the Central Utah Water Conservancy District (District).

ACTION: Notice of availability of the Draft Environmental Impact Statement: DES 96–51.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, and the District have issued a joint Draft Environmental Impact Statement (Draft EIS) on the Upalco Replacement Project (Upalco). The Draft EIS consists of a proposed action and alternatives to construct a combination of features that will develop water supplies for the Upalco Unit of the Central Utah Project in the Unita Basin of northeastern Utah. The Draft EIS evaluates the environmental impacts of water storage reservoirs, improved diversion and distribution of water, water conservation, stabilization of high mountain lakes, instream flows, fish and wildlife mitigation and enhancement, recreation developments and land retirement.

There is a need to manage the water supply within the Upalco Unit to develop resources of the Ute Indian Tribe of the Uintah and Ouray Reservation, provide early and late season irrigation water, provide municipal water supplies, and provide water and facilities for environmental and recreation purposes. The proposed action and alternatives seek to meet these needs by providing storage, improved distribution of water, water conservation, municipal and industrial water, instream flows, fish and wildlife enhancements, and recreation developments.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** on December 31, 1992. Since that time, open houses, public meetings, and mail-outs have been conducted to solicit comments and ideas. Any comments received throughout the process have been considered.

DATES: Written comments on the Draft EIS must be submitted or postmarked no later than March 4, 1997. Comments on the Draft EIS may also be presented verbally or submitted in writing at the public hearings to be held at the following times and locations:

- Wednesday, February 5, 1997, 6:00 p.m., Altamont High School Auditorium, Highway 87 (North Side), Altamont, Utah.
- Thursday, February 6, 1997, 6:00 p.m., Salt Lake County Commission Chambers, Room N1100, 2001 South State Street, Salt Lake City, Utah.
- Tuesday, February 11, 1997, 1:00 p.m., Ute Tribal Auditorium, Ute Tribal Headquarters, Fort Duchesne, Utah.

The public hearings are being held to address the Draft EIS for the proposed Upalco Unit Replacement Project. In order to be included as part of the hearing record, written testimony must be submitted at the time of the hearing. Verbal testimony will be limited to 5 minutes. Those wishing to give testimony at a hearing should submit a registration form, included at the end of the Draft EIS, to the address listed below by, January 31, 1997.

ADDRESSES: Comments on the Draft EIS should be addressed to: Terry Holzworth, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

FOR FURTHER INFORMATION CONTACT: Additional copies of the Draft EIS, copies of the resources technical reports, or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Bureau of Indian Affairs, Uintah and Ouray Agency, 988 South 7500 East, Fort Duchesne, Utah 84026

Dated: December 27, 1996.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 96–33344 Filed 12–31–96; 8:45 am]

BILLING CODE 4310–RK–P

Fish and Wildlife Service

Notice of Receipt of Application for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–823479

Applicant: Darrel R. Ragan, Statesboro, Georgia.

The applicant requests a permit to take (capture, band, or conduct population surveys) the red-cockaded woodpecker, *Picoides borealis*, eastern indigo snake, *Drymarchon corais couperi*, and wood stork, *Mycteria americana*, throughout the species' ranges in coastal Georgia and South Carolina for the purpose of enhancement of survival of these species.

Written data or comments on this application should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: December 24, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–33333 Filed 12–31–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–958–0777–63; GP7–0012; OR–50483]

Public Land Order 7233; Withdrawal of National Forest System Lands for Administrative Sites and a Wild and Scenic River Corridor; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,090 acres of National Forest System lands in

the Rogue River National Forest from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the Rabbit Ears-Falcon Wildlife Area, the Rogue River Wild and Scenic Corridor, Union Creek Historic District, Abbott Creek and Mill Creek Recreation Sites, and Prospect Ranger Station Administrative Site. The lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: Janaury 2, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a wildlife area, a wild and scenic corridor, a historic district, two recreation sites, and a ranger station:

Willamette Meridian

Rogue River National Forest

Rabbit Ears-Falcon Wildlife Area

T. 29 S., R. 3 E.,
sec. 26, W½SW¼ and SE¼SW¼;
sec. 27, E½SW¼ and SE¼;
sec. 34, NE¼, E½NW¼, E½NE¼SW¼, N½SE¼, and N½S½SE¼;
sec. 35, W½NE¼, NW¼, N½SW¼, N½SW¼SW¼, and W½NW¼SE¼.

Rogue River Wild and Scenic Corridor

T. 30 S., R. 3 E.,
sec. 1, E½SE¼;
sec. 12, NE¼NE¼NE¼;
sec. 13, E½NW¼;
sec. 23, NE¼NE¼SE¼ and W½W½SE¼;
sec. 34, SE¼NE¼SE¼;
sec. 35, SE¼NE¼NW¼, SW¼SW¼NW¼, and NW¼SE¼NW¼.
T. 31 S., R. 3 E.,
sec. 17, NE¼NW¼NE¼;
sec. 19, NW¼NE¼NE¼ and SE¼SE¼NE¼.
T. 29 S., R. 4 E.,
sec. 10, W½E½NE¼, S½S½SW¼, and E½NW¼SE¼;
sec. 15, N½NW¼;
sec. 21, NW¼NE¼;
sec. 29, SE¼SW¼;
sec. 32, E½NW¼.
T. 29 S., R. 5 E.,
sec. 4, S½NE¼.

Union Creek Historic District

T. 31 S, R. 3 E.,
sec. 2, SW¼SW¼NW¼;
sec. 3, E½NE¼SE¼, SE¼SW¼SE¼, and NW¼SE¼SE¼;
sec. 9, N½NE¼SE¼;
sec. 10, NE¼NW¼NE¼, SW¼NW¼NE¼, and SE¼SE¼NW¼.

Abbott Creek Recreation Site

T. 31 S., R. 3 E.,
sec. 7, E½SE¼SW¼ and W½SW¼SE¼;
sec. 18, NW¼NW¼NE¼ and NE¼NE¼NW¼.

Mill Creek Recreation Site

T. 32 S., R. 3 E.,
sec. 9, SW¼SE¼;
sec. 16, N½NW¼NE¼.

Prospect Ranger Station Administrative Site

T. 32 S., R. 3 E.,
sec. 29, W½NE¼NW¼.

The areas described aggregate 2,090 acres in Jackson and Douglas Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: December 23, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–33347 Filed 12–31–96; 8:45 am]

BILLING CODE 4310–33–P

[MT–070–97–1430–01]

Resource Management Plan Amendment; Missoula County, Montana

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Resource Management Plan Amendment.

SUMMARY: A Resource Management Plan Amendment/Environmental Assessment will be prepared to allocate resources and to designate management goals and guidelines for 11,730 acres of land along the lower Blackfoot River in Missoula County, Montana which are proposed for acquisition by exchange. The Garnet Resource Area Resource Management Plan (Garnet RMP), approved in 1986, provide for the disposal and acquisition of lands by exchange based on a specific set of criteria and further, identified public lands for disposal based on this criteria.

Future management of the lands proposed for acquisition has been identified as an issue to be addressed in the Environmental Assessment for the proposed land exchange. Management Areas consistent with the Garnet RMP would be assigned to the lands proposed for acquisition. Thirteen Management Areas were described in the Garnet RMP and all public lands in the Resource Area were placed in one of these categories. Each Management Area places a specific emphasis on future land use and each provides broad direction for future management of the lands in each category.

DATES: A public scoping period will run until February 3, 1997. Comments may be submitted to the address listed below.

FOR FURTHER INFORMATION: Contact the Bureau of Land Management, Attention: James Ledger, 3255 Fort Missoula Road, Missoula, Montana, 59804. Phone: 406–329–3914.

Dated: December 20, 1996.

Darrell C. Sall,

Area Manager.

[FR Doc. 96–33319 Filed 12–31–96; 8:45 am]

BILLING CODE 4310–DN–P

National Park Service

Gettysburg National Military Park Advisory Commission; Notice of Meeting

SUMMARY: This notice sets forth the date of the twentieth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The Public meeting will be held on January 16, 1997, from 7:00 p.m.–9:00 p.m.

LOCATION: The meeting will be held at Gettysburg Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Requests for Proposals—Visitor Center and Museum, Deer Management, Operational Update on Park Activities, Election of Officers and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: December 23, 1996.

David H. Dreier,

Acting Superintendent, Gettysburg NMP/ Eisenhower HNS.

[FR Doc. 96–33136 Filed 12–31–96; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: an overview of the Water Quality Common Program; an overview of the System Integrity Common Program; an overview of the general level of detail of the integration of the common programs into the EIS/ EIR; and other items. The Ecosystem Roundtable (a subcommittee of the BDAC) will meet to discuss the following issues: CALFED Management liaisions; implementation strategy; resource needs; and information relative to a fiscal decisionmaking process. Both meetings are open to the public. Interested persons may make oral statements to the BDAC or to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 10:00 am to 5:00 pm on Thursday, January 30, 1997. The Ecosystem Roundtable will meet from 9:30 am to 1:30 p.m on Tuesday, January 21, 1997.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Sacramento Convention Center, 1400 J Street, Room 204, Sacramento, CA. The Ecosystem Roundtable will meet in Room 1131, 1416 Ninth Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: For the BDAC meeting, contact Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. For the Ecosystem Roundtable meeting contact Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and renhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisers representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been charted under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meetings will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: December 19, 1996.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 96–33316 Filed 12–31–96; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on November 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined the Consortium as Sponsor Members: ARPA, Arlington, VA; AT&T-Western Technology Center, San Mateo, CA; Avery Dennison Worldwide Office Products Group, Diamond Bar, CA; Bank of America, San Francisco, CA; BBN, Cambridge, MA; Bull Worldwide Information Systems, Foster City, CA; California Trade and Commerce Agency, OST, Pasadena, CA; Deloitte & Touche, Boston, MA; Digital Equipment Corporation, Littleton, MA; Harbinger-Corporation, Atlanta, GA; Intuit Inc., Mountain View, CA; Loral Space and Range Systems, Sunnyvale, CA; Lockheed Martin Missiles and Space, Palo Alto, CA; McDonnell Douglas, St. Louis, MO; Novell, Salt Lake City, UT; Premenos, Concord, CA; Sterling Commerce, Reston, VA; 3Com, Santa Clara, CA; U.S. Postal Service, Washington, DC; Visigenic Software, San Mateo, CA; Websoft, San Francisco, CA; and Wright-Patterson Air Force Base, OH.

The following organizations have joined the Consortium as Associate Members: Actra Business Systems,

Sunnyvale, CA; Arthur Andersen L.L.P., San Jose, CA; Arthur D. Little, Inc., San Francisco, CA; Center for Information Technology and Management, Berkeley, CA; CrossRoute, Redwood Shores, CA; Cyberbusiness Association Japan, Tokyo, JAPAN; Cyberpath, Orem, UT; Dacom Corporation, Seoul, KOREA; Daimler Benz Research and Technology, Palo Alto, CA; Defense Information Systems Agency, Reston, VA; Earthweb Inc., New York, NY; Electronic Purchasing Information Corporation, New York, NY; E-Stamp Corporation, Palo Alto, CA; Fablink, Colorado Springs, CO; First Technology Federal Credit Union, Beaverton, OR; France Telecom, San Francisco, CA; Freddie Mac, McLean, VA; GTE, Needham, MA; GC Tech, New York, NY; Internet Business Group (IBG), Bedford, NH; ICAST Communications Inc., Mountain View, CA; iCat Corporation, Seattle, WA; Idea Center Inc., Las Vegas, NV; InReference Inc., Sunnyvale, CA; Institute of the Future, Menlo Park, CA; Internet Profiles (IPRO), Palo Alto, CA; Lizard Communications Inc., Santa Clara, CA; Logistics Advantage, Atlanta, GA; Mediakola, San Jose, CA; Mercentec Inc., Lisle, IL; MFP Australia, Adelaide, AUSTRALIA; Mitsubishu Electric Corporation, Tokyo, JAPAN; MPACT Immedia Systems, Livonia, MI; NACHA/Wespay, San Bruno, CA; nCipher Limited, Cambridge, ENGLAND; NCR, Lincroft, NJ; Netgrocer, New York, NY; NIA, Oakland, CA; National Institute of Standards and Technology (NIST), Gaithersburg, MD; Nortel, Ottawa, Ontario, CANADA; Northern Telecom (Nortel), Research Triangle Park, NC; Novalink Technologies Inc., Fremont, CA; NTT Data Communications, Palo Alto, CA; Partner, Salt Lake City, UT; Paylinx Corporation, St. Louis, MO; Portland Software, Portland, OR; Saqqara Systems, Sunnyvale, CA; Seoul Web Society, Seoul, KOREA; Signal Internet Technologies, Pittsburgh, PA; Skornia Law Firm, San Jose, CA; Software Forum, Palo Alto, CA; Supply Tech, Ann Arbor, MI; Terisa Systems, Los Altos, CA; Underwriters Laboratories Inc., Santa Clara, CA; U.S. Web, Santa Clara, CA; VeriSign, Mountain View, CA; WhoWhere?, Mountain View, CA; WIZnet-Worldwide Internet Solutions Network Inc., Delray Beach, FL; WorldPoint Interactive Inc., Solana Beach, CA; and Xcert Software, Vancouver, British Columbia, CANADA.

The following organizations have joined the Consortium as In-Kind Members: Council of Better Business Bureaus, Arlington, VA; Gray, Cary, Ware & Friedenrich, Palo Alto, CA; and Internet Business Group (IBG), Bedford, NH.

The following Sponsor Members have canceled their memberships: Allan-Bradley Company Inc., Albuquerque, NM; NYNEX Corporation, Middleton, MA; Delphi Internet Services Corporation, Cambridge, MA; InterNex Information Services, Menlo Park, CA; Avex Electronics Inc., Huntsville, AL; D.E. Shaw & Co., L.P., New York, NY; and First Interstate Bancorp, Los Angeles, CA.

The following Associate Members have canceled their memberships: Concurrent Technologies Corporation, Oakland, CA; Intercom-University of Virginia, Computer Science Department, Charlottesville, VA; Tradewinds Technologies Incorporate, Winston-Salem, NC; IEEE Computer Society, Washington, DC; European Union Bank, Antigua, WEST INDIES; Los Alamos National Laboratory, Los Alamos, NM; Frontier Technologies Corporation, Mequon, WI; Nihongo Yellow Pages Inc., San Jose, CA; Dun & Bradstreet, Westport, CT; Arroyo Seco/Fore Play Golf, South Pasadena, CA; CyberMark Inc., Washington, DC; Process Software Corporation, Framingham, MA; Danish International Inc., Sunnyvale CA; Internet Shopping Network, Menlo Park, CA; and Nanothinc, San Francisco, CA.

The following companies have changed their memberships from Associate to In-Kind: I/Pro, Palo Alto, CA; and Vanderbilt University, Nashville, TN.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, the Consortium, as 'Smart Valley CommerceNet Consortium Inc., filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on August 17, 1995. A notice was published in the **Federal Register** on December 18, 1995 (60 FR 65068).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–33309 Filed 12–31–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on December 6, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SCR") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AG Associates, Analogy, Inc., and IntelliSense Corporation are no longer members of the joint venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Research Corporation intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on October 16, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 6, 1996 (61 FR 64371).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–33310 Filed 12–31–96; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

[Secretary's Order 5–96]

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration

December 27, 1996.

1. *Purpose.* To delegate authorities and assign responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration.

2. *Directives Affected.* This Order repeals and supersedes Secretary's Order 1–93 (Employment Standards). In

addition, this Order cancels Secretary's Orders: 2–93, 3–93, 4–93, 6–94 (previously superseded in part by Secretary's Order 1–96), 2–95, and 1–96. Finally, this Order cancels my Notice published in the **Federal Register** at 61 FR 31164 (June 19, 1996).

3. *Background.* This Order, which repeals and supersedes Secretary's Order 1–93, constitutes the generic Secretary's Order for the Employment Standards Administration. Specifically, this Order delegates authorities and assigns responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration as delineated in subparagraphs 3.a.–d. below. All other authority and responsibility set forth in this Order were delegated or assigned previously to the Assistant Secretary for Employment Standards in Secretary's Order 1–93, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

a. *Exchange of Authorities Between the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health.* This Order, in conjunction with Secretary's Order 6–96, effects an exchange of particular authorities and responsibilities between the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health. The exchange was tested in a pilot project for Region VI established by Secretary's Order 6–94 (extended by Secretary's Order 1–96), that granted these assistant Secretaries limited concurrent authority to enforce certain environmental and public health-related whistleblower protection laws, which had been delegated to the Employment Standards Administration (ESA) under Secretary's Order 1–93, an certain laws establishing labor standards affecting field sanitation and migrant housing, which had been delegated to the Occupational Safety and Health Administration (OSHA) under Secretary's Order 1–90. The pilot project resulted in a determination that the respective agencies would make better use of their program expertise, and, therefore, that the Department of Labor would more effectively and efficiently utilize its resources, by a permanent transfer of specific enforcement activities between the Assistant Secretaries for ESA and OSHA.

Accordingly, this Order grants the Assistant Secretary for ESA authority under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to enforce compliance by agricultural employers with, and to develop and issue compliance interpretations regarding, the standards on: (1) Field sanitation, 29 C.F.R. 1928.110; and (2) temporary labor camps, 29 C.F.R. 1910.142, as described in subparagraph 4.a.(22)(b) of this Order. (See subparagraph 4.a.(22) of this Order.) Secretary's Order 6–96 grants the Assistant Secretary for OSHA authority to investigate and resolve allegations of discriminatory actions taken by employers against employees in violation of the following statutory whistleblower protection provisions: (1) Section 1450(i) of the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); (2) Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; (3) Section 110(a)–(d) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)–(d); (4) Section 507 of the Federal Water Pollution Control Act, 33 U.S.C. 1367; (5) Section 23 of the Toxic Substances Control Act, 15 U.S.C. 2622; (6) Section 7001 of the Solid Waste Disposal Act, 42 U.S.C. 6971; and (7) Section 322 of the Clean Air Act, 42 U.S.C. 7622.

b. *Delegation to the Assistant Secretary for Employment Standards: Certain Authorities of the Former Assistant Secretary for the American Workplace.* This Order delegates to the Assistant Secretary for ESA certain authorities of the former Assistant Secretary for the American Workplace, relating principally to the Office of Labor-Management Standards, as set forth in Secretary's Order 2–93. This Order thereby cancels a temporary delegation in my Notice published in the **Federal Register** at 61 FR 31164 (June 19, 1996). Thus, the Assistant Secretary for ESA shall become the legal successor to the residual authorities and responsibilities of the former Assistant Secretary for the American Workplace. (See subparagraphs 4.a.(23)–(28) of this Order.)

c. *Delegation to the Assistant Secretary for Employment Standards, the Wage and Hour Administrator, and the Regional Administrators: Authority To Issue Administrative Subpoenas.* In *Cudahy Packing Co., Ltd.* v. *Holland*, 315 U.S. 357 (1942), the Supreme Court ruled that the Wage and Hour Administrator of ESA could not delegate his subpoena authority under the Fair Labor Standards Act to other officials. However, pursuant to Reorganization Plan No. 6 of 1950, reprinted in 5 U.S.C. App., which was authorized by the Reorganization Act of 1949, all functions of the Administrator and other officers of the Department of Labor were transferred to the Secretary. The Reorganization Plan authorized the Secretary, in turn, to authorize any officer, agency, or employee of the Department to perform any function of the Secretary.

In 1984 Congress expressly ratified Reorganization Plan No. 6 of 1950, see Public Law 98–532 (Oct. 19, 1984), reprinted in 5 U.S.C. 906 note, which thus has the full force and effect of law. Pursuant to this authority, this Order delegates to the Assistant Secretary for ESA, the Wage and Hour Administrator, and the regional administrators, specific authority to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order. (See subparagraphs 4.a.(1)–(3), (8), (9), (21), (22); 4.b.(1); and 4.c. of this Order.)

d. *Delegation to the Assistant Secretary for Employment Standards, the Wage and Hour Administrator, and the Deputy Assistant Secretary for Federal Contract Compliance: Authority To Invoke a Claim of Privilege.* This Order delegates to the Assistant Secretary for ESA, the Wage and Hour Administrator, and the Deputy Assistant Secretary for Federal Contract Compliance, specific authority to formally invoke any necessary governmental claim of privilege arising from the functions of the Wage and Hour Division and the Office of Federal Contract Compliance Programs (this authority was delegated previously to the Wage and Hour Administrator and the Deputy Assistant Secretary for Federal Contract Compliance in Secretary's Orders 3–93 and 4–93, respectively). This Order continues in effect the guidelines, set forth in these earlier Orders, for asserting a formal claim of privilege. (See subparagraphs 4.b.(2) and 4.d. of this Order.)

4. *Delegation of Authority and Assignment of Responsibility.*

a. *The Assistant Secretary for Employment Standards* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards,

and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, Section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Assistant Secretary for ESA includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Assistant Secretary for ESA includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 276a *et seq.*, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in Sections 5(i) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1801 *et seq.*, including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.*, including subpoena authority under 29 U.S.C. 2004(b).

(10) The Federal Employees' Compensation Act, as amended and extended, 5 U.S.C. 8101 *et seq.*, except 5 U.S.C. 8149, as it pertains to the Employees' Compensation Appeals Board.

(11) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 *et seq.*, except: 33 U.S.C. 919(d), with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b), as it applies to the Benefits Review Board; and activities pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.

(12) The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.*

(13) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, except for monitoring of the Federal contractor job listing activities under 38 U.S.C. 4212(a) and the annual Federal contractor reporting obligations under 38 U.S.C. 4212(d), delegated to the Assistant Secretary for Veterans' Employment and Training.

(14) Sections 501(a), 501(f), 502, and 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791(a), 791(f), 792, and 793; and Executive Order 11758 ("Delegating Authority of the President Under the Rehabilitation Act of 1973") of January 15, 1974.

(15) Executive Order 11246 ("Equal Employment Opportunity") of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; and Executive Order 12086 ("Consolidation of Contract Compliance Functions for Equal Employment Opportunity") of October 5, 1978.

(16) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification (H–2A) program; and Section 274A(b)(3), 8 U.S.C. 1324A(b)(3), relating to employment eligibility verification and related recordkeeping.

(17) Section 212(m)(2)(E) (ii) through (v) of the INA, 8 U.S.C. 1182(m)(2)(E) (ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for users of nonimmigrant registered nurses (*i.e.*, H–1A Visas).

(18) The enforcement of the attestations required by employers under the INA pertaining to the employment of nonimmigrant longshore workers, Section 258 of the INA, 8 U.S.C. 1288(c)(4) (B)–(F); and foreign students working off-campus, 8 U.S.C. 1184 note; and enforcement of labor condition applications for employment of nonimmigrant professionals, Section 212(n)(2) of the INA, 8 U.S.C. 1182(n)(2).

(19) Joint responsibility and authority with the Assistant Secretary for Employment and Training for enforcing the Equal Employment Opportunity in Apprenticeship and Training requirements, as identified in Secretary's Order 4–90.

(20) Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and the regulations at 41 CFR Part 60–742.

(21) The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq.*, including subpoena authority under 29 U.S.C. 2616.

(22) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) field sanitation, 29 CFR 1928.110; and

(b) temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for Employment Standards under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such

authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(23) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.*

(24) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120; Section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117; Section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); and the regulations pertaining to such sections at 29 C.F.R. Parts 457–459.

(25) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209.

(26) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(27) Section 405 (a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565 (a), (b), (c), and (e).

(28) Section 43(d) of the Airline Deregulation Act of 1978, repealed and reenacted at 49 U.S.C. 42101–42103.

(29) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(28) of this paragraph, as directed by the Secretary.

b. *The Wage and Hour Administrator of the Employment Standards Administration* is hereby delegated authority and assigned responsibility to:

(1) Issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

(2) Invoke all appropriate claims of privilege, arising from the functions of the Wage and Hour Division, following his/her personal consideration of the matter and in accordance with the following guidelines:

(a) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to the Wage and Hour Division in cases arising under the statutory provisions listed in subparagraph 4.a. of this Order that are delegated or assigned to the Wage and Hour Division): A claim of privilege may be asserted where the Wage-Hour Administrator has determined that disclosure of the privileged matter may: Interfere with the Wage and Hour Division's enforcement of a particular statute for which that Division exercises investigative or enforcement authority; adversely affect persons who have provided information to the Wage and Hour Division; or deter other persons from reporting violations of the statute.

(b) *Deliberative Process Privilege* (to withhold information which may disclose predecisional intra-agency or inter-agency deliberations, including: The analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters; in cases arising under the statutory provisions listed in subparagraph 4.a. of this Order that are delegated or assigned to the Wage and Hour Division): A claim of privilege may be asserted where the Wage-Hour Administrator has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) *Privilege for Investigative Files* compiled for law enforcement purposes (to withhold information which may reveal the Wage and Hour Division's confidential investigative techniques and procedures): the investigative files privilege may be asserted where the Wage and Hour Administrator has determined that disclosure of the privileged matter may have an adverse impact upon the Wage and Hour Division's enforcement of the statutory provisions that have been delegated or assigned to the Division in subparagraph 4.a. of this Order, by: Disclosing investigative techniques and methodologies; deterring persons from providing information to the Wage and Hour Division; prematurely revealing the facts of the Wage and Hour Division's case; or disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Wage and Hour Administrator shall personally review: All the documents sought to be withheld (or, in cases where the volume is so large all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and a description or summary of the litigation in which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Wage and Hour Administrator may ask the Solicitor of Labor or the Solicitor's representative to file any necessary legal papers or documents.

c. *The Wage and Hour Regional Administrators of the Employment Standards Administration* are hereby delegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

d. *The Deputy Assistant Secretary for Federal Contract Compliance of the Employment Standards Administration* is hereby delegated authority and assigned responsibility to invoke all appropriate claims of privilege, arising from the functions of the Office of Federal Contract Compliance Programs (OFCCP), following his/her personal consideration of the matter and in accordance with the following guidelines:

(1) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to OFCCP in cases arising under an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order): A claim of privilege may be asserted where the Deputy Assistant Secretary for Federal Contract Compliance has determined that disclosure of the privileged matter may: interfere with an investigative or enforcement action taken by OFCCP under an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order; adversely affect persons who have provided information to

OFCCP; or deter other persons from reporting violations of the statute or other authority.

(2) *Deliberative Process Privilege* (to withhold information which may disclose predecisional intra-agency or inter-agency deliberations, including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions or advice on legal or policy matters; in cases arising under an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order): A claim of privilege may be asserted where the Deputy Assistant Secretary for Federal Contract Compliance has determined that disclosure of the privilege matter would have an inhibiting effect on the agency's decision-making processes.

(3) *Privilege for Investigative Files* compiled for law enforcement purposes (to withhold information which may reveal OFCCP's confidential investigative techniques and procedures): The investigative files privilege may be asserted where the Deputy Assistant Secretary for Federal Contract Compliance has determined that disclosure of the privileged matter may have an adverse impact upon OFCCP's enforcement of an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order, by: Disclosing investigative techniques and methodologies; deterring persons from providing information to OFCCP; prematurely revealing the facts of OFCCP's case; or disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(4) Prior to filing a formal claim of privilege, the Director shall personnally review: All the documents sought to be withheld (or, in cases where the volume is so large that all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and a description or summary of the litigation in which the disclosure is sought.

(5) In asserting a claim of governmental privilege, the Deputy Assistant Secretary for Federal Contract Compliance may ask the Solicitor or the Solicitor's representative to file any necessary legal papers or documents.

e. *The Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see subparagraph 4.a.(22) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

f. *The Chief Financial Officer* is assigned responsibility, in accordance with applicable appropriations enactments, for assuring that resources associated with the programs and functions of the Occupational Safety and Health Administration and the Office of Labor-Management Standards are reallocated and transferred to ESA, as appropriate, in an orderly and equitable manner.

g. *The Assistant Secretary for Administration and Management* is assigned responsibility to assure that any transfer of resources effecting this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities is conducted. The Assistant Secretary for Administration and Management is also responsible for providing or assuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

h. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, and delegated exclusively to the Solicitor.

5. *Reservation of Authority and Responsibility.*

a. The submission of reports and recommendations to the President and the Congress concerning the Administrative Orders listed above is reserved to the Secretary.

b. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2–96 (April 17, 1996).

c. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 2–90 (Office of Inspector General).

6. *Redelegation of Authority.* The Assistant Secretary for Employment Standards, the Chief Financial Officer, the Assistant Secretary for Administration and Management, and the Solicitor of Labor may redelegate authority delegated in this Order.

7. *Effective Dates.*

a. The delegation of authority and assignment of responsibility set forth in subparagraphs 4.a.(23)–(28) of this Order shall be effective upon publication in the **Federal Register**.

b. All other delegations of authority and assignments of responsibility set forth in paragraph 4, above shall be effective on February 3, 1997.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–33365 Filed 12–31–96; 8:45 am]

BILLING CODE 4510–23–M

[Secretary's Order 6–96]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupation Safety and Health

December 27, 1996.

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Directives Affected.* This Order repeals and supersedes Secretary's Order 1–90 (Occupational Safety and Health). In addition, this Order cancels Secretary's Orders 6–94 (previously superseded in part by Secretary's Order 1–96) and 1–96.

3. *Background.* This Order, which repeals and supersedes Secretary's Order 1–90, constitutes the generic Secretary's Order for the Occupational Safety and Health Administration. Specifically, this Order, in conjunction with Secretary's Order 5–96, effects an exchange of particular authorities and responsibilities between the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health. The exchange was tested in a pilot project for Region VI established by Secretary's Order 6–94 (extended by Secretary's Order 1–96), that granted these Assistant Secretaries limited concurrent authority to enforce certain laws establishing labor standards affecting field sanitation and migrant housing, which had been delegated to the Occupational Safety and Health Administration (OSHA) under Secretary's Order 1–90, and certain environmental and public health-related whiteblower protection laws, which had been delegated to the Employment Standards Administration (ESA) under Secretary's Order 1–93. The pilot project resulted in a determination that the respective agencies would make better

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use of their program expertise, and, therefore, that the Department of Labor would more effectively and efficiently utilize its resources, by a permanent transfer of specific enforcement activities between the Assistant Secretaries for OSHA and ESA.

Accordingly, this Order grants the Assistant Secretary for OSHA authority to investigate and resolve allegations of discriminatory actions taken by employers against employees in violation of the following statutory whistleblower protection provisions: (1) Section 1450(i) of the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); (2) Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; (3) Section 110(a)–(d) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)–(d); (4) Section 507 of the Federal Water Pollution Control Act, 33 U.S.C. 1367; (5) Section 23 of the Toxic Substances Control act, 15 U.S.C. 2622; (6) Section 7001 of the Solid Waste Disposal Act, 42 U.S.C. 6971; and (7) Section 322 of the Clean Air Act, 42 U.S.C. 7622. (See subparagraphs 4.a.(1)(l)–(r) of this Order.) Secretary's Order 5–96 grants the Assistant Secretary for ESA authority under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to enforce compliance by agricultural employers with, and to develop and issue compliance interpretations regarding, the standards on: (1) Field sanitation, 29 C.F.R. 1928.110; and (2) temporary labor camps, 29 C.F.R. 1910.142, as described in subparagraph 4.a.(2)(b) of this Order. (See subparagraph 4.a. (2) of this Order).

All other authority and responsibility set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 1–90, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. *Delegation of Authority and Assignment of Responsibility.*

a. *The Assistant Secretary for Occupational Safety and Health*

(1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health programs and activities of the Department of Labor, except as provided in subparagraph 4.a.(2) below, under the designated provisions of the following statutes:

(a) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*

(b) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45.

(c) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357.

(d) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) The Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) The National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(i)(2).

(g) 5 U.S.C. 7902 and any Executive Order thereunder.

(h) Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") of February 26, 1980.

(i) 49 U.S.C. 31105, the whistleblower provision of the Surface Transportation Assistance Act of 1982.

(j) Section 211 of the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(k) Section 7 of the International Safe Container Act, 46 U.S.C. App. 1505.

(l) Section 1450(i) of the Safe Drinking Water Act, 42 U.S.C. 300J–9(i).

(m) Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(n) Section 110 (a)–(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a)–(d).

(o) Section 507 of the Federal Water Pollution Control Act, 33 U.S.C. 1367.

(p) Section 23 of the Toxic Substances Control Act, 15 U.S.C. 2622.

(q) Section 7001 of the Solid Waste Disposal Act, 42 U.S.C. 6971.

(r) Section 322 of the Clean Air Act, 42 U.S.C. 7622.

(s) Responsibilities of the Secretary of Labor with respect to safety and health provisions of any other Federal statutes except those related to mine safety and health, the issuance of child labor hazardous occupation orders, and Department of Labor employee safety and health, which are administered pursuant to Secretary's Orders 3–78, 5–96, and 5–95, respectively.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) field sanitation, 29 CFR 1928.110; and

(b) temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies having responsibilities in the occupational safety and health area.

b. *The Assistant Secretary for Occupational Safety and Health and the Assistant Secretary for Employment Standards* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see subparagraph 4.a. (2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

c. *The Chief Financial Officer* is assigned responsibility, in accordance with applicable appropriations enactments, for assuring that resources associated with the programs and functions of the Employment Standards Administration are reallocated and transferred to OSHA, as appropriate, in an orderly and equitable manner.

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d. *The Assistant Secretary for Administration and Management* is assigned responsibility to assure that any transfer of resources effecting this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities is conducted. The Assistant Secretary for Administration and Management is also responsible for providing or assuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

e. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

f. *The Commissioner of Labor Statistics* is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with the provisions of Secretary's Orders 4–81 and 5–95.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretaries for Occupational Safety and Health and Employment Standards.

5. *Reservation of Authority and Responsibility.*

a. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed in subparagraph 4.a. above is reserved to the Secretary.

b. The commencement of legal proceedings under the statutory provisions listed in subparagraph 4.a. above, except proceedings before Department of Labor administrative law judges and the Administrative Review Board under 49 U.S.C. 31105 (the whistleblower provision of the Surface Transportation Assistance Act), is reserved to the Secretary. The Solicitor will determine in each case whether such legal proceedings are appropriate and may represent the Secretary in litigation as authorized by law.

c. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2–96 (April 17, 1996).

6. *Redelegation of Authority.* The Assistant Secretary for Occupational Safety and Health, the Chief Financial Officer, the Assistant Secretary for Administration and Management, the Solicitor of Labor, and the Commissioner of Labor Statistics may redelegate authority delegated in this Order.

7. *Effective Date.* This delegation of authority and assignment of responsibility shall be effective on February 3, 1997.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–33366 Filed 12–31–96; 8:45 am]

BILLING CODE 4510–23–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Corporation's Board of Directors: Correction

In the meeting notice published on December 27, 1996 (61 FR 68304), please make the following correction to the agenda:

In item 13, change "Consider and act on prcposed policies and procedures for annual performance reviews of the Corporation's President and Inspector General" to "Consider and act on proposed policies and procedures relating to communications between the Corporation and the Congress."

Dated: December 30, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–33389 Filed 12–30–96; 2:19 pm]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–9 CARP]

Copyright Arbitration Royalty Panels; List of Arbitrators

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of the 1997 CARP Arbitration List.

SUMMARY: The Copyright Office is publishing the list of arbitrators eligible for selection to a Copyright Arbitration Royalty Panel (CARP) during 1997. This list will be used to select arbitrators who shall serve on panels initiated during 1997 for determining the distribution of royalty fees or the adjustment of royalty rates.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Tanya M. Sandros, Attorney-Advisor, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

For royalty rate adjustments and distributions that are in controversy, the Copyright Act requires the selection of a Copyright Arbitration Royalty Panel (CARP) consisting of three arbitrators from "lists provided by professional arbitration associations." 17 U.S.C. 802(b). The Librarian selects two of the arbitrators for a CARP from a list of nominated arbitrators; those selected then choose a third person who serves as chairperson of the panel.

Under the CARP regulations, as amended, the Library of Congress shall publish in the **Federal Register** after January 1, 1998, and every two years thereafter, a list of between 30 and 75 names of those individuals who were nominated. The list must contain nominees from at least three professional arbitration associations or organizations. 61 FR 63715 (December 2, 1996). The change to a two-year list was implemented to reduce the cost associated with generating an annual list of arbitrators, most of whom would have no opportunity to serve on a CARP during the relevant year. In so amending the rule, the Office decided to use the 1996 list for any CARP proceeding initiated during 1997. Therefore, the Office is republishing the 1996 list of nominees to serve as the 1997 list of arbitrators.

The information submitted by the arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. The Licensing Division of the Copyright Office is located in the Library of Congress, James Madison Building, Room 458, 101 Independence Avenue, S.E., Washington, D.C. 20540.

Publication of today's list triggers the requirement in 37 CFR 251.32 that each listed person file a confidential financial

disclosure statement. The Librarian of Congress will use the financial disclosure statement to determine what conflicts of interest, if any, may preclude the person from serving as an arbitrator in a CARP proceeding. Since each of these nominees has already filed a financial disclosure form, he or she need not file an updated form unless the Library of Congress selects that individual for service on a CARP.

The 1997 CARP Arbitration List

Howard B. Abrams, Esq.—American Arbitration Association
Miles J. Alexander, Esq.—Center for Public Resources Inc.
Richard Bennett, Esq.—American Arbitration Association
The Honorable John W. Cooley—JAMS/Endispute
Robert A. Creo, Esq.—JAMS/Endispute
Joel Davidow, Esq.—American Arbitration Association
Edward Dreyfus, Esq.—American Arbitration Association
Corydon B. Dunham, Esq.—American Arbitration Association
The Honorable Lenore G. Ehrig—American Arbitration Association & Judicate, Inc.
The Honorable Jesse Etelson—Judicate, Inc.
John B. Farmakides, Esq.—American Arbitration Association
The Honorable Thomas A. Fortkort—Center for Litigation Alternatives
Richard G. Green, Esq.—American Arbitration Association
Joseph A. Greenwald, Esq.—American Arbitration Association
The Honorable Lewis Hall Griffith—Center for Litigation Alternatives
The Honorable Jeffrey S. Gulin, Esq.—Judicate, Inc.
Professor Hugh C. Hansen—Center for Litigation Alternatives
David C. Hilliard, Esq.—Center for Public Resources, Inc.
The Honorable Mel R. Jiganti—JAMS/Endispute
The Honorable William B. Lawless—"Judge-Net"
Michael K. Lewis, Esq.—Center for Public Resources, Inc.
The Honorable Reuben Lozner—Judicate
Steve A. Mains, Esq.—JAMS/Endispute
The Honorable H. Curtis Meanor—Center for Public Resources, Inc.
The Honorable James R. Miller—JAMS/Endispute
Charles B. Molineaux, Esq.—American Arbitration Association
The Honorable Timothy Murphy—Center for Litigation Alternatives
The Honorable Sharon T. Nelson—American Arbitration Association & Judicate
David W. Plant, Esq.—American Arbitration Association
The Honorable Kathleen A. Roberts—JAMS/Endispute
Peter Carey Schaumber, Esq.—American Arbitration Association
The Honorable Herbert Silberman—Judicate
Linda R. Singer, Esq.—Center for Public Resources, Inc.
John M. Townsend, Esq.—American Arbitration Association
The Honorable Ronald P. Wertheim—JAMS/Endispute & Judicate, Inc.
Bruce Zagaris, Esq.—American Arbitration Association

Dated: December 17, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–32761 Filed 12–31–96; 8:45 am]

BILLING CODE 1410–33–P

MORRIS K. UDALL SCHOLARSHIP & EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 9:00 a.m. on Friday, January 17, 1997, at the University of Arizona Main Library, Tucson, Arizona 85721.

The matters to be considered will include (1) A review of current budget matters; (2) Reports of on-going and planned Foundation programs; and (3) A report from the Udall Center for Studies and Public Policy. The meeting is open to the public.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, 803 East First Street, Tucson, AZ 85719. Telephone (520) 670–5523.

Dated this 27th day of December, 1996.

Christopher L. Helms.

[FR Doc. 97–00029 Filed 12–30–96; 9:44 am]

BILLING CODE 6820–FN–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Sepcial Emphasis Panel in Advanced Scientific Computing (#1185)

Date and Time: January 24, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of CISE Postdoctoral Research Associates in Computational Science and Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33363 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Faculty Early Career Award Panel in Chemical and Transport Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: January 27, 1997; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 680, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact Person: Dr. Raul Miranda, Program Director, Chemical Reaction Processes, Division of Chemical & Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY97 Faculty Early Career Development Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33354 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: Wednesday, January 29, 1997 & Thursday, January 30, 1997, 8:30 a.m. to 5:00 p.m.

Place: Rooms 530 & 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Craig S. Hartley & Sunil Saigal, Program Directors, Mechanics and Materials Program. National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33358 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System.

Date and Time: January 27, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 630, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Dr. Deborah Crawford, Program Director, Solid State and Microstructures, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate REG proposals in the QEWB program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33353 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: January 31, 1997.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Paul Werbos, Program Director, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Neuroengineering Career and Regular proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33357 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 6–7, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology and Organizations Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33360 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200).

Date and Time: February 3–4, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Database and Expert Systems Program Career proposals as part of the selection process for awards.

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Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33361 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200).

Date and Time: February 3–4, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1115N, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine and Intelligence Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 55b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33362 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in International Programs; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in International Programs (1201).

Date and Time: January 27–28, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 360.

Type of Meeting: Closed.

Contact Person: Susan Parris, Program Specialist or Randall Soderquist, Program Manager, Division of International Programs, Room 935, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1706.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Division of International Programs' International Research Fellow Awards Program as part of the selection process for awards.

Reason for Closing: The meeting is closed to the public because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33352 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: January 24, 1997, 8:00 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1060, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bruce A. MacDonald, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1835.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Faculty Early Career Development (CAREER) Program.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33351 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research #1203.

Dates and Times: 1/28–29/97, 8:00 am–6:00 pm and 1/30–31/97, 8:00 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 & 340 and 380 & 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning CAREER proposals submitted to the Condensed Matter Physics Program.

Agenda: Evaluation of proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33359 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204)

Date and Time: January 30 to February 1, 1997, 8:30 am–5:00 p.m.

Place: Rooms 340 and 360 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed:

Contact Person: S.I. Hariharan, Applied Mathematics Program, Program Officer, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals in the mathematics of fluids as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33356 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: January 30 & 31, 1997: 8:00 AM to 5:00 PM.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael Ledbetter, Program Director, Arctic System Sciences Program, Office of Polar Programs, Room 755 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate *Arctic System Sciences SHEBA* proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–33355 Filed 12–31–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth of Massachusetts: Staff Assessment of Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed Agreement with the Commonwealth of Massachusetts.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) has received, from the Governor of the Commonwealth of Massachusetts, a proposal to enter into an Agreement pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Act). The proposed Agreement would permit Massachusetts to assume certain portions of the Commission's regulatory authority. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing a summary of the NRC staff assessment of the proposed Massachusetts radiation control program. Comments are requested on the proposed Agreement, especially public health and safety aspects, and the assessment.

The Agreement will effectively release (exempt) persons in Massachusetts from certain portions of the Commission's regulatory authority. The Act also requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires January 23, 1997.

Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, along with copies of the request by Governor Weld including referenced enclosures, applicable legislation, regulations for the control of radiation, and the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail RLB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Commission has received a request from Governor William Weld of Massachusetts to enter into an Agreement whereby the NRC would discontinue, and the Commonwealth would assume, certain regulatory authority as specified in the Act. Section 274 of the Act authorizes the Commission to enter into such an agreement.

Section 274e of the Act requires that the terms of the proposed Agreement be published for public comment once each week for four consecutive weeks. This notice is being published in the **Federal Register** in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism whereby a State may assume regulatory authority, otherwise reserved to the NRC, over certain radioactive materials [1] and uses thereof. In a letter dated March 28, 1996, Governor Weld certified that the Commonwealth of Massachusetts has a program for the control of radiation hazards that is adequate to protect health and safety of the public within the Commonwealth with respect to the materials covered by the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The specific authorities requested by the Commonwealth of Massachusetts under this proposed Agreement are (1) the regulation of byproduct materials as defined in Section 11e.(1) of the Act, (2) the regulation of source materials, (3) the regulation of special nuclear materials in quantities not sufficient to form a critical mass, (4) the evaluation of the safety of sealed sources and devices (containing materials covered by the Agreement) for distribution in interstate commerce, and (5) the land disposal of low-level radioactive waste

[1] The materials, sometimes referred to as "agreement materials," are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) Byproduct materials as defined in Section 11e.(2) of the Act; (c) Source materials as defined in Section 11z. of the Act; and (d) Special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

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(as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. 2021b) received from other persons. The Commonwealth does not wish to assume authority over the regulation of byproduct materials as defined in Section 11e.(2) of the Act, that is over tailings from the recovery of source materials from ore, but does reserve the right to apply at a future date for an amended agreement to assume authority in this area.

(b) The proposed agreement contains nine articles that (1) list the materials and activities to be covered by the Agreement; (2) specify the activity for which the Commission will retain regulatory authority; (3) allow for future amendment of the Agreement; (4) allow for certain regulatory changes by the Commission; (5) reference the continued authority of the Commission for purposes of safeguarding nuclear materials and restricted data; (6) commit the Commonwealth and NRC to exchange information necessary to maintain coordinated and compatible programs; (7) recognize reciprocity of licenses issued by the respective agencies; (8) identify criteria for the suspension or termination of the Agreement; and (9) specify the proposed effective date. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes in style. Also, because of several issues posed by this request which required resolution before the Agreement could be concluded, the effective date requested by the Governor could not be realized. The final text of the Agreement, with the actual effective date, will be published after the Agreement is approved by the Commission.

(c) The Massachusetts radiation control program currently regulates users of naturally-occurring and accelerator-produced radioactive materials, and users of certain radiation-producing electronic machines. The program was enabled by Massachusetts law (Massachusetts General Law [M.G.L.] Chapter 111, § 5B) in 1958. This statute was later replaced by M.G.L. Chapter 111, Sections 5M through 5P. In 1987, M.G.L. Chapter 111H was added to provide for the regulation of low-level radioactive waste. Section 7 of the legislation contains the authority for the Governor to enter into an Agreement with the Commission.

The Massachusetts regulations contain provisions for the orderly transfer of authority over NRC licenses to the regulatory control of the Commonwealth. After the effective date of this proposed Agreement, licenses issued by NRC will continue in effect under Massachusetts regulatory authority until these licenses expire or are replaced by Commonwealth issued licenses.

(d) The NRC staff assessment finds the proposed Massachusetts program adequate to protect public health and safety, and compatible with the NRC program for materials regulation.

II. Summary of the NRC Staff Assessment of the Massachusetts Program for the Control of Agreement Materials

NRC staff has examined the proposed Massachusetts radiation control program with respect to the ability of the program to regulate agreement materials. The examination was based on the Commission's policy statement *"Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement"* (referred to herein as the "criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The proposed program unit responsible for regulating agreement materials will consist of 13 technical/professional positions within the existing radiation control program of the Massachusetts Department of Public Health. The qualifications for staff members specified in the personnel position descriptions, and the qualifications of the current staff members, meet the criteria for education, training and experience. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Most staff members hold advanced degrees, and have had additional training and experience in radiation protection. Senior staff have more than five years experience each in radiation control programs. The program director has a master's degree in public health and 15 years experience in regulatory health physics.

(b) *Legislation and Regulations.* The Massachusetts Department of Public Health is designated by statute to be the radiation control agency. The Department is provided by statute with the authority to promulgate regulations, issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required by law to provide access to inspectors.

The Department has adopted regulations (Massachusetts Regulations for the Control of Radiation or MRCR) providing radiation protection standards essentially identical to the standards in 10 CFR Part 20. Technical definitions in the MRCR are also essentially identical. The MRCR require consideration of the total radiation doses to individuals from all sources of radiation (except background radiation and radiation from medical treatment or examinations, as is the case in the NRC rules), whether the sources are in the possession of the licensee or not. The MRCR also require appropriate surveys and personnel monitoring under the close supervision of technically competent people, and the use of radiation labels, signs and symbols essentially identical to those contained in 10 CFR Part 20. Posting requirements and instruction of workers requirements adopted in the MRCR are compatible with the equivalent current requirements of the NRC.

Nothing in the Massachusetts statutes or regulations seeks to regulate areas not permitted by the Atomic Energy Act. The MRCR contain a provision to avoid interference with those regulatory requirements imposed by NRC pursuant to the Act, and for which Commonwealth licensees have not been exempted under the agreement.

(c) *Storage and Disposal.* The MRCR also contain compatible requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both waste disposal by material users and the land disposal of waste received from other persons. The NRC staff noted some differences in the MRCR waste regulations as compared to the NRC regulations in 10 CFR Part 61, but determined that the differences are related either to the prohibition of shallow land burial as a disposal technology or to the ownership of the disposal site by the Massachusetts Low-Level Radioactive Waste Management Board. Because of these special provisions, NRC staff determined that the differences in the regulations do not reduce the ability of the Massachusetts radiation control program to protect health and safety, nor reduce the compatibility of the program or the regulations themselves.

(d) *Transportation of Radioactive Material.* The MRCR contains rules equivalent to 10 CFR Part 71 as in effect prior to April 1, 1996. Effective on that date, the NRC amended Part 71. Under current policy, an existing Agreement State is allowed up to three years after NRC adopts a final rule to adopt a compatible rule, or to impose each regulatory provision of the rule using an alternate legally binding requirement (LBR), such as an order or license condition. A State seeking an agreement

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is expected to have effective rules or LBRs compatible with those of NRC in effect at the time the agreement becomes effective. The intent of this expectation is to spare licensees in the new Agreement State from the "whipsaw" effect of being subjected first to the new NRC requirements, then the old requirements when the agreement takes effect, then again to the new requirements when later adopted by the State. Massachusetts is in the process of adopting rules compatible with the revised 10 CFR Part 71. However, these rules may not become effective before the Agreement is signed. Massachusetts intends to impose the requirements of the new Part 71 rules in the interim by issuing appropriate orders to the affected licensees.

(e) *Recordkeeping and Incident Reporting.* The MRCR incident reporting requirements are similar to the requirements in the NRC rules. The NRC staff noted that for some NRC rules that specify a records retention period of less than five years, the retention period specified in the MRCR is shorter. The NRC staff concluded, however, that the retention periods specified in the MRCR rules are adequate since the retention periods are long enough to permit examination of the records during routine inspections. The MRCR imposes retention requirements similar to the NRC rules for records which must be retained indefinitely or until the license is terminated.

(f) *Evaluation of License Applications.* The MRCR contains requirements equivalent to the current NRC regulations specifying the required content of applications for licenses, renewals, and amendments. The MRCR also provide requirements equivalent to the NRC requirements for issuing licenses and specifying the terms and conditions of licenses. The agreement materials program unit has adopted a procedure for processing applications that assures the regulatory requirements will be met, or, if appropriate, exceptions granted. The program unit has the authority by Statute to impose requirements in addition to the requirements specified in the regulations. The program unit also retains by regulation the authority to grant specific exemptions from the requirements of the regulations. The MRCR specifies qualifications for the use of radioactive materials in or on humans that are similar to the NRC requirements in 10 CFR Part 35.

The Massachusetts licensing procedures manual, along with the accompanying regulatory guides, are adapted from similar NRC documents and contain adequate guidance for the agreement materials program unit staff to use when evaluating license applications.

(g) *Inspections and Enforcement.* The Massachusetts radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The agreement materials program unit has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted procedures for enforcement in the MRCR.

(h) *Regulatory Administration.* The Massachusetts Department of Public Health is bound by procedures specified in Commonwealth statute for rulemaking. The program has adopted procedures to assure fair and impartial treatment of license applicants.

(i) *Cooperation with Other Agencies.* The MRCR deems the holder of an NRC license on the effective date of the Agreement to possess a like license issued by Massachusetts. The MRCR provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. The MRCR also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. Licenses in timely renewal are not excluded from the transfer continuation provision. The MRCR provide exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The Department of Public Health and the Department of Labor and Industries have entered into a Memorandum of Understanding, as authorized elsewhere in Massachusetts law, which provides for the Department of Public Health to exercise the responsibility and authority of the Department of Labor and Industries with respect to radiation and radioactive materials. The Department of Environmental Protection is designated as the agency to adopt the suitability standards for any proposed disposal site under the Massachusetts Low-Level Radioactive Waste Management Act. The Department of Public Health will license and regulate the site only after the Executive Secretary for Environmental Affairs has determined that the report on the site characterization study is in conformance with the suitability standards, and the Low-Level Radioactive Waste Management Board has selected the operator.

The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of like materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff has concluded that the Commonwealth of Massachusetts meets the requirements of Section 274 of the Act. The Commonwealth's statutes, regulations, personnel, licensing, inspection, and administrative procedures are compatible with those of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Since the Commonwealth is not seeking authority over byproduct material as defined in Section 11e.(2) of the Act, Subsection 274o is not applicable to the proposed Agreement. The language of the Agreement requested by Governor Weld has been revised to reflect that the effective date of the proposed Agreement and the location at which it will be signed remain to be determined. Certain conventions have been used to highlight the proposed revisions. New language is shown inside boldfaced arrows, while

language that would be deleted is set off with brackets.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 19th day of December 1996.

For the U.S. Nuclear Regulatory Commission.

Paul H. Lohaus,

Acting Director, Office of State Programs.

Appendix A—Proposed Agreement

Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Massachusetts for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Massachusetts is authorized under Massachusetts General Laws, Chapter 111H, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Massachusetts certified on [June 1, 1995,] >March 28, 1996,< that the Commonwealth of Massachusetts (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect [the] public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [November 1, 1995,] >(date to be determined)< that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation[s] between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth, acting in behalf of the Commonwealth, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. By-product materials as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. Licensing of Low-Level Radioactive Waste Facilities.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of by-product, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of by-product, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other by-product, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting by-product material.

Article III

This Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E, whereby the Commonwealth can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of like materials. The Commonwealth and the Commission

will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to profect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on [April 24, 1996,] >(date to be determined)< and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Boston, Massachusetts] >(location to be determined)<, in triplicate, this [24]th Day of [April, 1996] >(date to be determined)<.

For the United States Nuclear Regulatory Commission.

Shirley Ann Jackson,

Chairman.

For the Commonwealth of Massachusetts.

William F. Weld,

Governor.

[FR Doc. 96–33252 Filed 12–31–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATE: Weeks of December 30, 1996 and January 6, 13, and 20, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 30

There are no meetings scheduled for the Week of December 30.

Week of January 6–Tentative

Tuesday, January 7

9:30 a.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)

2:00 p.m. Discussion of Procedures for NRC Strategic Assessment (Closed—Ex. 2)

Thursday, January 9

10:00 a.m. Briefing by Maine Yankee, NRR, and Region I (PUBLIC MEETING) (Contact: Daniel Dorman, 301–415–1429)

12:00 am. Affirmation Session (PUBLIC MEETING) (if needed)

Week of January 13–Tentative

Monday, January 13

10:00 a.m. Briefing on NRC Strategic Assessment (PUBLIC MEETING) (Contact: John Craig, 301–415–3812)

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of January 20–Tentative

Tuesday, January 21

3:30 p.m. Briefing on Investigative Matters (Closed—Ex, 5 & 7)

Wednesday, January 22

10:00 a.m. Briefing on Codes and Standards (PUBLIC MEETING) (Contact: Gil Millman, 301–415–5843)

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

***THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.**

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: December 27, 1996.

[FR Doc. 97–00063 Filed 12–30–96; 12:45 pm]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 9, 1996, through December 19, 1996. The last biweekly notice was published on December 18, 1996.

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the

proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 3, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and

telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 6, 1996

Description of amendments request: The proposed amendment would modify the technical specifications (TS) to require manual blocking of one train of fast bus transfer (FBT) within the first hour of degraded switchyard voltage should the switchyard voltage fall below the level necessary for the electrical distribution system (EDS) degraded voltage protection to maintain compliance with General Design Criteria (GDC) 17. The proposed amendment would further require the starting, paralleling with the grid, loading, and then separating from the grid the other train's emergency diesel generator (EDG) within the first hour, rather than the current TS which allows two hours after onset of a degraded switchyard voltage condition to start the EDG. Alternatively, fast bus transfer can be blocked in both trains within the first hour. The proposed amendment includes changes to the applicable notes to reflect that these changes are no longer temporary, but will remain as part of the long-term solution to this issue.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change reduces the amount of time the second train of electrical equipment is allowed to remain in nonconformance with GDC 17 in the TS action statement. This change only affects equipment used to mitigate an event, and does not affect equipment assumed to initiate any event. Thus the probability of an accident previously evaluated is not affected.

The proposed change brings the second EDS train into compliance with GDC 17 at least one hour sooner than the current TS. Once in conformance with GDC 17, the consequences of accidents previously evaluated conform to the current analysis. Thus the proposed change does not increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only affects equipment designed to mitigate the effects of an accident. The proposed change ensures that safety equipment is configured as assumed in the current accident analysis. The proposed change does not affect the conditions of structures, systems, or components assumed in the safety analysis beyond the existing design basis as maintained by the current TS. The proposed change does not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety affected by the proposed change is based on calculated offsite dose consequences for postulated transients and accidents for which the EDS provides power for equipment required to mitigate. The proposed change reduces the time that one train of the EDS is allowed to remain in nonconformance with GDC 17, thus increasing the availability of the EDS prior to the onset of a postulated accident compared to the current TS. Thus the proposed change does not increase thecalculated offsite dose, and therefore the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 26, 1996

Description of amendments request: The proposed amendment will adopt Option B of 10 CFR Part 50, Appendix J, to require Type B and Type C containment leakage rate testing to be performed on a performance-based testing schedule. Containment leakage rate testing is currently performed in accordance with 10 CFR Part 50, Appendix J, Option A, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Appendix J specifies containment leakage testing requirements, including the types of tests required, frequency of testing, and reporting requirements. Containment leakage test requirements include performance of Integrated Leakage Rate Tests, also known as Type A tests, which measure overall leakage rate of the containment; and Local Leakage Rate Tests, also known as Types B and C tests, which measure the leakage through containment penetrations and valves. The Nuclear Regulatory Commission (NRC) has amended the regulations to provide an alternate performance-based option, Option B, to the existing Appendix J. Baltimore Gas and Electric Company (BGE) received approval to adopt Option B for Type A testing only. At this time, BGE plans to adopt Option B for Types B and C testing, as well.

BGE is revising the Containment Leakage Rate Testing Program for Type A testing to implement Types B and C testing of the containment as required by 10 CFR 50.54(o) and 10 CFR Part 50, Appendix J, Option B. The revised program will be developed in accordance with the guidelines contained in Regulatory Guide 1.163 "Performance-Based Containment Leak-Rate Test Program," dated September 1995, including errata.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment leakage rate testing is performed in accordance with 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." The Appendix J containment leakage test requirements include performance of Type A tests, which measure the overall leakage rate of the containment, and Types B and C tests, which measure the leakage through containment penetrations and valves. The Nuclear Regulatory Commission has amended the regulations to provide a performance-based alternative, Option B, to the existing Appendix J. Baltimore Gas and Electric Company adopted Option B for Type A testing during the Unit 1 refueling outage earlier this year. At this time, BGE plans to adopt Option B for Types B and C testing.

Implementation of Option B involves no physical or operational changes to the plant structures, systems, or components. Furthermore, leakage rate does not contribute to the initiation of any postulated accidents; therefore, this proposed change does not involve an increase in the probability of any previously evaluated accidents.

Types B and C testing is necessary to demonstrate that leakage through the containment penetrations is within the limits assumed in the accident analyses. The only potential effect of the proposed change to the Types B and C test frequency is the possibility that containment penetration leakage would go undetected between tests. To provide assurance that containment penetration leakage remains within the limits of the Technical Specifications, BGE plans to implement the performance-based leakage testing program in accordance with NRC Regulatory Guide 1.163, dated September 1995 (including errata), with no exceptions.

By adopting Option B, BGE will no longer require an exemption from 10 CFR Part 50, Appendix J, which was granted to accommodate 24-month operating cycles. The exemption increased the surveillance interval to a maximum of 30 months, while proportionately decreasing the combined Types B and C leakage rate acceptance criteria. Option B to Appendix J provides the regulation necessary to accommodate an extended fuel cycle, while maintaining the original combined Types B and C leakage rate testing limit. Therefore, BGE has requested revocation of the exemption to 10 CFR Part 50, Appendix J, as adoption of Option B for Types B and C testing will enable a return to full compliance with Appendix J. As the facility will be in full compliance with the regulations, this change does not increase the consequences of any previously evaluated accidents.

Implementation of Option B does not change the total allowable containment leakage rate acceptance criteria, nor does it change the total leakage assumed in the accident analyses. Option B allows the implementation of a performance-based testing program to ensure that resources are concentrated on the components most likely to exceed administrative limits. Similarly, the changes to relocate the procedural details, including test frequency, performance and data conversion methodology, for containment leakage rate testing from the Technical Specifications to the Containment Leakage Rate Testing Program will have no effect on the total containment leakage allowed by the Technical Specifications, or assumed in the accident analyses. Relocating the allowable leakage rate conversions (Standard Cubic Centimeters per Minute) to the Technical Specification Bases does not change the allowable leakage rates (as a percentage of the containment air volume) specified in the Technical Specifications. Furthermore, relocation of the programmatic controls for Types B and C testing, including the allowable leakage rates, to the Administrative Controls section of the Technical Specifications ensures an adequate level of regulatory control of these criteria is retained.

Additionally, the Calvert Cliffs Individual Plant Examination considered the effects associated with severe accidents which could lead to containment failure. It was concluded that adopting a performance-based testing interval will not significantly affect the containment failure probabilities calculated for the Individual Plant Examination. Altogether, adoption of a performance-based testing frequency, as specified in 10 CFR Part 50, Appendix J, Option B, will not significantly decrease the confidence in the leak-tightness of the containment, including containment penetrations. Therefore, this change will not result in a significant increase in the probability of undetected containment penetration leakage in excess of that allowed by the Containment Leakage Rate Testing Program, or assumed in the accident analysis, or in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed Technical Specification change adopts a performance-based approach to containment penetration leakage rate testing. This change does not add any new equipment, modify any interfaces with any existing equipment, or change the equipment's function, or the method of operating the equipment. The proposed change does not affect normal plant operations or configuration, nor does it affect leakage rate test methods. As the proposed change would not change the design, configuration or operation of the plant, it could not cause containment penetration leakage rate testing to become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The purpose of the existing schedule for Types B and C tests is to provide assurance, on a regular basis, that the release of radioactive material will be restricted to those leak paths and leakage rates assumed in the accident analyses. The margin of safety associated with containment penetration leakage rates is not reduced if containment leakage does not exceed the maximum allowable leakage rate defined in the Technical Specifications. Implementation of Option B does not change the total allowable containment leakage rate acceptance criteria, nor does it change the total leakage assumed in the accident analyses. Option B only allows the implementation of a performance-based testing program to ensure that resources are concentrated on the components most likely to exceed administrative limits. Similarly, the changes to relocate the procedural details for containment leakage rate testing from the Technical Specifications to either the Containment Leakage Rate Testing Program or the Technical Specification Bases will have no effect on the total containment leakage allowed by the Technical Specifications, or assumed in the accident analyses. Furthermore, relocation of the programmatic controls for Types B and C testing, including the allowable leakage rates, to the Administrative Controls section of the Technical Specifications ensures that the same regulatory control of these criteria is retained.

Elimination of the exemption to Appendix J which reduced the amount of combined Types B and C testing allowable leakage redistributes that portion of the total containment leakage which may be attributed to local leakage rate testing, but does not affect the maximum allowable containment leakage rate, L_a. The proposed change does not affect a safety limit, a Limiting Condition for Operation, or the way in which the plant is operated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Acting Director

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: December 2, 1996 (NRC-96-0134)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.1.4.3, Rod Block Monitor, and Tables 3.3.6-1 and 4.3.6-1 in TS 3.3.6, Control Rod Block Instrumentation, to expand the range of conditions under which the rod block monitor must be operable. These changes are required to ensure that all fuel limits are met for the core that has been loaded for Cycle 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes provide requirements that are more restrictive than the existing requirements for operation of the facility. These changes provide assurance that the Rod Block Monitor system is operable when necessary to prevent or mitigate transients that could potentially threaten the integrity of the fuel cladding. There will be no adverse impact on the probability of any accident previously evaluated since the change provides additional assurance that fuel thermal and mechanical design bases will be satisfied and has no effect on any accident initiating mechanism. The additional restrictive conditions on plant operation also ensure that the consequences of anticipated operational occurrences are no more severe than the most limiting conditions using the current Technical Specifications. Therefore these changes do not involve any increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes will not involve any physical changes to plant systems, structures, or components (SSC). The changes in Rod Block Monitor operability requirements are consistent with the current safety analysis assumptions. These requirements provide assurance that the Rod Block Monitor will be operable if necessary to terminate a rod withdrawal error so that fuel thermal and mechanical design limits are satisfied. The change does not cause a physical change to the plant or introduce a new mode of operation. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. These changes maintain current assumptions within the safety analyses and design basis. The changes provide assurance that the Rod Block Monitor will be operable if necessary to terminate a rod withdrawal error so that fuel thermal and mechanical design limits are satisfied. Therefore, these changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: John N. Hannon

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 6, 1996

Description of amendment request: The proposed amendment would revise the technical specifications to permit an increase in the allowable leak rate for the Main Steam Isolation Valves (MSIVs) and delete the Penetration Valve Leakage Control System (PVLCS) and Main Steam-Positive Leakage Control System (MS-PLCS) requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The operation of River Bend Station, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed amendment to delete Technical Specification 3.6.1.8 and 3.6.1.9 involves eliminating the PVLCS and MS-PLCS leakage control requirements from the Technical Specifications. As described in Sections 9.3 and 6.7 respectively, of the USAR [Updated Safety Analysis Report], the PVLCS and MS-PLCS are manually initialed about 20 minutes following a design basis LOCA [Loss of Coolant Accident].

Since the PVLCS and MS-PLCS are operated only after an accident has occurred, this proposed amendment has no effect on the probability of an accident.

Since MSIV leakage and operation of the PVLCS and MS-PLCS are included in the radiological analysis for the design basis LOCA as described in Section 15.6.5 of the USAR, the proposed amendments will not affect the precursors of other analyzed accidents. The PVLCS and MS-PLCS are not initiators of any previously analyzed accident. The proposed amendments result in acceptable radiological consequences of the design basis LOCA previously evaluated in Section 15.6.5 of the USAR.

The proposed amendment to Technical Specification 3.6.1.3 does not involve a change to structures, components or systems that would affect the probability of an accident previously evaluated. A plant-specific radiological analysis has been performed to assess the affects of the proposed increase to the allowable MSIV leak rate and deletion of the PVLCS and MS-PLCS in terms of Control Room and off-site doses following a postulated design basis LOCA. This change required a revision to the existing LOCA dose analysis due to the potential leakage from the MSIVs and those valves served by the PVLCS. Additional changes were also included in the revised dose analysis to account for changes in regulatory guidance and dose methodology. Leakage from the drywell to the atmosphere through the PVLCS (secondary containment bypass valves) are both assumed to begin at time zero. The model conservatively assumes that one inboard MSIV fails open at time zero and the MSIVs associated with the remaining three main steam lines are assumed to begin leakage at 2 hours with a total leak rate of 200 scfh for all four main steam lines. The design basis leak rate of the primary containment (excluding main steam lines and lines sealed by the PVLCS) is 0.26% of the containment volume by weight per 24 hours for the duration of the accident and is assumed to be released entirely to the environment initially or the secondary containment later into the accident. The leakage of 170,000 cc/hr (4298 sccm) at P_a through the containment isolation valves served by the PVLCS is considered as bypass leakage circumventing the secondary containment. The on-site and off-site doses were determined using the TRANSACT computer code which included the ICRP 30 dose conversion factors. The total off-site and on-site LOCA doses for both the airborne and liquid release pathways resulting from the proposed change are bounded by the applicable regulatory limits.

The analysis demonstrates that dose contributions from the proposed combined MSIV leakage rate limit of 200 scfh and from the proposed deletion of the PVLCS and MS-PLCS result in values bounded by the applicable regulatory limits as compared to the LOCA doses previously evaluated for the off-site and Control Room doses as contained in 10CFR100 and 10CFR50, Appendix A (General Design Criteria 19), respectively. The LOCA doses previously evaluated are discussed in Section 15.6.5 of the USAR.

The whole body (DDE [Deep Dose Equivalent]) doses at the Low Population Zone (LPZ) is 2.82 Rem and the Control Room is 0.43 Rem. These values are acceptable since the revised doses are bounded by the Regulatory Guidelines (2.82 versus 25 Rem at the LPZ and 0.43 versus 5 Rem at the Control Room). The associated whole boy (DDE) dose at the exclusion area boundary (EAB) is 4.69 Rem which also remains bounded by the Regulatory Guideline of 25 Rem.

The thyroid CEDE [Committed Effective Dose Equivalent] dose at the LPZ is 62.58 Rem. This is acceptable since the revised dose of 62.58 Rem is significantly less than the Regulatory Guideline (300 Rem). The EAB thyroid CEDE dose is 37.53 Rem, whereas the Control Room thyroid CEDE dose is 11.18 Rem. These values are also acceptable since the revised doses are well within the Regulatory Guidelines (37.53 versus 300 Rem at the EAB and 11.18 versus 30 Rem at the Control Room). The Control Room beta (SDE [Shallow Dose Equivalent]) dose is 9.15 Rem which also remains bounded by the Regulatory Guideline of 30 Rem.

In summary, the proposed changes do not result in an increase to the radiological consequences of a LOCA previously evaluated in the USAR. The revised LOCA doses are bounded by the Regulatory Guidelines. The effectiveness of the proposed request even for leakage rates greater than the

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proposed MSIV allowable leak rate ensures that off-site and Control Room dose limits are not exceeded.

There is no physical change to the ADS/SRVs [Automatic Depressurization System/Safety Relief Valve]. The PVLCS accumulator tanks remain the backup air supply to the ADS/SRV accumulators. A qualified long-term backup air supply remains but is supplied from a difference source. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the requirements for the LCS [Leakage Control System] isolation valves which are non-PCIVs. These valves are eliminated and will not be performing a safety function. The LCS lines that are connected to the PCIVs and process piping will be welded and/or capped closed to assure primary containment integrity is maintained. The welding and post-weld examination procedures will be in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI requirements. These welds and/or caps will be periodically tested as part of the primary Containment Integrated Leak Rate Test (CILRT) program in accordance with the requirements of 10CFR50, Appendix J. The proposed change does not involve an increase in the probability of equipment malfunction previously evaluated in the USAR. In fact, the proposed change reduces the probability of equipment malfunction since, upon implementation, RBS will be operated with fewer process line isolation valves and associated support equipment subjected to postulated failure. The affected LCS MOVs [Motor Operated Valves] will be eliminated or retained as normal system isolation or maintenance valves having no safety or leakage control function thus requiring no bypassing of their thermal overloads. This proposed change has no effect on the consequences of an accident previously evaluated since the LCS lines will be welded and/or capped closed, thus assuring that primary containment integrity, isolation and leak test capability are not compromised.

Therefore, as discussed above, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The operation of River Bend Station, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to Technical Specification 3.6.1.3 does not create the possibility for a new or different kind of accident from any accident previously evaluated. The BWROG (Boiling Water Reactors Owners Group) evaluated MSIV leakage performance and concluded that MSIV leakage rates up to 200 scfh will not inhibit the capability and isolation performance of the valve to isolate the primary containment. There is no new modification which could impact the MSIV operability. The LOCA has been reanalyzed at the proposed maximum combined leakage rate of 200 scfh. Therefore, the proposed change does not create any new or different kind of accident from any accident previously evaluated in the USAR.

The proposed amendment to delete Technical Specification 3.6.1.8 and 3.6.1.9 does not create the possibility of a new or different kind of accident from any accident previously evaluated because the removal of the PVLCS and MS-PLCS does not affect any of the remaining systems at RBS [River Bend Station) and the LOCA has been reanalyzed with LOCA doses resulting from the proposed change remaining bounded by the applicable regulatory limits.

The PVLCS and MS-PLCS are of low safety significance as discussed in NUREG-1273, Technical Findings and Regulatory Analysis for Generic Safety Issue II.E.4.3, "Containment Integrity Check," and NUREG/CR-3539, "Impact of Containment Building Leakage on LWR Accident Risk."

The proposed change to eliminate the LCS does not create the possibility of a new or different kind of accident from any accident previously evaluated because the removal of the LCS does not adversely affect any of the remaining RBS systems or change system inter-relationships. The associated proposed changes to delete the LCS isolation valves does not create the possibility of a new or different kind of accident. The affected LCS MOVs will be eliminated or retained as normal system isolation or maintenance valves having no safety or leakage control function thus requiring no bypassing of their thermal overloads. The PVLCS and MS-PLCS connections to the process piping will be welded and/or capped closed to assure that primary containment integrity, isolation and leak testing capability are not compromised, therefore eliminating the possibility for any new or different kind of accident.

Therefore, as discussed above, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The operation of River Bend Station, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment to Technical Specification 3.6.1.3 does not involve a significant reduction in a margin of safety. The allowable leak rate limit specified for the MSIVs is used to quantify a maximum amount of bypass leakage assumed in the LOCA radiological analysis. Results of the analysis demonstrate calculated doses, assuming the two single active failures of one MSIV to close and one diesel generator to respond are bounded by the requirements of 10CFR100 for the off-site doses and 10CFR50, Appendix A (General Design Criteria 19) for the Control Room doses. The calculated whole body doses are significantly reduced at the LPZ, the Control Room, and the EAB. The calculated thyroid dose is significantly reduced at the LPZ, the Control Room, and the EAB.

The proposed amendment to delete Technical Specification 3.6.1.8 and 3.6.1.9 for the PVLCS and MS-PLCS, does not reduce the margin of safety. In fact, the overall margin of safety is increased. The method is effective to reduce dose consequences of MSIV and the PVLCS leakage over an expanded operating range and will, thereby, resolve the safety concern that the PVLCS and MS-PLCS will not function at leakage rates higher than their design capacity. The method is consistent with the philosophy of protection by multiple leak-tight barriers used in containment design for limiting fission product release to the environment. Therefore, the proposed method is highly reliable and effective for MSIV leakage and deletion of the PVLCS and MS-PLCS.

The calculation shows that MSIV leakage rates up to 100 scfh per steam line would not exceed the regulatory limits. Therefore, the proposed method provides a substantial safety margin for mitigating the radiological consequences of MSIV leakage beyond the proposed Technical Specification leak rate limit of 200 scfh for all four main steam lines (combined maximum pathway).

Minor increases in containment leakage such as the leakage through the MSIVs, as identified in NUREG-1273, NUREG/CR-3539, and NUREG-1493 have been found to have no significant impact on the risk to the public. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The proposed change to delete the LCS isolation valves does not reduce the margin of safety. Welded and/or capped closure of the LCS lines assure that primary containment integrity and leak testing capability are not compromised. The affected LCS MOVs will be eliminated or retained as normal system isolation or maintenance valves having no safety or leakage control function thus requiring no bypassing of their thermal overloads. The PVLCS and MS-PLCS connections to the process piping will be welded and/or capped closed to assure that primary containment integrity, isolation and leak testing capability are not compromised, therefore eliminating the possibility for a significant reduction in the margin of safety.

Therefore, as discussed above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

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Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 15, 1996

Description of amendment request: The proposed amendment would revise the technical specifications to allow the performance of the 24-hour emergency diesel generator (EDG) maintenance run while the unit is in either Mode 1 or Mode 2. This test for the River Bend Station (RBS) is currently prohibited in Mode 1 and Mode 2 and allowed in Modes 3, 4, and 5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The RBS SAR [Safety Analysis Report] assumes that the AC [Alternating Current] electrical power sources are designed to provide sufficient capacity, capability, redundancy and reliability to ensure that the fuel, reactor coolant system and containment design limits are not exceeded during an assumed design basis event. Specifically, the SAR assumes that the onsite EDGs provide emergency power in the event offsite power is lost to either one or all three EDF [Engineered Safety Features]

buses. In the event of a loss of preferred power, the ESF electrical loads are automatically connected to the EDGs in sufficient time to provide for safe reactor shutdown and to mitigate the consequences of a design basis accident such as a LOCA [Loss of Coolant Accident].

The proposed change to permit the 24-hour testing of the EDGs during power operation does not significantly increase the probability or consequences of any previously evaluated accident. The capability of the EDGs to supply power in a timely manner will not be compromised by permitting performance of EDG testing during periods of power operation. Design features of the EDGs and electrical systems ensure that if a LOCA or LOP [Loss of Offsite Power] signal, either individually or concurrently, should occur during testing, the EDG would be returned to its ready-to-load condition (i.e., EDG running at rated speed and voltage separated from the offsite sources) or separately connected to the ESF bus providing ESF loads. An EDG being tested is considered to be operable and fully capable of meeting its intended design function. Additionally, the testing of an EDG is not a precursor to any preciously evaluated accidents.

If, during the test period, the EDG were to receive a normal operation protective trip resulting in the actuation of a generator lockout signal, the lockout could be reset by the operators monitoring the test. The resulting delay does not present an immediate challenge to the fuel cladding integrity, reactor water level control or to containment parameters, as demonstrated by the bounding four-hour station blackout coping analysis contained in RBS's station blackout conformance report.

Therefore, the proposed change allowing testing of EDGs during power operation will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As previously discussed, the proposed change to permit the performance of EDG testing during power operation will not affect the operation of any system or alter any system's response to previously evaluated design basis events. The EDGs will automatically transfer from the test configuration to the ready-to-load configuration following receipt of a valid signal (i.e., LOCA or LOP). In the ready-to-load configuration the EDG will be running at rated speed and voltage, separated from the offsite source and capable of automatically supplying power to the ESF buses in the event that preferred power is actually lost.

The proposed change is also the same configuration currently used for the monthly one-hour test. Therefore, testing during power operation will not create the possibility of a new or different kind of event from any previously evaluated.

[Surveillance Requirement] SR 3.8.1.16 demonstrated that the EDG will automatically override the test mode following generation of a LOCA signal. In addition, the ability of the EDGs to survive a full load reject is verified by the performance of SR 3.8.1.9. These existing surveillance requirements, along with system design features, ensure that the performance of EDG testing during power operation will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The AC electrical power sources are designed to provide sufficient capacity, capability, redundancy, and reliability to ensure the availability of necessary power to ESF systems so that the fuel, reactor coolant system and containment design limits are not exceeded. Specifically, the EDGs must be capable of automatically providing power to ESF loads in sufficient time to provide for safe reactor shutdown and to mitigate the consequences of a design basis accident in the event of a loss of preferred power.

Testing of EDGs during power operation will not affect the availability or operation of any offsite source of power. In addition, the EDG being tested remains capable of meeting it intended design functions. Therefore, the proposed change to the Technical Specification Surveillance Requirement 3.8.1.13 will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 15, 1996

Description of amendment request: The proposed amendment would increase the two recirculation loop Minimum Critical Power Ratio (MCPR) limit from 1.07 to 1.10 and the single recirculation loop MCPR limit from 1.08 to 1.12. This change request is the result of a non-conservative calculation identified by the fuel vendor.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised Safety Limit MCPR and the cycle-specific thermal limits that are based on the revised SLMCPR have been calculated using the methods identified in the "Supplemental Reload Licensing Report For River Bend Station Reload 6 Cycle 7" (Reference 1). These methods are within the existing design and licensing basis and cannot increase the probability or severity of an accident. The basis of the MCPR Safety Limit calculation is to ensure that greater that [than] 99.9% of all fuel rods in the core avoid transition boiling and fuel damage in the event of a postulated accident.

The SLMCPR is used to establish the Operating Limit Minimum Critical Power Ratio (OLMCPR). Neither the SLMCPR nor the OLMCPR can initiate an event, therefore[,] a change to the SLMCPR does not increase the probability of a accident previously evaluated. Maintaining the Minimum Critical Power Ratio (MCPR) at or above the OLMCPR during normal operations precludes fuel failure due to overheating of the fuel clad during an anticipated operational occurrence (AOO), thus limiting the consequences of an AOO. The proposed change will increase the SLMCPR, which will require the OLMCPR to be increased,

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which in turn will ensure that the requirements of 10 CFR [Part] 100 are met for an AOO. Therefore, there is no increase in the consequences of an accident previously analyzed.

The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. It cannot create the possibility of any new type of accident.

Neither the SLMCPR or the OLMCPR can initiate an event, therefore, a change to the SLMCPR does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The request does not involve a significant reduction in the margin of safety.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. This new Safety Limit MCPR is calculated using the methods identified in the reference. These methods are within the existing design and licensing basis and based on RBS specific inputs.

The margin of Safety resides between the SLMCPR and the point at which fuel fails. The proposed change to SLMCPR (and the OLMCPR) will in fact restore the margin of safety associated with GE's SLMCPR methodology.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 2, 1996

Description of amendment request: The proposed Technical Specification (TS) Change Request will permit the use of 10CFR50 Appendix J, Option B, Performance-Based Containment Leakage Testing for Type A, B and C leak rate testing. TSs 3/4.6.1.1, 3/4.6.1.2, 3/4.6.1.3, 4.6.1.6 and 4.6.1.7 are revised and Section 6.15 is added establishing the Containment Leakage Rate Testing Program. The Bases are revised to reflect this change. Minor editorial changes are included in this request. Waterford Steam Electric Station is planning to have a Containment Leakage Rate Testing Program in place prior to the next scheduled refueling outage. This program will be in accordance with the guidelines contained in Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," dated September 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed changes will result in increased intervals between containment leakage tests determined through a performance based approach. The intervals between such tests are not related to conditions which cause accidents. The proposed changes do not involve a change to the plant design or operation. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated.

NUREG-1493, "Performance-Based Containment Leak-Test Program," contributed to the technical bases for Option B of 10 CFR 50 Appendix J. NUREG-1493 contains a detailed evaluation of the expected leakage from containment and the associated consequences. The increased risk due to lengthening of the intervals between containment leakage tests was also evaluated and found acceptable. Using a statistical approach, NUREG-1493 determined the increase in the expected dose to the public from extending the testing frequency is extremely small. It also concluded that a small increase is justifiable due to the benefits which accrue from the interval extension. The primary benefit is in the reduction in occupational exposure. The reduction in the occupational exposure is a real reduction, while the small increase to the public is statistically derived using conservative assumptions. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. The reduced testing frequency will not affect the testing methodology. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not change the performance methodology of the containment leakage rate testing program. However, the proposed change does affect the frequency of containment leakage rate testing. With an increased frequency between tests, the proposed change does increase the probability that a increase in leakage could go undetected for a longer period of time. Operational experience has demonstrated the leak tightness of the containment buildings has been significantly below the allowable leakage limit.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rates. The limitation on containment leakage rate is designed to ensure the total leakage volume will not exceed the value assumed in our accident analysis. The margin of safety for the offsite dose consequences of postulated accidents directly related to containment leakage is maintained by meeting the 1.0 La acceptance criteria. The proposed change maintains the 1.0 La acceptance criteria. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: September 19, 1996

Description of amendment request: The proposed changes to Plant Hatch Units 1 and 2 Technical Specifications would revise the Surveillance Requirements (SRs) addressing the reactor vessel pressure and temperature (P/T) limits. The affected SRs are 3.4.9.1, 3.4.9.2, 3.4.9.3, 3.4.9.4, 3.4.9.5, 3.4.9.6, and 3.4.9.7, and the corresponding Units 1 and 2 Figures 3.4.9-1, 3.4.9-2, and 3.4.9-3, which show P/T limit curves for inservice leak and hydrostatic testing, non-nuclear heatup and cooldown, and criticality, respectively.

The P/T curves would be changed to allow separate monitoring of the three major regions of the reactor pressure vessel (RPV) (i.e., the upper vessel and flange region, the beltline region, and the bottom head region), and to extend the validity of the Unit 1 curves to 32

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Effective Full Power Years (EFPY). Separate monitoring would alleviate the difficulties with meeting certain temperature requirements due to the artificial limits imposed by the current P/T curves.

In support of the proposed changes, General Electric (GE) prepared and issued GENE-523-A137-1295, "E. I. Hatch Nuclear Power Station, P-T Curve Modification for Unit 1 and Unit 2," which is provided in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Pressure and temperature (P/T) limits for the reactor pressure vessel (RPV) are established to ensure brittle fracture of the vessel does not occur.

A. The proposed changes merely clarify the Applicability of the P/T limits for each of the low pressure conditions by replacing the word "performed" with "met", adding Notes to Surveillance Requirements, incorporating the requirements of Notes into the Surveillance Requirements, and modifying the Frequency statements. Conditions 2, 3, and 4, discussed in Enclosure 1 "justification of changes", [of the licensee's application] have their own Surveillance Requirements. Temperature requirements for Condition 1 are specified in the Bases. This proposed change only clarifies which Surveillance Requirement applies to each operating configuration. No reduction in Surveillance Frequencies is proposed.

B. The proposed revisions to the operating limits curves for inservice leak and hydrostatic testing, and the heatup and cooldown allow independent monitoring of the three RPV regions; i.e., the bottom head, the upper vessel and flange, and the core beltline. The three Unit 1 curves, including the criticality curve, were extended to 32 Effective Full Power Years (EFPY), and a correction to the Unit 1 criticality curve was made. Operating limits for each of the curves were evaluated in accordance with the methodology given in the applicable ASME Codes; Regulatory Guide 1.99, Rev. 2, and Appendix G of 10 CFR [Part] 50.

The actual limits in the inservice leak and hydrostatic testing curves, and the heatup and cooldown curves were not relaxed. Therefore, segregating the curves into the three affected vessel regions does not represent a reduction in the actual P/T requirements. The current P/T curves represent a composite of the three regions, with each point representing the limiting region. Regions of the vessel that are not limiting at a specific point are, therefore, artificially restrained. Upon implementation of the proposed changes, each vessel region will have its own curve, with its own true limit.

Since the proposed changes do not affect the recirculation piping, the probability and the consequences of a loss of coolant accident are not increased. Likewise, no other previously evaluated accidents or transients, as defined in Chapters 14 and 15 of the Units 1 and 2 Final Safety Analysis Reports, are affected by the proposed changes.

In summary, the proposed changes do not represent a relaxation of any actual operating limit and do not reduce the Frequency of any Surveillance. Three of the four operating configurations of the RPV are covered by Surveillance Requirements. Temperature limitations for the head removed from the vessel are given in the Bases. The operating limits were developed using the approved methodology contained in 10 CFR [Part] 50, Appendix G. Therefore, the probability and consequences of a brittle fracture of the RPV are not increased.

2. Do the proposed changes create the possibility of a new or different type of accident from any previously evaluated.

Implementing the low pressure changes, or the new operating limit curves, does not alter the design or operation of any system designed for the prevention or mitigation of accidents. The proposed changes do not introduce any new type of normal or abnormal operating mode or failure mode. All P/T limits for the Unit 1 and the Unit 2 reactor vessels continue to be monitored per the requirements of 10 CFR [Part] 50, Appendices G and H. Therefore, the proposed changes do not create the possibility of a new type of accident.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The purpose of the P/T limits is to ensure a brittle fracture of the RPV does not occur. The proposed Technical Specifications changes for the low pressure conditions are made for clarification purposes. No operating limits or Surveillance Requirements are relaxed. The wording of current Technical Specifications SRs 3.4.9.1, 3.4.9.2, 3.4.9.5, 3.4.9.6, and 3.4.9.7 could result in overly conservative application of the requirements. The proposed amendment is written to remove the ambiguity in that the Applicability and Frequency of each Surveillance Requirement are clear. Neither the acceptance criteria nor the Surveillance Frequency of any Surveillance is reduced. Furthermore, the four possible RPV configurations are all adequately monitored. As a result, the margin of safety for the low pressure conditions is not significantly reduced due to the proposed changes.

The Unit 1 operating curves were extended to 32 EFPY using approved methodologies. More operational margin is provided, because the three vessel regions (upper vessel and flange, beltline, and bottom head) are being separated for the inservice leak and hydrostatic testing curve, and the heatup and cooldown curve. Although this separation results in more operating margin for certain vessel regions, it does not represent a significant reduction in the margin of safety. As described previously, the current Technical Specifications curves represent a composite of the three regions. Thus, the curves represent the temperature for the limiting region at a particular point. The regions that are not limiting at a particular point are artificially restricted. Separating the three regions, as proposed, eliminates false limits. The true limit for each region is preserved and uncompromised, based on the use of approved methodologies.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 7, 1996

Description of amendment request: The proposed changes to Plant Hatch Unit 1 and Unit 2 Technical Specifications (TS) would revise Surveillance Requirements (SR) 3.1.7.7 and 3.4.3.1, and Limiting Conditions for Operation (LCO) 3.4.3, 3.5.1, and 3.6.1.6, to increase the nominal mechanical pressure relief setpoints for all of the 11 safety/relief valves (SRV) to 1150 psig and allow operation with one SRV and its associated functions inoperable. The proposed changes would reduce the potential for SRV pilot leakage and the potential for forced outages due to an inoperable SRV during a fuel cycle.

The existing TS require that during continuous operation, all of the 11 SRVs remain OPERABLE in the safety mode, 7 in the Automatic Depressurization System (ADS) mode, and 4 in the Low-Low Set (LLS) mode. If one SRV is inoperable for longer than the duration specified in the applicable Action Statements, the plant must be placed in a Cold Shutdown Condition. Analyses have been completed which show that, with one SRV out of service, all transient/accident criteria can still be met. Increasing the nominal mechanical relief setpoints will increase the simmer margin (i.e., the difference between the SRV setpoints and the vessel steam dome pressure), thereby potentially reducing SRV pilot leakage which may occur during a typical operating cycle.

As a result of increasing the mechanical relief setpoints for the SRVs, the Standby Liquid Control (SLC) System pump test discharge pressure is increased to 1232 psig. The High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems are capable of operating at this increased pressure.

In support of the proposed changes, General Electric (GE) prepared NEDC-32041P, "Safety Review for Edwin I. Hatch Nuclear Power Plant Units 1 and 2 Updated Safety/Relief Valve Performance Requirements," Revision 2, dated April 1996, which was included in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SRVs serve to mitigate postulated transients and accidents; the proposed changes do not alter the function or mode of operation of the SRVs. The probability of an OPERABLE or an INOPERABLE SRV inadvertently opening or failing to open or close is not affected by these changes. Therefore, the probability of an accident is not increased. Analysis[a] has been performed which considers the consequences of the various transients and accidents with the increased setpoints and with one SRV inoperable. The analysis also considers the impact on ECCS [Emergency Core Cooling System] performance, including HPCI and RCIC. The analysis has shown that the consequences of an accident with the increased SRV setpoints and with one SRV inoperable are not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

Revising the nominal SRV setpoint only changes when the SRV opens in its mechanical relief mode; the operation of the SRV and any other existing equipment is not altered. Operation with one SRV inoperable was evaluated[a] and does not introduce any new failure modes. The impact on the operation and design of other systems and components has been evaluated,[a] including ECCS and SLC. No new operating modes or failure modes are introduced. Thus, these changes do not contribute to a new or different type of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The change in SRV setpoint and operation with one SRV inoperable was evaluated relative to the applicable safety system settings and found to remain acceptable. For example, the proposed changes were evaluated against peak clad temperature limits, ECCS operation, ASME Code overpressurization limits, the MINIMUM CRITICAL POWER RATIO Safety Limit, and containment design limits; no significant reduction in the margin of safety was identified[a].

(a) GE Report NEDC-32041P, "Safety Review for Edwin I. Hatch Nuclear Power Plant Units 1 and 2 Updated Safety/Relief Valve Performance Requirements, Revision 2 (Proprietary), April 1996".

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 29, 1996

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) for Plant Hatch Units 1 and 2 associated with the installation of a digital Power Range Neutron Monitoring (PRNM) system and the incorporation of long-term stability solution hardware.

In response to Generic Letter 94-02, "Thermal-Hydraulic Instabilities in Boiling Water Reactors," Georgia Power Company (GPC) selected General Electric (GE) Option III as the long-term stability solution. Option III detects core instabilities and provides a reactor scram signal to the Reactor Protection System (RPS). The long-term stability solution, GE Option III, is supported by the BWR Owners' Group Topical Report NEDO-31960-A submitted to the NRC for approval in May 1991, and NEDO-31960-A, Supplement 1, submitted to the NRC for approval in March 1992. The NRC issued a Safety Evaluation Report (SER) for NEDO-31960-A and Supplement 1 in July 1993. BWR Owners' Group Topical Report NEDO-32465, submitted to the NRC in June 1995, provides additional analysis for the detection and suppression methodology (Option III).

To execute the stability solution software, the Average Power Range Monitor (APRM) and Rod Block Monitor (RBM) electronics would be replaced with a PRNM system based on digital GE Nuclear Measurements Analysis and Control NUMAC modules. Implementation of the PRNM would affect the RPS and Control Rod Block TS 3.3.1.1, 3.3.2.1, 3.4.1 and 3.10.8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed amendment is to incorporate the Power Range Neutron Monitoring (PRNM) retrofit and Oscillation Power Range Monitor (OPRM) installation. The types of Average Power Range Monitor (APRM) Functions that are credited to mitigate accidents were previously evaluated. The proposed OPRM Upscale Function is implemented in the same hardware that implements the APRM Functions. The change to a two-out-of-four RPS [Reactor Protection System] logic was analyzed and determined to be equal to the original logic.

The modification involves equipment that is intended to detect the symptoms of some accidents and initiate mitigating action. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram), but no failure can cause an accident. As discussed in the bases for proposed changes, the PRNM replacement system is designed to perform the same operations as the existing Power Range Monitoring (PRM) system and to meet or exceed all of its operational requirements. Therefore, it is concluded that the probability of an accident previously evaluated is not increased as a result of replacing the existing equipment with the PRNM equipment.

* * * *

Human-machine interface (HMI) failures in the current system could be related to incorrectly adjusted settings, incorrect reading of meters, and failure to return the equipment to the normal operating configuration. There are comparable failure modes for some of these problems in the digital system where an erroneous potentiometer adjustment in the current system is equivalent to an erroneous digital entry in the replacement system. Certain potential "failure to reconfigure errors" in the current system have no counterpart in the replacement system, because any reconfiguration" is automatically returned to normal by the system. Also, since parameters are available for review at any time, even if an error, such as a digital entry error occurs, it is more likely that the error would be almost immediately detected by recognition that the displayed value is not the correct one.

The failure analysis of the current system assumes certain rates of human error. The rates for the replacement system will be lower and, hence, are bounded by the FSAR [Final Safety Analysis Report] analysis.

Therefore, GPC [Georgia Power Company] concludes the proposed changes do not

involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The APRM Trip Functions credited in the accident analyses are retained in the PRNM retrofit. The response time of the new electronics meets or exceeds the required response criteria. No new interfaces or interactions with other equipment will introduce any new failure modes.

The modification involves equipment that is intended to detect the symptoms of some accidents and initiate mitigating action. The worst-case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram), but no failure can cause an accident. This is unchanged from the current system.

Software common-cause failures can at most cause the system to fail to perform its safety function. In that case, it could fail to initiate action to mitigate the consequences of an accident, but would not cause one.

The new system is a digital system with software (firmware) control. As such, it has "central" processing points and software controlled digital processing where the current system had analog and discrete component processing. The result is that the specific failures of hardware and potentially common-cause software failures are different from the current system. Also, automatic self-test results in some cases in a direct trip as a result of a hardware failure where the current system may have remained "as-is". However, when these are evaluated at the system level, there are no new effects. In general, FSARs assume simplistic failure modes (relays for example) but do not specifically evaluate such effects as self-test detection and automatic trip or alarm.

The effects of software common-cause failure are mitigated by hardware design and system architecture. The replacement equipment is fully qualified to operate in its installed location and will not affect other equipment.

Therefore, GPC concludes the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The replacement equipment provides the same function as the original electronics. Response time and operator information are either maintained or improved. The equipment was qualified, where appropriate, to assure its intended safety function is performed. The replacement system has improved channel trip accuracy compared to the current system and meets or exceeds system requirements assumed in setpoint analysis. The channel response time exceeds the requirements. The channel indicated accuracy is improved over the current system, and meets or exceeds system requirements. The replacement system meets or exceeds all system requirements.

The BWROG [BWR Owners' Group] Stability Option III was developed to meet the requirements of GDC [General Design Criterion] 10 and GDC 12 by providing a hardware system that detects the presence of thermal-hydraulic instabilities and automatically initiates the necessary actions to suppress the oscillations prior to violating the MCPR [maximum critical power ratio] Safety Limit. The NRC has reviewed and accepted the Option III methodology described in Licensing Topical Report NEDO-31960 and concluded this solution will provide the intended protection. Therefore, it is concluded that there will be no reduction in the margin of safety as defined in the Technical Specifications as a result of the installation of the OPRM system and the simultaneous removal of the operating restrictions imposed by the ICAs [item control areas].

Therefore, GPC concludes the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 20, 1996

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to allow the Vice President to designate the Safety Audit and Review Committee (SARC) Chairperson, to change the work hours limitation in accordance with guidance in GL 82-12, "Nuclear Power Plant Staff Working Hours;" to change radioactive shipments record retention requirements to comply with recent 10 CFR Part 20 changes; and other editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The changes requested are administrative in nature. Paragraph 3.D was placed in the License by Amendment No. 155 to authorize Omaha Public Power District (OPPD) to increase the storage capacity of the FCS spent fuel pool. Amendment No. 155 stated that the TS as issued would be effective when the last new rack was installed. Since the last new rack was installed on

August 8, 1994, Paragraph 3.D is no longer necessary and should

be deleted from the License.

Table of Contents, Section 6.0, "Interim Special Technical Specifications," Subsections 6.1 through 6.4 are proposed for deletion because all of the Specifications referred to have been deleted by previous Amendments.

The revision proposed for TS 2.15 (Item 2C of Table 2-3 & Item 1C of Table 2-4) will insert the correct terminology (Pressurizer Low/Low Pressure) into the Functional Unit description.

The revision proposed for TS 5.2 will require the control of overtime worked by personnel to be in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12) in lieu of stating the specific times requirements from the Policy as the current TS does. This option is in accordance with NUREG-1432, Standard TS for Combustion Engineering Plants, Specification 5.2.2e, and will allow work groups to be on twelve hour shifts.

The revision proposed for TS 5.5.2.2 will replace the specific title of the Chairperson of the Safety Audit and Review Committee and replace it with "Member as appointed by the Vice President." This will allow the flexibility to change chairmanship of the committee amongst the members.

The revision to TS 5.10 concerning retention of records of radioactive shipments will update the TS to current 10 CFR 20 requirements. Plant procedures already comply with current 10 CFR 20 record retention requirements. The addition of the Section 5.0 title corrects a minor format discrepancy.

These proposed revisions are administrative in nature. The proposed revisions have no effect on any initial assumptions or operating restrictions assumed in any accident, nor do these changes have any effect on equipment required to mitigate the consequences of an accident. Therefore the proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions correct minor errors, remove outdated information, are consistent with changes in organizational structure, 10 CFR Part 20, or NUREG-1432, "Combustion Engineering Standard Technical Specifications (STS). These changes will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. No new operating modes are proposed as a result of these changes. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

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3. The proposed change does not involve a significant reduction in a margin of safety.

The revisions listed above correct minor errors, remove outdated information, or are consistent with changes in organizational structure, 10 CFR Part 20, or Standard TS. These changes will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: October 28, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3/4.8.1, "A.C. Sources," TS Section 3/4.8.2, "Onsite Power Distribution Systems," TS Table 4.8.1, "Battery Surveillance Requirements," and the associated bases. Surveillance requirements would be modified to account for the increase in the fuel cycle, consistent with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle," dated April 2, 1991. Administrative changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 to 24 months for the A.C. Offsite Sources, the Emergency Diesel Generators and the Station Batteries or the proposed revision to remove the "during shutdown" restriction for conduct of the battery performance test.

Results of the review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews.

These proposed revisions are consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," dated April 2, 1991.

Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

The proposed revision to reflect that the battery charger performance test will continue to be conducted on a[n] 18 month surveillance interval is an administrative change and does not affect previously analyzed accidents.

The proposed revision to the Bases to reflect that a change to a 24 month surveillance test interval is an exception to current guidance is an administrative change and does not affect previously analyzed accidents.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes and the assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval and to restrictions on conducting testing only during shutdown conditions.

Results of the review of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because no potential for a significant increase in a failure rate of a system or component was identified during these reviews.

The proposed revision to reflect that the battery charger performance test will continue to be conducted on a[n] 18 month surveillance interval is an administrative change and does not alter testing currently being performed.

The proposed revision to the Bases to reflect that a change to a 24 month surveillance test interval is an exception to current guidance is an administrative change and does not alter testing currently being performed.

3. Not involve a significant reduction in a margin of safety because the results of the historical 18 month surveillance data and maintenance records review identified no potential for a significant increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy is not being changed by these proposed changes.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences, consequently there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 26, 1996

Description of amendment request: The proposed changes would eliminate the records retention requirements from the administrative section of the Technical Specifications (TS) in accordance with NRC Administrative Letter95-06, "Relocation of Technical Specifications Administrative Controls Related to Quality Assurance."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the ... North Anna Power [Station] in accordance with the proposed Technical Specifications changes will not:

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(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed administrative changes do not affect equipment or its operation. Therefore, the likelihood that an accident will occur is neither increased nor decreased by relocating record retention requirements from the Technical Specifications to the Operational Quality Assurance Program. This TS change will not impact the function or method of operation of plant equipment. Thus, a significant increase in the probability of a previously analyzed accident does not result due to this change. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of any accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not increased by this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the design or operations of the physical plant. Since record retention requirements are administrative in nature, a change to these requirements does not contribute to accident initiation, an administrative change related to this activity does not produce a new accident scenario or produce a new type of equipment malfunction. [These] changes do not alter any existing accident scenarios. The proposed administrative change does not affect equipment or its operation, and, thus, does not create the possibility of a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Section 6.0 of the North Anna ... Technical Specifications does not have a basis description. The proposed administrative change does not affect equipment or its operation, and, thus, does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Mark Reinhart, Acting

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 3, 1996

Description of amendment request: This amendment request proposes to revise the technical specifications associated with the inspection of the reactor coolant flywheel to provide an exception to the recommendations of Regulatory Guide 1.14, Revision 1, "Reactor Coolant Pump Flywheel Integrity." The proposed exception would allow either an ultrasonic volumetric examination or surface examination to be performed at approximately 10-year intervals. In addition, a correction of the issuance date of a referenced regulatory guide is included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is p presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety function of the RCP [reactor coolant pump] flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP flywheel results from overspeed following a LOCA [loss-of-coolant accident]. The maximum obtainable speed in the event of a LOCA was predicted to be less than 1500 rpm. Therefore, a peak LOCA speed of 1500 rpm is used in the evaluation of RCP flywheel integrity in WCAP-14535. This integrity evaluation shows a very high flaw tolerance for the flywheels. The proposed change does not affect that evaluation. Reduced coastdown times due to a single failed flywheel is bounded by the locked rotor analysis, therefore, it would not place the plant in an unanalyzed condition. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the proposed change, since the proposed change does not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

3. The proposed change does not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are basically unchanged by the proposed amendment. The results of the flywheel inspections performed have identified no indications affecting flywheel integrity. As identified in WCAP-14535, detailed stress analysis as well as risk analysis have been completed with the results indicating that there would be no change in the probability of failure for RCP flywheels if all inspections were eliminated. Therefore these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 3, 1996

Description of amendment request: This amendment request proposes to correct the reference to the Action Statement for Item 7.b, RWST Level - Low-Low Coincident with Safety Injection, Table 3.3-3, Engineered Safety Features Actuation System Instrumentation, from Action 16 to Action 28.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the reference from Action Statement 16 to Action Statement 28 for Functional Unit 7.b. of Table 3.3-3 will reduce the probability for an automatic switchover from the RWST [refueling water storage tank] to an empty containment sump to occur, while an RWST level channel is inoperable or is being tested with its bistable tripped, should an inadvertent safety injection signal occur concurrent with a single failure of a second RWST level channel. The design of these channels does not allow for operation or testing in bypass, so Action Statement 16 is not applicable. Changing to Action Statement 28 will limit

the duration that a channel could be inoperable or be in test with its bistable bypassed. This change does not involve any design changes or hardware modifications, and does not introduce any new potential accident initiating conditions. The increase in allowed outage time for this item was evaluated and the associated unavailability and risk was shown to be equivalent to, or less than, that of other functional units evaluated in WCAP-10271, Supplement 2, Revision 1. Therefore, this proposed change does not increase the probability of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not result in any hardware changes and does not result in a change in the manner in which the ESFAS [engineered safety features actuation system] provides plant protection. This change does not alter the functioning of the ESFAS. Rather, the likelihood or probability of the ESFAS functioning properly is affected as described above. This change will not change the method by which any safety-related system performs its function. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This proposed change will not result in a significant reduction in the margin of safety defined for any technical specification since it does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 28, 1996

Brief description of amendments: The amendment would modify the technical specifications (TS) to increase the minimum required amount of anhydrous trisodium phosphate (TSP) in the containment baskets. TSP is used to ensure that following a postulated design basis loss of coolant accident (LOCA), the containment sump pH is maintained greater than or equal to seven.

Date of issuance: December 10, 1996

Effective date: December 10, 1996, to be implemented within 45 days from the date of issuance.

Amendment Nos.: Unit 1 - 110; Unit 2 - 102; Unit 3 - 82

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1996 (61 FR 47962) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 21, 1996

Brief description of amendments: The amendments revise the term "lifting loads" used in Technical Specification 3.9.6b.2, Manipulator Crane, to "lifting force." This revision will clarify that the static loads associated with the lifting tool, drive rod, and control rod weights are not included in the lifting force limit.

Date of issuance: December 12, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 171 and 153

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1996 (61 FR 47977) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 22, 1996, and as supplemented by letters dated July 4 and September 20, 1996

Brief description of amendment: The amendment revises Clinton Power Station Technical Specification 3.3.4.1, "End of Cycle Recirculation Pump Trip (EOC-RPT) Instrumentation," by deleting Surveillance Requirement 3.3.4.1.6 which requires the RPT breaker interruption time to be determined at least once per 60 months.

Date of issuance: December 13, 1996

Effective date: December 13, 1996

Amendment No.: 111

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 24, 1996 (61 FR 18169) The supplemental letters of July 4 and September 20, 1996, provided clarifying information and did not include significant changes relative to the original **Federal Register** notice.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: July 12, 1996, as supplementedOctober 30, 1996.

Brief description of amendment: The amendment revises TS 6.2.2.h regarding the administrative controls for the normal working hours of unit staff who perform safety-related functions, and TS 6.2.2.i regarding an organizational change. The changes authorize (1) establishment of unit staff work schedules that average 40 hours per week using shifts as long as 12 hours, and (2) elimination of the positions of General Supervisor Operations and Supervisor Operations.

Date of issuance: December 12, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 158

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1996 (61 FR 42280) The October 30, 1996, letter provided supplemental information that did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: July 12, 1996

Brief description of amendment: The amendment revises Technical Specification Section 6.2.2.i regarding the administrative controls for the normal working hours of unit staff who perform safety-related functions. The change allows the establishment of unit staff work schedules that average 40 hours per week using shifts as long as 12 hours.

Date of issuance: December 12, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 78

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1996 (61 FR 42281) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 28, 1995, as supplemented October 25, 1995, and August 9, 1996

Brief description of amendments: The amendments revise the 250 volt DC profiles in the Technical Specifications for the two units to reflect new load profile calculations.

Date of issuance: December 17, 1996

Effective date: Unit 1, as of date of issuance, to be implemented within 30 days; Unit 2, as of date of issuance, to be implemented prior to Startup following the Eighth Refueling and Inspection Outage for Unit 2, which is scheduled for the Spring of 1997.

Amendment Nos.: 162 and 133

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47622) The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor the **Federal Register** notice.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 12, 1992, as supplemented September 17, 1992, March 17, 1993, August 17, 1993, August 18, 1993, December 29, 1993, June 29, 1995, August 15, 1996, October 3, 1996,October 23, 1996, November 14, 1996, November 20, 1996 (JPN-96-045), November 20, 1996 (JPN-96-046), and November 27, 1996.

Brief description of amendment: The amendment modifies

Facility Operating License No. DPR-59 and the James A. FitzPatrick Nuclear Power Plant (JAFNPP) Technical Specifications (TSs) to authorize an increase in the maximum power level of JAFNPP from 2436 MWt to 2536 MWt. The amendment also approves changes to the TSs to implement uprated power operation.

Date of issuance: December 6, 1996

Effective date:

As of the date of issuance to be implemented upon plant startup following the refueling outage cycle 13.

Amendment No.: 239

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4943) The letters dated September 17, 1992, March 17, 1993, August 17, 1993, August 18, 1993, December 29, 1993, June 29, 1995, August 15, 1996,October 3, 1996, October 23, 1996, November 14, 1996, November 20, 1996, (JPN-96-045), November 20, 1996, (JPN-96-046), and November 27, 1996, provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey Date of application for amendment: September 20, 1996, as supplemented September 30, 1996

Brief description of amendment: The amendment changes Technical Specification Surveillance Requirement 4.7.7.b.4 for the Auxiliary Building Exhaust Air Filtration System, and its associated Bases, to indicate that the specified flowrate applies only to system testing.

Date of issuance: December 12, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No. 168

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1996 (61 FR 55040) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 27, 1996, as supplemented October 24, 1996

Brief description of amendments: The amendment to Unit 2 deletes License Condition 2.C.(24)(a) which required establishment by June 3, 1981, of regularly scheduled 8-hour shifts without reliance on routine use of overtime. The amendments to both Units 1 and 2 revise Technical Specification 6.2.2 to delete the reference to Generic Letter 82-12, "Nuclear Plant Staff Working Hours," and require that administrative controls be established which will ensure that adequate shift coverage is maintained without heavy use of overtime for individuals.

Date of issuance: December 17, 1996

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos. 186 and 169

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications for both units and License for Unit 2 only.

Date of initial notice in **Federal Register:** September 12, 1996 (61 FR 48175) The October 24, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or the original notice.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 29, 1996

Brief description of amendments: These amendments revise Technical Specification (TS) Surveillance Requirement 3.5.1.4 to increase the minimum boron concentration in the safety injections tanks from 1850 ppm to 2200 ppm.

Date of issuance: December 6, 1996

Effective date: December 6, 1996, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2 - 135; Unit 3 - 124

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1996 (61 FR 40029) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 1996. No significant hazards consideration comments received: No.Temporary

Local Public Document Room location: Science Library, University of California, P. O. Box 19557, Irvine, California 92713

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: September 27, 1996, as supplemented on October 25, and November 18, 1996

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification requirements related to the low temperature overpressure protection (LTOP) system. Specifically, the LTOP curve is modified to define 10 CFR Part 50, Appendix G pressure temperature limitations for LTOP evaluation through the end of operating cycle (EOC) 33. In addition, the LTOP enabling temperature and the temperature required for starting a reactor coolant pump have been changed consistent with the design basis for the LTOP system. Finally, the TS bases were changed consistent with the changes described above.

Date of issuance: December 13, 1996

Effective date: December 13, 1996, to be implemented within 30 days.

Amendment No.: 130

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1996 (61 FR 52472) The October 25 and November 18, 1996, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Dated at Rockville, Maryland, this 24th day of December 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96-33254 Filed 12-31-96; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38086; File No. SR-CBOE-96-69]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Calculating Blue Sheets Violation Aggregate Fines on a Rolling Year Basis

December 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on November 20, 1996,[3] the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 17, 1996, the Exchange filed Amendment No. 1 to the proposed rule change. Amendment No. 1 is a technical amendment, correcting Exhibit I, Section I to the filing. *See* letter from Margaret Abrams, Senior Attorney, CBOE to Janice Mitnick, Attorney, Division of Market Regulation, SEC, dated December 17, 1996.

"Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its minor rule violation plan so that automated submission of trading data ("Blue Sheets") violation aggregate fines are calculated on a rolling year basis. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE's minor rule violation plan contained in Exchange Rule 17.50 ("minor rule plan") to change provisions calculating time for aggregate fines for Blue Sheets violations from a calendar year basis to a rolling year basis. The rule change will implement the Commission's recommendation to amend the minor rule plan following a 1995 inspection of CBOE's regulatory and enforcement programs.

In an inspection report dated January 3, 1996[4], the Commission's Office of Compliance Inspections and Examinations recommended amendment of CBOE's minor rule plan to consider previous Blue Sheets violations on a rolling basis in order to deter repeat, or recidivist, violators;

The current plan calculates aggregate fines on a calendar year basis for violations of position limits and bluesheet requests. Presently, if a member violates a position limit in March 1995, the CBOE would review whether the member had been sanctioned only in the prior two months and not the previous year. Reviewing sanctions levied on a rolling year basis would prove more beneficial.[5]

The filing will amend Rule 17.50(g)(3) relating to failures to respond in a timely manner to a request for Blue Sheets accordingly. The Exchange notes that no Blue Sheets violations have been processed as summary fines under the Exchange's minor rule plan in 1996.

2. Statutory Basis

By amending Exchange rules to implement the Commission's recommendations to more effectively deter repeat violations of the Blue Sheets provisions of CBOE's minor rule plan, the Exchange believes that the proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 ("Act") in general and with Section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act. Specifically, the Commission believes that the rule change to calculate aggregate fines on a rolling year basis, implementing Commission recommendations, should deter more effectively repeat violations of CBOE's minor rule plan, and should promote just and equitable principles of trade, and the protection of investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register.** Immediate approval will allow the Exchange to adopt a Commission staff recommended change to its existing minor rule violation plan without further delay. Further, the Commission notes that the rule change merely conforms to the standard used by the New York Stock Exchange.[6] Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–69 and should be submitted by January 23, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–96–69) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–33315 Filed 12–31–96; 8:45 am]

BILLING CODE 8010–01–M

[4] See Letter and attached Inspection Report from Lori A. Richards, Director, Office of Compliance Inspections and Examinations, Commission to Charles Henry, President, CBOE, dated January 3, 1996.

[5] See Inspection Report, p.9.

[6] See New York Stock Exchange Rule 476A, Supplementary Material (using "a 'rolling' 12-month period" to determine multiple minor violations).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–38081; File No. SR–PSE–96–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Listing and Trading of Index Options on the Dow Jones & Co. Taiwan Index

December 23, 1996.

I. Introduction

On October 17, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade index options based on the Dow Jones & Co. ("Dow Jones & Co.") Taiwan Index ("Index").

The proposed rule change appeared in the **Federal Register** on October 25, 1996.[3] No comments were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on December 17, 1996.[4] This order approves the PSE's proposal, as amended.

II. Description

The Exchange is proposing to list and trade cash-settled, European-style[5] stock index options on the Dow Jones & Co. Taiwan Index. The Index is comprised of 113 representative stocks traded on the Taiwan Stock Exchange ("TSE").[6] According to the Exchange, the Index is representative of the Taiwan stock market as a whole, and therefore, is deemed a broad-based index.

A. Index Design

The Index was designed, and is maintained, by Dow Jones & Co. The 113 stocks comprising the Index were selected for their market weight, trading liquidity, and their representation of the business industries reflected on the TSE. The Exchange believes that these stocks reflect the industrial composition of the broader Taiwanese equity market. Specifically, stocks from nineteen different economic sectors of the Taiwan stock market were ranked by their market value and the largest stocks were selected from the sectors until approximately 80% of the market was represented by Index stocks.[7]

Only publicly traded and liquid common stocks are considered for inclusion in the Index. Stocks which are not traded frequently, do not have sufficiently high share turnover, or a sufficiently large dollar volume are excluded from the Index. Companies whose stocks are 75% owned by another company or state entity will be excluded, and companies controlled by a family or an individual are carefully reviewed before inclusion.

The Index is weighted by the market capitalization of the component stocks. As of August 30, 1996, the market capitalization of the Index was US$181 billion[8] (at the exchange rate of NT $27.5 per dollar), which represents approximately 80% of the capitalization of the TSE. The average market capitalization of these stocks was US$1.6 billion on the same date (at the same rate of exchange). The individual market capitalization of these stocks ranged from US$18.6 billion (Cathay Life Insurance) to US$150 million (Hong Ho Precision Textile Co.) on the same date. The largest stock accounted for 10.26% of the Index, while the smallest accounted for .08%. The top five stocks in the Index, by weight, accounted for approximately 31% of the Index.[9] The average daily trading volume of the component securities for the period April 1 through August 30, 1996, ranged from a high of 49,879,418 shares (China Steel) to a low of 457,091 shares (Hsing Ta Cement Co.), with an average daily trading volume for all components of the Index of approximately 7,698,763 shares. For the quarter ended September 30, 1996, the Index components, in the aggregate, had an average daily trading volume of US$1.1 billion.

B. Calculation and Maintenance of Index

The value of the Index is determined by multiplying the price of each stock by its number of shares included in the Index, adding those sums, and then dividing by a divisor which gives the Index value of 100 on its base date of December 31, 1991. The Index had a closing value of 160.33 on August 30, 1996. The Index will be maintained by Dow Jones & Co. and, in order to maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights insurances, and mergers and acquisitions.

The composition of the Index is reviewed every quarter using size, liquidity, and investibility screens. Dow Jones & Co. may make component changes at any time to ensure that the Index continues to represent the overall character of the Taiwanese equity market. To restrict turnover at quarterly revisions, however, an Index stock can be replaced by a new stock from the same economic sector only if the market value of the new stock exceeds its market value by a threshold amount. Index stocks may also be replaced when necessary between quarterly reviews following special corporate events such as delistings, mergers, or acquisitions. Adjustments may also become necessary following changes in government restrictions on the foreign ownership of stocks.

In addition, in the event that the Index does not comply with any of the following maintenance criteria, the Exchange will notify the Commission to determine the appropriate regulatory response: (a) the number of component stocks in the Index changes and there are more than 150 stocks or less than 75 stocks comprising the Index; (b) at the time of a quarterly review, a component's market capitalization is below $75 million; (c) the top weighted component stock accounts for more than 25% of the weight of the Index; or (d) the top three weighted stocks account for more than 45% of the weight of the Index.[10] The Commission's and the PSE's regulatory responses for failure to meet the above criteria could include, but are not limited to, the removal of the securities from the Index, prohibiting opening transactions, or discontinuing

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37842 (October 18, 1996), 61 FR 55345 (October 25, 1996).

[4] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated December 17, 1996 ("Amendment No. 1"). In No. 1, the PSE amended its rule filing regarding its maintenance criteria and Index value dissemination procedures. *See infra* notes 10 and 12, and accompanying text.

[5] European-style options may only be exercised during a specified period before expiration.

[6] A list of Index components is available at the Commission and at the PSE.

[7] Due to foreign investment restrictions of Taiwanese stocks, Dow Jones & Co. only includes 20% of a component stocks' total shares outstanding in calculating the market capitalization. Accordingly, only 20% of the actual market value of the component stocks is represented by the Index.

[8] This figure includes all outstanding shares for each component stock. The Index itself is comprised of approximately 20% of this figure, of US$36.2 billion. *See supra* note 7.

[9] The five most heavily weighted stocks in the Index as of August 30, 1996 were: Cathay Life Insurance (10.26%); First Commercial Bank (5.98%); Hua Nan Bank (5.75%); Chang Hwa Bank (5.22%); and China Steel (3.88%).

[10] *See* Amendment No. 1.

the listing of new series of Index options.

C. Index Option Trading

The Exchange proposes to base trading in options on the Index on the full value of the Index as expressed in U.S. dollars. The Exchange also may provide for the listing of long-term index option series ("LEAPS") on the Index. The Exchange will list expiration months for Index options and Index LEAPS in accordance with PSE Rule 7.8.

The trading hours for options on the Index will be from 6:30 a.m. Pacific time to 1:15 p.m. Pacific time.[11] With no overlap in trading hours between the PSE and the TSE, the Exchange is proposing to disseminate the Index value only at the beginning of each trading day.[12] Specifically, the PSE plans to disseminate the Index value via the Consolidated Tape Authority ("CTA") Network B once a day at the opening of trading. The Index value will be subsequently re-disseminated throughout the trading day through data venders as well as through the Dow Jones Global Index web site.

In addition, the Exchange will be trading options on an Index value that is calculated in the "local currency" (*i.e.*, Taiwan dollars) and not converted into U.S. dollars. Although premiums will be in U.S. dollars, the strike prices will be based on the local currency Index level. It also should be noted that the futures and futures options that will be traded at the Chicago Mercantile Exchange ("CME") will be based on the same underlying Index and the same Index value.

The Exchange is proposing to establish position limits for Index options equal to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date. According to the Exchange, these limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices. Furthermore, the hedge exemption rule applicable to broad-based index options will apply to Index options.[13]

The PSE also represents that it has the necessary systems capacity to support new series that would result from the introduction of the Index options.

D. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month, and trading in the expiring contract month on the PSE will normally cease on Friday at 1:15 p.m. Pacific time unless a holiday occurs. The exercise settlement value of Index options at expiration will be determined from closing prices established at the close of the regular Friday trading session in Taiwan. If a stock does not trade during this interval or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index. When expirations are removed in accordance with Exchange holidays, such as when the PSE is closed on the Friday before expiration, the last trading day for expiring options will be Thursday and the exercise settlement value of Index options at expiration will be determined at the close of the regular Thursday trading sessions in Taiwan even if the Taiwanese markets are open on Friday. If the Taiwanese markets are closed on the Friday before expiration but the PSE is open for trading, the last trading day for expiring options will similarly be Thursday, with the exercise settlement value being determined from Thursday closing prices on the TSE.

E. Surveillance

The Exchange will apply its existing index option surveillance procedures to Index options. In addition, the Exchange has entered into a surveillance sharing agreement with the TSE, which should, as discussed below, enable the Exchange to obtain information concerning the trading of the component stocks of the Index.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[14] Specifically, the Commission finds that the trading of index options based on the Dow Jones & Co. Taiwan Index, including long-term index options, will serve to protect investors, promote the public interest, and will help to remove impediments to a free and open market by providing investors with a means to hedge exposure to the market risk associated with the Taiwanese equity market and to provide a risk management instrument for positions in the Taiwanese securities market.[15]

Nevertheless, the trading of options on the Index raises several issues related to the design and structure of the Index, customer protection, and surveillance. The Commission believes, however, for the reasons discussed below, that the PSE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to apply the Exchange rules applicable to broad-based index options to the Index options. First, the Index consists of 113 of the most actively traded stocks on the TSE. Second, stocks in the Index are among the most highly capitalized stocks on the TSE. For example, on August 30, 1996, the market capitalization of the Index was US$181 billion (at the exchange rate of NT $27.5 per dollar), which represents approximately 80% of the capitalization of the TSE. In addition, the market capitalization of the individual stocks in the Index ranged from a high of US$18.6 billion (Cathay Life Insurance) to a low of US$150 million (Hong Ho Precision Textile Co.), with an average market capitalization of US$1.6 billion. Third, the Index includes stocks of companies from nineteen separate industries. Fourth, PSE maintenance criteria require that no single Index component shall comprise more than 25% of the Index's total value, and that the percentage weighting of the three largest issues in the Index shall not exceed 45% of the Index's value. This will help to ensure that a single stock or small group of stocks does not dominate the Index.[16] Fifth, Dow Jones & Co. has adopted listing and maintenance criteria to ensure that the Index maintains its broad representative sample of stocks as well as a variety of industries and economic sectors.[17] In addition, the

[11] Regular trading hours in Taiwan are Monday to Friday 0900–1200, and Saturday from 0900–1100.

[12] According to the PSE, the Consolidated Tape Authority ("CTA") has asked the options exchanges to evaluate the need to disseminate index values based on foreign indices every fifteen seconds when the index value does not change during U.S. trading hours. The CTA is concerned that disseminating the same index value every fifteen seconds results in unnecessary data traffic. By disseminating the Index value only once a day, the Exchange believes that it is complying with the CTA's request. *See* Amendment No. 1.

[13] *See* Commentary .02 to PSE Rule 7.6.

[14] 15 U.S.C. 78f(b) (1988).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] As noted above, as of August 30, 1996, the top five stocks in the Index, by weight, accounted for approximately 31% of the Index, and no single stock accounted for more than 10.26% of the Index. *See supra* note 9 and accompanying text.

[17] For example, the Exchange's maintenance criteria require that at the time of a quarterly review, a component's market capitalization be

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maintenance criteria will ensure that the Index continues to be comprised of component stocks that are among the most highly capitalized and actively traded stocks on the TSE. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

For many of the same reasons, the Commission believes that the general broad diversification of the Index component stocks, as well as their high capitalizations and trading activity, lessen the potential for manipulation of the index. First, as noted above, the Index represents a broad cross-section of highly-capitalized Taiwanese stocks, with no single industry group or stock dominating the Index. Second, the stocks that comprise the Index are relatively actively traded. Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index continues to represent stocks with the highest capitalizations and trading volumes on the TSE. In addition, the Exchange has proposed position and exercise limits for the Index options that are consistent with other broad-based index options. Finally, as discussed in more detail below, the Commission believes that adequate surveillance mechanisms exist between the PSE and the underlying security market to detect and deter potential market manipulation and other trading abuses.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the Dow Jones & Co. Taiwan Index options and Index LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the PSE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Dow Jones & Co. Taiwan Index options and Index LEAPS.

C. Surveillance

In evaluating a proposal to trade a new derivative instrument, the Commission, consistent with the protection of investors, considers the degree to which the derivative market can conduct adequate surveillance of trading in the instrument. The ability of the options market to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in this evaluation. It is for this reason that it is important that the Commission determine that there is an adequate mechanism in place to provide for the exchange of information between the market trading the derivative product and the market on which the securities underlying the derivative product are traded. Such mechanisms enable officials to surveil trading in both the derivative product and the underlying securities. [18] For foreign stock index derivative products, such mechanisms are especially important for the relevant foreign and domestic exchanges to facilitate the collection of necessary regulatory, surveillance, and other information.

The Commission notes that the PSE and the TSE have entered into a Memorandum of Understanding ("MOU") which appears to enable the Exchange to obtain necessary surveillance information concerning the trading of the component stocks of the Index, including the identity of persons who execute transactions on either the TSE or the PSE.[19] The Commission recognizes, however, that there are conditions that affect the flow of information under the MOU between the two exchanges. While the TSE has represented that there are no TSE rules or Taiwanese laws that might act to restrict the flow of market surveillance information, any request that involves information on an investor's identity or any information that is confidential or classified must be approved by the Taiwan Securities and Exchange Commission ("TSEC"). The TSEC will review the request on a case-by-case basis in deciding whether to permit the TSE to provide the information to the PSE. As such, pertinent transaction, clearing, or customer identity information that may be necessary for the PSE to review during an investigation might need approval by the TSEC before it could be relayed to the PSE.

In most situations, in the absence of a fully effective surveillance sharing agreement between exchanges, the Commission finds it difficult to conclude that a derivative product, such as the Dow Jones & Co. Taiwan Index options, is not susceptible to manipulation. Other factors, however, mitigate such a conclusion in this instance and support approval of the PSE's proposal. First, while the size of the underlying market is not necessarily determinative of whether a particular derivative product is readily susceptible to manipulation, the size of the market underlying the Dow Jones & Co. Taiwan Index makes it less likely that the proposed Index options are readily susceptible to manipulation.

Second, the PSE and the TSE, as discussed above, have signalled their intentions to prevent cross-border fraud and manipulation by entering into a MOU.

Third, although it appears that the TSEC has the ability to limit or condition the information to be provided by the TSE to the PSE, the TSEC has stated to the Commission that it would share surveillance information with the Commission on a case-by-case basis.[20] Moreover, in connection with the Commission's review of a proposal by the CME to trade futures on the Dow Jones & Co. Taiwan Index, the CME provided an opinion of counsel that indicates that the TSEC has the authority to obtain market oversight information that the Commission might request.[21] Consequently, it appears as though the TSEC can obtain the

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above $75 million, and that the number of component stocks in the Index not be more than 150 or less than 75 stocks. In the event that the Index does not comply with any of the Exchange's maintenance criteria, the PSE will notify the Commission to determine that appropriate regulatory responses. Such responses could include, but are not limited to, the removal of the securities from the Index, prohibiting opening transaction, or discontinuing the listing of new series of Index options.

[18] The Commission believes that a comprehensive surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally insists that such agreements require that the parties provide each other, upon request, with information about market trading activity, clearing activity, and the identity of the purchasers and sellers of securities underlying the derivative product. *See, e.g.*, Securities Exchange Act Release No. 31529 (November 27, 1992), 57 FR 574248 (December 3, 1992) (File No. Amex–91–26) (order approving proposed rule changes relating to the listing and trading of options on American Depositary Receipts and preferred stock).

[19] *See* Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the Pacific Stock Exchange and the Taiwan Stock Exchange, dated October 22, 1993.

[20] Such information would include transaction, clearing, and customer identity information necessary to conduct an investigation.

[21] *See* letter from Carl A. Royal, Senior Vice President, Chicago Mercantile Exchange, to Jane C. Kang, Special Counsel, CFTC, and Howard Kramer, Associate Director, Division of Market Regulation, Commission, dated September 12, 1996.

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necessary information and is willing to provide it to the Commission. The Commission believes that this, along with the PSE's agreement with the TSE, should help to detect as well as to deter potential manipulation.

While the situation described above is not ideal, the Commission believes that it is adequate in light of the circumstances and considering the large capitalizations, substantial trading volume, wide diversity of the component stocks in the Dow Jones & Co. Taiwan Index, and the size of the market underlying the Index.[22]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 to the PSE's proposal describes details of certain Index maintenance procedures. In this regard, the Commission believes that the Exchange's review of the Index's component securities for liquidity, capitalization, and concentration levels will help to ensure that the Index maintains its intended market character as well as remains an appropriate trading vehicle for public customers. In addition, Amendment No. 1 changes the Exchange's dissemination procedures. Rather than calculating and disseminating the Index value every fifteen seconds throughout the trading day, the Exchange will disseminate the Index value only at the beginning of each trading day. The Commission believes that in light of the PSE's assurances that the Index value will be widely available to investors throughout the trading day through data vendors as well as through the Dow Jones Global Index web site, and because stock exchange trading in Taiwan and U.S. markets do not overlap, approval of the amendment is appropriate. The changes proposed by Amendment No. 1 are minor, technical, or clarify and, for the reasons noted above, do not raise any new regulatory issues. The Commission also notes that no comments were received on the original PSE proposal, which was subject to the full 21-day notice and comment period. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–40 and should be submitted by January 23, 1997.

IV. Conclusion

For the foregoing reasons, the Commission finds that the PSE's proposal to list and trade index options based on the Dow Jones & Co. Taiwan Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–PSE–96–40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–33314 Filed 12–31–96; 8:45 am]

BILLING CODE 8010–01–M

[22] The Commission has similarly explored alternatives in other instances when the relevant foreign exchange was unwilling or unable to enter into a comprehensive surveillance sharing agreement. *See, e.g.*, Securities Exchange Act Release No. 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995) (order approving proposed rule change relating to the listing and trading of warrants on the Deutscher Aktienindex).

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2493]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on January 22, 1997, at 9:30 a.m., in Room 4315 at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593. The purpose of the meeting will be to discuss the outcome of the Forty-first Session of the International Maritime Organization's Subcommittee on Fire Protection, held on September 30, 1996. In addition, preparations for the next session will also be discussed at the meeting.

The meeting will focus on proposed amendments to the 1974 SOLAS Convention for the fire safety of commercial vessels. Specific discussion areas include: the new mandatory Fire Test Procedures Code, proposed restructuring of Chapter II–2, halon fire extinguishing systems, emergency escape breathing devices, fire retardant materials for fishing vessel lifeboats, criteria for maximum fire loads, fire safety measures for deep fat cooking equipment, interpretations to SOLAS 74, role of the human element in maritime casualties, safety of passenger submersible craft, recognition of test laboratories, fixed fire detection and alarm systems for new and existing cargo ships, and shipboard safety emergency plans.

Although the meeting will focus primarily on the outcome of the previous session, preparations and plans for the next will also be discussed. This offers the opportunity for members of the public to be involved early in the standards development process. Members of the public wishing to make a statement on new issues or proposals at the meeting are requested to submit a brief summary to the U.S. Coast Guard five days prior to the meeting.

Interested members of the public are encouraged to attend. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267–2997.

Dated: December 18, 1996.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–33313 Filed 12–31–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

White House Commission on Aviation Safety and Security; Open Meeting

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security will hold a meeting to discuss

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aviation safety and security issues. The meeting is open to the public.

DATES: The meeting will be held on Thursday, January 16, 1997, from 2:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will take place in the Commerce Department Auditorium, 14th Street, between Constitution and Pennsylvania Avenues, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW, Washington, DC 20405; telephone 202.501.3863; telecopier 202.501.6160.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security ("Commission"). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on January 16 is to obtain information concerning aviation safety and financing.

Limited seating for the public portion of the meeting is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC, on December 26, 1996.

Rosalind A. Knapp,

Acting General Counsel, Department of Transportation.

[FR Doc. 96–33338 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD08–97–061]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of full committee meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The meeting at HOGANSAC will be held on Thursday, January 30, 1997 from 9:30 a.m. to approximately 1 p.m. Member of the public may present written or oral settlements at the meeting.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the House Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Kevin Eldridge, Executive Director of HOGANSAC, telephone (713) 671–5101, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of the Meeting

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the sponsor (Rear Admiral Josiah), Executive Director (Captain Eldridge) and chairman (Tim Leitzell).

(2) Approval of the October 3, 1996 minutes.

(3) Report from the Waterways Subcommittee.

(4) Report from the Navigation Subcommittee.

(5) "State of the Waterway" report by Vessel Traffic Service Houston/Galveston.

(6) Status reports on Committee membership, HSC 2000 Report, "Mobility" initiative and Houston Ship Channel dredging project.

Procedural

All meetings are open to the public. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: December 19, 1996.

T. W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 96–33371 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Advisory Circulars: Small Airplanes Airworthiness Standards

AGENCY: Federal Aviation Administraion (FAA), DOT.

ACTION: Publication of advisory Circulars; Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1996. The AC's listed below relate to part 23 of the Federal Aviation Regulations (FAR) and/or Part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Ms. Terre Flynn, Standards Staff (ACE–11), Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed to update existing policy information for small airplane certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, Maryland 20785.

Advisory Circulars Published

AC No.	Date	Title
23.1521–2, Change 1	4/24/96	Type Certification of Oxygenates and Oxygenated Gasoline Fuels in Part 23 Airplanes with Reciprocating Engines.

AC No.	Date	Title
23.733–1	10/10/96	Tundra Tires.

In addition to the AC's listed above, Powered Parachute Design Standards for Acceptance Under Primary Category was issued 5/8/96. A copy of this publication may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri, on December 24, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate Aircraft Certification Office.

[FR Doc. 96–33376 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–62]

Petitions for Waiver; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for waivers received and of dispositions of prior petitions.

SUMMARY: This notice contains the summary of a petition requesting a waiver from the interim compliance date required of 14 CFR part 91, § 91.867. Requesting a waiver is allowed through § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28771, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on December 23, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Waiver

Docket No.: 28771.

Petitioner: Transcontinental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 91867.

Description of Relief Sought: To allow Transcontinental Airlines, Inc. to operate for 31 days after December 31, 1996, without the required number of Stage 3 aircraft in its fleet.

[FR Doc. 96–33372 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC) 165 meeting to be held January 16–17, 1997, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The plenary agenda will be as follows:

(1) Welcome and Introductions;

(2) Approval of the Summary of the Previous Meeting;

(3) Chairman's Remarks;

(4) Overview of New Developments Relevant to AMSS and SC 165: a. Required Communications Performance (SC 169/WG 2); b. AMCP WG A on AMSS; c. Industry, Users, Government;

(5) Review of Working Group Activities: a. WG 1 (AMSS Avionics Equipment MOPS); b. WG 3 (System/Service Performance Criteria and Next-Generation Satcom); c. WG 5 (AMS(R)S Satcom Voice);

(6) Other Business;

(7) Date and Place on Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 20, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–33374 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on January 14–16, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) General Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review Ballot Comments on Special Committee 185 Final Report; (6) Other Business; (7) Adjournment of Special Committee 185.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 20, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–33375 Filed 12–31–96; 8:45 am]

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Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 12, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of section 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than March 18, 1997.

The following is a brief overview of the impose and use application.

PFC Project: # 97–04–C–00–MHT.

Level of the proposed PFC: $3.00.

Proposed Charge effective date: September 1, 1997.

Estimated charge expiration date: February 1, 1998.

Estimated total net PFC revenue: $527,500.00.

Brief description of project: Acquire Snow Removal Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in persons at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103.

Issued in Burlington, Massachusetts on December 17, 1996.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 96–33373 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#97–03–C–00–GEG) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Spokane International Airport, Submitted by the Spokane Airports, Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Spokane International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW; Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John G. Morrison, CEO/Executive Director, at the following address: Spokane Airports, P.O. Box 19186, Spokane, WA 99219–9186.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Spokane International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (206) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–03–C–00–GEG) to impose and use PFC revenue at Spokane International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 24, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Spokane International Airport, Spokane, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 25, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1997.

Proposed charge expiration date: July 1, 2002.

Total requested for use approval: $17,606,000.00.

Brief description of proposed project: Master plan update; Airport terminal signage; Taxiway D and H improvements; Taxiway J improvements; Multiple use apron (Apron G) improvements; Multi use apron improvements; Regional terminal concourse expansion; and Terminal ticketing/baggage expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at:

Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Spokane International Airport.

Issued in Renton, Washington, on December 24, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–33377 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket No. PB–95–4]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Railroad Corporation

Northeast Illinois Railroad Corporation (Metra) seeks a permanent waiver of compliance from certain provisions of 49 CFR Part 232, Section 17, on passenger cars equipped with 26–C brake equipment by extending the clean, oil, test and stencil (COT&S) period from 36 to 48 months, and on passenger cars that are equipped with PS–68 brake systems by eliminating the required 12 cycle of single car testing. According to Metra's waiver request, their entire car fleet is equipped with the 26–C brake valve and is captive to the Chicago metropolitan area. Each Metra car is placed in a yard at least once each week. Their passenger locomotive fleet is equipped with Graham-White Air Dryers which provide a source of clean, dry air to the brake system. When on repair tracks or upon completion of COT&S, Metra cars are tested under Metra's Code of Tests for Passenger Cars. The Metra's Code of Tests for Passenger Cars is based upon Association of American Railroad's (AAR) Standard S–044 with the following enhancements:

- Main reservoir pipe and reservoir leakage test (Part 2.2);
- Test for auxiliary brake pipe reduction devices (Part 2.5);
- Lift interlock pressure setting test (required feature covered by the American Disabilities Act) (Part 2.10);
- Test for cars equipped with the 26–C service portion valves and ABDXL emergency portion valves (Part 2.16); and
- Test for the car handbrake (Part 2.17).

The passenger cars operated on the Burlington Northern are equipped with a PS–68 brake system, which has 26–C brake equipment as its foundation. The PS–68 brake system is governed by a 48 month COT&S cycle, per AAR Standard S–045. In date, testing has been performed as the cars are repaired in maintenance shops. According to Metra, the car is dependable and safe, and their experience with this equipment does not support a benefit for the additional 12 month cycle of single car testing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–95–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on December 20, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–33303 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–06–P

[FRA Waiver Petition Docket No. PB–96–2]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

South Kansas & Oklahoma Railroad and South East Kansas Railroad

The South Kansas & Oklahoma Railroad and the South East Kansas Railroad seek a permanent waiver of compliance from 49 CFR Part 232.13 (e)(1), concerning transfer and yard train air test. The aforementioned railroads work in Coffeyville, Kansas, preparing outbound trains on a daily basis. The trains are built throughout the day with cars being added at various times. According to the railroads, the space available does not allow for complete trains to be built without cutting or clearing four public crossings, including a Federal highway. The trains depart each day after receiving an initial terminal air test but they cannot be air tested at locations where the trains are made up without blocking some or all of the aforementioned crossings for significant amounts of time. The railroads would like to put trains together and pull them to the edge of town where they can be tested without blocking any public crossings. The track speed is governed by restricted speed with a maximum of 10 mph, all within yard limits. Currently, the railroads make two air tests of the same train within a two mile area. The railroads state that the city of Coffeyville has one road accessibility to the south part of town when the aforementioned crossings are blocked, thus the waiver would allow for safer access by emergency personnel, as well as save the public from long delays by blocked crossings.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–96–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, DC, on December 20, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–33304 Filed 12–31–96; 8:45 am]

BILLING CODE 4910–06–P

UNITED STATES INFORMATION AGENCY

Community Connections

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges, Russia/Eurasia Division of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to organize and implement community-based, professional programs for entrepreneurs, legal professionals and government officials from Russia, Ukraine, Moldova, Armenia, Belarus, and Georgia. The objective of Community Connections, the successor to Business for Russia, is to enhance the participants' skills in business and entrepreneurship, law, and local governance. USIA is interested in proposals that provide both professional experience and exposure to American life and culture through internships hosted by U.S. business and local governmental and legal institutions, and home stays with local community members. An overall objective of Community Connections is to establish long term lasting relationships among U.S. and international audiences. This program is not academic in nature; rather, it is designed to provide practical, hands-on training in American business, legal and public sector environments which can be transferred upon an individual's return home. The Agency welcomes innovative proposals which combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Laws 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the *Freedom* Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/PN–97–18.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, February 28, 1997. Faxed documents will not be accepted, nor will documents postmarked February 28, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Russia/Eurasia Division, E/PN Room 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Phone: (202) 401–6884, fax: (202) 619–4350, internet: vrector@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation package may be downloaded from USIA's website at http://www.usia.gov/or from the Internet Gopher at gopher://gopher.usia.gov. Select "Education and Cultural Exchanges", then select "Current Request for Proposals (RFPs)." Please read "About the Following RFPs" before beginning to download.

Please specify USIA Program Officer Michael Weider on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Information Agency, Ref.: E/PN–97–18, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life."Diversity" should be interpreted in the broadest sense and ecompass differences including, but not limited, to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

Community Connections seeks to establish and strengthen links between American communities and communities in Russia, Ukraine and Moldova. Contingent upon the availability of funds, we also anticipate expanding the program to include audiences from Armenia, Belarus and Georgia. Community Connections will focus on business (particularly extrepreneurship), the legal profession and its relationship to the administration of justice, and issues of concern for local and regional government. IN order to expand the reach and impact of Community Connections, the program will recruit both English speaking participants and participants with little or no English-language skills.

Pending availability of funds, it is anticipated that approximately 1,200 professionals will participate in this cycle of the FY 1997-funded Community Connections program. All participants will be recruited from the selected regions by experienced U.S. organizations with offices in Russia and the other previously mentioned countries. It is anticipated that approximately half of all participants will be from Russia, one third from Ukraine, and the remainder from Moldova, Armenia, Belarus and Georgia.

Guidelines

In order to make the most effective use of the limited financial resources available while, at the same time, maintaining a maximum degree of program flexibility, the Office of Citizen Exchanges asks that interested organizations submit proposals to host no fewer than 30 participants in total. Organizations must host at least one group of participants each from two of the three subject components of the program. In the past, in an effort to minimize administrative expenses, organizations have hosted no fewer than ten participants at any given time. Programs for business people will be from four to five weeks in length; programs for legal professionals will be from three to four weeks in length; and programs for government officials will be from two to three weeks in length. It is anticipated that programs will be conducted between late summer of 1997 and late summer 1998. Care must be taken to allow sufficient time between programs to prepare for the following group. Organizations proposing to develop programs for additional groups of participants beyond the minimum must demonstrate that they have either allowed for sufficient preparatory time between programs or have the necessary human, physical and financial resources to handle any overlap.

Participants will be assigned to U.S. host communities by the Office of Citizen Exchanges based on the following factors: existing ties between the regions of origin of the participants, the locations of the U.S. grantee organizations, the professional interests of the participants, and the areas of strength of U.S. grantee organizations.

A proposal's cost-effectiveness, including in-kind contributions and ability to keep administrative cost low, is a major consideration in the review process. Cost-sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (revised subpart C.23), "Cost-Sharing and Matching" and should be described in the proposal. In the event that the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Contingent upon the availability of funds from one fiscal year to the next, USIA intends to establish long-term continuing relationships with U.S. organizations which have demonstrated particular expertise in the planning and administration of long standing programs of importance to United States foreign policy, such as Community Connections. Accordingly, USIA reserves the right to extend grant programs found to be effective, by annual amendment for up to three additional fiscal years (not to exceed 5 years total), to provide continued support for this program. At USIA's discretion, organizations may be requested to continue activities for specific audiences or to expand target audiences within the scope of the program (e.g., an organization may be requested to host participants from the same or another discipline—local government, business, or legal profession—from the same or another country included in the program) to meet the changing needs of this program initiative.

The Fulbright-Hays Act, as amended, provides authority to establish long-standing relationships with grantees to further U.S. foreign policy. In recognition of the need to establish such long-term program expertise, an incumbent grantee (which has been found to be effective) may make reference to its current program plans/grant agreement, or incorporate such program by reference and identify any changes, amendments, revisions, improvements, etc. to such current program that it would propose to implement under this solicitation.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. For reference purposes, past programs have averaged a total of $6,300 for each participant hosted. Please use this figure as a guide when preparing your budget.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of Eastern European and NIS Affairs and USIA posts in Russia, Ukraine, Moldova, Armenia, Belarus and Georgia. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below:

1. Program planning and ability to achieve objectives: Detailed agenda and relevant work plan should demonstrate careful and thorough preparation to carry out substantive programs which have a high likelihood of achieving program objectives. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible.

2. Institutional capability: Organization should demonstrate sufficient skills and experience in hosting visitors from other countries and ability to utilize local business, legal and governmental resources and voluntary support. Thematic expertise in project subject matter must be demonstrated.

3. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should also maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

4. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

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Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 24, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–33317 Filed 12–31–96 ; 8:45 am]

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Corrections

Federal Register
Vol. 62, No. 1
Thursday, January 2, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-801, A-428-801, A-475-801, A-588-804, A-559-801, A-401-801, A-412-801]

Anitfriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

Correction

In notice document 96–31753 beginning on page 66472 in the issue of Tuesday, December 17, 1996, make the following correction:

On page 66473, in the table under **France**, in the "BBs" column, in the eighth line, "70.73" should read "0.73".

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federal register

Thursday
January 2, 1997

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) proposed temporary, emergency guideline amendments increasing penalties for alien smuggling and fraudulent use of government-issued documents; (2) proposed temporary, emergency guideline amendments imposing penalties for involuntary servitude, peonage, and slave trade offense; (3) proposed temporary, emergency guideline amendments increasing the penalties for offenses involving list I chemicals; and (4) proposed non-emergency amendments to sentencing guidelines and commentary. Request for Comment. Notice of hearing.

SUMMARY: The Sentencing Commission hereby gives notice of the following actions: (1) pursuant to its authority under sections 203, 211, and 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Commission is preparing to promulgate amendments to §§ 2L1.1, 2L2.1, 2L2.2, and 2H4.1 and accompanying commentary; (2) pursuant to its authority under section 302 of the Comprehensive Methamphetamine Control Act of 1996, the Commission is preparing to promulgate amendments to § 2D1.11 and accompanying commentary; and (3) pursuant to section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (p)), the Commission is considering promulgating certain other non-emergency amendments to the sentencing guidelines and commentary. The Commission may submit the latter, non-emergency amendments to the Congress not later than May 1, 1997.

This notice sets forth the emergency and other proposed amendments and a synopsis of the issues addressed by the amendments as well as additional issues for comment. The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals and that the Commission invites comment and suggestions for appropriate policy choices; for example, a proposed enhancement of [3–5] levels means a proposed enhancement of either three, four, or five levels. Similarly, a proposed enhancement of [4] levels indicates that the Commission is considering, and invites comment on, alternative policy choices. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

DATES: (1) Emergency Amendments. Comment on the several emergency amendments set forth in this notice should be received by the Commission not later than February 4, 1997. After considering any public comment, the Commission plans to address possible promulgation of the emergency amendments at its meeting scheduled for February 11, 1997, at the Commission's offices in the Thurgood Marshall Federal Judiciary Building (meeting time to be determined).

(2) Non-Emergency Amendments. Comment on the non-emergency amendments and issues set forth in this notice should be received not later than March 17, 1997. The Commission has scheduled a public hearing on the proposed non-emergency amendments for March 17, 1997, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E,. Washington, D.C. 20002–8002.

A person who desires to testify at the public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273–4590 not later than March 3, 1997. Written testimony for the hearing must be received by the Commission not later than March 10, 1997. Submission of written testimony is a requirement for testifying at the public hearing.

ADDRESSES: Public Comment should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, Washington, D.C. 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (20[illegible] 273–4590.

Authority: 28 U.S.C. 994 (a[illegible] (o), (p), (x).

Richard P. Conaboy,

Chairman.

Emergency Amendments

Section 2D1.11 Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy

1. Synopsis of Proposed Amendment: This amendment implements section 302 of the Comprehensive Methamphetamine Control Act of 1996. That section raises the statutory maximum penalties under 21 U.S.C. 841(d) and 960(d) from ten to twenty years' imprisonment. The Act also instructs the Commission to increase by at least two levels the offense levels for offenses involving list I chemicals under 21 U.S.C. 841(d) (1) and (2) and 960(d) (1) and (3). These offenses involve the possession and importation of listed chemicals knowing, or having reasonable cause to believe, the chemicals will be used to unlawfully manufacture a controlled substance. In carrying out these instructions, the Act requires that the offense levels be calculated proportionately on the basis of the quantity of controlled substance that reasonably could be manufactured in a clandestine setting using the quantity of list I chemical possessed, distributed, imported, or exported.

Current Operation of the Guidelines: Offenses involving violations under the above statutes are covered under § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical). This guideline uses a Chemical Quantity Table to determine the base offense level. The guideline also has a cross reference to § 2D1.1 (Unlawfully Manufacturing, Importing, Exporting, or Trafficking) for cases involving the actual manufacture, or attempt to manufacture, a controlled substance.

The Chemical Quantity Table was developed in two steps. First, the amount of listed chemical needed to produce a quantity of controlled substance in the Drug Quantity Table in § 2D1.1 was determined. The amount of listed chemical was based on 50% of theoretical yield.[1] The 50% figure was used because, after much study, this figure was determined to be a fair estimate of the amount of controlled substance that typically could be produced in a clandestine laboratory.

Second, the offense level in § 2D1.11 was adjusted downward by eight levels from the level in the Drug Quantity § 2D1.1. There were several reasons for these adjustments. One, the listed chemical offenses involved an intent to manufacture a controlled substance, not the actual manufacture, or attempt to manufacture, a controlled substance. For cases involving an actual or attempted manufacture of a controlled substance, § 2D1.11 contains a cross reference to § 2D1.1. Another reason for the reduction in offense level from the offense levels in § 2D1.1 was the fact that statutes covering listed chemicals had maximum sentences of ten years' imprisonment, whereas some of the controlled substance offenses had

[1] Theoretical yield is the amount of a controlled substance that could be produced in a perfect reaction. It is based on a chemical equation/mathematical formula and does not occur in reality.

maximum sentences of life imprisonment. If the offense level was not reduced in § 2D1.11, almost all of the cases would have resulted in sentences at or exceeding the statutory maximum. A third reason was that it is more difficult to make an accurate determination of the amount of finished product based on only one listed chemical as opposed to several listed chemicals and/or lab equipment. By not reducing the offense level, there would have been the possibility that the person who had only one precursor would get a higher offense level than someone who actually manufactured the controlled substance.

The proposed amendment raises the penalties for list I chemicals by two levels. The top of the Chemical Quantity Table for list I chemicals will now be at level 30. The offense level for list II chemicals remains the same. With the new statutory maximum of 20 years, the guidelines will now be able to better take into account aggravating adjustments such as those for role in the offense. Additionally, the increased statutory maximum will allow for higher sentences for cases convicted under this statute that involve the actual manufacture of a controlled substance.

Proposed Amendment: Section 2D1.11(d) is amended by deleting subsections (d) (1)—(9) and inserting in lieu thereof the following:

"(d) Chemical Quality Table*

Listed chemicals and quantity	Base offense level
(1) List I Chemicals	Level 30
17.8 KG or more of Benzaldehyde;	
20 KG or more of Benzyl Cyanide;	
20 KG or more of Ephedrine;	
200 G or more of Ergonovine;	
400 G or more of Ergotamine;	
20 KG or more of Ethylamine;	
44 KG or more of Hydriodic Acid;	
320 KG or more of Isoafrole;	
4 KG or more of Methylamine;	
1500 KG or more of N-Methylephedrine;	
500 KG or more of N-Methylpseudoephedrine;	
12.6 KG or more of Nitroethane;	
200 KG or more of Norpseudoephedrine;	
20 KG or more of Phenylacetic Acid;	
200 KG or more of Phenylpropanolamine;	
10 KG or more of Piperidine;	
320 KG or more of Piperonal;	
1.6 KG or more of Propionic Anhydride;	
20 KG or more of Pseudoephedrine;	
320 KG or more of Safrole;	
400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;	
(2) List I Chemicals	Level 28.
At least 5.3 KG but less than 17.8 KG of Benzaldehyde;	
At least 6 KG but less than 20 KG of Benzyl Cyanide;	
At least 6 KG but less than 20 KG of Ephedrine;	
At least 60 G but less than 200 G of Ergonovine;	
At least 120 G but less than 400 G of Ergotamine;	
At least 6 KG but less than 20 KG of Ethylamine;	
At least 13.2 KG but less than 44 KG of Hydriodic Acid;	
At least 96 KG but less than 320 KG of Isoafrole;	
At least 1.2 KG but less than 4 KG of Methylamine;	
At least 150 KG but less than 500 KG of N-Methylephedrine;	
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;	
At least 3.8 KG but less than 12.6 KG of Nitroethane;	
At least 60 KG but less than 200 KG of Norpseudoephedrine;	
At least 6 KG but less than 20 KG of Phenylacetic Acid;	
At least 60 KG but less than 200 KG of Phenylpropanolamine;	
At least 3 KG but less than 10 KG of Piperidine;	
At least 96 KG but less than 320 KG of Piperonal;	
At least 480 G but less than 1.6 KG of Propionic Anhydride;	
At least 6 KG but less than 20 KG of Pseudoephedrine;	
At least 96 KG but less than 320 KG of Safrole;	
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
KG or more of Acetic Anhydride;	
1175 KG or more of Acetone;	
20 KG or more of Benzyl Chloride;	
1075 KG or more of Ethyl Ether;	
1200 KG or more KG of Methyl Ethyl Ketone;	
10 KG or more of Potassium Permanganate;	
1300 KG or more of Toluene.	
(3) List I Chemicals	Level 26.

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Listed chemicals and quantity	Base offense level
At least 1.8 KG but less than 5.3 KG of Benzaldehyde;	
At least 2 KG but less than 6 KG of Benzyl Cyanide;	
At least 2 KG but less than 6 KG of Ephedrine;	
At least 20 G but less than 60 G of Ergonovine;	
At least 40 G but less than 120 G of Ergotamine;	
At least 2 KG but less than 6 KG of Ethylamine;	
At least 4.4 KG but less than 13.2 KG of Hydriodic Acid;	
At least 32 KG but less than 96 KG of Isoafrole;	
At least 400 G but less than 1.2 KG of Methylamine;	
At least 50 KG but less than 150 KG of N-Methylephedrine;	
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;	
At least 1.3 KG but less than 3.8 KG of Nitroethane;	
At least 20 KG but less than 60 KG of Norpseudoephedrine;	
At least 2 KG but less than 6 KG of Phenylacetic Acid;	
At least 20 KG but less than 60 KG of Phenylpropanolamine;	
At least 1 KG but less than 3 KG of Piperidine;	
At least 32 KG but less than 96 KG of Piperonal;	
At least 160 G but less than 480 G of Propionic Anhydride;	
At least 2 KG but less than 6 KG of Pseudoephedrine;	
At least 32 KG but less than 96 KG of Safrole;	
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 3.3 KG but less than 11 KG of Acetic Anhydride;	
At least 352.5 KG but less than 1175 KG of Acetone;	
At least 6 KG but less than 20 KG of Benzyl Chloride;	
At least 322.5 KG but less than 1075 KG of Ethyl Ether;	
At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;	
At least 3 KG but less than 10 KG of Potassium Permanganate;	
At least 390 KG but less than 1300 KG of Toluene.	
(4) List I Chemicals	Level 24.
At least 1.2 KG but less than 1.8 KG of Benzaldehyde;	
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;	
At least 1.4 KG but less than 2 KG of Ephedrine;	
At least 14 G but less than 20 G of Ergonovine;	
At least 28 G but less than 40 G of Ergotamine;	
At least 1.4 KG but less than 2 KG of Ethylamine;	
At least 3.08 KG but less than 4.4 KG of Hydriodic Acid;	
At least 22.4 KG but less than 32 KG of Isoafrole;	
At least 280 G but less than 400 G of Methylamine;	
At least 35 KG but less than 50 KG of N-Methylephedrine;	
At least 35 KG but less than 50 KG of N-Methylpseudoephedrine;	
At least 879 G but less than 1.3 KG of Nitroethane;	
At least 14 KG but less than 20 KG of Norpseudoephedrine;	
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;	
At least 14 KG but less than 20 KG of Phenylpropanolamine;	
At least 700 G but less than 1 KG of Piperidine;	
At least 22.4 KG but less than 32 KG of Piperonal;	
At least 112 G but less than 160 G of Propionic Anhydride;	
At least 1.4 KG but less than 2 KG of Pseudoephedrine;	
At least 22.4 KG but less than 32 KG of Safrole;	
At least 28 KG but less than 40 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 1.1 KG but less than 3.3 KG of Acetic Anhydride;	
At least 117.5 KG but less than 352.5 KG of Acetone;	
At least 2 KG but less than 6 KG of Benzyl Chloride;	
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;	
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;	
At least 1 KG but less than 3 KG of Potassium Permanganate;	
At least 130 KG but less than 390 KG of Toluene.	
(5) List I Chemicals	Level 22.

Listed chemicals and quantity	Base offense level
At least 712 G but less than 1.2 KG of Benzaldehyde;	
At least 800 G but less than 1.4 KG of Benzyl Cyanide;	
At least 800 G but less than 1.4 KG of Ephedrine;	
At least 8 G but less than 14 G of Ergonovine;	
At least 16 G but less than 28 G of Ergotamine;	
At least 800 G but less than 1.4 KG of Ethylamine;	
At least 1.76 KG but less than 3.08 KG of Hydriodic Acid;	
At least 12.8 KG but less than 22.4 KG of Isoafrole;	
At least 160 G but less than 280 G of Methylamine;	
At least 20 KG but less than 35 KG of N-Methylephedrine;	
At least 20 KG but less than 35 KG of N-Methylpseudoephedrine;	
At least 503 G but less than 879 G of Nitroethane;	
At least 8 KG but less than 14 KG of Norpseudoephedrine;	
At least 800 G but less than 1.4 KG of Phenylacetic Acid;	
At least 8 KG but less than 14 KG of Phenylpropanolamine;	
At least 400 G but less than 700 G of Piperidine;	
At least 12.8 KG but less than 22.4 KG of Piperonal;	
At least 64 G but less than 112 G of Propionic Anhydride;	
At least 800 G but less than 1.4 KG of Pseudoephedrine;	
At least 12.8 KG but less than 22.4 KG of Safrole;	
At least 16 KG but less than 28 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 726 G but less than 1.1 KG of Acetic Anhydride;	
At least 82.25 KG but less than 117.5 KG of Acetone;	
At least 1.4 KG but less than 2 KG of Benzyl Chloride;	
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;	
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;	
At least 700 G but less than 1 KG of Potassium Permanganate;	
At least 91 KG but less than 130 KG of Toluene.	
(6) List I Chemicals	Level 20.
At least 178 G but less than 712 G of Benzaldehyde;	
At least 200 G but less than 800 G of Benzyl Cyanide;	
At least 200 G but less than 800 G of Ephedrine;	
At least 2 G but less than 8 G of Ergonovine;	
At least 4 G but less than 16 G of Ergotamine;	
At least 200 G but less than 800 G of Ethylamine;	
At least 440 G but less than 1.76 KG of Hydriodic Acid;	
At least 3.2 KG but less than 12.8 KG of Isoafrole;	
At least 40 G but less than 160 G of Methylamine;	
At least 5 KG but less than 20 KG of N-Methylephedrine;	
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;	
At least 126 G but less than 503 G of Nitroethane;	
At least 2 KG but less than 8 KG of Norpseudoephedrine;	
At least 200 G but less than 800 G of Phenylacetic Acid;	
At least 2 KG but less than 8 KG of Phenylpropanolamine;	
At least 100 G but less than 400 G of Piperidine;	
At least 3.2 KG but less than 12.8 KG of Piperonal;	
At least 16 G but less than 64 G of Propionic Anhydride;	
At least 200 G but less than 800 G of Pseudoephedrine;	
At least 3.2 KG but less than 12.8 KG of Safrole;	
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 440 G but less than 726 G of Acetic Anhydride;	
At least 47 KG but less than 82.25 KG of Acetone;	
At least 800 G but less than 1.4 KG of Benzyl Chloride;	
At least 43 KG but less than 75.25 KG of Ethyl Ether;	
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;	
At least 400 G but less than 700 G of Potassium Permanganate;	
At least 52 KG but less than 91 KG of Toluene.	
(7) List I Chemicals	Level 18.

Listed chemicals and quantity	Base offense level
At least 142 G but less than 178 G of Benzaldehyde;	
At least 160 G but less than 200 G of Benzyl Cyanide;	
At least 160 G but less than 200 G of Ephedrine;	
At least 1.6 G but less than 2 G of Ergonovine;	
At least 3.2 G but less than 4 G of Ergotamine;	
At least 160 G but less than 200 G of Ethylamine;	
At least 352 G but less than 440 G of Hydriodic Acid;	
At least 2.56 KG but less than 3.2 KG of Isoafrole;	
At least 32 G but less than 40 G of Methylamine;	
At least 4 KG but less than 5 KG of N-Methylephedrine;	
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;	
At least 100 G but less than 126 G of Nitroethane;	
At least 1.6 KG but less than 2 KG of Norpseudoephedrine;	
At least 160 G but less than 200 G of Phenylacetic Acid;	
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;	
At least 80 G but less than 100 G of Piperidine;	
At least 2.56 KG but less than 3.2 KG of Piperonal;	
At least 12.8 G but less than 16 G of Propionic Anhydride;	
At least 160 G but less than 200 G of Pseudoephedrine;	
At least 2.56 KG but less than 3.2 KG of Safrole;	
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 110 G but less than 440 G of Acetic Anhydride;	
At least 11.75 KG but less than 47 KG of Acetone;	
At least 200 G but less than 800 G of Benzyl Chloride;	
At least 10.75 KG but less than 43 KG of Ethyl Ether;	
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;	
At least 100 G but less than 400 G of Potassium Permanganate;	
At least 13 KG but less than 52 KG of Toluene.	
(8) List I Chemicals	Level 16.
At least 107 G but less than 142 G of Benzaldehyde;	
At least 120 G but less than 160 G of Benzyl Cyanide;	
At least 120 G but less than 160 G of Ephedrine;	
At least 1.2 G but less than 1.6 G of Ergonovine;	
At least 2.4 G but less than 3.2 G of Ergotamine;	
At least 120 G but less than 160 G of Ethylamine;	
At least 264 G but less than 352 G of Hydriodic Acid;	
At least 1.92 KG but less than 2.56 KG of Isoafrole;	
At least 24 G but less than 32 G of Methylamine;	
At least 3 KG but less than 4 KG of N-Methylephedrine;	
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;	
At least 75 G but less than 100 G of Nitroethane;	
At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine;	
At least 120 G but less than 160 G of Phenylacetic Acid;	
At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine;	
At least 60 G but less than 80 G of Piperidine;	
At least 1.92 KG but less than 2.56 KG of Piperonal;	
At least 9.6 G but less than 12.8 G of Propionic Anhydride;	
At least 120 G but less than 160 G of Pseudoephedrine;	
At least 1.92 KG but less than 2.56 KG of Safrole;	
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;	
List II Chemicals	
At least 88 G but less than 110 G of Acetic Anhydride;	
At least 9.4 KG but less than 11.75 KG of Acetone;	
At least 160 G but less than 200 G of Benzyl Chloride;	
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;	
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;	
At least 80 G but less than 100 G of Potassium Permanganate;	
At least 10.4 KG but less than 13 KG of Toluene.	
(9) List I Chemicals	Level 14.

Listed chemicals and quantity	Base offense level
At least 2.7 KG but less than 3.6 KG of Anthranilic Acid; At least 80.25 G but less than 107 G of Benzaldehyde; At least 90 G but less than 120 G of Benzyl Cyanide; At least 90 G but less than 120 G of Ephedrine; At least 900 MG but less than 1.2 G of Ergonovine; At least 1.8 G but less than 2.4 G of Ergotamine; At least 90 G but less than 120 G of Ethylamine; At least 198 G but less than 264 G of Hydriodic Acid; At least 1.44 G but less than 1.92 KG of Isoafrole; At least 18 G but less than 24 G of Methylamine; At least 3.6 KG but less than 4.8 KG of N-Acetylanthranilic Acid; At least 2.25 KG but less than 3 KG of N-Methylephedrine; At least 2.25 KG but less than 3 KG of N-Methylpseudoephedrine; At least 56.25 G but less than 75 G of Nitroethane; At least 900 G but less than 1.2 KG of Norpseudoephedrine; At least 90 G but less than 120 G of Phenylacetic Acid; At least 900 G but less than 1.2 KG of Phenylpropanolamine; At least 45 G but less than 60 G of Piperidine; At least 1.44 KG but less than 1.92 KG of Piperonal; At least 7.2 G but less than 9.6 G of Propionic Anhydride; At least 90 G but less than 120 G of Pseudoephedrine; At least 1.44 G but less than 1.92 KG of Safrole; At least 1.8 KG but less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone; List II Chemicals At least 66 G but less than 88 G of Acetic Anhydride; At least 7.05 KG but less than 9.4 KG of Acetone; At least 120 G but less than 160 G of Benzyl Chloride; At least 6.45 KG but less than 8.6 KG of Ethyl Ether; At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone; At least 60 G but less than 80 G of Potassium Permanganate; At least 7.8 KG but less than 10.4 KG of Toluene.	
(10) List I Chemicals	Level 12.
Less than 2.7 KG of Anthranilic Acid; Less than 80.25 G of Benzaldehyde Less than 90 G of Benzyl Cyanide; Less than 90 G of Ephedrine; Less than 900 MG of Ergonovine; Less than 1.8 G of Ergotamine; Less than 90 G of Ethylamine; Less than 198 G of Hydriodic Acid; Less than 1.44 G of Isoafrole; Less than 18 G of Methylamine; Less than 3.6 KG of N-Acetylanthranilic Acid; Less than 2.25 KG of N-Methylephedrine; Less than 2.25 KG of N-Methylpseudoephedrine; Less than 56.25 G of Nitroethane; Less than 900 G of Norpseudoephedrine; Less than 90 G of Phenylacetic Acid; Less than 900 G of Phenylpropanolamine; Less than 45 G of Piperidine; Less than 1.44 KG of Piperonal; Less than 7.2 G of Propionic Anhydride; Less than 90 G of Pseudoephedrine; Less than 1.44 G of Safrole; Less than 1.8 KG of 3, 4-Methylenedioxyphenyl-2-propanone; List II Chemicals Less than 66 G of Acetic Anhydride; Less than 7.05 KG of Acetone; Less than 120 G of Benzyl Chloride; Less than 6.45 KG of Ethyl Ether; Less than 7.2 KG of Methyl Ethyl Ketone; Less than 60 G of Potassium Permanganate; Less than 7.8 KG of Toluene.	

The Commentary to § 2D1.11 captioned "Application Notes" is amended in Note 4(a) by deleting "three kilograms" and inserting in lieu thereof "300 grams"; by deleting "24" each time it appears and inserting in lieu thereof "26"; and by deleting "14" and inserting in lieu thereof "16".

Section 2L1.1—Alien Smuggling

2. Synopsis of Proposed Amendment: This amendment implements section 203 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 203 directs the Commission to amend the guidelines for offenses related to smuggling, transporting, or harboring illegal aliens.

The legislation directs the Commission to:

"(A) increase the base offense level for such offenses at least 3 offense levels above the applicable level in effect on the date of the enactment of this Act;

(B) review the sentencing enhancement for the number of aliens involved (U.S.S.G. 2L1.1(b)(2)), and increase the sentencing enhancement by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category; * * * [and an additional enhancement for 2 or more priors];

(E) impose an appropriate sentencing enhancement on a defendant who, in the course of committing an offense described in this subsection (i) murders or otherwise causes death, bodily injury, or serious bodily injury to a defendant; (ii) uses or brandishes a firearm or other dangerous weapon; or (iii) engages in conduct that consciously or recklessly places another in serious danger of death or serious bodily injury;

(F) consider whether a downward adjustment is appropriate if the offense is a first offense and involves the smuggling only of the alien's spouse or child * * *"

The amendment provides for a higher base offense level as required by the legislation. In addition, the amendment provides for new specific offense characteristics outlined in the legislation and adjusts the current specific offense characteristics as directed by the legislation. Finally, the amendment provides for clarifying commentary.

Proposed Amendment: Section 2L1.1(a)(1) is amended by deleting "20" and inserting in lieu thereof "[23–25]".

Section 2L1.1(a)(2) is amended by deleting "9" and inserting in lieu thereof "[12–14]".

Section 2L1.1(b) is amended by deleting:

"(1) If the defendant committed the offense other than for profit and the base offense level is determined under subsection (a)(2), decrease by 3 levels.

(2) If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, increase as follows:

Number of unlawful aliens smuggled, transported, or harbored	Increase in level
(A) 6–24	Add 2.
(B) 25–99	Add 4.
(C) 100 or more	Add 6.

(3) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, and the offense level determined above is less than level 8, increase to level 8."

and inserting in lieu thereof:

"(1) If the offense involves the smuggling, transporting, or harboring only of the defendant's spouse or child, decrease by [2–3] levels.

(2) If the offense involved the smuggling, transporting, or harboring of three or more unlawful aliens, increase as follows:

Number of unlawful aliens smuggled, transported, or harbored	Increase in level
(A) 3–5	Add 1.
(B) 6–11	Add 3.
(C) 12–24	Add 5.
(D) 25–99	Add 7.
(E) 100 or more	Add 9.

(3) [Option 1: If the defendant committed the instant offense subsequent to sustaining (A) one conviction for an immigration and naturalization offense, increase by 2 levels; or (B) two convictions for immigration and naturalization offenses each arising out of separate prosecutions, increase by 4 levels.]

[Option 2: If the defendant at the time of sentencing had been previously convicted of (A) one immigration and naturalization offense arising out of a separate and prior prosecution, increase by 2 levels; or (B) two immigration and naturalization offenses each arising out of separate prosecutions, increase by 4 levels.]

(4) (A) If a firearm was discharged, increase by 6 levels, but if the resulting offense level is less than level [22–24], increase to level [22–24];

(B) if a dangerous weapon (including a firearm) was brandished or otherwise used, increase by 4 levels, but if the resulting offense level is less than level [20–22], increase to level [20–22];

(C) if a dangerous weapon (including a firearm) was possessed, increase by 2 levels, but if the resulting offense level is less than level [18–20], increase to level [18–20].

[Option 1: (D) if the offense involved recklessly creating a substantial risk of death or serious bodily injury to another person, increase by 2 levels, but if the resulting offense level is less than level [18–20], increase to level [18–20]].

[Option 2: (5) If the offense involved recklessly creating a substantial risk of death or serious bodily injury to another person, increase by 2 levels, but if the resulting offense level is less than level [18–20], increase to level [18–20].

(6) If any person died or sustained bodily injury as a result of the offense, increase the offense level accordingly:

(1) Bodily Injury	Add 2 levels.
(2) Serious Bodily Injury	Add 4 levels.
(3) Permanent or Life-Threatening Bodily Injury.	Add 6 levels.
(4) Death	Add 8 levels.

(c) Cross Reference.

If any person was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the special maritime and territorial jurisdiction of the United States, apply the appropriate murder guideline from Chapter two, Part A, Subpart 1."

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 5 by deleting "dangerous or inhumane treatment, death or bodily injury, possession of a dangerous weapon, or".

The Commentary to § 2L1.1 captioned "Application Notes is amended by inserting the following additional notes:

"[7. Under subsections (b)(4)(A) and (b)(4)(B), the defendant is accountable if (A) the defendant discharges, brandishes, or otherwise uses a firearm, or (B) another person discharges, brandishes, or otherwise uses a firearm and the defendant is aware of the presence of the firearm. Under subsection (b)(4)(C), the defendant is accountable if the defendant or another person possesses a dangerous weapon during the offense.]

8. Prior felony conviction(s) resulting in an adjustment under subsection (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

9. Reckless conduct triggering the adjustment from subsection(b)(5) can vary widely. Such conduct may include, but is not limited to, transporting persons in the trunk or engine compartment of a motor vehicle, carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, or harboring persons in a crowded, dangerous, or inhumane condition. If the reckless conduct triggering the adjustment in subsection (b)(4)(C) includes only conduct related to fleeing from a law enforcement officer, do not apply an adjustment from § 3C1.2 (Reckless Endangerment During Flight). [Do not apply the adjustment in subsection (b)(4)(D) if the reckless

conduct that created a substantial risk of death or serious bodily injury includes only conduct related to weapon possession or use.]

10. An 'immigration and naturalization offense" means any offense covered by Chapter 2, Part L.

11. For purposes of this section, the term "child" is defined at section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)) and "spouse" is defined at section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35))."

The Commentary to § 2L1.1 captioned "Background" is amended by deleting the following:

"A specific offense characteristic provides a reduction if the defendant did not commit the offense for profit. The offense level increases with the number of unlawful aliens smuggled, transported, or harbored."

The Commentary to § 2L1.1 captioned "Background" is amended by inserting the following after "In large scale":

"smuggling or harboring".

Section 2L2.1 and 2L2.2—Immigration Document Fraud

3. Synopsis of Proposed Amendment: This amendment implements section 211 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996. Section 211 directs the Commission to amend the guidelines for offenses related to the fraudulent use of government issued documents. The Commission is directed to:

"(A) increase the base offense level for such offenses at least 2 offense levels above the level in effect on the date of the enactment of this Act;

(B) review the sentencing enhancement for the number of documents or passports involved (U.S.S.G. 2L2.1(b)(2)), and increase the upward enhancement by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category; . . . [and an additional enhancement for 2 or more priors];"

The amendment provides for a higher base offense level as required by the legislation. In addition, the amendment provides for a new specific offense characteristic for defendants who have one or more prior convictions for the same or similar conduct—as outlined in the legislation—and adjusts the current specific offense characteristics as directed by the legislation and consistent with other guidelines. Finally, the amendment provides for clarifying commentary.

Proposed Amendment: Section 2L2.1 is amended by deleting "9" and inserting in lieu thereof "[11–13]".

Section 2L2.1(b) is amended by deleting:

"(1) If the defendant committed the offense other than for profit, decrease by 3 levels.

(2) If the offense involved six or more documents or passports, increase as follows:

Number of documents/passports	Increase in level
(A) 6–24	Add 2.
(B) 25–99	Add 4.
(C) 100 or more	Add 6."

and insert in lieu thereof:

"(1) [Option 1: If the defendant committed the offense other than for profit and had not been convicted of an immigration and naturalization offense prior to the commission of the instant offense, decrease by 3 levels.]

[Option 2: If the offense involves documents only related to the defendant's spouse or child, decrease by [2–3] levels.]

(2) If the offense involved three or more documents or passports, increase as follows:

Number of documents/passports	Increase in level
(A) 3–5	Add 1.
(B) 6–11	Add 3.
(C) 12–24	Add 5.
(D) 25–99	Add 7.
(E) 100 or more	Add 9."

Section 2L2.1(b) is amended by inserting the following additional subdivision:

"(3) [Option 1: If the defendant committed the instant offense subsequent to sustaining (A) one conviction for an immigration and naturalization offense, increase by 2 levels; or (B) two convictions for immigration and naturalization offenses each arising out of separate prosecutions, increase by 4 levels.]

[Option 2: If the defendant at the time of sentencing had been previously convicted of (A) one immigration and naturalization offense arising out of a separate and prior prosecution, increase by 2 levels; or (B) two immigration and naturalization offenses each arising out of separate prosecutions, increase by 4 levels.]"

The Commentary to § 2L2.1 captioned "Application Notes" is amended by inserting the following additional notes:

"4. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

5. An "immigration and naturalization offense" means any offense covered by Chapter 2, Part L.

6. For purposes of this section, the term "child" is defined at section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)) and "spouse" is defined at section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35))."

Section 2L2.2(a) is amended by deleting "6" and inserting in lieu thereof "[8–10]".

Section 2L2.2(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by inserting the following new subdivision:

"(2) [Option 1: If the defendant committed the instant offense subsequent to sustaining (A) one conviction for an immigration and naturalization offense, increase by 2 levels; or (B) two convictions for immigration and naturalization offenses each arising out of separate prosecutions, increase by 4 levels.]

[Option 2: If the defendant at the time of sentencing had been previously convicted of (A) one immigration and naturalization offense arising out of a separate and prior prosecution, increase by 2 levels; or (B) two immigration and naturalization offenses each arising out of separate prosecutions, increase by 4 levels.]"

The Commentary to § 2L2.2 captioned "Application Note" is amended by deleting and inserting in lieu thereof "Notes"; and by inserting the following additional notes:

"2. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

3. An 'immigration and naturalization offense' means any offense covered by Chapter 2, Part L.".

Section 2H4.1—Involuntary Servitude

4. Synopsis of Proposed Amendment: This amendment implements section 218 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996. Section 218 directs the

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Commission to review the guideline for peonage, involuntary servitude and slave trade offenses and amend the guideline, as necessary, to:

"(A) reduce or eliminate any unwarranted disparity * * * between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses and alien smuggling;

(B) ensure that the applicable guidelines for defendants convicted of peonage, involuntary servitude, and slave trade offenses are sufficiently stringent to deter such offenses and adequately reflect the heinous nature of such offenses; and

(C) ensure that the guidelines reflect the general appropriateness of enhanced sentences for defendants whose peonage, involuntary servitude, or slave trade offenses involve, (i) a large number of victims; (ii) the use or threatened use of a dangerous weapon; or (iii) a prolonged period of peonage or involuntary servitude."

The amendment generally tracks the structure of the kidnapping guideline.

Section 2H4.1 is amended by deleting the section in its entirety and replacing in lieu thereof the following:

"§ 2H4.1. Peonage, Involuntary Servitude, and Slave Trade

(a) Base Offense Level (Apply the greater):

(1) [18–24]

(b) Specific Offense Characteristics

(1) (A) If any victim sustained permanent or life-threatening bodily injury, increase by [4–6] levels; (B) if any victim sustained serious bodily injury, increase by [2–4] levels.

(2) If a dangerous weapon was used, increase by [2–4] levels.

(3) If any victim was held in a condition of servitude or peonage for (A) more than one year, increase by [3–5] levels; (B) between 180 days and one year, increase by [2–4] levels; (C) more than thirty days but less than 180 days, increase by [1–3] level.

(4) If any other offense was committed during the commission of or in connection with the servitude, peonage, or slave trade offense, increase to the greater of:

(A) 2 plus the offense level as determined above, or

(B) 2 plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level 43.

Commentary

Statutory Provisions: 18 U.S.C. §§ 241, 1581–1588.

Application Notes:

1. Under subsection (b)(4), 'any other offense * * * committed during the commission of or in connection with the servitude, peonage, or slave trade offense' means any conduct that constitutes an offense under federal, state, or local law (other than an offense that is itself covered under Chapter Two, Part H, Subpart 4). See the Commentary in § 2H1.1 for an explanation of how to treat a count of conviction which sets forth more than one "other" offense.

2. Definitions of 'serious bodily injury' and 'permanent or life-threatening bodily injury' are found in the Commentary to § 1B1.1 (Application Instructions).

3. 'A dangerous weapon was used' means that a firearm was discharged, or a 'firearm' or 'dangerous weapon' was 'otherwise used" (as defined in the Commentary to § 1B1.1 (Application Instructions)).

4. If the offense involved the holding of more than 10 victims in a condition of involuntary servitude or peonage, an upward departure may be warranted.

Background: This section covers statutes that prohibit peonage, involuntary servitude, and slave trade. For purposes of deterrence and just punishment, the minimum base offense level is [18–24].".

Issue for Comment: Section 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 directs the Commission to ensure that the guidelines reflect the general appropriateness of enhanced sentences for defendants whose peonage, involuntary servitude, or slave trade offenses involve a large number of victims. The Commission seeks comment on whether the current enhancements provided under the guidelines' multiple count provisions are sufficient to ensure appropriately enhanced sentences when peonage, involuntary servitude, or slave trade offenses involve a large number of victims or whether a new specific offense characteristic for a large number of victims is needed.

Non-Emergency Amendments

Section 3A1.4 Terrorism

5. Synopsis of Proposed Amendment: This amendment proposes to make permanent the emergency amendment promulgated by the Commission to implement section 730 of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132; 110 Stat. 1214). That section gave the Commission emergency authority, under section 21(a) of the Sentencing Act of 1987, to amend the sentencing guidelines so that the Chapter 3 adjustment in § 3A1.4, relating to international terrorism, applies more broadly to Federal crimes of terrorism, as defined in section 2332b(g) of title 18, United States Code. By vote of the Commission, the emergency amendment became effective November 1, 1996. However, under the terms of section 21(a) of the Sentencing Act of 1987, the emergency amendment will no longer be in effect after submission of the next report to Congress under 28 U.S.C. § 994(p) unless in the next report, the Commission submits (and Congress does not disapprove) an amendment to make it permanent.

Proposed Amendment: Section 3A1.4 is amended in the title by deleting "International".

Section 3A1.4(a) is amended by deleting "international" and inserting in lieu thereof "a federal crime of".

The Commentary to § 3A1.4 captioned "Application Notes" is amended in Note 1 in the first sentence by deleting "international" and inserting in lieu thereof "a federal crime of"; and in the second sentence by deleting "International" and inserting in lieu thereof "Federal crime of"; and by deleting "2331" and inserting in lieu thereof "2332b(g)".

Section 1B1.1 Application Instructions

6. Synopsis of Proposed Amendment: This is a two-part amendment to § 1B1.1 (Application Instructions). First, the amendment corrects a technical error in § 1B1.1(b). Second, the amendment expands the definition of "offense" to specify what is meant by the term "instant offense." This term is used to distinguish the current or "instant" offense from prior criminal offenses. Currently, this term is not defined and has repeatedly raised questions about its application. This amendment defines this term to mean the offense of conviction and relevant conduct, unless a different meaning is expressly stated or is otherwise clear from the context.

Two conforming amendments are necessary. The first conforming amendment adds commentary defining the term "instant offense" in relation to § 3C1.1. Section 3C1.1 requires more extensive commentary regarding this term because of the variety of situations covered by this guideline. The second conforming amendment makes explicit that, with respect to §§ 4B1.1 and 4B1.2, the "instant offense" is the offense of conviction. Currently, § 4B1.1 expressly states this in subdivision (2), but not in subdivision (1).

Proposed Amendment: Section 1B1.1(b) is amended by inserting ", cross references, and special instructions" immediately following "characteristics".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(l) by inserting as the second sentence "The term 'instant' is used in connection with 'offense' when, in the context, it is necessary to distinguish the current or 'instant' offense from prior criminal offenses.".

The Commentary to § 3C1.1 captioned "Application Notes" is amended by inserting the following additional note at the end:

"8. 'During the investigation or prosecution of the instant offense' means during, and in relation to, the investigation or prosecution of the federal offense of which the defendant is convicted and any offense or related civil violation, committed by the defendant or another person, that was part of the same investigation or prosecution, whether or not such offense resulted in conviction or such violation resulted in the imposition of civil penalties. It is not necessary that the obstructive conduct pertain to the particular count of which the defendant was convicted.

'During the sentencing of the instant offense' means during, and in relation to, the sentencing phase of the process, including the preparation of the presentence report.".

Section 4B1.1 is amended by deleting "of the instant offense" and inserting in lieu thereof "the defendant committed the instant offense of conviction".

Section 4B1.2(3) is amended by inserting "of conviction" immediately before "subsequent".

Section 1B1.2 Applicable Guidelines

7. Synopsis of Proposed Amendment: This amendment amends § 1B1.2 (Applicable Guidelines) and the Statutory Index to clarify that, except as otherwise provided in the Introduction to the Statutory Index, the Statutory Index will specify the Chapter Two offense guideline most applicable to an offense of conviction.

Proposed Amendment: The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 by deleting "The Statutory Index (Appendix A) provides a listing to assist in this determination." and inserting in lieu thereof "Except as otherwise provided in the Introduction to the Statutory Index, the Statutory Index specifies the offense guideline section(s) in Chapter Two most applicable to the offense of conviction."; by inserting "in the Statutory Index" immediately following "referenced"; by inserting "more than one offense guideline section may be referenced in the Statutory Index for that particular statute and" immediately following "offense guidelines,"; by inserting "of the referenced" immediately following "determine which"; and by deleting "section" immediately before "applies" and inserting in lieu thereof "sections".

The Introduction to Appendix A is amended in the first paragraph by inserting "Therefore, as a general rule, when determining the guideline section from Chapter Two most applicable to the offense of conviction for purposes of § 1B1.1, use the guideline referenced for that statute in this index." after the first sentence; deleting "If, in an atypical case, the guideline section indicated for the statute of conviction is inappropriate because of the particular conduct involved, use the guideline section most applicable to the nature of the offense conduct charged in the count of which the defendant was convicted. (See § 1B1.2.)"; and by inserting "referenced" immediately before "for the substantive".

The Introduction to Appendix A (Statutory Index) is amended by moving the second paragraph to the end of the first paragraph.

The Introduction to Appendix A (Statutory Index) is amended by deleting the second (formerly the third) paragraph as follows:

"For those offenses not listed in this index, the most analogous guideline is to be applied. (See § 2X5.1.)".,

And inserting in lieu thereof:

"However, there are exceptions to the general rule set forth above. If the statute of conviction (1) is not listed in this index; or (2) is listed in this index but the guideline section referenced for that statute is no longer appropriate to cover the offense conduct charged because of changes in law not yet reflected in this index, use the most analogous guideline. (See § 2X5.1.)".

Section 1B1.3 Relevant Conduct

8. Synopsis of Proposed Amendment: This amendment incorporates into § 1B1.3 (Relevant Conduct) the holding in United States v. Hill, 79 F.3d 1477 (6th Cir. 1996), that when two controlled substance transactions are conducted more than one year apart, the fact that the same controlled substance was involved in both transactions is insufficient, without more, to demonstrate that the transactions were part of the "same course of conduct" or "common scheme or plan".

Proposed Amendment: The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 9(B) by deleting "For example, where" and inserting in lieu thereof "If"; and by inserting after the fourth sentence "For example, if two controlled substance transactions are conducted more than one year apart, the fact that the transactions involved the same controlled substance, without more information, is insufficient to show that they are part of the same course of conduct or common scheme or plan." after the fourth sentence.

9. Synopsis of Proposed Amendment: This amendment addresses the issue of whether acquitted conduct may be considered for sentencing purposes. Option 1 of this amendment excludes the use of acquitted conduct as a basis for determining the guideline range. Option 1 has two suboptions, either or both of which could be added. Option 1(A) adds the bracketed language, in the guideline and application note, providing that acquitted conduct shall be considered if established independently of evidence admitted at trial. Option 1(B) invites the use of acquitted conduct as a basis for upward departure.

Option 2 is derived from a "compromise" proposal suggested several years ago by the Commission's Practitioners' Advisory Group. It excludes acquitted conduct from consideration in determining the guideline range unless such conduct is established by the "clear and convincing" standard, rather than the less exacting "preponderance of the evidence" standard generally applicable to the determination of relevant conduct.

Option 3 expressly provides what currently is arguably implicit in the Relevant Conduct guideline: that acquitted conduct should be evaluated using the same standards as any other form of unconvicted conduct and included in determining the guideline range if those standards are met. However, the amended commentary invites a discretionary downward departure to exclude such conduct if the use of that conduct to enhance the sentence raises substantial concerns of fundamental fairness. It also states what should be the obvious appropriate floor for such a downward departure.

Proposed Amendment: [Option 1A: Section 1B1.3 is amended by inserting the following new subsection:

"(c) Acquitted conduct, i.e., conduct necessarily rejected by the trier of fact in finding the defendant not guilty of a charge, shall not be considered relevant conduct under this section unless it is independently established by evidence not admitted at trial.".

The Commentary to § 1B1.3 captioned "Application Notes" is amended by renumbering Note 10 as Note 11 and by inserting the following as new Note 10:

"10. Subsection (c) provides that conduct (i.e., acts and omissions) of

which the defendant has been acquitted after trial ordinarily shall not be considered in determining the guideline range. In applying this provision, the court should be mindful that evidence not admissible at trial properly may be considered at sentencing and that application of the guidelines often may involve determinations somewhat different from those necessary for conviction of an offense. For example, the factors necessary to establish the enhancement in § 2D1.1(b)(1) for possession of a weapon in a controlled substance offense are different from the elements necessary to find a defendant guilty of using or carrying a firearm in connection with that offense, in violation of 18 U.S.C. § 924(c); therefore, an acquittal of that offense would not necessarily foreclose the application of the weapon enhancement. Moreover, even if the defendant is acquitted of a charge under 18 U.S.C. § 924(c), the weapon enhancement in § 2D1.1(b)(1) may apply if, for example, another person possessed a weapon as part of jointly undertaken criminal activity with the defendant and the possession of the weapon was reasonably foreseeable.".]

[Option 1B: Section 1B1.3 is amended by inserting the following new subsection:

"(c) Acquitted conduct, i.e., conduct necessarily rejected by the trier of fact in finding the defendant not guilty of a charge, shall not be considered relevant conduct under this section.".

The Commentary to § 1B1.3 captioned "Application Notes" is amended by renumbering Note 10 as Note 11 and by inserting the following as new Note 10:

"10. Subsection (c) provides that conduct (i.e., acts and omissions) of which the defendant has been acquitted after trial shall not be considered in determining the guideline range. In applying this provision, the court should be mindful that application of the guidelines often may involve determinations somewhat different from those necessary for conviction of an offense. For example, the factors necessary to establish the enhancement in § 2D1.1(b)(1) for possession of a weapon in a controlled substance offense are different from the elements necessary to find a defendant guilty of using or carrying a firearm in connection with that offense, in violation of 18 U.S.C. § 924(c); therefore, an acquittal of that offense would not necessarily foreclose the application of the weapon enhancement.

Moreover, even if the defendant is acquitted of a charge under 18 U.S.C. § 924(c), the weapon enhancement in § 2D1.1(b)(1) may apply if, for example, another person possessed a weapon as part of jointly undertaken criminal activity with the defendant and the possession of the weapon was reasonably foreseeable. Although acquitted conduct may not be used in determining the guideline range, such conduct may provide a basis for an upward departure.".]

[Option 2

Section 1B1.3 is amended by inserting the following new subsection:

"(c) Acquitted conduct, i.e., conduct necessarily rejected by the trier of fact in finding the defendant not guilty of a charge, shall not be considered relevant conduct under this section unless such conduct is established by clear and convincing evidence.".

The Commentary to § 1B1.3 captioned "Application Notes" is amended by renumbering Note 10 as Note 11 and by inserting the following as new Note 10:

"10. Subsection (c) provides that conduct (i.e., acts and omissions) of which the defendant has been acquitted after trial shall not be considered in determining the guideline range unless, considering the evidence admitted at trial and any additional evidence presented at sentencing, such conduct is established by clear and convincing proof.

In determining whether conduct necessarily was rejected by an acquittal, the court should be mindful that application of the guidelines often may involve determinations different from those necessary for conviction of an offense. For example, the factors necessary to establish the enhancement in § 2D1.1(b)(1) for possession of a weapon in a controlled substance offense are different from the elements necessary to find a defendant guilty of using or carrying a firearm in connection with that offense, in violation of 18 U.S.C. § 924(c); therefore, an acquittal of that offense would not necessarily foreclose the application of the weapon enhancement. Moreover, even if the defendant is acquitted of a charge under 18 U.S.C. § 924(c), the weapon enhancement in § 2D1.1(b)(1) may apply if, for example, another person possessed a weapon as part of jointly undertaken criminal activity with the defendant and the possession of the weapon was reasonably foreseeable.".]

[Option 3

The Commentary to § 1B1.3 captioned "Application Notes" is amended by renumbering Note 10 as Note 11 and by inserting the following note as new Note 10:

"10. Acquitted conduct, i.e., conduct necessarily rejected by the trier of fact in finding the defendant not guilty of a charge, shall be considered under this section if it otherwise qualifies as relevant conduct within the meaning of this section. However, if the court determines that, considering the totality of circumstances, the use of such conduct as a sentencing enhancement raises substantial concerns of fundamental fairness, a downward departure may be considered. Such a downward departure should not result, in the absence of other appropriate factors, in a sentence lower than the minimum sentence in the guideline range that would apply if such conduct were not considered.".]

Section 1B1.5 Interpretation of References to Other Offense Guidelines.

10. Synopsis of Proposed Amendment: This amendment simplifies the operation of Chapter Two cross references in two ways: (1) by amending § 1B1.5 (Interpretation of References to Other Offense Guidelines) to provide that only Chapter Two offense levels (not Chapter Two offense levels and Chapter Three adjustments) must be considered in determining whether a cross reference will result in a greater offense level than that provided in the Chapter Two guideline that contains the cross reference provision; and, (2) by amending § 2X1.1 to replace the three-level reduction for certain offenses involving attempts, solicitation and, conspiracy with a downward departure provision (see accompanying memorandum). This amendment also corrects a technical error in Application Note 1 of § 1B1.5.

(1) Amendment of § 1B1.5— Approximately 32 guideline subsections involving numerous cross references contain a requirement that the cross reference applies only if it results in the greater offense level. Currently, to determine the "greater offense level," a comparison is required taking into account both the Chapter Two offense levels and any applicable Chapter Three adjustments. The inclusion of the Chapter Three adjustments in the comparison significantly increases the complexity of this task.

This amendment simplifies the guidelines by restricting the comparison to the Chapter Two offense levels, unless a different procedure is expressly specified. The amendment, together with existing guideline language, provides a different procedure with respect to §§ 2C1.1, 2C1.7, 2E1.1, 2E1.2 because they are the only four offense guidelines in which the inclusion of Chapter Three adjustments in the comparison is likely to make a difference. Although it is possible that there may be a difference under some

other guideline section under some unusual circumstance, such differences will occur extremely rarely, if at all.

Sections 2E1.1 and 2E1.2 currently expressly provide for a comparison (of the offense level applicable to the underlying activity and the alternative base offense level) including Chapter Three adjustments. There may be cases, for example, in which abuse of a position of trust is accounted for in the offense level applicable to the underlying racketeering activity. If Chapter Three adjustments (including § 3B1.3 (Abuse of Position of Trust or Use of Special Skill)) are not included in the comparison, then abuse of a position of trust would be taken into account only in the offense level applicable to the underlying activity and not with respect to the alternative base offense level.

Likewise, §§ 2C1.1 and 2C1.7 currently do not expressly provide for a comparison including Chapter Three adjustments, although under current § 1B1.5 such a comparison is called for. Cases under §§ 2C1.1 and 2C1.7 would have a different result using a Chapter Two comparison versus a Chapter Two and Three comparison only where the Chapter Two offense level from § 2C1.1 or 2C1.7 was the same as that for the underlying offense, and a 2-level adjustment from § 3B1.3 would apply to the underlying offense (an adjustment from § 3B1.3 does not apply to an offense level from § 2C1.1 or § 2C1.7). In such case, a 2-level difference would result: that conduct would already be taken into account under §§ 2C1.1 and 2C1.7 but would not be taken into account in the comparison of the offense level from the underlying offense because the Chapter Three adjustment would not be included. However, such cases should occur relatively infrequently. In FY 1995, there were 220 cases sentenced under § 2C1.1 altogether and 26 cases sentenced under 2C1.7.

To address the cases described above, this amendment requires, as an express exception to the general rule provided for in the amendment, that the comparisons made in §§ 2C1.1, 2C1.7, 2E1.1, and 2E1.2 include Chapter Three adjustments. Application notes are added to §§ 2C1.1 and 2C1.7 expressly requiring a Chapter Three comparison (and the application notes in §§ 2E1.1 and 2E1.2 that require the same are retained), without any substantive change.

(2) Amendment of § 2X1.1—This amendment also proposes deletion of the three-level reduction under § 2X1.1(b) (1), (2), or (3), for attempts, conspiracies, or solicitations not covered by a specific offense guideline, in which the defendant has not completed all the acts necessary for the substantive offense and was not "about to complete all such acts but for the apprehension or interruption by some similar event beyond the defendant's control." In place of the three-level reduction, this amendment provides for the possibility of a downward departure under such circumstances. The arguments for eliminating the provisions are: (1) A large number of cases that go to § 2X1.1 theoretically are required to be considered for the reduction, but only a small number qualify for it; (2) on its face the provision should be expected to apply rarely; and (3) the concerns manifested in the provisions can be dealt with adequately through departure. On the other hand, if the three-level reduction is replaced by a departure provision, in the rare case when the requirements for a reduction under subsection (b) are met, the defendant will not have a right to the reduction but must rely on the sentencing judge's exercise of the discretion to depart.

In FY 1995 there were 1,568 cases in which the highest guideline applied was § 2X1.1(a). Of these, 33 (or 2%) received the three-level reduction under subsection (b) (17 for attempt, 13 for conspiracy, and 3 for solicitation). The affirmance rate of appeals of these findings has been very high (90.5% in FY 1995, 85% in FY 1994, and 94.4% in FY 1993).

Proposed Amendment: Section § 1B1.5(d) is amended by deleting "final offense level (i.e., the greater offense level taking into account the Chapter Two offense level and any applicable Chapter Three adjustments)" and inserting in lieu thereof "Chapter Two offense level, except as otherwise expressly provided".

The Commentary to § 1B1.5 captioned "Application Notes" is amended in Note 1 by deleting ", (2)," and inserting in lieu thereof "and" immediately after "§ 2D1.2(a)(1)" and by deleting "and § 2H1.1(a)(1),".

The Commentary to § 1B1.5 captioned "Application Notes" is amended in Note 2 by deleting in the second sentence "greater final"; by deleting "(i.e., the greater offense level"; by deleting "both" and inserting in lieu thereof "only"; and by deleting "and any applicable Chapter Three adjustments)."

The Commentary to § 1B1.5 captioned "Application Notes" is amended in Note 2 by deleting the second and third sentences and inserting the following in lieu thereof:

", unless the offense guideline expressly provides for consideration of both the Chapter Two offense level and applicable Chapter Three adjustments. For situations in which a comparison involving both Chapters Two and Three is necessary, see the Commentary to §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe); 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials); 2E1.1 (Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations); and 2E1.2 (Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise).".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by inserting the following additional note:

7. For the purposes of determining whether to apply the cross references in this section, the "resulting offense level" means the greater final offense level (i.e., the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–D).".

The Commentary to § 2C1.7 captioned "Application Notes" is amended by inserting the following additional note:

"6. For the purposes of determining whether to apply the cross references in this section, the "resulting offense level" means the greater final offense level (i.e., the offense level determined by taking into account both the Chapter Two offense level and any applicable adjustments from Chapter Three, Parts A–D).".

Section § 2X1.1 is amended by deleting subsection (b) in its entirety and redesignating subsection (c) as subsection (b).

The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting Note 4 in its entirety and inserting the following in lieu thereof:

"4. This guideline applies to attempts, solicitations, or conspiracies that are not covered by a specific offense guideline. In cases to which this guideline applies, a downward departure of up to three levels may be warranted if the defendant is arrested well before the defendant or any co-conspirator has completed the acts necessary for the substantive offense. A downward departure would not be appropriate under this section in cases in which the defendant or a co-conspirator completed all the acts such person believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event

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beyond the person's control. A downward departure also would not be appropriate in cases involving solicitation if the statute treats solicitation of the substantive offense identically with the substantive offense, i.e., the offense level in such cases should be the same as that for the substantive offense.".

The Commentary to § 2X1.1 captioned "Background" is deleted in its entirety.

The Commentary to § 1B1.3 captioned "Application Notes" is amended by deleting Note 7 in its entirety.

The Commentary to § 2A4.1 captioned "Application Notes" is amended in Note 5 by deleting ", subject to a possible 3-level reduction under § 2X1.1(b))".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by deleting Note 9 in its entirety.

Section 1B1.10 Retroactivity of Amended Guideline Range

11. Synopsis of Proposed Amendment: This amendment responds to recent litigation, including a circuit conflict and inquiries regarding the operation of § 1B1.10 and related statutory provisions.

The amendment clarifies Commission intent that the designation of an amendment for retroactive application to previously sentenced, imprisoned defendants authorizes only a reduction in the term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2) (which, in turn, speaks only to modification of a term of imprisonment) and does not open any other components of the sentence (e.g., the term of supervised release) to modification. The amendment further clarifies that the amount of reduction in the prison sentence, subject to the constraints of the amended, reduced guideline range and the amount of time remaining to be served, is within the sound discretion of the court.

Proposed Amendment: Section 1B1.10 is amended in the title by deleting "Retroactivity" and inserting in lieu thereof "Reduction in Term of Imprisonment as a Result".

Section 1B1.10(b) is amended by deleting "sentence" the first time it appears and inserting in lieu thereof "the term of imprisonment", by deleting "sentence" the next time it appears and inserting in lieu thereof "term of imprisonment", and by inserting ", except that in no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served" immediately before the period at the end of the sentence.

The Commentary to § 1B1.10 captioned "Application Notes" is amended by inserting the following additional note at the end:

"3. The determination of whether to grant a reduction in a term of imprisonment under 18 U.S.C. § 3582(c)(2) and the amount of such reduction are within the sound discretion of the court, subject to the limitations in subsection (b).".

The Commentary to § 1B1.10 captioned "Background" is amended in the third paragraph by inserting "to determine an amended guideline range under subsection (b)" immediately before the period at the end of the sentence; and by inserting the adding at the end the following new paragraph:

"The listing of an amendment in subsection (c) reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. The authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.".

Section 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transmitting, or Possessing Stolen Property

12. Synopsis of Proposed Amendment: (a) Source and Purpose—This amendment addresses a significant interpretive problem involving a specific offense characteristic in the Theft (§ 2B1.1) and Fraud (§ 2F1.1) guidelines. The problem occurs in connection with the specific offense characteristic under § 2B1.1(b)(6)(B) and § 2F1.1(b)(6)(B), which provides an enhancement of four levels (approximate 50 percent increase) and a floor offense level of 24 (51–63 months for a first offender), if the offense "affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense." The proper interpretation of this language has been the subject of a number of hotline calls and some litigation (although no circuit conflict has yet resulted). Staff review of the Theft and Fraud guidelines has raised this matter for possible Commission attention.

(b) Number of affected cases—FY '95 monitoring data are unable to distinguish cases that received the similar enhancement for substantially jeopardizing the safety and soundness of a financial institution (under § 2B1.1(b)(6)(A) and § 2F1.1(b)(6)(A)) from this particular enhancement under paragraph (B). One or the other enhancement was applied in 37 (0.6%) of 6,019 fraud cases and 28 (0.9%) of 3,142 theft (§ 2B1.1) cases. This amendment could decrease the frequency with which this particular enhancement is given. The amendment proposes to delete the four-level enhancement in paragraph (B), while retaining the minimum offense level of 24 (because that is all the directive requires). This could affect as many as 27 of the fraud cases (i.e., 27 of the fraud cases received a 4-level enhancement while 10 were affected by the floor of 24) and 2 of the theft cases (i.e., 2 of the 28 cases received a 4-level enhancement while 26 were affected by the floor of 24).

(c) Scope of Amendment—This amendment would continue to apply the enhancement to a broader spectrum of cases than minimally required under the congressional directive. However, the commentary would state that the offense must be perpetrated against one or more financial institutions and the defendant's $1 million must be derived entirely from one or more financial institutions. The definition for "gross receipts" in the commentary would be amended to clarify that "gross receipts from the offense" includes property under the control of, or in the custody of, the financial institution for a second party, e.g., a depositor. The Background Commentary would also be amended to reflect the Commission's intent to implement the congressional directive more broadly.

Proposed Amendment: Section § 2B1.1(b)(6) is amended by deleting "(A)"; by deleting "; or" immediately following "institution" and inserting in lieu thereof a "," ; and by deleting subsection (B) in its entirety.

Section § 2B1.1 is amended by inserting the following additional subsection:

"(7) If (A) obtaining or retaining the gross receipts of one or more financial institutions was an object of the offense, (B) the defendant derived more than $1,000,000 in gross receipts from such institutions, and (C) the offense level as determined above is less than level 24, increase to level 24.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 11 by inserting at the beginning the following:

"For purposes of subsection (b)(7), 'gross receipts' means any moneys, funds, credits, assets, securities, or other real or personal property, whether tangible or intangible, owned by, or

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under the custody or control of, a financial institution, that are obtained directly or indirectly as a result of such offense. See 18 U.S.C. §§ 982(a)(4), 1344.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 11 by deleting in the second sentence (formerly the first sentence) "from the offense,"; by deleting "(6)(B)" immediately following "(b)"; and by deleting "generally" immediately following "(7),".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 11 by deleting the third sentence (formerly the second sentence) in its entirety.

The Commentary to § 2B1.1 captioned "Background" is amended in the sixth paragraph by deleting "Subsection" and inserting in lieu thereof "Subsections"; by deleting "(A)" immediately following "(b)(6)" and inserting in lieu thereof "and (b)(7)"; by deleting "implements" and inserting in lieu thereof "implement"; by deleting "instruction" and inserting in lieu thereof "instructions"; and by inserting "and section 2507 of Public Law 101–647, respectively" immediately following "101–73".

Section 2F1.1(b)(6) is amended by deleting "(A)"; by deleting "; or" immediately following "institution" and inserting in lieu thereof a "," ; and by deleting (B) in its entirety.

Section 2F1.1(b) is amended by inserting the following additional subsection:

"(7) If (A) obtaining or retaining the gross receipts of one or more financial institutions was an object of the offense, (B) the defendant derived more than $1,000,000 in gross receipts from such institutions, and (C) the offense level as determined above is less than level 24, increase to level 24.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 16 by deleting in the first sentence "from the offense,"; by deleting "(6)(B)" immediately following "(b)"; and by deleting "generally" immediately following "(7),".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 16 by deleting the second sentence in its entirety.

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 16 by inserting at the beginning the following:

"For purposes of subsection (b)(7), 'gross receipts' means any moneys, funds, credits, assets, securities, or other real or personal property, whether tangible or intangible, owned by, or under the custody or control of, a financial institution, that are obtained directly or indirectly as a result of such offense. See 18 U.S.C. §§ 982(a)(4), 1344.".

The Commentary to § 2F1.1 captioned "Background" is amended in the seventh paragraph by deleting "Subsection" and inserting in lieu thereof "Subsections";

By deleting "(A)" immediately following "(b)(6)" and inserting in lieu thereof "and (b)(7)";

By deleting "implements" and inserting in lieu thereof "implement";

By deleting "instruction" and inserting in lieu thereof "instructions";

And by inserting "and section 2507 of Public Law 101–647, respectively" immediately following "101–73".

Section 5A1.1 Sentencing Table

13. Synopsis of Proposed Amendment: This is a two-part amendment. First, this amendment incorporates the Sentencing Table into a new guideline at § 5A1.1, in response to questions about the legal status of the Sentencing Table. By incorporating the Sentencing Table into a guideline, this amendment also uses a construct for the Sentencing Table that is consistent with the construct used for other tables in the Guidelines Manual, such as the Drug Quantity Table in § 2D1.1.

Second, this amendment addresses an arguably unwarranted "cliff" in the Sentencing Table between offense levels 42 and 43. Under the current table, offense level 42 prescribes guideline ranges of 360 months to life imprisonment for each criminal history category. Offense level 43, in comparison, prescribes a guideline sentence of life for each criminal history category.

There is evidence that the Commission initially intended to preserve level 43 and its resulting life sentence requirement for the most egregious law violators; i.e., those convicted of first degree murder, including felony murder, and treason. Note, for example, the wording of Application Note 1 to § 2A1.1: "The Commission has concluded that in the absence of capital punishment life imprisonment is the appropriate punishment for premeditated killing." However, in providing for a sentencing table with a continuous series of offense levels, the Commission actually made it possible for those most serious categories of criminals to be subject to offense levels less than 43 (and, hence, to guideline ranges that do not require a life sentence), if mitigating guideline adjustments apply. Conversely, the continuous nature of the Sentencing Table also can result in defendants who commit less inherently serious crimes; i.e., those carrying base offense levels less than 43, receiving an offense level of 43 (and, hence, a required life sentence) as a result of applicable aggravating guideline adjustments (e.g., aggravating role, weapon enhancement). Prior to a 1994 amendment reducing the quantity-based offense level in the drug table from 42 to 38, this latter situation occurred more frequently than it occurs now.

Nevertheless, in those infrequent cases, when a defendant whose base offense level is less than 43 becomes subject to guideline enhancements that result in a final, adjusted offense level of 43 or more, a "mandatory" guideline sentence of life imprisonment may not be warranted. In the last several years, a number of judges have written or called the Commission to express concern about what they see as an anomalous, unwarranted "cliff" between level 42 (range of 360 months to life) and level 43 (life), particularly in the case of a very young defendant who has a remaining life expectancy exceeding 30 years. Those who have contacted the Commission about this sentencing table phenomenon have pointed out that, for younger defendants, there may be a definite qualitative as well as a quantitative difference between a sentence of 30 or more years and a non-parolable sentence of life. In some of these cases, the applicability of a guideline enhancement of one or two offense levels can turn a very lengthy, deserved sentence into a life sentence that may not be warranted and, according to some who have commented, may even raise Eighth Amendment concerns.

The second part of this amendment addresses this concern by making level 42 the offense level upper limit in the sentencing table, unless the defendant was subject to an offense level of 43 as a result of the application of § 2A1.1 (First Degree Murder), § 2M1.1 (Treason), or other guideline provision that elevates the offense level to level 43 because of the death of a person. In such cases, level 43 and its associated life sentence would continue to apply. This approach preserves level 43 for the most egregious cases while providing a range of 360 months to life for all other cases that reach level 42 through guideline enhancements.

This amendment can be expected to affect a relatively small number (perhaps 30–40) of cases, based on FY 1995 monitoring data. In FY 1995, 80 defendants received a final offense level of 43. Of these, 28 would not be affected because level 43 was received via § 2A1.1 (First Degree Murder); (there

were no § 2M1.1 (Treason) cases.) Of the 52 remaining defendants at final offense level 43, 34 received a life sentence. The amendment could be expected to impact approximately this number of defendants, some of whom might still receive a life sentence because the judge elected to impose it.

Proposed Amendment: The Commentary to § 2A1.1 captioned "Application Notes" is amended in Note 1 by deleting "life imprisonment is the appropriate punishment for premeditated killing" and inserting in lieu thereof "a defendant who commits premeditated murder should be sentenced at the highest offense level under the Sentencing Table (subject to any applicable adjustments from Chapter Three)" ; and by deleting the second, third, and fourth sentences.

Chapter Five—Determining the Sentence is amended in Part A—Sentencing Table by deleting "The Sentencing Table used to determine the guideline range follows:" and inserting in lieu thereof:

"§ 5A1.1 Sentencing Table

(a) The Sentencing Table used to determined the guideline range is set forth in subsection (b).".

Chapter Five—Determining the Sentence is amended in Part A—Sentencing Table by inserting "(b)" in the title of the Sentencing Table.

The Commentary to Sentencing Table is amended in Note 2 by deleting "An offense level of more than 43 is to be treated as an offense level of 43." and inserting the following in lieu thereof:

"A total offense level of more than 42 is to be treated as an offense level of 42. However, if the final offense level is 43 or more as a result of the application of § 2A1.1 (First Degree Murder), § 2M1.1 (Treason), or another guideline provision (including a cross reference to § 2A1.1) that increases the offense level to level 43 because the offense involved first degree murder or resulted in death, the offense level is to be treated as an offense level of 43.".

Section 2B3.1 Robbery

14. Synopsis of Proposed Amendment: (a) Source and Purpose—This amendment addresses a split among the circuit courts regarding the application of the "express threat of death" enhancement in § 2B3.1 (Robbery).

The majority, relying on the Commission's discussion in Application Note 6, holds that the enhancement applies when the combination of the defendant's actions and words would instill in a reasonable person in the position of the immediate victim (e.g., a bank teller) a greater amount of fear than necessary to commit the bank robbery. Pursuant to this approach, the enhancement applies even when the defendant's statement does not indicate distinctly an intent to kill the victim; it is sufficient that the victim infers from the defendant's conduct that a threat of death was made. See United States v. Robinson, 86 F.3d 1197, 1202 (D.C. Cir. 1996) (enhancement applies if (1) a reasonable person in the position of the immediate victim would very likely believe the defendant made a threat and the threat was to kill; and (2) the victim likely thought his life was in peril); United States v. Murray, 65 F.3d 1161, 1167 (4th Cir. 1995) ("any combination of statements, gestures, or actions that would put an ordinary victim in reasonable fear for his or her life is an express threat of death"); United States v. France, 57 F.3d 865, 868 (9th Cir. 1995) ("[a]n express threat need not be specific in order to instill the requisite level of fear in a reasonable person"); United States v. Hunn, 24 F.3d 994 (7th Cir. 1994) (combination of defendant's note and his gesture that he was pointing a gun through his pocket at the teller would be understood by a reasonable victim as a death threat); United States v. Bell, 12 F.3d 139 (8th Cir. 1993) (upholding enhancement based on demand note's statement "Make any sudden moves alert anyone I'll pull the pistol in this purse and the shooting will start!"); United States v. Smith, 973 F.2d 1374, 1378 (8th Cir. 1992) (combination of threatening statements to teller and gesture that defendant had a gun instilled greater fear than necessary to commit the robbery).

The minority holds that only what the defendant does or says, not what the victim infers, should be used to assess whether an express threat of death was made within the meaning of the robbery guideline. United States v. Alexander, 88 F.3d 427, 431 (6th Cir. 1996) ("a defendant's statement must distinctly and directly indicate that the defendant intends to kill or otherwise cause the death of the victim"); United States v. Tuck, 964 F.2d 1079 (11th Cir. 1992) (same); see also United States v. Hunn, 24 F.3d at 999–1000 (Easterbrook, J., dissenting). The Sixth Circuit also held that the commentary examples and the Commission's underlying intent at Application Note 6 are not controlling because they are inconsistent with the plain meaning of "express" in § 2B3.1(b)(2)(F). United States v. Alexander, 88 F.3d at 431 (referring to Stinson v. United States, 508 U.S. 36 (1993)).

(b) Policy Considerations—The major policy consideration is how strictly the Commission intends for the threat of death enhancement to apply; i.e., must the defendant explicitly threaten death in order for the enhancement to apply.

(c) Number of Affected Cases—In FY 1995, the enhancement is applied in 169 out of 1,488 cases (or 11.4% of the cases) sentenced under the robbery guideline.

(d) Amendment Options—This amendment adopts the majority view and clarifies the Commission's intent to enhance offense levels for defendants whose intimidation of the victim exceeds that amount necessary to constitute an element of a robbery offense. The amendment deletes the reference to "express" in § 2B3.1(b)(2)(F) and provides for a two-level enhancement "if a threat of death was made".

Proposed Amendment: Section § 2B3.1(b)(2)(F) is amended by deleting "an express" and inserting in lieu thereof "a".

Option 1:

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 6 by deleting "An express" and inserting in lieu thereof "A " ";

By deleting the second sentence in its entirety and inserting in lieu thereof "Accordingly, the defendant does not have to state expressly his intent to kill the victim in order for the enhancement to apply.";

And by deleting in the third sentence "the underlying" and inserting in lieu thereof "this".

Option 2:

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 6 by deleting "An express" and inserting in lieu thereof "A " ";

By deleting the second sentence in its entirety and inserting in lieu thereof "Accordingly, the defendant does not have to state expressly his intent to kill the victim in order for the enhancement to apply.";

By deleting in the third sentence "the underlying" and inserting in lieu thereof "this"; and by deleting "significantly greater fear than that necessary to constitute an element of the offense of robbery" and inserting in lieu thereof "a fear of death".

15. Synopsis of Proposed Amendment: This amendment addresses the Carjacking Correction Act of 1996, Pub.L. 104–217; 110 Stat. 3020. Section 2 of that Act amends 18 U.S.C. § 2119(2), which (A) makes it unlawful to take a motor vehicle by force and violence or by intimidation, with intent to cause death or serious bodily harm, and (B) provides for a term of

imprisonment of not more than 25 years if serious bodily injury results. As amended by the Carjacking Correction Act of 1996, 18 U.S.C. § 2119(2) includes aggravated sexual abuse under 18 U.S.C. § 2241 and sexual abuse under 18 U.S.C. § 2242 within the meaning of "serious bodily injury". Therefore, a defendant will be subject to the 25-year statutory maximum under 18 U.S.C. § 2119(2) if the defendant commits a carjacking and rapes the carjacking victim during the carjacking.

In addition, this amendment amends § 2B3.1(b)(1) to provide cumulative enhancements if the offense involved bank robbery and carjacking. Currently, § 2B3.1 provides a 2-level enhancement either for bank robbery or for carjacking; it does not provide separate enhancements for those factors.

Two options are presented. Option 1 is a fairly narrow response to the Act. It amends Application Note 1 of § 2B3.1 (Robbery, Extortion, and Blackmail), the guideline which covers carjacking offenses under 18 U.S.C. § 2119 (and only that guideline) to provide that "serious bodily injury" includes aggravated sexual abuse under 18 U.S.C. § 2241 and sexual abuse under 18 U.S.C. § 2242.

Option 2 is a broader response to the Act. It expands the definition of "serious bodily injury" under § 1B1.1. Option 2 makes this broader definition generally applicable to Chapter Two offense guidelines which contain a "serious bodily injury" enhancement. The sexual abuse guideline, § 2A3.1, in turn is amended to make clear that, for purposes of that guideline, the "serious bodily injury" enhancement covers conduct other than aggravated sexual abuse and sexual abuse, which are inherent in the conduct covered by that guideline.

Option 2 also clarifies the guideline definition of serious bodily injury by inserting the word "protracted" immediately preceding the word "impairment". Statutes defining serious bodily injury consistently use the term "protracted" before "impairment" (e.g., 18 U.S.C. §§ 831, 1365, 1864; 21 U.S.C. § 802). Without use of the term "protracted", even a temporary impairment such as a "sprained wrist" would fall within the definition of serious bodily injury, as would the throwing of sand or pepper in someone's face to temporarily impair vision. Finally, Option 2 removes two sentences of commentary that are unhelpful.

[Option 1

Section 2B3.1(b)(1) is amended by deleting "(A)" immediately following "If", and by deleting "or (B) the offense involved carjacking,".

Section 2B3.1 is amended by renumbering subdivisions (5) and (6) as subdivisions (6) and (7) respectively and inserting the following as a new subdivision (5):

"(5) If the offense involved carjacking, increase by 2 levels.".

Section 2B3.1 captioned "Application Notes" is amended in Note 1 by inserting "For purposes of this guideline—" immediately before "Firearm," and inserting "In addition, 'serious bodily injury—' includes conduct constituting criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law." immediately after "Instructions).".

[Option 2

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(b) by deleting "As used in the guidelines, the definition of this term is somewhat different than that used in various statutes.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(j) by inserting "protracted" immediately before "impairment"; and by deleting "As used in the guidelines, the definition of this term is somewhat different than that used in various statutes." and inserting in lieu thereof "'Serious bodily injury' includes conduct constituting criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law.".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by inserting "For purposes of this guideline" immediately before "'Permanent"; and by inserting the following as the last sentence:

"However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by inserting the following as the last paragraph:

"The means set forth in 18 U.S.C. § 2241 (a) or (b)" are: by using force against the victim; by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, where any dangerous weapon was used, brandished, or displayed to intimidate the victim.".

The Commentary to § 2A3.1 captioned "Application Notes" is amended by deleting Note 2 in its entirety; and by renumbering Notes 3–7 as Notes 2–6 respectively.

Section 2B3.1(b)(1) is amended by deleting "(A)" immediately after "If"; by deleting "or (B) the offense involved carjacking," immediately before "increase".

Section 2B3.1(b) is amended by renumbering subdivisions (5) and (6) as subdivisions (6) and (7) respectively, and by inserting the following as a new subdivision (5):

"(5) If the offense involved carjacking, increase by 2 levels.".

Section 2B5.1 Offenses Involving Counterfeit Bearer Obligations of the United States

16. Synopsis of Proposed Amendment: This is a three-part amendment. First, this amendment addresses section 807(h) of the Antiterrorism and Effective Death Penalty Act of 1996. That section requires the Commission to amend the sentencing guidelines to provide an appropriate enhancement for a defendant convicted of an international counterfeiting offense under 18 U.S.C.§ 470. The amendment adds a specific offense characteristic in § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to provide a two-level enhancement if the offense occurred outside the United States.

Second, this amendment moves the coverage of offenses involving altered bearer instruments of the United States from § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States). Currently, § 2B5.1 covers counterfeit bearer obligations of the United States. Section 2F1.1 covers altered bearer obligations of the United States. The offense level in § 2B5.1 is one-level higher than sophisticated fraud (i.e., fraud and more than minimal planning) under § 2F1.1 throughout the range of loss values. There are two reasons for moving offenses involving altered bearer instruments of the United States from § 2F1.1 to § 2B5.1: (A) theoretical consistency, and (B) simplicity of guideline operation.

(A) Theoretical Consistency. The higher offense level for offenses involving counterfeit bearer obligations of the United States reflects the lower

level of scrutiny realistically possible in transactions involving currency and the absence of any requirement that the person passing the currency produce identification. Under this rationale, however, altered bearer obligations of the United States seem to belong with counterfeit bearer obligation of the United States, rather than with other counterfeit or altered instruments.

(B) Simplicity of Guideline Operation. As a practical matter, the distinction between an altered instrument and a counterfeit instrument is not always clear. For example, if a genuine one-dollar bill is bleached and a photocopy of a twenty-dollar bill made using the genuine note paper, is the resulting twenty-dollar bill a counterfeit bill or an altered bill? In one recent case, a defendant made photocopies of twenty-dollar bills, then cut out the presidential picture of genuine twenty-dollar bills and switched pictures (using the genuine picture with the photocopied bill and the photocopied picture with the otherwise genuine bill). Is the photocopied bill with the genuine presidential picture a counterfeit or an altered instrument? This amendment simplifies the guidelines by handling this conduct in the same offense guideline, thus avoiding any difference based upon such very fine distinctions.

Third, this amendment clarifies the operation of § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) in two respects to address issues raised in litigation. It deletes a phrase in Application Note 3 concerning photocopying a note that could lead to the inappropriate conclusion that an enhancement from subsection (b)(2) does not apply even to sophisticated copying of notes. It also adds an application note to provide expressly that items clearly not intended for circulation are not counted under subsection (b)(1).

Proposed Amendment: Section 2B5.1 is amended in the title by inserting "or Altered" immediately following "Counterfeit".

Section 2B5.1(b) (1) and (b)(2) are both amended by inserting "or altered" immediately following "counterfeit".

Section 2B5.1(b) is amended by inserting the following new subdivision at the end:

"(4) If the offense was committed outside the United States, increase by 2 levels.".

The Commentary to § 2B5.1 captioned "Statutory Provision" is amended by deleting "471" and inserting in lieu thereof "470".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by deleting Note 2, renumbering Note 1 as Note 2 and inserting the following as the new Note 1:

"1. For purposes of this guideline, "United States" means each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.";

In Note 2 (formerly Note 1) by inserting "or altering" immediately following "counterfeiting";

By renumbering Note 3 as Note 4 and inserting the following as the new Note 3:

"3. For the purposes of subsection (b)(1), do not count items that clearly were not intended for circulation (e.g., items that are so defective that they are unlikely to be accepted even if subjected to only minimal scrutiny). However, partially completed items that would have been completed but for the discovery of the offense should be counted for purposes of such subsection.";

And in Note 4 (formerly Note 3) by deleting "merely photocopy notes or otherwise".

The Commentary to § 2B5.1 captioned "Background" is amended by inserting "alters bearer obligations of the United States or" immediately before "produces".

Section 2F1.1 is amended in the title by inserting "Altered or" immediately following "than".

Section 2D1.6 Use of Communication Facility in Committing Drug Offense

17. Synopsis of Proposed Amendment: This amendment clarifies the operation of §§ 2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy), 2E1.1 (Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations), 2E1.2 (Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise), and 2E1.3 (Violent Crimes in Aid of Racketeering Activity) in a manner consistent with the operation of § 1B1.2 (Applicable Guidelines) governing the selection of the offense guideline section. This amendment addresses a circuit conflict by specifying that the "underlying offense", for purposes of these guidelines, is determined on the basis of the conduct of which the defendant was convicted. Compare United States v. McCall, 915 F.2d 811 (2d Cir. 1990) with United States v. Carrozza, 4 F.3d 70 (1st Cir. 1993). In addition, this amendment deletes an application note from §§ 2E1.1, 2E1.2, and 2E1.3 that is unnecessary and is not included in other sections of the Guidelines Manual.

Proposed Amendment: The Commentary to § 2D1.6 captioned "Application Notes" is amended by deleting "Note" and inserting in lieu thereof "Notes", by renumbering Note 1 as Note 2, by inserting the following as new Note 1:

"1. 'Offense level applicable to the underlying offense" means the offense level determined by using the offense guideline applicable to the controlled substance offense that the defendant was convicted of using a communication facility to commit, cause, or facilitate.".

The Commentary to § 2E1.1 captioned "Application Notes" is amended in Note 1 by deleting "Where there is more than one underlying offense" and inserting in lieu thereof "The 'offense level applicable to the underlying racketeering activity' under subsection (a)(2) means the offense level under the applicable offense guideline, as determined under the provisions of § 1B1.2 (Applicable Guidelines)(i.e., on the basis of the conduct of which the defendant was convicted). In the case of more than one underlying offense (for this determination, apply the provisions of Application Note 5 of the Commentary to § 1B1.2 as if in a conspiracy case)"; by inserting "apply Chapter Three, Parts A, B, and C to subsection (a)(1), and" immediately following "level,", by deleting "both (a)(1) and" and inserting in lieu thereof "subsection"; by deleting Note 3, and by renumbering the remaining notes accordingly.

The Commentary to § 2E1.2 captioned "Application Notes" is amended in Note 1 by deleting "Where there is more than one underlying offense" and inserting in lieu thereof "The 'offense level applicable to the underlying crime of violence or other unlawful activity' under subsection (a)(2) means the offense level under the applicable offense guideline, as determined under the provisions of § 1B1.2 (Applicable Guidelines) (i.e., on the basis of the conduct of which the defendant was convicted). In the case of more than one underlying offense (for this determination, apply the provisions of Application Note 5 of the Commentary to § 1B1.2 as if in a conspiracy case)",

The Commentary to § 2E1.3 captioned "Application Notes" is amended by deleting "Notes" and inserting in lieu thereof "Note"; in Note 1 by adding the following as the first sentence:

"The 'offense level applicable to the underlying crime or racketeering activity" under subsection (a)(2) means the offense level under the applicable offense guideline, as determined under the provisions of § 1B1.2 (Applicable

Guidelines)(i.e., on the basis of the conduct of which the defendant was convicted).";

And by deleting Note 2.

Fraud, Theft, and Tax Offenses

Chapter Two, Parts B, F, and T (Theft, Fraud, and Tax)

18. Synopsis of Proposed Amendment: This amendment makes the following changes to guideline §§ 2B1.1, 2F1.1, and 2T4.1: (1) Eliminates the more-than-minimal-planning enhancement in §§ 2B1.1 and 2F1.1 and other guidelines, and builds a corresponding increase into the loss tables, and creates a two-level enhancement like the one in § 2T4.1 for offenses involving "sophisticated means"; (2) increases the base offense level of § 2B1.1 (the theft guideline) and revises the loss tables in §§ 2B1.1, 2F1.1, and 2T4.1 (theft, fraud, and tax offenses, respectively); (3) changes the current one-level increments in the loss tables in §§ 2B1.1, 2F1.1, and 2T4.1 (to two-level increments or a combination of one and two-level increments); (4) increases the severity of the loss tables in §§ 2B1.1, 2F1.1, and 2T4.1 at higher loss amounts; (5) adds telemarketing enhancements to §§ 2B1.1 and 2F1.1; (6) adds a cross reference in § 2F1.1 for offenses involving arson; and (7) makes conforming technical changes.

(1) Elimination of More-than-Minimal-Planning Enhancement for Sophisticated Means.

First, the amendment eliminates the specific offense characteristic for more-than-minimal planning from the theft and fraud guidelines (and a number of other guidelines), and phases in a corresponding increase in the loss tables (or, in the case of option 3, into the base offense level). Arguments for revising or eliminating the "more than minimal planning" specific offense characteristic include: (I) the workload (and related litigation) burden of the provision is considerable; in each of the over 9,000 cases sentenced under these guidelines, some consideration is given to whether this SOC is applicable; (ii) the definition of more than minimal planning is arguably unclear or ambiguous; (iii) past Commission studies have shown that the provision is applied unevenly, thus contributing to unwarranted disparity; and (iv) the adjustment is applied with such frequency, particularly at higher dollar amounts, that it arguably should be built into the loss table or even the base offense level. (The more-than-minimal planning adjustment is applied in 58.7% of all cases sentenced under § 2B1.1; of all cases under § 2F1.1, it is applied in 82.5% (and over 89% of cases involving loss amounts greater than $10,000)).

The amendment proposes creating a two-level specific offense characteristic in §§ 2B1.1 and 2F1.1 (and other guidelines that currently have a more-than-minimal planning enhancement) that would apply if "sophisticated means" were used to impede discovery of the existence or extent of the offense (with a floor of level 12). Replacing the more-than-minimal planning enhancement with one for sophisticated means will increase the fact-finding and application burden compared to just deleting the more-than-minimal planning enhancement. In addition, in the proposed loss table options at levels at or above the point where the two levels from more-than-minimal planning are automatically built into the loss table, defendants who would receive the new two-level enhancement for sophisticated means would effectively receive an additional two-level increase, in addition to any others provided in this amendment. It is unclear how many cases would be affected by this new enhancement. In conjunction with the addition of this enhancement, it is proposed that the current specific offense characteristic involving use of foreign bank accounts found at subsection (b)(5) (providing a floor of 12 for such offenses), be deleted and incorporated into the definition of "sophisticated means" for all guidelines that currently have a more-than-minimal planning enhancement. In FY 1995, of the 6,019 cases sentenced under § 2F1.1, 3 (.05%) received the enhancement for use of foreign bank accounts.

(2) Amendments to Loss Tables.

Three options are presented for changes to the loss tables for the theft and fraud guidelines. A corresponding change is proposed to the tax loss table in § 2T4.1 (for options 1 and 2; if option 3 is chosen, a conforming tax loss table will be prepared). Depending on the option chosen, the necessity of factual findings for the lowest loss amounts is eliminated by building these loss amounts into the base offense level.

Options 1 and 2 of this proposal provide identical base offense levels of 6 for the theft and fraud guidelines. Option 3 provides a base offense level of 8.

(3) Loss Tables—Two-level Increments.

Second, in options one and three the loss tables are changed from the current one-level increments to two-level increments, so that broader ranges of dollar loss are assigned to a particular offense level increase. Option two generally retains one-level increments, but provides two-level increments for losses above $2,000 and $5,000, and for loss increments above $5,000,000. Option two retains cutting points that are very similar to the current loss tables, but has no consistent pattern in the selection of the cutting points.

Several arguments suggest use of two-level increments in the loss tables, as proposed in Options One and Three: (i) Reduction in probation officer and judicial workload (broader loss ranges will produce fewer "cutting points"; for example, a two-level loss table—with no other changes—would go from 18 to 10 cutting points); (ii) increased consistency with other offense guidelines (most alternative base offense levels and specific offense characteristics increase by at least two-level increments; for example, the drug table); and (iii) a table with two-level increments is less mechanistic and lessens the appearance of false precision compared to the current structure. On the other hand, one-level increments provide a smoother increase in levels relative to loss amounts, with a minimized "cliff" effect and somewhat greater proportionality.

(4) Loss Tables—Increased Severity at Higher Loss Amounts.

Fourth, all three options provide for increases in the severity levels assigned to the higher loss amounts, in addition to the increase built into the table (or base offense level) in response to the elimination of the more-than-minimal planning adjustment.

There are several reasons why consideration should be given to raising the severity levels for cases involving the largest loss amounts. First, the draft report of the Commission-sponsored "just punishment" study suggests that respondents identified certain kinds of cases that may warrant greater punishment for higher loss amounts than currently provided by the loss tables in the theft and fraud guidelines: embezzlement or theft cases involving bank officials or postal workers; fraudulent solicitation for a nonexistent charity; fraud involving false mortgage application with no intent to repay; and forgery or fraud involving stolen credit cards or writing bad checks.

Second, the draft results of the Federal Judicial Center survey of federal district court judges and chief probation officers reveal sentiment that §§ 2B1.1 and 2F1.1 under punish defendants whose offenses involve large monetary losses.

Third, the Department of Justice and the Criminal Law Committee of the Judicial Conference have recommended that consideration be given to raising the severity levels at higher loss

amounts for theft and fraud cases to more appropriately punish large-scale offenders.

(5) Telemarketing Enhancements.

The fifth change proposed by this amendment is to add specific offense characteristics to § 2F1.1 for offense conduct involving telemarketing. In the 1994 omnibus crime bill, Congress raised the statutory maximum for telemarketing offenses by five years (18 U.S.C. § 2326(1)), and by ten years for such offenses that victimized ten or more persons over age 55 or targeted persons over the age of 55 (18 U.S.C. § 2326(2)). This amendment provides a two-level increase in § 2F1.1 for offenses involving telemarketing, and an additional, cumulative 2-level increase if the offense victimized 10 or more persons over the age of 55, or targeted persons over the age of 55.

(6) Cross Reference—Arson.

The sixth change proposed by the amendment is to add to the fraud guideline a cross reference to § 2K1.4 (Arson, Property Damage by Use of Explosives), if the offense involved arson or property destruction by use of explosives, and if the resulting offense level is greater. Offenses that involve an underlying arson may be charged as frauds. The proposed cross reference better ensures that similar offenses are treated similarly.

(7) Conforming Technical Changes.

The amendment also makes the following technical changes: In § 2B1.1, subsection (b)(3) is proposed for deletion because the floor of 6 for offenses involving the theft of mail is unnecessary given the proposal to increase the base offense level for all offenses under this guideline from 4 to 6; in § 2B1.1, subsection (b)(4)(B) providing a four-level increase for offenses involving receiving stolen property is revised to provide a two-level increase because of the proposed deletion of more than minimal planning (i.e., the current, four-level enhancement is applied in the alternative to a two-level enhancement for more than minimal planning; if the more-than-minimal planning enhancement is subsumed in the loss tables, it is necessary to reduce the four-level enhancement for fencing stolen property to two levels to maintain equipoise). In § 2F1.1, subsection (b)(2)(B), providing an alternative (to the more-than-minimal-planning) two-level increase for a scheme involved the defrauding of more than one victim, is proposed for deletion because the concerns are handled by building the levels for more than minimal planning into the loss table; and the definition of more-than-minimal planning in § 1B1.1, comment. (n.1(f)), is proposed for deletion and replacement by the definition of "sophisticated means", with corresponding changes to §§ 2A2.1(b)(1), 2B1.1(b)(4)(A), 2B1.3(b)(3), and 2B2.1(b)(1). The definition of "sophisticated means" currently in § 2T1.1 is revised accordingly.

(A) Proposed Amendment

The Commentary to § 1B1.1 captioned "Application Notes" is amended by deleting application note 1(f) in its entirety and inserting in lieu thereof:

"'Sophisticated means to impede discovery of the offense or its extent,' includes conduct that is more complex or demonstrates greater intricacy or planning than a routine effort to impede discovery of the offense or its extent. An enhancement would be applied, for example where the defendant used transactions through corporate shells or fictitious entities, or used foreign bank accounts or transactions to conceal the nature or extent of the fraudulent conduct."

* * * * *

Section 2B1.1(a) (Base Offense Level) is amended by deleting "4" and inserting in lieu thereof [Options 1 and 2: "6"; Option 3: "8"].

Section 2B1.1 is amended by deleting (b)(1) in its entirety, and inserting in lieu thereof, one of the following three options:

Option One

["(b) Specific Offense Characteristics

(1) If the loss was $5,000 or more, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $5,000 or more	Add 2.
(B) 10,000 or more	Add 4.
(C) 22,500 or more	Add 6.
(D) 50,000 or more	Add 8.
(E) 120,000 or more	Add 10.
(F) 275,000 or more	Add 12.
(G) 650,000 or more	Add 14.
(H) 1,500,000 or more	Add 16.
(I) 3,500,000 or more	Add 18.
(J) 8,000,000 or more	Add 20.
(K) 18,000,000 or more	Add 22.
(L) 40,000,000 or more	Add 24.
(M) 90,000,000 or more	Add 26"].

Option Two

["(b) Specific Offense Characteristics

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level.
(A) More than $2,000	Add 2.
(B) More than 5,000	Add 4.
(C) More than 10,000	Add 5.
(D) More than 20,000	Add 6.
(E) More than 40,000	Add 7.
(F) More than 70,000	Add 8.
(G) More than 120,000	Add 9.
(H) More than 200,000	Add 10.
(I) More than 350,000	Add 11.
(J) More than 500,000	Add 12.
(K) More than 800,000	Add 13.
(L) More than 1,500,000	Add 14.
(M) More than 2,500,000	Add 15.
(N) More than 5,000,000	Add 16.
(O) More than 7,500,000	Add 18.
(P) More than 15,000,000	Add 20.
(Q) More than 25,000,000	Add 22.
(R) More than 50,000,000	Add 24"].

Option Three

["(b) Specific Offense Characteristics

(1) If the loss exceeded $5,000, increase the offense level as follows:

Loss (apply the greatest)	Level of increase.
(A) More than $5,000	Add 2.
(B) More than 20,000	Add 4.
(C) More than 60,000	Add 6.
(D) More than 100,000	Add 8.
(E) More than 250,000	Add 10.
(F) More than 500,000	Add 12.
(G) More than 750,000	Add 14.
(H) More than 1,000,000	Add 16.
(I) More than 3,000,000	Add 18.
(J) More than 7,000,000	Add 20.
(K) More than 12,000,000	Add 22.
(L) More than 20,000,000	Add 24.
(M) More than 40,000,000	Add 26.
(N) More than 80,000,000	Add 28"].

Section 2B1.1 is amended by deleting (b)(3) in its entirety and inserting in lieu thereof:

"If sophisticated means were used to impede discovery of the offense or its extent, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12."

Section 2B1.1 is amended by deleting (b)(4)(A) in its entirety and by amending (b)(4)(B) by deleting "(B)" and by deleting and changing "4 levels" to "2 levels".

* * * * *.

Option Three Only

[Section 2F1.1(a) is amended by deleting "6" and inserting in lieu thereof "8"].

Section 2F1.1 is amended by deleting (b)(1) in its entirety, and inserting in lieu thereof, one of the following three options:

Option One

["(b) Specific Offense Characteristics.

(1) If the loss was $5,000 or more, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $5,000 or more	Add 2.
(B) 10,000 or more	Add 4.
(C) 22,500 or more	Add 6.
(D) 50,000 or more	Add 8.
(E) 120,000 or more	Add 10.
(F) 275,000 or more	Add 12.
(G) 650,000 or more	Add 14.
(H) 1,500,000 or more	Add 16.
(I) 3,500,000 or more	Add 18.
(J) 8,000,000 or more	Add 20.
(K) 18,000,000 or more	Add 22.
(L) 40,000,000 or more	Add 24.
(M) 90,000,000 or more	Add 26"].

Option Two

["(b) Specific Offense Characteristics.

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) More than $2,000	Add 2.
(B) More than 5,000	Add 4.
(C) More than 10,000	Add 5.
(D) More than 20,000	Add 6.
(E) More than 40,000	Add 7.
(F) More than 70,000	Add 8.
(G) More than 120,000	Add 9.
(H) More than 200,000	Add 10.
(I) More than 350,000	Add 11.
(J) More than 500,000	Add 12.
(K) More than 800,000	Add 13.
(L) More than 1,500,000	Add 14.
(M) More than 2,500,000	Add 15.
(N) More than 5,000,000	Add 16.
(O) More than 7,500,000	Add 18.
(P) More than 15,000,000	Add 20.
(Q) More than 25,000,000	Add 22.
(R) More than 50,000,000	Add 24"].

Option Three

["(b) Specific Offense Characteristics

(1) If the loss exceeded $5,000, increase the offense level as follows:

Loss (apply the greatest)	Level of increase
(A) More than $5,000	Add 2.
(B) More than 20,000	Add 4.
(C) More than 60,000	Add 6.
(D) More than 100,000	Add 8.
(E) More than 250,000	Add 10.
(F) More than 500,000	Add 12.
(G) More than 750,000	Add 14.
(H) More than 1,000,000	Add 16.
(I) More than 3,000,000	Add 18.
(J) More than 7,000,000	Add 20.
(K) More than 12,000,000	Add 22.
(L) More than 20,000,000	Add 24.
(M) More than 40,000,000	Add 26.
(N) More than 80,000,000	Add 28"].

* * * * *

Section 2F1.1 is amended by deleting (b)(5) in its entirety, and by deleting (b)(2) in its entirety, and inserting in lieu thereof:

"If sophisticated means were used to impede discovery of the offense or its extent, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12."

Section 2F1.1 is amended by inserting the following:

"(6) If the offense involved telemarketing, increase by 2 levels.

(7) If the offense [involved telemarketing conduct and either] victimized 10 or more persons over the age of 55, or targeted persons over the age of 55, increase by 2 levels."

Section 2F1.1 is amended by adding the following cross reference as (c)(2):

"(2) If the offense involved arson or property destruction by use of explosives, apply § 2K1.4 (Arson, Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above."

* * * * *

Section 2T1.1 is amended by deleting (b)(5) in its entirety and inserting in lieu thereof:

"If sophisticated means were used to impede discovery of the offense or its extent, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12."

Section 2T4.1 is amended by deleting the tax table, and inserting in lieu thereof, one of the following two options:

Option One

["Tax Loss	Level
(A) $5,000 or more	8
(B) 10,000 or more	10
(C) 22,500 or more	12
(D) 50,000 or more	14
(E) 120,000 or more	16
(F) 275,000 or more	18
(G) 650,000 or more	20
(H) 1,500,000 or more	22
(I) 3,500,000 or more	24
(J) 8,000,000 or more	26
(K) 18,000,000 or more	28
(L) 40,000,000 or more	30
(M) 90,000,000 or more	32"]

Option Two

["Tax Loss (apply the greatest)	Level
(A) $2,000 or less	8
(B) More than 2,000	9
(C) More than 5,000	10
(D) More than 10,000	11
(E) More than 20,000	12
(F) More than 40,000	13
(G) More than 70,000	14
(H) More than 120,000	15
(I) More than 200,000	16
(J) More than 350,000	17
(K) More than 500,000	18
(L) More than 800,000	19
(M) More than 1,500,000	20
(N) More than 2,500,000	21
(O) More than 5,000,000	22
(P) More than 7,500,000	24
["Tax Loss (apply the greatest)	Level
(Q) More than 15,000,000	26
(R) More than 25,000,000	28
(S) More than 50,000,000	30"]

Issues for Comment

The following issues for comment are provided to facilitate informed comment on the issues raised by the preceding amendment.

(1) Loss Tables: In addition to requesting input on the options in the proposed amendment, the Commission requests comment on whether §§ 2B1.1 and 2F1.1 should have different base offense levels and different starting points and cutting points for the loss tables. If so, the Commission requests comment on what the respective base offense levels should be (for example, level 6 for § 2B1.1 and level 8 for § 2F1.1), on what loss amount should trigger the first increase ($2,000, $5,000, or $10,000 for § 2B1.1; $2,000, $5,000, $10,000, or $20,000 for § 2F1.1), and what the cutting points of the loss tables should be.

(2) Telemarketing offenses: In addition to the issues raised by the proposed amendment, the Commission invites comment on whether the guidelines should provide a broader enhancement for other frauds involving the victimization or targeting of persons over the age of 55. The Commission also invites comment on whether the guidelines should be amended to add a Chapter Three adjustment that provides a two-level increase if the offense, regardless of type, involves the victimization of 10 or more persons over the age of 55 or the targeting of persons over the age of 55. Alternatively, the Commission invites comment on whether § 3A1.1 (Vulnerable Victim) should be amended to provide that it will always apply when an offense involves the victimization of 10 or more persons over the age of 55 or the targeting of persons over the age of 55, or to provide an enhancement for offenses involving telemarketing conduct.

(3) Cross Reference: The Commission invites comment on whether the following cross reference should be adopted: "If the offense involved a bribe, gratuity, commercial bribe or kickback, or similar conduct, apply § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2C1.5 (Payment to Obtain Public Office); § 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper); § 2C1.7 (Fraud Involving Deprivation of

the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions); or § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), whichever is the most applicable, would provide that the cross reference should apply only if the listed offense conduct results in a higher offense level."

(4) Consolidation of §§ 2B1.1 and 2F1.1: Currently there is sometimes confusion about whether a given offense should be sentenced using § 2B1.1 or § 2F1.1 and which definition of loss should be used. The Commission invites comment on whether §§ 2B1.1 and 2F1.1 should be consolidated into one guideline and, if so, what provisions of each should be retained in the consolidated guideline, and how the two definitions of loss should be combined into one. Alternatively, the Commission invites comment on whether the definitions of loss in §§ 2B1.1 and 2F1.1 should be combined into one definition and, if so, what provisions of each should be retained in the consolidated definition and how the new definition should be worded.

Additional Issues for Comment—Determination of Loss

These issues for comment solicit input on possible changes to the definition of loss in §§ 2B1.1 and 2F1.1 to clarify the Commission's intent, resolve issues raised by case law, and aid in consistency of application.

(1) Standard of causation: Currently, the definition of loss in § 2F1.1 does not specify a standard of causation governing whether unintended or unexpected losses are to be included in the loss calculation under the guidelines. See United States v. Neadle, 72 F.3d 1104, 1108–11 (3d Cir.) (holding defendant fraudulently posted required $750,000 bond to open insurance company accountable for $23 million in property damage from a hurricane that the defendant's insurance company lacked the assets to cover, loss undoubtedly would have gone unreimbursed regardless of defendant's insurance fraud), amended, 79 F.3d 14 (3d Cir.), cert. denied, 117 S. Ct. 238 (1996).

The Commission invites comment on whether to clarify the standard of causation necessary to link a harm with an offense under § 1B1.3(a)(3). More specifically, the Commission requests comment on whether it should include only harm proximately caused (or directly caused) by the defendant's conduct, or whether it should include all harm that would not have occurred "but for" the defendant's conduct. Finally, the Commission invites comment on whether, regardless of which causation standard is adopted, the Commission should invite the possibility of a departure when losses far exceed those intended or reasonably foreseen by the defendant.

(2) Market value: The current definition of loss in theft and fraud uses the concept of market value as an important factor in determining loss. The Commission invites comment on whether this concept should be clarified to specify whether retail, wholesale, or black market value is intended, depending on the nature of the offense. In addition, the Commission invites comment on whether market value includes the enhanced value on the black market when it exceeds fair market value, or alternatively, whether black market value should be a departure consideration.

(3) Consequential damages and administrative costs—inclusion of interest: The definition of loss in fraud provides that reasonably foreseeable consequential damages and administrative costs are included in determinations of loss only in cases involving procurement fraud or product substitution. The Commission invites comment on whether consequential damages should be used in determinations of loss in all theft and/or fraud cases, and if so, how such damages should be determined. Alternatively, should the special rule in fraud on the inclusion of consequential damages and administrative costs in loss determinations in procurement fraud and product substitution cases be deleted? The Commission further invites comment on whether, even if consequential damages, generally, are not included in loss, they might be used as an offset against the value of the benefit received by the victim(s).

Although the definition of loss in the theft and fraud guidelines excludes interest "that could have been earned had the funds not been stolen," some courts have interpreted the definition of loss to permit inclusion in loss of the interest that the defendant agreed to pay in connection with the offense. Cf., United States v. Hoyle, 33 F.3d 415, 419 (4th Cir. 1994) ("[I]nterest shall not be included to determine loss for sentencing purposes.") with United States v. Gilberg, 75 F.3d 15, 18–19 (1st Cir. 1996) (including in loss interest on fraudulently procured mortgage loan); and United States v. Henderson, 19 F.3d 917, 928–29 (5th Cir.) ("Interest should be included if, as here, the victim had a reasonable expectation of receiving interest from the transaction."), cert. denied, 115 S. Ct. 207 (1994).

The Commission invites comment on whether the definition of loss should be clarified to (A) exclude all interest from loss; (B) to permit inclusion of bargained-for interest, or (C) to allow consideration of bargained-for interest as a departure factor only.

(4) Benefit received by victims: Currently, with the exception of payments made and collateral pledged in fraudulent loan cases, the definition of loss does not specify whether benefit received by the victim(s) reduces the amount of the loss. Courts have generally, although not unanimously, held that loss in fraud cases must be reduced by any benefits received by the victim(s). See, e.g.,United States v. Maurello, 76 F.3d 1304, 1311–12 (3d Cir. 1996) (calculating loss by subtracting value of satisfactory legal services from amount of fees paid to bogus lawyer); United States v. Reddeck, 22 F.3d 1504, 1513 (10th Cir. 1994) (reducing loss by value of education received from bogus university); United States v. Mucciante, 21 F. 3d 1228, 1237–38 (2d Cir.) (refusing to reduce loss by amount that defendant "repaid * * * as part of a meretricious effort to maintain [the victims'] confidences" in a non-Ponzi scheme), cert. denied 115 S. Ct. 361 (1994).

A Ponzi scheme is a particular kind of criminal offense that may warrant explicit treatment in the definition of loss. A Ponzi scheme is defined as "a fraudulent investment scheme in which money placed by later investors pays artificially high dividends to the original investors, thereby attracting even larger investments." Bryan A. Garner, A Dictionary of Modern Legal Usage 671 (2d ed. 1995). Several cases raise some important issues about Ponzi schemes.

The Seventh Circuit was the first to address the issue of calculating loss from a Ponzi scheme. In United States v. Holiusa, 13 F.3d 1043, 1044–45 (6th Cir. 1994), the defendant perpetuated a Ponzi scheme by appropriating $11,625,739 from "investors" and returning approximately $8,000,000 in "interest." The appellate court rejected the district court holding that because the defendant intended "to defraud all of the victims of their money" he was accountable for the full $11,625,739. Id. at 1045; see also U.S.S.G. § 2F1.1, comment. (n. 7) ("[I]f an intended loss that the defendant was attempting to inflict can be determined, this figure will be used if it is greater than the actual loss."). The court held that "[t]he full amount invested was not the probable or intended loss because [the defendant] did not at any point intend

to keep the entire sum. * * * Because he did not intend to and did not keep the full $11.6 million, that amount does not reflect the actual or intended loss, and is not an appropriate basis for sentencing." Holiusa, 13 F.3d at 1046–47. The court remanded the case, instructing the district court not to include in loss "amounts that [the defendant] both intended to and indeed did return to investors." Id. at 1048; see also United States v. Wolfe, 71 F.3d 611, 618 (6th Cir. 1995) (following Holiusa).

While the Seventh Circuit saw the concept of intended loss as the focus of Ponzi scheme loss calculation, the Eleventh Circuit took a different approach in United States v. Orton, 73 F.3d 331 (11th Cir. 1996). The Orton defendant had received $525,865.66 from and returned $242,513.65 to the "investors." Twelve investors received more than they had invested; the total lost by the other investors was $391,540.01. Id. at 333. The Eleventh Circuit adopted what it dubbed the "loss to losing victims" method: it held the defendant accountable for "the net losses of all victims who lost all or part of the money they invested." Id. at 334. The money that the defendant received from and returned to those investors who ended up with a net gain did not enter into the loss calculation. The Orton defendant was therefore held accountable for $391,540.01.

The Commission invites comment on whether the value of the benefit received by the victim(s) of an offense should be used to reduce the amount of the loss and, if so, how benefits that are more theoretical than real should be valued. The Commission also invites comment on whether the money returned to victim-investors (including "profits") in a Ponzi scheme should be included in the calculation of loss. In addition, the Commission invites comment on whether in cases involving fraudulent representations of a defendant's professional license or training, the loss should be reduced by the value of the "benefit/service" given to the victim (or to someone else on the victim's behalf) by the defendant, or whether it should be determined based on the full charge for the "service."

(5) Diversion of government benefits: The Commission invites comment on how loss should be determined in fraud cases involving the diversion of government program benefits and kickbacks. These cases tend to present special difficulties in determining or estimating loss and determining gain. At the same time, there is a strong societal interest in the integrity of government programs. More specifically, the Commission invites comment on whether the "value of benefits diverted" in such cases should be reduced by the "benefits" or services provided by the participants. In addition, the Commission invites comment on whether special rules should be devised for such cases to facilitate the determination/estimation of loss or gain, such as a special rule that determines loss or gain based on a percentage of the total value of the benefits diverted and, if so, what percentage should be chosen (such as 5–40%). The Commission also invites comment on whether the nature and seriousness of such offenses require a specific offense characteristic to target such conduct and/or a floor offense level to guarantee a minimum offense level.

(6) Pledged collateral and payments: Currently, the value of pledged collateral is determined based on the net proceeds of the sale of the collateral, or if the sale has not been accomplished prior to sentencing, then the market value of the collateral reduced by the expected cost of the sale. See, e.g., United States v. Barrett, 51 F.3d 86, 90–91 (7th Cir. 1995) (including in loss the drop in value of property securing fraudulently obtained loans). The Commission invites comment on how and when to determine loss in respect to crediting pledged collateral and payments. More specifically, the Commission invites comment on whether to clarify the current rule that only payments made prior to discovery of the offense are to be credited in determining loss, whether to clarify or change the current rule that provides that the value of the pledged collateral is determined by the amount the lending institution has recovered or can expect to recover, and whether to clarify what constitutes "discovery of the offense." In addition, the Commission invites comment on whether the value of the pledged collateral should be determined at the time it is pledged or at the time of discovery of the offense, or some other time. In addition, the Commission invites comment on whether unforeseen (or unforeseeable) decreases (or increases) in the value of the collateral should affect the credit to be used to determine loss.

(7) Gain: Currently gain can be used in lieu of loss in certain limited circumstances under § 2F1.1. Compare United States v. Kopp, 951 F.2d 521, 530 (3d Cir. 1991) (holding that gain cannot be used if loss is measurable even if loss is zero), with United States v. Haddock, 12 F.3d 950, 960 (10th Cir. 1993) (allowing gain to be used as alternative at all times). The Commission invites comment on whether to clarify the issue of whether or not gain may be used in lieu of loss. If the rule should be clarified, should upward departures be encouraged if the amount of gain substantially exceeds loss? Alternatively, the Commission invites comment on whether gain should be used whenever it is greater than actual or intended loss and, if so, how gain should be determined. The Commission also invites comment on whether there are situations in which gain should be used for theft-type cases under § 2B1.1.

(8) Intended loss: Intended loss is to be used in fraud cases when it is determined to be greater than actual loss. § 2F1.1, comment. (n. 7). Some courts have held that intended loss should be limited by concepts of "economic reality" or impossibility. Compare United States v. Moored, 38 F.3d 1419, 1425 (6th Cir. 1994) (focusing on loss that defendant "realistically intended") with United States v. Lorenzo, 995 F.2d 1448, 1460 (9th Cir.) ("[T]he amount of [intended] loss * * * does not have to be realistic."), cert. denied, 510 U.S. 881 (1993).

The Commission invites comment on whether the current rule should be changed to provide that loss is to be based primarily on actual loss, with intended loss available only as a possible ground for departure. The Commission further invites comment on whether, if the substance of the current rule is to be retained, the magnitude of intended loss should be limited by the amount that the defendant realistically could have succeeded in obtaining. More specifically, the Commission invites comment on whether intended loss should be limited by concepts of "economic reality" or impossibility, such as in a government sting operation where there can be no loss, or in a false insurance claims case in which the defendant submits a claim for an amount in excess of the fair market value of the item.

(9) Risk of loss: Currently, in some cases defendants obtain loans by fraudulent means but the loss is determined to be zero because of pledged collateral and payments made prior to discovery. The Commission invites comment on whether the definition of loss should be revised to include the concept of risk of loss, so as to ensure higher punishment levels for defendants who commit serious crimes that, because of the value of pledged collateral or payments made before discovery, result in low or even zero loss, and if so, how the risk of loss might be determined. See § 2F1.1, comment. (n. 7).

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(10) Loss amounts that over- or understate the significance of the offense: The Commission invites comment on whether to provide guidance for applying the current provision allowing departure where the loss amount over- or understates the significance of the offense. See § 2F1.1, comment. (n. 10). More specifically, the Commission invites comment on whether to specify that where the loss amount included through § 1B1.3 (Relevant Conduct) is far in excess of the benefit personally derived by the defendant, the court might depart down to an offense level corresponding to the loss amount that more appropriately measures the defendant's culpability. Alternatively, the Commission invites comment on whether to provide a specific offense characteristic or special rule to reduce the offense level in such cases.

Chapter Two, Part M

19(A). Issue for comment: Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 pertains to biological weapons. It incorporates attempt and conspiracy into 18 U.S.C. § 175, which prohibits the production, stockpiling, transferring, acquiring, retaining, or possession of biological weapons. It also expands the scope of biological weapons provisions in chapter 10 of title 18 by expanding the meaning of biological agents.

Section 521 creates a new offense at 18 U.S.C. § 2332c. The new offense smakes it unlawful for a person, without lawful authority, to use (or attempt or conspire to use) a chemical weapon against a United States national outside the United States, any person within the United States, or any federal property. The penalty is any term of years or life or, if death results, death or any term of years or life.

The Commission invites comment as to how the guidelines could be amended to include these statutes. One approach could be to amend § 2M6.1 (Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities) to include these statutes. If the Commission were to select this approach, what changes, if any, would be appropriate to accommodate these offenses?

(B) Issue for comment: Section 702 creates a new offense at 18 U.S.C. § 2332b. The new offense makes it unlawful for a person, committing conduct occurring outside the United States and conduct occurring inside the United States and under specified circumstances, to (1) kill, kidnap, maim, or commit an assault resulting in serious bodily injury or with a dangerous weapon, or (2) create a substantial risk of serious bodily injury to another person by damaging (or conspiring to damage) any real or personal property within the United States. The specified circumstances are using or obstructing interstate or foreign commerce, having the federal government or one of its employees or agents as a victim or intended victim, involving federal property, and committing the offense in the territorial sea of the United States or within the special maritime or territorial jurisdiction of the United States.

The terms of imprisonment under the new offense are (1) death, or life, or any term of years, if death resulted; (2) any term of years, for kidnaping; (3) not more than 35 years, for maiming; (4) not more than 30 years, for assault; (5) not more than 25 years, for damaging or destroying property; (6) for any term of years not exceeding that which would have applied if the offense had been committed, for a conspiracy; and (7) not more than 10 years, for threatening to commit any such offense.

The provision also expressly precludes the imposition of a term of probation for any of the above-described offenses and precludes the imposition of concurrent sentences for terms of imprisonment imposed under this section with any other terms of imprisonment.

The Commission invites comment on how the guidelines should be amended to include this statute. For example, one option could be to amend the statutory index to reference the statute to the guideline for each of the underlying offenses.

Section 2X3.1 Accessory After the Fact

Section 2X4.1 Misprision of Felony

20. Synopsis of Proposed Amendment: This is a three-part amendment. First, this amendment clarifies the application of § 2X3.1 when this guideline is used as the result of a cross reference.

Second, this amendment clarifies the interaction of § 1B1.3 (Relevant Conduct) with §§ 2X3.1 (Accessory After the Fact) and 2X4.1 (Misprision of Felony). In the case of a guideline with alternative base offense levels, as opposed to one base offense level and one or more specific offense characteristics, the question has arisen as to whether the knowledge requirement set forth in Application Note 1 applies to the selection of the appropriate base offense level. Consistent with § 1B1.3, this amendment clarifies that the knowledge requirement does apply.

Finally, this amendment clarifies that, for purposes of §§ 2X3.1 and 2X4.1, if the offense guideline applicable to the underlying offense refers to the defendant, such reference is to the defendant who committed the underlying offense, not to the defendant who is convicted of being an accessory or to the defendant who committed the misprision.

Proposed Amendment: The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by deleting:

"Apply the base offense level plus any applicable specific offense characteristics that were known, or reasonably should have been known, by the defendant; see Application Note 10 of the Commentary to § 1B1.3 (Relevant Conduct).",

And inserting in lieu thereof:

"However, if the application of § 2X3.1 results from a cross reference or other instruction in another Chapter Two offense guideline (e.g., §§ 2J1.2(c)(1), 2J1.3(c)(1)), the underlying offense is the offense determined by that cross reference or instruction. Determine the offense level (base offense level, specific offense characteristics, and cross references) based on the conduct that was known, or reasonably should have been known, by the defendant; see Application Note 10 of the Commentary to § 1B1.3 (Relevant Conduct). In addition, if the Chapter Two offense guideline applicable to the underlying offense refers to the defendant, such reference is to the defendant who committed the underlying offense, not to the defendant who is convicted of being an accessory or to whom this section applies due to a cross reference or other instruction in another Chapter Two offense guideline.".

The Commentary to § 2X4.1 captioned "Application Notes" is amended in Note 1 by deleting "Apply the base offense level plus any applicable specific offense characteristics that were" and inserting in lieu thereof "Determine the offense level (base offense level, specific offense characteristics, and cross references) based on the conduct that was"; and by inserting at the end the following as the last sentence:

"In addition, if the Chapter Two offense guideline applicable to the underlying offense refers to the defendant, such reference is to the defendant who committed the underlying offense, not to the defendant who is convicted of committing the misprision or to whom this section applies due to a cross reference or other instruction in another Chapter Two offense guideline.".

UMI

Part B—Role in the Offense

Introductory Commentary, § 3B1.1 (Aggravating Role)

21. Synopsis of Proposed Amendment: This two-part amendment (A) revises the Introductory Commentary to Chapter Three, Part B to put the application of §§ 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) in perspective and show the relationship among these adjustments, and (B) revises § 3B1.1. Options 1 and 2 of Part B maintain the current structure of § 3B1.1 but revise the guideline to provide clearer definitions and cure a significant anomaly in the current guideline structure. Option 3 presents an alternative structure similar to the proposed amendment to § 3B1.2.

Following the amendment to § 3B1.2 are several issues for comment designed to elicit suggestions for alternative approaches.

(A) Proposed Amendment: Chapter 3, Part B—Role in the Offense is amended in the first sentence of the Introductory Commentary by inserting "whether, in committing the offense," immediately following "based upon";

By deleting "role the" immediately before "defendant";

By inserting "(A)" immediately following "defendant";

By deleting "in committing the offense" and inserting in lieu thereof "an aggravating or a mitigating role, (B) abused a position of trust or used a special skill, or (C) used a minor".

Chapter 3, Part B—Role in the Offense is amended in the second sentence of the Introductory Commentary by deleting "The determination of a defendant's role in the offense" and inserting in lieu thereof "Each of these determinations";

By deleting "all" and inserting in lieu thereof "the";

By deleting "within the scope of" and inserting in lieu thereof "for which the defendant is accountable under";

And by deleting the "," immediately following "(Relevant Conduct)" and inserting in lieu thereof a ";".

Chapter 3, Part B—Role in the Offense is amended in the Introductory Commentary by deleting the second paragraph in its entirety and inserting in lieu thereof the following:

Sections 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) are designed to provide appropriate adjustments in the defendant's offense level based on the defendant's role and relative culpability in the offense conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). For § 3B1.1 (Aggravating Role) or § 3B1.2 (Mitigating Role) to apply, the offense must involve the defendant and at least one other participant. If an offense has only one participant, neither § 3B1.1 nor § 3B1.2 will apply. In some cases, some participants may warrant an upward adjustment under § 3B1.1, other participants may warrant a downward adjustment under § 3B1.2, and still other participants may warrant no role adjustment.".

(B) Proposed Amendment:

Option 1:

Section § 3B1.1 is amended by deleting "follows:" and inserting in lieu thereof "follows (Apply the Greatest):".

Section § 3B1.1(a) is amended by deleting "a criminal activity that involved five or more participants or was otherwise extensive" and inserting in lieu thereof "an offense that involved at least four other participants or was otherwise extensive".

Section § 3B1.1(b) is amended by deleting "(but not an organizer or leader) and the criminal activity involve five or more participants or was otherwise extensive" and inserting in lieu thereof "(1) of at least [three][four] other participants in the offense, or (2) in an offense that was otherwise extensive".

Section § 3B1.1(c) is amended by deleting "in any criminal activity other than described in (a) or (b)" and inserting in lieu thereof "of at least one other participant in the offense".

The Commentary to § 3B1.1 captioned "Application Notes" is amended in Note 1 by inserting at the beginning "For purposes of this guideline-";

By deleting "convicted" and inserting in lieu thereof "charged [or specifically identified, so long as the court determines that the offense involved another person]".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by deleting Note 2 in its entirety and inserting in lieu thereof the following as paragraphs two and three of Note 1:

"An 'organizer' or 'leader' is the participant who is primarily responsible for the criminal venture; the person in overall charge of the other participant(s). Generally, the organizer or leader will be the person who plans and organizes the offense, recruits the other key participant(s), makes the key decisions, directs and controls the actions of other participants, and receives the largest share of the proceeds. In some offenses (generally larger scale offenses), there may be more than one organizer or leader. The term 'organizer' or leader is not intended to apply to a person who merely suggests the commission of the offense.

A 'manager' or 'supervisor' is a person, other than an 'organizer' or 'leader,' who exercises managerial or supervisory authority over one or more other participants, either directly or indirectly. A manager or supervisor is at a lower level in the hierarchy than the organizer or leader of the offense, and generally will receive a share of the proceeds that is less than that of the organizer or leader but greater than that of the participant(s) that he or she manages or supervises.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by redesignating Note 3 as Note 2; and inserting the following as the new Note 3:

"3. In the case of a defendant who would have merited a minor or minimal role adjustment but for the defendant's supervision of other minor or minimal participants, do not apply an adjustment from § 3B1.1 (Aggravating Role). Instead, this factor is to be considered in determining the appropriate reduction, if any, under § 3B1.2 (Mitigating Role). For example, if the defendant would have merited a reduction for a minimal role but for his or her supervision of other minimal participants, a reduction for a minor, rather than a minimal, role ordinarily would be appropriate. Similarly, if the defendant would have merited a reduction for a minor role but for his or her supervision of other minimal or minor participants, no reduction for role in the offense ordinarily would be appropriate.

The interaction of §§ 3B1.1 and 3B1.2 is to be addressed in the manner described above. Thus, if an adjustment from § 3B1.1 is applied, an adjustment from § 3B1.2 may not be applied.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by deleting Note 4 in its entirety and inserting in lieu thereof the following:

"4. Illustrations of Circumstances That May Warrant an Upward Departure.

There may be circumstances in which a defendant has a more culpable role in the offense but does not qualify for an upward adjustment under this section. In such circumstances, an upward departure may be considered. The following are examples of circumstances that may warrant an upward departure analogous to an aggravating role adjustment:

(A) A defendant who exercised management responsibility over the property, assets, or activities of a criminal organization but who did not organize, lead, manage, or supervise another participant.

(B) In a controlled substance offense, a defendant who functions at a relatively high level in a drug distribution network but who, nevertheless, may not qualify for an aggravating role adjustment because he or she does not exercise supervisory control over other participants.".

Option 2:

Section 3B1.1(a) is amended by deleting "a criminal activity that involved five or more participants or was otherwise extensive" and inserting in lieu thereof "an offense that involved at least four other participants or was otherwise extensive".

Section 3B1.1 is amended by deleting subsection (b) in its entirety.

Section 3B1.1 is amended by redesignating subsection (c) as subsection (b); by deleting "in any criminal activity other than described in (a) or (b)" and inserting in lieu thereof "of one other participant in the offense".

Section 3B1.1 is amended by inserting as an additional paragraph at the end "In cases falling between (a) and (b), increase by 3 levels.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended in Note 1 by inserting at the beginning "For purposes of this guideline-"; by deleting "convicted" and inserting in lieu thereof "charged [or specifically identified, so long as the court determines that the offense involved another person]"; and by inserting the following additional paragraphs:

"An 'organizer' or 'leader' is the participant who is primarily responsible for the criminal venture; the person in overall charge of the other participant(s). Generally, the organizer or leader will be the person who plans and organizes the offense, recruits the other key participant(s), makes the key decisions, directs and controls the actions of other participants, and receives the largest share of the proceeds. In some offenses (generally larger scale offenses), there may be more than one organizer or leader. The term 'organizer' or 'leader' is not intended to apply to a person who merely suggests the commission of the offense.

A 'manager' or 'supervisor' is a person, other than an 'organizer' or 'leader,' who exercises managerial or supervisory authority over one or more other participants, either directly or indirectly. A manager or supervisor is at a lower level in the hierarchy than the organizer or leader of the offense, and generally will receive a share of the proceeds that is less than that of the organizer or leader but greater than that of the participant(s) that he or she manages or supervises.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by deleting Note 2 in its entirety and inserting in lieu thereof:

"To qualify for a four-level adjustment under subsection (a), the defendant must be an organizer or leader of an offense involving at least four participants in addition to the defendant. The defendant need not, however, personally exercise supervisory control over all such participants. To qualify for a two-level adjustment under subsection (b), the defendant must have been the organizer, leader, manager, or supervisor of one other participant. In cases falling between subsections (a) and (b), i.e., where the defendant organizes, leads, manages, or supervises more than one participant but whose aggravating role does not rise to the level of that described in subsection (a), a three level upward adjustment is warranted.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by deleting Note 4 in its entirety and inserting in lieu thereof the following:

"4. In the case of a defendant who would have merited a minor or minimal role adjustment but for the defendant's supervision of other minor or minimal participants, do not apply an adjustment from § 3B1.1 (Aggravating Role). Instead, this factor is to be considered in determining the appropriate reduction, if any, under § 3B1.2 (Mitigating Role). For example, if the defendant would have merited a reduction for a minimal role but for his or her supervision of other minimal participants, a reduction for a minor, rather than a minimal, role ordinarily would be appropriate. Similarly, if the defendant would have merited a reduction for a minor role but for his or her supervision of other minimal or minor participants, no reduction for role in the offense ordinarily would be appropriate.

The interaction of §§ 3B1.1 and 3B1.2 is to be addressed in the manner described above. Thus, if an adjustment from § 3B1.1 is applied, an adjustment from § 3B1.2 may not be applied.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by inserting the following additional note:

"5. Illustrations of Circumstances That May Warrant an Upward Departure.

There may be circumstances in which a defendant has a more culpable role in the offense but does not qualify for an upward adjustment under this section. In such circumstances, an upward departure may be considered. The following are examples of circumstances that may warrant an upward departure analogous to an aggravating role adjustment:

(A) A defendant who exercised management responsibility over the property, assets, or activities of a criminal organization but who did not organize, [lead], manage, or supervise another participant.

(B) In a controlled substance offense, a defendant who functions at a relatively high level in a drug distribution network but who, nevertheless, may not qualify for an aggravating role adjustment because he or she does not exercise supervisory control over other participants.".

Option 3:

Section 3B1.1 is deleted in its entirety and inserting in lieu thereof the following:

"Section 3B1.1. Aggravating Role

Based on the defendant's role in the offense as a substantially more culpable participant, increase the offense level as follows (Apply the greater):

(a) If the defendant had [a major aggravating] role in [the] [a large-scale] offense, increase by 4 levels.

(b) If the defendant had [a lesser aggravating] role in the offense, increase by 2 levels.

Commentary

Application Notes:

1. For purposes of this guideline—

A "participant" is a person who is criminally responsible for the commission of the offense, but need not have been charged [or specifically identified, so long as the court determines that the offense involved another such person]. A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.

["Large-scale offense" means an offense that involved at least five participants, including the defendant, or an offense that involved at least two participants, including the defendant, and is otherwise extensive.]

2. For a major aggravating role adjustment to apply under subsection (a), the defendant must be (A) a substantially more culpable participant, and (B) among the most culpable participants in the offense. The following is a non-exhaustive list of characteristics typically possessed by a defendant with a major aggravating role:

(i) Broad knowledge and understanding of the scope and structure of the offense, and of the identity and role of the other participants in the offense;

(ii) Sophisticated tasks performed;

(iii) [Primary] [major] decision-making authority in the offense;

(iv) [Primary] [major] responsibility and control over the property, finances, and other participants involved in the offense;

(v) The anticipated or actual total compensation or benefit was large in comparison to the total return typically associated with offenses of the same type and scope; and

(vi) Recruitment of other participants in the offense.

3. For a lesser role adjustment to apply under subsection (b), the defendant must (A) be a substantially more culpable participant, and (B) typically possess some of the characteristics associated with a major aggravating role, but not qualify for a major aggravating role adjustment.

4. The determinations of (A) whether a defendant is a substantially more culpable participant warranting an aggravating role adjustment under this section, and (B) if so, whether a major aggravating or lesser aggravating role adjustment is more appropriate, involve case-specific, fact-based assessments of the defendant's conduct in comparison to that of other participants in the offense. [In making these determinations, and particularly in determining whether a defendant in fact has an aggravating role, the court may also wish to compare the conduct of the defendant to the conduct of an average participant in an offense of the same type and scope.] The sentencing judge is in a unique position to make these determinations, based on the judge's assessment of all of the relevant circumstances.

19. In the case of a defendant who would have merited a minor or minimal role adjustment but for the defendant's supervision of other minor or minimal participants, do not apply an adjustment from § 3B1.1 (Aggravating Role). Instead, this factor is to be considered in determining the appropriate reduction, if any, under § 3B1.2 (Mitigating Role). For example, if the defendant would have merited a reduction for a minimal role but for his or her supervision of other minimal participants, a reduction for a minor, rather than a minimal, role ordinarily would be appropriate. Similarly, if the defendant would have merited a reduction for a minor role but for his or her supervision of other minimal or minor participants, no reduction for role in the offense ordinarily would be appropriate.

The interaction of §§ 3B1.1 and 3B1.2 is to be addressed in the manner described above. Thus, if an adjustment from § 3B1.1 is applied, an adjustment from § 3B1.2 may not be applied.".

Section 3B1.2 Mitigating Role

22(A). Synopsis of Proposed Amendment: This amendment clarifies the operation of the mitigating role adjustment in § 3B1.2, as follows:

1. The language in the guideline is standardized by using the term "offense" instead of "criminal activity."

2. The "intermediate," three-level reduction is bracketed for possible deletion because it does not provide a meaningfully distinct category and is unnecessary in view of the overlapping ranges feature of the Sentencing Table.

3. A common, umbrella definition for mitigating role; i.e., "substantially less culpable participant" is provided. This definition should assist the court in distinguishing mitigating role defendants from those who receive an aggravating or no role adjustment.

4. Commentary in current Application Note 2 that has been viewed as overly restrictive in regard to the minimal role adjustment is removed. In its place, a non-exhaustive list of typical characteristics associated with minimal role is provided. The characteristics are derived from the case law and staff review of mitigating role cases.

5. A somewhat more helpful but still flexible definition of minor role is provided.

6. Commentary is added to reflect Commission intent that district court assessments of mitigating role should be reviewed deferentially.

7. A circuit conflict regarding how mitigating role comparisons should be done—whether within the context of relevant conduct or, also by comparing the defendant to a hypothetical average participant—is addressed. The suggested "compromise" resolution (see bracketed language in Application Note 4) is to require the relevant conduct comparison but also suggest/allow the broader, "average participant" comparison if the court finds it helpful.

8. Commentary is added to address the burden of persuasion in a common-sense fashion consistent with the overall guidelines structure.

9. Commentary is added to address another circuit conflict regarding whether a court can analogize to mitigating role and downwardly depart when a defendant is "directed" to some extent by a government agent or other person who is not a criminally responsible participant. Whether the bracketed language that provides a qualified "yes" answer should be included is a policy judgment for the Commission.

10. The existing background commentary is removed because it is largely redundant and unnecessary.

Option 1:

Section § 3B1.2 is amended in the first paragraph by inserting "as a substantially less culpable participant" immediately following "offense".

Section § 3B1.2(a) is amended by deleting "was a minimal participant in any criminal activity" and inserting in lieu thereof "had a minimal role in the offense".

Section § 3B1.1(b) is amended by deleting "was a minor participant in any criminal activity" and inserting in lieu thereof "had a minor role in the offense".

Option 2:

Section § 3B1.2 is amended by inserting "as a substantially less culpable participant" immediately following "offense".

Section § 3B1.2(a) is amended by deleting "was a minimal participant in any criminal activity" and inserting in lieu thereof "had a minimal role in the offense".

Section § 3B1.1(b) is amended by deleting "was a minor participant in any criminal activity" and inserting in lieu thereof "had a minor role in the offense".

Section § 3B1.2 is amended by deleting "In cases falling between (a) and (b), decrease by 3 levels.".

Options 1 and 2:

The Commentary to § 3B1.2 captioned "Application Notes" is amended by deleting Note 1 in its entirety and inserting in lieu thereof the following:

"1. For purposes of this guideline—

'Participant' is defined in the Commentary to § 3B1.1 (Aggravating Role).

'Substantially less culpable participant' means a defendant who (A) is recruited by, or voluntarily assists, another more culpable participant in facilitating the commission of a criminal offense, and (B) performs one or more limited, discrete functions that typically are less critical to the success of the offense.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by deleting Note 2 in its entirety and inserting in lieu thereof the following:

"2. For a minimal role adjustment to apply under subsection (a), the defendant must be (A) a substantially less culpable participant, and (B) among the least culpable participants in the offense. The following is a non-exhaustive list of characteristics typically possessed by a defendant with a minimal role:

(i) Lack of knowledge or understanding of the scope and

structure of the offense, and of the identity or role of the other participants in the offense;

(ii) only unsophisticated tasks performed;

(iii) no material decision-making authority in the offense;

(iv) no, or very minimal, supervisory responsibility over the property, finances, or other participants involved in the offense; and

(v) the anticipated or actual total compensation or benefit was small in comparison to the total return typically associated with offenses of the same type and scope.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by deleting Note 3 in its entirety and inserting in lieu thereof the following:

"3. For a minor role adjustment to apply under subsection (b), the defendant must (A) be a substantially less culpable participant, and (B) typically possess some of the characteristics associated with a minimal role, but not qualify for a minimal role adjustment.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended in Note 4 by inserting in the first sentence "a" immediately before "substantially" and by deleting "than" and inserting in lieu thereof "participant compared to".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by redesignating Note 4 as Note 5 and inserting the following new Note 4:

"4. The determinations of (A) whether a defendant is a substantially less culpable participant warranting a mitigating role adjustment under this section, and (B) if so, whether a minimal or minor role adjustment is more appropriate, involve case-specific, fact-based assessments of the defendant's conduct in comparison to that of other participants in the offense. [In making these determinations, and particularly in determining whether a defendant in fact has a mitigating role, the court may also wish to measure the defendant's conduct and relative culpability against the elements of the offense of conviction and to compare the conduct of the defendant to the conduct of an average participant in an offense of the same type and scope.] The sentencing judge is in a unique position to make these determinations, based on the judge's assessment of all of the relevant circumstances.

The defendant bears the burden of persuasion in establishing whether the defendant qualifies for a minimal or minor role adjustment under this section. As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by inserting the following additional note:

"6. If the defendant would be a substantially less culpable participant but for the fact that the defendant was recruited by a person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer), a downward departure may be warranted. Such a downward departure should not result, without more, in a lower sentence than would result if the defendant had received a mitigating role adjustment under this section.".

(B) Additional Issues for Comment: (1) The Commission invites comment on whether, as an alternative to separate guidelines for aggravating role (§ 3B1.1) and mitigating role (§ 3B1.2), it should adopt a single or unitary role guideline with aggravating, mitigating, and no role adjustments. What would be the advantages and/or disadvantages of such an approach in comparison to the current structure?

(2) Focusing on aggravating role, Option 3, the Commission invites comment on characteristics, in addition to those suggested, that reliably distinguish among aggravating role adjustments, as well as those characteristics that reliably distinguish defendants with an aggravating role from those warranting no role adjustment or a mitigating role adjustment.

(3) Focusing on mitigating role, the Commission invites comment on characteristics, in addition to those suggested in the proposed amendment, that distinguish defendants with a mitigating role from defendants who do not merit such an adjustment. Additionally, the Commission invites suggestions regarding characteristics, factors, and/or definitional language that would better provide a meaningful distinction between minimal role and minor role. Finally, the Commission invites comment on whether it should expressly state whether "couriers" or "mules" receive a minimal, minor, or no role adjustment.

Section 3C1.1 Obstructing or Impeding the Administration of Justice

23. Synopsis of Proposed Amendment: This amendment addresses a split in the circuits over the meaning of the last sentence of Application Note 1 in the Commentary to the Chapter Three adjustment for obstruction of justice. The issue is whether that sentence requires the use of a heightened standard of proof when the court applies an enhancement for perjury. Compare United States v. Montague, 40 F.3d 1251 (D.C. Cir. 1994) (applying the clear and convincing standard) with United States v. Zajac, 62 F.3d 145 (6th Cir. 1995) (applying the preponderance of the evidence standard). The amendment changes the last sentence of Application Note 1 so that it no longer suggests the use of a heightened standard of proof. Instead, it clarifies that the court should be mindful that not all inaccurate testimony or statements reflect a willful attempt to obstruct justice.

Second, subdivision (i) of Application Note 3 in § 3C1.1 is deleted as unnecessary. This subdivision is not helpful in contrasting the types of conduct that are serious enough to warrant an enhancement from those that are not serious enough to warrant the enhancement. The statutes referred to in subsection (i) include a hodgepodge of provisions. Some have very marginal, if any, relevance, e.g., 18 U.S.C. § 1507 (picketing or parading); and some, e.g., 18 U.S.C. § 1514 (civil action to restrain harassment of a victim or witness), and 1515 (definitions for certain provisions; general provision) have no relevance at all.

Third, this amendment adds an additional sentence at the end of Application Note 4 in § 3C1.1 to clarify the meaning of the phrase "absent a separate count of conviction." A panel of the Seventh Circuit, although reaching the correct result, has examined this phrase and found it to be unclear. See United States v. Giacometti, 28 F.3d 698 (7th Cir. 1994).

Fourth, this amendment moves the last two sentences of Application Note 6 into a separate Application Note 7. This clarifies that the guidance provided in these two sentences applies to a broader set of cases than the cases described in the first two sentences of Application Note 6.

Proposed Amendment: The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 1 by deleting in the second sentence "such testimony or statements should be evaluated in a light most favorable to the defendant" and inserting the following in lieu thereof:

"The court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in

Note 3(h) by deleting the ";" and inserting in lieu thereof ",".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 3 by deleting subsection (i) in its entirety.

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by deleting "The following is a non-exhaustive list of examples of the" and inserting in lieu thereof "Some";

By deleting "that, absent a separate count of conviction for such conduct," and inserting in lieu thereof "ordinarily";

By deleting "but ordinarily can appropriately be sanctioned by the determination of the particular" and inserting in lieu thereof "but may warrant a greater"; by inserting immediately following "guideline range" the following:

". However, if the defendant is convicted of a separate count for such conduct, this enhancement will apply and increase the offense level for the underlying offense (i.e., the offense with respect to which the obstructive conduct occurred). See Application Note 7, below.

The following is a non-exhaustive list of examples of the types of conduct to which this application note applies:".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 6 in the second sentence by inserting "(the offense with respect to which the obstructive conduct occurred)," immediately before "the count for the obstruction" and by redesignating as new Note 7 the second and third sentences.

The Commentary to § 3C1.1 captioned "Application Notes" is amended by redesignating Note 7 as Note 8.

Section 3E1.1 Acceptance of Responsibility

24. Synopsis of Proposed Amendment: This amendment revises § 3E1.1 (Acceptance of Responsibility) in a number of key respects to provide greater flexibility to the sentencing judge in determining whether a defendant qualifies for a reduction in sentence, particularly the additional one-level reduction in subsection (b), based on the defendant's acceptance of responsibility. First, this amendment eliminates many of the considerations currently listed as appropriate to consider in determining whether the defendant qualifies for the two-level reduction under subsection (a), reserving many of those considerations for a determination of whether the defendant qualifies for the additional one-level reduction under subsection (b).

Second, this amendment conditions receipt of the two-level reduction on the timeliness of the defendant's admission of conduct comprising the offense of conviction, the defendant's admission or failure to falsely deny relevant conduct, and the defendant's not having committed, after filing of charges on the instant offense, conduct that, under the totality of the circumstances, negates an inference of acceptance of responsibility. Therefore, obstructive conduct does not automatically preclude receipt of the two-level reduction if the totality of the circumstances indicate that the defendant has accepted responsibility for the offense.

Third, this amendment provides for an additional one-level reduction if the defendant qualifies for the two-level reduction and the defendant has demonstrated extraordinary acceptance of responsibility, based on the sentencing judge's consideration of a variety of considerations, including those listed in Application Note 2, as well as the sentencing judge's consideration of the totality of the circumstances. Finally, the amendment provides a number of options with respect to whether the commission of obstructive conduct or a new offense should disqualify the defendant from receiving the additional one-level reduction.

Proposed Amendment: Section 3E1.1 is amended by deleting it in its entirety and inserting in lieu thereof:

"§ 3E1.1. Acceptance of Responsibility

(a) If the defendant demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and the defendant clearly demonstrates extraordinary acceptance of responsibility, decrease the offense level by 1 additional level.

Commentary

Application Notes

1. A defendant qualifies under subsection (a), if the defendant:

(a) Truthfully admits, in a timely manner, the conduct comprising the offense(s) of conviction, and truthfully admits or does not falsely deny any additional relevant conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Note that a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. However, a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility; and

(b) Has not, after the filing of charges on the instant offense, committed conduct that, under the totality of the circumstances, negates an inference of acceptance of responsibility. Conduct that may negate an inference of acceptance of responsibility under this paragraph is (1) conduct resulting in an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice), i.e., obstructive conduct, or (2) the commission of an offense by the defendant. Such conduct does not necessarily disqualify the defendant from receiving a reduction in offense level under this section. In determining whether such conduct disqualifies the defendant from receiving a reduction in offense level under this section, the court should consider the nature, seriousness, and timing of the conduct, as well as the extent to which commission of the conduct is inconsistent with acceptance of responsibility.

2. In the case in which the defendant qualifies for the 2-level reduction under subsection (a) and the offense level determined prior to the operation of subsection (a) is level 16 or greater, the court may grant an additional 1-level reduction under subsection (b) if the court determines, under the totality of the circumstances, that the defendant has clearly demonstrated extraordinary acceptance of responsibility. The sentencing judge is in a unique position to make this determination. For this reason, this determination is entitled to great deference on review. In determining whether the defendant has clearly demonstrated extraordinary acceptance of responsibility for purposes of subsection (b), appropriate considerations include the following:

(a) Fully cooperating with the probation officer in the preparation of the presentence report.

Note: This includes appearing for interview as required, providing accurate background information, including information regarding the defendant's juvenile and adult criminal record, and providing complete financial information as requested, in a timely fashion. With respect to discussion of the offense of conviction and

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relevant conduct, the provisions set forth in Application Note 1(a) above control.

(b) Timely notifying authorities of his intention to enter a plea of guilty, in a sufficiently prompt manner to permit the government to avoid preparing for trial and to permit the court to allocate its resources efficiently.

Note: The notification to authorities of the intention to plead guilty should occur particularly early in the case. For example, a defendant who pleads guilty one day before his scheduled trial date may qualify under subsection (a), but such plea will not ordinarily be timely enough to constitute an indicia of extraordinary acceptance of responsibility under this paragraph.

[(c) Voluntary termination or withdrawal from criminal conduct or associations;]

[(d) Voluntary payment of restitution prior to adjudication of guilt;]

[(e) Voluntary surrender to authorities promptly after commission of the offense;]

[(f) Voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;]

[(g) Voluntary resignation from the office or position held during the commission of the offense;]

[(h) Post-offense rehabilitative efforts (e.g., counseling or drug treatment); and]

[(i) Voluntary stipulation to administrative deportation, in the case of a deportable alien].

The defendant may qualify for the additional 1-level decrease under subsection (b) without satisfying all of the factors listed in this Application Note. However, satisfaction by the defendant of one or more of the factors listed in this Application Note will not be sufficient under subsection (b) if the court determines that, under the totality of the circumstances, the defendant has not clearly demonstrated extraordinary acceptance of responsibility.

A defendant who, after the filing of charges on the instant offense, commits obstructive conduct or a new offense [may not receive the additional 1-level decrease under subsection (b)] [ordinarily will not qualify for the additional 1-level decrease under subsection (b)] [will qualify for the additional 1-level decrease under subsection (b) only in an extraordinary case].

3. A reduction in offense level under this section is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct.

Background: Subsection (a) provides a 2-level decrease in offense level. Subsection (b) provides an additional 1-level decrease for a defendant at offense level 16 or greater prior to operation of subsection (a) who both qualifies for a decrease under subsection (a) and clearly demonstrates extraordinary acceptance of responsibility based on the factors listed in Application Note 2 or equivalent factors. Subsection (b) does not apply, however, to a defendant whose offense level is level 15 or lower prior to application of subsection (a). The reduction in the guideline range provided by a 2-level decrease in offense level under subsection (a) is sufficient at offense level 15 or lower because the 2-level decrease provides a greater proportional reduction in the guideline range than at higher offense levels due to the structure of the Sentencing Table.

The reduction of offense level provided by this section recognizes legitimate societal interests. A defendant who timely demonstrates acceptance of responsibility for his offense is appropriately given a lower offense level than a defendant who has not demonstrated acceptance of responsibility. A defendant who further demonstrates extraordinary acceptance of responsibility is likewise deserving of additional recognition of his extraordinary acceptance.".

Section 3E1.1 Acceptance of Responsibility

25. Synopsis of Proposed Amendment: This amendment clarifies that the commission of a new offense while pending trial or sentencing on the instant offense is a negative indicant of acceptance of responsibility. This provision does not require that the new offense be related or similar to the instant offense. Currently, there is a circuit split on this issue. Compare *United States* v. *Morrison*, 983 F.2d 730 (6th Cir. 1993)(consideration of post-indictment theft and positive drug test inappropriate in determining whether defendant accepted responsibility for firearms violations) with, e.g., *United States* v. *Watkins*, 911 F.2d 983 (5th Cir. 1990)(upholding denial of acceptance for defendant convicted of possessing stolen treasury checks who used cocaine pending sentencing).

Proposed Amendment: The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 4 by inserting the following as the last sentence:

"Similarly, the commission of an offense by the defendant while pending trial or sentencing on the instant offense, whether or not that offense is similar to the instant offense, ordinarily indicates that the defendant has not accepted responsibility for the instant offense.".

Section 3E1.1 Acceptance of Responsibility

26. Synopsis of Proposed Amendment: This amendment revises § 3E1.1 (Acceptance of Responsibility) to remove the restriction that currently prohibits the application of the additional 1-level decrease in subsection (b) for offense levels 15 and lower. This amendment would allow consideration of the additional 1-level decrease for defendants at all offense levels. Consequently, eligibility for alternatives to incarceration would be increased for defendants at offense levels of 15 or less who receive a 3 level reduction for acceptance of responsibility.

Proposed Amendment: Section 3E1.1(b) is amended by deleting "the offense level determined prior to the operation of subsection (a) is level 16 or greater, and the defendant" and inserting in lieu thereof "and".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 6 by deleting "at offense level 16 or greater prior to the operation of subsection (a)".

The Commentary to § 3E1.1 captioned "Background" is amended in the second paragraph by deleting "at offense level 16 or greater prior to operation of subsection (a)"; and by deleting "Subsection (b) does not apply, however, to a defendant whose offense level is level 15 or lower prior to application of subsection (a). At offense level 15 or lower, the reduction in the guideline range provided by a 2-level decrease in offense level under subsection (a) (which is a greater proportional reduction in the guideline range than at higher offense levels due to the structure of the Sentencing Table) is adequate for the court to take into account the factors set forth in

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subsection (b) within the applicable guideline range.".

Section 4B1.3 is amended by deleting "13, unless § 3E1.1 (Acceptance of Responsibility) applies, in which event his offense level shall be not less than 11" and inserting "level 13 (decreased by any applicable adjustment from § 3E1.1 (Acceptance of Responsibility)).".

Section 4B1.2 Definitions of Terms Used in Section 4B1.1

27. Synopsis of Proposed Amendment: This amendment resolves a circuit conflict with respect to definitions of terms used in the Chapter Four career offender guideline and addresses several related issues.

(1) Miscellaneous Controlled Substance Offenses—This amendment addresses the question of whether the offenses of possessing a listed chemical with intent to manufacture a controlled substance or possessing a prohibited flask or equipment with intent to manufacture a controlled substance are "controlled substance offenses" under the career offender guideline. A panel of the Fifth Circuit concluded that possession of a listed chemical with intent to manufacture a controlled substance is a controlled substance offense under § 4B1.2. *U.S.* v. *Calverley*, 11 F.3d 505 (5th Cir. 1993). (The panel questioned the precedent on which the decision was based and recommended reconsideration en banc; on reconsideration en banc, the Fifth Circuit declined to address the merits of the issue.) In contrast, the Tenth Circuit has concluded that possession of a listed chemical with intent to manufacture a controlled substance is not a controlled substance offense. *United States* v. *Wagner*, 994 F.2d 1467, 1475 (10th Cir. 1993). This amendment makes such offenses a "controlled substance offense" under the career offender gtideline. There seems such an inherent connection between possession of a listed chemical or prohibited flask or equipment with intent to manufacture a controlled substance and actually manufacturing a controlled substance that the former offenses are fairly considered as controlled substance trafficking offenses.

(2) Additional Related Issues—The first related issue is whether the Commission should amend § 4B1.2 to clarify that certain offenses are "crimes of violence" or "controlled substance offenses" if the offense of conviction established that the underlying offense was a "crime of violence" or "controlled substance offense." See *United States* v. *Baker*, 16 F.3d 854 (8th Cir. 1994); *United States* v. *Vea-Gonzalez*, 999 F.2d 1326 (9th Cir. 1993), effectively overruled on other grounds by *Custis* v. *United States*, 114 S.Ct. 1732 (1994).

The second issue is whether to make the following nonsubstantive changes to § 4B1.2 to improve the internal consistency of the guidelines: (A) adding the phrase "punishable by imprisonment for a term exceeding one year" in subsection (2) to make it consistent with subsection (1); and (B) conforming the second paragraph of Application Note 2 of § 4B1.2 to the language of §§ 2K1.3 and 2K2.1.

Proposed Amendment: Section § 4B1.2(1) is amended by inserting a "," immediately after "state law" and immediately after "one year";

By redesignating "§ 4B1.2(1)" as "§ 4B1.2(a)"; by redesignating "(i)" as "(1)" and redesignating "(ii)" as "(2)".

Section § 4B1.2(2) is amended by deleting "a" immediately after "under";

By deleting "prohibiting" and inserting in lieu thereof ", punishable by imprisonment for a term exceeding one year, that prohibits" and by redesignating "(2)" as "(b)".

Section § 4B1.2(3) is amended by redesignating "(A)" as "(1)", redesignating "(B)" as "(2)" and by redesignating "§ 4B1.2(3)" as "§ 4B1.2(c)".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 by inserting at the beginning "For purposes of this guideline-";

By deleting "The terms 'crime' " and inserting in lieu thereof " 'Crime' ".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by deleting in the second sentence "whereas" immediately following "included" and inserting in lieu thereof "as 'crimes of violence' if";

By deleting the last sentence from the first paragraph;

By deleting from the first sentence of the second paragraph "The term 'crime' " and inserting in lieu thereof " 'Crime' ";

By deleting in the second sentence of the second paragraph "has" immediately following "if the defendant" and inserting in lieu thereof "had";

And by inserting at the end the following:

"Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. § 841(d)(1)) is a 'controlled substance offense.'

Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. § 843(a)(6)) is a 'controlled substance offense.'

Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. § 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. § 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

Possessing a firearm during and in relation to a crime of violence or drug offense (18 U.S.C. § 924(c)) is a 'crime of violence' or 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense during and in relation to which the firearm was carried or possessed) was a 'crime of violence' or 'controlled substance offense.' Note that if the defendant also was convicted of the underlying offense, the two convictions will be treated as related cases under § 4A1.2 (Definitions and Instruction for Computing Criminal History)).".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by deleting the numbers corresponding to Notes "2" and "3"; and by inserting the following as new Note 2:

"2. Section 4B1.1 (Career Offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was convicted. Therefore, in determining whether an offense is a crime of violence or controlled substance for the purposes of § 4B1.1 (Career Offender), the offense of conviction (i.e., the conduct of which the defendant was convicted) is the focus of inquiry.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by redesignating Note 4 as Note 3.

28. Issue for Comment: The Commission requests public comment on whether, and in what manner, it should address by amendment the following circuit court conflicts:

(1) Whether an upward departure may be based on dismissed or uncharged conduct that is related to the offense of conviction but is not relevant conduct. Compare *United States* v. *Figaro*, 935 F.2d 4 (1st Cir. 1991) (permitting consideration of uncharged conduct related to the offense of conviction); *United States* v. *Kim*, 896 F.2d 678 (2d Cir. 1990) with *United States* v. *Thomas*, 961 F.2d 1110 (3d Cir. 1992) (court cannot consider uncharged conduct).

(2) Whether information provided in connection with a § 1B1.8 agreement

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may be placed in the presentence report or used to affect conditions of confinement. (Amendment would implicate § 1B1.8 (Use of Certain Information).) Compare *United States* v. *Marsh*, 963 F.2d 72, 74 (5th Cir.1992) (implying court may receive information); *United States* v. *Malvito*, 946 F.2d 1066, 1068 (4th Cir.1991) (same) with *United States* v. *Abanatha*, 999 F.2d 1246, 1249 (8th Cir. 1993), cert. denied 114 S.Ct. 1549 (1994) (information should not be included in PSR because the Fifth Amendment precludes information from being considered at sentencing or allowed to affect conditions of confinement).

(3) Whether drug quantities possessed for personal use should be aggregated with quantities distributed or possessed with intent to distribute. (Amendment would implicate § 1B1.3 and § 2D1.1.) Compare *United States* v. *Antonietti*, 86 F.3d 206, 209 (11th Cir.); *United States* v. *Innamorati*, 996 F.2d 456, 492 (1st Cir. 1993), cert. denied, 510 U.S. 955 (1993) with *United States* v. *Rodriquez-Sanchez*, 23 F.3d 1488 (9th Cir. 1994) (personal use amounts are not same course of conduct as quantities possessed for distribution).

(4) Whether a federal prison camp is a "similar facility" under § 2P1.1(b)(3). Compare *United States* v. *Hillstrom*, 988 F.2d 448 (3d Cir. 1993), cert. denied, 115 S. Ct. 1382 (1995) with *United States* v. *Sarno*, 24 F.3d 618 (4th Cir. 1994) (minimum security prison is a secure facility); *United States* v. *Tapia*, 981 F.2d 1194 (11th Cir.), cert. denied, 113 S. Ct. 2979 (1993). (Although the Third Circuit initially disagreed with the Fourth, Fifth, Ninth, Tenth, and Eleventh circuits, the district court on remand held that a federal prison camp is not a "similar facility" within the meaning of the escape guideline. *United States* v. *Hillstrom*, 837 F.Supp. 1324 (M.D.Pa. 1993); aff'd, 37 F.3d 1490 (unpublished).).

(5) Whether the two-level enhancement at § 2F1.1(b)(3)(A) requires that the defendant misrepresent his authority to act on behalf of a charitable or governmental organization. Compare *United States* v. *Frazier*, 53 F.3d 1105, 1123–13 (10th Cir. 1995) (enhancement does not apply to chairman of educational organization who misapplied funds because he made no misrepresentation of his authority to act on behalf of the organization) with *United States* v. *Marcum*, 16 F.3d 599, 603 (4th Cir.), cert. denied, 115 S. Ct. 137 (1994) (applying enhancement to president of charitable organization who embezzled fund from the organization).

(6) Whether "victim of the offense" under § 3A1.1 refers only to victim of the offense of conviction or to victim of any relevant conduct. Compare *United States* v. *Echevarria*, 33 F.3d 175 (2d Cri. 1994) (vulnerable victim need not be victim of the offense of conviction); *United States* v. *Roberson*, 872 F.2d 597 (5th Cir.), cert. denied, 493 U.S. 961 (1989) with *United States* v. *Dixon*, 66 F.3d 133 (6th Cir. 1995); *United States* v. *Wright*, 12 F.3d 70 (6th Cir. 1993), cert. denied 116 S. Ct. 320 (1995).

(7) Whether a defendant's failure to admit to use of a controlled substance amounts to willful and material obstruction of justice under § 3C1.1 (Obstruction of Justice). Compare *United States* v. *Garcia*, 20 F.3d 670 (6th Cir. 1994), cert. denied, 115 S. Ct. 1120 (1995) with *United States* v. *Belletiere*, 971 F.2d 961 (3d Cir. 1992); *United States* v. *Thompson*, 944 F.2d 1331 (7th Cir. 1991), cert. denied, 502 U.S. 1097 (1992).

(8) Whether time in a community treatment center is a "sentence of imprisonment" under § 4A1.2(e)(1). Compare *United States* v. *Rasco*, 963 F.2d 132 (6th Cir.), cert. denied 113 S. Ct. 238 (1992) (detention in community treatment facility following revocation of parole is "incarceration"); *United States* v. *Vanderlaan*, 921 F.2d 257 (10th Cir. 1990), cert. denied, 499 U.S. 954 (1991) (placement in federal special treatment facility during period of commitment to federal prison is confinement and is considered "sentence of imprisonment") with *United States* v. *Latimer*, 991 F.2d 1509 (9th Cir. 1993) (placement in community treatment facility following revocation of parole is not considered "incarceration"); *United States* v. *Urbizu*, 4 F.3d 636 (8th Cir. 1993) (dicta) (placement in halfway house not categorized as confinement).

(9) Whether convictions that are erased for reasons unrelated to innocence or errors of law (regardless of whether they are termed by statute as "set aside" or "expunged") should be counted for purposes of criminal history. (Amendment would implicate § 4A1.2, comment. n. 10). Compare *United States* v. *McDonald*, 991 f.2d 866 (D.C. Cir. 1993) (examining effect of set aside D.C. Youth Rehabilitation Act conviction and noting it is automatic and unrelated to innocence) with *United States* v. *Beaulieau*, 959 F.2d 375 (2d Cir. 1992) (do not count conviction where Vermont set aside statute intended to erase conviction from record; such a set aside is equivalent to expungement); *United States* v. *Hidalgo*, 932 F.2d 805 (9th Cir. 1991) (do not count conviction subject to California Youth Act set aside provision releasing youth from all penalties and disabilities; treat as an expungement provision).

(10) Whether a court may impose a fine for costs of imprisonment under § 5E1.2(c). Compare *United States* v. *Sellers*, 42 F.3d 116 (2d Cir. 1994), cert. denied, 116 S. Ct. 93 (1995) (§ 5E1.2 does not require district court to impose a punitive fine in order to impose a fine for costs of imprisonment); *United States* v. *Turner*, 998 F.2d 534 (7th Cir.), cert. denied, 114 S. Ct. 639 (1993) with *United States* v. *Corral*, 964 F.2d 83 (1st Cir. 1992) (court cannot impose fine for cost of imprisonment when defendant is indigent); *United States* v. *Labat*, 915 F.2d 603 (10th Cir. 1990) (cost of imprisonment is additional fine that cannot be imposed unless court first imposes a punitive fine).

(11) Whether a departure above a statutorily required minimum sentence should be measured from a defendant's guideline range or the applicable mandatory minimum. (Amendment would implicate §§ 5G1.1, 5K2.0, 4A1.3.) Compare *United States* v. *Carpenter*, 963 F.2d 736 (5th Cir. 1992) (appropriate for court to depart upwards from the range within which the mandatory minimum falls); *United States* v. *Doucette*. 979 F.2d 1042, 1047 (5th Cir. 1992) with *United States* v. *Rodriguez-Martinez*, 25 F.3d 797 (9th Cir. 1994) (if the court determines that a departure above a mandatory minimum is warranted, it should calculate the departure from the defendant's guideline range).

(12) Whether the district court can depart to the career offender level based on the defendant's criminal history, although the defendant does not otherwise qualify for the career offender enhancement. Compare *United States* v. *Ruffin*, 997 F.2d 343, 347 (7th Cir. 1993)("Only real convictions support a sentence under § 4B1.1."); *United States* v. *Faulkner*, 952 F.2d 1066, 1072–73(9th Cir. 1991)(career offender guidelines operate as an "on/off" switch and cannot be used for departure purposes if defendant does not qualify as a career offender) with *United States* v. *Cash*, 983 F.2d 558, 562 (4th Cir. 1992)(departure reasonable when defendant would be career offender but for constitutional invalidity of one prior conviction; § 4A1.3's level by level consideration is implicit in the departure); *United States* v. *Hines*, 943 F.2d 348, 354–55 (4th Cir. 1991)(departure reasonable when defendant's two prior murder convictions were consolidated for sentencing).

(13) Whether multiple criminal incidents occurring over a period of time may constitute a single act of

aberrant behavior warranting departure. Compare *United States* v. *Grandmaison*, 77 F.3d 555 (1st Cir. 1996) (includes multiple acts leading up to the defendant's commission of the offense); *United States* v. *Takai*, 941 F.2d 738 (9th Cir. 1991) (multiple incidents over six-week period can be "single act of aberrant behavior") with *United States* v. *Marcello*, 13 F.3d 752 (3d Cir. 1994) (requires spontaneous, thoughtless, single act involving lack of planning); *United States* v. *Williams*, 974 F.2d 25 (5th Cir. 1992), cert. denied, 507 U.S. 934 (1993) (same).

(14) Whether collateral consequences of a defendant's conviction can be the basis of a downward departure. Compare *United States* v. *Smith*, 27 F.3d 649 (D.C. Cir. 1994) (objectively more serious prison conditions faced by deportable aliens may warrant downward departure) with *United States* v. *Sharapan*, 13 F.3d 781 (3d Cir. 1994) (demise of defendant's business, employees' loss of jobs, and economic harm do not support downward departure); *United States* v. *Restreppo*, 999 F.2d 640 (2d Cir.), cert. denied, 114 S. Ct. 405 (1993) (disallowing departure based on collateral consequences of being a deportable alien).

(15) Whether the definition of "violent offense" under § 5K2.13 (Diminished Capacity) is the same as "crime of violence" under § 4B1.2. Compare *United States* v. *Poff*, 926 F.2d 588 (7th Cir.), cert. denied, 502 U.S. 827 (1991); *United States* v. *Maddalena*, 893 F.2d 815 (6th Cir. 1990), cert. denied, 502 U.S. 882 (1991) with *United States* v. *Weddle*, 30 F.3d 532 (4th Cir. 1994); *United States* v. *Chatman*, 986 F.2d 1446 (D.C. Cir. 1993)

Section 5B1.3 Conditions of Probation

29(A). Synopsis of Proposed Amendment: This amendment revises §§ 5B1.3, 5B1.4, and 5D1.3 to reflect required conditions of probation and supervised release that have been added by the Antiterrorism and Effective Death Penalty Act of 1996 and other statutory provisions. Section 5B1.4 is amended to list both statutorily required and discretionary conditions in a way that will facilitate their application in individual cases.

Proposed Amendment: Section 5B1.3(a) is amended by deleting:

"(a) If a term of probation is imposed, the court shall impose a condition that the defendant shall not commit another federal, state, or local crime during the term of probation. 18 U.S.C. § 3563(a)(1). The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. § 3563(a)(3)."

And inserting in lieu thereof:

"(a) If a term of probation is imposed, the court is required by statute to impose the following conditions:

(1) That the defendant not commit another federal, state, or local crime during the term of probation. 18 U.S.C. § 3563(a)(1). This condition is reflected in § 5B1.4(a) (condition #1);

(2) That the defendant not unlawfully possess a controlled substance. 18 U.S.C. § 3563(a)(3). This condition is reflected in a broader form in § 5B1.4(a) (condition #8);

(3) In the case of a defendant convicted for the first time of a domestic violence crime, as defined in 18 U.S.C. § 3561(b), that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with the State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. 18 U.S.C. § 3563(a)(4). This condition is reflected in a broader form in § 5B1.4(b) (condition #25);

(4) That the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant. 18 U.S.C. § 3563(a)(5). This condition is reflected in a broader form in § 5B1.4(a) (condition #8) and § 5B1.4(b) (conditions #22 and #23);

(5) That the defendant make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. 18 U.S.C. § 3563(a)(6)(A). This condition is reflected in a broader form in § 5B1.4(b) (condition #18);

(6) That the defendant pay the special assessment imposed under 18 U.S.C. § 3013. 18 U.S.C. § 3563(a)(6)(B). This condition is reflected in § 5B1.4(a) (condition #15);

(7) That the defendant notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments. 18 U.S.C. § 3563(a)(7). This condition is reflected in § 5B1.4(a) (condition #16);

(8) If the court has imposed a fine, that the defendant pay the fine or adhere to a court-established installment schedule. 18 U.S.C. § 3563(a). This condition is reflected in § 5B1.4(b) (condition #19).".

Section 5B1.3(b) is renumbered as § 5B1.3(c); and § 5B1.3(c) is renumbered as § 5B1.3(b).

Section 5B1.3(b) (formerly (c)) is amended by deleting "a fine,"; and by inserting "(pertaining to discretionary conditions of probation)" immediately after "3563(b)".

Section 5B1.3(c) (formerly (b)) is amended by deleting "Recommended conditions are set forth in § 5B1.4.".

Section 5B1.3(d) is amended by inserting at the "This condition is reflected in § 5B1.4(c) (condition #31).".

Section 5B1.3 is amended by inserting after subsection (d) the following new subsection:

"(e) Recommended conditions of probation are set forth in § 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

The Commentary to § 5B1.3 is deleted in its entirety, including the title.

Section 5B1.4(a) is amended by deleting "(1–13)"; by deleting "generally"; by deleting ":" and inserting in lieu thereof "." and by inserting at the end the following "A condition (or a part of a condition) designated by an asterisk may be statutorily required in all or some cases:".

Section 5B1.4(a) is amended by renumbering subdivisions (1) through (13) as subdivisions (2) through (14), respectively; and by inserting before subdivision (2) (formerly (a)(1)) the following: "(1) the defendant shall not commit another federal, state, or local crime;*"

Section 5B1.4(a)(5) (formerly (a)(4)) is amended by deleting "his" and inserting in lieu thereof "the defendant's"; and by inserting immediately following "responsibilities" the following: "(including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or any other possession or territory of the United States requiring payments by the defendant for the support and maintenance of any child or of a child and the parent with whom the child is living)".

Section 5B1.4(a)(7) (formerly (a)(6)) is amended by deleting "within seventy-two hours of" and inserting in lieu thereof "at least ten days prior to"; and by deleting "in" and inserting in lieu thereof "of".

Section 5B1.4(a)(8) (formerly (a)(7)) is amended by deleting "narcotic or other"; by deleting "such" and inserting

in lieu thereof "any controlled"; by deleting "substance" and inserting in lieu thereof "substances"; and by inserting an asterisk immediately following "physician;".

Section 5B1.4(a)(11) (formerly (a)(10)) is amended by deleting "him" and inserting in lieu thereof "the defendant".

Section 5B1.4(a)(14) (formerly (a)(13)) is amended by deleting "." at the end and inserting in lieu thereof ";".

Section 5B1.4(a) is amended by inserting at the end the following new subdivisions (15) and (16):

"(15) The defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment;*

(16) The defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay any unpaid amount of restitution, fines, or special assessments.*".

Section 5B1.4(b) is amended by deleting in the first sentence "(14–24)"; by deleting "either"; by deleting "or required by law under" and inserting in lieu thereof "in"; by deleting ", or may be appropriate in a particular case" and inserting in lieu thereof "and, in addition, may otherwise be appropriate in particular cases. A condition (or a part of a condition) designated by an asterisk may be statutorily required in all or some cases"; and by renumbering subdivisions (14) through (18) as (17) through (21) respectively; by renumbering subdivisions (19) through (22) as (26) through (29), respectively; and by renumbering subdivision (23) as subdivision (22); and by renumbering subdivision (25) as subdivision (30).

Section 5B1.4(b)(17) (formerly (b)(14)) is amended by deleting ", it is recommended that the court impose" and inserting in lieu thereof "—".

Section 5B1.4(b)(18) (formerly (b)(15)) is amended by deleting "of" immediately following "order" and inserting in lieu thereof "or condition requiring"; by deleting " it is recommended that the court impose" and inserting in lieu thereof "—"; by deleting "See § 5E1.1 (Restitution)." and by inserting in lieu thereof an asterisk; ; and by inserting at the end the following new paragraph:

"If any restitution obligation remains unpaid at the commencement of a term of supervised release, it shall be a condition of supervised release that the defendant pay any such restitution in accordance with the schedule of payments ordered by the court.".

Section 5B1.4(b)(19) (formerly (b)(16)) is amended by deleting ", it is recommended that the court impose" and inserting in lieu thereof "—"; by inserting an asterisk after "the fine."; and by adding at the end the following new paragraph:

"If any fine obligation remains unpaid at the commencement of a term of supervised release, it shall be a condition of supervised release that the defendant pay any such fine in accordance with the schedule of payments ordered by the court."

Section 5B1.4(b) is amended by inserting after subdivision (22) (formerly subdivison (b)(23)) the following new subdivision (23):

"(23) Drug Testing.

Unless the court determines that there is a low risk of future substance abuse by the defendant—a condition requiring the defendant to submit to one drug test within fifteen days of release on [probation][supervised release] and at least two periodic drug tests thereafter, as determined by the court.*

Note: This condition is not necessary if the substance abuse program participation condition (condition #22) is imposed.".

Section 5B1.4(b)(20) (formerly (b)(17)) is amended by deleting ", it is recommended that the court impose" and inserting in lieu thereof "——".

Section 5B1.4(b)(21) (formerly (b)(18)) is amended by deleting ", it is recommended that the court impose" and inserting in lieu thereof "——".

Section 5B1.4(b)(22) (formerly (b)(23)) is amended by deleting ", it is recommended that the court impose" and inserting in lieu thereof "—".

Section 5B1.4(b)(24) is amended by deleting ", it is recommended that the court impose" and inserting in lieu thereof "——".

Section 5B1.4(b) is amended by inserting the following as new subdivision (25):

"(25) Domestic Violence Program Participation.

In the case of a defendant convicted of a domestic violence crime, as defined in 18 U.S.C. § 3561(b), a condition requiring the defendant to attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with the State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant.*"

Section 5B1.4 is amended by inserting the following immediately after new subdivision (25);

"(c) Additional Conditions.

The following "special conditions" may be appropriate on a case-by-case basis:"

Section 5B1.4 (c)(30) (formerly (b)(25)) is amended by deleting "If" and inserting in lieu thereof "A condition imposing a curfew may be imposed if"; and by deleting ", a condition of curfew is recommended".

Section 5B1.4 is amended by inserting after subdivision (30) (formerly subdivision (b)(25)) the following new subdivision:

"(31) Intermittent Confinement

Intermittant confinement (custody for intervals of time) may be ordered as a condition of probation during the first year of probation.

Note: This condition may not be order as a condition of supervised release.".

The commentary to 5B1.4 captioned "Application Note" is amended in Note 1 by deleting "his" wherever it appears and inserting in lieu thereof "the defendant's"; and by inserting in the last sentence a comma immediately following "home detention".

Section 5D1.3 is amended by deleting subsection (a) in its entirety and inserting in lieu thereof:

"(a) If a term of supervised release is imposed, the court is required by statute to impose the following conditions:

(1) that the defendant not commit another federal, state, or local crime during the term of supervised release. 18 U.S.C. § 3583 (d). This condition is reflected in § 5B1.4(a) (condition #1);

(2) that the defendant not unlawfully possess a controlled substance. 18 U.S.C. § 3583 (d). This condition is reflected in § 5B1.4(a) (condition #8);

(3) in the case of a defendant convicted for the first time of a domestic violence crime, as defined in 18 U.S.C. § 3561(b), that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with the State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. 18 U.S.C. § 3583(d). This condition is reflected in § 5B1.4(b) (condition #25);

(4) that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test with 15 day of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but this condition may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant. 18 U.S.C. § 3583(d). This

condition is reflected in a broader form in § 5B1.4(a) (condition #8), and § 5B1.4(b) (conditions #22 and #23).".

Section 5D1.3(b) is amended by deleting "§ 3353(a)(2) and".

Section 5D1.3(c) is amended by inserting "(Recommended Conditions of Probation and Supervised Release)" immediately following "§ 5B1.4".

The Commentary to 5D1.3 captioned "Background" is amended by deleting the fourth sentence.

Section 8D1.3(a) is amended by deleting "shall" following "the organization".

Section 8D1.3 is amended by redesignating subsection (c) as subsection (g); and by inserting after subsection (b) the following new subsections:

(c) Pursuant to 18 U.S.C. § 3563(a)(6)(A), any sentence of probation shall include the condition that the defendant make restitution in accordance with 18 U.S.C. § 2248, 2259, 2327, 3663, 3663A, and 3664.

(d) Pursuant to 18 U.S.C. § 3563(a)(6)(B), any sentence of probation shall include the condition that the defendant pay the special assessment imposed under 18 U.S.C. § 3013.

(e) Pursuant to 18 U.S.C. § 3563(a)(7), any sentence of probation shall include the condition that the defendant notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

(f) Pursuant to 18 U.S.C. § 3563(a), if the court has imposed a fine, any sentence of probation shall include the condition that the defendant pay the fine or adhere to a court-established installment schedule.

B. *Issue for Comment:* The Commission invites comment as to whether §§ 5B1.3 (Conditions of Probation), 5B1.4 (Recommended Conditions of Probation and Supervised Release (Policy Statements)), and 5D1.3 (Conditions of Supervised Release) should be reorganized so as to better distinguish between the statutorily required, standard, and special conditions of probation and supervised release. For example, one option could be to delete § 5B1.4 and amend §§ 5B1.3 and 5D1.3 so that subsection (a) of each guideline lists all the statutorily required conditions of probation or supervised release, subsection (b) lists all the standard conditions, and subsection (c) lists all the optional conditions.

Section 5D1.2 Term of Supervised Release

30. Synopsis of Proposed Amendment: This amendment amends § 5D1.2 (Term of Supervised Release) to make clear that a defendant who qualifies under the "safety valve" (§ 5C1.2, 18 U.S.C. § 3553(f)) is not subject to any statutory minimum term of supervised release. This issue has arisen in a number of hotline calls. This amendment also clarifies that the requirement in subsection (a), with respect to the length of a term of supervised release, is subject to the requirement in subsection (b) that the term be not less than any statutorily required term of supervised release.

Proposed Amendment: Section 5D1.2(a) is amended by deleting "If" and inserting in lieu thereof "Subject to subsection (b), if".

Section 5D1.2(b) is amended by deleting "The" and inserting in lieu thereof "Provided, that the".

The Commentary to § 5D1.2 is amended by inserting the following immediately before "Background":

"Application Note:

1. In the case of a defendant who qualifies under § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentence in Certain Cases), the term of supervised release is to be determined under subsection (a) without regard to any otherwise applicable statutory minimum term of supervised release; i.e., the requirement in subsection (b) is inapplicable in such a case because a statutory minimum term of supervised release no longer applies to that defendant.".

Section 5E1.1 Restitution

31(A). Synopsis of Proposed Amendment: This amendment conforms the provisions of § 5E1.1 to the mandatory restitution provisions of the Antiterrorism and Effective Death Penalty Act of 1996. Because the new restitution provisions have ex post facto provisions that cannot be addressed in the usual fashion (by determining whether the final Chapter Five guideline range is greater), a separate provision is set forth as a special instruction to address this issue and allow the maintenance of the Commission's "one book" rule.

Proposed Amendment: Section 5E1.1(a)(1) is amended by inserting "in the case of an identifiable victim of the offense for the full amount of the victim's loss," immediately following "restitution order"; by deleting "§ " immediately after "18 U.S.C."; by inserting "2248, § 2259, § 2264, § 2327, § " immediately before "3663"; and by deleting "-3664" and inserting in lieu thereof ", or § 3663A".

Section 5E1.1(a)(2) is amended by inserting "impose a term of probation or supervised release with a condition requiring restitution in the case of an identifiable victim of the offense for the full amount of the victim's loss," immediately before "if a restitution"; by deleting "§ " immediately following "18 U.S.C."; by deleting "-3664" immediately following "3663"; by deleting "set forth in" and inserting in lieu thereof "under"; by inserting "21 U.S.C. § 841, § 848(a), § 849, § 856, § 861, or § 863," immediately following "States Code,"; and by deleting ", impose a term of probation or supervised release with a condition requiring restitution".

Section 5E1.1(b) is amended by deleting it in its entirety and inserting in lieu thereof:

"(b) Provided, that the provisions of subsection (a) do not apply—

(1) when full restitution has been made; or

(2) in the case of a restitution order under § 3663; a restitution order under 18 U.S.C. § 3663A that pertains to an offense against property described in 18 U.S.C. § 3663A(c)(1)(A)(ii); or a condition of restitution imposed pursuant to subsection (a)(2) above, to the extent the court finds, from facts on the record, that (1) the number of identifiable victims is so large as to make restitution impracticable, or (2) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process."

Section 5E1.1(c) is amended by inserting "to an identifiable victim" immediately following "to make restitution".

Section 5E1.1(d) is deleted in its entirety and the following new subsections are inserted in lieu thereof:

"(d) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (1) return of property; (2) replacement of property, or (3) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. 18 U.S.C. § 3664(f)(4).

(e) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not

allow the payment of any amount of a restitution order and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(f) Special Instruction.

(1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former § 5E1.1 (set forth in Appendix C, amendment 537) in lieu of this guideline in any other case.".

The Commentary to § 5E1.1 captioned "Application Note" is amended by deleting Note 1 in its entirety; and by deleting "Application Note:".

The Commentary to § 5E1.1 captioned "Background" is amended in the first sentence of the first paragraph by inserting ", United States Code," immediately following "Title 18"; by deleting the second sentence and inserting the following in lieu thereof: "Orders of restitution are authorized under 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, and 3663A."; in the third sentence by deleting "other" immediately following "For"; and by inserting "for which an order of restitution is not authorized" immediately following "offenses"; and by deleting the fourth sentence and inserting in lieu thereof "To the extent that any of the above-noted statutory provisions conflict with the provisions of this guideline, the applicable statutory provision shall control.".

The Commentary to § 5E1.1 captioned "Background" is amended by deleting the second through fifth paragraphs in their entirety.

Section 8B1.1 is deleted in its entirety and the following is inserted in lieu thereof:

"§ 8B1.1. Restitution—Organizations.

(a) The court shall——

(1) Enter a restitution order in the case of an identifiable victim of the offense for the full amount of the victim's loss, if such order is authorized under 18 U.S.C. § 2248, § 2259, § 2264, § 2327, § 3663, or § 3663A; or

(2) Impose a term of probation with a condition requiring restitution in the case of an identifiable victim of the offense for the full amount of the victim's loss, if a restitution order would be authorized under 18 U.S.C. § 3663, except for the fact that the offense of conviction is not an offense under Title 18, United States Code, 21 U.S.C. § 841, § 848(a), § 849, § 856, § 861, or § 863, or 49 U.S.C. § 46312, § 46502, or § 46504.

(b) Provided, that the provisions of subsection (a) do not apply—

(1) when full restitution has been made; or

(2) in the case of a restitution order under § 3663; a restitution order under 18 U.S.C. § 3663A that pertains to an offense against property described in 18 U.S.C. § 3663A(c)(1)(A)(ii); or a condition of restitution imposed pursuant to subsection (a)(2) above, to the extent the court finds, from facts on the record, that (1) the number of identifiable victims is so large as to make restitution impracticable, or (2) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(c) If a defendant is ordered to make restitution to an identifiable victim and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

(d) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (1) return of property; (2) replacement of property, or (3) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. 18 U.S.C. § 3664(f)(4).

(e) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(f) Special Instruction.

(1) This guideline applies only to a defendant convicted of an offense committed on or after November 1, 1997. Notwithstanding the provisions of § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing), use the former § 8B1.1 (set forth in Appendix C, amendment 537) in lieu of this guideline in any other case.

Commentary

Background: Section 3553(a)(7) of Title 18 requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Orders of restitution are authorized under 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, and 3663A. For offenses for which an order of restitution is not authorized, restitution may be imposed as a condition of probation.".

(B) *Issue for Comment:* Community Restitution—Section 205 of the Antiterrorism and Effective Death Penalty Act of 1996 ("the Act") authorizes district courts to order "community restitution" when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. § 841, § 848(a), § 849, § 856, § 861, or § 863) in which there is no identifiable individual victim. The Act further directs the Commission to promulgate guidelines, based on the amount of public harm caused by the offense and not to exceed the amount of the fine ordered for the offense, to assist courts in determining the appropriate amount of community restitution to be ordered in individual cases.

The Commission requests comment regarding implementation of this directive so as to fully effectuate congressional intent. The Commission specifically requests comment on (1) how the Commission should determine the appropriate amount of community restitution to be ordered, (2) whether it would be appropriate to determine the amount of community restitution by reference to the fine table found at section 5E1.2 of the Guidelines Manual, (3) whether it would be appropriate to apportion a specific percentage of any fine ordered under the current guidelines to community restitution, and (4) if it is appropriate to apportion a specific percentage of any fine ordered under the current guidelines to community restitution, whether the Commission should adjust the fine table.

Section 5E1.3 Special Assessments

32. Synopsis of Proposed Amendment: This amendment implements section 210 of the Antiterrorism and Effective Death Penalty Act of 1996. That section amends 18 U.S.C. § 3013(a)(2) to provide for a special assessment, in the case of a felony, of not less than $100 for an individual and not less than $400 for an organization.

Proposed Amendment: Section 5E1.3 is deleted in its entirety and the following replacement guideline is inserted in lieu thereof:

"§ 5E1.3. Special Assessments.

(a) In the case of a defendant convicted of a felony offense committed on or after April 24, 1996, the special assessment shall be $100.

(b) In the case of a defendant convicted of—

(1) A misdemeanor offense or an infraction; or

(2) A felony offense committed prior to April 24, 1996,

the special assessment shall be the amount fixed by statute (18 U.S.C. § 3013).

Commentary

Application Notes:

1. This guideline applies only if the defendant is an individual. See § 8E1.1 for special assessments applicable to organizations.

In the case of a felony conviction for an offense committed by an individual on or after April 24, 1996, this guideline specifies a special assessment in the amount of $100. Any greater special assessment is a departure from this guideline.

In any other case, the special assessment is in the amount set forth by statute.

2. The following special assessments are provided by statute (18 U.S.C. § 3013):

For Offenses Committed By Individuals On Or After April 24, 1996:

(A) Not less than $100, if convicted of a felony;

(B) $25, if convicted of a Class A misdemeanor;

(C) $10, if convicted of a Class B misdemeanor or an infraction;

(D) $5, if convicted of an infraction or a Class C misdemeanor.

For Offenses Committed By Individuals On Or After November 18, 1988, But Prior To April 24, 1996:

(E) $50, if convicted of a felony;

(F) $25, if convicted of a Class A misdemeanor;

(G) $10, if convicted of a Class B misdemeanor or an infraction;

(H) $5, if convicted of an infraction or a Class C misdemeanor.

For Offenses Committed By Individuals Prior To November 18, 1988:

(I) $50, if convicted of a felony;

(J) $25, if convicted of a misdemeanor.

3. A special assessment is required by statute for each count of conviction.

Background: Section 3013 of Title 18, added by The Victims of Crimes Act of 1984, Pub. L. No. 98–473, 98 Stat. 1837, 2174 (1984), requires courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation.

In the case of felony conviction for an offense committed on or after April 24, 1996, the special assessment authorized by statute on each count is not less than $100 if the defendant is an individual. No maximum limit is specified. In all other cases, the amount of the special assessment is fixed by statute.

The Commission has set the guideline for a special assessment for a felony offense committed by an individual on or after April 24, 1996 at $100. The Commission believes a special assessment in this amount, combined with the restitution provisions in § 5E1.1 (Restitution) and the fine provisions in § 5E1.2 (Fines) (which increase with the seriousness of the offense committed), will provide an appropriate, coordinated financial penalty.".

Section 8E1.1 amended by deleting the guideline in its entirety and the following replacement guideline is inserted in lieu thereof:

Section 8E1.1. Special Assessments—Organizations

(a) In the case of a defendant convicted of a felony offense committed on or after April 24, 1996, the special assessment shall be $400.

(b) In the case of a defendant convicted of—

(1) A misdemeanor offense or an infraction; or

(2) A felony offense committed prior to April 24, 1996,

the special assessment shall be the amount fixed by statute (18 U.S.C. § 3013).

Commentary

Application Notes:

1. This guideline applies if the defendant is an organization. It does not apply if the defendant is an individual. See § 5E1.3 for special assessments applicable to individuals.

In the case of a felony conviction for an offense committed by an organization on or after April 24, 1996, this guideline specifies a special assessment in the amount of $400. Any greater special assessment is a departure from this guideline.

In any other case, the special assessment is in the amount set forth by statute.

2. The following special assessments are provided by statute (18 U.S.C. § 3013):

For Offenses Committed By Organizations On Or After April 24, 1996:

(A) Not less than $400, if convicted of a felony;

(B) $125, if convicted of a Class A misdemeanor;

(C) $50, if convicted of a Class B misdemeanor; or

(D) $25, if convicted of a Class C misdemeanor or an infraction.

For Offenses Committed By Organizations On Or After November 18, 1988 But Prior To April 24, 1996:

(E) $200, if convicted of a felony;

(F) $125, if convicted of a Class A misdemeanor;

(G) $50, if convicted of a Class B misdemeanor; or

(H) $25, if convicted of a Class C misdemeanor or an infraction.

For Offenses Committed By Organizations Prior To November 18, 1988:

(I) $200, if convicted of a felony;

(J) $100, if convicted of a misdemeanor.

3. A special assessment is required by statute for each count of conviction.

Background: Section 3013 of Title 18, added by The Victims of Crimes Act of 1984, Pub. L. No. 98–473, Title II, Chap. XIV, requires courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation.

In the case of felony conviction for an offense committed on or after April 24, 1996, the special assessment authorized by statute on each count is not less than $400 if the defendant is an organization. No maximum limit is specified. In all other cases, the amount of the special assessment is fixed by statute.

The Commission has set the guideline for a special assessment for a felony offense committed by an organization on or after April 24, 1996 at $400. The Commission believes a special assessment in this amount, combined with the restitution provisions in Part B of this Chapter and the fine provisions in Part C of this Chapter (which increase with the seriousness of the offense committed), will provide an appropriate, coordinated financial penalty.".

Section 5H1.13 Susceptibility to Abuse in Prison and Designation of Prison Facility

33. Synopsis of Proposed Amendment: This amendment creates an additional policy statement in Chapter 5, part H as § 5H1.13 (Susceptibility to Abuse in Prison and Designation of Prison (Policy Statement)). The amendment provides that neither susceptibility to abuse in prison nor the type of imprisonment facility designated for service of imprisonment is ordinarily relevant in determining a departure.

Proposed Amendment: Chapter 5, Part H is amended by inserting an additional policy statement as:

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"§ 5H1.13. Susceptibility to Abuse in Prison and Designation of Prison Facility (Policy Statement).

Neither susceptibility to abuse in prison nor the type of facility designated for service of a term of imprisonment is ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.".

Section 5K2.0 Grounds for Departure

34. Synopsis of Proposed Amendment: This amendment proposes to make changes to policy statement § 5K2.0 (Grounds for Departure). The proposed amendment moves language discussing departure policies from the Introduction of the Guidelines Manual to § 5K2.0; deletes a sentence that, under the proposed emergency amendment to the immigration guidelines, will no longer be apt; adds a citation to Koon v. United States, 116 S.Ct. 2035 (1996), to reflect the greater deference to be accorded district court departure decisions by the appellate courts; adds a sentence stating that departures must be consistent with the purposes of sentencing and Sentencing Reform Act goals; and makes minor changes to improve the precision of the language.

Proposed Amendment: Section 5K2.0 is amended by deleting "Under 18 U.S.C. § 3553(b) the sentencing court may impose a sentence outside the range established by the applicable guideline, if the court finds 'that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' " and inserting in lieu thereof "The Sentencing Reform Act permits a court to depart from a guideline range when it finds 'an aggravating or mitigating circumstance, of a kind or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. 18 U.S.C. § 3553(b). The Commission intends for sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies, but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. With the few exceptions noted below, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

Factors that the court may not take into account as grounds for departure are:

(1) race, sex, national origin, creed, religion, and socio-economic status (See § 5H1.10);

(2) Lack of guidance as a youth and similar circumstances (See § 5H1.12);

(3) Drug or alcohol abuse (See § 5H1.4);

(4) Personal financial difficulties and economic pressures upon a trade or business (See § 5K2.12).".

Section 5K2.0 is amended in the first paragraph by beginning a new paragraph at the sentence that starts "Circumstances that may warrant departure"; by deleting "guidelines" immediately following "from the" and inserting in lieu thereof "guideline range"; by deleting "controlling" immediately following "The"; by deleting "can only be" immediately following "warranted" and inserting in lieu thereof "most appropriately is"; by deleting "courts" immediately following "the" and inserting in lieu thereof "sentencing court on a case-specific basis"; by inserting "determining" immediately following "consideration in"; by deleting "guidelines" immediately following "consideration in the" and inserting in lieu thereof "guideline range"; by deleting "guideline level" immediately following "circumstances, the" and inserting in lieu thereof "weight"; and by inserting "under the guidelines" immediately following "factor".

Section 5K2.0 is amended in the third paragraph by deleting "For example, the use of a weapon has been listed as a specific offense characteristic under many guidelines, but not under immigration violations. Therefore, if a weapon is a relevant factor to sentencing for an immigration violation, the court may depart for this reason."

Section 5K2.0 is amended in the fourth paragraph by deleting "An" and inserting in lieu thereof "Finally, an"; by inserting ", in the commission's view," immediately following "circumstance that"; and by inserting parentheses around "not ordinarily relevant" immediately before "in determining".

The Commentary to § 5K2.0 is amended by inserting "Moreover, any cited basis for departure must be consistent with the statutory purposes of sentencing and the fundamental objectives of the Sentencing Reform Act. See 18 U.S.C. §§ 3553(a),(b), 28 U.S.C. § 991 (b)(1)." immediately before "For, example"; and by inserting as a new paragraph "The Supreme Court has determined that, in reviewing a district court's decision to depart from the guidelines, appellate courts are to apply an abuse of discretion standard. Koon v. United States, 116 S.Ct. 2035 (1996)."

Section 5K2.19 Successive Federal Prosecution

35. Synopsis of Proposed Amendment: This amendment proposes to create an additional amendment in Chapter 5, Part K as § 5K2.19 (Successive Federal Prosecutions (Policy Statement)). The amendment provides that a federal prosecution following another jurisdiction's prosecution for the same or similar conduct is not ordinarily relevant in determining a departure, except as authorized by § 5G1.3 (Imposition of a Sentence on a Defendant subject to an Undischarged Term of Imprisonment).

Proposed Amendment: Chapter 5, Part K is amended by inserting an additional policy statement as follows:

"§ 5K2.19. Successive Federal Prosecution (Policy Statement).

Prosecution and conviction in federal court following prosecution in another jurisdiction for the same or similar offense conduct is not ordinarily relevant in determining whether a sentence below the guideline range is warranted, except as authorized by § 5G1.3 (Imposition of a Sentence on a Defendant subject to an Undischarged Term of Imprisonment). In circumstances not covered by § 5G1.3, concerns about the impact of successive prosecutions must be carefully weighed against concerns relating to the legitimate exercise of prosecutorial authority by separate sovereigns.".

Section 6A1.1 Presentence Report

36. Synopsis of Proposed Amendment: This amendment makes a number of technical changes to Chapter Six (Sentencing Procedures and Plea Agreements) to reflect changes recently made in the structure of Rule 32, Fed. R. Crim. P.

Proposed Amendment: Section 6A1.1 is amended by deleting "(c)(1)" and inserting in lieu thereof "(b)(1)".

The Commentary to § 6A1.1 is amended by deleting "(c)(1)" and inserting in lieu thereof "(b)(1)".

Section 6A1.2 is amended by deleting "See Model Local Rule for Guideline Sentencing prepared by the Probation Committee of the Judicial Conference (August 1987)" and insert in lieu thereof "Rule 32 (b)(6), Fed. R. Crim. P.".

The Commentary to § 6A1.2 captioned "Application Note" is amended in Note 1 by deleting "111 S. Ct. 2182" and inserting in lieu thereof "501 U.S. 129, 135–39".

The Commentary to § 6A1.2 captioned "Background" is amended by inserting

"in writing" immediately following "respond"; and by deleting the second, third, and fourth sentences and inserting in lieu thereof "Rule 32 (b)(6), Fed. R. Crim. P.".

Section 6A1.3(a) is amended in the second sentence by deleting "reasonable" immediately before "dispute".

Section § 6A1.3(b) is amended by inserting "at a sentencing hearing" immediately following "factors"; by deleting "(a)(1)" and inserting in lieu thereof "(c)(1)"; and by deleting "(effective Nov. 1, 1987), notify the parties of its tentative findings and provide a reasonable opportunity for the submission of oral written objections before imposition of sentence".

The Commentary to § 6A1.3 is amended in the seventh sentence of the first paragraph by deleting "reasonable" immediately before "dispute".

The Commentary to § 6A1.3 is amended by deleting the last paragraph in its entirety.

Consolidation of Closely Related Guidelines

37. Synopsis of Proposed Amendment: This amendment consolidates a number of Chapter Two offense guidelines. There are several advantages to consolidation of offense guidelines: (1) shortening the Guidelines Manual and simplifying its application and appearance; (2) reducing the potential for inconsistency in phraseology and definitions between closely related offense guidelines (and litigation as to the meaning of such differences); (3) reducing the potential for inadvertent, unwarranted inconsistency in offense levels among closely related offense guidelines; (4) reducing the potential for uncertainty (and resulting litigation) as to which offense guideline applies when one statute references two or more closely related offense guidelines; (5) making application of the rules relating to the grouping of multiple counts of conviction simpler by reducing the frequency of cases in which the offense levels have to be determined under more than one guideline using aggregate quantity and then compared (§ 3D1.3(b)); (6) reducing the number of cross references in the Guidelines Manual and the added calculations entailed; (7) aiding the development of case law because cases involving similar or identical concepts will be referenced under one guideline section rather than different guideline sections; and (8) reducing the number of conforming amendments required when the guidelines are amended.

On the other hand, the proposed consolidation of offense guidelines may raise one or more of the following concerns: (1) some of the proposals result, or may result, in a change in offense levels for some offenses (due mainly to the application of specific offense characteristics and cross references as a result of consolidation); (2) some of the proposals may move closer to a "real offense" system with respect to offense behavior covered by those proposals; and (3) some of the proposals implicate other policy issues (e.g.; through the elimination of specific offense characteristics).

(A) *Consolidation of §§ 2A1.5 and 2E1.4.*

Synopsis of Proposed Amendment: Section 2E1.4 (Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire) is consolidated with § 2A1.5 (Conspiracy or Solicitation to Commit Murder) with no change in offense levels. The base offense level of 32 under § 2E1.4 is represented in the consolidation by a base offense level of 28 plus four levels for pecuniary gain under subsection (b)(2). The four-level enhancement for pecuniary gain always should apply to murder-for-hire offenses under § 2E1.4. This amendment also eliminates the cross reference in § 2A1.5(c)(2) and replaces it with a bodily injury enhancement in subsection (b)(1).

The 1993 Annual Report (FY 93) shows 31 cases sentenced under § 2A1.5 (in 13 of those it was the primary guideline) and 26 cases sentenced under § 2E1.4 (in 24 of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 28 cases sentenced under § 2A1.5 (in 18 of those it was the primary guideline) and 31 cases sentenced under § 2E1.4 (in 23 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 25 cases sentenced under § 2A1.5 (in 16 of those it was the primary guideline) and 20 cases sentenced under § 2E1.4 (in 15 of those it was the primary guideline).

Proposed Amendment: Section 2A1.5 is amended in the title by inserting at the end "; Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire". Section 2A1.5(b) is amended by redesignating subdivision (1) as subdivision (2) and by inserting the following new subdivision:

"(1) (A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; or (B) if the victim sustained serious bodily injury, increase by 2 levels".

Section 2A1.5(c) is amended in the caption by deleting "References" and inserting in lieu thereof "Reference".

Section 2A1.5(c) is amended by deleting:

"(2) If the offense resulted in an attempted murder or assault with intent to commit murder, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder).".

The Commentary to § 2A1.5 captioned "Statutory Provisions" is amended by inserting after "1751(d)" ",1958 (formerly 18 U.S.C. § 1952A).".

The Commentary to § 2A1.5 is amended by inserting the following at the end:

"Application Notes:

1. Definitions of 'serious bodily injury' and 'permanent or life-threatening bodily injury' are found in the Commentary to § 1B1.1 (Application Instructions).

2. If the offense involved a substantial risk of death or serious bodily injury to more than one person, an upward departure may be warranted.".

Section 2E1.4 is deleted in its entirety.

(B) *Consolidation of §§ 2A2.3 and 2A2.4.*

Synopsis of Proposed Amendment: Section 2A2.4 (Obstructing or Impeding Officers) is consolidated with § 2A2.3 (Minor Assault). The resulting offense levels are the same as those under the current guidelines, except for the following differences. First, the cross reference to aggravated assault (shown as an option under the consolidated guideline) would now apply to offenses under § 2A2.3. Currently, the cross reference to aggravated assault applies only to § 2A2.4. Second, the enhancement for official victim in the consolidated guideline would now apply to minor assault cases under § 2A2.3. Similarly, the upward departure provision for significant disruption of governmental function (Application Note 3 of the consolidated guideline) would apply to minor assault cases.

In addition, there is a split among the circuits as to whether subsection (c) refers to the conviction offense or is based on consideration of the underlying conduct (compare *United States* v. *Jennings*, 991 F.2d 725 (11th Cir. 1993) with *United States* v. *Padilla*, 961 F.2d 322 (2d Cir.), cert. denied, 506 U.S. 846 (1992). There seems no reason for the cross reference to apply to one guideline but not the other. Two options are provided. If the bracketed language (subsection (c)) is included, the cross reference to § 2A2.2 will apply on the basis of the underlying conduct (i.e., whether the assault was an aggravated or simple assault will be a sentencing

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rather than a charge offense factor). If the bracketed language is not included, § 2A2.2 will apply only if established by the offense of conviction (see § 1B1.2 (Applicable Guidelines)).

The 1993 Annual Report (FY 93) shows 26 cases sentenced under § 2A2.3 (in 25 of those it was the primary guideline) and 97 cases sentenced under § 2A2.4 (in 83 of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 27 cases sentenced under § 2A2.3 (in 22 of those it was the primary guideline) and 85 cases under § 2A2.4 (in 73 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 24 cases sentenced under § 2A2.3 (in 19 of those it was the primary guideline) and 120 cases sentenced under § 2A2.4 (in 98 of those it was the primary guideline).

Proposed Amendment: Section 2A2.3 is amended in the title by inserting at the end "; Obstruction or Impeding Officers".

Section 2A2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

Section 2A2.3(b) is amended by redesignating subdivision (1) as subdivision (2) and inserting the following new subsection:

"(1) If the offense involved obstructing or impeding a governmental officer in the performance of his duty, increase by 3 levels.".

Section 2A2.3(b) is amended in the redesignated (2) (formerly (1)) by deleting "resulted in" and inserting in lieu thereof "involved".

Section 2A2.3 is amended by adding the following additional subsection:

"[(c) Cross Reference.

(1) If the offense involved aggravated assault, apply § 2A2.2 (Aggravated Assault).]".

The Commentary to § 2A2.3 captioned "Statutory Provisions" is amended by inserting "111," immediately before "112"; by inserting "1501, 1502," immediately following "351(e),"; and by inserting ", 3056(d)" immediately following "1751(e)".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by deleting Notes 1 through 3 and inserting the following as new Notes 1 through 3:

"1. For purposes of this guideline—

'Minor assault' means a misdemeanor assault, or a felonious assault not covered by § 2A2.2 (Aggravated Assault).

'Firearm' and 'dangerous weapon' have the meaning given such terms in the Commentary to § 1B1.1 (Application Instructions).

'Substantial bodily injury' means 'bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty.' See 18 U.S.C. § 113(b)(1).

2. Subsection (b)(1) reflects the fact that the victim was a governmental officer performing official duties. If subsection (b)(1) applies, do not apply § 3A1.2 (Official Victim) unless the offense level is determined by use of the cross reference in subsection (c).

3. The offense level under this guideline does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).".

The Commentary to § 2A2.3 captioned "Background" is deleted in its entirety.

Section 2A2.4 is amended by deleting it in its entirety.

(C) *Consolidation of §§ 2B1.1, 2B1.3, 2B6.1, and 2H3.3.*

Synopsis of Proposed Amendment: This is a three-part amendment. First, § 2B1.3 (Property Damage or Destruction) is consolidated with § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) with no change in offense levels.

Second, § 2B6.1 (Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers) is consolidated with § 2B1.1. Section 2B6.1 is, in effect, a stolen property guideline limited to stolen automobiles and automobile parts with altered or obliterated identification numbers. The offense levels resulting from application of the current guidelines in most cases are identical. The only differences are that § 2B6.1 has a built-in adjustment for more than minimal planning and a loss of at least $2,000. In the small percentage of cases in which the loss is $1,000 or less, or more than minimal planning is not found, the offense level from § 2B6.1 is higher than from § 2B1.1. To ensure no reduction in offense level (with respect to the more than minimal planning adjustment) under the consolidated guideline, an application note is added providing that more than minimal planning is deemed present when the offense involved altering or removing an automobile or automobile part identification number or trafficking in an automobile or automobile part with an altered or obliterated identification number. Therefore, under the consolidated guideline, if the value of the vehicle(s) or part(s) is more than $1,000, the offense level will be the same as under the current guidelines. The only difference in offense level between the current and proposed guideline is that if the value of the vehicle(s) or part(s) is $100 or less, the offense level under the consolidated guideline will be 6 rather than 8; and if the value of the vehicle(s) or part(s) is $101–$1,000, the offense level under the consolidated guideline will be 7 rather than 8. In FY 95, 4.3% of cases (i.e.; 3 of 70 cases) sentenced under § 2B6.1 did not receive an enhancement under § 2B6.1(b)(1) because the value of the vehicle was less than $2,000.

Third, the consolidation of §§ 2B1.1 and 2B1.3 allows the consolidation of § 2H3.3 (Obstructing Correspondence) with § 2B1.1. No substantive change in offense levels would result.

The 1993 Annual Report (FY 93) shows 3,902 cases sentenced under §§ 2B1.1 and 2B1.2 (which is now consolidated with § 2B1.1; in 3,769 of those they were the primary guidelines), 79 cases sentenced under § 2B1.3 (in 74 of those it was the primary guideline), 93 cases sentenced under § 2B6.1 (in 85 of those it was the primary guideline), and 17 cases sentenced under § 2H3.3 (in all of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 3,712 cases sentenced under §§ 2B1.1/2B1.2 (in 3,598 of those they were the primary guidelines), 62 cases sentenced under § 2B1.3 (in 56 of those it was the primary guideline), 55 cases sentenced under § 2B6.1 (in 51 of those it was the primary guideline), and nine cases sentenced under § 2H3.3 (in all of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 3,265 cases sentenced under §§ 2B1.1/2B1.2 (in 3,152 of those it was the primary guideline), 81 cases sentenced under § 2B1.3 (in 77 of those it was the primary guideline), 75 cases sentenced under § 2B6.1 (in 70 of those it was the primary guideline), and seven cases sentenced under § 2H3.3 (in all of those it was the primary guideline).

Proposed Amendment: Section 2B1.1 is amended in the title by inserting at the end "; Property Damage or Destruction; Obstructing Correspondence".

Section § 2B1.1(b)(3) is amended by redesignating "(B)" as "(C)";

By deleting "or" immediately after "was taken" and inserting in lieu thereof "destroyed, or obstructed, (B)";

And by deleting "of such item" and inserting in lieu thereof ",destruction, or obstruction of undelivered United States mail".

Section 2B1.1(b)(5) is amended by inserting "or to receive stolen vehicles or vehicle parts," immediately following "vehicle parts,".

Section 2B1.1(c) is amended by deleting "Reference" and inserting in lieu thereof "References"; and by inserting the following new subdivision at the end:

"(2) If the offense involved arson, or property destruction by use of explosives, apply § 2K1.4 (Arson; Property Destruction by Use of Explosives) if the resulting offense level is greater than that determined above.".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "511," immediately following "225,"; by inserting "(2)," immediately following "553(a)(1),"; by inserting "1361," immediately following "664,"; by inserting "1703," immediately following "1702,"; and by inserting ",2321" immediately following "2317".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"15. In some cases, the monetary value of the property damaged or destroyed may not adequately reflect the extent of the harm caused. For example, the destruction of a $500 telephone line may cause an interruption in service to thousands of people for several hours. In such instances, an upward departure may be warranted.

16. More than minimal planning shall be deemed present in any offense involving altering or removing an automobile (or automobile part) identification number or trafficking in an automobile (or automobile part) with an altered or obliterated identification number.".

The Commentary to § 2B1.1 captioned "Background" is amended by inserting the following as a new first paragraph:

"This guideline covers offenses involving theft, stolen property, and property damage or destruction. It also covers offenses involving altering or removing motor vehicle identification numbers, trafficking in automobiles or automobile parts with altered or obliterated identification numbers, and obstructing correspondence.";

In the third paragraph by deleting "Consistent with statutory distinctions, an" and inserting in lieu thereof "An"; by inserting in the first sentence of the third paragraph ", destruction, or obstruction" immediately following "theft"; and by deleting in the third paragraph ". Theft of undelivered mail interferes with a governmental function, and the scope of the theft may be difficult to ascertain" immediately following "undelivered mail", and inserting in lieu thereof "because theft, destruction, or obstruction of undelivered mail inherently interferes with a governmental function"; in the fourth paragraph by inserting "or to receive stolen vehicles or vehicle parts" immediately following "vehicle parts";

Section 2B1.3 is deleted in its entirety.

Section 2B6.1 is deleted in its entirety.

Section 2H3.3 is deleted in its entirety.

Section 2K1.4(a)(4) is amended by deleting "§ 2B1.3 (Property Damage or Destruction)" and inserting in lieu thereof "§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property; Property Damage or Destruction; Obstructing Correspondence)".

(D) *Consolidation of §§ 2C1.2 and 2C1.6.*

Synopsis of Proposed Amendment: This amendment consolidates §§ 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) and 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper). Both guidelines cover offenses involving gratuities and have identical base offense levels. There are, however, several inconsistencies between §§ 2C1.2 and 2C1.6. Section 2C1.2 (like § 2C1.1) contains enhancements for multiple instances and involvement of high-level officials, but § 2C1.6 does not contain these enhancements. Section 2C1.2 has a special instruction pertaining to fines for organizations; § 2C1.6 does not contain this instruction. This amendment removes these inconsistencies. In addition, this amendment adds an application note to clarify that the unlawful payment involved need not be a monetary payment.

The 1993 Annual Report (FY 93) shows 15 cases sentenced under § 2C1.2 (in 13 of those it was the primary guideline) and one case sentenced under § 2C1.6 (in that case it was also the primary guideline).

The 1994 Annual Report (FY 94) shows 39 cases sentenced under § 2C1.2 (in 37 of those it was the primary guideline) and no cases sentenced under § 2C1.6.

The 1995 Annual Report (FY 95) shows 37 cases sentenced under § 2C1.1 (in 35 of those it was the primary guideline) and no cases sentenced under § 2C1.6.

Proposed Amendment: Section § 2C1.2(b)(2)(A) is amended by deleting "gratuity" and inserting in lieu thereof "unlawful payment".

Section § 2C1.2(b)(2)(B) is amended by deleting "gratuity" and inserting in lieu thereof "unlawful payment".

The Commentary to § 2C1.2 captioned "Statutory Provisions" is amended by inserting "§ " immediately following "§ "; and by inserting ", 212, 214, 217, 666" immediately following "(c)(1)".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by inserting the following additional note:

"5. An unlawful payment may be anything of value; it need not be a monetary payment.".

The Commentary to § 2C1.2 captioned "Background" is amended by deleting the second, third, and fourth sentences and inserting the following in lieu thereof:

"It also applies to the offer to, or acceptance by, a bank examiner of any unlawful payment; the offer or receipt of anything of value for procuring a loan or discount of commercial paper from a Federal Reserve Bank; and the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.".

(E) *Consolidation of §§ 2C1.3, 2C1.4, and 2C1.5.*

Synopsis of Proposed Amendment: This amendment consolidates §§ 2C1.3 (Conflict of Interest), 2C1.4 (Payment or Receipt of Unauthorized Compensation), and § 2C1.5 (Payments to Obtain Public Office) .

Although the elements of the offenses of conflict of interest (currently covered by § 2C1.3) and unauthorized compensation (currently covered by § 2C1.4) payment differ in some ways, the gravamen of the offenses is similar—unauthorized receipt of a payment in respect to an official act. The base offense levels for both guidelines are identical. The few cases in which these guidelines were applied usually involved a conflict of interest offense that was associated with a bribe or gratuity; i.e., the conflict of interest statute was used as a plea bargaining statute.

Note that there may be a change in offense levels for some cases if the cross reference to the guidelines for offenses involving a bribe or gratuity is provided. If the bracketed language (subsection (c)) is included, a cross reference to § 2C1.1 or § 2C1.2 will apply on the basis of the underlying conduct; i.e., as a sentencing factor rather than a charge of conviction factor.

Offenses involving payment to obtain public office (currently covered by § 2C1.5) generally, but not always, involve the promised use of influence to obtain public appointive office. Also, such offenses need not involve a public official (see, for example, the second paragraph of 18 U.S.C. § 211). The current offense level for all such offenses is level 8. The two statutes to which § 2C1.5 applies (18 U.S.C. §§ 210

and 211) are both Class A misdemeanors.

Under the proposed consolidation, the base offense level would be level 6, but the higher base offense level of § 2C1.5 would be taken into account by a 2-level enhancement in subsection (b)(2) covering conduct under 18 U.S.C. § 210 and the first paragraph of 18 U.S.C. § 211. There is one circumstance in which a lower offense level may result and one circumstance in which a higher offense level may result. The offense level for conduct under the second paragraph of 18 U.S.C. § 211 (the prong of § 211 that does not pertain to the promise or use of influence) is reduced to level 6. On the other hand, conduct that involves a bribe of a government official will result in an increased offense level (level 10 or greater) under the proposed cross reference.

The 1993 Annual Report (FY 93) shows four cases sentenced under § 2C1.3 (in all of those it was the primary guideline), seven cases sentenced under § 2C1.4 (in all of those it was the primary guideline), and no cases sentenced under § 2C1.5.

The 1994 Annual Report (FY 94) shows 16 cases sentenced under § 2C1.3 (in 13 of those it was the primary guideline), 16 cases sentenced under § 2C1.4 (in 15 of those it was the primary guideline), and one case sentenced under § 2C1.5 (in that case it was also the primary guideline).

The 1995 Annual Report (FY 95) shows 10 cases sentenced under § 2C1.3 (in all of those it was the primary guideline), six cases sentenced under § 2C1.4 (in all of those it was the primary guideline), and no cases sentenced under § 2C1.5.

Proposed Amendment: Section 2C1.3 is amended in the title by inserting at the end "; Payment or Receipt of Unauthorized Compensation; Payments to Obtain Public Office".

Section 2C1.3(b) is amended by inserting the following additional subsection:

(2) If the offense involved (A) the payment, offer, or promise of any money or thing of value in consideration of the use of, or promise to use, any influence to procure an appointive federal position for any person; or (B) the solicitation or receipt of any money or thing or value in consideration of the promise of support, or use of influence, in obtaining an appointive federal position for any person, increase by 2 levels.

Section 2C1.3 is amended by inserting at the end the following:

[(c) Cross Reference.

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than determined above.]

The Commentary to § 2C1.3 captioned "Statutory Provisions" is amended by inserting ", 209, 210, 211, 1909" immediately following "208".

The Commentary to § 2C1.3 captioned "Application Notes" is amended by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 2C1.3 captioned "Background" is deleted in its entirety.

Section 2C1.4 is deleted in its entirety.

Section 2C1.5 is deleted in its entirety.

(F) *Consolidation of §§ 2D1.9 and 2D1.10.*

Synopsis of Proposed Amendment: Section 2D1.10 is consolidated with § 2D1.9. The offenses covered by both guidelines essentially involve endangering human life while manufacturing a controlled substance. The treatment under the current guidelines, however, is very different. Under § 2D1.9 (effective 11/1/87), the offense level is 23, with no additional characteristics. Under § 2D1.10 (effective 11/1/89), the offense level is the greater of 20 or 3 plus the offense level from the underlying drug offense. In the consolidated guideline, the structure from § 2D1.10 (the more recently adopted guideline) is used. Two bracketed options (level 20 or level 23) are provided for the alternative base offense level in subsection (a)(2). If level 20 is provided as the alternative base offense level under subsection (a)(2), a change in offense levels for some cases under § 2D1.9 may result. The base offense level currently is 23 for offenses under § 2D1.9. The base offense level applicable for such offenses under the consolidation with § 2D1.10 would be either 3 plus the offense level from the Drug Quantity Table in § 2D1.1; or 20.

The 1993 Annual Report (FY 93) shows no cases sentenced under § 2D1.9 or § 2D1.10.

The 1994 Annual report (FY 94) shows no cases sentenced under § 2D1.9 and four cases sentenced under § 2D1.10 (in all of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows no cases sentenced under § 2D1.9 and four cases sentenced under § 2D1.10 (in all of those it was the primary guideline).

Proposed Amendment: Section 2D1.10 is amended in the title by inserting at the end "; Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy".

Section 2D1.10(a)(2) is amended by deleting "20" and inserting in lieu thereof "[20][23]".

The Commentary to § 2D1.10 is amended by deleting "Provision" and inserting in lieu thereof "Provisions" and by inserting "§ 841 (e)," immediately following "§".

Section 2D1.9 is deleted in its entirety.

Section 2D1.10 is redesignated as § 2D1.9.

(G) *Consolidation of §§ 2D2.1 and 2D2.2.*

Synopsis of Proposed Amendment: Sections 2D2.2 (Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy) and 2D2.1 (Unlawful Possession; Attempt or Conspiracy) are consolidated. The only substantive change is that any adjustment for acquiring a controlled substance by forgery, fraud, deception, or subterfuge will be determined as a sentencing factor rather than on the basis of the offense of conviction.

The 1993 Annual Report shows 961 cases sentenced under § 2D2.1 (in 904 of those it was the primary guideline) and 38 cases sentenced under § 2D2.2 (in 34 of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 845 cases sentenced under § 2D2.1 (in 809 of those it was the primary guideline) and 46 cases sentenced under § 2D2.2 (in 41 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 630 cases sentenced under § 2D2.1 (in 587 of those it was the primary guideline), 24 cases sentenced under § 2D2.2 (in 17 of those it was the primary guideline).

Proposed Amendment: Section 2D2.1 is amended in the title by inserting "of a Controlled Substance; Acquiring a Controlled Substance by Misrepresentation, Forgery, Fraud, Deception or Subterfuge" immediately following "Possession".

Section 2D2.1(b) is redesignated as "(c)".

Section 2D2.1(c)(2) (formerly (b)(2)) is amended by inserting "if the resulting offense level is greater than that determined above" immediately before ".".

Section 2D2.1 is amended by adding the following new subsection after subsection (a):

"(b) Specific Offense Characteristic

(1) If the offense involved acquiring a controlled substance from a legally

authorized source by misrepresentation, forgery, fraud, deception, or subterfuge, increase by 2 levels. If the resulting offense level is less than level 8, increase to level 8.".

The Commentary to § 2D2.1 is amended by deleting "Provision" and inserting in lieu thereof "Provisions" and by inserting "§ 843(a)(3)," immediately after "§ ".

The Commentary to § 2D2.1 is amended by inserting the following:

"Application Note:

1. Subsection (b)(1) would apply, for example, where the defendant obtained a controlled substance from a pharmacist by using a forged prescription or a prescription obtained from a physician by fraud or deception.".

The Commentary to § 2D2.1 captioned "Background" is amended in the second paragraph by deleting "2D2.1(b)" and inserting in lieu thereof "2D2.1(c)".

Section 2D2.2 is deleted in its entirety.

(H) *Consolidation of §§ 2D3.1 and 2D3.2.*

Synopsis of Proposed Amendment: Sections 2D3.1 (Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances; Attempt or Conspiracy) and 2D3.2 (Regulatory Offenses Involving Controlled Substances; Attempt or Conspiracy) are consolidated. Section 2D3.1 currently has a base offense level of 6; § 2D3.2 has a base offense level of 4. The consolidated guideline would have a base offense level of 6, the base offense level most typical for regulatory offenses.

The 1993 Annual Report shows seven cases sentenced under § 2D3.1 (in all of those it was the primary guideline) and three cases sentenced under § 2D3.2 (then §§ 2D3.2–2D3.5; in all of those they were the primary guidelines).

The 1994 Annual Report (FY 94) shows nine cases sentenced under § 2D3.1 (in eight of those it was the primary guideline) and two cases sentenced under §§ 2D3.2–2D3.5 (in both of those they were the primary guidelines).

The 1995 Annual Report (FY 95) shows two cases sentenced under § 2D3.1 (in both of those it was the primary guideline) and four cases sentenced under §§ 2D3.2–2D3.5 (in three of those they were the primary guidelines).

Proposed Amendment: Section 2D3.1 is amended in the title by deleting "Registration Numbers" and inserting in lieu thereof "Controlled Substances or Listed Chemicals".

The commentary to § 2D3.1 captioned "Statutory Provisions" is amended by deleting "842(a)(1), 843(a)(1), (2)" and inserting in lieu thereof "842(a)(1), (2), (9), (10), (b), 843(a)(1), (2), 954, 961".

Section 2D3.2 is deleted in its entirety.

(I) *Consolidation of §§ 2E2.1 and 2B3.2.*

Synopsis of Proposed Amendment: Sections 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) and 2E2.1 (Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means) are consolidated. These guidelines use the same basic structure and cover conduct that is in many respects similar. The current guidelines have four differences. First, the base offense level of § 2B3.2 is 18 with a 2-level adjustment for an express or implied threat of death, bodily injury, or kidnapping. The base offense level of § 2E2.1 is 20. Second, the offense levels for weapon use (originally identical) are now different. (In 1991, the Commission increased the adjustments for firearms possession or use in §§ 2B3.1 and 2B3.2 but not § 2E2.1).

Third, § 2B3.2 provides an enhancement for the amount demanded or loss to the victim. Section 2E2.1 does not contain this enhancement (because there would be substantial difficulty in separating the unlawfully demanded interest from the principal and legitimate interest that could have been charged). Fourth, § 2B3.2 contains a cross reference to the attempted murder guideline; § 2E2.1 does not.

The consolidated guideline uses the base offense level and adjustments from § 2B3.2. A specific offense characteristic is added to include a 2-level adjustment for extortionate extension of credit and collecting an extension of credit by extortionate means (resulting in the same offense level as the current guideline for such conduct). In addition, Application Note 1 is amended to provide (as in current § 2E2.1) that, in cases involving extortionate extension of credit or collecting an extension of credit by extortionate means, subsection (b)(2) does not apply to the demand for repayment of principal or interest in the case of a loan.

Under the consolidation, offenses under § 2E2.1 will be subject to a weapon enhancement that may be two levels greater, in some cases, than is currently provided by the weapon enhancement in § 2E2.1. In addition, under the consolidated guideline, the attempted murder cross reference in § 2B3.2 and the enhancement in § 2B3.2(b)(3)(B) (providing a three-level increase if the offense involved preparation or other demonstrated ability to carry out a threat of specified unlawful behavior), would now apply to offenses under § 2E2.1.

The 1993 Annual Report (FY 93) shows 52 cases sentenced under § 2B3.2 (in 36 of those it was the primary guideline) and 48 cases sentenced under § 2E2.1 (in 31 of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 129 cases sentenced under § 2B3.2 (in 74 of those it was the primary guideline), and 48 cases sentenced under § 2E2.1 (in 29 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 93 cases sentenced under § 2B3.2 (in 52 of those it was the primary guideline), and 62 cases sentenced under § 2E2.1 (in 39 of those it was the primary guideline).

Proposed Amendment: Section 2B3.2 is amended in the title by inserting at the end "; Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means".

Section 2B3.2(b)(2) is amended by inserting at the end the following: "Do not apply this subsection in the case of extortionate extension of credit or collecting an extension of credit by extortionate means.".

Section 2B3.2(b) is amended by inserting the following additional subdivision at the end:

"(6) If the offense involved extortionate extension of credit or collecting an extension of credit by extortionate means, increase by 2 levels.".

Section 2B3.2(c) is amended by inserting the following additional subdivision:

"(3) If the offense did not involve a threat, express or implied, that reasonably could be interpreted as one to injure a person or physically damage property, or any comparably serious threat, apply § 2B3.3 (Blackmail and Similar Forms of Extortion).".

The Commentary to § 2B3.2 captioned "Statutory Provisions" is amended by inserting "892–894" following "877,".

The Commentary to § 2B3.2 captioned "Statutory Provisions" is amended by inserting "892–894," immediately following "877".

The Commentary to 2B3.2 captioned "Application Notes" is amended in Note 1 by inserting at the beginning "For purposes of this guideline-";

By deleting "are defined in the commentary to § 1B1.1 (Application Instructions)" and inserting in lieu thereof "have the meaning given such terms in [the commentary to] § 1B1.1";

And by inserting the following additional paragraph at the end:

"'Loss to the victim,' as used in subsection (b)(2), means any demand

paid plus any additional consequential loss from the offense (e.g., the cost of defensive measures taken in direct response to the offense). Subsection (b)(2) does not apply in the case of extortionate extension of credit or collecting an extension of credit by extortionate means. However, in such a case, if the loss to the victim involved consequential loss from the offense, such as damage to an automobile, an upward departure may be warranted.".

The Commentary to § 2B3.2 captioned "Application Notes" is amended in Note 3 by deleting the last sentence.

The Commentary to § 2B3.2 captioned "Application Notes" is amended by deleting Note 5 in its entirety and renumbering the remaining notes accordingly.

The Commentary to § 2B3.2 captioned "Background" is deleted in its entirety.

Section 2E2.1 is deleted in its entirety.

(J) *Consolidation of §§ 2E5.3 and 2F1.1*

Synopsis of Proposed Amendment: Section 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act) and 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) are consolidated. Section 2E5.3 is an infrequently used guideline for what is essentially a false statement offense or a failure to maintain records offense that in some cases may be used to conceal another offense, generally embezzlement or bribery. Consolidation with § 2F1.1 retains the same base offense level, and will produce the same final offense level in cases of embezzlement.

Currently, Application Note 13 of § 2F1.1 describes situations in which application of offense guidelines other than § 2F1.1 may be more apt. This amendment adds a cross reference to § 2F1.1 to apply another offense guideline if the offense conduct is addressed more specifically by that guideline and modifies Application Note 13 accordingly. Application Note 13 is also modified to address the small number of cases in which this offense may be committed to conceal a bribery offense.

The 1993 Annual Report (FY 93) shows two cases sentenced under § 2E5.3 (in both of those it was the primary guideline) and 5,963 cases sentenced under § 2F1.1 (in 5,696 of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 10 cases sentenced under § 2E5.3 (in seven of those it was the primary guideline), and 6,235 cases sentenced under § 2F1.1 (in 5,952 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 90 cases sentenced under § 2E5.3 (in eight of those it was the primary guideline) and 6,339 cases sentenced under § 2F1.1 (in 6,019 of those it was the primary guideline).

Proposed Amendment: Section 2E5.3 is deleted in its entirety.

Section 2F1.1 is amended by inserting the following new subsection:

"(c) Cross Reference.

(1) If the offense conduct is addressed more specifically by another offense guideline, apply that offense guideline.".

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by deleting ", 1026, 1028," and inserting "-"; and by inserting "; 29 U.S.C. §§ 439, 461, 1131" immediately after "2315".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 13 by deleting "Sometimes," and inserting in lieu thereof "Subsection (c)(1) provides a cross reference to another offense guideline if that guideline more specifically addresses the offense conduct than this section does. For example, sometimes"; by inserting "false statements to secure immigration documents, for which § 2L2.1 or § 2L2.2 would be more apt," immediately before "and false statements"; by inserting "§ 2S1.3 or" immediately before "§ 2T3.1"; and by deleting "Where the indictment or information setting forth the count of conviction (or a stipulation as described in § 1B1.2(a)) establishes an offense more aptly covered by another guideline, apply that guideline rather than § 2F1.1. Otherwise, in such cases, § 2F1.1 is to be applied, but a departure from the guidelines may be considered." and inserting in lieu thereof: "In certain other cases, an offense involving fraudulent statements or documents, or failure to maintain required records, may be committed in furtherance of the commission or concealment of another offense, such as embezzlement or bribery. In such cases, § 2B1.1 or § 2E5.1 would be more apt.".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting the following new paragraph after the first paragraph:

"This guideline also covers the falsification of documents or records relating to a benefit plan covered by the Employment Retirement Income Security Act and failure to maintain or falsification of documents required by the Labor Management Reporting and Disclosure Act.".

(K) Consolidation of §§ 2E1.2 and 2E1.3.

Synopsis of Proposed Amendment: Sections 2E1.2 (Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise) and 2E1.3 (Violent Crimes in Aid of Racketeering Activity) are consolidated. Both have the base offense level for the underlying offense as the primary base offense level. Section 2E1.2 has an alternative base offense level of 6 and § 2E1.3 has an alternative base offense level of 12. Elimination of these alternative base offense levels will considerably simplify the operation of these guidelines, removing the need in each case for the comparison set forth in Application Note 1. In FY 95, 5 of the 24 cases sentenced under § 2E1.2 (or 20.8%) had a base offense level of 6, and one of the 19 cases sentenced under § 2E1.3 (or 5.3%) had a base offense level of 12.

The 1993 Annual Report (FY 93) shows 90 cases sentenced under § 2E1.2 (in 72 of those it was the primary guideline) and 55 cases sentenced under § 2E1.3 (in 26 of those it was the primary guideline).

The 1994 Annual Report (FY94) shows 97 cases sentenced under § 2E1.2 (in 77 of those it was the primary guideline), and 48 cases sentenced under § 2E1.3 (in 17 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 33 cases sentenced under § 2E1.2 (in 24 of those it was the primary guideline), and six cases sentenced under § 2E1.3 (in three of those it was the primary guideline).

Proposed Amendment: Section § 2E1.2 is amended in the title by inserting at the end "; Violent Crimes in Aid of Racketeering Activity".

Section § 2E1.2(a) is amended by deleting "(Apply the greater):"; by deleting subsection (1) in its entirety; by deleting "(2)"; by deleting "the" and inserting in its place "The"; and by deleting "crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken" and inserting in lieu thereof "offense (crime of violence or racketeering activity)".

The Commentary to § 2E1.2 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions"; by inserting an additional "§ " immediately following the "§ "; and by inserting at the end "; 1959 (formerly 18 U.S.C. 1952B)".

The Commentary to § 2E1.2 captioned "Application Notes" is amended in Note 1 by deleting "for the purposes of

subsection (a)(2)" and by deleting the second and third sentences.

The Commentary to § 2E1.2 captioned "Application Notes" is amended by deleting Note 3 in its entirety.

Section 2E1.3 is deleted in its entirety.

(L) *Consolidation of §§ 2J1.2 and 2J1.3.*

Synopsis of Proposed Amendment: Sections 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) and 2J1.2 (Obstruction of Justice) are consolidated. No substantive change in offense levels results from this consolidation. The only difference between the current guidelines is that § 2J1.3 contains a special instruction pertaining to the grouping of certain separate instances of perjury. This special instruction would continue to apply only to cases currently covered. This amendment also clarifies the interaction of §§ 2J1.2(c)(1) and 2J1.3(c)(1) with § 2X3.1 and adds an Application Note to § 2J1.2 to clarify that the criminal offense the investigation or prosecution of which was obstructed need not have been specifically charged or resulted in a conviction in order for the cross reference to § 2X3.1 to apply.

In addition, this amendment adds an application note to reemphasize that the defendant's conduct need not constitute the offense of accessory after the fact in order for the cross reference to § 2X3.1 to apply. Even though the background and commentary to § 2J1.2 was amended in 1991 to clarify that the cross reference to § 2X3.1 could apply even if the defendant was a principal to the underlying offense, hotline calls indicate there is still some confusion in respect to this issue for both §§ 2J1.2 and 2J1.3 cases.

The 1993 Annual Report (FY 93) shows 111 cases sentenced under § 2J1.2 (in 89 of those it was the primary guideline) and 125 cases sentenced under § 2J1.3 (in 109 of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 137 cases sentenced under § 2J1.2 (in 99 of those it was the primary guideline) and 119 cases sentenced under § 2J1.3 (in 96 of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 104 cases sentenced under § 2J1.2 (in 82 of those it was the primary guideline) and 78 cases sentenced under § 2J1.3 (in 63 of those it was the primary guideline).

Proposed Amendment: Section 2J1.2 is amended in the title by inserting "Perjury or Subornation of Perjury; Witness Bribery;" immediately before "Obstruction".

Section 2J1.2(b)(1) is amended by inserting "suborn perjury or otherwise" immediately before "obstruct".

Section 2J1.2 is amended by adding the following new subsection:

"(d) Special Instruction.

(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, do not group the counts together under § 3D1.2 (Groups of Closely Related Counts).".

The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting "201(b) (3), (4)," immediately before "1503,"; and by inserting ", 1621–1623" immediately following "1516".

The Commentary to § 2J1.2 captioned "Application Notes is amended in Note 2 by deleting "or" immediately after "investigation" and inserting a comma in lieu thereof; by deleting "of the" immediately after "trial" and inserting in lieu thereof ", or sentencing of the perjury, subornation of perjury, witness bribery, or"; in Note 5 by inserting "suborn perjury or" immediately following "(e.g., to"; and by inserting the following additional notes:

"6. For purposes of subsection (c)(1), the criminal offense the investigation or prosecution of which was obstructed need not have been charged or resulted in a conviction.

Application of subsection (c)(1) does not require that the defendant's conduct constitute the offense of accessory after the fact. Rather, it provides for the use, in the circumstances specified, of the guideline that applies to accessory after the fact offenses. Thus, the fact that a defendant cannot be an accessory after the fact, under federal law, to an offense in which the defendant is a principal does not bar application of this cross reference.

7. 'Separate proceedings,' as used in subsection (d)(1), includes different proceedings in the same case or matter (e.g., a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases or matters (e.g., separate trials of codefendants), but does not include multiple grand jury proceedings in the same case.".

The Commentary to § 2J1.2 captioned "Background" is amended in the first sentence by deleting "the" immediately following "involving" and inserting in lieu thereof "perjury, subornation of perjury, witness bribery, and".

Section 2J1.3 is deleted in its entirety.

Issue for Comment: The special instruction currently contained in § 2J1.3(d)(1) applies to perjury or subornation of perjury and not to obstruction, separate instances of which are more difficult to determine. This special instruction was not included in the original guideline but was later added to cover the very infrequent perjury case to which it applied (approximately six in 40,000 cases). The Commission requests comment on whether this historical policy judgment, which was limited to perjuries, should be expanded to cover obstructions.

(M) *Consolidation of §§ 2K1.1 and 2K1.6.*

Synopsis of Proposed Amendment: Sections 2K1.1 and 2K1.6 are consolidated. These are regulatory and recordkeeping offenses having the same base offense level. The only substantive change resulting from the consolidation is that the cross reference in § 2K1.6, which directs to apply § 2K1.3 if the offense reflected an effort to conceal a substantive offense, would also apply to offenses under § 2K1.1. This could result in a change in offense levels for cases under § 2K1.1 (offenses under which currently have a statutory maximum of one year.) There seems no reason that the cross reference in § 2K1.6 (covering conduct reflecting an effort to conceal a substantive offense) should not also cover conduct under § 2K1.1.

The 1993 Annual Report (FY 93) shows no cases sentenced under § 2K1.1 or § 2K1.6.

The 1994 Annual Report (FY 94) shows nine cases sentenced under § 2K1.1 (in all of those it was the primary guideline) and no cases sentenced under § 2K1.6.

The 1995 Annual Report (FY 95) shows 11 cases sentenced under § 2K1.1 (in all those it was the primary guideline) and no cases sentenced under § 2K1.6.

Proposed Amendment: Section 2K1.1 is amended in the title by inserting at the end "; Licensee Recordkeeping Violations".

Section 2K1.1 is amended by adding the following new subsection after subsection (a):

"(b) Cross Reference:

(1) If the offense involved an effort to conceal a substantive explosive materials offense, apply § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosives Materials; Prohibited Transactions Involving Explosive Materials).".

The Commentary to § 2K1.1 captioned "Statutory Provisions" is amended by inserting "(f), (g)," immediately following "§ 842".

The Commentary to § 2K1.1 captioned "Background" is deleted in its entirety.

Section 2K1.6 is deleted in its entirety.

(N) *Consolidation of §§ 2L2.2 and 2L2.5.*

Synopsis of Proposed Amendment: Sections 2L2.2 and 2L2.5 are consolidated. No change in offense level

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will result. Section 2L2.5 covers a rarely prosecuted statute that has the same base offense level as § 2L2.2. Section 2L2.2 contains additional adjustments, but they do not apply to conduct covered by § 2L2.5.

The 1993 Annual Report (FY 93) shows 186 cases sentenced under § 2L2.2 (in 156 of those it was the primary guideline) and no cases sentenced under § 2L2.5.

The 1994 Annual Report (FY 94) shows 266 cases sentenced under § 2L2.2 (in 242 of those it was the primary guideline) and no cases sentenced under § 2L2.5.

The 1995 Annual Report (FY 95) shows 402 cases sentenced under § 2L2.2 (in 354 of those it was the primary guideline) and no cases sentenced under § 2L2.5.

Proposed Amendment: Section 2L2.2 is amended in the title by inserting at the end "; Failure to Surrender Canceled Naturalization Certificate".

The Commentary to § 2L2.2 captioned "Statutory Provisions" is amended by deleting "1426" and inserting in lieu thereof "1427".

Section 2L2.5 is deleted in its entirety.

(O) *Consolidation of §§ 2M2.1 and 2M2.3.*

Synopsis of Proposed Amendment: This amendment consolidates §§ 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities) and 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities). [Note: The Commission decided in October that it did not wish to propose deletion of these two guidelines and their incorporation into § 2B1.1 (Theft, Embezzlement, Receipt of Stolen Property, and Property Destruction), but the Commission indicated a willingness to consider merging the two guidelines into one.] Consolidation is appropriate for two reasons. First, prosecutions under these statutes are infrequent. In FY 1990 through 1995, there were no cases sentenced under these guidelines. Second, although the statutes referenced to §§ 2M2.1 and 2M2.3 cover an extremely wide range of conduct (e.g., from major sabotage designed to injure the United States on one hand to minor property damage by a disgruntled serviceman or a war protest group on the other), the offenses covered by these two guidelines essentially are property damage offenses. An option for addressing the issue of the appropriate offense level is to add an application note explaining the circumstances under which a departure may be warranted.

Proposed Amendment: Section 2M2.1 is amended by deleting subsection (a) in its entirety and inserting the following in lieu thereof:

(a) Base Offense Level (Apply the greater):

(1) 32, if the defendant is convicted (A) under 18 U.S.C. § 2153 or § 2154; or (B) under 42 U.S.C. § 2284 of acting with intent to injure the United States or aid a foreign nation; or

(2) 26, otherwise.

The Commentary to § 2M2.1 captioned "Statutory Provisions" is amended by inserting an additional "§ " immediately following the "§ "; and by deleting "2154" and inserting in lieu thereof "–2156".

The Commentary to § 2M1.1 captioned "Application Note" is amended by deleting Note 1 in its entirety and inserting the following in lieu thereof:

[1. Because this section covers a particularly wide range of conduct, it is not possible to include all of the potentially relevant circumstances in the offense level. Therefore, depending on the circumstances of the case, an upward or a downward departure may be warranted. For example, if the defendant was convicted under 18 U.S.C. § 2155 of throwing paint on defense equipment or supplies as an act of protest during peacetime, the offense level in subsection (a)(2) may overrepresent the seriousness of the offense. In that case, a downward departure may be warranted. However, if the defendant was convicted under 18 U.S.C. § 2153 of major sabotage of arms and munitions while the United States was at war, the offense level in subsection (a)(1) may underrepresent the seriousness of the offense. In that case, an upward departure may be warranted. Factors to be considered in determining the extent of the departure include whether the offense was committed while the United States was at war, whether the purpose of the offense was to injure the United States or aid a foreign nation or power, whether a substantial risk of death or physical injury was created, and the extent to which national security was threatened. See Chapter Five, Part K (Departures).]

Section 2M2.3 is deleted in its entirety.

(P) *Deletion of § 2M3.4.*

Synopsis of Proposed Amendment: This amendment deletes § 2M3.4 (Losing National Defense Information) as unnecessary and potentially counterproductive. This guideline covers an extremely rarely prosecuted offense. There have been no sentences recorded under this section since the guidelines took effect. Given that this offense could occur in a variety of circumstances (as well as could be used as a plea bargain offense for a more serious offense), it seems questionable whether the current § 2M3.4 is adequate to provide an appropriate result. Given the rarity of this offense, deletion of this offense guideline is recommended. Any offenses currently handled under this section will be addressed by § 2X5.1 (Other Offenses).

The 1993 Annual Report (FY 93) shows no cases sentenced under § 2M3.4.

The 1994 Annual Report (FY 94) shows no cases sentenced under § 2M3.4.

The 1995 Annual Report (FY 95) shows no cases sentenced under § 2M3.4.

Proposed Amendment: Section 2M3.4 is deleted in its entirety.

(Q) *Consolidation of §§ 2M3.5 and 2M6.2.*

Synopsis of Proposed Amendment: Sections 2M3.5 (Tampering with Restricted Data Concerning Atomic Energy) and 2M6.2 (Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations) are rarely used guidelines that cover conduct relating to atomic energy. Currently, there seems to be some inconsistency in the offense levels between these guidelines. It is not clear why tampering with restricted data concerning atomic energy has an offense level of 24 (even if done with intent to injure the United States or aid a foreign nation) while violations of other federal atomic energy statutes, rules, or regulations have an offense level of 30 if committed with intent to injure the United States or aid a foreign nation. This amendment would remove this inconsistency by consolidating these guidelines. However, offenses that involve tampering with restricted data (which currently receive an offense level of 24) would receive an offense level of 30 if the offense were committed with intent to injure the United States or aid a foreign nation.

The 1993 Annual Report (FY 93) shows no cases sentenced under § 2M3.5, and five cases sentenced under § 2M6.2 (in four of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows no cases sentenced under § 2M3.5, and two sentences under § 2M6.2 (in one of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows no cases sentenced under § 2M3.5 and three cases sentenced under § 2M6.2 (in all of those it was the primary guideline).

Proposed Amendment: Section 2M6.2 is amended in the title by inserting "Tampering With Restricted Data Concerning Atomic Energy;" immediately before "Violation".

Section 2M6.2(a) is amended by deleting "Greater" and inserting in lieu thereof "Greatest"; by renumbering subdivision (2) as subdivision (3) and inserting the following as subdivision (2):

"(2) 24, if the offense involved tampering with restricted data concerning atomic energy; or".

The Commentary to § 2M6.2 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions"; by inserting "§ " immediately before "2273"; and by inserting ", 2276" immediately following "2273".

The Commentary to § 2M6.2 is amended by inserting the following immediately before "Background":

"Application Note:

1. For purposes of this guideline, 'tampering with restricted data concerning atomic energy" means conduct proscribed by 18 U.S.C. § 2276.".

Section 2M3.5 is deleted in its entirety.

(R) *Consolidation of §§ 2N3.1 and 2F1.1.*

Synopsis of Proposed Amendment: Section 2N3.1 (Odometer Laws and Regulations) is consolidated with § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other Than Counterfeit Bearer Obligations of the United States). Currently, § 2N3.1 has the same base offense level as § 2F1.1 and is cross-referenced to § 2F1.1 if more than one vehicle was involved (one vehicle cases are infrequent). Under this consolidation, fraud by odometer tampering involving one vehicle will be treated the same as other fraud (i.e., the specific offense characteristics for loss and more than minimal planning will apply, if warranted). There seems no reason to treat this type of fraud differently than other types of fraud.

The 1993 Annual Report (FY 93) shows 5,963 cases sentenced under § 2F1.1 (in 5,696 of those it was the primary guideline) and 17 cases sentenced under § 2N3.1 (in all of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 6,235 cases sentenced under § 2F1.1 (in 5,952 of those it was the primary guideline) and eight cases sentenced under § 2N3.1 (in seven of those it was the primary guideline).

The 1995 Annual Report (FY 95) shows 6,339 cases sentenced under § 2F1.1 (in 6,019 of those it was the primary guideline) and two cases sentenced under § 2N3.1 (in both of those it was the primary guideline).

Proposed Amendment: The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting ", 1983–1988, 1990c" immediately following "1644".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting as a new paragraph after the first paragraph:

"This guideline also covers offenses relating to odometer laws and regulations.".

Section 2N3.1 is deleted in its entirety.

(S) *Consolidation of §§ 2T1.1 and 2T1.6.*

Synopsis of Proposed Amendment: Sections 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents) and 2T1.6 (Failing to Collect or Truthfully Account for and Pay Over Tax) are consolidated. Section 2T1.6 is an infrequently prosecuted tax offense involving an employer failing to collect or truthfully account for any pay over tax.

Both guidelines have the same base offense level. In most cases, there will be no change in offense level, which is based on the tax loss, because sections 2T1.1(b) (1) and (2) will not apply to conduct under § 2T1.6. However, currently § 2T1.6 contains a cross reference to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) if the offense involved embezzlement by withholding tax from an employee's earnings and willfully failing to account to the employee for it. Application of that cross reference could result in offense levels one or two levels greater for offenses under § 2T1.6. That cross reference no longer exists under the consolidation, and the consolidation does not provide an enhancement for offenses involving embezzlement.

The 1993 Annual Report (FY 93) shows 302 cases sentenced under § 2T1.1 (in 225 of those it was the primary guideline) and five cases sentenced under § 2T1.6 (in all of those it was the primary guideline).

The 1994 Annual Report (FY 94) shows 528 cases sentenced under § 2T1.1 (in 413 of those it was the primary guideline) and no cases sentenced under § 2T1.6.

The 1995 Annual Report (FY 95) shows 517 cases sentenced under § 2T1.1 (in 405 of those it was the primary guideline) and five cases sentenced under § 2T1.6 (in all of those it was the primary guideline).

Proposed Amendment: Section 2T1.1 is amended in the title by inserting "; Failing to Collect or Truthfully Account for and Pay Over Tax" immediately following "Documents".

Section 2T1.1(c) is amended by renumbering subdivision (5) as subdivision (6) and by inserting the following as a new subdivision (5):

"(5) If the offense involved failing to collect or truthfully account for any pay over tax, the tax loss is the amount of tax not collected or accounted for and paid over.".

Section 2T1.6 is deleted in its entirety.

(T) *Consolidation of §§ 2E4.1, 2T2.1, and 2T2.2.*

Synopsis of Proposed Amendment: Sections 2E4.1 (Unlawful Conduct Relating to Contraband Cigarettes), 2T2.1 (Non-Payment of [Alcohol and Tobacco] Taxes), and 2T2.2 (Regulatory Offenses) and are consolidated. This amendment consolidates three infrequently applied guidelines.

Under this consolidation, the base offense level for § 2T2.2 is raised from four to six, which is the base offense most typical for regulatory offenses. Otherwise, there is no substantive change.

The 1993 Annual Report shows no cases sentenced under § 2E4.1, seven cases sentenced under § 2T2.1 (in five of those it was the primary guideline), and no cases sentenced under § 2T2.2.

The 1994 Annual Report (FY94) shows 10 cases sentenced under § 2E4.1 (in six of those it was the primary guideline), four cases sentenced under § 2T2.1 (in one of those it was the primary guideline), and no cases sentenced under § 2T2.2.

Proposed Amendment: Chapter Two, Part T, Subpart 2 captioned "Introductory Commentary" is deleted in its entirety.

Section 2T2.1 is amended by deleting it in its entirety and inserting in lieu thereof:

§ 2T2.1. Non-Payment of Taxes; Regulatory Offenses.

(a) Base Offense Level (Apply the Greatest):

(1) Level from § 2T4.1 (Tax Table) corresponding to the tax loss;

(2) 9, if the offense involved contraband cigarettes; or

(3) 6, if there is no tax loss.

(b) Special Instruction.

(1) For purposes of this guideline, the "tax loss" is the total amount of taxes on the alcohol or tobacco that the taxpayer failed to pay, evaded, or attempted to evade.

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Commentary

Statutory Provisions: 18 U.S.C. §§ 2342(a), 2344(a); 26 U.S.C. §§ 5601, 5603–5605, 5661, 5671, 5762. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. In the case of contraband cigarettes (as defined in 18 U.S.C. § 2341 (2)), the tax loss is the total amount of unpaid state excise taxes on the cigarettes.

2. Offense conduct directed at more than tax evasion (e.g., theft or fraud) may warrant an upward departure.

Background: This section covers a variety of offenses involving alcohol and tobacco, including evasion of alcohol and tobacco taxes, evasion of state excise taxes on cigarettes, operating an illegal still, and regulatory offenses."

Sections 2E4.1 and 2T2.2 are deleted in their entirety.

[FR Doc. 96–33157 Filed 12–31–96; 8:45 am]
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federal register

Thursday
January 2, 1997

Part III

Environmental Protection Agency

40 CFR Part 89

Control of Emissions of Air Pollution from Nonroad Diesel Engines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS-FRL-5670-3]

RIN 2060-AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

AGENCY: Environmental Protection Agency.

ACTION: Supplemental advance notice of proposed rulemaking.

SUMMARY: EPA, the California Air Resources Board, and members of the nonroad diesel engine industry recently signed a Statement of Principles ("Nonroad SOP") calling for significantly more stringent standards for emissions of oxides of nitrogen, hydrocarbons, and particulate matter from compression-ignition, or diesel, engines used in most land-based nonroad equipment and some marine applications. In addition, members of the nonroad equipment manufacturing industry that utilize these engines have also signed in support of the SOP. If these standards are implemented, the resulting emission reductions would translate into significant, long-term improvements in air quality in many areas of the U.S. For engines in this large category of pollution sources, NOx and PM emissions would be reduced by up to two-thirds from current standards. Overall, the proposed program would provide much-needed assistance to states and regions facing ozone and particulate air quality problems that are causing a range of adverse health effects for their citizens, especially in terms of respiratory impairment and related illnesses.

EPA is issuing this Supplemental Advance Notice of Proposed Rulemaking (Supplemental ANPRM) to make available the text of the Nonroad SOP and to invite comment from all interested parties on EPA's plans to propose new emission standards and other related provisions for these engines consistent with the Nonroad SOP. This action supplements an earlier Advance Notice published on August 31, 1995, which provides additional context for EPA's plans regarding nonroad engines.

DATES: EPA requests comment on this Supplemental ANPRM no later than February 3, 1997. Should a commenter miss the requested deadline, EPA will try to consider any comments that it receives prior to publication of the Notice of Proposed Rulemaking (NPRM) that the Agency expects to follow this Supplemental ANPRM. There will also be an opportunity for oral and written comment when EPA publishes the NPRM.

ADDRESSES: Materials relevant to this action are contained in Public Docket A-96-40, located at room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this notice should be sent to Public Docket A-96-40 at the above address. EPA requests that a copy of comments also be sent to Tad Wysor, U.S. EPA , 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668-4332.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose for This Supplemental Advance Notice

With this notice EPA announces the signing of a Statement of Principles (SOP) between EPA, the California Air Resources Board, and members of the nonroad diesel engine manufacturing industry. Members of the nonroad equipment manufacturing industry that utilize these engines also signed in support of the SOP. EPA announced its intent to pursue an SOP for nonroad engines in an Advance Notice of Proposed Rulemaking (ANPRM) on August 31, 1995 (60 FR 45580). This 1995 ANPRM discussed the need for further reductions of NO_X, PM, and HC from highway heavy-duty engines (HDEs) and nonroad engines and presented for public comment an SOP focusing on highway HDEs. Today's Supplemental Advance Notice includes the text of the Nonroad SOP as an appendix to this preamble.

It is the Agency's intent to issue a Notice of Proposed Rulemaking (NPRM) in the near future in accordance with the Nonroad SOP. Such a proposal will be subject to the full public process of any proposed rulemaking. By publishing the text of the SOP in advance of the NPRM, EPA hopes to receive early comments and suggestions which can inform the development of the proposal. In addition, in the August 1995 ANPRM EPA discussed a number of reasons why the Agency places a high priority on considering new emission standards for both highway heavy-duty engines and nonroad engines. EPA encourages comment on this rationale as it applies to nonroad engines and on all aspects of the Nonroad SOP published here.

As discussed in the August 31, 1995 ANPRM, EPA believes that the Nonroad SOP represents a constructive framework for stringent new standards for a class of engines which contribute heavily to the nation's air quality problems. Emissions of oxides of nitrogen (NO_X) are a major part of the ozone problem facing many areas (due to local emissions as well as the transport of ozone and its precursors from upwind areas); these emissions add to the NO_X-related problems of acid rain, eutrophication of estuaries, and the formation of secondary nitrate PM; and NO_X emissions are directly harmful to human health and the environment. NO_X emissions from compression-ignition (CI) nonroad engines (commonly called nonroad diesels) represent a large fraction of total nationwide NO_X emissions, about 10 percent, or about 20 percent of nationwide mobile-source NO_X emissions.[1] EPA expects that emission reductions from current standards will be largely offset in the future by growth in this sector. Figure 1 illustrates EPA's current projection of the emissions of NO_X from nonroad diesels covered by this Supplemental ANPRM as compared to total mobile source emissions.[2]

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[1] The discussion of the contribution of nonroad engines in the 1995 ANPRM was general and included some categories of nonroad engines not covered in the recent Nonroad SOP. Today's action is limited to the Nonroad SOP categories.

[2] The "Nonroad Diesel" emissions presented in Figure 1 are the sum of all diesel-powered source categories listed in the memo "Nonroad Diesel and Mobile Source NO_X Emission Projections" (found in Docket Number A-96-40) except highway vehicles, commercial marine vessels, and locomotives. The "All Mobile Sources" emissions in Figure 1 are the total of all source categories listed in the memo except stationary sources.

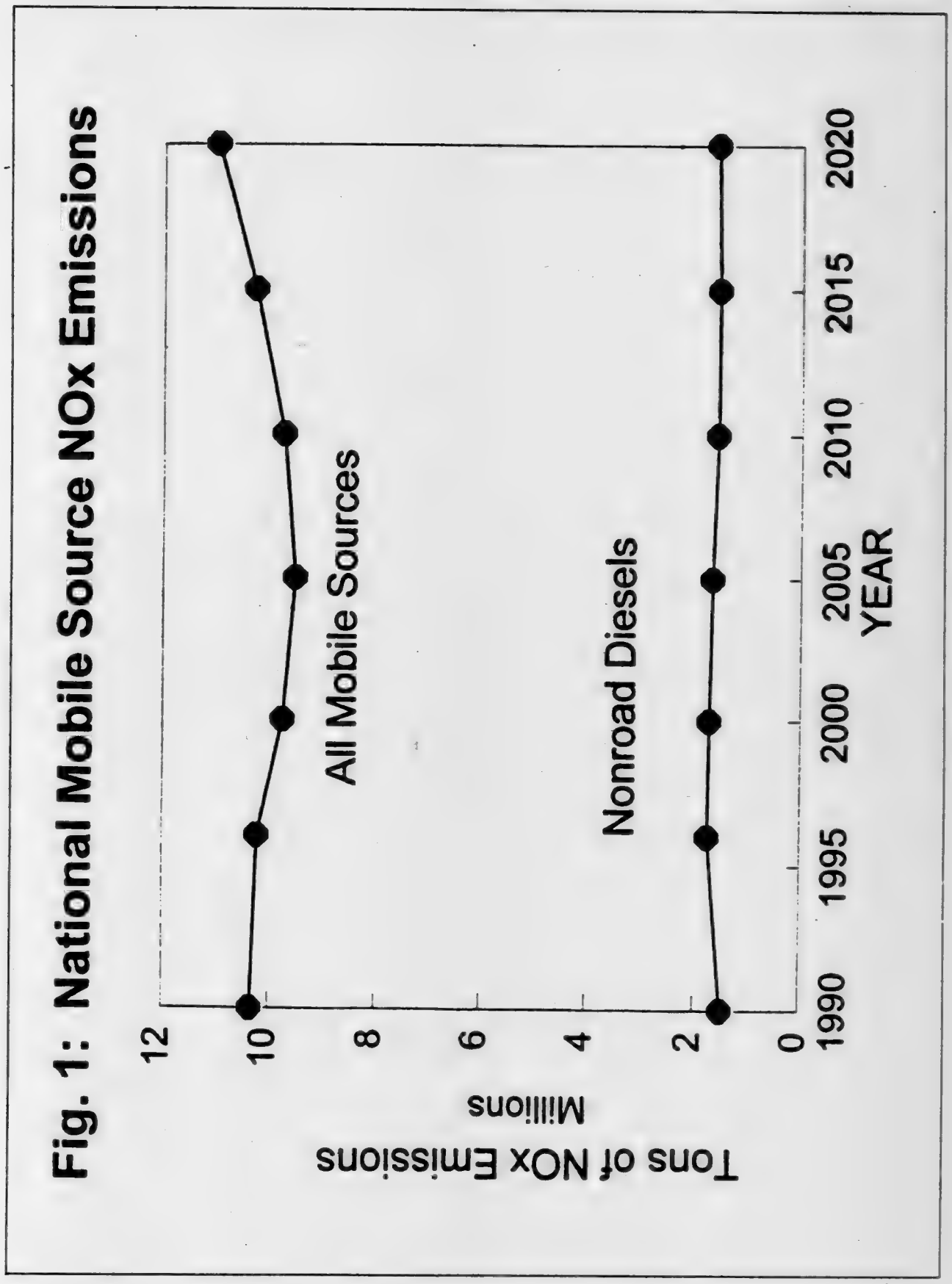

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Available evidence shows that PM caused by diesel engines contributes to a variety of respiratory problems and diseases. Nonroad diesels covered by the Nonroad SOP contribute a large fraction of the diesel PM emissions to which Americans are exposed—nearly half of the total PM from diesel engines. Finally, nonroad diesel engines are also significant contributors to hydrocarbon emissions, a key precursor to ozone formation.[3]

A first set of emission standards, called "Tier 1" standards, was previously issued for new land-based nonroad diesel engines rated at or above 37 kW (50 hp) (59 FR 31306, June 17, 1994). As a result, manufacturers of these engines are now beginning to address the emissions of their products. For nonroad diesel engines rated below 37 kW, no emission standards currently exist. All diesel nonroad engine and equipment manufacturers are at a much earlier stage in the development and incorporation of emission control technologies than are their counterparts in the highway engine and truck/bus industries. Also, in contrast to the relatively small number of large, domestically-focused companies that dominate the heavy-duty highway engine and truck/bus industries, the nonroad diesel industry is made up of a large number of engine and equipment manufacturers, many of which do business internationally.

II. Summary of the Nonroad SOP and EPA Plans

The Nonroad SOP concerns most diesel nonroad engines and the equipment they power. Nonroad engine categories not addressed in this SOP and being addressed in other federal programs are those used in aircraft, underground mining equipment, locomotives, marine vessels over 37 kW, and all spark-ignition (SI) nonroad engines, including gasoline engines. As discussed in the Nonroad SOP, EPA will pursue a separate SOP with manufacturers of land-based SI engines rated at over 19 kW (25 hp) regarding standards for this class of engines. Other SI engines are being addressed in separate EPA initiatives.

The approach to new emission standards is somewhat different in the Nonroad SOP than in the Heavy-duty Highway SOP, where a single set of standards was proposed. Specifically, the Nonroad SOP involves a tiered approach to reducing the standards. For engines rated at 37 kW and above, which are subject to the Tier 1 regulations, the SOP discusses a Tier 2 set of standards for the early years of the next decade and Tier 3 standards 3 to 5 years later for engines rated between 37 kW and 560 kW (750 hp). The Tier 2 nonroad NO_X standards for engines rated at 37 kW and above are similar in stringency to the heavy-duty highway engine NO_X standards that will apply in 1998; the Tier 3 nonroad NO_X standards are similar in stringency to the highway heavy-duty NO_X standards proposed for 2004 (see 61 FR 33421, June 27, 1996).

As discussed in the SOP, EPA plans to propose a second tier of PM standards for nonroad engines rated at 37 kW and above, but does not plan to immediately propose a third tier of standards for PM. Recent health studies have raised new concerns about exposure to diesel and other PM, and EPA has proposed a revision of the existing PM NAAQS and is currently taking comment. At this time, the Agency believes it is premature to address diesel nonroad PM standards beyond the second tier contained in the SOP, and would take any further reductions that might be proposed in the future into account in the below-discussed review of the feasibility of the proposed Tier 3 $NMHC+NO_X$ standards.

For nonroad diesel engines rated under 37 kW, EPA plans to propose federal standards for the first time.[4] The SOP contains a set of Tier 1 standards for the 1999–2000 time frame and Tier 2 standards in the 2004–5 time frame.

For the Tier 3 over 37 kW engine standards and the Tier 2 under 37 kW engine standards, the Nonroad SOP calls for EPA to conduct a review, including opportunity for public comment, of any rule adopting these standards to assess whether these standards are technologically feasible and otherwise appropriate under the Clean Air Act. This review is to be completed by the end of 2001. The SOP describes a number of issues to be covered in this review, including the cost of engine and equipment redesigns.

There are some program areas for which the SOP does not contain detailed provisions, as discussed below. EPA particularly solicits comment on these areas in its preparation of the proposal.

The SOP participants are interested in establishing a program that, in real-world operating experience, achieves the emission control levels implied in the SOP standards. To this end, the Agency is evaluating whether the provisions adopted in the Tier 1 program that impact emission controls' durability, such as the length of the regulatory useful life, should be revised. Comment is solicited on the need for and form of such changes.

In addition, the SOP discusses a program to encourage clean alternative fuels and innovative diesel emission control technologies through optional standards and test procedures. EPA solicits suggestions on the appropriate standards and procedures for this program, as well as on any other concepts which might help accomplish this goal.

Because many manufacturers of nonroad diesel engines and equipment market their products on an international scale, the industry places a very high value on globally harmonized emission standards. Therefore, the Nonroad SOP states that harmonized standards and test procedures will be pursued to the maximum extent possible, provided that these measures do not compromise either the SOP's other provisions or the air quality needs of the U.S. The Agency requests comment on specific program elements by which fuller harmonization might be achieved.

Finally, the SOP includes detailed provisions for a proposal giving flexibility to equipment manufacturers in incorporating the cleaner engines envisioned in the SOP into their products. The SOP also expresses the signatories' intent to develop alternative flexibility proposals that will not compromise the environmental benefits. EPA encourages commenters to provide suggestions for such alternatives.

III. Potential Impacts of the SOP Standards

Because of the large reduction in the levels of emissions standards contained in the SOP and the large number of engines that would be subject to the standards, EPA and the other signatories of the Nonroad SOP expect major reductions in emissions to occur if the standards are implemented. As a part of the planned rulemaking, EPA will include detailed analyses of the emissions reductions and air quality benefits that would result from implementing the SOP standards in the planned NPRM. Based on preliminary assessments, EPA expects that the emission control program described in the SOP will reduce NO_X emissions on the order of 800,000 tons per year. Large reductions in PM would result as well, both from reducing the carbonaceous PM that is directly emitted by nonroad diesel engines and from reducing

[3] The reader will find more discussion of the health and environmental impacts of NO_X, PM, and HC, the contribution of nonroad engines to these emissions, and EPA's conclusion that new emission controls are appropriate in the August 31, 1995 ANPRM referenced above.

[4] The State of California currently regulates nonroad diesel engines under 19 kW (25 hp).

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secondary nitrate PM as a result of the NO_X reductions described above. Overall, the emission reductions the Agency believes will result from the standards contained in the SOP would rank this program among the most significant single mobile-source emission control programs EPA has ever implemented.

EPA also will include in the NPRM an analysis of the expected costs of meeting the emission standards of the Nonroad SOP. A very approximate indication of possible cost impacts can be gained from the cost analyses developed by the Agency in the past for similar levels of emissions control on highway HDEs. EPA estimated the per-engine cost of reducing the highway HDE NO_X standard from 6.0 to 5.0 g/bhp-hr (effective in 1991) at less than $100 (50 FR 10653, March 15, 1985); from 5.0 to 4.0 g/bhp-hr (1998) at less than $100 (58 FR 15801, March 24, 1993); and from 4.0 g/bhp-hr NO_X to 2.5 g/bhp-hr NO_X+NMHC (proposed for 2004) at less than $500 (61 FR 33421, June 27, 1996). Thus EPA's estimate of the overall cost for reducing emissions from 6.0 g/hp-hr NO_X to 2.5 g/bhp-hr NO_X+NMHC is in the range of several hundred dollars per highway HDE. This emission reduction is similar to the reduction from 6.9 g/bhp-hr NO_X (the nonroad Tier 1 level) to 3.0 g/hp-hr NO_X+HC (the Nonroad SOP Tier 3 level for larger engines). The Agency recognizes that comparisons of this sort do not account for such differences as the potential costs of nonroad equipment redesign, relative penetration of electronic fuel controls and turbocharging, relative market sizes and degree of product diversity, special factors in small engine design, and costs of controlling other pollutants. These factors will, of course, be included in the NPRM analysis.

IV. Public Participation

The Agency is committed to a full and open regulatory process and looks forward to input from a wide range of interested parties as the rulemaking process develops. If EPA proceeds as expected with a proposed rule, these opportunities will include a formal public comment period and a public hearing. EPA encourages all interested parties to become involved in this process as it develops.

With today's action, EPA opens a comment period for this Supplemental ANPRM. Comments will be accepted through February 3, 1997. The Agency strongly encourages comment on all aspects of the SOP and the overall emission control program it lays out. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–96–40 before the date specified above.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for an NPRM, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

V. Copies of Documents

This Supplemental Advance Notice and the Nonroad SOP, as well as the August 31, 1995 ANPRM, are available in the public docket as described under **ADDRESSES** above. These documents are also available electronically on the Internet and on the Technology Transfer Network (TTN).

A. Internet

This Supplemental Advance Notice and related documents may be found on the Internet as follows:

World Wide Web

http://www.epa.gov/omswww

FTP

ftp://ftp.epa.gov Then CD to the /pub/gopher/OMS/ directory

Gopher

gopher://gopher.epa.gov:70/11/Offices/Air/OMS

Alternatively, go to the main EPA gopher, and follow the menus:
gopher.epa.gov
EPA Offices and Regions
Office of Air and Radiation
Office of Mobile Sources

B. Technology Transfer Network (TTN)

The Technology Transfer Network (TTN) is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Users are able to access and download TTN files free of charge (except for the cost of the phone call) on their first call using a personal computer and modem as follows:

TTN BBS: 919–541–5742 (1200–14400 bps, no parity, 8 data bits, 1 stop bit)

Voice Helpline: 919–541–5384

Also accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 AM to 12:00 Noon ET

VI. Statutory Authority

Section 213 of the amended Clean Air Act, 42 USC 7547(a), EPA conducted a study of emissions from nonroad engines, vehicles and equipment in 1991. Based on the results of that study, EPA determined that emissions of NO_X, volatile organic compounds (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one NAAQS nonattainment area (see 59 FR 31306, June 17, 1994). Having made these determinations, Section 213(a)(3) of the Act requires EPA to promulgate (and from time to time revise) emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in EPA's judgment cause or contribute to such air pollution.

Where EPA determines that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, Section 214(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that EPA determines cause or contributor to such air pollution.

VII. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome

alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the requirements of UMRA do not extend to advance notices of proposed rulemaking such as this Supplemental Advance Notice.

VIII. Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, amended the Regulatory Flexibility Act and is intended to assure that concerns about small entities are adequately considered during the development of new regulations which affect them. SBREFA does not formally apply to advance notices like this Supplemental ANPRM. However, EPA has begun to consider how small entities would be affected by the potential new standards of the SOP.

In contrast to the relatively small number of fairly large companies that dominate the heavy-duty highway engine and truck/bus industries and the primarily domestic market these industries serve, the nonroad diesel industry is made up of a large number of engine manufacturers and a still larger number of equipment manufacturers, many of which do business internationally. Some of these equipment manufacturers are relatively small businesses that may be impacted differently than larger equipment manufacturers as new technologies are incorporated into nonroad diesel engines.

Equipment manufacturers were involved in the Nonroad SOP discussions and, as discussed above, the final SOP includes several provisions which will provide flexibility to nonroad equipment manufacturers, especially smaller manufacturers, without harming the overall emission benefits of the program. EPA plans to minimize any disproportionate impact on smaller nonroad equipment manufacturers and will work with representatives of such entities as the formal proposal is developed, including the preparation of a Regulatory Flexibility Analysis. EPA requests comment on the impacts of the program outlined in the SOP on small entities; such comments will help the Agency meet its obligations under SBREFA.

IX. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as any regulatory action (including an advanced notice of proposed rulemaking) that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Supplemental Advance Notice was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this Notice.

List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements, Research.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

Appendix—Nonroad Compression-Ignition Engine Statement of Principles

Nonroad Compression-Ignition Engine Statement of Principles

Members of the nonroad compression-ignition (CI) engine and equipment industry, the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (ARB) (collectively, the Signatories) recognize the importance of preserving the environment while maintaining a strong industry. This Statement of Principles (SOP) increases certainty and stability for the nonroad CI engine and equipment industry which is vital for their business planning. It also ensures cleaner air in a manner which is both realistic for industry and responds to environmental needs. With this SOP the nonroad CI engine and equipment industry has stepped forward to become a leader in environmental protection, and industry and government will work as partners to bring about cleaner air.

EPA and ARB have recently established programs to control emissions from nonroad engines. EPA and ARB recognize these engines are sources of ozone-forming oxides of nitrogen (NO_X) and hydrocarbons (HC), as well as of particulate matter (PM) and other pollutants, all of which raise concerns for public health and the environment. The current Tier 1 regulations for large CI nonroad engines are primarily focused on achieving significant NO_X reductions as early as possible and are being phased in by horsepower level beginning in 1996. At the time of finalizing the Tier 1 regulations, EPA and ARB recognized that more stringent standards for these engines, and further evaluation of the test procedure by which compliance with the standards is measured, would likely be needed in the future to help meet air quality goals. These agencies also recognized the need to control emissions from spark-ignited (SI) and other CI nonroad engines as well.

Although recent progress in improving the nation's air quality has been encouraging, EPA and ARB believe there is strong evidence that currently adopted measures are insufficient to offset such factors as the growth in vehicle and equipment sales and usage. The states and others have strongly urged EPA to undertake new programs to achieve further cost-effective emission reductions in a time frame consistent with the Clean Air Act attainment goals. In response, among other initiatives, EPA and ARB have initiated a program to further reduce emissions from heavy-duty on-highway vehicles and nonroad engines.

The industries that produce these engines have also stepped forward, expressing a desire to develop and use cost-effective emission control technologies to help meet the nation's air quality goals. EPA and ARB have consulted with these industries to help craft proposals that provide the needed air quality benefit. The effectiveness of this approach is evidenced by the issuance of a joint Statement of Principles (SOP) on July 11, 1995, outlining a proposal for stringent new nationwide standards for on-highway heavy duty engines. EPA followed up that SOP with an Advanced Notice of Proposed Rulemaking (ANPRM) and a Notice of Proposed Rulemaking (NPRM). The 1995 SOP expressed an intent by the Signatories to pursue a similar SOP for heavy-duty nonroad engines.

After considerable discussion between EPA, ARB, and the nonroad engine and equipment industries, this SOP has been completed. The Signatories expect major reductions in emissions from the standards set forth in this SOP. For nonroad CI engines rated at 50 hp (37 kW) and higher, the Tier 2 and Tier 3 standards together will achieve about a 75 percent reduction in NO_X from uncontrolled levels. The Tier 2 standards for PM represent about a 40 percent reduction from current levels. For nonroad CI engines rated at less than 50 hp, the Tier 2 standards are expected to result in NO_X and PM

reductions similar to those from the Tier 2 standards for engines rated at 50 hp and higher.

The Signatories agree that EPA should issue an ANPRM in 1996 and an NPRM in 1997 consistent with the points outlined in this document. A final rule would follow by February 1998. However, this SOP does not change the importance of EPA demonstrating the need for the standards described below and EPA's obligation to meet the criteria of the Clean Air Act in finalizing any rule, including complying with all applicable rulemaking procedures.

1. Scope

This SOP concerns CI nonroad engines as defined in 40 CFR 89.2, and the nonroad equipment powered by these engines, with the exception of engines used in aircraft, underground mining equipment, locomotives, and marine vessels. However, propulsion and auxiliary marine CI engines rated at less than 50 hp (37 kW) are included.[1] EPA is addressing marine CI engines rated at 50 hp and higher separately from this SOP.

Although EPA and ARB have made significant progress in SOP discussions with the manufacturers of nonroad SI engines rated at above 25 hp (19 kW) (as well as the manufacturers of equipment using these engines), these discussions have not yet reached a stage that would allow inclusion of these engines in this SOP. EPA and ARB will pursue the development of an SOP for nonroad SI engines above 25 hp by the end of 1996. Such an SOP would assist the nonroad engine and equipment manufacturers in their product planning. The Signatories recognize the possible competitive effects of regulating CI and SI engines separately, and EPA and ARB will take those effects into account in the development of an SI engine SOP.

2. National Standards for CI Nonroad Engines

This SOP seeks to establish a nationwide program that, in real-world operating experience, achieves the emission control levels indicated below. Recognizing that real-world control is closely linked to the test procedure by which conformance with standards is measured, the following discussion of standards should be read in the context of the test procedure discussion that follows it. The Signatories' goal is a combination of emission standards and test procedures that achieves real-world emission reductions corresponding to these standards, provided that such standards are technologically feasible and cost effective, taking into consideration both engine and equipment manufacturer costs.

a. NMHC, NO_X, CO and PM Standards

EPA will propose combined standards for nonmethane hydrocarbons (NMHC) and NO_X, and separate standards for carbon monoxide (CO) and PM. These standards would apply to any affected engine that is newly manufactured on or after January 1 of the year indicated in the following table, except as provided in Section 5, Implementation Flexibility, below. While this SOP does not specify PM standards in Tier 3, the Signatories acknowledge that there is, in general, an inverse relationship in controlling certain pollutants (e.g., NO_X and PM). The Signatories recognize that the manufacturer signatories have agreed to the Tier 3 NMHC+NO_X standards set forth below on the condition that there would be no further reduction in PM or CO from Tier 2 levels. If such reductions should be proposed, EPA will take the reductions into account in its review of the feasibility of the proposed Tier 3 NMHC+NO_X standards (see Section 4, Feasibility Review, below). The Signatories recognize the role that direct injection engine technology plays in the less than 50 hp nonroad engine market and expect the standards set forth in this SOP to allow for the continued existence of that technology. As part of the feasibility review (see Section 4 below), EPA will assess the progress in meeting Tier 2 standards for those engines using direct injection technology.

b. Smoke

The Signatories support the completion and worldwide adoption of the new smoke test being developed by the International Standards Organization (ISO 8178–9). EPA intends to propose to replace its current smoke test with the ISO test procedure for the sake of harmonization and improved control of smoke, provided that it provides for a level of smoke control at least as adequate as the current test. EPA will also propose to extend the smoke standards that were adopted in the Tier 1 rule to the under 50 hp engine category, and will evaluate the appropriateness of any changes to the smoke standards for all engine size categories in formulating the proposal.

c. Crankcase Emissions

For several years, emission regulations for on-highway engines have required that crankcase emissions be eliminated, except in the case of turbocharged diesel engines, which present special difficulties in designing for closed crankcase. EPA will propose to extend this requirement to covered nonroad engines (including the provision for excepting turbocharged diesel engines).

NMHC+NO_X / CO / PM in g/hp-hr (g/kW-hr)

hp(kW)	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
					Tier 1		Tier 2*			
<11 (8)		7.8 (10.5)					5.6 (7.5)			
		6.0 (8.0)					6.0 (8.0)			
		0.74 (1.0)					0.60			
							(0.80)			
≥11 (8)		7.0 (9.5)					5.6 (7.5)			
<25 (19)		4.9 (6.6)					4.9 (6.6)			
		0.60 (0.80)					0.60			
							(0.80)			
≥25 (19)	7.0 (9.5)					5.6 (7.5)				
<50 (37)	4.1 (5.5)					4.1 (5.5)				
	0.60 (0.80)					0.44				
						(0.60)				
					Tier 2				Tier 3*	
≥50 (37)						5.6 (7.5)				3.5 (4.7)
<100 (75)						3.7 (5.0)				3.7 (5.0)
						0.30 (0.40)				**
≥100 (75)					4.9 (6.6)				3.0 (4.0)	
<175 (130)					3.7 (5.0)				3.7 (5.0)	
					0.22 (0.30)				**	
≥175 (130)					4.9 (6.6)			3.0 (4.0)		
<300 (225)					2.6 (3.5)			2.6 (3.5)		
					0.15 (0.20)			**		
≥300 (225)			4.8 (6.4)					3.0 (4.0)		
<600 (450)			2.6 (3.5)					2.6 (3.5)		
			0.15 (0.20)							
≥600 (450)				4.8 (6.4)				3.0 (4.0)		
<750 (560)				2.6 (3.5)				2.6 (3.5)		
				0.15 (0.20)				**		

[1] Currently, EPA is required under a court order to take final action on proposed regulations for CI marine engines by December 18, 1996. EPA will seek appropriate changes to this order regarding final action on CI marine engines less than 50 hp (37 kW) to conform to this SOP.

NMHC+NO_x / CO / PM in g/hp-hr (g/kW-hr)										
hp(kW)	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
≥750 (560)	.....	.....	.....	.....	.....	.....	.....	4.8 (6.4)		
	.....	.....	.....	.....	.....	.....	.....	2.6 (3.5)		
	.....	.....	.....	.....	.....	.....	.....	0.15 (0.20)		

* These standards are subject to a feasibility review as discussed in Section 4.
** See above discussion on PM standards.

3. Test Procedures

In adopting a steady-state test cycle for its Tier 1 final rule, EPA stated that further study will be required to better characterize the nature and level of transient operation experienced by nonroad engines in actual use. The Signatories recognize that additional data would be beneficial in assessing the adequacy of the steady-state test in achieving control of regulated emissions, especially PM, in use. Other test parameters, such as the composition of the test fuel, may also impact the program's success in controlling in-use emissions.

The Signatories further recognize: (1) the crucial role that the test procedure plays in ensuring real emissions control in use, (2) the critical importance of in-use emission reductions in improving air quality and in determining state implementation plan credits under the Clean Air Act, (3) the effect that changes to test procedures could have on industry's ability to design, test and produce engines that comply with the applicable standards in the time periods contemplated by the SOP, (4) the need for a well-planned and well-coordinated test program to settle the issue of test procedure adequacy, (5) the value of proceeding in concert with international standard setting organizations in adopting a harmonized test procedure, and (6) the potential for this to be a lengthy process.

In order to achieve major NOx reductions as early as possible, EPA will propose that the current steady-state test be retained in the adoption of this SOP's standards. In addition, the Signatories will initiate a comprehensive test program, coordinated by EPA and cooperatively executed, to evaluate the adequacy of the current test procedure for achieving in-use emissions control. The test program will be initiated within six months of signing this SOP and will be completed by December 1998. The Signatories will also engage interested parties in the European Union (EU) in this comprehensive test program with the goal of gaining their participation as partners, if possible. Should the results of the testing program indicate that the test procedure does not achieve adequate control of emissions in use, EPA will initiate action to revise the test procedure if another test procedure is expected to provide significantly better control.

It is recognized that the standards in the SOP are based on the current steady-state test procedure. Further, all Signatories recognize that any test cycle changes or additions would likely complicate and delay industry's ability to research, design, test, and produce engines that comply with the standards contained in the SOP. As a result, any proposal to revise the current test procedure would propose that the revision not be implemented before Tier 3. Any changes in the test procedure will be taken into consideration as part of the Tier 3 feasibility review outlined below.

Engines rated at under 50 hp are not subject to the current Tier 1 standards and test procedure.

The Signatories recognize that the manufacturer signatories' agreement to the standards for these engines set forth in Section 2 of this SOP is based on the assumption that the following test cycles are adopted:

Land-based CI engines

Variable- and constant-speed <25 hp (19 kW) .....ISO 8178 G2
Variable-speed 25–50 hp (19–37 kW) .....ISO 8178 C1
Constant-speed 25–50 hp (19–37 kW) .....ISO 8178 D2

Auxiliary marine CI engines

Variable- and constant-speed <25 hp (19 kW) .....ISO 8178 G2
Variable-speed 25–50 hp (19–37) kW .....ISO 8178 C1
Constant-speed 25–50 hp (19–37) kW .....ISO 8178 D2

Propulsion marine CI engines <50 hp (37 kW) .....ISO 8178 E3

In addition, the Signatories recognize that the manufacturer signatories' agreement to the application of the standards set forth in Section 2 of this SOP to land-based constant-speed engines rated at over 50 hp is based on the assumption that the ISO 8178 D2 test cycle is adopted for these engines as an optional alternative to the current steady-state test. EPA will assess the adequacy of the above cycles for the indicated engines and propose appropriate cycles in the NPRM. If EPA should propose different cycles, then EPA will reassess the feasibility of the standards in light of the proposed cycles.

4. Feasibility Review

In order to assess the progress of the industry in meeting the Tier 3 standards and effect dates for over 50 hp engines and Tier 2 standards and effect dates for under 50 hp engines (hereafter collectively, the "Later Standards"), and to ensure the lowest appropriate standard levels at the earliest appropriate time, EPA shall conduct a review of any rule adopting the Later Standards set forth in this SOP. This review will conclude in 2001 and will commence with a notice providing opportunity for public comment on whether or not the standards are technologically feasible and otherwise appropriate under the Clean Air Act. After the public comment period, EPA will take final action on the review under Section 307 of the Clean Air Act. Should the Agency conclude as a result of this review that these standards are not technologically feasible, or are otherwise not appropriate under the Clean Air Act, it shall revise the rule as appropriate. In any such revision, the NMHC+NOx standards are not expected to be raised more than 1.0 g/hp-hr (1.3 g/kW-hr), assuming no change in the PM and CO standards.

In reviewing the rulemaking as set forth above, EPA shall review the need for and feasibility and cost of the Later Standards, including, but not limited to: (1) the need to provide engine and equipment manufacturers an adequate period in which to recoup the capital investment required to achieve the previous standards; (2) the need to provide engine and equipment manufacturers no less than four full years of leadtime[2] between the time the feasibility review is finalized and the Later Standards become effective (while maintaining the engine category phase-in set forth in Section 2 above); (3) the need to assess the suitability, effectiveness and cost of transferring on-highway engine technology to nonroad engines and equipment; and (4) the need to assess the costs associated with redesigning equipment to accommodate the Later Standards.

The Signatories acknowledge that the standards set forth in this SOP will require a substantial investment for nonroad engine and equipment manufacturers, and their customers, and that the affected nonroad industry ordinarily requires a substantial period of stability in which to recoup such an investment. The period of stability between the previous and Later Standards ordinarily would be too short a time in which to reasonably recoup the investment needed to comply with the previous standards before imposing additional costs to comply with the Later Standards. Thus, the Signatories agree that the Later Standards in this SOP are based on the premise that no significant equipment redesign beyond that required to accommodate engines meeting the previous standards will be required to accommodate engines meeting the Later Standards.

As part of the review discussed in this Section, EPA will solicit information as to whether equipment redesign will be required as a result of changes to engines that will be required to meet the Later Standards. Should such equipment redesign be required, EPA will assess its significance, taking into account the cost and technical difficulty of such redesign, the need for a period of stability to reasonably recoup the investment in equipment redesign to meet the previous standards, the number of equipment models affected, and other relevant factors. If significant equipment redesign is required to accommodate engines meeting the Later

[2] In the case of engines rated at less than 50 hp, no less than two full years of leadtime.

Standards, EPA will propose appropriate measures to address the burden of such redesign. Such measures would include flexibilities similar to those set forth in Section 5 below, a minimum two-year[3] adjustment of the time between the previous standards and Later Standards for all engine families in each affected power category, an adjustment to the Later Standards to address the need for the redesign, or some combination thereof. EPA also may propose additional measures as appropriate under the Clean Air Act. EPA and ARB acknowledge that this SOP will require the industry to make a commitment to meet the Later Standards that will require a substantial period of stability.

EPA's review and assessment of the feasibility and cost of the Later Standards will include a review of the costs associated with the Later Standards on a marginal cost basis, taking into consideration total equipment production and operating costs, not just engine costs. If this assessment shows that the nonroad equipment industry will experience significant adverse impacts from changes in standards that are too frequent, rapid, or costly, EPA further commits to propose relaxing the standards and/or delaying the effective date of the standards, consistent with relevant provisions of the Clean Air Act.

The Signatories shall meet periodically to provide updates on their efforts and progress in complying with this SOP.

5. Implementation Flexibility

The Signatories recognize that new emission standards may create challenges for engine and equipment manufacturers beyond simply developing low-emission technologies. The nonroad industry is characterized by a diversity in engine models and equipment applications, many of which have small markets, making it difficult to rapidly and frequently implement design changes across wide product lines. Even small changes in engine designs can create major difficulties for equipment makers with low volume models, diverse product lines, or inadequate leadtime to respond to the changes. If engine makers were to discontinue engine models made in small volumes, this could cause market disruptions, especially for small manufacturers of equipment who buy these engines, and their customers.

Problems of this sort could be dealt with by phasing new standards in very gradually. However, in order to gain the desired air quality benefits as early as possible, this SOP instead aims to resolve the problem by broadening the flexibility granted to equipment manufacturers by providing them implementation options. Thus, EPA will propose programs whereby, on an annual basis, an equipment manufacturer would be allowed to install engines not meeting the otherwise applicable Tier 2 or 3 standards for engines 50 hp or higher in some of its equipment (Tier 1 standards for engines less than 50 hp). The following subsection describes two such programs that will be proposed, based on a percent-of-sales approach. The Signatories agree to work together in developing alternative flexibility proposals, with the understanding that these alternatives will not involve a projected loss in overall emission benefits over that entailed in the below-described program. One alternative approach under consideration would exempt equipment on an application-specific basis; EPA will, at a minimum, seek comment on such an approach in the NPRM.

a. Equipment Manufacturer Phase-in

Engines 50 hp or higher. For engines rated at 50 hp or higher, EPA will propose to allow each equipment manufacturer to install engines certified to the Tier 1 standards in a maximum of 15 percent of the equipment produced for sale in the United States during the first year that a new Tier 2 standard applies, and in a maximum of 5 percent during each of the six years thereafter. This allowance would continue for a total of seven years after Tier 2 standards become effective for each engine category. At the end of this allowance period, equipment manufacturers would be required to install Tier 3 engines (or Tier 2 engines in any engine categories without Tier 3 standards) in all new equipment using engines in the category. However, if the effective dates of Tier 3 standards in any engine category are delayed beyond those set forth in Section 2, the allowance period for that engine category would be extended by the same period of time. For manufacturers electing to take advantage of the special flexibility provision for farm and logging equipment described below, the above-described flexibility provision would apply to just the non-farm/logging equipment the manufacturer sells.

To avoid disadvantaging smaller companies with limited product offerings, manufacturers would be allowed to exceed the above percent of production allowances during the same years affected by the above allowance program, provided they limit the installation of Tier 1 engines to a single equipment model with an annual production level (for U.S. sales) of 100 pieces or less.

In addition to the above general flexibility allowances, EPA will propose that manufacturers of farming or logging equipment will be allowed to install Tier 1 engines in a maximum of 30 percent of this equipment (produced for sale in the United States) during the first year that a new Tier 2 standard applies, and in a maximum of 15 percent for each of the seven years thereafter. This allowance would continue for a total of eight years after Tier 2 standards become effective for each engine category. At the end of this allowance period, equipment manufacturers would be required to install Tier 3 engines (or Tier 2 engines in any engine categories without Tier 3 standards) in all new farm or logging equipment using engines in the category. However, if the effective dates of Tier 3 standards in any engine category are delayed beyond those set forth in Section 2, the allowance period for that engine category would be extended by the same period of time.

Nothing set forth above would change the rules established in the Tier 1 standards which allow equipment manufacturers to use up existing stocks of noncomplying engines at the time a new standard takes effect.

Engines less than 50 hp. EPA will propose flexibilities as described above for equipment manufacturers who install <50 hp engines into their equipment, except as follows:

(1) Equipment manufacturers will be allowed to install unregulated engines instead of Tier 1 engines.

(2) The flexibilities will expire after a total of four years. When they expire manufacturers must install certified engines in all equipment.

(3) A delay of the effective date for the <50 hp Tier 2 standards does not affect the expiration date of the flexibilities.

b. Engine Manufacturer ABT and Continued Sales of Previous-Standard Engines

EPA finalized an averaging, banking, and trading (ABT) program in its Tier 1 rule to help engine manufacturers meet the new standards. Consistent with the NPRM for heavy-duty on-highway engines, EPA will propose to modify the existing ABT program to eliminate any limit on credit life, to eliminate any discounts in the way credits are calculated, and to make ABT available for NMHC+NO_X and PM. These provisions will apply to all of the standards set forth in Section 2 except as discussed below. In recognition of the role ABT plays in facilitating the introduction of new standards, EPA will reassess the appropriateness of these provisions as part of the feasibility review discussed in Section 4. The Signatories recognize that the manufacturers have agreed to the standards set forth in this SOP on the condition that the changes that EPA will propose in the ABT program are finalized and made a part of these standards.

EPA will also propose three special provisions for the ABT program for engines rated at less than 25 hp. First, no credits generated from the sale of these engines would be allowed to be used to demonstrate compliance for engines rated above 25 hp. Second, all credits generated from the sale of Tier 1 under 25 hp engines would expire at the end of 2007. Finally, credits from the sale of Tier 1 under 25 hp engines would only be generated by engine families with family emission limits of less than 5.6 g/hp-hr (7.5 g/kW-hr) for NMHC+NO_X credits and 0.60 g/hp-hr (0.80 g/kW-hr) for PM credits, and these credits would be calculated against these baseline levels rather than against the actual Tier 1 standard levels.

In addition to these ABT provisions, EPA will propose that engine manufacturers be allowed to continue to build and sell the engines needed to meet the market demand created by the equipment manufacturer flexibility program set forth above. To avoid the creation of unfair business advantages, the engine manufacturer Signatories agree that, if they decide to continue the production of such engines, they will make them available for sale at reasonable prices to all interested buyers.

Finally, EPA also will propose to allow engine manufacturers to produce unregulated, Tier 1, or Tier 2 engines, as the case may be, to meet customer needs for replacement engines, so long as

[3] Minimum three years and one year for engines in the 175–300 hp and 300–600 hp categories, respectively.

manufacturers comply with the replacement engine regulations that EPA is developing.

6. Harmonization

The participants in this SOP recognize the value that harmonizing standards within the United States would have on the cost of producing engines and equipment. EPA and the California Air Resources Board will pursue harmonized standards and test procedures for nonroad engines covered by this SOP such that an engine family tested and certified by EPA could be sold in California and, similarly, an engine family tested and certified in California could be sold in the rest of the country. California acknowledges that the emission standards set forth in this SOP meet its needs for emission reductions for the engines covered by this SOP. However, if these standards should not be implemented as proposed, California's obligations to comply with State and Federal law, including its State Implementation Plan, take precedence over this SOP.

Furthermore, the global nature of the nonroad equipment and engine markets argues for maximum harmonization between the U.S. standards and test procedures and those of other nations. In particular, the European Union has developed standards very similar to EPA's Tier 1 standards and has proposed its own Tier 2 standards. The Signatories support the goal of continued harmonization and intend to work with the EU, Japan, and other regulatory bodies in developing harmonized future standards, including provisions for implementation flexibility. Harmonized standards and test procedures will be pursued in the program developed under this SOP to the maximum extent possible, provided that these measures do not compromise the other provisions of this SOP or the primary purpose of the program, which is to meet the air quality needs of the United States.

7. Fuels and Lower Emitting Alternatives

The standards set forth above contemplate the possibility of transferring on-highway technology to nonroad engines. The Signatories recognize that: (1) on-highway engines currently are operated on higher quality fuel than nonroad engines, (2) fuel composition has a significant impact on emission performance, (3) changes in the composition and improvements in the quality of nonroad fuels may be needed to make the Tier 3 standards technologically feasible and otherwise appropriate under the Act.

A number of states and other interested parties have expressed strong interest in programs to reduce emissions from nonroad engines beyond the levels established in this SOP. These parties believe that if a program were in place to certify low emitting engines (both diesel and alternative fuel engines), a market for these engines could be created through a variety of incentives including, but not limited to, marketable emission credits and the prominent labeling of low-polluting equipment as such. This certification program would be dependent on the establishment of a test procedure which reasonably evaluates the effectiveness of these engines in achieving real in-use emissions reductions.

Therefore, EPA shall propose an optional program for the certification of very low-emitting engines. This program would include, as needed, optional test procedures and standards that would encourage the sale of engines providing benefits beyond those corresponding to the program described elsewhere in this SOP. In addition, EPA will consider other programs to encourage the use of low-emitting engines and emission-reducing fuels.

8. Durability

All Signatories recognize that it is important that emissions control be maintained throughout the life of the engine. The Signatories will work together to develop appropriate measures which ensure that emission improvements are maintained in use.

9. Certification and Compliance

All Signatories recognize that it is important to minimize the costs associated with certification and they commit to working together to streamline and simplify the certification process. Further, the Signatories acknowledge that the standards set forth in Section 2 of this SOP are based on the assumption that there will be no changes to the enforcement program adopted as part of the Tier 1 rule, except as specifically set forth in this SOP. Finally, the Signatories also recognize that engine manufacturers will be required to undertake significant engineering challenges in relatively short time frames in order to meet the Tier 2 and Tier 3 standards including the challenge of stabilizing initial production variability. Therefore, EPA will only impose selective enforcement audits (SEA's) during the first year in which a standard is in effect for those engine families where strong evidence exists that SEA failure would be likely.

10. Research Agreement

The Signatories recognize the benefits of a joint industry/government research program with the goal of developing engine technologies which can meet and exceed the standards for nonroad engines outlined in this SOP. The Signatories will undertake development of a separate research agreement with goals of reducing NO_x emissions to 1.5 g/hp-hr (2.0 g/kW-hr) and PM emissions to 0.05 g/hp-hr (0.07 g/kW-hr), while maintaining attributes of current nonroad diesel engines such as performance, reliability, durability, safety, efficiency, and compatibility with nonroad equipment. These characteristics have allowed current nonroad diesel engines to serve as the pillar of the international nonroad equipment industry. This research agreement would include certain of the industry signatories below, EPA, ARB, and other organizations, such as the U.S. Department of Energy, as are approved by the participants.

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federal register

Thursday
January 2, 1997

Part IV

Environmental Protection Agency

40 CFR Part 51

Proposed Implementation Requirements for Reduction of Sulfur Oxide (Sulfur Dioxide) Emissions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD–FRL–5670–8]

RIN 2060–AA61

Proposed Implementation Requirements for Reduction of Sulfur Oxide (Sulfur Dioxide) Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a new intervention level program under the authority of sections 301(a)(1) and 303 of the Clean Air Act (Act) to supplement protection provided by the primary and secondary sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). The program proposed today is in lieu of the three alternative implementation strategies for reducing high 5-minute SO_2 concentrations in the ambient air proposed on March 7, 1995.

The intervention level program addresses EPA's concern that a segment of the asthmatic population may be at increased health risk when exposed to 5-minute peak concentrations of SO_2 in the ambient air while exercising ("exercising" in this case can include walking up stairs or hills, as well as more strenuous activities). At certain concentration levels or frequencies, such peaks can represent imminent and substantial endangerment to public health. This proposed program also responds to comments received on the March 7, 1995 proposal.

In addition, EPA is reproposing the implementation strategy for identifying and prioritizing areas with potential 5-minute SO_2 peaks. The changes to the monitoring strategy discussed in the March 7, 1995 proposal address public comments regarding the flexibility of the strategy and the criteria used to identify sources for monitoring.

Finally, EPA has reviewed comments concerning the revisions to the 24-hour significant harm levels (SHL) for SO_2 discussed in the March 7, 1995 proposal. After further consideration, the EPA now believes the proposed revisions to those levels are not needed at this time. The EPA is requesting comment on whether the proposed changes to the SHL are necessary or should be withdrawn.

DATES: Written comments on this proposal must be received by March 3, 1997. Persons wishing to present oral testimony pertaining to this notice should contact EPA at the address listed below under **FOR FURTHER INFORMATION CONTACT** by January 17, 1997. If anyone contacts EPA requesting to speak at a public hearing, a separate notice will be published announcing the date, time, and place where the hearing will be held.

ADDRESSES: Submit comments on this proposal (two copies are preferred) to: Office of Air and Radiation Docket and Information Center (Air Docket 6102), Room M 1500, U.S. Environmental Protection Agency, Attention: Docket No. A–94–55, 401 M Street, SW, Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. The Air Docket may be called at (202) 260–7548. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Eric L. Crump, Integrated Policies and Strategies Group (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–4719.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which contribute to 5-minute ambient SO_2 concentrations that pose a health threat to sensitive, exposed populations. Regulated categories and entities would include:

Category	Examples of regulated entities
Industry	Pulp and paper mills, lead, aluminum, and copper smelters, petroleum refineries, iron and steel mills, carbon black manufacturers, portland cement plants, oil and gas extraction processes, fertilizer manufacturers, industrial and utility boilers, sulfuric acid plants.
Federal government	Federal agencies which operate industrial or utility boilers.
State/tribal government	State/tribal agencies which operate industrial or utility boilers.

This table is not intended to be exhaustive; furthermore, entities listed in this table would not necessarily be subject to regulation under this proposed action. This table is intended only as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA believes could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business or organization would be regulated by this proposed action, you should ascertain whether your facility, company, business, or organization (1) emits SO_2, and (2) is located in an area subject to ambient air concentrations that exceed the criteria in § 51.154 of 40 CFR. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Availability of Related Information.

The 1982 revised criteria document, Air Quality Criteria for Particulate Matter and Sulfur Oxides (three volumes, EPA–600/8–82–029af-cf, December 1982; Volume I, NTIS # PB–84–120401, $36.50 paper copy and $9.00 microfiche; Volume II, NTIS # PB–84–120419, $77.00 paper copy and $9.00 microfiche; Volume III, NTIS # PB–84–120427, $77.00 paper copy and $20.50 microfiche); the 1986 criteria document addendum, Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information (EPA/600/8–86–020–F, NTIS # PB–87–176574, $36.50 paper copy and $9.00 microfiche); the 1994 criteria document supplement, Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatic Individuals (1994) (EPA–600/FP–93/002); the 1982 staff paper, Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information (EPA–450/5–82–007, November 1982; NTIS # PB–84–102920, $36.50 paper copy and $9.00 microfiche); the 1986 staff paper addendum, Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information (EPA–450/05–86–013, December 1986; NTIS # PB–87–200259, $19.50 paper copy and $9.00 microfiche) and the 1994 staff paper supplement, Review of the National Ambient Air Quality

Standards For Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum (1994) (EPA–452/R–94–013, September 1994; NTIS # PB–95–124160, $27.00 paper copy and $12.50 microfiche) are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or call 1–800–553–NTIS. (Add $3.00 handling charge per order.)

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SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

As discussed in the November 15, 1994 proposal (59 FR 58958), EPA completed a thorough review of the air quality criteria and the current SO_2 NAAQS required by sections 108 and 109 of the Act and concluded provisionally that the current 24-hour and annual primary standards provide adequate protection against the effects associated with those averaging periods. The key issue that emerged from the review is whether additional regulatory measures are needed to provide additional protection for asthmatic individuals that may be exposed to high 5-minute peak SO_2 concentrations.

As explained in the March 7, 1995 **Federal Register** proposal (60 FR 12492), the available air quality and exposure data indicate that the likelihood that the asthmatic population in general would be exposed to 5-minute peak SO_2 concentrations of concern, while outdoors and at exercise, is very low when viewed from a national perspective. The data indicate, however, that high peak SO_2 concentrations can occur around certain sources with some frequency, and as a result, asthmatic individuals in the vicinity of such sources would be subject to a greater health risk than asthmatics not subject to such peaks or the nonasthmatic population. These assessments lead EPA to believe that if any additional regulatory measures are adopted to provide additional protection, they should be addressed through an approach that focuses on those locations where the sensitive population is more likely to be exposed to high 5-minute peak SO_2 concentrations.

Based on these considerations, EPA requested comment on three regulatory measures proposed on March 7, 1995 to address high 5-minute SO_2 peaks: (1) augmenting implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO_2 concentrations; (2) establishing a new regulatory program under section 303 of the Act to supplement the protection provided by the existing NAAQS; and (3) supplementing the existing NAAQS with a 5-minute NAAQS of 0.60 parts per million (ppm).

The public comments received represented various concerns regarding the three alternatives. Of the many comments received, the following arguments appeared to be most compelling: (1) short-term peak emissions are more of a localized issue rather than a widespread concern and that instead of a broad national regulatory program, States and tribes should be given the authority to address such issues; and (2) States and tribes need more flexibility to address situations that create exposures to high short-term ambient concentrations, especially in cases when the short-term peaks are rare and the potential for exposure is low (for example, when the source is located in a relatively isolated area). The comments received confirm EPA's original assessment that high 5-minute peak episodes of SO_2 are not a uniformly widespread problem; rather, these episodes are limited to certain localized areas throughout the country. The EPA now believes that a national regulatory program developed for implementation by every State and tribe would be counterproductive, placing an administrative burden on many parts of the country that are not subject to risk from these peak concentrations.

Although these episodes are few, it is clear that 5-minute SO_2 ambient concentration peaks pose a health threat to sensitive, exposed populations, and that the severity of the threat depends upon the concentration and frequency of peak episodes and the size of the population subject to the peak episodes. Because every area that is subject to significant short-term peaks has its own unique characteristics, EPA agrees it is prudent for States, local governments, and tribal governments to assess each individual situation, and if a significant threat to public health exists, act appropriately and efficiently to reduce the risk to the public. The EPA wishes to establish an implementation program that (1) effectively addresses real health concerns, (2) provides States, tribes, and local communities with a basis for taking protective action, and (3) provides flexibility to address a given situation appropriately.

For the reasons discussed in the May 22, 1996 **Federal Register** final decision (61 FR 25566), EPA has concluded that revisions to the existing SO_2 NAAQS are not appropriate at this time. In lieu of the three alternative approaches originally proposed to address 5-minute concentrations, EPA now proposes an intervention level program under the authority of section 303 of the Act to address the risk presented by 5-minute SO_2 concentrations.

Because health effects caused by 5-minute SO_2 ambient concentrations tend to be localized problems, EPA believes the intervention level program is the appropriate approach to address this concern. Instead of a uniform nationwide approach that might call for unnecessary administrative effort, this program would allow placement of resources and efforts precisely where the problems are. It would allow States, tribes, and local governments to analyze the variable issues relevant to peak concentration episodes in their jurisdiction, giving them the flexibility to address the sources of the peak emissions more efficiently and appropriately. The intervention level program would also provide a catalyst for community-based approaches to environmental protection by encouraging States and tribes to incorporate citizen concerns and complaints into their criteria for assessing public health risk.

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B. Rulemaking Docket

Docket No. A–94–55 has been established for supporting documentation for the action proposed today. The EPA established a standard review docket (Docket No. A–79–28) for the sulfur oxides review in July 1979. The EPA also established a rulemaking docket (Docket No. A–84–25) for the April 26, 1988 proposal under section 307(d) of the Act. Docket No. A–84–25 was used for the most current review of the SO_2 NAAQS. Both of these dockets, as well as a separate docket established for criteria document revision (Docket No. ECAO–CD–79–1), are hereby incorporated into the rulemaking docket for the action proposed today.

II. Intervention Level Program

A. Program Highlights

The proposed intervention level program is derived in part from the SHL program, which has served in the past as a means for implementing the authority granted under section 303 of the Act. The SHL program was designed to address emergency episodes that occur where pollution levels build up over a period of time to unhealthy levels. The SHL program establishes a specific pollutant concentration within a given time period that is known to pose a significant threat to human health and that would require specific measures on the part of the State or tribe and emission sources to correct. In addition, the program establishes several degrees or levels of response which are triggered by pollutant concentrations below the SHL. As the concentration of a pollutant rises to each level, emission sources in the area are required to take increasingly restrictive action to reduce emissions as specified in the contingency plan within an approved State implementation plan (SIP). The SHL program is a proactive program designed to prevent an area from ever reaching the SHL.

The EPA contemplated using a similar approach to address 5-minute peak emissions of SO_2, but believes the SHL program would not be the best means for addressing such short term peak episodes. A 5-minute ambient concentration peak encompasses a short period of time compared to the 3-hour and 24-hour periods used in the SHL program. The EPA believes it is impractical to expect industry, States, and tribes to have a predetermined course of corrective action in place to stop 5-minute peak episodes as they occur because 5-minute episodes would generally be over before remedial action could be taken to stop them. In the view of the Administrator, this situation calls for a more reactive approach as opposed to the proactive approach called for in the SHL program. The EPA believes that its authority under sections 301(a)(1) and 303 of the Act provides for the creation of a new program to address these short term peaks of SO_2—the intervention level program.

The intervention level program proposed herein would be similar to the SHL program in that it would establish concentration levels in the CFR that provide a basis for action by States, tribes and industry if those levels are reached. As a supplement to the four concentration levels specified in the SHL program, EPA proposes a range of concentrations under the intervention level program. The lower boundary of this range would be the concern level, set at 0.60 ppm of SO_2, based on a 5-minute hourly maximum value (a 5-minute hourly maximum value for SO_2 is the highest of the 5-minute averages from the 12 possible nonoverlapping periods during a clock hour). The upper boundary of this range would be the endangerment level, set at 2.0 ppm of SO_2, based on a 5-minute hourly maximum value. These intervention levels are based on the health criteria discussed below and in the May 22, 1996 part 50 final action (61 FR 25566), and would be used by States and tribes along with other factors to determine whether occurrences of 5-minute SO_2 concentrations require action to address "* * * imminent and substantial endangerment to public health or welfare, or the environment * * *", as stated in section 303 of the Act.

In the event that the concern level concentration is exceeded in a given area, and the State or tribe has reason to believe that the exceedance may constitute imminent and substantial endangerment, the State or tribe would assess the situation to determine whether intervention is appropriate. In making this determination, the State or tribe would consider the magnitude of the 5-minute peak concentrations; the frequency of the episodes (based on those episodes detected by monitors and an estimate of the number of 5-minute peaks not recorded by the monitoring network); the history and nature of citizen complaints; available information on potential population exposure, inferred in part by the population in the vicinity of the source; the type of process being used (i.e., one type of process within a source category may be less efficient and known to emit more SO_2 than another); the history of past upsets or malfunctions; the type of fuel used; knowledge of how well the source is controlled; and any other considerations the State or tribe finds to be appropriate. Because the health effects become more severe as the 5-minute SO_2 concentration approaches the endangerment level, it is reasonable to expect that the State or tribe would be more likely to determine that intervention is warranted, and that the degree of intervention judged to be necessary would increase. If the endangerment level is exceeded, thereby exposing a significant population to imminent and substantial endangerment, the State or tribe may consider taking immediate action to protect public health. Even in cases when the endangerment level is exceeded, it is conceivable that the State or tribe may determine that no action is warranted. For example, if the exceedance is linked to an unusual circumstance not likely to reoccur, or causes minimal impact on public health, the State or tribe may conclude that corrective measures are not needed at this time.

In general the State or tribe will assess the health risk and implement corrective measures under the intervention level program, not EPA. If necessary, EPA would take action under the authority of section 303, as appropriate, in the event that the State or tribe fails to address (1) imminent and substantial endangerment to public health presented by exceedances of the endangerment level, or (2) evidence that exceedances above the concern level (but below the endangerment level) cause imminent and substantial endangerment due to their frequency, magnitude, and reported health impacts.

B. Health Effects and Basis for Levels

The health effects associated with exposures to the concern level, 0.60 ppm SO_2, 5-minute block average, were the focus of EPA's most recent review of the primary NAAQS for sulfur oxides (measured as sulfur dioxide). The health effects and the Administrator's conclusions about the public health risks associated with exposure to the concern level are thoroughly discussed in the EPA documents generated during that review: the criteria document supplement (EPA, 1994a), the staff paper supplement (EPA 1994b), the November 15, 1994 proposal (59 FR 58958) and the May 22, 1996 final decision on part 50 (61 FR 25566). These documents are incorporated into today's proposal by reference.

The EPA's concern about the potential public health consequences of exposures to short-term peaks of SO_2 arose from the extensive literature involving brief (2- to 10-min) controlled exposures of persons with mild (and, in some cases moderate) asthma across the

ranges of concentrations of SO_2 to greater than 2.0 ppm while at elevated ventilation rates. The major effect of SO_2 on sensitive asthmatic individuals is bronchoconstriction, usually evidenced in these studies by decreased lung function (i.e., decreased forced expiratory volume in 1 second (FEV_1) and increased specific airway resistance (SR_{aw})) and the occurrence of clinical symptoms such as wheezing, chest tightness, and shortness of breath. The proportion of asthmatic individuals who respond, the magnitude of the response and the occurrence of symptoms increase as SO_2 concentrations and ventilation rates increase. The criteria document supplement (EPA, 1994a) contains a summary of the literature on the health effects associated with brief exposures to SO_2.

Taking into account the available health effects studies and the body of comments on the health effects, the Administrator concluded in the May 22, 1996 final decision (61 FR 25566) that a substantial percentage (20 percent or more) of mild-to-moderate asthmatic individuals exposed to 0.60 to 1.0 ppm SO_2 for 5 to 10 minutes at elevated ventilation rates, such as would be expected during moderate exercise, would be expected to have lung function changes and severity of respiratory symptoms that clearly exceed those experienced from typical daily variation in lung function or in response to other stimuli (e.g., moderate exercise or cold/dry air). The bronchoconstriction caused by brief exposures to 0.6 to 1.0 ppm SO_2 is transient (i.e., measurements of lung function start to improve when exposure ceases or when the individual ceases to exercise and ventilation rates return to resting levels). However, for many responders, the effects are likely to be both perceptible and thought to be of some health concern; that is, likely to cause some disruption of ongoing activities, use of bronchodilator medication, and/or possibly seeking of medical attention.

During the regulatory review process, there was some agreement by medical experts that at this concentration, 0.60 ppm SO_2, the frequency with which such effects are experienced may affect the degree of public health risk. After taking into account the broad range of opinions expressed by Clean Air Scientific Advisory Committee (CASAC) members, medical experts, and the public in the part 50 final decision, the Administrator concluded that repeated occurrences of such effects should be regarded as significant from a public health standpoint. Furthermore, the Administrator determined that the likely frequency of occurrence of such effects should be a consideration in assessing the overall public health risk in a given situation.

The available scientific literature indicates that in the range of 0.60 to 2.0 ppm SO_2, there is a dose-response relationship between SO_2 concentration and (1) the magnitude of the lung function changes, and (2) the proportion of the asthmatic individuals expected to respond. At 1.0 ppm SO_2, 5-minute block average, approximately 60 percent of the mild-to-moderate asthmatic individuals at elevated ventilation rates are likely to respond. The health effects become more pronounced, with more substantial changes in pulmonary function accompanied by symptoms. Asthmatic individuals may experience mild bronchoconstriction without symptoms while at rest (EPA, 1986a; EPA, 1986b).

At 2.0 ppm SO_2, 5-minute block average, approximately 80 percent of mild-to-moderate asthmatic individuals at elevated ventilation rates are likely to respond. Effects can range from moderate to incapacitating. Asthmatic individuals at rest are likely to experience moderate bronchoconstriction. A moderate episode of bronchoconstriction can increase the lung function index SR_{aw} by 100 to 200 percent, with a severe response being an SR_{aw} increase of > 200 percent, and incapacitating bronchoconstriction entails SR_{aw} increases much greater than 300 percent (EPA, 1994a). Horstman et al. (1986) report that 12 (of 27) subjects in the Roger et al. (1985) study, whose SR_{aw} values did not increase by 100 percent at 1.0 ppm SO_2 or lower levels, were also exposed to 2.0 ppm using the same protocol. At this level, seven of these less sensitive asthmatic individuals had SR_{aw} increases of from 100 to over 600 percent. For a more detailed discussion of the studies which support this assessment, see the 1986 criteria document addendum (Table 7; EPA, 1986a), and section IIB of the 1986 staff paper addendum (EPA, 1986b).

At 3.0 to 5.0 ppm SO_2, nonasthmatic adults at mild exercise will experience bronchoconstriction, and asthmatic individuals at rest will likely experience pronounced bronchoconstriction. For a more detailed discussion of the health effects of exposure to these higher concentrations of SO_2, see the 1982 criteria document (EPA, 1982a) and the 1982 staff paper (EPA, 1982b). Based upon this information, EPA believes that exposure of a sensitive population to a 5-minute ambient concentration of 2.0 ppm or above would pose an imminent and substantial endangerment to public health and welfare and, therefore, would justify corrective action under the authority of section 303.

C. Flexible Implementation Strategy

Like the previously proposed implementation alternatives, a key element of this new implementation strategy is the relocation of existing SO_2 monitors to areas near point sources where peak SO_2 concentrations may exist. Because the monitors in the existing State and local area monitoring stations (SLAMS) network were designed to characterize urban ambient air quality associated with 3-hour, 24-hour, and annual SO_2 concentrations, they are not always the appropriate means for measuring 5-minute peak SO_2 concentrations from point sources. To make existing monitors available for the measurement of short-term peak concentrations, EPA proposed certain technical changes to the requirements for ambient air monitoring reference and equivalent methods (40 CFR part 53) and revisions to the ambient air quality surveillance requirements (40 CFR part 58) in the November 15, 1994 (59 FR 58958) and the March 7, 1995 (60 FR 12492) proposals, respectively.

The EPA believes these changes to the monitoring requirements will give the States and tribes the flexibility to relocate existing monitors to areas where 5-minute peak concentrations may be of concern, and to respan the monitors to measure these peaks. Under the intervention level program, the States and tribes would be able to identify areas to be monitored based on State or tribal priorities, source emissions, citizen complaints, location of sensitive populations, or other variables. Upon request, EPA would assist State and tribal efforts to identify and prioritize areas for monitoring 5-minute peak concentrations by providing information compiled from various databases. The EPA would leave the discretion on how best to utilize this information in siting monitors to the States and tribes. If the State or tribe has ample reason to believe that areas within its jurisdiction do not experience health risks from 5-minute peak concentrations (for example, no sources with significant compliance issues, maintenance problems or upsets; no complaints about detrimental health effects from short-term peak SO_2 concentrations), the State or tribe would be justified in not relocating SO_2 monitors for this purpose.

III. Legal Authority

In the November 15, 1994 **Federal Register** action (59 FR 58958), EPA

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discussed the legal authority for a proposed regulatory program under the authority of sections 110(a)(2)(G), 301, and 303 of the Act. The March 7, 1995 proposal (60 FR 12492) described this program in greater detail. Although the intervention level program proposed herein differs from the section 303 program described in these actions, the basic objective and the legal authority to establish it remain the same. Consequently, the EPA continues to rely on the legal authority discussion regarding sections 301 and 303 contained in the November 15, 1994 proposal and hereby incorporates that discussion by reference (59 FR 58970–71).

In addition, the EPA believes that in some cases the potential health effects that may result from a 5-minute peak SO_2 concentration above the concern level of 0.60 ppm could be an indicator of substantial endangerment to public health and welfare, depending on the frequency and magnitude of the ambient peak concentrations and the likelihood that asthmatic individuals will experience exposures of concern. For example, concentrations above the concern level may present an unacceptable risk of harm to asthmatic individuals who have not premedicated with beta-agonist bronchodilators and are exposed at elevated ventilation. Action under the authority of section 114 to investigate the cause and potential effect of ambient concentrations above the concern level, followed by corrective action under the authority of section 303, might therefore be warranted in some cases. Furthermore, EPA believes that exposure of a sensitive population to a 5-minute ambient concentration of 2.0 ppm or above would pose an imminent and substantial endangerment to public health and welfare and, therefore, would justify corrective action under the authority of section 303.

Unlike the section 303 program EPA proposed on March 7, 1995, the intervention level program proposed today would not require States and tribes to submit revised contingency plans to EPA requiring specific actions for the State, tribe, and source to undertake once an established ambient SO_2 concentration is violated. The EPA believes that the approved SIP's currently in force provide the States with adequate general authorities to implement the intervention level program without submittal of revised contingency plans for approval by EPA. Section 110(a)(2)(G) of the Act requires that the SIP contingency plans contain adequate authority to implement section 303 programs. Furthermore, the SIP's contain general enforcement authority that allows States to request information and conduct inspections—in short, to gather the necessary data to determine the appropriate course of action in the event that 5-minute SO_2 peaks pose a threat to human health. Finally, many SIP's contain general prohibitions against air pollution which provide the States broad discretion to address source-specific problems. The EPA also believes that once the tribal rule proposed on August 25, 1994 (59 FR 43956) becomes final, tribal implementation plans (TIP's) will provide tribes with similar authority.

The EPA believes the general authority possessed by States and tribes to implement the intervention level program under section 303 is an advantage. By eliminating the need for States and tribes to revise their contingency plans, as well as the need for an extensive review and approval process, the intervention level program should minimize the potential administrative burden on the States and tribes. If a particular State SIP or tribal TIP does not contain adequate authority to implement the intervention level program, EPA expects the State/tribe to revise its SIP/TIP accordingly to provide the necessary authority. In the event that the State/tribe does not take prompt action to revise its SIP/TIP, EPA would issue a SIP/TIP call for the State/tribe. The EPA interprets sections 110(a)(2)(G) and 303 of the Act, along with section 301 (which grants general authority to prescribe regulations necessary to carry out the functions of the Administrator), as providing adequate legal authority to establish this program and to promulgate the necessary regulations to implement it.

IV. Program Implementation

A. Requirements Associated with Implementation of the Intervention Level Program

As stated earlier, EPA's intent in proposing the intervention level program is that the States and tribes would be given the flexibility to address particular sources of 5-minute SO_2 peak concentrations in the most efficient and appropriate manner, based on an area-specific analysis of the particular characteristics of peak ambient concentration episodes in their jurisdictions. The following discussion is intended as a guide for implementing the intervention level program and is not meant to be prescriptive.

The EPA believes that when the concern level of 0.60 ppm has been exceeded in a given area, the State or tribe should consider whether or not the situation presents a significant public health risk. If the number of exceedances per year are few in number, or linked to rare incidents, the State or tribe may determine that no further action is warranted unless the frequency or severity of the exceedances increases. If the concern level is exceeded on a more regular basis, or to a more severe degree, the State or tribe should conduct a more detailed analysis. The analysis could include elements such as identification of the sources that contribute most to the peak ambient concentrations, the number of observed and projected exceedances, the magnitude of the exceedances, the nature and location of the sources, the proximity of the sources to sensitive populations, and other pertinent factors needed to characterize the risk to public health. The State or tribe may choose to follow up the analysis with a compliance inspection of the sources that contribute to the peak ambient concentrations. If the magnitude of the peak concentrations is significantly higher than the concern level of 0.60 ppm (but still less than the endangerment level of 2.0 ppm), the State or tribe may choose to conduct a compliance inspection after only one exceedance. If any of the sources under consideration are out of compliance with their existing emission limits (based on the NAAQS or other air pollution requirements), then the State or tribe would take the necessary steps to bring the sources into compliance. If, however, the State or tribe determines a substantial threat to public health exists, but (1) finds it unlikely that bringing sources into compliance with their existing emission limits would prevent further exceedances of the concern level, or (2) determines the source to be in compliance with applicable emission limits, then further action in addition to assuring compliance may be needed. In such circumstances, the next step would be for the State, tribe and source to examine the sources of the peak concentrations. Once that is determined, an appropriate approach to address the high peak concentrations would need to be developed.

Under the intervention level program, EPA would not specify a time limit in which States, tribes and sources must take corrective action (whether it be control devices, process or operational modifications, or other selected protective approach). However, EPA expects that development and implementation of any course of corrective action for a given situation would occur expeditiously and efficiently, based on the risk to public

health; the specific processes or operations at the source that cause the peak episodes; the available options for addressing the public health risk; the reasonable lead time necessary to plan, design, procure and install control devices and process modifications, or to implement alternative approaches to control; and other pertinent considerations. Implementation need not wait until the process of incorporating the selected course of action into the SIP/TIP, permit, or other enforceable agreement is complete. Once the approach for addressing the public health risk has been determined, the State/tribe should issue a section 303 order to the source to expedite implementation of the selected action.

In determining the course of corrective action, States, tribes, and sources should keep in mind that the goal of the intervention level program is to prevent imminent and substantial endangerment to public health caused by short-term peak ambient concentrations. Control measures to prevent recurrences of 5-minute SO_2 peaks may include better maintenance of control equipment, better capture of fugitive emissions, raising the stack height (refer to section A under *Relationship between the Intervention Level Program and Existing Programs),* restriction of operations during times of peak exposure (e.g., conducting activities during hours when fewer people are outside), or other innovative courses of action. In some cases (e.g., areas where the risk is minimal due to low population density or where infrequent 5-minute peaks occur), after consultation with sources and the affected communities, the State or tribe may determine that control measures may not be the most appropriate means for reducing the risk to the public. In such cases, States or tribes, in consultation with sources and the impacted communities, may elect to address the health risk through alternative approaches. Examples of alternative approaches that States, sources, and communities might select are: public education campaigns for asthma prevention, public warning/notice of potential health problems due to peak episodes (e.g., a local alert system, posting of areas where short-term peaks occur), or providing support for State, tribal, or local public health programs. Should an alternative approach be chosen, the State/tribe should ensure that the alternative measures required of the source are federally enforceable.

As the concentration approaches the endangerment level of 2.0 ppm averaged over a 5-minute period, the health effects, as discussed earlier, will become more pronounced and severe. The EPA expects States and tribes will be more concerned about the potential impacts and be more assertive in pursuing corrective remedies with the sources as the 5-minute peak concentrations approach the endangerment level. At concentrations at or above the endangerment level, EPA believes that imminent and substantial endangerment to the public health and welfare *could* occur, *and if such is the case,* urgent corrective actions would be warranted. However, even an isolated exceedance of the endangerment level might not require corrective action if the State or tribe find that the circumstances related to the exceedance are not likely to reoccur, or that the risk of exposure to sensitive populations is minimal. Again, EPA encourages States and tribes to determine the appropriate course of action for each situation based on the potential for public exposure and the risk to public health. While the State/tribe would issue section 303 orders requiring urgent corrective actions, any long-term corrective actions would have the same enforceability, recordkeeping, and compliance requirements as specified for the concern level actions.

The EPA believes proper and judicious implementation of the intervention level program by States and tribes would provide adequate protection against the recurrence of high, 5-minute SO_2 peaks once such emissions are identified as a problem for particular sources. In EPA's view, States and tribes, being in the best position to assess the impact of 5-minute concentrations in their jurisdiction, would have primary responsibility to execute this section 303 program. However, EPA would retain the authority to take whatever actions the Agency considers appropriate under section 303 to address these situations. For example, if a State or tribe does not take action after the endangerment level has been exceeded, EPA would consult with the State or tribe to discuss the basis for their decision not to act. If EPA then determines that corrective action is warranted to protect public health, EPA itself would take action. Similarly, EPA would consult with the State or tribe and take action in cases where it is evident that frequent exceedances of the concern level constitute an imminent and substantial endangerment to public health, and the State or tribe has failed to take protective action.

B. Compliance and Enforcement Issues

If the State/tribe decides that action is required under the intervention level program to abate the threat to public health, an effective means for ensuring that the source (or sources) has implemented the required course of action is needed. In many cases, compliance would consist of the State or tribe ensuring that the source has implemented the required remedies (e.g., equipment/process modifications, improving maintenance to address emissions contributing to short-term peaks, or a system to alert the public that conditions conducive to high 5-minute peak concentrations are present). However, if there are instances in which emissions can be feasibly measured on a 5-minute basis, or if fuel sampling can be shown to be a feasible compliance indicator, the State or tribe may elect to set an emission limit and use emission measurement or fuel sampling as the method for determining compliance with any control requirements. In such cases, ambient air monitoring over a reasonable period after the implementation of the selected approach would be necessary to verify the effectiveness of the selected corrective actions.

Enforcement of the intervention level program requirements would be based on the requirements of the applicable operating permit, enforceable consent order or agreements, or SIP. Because States and tribes have differing mechanisms for implementing their programs, EPA believes States and tribes are in the best position to determine the most appropriate implementation mechanism for their situations. Nonetheless, EPA believes that any corrective action required of a source by the State/tribe should be effective and practically enforceable—on both the State/tribal and Federal levels. Furthermore, the State/tribe should provide opportunity for public notice and comment on these actions. To this end, SIP revisions, operating permits, court orders, or other implementation mechanisms that provide for Federal enforceability and public participation would be appropriate methods for establishing corrective actions.

V. Relationship Between the Intervention Level Program and Existing Programs

A. Impact on SIP's, Attainment Planning and Implementation

While both the intervention level program and the SIP address health concerns caused by ambient concentrations of SO_2 in a given area, care should be taken to distinguish the two approaches. While the SIP and the intervention level programs are both meant to provide protection from the effects of ambient SO_2 concentrations,

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they address different health concerns. The SIP is intended for implementation of the primary and secondary SO_2 NAAQS, established under sections 108 and 109 of the Act to protect public health with an adequate margin of safety and protect the public welfare. The limits for the NAAQS as established are based on an annual arithmetic mean, a maximum 24-hour concentration and a maximum 3-hour concentration. The intervention level program, under the authority of section 303, is designed to address short-term (5-minute) ambient concentrations that present imminent and substantial endangerment to public health or welfare. While these programs complement each other, satisfaction of one program's requirements does not necessarily mean compliance with the other. For example, an area within a State may be in compliance with the requirements of the SIP and still be subject to 5-minute peaks of such magnitude and frequency that action under the intervention level program is warranted. Similarly, in a nonattainment area where progress is being made toward meeting the SIP requirements, the State/tribe may conclude that action under the intervention level program is unnecessary if, for example (1) the area has no 5-minute peaks that exceed the concern level, or (2) the area has infrequent peak episodes that do not render a significant health risk. Furthermore, if any actions are taken by States, tribes, or industry to address 5-minute peaks of SO_2 in a given area, care should be taken to ensure that such actions do not conflict with the existing SIP requirement, or the State or tribal attainment plan.

As an example, after investigating 5-minute SO_2 peak emissions in a given area and discussing various approaches with the source and the affected community, it may be determined that the most cost efficient way of addressing the situation would be to increase the stack height of a particular source. While the impact of increasing the stack height may not be considered in determining whether the emission limitation requirements of the SIP are satisfied, and though the source may already be in compliance with all applicable SIP limits, it is conceivable that the best way to address a given 5-minute concentration problem under the intervention level program could be through the use of dispersion techniques and intermittent controls. The EPA is not suggesting by this example that increasing stack heights is generally an appropriate means for addressing short-term peaks. States, tribes, sources, and affected communities are encouraged to consider other available approaches for minimizing the risk from short-term SO_2 exposures.

In conclusion, implementation of the intervention level program cannot and should not lead to any relaxation of the SIP requirements. However, there will be cases where the implementation of the intervention level program will complement the implementation of the SIP, if reductions in emissions are achieved. In nonattainment areas where 5-minute SO_2 peaks are also prevalent, the State or tribe may wish to coordinate attainment plan development so that the corrective action taken by the source is consistent with the objectives of both the attainment plan and the intervention level program.

B. Malfunctions

The EPA has on occasion used its enforcement discretion in determining how and whether to act on unavoidable violations of source emission limits during periods of startup, shutdown and malfunction (40 CFR 60.11(d)). This policy recognizes that during certain startup and shutdown conditions, effective pollutant control may sometimes not be technically feasible due to process temperatures and pressures that have not yet stabilized. The policy also recognizes that certain source malfunctions are not reasonably foreseeable and are unavoidable, which result in uncontrolled emissions to the atmosphere. However, in some cases these emissions may be causing 5-minute SO_2 peak concentrations that exceed the concern level of 0.60 ppm. The State or tribe must decide when and if action is needed to address such cases. The State or tribe may find that if exceedances associated with malfunctions, start-ups, or shutdowns occur frequently and pose a risk to public health, an appropriate remedial response (including controls, improved maintenance, or other alternative approaches) would be warranted.

C. Significant Harm Level Program

The EPA views the SHL program and the intervention level program as separate programs designed to address different situations that pose a threat to public health. The SHL program establishes corrective actions in advance to address emergency episodes that occur over a period of time (in the case of SO_2, the timeframe would be 24 hours or more). The intervention level program is intended to address peak concentrations which occur over a relatively short timeframe (5 minutes) and, thereby, calls for the appropriate means to address the peaks to be determined after the peak episode occurs.

In most cases, no overlap between the two programs is expected to occur. It is, however, conceivable that an area may be subject to high SO_2 emissions and generate 5-minute and 24-hour ambient concentrations of such magnitude that a State or tribe would have cause to take action under the auspices of both the intervention level and the SHL programs. For example, an area experiencing a 24-hour average SO_2 concentration of 1.0 ppm (the significant harm level) would also experience 5-minute peak concentrations in excess of 0.60 ppm (the concern level for the intervention level program).

Under such circumstances, EPA expects corrective action will be promptly initiated through the SHL program. Once the corrective action required under that program has been established, steps would be taken to determine whether (1) that action effectively prevents 5-minute peak concentration episodes in excess of the intervention levels, or (2) if the 5-minute episodes occur independently of events in which the 24-hour episode levels are exceeded. In the latter case, States and tribes would be expected to take further action under the intervention level program as necessary.

D. Acid Rain Program

Under the acid rain program, sources (primarily coal-fired electric utilities) are given flexibility in how they choose to meet their emissions reductions, including the buying or selling of SO_2 emissions allowances. Regardless of the number of SO_2 allowances a source holds, it may not emit at levels that would violate Federal, State, or tribal emission requirements established under title I of the Act to protect public health, including any emission requirements that would be established to carry out the intent of the intervention level program.

VI. Community Involvement in the Intervention Level Program

As stated earlier, the intervention level program as designed would give States, tribes, local governments, and communities the authority, ability and flexibility to address localized health concerns caused by 5-minute SO_2 episodes more effectively. While State or tribal regulatory agencies and industrial sources would be expected to be primarily responsible for implementing the intervention level program, members of the local community, whose health may be

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significantly impacted by peak ambient SO_2 concentrations, have a primary interest in the implementation of this program. The EPA encourages the States, tribes, industry, and local citizens to work together through the intervention level program to identify areas subject to 5-minute peaks, to assess the need for corrective action, and to develop corrective solutions.

When identifying areas that are subject to high ambient peaks, States and tribes may not wish to limit their analysis to ambient air monitoring and risk analysis. The States and tribes may want to consider the number and nature of citizen complaints received as an indicator of a potential public health problem and apply appropriate resources to receiving, reviewing, and addressing the concerns of citizens and community groups. The EPA recommends that citizens who express concern about the health and welfare effects due to high ambient concentration peaks be given the opportunity to present and clarify their concerns to the State or tribe. Citizens, in turn, should be informed of the types and levels of information that would be most helpful in determining links between peaks and health effects and be given every opportunity to gather and provide that information. The EPA can serve as an information resource for States, tribes, and citizens providing the information it has available regarding health effects, risk analysis, ambient air concentrations, monitoring, and other issues, if requested.

After the State or tribe completes its assessment of the health risks in an area caused by 5-minute SO_2 concentrations, it may determine one of three things in an area: (1) measures to protect the public health are needed, (2) measures to protect the public health are not needed, or (3) more information is needed to reasonably determine if protective measures are needed. The EPA encourages States and tribes to keep local citizens and community groups informed during the decision-making process, to explain the factors and information used to supporting the decision, and to provide citizens ample opportunity to comment if they disagree with the decision.

If the State or tribe decides that measures to protect the public health are necessary, EPA recommends that the protective measures be developed through a collaborative process involving the State, tribe, industry, and the local community. As part of the collaborative process, the parties involved should determine: (1) an agreed outcome or goal to be achieved by the protective measures, (2) appropriate actions to be taken by the emission sources to reduce the risk due to 5-minute ambient SO_2 concentrations, (3) a reasonable timetable for completion of the agreed-upon action (or actions), (4) a process to ensure that the action (or actions) agreed upon has been taken, and (5) a reasonable yardstick for assuring that the desired objectives have been achieved.

VII. Source Prioritization and Monitor Allocation

Like the three implementation options originally proposed, a key element of this new proposed implementation strategy is the relocation of existing SO_2 monitors to areas near point sources where peak SO_2 concentrations may exist. Historically, EPA has relied on modeling to predict air pollutant concentrations. However, the use of models is not currently an effective means for predicting 5-minute SO_2 excursions. The reasons for this, discussed in detail in the March 7, 1995 proposal (60 FR 12492), are summarized as follows: (1) model validation studies have not been conducted to determine if existing models can estimate with sufficient accuracy to be used in a regulatory context; (2) it is difficult to obtain accurate source emission data for 5-minute periods, since such data often depend on trying to measure emissions that may occur infrequently and at unpredictable times, concentrations, and flow rates; and (3) a method of determining the expected frequency of emission releases due to malfunctions would have to be employed in order to model these releases.

For these reasons, EPA presented a "targeted implementation strategy" in the March 7, 1995 proposal that relied principally on ambient air monitoring instead of modeling to find areas exposed to high, 5-minute concentrations of SO_2. Because the layout of the existing SLAMS network was intended for characterizing urban ambient air quality associated with 3-hour, 24-hour, and annual SO_2 concentrations, the network is not currently designed to measure 5-minute peak SO_2 concentrations from point sources. To allow for the relocation of monitors for measuring 5-minute peak concentrations, EPA proposed revisions to the ambient air quality surveillance requirements (40 CFR part 58) and proposed certain technical changes to the requirements for ambient air monitoring reference and equivalent methods (40 CFR part 53) in the November 15, 1994 (59 FR 58958) and the March 7, 1995 (60 FR 12492) proposals. The March 7, 1995 proposal also presented a strategy States and tribes could use to prioritize potential sources of high, 5-minute SO_2 peaks for monitoring. The strategy presented three groups of sources ranked by their capacity for high emission rates and their potential for high, 5-minute peaks. Available air quality or exposure data and the effects of source location in complex terrain were also considerations in developing the groups.

In ranking sources for monitoring 5-minute peaks, EPA did not expect States and tribes to rely solely on the three categories described in the original proposal. The EPA also recommended that States and tribes evaluate each facility on an individual basis, considering such factors as the type of process, past upsets and malfunctions, the type of fuel used, the complexity of the surrounding terrain, knowledge of how well the source is controlled, the compliance history of the source, proximity to population centers, and the history of citizen complaints. The States and tribes would also need to determine how heavily to weigh a Group A source in an area with low population density versus a Group C source in a more densely-populated area and consider the impact of different source types clustering within a given area. These considerations would form the basis for a State or tribal monitoring plan which would be submitted to EPA during the annual review of the SLAMS network. While EPA would review the monitoring plan developed by States or tribes, it was EPA's intent that States and tribes would retain the main role of decision making since they would have better knowledge of the individual circumstances pertaining to the potential sources to be targeted.

Comments received on the targeted monitoring strategy indicate that some members of the public viewed the proposed strategy as being more rigid than EPA intended. Many commenters felt that the data and assumptions used to develop the ranking categories were outdated and/or conservative. Some felt that their respective industries should not have been given as high a priority as suggested by the categories. Many rejected the concept of prioritizing industrial categories, preferring that the prioritization of sources be based on the additional factors EPA originally proposed—health and exposure data, the size and configuration of sources, compliance history, proximity to population centers, etc.

In response to the comments received, EPA wishes to clarify the criteria discussed in the March 7, 1995 proposal for use by States and tribes to prioritize

the monitoring of sources for high, 5-minute SO_2 peaks. The EPA is not requiring States or tribes to prioritize sources for monitoring in accordance with the three categories of industrial sources discussed in that proposal. The EPA is now recommending that States and tribes evaluate the need to monitor sources based on factors such as the history of citizen complaints, the compliance history of the sources in question, the State or tribe's knowledge of the operational characteristics of a given source (e.g., the likelihood of highly variable emissions, maintenance history), the population in the vicinity of a source (or more specifically, the population of asthmatics and other individuals susceptible to high SO_2 concentrations), and environmental justice concerns. The EPA maintains the proposed revisions to the ambient air quality surveillance requirements (40 CFR part 58) and the proposed technical changes to the requirements for ambient air monitoring reference and equivalent methods (40 CFR part 53), as discussed earlier.

VIII. Reconsideration of Proposed 24-Hour Significant Harm Level and Episodes Criteria

In the March 7, 1995 action (53 FR 14926), EPA also proposed revisions to the 24-hour SHL for SO_2. The EPA is now reconsidering this proposed SHL revision.

The EPA based its previous proposal on a reassessment of the data upon which the original SHL were based and an assessment of more recent scientific evidence on sulfur oxides and particulate matter. The scientific evidence suggested that the combination of SO_2 and high levels of particulate matter can be associated with increases in daily mortality. The final 24-hour PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) SHL of 600 $\mu g/m^3$ takes this potential interaction into account. This raised the question as to whether the remaining SO_2 SHL is sufficient. The possibility that SO_2 alone or in combination with other pollutants or fog droplets may be in part responsible for the effects associated with 24-hour exposures suggests the need to continue a 24-hour SHL for SO_2, but at a substantially lower concentration. Accordingly, EPA proposed to revise the 24-hour SO_2 SHL from 1.0 (2,620 $\mu g/m^3$) to 0.29 ppm (750 $\mu g/m^3$), as well as revisions to the 24-hour episode levels.

Upon further consideration, EPA now believes that a revised 24-hour SHL is not necessary to protect the public health. Based on a review of existing data, the EPA now believes the additional areas that would require corrective action as a result of changing the SHL (and the episode levels) are generally areas that have not attained the SO_2 NAAQS. The EPA expects that continued efforts of the States and tribes toward submittal, approval, and enactment of State or tribal implementation plans should not only achieve attainment of the NAAQS, but should also address the impact on human health caused by significant 24-hour SO_2 episodes. For this reason, EPA is amending its earlier proposal, recommending that no revision to the 24-hour SHL for SO_2 be made at this time. The EPA solicits comment on this issue.

IX. Comments and the Public Docket

The EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for improving or clarifying any aspects of the proposal. All comments, with the exception of proprietary information, should be directed to Docket No. A–94–55 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by: (1) labeling proprietary information "Confidential Business Information," and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

IX. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

While EPA does not believe the intervention level program would potentially have an annual effect on the economy of $100 million or more, the proposed intervention level program was developed in part due to comments received on earlier proposed implementation strategies which were deemed to be significant. Also, to some extent, the characteristics of the intervention level program—local responsibility, flexibility, community involvement—represents a novel regulatory approach. For these reasons, EPA has judged that the proposed intervention level program is a significant regulatory action as defined by Executive Order 12866 and has submitted this action to OMB for review. The EPA has prepared a regulatory impact analysis (RIA) which is summarized below.

In the event that a State or tribe determines that some means of corrective action is necessary under the intervention level program, the actions taken will be specific to the source and the area impacted by high, 5-minute ambient concentrations. As such, the costs can vary widely (from a low-cost alternative, such as fuel switching, to the installation of more costly add-on control equipment). Because of the tremendous uncertainty surrounding the estimation of national costs, the RIA evaluates the cost of control through a series of case studies that present information on a sample of control strategies. The case studies chosen for analysis in the RIA are based upon available data and characteristics of the SO_2 problem (and areas) that provide a broad scope of the issues associated with the implementation of the intervention level program. Of the predicted actions to be taken under this program, two of them correspond with case studies provided in the RIA. It should be noted, however, that the control strategies evaluated for the case

studies were chosen to provide the reader with a wide variety of approaches to resolve a short-term SO_2 problem, and thus, the strategies may not coincide with strategies that may be developed by States and tribes to resolve the problem in their local areas. The list of control strategies analyzed is not exhaustive, as time and resource constraints preclude analysis of all possible control alternatives (including new and innovative ways of addressing SO_2 concentrations that States and local communities may develop while evaluating a 5-minute SO_2 problem). As discussed earlier, States or tribes may choose to have sources address health risks from short-term peaks through alternative approaches such as public health education campaigns or public warning/notice of peak episodes. Such approaches may have lower costs than measures that reduce SO_2 emissions.

Since the current SLAMS network was not developed to identify areas that experience 5-minute peak SO_2 concentrations, it is difficult to predict how many areas of concern might be identified by States and tribes when they relocate monitors for this purpose. A survey of the States yielded 63 source-based monitors that monitored 5-minute concentrations during 1993 and 1994. Of these 63 monitors, 27 (43 percent) registered at least one exceedance of the concern level (0.6 ppm), and 1 (2 percent) registered exceedance of the endangerment level (2.0 ppm). Based on a detailed evaluation of data from these monitors, EPA identified ten areas that the Agency felt would be evaluated for the level of public health risk associated with short-term SO_2 episodes. Of the ten areas, EPA reasonably estimates that action under the intervention level program could be warranted for approximately five areas. The EPA is using several types of information as a basis for projecting the likelihood of action under the intervention level program, including: (1) historical knowledge about the situation based on interactions between the EPA Regions, States and local sources; (2) comments from sources, States, and local agencies on the original proposals which not only discuss local situations, but also the regulatory agency's likely response (because EPA is not only making a provisional judgment about the potential public health risk from these situations, but is also assessing how the regulatory agencies would respond); (3) air quality and census data; and (4) information about the industrial processes at facilities in the locations of concern.

The EPA recognizes that relocation of monitors around sources and in areas of potential concern could identify more areas where assessment of public health risk and possible intervention would be warranted. Since there is significant uncertainty about the extent to which States and tribes will relocate monitors, the total cost of the final program could be higher than the cost EPA has so far identified. The EPA invites public comment on its approach to estimating the costs of this proposal.

The case studies indicate the range of annualized cost for solutions to different 5-minute SO_2 problems to be from approximately $300,000 to $2.2 million. In addition, some case studies have no cost associated with the program since action is not taken. Yet, other studies indicate the potential for either a cost savings of $257,544 or a total annualized cost of $30 million. The range of costs reflects the significant amount of flexibility that regulatory authorities, communities, and sources have under the intervention level program to resolve short-term SO_2 problems at a substantially lower cost than other potential regulatory vehicles. For example, the previously-proposed regulatory option of establishing a new short-term SO_2 NAAQS (0.60 ppm, 5-minute average) was estimated to cost $1.75 billion. Several sources expected to incur costs under the NAAQS option would conceivably have no regulatory action taken upon them under the intervention level program and thus would not incur compliance costs. Even if the five actions predicted so far to occur under the intervention level program have the highest end of costs estimated in the RIA case studies ($2.2 million), the total cost of these five actions would be $11 million—$1.739 billion less than the NAAQS option proposed earlier.

Given that implementation of the intervention level program will only occur in areas where a State or tribe determines there is substantial risk to human health, it is unlikely that a vast number of sources in any one industry will be impacted. It is likely that only one or two sources of an industry will incur additional control costs to resolve a 5-minute SO_2 problem. If the sources affected by the program are not the marginal producers of an industry, the market supply curve is not likely to shift and the source would not benefit from increased prices. Rather, the source would absorb the compliance costs and incorporate them into the cost of production to determine their optimal level of operation.

The quantified benefits of the case studies ranged in value from $2,700 to $44,100. As such, the costs exceed benefits by a significant amount. The small magnitude of benefits results from mainly two factors. First, the short-term peaks in SO_2 under consideration impact a fairly small geographic area within the local vicinity of the model plants. The small geographic area leads to a relatively small number of people being exposed to these short-term peaks. Second, the benefit estimates are limited to the health benefits accruing to asthmatics. The welfare benefits associated with any ecosystem—visibility, odor, materials damage, or particulate matter improvements that may result from control of short-term peaks in SO_2—have not been considered. Although the costs determined for the case studies exceed the quantifiable benefits, the intervention level program achieves a reasonable solution to short-term SO_2 problems at substantially lower cost than other potential regulatory vehicles, such as the previously-proposed, new short-term SO_2 NAAQS. Several of the sources assumed to incur costs under the short-term NAAQS option would conceivably not require regulatory action taken upon them under the proposed intervention level program and would thus incur no compliance costs. In addition, a regulatory authority may consider environmental justice as a criteria to warrant action under the intervention level program. Paragraph E of this section of the preamble discusses the environmental justice analysis prepared for the RIA.

B. Monitoring and Administration Costs

There are 679 sites in the current SLAMS network established to monitor for violations of the SO_2 NAAQS. It was estimated in the previous proposal that approximately two-thirds of the monitors could be relocated in order to monitor for short-term SO_2 concentrations without compromising the current network of monitors for the NAAQS. When final changes to the requirements for ambient air monitoring reference and equivalent methods (40 CFR part 53) and revisions to the ambient air quality surveillance requirements (40 CFR part 58) are promulgated, the States, tribes, and local authorities will be given guidance to place anywhere from 1 to 4 monitors around sources where short-term SO_2 concentrations are of concern. While the total number of monitors to be relocated cannot be determined presently, it is likely that significantly fewer than two-thirds of the current network will be relocated under the intervention level program.

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The cost to relocate a monitor is specific to the monitor and site. However, if a stand-alone monitor can be relocated without having to replace operating and maintenance equipment (i.e., the shelter, calibration equipment, data logger, etc.), EPA estimates it would cost $18,630 to relocate the monitor. If a monitor that is relocated requires the installation of new equipment, the total cost of relocation would be $45,050. In addition, there is a cost to operate the monitor estimated at $22,000 per year. If the monitor is currently operating independently, relocating the monitor would merely transfer this expense to the new site. Therefore, there would be no incremental cost to operate the relocated monitor. However, the EPA is aware that some SO_2 monitors are colocated with other monitors (e.g., for ozone, nitrogen oxides, and particulate matter). When relocating the SO_2 monitor in this case, the existing site would maintain the current operating expense for the remaining monitors, and the new site for the relocated SO_2 monitor would incur an incremental operating cost of $22,000. Thus the total cost to relocate a monitor could range from $18,630 for a stand-alone monitor that already has the necessary equipment to relocate to a new site and will not incur any incremental operating costs to $67,050 for a monitor requiring both new equipment and operating expenses.

The EPA recognizes that as monitors are relocated, areas of concern in addition to those estimated may be identified. To the extent more information becomes available, EPA will estimate the anticipated impact of relocating monitors on total program costs in the final rule.

The EPA recognizes that there are costs associated with the administration of the intervention level program. These costs include: determining the need to relocate monitors; evaluating citizen complaints; assessing public health risk; and developing, implementing, and monitoring actions required of the source to reduce risk. The EPA believes that the additional costs resulting from the intervention level program would be minimal for two reasons. First, many States and tribes currently have sufficient administrative infrastructure in place to conduct such activities. Second, the flexibility of the program allows States and tribes to use their resources in the most efficient manner in implementing the program. The EPA invites public comment on the costs associated with administering the intervention level program.

C. Regulatory Flexibility Ar ysis

The Regulatory Flexibility Act (RFA) requires that all Federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

A decision to implement the intervention level program under the authority of section 303 would impose no new major requirements. Furthermore, the control measures necessary to implement the intervention level program are developed by the States and tribes. In selecting such measures, the States and tribes have considerable discretion to address the risk presented by 5-minute ambient SO_2 concentrations. Therefore, the impact on small entities from the intervention level program would be determined by how the States and tribes choose to implement the program. For these reasons, any assessment performed by EPA on the costs of implementation at this time would necessarily be speculative. On the basis of the above considerations and findings, and as required by section 605 of the RFA, 5 U.S.C. 601 et seq., the Administrator certifies that this regulation does not have a significant impact on a substantial number of small entities.

D. Impact on Reporting Requirements

While there are reporting requirements associated with related sections of the Act, particularly sections 107, 110, 160, and 317 (42 U.S.C. 7407, 7410, 7460, and 7617), there are no specific Federal reporting requirements associated with the proposed intervention level program. Because the program gives States and tribes discretion to take action as warranted by the risk to the public health, it is difficult to project what recordkeeping and reporting requirements States and tribes may feel are needed to ensure compliance and enforceability in specific cases. Furthermore, any necessary reporting and recordkeeping would be restricted to sources the State/tribe determines as contributing to high 5-minute concentrations in a localized area. No recordkeeping or reporting would be required from sources not contributing to 5-minute peaks or from sources in areas not subject to high 5-minute peaks.

Consequently, EPA is not asking for approval under the Paperwork Reduction Act for any such requirements at this time. The EPA welcomes comments on the nature and burden of recordkeeping and reporting requirements that may be associated with the intervention level program. As the information requirements of the program become clearer, EPA will reevaluate the need for information collection approval under the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under sections 202, 203, and 205, respectively, of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially-affected, small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures

of $100 million or more for State, local, or tribal governments, in the aggregate or the private sector in any 1 year. The EPA anticipates that the number of cases in which abatement of short-term SO_2 concentrations will be necessary will be few in number and that the States and tribes will work with the sources and the local community to arrive at the most appropriate and efficient control approach to reduce the risk to the public. For these reasons, the expenditures under the intervention level program are not expected to exceed the $100 million threshold. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Environmental Justice

Executive Order 12898 requires that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The requirements of Executive Order 12898 have been addressed in the draft regulatory impact analysis.

A number of factors indicate that asthma may pose more of a health problem among non-white individuals, children, and urban populations. With these factors in mind, a general screening analysis is conducted to examine the sociodemographic characteristics of the case study areas potentially impacted by short-term SO_2 peaks.

Overall, the population distributions in the case study areas do not indicate that a disproportionate number of non-white individuals would be impacted by short-term SO_2 ambient concentrations greater than 0.60 ppm. The analysis also indicates that there are twice as many children residing in the case study areas as compared to the national average, and potentially 595 of these children could have asthma and thus experience health impacts during peak SO_2 concentrations. In addition to the large number of children potentially exposed to peak SO_2 concentrations, 27 percent of the households in the case study areas are below the poverty level, which is twice the national average. It should be noted, however, that it is not known how many of the households below the poverty level contain asthmatic individuals. Given the available data, there is an indication that a disproportionate number of children and households below the poverty level are exposed to short-term SO_2 peaks.

In general, children do not have sufficient resources to relocate or take action against sources of SO_2 emissions. Similarly, households below the poverty level are generally unlikely to relocate or take action against sources of SO_2 emissions. Not only do these households often lack the resources to relocate, but they may be dependent on the local industrial sources for employment. In such a case, these households may be reluctant to take action against sources of SO_2 emissions if this action would adversely impact employment opportunities.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practices and procedure, Air pollution control, Intergovernmental relations, SO_2, Reporting and recordkeeping requirements, State implementation plans.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

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Roger, L. J.; Kehrl, H. R.; Hazucha, M.; Horstman, D. H. (1985). Bronchoconstriction in asthmatics exposed to sulfur dioxide during repeated exercise. J. Appl. Physiol. 59: 784–791.

For the reasons set forth in the preamble, EPA proposes to amend part 51 of Chapter I of title 40 of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Prevention of Air Pollution Emergency Episodes

2. Section 51.154 is added to Subpart H to read as follows:

§ 51.154 Intervention levels.

(a) Each plan must contain the authority to take whatever action necessary to prevent further exceedances of the following concern level attributable to emissions from a source or group of sources where one exceedance has occurred, and the State, tribe, or local air pollution control agency determines that the potential for further exceedances of this level constitutes imminent and substantial endangerment to public health or welfare, or the environment:

Sulfur dioxide (SO_2)—0.60 ppm, 5-minute hourly maximum value.

(b) Each plan must contain the authority to take whatever action necessary to prevent further exceedances of the following endangerment level attributable to emissions from a source or group of sources where one exceedance has occurred, and the State, tribe, or local air pollution control agency determines that the potential for further exceedances of this level constitutes imminent and substantial endangerment to public health or welfare, or the environment:

Sulfur dioxide (SO_2)—2.0 ppm, 5-minute hourly maximum value.

(c) Nothing in paragraphs (a) or (b) of this section shall preclude the State, tribe, or local air pollution control agency from addressing any public health threat arising from exceedances of the concern or endangerment levels with measures other than the imposition

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of control requirements designed to reduce emissions from specific sources, as long as the measures chosen effectively reduce the threat to public health.

(d) The State, tribe, or local air pollution control agency shall ensure that any action to be taken on the part of the source or group of sources to address any public health threat caused by exceedances of either the concern or endangerment level shall be enforceable by the Administrator and by citizens under the Act.

(e) A 5-minute hourly maximum value for SO_2 is the highest of the 5-minute averages from the 12 possible nonoverlapping periods during a clock hour. An exceedance occurs if the 5-minute hourly maximum is greater than the 5-minute concern or endangerment level after rounding. A value of 0.605 would be rounded to 0.61; a value of 2.05 would be rounded to 2.1. Therefore, the smallest value for an exceedance of the concern level is 0.61 and the smallest value for an exceedance of the endangerment level is 2.1. A 5-minute maximum shall be considered valid if:

(1) The 5-minute averages were available for at least 9 of the 12 5-minute periods during the clock hour; or

(2) The value of any 5-mihute average is greater than the concern level.

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federal register

Thursday
January 2, 1997

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Ch. 1, et al.
Federal Acquisition Regulation (FAR); Final Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–45]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document serves to introduce and relate together the interim and final rule documents which follow and which comprise Federal Acquisition Circular (FAC) 90–45. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90–45 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	Analyst
I	Procurement Integrity	96–314	Linfield
II	Certification Requirements	96–312	O'Neill
III	Humanitarian Operations	96–323	Linfield
IV	Freedom of Information Act	96–326	O'Neill
V	Exceptions to Requirements for Certified Cost or Pricing Data	96–306	Olson
VI	Implementation of the North American Free Trade Agreement Implementation Act	93–310	Linfield
VII	Application of Special Simplified Procedures to Certain Commercial Items	96–307	Moss
VIII	Compliance with Immigration and Nationality Act Provisions	96–320	Linfield
IX	Caribbean Basin and Designated Countries	96–017	Linfield
X	Caribbean Basin Country End Products—Renewal of Treatment as Eligible	96–020	Linfield
XI	Compensation of Certain Contractor Personnel (Interim)	96–325	DeStefano
XII	Agency Procurement Protests	95–309	O'Neill
XIII	Two-Phase Design Build Selection Procedures	96–305	O'Neill
XIV	Year 2000 Compliance (Interim)	96–607	O'Neill
XV	Limitation on Indirect Cost Audits	96–324	Olson

DATES: For effective dates and comment dates, see individual documents which appear elsewhere in this separate part.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405 (202) 501–4755. Please cite FAC 90–45 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–45 amends the Federal Acquisition Regulation (FAR) as specified below:

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Procurement Integrity (FAR Case 96–314)

This final rule amends the FAR to implement the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, as amended by Section 4304 of the 1996 National Defense Authorization Act. Section 4304 is part of the Clinger-Cohen Act of 1996. Section 3.104 is rewritten. Unlike the previous statute, some of the post-employment restrictions in the rewritten 3.104 apply to post-award activities. The final rule eliminates all of the procurement integrity certifications required by the previous statute.

The final rule makes other significant changes. The new post-employment restrictions apply to services provided or decisions made on or after January 1, 1997; the old restrictions apply for former officials whose employment ended before January 1, 1997. The clause at 52.203–10 is revised. The clauses at 52.203–9 and 52.203–13, and the Optional Form 333 at 53.202–1, are removed. The solicitation provision at 52.203–8 is replaced with a new clause to provide the means to void or rescind contracts where there has been a violation of the procurement integrity restrictions.

Item II—Certification Requirements (FAR Case 96–312)

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove certain certification requirements for contractors and offerors that are not specifically required by statute. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104–106).

Item III—Humanitarian Operations (FAR Case 96–323)

This final rule amends the definition of "simplified acquisition threshold" at FAR 2.101 to increase the threshold to $200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in support of a humanitarian or peacekeeping operation. The rule implements 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) as amended by Section 807 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201).

Item IV—Freedom of Information Act (FAR Case 96–326)

This final rule amends FAR Subpart 24.2 to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act.

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Item V—Exceptions to Requirements for Certified Cost or Pricing Data (FAR Case 96–306)

This final rule implements Section 4201 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4201: (1) Exempts suppliers of commercial items under Federal contracts from the requirement to submit costs or pricing data; (2) provides for the submission of information other than cost or pricing data to the extent necessary to determine price reasonableness; and (3) removes specific audit authorities pertaining to information provided by commercial suppliers. Accordingly, FAR 15.8, 52.215–26, 52.215–41, and 52.215–42 are amended to revise requirements pertaining to the submission of information relating to commercial items; FAR 52.215–43 is removed; and other associated changes are made in FAR Parts 4, 12, 15, 16, 25, 31, 46, and 52.

Item VI—Implementation of the North American Free Trade Agreement Implementation Act (FAR Case 93–310)

The interim rule published as FAC 90–19 and amended by FAC 90–39 is converted to a final rule with changes. The final rule amends FAR Part 25. The final rule revisions result from public comments received on FAR Case 96–312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published in FAC 90–39 were reinstated.

Item VII—Application of Special Simplified Procedures to Certain Commercial Items (FAR Case 96–307)

This final rule amends FAR Parts 5, 6, 11, 12, and 13 to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold ($100,000) but not greater than $5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

Item VIII—Compliance With Immigration and Nationality Act Provisions (FAR Case 96–320)

The interim rule published as Item II of FAC 90–41 is converted to a final rule without change. The final rule amends FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. The rule implements Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions.

Item IX—Caribbean Basin and Designated Countries (FAR Case 96–017)

This final rule amends FAR 25.401 to update the lists of countries included in the definitions of "Caribbean Basin country" and "Designated country".

Item X—Caribbean Basin Country End Products—Renewal of Treatment as Eligible (FAR Case 96–020)

This final rule amends FAR 25.402(b) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries.

Item XI—Compensation of Certain Contractor Personnel (FAR Case 96–325)

This interim rule adds a new requirement at FAR 31.205–6(p) to implement Section 809 of the Fiscal Year (FY) 1997 National Defense Authorization Act (Public Law 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during FY 1997.

Item XII—Agency Procurement Protests (FAR Case 95–309)

The interim rule published as Item XIII of FAC 90–40 is revised and finalized. The rule amends FAR 33.103 to implement Executive Order 12979, Agency Procurement Protests. Executive Order 12979 provides for inexpensive, informal, procedurally simple, and expeditious resolution of agency protests, including the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel.

Item XIII—Two-Phase Design-Build Selection Procedures (FAR Case 96–305)

This final rule amends FAR Part 36 to implement Section 4105 of the Clinger-Cohen Act of 1996 (Public Law 104–106), which authorizes the use of two-phase design-build procedures for construction contracting. Two phase design-build construction contracting provides for the selection of a limited number of offerors (normally five or fewer), during Phase One of the solicitation process, to submit detailed proposals for Phase Two.

Item XIV—Year 2000 Compliance (FAR Case 96–607)

This interim rule amends FAR Part 39 to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues.

Item XV—Limitation on Indirect Cost Audits (FAR Case 96–324)

This final rule amends FAR Part 42 to implement Section 808 of the FY 97 National Defense Authorization Act (Public Law 104–201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) of Public Law 103–355, to include reciprocity on pre-award audits.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90–45 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–45 is effective January 1, 1997, except for Item XII, which is effective March 3, 1997

Dated: December 24, 1996.

Charles A. Zuckerman,

Director, Defense Procurement (Acting).

Dated: December 23, 1996.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 23, 1996.

L.W. Bailets,

Associate Administrator for Procurement (Acting), National Aeronautics and Space Administration.

[FR Doc. 96–33198 Filed 12–31–96; 8:45 am]

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48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53

[FAC 90–45; FAR Case 96–314; Item I]

RIN 9000–AH19

Federal Acquisition Regulation; Procurement Integrity

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 27 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 423), as amended by Section 4304 of the Clinger-Cohen Act, part of the FY 96 National Defense Authorization Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–314. E-mail correspondence submitted over the Internet should be addressed to: 96–314@V.GSA.GOV.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to implement the procurement integrity requirements in 41 U.S.C. 423 as amended by Section 4304 of the Clinger-Cohen Act of 1996 (Public Law 104–106). A proposed rule with request for public comments was published on September 6, 1996 (61 FR 47390). Sixty-nine comments were received from 10 respondents. These comments include three respondents' comments that were received after November 5, 1996, but which also were considered in drafting this final rule.

Section 4304 imposes restrictions on both the obtaining and disclosing of certain information obtained during the conduct of a procurement, except as provided by law. It requires certain agency officials involved in a procurement to take definite actions when contacting or contacted by offerors regarding non-Federal employment. Also, it prohibits a former official's acceptance of compensation from a contractor if the former official either served in an identified position or made certain contract decisions involving more than $10 million to that contractor. Unlike the previous statutory requirements, some of the post-employment restrictions apply to post-award activities.

The final rule eliminates all procurement integrity certifications previously required by the statute and revises the proposed rule published on September 6, 1996, in several significant ways. Subsection 3.104–2 was clarified to state that the post-Federal employment restrictions of the amended statute are applicable only to Federal service provided or decisions made after January 1, 1997. The text was reorganized and two new subsections added. In the redesignated 3.104–3, the terms "compensation", "contract", "decision to award a subcontract or modification of subcontract", "in excess of $10,000,000", and "source selection evaluation board" were defined.

The final rule amplifies on the proposed rule in several areas addressed in the public comments received. For example, bid or proposal information marked in accordance with FAR 52.215–12 is contractor bid or proposal information that requires protection (see definition in 3.104–3 and 3.104–5). In 3.104–6, the final rule adds that contacts through an agent or other intermediary of an agency official or of a bidder or offeror may be considered a "contact" and require the agency official to disqualify himself or herself from the procurement. In the new 3.104–10, we added that the agency may take appropriate administrative action when an agency official's contact with a bidder or offeror regarding post-Federal employment interferes with the official's ability to perform assigned duties, and made specific reference to the criminal and civil penalties which may result from violations of the prohibitions and requirements of the Act.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. The analysis is summarized as follows:

The objective of this rule is to advise present and certain former agency officials, bidders, offerors, and others involved in Federal agency procurements and contracts, of the revised requirements of 41 U.S.C. 423. Section 4304 of the Clinger-Cohen Act of 1996 (Public Law 104–106) (1) restricts the disclosing and obtaining of procurement information during the conduct of a Federal agency procurement, (2) identifies actions procurement officers must take when contacted by a bidder or offeror regarding non-Federal employment, and (3) prohibits a former official's acceptance of compensation from a contractor if the former official either served in an identified position or made certain contact decisions involving more than $10 million to that contractor.

No comments were received in response to the Initial Regulatory Flexibility Analysis. The final rule's restrictions on disclosing or obtaining procurement information apply to all competitive Government procurements. The restrictions on employment discussions between Federal agency officials and bidders or offerors in Federal agency procurements apply to all competitive Government procurements above the simplified acquisition threshold. We estimate that there are approximately 40,000 small businesses per year that submit bids or proposals for contracts exceeding the simplified acquisition threshold.

The rule's prohibition on former Federal agency officials' acceptance of compensation from certain contractors applies to any contractor which is awarded a contract in excess of $10 million, or which is affected by certain decisions made by a Federal agency official on matters in excess of $10 million. We estimate that this provision of the rule will apply to approximately 60 small businesses per year.

The interim rule imposes no new information collection or recordkeeping requirements. The rule eliminates existing information collection and recordkeeping requirements that implemented 41 U.S.C. 423 prior to its amendment by Section 4304. The existing requirements that this rule eliminates applied to (1) large and small entities that are bidders or offerors in Federal agency procurements with a value of $100,000 or more, (2) contractors negotiating contract modifications with a value of $100,000 or more, and (3) contractors that wish to employ former Federal procurement officials.

There are no known alternatives which would further reduce the impact on small entities and accomplish the objectives of 41 U.S.C. 423, as amended by Section 4304 of Public Law 104–106.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply

because the final rule eliminates existing recordkeeping and information collection requirements approved by the Office of Management and Budget under OMB Number 9000–0103. A paperwork burden of 43,333 hours is eliminated.

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. The table in section 1.106 is amended under the "FAR Segment" and "OMB Control Number" columns by removing the entries for "3.104–9", "3.104–12(a)(12)", "52.203–8", and "52.203–9".

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Sections 3.104 through 3.104–11 are revised and 3.104–12 is removed, to read as follows:

3.104 Procurement integrity.

3.104–1 General.

(a) This FAR section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the Fiscal Year 1990/1991 National Defense Authorization Act, Public Law 101–189, section 815 of the Fiscal Year 1991 National Defense Authorization Act, Public Law 101–510, and section 4304 of the Fiscal Year 1996 National Defense Authorization Act, Public Law 104–106 (hereinafter, the Office of Federal Procurement Policy Act, as amended, is referred to as "the Act"). Agencies may supplement 3.104 and any clauses required by 3.104, and may use agency specific definitions to identify individuals who occupy positions specified in 3.104–4(d)(1)(ii). Such supplementation and definitions must be approved at a level not lower than the senior procurement executive of the agency, unless a higher level of approval is required by law for that agency.

(b) Agency employees are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207, 5 U.S.C. 7353, and 5 CFR part 2635;

(2) Section 208 of Title 18, United States Code, and 5 CFR part 2635 preclude a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person from whom the employee is seeking employment;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641, which prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905;

(5) Other laws such as the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905) may preclude release of information both before and after award (see 3.104–5); and

(6) Use of nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are covered by 5 CFR 2635.703.

3.104–2 Applicability.

(a) The restrictions at 3.104–4 (a) and (b) apply beginning January 1, 1997, to the conduct of every Federal agency procurement using competitive procedures for the acquisition of supplies or services from non-Federal sources using appropriated funds.

(b) The requirements of 3.104–4(c) apply beginning January 1, 1997, in connection with every Federal agency procurement using competitive procedures, for a contract expected to exceed the simplified acquisition threshold. Such requirements do not apply after the contract has been awarded or the procurement has been canceled.

(c) The post-employment restrictions at 3.104–4(d) apply to any former official of a Federal agency, for services provided or decisions made on or after January 1, 1997.

(d) Former officials of a Federal agency whose employment by a Federal agency ended before January 1, 1997, are subject to the restrictions imposed by 41 U.S.C. 423 as it existed before Public Law 104–106. Solely for the purpose of continuing those restrictions on those officials to the extent they were imposed prior to January 1, 1997, the provisions of 41 U.S.C. 423 as it existed before Public Law 104–106 apply through December 31, 1998.

3.104–3 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 and any other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104–7 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

Compensation means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

Contract, for purposes of the post-employment restrictions at 3.104–4(d), includes both competitively awarded and non-competitively awarded contracts.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section).

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215–12.

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Decision to award a subcontract or modification of subcontract means a decision to designate award to a particular source.

Federal agency has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency shall constitute a separate procurement for purposes of the Act.

In excess of $10,000,000 means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract unless the contracting officer documents a lower estimate.

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Official means:

(1) An officer, as defined in 5 U.S.C. 2104.

(2) An employee, as defined in 5 U.S.C. 2105.

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3).

(4) A special Government employee, as defined in 18 U.S.C. 202.

Participating personally and substantially in a Federal agency procurement is defined as follows:

(1) *Participating personally and substantially in a Federal agency procurement* means active and significant involvement of the individual in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) *Participating "personally"* means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) *Participating "substantially"* means that the employee's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an individual will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement;

(iii) Clerical functions supporting the conduct of a particular procurement; and

(iv) For procurements to be conducted under the procedures of OMB Circular A–76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

Source selection information means any of the following information which is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to a Federal agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as "SOURCE SELECTION INFORMATION—SEE FAR 3.104" based on a case-by-case determination by the head of the agency or designee, or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

3.104–4 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104–5(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection*

27(b) of the Act). A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of agency officials when contacted by offerors regarding non-Federal employment (subsection 27(c) of the Act).* If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(1) Promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(i) Reject the possibility of non-Federal employment; or

(ii) Disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104–6) until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, on the grounds that—

(A) The person is no longer a bidder or offeror in that Federal agency procurement; or

(B) All discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).*

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency—

(A) A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(C) A decision to approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) A decision to pay or settle a claim in excess of $10,000,000 with that contractor.

(2) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency or designee, or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.411, 15.413, applicable law, and agency regulations.

(c) In determining whether particular information is source selection information, see the definition in 3.104–3 and consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information under paragraph (10) of the definition shall mark the cover page and each page that the individual believes contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." Although the information in paragraphs (1) through (9) of the definition in 3.104–3 is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with the same legend.

(d) Except as provided in subparagraph (d)(4) of this subsection, if the contracting officer believes that information marked as proprietary is not proprietary, information otherwise marked as contractor bid or proposal information is not contractor bid or proposal information, or information marked in accordance with 52.215–12 is inappropriately marked, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and the information may be released.

(2) If, after reviewing any justification submitted by the contractor, the contracting officer determines that the marking is not justified, the contracting officer shall notify the contractor in writing.

(3) Information marked by the contractor as proprietary, otherwise marked as contractor bid or proposal information, or marked in accordance with 52.215–12, shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier. Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(e) Nothing in this section restricts or prohibits—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) Nothing in this section shall be construed to authorize—

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(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information which pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award where such disclosure, solicitation, or receipt is prohibited by law. See 3.104–1(b)(5) and subpart 24.2.

3.104–6 Disqualification.

(a) *Contacts through agents.* Disqualification pursuant to 3.104–4(c)(2) may be required even where contacts are through an agent or other intermediary of the agency official or an agent or other intermediary of a bidder or offeror. See 18 U.S.C. 208 and 5 CFR 2635.603(c).

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104–4(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104–4(c)(2)(ii) shall promptly submit to the head of the contracting activity (HCA), or designee, a written notice of disqualification from further participation in the procurement. Concurrent copies of the notice shall be submitted to the contracting officer, the source selection authority if the contracting officer is not the source selection authority, and the agency official's immediate supervisor. As a minimum, the notice shall—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the bidder or offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The individual shall remain disqualified until such time as the agency has authorized the official to resume participation in the procurement in accordance with 3.104–4(c)(2)(ii).

(2) Subsequent to a period of disqualification, if an agency wishes to reinstate the agency official to participation in the procurement, the HCA or designee may authorize immediate reinstatement or may authorize reinstatement following whatever additional period of disqualification the HCA determines is necessary to ensure the integrity of the procurement process. In determining that any additional period of disqualification is necessary, the HCA or designee shall consider any factors that might give rise to an appearance that the agency official acted without complete impartiality with respect to issues involved in the procurement. The HCA or designee shall consult with the agency ethics official in making a determination to reinstate an official. Decisions to reinstate an employee should be in writing. It is within the discretion of the HCA, or designee, to determine that the agency official shall not be reinstated to participation in the procurement.

(3) An employee must comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. An employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom he or she is seeking employment, unless he or she receives a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3) or an authorization in accordance with the requirements of 5 CFR part 2635, as appropriate.

3.104–7 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104–4(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official prior to accepting such compensation.

(b) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the official or former official that is relevant to the inquiry. As a minimum, the request shall include—

(1) Information about the procurement(s), or decision(s) on matters under 3.104–4(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Information about the individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Information about the contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue an opinion as to whether the proposed conduct is proper or would violate subsection 27(d) of the Act.

(d)(1) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to the requester. Additional information may also be requested from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor shall be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104–8 Calculating the period of compensation prohibition.

The one-year prohibition on accepting compensation (see 3.104–4(d)(1)) begins to run as provided in this subsection:

(a) If the former official was serving in one of the positions specified in 3.104–4(d)(1)(i) on the date of the selection of the contractor, but not on the date of the award of the contract, the prohibition begins on the date of the selection of the contractor.

(b) If the former official was serving in one of the positions specified in 3.104–4(d)(1)(i) on the date of the award of the contract (whether or not they were serving on the date of the selection of the contractor), the prohibition begins on the date of the award of the contract.

(c) If the former official was serving in one of the positions specified in 3.104–4(d)(1)(ii), the prohibition begins on the last date the individual served in that position.

(d) If the former official personally made one of the decisions specified in 3.104–4(d)(1)(iii), the prohibition begins on the date the decision was made.

3.104–9 Contract clauses.

(a) The contracting officer shall insert the clause at 52.203–8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

3.104–10 Violations or possible violations.

(a) If the contracting officer receives or obtains information of a violation or possible violation of subsections 27 (a), (b), (c), or (d) of the Act (see 3.104–4), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement.

(2) If the individual reviewing the contracting officer's conclusion does not agree with that conclusion, the individual shall advise the contracting officer to withhold award and shall promptly forward the information and documentation to the HCA or designee.

(3) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer shall promptly forward the information to the HCA or designee.

(b) The HCA or designee receiving any information describing an actual or possible violation of subsections 27 (a), (b), (c), or (d) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the contracting officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies;

(4) Concluding that a violation occurred; or

(5) Recommending an agency head determination that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that a bidder, offeror, contractor, or person has violated the Act, the HCA or designee may request information from appropriate parties regarding the violation or possible violation when considered in the best interests of the Government.

(d) If the HCA or designee concludes that the prohibitions of section 27 of the Act have been violated, then the HCA or designee may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture as provided for in the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsections 27 (a) or (b) of the Act for the purpose of either—

(*1*) Exchanging the information covered by such subsections for anything of value; or

(*2*) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspension and debarment official.

(e) The HCA or designee shall recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA or designee receiving information concerning a violation or possible violation determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, the HCA may authorize the contracting officer to award the contract or execute the contract modification after notification to the head of the agency in accordance with agency procedures.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104–11 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct which violates the Act (see 3.104–4). See 33.102(f) for special rules regarding bid protests. See 3.104–10 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104–4 shall be subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) A bidder or offeror who engages in employment discussion with an official subject to the restrictions of 3.104–4, knowing that the official has not complied with 3.104–4(c)(1), shall be subject to the criminal, civil or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see

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3.104–6) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

4. Section 3.700(a) is revised to read as follows:

3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which—

(1) There has been a final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) There has been an agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract.

* * * * *

5. Section 3.701 is revised to read as follows:

3.701 Purpose.

This subpart provides—

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

6. Section 3.703 is amended by redesignating the text as paragraph "(a)", and by adding paragraph (b) to read as follows:

3.703 Authority.

* * * * *

(b) Subsection 27(e)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the OFPP Act), as amended, requires a Federal agency, upon receiving information that a contractor or a person has engaged in conduct constituting a violation of subsection 27 (a) or (b) of the OFPP Act, to consider recission of a contract with respect to which—

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under subsection 27(e)(1) of the OFPP Act; or

(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

7. Section 3.704 is amended in paragraph (b) by removing "FAR" and by adding paragraph (c) to read as follows:

3.704 Policy.

* * * * *

(c) If there is a final conviction for an offense punishable under subsection 27(e) of the OFPP Act, or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the head of the contracting activity shall consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at 3.705 (see 3.104–10); and

(2) Recommending the initiation of suspension or debarment proceedings in accordance with subpart 9.4.

8. Section 3.705 is amended by revising the last sentence in paragraph (c)(3) and paragraph (d)(3) to read as follows:

3.705 Procedures.

* * * * *

(c) * * *

(3) * * * However, no inquiry shall be made regarding the validity of a conviction.

* * * * *

(d) * * *

(3) Specifically identify the offense or final conviction on which the action is based;

* * * * *

PART 4—ADMINISTRATIVE MATTERS

9. Section 4.802(e) is revised to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 3.104–3 shall be protected from disclosure to unauthorized persons (see 3.104–5).

* * * * *

4.803 [Amended]

10. Section 4.803 is amended by removing paragraph (a)(42), and by redesignating paragraph (a)(43) as (a)(42).

PART 9—CONTRACTOR QUALIFICATIONS

9.105–3 [Amended]

11. Section 9.105–3(c) is amended by revising the parenthetical "(see 3.104–4 (j) and (k))" to read "(see 3.104–3)".

9.106–3 [Amended]

12. Section 9.106–3 is amended in paragraph (a) by removing the paragraph designation "(a)", and by removing paragraph (b).

9.505 [Amended]

13. Section 9.505 is amended in paragraph (b)(1) by removing "3.104–4(j)" and inserting "3.104–3" in its place, and in (b)(2) by removing "3.104–4(k)" and inserting "3.104–3" in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

14. Section 12.503 is amended by removing paragraph (b)(4), and by redesignating paragraphs (b) (5) and (6) as (b) (4) and (5), respectively.

12.504 [Amended]

15. Section 12.504 is amended by removing paragraph (b)(3), and by redesignating paragraph (b)(4) as (b)(3).

PART 14—SEALED BIDDING

14.404–2 [Amended]

16. Section 14.404–2 is amended by removing paragraph (m).

PART 15—CONTRACTING BY NEGOTIATION

17. Section 15.413 is revised to read as follows:

15.413 Disclosure and use of information before award.

See 3.104 for statutory and regulatory requirements related to the disclosure of contractor bid or proposal information and source selection information.

15.413–2 [Amended]

18. Section 15.413–2 is amended by removing paragraph (f)(6).

19. Section 15.509 is amended by revising paragraph (f)(4), and by removing (h)(3) to read as follows:

15.509 Limited use of data.

* * * * *

(f) * * *

(4) Require any non-government evaluator to give a written agreement stating that data in the proposal will not be disclosed to others outside the Government.

* * * * *

20. Section 15.805–5 is amended by revising paragraph (j) and by removing paragraph (k) to read as follows:

15.805–5 Field pricing support.

* * * * *

(j) Field pricing reports, including audit and technical reports, may contain proprietary and/or source selection information (see 3.104–3), and the cover page and all pages containing such information should be marked with the appropriate legend and protected accordingly.

PART 19—SMALL BUSINESS PROGRAMS

19.811–1 [Amended]

21. Section 19.811–1 is amended by removing paragraph (d).

19.811–2 [Amended]

22. Section 19.811–2 is amended by removing paragraph (b) and by redesignating paragraph (c) as (b).

PART 33—PROTESTS, DISPUTES, AND APPEALS

23. Section 33.102 is amended by adding paragraph (f) to read as follows:

33.102 General.

* * * * *

(f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation (41 U.S.C. 423(g)).

PART 37—SERVICE CONTRACTING

37.103 37.103 [Amended]

24. Section 37.103 is amended by removing paragraph (c) and by redesignating paragraph (d) as (c).

PART 43—CONTRACT MODIFICATIONS

43.106 [Reserved]

25. Section 43.106 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Section 52.203–8 is revised to read as follows:

52.203–8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

As prescribed in 3.104–9(a), insert the following clause in solicitations and contracts:

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106), the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

52.203–9 [Reserved]

27. Section 52.203–9 is removed and reserved.

28. Section 52.203–10 is amended by revising the introductory text, clause date, and paragraphs (a) and (b)(5) to read as follows:

52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104–9(b), insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) * * *

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

* * * * *

(End of clause)

52.203–13 [Reserved]

29. Section 52.203–13 is removed and reserved.

52.212–3 [Amended]

30. Section 52.212–3 is amended by revising the clause date to read "(JAN 1997)" and by removing paragraph (i).

PART 53—FORMS

53.203 [Reserved]

31. Section 53.203 is removed and reserved.

53.302–333 [Removed]

32. In section 53.302–333, Optional Form 333 is removed.

[FR Doc. 96–33205 Filed 12–31–96; 8:45 am]

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48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53

[FAC 90–45; FAR Case 96–312; Item II]

RIN 9000–AH23

Federal Acquisition Regulation; Certification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to remove particular certification requirements for contractors and offerors. This final rule implements Section 4301(b) of Public Law 104–106. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 96–312. E-mail correspondence submitted over the Internet should be addressed to: 96–312@V.GSA.GOV

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove particular certification requirements for contractors and offerors. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4301(b) required the Administrator, Office of Federal Procurement Policy, to issue for public comment a proposal to remove from the FAR those certification requirements for contractors and offerors that are not specifically imposed by statute. A proposed rule was published in the **Federal Register** on September 12, 1996 (61 FR 48354). Thirty comments were received from seven respondents. All comments were considered in the development of the final rule.

In response to the public comments, FAR 52.242–4, Certification of Indirect Costs, was amended to reduce the scope of the certification requirement and to remove the requirement to certify under penalty of perjury. The requirement at FAR 32.304–8 to provide certificates also was removed, and an editorial change was made at FAR 52.215–35 to substitute the word "offer" for "bid" in paragraph (a).

The certification at 52.213–1, Fast Payment, is being retained for several reasons: (a) One large industry trade organization, in its public comments, acknowledged that this certification is useful and potentially beneficial to industry; (b) The Government has higher confidence in the accuracy of the request for payment, since it is expected to receive a higher degree of scrutiny by the contractor before it is certified and submitted; and (c) The payment office is frequently separate and distinct from the contract administration office, and the certification provides the paying office with documentation that the items have been delivered independent of a separate source inspection documentation.

Several certifications associated with Foreign Contracting had been proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications were retained, because the self-policing discipline of a certification requirement is important to enforcing a national policy grounded in vital economic and security interests. The Government believes that elimination of these certification requirements would have created a need for offerors to submit more detailed information regarding the origin of offered products. Therefore, the certification is viewed as a less burdensome alternative. The certification required by 52.223–1, Clean Air and Water Certification, has been retained because the Government has concluded that the certification is the least burdensome and most effective way to avoid entering into a contract with a Clean Air Act or Clean Water Act violator. In the near future, we will be publishing for public comment a proposal to substitute a more limited clean air and water certification and a Clean Air and Water Act notification for commercial items. An associated change is made in FAR case 93–310, Item VI of this FAC. The certification required by 52.223–1, Clean Air and Water Certification, was also revised and retained because the Government concluded that it would be the least burdensome and most effective way to avoid entering into a contract with a Clean Air Act or Clean Water Act Violator. Interested parties are invited to submit comments on the retention of these certification requirements. Please cite Holding File 96–708–01, Regulatory Reform—Certifications, in correspondence. Comments should be limited to the retention of the following certifications for contractors and offerors which were proposed for elimination but have been retained as a result of the analysis of public comments.

FAR cite	Clause/provision No.	Title
22.810(a)(1)	52.222–21	Certification of Nonsegregated Facilities.
23.105(a)	52.223–1	Clean Air and Water Certification.
25.109(a)	52.225–1	Buy American Certificate.
25.305	52.225–6	Balance of Payments Program Certificate
	52.225–7	Balance of Payments Program.
25.408(a)(1)	52.225–8	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
25.408(a)(2)	52.225–9	Buy American Act—Trade Agreements—Balance of Payments Program.
25.408(a)(3)	52.225–20	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (amended).
25.408(a)(4)	52.225–21	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.
25.408(b)		Solicitation provisions and contract clauses.

B. Regulatory Flexibility Act

This final rule is expected to have a significant beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it reduces the number of certifications that offerors and contractors must provide to the Government. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows: The objective and legal basis for this rule is Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104–106). The rule implements Section 4301(b) by amending the FAR to remove particular certification requirements for contractors and offerors.

There were no public comments received in response to the initial regulatory flexibility analysis. Several changes were made in the final rule as a result of public comments received in response to the proposed rule. All of the certifications required by FAR Part 25 have been retained. The certification required by FAR 52.223–1 was also retained. The Certification of Final Indirect Costs at FAR 52.242–4 was revised to remove the requirement to sign the certification under penalty of perjury, and the requirement to provide certificates was deleted from FAR 32.304–8.

The rule will apply to all bidders or offerors, and contractors, large and small, whose direct economic interests would be affected by the award or failure to award a Government contract. The number of small entities to which the rule will apply is estimated to be between 35,000 and 45,000. This rule does not impose any additional reporting, recordkeeping, or other compliance requirements.

This rule is expected to have a beneficial impact on small entities by deleting existing certification requirements that are not required by statute.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply because the final rule eliminates existing recordkeeping and information collection requirements approved by the Office of Management and Budget (OMB) under OMB Control Numbers 9000–0017, and 9000–0111. A paperwork burden of 67,375 hours is eliminated.

List of Subjects in 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the table following the text by removing the following entries along with their control numbers: 8.203–2, 9.5, and 52.208–1.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.502–2(i)(1) is revised to read as follows:

3.502–2 Subcontractor kickbacks.

* * * * *

(i) * * *

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.102 is amended by revising the last sentence of paragraph (d) to read as follows:

4.102 Contractor's signature.

* * * * *

(d) *Joint ventures.* * * * When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.302–3 [Amended]

5. Section 6.302–3 is amended in paragraph (b)(1)(vi) by inserting "or" at the end; in paragraph (b)(1)(vii) by removing "; or" and inserting a period in its place; and by removing paragraph (b)(1)(viii).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Section 8.002 is amended by removing paragraph (a), redesignating paragraphs (b) through (f) as (a) through (e); and revising newly redesignated paragraphs (a) and (d) to read as follows:

8.002 Use of other Government supply sources.

* * * * *

(a) Public utility services (see part 41);

* * * * *

(d) Strategic and critical materials (e.g., metals and ores) from inventories exceeding Defense National Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 8725 John J. Kingman Rd., Suite 4528, Fort Belvoir, VA 22060–6223; and

* * * * *

Subpart 8.2 [Reserved]

7. Subpart 8.2 is removed and reserved.

PART 9—CONTRACTOR QUALIFICATIONS

9.505–4 [Amended]

8. Section 9.505–4(c) is amended by removing the last sentence.

9. Section 9.506 is amended in paragraph (a) by revising the first sentence; in paragraph (d)(3) by replacing "; and," with a period; and by removing paragraph (d)(4). The revised text reads as follows:

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers first should seek the information from within the Government or from other readily available sources. * * *

* * * * *

9.507–1 [Amended]

10. Section 9.507–1 is amended by removing the paragraph (a) designation and removing paragraphs (b), (c), and (d).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

11. Section 12.503 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(1) 33 U.S.C. 1368, Requirement for a clause under the Federal Water Pollution Control Act (see 23.105).

* * * * *

(4) 42 U.S.C. 7606, Requirements for a clause under the Clean Air Act (see 23.105).

* * * * *

12.504 [Amended]

12. Section 12.504 is amended by removing paragraph (a)(16).

PART 14—SEALED BIDDING

14.405 [Amended]

13. Section 14.405(f) is amended by removing "certifications" and inserting "representations" in its place.

PART 16—TYPES OF CONTRACTS

16.306 [Amended]

14. Section 16.306 is amended in the second sentence of paragraph (d)(2) by removing "certification" and inserting "statement" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

15. At section 19.001, the definition "Small disadvantaged business concern" is amended in paragraph (b) by removing "certify" and inserting "represent" in its place.

16. Section 19.301 is amended by revising the first sentence of paragraph (a) to read as follows:

19.301 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation. * * *

* * * * *

17. Section 19.303 is amended by revising the introductory text of paragraph (c)(2); in paragraph (c)(2)(vi) by removing "certifying" and inserting "acknowledging" in its place; and by revising the second sentence of paragraph (c)(3) to read as follows:

19.303 Determining product or service classifications.

* * * * *

(c) * * *

(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, DC 20416. No particular form is prescribed for the appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. By signing the submission, a party or its attorney attests that the statements and allegations in the submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment. The appeal shall include—

* * * * *

(3) * * * The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. * * *

19.501 [Amended]

18. Section 19.501 is amended by removing paragraph (h).

19.508 [Amended]

19. Section 19.508 is amended by removing paragraph (f).

20. Section 19.703 is amended in paragraph (a)(2) by revising the second and fourth sentences to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) * * * Individuals who represent that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) may also represent themselves as socially and economically disadvantaged. * * * Concerns that are tribally owned entities or Native Hawaiian Organizations may represent themselves as socially and economically disadvantaged if they qualify under the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. * * *

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.102 [Amended]

21. Section 23.102 is amended in paragraph (d) by removing the reference "40 CFR part 15" and inserting "40 CFR part 32" in its place.

22. Section 23.302 is amended by revising paragraph (d)(1) to read as follows:

23.302 Policy.

* * * * *

(d) * * *

(1) By the apparent successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

* * * * *

23. Section 23.601 is amended by revising paragraph (c) to read as follows:

23.601 Requirements.

* * * * *

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

* * * * *

PART 27—PATENT, DATA, AND COPYRIGHTS

24. Section 27.303(e) is amended by revising the first sentence to read as follows:

27.303 Contract clauses.

* * * * *

(e) For those agencies excepted under paragraph (a)(1)(i) of this section, only small business firms or non-profit organizations qualify for the clause at 52.227–11. * * *

* * * * *

25. Section 27.406 is amended by revising paragraph (c); in paragraph (d)(1) and (d)(2), and twice in (d)(3) by removing "(C) certification" and inserting "(D) declaration"; and in paragraph (d)(2) by removing "certify" and inserting "declare" in its place. The revised text reads as follows:

27.406 Acquisition of data.

* * * * *

(c) *Acceptance of data.* As required by 41 U.S.C. 418a(d)(7), acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by subpart 46.3, and the clause at 52.227–21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

* * * * *

27.409 [Amended]

26. Section 27.409 is amended in paragraph (q) by removing "Certification" and inserting "Declaration" in its place.

PART 29—TAXES

29.302 [Amended]

27. Section 29.302 is amended in the second sentence of paragraph (b) by revising the word "Certificate" to read "Form".

28. Section 29.305 is amended in paragraph (a)(3) by revising the word "Certificate" to read "Form"; and by revising paragraph (b)(3) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(3) Under a contract or purchase order that contains no tax provision, if—

(i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

29. Section 31.110 is amended by revising the first sentence of paragraph (a) to read as follows:

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes.

* * *

* * * * *

31.205–22 Lobbying and political activity costs.

30. Section 31.205–22 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e), respectively; and in the newly designated (d) by adding "(see 42.703–2)" after "unallowable".

PART 32—CONTRACT FINANCING

32.304–8 Amended]

31. Section 32.304–8 is amended in paragraph (b)(3) by revising the word "certificates" to read "documentation".

32.805 [Amended]

32. Section 32.805 is amended in paragraph (a)(1)(iii) by removing "certified" and inserting "true" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

33. Section 36.205 is amended by revising paragraph (b)(3) to read as follows:

36.205 Statutory cost limitations.

* * * * *

(b) * * *

(3) That the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

* * * * *

PART 37—SERVICE CONTRACTING

34. Section 37.402 is revised to read as follows:

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparent successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

PART 42—CONTRACT ADMINISTRATION

42.302 [Amended]

35. Section 42.302 is amended in paragraph (a)(18) by revising the word "certificates" to read "forms".

36. Section 42.703–2 is amended by revising paragraphs (a) and (c)(1); in paragraph (c)(2)(ii) by removing the word "potentially"; in paragraph (d) by inserting the word "final" after "of"; and by revising paragraph (f) to read as follows:

42.703–2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

* * * * *

(c) * * *

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

* * * * *

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242–4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

PART 45—GOVERNMENT PROPERTY

45.606–1 [Amended]

37. Section 45.606–1 is amended by removing the designation of paragraph (a); and by removing paragraph (b).

45.606–5 [Amended]

38. Section 45.606–5 is amended in the parenthetical at the end of paragraph (a)(2) by revising "45.606–1(a).)" to read "45.606–1.)"

PART 47—TRANSPORTATION

39. Section 47.303–17 is amended by revising paragraph (d)(3)(ii) to read as follows:

47.303–17 Contractor-prepaid commercial bills of lading, small package shipments.

* * * * *

(d) * * *

(3) * * *

(ii) The contractor agrees to furnish evidence of payment when requested by the Government.

* * * * *

47.305–11 [Amended]

40. Section 47.305–11 is amended by removing the designation of paragraph (a) and adding the text to the end of the undesignated introductory paragraph which precedes it; by removing paragraph (b); and redesignating paragraphs (a)(1) through (3) as (a) through (c).

41. Section 47.403–3 is amended in paragraph (a) by removing "certificate or"; and by revising paragraph (c) to read as follows:

47.403–3 Disallowance of expenditures.

* * * * *

(c) The justification requirement is satisfied by the contractor's use of a statement similar to the one contained in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers. (See 47.405.)

42. Section 47.404 is amended by revising paragraph (b)(2) to read as follows:

47.404 Air freight forwarders.

* * * * *

(b) * * *

(2) justification for the use of foreign-flag air carriers similar to the one shown in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers.

PART 49—TERMINATION OF CONTRACTS

43. Section 49.108–3 is amended by revising paragraph (b) to read as follows:

49.108–3 Settlement procedure.

* * * * *

(b) Except as provided in 49.108–4, the TCO shall require that—

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(1) All subcontractor termination inventory be disposed of and accounted for in accordance with part 45; and

(2) The prime contractor submit, for approval or ratification, all termination settlements with subcontractors.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–1 and 52.208–2 [Removed and Reserved]

44. Sections 52.208–1 and 52.208–2 are removed and reserved.

45. Section 52.209–3 is amended in Alternate I by revising the date and paragraph (i) to read as follows:

52.209–3 First Article Approval—Contractor Testing.

* * * * *

Alternate I (JAN 1997). * * *

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

46. Section 52.209–4 is amended by revising the date and paragraph (j) of Alternate I to read as follows:

52.209–4 First Article Approval—Government Testing.

* * * * *

Alternate I (JAN 1997). * * *

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

52.209–7 and 52.209–8 [Removed]

47. Sections 52.209–7 and 52.209–8 are removed.

48. Section 52.212–3 is amended by revising the provision date, paragraph (c)(2), the introductory text of (c)(6), and the last sentence of the introductory text of (c)(6)(ii) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JAN 1997)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.

* * * * *

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [*Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.*]

* * * * *

(ii) * * * Offeror represents as follows:

* * * * *

49. Section 52.214–30 is revised to read as follows:

52.214–30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (JAN 1997)

The bidder has (check the appropriate block):

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*], which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if "none," so state*]:

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

50. Section 52.215–35 is revised to read as follows:

52.215–35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (JAN 1997)

The offeror has (check the appropriate block):

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*] which are incorporated herein by reference and are current, accurate, and complete as of the date of this offer, except as follows [*insert changes that affect only this solicitation; if "none," so state*]:

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

52.216–2 [Amended]

51. Section 52.216–2 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing the last sentence.

52.216–3 [Amended]

52. Section 52.216–3 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing the last sentence.

52.216–4 [Amended]

53. Section 52.216–4 is amended by revising the clause date to read "(JAN 1997)"; and by removing paragraph (d) and redesignating paragraph (e) as (d).

52.219–1 [Amend d]

54. Section 52.219–1 is amended by revising the provision date to read "(JAN 1997)"; and in paragraph (b)(1) by removing "and certifies".

52.219–15 [Removed and Reserved]

55. Section 52.219–15 is removed and reserved,

52.219–18 [Amended]

56. Section 52.219–18 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing "certifies" and inserting "represents" in its place.

57. Section 52.219–19 is amended by revising the date and paragraph (b) of the provision to read as follows:

52.219–19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

* * * * *

SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

* * * * *

(b) [*Complete only if the Offeror has represented itself under the provision at 52.219–1 as a small business concern under the size standards of this solicitation.*]

The Offeror ☐ is, ☐ is not an emerging small business.

* * * * *

52.219–21 [Amended]

58. Section 52.219–21 is amended by revising the clause date to read (JAN 1997); in the parenthetical following the provision heading by removing "certified" and inserting "represented" in its place; and in the first paragraph of the provision by removing "and certifies".

59. Section 52.223–3 is amended by revising the clause date and paragraphs (c) and (e) to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

* * * * *

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

* * * * *

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

* * * * *

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

* * * * *

60. Section 52.223–7 is amended by revising the clause date and paragraph (b)(2) to read as follows:

52.223–7 Notice of Radioactive Materials.

* * * * *

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

* * * * *

(b) * * *

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

* * * * *

52.227–12 [Amended]

61. Section 52.227–12 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (f)(7) by removing "certifying" wherever it appears and inserting "stating" in its place.

52.227–13 [Amended]

62. Section 52.227–13 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (e)(3) by removing "certifying" wherever it appears and inserting "stating" in its place.

63. Section 52.227–21 is amended by revising the section and clause headings, the clause date, paragraph (b)(1), the first sentence of (b)(2), and (d)(1)(ii) to read as follows:

52.227–21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

* * * * *

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (JAN 1997)

* * * * *

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. * * *

* * * * *

(d) * * *

(1) * * *

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

* * * * *

(End of clause)

64. Section 52.228–5 is amended by revising the clause date and the first sentence of paragraph (b) to read as follows:

52.228–5 Insurance—Work on a Government Installation.

* * * * *

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

* * * * *

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. * * *

* * * * *

65. Section 52.228–8 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.228–8 Liability and Insurance—Leased Motor Vehicles.

* * * * *

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (JAN 1997)

* * * * *

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained.

* * * * *

66. Section 52.228–9 is amended by revising the clause date, the second sentence of paragraph (b), and paragraph (c)(2) to read as follows:

52.228–9 Cargo Insurance.

* * * * *

CARGO INSURANCE (JAN 1997)

(a) * * *

(b) * * * As evidence of insurance maintained, an authenticated copy of the cargo liability insurance policy or policies shall be furnished to _____ [*insert name of contracting agency*]. * * *

(c) * * *

(2) An authenticated copy of any renewal policy to _____ [*insert name of contracting agency*] not less than 15 days prior to the expiration of any current policy on file with _____ [*insert name of contracting agency*].

(End of clause)

67. Section 52.237–7 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.237–7 Indemnification and Medical Liability Insurance.

* * * * *

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 1997)

* * * * *

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. * * *

* * * * *

68. Section 52.242–4 is amended by revising the section heading, clause title and date; paragraphs (a)(1), (b), and (c); and the Certificate following paragraph (c). The revised text reads as follows:

52.242–4 Certification of Final Indirect Costs.

* * * * *

CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) * * *

(1) Certify any proposal to establish or modify final indirect cost rates;

* * * * *

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (*identify proposal and date*) to establish final indirect cost rates for (*identify period covered by rate*) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

69. Section 52.245–8 is amended by revising the introductory text, the clause date, and the fourth and fifth sentences of paragraph (f) to read as follows:

52.245–8 Liability for the Facilities.

As prescribed in 45.302–6(b), insert the following clause:

LIABILITY FOR THE FACILITIES (JAN 1997)

* * * * *

(f) * * * Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer documentation of insurance or an authenticated copy of each renewal policy. * * *

* * * * *

(End of clause)

70. Section 52.247–2 is amended by revising the introductory paragraph, the clause date and paragraph (a) to read as follows:

52.247–2 Permits, Authorities, or Franchises.

As prescribed in 47.207–1(a), insert the following clause:

PERMITS, AUTHORITIES, OR FRANCHISES (JAN 1997)

(a) The offeror does ☐, does not ☐, hold authorization from the Federal Highway Administration (FHWA) or other cognizant regulatory body. If authorization is held, it is as follows:

_____

(Name of regulatory body)

_____

(Authorization No.)

* * * * *

[End of clause]

52.247–54 [Removed and Reserved]

71. Section 52.247–54 is removed and reserved.

72. Section 52.247–63 is amended by revising the clause date and the definition "U.S.-flag air carrier"; in paragraph (b) by removing "49 U.S.C. 1517" and inserting "49 U.S.C. 40118"; and by revising paragraph (d) to read as follows:

52.247–63 Preference for U.S.-Flag Air Carriers.

* * * * *

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

* * * * *

(a) * * *

U.S.-flag air carrier, as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

* * * * *

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

_____

(End of statement)

* * * * *

PART 53—FORMS

73. Section 53.214(e) is amended by revising the paragraph heading to read as follows:

53.214 Sealed bidding.

* * * * *

(e) *SF 129 (REV. 12/96), Solicitation Mailing List Application.* * * *

* * * * *

74. Section 53.215–1(f) is amended by revising the paragraph heading to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

* * * * *

(f) *SF 129 (REV. 12/96), Solicitation Mailing List Application.* * * *

* * * * *

75. Section 53.222(g) is amended by revising the paragraph heading to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH–347).

* * * * *

(g) *SF 1445 (REV. 12/96), Labor Standards Interview.* * * *

* * * * *

76. Section 53.229 is amended by revising the paragraph heading to read as follows:

53.229 Taxes (SF's 1094, 1094–A).

SF 1094 (REV. 12/96, U.S. Tax Exemption Form, and SF 1094–A (REV 12/96), Tax Exemption Forms Accountability Record. * * *

77. Section 53.245 is amended in paragraphs (c), (f), (g), (h), (i), and (j) by revising the paragraph headings to read as follows:

53.245 Government property.

* * * * *

(c) *SF 1423 (REV. 12/96), Inventory Verification Survey.*

* * * * *

(f) *SF 1426 (REV. 12/96), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).* * * *

. (g) *SF 1428 (REV. 12/96), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B—Continuation Sheet.* * * *

(h) *SF 1430 (REV. 12/96), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C—Continuation Sheet (Work-in-Process).* * * *

(i) *SF 1432 (REV. 12/96), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).* * * *

(j) *SF 1434 (REV. 12/96), Termination Inventory Schedule E (Short Form for Use with SF 38 Only).* * * *

53.301–129 [Revised]

78. Section 53.301–129 is revised to read as follows:

53.301–129 SF 129, Solicitation Mailing List Application.

BILLING CODE 6820–EP–P

SOLICITATION MAILING LIST APPLICATION

1. TYPE OF APPLICATION ☐ INITIAL ☐ REVISION | 2. DATE | OMB No.: 9000-0002 Expires: 10/31/97

NOTE: Please complete all items on this form. Insert N/A in items not applicable. See reverse for instruction.

Public reporting burden for this collection of information is estimated to average .58 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

3. SUBMIT TO				4. APPLICANT				
a. FEDERAL AGENCY'S NAME				a. NAME				
b. STREET ADDRESS				b. STREET ADDRESS		c. COUNTY		
c. CITY	d. STATE	e. ZIP CODE		d. CITY		e. STATE	e. ZIP CODE	

5. TYPE OF ORGANIZATION *(Check one)*

☐ INDIVIDUAL ☐ NON-PROFIT ORGANIZATION

☐ PARTNERSHIP ☐ CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF:

6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED *(If different than item 4)*

a. STREET ADDRESS	b. COUNTY	
c. CITY	d. STATE	e. ZIP CODE

7. NAMES OF OFFICERS, OWNERS, OR PARTNERS

a. PRESIDENT	b. VICE PRESIDENT	c. SECRETARY
d. TREASURER	e. OWNERS OR PARTNERS	

8. AFFILIATES OF APPLICANT

NAME	LOCATION	NATURE OF AFFILIATION

9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME *(Indicate if agent)*

NAME	OFFICIAL CAPACITY	TELEPHONE NUMBER	
		AREA CODE	NUMBER

10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER *(See attached Federal Agency's supplemental listing and instruction, if any)*

11a. SIZE OF BUSINESS *(See definitions on reverse)*	11b. AVERAGE NUMBER OF EMPLOYEES *(Including affiliates)* FOR FOUR PRECEDING CALENDAR QUARTERS	11c. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS
☐ SMALL BUSINESS *(If checked, complete items 11B and 11C)* ☐ OTHER THAN SMALL BUSINESS		$

12. TYPE OF OWNERSHIP *(See definitions on reverse)* *(Not applicable for other than small businesses)*	13. TYPE OF BUSINESS *(See definitions on reverse)*
☐ DISADVANTAGED BUSINESS ☐ WOMAN-OWNED BUSINESS	☐ MANUFACTURER OR PRODUCER ☐ CONSTRUCTION CONCERN ☐ SURPLUS DEALER ☐ SERVICE ESTABLISHMENT ☐ RESEARCH AND DEVELOPMENT

14. DUNS NO. *(If available)*	15. HOW LONG IN PRESENT BUSINESS?

16. FLOOR SPACE *(Square Feet/M²)*		17. NET WORTH	
a. MANUFACTURING	b. WAREHOUSE	a. DATE	b. AMOUNT $

18. SECURITY CLEARANCE *(If applicable, check highest clearance authorized)*

FOR	TOP SECRET	SECRET	CONFIDENTIAL	c. NAMES OF AGENCIES GRANTING SECURITY CLEARANCES	d. DATES GRANTED
a. KEY PERSONNEL					
b. PLANT ONLY					

The information supplied herein *(including all pages attached)* is correct and neither the applicant nor any person *(or concern)* in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.

19a. NAME OF PERSON AUTHORIZED TO SIGN *(Type or print)*	20. SIGNATURE	21. DATE SIGNED
19b. TITLE OF PERSON AUTHORIZED TO SIGN *(Type or print)*		

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STANDARD FORM 129 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.214(e)

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in Item 10 the equipment, supplies, and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification codes, if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing for items concerned.

SIZE OF BUSINESS DEFINITIONS
(See Item 11A.)

a. Small business concern - A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or the other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. Affiliates - Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 8 and 11A.)

c. Number of employees - (Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business.

TYPE OF OWNERSHIP DEFINITIONS
(See Item 12.)

a. "Disadvantaged business concern" - means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. "Women-owned business" - means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

TYPE OF BUSINESS DEFINITIONS
(See Item 13.)

a. "Manufacturer or producer" - means a person (or concern) owning, operating, or maintaining a store, warehouse, or other establishment that produces, on the premises, the materials, supplies, articles or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

b. "Service establishment" - means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as a part of the services performed.

• COMMERCE BUSINESS DAILY - The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

STANDARD FORM 129 (REV. 12-96) BACK

BILLING CODE 6820-EP-C

53.301–1094 [Revised] 53.301–1094 SF 1094, U.S. Tax Exemption Form.

79. Section 53.301–1094 is revised to read as follows:

BILLING CODE 6820–EP–P

Book No.

UNITED STATES TAX EXEMPTION FORMS

NSN 7540-01-152-8080 PREVIOUS EDITION NOT USABLE

These Are Accountable Forms

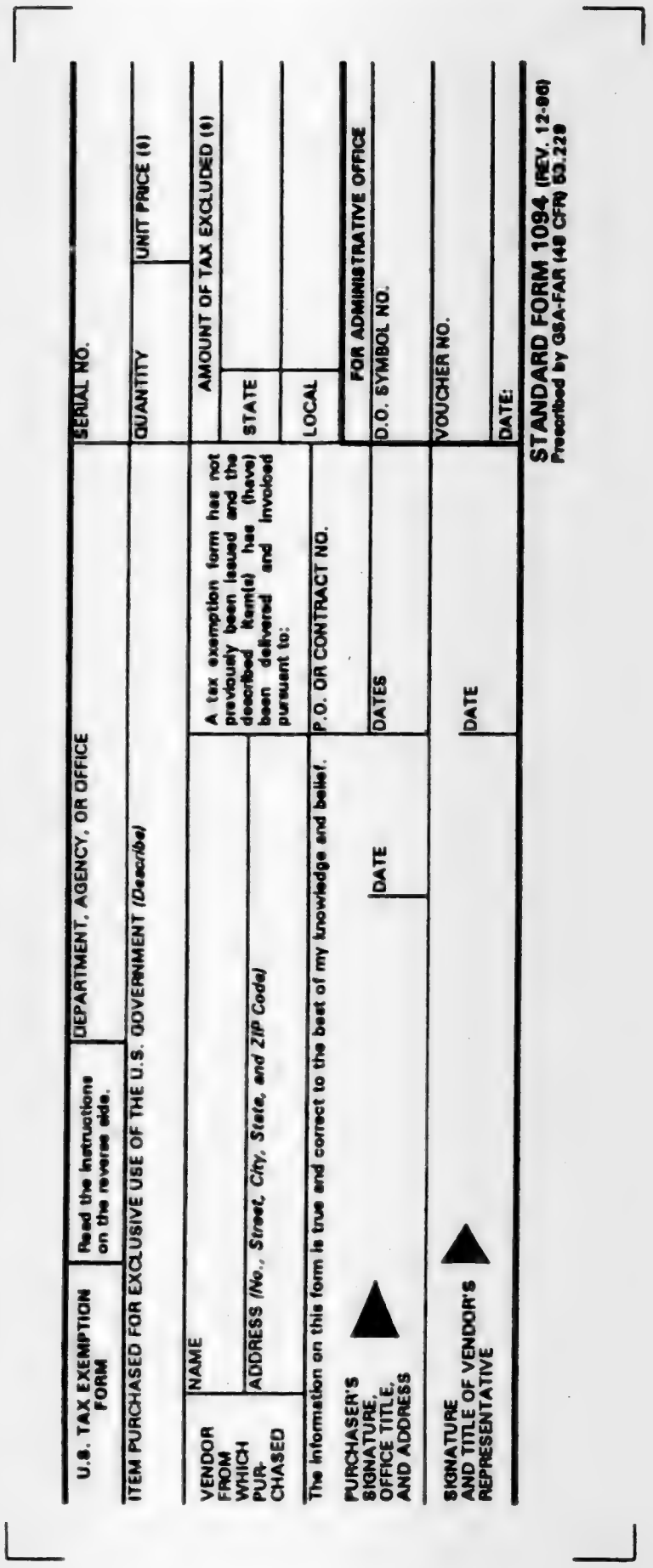

U.S. TAX EXEMPTION FORM

Read the instructions on the reverse side.

DEPARTMENT, AGENCY, OR OFFICE

ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT *(Describe)*

SERIAL NO.

QUANTITY

UNIT PRICE ($)

AMOUNT OF TAX EXCLUDED ($)

STATE

LOCAL

A tax exemption form has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to:

P.O. OR CONTRACT NO.

DATES

DATE

FOR ADMINISTRATIVE OFFICE

D.O. SYMBOL NO.

VOUCHER NO.

DATE:

VENDOR FROM WHICH PURCHASED

NAME

ADDRESS *(No., Street, City, State, and ZIP Code)*

The information on this form is true and correct to the best of my knowledge and belief.

PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▲

DATE

SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▲

STANDARD FORM 1094 (REV. 12-96)
Prescribed by GSA-FAR (48 CFR) 53.229

INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

2. This form shall NOT be used for:
(a) Purchases of quarters or subsistence made by employees in travel status.
(b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
(c) Merchandise purchased which is subject only to Federal Tax.

3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.

4. If both State and local taxes are involved, use a separate form for each tax. The form will be provided to the vendor when the prices exclude State or local tax.

5. The serial number of each form prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS FORM FOR THE PURPOSE OF OBTAINING EXCEPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.

STANDARD FORM 1094 (REV.12-96) BACK

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BILLING CODE 6820-EP-C

In case this book of United States Tax Exemption Forms is lost, finder will please put bend or string around cover and mail to:

GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE
GENERAL PRODUCTS COMMODITY CENTER
ATTN: 7FXM
819 TAYLOR STREET
FORT WORTH TX 76102

53.301–1
80. Se
to read

UMI

53.301–1094A [Revised]

80. Section 53.301–1094A is revised to read as follows:

§ 53.301–1094A SF 1094A, Tax Exemption Forms Accountability Record.

BILLING CODE 6820–EP–P

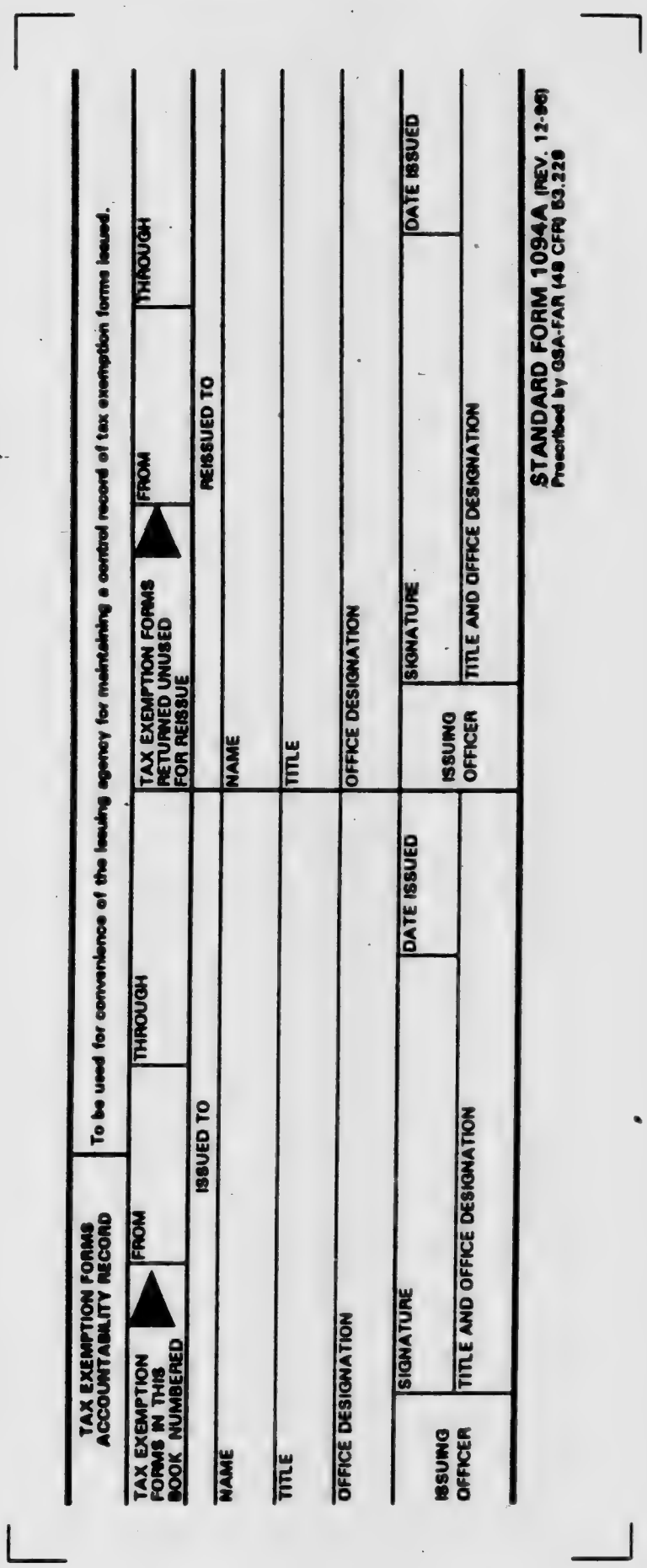

FORM NO.	DATE	Mark "X" in appropriate column to indicate type of tax	VENDOR NAME AND ADDRESS	ITEM PURCHASED	TAX EXCLUDED (Amount $)	STATE	LOCAL	TRANSACTION REFERENCE
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:

STANDARD FORM 1094A (REV. 12-96) BACK
Prescribed by GSA-FAR (48 CFR) 53.229

BILLING CODE 6820-EP-C

53.301–1423 [Revised]

81. Section 53.301–1423 is revised to read as follows:

53.301–1423 SF 1423, Inventory Verification Survey.

BILLING CODE 6820–EP–P

INVENTORY VERIFICATION SURVEY
(See FAR 45.606-3)

DATE

OMB No.: 9000-0015
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

SECTION I - GENERAL

1. FROM: *(Include ZIP Code)*	2. CONTRACT NUMBER
3. TO: *(Include ZIP Code)*	4. CONTRACT/SUBCONTRACTOR

5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

SF 1426 pages ____ through ____ $ ____
SF 1428 pages ____ through ____ $ ____
SF 1430 pages ____ through ____ $ ____
SF 1432 pages ____ through ____ $ ____
SF 1434 pages ____ through ____ $ ____

SECTION II - TECHNICAL VERIFICATION

	YES	NO		YES	NO
6. IS PROPERTY LISTED ON THE INVENTORY SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		*	12. ARE THE WEIGHTS OF THE ITEMS RECOMMENDED AS SCRAP APPROXIMATELY CORRECT? IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT:		*
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY SCHEDULES?		*	13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?		*
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?		*	14. ARE THE ITEMS AGENCY-PECULIAR?	*	
9. IS THE PROPERTY PROPERLY TAGGED?		*	15. DO ANY ITEMS REQUIRE SPECIAL PROCESSING *(Fire arms, drugs, hazardous or sensitive items, or precious metals, etc.)*?	*	
10. ARE THE CONDITION CODES ACCURATE?		*	16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY SCHEDULE?	*	
11. ARE THE ITEMS LISTED ON SF 1432 CORRECTLY CATEGORIZED AS SPECIAL TOOLING OR SPECIAL TEST EQUIPMENT?		*			

SECTION III - TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED *(Requester, check one)*

	YES	NO		YES	NO
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? DATE TO NOTICE:		*	20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.	*	
18. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT?	*		21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?		*
CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?	*		b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?		*
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?		*	c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?		*

22. REQUESTING OFFICE REMARKS *(Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)*

23. SIGNATURE OF REQUESTER

INVENTORY VERIFICATION

The above information is based on a physical Verification of Inventory listed under Item 5.

24. NAME AND TITLE	25. SIGNATURE OF VERIFIER	26. DATE

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STANDARD FORM 1423 (REV. 12-96)
Prescribed by GSA-FAR (48 CFR 53.245(c))

BILLING CODE 6820–EP–C

53.301–1426 [Revised] **53.301–1426 SF 1426, Inventory Schedule A (Metals In Mill Product Form).**

82. Section 53.301–1426 is revised to read as follows:

BILLING CODE 6820–EP–P

BILLING CODE 6820–EP–C

INVENTORY SCHEDULE A
(METALS IN MILL PRODUCT FORM)
(See FAR Section 45.606 for instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT | DATE

OMB No.: 9000-0015
Expires: 05/31/98

PROPERTY CLASSIFICATION | PAGE | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME | STREET ADDRESS

CITY | STATE | ZIP CODE

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY | STATE | ZIP CODE

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: FORM, SHAPE, ROLLING TREATMENT (When applicable, type of edge. Example: HR coiled strip, CR flat sheets box rod, tubing in straight length, etc.) (b)	HEAT TREATMENT, TEMPER, HARDNESS FINISH, ETC. (Example: Annealed and pickled, 1/2 hard, polished, etc.) (b1)	SPECIFICATIONS, AND ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION (Example: QQ-T-951-D B16-42 Alloy 7 Grade B) (b2)	DIMENSIONS: THICKNESS (Wall for tubing, class for pipe, type for copper water-tube) (b3)	WIDTH (O.D. for tube diameter of rod, size for pipe, manufacturer's die no. for extruded shapes) (b4)	LENGTH (b5): FT/M (b5)	LENGTH (b5): IN/CM (b5)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (G)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This Inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

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STANDARD FORM 1426 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.245(i)

53.301–1426 [Revised] **53.301–1426 SF 1426, Inventory Schedule A (Metals In Mill Product Form).**

83. Section 53.301–1426 is revised to read as follows:

BILLING CODE 6820–EP–P

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53.301–1428 [Revised]

83. Section 53.301–1428 is revised to read as follows:

53.301–1428 SF 1428, Inventory Schedule B.

BILLING CODE 6820–EP–P

BILLING CODE 6820–EP–C

INVENTORY SCHEDULE B (See FAR Section 45.606 for instructions) ☐ PARTIAL ☐ FINAL	TYPE ☐ TERMINATION ☐ NONTERMINATION	TYPE OF CONTRACT	DATE	OMB No.: 9000-0015 Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

TYPE OF INVENTORY

☐ RAW MATERIALS (Other than metals) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS

☐ FINISHED PRODUCT ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

THIS SCHEDULE APPLIES TO (Check one)

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	DESCRIPTION: GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	DESCRIPTION: TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably useable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY (Signature of Authorized Official)	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1428 (REV. 12-96)
Prescribed by GSA-FAR (48 CFR 53.245(g))

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VOL 62 ISS 1 JAN 2 1997

53.301–1430 [Revised]

84. Section 53.301–1430 is revised to read as follows:

53.301–1430 SF 1430, Inventory Schedule C (Work-in-Process).

BILLING CODE 6820–EP–P

BILLING CODE 6820–EP–C

INVENTORY SCHEDULE C (WORK-IN-PROCESS) (See FAR Section 45.606 for instructions) ☐ PARTIAL ☐ FINAL	TYPE ☐ TERMINATION ☐ NONTERMINATION	TYPE OF CONTRACT	OMB No.: 9000-0015 Expires: 05/31/98
		DATE	PAGE NO. / NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

THIS SCHEDULE APPLIES TO *(Check one)* ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)			COMPANY PREPARING AND SUBMITTING SCHEDULE
GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION			
NAME			CITY AND STATE *(Include ZIP Code)*
ADDRESS *(Include ZIP Code)*			LOCATION OF MATERIAL
PRODUCT COVERED BY CONTRACT OR ORDER			

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	ESTIMATED WEIGHT (b1)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of Authorized Official)*	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL		TITLE	

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STANDARD FORM 1430 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.245(h)

BILLING CODE 6820–EP–P

53.301–1430 SF 1430, Inventory Schedule C (Work-in-Process).

85. Section 53.301–1430 is revised to read as follows:

53.301–1432 [Revised]

85. Section 53.301–1432 is revised to read as follows:

53.301–1432 SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).

BILLING CODE 6820–EP–P

INVENTORY SCHEDULE D (SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT) (See FAR Section 45.606 for instructions) ☐ PARTIAL ☐ FINAL	TYPE ☐ TERMINATION ☐ NONTERMINATION	TYPE OF CONTRACT	DATE	OMB No.: 9000-0015 Expires: 06/31/98
		PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 2040.

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	CONDITION (Use code) (c)	QUANTITY (d)	COST UNIT (e)	COST TOTAL (f)	COST APPLICABLE TO THIS CONTRACT: TO ENTIRE CONTRACT (f1)	COST APPLICABLE TO THIS CONTRACT: TO PORTION NOT TO BE COMPLETED (f2)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of Authorized Official)*	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1432 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.245(i)

BILLING CODE 6820–EP–C

53.301–1434 [Revised]

86. Section 53.301–1434 is revised to read as follows:

53.301–1434 SF 1434, Termination Inventory

Schedule E (Short Form For Use With SF 1438 Only).

BILLING CODE 6820–EP–P

TERMINATION INVENTORY SCHEDULE E (SHORT FORM FOR USE WITH SF 1438 ONLY) (See FAR Section 45.606 for instructions) ☐ PARTIAL ☐ FINAL	DATE	PAGE NO.	NO. OF PAGES	OMB No.: 9000-0015 Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

THIS SCHEDULE APPLIES TO (Check one) ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)			COMPANY PREPARING AND SUBMITTING SCHEDULE
GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION			
NAME			CITY AND STATE (Include ZIP Code)
ADDRESS (Include ZIP Code)			LOCATION OF MATERIAL
PRODUCT COVERED BY CONTRACT OR ORDER			

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

TERMINATION INVENTORY

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY (Signature of Authorized Official)	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL		TITLE	

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Previous edition is not usable

STANDARD FORM 1434 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.245(j)

[FR Doc. 96–32 Filed 1–2–97; 8:45 am]
BILLING CODE 6820–EP–P

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53.301–1445 [Revised]

87. Section 53.301–1445 is revised to read as follows:

53.301–1445 SF 1445, Labor Standards Interview.

BILLING CODE 6820–EP–P

LABOR STANDARDS INTERVIEW

CONTRACT NUMBER	EMPLOYEE INFORMATION		
NAME OF PRIME CONTRACTOR	LAST NAME	FIRST NAME	MI
NAME OF EMPLOYER	STREET ADDRESS		
SUPERVISOR'S NAME	CITY	STATE	ZIP CODE
LAST NAME / FIRST NAME / MI	WORK CLASSIFICATION	WAGE RATE	

ACTION	CHECK BELOW YES	NO
Do you work over 8 hours per day?		
Do you work over 40 hours per week?		
Are you paid at least time and a half for overtime hours?		
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?	TOOLS YOU USE	
DATE OF LAST WORK DAY BEFORE INTERVIEW *(YYMMDD)*		
DATE YOU BEGAN WORK ON THIS PROJECT *(YYMMDD)*		

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE	DATE *(YYMMDD)*
INTERVIEWER: SIGNATURE / TYPED OR PRINTED NAME	DATE *(YYMMDD)*

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION *(If explanation is needed, use comments section)*	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
	ARE WAGE RATES AND POSTERS DISPLAYED?		

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

☐ YES ☐ NO

COMMENTS

CHECKER			
LAST NAME	FIRST NAME	MI	JOB TITLE
SIGNATURE			DATE *(YYMMDD)*

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1445 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.222(g)

[FR Doc. 96–33206 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–C

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48 CFR Part 2

[FAC 90–45; FAR Case 96–323; Item III]

RIN 9000–AH45

Federal Acquisition Regulation; Humanitarian Operations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 807 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104–201). Section 807 increases the "simplified acquisition threshold" for a humanitarian or peacekeeping operation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–323.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 2 to implement Section 807 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104–201). Section 807 amends 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) to provide for a simplified acquisition threshold for humanitarian or peacekeeping operations in an amount equal to two times that specified in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403). Accordingly, the definition of "simplified acquisition threshold" at FAR 2.101 is amended to reflect an amount of $200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in support of a humanitarian or peacekeeping operation.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–45, FAR case 96–323), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 2

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 2 is amended as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR Part 2 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 2.101 is amended by revising the definition for "Simplified acquisition threshold" to read as follows:

2.101 Definitions.

* * * * *

Simplified acquisition threshold means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the term means $200,000.

* * * * *

[FR Doc. 96–33207 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 6, 15, and 24

[FAC 90–45; FAR Case 96–326; Item IV]

RIN 9000–AH46

Federal Acquisition Regulation; Freedom of Information Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 821 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104–201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–326.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 24.2, Freedom of Information Act (5 U.S.C. 552), to add a new section 24.202, Prohibitions. This new section implements section 821 of Public Law 104–201 by prohibiting, with certain exceptions, the release of proposals submitted in response to competitive solicitations. The rule also amends FAR sections 6.305 and 15.1006 to provide appropriate cross-references. (Note: The change to 15.804–5 that implements this rule in part is made under FAR case 96–306.)

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–45, FAR case 96–326), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office

of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 15, and 24

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6, 15, and 24 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 15, and 24 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.305 is amended in paragraph (1) by revising the third sentence to read as follows:

6.305 Availability of the justification.

(1) * * * Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.1006 is amended in paragraph (e) introductory text by revising the second sentence to read as follows:

15.1006 Postaward debriefing of offerors.

* * * * *

(e) * * * Moreover, debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act, including—

* * * * *

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

24.202 [Redesignated as 24.203]

4. Section 24.202 is redesignated as 24.203 and a new section 24.202 is added to read as follows:

24.202 Prohibitions.

(a) A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is—

(1) In the possession or control of NASA or the Coast Guard; or

(2) Set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).)

(b) No agency shall disclose any information obtained pursuant to 15.804–5(b) that is exempt from disclosure under the Freedom of Information Act. (See 10 U.S.C. 2306a(d)(2)(C) and 41 U.S.C. 254b(d)(2)(C).)

[FR Doc. 96–33208 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52

[FAC 90–45; FAR Case 96–306; Item V]

RIN 9000–AH16

Federal Acquisition Regulation; Exceptions to Requirements for Certified Cost or Pricing Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4201 of the Federal Acquisition Reform Act of 1996. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–306.

SUPPLEMENTARY INFORMATION:

A. Background

This final FAR rule implements changes to the Truth in Negotiations Act (TINA) contained in Section 4201 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) and—

Simplifies obtaining a TINA exception for commercial items by eliminating the distinction between catalog or market-priced commercial items and all other commercial items;

Eliminates the subordination of the commercial item exception to the traditional exceptions of adequate price competition, catalog or market-priced commercial items, or prices set by law or regulation, which previously was required by the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA);

Eliminates the criteria established by FASA for the commercial item exception (i.e., an exception could not be granted unless price reasonableness could be determined based on specific information requirements) and deletes the authority to obtain cost or pricing data for commercial item acquisitions when the criteria is not met; and

Eliminates the clause for postaward audit of information submitted to support the pricing of commercial item contracts.

The Federal Acquisition Reform Act of 1996 was subsequently named the Clinger-Cohen Act of 1996.

A proposed rule was published on August 7, 1996 (61 FR 41214). Sixteen comments were received from seven respondents. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require the submission of cost or pricing data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52 continues to read as follows:

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Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.702 [Amended]

2. Section 4.702 is amended by removing paragraph (a)(3).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.209 is revised to read as follows:

12.209 Determination of price reasonableness when contracting by negotiation.

When contracting by negotiation for commercial items, the policies and procedures in subpart 15.8 shall be used to establish the reasonableness of prices.

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.106 is revised to read as follows:

15.106 Contract clause.

(a) This section implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except those—

(1) Not exceeding the simplified acquisition threshold;

(2) For commercial items exempted under 15.804–1; or

(3) For utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

15.106–1 and 15.106–2 [Removed]

5. Sections 15.106–1 and 15.106–2 are removed.

15.802 [Amended]

6. Section 15.802 is amended in the third sentence of paragraph (a) introductory text by revising "15.804–5(b)" to read "15.804–5", and in paragraph (a)(1) by revising "15.804–5(a)(3)" to read "15.804–5(b)".

7. Section 15.804–1 is amended by revising paragraph (a); removing (b)(2); redesignating (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively, and revising newly designated (b)(3) and (b)(5); and by removing paragraphs (c) and (d). The revised text reads as follows:

15.804–1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection; or

(ii) Prices set by law or regulation (see exception standards at paragraph (b)(2) of this subsection).

(2) For acquisition of a commercial item (see exception standards at paragraph (b)(3) of this subsection).

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(4) of this subsection).

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) or (a)(2) of this subsection and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(5) of this subsection).

(b) * * *

(3) *Commercial items.* An acquisition for an item that meets the commercial item definition in 2.101 is excepted from the requirement to obtain cost or pricing data.

* * * * *

(5) *Modifications.* This exception applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, price set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item (15.804–1(a)(1) or (a)(2)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804–1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the changed or added work.

8. Section 15.804–2 is amended in the second sentence of paragraph (a)(1), introductory text, by removing "15.804–1 (b)(5)" and inserting "15.804–1(b)(4)"; and in paragraph (a)(1)(ii) by removing "15.804–1(b)(5)" and inserting "15.804–1(b)(4)" in its place; and by revising paragraph (a)(2) to read as follows:

15.804–2 Requiring cost or pricing data.

(a) * * *

(2) Unless prohibited because an exception at 15.804–1 (a)(1) or (a)(2) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

* * * * *

9. Section 15.804–5 is revised to read as follows:

15.804–5 Requiring information other than cost or pricing data.

(a) *General.* (1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall perform a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer shall require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. Unless an exception under 15.804–1(a)(1) applies, the contracting officer shall obtain, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price.

(3) The contractor's format for submitting such information shall generally be used (see 15.804–5(c)(2)).

(4) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804–4.

(b) *Adequate price competition.* When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Limitations relating to commercial items.* (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror in commercial operations.

(3) Any information relating to commercial items obtained pursuant to this paragraph (c) that is prohibited from disclosure by 24.202(a) or exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) (see 24.202(b)) shall not be disclosed by the Government.

10. Section 15.804–6 is amended in paragraph (a)(5) by removing the words "or postaward" and in Table 15–2 by revising the fourth paragraph of Item 1 entitled "Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Items Not Covered By Another Exception" to read as follows:

15.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

* * * * *

Prices Set by Law or Regulation or Commercial Item Exception—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exception.

* * * * *

11. Section 15.812–1 is amended by revising paragraph (b) and the fourth sentence of paragraph (c) to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract for acquisition of a commercial item.

(c) * * * The information shall not be requested for commercial items. * * *

12. Section 15.812–2 is amended by revising paragraphs (a)(3) and (a)(5); and adding (a)(6) to read as follows:

15.812–2 Contract clause.

(a) * * *

(3) Utility services under part 41;

* * * * *

(5) Acquisitions of commercial items; and

(6) Contracts for petroleum products.

* * * * *

PART 16—TYPES OF CONTRACTS

13. Section 16.203–4 is amended by revising paragraphs (a)(1)(ii) and (b)(1)(ii) to read as follows:

16.203–4 Contract clauses.

(a)(1) * * *

* * * * *

(ii) The requirement is for standard supplies that have an established catalog or market price.

* * * * *

(b)(1) * * *

* * * * *

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

* * * * *

PART 25—FOREIGN ACQUISITION

25.901 [Amended]

14. Section 25.901 is amended in the first sentence of paragraph (b) by removing "15.106–1(b)" and inserting "15.106(b)" in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

15. Section 31.205–26 is amended by revising paragraph (f) to read as follows:

31.205–26 Material costs.

* * * * *

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

PART 46—QUALITY ASSURANCE

46.804 [Amended]

16. Section 46.804 is amended in the second sentence by removing "(see 15.804–1(b)(2))".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–2 [Amended]

17. Section 52.215–2 is amended in the introductory text by removing "15.106–1(b)" and inserting "15.106(b)" in its place; in Alternates I, II and III, by revising the Alternate dates to read "(JAN 1997)" and removing "15.106–1(c)" and inserting "15.106(c)" in its place.

18. Section 52.215–26 is revised to read as follows:

52.215–26 Integrity of Unit Prices.

As prescribed in 15.812–2, insert the following clause:

INTEGRITY OF UNIT PRICES (JAN 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer.

(End of clause)

Alternate I (JAN 1997). As prescribed in 15.812–2(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value.

19. Section 52.215–41 is amended by revising the provision and Alternates II and III to read as follows:

52.215–41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

* * * * *

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (JAN 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data,

offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed in FAR 15.804–4.

(End of provision)

* * * * *

Alternate II (JAN 1997). As prescribed in 15.804–8(h), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (JAN 1997). As prescribed in 15.804–8(h), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignated as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.).

* * * * *

20. Section 52.215–42 is amended by revising the clause; and revising the date and the last sentence in paragraph (b) of Alternate IV to read as follows:

52.215–42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

* * * * *

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (JAN 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804–2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If (*1*) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item, and (*2*) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include:

(*1*) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(*2*) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(*3*) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practical after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804–4.

(End of clause)

* * * * *

Alternate IV (JAN 1997) * * *

(b) * * * *Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

52.215–43 [Removed]

21. Section 52.215–43 is removed.

22. Section 52.216–2 is amended by revising the introductory paragraph, the clause date, and the third sentence in paragraph (a) to read as follows:

52.216–2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203–4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES (JAN 1997)

(a) * * * The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor.

* * * * *

23. Section 52.216–3 is amended by revising the introductory paragraph, the clause date, and the second sentence of paragraph (a) to read as follows:

52.216–3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203–4(b), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES (JAN 1997)

(a) * * * The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. * * *

[FR Doc. 96–33209 Filed 12–31–96; 8:45 am]
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48 CFR Parts 5, 14, 15, 17, 25, 27, and 52

[FAC 90–45; FAR Case 93–310; Item VI]

RIN 9000–AF60

Federal Acquisition Regulation; Implementation of the North American Free Trade Agreement Implementation Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act related to applications of the Buy American Act provisions to acquisition of certain Mexican and Canadian products. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 93–310.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** on January 5, 1994 (59 FR 544, FAC 90–19), FAR case 93–310, to implement NAFTA. Based on the analysis of public comments, a revised interim rule was published in the **Federal Register** on June 20, 1996 (61 FR 31646) (FAC 90–39). One late public comment was received and considered, but was not incorporated in the final rule. This final rule does contain revisions resulting from public comments received on FAR Case 96–312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published at 61 FR 31646 are being retained. The Government believes if the certifications were eliminated, offerors would be required to submit more detailed information regarding the origins of offered products. Without this information, enforcing a national policy grounded in vital economic and security interests would be extremely difficult. To satisfy this national policy interest, the self-policing discipline of a certification was determined to be the less burdensome alternative.

B. Regulatory Flexibility Act

This final rule is expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule waives the Buy American Act for certain Mexican and Canadian products. A Final Regulatory Flexibility Analysis (FRFA) has been prepared. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows: This final rule generally applies to all businesses, large and small, that contract with Federal agencies other than the Department of Defense for supply contracts with an estimated value above $25,000. This final rule also applies to Federal construction contracts, including those awarded by the Department of Defense, with an acquisition value of $6,500,000 or more. Although U.S. businesses may face increased competition from Canadian or Mexican firms, they may also find an increased market for their materials in Canada and Mexico.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the provision at FAR 52.225–20 requires offerors to list the line item number and the country of origin for any end product other than a domestic end product. Accordingly, a request for clearance of the information collection requirement was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and has been approved under OMB Control Number 9000–0130.

List of Subjects in 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52, which was published at 59 FR 544 on January 5, 1994, and amended by the interim rule published at 61 FR 31646 on June 20, 1996, is adopted as final with changes as set forth below:

1. The authority citation for 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.408 [Amended]

2. Section 25.408 is amended in paragraph (a)(3) by removing the word "Provision" in the title of the provision and inserting "Certificate".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.212–3 is amended by revising the date of the provision and paragraphs (g)(1)(i), (g)(1)(iii), and (g)(2) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JAN 1997)

* * * * *

(g)(1) * * *

(i) The offeror certifies that each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement

Implementation Act—Balance of Payments Program," and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program":

_____

_____

_____

(Insert line item numbers)

* * * * *

(2) *Alternate I.* If Alternate I to the clause at 52.225–21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified and certified below will not be deemed Canadian end products.

The offeror certifies that the following supplies qualify as "Canadian end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program":

_____

(Insert line item numbers)

* * * * *

(End of provision)

4. Section 52.225–20 is amended in the section heading and provision heading by removing the word "Provision" and inserting "Certificate"; revising the date of the provision and its Alternate I to read "(JAN 1997)"; revising paragraph (a) of the provision; revising the first paragraph of paragraph (c) of the provision and of Alternate I; and by inserting the words "offeror certifies that the" after the first word "The" in the first sentence of the second paragraph of paragraph (c) of the provision and of Alternate I to read as follows:

52.225–20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

* * * * *

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE

(JAN 1997)

(a) The offeror certifies that each end product being offered, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products.

* * * * *

Alternate I (JAN 1997). * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

* * * * *

52.225–21 [Amended]

5. Section 52.225–21 is amended by revising the date of the clause to read "(JAN 1997)" and by removing the word "specifying" in the fourth sentence of paragraph (c) of the clause and of Alternate I and inserting "certifying".

[FR Doc. 96–33210 Filed 12–31–96; 8:45 am]

BILLING CODE 5820–EP–P

48 CFR Parts 5, 6, 11, 12 and 13

[FAC 90–45; FAR Case 96–307; Item VII]

RIN 9000–AH20

Federal Acquisition Regulation; Application of Special Simplified Procedures to Certain Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold ($100,000) but not greater than $5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss at (202) 501–4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–307.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 authorizes special simplified procedures for acquisitions of commercial items at amounts greater than the simplified acquisition threshold ($100,000) but not greater than $5 million, when the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items. The authority to use the special simplified procedures under this section expires on January 1, 2000. Section 4202 also amends 41 U.S.C. 416 to permit issuance of solicitations for commercial items in fewer than 15 days after the synopsis notice is published.

A proposed rule was published in the **Federal Register** on September 6, 1996 (61 FR 47384). Twenty-four sources

submitted comments in response to the proposed rule. All comments were considered in the development of the final rule. Among other changes adopted in this final rule, the proposed language at 13.604–2, Alternative negotiation techniques, which introduced into the FAR an auctioning-like concept, has been removed from this final rule for further study and analysis under new FAR case 96–024.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it is expected to increase the number of Federal contracts awarded using procedures that are familiar to small entities. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows: One public comment was received in response to the initial regulatory flexibility analysis. The respondent stated that the analysis did not indicate that regulatory alternatives were considered in the process of drafting the proposed rule, and that there was no estimated measure or quantification of small business impact or number and dollar value of Federal contracts likely to be affected. The final regulatory flexibility analysis contains a more complete description of the alternatives that were considered for the purpose of minimizing any adverse impact on small businesses and reflects data extrapolated from the Federal Procurement Data System which show that in fiscal year 1995, 73 percent of all purchases made under the procedures used in Part 13 were awarded to small businesses. As stated in the initial regulatory flexibility analysis, the Federal Procurement Data System is just beginning to track acquisitions of commercial items. Until more complete data are collected, it will be difficult to precisely estimate the number of small entities to which the rule will apply. The rule imposes no new reporting, recordkeeping, or other compliance requirements. We considered whether flexible compliance with this rule would be appropriate. Since the rule is expected to have a beneficial impact on industry, it was determined that flexible compliance would not be appropriate in this case. Instead, the rule is intended to apply to both small and large entities equally so that both may benefit. However, in developing the final rule, alternatives were considered, and revisions were made, to minimize possible economic impact on small entities. The language on alternative negotiation techniques has been removed from the rule pending further study and analysis. At the present time, this rule does not extend authority to use the special test procedures for construction. The proposed language included on construction, in Part 13, was not intended to address the applicability of the test procedures to construction and the language in the final rule has been amended to eliminate this ambiguity. The broader issue of the applicability of the FAR's commercial item policies to construction contracting is under review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 6, 11, 12 and 13

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 6, 11, 12 and 13 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 11, 12 and 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.203 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) A notice of contract action shall be published in the *Commerce Business Daily* at least 15 days before issuance of a solicitation except when that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined CBD synopsis/solicitation procedure (see 12.603).

* * * * *

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD, the contracting officer may reduce this time period to as few as 10 days.

3. Section 5.207 is amended by revising paragraph (e)(3) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(e) * * *

(3) Except for contract actions equal to or less than the simplified acquisition threshold or acquisitions of commercial items, the synopsis shall refer to Numbered Note 22 for noncompetitive contract actions. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

* * * * *

PART 6—COMPETITION REQUIREMENTS

4. Section 6.001(a) is revised to read as follows:

6.001 Applicability.

* * * * *

(a) Contracts awarded using the simplified acquisition procedures of part 13 (but see 13.602 for requirements pertaining to sole source acquisitions of commercial items under subpart 13.6);

* * * * *

PART 11—SUBSCRIBING AGENCY NEEDS

5. Section 11.002 is amended by revising paragraph (a)(1)(ii) and adding paragraph (e) to read as follows:

11.002 Policy.

(a) * * *

(1) * * *

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

* * * * *

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

6. Section 11.104 is amended by revising paragraph (a) to read as follows:

11.104 Items peculiar to one manufacturer.

* * * * *

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(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs; and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

7. Section 12.202 is amended by revising paragraph (b) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

* * * * *

8. Section 12.203 is amended by adding a sentence to the end of the paragraph to read as follows:

12.203 Procedures for solicitation, evaluation, and award.

* * * For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding $5,000,000, including options, contracting activities shall employ the simplified procedures authorized by subpart 13.6 to the maximum extent practicable.

9. Section 12.204 is revised to read as follows:

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

10. Section 12.205 is amended by revising paragraph (c) to read as follows:

12.205 Offers.

* * * * *

(c) Consistent with the requirements at 5.203 (b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

11. Section 12.213 is revised to read as follows:

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12. Section 12.302(a) is revised to read as follows:

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212—1, Instructions to Offerors-Commercial Items, and the clause at 52.212—4, Contract Terms and Conditions-Commercial Items, to adapt to the market conditions for each acquisition.

* * * * *

13. Section 12.602 is amended by revising paragraph (a) to read as follows:

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212–2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106–2 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212–2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in part 13, contracting officers are not required to describe the relative importance of evaluation factors.

* * * * *

14. Section 12.603 is amended by revising paragraph (c)(3)(ii) to read as follows:

12.603 Streamlined solicitation for commercial items.

* * * * *

(c) * * *

(3) * * *

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b) (but see 5.203(h)).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

15. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Section 13.601 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not greater than $5,000,000, including options. See part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602–5 for simplified procedures to be used when acquiring architect-engineering services.

16. Section 13.103 is amended by revising paragraphs (b), (c) and (j) to read as follows:

13.103 Policy.

* * * * *

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, unless the office's

cognizant agency has certified full FACNET capability in accordance with 4.505–2. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.6.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold (or $5,000,000, including options, for acquisitions of commercial items using subpart 13.6), even though resulting awards do not exceed the applicable threshold. Requirements aggregating more than the simplified acquisition threshold (or $5,000,000, including options, if using subpart 13.6) or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

* * * * *

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For acquisitions of other than commercial items not expected to exceed the simplified acquisition threshold, contracting officers may use any appropriate combination of the procedures in part 13, 14, 15, 35, or 36, including the use of Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)). For acquisitions of commercial items not expected to exceed $5 million, contracting officers may use any appropriate combination of the procedures in parts 12, 13, 14 and 15 (see 13.103(c)).

* * * * *

17. Section 13.104 is amended by revising paragraph (b) to read as follows:

13.104 Procedures.

* * * * *

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or none" or "multiple award" basis if suppliers are so advised when quotations or offers are requested.

* * * * *

18. Section 13.106–2 is amended by revising paragraphs (a)(1) through (a)(3), (a)(4) introductory text, (a)(5), (a)(6), (b)(1), (b)(3), (c)(1), (c)(2), (d)(3) and (d)(4)(ii); redesignating (a)(6) through (8) as (a)(7) through (9), respectively; and by adding new (a)(6), and (a)(10) to read as follows:

13.106–2 Purchases exceeding the micro-purchase threshold.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, based, as appropriate, on either price alone or price and other factors (*e.g.*, past performance and quality) including the administrative cost of the purchase. Contracting officers are encouraged to use best value. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) For acquisitions not exceeding the simplified acquisition threshold where FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means (e.g., orally, or in writing). The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. When a synopsis is required, sufficient information to permit suppliers to develop quotations or offers may be incorporated into a combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. For commercial item acquisitions, also see 12.603.

(3) For acquisitions not exceeding $25,000, requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed $25,000 should only be issued only when obtaining electronic or oral quotations is not considered economical or practicable. Written solicitations shall be issued for construction contracts over $2,000.

(4) If a synopsis is not required (*e.g.*, the acquisition does not exceed $25,000 or an exemption to the synopsis requirement applies) and FACNET is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum extent practicable. In such circumstances, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations or offers. The following factors influence the number of quotations or offers required in connection with any particular purchase:

* * * * *

(5) For purchases not exceeding the simplified acquisition threshold, Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

(6) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.6, the requirements at 13.602(a) apply.

(7) Contracting officers shall not limit competition to suppliers of well-known and widely distributed makes or brands (see 11.104), or solicit quotations or offers on a personal preference basis.

* * * * *

(10) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Evaluation of quotations or offers.* (1) When evaluating quotations or offers, the evaluation must be made on the basis established in the solicitation. All quotations or offers must be considered. However, the contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used. Formal evaluation plans, establishment of a competitive range, conduct of discussions, and scoring of quotes or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance, does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis.

* * * * *

(3) Contracting officers shall evaluate quotations or offers inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

* * * * *

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the

quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) For acquisitions not exceeding the simplified acquisition threshold, except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

* * * * *

(d) * * *

(3) If only one source is solicited and the acquisition does not exceed the simplified acquisition threshold, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source.

(4) * * *

(ii) *Written solicitations (see 2.101).* For acquisitions not exceeding the simplified acquisition threshold, written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

* * * * *

19. Section 13.107 is amended by revising paragraph (a) to read as follows:

13.107 Solicitation forms.

(a) For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

* * * * *

20. Section 13.202 is amended by revising paragraph (b)(2) to read as follows:

13.202 Establishment of blanket purchase agreements (BPAs).

* * * * *

(b) * * *

(2) Consider suppliers whose past performance has shown them to be dependable, and who offer quality supplies or services at consistently lower prices and who have provided numerous purchases at or below the simplified acquisition threshold.

* * * * *

21. Section 13.204 is amended by revising paragraphs (a) and (b) to read as follows:

13.204 Purchases under blanket purchase agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold, or $5,000,000 for acquisitions of commercial items conducted under subpart 13.6.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those under BPAs established in accordance with 13.202(c)(3), shall not exceed the simplified acquisition threshold, or $5,000,000, for acquisitions of commercial items conducted under subpart 13.6.

* * * * *

22. Subpart 13.6, consisting of sections 13.601 and 13.602, is added to read as follows:

Subpart 13.6-Test Program for Certain Commercial Items

Sec.
13.601 General.
13.602 Special documentation requirements.

13.601 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding $5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses at subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.602 Special documentation requirements.

(a) *Sole source acquisitions.* Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall not conduct sole source acquisitions, as defined in 6.003, under this subpart unless the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(1) and (a)(2) of this section. Contracting officers shall prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act). Justifications and approvals are required under this subpart only for sole source acquisitions.

(1) For a proposed contract exceeding $100,000 but not exceeding $500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in agency procedures.

(2) For a proposed contract exceeding $500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304 (a)(3) or (a)(4). This authority is not delegable.

(b) *Contract file documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR 13.6 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

[FR Doc. 96–33211 Filed 12–31–96; 8:45 am]
BILLING CODE 6820–EP–P

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48 CFR Part 9

[FAC 90–45; FAR Case 96–320; Item VIII]

RIN 9000–AH47

Federal Acquisition Regulation; Compliance with Immigration and Nationality Act Provisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published at 61 FR 41472, August 8, 1996, to a final rule without change. The rule amended the Federal Acquisition Regulation (FAR) to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 96–320.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Executive Order 12989 of February 13, 1996, which provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. No comments were received in response to the interim rule published on August 8, 1996.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because only a small number of Federal contractors are likely to be the subject of a determination by the Attorney General that they are not in compliance with the employment provisions of the Immigration and Nationality Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final

The interim rule published as Item II of FAC 90–41 (61 FR 41472, August 8, 1996) is converted to a final rule without change. The rule amended FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act.

The authority citation for 48 CFR Part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 96–33212 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Part 25

[FAC 90–45; FAR Case 96–017; Item IX]

RIN 9000–AH48

Federal Acquisition Regulation; Caribbean Basin and Designated Countries

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to update the lists of Caribbean Basin countries and designated countries included in the definitions at FAR 25.401. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–0174.

SUPPLEMENTARY INFORMATION:

A. Background

As directed by the Office of the United States Trade Representative, this final rule updates the lists of Caribbean Basin countries and designated countries included in the definitions at FAR 25.401. Haiti, Nicaragua, and Panama are added to the list of Caribbean Basin countries. Ten least-developed countries are added to the list of designated countries pursuant to Section 504(c)(6) of the Trade Act of 1974, as amended. In addition, Singapore is added as a designated country pursuant to Section 1–101 of Executive Order 12260 (61 FR 11233, March 19, 1996). The designation of Singapore does not apply to procurements by the Department of Energy, the Department of Transportation, the Army Corps of Engineers, the Tennessee Valley Authority, or the Bureau of Reclamation.

Sudan is removed from the list of designated countries because the Acting U.S. Trade Representative has withdrawn the designation of Sudan under the Trade Agreements Act of 1979, as amended, in light of the political situation in Sudan and the lack of normal economic relations between the United States and Sudan.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–45, FAR case 96–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

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Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.401 is amended by revising the definitions "Caribbean Basin country" and "Designated country" to read as follows:

25.401 Definitions.

* * * * *

Caribbean Basin country, as used in this subpart, means a country designated by the President as a beneficiary under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) and listed as follows:

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

* * * * *

Designated country, as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed as follows:

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

[FR Doc. 96–33213 Filed 12–31–96; 8:45 am]
BILLING CODE 6820–EP–P

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48 CFR Part 25

[FAC 90–45; FAR Case 96–020; Item X]

RIN 9000–AH49

Federal Acquisition Regulation; Caribbean Basin Country End Products—Renewal of Treatment as Eligible

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have amended the Federal Acquisition Regulation (FAR) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 96–020.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 25.404(b) provides that products of Caribbean Basin countries which are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products under the Trade Agreements Act. This final rule extends the eligibility date from September 30, 1996, to September 30, 1997, except that for products of Panama, the date is extended through September 30, 1998, in accordance with the notice published by the U.S. Trade Representative on September 30, 1996 (61 FR 51134).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–45, FAR case 96–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.402(b) is revised to read as follows:

25.402 Policy.

* * * * *

(b) The U.S. Trade Representative has determined that in order to promote further economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries which are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart. Except for products of Panama, this determination is effective until September 30, 1997. For products of Panama, this determination is effective until September 30, 1998. These dates may be extended by the U.S. Trade Representative by means of a notice in the **Federal Register.**

* * * * *

[FR Doc. 96–33214 Filed 12–31–96; 8:45 am]
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48 CFR Part 31

[FAC 90–45; FAR Case 96–325; Item XI]

RIN 9000–AH50

Federal Acquisition Regulation; Compensation of Certain Contractor Personnel

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) by placing a Governmentwide ceiling on allowable compensation costs for contractor personnel in senior management positions under contracts that are awarded during fiscal year 1997. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date*: January 1, 1997.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS),18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90–45, FAR case 96–325 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–325.

SUPPLEMENTARY INFORMATION:

A. Background

Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) limits, during fiscal year 1997, allowable compensation costs to $250,000 per year for contractor personnel in senior management positions. Section 809 defines "compensation" as the total amount of wages and elective deferrals for the year concerned, as these terms are defined in Sections 3401(a) and 402(g)(3), respectively, of the Internal Revenue Code of 1986. Section 809 also limits the application of the compensation ceiling to an "officer" of a company "who is determined to be in a senior management position as established by regulation." The interim rule defines an "officer in a senior management position" as the contractor's Chief Executive Officer (CEO), or any individual acting in a similar capacity, and the contractor's four most highly compensated officers in senior management positions, other than the CEO. This definition is consistent with the standard employed by the United States Securities and Exchange Commission (SEC) in its executive compensation disclosure rules. The SEC requires that publicly traded companies disclose to their stockholders the compensation of the CEO (or any individual acting in a similar capacity) as well as that of their four most highly paid senior executive officers, other than the CEO, who earn more than $100,000 per year in salary and bonus.

The interim FAR rule adds a new requirement at 31.205–6(p) to implement the statutory ceiling on allowable compensation costs for officers in senior management positions. This restriction applies to contracts awarded during fiscal year 1997, for compensation costs of certain contractor personnel that are incurred during fiscal year 1997, and that are in excess of $250,000 per year. This restriction also applies to the five most highly compensated individuals in senior management positions at intermediate home offices and/or segments if a contractor is organizationally subdivided into such units.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. In addition, this rule is limited to businesses that incur costs prior to October 1, 1997, under contracts awarded during fiscal year 1997, for compensation in excess of $250,000 per year for an officer in a senior management position. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 96–325), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to ensure that contracting activities become aware of the statutory ceiling on allowable compensation costs for certain contractor personnel when forward pricing contracts to be awarded during fiscal year 1997. This rule implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) and applies to Governmentwide contracts awarded during fiscal year 1997. However, pursuant to Public Law 98–577 and FAR

1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended by adding paragraph (p) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position in excess of $250,000 per year are unallowable (Section 809 of Public Law 104–201).

(2) As used in this paragraph:

(i) *Compensation* means—

(A) The total amount of taxable wages paid to the employee for the year concerned; plus

(B) The total amount of elective deferred compensation earned by the employee in the year concerned.

(ii) *Officer in a senior management position means*—

(A) The contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity;

(B) The contractor's four most highly compensated officers in senior management positions, other than the CEO; and

(C) If the contractor is organizationally subdivided into intermediate home offices and/or segments, the five most highly compensated individuals in senior management positions at each such intermediate home office and/or segment.

[FR Doc. 96–33215 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 33

[FAC 90–45; FAR Case 95–309; Item XII]

RIN 9000–AH10

Federal Acquisition Regulation; Agency Procurement Protests

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to provide for informal, procedurally simple, and inexpensive resolution of protests. This final rule implements Executive Order 12979, Agency Procurement Protests. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 95–309.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises the agency procurement protest procedures at FAR 33.103 to implement Executive Order 12979 of October 25, 1995, Agency Procurement Protests (60 FR 55171, October 27, 1995). An interim rule was published in the **Federal Register** at 61 FR 39219, July 26, 1996. Six sources submitted public comments. All comments, including comments from GAO, were considered in developing the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule implements Executive Order 12979, Agency Procurement Protests, which requires the heads of the executive departments and agencies engaged in the procurement of supplies and services to prescribe administrative procedures for the resolution of procurement protests as an alternative to protests in a forum outside the procuring agencies. There were no public comments received in response to the Initial Regulatory Flexibility Analysis. Several changes were made as a result of public comments in response to the interim rule. The time to file a protest was reduced from 14 to 10 days after the basis of protest is known, or should be known, to conform with revisions to General Accounting Office protest procedures. The rule was revised to clarify that agencies may designate an official, other than the contracting officer, to receive protests. Agencies may also designate whether a review of a protest by an official other than the contracting officer is instead of, or in addition to, review of the protest by the contracting officer. The rule was revised to permit agencies to exchange information with a protester while considering the protest.

The rule will apply to all actual or potential bidders or offerors, large and small, whose direct economic interests would be affected by the award or failure to award a Government contract. The number of small entities to which the rule will apply is estimated to be between 35,000 and 45,000. This rule does not impose any reporting, recordkeeping, or other compliance requirements.

This rule is expected to have a beneficial impact on small entities by prescribing informal, procedurally simple, and inexpensive means to resolve protests. The rule encourages the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel as alternative protest resolution methods.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR Part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 33.103 is amended—

a. in paragraph (c) by removing "and permitted by law";

b. by revising paragraphs (d)(2)(i) and (d)(4);

c. in paragraph (e) by revising "14 days" to read "10 days";

d. in the first sentence of paragraphs (f)(1) and (f)(2) by inserting the word "agency" after the word "pending";

e. by adding paragraph (f)(4); and

f. by revising paragraphs (g) and (h) to read as follows:

33.103 Protests to the agency.

* * * * *

(d) * * *

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

* * * * *

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

* * * * *

(f) * * *

(4) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agencies protests are denied and the protester subsequently files at GAO.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

[FR Doc. 96–33216 Filed 12–31–96; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Parts 1, 5, 14, and 36

[FAC 90–45; FAR Case 96–305; Item XIII]

RIN 9000–AH17

Federal Acquisition Regulation; Two-Phase Design Build Selection Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4105 of the Clinger-Cohen Act of 1996 (Public Law 104–106), which authorizes the use of two-phase design-build procedures for construction contracting. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–5, FAR case 96–305.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule with request for public comment was published in the **Federal Register** at 61 FR 41212, August 7, 1996. Comments were received from 77 respondents. After analysis of the public comments and further consideration of the proposed language, the rule was revised at FAR 36.104, 36.301(b)(2), and 36.303–1 to more closely conform to the provisions of Section 4105 of Public Law 104–106. In addition, examples of phase-two evaluation factors have been added at FAR 36.303–(a).

B. Regulatory Flexibility Act

This final rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule reduces the cost of proposal preparation for those offerors not selected for Phase Two, when two-phase design-build procedures are used. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is summarized as follows:

We estimate that approximately 1,465 small businesses responding to two-phase design-build solicitations annually may save proposal costs on an average of eight separate solicitations each. This final rule imposes no new reporting or recordkeeping requirements.

A copy of the FRFA will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 96–305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 5, 14, and 36

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 5, 14, and 36 is amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 5, 14, and 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the list following the introductory paragraph by removing the FAR segment "36.302" and inserting "36.213–2".

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.204 is amended by revising the first sentence to read as follows:

5.204 Presolicitation notices.

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.213–2). * * *

PART 14—SEALED BIDDING

4. Section 14.202–1 is amended in paragraph (a) by revising the first parenthetical to read as follows:

14.202–1 Bidding time.

(a) * * * (For construction contracts, see 36.213–3(a)). * * *

* * * * *

5. Section 14.211 is amended by revising the first sentence of paragraph (a) to read as follows:

14.211 Release of acquisition information.

(a) *Before solicitation.* Information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices in accordance with 14.205–4(c) or 36.213–2, or long-range acquisition estimates in accordance with 5.404, or synopses in accordance with 5.201. * * *

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. Section 36.102 is amended by adding, in alphabetical order, the definitions "Design", "Design-bid-build", "Design-build", and "Two-phase design-build selection procedures" to read as follows:

36.102 Definitions.

* * * * *

Design, as used in this part, means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

Design-bid-build, as used in this part, means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

Design-build, as used in this part, means combining design and construction in a single contract with one contractor.

* * * * *

Two-phase design-build selection procedures, as used in this part, is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see subpart 36.3).

7. Section 36.104 is added to read as follows:

36.104 Policy.

Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (41 U.S.C. 541, *et seq.*) or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by 10 U.S.C. 2305a or 41 U.S.C. 253m when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see subpart 36.3). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the design-build process described in 10 U.S.C. 2862.

Subpart 36.3 [Redesignated as 36.213 and Amended]

36.301–36.304 [Redesignated as 36.213–1—36.213–4]

8. Subpart 36.3 is redesignated as section 36.213 and the heading is revised to read "Special procedures for sealed bidding in construction contracting."; and sections 36.301 through 36.304 are redesignated as 36.213–1 through 36.213–4, respectively.

Subpart 36.4 [Removed]

36.401 [Removed]

36.402 [Redesignated as 36.214]

36.403 [Redesignated as 36.215]

9. Subpart heading 36.4 and section 36.401 are removed; and sections 36.402 and 36.403 are redesignated as 36.214 and 36.215, respectively, and the section headings revised to read as follows:

36.214 Special procedures for price negotiation in construction contracting.

36.215 Special procedure for cost-reimbursement contracts for construction.

10. Subpart 36.3, consisting of sections 36.300 through 36.303–2, is added to read as follows:

Subpart 36.3—Two-Phase Design-Build Selection Procedures

Sec.

36.300 Scope of subpart.
36.301 Use of two-phase design-build selection procedures.
36.302 Scope of work.
36.303 Procedures.
36.303–1 Phase One.
36.303–2 Phase Two.

Subpart 36.3—Two-Phase Design-Build Selection Procedures

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by 10 U.S.C. 2305a and 41 U.S.C. 253m.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal acquisition planning (see part 7), if considering the use of two-phase design-build selection procedures, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures shall be used when the contracting officer determines that this method is appropriate, based on the following:

(1) Three or more offers are anticipated.

(2) Design work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers.

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the head of the contracting activity.

36.302 Scope of work.

The agency shall develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in subpart 36.6 shall be used.

36.303 Procedures.

One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which offerors will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303–1 Phase One.

(a) Phase One of the solicitation(s) shall includ—

(1) The scope of work;

(2) The phase-one evaluation factors, including—

(i) Technical approach (but not detailed design or technical information);

(ii) Technical qualifications, such as—

(A) Specialized experience and technical competence;

(B) Capability to perform;

(C) Past performance of the offeror's team (including the architect-engineer and construction members); and

(iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);

(3) Phase-two evaluation factors (see 36.303–2); and

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting).

(b) After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with 36.303–1(a)(4)) and request that only those offerors submit phase-two proposals.

36.303–2 Phase Two.

(a) Phase Two of the solicitation(s) shall be prepared in accordance with part 15, and include phase-two evaluation factors, developed in accordance with 15.605. Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the solicitation(s) shall require submission of technical and price proposals, which shall be evaluated separately, in accordance with part 15.

11. Subpart 36.4 is added and reserved to read as follows:

Subpart 36.4—Commercial Practices [Reserved]

[FR Doc. 96–33217 Filed 12–31–96; 8:45 am]
BILLING CODE 6820–EP

48 CFR Parts 39 and 52

[FAC 90–45; FAR Case 96–607; Item XIV]

RIN 9000–AH51

Federal Acquisition Regulation; Year 2000 Compliance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are amending the FAR on an interim basis to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* January 1, 1997. *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90–45, FAR case 96–607 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 96–607.

SUPPLEMENTARY INFORMATION:

A. Background

Many information technology systems will have operational difficulties due to the use of two-digit years in date representations. While commonly thought to be a problem of old legacy systems, it can also be a problem in information technology services and products that are for sale today.

At the recommendation of the Chief Information Officers Council and the interagency working group on the year 2000, the Federal Government intends to only acquire products that will work in the year 2000. This interim rule is intended to assist in the implementation of that intent. It provides a uniform approach and definition for addressing the year 2000 problem in the many, unique information technology acquisitions that will occur between now and the year 2000.

The rule defines the term "year 2000 compliant." It also requires that agencies assure that when acquiring information technology which will be required to perform date/time processing involving dates subsequent to December 31, 1999, the solicitations and contracts either require year 2000 compliant technology, or require that non-compliant information technology be upgraded to be compliant in a timely manner. The rule also recommends that agency solicitations describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

Additional information about the year 2000 problem and the activities of the interagency working group on the year 2000 can be found on the group's home page located at URL http://www.itpolicy.gsa.gov.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily pertains to internal Government acquisition planning guidance regarding the acquisition of major systems of information technology. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR part also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR case 96–607 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services (GSA), and the Administrator

of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to ensure that Federal agencies do not procure non-compliant information technology products that would otherwise require premature replacement or costly repairs to make them Year 2000 compliant before December 31, 1999. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 39 and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 39 and 52 are amended as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Parts 39 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 39.002 is amended by adding, in alphabetical order, the definition "Year 2000 compliant" to read as follows:

39.002 Definitions.

* * * * *

Year 2000 compliant means information technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, Year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

39.106 [Redesignated as 39.107]

3. Section 39.106 is redesignated as 39.107, and a new section 39.106 is added to read as follows:

39.106 Year 2000 compliance.

When acquiring information technology that will be required to perform date/time processing involving dates subsequent to December 31, 1999, agencies shall ensure that solicitations and contracts—

(a)(1) Require the information technology to be Year 2000 compliant; or

(2) Require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of

(i) the earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or

(ii) December 31, 1999; and

(b) As appropriate, describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.239–1 [Amended]

4. Section 52.239–1 is amended in the introductory text by revising "39.106" to read "39.107".

[FR Doc. 96–33218 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Part 42

[FAC 90–45; FAR Case 96–324; Item XV]

RIN 9000–AH52

Federal Acquisition Regulation; Limitation on Indirect Cost Audits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) implementing Section 808 of the FY 97 Defense Authorization Act (Pub. L. 104–201), which expands required audit reciprocity among Federal agencies to include post-award audits. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–324.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR change implements Section 808 of the Fiscal Year 1997 National Defense Authorization Act (Public Law 104–201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. Section 808 was effective September 23, 1996. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) (Public Law 103–355), to include reciprocity on pre-award audits.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–45, FAR case 96–324), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 42 amended as set forth below:

PART 42—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 42.703–1 is amended by revising paragraph (a) to read as follows:

42.703–1 Policy.

(a) A single agency (see 42.705–1(a)) shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited

by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government (10 U.S.C. 2313(d) and 41 U.S.C. 254d(d)).

* * * * *

[FR Doc. 96–33219 Filed 12–31–96; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90–45 which amend the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 90–45 which precedes this notice. This document may be obtained from the Internet at http://www.gsa.gov/far/SECG.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 90–45

Item	Subject	FAR case	Analyst
I*	Procurement Integrity	96–314	Linfield.
II *	Certification Requirements	96–312	O'Neill.
III	Humanitarian Operations	96–323	Linfield.
IV	Freedom of Information Act	96–326	O'Neill.
V	Exceptions to Requirements for Certified Cost or Pricing Data	96–306	Olson.
VI *	Implementation of the North American Free Trade Agreement Implementation Act	93–310	Linfield
VII *	Application of Special Simplified Procedures to Certain Commercial Items	96–307	Moss.
VIII	Compliance with Immigration and Nationality Act Provisions	96–320	Linfield.
IX	Caribbean Basin and Designated Countries	96–017	Linfield.
X	Caribbean Basin Country End Products—Renewal of Treatment as Eligible	96–020	Linfield.
XI	Compensation of Certain Contractor Personnel (Interim)	96–325	DeStefano.
XII *	Agency Procurement Protests	95–309	O'Neill.
XIII *	Two-Phase Design Build Selection Procedures	96–305	O'Neill.
XIV	Year 2000 Compliance (Interim)	96–607	O'Neill.
XV	Limitation on Indirect Cost Audits	96–324	Olson.

Item I—Procurement Integrity (FAR Case 96–314)

This final rule amends the FAR to implement the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, as amended by Section 4304 of the 1996 National Defense Authorization Act. Section 4304 is part of the Clinger-Cohen Act of 1996. Section 3.104 is rewritten. Unlike the previous statute, some of the post-employment restrictions in the rewritten 3.104 apply to post-award activities. The final rule eliminates all of the procurement integrity certifications required by the previous statute.

The final rule makes other significant changes. The new post-employment restrictions apply to services provided or decisions made on or after January 1, 1997; the old restrictions apply for former officials whose employment ended before January 1, 1997. The clause at 52.203–10 is revised. The clauses at 52.203–9 and 52.203–13, and the Optional Form 333 at 53.202–1, are removed. The solicitation provision at 52.203–8 is replaced with a new clause to provide the means to void or rescind contracts where there has been a violation of the procurement integrity restrictions.

Item II—Certification Requirements (FAR Case 96–312)

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove certain certification requirements for contractors and offerors that are not specifically required by statute. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104–106).

Item III—Humanitarian Operations (FAR Case 96–323)

This final rule amends the definition of "simplified acquisition threshold" at FAR 2.101 to increase the threshold to $200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in support of a humanitarian or peacekeeping operation. The rule implements 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) as amended by Section 807 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201).

Item IV—Freedom of Information Act (FAR Case 96–326)

This final rule amends FAR Subpart 24.2 to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act.

Item V—Exceptions to Requirements for Certified Cost or Pricing Data (FAR Case 96–306)

This final rule implements Section 4201 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4201: (1) Exempts suppliers of commercial items under Federal contracts from the requirement to submit costs or pricing

data; (2) provides for the submission of information other than cost or pricing data to the extent necessary to determine price reasonableness; and (3) removes specific audit authorities pertaining to information provided by commercial suppliers. Accordingly, FAR 15.8, 52.215–26, 52.215–41, and 52.215–42 are amended to revise requirements pertaining to the submission of information relating to commercial items; FAR 52.215–43 is removed; and other associated changes are made in FAR Parts 4, 12, 15, 16, 25, 31, 46, and 52.

Item VI—Implementation of the North American Free Trade Agreement Implementation Act (FAR Case 93–310)

The interim rule published as FAC 90–19 and amended by FAC 90–39 is converted to a final rule with changes. The final rule amends FAR Part 25. The final rule revisions result from public comments received on FAR Case 96–312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published in FAC 90–39 were reinstated.

Item VII—Application of Special Simplified Procedures to Certain Commercial Items (FAR Case 96–307)

This final rule amends FAR Parts 5, 6, 11, 12, and 13 to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold ($100,000) but not greater than $5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

Item VIII—Compliance With Immigration and Nationality Act Provisions (FAR Case 96–320)

The interim rule published as Item II of FAC 90–41 is converted to a final rule without change. The final rule amends FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. The rule implements Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions.

Item IX—Caribbean Basin and Designated Countries (FAR Case 96–017)

This final rule amends FAR 25.401 to update the lists of countries included in the definitions of "Caribbean Basin country" and "Designated country".

Item X—Caribbean Basin Country End Products—Renewal of Treatment as Eligible (FAR Case 96–020)

This final rule amends FAR 25.402(b) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries.

Item XI—Compensation of Certain Contractor Personnel (FAR Case 96–325)

This interim rule adds a new requirement at FAR 31.205–6(p) to implement Section 809 of the Fiscal Year (FY) 1997 National Defense Authorization Act (Public Law 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during FY 1997.

Item XII—Agency Procurement Protests (FAR Case 95–309)

The interim rule published as Item XIII of FAC 90–40 is revised and finalized. The rule amends FAR 33.103 to implement Executive Order 12979, Agency Procurement Protests. Executive Order 12979 provides for inexpensive, informal, procedurally simple, and expeditious resolution of agency protests, including the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel.

Item XIII—Two-Phase Design-Build Selection Procedures (FAR Case 96–305)

This final rule amends FAR Part 36 to implement Section 4105 of the Clinger-Cohen Act of 1996 (Public Law 104–106), which authorizes the use of two-phase design-build procedures for construction contracting. Two phase design-build construction contracting provides for the selection of a limited number of offerors (normally five or fewer), during Phase One of the solicitation process, to submit detailed proposals for Phase Two.

Item XIV—Year 2000 Compliance (FAR Case 96–607)

This interim rule amends FAR Part 39 to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues.

Item XV—Limitation on Indirect Cost Audits (FAR Case 96–324)

This final rule amends FAR Part 42 to implement Section 808 of the FY 97 National Defense Authorization Act (Public Law 104–201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) of Public Law 103–355, to include reciprocity on pre-award audits.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–33220 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Thursday
January 2, 1997

Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Part 232

Two-Way End-of-Train Telemetry Devices; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 6]

RIN 2130–AA73

Two-Way End-of-Train Telemetry Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is revising the regulations governing train and locomotive power braking systems to include provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). Two-way EOTs provide locomotive engineers with the capability of initiating an emergency brake application that commences at the rear of the train. These revisions are designed to improve the safety of railroad operations by requiring the use of these devices on a variety of freight trains in accordance with legislation enacted in 1992 and by providing minimum performance and operational standards related to the use and design of two-way EOTs.

EFFECTIVE DATE: The rule is effective July 1, 1997.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

FOR FURTHER INFORMATION, CONTACT: Thomas Peacock, Motive Power and Equipment Division, Office of Safety, RRS–14, Room 8326, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3345), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION:

Background

The train air brake system is complex and sensitive. A simplified summary of its operation may be useful in understanding the use and desirability of the technology required by this final rule. The train air brake system is composed of three major parts: (i) a signal sender; (ii) a signal relayer; and (iii) a signal receiver/responder.

The brake valve on the locomotive is the signal sender. Operation of the valve permits air to be pumped into or released from the brake pipe. The pressure change resulting from the additional or reduced air supply in the brake pipe is the "signal." The brake pipe, also known as the train air line, is the "signal relayer." The brake pipe is the continuous air line running from the front of the train to the rear of the train. The continuity of the air line from car to car is accomplished by means of flexible air hoses. The brake pipe is closed (sealed) at the rear of the train and pressurized so that, apart from air leakage in the system, changes in the brake pipe pressure are made through operation of the brake valve on the locomotive.

When the engineer "sets the brakes," air is released from the brake pipe through the locomotive brake valve. This release of air reduces the pressure of the brake pipe, beginning at the front of the train. The pressure reduction moves down the brake pipe to the rear of the train. Thus, the signal is relayed by the brake pipe to the entire train. Similarly, when the brakes are released, the locomotive brake valve is positioned so that air is pumped into the brake pipe, sending a pressure increase through the brake pipe. A pressure reduction in the brake pipe rather than a pressure increase initiates a brake application. Consequently, the train air brake system is said to be "failsafe," i.e., if an air hose bursts, the resulting loss of air pressure in the brake pipe will initiate a brake application.

The third major part of the train air brake system is the "signal receiver/responder" valves located on each car, which receive and interpret the changes in the brake pipe pressure. These valves initiate the application or release of the brake on each individual car. The degree of braking effort is determined by the degree of the brake pipe pressure drop, generally described as a partial service reduction, a full service reduction, or an emergency application.

An EOT device is a radio telemetry device composed of a front unit, located in the cab of the controlling locomotive, and a rear unit, located at the rear of the train and attached to the brake pipe. Provisions governing the use of one-way EOTs were incorporated into the power brake regulations in 1986. *See* 49 CFR 232.13 and 232.19. One-way EOTs have the capability of interpreting rear-of-train brake pipe pressure and of transmitting that information via radio to the front receiving unit in the cab of the controlling locomotive. Optional features include the transmission of information regarding rear end motion and battery status. Many of the rear units of an EOT also incorporate rear-end marking devices required by 49 CFR Part 221. One-way EOTs only have the ability to transmit information from the rear unit to the front unit.

Since the advent of EOTs, technological advances have been made to incorporate "two-way communication" into the system. The two-way EOTs, in addition to the features of the one-way EOTs, have the ability of transmitting from the controlling locomotive an emergency brake application that begins at the rear of the train. This is a desirable feature in event of a blockage or separation in the train's brake pipe that would prevent the pneumatic transmission of the emergency brake application throughout the entire train. In 1986, FRA concluded that mandating the installation of two-way EOTs was not warranted. At that time, cabooseless trains operating without two-way EOTs lacked any ability to initiate an emergency brake application from the rear of the train and in FRA's view there was no demonstrated a need for the EOT to do so. Furthermore, at that time EOTs with two-way capability were not commercially available. In addition, since two-way capability requires two-way signal transmission, the cost of the devices sharply increased. Nevertheless, FRA made a public commitment then to monitor developments in EOT technology and to review the subject periodically. *See* 51 FR 17300, 17301 (May 9, 1986).

Since 1986, significant advances have been made in the development of two-way EOTs, and they are now commercially available in the marketplace from several manufacturers. In 1987, two-way EOTs were mandated in Canada as a condition for elimination of cabooses. FRA received recommendations from the National Transportation Safety Board (NTSB) and petitions from the United Transportation Union, the Brotherhood of Locomotive Engineers, the Oregon Public Utilities Commission, the Washington Utilities and Transportation Commission, and the Montana Public Service Commission to require two-way EOTs on all cabooseless trains operating in certain territories.

In 1992, Congress amended the Federal rail safety laws by adding certain statutory mandates related to power brake safety. *See* 49 U.S.C. 20141 (formerly contained in Section 7 of the Rail Safety Enforcement and Review Act, Pub. L. No. 102–365 (September 3, 1992), amending Section 202 of the Federal Railroad Safety Act of 1970, formerly codified at 45 U.S.C. 421, 431 *et seq.*). These amendments specifically address two-way EOTs by adding a new subsection which states:

UMI

(r) POWER BRAKE SAFETY.—
* * * (3)(A) The Secretary shall require 2-way end of train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The Secretary shall promulgate rules as soon as possible, but not later than December 31, 1993, requiring such 2-way end of train devices. Such rules shall at a minimum—

(i) set standards for such devices based on performance;

(ii) prohibit any railroad, on or after the date that is one year after promulgation of such rules, from acquiring any end of train device for use on trains which is not a 2-way device meeting the standards set under clause (i);

(iii) require that such trains be equipped with 2-way end of train devices meeting such standards not later than 4 years after promulgation of such rules; and

(iv) provide that any 2-way end of train device acquired for use on trains before such promulgation shall be deemed to meet such standards. (B) The Secretary may consider petitions to amend the rules promulgated under subparagraph (A) to allow the use of alternative technologies which meet the same basic performance requirements established by such rules. (C) In developing the rules required by subparagraph (A), the Secretary shall consider data presented under paragraph (1).

(4) The Secretary may exclude from the rules required by paragraphs (1), (2), and (3) any category of trains or rail operations if the Secretary determines that such an exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for granting any such exclusion. The Secretary shall at a minimum exclude from the requirements of paragraph (3)—

(A) trains that have manned cabooses;

(B) passenger trains with emergency brakes;

(C) trains that operate exclusively on track that is not part of the general railroad system;

(D) trains that do not exceed 30 miles per hour and do not operate on heavy grades, except for any categories of such trains specifically designated by the Secretary; and

(E) trains that operate in a push mode.

Pub. L. No. 102–365, § 7; codified at 49 U.S.C. 20141, superseding 45 U.S.C. 431(r).

Proceedings to Date

In response to the statutory mandate, the various recommendations, and due to its own determination that the power brake regulations were in need of revision, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) on December 31, 1992 (57 FR 62546) and conducted a series of public workshops in early 1993. A section of the ANPRM was specifically designed to elicit comments, information, and views on two-way EOTs, and a portion of the public workshops covered this topic. *See* 57 FR 62550–62551. Based on the comments and information received, FRA published an NPRM regarding revision the power brake regulation which contained specific requirements related to two-way EOTs. *See* 57 FR 47700, 47713–14, 47731, 47734, and 47743.

Following publication of the NPRM in the **Federal Register** (59 FR 47676), FRA held a series of public hearings in 1994 to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. Public hearings were held in Chicago, Illinois on November 1–2; in Newark, New Jersey on November 4; in Sacramento, California on November 9; and in Washington, D.C. on December 13–14, 1994. These hearings were attended by numerous railroads, organizations representing railroads, labor organizations, rail shippers, and State governmental agencies. Due to the strong objections raised by a large number of commenters, FRA announced by notice published on January 17, 1995 that it would defer action on the NPRM and permit the submission of additional comments prior to making a determination as to how it would proceed in this matter. 60 FR 3375. In the January notice, FRA also stressed that it did not intend to defer implementation of the requirement for two-way EOTs beyond an effective date of December 31, 1997.

In the ANPRM and the NPRM, FRA identified 11 recent incidents that might have been avoided had the involved trains been equipped with two-way EOTs. *See* 57 FR 62550; 59 FR 47713–14. In addition, on December 14, 1994, in Cajon Pass in California, an intermodal train operated by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) collided with the rear end of a unit coal train operated by the Union Pacific Railroad Company, resulting in the serious injury of two crew members and total estimated property damages in excess of $4 million. After investigation of this incident, the NTSB concluded that, had the train been equipped with a two-way EOT, the collision could have been avoided because the engineer could have initiated an emergency brake application from the end of the train. On December 15, 1995, based on the conclusion reached above, the NTSB made the following recommendation to FRA:

> Separate the two-way end-of-train requirements from the Power Brake Law NPRM, and immediately conclude the end-of-train device rulemaking so as to require the use of two-way end-of-train telemetry devices on all cabooseless trains. (R–95–44).

Furthermore, on February 1, 1996, again in Cajon Pass, a westward Santa Fe freight train derailed on a descending three-percent grade. The incident resulted in fatal injuries to two of the crew members, serious injuries to a third, and the derailment of 45 of 49 cars and four locomotives. Although investigation of this incident is currently in progress, it appears as though it could have been avoided had the train been equipped with a means for the train crew to have effected an emergency brake application from the rear of the train. The two aforementioned incidents resulted in FRA's issuance on February 6, 1996, of Emergency Order No. 18 (61 FR 5058), which requires the affected railroad to ensure that its train crews have the ability to effect an emergency brake application from the rear of the train on all westward freight trains operating through Cajon Pass.

Consequently, based on these considerations and after review of all the comments submitted, FRA determined that in order to limit the number of issues to be examined and developed in any one proceeding it would proceed with the revision of the power brake regulations via three separate processes. In light of the testimony and comments received on the NPRM, emphasizing the differences between passenger and freight operations and the brake equipment utilized by the two, FRA decided to separate passenger equipment power brake standards from freight equipment power brake standards. As passenger equipment power brake standards are a logical subset of passenger equipment safety standards, the passenger equipment safety standards working group will assist FRA in developing a second NPRM covering passenger equipment power brake standards. *See* 49 U.S.C. 20133(c). In addition, a second NPRM covering freight equipment power brake standards will be developed with the assistance of FRA's Railroad Safety Advisory Committee. *See* 61 FR 29164. Furthermore, in the interest of public safety and due to statutory as well as internal commitments, FRA determined that it would separate the issues related to two-way EOTs from both the passenger and freight issues, address them in a public regulatory conference, and issue a final rule on the subject as soon as practicable.

Pursuant to a notice published on February 21, 1996 (61 FR 6611), FRA held an informal public regulatory conference on March 5, 1996, in Washington, D.C. to further discuss issues related to the proposed

requirements on two-way EOTs contained in the NPRM. In accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the public regulatory conference was a continuation of the power brake rulemaking proceeding. In this notice, based on a review of the substantial number of comments submitted in connection with the ANPRM and the NPRM regarding two-way EOTs, FRA identified and provided some discussion of seven major issue areas regarding two-way EOTs including: the definition of "mountain grade territory," en route failures of the devices, trains subject to the requirements, initial terminal requirements, design requirements, calibration requirements, and cost/benefit information. As part of the cost/benefit discussion, FRA identified 26 potentially preventable accidents had the trains involved been equipped with two-way EOTs. *See* 61 FR 6615. This public regulatory conference was attended by representatives of at least seven railroads, two organizations representing Class I and short line railroads, four labor organizations, two manufacturers of the two-way EOTs, and one State public utilities commission. Written comments were received from most of these parties or their representative. The comment period for this proceeding closed on April 15, 1996; however, comments received after that date have been considered.

Discussion of Comments and Conclusions

Those parties filing comments and presenting testimony regarding two-way EOTs at the hearings following publication of the ANPRM and NPRM as well as the public regulatory conference have provided the agency with a wealth of facts and informed opinions and have been extremely helpful to FRA in resolving the issues. While most commenters provided testimony or written comments on more than one issue, and while most of the comments supported the position(s) of at least one other commenter, the issues themselves were centered around a few key concepts. Rather than attempt to paraphrase each commenter's response to each of the proposed regulatory sections in the NPRM, FRA believes it is better, and more understandable, to discuss the key issue areas in this proceeding and present the thrust of the comments on each of these.

A. Replacement of Term "Mountain Grade" with "Heavy Grade"; Definition of Heavy Grade

In the NPRM as well as in the Notice of Public Regulatory Conference, FRA consistently used the term "mountain grade" territory to describe those areas where trains, even though operating below 30 mph, would be required to be equipped with a two-way EOT. Several commenters recommended that FRA abandon its use of the term "mountain grade" territory because it is confusing and inconsistent with the language used in the statute. *See* 49 U.S.C. 20141(c). In order to remain consistent with the language used in the statutory mandate and to avoid confusion by affected parties, FRA will not use the term "mountain grade" territory in the final regulations and will instead use the term "heavy grade."

In Appendix C of the NPRM, FRA proposed a definition of mountain grade territory as a section of track of distance, D, with an average grade of 1.5 percent or more over that distance which satisfies the following relationship:

$(30/V)^2G^2D \leq 12$

Where:

G = average grade x 100
D = distance in miles over which average grade is taken
V = speed of train

See 59 FR 47719, 47753. FRA also provided a chart containing mountain grade territory curves based on an application of the definition. *See* 59 FR 47753. FRA developed this empirical relationship based on most commenters' suggestions that some type of formula be developed based on a variety of factors, including train tonnage, speed, length of grade, percent of grade, and distance of grade. FRA determined that the three most important variables in defining mountain grade were: (i) the speed of the train (V); (ii) the steepness of the grade (G); and (iii) the length of the grade (D).

Many commenters found the definition contained in the NPRM confusing, inaccurate, and impractical. These commenters suggested that the definition would result in known mountain or heavy grades not being covered by the two-way EOT requirement, while other areas never before believed to be mountain grades would fall within the requirement. Several commenters also recommended that the definition be eliminated and that the two-way EOT requirements apply solely to trains operating in excess of 30 mph. The California Public Utilities Commission suggested that, short of requiring the devices on every train, the fundamental criterion should be the ability of the train to stop within a safe distance based solely on the ability of the independent locomotive brakes. Other commenters suggested that other criteria be used to define mountain grade territory and that the formula be simplified. One commenter recommended that the proposed definition be eliminated, and that the two-way EOT requirements be applied to trains operating over 30 mph and to heavy tonnage and long trains as defined in FRA's proposal.

Based on these comments as well as its reconsideration of the proposed definition, FRA acknowledged that the definition contained in the NPRM was confusing and inaccurate in its Notice of Public Regulatory Conference published on February 21, 1996. *See* 61 FR 6612. In that Notice, FRA requested alternative suggestions and proposed replacing the term "mountain grade" with "heavy grade" and defining "heavy grade" as: any portion of a railroad with an average grade of one percent or greater where the product of the average percent grade (as a decimal) and the distance over which the grade persists (in miles) is greater than or equal to .03. Thus a one percent (.01) average grade for three miles or a two percent (.02) average grade for 1.5 miles would meet the definition. *See* 61 FR 6613. Although this definition was accepted by some commenters as being better than that proposed in the NPRM, none of the commenters endorsed the definition, and several stated that it was either too hard to enforce or was too broad or too narrow.

Several commenters provided alternative definitions of mountain or heavy grade. The Association of American Railroads (AAR) and The American Short Line Railroad Association (ASLRA) suggested that mountain or heavy grade be defined as "a section of track with a continuous grade of 2 percent or greater over a distance of 2 miles." Many commenters objected to this alternative, stating that it excludes known mountain or heavy grade territories. Several of these commenters identified specific locations with grades of greater than one percent but less than two percent for long distances that would not fall within the definition proposed by the AAR (such as Feather River Canyon in California and the grade at Pig's Eye Yard in St. Paul, Minnesota). In the alternative, the AAR recommended that the term mountain or heavy grade not be specifically defined in the regulation and that each railroad define the term in its operating rules filed with FRA. The stated advantage to this approach is that each railroad could tailor the definition

to its particular operating territory and FRA could object should a railroad fail to include a section of track FRA believed to be mountain or heavy grade territory. Several commenters objected to this alternative, stating that such a regulation would be difficult to enforce since every railroad would have different definitions of the term and such a regulation could result in railroads intentionally defining the term in order to negate its applicability to their operation. The ASLRA further recommended that shorter, lower tonnage trains be excluded from any definition of mountain or heavy grade due to the costs involved with equipping these types of operations and the fact that the safety data does not support the need for the use of the devices on these types of operations solely because they operate in mountain or heavy grade territory. The ASLRA also suggested that an alternative to the use of two-way EOTs be permitted for trains operating with 4,000 trailing tons or less by permitting them to use retaining valves, set in the high pressure position before operating over a descending grade.

The Brotherhood of Railway Carmen (BRC) recommended that "heavy grade" be defined as any grade greater than one percent. The BRC believed that such a definition was clear, enforceable, and not overly restrictive. This commenter felt that variables such as speed, tonnage, and train length were too subject to manipulation and change to be included in a clear, enforceable definition. Other commenters objected to this definition, stating that it was overly broad and would include areas never considered to be heavy grades. Several commenters recommended that two-way EOTs be required on all trains operating on main line track regardless of speed or grade. Many parties objected to this suggestion stating that it is clearly in excess of Congress' intent to provide exceptions for various operations based on their operating speeds, terrain, and type of service being provided.

The California Public Utilities Commission (CAPUC) recommended that a performance standard be adopted to determine which operations would be subject to the requirements. This performance standard would be based on the ability of the independent locomotive brakes to stop a train. In its written comments, the CAPUC provided a detailed discussion of calculating the standard for various grades and tonnages based on the amount of independent locomotive brake present on a given train. However, the CAPUC emphasized that values contained in its analysis were illustrative and that further research would be required to develop the concept. At the public regulatory conference, several parties objected to this type of performance approach as too complicated and very difficult, if not impossible, to enforce due to the amount of information necessary to calculate the formula.

Conclusions

In its statutory mandate, Congress specifically provided an exception from any two-way EOT requirements for certain trains that do not operate on heavy grades. *See* 49 U.S.C. 20141(c)(4). In order to give effect to, and remain consistent with, this statutory provision, FRA is compelled to develop an understandable and easily enforceable standard for determining whether a segment of track should be considered heavy grade territory. FRA believes that any regulations related to two-way EOTs must include provisions excluding from the requirements certain operations that do not operate on heavy grades. Consequently, FRA does not think it would be consistent with the statutory mandate or with the safety data reviewed in this proceeding to require the use of two-way EOTs on all trains operating on main line track regardless of speed or grade, as recommended by some commenters. FRA believes that a performance standard based on tons per axle of independent locomotive brake offers an attractive approach; however, the proposal would require significant refinement and might not be capable of reliable application in the field. FRA also believes that the AAR alternative, permitting each railroad to define the term heavy grade, could result in inconsistent standards, without an adequate safety rationale, opening the regulation to legal challenge, and would require considerable agency resources to review and verify the submissions of each railroad across the country.

In determining the most effective way to define heavy grade, FRA not only considered the comments submitted but also considered and analyzed a variety of factors which affect the operation of a train in grade territory. These included such things as: the steepness of grade; the effect of cresting speed; the location of a trainline blockage; the weight of the train; the number of locomotives; the length of grade; and the life of brake shoes under stress. After consideration of these factors, FRA determined that any definition of heavy grade should attempt to incorporate the effects of as many of these factors as possible without creating a requirement which would be extremely complex or overly intrusive on the operations of a railroad. For example, one factor FRA considered to be overly intrusive was placing limitations on the cresting speeds of trains at various grades. FRA determined that there was no universally applicable standard and that establishing such limitations may actually create additional safety concerns.

In the aftermath of recent accidents on heavy grades, FRA became aware of the great value of including heavy grade descent plans in the training and instruction of operating employees. A heavy grade descent plan can incorporate the wisdom and experience of engineers long familiar with descending a particular heavy grade and provide a vehicle for sharing the different ways the grade can successfully be traversed. Such a plan should take into account a wide variety of factors such as those listed above. FRA strongly encourages railroads to develop and use heavy grade descent plans and to share "best practices" for training operating employees to handle heavy grades. While requiring the use of heavy grade descent plans or changing requirements for training operating employees is outside the scope of this rulemaking, FRA thinks that railroads should be aware in the context of this rule of the potential for heavy grade descent plans to enhance safety. FRA will address heavy grade descent plans and training practices through other vehicles in the near future.

As noted above, the AAR and the ASLRA proposed to define heavy grade as a section of track with a continuous grade of two percent for two miles. FRA believes this basic and simple definition is a good starting point as it takes into account both the percentage of grade and the distance over which that grade extends. However, FRA agrees with many of the commenters that this definition fails to capture several areas traditionally considered to be heavy or mountain grades. Furthermore, after a review of the potentially preventable accidents identified in the Notice of Public Regulatory Conference (61 FR 6615) as well as other recently identified accidents/incidents, it is apparent that train tonnage or length should also be a factor in determining whether a particular segment of track is considered heavy grade territory for a particular train. In order to keep the definition of heavy grade as simple to understand as possible, FRA will use only total trailing tons as a supplemental factor since it somewhat incorporates train length. Consequently, FRA will use a simple, two-level approach in defining heavy grade, using the total trailing tons of a train as one

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of the two bases for determining whether the train is operating over a heavy grade.

The ASLRA recommended that FRA exclude trains with less than 4,000 trailing tons from the requirements relating to heavy grades, contending that the safety data do not support the use of the devices on these shorter, lower-tonnage trains and that such an exclusion would reduce the economic impact of the requirements on smaller railroads. After a review of the accident/incident data, FRA agrees that lower-tonnage trains tend to have fewer problems operating over heavy grades than higher-tonnage trains. Virtually all of the accidents/incidents cited by FRA in its cost/benefit analysis as potentially preventable with a high degree of confidence involve long, heavy-tonnage trains or trains operating in excess of 30 mph. Consequently for simplicity's sake, FRA will adopt the definition of heavy grade suggested by the AAR and the ASLRA for trains operating with 4,000 trailing tons or less, with one modification: FRA will require use of a two-way EOT on trains operating with 4,000 trailing tons or less when operated on a segment of track with an average rather than a continuous grade of two percent or more for a distance of two or more miles. FRA believes that the use of average grade instead of continuous grade will capture some of the locations with brief dips below two percent (i.e., 1.9 or 1.8 percent) raised as examples by several commenters. Furthermore, FRA does not believe that the use of retaining valves, even on a train operating with less than 4,000 trailing tons, provides the same measure of safety as an armed and operable two-way EOT and, thus, FRA will not permit the use of retaining valves as an alternative to the use of a two-way EOT.

As mentioned above, FRA will apply a separate definition of heavy grade for trains operating with greater than 4,000 trailing tons. A review of the accidents/incidents considered by FRA as potentially preventable, had the train involved been equipped with a two-way EOT, reveals that those incidents occurring on steep grades almost always involved trains operating with greater than 4,000 trailing tons. FRA believes that the definition of heavy grade for these types of trains needs to be broad enough to encompass the areas identified by several commenters noted above, yet sufficiently limited so as not to be overly burdensome to the industry. Consequently, based on FRA's proposed definition contained in its Notice of Public Regulatory Conference (61 FR 6613) and based upon comments received from the BRC and CAPUC as well as others, FRA will define heavy grade for trains operating with greater than 4,000 trailing tons as segments of track with an average grade of one percent or greater over a distance of three or more miles. FRA does not believe this definition will be overly burdensome to the industry since the ASLRA stated that 17 of the 21 mountain grade railroads it surveyed have average train tonnage of less than 4,000 trailing tons and most of the trains operated by Class I railroads over this type of terrain will be operating in excess of 30 mph at some point between origin and destination of the intact consist.

Both of the definitions of heavy grade discussed above include a minimum distance over which the average grade must extend. If a strict percentage approach were adopted (i.e. 1 or 2 percent), then areas where brief dips in the grade reach those percentages for very short distances would bring a train within the requirement for use of the device when in reality these brief dips do not create a safety concern. The two and three mile minimum distance requirements were adopted based on an analysis of the relevant potentially preventable accident/incident data as well as the natural rolling resistance of a train and the brake shoe life of the independent locomotive brakes if cautious cresting speeds are assumed. The grade and mileage components of the definitions are sufficiently restrictive to capture all of the past relevant potentially preventable accidents/incidents but broad enough to prevent brief dips in the terrain from being considered heavy grades.

B. Applicability

Based on the statutory mandate and after review of the comments received and the accidents relied on for support of the use of two-way EOTs, FRA in the NPRM proposed that the devices be required equipment on trains that operate at speeds in excess of 30 mph and on trains that operate in mountain grade territories. *See* 59 FR 47743. In addition to those operations specifically excluded from two-way EOT requirements by the statute (49 U.S.C. 20141(c)), FRA found sufficient safety justification for excluding two other types of operations: (i) Freight trains equipped with a locomotive capable of initiating a brake application located in the rear third of the train length; and (ii) trains equipped with fully independent secondary braking systems capable of safely stopping the train in the event of failure of the primary system. In order to provide the industry with time to acquire a sufficient number of two-way EOTs and to ease the economic impact of acquiring the devices, FRA proposed that the requirement for use of the devices, not become effective until December 31, 1996. *See* 59 FR 47713, 47743. FRA also proposed that all two-way EOTs purchased prior to the effective date of the final rule would be deemed to meet the design requirements contained in the proposal. *See* 59 FR 47713, 47743. There were very few comments submitted in response to the NPRM specifically addressing the applicability requirements contained in the NPRM other than stylistic suggestions. One commenter did recommend that the exception for trains operating in a push mode be amplified to require that the control cab on the rear of train be occupied, display a reading of the brake pressure, and be capable of making an emergency application.

At the public regulatory conference several commenters raised objections to FRA's proposal regarding local and work trains that were reiterated in the written comments. In the NPRM, FRA proposed to require the use of two-way EOTs on local and work trains that exceeded 30 mph. *See* 59 FR 47743. FRA also proposed definitions of these types of trains. *See* 59 FR 47726. Several commenters objected to the proposed restrictions on these types of trains contending that they are inconsistent with the statutory mandate. The AAR proposed that these types of trains not be subject to the two-way EOT requirements and reiterated the definitions contained in the NPRM for local and work trains. In the statutory provision, Congress stated that two-way EOTs shall be required "on road trains other than locals, road switchers, or work trains. . . ." *See* 49 U.S.C. 20141(b)(1). However, the statute does not define the terms local, road switcher, or work trains and does not include them in the specific exclusions contained in the legislation. *See* 49 U.S.C. 20141(c). At the public regulatory conference it was generally agreed that any definition of local trains would essentially subsume the term "road switcher" and, thus, separate definitions would not be required for purpose of these regulations. Several commenters suggested that due to the nature of the work performed by local and work trains (e.g., delivery or pick-up switching en route and repairs) that any requirement that they be equipped with two-way EOTs would have a tremendous economic impact on the industry. These commenters also suggested that due to the shorter distances these trains generally travel

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the safety rationale for requiring use of the devices is far less apparent. Other commenters recommended that FRA narrowly define local and work train in order to prevent a possible loophole wherein carriers could designate all their trains as local trains and, thus, circumvent the two-way EOT requirements. Several commenters also objected to treating local and work trains any differently than road trains as they incur the same operational difficulties and pose the same threat to safety.

One commenter expressed concern over the proposed exception granted to trains with a locomotive capable of making a brake application located in the rear third of the train. Generally, this commenter was concerned with how the locomotive, located in the rear third of the train, would be operated and whether the locomotive would be required to have the capability of effectuating an emergency brake application in both directions from its position in the train. Another commenter suggested that the proposed exception for trains operating in the push mode be reworded so as only to permit the exception if the train has the ability to initiate an emergency brake application from the rear of the train. One railroad recommended that an exception from the requirements regarding two-way EOTs be granted to railroads that do not operate on ruling grades exceeding .5 percent.

Conclusions

Although it is arguable, as some commenters suggested, that Congress intended for locals, road switchers, and work trains *per se* to be granted an exception from the requirements related to two-way EOTs, FRA does not believe Congress intended to except trains merely based on a label placed on the operation. FRA believes that Congress intended for the term "locals, road switchers, or work trains" to be narrowly construed by FRA and not so broadly defined that the requirements for two-way EOTs are rendered meaningless in many circumstances.

In the NPRM, FRA attempted to limit the local or work train exception by proposing the 30 mph standard. However, after reconsideration of the accident/incident data compiled in relation to this proceeding and the comments submitted, FRA admits that the proposed exception was probably not the most effective means of limiting the application of the requirements for these types of operations.

Therefore, in the final rule, rather than impose a blanket speed criterion, FRA intends to define local and work trains narrowly and not except such trains when operated in heavy-grade territory. FRA will start with the definitions proposed in the NPRM for local and work trains (59 FR 47726) and add an additional limiting factor of 4,000 trailing tons. FRA will further narrow the definition of a local train by adding the limitation that the train travel a distance that is no greater than that which can be operated by a single crew in a single tour of duty. In FRA's view, local trains operating with greater than 4,000 trailing tons for extended distances and work trains operating with greater than 4,000 trailing tons lose the characteristics of being traditional local or work trains and begin to look more like any other road train susceptible to the same operational problems and difficulties and, thus, fall outside the exception contemplated by Congress for local and work trains. FRA believes this approach is consistent with Congress' intent and FRA's rationale expressed with regard to defining heavy grades. This approach not only recognizes the operational necessity for the services these types of trains provide and the nature of the duties they engage in when en route, while preventing the potential for confusion or abuse of the term local or work train, but also ensures that those trains most likely to benefit from the added safety provided by two-way EOTs are so equipped.

FRA also intends to amend the exceptions contained in the NPRM relating to trains operated in a push mode and trains with a locomotive in the rear third of the train in order to clarify the exceptions and address the concerns raised by some commenters with regard to these exceptions. The exception for trains operated in the push mode will be clarified to include language that the train must have the ability to effectuate an emergency brake application from the rear of the train. In addition, the exception for trains operated with a locomotive in the rear third of the train will be amended to require that the locomotive be capable of effectuating an emergency brake application in both directions from its location in the train. FRA believes that although this method of operation does not provide all the safeguards provided by a two-way EOT, it provides other operational and train-handling benefits as well as many of the safeguards provided by a two-way EOT and, thus, there is no compelling need for the devices in these operations.

Finally, FRA rejects the suggestion of one railroad that an exception be granted for trains that do not operate on grades exceeding .5 percent regardless of the train's speed. Although these types of trains would not be operating on heavy grades, such an exception would be contrary to Congressional intent.

C. En Route Failures

In the NPRM, FRA proposed that if a two-way EOT or equivalent device becomes incapable of initiating an emergency brake application from the rear of the train while the train is en route, then the speed of that train would be limited to 30 mph. *See* 59 FR 47714, 47743. FRA's rationale for this limitation was that, under the statute, two-way EOT devices are not required on trains that travel less than 30 mph. Operating with a non-functional two-way EOT device is the same as not having a device; consequently, trains operating with failed two-way EOT devices should be subjected to this same limitation. Furthermore, FRA suggested that the concerns raised by several railroads regarding train delays, missed deliveries, and safety were not justified. The AAR as well as several railroads commented that these devices are very reliable and have an extremely low failure rate, if properly maintained. FRA believed that the concerns of the railroads were outweighed by the potential harm to both the public and railroad employees caused by trains being allowed to operate without the devices at speeds which Congress and FRA think require the added safety benefits provided by these devices.

Several railroads commented on FRA's proposal, reinforcing the view that such a limitation could cause serious train delays and missed deliveries and would actually produce additional safety hazards due to the bunching of trains. Commenters also suggested that FRA failed to include the cost of this limitation in its analysis. Other commenters noted that subsequent to the drafting of the NPRM, Canada eliminated its speed restriction for failure of a two-way EOT en route.

At the public regulatory conference and in written comments, the AAR again objected to any speed restriction for en route failures of the devices, stating that any speed restriction would be costly both in terms of operating expense and reduced customer satisfaction. In support of this statement, the AAR provided a cost analysis regarding various speed restrictions. The AAR also proposed an alternative method for handling en route failures. This proposal required that the conductor report the location, date, time, and description of the failure; that the train be equipped with a train brake status system; and that the train be moved only to the nearest forward point

capable of repairing or replacing the unit. Several commenters objected to this alternative as well as other alternatives permitting speeds greater than 30 mph on the grounds that they basically provide incentives to operate a train with a defective two-way EOT device. Many commenters felt that if carriers are permitted to proceed to the next point where repairs can be made then the same problems inherent with moving cars with any defect will result: repair points will disappear, or locations will be declared unable to make repairs or replacements.

Several commenters supported the proposed 30-mph speed restriction for en route failures. The BRC endorsed the proposed speed restriction, but would like to see it coupled with a requirement that the device be repaired or replaced at the next yard, terminal, or crew change point, whichever comes first. This commenter believed that the speed reduction was the only viable incentive for ensuring that railroads properly maintain the devices. At the public regulatory conference it was also discovered that, contrary to the information provided in response to the NPRM, Canada has not eliminated the 25-mph speed restriction for en route failures of two-way EOTs. The Canadian Legislative Director for the United Transportation Union stated that although the order requiring a speed reduction to 25 mph for en route failures of the devices was revoked, it was revoked only on the premise that the general operating instructions of the railroads would contain the requirements of the order, which they do, and it is a violation of the Canadian Rail Safety Act to violate the railroad's general operating instructions. Thus, the speed restriction for en route failure of the devices still exists in Canada, and no evidence was submitted to show the restriction has adversely affected railroad operations. FRA has received no written comments disputing the statements regarding the Canadian requirements as presented at the public regulatory conference.

Although supporting the 30-mph speed restriction for en route failures, the CAPUC was concerned that the limitation did nothing to address en route failures that occur in heavy grade territory. This commenter suggested that many trains do not operate over 30 mph when in mountain or heavy grade territory and, thus, for railroads operating such trains the risk of a 30-mph restriction provides no incentive to keep the devices operational. One commenter suggested an alternative to the speed restriction: requiring trains that develop en route failures to immediately stop and have the crew determine whether the train can be operated at a safe speed to the next location for repairs. This proposal also provided that if the train proceeded the crew would be exonerated from any discipline resulting from a rules violation or accident.

Both oral and written comments were received in relation to the question of what constitutes an en route failure of the device. In the NPRM, FRA merely stated that a failure will be considered the inability to initiate an emergency brake application from the rear of the train. Although this provides some guidance, it does not really address the problem of loss of communication and at what point that loss constitutes a failure of the device. Commenters and FRA recognize that brief communication interruptions between the front and rear units commonly occur and that these lapses may not be critical since the signal for an emergency application is transmitted at a much higher wattage than the ordinary communication signals between the two units. The AAR recommended that a failure not be declared until communication between the front and rear units cannot be established for 16 minutes and 30 seconds. This time frame was proposed based on the design of the devices, which automatically checks communication between the units every ten minutes. If no response is received, the front unit automatically requests communication from the rear 15 seconds later; if no response is received to that request, another request is made six minutes later; and if there is still no response, the front unit makes another request 15 seconds later. No other commenters presented measurable criteria for determining when an en route failure occurs.

Conclusions

FRA intends to require trains which experience en route failures of the two-way EOT device to limit their speed to 30 mph. FRA believes this is a logical outgrowth of the requirement that trains operating in excess of 30 mph be equipped with the devices. FRA agrees with many of the commenters that to permit speeds in excess of 30 mph would be akin to providing an incentive to operate without the devices. The railroads as well as the manufacturers of the devices stated that the failure rate for the devices is extremely low. These parties indicated that the majority of the failures were due to depleted batteries, which FRA believes will be reduced to a great extent by the requirements contained in this regulation regarding the charging of batteries throughout the trip. (*See* discussion regarding inspection and calibration of the devices.) FRA also believes that the 30-mph speed limitation on trains experiencing en route failures will encourage railroads to ensure that the devices are properly functioning when they are installed and will ensure that a sufficient number of the devices are available at various locations throughout a train's trip, both of which will further mitigate the effects of the speed restriction. Furthermore, trains in Canada have been operating for several years with a 25-mph speed restriction on trains that experience en route failures of the devices, and there were no comments submitted indicating the problems suggested by the railroads. Consequently, FRA believes that failure of these devices will be extremely rare and that the concerns expressed and the costs estimated by the railroads regarding train delays and missed deliveries are not justified and are overstated.

FRA does not intend to mandate locations where these devices must be repaired or replaced if they should fail en route. FRA believes each railroad is in the best position to determine the locations where additional devices can or must be maintained and stored to ensure the efficiency of its own operation. Furthermore, FRA believes that the requirements limiting the speed of a train operating with a defective device, as well as the inspection and battery charge requirements, are sufficient to promote the prompt repair or replacement of defective units and to ensure that the devices will be operational throughout a train's trip.

FRA will adopt the AAR's suggestion for determining when a loss of communication between the front and rear units should be considered a failure of the device en route. As noted in the above discussion, brief losses of communication do occur between the front and rear unit, and FRA does not intend to consider these communication gaps as failures en route. As pointed out by several commenters, the signal calling for the initiation of an emergency brake application is continuously transmitted at a wattage that is greater than five times the wattage at which ordinary communications between the two units are transmitted. Thus, brief communication gaps will be overcome by the increased wattage at which the signal calling for an emergency brake application is transmitted. The 16 minutes and 30 seconds recommended by the AAR is based on the current design of the automatic communication between the front and rear units and

constitutes an enforceable standard for determining when a loss of communication should be considered an en route failure.

As noted by some commenters, the issue of failures approaching the crest of heavy grades is not adequately addressed by simply limiting train speed. Nor is it sufficient to know that the train line is open and properly charged at the crest. As two recent accidents appear to illustrate, buff (compressive) forces in the train may cause blockages in the train line as the train descends the grade that may not have been present while the train was stretched on its upward climb. Therefore, it is particularly critical, in order to realize the benefits contemplated by the Congress, that the two-way EOT be operative as the train begins its descent down heavy grades. Although FRA believes that the requirements limiting the speed of a train operating with a defective device, as well as the inspection and battery charge requirements, are sufficient to promote the prompt repair or replacement of defective units and to ensure that the devices will be operational throughout a train's trip in most instances, FRA believes that additional safeguards must be provided when a train experiences a failure of its two-way EOT when operating on particularly heavy grades. FRA believes these added safeguards are necessary for those trains that operate over sections of track with an average grade of two percent or greater for two continuous miles. FRA's Emergency Order No. 18 permits operation over a heavy grade down the Cajon Pass of California only if the two-way EOT system is operative or provided one of certain other alternative measures is provided. The alternative measures include the following:

1. *Use of an occupied helper locomotive at the end of the train.* If this method is used, the helper locomotive engineer shall initiate and maintain two-way voice radio communication with the engineer on the head end of the train; this contact shall be verified just prior to passing the crest of the grade. If there is a loss of communication prior to passing the crest of the grade, the helper locomotive engineer and the head-end engineer shall act immediately to stop the train until voice communication is resumed. If there is a loss of communication once the descent has begun beyond Summit, the helper locomotive engineer and the head-end engineer shall act to stop the train if the train has reached a predetermined rate of speed that indicates the need for emergency braking. The brake pipe of the helper locomotive must be connected and cut in to the train line and tested to ensure operation; and trains shall be stopped when helpers are cut in or cut off from trains being assisted.

2. *Use of an occupied caboose at the end of the train* with a tested, functioning brake valve capable of initiating an emergency brake application from the caboose. If this method is used the train service employee in the caboose and the engineer on the head end of the train shall establish and maintain two-way voice radio communication and respond appropriately to the loss of such communication in the same manner as prescribed for helper locomotives.

3. *Use of a radio-controlled locomotive* in the rear third of the train under continuous control of the engineer in the head end by means of telemetry, but only if such radio-controlled locomotive is capable of initiating an emergency application on command from the lead locomotive.

Railroads typically maintain available helper locomotives and have crews on call to address exigencies in heavy grade territory, such as failure of one or more locomotives en route. FRA believes that, given the high reliability of two-way EOTs, the marginal costs of using helper locomotives cut into the train line—under the control of a crew in contact with the lead unit of the primary locomotive consist—would not be significant in relation to the risk of a run-away train. Accordingly, FRA will require that the two-way EOT be operative or that one of the approved alternative methods of operation be employed whenever a train required to be equipped with a two-way EOT operates over a section of track with an average grade of two percent or greater for a distance of two miles.

D. Design Requirements

In order to maintain uniformity in the performance of two-way EOTs, FRA proposed basic performance and design requirements for these devices in the NPRM. As two-way EOTs that are currently in production meet the design requirements already established for one-way devices contained at 49 CFR 232.19, FRA proposed to retain those requirements, apply them to two-way EOTs and add specific requirements to ensure two-way communication and the ability to initiate an emergency brake application from the rear of the train. In the NPRM, FRA recognized that currently available two-way EOTs have several optional features that could prove beneficial to railroads, and although FRA recommended that railroads obtain as many of the optional features as they can when purchasing the devices, FRA did not propose to mandate their use and feels each railroad is in the best position to determine which features benefit its operation.

In the NPRM, FRA proposed a requirement that the rear unit automatically begin restoring the brake function (recharging the air brake system) within 60 seconds after it has initiated an emergency application. *See* 59 FR 47731. FRA proposed this requirement based on the belief that currently manufactured two-way EOTs are designed with this feature. Several commenters in response to the NPRM and the Notice of Public Regulatory Conference suggested that the proposed provision requiring the automatic restoration of the brake function after 60 seconds should be eliminated. These commenters stated that the brake function should not be restored until the train has come to a complete stop or that the locomotive engineer should retain control of the restoration, or both. These commenters also stated that many railroads require the train to be inspected after an emergency application and do not want the brakes to be reset prior to the completion of the inspection.

In the Notice of Public Regulatory Conference, FRA attempted to clarify the proposal regarding the availability of the front-to-rear communications link being checked automatically by stating that the NPRM inadvertently contained a requirement of 10 minutes and that it should have read "10-seconds." *See* 61 FR 6614. Several parties commented on this clarification, including the manufacturers of the devices, stating that a 10-second requirement would be impossible to meet with current technology and would result in a battery drain within a short time. These commenters stated that FRA correctly proposed a 10-minute requirement in the NPRM as that is the current industry standard and has been the standard for devices used in Canada for several years.

The AAR recommended that FRA should not require that the rear unit respond only to the front unit of that train. This commenter indicated that some railroads want the ability to activate the rear unit from a location other than the front end of the train in an emergency, such as, where the crew of the train becomes disabled. Finally, one commenter recommended that a separate, labeled, and protected emergency switch should not be mandated if the EOT's emergency

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application could be integrated into the existing emergency brake controls.

Conclusions

Based on the comments received, FRA does not intend to change its position regarding the mandating of any of the optional features currently available on two-way EOTs. As FRA stated in the NPRM, it encourages railroads to obtain as many of the optional features as possible when purchasing the devices, but believes that each railroad is in the best position to determine which features best suit its operation. FRA agrees with many of the commenters that requiring the braking function to be automatically restored within 60 seconds after an emergency application has been initiated would hinder the safe practices of many railroads with regard to inspecting the train after an emergency application is made or leaving the train within the control of the locomotive engineer. FRA also agrees with those commenters that noted that FRA improperly suggested a change in the Notice of Public Regulatory Conference with regard to the time frame for checking the front-to-rear communications link. Consequently, FRA will leave the requirement at 10 minutes as proposed in the NPRM, rather than the 10 seconds contained in the Notice of Public Regulatory Conference.

FRA further agrees with the AAR's recommendation that some leeway be provided in the requirement that the rear unit respond to only the front unit of that train in order to permit railroads to activate the rear unit from a location other than the front end, provided it can be done in such a way as to ensure the security of such a procedure. FRA believes this can be easily accommodated by changes in the wording contained in the proposal to permit the rear unit to respond to an emergency command from any "properly associated front unit." This language should permit the flexibility desired by some railroads.

FRA does not believe it would be beneficial to remove the provision requiring a separately labeled and manually controlled switch for initiating an emergency brake transmission command, as suggested by one commenter. At present, FRA is unfamiliar with the technology that would integrate the EOT's emergency application with the existing emergency brake controls. Implementation of integrated electronic controls of pneumatic brakes has not yet achieved the degree of reliability that would be desirable as a platform for this key safety function. Thus, FRA believes that such technology would best be introduced through a waiver or possibly through future regulations addressing the introduction of new technology, currently under consideration by the Railroad Safety Advisory Committee working group on freight power brakes.

E. Inspection and Calibration

At the ANPRM stage, FRA received several comments regarding the batteries used in two-way EOTs. Several commenters suggested that the most frequent cause of failure of two-way EOTs is battery failure. These commenters also indicated that this problem could be cured by replacing batteries at initial terminals. Other commenters suggested that some minimum charge be required at initial terminals and that inspections be performed during all brake tests and at crew change points. Several commenters also suggested that interchangeable battery packs were necessary because some railroads were unable to charge the devices that come onto their lines from other railroads. Based on these comments, FRA proposed that any train equipped with a two-way EOT or its equivalent shall not depart from the point where the train is originally assembled unless (i) the device is capable of initiating a brake application from the rear of the train and (ii) the batteries of the device are charged to at least 75 percent of watt-hour capacity. *See* 59 FR 47734.

At the public regulatory conference the issue of the amount of battery charge that should be required at initial terminals was discussed. Several commenters initially recommended that a percentage of watt-hour capacity be required at this location, ranging from 100 percent to 50 percent. However, as the discussion progressed, it was apparent that many commenters favored some type of performance requirement. In its written comments, the AAR recommended that FRA merely require that the EOT be sufficiently charged so that it can be reasonably expected that the EOT will remain operative until the next terminal capable of charging the batteries or installing replacements. The AAR suggested that such an approach would ensure that the devices are sufficiently charged without the use of an arbitrary percentage that may be too high, requiring railroads to spend resources to unnecessarily charge batteries, or that may be too low to ensure a sufficient charge throughout the trip. Other commenters recommended that if a performance standard is adopted which requires sufficient battery charge to ensure completion of the train's trip then strict liability needs to attach to instances where depleted batteries are the cause of an en route failure. It was stressed that this sort of liability should apply only to the batteries supporting the telemetry capabilities of the devices, not to the rear-end marker function. As noted previously, most EOTs incorporate the rear-end marking device required by 49 CFR Part 221 into their design, and there are separate batteries within the rear units which provide power to these devices. Several commenters stated that if FRA were to limit the operating speed of trains experiencing en route failures of the devices then a performance standard related to battery charge would probably work since railroads would have an incentive to keep them charged.

In addition to battery-charge requirements, there was some discussion as to what would be required at the initial terminal with regard to testing the devices to ensure they are capable of initiating a brake application from the rear of the train. Several parties commented that there were several different methods for testing such ability. Basically, four possible methods for testing the devices were identified in the various comments. One method would be to attach the device to the rear of the train and then have the controlling locomotive transmit an emergency brake application signal with the front unit causing an emergency application to be initiated from the rear of the train, thereby having the entire train effectuate an emergency application of the brakes. A second method would be to attach the device to the rear of the train, close the angle cock on the last or second-to-the-last car of the train (an angle cock is a lever which permits the closing of the brake pipe so that no air can travel past that point in the brake pipe), and then have the controlling locomotive transmit an emergency brake application signal from the front unit. Under this method only the last one or two cars of the train would effectuate an emergency brake application as the closed angle cock would prevent further propagation of the signal down the trainline. The third method would involve a check of the emergency valve on the rear unit after the unit is attached and armed, without placing any cars in the train into emergency. This method would require an emergency application to be transmitted by the controlling locomotive and then a visual check of the emergency valve on the rear unit to ensure the valve functions properly. The final method of inspection would be a bench test of the device which would be performed prior to the device being

armed and placed on the train. One commenter suggested that if bench testing is permitted it should be required to be done within a short time prior to the device being placed on the train. The BRC recommended that, in addition to testing requirements, the FRA needed to require additional periodic inspections and maintenance to ensure the devices are working properly.

In the NPRM, FRA also proposed to extend the calibration period for all EOTs from 92 days to 365 days. *See* 59 FR 47700, 47731. Currently, the regulations require one-way EOTs to be calibrated for accuracy every 92 days. *See* 49 CFR 232.19(h)(3). FRA based this proposed extension not only on its own experience but also on the comments received from several parties that the devices are fairly reliable and can operate for years without calibration. Furthermore, FRA stated that the 92-day calibration period was established at a time when there was little experience with the devices, noting that since that time, not only has calibration of the devices not proven to be a problem, but technology has further improved the reliability of the devices. Although several commenters, both at the ANPRM and NPRM stage, commented on the unreliability of the devices, these comments generally addressed either the failure of the railroads to properly perform the calibrations or the misuse of the devices. Comments submitted subsequent to the public regulatory conference basically reiterated the positions expressed previously. The AAR and manufacturers of the devices supported a 365-day calibration period, stating that the calibration of the devices does not drift periodically and that when the devices fail they fail completely, as the calibration of the devices does not deteriorate over time. One manufacturer commented that the mean time between failures of its devices is in excess of 15,000 hours. The BRC restated its objection to the proposed extension of the calibration period citing carrier abuses of the devices and the extreme operating conditions under which the devices are used.

Conclusions

FRA intends to adopt a performance standard relative to both the requirements for charging batteries as well as testing requirements at the initial terminal or point of installation of the devices. FRA agrees with many of the commenters that rather than merely picking a percentage of watt-hours to which the batteries must be charged at initial terminals, it would be much more effective to establish a performance standard for this requirement. Due to the fact that FRA intends to impose a speed limitation on trains that experience en route failures of the devices and since a vast majority of the en route failures are attributable to dead batteries, FRA believes there is a major incentive to the railroads to ensure the batteries are sufficiently charged. Consequently, FRA intends to establish a standard that requires the batteries on the rear unit to be sufficiently charged at the initial terminal or point of installation and throughout the train's trip to ensure that the device will remain operative throughout the trip. This requirement is only intended to apply to the batteries supporting the telemetry capabilities of the devices. Furthermore, as recommended by several commenters and agreed to by carrier representatives, FRA will impose a strict liability standard regarding failures due to insufficiently charged batteries; that is, it will be a per se violation if a device fails en route due to insufficiently charged batteries. FRA will rely on witness statements, interviews, and carrier repair records to establish whether a failure of the device was the result of insufficiently charged batteries.

FRA also intends to require that the devices be inspected at the initial terminal or other point of installation to ensure that the device is capable of initiating an emergency brake application from the rear of the train. Rather than require a specific method of ensuring this capability, FRA will permit the railroads to develop a method that best fits the circumstances and their operations. At this time, FRA recognizes four different methods, discussed in detail above, that would be sufficient to test this capability; they include: dumping the whole train into emergency once the device is attached; closing the angle cock on the last one or two cars and then activating an emergency application on those cars; inspection and testing of the emergency valve on the device once it is attached to ensure it functions properly without placing any cars in emergency; and bench testing the devices prior to their being armed and placed on the train within a reasonable time period prior to attaching the device to the train. Use of a method other than those listed above will not be permitted if FRA finds that it does not sufficiently ensure that the device is capable of initiating an emergency brake application. Due to the speed limitation being imposed for en route failures, FRA does not believe it is necessary to mandate additional inspections or maintenance as the carriers have sufficient incentive to ensure the devices are adequately maintained.

No new information was provided FRA in relation to the proposed extension of the calibration requirements from 92 days to 365 days. Consequently, FRA continues to believe, based on its own experiences and the comments submitted, that these devices are fairly reliable and can be operated for long periods of time without calibration problems. FRA believes that the current 92-day requirement is outdated due to improved technology and is not consistent with the reality that calibration of these devices has not proven to be a problem. Furthermore, FRA believes that much of the abuse and misuse of these devices cited by one commenter will be corrected due to the restrictions imposed on trains operating with devices that are defective or fail en route.

Section-by-Section Analysis

As most of the issues and provisions have been discussed and addressed in detail in the preceding discussions, this section-by-section analysis will explain the provisions of the final rule and changes from the NPRM by briefly highlighting the rationales or referring to the prior discussion. The discussions and conclusions contained above should be considered in conjunction with the analysis contained below. Each comment received has been considered by FRA in preparing this final rule. Because the provisions regarding two-way EOTs were part of a much broader NPRM addressing all power brake provisions, the section citations in the final rule will vary considerably from the citations referred to in the NPRM.

Section 232.21

This new section of the regulations contains design standards for two-way EOTs. Except for a few modifications, as noted below, this section essentially contains the same requirements as proposed in the NPRM at § 232.117 (59 FR 47731). This section indicates that two-way EOTs are to be designed not only in accordance with the standards contained in this section but also those contained in § 232.19 applicable to one-way devices, except those in § 232.19(b)(3). FRA intends that enforcement actions taken pursuant to these design and performance requirements would be principally focused at manufacturers of the devices. It is noted that, failure to use a device meeting the design and performance criteria contained in this section could

result in enforcement action against a railroad pursuant to § 232.23(b).

FRA has eliminated the requirement regarding the automatic restoration of the braking function by the rear equipment within 60 seconds after it has initiated an emergency application as proposed in the NPRM at § 232.117(e). FRA agrees with many of the commenters that requiring the braking function to be automatically restored within 60 seconds after an emergency application has been initiated would hinder the safe practices of many railroads with regard to inspecting the train after an emergency application is made or leaving the train within the control of the locomotive engineer.

Subsections (a)-(g) are unchanged from the provisions proposed in the NPRM at § 232.117(a)-(d) and (f)-(h). These requirements pertain to the design and performance of the front and rear units necessary to ensure that a proper communication link exists between the front and rear units and to ensure that a safe and timely emergency brake application can and is initiated from the rear of the train. The only comments received regarding any of these provisions related to subsections (e) and (f). As noted earlier, one commenter requested that a separate, labeled, and protected emergency switch should not be mandated if the EOT's emergency application could be integrated into the existing emergency brake controls. As previously stated, FRA is unfamiliar with the technology that would integrate the EOT's emergency application with the existing emergency brake controls and thus, does not feel elimination of this requirement is appropriate. FRA believes that such technology would best be introduced through a waiver or possibly through future regulations addressing the introduction of new technology, currently under consideration by the Railroad Safety Advisory Committee working group on freight power brakes.

In the Notice of Public Regulatory Conference, FRA attempted to clarify the proposal regarding the availability of the front-to-rear communications link being checked automatically by stating that the NPRM inadvertently contained a 10-minute, instead of a 10-second, requirement. *See* 61 FR 6614. Several parties commented on this clarification, including the manufacturers of the devices, stating that the 10-second requirement would be impossible to meet with current technology and would result in a battery drain within a short time. These commenters stated that FRA correctly proposed a 10-minute requirement in the NPRM as that is the current industry standard and has been the standard for devices used in Canada for several years. FRA agrees with these commenters and will leave the requirement at 10 minutes as proposed in the NPRM.

Subsection (h) has been modified slightly from that proposed in the NPRM at § 232.117(i) by replacing the word "its" with the phrase "a properly." This revision is made in response to a recommendation by the AAR that some leeway be provided in the requirement that the rear unit only respond to front unit of that train to permit railroads to activate the rear unit from a location other than the front unit of the train, provided it can be done in such a way as to ensure the security of such a procedure. FRA believes the revised language permits the rear unit to respond to an emergency command from any properly associated front unit and, thus, should permit the flexibility desired by some railroads.

Section 232.23

This new section of the regulations contains the operating requirements related to two-way EOTs. This section also contains general applicability standards and identifies those operations excepted from the requirements related to two-way EOTs.

Subsection (a) contains the definitions of key terms necessary for identifying those operations excepted from the requirements related to two-way EOTs. These definitions are intended solely for determining the applicability of the requirements related to two-way EOTs and should not be used in connection with other provisions contained in FRA regulations. With the exception of the definition of a "train" contained in (a)(2), the other definitions contained in this section have been revised from those proposed in the NPRM at § 232.5 (59 FR 47723-26) based on a review of the accident data and the comments received.

Heavy Grade

(For a detailed discussion of the all the comments, issues, and conclusions involving this definition, interested parties should review the preceding discussion regarding the definition of heavy grade contained in part A of the "Discussion of Comments and Conclusions" portion of this document.) Although FRA used the term "mountain grade" to describe this idea in previous proposals, FRA has determined, in order to avoid confusion and remain consistent with the statutory provision, it will use the term "heavy grade" in the final rule. FRA will use a bi-level approach in defining heavy grade, using the total trailing tons of the train as one factor in determining whether a train is operating on a heavy grade and, thus, subject to the requirements related to two-way EOTs. A train operating with 4,000 trailing tons or less will be considered to be operating on a heavy grade if a section of track over which it operates has an average grade of 2 percent or greater for a distance of 2 miles. A train operating with greater than 4,000 trailing tons will be considered to be operating on a heavy grade if a section of track over which it operates has an average grade of 1 percent or greater for 3 miles. FRA feels this definition is consistent with the available accident data and addresses many of the concerns raised in the comments submitted.

Local Train

(See part the preceding "Discussion of Comments and Conclusions" portion of this document under the heading "Applicability" for a detailed discussion of this issue.) Although FRA believes Congress intended an exception for local trains, FRA believes that Congress intended for the term to be narrowly construed. Rather than attempt to narrowly construe the term in the exceptions portion of the rule as was done in the NPRM, FRA decided to narrowly define the term based on the traditional idea of what constitutes a local train. Consequently, FRA has limited the distance such a train moves to that which can be operated by a single crew in a single tour of duty and has limited the size of the trains to 4,000 trailing tons or less. FRA also believes this definition is consistent with the overall structure of these requirements. If a train, even though designated by a railroad as a local train, falls outside the parameters contained in this definition then, it will be considered an ordinary train subject to the two-way EOT requirements.

Work Train

(See the preceding "Discussion of Comments and Conclusions" portion of this document under the heading "Applicability" for a detailed discussion of this issue.) FRA used the same reasoning for defining work trains as is it did for local trains. If a train fails to meet the definition contained in this subsection, even though labeled a work train by the railroad, it will be considered an ordinary train subject to the two-way EOT requirements.

Subsection (b) contains the general requirement for equipping trains with two-way EOTs. FRA recognizes that the Class I, II, and III railroads have voluntarily committed to equip the vast

majority of the trains covered by these rules by the effective date of the requirements. Therefore, FRA believes that an effective date of July 1, 1997 is a realistic deadline for complying with these requirements. FRA will consider extending this date only in the event that manufacturing delays result in a railroad's inability to secure an adequate number of the devices; however, FRA will not consider extension of the effective date beyond the statutorily mandated date of December 31, 1997. This section also provides that in order to be properly equipped the two-way EOT must meet the performance criteria contained in § 232.21.

Subsections (c) and (d) basically contain the statutory requirements regarding present and future purchases of EOT devices. These provisions require that all EOTs purchased after one year from the date of publication of these requirements shall have two-way capabilities meeting the design and performance requirements contained in § 232.21 and that all two-way devices acquired prior to the promulgation of this rules shall be grandfathered as meeting the design and performance requirements contained in § 232.21. In essence, these requirements eventually result in one-way EOTs being gradually phased out of use as they are replaced by two-way EOTs.

Subsection (e) contains a listing of those trains that are excepted from the requirements relating to two-way EOTs, previously proposed in the NPRM at § 232.813(e) (59 FR 47743). The majority of the exceptions were specifically provided for in the statute. See 49 U.S.C. § 20141(c). FRA has revised the exceptions contained in paragraphs (e)(1) and (e)(2) from those proposed in the NPRM, in order to clarify the scope of the exceptions. Paragraph (e)(1) has been rewritten to ensure that the locomotive located in the rear third of the train has the capability to initiate an emergency brake application and is in continuous communication with the controlling locomotive. Paragraph (e)(2) has been revised to clarify that the exception is for trains operating in a push mode only if the locomotive at the rear of the train has the ability to initiate an emergency brake application from that location. Paragraph (e)(3) has been revised to ensure that the caboose is manned by a crew member and is equipped with an emergency brake valve. The local and work train exceptions contained in paragraphs (e)(6) and (e)(7) have been revised from those proposed in the NPRM to remain consistent with the definitions contained in subsection (a) and are limited in that the exception does not apply if these types of trains are operating on heavy grade. As the definitions of both "local train" and "work train" limit their size to 4,000 trailing tons or less, heavy grades for these trains will be sections of track with an average grade of 2 percent or greater for 2 miles. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the "Applicability" heading for a detailed discussion of this issues related to local and work trains and other exceptions.)

Subsection (f)(1) requires that the devices be properly armed and operable at the time a train departs from the point where the device is installed. FRA believes that this requirement, although not specifically contained in the NPRM, could have be inferred from the proposed initial terminal requirements regarding these devices at § 232.309 (59 FR 47734) and the testing and inspection requirements contained in § 232.25. However, several commenters wanted a specific provision contained in the final regulations to prevent any confusion or misunderstanding.

Subsection (f)(2) contains the performance standard related to the amount of battery charge required when the devices are in use. The standard requires that the batteries on the rear units be sufficiently charged at the train's initial terminal or the point where the device is installed and throughout the train's trip to ensure that the device will remain operative until the train reaches destination. In the NPRM at § 232.309(e) (59 FR 57734), FRA proposed a 75 watt-hour requirement for the batteries at initial terminals; however, based the comments received as discussed above, FRA believes this is an ideal situation in which to use a performance standard. Due to the speed restrictions being mandated for en route failures, coupled with FRA's intent to apply strict liability for en route failures due to insufficiently charged batteries, FRA feels there are sufficient incentives for railroads to ensure that the batteries on the rear units are sufficiently charged at all times. This requirement is intended only to apply to the batteries supporting the telemetry capabilities of the devices. FRA does not intend this provision to require that the place where the batteries should be sufficiently charged for the train to reach its final destination should be the initial terminal or the point where the device is installed; it is within the railroad's discretion to determine when and where the batteries will be charged, and railroads should be cognizant of their strict liability for failure of the batteries en route and mindful of the speed restrictions that will be imposed. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the "Inspection and Calibration" heading for a detailed discussion of this issue.)

Subsection (g) contains the speed restriction being placed on trains that experience en route failure of the devices. This is identical to the restriction proposed in the NPRM at § 232.815(f) (59 FR 47743). This subsection also contains the definition of when a loss of communication between the front and rear units will be considered an en route failure. If a train experiences an en route failure of the two-way EOT, it will be required to limit its speed to 30 mph. FRA believes this is a logical outgrowth of the requirement that trains operating in excess of 30 mph be equipped with the devices. FRA believes that failure of these devices will be very rare and that the concerns raised by several commenters regarding the costs and delays associated with this requirement are not justified. FRA further believes that many of the failures currently reported will be greatly reduced since a majority of them are the result of depleted batteries, which FRA feels will be a thing of the past due to this speed restriction and the requirements contained in this rule regarding the charging of batteries. The definition of when a loss of communication between the front an rear units will be considered an "en route failure" is based on the automatic communications built into the devices. FRA does not intend for brief losses of communication to be considered failures en route since these brief gaps should be overcome by the increase in the wattage at which the emergency signal is transmitted and continuous rate at which the signal calling for an emergency brake application is transmitted. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the "En Route Failures" heading for a detailed discussion of these issues.)

Paragraph (g)(1) of this subsection contains the operating restrictions for trains which experience en route failures of the two-way EOT when operating on especially heavy grades. Although FRA believes that the requirements limiting the speed of a train operating with a defective device, as well as the inspection and battery charge requirements, are sufficient to ensure the prompt repair or replacement of defective units and to ensure that the devices will be operational throughout a train's trip in most instances, FRA

believes that additional safeguards must be provided when a train experiences a failure of its two-way EOT when operating on particularly heavy grades. FRA believes these added safeguards are necessary for those trains that operate over sections of track with an average grade of 2 percent or greater for 2 continuous miles. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the "En Route Failures" heading for a detailed discussion of these issues.)

Section 232.25

This new section of the regulation contains the inspection, testing, and calibration requirements related to EOT devices. This section contains the provisions previously contained in § 232.19(h) but with some revisions, as noted below.

Subsections (a) and (b) basically contain the provisions previously contained in § 232.19(h)(1) and (h)(2). Although these provisions previously pertained only to one-way EOTs, FRA intends them to be equally applicable to two-way EOTs and proposed that in the NPRM at § 232.115 (59 FR 47730). The provisions contain the language "after each installation" as proposed in order to clarify when these requirements are to be performed.

Subsection (c) contains a type of performance standard test that is to be performed at the initial terminal of the train or at the point where a two-way EOT is first installed on the train, as an EOT device may not always be installed at the initial terminal. At these locations the devices must be tested to ensure that they are capable of initiating an emergency brake application from the rear of the train. In the preceding discussion, FRA indicated that it intended to leave it to the railroad's discretion as to how this test will be conducted. FRA recognized that there are currently four different acceptable methods of performing this test: dumping the whole train into emergency once the device is attached; closing the angle cock on the last one or two cars and then activating an emergency of those cars; inspection of the emergency valve on the device once it is attached to ensure it functions properly without placing any cars into emergency; and bench testing the devices prior to their being armed and placed on the train within a reasonable time period of attaching the device to the train. FRA also noted that use of a method other than those contained above will not be permitted, if FRA finds that it does not sufficiently ensure that the device is capable of initiating an emergency brake application. This subsection also requires that if the testing of the device is conducted by an individual other than a member of the train crew then the locomotive engineer be informed that the test was performed. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the "Inspection and Calibration" heading for a detailed discussion of these issues.)

Subsection (d) contains the calibration and recordkeeping requirements for EOT devices as previously proposed in the NPRM at § 232.115(h)(3) (59 FR 47731). FRA continues to believe, based on its own experiences and the comments submitted, that these devices are fairly reliable and can be operated for long periods of time without calibration problems. FRA believes that the current 92-day requirement is excessive due to improved technology and is not consistent with the reality that calibration of these devices has not proven to be a problem. Furthermore, FRA believes that much of the abuse and misuse of these devices cited by one commenter will be corrected due to the restrictions imposed on trains operating with devices that are defective or fail en route. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the "Inspection and Calibration" heading for a detailed discussion of these issues.)

Regulatory Impact

This rulemaking is the result of a specific and direct legislative mandate that required use of an existing technology to prevent accidents caused by obstructions of train air brake lines. FRA has sought to carry out that mandate, issuing regulations necessary for safety. FRA has also conducted a regulatory impact analysis and an assessment of impacts upon small entities under the Regulatory Flexibility Act.

The final rule seeks to prevent very serious accidents associated with loss of braking control on freight trains, focusing on scenarios posing serious risk while avoiding the creation of exceptions that could undermine the purpose the statute sought to achieve. Analysis conducted in support of this proceeding has assisted in the crafting of a final rule that provides flexibility to employ various technologies to achieve the regulatory purpose.

The analysis below reports the results of economic analysis using historical data as the basis for estimating future risk, discusses the limitations of that approach, and indicates the agency's rationale for striking the balance included in the final rule. A key component of that rationale is the recognition that the actual consequences of catastrophic accidents are difficult or even impossible to predict. Given the grave potential for serious consequences from accidents caused by loss of braking control on freight trains, FRA has applied that focus on risk reduction. The natural consequence of that strategy is relief for smaller railroads operating lighter trains at reduced speeds, except in the limited instances where very heavy grades must be negotiated.

The consequences of an accident caused by a run-away train tend to be extreme, with potential for deaths, economic disruption and lasting environmental damage. An example of this type of disaster, discussed below, occurred on February 1, 1996 in Cajon Pass in California. The value of casualties, which included: 2 fatalities, 1 severe injury, and 32 minor injuries (32 emergency responders required medical treatment due to inhalation of toxic chemicals) combined with damages due to railroad property damage and casualties, would be approximately $9.8 million. Costs to the United States Environmental Protection Agency for monitoring environmental clean-up and mitigation (through May 1996) were $16,014. The costs to the involved railroad for environmental damages were estimated at approximately $4.2 million. These damages are included in the economic analysis discussed below with a total value of approximately $14 million, for railroad property, casualties, and environmental damages.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be significant under DOT policies and procedures (44 FR 11304) because of Congressional and public interest in promoting rail safety. This final rule has also been reviewed under Executive Order 12866 and is considered "significant" under that Order. Consequently, FRA has prepared a regulatory evaluation addressing the economic impact of the proposed rule. The regulatory evaluation estimates the economic costs and consequences of this proposed rule as well as its anticipated benefits and impacts. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours on the Seventh Floor, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Washington, D.C. Copies may also be obtained by

submitting a written request to the FRA Docket Clerk at Room 8201, 400 Seventh Street, S.W., Washington, D.C. 20590.

Potential costs and benefits of the proposed rule were calculated for a 20-year period using the seven percent discount rate required by Federal regulatory guidelines. It is estimated that the net present value (NPV) costs associated with the rule total approximately $264 million over the 20-year period of analysis. Our analysis of the historical accidents that could have been prevented by two-way EOTs indicates that about three accidents per year may not have occurred had these devices been in place. Assuming that the same type of accidents would continue to occur in the absence of two-way devices, we have calculated that the benefit of installing these devices will result in a reduction of accidents, casualties and damages worth approximately $92 million over 20 years (again, discounted to present value).

Although FRA identified 26 potentially preventable accidents in its Notice of Public Regulatory Conference (61 FR 6615), the number of potentially preventable accidents was reduced to sixteen for purposes of this regulatory impact analysis based on comments received and an application of the provisions of this final rule to the factual situations of each of the accidents. In quantifying the benefits related to this final rule, FRA generally identified two types of accidents which could be prevented through the use of two-way EOTs. These included accidents due to brake pipe obstruction and accidents due to other brake related problems. An effectiveness rate was then assigned to each of the accidents based on the level of confidence by FRA safety experts that the accidents could have been prevented had the train been equipped and used a two-way EOT. The property damages and costs related to injuries and fatalities associated with each of the potentially preventable accidents are contained in Table 1 below.

TABLE 1—POTENTIALLY PREVENTABLE ACCIDENTS

DATE	PLACE	CAUSE	INJURIES	FATALITIES	RR PROPERTY UPDATED TO 12/95 $	RATE OF EFFECTIVENESS	ACCIDENTS PREVENTABLE BENEFIT
910918	Sprague, WA	OBSTRUCTED BRAKE PIPE.	4	1	$4,327,634	0.9	$6,883,771
910304	Waterfall, WY	OTHER BRAKE RELATED.	4	0	1,626,483	0.5	824,041
920307	Kansas City, MO	OBSTRUCTED BRAKE PIPE.	2	0	492,307	0.9	452,796
920611	Money, MS	OTHER BRAKE RELATED.	2	0	677,113	0.5	343,956
931001	Keystone, NB	OBSTRUCTED BRAKE PIPE.	2	0	2,653,038	0.9	2,463,064
931011	Fulton, KY	OTHER BRAKE RELATED.	0	0	14,589	0.5	7,295
931221	Wood, IA	OTHER BRAKE RELATED.	0	0	428,535	0.5	214,268
931225	Seward, NB	OBSTRUCTED BRAKE PIPE.	4	0	1,947,358	0.9	3,575,122
940118	Cowen, WV	OBSTRUCTED BRAKE PIPE.	0	0	1,381,380	0.9	1,243,242
940907	Gillette, WY	OTHER BRAKE RELATED.	0	0	3,677,160	0.9	3,309,444
941122	Tenn Pass, CO	OBSTRUCTED BRAKE PIPE.	1	0	1,503,495	0.9	3,206,020
941214	Cajon, CA	OBSTRUCTED BRAKE PIPE.	3	0	4,058,544	0.9	3,936,999
950209	Nelsons, WI	OTHER BRAKE RELATED.	1	0	30,696	0.9	65,291
950406	Argonne, MI	OTHER BRAKE RELATED.	0	1	268,529	0.9	2,671,676
960201	Cajon, CA	OBSTRUCTED BRAKE PIPE.	32	2	3,756,294	0.9	15,851,369
960214	E. St. Paul, MN	OBSTRUCTED BRAKE PIPE.	9	0	2,723,956	0.9	3,504,965
	TOTAL		65	4	29,567,109		48,553,320

Although the quantified benefits of the proposed rule are exceeded by the estimated costs, with a NPV cost of approximately $172 million over 20 years, FRA believes that the accident information collected by FRA does not adequately reflect the true costs to society due to brake-related accidents. Further, as discussed below, considerable variation in accident severity can be expected.

The potential benefits, which have not been quantified in this analysis due to a lack of information, may equal or substantially exceed the benefits which have been quantified. As shown in the most recent "preventable" accidents identified by FRA, there is a significant risk that similar accidents in the future could release large amounts of hazardous materials which, if the accident occurred in a densely populated or environmentally sensitive area, could produce truly catastrophic results. The costs of evacuation and medical treatment for those near the accident site could be substantial, and associated road closures also produce significant economic impact to travelers

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and the communities nearby. Should a hazardous material release impact a river or stream, the consequences to wildlife in the area could also be severe and lasting. The costs associated with these types of accidents could be extremely high and, as these types of costs (potential benefits) have not been calculated in this analysis, the benefit estimations are extremely conservative. For cost/benefit analyses to serve their purpose well, all reasonably foreseeable damages should be accounted for, not merely those that have already chanced to occur.

Evaluation of Risk and Requirements to Equip Trains

The FRA recognizes that the base case economic analysis for this rulemaking suggests caution. Nevertheless, the FRA has determined that exceptions to the requirement for two-way EOTs should be drawn with great care, respecting the intent of the statutory exceptions without creating potential loopholes that could seriously erode the beneficial safety impacts intended by the Congress. In doing so, FRA has been mindful of the need to ensure impacts on small entities are limited to the extent possible given the specific commands of the congressional mandate. These choices have caused FRA to focus on train speed, grade, and tonnage as critical factors in determining what trains should be equipped with two-way EOTs and in determining the appropriate response when this equipment fails en route. FRA has proceeded in this manner both because the agency wished to be faithful to the level of safety determined by the statute to be appropriate in this context and because a common sense approach to analysis of the appropriate risks indicates the need to act decisively. This approach recognizes the role of accident frequency, accident causation, and accident severity.

In addition to performing an economic analysis employing historic accident patterns to project future risk (and thus prospective benefits), FRA has considered the potential volatility of the future risk associated with absence of two-way EOTs. When the Congress began hearings on the legislation that underlies this rulemaking in 1991, advocates of the technology were hard-pressed to cite specific and sustainable examples of accidents potentially preventable through use of two-way telemetry. A decade had just closed during which cabooses had been removed from trains, and initial experience had been relatively favorable. From the perspective of 1996, the need for this technology is much more evident, with the frequency of preventable events having proven higher than would have been expected. Accidents preventable by this technology *but involving trains not utilizing the technology* have continued into the current year, notwithstanding the fact that railroads have, in fact, made strides toward full compliance with two-way EOT requirements by the outside statutory deadline of December 31, 1997 (an effort recently accelerated to meet earlier voluntary deadlines).

The **consequences** of an accident depend on many factors which may not be related to the **cause** of the accident, such as the location of the train or the lading it transports. In either a densely populated or environmentally sensitive area, the consequences of an accident may be more severe than an accident in a less critical location. Likewise, a hazardous materials release is much more likely to have more severe effects (such as death, explosions, or environmental damage) than a grain spill in the same location. When considering the potential benefits which may be produced by avoiding the type of brake-related accidents targeted by this rule, it is therefore not sufficient to look only at the consequences of past accidents with similar causes. One should also look for indications in those past accidents for the reasonable potential for greater catastrophe. In this context, **accidents caused by loss of braking control** on freight trains (as can occur, among other reasons, due to brake pipe obstructions) tend to have a rather high potential for casualties, very substantial property damage, and considerable risk of environmental damage when hazardous materials are in the consist. Because derailment or collision will often occur due to overturning on curves or entering congested areas, third party casualties and property damage can also be substantial.

An example of the potential severity of an accident caused by loss of braking control, other than those noted above, may be illustrated by the circumstances surrounding the accident occurring on May 12, 1989 in which a Southern Pacific Transportation Company train accelerated out of control descending a 2.2 percent grade into San Bernardino, California. Two employees were killed and three injured. The accident destroyed seven residences adjacent to the right-of-way, killing two residents and injuring a third. A 14-inch gasoline pipeline which may have been damaged in either the accident or ensuing clean-up, ruptured 13 days later, resulting in the death of two additional residents, serious injuries to two residents, and minor injuries to 16 others. Eleven additional homes were destroyed, along with 21 motor vehicles. Total property damages in the derailment and pipeline rupture exceeded $14 million. While this accident was not preventable through use of a two-way EOT system, exactly the same consequences could result from a loss of control that would be preventable by this technology.

Another example would be the accident that occurred at Helena, Montana, on February 2, 1989, in which freight cars from a Montana Rail Link train rolled eastward down a mountain grade and struck a helper locomotive consist, slightly injuring two crew members. Hazardous materials in the consist included hydrogen peroxide, isopropyl alcohol, and acetone. Release of these hazardous materials later resulted in a fire and explosions, necessitating the evacuation of approximately 3,500 residents of Helena for over two days. According to the National Transportation Safety Board, railroad and other property damage exceeded $6 million, and all of the buildings of Carroll College sustained damage. The City of Helena received 154 reports of property damage from residents within a three-mile radius of the accident. As a result of this accident, the Board recommended that FRA "require the use of two-way end-of-train telemetry devices on all cabooseless trains for the safety of railroad operations." (NTSB Report RAR–89/05 at 19–20, 76.) Although in FRA's judgment it is unlikely that the Helena accident would, in fact, have been prevented by a two-way EOT system due to the prior gradual leakage of brake pipe pressure from the train line, other potential accidents with similar or even more serious consequences certainly could be prevented.

Consequently, based on the potential for catastrophic results of an accident of this type, FRA cannot make the finding that a less restrictive rule would be consistent with safety. A train without the ability to properly control its speed and stop due to brake problems represents an unacceptable risk to tolerate, given the availability of relatively inexpensive and highly reliable technology that can greatly reduce or even eliminate that risk. Existing types of automatic train brakes generally fail safe, but not when there is an obstruction of the train line. As noted above, train line obstructions are known to occur. The technology mandated by this rule addresses this need, and use of the technology will provide a high level of confidence that the failure mode will not permit a catastrophe. That is, it is not necessary to speculate regarding the

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existence of an unacceptable hazard nor the effectiveness of the countermeasure. As affirmed by the 1992 congressional mandate, it would be irresponsible public policy to withhold action until the occurrence of an accident or accidents of sufficient magnitude to permit completion of an economic analysis showing a positive benefit-to-cost ratio for the primary case.

FRA believes this legislatively mandated rule balances the need to reduce the risk of a truly catastrophic event with the need to minimize costs to freight railroad operations. FRA has not been able to identify additional exceptions to the requirement for two-way EOTs that could be considered to be consistent with safety, given the hazard addressed by the statutory mandate and the realities of railroad operations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) uses an industry wide definition of small business based on employment. Railroads are considered small by SBA definition if they employ fewer than 1,500 people. FRA typically employs the classification system of the Surface Transportation Board (STB), which is based on operating revenue, where a Class II railroad has operating revenue greater or equal to $40 million dollars but less than $253.7 million and a Class III railroad has operating revenue below $39 million. This proposed rule affects many of the larger regional railroads and some of the larger short line railroads (i.e, Class II and III railroads). After consulting with the Office of Advocacy of the SBA, the STB/FRA classification system was used in this analysis.

Most short line railroads (Class III) will not be required to purchase or use two-way EOTs, and thus, will not be affected by the provisions of this final rule. The American Short Line Railroad Association (ASLRA), an organization that represents short line railroads, submitted comments to FRA Docket No. PB–9 subsequent to the public regulatory conference conducted in March of 1996 which referenced the results of a survey they had conducted of their member railroads. Their survey results indicated that out of a total of 287 railroads that responded to the survey, only 32 railroads operate at speeds in excess of 30 mph and only 21 of the railroads operate in heavy grades of two percent over two miles. Of the 21 railroads operating in these heavy grades 17 of them operate trains with an average tonnage of less than 4,000 trailing tons. The ASLRA recommended that lower tonnage trains be excluded from any definition of heavy grade. After reviewing the accident data, FRA has adopted a definition of heavy grade based on a two-tier approach which permits trains operating with 4,000 trailing tons or less to operate over certain heavy grades (less than 2% over 2 miles) without being equipped with a two-way EOT.

Although the ASLRA did not have an opportunity to comment on the definition of heavy grade for heavier trains, conversations with ASLRA representatives and FRA track experts indicate that between 50 and 70 percent of short line railroads operate trains in territory where an average grade of one percent over three miles would be encountered. However, most of these railroads do not operate at speeds greater than 30 mph, nor do they have average train tonnage in excess of 4,000 trailing tons. It is believed that the rule will primarily impact only those short line railroads which operate in heavy grades of two percent or greater over a distance of two miles. The ASLRA estimated that its member railroads would need to acquire approximately 1,100 two-way EOTs to comply the proposal submitted by the AAR. In the regulatory impact analysis FRA estimated the number of devices required by short line railroads to be 1,146 in order to comply with the final rule.

In reviewing the economic impact of the rule, FRA has concluded that it will have a small economic impact on small entities. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

FRA has prepared a regulatory flexibility assessment addressing the impact of the final rule on small entities. The regulatory flexibility assessment has been placed in the docket and is available for public inspection and coping during normal business hours in on the Seventh Floor, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Washington, D.C. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at Room 8201, 400 Seventh Street, S.W., Washington, D.C. 20590.

Paperwork Reduction Act

This final rule contains information collection requirements. Because the policy of the Federal Government is to minimize the regulatory record keeping burden placed on private industry, a separate analysis of the record keeping burden resulting from the final rule was performed.

FRA will submit these information collection requirements to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Persons desiring to comment regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should submit their views in writing to: Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8314, Washington, D.C. 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer for FRA (OMB No. 2130-New), New Executive Office Building, 726 Jackson Place, N.W., Room 3201, Washington, D.C. 20503. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements when they do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new or revised information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this final rule will not have any effect on the quality of the environment.

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Federalism Implications

This final rule will not have a substantial effect on the States, on the relationship between the national government on the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects

49 CFR Part 232

Railroad safety, Railroad power brakes, Two-way end-of-train devices.

The Rule

In consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20107, 20108, 20110-20112, 20114, 20133, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; Pub. L. 103–272 (1994); and 49 CFR 1.49 (c), (g), and (m).

2. Section 232.19 is amended by removing paragraph (h), by revising the section heading and by revising paragraph (a) to read as follows:

§232.19 Design standards for one-way end-of-train devices.

(a) A one-way end-of-train device shall be comprised of a rear-of-train unit (rear unit) located on the last car of a train and a front-of-train unit (front unit) located in the cab of the locomotive controlling the train.

* * * * *

3. Sections 232.21, 232.23, and 232.25 are added to read as follows:

§232.21 Design and performance standards for two-way end-of-train devices.

Two-way end-of-train devices shall be designed and perform with the features applicable to one-way end-of-train devices described in §232.19, except those included in §232.19(b)(3). In addition, a two-way end-of-train device shall be designed and perform with the following features:

(a) An emergency brake application command from the front unit of the device shall activate the emergency air valve at the rear of the train within one second.

(b) The rear unit of the device shall send an acknowledgment message to the front unit immediately upon receipt of an emergency brake application command. The front unit shall listen for this acknowledgment and repeat the brake application command if the acknowledgment is not correctly received.

(c) The rear unit, on receipt of a properly coded command, shall open a valve in the brake line and hold it open for a minimum of 15 seconds. This opening of the valve shall cause the brake line to vent to the exterior.

(d) The valve opening and hose shall have a minimum diameter of ¾ inch to effect an emergency brake application.

(e) The front unit shall have a manually operated switch which, when activated, shall initiate an emergency brake transmission command to the rear unit. The switch shall be labeled "Emergency" and shall be protected so that there will exist no possibility of accidental activation.

(f) The availability of the front-to-rear communications link shall be checked automatically at least every 10 minutes.

(g) Means shall be provided to confirm the availability and proper functioning of the emergency valve.

(h) Means shall be provided to arm the front and rear units to ensure the rear unit responds to an emergency command only from a properly associated front unit.

§232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

(a) The following definitions are intended solely for the purpose of identifying those operations subject to the requirements for the use of two-way end-of-train devices.

(1) *Heavy grade* means:

(i) For a train operating with 4,000 trailing tons or less, a section of track with an average grade of two percent or greater over a distance of two continuous miles; and

(ii) For a train operating with greater than 4,000 trailing tons, a section of track with an average grade of one percent or greater over a distance of three continuous miles.

(2) *Train* means one or more locomotives coupled with one or more rail cars, except during switching operations or where the operation is that of classifying cars within a railroad yard for the purpose of making or breaking up trains.

(3) *Local train* means a train assigned to perform switching en route which operates with 4,000 trailing tons or less and travels between a point of origin and a point of final destination, for a distance that is no greater than that which can normally be operated by a single crew in a single tour of duty.

(4) *Work train* means a non-revenue service train of 4,000 trailing tons or less used for the administration and upkeep service of the railroad.

(5) *Trailing tons* means the sum of the gross weights—expressed in tons—of the cars and the locomotives in a train that are not providing propelling power to the train.

(b) All trains not specifically excepted in paragraph (e) of this section shall be equipped with and shall use either a two-way end-of-train device meeting the design and performance requirements contained in § 232.21 or a device using an alternative technology to perform the same function.

(c) Each newly manufactured end-of-train device purchased by a railroad after (one year from date of publication) shall be a two-way end-of-train device meeting the design and performance requirements contained in § 232.21 or a device using an alternative technology to perform the same function.

(d) Each two-way end-of-train device purchased by any person prior to promulgation of these regulations shall be deemed to meet the design and performance requirements contained in § 232.21.

(e) The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

(1) Trains with a locomotive capable of making an emergency brake application, through a command effected by telemetry or by a crew member in radio contact with the lead (controlling) locomotive, located in the rear third of the train length;

(2) Trains operating in the push mode with the ability to effectuate an emergency brake application from the rear of the train;

(3) Trains with an operational caboose placed at the rear of the train, carrying one or more crew members, that is equipped with an emergency brake valve;

(4) Trains operating with a secondary, fully independent braking system capable of safely stopping the train in the event of failure of the primary system;

(5) Trains that do not operate over heavy grades and do not exceed 30 mph;

(6) Local trains as defined in paragraph (a)(3) of this section that do not operate over heavy grades;

(7) Work trains as defined in paragraph (a)(4) of this section that do not operate over heavy grades;

(8) Trains that operate exclusively on track that is not part of the general railroad system; and

(9) Passenger trains with emergency brakes.

(f) If a train is required to use a two-way end-of-train device:

(1) That device shall be armed and operable from the time a train departs

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from the point where the device is installed until the train reaches its destination.

(2) The rear unit batteries shall be sufficiently charged at the initial terminal or other point where the device is installed and throughout the train's trip to ensure that the end-of train-device will remain operative until the train reaches its destination.

(g) If a two-way end-of-train device or equivalent device fails en route (i.e., is unable to initiate an emergency brake application from the rear of the train due to certain losses of communication or due to other reasons), the speed of the train on which it is installed shall be limited to 30 mph until the ability of the device to initiate an emergency brake application from the rear of the train is restored. This limitation shall apply to a train using any device that uses an alternative technology to serve the purpose of a two-way end-of-train device. With regard to two-way end-of-train devices, a loss of communication between the front and rear units will be considered an en route failure only if the loss of communication is for a period greater than 16 minutes and 30 seconds.

(1) If a two-way end-of-train device fails en route, the train on which it is installed, in addition to observing the 30-mph speed limitation, shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles, unless one of the following alternative measures is provided:

(i) Use of an occupied helper locomotive at the end of the train. This alternative may be used only if the following requirements are met:

(A) The helper locomotive engineer will initiate and maintain two-way voice radio communication with the engineer on the head end of the train; this contact shall be verified just prior to passing the crest the grade.

(B) If there is a loss of communication prior to passing the crest of the grade, the helper locomotive engineer and the head-end engineer shall act immediately to stop the train until voice communication is resumed, if this can be done safely.

(C) If there is a loss of communication once the descent has begun, the helper locomotive engineer and the head-end engineer shall act to stop the train if the train has reached a predetermined rate of speed that indicates the need for emergency braking.

(D) The brake pipe of the helper locomotive shall be connected and cut into the train line and tested to ensure operation.

(ii) Use of an occupied caboose at the end of the train with a tested, functioning brake valve capable of initiating an emergency brake application from the caboose. This alternative may be used only if the train service employee in the caboose and the engineer on the head end of the train establish and maintain two-way voice radio communication and respond appropriately to the loss of such communication in the same manner as prescribed for helper locomotives in paragraph (g)(1)(i) of this section.

(iii) Use of a radio-controlled locomotive in the rear third of the train under continuous control of the engineer in the head end by means of telemetry, but only if such radio-controlled locomotive is capable of initiating an emergency application on command from the lead (controlling) locomotive.

§ 232.25 Inspection and testing of end-of-train devices.

(a) After each installation of either the front or rear unit of an end-of-train device, or both, on a train and before the train departs, the railroad shall determine that the identification code entered into the front unit is identical to the unique identification code on the rear-of-train unit.

(b) After each installation of either the front or rear unit of an end-of-train device, or both, the functional capability of the device shall be determined, after charging the train, by comparing the quantitative value displayed on the front unit with the quantitative value displayed on the rear unit or on a properly calibrated air gauge. The end-of-train device shall not be used if the difference between the two readings exceeds three pounds per square inch.

(c) A two-way end-of-train device shall be tested at the initial terminal or other point of installation to ensure that the device is capable of initiating an emergency power brake application from the rear of the train. If this test is conducted by a person other than a member of the train crew, the locomotive engineer shall be informed that the test was performed.

(d) The telemetry equipment shall be calibrated for accuracy according to the manufacturer's specifications at least every 365 days. The date of the last calibration, the location where the calibration was made, and the name of the person doing the calibration shall be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front unit and the rear unit.

4. Appendix A to Part 232—"Schedule of Civil Penalties" is amended by removing the entry for § 232.19(h) and by adding entries for §§ 232.21, 232.23, and 232.25 to read as follows:

Appendix A to Part 232—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
• • •		
• • •		
•		
232.21 Two-way EOTs:		
(a)-(h) Design Standards	2,500	5,000
232.23 Operating Standards:		
(b) Failure to equip	5,000	7,500
(c) Purchases	2,500	5,000
(f)(1) Device not armed or operable	5,000	7,500
(2) Insufficient battery charge	2,500	5,000
(g) En route failures	5,000	7,500
232.25 Inspection and Testing:		
(a) Unique code	2,500	5,000
(b) Comparing values	2,500	5,000
(c) Test of emergency capability	5,000	7,500
(d) Calibration	2,500	5,000

Issued in Washington, D.C., on December 27, 1996.

S. Mark Lindsey,

Acting Administrator.

[FR Doc. 96–33364 Filed 12–31–96; 8:45 am]

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federal register

Thursday
January 2, 1997

Part VII

The President

Presidential Determination No. 97–11A—Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as Enacted in Public Law 104–208)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 97–11A of December 6, 1996

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as Enacted in Public Law 104–208)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as enacted in Public Law 104–208), I hereby certify that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register**.

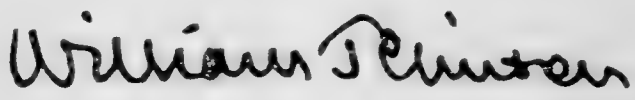

THE WHITE HOUSE,
Washington, December 6, 1996.

[FR Doc. 96–33393
Filed 12–31–96; 8:45 am]
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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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CFR ISSUANCES 1997
Complete Listing of 1996 Editions and Projected January, 1997 Editions

This list sets out the CFR issuances for the 1996 editions and projects the publication plans for the **January, 1997** quarter. A projected schedule that will include the **April, 1997** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1996–1997 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1996:

Title

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3 (Compilation)

4

5 Parts:
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6 [Reserved]

7 Parts:
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210–299
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9 Parts:
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10 Parts:
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24 Parts:
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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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January 2	January 17	February 3	February 18	March 3	April 2
January 3	January 21	February 3	February 18	March 4	April 3
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January 8	January 23	February 7	February 24	March 10	April 8
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January 10	January 27	February 10	February 24	March 11	April 10
January 13	January 28	February 12	February 27	March 14	April 14
January 14	January 29	February 13	February 28	March 17	April 14
January 15	January 30	February 14	March 3	March 17	April 15
January 16	January 31	February 18	March 3	March 17	April 16
January 17	February 3	February 18	March 3	March 18	April 17
January 21	February 5	February 20	March 7	March 24	April 21
January 22	February 6	February 21	March 10	March 24	April 22
January 23	February 7	February 24	March 10	March 24	April 23
January 24	February 10	February 24	March 10	March 25	April 24
January 27	February 11	February 26	March 13	March 28	April 28
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105th Congress, 1st Session, 1997

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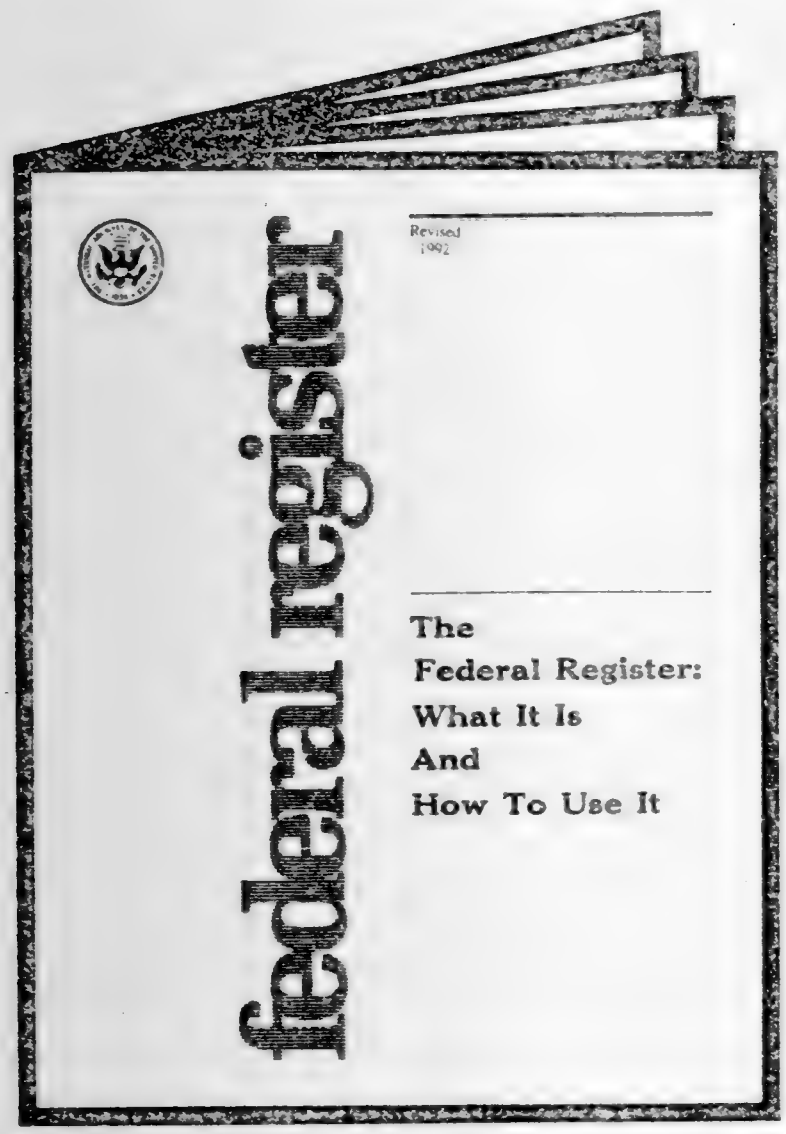

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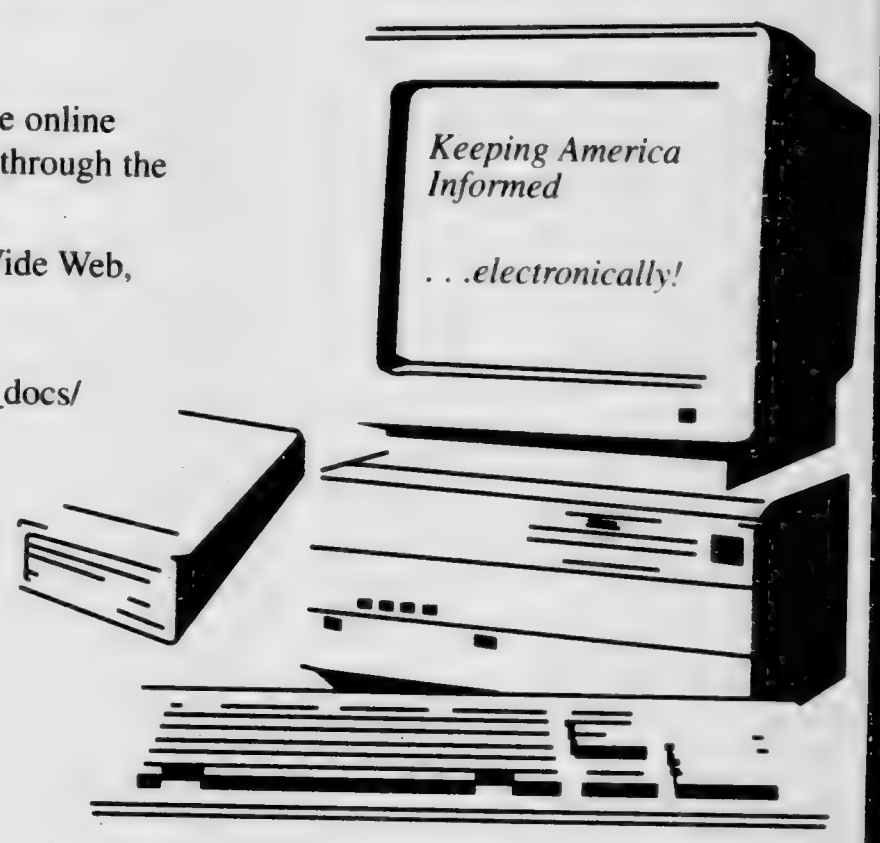

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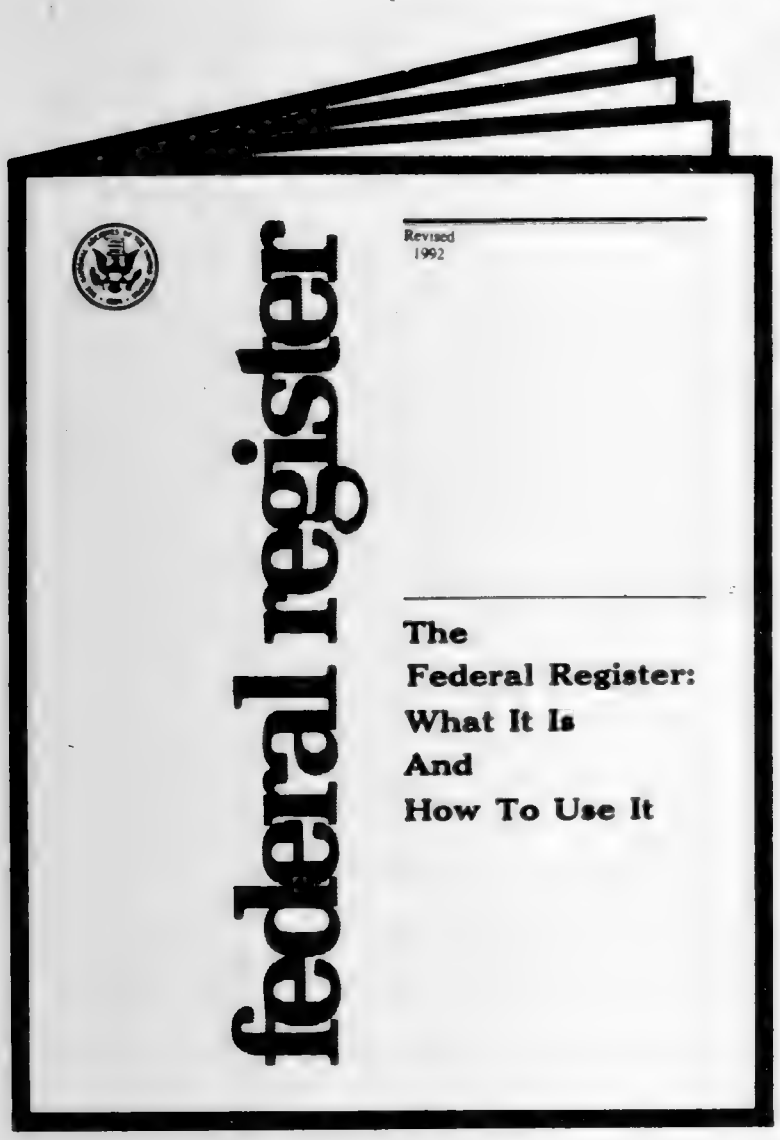

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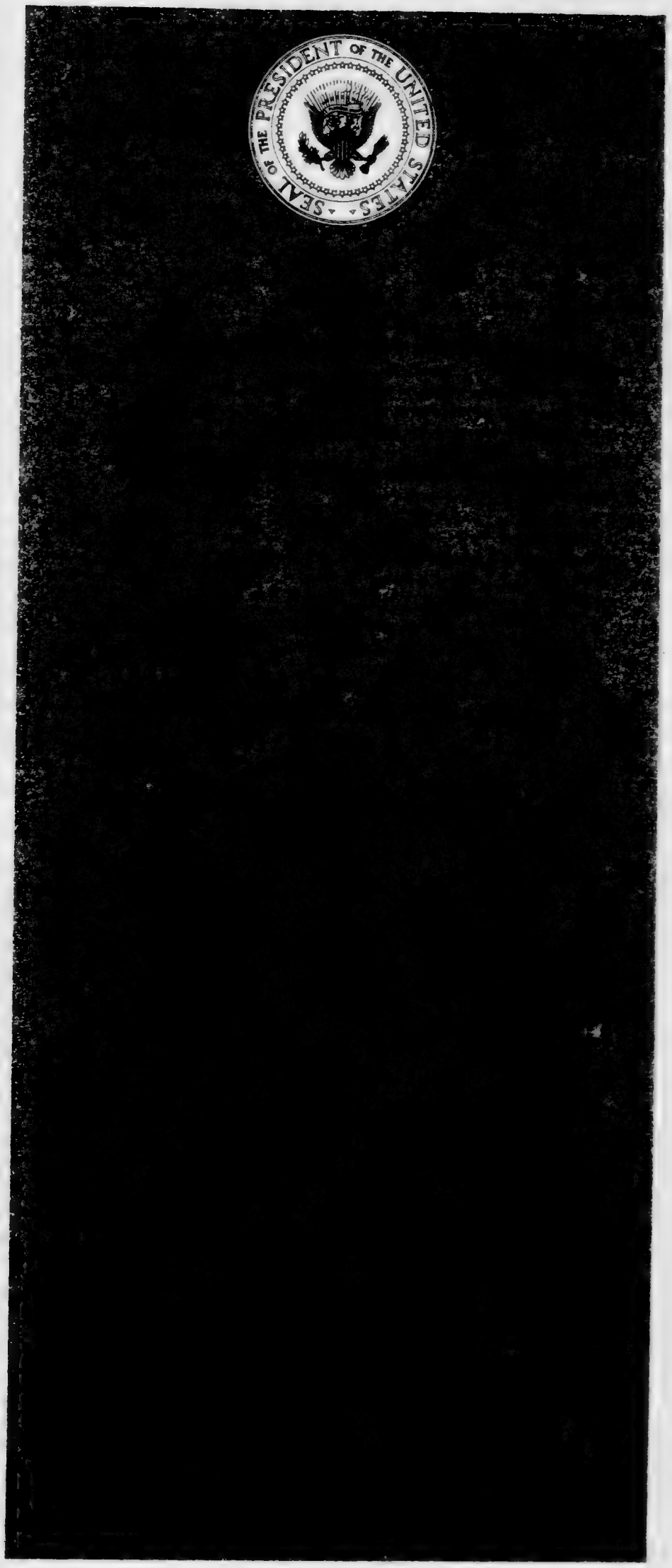

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: Section 103(c) of the Small Business Programs Improvement Act of 1996 (1996 legislation), enacted on September 30, 1996, authorizes SBA to continue its Low Documentation (LowDoc) loan program through lenders with significant experience in making small business loans. The Act requires SBA to promulgate regulations by December 31, 1996. This interim final rule implements this requirement. SBA is soliciting and will consider any comments it receives with respect to this interim final rule in making future adjustments.

DATES: This rule is effective January 3, 1997. Comments may be made by February 3, 1997.

ADDRESSES: Comments should be sent to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, Director, Office of Loan Programs, (202) 205–6570.

SUPPLEMENTARY INFORMATION: Section 103(c) of the 1996 legislation (Pub. L. 104–208) amends section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and authorizes SBA to continue its LowDoc loan program through lenders with significant experience in making small business loans. Under the LowDoc program, SBA may guaranty repayment of up to 80% of a loan of $100,000 or less made to a small business by a participating SBA lender. In the LowDoc program the SBA requires a lender to submit less documentation to support its guaranty request than SBA requires for other loans guaranteed under section 7(a) of the Small Business Act. The 1996 legislation requires SBA to promulgate regulations defining the experience necessary for a lender to be designated as experienced.

SBA believes that an experienced lender should be an SBA qualified lender with significant current activity in making small loans to small businesses. SBA presently qualifies all of its participating lenders pursuant to section 410 of its regulations (13 CFR § 120.410). Once qualified, lenders enter into a guarantee agreement (SBA Form 750) with SBA. A lender's qualification can be revoked for failure to maintain regulatory compliance. SBA is satisfied that this qualification process is satisfactory to assure that only experienced and capable lenders participate in its programs.

SBA presently monitors the activity of lenders which participate in its programs and retains information regarding their SBA activity. In addition, while banking regulators do not require banks and thrift institutions to track or report lending activity with small businesses, they do require banks to report the number of small loans outstanding as of each "call report" date. SBA uses this data on commercial/industrial loans and for commercial real estate loans made by banks and thrifts to supplement the information it retains regarding qualified lenders.

SBA has reviewed the activity of its own portfolio of active lenders and that of the lending community at large to determine what constitutes a sufficient number of small loans for purposes of qualification as a LowDoc lender. It also reviewed its own requirements for the origination, servicing and liquidation capabilities of SBA guaranteed lenders. On the basis of that review, SBA is satisfied that a lender should qualify as having significant experience lending to small business concerns if it is: (1) a bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of the call report date closest to the date of its fiscal year end, or (2) an institution other than a bank or thrift institution which has executed a SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of its latest fiscal year end. A qualified loan is one which was initially approved in the amount of $100,000 or less and is classified as a commercial, industrial, or commercial real estate loan for purposes of call reporting.

SBA will consider good cause exceptions to this definition on a case by case basis. Lenders seeking an exception should make their requests directly to the Associate Administrator for Financial Assistance.

Compliance With Regulatory Flexibility Act, Executive Orders 12866, 12612, and 12778, the Unfunded Mandates Act and the Paperwork Reduction Act

SBA certifies that this interim final rule will not have a significant impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule only affects those banks that make fewer than 20 qualified loans to small business and want to participate in the SBA's LowDoc Loan Program. A qualified loan is one which was initially approved in the amount of $100,000 or less and is classified as a commercial, industrial or commercial real estate loan for purposes of call reporting. Approximately 500 banks out of 10,000 will be affected by this rule.

SBA certifies that this interim final rule is not a "significant regulatory action" under Executive Order 12866. It does not have an annual effect on the economy of $100 million or more and does not adversely affect in a material way the economy or any sector of the economy.

SBA certifies that this interim final rule will not have federalism implications warranting a Federalism Assessment under Executive Order 12612. SBA further certifies that this interim final rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this interim final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

Because this final rule is required to be promulgated by December 31, 1996, SBA is publishing it without opportunity for prior public comment pursuant to 5 U.S.C. 553(b)(A). However, SBA will consider any comments it receives with respect to

this final rule in making future adjustments.

(Catalog of Federal Domestic Assistance Program No. 59.012)

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOANS

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.410 is amended by removing "; and" at the end of paragraph (c), removing the period at the end of paragraph (d) and adding "; and" in its place, and adding a new paragraph (e) to read as follows:

§ 120.410 Requirements for all participating Lenders.

* * * * *

(e) In order to make Low Documentation loans, be:

(1) A bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of the call report date closest to the date of its fiscal year end, or

(2) An institution other than a bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of its latest fiscal year end. For purposes of this paragraph (e), a qualified loan is one which was initially approved in the amount of $100,000 or less and is classified as a commercial, industrial or commercial real estate loan for purposes of call reporting. A lender may request an exception to the requirements of this paragraph (e) from the SBA Associate Administrator for Financial Assistance.

Dated: December 30, 1996.

Philip Lader,

Administrator.

[FR Doc. 97–103 Filed 1–2–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–280–AD; Amendment 39–9868; AD 96–26–52]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T96–26–52 that was sent previously to all known U.S. owners and operators of Boeing Model 747 series airplanes by individual telegrams. This AD requires repetitive inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface; repetitive inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance; and repair of any discrepancy found. This action is prompted by a report indicating that a fuse pin had migrated on an inboard spring beam fitting on the Number 1 engine pylon of a Boeing Model 747–400 airplane. The actions specified by this AD are intended to prevent migration of this fuse pin, which, if not detected and corrected in a timely manner, could result in failure of the engine pylon and consequent separation of the engine from the wing.

DATES: Effective January 8, 1997, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–26–52, issued December 20, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Service information pertaining to this rulemaking action may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On December 20, 1996, the FAA issued telegraphic AD T96–26–52, which is applicable to certain Boeing Model 747 series airplanes.

That action was prompted by a report indicating that a fuse pin had migrated 5/8 inch out of an inboard spring beam fitting on the Number 1 engine pylon of a Boeing Model 747–400 series airplane. In addition, the mating nut to this pin had backed off approximately 3/10 inch from full engagement with the pin. The discrepant fuse pin was detected after maintenance personnel observed that the access door (part number 65B94112–43) to this fuse pin protruded outward from its adjacent pylon structure.

At the time this discrepancy was found, the airplane had accumulated 12,446 total hours time-in-service, and accomplished 1,439 total landings. Prior to delivery of this airplane in June 1994, the manufacturer had installed fuse pins in the spring beam fitting that are made of 15–5 corrosion resistant steel ("third generation pins"). These pins replaced existing pins made of 4330 or 4340 steel.

Migration of the fuse pin, if not detected and corrected in a timely manner, could result in failure of the engine pylon and consequent separation of the engine from the wing.

Other Relevant Rulemaking

The FAA previously had issued AD 95–13–05 [amendment 39–9285 (60 FR 33333, dated June 28, 1995; as corrected at 60 FR 35452, July 7, 1995)], which applies to certain Boeing Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines. The FAA also had issued AD 95–13–06 [amendment 39–9286 (60 FR 33338, June 28, 1995; as corrected at 60 FR 37500, July 20, 1995)], which applies to certain Model 747 series airplanes equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines. These AD's, which are almost identical, require modification of the nacelle strut and wing structure of the applicable airplanes. Among the actions required by both AD's is the installation of a mechanical secondary retention to prevent the fuse pins for the midspar/spring beam fittings from migrating.

At the time the discrepancy described above was discovered, the nacelle strut and wing modification had not yet been accomplished on the incident airplane;

consequently, the secondary retention device had not yet been installed either. (The secondary retention device has been installed during production of airplanes beginning at line number 1047.)

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T96–26–52 to prevent migration of this fuse pin, subsequent failure of the engine pylon, and consequent separation of the engine from the wing. The AD requires repetitive detailed visual inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface, and repair, if necessary. In addition, the AD requires repetitive detailed visual inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance, and repair, if necessary. These inspections are to be repeated until the terminating modifications currently required by AD 95–13–05 or AD 95–13–06, as applicable, are accomplished.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 20, 1996, to all known U.S. owners and operators of Boeing Model 747 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–280–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–26–52 Boeing: Amendment 39–9868. Docket 96–NM–280–AD.

Applicability: Model 747 series airplanes having line numbers 1 through 1046, inclusive; certificated in any category; that meet all of the following criteria:

- equipped with Pratt & Whitney Model PW4000 series engines, or General Electric Model CF6–80C2 series engines, or Rolls Royce Model RB211 series engines;
- on which fuse pins having part numbers 310U2301–101, –116, –117, or –120 ("third generation" fuse pins) are installed at the midspar/spring beam fittings of the engine pylon; and
- on which the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156 or Boeing Alert Service Bulletin 747–54A2157, as applicable, has not been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine pylon and consequent separation of the engine from the wing, due to migration of the fuse pins installed at the midspar/spring beam fittings of the pylon, accomplish the following:

(a) Within 15 days after the receipt of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a detailed visual inspection of the access doors to each midspar/spring beam fuse pin on each engine pylon to detect cracks on the external surface of the doors.

(i) If no cracking is detected during the inspection, repeat that inspection at intervals not to exceed 150 landings or 1,000 hours time-in-service, whichever occurs first.

(ii) If any cracking is detected during the inspection, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office

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(ACO), FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 150 landings or 1,000 hours time-in-service, whichever occurs first.

(2) Gain access through the aft fairing doors of each engine pylon to each midspar/spring beam fuse pin and its mating, self-locking nut, and perform a detailed visual inspection of each fuse pin to verify that at least one thread of the fuse pin protrudes beyond its mating, self-locking nut.

(i) If no discrepancy is detected during the inspection, repeat that inspection at intervals not to exceed 150 landings or 1,000 hours time-in-service, whichever occurs first.

(ii) If the inspection reveals that at least one thread does not protrude beyond its mating, self-locking nut, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 150 landings or 1,000 hours time-in-service, whichever occurs first.

(b) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, Revision 2, dated December 21, 1995, or earlier revisions (for airplanes equipped with General Electric Model CF6–80C2 series engines, or Pratt & Whitney PW4000 series engines); or Boeing Alert Service Bulletin 747–54A2157, Revision 2, dated November 14, 1996, or earlier revisions (for airplanes with Rolls Royce Model RB211 series engines); as applicable; constitutes terminating action for the repetitive detailed visual inspections required by paragraphs (a)(1) and (a)(2) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on January 8, 1997, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–26–52, issued on December 20, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 23, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–114 Filed 1–2–97; 8:45 am]

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14 CFR Part 39

[Docket No. 96–NM–277–AD; Amendment 39–9870; AD 96–26–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires a one-time inspection to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, this action also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This amendment is prompted by an FAA determination that an environment conducive to vibration exists in the conduit and wire bundles of the boost pumps and of the auxiliary tank jettison pumps, which can cause abrasion of the Teflon sleeving and subsequent abrasion of the wires in the bundles. The actions specified in this AD are intended to detect and correct such abrasion, which could result in electrical arcing between the wires and the aluminum conduit and subsequent fire or explosion of the fuel tank.

DATES: Effective January 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On July 17, 1996, a Boeing Model 747 series airplane broke up during climb over the Atlantic Ocean after takeoff from John F. Kennedy International Airport, Jamaica, New York. Although the National Transportation Safety Board (NTSB) has not determined the cause of the accident, it has identified mechanical failure as one possible cause. The NTSB also stated that the center fuel tank exploded at some time during the accident. However, the NTSB has not determined if that explosion was the cause of the accident or the result of some other event. Following the accident, the FAA began investigating potential failures that could result in ignition sources in the fuel tanks installed on Model 747 series airplanes.

Other Relevant Rulemaking and Survey

As part of its investigation, the FAA reviewed the actions required by certain existing AD's, and the results of a survey conducted on in-service Model 747 series airplanes, as discussed below.

In 1979, the FAA issued AD 79–05–04, amendment 39–3431 (44 FR 12636, March 8, 1979). That AD was prompted by a report indicating that the fuel pump wires in an aluminum conduit in an auxiliary fuel tank on a Model 747 series airplane chafed through the insulation. Electrical arcing from the chafed wire to the aluminum conduit caused a hole in the conduit; however, the arcing did not cause a fire or explosion. The hole in the conduit was discovered because fuel leaked through the hole and out of the conduit at the rear spar.

AD 79–05–04 required discontinuing the use of the auxiliary fuel tanks, draining fuel from those tanks, and opening and collaring the circuit breakers for the auxiliary tank jettison pumps. Those actions were required to be accomplished prior to further flight. The actions required by that AD affected 10 Model 747–200 series airplanes, unless Teflon sleeving had been installed on the wire bundles in accordance with Boeing Alert Service Bulletin 747–28A2091, Revision 1, dated February 5, 1979, or unless the pumps had been deactivated previously in accordance with Boeing Service

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Bulletin 747–28–2067, dated November 11, 1977. The FAA has been advised that use of the fuel tanks has been discontinued on eight of the affected airplanes, and that Teflon sleeving has been installed on the wire bundles of two of the affected airplanes.

Following the issuance of AD 79–05–04, a survey involving an inspection of the wires in the conduits for the numbers 1 and 4 fuel tank pumps was conducted on approximately 26 in-service Model 747 series airplanes. The results of that survey revealed that numerous wires in these conduits were chafing against the conduit. Although none of the wires inspected at that time had worn completely through the insulation, chafing through up to 80 percent of the total insulation thickness was found on numerous wires.

Based on these survey results, the FAA issued AD 79–06–02, amendment 39–3439 (44 FR 16362, March 19, 1979). That AD requires an inspection, repair, and modification of the outboard main fuel tanks (numbers 1 and 4) boost pump wires in the conduits located in the inboard main fuel tanks (numbers 2 and 3) on Model 747 series airplanes. Any chafed wires are required to be replaced, and Teflon sleeving is to be installed to prevent chafing or abrasion of the wires against the conduit. Those actions were required to be accomplished within 750 hours time-in-service or 2 months, whichever occurred first, after the airplane had accumulated either 6,000 or 30,000 total hours time-in-service, depending upon the type of wires installed. The modification required by AD 79–06–02 involves tying the wires together every six inches and installing two concentric Teflon sleeves over the wire bundle. The requirements of that AD were intended to prevent abrasion of the electrical wires of the fuel tank boost pumps.

Background Information

The numbers 1 and 4 main fuel tanks (outboard main tanks) on Model 747 series airplanes each have two boost pumps that are located in dry bays ("dog houses") inside the numbers 2 and 3 main fuel tanks (inboard main tanks). The electrical power for these boost pumps is supplied by wiring routed through aluminum conduits inside the inboard main tanks. These conduits begin at the wing rear spar and end at the boost pump dog houses. The wires are separated from the conduit by two concentric Teflon sleeves that are installed over the wire bundles.

The auxiliary tank jettison pumps, if installed, are located in the auxiliary fuel tanks. These pumps are mounted in dog houses inside the auxiliary fuel tanks. The electrical power for these pumps is routed through aluminum conduit inside the auxiliary fuel tanks, similar to the conduit of the boost pumps for the numbers 1 and 4 main fuel tanks.

Vibration of the conduit and wire bundles can cause abrasion of the Teflon sleeving, which could lead to abrasion of the wires in the bundles. Such abrasion, if not corrected, could result in electrical arcing between the wires and the aluminum conduit and subsequent fire or explosion of the fuel tank.

FAA's Determinations

The FAA finds that an environment conducive to vibration still exists in the conduit and wire bundles of the fuel boost pumps and the auxiliary tank jettison pumps (if installed). The FAA has determined that wire chafing has occurred on Model 747 series airplanes inside other conduits located outside the main fuel tanks in the vicinity of the conduits addressed in AD 79–06–02. In some cases, chafing through both the Teflon sleeving and the wire insulation has occurred on these airplanes [reference AD 96–03–14, amendment 39–9511 (61 FR 6500, February 21, 1996), and AD 89–14–04, amendment 39–6246 (54 FR 27157, June 28, 1989)]. The FAA concludes that follow-on inspections of the Teflon sleeving must be accomplished to determine if the sleeving continues to provide a protective barrier after extended time in service.

Explanation of Relevant Service Information

The FAA reviewed and approved Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, which describes procedures for a one-time inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the wire bundles of the auxiliary tank jettison pumps (if installed); and repair or replacement of damaged parts with new parts. For airplanes on which any burned wires are found, the alert service bulletin describes procedures for an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks, which could result in electrical arcing between the wires and the aluminum conduit and subsequent fire or explosion of the fuel tank. This AD requires a one-time inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, this AD requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires that operators submit a report of inspection results to the FAA. In addition, this AD requires that operators submit damaged Teflon sleeving, wires, and conduits to the FAA.

Boeing Model 747 series airplanes having line numbers 433 and subsequent are equipped with fuel pump wire conduits made from corrosion-resistant steel (stainless steel). Arcing from the fuel pump wires to the stainless steel conduit will result in opening the fuel pump circuit breaker before sufficient heat is generated to penetrate the stainless steel conduit. The FAA is considering additional rulemaking to require replacing the aluminum conduits located in the fuel tanks with stainless steel conduits following accomplishment of the one-time inspection required by this AD. The details of the requirement to replace the aluminum conduits with stainless steel conduits will be finalized after reviewing the reports of inspection results required by this AD.

Additionally, the FAA recognizes that the degree of wear or damage to the parts may be difficult to describe in a written report of inspection results. Consequently, the FAA finds it necessary to require that any damaged parts be submitted to the FAA for examination. Examination of these parts will enable the FAA to determine whether a need exists to require future replacement of aluminum conduits with stainless steel conduits, and to develop appropriate compliance times based on the extent of wear or damage found.

Justification of Compliance Time

The required compliance time of 120 days is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, that compliance time was selected in order to allow the requirements of the AD to be performed at a maintenance base where special equipment and trained maintenance personnel will be available without significant disruption of normal operations. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required one-time inspection as soon as possible.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–277–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–26–06 Boeing: Amendment 39–9870. Docket 96–NM–277–AD.

Applicability: Model 747 series airplanes having line numbers up through 432, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and the aluminum conduit and subsequent fire or explosion of the fuel tank, accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a one-time inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the wire bundles of the auxiliary tank jettison pumps (if installed), in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996.

(1) If any damaged sleeving is found, prior to further flight, replace the sleeving with new sleeving in accordance with the alert service bulletin.

(2) If any damaged wire is found, prior to further flight, repair or replace the wire with new wire in accordance with the alert service bulletin.

(3) If any burned wire is found, prior to further flight, perform an inspection to detect damage of the conduit, in accordance with the alert service bulletin. If any damage is found, prior to further flight, replace the conduit with a serviceable conduit in accordance with the alert service bulletin.

(b) Within 14 days after accomplishing the requirements of paragraph (a) of this AD, submit a report of inspection results to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; fax (206) 227–1181. The report shall include the information specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The airplane serial number.

(2) The total hours time-in-service accumulated on the airplane.

(3) The total number of flight cycles accumulated on the airplane.

(4) A description of any damage found.

(5) The location where the damaged part was installed.

(c) If any damaged sleeving, wire, or conduit is found during any inspection

required by this AD, within 14 days after accomplishing the inspection, submit the damaged part to the Manager, Seattle ACO, along with the report of inspection results required by paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 21, 1997.

Issued in Renton, Washington, on December 23, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–33105 Filed 12–31–96; 12:23 pm]

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14 CFR Part 39

[Docket No. 96–ANE–37; Amendment 39–9874; AD 97–01–03]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Textron Lycoming reciprocating engines. This action requires removal from service of defective piston pins, and replacement with serviceable parts. This amendment is prompted by a report of failure of a piston pin. The actions specified in this AD are intended to prevent piston pin failure, which could result in engine failure.

DATES: Effective January 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–37, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7278, fax (717) 327–7022. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri and Pat Perrotta, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256–7526 and (516) 256–7534, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report of metal detected in an engine oil filter on a Textron Lycoming Model AEIO–540–L1B5 reciprocating engine. The investigation revealed the metal in the oil filter was caused by a failed piston pin, Part Number (P/N) LW–14077. Failure of the piston pin may cause puncturing of the engine crankcase by the piston rod resulting in the loss of oil leading to total power failure and possible fire. Failure of the piston pin may also cause jamming of the engine crankcase by the piston rod resulting in total power failure. The FAA has determined that a quantity of piston pins, marked with code 17328, were produced that did not meet manufacturing specifications. The defects are grooves in the piston pin created during manufacturing that result in the fatigue failure of the pins. Textron Lycoming has notified the FAA of three piston pin failures that were reported at 50, 62.4 and 386 hours total time in service (TIS) with the defective piston pin installed. This condition, if not corrected, could result in piston pin failure, which could result in engine failure.

The FAA has reviewed and approved the technical contents of Textron Lycoming Mandatory Service Bulletin (SB) No. 527B, dated October 8, 1996, that lists serial numbers (S/Ns) of engines manufactured, remanufactured, or overhauled by Textron Lycoming during the time period that defective piston pins could have been installed, and describes procedures for removal from service of defective piston pins, and replacement with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent piston pin failure, which could result in engine failure. This AD requires removal from service of defective piston pins, and replacement with serviceable parts. The actions are required to be accomplished in accordance with the Mandatory SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

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concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–37." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–03 Textron Lycoming: Amendment 39–9874. Docket 96–ANE–37.

Applicability: Textron Lycoming O–320, IO–320, AEIO–320, O–360, LO–360, IO–360, LIO–360, VO–360, IVO–360, HO–360, HIO–360, AIO–360, AEIO–360, TIO–360, TO–360, O–540 (except O–540–J1A5D, –J1C5D, –J2A5D, –J3A5D, –J3C5D, –L3C5D), IO–540 (except IO–540–W1A5D, –W3A5D, –AB1A5), AEIO–540, TIO–540, LTIO–540, TIO–541, TIGO–541, and IO–720 series reciprocating engines, that meet any one of the following conditions:

1. Engines with serial numbers (S/Ns) listed in Textron Lycoming Mandatory Service Bulletin (SB) No. 527B, dated October 8, 1996; or

2. Engines that had Textron Lycoming cylinder kits installed after December 15, 1995; or

3. Engines that have been overhauled, or had cylinder head maintenance performed, by a repair facility other than Textron Lycoming after December 15, 1995. These engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Aerospatiale, Bellanca, Cessna, The New Piper Company, Beech, Schweizer, Maule, and Mooney.

Note 1: A maintenance records check may allow an owner or operator to determine if this AD applies.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent piston pin failure, which could result in engine failure, accomplish the following:

(a) For engines with S/Ns listed in Textron Lycoming Mandatory SB No. 527B, dated October 8, 1996, accomplish the following:

(1) Check the piston pin code in accordance with Textron Lycoming SB No. 527B, dated October 8, 1996 in accordance with the following schedule:

(i) For engines with 45 hours or more time in service (TIS) since the engine was shipped from Textron Lycoming, since overhaul, since installation of a cylinder kit, or since installation of a replacement piston pin, as applicable, accomplish within 5 hours TIS after the effective date of this AD.

(ii) For engines with less than 45 hours TIS since the engine was shipped from Textron Lycoming, since overhaul, since installation of a cylinder kit, or since installation of a replacement piston pin, as applicable, accomplish prior to accumulating 50 hours TIS since the applicable date.

(2) Remove from service piston pins, Part Number (P/N) LW–14077, code 17328, and replace with serviceable piston pins.

(b) For all other affected engines, determine if a suspect piston pin, P/N LW–14077, code 17328 could have been installed, in accordance with Textron Lycoming Mandatory SB No. 527B, dated October 8, 1996, and accomplish the following:

(1) If it is determined that suspect piston pins, P/N LW–14077, code 17328 could have been installed, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(2) If it is determined that suspect piston pins, P/N LW–14077, code 17328 could not have been installed, no further action is required.

(3) If it cannot be determined if the suspect piston pins, P/N LW–14077, code 17328 were installed, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(c) For purposes of this AD a serviceable piston pin is a piston pin, P/N LW–14077, with a piston pin code of "BN" or "71238." Installation of a piston pin, P/N LW–14077, with a piston pin code of "17328" is prohibited after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following Textron Lycoming Mandatory SB:

Document No.	Pages	Date
527B	1–3	October 8, 1996.
Attachment	1–6	October 8, 1996.
Total pages.	9	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7278, fax (717) 327–7022. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 21, 1997.

Issued in Burlington, Massachusetts, on December 26, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–33399 Filed 12–31–96; 12:23 pm]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AEA–11]

Amendment to Class E Airspace, Staunton, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Staunton, VA, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 23 at Shenandoah Valley Regional Airport. This amendment also corrects the airspace description of the Staunton, VA Class E airspace are, published as a Notice of Proposed Rulemaking in the **Federal Register** November 1, 1996 (61 FR 56480). The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 1, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Staunton, VA, (61 FR 56480). This action would provide adequate Class E airspace for IFR operations at Shenandoah Valley Regional Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies Class E airspace area at Staunton, VA, to accommodate a GPS RWY 23 SIAP and for IFR operations at Shenandoah Valley Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Staunton, VA [Revised]

Shenandoah Valley Regional Airport, VA
(lat. 38°15′50″N., long. 78°53′47″W.)
Bridgewater Air Park, VA
(lat. 38°22′00″N., long. 78°57′37″W.)
Bridgewater NDB
(lat. 38°21′56″N., long. 78°57′40″W.)
STAUT NDB
(lat. 38°12′06″N., long. 78°57′26″W.)

That airspace extending upward from 700 feet above the surface within a 10.5–mile radius of the Shenandoah Valley Regional Airport and within 8 miles northwest and 4 miles southeast of the Shenandoah Valley Regional Airport localizer southwest course extending from the STAUT NDB to 16 miles southwest of the NDB and within a 6.8–mile radius of Bridgewater Air Park and within 4 miles northwest and 8 miles southeast of the 208° bearing from the Bridgewater NDB extending from the NDB to 16 miles southwest of the NDB.

* * * * *

Issued in Jamaica, New York on December 18, 1996.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–76 Filed 1–2–97; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD75

Supplemental Security Income for the Aged, Blind, and Disabled; Charging Administration Fees for Making State Supplementary Payments; Interest Charging on State Supplementary Payment Funds

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are revising our rules to bring them into accord with statutory changes which require the Social Security Administration (SSA) to charge the States an administration fee for making supplementary payments on behalf of States and authorize SSA to charge the States an additional services fee for performing services not customarily provided at the request of States. We also are conforming our regulations to reflect the requirements of the law regarding the transfer of funds

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from States to SSA for use in making supplementary payments.

EFFECTIVE DATE: These rules are effective February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION

Background

These regulations reflect the provisions of section 13731 of Pub. L. 103–66 (the Omnibus Budget Reconciliation Act (OBRA) of 1993) and Pub. L. 101–453 (the Cash Management Improvement Act (CMIA) of 1990) as amended by Pub. L. 102–589 (the Cash Management Improvement Act Amendments of 1992). From the inception of the supplemental security income (SSI) program in January 1974 through September 1993, SSA did not have the authority to charge States for the costs it incurred in administering mandatory and optional State supplementary payment programs. During that same period of time, SSA did not have specific authority to charge States for the costs it incurred in performing, at the request of the States, services not customarily provided in the administration of State supplementary payment programs.

Section 13731 of Public Law 103–66, effective for supplementary payments made for any month beginning on or after October 1, 1993, requires SSA to charge the States an administration fee for making supplementary payments on behalf of States and authorizes SSA to charge the States an additional services fee for performing services at the request of States not customarily provided.

The CMIA requires that transfers of funds from the States to SSA for the payment of supplementary payments be timed to coincide as closely as possible with disbursements of those funds to eligible individuals. In the case of certain States, transfers which do not occur on due dates and/or which are not in appropriate amounts will cause the imposition of an interest liability on either the States or on the Federal Government in accordance with the regulations of the United States Department of the Treasury implementing the CMIA. The provisions of the CMIA were effective on the later of July 1, 1993, or the first day of the State's fiscal year beginning in 1993. Prior to the effective date of the CMIA, no interest liability was incurred by either the States or the Federal Government on the transfer of funds to SSA for use in making State supplementary payments.

At the outset of the SSI program, States were encouraged to supplement the Federal benefit. As an incentive to provide a supplement, States that agreed to make optional supplementary payments and signed an agreement to have those payments administered by the Federal Government would not be charged a fee for Federal administration. States required to pay mandatory supplementary payments could also enter into agreements providing for Federal administration of those payments at no cost to the States. States electing Federal administration were required to periodically transfer to SSA only amounts equal to the expenditures made by SSA for supplementary payments.

On October 1, 1993, pursuant to amendments made to the Social Security Act (the Act) and to section 212(b)(3) of Public Law 93–66 by section 13731 of Public Law 103–66, SSA began charging States that had elected Federal administration of optional and/or mandatory State supplementary payments a fee for administering those payments. The administration fee is charged monthly and is derived by multiplying the number of State supplementary payments made by SSA on behalf of a State for a month by the applicable dollar rate for the fiscal year (FY), as prescribed in section 13731 of Public Law 103–66. The dollar rates are as follows: for FY 1994, $1.67; for FY 95, $3.33; for FY 96, $5.00; and, for FY 1997 and each succeeding FY, $5.00 or such different rate as determined by SSA to be appropriate for any particular State, taking into account the complexity of administering the State's supplementary payment program. The number of supplementary payments made by SSA in a month is the total number of checks issued, and direct deposits made, to recipients in that month, that are composed in whole or in part of State supplementary funds. The number of supplementary payments include, for example, recurring monthly payments (ongoing monthly payments to individuals who maintain eligibility from the previous month); supplemental payments (payments certified after the date established for the regular transfer of payment data to the United States Department of the Treasury); daily payments (non-recurring initial claims or post-entitlement payments including one-time payments such as those made to correct underpayments); erroneous payments (overpayments and payments to ineligibles); unnegotiated check payments (payments by check not presented for payment by the recipient within 180 days of issuance); replacement checks (duplicate checks issued when recipients allege nonreceipt of original check issuances); and, installment payments of large past-due amounts (payments made over a period of months, the sum of which is equal to amounts due recipients).

Section 13731 of Public Law 103–66 also authorizes SSA to charge a State an additional services fee if, at the request of the State, SSA agrees to provide the State with additional services beyond the level customarily provided in the administration of State supplementary payments. SSA is not required to perform any additional services requested by a State and may, at its sole discretion, refuse to perform those additional services. An additional services fee charged a State may be a one-time charge or, if the furnished services result in ongoing costs to the Federal Government, a monthly or less frequent charge to the State for providing such services. Section 13731 of Public Law 103–66 requires that the additional services fee be in an amount that SSA determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services. Prior to the effective date of section 13731 of Pub. L. 103–66, SSA had no specific authority to impose additional services fees.

The CMIA was enacted to ensure greater efficiency, effectiveness and equity in the exchange of funds between the Federal Government and the States. For purposes of Federal administration of State supplementary payments, the CMIA requires that the transfer of funds from the States to SSA for use in making supplementary payments be timed to coincide as closely as possible with the actual payment of those funds to recipients. While all States are required to comply with the funding techniques of the CMIA, pursuant to the implementing regulations of the United States Department of the Treasury at 31 CFR Part 205, only those States whose State supplementary payment programs meet the requirements of a major Federal assistance program in their respective States are subject to the interest liability provisions of the CMIA. For those States, transfers of supplementary payment funds to SSA which are not made on due dates and/or are not made in appropriate amounts will cause the imposition of an interest liability on either the State, or the

Federal Government. Currently, SSA administers the supplementary payment programs of 25 States and the District of Columbia. The supplementary payment programs of 11 of those States and the District of Columbia meet the requirements of a major Federal assistance program and, thus, are subject to the interest liability provisions of the CMIA.

Each month, States are notified of the amount of funds they must transfer to SSA to be used in the succeeding month to make supplementary payments and to pay administration fees. Notification is made, generally, 7 work days before the end of the month. For purposes of complying with the funding technique requirements of the CMIA and its implementing regulations, all State funds must be received by SSA by the fifth Federal business day following the day the regularly recurring monthly supplementary payments are issued. This date is the State supplementary payment transfer date and represents the dollar-weighted average day of clearance of all SSI/State supplementary payment checks and direct deposits made to individuals in a month. Section 1616(d) of the Act and section 212(b)(3) of Public Law 93–66, as amended by section 13731 of Public Law 103–66, require that the States pay administration fees on the same day they transfer to SSA the amounts necessary to make State supplementary payments. However, the provisions of the CMIA apply only to the amounts transferred to SSA for use in making supplementary payments. Therefore, the interest provisions of the CMIA are inapplicable to the payment of administration fees not made on transfer dates and/or not made in appropriate amounts. However, administration fee payment delinquencies by States are subject to the provisions of the claims collection regulations at 45 CFR Part 30, which include the imposition of interest on amounts due SSA. These Department of Health and Human Services regulations remain applicable after March 30, 1995, to the assessment of interest on delinquent administration fees by SSA pursuant to section 106(b) of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994.

It is not possible for SSA to forecast the precise amount of State expenditures that will be made in the subsequent month. Therefore, the amounts transferred on the State supplementary payment transfer date are based on estimates made by SSA. After the close of the month for which the amounts are transferred, when final expenditure figures become available, those amounts will be revealed to be either more or less than actually expended, therefore triggering an interest liability on either the State or the Federal Government. Prior to the amendments being made by these final rules, SSA's regulations did not reflect the CMIA requirement that supplementary payment funds be transferred to SSA on the date of average clearance of SSI/supplementary payments, nor did they authorize the charging or payment of interest by either SSA or the States with regard to the transfer of State supplementary payment funds.

Regulations Changes

We are amending the regulations at §§ 416.2010(b) and 416.2090 to reflect the provisions of section 13731 of Public Law 103–66 that require SSA to charge States an administrative fee for administering their State supplementary payments and authorize SSA to charge States an additional services fee for services not customarily performed. Examples of services not customarily provided States and thus, for which an additional fee will be charged if SSA agrees to perform them, are presented below. The list is not intended to be inclusive. Any and all additional services performed by SSA at the request of a State will be subject to the services fee, including:

- The collection and/or verification of additional information in the claims or redetermination process which SSA does not now typically or usually collect and/or verify;
- The modification of a supplementary payment level variation or replacement of a supplementary payment level variation, resulting in a variation more labor intensive or otherwise more costly to administer than variations normally administered by SSA;
- The modification or expansion of the existing SSI Quality Assurance sample that would increase the level of reporting usually performed by SSA;
- The development and issuance of notices to SSI/State supplementary payment recipients in the State beyond those normally provided;
- The revision of State supplementary payment amounts which requires software changes in the SSI payment system not otherwise necessary. Such revisions would be other than the customary revisions associated with annual cost-of-living adjustments to the Federal benefit rate;
- The provision of more detailed or frequent accounting data or reports; and
- A service that would require SSA to engage in software development or modification and/or reprogramming efforts not normally undertaken.

We also are amending the regulations at § 416.2090(a)(2) to provide, consistent with our present procedure, that all State funds to be used by SSA to make monthly supplementary payments and to pay administration fees for that month, as estimated by SSA, must be on deposit with SSA by the fifth Federal business day following the day the regularly recurring monthly supplementary payments are issued. This paragraph also provides that any additional services fees are to be on deposit with SSA on the date specified by SSA. In addition, we are amending § 416.2090(b) to clarify that administration and additional services fees are included in SSA's accounting of State funds and to reflect the fact that SSA and the States may now incur interest charges with respect to the adjustment and accounting of State supplementary payment funds in accordance with the CMIA and implementing regulations of the United States Department of the Treasury.

We also are making technical revisions to the regulations in Subpart T that are unrelated to the provisions of OBRA of 1993 and the CMIA. Section 184 of Public Law 97–248, enacted September 3, 1982, phased-out the hold-harmless provisions of the Social Security Act. In order to reflect the fact that these provisions are now obsolete, we are deleting the hold-harmless regulations at §§ 416.2010(b) (except for the last sentence which is unrelated to the hold-harmless protection and which will be inserted at the end of §§ 416.2005(d)), 416.2080, 416.2082, and 416.2085 per SSA's June 1, 1995, report to President Clinton on Eliminating and Improving Regulations, and are amending the regulations at § 416.2050(b)(1) and § 416.2090 (a)(2) and (d). Section 416.2010(d) is being redesignated as § 416.2010(c) and is being revised to indicate that agreements will renew automatically one year after the date they are signed for a period of one year unless the State or SSA gives written notice not to renew at least 90 days before the beginning of the new period. The regulations previously provided that the agreements run until June 30, the Federal government's former end of a fiscal year. This change takes into consideration the fact that States have not signed their agreements on one uniform date. Finally, these rules, in the sections being amended, replace all references to the Secretary of Health and Human Services with references to SSA to reflect Public Law 103–296 which, effective March 31, 1995, established

SSA as an independent agency separate from the Department of Health and Human Services.

Comments on Notice of Proposed Rulemaking

These regulations were published in the **Federal Register** (61 FR 18529) as a notice of proposed rulemaking (NPRM) on April 26, 1996. Interested parties were given 60 days to submit comments. Public comments were received from a State's Governor's office which raised concerns about interest charging on State supplementary funds. We address these concerns in our responses to the comments by elaborating on certain statements we made in the NPRM. We are, therefore, publishing the final rules with no substantive changes from the proposed rules.

Comment: The commenter believes it is contrary to the spirit of CMIA to assess interest when a State timely transmits to SSA the amount of SSI funds requested for a month's disbursements. The NPRM indicates that such interest results because "[i]t is not possible for SSA to forecast the precise amount of State expenditures that will be made in the subsequent month . . .," (61 FR 18529, 18530) which the commenter sees as an explicit admission that SSA procedures require improvement.

The commenter stated that in conversations with SSA on this subject, it was explained that necessary adjustments occurring subsequent to the payment due date affect the final monthly figures. This could and does result in differences between the amounts estimated by SSA and amounts actually paid out, leading to a calculation of interest due to or from the Federal Government. According to the commenter, a fairer solution to the problem would be for SSA to record the later adjustments and apply them, plus or minus, to the estimates for the succeeding month. These estimates, when timely transmitted by the State, would result in no interest calculation and would be in keeping with the spirit of CMIA.

Response: Pursuant to CMIA, interest has been and will be calculated on the difference between the amount of the State's monthly payment to SSA and the actual amount of monthly outlays for State supplementary payments made by SSA on behalf of the State. The monthly funds requests are developed nearly two months before the actual current month's expenditures are available. SSA does take adjustments into consideration when developing the monthly estimates. However, State supplementary payments are not processed only on the first of each month. Payments and recoveries are processed daily and the volume is unpredictable. By including as many monthly adjustments and payments as possible in the monthly funds request, interest charges to either party are kept to a minimum. The greatest cause of interest to either party is the early or late transfer of State payment funds not the adjustments included in the funds requests.

Comment: The same commenter also addresses the rate of interest SSA uses in calculating a "penalty" for untimely delivery of the processing fees. According to the commenter, SSI is by its nature not a "Federal Assistance Program," which defines the scope of CMIA. However, since the program is specifically covered by CMIA regulations, the commenter accepts its inclusion under CMIA.

The commenter states that CMIA defines the interest rate applicable to programs covered by CMIA, and does not reserve to SSA or any Federal agency the right to charge interest rates other than those calculated in accordance with CMIA; therefore, any interest charged for delinquent payment of processing fees should be subject to CMIA interest rules. The commenter believes that in terms of equity and fairness, SSA cannot have it both ways: either SSI and related fees are subject to CMIA or they are not. If they are subject to CMIA, as it appears, then only one interest rate should apply—that specified by CMIA regulations.

Response: The CMIA is only applicable to funds representing benefit payments to recipients. The administration fees are not covered by CMIA. However, the fees are covered by the claims collection regulations, set forth at Subpart B of 45 C.F.R. Part 30. These regulations require that the Commissioner of Social Security take action to collect debts and reduce delinquencies and generally require the imposition of interest on debts. The interest rate is set by the Secretary of the Treasury after taking into consideration the prevailing private consumer rates of interest. The State is immediately notified of any interest due as a result of a failure to make timely payment of its administrative fee.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These rules impose no reporting/recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: December 19, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Subpart T of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

Subpart T—[Amended]

1. The authority citation for subpart T of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1616, 1618, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382e, 1382g, and 1383); sec. 212, Pub. L. 93–66, 87 Stat. 155 (42 U.S.C. 1382 note); sec. 8(a), (b)(1)–(b)(3), Pub. L. 93–233, 87 Stat. 956 (7 U.S.C. 612c note, 1431 note and 42 U.S.C. 1382e note); secs. 1 (a)–(c) and 2(a), 2(b)(1), 2(b)(2), Pub. L. 93–335, 88 Stat. 291 (42 U.S.C. 1382 note, 1382e note).

2. Section 416.2005 is amended by revising paragraph (a), removing "the Secretary" and adding "SSA" in the heading and each time it appears in paragraphs (b)–(d) and adding a sentence to the end of paragraph (d) to read as follows:

§ 416.2005 Administration agreements with SSA.

(a) *Agreement-mandatory only.* Subject to the provisions of paragraph (d) of this section, any State having an agreement with the Social Security Administration (SSA) under § 416.2001(c) may enter into an administration agreement with SSA under which SSA will make the mandatory minimum supplementary payments on behalf of such State. An agreement under § 416.2001(c) and an

administration agreement under this paragraph may be consolidated into one agreement.

* * * * *

(d) * * * If the State elects options available under this subpart (specified in §§ 416.2015–416.2035), such options must be specified in the administration agreement.

3. Section 416.2010 is amended by removing paragraph (b), redesignating paragraphs (c) through (f) as paragraphs (b) through (e), removing "the Secretary" and adding "SSA" each time it appears in paragraphs (a), (d) and (e), and by revising redesignated paragraphs (b) and (c) to read as follows:

§ 416.2010 Essentials of the administration agreements.

* * * * *

(b) *Administrative costs.* (1) SSA shall assess each State that had elected Federal administration of optional and/or mandatory State supplementary payments an administration fee for administering those payments. The administration fee is assessed and paid monthly and is derived by multiplying the number of State supplementary payments made by SSA on behalf of a State for any month in a fiscal year by the applicable dollar rate for the fiscal year. The number of supplementary payments made by SSA in a month is the total number of checks issued, and direct deposits made, to recipients in that month, that are composed in whole or in part of State supplementary funds. The dollar rates are as follows:

(i) For fiscal year 1994, $1.67;

(ii) For fiscal year 1995, $3.33;

(iii) For fiscal year 1996, $5.00; and

(iv) For fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as determined by SSA to be appropriate for any particular State, taking into account the complexity of administering the State's supplementary payment program.

(2) SSA shall charge a State an additional services fee if, at the request of the State, SSA agrees to provide the State with additional services beyond the level customarily provided in the administration of State supplementary payments. The additional services fee shall be in an amount that SSA determines is necessary to cover all costs, including indirect costs, incurred by the Federal Government in furnishing the additional services. SSA is not required to perform any additional services requested by a State and may, at its sole discretion, refuse to perform those additional services. An additional services fee charged a State may be a one-time charge or, if the furnished services result in ongoing costs to the Federal Government, a monthly or less frequent charge to the State for providing such services.

(c) *Agreement period.* The agreement period for a State which has elected Federal administration of its supplementary payments will extend for one year from the date the agreement was signed unless otherwise designated. The agreement will be automatically renewed for a period of one year unless either the State or SSA gives written notice not to renew, at least 90 days before the beginning of the new period. For a State to elect Federal administration, it must notify SSA of its intent to enter into an agreement, furnishing the necessary payment specifications, at least 120 days before the first day of the month for which it wishes Federal administration to begin, and have executed such agreement at least 30 days before such day.

* * * * *

§ 416.2050 [Amended]

4. Paragraph (b)(1) of section 416.2050 is amended by removing the phrase "(as defined in § 416.2085(e))" and removing "the Secretary" and adding "SSA" each time it appears.

§ 416.2080 [Removed]

5. Section 416.2080 is removed.

§ 416.2082 [Removed]

6. Section 416.2082 is removed.

§ 416.2085 [Removed]

7. Section 416.2085 is removed.

8. Section 416.2090 is amended by removing "the Secretary" and adding "SSA" each time it appears in paragraph (c), by removing the phrase "for purposes of § 416.2080" at the end of paragraph (d), and by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 416.2090 State funds transferred for supplementary payments.

(a) *Payment transfer and adjustment.* (1) Any State which has entered into an agreement with SSA which provides for Federal administration of such State's supplementary payments shall transfer to SSA:

(i) An amount of funds equal to SSA's estimate of State supplementary payments for any month which shall be made by SSA on behalf of such State; and

(ii) An amount of funds equal to SSA's estimate of administration fees for any such month determined in the manner described in § 416.2010(b)(1); and

(iii) If applicable, an amount of funds equal to SSA's determination of the costs incurred by the Federal government in furnishing additional services for the State as described in § 416.2010(b)(2).

(2) In order for SSA to make State supplementary payments on behalf of a State for any month as provided by the agreement, the estimated amount of State funds referred to in paragraph (a)(1)(i) of this section, necessary to make those payments for the month, together with the estimated amount of administration fees referred to in paragraph (a)(1)(ii) of this section, for that month, must be on deposit with SSA on the State supplementary payment transfer date, which is the fifth Federal business day following the day in the month that the regularly recurring monthly supplemental security income payments are issued. The additional services fee referred to in paragraph (a)(1)(iii) of this section shall be on deposit with SSA on the date specified by SSA. The amount of State funds paid to SSA for State supplementary payments and the amount paid for administration fees will be adjusted as necessary to maintain the balance with State supplementary payments paid out by SSA on behalf of the State, and administration fees owed to SSA, respectively.

(b) *Accounting of State funds.* (1) As soon as feasible, after the end of each calendar month, SSA will provide the State with a statement showing, cumulatively, the total amounts paid by SSA on behalf of the State during the current Federal fiscal year; the fees charged by SSA to administer such supplementary payments; any additional services fees charged the State; the State's total liability therefore; and the end-of-month balance of the State's cash on deposit with SSA.

(2) SSA shall provide an accounting of State funds received as State supplementary payments, administration fees, and additional services fees, within three calendar months following the termination of an agreement under § 416.2005.

(3) Adjustments will be made because of State funds due and payable or amounts of State funds recovered for calendar months for which the agreement was in effect. Interest will be incurred by SSA and the States with respect to the adjustment and accounting of State supplementary payments funds in accordance with applicable laws and regulations of the United States Department of the Treasury.

* * * * *

[FR Doc. 97–39 Filed 1–2–97; 8:45 am]

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency for International Development

22 CFR Part 228

RIN 0412–AA28

Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development; Correction

AGENCY: United States Agency for International Development (USAID), IDCA.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (22 CFR Part 228) which were published Tuesday, October 15, 1996 (61 FR 53615). The regulations cover USAID's rules on source, origin and nationality for commodities and services financed by USAID.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen J. O'Hara, Office of Procurement, Procurement Policy Division (M/OP/P), USAID, Room 1600A, SA–14, Washington, DC 20523–1435. Telephone (703) 875–1534, facsimile (703) 875–1243.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections was effective on November 14, 1996.

Need for Correction

As published, the final rule contains errors which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication on October 15, 1996 of the final rule, which were the subject of FR Doc. 96–26246, is corrected as follows:

§ 228.11(b) [Corrected]

1. On page 53618, in the first column, in § 228.11, paragraph (b) is corrected by removing "non-Free World" and putting "foreign policy restricted" in its place.

§ 228.13 [Corrected]

2. On page 53618, in the second column, in § 228.13, paragraph (b) is corrected by deleting the fifth sentence, which begins on line 23 of the paragraph.

§ 228.14 [Corrected]

3. On page 53628, in the third column, in § 228.14, paragraph (c)(2) is corrected by deleting "Deputy Assistant Administrator for Management (DAA/M)" and putting "Procurement Executive" in its place.

§ 228.22 [Corrected]

4. On page 53619, in the second column, in § 228.22, paragraph (d), the word "agreement" at the end of the paragraph is corrected to read "agreements".

§ 228.37 [Corrected]

5. On page 53621, in the first column, in § 228.37, paragraph (b), line nine is corrected by adding the word "Director" after "Mission".

§ 228.51 [Corrected]

6. On page 53622, in the first column, in § 228.51, paragraph (c) is corrected by adding: "In no event, however, shall procurement be from a non-Code 935 source." at the end of the paragraph.

Dated: December 13, 1996.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 97–63 Filed 1–2–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 9

[AG ORDER No. 2064–96]

RIN 1105–AA23

Revision of Regulations Governing the Remission or Mitigation of Civil and Criminal Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends and adopts rules that govern the processing of petitions for remission and mitigation of forfeitures by the Criminal Division, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service of the Department of Justice. The amendments are made in an effort to ameliorate the harsh results in individual forfeiture cases and to provide relief to innocent persons whose property is used by others for criminal purposes.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy L. Rider, Deputy Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice, Washington, DC 20530, telephone (202) 514–1263. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This order amends 28 CFR part 9 primarily so the Department can transfer forfeited assets to victims of the offense or related offenses underlying particular forfeiture actions. Under the current regulations, standing to seek remission or mitigation is limited to parties having a present legally cognizable interest in the forfeited property (*e.g.*, owners, lienholders), and unless a particular victim has such an interest, forfeited assets cannot be used to restore property to those victimized by the criminal conduct. The amendments permit the Department to transfer certain forfeited assets to victims of certain fraud-type offenses who lack a present ownership interest in particular forfeited assets but who are victims of the offense underlying the forfeiture or related offense where the applicable statutes allow such a transfer. These regulations also clarify certain ambiguities in the present regulations pertaining to who has standing to file petitions for remission. The notice of proposed rulemaking for these regulations was published in the **Federal Register** on June 29, 1994 (59 FR 33457).

Comments

The Department received five comments during the comment period that ended July 29, 1994. Three of the comments pertained to issues relating to the use of remission to transfer seized and forfeited property to victims of the criminal or criminal conduct. Two of the comments concerned the manner in which victims' interests are treated under the new regulations. The purpose of remission is not to effect restitution to all victims of crime, but rather to ameliorate the hardship that may result from forfeiture to those who (i) have an ownership interest in the property, and (ii) others who, even though they do not have a cognizable interest in the property, have incurred a monetary loss as a result of the same underlying or related criminal offense and who are uninvolved in or unaware of the underlying criminal activity that resulted in the forfeiture. Restitution, on the other hand, a remedy that is often confused with remission, is available as an equitable remedy designed to make parties whole and to prevent unjust enrichment.

The Department believes the definition of victim for purposes of the relevant statutes is included in the definition of an owner as found at section 9.2(1), where the victim has a legally cognizable interest in the forfeited property. Victims who do not

have a legally cognizable interest in the property that has been seized and forfeited, but have been victimized by the criminal from whom the property was seized are non-owners and are, to the extent the Department may recognize those interests, covered by section 9.8.

One of the two comments concerning victims suggested the regulation's definition of the word victim be expanded to include an owner-victim, whose ownership interest is based on the fact that the forfeited property was acquired with property wrongfully taken from him, but where the forfeiture was not based on an offense underlying the victim's loss. The example cited was that of a thief who steals money and buys a car that is subsequently forfeited for an offense unrelated to the theft. The concern is that the person from whom the thief stole the money would not be a victim covered under the regulations if the forfeiture was based on an offense unrelated to the theft. The commenter is mistaking remission for restitution. If the government seized and forfeited the stolen money for a reason unconnected to the theft, and the money was clearly taken in the theft, the money would be restored to the individual from whom it had been stolen as the rightful owner. If the thief used stolen money to purchase a vehicle that was subsequently forfeited for a reason unconnected to the theft, the government would not be able to restore the stolen money, nor the vehicle purchased with stolen money, for many practicable and evidentiary reasons, unless the victim clearly established a legally cognizable interest in the forfeited property and thus demonstrated his interest as that of an "owner" under section 9.2(l).

Another commenter stated that sections 9.2(v) and 9.8 are inconsistent, in that section 9.2(v) only applies to victims of the offense underlying a forfeiture and excludes or of [a] related offense, which appears in section 9.8. The commenter was correct and the distinction is purposeful. As noted, there is a difference between section 9.2(v) and section 9.8 victims: section 9.2(v) covers owners, who have been victimized by the criminal conduct that was the basis of the forfeiture, while section 9.8 covers non-owners who have been victimized by the criminal conduct that was the basis of the forfeiture or related to the forfeiture. For example, section 9.8 would address victims of a mail fraud scheme where the forfeiture is brought pursuant to the RICO statute—18 U.S.C. § 1963, where such a person would not be covered by section 9.2(v).

Because the sections were drafted to address different types of victims for the reasons previously given, the suggestion to align the two definitions of "victim" would be inconsistent with the purpose and intent of these regulations.

The third comment concerning victims issues maintained that the regulations do not appear to have been drafted with an emphasis on forfeiture cases that arise out of financial crimes, *i.e.*, schemes to defraud banks and individuals. The regulations implement federal laws, and relate to the remission of forfeitures conducted pursuant to statutes such as sections 981 and 982 of title 18, United States Code, which permit the forfeiture of the proceeds of certain bank fraud violations, as well as the criminal proceeds of other violations of federal law predicated on schemes to defraud.

Another comment suggested that the regulations ignored forfeitures under title 26, for failure to file Currency Transaction Reports (CTRs), and title 31, for failure to file Currency and Monetary Instrument Reports (CMIRs). It stated that since these statutes do not contain innocent owner provisions, there is no avenue for remission or mitigation for individuals who are affected by title 26 or title 31 forfeitures. The Department of Justice responds by pointing out that section 9.5(a)(1)(ii) specifically provides that "[i]f the applicable civil forfeiture statute contains no innocent owner defense, the innocent owner provisions applicable to 21 United States Code § 881(a)(4) shall apply."

The last comment suggested that section 9.6(f)(1)(iii) be amended to allow a judgment creditor to be recognized if he or she had no knowledge of the acts giving rise to the forfeiture at the time of the transaction upon which the judgment was based instead of requiring the creditor to have no knowledge "at the time the judgment became a lien on the forfeited property." The Department responds that section 9.6(f)(1)(iii) is necessarily consistent with the time-of-knowledge standard applicable to *all* petitioners pursuant to section 9.5. The suggested amendment must be rejected as it would provide judgment creditors with an unfair advantage over other petitioners in the petition for remission process.

Recent changes in the Immigration and Naturalization Service organizational structure have modified internal decision-making authority. Accordingly, under section 9.1(b)(1), authority to grant remission and mitigation is now delegated to the INS Regional Directors.

The Department has deleted the last sentence of the definition of the term "owner" in section 9.2(l), which provided that "[t]he mere existence of a community property interest without proof of financial contribution to the purchase of the property will not be deemed sufficient to support a petition." This provision was included to guard against spouses of drug dealers and other criminals obtaining a windfall from the proceeds of illegal activities where the petitioning spouse made no financial contribution to the purchase of the property at issue. Though this rationale remains a concern, the sweep of the provision was unduly broad, possibly precluding meritorious petitions by innocent spouses claiming an ownership interest under state community property laws. Accordingly, the Department will review petitions predicated upon state community property laws on a case-by-case basis and may deny such petitions where the petitioning spouse would be unjustly enriched by the proceeds of the offending spouse's criminal wrongdoing.

The Department has made other technical changes in section 9.8 which do not require an additional notice and comment period.

Other Matters

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review; accordingly, it has been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 9

Administrative practice and procedure, Crime, Seizures and forfeitures.

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509 and 510, 28 CFR part 9 is revised to read as follows:

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PART 9—REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

Sec.

9.1 Authority, purpose, and scope.
9.2 Definitions.
9.3 Petitions in administrative forfeiture cases.
9.4 Petitions in judicial forfeiture cases.
9.5 Criteria governing administrative and judicial remission and mitigation.
9.6 Special rules for specific petitioners.
9.7 Terms and conditions of remission and mitigation.
9.8 Provisions applicable to victims.
9.9 Miscellaneous provisions.

Authority: 28 U.S.C. 509, 510, 515–518, 524; 8 U.S.C. 1324; 15 U.S.C. 1177; 17 U.S.C. 509; 18 U.S.C. 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 U.S.C. 1613, 1618; 21 U.S.C. 853, 881; 22 U.S.C. 401.

§ 9.1 Authority, purpose, and scope.

(a) *Purpose.* This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Criminal Division. The purpose of the regulations in this part is to provide a basis for ameliorating the effects of forfeiture through the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(b) *Authority to grant remission and mitigation.* (1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Immigration and Naturalization Service, authority to grant remission and mitigation is delegated to the INS Regional Directors.

(2) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division.

(3) The powers and responsibilities delegated by these regulations in this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) The time periods and internal requirements established in this part are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. The regulations will apply to all decisions on petitions for remission or mitigation made on or after February 3, 1997. The regulations will apply to decisions on requests for reconsideration of a denial of a petition under §§ 9.3(j) and 9.4(k) only if the initial decision on the petition was made under the provisions of this part effective on February 3, 1997.

(d) This part governs any petition for remission filed with the Attorney General and supersedes any Department of Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part. In particular, this part supersedes the provisions of 21 CFR 1316.79 and 1316.80, which contain remission and mitigation procedures for property seized for narcotics violations. The provisions of 8 CFR 274.13 through 274.19 and 28 CFR 8.10, which concern non-drug related forfeitures, are also superseded by this part where those regulations relate to remission and mitigation.

§ 9.2 Definitions.

As used in this part:

(a) The term *administrative forfeiture* means the process by which property may be forfeited by an investigative agency rather than through judicial proceedings.

(b) The term *appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(c) The term *Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund or Department of the Treasury Asset Forfeiture Fund, depending upon the identity of the seizing agency.

(d) The term *Attorney General* means the Attorney General of the United States or his or her designee.

(e) The term *beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(f) The terms *Chief, Asset Forfeiture and Money Laundering Section*, and *Chief*, refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.

(g) The term *general creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(h) The term *judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

(i) The term *judicial forfeiture* means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(j) The term *lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(1) Was established by operation of law or contract;

(2) Was created as a result of an exchange of money, goods, or services; and

(3) Is perfected against the specific property forfeited for which remission or mitigation is sought (*e.g.*, a real estate mortgage; a mechanic's lien).

(k) The term *net equity* means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

(l) The term *owner* means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense, as

defined in paragraph (v) of this section, may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

(m) The term *person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(n) The term *petition* means a petition for remission or mitigation of forfeiture under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

(o) The term *petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property, under the regulations in this part. A petitioner may be an owner as defined in § 9.2(l), a lienholder as defined in § 9.2(j), or a victim as defined in § 9.2(v), subject to the limitations of § 9.8.

(p) The term *property* means real or personal property of any kind capable of being owned or possessed.

(q) The term *record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence; a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture; or two convictions for a related crime at any time in the past.

(r) The term *related crime* as used in § 9.2(q) and § 9.6(e) means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the federal laws relating to drugs, a related crime would be any offense involving a violation of the federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

(s) The term *related offense* as used in § 9.8 means:

(1) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(2) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

(t) The term *Ruling Official* means any official to whom decision making authority has been delegated pursuant to § 9.1(b).

(u) The term *seizing agency* means the federal agency that seized the property or adopted the seizure of another agency for federal forfeiture.

(v) The term *victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation inheritance, or otherwise form the actual victim, unless that person has acquired an actual ownership interest in the forfeited property.

(w) The term *violator* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

§ 9.3 Petitions in administrative forfeiture cases.

(a) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the forfeited property is placed into official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(b) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in § 9.2(o) or as prescribed in §§ 9.9(g) and (h).

(c) *Contents of petition.* (1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) A complete description of the property, including make, model, and serial numbers, if any; and

(iv) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

(2) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(d) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in paragraph (c) of this section, upon request, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(e) *Filing petition with agency.* (1) A petition for remission or mitigation subject to administrative forfeiture shall be addressed to the appropriate federal agency as follows:

(i) Drug Enforcement Administration, Office of Chief Counsel, Street Address: 700 Army Navy Drive, Arlington, VA 22202

Mailing Address: P.O. Box 28356, Washington, D.C. 20038.

(ii) Federal Bureau of Investigation, Special Agent in Charge, Field Office that seized the property.

(iii) Immigration and Naturalization Service District Director, Chief Patrol Agent, or Regional Asset Forfeiture Office at location with jurisdiction over the forfeiture proceeding.

(2) The petition is to be sent to the official address provided in the notice of seizure and shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in § 9.9(g). The Chief of the Asset Forfeiture and Money Laundering Section is delegated authority to amend the address of the official to whom petitions may be sent from time to time, as necessary, by publishing notice of the change of address in the **Federal Register**. Failure to publish a notice of change of address in the **Federal Register** shall not alter the authority of the Ruling Official to determine petitions for remission or mitigation nor the obligation of a petitioner to file a petition at the address provided in the notice of seizure. Failure to publish a notice of change of address in the **Federal Register** shall not be grounds for expanding the time for filing a petition for remission or mitigation under the regulations in this part.

(f) *Agency investigation.* Upon receipt of a petition, the seizing agency shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(g) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official for the seizing agency

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shall review the petition and the report, and shall rule on the merits of the petition. No hearing shall be held.

(h) *Petitions granted.* If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney. A copy shall also be sent to the United States Marshals Service or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(i) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the United States Marshals Service or other property custodian. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (j) of this section.

(j) *Request for reconsideration.* (1) A request for reconsideration of the denial of the petition shall be considered if:

(i) It is postmarked or received by the office of the Ruling Official within ten (10) days from the receipt of the notice of denial of the petition by the petitioner; and

(ii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(2) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(k) *Restoration of proceeds from sale.* (1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or leinholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(2) Such a petition shall be submitted pursuant to paragraphs (b) through (e) of this section within ninety (90) days of the date the property is sold or otherwise disposed of.

§ 9.4 Petitions in judicial forfeiture cases.

(a) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of seizure shall include the title of the Ruling Official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(b) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in § 9.2(o) or as prescribed in § § 9.9 (g) and (h).

(c) *Contents of petition.* (1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) The district court docket number;

(iv) A complete description of the property, including the address or legal description of real property, and make, model, and serial numbers of personal property, if any; and

(v) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, mortgages, deeds, or other documentary evidence.

(2) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(d) *Releases.* In addition to the content of the petition for remission or mitigation set forth in paragraph (c) of this section, the petitioner, upon request, also shall furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing the interest in such property.

(e) *Filing petition with Department of Justice.* A petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in § 9.9(g); and shall be submitted to the United States Attorney for the district in which the judicial forfeiture proceedings are brought. A petitioner also shall submit a copy of the petition to the seizing agency in the judicial district in which the seizure occurred as specified in the notice of seizure, except in Drug Enforcement Administration cases, where the copy shall be submitted to Drug Enforcement Administration Headquarters, Office of Chief Counsel, P.O. Box 28356, Washington, D.C. 20038, or 700 Army Navy Drive, Arlington, VA 22202.

(f) *Agency investigation and recommendation; United States Attorney's recommendation.* Upon receipt of a petition, the United States Attorney shall direct the seizing agency to investigate the merits of the petition based on the information provided by the petitioner and the totality of the agency's investigation of the underlying basis for forfeiture. The agency shall submit to the United States Attorney a report of its investigation and its recommendation on whether the petition should be granted or denied. Upon receipt of the agency's report and recommendation, the United States Attorney shall forward to the Chief, Asset Forfeiture and Money Laundering Section, the petition, the seizing agency's report and recommendation, and the United States Attorney's recommendation on whether the petition should be granted or denied.

(g) *Ruling.* The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition in any case in which similar petition has been administratively denied by the seizing agency prior to the referral of the case to the United States Attorney for the institution of forfeiture proceedings.

(h) *Petitons under Internal Revenue Service liquor laws.* The Chief shall accept and consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue Service liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, district courts have exclusive jurisdiction.

(i) *Petitions granted.* If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner or, if represented by an attorney, to the petitioner's attorney, the appropriate

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United States Attorney, the United States Marshals Service or other property custodian, and the appropriate seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult with the United States Attorney as to such terms and conditions, The United States Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the United States Marshals Service or other property custodian.

(j) *Petitions denied.* If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner, or if represented by an attorney, to the petitioner's attorney of record, to the appropriate United States Attorney, the United States Marshals Service or other property custodian, and to the appropriate seizing agency. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Chief at the address provided in the decision, in accordance with paragraph (k) of this section.

(k) *Request for reconsideration.* (1) A request for reconsideration of the denial shall be considered if:

(i) It is postmarked or received by the Asset Forfeiture and Money Laundering Section at the address contained in the decision denying the petition within ten (10) days from the receipt of the notice of denial of the petition by the petitioner; and

(ii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous. A copy of the request must be received by the appropriate United States Attorney within ten (10) days of the receipt of the denial by the petitioner.

(2) In no event shall a request for reconsideration be decided by the Ruling Official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(4) Upon receipt of the request for reconsideration of the denial of a petition, disposition of the property will be delayed pending notice of the decision at the request of the Chief. If the United States Attorney does not receive a copy of the request for reconsideration within the prescribed period, the deposition of the property may proceed.

(l) *Restoration of Proceeds from sale.* (1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a final order of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a final order of forfeiture.

(2) Such a petition must be submitted pursuant to paragraphs (b) through (e) of this section within ninety (90) days of the date the property was sold or otherwise disposed of.

§ 9.5 Criteria governing administrative and judicial remission and mitigation.

(a) *Remission.* (1) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that:

(i) The petitioner has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part; and

(ii) The petitioner is innocent within the meaning of the innocent owner provisions of the applicable civil forfeiture statute, is a bona fide purchaser for value without cause to believe that the property was subject to forfeiture at the time of the purchase, or is one who held a legally cognizable interest in the seized property at the time of the violation underlying the forfeiture superior to that of the defendant within the meaning of the applicable criminal forfeiture statute, and is thereby entitled to recover his or her interest in the forfeited property by statute. (If the applicable civil forfeiture statute contains no innocent owner defense, the innocent owner provisions applicable to 21 U.S.C. 881(a)(4) shall apply.) Unless otherwise provided by statute, in the case of petitioners who acquired their interest in the property after the time of the violation underlying the forfeiture, the question of whether the petitioner had knowledge of the violation shall be determined as of the point in time when the interest in the property was acquired.

(2) The knowledge and responsibilities of petitioner's representative, agent, or employee in paragraph (a)(1)(ii) of this section are imputed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(3) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(4) The Ruling Official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(5) Willful, materially-false statements or information, made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(b) *Mitigation.* (1) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(i) Where the petitioner has not met the minimum conditions for remission, but the Ruling Official finds that some relief should be granted to avoid extreme hardship, and that return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(ii) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Ruling Official, complete relief is not warranted.

(2) The Ruling Officials may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: the lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution,

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manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(3) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Assets Forfeiture Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within twenty (20) days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

§ 9.6 Special rules for specific petitioners.

(a) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as petitioner under this part.

(b) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, the claims of the beneficial owner shall take precedence.

(c) *Voluntary bailments.* A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of § 9.5.

(d) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of § 9.5.

(e) *Straw owners.* A petition by any person who has acquired a property interest recognizable under this part, and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or the regulations in this part, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in § 9.2(r), or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of § 9.5.

(f) *Judgment creditors.* (1) A judgment creditor will be recognized as a lienholder if:

(i) The judgment was duly recorded before the seizure of the property for forfeiture;

(ii) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(iii) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(2) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen property). A judgment creditor is entitled under this part to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney's fees associated with the action that led to the judgment or its collection.

(3) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

§ 9.7 Terms and conditions of remission and mitigation.

(a) *Owners.* (1) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(2) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(3) Where the government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the government in the sale. The Ruling Official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(4) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(b) *Lienholders.* (1) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(i) In the case of remission, the lien is satisfied as determined through the petition process; or

(ii) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency of foreign government.

(2) When the forfeited property is not retained for official use or transferred to another agency or foreign government pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(i) *Return of property.* The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the United States Marshals Service or other property custodian who shall thereafter release the property to the lienholder; or

(ii) *Sale of Property and Payment to Lienholder.* Subject to the provisions of § 9.9(a), upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, at his or her

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discretion, may waive costs and expenses incident to the forfeiture.

(3) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth in paragraph (b)(2) of this section within twenty (20) days of the receipt of notification, the Ruling Official shall direct the United States Marshal or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Assets Forfeiture Fund to the extent of the payment received.

(4) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

§ 9.8 Provisions applicable to victims.

The provisions of this section apply to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). The provisions of this section apply only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. Victims who have a superior present legally cognizable ownership interest in forfeited property may file petitions, as other owners, subject to the regulations set forth in § 9.7(a). The claims of such owner victims, like those of any other owners, shall have priority over the claims of any non-owner victims whose claims are recognized pursuant to this section.

(a) *Qualification to file.* A victim, as defined in § 9.2(v), of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property, if in addition to complying with the other applicable provisions of § 9.8, the victim satisfactorily demonstrates that:

(1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;

(2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;

(3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(b) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest foregone or for collateral expenses incurred to recover lost property or to seek other recompense.

(c) *Torts.* A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(d) *Denial of petition.* In the exercise of his or her discretion, the Ruling Official may decline to grant remission where:

(1) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(2) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the government in determining whether to grant remission; or

(3) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(e) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(1) The specificity and reliability of the evidence establishing a loss;

(2) The fact that a particular victim is suffering an extreme financial hardship;

(3) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related persecution or civil action; and

(4) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(f) *Reimbursement.* Any petitioner granted remission pursuant to this part shall reimburse the Assets Forfeiture Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(g) *Claims of financial institution regulatory agencies.* In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (a)(1)(D), the Ruling Official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7). Generally, claims of financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

§ 9.9 Miscellaneous Provisions.

(a) *Priority of payment.* Except where otherwise provided in this part, costs incurred by the United States Marshals Service and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (c) of this section, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of the petition(s) for remission or mitigation.

The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order or priority, except that the Ruling Official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (a)(3) and (4) of this section in exceptional circumstances:

(1) Owners;

(2) Lienholders;

(3) Federal financial institution regulatory agencies (pursuant to paragraph (e) of this section), not constituting owners or lienholders; and

(4) Victims not constituting owners or lienholders (pursuant to § 9.8).

(b) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a ruling, the Ruling Official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(1) Payment of the government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(2) Payment to the petitioner of an amount up to his or her interest in the property;

(3) Payment to the Assets Forfeiture Fund of all other costs and expenses incident to the forfeiture;

(4) In the case of victims, payment of any amount up to the amount of his or her loss; and

(5) Payment of the balance remaining, if any, to the Assets Forfeiture Fund.

(c) *Trustees and other assistants.* In the exercise of his or her discretion, the Ruling Official, with the approval of the Asset Forfeiture and Money Laundering Section, may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(d) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with any applicable provisions of §§ 9.3 through 9.5. The decision to make such transfer shall be made in writing by the Ruling Official.

(e) *Financial institution regulatory agencies.* A Ruling Official may direct the transfer of property under 18 U.S.C. 981(e) to certain federal financial institution regulatory agencies or an entity acting in their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(f) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(g) *Filing by attorneys.* (1) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(i) The attorney has the authority to represent the petitioner in this proceeding;

(ii) The petitioner has fully reviewed the petition; and

(iii) The petition is truthful and accurate in every respect.

(2) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(h) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a "victim" within the meaning of § 9.2(v), may also file a petition on behalf of its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture or the perpetrator of a "related offense" within the meaning of § 9.2(s), if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

Dated: December 19, 1996.

Janet Reno,

Attorney General.

[FR Doc. 97–117 Filed 1–2–97; 8:45 am]

BILLING CODE 4410–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Amendment G–111]

RIN 3090–AG26

Motor Vehicles

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates fuel economy standards; provides references to the newly-established General Services Administration (GSA) Office of Governmentwide Policy; updates reporting requirements pertaining to leasing vehicles from commercial activities; updates organizational titles within the Departments of Agriculture, Labor and the Treasury; and provides unlimited exemptions from the requirement to display official U.S. Government tags and other identification for certain activities of the Environmental Protection Agency, GSA, and the Departments of Defense, Housing and Urban Development, Transportation, and Veterans Affairs (VA). The regulation also revises residence to place of employment procedures for users of GSA Interagency Fleet Management System vehicles; revises restrictions on the use of leaded gasoline in Government-owned or -leased motor vehicles; reformats the Table of Minimum Replacement Standards; revises requirements for the use of the SF 149, U.S. Government National Credit Card, and SF 149A, U.S Government Fleet Credit Card, and makes minor editorial changes. This

regulation is issued to show new references to the GSA Office of Governmentwide Policy; reflect new fuel economy standards issued by the Secretary of Transportation, to update exemptions for the identification of motor vehicles, to update gasoline requirements for Government operated motor vehicles; to provide a separate replacement category for ambulances, to delete the restriction that fuel credit cards cannot be used for vehicles leased or rented from commercial sources for less than 60 continuous days, and to update the regulation in light of current industry practices, other regulatory requirements, and improved readability. The intended result is to reduce administrative burdens on agencies, to update 41 CFR Part 38 in light of other regulatory issuances, to provide updated fuel economy standards, to update the list of activities authorized exemption from the requirement to display official U.S. Government identification and license plates, and to correct organizational structure inconsistencies caused by agency reorganizations.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Office of Governmentwide Policy, Federal Vehicle Policy Division (202–501–2507) or E-mail at mike.moses@gsa.gov.

SUPPLEMENTARY INFORMATION: The GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

GSA has established the Office of Governmentwide Policy (OGP) in response to President Clinton's request for GSA to place greater emphasis on its policy functions. The new Federal Vehicle Policy Division (MTV), within the Office of Transportation and Personal Property of OGP, is tasked with establishing Governmentwide policies that promote efficiency and economy in the operation of Federal agency vehicle fleets. Some of the Governmentwide functions previously performed by the GSA Interagency Fleet Management Division are now the responsibility of this new office. The regulation is being updated to reflect this new office, where appropriate.

GSA's Interagency Fleet Management System (IFMS) has been a "provider of choice" since its inception in 1954. Vehicle support from the IFMS has historically been based upon mutual agreement between GSA and executive agencies based on cost effectiveness and the availability of vehicles. The regulation currently requires executive agencies desiring to lease vehicles for 60 consecutive days or more to first obtain a determination from GSA of whether vehicle requirements can be satisfied through the IFMS. This requirement may be interpreted to mean that the IFMS is a mandatory source for vehicle services. Accordingly, the regulation is revised to remove this requirement.

The Secretary of Transportation establishes yearly fleet average fuel economy standards for passenger automobiles and light trucks. Prior to this amendment, 41 CFR 101–38.104 provided fuel economy standards through fiscal year 1995 for passenger automobiles and through fiscal year 1994 for light trucks. The Secretary of Transportation has established fuel economy standards for passenger automobiles through fiscal year 1998, and for light trucks through fiscal year 1997. Accordingly, the FPMR is updated by this amendment to reflect these additional standards.

On May 1, 1996, the Defense Logistics Agency (DLA) requested an unlimited exemption from the requirement to display U.S. Government identification on vehicles used for intelligence, investigative, or security purposes. This request was approved by GSA.

On April 29, 1996, the Environmental Protection Agency requested an unlimited exemption from the requirement to display U.S. Government identification on vehicles used for law enforcement and investigative duties. The request was specifically for the Office of Inspector General and the Office of Enforcement and Compliance Assurance. This request was approved by GSA.

On April 9, 1996, the GSA Public Buildings Service requested an unlimited exemption from the requirement to display U.S. Government identification on vehicles assigned to the GSA Federal Protective Service. The request specifically identified Special Agents of the GSA Federal Protective Service engaged in criminal investigations and surveillance activities. On May 10, 1996, a similar request was received for the GSA Office of Inspector General. These requests were approved by GSA.

On January 30, 1996, the Department of Transportation, Federal Highway Administration requested an unlimited exemption from the requirement to display U.S. Government identification in lieu of requesting a continuation of the limited exemption now in effect. The request specifically identified Special Agents of the Idaho Division Office of Motor Carriers, Federal Highway Administration. This request was approved by GSA.

On October 12, 1995, the Department of the Treasury requested that Federal Property Management Regulations, § 101–38.204–1(u), be corrected to reflect current organizational titles for activities within the Bureau of Alcohol, Tobacco, and Firearms (ATF). Specifically, the request stated that the Office of Criminal Enforcement and the Office of Internal Affairs within ATF had been changed on October 1, 1994, to the Office of Enforcement and the Office of Inspection. On May 6, 1996, the Department of Labor requested that § 101–38.204–1(m) be corrected to reflect an organizational change within DOL. Specifically, the Office of Manpower Administration (Bureau of Apprenticeship and Training) is now identified as the Employment and Training Administration. A similar request to correct organizational titles within § 101–38.204–1(b) was received from the Department of Agriculture on May 15, 1996. The regulation is being changed to reflect these new titles.

On May 7, 1996, the Department of Housing and Urban Development requested an unlimited exemption from the requirement to display official U.S. Government tags and other identification for vehicles used by the Office of Inspector General for law enforcement and investigative purposes. GSA approved this request.

On August 7, 1995, the Department of Veterans Affairs requested an unlimited exemption from the requirement to display official U.S. Government tags and other identification for regional Field Inspectors and Property Management Inspectors. GSA approved this request on August 22, 1995, and is changing this regulation to reflect this additional exemption.

Prior to May 1993, the GSA Interagency Fleet Management Division (IFMS) required customer agencies to notify the servicing GSA Fleet Management Center when vehicle operators were allowed residence to place of employment travel in IFMS vehicles. When GSA's internal handbook was rewritten in May 1993, this requirement was deleted to reduce the workload on customer agencies and GSA. This regulation removes this reporting requirement.

On February 2, 1996, the Environmental Protection Agency published a direct final rule titled Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use (40 CFR part 80). The regulation promulgated provisions in the Clean Air

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Act which prohibit the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. Accordingly, the provisions in 41 CFR 101–38.401–1 concerning the restrictions on the use of leaded gasoline in Government-owned or -leased motor vehicles operated within the 50 States is no longer needed and is being removed.

Federal Property Management Regulations Amendment G–78 was issued on April 4, 1986. This amendment reformatted FPMR Parts 101–38 and 101–39 to separate issues covering the Federal fleet as a whole and issues concerning interagency motor pool management. Prior to the issuance of FPMR G–78, minimum replacement standards for ambulances were identified as a separate entity. Amendment G–78 grouped ambulances with sedans and station wagons under a passenger vehicle category. The Department of Defense (DOD) has requested that ambulances be returned to a separate category, since ambulances are routinely classified as special purpose vehicles built and operated for a distinct purpose other than transporting passengers. GSA agrees with DOD's request and is revising the Table of Minimum Replacement Standards accordingly.

The Department of Health and Human Services, Food and Drug Administration, has requested a deviation from § 101–38.800 of the FPMR. The agency's investigative mission requires the short- term rental of commercial motor vehicles on a routine basis. The regulation now states that Government fuel credit cards can only be used for vehicles rented or leased for 60 continuous days or more; thus, an agency must pay cash for fuel purchases and be reimbursed through imprest funds. This procedure is time consuming and does not take advantage of the Government's exemption from State sales taxes. Additionally, with the discontinuance of GSA IFMS dispatch vehicle services at most locations, the Government has increased its reliance on the commercial sector for short-term vehicle needs. GSA has decided that the 60-day restriction is burdensome for the Government as a whole and no longer makes good economic sense. This restriction is being removed.

On April 16, 1996, GSA informally sent a draft copy of this amendment to all major Federal agencies asking for their comment on the proposed changes and to solicit additional changes not included in that draft. Comments were received from the Departments of Agriculture, Defense, Labor, Treasury, and Veterans Affairs and the Environmental Protection Agency. These comments involved changes in organizational structures, additional exemptions to 41 CFR 101–38.204–1, and editorial changes to improve readability. These comments are addressed in this amendment.

List of Subjects

41 CFR Part 101–38

Energy conservation, Government property management, Motor vehicles, Reporting and record keeping requirements.

For the reasons set out in the preamble, 41 CFR Part 101–38 is amended as follows:

1. The authority citation for part 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

PART 101–38—MOTOR EQUIPMENT MANAGEMENT

1a. The heading of Part 101–38 is revised to read as set forth above.

2. Section 101–38.001–19 is revised to read as follows:

§ 101–38.001–19 Light truck.

Light truck means a truck up to 8,500 pounds gross vehicle weight rating (GVWR), which is a four-wheeled vehicle propelled by fuel (gasoline, diesel, or an alternative fuel such as natural gas, ethanol, or methanol), is manufactured primarily for use on public streets, roads, and highways, and is contained in Federal Standard No. 307 (Trucks: Light commercial, two-wheel drive) or Federal Standard No. 292 (Trucks: Light commercial, four-wheel drive).

3. Section 101–38.104 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) (ii) (A) through (E) to read as follows:

§ 101–38.104 Fuel efficient passenger automobiles and light trucks.

* * * * *

(b) * * *

(1) * * *

(2) The Federal fleet program enables GSA to determine the total fleet average fuel economy achieved by all executive agencies at the end of each fiscal year and to provide management assistance to agencies to ensure compliance with Executive Order 12375. Copies or synopses of actual vehicle leases and vehicle purchases not procured through the GSA Automotive Center shall be forwarded to the General Services Administration, ATTN: MTV, Washington, DC 20405, not later than December 1st of each year, in accordance with the requirements set forth in § 101–38.105.

(3) Passenger automobiles and light trucks acquired by executive agencies must meet the fleet average fuel economy objectives set forth below for the appropriate fiscal year:

Fiscal year	Miles per gallon			
	Average[1] fuel economy standard	Passenger automobiles	Light trucks	
			Fleet average fuel[2] economy 4 × 2	Fleet average fuel[2] economy 4 × 4
1977	18.0	18.0		
1978	18.0	20.0		
1979	19.0	22.0	17.2	15.8
1980	20.0	24.0	16.0	14.0
1981	22.0	26.0	16.7	15.0
1982	24.0	24.0	18.0	16.0
1983	26.0	26.0	19.5	17.5
1984	27.0	27.0	20.3	18.5
1985	27.5	27.5	19.7	18.9
1986	26.0	26.0	20.5	19.5
1987	26.0	26.0	21.0	19.5
1988	26.0	26.0	21.0	19.5

Fiscal year	Miles per gallon			
	Average[1] fuel economy standard	Passenger automobiles	Light trucks	
			Fleet average fuel[2] economy 4 × 2	Fleet average fuel[2] economy 4 × 4
1989	26.5	26.5	21.5	19.0
1990	27.5	27.5	20.5	19.0
1991	27.5	27.5	20.7	19.1
1992	27.5	27.5	[3]20.2	[3]20.2
1993	27.5	27.5	[3]20.4	[3]20.4
1994	27.5	27.5	[3]20.5	[3]20.5
1995	27.5	27.5	[3]20.6	[3]20.6
1996	27.5	27.5	[3]20.7	[3]20.7
1997	27.5	27.5	[3]20.7	[3]20.7
1998 and beyond	27.5	27.5	[4]	[4]

* * * * *

(4) * * *

(ii) * * *

(A) Six-cylinder automatic transmission passenger vans and cargo vans (200) divided by 22.1 mpg, plus

(B) Eight-cylinder automatic transmission passenger vans and cargo vans (75) divided by 19.2 mpg, plus

(C) Six-cylinder manual transmission pick-ups (100) divided by 20.8 mpg, plus

(D) Sic-cylinder automatic transmission pick-ups (200) divided by 20.5 mpg, plus

(E) Six-cylinder automatic transmission compact van wagons (25) divided by 23.4 mpg.

$$= \frac{600}{\frac{200}{22.1} + \frac{75}{19.2} + \frac{100}{20.8} + \frac{200}{20.5} + \frac{25}{23.4}}$$

$$= \frac{600}{9.0490 + 3.9063 + 4.8077 + 9.7561 + 1.0684}$$

$$= \frac{600}{28.5883} = 20.9876 \text{ (Rounded to nearest 0.1 mpg)}$$

* * * * *

4. Section 101–38.105 is amended by revising paragraphs (a), (e), (h) and (i) to read as follows:

§ 101–38.105 Agency purchase and lease of motor vehicles.

(a) Executive agencies that obtain a waiver of the provisions of § 101–26.501–1 in accordance with paragraphs (b) and (c) of that section may acquire vehicles without using the services of the GSA Automotive Center. Copies or synopses of actual vehicle leases and purchases acquired for domestic fleets which are not acquired through the GSA Automotive Center will be furnished to the General Services Administration, ATTN: MTV, Washington, DC 20405. Each submission shall use the unadjusted combined city/highway mileage ratings for passenger automobiles and light trucks developed by the Environmental Protection Agency (EPA) for each fiscal year. The submissions shall be forwarded to GSA as soon as possible after the purchase or effective date of the lease. All submissions for the previous fiscal year shall reach GSA by December 1st of each year. GSA issues information concerning the EPA mileage ratings and miles per gallon rating guidance to assist agencies in the timely planning of their acquisitions. Agencies not intending to purchase or lease vehicles or agencies that satisfy their total motor vehicle requirements through the GSA Interagency Fleet Management System shall so inform GSA.

* * * * *

(e) In order to maintain a master record of all leased passenger vehicles and light trucks under 8,500 pounds (GVWR), agencies shall forward to the General Services Administration, ATTN: MTV, Washington, DC 20405, copies or synopses of lease agreements for those vehicles leased for a period of 60 continuous days or more, or they may submit the following information:

(1) Number of vehicles, by category;

(2) Year;

(3) Make;

(4) Model;

(5) Transmission type (if manual, number of forward speeds);

(6) Cubic inch displacement;

(7) Fuel type (i.e., gasoline or alternative fuel);

(8) Monthly lease cost;

(9) Duration of lease (include option to renew);

(10) Vehicle type (4X2 or 4X4—light trucks only);

(11) Gross vehicle weight rating (GVWR): Light trucks only; and

(12) Lessor's name and address.

* * * * *

(h) Agencies may request GSA assistance when planning their acquisitions by contacting the General Services Administration, Attn: MTV, Washington, DC 20405.

(i) Information concerning vehicles purchased for agencies by the GSA Automotive Center is provided

internally; therefore, vehicles procured by GSA are not required to be reported.

§ 101–38.106 [Removed]

5. Section 101–38.106 is removed.

6. Section 101–38.200 is amended by revising paragraphs (f) and (g) to read as follows:

§ 101–38.200 General requirements.

* * * * *

(f) Exemptions, in addition to those authorized in §§ 101–38.204–1 and 101–38.204–2 may be authorized by the head of the agency or designee upon written certification that conspicuous identification will interfere with the purpose for which the motor vehicle is used. This certification shall be maintained at the agency headquarters. A copy of this certification shall also be provided to the General Services Administration, Attn: FBF, Washington, DC 20406, if the vehicle is obtained through the GSA Interagency Fleet Management System. Approval by GSA will not be required. The certification must state that the motor vehicle(s) is (are) acquired and used primarily for the purpose of investigative, law enforcement, or intelligence duties involving security activities or for safety of the vehicle's occupant(s), and that the identification of the motor vehicle(s) would interfere with the discharge of such duties or endanger the security of individuals or the United States Government. Vehicles regularly used for common administrative purposes not directly connected with the performance of law enforcement, investigative, or intelligence duties involving security activities shall not be exempt. All exemptions granted under the provisions of this § 101–38.200(f) are limited to 1 year. If the requirement for exemption still exists at the end of the year, the agency shall recertify its intent to continue the exemption. A copy of this certification shall be forwarded to GSA if the vehicle is leased from the GSA Interagency Fleet Management System.

(g) Certain organizational units of Federal agencies may be authorized to remove official Government markings and substitute license plates issued by the appropriate State, Commonwealth, territory, or possession whenever the agency head or designee determines that temporary removal is in the public interest. A written determination and justification for temporary removal of official Government markings shall be maintained at the agency headquarters. This determination shall also be submitted to the General Services Administration, Attn: FBF, Washington, DC 20406, if the vehicle is leased from the GSA Interagency Fleet Management System.

7. Section 101–38.202–2 is amended by revising paragraph (b)(1) to read as follows:

§ 101–38.202–2 Outside the District of Columbia.

* * * * *

(b) * * *

(1) Purchase orders shall include the code letters to be imprinted on the tags; the dates on which deliveries are required; the consignee and shipping instructions; the symbol number of the appropriation to be charged; and the signature of an officer authorized to obligate the cited appropriation.

* * * * *

8. Section 101–38.202–4 is revised to read as follows:

§ 101–38.202–4 Numbering and coding.

Official U.S. Government tags shall be numbered serially for each executive agency, beginning with 101, and shall be preceded by a letter code designating the agency having accountability for the motor vehicles as follows:

ACTION	ACT
Agriculture, Department of	A
Air Force, Department of the	AF
Army, Department of the	W
Commerce, Department of	C
Consumer Product Safety Commission	CPSC
Corps of Engineers, Civil Works	CE
Defense Commissary Agency	DECA
Defense Contract Audit Agency	DA
Defense, Department of	D
Defense Logistics Agency	DLA
District of Columbia Redevelopment Land Agency	LA
Education, Department of	ED
Energy, Department of	E
Enrichment Corporation, U.S.	EC
Environmental Protection Agency	EPA
Executive Office of the President	EO
Council of Economic Advisers, National Security Council, Office of Management and Budget	
Export-Import Bank of the United States	EB
Federal Communications Commission	FC
Federal Deposit Insurance Corporation	FD
Federal Emergency Management Agency	FE
Federal Home Loan Bank Board	FB
Federal Mediation and Conciliation Service	FM
Federal Reserve System	FR
Federal Trade Commission	FT
General Accounting Office	GA
General Services Administration	GS
Government Printing Office	GP
Health and Human Services, Department of	HHS
Housing and Urban Development, Department of	H
Interagency Fleet Management System, GSA	G
Interior, Department of	I
Judicial Branch of the Government	JB
Justice, Department of	J
Labor, Department of	L
Legislative Branch	LB
Marine Corps	MC
National Aeronautics and Space Administration	NA

National Capital Housing Authority	NH
National Capital Planning Commission	NP
National Guard Bureau	NG
National Labor Relations Board	NL
National Science Foundation	NS
Navy, Department of the	N
Nuclear Regulatory Commission	NRC
Office of Personnel Management	OPM
Panama Canal Commission	PC
Railroad Retirement Board	RR
Securities and Exchange Commission	SE
Selective Service System	SS
Small Business Administration	SB
Smithsonian Institution	SI
National Gallery of Art	
Soldiers' and Airmen's Home, U.S.	SH
State, Department of	S
Tennessee Valley Authority	TV
Transportation, Department of	DOT
Treasury, Department of the	T
United States Information Agency	IA
United States Postal Service	P
Veterans Affairs, Department of	VA

9. Section 101–38.202–5 is revised to read as follows:

§ 101–38.202–5 Requests for additional code designations.

Additional code designations are issued by GSA upon written request to General Services Administration, ATTN: MTV, Washington, DC 20405.

10. Section 101–38.204–1 is amended by redesignating paragraphs (h) through (v) as paragraphs (k) through (y); adding paragraphs (h), (i) and (j); and revising paragraphs (b), (d), and redesignated paragraphs (n), (v), (w), and (x) to read as follows:

§ 101–38.204–1 Unlimited exemptions.

* * * * *

(b) *Agriculture, Department of.* Motor vehicles that the Agricultural Marketing Service, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, Forest Service, Grain Inspection, Packers and Stockyard Administration, Packers and Stockyard Program, Food and Consumer Service, and Office of Inspector General use in the conduct of investigative or law enforcement activities.

* * * * *

(d) *Defense, Department of.* Motor vehicles used for intelligence, investigative, or security purposes, including such vehicles used by the U.S. Army Intelligence Agency and the Criminal Investigation Command of the Department of the Army; Office of Naval Intelligence of the Department of the Navy; Office of Special Investigations of the Department of the Air Force; the Defense Criminal Investigation Service, Office of the Inspector General; and the Defense Logistics Agency.

* * * * *

(h) *Environmental Protection Agency.* Motor vehicles used for law enforcement and investigative purposes operated by the Office of Inspector General and the Office of Enforcement and Compliance Assurance.

(i) *Federal Communications Commission.* Motor vehicles operated by the Field Operations Bureau for investigative purposes.

(j) *General Services Administration.* Motor vehicles operated by Special Agents of the Public Buildings Service, Federal Protective Service and Special Agents of the Office of Inspector General while engaged in criminal investigations, surveillance, and security activities.

* * * * *

(n) *Justice, Department of.* All motor vehicles operated in undercover law enforcement activities or investigative work by the Department.

* * * * *

(v) *State, Department of.* All motor vehicles designated for the protection of both domestic and foreign dignitaries and motor vehicles used in the investigations of passport and visa fraud cases.

(w) *Transportation, Department of.* All motor vehicles used for intelligence, investigative, or security purposes by the DOT Office of Inspector General; the OST Office of Security; the Investigations and Security Division and field counterparts in the U.S. Coast Guard; the Office of Civil Aviation Security and field counterparts in the Federal Aviation Administration; and the Idaho Division Office of Motor Carriers in the Federal Highway Administration.

(x) *Treasury, Department of the.* All motor vehicles operated by the U.S. Secret Service; Criminal Investigation Division, Internal Security Division, and vehicles used for investigative purposes by the Collection Division of the Internal Revenue Service; the Office of Enforcement and the Office of Inspection of the Bureau of Alcohol, Tobacco, and Firearms; and the Office of Enforcement, Office of Compliance Operations, and Office of Internal Affairs of the U.S. Customs Service.

* * * * *

11. Section 101–38.204–4 is revised to read as follows:

§ 101–38.204–4 Report of exempted motor vehicles.

The head of each executive agency shall submit a report, upon request, to the General Services Administration, ATTN: MTV, Washington, DC 20405, concerning motor vehicles exempted under Subpart 101–38.2. Interagency report control number 1537–GSA–AR has been assigned to this reporting requirement.

12. Section 101–38.301 is revised to read as follows:

§ 101–38.301 Authorized use.

Officers and employees of the Government shall use Government-owned or -leased motor vehicles for official purposes only. "Official purposes" does not include transportation of an officer or employee between his or her residence and place of employment, unless authorized under the provisions of 31 U.S.C. 1344, or other applicable law. A copy of any written approval shall be maintained at the appropriate level within the agency. Each agency should establish procedures to monitor and control the use of its vehicles at all times. Officers and employees entrusted with a motor vehicle are responsible for the proper care, operation, maintenance, and protection of the vehicle. Any officer or employee who uses or authorizes the use of such vehicle for other than official purposes is subject to a suspension of at least 1 month or, up to

and including, removal by the head of the agency (31 U.S.C. 1349).

13. Section 101–38.401–1 is amended by removing the introductory text, redesignating paragraph (c) as paragraph (b), and revising paragraph (a) introductory text to read as follows:

§ 101–38.401–1 Gasoline for use in motor vehicles.

(a) Unleaded (0.05gm/gal.) gasoline shall be used in all Government-operated motor vehicles used overseas unless—

(1) * * *

(2) * * *

(b) Under no circumstances should premium gasoline be used in Government-owned vehicles, except for those vehicles that require premium gasoline.

14. Section 101–38.401–2 is amended by revising the introductory text and removing paragraphs (a) through (d) to read as follows:

§ 101–38.401–2 Use of self-service pumps.

Heads of agencies shall require the use of self-service pumps by their motor vehicle operators when purchasing fuel at commercial service stations with self-service pumps to the fullest extent possible. Operators should minimize the cost of fuel purchases by using service stations which accept the Standard Form 149, U.S. Government National Credit Card, and SF 149A, U.S. Government Fleet Credit Card, for gasoline purchases at self-service pumps.

15. Section 101–38.402 is amended by revising paragraph (a) to read as follows:

§ 101–38.402 Replacement standards.

(a) Table of minimum replacement standards.

TABLE OF MINIMUM REPLACEMENT STANDARDS

Vehicle description	Life expectancy	
	Years	Miles
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000
Buses:		
Intercity-Type	N/A	280,000
City-Type	N/A	150,000
School-Type	N/A	80,000
Trucks:		
Less than 12,500 pounds GVWR	6	50,000
12,500—23,999 GVWR	7	60,000
24,000 pounds and over	9	80,000
4-or 6-wheel drive vehicles	6	40,000

* * * * *

16. Section 101–38.504 is revised to read as follows:

§ 101–38.504 Assistance to agencies.

GSA is available to assist agencies in establishing or revising their scheduled maintenance programs. Requests for this assistance shall be submitted by owning agencies to the General Services Administration, ATTN: MTV, Washington, DC 20405.

17. Section 101–38.701 is amended by revising paragraph (a)(1) to read as follows:

§ 101–38.701 Transfer of title for Government-owned motor vehicles.

(a) * * *

(1) All Government-owned motor vehicles to be titled by State motor vehicle activities shall be transferred by executing Standard Form (SF) 97, The United States Government Certificate to Obtain Title to a Vehicle. The use of this form in foreign countries is optional.

* * * * *

18. Section 101–38.800 is amended by revising paragraph (f) to read as follows:

§ 101–38.800 General.

* * * * *

(f) The SF 149 and SF 149A may be used for any properly identified U.S. Government motor vehicle, boat, small aircraft, or nonvehicular equipment.

19. Section 101–38.903 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 101–38.903 Reporting of data.

(a) Federal agencies shall use Standard Form 82, Agency Report of Motor Vehicle Data, to report vehicle inventory, cost, and operating data to GSA. Interagency Report Control Number 1102–GSA–AN has been assigned to this reporting requirement.

(b) * * *

(1) Each owning agency shall submit a Standard Form 82 to the General Services Administration, ATTN: MTV, Washington, DC 20405 within 75 calendar days after the end of the fiscal year.

* * * * *

Dated: October 28, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 97–52 Filed 1–2–97; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 94–31]

Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final Rule; lifting of stay.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is lifting the stay of monitoring report requirements contained in its agreement regulations. The filing of the quarterly monitoring reports will begin with the report covering the first quarter of calendar year 1997.

EFFECTIVE DATE: 46 CFR 572.701(a) and 572.702, which were stayed at 61 FR 11564, March 21, 1996, are effective January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573–0001, 202–523–5787.

SUPPLEMENTARY INFORMATION: In Docket No. 94–31, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common*

Carriers Subject to the Shipping Act of 1984, the Federal Maritime Commission amended its regulations set forth in 46 CFR Part 572 governing the filing, processing and review of agreements subject to the Shipping Act of 1984. 61 FR 11 564 (Mar. 21, 1996) and 61 FR 40530 (Aug. 5, 1996). For the most part, these amended regulations became effective on April 19, 1996. Since that date, new agreements have been required to comply with the revised information form provisions. However, the proper application of the new monitoring report provisions in 46 CFR 572.701–572.705 to agreements already in effect could not be determined immediately, because the market share data necessary to separate Class A/B agreements into Class A and Class B was not readily available. Accordingly, the Commission stayed the effectiveness of the monitoring report provisions of the final rule until further notice. Under section 15 of the 1984 Act, the Commission has directed all existing Class A/B agreements to submit reports that include the information demanded of new Class A/B agreements under the information form regulations, including market share data.

The market share data has been submitted to the Commission, and existing Class A/B agreements can now be assigned their appropriate rereporting classifications. Those agreements are being notified, via letter, of their reporting classification for 1997.

Therefore, the Commission is lifting the stay of the monitoring report provisions at 46 CFR 572.701(a) and 572.702. With this action, the lifting of quarterly monitoring reports, including those applicable to Class C agreements, will begin with the report covering the first quarter (i.e., January-March) of calendar year 1997, which is to be filed within 75 days of the end of that quarter, pursuant to 46 CFR 572.701(f).

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–60 Filed 1–2–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–50; RM–8581; RM–8662]

Radio Broadcasting Services; Willcox, AZ; Lordsburg, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C3 for Channel 252A at Willcox, Arizona, and modifies the license of Station KWCX–FM to specify operation on the nonadjacent higher powered channel, as requested by William S. Konopnicki. *See* 60 FR 22022, May 4, 1995. Also, Channel 223C3 is allotted to Willcox, as an additional equivalent channel, since an interest in applying for a second Class C3 allotment at that community was expressed by Michael T. McKenna. Additionally, Channel 289C3 is allotted to Lordsburg, New Mexico, as an additional local FM transmission service at that community, in response to a counterproposal filed on behalf of Lordsburg Broadcasting Associates. Coordinates used for Channel 223C3 at Willcox are 32–16–22 North Latitude and 109–48–14 West Longitude; coordinates used for Channel 285C3 at Willcox are 32–14–48 North Latitude and 109–39–52 West Longitude; coordinates used for Channel 289C3 at Lordsburg, are 32–20–48 North Latitude and 108–42–36 West Longitude. As Willcox, Arizona, and Lordsburg, New Mexico, are located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government in the respective allotments was obtained. With this action, the proceeding is terminated.

DATES: Effective February 10, 1997. The window period for filing applications for Channel 223C3 at Willcox, Arizona, and for Channel 289C3 at Lordsburg, New Mexico, will open on February 10, 1997, and close on March 13, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 223C3 at Willcox, Arizona, and for Channel 289C3 at Lordsburg, New Mexico, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–50, adopted December 20, 1996, and released December 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 223C3 at Willcox;

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 252A and adding Channel 285C3 at Willcox;

4. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 289C3 at Lordsburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–47 Filed 1–2–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–76; RM–8770]

Radio Broadcasting Services; Nekoosa, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 288A to Nekoosa, Wisconsin, in response to a petition filed by Lyle Robert Evans d/b/a The Radio Company. *See* 61 FR 18541, April 26, 1996. The coordinates for Channel 288A are 44–18–33 and 90–03–10. There is a site restriction 11.9 kilometers (7.4 miles) west of the community. With this action this proceeding is terminated.

DATES: Effective February 10, 1997. The window period for filing applications for Channel 288A at Nekoosa, Wisconsin, will open on February 10, 1997, and close on March 13, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–76,

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adopted December 20, 1996, and released December 27, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 288A at Nekoosa.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–46 Filed 1–2–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 259

[Docket No.961122328–6326–01; I.D. 081092G]

RIN 0648–AF22

Capital Construction Fund; Interim Fishing Vessel Capital Construction Fund Procedures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to allow fishermen to use the Fishing Vessel Capital Construction Fund Program (Program) for equipping and/or modifying their fishing vessels to increase general vessel safety and/or to comply with specific requirements established under the Commercial Fishing Industry Vessel Safety Act of 1988 and/or other laws or regulations that materially increase the safety of a fishing vessel. The result is that a vessel equipment acquisition or vessel modification, which materially increases the safety of a qualified vessel, will be treated as a reconstruction and exempted from certain Program rules so that payment for it becomes a qualified withdrawal.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Charles L. Cooper (Financial Services Division, NMFS) at 301-713-2396.

SUPPLEMENTARY INFORMATION:

Background

The Program allows fisheries taxpayers to defer paying Federal taxes on fishing vessel income. Income on which taxes are to be deferred must be deposited in accordance with Capital Construction Fund Agreements and reserved for the equity portion of fishing vessel construction, reconstruction, or acquisition costs. All deferred taxes are eventually recaptured by reductions in the depreciation basis, for tax purposes, of vessels benefitting from tax deferrals under the Program.

Under present Program rules (50 CFR part 259), fishermen cannot use the Program to pay for safety equipment unless that equipment is part of a vessel construction or reconstruction project. Although this is not generally a problem when fishing vessel construction is involved, it can be a problem when fishing vessel reconstruction is involved.

Generally, improving a fishing vessel will not qualify as reconstruction under this Program's rules unless the cost of doing so: (1) Is a capital expenditure; (2) amounts to at least $100,000 or 20 percent of the vessel's acquisition cost (whichever is less); and (3) substantially prolongs the vessel's useful life, increases its value, or adapts it to a different fisheries use. The purchase and installation of fishing vessel safety equipment would seldom meet this rules test. Many fishing vessel modifications for safety purposes would also fail to meet this test.

Additionally, the conditional fishery requirements apply to fishing vessel reconstruction under this Program. These requirements restrict the availability of Program benefits in fisheries where the Government deems additional or increased harvesting capacity unwarranted. These conditional fishery requirements could also, under the present Program rules, prevent use of this Program for safety projects.

This rulemaking permits Program use for the acquisition and installation of fishing vessel safety equipment and for fishing vessel modifications whose central purpose is to increase vessel safety to be treated, in their own right, as reconstructions for the purpose of withdrawing tax-deferred funds from Capital Construction Funds to pay for them. Except for the capital expenditure requirement, these fishing vessel safety projects are now exempted from the normal rules test that determines whether fishing vessel improvements can qualify as reconstructions. They are now also exempted from the conditional fishery requirements that would otherwise apply to reconstruction projects.

Notice of proposed rulemaking for this change was published in the **Federal Register** on November 18, 1992 (57 FR 54356).

Comments and Responses

Seven parties responded in writing to the notice of proposed rulemaking. All supported it. The general response was that this rule would give the industry needed flexibility in meeting new and proposed safety requirements for fishing vessels. One of those responding was the Director, Northeast Region, NMFS, for NOAA, who also recommended expanding the proposed rule to include the acquisition and installation of equipment required by law or regulation which materially increases the safety of a qualified fishing vessel. This recommendation was made for the purpose of helping fishermen pay for the high cost of transponders required for fishery management purposes; but which also serve to materially increase vessel safety by providing accurate hourly position transmissions that could be sent directly to the U.S. Coast Guard.

After considering these comments, NMFS has decided to proceed with final rulemaking with only a minimum change in the proposed rule to allow the Program to be used for vessel equipment acquisitions or vessel modifications, which materially increase the safety of a qualified vessel, to be treated as a reconstruction when made either for such central purpose or because it was required by law or regulation.

Effect of Final Rule

This rule allows the fishing industry to use their Capital Construction Funds to pay for fishing vessel safety-related projects without regard to: (1) The cost of the safety project; (2) whether the fishing vessel involved in the safety project had its useful life extended, its

value increased, or was converted to a different fisheries use; and (3) conditional fishery requirements.

Classification

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it relates to financial assistance programs in which participation is voluntary and does not impose any cost, economic burden, or reporting burden on the industry. As a result, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 259

Fisheries, Fishing vessels, Income taxes, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 259 is amended as follows:

PART 259—CAPITAL CONSTRUCTION FUND

1. The authority citation for part 259 continues to read as follows:

Authority: 46 U.S.C. 1177.

2. Section 259.31 is amended by removing the authority citation in the parenthetical at the end of the section and by adding a new paragraph (e) to read as follows:

§ 259.31 Acquisition, construction, or reconstruction.

* * * * *

(e) *Safety projects.* The acquisition and installation of safety equipment for a qualified vessel and vessel modifications whose central purpose is materially increasing the safety of a qualified vessel or the acquisition and installation of equipment required by law or regulation that materially increases the safety of a qualified vessel shall, regardless of cost, be treated as reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure, shall be exempt from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32, and shall be exempt from all qualifying tests for reconstruction set forth in paragraph (b) of this section, with the following exceptions:

(1) A safety improvement shall be required to meet both conditional fishery requirements and all qualifying tests for reconstruction if it serves the dual purpose of safety and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel;

(2) That portion of the actual cost of a safety improvement that is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes;

(3) Safety improvement projects whose clear and central purpose is restricted to complying with the requirements of the Commercial Fishing Industry Vessel Safety Act of 1988 (Public Law 100–424 Sec. 1, 102 stat. 1585 (1988) (codified in scattered sections of 46 U.S.C.)) shall, without further documentation, be considered to fall within this paragraph (e). Satisfactory documentation will be required for all other projects proposed to be considered as falling within this paragraph (e). Projects not required by law or regulation whose central purpose clearly involves something other than an improvement that materially increases the safety of a vessel will not be considered to fall within this paragraph (e).

[FR Doc. 96–33386 Filed 12–27–96; 4:05 am]

BILLING CODE 3510–22–F

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 961209344–6344–01; I.D. 102596D]

RIN 0648–AI29

Atlantic Tuna Fisheries; Permit Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS amends the final regulations governing the Atlantic tunas fisheries by removing references to the Regional Director for the purposes of applying for and issuing tuna permits. These changes are necessary to allow the Atlantic tunas permit program to be managed by contract.

EFFECTIVE DATE: December 30, 1996. See **SUPPLEMENTARY INFORMATION** for the permit conversion schedule.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). The ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA.

ICCAT requires contracting parties to report annual fishing effort and catch statistics for species under international management. To implement the ICCAT data collection program, NMFS has established vessel permitting requirements for Atlantic tuna fisheries (60 FR 38505, July 27, 1995). Due to the volume of permits issued, NMFS has determined that the Atlantic tunas permit program can be more efficiently managed under contract.

This final rule amends tuna regulations by removing references to the Regional Director for the purposes of applying for and issuing tuna permits. These changes are necessary to allow the Atlantic tunas permit program to be managed by contract. This amendment does not affect any other requirements for vessel permits. However, all existing Atlantic tunas permits must be reissued under the new system in order to remain valid and a fee of $18.00 will be assessed to recover administrative costs of the contract.

Atlantic tunas permits which expired in 1996, regardless of whether or not renewed, must be reissued under the new system to remain valid beginning January 1, 1997. In addition, all new permit applications and requests for category changes must be made under the new system beginning January 1, 1997. In a proposed rule to be published soon, NMFS will propose that permits expiring on or after January 1, 1997 must be renewed under the new system by March 31, 1997. NMFS will inform vessel owners of procedures to access the new permitting system in letters to individual permit holders and in notices broadcast over the Highly Migratory Species FAX network.

Classification

Because this amendment only revises agency procedure or practice, under 5 U.S.C. 553(b)(A) prior notice and opportunity for comment are not required. Because this rule is not substantive, under 5 U.S.C. 553(d), it is

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not subject to a 30-day delay in effectiveness.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended by making the following technical amendment:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.21 paragraphs (b)(1), (c), (d), (e), (g) and (l) are revised to read as follows:

§ 285.21 Vessel permits.

* * * * *

(b) *Categories of permits.* (1) Upon submission of a complete and valid application pursuant to paragraph (c) of this section, the owner of each qualifying vessel may be issued a permit by NMFS for one of the following permit categories: General, Charter/Headboat, Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permit will not be issued for more than one category.

* * * * *

(c) *Application procedure.* Permits issued under this section must be renewed upon expiration. A vessel owner applying for an initial Atlantic tuna permit, or transfer, under this section must submit a completed permit application signed by the owner or agent on a form approved by the Assistant Administrator. The application must be submitted as indicated in the instructions on the form at least 30 days before the date on which the applicant desires to have the permit made effective. To be deemed complete, an application must include all the information required on the form and must contain copies of required documents as indicated in the instructions on the form. The application must include the name, address and telephone number of the vessel owner(s) (for each owner that owns more than a 25 percent interest in the vessel); the name of the vessel; the port where the vessel is docked; the official U.S. Coast Guard documentation or state registration number; the gross tonnage, if known; the length of the vessel; the engine horsepower; the year the vessel was built; the type of vessel construction; the type of vessel propulsion; the vessel's fish hold capacity; the type(s) of fishing gear used; the normal crew size; number of party or charter passengers licensed to carry (if applicable); and the category of the permit. In addition, applicants must submit a copy of the official state registration or U.S. Coast Guard documentation, party/charter boat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation, including the names and addresses of all shareholders owning 25 percent or more of the corporation's shares). Except for purse seine vessels, an owner may change the category of the vessel's permit by application on the appropriate form to the Assistant Administrator before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless there is sufficient evidence for the Assistant Administrator to determine that an error involving contradictory information was made on the application.

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, a permit shall be issued within 30 days of receipt of a complete and valid application.

(2) The applicant will be notified of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or it expires. A permit issued under this section expires when the name of the owner or vessel changes, or upon the renewal date specified on the permit.

* * * * *

(g) *Replacement.* Replacement permits will be issued when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. A request for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (k) of this section, may be charged for issuance of the replacement permit.

* * * * *

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing. In such case, a new permit will be issued to incorporate the new information. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued. The permit is void if any change in the information is not reported within 15 days.

* * * * *

3. In § 285.53 paragraphs (a) through (c), and the first sentence in (d) are revised to read as follows:

§ 285.53 Vessel permits.

(a) *Permit requirements.* The operator of each vessel that fishes for, or takes, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have on board a valid permit issued under this section.

(b) *Commercial vessel permits.* As a prerequisite to selling Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito and to be eligible for exemption from applicable bag limits, if any, specified in this subpart, an owner or operator of a vessel that fishes for or takes Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must be issued a vessel permit in the commercial category appropriate for the gear type or method of fishing.

(c) *Charter/Headboat vessel permits.* Owners or operators of charter vessels and headboats must be issued a charter/headboat vessel permit to lawfully fish for, catch, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito. Anglers on board charter vessels and headboats must adhere to applicable catch limits for the recreational fisheries.

(d) *Recreational vessel permits.* Owners or operators of private recreational vessels must be issued vessel permits in order to fish for, catch, retain, or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas.

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[FR Doc. 96–33391 Filed 12–30–96; 2:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 2
Friday, January 3, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Fresh Market Sweet Corn Endorsement; and Common Crop Insurance Regulations, Fresh Market Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of fresh market sweet corn. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Sweet Corn Endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Sweet Corn Endorsement to the 1997 and prior crop years.

DATES: Written comments, data and opinions on this proposed rule will be accepted until close of business February 3, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 3, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Fresh Market Sweet Corn Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies.

Potential respondents to this information collection are producers of fresh market sweet corn that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage

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report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.129, Fresh Market Sweet Corn Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market sweet corn found at 7 CFR 401.138 (Fresh Market Sweet Corn Endorsement). FCIC also proposes to amend § 401.138 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.138.

This rule makes minor editorial and format changes to improve the Fresh Market Sweet Corn Crop Insurance Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring fresh market sweet corn as follows:

1. Section 1—Add definitions for the terms "crate," "days," "excess rain," "excess wind," "FSA," "good farming practices," "interplanted," "irrigated practice," "planted acreage," "practical to replant," "replanting," and "written agreement" for clarification.

Clarify the definition of crop year to specify that the crop year begins on the first day of the earliest planting period for fall-planted sweet corn and continues through the end of the insurance period for spring-planted sweet corn.

Change the definition of freeze to specify that freeze occurs when low air temperatures cause ice to form in the cells of the plant or its fruit to encompass conditions found in both frost and freeze.

Change the definition of harvest to clarify and remove the term marketable. Sweet corn picked from the stalk is considered harvested whether marketable or not.

2. Section 3(a)—Clarify that an insured may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the sweet corn in the county insured under the policy.

3. Section 3(b)—Clarify that the amounts of insurance the insured chooses for each planting period and practice must have the same percentage relationship to the maximum amount of insurance offered by FCIC for each planting period and practice.

4. Section 5—Change the cancellation and termination dates to March 15 for all States that currently have an April 15 date. This change is necessary to standardize the cancellation and termination dates with the sales closing dates that were changed for spring planted crops to comply with the requirements of the Federal Crop Insurance Reform Act of 1994. To allow sweet corn crop expansion into other areas, Berrien County, Georgia, has been added to the Georgia Counties that have July 31 cancellation and termination dates. The July 31 cancellation and termination dates for Berrien County, Georgia coincide with production practices of other Georgia counties with that same date.

5. Section 9(a)—Add a provision that will provide coverage on newly cleared land or former pasture land that is planted to fresh market sweet corn. It is a recognized practice to plant the insured crop on tilled acreage that has been newly cleared or has been pasture land to eliminate some of the risk of disease and insect damage. This change also will standardize current regulations for the fresh market vegetable crops.

6. Section 9(b)(2)—Allow an insured to elect not to replant damaged sweet corn that is initially planted within the fall or winter planting periods, provided the final planting date for the planting period has passed. With this election, the insured may collect an indemnity and that particular acreage will be uninsurable for the next planting period. The insured may also elect to replant such sweet corn acreage, collect a replanting payment under section 12, and maintain the initial planting period coverage. This change incorporates and standardizes procedures utilized in the fresh market vegetable crops.

7. Section 10(f)—The calendar date for the end of the insurance period is now included in the sweet corn crop provisions and has been established as 100 days after the date of planting or replanting. This change incorporates the actual number of days for sweet corn to reach maturity and for the crop to be harvested. This change will also standardize provisions to that of other crop insurance policies. Currently, the calendar date for the end of the insurance period is contained in the Actuarial Table.

8. Section 11(a)—Add excess rain and excess wind as insurable causes of loss. Current regulations allow these causes to be covered only if they occur in conjunction with a cyclone. Removal of the requirement that these causes of loss must occur in conjunction with a cyclone will provide coverages for crop damage that is not associated with a cyclone.

9. Section 13—Change notice of damage or loss requirements to require that if the insured intends to claim an indemnity on any unit, notice must be given within 72 hours after the earliest of: discontinuance of harvest of any acreage on the unit; the date harvest would normally start if any acreage on the unit will not be harvested; or the

calendar date for the end of the insurance period. This change will standardize provisions found in all fresh market vegetable crop policies.

10. Section 14(b)(2)—Modify claim for indemnity calculations by providing calculations for catastrophic risk protection coverage and for coverage other than catastrophic risk protection. This provision includes the use of the catastrophic risk protection price election equivalent to determine the total dollar of production to count for indemnity purposes. This change is necessary to assure that producers that are insured based on a dollar amount of insurance are indemnified comparable to producers that are insured based on an actual production history (APH) yield basis.

11. Section 14(c)(1)—Clarify that the insured will receive not less than the amount of insurance per acre for the applicable stage for acreage that is: Abandoned; put to another use without the insurance provider's consent; damaged solely by uninsured causes; or for which the insured fails to provide production records. Current regulations require that not less than the final stage dollar amount of insurance be assessed for such acreage. This change allows for either the first stage amount of insurance or the final stage amount of insurance to be assessed against such acreage, depending on the growth stage of the crop when the event occurred. This change will standardize the provisions found in all fresh market vegetable crops.

12. Section 14(c)(2)(iii)—Require the insured to continue to care for acreage when the insured does not agree with the appraisal on that acreage. Production to count for such acreage will be determined using the harvested production if the crop is harvested, or our reappraisal if the crop is not harvested.

13. Section 14(c)(3)—Change the value to count for harvested production to the dollar amount obtained by subtracting the allowable cost from the price received (this resulting price must not be less than the minimum value shown in the Special Provisions), and multiplying this result by the number of crates harvested. Current regulations allow the value of sold production to be as low as zero. Also, clarify that harvested mature sweet corn that is damaged or defective due to insurable causes and is not marketable will not be counted as production. These changes are made to assure that the minimum value specified in the Special Provisions will be the lowest value considered for any marketable harvested production unless the insured selected the minimum value option.

14. Section 15—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

15. Section 16—A minimum value option is added. The option allows the value of each harvested crate to be as low as zero. This option is selected on the insurance application. This change will provide consistency in regulations found in other fresh market vegetable crops.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Fresh market sweet corn endorsement, Fresh market sweet corn.

Proposed Rule

For the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U. S. C. 1506(l), 1506(p).

2. In § 401.138, the introductory text is revised to read as follows:

§ 401.138 Fresh market sweet corn endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. 7 CFR part 457 is amended by adding a new § 457.129 to read as follows:

§ 457.129 Fresh Market Sweet Corn Crop Insurance Provisions.

The Fresh Market Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh Market Sweet Corn Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions.

Crate—Forty-two (42) pounds of the insured crop.

Crop year—In lieu of the definition of "crop year" contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall-planted sweet corn and continues through the last day of the insurance period for spring-planted sweet corn. The crop year is designated by the calendar year in which spring-planted sweet corn is harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

Excess wind—Wind speed strong enough to cause lodging of stalks and prevent a normal harvest.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity, and are those recognized by the Cooperative State Research, Education and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of sweet corn on the unit.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed for the insured crop to make normal progress toward maturity.

Marketable sweet corn—Sweet corn that meets the standards for grading U.S. No. 1 or better and will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. For each planting period, fresh market sweet corn must initially be planted in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which fresh market sweet corn must be planted to be considered fall, winter, or spring-planted sweet corn.

Potential production—The number of crates of sweet corn that the sweet corn plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain seed will not be considered when determining if it is practical to replant).

Replanting—Performing the cultural practices necessary to replace the sweet corn seed and then replacing the sweet corn seed in the insured acreage with the expectation of growing a successful crop.

Sweet corn—A type of corn with kernels containing a high percentage of sugar that is adapted for human consumption as a vegetable.

Written agreement—A written document that alters designated terms of a policy in accordance with section 15.

2. Unit Division.

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) will be divided by planting period.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement for such further division exists.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year in which the crop was planted;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Amounts of Insurance and Production Stages.

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the sweet corn in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The amount of insurance available under the catastrophic risk protection plan of insurance will be specified in the Actuarial Table.

(d) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to fresh market sweet corn.

(e) The amounts of insurance are progressive by stages as follows:

Stage	% of amount of insurance per acre that you selected	Length of time
1	65	From planting through the beginning of tasseling (which is when the tassel becomes visible above the whorl).
Final	100	From tasseling until the acreage is harvested.

(f) Any acreage of sweet corn damaged in the first stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date shown below is the date preceding the cancellation date:

State and county	Date
All Florida counties; and all Georgia counties for which the Special Provisions designate a fall planting period ...	Apr. 30.
Alabama; South Carolina; all Georgia counties for which the Special Provisions do not designate a fall planting period; and all other States	Nov. 30.

5. Cancellation and Termination Dates.

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
Florida; Atkinson, Baker, Berrien, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties Georgia and all counties south thereof for which the Special Provisions designate a fall planting period	July 31.
Alabama; South Carolina; and all Georgia Counties for which the Special Provisions do not designate a fall planting period	Feb. 15.
All other States	Mar. 15.

6. Report of Acreage.

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period, all the acreage of sweet corn in the county

insured under this policy in which you have a share.

7. Annual Premium.

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (*e.g.* fall planted irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop.

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sweet corn in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share;

(b) That is:

(1) Planted to be harvested and sold as fresh market sweet corn;

(2) Planted within the planting periods designated in the Actuarial Table;

(3) Grown under an irrigated practice;

(4) Grown by a person who in at least one of the three previous crop years:

(i) Grew sweet corn for commercial sale; or

(ii) Participated in managing a sweet corn farming operation;

(c) That is not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Grown for direct marketing.

9. Insurable Acreage.

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market sweet corn.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of sweet corn damaged during the planting period in which initial planting took place whenever less than 75 percent of the plant stand remains: and

(i) It is practical to replant: and

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed.

(2) Whenever sweet corn initially is planted during the fall or winter planting periods and the condition specified in section 9(b)(1)(ii) is not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

10. Insurance Period.

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the sweet corn is planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Abandonment of the sweet corn on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) 100 days after the date of planting or replanting.

11. Causes of Loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Excess rain;

(2) Excess wind;

(3) Fire;

(4) Freeze;

(5) Hail;

(6) Tornado; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

(1) Disease;

(2) Insect infestation; or

(3) Failure to market the sweet corn, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments.

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 25 percent of the plant stand will not produce sweet corn and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the result obtained by multiplying $65.00 by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), limiting a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss.

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(e));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3): (i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) times:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records.

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of crates of appraised sweet corn times the minimum value per crate shown in the Special Provisions for the planting period:

(i) Unharvested production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(ii) Production lost due to uninsured causes; and

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be

the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each crate of sweet corn (this result may not be less than the minimum value shown in the Special Provisions for any crate of sweet corn), and multiplying this result by the number of crates of sweet corn harvested. Harvested mature sweet corn that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Written Agreements.

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market sweet corn under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each crate of sweet corn (this result may not be less than zero for any crate of sweet corn), and multiplying this result by the number of crates of sweet corn sold; and

(2) For marketable production that is not sold, the dollar amount obtained by multiplying the number of crates of such sweet corn on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, D.C., on December 24, 1996

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–62 Filed 1–2–97; 8:45 am]

BILLING CODE 3410–FA–P

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7 CFR Parts 445 and 457

Pepper Crop Insurance Regulations; and Common Crop Insurance Regulations, Fresh Market Pepper Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of fresh market peppers. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Pepper Crop Insurance Regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Pepper Crop Insurance Regulations to the 1997 and prior crop years.

DATES: Written comments, data and opinions on this proposed rule will be accepted until close of business February 3, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 3, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Fresh Market Pepper Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of fresh market peppers that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the

Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.148, Fresh Market Pepper Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market peppers found at 7 CFR part 445 (Pepper Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 445 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 445.

This rule makes minor editorial and format changes to improve the Fresh Market Pepper Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring peppers as follows:

1. Section 1—Add definitions for the terms "bell pepper," "box," "days," "FSA," "good farming practices," "interplanted," "irrigated practice," "mature bell pepper," "planted acreage," "practical to replant," "row width," and "written agreement" for clarification.

The definition of "county" contained in the Common Crop Insurance Policy (§ 457.8), will be used to conform with other fresh market crop policies. This change will require acreage located in a local producing area bordering the county to be insured using the actuarial materials for the county where the land is physically located.

Clarify the definition of crop year to specify that the crop year begins on the first day of the earliest planting period for fall-planted peppers and continues through the end of the insurance period for spring-planted peppers.

Clarify the definition of excess rain to specify that it is an amount of precipitation that is sufficient to directly damage the crop. Previous regulations defined excessive rain as a minimum of 10 inches of rain within a 24-hour period. This change will provide coverage for crop damage that occurs when a lesser amount of precipitation is received.

Change the definition of freeze to specify that freeze occurs when low air temperatures cause ice to form in the cells of the plant or its fruit to encompass conditions found in both frost and freeze.

Change the definition of harvest to clarify and remove the term marketable. Peppers picked from the plant are considered harvested whether marketable or not.

2. Section 3(a)—Clarify that an insured may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the fresh market peppers in the county insured under the policy.

3. Section 3(b)—Clarify that the amounts of insurance the insured chooses for each planting period and practice must have the same percentage relationship to the maximum amount of insurance offered by FCIC for each planting period and practice.

4. Section 3(e)—Add language listing three stages of coverage for direct seeded and transplanted acreage. This language was previously contained in the actuarial documents.

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5. Section 9(a)—Add a provision that provides coverage on newly cleared land or former pasture land that is planted to fresh market peppers. It is a recognized practice to plant the insured crop on tilled acreage that has been newly cleared or that has been pasture land to eliminate some of the risk of disease and insect damage. This change also will standardize current regulations for the fresh market vegetable crops.

6. Section 9(b)(2)—Allow an insured to elect not to replant damaged peppers that were initially planted within the fall or winter planting periods, provided the final planting date for the planting period has passed and damage occurs after 30 days of transplanting or after 60 days of direct seeding. With this election, the insured may collect an indemnity and that particular acreage will be uninsurable for the next planting period. The insured may also elect to replant such pepper acreage, collect a replanting payment under section 12, and maintain the initial planting period coverage. This change incorporates and standardizes procedures utilized in the fresh market vegetable crops.

7. Section 10(f)(1)—Change the calendar date for the end of the insurance period from 150 days to 165 days after the date of direct seeding or replanting with seed. This change will allow expansion of pepper crop insurance coverage into other areas.

8. Section 14(b)(2)—Modify claim for indemnity calculations by providing calculations for catastrophic risk protection coverage and for coverage other than catastrophic risk protection. This provision includes the use of the catastrophic risk protection price election equivalent to determine the total dollar of production to count for indemnity purposes. This change is necessary to assure that producers that are insured based on a dollar amount of insurance are indemnified comparable to producers that are insured based on an actual production history (APH) yield basis.

9. Section 14(c)(2)(iv)—Require the insured to continue to care for acreage when the insured does not agree with the appraisal on that acreage. Production to count for such acreage will be determined using the harvested production if the crop is harvested, or our reappraisal if the crop is not harvested.

10. Section 14(c)(3)—Change the value to count for harvested production to the dollar amount obtained by subtracting the allowable cost from the price received (this resulting price must not be less than the minimum value shown in the Special Provisions), and multiplying this result by the number of boxes harvested. Current regulations allow the value of sold production to be as low as zero. Also, clarify that harvested mature bell peppers that are damaged or defective due to insurable causes and are not marketable will not be counted as production. These changes are made to assure that the minimum value specified in the Special Provisions will be the lowest value considered for any marketable harvested production unless the insured selected the minimum value option.

11. Section 15—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

12. Section 16—A minimum value option is added. The option allows the value of each harvested box to be as low as zero. This option is selected on the insurance application. This change will provide consistency in regulations found in other fresh market vegetable crops.

List of Subjects in 7 CFR Parts 445 and 457

Crop insurance, Pepper crop insurance regulations, Fresh market peppers.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 445 and 457 as follows:

PART 445—PEPPER CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 445 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The subpart heading preceding § 445.1 is revised to read as follows:

Subpart—Regulations for the 1987 Through the 1997 Crop Years

3. Section 445.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 445.7 The application and policy.

* * * * *

(d) The application for the 1987 and succeeding crop years is found at subpart D of part 400–General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Pepper Crop Insurance Policy for the 1987 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. 7 CFR part 457 is amended by adding a new § 457.148 to read as follows:

§ 457.148 Fresh Market Pepper Crop Insurance Provisions.

The Fresh Market Pepper Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

FRESH MARKET PEPPER CROP PROVISIONS

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions.

Acre—43,560 square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Bell pepper—An annual pepper (of the capsicum annuum species, grossum group), widely cultivated for its large, crisp, edible fruit.

Box—One and one-ninth (1 1/9) bushels of the insured crop.

Crop year—In lieu of the definition of "crop year" contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall-planted peppers and continues through the last day of the insurance period for spring-planted peppers. The crop year is designated by the calendar year in which spring-planted peppers are harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of peppers on the unit.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed for the insured crop to make normal progress toward maturity.

Mature bell pepper—A pepper that has reached the stage of development that will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, transplants or seed have been placed manually or by a machine appropriate for the insured crop and planting method, at the correct depth, into soil that has been properly prepared for the planting method and production practice. For each planting period, peppers must initially be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which the peppers must be planted to be considered fall, winter or spring-planted peppers.

Potential production—The number of boxes of mature bell peppers that the pepper plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

Replanting—Performing the cultural practices necessary to replace the pepper seed or transplants and then replacing the pepper seed or transplants in the insured acreage with the expectation of growing a successful crop.

Row width—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

Written agreement—A written document that alters designated terms of a policy in accordance with section 15.

2. Unit Division.

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) will be divided by planting period.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement for such further division exists.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year in which the insured crop was planted;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Amounts of Insurance and Production Stages.

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the peppers in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The amount of insurance available under the catastrophic risk protection plan of insurance will be specified in the Actuarial Table.

(d) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) do not apply to fresh market peppers.

(e) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of amount of insurance per acre that you selected	Length of time if direct seeded	Length of time if transplanted
1	65	From planting through the 74th day after planting	From planting through the 44th day after planting.
2	85	From the 75th day after planting until the beginning of stage 3.	From the 45th day after planting until the beginning of stage 3.
3	100	Begins the earlier of 110 days after planting, or the beginning of harvest.	Begins the earlier of 80 days after planting, or the beginning of harvest.

(f) Any acreage of peppers damaged in the first or second stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are July 31.

6. Report of Acreage.

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

(a) All the acreage of peppers in the county insured under this policy in which you have a share; and

(b) The row width.

7. Annual Premium.

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (*e.g.* fall direct seeded irrigated) is determined by multiplying the third stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop.

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the bell peppers in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share;

(b) That are:

(1) Planted to be harvested and sold as mature fresh market bell peppers;

(2) Planted within the planting periods designated in the Actuarial Table;

(3) Grown under an irrigated practice;

(4) Grown on acreage covered by plastic mulch except where the Special Provisions allow otherwise;

(5) Grown by a person who in at least one of the three previous crop years:

(i) Grew bell peppers for commercial sale; or

(ii) Participated in managing a bell pepper farming operation;

(c) That are not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume;

(3) Pimento peppers; or

(4) Grown for direct marketing.

9. Insurable Acreage.

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market peppers.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of peppers damaged during the planting period in which initial planting took place whenever less than 50 percent of the plant stand remains: and

(i) It is practical to replant;

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and

(iii) The damage occurs within 30 days of transplanting or 60 days of direct seeding.

(2) Whenever peppers initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1)(ii) and (iii) are not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

(3) We will not insure any acreage which, in the preceding planting period was planted to peppers (except as allowed in sections 9(b)(1) and (2)), tomatoes, eggplants, or tobacco unless the soil has been fumigated or otherwise properly treated.

10. Insurance Period.

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the peppers are planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the peppers on the unit;

(b) Abandonment of the peppers on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) The calendar date for the end of the insurance period as follows:

(1) 165 days after the date of direct seeding or replanting with seed; and

(2) 150 days after the date of transplanting or replanting with transplants.

11. Causes of Loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Excess rain;

(2) Fire;

(3) Freeze;

(4) Hail;

(5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

(1) Disease;

(2) Insect infestation; or

(3) Failure to market the peppers, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments.

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce peppers and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the result obtained by multiplying $300.00 by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), limiting a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss.

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(e));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of boxes of appraised peppers times the minimum value per box shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the third time;

(ii) Unharvested mature bell peppers (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each box of peppers (this result may not be less than the minimum value shown in the Special Provisions for any box of peppers), and multiplying this result by the number of boxes of peppers harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Written Agreements.

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

16. Minimum Value Option.

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I *or* Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market peppers under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each box of peppers (this result may not be less than $2.75 for any box of peppers), and multiplying this result by the number of boxes of peppers sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of boxes of such peppers on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount specified in section 16(b)(1)(i) may not be less than zero.

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, D.C., on December 24, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance.

[FR Doc. 97–61 Filed 1–2–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–44]

RIN 2120–AA64

Airworthiness Directives; Certain Textron Lycoming 320 and 360 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), which would have been applicable to all Textron Lycoming 235 series and 290 series, and certain 320 and 360 series reciprocating engines, that would have required initial and repetitive inspections of the crankshaft inner diameter (ID) for corrosion and cracks, and replacement of cracked crankshafts with a serviceable part. In addition, that proposed AD would have permitted operation of engines with crankshafts that were found to have corrosion pits but were free of cracks, provided repetitive inspections were performed by only certain qualified individuals until the next engine overhaul or 5 years after the initial inspection, whichever occurred first, at which time the proposed AD would have required those crankshafts with corrosion pits but no cracks to be replaced with serviceable crankshafts. That proposal was prompted by reports of crankshaft breakage originating from corrosion pits on the inside wall. This action revises the proposal by limiting the applicability of the proposed AD to only certain Textron Lycoming 320 and 360 series reciprocating engines, excluding additional engines installed in helicopters; permitting any certificated mechanic holding an airframe or powerplant rating to perform the Fluorescent Penetrant Inspection (FPI); permitting continued use of a pitted crankshaft as long as repetitive FPI inspections are performed; and deleting the five year limit on the use of crankshafts that are pitted but not cracked. Also, the FAA has received new cost information, and has revised the economic analysis with respect to the initial inspection time, the time to remove and replace crankshafts, the cost of the replacement crankshafts, and the cost for repetitive FPI inspections. Finally, this revised proposal introduces a public reporting survey to provide the FAA with a broader database on the

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condition of crankshafts when observed during the initial inspections. The actions specified by this proposed AD are intended to prevent crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft.

DATES: Comments must be received by April 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7080, fax (717) 327–7100. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond Reinhardt or Pat Perrotta, Aerospace Engineers, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581–1200; telephone (516) 256–7532 or (516) 256–7534, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–44." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 18, 1993, the Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, received a report that a Piper PA–28–161 aircraft, with a Textron Lycoming O–320–D3G reciprocating engine installed, executed a forced landing due to an engine crankshaft failure which caused the propeller to separate from the aircraft. The cause of the crankshaft failure was determined to be due to a high cycle fatigue mechanism that had initiated from a number of corrosion pits in the crankshaft bore. After the cracks had progressed through a substantial proportion of the crankshaft section, the rate of advance had increased until the remaining unseparated portion had failed as a result of overload. The cracking occurred in high cycle fatigue and it had progressed over an extended period of service. At the time of the accident the engine had operated for 1,950 hours time in service (TIS) since overhaul and had accumulated 4,429 hours total time since new over a period of 16 years. In addition, the Federal Aviation Administration (FAA) has confirmed that four other failures in the United States and 10 in foreign countries were due to cracks initiating from corrosion pits in the crankshaft bore on certain Textron Lycoming 320 and 360 reciprocating engines with ratings of 160 horsepower or greater. Of the 10 failures in foreign countries, four resulted in the propeller separating from the aircraft inflight. Three of these four were from 1993 to 1996. The FAA utilized metallurgical failure analysis reports and other information to conclude that these failures were due to cracks originating from corrosion pits. This condition, if not corrected, could result in crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Textron Lycoming 235 Series and 290 Series, and certain 320 and 360 series reciprocating engines was published in the **Federal Register** on November 28, 1995 (60 FR 58580); the comment period was reopened in a reprinting of the original proposal on April 8, 1996 (61 FR 15430). That action proposed to require initial and repetitive inspections of the crankshaft inner diameter (ID) for corrosion and cracks, and replacement of cracked crankshafts with a serviceable part. In addition, the proposed AD would have permitted operation of engines with crankshafts that were found to have corrosion pits but were free of cracks provided repetitive inspections were performed until the next engine overhaul or 5 years after the initial inspection, whichever occurred first, at which time the proposed AD would have required those crankshafts with corrosion pits but no cracks to be replaced with serviceable crankshafts. Those proposed actions would be performed in accordance with Textron Lycoming Mandatory Service Bulletin (MSB) No. 505A, dated October 18, 1994.

The FAA had determined that Fluorescent Penetrant Inspections (FPI) were warranted if corrosion pits were found. The FPI inspection was developed due to reports from Textron Lycoming and other approved repair stations that most of the crankshafts that are pitted do not contain cracks. The FAA determined that visual inspections alone were not sufficient to detect a crack. The FPI inspection was based on crack propagation data developed by the FAA in conjunction with Textron Lycoming and with consideration of the technical base in the U.S. for performing Non-Destructive Inspections. The FPI process was shown to be reliable for detection of cracks down to 0.050 inches deep and 0.100 inches in length. The FPI inspection interval was based on the crack propagation data such that a crack could be reliably be detected before the crankshaft failed. If an installed engine was found to have a pitted crankshaft, the FAA did not propose to allow the removal of metal to remove the corrosion pits due to possible contamination of the engine oil supply with metal filings and to ensure that the concentricity of the crankshaft would not be compromised.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Over 200

comments were received in response to the initial NPRM. The following comment groups comprise the information received from the various commenters from around the U.S. and overseas:

A group of commenters state that the Textron Lycoming Model 0–360–A4A and other models that incorporate solid crankshafts should be exempted from the proposed rule's applicability. Also, the commenters state that the Textron Lycoming Model 0–360–J2A engine, installed in the Robinson helicopter, should also be exempted from the proposed rule's applicability, as the –J2A model was not specifically designed as a helicopter engine. The FAA concurs. All these engines have been deleted from the applicability of the revised proposal.

Another group of commenters state that inspections are too costly, that there are not enough failures to justify an AD, and not enough data and studies were developed before issuance of the NPRM. The FAA does not concur. The FAA received data and studies which substantiated the need for an AD. These data confirm the crankshaft fracture occurred at a stress concentration caused by a corrosion pit on the inside of the crankshaft. In addition, since the NPRM was issued, six additional crankshaft failures on 160 horsepower Textron Lycoming engines are being investigated. The FAA has, however, performed additional analysis to limit the population of engines impacted by this proposed AD and has deleted the five year life limit on pitted crankshafts undergoing repetitive FPI inspections. These measures will decrease the cost of this AD to the public.

Another group of commenters state that the 5-year limit on the fluorescent penetrant inspection (FPI) after which the pitted crankshaft must be removed from service should be deleted from the AD. The FAA concurs, and the proposal AD has been revised to delete the 5-year life limit on pitted crankshafts undergoing repetitive FPI inspections.

Another group of commenters state that the crankshaft failures used to justify the proposed AD occurred after a propeller strike, and that the propeller strike history is the main reason for crankshaft failures. The commenters recommend inspecting crankshafts only after a propeller strike. The FAA does not concur. There is insufficient evidence to show that propeller strikes were the primary cause or even a major contributing factor in the investigated crankshaft failures. Severe propeller strikes are normally associated with stress rupture or low cycle fatigue failures, whereas the corrosion failures addressed in this proposal are associated with high cycle fatigue.

Another group of commenters state that any AD should allow airframe or powerplant rated mechanics to perform the required FPI inspections, not just specially rated individuals. The FAA concurs and the proposed AD has been revised accordingly.

Another group of commenters state that instead of the proposed initial and repetitive inspections, the inspections should be required at the next overhaul or 2000 hours TIS since last overhaul, and reinspection accomplished at reasonable TIS intervals. The FAA does not concur. Most overhauls do not include a detailed examination of the crankshaft internal bore for corrosion and cracks. The proposed initial inspection at 1,000 hours TIS since remanufacture or overhaul is necessary due to service failures which have occurred shortly after 1,000 hours TIS since new or overhaul. With regard to the repetitive inspection intervals, the 100 hours TIS interval is based on the crack propagation rate when the crack, detectable by FPI, exists in the internal bore.

Another group of commenters state that the proposed inspections may cause more problems by, for example, improper plug replacement, a rag left in the shaft bore, improper torque on propeller bolts, or metal particles falling into the oil system. The FAA concurs. The NPRM and Textron Lycoming's Mandatory SB cautioned operators about some of these conditions, and the proposed AD has been revised to require, for example, removal of cloths used during the FPI inspections.

Another group of commenters state that all new crankshafts should be exempt from the inspections required by the proposed AD for 10 years. The FAA concurs in part. The original proposal recognized this issue and already incorporates this provision. Paragraph (b) of the current proposal allows initial inspection within 10 years of the original ship date, or 6 months from the effective date of the AD, whichever occurs later. However, there are other events that may require crankshaft inspection prior to reaching 10 years, for example, an overhaul or engine disassembly as specified in Paragraph (b) of the proposed AD.

Another group of commenters state that FPI inspection chemicals may interfere with corrosion prevention treatments being initiated. The commenters recommend delaying FPI inspection for 1 year. The FAA does not concur. When corrosion protection treatments are available, the FAA will evaluate the need for future rulemaking.

In addition, the FAA has removed from the proposed AD's applicability engines with less than 160 maximum rated horsepower (hp) because the lower power engines, which utilize the same size crankshaft, develop lower stress levels at the location of the corrosion pitting. The lower stress levels result in predicted fatigue life which will not initiate cracking from the stress concentrations associated with the corrosion pitting. In addition, service history of cracks developing from the location of corrosion pitting has been limited to the higher rated power (160 hp and above) engines.

Also, the FAA has determined the need to acquire more data on the extent of crankshaft corrosion. A crankshaft inspection survey has been included as an appendix to this proposed AD. The inspection survey will be utilized by the FAA to determine: the number of engines under repetitive FPI inspections, the number of crankshafts that are found to be cracked, if another failure mechanism is contributing to the crankshaft failures, and possible adjustment of the repetitive inspection interval. The information obtained by this survey may lead to future rulemaking.

Finally, the economic analysis of this proposed AD is revised to address the changes in the scope of the proposal. The total number of engines impacted worldwide has dropped from 77,100 to 16,357 (11,000, 160 hp, 320 series; and 5,357, 360 Series). The FAA estimates that 60% of that number, 9,814 engines are installed on aircraft of U.S. registry, and would be affected by this proposed AD. The FAA estimates that it would take approximately 8 work hours per engine to accomplish the proposed initial visual inspection, and that the average labor rate is $60 per work hour; therefore the estimated cost impact for the proposed initial visual inspections would be $4,710,720. The FAA also estimates, based on information received from the UK CAA regarding the number of engines undergoing repetitive inspections in the UK due to the UK CAA AD on the same subject, that 12%, or 1,178, of the affected engines would contain crankshafts that require FPI. The FAA estimates that each FPI would take approximately 8 hours, and that operators with corroded crankshafts would perform one FPI per year. The estimated cost for the repetitive FPI, therefore, is $565,286 annually. Lastly, the FAA estimates that 5 crankshafts will require replacement per year due to cracks, and that it would take 38 work hours per engine to replace cracked crankshafts. Assuming that a replacement crankshaft would cost

approximately $6,000 per engine, the estimated cost for replacement of 5 crankshafts would be $41,400 annually. Therefore, the total estimated cost impact of this proposal is $5,317,406 for the first year, and $606,686 each year thereafter.

Since these changes expand the scope of the originally proposed AD, the FAA has determined that it is necessary to publish this Supplemental Notice of Proposed Rulemaking to provide an opportunity for public comment on the revised proposal.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming: Docket No. 94–ANE–44.

Applicability: Textron Lycoming 320 series limited to 160 horsepower, and 360 series, four-cylinder reciprocating engines with fixed pitch propellers; except for the following installed in helicopters or with solid crankshafts: HO–360 series, HIO–360 series, LHIO–360 series, VO–360 series, and IVO–360 series, and Models O–320–B2C, O–360–J2A, AEIO–360–B4A, O–360–A4A, –4G, –A4J, –A4K, –A4M, and –C4F. These engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Cessna, Piper, Beech, American Aircraft Corporation, Grumman American Aviation, Mooney, Augustair Inc., Maule Aerospace Technology Corporation, Great Lakes Aircraft Co., and Commander Aircraft Co.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure, which can result in engine failure, propeller separation, forced landing, and possible damage to the aircraft, accomplish the following:

(a) For engines shipped new from Textron Lycoming prior to and including December 31, 1984, and that have never been overhauled, or any engine remanufactured or overhauled and that has accumulated 1,000 hours or more time in service (TIS) since remanufacture or overhaul, visually inspect the inner diameter (ID) of the crankshaft for corrosion pits within the next 100 hours TIS after the effective date of this AD, or 6 months after the effective date of this AD, whichever occurs first, in accordance with Textron Lycoming Mandatory Service Bulletin (MSB) No. 505A, dated October 18, 1994.

(1) The propeller must be removed in accordance with the aircraft manufacturer's procedures to perform this inspection.

(2) If corrosion pits are found during this inspection, prior to further flight perform a Fluorescent Penetrant Inspection (FPI) in accordance with paragraph (e) of this AD.

(3) Within 48 hours after these inspections, report the finding of the inspection in accordance with paragraph (f) of this AD.

(b) For engines shipped new from Textron Lycoming after December 31, 1984, and that have never been overhauled, or any engine remanufactured or overhauled and that has accumulated less than 1,000 hours TIS since remanufacture or overhaul, visually inspect the ID of the crankshaft for corrosion pits, at the earliest occurrence of any event specified in subparagraph (4) of this paragraph, and in accordance with Textron Lycoming MSB No. 505A, dated October 18, 1994.

(1) The propeller must be removed in accordance with the aircraft manufacturer's procedures to perform this inspection.

(2) If corrosion pits are found during this inspection, prior to further flight perform an FPI in accordance with paragraph (e) of this AD.

(3) Within 48 hours after these inspections, report the finding of the inspection in accordance with paragraph (f) of this AD.

(4) Visually inspect the ID of the crankshaft for corrosion pits at the earliest of the following:

(i) The next engine overhaul or disassembly.

(ii) Within 10 years of the original shipping date or 6 months from the effective date of this AD, whichever occurs later.

(iii) Within 1,000 hours TIS since remanufacture or overhaul, or 6 months from the effective date of this AD, whichever occurs later.

(c) Thereafter, if no corrosion pits or cracks are found on the ID of the crankshaft during the initial visual inspection, perform a visual inspection at intervals not to exceed 5 years since last inspection, or at the next engine overhaul or disassembly, whichever occurs first, in accordance with Textron Lycoming MSB No. 505A, dated October 18, 1994. If corrosion pits but no cracks are found on the ID of the crankshaft during the initial visual inspection, repeat the FPI at intervals not to exceed 100 hours TIS since last FPI inspection until a serviceable crankshaft is installed in the engine..

(d) Prior to further flight, remove from service and replace with a serviceable part any crankshaft found cracked during FPI performed in accordance with paragraph (e) of this AD.

(e) An engine, installed in the aircraft having a corroded crankshaft, may be returned to service without disassembly provided an FPI confirms the bore to be crack free. The process and materials utilized for the FPI must comply with the classification contained in MIL–I–25135. The FPI must be fluorescent solvent removable (Method C) utilizing a Type 1 penetrant system with a penetrant sensitivity Level 3 or higher and a Form D-Nonaqueous Developer. Spray containers of the materials are acceptable for this inspection. An individual having a mechanic certificate with at least an Airframe or Powerplant Rating who has the capability to perform the FPI inspection method is authorized to perform the FPI inspection. This FPI process involves the removal of penetrant material from the inspection surface. To ensure that contaminants from the cleaning process and the FPI do not enter the engine oil supply, block off the area of the crankshaft bore that is aft of the area being inspected by using a clean, dry, lint-free cloth. When the FPI is completed remove the lint-free cloth from the crankshaft bore before installing the front crankshaft plug. The FPI must be performed using the following steps:

(1) Cleaning—The crankshaft bore surface must be cleaned of visible corrosion prior to the FPI process using Scotchbrite or an

equivalent material. Metal-removing processes must not be used for visible corrosion cleaning. In addition, clean all surfaces to be inspected utilizing a cleaner, such as Magnaflux Spot Check Cleaner/ Remover SKC–NF or equivalent, on the ID of the crankshaft bore. Let the cleaner/remover dry for 5 minutes minimum. Wipe clean with a lint-free cloth.

(2) Penetrant Application—Spray penetrant, such as ZYGLO ZL–22A Magnaflux Corp. or equivalent Type 1 with a penetrant sensitivity Level 3 or higher, on the ID bore.

(3) Penetrant Dwell—Allow a minimum of 10 minutes dwell. For dwell times exceeding 60 minutes the penetrant shall be reapplied to prevent drying.

(4) Penetrant Removal—Remove all bulk surface penetrant by wiping with a clean, dry lint-free cloth. Make a single wipe and then fold the cloth to provide a clean surface for succeeding wipes.

(i) Solvent Wipe—After the bulk of the surface penetrant has been removed, lightly moisten a fresh lint-free cloth with cleaner/ remover and again wipe the surface. The cloth must not be saturated and the inspection surface must not be flooded with solvent. Excessive solvent will wash penetrant from defects.

(ii) During wiping, the inspection surface shall be illuminated with black light. Repeat the solvent wipe as necessary until no residual trace of penetrant remains on the inspection surface.

(5) Nonaqueous Developer (solvent suspended)—Following the cleaner/remover wipe apply nonaqueous developer by spraying a developer, such as Magnaflux Spot Check Developer SKD–NF or Form D-Nonaqueous equivalent, on the ID bore. Apply a thin uniform layer to the bore surface. The optimum coating thickness is indicated by the visibility of the part surface. If the metallic luster cannot be seen the developer is too thick.

(6) Dwell—Developer dwell is required to allow the developer time to draw entrapped penetrant from any small defects. The minimum development time shall be 10 minutes. The maximum dwell time for nonaqueous developer shall be 60 minutes.

(7) Inspection shall be performed within the allotted dwell time. Components that are not inspected within the allotted dwell time must be reprocessed.

(i) Examine crankshaft bore in a darkened enclosure under ultraviolet (black) light. Allow 1 minute for eyes to adapt to darkened environment prior to inspecting crankshaft bore. Use of photochromic lenses or permanent darkened lenses is prohibited.

(ii) During inspection make sure that the black light intensity is a minimum of 1200 microwatts/cm^2 at the bore surface. This can be accomplished by positioning the black light as close as necessary to the bore to achieve 1200 microwatts/cm^2. White light background shall not exceed 20 1×/m^2 (2 foot-candles). A photographic light meter may be used to determine the white light background reading.

(iii) Crankshaft bores having no crack indications are acceptable.

(iv) Magnification (10X maximum) and/or white light may be used to determine discontinuity type. Indications, on parts exhibiting fluorescent background which interferes with evaluation of questionable indications, shall be evaluated as follows:

(A) Lightly wipe the area once with a soft brush or cotton swab applicator dampened with ethyl alcohol. Do not permit alcohol to flood the surface.

(B) After the alcohol evaporates from the surface, re-inspect. If an indication reappears, evaluate it immediately. If the indication does not reappear, reapply developer. The redevelopment time shall equal the original development time. Thereafter, re-inspect.

(8) After inspection, clean residual penetrants and developers from the crankshaft bore. Remove the lint-free cloth from the crankshaft bore prior to installing front crankshaft plug. Failure to do so may result in oil restriction within the engine and in turn cause engine failure. Reinstall the front crankshaft plug in accordance with Textron Lycoming MSB No. 505A, dated October 18, 1994. Failure to install the plug properly may result in engine oil loss and in turn cause engine failure.

(f) After accomplishing the initial visual inspection and, if necessary, the FPI, required by this AD, complete Appendix 1 of this AD and submit to the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; fax (516) 568–2716. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

Appendix 1

Textron Lycoming Crankshaft Inspection Survey

AD DOCKET NO. 94–ANE–44

Date of Inspection _____

Inspector's Information

Name _____

Address _____

State _____ Zip Code _____

Telephone No. _____

Facsimile No. _____

Engine Model Number _____

Engine Serial Number (S/N) _____

Date of Manufacture _____ (M/D/YR)

Total Time (TT) _____ hrs

Time Since Major Overhaul (SMOH) _____ hrs

Crankshaft Part Number (located on prop flange) _____ S/N _____

Aircraft Make and Model

_____

Frequency of Flights _____ per month (average) Duration _____ hrs per Flight

How was aircraft being utilized? _____ Training, _____ Personal, _____ Banner Towing, _____ Glider Towing, _____ Agricultural, Other (please explain) Q_____

Propeller Make and Model

_____

Has the aircraft ever experienced a propeller strike during service? _____ Yes _____ No

Was propeller ever removed for servicing or overhaul? _____ Yes _____ No

If yes, describe reason for removal in detail.

_____

_____

_____

What was the condition of the crankshaft internal bore?

Corroded _____ Yes _____ No

If corroded, how many pits? ____ 1 to 5, ____ 6 to 10, _____ More than 10

Was a crack found? _____ Yes _____ No

If crack was found, complete the following:

_____ Distance from crankshaft end (Inches)

_____ Crack Length (Inches)

Comments:

_____

_____

_____

_____

_____

_____

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 26, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–32 Filed 1–2–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AEA–16]

Proposed Establishment of Class E Airspace; Johnstown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Johnstown, NY. The development of two new Standard Instrument Approach Procedures (SIAP) at Fulton County Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled

airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 30, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–16, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AEA–16". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Johnstown, NY. A GPS RWY 10 SIAP and a GPS RWY 28 SIAP has been developed for Fulton County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Johnstown, NY [New]

Fulton County Airport, NY
(Lat. 42°59'54" N, long. 74°19'46" W)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Fulton County Airport, excluding that portion that coincides with the Albany, NY Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 18, 1996.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–78 Filed 1–2–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–15]

Proposed Establishment of Class E Airspace; Stuart, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Stuart, VA. The development of a new Standard Instrument Approach Procedure (SIAP) at Micro Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward

from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 30, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–15, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or argument as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AEA–15". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Stuart, VA. A GPS RWY 26 SIAP has been developed for Micro Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Stuart, VA [New]

Micro Airport, VA
(lat. 36° 44′07″N, long. 80° 26′56″W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Micro Airport and within 4.5 miles each side of the 252° bearing to the airport from the 8-mile radius to 15 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on December 18, 1996.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–79 Filed 1–2–97; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AE44

Federal Old-Age, Survivors and Disability Insurance; Report of Earnings Under the Social Security Earnings Test

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend our regulations regarding reports of earnings to the Social Security Administration (SSA) required of beneficiaries who work and earn more

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than the applicable exempt amount. Beneficiaries under age 70, who work and earn more than the applicable exempt amount, are required by law to report their earnings to SSA within three months and 15 days following the close of their tax year (usually April 15). As a result of our ongoing efforts both to improve customer service and to reduce the public's paperwork burden, we propose to change our regulations to state that we can accept the W–2 report filed by the employer with SSA, and/or the self-employment income tax return filed by the beneficiary with the Internal Revenue Service (IRS), as the report of earnings. We will use the information (wages and net earnings from self-employment) contained in those reports together with other pertinent information to adjust benefits under the earnings test.

DATES: To be sure that your comments are considered, we must receive them no later than February 3, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect format and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Division of Regulations and Rulings, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5121. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Under the Social Security earnings test set out in section 203 of the Social Security Act (the Act), benefits are reduced if the annual earnings of a beneficiary (receiving other than disability benefits), under age 70, exceed certain exempt amounts. The exempt amounts are established by law. Individuals who are entitled to a monthly benefit (other than a disability benefit) during the year and who earn over the exempt amount are required to file a report of earnings with the SSA within three months and 15 days following the close of their tax year (usually April 15). The reports may be filed on a form prescribed by SSA, or in person, or by telephone. The report may be filed by someone other than the beneficiary, provided the report contains the required information. Failure to file a report as required will result in a monetary penalty, unless we find that there was good cause for filing late. There are 330,833 public reporting burden hours associated with the completion and filing of these annual earnings reports.

Working beneficiaries are also required to report their income to the IRS during the same time period. SSA receives and processes W–2 information from employers. We also receive limited information from IRS from individual self-employment income tax returns that are filed. Wages and net-earnings from self-employment are "posted" to individual earnings records as part of our mission to maintain accurate earnings records for benefit payment. Until recently, we have been unable to use the earnings information we receive from W–2 forms and self-employment tax returns as the annual report because it took several years for SSA to receive and process the earnings information from the W–2 forms and the tax returns. For that reason, we provided in § 404.452(b) of our regulations that the filing of tax returns with the IRS was not such a report as is required to be filed for the annual earnings test, even where the tax returns showed the same wages and net earnings from self-employment that must be reported to us for purposes of the annual earnings test. Although SSA was unable to use earnings information from W–2 forms and self-employment tax returns to adjust benefits on a timely basis, we have traditionally used this information as a check to ensure beneficiary compliance with the reporting requirements of the annual earnings test.

Recent improvements in employer reporting practices and in SSA's Annual Wage Reporting (AWR) process have made it feasible and desirable for SSA to change its process for obtaining earnings information from working beneficiaries. For the majority of beneficiaries, information from the W–2 report and/or the self-employment tax return is now processed quickly enough that it is sufficient to serve as the "annual report" without need for further action by the beneficiary. Therefore, as part of the "reinventing government" initiative and in order to reduce the reporting burden on the public, improve customer service and save administrative costs, we propose to revise § 404.452 to state that the form W–2 filed by the employer with SSA and/or the self-employment income tax return filed by beneficiaries with IRS may serve as the annual report of earnings. Because of this change, SSA will no longer print and mail Annual Report of Earnings forms. For most beneficiaries, the process will be totally automated, with SSA receiving and processing earnings information reported for tax purposes and using that information in conjunction with other relevant information to adjust the Social Security benefits payable accordingly.

Certain situations will require more information than is contained on the form W–2 and self-employment income tax return. When these situations occur, a beneficiary will still have to contact SSA to provide the information in order to ensure the correct amount of benefits are paid, unless the information was otherwise provided to us. In addition, some beneficiaries may wish to file a report directly with SSA, in order to have their benefits adjusted sooner. (Most adjustments now occur during the period February through May, based on reports filed directly with us, but would take place June through October if based on reports filed through IRS.) In these instances, we will accept a report of earnings in writing, in person, or over the telephone, from beneficiaries who still need or wish to file a report.

For example, under IRS regulations, wages are reported on forms W–2 for the year in which they are paid. Under the Social Security earnings test, wages are counted for the year in which services are performed. Therefore, if the form W–2 shows wages that were earned in a year or years prior to the year for which the report is made, e.g., deferred compensation, the beneficiary will need to report to us the correct amount of earnings for the year reported.

There is a similar provision for the self-employed (applicable to years after the initial year of entitlement) that may require contact when no services have been performed in the year for which net earnings from self-employment are reported. Furthermore, in the year in which the monthly earnings test applies (frequently the year of retirement), a beneficiary who has not already done so will need to provide monthly earnings information to SSA that cannot be discerned from the form W–2 or the self-employment income tax return.

Additional examples of situations where other pertinent information must be provided are:

- The beneficiary earned wages above the exempt amount and also had a net loss from self-employment;
- There were wages reported on a W–2 that will be included on a self-employment tax return (e.g., ministers and certain church workers);
- The beneficiary is self-employed and reports earnings on a fiscal year basis which is not the calendar year;
- The beneficiary had Federal agricultural program payments or income from carry-over crops that is included on the SE return;
- The beneficiary estimated earnings over the exempt amount and some benefits were withheld, but there were no earnings for the year, i.e., no wages reported, no self-employment.

SSA already has methods of collecting some of the supplemental information needed to correctly adjust benefits under the earnings test when that information is needed. Much of the information can be gathered in the initial claims process. We also work with employers and payroll groups to have them report directly to us certain payments that should not be counted under the earnings test. We will continue to use these methods as well as develop other means to obtain supplemental information needed to correctly adjust benefits without a separate report of earnings from the beneficiary. We will provide an explanation of the process during the claims interview, and we will provide written information through our public information materials that will allow beneficiaries to understand what earnings should be counted under the earnings test and the situations in which we would need additional information. When we adjust benefits based on the earnings posted to the beneficiary's record, we will, in our notice to the beneficiary, provide full information regarding the earnings that we used and the situations in which those earnings may not be correct. This will ensure that beneficiaries have full knowledge of our actions. Our notice will also tell beneficiaries how to obtain a reconsideration of our determination if they feel we were wrong, and will advise them of their responsibility to give us any further information that could be pertinent to their benefit adjustment.

It should be noted that we are not revising our regulations regarding extension of time for filing a report (§ 404.452(f)). The deadline for filing employer reports (W–2 forms) is well within the timeframes for required annual reports. In relying on these, as well as the SE tax return information, SSA will assume that posted earnings are based on timely filed reports. However, when a beneficiary requests an extension of time from IRS for filing a self-employment tax return, the beneficiary must either file a timely report of earnings with SSA, or request an extension of time for filing such a report from SSA. An extension granted by IRS will not be considered an extension of time granted by SSA.

This change in our rules is proposed in the spirit of improved service to our beneficiaries. First, this proposed rule would reduce the burden associated with the double filing of information with both SSA and IRS. Second, SSA would be able to shift resources devoted to the solicitation and processing of reports from beneficiaries under the current annual report process to other priority workloads, such as processing claims for benefits and responding to telephone inquiries. Finally, this proposed rule supports the President's request in his remarks on May 22, 1995 on signing the Paperwork Reduction Act of 1995, that agencies review their regulations with the goal of reducing by half the frequency of reports required from citizens. This proposed rule would eliminate the annual report of earnings form and the need for most working beneficiaries to file a separate report of earnings with SSA, resulting in a savings of up to 330,833 public burden hours each year.

We also propose to revise paragraphs (a)(1) and (a)(2) of § 404.452 by changing age 72 to age 70. These revisions would reflect the statutory change in the Social Security Amendments of 1977 that reduced from age 72 to 70, the age at which beneficiaries become exempt from the annual earnings test. This change was originally scheduled to take effect in 1982 but, due to a provision in the Omnibus Budget Reconciliation Act of 1981, it did not become effective until 1983. Since the statutory provisions were self-implementing, we exempted working beneficiaries age 70 and over from the annual earnings test beginning in 1983. However, we have not previously updated this regulation to take account of this statutory change.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this proposed rule and determined that it meets the criteria for a significant regulatory action within the meaning of Executive Order 12866. As indicated earlier in this preamble, failure to file a timely report of earnings will result in a monetary penalty, unless we find that there was good cause for filing late. Since, for most beneficiaries, the W–2 and/or self-employment tax return information will be considered the annual report of earnings required by section 203(f) of the Act, we anticipate that there will be very few penalties imposed on beneficiaries for failing to report their earnings. The loss of penalty dollars is estimated to be $60–75 million for the 5-year period of fiscal years 1997 through 2001. However, we believe that the loss of penalty income should not be given undue consideration because this income results from beneficiaries' failure to timely report their earnings to SSA. It has always been the goal of SSA to achieve maximum reporting compliance and if this goal was achieved, there would be no penalties imposed. Furthermore, we believe that the loss of penalty revenue is more than offset by the benefits that both the public and SSA would realize under the proposed rule. These benefits include the fact that up to 1.3 million beneficiaries will no longer be required to complete the annual report of earnings forms resulting in a reduction in the public reporting burden of up to 330,833 hours. In addition, this initiative will shift the annual report workload from SSA's peak workload period (January through March) until later in the year and thus, will allow SSA to divert scarce resources to other priority workloads, such as processing claims for benefits and responding to telephone inquiries, resulting in better overall service to the public.

Administrative savings for this initiative are estimated to be 540 workyears and $23.2 million for fiscal years 1997 through 2001.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed regulation will impose no new reporting or recordkeeping requirements requiring OMB clearance. As indicated earlier in this preamble, we estimate that the proposed Annual Report of Earnings process will reduce the annual public reporting burden by up to 330,833 hours. This is the annual reporting burden currently associated with the completion and filing of forms SSA–777 and SSA–7770 (OMB Control Number 0960–0057). Although this proposed regulation would eliminate those forms, SSA will continue to

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collect earnings information, through a number of other collection instruments already approved by OMB. In most cases, we will obtain this information through forms W–2 and schedule SEs approved for use by IRS. In those cases where additional information is required, we expect to obtain that information during the initial claims interview through forms approved for use by SSA (primarily the SSA–1 (Application for Retirement Benefits; OMB Approval Number 0960–0007) and the SSA–795 (Statement of Claimant or Other Person; OMB Approval Number 0960–0045)). In addition, SSA has developed a new form to collect the additional information needed from employers to correctly adjust benefits in special wage payment situations. We will submit this form to OMB for its review under section 3507(d) of the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 1, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, part 404 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404 (a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. Section 404.452 is amended by revising paragraphs (a)(1) and (a)(2), revising the last sentence of paragraph (b), and revising paragraph (d) to read as follows:

§ 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment.

(a) * * *

(1) The individual attained the age of 70 in or before the first month of entitlement to benefits in the taxable year, or

(2) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which the individual was entitled to benefits and was under age 70.

(b) * * * The filing of an income tax return or a form W–2 with the Internal Revenue Service may serve as the report required to be filed under the provisions of this section where the income tax return or form W–2 shows the same wages and net earnings from self-employment that must be reported to the Administration under this section.

* * * * *

(d) *Information to be provided to us.* The report should show the name and social security claim number of the beneficiary about whom the report is made; identify the taxable year for which the report is made; show the total amount of wages for which the beneficiary rendered services during the taxable year (if applicable), the amount of net earnings from self-employment for such year (if applicable); and show the name and address of the individual making the report. To overcome the presumption that the beneficiary rendered services for wages exceeding the allowable amount and rendered substantial services in self-employment in each month (see § 404.435), we must also be told the specific months in which the beneficiary did not render services in employment for wages of more than the allowable amount (as described in § 404.435) and did not render substantial services in self-employment (as described in §§ 404.446 and 404.447).

* * * * *

[FR Doc. 97–100 Filed 1–2–97; 8:45 am]
BILLING CODE 4190–29–P

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20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD73

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Standards of Conduct for Claimant Representatives

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These proposed rules would revise our regulations governing representation of claimants seeking Social Security or supplemental security income (SSI) benefits under title II or XVI of the Social Security Act (the Act). They would establish standards of conduct and responsibility for persons serving as representatives and further define our expectations regarding their obligations to those they represent and to us. They would include statutorily and administratively imposed requirements and prohibitions.

DATES: To be sure that your comments are considered, we must receive them no later than March 4, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov", or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758.

SUPPLEMENTARY INFORMATION

Purpose and Scope

Existing regulations governing representatives' conduct (§§ 404.1740, *et seq.* and 416.1540, *et seq.*) under titles II and XVI primarily reiterate various statutory provisions set forth in the Act. Sections 404.1745 and 416.1545 also provide that a representative may be suspended or disqualified if he or she has violated those rules, been convicted of a violation of section 206 of the Act or "otherwise refused to comply with our rules and regulations on representing claimants in dealings with us." This is consistent with section 206(a)(1) of the Act, which provides that the Commissioner of Social Security (the Commissioner) may "suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations * * *." Since their inception, the regulations have reflected the Commissioner's (formerly the Secretary of Health and Human Services' (the Secretary's)) broad authority over matters involving representatives' activities in their dealings with us.

These proposed rules specifically provide enforceable standards governing aspects of practice, performance and conduct for all persons who act as claimants' representatives. The proposed rules also recognize potential changes in the procedures used by the

Social Security Administration (SSA) to process claims, the increased participation of compensated representatives in the adjudicative process, the special circumstances presented by SSA's nonadversarial hearings, and statutory amendments, such as the anti-fraud provisions of the Social Security Independence and Program Improvements Act of 1994, Public Law (Pub. L.) 103–296. The existing regulations pertaining to representatives' conduct have been largely unchanged since their promulgation in 1980, and do not adequately address actual and potential problems resulting from the participation of representatives in the claims process.

Although we realize that most representatives do a conscientious job in assisting their clients, our experience has convinced us that there are sufficient instances of questionable conduct to warrant promulgation of additional regulatory authority. The existing regulations do not address a representative's willful or negligent delay, refusal to cooperate, failure to adequately prepare and present the claimant's case and other deficiencies. The proposed rules correct these omissions and are necessary to protect the claimant and the process from those individuals who are incapable of providing, or unwilling to provide, meaningful assistance in expeditiously resolving pending claims.

Although there are disparities in the levels of skill, experience, education and professional status among those who serve as representatives, we believe all such individuals must be bound by the same set of rules. In determining appropriate standards, we considered the requirements and intent of the Act and its implementing regulations, administrative law principles applicable to adjudication and the American Bar Association's (ABA) Model Rules of Professional Conduct and Model Code of Professional Responsibility.

There are comparable rules in part 410, subpart F (§§ 410.684, *et seq.*) governing representative conduct under the Black Lung benefits program. We are not revising those rules, however. Executive Order 12866, Regulatory Planning and Review, issued by the President on October 4, 1993 (58 FR 51735), provides that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need * * *." Because we have found no problems with representative conduct in claims involving Black Lung benefits comparable to those that have led to these proposed rules for titles II and XVI, there is no compelling need to revise the Black Lung rules.

We expect that the proposed rules will further clarify our expectations regarding the obligations of representatives to provide competent representation of their clients, in accordance with procedural and evidentiary requirements of the claims process. Moreover, the proposed regulations, when published, will constitute official notice concerning our requirements and prohibitions.

To address the concerns of claimants and others with a stake or interest in the issue of claimant representation in drafting the proposed rules, we obtained information from various sources. We conducted focus groups with claimants and beneficiaries as part of our disability process redesign initiative. We also used information gathered in investigating nearly 600 complaints of representative misconduct made by claimants from 1988 to date.

Communication With Claimants

Participants in the public dialogue conducted in conjunction with our disability process redesign initiative frequently complained about the lack of timely or effective assistance on the part of claimants' representatives. They felt that some representatives delayed submitting evidence until the case reached the hearing level in order to increase the amount of past-due benefits and thereby increase the amount of their fees. Others did not believe that all representatives provided adequate assistance in the preparation or presentation of the case. In the latter category, there were recurring complaints that the claimant did not see or have any contact with the representative until shortly before the hearing when the representative, allegedly for the first time, would review the file. These claimants did not believe that the representative was adequately prepared to present their case, or had provided any assistance in ensuring that the record was complete. Some individuals complained that their representatives' failure to obtain medical documentation for inclusion in the record, despite being informed that the evidence was available and material, forced them personally to obtain the required documentation. The dissatisfaction with the quality and effectiveness of representatives' services was strong enough to prompt the Disability Process Redesign Team to include within its recommendations provisions aimed at correcting shortcomings in the representatives' performance.

The comments received from focus groups and at public meetings are consistent with written complaints we receive about representatives who do not participate or cooperate in the processing of claims. We have seen instances where a representative demands that all communications with the claimant be made through his or her office and refuses, at lower levels of adjudication, to produce available medical evidence or make his or her client available for a consultative examination. Some representatives, as a matter of practice, do not submit available evidence until the day of the hearing even though in some cases the matter might have been favorably decided some time before on the basis of new medical reports. In addition to delaying payment unnecessarily in some cases, this practice can further delay disposition of a claim when the administrative law judge or expert witnesses do not have an opportunity to review and consider the new evidence prior to the hearing.

Consultation With the Representative Community

In February 1995 we requested comments on a draft proposal from 33 separate groups and organizations comprising the attorney and non-attorney representative community. These groups included professional organizations, interest groups, think tanks, the Legal Services Corporation, and various private representative organizations.

We received 92 individual responses. Many were supportive, especially regarding the need to provide standards for non-attorney representatives. Many, however, were opposed to more regulation of their professional conduct. We carefully considered all of the individual views and concerns in formulating these proposed rules. A summary of the major views and concerns and our responses follows.

1. A common complaint was that the proposed standards used terms that were too vague and ambiguous, such as "timely," "diligence," "as soon as possible" and "matters at issue." To be responsive to these concerns and further clarify our requirements, we have modified the language that was most often identified as ambiguous.

For example, the earlier language in what are now proposed §§ 404.1740(b)(1) and (2) and 416.1540(b)(1) and (2) called for representatives to diligently develop the record and submit evidence as soon as possible. In these proposed rules, we ask representatives to submit evidence "as soon as practicable, but no later than

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the due date designated by the Agency, except for good cause shown." We believe this standard is more specific, and gives representatives some discretion in the submission of information and evidence. Also, in place of the phrase "matters at issue" in what are now proposed §§ 404.1740(b)(2)(ii) and 416.1540(b)(2)(ii), we say "pertaining to specifically identified issues." In proposed §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i), we narrowed the "matters at issue" to those matters "establishing entitlement or eligibility to the claimed right or benefit."

Some individuals found the entire substance of the proposed standards to be ambiguous, although one believed they were drawn too narrowly and should be expanded. Several argued that the proposals did not provide adequate notice to representatives of the exact types of conduct we would find to violate these regulations.

It is our position that the proposed rules define with specificity the types of conduct subject to regulation. Similar to other codes of conduct (e.g., the ABA Model Rules), the proposed regulations do not list every act or omission which might constitute a violation. Such a listing would be virtually impossible given the limitless factual situations involved in claims processing. Rather, we intend to deal with each complaint on a case-by-case basis to determine whether under the attending circumstances, a representative engaged in actionable misconduct. In making this determination we will apply an objective test, that is, whether a reasonable person, in light of all the circumstances, would consider the act or omission violative of the rule in question.

This has been our practice in the past. In all but the most egregious instances of potential misconduct, we give representatives notice of the alleged wrongdoing and an opportunity to respond before formal charges are ever proposed. Once it is determined that a formal complaint is warranted, the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate) reviews the proposal independently from the investigative component and makes a decision whether to file a complaint.

We believe that the internal checks and balances within our operating procedures provide adequate safeguards against abuse of discretion or arbitrary action. Even after a complaint is served, a representative is entitled to file an answer and petition for withdrawal of the complaint. Thereafter, the accused party has a right to a full evidentiary hearing, and a right to request review of the resulting decision. In view of these elaborate safeguards, administered at each step by independent decision makers, it is unlikely that an honest mistake or a reasonable misunderstanding on the part of a representative would result in sanctions.

2. A majority of responding attorneys complained that, since their conduct already is governed by their individual State bar codes of conduct and ethical rules, a separate SSA code of conduct is redundant. Several individuals expressed the opinion that SSA simply can refer an attorney to his or her State bar disciplinary authority when we suspect misconduct. Another recognized that State bar rules are not applicable to representatives who are not attorneys, but opined that there are not enough non-attorney representatives to warrant standards of conduct for non-attorneys.

Bar rules differ in language and format among the 50 States, the District of Columbia and the U.S. territories. As the administrator of a national program, however, SSA should not be expected or required to apply local rules, or local interpretations of the rules, to problems which extend beyond the boundaries of local jurisdictions. Furthermore, if we applied local rules or local interpretations rather than a national standard, it is conceivable that attorneys in one area could be subject to discipline for conduct that another jurisdiction would not find actionable. We do not believe it benefits the attorneys, the claimants or SSA to have this type of inconsistency in effecting the Commissioner's statutory obligation to regulate the conduct of representatives.

Moreover, attorneys often represent claimants in jurisdictions other than those in which they are licensed to practice law. In those instances, it would be unclear which jurisdiction's rules would apply, which could lead to inconsistent application of the rules among attorneys practicing in the same geographical area.

Also, under existing laws, referral of suspected attorney misconduct to a State bar disciplinary authority could possibly constitute a violation of the provisions of section 1106 of the Act and, under certain circumstances, the Privacy Act (5 U.S.C. 552a) on maintaining the confidentiality of personal information that we maintain in our files.

A major concern is the fact that currently there is no external authority enforcing standards or rules of conduct for representatives who are not attorneys. Contrary to one individual's opinion, individual non-attorney representatives and representative organizations represent a substantial number of claimants. Within the last 7 years, suspension/disqualification actions against non-attorneys comprised approximately 36 percent of SSA's representative disciplinary actions. Therefore, it is essential to provide rules that will govern the conduct of non-attorneys who practice before us. Moreover, it is only fair and equitable to hold all representatives who practice before us to the same standards.

3. A majority of responding individuals objected to the earlier wording of what now are proposed §§ 404.1740(b)(1) and 416.1540(b)(1), which required representatives to "[e]xercise diligence in developing the record on behalf of his or her client by obtaining and submitting, as soon as possible, all information and evidence intended for inclusion in the record."

They argued that SSA was attempting to improperly delegate to claimants and representatives its own duty to develop the record, which could place representatives at the mercy of arbitrary or unreasonable SSA requests for information. They also pointed out that the original language did not allow for discretion in situations involving uncooperative treating physicians and uncooperative or uneducated claimants.

The claimant has a right to receive benefits under the Act only after establishing that he or she satisfies the underlying statutory and regulatory requirements.

Historically, SSA has assisted claimants in gathering evidence and perfecting the claim. Current workloads and revised processing procedures will require, however, that the claimant take a more active role in establishing entitlement or eligibility. The representative, as the designated agent of the claimant, will be called upon to respond to our requests just as an unrepresented claimant will be required to cooperate.

Our intention is for the representative to ensure that the claimant's evidence is available for inclusion in the record when the claim is ready for adjudication, unless there is a valid reason for the delay. This is consistent with the ABA Model Rules, which state at Rule 3.2—Expediting Litigation, that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The comment accompanying the rule states that "[d]elay should not be indulged merely for the convenience of the advocates," and "[r]ealizing financial or other

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benefit from otherwise improper delay in litigation is not a legitimate interest of the client."

It is in the best interests of the claimant to have full adjudication of the claim as early in the adjudicative process as possible. Although there will be instances when evidence is not readily available despite reasonable effort, we believe that in most cases the information can be secured timely.

In our experience, some representatives do not submit evidence promptly and fail to cooperate with our attempts to obtain necessary information and evidence. Under our current rules at §§ 404.1715(a) and 416.1515(a), we are required to send the representative requests for information and evidence. Since we may not contact a represented claimant directly, the claimant often does not even know the claim is being delayed by the representative. Although this practice is not pervasive, when it does occur we are required to engage in unwarranted and time-consuming efforts to develop the evidence. More importantly, however, the claimant is harmed by delay in the disposition of the claim.

We do not believe that our proposed rules unduly burden claimants or representatives. The duties in question only require a good faith effort to assist the claimant in timely submission of material information and evidence that the claimant wants included in the record.

Many individuals complained that compliance with what are now proposed §§ 404.1740(b)(2) and 416.1540(b)(2), which originally asked representatives to "[p]romptly comply, at every stage of the administrative review process, with our requests for information and evidence," might place them in violation of their own State bar rules requiring zealous advocacy and protection of confidential client information.

We recognize that State bar rules vary in their interpretation of an attorney's duty to maintain the confidences and secrets of the client. We believe that our proposed rules, as we have modified them in response to individual representatives' concerns, will permit an attorney to satisfy our requirements without risking unauthorized disclosures of information.

Under the ABA Model Rules, an attorney may reveal information that is "impliedly authorized in order to carry out the representation." Moreover, Rule 1.6a provides that the attorney is not barred from making disclosures if "the client consents after consultation." We believe that an attorney can act in accordance with State bar rules by informing the client that SSA requires certain information and evidence from claimants, and that as the claimant's representative, the attorney must either comply with these requests or tell SSA that the claimant declines to furnish the data. Taking these rules into consideration, we have modified proposed §§ 404.1740(b)(2) and 416.1540(b)(2) to permit representatives to protect a client's confidentiality by notifying SSA that "the claimant does not consent to release of some or all of the [requested] material."

We do not believe, however, that deliberate and purposeful withholding from us of information or evidence is justifiable under the various State bar rules. In fact, such actions may be illegal and subject to severe penalty. Section 206 of Public Law 103–296 adds a new section 1129 to the Social Security Act, providing that: "Any person * * * who makes, or causes to be made, a statement or representation of a material fact for use in determining [the right to benefits under title II or title XVI] that the person knows or should know is false or misleading or knows or should know omits a material fact * * * shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 * * *." A material fact is defined as "one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits * * *." (See sections 1129(a) (1) and (2) of the Act.)

Further, section 205(u)(1)(A) of the Act, as added by section 206(d) of Public Law 103–296, provides that the Commissioner "shall immediately redetermine the entitlement of individuals to monthly insurance benefits under * * * [title II] if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits * * *." Section 1631(e)(6)(A)(i) of the Act, which also was added by section 206(d) of Public Law 103–296, is a comparable provision covering eligibility for title XVI benefits. Similar fault is defined in sections 205(u)(2) and 1631(e)(6)(B) of the Act as knowingly making "an incorrect or incomplete statement that is material to the determination" or knowingly concealing "information that is material to the determination." Moreover, section 205(a) of the Act provides that the Commissioner shall adopt "reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder." This section is made applicable to the title XVI program by section 1631(d)(1) of the Act.

In our view, the provisions of proposed §§ 404.1740(b)(2) and 416.1540(b)(2) require the representative to comply with our requests made under statutory authority for full and accurate disclosure of material facts to the same extent that the claimant is required to do so. In assessing any allegation raised against a representative regarding failure to comply with our request for information, we will consider the reasonableness of the request, the relevance of the information requested, and any factors that may interfere with the procurement of requested information.

4. A few individuals questioned the need for any rules or standards of conduct, expressing their opinion that representatives rarely engage in misconduct sufficient to warrant formalized investigative and disciplinary procedures. Several speculated that only representatives who were not attorneys engaged in misconduct warranting SSA attention.

From August 1988 through August 1995, the Office of Hearings and Appeals received approximately 566 referrals of representative misconduct. Some of these referrals complained of questionable conduct which warranted corrective action, but which was not covered by any existing regulatory authority. Of the remaining referrals, we were able to close many without formal disciplinary action. In approximately 160 claims, we closed the disciplinary referral upon the representative's refund to a claimant or to SSA of monies collected without authorization or as a result of Agency overpayments to representatives. As of August 15, 1995, we have collected from these representatives a total of $279,411.98, returning $176,096 of this amount to the claimants who had been overcharged, and the remainder to SSA.

We also have filed approximately 136 formal complaints against representatives. We were able to resolve many complaints before a formal hearing. The remainder, however, have resulted in the suspension or disqualification of 57 representatives. Approximately 64 percent of the suspended or disqualified representatives were attorneys.

We believe these general statistics provide ample evidence of the need to continue our investigative and disciplinary role. We expect the proposed rules and standards to provide the representative community with improved notice of the conduct we view as inappropriate, and supply SSA with

the tools to address representatives' conduct that falls below our published standards.

5. Several individuals were confused about the addition of the word "retain" in what are now proposed §§ 404.1740(c)(2) and 416.1540(c)(2), which state that a representative shall not "[k]nowingly charge, collect or retain * * * any fee for representational services in violation of applicable law or regulation." They questioned whether this was a change in SSA's policy permitting representatives to collect money toward payment of their fees before any fee is authorized, as long as the collection is placed in a trust or escrow account.

This is not a policy change. Social Security Ruling (SSR) 82–39 still permits representatives to solicit from claimants a deposit of money into a trust or escrow account as a means of assuring payment of the fees for services in connection with such representation, as long as the claimant willingly enters into the trust or escrow agreement and willingly deposits the money in the trust or escrow account; none of the money in the account is paid over to the representative unless and until SSA authorizes a fee, and then only in an amount up to, but not exceeding, the authorized fee; and any funds in the account in excess of the authorized fee are refunded promptly to the claimant.

We have added the word "retain" to cover those situations in which the representative has charged or collected a fee and has improperly retained the fee despite a claimant's or SSA's request for refund. If a representative places the money charged and collected from a claimant into a trust or escrow account, and complies with the conditions set forth in SSR 82–39, we will not consider that money to be an improperly retained fee.

6. A few individuals were concerned with what are now proposed §§ 404.1740(c)(3) and 416.1540(c)(3), which prohibit representatives from knowingly making or participating in the making or presentation of false oral or written statements, assertions or representations about a material fact concerning a matter within our jurisdiction. They suggested that it required them to be a guarantor of a claimant's testimony, or to impeach their own client if they suspected that the client was presenting false evidence or testimony.

This prohibition applies only to knowing presentations of false statements. There already exist both criminal and civil penalties for knowingly making or participating in the making of false representations to a claimant or to SSA. (See 18 U.S.C. 1001 and sections 208 and 1129 of the Act.) By incorporating this prohibition in our rules of conduct, we place representatives on notice that, in addition to the criminal and civil sanctions possible for this misconduct, the making or presentation of such false statements also may lead to their suspension or disqualification from representing claimants in matters before us.

We do not place an affirmative duty on representatives to impeach their clients or guarantee a client's honesty. Nonetheless, we do expect representatives who practice before us not to knowingly prompt, encourage or engage in false or misleading representations about material facts in connection with the representation of a claimant.

7. Several individuals expressed concern about what are now proposed §§ 404.1740(c)(4) and 416.1540(c)(4), which prohibit willfully or negligently delaying, or causing to be delayed, the processing of a claim. They suggested that it was overly broad, and could be interpreted to prohibit even such reasonable delays as scheduling conflicts, illness, family emergency and claimants' continuing treatment.

Black's Law Dictionary defines an act or omission as willfully done "if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done." It includes actions engaged in with a bad motive or purpose, with indifference to the natural consequences, or without justifiable excuse. A negligent action involves the failure to exhibit the conduct or care a reasonable person would exhibit under similar circumstances. It is characterized chiefly by inadvertence, thoughtlessness and inattention.

Under our proposed standard prohibiting willful or negligent delay, SSA does not intend to penalize reasonable or justifiable delays, or delays that may occur even when reasonable care is taken in claim preparation. In determining whether a representative has violated this rule we will look to the gravity of the act or omission, the consequences for the claimant, whether the behavior reflects a pattern or practice, and other factual circumstances particular to the matter.

8. The draft proposal had language prohibiting representatives from engaging in disruptive, defiant or confrontational behavior or repeated challenges to the presiding official's authority, which clearly exceed the bounds of zealous advocacy. Many individuals found this provision to be vague and an interference with their duty to provide zealous advocacy.

In response to these concerns, we modified the language in proposed §§ 404.1740(c)(7)(ii) and 416.1540(c)(7)(ii) to prohibit "[w]illful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process." We envision actionable conduct under this provision to include grossly undignified or discourteous behavior and inflammatory language directed at the presiding official which prejudice the orderly presentation and reception of evidence.

This rule is not intended to inhibit zealous advocacy or vigorous dissent, but to prevent conduct or language which significantly exceeds the bounds of civility, and disrupts a proceeding. In determining whether a representative has violated this provision, we will look at the totality of the circumstances, including the egregiousness of the conduct, its impact on the claimant or the Agency, possible provocation and whether the behavior reflects a pattern or practice.

9. The draft proposal included a prohibition against soliciting or accepting from SSA direct payment of fees from past-due benefits, in violation of law or regulation, for services performed by a person other than an attorney. Many individuals misunderstood the intent of this provision, believing that it meant either that non-attorney representatives could not be paid for their representational services, or that attorneys could not receive direct payment from SSA for persons other than attorneys who provided representational services under their direct supervision.

Because of the confusion involving this provision, and the fact that SSA currently is considering separate regulations to address direct payment of fees in more detail, this provision is not included in these proposed rules.

10. The draft proposal contained a prohibition against making off-the-record communications relevant to the merits of an adjudication to anyone involved in the administrative review process. Many individuals found this provision to be vague and undefined. They were concerned that it prohibited communications to SSA in claims that had extenuating circumstances, such as claimants who were terminally ill or suicidal. In their opinion, it would unduly formalize nonadversarial proceedings, would foster inefficiency by requiring increased documentation of SSA contacts, and would be in conflict

with SSA's goal of expediting claims processing.

We agreed that the provision was confusing and possibly counterproductive, so it is not included in these proposed rules.

11. The draft proposal also contained a prohibition against engaging in dilatory tactics or neglectful actions which are prejudicial to the fair or orderly conduct of oral proceedings. Some individuals pointed out that it was vague and duplicated an existing provision. We agreed, and this provision is not included in these proposed rules.

Explanation of Revisions

These proposed regulations would revise §§ 404.1740, 404.1745, 404.1750, 404.1765, 404.1770, 404.1799, 416.1540, 416.1545, 416.1550, 416.1565, and 416.1599.

Proposed §§ 404.1740(b) and 416.1540(b) describe affirmative duties, which are certain obligations that a representative must actively perform in his or her representation of claimants in matters before us. We expect these affirmative duties to promote efficiency and timeliness in assisting the claimant to meet the burden of proving eligibility for benefits.

Proposed §§ 404.1740(b)(1) and 416.1540(b)(1) require the representative to exercise diligence in obtaining and submitting that evidence which the claimant wants the decision maker to consider in ruling on a claim.

Proposed §§ 404.1740(b)(2)(i) and 416.1540(b)(2)(i) require that the representative provide, upon request, information regarding the claimant's medical treatment, vocational factors or other specifically identified matters, or provide notification that the claimant does not consent to release the information.

Proposed §§ 404.1740(b)(2)(ii) and 416.1540(b)(2)(ii) require that the representative provide, upon request, evidence material to identified issues which the representative or claimant already has or may readily obtain. This rule requires furnishing evidence already in the possession of the representative or claimant, or obtaining copies of existing evidence not already of record. The provision also mandates that the representative and claimant furnish all the pertinent evidence requested, even if it is ostensibly unfavorable to the claimant, or provide notification by the representative that the claimant does not consent to its release.

Proposed §§ 404.1740(b)(3) and 416.1540(b)(3) are intended to establish minimum requirements governing the competency and behavior of representatives in their dealings with us. They seek to ensure that the representative does not become a hindrance, either through ignorance or willful obstruction, in our attempts to provide a fair and expeditious disposition of the claim for benefits.

We have weighed the possibility of testing or other formal certification procedures for non-attorney representatives, but rejected the idea as infeasible at this time. Nonetheless, in order to identify those persons who do not possess the requisite qualifications, we are considering possible revisions to §§ 404.1705 and 416.1505 to define in greater detail the minimum requirements to serve as a representative.

Any individual who provides services as a representative for a fee shall be expected to demonstrate, in the performance of those services, sufficient knowledge of the claims process to be of assistance to the claimant. Ignorance of substantive provisions of law or procedural requirements shall not be considered a mitigating factor for acts or omissions which impede or disrupt the efficient and orderly disposition of a claim.

Proposed §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i) essentially state that the representative must understand what the claimant must prove in order to qualify for benefits, and know how to obtain and submit evidence regarding the claim.

Proposed §§ 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii) require the representative to promptly answer our requests and communications pertaining to the pending claim. It is not permissible for the representative to ignore official communications.

Proposed §§ 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) require cooperation in developing the record, which may typically include transactions requiring the participation of the claimant, such as consenting to a treating source's release of medical records, scheduling consultative examinations and scheduling conferences or hearing dates.

Proposed §§ 404.1740(c) and 416.1540(c) describe prohibited actions, which are certain acts or activities that a representative must avoid. In part, the prohibited actions incorporate various statutory provisions set forth in the Act and other legislation.

Proposed §§ 404.1740(c)(1) and 416.1540(c)(1) are based on the prohibitions set forth in section 206(a)(5) of the Act and are self-explanatory. A representative's honest mistake would not be construed as knowingly misleading a claimant. In determining whether a representative knowingly misled a claimant, we will consider whether the action involved matters that the representative should have known were untrue.

Proposed §§ 404.1740(c)(2) and 416.1540(c)(2) are based on the provisions of sections 206 (a) and (b) of the Act and apply to all fee collections. With regard to section 206(a)(4) of the Act, we will assume in the absence of evidence to the contrary that work performed by support staff in a law office is performed under the supervision of an attorney, thereby permitting the attorney to validly claim direct payment from past-due benefits for those services in a title II claim. This assumption will not apply, however, when a person other than an attorney appears alone at a hearing to provide representation on behalf of a claimant. In those cases, the person shall be considered the representative and will be required to file a fee petition or fee agreement for his or her services, and will not be entitled to receive direct payment from past-due benefits for the representation at the hearing.

Proposed §§ 404.1740(c)(3) and 416.1540(c)(3) are based generally on the criminal prohibitions in 18 U.S.C. 1001 and the provisions governing civil monetary penalties and assessments set forth in section 1129 of the Act and are self-explanatory.

Proposed §§ 404.1740(c)(4) and 416.1540(c)(4) are directed against practices where willful or negligent acts or omissions have the effect of delaying the disposition of a claim for benefits.

Proposed §§ 404.1740(c)(5) and 416.1540(c)(5) are based on the provisions of section 1106 of the Act, which prohibit disclosure by any person of information obtained by the Agency in conjunction with a claim, except as may be authorized by regulations prescribed by us.

Proposed §§ 404.1740(c)(6) and 416.1540(c)(6) prohibit a representative from offering or giving anything of value to persons involved in the adjudication except as remuneration to a witness for legitimate expenses or for services rendered. The intent is to prevent the fact or the appearance of attempting to influence the disposition of a claim by bestowing gifts or favors on individuals in a position to materially affect the outcome.

Proposed §§ 404.1740(c)(7) and 416.1540(c)(7) are directed at conduct undertaken during the course of oral proceedings which is disruptive and detrimental to due process and the administration of justice.

Proposed §§ 404.1740(c)(7)(i) and 416.1540(c)(7)(i) prohibit repeated instances of unexcused absences or

tardiness because such conduct adversely affects claimants, diminishes the ability of the Agency to operate efficiently and harms other applicants by disrupting hearing schedules and work flow.

Proposed §§ 404.1740(c)(7)(ii) and 416.1540(c)(7)(ii) address deliberate acts which have the effect of disrupting the proceedings or diverting the attention of the participants from the purpose of the hearing to matters irrelevant to the merits of the case.

Proposed §§ 404.1740(c)(7)(iii) and 416.1540(c)(7)(iii) are based in part on the provisions of section 206(a)(5) of the Act, 18 U.S.C. 111 and 28 CFR 64.2(x). They prohibit threatening or intimidating the participants in an oral proceeding or the employees assigned to our offices. Actual or implied threats of violence will not be tolerated.

Proposed §§ 404.1745 and 416.1545 explain that we may begin proceedings to suspend or disqualify a person who does not meet our qualifications for a representative or who violates our rules and standards governing representatives in their dealings with us.

Proposed §§ 404.1750 (a) and (d), 404.1765 (a) and (e), 404.1799 (c) and (e), 416.1550 (a) and (d), 416.1565 (a) and (e), and 416.1599 (c) and (e) are being modified to reflect current Agency official titles and organizational changes.

Proposed §§ 404.1765(g)(3) and 416.1565(g)(3) are being revised to remove the first word "not" from each paragraph. This corrects errors made when the regulations on representation of parties were reorganized, renumbered and republished on August 5, 1980 (45 FR 52078). When the original regulation was published as § 404.983(f) on April 26, 1969 (34 FR 6973, 6974), it provided that "[i]f the individual has filed an answer and if the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may at any time prior to the mailing of notice of the decision, or submittal of a recommended decision, reopen the hearing for the receipt of such evidence." This is consistent with the preceding language in § 404.983(f), which states that if a representative "has filed no answer he shall have no right to present evidence * * *."

In the 1980 final rule, the former § 404.983(f) was renumbered as § 404.1765(f), with a parallel SSI provision at § 416.1565(f). Paragraph (f)(2) addressed representatives who do not answer charges and paragraph (f)(3) addressed those who do. Paragraph (f)(3) (45 FR 52078, 52093, 52108) contained a misprint, however, which read, "If the representative did not file an answer to the charges * * *." Thus, paragraphs (f)(2) and (f)(3) were inconsistent and conflicting. Subsequently, in 1991, paragraph (f) of §§ 404.1765 and 416.1565 was redesignated as paragraph (g) (56 FR 24129, 24131, 24132).

The 1980 misprint substantively changed the meaning of current paragraph (g)(3). As specifically explained in the preamble to those rules, however, SSA never intended to make any substantive changes in those regulations. The regulations were rewritten for the purpose of reorganizing and restating them more clearly in simpler language. The misprint has created confusion in the representative disciplinary process. Consequently, we are taking this opportunity to correct the error to reflect the original intent of the regulations.

We also are correcting another minor misprint in the current § 404.1765(g)(3) by making "decisions" singular for correctness and consistency with § 416.1565(g)(3).

Finally, in proposed § 404.1770, paragraphs (a)(3) and (b)(3) are being amended to correct a publication error that occurred after paragraph (a)(3) was revised in 1991. As correctly published in final rules on May 29, 1991 (56 FR 24129, 24132), paragraph (a)(3) was revised to show that the hearing officer shall mail a copy of the decision to the parties at their last known addresses. When codified in the 1992 volume of the Code of Federal Regulations, however, the revised language of paragraph (a)(3) was erroneously placed in paragraph (b)(3), superseding that existing language addressing the effect of a final decision imposing a suspension upon a representative. With this correction, we will accurately reflect the language and purpose of paragraphs (a)(3) and (b)(3) and bring § 404.1770 into conformity with its equivalent § 416.1570.

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The provisions of the proposed rules that involve entities were developed to allow them to provide representational services without generating any supplemental reporting requirements. The proposed rules will not result in any increased legal accounting or consulting costs to small businesses or small organizations, will not adversely affect competition in the marketplace, or create barriers to entry on the part of small entities. In fact, these rules may facilitate such entry into the representation sphere. The regulations will provide uniform standards applicable to all entities who engage in the business and tend to disqualify the unscrupulous and the incompetent practitioners, thereby expanding demand for others willing and able to perform the service. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping, Supplemental Security Income (SSI) requirements.

Dated: December 23, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart R, chapter III of title 20 of the Code of Federal

Regulations is proposed to be amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 406, and 902(a)(5)).

2. Section 404.1740 is revised to read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

(a) *Purpose and scope.* (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit shall, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A representative shall provide competent assistance to the claimant and recognize the authority of the Agency to lawfully administer the process. The following provisions in this section set forth certain affirmative duties and prohibited actions which shall govern the relationship between the representative and the Agency, including matters involving our administrative procedures and fee collections.

(2) Moreover, all representatives shall be forthright in their dealings with us and with the claimant and shall comport themselves with due regard for the nonadversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative shall:

(1) Promptly obtain all information and evidence which the claimant wants to submit in support of the claim and forward the same for consideration as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown;

(2) Comply with our requests for information or evidence at any stage of the administrative review process as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown. This includes the obligation to:

(i) Provide, upon request, identification of all known medical sources, updated information regarding medical treatment, new or corrected information regarding work activity, other specifically identified information pertaining to the claimed right or benefit, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material; and

(ii) Provide, upon request, all evidence and documentation pertaining to specifically identified issues which the representative or the claimant either has within his or her possession or may readily obtain, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material;

(3) Conduct his or her dealings in a manner which does not obstruct the efficient, fair or orderly conduct of the administrative review process, including duties to:

(i) Be cognizant of the matters at issue in establishing entitlement or eligibility to the claimed right or benefit, and knowledgeable of our evidentiary and procedural requirements in order to provide competent assistance to the party he or she represents;

(ii) Provide timely and responsive answers to requests from the Agency for information pertinent to processing of the claim; and

(iii) Cooperate with our attempts to obtain information and documentation, or complete processing requirements for a claimed right or benefit.

(c) *Prohibited actions.* A representative shall not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act;

(2) Knowingly charge, collect or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation;

(3) Knowingly make or present, or participate in the making or presentation of, false oral or written statements, assertions or representations about a material fact concerning a matter within our jurisdiction;

(4) Willfully or negligently delay, or cause to be delayed, by any act or omission, without good cause, the processing of a claim at any stage of the administrative review process;

(5) Divulge, except as may be authorized by regulations prescribed by us, any information we furnish or disclose about a claim or prospective claim of another person;

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative review process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence; or

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of oral proceedings, including but not limited to:

(i) Repeated instances of unauthorized absences, or persistent tardiness at scheduled proceedings;

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee.

3. Section 404.1745 is revised to read as follows:

§ 404.1745 Violations of our requirements, rules, or standards.

When we have evidence that a representative fails to meet our qualification requirements or has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us. We may file charges seeking such sanctions when we have evidence that a representative:

(a) Does not meet the qualifying requirements described in § 404.1705;

(b) Has violated the affirmative duties or engaged in the prohibited actions set forth in § 404.1740; or

(c) Has been convicted of a violation under section 206 of the Act.

4. Section 404.1750 is amended by revising paragraphs (a) and (d) to read as follows:

§ 404.1750 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, may extend the 30-day period for good cause.

* * * * *

5. Section 404.1765 is amended by revising paragraph (a), the second

sentence of paragraph (e), and paragraph (g)(3) to read as follows:

§ 404.1765 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

(e) *Parties.* * * * The Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, shall also be a party to the hearing.

* * * * *

(g) * * *

(3) If the representative did file an answer to the charges, and if the hearing officer believes that there is material evidence available that was not presented at the hearing, the hearing officer may at any time before mailing notice of the hearing decision reopen the hearing to accept the additional evidence.

* * * * *

6. Section 404.1770 is amended by revising the first sentence of paragraph (a)(3) and by revising paragraph (b)(3) to read as follows:

§ 404.1770 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. * * *

(b) * * *

(3) If the final decision is that a person is suspended for a specified period of time from being a representative in dealings with us, he or she will not be permitted to represent anyone in dealings with us during the period of suspension unless authorized to do so under the provisions of § 404.1799.

7. Section 404.1799 is amended by revising the first sentence of paragraph (c) and the second sentence of paragraph (e) to read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. * * *

* * * * *

(e) * * * It shall also mail a copy to the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee.

* * * * *

For the reasons set forth in the preamble, part 416, subpart O, chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

8. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5) and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(d)).

9. Section 416.1540 is revised to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

(a) *Purpose and scope.* (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit shall, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A representative shall provide competent assistance to the claimant and recognize the authority of the Agency to lawfully administer the process. The following provisions in this section set forth certain affirmative duties and prohibited actions which shall govern the relationship between the representative and the Agency, including matters involving our administrative procedures and fee collections.

(2) Moreover, all representatives shall be forthright in their dealings with us and with the claimant and shall comport themselves with due regard for the nonadversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative shall:

(1) Promptly obtain all information and evidence which the claimant wants to submit in support of the claim and forward the same for consideration as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown;

(2) Comply with our requests for information or evidence at any stage of the administrative review process as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown. This includes the obligation to:

(i) Provide, upon request, identification of all known medical sources, updated information regarding medical treatment, new or corrected information regarding work activity, other specifically identified information pertaining to the claimed right or benefit, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material; and

(ii) Provide, upon request, all evidence and documentation pertaining to specifically identified issues which the representative or the claimant either has within his or her possession or may readily obtain, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material;

(3) Conduct his or her dealings in a manner which does not obstruct the efficient, fair or orderly conduct of the administrative review process, including duties to:

(i) Be cognizant of the matters at issue in establishing entitlement or eligibility to the claimed right or benefit, and knowledgeable of our evidentiary and procedural requirements in order to provide competent assistance to the party he or she represents;

(ii) Provide timely and responsive answers to requests from the Agency for information pertinent to processing of the claim; and

(iii) Cooperate with our attempts to obtain information and documentation, or complete processing requirements for a claimed right or benefit.

(c) *Prohibited actions.* A representative shall not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act;

(2) Knowingly charge, collect or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation;

(3) Knowingly make or present, or participate in the making or presentation of, false oral or written statements, assertions or representations about a material fact concerning a matter within our jurisdiction;

(4) Willfully or negligently delay, or cause to be delayed, by any act or

omission, without good cause, the processing of a claim at any stage of the administrative review process;

(5) Divulge, except as may be authorized by regulations prescribed by us, any information we furnish or disclose about a claim or prospective claim of another person;

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative review process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence; or

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of oral proceedings, including but not limited to:

(i) Repeated instances of unauthorized absences, or persistent tardiness at scheduled proceedings;

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee.

10. Section 416.1545 is revised to read as follows:

§ 416.1545 Violations of our requirements, rules, or standards.

When we have evidence that a representative fails to meet our qualification requirements or has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us. We may file charges seeking such sanctions when we have evidence that a representative:

(a) Does not meet the qualifying requirements described in § 416.1505;

(b) Has violated the affirmative duties or engaged in the prohibited actions set forth in § 416.1540; or

(c) Has been convicted of a violation under section 1631(d) of the Act.

11. Section 416.1550 is amended by revising paragraphs (a) and (d) to read as follows:

§ 416.1550 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, may extend the 30-day period for good cause.

* * * * *

12. Section 416.1565 is amended by revising paragraph (a), the second sentence of paragraph (e), and paragraph (g)(3) to read as follows:

§ 416.1565 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

(e) *Parties.* * * * The Deputy Commissioner for Programs, Policy, Evaluation and Communi cations (or other official the Commissioner may designate), or his or her designee, shall also be a party to the hearing.

* * * * *

(g) * * *

(3) If the representative did file an answer to the charges, and if the hearing officer believes that there is material evidence available that was not presented at the hearing, the hearing officer may at any time before mailing notice of the hearing decision reopen the hearing to accept the additional evidence.

* * * * *

13. Section 416.1599 is amended by revising the first sentence of paragraph (c) and the second sentence of paragraph (e) to read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. * * *

* * * * *

(e) * * * It shall also mail a copy to the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee.

* * * * *

[FR Doc. 97–38 Filed 1–2–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252233–96]

RIN 1545–AU73

Continuity of Interest and Business Enterprise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes rules providing that for certain reorganizations, transfers by the acquiring corporation of target assets or stock to certain controlled corporations, and under prescribed conditions, transfers of target assets to partnerships, will not disqualify the transaction from satisfying the continuity of interest and continuity of business enterprise requirements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by April 3, 1997. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, May 7, 1997 must be received by Wednesday, April 16, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252233–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–252233–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.

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FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Marlene Peake Oppenheim, (202) 622–7750; concerning submissions and the hearing, Christina Vasquez, (202) 622–6808 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 368. The proposed regulations establish rules providing that for certain reorganizations transfers by the acquiring corporation of target corporation assets or stock to certain controlled corporations and under prescribed conditions transfers of target assets to partnerships, will not disqualify the transaction from satisfying the continuity of interest and continuity of business enterprise requirements.

Explanation of Proposed Regulations

A. Remote Continuity of Interest

1. Overview

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations specifically described in section 368 of the Code. Literal compliance with the statutory requirements is not sufficient, however, for nonrecognition treatment.

The Supreme Court, in *Groman* v. *Commissioner*, 302 U.S. 82 (1937), and *Helvering* v. *Bashford*, 302 U.S. 454 (1938), established the basis of what has become known as the "remote continuity of interest doctrine." Under this doctrine, stock consideration received by the target corporation's (T) shareholders does not provide continuity unless the target assets or stock are ultimately held by the corporation that issued the stock. Thus, if T transfers its assets to an acquiring corporation (P), in exchange for stock of the corporation controlling P (see *Groman*), or if P acquires the T assets but pursuant to the plan of reorganization transfers them to a controlled subsidiary (S) (see *Bashford*), the continuity of interest requirement is not satisfied.

Congress has substantially limited the remote continuity of interest doctrine. In 1954, Congress enacted section 368(a)(2)(C) which provides that P's transfer of T assets acquired in a reorganization under section 368(a)(1)(A) (merger or consolidation) or section 368(a)(1)(C) (asset acquisition) to S does not disqualify the reorganization. Section 368(a)(1)(C) was also amended to provide that P can acquire T assets directly in exchange for voting stock of a corporation in control of P (a triangular C reorganization).

In the 1960's, the Treasury Department and IRS issued several revenue rulings attempting to clarify to what extent the remote continuity doctrine had remaining vitality. Where the guidance held that the remote continuity doctrine applied to disqualify the transaction from reorganization treatment, Congress at times responded by amending the relevant Code section and overturning the result. For example, Rev. Rul. 63–234 (1963–2 C.B. 148) held that remote continuity remained an issue for section 368(a)(1)(B) reorganizations. The following year Congress responded by amending section 368(a)(1)(B), permitting P to acquire T's stock in exchange for stock of the corporation controlling P (a triangular B reorganization). Congress also amended section 368(a)(2)(C) to provide that P can transfer T stock acquired in a reorganization under section 368(a)(1)(B) to S without disqualifying the reorganization.

Similarly, when Rev. Rul. 67–326 (1967–2 C.B. 143) held that a merger of T into S in exchange for stock of the corporation controlling S (a forward triangular merger) violated the continuity of interest doctrine, Congress responded in the following year by enacting section 368(a)(2)(D), which provides that a forward triangular merger qualifies as a section 368(a)(1)(A) reorganization.

In contrast, Rev. Rul. 64–73 (1964–1 C.B. 142) held that a transaction qualified as a section 368(a)(1)(C) reorganization where P and P's second tier subsidiary acquired all the T assets in exchange for P stock. The transaction was viewed as an acquisition of substantially all the T assets by P.

2. Transfers of T Assets or Stock to Controlled Corporations

The proposed regulations curtail the remote continuity of interest doctrine by providing that assets can be transferred among members of a "qualified group." A qualified group consists of one or more chains of corporations connected through stock ownership with the "issuing corporation," but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one other corporation, and stock meeting the requirements of section 368(c) in each of the corporations (except the issuing corporation) is owned directly by one of the other corporations. The issuing corporation is the acquiring corporation (as that term is used in section 368(a)), except in transactions where use of stock of a corporation in control of the acquiring corporation is permitted. Where stock of the controlling corporation is used, the controlling corporation is the issuing corporation.

The proposed regulations generally permit transfers or successive transfers of assets or stock to members of the qualified group. Thus, continuity of interest is not violated where there are transfers or successive transfers of T stock (or transfers of the T assets after a T stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of the qualified group. The Treasury Department and IRS solicit comments on whether the qualified group should be defined other than by reference to section 368(c).

The proposed regulations are limited to asset or stock transfers following transactions that otherwise qualify as section 368(a)(1) (A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)) reorganizations (covered reorganizations). Section 368(a)(2)(C) by its terms does not apply to acquisitive section 368(a)(1)(D) or section 368(a)(1)(F) reorganizations. The Treasury Department and IRS solicit comments as to whether the rules in the proposed regulations should be extended to these other reorganization provisions or to section 355 divisive transactions.

3. Transfer of T Assets to a Partnership

Whether the transfer of assets to a partnership (PRS) by the corporate transferor partner (PTR) disqualifies an otherwise qualifying covered reorganization depends in part on whether PRS is viewed as an aggregate of its partners or as an entity separate from the partners. The treatment of PRS as an aggregate or entity must be determined on the basis of the characterization most appropriate for the situation. H.R. Conf. Rep. No. 2543, 83d Cong., 2d Sess. 59 (1954). Cf. § 1.701–2(e)(1) of the Income Tax Regulations.

The Treasury Department and IRS believe it is appropriate to treat PRS as an aggregate of its partners in analyzing a transaction with respect to continuity of interest. Thus, the proposed regulations provide that PTR's transfer of T assets to PRS does not violate the continuity of interest requirement.

The proposed regulations do not permit the transfer of stock to PRS where the Code imposes a control requirement in section 368. See sections 368(a)(1)(B) and (C), sections 368(a)(2)(D) and (E), and section 368(a)(2)(C). In addition, the transfer of

T assets to PRS may violate the continuity of business enterprise (COBE) requirement.

B. Continuity of Business Enterprise

1. Overview

Section 1.368–1(b) requires that reorganizations afford a continuity of business enterprise under modified corporate form. COBE requires that P either (i) continue T's historic business (business continuity) or (ii) use a significant portion of T's historic business assets in a business (asset continuity). § 1.368–1(d)(2). The proposed regulations provide a framework for applying the existing COBE regulations to situations where the T assets or stock are transferred to certain controlled corporations or assets are transferred to partnerships.

2. Transfer of T Assets or Stock to a Controlled Corporation

The proposed regulations provide that, under prescribed conditions, COBE is not violated by reason of the fact that part or all of the T assets or stock are transferred among members of a qualified group. Thus, the COBE requirement is not violated where there are transfers or successive transfers of T stock (or transfers of the T assets after a T stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of the qualified group.

3. Transfer of T Assets to a Partnership

The proposed regulations provide that, under prescribed conditions, COBE is not violated by reason of the fact that part or all of the T assets are transferred to PRS by PTR. The proposed regulations adopt an aggregate approach in determining whether COBE has been satisfied when T assets are transferred to PRS following a T asset or T stock acquisition. Thus, the proposed regulations provide that for purposes of the business continuity test, PTR will be treated as conducting a business of PRS if PTR has active and substantial management functions as a partner with regard to the business (cf. Rev. Rul. 92–17 (1992–1 C.B. 142)) or if PTR's partnership interest in PRS represents a significant interest in the PRS business. Furthermore, in determining whether PTR satisfies the asset continuity test (i) PTR will be treated as owning the assets of PRS in accordance with PTR's interest in PRS, and (ii) PTR will be treated as conducting a business of PRS under the rules applicable to business continuity.

COBE requires a facts and circumstances analysis. Thus, the proposed regulations also state that the fact that PTR meets the business continuity requirements of § 1.368–1(d)(2)(i) and 1(d)(3) through active and substantial management of a PRS business tends to establish COBE, but the fact that PTR conducts a PRS business is not alone sufficient.

C. Effect on Other Authorities

The proposed regulations apply only for the purpose of determining the effect that transfers of assets or stock following a reorganization have on the continuity of interest and COBE requirements. They do not address any other issues concerning the qualification of a transaction as a reorganization.

Thus, the proposed regulations do not expand the scope of triangular reorganizations. Under current law, a T asset or stock acquisition in exchange for stock of a grandparent (or higher tier) corporation does not qualify as a reorganization. See Rev. Rul. 74–564 (1974–2 C.B. 124) and Rev. Rul. 74–565 (1974–2 C.B. 125). The proposed regulations do not change this result.

The proposed regulations do not provide guidance on whether the "solely for voting stock" requirement is satisfied in a section 368(a)(1)(C) reorganization when a corporation other than the acquiring corporation assumes target liabilities. See generally Rev. Rul. 70–107 (1970–1 C.B. 78).

Furthermore, the proposed regulations do not modify the section 381 regulations which provide rules concerning which entity inherits the tax attributes of T in an asset acquisition.

The Treasury Department and IRS solicit comments on these issues.

Proposed Effective Date

The revisions and additions in the proposed regulations apply to transactions occurring after these regulations are published as final regulations in the **Federal Register**, except that they shall not apply to transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**.

Effect on Other Documents

The Treasury Department and IRS solicit comments on what IRS publications should be modified or obsoleted when the proposed regulations are published as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the Internal Revenue Service. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, May 7, 1997, beginning at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must request to speak, and submit an outline of topics to be discussed and the time to be devoted to each topic by Wednesday, April 16, 1997.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Marlene Peake Oppenheim of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the Treasury and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.368–1 as proposed to be amended at 61 FR 67514 is amended by:

1. Adding two sentences after the sixth sentence of paragraph (b).
2. Redesignating paragraph (d)(5) as paragraph (d)(6).
3. Adding a new paragraph (d)(5).
4. Adding three sentences to the end of newly designated paragraph (d)(6) introductory text.
5. Adding *Example 6* through *Example 10* to newly designated paragraph (d)(6).
6. Adding paragraph (f).

The additions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(b) * * * Rules concerning continuity of interest as applied to section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)) are in paragraph (f) of this section. The preceding sentence applies to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(d) * * *

(5) *Transfers of assets or stock to controlled corporations and partnerships*—(i) *Scope.* The following rules in paragraphs (d)(5) (ii) through (vi) of this section apply in determining whether the continuity of business enterprise requirement of paragraph (d)(1) of this section is satisfied with respect to transactions otherwise qualifying as reorganizations under section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)).

(ii) *Transfers to members of a qualified group.* Continuity of business enterprise continues to be satisfied where there are transfers or successive transfers of target (T) stock (or transfers of T assets after a stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of a qualified group as defined in paragraph (d)(5)(iii) of this section.

(iii) *Qualified group.* A qualified group is one or more chains of corporations connected through stock ownership with the issuing corporation as defined in paragraph (d)(5)(iv) of this section, but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one other corporation, and stock meeting the requirements of section 368(c) in each of the corporations (except the issuing corporation) is owned directly by one of the other corporations.

(iv) *Issuing corporation.* The issuing corporation is the acquiring corporation (as that term is used in section 368(a)), except in transactions where the use of stock of a corporation in control of the acquiring corporation is permitted. Where stock of the controlling corporation is used, the controlling corporation is the issuing corporation.

(v) *Partnerships*—(A) For purposes of the business continuity test of paragraph (d)(3) of this section, the corporate transferor partner (PTR) will be treated as conducting a business of a partnership (PRS) where—

(*1*) PTR has active and substantial management functions as a partner with respect to the PRS business; or

(*2*) PTR's interest in PRS represents a significant interest in the PRS business.

(B) For purposes of the asset continuity test of paragraph (d)(4) of this section—

(*1*) PTR will be treated as owning the assets of PRS in accordance with PTR's interest in PRS; and

(*2*) PTR will be treated as conducting a PRS business if PTR meets the requirement of paragraph (d)(5)(v)(A) (*1*) or (*2*) of this section.

(C) The fact that PTR is treated as conducting a business of PRS under paragraph (d)(5)(v)(A) of this section tends to establish the requisite continuity, but is not alone sufficient.

(vi) This paragraph (d)(5) applies to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**.

(6) * * * All corporations have only one class of common stock outstanding. *Example 6* through *Example 10* of this paragraph (d)(6) apply to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that they shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**. The examples are as follows:

* * * * *

Example 6. *Qualified group and business continuity.* (a) *Facts.* T operates a bakery which makes and supplies delectable pastries and cookies to a few select locations. The acquiring corporate group consists of numerous corporations which produce a variety of baked goods for distribution around the world. Holding Company (HC) owns 80 percent of the stock of P. Pursuant to a plan, T transfers all of its assets to P solely in exchange for HC voting stock, which T distributes to its shareholders. P owns 80 percent of the stock of S1; S1 owns 80 percent of the stock of S2, which also makes and supplies pastries and cookies. To amalgamate the T business into HC's affiliated group, P would like to operate T's business in S2. Pursuant to the plan, P transfers the T assets to S1; S1 then transfers the T assets to S2.

(b) *Continuity of business enterprise.* HC, P, S1, and S2 are members of a qualified group as defined in paragraph (d)(5)(iii) of this section. Under paragraph (d)(5)(ii) of this section, continuity of business enterprise continues to be satisfied where T's historic business is transferred to a member of the qualified group. The same results would occur if T had been acquired by P for HC voting stock in a reorganization described in section 368(a)(1)(B) and the T stock had been transferred from P to S1 and from S1 to S2.

Example 7. *Transfers of assets to multiple controlled corporations.* (a) *Facts.* T operates an auto parts distributorship. Pursuant to a plan, T merges into P and the T shareholders receive solely P stock. P owns 80 percent of the stock of S1. S1 owns 80 percent of the stock of ten subsidiaries, S2 through S11. S2 through S11 each separately operate a full service gas station. As part of the plan, P transfers T's auto parts to S1, which in turn transfers some of the parts to each of its ten subsidiaries. No one subsidiary receives a significant portion of T's historic business assets. Each of S1's subsidiaries will use the T assets received in the operation of its full service gas station. No S1 subsidiary will be an auto parts distributor.

(b) *Continuity of business enterprise.* P, S1, and the respective subsidiaries are members of a qualified group as defined in paragraph (d)(5)(iii) of this section. Under paragraph (d)(5)(ii) of this section, continuity of business enterprise continues to be satisfied where all of T's historic business assets are transferred among members of the qualified group. Even though no one corporation is using a significant portion of T's historic

business assets in a business, the continuity of business enterprise requirement is satisfied because the qualified group is using a significant portion of T's historic business assets in a business.

Example 8. *Transfer of a historic T business to PRS—active and substantial management.* (a) *Facts.* T manufactures custom ski boots. T transfers all of its assets to P solely in exchange for P voting stock, which T then distributes to its shareholders. P plans to continue manufacturing ski boots and to expand this operation. As part of the expansion, P and R (an unrelated party) form a new partnership (PRS). As part of the plan of reorganization, P (PTR) transfers T's ski boot business to PRS in exchange for a 20 percent interest in PRS. R transfers cash in exchange for its interest in PRS. PTR performs active and substantial management functions for PRS including the decision-making regarding significant business decisions of PRS and regular participation in the overall supervision, direction and control of the employees of PRS in operating the ski boot business.

(b) *Continuity of business enterprise.* Under paragraph (d)(5)(v)(A)(*1*) of this section, PTR is treated as conducting T's historic business because the officers of PTR perform active and substantial management functions for the ski boot business in PRS. Thus, the continuity of business enterprise requirement is satisfied because PTR is treated as continuing to conduct T's historic business.

(c) *Continuity of interest.* Under paragraph (f)(1)(ii) of this section, the continuity of interest requirement is satisfied even though the assets are transferred to PRS in exchange for an interest in PRS.

Example 9. *Transfer of a historic T business to PRS—significant interest.* (a) *Facts.* The facts are the same as in Example 8 except that PTR's officers do not operate the ski boot business, and PTR owns a 33⅓ percent interest in PRS.

(b) *Continuity of business enterprise.* Under paragraph (d)(5)(v)(A)(*2*) of this section, PTR is treated as conducting T's historic ski boot business because PTR's 33⅓ percent interest in PRS represents a significant interest in the PRS ski boot business.

(c) *Continuity of interest.* Under paragraph (f)(1)(ii) of this section, the continuity of interest requirement is satisfied even though the assets are transferred to PRS in exchange for an interest in PRS.

Example 10. *Transfer of T's historic assets to PRS.* (a) *Facts.* T manufactures silk. T transfers all of its assets to P solely in exchange for P voting stock, which T then distributes to its shareholders. P manufactures clothing and has been buying silk from T. P (PTR) and R (an unrelated party) own interests in a partnership (PRS) which owns and maintains warehouse facilities. As part of the plan of reorganization, PTR transfers the T assets to PRS, increasing PTR's percentage interest in PRS from 20 to 33⅓ percent. PTR decides to buy its silk from a different manufacturer and converts T's plant facilities into warehouses.

(b) *Continuity of business enterprise.* Under paragraph (d)(5)(v)(A)(*2*), PTR is treated as being in the business of owning and maintaining warehouse space because of PTR's significant interest in PRS. Furthermore, under paragraph (d)(5)(v)(B) of this section, PTR is treated as owning the assets of PRS in accordance with its interest in the partnership. Thus, the continuity of business enterprise requirement is satisfied because PTR continues to use a significant portion of T's historic assets in a business.

(c) *Continuity of interest.* Under paragraph (f)(1)(ii) of this section, the continuity of interest requirement continues to be satisfied even though the assets are transferred to PRS in exchange for an interest in PRS.

* * * * *

(f) *Continuity of interest and asset or stock transfers.* (1) *Scope.* The following rules apply to transactions otherwise qualifying as a reorganization under section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1) (A) and (B)):

(i) *Transfers to members of a qualified group.* Continuity of interest is satisfied where there are transfers or successive transfers of target (T) stock (or transfers of T assets after a stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of a qualified group as defined in paragraph (d)(5)(iii) of this section.

(ii) *Partnerships.* Continuity of interest is satisfied even where T assets (or transfers of T assets following a T stock acquisition) are transferred to a partnership in exchange for a partnership interest.

(2) *Example.* The rules of this paragraph (f) are illustrated by the following example. P represents the acquiring corporation and T represents the target corporation. Also see *Example 8* through *Example 10* in paragraph (d)(6) of this section.

The example is as follows:

Example. *Transfers to corporations in the qualified group.* (a) *Facts.* T manufactures playground equipment, including launch ramps and half pipes for skateboarding, in-line skating, and bicycling. The P affiliated group is engaged in architectural design and construction. A holding company (HC) owns 80 percent of the stock of each of P and S1. S1 in turn, owns 80 percent of the stock of S2, and S2 owns 80 percent of the stock of S3. T transfers all of its assets to P in exchange for HC voting stock, which T distributes to its shareholders. HC transfers all of the P stock to S1. S1 in turn transfers all of the P stock to S2, and S2 transfers the P stock to S3.

(b) *Continuity of interest.* HC, P, S1, S2 and S3 are members of a qualified group as defined in paragraph (d)(5)(iii) of this section. Under paragraph (f)(1)(i) of this section, the successive transfers of the P stock to other members of the qualified group do not violate the continuity of interest requirement.

Par. 3. In § 1.368–2, paragraph (f) is amended by removing the second sentence and adding two new sentences in its place to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(f) * * * A corporation remains a party to the reorganization even though assets are transferred among members of a qualified group as defined in § 1.368-1(d)(5)(iii). The preceding sentence applies to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 97–83 Filed 1–2–97; 8:45 am]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400106B; FRL–5581–2]

RIN 2070–AD08

Addition of Community Right-to Know; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: In the **Federal Register** of October 1, 1996, EPA issued an advance notice of proposed rulemaking (ANPR) to announce EPA's intention to expand its Community Right-to-Know initiatives to increase the information available to the public on chemical use, and to solicit comments on all aspects of chemical use data and its collection. Based on a request for additional time submitted by the U.S. Department of Energy's Office of Environmental Policy and Assistance, EPA is extending the comment period on the ANPR by 60 days.

DATES: Comments must be received by February 28, 1997.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G099, 401 M St., SW., Washington, DC 20460. Comments containing information claimed as confidential must be clearly marked as confidential business information (CBI). If CBI is claimed,

three additional sanitized copies must also be submitted. Nonconfidential versions of comments will be placed in the record for this action and will be available for public inspection. Comments should include the docket control number for the ANPR, OPPTS-400106 and the EPA contact. Unit II. of this document contains additional information on submitting comments containing information claimed as CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400106. No CBI should be submitted through e-mail. Electronic comments on this ANPR may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: Matt Gillen at 202-260-1801, e-mail: gillen.matthew@epamail.epa.gov for specific information regarding this Notice. For further information on EPCRA section 313 contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460. Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION: Electronic Availability: An electronic copy of the documents listed in Unit I of this document are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental SubSet entry under "Rules and Regulations."

I. Introduction

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). Section 313 of EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment or otherwise manage. The information is placed in a publicly accessible data base known as the Toxics Release Inventory (TRI). The purpose of this requirement is to inform the public, government officials, and industry about the chemical management practices of specified toxic chemicals.

EPA is interested in expanding the information available via TRI to include chemical use information such as materials accounting data. The Agency began reviewing this issue in 1993 and held public meetings in 1994 and 1995. On August 8, 1995, President Clinton directed EPA to develop and implement, on an expedited schedule, a process for consideration of reporting use information under TRI. In response, EPA has begun the regulatory development process for additional review of chemical use reporting, which the Agency believes may provide a more detailed and comprehensive picture to the public about environmental performance and about toxic chemicals in their communities. EPA published the ANPR on October 1, 1996 (61 FR 51322) (FRL–5387–6), to give notice of EPA's consideration of this issue and to solicit comments on all aspects of chemical use and the collection of chemical use data. At the same time, the Agency also released "Issues Paper No. 3" which describes previous stakeholder comments on chemical use reporting. EPA also held three public meetings in October and December of 1996 to provide public forums for interested parties to provide input on the issues raised by the ANPR. This issues paper and ANPR can be obtained from the EPCRA hotline at the telephone numbers listed in the FOR FURTHER INFORMATION CONTACT unit of this document, or electronically via the EPA's TRI Homepage at: http://www.epa.gov/opptintr/tri.

The original comment period for the ANPR was due to expire on December 30, 1996. However, on November 26, 1996, the Department of Energy submitted a request for an extension of the comment period to allow time to gather and consolidate comments from various DOE facilities, and to account for DOE's need to comment on another EPA reporting initiative during the same period. EPA has decided to grant this request and to extend the comment period for an additional 60 days, or until February 28, 1997.

II. Rulemaking Record and Electronic Filing of Comments

A record has been established for the ANPR under docket number "OPPTS-400106" (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Room NE-B607, 401 M St., SW., Washington, DC 20460.

Any person who submits comments claimed as CBI must mark the comments as "confidential," "CBI," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare a nonconfidential public version of the comments in triplicate that EPA can place in the public file.

Electronic comments can be sent directly to EPA at oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 23, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–57 Filed 1–2–97; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 372

[OPPTS–400107; FRL–5581–1]

RIN 2070–AC00

Barium Compounds; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to remove the barium compounds category from the list of chemicals subject to the reporting requirements under section 313 of the Emergency Planning and

Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is based on EPA's conclusion that barium compounds do not meet the deletion criterion of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that barium ion (Ba^{+2}) can become available from the barium compounds subject to reporting and that barium ion can reasonably be anticipated to cause chronic toxicity. Therefore, barium compounds meet the criteria for inclusion on the list of chemicals subject to reporting under section 313 of EPCRA.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882 or e-mail: bushman.daniel@epamail.epa.gov, for specific information regarding this document. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Barium-containing substances were included on the initial list, under the chemical category entitled "barium compounds." Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61439, November 30, 1994) (FRL-4922-2).

II. Description of Petition and Regulatory Status of Barium and Barium Compounds

Barium-containing substances are on the list of toxic chemicals subject to the annual reporting requirements of EPCRA section 313 and PPA section 6607. Barium-containing substances comprise the "barium compounds" category on the EPCRA section 313 list of toxic chemicals. The presence of barium in a compound defines its inclusion in the barium compounds category. As with all the metal compound categories on the EPCRA section 313 list of toxic chemicals, the basis for inclusion of the individual metal-containing substances within these categories is the toxicity which may be exhibited by the intact substance, or by the metal or metal ion which may be liberated from the intact substance within an organism, by biological fluids, or in the environment. EPA published a detailed discussion on the Agency's policies related to the metal compound categories on the EPCRA section 313 list of toxic chemicals in the **Federal Register** of May 23, 1991 (56 FR 23703).

EPA recently deleted barium sulfate (also known as barite) from the barium compounds category (59 FR 33205, June 28, 1994) (FRL–4767–5). EPA concluded that barium sulfate does not meet the toxicity criteria of EPCRA sections 313(d)(2)(A), (B) or (C), and that barium ion is available from barium sulfate only under low sulfate, anaerobic conditions in stagnant water bodies that are cut-off from surface and ground waters (i.e., conditions that cannot reasonably be anticipated to cause ecotoxicity or lead to human exposure to the ion). EPA believes that the low toxicity of barium sulfate can be mainly ascribed to the very low water solubility (2.4 milligrams per liter (mg/L) at 25 °C) of barium sulfate, barium ion's strong affinity for sulfate, and correspondingly, the low availability of barium ion.

Barium is regulated under the Safe Drinking Water Act, (42 U.S.C. 300f-300j-26); the current maximum contaminant level (MCL) is 2 mg/L (2 parts per million (ppm)) (40 CFR 141.62(b)(3)).

On June 28, 1996, EPA received a petition from the Chemical Products Corporation (CPC) to delete the entire barium compounds category from the EPCRA section 313 list of toxic chemicals. With this action, CPC petitioned EPA to delete all barium compounds from the list of toxic chemicals subject to the annual reporting requirements of EPCRA section 313 and PPA section 6607. In the petition, data are presented from various toxicity studies on a limited number of barium compounds. The petitioner contends that all barium compounds should be deleted because the available toxicity data show that barium ion does not meet the criteria for inclusion on the list of EPCRA section 313 chemicals. The petitioner also asserts that under environmental conditions barium ion is largely unavailable from barium compounds because of the presence of sulfate ion in the environment; sulfate ion will react quickly with barium ion to form barium sulfate.

III. EPA's Technical Review of Barium Compounds

The technical review of the petition to delete barium compounds from the reporting requirements of EPCRA section 313 and PPA section 6607 included an analysis of the chemistry, health effects, ecological effects, and environmental fate data available for barium compounds.

A. Chemistry and Use

Barium is a metallic substance that occurs in nature as its divalent cation

(ion), Ba^{+2}. Barium compounds are those substances that contain barium as part of their molecular formula. EPA has published a discussion on the chemistry of barium ion (Ref. 1). Barium ion is highly electropositive, and reacts readily with anions (sulfate (SO_4^{-2}), chloride (Cl^{-1}), carbonate (CO_3^{-2}), nitrate (NO_3^{-2}), etc.) to form the corresponding barium salt. The water solubility of the salt and, therewith, its ability to dissociate to barium ion is largely dependent on the affinity between barium ion and the anion. Barium chloride is highly water soluble (317 grams per liter (g/L)), whereas barium carbonate and barium sulfate are considerably less soluble, having water solubilities of 24 mg/L and 2.4 mg/L, respectively (Ref. 2). Barium carbonate is soluble in diluted solutions of hydrochloric, nitric or acetic acid. These acids react with barium carbonate to form barium chloride, barium nitrate, and barium acetate, respectively, which are all freely soluble in water (Ref. 2).

Another important factor controlling the availability of barium ion from a barium compound is the presence of sulfate ion. In waters, the availability of barium ion from a barium compound is governed largely by the concentration of sulfate ion present in solution. The availability of barium ion is inversely related to the concentration of sulfate; barium ion availability is suppressed in the presence of sulfate, and enhanced when sulfate concentration is low. This is because sulfate has a high affinity for barium ion and will form barium sulfate which precipitates out of solution (Ref 1). A more detailed discussion of factors that control barium ion availability in waters is provided below in Unit III.C. of this notice "Environmental Fate of Barium Compounds."

The most common natural form of barium is barium sulfate (barite). The greater natural occurrence of barium sulfate with respect to other barium salts is likely to be due to the relatively stronger affinity between Ba^{+2} and SO_4^{-2}, when compared to the affinity between Ba^{+2} and other naturally occurring anions.

Barium carbonate is another naturally occurring barium compound. It is also produced commercially from barium sulfate. Barium carbonate is often added to brick and clay products to precipitate sulfates. Barium carbonate is used also in the production of ceramic materials and glass products, and to produce other barium compounds. Barium compounds produced from barium carbonate include: barium acetate; barium bromide; barium chloride; barium 2-ethylhexanoate; barium hydroxide; barium hydrosulfide; barium iodide; barium metaborate; barium nitrate; barium nitrite; barium oxide; barium peroxide; barium sodium niobium oxide; barium sulfide; barium titanate; and higher purity grades of barium sulfate (Ref. 3). The uses of most of these barium compounds are summarized in Ref. 3.

B. Toxicological Evaluation

EPA's toxicological evaluation of barium compounds consisted of an analysis of health and environmental data pertaining to barium-containing substances included on the EPCRA section list of toxic chemicals as part of the barium compounds category. Data were obtained from: studies found in the literature (Refs. 4-12); the Hazardous Substances Data Bank (Ref. 13); EPA's Integrated Risk Information System (IRIS) (Ref. 14); a previous **Federal Register** Notice on barium sulfate (Ref. 15); a 1992 report published by the U.S. Department of Health and Human Services' Agency for Toxic Substances and Disease Registry entitled *Toxicological Profile for Barium* (Ref. 16); a 1993 report published by the U.S. Department of Health and Human Services' National Toxicology Program entitled *Toxicology and Carcinogenesis Studies of Barium Chloride Dihydrate in F4344 Rats and B6C3F1 Mice* (Ref. 17); and a 1990 EPA document entitled *The Drinking Water Criteria Document for Barium* (Ref. 18). The health and environmental portions of these reference sources are summarized below. Detailed discussions can be found in the publications and in the technical reports (Refs. 19-22) prepared by the EPA scientists who reviewed the publications. EPA's toxicological evaluation of barium compounds also included a review of the analysis of health and environmental data stated in the petition and the petitioner's interpretation of such data.

1. *Acute mammalian toxicity.* In humans, symptoms of acute barium toxicity after accidental or intentional oral ingestion of 1-15 grams of soluble barium salts include: muscular paralysis; respiratory failure; arterial hypertension; cardiac arrhythmias; profound hypokalemia and death (Refs. 5 and 18). The threshold of a toxic oral dose in adults has been estimated to be 200-500 milligrams (mg) or 2.86 - 7.14 milligrams per kilogram (mg/kg) of body weight. This quantity applies to the equivalent weight of the barium ion absorbed from the gut from the barium compound. The digestive system is extremely permeable to the barium ion. Acute lethal oral doses for barium in adults have been estimated to be 3-4 grams (calculated 43 - 57 mg/kg) (Refs. 13 and 18). Animal studies support similar cardiotoxic effects following acute exposure.

Ogen, et al. summarized the results of two large outbreaks of food poisoning that occurred following consumption of sausage that contained barium carbonate which was accidentally substituted for potato starch during sausage preparation (Ref. 12). The authors estimate that the amount of barium carbonate ingested in most of the affected individuals was 2-3 grams per person. The characteristic symptoms occurred within 8 hours after ingestion of the contaminated sausage, and included: vomiting, diarrhea, general weakness, paresthesia, difficulty in breathing, and, in the more severe cases, paralysis of the limbs and respiratory muscles. Most of the 144 affected individuals received treatment and recovered within a few days, however, 19 individuals required hospitalization, and one patient died. The authors of the study attribute the observed toxicity of barium carbonate to its reaction with hydrochloric acid in the stomach to yield barium chloride, which dissociates readily to barium ion and is absorbed systemically. These authors cite other studies involving food poisoning from barium carbonate.

The acute oral lethality of barium in animals has been well documented. There is a wide variability in the lethal dose of barium among species and age, as well as between strains of the same species. Nevertheless, the acute lethality of various barium salts is a function of their solubility in water or acid. In rats, acute oral toxicities of barium chloride, fluoride, nitrate and acetate have median lethal dose (LD_{50}) values of 118, 250, 355 and 921 mg barium/kg, respectively (Refs. 4, 13, and 17).

2. *Subchronic and chronic mammalian toxicity.* EPA's review of the available toxicity data for barium compounds identified kidney toxicity as the toxicological endpoint of concern. There are also varying reports on cardiovascular effects in humans and test animals from subchronic and chronic exposure to barium.

The U.S. Department of Health and Human Services' National Toxicology Program (NTP) conducted toxicology and carcinogenicity studies in F344/N rats and B6C3F1 mice by administering barium chloride dihydrate (99 percent pure) in drinking water for 15 days, 13 weeks, and 2 years (Ref. 17). Under the conditions of the study, there was no evidence of carcinogenic activity in any of the test animals. There were chemical-related increased incidences of kidney toxicity (nephropathy) in male and female mice. The Lowest Observed Adverse Effect Level (LOAEL) for

kidney toxicity in mice is approximately 180 milligrams per kilogram per day (mg/kg/day) (Refs. 19 and 20). Kidney toxicity was observed in rats, but the data are conflicting (kidney effects were seen in the 13-week study, but not in the 2-year study). Test animals and their offspring were not observed for reproductive or developmental effects. The results of the NTP study are summarized below. A more detailed summary is provided in Ref. 19.

In groups of 60 male and 60 female mice receiving 0, 500, 1,250, or 2,500 mg/L barium chloride dihydrate in drinking water for 2 years, dose-related nephropathy was observed. The incidence of nephropathy was significantly increased in mice of both genders that received 2,500 mg/L. The nephropathy consisted of extensive regeneration of cortical and medullary renal tubule epithelium, tubule dilatation, hyaline cast formation, multifocal interstitial fibrosis and in some kidneys, glomerulosclerosis. These lesions were accompanied by brown crystals (barium precipitated salts) located within the kidney's tubules lumen and interstitium throughout the cortex and medulla. The kidney lesions were considered the cause of death in most animals. The absolute and relative spleen weights in female rats in the highest dose were lower compared to controls. Based on the renal toxicity, the LOAEL is 160 mg/kg/day for male mice and 200 mg/kg/day for female mice. The No Observed Adverse Effect Level (NOAEL) is 75 mg/kg/day for male mice and 90 mg/kg/day for female mice.

Groups of 10 male and 10 female F344/N rats received barium chloride dihydrate in drinking water at doses of 0, 125, 500, 1,000, 2,000 or 4,000 mg/L, 7 days a week for 13 weeks (Ref. 17). Drinking water levels were estimated to deliver daily doses of 10, 30, 65, 110, or 200 mg/kg for male rats and 10, 35, 65, 115, or 180 mg/kg body weight to females. Three male rats and one female rat that received 4,000 mg/L died during the last week of the study. A significant decrease in motor activity was observed in rats that received the highest dose.

The absolute and relative kidney weights of female rats that received 2,000 and 4,000 mg/L and the relative kidney weight of male rats in the 4,000 mg/L groups were greater than controls and were associated with barium-induced renal lesions. Barium-induced renal lesions occurred in three male and three female rats in the highest dose groups. Gross pathology revealed kidneys that were pale and had roughened surfaces. Microscopically, the kidney lesion appeared as a minimal to mild focal to multifocal dilatation of the proximal convoluted tubules in the outer medulla and the renal cortex. Tubule dilatation observed in this study was different from the common spontaneous lesions observed in the kidney of rats.

In a similar 13–week study on mice (Ref. 17), barium-induced nephropathy was observed in 10 male and 9 female mice in the highest dose group. Gross pathology revealed kidneys that were pale and had roughened surfaces. The nephropathy consisted of mild to moderate multifocal tubule dilatation, regeneration and atrophy with crystals in the lumens of the atrophic tubules. An increased amount of fibrous connective tissue was present in the affected kidneys. The LOAEL in male mice was 450 mg/kg/day and in female mice was 495 mg/kg/day based on the mortality, lower final mean body weights and water consumption, presence of renal, thymic and splenic lesions. The NOAEL was 205 mg/kg/day for male mice and 200 mg/kg/day for female mice.

In a 13-week drinking water study (Ref. 11), barium chloride dihydrate was given to groups of 10 male and 10 female F344/N rats and B6C3F1 mice at levels of 0, 125, 500, 1,000, 2,000, and 4,000 mg/L (ppm). The estimated average barium doses for rats were 0, 5.1, 20.0, 39.0, 70.0, and 128 mg/kg/day and for mice were 0, 12.0, 45.0, 83.0, 165, and 399 mg/kg/day. Mortality ranged from 60 to 70 percent in mice and from 10 to 30 percent in rats in the 4,000 mg/L groups. Deaths in mice were associated with barium-induced renal toxicity. Renal lesions in rats were much less severe than in mice and did not contribute to the barium-induced deaths seen in the high dose group. In both species the highest dose produced marginal decreases in motor activity, grip strength, and thermal sensitivity. The authors attributed these effects to secondary changes resulting from barium chloride toxicity at this dose. In mating trials, no anatomical effects on offspring of rats or mice were noted. Rats given 4,000 mg/L had marginal reductions in pup weights. No effects were noted on reproductive indices. Based on the mortality and renal toxicity at 4,000 mg/L in both rats and mice, the NOAEL was 70 mg/kg/day in rats and 165 mg/kg/day in mice.

Reports on the cardiovascular effects of subchronic and chronic exposure to barium in humans and animals vary. Brenniman et al. (Ref. 7) conducted an epidemiological study in which death-rates (established from death certificates) in communities with high levels of barium in their drinking water (2 -10 mg/L) were compared to communities that were exposed to low levels of barium in water (0.0 - 0.2 mg/L). While an initial analysis of the data indicated statistical differences in blood pressure between the communities, extensive analysis did not. No statistically significant differences were found in blood pressure between individuals in the two cities even when adjustments for duration of exposure, use of water softeners and the use of ant'hypertensive drugs were made (Ref. 17).

In a human study conducted by Wones et al. (Ref. 8), 11 healthy men were enrolled in a 10-week barium drinking water dose-response protocol. Diet and lifestyle were controlled and the barium content of the drinking water was varied from 0 mg/L (first 2 weeks) to 5 mg/L (next 4 weeks) to 10 mg/L (last 4 weeks). There were no changes in morning or evening systolic or diastolic blood pressures, plasma cholesterol or lipoprotein, serum potassium or calcium or glucose levels. There were no arrythmias related to barium exposure. Consumption of barium in drinking water at a dose of 0.21 mg barium/kg/day did not appear to affect any of the cardiovascular parameters monitored in this study (Ref. 17). This study was considered limited by the EPA's Office of Drinking Water due to its small study population and short duration of exposure (4 weeks) and because there was no lowest effect dose.

Perry et al. (Ref. 9) studied the effect of barium in drinking water on blood pressure in rats. A total of 195 female weanling Long-Evans rats were subdivided into a control group of 26 animals (0 mg/L) and 3 exposure groups of 13 rats. Each group was provided drinking water containing 1, 10, or 100 mg/L of barium chloride for 1, 4, or 16 months. There were significant increases in mean systolic blood pressure in rats receiving the highest dose at 1 and 4 months (7.1 and 6.3 mg/kg/day, respectively). In the 16-month study, rats exposed to 0.51 and 5.1 mg/kg/day had significant increases in blood pressure as well. Also at the highest dose, there was a decrease in contractility and excitability of cardiac muscle fiber. The LOAEL for the 16-month study was 0.51 mg/kg/day as evidenced by increase in blood pressure and the NOAEL was 0.051 mg/kg/day. However, the test animals were maintained on a special contaminant-free diet that restricted their intake of certain beneficial trace metals, such as calcium and potassium. This restriction may have contributed to the observed hypertensive effects. Several other studies with rats and mice lasting from

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13 weeks to 2 years show no increase in blood pressure or any other cardiovascular effects.

3. *Ecotoxicity.* Barium compounds have low toxicity to aquatic organisms and plants (Refs. 15 and 22). The low toxicity of barium compounds to aquatic species is attributable to the presence of sulfate in waters; barium ion liberated from a barium compound reacts with sulfate to form barium sulfate, which precipitates from solution.

C. Environmental Fate of Barium Compounds

EPA's environmental fate evaluation of barium compounds consisted of an analysis of environmental fate data pertaining to barium-containing substances included on the EPCRA section 313 list of toxic chemicals as part of the barium compounds category. Data were obtained from studies found in the literature (Refs. 23, 26-29, 31, and 32) and several government documents (Refs. 24, 25, and 30). The portions of these reference sources that are relevant to EPA's review of the environmental fate of barium compounds are summarized below. Detailed discussions can be found in the publications and in Ref. 33, EPA's technical review of these publications.

1. *Air.* Most barium compounds released to the environment from industrial sources are in forms that do not become widely dispersed (Ref. 23). In the atmosphere, barium compounds are likely to be present in particulate form. Although chemical reactions may cause changes in speciation of barium in air, the main mechanisms for the removal of barium compounds from the atmosphere are likely to be wet and dry deposition (Ref. 24).

Elemental barium is oxidized readily in moist air (Refs. 25 and 26). The residence time of barium in the atmosphere may be several days, depending on the size of the particulate formed, the chemical nature of the particulate, and environmental factors such as rainfall (Ref. 24).

2. *Water.* In aquatic media, barium compounds are likely to precipitate out of solution as barium sulfate ($BaSO_4$) or barium carbonate ($BaCO_3$). Waterborne barium may also adsorb to suspended particulate matter (Refs. 24, 27, and 28). Precipitation of barium sulfate is accelerated when rivers enter ocean waters. This is due to the higher sulfate content in ocean waters (Ref. 33). Sedimentation removes a large portion of barium compounds that are suspended in surface waters (Ref. 29).

Appreciable quantities of barium sulfate or carbonate precipitate may occur in aquatic environments. This is because natural waters usually contain sulfate or carbonate concentrations that are sufficient to react with barium ion to form barium sulfate or carbonate, which precipitates from solution (Ref. 30). In natural waters at pH levels of 9.3 or below, barium ion will react to form barium sulfate (Ref. 27). At pH above 9.3 formation of barium carbonate is favored.

3. *Soil.* Barium is not very mobile in most soils. The rate of transportation of barium in soils is dependent on soil characteristics. Soil properties that influence the transportation of barium to groundwaters are cation exchange capacity and calcium carbonate ($CaCO_3$) content. In soils with a high cation exchange capacity (e.g., fine textured mineral soils or soils with high organic matter content), barium mobility will be limited by adsorption (Ref. 28). High calcium carbonate content limits mobility by precipitation of the element as barium carbonate. In soils, barium will also precipitate as barium sulfate in the presence of sulfate ions (Refs. 27 and 28). Barium is more mobile and is more likely to be leached from soils in the presence of chloride due to the increased solubility of barium chloride as compared to other chemical compounds of barium (Ref. 28). Barium can form compounds with fatty acids (e.g., in acidic landfill leachate) with enhanced mobility in soils due to the lower charge of these compounds and subsequent reduction in adsorption capacity (Ref. 28). The significance of these mobility enhancing processes is thought to be minor overall, and it is likely that in the presence of sulfate or carbonate in soils, barium ion will react to form a solid (barium sulfate or barium carbonate) with relatively low mobility.

4. *Barium solubility in anaerobic environments.* Although the formation of barium sulfate precipitate is thought to be the major fate pathway for barium ion in aqueous environments containing adequate levels of sulfate, there is evidence indicating that under anaerobic, low sulfate conditions, enhanced barium solubility from barium sulfate can occur. Barium ion concentrations greater than those expected based on the solubility of barium sulfate can result through a series of steps in which available sulfate is reduced to sulfide by anaerobic bacteria (Ref. 31).

The existence of anaerobic, sulfate poor aquatic environments where enhanced barium solubility may occur has been documented (Ref. 32). However, these environments are often found in northern glaciated regions in water bodies that are isolated from flowing surface waters and groundwaters. As these areas tend to be remote, the likelihood of releases of barium compounds entering these environments with subsequent attainment of barium ion concentrations of environmental significance is low.

D. Acute Exposure

Because barium compounds have been associated with acute effects in humans, EPA conducted a limited exposure analysis. (See discussion of use of exposure in listing decisions, 59 FR 61440, November 30, 1994.) Based on the TRI data, EPA has determined that the concentration levels of barium compounds likely to exist beyond facility site boundaries are low compared to the levels that would be required to induce the acute toxicities discussed above. Therefore, EPA does not believe that adverse acute human health effects are reasonably likely to occur as a result of continuous, or frequently recurring releases of barium compounds from facilities (Ref. 33).

IV. Technical Summary

EPA's technical review shows that many barium compounds are known to produce toxic effects in humans and experimental animals with the main target organ being the kidneys. Several barium compounds are acutely toxic to humans; however, EPA's exposure analysis indicates that the concentrations required to produce these acute toxicities are not reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases of barium compounds from facilities. With regard to chronic toxicity, the data from animal studies support a LOAEL of approximately 180 mg/kg/day for renal toxicity. Based on these data, EPA considers barium ion to have moderately high chronic toxicity. From its technical review EPA concludes that: barium ion is bioavailable from barium compounds, including some compounds with low water solubility (e.g, barium carbonate); and that barium ion is responsible for the toxic effects produced by barium compounds. Available data indicate that barium compounds are not ecotoxic. EPA's previous determination (59 FR 33205, June 28, 1994) (FRL-4767-5) that barium sulfate is essentially non-toxic to humans and the environment, and thus does not meet the EPCRA section 313(d)(2) criteria for listing remains unchanged.

V. Rationale for Denial

With the exception of barium sulfate, barium-containing substances are chemicals subject to EPCRA section 313

(listed under the category of "barium compounds") and PPA section 6607 reporting requirements. The petition to delist barium compounds is based on the petitioner's contention that barium compounds are not toxic and do not meet any of the statutory criteria under section 313(d)(2). In addition, the petitioner contends that due to an abundance of sulfate in the environment, barium ion is not available from barium compounds released into the environment because environmental sulfate will combine with barium ion to form barium sulfate.

EPA's review of available data has led the Agency to conclude that in experimental animals and humans: (1) Barium ion is available from barium compounds, including some compounds that have low water solubility; and (2) barium ion causes moderately high toxicity to the kidney.

Based on available data, EPA concludes that barium compounds can reasonably be anticipated to cause chronic toxicity in humans because of their ability to liberate barium ion, which in turn causes adverse chronic health effects. Therefore, barium compounds meet the criteria of EPCRA section 313(d)(2)(B). EPA concludes that barium compounds should not be deleted from the section 313 list of toxic chemicals, and the petition should be denied. Because barium compounds can reasonably be anticipated to cause moderately high chronic toxicity, EPA does not believe that an exposure assessment is necessary to conclude that barium compounds meet the toxicity criterion of EPCRA section 313(d)(2)(B). For a discussion of the use of exposure in EPCRA section 313 listing/delisting decisions, see 59 FR 61440, November 30, 1994.

EPA agrees with the petitioner that sulfate is a ubiquitous substance in the environment, and that sulfate reacts with barium ion to form barium sulfate. EPA also agrees that barium sulfate does not meet the criteria for listing on the section 313 list of toxic chemicals. EPA does not agree, however, that the presence of sulfate in the environment ensures that barium compounds cannot be toxic to humans. In its review of the toxicity of barium compounds, EPA concludes that environmental presence of barium ion is not a necessary prerequisite for toxicity from a barium compound. In the technical review portion of this notice, EPA describes studies in which adverse effects were observed following exposure to an intact barium compound. The toxicity occurs as a consequence of barium ion release *in vivo*. Therefore, exposure to an intact barium compound can reasonably be anticipated to cause toxicity as a result of the release of barium ion in the body.

In addition, EPA does not agree that the presence of sulfate in the environment automatically ensures that barium ion availability will not result from barium compounds released into the environment. EPA feels that continuous releases of a barium compound (particularly a highly soluble one) to a given area could deplete sulfate in that area. Once sulfate depletion takes place, continued release of the barium compound could lead to availability of barium ion.

EPA's denial of this petition is consistent with the Agency's published policy and guidance on metal compound categories under section 313 of EPCRA (56 FR 23703, May 23, 1991). This policy and guidance articulated EPA's determination that the toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function of the toxicity induced by the intact species and the availability of the metal ion. Thus, EPA stated that for petitions to exempt individual metal-containing compounds from the EPCRA section 313 list of toxic chemicals, EPA bases its decisions on the evaluation of all chemical and biological processes that may lead to metal ion availability, as well as on the toxicity exhibited by the intact species. EPA stated that the Agency will deny petitions for chemicals that dissociate or react to generate the metal ion at levels which can reasonably be anticipated to cause adverse effects to human health or the environment and for which the metal ion availability cannot be properly characterized.

In summary, EPA's review of information pertaining to barium compounds resulted in the conclusion that in mammals: (1) Barium ion is available from barium compounds (including some compounds that have low water solubility); and (2) barium ion causes chronic toxic effects. Thus, barium compounds can reasonably be anticipated to cause chronic toxicity in humans because of their ability to liberate barium ion. EPA believes that the available data satisfy the criterion in EPCRA section 313(d)(2)(B). Accordingly, EPA is denying the petition.

VI. References

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VIII. Administrative Record

The record supporting this decision is contained in docket control number OPPTS–400107. All documents, including the references listed in Unit VI. above and an index of the docket, are available to the public in the TSCA Non-Confidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: December 23, 1996.

Lynn R. Goldman,

Assistant Administrator, for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–56 Filed 1–2–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–259; RM–8970]

Radio Broadcasting Services; Moscow, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Darin L. Siebert requesting the allotment of Channel 277A to Moscow, Idaho, as that community's second local commercial FM service. Coordinates used for Channel 277A at Moscow are 46–42–24 and 116–55–08. As Moscow, Idaho, is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain the concurrence of the Canadian government to this proposal.

DATES: Comments must be filed on or before February 18, 1997, and reply comments on or before March 5, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Darin L. Siebert, S. 605 Grand Ave., Pullman, WA 99163.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–259, adopted December 20, 1996, and released December 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140,Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–49 Filed 1–2–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–258; RM–8967]

Radio Broadcasting Services; Valdez, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of North Wave Communications, Inc., seeking the allotment of FM Channel 227A to Valdez, Alaska, as that community's first local FM transmission service. Coordinates used for this proposal are 61–07–00 and 146–16–00. As Valdez, Alaska, is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain the concurrence of the Canadian government to this proposal.

DATES: Comments must be filed on or before February 18, 1997, and reply comments on or before March 5, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Michael H. Bader, Esq., Haley Bader & Potts, P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, VA 22203–1633.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–258, adopted December 20, 1996, and released December 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–48 Filed 1–2–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–260, RM–8965]

Radio Broadcasting Services; Mankato, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mid-Minnesota Broadcsting Company proposing the allotment of Channel 231A to Mankato, Minnesota. The coordinates for Channel 231A at Mankato are 44–10–12 and 94–00–24.

DATES: Comments must be filed on or before February 18, 1997, and reply comments on or before March 5, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Abdolmajid Khalizadeh, Philip A. Rubin & Associates, Inc., 1350 Connecticut Avenue, Suite 610, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–260, adopted December 20, 1996, and released December 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–45 Filed 1–2–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–257, RM–8966]

Radio Broadcasting Services; Cloudcroft, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert J. Flotte seeking the allotment of Channel 250C1 to Cloudcroft, New Mexico, as the community's first local aural transmission service. Channel 250C1 can be allotted to Cloudcroft in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 32–57–30 North Latitude and 105–44–42 West Longitude. Mexican concurrence in the allotment is required since the community is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before February 18, 1997, and reply comments on or before March 5, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Esq., Mark A. Brinton, Esq., Jones, Waldo, Holbrook & McDonough, P.C., 2300 M Street NW., Suite 900, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–257, adopted December 20, 1996, and released December 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–40 Filed 1–2–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 231, and 242

[DFARS Case 95–D040]

Defense Federal Acquisition Regulation Supplement; Independent Research and Development/Bid and Proposal Costs for FY96 and Beyond

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect proposed changes to the Federal Acquisition Regulation (FAR) to treat Independent Research and Development and Bid and Proposal cost for fiscal year 1996 and beyond as fully allowable, subject only to the FAR normal standards of reasonableness and allocability.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 4, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to, Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, telefax number (703) 602–0350. Please cite DFARS Case 95–D040 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, at (703) 602–0131. Please cite DFARS Case 95–D040.

SUPPLEMENTARY INFORMATION:

A. Background

The current Independent Research and Development (IR&D)/Bid and Proposal (B&P) cost principle at DFARS 231.205–18 covers the limited allowability of IR&D/B&P costs for major contractors through a 3-year transition period (fiscal years 1993–1995), based on the requirements of section 802 of the National Defense Authorization Act for fiscal years 1992 and 1993 (Pub. L. 102–190). Section 802 does not address the allowability of IR&D/B&P costs after fiscal year 1995. This proposed DFARS rule supplements a proposed FAR rule (FAR Case 95–032), which treats IR&D/B&P costs for fiscal year 1996 and beyond as 100 percent allowable for all contractors, subject only to the FAR normal standards of reasonableness and allocability. The proposed FAR rule was published in the **Federal Register** on November 14, 1996 (61 FR 58452). In addition, this DFARS rule continues to require, in accordance with 10 U.S.C. 2372, that IR&D/B&P activities of major contractors have a potential interest to DoD for the costs to be allowable.

The proposed DFARS rule revises 231.205–18 and 242.771 to delete (1) the requirement for advance agreement negotiations or formal IR&D technical reviews and evaluations after contractors' fiscal year 1992; and (2) the limited allowability restriction of IR&D/B&P costs for fiscal years 1993–1995. Also, the rule revises 225.7303–2(c) to indicate that the "potential interest to DoD" requirement of DFARS 231.205–18(c)(3) does not apply to contracts for foreign military sales.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis, therefore, has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D040 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225, 231, and 242

Government procurement

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 225, 231, and 242 be amended as follows:

1. The authority citation for 48 CFR Parts 225, 231, and 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–2 is amended by revising paragraph (c) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

* * * * *

(c) The cost limitation for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects which are of potential interest to DoD, in 231.205–18(c)(iii), does not apply to foreign military sale contracts, except as provided in 225.7303–5. The

allowability of IR&D/B&P costs on contracts for foreign military sales not wholly paid for from funds made available on a nonrepayable basis shall be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.205–18 is revised to read as follows:

231.205–18 Independent research and development and bid and proposal costs.

(a) *Definition. Major contractor,* as used in this subsection, means a contractor with more than $11,000,000 in IR&D/B&P costs in the preceding fiscal year allocated to DoD prime contracts and subcontracts whose values exceed the simplified acquisition threshold, except for fixed-price contracts and subcontracts without cost incentives.

(c) *Allowability.* (i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See 225.7303–2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors (see paragraph (a) of this subsection), the following limitation applies—

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(*1*) Such contracts' allocable share of total incurred IR&D/B&P costs; or

(*2*) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to the DoD, including activities intended to accomplish any of the following—

(*1*) Enable superior performance of future U.S. weapon systems and components;

(*2*) Reduce acquisition costs and life-cycle costs of military systems;

(*3*) Strengthen the defense industrial and technology base of the United States;

(*4*) Enhance the industrial competitiveness of the United States;

(*5*) Promote the development of technologies identified as critical under 10 U.S.C. 2522;

(*6*) Increase the development and promotion of efficient and effective applications of dual-use technologies;

(*7*) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(iv) For major contractors, the contracting officer will—

(i) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(ii) Provide the results of the determination to the contractor.

(v) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (see also 242.771–3(a)).

PART 242—CONTRACT ADMINISTRATION

4. Sections 242.771 through 242.771–3 are revised to read as follows:

242.771 Independent research and development/bid and proposal.

242.771–1 Scope of subpart.

This section implements 10 U.S.C. 2372, Independent research and development and bid and proposal costs: payments to contractors.

242.771–2 Policy.

Defense contractors are encouraged to engage in IR&D/B&P activities of potential interest to DoD, including activities cited in 231.205–18(c)(iii)(B).

242.771–3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine cost allowability of IR&D/B&P costs as set forth in 231.205–18 and FAR 31.205–18.

(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205–18(a)) are of potential interest to DoD. Notify the contractor promptly of any IR&D/B&P activities which are not of potential interest to DoD.

(b) The Defense Contract Management Command of the Defense Logistics Agency or the Military Department responsible for performing contract administration functions is responsible for—

(1) Providing contractors with guidance on financial information needed to support IR&D/B&P costs.

(2) Providing Defense Contract Audit Agency (DCAA) with IR&D/B&P statistical information, as necessary, to assist DCAA in its annual reporting requirement (see paragraph (c) of this subsection).

(c) The Defense Contract Audit Agency is responsible for submitting an annual report to the Director of Defense Procurement (USD (A&T) DP) setting forth required statistical information relating to the DoD-wide IR&D/B&P program.

(d) The Director, Defense Research and Engineering (USD (A&T) DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

[FR Doc. 97–43 Filed 1–2–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. 94–35; Notice 2]

RIN 2127–AF37

Minimum Driving Range for Dual Fueled Electric Passenger Automobiles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In this document, NHTSA proposes to set the minimum driving range only for dual fueled electric passenger automobiles, otherwise known as hybrid electric vehicles (HEVs), at 17.7 miles when operating on electricity alone. The purpose of establishing the range is to meet a statutory requirement intended to encourage the production of HEVs. An HEV which meets the range requirement would qualify to have its fuel economy calculated according to a special procedure that would facilitate the efforts of its manufacturer to comply with the corporate average fuel economy standards. NHTSA is also proposing to

establish a procedure through which manufacturers of HEVs that do not meet the minimum driving range requirements may petition the agency for relief.

DATES: Comments must be received by March 4, 1997.

ADDRESSES: Comments on this document must refer to the docket and notice numbers set forth above and be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. P. L. Moore, Office of Planning and Consumer Programs, NPS–32, Room 5315, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–5222.

SUPPLEMENTARY INFORMATION:

Background

A. Alternative Motor Fuels Act of 1988

Section 6 of the Alternative Motor Fuels Act of 1988 (AMFA) (P.L. 100–494) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 513, "Manufacturing Incentives for Automobiles." Section 513 contained incentives for the manufacture of vehicles designed to operate on alcohol or natural gas, including dual fuel vehicles; i.e., vehicles capable of operating on one of those alternative fuels and either gasoline or diesel fuel.

Section 513 provided that dual fuel vehicles meeting specified criteria qualify for special treatment in the calculation of their fuel economy for purposes of the corporate average fuel economy (CAFE) standards. The fuel economy of a qualifying vehicle is calculated in a manner that results in a relatively high fuel economy value, thus encouraging its production as a way of facilitating a manufacturer's compliance with the CAFE standards. One of the qualifying criteria for passenger automobiles was to meet a minimum driving range, which was to be established by NHTSA.

NHTSA was required to establish two minimum driving ranges, one for "dual energy" (alcohol/gasoline or diesel fuel) passenger automobiles when operating on alcohol, and the other for "natural gas dual energy" (natural gas/gasoline or diesel fuel) passenger automobiles when operating on natural gas. In establishing the driving ranges, NHTSA was to consider the purposes of AMFA, consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and any other factors deemed relevant.

The AMFA and its legislative history made it clear that the driving ranges were to be low enough to encourage the production of dual fuel passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternative fuels. The agency accordingly promulgated driving range regulations at 49 CFR Part 538 (55 FR 17616).

B. Energy Policy Act of 1992

The Energy Policy Act of 1992 (Pub. L. 102–486) amended section 513 of the Cost Savings Act to expand the scope of the alternative fuels it promotes. The amended section provided incentives for the production of vehicles using, in addition to alcohol and natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), and any fuel NHTSA determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

Section 513 continued to provide incentives for the production of dual fuel vehicles; i.e., vehicles that operate on one of a now expanded list of alternative fuels, including electricity, and on gasoline or diesel fuel. For example, the calculated fuel economy of a dual fueled vehicle is based on the harmonic average of the fuel economy when operated on gasoline or diesel fuel and the credited fuel economy when operated on the alternative fuel. A hybrid electric vehicle operating on gasoline may have a combined city/highway fuel economy average of 28.5 miles per gallon, and a combined city/highway energy consumption of 422 watt-hours/mile when operated on electricity. Using the petroleum equivalency factor of 38322 watt-hours per gallon (Wh/gal) proposed by the Department of Energy on February 4, 1994 (59 FR 5336) to derive a miles per gallon equivalent, the mpg of such an electric vehicle with no petroleum powered accessories is derived by dividing the petroleum equivalency by the electric energy consumed per mile:

38322/422 =90.81 miles/gallon

The harmonic average of 90.81 mpg and 28.5 mpg is:

$$\frac{1}{\frac{0.5}{28.5}+\frac{0.5}{90.8}} = 43.4 \text{ miles / gallon}$$

NHTSA notes that some statutory terminology was changed by the 1992 amendments. Among other things, the terms "dual energy" and "natural gas dual energy" were dropped, and the terms "alternative fueled automobile," "dedicated automobile," and "dual fueled automobile" were added.

Section 513 also continued to require dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for the special treatment in the calculation of their fuel economy for purposes of the CAFE standards. The

1992 Energy Policy Act necessitates amending Part 538. The agency must establish a minimum driving range for the expanded scope of dual fueled vehicles. Minimum driving range standards for all dual energy vehicles except electric vehicles were established by a final rule issued on March 21, 1996 (61 FR 14507). Pursuant to the 1992 amendments, the March 21, 1996, final rule also eliminated the exemption from the minimum driving range requirements for all non-electric dual fueled vehicles. Establishment of a minimum driving range for HEVs requires reinstating the availability of an exemption for these vehicles.

On July 5, 1994, the Cost Savings Act was revised and codified "without substantive change." The provisions formerly found in section 513 of the Cost Savings Act are now at 49 U.S.C. 32901, 32905, and 32906. In setting the minimum driving range for dual energy electric vehicles, NHTSA is required by 49 U.S.C. 32901(c)(3) to consider the purposes set forth in section 3 of the AMFA as amended by the Energy Policy Act:

(1) To encourage the development and widespread use of methanol, ethanol, natural gas, other gaseous fuels, and electricity as transportation fuels by consumers; and

(2) To promote the production of alternatively fueled motor vehicles.

Section 32901(c)(3) also requires that the agency consider consumer acceptability, economic practicibility, technology, environmental impact, safety, drivability, performance, and other relevant factors in setting a minimum driving range.

Proposal

In this document, NHTSA is proposing to amend Part 538 pursuant to the Energy Policy Act. As discussed below, the agency is proposing to set the minimum driving range for all hybrid electric dual fueled passenger automobiles while operating on electricity alone at 17.7 miles and to establish application procedures for manufacturers of HEVs seeking exemption from the minimum range requirement.

To encourage the development and production of alternative fuel vehicles, the AMFA provides that such vehicles meeting an appropriate minimum driving range will qualify for special treatment in the calculation of their fuel economy for the purpose of their manufacturers' compliance with CAFE standards.

The inclusion of electricity in the list of alternative fuels covered by the AMFA necessitates that a minimum driving range be established for HEVs for fuel economy purposes. The AMFA specifies a minimum driving range of 200 miles for dual fueled passenger cars (other than dual fueled electric) when operating on the alternative fuel, but allows the Secretary of Transportation to establish the minimum driving range for HEVs.

The AMFA and Energy Policy Act provisions, which are now codified at 49 U.S.C. sections 32901(c) and 32905, require the Secretary of Transportation to establish a minimum driving range for HEVs. This minimum range requirement applies to passenger automobiles only. It does not apply to dual fueled light trucks.

In seeking to carry out its goals, the Act attempts to balance two competing objectives:

(1) Encouraging the production of alternatively fueled vehicles by offering CAFE standard compliance incentives, and

(2) Encouraging the purchase of alternatively fueled vehicles by consumers by providing the incentives only to those vehicles whose range of operation is large enough to meet consumer needs.

The setting of a minimum driving range for HEVs must balance the needs of the consumer with the technical and economic considerations that are faced by the manufacturers. A low minimum driving range eligibility criterion might encourage the production of dual fueled cars, but lead to HEVs being designed with such a low alternative fuel driving range that consumers do not buy them or, if they buy them, infrequently operate them on the alternative fuel. Conversely, an excessively high minimum driving range eligibility criterion might discourage the production of dual fueled electric cars and unnecessarily compromise other vehicle attributes and aspects of performance. Manufacturers would be discouraged by an overly-stringent minimum range because a vehicle which does not meet the minimum driving range for its type is unlikely to be built since the manufacturer would not receive any of the benefits or incentives provided by the Act.

From the viewpoint of the consumer, the necessary driving range may be dictated by the convenience of a range that corresponds to a typical workweek travel distance, or a daily travel distance for a fleet car. Also, if the majority of consumers would use an HEV in an urban area with more recharging stations or in a fleet application with a central recharging station, a large driving range may be less critical.

To aid the agency in relating the data on driving range for HEVs to the unique characteristics of dual fueled passenger automobiles, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) on September 22, 1994 (59 FR 48589). In the ANPRM, the agency posed a number of questions on the use of HEVs relating to the determination of a driving range that would serve the purposes of Alternative Motor Fuels Act and the Energy Policy Act.

A. Response to the ANPRM

The agency received four comments in response to the September 22, 1994, ANPRM. Comments were submitted by Volvo Cars of North America, Inc. (Volvo), National Automobile Dealers Association (NADA), Mitsubishi Motors America, Inc. (Mitsubishi), and American Automobile Manufacturers Association (AAMA). NADA did not provide responses to the individual questions; Volvo commented on most of the questions, and Mitsubishi and AAMA commented on all questions.

One of the questions contained in the ANPRM requested views on the minimum driving range for HEV passenger cars when operating on electricity. Volvo stated that a minimum driving range of approximately 60 to 80 miles would be appropriate. Mitsubishi declined to recommend an explicit minimum driving range, but did recommend that the agency consider the application of a driving cycle that is at a lower speed than the current EPA urban/highway driving cycle since the EPA urban/highway driving cycle's speeds (60+ mph) are too high for some HEVs. AAMA recommended that NHTSA set a zero minimum driving range for HEVs so that no HEV technologies (including those with little or no all-electric range) that still offer energy and/or emissions benefits will be excluded by regulatory design. AAMA believes that this approach to setting minimum driving range is consistent with the intent of the Energy Policy Act.

The ANPRM also solicited comments on what the appropriate method for determining minimum driving ranges should be, whether the EPA driving cycle should be used to determine the range and whether driving range measurements should be undertaken with the vehicle using electric power alone or a combination of electricity and other fuels. Volvo stated that dual fueled vehicles should incorporate the same driving range on the two fuels combined as a normal gasoline fueled vehicle, which is 350–400 miles. However, Volvo believes that it is possible for a hybrid vehicle to complete the EPA driving cycle solely on electric power. Mitsubishi believes

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that the minimum driving range should be determined based on the hybrid vehicle's role and purpose; e.g., in a high pollution urban area, the range should be based on all electric operation and in suburban or rural areas the range should be based on operation with the other power source running as well. Mitsubishi also stated that whether the hybrid can operate solely on electricity depends on the design and purpose of the vehicle. AAMA stated that the range should be determined on the combination of both power sources and it believes that there may be vehicles that can operate solely on electricity while others may require the auxiliary power source as well. AAMA also noted that a hybrid with electric power and an alternative fueled engine is a dedicated alternative fueled automobile since it operates entirely on alternative fuels, albeit two types of alternative fuel.

The ANPRM also requested comments regarding the suitability of the Society of Automotive Engineers (SAE) J1711 Hybrid Electric Vehicle Test Procedure. This test procedure, which is still under development, might be used in the future for determining range. Among other requests, the NPRM sought information regarding the adaptability of the SAE procedure for use with the EPA driving cycle, and the appropriateness of other tests. Mitsubishi's opinion was that the SAE procedure should be adopted, but with lower speeds since the EPA cycle speeds are too high for hybrids. AAMA stated that the SAE procedure could be used once it is fully developed since it does contain procedures for computing an all-electric range. AAMA further added that it was unaware of other test procedures that would be applicable in determining the range for hybrid vehicles.

In addition to addressing the basic concerns of how to determine a driving range for HEVs and what the potential ranges for such vehicles may be in light of existing technology, the ANPRM also solicited information relating to consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, and performance. Comments received in response to the ANPRM as well as the agency's own research indicate that consumer expectations and requirements for range, safety, drivability and performance place a great burden on existing HEV technologies, particularly when the economic practicibility of these vehicles is considered. In regard to consumer demands and expectations, Volvo thinks that hybrid vehicles will be used mainly in urban areas and recharging will take place at the consumer's residence or, for fleets, at central recharging facilities. Mitsubishi believes that the primary use will be in urban areas and for fleets with central recharging. AAMA expects that hybrids will be used in urban areas for commuting and fleet use. Recharging is expected to be at residences and centralized stations or parking garages.

In response to questions directed at specific consumer expectations of minimum driving range, Volvo commented that the consumer can accept a shorter driving range if the hybrid or dual fueled vehicle incorporates an auxiliary power unit as opposed to a vehicle solely powered by an electrical source. Volvo also stated that the minimum driving range for a vehicle operating on electricity should be defined so that the majority of people who commute, for example in the Los Angeles metropolitan area (or any other mandated metropolitan area), have the capability to get to work and then back home (and with some margin) using the vehicle's stored electrical energy supply. Mitsubishi offered the fact that 90% of daily round-trip commutes are less than 60 miles in urban areas. AAMA commented that the minimum driving range should be based on convenience to the customer. Volvo, Mitsubishi, and AAMA all indicated that until technology allows more rapid recharging and electric recharging facilities become widely available, that the range of HEVs operating on electricity alone will be constrained by the need to recharge vehicles at their base of operations.

Consumer requirements such as performance, utility and comfort also have an impact on range. Mitsubishi noted that about 1 kW of electrical power is expected to be needed to operate normal heating and cooling systems in Electric passenger cars. With a heat pump system, driving in the city may decrease the range by 15 to 20%. Using a heater adequate to meet FMVSS 103 requirements would consume more than 5 kW of electricity. Mitsubishi stated that such a heater would easily meet the defrosting requirements, but heating the interior could reduce the driving range in half. AAMA indicated that heaters and air conditioners reduce the range of the vehicle depending on the ambient temperature and type of system. While new technology is being developed, it cannot be considered at this time because of high cost and unknown reliability. While NADA did not comment on this question specifically, it submitted information about the GM Impact electric vehicle cold weather experience and noted that minimum HEV range calculations must also reflect climate variations. Results of prototype tests in colder ambient air temperatures indicated that these vehicles suffered drastically reduced driving range with the expected 55 mile range reduced by 40% when the temperature falls from 70 degrees Fahrenheit to 20 degrees and a 55% reduction when the temperature falls to 0 degrees.

In offering its comments on utility and space Mitsubishi indicated that if the minimum driving range is set too high, there may not be enough space for the batteries in a typical sedan-type vehicle. AAMA stated that there is always a trade-off between appearance and aerodynamics versus function when designing a vehicle and that with current technology, storage space is likely to be reduced if a large minimum driving range is required. Passenger and cargo space must be utilized to increase range to higher levels.

In examining the economic practicability of HEVs, the range of the vehicle appears to be directly related to its cost. AAMA stated, and the responses submitted by Volvo and Mitsubishi indicate, that even without significant driving range requirements, one of the HEVs most serious issues is battery cost. High driving range requirements can lead to excessive cost and weight of powertrains and energy storage devices. The increased weight due to the dual fuel capability of HEVs requires increased vehicle structural strength and additional chassis components which increase the overall weight and cost of the HEV and reduce energy efficiency.

Higher range requirements have other costs as well, particularly when existing technologies are considered. Greater range under electric power requires larger and heavier battery packs. Volvo indicated that the bigger the battery, the longer the range, since battery pack size is in direct proportion to the consumer's available driving range. Volvo also stated that the bigger the battery, the heavier the vehicle, thus providing a shorter driving range when a non-electric source of energy is used to propel the vehicle. Mitsubishi reasoned that if the battery pack is larger, it may take longer to discharge the battery, which would result in a longer HEV driving range. However, Mitsubishi believes that HEVs may actually have a shorter driving range since the reduction in fuel economy resulting from the increased weight may not offset the amount of energy gained by a larger battery pack.

AAMA indicated that batteries occupying the same space as a gasoline fuel tank would weigh about 1.7 times

as much while providing only a fraction of the operating range (approximately 3%). In an HEV, an oversized energy storage device reduces the space available for the gasoline or diesel fuel storage.

Higher range in the electric-only mode of operation would also invoke penalties affecting performance and safety. Mitsubishi believes that the balance of the vehicle, and consequently the vehicle's handling, will be affected if a large number of batteries are used to provide longer driving ranges. Mitsubishi indicated that an HEV with the range of a standard gasoline powered vehicle would weigh approximately 5000 lbs. Mitsubishi further added that while the majority of driving performance depends on the vehicle weight and the motor's power capacity, the most important parameter is weight balance to improve handling. In addition to performance and handling, Mitsubishi indicated that it did not have sufficient data regarding the safety risk related to longer driving ranges on electric power, but believed that if the battery capacity is smaller, the safety risk is lower, and the driving range is shorter. AAMA explained that an electric powertrain can be made to produce the same performance capability as a gasoline vehicle, but, like a gasoline vehicle, increased performance generally results in decreased range when holding all other variables constant. If longer range requires larger battery storage, then cost and packaging constraints will lead toward smaller engines, which, if the battery is near depletion, leads to performance and drivability degradation.

B. The Proposed Minimum Driving Range

The setting of a minimum driving range for HEVs must carefully balance what the potential purchaser expects from the vehicle and what technical and economic considerations the manufacturer will encounter in successfully bringing these vehicles to the marketplace. The agency's goal is to allow maximum flexibility to manufacturers of this emerging technology while encouraging the purchase of alternatively fueled vehicles by consumers, with the expectation that those vehicles produced will satisfy vehicle performance requirements and contain attributes desired by the purchaser.

In comparison to a normal gasoline fueled vehicle driving range of 350–400 miles, the typical electric-only vehicle has a driving range of 60–80 miles or less. Recent developments in electric vehicle technology appear to be extending driving ranges. New battery types, such as the fiber-nickel-cadmium battery previously used only in the aerospace industry, may change existing constraints on range. Vehicles based on these batteries are expected to have a range of 100 to 150 miles, can partially recharge in as little as five minutes, and have a battery life of more than 200,000 miles. These batteries, however, along with a host of other advanced-technology batteries are still in the developmental stage, and are not expected to be available on a commercial scale for many years. Meanwhile, lead-acid and possibly nickel-cadmium are the only commercially available and economical battery technologies suitable for electric vehicles in the near term. Therefore, for the immediate future, it is expected that the battery used in electric and hybrid vehicles will be the lead-acid battery. This battery configuration has considerable constraints, such as an extremely low charge density and a long recharge time. Based on NHTSA's review of comments forwarded in response to the ANPRM, a review of current literature, studies of current industry capabilities, an assessment of the available technology, and existing statutory requirements, the agency is proposing to set the minimum driving range for HEVs, when operating solely on electricity at 17.7 miles—the range required to complete one EPA urban/highway cycle under the current Federal Test Procedure (FTP).

In the agency's view, setting a minimum driving range at 17.7 miles ensures that HEVs will have sufficient driving range to meet the needs of consumers while also encouraging HEV development. A 17.7 mile minimum range is not so stringent as to foreclose the development of vehicles relying on new technologies or entry into the market without unduly large expenditures of capital resources. The proposed range is also sufficient to meet the needs of many vehicle users. According to the 1990 National Personal Transportation Survey (NPTS), a 17.7 mile range would be adequate for 85% of daily vehicle trips and 45% of daily vehicle miles traveled. In addition, setting the minimum driving range at 17.7 miles allows use of EPA test procedures, where one complete highway and urban cycle consists of 17.7 mi. The agency is, therefore, proposing that those vehicles that finish one complete circuit of the EPA highway and urban cycle in the electric-only mode without recharging shall be deemed to have met the minimum range requirement.

The agency notes that the proposed minimum driving range contemplates operation of the vehicle solely on electric power when some hybrid designs under consideration are full time hybrids. In these vehicles, electric and internal combustion engines are designed to complement each other and may not have sufficient power alone to adequately propel the vehicle. Similarly, other designs in which the vehicle may be operated on electric power alone may not have sufficient range to meet the proposed 17.7 mile minimum range. However, calculation of the fuel economy of a dual fueled automobile under Section 513 of the AMFA (now 49 U.S.C. 32905) requires that the vehicle be operated solely on the alternative fuel and, as set forth in 49 U.S.C. 32904(c), have its energy consumption measured through use of the EPA combined urban and highway cycle. This statutory requirement compels a minimum driving range specifying electric only operation for a distance equivalent to one EPA cycle.

In order to assist the agency in setting the minimum driving range and evaluating the environmental consequences of this proposal, NHTSA requests that vehicle manufacturers provide answers to the following questions: (1) If there were no CAFE incentives for producing dual fuel electric vehicles, how many of these vehicles would you manufacture in the next ten years? What type of battery would the vehicles have? What range do you expect the vehicle to have when operating on electric power, conventional fuels, or both? (2) With CAFE incentives available only for dual fuel electric vehicles that have a range of at least 17.7 miles, how many of these vehicles would you produce in each of the next ten years? What kind of battery would it employ? (3) Is there a minimum driving range different than 17.7 miles that would give you an incentive to build substantially more vehicles? How many vehicles would you manufacture in the next ten years in this case? What types of batteries would you use? (4) What is the highest driving range at which you would manufacture at least 80% of the number of vehicles projected in your answer to question 3, and what type of batteries would you use to achieve that range?

Adopting a range lower than 17.7 miles might provide additional flexibility to manufacturers seeking to develop new technologies. However, it is NHTSA's current view that the agency is precluded by the explicit language of 49 U.S.C. 32905 from setting

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a minimum driving range that does not require operation on electricity alone. In addition, determining the fuel economy of a hybrid electric vehicle while operating on electricity alone requires that the vehicle complete at least one EPA driving cycle. In addition, allowing manufacturers to obtain CAFE credits by producing a vehicle that may not be capable of any meaningful operation while using electricity as a fuel, is contrary to the intent of the statute in that credits would be made available without any corresponding benefit. Those manufacturers who are unable, because of technological or other burdens, to produce a vehicle capable of meeting the 17.7 mile range requirement, may apply for exemption under the procedures proposed in this notice.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined that the action is not "significant" under the Department of Transportation's regulatory policies and procedures. In this NPRM, the agency proposes to set the minimum driving range for electric dual fueled passenger automobiles when operating solely on electricity at 17.7 miles. The establishment of a minimum driving range implements statutory incentives to encourage the manufacture of alternative fuel vehicles and does not add any additional burdens. For these reasons, NHTSA believes that any impacts on manufacturers will be so minimal as not to warrant preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed rule, if made final, will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that, to the extent that any passenger automobile manufacturers qualify as small entities, their number would not be substantial. Moreover, conversion of vehicles to dual fuel status with the minimum ranges that would be established by this regulation would be undertaken voluntarily. Therefore, no significant costs would be imposed on any manufacturers or other small entities.

C. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. Civil Justice Reform

This proposed rule would not have any retroactive effect and it does not preempt any State law. 49 U.S.C. 32909 sets forth a procedure for judicial review of automobile fuel economy regulations. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Paperwork Reduction Act of 1995

This proposed rule includes new "collections of information" as that term is defined by the Office of Management and Budget. For Part 538, OMB has previously approved a collection of information (OMB Control Number 2127–00554 "Minimum Driving Range for Dual Energy and Natural Gas Dual Energy Passenger Vehicles—49 CFR 538") for use through June 30, 1996. This approval has now lapsed as the petitioning process for non-electric alternative fuel vehicles was rescinded in the last revision of Part 538 (61 FR 14507). NHTSA will prepare a new request for collection of information approval for the petitioning process proposed in this notice and will include in the request an estimate of the new collection of information burden that would result if this proposed rule is made final. To assist the agency in estimating the new collection of information burden that would result if this proposed rule is made final, the agency requests that potential petitioners provide comments to the following questions: (1) Do you anticipate petitioning the agency for a reduction in the minimum driving range requirement for a particular vehicle? If so, identify yourself as a member of one of the following; household, business, for-profit entity, non-profit entity, and/or federal, state, local, or tribal government. (2) What are the estimated annual reporting and recordkeeping hours required to submit a petition for a model-specific reduction of the minimum driving range? Indicate whether this information could be collected and transmitted electronically either in whole or in part and what percentage of the information could be collected or transmitted electronically. (3) What is your estimate of the annual reporting and recordkeeping costs required to petition for a model-specific reduction of the minimum range requirement? (4) What is your estimate of the total annualized capital/startup costs required for submitting a petition for a model-specific reduction? (5) What is your estimate of your total annual costs for reporting and recordkeeping for petitioning for a model-specific reduction?

Pursuant to the Paperwork Reduction Act of 1995 and OMB's regulations at 5 CFR section 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. As of the publication of this notice, there is no valid OMB control number applicable to the collection of information associated with the driving range reduction petition process proposed in this notice. As noted above, the agency intends to obtain a valid OMB control number prior to promulgation of a final rule.

Public Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the NPRM will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late in regard to the final

rule will be considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 538

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 538 is proposed to be revised to read as follows:

PART 538—MANUFACTURING INCENTIVES FOR ALTERNATIVE FUEL VEHICLES

Sec.

538.5 Minimum driving range.
538.6 Measurement of driving range.
538.7 Petitions for reduction of minimum driving range.

Authority: 49 U.S.C. 32901, 32905, and 32906; delegation of authority at 49 CFR 1.50.

§ 538.5 Minimum driving range.

(a) The minimum driving range that a passenger automobile must have in order to be treated as a dual fueled automobile pursuant to 49 U.S.C. 32901(c) is 200 miles when operating on its nominal usable fuel tank capacity of the alternative fuel, except when the alternative fuel is electricity.

(b) The minimum driving range that a passenger automobile using electricity as an alternative fuel must have in order to be treated as a dual fueled automobile pursuant to 49 U.S.C. 32901(c) is 17.7 miles when operating on its nominal storage capacity of electricity.

§ 538.6 Measurement of driving range.

(a) The driving range of a passenger automobile model type not using electricity as an alternative fuel is determined by multiplying the combined EPA city/highway fuel economy rating when operating on the alternative fuel, by the nominal usable fuel tank capacity (in gallons), of the fuel tank containing the alternative fuel.

(b) The combined EPA city/highway fuel economy rating is the value determined by the procedures established by the Administrator of the EPA under 49 U.S.C. 32904 and set forth in 40 CFR part 600.

(c) The driving range of a passenger automobile model type using electricity as an alternative fuel is determined by operating the vehicle in the electric-only mode of operation through the EPA combined city/highway cycle.

(d) Passenger automobile types using electricity as an alternative fuel that have completed the EPA combined city/highway cycle once without recharging shall be deemed to have a range of 17.7 miles.

§ 538.7 Petitions for reduction of minimum driving range.

(a) A manufacturer of a model type of passenger automobile capable of operating on both electricity and either gasoline or diesel fuel may petition for a reduced minimum driving range for that model type in accordance with paragraphs (b) and (c) of this section.

(b) Each petition shall:

(1) Be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(2) Be submitted not later than the beginning of the first model year in which the petitioner seeks to have the model type treated as an electric dual fueled automobile.

(3) Be written in the English language.

(4) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the petitioner.

(5) Set forth in full data, views, and arguments of the petitioner, including the information and data specified in paragraph (c) of this section, and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

(6) Specify and segregate any part of the information and data submitted under this section that the petitioner wishes to have withheld from public disclosure in accordance with part 512 of this chapter.

(c) Each petitioner shall include the following information in his/her petition:

(1) Identification of the model type or types for which a lower driving range is sought under this section.

(2) For each model type identified in accordance with paragraph (c)(1) of this section:

(i) The driving range sought for that model type.

(ii) The number of years for which that driving range is sought.

(iii) A description of the model type, including car line designation, engine displacement and type, electric storage capacity, transmission type, and average fuel economy when operating on:

(A) Electricity, and

(B) Gasoline or diesel fuel.

(iv) An explanation of why the petitioner cannot modify the model type so as to meet the generally applicable minimum range, including the steps taken by the petitioner to improve the minimum range of the vehicle, as well as additional steps that are technologically feasible, but have not been taken. The costs to the petitioner of taking these additional steps shall be included.

(3) A discussion of why granting the petition would be consistent with the following factors:

(i) The purposes of 49 U.S.C. chapter 329, including encouraging the development and widespread use of electricity as a transportation fuel by consumers, and the production of passenger automobiles capable of being operated on both electricity and gasoline/diesel fuel;

(ii) Consumer acceptability;

(iii) Economic practicability;

(iv) Technology;

(v) Environmental impact;

(vi) Safety;

(vii) Drivability; and

(viii) Performance.

(d) If a petition is found not to contain the information required by this section, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is received.

(e) The Administrator may request the petitioner to provide information in addition to that required by this section.

(f) The Administrator publishes in the **Federal Register** a notice of receipt for each petition containing the information required by this section. Any interested person may submit written comments regarding the petition.

(g) In reaching a determination on a petition submitted under this section, the Administrator takes into account:

(1) The purposes of 49 U.S.C. chapter 329, including encouraging the development and widespread use of alternative fuels as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;

(2) Consumer acceptability;

(3) Economic practicability;

(4) Technology;

(5) Environmental impact;

(6) Safety;

(7) Drivability; and

(8) Performance.

(h) If the Administrator grants the petition, the petitioner is notified in writing, specifying the reduced

minimum driving range, and specifying the model years for which the reduced driving range applies. The Administrator also publishes a notice of the grant in the **Federal Register** and the reasons for the grant.

(i) If the Administrator denies the petition, the petitioner is notified in writing. The Administrator also publishes a notice of the denial of the petition in the **Federal Register** and the reasons for the denial.

Issued on: December 26, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–85 Filed 1–2–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 961217359–6359–01; I.D. 121196B]

RIN 0648–AJ11

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and proposed catch sharing plan.

SUMMARY: NMFS proposes to approve and implement revisions to the Catch Sharing Plan (Plan) for sport harvests of Pacific halibut off Oregon under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). NMFS also proposes sport fishery regulations to implement the Plan in 1997. The proposed rule is intended to carry out the objectives of the Plan for 1997.

DATES: Comments on the changes to the Plan must be received by January 19, 1997; comments on the proposed sport fishery regulations must be received by February 15, 1997.

ADDRESSES: Send comments or requests for the Plan to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, catch sharing plans to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California) have been developed each year since 1988 by the Pacific Fishery Management Council (Council) in accordance with the Halibut Act. In 1995, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, March 20, 1995) which was revised in 1996 (61 FR 11337, March 20, 1996). The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors; a directed (traditional longline) commercial fishery that is allocated 85 percent of the 31.7 percent (26.945 percent of the non-Indian commercial harvest), and incidental (troll salmon) commercial fishery is allocated 15 percent of the 31.7 percent (4.755 percent of the non-Indian commercial harvest). The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

Proposed Changes to the Plan

At its August 1996 public meeting, the Council adopted, for public comment, proposed changes to the Plan on: (1) Re-structuring the Oregon sport fisheries from quota managed seasons to fixed-length seasons that are determined and set preseason, and (2) deleting the rollover provisions for unused quota in the commercial incidental halibut catch (salmon troll) fishery. At its October 1996 public meeting, the Council made final recommendations for modifying the Plan to restructure the May and August seasons in the Oregon Central Coast subarea sport fishery (Cape Falcon to Florence north jetty) from a quota managed to a fixed-length season fishery. At the request of the Oregon Department of Fish and Wildlife (ODFW), the Oregon South Coast subarea sport fishery in May was not recommended for modification based on input from sport users in that area; however, the August season, which is combined with the Central Coast subarea, was recommended for modification to a fixed-length season. The commercial, incidental halibut catch (salmon troll) fishery was not recommended for change because of the Council's desire to maintain its original intent in the Plan to roll over any remaining quota not incidentally harvested during the May/June chinook salmon troll fishery to the directed commercial (longline) fishery.

NMFS is proposing to implement the Council-recommended changes to the Plan.

Proposed Revised Section of the Plan for the Oregon Sport Fisheries

Oregon Central Coast Subarea

If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this Oregon Central Coast subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) and the sport fishery is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea extends from Cape Falcon to the California border and the sport fishery is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide two fixed-length periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charter and larger private boat anglers, and provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed-length seasons will be established preseason for the May and August openings and will not be modified inseason. The average catch per day observed in the previous 3 years in May and August will be used to estimate the number of open days for each fixed season. ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient

catch remains for an additional day of fishing after the May season or the August season, openings will be provided in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the subquotas from earlier seasons will be added to the next season. The daily bag limit for all seasons is two halibut per person, one with a minimum 32–inch (81.3–cm) size limit and the second with a minimum 50–inch (127.0 cm) size limit. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the opening dates for each season each year. The three seasons for this subarea are as follows.

1. The first season is an all-depth fishery that begins in mid-May and is allocated 68 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this first season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be open 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be open 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

2. The second season opens the day following closure of the first season, only in waters inside the 30–fathom (55–m) curve, and continues daily until 7 percent of the subarea quota is taken, or until early August, whichever is earlier.

3. The last season is a coastwide (Cape Falcon to Oregon/California border) all-depth fishery that begins in early August and is allocated 25 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon subarea quotas south of Cape Falcon. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if quota remains unharvested. The fishery will be open 2 days per week (Friday and Saturday).

Oregon South Coast Subarea

If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this Oregon South Coast subarea extends from the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) to the California border (42°00'00" N. lat.) and the sport fishery is allocated 7.0 percent of the Oregon/California sport allocation, which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central Coast subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar crossing conditions very often do not allow scheduled fishing trips. The first and second seasons will be managed for a quota, and a fixed-length season will be established preseason for the August coastwide season (Cape Falcon to Oregon/California border). The average catch per day observed in the previous 3 years fisheries in August would be used to estimate the number of days for the fixed season. Any poundage remaining in the subquotas from earlier seasons would be added to the next season. Additional open dates may be allowed after the August fixed-length season if sufficient quota remains for an additional day of fishing. If a decision is made inseason to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Additional open dates will be announced preseason. The daily bag limit for all seasons is two halibut per person, one with a minimum 32–inch (81.3–cm) size limit and the second with a minimum 50–inch (127.0–cm) size limit. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the opening dates for each season each year. The three seasons for this subarea are as follows:

1. The first season is an all-depth fishery that begins in May and continues at least 3 days per week (dependent on TAC) until 80 percent of the subarea quota is taken.

2. The second season opens the day following closure of the first season, only in waters inside the 30–fathom (55 m) curve, and continues daily until the subarea quota is estimated to have been taken, or early August, whichever is earlier.

3. The last season is a coastwide (Cape Falcon to Oregon/California border) all-depth fishery that begins in early August. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon subarea quotas south of Cape Falcon. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if quota remains unharvested. The fishery will be open 2 days per week (Friday and Saturday).

Proposed Sport Fishery Regulations

This document also proposes sport fishery regulations necessary to implement the Plan in 1997. These proposed sport fishery regulations are based on the 1996 Area 2A TAC of 520,000 lb (235.9 mt). Many of the proposed sport fishing regulations are the same as the 1996 regulations, which were published on March 20, 1996 (61 FR 11337). It is unknown at this time what the 1997 TAC will be, but information available from IPHC indicates the TAC will likely be greater than 1996. If the 1997 TAC is greater than 1996, the proposed sport regulations will be revised in a final rule as described in the Plan. The final TAC will be determined by the IPHC at its annual meeting in January 1997. The proposed sport fishing regulations for 1997 by subarea based on the 1996 TAC of 520,000 lb (235.9 mt), are as follows:

Washington Inside Waters Subarea (Puget Sound and Straits)

The proposed sport regulations for this subarea are similar to 1996, except that the season is reduced by 2 weeks, because the catch rate in 1996 was greater than predicted preseason in 1996. The proposed fishing season would be open from May 23 through July 13, 5 days a week (Thursday through Monday). If the 1997 TAC is greater than 1996, the season length and/or days open per week will likely increase. The final determination of the season dates that will be open will be based on the allowable harvest level, estimated catch rates, and recommendations developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the 1997 TAC is set by the IPHC.

Washington North Coast Subarea (north of the Queets River)

The proposed sport regulations for this subarea are the same as 1996 with a May 1 opening and continuing 5 days per week (Tuesday through Saturday) until the quota is taken. If the 1997 TAC is the same as 1996, the quota for this

subarea would likely be reached by the end of May. If the 1997 TAC is greater than 1996, the Plan stipulates that the second priority (after a 5-days-per-week season in May) is to reopen the fishery on July 1 and continue through at least July 4. The next priority in the Plan, if the TAC is sufficient, is to increase the May season to 7 days per week and continue into June.

Washington South Coast Subarea

The proposed sport regulations for this subarea are the same as 1996 with a May 1 opening and continuing 7 days per week until 1,000 lb (0.45 mt) remain in the quota, and then would reopen as a nearshore fishery until the remaining quota is taken, or September 30, whichever occurs first. The Plan does not stipulate any change in the structuring of this season if the 1997 TAC is greater than 1996.

Columbia River Subarea

The proposed sport regulations for this subarea are the same as 1996 with a May 1 opening and continuing 7-days per week until the quota is reached or September 30, whichever occurs first. The Plan does not stipulate any change in the structuring of this season if the 1997 TAC is greater than 1996.

Oregon Central Coast Subarea

The proposed changes to the Plan would change the structuring for the May and August seasons in this area to fixed-seasons. With an Area 2A TAC of 520,000 lb (235.9 mt), the May opening would be a 5-day fishery with a 3-day season from May 8 through May 10, and a 2-day season on May 16 and 17. If sufficient quota remains after this season for additional days fishing, the open dates would be May 31, then May 30, then May 29. The 30–fathom fishery would open on May 18 and continue until July 31 or attainment of quota for this season. The August coastwide unrestricted-depth fishery (Cape Falcon to Oregon/California border) would be a 2-day season on August 1 and 2. If sufficient quota remains after this season for additional days fishing, the open dates would be August 16, then August 15, then August 14. If the 1997 TAC is greater than 1996, the May season may be more than 5 days, and the fishery would be open 3 days per week as described in the above proposed changes to the Plan. The final determination of the season dates will be based on the allowable harvest level, estimated catch rates, and recommendations developed in a public workshop sponsored by ODFW after the 1997 TAC is set by the IPHC.

Oregon South Coast Subarea

The proposed sport regulations for the first and second seasons are the same as 1996 with the first season opening May 16 and continuing 3 days per week until 80 percent of the quota is taken, then switching to a nearshore water fishery until the subarea quota is taken or July 31, whichever is earlier. The third coastwide (Cape Falcon to OR/CA border) unrestricted depth season would be a 2-day season on August 1 and 2. If sufficient quota remains after this season for additional days fishing, the open dates would be August 16, then August 15, then August 14. The Plan, as proposed to be changed (described above), does not stipulate any change in the structuring of the seasons if the 1997 TAC is greater than 1996. The final determination of the season opening dates will be based on recommendations developed in a public workshop sponsored by ODFW after the 1997 TAC is set by the IPHC.

California Subarea

The proposed sport regulations for this subarea are the same as 1996 with a May 1 opening and continuing 7-days per week until September 30. The Plan does not stipulate any change in the structuring of this season if the 1997 TAC is greater than 1996.

NMFS requests public comments on the Council's recommended modifications to the Plan and the proposed sport fishing regulations. The Area 2A TAC will be set by the IPHC at its annual meeting on January 27–30, 1997. Comments on the proposed changes to the Plan are requested by January 19, 1997 so that final changes to the Plan can be approved before the IPHC meeting. Comments on the proposed sport regulations are requested by February 15, 1997, after the IPHC annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed sport fishing regulations. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known, and after NMFS reviews public comments and comments from the States, NMFS will issue final rules for the Area 2A Pacific halibut sport fishery concurrent with the IPHC regulations for the 1997 Pacific halibut fisheries.

Copies of the Plan are available from NMFS (see **ADDRESSES**).

Classification

The proposed revisions to the Plan and sport regulations are not significant and fall within the scope of the 1995 Environmental Assessment/Regulatory Impact Review prepared by the Council, which also applies to this action.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed revisions to the Catch Sharing Plan would not change the allocation of the total allowable catch of Pacific halibut between treaty and non-Indian fisheries, and among non-Indian commercial and sport fisheries in International Pacific Commission Statistical Area 2A (off Washington, Oregon, and California). The proposed revisions, recommended by the Pacific Fishery Management Council, would affect only the non-Indian sports fishery and are intended to allow users to better utilize allocations in the sport fisheries off Oregon.

Many of the proposed sport fishing regulations are similar to those implemented in 1996 and are based on the Area 2A 1996 total allowable catch of 520,000 pounds (235.9 metric tons) of Pacific halibut. If the International Pacific Halibut Commission determines that the 1997 total allowable catch for Area 2A is greater than the 1996 amount, the fishing seasons and open fishing dates could be adjusted to provide for an increased sport fishery harvest. Any increase in the 1997 total allowable catch would have a positive economic impact on the sport fisheries.

Therefore, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–00006 Filed 1–2–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 622

[I.D. 120696E]

South Atlantic Fishery Management Council; Public Hearings; Correction

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; correction.

SUMMARY: This document corrects the notice announcing hearings on Draft Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic

(FMP), published on December 20, 1996, at 61 FR 67294.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, 803–571–4366.

SUPPLEMENTARY INFORMATION: The document that is the subject of these corrections announced that the South Atlantic Fishery Management Council (Council) will convene 10 public hearings on Draft Amendment 8 to the FMP.

Need for Correction

As published, the summary paragraph is incomplete and the Council is adding some additional information regarding the availability of staff members to answer questions about the document before each public hearing.

Correction of Publication

Accordingly, the publication on December 20, 1996, of the public hearing document (I.D. 120696E), which was the subject of FR DOC 96–29500, is corrected as follows:

On page 67294, in the third column, the **SUMMARY** paragraph is corrected to read: "The South Atlantic Fishery Management Council (Council) will convene 10 public hearings on Draft Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) and its associated analyses of regulatory and environmental impacts, including a draft supplemental environmental impact statement (DSEIS). Due to the complexity of the public hearing document, Council staff members will be available at the respective hearing locations from 6 p.m. to 7 p.m. (one hour before the start of the public hearings) to answer questions the public may have about the document".

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 27, 1996.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29 Filed 1–2–97; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 62, No. 2
Friday, January 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 4, 1996, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–405
Argentina
Barbed Wire & Barbless Fencing Wire
Objection Date: November 18, 1996, November 19, 1996
Objector: Insteel Industries, Inc., Keystone Steel & Wire Company
Contact: Tom Killiam at (202) 482–2704

A–357–007
Argentina
Carbon Steel Wire Rods
Objection Date: November 26, 1996, November 27, 1996
Objector: North Star Steel, Atlantic Steel Company
Contact: Tom Killiam at (202) 482–2704

A–559–502
Singapore
Light-Walled Rectangular Pipe & Tube
Objection Date: November 27, 1996
Objector: Hannibal Industries, Inc.
Contact: Tom Killiam at (202) 482–2704

A–570–811
The People's Republic of China
Tungsten Ore Concentrates
Objection Date: November 26, 1996
Objector: U.S. Tungsten Corporation
Contact: Andrea Chu at (202) 482–4733

A–588–090
Japan
Certain Small Electric Motors of 5 to 150 Horsepower
Objection Date: November 25, 1996
Objector: Reliance Electric Industrial Company
Contact: Jacqueline Winbush at (202) 482–1374

Dated: December 17, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–74 Filed 1–2–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–823]

Professional Electric Cutting Tools From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan. This review covers the period of July 1, 1994 through June 30, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1996, we published in the **Federal Register** (61 FR 46624) the preliminary results of administrative review of the antidumping duty order on PECTs from Japan (58 FR 37461; July 12, 1993). We received case briefs from the respondent, Makita Corporation and

Makita U.S.A., Inc. (Makita) and the petitioner, Black and Decker (U.S.), Inc. (Black & Decker) on October 18, 1996. Petitioner and respondent submitted rebuttal briefs on October 24, 1996. We held a public hearing on October 29, 1996. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features. The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term "unassembled" means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (e.g., kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. The are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (i.e., a majority or greater number of the bearings in the tool are ball, needle, or roller bearings;
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (i.e., a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company and the period July 1, 1994 through June 30, 1995.

Analysis of the Comments Received

Comment 1: Makita argues that the Department's usage of the term "professional" to define the scope of the subject merchandise is inaccurate, and that power tools cannot be distinguished by the terms "professional" or "non-professional." Makita claims that, in the less-than-fair-value (LTFV) investigation, the Department used an arbitrary and shifting set of physical characteristics, not recognized by producers, consumers or end-users in the tool industry, in its effort to create a generally-accepted definition of the subject merchandise.

Petitioner argues that Makita submitted its views on the scope of the order to the Department during the LTFV investigation, and that the Department rejected Makita's argument that there is no distinction between professional and consumer electric cutting tools. Petitioner asserts that Makita has not submitted any valid grounds on which the scope issue should be reopened. Furthermore, petitioner argues, the Department should not reconsider this matter until the Court of International Trade (CIT) has reached its decision on issues related to the LTFV investigation.

Department's Position: Makita's argument that we should reconsider the scope of the order is unpersuasive, as there is nothing on the record of this review to suggest that our scope is incorrect. During the LTFV investigation, we gave all parties an opportunity to present their views concerning the scope. Makita appealed our determination of the scope, among other issues concerning the LTFV investigation, to the CIT. The CIT has not yet issued its determination on these matters, and thus altering the scope at this time is unwarranted.

Comment 2: Makita argues that, in failing to use average-to-average price comparisons in the calculation of the dumping margin, the Department ignored the changes to the U.S. antidumping law pursuant to the World Trade Organization's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("WTO Antidumping Agreement") and the Department's own practice. Makita states that, prior to the WTO-mandated amendments to the antidumping law, the Department had the discretion to use averaging in both investigations and administrative reviews pursuant to 19 U.S.C. § 1677f–1(a)(1). With the amendments to the law, however, Makita argues that the Department is now required to use either average-to-average or transaction-to-transaction price comparisons in investigations, with a preference for the average-to-average approach.

Although the new law does not specifically provide for the use of average-to-average price comparisons during administrative reviews, Makita argues that the Department is required

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to use this methodology in reviews for the following reasons: (1) the new law does not specifically except administrative reviews from the requirement of using average-to-average price comparisons; (2) administrative reviews and investigations are identical proceedings, different in name only; and (3) there is no justification or logical reason for the application of different standards to investigations and reviews. Makita asserts that the argument that average-to-average price comparisons may mask targeted dumping is not a justification for failing to use this methodology in reviews when it is used in investigations, because the likelihood of targeted dumping is equally present in both investigations and reviews.

Makita argues that, in general, the application of a different methodology in administrative reviews than was used in LTFV investigations will result in higher margins in reviews than were found in investigations, with the effect that exporters will not be able to rely on margins established in the investigation as a guide for future corrective conduct. Citing *Shikoku Chemicals Corp.* v. *U.S.*, 795 F.Supp. 417, 421 (CIT 1992) (*Shikoku*), Makita further states that it has a right to rely on the consistent and fair application of methodologies from one proceeding to the next. The fact that the Department did not use average-to-average price comparisons in the LTFV investigation in this case is, according to Makita, irrelevant for the reasons stated above.

In support of its contention that Congress intended for average-to-average price comparisons to be used in both investigations and administrative reviews, Makita states that Congress did not expressly or implicitly disapprove of the Department's longstanding practice under the earlier antidumping law of using the same price comparison methodology in both investigations and reviews. Thus, Congress intended for the Department to continue this practice. Makita cites *Harris* v. *Sullivan*, 968 F.2d 263, 265 (2nd Cir. 1992) (*Harris*). Makita asserts that the fact that the Statement of Administrative Action (SAA) may suggest otherwise is irrelevant, since the SAA is not law, nor is it appropriate to use it to interpret a statutory provision that is neither vague nor ambiguous, pursuant to *Marcel Watch Co.* v. *U.S.*, 11 F.3d 1054, 1058 (Fed. Cir. 1992). *See* SAA, House Doc. 103–316, Vol. 1, 103d Cong. 2nd Sess., September 27, 1994.

Furthermore, Makita argues, the SAA itself may be in violation of the WTO Antidumping Agreement, because using a different price comparison methodology in reviews than was used in investigations may by itself increase antidumping duties in a manner not contemplated by the WTO.

Petitioner states that the correctness of the Department's approach in the preliminary results is confirmed by the statute, the SAA, and the Department's proposed regulations, and that Makita's arguments are based on an incorrect reading of the law. Petitioner cites the SAA at 843, and *Antidumping Duties: Proposed Rule*, 61 FR 7308, 7348, section 351.414 (February 27, 1996) (*Proposed Regulations*).

Petitioner argues that Makita's reliance on *Shikoku* and *Harris* is misplaced. The Department has not changed a long-standing practice; rather, Congress has mandated a new approach, which requires different price comparison methodologies in investigations and reviews. As evidence that Congress intended to treat investigations separately from reviews, petitioner points out that 19 U.S.C. § 1677f–1(d) contains different provisions for investigations and reviews: section (d)(1) deals with investigations, and requires the Department to compare weighted average normal values (NVs) to weighted-average export prices, with the alternative of comparing transaction-by-transaction prices on both sides of the equation, while section (d)(2) deals with reviews, and requires the Department to compare weighted average NVs to individual export prices, as the Department did in this case.

Another justification for treating investigations and reviews differently, according to petitioner, is that respondents should be held to higher, stricter standards in reviews, since by the time of the administrative review, they are on notice that further dumping will be penalized. Petitioner argues that Makita's case confirms this proposition, since Makita has failed to correct its dumping practices since issuance of the LTFV determination, and should therefore be held to a higher standard during the administrative review.

Department's Position: We agree with petitioner. The Act, as amended by the URAA, distinguishes between price comparison methodologies in investigations and reviews. Section 777A(d)(1) states that in investigations, generally the Department will make price comparisons on an average-to-average or transaction-to-transaction-specific basis. *See also* SAA at 842–43; *Proposed Regulations* at 7348–49 and Proposed Rule 351.414.

However, the language of 777A(d)(2) reflects Congress's understanding that the Department would use a monthly average NV to a U.S. transaction-specific methodology during reviews, in keeping with the Department's past practice, and both the SAA and the Department's proposed regulations expressly state that the monthly average-to-transaction-specific comparison is the preferred methodology in reviews. *See* SAA at 843; *Proposed Regulations* at 7348–49. Hence, the Department is under no legal obligation to apply an average-to-average approach in a review merely because 777A(d)(1) permits such a comparison in investigations. However, in appropriate circumstances, such as in the case of highly perishable products, for example, average-to-average price comparisons may be used. *See Floral Trade Council of Davis* v. *United States*, 606 F. Supp. 695,703 (CIT 1991). Makita has not demonstrated that similar circumstances exist with respect to the sale of PECTs that would warrant a departure from our stated preference of making monthly average-to-transaction-specific price comparisons in reviews.

Moreover, contrary to Makita's assertion, an LTFV investigation and an administrative review are not "identical proceedings," but are two distinct segments of a single antidumping proceeding. The Act expressly distinguishes between investigations and reviews. *See* § 733; 735; 751; 19 CFR 353.2(l). They differ in several respects, such as initiation requirements and outcome—an investigation may or may not end upon the issuance of an antidumping duty order, while only a review will result in the actual assessment of duties. Further, investigations and reviews are based on different sets of sales, and both are subject to separate judicial review.

The WTO Antidumping Agreement also distinguishes between investigations and reviews in antidumping matters. (*See also* Comment 3). Article 2.4.2 of the WTO Antidumping Agreement explicitly requires that an average-to-average price comparison be used in the "investigation phase" of an antidumping proceeding. The SAA elucidates the intent of the WTO Antidumping Agreement that the Department continue to treat investigations and reviews differently with respect to price comparisons. As the SAA states:

> The Agreement reflects the express intent of the negotiators that the preference for the use of an average-to-average or transaction-to-transaction comparison be limited to the "investigation phase" of an antidumping proceeding. Therefore, as permitted by Article 2.4.2, the preferred methodology in reviews will be to compare average to individual export prices.
>
> SAA at 843.

Finally, Makita claims that it has a right to rely on the consistent and fair application of methodologies from one segment of a proceeding to the next. Makita argues that by not applying an average-to-average comparison in this review, the Department is not consistent with what it is required to do under the new law for investigations—make average-to-average price comparisons. Hence, following Makita's logic, the Department must now apply an average-to-average methodology in this review to be consistent with the new methodology used in investigations. Makita is incorrect in two respects. The law now requires the Department to apply an average-to-average price comparison in investigations only. Secondly, by comparing monthly average NVs to transaction-specific U.S. prices in this review, we are being consistent with our longstanding practice, which was not changed by the passage of the URAA, as discussed above. Moreover, during the investigation of this order, which occurred under the old law, we did compare average foreign market values (FMVs) to transaction-specific U.S. prices. Thus, we are being consistent from one segment of the proceeding to another.

Finally, Makita's reliance on *Shikoku* is misplaced. That case dealt with a situation in which the Department failed to follow a particular case-specific calculation methodology that it had repeatedly used in several reviews with respect to the sales of a particular respondent. Here, there has been no change in methodology, as discussed above.

Comment 3: Makita argues that, if the Department had used average-to-average price comparisons in the preliminary results, Makita's margin would have been *de minimis* pursuant to the 2 percent *de minimis* standard mandated by Article 5.8 of the WTO Antidumping Agreement (*see* 19 U.S.C. §§ 1673b(b)(3) and 1673(a)(4)). Since the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews, Makita argues, the 2 percent *de minimis* standard should also apply to reviews, for the same reasons Makita discussed with respect to using average-to-average price comparisons in reviews.

Makita argues that no basis can be found in either the WTO Antidumping Agreement, or in U.S. law or policy, for using 0.5 percent as the *de minimis* standard for reviews, since there is no mention of this particular figure in any of the relevant documents. Makita asserts that using a stricter standard for reviews than for investigations is illogical if the underlying purpose is to punish exporters who are caught dumping, since it would make more sense to apply a stricter standard in the investigation phase. Finally, Makita claims that this practice could by itself result in increased dumping liability for exporters, and is a possible violation of the WTO by the United States.

Petitioner argues that Makita misreads the law, which requires that the new *de minimis* level of two percent be applied in investigations only. Thus, the Department must continue to use its regulatory standard of 0.5 percent during reviews, as stated in the SAA and the Department's proposed regulations (61 FR 7308, 7355).

Department's Position: We disagree with respondent that the 0.5 percent *de minimis* standard set forth in 19 CFR 353.6 should not continue to apply to reviews. Article 5.8 of the WTO Antidumping Agreement explicitly requires signatories to apply the two percent *de minimis* standard only in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. Moreover, Makita is incorrect in claiming that the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews. *See eg.*, Article 5; Article 11.

In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis*. Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during *investigations* initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding.

The SAA also clarifies that "[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations." *See* SAA at 845. The SAA further states "* * * in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as *de minimis*." SAA at 844. Likewise, "[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for *de minimis*." SAA at 845 (emphasis added). *See Proposed Regulations* at 7355, Proposed Rule 351.106; *see also High-Tenacity Rayon Filiment Yarn from Germany; Final Results of Antidumping Duty Administrative Review*, 61 FR 51421 (October 2, 1996).

Comment 4: Makita claims that the Department's preliminary margin calculation program misapplied the sales below cost test by deducting from the gross unit price certain costs which were included in the total cost against which the net price is compared. As a result, the number of sales below cost was overstated in the preliminary results. Petitioner did not comment on this issue.

Department's Position: We agree with Makita, and have made the requested corrections to the margin calculation program for the final results.

Comment 5: Makita claims that the Department's computer program incorrectly calculated constructed value (CV) and constructed export price (CEP) profit, based on only those home market sales that were used as matches for U.S. sales. Makita argues that, since the profit calculations must be made on the basis of all sales of the foreign like product, using this reduced home market database results in overstated profit rates for both CV and CEP profit.

Makita argues that the law does not intend for profit to be calculated using only the products in the home market which are the closest matches to models sold in the United States. Makita cites to the Department's explanation of its proposed regulations, with respect to section 351.405(b), which states that this would "undermine the predictability of the statute" by giving the Department "the discretion to pick and choose the sale of the foreign product from which profit and SG&A would be taken" (61 FR 7335).

With respect to CEP profit, Makita points out that the law is clear that the calculation is to be based on total expenses "incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country." 19 U.S.C. § 1677a(f)(2)(C)(i).

Petitioner argues that the Department correctly calculated CEP profit based on data for the foreign like product. Petitioner claims that the term foreign like product is defined by the statute as

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the sales used as a basis of comparison with sales to the United States (19 U.S.C. § 1677b(a)). Petitioner notes that 19 U.S.C. § 1677(16)(A)(B)(C) requires the Department to select as the foreign like product merchandise that is, in the first instance, identical to that sold in the United States. If identical merchandise does not exist, the Department may select similar merchandise as the foreign like product, the objective being to develop a pool of comparable products, the prices of which are used to calculate NV. Petitioner cites *Koyo Seiko Co., Ltd.* v. *United States*, 66 F.3d 1204, 1209 (C.A.Fed. 1995) (Koyo Seiko) in support of its contention that the pool of matched models is the foreign like product from which the home market portion of the CEP profit is derived.

Petitioner concludes that if the foreign like product is expanded beyond the pool of matched models to include all similar products, as respondent requests, the resulting profit figure would be unrepresentative of the products that were used to determine NV.

Department's Position: We agree that we incorrectly limited the home market data base to those models used as matches for U.S. sales for the purposes of calculating CV and CEP profit in the preliminary results. For the final results, we have used all sales of the foreign like product for the purposes of calculating CV and CEP profit.

Newly amended sections 772(f) and 773(e)(2)(A) now require that the Department calculate CV and CEP profit based on a respondent's actual profits made from home market sales of the foreign like product, provided the home market is found viable. While neither side disputes that actual profits will be used in this regard, petitioner believes that the Department should disregard its past practice of determining profit for CV based on sales in the home market on an aggregated basis, *i.e.*, based on sales of the same general class or kind as the merchandise under consideration. *See* 773(e)(1)(B) of the pre-URAA statute. Instead, petitioner argues that newly amended 771(16) now requires that the Department arrive at the actual home market profit using only those home market sales which can be matched most closely to the subject merchandise applying the descending hierarchy of 771(16).

For purposes of calculating CV and CEP profit, we interpret the term "foreign like product" to be inclusive of all merchandise sold in the home market which is in the same general class or kind of merchandise as that under consideration. We do not believe the change in terminology from "such or similar merchandise to "foreign like product" was intended as a substantive change in this regard. Thus, "foreign like product" includes all of the merchandise covered by the descending hierarchy of section 771(16) (A), (B) & (C). This comports with our past practice. Moreover, were we to adopt petitioner's view, the Department would have the discretion to pick and choose the sale of the foreign like product from which profit would be taken, which would undermine the prodictability of the statute, as Makita correctly points out. *See Proposed Regulations* at 7335. In this case, since all models of PECTs comprise the same general class or kind of merchandise, regardless of whether they were matched to U.S. sales in the margin calculation, we determine the foreign like product to include all of Makita's reported home market models. *See Professional Electric Cutting Tools and Professional Electric Sanding/ Grinding Tools from Japan: Final Determinations of Sales at Less Than Fair Value*, 58 FR 30144 (May 26, 1993) (the Department determined that PECTs comprise one class or kind). *See also Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan; Final Determination of Sales at Less Than Fair Value Investigation*, 61 FR 38139 (July 23, 1996).

Petitioner confuses section 771(16)'s hierarchy of what encompasses the foreign like product with how the Department uses this hierarchy for purposes of model-matching to arrive at a comparison based on the most physically similar merchandise. Petitioner's reliance on *Koyo Seiko* is misplaced, as that case dealt with the issue of the model-matching hierarchy set out for such or similar merchandise under the old law. ("Congress has implicitly delegated authority to Commerce to determine and apply a model-match methodology necessary to yield 'such or similar' merchandise under the statute.") However, here we are concerned with calculating actual profits under the newly amended law for CV and CEP, and whether home market profits and SG&A should be inclusive of all sales of the foreign like product in making this calculation.

We note that for calculating the actual selling, general and administrative expenses for the purposes of CV for these final results, we have also based said expenses on all of Makita's home market sales of PECTs, for the same reasons set out above.

Lastly, petitioner's concern that basing the CEP profit calculation on a larger group of models than is used to calculate NV will result in an unrepresentative profit figure is unfounded. As the SAA states, even if the Department determined total profit on the basis of a broader product line than the subject merchandise, no distortion in the profit allocable to U.S. sales is created, because the total expenses are also determined on the basis of the same expanded product line. *See SAA* at 825.

Comment 6: Petitioner claims that the Department's margin calculation program incorrectly subtracted home market indirect selling expenses from NV. Petitioner points out that indirect selling expenses are only properly deducted under certain limited circumstances, such as an offset for selling commissions in the United States and as an offset to CEP.

Makita argues that the deduction of indirect selling expenses from NV was not a mistake, since it satisfies the requirements for establishing a "fair comparison" as required by the WTO Antidumping Agreement and 19 U.S.C. § 1677b(a). Makita states that, according to the new law, the Department must reduce NV by the amounts included in the price that are "attributable to any additional costs, charges, and expenses." 19 U.S.C. § 1677b(6)(B). Reducing NV by the amount of indirect selling expenses, Makita claims, would therefore be appropriate.

Makita argues that, since greater selling expenses for a specific service are incurred in the home market than are incurred for the same service for products destined for the U.S. market, deducting direct selling expenses from NV, while not also deducting indirect selling expenses, does not represent a "fair comparison" under the new law. Finally, Makita asserts that there is no reasonable basis for arriving at any relevant or meaningful distinction between "direct" and "indirect" selling expenses.

Department's Position: We agree with petitioner that our deduction of indirect selling expenses from NV was a clerical error. The amended statute permits the deduction of indirect selling expenses from NV as a CEP offset only when a level-of-trade (LOT) adjustment is warranted, but the data available do not provide an appropriate basis to determine a LOT adjustment. *See* § 773(a)(7)(B). In addition, the SAA clearly states that the CEP offset is to be used *in lieu of* a LOT adjustment. *See* SAA at 829. In the preliminary results, we made a LOT adjustment to NV in accordance with § 773(a)(7)(B). Therefore, we have not deducted indirect selling expenses from NV in our final margin calculation.

Makita's reliance on 773(a)(6)(B) in support of its position that the new law now requires that all expenses be deducted from NV is erroneous. This statutory provision explicitly provides for the deduction of all movement expenses from NV, but not for the deduction of all expenses in general, and indirect selling expenses in particular, as Makita suggests. Were we to do so, we would clearly be in violation of the Act. Moreover, we disagree with Makita's assertion that the language in 773(a) stating that a "fair comparison" shall be made between the export price or CEP and NV now requires the Department to make additional adjustments to NV not specifically set out in 773(a). Rather, 773(a) expressly states that, in order to achieve a "fair comparison," NV will be determined as set out in 773(a), which we have followed in this review.

Comment 7: Petitioner argues that the Department should correct an error in the computer program involving the difference in merchandise (difmer) adjustment. Petitioner points out that, according to the Department's methodology, the difmer is found by subtracting the variable manufacturing costs in the U.S. market from the variable manufacturing costs in the home market. If the U.S. manufacturing costs exceed the home market manufacturing costs, the difference should be added to NV in accordance with the procedures described in the Import Administration Antidumping Manual (*see* Chapter 8 at 44, July 1993 Rev.) Petitioner points out that the Department's computer program incorrectly deducted from NV the positive amount by which U.S. costs exceed home market costs.

Makita states that, in most cases, the difmer should not be added to NV. However, in this case, no difmer adjustment should be made at all, pursuant to 19 U.S.C. § 1677b(a), which requires the Department to make fair comparisons. Makita claims that the main physical characteristics of the merchandise at issue should not result in any difmer adjustment because they are not amenable to precise measurement for purposes of arriving at price differences. Since all physical differences are minor variations or features mandated to meet U.S. and Japanese technical and safety standards, their inclusion was a necessary condition to Makita's sale of the subject merchandise in both the U.S. and Japan. Makita argues that price comparisons within antidumping proceedings should focus on the voluntary action of a respondent in raising or not raising its U.S. prices rather than on issues relating to the technical need for additional costly features of the product. Makita requests that the Department disregard differences in voltage, amperage, and wattage in its application of the difmer.

Department's Position: We agree with petitioner that we made a clerical error by adding difmer to NV instead of subtracting it. We have made the necessary correction to our margin calculations for the final results.

When we make price comparisons based on similar models, it is our longstanding practice to adjust NV for the differences in the variable costs associated with manufacturing those products. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part of an Antidumping Finding,* 61 FR 57629 (November 7, 1996). We calculated difmer based on the variable cost information Makita provided in its questionnaire response. In choosing to sell its products to the United States, Makita made the decision to adapt the models sold to U.S. voltage and amperage requirements. Makita admits that there are legitimate cost differences between home market models and U.S. models. For our purposes, the reasons behind why there are cost differences are irrelevant. It is well-established law that establishing an intent to dump is not required under the Act. (*See USX* v. *United States,* 682 F.Supp. 6068 (CIT, 1988).

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Makita Corporation	7/1/94–6/30/95	4.36

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in these final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 54.52 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: December 24, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–73 Filed 1–2–97; 8:45 am]

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[C–549–401]

Certain Apparel From Thailand; Determination to Amend Revocation, in Part, of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination to amend revocation, in part, of countervailing duty order.

SUMMARY: The Department of Commerce (the Department) has determined to amend the effective date of the revocation of the countervailing duty order on Certain Apparel from Thailand, with respect to the products classified under the item numbers of the Harmonized Tariff Schedule (HTS) listed in Appendix D to this notice, from January 1, 1995 to January 1, 1991. In addition, the Department has determined not to amend the effective date of revocation with respect to the products classified under the HTS item numbers listed in Appendix B to this notice. As a result of this determination not to amend the effective date of revocation, we will now complete the administrative review of the countervailing duty order, covering the period January 1, 1991 through December 31, 1991. with respect to the Appendix B items.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Robert Copyak, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

During the original certain textile products and certain apparel investigations from various countries, including Thailand, the Department reviewed issues concerning the standing of petitioners with respect to apparel and explained its determinations in *Final Negative Countervailing Duty Determination: Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852; March 12, 1985) (*Malaysia Final Determination*). No injury investigations were required for the countries involved, and the Department relied upon a list of 86 like products both for determining the standing of petitioners and for establishing the corresponding scope of the certain apparel order. *See* Letter from Wilmer, Cutler & Pickering, Dec. 3, 1984, Annex 3, on file in the Central Records Unit, Room B–099, Department of Commerce (CRU).

With respect to the investigation on certain apparel, the Department determined that the Amalgamated Clothing and Textile Workers Union (ACTWU) was an interested party with respect to 52 of the 86 apparel like products covered by the petition. The Department also determined that the standing requirement for the remaining apparel products covered by the petition was satisfied by the International Ladies' Garment Workers' Union (ILGWU). Together, these petitioners had filed the petition "on behalf" of the apparel industry.

On March 13, 1992, the Department announced its intent to revoke the countervailing duty order on certain apparel from Thailand pursuant to section 355.25(d)(4)(i) of the Department's regulations because no interested party had requested an administrative review for at least four consecutive review periods. *Notice of Intent to Revoke Countervailing Duty Orders*, 57 FR 8860 (March 13, 1992) (*Intent to Revoke Notice*). Pursuant to the Department's regulations, if no interested party objects to the Department's intended revocation or requests an administrative review of the countervailing duty order, the Department will revoke the order. 19 CFR § 355.25(d)(4)(iii)(1993).

On March 16, 1992, ACTWU objected to the intended revocation and requested an administrative review, covering the period January 1, 1991 through December 31, 1991. The review was initiated on April 13, 1992. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 57 FR 12797 (April 13, 1992). On April 24, 1992, the Royal Thai Government (RTG) challenged the standing of ACTWU to object to the Department's intended revocation and to request an administrative review. The RTG argued that, to the extent that ACTWU lacked standing with respect to any of the many like products covered by the order, the Department should revoke the countervailing duty order with respect to those products and conduct the administrative review of only the merchandise which remained in the scope of the order. On June 19, 1996, the Department issued its preliminary findings with respect to the standing of ACTWU. *See Memorandum from Barbara E. Tillman to Paul L. Joffe, Acting Assistant Secretary for Import Administration*, June 19, 1996 (*Analysis Memorandum*). Comments on the Department's preliminary findings were filed by the RTG. The Department's final determinations with respect to this issue are fully discussed in the sections *Interested Party Status of ACTWU* and *Analysis of Comments*, below.

Revocation Under Section 753 of the Uruguay Round Agreements Act

This countervailing duty order was revoked effective January 1, 1995, pursuant to section 753 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (60 FR 40568). The Department is conducting an administrative review only to determine the appropriate assessment rate for entries made during the period January 1, 1991 through December 31, 1991.

Scope Conversion

The scope of the certain apparel order was originally defined in terms of the item numbers listed under the *Tariff Schedule of the United States Annotated* (TSUSA). *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand* (50 FR 9819; March 12, 1985) (*Thailand Final Determination*). On January 1, 1989, the United States fully converted from TSUSA to the *Harmonized Tariff Schedule* (HTS). At that time, the Customs Service prepared a list which included all of the HTS numbers necessary to cover the items previously identified by the TSUSA. However, because the two tariff schedules use different classification systems which do not produce a one-to-one product correlation, this list also included some items not included in the like product list relied upon by the Department in the investigation. On July 26, 1993, the Department published *Certain Apparel; Notice of Proposed Scope Amendment* (58 FR 39789), which contained the proposed HTS scope and invited comments. The conversion became final on May 17, 1994, with the publication of *Certain Apparel from Thailand; Scope Amendment* (59 FR 25699) (*Scope Notice*), in which the comments submitted were addressed. The analysis undertaken as a result of the RTG's challenge of ACTWU's standing is based on the item numbers of the HTS listed in the *Scope Notice*; these HTS item numbers have now been separated into those for which we determine that ACTWU has standing (Appendix B) and those for which we determine ACTWU does not have standing (Appendix D).

Applicable Statute and Regulations

The Department has made this determination in accordance with sections 751 (a) and (c) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the

statute and to Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Interested Party Status of ACTWU

In April 1992, the RTG challenged the standing of ACTWU both to object to the Department's intended revocation and to request an administrative review of the countervailing duty order on certain apparel from Thailand. The RTG argued that, to the extent ACTWU lacked standing with respect to any of the many like products covered by the order, the Department should revoke the order with respect to those products and conduct the administrative review of only the merchandise which remained in the scope of the order. The RTG cited to the original investigation, noting that ACTWU was found to have standing for only 52 of the 86 like products investigated (standing for the remaining like products was satisfied by co-petitioners). Furthermore, the RTG noted that declining union membership had been documented in the course of the investigation. Thus, the RTG urged the Department to examine anew whether ACTWU had standing with respect to all of the like products covered by the order.

During the 1985 countervailing duty investigations of apparel and textile mill products, which involved many countries, including Thailand and Malaysia, the Department determined that ACTWU was an interested party with respect to 52 of the original 86 apparel like products covered by the petition. *Final Negative Countervailing Duty Determination; Certain Textile Mill Products and Apparel from Malaysia*, 50 FR 9852 (March 12, 1985) (*Malaysia Final Determination*). The Department determined that the standing requirement for the remaining apparel products covered by the petition was satisfied by the International Ladies' Garment Workers' Union (ILGWU). Together, these petitioners had filed the petition "on behalf of" the apparel industry and had standing with respect to the 86 apparel like products at issue. Id. at 9854; *Thailand Final Determination*.

The RTG contested ACTWU's standing as an interested party after the objection by ACTWU to the Department's intent to revoke the order. The Department determined, based on information collected in the course of this proceeding, that there was no basis to reexamine ACTWU's standing for the 52 like products for which it was found to have standing during the investigation. *See Memorandum from Barbara E. Tillman, Director, Office of Countervailing Compliance to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, on the Interested Party Status of a Domestic Interested Party With Respect to the Countervailing Duty Order on Apparel from Thailand*, October 14, 1992 (*October 1992 Memorandum*), on file in the Central Records Unit, Room B–099, Department of Commerce (CRU).

The Department examined ACTWU's status as an interested party, within the meaning of section 771(9)(D) of the Act, with respect the 34 remaining like products covered by this order. *See Analysis Memorandum*. The Department asked ACTWU to indicate which of these products were produced by its members.[1] Regarding unions, section 771(9)(D) defines "interested party" as "a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production or wholesale in the United States of a like product. . . ."

After examining the information provided by ACTWU, and considering the arguments submitted by the RTG over the course of this proceeding, the Department issued its preliminary findings on June 19, 1996. *See Analysis Memorandum*. Of the remaining 34 like products, the Department determined that ACTWU had standing as an interested party with respect to five. Combined with the 52 like products for which ACTWU was found to have standing during the investigations (*see Malaysia Final Determination*), the total number of like products for which ACTWU was found to have standing is 57. The Department invited comments on this determination. We address the RTG's arguments in the *Analysis of Comments* section below. No other party submitted comments.

Analysis of Comments

Comment 1: The RTG argues that the Department's determination that ACTWU has standing with respect to 57 like products is based upon a legal standard that is contrary to the plain language of the statute. The RTG cites section 355.2(i)(4) of the Department's regulations, which specifies that to be an interested party, a union must be "representative of the industry or of sellers (other than retailers) in the United States of the like product produced in the United States." The RTG also cites section 771(4)(D) of the Act, which defines "industry" as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product * * *." The RTG concludes that in order to be representative of those producers whose collective output represents a major proportion of total domestic production of the like product, a union must demonstrate that it represents workers in each facility included in such a determination.

The RTG argues that it is inappropriate for the Department to presume that a union is representative of an industry producing the like product when it represents only one or a small number of the workers in that industry. Had Congress intended such a result, the RTG argues, it would not have required that a union be "representative of an industry" (which clearly encompasses more than just one worker or more than just one enterprise); rather, Congress would simply have required the union to be representative of a "producer" of the "like product."

In conclusion, the RTG notes that ACTWU, like all unions, is engaged in efforts to increase its membership by enrolling workers at factories that are not yet unionized; if ACTWU has not succeeded in enrolling workers at companies whose collective output represents a major proportion of total domestic production of a particular like product, then, the RTG argues, the union cannot simply be deemed representative of the industry producing that product. The RTG urges the Department to arrive at an interpretation of the statute that gives full meaning to the term "industry" in the specifications of the standing requirements for unions.

Department's Position: We disagree with the RTG's assertion that we applied the incorrect legal standard to determine whether ACTWU is an interested party, and we continue to find that ACTWU has standing to object to revocation and request an administrative review for each of the like products for which the union ultimately claimed interested party status, in accordance with section 355.25(d)(4)(iii) of the Department's regulations.

The RTG correctly notes that to qualify as an interested party pursuant to section 771(9)(D) of the Act, a union must be "representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product." However, the RTG incorrectly links this requirement

[1] An 87th like product, flatbags, handbags and luggage, was subject to investigation and was classified as within the scope of the apparel order when certain textile mill products and certain apparel were separated into two countervailing duty orders. There is no information in the record which indicates that ACTWU had standing with respect to this product.

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directly to the definition of the term "industry" under section 771(4)(A). The RTG concludes that, to meet this requirement, a union must at least demonstrate that it represents workers in each facility producing the like product. We disagree. Such a narrow interpretation of the phrase "representative of an industry" would unduly limit the rights of a union to qualify as an interested party, object to revocation, and otherwise participate in a proceeding.

Section 771(9) of the Act defines several categories of domestic interested parties. In each case, the key to qualifying is for the party to manufacture, produce or wholesale the like product in the United States. For instance, under section 771(9)(C), to qualify as a "manufacturer or producer" of the like product, the Court of International Trade has held that a party must actually manufacture the product in the United States. *See Brother Indus. (USA)* v. *United States*, 801 F. Supp. 751, 757 (CIT 1992).

However, the language of the legislative history describing the standing requirements "is broad and unqualified." *Id.* (*citing* S. Rep. No. 249, 96th Cong., 1st Sess. 90 (1979)). Where Congress intended to further limit a party's ability to qualify as an interested party, Congress made that intention explicit. In particular, sections 771(9)(E) and (F) explicitly limit the rights of a trade or business association in just this manner. The legislative history explains:

> The provision also provides that a trade or business association may be considered an interested party only when a majority of its members are importers of merchandise under investigation, or manufacture, produce, or wholesale a like product, as the case may be. This limitation is believed to fairly delimit those groups with sufficient interest to always be considered interested parties. An association representative of importers generally, or business generally, would not be considered an interested party under this limitation, although a sub-group of such an association may qualify.

S. Rep. No. 249, 95th Cong., 1st Sess. 90 (1979). By contrast, with regard to section 771(9)(D), the legislative history states that the provision "clarifies that a union may file a petition and participate in proceedings under Title VII as added by the bill. The union or group of workers must represent workers in the relevant U.S. industry." *Id.* Congress gave no indication that by requiring a union to be "representative of an industry," it intended to limit the rights of unions which "represent workers in the relevant U.S. industry" to participate in proceedings as interested parties. The legislative history makes clear that Congress intended unions which represent workers in the relevant U.S. industry to be "representative" of the industry. For these reasons, we find that the phrase "representative of an industry" requires no more than that a union "represent workers in the relevant U.S. industry."

This is the same determination reached by the Department in the original apparel and textile mill product investigations. *See Malaysia Final Determination* at 9854. Contrary to the claim of the RTG, we have not determined that a union representing just one worker at just one facility producing the like product necessarily qualifies as an interested party. We have determined that when a union certifies, as ACTWU has done, that it represents workers in the relevant U.S. industry, we will not investigate the matter further, absent actual evidence calling the union's certification into question. This determination is further explained in the *Department's Position* on comment 2, below.

Having found that ACTWU qualifies as an interested party, the next issue is whether the union may object to revocation and request an administrative review for those like products for which it has claimed standing. Section 355.25(d)(4)(iii) of the Department's regulations provides simply that if no interested party objects to revocation or requests a review, the Department will conclude that the order (or suspended investigation) is no longer of interest to domestic interested parties, as provided for by section 355.25(d)(1)(i). Conversely, if a domestic interested party does object, and no other party expresses its support for revocation, the Department will not revoke the order. In this situation, the Department effectively presumes that the order, whether in whole or in part, is of interest to domestic interested parties and that revocation is not appropriate.

The Department indicated in the commentary to the regulations that when "parties which account for a significant proportion of domestic production" either affirmatively oppose or support revocation, we will make a case-by-case determination of whether revocation is appropriate. 53 FR 52,306, 52,333 (1988). Accordingly, the Department has revoked an order over the objection of one or more domestic interested parties, and we have refused to revoke despite receiving support for revocation from part of the domestic industry. *See Oregon Steel Mills, Inc.* v. *United States*, 862 F.2d 1541 (Fed. Cir. 1988) (affirming revocation); *Certain Round-Shaped Agricultural Tillage Tools From Brazil; Preliminary Results of Changed Circumstances CVD Review and Intent Not To Revoke Order*, 55 FR 41,265 (1990) (declining to revoke). In this case, however, no domestic interested party has expressed support for the order. ACTWU's objection to revocation is the only indication we have received regarding the domestic industry's position. As described above, ACTWU has certified that it represents workers producing each of the remaining 57 like products, which qualifies the union as an interested party. Given that no domestic interested party has supported revocation, it is reasonable to presume that the remainder of the industry favors or at least acquiesces in ACTWU's position.

This is similar to the presumption adhered to by the Department for determining whether a petition for initiating an antidumping or countervailing duty investigation is filed "on behalf of an industry," in accordance with section 702(b)(1) of the Act. In that situation, the Department presumes that the petitioner filed on behalf of the domestic industry, unless a majority of the domestic industry affirmatively opposes the petition. The Court of Appeals for the Federal Circuit has upheld this interpretation of the statute as being reasonable. *Minebea Co., Ltd.* v. *United States*, 984 F.2d 1178, 1180 (Fed. Cir. 1993); *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 966 F.2d 660 (Fed. Cir. 1992).

Comment 2: The RTG next argues that, even assuming the Department has applied the correct legal standard, the Department must still investigate whether ACTWU meets this standard, both with respect to the 52 like products for which ACTWU was found to have standing in the original investigation and with respect to the five products for which ACTWU first made standing claims in this proceeding. The RTG claims that it is incorrect for the Department to refuse to reconsider its original standing determination; moreover, the Department cannot refuse to further investigate ACTWU's additional claims of standing, absent affirmative evidence that ACTWU's interested party status has changed.

Regarding the 52 like products for which ACTWU originally claimed standing, the RTG contests the Department's refusal during this proceeding to reconsider its determination in the original countervailing duty investigation. The RTG argues that it was documented in the context of the original 1984–1985 investigations that union membership in

the apparel industry had been gradually declining. The RTG asserts that it is likely that this trend has continued and that ACTWU's membership has changed over time. The RTG also asserts that companies in import sensitive industries have been moving production facilities from the unionized Northeast to non-unionized areas in the South, to Mexico, and elsewhere overseas. On this basis, the RTG concludes that there exists public information showing declining and changing union membership in the apparel industry.

According to the RTG, these facts should have caused the Department to revisit its 1985 determination. In addition, the RTG claims that the information provided by ACTWU in 1984, indicating standing for 52 of the like products, is inconsistent with ACTWU's ultimate claim in 1994 of standing for five additional like products. In claiming standing for five additional like products, ACTWU called attention to obvious changes in membership over time. Such changing membership indicates that ACTWU may no longer represent one or more of the like product industries it represented in 1984.

Furthermore, the RTG argues, the Department's determination that ACTWU is an interested party with respect to the original 52 like products was based on ACTWU's certification during the investigation that it was an "interested party." According to the RTG, this is a legal conclusion on the part of ACTWU, and is therefore not the appropriate basis for the Department's determination. Rather, the Department should seek a factual representation from which to draw its own legal conclusion.

As a matter of policy, the RTG argues that it is inappropriate for the Department to place the burden of production in this instance on respondents. ACTWU's membership information is not public; it would be impossible for the RTG to determine whether ACTWU continues to represent workers in each of the like product industries at issue; and, it is contrary to the normal presumption of the conduct of a countervailing duty investigation to require a party to come forward with another party's confidential information.

Thus, the RTG urges the Department to solicit and examine information regarding ACTWU's membership, as it relates to these like products. Specifically, for each like product, the RTG urges the Department to obtain the following information: the names of the companies in which ACTWU represents workers, the number of union-represented and non-union workers in each such facility, the names of companies which produce the like product whose workers are not represented by the union, and an estimate of the number of workers in such facilities.

Department's Position: We disagree with the RTG. As described in the *Analysis Memorandum*, absent affirmative evidence showing that a party's status has changed, we do not reconsider our original standing determination with respect to those like products for which a domestic interested party, objecting to revocation or requesting a review, had interested party status during the original investigation. Moreover, ACTWU has certified that it continues to represent workers producing each of the 52 like products for which it was originally determined to have standing, and neither the RTG nor any other party has presented affirmative evidence challenging ACTWU's certification.

It is true that several years have passed since the Department reached its original standing determination. However, the Department is not required to investigate standing issues to the same extent as it must allegations of dumping or subsidization. *See Brother Indus., Ltd.* v. *United States*, Slip Op. 92–231 at 4–5 (CIT Dec. 30, 1992). For the purpose of requesting a review or objecting to revocation, it would not be appropriate either to revisit our original standing determination or to question a union's certification that it represents workers producing a particular like product, absent some evidence that the union's representation of those workers has, in fact, changed.

Much the same holds true for the remaining like products for which ACTWU claimed standing. The union certified that it represents workers in each of these industries, and the RTG has presented no evidence to the contrary. Absent such evidence, we consider ACTWU's certification sufficient. It is worth noting that the Department did not accept ACTWU's initial standing claim at face value. ACTWU originally claimed that its members produced eighteen additional products. ACTWU correctly qualified this claim, however, by noting that the products its members produced were identical to the products covered by the scope of the order except for vegetable fiber content. The Department rejected this claim on the ground that the like product list describing the scope of the order distinguishes among apparel products on this very basis—according to fiber content. *See* Letter from Barbara Tillman to Mark Love, dated May 11, 1994, on file in CRU. Thereafter, ACTWU withdrew this claim, and submitted another claim with respect to five different like products, which ACTWU certified as being identical to those covered by the scope of the order. We examined the claim and the certification, and deemed the certification sufficient to support the claim, absent evidence to the contrary. No such evidence was provided.

This standard does not place an undue burden on respondents to produce evidence to challenge a union's standing to object to revocation or request a review. The Department found at the time of the original investigation that ACTWU represented workers producing 52 like products, and ACTWU has certified that it continues to produce these and the other five like products for which it has claimed standing. It is not too much to require that a party challenging this assertion do more than point to the passage of time and shifts in demographics as support. Like the standard for filing a petition, the standing requirements for objecting to revocation are to be construed liberally. *See Brother Indus.*, Slip Op. 92–231 at 4 (*citing* S. Rep. 249 at 63); *Brother Indus.*, 801 F.Supp. At 757. We determine that ACTWU has met these requirements.

Comment 3: The RTG argues that the Department should revoke the order with respect to those products at the HTS ten-digit level that do not fall within the 57 like products for which ACTWU has claimed standing. The RTG notes that examination of standing at the ten-digit level is consistent with the standing analysis used by the Department in the suspended investigation of certain textile mill products from Thailand. The RTG is concerned that at the eight-digit level, the HTS item numbers cover several products, some of which are represented among the list of 86 like products originally covered by this countervailing duty order and some of which are not. Thus, the Department should revoke the order for these products at the ten-digit level.

Department's Position: Beginning with the conversion from the TSUSA to the HTS tariff schedule, the Department has conducted its standing analysis in this proceeding at the ten-digit HTS level. *See Scope Notice*, 59 FR at 25610. This is the same approach we took in the suspended investigations involving textile mill products from Thailand and various other countries. *See, e.g., Certain Mill Products From Thailand; Notice of Termination in Part*, 60 FR 20258 (April 25, 1995); *Certain Textile*

Mill Products From Colombia and Thailand; Notice of Proposed Conversion, 59 FR 16101 (April 15, 1994). If only the eight-digit HTS item number is listed for a particular product category, either the category does not break down into additional ten-digit HTS levels, or all of the products included in that category (at the eight-digit or greater level) are covered by the scope of the order.

Where the qualifications of coverage corresponded to the breakdown of products at the ten-digit level, we have now included the appropriate HTS numbers at the ten-digit level to identify both HTS items for which the order remains in effect for the 1991 review period and the HTS items for which the effective date of revocation will be amended (as indicated in Appendix B and Appendix D). Further, in drawing up the HTS list, we included annotations for the first time in the *Scope Notice* to clarify the limits of coverage under particular item numbers which identified merchandise outside of the scope of the order as well as merchandise within the scope. In the course of this proceeding, the Department has added a number of annotations, and other annotations have been clarified as a result of the RTG's arguments in *Comment 4* below.

Comment 4: The RTG urges the Department to reexamine some of the products for which it found ACTWU to have standing and to revise the footnotes which annotate certain of the HTS item numbers for which it found ACTWU to have standing. Basically, the RTG takes issue with some of the Department's categorizations of the numerous HTS item numbers according to the list of 86 like products which has been the basis for standing determinations throughout the history of this case. Specifically, the Department categorized HTS number 6111.3050 (babies' garments and cloth accessories, sunsuits, blanket sleepers (synthetic, knit)) under the like products for nightwear (like product 58), other apparel (60), or playsuits (45). According to the RTG, there is no indication that these like product categories were ever intended to include baby apparel, and that only those like product categories which carry the designation "WGI," for women's, girls', and infants' apparel, should be used for determining ACTWU's standing with regard to baby apparel. Since ACTWU made no standing claims with respect to many WGI like products made from synthetic fabric, it is reasonable to conclude that ACTWU lacked standing with respect to babies' garments and clothing accessories. Thus, the Department should revoke the order with respect to HTS 6111.3050.

In addition, the Department found ACTWU to have standing for HTS 6112.1200, men's and boys' synthetic track suits, based on ACTWU's standing for the like products for other coats (42), knit shirts (46), and trousers (54) of man-made fiber. According to the RTG, there is no indication that track suits or other warm-up style suits were ever intended to fall within these particular like products, and therefore, the order with respect to this HTS item number should also be revoked.

The RTG argues that the Department also incorrectly classified the products included under HTS 6209.2050, babies' sunsuits, washsuits, clothing sets and diapers (non-knit, cotton), under the like products for playsuits (8) and other apparel (21) of cotton, and found ACTWU to have standing with respect to all products within this HTS subheading. The RTG takes issue with the Department's determination that diapers constitute "other apparel," and notes that there is no indication that ACTWU represents workers making diapers. Thus, the order should be revoked with respect to HTS 6209.2050.

With respect to "trousers, breeches, and shorts," the RTG's argues that the like product categories for "trousers" necessarily exclude breeches and shorts, and therefore although ACTWU was found to have standing with respect to "trousers," it cannot be said to have standing with respect to breeches and shorts. Because the HTS numbers which identify trousers also include breeches and shorts, and there is no indication, according to the RTG, that ACTWU's standing for trousers extends to breeches and shorts, the RTG argues for an annotation which notes the limits of coverage under any HTS item numbers which cover "trousers breeches, and shorts" together. Alternatively, the RTG argues for revocation of the HTS numbers at the ten-digit level.

The RTG also noted a number of additional HTS item numbers for which they recommend the Department modify the annotations to clarify the limits of the coverage under those item numbers.

Department's Position: With respect to HTS item numbers 6111.3050, 6112.1200, and 6209.2050, the RTG's concern that the Department has misclassified these HTS items in terms of the listing of like products which are subject to the order is misplaced. As a general matter, in classifying these items using the like product list, the Department consulted with the United States Customs Service and received confirmation that the classifications were reasonable. *See Memorandum for The File on Certain Apparel from Thailand—Like Products and HTS Numbers*, dated February 20, 1996, on file in the CRU.

We reject the RTG's argument that ACTWU's standing with respect to babies' apparel on the whole is questionable based on the fact that ACTWU lacks standing with respect to several items of babies' apparel included among the like products. The Department determined ACTWU's standing for these HTS item numbers after first classifying them according to like products. Because ACTWU was determined to have standing for all of the like products under which these HTS items were classified, their standing for this HTS item number needs no qualification.

We also reject the RTG's conclusion that track suits were never intended to be included among the 87 like products covered by the countervailing duty order. This conclusion is unsupported by record evidence. This issue, like so many of the issues raised by the RTG, actually concerns the Department's conversion of the tariff schedule from the TSUSA to the HTS listing. As noted above, ACTWU represents workers producing the like products "other coats," "knit shirts," and "trousers" of man-made fiber. In conducting the original investigation, the Department determined that those like products corresponded to a certain TSUSA item number or numbers. Thereafter, in making the conversion from TSUSA to HTS, the Department concluded that those TSUSA item number or numbers corresponded in part to the HTS item number 6112.1200.10, for men's and boys' synthetic track suits. At the same time, we determined that of the like products corresponding to the coverage of the order, the closest match to track suits are the like products mentioned above. Thus, we based our standing determination for track suits on the fact that ACTWU has standing for the individual like products which comprise track suits.

This is a reasonable determination. While synthetic track suits do constitute a single item for HTS purposes, a track suit actually consists of two separate components, a relatively light-weight synthetic coat and trousers. Indeed, the HTS listing for track suits is broken down into coats, shirts, and trousers; in the case of coats, the HTS then cross-references the separate HTS listings for those items. This confirms that it is reasonable to classify track suits under the like products for their components.

Similarly, many of the other standing determinations questioned by the RTG concern HTS item numbers which cover

"ensembles," which we have classified under the like products for their components. In reviewing our determinations, we agree with the RTG that certain of these classifications should be clarified. In many cases, ACTWU was found to have standing for some of the components and not for others. ACTWU's standing with respect to the HTS item is limited by the like products for the ensemble components for which it was found to have standing. Thus, we have clarified the annotations as appropriate, or resorted to the use of the ten-digit HTS item number, as explained in *Comment 3* above and as indicated in Appendix B.

We disagree, however, that the like product category "trousers" excludes breeches and shorts. We determine that breeches and shorts are types of trousers. Therefore ACTWU's standing with respect to "trousers" extends to all types of trousers, including breeches and shorts. Thus, we will neither be adding the annotation desired by the RTG nor revoking at the ten-digit level the HTS numbers for breeches and shorts.

Determination to Amend Revocation, in Part

For the reasons stated above, the Department has determined that the ACTWU does not have standing as an interested party with respect to 30 of the like products covered by this countervailing duty order, as listed in Appendix C this notice. The HTS item numbers corresponding to the like products listed in Appendix C are listed in Appendix D. The Department is now amending the effective date of the revocation of the order with respect to these HTS item numbers to make it effective January 1, 1991. Accordingly, for the merchandise identified in Appendix D, the Department will instruct the U.S. Customs Service to liquidate without regard to countervailing duties all unliquidated entries made on or after January 1, 1991.

The Department determines that ACTWU does have standing as an interested party, in accordance with 19 U.S.C. 1677(9)(D) and 19 C.F.R. § 355.2(i)(4), with respect to 57 like products. These like products are listed in Appendix A. The HTS item numbers which correspond to these like products are listed in Appendix B, with appropriate annotations as discussed above. Thus, the Department will conduct the administrative review of entries of the merchandise listed in Appendix B, made during the period January 1, 1991 through December 31, 1991, and will issue appropriate instructions to Customs with respect to these entries upon completion of the review.

This countervailing duty order was subject to section 753 of the Uruguay Round Agreements Act. *See Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation*, 60 FR 27,963 (May 26, 1995). Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked the order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act, and ordered Customs to terminate suspension of liquidation and to refund all cash deposits made after January 1, 1995. *Revocation of Countervailing Duty Orders*, 60 FR 40568 (August 9, 1995). Accordingly, for the merchandise listed in Appendix B for which the Department is not amending the effective date of revocation, the Department intends to order Customs to liquidate shipments exported on or after January 1, 1991 and entered on or before December 31, 1991, in accordance with the final results of the administrative review. We will not issue further instructions with respect to suspension of liquidation or cash deposits of estimated countervailing duties.

This determination and notice are in accordance with sections 751 (a) and (c) of the Act (19 U.S.C. 1675(a)(1) and 1675(c)).

Dated: December 9, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

Appendix A—C–549–401 Countervailing Duty Order on Certain Apparel From Thailand Like Products for Which ACTWU Has Standing

Like product code No.	Like product description
Cotton:	
1	Handkerchiefs.
2	Gloves.
3	Hosiery.
4	Suit-type coats, M&B.
5	Other Coats, M&B.
8	Playsuits.
9	Knit Shirts, M&B.
10	Knit Shirts & Blouses, WGI.
11	Shirts, Not Knit, M&B.
14	Sweaters.
15	Trousers, M&B.
19	Nightwear.
20	Underwear.
21	Other Apparel.
Wool:	
22	Gloves.
23	Hosiery.
24	Suit-type Coats, M&B.
25	Other Coats, M&B.
26	Coats, WGI.
28	Knit Shirts & Blouses.
29	Shirts & Blouses, Not Knit.
30	Skirts.
31	Suits, M&B.
33	Sweaters, M&B.
35	Trousers, M&B.
36	Trousers, WGI.
37	Other Wool Apparel.
Man-Made Fiber:	
38	Handkerchiefs.
39	Gloves.
40	Hosiery.
41	Suit-type Coats, M&B.
42	Other Coats, M&B.
45	Playsuits.
46	Knit Shirts, M&B.
48	Shirts, Not Knit, M&B.
51	Suits, M&B.
52	Suits, WGI.
53	Sweaters.
54	Trousers, M&B.
58	Nightwear.
59	Underwear.
60	Other Apparel.
Other Fabric:	
61	Handkerchiefs.
62	Gloves.
63	Hosiery.
64	Suit-type Coats, M&B.
65	Other Coats, M&B.
68	Playsuits.
69	Knit Shirts M&B.
71	Shirts, Not Knit, M&B
74	Suits, M&B.
76	Sweaters, M&B.
78	Trousers, M&B.
82	Nightwear.
83	Down-filled Coats, M&B.
85	Underwear.
86	Other Apparel.

Appendix B—C–549–401 Countervailing Duty Order on Certain Apparel From Thailand Harmonized Tariff Schedule Numbers

HTS No.	Annotation
6101.2000	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6101.3020	

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HTS No.	Annotation
6102.1000	
6103.1920	Coverage limited to garments that would be covered if separately entered.
6103.2200	Coverage limited to garments that would be covered if separately entered.
6103.2300	Coverage limited to garments that would be covered if separately entered.
6103.2910	Coverage limited to garments that would be covered if separately entered.
6103.4210	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6103.4315	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6103.4910	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6104.1320	
6104.1915	
6104.2100.10	
6104.2100.30	
6104.2100.40	
6104.2100.60	
6104.2100.80	
6104.2200.10	
6104.2200.60	
6104.2200.80	
6104.2200.90	
6104.2300.22	
6104.2910.60	
6104.5100	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6104.5310	Coverage limited to wool skirts.
6104.5910	Coverage limited to wool skirts; coverage excludes girls' skirts or divided skirts *NOT* having embroidery or permanently affixed applique work on the outer surface.
6104.6920	Coverage limited to wool trousers.
6105.1000	
6105.2020	
6106.1000	
6109.1000	
6109.9010.07	
6109.9010.09	
6109.9010.13	
6109.9010.25	
6109.9010.47	
6109.9010.49	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6110.2020	Coverage excludes men's or boys' garments having embroidery or permanently affixed applique work on the outer surface.
6110.3030.05	
6110.3030.10	
6110.3030.15	
6110.3030.20	
6110.3030.25	
6110.3030.40	
6110.3030.50	
6111.3040	Coverage limited to sweaters; coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6111.3050	
6111.9040	Coverage limited to sweaters.
6111.9050	
6112.1200.10	
6112.1200.30	
6112.1200.50	
6112.1910.10	Coverage limited to men's and boys' garments that would be covered if separately entered.
6112.1910.30	Coverage excludes men's or boys' garments that would be covered if separately entered.
6112.1910.50	Coverage excludes men's or boys' garments that would be covered if separately entered.
6112.2010.10	Coverage excludes men's or boys' garments that would be covered if separately entered.
6112.2010.30	Coverage limited to men's and boys' garments that would be covered if separately entered.
6112.2010.50	Coverage excludes men's or boys' garments that would be covered if separately entered.
6112.2010.60	Coverage excludes men's or boys' garments that would be covered if separately entered.
6112.2010.80	Coverage limited to men's and boys' garments that would be covered if separately entered.
6114.2000	
6114.3010.10	
6114.3030	
6201.1220	
6201.1340	
6201.9220	
6203.1910	Coverage limited to garments that would be covered if separately entered.
6203.2230	Coverage limited to garments that would be covered if separately entered.

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HTS No.	Annotation
6203.2300	Coverage limited to garments that would be covered if separately entered.
6203.2920	Coverage limited to garments that would be covered if separately entered.
6203.4240	
6203.4340	
6203.4920	
6204.2300	Coverage limited to woolen garments that would be covered if separately entered.
6204.2920.10	
6204.2920.30	
6204.2920.40	
6204.2920.50	Coverage limited to garments that would be covered if separately entered.
6205.2020	
6208.2200	
6208.9200.30	
6208.9200.40	
6209.2050	

Appendix C—C–549–401 Countervailing Duty Order on Certain Apparel From Thailand Like Products for Which ACTWU Does Not Have Standing

Like product code No.	Like product description
Cotton:	
6	Coats, WGI.
7	Dresses.
12	Blouses, Not Knit, WGI.
13	Skirts.
16	Trousers, WGI.
17	Brassieres, etc.
18	Dressing Gowns.
Wool:	
27	Dresses.
32	Suits, WGI.
34	Sweaters, WGI
Man-Made Fiber:	
43	Coats, WGI.
44	Dresses.
47	Knit Shirts & Blouses, WGI.
49	Blouses, Not Knit, WGI.
50	Skirts.
55	Trousers, WGI.
56	Brassieres, etc.
57	Dressing Gowns.
Other Fabric:	
66	Coats, WGI.
67	Dresses.
70	Knit Shirts & Blouses, WGI.
72	Blouses, Not Knit, WGI.
73	Skirts.
75	Suits, WGI.
77	Sweaters, WGI.
79	Trousers, WGI.
80	Brassieres, etc.
81	Dressing Gowns.
84	Down-filled Coats, WGI.
Other Like:	
87	Flatgoods, handbags, and luggage.

Appendix D—C–549–401 Countervailing Duty Order on Certain Apparel From Thailand Harmonized Tariff Schedule Numbers

(For which revocation will be amended from January 1, 1995 to January 1, 1991)

4202.1240	6104.2910.70	6112.2010.90
4202.1260	6104.3100	6113.0000.30
4202.1280	6104.3310	6114.3010.20
4202.2245	6104.3320	6202.1220
4202.2260	6104.3910	6202.1340
4202.2270	6104.4200	6202.9220
4202.2280	6104.4320	6202.9345
4202.3240	6104.4420	6202.9350
4202.3295	6104.5200	6204.1200
4202.9215	6104.5320	6204.2230
4202.9220	6104.6220	6204.2920.15
4202.9230	6104.6320	6204.2920.20
4202.9260	6106.2020	6204.2920.25
4202.9290	6109.9010.50	6204.3220
6102.3010	6109.9010.60	6204.3350
6102.3020	6109.9010.65	6204.3930
6104.1200	6109.9010.70	6204.4230
6104.2100.70	6109.9010.75	6204.4340
6104.2200.30	6109.9010.90	6204.4440
6104.2200.40	6110.3030.30	6204.5220
6104.2200.50	6110.3030.35	6204.5330
6104.2300.10	6110.3030.45	6204.5930
6104.2300.14	6110.3030.55	6204.6240
6104.2300.16	6111.3010	6204.6335
6104.2300.20	6111.3020	6204.6925
6104.2300.24	6111.3030	6206.3030
6104.2300.26	6111.9010	6206.4030
6104.2300.30	6111.9020	6208.9200.10
6104.2300.32	6111.9030	6208.9200.20
6104.2300.34	6112.1200.20	6209.2010
6104.2300.36	6112.1200.40	6209.2020
6104.2300.40	6112.1200.60	6209.2030
6104.2300.42	6112.1910.20	6210.3010
6104.2910.10	6112.1910.40	6210.501020
6104.2910.20	6112.1910.60	6212.1050*
6104.2910.30	6112.2010.20	6212.1090*
6104.2910.40	6112.2010.40	
6104.2910.50	6112.2010.70	

*In the amended HTS list, published May 17, 1994, 6212.1050 and 6212.1090 were not listed. These two numbers replaced 6212.1010 and 6212.1020 in early 1995.

[FR Doc. 97–72 Filed 1–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force Services Agency, DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Services Agency (HQ AFSVA) announces a proposed format change to the existing Air Force Form 3211, Customer Comments card and seeks public comment of the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 4, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ AFSVA, Lodging and Laundry Branch (HQ AFSVA/SVOHL, 10100 Reunion Place, Ste 401, San Antonio TX 78216–4138, ATTN: Lt Col Deb Kuennen or SMSgt Denise Knebel).

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFSVA/SVOHL, at (210) 652–8875.

Title, Associated Form, and OMB Number: Customer Comments, AF Form 3211, OMB Number 0701–XXX.

Needs and Uses: Each lodging guest is provided an AF Form 3211. The AF Form 3211 gives each guest the opportunity to comment on facilities

and services received. Completion and turn in of the form is optional. The information collection requirement is necessary for Wing leadership to assess the effectiveness of their Lodging program. AF Forms 3211 can be used as background documentation/supporting material for all types of management decisions.

Affected Public: AFI 34–246, Air Force Lodging Program, specifies who is an authorized guest in Air Force lodging. Some examples of the public include construction contractors and special guests of the Installation Commander.

Annual Burden Hours: 16.67..

Number of Respondents: 200.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Each guest of Air Force lodging and its contract lodging operations are provided access to AF Forms 3211. AF Forms 3211 give each guest the opportunity to comment on facilities and services received and completion and turn in of the form is optional. The information collection requirement is necessary for Wing leadership to assess the effectiveness of their Lodging program. Form 3211s are also useful as background documentation/supporting material for all types of management decisions. They are also reviewed by higher headquarters during lodging assistance and Innkeeper Award competitions.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–90 Filed 1–2–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Achievement Levels Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 10, 1997.

TIME: 7:00 a.m.–2:30 p.m.

LOCATION: The Brown Palace Hotel, 321 Seventeenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On February 10, 1997, between the hours of 7:30 a.m. and 2:30 p.m. there will be a closed meeting of the Achievement Levels Committee. The Committee will be reviewing the final data and national consensus information on the proposed 1996 science achievement levels to prepare its final recommendations to present to the Executive Committee.

This meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with the policy of 5 U.S.C., 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W. Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: December 30, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–54 Filed 1–2–97; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed teleconference meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date: February 13, 1997.

Time: 1:00–2:00 p.m., (closed); 2:00–3:00 p.m., (open).

Location: National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On February 13, 1997, the Executive Committee will meet via teleconference in partially closed session. The Committee will meet in closed session from 1:00–2:00 p.m. to review and discuss the recommendation from the Achievement Levels Committee regarding the proposed achievement levels for the 1996 science assessment. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Beginning at 2:00 p.m. until adjournment, 3:00 p.m., the Committee

will meet in open session to review and approve the agenda for the Governing Board meeting scheduled for March 6–8, 1997.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: December 30, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–55 Filed 1–2–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–512–000]

A'Lones Group, Inc.; Notice of Issuance of Order

December 27, 1996.

A'Lones Group, Inc. [A'Lones Group) submitted for filing a rate schedule under which A'Lones Group will engage in wholesale electric power and energy transactions as a marketer. A'Lones Group also requested waiver of various Commission regulations. In particular, A'Lones Group requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by A'Lones Group.

On December 18, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by A'Lones Group should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, A'Lones Group is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of A'Lones Group's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 17, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–464–000]

AMVEST Coal Sales, Inc.; Notice of Issuance of Order

December 27, 1996.

AMVEST Coal Sales, Inc. (AMVEST) submitted for filing a rate schedule under which AMVEST will engage in wholesale electric power and energy transactions as a marketer. AMVEST also requested waiver of various Commission regulations. In particular, AMVEST requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by AMVEST.

On December 16, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by AMVEST should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, AMVEST is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of AMVEST's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 15, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–122–000]

United Power Technologies, Inc., Notice of Issuance of Order

December 27, 1996.

United Power Technologies, Inc. (United Power) submitted for filing a rate schedule under which United Power will engage in wholesale electric power and energy transactions as a marketer. United Power also requested waiver of various Commission regulations. In particular, United Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by United Power.

On December 16, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by United Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, United Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the

applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of United Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 15, 1997. Copies of the full test of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–325–000, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

December 26, 1996.

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ER97–325–000]

Take notice that on December 18, 1996, The Detroit Edison Company (Detroit Edison), tendered for filing a revised Wholesale Power Sales Tariff (WPS–1), together with a blacklined copy of the revised tariff, showing the revisions made in this filing. Detroit Edison requests an effective date of November 2,1996, for WPS–1.

Copies of this filing have been served on the Michigan Public Service Commission and on all parties to this proceeding.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket No. ER97–651–000]

Take notice that on December 13, 1996, Portland General Electric Company (PGE) and Southern California Edison Company (Edison), filed an amendment to the Notices of Cancellation of PGE and Edison's Long-Term Power Sale and Exchange Agreement (PGE Rate Schedule FERC No. 57, and Edison Rate Schedule FERC No. 213) and requested expedited action and a waiver of the 60-day prior notice requirement (205 of the FPA and 18 CFR 35.15) to allow the termination to become effective on December 31, 1996.

PGE and Edison's notice of cancellation was subject to the California Public Utilities Commission (California PUC) approving, by December 31, 1996, a "Termination Agreement Between Portland General Electric and Southern California Edison," dated March 28, 1996 (Termination Agreement). On December 9, 1996, the California PUC issued an Interim Opinion approving the Termination Agreement.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER97–805–000]

Take notice that on December 16, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Associated Electric Cooperative, Inc. Duke requests that the Agreement be made effective as of November 19, 1996.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER97–806–000]

Take notice that on December 16, 1996, Commonwealth Edison Company (ComEd) submitted three Service Agreements, variously dated, establishing American Electric Power Service Corp., (AEP), Northern Indiana Public Service Company (NIPSCO), and Interstate Power Company (ISP), as non-firm customers under the terms of ComEd's Open Access Transmission Tariff (OATT). Also submitted is a Service Agreement, establishing Wisconsin Electric Power Company (WEPCO), as a firm transmission customer under the terms of ComEd's OATT.

ComEd requests an effective date of November 16, 1996 for the service agreements with AEP, NIPSCO, ISP, and November 30, 1996 for the service agreement with WEPCO, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon AEP, NIPSCO, ISP, WEPCO and the Illinois Commerce Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER97–807–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and American Electric Power Service Corporation under Rate GSS.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER97–808–000]

Take notice that on December 16, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Wabash Valley Power Association, Inc. under Rate GSS.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Company

[Docket No. ER97–809–000]

Take notice that on December 16, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated December 6, 1996 between Illinois Power Company (IP) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to IP pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96-50.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER97–810–000]

Take notice that on December 16, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated December 6, 1996 between MidAmerican Energy company (MEC) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to MEC pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER97–811–000]

Take notice that on December 16, 1996, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements, establishing Interstate Power Company (ISP), American Electric Power Service Corporation (AEP), and the Village of Winnetka (Winnetka), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 tariff). ComEd

also filed new Service Agreements with Vitol Gas & Electric LLC (Vitol), Sonat Power Marketing L.P. (Sonat), to reflect a customer name change. The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 1, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon ISP, Vitol, Sonat, AEP, Winnetka, and the Illinois Commerce Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER97–812–000]

Take notice that on December 16, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and AIG Trading Corporation. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER97–813–000]

Take notice that on December 16, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Wisconsin Electric Power Company. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Wisconsin Electric.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ES97–19–000]

Take notice that on December 16, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue, on or before December 31, 1998, short-term notes and obligations in an aggregate principal amount outstanding at any time not exceeding an amount equal to 10 percent of the aggregate of total consolidated surplus and secured indebtedness of Niagara Mohawk and its wholly-owned subsidiaries and the capital of the Niagara Mohawk plus $50 million. Such short-term secured notes and other obligations will have a final maturity date not more than one year after the date of issuance.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11530–000, Iowa]

Mitchell County Conservation Board; Notice of Availability of Final Environmental Assessment

December 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for initial license for the Mitchell Mill Dam Hydroelectric Project, located on the Cedar River, in Mitchell County, Iowa, and has prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact Nancy Beals at (202) 219–2178.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2550–002]

N.E.W. Hydro, Inc.; Notice of Availability of Environmental Assessment

December 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Weyauwega Hydroelectric Project, located on the Waupaca River, in the City of Weyauwega, Waupaca County, Wisconsin; and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street NE., Washington, DC 20426. For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11132–000]

Ridgewood Maine Hydro Partners, L.P.; Notice of Availability of Final Environmental Assessment

December 27, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the existing unlicensed Eustis Hydroelectric Project, located in Franklin County, Maine, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action

significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2131–008]

Wisconsin Electric Power Company; Notice of Availability of Environmental Assessment

December 27, 1996.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of an application by Wisconsin Electric Power Company (licensee) to grant an easement to the Wisconsin Department of Natural Resources (WDNR) for about 1,366 acres of land in the Kingsford Hydroelectric Project boundary. The WDNR wants to include these lands in its new Spread Eagle Barrens State Natural Area (State Natural Area). The State Natural Area is being created by the WDNR to preserve, restore, and manage rare pine barrens/bracken grasslands in the vicinity of the Kingsford Hydroelectric Project. Approving the application to grant the easement would not constitute a major federal action significantly affecting the quality of the human environment. The Kingsford Hydroelectric Project is located on the Menominee River in Florence County, Wisconsin and Dickinson County, Michigan.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5476–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed December 23, 1996 Through December 27, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960596, Draft EIS, NPS, AS, National Park of American Samoa, Implementation, General Management Plan, Islands of Tutulla, Ta'u and Ofu, Territory of American Samoa, Due: February 18, 1997, Contact: Alan Schmierer (415) 744–3971.

EIS No. 960597, Draft EIS, BLM, CA, U.S. Army's Land Acquisition Project for National Training Center, Fort Irwin, San Bernardino County, CA, Due: April 04, 1997, Contact: Mike DeKeyrel (619) 255–8730.

EIS No. 960598, Final EIS, BLM, NV, Ruby Hill Gold Mining Operations Project, Implementation, Battle Mountain District, Plan of Operations and COE Section 404 Permit, Eureka County, NV, Due: February 03, 1997, Contact: Christopher Stubbs (702) 635–4000.

EIS No. 960599, Draft Supplement, COE, NJ, Green Brook Sub-Basin Flood Control Plan, Updated Information concerning a Revised Recommended Plan and Mitigation Plan, Implementation, Middlesex, Union and Somerset Counties, NJ, Due: February 18, 1997, Contact: William Richardson (212) 264–1275.

EIS No. 960600, Final EIS, AFS, AK, South Lindenberg Timber Sale(s), Timber Harvesting, Tongass National Forest, Stikine Area, Kupreanof Island, AK, Due: February 03, 1997, Contact: Jim Thompson (907) 772–3871.

EIS No. 960601, Draft EIS, DOI, UT, Upalco Unit/Uinta Basin Replacement Project, Water Supply Management, Approvals and Permits Issuance, Duchesne and Uintah Counties, UT, Due: March 04, 1997, Contact: Terry Holzworth (801) 226–7100. The US Department of the Interior and the Central Utah Water Conservancy District are Joint Lead Agencies on the above project.

EIS No. 960602, Draft EIS, FRC, ND, SD, MN, MT, IA, IL, Northern Border Project, Natural Gas Transportation, Pipeline and Facilities Expansion and Construction, Permits and Right-of-Way Grant Issuance, ND, SD, MN, MT, IA and IL, Due: February 18, 1997, Contact: Laura Turner (202) 208–0916.

Dated: December 30, 1996.

B. Katherine Biggs,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–65 Filed 1–2–97; 8:45 am]

BILLING CODE 6560–50–U

Environmental Protection Agency

[OPPTS–00204; FRL–5579–6]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately $5 million in fiscal year 1997 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The grant dollars are targeted at State and Tribal programs that address the reduction or elimination of pollution across all environmental media: air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under Unit VI. of this preamble.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately $30 million has been awarded to more than 100 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101-508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States

to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for which lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorized EPA to establish a national source reduction clearinghouse and expanded EPA's authorities to collect data to better track source reduction activities. The Act also requires EPA to report periodically to Congress on EPA progress in implementing the Act.

In June 1996, EPA published the *Pollution Prevention Incentives for States Assessment Study*. The study documents the full range of activities funded by the PPIS grant program during its first 5 years. It represents an accounting of how grantees used EPA funds to stimulate and enhance pollution prevention awareness and initiatives throughout the country. For a copy of the report, including the Executive Summary, contact the Pollution Prevention Information Clearinghouse at 202-260-1023.

II. Availability of FY 97 Funds

With this publication, EPA is announcing the availability of approximately $5 million in grant/cooperative agreement funds for FY 1997. The Agency has delegated grant making authority to the EPA Regional offices. Regional offices are responsible for the solicitation of interest, the screening of proposals, and the actual selection of awards. PPIS grant guidance will be provided to all applicants along with any supplementary information the Regions may wish to provide.

All applicants must address the national program criteria listed under Unit V.2. of this document. In addition, applicants may be required to meet any supplemental Regional criteria. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information.

III. Catalogue of Federal Domestic Assistance

The number assigned to the PPIS program in the Catalogue of Federal Domestic Assistance is 66.708 (formerly 66.900).

IV. Matching Requirements

Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50 percent. For example, the Federal government will provide half of the total allowable cost of the project, and the State will provide the other half. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars, in-kind goods and services, and/or third party contributions.

V. Eligibility

1. *Applicants.* In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all Federally recognized Native American tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. The organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

2. *Activities and criteria.*--(i) *General.* The purpose of the PPIS grant program is to support the establishment and expansion of State, Regional, Tribal, or local multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State- or Region-wide. State programs might focus on, for example:

a. Developing multimedia pollution prevention activities, including but not limited to: providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine progress in pollution prevention; and identifying regulatory and nonregulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

b. Institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and nongovernmental institutions of the State or region.

c. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies including measuring progress.

(ii) *1997 National Criteria.* There is a growing emergence of business assistance organizations established within States to address the vast array of environmental concerns. Consequently, as a means to provide substantive support of pollution prevention, EPA is eager to ensure that the PPIS grants will add to the success and sustainability of State environmental assistance providers and will encourage a cooperative network of coordinated environmental assistance providers. EPA also believes it is important for these assistance organizations to complement the goals and strategies of the State Environmental Performance Agreement (EnPA), Performance Partnership Agreements (PPAs), and Performance Partnership Grants (PPGs) under the National Environmental Performance Partnership System (NEPPS).

EPA through the PPIS grant funds is striving to support the development of a coordinated network of State environmental service providers that seek to leverage the expertise of the various environmental assistance organizations and show an ability to work jointly in an effort to promote pollution prevention in conjunction with the overall environmental performance goals identified by the States through the EnPAs. The application must demonstrate how activities will advance State environmental goals. Applicants must describe how pollution prevention activities will complement (where present) State EnPAs, PPAs, and PPGs developed under NEPPS. EPA encourages all applicants to develop initiatives in priority industry sectors and geographic areas identified by the states.

For applicants from States that are currently not participating in the development of EnPAs, in order to be eligible for PPIS grant funds, the applicant must still clearly identify a partnership with one or more business or environmental assistance provider in the State.

In addition, in 1995 and 1996 the National Institute for Standards and Technology (NIST) funded 27 State environmental planning networks. The purpose of the planning effort is to coordinate activities among NIST Manufacturing Extension Partnerships, pollution prevention programs, compliance centers, and other environmental service delivery organizations in the State. PPIS applications from States that have received funding from NIST for environmental services planning must address how the grant will relate to the NIST-funded environmental planning efforts.

PPIS applications from States that have not been awarded a NIST environmental services planning grant are not required to address this criterion.

Based on the above, EPA has developed the following criteria that must be addressed by all eligible applicants. Proposals that do not address these criteria will not be considered eligible for funding. In the narrative of the grant application, the following three requirements must be addressed:

(1) Identify who the partnering organization(s) is/are and demonstrate or document the relationship. This can be done, for example, through a letter of agreement, a joint statement, or principles of agreement signed by both parties.

(2) Describe how the activities in the grant will support the State's EnPA under NEPPS, where present.

(3) Address how the grant will relate to the NIST-funded environmental coordination planning efforts. (This criterion only applies to those States that have a NIST-funded grant.)

Applicants should consult the PPIS program guidance for more detailed information on the 1997 goals and criteria. Proposals accepted for review under this program must qualify as pollution prevention as defined by EPA.

3. *Program management.* Awards for FY 1997 funds will be managed through the EPA Regional Offices.

4. *Contacts.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under Unit VI. of this document to obtain specific instructions and guidance for submitting proposals.

VI. Regional Pollution Prevention Contacts

Abby Swaine, US EPA Region 1 (SPN), JFK Federal Bldg, Room 2203 Boston, MA 02203, (617) 565-4523 (CT, MA, ME, NH, RI, VT)

Janet Sapadin, US EPA Region 2 (2-OPM-PPI), 290 Broadway, 25th Floor New York, NY 10007, (212) 637-3584 (NJ, NY, PR, VI)

Cathy Libertz, US EPA Region 3 (3ES43), 841 Chestnut Bldg. Philadelphia PA 19107, (215) 566-2737 (DC, DE, MD, PA, VA, WV)

Connie Roberts, US EPA Region 4, Atlanta Federal Center 100 Alabama St. SW Atlanta, GA 30365, (404) 562-9084 (AL, FL, GA, KY, MS, NC, SC, TN)

Phil Kaplan, US EPA Region 5 (DRP-8J), 77 West Jackson Blvd., Chicago, IL 60604-3590, (312) 353-4669 (IL, IN, MI, MN, OH, WI)

Linda Thompson, US EPA Region 6 (6EN-XP), 1445 Ross Ave., 12th Floor, Suite 1200 Dallas, TX 75202, (214) 665-6568 (AR, LA, NM, OK, TX)

Steve Wurtz, US EPA Region 7, 726 Minnesota Ave. Kansas City, KS 66101, (913) 551-7315 (IA, KS, MO, NE)

Linda Walters, US EPA Region 8 (8P2-P2), 999 18th St., Suite 500 Denver, CO 80202-2466 (303) 312-6385 (CO, MT, ND, SD, UT, WY)

Eileen Sheehan, US EPA Region 9 (H-1-B), 75 Hawthorne Ave. San Francisoco, CA 94105, (415) 744-2190 (AS, AZ, CA, CNMI, GU, HI, NV, RP)

Carolyn Gangmark, US EPA Region 10, 1200 Sixth Ave. Seattle, WA 98101, (206) 553-4072 (AK, ID, OR, WA)

Dated: December 20, 1996.

William H. Sanders,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–58 Filed 1–2–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following fright forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3400.

Name: European & General Shipping, Inc.

Address: 8300 N.W. 53rd Street, Suite 308, Miami, FL 33166.

Date Revoked: December 2, 1996.

Reason: Failed to maintain a valid surety bond.

License Number: 309.

Name: Frederick Richards, Inc.

Address: 321 East Bay Street, Charleston, SC 29402.

Date Revoked: November 27, 1996.

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–53 Filed 1–2–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 1997.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Robert M. and Jeannine N. Daugherty, Park City, Utah, and W. James Tozer, Jr., New York, New York, to each acquire a total of 1.87 percent; Pei-Yuan Chia, Bedford, New York, David and Constance Clapp, New York, New York, Solitude Partners, L.P., Solitude, Utah, Thomas S. Johnson, New York, New York, 333 Corporation, New York, New York, Robert and Gayle Larsen, Park City, Utah, Joseph Mahoney, Park City, Utah, John B. Prince, Salt Lake City, Utah, John M. Robertson, Salt Lake City, Utah, Michelle E. Proctor, Salt Lake City, Utah, Garth Blake Robinson, Centerville,

Utah, William N. Shiebler, Boston, Massachusetts, Richard B. Tucker, Denver, Colorado, Robert E. Wood II, Chicago, Illinois, to each acquire a total of 3.27 percent; Peter and Barbara Georgescu, New York, New York, Benefex Corporation, Watermill, New York, Steven Lazarus, Glencoe, Illinois, and James and Frances Wood, Mt. Kisco, New York, to each acquire a total of 1.63 percent, of the voting shares of Draper Bancorp, Draper, Utah, and thereby indirectly acquire Draper Bank and Trust, Draper, Utah.

Board of Governors of the Federal Reserve System, December 27, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24 Filed 1-2-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. County Bancorp, Inc., Manitowoc, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Investors Community Bank, Manitowoc, Wisconsin (in organization).

Board of Governors of the Federal Reserve System, December 27, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23 Filed 1-2-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Southern Security Financial Corporation, Hollywood, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Security Bank Corporation, Hollywood, Florida, and thereby indirectly acquire Southern Security Bank, Hollywood, Florida.

Board of Governors of the Federal Reserve System, December 30, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–75 Filed 1-2-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 8, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to the prudential limitations (firewalls) imposed on the operations of section 20 subsidiaries of bank holding companies.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–33400 Filed 12–31–96; 2:34 pm]

BILLING CODE 6210-01-P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:45 a.m., Wednesday, January 8, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–33401 Filed 12–31–96; 2:34 pm]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST) January 13, 1997.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the December 16, 1996, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 31, 1996.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 96–33404 Filed 12–31–96; 2:34 pm]

BILLING CODE 6760-01-M

FEDERAL TRADE COMMISSION

[File No. 971–0002]

Baxter International Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Baxter International ("Baxter"), an Illinois-based corporation, to divest its Autoplex product to a Commission-approved buyer, and to license Immuno International AG's ("Immuno") product in development to a Commission-approved licensee within four months of the date Baxter signs the consent. This would resolve antitrust concerns raised by the proposed $463 million acquisition of Immuno by Baxter, which both manufacture a wide variety of biologic products derived from human blood plasma.

DATES: Comments must be received on or before March 4, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or George Cary, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page, on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order ("Order") from Baxter International Inc. ("Baxter"), which remedies the anticompetitive effects of Baxter's acquisition of Immuno International AG ("Immuno"). The proposed order requires Baxter to divest assets and undertake certain actions to restore competition in the market for treatments of Factor VIII inhibitors in hemophiliacs, and to license assets and undertake certain actions to restore competition in the market for fibrin sealant. In addition, Baxter has signed an Interim Agreement providing that the terms of the Consent Agreement will become effective immediately.

The proposed Consent Agreement has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to a Stock Purchase Agreement signed August 28, 1996, Baxter agreed to purchase a majority of the outstanding shares of Immuno, in a transaction valued at approximately $715 million. The proposed Complaint alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the research,

development, manufacture and sale of products for the treatment of Factor VIII inhibitors in the United States; and in the market for the research, development, manufacture and sale of fibrin sealant in the United States.

The proposed Order would remedy the alleged violations. In the market for the research, development, manufacture and sale of treatments for Factor VIII inhibitors in the United States, the proposed Order requires Baxter to divest its Autoplex product to a Commission approved buyer within four months. Baxter's Autoplex and Immuno's FEIBA are the only FDA-approved activated prothrombin complex concentrates for the treatment of patients with hemophilia A who have developed an immune system response to their therapy, known as "inhibitors". Autoplex and FEIBA act to overcome these patients' inhibitors so that they can be treated effectively. The acquisition would eliminate the substantial competition between Autoplex and FEIBA. The proposed Consent Agreement would remedy the loss of competition by requiring Baxter to divest Autoplex to a Commission-approved buyer within four months of the date Baxter signed the Consent Agreement.

In Europe and Japan, fibrin sealants are used to control bleeding and promote wound healing in a wide variety of surgical procedures, and to treat burn and trauma victims. Baxter and Immuno are two of only a few companies developing fibrin sealant for sale in the United States, and are likely to be two of the first companies to receive FDA approval to do so. The United States market for an FDA-approved fibrin sealants could be as large as $400 million per year. The acquisition would eliminate the significant on-going competition between Baxter and Immuno in the research and development, as well as future competition in the manufacture and sale, of fibrin sealant in the United States. The proposed Order remedies this loss of competition by requiring Baxter to license Immuno's product in development to a Commission-approved licensee within four months of the date Baxter signed the Consent Agreement.

The Order also requires Baxter to provide to the Commission a report of compliance with the divestiture and licensing provisions of the Order within sixty (60) days following the date the Order becomes final, and every ninety (90) days thereafter until Baxter has completed the divestiture and licensing. The Order also requires Baxter to notify the Commission at least thirty (30) days prior to any change in the structure of Baxter resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–4 Filed 1–2–97; 8:45 am]

BILLING CODE 6750–01–P

[File No. 961–0055]

Ciba-Geigy Limited, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, the $63 billion merger of Ciba-Geigy Limited and Sandoz Ltd., two leading commercial developers of gene therapy products, so long as the companies carry out the divestiture, licensing and certain other requirements. If the divestiture is not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transaction.

DATES: Comments must be received on or before March 4, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or George Cary, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page, on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order ("Order") to resolve anticompetitive concerns raised by the proposed merger of Ciba-Geigy Limited ("Ciba") and Sandoz Ltd. ("Sandoz") into a new entity, Novartis AG ("Novartis"). The agreement is between the Commission and Ciba, Sandoz, and Chiron Corporation ("Chiron"). Ciba, which owned 46.5% of Chiron's voting stock as of September 30, 1996, participates in the field of gene therapy through Chiron. Under the proposed Order, the companies have agreed to license certain Sandoz and Chiron gene therapy technologies, to divest Sandoz' corn herbicide business, and to divest Sandoz' United States and Canadian flea control business. In addition, the parties have entered into an Agreement to Hold Separate Sandoz's agricultural chemicals business, including herbicides and other pesticides, and Sandoz's flea control business until the required divestitures have been accomplished.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the government or make final the agreement's proposed Order.

On March 6, 1996, Ciba and Sandoz signed a merger agreement providing that both companies will merge to form Novartis AG ("Novartis"). The total value of the stock involved in the transaction is in excess of $63 billion. The merged entity, Novartis, will control worldwide assets valued at approximately $80 billion.

The proposed complaint alleges that the merger violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by lessening competition or tending to create a

monopoly in markets involving three general areas: (1) gene therapy research and development; (2) corn herbicides; and (3) flea control products. According to the complaint, the merger will increase the level of concentration and increase barriers to entry in each of the relevant markets and eliminate Ciba and Sandoz as substantial, independent competitors both for currently marketed products as well as products that are under development.

According to the proposed complaint, entry into the relevant markets would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the merger. Regulations by the Food and Drug Administration ("FDA") covering gene therapy products and systemic flea control products, and by the Environmental Protection Agency ("EPA") covering corn herbicides and externally applied flea control products, create long lead times for the introduction of new products. Additionally, patents and other intellectual property create large and potentially insurmountable barriers to entry.

Gene Therapy Research and Development

The proposed complaint alleges that therapy technology and the research and development of gene therapies constitute relevant markets in which to analyze the effects of the proposed merger. The proposed complaint also alleges that there are four specific gene therapy closet to market use retroviral vectors, the delivery vehicle for genes, to place an HSV-tk gene into the cancerous cells and are anticipated to have sales exceeding $600 million by 2002. HSV-tk gene therapy is also expected to be used to treat graft versus host disease, an acute, chronic and sometimes fatal complication occurring in a significant percentage of all bone marrow transplantations. Gene therapy treatments for hemophilia A are likely to be used prophylactically for many sufferers; in cases of trauma, gene therapy products would likely be used in combination with recombinant and purified Factor VIII proteins. Cancer patients could benefit significantly from gene therapy for chemoresistance by providing protection to patients' blood systems and allowing higher, more effective doses of cancer chemotherapy to be administered. If chemoresistance gene therapy research is successful, sales are projected to exceed $1 billion by 2004.

The complaint alleges that each of the gene therapy markets is highly concentrated and that Ciba/Chiron and Sandoz are two of only a few entities capable of commercially developing a broad range of gene therapy products. Ciba/Chiron and Sandoz control crucial inputs into the development of gene therapy products and the merger creates an unmatchable portfolio of intellectual property assets that are necessary to commercialize gene therapy products. In addition, they both posses the technological, manufacturing, clinical, and regulatory expertise and manufacturing capability to commercially develop gene therapy products. A substantial number of other companies are able to conduct gene therapy research. Without licenses to crucial intellectual property held by Ciba/Chiron and Sandoz, however, these other researchers would not be likely to continue development. The critical intellectual property rights for gene therapy held by Ciba/Chiron and Sandoz include a broad patent covering all ex vivo approaches product markets. These are the markets for the research, development, manufacture and sale of: (1) herpes simplex virus-thymidine kinase ("HSV-tk") gene therapy for the treatment of cancer; (2) HSV-tk gene therapy for the treatment of graft versus host disease; (3) gene therapy for the treatment of hemophilia A; and (4) chemoresistance gene therapy. Sandoz and Ciba/Chiron are two of only a very small number of entities capable of commercially developing gene therapy products. They posses the intellectual property, the technological, manufacturing, clinical, and regulatory expertise, and the manufacturing assets to commercially develop gene therapy products.

Gene therapy involves treating diseases or medical conditions by modifying genes and then inserting the modified genes into a patient's cells. Patients' genes may be altered using one of two broad approaches: ex vivo, outside the body, for subsequent administration into the patient; or in vivo, inside the body, by gene therapy products that are given directly to the patients. Gene therapy research today targets fatal or disabling diseases such as cancer for which there are no current effective treatments and for which no drugs are in advanced development.

While no gene therapy product has yet been approved by the FDA for commercial sale, gene therapy treatments now in clinical trials offer patients the prospect of significant medical improvements or cures for diseases, particularly in oncology, transplantation and central nervous system diseases. Gene therapy may be useful in treating a wide array of diseases and conditions. Sales of all gene therapy products are projected to reach up to $45 billion by 2010.

The first regulatory approvals for commercial sales of gene therapy products, expected by the year 2000, will most likely be in the area of cancer treatment of brain tumors. Gene therapy offers brain cancer patients their first hope of a real cure. The brain cancer gene therapy products used in gene therapy and the use of cytokines, a protein necessary for many ex vivo gene therapy applications that is used to increase the number of cells taken from a patient. The parties also have vital intellectual property rights in retroviral vectors, the only delivery vehicle for gene therapy that has been proven safe and relatively effective.

The complaint alleges that only two companies, Ciba/Chiron and Sandoz, are capable of commercially developing HSV-tk gene therapy products with retroviral vectors and are either in clinical development or near clinical development to treat cancer and to treat graft versus host disease. Similarly, these two companies are the most advanced of all companies capable of commercially developing viral vectors using the Factor VIII gene for the treatment of hemophilia A and using the MDR–1 gene and the MRP gene for the treatment of chemoresistance. In each instance, Ciba/Chiron and Sandoz are either in clinical development or near clinical development for the treatment of these diseases, are the leading commercial developers of these gene therapy technologies and control critical proprietary intellectual property portfolios, including patents, patent applications, and know-how. For example, with respect to the HSV-tk gene therapy products, both Ciba/Chiron and Sandoz control intellectual property portfolios sufficient to make it likely that they could market HSV-tk gene therapy products in competition with one another. The merger would eliminate that competition, and because of the parties' patent portfolios, it is extremely unlikely that any other firm would be able to enter to replace that lost competition.

The complaint alleges that entry into the gene therapy markets requires lengthy FDA approved clinical trials, data collection and analysis, and expenditures of significant resources over may years. No company may reach advanced stages of development in the relevant gene therapy markets without: (1) clinical gene therapy expertise; (2) scientific research that requires years to complete; (3) patent rights to all the necessary proprietary inputs into the gene therapy product sufficient to provide the company with reasonable

assurances of freedom to operate; and (4) clinical grade product manufacturing expertise, regulatory approvals and capacity to complete clinical development. The necessary proprietary inputs may include genes, vectors and vector manufacturing technology, and cytokines.

Ciba/Chiron and Sandoz each possess virtually all of the gene therapy intellectual property needed to ensure their ability to independently perform gene therapy development. Through the merger, the companies' alternative competing gene therapy technologies will be combined, reducing innovation competition. That combination changes the competitive incentives of the merged entity. It will likely lead to a reduction in development of gene therapy products, as the parties combine their research and development pipelines and eliminate or slow down their parallel development projects.

In addition, Novartis, the merged firm, will have a disincentive to license intellectual property rights to or collaborate with other companies as compared to the pre-merger incentives of the independent competitors, Ciba/Chiron and Sandoz. Although Ciba/Chiron and Sandoz had substantial individual intellectual property portfolios pre-merger, they had the incentive and did act as rival centers from which others could obtain needed intellectual property rights. Ciba/Chiron and Sandoz would grant limited intellectual property rights to other developers and researchers in return for receiving marketing or other valuable rights back from them. Consequently, as the complaint alleges, the merger may heighten barriers to entry by resulting in one entity holding so extensive a portfolio of patents and patent applications, of uncertain breadth and validity, as to diminish its incentives to license, thus impeding the ability of other gene therapy researchers and developers to continue developing their products.

To remedy the alleged competitive harm, the proposed Order provides for a set of patent licenses to allow other companies to replace the competition otherwise lost due to the merger. The Commission believes that licensing, rather than divestiture of assets, is sufficient because access to certain key intellectual property rights held by the merged firm is a crucial component of successful commercialization of many potential gene therapy products. Competitors already have (to varying degrees) the hard assets, *e.g.*, production facilities, researchers and scientists, needed to compete. Rivals and other scientists confirm that licensing would enable them to develop gene therapy products and replace the competition lost due to the merger. Further, an asset divestiture might create substantial disruption in the parties' research and development efforts. In this case, therefore, a licensing remedy appears to be the preferred approach to restoring the competition lost by the merger.

The proposed Order includes the following remedy provisions. First, in the research, development, manufacture, and sale of gene therapy, the proposed Order would require Sandoz and Chiron to provide to all gene therapy researchers and developers non-exclusive licenses or sublicenses to certain proprietary and patented technologies essential for the competitive development and commercialization of gene therapy products. In the United States, Chiron owns the rights to commercialize cytokine Interleukin 2 ("IL–2"), and Sandoz has exclusive rights to the Anderson *ex vivo* patent, and claims arising there-under, and owns the rights to cytokines Interleukin 3 ("IL–3") and Interleukin 6 ("IL–6"). Within thirty (30 days of the date the Order becomes final, the companies are required to grant to other gene therapy researchers non-exclusive licenses to each of these essential gene therapy technologies. In addition, each licensee must be given access to drug master files, the data filed with the FDA establishing the safety and purity of these cytokines. These licensing arrangements will remedy the reduction in competition in research and development of gene therapy caused by the merger.

As detailed in the Order, the IL–2, IL–3 and IL–6 cytokines and the Anderson *ex vivo* patent licenses include a right to a royalty payment at low rates (based upon net sales with no minimum amount). In the past, the Commission has had concerns with royalty payments in connection with licenses that are meant to restore competition eliminated by a merger. This is because continuing entanglements between the divesting company and the acquirer might provide opportunities for information exchange between competitors and interfere with their economic incentives to compete vigorously. These risks are relatively slight under the terms of the proposed Order, particularly because of the low royalties and potential number of non-exclusive licenses to the industry required under the proposed Order. In addition, to minimize further the financial relationships and the exchange of competitively sensitive information among Novartis, Chiron and potential competitor-licensees, an independent auditor will be appointed to collect and aggregate the royalty payments. Sandoz, Ciba, Chiron, and Novartis will be prohibited from gaining access to this confidential sales information. Each license will also include a binding arbitration clause to resolve disputes regarding the royalties or any other terms, a provision that further insulates Sandoz, Ciba, Chiron, and Novartis from interactions with the potential licensees.

Second, the proposed Order provides for further remedies regarding the anticompetitive harm alleged with respect to the HSV-tk product markets. Both Sandoz and Ciba/Chiron are developing HSV-tk gene therapies for cancer and graft versus host disease. After the merger, Ciba/Chiron and Sandoz would control dominating intellectual property portfolios for HSV-tk gene therapy. The proposed Order restores the pe-merger incentives for research, development, manufacture and sale of HSV-tk gene therapy products for cancer and graft versus host disease by requiring licensing of the Sandoz' and Chiron's worldwide HSV-tk patent rights, including rights relating to vectors. By September 1, 1997, Sandoz and Chiron each are required to grant a non-exclusive license to Rhône-Poulenc Rorer ("RPR"), with whom Ciba, Sandoz and Chiron have entered into a letter of intent for this purpose. If the agreement between RPR and Ciba, Sandoz, and Chiron were to fall through, Ciba, Sandoz and Chiron would be required to license these assets to another licensee who has received Commission approval by September 1, 1997. Under the terms of the proposed Order, the license granted to RPR, or an alternative licensee, must include the right to sublicense in fields that are not developed by RPR or the licensee, as well as a technology transfer from Sandoz of necessary HSV-tk know-how, including know-how relating to vectors, within one year of execution of the license.

Third, to ensure the continued research, development, manufacture and sale of Factor VIII gene therapy products for the treatment of hemophilia A, the proposed Order requires that by September 1, 1997, Sandoz shall either: (1) convert its exclusive license for the use in gene therapy of the partial Factor VIII gene to a non-exclusive license; or (2) grant to RPR a sublicense to those gene therapy Factor VIII rights. At the option of the sublicensee, Sandoz may be required to provide technical information and know-how relating to Factor VIII gene therapy products.

Finally, to ensure the continued research, development, manufacture and sale of chemoresistance gene

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therapy products in the United States, the proposed Order requires that neither Ciba, Chiron, Sandoz nor Novartis shall acquire exclusive rights in intellectual property and technology related to the MDR–1 and/or MRP genes. With exclusive rights to the genes necessary for this treatment area, both parties would have potentially dominating intellectual property rights for the use of the MDR–1 or MRP chemoresistance genes in gene therapy. The merger combines the parties' two competing chemoresistance gene therapy programs and potentially concentrates the important intellectual property rights for these genes. Thus, the proposed restriction on exclusive licensing of the MDR–1 and MRP genes will ensure access to the chemoresistance genes to at least one other competing company.

The proposed Order also provides for the appointment of a trustee if Novartis and/or Chiron fail to grant any of these licenses within the appropriate time period. In that event, the trustee is authorized to divest either Sandoz' or Chiron's HSV-tk businesses in their entirety.

Corn Herbicides

According to the Commission's proposed complaint, the merger of Ciba and Sandoz into Novartis, absent relief, would have adverse effects on various markets for corn herbicide. United States sales of corn herbicides—chemical products designed to kill or control weeds that interfere with corn production—totaled $1.4 billion in 1995. According to the proposed complaint, the markets for corn herbicide are distinguished by the types of weeds—broadleaf or grass—against which the herbicide is chemically effective as well as by the stage of growth of the corn crop or weed—pre-emergent or post-emergent—at which the herbicide is safe for us on the corn crop and chemically effective against the weeds to be controlled.

The Commission's proposed complaint alleges that Ciba's metolachlor herbicides, sold under the brands Dual® and Bicep®, are the leading corn herbicides for pre-emergent control of grasses. The complaint alleges that Sandoz' recently introduced dimenthenamid grass herbicides, sold under the brands Frontier® and Guardsman®, are gaining share against Ciba's metolachlor grass herbicides.

The complaint also alleges that Sandoz' dicamba herbicides, sold under the brands Banvel®, Marksman®, and Clarity®, are the leading corn herbicides for post-emergent control of broadleaf weeds. According to the complaint Ciba's recently introduced sulfonyl urea broadleaf herbicide, sold under the bran Exceed®, is rapidly gaining share against Sandoz' dicamba broadleaf herbicides, and Ciba and Sandoz recognize that current users of Sandoz' dicamba herbicides are the principal target for expected market share gain by Ciba's Exceed® herbicide. Ciba is also the dominant supplier of atrazine, a broadleaf weed control product that is widely used as a component in premixed herbicide formulations sold by Ciba, Sandoz and their competitors.

According to the complaint, each of the corn herbicide markets is highly concentrated, as measured by the Herfindahl-Hirschman Index ("HHI") and other measures of concentration. Ciba accounts for over 35 percent of corn herbicide sales in the United States and over 40 percent of treated acres, while Sandoz has approximately a 10 percent share by either measure. Further, the complaint alleges that the proposed merger would increase concentration, as measured by the HHI, by approximately 700 points for dollar sales, and by approximately 1000 points for treated acres, to approximately 3000 for sales and approximately 3300 for treated acres.

In the market for pre-emergent treatment of corn acres for grasses, the complaint alleges that Ciba products accounted for over 40 percent and that Sandoz accounted for approximately 3 percent in 1995. The proposed merger would increase concentration in that market, as measured by the HHI, by aprpoximately 300 points to approximately 3400. In addition, in the market for post-emergent treatment of corn acres for broadleaf weeds, the complaint alleges that Sandoz products accounted for over 30 percent and that Ciba's Exceed® brand accounted for approximately 5 percent in 1995. Combining Exceed® and other Ciba products with Sandoz' products, the proposed merger would increase concentration in that market, as measured by the HHI, by approximately 1900 points to over 4000.

The complaint alleges that entry into the corn herbicide markets requires over a decade for chemical synthesis; laboratory and greenhouse testing; formulation; process development; pilot production; pilot trials; field trials; testing for acute, subchronic and chronic toxicity, possible carcinogenic and mutagenic effects and effects on prenatal deformation; environmental toxicology testing; measurement of plant, animal, soil, water and air residues and testing of degradation of plant, animal, soil, and water environment; data collection; product registration and EPA review; construction of production facilities; and use optimization. Further, according to the complaint, once a product is introduced to the market, several years are often required to gain customer acceptance through demonstrated safety, performance and reliability, over a variety of weather conditions.

Additionally, the complaint alleges that, despite the expiration of United States patents on dicamba and metolachlor, post-patent strategies pursued by Ciba and Sandoz, including product reformulation, distribution agreements, purchase and supply contracts with manufacturers, and joint product development agreements, have limited entry of generic competition to Ciba's leading pre-emergent grass herbicides and Sandoz' leading post-emergent broadleaf herbicides.

Further, according to the complaint, supply agreements, joint product development agreements, and joint marketing agreements among producers of corn herbicide increase coordinated interaction and the recognition of mutual interdependence among competitors in each of the relevant markets for corn herbicide.

The complaint further alleges that the proposed merger of Ciba and Sandoz would eliminate Ciba and Sandoz as substantial, independent competitors; eliminate actual, direct, and substantial competition between Ciba and Sandoz, including the reduction in, delay of or redirection of research and development projects; eliminate the potential for increased actual, direct and substantial price competition and cause consumers to pay higher prices for corn herbicides; increase barriers to entry; increase the level of concentration in the corn herbicide markets; increase the merged firm's ability unilaterally to exercise market power in the market for corn herbicide for post-emergent control of broadleaf weeds by combining the two closest substitutes in the market; and increase the likelihood and degree of coordinated interaction between or among competitors in the market for corn herbicide for pre-emergent control of grasses.

The Order accepted for public comment contains provisions that would require Sandoz to divest its corn herbicide business, including Sandoz' dicamba and dimethenamid plants in Beaumont, Texas, and United States and Canadian assets to BASF Aktiengesellschaft ("BASF"), no later than ten days after the Order becomes final, pursuant to an agreement between Sandoz and BASF for approximately $780 million. If, through no fault of Sandoz, BASF fails to acquire the

business, the Order requires Sandoz to divest its corn herbicide business, within sixty days after the Order becomes final, to an alternative acquirer approved by the Commission and in a manner that receives the approval of the Commission, and to divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, independence, viability and competiveness of the divested business. The Order further provides for appointment of a trustee to divest Sandoz' agricultural chemicals business, including herbicides and other pesticides, in the event Sandoz is unable to complete the required corn herbicide divestiture within the specified period.

Flea Control Products

According to the proposed complaint, the proposed merger will have anticompetitive effects in the market for the research, development, manufacture and sale of flea control products in the United States. Flea control products are chemical products designed to treat and prevent flea infestation in cats and dogs. They are sold in various forms, including pills, collars, shampoos, sprays, and foggers and are sold through various channels of distribution: veterinarians, pet specialty stores, lawn and garden centers, mass merchandisers, and grocery stores. The complaint alleges that there are no economic substitutes for flea control products for the treatment and prevention of flea infestation in cats and dogs.

The complaint further alleges that the flea control products market is a very highly concentrated market that had sales in the U.S. of approximately $400 million in 1995. Ciba is the leading developer, manufacturer and seller of flea control products, and Ciba's market share is approximately 50 percent. Ciba's Program® brand flea control products have a dominant share of the flea control products market. Sandoz ranks second in flea control products sales from sales of its flea control products, under the Vetkem® and Zodiac® brands, and from sales of the active ingredient, methoprene, used by other companies in flea control products. The complaint also alleges that, prior to the merger, Sandoz and Ciba were both developing additional flea control products, which likely would be in direct and substantial competition with each others' products.

The proposed complaint alleges that entry into the flea control products market requires over a decade for chemical synthesis, lengthy clinical trials, data collection and analysis, and expenditures of significant resources over many years as well as qualified manufacturing facilities in Order to achieve the required EPA or FDA approvals for commercial sale of these products. Once a product is introduced to the market, extensive sunk costs must be incurred for advertising and promotion to gain significant customer and pet owner acceptance. Despite the expiration of United States patents on methoprene, the base active ingredient used in Sandoz' second generation flea control products, the EPA registrations and proprietary technology involved in the production of methoprene have prevented entry of generic competition to Sandoz' flea control products.

The complaint further alleges that the proposed merger of Ciba and Sandoz would increase the merged firm's ability unilaterally to exercise market power in the flea control products market by combining the two closest substitutes in the market. According to the complaint, the proposed merger would increase the likelihood of coordinated interaction between or among competitors in the flea control products market and eliminate the potential for actual, direct and substantial price competition between them. Consumers would then pay higher prices for flea control products and would not receive the benefits of innovation competition among producers of flea control products.

The proposed Order seeks to remedy the anticompetitive effects of the proposed merger by requiring Sandoz to divest its flea control business for the United States and Canada. Under the Order, the Sandoz flea control business and the Sandoz Dallas facility, which is largely devoted to production of flea control products for the United States and Canada, must be sold to Central Garden and Pet Supply ("Central Garden") within thirty days after the Order becomes final pursuant to an agreement between Central Garden and Sandoz that will be modified to conform to the terms of the consent Order. Alternatively, Novartis is required by the Order to divest the assets to an alternative acquirer that has received Commission approval, within ninety days after the Order is final. The Order further provides for appointment of a trustee to divest these assets in the vent Sandoz is unable to complete the required divestiture within the specified period. Ciba, Sandoz, and Novartis have entered into an agreement to hold these assets separate from the rest of Ciba, Sandoz, and Novartis pending completion of the divestiture.

The proposed Order also includes a technology transfer agreement to enable the acquirer to produce its own methoprene, the principal active ingredient in the products to be sold pursuant to the Order, as well as a temporary supply agreement to provide methoprene to the acquirer until its own manufacturing capability has achieved necessary government approvals. Some products currently produced at the Dallas facility that are manufactured for sale outside the United States and Canada may continue to be manufactured for Sandoz on behalf of the acquirer for two years.

To ensure the viability of the flea products acquirer, Novartis is prohibited from re-entering the U.S. market with a methoprene-based flea control product for six years. In addition, Novartis is required under the proposed Order to notify the Commission if it plans to acquire flea control assets in the U.S. during the next ten years.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way its terms.

Benjamin I. Berman,

Acting Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga in Ciba Geigy Limited, File No. 961–0055

The Commission today accepts a proposed consent order for public comment to settle allegations that the planned merger of Ciba Geigy Ltd. and Sandoz Ltd. would violate Section 7 of the Clayton Act in certain agricultural chemical, pet flea control and gene therapy markets.

There appears to be reason to believe that the proposed merger would be unlawful in the corn herbicide and flea control markets identified in the complaint and that divestiture in each market is the appropriate remedy. Because BASF makes and sells a specialized corn herbicide, the proposed divestiture of Sandoz's corn herbicide business to BASF would not entirely restore pre-merger conditions, but BASF's product is sufficiently differentiated from the divested assets that the minor overlap does not appear to be significant.

It is premature, in my view, to select Central Garden and Pet Supply to acquire Sandoz's flea control business, because the Commission has virtually no information about Central beyond that contained in the proposed order and the Analysis To Aid Public Comment. While the early identification of a candidate to acquire assets to be

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divested under an order is to be preferred in order to restore competition quickly, the Commission does not yet have the information to evaluate the competitive implications of a proposed divestiture to Central Garden and Pet Supply.

The alleged gene therapy markets involve products now in clinical trials and others that appear to be more distant in time and perhaps more speculative. The proposed complaint also alleges a technology market, comprising the technology that firms use to develop gene therapies. The theory is that the post-merger combination of Sandoz and Ciba Geigy will control such a critical mass of proprietary information that its incentives to cross license will be diminished, either deterring entry or raising the price of it. I would be interested in public comment on these allegations.

Assuming a violation, it is not entirely clear that the proposed licensing relief is preferable or adequate. A divestiture is the preferred remedy in a Section 7 case. The proposed order, among other things, requires a license of the ex vivo patent, also called the Anderson patent, which was licensed to Sandoz by the National Institutes of Health. The merger does not add to the scope of the patent monopoly, and I see no basis in the proposed complaint for this aspect of the relief. Nor is there any apparent reason why a divestiture in these markets could not be accomplished. I look forward to reviewing the comments on this issue as well.

[FR Doc. 97–5 Filed 1–2–97; 8:45 am]
BILLING CODE 6750–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.
ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, January 17, 1997, from 9:00 A.M. to 4:00 P.M. in room 7C13 of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss (1) comments received on the Cost of Capital document, (2) social insurance, (3) Interpretation follow-up, and (4) future agenda items. Also, three new members will be introduced, who will be replacing three retiring members.

Any interested person may attend the meeting is an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Acting Executive Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: December 30, 1996.

Wendy M. Comes,

Acting Executive Director.

[FR Doc. 97–71 Filed 1–2–97; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96S–0285]

Establishment of a Public Docket for Documents and Other Information Pertaining to Exports and Import-for-Export of Certain FDA-Regulated Products Under the FDA Export Reform and Enhancement Act of 1996

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a public docket for documents and other information pertaining to the export and the import-for-export of certain FDA-regulated products (such as drugs, biologics, and devices) under the FDA Export Reform and Enhancement Act of 1996. This action will ensure that this information is equally available to all interested persons on a timely basis.

ADDRESSES: The public docket is available under the docket number found in brackets in the heading of this notice and is located in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The public docket may be reviewed between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: On April 26, 1996, the President signed the FDA Export Reform and Enhancement Act of 1996 (Pub. L. 104–134) into law. This law significantly alters the statutory requirements for the export of unapproved drugs (including biologics and animal drugs) and devices. The law also permits the importation of components of drugs and devices and food additives, color additives, and dietary supplements into the United States if those components are incorporated into articles ("import-for-export") that are exported in accordance with the Federal Food, Drug, and Cosmetic Act, as amended.

On August 6, 1996, the President signed Pub. L. 104–180, which included, in section 603, minor technical amendments. The public may obtain a document that sets forth the current statutory provisions (combining the pre-existing law with the amendments made in April and August 1996) on FDA's home page on the Internet (www.FDA.gov).

FDA employees, in the usual discharge of their responsibilities and in response to inquiries and requests from companies, firms, and trade associations, often provide information on FDA's export and import activities. The information provided often addresses historical and current information on statutory or regulatory requirements and on current FDA export and import policies and programs.

To help make information regarding FDA's interpretation and implementation of the FDA Export Reform and Enhancement Act of 1996 available to all interested persons, FDA has developed a mechanism for providing public access to relevant documents and other information created by FDA employees. Specifically, FDA has created a public docket where documents, such as letters on the export of unapproved drugs for investigational use and sent by FDA to various companies and trade associations and guidance to field personnel concerning procedures for articles imported for manufacturing and subsequent export, will be maintained. The documents placed in the public docket are not intended to create or confer any rights for or on any person and do not operate to bind or otherwise obligate or commit FDA or the public to the views expressed. Instead, the documents represent either the agency's current thinking on a particular issue at the time the document was created or at best the best advice of that employee at that time on the issue. (See 21 CFR 10.85(k)).

To ensure that the information in the public docket is kept current, FDA will remove information in the docket that is more than 3 years old. FDA will review the public docket annually to determine its usage; if FDA determines that it is not being used, FDA will discontinue its use.

The public docket is available for public review in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–35 Filed 1–2–96; 8:45 am]

BILLING CODE 4160–01–F

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 19, 1996 (61 FR 67020). The document announced a meeting of the FDA standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications, establishment license applications, and biologics license applications. The agency inadvertently omitted two sentences. This document corrects that error.

DATES: The meeting will be held on January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3079.

In FR Doc. 96–32272, appearing on page 67020 in the **Federal Register** of Thursday, December 19, 1996, the following correction is made: On page 67020, in the 2d column, under the **SUPPLEMENTARY INFORMATION** caption, in the 3d paragraph, in the 11th line, the sentences "If there are no RTF decisions to review, however, the meeting may be cancelled. Publication of any meeting cancellation will be made only as time permits." are added at the end of the paragraph.

Dated: December 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–91 Filed 1–2–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket Nos. 96N–0325 and 96N–0335]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the reinstatement of four collections of information have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval numbers.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 1996 (61 FR 55805 and 55807), the agency announced that the following proposed information collections had been submitted to OMB for review and clearance:

1. Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers—(21 CFR 108.25(c)(1), (c)(2), (d), (e), (f), and (g); 108.35(c)(1), (c)(2), (d), (e), (f), and (h); 113.60(c); 113.83; 113.87; 113.89; 113.100; 114.80(b); 114.89; and 114.100(a) through (d));

2. Temporary Marketing Permit Applications—(21 CFR 130.17(c) and (i));

3. State Petitions for Exemption From Preemption—(21 CFR 100.1(d)); and

4. State Enforcement Notification—(21 CFR 100.2(d)).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the reinstatement of the information collections and has assigned OMB control numbers as follows:

For Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers, OMB has approved the reinstatement and assigned OMB control number 0910–0037. The approval expires on November 30, 1999.

For Temporary Marketing Permit Applications, OMB has approved the reinstatement of the information collection and assigned OMB control number 0910–0133. The approval expires on November 30, 1999.

For State Petitions for Exemption From Preemption, OMB has approved the reinstatement of the information collection and assigned OMB control number 0910–0277. The approval expires on November 30, 1999.

For State Enforcement Notification, OMB has approved the reinstatement of the information collection and assigned OMB control number 0910–0275. The approval expires on November 30, 1999.

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Under 5 CFR 1320.5(b), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: December 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–36 Filed 1–02–96; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444 / 800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263 / 800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–4700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/ 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/ 800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and

Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999–LABS
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 702–334–3400
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–0289/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, TX 77555–0551, 409–772–3197

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–109 Filed 1–2–97; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–4200–N–01]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

DATES: Comments due date: February 3, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 24, 1996.

Kay Weaver,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Customer Satisfaction Survey.

Office: Government National Mortgage Association.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed Use: The purpose of this information collection will be to evaluate existing Government National Mortgage Association (Ginnie Mae) services and programs. This request to conduct the Ginnie Mae customer satisfaction survey is in response to Executive Order 12862 on setting customer driven standards. The survey will be used to evaluate what benefits would be needed to understand and satisfy the customers.

Form Number: None.

Respondents: Not-For-Profit Institutions and State, Local, or Tribal government

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	520	....	1	....	.25	....	130

Total Estimated Buden Hours: 130.

Status: New.

Contact: Sonya Suarez, HUD, (202) 708–2772 x4772, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 24, 1996.

[FR Doc. 97–17 Filed 1–2–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4124–N–19]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708– 1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 27, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–26 Filed 1–2–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Lake Clark National Park and the Chairperson of the Subsistence Resource Commission for Lake Clark National Park announce a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Chairman's welcome.

(2) Introduction of Commission members and guests.

(3) Review agenda.

(4) Approval of minutes of last meeting.

(5) Old business:

a. Update of roster regulation.

(6) New business:

a. Discussion of Commission appointments.

b. Review of 1997–98 proposals to change federal subsistence regulations.

c. Discussion of NPS position paper.

(7) Agency and public comments.

(8) Determine time and date of next meeting.

(9) Adjourn.

DATE: The meeting will be held Wednesday, January 15, 1997. The meeting will begin at 10 a.m. and conclude around 5 p.m.

LOCATION: The meeting will be held at the Lake Clark National Park Visitor Center, Port Alsworth, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, Lake Clark National Park and Preserve, 4230 University Drive, #311, Anchorage, Alaska 99508. Phone (907) 271–3751.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Field Director.

[FR Doc. 97–68 Filed 1–2–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on January 13, 1997, from 10:00 am until 5:00 pm at The Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the June 1996 meeting; a review of DAB Calendar of Events through March 1997; a review and discussion of outstanding standards from last meeting and standards referred for further detail; a presentation by the American Society of Crime Lab Directors; and a presentation concerning the National Forensic Science Training Center.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½" × 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Randall S. Murch, Chief, Scientific Analysis Section, Laboratory Division, Tenth Street Northwest, Washington, D.C. 20535, (202) 324–4416, FAX (202) 324–1462.

Dated: December 24, 1996.

Randall S. Murch,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 97–86 Filed 1–2–97; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 275a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY960004 (March 15, 1996)
- NY960005 (March 15, 1996)
- NY960008 (March 15, 1996)
- NY960010 (March 15, 1996)
- NY960013 (March 15, 1996)
- NY960018 (March 15, 1996)
- NY960019 (March 15, 1996)
- NY960026 (March 15, 1996)
- NY960033 (March 15, 1996)
- NY960039 (March 15, 1996)
- NY960040 (March 15, 1996)
- NY960045 (March 15, 1996)
- NY960048 (March 15, 1996)
- NY960049 (March 15, 1996)
- NY960050 (March 15, 1996)
- NY960051 (March 15, 1996)
- NY960067 (March 15, 1996)
- NY960075 (March 15, 1996)

Volume II

Pennsylvania
- PA960004 (March 15, 1996)
- PA960042 (March 15, 1996)

Volume III

Georgia
- GA960003 (March 15, 1996)
- GA960004 (March 15, 1996)
- GA960022 (March 15, 1996)
- GA960023 (March 15, 1996)
- GA960031 (March 15, 1996)
- GA960032 (March 15, 1996)
- GA960033 (March 15, 1996)
- GA960044 (March 15, 1996)
- GA960050 (March 15, 1996)
- GA960065 (March 15, 1996)
- GA960073 (March 15, 1996)
- GA960084 (March 15, 1996)
- GA960085 (March 15, 1996)
- GA960086 (March 15, 1996)
- GA960087 (March 15, 1996)
- GA960088 (March 15, 1996)

Volume IV

Michigan
- MI960001 (March 15, 1996)
- MI960002 (March 15, 1996)
- MI960030 (March 15, 1996)
- MI960062 (March 15, 1996)

Volume V

Nebraska
- NE960001 (March 15, 1996)
- NE960003 (March 15, 1996)
- NE960005 (March 15, 1996)
- NE960007 (March 15, 1996)
- NE960010 (March 15, 1996)
- NE960011 (March 15, 1996)
- NE960038 (March 15, 1996)
- NE960058 (March 15, 1996)
- NE960059 (March 15, 1996)

Volume VI

California
- CA960001 (March 15, 1996)
- CA960002 (March 15, 1996)
- CA960027 (March 15, 1996)
- CA960028 (March 15, 1996)
- CA960031 (March 15, 1996)
- CA960032 (March 15, 1996)
- CA960033 (March 15, 1996)
- CA960034 (March 15, 1996)
- CA960035 (March 15, 1996)
- CA960036 (March 15, 1996)
- CA960037 (March 15, 1996)
- CA960038 (March 15, 1996)
- CA960039 (March 15, 1996)
- CA960040 (March 15, 1996)
- CA960041 (March 15, 1996)
- CA960042 (March 15, 1996)
- CA960047 (March 15, 1996)
- CA960069 (April 12, 1996)
- CA960100 (December 27, 1996)
- CA960105 (December 27, 1996)
- CA960109 (December 27, 1996)
- CA960110 (December 27, 1996)

Idaho
- ID960001 (March 15, 1996)
- ID960003 (March 15, 1996)
- ID960014 (March 15, 1996)

Montana
- MT960001 (March 15, 1996)

Washington
- WA960005 (March 15, 1996)

Wyoming
- WY960004 (March 15, 1996)
- WY960009 (March 15, 1996)
- WY960021 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 26th day of December 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–25 Filed 1–2–97; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

This notice amends a petition document listed below to include the mandatory safety standard. This document was published in the **Federal Register** on December 4, 1996 (61 FR 64374). The standard was inadvertently left out of the previous notice.

Mountain Coal Company (Correction)

[Docket No. M–96–104–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.503) (permissible electric face equipment; maintenance) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use 1,100 feet of 2/0, type SHD–GC cable on continuous miners, 1,000 feet of #2, type GC cable on roof bolters, and 1,000 feet of #2, type SHD–GC cable on auxiliary face fans. The petitioner states that the maximum circuit breaker instantaneous settings for the cables would be 1,500 amperes, 800 amperes and 800 amperes respectively. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

The following parties have filed the petitions listed below to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Minton Hickory Coal Company

[Docket No. M–96–143–C]

Minton Hickory Coal Company, P.O. Box 1733, Corbin, Kentucky 40702 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its Mine No. 9 (I.D. No. 15–17691) located in Knox County, Kentucky. The petitioner proposes to install two five pound or one ten pound portable fire extinguisher in the operator deck of each Mescher Tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; and to have the equipment operator inspect each fire extinguisher daily prior to entering the escapeway. The petitioner asserts that this petition is based on the safety of the miners involved at the mine.

2. Minton Hickory Coal Company

[Docket No. M–96–144–C]

Minton Hickory Coal Company, P.O. Box 1733, Corbin, Kentucky 40702 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 9 (I.D. No. 15–17691) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that this petition is based on the safety of the miners involved at the mine.

3. F–M Coal Company

[Docket No. M–96–145–C]

F–M Coal Company, P.O. Box 1733, Corbin, Kentucky 40702 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 2 (I.D. No. 15–17812) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that this petition is based on the safety of the miners involved at the mine.

4. F–M Coal Company

[Docket No. M–96–146–C]

F–M Coal Company, P.O. Box 1733, Corbin, Kentucky 40702 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its Mine No. 2 (I.D. No. 15–17812) located in Knox County, Kentucky. The petitioner proposes to install two five pound or one ten pound portable fire extinguisher in the operator deck of each Mescher Tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; and to have the equipment operator inspect each fire extinguisher daily prior to entering the escapeway. The petitioner asserts that this petition is based on the safety of the miners involved at the mine.

5. Old Ben Coal Company

[Docket No. M–96–147–C]

Old Ben Coal Company, P.O. Box 456, Coulterville, Illinois 62237 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Ziegler No. 11 Mine (I.D. No. 11–02408) located in Randolph County, Illinois. The petitioner proposes to use contactors capable of dropping out at 40–60 percent the voltage loss on belt starting equipment in the Mine's New Main East and New Main South Development areas instead of using undervoltage release breakers for undervoltage protection. The petitioner has outlined in the petition specific procedures to be followed when implementing its proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Jim Walter Resources, Inc.

[Docket No. M–96–148–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 7 Mine (I.D. No. 01–01401) located in Tuscaloosa County, Alabama. The petitioner requests that Paragraph 9 of the Proposed Decision and Order for granted petition, Docket No. M–85–09–C, be amended as follows: The high-voltage circuit from the longwall power center to the longwall controller shall be provided with short circuit protection set at not more than 2,500 amperes or the value of current indicated in the longwall approval plan. A time delay of not more than 0.25 second shall be permitted for coordination with downstream short-circuit protection devices or the time delay specified in the Longwall Approval Plan. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Eighty-Four Mining Company

[Docket No. M–96–149–C

Eighty-Four Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Mine No. 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to use non-permissible submersible pumps to dewater a sump in which it is installed. The petitioner states that the pumps would be operated on a 480-volt three-phase alternating-current electrical power circuit with power supplied from a resistor grounded wye transformer and protected with a line power ground fault, pilot combination unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Eighty-Four Mining Company

[Docket No. M–96–150–C]

Eighty-Four Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.512 (electrical equipment) to its Mine No. 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to use non-permissible submersible pumps to dewater a sump in which it is installed. The petitioner states that the pumps would be operated on a 480-volt three-phase alternating-

current electrical power circuit with power supplied from resistor grounded wye transformer and protected with a line power ground fault, pilot combination unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Costain Coal, Inc.

[Docket No. M–96–151–C]

Costain Coal, Inc., P.O. Box 448, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.312(d) (main mine fan and examinations and records) to its Wheatcroft Mine (I.D. No. 15–13920) and its Baker Mine (I.D. No. 15–14492) both located in Webster County, Kentucky. The petitioner proposes to test the automatic closing doors every thirty-one (31) days by de-energizing the operating fan along with simultaneously starting the idle fan and then observe the previously operating fan for proper operation as the previously idle fan powers up and maintains ventilation without materially affecting the system. The petitioner states that both fans would be set up with the same blade setting and a visual indicator that shows when the anti-reversal doors are open or closed; and that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Road Fork Development Company

[Docket No. M–96–152–C]

Road Fork Development Company, P.O. Box 565, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Calloway Mine (I.D. No. 15–17252); its Pegs Branch Mine (I.D. No. 15–17541); its Burnwell Energy Mine (I.D. No. 15–16599); and its Extra Energy Mine (I.D. No. 15–15386) all located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Boone Resources, Inc.

[Docket No. M–96–153–C]

Boone Resources, Inc., 1051 Oak Mountain Drive, Pelham, Alabama 35124 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Boone No. 1 Mine (I.D. No. 01–02908) located in Shelby County, Alabama. The petitioner requests a modification of the standard to permit the use of belt air to provide ventilation for the sections and possibly a longwall system in the future. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake aircourses. The petitioner asserts that the terms and conditions in this petition would ensure that the high level of safety standards that Boone No. 1 has provided to its workforce in the past will be maintained.

12. Costain Coal, Inc.

[Docket No. M–96–154–C]

Costain Coal, Inc., P.O. Box 448, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examinations) to its Smith Underground No. 1 Mine (I.D. No. 15–16020) located in Webster County, Kentucky. Due to a roof fall, one of the seals in the 1st South seals off the South Main of the mine cannot be examined safely. The petitioner proposes to continuously monitor the air passing by the seals to determine the levels of methane, carbon monoxide, and oxygen. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Road Fork Development Company

[Docket No. M–96–155–C]

Road Fork Development Company, P.O. Box 565, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Calloway Mine (I.D. No. 15–17252); its Pegs Branch Mine (I.D. No. 15–17541); its Burnwell Energy Mine (I.D. No. 15–16599); and its Extra Energy Mine (I.D. No. 15–15386) all located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of the mines. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Rawl Sales and Processing Company

[Docket No. M–96–156–C]

Rawl Sales and Processing Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.901(a) (protection for low- and medium-voltage three-phase circuits used underground) to its Tall Timber Mine (I.D. No. 15–13720) located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of the mine. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

15. Crystal Fuels Company

[Docket No. M–96–157–C]

Crystal Fuels Company, P.O. Box 269, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 46–03408) located in Mingo County, West Virginia. The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Vantage Mining Company

[Docket No. M–96–158–C]

Vantage Mining Company, P.O. Box 780, Matewan, West Virginia has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 46–01939) located in Wayne County, West Virginia. The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult

removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Rawl Sales and Processing Company

[Docket No. M–96–159–C]

Rawl Sales Processing Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Tall Timber Mine (I.D. No. 15–13720) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Sycamore Fuels, Inc.

[Docket No. M–96–160–C]

Sycamore Fuels, Inc., P.O. Box 703, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 46–01756) located in Mingo County, West Virginia. The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Rawl Sales and Processing Company

[Docket No. M–96–161–C]

Rawl Sales and Processing Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Rocky Hollow Mine (I.D. No. 46–05195) located in Mingo County, West Virginia. The petitioner proposes to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Cyprus Shoshone Coal Corporation

[Docket No. M–96–162–C]

Cyprus Shoshone Coal Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Shoshone No. 1 Mine (I.D. No. 48–01186) located in Carbon County, Wyoming. The petitioner proposes to use an extendable 20-foot probe to take methane tests. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. Cyprus Plateau Mining Corporation

[Docket No. M–96–163–C]

Cyprus Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.362 (on-shift examination) to its Star Point No. 2 Mine (I.D. No. 42–00171) located in Carbon County, Utah. The petitioner proposes to use an extendable 20-foot probe to take methane tests. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

22. Twentymile Coal Company

[Docket No. M–96–164–C]

Twentymile Coal Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use an extendable 20-foot probe to take methane tests. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

23. Bar-K, Inc.

[Docket No. M–96–165–C]

Bar-K, Inc., P.O. Box 8, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Camp Creek No. 1 Mine (I.D. No. 46–08523), and its Sugar Tree No. 1 Mine (I.D. No. 46–08573) both located in Boone County, West Virginia. The petitioner proposes to use a threaded ring and a spring loaded device on battery plug connectors on mobile battery-powered machines used inby the last open cross-cut to prevent the plug connector from accidently disengaging while under load instead of using a padlock. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1997. Copies of these petitions are available for inspection at that address.

Dated: December 20, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–69 Filed 1–2–97; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Issued Under the Antarctic Conservation Act of 1978, Public Law 95–541

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy or Robert S. Cunningham, Permit Office, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Rm 755, Arlington, VA 22230, telephone: (703) 306–1033.

SUPPLEMENTARY INFORMATION: On November 20, 1996, the National Science Foundation published a notice in the **Federal Register** of waste management permit applications received from Quark Expeditions for the operation of field support incidental to shipboard tour operations in Antarctica and for operation of a small research camp at Cape Shirreff, Livingston Island, Antarctica by Dr. Rennie S. Holt. The waste management permits authorize activities as described in permit applications on file at the Office of Polar Programs. These files may be viewed during normal business hours. The effective date of each waste management permit is December 27, 1996 to April 30, 2001.

Robert S. Cunningham,

Environmental Compliance Manager, Office of Polar Programs, National Science Foundation.

[FR Doc. 97–28 Filed 1–2–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR)–(61).

Date and Time: January 22–23, 1997, 8:00 a.m.–5:00 p.m.

Type of Meeting: Open.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Cheryl Albus, SBIR Program Coordinator, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda

January 22, 1997, Room 1235

8:00 a.m. to 8:30 a.m.—Welcome and Introductions
8:30 a.m. to 12:00 noon—Review and Discussion of Programs
- •SBIR Phase I
- •SBIR Phase II
- •STTR Phase I/II

12:00 noon to 1:30 p.m.—Lunch
1:30 p.m. to 3:30 p.m.—Discussion of Program Issues
3:30 p.m. to 3:45 p.m.—Break
3:45 p.m. to 5:00 p.m.—Further Discussions
5:00—Adjourn

January 23, 1996—Room 1235

8:00 a.m. to 10:00 a.m.—Preparation of Committee Report
10:00 a.m. to 10:30 a.m.—Break
10:30 a.m. to 12:30 p.m.—Feedback from Committee
12:30 p.m.—Adjourn

Dated: December 30, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–27 Filed 1–2–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit 1; Issuance of Partial Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has issued a Partial Director's Decision with regard to a Petition dated August 21, 1995, and supplemented on August 28, 1995, submitted by Mr. George Galatis and We the People, Inc. (the Petitioners), requesting action under 10 CFR 2.206. The Petition pertains to Millstone Nuclear Power Station, Unit 1, operated by Northeast Nuclear Energy Company (Licensee).

The Petitioners requested that the NRC (1) suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the license and the design basis; (2) revoke the operating license until the facility is in full compliance with the terms and conditions of its license; (3) perform a detailed independent analysis of the offsite dose consequences of the total loss of spent fuel pool water; and (4) take enforcement action pursuant to 10 CFR 50.5 and 50.9. As bases for their requests, the Petitioners raised the following three issues: (1) The Licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendments Nos. 39 and 40; (2) License Amendments Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the Licensee in documents submitted to the NRC; and (3) the license amendment proposed in a letter dated July 28, 1995, should be denied and the Licensee should be required to operate in full conformance with License Amendment No. 40. Issue 3 was determined to be a request for a licensing action and so was beyond the scope of 10 CFR 2.206.

The Acting Director of the Office of Nuclear Reactor Regulation has partially granted Requests 1, 2, and 3 of the Petition. The reasons for this decision are explained in the "Partial Director's Decision Pursuant to 10 CFR 2.206" (DD–96–23), the complete text of which follows this notice. With regard to Petitioner's Request 4, the NRC staff activities are not yet complete. A Final Director's Decision will be issued upon completion of NRC activities in this area.

A copy of this Partial Director's Decision will be available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of this Partial Director's Decision has been filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c) of the Commission's regulations. This Decision will become the final action of the Commission (for Petitioners' requests dispositioned in this Partial Director's Decision) 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of December 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

Partial Director's Decision Under 10 CFR 2.206

I. Introduction

On August 21, 1995, Mr. George Galatis and We the People, Inc. (Petitioners), filed a Petition with the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). A supplement to the Petition was submitted on August 28, 1995. These two submittals will hereinafter be referred to as the "Petition."

The Petition raised three issues regarding the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), operated by Northeast Nuclear Energy Company (NNECO or Licensee). First, Petitioners asserted that the Licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendments Nos. 39 and 40. Specifically, Petitioners assert that NNECO has offloaded more fuel assemblies into the Millstone Unit 1 spent fuel pool (SFP) during refueling outages than permitted under these license amendments. Second, Petitioners asserted that License Amendments Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the Licensee in documents submitted to the NRC. Third, the license amendment proposed by the Licensee in a letter dated July 28, 1995, regarding offloading of the entire core of spent fuel assemblies at Millstone Unit 1 should be denied and the Licensee should be required to operate in full conformance with License Amendment No. 40.

On the basis of these assertions, the Petitioners requested that the NRC institute a proceeding under 10 CFR 2.202 to suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the license and the design basis and to revoke the operating license for the Millstone Unit 1 facility until it is in full compliance with the terms and conditions of its license. Petitioners also requested that before reinstatement of the license, a detailed independent analysis of the offsite dose consequences of the total loss of SFP water be conducted and that the NRC take enforcement action against NNECO pursuant to 10 CFR 50.5 and 50.9. Finally, Petitioners requested that the license amendment sought by NNECO be denied.

By letter dated October 26, 1995, the NRC informed the Petitioners that the Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 of the Commission's regulations for preparation of a response. The NRC also informed the Petitioners that the NRC staff would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. Additionally, the Petitioners were informed that their request with regard to issues associated with the requested license amendment (i.e., Petitioners' third issue) was not within the scope of 10 CFR 2.206 and thus was not appropriate for consideration under 10 CFR 2.206. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–81–6, 13 NRC 443 (1981).[1] Therefore, this issue will not be addressed in this or any subsequent Director's Decision.

Petitioners' supplement of August 28, 1995, provided additional information. A portion of the Petitioners' supplemental letter of August 28, 1995, contained assertions relating to the third issue. Specifically, regarding Millstone Unit 3, the Petitioners asserted that there is a material false statement in a submission used to support a previous license amendment and that there is an unanalyzed condition in the Updated Final Safety Analysis Report (UFSAR) with regard to system piping not being analyzed for the full-core offload normal end-of-cycle event. Also, with regard to Seabrook Station Unit 1, Petitioners asserted that there are Technical Specification violations related to criticality analysis and gaps in Boraflex material. As the third issue is outside the scope of 10 CFR 2.206, these assertions will not be addressed in this or subsequent Director's Decisions. However, the staff is reviewing these assertions and the staff's findings will be forwarded to the Petitioners by separate correspondence.

Petitioners' supplemental letter also provided additional information on the first issue. Specifically, the Petitioners asserted that the licensees for Millstone Units 2 and 3 and Seabrook Unit 1 also performed full-core offloads in violation of their licenses. These assertions will be addressed in this Partial Director's Decision.

Petitioners' issues 1 and 2 assert wrongdoing on the part of the Licensee. The NRC staff has not yet completed its review of possible wrongdoing on the part of the Licensee and will address this issue in a subsequent Director's Decision.

The NRC staff has, however, completed its technical assessment of core offloading practices at Millstone Units 1, 2, and 3 and Seabrook Unit 1 and these areas are discussed below. As explained below, the NRC staff has taken actions that, in part, address the Petitioners' requests.

II. Discussion

A. Requests To Revoke and Suspend the Operating License for Millstone Unit 1

The Petitioners based their requests on their issues that the Licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendments Nos. 39 and 40 and that License Amendments Nos. 39 and 40 for Millstone Unit 1 are based on material false statements. Specifically, the Petitioners stated that the Licensee conducted full-core offloads as a routine practice when its licensing basis analyses assumed one-third core offloads as the normal refueling practice. In their August 28 supplemental letter, the Petitioners asserted that the licensees for Millstone Units 2 and 3 and Seabrook Unit 1 also performed full-core offloads in violation of their licenses. The Petitioners further contend that the Licensee's actions subjected the public to an unacceptable risk. As previously noted, the wrongdoing aspects of the Licensee's actions will not be addressed in this Director's Decision. However, the technical aspects associated with core offloading practices will be addressed in the following paragraphs. For perspective, the NRC staff's conclusions are prefaced by an abbreviated history of this issue.

On October 18, 1993, the Licensee issued Licensee Event Report (LER) 93–11. The LER stated that the Licensee had made inappropriate assumptions in the analysis that was performed in support of License Amendment No. 40 for Millstone Unit 1. Specifically, the normal refueling analysis assumed a one-third core offload when Unit 1 routinely performed full-core refueling offloads. Following issuance of LER 93–11, the Licensee conducted refueling

[1] Petitioners' concerns related to the license amendment were considered by the NRC staff during the license amendment review process. A license amendment was issued by the NRC staff on November 9, 1995. A number of petitioners, including We the People, Inc., sought to intervene in the license amendment proceeding. Two petitioners, including We the People, Inc., were found to have standing to intervene and were admitted to the proceeding subject to the filing of at least one admissible contention. Based upon confirmation by counsel for these petitioners that no contention would be filed, the Atomic Safety and Licensing Board terminated the proceeding on April 15, 1996.

outage (RFO) 14 in 1994. The Licensee used a waiting period between the one-third core offload and the full-core offload during RFO 14 to ensure that the SFP bulk temperature remained within the temperature design parameters identified in LER 93–11 and the UFSAR.

On April 22, 1994, the NRC issued Inspection Report (IR) 50–245/94–01, 50–336/94–01, and 50–423/94–01. The NRC staff's review of LER 93–11 was included in this inspection report. The NRC staff found that the Licensee for Millstone Unit 1 had historically removed all of the fuel assemblies to the SFP during refueling outages. The NRC staff noted that this operating practice was not consistent with the spent fuel analysis design-basis assumptions in the UFSAR. Therefore, the NRC staff concluded that the Licensee had failed to maintain spent fuel analysis design assumptions in plant operating practices. However, because the violation was a Licensee-identified Severity Level IV violation meeting the criteria set out in Section VII.B of the NRC Enforcement Policy,[2] a Notice of Violation was not issued. The purpose of this policy regarding NRC discretion for citing violations is to encourage and support licensee initiatives for self-identification and correction of problems.[3]

From July 10 through July 14, 1995, the NRC staff conducted a safety inspection of several previously identified technical issues at Millstone Units 1, 2, and 3, including the Licensee's refueling offload practices that were reviewed previously. The results of the inspection were documented in NRC IR 50–245/95–28, 50–336/95–28, and 50–423/95–28 issued on September 1, 1995. The staff noted that during RFOs 12, 13, and 14, the Licensee performed full-core offloads at Millstone Unit 1. The staff concluded that these outages may have been performed outside the design basis of Millstone Unit 1. The staff also concluded that the Licensee did not completely and accurately describe in its submittals for License Amendments Nos. 39 and 40 the refueling activities as they were actually conducted. The Licensee was routinely performing full-core offloads during refueling outages, but the amendment submittals stated that "normal" refueling offloads were one-third core offloads. Enforcement action associated with the staff's findings will be taken, as appropriate, upon final resolution of the Petitioners' contentions regarding possible wrongdoing.

On July 28, 1995, the Licensee requested a license amendment to use full-core offloads as the normal refueling practice at Millstone Unit 1. The Licensee proposed plant modifications to support this license amendment. The staff granted the Licensee's amendment request on November 9, 1995. The NRC's approval of the Licensee's request was based on design changes, procedure revisions, and enhanced administrative controls that did not exist during prior refueling activities. In the cover letter forwarding the granted license amendment, the staff noted that NNECO's design and operational practices for full-core offloads were more conservative than NRC recommendations and industry standards.

On November 4, 1995, the Licensee shut down Millstone Unit 1 for the planned 50-day RFO 15. The Licensee for Millstone Unit 1 has not yet restarted the plant from this shutdown.

In part, in response to the concerns the Petitioners raised, from October 24 to November 10, 1995, the NRC staff performed an inspection at Millstone Unit 1 to ensure the Licensee's planned refueling operation would be done safely and in accordance with its license, design basis, and plant procedures. The inspection was continued from March 4 to 14, 1996. The results of this Millstone Unit 1 inspection were documented in NRC IR 50–245/95–82, issued July 10, 1996. The NRC staff concluded that the Licensee could safely offload fuel for RFO 15. However, the inspection identified design control questions related to the SFP cooling system. Consequently, the staff concluded that additional Licensee efforts were needed to identify and correct deficiencies related to the Licensee's SFP cooling systems and their operation. Two areas of concern involved the Licensee's failure (1) to conduct adequate safety evaluations in accordance with 10 CFR 50.59 and (2) to take adequate design control measures in accordance with Appendix B of 10 CFR Part 50. These items were cited as apparent violations. NRC is considering enforcement action associated with the staff's findings.

At a public meeting on December 5, 1995, the NRC's Acting Inspector General stated that, based on an investigation conducted by his office, refueling activities at Millstone Unit 1 may not have been conducted consistent with the Millstone Unit 1 UFSAR.[4]

On December 13, 1995, pursuant to 10 CFR 50.54(f), the NRC required that NNECO provide the NRC with additional information to describe the actions taken to ensure that future operation of Millstone Unit 1 will be conducted in accordance with the terms and conditions of the Millstone Unit 1 operating license, the Commission's regulations, and the Millstone Unit 1 UFSAR. NRC concerns related to past refueling activities at Millstone Unit 1 were a major impetus for this request. The December 13, 1995, letter required this information to be submitted before the plant's restart.

In January 1996, the NRC placed the Millstone facility on NRC's "Watch List" as a Category 2 facility. Plants in this category have been identified as having weaknesses that warrant increased NRC attention. The NRC staff based its actions on the numerous problems identified by both the NRC and the Licensee and the repeated failure of the Licensee's corrective action programs to prevent recurrence of these problems.

On February 20, 1996, the Licensee shut down Millstone Unit 2 when both trains of the high-pressure safety injection (HPSI) system were declared inoperable due to the potential to clog the HPSI discharge throttle valves during the recirculation phase following a loss-of-coolant accident. The Licensee for Millstone Unit 2 has not yet restarted the plant from this shutdown.

On February 22, 1996, the Licensee issued "ACR 7007—Event Response Team Report," which describes the underlying causes for numerous inaccuracies contained in Millstone Unit 1's UFSAR. The 7007 Report also acknowledged that because of the nature of the identified causes, the potential existed for the presence of similar configuration management problems at the Haddam Neck Plant and Millstone Units 2 and 3. In response to the 7007 Report and on the basis the NRC's own inspections of Millstone Unit 2 indicating problems such as those described in the 7007 Report, the NRC issued a letter on March 7, 1996, to NNECO, pursuant to 10 CFR 50.54(f), requiring that the type of information requested for Millstone Unit 1 on December 13, 1995, also be provided for Millstone Unit 2. This information had to be submitted before the plant's restart. In addition, although the NRC's

[2] "General Statement of Policy and Procedure for NRC Enforcement Actions," at that time contained in Appendix C to 10 CFR Part 2.

[3] The NRC staff, in response to Petitioners' requests, is evaluating possible wrongdoing associated with this violation and will reassess the appropriateness of exercising enforcement discretion when the NRC staff's review is complete.

[4] The results of the investigation were documented on December 21, 1995, in Office of Inspector General Event Inquiry, "NRC Failure to Adequately Regulate—Millstone Unit 1," Case No. 95–771.

inspection history did not indicate that similar problems existed at Millstone Unit 3 and Haddam Neck Plant, the NRC issued a separate letter on March 7, 1996, pursuant to 10 CFR 50.54(f) requiring the Licensee to address the applicability of the conclusions of the 7007 Report to these plants.

Following the March 7 letters, the NRC conducted a special inspection at Millstone Unit 3 that identified design and other deficiencies similar to those reported in the 7007 Report. On March 30, 1996, the Licensee for Millstone Unit 3 shut down the plant after it was determined that containment isolation valves for the auxiliary feedwater turbine-driven pump were inoperable because the valves did not meet NRC requirements. The Licensee for Millstone Unit 3 has not yet restarted the plant from this shutdown.

In a letter dated April 4, 1996, to the Licensee pursuant to 10 CFR 50.54(f), the NRC stated that an NRC special inspection team found programmatic issues and design deficiencies at Millstone Unit 3 that were similar to those at Millstone Units 1 and 2. Thus, by this letter, the NRC required information for Millstone Unit 3 that was similar to that previously required for Millstone Units 1 and 2. This information had to be submitted before the plant's restart.

On April 8, 1996, the NRC staff held the informal public hearing that the Petitioners requested. Information gained at this hearing was considered in the preparation of this Partial Director's Decision and will be considered in the preparation of the Final Director's Decision.

On May 21, 1996, pursuant to 10 CFR 50.54(f), the NRC issued a letter to the Licensee requiring specific information regarding design and configuration deficiencies identified at each of the Millstone units, as well as a detailed description of the Licensee's plans for completion of the work required to respond to the NRC's previous letters.

By letters dated June 20 and July 2, 1996, the Licensee responded to the NRC's letter of May 21, 1996. In its letters, the Licensee informed the NRC that Millstone Unit 3 would be the first Millstone unit that the Licensee planned to restart. The Licensee also described its configuration management plan (CMP) that is intended to provide reasonable assurance that the future operation of Millstone Unit 3 will be conducted in accordance with its design basis.

In June 1996, at the direction of the Commission, the staff informed the Licensee that the Millstone facility had been designated a "Watch List" Category 3 facility. Plants in this category have been identified as having significant weaknesses that warrant keeping the plant shut down until the licensee can demonstrate to the NRC that adequate programs have been established and implemented to ensure substantial improvement in the plant. This designation also requires the NRC staff to obtain the Commission's approval before restart of the facility.

During an August 12, 1996, meeting with the Licensee, the staff informed the Licensee that the NRC staff believed NNECO should establish an independent corrective action verification program to provide additional assurance that the Licensee has effectively corrected its configuration management problems at all Millstone units. The NRC concluded that the Licensee's CMP was not sufficient to ensure the correction of the problems noted at the Millstone units, given the Licensee's history of poor performance in ensuring complete implementation of the corrective action for both known degraded and non-conforming conditions and past violations of NRC requirements.

In response to the staff's comments in the August 12 meeting, in a letter dated August 13, 1996, the Licensee submitted its plan for conducting an independent review of the results of the Licensee's CMP regarding establishment of adequate design bases and design controls.

On August 14, 1996, the NRC issued a Confirmatory Order Establishing an Independent Corrective Action Verification Program (Effective Immediately) for Millstone Units 1, 2, and 3 (ICAVP Order). The NRC issued the order because of the Licensee's history of poor performance in ensuring complete implementation of corrective actions for both known degraded and non-conforming conditions and past violations of NRC requirements. In addition, the magnitude and scope of the design and configuration deficiencies identified at the Millstone units indicated ineffective implementation of oversight programs, including the NRC-approved quality assurance program. Thus, the NRC ordered the Licensee to obtain the services of an organization independent of the Licensee and its design contractors to conduct a multi-disciplinary review of Millstone Units 1, 2, and 3. The ICAVP is to provide independent verification that for the selected systems, the Licensee's CMP has identified and resolved existing problems, documented licensing and design bases, and established programs, processes, and procedures for effective configuration management in the future.

Additionally, on the basis, in part, of the UFSAR compliance deficiencies found at Millstone Units 1, 2, and 3, on October 9, 1996, pursuant to 10 CFR 50.54(f), the NRC issued letters to all operating reactor licensees. The letters required licensees to submit information to provide confidence and assurance that licensees are operating and maintaining their plants within the design bases and that any design-bases deviations are reconciled in a timely manner. Specifically, the NRC staff required licensees to describe their configuration management processes, provide their rationale for concluding that the design-bases requirements have been translated into procedures, provide their rationale for concluding that the plant configuration and performance are consistent with the design-bases, describe their processes for identifying and correcting design-bases problems, and provide their assessment of the effectiveness of their current programs.

On the basis of its review and inspections of the Millstone Unit 1 SFP issues, the NRC staff has concluded that the design of the SFP and related systems at Millstone Unit 1 was adequate to protect public health and safety during full-core offloads.[5] The staff concluded that the probability of reaching boiling conditions in the SFP when there has been a full-core offload would be low.

At Millstone Unit 1, the systems that have an SFP cooling capability (i.e., SFP cooling system (SFPCS) and shutdown cooling system (SDCS)) are designed to receive power from two separate and independent emergency buses that can receive power from either of two onsite power supplies following a loss of normal power. The independence of the systems reduces the probability of an event capable of causing a sustained loss of SFP cooling. Assuming the SFP cooling function is lost, despite this feature, there would be a substantial period of time available in which to restore cooling before boiling occurs because of the large volume of water in the SFP and the reactor cavity during refueling outages. In the unlikely event that boiling occurs, the adverse safety impact of a boiling SFP is relatively low because the safety systems subject to adverse environmental conditions from

[5] Based on its inspection and Licensee submittals, the NRC staff has identified some instances when the Licensee prematurely performed full-core offloads at Millstone Unit 1. Although the safety significance of these offloads was low, there is a regulatory concern associated with this practice and the NRC staff is considering enforcement action with regard to it.

SFP boiling would not have a necessary function when irradiated fuel has been transferred from the reactor vessel to the SFP. The water lost because of boiling can be replaced by the condensate system, which is a seismic Category I safety-related makeup source, or from the fire protection system.

In addition to the design features previously discussed, to support its license amendment request of July 28, 1995, to conduct full-core offloads as the normal refueling practice at Millstone Unit 1, the Licensee further upgraded its SFP cooling capability by installing a cross-connect between the SDCS and the SFPCS. This modification provided a redundant train of shutdown cooling for use during full-core offloads.

The Petitioners' supplemental letter of August 28, 1995, contained three allegations regarding core offloading practices at other facilities. The Petitioners noted that the allegations were given to Mr. Galatis and that he had no firsthand knowledge of the veracity of the allegations and did not, himself, allege the conditions exist or existed. However, Mr. Galatis contended that, considering the source, the allegations would appear to have substantial merit. These allegations are addressed in the following paragraphs.

The Petitioners asserted that at Millstone Unit 2, the Licensee engaged in violations of its Technical Specifications by offloading more than one-third of the core into the SFP during normal end-of-cycle refueling outages.

On the basis of the NRC staff's review of Licensee documentation, the NRC staff found that the Licensee routinely, with justified exceptions, conducted one-third core offloads for the Millstone Unit 2 refueling outages in accordance with its licensing basis.

The Petitioners asserted that at Millstone Unit 3, the Licensee also engaged in full-core offloads during normal refueling outages in violation of the applicable license amendment.

The staff found that License Amendment No. 60, dated March 31, 1991, was the applicable license amendment for current SFP storage issues. The Licensee requested this amendment in a letter dated November 30, 1990. In this letter, the Licensee stated that, although the design basis had assumed that normal refueling outages would use partial-core offloads, for Millstone Unit 3, a full-core discharge is the actual normal refueling practice. The design-bases analyses limited the allowed number of full-core discharges to six for the 40-year life of the plant. The Licensee stated that, if it decides to continue offloading a full-core as a normal event, the design basis would be changed before it exceeded the design-basis limit of six full-core offloads. The staff did not object to the Licensee's use of full-core offloads when License Amendment No. 60 was issued.

The staff notes that the practice at Millstone Unit 3 is inconsistent with the original design-basis assumptions regarding normal RFO offloads. As was the case with Millstone Unit 1, the Licensee was routinely performing full-core RFO offloads when the design basis assumed partial-core offloads would be the normal RFO offload. Since the plant was analyzed for at least six full-core offloads and the Licensee has not exceeded this number of full-core offloads, the safety significance of this issue is low. The staff, on a generic basis, is considering the appropriate actions for licensees that have been conducting full-core offloads as their routine refueling practice when their design-basis assumptions for normal fuel offloads were based on partial RFO offloads. The staff will take appropriate action for Millstone Unit 3 once it makes this generic determination.

The Petitioners asserted that Seabrook Unit 1, which is operated by the North Atlantic Energy Service Corporation, was also operated in violation of the terms of its operating license by discharging the full-core to the SFP during routine refueling outages.

The NRC staff found that all RFOs at Seabrook Unit 1 have involved discharge of the entire core to the SFP. Neither the Seabrook Unit 1 operating license nor the plant Technical Specifications contain a limit on the fraction of the core that may be discharged to the SFP during refueling. The UFSAR originally did not state which type of offload would be performed routinely. However, the UFSAR did contain heat load assumptions. Before the first two RFO offloads, the Licensee verified that these assumptions would not be exceeded during the RFO. Before the third refueling outage, under the provisions of 10 CFR 50.59, the UFSAR was revised to explicitly state that full-core discharge is routinely performed as part of a normal refueling. On the basis of its review, the staff found that the Licensee for Seabrook Unit 1 has conducted its core offloads in accordance with the facility's design basis.

The Petitioners requested suspension and revocation of the operating license for Millstone Unit 1. As previously discussed, the relative safety significance of the full-core offloads performed at Millstone Unit 1 is low. However, all three Millstone units have been found to have significant design-basis deficiencies. The NRC has issued letters to NNECO for each Millstone facility requiring that certain information pertaining to actions taken to address design configuration issues be submitted to the NRC and requesting its submittal before the restart of the facilities. Additionally, the NRC has issued the ICAVP Order to the Licensee requiring an independent verification of its broad configuration management corrective actions before restarting of any Millstone units.

These actions taken by the NRC are relevant to the issues raised by the Petitioners regarding adherence by the Licensee to its licensing basis. Further, the actions taken are much broader than those requested by Petitioners in that Petitioners' requests were limited to the SFP design basis at Millstone Unit 1. Thus, the NRC's actions to date constitute a partial grant of the Petitioners' requests regarding suspension and revocation of the operating license for Millstone Unit 1.

B. Request to Perform a Detailed Independent Analysis of the Offsite Dose Consequences of the Total Loss of Spent Fuel Pool Water

The risk of accidents in spent fuel storage pools beyond the design basis was examined in WASH–1400.[6] In this study, it was concluded that the risks associated with the spent fuel are orders of magnitude below those involving the reactor core because of the simplicity of the SFP.

This issue was reexamined in the late 1980s because (1) spent fuel was being stored onsite instead of being reprocessed and (2) some laboratory studies provided evidence of the possibility of fire propagation between assemblies stored in an air-cooled environment. The dose estimate portions of the study were performed by the Brookhaven National Laboratory. The results of this reexamination were published in NUREG–1353.[7] The NRC staff concluded that SFP accidents beyond the design basis did not warrant additional regulatory action because of the large inherent safety margins in the design and construction of the SFP.

Additionally, because of SFP safety questions that were first reported to the NRC staff in November 1992 by two engineers who formerly worked under contract for the Pennsylvania Power & Light Company, the NRC again revisited

[6] U.S. Nuclear Regulatory Commission (USNRC), "Reactor Safety Study—An Assessment of Accident Risk in U.S. Commercial Nuclear Power Plants," WASH–1400, October 1975.

[7] U.S. Nuclear Regulatory Commission (USNRC), "Regulatory Analysis for the Resolution of Generic Issue 82, 'Beyond Design Basis Accidents in Spent Fuel Pools,'" NUREG–1353, April 1989.

this issue. The principal safety concern the staff reviewed involved the potential for a sustained loss of SFP cooling and the potential for a substantial loss of spent fuel coolant inventory that could expose irradiated fuel.[8]

The NRC staff completed its work under the task action plan in July 1996. The staff forwarded the results of its review to the Commission on July 26, 1996.[9] In the report, the staff concluded that existing SFP structures, systems, and components provide adequate protection for public health and safety. Protection is provided by several layers of defense involving accident prevention (e.g., quality controls on design, construction, and operation), accident mitigation (e.g., multiple cooling systems and multiple makeup water paths), radiation protection, and emergency preparedness. The staff has reviewed and approved design features addressing each of these areas for spent fuel storage for each operating reactor. In addition, the limited risk analyses available for spent fuel storage suggest that current design features and operational constraints cause issues related to SFP storage to be a small fraction of the overall risk associated with an operating light-water reactor.

The NRC's actions to date in evaluating SFP accidents beyond the design basis constitute a partial grant of the Petitioners' request to perform analyses of such accidents.

C. Request for Enforcement Action Pursuant to 10 CFR 50.5 and 50.9

The NRC staff is still considering the Petitioners' assertions that the Licensee knowingly, willfully, and flagrantly operated Millstone Unit 1 in violation of License Amendments Nos. 39 and 40 and submitted material false statements to obtain License Amendments Nos. 39 and 40, which will be addressed in a subsequent Director's Decision.

III. Conclusion

The staff has completed its technical review of the full-core offload issue at Millstone Units 1, 2, and 3, and Seabrook Unit 1. The staff has concluded that Millstone Unit 1 could safely offload a full core. The staff also found that Millstone Unit 3 and Seabrook Unit 1 could safely offload full cores. Additionally, the staff found that Millstone Unit 2 was not routinely performing full-core offloads as asserted by the Petitioners. However, the staff followup of spent fuel pool issues raised by the Petitioners led, in part, to the identification of a broad spectrum of configuration management concerns that must be corrected before the restart of any Millstone unit.

The three Millstone units are currently shut down and the NRC staff has issued a Confirmatory Order establishing an ICAVP for each Millstone unit to ensure that the plant's physical and functional characteristics are in conformance with its licensing and design basis. The ICAVP shall be performed and completed for each unit, to the satisfaction of the NRC, before restart of any unit. To this extent, Petitioners' requests for suspension and revocation of the Millstone Unit 1 operating license are granted. In addition, the staff has evaluated spent fuel accidents beyond the design bases and, to this extent, Petitioners' request to perform analyses of such accidents is granted.

A copy of this Partial Director's Decision will be placed in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of this Partial Director's Decision will also be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c) of the Commission's regulations. This Partial Decision will become the final action of the Commission (for Petitioners' requests 1, 2, and 3) 25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of December 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–64 Filed 1–2–97; 8:45 am]

BILLING CODE 7590–01–P

[8] "Task Action Plan for Spent Fuel Storage Pool Safety."

[9] Memorandum to the Commission from J. Taylor, "Resolution of Spent Fuel Storage Pool Action Plan Issues," dated July 26, 1996.

POSTAL RATE COMMISSION

[Docket No. A97–8]

Pleasant Prairie, WI 53158 (Anthony J. Dzian, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued December 27, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. "Trey" LeBlanc III

Docket Number: A97–8.
Name of Affected Post Office: Pleasant Prairie, Wisconsin 53158.
Name(s) of Petitioner(s): Anthony J. Dzian, *et al.*
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: December 23, 1996.
Categories of Issues Apparently Raised:
1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by January 7, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

December 23, 1996

Filing of Appeal letter
December 27, 1996
Commission Notice and Order of Filing of Appeal
January 17, 1997
Last day of filing of petitions to intervene [see 39 CFR § 3001.111(b)]
January 27, 1997
Petitioners' Participant Statement or Initial Brief [see 39 CFR § 3001.115 (a) and (b)]
February 18, 1997
Postal Service's Answering Brief [see 39 CFR § 3001.115(c)]
March 5, 1997
Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)]
March 12, 1997
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116]
April 22, 1997
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–30 Filed 1–2–97; 8:45 am]
BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Proposed New Rules

Rule 203A–2; SEC File No. 270–431; OMB Control No. 3235-new.
Rule 203A–5; SEC File No. 270–432; OMB Control No. 3235-new.

Proposed Amendments

Rule 203–1 and Form ADV: SEC File No. 270–39; OMB Control No. 3235–0049.
Rule 204–1; SEC File No. 270–41; OMB Control No. 3235–0048.
Rule 204–2; SEC File No. 270–315; OMB Control No. 3235–0278.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of the following proposed rules and forms.

On October 11, 1996 President Clinton signed into law the National Securities Markets Improvement Act of 1996 ("1996 Act"). Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), amended the Investment Advisers Act of 1940 to, among other things, reallocate the responsibilities for regulating investment advisers between the Commission and the securities regulatory authorities of the states. The most significant of these amendments reallocates federal and state responsibilities for the regulation of the approximately 22,500 investment advisers currently registered with the Commission. These amendments will become effective on April 9, 1997. Based on information provided by advisers, the Commission estimates that approximately 72 percent of the advisers currently registered with the Commission will not be eligible for Commission registration after April 9, 1997.

The Commission has published for comment new rules and rule amendments to implement Congressional intent to reallocate regulatory responsibilities for investment advisers between the Commission and state securities authorities. The Commission is also revising several of its rules that currently apply to all investment advisers to make such rules applicable only to advisers registered or required to be registered with the Commission. The proposed rules would establish the process by which certain advisers would withdraw from Commission registration, exempt certain advisers from the prohibition on Commission registration, and define certain terms. The proposed amendments to rules under the Advisers Act would reflect the changes made by the Coordination Act. Certain provisions of the proposed rules and rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Those provisions are summarized below.

Rule 203A–2(d)

Proposed rule 203A–2(d) would exempt from the prohibition on Commission registration a newly formed adviser that has a reasonable expectation that it will be eligible for Commission registration within 90 days, provided certain conditions are met. Proposed rule 203A–2(d) contains two related collection of information requirements. The collection of information would be necessary to determine the eligibility of certain investment advisers to rely on the proposed "reasonable expectation" exemption from the prohibition on Commission registration, and to implement that exemption. It is anticipated that this collection of information would be found at 17 CFR 275.203A–2(d). An adviser relying on the exemption provided by proposed rule 203A–2(d) would be required to file a short written undertaking on Schedule E to Form ADV, indicating that the adviser will withdraw from registration if on the 90th day after registering with the Commission the adviser does not meet the eligibility requirements for registration under section 203A of the Advisers Act and rules thereunder. At the end of the 90-day period, the adviser also would be required to file an amended Schedule I to Form ADV. If the adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser would be required to file a Form ADV–W concurrently with the Schedule I, thereby withdrawing its registration with the Commission. The likely respondents to this information collection are newly formed investment advisers that are not currently registered with the Commission or with the states. The Commission estimates that there would be 100 such respondents per year, and that each respondent would respond one time per year. The weighted average total annual time burden for each respondent is estimated to be 57.5 minutes. This figure is based upon the following estimates: (i) 45 minutes for the approximately 90 advisers that advise registered investment companies, that do not need to calculate assets under management to complete Schedule I, or that need to calculate assets under management but do so as part of their normal business operations; (ii) 2 hours for the approximately 10 advisers that must calculate assets under management for the sole purpose of filing Schedule I; and (iii) 5 minutes for all respondents to prepare the undertaking required on Schedule E to Form ADV. The Commission estimates that the aggregate annual burden for all respondents would be 95.83 hours. Providing this information would be mandatory to qualify for the exemption under proposed rule 203A–2(d), and responses would not be kept confidential.

Rule 203A–5 and Form ADV–T

Proposed rule 203A–5 and Form ADV–T contain collection of information requirements. This collection of information is necessary for the Commission to determine whether advisers meet the proposed eligibility criteria for Commission registration set forth in section 203A of the Advisers Act and rules thereunder, and to provide for the orderly withdrawal from Commission

registration for advisers that are no longer eligible. It is anticipated that this collection of information would be found at 17 CFR 275.203A–5 and 17 CFR 279.3. Under proposed rule 203A–5 and 17 CFR 279.3. Under proposed rule 203A–5, all advisers registered with the Commission on April 9, 1997 would be required to file a completed Form ADV–T no later than that date. Form ADV–T would require each adviser to declare whether it remains eligible for Commission registration. For an adviser that declares itself *not* eligible for Commission registration, Form ADV–T would serve as a request for withdrawal of the adviser's registration as of April 9, 1997. The likely respondents to this information collection are all investment advisers registered with the Commission on April 9, 1997. The Commission estimates that there would be 22,500 such respondents to this collection of information. Each respondent would respond once. The weighted average annual time burden for each respondent is estimated to be 53.33 minutes. This figure is based upon the following estimates: (i) 45 minutes for the approximately 20,000 advisers that advise registered investment companies, that do not need to calculate assets under management to complete Form ADV–T, or that need to calculate assets under management but do so as part of their normal business operations; (ii) 2 hours for the approximately 2,500 advisers that must calculate assets under management for the sole purpose of filing Form ADV–T. The aggregate annual burden for all 22,500 advisers is estimated to be 19,998 hours. Providing the information would be mandatory, and responses would not be kept confidential.

Rule 203–1 and Form ADV

Rule 203–1 and Form ADV, including the proposed new Schedule I to Form ADV, contain information collection requirements. Form ADV is required by rule 201–1 to be filed by every applicant for registration with the Commission as an investment adviser, is mandatory, and responses are not kept confidential. This collection of information is found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission in the past received approximately 3,500 applications for registration on Form ADV in one year. The weighted average burden hours for completing Form ADV is currently 9.0063, and the total annual burden hours currently approved by OMB for this form is 31, 522 hours.

The Commission is proposing to amend Form ADV to include a new Schedule I. The Commission is not proposing to amend rule 203–1. Schedule I would require an applicant to declare whether it is eligible for Commission registration. This new requirement is necessary for the Commission to determine whether advisers meet the eligibility criteria for Commission registration set forth in section 203A of the Advisers Act and rules thereunder. The likely respondents to this information collection would be all applicants for registration with the Commission after April 9, 1997. Based on the Commission's experience in processing adviser applications, and the percentage of applicants in the past without assets under management, the Commission estimates that after April 9, 1997 the number of applicants for registration will decrease from approximately 3,500 to between 500 and 1000 annually. The weighted average total annual time burden for each applicant to complete Schedule I on average is estimated to be 52.5 minutes. This figure is based upon the following estimates. Compliance with the requirement to complete Schedule I imposes a total burden per applicant of approximately 45 minutes for the approximately 90 percent of applicants that advise registered investment companies, that do not need to calculate assets under management to complete Schedule I, or that need to calculate assets under management but do so as a part of their normal business operations. For the approximately 10 percent of applicants that must calculate assets under management for Schedule I, however, this burden would be 2 hours. Providing this information would be mandatory. Amending Form ADV to include new Schedule I is estimated to increase the weighted average burden hours for applicants completing Form ADV to 9.8813 hours. As a result of the new Schedule I, together with the reduction of the number of investment advisers registered with the Commission, the annual aggregate burden for all respondents for completing amended Form ADV is estimated to be between 4,940.65 and 9,881.3 hours.

Rule 204–1

Rule 204–1, including the proposed amendment to the rule, includes collection of information requirements. Rule 204–1 sets forth the circumstances requiring the filing of an amendment to Form ADV, the form that must be filed with the Commission to register as an investment adviser. This collection of information is found at 17 CFR 275.204–1, is mandatory, and responses are not kept confidential. The total annual burden currently approved by OMB for rule 204–1 is approximately 21,438 hours for the 20,088 advisers registered with the Commission in 1994.

The proposed amendments to rule 204–1 would require an adviser to file an amended Schedule I to Form ADV annually within 90 days of the end of the adviser's fiscal year. Schedule I would require an adviser to declare whether it remains eligible for Commission registration. The new requirement is necessary for the Commission to determine whether advisers continue to meet the eligibility criteria for Commission registration set forth in section 203A of the Advisers Act and rules thereunder. The likely respondents to this information collection are all investment advisers registered with the Commission after April 9, 1997. The Commission estimates that there would be 6,300 such respondents to this collection of information (28% of the approximately 22,500 registered investment advisers as of April 9, 1997). Each respondent would respond one time per year. The total annual time burden for each respondent is estimated to be 52.14 minutes. This figure is based upon the following estimates. Compliance with the requirement to file an amended Schedule I would impose a total annual burden per adviser of approximately 45 minutes for the approximately 5,700 advisers that advise registered investment companies, that do not need to calculate assets under management to complete Schedule I, or that need to calculate assets under management but do so as part of their normal business operations. For the approximately 600 advisers that must calculate assets under management for Schedule I, however, this burden would be 2 hours. Providing the information would be mandatory and responses would not be kept confidential. Based on the Commission's experience under rule 204–1, and taking into account the new requirement to annually amend Schedule I, the Commission anticipates that each adviser eligible for Commission registration after April 9, 1997 will respond to the information collection requirements of rule 204–1, as proposed to be amended, an average of 1.5 times annually. The Commission estimates that the annual aggregate burden for all respondents under rule 204–1 will be 18,297.09 hours.

Rule 204–2

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep for prescribed periods such records, and furnish such copies thereof, and make and disseminate such reports as the

Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204–2 sets forth requirements for keeping, maintaining and preserving specified books and records by investment advisers. This collection of information is found at 17 CFR 275.204–2, is mandatory, is used by the Commission staff in its oversight program, and generally is kept confidential. See section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)]. Currently, compliance with the rule requires approximately 235.47 hours each year per Commission-registered investment adviser, for a total of 5,180,340 hours for all 22,000 advisers registered last year.

The proposed amendments to rule 204–2 would clarify the application of the rule's recordkeeping requirements to advisers that register with the Commission after having been registered with the states. The proposed amendments are necessary (i) to make the books and recordkeeping requirements of that rule applicable only to advisers registered with the Commission, and (ii) to clarify the rule's application to investment advisers that transfer from state to Commission registration after April 9, 1997. The Commission is proposing to amend rule 204–2 to make the rule's books and recordkeeping requirements applicable only to advisers registered with the Commission after the Coordination Act's effective date. This amendment would relieve the approximately 16,200 of the 22,500 advisers currently registered that will not be eligible for Commission registration after April 9, 1997 from the recordkeeping burdens imposed by this rule.

The Commission is also proposing to amend rule 204–2 to require an adviser that registers with the Commission after April 9, 1997 to preserve any books and records that the adviser was previously required to maintain under state law. These books and records would be required to be maintained in the manner and for the period of time as the other books and records required to be maintained under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2. The likely respondents to this information collection are all investment advisers registered with the Commission after April 9, 1997. The Commission estimates that there would be 6,300 such respondents to this collection of information. Each respondent would retain records on an ongoing basis. The total annual time burden for each respondent is estimated to be 235.47 hours. The proposed amendments would not change the burden last reported to the OMB. As a result of the reduction of the number of investment advisers registered with the Commission, the annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 is estimated to be 1,483,461 hours.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 20, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21 Filed 1–2–97; 8:45 am]

BILLING CODE 8010–01–M

Submission for OMB Review; Comment Request

Approval of Existing Collections

Rule 9b–1; SEC File No. 270–429; OMB Control No. 3235–New.

Rule 15c2–8; SEC File No. 270–421; OMB Control No. 3235–New.

Extensions

Rule 12f–1; SEC File No. 270–139; OMB Control No. 3235–0128.

Rule 12f–2 and Form 27; SEC File No. 270–140; OMB Control No. 3235–0248.

Rule 12f–3 and Form 28; SEC File No. 270–141; OMB Control No. 3235–0249.

Rule 12a–5 and Form 26; SEC File No. 270–85; OMB Control No. 3235–0079.

Rule 15Aj–1, Form X–15AJ–1 and Form X–15AJ–2; SEC File No. 270–25; OMB Control No. 3235–0044.

Rule 15c2–11; SEC File No. 270–196; OMB Control No. 3235–0202.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of existing collections without OMB approval and extension on previously approved collections of information:

Rule 9b–1 sets forth the categories of information required to be disclosed in an options disclosure document (ODD) and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer and ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 5 options markets that must comply with Rule 9b–1, These 5 respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file no more than one amendment per year, which requires approximately 8 hours per year for each respondent. Thus, the total compliance burden for options markets per year is 40 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for these respondents of $4,000 per year (40 hours @ $100).

In addition, approximately 2,000 broker-dealers must comply with Rule 9b–1. Each of these respondents will process an average of three new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of 78 minutes, or 1.3 hours. Thus, the total compliance burden per year is 2,600 hours (2,000 broker-dealers × 1.3 hours). The approximate cost per hour to these respondents is $10 per hour, resulting in a total cost of compliance for these respondents of $26,000 per year (2,600 hours @ 1.3 hours).

The total compliance burden for all respondents under this rule (both

options markets and broker-dealers) is 2,640 hours per year (40 + 2,600), and total compliance costs of $30,000 ($4,000 + $26,000).

Rule 15c2–8 requires broker-dealers to deliver preliminary or final prospectuses to specified persons in association with securities offerings. This requirement ensures that information concerning issuers flows to purchasers of the issuers' securities in a timely fashion. There are approximately 8,500 broker-dealers, any of which potentially may participate in an offering subject to Rule 15c2–8. The Commission estimates that Rule 15c2–8 creates approximately 40,290 burden hours with respect to approximately 579 initial public offerings and 1,344 other offerings.

Estimating that records are to be kept by compliance or other related personnel paid at an hourly rate of $28, the total annualized cost burden for recordkeeping is $1,128,120 (28 × 40,290). Added to this are the costs of copying and mailing. These costs are estimated to be approximately $100,000 per initial public offering, for a total of $59,200,000, with other costs expected to be de minimis, as they would be incurred for purposes of complying with Securities Act of 1933 provisions. The total annualized cost burden is therefore $60,328,120.

Rule 12f–1 sets forth the information which an exchange must include in an application for unlisted trading privileges in a security. There are 5 national securities exchanges that require an aggregate total of 670 hours to comply with this rule. Each of these 5 respondents makes an estimated 134 annual responses, for an aggregate of 670 responses per year. Each response takes approximately 1 hours to complete. Thus, the total compliance burden per year is 670 burden hours. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $67,000 (670 hours @ $100).

Rule 12f–2 requires that a national securities exchange must report to the Commission certain changes in a security admitted to unlisted trading privileges. This report is generally made by filing Form 27. There is one respondent that requires an aggregate total of 42 minutes to comply with this rule. Thus, the total compliance burden per year is 42 minutes. The total cost of compliance for the respondents is $27.

Rule 12f–3 prescribes the information which must be included in applications for and notices of termination or suspension of unlisted trading privileges in a security. An exchange must notify the Commission of such action by promptly filing a Form 28. Each of the five national securities exchange respondents incurs an average of 20 burden hours per year in complying with the rule, for a total burden of 100 hours. The approximate cost per hour is $100, for a total annualized cost burden of $10,000.

Rule 12a–5, under paragraph (d), directs that after an exchange has taken action to admit any security to trading pursuant to the provisions of the Rule 12a–5, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) the security was or will be admitted to when issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally is responsible for overseeing the national securities exchanges, and is particularly responsible under Section 12(a) of the Securities Exchange Act of 1934 ("Act") to receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a–5. Without the Rule and the Form, the Commission would be unable fully to implement these statutory responsibilities.

There are nine national securities exchanges which may avail themselves of the exemption provided by Rule 12a–5. While approximately 45 Form 26s are filed annually, the reporting burdens typically are not spread evenly among the exchanges. For purposes of this filing, the staff has assumed that each exchange files an equal number (five) of Form 26 reports. Each report requires approximately 20 minutes to complete, and so the aggregate annual compliance burden is estimated to be 100 minutes for each exchange and 15 hours for all nine exchanges.

The Commission staff estimates that the cost to respondents of completing Form 26 ranges from approximately $10 to $15, with an average cost per response of $13. The estimated total annual cost for complying with the Rule 12a–5 is about $65 for each exchange, and $585 for all exchanges combined.

Rule 15Aj–1 implements the requirements of Sections 15A, 17, and 19 of the Act by requiring every association applying for registration or registered as a national, or as an affiliated securities association to keep its registration statement up to date by filing with the Commission on Form X–15AJ–1 and Form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission on Form X–15AJ–1 of any change which renders inaccurate any information contained or incorporated in the registration statement or in any amendment or supplement thereto. Rule 15Aj–1 also requires a securities association to file each year with the Commission an annual consolidated supplement on Form X–15AJ–2.

There is presently only one registered securities association that is required to comply with Rule 15Aj–1. The number of hours necessary to comply with the rule by filing an amendment is approximately one-half hour per response. The average number of hours necessary to file the annual supplement is three reporting hours. The average cost per response for Rule 15Aj–1 is approximately $7. The average cost of annual supplements pursuant to Rule 15Aj–1 is approximately $45.

Rule 15c2–11 requires broker-dealers to collect information regarding issuers prior to initiating or resuming publication of quotations of the issuer's securities. The Commission estimates that 142 respondents collect information annually under Rule 15c2–11 and that approximately 13,580 hours would be required annually for these collections. The Commission estimates that the annual cost to comply with Rule 15c2–11 is $271,600 ($20 per hour times 13,580 hours).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director,

Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 19, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–22 Filed 1–2–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26636]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 24, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or delcaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 21, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70–8975)

Notice of Proposal to Issue Common Stock; Order Authorizing Solicitation of Proxies

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a gas registered holding company, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

NFG proposes to issue shares of NFG common stock in connection with the NFG 1997 Award and Option Plan ("Plan"). The Plan will be administered by the Compensation Committee of the Board of Directors or another committee so designated ("Committee"). No member of the Committee is eligible to be selected to participate in the Plan. The Plan authorizes the Committee, at its discretion, to grant awards from December 13, 1996 through December 12, 2006 to key employees of NFG or any of its 80% or more owned subsidiaries. Under the Plan, 1.9 million shares of NFG common stock are available for grants. Awards covering no more than 300,000 shares of Common Stock may be granted to any participant in any fiscal year.

NFG's Board of Directors ("Board") may suspend or terminate the Plan at any time and may also amend the Plan at any time, provided however, that any such amendment may be subject to shareholder approval (1) at the discretion of the Board and (2) to the extent that shareholder approval may be required by law.

The following types of awards may be available under the Plan: (1) Stock options, including incentive stock options; (2) stock appreciation rights ("SARs"), the right to receive a payment equal to the appreciation in market value of a stated number of shares of common stock from the SARs' exercise price to the market value on the date of exercise; (3) common stock of NFG, including restricted stock; (4) common stock units; (5) performance shares; (6) performance units; and (7) any award established by the Committee which is consistent with the Plan's purpose, as described in the Plan.

The Plan provides for the forfeiture of awards in the event of termination of employment for a reason other than death, disability, retirement, or any approved reason, unless the award provides otherwise. Forfeiture is also required if, in the Committee's opinion, the participant competes with NFG without its written consent, or if the participant acts in a manner inimical to NFG's best interests.

The Committee may unilaterally amend any award if, in the Committee's opinion, such amendment is not adverse to the participant. NFG may deduct from any payment under the Plan the amount of any applicable income and employment taxes, or may require the participant to pay such taxes as a condition to making such payment. The Committee may also allow the participant to satisfy this obligation by withholding from any payment of common stock due, or by delivering to NFG, shares of common stock with a fair market value equal to the amount of applicable taxes.

NFG proposes to solicit proxies from its common shareholders to approve the Plan at NFG's Annual Meeting of Stockholders on or about February 20, 1997. Accordingly, NFG request that an order authorizing the solicitation of proxies be issued as soon as practicable pursuant to rule 62(d).

It appearing to the Commission that NFG's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18 Filed 1–2–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38085; File No. SR–CBOE–96–70]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Reporting Requirements for Securities Accounts and Orders of Market-Makers and Joint Account Provisions

December 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act",[1] notice is hereby given that on November 20, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to amend Rule 8.9 regarding certain reporting requirements

[1] 15 U.S.C. § 78s(b)(1) (1988).

for securities accounts, orders of market-makers and joint account provisions.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE is proposing to amend Rule 8.9, Securities Accounts and Orders of Market-Makers. CBOE proposes to amend Rule 8.9(a), regarding the identification of accounts. Currently, Exchange market-makers are required to identify and report to the Exchange all accounts in which the market-maker may engage in stock, option and securities trading, directly or indirectly, or over which it has investment discretion. The rule in its current form is broad enough to require market-makers to report professional trading accounts held at clearing firms, as well as outside personal accounts such as brokerage accounts.

The Exchange has received comment from CBOE members stating that it is burdensome and unnecessary to require market-makers to identify all non-professional trading accounts, or 'outside accounts' to the Exchange. Exchange staff agrees that the reporting requirement may be overly broad, in that the outside account data has little significance to the Exchange's surveillance programs unless there is a specific reason for monitoring the outside accounts. The Exchange is most concerned with monitoring the professional trading activity of market-makers in accounts cleared and guaranteed by The Options Clearing Corporation member clearing firms.

Upon review and analysis, the Exchange has determined that the reporting requirements of Rule 8.9(a) should be amended to eliminate the routine submission of information respecting non-market-maker trading accounts, or 'outside accounts.' The proposes rule change would require market-makers to report outside account information only when requested by the Exchange.

CBOE proposes to amend Rule 8.9(b), regarding the reporting of market-maker orders. Currently, each market-maker is required to report to the Exchange every order entered into by that market-maker within the specifications of the Rule. CBOE is proposing to amend Rule 8.9(b) to require the clearing firm for the professional trading account, rather than the market-maker personally, to report executed order information to the Exchange. CBOE believes that this revision recognizes that a clearing firm can most accurately gather and report order information to the Exchange in a timely manner, and in fact already transmits such order information for Exchange review. In addition, the proposed rule will require the order information submitted be restricted to executed orders only, as CBOE has received few surveillance benefits by gathering unexecuted order information on a routine basis.

According to the proposed rule change, the market-maker will be held responsible for the reporting requirements only if the clearing firm is not reporting executed order information to the Exchange and/or if the Exchange has requested that the market-maker provide the information. Further, the proposed rule change will clarify that this reporting requirement applies to professional trading accounts (*i.e.*, transactions cleared into all accounts carried for market-makers who are the subject of a clearing firm letter of guarantee issued to the Exchange pursuant to CBOE Rule 8.5).

The clearing firm thus will be the primary source for the reporting of market-maker executed order information to the Exchange. However, all firms which represent and execute market-maker orders, including order service firms as defined in Exchange Rule 6.77, will continue to be responsible for maintaining and retaining executed and unexecuted order information as required by Rules 17a–3 and 17a–4 under the Act and by Exchange Rule 15.1. CBOE proposed that the continuing recordkeeping obligations of such firms pursuant to Exchange rules and other applicable securities laws and regulations will be noted in an Exchange regulatory circular upon approval of the proposed rule change.

CBOE proposes to eliminate the existing description of specific order information required to be reported as set forth in Rule 8.9(b). Upon approval of this filing, the Exchange will issue a regulatory circular to clearing firms which will list the order reporting requirements that were previously embodied in Rule 8.9(b), and list additional requirements as they are implemented. The existing Rule 8.9(b) already provides that the Exchange will prescribe the manner of order reporting.

Finally, CBOE proposes to amend Interpretation and Policy .06 to Rule 8.9 to clarify that the existing prohibition against a joint account participant effecting a transaction with another member acting on behalf of the same joint account applies whether the transaction is effected in person or via order. CBOE will also revise Interpretation and Policy .06 to Rule 8.9 to prohibit transactions between two joint accounts if the member who causes a transaction to be executed for one of the joint accounts knows or has reason to know that the two joint accounts have one or more common participants.

The addition to Interpretation .06 to Rule 8.9 codifies in the rule current provisions in regulatory circulars which seek to ensure that joint account transactions result in a bona fide change in beneficial ownership. Existing regulatory circulars RG96–28 (item 7(b)) and RG95–64 (item 8(b)) provide that a member has the responsibility to ensure that in-person transactions or the entry of orders with floor brokers do not result in trades occurring "between two joint accounts that have common participants." The proposed rule change expressly imposes a knowledge requirement as an element of the offense of effecting a transaction between joint accounts with common participants. This recognizes that members are not always able to know whether there are common participants in two joint accounts because of the frequency with which joint account composition may change.

The CBOE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[3] of the Act in that it should result in more effective and efficient reporting of market-maker accounts and executed order information to the Exchange. CBOE believes the proposed rule change also should clarify market-maker joint account provisions, removing impediments to a free and open market, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

[2] The text of the proposed rule change is available at the Office of the Secretary, CBOE and in the Public Reference Section of the Commission.

[3] 15 U.S.C. § 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–96–70 and should be submitted by January 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19 Filed 1–2–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30-3(a)(12) (1996).

[Release No. 34–38089; File No. SR–NASD–96–50]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the NASD's Excess Spread Rule Applicable to Market Maker Quotations

December 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(d) on a one-year pilot basis to provide that a registered market maker in a security listed on The Nasdaq Stock Market, Inc. ("Nasdaq") shall be precluded from being a registered market maker in that issue for twenty (20) business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

NASD Rule 4613 Character of Quotations

(d) *Reasonably Competitive Quotations* [Excess Spreads]

A registered market maker in a security listed on The Nasdaq Stock Market will be withdrawn as a registered market maker and precluded from re-registering as a market maker in such issue for 20 business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month.

(1) If a registered market maker has not satisfied the average spread requirement set forth in this subparagraph (d) for a particular Nasdaq security, its registration in such issue shall be withdrawn commencing on the next business day following the business day on which the market maker was sent notice of its failure to comply with the requirement. A market maker may request reconsideration of the withdrawal notification. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members. A request for reconsideration shall not operate as a stay of the withdrawal or toll the twenty business day period noted in subparagraph (d) above.

(2) Grounds for requests for reconsideration shall be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

(3) This subparagraph (d) shall be in effect until January 31, 1998.

[A market maker shall not enter quotations in The Nasdaq Stock Market securities that exceed the parameters for maximum allowable spreads as approved by the Association's Board of Governors and that may be published from time to time by the Association. The maximum allowable spreads for Nasdaq securities shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security (if there are fewer than three (3) market makers in a security, the maximum allowable spread will be 125% of the average spread); provided however, that the maximum allowable spread shall never be less than ¼ point.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASD Rule 4613(d), which is commonly known as the NASD's "excess spread rule," presently provides that registered market makers in Nasdaq securities shall not enter quotations that exceed the NASD's parameter for maximum allowable spreads. Specifically, the rule provides that the maximum allowable spread for any Nasdaq security is 125 percent of the

average of the three narrowest market maker spreads in that issue ("125 percent test"), provided, however, that the maximum allowable spread shall never be less than ¼ of a point.[1]

The excess spread rule was originally designed to bring a measure of quality to the Nasdaq market by preventing firms from holding themselves out as market makers without having a meaning quote in the system. Despite the laudable regulatory objectives underlying the excess spread rule, however, many market participants believe the rule has produced a variety of unintended consequences that have undermined the integrity of Nasdaq. Most notably, the SEC found in its 21(a) Report on the NASD and The Nasdaq Stock Market that "the interdependence of quotes mandated by the rule may deter market makers from narrowing their dealer spreads, because, once the spread is tightened, the rule in some instances precludes a market maker from widening the spread to earlier levels."[2] As a result, the SEC found that the excess spread rule creates an economic incentive for market makers to discourage one another from narrowing their quotes, thereby interfering with the "free flow of prices in the market and imped[ing] attempts by the market to reach the optimal competitive spread."[3] Accordingly, the SEC has requested that the NASD "modify the rule to eliminate its undesirable effects, or to repeal it."[4] In addition, because of the constraints on quote movements created by the rule, market participants claim that the excess spread rule has contributed to locked and crossed markets during periods of market turbulence.

Accordingly, Nasdaq and the NASD are submitting this rule proposal to help to ameliorate adverse consequences the current excess spread rule could potentially have on the competitiveness and independence of quotations displayed on the Nasdaq market. In formulating this proposal Nasdaq and the NASD felt that it was important to strike a reasonable balance between the need to eliminate any constraints that the excess spread rule places on firms to adjust their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker (*e.g.*, affirmative determination exemption and preferential margin treatment). Nasdaq and the NASD also believe it is critical to transform the excess spread rule into a performance standard used to determine market maker eligibility, instead of a strict regulatory requirement applicable to every quote update in a Nasdaq security, violations of which are punishable by disciplinary action.

With these considerations in mind, Nasdaq and the NASD discussed a variety of proposals to amend the excess spread rule. Ultimately, as discussed below, Nasdaq and the NASD reached a determination to eliminate the current "125 percent test" and instead substitute a new minimal market maker performance requirement that would help to ensure that all registered market makers are providing some threshold level of market making support in their issues. Specifically, under the proposal, a registered market maker would be required to maintain an average spread over the course of any full calendar month equal to or less than 150 percent of the average of all market makers in the issue over the course of the month ("150 percent test"). If a market maker failed to satisfy this standard with respect to a particular issue, it would be forced to withdraw from that issue for at least 20 business days.

Even though the proposed minimal market maker performance standard would have adverse ramifications for those market makers who quote inordinately wide spreads, Nasdaq and the NASD believe the proposal is responsive to the SEC's request that the NASD eliminate the undesirable effects of the excess spread rule. Specifically, because the proposed "150 percent test" is based on the average of all market makers in an issue and not just the three market makers quoting the narrowest spreads and because of the magnitude of increase to 150 percent, Nasdaq and the NASD do not believe that the interdependence of market maker quote movements noted by the SEC in its 21(a) Report will occur with this standard. Moreover, Nasdaq and the NASD believe market makers will not feel constrained to narrow or widen their spreads under the proposal because the "150 percent test" would evaluate a market maker's quotation behavior over the course of a full calendar month, rather than each time a market maker updates its quote, as is presently the case.

Nasdaq and the NASD also believe it is important to eliminate the current excess spread rule because of the order-driven nature of the Nasdaq market that will be brought about by implementation of the SEC's new limit order display rule on January 10, 1997.[5] In particular, because spreads in Nasdaq securities likely will narrow because of the display of customer limit orders, the average of the three narrowest market maker spreads will be commensurately narrowed. As a result, the interdependence of market maker quotations highlighted by the SEC in its 21(a) Report will be exacerbated and some market makers may even choose to withdraw from making markets, thus dampening liquidity on Nasdaq and reducing competition among market makers. Conversely, under the current excess spread rule, market makers may have an economic incentive to not accept customer limit orders or only accept those limit orders priced at the inside bid or offer so as to not narrow the maximum allowance spread parameters. Such a development would be completely contradictory to the important investor protection objectives underlying adoption of the SEC's limit order display rule. Because neither result is acceptable, Nasdaq and the NASD believe that the current excess spread rule should be eliminated.

While Nasdaq and the NASD believe the proposed "150 percent test" will help to ensure that market makers maintain at least a minimal level of commitment to their issues, Nasdaq and the NASD, nevertheless, believe it would be prudent to not impose the "150 percent test" on a permanent basis until there is a substantial basis to conclude that the "150 percent test" has not contributed to or fostered the same unintended consequences created by the current excess spread rule (*e.g.*, the interdependence of market maker quote movements and the exacerbation of locked and crossed market situations). Accordingly, Nasdaq and the NASD propose that the "150 percent test" be implemented on a one-year pilot basis until January 31, 1998. During the pilot period, Nasdaq and the NASD will analyze market maker quotation behavior to determine whether the rule

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[1] Unrelated to the excess spread rule, there is also a dealer spread test that is part of the NASD's Primary Market Maker ("PMM") standards that are used to determine the eligibility of market makers to an exemption from the NASD's short sale rule for short sales effected during the course of bona fide market making activity. Specifically, the market maker spread component of the PMM standards provides that a market maker must maintain a spread no greater than 102 percent of the average dealer spread.

[2] *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market ("21(a) Report"), SEC, August 8, 1996, at p. 98.

[3] *Id.* at p. 99.

[4] *Id.*

[5] SEC Rule 11Ac1–4 requires the display of customer limit orders that are priced better than a market maker's quote or that add to the size associated with a market maker's quote when the market maker is at the best price in the market. *See* Securities Exchange Act Release 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rule Adopting Release").

has met its dual objectives of removing constraints on market maker quotation movements and ensuring some minimal level of commitment by market makers to their issues. Throughout the pilot period, Nasdaq and the NASD also will proactively explore whether there are other alternative means to achieve these objectives without reliance on a quotation-based evaluation criteria.

In addition, because a market maker would be precluded from functioning as a registered market maker in a particular Nasdaq security for twenty business days if it failed to meet the "150 percent test", the proposal also amends NASD Rule 4613(d) to afford market makers the opportunity to request reconsiderations of their withdrawal notices. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions will be final and binding on the members. Because Nasdaq and the NASD believe that such reconsiderations should be exclusively limited to an evaluation as to whether the "150 percent test" was indeed satisfied, the proposed rule change provides that the grounds for reconsideration shall be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b) (11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Specifically, because Nasdaq and the NASD believe the proposed "150 percent test" will help to ameliorate adverse consequences the current excess spread could potentially have on the competitiveness and independence of quotations displayed on the Nasdaq market, Nasdaq and the NASD believe the proposed rule change will promote the integrity of quotations on the Nasdaq market and enhance competition among market makers, thereby contributing to greater market liquidity, improved price discovery, and the best execution of customer orders. At the same time, while Nasdaq and the NASD believe the proposed "150 percent test" will remove a constraint on market maker quote movements, Nasdaq and the NASD also believe that the proposal will help to ensure that all registered market makers are providing some threshold level of market making support in their issues. Nasdaq and the NASD also believe that use of the "150 percent test" will avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker. Accordingly, the NASD and Nasdaq believe the proposed rule change is consistent with all of the above-cited Sections of the Act and the rules thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD and Nasdaq request that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act by January 10, 1997. As noted above in the text accompanying footnote 5, Nasdaq and the NASD believe that serious market consequences could potentially result from retention of the current excess spread rule in a market environment where customer limit orders are required to be displayed. Accordingly, since implementation of the SEC's new limit order display rule is scheduled to commence on January 10, 1997, Nasdaq and the NASD believe good cause exists to accelerate approval of the proposed rule change on or prior to January 10, 1997. In addition, in a separate rule filing, SR–NASD–96–43, Nasdaq and the NASD proposed to modify the SOES Automated Quotation Update Feature so that only one side of a market maker's quote would be updated when its quote size has been decremented to zero through SOES executions. By updating the bid or the offer, but not both, the NASD and Nasdaq believe the auto-refresh feature will not exacerbate or contribute to locked or crossed markets, as has been the case with the current update feature during turbulent market conditions. Accordingly, Nasdaq and the NASD believe that the instant rule filing and SR–NASD–96–43 should be approved in tandem and, therefore, that good cause exists to accelerate approval of the instant rule filing if such acceleration is necessary to ensure that both filings are approved at the same time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–96–50 and should be submitted by January 24, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20 Filed 1–2–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Disaster Home Loan Application."

Type of Request: Extension of a Currently Approved Collection.

Form No's.: 5C, 739, 1632.

Description of Respondents: Applicants Requesting SBA Disaster Home Loans.

Annual Responses: 26,100.

Annual Burden: 52,200.

Comments: Send all comments regarding this information collection to Bridget Dusenbury, Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6500 Washington, DC 20416. Phone No.: 202205–6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–3 Filed 1–2–97; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration Interest Rates; Notice

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6⅝ percent for the January–March quarter of FY 97.

Pursuant to 13 CFR 120.932, the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be 6% over the New York prime rate. The initial rate for a fixed rate loan shall be the legal rate for the term or the loan.

John. R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 97–2 Filed 1–2–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held January 22–24, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from the Previous Meeting; (4) Reports from Related Industry Meetings; (5) Role of ARP 4754, Certification Consideration for Highly Integrated or Complex Aircraft Systems; (6) Review of MOPS Draft Version 0.3; (7) Web Forum: Plan for MOPS Document Administration; (8) Discussion Papers; (9) Position Papers; (10) Glossary Additions; (11) Other Business; (12) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 1996.

Steve Zaidman,

Director, Office of System Architecture and Investment Analysis, Designated Official.

[FR Doc. 97–80 Filed 1–2–97; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc. Special Committee 169; Aeronautical Data Link Applications

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–169 meeting to be held January 28–29, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc. 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Plenary Administration: Chairman's Introductory Remarks; Review and Approval of Meeting Agenda; Review and Approval of Minutes from the Previous Meeting; Review of Outstanding Action Items; (2) Working Group (WG) Progress: WG–1, Air/Ground Air Traffic Service Applications; WG–2, Systems Architecture/ Performance; WG–3, Flight Information Services Applications; WG–4, International Coordination; WG–5, Ground/Ground Traffic Flow Management Applications; (3) Plenary Business; Final Review/ Approval of *Minimum Aviation System Performance Standards (MASPS) for Air Traffic Management (ATM)—Aeronautical Operational Control (AOC) Ground-Ground Information Exchange,* RTCA Paper No. 440–96/SC169–273; Review of SARP Compliant Documents; Discussion of Future of SC–169 Work Efforts; (4) Other Business; (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 1996.

Steve Zaidman,

Director, Office of System Architecture and Investment Analysis, Designated Official.

[FR Doc. 97–81 Filed 1–2–97; 8:45 am]

BILLING CODE 4810–13–M

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Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on December 27, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approval.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	02/28/1997
11193–N	U.S. Department of Defense, Falls Church, VA	4	01/31/1997
11322–N	Hydra Rig, Inc., Ft. Worth, TX	1	12/31/1996
11375–N	Oceaneering Space Systems, Houston, TX	4	12/31/1996
11396–N	Laidlaw Environmental Services, LaPorte, TX	4	12/31/1996
11409–N	Pure Solve, Inc., Irving, TX	4	02/28/1997
11442–N	Union Tank Car Co., East Chicago, IN	4	02/28/1997
11443–N	Hercules Inc., Wilmington, DE	4	01/31/1997
11465–N	Monsanto Co., St. Louis, MO	4	02/28/1997
11491–N	P.M. Industrial Gas Ltd., Georgetown	1	02/28/1997
11511–N	Brenner Tank INc., Fond du Lac, WI	4	02/28/1997
11523–N	Bio-Lab, Inc., Conyers, GA	4	02/28/1997
11527–N	Technical Service Co., Long Beach, CA	4	12/31/1996
11537–N	Babson Bros. Co., Romeoville, IL	4	02/28/1997
11540–N	Convenience Products, Fenton, MO	1	02/28/1997
11559–N	Japan Oxygen, Inc., Long Beach, CA	4	02/28/1997
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	12/31/1996
11572–N	North American Biologicals, Inc., Miami, FL	4	01/31/1997
11578–N	General Alum & Chemical Co., Searsport, MA	4	02/28/1997
11586–N	Chem Coast Inc., La Porte, TX	4	02/28/1997
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	12/31/1996
11592–N	Amtrol Inc., West Warwick, RI	4	01/31/1997
11597–N	Zeneca, Inc., Wilmington, DE	4	02/28/1997
11598–N	Metalcraft Inc., Baltimore, MD	1	02/28/1997
11599–N	Haviland Products Co., Grand Rapids, MI	1	02/28/1997
11606–N	Safety-Kleen Corp., Elgin, IL	4	02/28/1997
11609–N	Rubbermaid Commercial Products Inc., Winchester, VA	4	12/31/1996
11621–N	Aerojet Industrial Products, North Las Vegas, NV	1	02/28/1997
11626–N	DeVilbiss Health Care, Inc., Ft. Pierce, FL	4	01/31/1997
11627–N	Cabot Corporation, Revere, PA	4	01/31/1997
11631–N	Health Care Incincerators, Fargo, ND	4	01/31/1997
11645–N	Chemical Products Corp., Cartersville, GA	4	03/31/1997
11646–N	Barton Solvents Inc., Des Moines, IA	4	01/31/1997
11649–N	VTG USA, Inc., West Chester, PA	4	01/31/1997
11653–N	Phillips Petroleum Co., Bartlesville, OK	4	01/31/1997
11654–N	Hoechst Celanese Corp., Dallas, TX	4	01/31/1997
11662–N	FIBA Technologies, Inc., Westboro, MA	4	02/28/1997
11663–N	Pfizer Inc., Groton, CT	4	03/31/1997
11664–N	Breed Technologies, Inc., Lakeland, FL	4	03/31/1997
11667–N	Weldship Corp., Bethlehem, PA	4	02/28/1997
11668–N	AlliedSignal, Inc., Morristown, NJ	4	02/15/1997
11670–N	Oilphase Sampling Services Limited, Dye, Aberdeen, Scotland	4	02/28/1997
11671–N	Matheson Gas Products, Secaucus, NJ	4	02/28/1997
11677–N	Chaparral, Inc., Lubbock, TX	4	03/15/1997
11678–N	Air Transport Association, Washington, DC	4	03/31/1997
11679–N	Dorbyl Engineering Container Division (DHE), Republic of South Africa	4	02/28/1997
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	02/28/1997
11687–N	Tri Tank Corp., Syracuse, NY	4	02/28/1997
11692–N	SCM Technologies, Tilbury, ON	4	02/28/1997

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
4354–M	PPG Industries, Inc., Pittsburgh, PA	4	02/28/1997
5493–M	Montana Sulphur & Chemical Co., Billings, MT	4	02/28/1997
6117–M	Montana Sulphur & Chemical Co., Billings, MT	4	03/31/1997
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	01/31/1997
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	12/31/1996
9413–M	EM Science, Cincinnati, OH	4	03/31/1997
9706–M	Taylor-Wharton, Harrisburg, PA	4	01/31/1997
9909–M	Taylor-Wharton, Harrisburg, PA	4	01/31/1997
10511–M	Schlumberger Technology Corporation, Houston, TX	4	12/31/1996
10517–M	Nalco Chemical Co., Naperville, IL	4	12/31/1996
10798–M	Olin Corp., Stamford, CT	4	02/28/1997
11005–M	Pressure Technology, Inc., Hanover, MD	4	12/31/1996
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	03/31/1997
11171–M	Dart Container Corp. of PA, Leola, PA	4	01/31/1997
11321–M	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	4	01/31/1997

[FR Doc. 97–70 Filed 1–2–97; 8:45 am]
BILLING CODE 4910–60–M

Surface Transportation Board

[STB Finance Docket No. 33305]

Union Pacific Railroad Company—Acquisition Exemption—Idaho Northern & Pacific Railroad Company

Union Pacific Railroad Company (UP), a Class I rail carrier, has filed a notice of exemption under 49 CFR 1180.2 to acquire trackage and right-of-way owned by Idaho Northern & Pacific Railroad Company (INP) and previously authorized for abandonment, subject to negotiations for trail use,[1] between milepost 1.0, near Weiser, and milepost 84.1 at Rubicon, in Washington and Adams Counties, ID (Line). UP notes that it has no plan to reactivate rail service on the Line at this time, although reactivation for rail service would be possible in the future if the Line were conveyed to a trail user under the Trails Act. In its notice, UP has stated that, if trail use negotiations are unsuccessful, UP will abandon the Line pursuant to the authorization granted in Docket No. AB–433 (Sub-No. 2X).

UP's acquisition transaction was expected to be consummated on or after December 19, 1996.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33305, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, Omaha, NE 68179.

Decided: December 23, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–67 Filed 1–2–97; 8:45 am]
BILLING CODE 4915–00–P

[STB Docket No. AB–481X]

South Plains Lamesa Railroad, Ltd.—Abandonment Exemption—in Dawson and Lynn Counties, TX

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by South Plains Lamesa Railroad, Ltd., of 49.06 miles of rail line between milepost 5.00 near Slaton and milepost 54.06 near Lamesa, in Dawson and Lynn Counties, TX, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 3, 1997. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[1] must be filed by January 13, 1997; petitions to stay must be filed by January 21, 1997; requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by January 23, 1997; and petitions to reopen must be filed by January 28, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–481X to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Petitioner's representative: William R. Power, 5840 West Interstate 20, 260 Cordovan Park, Arlington, TX 76017.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Decided: December 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–66 Filed 1–2–97; 8:45 am]
BILLING CODE 4915–00–P

[1] Abandonment of the Line was authorized in *Idaho Northern & Pacific Railroad Company—Abandonment and Discontinuance Exemption—in Washington and Adams Counties, ID*, Docket No. AB–433 (Sub-No. 2X) (ICC served Nov. 1, 1995). In addition, the Interstate Commerce Commission, by decision served December 28, 1995, issued a notice of interim trail use under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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federal register

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Part II

Department of Justice

Immigration and Naturalization Service and Executive Office for Immigration Review

8 CFR Part 1, et al.

Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Proposed Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service and Executive Office for Immigration Review

8 CFR Parts 1, 3, 103, 204, 207, 208, 209, 211, 212, 213, 214, 216, 217, 221, 223, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 251, 252, 253, 274a, 286, 287, 299, 316, 318, and 329

[INS No. 1788–96; AG Order No. 2065–96]

RIN 1115–AE47

Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) governing the conduct of both expedited and regular removal proceedings, and handling of asylum claims. The regulation addresses other activities involving the apprehension, detention, hearing of claims and ultimately the removal of inadmissible and deportable aliens. In addition, this rule incorporates a number of changes which are a part of the Administration's reinvention initiative, mandated in a directive signed by the President on March 4, 1995, requiring all heads of departments and agencies to conduct a page-by-page review of all regulations and to eliminate or revise those that are outdated or otherwise in need of reform. This rule is necessary to implement the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

DATES: Written comments must be submitted on or before February 3, 1997.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please refer INS number 1788–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review—Peggy Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone number (703) 305–0470; for asylum issues—Michael Shaul, Field Manual Project Office, Immigration and Naturalization Service, 425 I Street NW., ULLB–4th Floor, Washington, DC 20536, telephone number (202) 616–7439; for inspections issues—Linda Loveless, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, telephone number (202) 616–7489; for detention and removal issues—Len Loveless, Office of Detention and Deportation, Immigration and Naturalization Service, 425 I Street NW., Room 3008, Washington, DC 20536, telephone number (202) 616–7799.

SUPPLEMENTARY INFORMATION: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, enacted on September 30, 1996, amends the Immigration and Nationality Act (Act) in several ways. This rule proposes to implement the IIRIRA by creating a new, expedited removal process for aliens attempting to enter the United States through fraud or misrepresentation or without proper documents while providing a mechanism for the determination and review of applicants who demonstrate a credible fear of persecution if returned to their own country. It consolidates exclusion and deportation proceedings into one unified removal proceeding. It revises the asylum process.

It provides that persons who are present in the United States without inspection are considered applicants for admission and indicates that such persons will not be subject to expedited removal unless and until the INS Commissioner invokes the provisions in the statute and this rule allowing her to expand the use of the expedited removal process to include such individuals. Also, various sections of IIRIRA have revised and expanded the grounds of inadmissibility (formerly exclusion grounds).

The effective date of the changes implementing the expedited removal process is April 1, 1997. The Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, was enacted April 24, 1996. Many of its major provisions were superseded by IIRIRA before they became effective. Several of the remaining provisions will be implemented with this rulemaking.

Taken together, the provisions of IIRIRA have made pervasive changes in the laws governing admission, inspection, removal, and detention of aliens—eliminating or revising old standards, creating new ones, and reorganizing and revising numerous provisions of existing law. In some respects, even after the effective date of the new provisions, existing legal standards will still be applied with respect to legal matters initiated prior to that date. The length of this rulemaking document alone—only one of the regulatory actions necessary to implement IIRIRA— demonstrates the breadth and complexity of these changes.

Congress directed that the provisions of Title III–A of IIRIRA take effect on April 1, 1997, and also directed that the Attorney General publish implementing regulations by March 1, 1997. A five-month period is an extremely short time frame for completing the regulatory process for a rule of this magnitude, given the time needed to draft the rule, coordinate with interested agencies, complete the regulatory review process by OMB pursuant to Executive Order 12866, and allow time for public comment. In particular, it means that there is not adequate time for the usual rulemaking model of 60 days public notice.

Because of these exigencies, the Department has limited the public comment period on this proposed rule to 30 days. However, in order to provide a fuller opportunity for public input on the numerous issues addressed in this rulemaking, the Department will allow a 120-day comment period on the Interim Rule when that is published by the beginning of March, prior to the development of a Final Rule.

As of the date this document was submitted for publication, Public Law 104–208 had not been printed. The conference report accompanying the House version of the bill, however, contains the provisions of IIRIRA. *See* H.R. Conf. Rep. No. 863, 104th Cong. 2d Sess., at 561. The Act should be printed in its entirety in the next few weeks.

Applicants for Admission and Arriving Aliens

Section 302 of IIRIRA amends section 235(a) of the Act to describe as applicants for admission both aliens who are arriving in the United States (whether or not they arrive at a designated port-of-entry) and aliens present in the United States who have not been admitted. This section also includes aliens brought to the United States after having been interdicted in international or United States waters. Prior to the enactment of the IIRIRA, aliens apprehended after entering the

United States without inspection were subject to deportation proceedings under section 242 of the Act. By considering such aliens to be applicants for admission, this amendment significantly changes the manner in which aliens who have entered the United States without inspection are considered under the Act.

In some instances, IIRIRA distinguishes between the broader term "applicants for admission" and a narrower group, "arriving aliens." For clarity, "arriving alien" has now been specifically defined in 8 CFR part 1. The proposed definition of "arriving alien" in section 1.1(q) includes aliens arriving at a port-of-entry, aliens interdicted at sea, and aliens previously paroled upon arrival. The term "arriving alien" could also include other classes of aliens, e.g., those apprehended crossing a land border between ports-of-entry. The Department would value commentary on the proper scope of the regulatory definition.

Parole of Aliens

The proposed rule amends § 212.5 to permit chief patrol agents to authorize parole from Service custody of aliens who have not been admitted to the United States. The regulations previously allowed the district director to exercise this authority for emergent reasons or when strictly in the public interest. Because many of the aliens apprehended and processed under the jurisdiction of a chief patrol agent will now be considered applicants for admission, this change is necessary to allow discretionary release of those aliens in the particular circumstances enumerated in § 212.5.

Custody of Aliens Applying at Land Border Ports-of-entry

The proposed regulation implements a new provision added to section 235(b)(2) of the Act to state that an applicant for admission arriving at a land border port-of-entry and subject to a removal hearing under section 240 of the Act may be required to await the hearing in Canada or Mexico. This simply adds to statute and regulation a long-standing practice of the Service. If the alien fails to appear for the hearing, the immigration judge may order the alien removed *in absentia*.

Withdrawal of Application for Admission

Section 302(a) of IIRIRA incorporates into section 235(a)(4) of the Act the longstanding practice used by the Service to permit applicants for admission to voluntarily withdraw their applications for admission to the United States, in lieu of removal proceedings, and to depart immediately. Permitting an alien to withdraw his or her application for admission allows the Service to better manage its resources by removing inadmissible aliens quickly at little or no expense to the Government, and may be considered instead of expedited or regular removal when the circumstances of the inadmissibility may not warrant a formal removal. The option to permit withdrawal is solely at the discretion of the Government, and is not a right of the alien. An immigration judge may allow only arriving aliens to withdraw an application for admission. Such a grant should ordinarily require the Service's concurrence once the issue of inadmissibility or deportability has been resolved. During the pendency of an appeal from an order of removal, permission to withdraw must be obtained from the immigration judge or the Board of Immigration Appeals (Board).

Expedited Removal of Certain Applicants for Admission

Pursuant to section 302(a) of IIRIRA, aliens who attempt to enter the United States by fraud or misrepresentation or who arrive without valid entry documents may be removed under an expedited process without further hearing or review. An exception is provided for Cuban nationals arriving by aircraft at a port-of-entry. Aliens who are inadmissible on other grounds will be referred for proceedings before an immigration judge under the new removal provisions of section 240 of the Act. Although not required by statute, the proposed regulation provides for review and approval of the expedited removal order by a supervisory immigration officer prior to removal of the alien. The expedited removal order bars reentry for 5 years following the removal, or 20 years in the case of a second or subsequent removal, unless the alien obtains advance permission to reenter the Untied States.

The Department requests public comment regarding the appropriate use of the authority conferred by the statute upon the Attorney General to expand the class of aliens subject to expedited removal. Section 235(b)(1)(A)(iii) of the Act permits the Attorney General, in her sole and unreviewable discretion, to apply expedited removal to aliens not admitted or paroled (and not described in section 235(b)(1)(H)) who cannot establish continuous physical presence in the United States for the previous two years.

Under the proposed rule, expedited removal will generally apply only to "arriving aliens," as defined in section 1.1(q), i.e., aliens arriving at a port-of-entry, aliens interdicted at sea, and aliens previously paroled upon arrival. The Commissioner may, however, elect to apply the expedited removal procedures to additional classes of aliens within the limits set by the statute, if, in the Commissioner's discretion, such action is operationally warranted. The Commissioner's designation may be localized, in response to specific needs within a particular region, or nationwide, as appropriate. The designation would become effective upon publication in the **Federal Register**, except where circumstances require immediate implementation. The Department would value commentary on two alternative approaches as well: (1) application of expedited removal only to "arriving aliens"; and (2) application of expedited removal to all aliens not admitted or paroled (and not described in section 235(b)(1)(F) who cannot demonstrate continuous physical presence for the previous two years.

Finally, commentary on the proper scope of the term "arriving alien" would be helpful to the Department in implementing section 235(b)(1). The proposed regulatory definition in section 1.1(q) includes aliens arriving at a port-of-entry, aliens interdicted at sea, and aliens previously paroled upon arrival. The term "arriving alien" could also include other classes of aliens, e.g., those apprehended crossing a land border between ports-of-entry.

Review of Claim to Lawful Permanent Resident, Refugee, or Asylee Status in Expedited Removal

An expedited removal order entered against an alien by an immigration officer at the time of arrival or by an asylum officer following a determination that the alien does not have a credible fear of persecution is not subject to administrative appeal, but may be reviewed by an immigration judge upon request of the alien. An exception is provided in section 235(b)(1)(C) of the act for an alien who claims under oath or under penalty or perjury to be a lawful permanent resident, to have been admitted as a refugee under section 207 of the Act, or to have been granted asylum under section 208 of the Act.

Before entering an expedited removal order against these aliens, the Service will attempt to verify the alien's claim to lawful permanent resident, refugee, or asylee status. If a claim to lawful permanent resident status is verified, the examining officer will determine whether the alien is considered an applicant for admission within the

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meaning of section 101(a)(13) of the Act. Section 301(a) of IIRIRA amended section 101(a)(13) of the Act to provide that an alien lawfully admitted for permanent residence is not seeking admission unless the alien has abandoned or relinquished that status, has been absent for a continuous period in excess of 180 days, has engaged in illegal activity after having departed the United States, has departed while under legal process seeking removal, has committed certain criminal offenses, or is attempting to enter at a time or place other than as designated or has not been inspected and admitted to the United States. If the verified lawful permanent resident is determined to be an applicant for admission, the officer may consider appropriate discretionary waivers, if applicable, such as a waiver of documents under section 211(b) or other administrative options.

Current regulations do not provide for a waiver of documents or similar options for refugees and asylees who seek to reenter the United States without a refugee travel document. The regulations at § 223.2(b)(2) require that an application for a refugee travel document be filed before a refugee or asylee departs from the United States. The regulations also require at § 223.1(b) that a refugee or asylee must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document. The combination of these two provisions has resulted in a few refugees and asylees (who had no intention of abandoning their status in the United States at the time of their departure) not being able to be readmitted in such status. With the advent of the expedited removal provisions, including the procedure for a review by an immigration judge of a claim to refugee or asylee status, the need for a formal process for dealing with such individuals has become more critical. The Service proposes to address the problem by giving district directors the discretionary authority to accept an application for a refugee travel document from an alien who is outside the United States, provided that alien: (1) held bonafide refugee or asylee status in the United States at the time of his or her departure from the United States, (2) did not intend to abandon such refugee or asylee status, (3) did nothing while outside the United States which would be inconsistent with refugee or asylum status, (4) has been outside the United States for less than one year (the maximum period of time for which the refugee travel document can be issued), and (5) files the requisite Form I–131, Application for a Travel Document, with the appropriate fee. Upon the filing and approval of such application, the alien may be readmitted to the United States as if he or she were in possession of a valid refugee travel document, provided the alien is otherwise admissible.

If the immigration officer determines that an alien verified to have once held the status of a lawful permanent resident, refugee, or asylee does not merit a waiver, the officer will not issue an expedited removal order; rather, the officer may place the alien in removal proceedings under section 240 of the Act, Section 235(b)(1)(C) of the Act does not specify what should occur if an alien actually establishes to the satisfaction of an inspecting officer or an immigration judge that he or she is a lawful permanent resident, refugee, or asylee. However, section 242(e)(4) of the amended Act provides that if an alien appealing an expedited removal order to Federal district court establishes by a preponderance of the evidence that he or she is a lawful permanent resident, has been admitted as a refugee, or has been granted asylum, then the district court may order that the alien be provided a hearing under section 240 of the Act. In light of these judicial review provisions that would result in such aliens receiving a regular removal proceeding under section 240 of the Act, the Department considers a referral into section 240 removal proceedings upon verification of such status by an immigration officer or demonstration of such status to an immigration judge to be the most practical and efficient implementation of these provisions.

In cases where the alien's claim to lawful permanent resident, refugee, or asylee status cannot be verified, the immigration officer or the asylum officer will order the alien removal under section 235(b)(1)(A)(i) of the Act or for a credible fear determination under section 235(b)(1)(B)(iii), and then refer the alien to an immigration judge for review of the order. If the judge determines that the alien is not a lawful permanent resident, has not been admitted as a refugee, or has not been granted asylum under section 208 of the Act, the order issued by the examining immigration officer or asylum officer will be effected and the alien will be removed from the United States under that order. No further review is available. If the judge determines that the alien was once admitted and/or currently is a lawful permanent resident, refugee, or asylee, the order will be canceled and proceedings under section 235(b)(1) of the Act will be terminated. The Service may then admit the alien or pursue any other grounds of inadmissibility or deportability under section 212 or 237 of the Act in a removal proceeding pursuant to section 240 of the Act, if appropriate.

Revision of Asylum Procedures

The regulation proposes to amend 8 CFR part 208 to create new procedures for the consideration of asylum applications as mandated by section 604 of IIRIRA, to make certain other changes which are not mandated by IIRIRA, but that will significantly improve the asylum process, and to streamline the existing regulations in accordance with the principles discussed elsewhere in the supplementary information.

Of special significance are the provisions in the regulation providing the immigration judges with exclusive jurisdiction over certain categories of asylum applications, including those filed by alien crewmen, stowaways who establish a credible fear of persecution, aliens covered by the Visa Waiver Pilot Program, aliens subject to removal under section 235(c) of the Act, and aliens who have applied for or received an "S" visa. Under the current regulations, some of these classes of aliens (stowaways, crewmen, and aliens removable under section 235(c) of the Act) receive only an interview with an asylum officer which is reviewed directly by the Board. However, some problems have arisen with these procedures, most significantly, the difficulty of generating a reliable and complete record and the absence of a government-provided interpreter in asylum officer interviews. The Department believes that giving the immigration judges exclusive jurisdiction over such determinations will certify these problems while still maintaining the high quality and consistency of the interview and decision-making process which the public has come to expect.

The proposed rule's treatment of section 208(a)(2) of the Act, which establishes a number of new grounds barring an alien from applying for asylum, is equally important. Regarding section 208(a)(2)(C) of the Act, which bars an alien from applying for asylum if the alien had a previous asylum application denied, the rule makes clear that this provision applies only to asylum applications that have been denied by an immigration judge or the Board. This ensures that aliens who received a denial of their application from an asylum officer because they applied for asylum while in valid status or under procedures in place prior to January 1995 receive consideration of

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their application by an immigration judge. The rule also interprets the terms "changed circumstances" and "extraordinary circumstances" in section 208(a)(2)(D) of the Act as those terms apply to the 1-year bar in section 208(a)(2)(B) of the Act. The regulation provides minimal guidance on the meaning of the term "changed circumstances." Nevertheless, because of the novelty of the "extraordinary circumstances" exception to the 1-year bar, the rule offers a regulatory interpretation of this term. While the Department considered having the regulation identify specific examples of extraordinary circumstances that would justify a waiver of the one-year filing requirement, the proposed rule opts in favor of a provision that generally defines the term as events or factors beyond the alien's control that caused the failure to meet the one-year deadline. The regulation also provides that the alien file the application as soon as practicable under those circumstances. Thus, an event or factor of relatively brief duration would be insufficient to excuse the filing of an application long after the deadline. In our view, such a general definition provides guidance to decision makers while offering more flexibility than a definition by example would. Nevertheless, we can imagine several examples that would likely satisfy this definition: the applicant suffered a physical or mental disability that prevented a timely filing; the applicant was under a legal disability (e.g., an unaccompanied minor) during the one-year period; or the applicant received ineffective assistance of counsel, as that concept has been interpreted by the Board of Immigration Appeals, resulting in a failure to file a timely application. Nevertheless, because of both the novelty and importance of these new provisions, the Department welcomes suggestions from the public on how best to implement them.

The proposed rulemaking also offers guidance on how to apply section 208(d)(6) of the Act, which provides that an alien who knowingly makes a frivolous asylum application shall be permanently ineligible for any benefits under the Act. At § 208.18, the rule first provides that such determinations may only be made in a final order by an immigration judge or the Board of Immigration Appeals. The rule also defines an application as "frivolous" if it is fabricated or brought for an improper purpose. In doing so, the Department is carrying out one of the central principles of the asylum reform process begun in 1993; to discourage applicants from making patently false claims.

It should be noted that the proposed rule does not discuss § 208.19 dealing with the admission of the spouse and children of an alien granted asylum status. This topic was the subject of a separate proposed rule published July 9, 1996. *See* 61 FR 35,984 (1996). That separate rulemaking will be incorporated into the overall asylum regulations once it is finalized.

Credible Fear Determination and Claims of Asylum or Fear of Persecution by Alien Subject to Expedited Removal

Under the new section 235(b)(1)(A)(ii) of the Act, an alien subject to expedited removal who indicates an intention to apply for asylum or who expresses a fear of persecution will be referred to an asylum officer to determine if the alien has a credible fear of persecution. Credible fear of persecution is defined in section 302(a) of IIRIRA to mean that "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208."

Interviews to determine whether an alien has a credible fear of persecution will be conducted by an asylum officer, either at the port-of-entry or at designated locations such as detention centers. For purposes of this credible fear interview, an asylum officer is defined in the Act as an immigration officer who has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208, and is supervised by an officer who meets the same criteria and who has had substantial experience adjudicating asylum applications. This definition may include officers other than full-time asylum officers, provided they have undergone the necessary training and have the requisite supervision, but the Service will generally attempt to assign full-time asylum officers to the task of determining credible fear. Prior to the interview, the alien may consult with a person or persons of his or her own choosing at no cost to the Government, provided it does not unreasonably delay the process.

The asylum officer will make a determination whether the alien has a credible fear of persecution. Service procedures will require that the determination be reviewed by a supervisory asylum officer. The supervisory asylum officer may direct the asylum officer to interview the applicant further, or to research country conditions or other matters relevant to the decision. If the supervisory asylum officer agrees that the alien has not demonstrated a credible fear of persecution, the alien will be ordered removed under the provisions of section 235(b)(1)(B)(iii)(I) of the Act. If the alien requests review of the determination that he or she has not demonstrated a credible fear of persecution, the credible fear determination will be promptly reviewed by an immigration judge. The alien will have the opportunity to be heard and questioned by the immigration judge. This review will be limited solely to the issue of credible fear, and may be conducted either in person or by telephonic or video connection. By statute, the review should be conducted as soon as possible following the credible fear determination, preferably within 24 hours, and no later than seven days after the date of determination. The alien will be detained during this review period, and if found by the immigration judge not to have a credible fear, will be promptly removed.

Section 235(b)(1)(B)(ii) of the Act provides that aliens who are determined by an asylum officer to have a credible fear of persecution will be detained for further consideration of the asylum claim. While the statute does not specify how or by whom this further consideration should be conducted, the proposed rule provides for such consideration by an immigration judge in removal proceedings conducted pursuant to section 240 of the Act. In the removal hearing, the immigration judge will make a determination whether alien is eligible for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act. The removal order will be subject to administrative review by the Board in accordance with section 240 of the Act and § 3.1(b)(3).

Credible fear determinations are also made in the case of stowaways. Although not entitled to removal proceedings under section 240 of the Act, a stowaway who has been determined by an asylum officer (or by an immigration judge upon review of a negative determination by an asylum officer) to have a credible fear of persecution may file an asylum application to be adjudicated by an immigration judge in asylum-only proceedings. There is no appeal from the decision of an immigration judge as to whether the stowaway has a credible fear of persecution. A stowaway who is found not to have a credible fear will be

expeditiously removed. However, a stowaway who meets the credible fear threshold and is allowed to present an asylum or withholding of removal application in a proceeding before an immigration judge may appeal the resulting decision to the BIA.

Proposed Changes Not Mandated by IIRIRA

The rulemaking also proposes to remove §§ 208.13(b)(2)(ii) and 208.16(b)(4) which require that adjudicators give "due consideration to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country." The regulations accomplish little and are potentially misleading in their current form. The term "due consideration" provides little guidance. Moreover, the question of whether punishment for a migration-related offense is "persecution" hinges on an evaluation of the circumstances of each case. Under current law, prosecution for migration-related offenses does not ordinarily amount to persecution. Since the provision does not offer any assistance in adjudicating claims involving prosecution for unauthorized departure, we propose removing it from the regulations.

The rule provides a special regulation to govern the application of section 243(h)(3) of the Act, a provision added by section 413(f) of AEDPA that was eliminated by section 307 of IIRIRA. That section provided that, notwithstanding any other provision of law, the Attorney General could grant an alien withholding of deportation if she determined that it was necessary to do so to ensure compliance with the 1967 Protocol Relating to the Status of Refugees. In new section 241(b)(3)(B) of the Act, the only change Congress made to the existing bars to withholding of deportation was to require, in the case of an alien convicted of an aggravated felony (or felonies), that the alien receive an aggregate term of imprisonment of at least 5 years before such crime or crimes are automatically considered to be particularly serious. We understand this change to reflect Congress' conclusion that the bars to withholding of deportation or removal are consistent with the United States' obligations under the 1967 Protocol Relating to the Status of Refugees, except potentially in the case of an aggravated felon who receives less than a 5-year aggregate sentence. The Department proposes a regulatory interpretation of section 243(h)(3) that is consistent with this most recently expressed view of the Congress. Thus, the rule provides that an alien may attempt to obtain relief under section 243(h)(3) of the Act only if he or she is an aggravated felon who received an aggregate sentence of less than 5 years and can establish that the crime or crimes of which he or she has been convicted are not particularly serious. This will require a case-by-case determination whether the crime or crimes committed by the alien are particularly serious. Only if the crime is determined not to be particularly serious will the alien be entitled to have his or her withholding of deportation claim considered. Because section 243(h)(3) of the Act was eliminated by IIRIRA, this rule applies only to applications for withholding made in proceedings commenced prior to April 1, 1997, so long as a final action on any such withholding request was not taken prior to April 24, 1996, the date of AEDPA's passage.

Establishment of a Fee for Filing an Application for Asylum

This rulemaking does not propose to establish a fee for filing an application for asylum or to expand the situations under which fees may be charged for asylum-based applications for work authorization, despite the statutory permission to do so contained in section 208(d)(3) of the Act. Should the Department decide to do so at a later date, that action would be part of a separate rulemaking.

Employment Authorization for Asylum Applicants

The proposed regulations will continue to allow asylum applicants to apply for an employment authorization document (EAD) once the asylum application has been pending for 150 days, which is 30 days before the new statutorily-mandated time for granting such authorization contained in section 208(d)(2) of the Act.

Rules of Procedure for Executive Office for Immigration Review

Implementation of IIRIRA will impact the rules of procedure for proceedings before the Executive Office for Immigration Review. These proposed rules amend the regulations to expand the scope of the rules of procedure to include new removal proceedings in provisions regarding motions to reopen and reconsider, jurisdiction and commencement of proceedings, stipulated requests for orders, in absentia hearings, public access to hearings, and additional charges. The proposed rules also add provisions regarding the scheduling of removal cases, custody and bond in removal proceedings, and contents of the Notice of Appear form.

Subpoenas by Immigration Judges

Section 304 of IIRIRA bestows upon immigration judges the statutory authority to issue subpoenas for the attendance of witnesses and presentation of evidence in removal proceedings. This subpoena power had previously been granted to immigration judges by regulation only and the immigration judges had to enlist the district director to invoke the aid of the district court for failure to comply with the subpoena. The proposed rule amends the subpoena provisions to provide that an immigration judge directly invokes the aid of the district court for an order requiring the compliance with a subpoena instead of requiring the district director to take such action.

New Removal Proceedings

Section 240 of the Act as amended by section 304(a) of IIRIRA merges the separate proceedings of exclusion and deportation into one removal proceeding. In this single proceeding, the immigration judge will determine whether an alien is inadmissible under section 212 of the Act or deportable under section 237 (formerly section 241) of the Act. In light of these statutory changes, individuals in removal proceedings are referred to in the proposed rule as determined to be removable or ordered removed after being found to be either inadmissible or deportable (but no longer will be referred to as excludable or excluded). Removal proceedings will in nearly all respects resemble present day deportation or exclusion proceedings, with some minor differences outlined below and implemented by this proposed rule.

Although not as a result of any provision of IIRIRA, the Department is soliciting public comments on whether these regulations should include a provision for appointment of a guardian ad litem in a case where a minor or incompetent respondent in removal proceedings is otherwise unrepresented.

Applicability of New Removal Provisions

The IIRIRA provides that the newly created removal procedures and the new amended forms of relief available in removal proceedings which appear in title III–A of IIRIRA will apply to all individuals placed into removal proceedings on or after April 1, 1997, and will not affect individuals who

were in deportation or exclusion proceedings prior to April 1, 1997. *See* Section 309(a) of IIRIRA. For this reason, the proposed rule preserves the former regulations relating to deportation and exclusion proceedings for those individuals who will continue on in such proceedings after April 1, 1997. The proposed rule preserves such provisions by retaining current regulatory provisions previously contained in 8 CFR parts 236, 242, and 244 within separate new subparts of part 240. In addition, sections formerly contained in parts 237 and 243 have been retained in new subparts of part 241. A more detailed description of the entire reorganization of effected parts of title 8 is contained later in this supplementary information.

The Notice to Appear (Form I–862)

The charging document which commences removal proceedings under section 240 of the Act will be referred to as the Notice to Appear, Form I–862, replacing the Order to Show Cause, Form I–221, that was used to commence deportation proceedings and the Notice to Detained Applicant of Hearing Before an Immigration Judge, Form I–110. The Notice to Appear must contain nearly all of the information that was required to be in the Form I–221. The regulations reflect the fact that section 304 of IIRIRA did not retain the requirement that the Notice to Appear be provided in Spanish; that the mandatory period between service of a Notice to Appear and the date of an individual's first hearing is 10 days rather than the 14 days required for the Order to Show Cause; that service of the Notice to Appear by ordinary mail, rather than certified mail, is sufficient if there is proof of attempted delivery to the last address provided by the alien and noted in the Central Address File; and that no written notice need be provided if the alien has failed to provide his or her address as required under the amended Act.

In addition, the proposed rule implements the language of the amended Act indicating that the time and place of the hearing must be on the Notice to Appear. The Department will attempt to implement this requirement as fully as possible by April 1, 1997. Language has been used in this part of the proposed rule recognizing that such automated scheduling will not be possible in every situation (e.g., power outages, computer crashes/downtime.)

Burdens of Proof in Removal Proceedings

The proposed regulation restates the burden of proof language in section 240(c) of the Act as revised by section 304(a) of IIRIRA. In removal proceedings in which an alien is charged with deportability, the Service must establish deportability by clear and convincing evidence. This replaces the clear, convincing, and unequivocal standard set forth in *Woodby* v. *INS*, 385 U.S. 276 (1966). An applicant for admission to the United States must establish that he or she is clearly and beyond a doubt entitled to be admitted and is not inadmissible. In the case of an alien present in the United States without being admitted or paroled, once the Service establishes alienage, the alien must prove that he or she is clearly and beyond a doubt entitled to be admitted and is not inadmissible, unless the alien proves by clear and convincing evidence that he or she is lawfully present pursuant to a prior admission.

Cancellation of Removal

The proposed rule provides for the application by qualified individuals in removal proceedings for the new form of relief created by section 304(a) of IIRIRA: cancellation of removal. Cancellation of removal comes in two forms. The first form, available to lawful permanent residents, is similar to relief under section 212(c) of the pre-IIRIRA Act, except that only 5 years of the required 7 years of residence to statutorily qualify for this form of cancellation of removal need be fulfilled as a lawful permanent resident. This means that up to 2 years of the 7 years can be satisfied with temporary residence. This provision codifies the interpretation by a number of Federal circuit courts that a period of temporary residence counts toward the 7-year residency requirement for relief under section 212(c) of the pre-IIRIRA Act.

The second form of cancellation of removal resembles suspension of deportation under section 244 of the pre-IIRIRA Act, except that an applicant for the second form of cancellation of removal must demonstrate continuous physical presence for 10 years instead of 7 years, and must show "exceptional and extremely unusual hardship" instead of "extreme hardship." Further, unlike suspension of deportation, this form of cancellation of removal is not available for aliens who can only show hardship to themselves. The proposed rule also implements the availability of this second form of cancellation of removal to a battered spouse or child who can demonstrate 3 years of continuous physical presence in the United States and who shows that removal would result in "extreme hardship" to the battered spouse, his or her child, or the battered child's parent.

Administrative Motions To Reopen and Reconsider Removal Proceedings

Section 304(a) of IIRIRA added a number of motions procedures to the Act regarding the reopening or reconsideration of a final order of removal. For the most part, these new statutory provisions encompass the new procedures implemented by EOIR's new motions and appeals regulation, which took effect on July 1, 1996. However, the statute does place the time and number restrictions for motions specifically on the alien. The proposed rule implements this change by adding a provision to indicate that in removal proceedings, the restrictions only apply to the alien and not to the Service. In addition, unlike the pre-IIRIRA regulations excepting motions to reopen exclusion or deportation orders rendered in absentia from both the 90-day and 1-motion restrictions, the statute only excepts motions to reopen removal orders rendered in absentia from the 90-day time period and not the numerical restriction. The proposed rule implements this change as well.

Proceedings To Review Asylum Claims by Certain Aliens Not Eligible for Section 240 Proceedings

This rule established a new Notice of Referral to Immigration Judge, Form I–863, to be used to institute limited proceedings before an immigration judge. This referral form will be used by immigration officers to initiate review by an immigration judge for asylum or withholding of removal claims by Visa Waiver Pilot Program (VWPP) refusal cases and VWPP status violators, crew members, aliens ordered removed pursuant to section 235(c) of the Act, aliens present pursuant to section 101(a)(15)(S) of the Act, and alien stowaways found to have a credible fear of persecution. This proceeding is limited solely to the asylum or withholding claim and no other forms of relief may be presented by the alien or considered by the immigration judge.

Asylum officers will also use the Notice of Referral for expedited removal cases where the alien seeks review of a "no credible fear" finding by the asylum officer in section 235(b)(1) proceedings or for stowaways, prior to the execution of the expedited removal order or removal of the stowaway.

In addition, the Notice of Referral will be used to institute an immigration judge review of expedited removal orders issued against aliens claiming to be lawful permanent residents, refugees or asylees. In such cases, the immigration judge will review the

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expedited removal order, which may either be affirmed or canceled.

Existing regulations regarding deportable VWPP aliens who claim asylum state that the alien will be referred for a determination of deportability. The current regulations for VWPP applicants arriving at ports-of-entry are vague, stating only that the alien will be referred to an immigration judge for further inquiry. The proposed change will clarify that VWPP applicants and status violators are to be provided a hearing and appeal on the asylum and withholding claim only.

Existing regulations provide that a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act file an application for asylum with the district director and that the district director forward it to an asylum officer for adjudication. The Attorney General has determined that these claims should be adjudicated by an immigration judge. This determination to adjudicate the asylum claims for these classes of aliens in a proceeding before an immigration judge is in response to recent case law holding that stowaway asylum applicants must be afforded the same asylum procedures deemed necessary for other aliens. In *Marincas* v. *Lewis*, 92 F.3d 195, 200–201 (3rd Cir. 1996), the court held that the plain language of the Refugee Act left no room to construe the statue to permit differing asylum procedures for stowaways. Although the Department with that holding, the Attorney General has found that providing a proceeding before an immigration judge to hear the asylum claim will address the concerns raised in *Mirancas*, while remaining consistent with the statutory directives to limit due process for these classes of aliens. As required by IIRIRA, a stowaway will receive a credible fear determination by an asylum officer prior to the referral to an immigration judge.

Reorganization of Certain Regulatory Sections

The IIRIRA substantially revised sections of the Act relating to the arrest of aliens suspected of inadmissibility to or unlawful presence in the United States, detention of such aliens prior to and during removal proceedings, the conduct of removal proceedings, and ancillary issues such as voluntary departure and available forms of relief. The Service and EOIR have jointly undertaken a complete revision of the affected parts of title 8, to bring the relevant regulatory parts into alignment with the new sections of the Act. The newly revised sections are organized in the following manner: 8 CFR part 236, Subpart A—Detention of aliens prior to order of removal, Subpart B—Family Unity Program; 8 CFR part 238—Expeditious removal of aggravated felons; 8 CFR part 239—Initiation of removal proceedings; 8 CFR part 240, Subpart A—Removal proceedings, Subpart B—Cancellation of removal, Subpart C—Voluntary departure, Subpart D—Exclusion of aliens (for proceedings commenced prior to April 1, 1997); Subpart E—Proceedings to determine deportability of aliens in the United States: Hearing and Appeal (commenced prior to April 1, 1997); Subpart F—Suspension of deportation and voluntary departure (for proceedings commenced prior to April 1, 1997); Subpart G—Civil penalties for failure to depart; 8 CFR part 241, Subpart A—Post-hearing detention and removal, Subpart B—Deportation of Excluded Aliens (for hearings commenced prior to April 1, 1997), Subpart C—Deportation of Aliens in the United States (for hearings commenced prior to April 1, 1997); 8 CFR parts 237, 242, and 243 have been removed and reserved; 8 CFR part 244 will now contain regulations pertaining to the Temporary Protected Status program.

Sections of the old regulations which are still applicable to proceedings commenced prior to April 1, 1997, have been retained, but moved to new parts of the regulations as separate subparts according to topic. For example, the regulations relating to the conduct of proceedings, formerly contained in 8 CFR part 242, have been moved to 8 CFR part 240, which contains regulations for the conduct of removal proceedings.

Most sections of the regulations have not been retained in this manner. They have been totally revised, in conformity with the new statute. In some instances, these regulations distinguish between situations involving aliens "grandfathered" under former statutory authority and those encompassed by the provisions of IIRIRA. For example, new § 252.2(b) contains separate provisions for alien crewmen who arrived prior to April 1, 1997, and those who arrive after that date.

Because the Service and EOIR have concerns about the serious restructuring of these regulations, the public is invited to comment on the approach taken by this rulemaking. In particular, the Service wishes to solicit comments concerning any possible unintended consequences of the restructuring, such as the inclusion of new sections which encompass aliens entitled to consideration under "old" provisions.

Apprehension, Custody, and Detention of Aliens

This rule incorporates the changes made to section 242 of the Act by section 440(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Public Law 104–132 as well as section 303(a) of the IIRIRA. By enactment of AEDPA, Congress altered the provisions created by section 504 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, enacted November 29, 1990, relating to release of lawfully admitted aliens who had been convicted of aggravated felonies. The AEDPA directed the Attorney General to detain aliens convicted of aggravated felonies without bond and extended the mandatory detention provisions to aliens deportable for conviction of certain other felonies. The IIRIRA extended the mandatory detention provisions to additional classes of inadmissible and deportable aliens but provided an exception for certain witnesses. It also allowed the Attorney General the option of a transition period for implementation of mandatory detention. The INS exercised this discretion and implemented the transition period custody rules on October 9, 1996, effective for 1 year. The Act is very clear as to which aliens may be released. This rule proposes to amend the Service's regulations to comply with the amended Act by removing the release from custody provisions for aliens who may no longer be released. These amendments to the regulations will take effect upon the termination of the transition period. As for non-criminal aliens, the rule reflects the new $1,500 minimum bond amount specified by IIRIRA. Otherwise, the proposed rule essentially preserves the status quo for bond determination by the Service and bond redetermination proceedings before immigration judges. Despite being applicants for admission, aliens who are present without having been admitted (formerly referred to as aliens entering without inspection) will be eligible for bond and bond redetermination.

Expedited Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

This rule incorporates the changes made to section 242A(b) of the Act by section 442 of the AEDPA and section 304(c) of the IIRIRA. By enactment of the AEDPA, Congress made several changes to the expedited administrative deportation procedure authorized under section 130004 of the Violent Crime Control and Law Enforcement Act of

1994, Public Law 103–322. Some of these changes were modified by the IIRIRA and one was eliminated. This rule proposes to amend the Service's regulations to comply with the amended Act as follows: aliens who have lawful permanent residence on a conditional basis under section 216 of the Act are subject to expedited administrative deportation procedures and have been included in the regulation. Since section 238(b)(5) of the Act states that an alien subject to these proceedings is ineligible for any relief from removal, all references to prima facie eligibility for relief and to relief from deportation have been removed. This revision also eliminates references to release from custody, since aliens subject to these proceedings are now statutorily ineligible for release as a result of changes to other sections of the Act.

Voluntary Departure

The proposed rule outlines how voluntary departure will be handled at various stages of proceedings. Prior to the initiation of proceedings, the Service has sole jurisdiction to grant voluntary departure for a period not to exceed 120 days. The Service may impose any conditions it deems necessary to ensure the alien's timely departure from the Untied States, including the posting of a bond, continued detention pending departure and removal under safeguards. After proceedings have been commenced and at any time up to 30 days subsequent to the master calendar, the immigration judge may grant voluntary departure for a period not to exceed 120 days. In each instance, the alien will be required to present to the Service travel documents sufficient to assure lawful entry into the country to which the alien is departing, unless such document is not necessary for the alien's return.

An alien may be granted voluntary departure at the conclusion of proceedings if the immigration judge finds that the alien meets the conditions of section 240B(b) of the Act. The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States, but in all cases, the alien shall be required, within 5 days of the order, to post a voluntary departure bond of no less than $500. In order for the bond to be canceled, the alien must provide proof of departure to the district director. If the alien fails to depart, or to meet any of the conditions attached to the grant of voluntary departure, such order will vacate and the alternate order of deportation will stand.

Section 304(a) of IIRIRA makes significant changes to both the nature and duration of voluntary departure. Under the new law, voluntary departure is clearly meant to be granted to aliens illegally in the United States who are able and willing to depart in a relatively short period of time. It will no longer be available to those who are seeking to significantly extend their time in the United States for other reasons. If fact, the time periods which will be allowed for voluntary departure are such that they meet or exceed the normal processing time for applications for employment authorization. In light of these changes, the Department is eliminating the provisions currently contained in 8 CFR parts 242 and 274a which permit the granting of work authorization to aliens who have been given voluntary departure.

New section 240B of the Act and the corresponding regulations represent a significant departure from the predecessor provisions for voluntary departure. Public comments regarding the Department's approach to implementation of this provision will be particularly welcome.

Reinstatement of Removal Orders Against Aliens Illegally Reentering

Section 241(b)(5) of the Act requires the Attorney General to reinstate the removal order for an alien who illegally reenters the United States after having been removed or after having departed voluntarily under a removal order. Removal would be accomplished under the proposed rule without referral to an Immigration Court. Although the Act previously contained a provision for reinstatement of a final order of deportation, the accompanying regulation required the issuance of an order to show cause and a hearing before an immigration judge. This resulted in limited use of the provision. The proposed rule provides a procedure for a district director to reinstate a final order upon establishing identity and unlawful reentry of a previously deported or removed alien found in the United States. Once identity is affirmed, the original order will be executed.

Detention and Removal of Aliens Ordered Removed

This rule incorporates the changes made to section 241 of the Act by section 305(a) of IIRIRA. Section 241 of the Act now relates to the period for removal of aliens, post-order detention and removal of aliens, reinstatement of final orders, and detention and removal of stowaways.

This rule provides for the assumption of custody during the removal period, allows detention beyond the period, and provides condition for discretionary release and supervision of aliens who cannot be removed during the period. A district director may issue a warrant of removal based on a final administrative order of removal. The warrant of removal will authorize the Service to take an alien in the United States into custody during the removal period. The Service is required to assume custody of any alien within the United States once the 90-day removal period begins, as defined in section 241 of the Act, and detain the alien until removal or expiration of the removal period. At the expiration of the removal period, the Service has the discretion to release an alien. If the alien shows to the satisfaction of the district director that the alien is not a threat to the community and is likely to report for removal, the district director may release the alien on an order of supervision. As a condition or release, an authorized officer may require the posting of a bond, impose restrictions on conduct, and require periodic reporting to a designated officer. The district director may grant employment authorization as specified in the Act. The district director retains the authority to grant humanitarian stays of removal.

This rule restates the principle, previously found at § 243.5, that an alien who departs the United States while a final order is outstanding has executed the order.

Detention and Removal of Stowaways

The arrival of stowaways in the United States, particularly aboard cargo vessels, has long been a problem for both the transportation companies and the Service. Section 308(e) of IIRIRA has stricken former section 273(d) of the Act, which governed stowaways and section 305 of IIRIRA has clearly defined the responsibilities for stowaways and costs of detention in the new section 241 of the Act. All stowaways are deemed to be inadmissible under the Act and are not entitled to a hearing on admissibility. Those with a credible fear of persecution may seek asylum in accordance with 8 CFR part 208 in proceedings before an immigration judge.

Under the provisions of section 241 of the Act, the carrier (which includes the owner, agent, master, commanding officer, person in charge, purser, or consignee) is responsible for detaining the stowaways on board the vessel or aircraft (or at another approved location) until completion of the inspection, and may not permit the alien to leave the vessel or aircraft, unless authorized by the Service for either medical treatment,

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detention by the Service, or removal of the stowaways. The Service may order that the stowaway be removed on the vessel or aircraft of arrival when that is the most practical manner of removal. With the mutual goal of removing stowaways by the most expeditious and secure means, the Service will generally favor any reasonable request to remove the stowaway on other than the vessel or aircraft of arrival. The carrier must make all travel arrangements, including obtaining any necessary travel documents.

Since asylum-seeking stowaways may not be removed pending a final decision on their asylum claim, which may sometimes extend for a lengthy period, the statute limits the detention liability of the owner of the vessel or aircraft. The owner is now responsible for a period of time needed to determine whether the stowaway has a credible fear of persecution, and a reasonable period, beginning when a credible fear is found to exist, during which the asylum application may be considered. The statute and regulations allow for up to 72 hours to arrange and conduct the credible fear interview, although the Service anticipates that this will occur as expeditiously as possible, depending on the location and circumstances of the stowaway's arrival. If the stowaway is allowed to pursue his or her asylum application, the statute provides 15 working days, excluding Saturdays, Sundays, and holidays, for the asylum claim to be heard, at the expense of the owner of the vessel or aircraft. Any detention required beyond that time period will be at the expense of the Service. The carrier remains liable for removal, including removal expenses, if the alien is denied asylum.

Adjustment of Status

Adjustment of status is granted in the discretion of the Attorney General. Consistent with Congress' intent that arriving aliens, as that term is defined in § 1.1(g), be removed in an expedited manner through the procedures provided in section 235(b)(1) of the Act, the Attorney General has determined that she will not favorably exercise her discretion to adjust the status of arriving aliens who are ordered removed pursuant to section 235(b)(1) of the Act or who are placed in removal proceedings under section 240 of the Act. Of course, any such alien who has been persecuted or has a reasonable fear of persecution may request asylum in expedited removal. Arriving aliens who are granted asylum may then adjust their status outside of the removal proceeding context. In all other instances, those apprehended after arriving illegally in the United States should have no other benefit available to them, and should not be permitted to delay their removal through an application for adjustment of status. Any other arriving alien who is eligible to receive an immigrant visa will be required to return to his or her country of residence and request it through the consular process available to all aliens outside of the United States. If the Service decides as a matter of prosecutorial discretion, not to initiate removal proceedings but to parole the arriving alien, the alien will be able to apply for adjustment of status before the district director.

Disposition of Cases of Aliens Arrested in the United States

The regulation proposes to amend § 287.3 to differentiate the actions that must be taken when an alien is apprehended entering or attempting to enter the United States in violation of the immigration laws, or is otherwise found in the United States in violation of those laws. Disposition of the case will vary depending on the circumstances of entry or attempted entry, or the specific violation with which the alien is charged. This section is amended to include those cases that may now be processed under the expedited removal provisions of section 235(b)(1) of the Act, if such provisions are invoked by the Commissioner.

Elimination of Mexican Border Visitor's Permit

The Mexican Border Visitor's Permit, Form I–444, is a record of entry issued by the Service at land border ports-of-entry along the United States/Mexico border to holders of Nonresident Alien Border Crossing Cards, Forms I–186 and I–586. The Nonresident Alien Border Crossing Card is issued in place of a nonimmigrant visa. Currently, Form I–444 is issued when the requested visit to the United States will be for more than 72 hours but less than 30 days in duration or when requested travel is more than 25 miles from the United States/Mexico border but within the five states of Arizona, California, Nevada, New Mexico, or Texas. The Service also issues Form I–444 to Mexican nationals who are in possession of valid Mexican passports and multiple-entry nonimmigrant visas requesting admission to the United States under the limitations described above.

The current Form I–444 has been in use since 1983 and the Service now issues over 200,000 of these forms per month. Due largely to its lack of security features and the absence of standardization between ports, Form I–444 is widely counterfeited. The Service has been unable to demonstrate that there is a connection between the limits on travel by persons issued Forms I–444 and immigration violations. These restrictions should be lifted and applicants for admission should be admitted as any other person in possession of a B–1 or B–2 visa is admitted.

This regulation proposes to remove references to the issuance of the form and the section requiring a fee for issuance of Form I–444. A provision is added requiring the issuance of Form I–94, and collection of the fee, for Mexican nationals seeking to enter for more than 72 hours and/or to travel further than 25 miles from the United States/Mexico border. The Form I–94 issued to a B–2 visitor for pleasure is normally valid for 6 months. The proposed rule provides in § 235.1(f) that a Form I–94 issued at a land border port-of-entry is valid for multiple entries unless otherwise indicated.

Streamlining and Updating of Regulations

The President has directed each agency to undertake a review of its regulations for the purpose of reducing the regulations or, when possible, rendering them more readable and comprehensible. *See* E.O. 12866, 58 FR 51,735 (1993). The Service is engaging in a thorough line-by-line review of all regulations in Title 8 of the Code of Federal Regulations.

Updated Sections

References to the former section 212(a)(17) of the Act dealing with the Attorney General's consent to apply for readmission have been removed from § 217.2(b) and replaced with the current citation. References throughout 8 CFR part 235 to special inquiry officers have been replaced with the title "immigration judge." References to regional commissioners have been replaced with references to regional directors. The regulatory language contained in §§ 238.1, 238.2, 238.3, and 238.5 has been moved to 8 CFR part 233, to conform with redesignation of those statutory sections by the IIRIRA. Lists of carriers signatory to agreements with the Service for carriage to transit passengers and preinspection have been removed form the regulations and will be maintained by the Headquarters Office of Inspections.

Terminated Programs

References to initial (not replacement) application procedures in § 235.12 for Form I–777, Northern Mariana Card, have been removed as the application

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period for that form expired in July 1990. Section 235.9, dealing with refugee admissions, has been removed as that procedure is no longer followed and its subject is now governed by section 207 of the Act. Provisions in § 211.2 dealing with waivers of passport requirements for third-preference immigrants have been removed as that category of immigrant no longer exists. Terms which were appropriate in referring to exclusion and deportation procedures have been changed to reflect the single removal process.

Removal of Purely Procedural Matters Involving Only Internal Service Processes

The discussion of internal Service procedures regarding the admission of immigrant children formerly found in § 211.4 has been removed. Language in § 211.5 relating to admission procedures for alien commuters has been removed in favor of placing such information into Service Field Manuals. Examples dealing with alien crewmen, as well as Canadian nationals, have been removed from § 235.1. Part 232 of 8 CFR dealing with the procedures for notification of the master or agent of an arriving vessel when arriving aliens were placed in detention for mental or physical examination has been removed since it is addressed in Service manuals. Language dealing with procedures for completion of entry documents for nonimmigrant aliens, Mexican border crossers, bearers of Mexican diplomatic passports, and paroled aliens in 8 CFR part 235 has been removed. Language in § 235.2 relating to deferred inspection procedures for incapacitated or incompetent aliens has also been removed. Section 235.4 dealing solely with Service procedures for endorsing documents evidencing admission has been revised to address the withdrawal of an application for admission. The former § 251.1(d), dealing with the notations to be made on Service forms when inspecting crewmen, has been incorporated into Service manuals.

Elimination of Duplication

Duplicative references have been removed. Language in § 217.2, relating to eligibility for the Visa Waiver Pilot Program, has been removed as it merely restates the eligibility requirements contained in the Act. Language in § 217.3 and throughout relating to Visa Waiver Pilot Program participants' eligibility for other immigration benefits and readmission after departure to contiguous territory has been removed as it merely restates the Act and is covered by other regulations in this part.

Streamlining

Section 211.1. has been restructured in its entirety to make it easier to comprehend. The provisions relating to admission of children of lawful permanent residents formerly contained in § 211.2 have been consolidated into the general waiver provisions of section § 211.1. Language formerly in § 211.2(b) which referred to other code sections by description has been replaced by a simple citation. Sections 211.3, 211.4, and 235.9 have been removed and reserved as their contents are addressed in other sections of this part. The 8 CFR part 251, relating to alien crewmen, longshore work, and vessels has been restructured and clarified.

Unnecessary recitals of the law have been removed in the following: § 211.5(b), relating to forfeiture of an I–551 upon loss of resident status by a commuter alien; and § 217.1, which merely restates statutory language regarding eligibility for admission under the Visa Waiver Pilot Program. The 8 CFR part 217 has been streamlined by consolidating various definitions throughout that part into one section. Confusing language in § 217.3 has been streamlined with regard to readmission under the Visa Waiver Pilot Program of an alien who has departed to contiguous territory or an adjacent island has been streamlined.

Other Changes

In addition, conforming and purely editorial or grammatical revisions have been made, as appropriate.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant adverse economic impact on a substantial number of small entities because of the following factors. This rule affects only Federal government operations by codifying statutory amendments to the Immigration and Nationality Act primarily regarding the examination, detention, and removal of aliens from the United States. It affects only individuals and does not impose any reporting or compliance requirements on small entities.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), because it will have a significant economic impact on the Federal government in excess of $100,000,000. No economic impact is anticipated for state and local governments. The Service projects significant increases in detention-related costs due to the provisions of IIRIRA which mandate the custody of criminal aliens who have committed two or more crimes involving moral turpitude, aliens convicted of firearms offenses, and aliens who have been convicted of an aggravated felony. The type of crime that will qualify as an "aggravated felony" has been greatly expanded under IIRIRA. In addition, all aliens, even non-criminal aliens, who are subject to a final administrative order of removal must be held in custody until the alien can be removed from the United States. If the person is not removed within 90 days he or she may be released from custody.

The Commissioner has notified Congress pursuant to section 303(b) of IIRIRA that the Service lacks sufficient space to immediately implement the mandatory custody provisions. This notification will delay for 1 year full implementation of the new mandatory custody provisions. Section 303(b) also provides for an additional 1-year delay in implementation of the mandatory custody provisions upon a second certification that space and personnel are inadequate to comply with the requirement. The Service estimates that the cost to enforce the requirement to detain all criminal aliens will be at least $205,000,000. Of that total, personnel costs account for $65,284,000 which include detention and deportation officers ($32,873,000), investigators ($25,501,000), legal proceedings personnel ($4,968,000), and administrative support ($1,942,000). Non-personnel requirements are projected to be at least $139,732,000 which includes increases in bedspace and related alien custody requirements ($82,782,000—funds 3,600 beds @ $63.00 per day), increases in alien travel expenses ($36,000,000–3,600 removals @ $1,000 each), and detention vehicle expenses ($20,950,000). The Service is currently in the process of projecting the cost of the IIRIRA requirements that we detain all aliens with administratively final orders of deportation pending their removal.

In addition to these detention related costs, the Service estimates that the expenses for training employees on the provisions of the new law and the regulations will be $2,977,500. The cost to the Service related to additional forms or changes needed to current forms is estimated to be $2,000,000 (until the final list of form requirements is completed it is not possible to more accurately assess this cost). Finally, the Department believes there may be some

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increases needed for immigration judges to review credible fear determinations made under section 235(b) of the INA.

The EOIR estimates increases in its costs related to IIRIRA-mandated immigration judge review of credible fear determinations (which must be made under stringent time frames) and the prompt immigration judge review which IIRIRA requires of certain expedited removal orders entered against aliens claiming to be lawful permanent residents, asylees or refugees. Further, EOIR projects costs associated with the need for an Immigration Court presence in nearly ever port-of-entry, which will result from the above-mentioned credible fear review and expedited removal review process. Also, there will be costs related to the overall need for an increased Immigration Court presence at existing Service detention centers to support the processing of the additional detainees that will result from the implementation of this rule. Similarly, EOIR anticipates a need for construction of new Immigration Courts at new detention facilities the Service may open as a result of this rule's implementation.

Although there are still a number of unknown variables which could affect the total costs to EOIR to implement its part of the new expedited removal process and to respond to the increased number of detained individuals in proceedings under this rule, EOIR estimates that the total annual cost for EOIR could be as high as $25,000,000. Of that total, the cost for hiring new immigration judges and legal support staff is projected to be $21,300,000. The cost for new video and audio teleconfering equipment is estimated at $3,000,000. Training costs are expected to be approximately $400,000. Finally, forms and other support requirements are estimated to cost $300,000.

Small Business Regulatory Enforcement Act of 1996

At this time the Department considers this rule a "major rule" as defined in 5 U.S.C. § 804(2).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This proposed rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirements contained in this rule have been forwarded to the Office of Management and Budget under the Paper Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 207

Administrative practice and procedure, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 213

Immigration, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

8 CFR Part 221

Aliens, Surety bonds.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 232

Aliens, Public health.

8 CFR Part 233

Administrative practice and procedure, Air carriers, Government contracts, Travel.

8 CFR Part 234

Air carriers, Aircraft, Airports, Aliens.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 237

Aliens.

8 CFR Part 238

Administrative practice and procedure, Aliens.

8 CFR Part 239

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 243

Administrative practice and procedure, Aliens.

8 CFR Part 244

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 246

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 248

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 249

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 251

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Crewmen.

8 CFR Part 252

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Crewmen.

8 CFR Part 253

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 287

Immigration, Law enforcement officers.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 318

Citizenship and naturalization.

8 CFR Part 329

Citizenship and naturalization, Military personnel, Veterans.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—DEFINITIONS

1. The authority citation for part 1 is revised to read as follows:

Authority: 8 U.S.C. 1101.

2. Section 1.1 is amended by revising paragraph (l), and by adding new paragraphs (q) and (r) to read as follows:

§ 1.1 Definitions.

* * * * *

(l) The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

* * * * *

(q) The term *arriving alien* means an alien who seeks admission to or transit through the United States, as provided in 8 CFR part 235, at a port-of-entry, or an alien who is interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.

(r) the term *respondent* means a person named in a Notice to Appear issued in accordance with section 239(a) of the Act, or in an Order to Show Cause issued in accordance with § 242.1 of this chapter as it existed prior to April 1, 1997.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(7), (b)(9), and (b)(10) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in 8 CFR part 236, Subpart D.

(2) Decisions of Immigration Judges in deportation cases, as provided in 8 CFR part 240, Subpart E, except that no appeal shall lie from an order of an Immigration Judge under 8 CFR part 240, Subpart F, granting voluntary departure within a period of at least 30 days, if the sole ground of appeal is that a greater period of departure time should have been fixed.

(3) Decisions of Immigration Judges in removal proceedings, as provided in 8 CFR part 240.

* * * * *

(7) Determinations relating to bond, parole, or detention of an alien as provided in 8 CFR part 236, Subpart A and 8 CFR part 240, Subpart E.

* * * * *

(9) Decisions of Immigration Judges in asylum proceedings pursuant to § 208.2(b) of this chapter.

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in 8 CFR part 244.

* * * * *

5. Section 3.2 is amended by:

a. Revising the section heading;

b. Revising paragraph (b)(2);

c. Revising paragraph (c)(2) and (c)(3), and by

d. Revising paragraphs (d) through (f), to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(b) * * *

(2) A motion to reconsider a decision must be filed with the Board within 30 days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. In removal proceedings pursuant to section 240 of the Act, an alien may file only one motion to reconsider a decision that the alien is removable from the United States.

(c) * * *

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen deportation or exclusion proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened. Except as provided in paragraph (c)(3) of this section, an alien may file only one motion to reopen removal proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.

(3) In removal proceedings pursuant to section 240 of the Act, the time limitation set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen filed pursuant to the

provisions of § 3.23(b)(4)(ii). The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(4)(iii)(A)(*1*) or § 3.23(b)(4)(iii)(A)(*2*);

(ii) To apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing;

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding; or

(iv) Filed by the Service in exclusion or deportation proceedings when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with § 208.22(f) of this chapter.

* * * * *

(d) *Departure, deportation, or removal.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of exclusion, deportation, or removal proceedings subsequent to his or her departure from the United States.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of the proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of §§ 3.23(b)(4)(ii) and 3.23(b)(4)(iii)(A), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

* * * * *

Subpart B—Immigration Court

b. In Part 3, the heading of Subpart B is revised as set forth above.

7. Section 3.9 is revised to read as follows:

§ 3.9 Chief Immigration Judge.

The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:

(a) Establishment of operational policies; and

(b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

8. Section 3.10 is revised to read as follows:

§ 3.10 Immigration Judges.

Immigration Judges, as defined in 8 CFR part 1, shall exercise the powers and duties in this chapter regarding the conduct of exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

9. Section 3.11 is revised to read as follows:

§ 3.11 Administrative control Immigration Courts.

An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration Courts with their assigned geographical areas will be made available to the public at any Immigration Court.

Subpart C—Immigration Court—Rules of Procedure

10. In part 3, the heading of Subpart C is revised as set forth above.

11. Section 3.12 is amended by revising the last sentence, and adding a new sentence at the end of the section, to read as follows:

§ 3.12 Scope of rules.

* * * Except where specifically stated, these rules apply to matters before Immigration Judges, including, but not limited to, deportation, exclusion, removal, bond, rescission, departure control, and asylum proceedings. The sole procedures for review of credible fear determinations by Immigration Judges are provided for in § 3.42.

12. Section 3.13 is revised to read as follows:

§ 3.13 Definitions.

As used in this subpart:

Administrative control means custodial responsibility for the Record of Proceeding as specified in § 3.11.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

Filing means the actual receipt of a document by the appropriate Immigration Court.

Service means physically presenting or mailing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney and a Notice to Appear or Notice of Removal Hearing shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

13. Section § 3.14 is amended by:

a. Revising paragraph (a), and by

b. Adding a new paragraph (c) to read as follows:

§ 3.14 Jurisdiction and commencement of proceedings.

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the

opposing party pursuant to § 3.32 which indicates the Immigration Court in which the charging document is filed. However, no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 3.19, 236.1(d) and 240.2(b) of this chapter or credible fear determinations pursuant to § 208.30 of this chapter.

* * * * *

(c) Immigration Judges have jurisdiction to administer the oath of allegiance in administrative naturalization ceremonies conducted by the Service in accordance with § 337.2(b) of this chapter.

14. Section 3.15 is amended by:

a. Revising the section heading;

b. Amending paragraph (b) introductory text and paragraph (b)(6), by adding the phrase "and Notice to Appear" immediately after the phrase "Order to Show Cause";

c. Redesignating paragraph (c) as (d);

d. Adding a new paragraph (c); and by

e. Revising newly redesignated paragraph (d), to read as follows:

§ 3.15 Contents of the order to show cause and notice to appear and notification of change of address.

* * * * *

(c) *Contents of the Notice to Appear for Removal Proceedings.* In the Notice to Appear for removal proceedings, the Service shall provide the following administrative information to the Immigration Court. Failure to provide any of these items shall not be construed as affording the alien any substantive or procedural rights.

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship; and

(5) The language that the alien understands.

(d) *Address and telephone number.* (1) If the alien's address is not provided on the Order to Show Cause or Notice to Appear, of if the address on the Order to Show Cause or Notice to Appear is incorrect, the alien must provide to the Immigration Court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. The alien may satisfy this requirement by completing and filing Form EOIR–33.

(2) Within five days of any change of address, the alien must provide written notice of the change of address on Form EOIR–33 to the Immigration Court where the charging document has been filed, or if venue has been changed, to the Immigration Court to which venue has been changed.

§ 3.16 [Amended]

15. Section 3.16(b) is amended by revising the term "respondent/applicant" to read "alien".

§ 3.17 [Amended]

16. Section 3.17(a) is amended in the first sentence by revising the term "respondent/applicant" to read "alien", and by revising the phrase "the appropriate EOIR form" to read "Form EOIR–28".

17. Section 3.18 is revised to read as follows:

§ 3.18 Scheduling of cases.

(a) The Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings.

(b) In removal proceedings pursuant to section 240 of the Act, the Service shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, where practicable. If that information is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing. In the case of any change or postponement in the time and place of such proceeding, the Immigration Court shall provide written notice to the alien specifying the new time and place of the proceeding and the consequences under section 240(b)(5) of the Act of failing, except under exceptional circumstances as defined in section 240(e)(1) of the Act, to attend such proceeding. No such notice shall be required for an alien not in detention if the alien has failed to provide the address required in section 239(a)(1)(F) of the Act.

§ 3.19 [Amended]

18. Section 3.19(a) is amended by revising the reference to "part 242 of this chapter" to read "8 CFR part 236" wherever it appears in the paragraph.

19. Section 3.19(d) is amended in the first sentence by adding the term "or removal" immediately after the word "deportation".

20. Section 3.19 is amended by removing paragraph (h).

21. In § 3.20, paragraph (a) is revised to read as follows:

§ 3.20 Change of venue.

(a) Venue shall lie at the Immigration Court where jurisdiction vests pursuant to § 3.14.

* * * * *

22. Section 3.23 is amended by revising the section heading and paragraph (b) to read as follows:

§ 3.23 Reopening or Reconsideration before the Immigration Court.

* * * * *

(b) *Before the Immigration Court.* (1) *In general.* An Immigration Judge may upon his or her own motion at any time, or upon motion of the Service or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. Subject to the exceptions in this paragraph and paragraph (b)(4) of this section, a party may file only one motion to reconsider and one motion to reopen proceedings. A motion to reconsider must be filed within 30 days of the date of entry of a final administrative order of removal, deportation, or exclusion. A motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion. A motion to reopen or to reconsider shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States. The time and numerical limitations set forth in this paragraph do not apply to motions by the Service in removal proceedings pursuant to section 240 of the Act, or to motions by the Service in exclusion or deportation proceedings, when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with § 208.22(f) of this chapter.

(i) *Form and contents of the motion.* The motion shall be in writing and signed by the affected party or the attorney or representative of record, if any. The motion and any submission made in conjunction with it must be in English or accompanied by a certified English translation. Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject

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of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding.

(ii) *Filing.* Motions to reopen or reconsider a decision of an Immigration Judge must be filed with the Immigration Court having administrative control over the Record of Proceeding. A motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments. If the moving party, other than the Service, is represented, a Form EOIR–28, Notice of Appearance as Attorney or Representative Before an Immigration Judge must be filed with the motion. The motion must be filed in duplicate with the Immigration Court, accompanied by a fee receipt.

(iii) *Assignment to an Immigration Judge.* If the Immigration Judge is unavailable or unable to adjudicate the motion to reopen or reconsider, the Chief Immigration Judge or his or her delegate shall reassign such motion to another Immigration Judge.

(iv) *Replies to motions; decision.* The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. The decision to grant or deny a motion to reopen or a motion to reconsider is within the discretion of the Immigration Judge.

(v) *Stays.* Except in cases involving in absentia orders, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Immigration Judge, the Board, or an authorized officer of the Service.

(2) *Motion to reconsider.* A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority. Such motion may not seek reconsideration of a decision denying previous motion to reconsider.

(3) *Motion to reopen.* A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing. A motion to reopen for the purpose of providing the alien an opportunity to apply for any form of discretionary relief will not be granted if it appears that the alien's right to apply for such relief was fully explained to him or her by the Immigration Judge and an opportunity to apply therefore was afforded at the hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Pursuant to section 240A(d)(1) of the Act, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 240A(a) (cancellation of removal for certain permanent residents) or 240A(b) (cancellation of removal and adjustment of status for certain nonpermanent residents) may be granted only if the alien demonstrates that he or she was statutorily eligible for such relief prior to the service of a notice top appear, or prior to the commission of an offense referred to in section 212(a)(2) of the Act that renders the alien inadmissible or removable under sections 237(a)(2) of the Act or (a)(4), whichever is earliest. The Immigration Judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief.

(4) *Exceptions to filing deadlines.*

(i) *Asylum.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply if the basis of the motion is to apply for relief under section 208 or 241(b)(3) of the Act and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding. The filing of a motion to reopen under this section shall not automatically stay the removal of the alien. However, the alien many request a stay and, if granted by the Immigration Judge, the alien shall not be removed pending disposition of the motion by the Immigration Judge. If the original asylum application was denied based upon a finding that it was frivolous, then the alien is ineligible to file either a motion to reopen or reconsider, or for a stay of removal.

(ii) *Order entered in absentia in removal proceedings.* An order of removal entered in absentia pursuant to section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal, if the alien demonstrates that the failure to appear was because of "exceptional circumstances" as defined in section 240(e)(1) of the Act. An order entered in absentia pursuant to section 240(b)(5) may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice in accordance with sections 239(a) (1) or (2) of the Act, or the alien demonstrates that he or she was in Federal or state custody and the failure to appear was through no fault of the alien. However, in accordance with section 240(b)(5)(B) of the Act, no written notice of a change in time or place of proceeding small be required if the alien has failed to provide the address required under section 239(a)(1)(F) of the Act. The filing of a motion to reopen under this section shall stay the removal of the alien pending disposition of the motion by the Immigration Judge. An alien may file only one motion pursuant to this paragraph.

(iii) *Order entered in absentia in deportation or exclusion proceedings.* (A) An order entered in absentia in deportation proceedings may be rescinded only a motion to reopen filed:

(*1*) Within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of "exceptional circumstances" beyond the control of the alien (e.g., serious illness of the alien or serious illness or death of an immediate relative of the alien, but not including less compelling circumstances); or

(*2*) At any time if the alien demonstrates that he or she did not receive notice or if the alien demonstrates that he or she was in federal or state custody and the failure to appear was through no fault of the alien.

(B) A motion to reopen exclusion hearings on the basis that the Immigration Judge improperly entered an order of exclusion in absentia must be supported by evidence that the alien had reasonable cause for his failure to appear.

(C) The filing of a motion to reopen under paragraph (b)(4)(iii)(A) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(D) The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraphs (b)(4)(iii)(A)(*1*) of this section.

(iv) *Jointly filed motions.* The time and numerical limitations set forth in subsection (b)(1) of this section shall not apply to a motion to reopen agreed upon by all parties and jointly filed.

23. Section 3.25 is revised to read as follows:

§ 3.25 Form of the proceeding.

(a) *Waiver of presence of the parties.* The Immigration Judge may, for good cause, and consistent with section 240(b) of the Act, waive the presence of the alien at a hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. When it is impracticable by reason of an alien's mental incompetency for the alien to be present, the presence of the alien may be waived provided that the alien is represented at the hearing by an attorney or legal representative, a near relative, legal guardian, or friend.

(b) *Stipulated request for order, wavier of hearing.* An Immigration Judge may enter an order of deportation, exclusion or removal stipulated to by the alien (or the alien's representative) and the Service. The Immigration Judge may enter such an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any. If the alien is unrepresented, the Immigration Judge must determine that the alien's waiver is voluntary, knowing, and intelligent. The stipulated request and required waivers shall be signed on behalf of the government and by the alien and his or her attorney or representative, if any. The attorney or representative shall file a Notice of Appearance in accordance with § 3.16(b). A stipulated order shall constitute a conclusive determination of the alien's deportability or removability from the United States. The stipulation shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or inadmissibility as charged;

(3) A statement that the alien makes no application for relief under the Act;

(4) A designation of a country for deportation or removal under section 241(b)(2)(A)(i) of the Act;

(5) A concession to the introduction of the written stipulation of the alien as an exhibit to the Record of Proceeding;

(6) A statement that the alien understands the consequences of the stipulated request and that the alien enters the request voluntarily, knowingly, and intelligently;

(7) A statement that the alien will accept a written order for his or her deportation, exclusion or removal as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or removal.

(c) *Telephonic or video hearings.* An Immigration Judge may conduct hearings through video conference to the same extent as he or she may conduct hearings in person. An Immigration Judge may also conduct a hearing through a telephone conference, but an evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or, where available, through a video conference, except that credible fear determinations may be reviewed by the Immigration Judge through a telephone conference without the consent of the alien.

24. Section 3.26 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3.26 In absentia hearings.

* * * * *

(c) In any removal proceeding before an Immigration Judge in which the alien fails to appear, the Immigration Judge shall order the alien removed *in absentia* if:

(1) The Service establishes by clear, unequivocal, and convincing evidence that the alien is removable; and

(2) The Service establishes by clear, unequivocal, and convincing evidence that written notice of the time and place of proceedings and written notice of the consequences of failure to appear were provided to the alien.

(d) Written notice to the alien shall be considered sufficient for purposes of this section if it was provided at the most recent address provided by the alien. If the respondent fails to provide his or her address as required under § 3.15(d), no written notice shall be required for an Immigration Judge to proceed with an *in absentia* hearing. This paragraph shall not apply in the event that the Immigration Judge waives the appearance of an alien under § 3.25.

25. Section 3.27 is amended by revising paragraph (c) to read as follows:

§ 3.27 Public access to hearings.

* * * * *

(c) In any proceeding before an Immigration Judge concerning an abused alien spouse, the hearing and the Record of Proceeding shall be closed to the public unless the abused spouse agrees that the hearing and the Record of Proceeding shall be open to the public. In any proceeding before an Immigration Judge concerning an abused alien child, the hearing and the Record of Proceeding shall be closed to the public.

26. Section 3.30 is revised to read as follows:

§ 3.30 Additional charges in deportation or removal hearings.

At any time during deportation or removal proceedings, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The alien shall be served with a copy of these additional charges and/or allegations and the Immigration Judge shall read them to the alien. The Immigration Judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented. The alien may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 240.10(b) of this chapter relating to pleading shall apply to the additional factual allegations and charges.

27. Section 3.35 is revised to read as follows:

§ 3.35 Depositions and Subpoenas.

(a) *Depositions.* If an Immigration Judge is satisfied that a witness is not reasonably available at the place of hearing and that said witness' testimony or other evidence is essential, the Immigration Judge may order the taking of deposition either at his or her own instance or upon application of a party. Such order shall designate the official by whom the deposition shall be taken, may prescribe and limit the content, scope, or manner of taking the deposition, and may direct the production of documentary evidence.

(b) *Subpoenas issued subsequent to commencement of proceedings.* (1) *General.* In any proceeding before an Immigration Judge, other than under 8 CFR part 335, the Immigration Judge shall have exclusive jurisdiction to issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both. An Immigration Judge may issue a subpoena upon his or her own volition or upon application of the Service or the alien.

(2) *Application for subpoena.* A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he or she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he or she has made diligent effort, without success, to produce the same.

(3) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence

is essential, the Immigration Judge shall issue a subpoena. The subpoena shall state the title of the proceeding and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. The subpoena may also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena.

(4) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witness' appearance at the Immigration Court nearest to the witness to respond to oral or written interrogatories, unless there is no objection by any party to the witness' appearance at the proceeding.

(5) *Service.* A subpoena issued under this section may be served by any person over 18 years of age not a party to the case.

(6) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the Immigration Judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpoena.

28. In Subpart C, a new § 3.42 is added to read as follows:

§ 3.42 Review of credible fear determination.

(a) *Referral.* Jurisdiction for an Immigration Judge to review an adverse credible fear finding by an asylum officer pursuant to section 235(b)(1)(B) of the Act shall commence with the filing by the Service to Form I–863, Notice of Referral to Immigration Judge. The Service shall also file with the notice of referral a copy of the written record of determination as defined in section 235(b)(1)(B)(iii)(II) of the Act, including a copy of the alien's written request for review, if any.

(b) *Record of proceeding.* The Immigration Court shall create a Record of Proceeding for a review of an adverse credible fear determination. This record shall be merged with any later proceeding pursuant to section 240 of the Act involving the same alien.

(c) *Procedures and evidence.* The Immigration Judge may receive into evidence any oral or written statement which is material and relevant to any issue in the review. The testimony of the alien shall be under oath or affirmation administered by the Immigration Judge. If an interpreter is necessary, one will be provided by the Immigration Court. The Immigration Judge shall determine whether the review shall be in person, or through telephonic or video connection (where available). The alien may consult with a person or persons of the alien's choosing prior to the review.

(d) *Standard of review.* The Immigration Judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the Immigration Judge, that the alien could establish eligibility for asylum under section 208 of the Act.

(e) *Timing.* The Immigration Judge shall conclude the review to the maximum extent practicable within 24 hours, but in no case later than 7 days after the determination of the asylum officer.

(f) *Decision.* If an Immigration Judge determines that an alien has a credible fear of persecution, the Immigration Judge shall vacate the order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. Subsequent to the order being vacated, the Service shall issue and file Form I–862, Notice to Appear, with the Immigration Court to commence removal proceedings. The alien shall have the opportunity to apply for asylum in the course of removal proceedings pursuant to section 240 of the Act. If an Immigration Judge determines that an alien does not have a credible fear of persecution, the Immigration Judge shall affirm the asylum officer's determination and remand the case to the Service for execution of the removal order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. No appeal shall lie from a review of an adverse credible fear determination made by an Immigration Judge.

(g) *Custody.* An Immigration Judge shall have no authority to review an alien's custody status in the course of a review of an adverse credible fear determination made by the Service.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

29. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR. 14874, 15557; 3 CFR, 1982 Comp. p. 166; 8 CFR part 2.

30. In § 1301, paragraph (g)(3)(ii) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum Officers.* Asylum officers constitute a professional corps of officers who serve under the supervision and direction of the Director of International Affairs and shall be specially trained as required in § 208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act and applications for asylum and for withholding of removal, as provided under 8 CFR part 208.

* * * * *

§ 103.5 [Amended]

31. Section 103.5 is amended by:

a. Removing paragraphs (a)(1)(iii)(B);

b. Redesignating paragraphs (a)(1)(iii)(C) through (F) as paragraphs (a)(1)(iii)(B) through (E), respectively; and

c. Removing paragraph (a)(5)(iii).

32. In § 103.5a, paragraph (c)(1) is revised to read as follows:

§ 103.5a Service of notification, decisions, and other papers by the Service.

* * * * *

(c) * * *

(1) *Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service, except as provided in section 239 of the Act.

* * * * *

33. In § 103.6, paragraph (a) is revised to read as follows:

§ 103.6 Surety bonds.

(a) *Posting of surety bonds.*—(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on Form I–352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I–312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not

executed on Form I–312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) *Bond riders.*—(i) *General.* Bond riders shall be prepared on Form I–351, Bond Riders, and attached to Form I–352. If a condition to be included in a bond is not on Form I–351, a rider containing the condition shall be executed.

* * * * *

§ 103.7 [Amended]

34. Section 103.7(b)(1) is amended by removing the entry to "Form I–444".

PART 204—IMMIGRANT PETITIONS

35. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

36. Section 204.2 is amended by:

a. Revising paragraph (a)(1)(iii) introductory text;

b. Removing paragraphs (a)(1)(iii) (A) through (C); and

c. Redesignating paragraphs (a)(1)(iii) (D) through (I) as paragraphs (a)(1)(iii) (A) through (F) respectively, to read as follows:

§ 204.2 Petitions for relatives, widows, and widowers, and abused spouses and children.

* * * * *

(a) * * *

(1) * * *

(iii) *Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or a lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)(8) of this chapter.

* * * * *

PART 207—ADMISSION OF REFUGEES

37. The authority citation for part 207 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

38. Section 207.1 is amended by removing paragraph (e), and by revising paragraph (a) to read as follows:

§ 207.1 Eligibility.

(a) *Filing jurisdiction.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by filing an application in accordance with § 207.2 with the Service office having jurisdiction over the area where the applicant is located. In those areas too distant from a Service office, the application may be filed at a designated United States consular office.

* * * * *

39. Section 207.3 is revised to read as follows:

§ 207.3 Waivers of inadmissibility.

(a) *Authority.* Section 207(c)(3) of the Act sets forth grounds of inadmissibility under section 212(a) of the Act which are not applicable and those which may be waived in the case of an otherwise qualified refugee and the conditions under which such waivers may be approved. Officers in charge of overseas offices are delegated authority to initiate the necessary investigations to establish the facts in each waiver application pending before them and to approve or deny such waivers.

(b) *Filing requirements.* The applicant for a waiver must submit Form I–602, Application by Refugee for Waiver of Grounds of Inadmissibility, with the Service office processing his or her case. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial, if the application is denied. There is no appeal from such decision.

§ 207.8 [Amended]

40. Section 207.8 is amended in the last sentence by revising the reference to "sections 235, 236, and 237" to read "sections 235, 240, and 241".

41. Part 208 is revised to read as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

Subpart A—Asylum and Withholding of Removal

Sec.

208.1 General.
208.2 Jurisdiction.
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208.14 Approval, denial, or referral of application.
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208.21 Restoration of status.
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208.23–29 [Reserved]

Subpart B—Credible Fear of Persecution

208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

Subpart A—Asylum and Withholding of Removal

§ 208.1 General.

(a) *Applicability.* Unless otherwise provided herein, this subpart shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(c) of this chapter. Such applications are hereinafter referred to generically as asylum applications. The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(5) and (c)(6) of the Act, and 8 CFR parts 3 and 103, where

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applicable. The provisions of this part relating to a person convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, shall apply to asylum applications that are filed on or after November 29, 1990.

(b) *Training of asylum officers.* The Director of International Affairs shall ensure that asylum officers receive special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles. The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

§ 208.2 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by, or a credible fear determination pertaining to, an alien physically present in the United States or seeking admission at a port-of-entry. An application that is complete within the meaning of § 208.3(c)(3) shall be either adjudicated or referred by asylum officers under this part in accordance with § 208.14. An application that is incomplete within the meaning of § 208.3(c)(3) shall be returned to the applicant. Except as provided in § 208.16(a), an asylum officer shall not decide whether an alien is entitled to withholding of removal under section 241(b)(3) of the Act.

(b) *Immigration Court.* (1) *Certain aliens not entitled to proceedings under section 240 of the Act.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exciusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewman who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) Has been granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution pursuant to the procedure set forth in Subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Pilot Program under section 217 of the Act;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Pilot Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status;

(v) An alien who has been ordered removed under section 235(c) of the Act; or

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act.

(2) *Rules of procedure.* Proceeding falling under the jurisdiction of the immigration judge pursuant to paragraph (b)(1) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, except the scope of review shall be limited to a determination of whether the alien is eligible for asylum or withholding of removal and whether asylum shall be granted in the exercise of discretion. During such proceeding all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, removability, eligibility for waivers, and eligibility for any form of relief other than asylum or withholding of removal.

(3) *other aliens.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crew members who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program.

§ 208.3 Form of application.

(a) An asylum applicant must file, in triplicate, Form I–589 together with any additional supporting material. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application. An application shall be accompanied by one completed fingerprint card, Form FD–258, for every individual included in the application who is 14 years of age or older. The application also shall be accompanied by two photographs of the applicant and of each dependent included in the application.

(b) An asylum application shall be deemed to constitute at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997. In such instances, the asylum application shall be deemed to constitute an application for withholding of deportation under section 243(h) of the Act, as that section existed prior to its amendment by Pub. L. 104–208.

(c) Form I–589 shall be filed under the following conditions and shall have the following consequences:

(1) Information provided on the application may be used as a basis for the institution of or as evidence in removal proceedings, and in deportation and exclusion proceedings where the application has been filed on or after January 4, 1995, as well as to satisfy the Service's burden of proof in such proceedings;

(2) The applicant and anyone other than a spouse, parent, son, or daughter of the applicant who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature is evidence that the applicant is a aware of the contents of the application. A person other than a relative specified in this paragraph who assists the applicant in preparing the application also must provide his or her full mailing address;

(3) An asylum application that does not include a response to each of the questions contained in the Form I–589, is unsigned, or is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. The filling of an incomplete application shall not commence the 150-day period after which the applicant may file an application for employment authorization in accordance with § 208.7. An application that is incomplete shall be retuned by mail to the applicant within 30 days of the receipt of the application by the Service. If the Service has not mailed the incomplete application back to the applicant within 30 days, it shall be deemed complete;

(4) Knowing placement of false information on the application may

subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act; and

(5) Knowing filing of a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.18.

§ 208.4 Filing the application.

Except as prohibited in paragraph (a) of this section, asylum applications shall be filed in accordance with paragraph (b) of this section.

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate that the exceptions in section 208(a)(2)(D) of the Act apply. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) For the purpose of section 208(a)(2)(C) of the Act, an asylum application has not been denied unless denied by an immigration judge or the Board of Immigration Appeals;

(2) The term "changed circumstances" in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum that have arisen:

(i) For the purpose of section 208(a)(2)(C) of the Act, since the denial of the last asylum application by the alien. Changed circumstances arising after the denial of the application but before the alien's departure or removal from the United States shall only be considered as part of a motion to reopen under section 240(c)(6) of the Act and §§ 3.2, 3.23 and 103.5 of this chapter; or

(ii) For the purpose of section 208(a)(2)(B) of the Act, since the 1-year period has expired; and

(3) The term "extraordinary circumstances" in section 208(a)(2)(D) of the Act shall refer to events or factors beyond the alien's control that caused the failure to meet the 1-year deadline. Such circumstances shall excuse the failure to file within the 1-year period so long as the alien filed the application as soon after the deadline as practicable given those circumstances.

(b) *Filing location.* (1) *With the service center by mail.* Except as provided in paragraphs (b)(2), (b)(3), (b)(4) and (b)(5) of this section, asylum applications shall be filed directly by mail with the service center servicing the asylum office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port-of-entry through which the alien seeks admission to the United States.

(2) *With the asylum office.* Asylum applications shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who has received the express consent of the Director of Asylum to do so.

(3) *With the immigration judge.* Aslyum applications shall be filed directly with the Immigration Court having jurisdiction over the case in the following circumstances:

(i) During exclusion, deportation, or removal proceedings, with the Immigration Court having jurisdiction over the port, district office, or sector after service and filing of the appropriate charging document.

(ii) After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen pursuant to 8 CFR part 3 where applicable, with the Immigration Court having jurisdiction over the prior proceeding. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings

(iii) In asylum proceedings pursuant to § 208.2(b)(1) and after the Notice of Referral to Immigration Judge has been served on the alien and filed with the Immigration Court having jurisdiction over the case.

(4) *With the Board of Immigration Appeals.* In conjunction with a motion to remand or reopen pursuant to §§ 3.2 and 3.8 of this chapter where applicable, an initial asylum application shall be filed with the Board of Immigration Appeals if jurisdiction over the proceedings is vested in the Board of Immigration Appeals under 8 CFR part 3. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(5) *With the district director.* In the case of any alien described in § 208.2(b)(1) and prior to the service on the alien of Form I–863, any asylum application shall be submitted to the district director having jurisdiction pursuant to 8 CFR part 103. The district director shall forward such asylum application to the appropriate Immigration Court with the Form I–863 being filed with that Immigration Court.

(c) *Amending an application after filing.* Upon request of the alien and as a matter of discretion, the asylum officer or immigration judge having jurisdiction may permit an asylum applicant to amend or supplement the application, but any delay caused by such request shall extend the period within which the application may not apply for employment authorization in accordance with § 208.7(a).

§ 208.5 Special duties toward aliens in custody of the Service.

(a) *General.* When an alien in the custody of the Service requests asylum or withholding of removal or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, the Service shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear of persecution determination under section 235(b)(1)(B) of the Act. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application.

(b) *Certain aliens aboard vessels.* (1) If an alien crewman or alien stowaway on board a vessel or other conveyance alleges, claims, or otherwise makes known to an immigration inspector or other official making an examination on the conveyance that he or she is unable or unwilling to return to his or her country of nationality or last habitual residence (if not a national of any country) because of persecution or a fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, the alien shall be promptly removed from the conveyance. If the alien makes such fear known to an official while off such conveyance, the alien shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service.

(i) An alien stowaway will be referred to an asylum officer for a credible fear determination under § 208.30.

(ii) An alien crewman shall be provided the appropriate applications forms and information required by section 208(d)(4) of the Act and may then have 10 days within which to submit an asylum application to the district director having jurisdiction over the port of entry. The district director, pursuant to § 208.4(b), shall serve Form I–863 on the alien and immediately forward any such application to the appropriate Immigration Court with a copy of the Form I–863 being filed with that court.

(2) Pending adjudication of the application, and, in the case of a

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stowaway the credible fear determination and any review thereof, the alien may be detained by the Service or otherwise paroled in accordance with § 212.5 of this chapter. However, pending the credible fear determination, parole of an alien stowaway may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(c) *Exception to prohibition on removal.* A motion to reopen or an order to remand accompanied by an asylum application pursuant to § 208.4(b)(3)(iii) shall not stay execution of a final exclusion, deportation, or removal order unless such stay is specifically granted by the Board of Immigration Appeals or the immigration judge having jurisdiction over the motion.

§ 208.6 Disclosure to third parties.

(a) Information contained in or pertaining to any asylum application shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

(b) The confidentiality of other records kept by the Service that indicate that a specific alien has applied for asylum shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentially of these records is maintained if they are transmitted to Department of State offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) The adjudication of asylum applications;

(ii) The defense of any legal action arising from the adjudication of or failure to adjudicate the asylum application;

(iii) The defense of any legal action of which the asylum application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum application; or

(ii) Arising from the proceedings of which the asylum application is a part.

§ 208.7 Employment authorization.

(a) *Application and approval.* (1) Subject to the restrictions contained in sections 236(a) and 208(d) of the Act, an applicant for asylum who is not an aggravated felon shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit a Form I–765, Application for Employment Authorization. The application shall be submitted no earlier than 150 days after the date on which a complete asylum application submitted in accordance with §§ 208.3 and 208.4 has been received. If an asylum application has been returned as incomplete in accordance with § 208.3(c)(3), the 150-day period will commence upon receipt by the Service of a complete asylum application. An applicant whose asylum application has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. If an asylum application is denied prior to a decision on the application for employment authorization, the application for employment authorization shall be denied. If the asylum application is not so denied, the Service shall have 30 days from the date of filing of the Form I–765 to grant or deny that application, except that no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997.

(2) Employment authorization pursuant to § 274a.12(c)(8) of this chapter may not be granted to an alien who fails to appear for a scheduled interview before an asylum officer or a hearing before an immigration judge, unless the applicant demonstrates that the failure to appear was the result of exceptional circumstances.

(3) The time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with §§ 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under § 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

(4) The provisions of paragraphs (a)(1) through (3) of this section apply to applications for asylum filed on or after January 4, 1995.

(b) *Renewal and termination.* Employment authorization shall be renewable, in increments to be determined by the Commissioner, for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for completion of any administrative or judicial review.

(1) If the asylum application is denied by the asylum officer, the employment authorization shall terminate at the expiration of the employment authorization document or 60 days after the denial of asylum, whichever is longer.

(2) If the application is denied by the immigration judge, the Board of Immigration Appeals, or a Federal court, the employment authorization terminates upon the expiration of the employment authorization document, unless the applicant has filed an appropriate request for administrative or judicial review.

(c) *Supporting evidence for renewal of employment authorization.* In order for employment authorization to be renewed under this section, the alien must provide the Service (in accordance with the instructions on or attached to the employment authorization application) with a Form I–765, the required fee (unless waived in accordance with § 103.7(c) of this chapter), and (if applicable) proof that he or she has continued to pursue his or her asylum application before an immigration judge or sought administrative or judicial review. For purposes of employment authorization, pursuit of an asylum application is established by presenting to the Service one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending in proceedings before the immigration judge, and the alien wishes to continue to pursue his or her asylum application, a copy of any asylum denial, referral notice, or charging document placing the alien in such proceedings;

(2) If the immigration judge has denied asylum, a copy of the document issued by the Board of Immigration Appeals to show that a timely appeal has been filed from a denial of the asylum application by the immigration judge; or

(3) If the Board of Immigration Appeals has dismissed the alien's appeal of a denial of asylum, or sustained an appeal by the Service of a grant of asylum, a copy of the petition for judicial review or for habeas corpus

pursuant to section 242 of the Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, the application for renewal must be received by the Service 90 days prior to expiration of the employment authorization.

§ 208.8 Limitations on travel outside the United States.

(a) An applicant who leaves the United States without first obtaining advance parole under § 212.5(e) of this chapter shall be presumed to have abandoned his or her application under this section.

(b) An applicant who leaves the United States pursuant to advance parole under § 212.5(e) of this chapter and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return.

§ 208.9 Procedure for interview before an asylum officer.

(a) The Service shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3) and is within the jurisdiction of the Service.

(b) The asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in his or her discretion, limit the length of such statement or comment and may require their submission in writing. Upon completion of the interview, the applicant shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision shall be treated as delay caused by the applicant for purposes of § 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive and acknowledge receipt of the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under § 208.14(b).

(e) The asylum officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by an equivalent time the periods specified by § 208.7 for the filing and adjudication of any employment authorization application.

(f) The asylum application, all supporting information provided by the applicant, any comments submitted by the Department of State or by the Service, and any other information specific to the applicant's case and considered by the asylum officer shall comprise the record.

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure without good cause to appear for the interview for purposes of § 208.10.

§ 208.10 Failure to appear at an interview before an asylum officer.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application, waiver of the right to an interview, or denial of any application for an employment authorization document. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview. Failure to appear will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

§ 208.11 Comments from the Department of State.

(a) The Service shall forward to the Department of State a copy of each completed application it receives. At its option, the Department of State may provide detailed country conditions information relevant to eligibility for asylum or withholding of removal.

(b) At its option, the Department of State may also provide:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual residence and the frequency of such persecution; or

(3) Such other information as it deems relevant.

(c) Asylum officers and immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate.

(d) Any such comments received pursuant to paragraphs (b) and (c) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding an asylum application, or whether the alien has a credible fear of persecution pursuant to section 235(b)(1)(B) of the Act, the asylum officer may rely on material provided by the Department of State, the Office of

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International Affairs, other Service offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 208.13 Establishing asylum eligibility.

(a) *Burden of proof.* The burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The fact that the applicant previously established a credible fear of persecution for purposes of section 235(b)(1)(B) of the Act does not relieve the alien of the additional burden of establishing eligibility for asylum.

(b) *Persecution.* The applicant may qualify as a refugee either because he or she has suffered actual past persecution or because he or she has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he or she can establish that he or she has suffered persecution in the past in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he or she shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he or she were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but it is also determined that he or she does not have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to his or her country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he or she may be granted asylum unless such a grant is barred by paragraph (c) of this section.

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he or she can establish first, that he or she has a fear of persecution in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion; second, that there is a reasonable possibility of actually suffering such persecution if he or she were to return to that country; and third, that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country because of such fear. In evaluating whether the applicant has sustained his or her burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for persecution if:

(i) The applicant establishes that there is a pattern or practice in his or her country of nationality or last habitual residence of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that his or her fear of persecution upon return is reasonable.

(c) *Mandatory denials.* (1) *Applications filed on or after April 1, 1997.* For applications filed on or after April 1, 1997, an applicant shall not qualify for asylum if section 208(a)(2) or 208(b)(2) of the Act applies to the applicant. If the evidence indicates that the applicant may be ineligible under section 208(a)(2) of the Act to apply for asylum, or under section 208(b)(2) of the Act to be granted asylum, the applicant shall have the burden of proving by a preponderance of the evidence, or in the case of an alien described in section 208(a)(2)(B) of the Act by clear and convincing evidence, that he or she is eligible.

(2) *Applications filed before April 1, 1997.* An immigration judge or asylum officer shall not grant asylum to any applicant who filed his or her application before April 1, 1997, if the alien:

(i) Having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(ii) Has been firmly resettled within the meaning of § 208.15;

(iii) Can reasonably be regarded as a danger to the security of the United States;

(iv) Has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act; or

(v) Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. If the evidence indicates that one of the above grounds apply to the applicant, he or she shall have the burden of proving by a preponderance of the evidence that he or she did not so act.

(d) *Discretionary denial.* An asylum application may be denied in the discretion of the Attorney General if the alien can be removed to a third country which has offered resettlement and in which the alien would not face harm or persecution.

§ 208.14 Approval, denial, or referral of application.

(a) *By an immigration judge.* Unless otherwise prohibited in § 208.13(c), an immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(b) *By an asylum officer.* Unless otherwise prohibited in § 208.13(c):

(1) An asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(2) If the alien appears to be deportable, excludable or removable under section 240 of the Act, the asylum officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation, exclusion, or removal proceedings. An asylum officer may refer such an application after an interview conducted in accordance with § 208.9 or if, in accordance with § 208.10, the applicant is deemed to have waived his or her right to an interview.

(3) If the applicant is maintaining valid nonimmigrant status at the time the application is decided, the asylum officer may grant or deny asylum, except in the case of an applicant described in § 208.2(b)(1).

(c) *Applicability of § 103.2(b) of this chapter.* No application for asylum or withholding of deportation shall be subject to denial pursuant to § 103.2(b) of this chapter.

(d) *Duration.* If the alien's asylum application is granted, the grant will be effective for an indefinite period, subject to termination as provided in § 208.22.

§ 208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he establishes:

(a) That his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and that he did not establish significant ties in that nation; or

(b) That the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. In making his determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.16 Withholding of removal.

(a) *Consideration of application for withholding of removal.* An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section 207(a)(5) of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) *Eligibility for withholding of removal; burden of proof.* The burden of proof is on the applicant for withholding of removal to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his or her life or freedom was threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his or her life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his or her life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that there is a pattern or practice in the country of proposed removal of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return.

(c) *Approval or denial of application.* (1) *General.* Subject to paragraphs (c)(2) and (c)(3) of this section, an application for withholding of deportation or removal to a country of proposed removal shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) *Mandatory denials.* Except as provided in paragraph (c)(3) of this section, an application for withholding of removal shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(3) *Exception to the prohibition on withholding of deportation in certain cases.* Section 243(h)(3) of the Act, as added by section 413 of Pub. L. 104–132, shall apply only to applications adjudicated in proceedings commenced before April 1, 1997, and in which final action had not been taken before April 24, 1996. The discretion permitted by that section to override section 243(h)(2) shall be exercised only in the case of an applicant convicted of an aggravated felony (or felonies) where he or she was sentenced to an aggregate term of imprisonment of less than 5 years and the immigration judge determines on an individual basis that the crime (or crimes) of which the applicant was convicted does not constitute a particularly serious crime. Except in the cases specified in this paragraph, the grounds for denial of withholding of deportation in section 243(h)(2) of the Act as it appeared prior to April 1, 1997, shall be deemed to comply with the 1967 Protocol Relating to the Status of Refugees.

(d) *Reconsideration of discretionary denial of asylum.* In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him or her, the denial of asylum shall be reconsidered. Factors to be considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country.

§ 208.17 Decisions.

The decision of an asylum officer to grant or to deny asylum or withholding of removal, or to refer an asylum application in accordance with § 208.14(b), shall be communicated in writing to the applicant. Notices of decisions to grant or deny asylum by asylum officers shall generally be served in person unless, in the discretion of the asylum office director, routine service by mail is appropriate. A letter communicating denial of the

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application shall state the basis for denial of the asylum application. The letter also shall contain an assessment of the applicant's credibility, unless the denial is the result of the applicant's conviction of an aggravated felony. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision.

§ 208.18 Determining if an asylum application is frivolous.

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. An asylum application is frivolous if it is fabricated or is brought for an improper purpose. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

§ 208.19 [Reserved]

§ 208.20 Effect on exclusion, deportation and removal proceedings.

(a) An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.22. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation may not be deported or removed to the country to which his or her deportation or removal is ordered withheld unless the withholding order is terminated pursuant to § 208.22.

(b) When an alien's asylum status or withholding of removal or deportation is terminated under this chapter, the Service shall initiate removal proceedings under section 235 or 240 of the Act, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may also be in conjunction with a termination hearing scheduled under § 208.22(e).

§ 208.21 Restoration of status.

An alien who was maintaining his or her nonimmigrant status at the time of filing an asylum application and has such application denied may continue in or be restored to that status, if it has not expired.

§ 208.22 Termination of asylum or withholding of removal or deportation.

(a) *Termination of asylum by the Service.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of asylum made under the jurisdiction of an asylum officer or a district director if following an interview, the asylum officer determines that:

(1) There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted;

(2) As to the applications filed on or after April 1, 1997, one or more of the conditions described in section 208(c)(2) of the Act exist; or

(3) As to applications filed before April 1, 1997, the alien no longer has a well-founded fear of persecution upon return due to a change of country conditions in the alien's country of nationality or habitual residence or the alien has committed any act that would have been grounds for denial of asylum under § 208.14(e)(2).

(b) *Termination of withholding of deportation or removal by the Service.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of withholding of deportation or removal made under the jurisdiction of an asylum officer or a district director if the asylum officer determines, following an interview, that:

(1) The alien is no longer entitled to withholding of deportation or removal due to a change of conditions in the country to which removal was withheld;

(2) There is a showing of fraud in the alien's application such that the alien was not eligible for withholding of removal at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of removal under section 241(b)(3)(B) of the Act had it occurred prior to the grant of withholding of removal; or

(4) For applications filed in proceedings commenced before April 1, 1997, the alien has committed any act that would have been grounds for denial of withholding of deportation under section 243(h)(2) of the Act.

(c) *Procedure.* Prior to the termination of a grant of asylum or withholding of deportation or removal, the alien shall be given notice of intent to terminate, with the reasons therefor, at least 30 days prior to the interview specified in paragraph (a) of this section before an asylum officer. The alien shall be provided the opportunity to present evidence showing that he or she is still eligible for asylum or withholding of deportation or removal. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation or removal, the alien shall be given written notice that asylum status or withholding of deportation or removal and any employment authorization issued pursuant thereto, are terminated.

(d) *Termination of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal. Such termination shall not preclude the spouse or child of such alien from separately asserting an asylum or withholding of deportation or removal claim.

(e) *Termination of asylum or withholding of deportation or removal by the Executive Office for Immigration Review.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum or withholding of deportation or removal made under the jurisdiction of an immigration judge. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum or withholding of deportation or removal made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation or removal proceeding.

(f) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in section 208(c)(2) of the Act and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

§§ 208.23–208.29 [Reserved]

Subpart B—Credible Fear of Persecution

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, the Service has exclusive jurisdiction to make credible fear determinations, and the Executive

Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart, paragraphs (b) through (e) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and review under section 235(b)(1)(B) of the Act.

(b) *Interview and procedure.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner and separate and apart from the general public. At the time of the interview, the alien may be required to register his or her identity electronically or through any other means designated by the Attorney General. The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence when available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a brief statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of such persons who may be present at the interview and on the length of statement or statements made. If the alien is unable to proceed in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country of nationality or, if the applicant is stateless, the applicant's country of last habitual residence.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in § 208.9(c).

(d) *Referral for an asylum hearing.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution, the asylum officer will so inform the alien, arrange for his or her detention, and issue a Form I–862, Notice to Appear, for full consideration of the asylum claim in proceedings under section 240 of the Act. Parole of the alien may only be considered in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter. If an alien stowaway is found to have a credible fear of persecution, the asylum officer will so inform the alien, arrange for his or her detention, and issue a Form I–863, Notice to Referral to Immigration Judge, for full consideration of the asylum claim in proceedings under § 208.2(b)(1).

(e) *Removal of aliens with no credible fear of persecution.* If an alien, other than an alien stowaway, is found not to have a credible fear of persecution, the asylum officer shall order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal. If an alien stowaway is found not to have a credible fear of persecution, the asylum officer shall order the alien removed from the United States in accordance with section 235(a)(2) of the Act. The asylum officer shall also advise the alien of his or her right to request that an immigration judge review the negative decision.

(f) *Review by immigration judge.* The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's verbal or written request, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. If the alien requests such review, the asylum officer shall arrange for the detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge. Copies of the Form I–863, the asylum officer's notes, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. Upon review of the asylum officer's negative credible fear determination:

(1) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution, the case shall be returned to the Service for removal of the alien.

(2) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an asylum application in accordance with § 208.4(b)(3)(i).

(3) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution, the alien shall be allowed to file an asylum application before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the asylum application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If and when a denial of the asylum application becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If and when an approval of the asylum application becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

42. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

§ 209.1 [Amended]

43. In § 209.1, paragraph (a)(1) is amended in the first sentence by revising the reference to ", 236, and 237" to read "and 240".

44. In § 209.2, the last sentence of paragraph (c) is revised to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* * * * If an alien has been placed in deportation, exclusion, or removal proceedings under any section of this Act (as effective on the date such proceedings commenced), the application can be filed and considered only in those proceedings.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS; IMMIGRANTS; WAIVERS

45. The authority citation for part 211 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

46. Part 211 is revised to read as follows:

Sec.

211.1 Visas.
211.2 Passports.
211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Forms I–551.
211.4 Waiver of documents for returning residents.
211.5 Alien commuters.

§ 211.1 Visas.

(a) *General.* Except as provided in paragraph (b) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a returning lawful permanent resident, shall present one of the following:

(1) A valid, unexpired immigrant visa;

(2) A valid, unexpired Form I–551, Alien Registration Receipt Card, if seeking readmission after a temporary

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absence of less than one year, or in the case of a crewmember regularly serving on board a vessel or aircraft of United States registry seeking readmission after any job-connected absence;

(3) A valid, unexpired Form I–327, Permit to Reenter the United States;

(4) A valid, unexpired Form I–571, Refugee Travel Document, properly endorsed to reflect admission as a lawful permanent resident;

(5) An expired Form I–551, Alien Registration Receipt Card, accompanied by a filing receipt issued within the previous six months for either a Form I–751, Petition to Remove the Conditions on Residence, or Form I–829, Petition by Entrepreneur to Remove Conditions, if seeking admission or readmission after a temporary absence of less than one year;

(6) A Form I–551, whether or not expired, presented by a civilian or military employee of the United States Government, who was outside the United States pursuant to official orders, or the spouse or child of such employee who is preceding, accompanying or following to join within four months the employee, returning to the United States; or

(7) Form I–551, whether or not expired, or a transportation letter issued by an American consular officer, presented by an employee of the American University of Beirut, returning temporarily to the United States before resuming employment with the American University of Beirut, or resuming permanent residence in the United States.

(b) *Waivers.* (1) A waiver of the visa required in paragraph (a) of this section shall be granted without fee by the district director, upon presentation of the child's birth certificate, to a child born subsequent to the issuance of an immigrant visa to his or her accompanying parent who applies for admission during the validity of such a visa; or a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within two years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(2) For an alien described in paragraph (b)(1) of this section, recordation of the child's entry shall be on Form I–181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The carrier of such alien shall not be liable for a fine pursuant to section 273 of the Act.

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I–551, or reentry permit, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter, *except* that if the alien's Form I–551 was lost or stolen, the alien shall instead file Form I–90, Application to Replace Alien Registration Receipt Card, with the fee prescribed in § 103.7(b)(1) of this chapter. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of an immigrant visa, Form I–551, or reentry permit and admit the alien as a returning resident, if the district director is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, Form I–551, or reentry permit.

(c) *Immigrants having occupational status defined in section 101(a)(15) (A), (E), or (G) of the Act.* An immigrant visa, reentry permit, or Form I–551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15) (A), (E), or (G) of the Act, unless he or she has previously submitted, or submits at the time he or she applies for admission to the United States, the written waiver required by section 247(b) of the Act and 8 CFR part 247.

(d) *Returning temporary residents.* (1) Form I–688, Temporary Resident Card, may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I–688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

§ 211.2 Passports.

(a) A passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his or her immigrant visa shall be presented by each immigrant except an immigrant who:

(1) Is the parent, spouse, or unmarried son or daughter of a United States citizen or of an alien lawful permanent resident of the United States,

(2) Is entering under the provisions of § 211.1(a)(2) through (a)(7), or § 211.1(b)(1),

(3) Is a stateless person or a person who because of his or her opposition to Communism is unwilling or unable to obtain a passport from the country of his or her nationality, or is the accompanying spouse or unmarried son or daughter of such immigrant,

(4) Is a member of the Armed Forces of the United States,

(b) If an alien seeking admission as an immigrant with an immigrant visa believes that good cause exists for his or her failure to present a passport, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of passport and admit the alien as an immigrant, if the district director is satisfied that the alien has established good cause for the alien's failure to present a passport.

§ 211.3 Expiration of immigrant visas, reentry permits, refugee travel document, and Form I–551.

An immigrant visa, reentry permit, refugee travel document, or Form I–551 shall be regarded as unexpired if the rightful holder embarked or enplaned before the expiration of his immigrant visa, reentry permit, or refugee travel document, or, with respect to Form I–551, before the first anniversary of the date on which he departed from the United States: provided, that the vessel or aircraft on which he so embarked or enplaned arrives in the United States or foreign contiguous territory on a continuous voyage. The continuity of the voyage shall not be deemed to have been interrupted by scheduled or emergency stops of the vessel or aircraft en route to the United States or foreign contiguous territory, or by a layover in foreign contiguous territory necessitated solely for the purpose of effecting a transportation connection to the United States.

§ 211.4 Waiver of documents for returning residents.

(a) Pursuant to the authority contained in section 211(b) of the Act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence was inadmissible because of failure to have or to present a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director if the district director determines that such alien:

(1) Was not otherwise inadmissible at the time of entry, or

(2) Having been otherwise inadmissible at the time of entry is with respect thereto qualified for an exemption from deportability under section 237(a)(1)(H) of the Act, and

(3) Is not otherwise subject to removal.

(b) Denial of a waiver by the district director is not appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before the immigration judge.

§ 211.5 Alien commuters.

(a) *General.* An alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his or her place of employment in the United States. An alien commuter engaged in seasonal work will be presumed to have taken up residence in the United States if he or she is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his or her actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United States for a continuous period of six months shall be deemed to have lost residence status, notwithstanding temporary entries in the interim for other than employment purposes. An exception applies when employment in the United States was interrupted for reasons beyond the individual's control other than lack of a job opportunity or the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States.

(c) *Eligibility for benefits under the immigration and nationality laws.* Until he or she has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his or her own behalf or on behalf or his or her relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he or she shall no longer be regarded as a commuter. He or she may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his or her first reentry for that purpose. Application for issuance of a new alien registration receipt card to show that he or she has taken up residence in the United States shall be made on Form I–90.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

47. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

48. Section 212.5 is amended by:

a. Revising paragraph (a) and (b);

b. Revising introductory text in paragraph (c);

c. Revising paragraph (c)(1); and by

d. Revising paragraph (d)(2)(i), to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) The parole of aliens within the following groups who have been or are detained in accordance with § 235.3 (b) or (c) of this chapter would generally be justified for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding:

(1) Aliens who have serious medical conditions in which continued detention would not be appropriate;

(2) Women who have been medically certified as pregnant;

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The district director or chief patrol agent shall follow the guidelines set forth in § 236.3(a) of this chapter in determining under what conditions a juvenile should be paroled from detention;

(i) Juveniles may be released to a relative (brother, sister, aunt, uncle) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that the juvenile has a relative who is in detention.

(ii) If a relative who is not in detention cannot be located to sponsor the minor, the minor may be released with an accompany relative who is in detention.

(iii) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minor has identified a nonrelative in detention who accompanied him on arrival, the question of releasing the minor and the accompanying nonrelative adult shall be addressed on a case-by-case basis.

(4) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or

(5) Aliens whose continued detention is not in the public interest as determined by the district director or chief patrol agent.

(b) In the case of all other arriving aliens, except those detained under § 235.3 (b) or (c) of this chapter and paragraph (a) of this section, the district director or chief patrol agent may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (c) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (e) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3 (b) or (c) of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3 (b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(c) *Conditions.* In any case where an alien is paroled under paragraph (a) or (b) of this section, the district director or chief patrol agent may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director or chief patrol agent should apply reasonable discretion. The

consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I–352 in such amount as the district director or chief patrol agent may deem appropriate;

* * * * *

(d) * * *

(2)(i) *On notice.* In cases not covered by paragraph (d)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director or chief patrol agent in charge of the area in which the alien is located, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 250 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed by removal within a reasonable time, the alien shall again be released on parole unless in the opinion of the district director or the chief patrol agent the public interest requires that the alien be continued in custody.

* * * * *

49. In § 212.6 paragraph (a)(2) is revised to read as follows:

§ 212.6 Nonresident alien border crossing cards.

(a) * * *

(2) *Mexican border crossing card, Form I–186 or I–586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I–186 or I–586, may be admitted under § 235.1(f) of this chapter if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall be issued Form I–94 if the alien is applying for admission from:

(i) A country other than Mexico or Canada, or

(ii) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

* * * * *

PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

50. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 213.1 [Amended]

51. Section 213.1 is amended in the last sentence by revising the term "part 103" to read "§ 103.6".

PART 214—NONIMMIGRANT CLASSES

52. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

53. Section 214.1 is amended by revising paragraph (c)(4)(iv) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(4) * * *

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

* * * * *

PART 215—[REMOVED]

54. Part 215 is removed.

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

55. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

Section 216.3 is revised to read as follows:

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a notice of intent to terminate an alien's conditional resident status, the director shall not adjudicate Form I–751 or Form I–829 until it has been determined that the alien's status will not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the notice of termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in removal proceedings. In addition to the notice of termination, the director shall issue a notice to appear in accordance with 8 CFR part 239. During the ensuing removal proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or removal proceedings under section 240 of the Act.

57. Section 216.4 is amended by:

a. Revising paragraphs (a)(6) and (b)(3);

b. Revising paragraph (c)(4);

c. Removing the unnumbered paragraph immediately after paragraph (c)(4); and by

d. Revising paragraph (d)(2) to read as follows:

§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) * * *

(6) *Termination of status for failure to file petition.* Failure to properly file Form I–751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I–751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I–751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in removal proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding notice to appear in accordance with § 239.2 of this chapter. If the joint petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the service.

(b) * * *

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and a notice to appear shall be issued placing the alien under removal proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements. If the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) * * *

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence. If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence, and issue a notice to appear to initiate removal proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for removal.

(d) * * *

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue a notice to appear under section 239 of the Act and 8 CFR part 239. The alien's lawful permanent residence status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in removal proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true or that the petition was properly denied.

58. Section 216.5 is amended by revising paragraphs (a)(1), (d), (e)(1), (e)(3)(ii), and (f) to read as follows:

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.

(a) * * *

(1) Removal from the United States would result in extreme hardship;

* * * * *

(d) *Interview.* The service center director may refer the application to the appropriate local office and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate removal proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application.* (1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's removal from the United States, the director shall take into account only those factors that arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any removal from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

* * * * *

(3) * * *

(ii) A conditional resident or former conditional resident who has not departed the United States after termination of resident status may apply for the waiver. A conditional resident who is in exclusion, deportation, or removal proceedings may apply for the waiver only until such time as there is a final order of deportation or removal. The conditional resident may apply for the waiver regardless of his or her present marital status. The conditional resident may still be residing with the citizen or permanent resident spouse, or may be divorced or separated.

* * * * *

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefore, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue a notice to appear placing the alien in removal proceedings. No appeal shall lie from the decision of the director, however, the alien may seek review of such decision in removal proceedings.

PART 217—VISA WAIVER PILOT PROGRAM

59. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

60. Section 217.1 is revised to read as follows:

§ 217.1 Scope.

The Visa Waiver Pilot Program (VWPP) described in this section is established pursuant to the provisions of section 217 of the Act.

61. Section 217.2 is revised to read as follows:

§ 217.2 Eligibility.

(a) *Defintions.* As used in this part, the term:

Carrier refers to the owner, charterer, lessee, or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

Designated country refers to Andorra, Argentina, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. Effective April 1, 1995, until September 30, 1998, or the expiration of the Visa Waiver Pilot Program, whichever comes first, Ireland has been designated as a Visa Waiver Pilot Program country with Probationary Status in accordance with section 217(g) of the Act.

Return trip ticket means any return trip transportation ticket presented by an arriving Visa Waiver Pilot Program applicant on a participating carrier valid for at least 1 year, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, and military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights. A period of validity of 1 year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in § 217.6(b)(2)(v).

(b) *Special program requirements.* (1) *General.* In addition to meeting all of the requirements for the Visa Waiver Pilot Program specified in section 217 of the Act, each applicant must posses a valid, unexpired passport issued by a designated country and present a completed, signed Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form.

(2) *Persons previously removed.* Aliens who have been deported or removed from the United States, after having been determined deportable, require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(9)(A)(ii) of the Act. Such persons may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants, unless otherwise exempt.

(c) *Restrictions on manner of arrival.* (1) *Applicants arriving by air and sea.* Applicants must arrive on a carrier signatory to an agreement specified in § 217.6 and at the time of arrival must be in possession of a return trip ticket that will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; except that the return trip ticket may transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

(2) *Applicants arriving at land border ports-of-entry.* Any Visa Waiver Pilot Program applicant arriving at a land border port-of-entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land-border port-of-entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required of applicants at land border ports-of-entry.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets all other program requirements.

62. Section 217.3 is revised to read as follows:

§ 217.3 Maintenance of status.

(a) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(b) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States for the balance of his or her Visa Waiver Pilot Program admission period if he or she is otherwise admissible.

63. Section 217.4 is amended by:

a. Revising the section heading:

b. Removing paragraph (a);

c. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c) respectively;

d. Revising newly redesignated paragraph (a)(1);

e. Adding a new paragraph (a)(3);

f. Revising newly redesignated paragraph (b); and by

g. Revising newly redesignated paragraph (c) to read as follows:

§ 217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be issued a Notice of Referral to Immigration Judge for a proceeding in accordance with § 208.2(b)(1) of this chapter.

* * * * *

(3) Refusal under paragraph (a)(1) of this section shall not constitute removal for purposes of section 212(a)(9)(A) of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be issued a Notice of Referral to Immigration Judge for a proceeding in accordance with § 208.2(b)(1) of this chapter.

(2) Removal under paragraph (b)(1) is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in § 217.6(b).

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

§ 217.5 [Removed and reserved]

64. Section 217.5 is removed and reserved.

65. Section 217.6 is revised to read as follows:

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I–775, Visa Waiver Pilot Program Agreement.

(b) *Agreement provisions.* (1) To be authorized to transport an alien to the United States pursuant to section 217 of the Act and this part, a carrier must enter into an agreement on Form I–775 to transport as an applicant for admission under section 217 of the Act and this chapter, only an alien who:

(i) Is a national of and in possession of a valid passport issued by a country listed in § 217.2;

(ii) Is in possession of a completed and signed Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form, prior to inspection;

(iii) Seeks admission into the United States for 90 days or less;

(iv) Is in possession of a round trip ticket; and

(v) Appears otherwise admissible.

(2) The carrier further agrees to:

(i) Submit to the Immigration and Naturalization Service the Form I–94 was required by 8 CFR part 231 and section 217(e)(1)(B) of the Act;

(ii) Remove from the United States any alien transported by the carrier to the United States for admission under the Visa Waiver Pilot Program, in the event that the alien is determined by an immigration officer at the port-of-entry to be inadmissible or is determined to have remained unlawfully beyond the 90-day period of admission under the program;

(iii) Reimburse within 30 days of notice (not pay as a penalty) the Service for any and all expenses incurred in the transportation (from the point of arrival in the United States to the place of removal) of any alien found inadmissible or deportable under this program;

(iv) Retain the responsibilities and obligations enumerated in this part should the alien under the Visa Waiver Pilot Program depart temporarily for a visit to foreign contiguous territory during the period of authorized stay in the United States and be readmitted pursuant to § 217.3(b);

(v) Transport an alien found inadmissible to the United States or deportable from the United States after admission under the Visa Waiver Pilot Program, by accepting as full payment for return passage the return portion of the transportation ticket as required in paragraph (b)(1)(iv) of this section from the original port of arrival in the United States to point of embarkation or to the country of nationality or last residence.

(c) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5 days notice to a carrier, for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

PART 221—ADMISSION OF VISITORS OR STUDENTS

66. The authority citation for part 221 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1201; 8 CFR part 2.

§ 221.1 [Amended]

67. Section 221.1 is amended in the last sentence by revising the term "part 103" to read "§ 103.6".

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

68. The authority citation for part 223 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

69. In § 223.1, paragraph (b) is revised to read as follows:

§ 223.1 Purpose of documents.

* * * * *

(b) *Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

70. In § 223.2, paragraph (b)(2) is revised to read as follows:

§ 223.2 Processing.

* * * * *

(b) * * *

(2) *Refugee travel document.* (i) *General.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

(ii) *Discretionary authority to accept an application from an alien not within the United States.* As a matter of discretion, a district having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed from the United States without having applied for such refugee travel document, provided:

(A) The alien submits a Form I–131, Application for Travel Document, with the fee required under § 103.7(b)(1) of this chapter.

(B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;

(C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylum status; and

(D) The alien has been outside the United States for less than 1 year since his or her last departure.

* * * * *

71. In § 223.3, paragraph (d)(2) is revised to read as follows:

§ 223.3 Validity and effect on admissibility.

* * * * *

(d) * * *

(2) *Refugee travel document.* (i) *Inspection and immigration status.* Upon arrival in the United States, an alien who presents a valid unexpired refugee travel document, or who has been allowed to file an application for a refugee travel document and this application has been approved under the procedure set forth in § 223.2(b)(2)(ii), shall be examined as to his or her admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document, or (in the case of an alien discussed in § 223.2(b)(2)(ii)) which will be endorsed in such document, unless he or she is no longer eligible therefor, or he or she applies for and is found eligible for some other immigration status.

(ii) *Inadmissibility.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be inadmissible, he or she shall be referred for proceedings under section 240 of the Act. Section 235(c) of the Act shall not be applicable.

PART 232—DETENTION OF ALIENS FOR PHYSICAL AND MENTAL EXAMINATION

72. The heading for part 232 is revised to read as set forth above.

73. The authority citation for part 232 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1222, 1224, 1252; 8 CFR part 2.

§ 232.1 Redesignated as 232.3 and revised]

74. Section 232.1 is redesignated as $232.3, and is revised to read as follows:

§ 232.3 Arriving aliens.

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he or she shall, after consultation with the United States Public Health Service at the port-of-entry, notify the master or agent of the arriving vessel or aircraft of his or her intention to effect such detention by serving on the master or agent Form I–259 in accordance with § 235.3(a) of this chapter.

§ 234.1 and § 234.2 [Redesignated as §§ 232.1 and 232.2 respectively]

75. Sections 234.1 and 234.2 are redesignated as §§ 232.1 and 232.2 respectively.

PART 234—[REMOVED]

76. Part 234 is removed.

77. The following parts are redesignated as set forth in the table below:

Old part	New part
Part 238	Part 233.
Part 239	Part 234.

PART 233—CONTRACTS WITH TRANSPORTATION LINES

78. The authority citation for newly redesignated part 233 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR part 2.

79. Newly redesignated § 233.1 is revised to read as follows:

§ 233.1 Contracts.

The contracts with transportation lines referred to in section 233(c) of the Act may be entered into by the Executive Associate Commissioner for Programs, or by an immigration officer designated by the Executive Associate Commissioner for Programs on behalf of the government and shall be documented on Form I–420. The contracts with transportation lines referred to in section 233(a) of the Act shall be made by the Commissioner on behalf of the government and shall be documented on Form I–426. The contracts with transportation lines desiring their passengers to be preinspected at places outside the United States shall be made by the Commissioner on behalf of the government and shall be documented on Form I–425; except that contracts for irregularly operated charter flights may be entered into by the Associate Commissioner for Examinations or an immigration officer designated by the Executive Associate Commissioner for Programs and having jurisdiction over the location where the inspection will take place.

80. In newly redesignated § 233.3, paragraph (b) is revised to read as follows:

§ 233.3 Aliens in immediate and continuous transit.

* * * * *

(b) *Signatory lines.* A list of currently effective Form I–426 agreements is maintained by the Service's Headquarters Office of Inspections and is available upon written request.

81. Newly redesignated § 233.4 is revised to read as follows:

§ 233.4 Preinspection outside the United States.

(a) *Form I–425 agreements.* A transportation line bringing applicants for admission to the United States through preinspection sites outside the United States shall enter into an agreement on Form I–425. Such an agreement shall be negotiated directly by the Service's Headquarters Office of Inspections and the head office of the transportation line.

(b) *Signatory lines.* A list of transportation lines with currently valid transportation agreements on Form I–425 is maintained by the Service's Headquarters Office of Inspections and is available upon written request.

82. Newly redesignated § 233.5 is revised to read as follows:

§ 233.5 Aliens entering Guam pursuant to section 14 of Public Law 99–396, "Omnibus Territories Act."

A transportation line bringing aliens to Guam under the visa waiver provisions of § 212.1(e) of this chapter shall enter into an agreement on Form I–760. Such agreements shall be negotiated directly by the Service's Headquarters and head offices of the transportation lines.

PART 234—DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

83. The heading for newly redesignated part 234 is revised as set forth above.

84. The authority citation for newly redesignated part 234 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

§ 234.3 [Amended]

85. Newly redesignated § 234.3 is amended by removing the last sentence.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

86. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

87. Section 235.1 is revised to read as follows:

§ 235.1 Scope of examination.

(a) *General.* Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section.

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the removal provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected and his or her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his or her entry shall not be recorded.

(d) *Alien applicants for admission.* (1) Each alien seeking admission at a United States port-of-entry shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he or she is not subject to removal under the immigration laws, Executive Orders, or Presidential Proclamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States. A person claiming to have been lawfully admitted for permanent residence must establish that fact to the satisfaction of the inspecting immigration officer and must present proper documents in accordance with § 211.1 of this chapter.

(2) An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of section 212(a) of the Act and to removal under section 235(b) or 240 of the Act.

(3) An alien who is brought to the United States, whether or not to a designated port-of-entry and regardless of the means of transportation, after having been interdicted in international or United States waters, is considered an applicant for admission and shall be examined under section 235(b) of the Act.

(4) An alien stowaway is not an applicant for admission and may not be admitted to the United States. A stowaway shall be removed from the United States under section 235(a)(2) of the Act. The provisions of section 240 of the Act are not applicable to stowaways, nor is the stowaway entitled to further hearing or review of the removal, except that an alien stowaway who indicates an intention to apply for asylum shall be referred to an asylum officer for a determination of credible fear of persecution in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. An alien stowaway who is determined to have a credible fear of persecution shall have his or her asylum application adjudicated in accordance with § 208.2(b)(2) of this chapter. Nothing in this section shall be construed to require expedited removal proceedings in accordance with section 235(b)(1) of the Act. A stowaway who absconds either prior to inspection by an immigration officer or after being ordered removed as a stowaway pursuant to section 235(a)(2) of the Act is not entitled to removal proceedings under section 240 of the Act and shall be removed under section 235(a)(2) of the Act as if encountered upon arrival. A stowaway who has been removed pursuant to section 235(a)(2) of the Act and this section shall be considered to have been formally removed from the United States for all purposes under the Act.

(e) *U.S. citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, upon application and payment of a fee prescribed under § 103.7(b)(1) of this chapter, Form I–68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I–68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I–68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar areas adjacent to the immediate shore area of the United States. If the bearer of Form I–68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port of entry.

(f) *Form I–94, Arrival Departure Record.* (1) Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States shall be issued, upon payment of a fee prescribed in § 103.7(b)(1) of this chapter for land border admissions, a Form I–94 as evidence of the terms of

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admission. A Form I–94 issued at a land border port-of-entry shall be considered issued for multiple entries unless specifically annotated for a limited number of entries. A Form I–94 issued at other than a land border port-of-entry, unless issued for multiple entries, must be surrendered upon departure from the United States in accordance with the instructions on the form. Form I–94 is not required by:

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under § 212.1(b) of this chapter;

(iii) Any Mexican national in possession of a valid nonresident alien Mexican border crossing card, or a valid Mexican passport and a multiple-entry nonimmigrant visa issued under section 101(a)(15)(B) of the Act, who is admitted as a nonimmigrant visitor at a Mexican border port of entry for a period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Bearers of Mexican diplomatic or official passports described in § 212.1(c–1) of this chapter.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94, endorsed with the parole stamp.

88. Section 235.2 is revised to read as follows:

§ 235.2 Deferred inspection.

(a) A district director may, in his or her discretion, defer the inspection of any vessel or aircraft, or of any alien, to another Service office or port-of-entry. Any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was deferred, shall be regarded as an applicant for admission at that onward port.

(b) An examining immigration officer may defer further examination and refer the alien's case to the district director having jurisdiction over the place where the alien is seeking admission, or over the place of the alien's residence or destination in the United States, if the examining immigration officer has reason to believe that the alien can overcome a finding of inadmissibility by:

(1) Posting a bond under section 213 of the Act;

(2) Seeking and obtaining a waiver under section 211 or 212(d)(3) or (4) of the Act; or

(3) Presenting additional evidence of admissibility not available at the time and place of the initial examination.

(c) Such deferral shall be accomplished pursuant to the provisions of section 212(d)(5) of the Act for the period of time necessary to complete the deferred inspection.

(d) Refusal of a district director to authorize admission under section 213 of the Act, or to grant an application for the benefits of section 211 or section 212(d)(3) or (4) of the Act, shall be without prejudice to the renewal of such application or the authorizing of such admission by the immigration judge without additional fee.

(e) Whenever an alien on arrival is found or believed to be suffering from a disability that renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his or her family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

89. Section 235.3 is revised to read as follows:

§ 235.3 Inadmissible aliens and expedited removal.

(a) *Detention prior to inspection.* All persons arriving at a port-of-entry in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required. The owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft shall deliver every alien requiring examination to an immigration officer for inspection or to a medical officer for examination. The Service will not be liable for any expenses related to such detention or presentation or for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissibility by a Service officer.

(b) *Expedited removal.* (1) *Determination of inadmissibility.* An alien who is arriving in the United States or other alien as designated pursuant to paragraph (b)(2)(ii) of this section who is determined to be inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act (except an alien for whom documentary requirements are waived under § 211.1(b)(3) or § 212.1 of this chapter), shall be ordered removed from the United States in accordance with section 235(b)(1) of the Act. The examining immigration officer shall serve the alien with Form I–860, Notice and Order of Expedited Removal. Except as otherwise provided in this section, such alien is not entitled to a hearing before an immigration judge in proceedings conducted pursuant to section 240 of the Act, or to an appeal of the expedited removal order by the Board of Immigration appeals. An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal, except that parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(2) *Applicability.* The expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section 212(a)(6)(C) or (7) of the Act:

(i) Arriving aliens, as defined in § 1.1(q) of this chapter, except for citizens of Cuba arriving at a United States port-of-entry by aircraft;

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the **Federal Register.** However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of

the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

(3) *Additional charges of inadmissibility.* In the expedited removal process, the Service may not charge an alien with any additional grounds of inadmissibility other than section 212(a)(6)(C) or 212(a)(7) of the Act. if an alien appears to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all charges. Once the alien is in removal proceedings under section 240 of the Act, the Service is not precluded from lodging additional charges against the alien. Nothing in this paragraph shall preclude the Service from pursuing such additional grounds of inadmissibility against the alien in any subsequent attempt to reenter the United States, provided the additional grounds of inadmissibility still exist.

(4) *Claim of asylum or fear of persecution.* If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, a fear of persecution, or a fear of return to his or her country, the inspecting officer shall, before proceeding further with the case, detain the alien and refer him or her for an interview by an asylum officer in accordance with § 208.30 of this chapter to determine if the alien has a credible fear of persecution. The referring officer shall provide information to the alien concerning the nature and purpose of the credible fear interview and shall advise the alien that he or she may, prior to the interview, consult with a person or person of his or her choosing, at no expense to the Government and without unreasonably delaying the process. Pending the credible fear determination, the alien shall be detained. Parole of such alien in accordance with section 212(d)(5) of the Act may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(5) *Claim to lawful permanent resident, refugee, or asylee status.* (i) *Verification of status.* If an applicant for admission who is subject to expedited removal pursuant to section 235(b)(1) of the Act claims to have been lawfully admitted for permanent residence, admitted as a refugee under section 207 of the Act, or granted asylum under section 208 of the Act, the immigration officer shall attempt to verify the alien's claim. Such verification shall include a check of all available Service data systems and any other means available to the officer. An alien whose claim to lawful permanent resident, refugee, or asylee status cannot be verified will be advised of the penalties for perjury, and will be placed under oath or allowed to make a declaration as permitted under 28 U.S.C. 1746, concerning his or her lawful admission for permanent residence, admission as a refugee under section 207 of the Act, or grant of asylum status under section 208 of the Act. Whenever practicable, a written statement shall be taken from the alien. The immigration officer shall issue an expedited order of removal under section 235(b)(1)(A)(i) of the Act and refer the alien to the immigration judge for review of the order in accordance with paragraph (b)(5)(iv) of this section and § 235.6(a)(2)(ii).

(ii) *Claimed lawful permanent residents.* If the claim to lawful permanent resident status is verified, and such status has not been terminated in exclusion, deportation, or removal proceedings, the examining immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. The examining immigration officer will determine in accordance with section 101(a)(13)(C) of the Act whether the alien is considered to be making an application for admission. If the alien is determined to be seeking admission and the alien is otherwise admissible, except that he or she is not in possession of the required documentation, a discretionary waiver of documentary requirements may be considered in accordance with section 211(b) of the Act and § 211.1(b)(3) of this chapter or the alien's inspection may be deferred to an onward office for presentation of the required documents. If the alien appears to be inadmissible, the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iii) *Claimed refugees and asylees.* If a check of Service records or other means indicates that the alien has been granted refugee status or asylee status, and such status has not been terminated in deportation, exclusion, or removal proceedings, the immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. If the alien is not in possession of a valid, unexpired refugee travel document, the examining immigration officer may accept an application for a refugee travel document in accordance with § 223.2(b)(2)(ii) of this chapter. If accepted, the immigration officer shall readmit the refugee or asylee in accordance with § 223.3(d)(2)(i) of this chapter. If the alien is determined not to be eligible to file an application for a refugee travel document the immigration officer may initiate removal proceedings against the alien under section 240 of this Act.

(iv) *Review of order for claimed lawful permanent residents, refugees, or asylees.* When an alien whose status has not been verified but who is claiming under oath or under penalty or perjury to be a lawful permanent resident, refugee, or asylee is ordered removed pursuant to section 235(b)(1) of the Act, the case will be referred to an immigration judge for review of the expedited removal order under section 235(b)(1)(C) of the Act and § 235.6(a)(2)(ii). If the immigration judge determines that the alien has never been admitted as a lawful permanent resident or as a refugee, or granted asylum status, the order issued by the immigration officer will be affirmed and the Service will remove the alien. There is no appeal from the decision of the immigration judge. If the immigration judge determines that the alien was once so admitted as a lawful permanent resident or as a refugee, or was granted asylum status, and such status has not been terminated by final administrative action, the immigration judge will terminate proceedings and vacate the expedited removal order. The Service may initiate removal proceedings against such an alien in proceedings under section 240 of the Act. During removal proceedings, the immigration judge may consider any waivers, exceptions, or requests for relief for which the alien is eligible.

(6) *Opportunity for the alien to establish that he or she was admitted or paroled into the United States.* If the Commissioner determines that the

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expedited removal provisions of section 235(b)(1) of the Act shall apply to any or all aliens described in paragraph (b)(2)(ii) of this section, such alien will be given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following inspection at a port-of-entry. The alien will be allowed to present evidence or provide sufficient information to support the claim. Such evidence may consist of documentation in the possession of the alien, the Service, or a third party. The examining immigration officer will consider all such evidence and information, make further inquiry if necessary, and will attempt to verify the alien's status through a check of all available Service data systems. The burden rests with the alien to satisfy the examining immigration officer of the claim of lawful admission or parole. If the alien establishes that he or she was lawfully admitted or paroled, the case will be examined to determine if grounds of deportability under section 237(a) of the Act are applicable, or if paroled, whether such parole has been, or should be, terminated, and whether the alien is inadmissible under section 212(a) of the Act. An alien who cannot satisfy the examining officer that he or she was lawfully admitted or paroled will be ordered removed pursuant to section 235(b)(1) of the Act.

(7) *Review of expedited removal orders.* Any removal order entered by an examining immigration officer pursuant to section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final. Such supervisory review shall not be delegated below the level of the second line supervisor, or a person acting in that capacity. The supervisory review and approval of an expedited removal order for an alien described in section 235(b)(1)(A)(iii) of the Act must include a review of any claim of lawful admission or parole and any evidence or information presented to support such a claim, prior to approval of the order. In such cases, the supervisor may request additional information from any source and may require further interview of the alien.

(8) *Removal procedures relating to expedited removal.* An alien ordered removed pursuant to section 235(b)(1) of the Act shall be removed from the United States in accordance with section 241(c) of the Act and 8 CFR part 241.

(9) *Waivers of documentary requirements.* Nothing in this section limits the discretionary authority of the Attorney General, including authority under sections 211(b) or 212(d) of the Act, to waive the documentary requirements for arriving aliens.

(10) *Applicant for admission under section 217 of the Act.* The provisions of § 235.3(b) do not apply to an applicant for admission under section 217 of the Act.

(c) *Other inadmissible aliens.* Any alien applicant for admission, as included in sections 101(a)(13) and 235(a)(1) of the Act and § 235.1(d) of this chapter, who appears to the inspecting officer to be inadmissible, but who does not fall within paragraph (b) of this section, may be detained, paroled, or paroled for deferred inspection by the inspecting officer. In determining whether or not an alien shall be detained, paroled, or paroled for deferred inspection, the inspecting officer shall consider the likelihood that the alien will abscond or pose a security risk.

(d) *Service custody.* The Service will assume custody of any alien subject to detention under paragraph (b) or (c) of this section. In its discretion, the Service may require any alien who appears inadmissible and who arrives at a land border port-of-entry from Canada or Mexico, to remain in that country while awaiting a removal hearing. Such alien shall be considered detained for a proceeding within the meaning of section 235(b) of the Act and may be ordered removed in absentia by an immigration judge if the alien fails to appear for the hearing.

(e) *Detention in non-Service facility.* Whenever an alien is taken into Service custody and detained at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are:

(1) 24-Hour supervision,

(2) Conformance with safety and emergency codes,

(3) Food Service, and

(4) Availability of emergency medical care.

(f) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to § 236.1(e) of this chapter apply when an inadmissible alien is detained for removal proceedings.

90. Section 235.4 is revised to read as follows:

§ 235.4 Withdrawal of application for admission.

(a) The Attorney General may, in his or her discretion, permit any alien applicant for admission to withdraw his or her application for admission in lieu of removal proceedings under section 240 of the Act or expedited removal under section 235(b)(1) of the Act. The alien's decision to withdraw his or her application for admission must be made voluntarily, but nothing in this section shall be construed as to give an alien the right to withdraw his or her application for admission. Permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately. An alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted in accordance with § 212.5(a) of this chapter.

(b) An immigration judge may allow only an arriving alien to withdraw an application for admission. Once the issue of inadmissibility or deportability has been resolved, permission to withdraw an application for admission should ordinarily be granted only with the concurrence of the Service. An immigration judge shall not allow an alien to withdraw an application for admission unless the alien, in addition to demonstrating that he or she possesses both the intent and the means to depart immediately from the United States, establishes that factors directly relating to the issue of inadmissibility indicate that the granting of the withdrawal would be in the interest of justice. In addition, during the pendency of an appeal from the order of removal, permission to withdraw an application for admission must be obtained from the immigration judge or the Board.

91. Section 235.5 is revised to read as follows:

§ 235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act

may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the examining immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination shall be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

(b) *In foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a port-of-entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made prior to such departure at the port or place in the foreign territory and shall have the same effect under the Act as though made at the destined port-of-entry in the United States.

92. Section 235.6 is revised to read as follows:

§ 235.6 Referral to immigration judge.

(a) *Notice.* (1) *Referral by Form I–862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I–862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If, in accordance with section 235(b)(1)(B)(ii) of the Act, an asylum officer determines that an alien is expedited removal proceedings has a credible fear of persecution and refers the case to the immigration judge for consideration of the application for asylum.

(iii) If, in accordance with section 235(b)(1)(B)(iii)(III) of the Act, the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution and vacates the expedited removal order issued by the asylum officer pursuant to section 235(b)(1)(B)(iii) of the Act.

(iv) If an immigration officer verifies that an alien subject to expedited removal under section 235(b)(1) of the Act has been admitted as a lawful permanent resident refugee, or asylee, or upon review pursuant to § 235.3(b)(5)(iv) an immigration judge determines that the alien was once so admitted, provided that such status has not been terminated by final administrative action, and the Service initiates removal proceedings against the alien under section 240 of the Act.

(2) *Referral by Form I–863, Notice of Referral to Immigration Judge.* An immigration officer will sign and deliver a Form I–863 to an alien in the following cases:

(i) If, in accordance with section 235(b)(1)(B)(iii)(III) of the Act, an asylum officer determines that an alien does not have a credible fear of persecution, and the alien requests a review of that determination by an immigration judge; or

(ii) If, in accordance with section 235(b)(1)(C) of the Act, an immigration officer refers an expedited removal order entered on an alien claiming to be a lawful permanent resident, refugee, or asylee for whom the officer could not verify such status to an immigration judge for review of the order.

(iii) If an immigration officer refers an applicant described in § 208.2(b)(1) of this chapter to an immigration judge for an asylum hearing under § 208.2(b)(2) of this chapter.

(b) *Certification for mental condition; medical appeal.* An alien certified under sections 212(a)(1) and 232(b) of the Act shall be advised by the examining immigration officer that he or she may appeal to a board of medical examiners of the United States Public Health Service pursuant to section 232 of the Act. If such appeal is taken, the district director shall arrange for the convening of the medical board.

§ 235.7 [Removed]

93. Section 235.7 is removed.

§ 235.13 [Redesignated as § 235.7]

94. Section 235.13 is redesignated as § 235.7.

95. Section 235.8 is revised to read as follows:

§ 235.8 Inadmissibility on security and related grounds.

(a) *Report.* When an immigration officer or an immigration judge suspects that an arriving alien appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii), (B), or (C) of the Act, the immigration officer or immigration judge shall order the alien removed and report the action promptly to the district director who has administrative jurisdiction over the place where the alien has arrived or where the hearing is being held. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I–147, Notice of Temporary Inadmissibility, of the action taken and the right to submit a written statement and additional information for consideration by the Attorney General. The district director shall forward the report to the regional director for further action as provided in paragraph (b) of this section.

(b) *Action by regional director.* (1) In accordance with section 235(c)(2)(B) of the Act, the regional director may deny any further inquiry or hearing by an immigration judge and order the alien removed by personal service of Form I–148, Notice of Permanent Inadmissibility, or issue any other order disposing of the case that the regional director considers appropriate.

(2) If the regional director concludes that the case does not meet the criteria contained in section 235(c)(2)(B) of the Act, the regional director may direct that:

(i) An immigration officer shall conduct a further examination of the alien, concerning the alien's admissibility; or,

(ii) The alien's case be referred to an immigration judge for a hearing, or for the continuation of any prior hearing.

(3) The regional director's decision shall be in writing and shall be signed by the regional director. Unless the written decision contains confidential information, the disclosure of which would be prejudicial to the public interest, safety, or security of the United States, the written decision shall be served on the alien. If the written decision contains such confidential information, the alien shall be served with a separate written order showing the disposition of the case, but with the confidential information deleted.

(c) *Finality of decision.* The regional director's decision under this section is final when it is served upon the alien in accordance with paragraph (b)(3) of this section. There is no administrative appeal from the regional director's decision.

(d) *Hearing by immigration judge.* If the regional director directs that an alien subject to removal under this section be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in

the matter shall be conducted in accordance with the provisions of section 240 of the Act and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer. In a case where the immigration judge ordered the alien removed pursuant to paragraph (a) of this section, the Service shall refer the case back to the immigration judge and proceedings shall be automatically reopened upon receipt of the notice of referral. If confidential information, not previously considered in the matter, is presented supporting the inadmissibility of the alien under section 212(a)(3)(A) (other than clause (ii)), (B), or (C) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again order the alien removed under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

(e) *Nonapplicability.* The provisions of this section shall apply only to arriving aliens, as defined in § 1.1(q) of this chapter. Aliens present in the United States who have not been admitted or paroled may be subject to proceedings under Title V of the Act.

§ 235.9 [Removed]

96. Section 235.9 is removed.

§ 235.12 [Redesignated as § 235.9 and revised]

97. Section 235.12 is redesignated as § 235.9 and is revised to read as follows:

§ 235.9 Northern Marianas identification card.

During the two-year period that ended July 1, 1990, the Service issued Northern Marianas Identification Cards to aliens who acquired United States citizenship when the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States entered into force on November 3, 1986. These cards remain valid as evidence of United States citizenship. Although the Service no longer issues these cards, a United States citizen to whom a card was issued may file Form I–777, Application for Issuance or Replacement of Northern Marianas Card, to obtain replacement of a lost, stolen, or mutilated Northern Marianas Identification Card.

98. Section 235.10 is revised to read as follows:

§ 235.10 U.S. Citizen Identification Card.

(a) *General.* Form I–197, U.S. Citizen Identification Card, is no longer issued by the Service but valid existing cards will continue to be acceptable documentation of U.S. citizenship. Possession of the identification card is not mandatory for any purpose. A U.S. Citizen Identification Card remains the property of the United States. Because the identification card is no longer issued, there are no provisions for replacements cards.

(b) *Surrender and voidance.* (1) *Institution of proceeding under section 240 or 342 of the Act.* A U.S. Citizen Identification Card must be surrendered provisionally to a Service office upon notification by the district director that a proceeding under section 240 or 342 of the Act is being instituted against the person to whom the card was issued. The card shall be returned to the person if the final order in the proceeding does not result in voiding the card under this paragraph. A U.S. Citizen Identification Card is automatically void if the person to whom it was issued is determined to be an alien in a proceeding conducted under section 240 of the Act, or if a certificate, document, or record relating to that person is canceled under section 342 of the Act.

(2) *Investigation of validity of identification card.* A U.S. Citizen Identification Card must be surrendered provisionally upon notification by a district director that the validity of the card is being investigated. The card shall be returned to the person who surrendered it if the investigation does not result in a determination adverse to his or her claim to be a United States citizen. When an investigation results in a tentative determination adverse to the applicant's claim to be a United States citizen, the applicant shall be notified by certified mail directed to his or her last known address. The notification shall inform the applicant of the basis for the determination and of the intention of the district director to declare the card void unless within 30 days the applicant objects and demands an opportunity to see and rebut the adverse evidence. Any rebuttal, explanation, or evidence presented by the applicant must be included in the record of proceeding. The determination whether the applicant is a United States citizen must be based on the entire record and the applicant shall be notified of the determination. If it is determined that the applicant is not a United States citizen, the applicant shall be notified of the reasons, and the card deemed void. There is no appeal from the district director's decision.

(3) *Admission of alienage.* A U.S. Citizen Identification Card is void if the person to whom it was issued admits in a statement signed before an immigration officer that he or she is an alien and consents to the voidance of the card. Upon signing the statement the card must be surrendered to the immigration officer.

(4) *Surrender of void card.* A void U.S. Citizen Identification Card which has not been returned to the Service must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(c) *U.S. Citizen Identification Card previously issued on Form I–179.* A valid Form I–179, U.S. Citizen Identification Card, continues to be valid subject to the provisions of this section.

99. Section 235.11 is revised to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General.* (1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Form I–751, Petition to Remove the Conditions on Residence, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Form I–829, Petition by Entrepreneur to Remove Conditions, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien shall be admitted as a lawful permanent resident on a conditional basis, if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216 of the Act, but the visa classification endorsed on the immigrant visa indicates that the

alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien shall be admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional permanent resident status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Form I–751, Petition to Remove the Conditions on Residence or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), Form I–829, Petition by Entrepreneur to Remove Conditions. Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under removal proceedings. However, in a case where conditional residence was based on a marriage, removal proceedings may be terminated and the alien may be admitted as a returning resident if the required Form I–751 is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, removal proceedings may be terminated and the alien admitted as a returning resident if the required Form I–829 is filed by the alien entrepreneur and approved by the Service.

100–101. Part 236 is revised to read as follows:

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

Subpart A—Detention of Aliens Prior to Order of Removal

Sec.

236.1 Apprehension, custody, and detention.
236.2 Confined aliens, incompetents, and minors.
236.3 Detention and release of juveniles.
236.4 Removal of S–5, S–6, and S–7 nonimmigrants.
236.5 Fingerprints and photographs.

Subpart B—Family Unity Program

236.10 Description of program.
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236.14 Filing.
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236.16 Travel outside the United States.
236.17 Eligibility for Federal financial assistance programs.
236.18 Termination of Family Unity Program benefits.

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; 8 CFR part 2.

Subpart A—Detention of Aliens Prior to Order of Removal

§ 236.1 Apprehension, custody, and detention.

(a) *Detainers.* The issuance of a detainer under this section shall be governed by the provisions of § 287.7 of this chapter.

(b) *Warrant of arrest.* (1) *In general.* At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.

(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) *Custody issues and release procedures.* (1) After the expiration of the Transition Period Custody Rules under Pub. L. 104–208, no alien described in section 236(c)(1) of the Act shall be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

(2) Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236 (a)(2) and (3) of the Act; *provided* that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.

(3) When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

(4) The provisions of § 103.6 of this chapter shall apply to any bonds authorized. Subject to the provisions of this section, the provisions of § 3.19 of this chapter shall govern availability to the respondent of recourse to other administrative authority for release from custody.

(5) An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to:

(i) Inadmissible aliens in removal proceedings,

(ii) Arriving aliens, as described in § 1.1(q) of this chapter, including aliens paroled pursuant to section 212(d)(5) of the Act, in removal proceedings,

(iii) Aliens described in section 237(a)(4) of the Act, or

(iv) After the expiration of section 303(b)(3) of Pub. L. 104–208, aliens described in section 236(c)(1) of the Act.

(d) *Appeals from custody decisions.* (1) *Application to immigration judge.* After an initial custody determination by the district director, including the setting of a bond, the respondent may at any time before an order under 8 CFR part 240 becomes final, request amelioration of the conditions under which he or she may be released. Prior to such final order, and except as otherwise provided in this chapter, the immigration judge is authorized to exercise the authority in section 236 of the Act to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released, as provided in § 3.19 of this chapter. If the alien has been released from custody, an application for amelioration of the terms of release must be filed within 7 days of release. Once a removal order becomes administratively final, determinations regarding custody and bond are made by the district director.

(2) *Application to the district director.* (i) After expiration of the 7-day period in paragraph (d)(1) of this section, the respondent may request review by the district director of the conditions of his or her release.

(ii) After an order becomes administratively final, the respondent may request review by the district director of the conditions of his or her release.

(3) *Appeal to the Board of Immigration Appeals.* An appeal relating to bond and custody determinations may be filed within 10 days of the decision, to the Board of

Immigration Appeals in the following circumstances:

(i) In accordance with § 3.38 of this chapter, the alien or the Service may appeal the decision of an immigration judge pursuant to paragraph (d)(1) of this section.

(ii) The alien may appeal from the district director's decision under paragraph (d)(2)(i) of this section.

(iii) The alien may appeal from the district director's decision under paragraph (d)(2)(ii) of this section, except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute an order of deportation and takes the alien into custody for that purpose.

(4) *Effect of filing an appeal.* The filing of an appeal from a determination of an immigration judge or district director under this paragraph shall not operate to delay compliance with the order, nor stay the administrative proceedings or removal.

(e) *Privilege of communication.* Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties with the countries listed below require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in removal proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf. When notifying consular or diplomatic officials, Service officers shall not reveal the fact that any detained alien has applied for asylum or withholding of removal.

Albania [1]
Antigua
Armenia
Azerbaijan
Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria
China (People's Republic of) [2]
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland
Romania
Russian Federation
St. Kitts/Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
South Korea
Tajikistan
Tanzania
Tonga
Trinidad/Tobago
Turkmenistan
Tuvalu
Ukraine
United Kingdom [3]
U.S.S.R.[4]
Uzbekistan
Zambia

(f) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Immigration Court having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to § 3.19(g) of this chapter.

§ 236.2 Confined aliens, incompetents, and minors.

(a) *Service.* If the respondent is confined, or if he or she is an incompetent, or a minor under the age of 14, the notice to appear, and the warrant of arrest, if issued, shall be served in the manner prescribed in § 239.1 of this chapter upon the person or persons specified by § 103.5a(c) of this chapter.

(b) *Service custody and cost of maintenance.* An alien confined because of physical or mental disability in an institution or hospital shall not be accepted into physical custody by the Service until an order of removal has been entered and the Service is ready to remove the alien. When such an alien is an inmate of a public or private institution at the time of the commencement of the removal proceedings, expenses for the maintenance of the alien shall not be incurred by the Government until he or she is taken into physical custody by the Service.

§ 236.3 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of 18 years.

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to:

(i) A parent;

(ii) Legal guardian; or

(iii) An adult relative (brother, sister, aunt, uncle, grandparent) who is not presently in Service detention, unless a determination is made that the detention of such juvenile is required to secure his or her timely appearance before the Service or the Immigration Court or to ensure the juvenile's safety or that of others. In cases where the parent, legal guardian, or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at a Service office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraphs (b)(1) (i) through (iii) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in Service detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in Service detention or outside the United States, the juvenile may be released to such person as is designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement

[1] Arrangements with these countries provide that U.S. authorities shall notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.

[2] When Taiwan nationals (who carry "Republic of China" passports) are detained, notification should be made to the nearest office of the Taiwan Economic and Cultural Representative's Office, the unofficial entity representing Taiwan's interests in the United States.

[3] British dependencies are also covered by this agreement. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

[4] All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraphs (b)(1) (i) through (iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(c) *Juvenile coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the Service, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by Service authorities or placed in any Service detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile, apprehended in the immediate vicinity of the border, who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form or being allowed to withdraw his or her application for admission, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. A juvenile who does not reside in Mexico or Canada who is apprehended shall be provided access to a telephone and must in fact communicate either with a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If such juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact, the requirements of this section are satisfied.

(h) *Notice and request for disposition.* When a juvenile alien is apprehended, he or she must be given a Form I–770, Notice of Rights and Disposition. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new Form I–770 shall be given to, and signed by the juvenile.

§ 236.4 Removal of S–5, S–6, and S–7 nonimmigrants.

(a) *Condition of classification.* As a condition of classification and continued stay in classification pursuant to section 101(a)(15)(S) of the Act, nonimmigrants in S classification must have executed Form I–854, Part B, Inter-agency Alien Witness and Informant Record, certifying that they have knowingly waived their right to a removal hearing and right to contest, other than on the basis of an application for withholding of deportation or removal, any removal action, including detention pending deportation or removal, instituted before lawful permanent resident status is obtained.

(b) *Determination of deportability.* (1) A determination to remove a deportable alien classified pursuant to section 101(a)(15)(S) of the Act shall be made by the district director having jurisdiction over the place where the alien is located.

(2) A determination to remove such a deportable alien shall be based on one or more of the grounds of deportability listed in section 237 of the Act based on conduct committed after, or conduct or a condition not disclosed to the Service prior to, the alien's classification as an S nonimmigrant under section 101(a)(15)(S) of the Act, or for a violation of, or failure to adhere to, the particular terms and conditions of status in S nonimmigrant classification.

(c) *Removal procedures.* (1) A district director who determines to remove an alien witness or informant in S nonimmigrant classification shall notify the Commissioner, the Assistant Attorney General, Criminal Division, and the relevant law enforcement agency in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant law enforcement agency have a right of appeal from any decision to remove.

(2) A district director who has provided notice as set forth in paragraph (c)(1) of this section and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected shall issue a Warrant of Removal. The alien shall immediately be arrested and taken into custody by the district director initiating the removal. An alien classified under the provisions of section 101(a)(15)(S) of the Act who is determined, pursuant to a warrant issued by a district director, to be deportable from the United States shall be removed from the United States to his or her country of nationality or last residence. The agency that requested the alien's presence in the United States shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure.

(d) *Withholding of removal.* An alien classified pursuant to section 101(a)(15)(S) of the Act who applies for withholding of removal shall have 10 days from the date the Warrant of Removal is served upon the alien to file an application for such relief with the

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district director initiating the removal order. The procedures contained in §§ 208.2 and 208.16 of this chapter shall apply to such an alien who applies for withholding of removal.

(e) *Inadmissibility.* An alien who applies for admission under the provisions of section 101(a)(15)(S) of the Act who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act and which have not been previously waived by the Commissioner will be taken into custody. The district director having jurisdiction over the port-of-entry shall follow the notification procedures specified in paragraph (c)(1) of this section. A district director who has provided such notice and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected shall remove the alien without further hearing. An alien may not contest such removal, other than by applying for withholding of removal.

§ 236.5 Fingerprints and photographs.

Every alien 14 years of age or older against whom proceedings based on deportability under section 237 of the Act are commenced under this part by service of a notice to appear shall be fingerprinted and photographed. Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies upon request to the district director or chief patrol agent having jurisdiction over the alien's record. Any such alien, regardless of his or her age, shall be photographed and/or fingerprinted if required by any immigration officer authorized to issue a notice to appear. Every alien 14 years of age or older who is found to be inadmissible to the United States and ordered removed by an immigration judge shall be fingerprinted, unless during the preceding year he or she has been fingerprinted at an American consular office.

§§ 236.6–236.9 [Reserved]

Subpart B—Family Unity Program

§ 236.10 Description of program.

The family unity program implements the provisions of section 301 of the Immigration Act of 1990, Pub. L. 101–649. This Act is referred to in this section as "IMMACT 90".

§ 236.11 Definitions.

In this subpart, the term:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(1) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(2) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

§ 236.12 Eligibility.

(a) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(1) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(2) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(b) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

§ 236.13 Ineligible aliens.

The following categories of aliens are ineligible for benefits under the Family Unity Program:

(a) An alien who is deportable under any paragraph in section 237(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); provided that an alien who is deportable under section 237(a)(1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based upon a ground of inadmissibility described in section 212(a) (2) or (3) of the Act;

(b) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(c) An alien described in section 241(b)(3)(B) of the Act.

§ 236.14 Filing.

(a) *General.* An application for voluntary departure under the Family Unity Program must be filed at the service center having jurisdiction over the alien's place of residence. A Form I–817, Application for Voluntary Departure under the Family Unity Program, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The service center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a notice to appear. After an initial denial, an applicant's case will not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under § 236.13(b), the Service reserves the right to issue a notice to appear at any time after the initial denial.

§ 236.15 Voluntary departure and eligibility for employment.

(a) *Authority.* Voluntary departure under this section implements the provisions of section 301 of IMMACT 90, and authority to grant voluntary departure under the family unity program derives solely from that section. Voluntary departure under the family unity program shall be governed solely by this section, notwithstanding the provisions of section 240B of the Act and 8 CFR part 240.

(b) *Children of legalized aliens.* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program, may be granted voluntary departure under section 301 of IMMACT 90 for a period of 2 years.

(c) *Duration of voluntary departure.* An alien whose application for benefits under the Family Unity Program is approved will receive voluntary departure for 2 years, commencing with the date of approval of the application. Voluntary departure under this section shall be considered effective from the date on which the application was properly filed.

(d) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I–765, Application for Employment Authorization. The application may be filed concurrently with Form I–817. The application must be accompanied by the correct fee required by § 103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(e) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I–817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I–817 once the petition, Form I–130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(f) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

§ 236.16 Travel outside the United States.

An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131, Application for Travel Document. The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests soley with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be inadmissible under section 212(a) (2) or (3) of the Act, shall be inspected and admitted in the same immigration status as the alien had at the time of departure, and shall be provided the remainder of the voluntary departure period previously granted under the Family Unity Program.

§ 236.17 Eligibility for Federal financial assistance programs.

An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in § 236.11 is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien who is ineligible for such assistance under section 245A(h) or 210(f) of the Act, respectively.

§ 236.18 Termination of Family Unity Program benefits.

(a) *Grounds of termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(1) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(2) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or who are ineligible for benefits under the Family Unity Program;

(3) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(4) The beneficiary is the subject of a final order of exclusion, deportation, or removal issued subsequent to the grant of Family Unity benefits unless such final order is based on entry without inspection; violation of status; or failure to comply with section 265 of the Act; or inadmissibility at the time of entry other than inadmissibility pursuant to section 212(a)(2) or 212(a)(3) of the Act, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(5) A qualifying relationship to a legalized alien no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of this chapter. Nothing in this section shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(c) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of removal, shall render the alien amenable to removal proceedings under section 240 of the Act. If benefits are terminated, the period of voluntary departure under this section is also terminated.

PART 237—[REMOVED AND RESERVED]

102. Part 237 is removed and reserved.

103. Part 238 is added to read as follows:

PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

§ 238.1 Proceedings under section 238(b) of the Act.

(a) *Definitions.* As used in this part:

Deciding Service officer means a district director, chief patrol agent, or another immigration officer designated by a district director or chief patrol agent, who is not the same person as the issuing Service officer.

Issuing Service officer means any Service officer listed in § 239.1 of this chapter as authorized to issue notices to appear.

(b) *Preliminary consideration and Notice of Intent to Issue a Final*

Administrative Deportation Order; commencement of proceedings. (1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon an alien a Form I–851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent), if the officer is satisfied that there is sufficient evidence, based upon questioning of the alien by an immigration officer and upon any other evidence obtained, to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence, or has conditional permanent resident status under section 216 of the Act;

(iii) Has been convicted (as defined in section 101(a)(48) of the Act and as demonstrated by any of the documents or records listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final; and

(iv) Is deportable under section 237(a)(2)(A)(iii) of the Act, including an alien who has neither been admitted nor paroled, but who is conclusively presumed deportable under section 237(a)(2)(A)(iii) by operation of section 238(c) of the Act ("Presumption of Deportability").

(2) *Notice.* (i) Removal proceedings under section 238(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by §§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intention to issue a Form I–851A, Final Administrative Removal Order, without a hearing before an immigration judge. This Notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien: has the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing, as long as counsel is authorized to practice in deportation proceedings; may inspect the evidence supporting the Notice of Intent; and may rebut the charges within 10 calendar days after service of such Notice (or 13 calendar days if service of the Notice was by mail).

(ii) The Notice of Intent also shall advise the alien that he or she may designate in writing, within the rebuttal period, the country to which he or she chooses to be deported in accordance with section 241 of the Act, in the event that a Final Administrative Removal Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 241 of the Act.

(iii) The Service must determine that the person served with the Notice of Intent is the person named on the Notice.

(iv) The Service shall provide the alien with a list of available free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to 8 CFR part 292, located within the district or sector where the Notice of Intent is issued.

(v) The Service must either provide the alien with a written translation of the Notice of Intent or explain the contents of the Notice of Intent to the alien in the alien's native language or in a language that the alien understands.

(c) *Alien's response.* (1) *Time for response.* The alien will have 10 calendar days from service of the Notice of Intent, or 13 calendar days if service is by mail, to file a response to the Notice of Intent. In the response, the alien may: designate his or her choice of country for removal; submit a written response rebutting the allegations supporting the charge and/or requesting the opportunity to review the Government's evidence; and/or request in writing an extension of time for response, stating the specific reasons why such an extension is necessary. Alternatively, the alien may, in writing, choose to accept immediate issuance of a Final Administrative Removal Order. The deciding Service officer may extend the time for response for good cause shown. A request for extension of time for response will not automatically extend the period for the response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien must send the response to the deciding Service officer at the address provided in the Notice of Intent.

(2) *Nature of rebuttal or request to review evidence.* (i) If an alien chooses to rebut the allegations contained in the Notice of Intent, the alien's written response must indicate which finding(s) are being challenged and should be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge.

(ii) If an alien's written response requests the opportunity to review the Government's evidence, the Service shall serve the alien with a copy of the evidence in the record of proceeding upon which the Service is relying to support the charge. The alien may, within 10 calendar days following service of the Government's evidence (13 calendar days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. If the alien's final response is a rebuttal of the allegations, such a final response should be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge.

(d) *Determination by deciding Service officer.* (1) *No response submitted or concession of deportability.* If the deciding Service officer does not receive a timely response and the evidence in the record of processing establishes deportability by clear, convincing, and unequivocal evidence, or if the alien concedes deportability, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the deportation decision. The alien may, in writing, knowingly and voluntarily waive the 14-day waiting period before execution of the final order of removal provided in a paragraph (f) of this section.

(2) *Response submitted.* (i) *Insufficient rebuttal; no genuine issue of material fact.* If the alien timely submits a rebuttal to the allegations, but the deciding Service officer finds that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the decision of deportability.

(ii) *Additional evidence required.* (A) If the deciding Service officer finds that the record of proceeding, including the alien's timely rebuttal, raises a genuine issue of material fact regarding the preliminary findings, the deciding Service officer may either obtain additional evidence from any source, including the alien, or cause to be issued a notice to appear to initiate removal proceedings under section 240 of the Act. The deciding Service officer may also obtain additional evidence from any source, including the alien, if the deciding Service officer deems that such additional evidence may aid the officer in the rendering of a decision.

(B) If the deciding Service officer considers additional evidence from a source other than the alien, that evidence shall be made a part of the record of proceeding, and shall be provided to the alien. If the alien elects to submit a response to such additional evidence, such response must be filed with the Service within 10 calendar days of service of the additional evidence (or 13 calendar days if service is by mail). If the deciding Service officer finds, after considering all

additional evidence, that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order that states the reasons for the decision of deportability.

(iii) *Conversion to proceedings under section 240 of the Act.* If the deciding Service officer finds that the alien is not amenable to removal under section 238 of the Act, the deciding Service officer shall terminate the expedited proceedings under section 238 of the Act and shall, where appropriate, cause to be issued a notice to appear for the purpose of initiating removal proceedings before an immigration judge under section 240 of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 238 of the Act, in accordance with this section.

(e) *Proceedings commenced under section 240 of the Act.* In any proceeding commenced under section 240 of the Act which is based on deportability under section 237 of the Act, if it appears that the respondent alien is subject to removal pursuant to section 238 of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 238 of the Act. However, in the absence of any such request, the immigration judge shall complete the proceeding commenced under section 240 of the Act.

(f) *Executing final removal order of deciding Service officer.* (1) *Time of execution.* Upon the issuance of a Final Administrative Removal Order, the Service shall issue a Warrant of Removal in accordance with § 241.2 of this chapter; such warrant shall be executed no sooner than 14 calendar days after the date the Final Administrative Removal Order is issued, unless the alien knowingly, voluntarily, and in writing waives the 14-day period.

(2) *Country to which alien is to be removed.* The deciding Service officer shall designate the country of removal in the manner prescribed by section 241 of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a Warrant of Removal, the alien may be arrested and taken into custody under the authority of a Warrant of Arrest issued by an officer listed in § 287.5(e)(2) of this chapter. The decision of the Service concerning custody or bond shall not be administratively appealable during proceedings initiated under section 238 of the Act and this part.

(h) *Record of proceeding.* The Service shall maintain a record of proceeding for judicial review of the Final Administrative Removal Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to: the charging document (Notice of Intent); the Final Administrative Removal Order (including any supplemental memorandum of decision); the alien's response, if any; all evidence in support of the charge; and any admissible evidence, briefs, or documents submitted by either party respecting deportability. The executed duplicate of the Notice of Intent in the record of proceedings shall be retained as evidence that the individual upon whom the notice for the proceeding was served was, in fact, the alien named in the notice.

Authority: 8 U.S.C. 1228; 8 CFR part 2.

104. Part 239 is added to read as follows:

PART 239—INITIATION OF REMOVAL PROCEEDINGS

Sec.
239.1 Notice to appear.
239.2 Cancellation of notice to appear.
239.3 Effect of filing notice to appear.

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

§ 239.1 Notice to appear.

(a) *Commencement.* Every removal proceeding conducted under section 240 of the Act to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the Immigration Court. Any immigration officer performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such an alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

(1) District directors (except foreign);
(2) Deputy district directors (except foreign);
(3) Assistant district directors for investigations;
(4) Deputy assistant district directors for investigations;
(5) Assistant district directors for deportation;
(6) Deputy assistant district directors for deportation;
(7) Assistant district directors for examinations;
(8) Deputy assistant district directors for examinations;
(9) Officers in charge (except foreign);
(10) Assistant officers in charge (except foreign);
(11) Chief patrol agents;
(12) Deputy chief patrol agents;
(13) Associate chief patrol agents;
(14) Assistant chief patrol agents;
(15) Patrol agents in charge;
(16) The Assistant Commissioner, Investigations;
(17) Service center directors;
(18) Deputy center directors;
(19) Assistant center directors for examinations;
(20) Supervisory asylum officers; or
(21) Institutional Hearing Program directors.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

§ 239.2 Cancellation of notice to appear.

(a) Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;
(2) The respondent is not deportable or inadmissable under immigration laws;
(3) The respondent is deceased;
(4) The respondent is not in the United States;
(5) The notice was issued for the respondent's failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act; or
(6) The notice to appear was improvidently issued.

(b) A notice to appear issued pursuant to section 235(b)(3) of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to § 3.14 of this chapter, any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

(d) *Motion for remand.* After commencement of the hearing, any officer enumerated in paragraph (a) of this section may move for remand of the

matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Service.

(e) *Warrant of arrest.* When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

(f) *Termination of removal proceedings by immigration judge.* An immigration judge may terminate removal proceedings to permit the alien to proceed to a final hearing on a pending application or petition for naturalization when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors; in every other case, the removal hearing shall be completely as promptly as possible notwithstanding the pendency of an application for naturalization during any state of the proceedings.

§ 239.3 Effect of filing notice to appear.

The filing of a notice to appear shall have no effect in determining periods of unlawful presence as defined in section 212(a)(9)(B) of the Act.

§§ 240.1–240.20 Redesignated as §§ 244.3–244.22]

105. Sections 240.1 through 240.20 are redesignated as §§ 244.3 through 244.22.

106. Part 240 is revised to read as follows:

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

Subpart A—Removal Proceedings

Sec.
240.1 Immigration judges.
240.2 Attorney for the Service.
240.3 Representation by counsel.
240.4 Incompetent respondents.
240.5 Interpreter.
240.6 Postponement and adjournment of hearing.
240.7 Evidence in removal proceedings under section 240 of the Act.
240.8 Burdens of proof in removal proceedings.
240.9 Contents of record.
240.10 Hearing.
240.11 Ancillary matters, applications.
240.12 Decision of the immigration judge.
240.13 Notice of decision.
240.14 Finality of order.
240.15 Appeals.
240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Pub. L. 104–208.

Subpart B—Cancellation of Removal

240.20 Cancellation of removal and adjustment of status under section 240A(a) and 240A(b) of the Act

Subpart C—Voluntary Depature

240.25 Voluntary departure—authority of the Service.
240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

Subpart D—Exclusion of aliens (for proceedings commenced prior to April 1, 1997)

240.30 Proceedings prior to April 1, 1997.
240.31 Authority of immigration judges.
240.32 Hearing.
240.33 Applications for asylum or withholding of deportation.
240.34 Renewal of application for adjustment of status under section 245 of the Act.
240.35 Decision of the immigration judge; notice of the applicant.
240.36 Finality of order.
240.37 Appeals.
240.38 Fingerprinting of excluded aliens.
240.39 Reopening or reconsideration.

Subpart E—Proceedings to determine deportability of aliens in the United States: Hearing and Appeal (for proceedings commenced prior to April 1, 1997)

240.40 Proceedings commenced prior to April 1, 1997.
240.41 Immigration judges.
240.42 Representation by counsel.
240.43 Incompetent respondents.
240.44 Interpreter.
240.45 Postponement and adjournment of hearing.
240.46 Evidence.
240.47 Contents of record.
240.48 Hearing.
240.49 Ancillary matters, applications.
240.50 Decision of the immigration judge.
240.51 Notice of decision.
240.52 Finality of order.
240.53 Appeals.
240.54 Proceedings under section 242(f) of the Act.

Subpart F—Suspension of deportation and voluntary departure (for proceedings commenced prior to April 1, 1997)

240.55 Proceedings commenced prior to April 1, 1997.
240.56 Application.
240.57 Extension of time to depart.

Subpart G—Civil penalties for failure to depart [Reserved]

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

Subpart A—Removal Proceedings

§ 240.1 Immigration judges.

(a) *Authority:* In any removal proceeding pursuant to section 240 of the Act, the immigration judge shall have the authority to: determine removability pursuant to section 240(a)(1) of the Act; to make decisions, including orders of removal as provided by section 240(c)(1)(A) of the Act; to determine applications under sections 208, 212(a)(2)(F), 212(a)(6)(F)(ii), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(g), 212(h), 212(i), 212(k), 237(a)(1)(E)(iii), 237(a)(1)(H), 237(a)(3)(C)(ii), 240A(a) and (b), 240B, 245, and 249 of the Act; to order withholding of removal pursuant to section 241(b)(3) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. In determining cases referred for further inquiry, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases. An immigration judge may certify his or her decision in any case under section 240 of the Act to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under sections 101(b)(4) and 103 of the Act.

(b) *Withdrawal and substitution of immigration judges.* The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified. If an immigration judge becomes unavailable to complete his or her duties, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she has done so.

(c) *Conduct of hearing.* The immigration judge shall receive and consider material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

§ 240.2 Attorney for the Service.

(a) *Authority.* The attorney for the Service shall present on behalf of the government evidence material to the issues of deportability or inadmissibility and any other issues that may require disposition by the immigration judge. The duties of the Service attorney include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the respondent or other witnesses. Nothing contained herein diminishes the authority of an immigration judge to conduct proceedings under this part. The Service

attorney is authorized to appeal from a decision of the immigration judge pursuant to § 3.38 of this chapter and to move for reopening or reconsideration pursuant to § 3.23 of this chapter.

(b) *Assignment.* In a removal proceeding, the Service shall assign an attorney to each case within the provisions of § 240.10(d), and to each case in which an unrepresented respondent is incompetent or is under 18 years of age, and is not accompanied by a guardian, relative, or friend. In a case in which the removal proceeding would result in an order of removal, the Service shall assign an attorney to each case in which a respondent's nationality is in issue. A Service attorney shall be assigned in every case in which the Commissioner approves the submission of non-record information under § 240.11(a)(3). In his or her discretion, whenever he or she deems such assignment necessary or advantageous, the General Counsel may assign a Service attorney to any other case at any stage of the proceeding.

§ 240.3 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 292.

§ 240.4 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

§ 240.5 Interpreter.

Any person acting as an interpreter in a hearing before an immigration judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

§ 240.6 Postponement and adjournment of hearing.

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

§ 240.7 Evidence in removal proceedings under section 240 of the Act.

(a) *Use of prior statements.* The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(b) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the immigration judge.

(c) *Depositions.* The immigration judge may order the taking of depositions pursuant to § 3.35 of this chapter.

§ 240.8 Burdens of proof in removal proceedings.

(a) *Deportable aliens.* A respondent charged with deportability shall be found to be removable if the Service proves by clear and convincing evidence that the respondent is deportable.

(b) *Arriving aliens.* In proceedings commenced upon a respondent's arrival in the United States or after the revocation or expiration of parole, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.

(c) *Aliens present in the United States without being admitted or paroled.* In the case of a respondent in the United States without being admitted or paroled, the Service must first establish the alienage of the respondent. Once alienage has been established, unless the respondent demonstrates by clear and convincing evidence that he or she is lawfully in the United States pursuant to a prior admission, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.

(d) *Relief from removal.* The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

§ 240.9 Contents of record.

The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge. In his or her decision, the immigration judge may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

§ 240.10 Hearing.

(a) *Opening.* In a removal proceeding, the immigration judge shall:

(1) Advise the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings and require the respondent to state then and there whether he or she desires representation;

(2) Advise the respondent of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the removal hearing is being held;

(3) Ascertain that the respondent has received a list of such programs, and a copy of appeal rights;

(4) Advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the government (but respondent shall not be entitled to examine such national security information as the government may proffer in opposition to the respondent's admission to the United States or to an application by the respondent for discretionary relief);

(5) Place the respondent under oath;

(6) Read the factual allegations and the charges in the notice to appear to the respondent and explain them in non-technical language; and

(7) Enter the notice to appear as an exhibit in the Record of Proceeding.

(b) *Public access to hearings.* Removal hearings shall be open to the public, except that the immigration judge may, in his or her discretion, close proceedings as provided in § 3.27 of this chapter.

(c) *Pleading by respondent.* The immigration judge shall require the respondent to plead to the notice to appear by stating whether he or she admits or denies the factual allegations and his or her removability under the charges contained therein. If the respondent admits the factual allegations and admits his or her removability under the charges and the immigration judge is satisfied that no

issues of law or fact remain, the immigration judge may determine that removability as charged has been established by the admissions of the respondent. The immigration judge shall not accept an admission of removability from an unrepresented respondent who is incompetent or under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the immigration judge does not accept an admission of removability, he or she shall direct a hearing on the issues.

(d) *Issues of removability.* When removability is not determined under the provisions of paragraph (b) of this section, the immigration judge shall request the assignment of an assistant district counsel, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading. The alien shall provide a court certified copy of a Judicial Recommendation Against Deportation (JRAD) to the immigration judge when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the alien. No JRAD is effective against a charge of deportability under former section 241(a)(11) of the Act or if the JRAD was granted on or after November 29, 1990.

(e) *Additional charges in removal hearings.* At any time during the proceeding, additional or substituted charges of inadmissibility and/or deportability and/or factual allegations may be lodged by the Service in writing. The alien in removal proceedings shall be served with a copy of these additional charges and allegations. The immigration judge shall read the additional factual allegations and charges to the and explain them to him or her. The immigration judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented, and that he or she may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 240.6(b) relating to pleading shall apply to the additional factual allegations and charges.

(f) *Country of removal.* The immigration judge shall notify the alien that if he or she is finally ordered removed, the country of removal will in the first instance be directed pursuant to section 241(b) of the Act to the country designated by the alien, unless section 241(b)(2)(C) of the Act applies, and shall afford him or her an opportunity then and there to make such designation. The immigration judge shall then specify and state for the record the country, or countries in the alternative, to which the alien's removal will be directed pursuant to section 241(b) of the Act if the country of his or her designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the alien declines to designate a country.

(g) In the event that the Service is unable to remove the alien to the specified or alternative country or countries, the Service may remove the alien to any other country as permitted by section 241(b) of the Act.

§ 240.11 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* (1) In a removal proceeding, an alien may apply to the immigration judge for cancellation of removal under section 240A of the Act, adjustment of status under section 245 of the Act, adjustment of status under section 1 of the Act of November 2, 1996 (as modified by section 606 of Pub. L 104–132) or under section 101 or 104 of the Act of October 28, 1977, or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of § 240.20, and 8 CFR parts 245 and 249. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act) shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act, or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8CFR part 216.

(2) In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the alien is inadmissible under any provision of section 212(a) of the Act, and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing.

(3) In exercising discretionary power when considering an application for status as a permanent resident under this chapter, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the alien, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the alien of the general nature of the information in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The alien may apply to the immigration judge for voluntary departure in lieu of removal pursuant to section 240B of the Act and subpart C of this part.

(c) *Applications for asylum and withholding of removal.* (1) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be removed pursuant to § 240.10(f), and the alien has not previously filed an application for asylum or withholding of removal that has been referred to the immigration judge by an asylum officer in accordance with § 208.14 of this chapter, the immigration judge shall:

(i) Advise the alien that he or she may apply for asylum in the United States or withholding of removal of those countries;

(ii) Make available the appropriate application forms; and

(iii) Advise the alien of the privilege of being represented by counsel at no expense to the government and of the consequences, pursuant to section 208(d)(6) of the Act, of knowingly, filing a frivolous application for asylum. The immigration judge shall provide to the alien a list of persons who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(2) An application for asylum or withholding of removal must be filed with the Immigration Court, pursuant to § 208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy

to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the alien and to the assistant district counsel representing the government.

(3) Applications for asylum and withholding of removal so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 of this chapter after an evidentiary hearing to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.14 or § 208.16 of this chapter is not necessary once the immigration judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of removal will be open to the public unless the alien expressly requests that the hearings be closed pursuant to § 3.27 of this chapter. The immigration judge shall inquire whether the alien requests such closure.

(ii) Nothing in this section is intended to limit the authority of the immigration judge to properly control the scope of any evidentiary hearing.

(iii) During the removal hearing, the alien shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf. The alien has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standards set forth in § 208.13 of this chapter.

(iv) The assistant district counsel may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information, he or she shall inform the alien. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the alien, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its sources. The summary should be as detailed as possible, in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(4) The decision of an immigration judge to grant or deny asylum or withholding of removal shall be communicated to the alien and to the assistant district counsel. An adverse decision shall state why asylum or withholding of removal was denied.

(d) *Application for relief under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from removal under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his or her alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation or removal submitted to the Service on or after January 4, 1995, as the basis for issuance of a charging document or to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The alien shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. Nothing contained herein is intended to foreclose the respondent from applying for any benefit or privilege that he or she believes himself or herself eligible to receive in proceedings under this part. Nothing in this section is intended to limit the Attorney General's authority to remove an alien to any country permitted by section 241(b) of the Act.

(f) *Fees.* The alien shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee.

§ 240.12 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. The decision of the immigration judge shall include a finding as to inadmissibility or deportability. The formal enumeration of findings is not required. The decision shall also contain reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where inadmissibility or deportability is determined on the pleadings pursuant to § 240.10(b) and the respondent does not make an application under § 240.11, the alien is statutorily ineligible for relief, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision or, if voluntary departure is granted, a summary decision with an alternate order of removal.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's removal, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When removal is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's removal shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

§ 240.13 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the service counsel, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the service counsel, if any, at the conclusion of the hearing. A copy of the summary written order shall be furnished at the request of the respondent or the service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 240.12(b), he or she shall serve a copy thereof upon the respondent at the conclusion of the hearing.

(d) *Decision to remove.* If the immigration judge decides that the respondent is removable and orders the respondent to be removed, the immigration judge shall advise the respondent of such decision, and of the consequences for failure to depart under the order of removal, including civil and criminal penalties described at sections 274D and 243 of the Act. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.15.

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§ 240.14 Finality of order.

The order of the immigration judge shall become final in accordance with § 3.39 of this chapter.

§ 240.15 Appeals.

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge to the Board of Immigration Appeals, except that no appeal shall lie from an order of removal entered in absentia. The procedures regarding the filing of a Form EOIR 26, Notice of Appeal, fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1–a) of this chapter.

§ 240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Pub. L. 104–208.

The Attorney General shall have the sole discretion to apply the provisions of section 309(c) of Pub. L. 104–208, which provides for the application of new removal procedures to certain cases in exclusion or deportation proceedings and for the termination of certain cases in exclusion or deportation proceedings and initiation of new removal proceedings. The Attorney General's application of the provisions of section 309(c) shall become effective upon publication of a notice in the **Federal Register**. However, if the Attorney General determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Attorney General's application shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter.

§§ 240.17–240.19 [Reserved]

Subpart B—Cancellation of Removal

§ 240.20 Cancellation of removal and adjustment of status under section 240A of the Act.

(a) *Jurisdiction.* An application for the exercise of discretion under section 240A of the Act shall be submitted on Form EOIR–42, Application for Cancellation of Removal, to the Immigration Court having administrative control over the Record of Proceeding of the underlying removal proceeding under section 240 of the Act.

(b) *Filing the application.* The application may be filed only with the immigration Court after jurisdiction has vested pursuant to § 3.14 of this chapter.

§§ 240.21–240.24 [Reserved]

Subpart C—Voluntary Departure

§ 240.25 Voluntary departure—authority of the Service.

(a) *Authorized officers.* The authority contained in section 240B(a) of the Act to permit aliens to depart voluntarily from the United States may be exercised in lieu of being subject to proceedings under section 240 of the Act or prior to the completion of such proceedings by district directors, assistant district directors for investigations, assistant district directors for examinations, officers in charge, chief patrol agents, service center directors, and assistant center directors for examinations.

(b) *Conditions.* The Service may attach to the granting of voluntary departure any conditions it deems necessary to ensure the alien's timely departure from the United States, including the posting of a bond, continued detention pending departure, and removal under safeguards. The alien shall be required to present to the Service, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. The Service may hold the passport or documentation for sufficient time to investigate its authenticity.

(c) *Periods of time.* The authorized officer, in his or her discretion, shall specify the period of time permitted for voluntary departure, and may grant extensions thereof, except that the total period allowed, including any extensions, shall not exceed 120 days.

(d) *Application.* Any alien who believes himself or herself to be eligible for voluntary departure under this section may apply therefor at any office of the Service. After the commencement of removal proceedings, the application may be communicated through the Service attorney. If the Service agrees to voluntary departure after proceedings have commenced, it may either:

(1) Join in a motion to terminate the proceedings, and if the proceedings are terminated, grant voluntary departure; or

(2) Join in a motion asking the immigration judge to permit voluntary departure in accordance with § 240.26.

(e) *Appeals.* An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply to the immigration judge for voluntary departure in accordance with § 240.26 or for relief from removal under any provision of law.

(f) *Revocation.* If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without notice by any officer authorized to grant voluntary departure under § 240.25(a).

§ 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

(a) *Eligibility; general.* An alien previously granted voluntary departure under section 240B of the Act, including by the Service under § 240.25, and who fails to depart voluntarily within the time specified, shall thereafter be ineligible, for a period of ten years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act.

(b) *Prior to completion of removal proceedings.* (1) *Grant by the immigration judge.* (i) An alien may be granted voluntary departure by an immigration judge pursuant to section 240B(a) of the Act only if the alien:

(A) Makes such request prior to or at a master calendar hearing;

(B) Makes no additional request for relief (or if such requests have been made, such requests are withdrawn prior to any grant of voluntary departure pursuant to this section);

(C) Concedes removability; and

(D) Waives appeal of all issues.

(ii) The judge may not grant voluntary departure under section 240B(a) of the Act beyond 30 days after the case has been calendared for a merits hearing, except pursuant to a stipulation under paragraph (b)(2) of this section.

(2) *Stipulation.* At any time prior to the completion of removal proceedings, the Service attorney may stipulate to a grant of voluntary departure under section 240B(a) of the Act.

(3) *Conditions.* (i) The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States, including the posting of a voluntary departure bond to be canceled upon proof that the alien has departed the United States within the time specified. The alien shall be required to present to

the Service, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing, unless:

(A) A travel document is not necessary to return to his or her native country or to which country the alien is departing; or

(B) The document is already in the possession of the Service.

(ii) The Service may hold the passport or documentation for sufficient time to investigate its authenticity. If such documentation is not immediately available to the alien, but the immigration judge is satisfied that the alien is making diligent efforts to secure it, voluntary departure may be granted for a period not to exceed 120 days, subject to the condition that the alien within 60 days must secure such documentation and present it to the Service. The Service in its discretion may extend the period within which the alien must provide such documentation. If the documentation is not presented within the 60-day period or any extension thereof, the voluntary departure order shall vacate automatically and the alternate order of deportation will take effect, as if in effect on the date of issuance of the immigration judge order.

(c) *At the conclusion of the removal proceedings.* (1) *Required findings.* An immigration judge may grant voluntary departure at the conclusion of the removal proceedings under section 240B(b) of the Act, if he or she finds that:

(i) The alien has been physically present in the United States for period of at least one year preceding the date the Notice to Appear was served under section 239(a) of the Act;

(ii) the alien is, and has been, a person of good moral character for at least five years immediately preceding the application;

(iii) the alien is not deportable under section 237(a)(2)(A)(iii) or 237(a)(4) of the Act; and

(iv) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and has the intention to do so.

(2) *Travel documentation.* Except as otherwise provided in paragraph (b)(3) of this section, the clear and convincing evidence of the means to depart shall include in all cases presentation by the alien of a passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. The Service shall have full opportunity to inspect and photocopy the documentation, and to challenge its authenticity or sufficiency before voluntary departure is granted.

(3) *Conditions.* The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States. In all cases under section 240B(b) of the Act, the alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien departs within the time specified, but in no case less than $500. The voluntary departure bond shall be posted with the district director within 5 business days of the immigration judge's order granting voluntary departure, and the district director may, at his or her discretion, hold the alien in custody until the bond is posted. If the bond is not posted within 5 business days, the voluntary departure order shall vacate automatically and the alternate order of removal will take effect on the following day. In order for the bond to be canceled, the alien must provide proof of departure to the district director.

(d) *Alternate order of removal.* Upon granting a request made for voluntary departure either prior to the completion of proceedings or at the conclusion of proceedings, the immigration judge shall also enter an alternate order or removal.

(e) *Periods of time.* If voluntary departure is granted prior to the completion of removal proceedings, the immigration judge may grant a period not to exceed 120 days. If voluntary departure is granted at the conclusion of proceedings, the immigration judge may grant a period not to exceed 60 days.

(f) *Extension of time to depart.* Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of the district director. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntary departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act.

(g) *Administrative Appeals.* (1) *Grants of requests made prior to the completion of the section 240 removal proceeding.* A Service appeal of a grant of voluntary departure prior to the completion of section 240 removal proceedings shall be limited to the issue of whether the alien merits the grant of voluntary departure as a matter of discretion. Such an appeal shall not challenge the number of days of voluntary departure granted.

(2) *At the conclusion of the section 240 removal proceeding.* An appeal of a grant or denial of voluntary departure at the conclusion of the section 240 removal proceeding shall be limited to the issues of whether the alien is eligible for a grant of voluntary departure under the Act and this chapter and whether the alien merits a grant of voluntary departure as a matter of discretion. Such an appeal shall not challenge the number of days of voluntary departure granted.

(h) *Reinstatement of voluntary departure.* An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making application for voluntary departure, if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act and paragraph (a) of this section.

§§ 240.27–240.29 [Reserved]

Subpart D—Exclusion of Aliens (for Hearings Commenced Prior to April 1, 1997)

§ 240.30 Proceedings prior to April 1, 1997.

Subpart D of 8 CFR part 240 applies to exclusion proceedings commenced prior to April 1, 1997, pursuant to the former section 236 of the Act. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 240.31 Authority of immigration judges.

In determining cases referred for further inquiry as provided in section 235 of the Act, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases.

§ 240.32 Hearing.

(a) *Opening.* Exclusion hearings shall be closed to the public, unless the alien at his or her own instance requests that the public, including the press, be permitted to attend; in that event, the hearing shall be open, provided that the alien states for the record that he or she is waiving the requirement in section 236 of the Act that the inquiry shall be kept separate and apart from the public.

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When the hearing is to be open, depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The immigration judge shall ascertain whether the applicant for admission is the person to whom Form I–122 was previously delivered by the examining immigration officer as provided in 8 CFR part 235; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him or her of the privilege of being represented by an attorney of his or her own choice at no expense to the Government, and of the availability of free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter located in the district where his or her exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs; and request him or her to ascertain then and there whether he or she desires representation; advise him or her that he or she will have a reasonable opportunity to present evidence in his or her own behalf, to examine and object to evidence against him or her, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

(b) *Procedure.* The immigration judge shall receive and adduce material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

(c) *Attorney for the Service.* The Service shall assign an attorney to each case in which an applicant's nationality is in issue and may assign an attorney to any case in which such assignment is deemed necessary or advantageous. The duties of the Service attorney include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained herein diminishes the authority of an immigration judge to conduct proceedings under this part.

(d) *Depositions.* The procedures specified in § 240.48(e) shall apply.

(e) *Record.* The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge.

§ 240.33 Applications for asylum or withholding of deportation.

(a) If the alien expresses fear of persecution or harm upon return to his or her country of origin or to a country to which the alien may be deported after a determination of excludability from the United States pursuant to this subpart, and the alien has not been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall:

(1) Advise the alien that he may apply for asylum in the United States or withholding of deportation to that other country; and

(2) Make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to the trial attorney representing the government.

(c) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 after an evidentiary hearing that is necessary to resolve material factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.13(c) of this chapter is not necessary once the immigration judge has determined that such denial is required.

(1) Evidentiary hearings on applications for asylum or withholding of deportation will be closed to the public unless the applicant expressly requests that it be open pursuant to § 236.3 of this chapter.

(2) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(3) During the exclusion hearing, the applicant shall be examined under oath on his or her application and may present evidence and witnesses on his or her own behalf. The applicant has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(4) The trial attorney for the government may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. The applicant shall be informed when the immigration judge receives such classified information. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the trial attorney for the government. An adverse decision will state why asylum or withholding of deportation was denied.

§ 240.34 Renewal of application for adjustment of status under section 245 of the Act.

An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997) before an immigration judge under the following two conditions: first, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I–512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

§ 240.35 Decision of the immigration judge; notice to the applicant.

(a) *Decision.* The immigration judge shall inform the applicant of his or her decision in accordance with § 3.37 of this chapter.

(b) *Advice to alien ordered excluded.* An alien ordered excluded shall be furnished with Form I–296, Notice to Alien Ordered Excluded by Immigration Judge, at the time of an oral decision by

the immigration judge or upon service of a written decision.

(c) *Holders of refugee travel documents.* Aliens who are holders of valid unexpired refugee travel documents may be ordered excluded only if they are found to be inadmissible under section 212(a)(2), 212(a)(3), or 212(a)(6)(E) of the Act, and it is determined that on the basis of the acts for which they are inadmissible there are compelling reasons of national security or public order for their exclusion. If the immigration judge finds that the alien is inadmissible but determines that there are no compelling reasons of national security or public order for exclusion, the immigration judge shall remand the case to the district director for parole.

§ 240.36 Finality of order.

The decision of the immigration judge shall become final in accordance with § 3.37 of this chapter.

§ 240.37 Appeals.

Except for temporary exclusions under section 235(c) of the Act, an appeal from a decision of an Immigration Judge under this part may be taken by either party pursuant to § 3.38 of this chapter.

§ 240.38 Fingerprinting of excluded aliens.

Every alien 14 years of age or older who is excluded from admission to the United States by an immigration judge shall be fingerprinted, unless during the preceding year he or she has been fingerprinted at an American consular office.

§ 240.39 Reopening or reconsideration.

Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirements of § 103.5 of this chapter. The immigration judge may upon his or her own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he or she had made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under 8 CFR part 3. An order by the immigration judge granting a motion to reopen may be made on Form I–328. A motion to reopen will not be granted unless the immigration judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing; nor will any motion to reopen for the purpose of providing the respondent with an opportunity to make an application under § 242.17 of this chapter be granted if respondent's right to make such application were fully explained to him or her by the immigration judge and he or she was afforded an opportunity to do so at the hearing, unless circumstances have arisen thereafter on the basis of which the request is being made. The filing of a motion under this section with an immigration judge shall not serve to stay the execution of an outstanding decision; execution shall proceed unless the immigration judge who has jurisdiction over the motion specifically grants a stay of deportation. The immigration judge may stay deportation pending his or her determination of the motion and also pending the taking and disposition of an appeal from such determination.

Subpart E—Proceedings To Determine Deportability of Aliens in the United States: Hearing and Appeal (for Proceedings Commenced Prior to April 1, 1997)

§ 240.40 Proceedings commenced prior to April 1, 1997.

Subpart E of 8 CFR part 240 applies only to deportation proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart pertain to the Act as in effect prior to April 1, 1997.

§ 240.41 Immigration Judges.

(a) *Authority.* In any proceeding conducted under this part the immigration judge shall have the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) and 242B of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine applications under sections 208, 212(k), 241(a)(1)(E)(iii), 241(a)(1)(H), 244, 245, and 249 of the Act; to determine the country to which an alien's deportation will be directed in accordance with section 243(a) of the Act; to order temporary withholding of deportation pursuant to section 243(h) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. An immigration judge may certify his or her decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under section 103 of the Act.

(b) *Withdrawal and substitution of immigration judges.* The immigration judge assigned to conduct the hearing shall at any time withdraw if he deems himself disqualified. If an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he has done so.

§ 240.42 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 292.

§ 240.43 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

§ 240.44 Interpreter.

Any person acting as interpreter in a hearing before an immigration judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

§ 240.45 Postponement and adjournment of hearing.

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

§ 240.46 Evidence.

(a) *Sufficiency.* A determination of deportability shall not be valid unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true.

(b) *Use of prior statements.* The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(c) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the immigration judge.

(d) *Depositions.* The immigration judge may order the taking of depositions pursuant to § 3.35 of this chapter.

§ 240.47 Contents of record.

The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge. In his or her discretion, the immigration judge may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

§ 240.48 Hearing.

(a) *Opening.* The immigration judge shall advise the respondent of his or her right to representation, at no expense to the Government, by counsel of his or her own choice authorized to practice in the proceedings and require him or her to state then and there whether he desires representations; advise the respondent of the availability of free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the respondent has received a list of such programs, and a copy of Form I–618, Written Notice of Appeal Rights; advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his or her own behalf and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be open to the public, except that the immigration judge may, in his or her discretion and for the purpose of protecting witnesses, respondents, or the public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

(b) *Pleading by respondent.* The immigration judge shall require the respondent to plead to the order to show cause by stating whether he or she admits or denies the factual allegations and his or her reportability under the charges contained therein. If the respondent admits the factual allegations and admits his or her deportability under the charges and the immigration judge is satisfied that no issues of law or fact remain, the immigration judge may determine that deportability as charged has been established by the admissions of the respondent. The immigration judge shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the immigration judge may not accept an admission of deportability, he or she shall direct a hearing on the issues.

(c) *Issues of deportability.* When deportability is not determined under the provisions of paragraph (b) of this section, the immigration judge shall request the assignment of a trial attorney, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading. The respondent shall provide a court certified copy of a Judicial Recommendation Against Deportation (JRAD) to the special inquiry officer when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the respondent. No JRAD is effective against a charge of deportability under section 241(a)(11) of the Act or if the JRAD was granted on or after November 29, 1990.

(d) *Additional charges.* The Service may at any time during a hearing lodge additional charges of deportability, including factual allegations, against the respondent. Copies of the additional factual allegations and charges shall be submitted in writing for service on the respondent and entry as an exhibit in the record. The immigration judge shall read the additional factual allegations and charges to the respondent and explain them to him or her. The immigration judge shall advise the respondent if he or she is not represented by counsel that he or she may be so represented and also that he or she may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he or she desires a continuance for either of these reasons. Thereafter, the provisions of paragraph (b) of this section shall apply to the additional factual allegations and lodged charges.

§ 240.49 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of 8 CFR parts 240, 245, and 249. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act of the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8 CFR part 216. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in

order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The respondent may apply to the immigration judge for voluntary departure in lieu of deportation pursuant to section 244(e) of the Act and § 240.56.

(c) *Applications for asylum or withholding of deportation.* (1) The immigration judge shall notify the respondent that if he or she is finally ordered deported, his or her deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by the respondent and shall afford him an opportunity then and there to make such designation. The immigration judge shall then specify and state for the record the country, or countries in the alternative, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his or her designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the respondent declines to designate a country.

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be deported pursuant to paragraph (c)(1) of this section, and the alien has not previously filed on application for asylum or withholding of deportation that has been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall:

(i) Advise the alien that he may apply for asylum in the United States or withholding of deportation to those countries; and

(ii) Make available the appropriate application forms.

(3) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 208.4(b) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, of the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to the trial attorney representing the government.

(4) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 after an evidentiary hearing that is necessary to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.13 or § 208.16 of this chapter is not necessary once the immigration judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of deportation will be open to the public unless the applicant expressly requests that it be closed.

(ii) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(iii) During the deportation hearing, the applicant shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf. The applicant has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(iv) The trial attorney for the government may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information he or she shall inform the applicant. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(5) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the trial attorney for the government. An adverse decision will state why asylum or withholding of deportation was denied.

(d) *Application for relief under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from deportation under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation submitted to an asylum officer pursuant to § 208.2 of this chapter on or after January 4, 1995, as the basis for issuance of an order to show cause or a notice to appear to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The respondent shall have the burden of establishing that he or she is eligible for any request benefit or privilege and that it should be granted in the exercise of discretion. The respondent shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. Nothing contained herein is intended to foreclose the respondent from applying for any benefit or privilege which he or she believes himself or herself eligible to receive in proceedings under this part.

§ 240.50 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. Except when deportability is determined on the pleadings pursuant to § 240.48(b), the decision of the immigration judge shall include a finding as to deportability. The formal enumeration of findings is not required. The decision shall also contain the reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 240.48(b) and the respondent does not make an application under § 240.49, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision on Form EOIR–7, Summary Order of Deportation, if deportation is

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ordered, or on Form EOIR–6, Summary Order of Voluntary Departure, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

§ 240.51 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the trial attorney, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the trail attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.53. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the trial attorney.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 240.51(b), he or she shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.54.

§ 240.52 Finality of order.

The decision of the immigration judge shall become final in accordance with § 3.39 of this chapter.

§ 240.53 Appeals.

(a) Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Form EOIR–26, Notice of Appeal, fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board. The reasons for the appeal shall be stated in the Form EOIR–26, Notice of Appeal, in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1–a) of this chapter.

(b) *Prohibited appeals; legalization or applications.* An alien respondent defined in § 245a.2(c)(6) or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability based solely on refusal by the immigration judge to entertain such an application in deportation proceedings.

§ 240.54 Proceedings under section 242(f) of the Act.

(a) *Order to show cause.* In the case of an alien within the provisions of section 242(f) of the Act, the order to show cause shall charge him or her with deportability under section 242(f) of the Act. The prior order of deportation and evidence of the execution thereof, properly identified, shall constitute prima facie cause for deportability under this section.

(b) *Applicable procedure.* Except as otherwise provided in this section, proceedings under section 242(f) of the Act shall be conducted in general accordance with the rules prescribed in this part.

(c) *Deportability.* In determining the deportability of an alien alleged to be within the purview of paragraph (a) of this section, the issues shall be limited to solely to a determination of the identity of the respondent, i.e., whether the respondent is in fact an alien who was previously deported, or who departed while an order of deportation was outstanding; whether the respondent was previously deported as a member of any of the classes described in section 241(a)(2),(3) or (4) of the Act; and whether respondent has unlawfully reentered the United States.

(d) *Order.* If deportability as charged in the order to show cause is established, the Immigration Judge shall order that the respondent be deported under the previous order of deportation in accordance with section 242(f) of the Act.

(e) *Service counsel; additional charges.* When Service counsel is assigned to a proceeding under this section and additional charges are lodged against the respondent, the provisions of paragraphs (c) and (d) of this section shall cease to apply.

Subpart F—Suspension of Deportation and Voluntary Departure (for Proceedings Commenced Prior to April 1, 1997)

§ 240.55 Proceedings commenced prior to April 1, 1997.

Subpart F of 8 CFR part 240 applies to deportation proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 240.56 Application.

Notwithstanding any other provision of this chapter, an alien who is deportable because of a conviction on or after November 18, 1988, for an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure as prescribed in 8 CFR part 240 and section 244 of the Act. Pursuant to subpart F of this part and section 244 of the Act, an immigration judge may authorized the suspension of an alien's deportation; or, if the alien established that he or she is willing and has the immediate means with which to depart promptly from the United States, an immigration judge may authorized the alien to depart voluntarily from the United States in lieu of deportation within such time as may be specified by the immigration judge when first authorizing voluntary departure, and under such conditions as the district director shall direct. An application for suspension of deportation shall be made on Form EOIR–40.

§ 240.57 Extension of time to depart.

Authority to reinstate or extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of the district director, except that an immigration judge or the Board may reinstate voluntary departure in a deportation proceeding that has been reopened for a purpose other than solely making an application for voluntary departure. A request by an alien for reinstatement or an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision shall be served upon the alien and no appeal may be taken therefrom.

Subpart G—Civil Penalties for Failure To Depart [Reserved]

107. Part 241 is revised to read as follows:

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

Subpart A—Post-Hearing Detention and Removal

Sec.
241.1 Final order of removal.
241.2 Warrant of removal.
241.3 Detention of aliens during removal period.
241.4 Continued detention beyond the removal period.
241.5 Conditions of release after removal period.
241.6 Administrative stay of removal.
241.7 Self-removal.
241.8 Reinstatement of removal orders.
241.9 Notice to transportation line of inadmissible alien's removal.
241.10 Special care and attention of removable aliens.
241.11 Detention and removal of stowaways.
241.12 Nonapplication of costs of detention and maintenance.

Subpart B—Deportation of Excluded Aliens (for Hearings Commenced Prior to April 1, 1997).

241.20 Proceedings commenced prior to April 1, 1997.
241.21 Stay of deportation of excluded alien.
241.22 Notice to surrender for deportation.
241.23 Cost of maintenance not assessed.
241.24 Notice to transportation line of alien's exclusion.
241.25 Deportation.

Subpart C—Deportation of Aliens in the United States (for Hearings Commenced Prior to April 1, 1997)

241.30 Proceedings commenced prior to April 1, 1997.
241.31 Final order of deportation.
241.32 Warrant of deportation.
241.33 Expulsion.

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

Subpart A—Post-hearing Detention and Removal

§ 241.1 Final order of removal.

An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final:

(a) Upon dismissal of an appeal by the Board of Immigration Appeals;

(b) Upon waiver of appeal by the respondent;

(c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time;

(d) If certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal;

(e) If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order; or

(f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period except where the respondent has filed a timely appeal with the Board. In such a case, the order shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of any voluntary departure period granted or reinstated by the Board or the Attorney General.

§ 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* A Form I–205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall be issued by a district director. The district director shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

(b) *Execution of the warrant of removal.* Any officer authorized by § 287.5(e) of this chapter to execute administrative warrants of arrest may execute a warrant of removal.

§ 241.3 Detention of aliens during removal period.

(a) *Assumption of custody.* Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.

(b) *Cancellation of bond.* Any bond previously posted will be canceled unless it has been breached or is subject to being breached.

(c) *Judicial stays.* The filing of (or intention of file) a petition or action in a Federal court seeking review of the issuance or execution of an order of removal shall not delay execution of the Warrant of Removal except upon an affirmative order of the court.

§ 241.4 Continued detention beyond the removal period.

(a) *Continuation of custody for inadmissible or criminal aliens.* The district director may continue in custody any alien inadmissible under section 212(a) of the Act or removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of the Act, or who presents a significant risk of noncompliance with the order of removal, beyond the removal period, as necessary, until removal from the United States. If such an alien demonstrates by clear and convincing evidence that the release would not pose a danger to the community or a significant flight risk, the district director may, in the exercise of discretion, order the alien released from custody on such conditions as the district director may prescribe, including bond in an amount sufficient to ensure the alien's appearance for removal. The district may consider, but is not limited to considering, the following factors:

(1) The nature and seriousness of the alien's criminal convictions;

(2) Other criminal history;

(3) Sentence(s) imposed and time actually served;

(4) History of failures to appear for court (defaults);

(5) Probation history;

(6) Disciplinary problems while incarcerated;

(7) Evidence of rehabilitative effort or recidivism;

(8) Equities in the United States; and

(9) Prior immigration violations and history.

(b) *Continuation of custody for other aliens.* Any alien removable under any section of the Act other than section 212(a), 237(a)(1)(C), 237(a)(2), or 237(a)(4) may be detained beyond the removal period, in the discretion of the district director, unless the alien demonstrates to the satisfaction of the district director that he or she is likely to comply with the remvoal order and is not a risk to the community.

§ 241.5 Conditions of release after removal period.

(a) *Order of supervision.* An alien released pursuant to § 241.4 shall be released pursuant to an order of supervision. A district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge may issue an order of supervision on Form I–220B. The order shall specify conditions of supervision including, but not limited to, the following:

(1) A requirement that the alien report to a specified officer periodically and provide relevant information under oath as directed;

(2) A requirement that the alien continue efforts to obtain a travel document and assist the Service in obtaining a travel document;

(3) A requirement that the alien report as directed for a mental or physical examinations as directed by the Service;

(4) A requirement that the alien obtain advance approval of travel beyond previously specified times and distances; and

(5) A requirement that the alien provide the Service with written notice of any change of address within five days of the change.

(b) *Posting of bond.* An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal.

(c) *Employment authorization.* An officer authorized to issue an order of supervision may, in his or her discretion, grant employment authorization to an alien released under an order of supervision if the officer specifically finds that:

(1) The alien cannot be removed because no country will accept the alien; or

(2) The removal of the alien is impracticable or contrary to public interest.

§ 241.6 Administrative stay of removal.

Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I–246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The district director, in his or her discretion and in consideration of factors such as are listed in § 212.5 of this chapter and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under such conditions as he or she may deem appropriate. Neither the request nor the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal. Denial by the district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in 8 CFR part 3. The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the Board. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed.

§ 241.7 Self-removal.

A district director may permit an alien ordered removed (including an alien ordered excluded or deported in proceedings prior to April 1, 1997) to depart at his or her own expense to a destination of his or her own choice. Any alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to have been so deported or removed.

§ 241.8 Reinstatement of removal orders.

(a) *Applicability.* An alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

(1) Whether the alien has been subject to a prior order of removal. The immigration officer must obtain the prior order of exclusion, deportation, or removal relating to the alien.

(2) The identity of the alien, i.e., whether the alien is in fact an alien who was previously removed, or who departed voluntarily while under an order of exclusion, deportation, or removal. In disputed cases, verification of identity shall be accomplished by a comparison of fingerprints between those of the previously excluded, deported, or removed alien contained in Service records and those of the subject alien. In the absence of fingerprints in a disputed case the alien shall not be removed pursuant to this paragraph.

(3) Whether the alien unlawfully reentered the United States. In making this determination, the officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The immigration officer shall attempt to verify an alien's claim, if any, that he or she was lawfully admitted, which shall include a check of Service data systems available to the officer.

(b) *Notice.* If an officer determines that an alien is subject to removal under this section, he or shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) *Order.* If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

(d) *Exception for withholding of removal.* If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer to determine whether the alien's removal to that country must be withheld under section 241(b)(3) of the Act. The alien's claim will be granted or denied by an asylum officer in accordance with § 208.16 of this chapter. If the alien has previously had a claim to withholding of deportation or removal denied, then that decision shall prevail unless the alien can establish the existence of changed circumstances that materially affect the alien's eligibility for withholding. The alien's case shall not be referred to an immigration judge, and there is no appeal from the decision of the asylum officer. If the alien is found to merit withholding of removal, the Service shall not enforce the reinstated order.

(e) *Execution of reinstated order.* Execution of the reinstated order of removal and detention of the alien shall be administered in accordance with this part.

§ 241.9 Notice to transportation line of alien's removal.

(a) An alien who has been ordered removed shall, immediately or as promptly as the circumstances permit, be offered for removal to the owner, agent, master, commanding officer, person in charge, purser, or consignee of the vessel or aircraft on which the alien is to be removed, as determined by the district director, with a written notice specifying the cause of inadmissibility or deportability, the class of travel in which such alien arrived and is to be removed, and with the return of any documentation that will assist in effecting his or her removal. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered removed shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal, including the cost of any transportation

as required under section 241(e) of the Act. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 241 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the alien for an additional 7 days beyond the date of the removal order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

241.10 Special care and attention of removable aliens.

When, in accordance with section 241(c)(3) of the Act, a transportation line is responsible for the expenses of an inadmissible or deportable alien's removal, and the alien requires special care and attention, the alien shall be delivered to the owner, agent, master, commanding officer, person in charge, purser, or consignee of the vessel or aircraft on which the alien will be removed, who shall be given Forms I–287, I–287A, and I–287B. The reverse of Form I–287A shall be signed by the officer of the vessel or aircraft to whom the alien has been delivered and immediately returned to the immigration officer effecting delivery. Form I–287B shall be retained by the receiving officer and subsequently filled out by the agents or persons therein designated and returned by mail to the district director named on the form. The transportation line shall at its own expense forward the alien from the foreign port of disembarkation to the final destination specified on Form I–287. The special care and attention shall be continued to such final destination, except when the foreign public officers decline to allow such attendant to proceed and they take charge of the alien, in which case this fact shall be recorded by the transportation line on the reverse of Form I–287B. If the transportation line fails, refuses, or neglects to provide the necessary special care and attention or comply with the directions of Form I–287, the district director shall thereafter and without notice employ suitable persons, at the expense of the transportation line, and effect such removal.

§ 241.11 Detention and removal of stowaways.

(a) *Presentation of stowaways.* The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft (referred to in this section as the carrier) bringing any alien stowaway to the United States is required to detain the stowaway on board the vessel or aircraft, at the expense of the owner of the vessel or aircraft, until completion of the inspection of the alien by an immigration officer. If detention on board the vessel or aircraft pending inspection is not possible, the carrier shall advise the Service of this fact without delay, and the Service may authorize that the carrier detain the stowaway at another designated location, at the expense of the owner, until the immigration officer arrives. No notice to detain the alien shall be required. Failure to detain an alien stowaway pending inspection shall result in a civil penalty under section 243(c)(1)(A) of the Act. The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft must present the stowaway for inspection, along with any documents or evidence of identity or nationality in the possession of the alien or obtained by the carrier relating to the alien stowaway, and must provide any available information concerning the alien's boarding or apprehension.

(b) *Removal of stowaways from vessel or aircraft for medical treatment.* The district director may parole an alien stowaway into the United States for medical treatment, but the costs of detention and treatment of the alien stowaway shall be at the expense of the owner of the vessel or aircraft, and such removal of the stowaway from the vessel or aircraft does not relieve the carrier of the requirement to remove the stowaway from the United States once such medical treatment has been completed.

(c) *Repatriation of stowaways.* (1) *Requirements of carrier.* Following inspection, an immigration officer may order the owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft bringing any alien stowaway to the United States to remove the stowaway on the vessel or aircraft of arrival. If the owner, agent, master, commanding officer, cahrterer, or consignee requests that he or she be allowed to remove the stowaway by other means, the Service shall consider any such request, provided the carrier has obtained, or will obtain in a timely manner, any necessary travel documents and has made or will make all transportation arrangements. The owner, agent, master, commanding officer, charterer, or consignee shall transport the stowaway or arrange for secure escort of the stowaway to the vessel or aircraft of departure to ensure that the stowaway departs the United States. All expenses relating to removal shall be borne by the owner. Other than requiring compliance with the detention and removal requirements contained in section 241(d)(2) of the Act, the Service shall not impose additional conditions on the carrier regarding security arrangements. Failure to comply with an order to remove an alien stowaway shall result in a civil penalty under section 243(c)(1)(A) of the Act.

(2) *Detention of stowaways ordered removed.* If detention of the stowaway is required pending removal on other than the vessel or aircraft of arrival, or if the stowaway is to be removed on the vessel or aircraft of arrival but departure of the vessel or aircraft is not imminent and circumstances preclude keeping the stowaway on board the vessel or aircraft, the Service shall take the stowaway into Service custody. The owner is responsible for all costs of maintaining and detaining the stowaway pending removal, including costs for stowaways seeking asylum as described in paragraph (d) of this section. Such costs will be limited to those normally incurred in the detention of an alien by the Service, including, but not limited to, housing, food, transportation, medical expenses, and other reasonable costs incident to the detention of the stowaway. The Service may require the posting of a bond or other surety to ensure payment of costs of detention.

(d) *Stowaways claiming asylum.* (1) *Referral for credible fear determination.* A stowaway who indicates an intention to apply for asylum or a fear of persecution shall be removed from the vessel or aircraft of arrival in accordance with § 208.5(b) of this chapter. The immigration officer shall refer the alien to an asylum officer for a determination of credible fear in accordance with section 235(b)(1)(B) of the Act and § 208.18 of this chapter. The stowaway shall be detained in the custody of the Service pending the credible fear determination and during any consideration of the asylum application.

(2) *Costs of detention of asylum-seeking stowaways.* The owner of the vessel or aircraft that brought the stowaway to the United States shall reimburse the Service for the costs of maintaining and detaining the stowaway pending a determination of credible fear under section 235(b)(1)(B) of the Act, up to a maximum period of 72 hours. The owner is also responsible for the costs of maintaining and detaining the stowaway during the period in which the stowaway is pursuing his or her asylum application, for a maximum period of 15 working days, excluding Saturdays, Sundays,

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and holidays. The 15-day period shall begin on the day following the day in which the alien is determined to have a credible fear of persecution by the asylum officer, or by the immigration judge if such review was requested by the alien pursuant to section 235(b)(1)(B)(iii)(III), but not later than 72 hours after the stowaway was initially presented to the Service for inspection. Following the determination of credible fear, if the stowaway's application for asylum is not adjudicated within 15 working days, the Service shall pay the costs of detention beyond this time period. If the stowaway is determined not to have a credible fear of persecution, or if the stowaway's application for asylum is denied, including any appeals, the carrier shall be notified and shall arrange for repatriation of the stowaway at the expense of the owner of the vessel or aircraft on which the stowaway arrived.

§ 241.12 Nonapplication of costs of detention and maintenance.

The owner of a vessel or aircraft bringing an alien to the United States who claims to be exempt from payment of the costs of detention and maintenance of the alien pursuant to section 241(c)(3)(B) of the Act shall establish to the satisfaction of the district director in charge of the port of arrival that such costs should not be applied. The district director shall afford the line a reasonable time within which to submit affidavits and briefs to support its claim. There is no appeal from the decision of the district director.

§§ 241.13–241.19 [Reserved]

Subpart B—Deportation of Excluded Aliens (for hearings commenced prior to April 1, 1997)

§ 241.20 Proceedings commenced prior to April 1, 1997.

Subpart B of 8 CFR part 241 applies to exclusion proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.21 Stay of deportation of excluded alien.

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the Act under such conditions as he or she may prescribe.

§ 241.22 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to 8 CFR part 240, subpart D may at any time surrender himself or herself to the custody of the Service and shall surrender to such custody upon notice in writing of the time and place for his or her surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his or her consent thereto filed in writing with the district director in charge of the place of his or her detention. An alien in foreign contiguous territory shall be informed that he or she may remain there in lieu of surrendering to the Service, but that he or she will be deemed to have acknowledged the execution of the order of exclusion and deportation in his or her case upon his or her failure to surrender at the time and place prescribed.

§ 241.23 Cost of maintenance not assessed.

A claim pursuant to section 237(a)(1) of the Act shall be established to the satisfaction of the district director in charge of the port of arrival, from whose adverse decision no appeal shall lie. The district director shall afford the line a reasonable time within which to submit affidavits and briefs to support its claim.

§ 241.24 Notice to transportation line of alien's exclusion.

(a) An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the district director, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation that will assist in effecting his or her deportation. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the excluded alien for an additional 7 days beyond the date of the deportation/exclusion order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the excluded alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

§ 241.25 Deportation.

(a) *Definitions of terms.* For the purposes of this section, the following terms mean:

(1) Adjacent island—as defined in section 101(b)(5) of the Act.

(2) Foreign contiguous territory—any country sharing a common boundary with the United States.

(3) Residence in foreign contiguous territory or adjacent island—any physical presence, regardless of intent, in a foreign contiguous territory or an adjacent island if the government of such territory or island agrees to accept the alien.

(4) Aircraft or vessel—any conveyance and other mode of travel by which arrival is affected.

(5) Next available flight—the carrier's next regularly scheduled departure to the excluded alien's point of embarkation regardless of seat availability. If the carrier's next regulatory scheduled departure of the excluded aliens point of embarkation is full, the carrier has the option of arranging for return transportation on other carrier which service the excluded aliens point of embarkation.

(b) *Place to which deported.* Any alien (other than an alien crew member or an alien who boarded an aircraft or vessel in foreign contiguous territory or an adjacent island) who is ordered excluded shall be deported to the country where the alien boarded the vessel or aircraft on which the alien arrived in the United States. If that country refuses to accept the alien, the alien shall be deported to:

(1) The country of which the alien is a subject, citizen, or national;

(2) The country where the alien was born;

(3) The country where the alien has a residence; or

(4) Any country willing to accept the alien.

(c) *Contiguous territory and adjacent islands.* Any alien ordered excluded who boarded an aircraft or vessel in foreign contiguous territory or in any adjacent island shall be deported to such foreign contiguous territory or adjacent

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island, or if the alien has a residence in such foreign contiguous territory or adjacent island. Otherwise, the alien shall be deported, in the first instance, to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island.

(d) *Land border pedestrian arrivals.* Any alien ordered excluded who arrived at a land border on foot shall be deported in the same manner as if the alien had boarded a vessel or aircraft in foreign contiguous territory.

§§ 241.26–241.29 [Reserved]

Subpart C—Deportation of Aliens in the United States (For Hearings Commenced Prior to April 1, 1997)

§ 241.30 Proceedings commenced prior to April 1, 1997.

Subpart C of 8 CFR part 241 applies to deportation proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.31 Final order of deportation.

Except as otherwise required by section 242(c) of the Act for the specific purposes of that section, an order of deportation, including an alternate order of deportation coupled with an order of voluntary departure, made by the immigration judge in proceedings under 8 CFR part 240 shall become final upon dismissal of an appeal by the Board of Immigration Appeals, upon waiver of appeal, or upon expiration of the time allotted for an appeal when no appeal is taken; of, if such an order is issued by the Board or approved by the Board upon certification, it shall be final as of the date of the Board's decision.

§ 241.32 Warrant of deportation.

A Form I–205, Warrant of Deportation, based upon the final administrative order of deportation in the alien's case shall be issued by a district director. The director shall exercise the authority contained in such 243 of the Act to determine at whose expense the alien shall be deported and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

§ 241.33 Expulsion.

(a) *Execution of order.* Except in the exercise of discretion by the district director, and for such reasons as are set forth in § 212.5(a) of this chapter, once an order of deportation becomes final, an alien shall be taken into custody and the order shall be executed. For the purposes of this part, and order of deportation is final and subject to execution upon the date when any of the following occurs:

(1) A grant of voluntary departure expires;

(2) An immigration judge enters an order of deportation without granting voluntary departure or other relief, and the alien respondent waives his or order right to appeal;

(3) The Board of Immigration Appeals enters and order of deportation on appeals, without granting voluntary departure or other relief; or

(4) A Federal district or appellate court affirms an administrative order of deportation in a petition for review or habeas corpus action.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody, provided that such period may be waived on the knowing and voluntary request of the alien. Nothing in this paragraph shall be construed, however, to preclude assumption of custody by the Service at the time of issuance of the final order.

PART 242—[REMOVED AND RESERVED]

108. Part 242 is removed and reserved.

PART 243—[REMOVED AND RESERVED]

109. Part 243 is removed and reserved.

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

110. The heading for part 244 is revised as set forth above.

111. The authority citation for part 244 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note.

§§ 244.1 and 244.2 [Removed]

112. Sections 244.1 and 244.2 are removed.

§§ 244.3 through 244.22 [Redesignated as §§ 244.1 through 244.20]

113. Newly redesignated §§ 244.3 through 244.22 are further redesignated as §§ 244.1 through 244.20, respectively.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

114. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

115. Section 245.1 is amended by:

a. Removing the word "and" at the end of the paragraph (c)(3);

b. Removing the "." at the end of paragraphs (c)(4) through (c)(7), and replacing it with a ";";

c. Redesignating paragraph (c)(8) as paragraph (c)(9);

d. Adding a new paragraph (c)(8);

e. Revising newly redesignated paragraph (c)(9) introductory text,

f. Revising newly redesignated paragraphs (c)(9)(i) through (c)(9)(iii); and by

g. Revising paragraph (f), to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(8) Any arriving alien who is in removal proceedings pursuant to section 235(b)(1) or section 240 of the Act; and

(9) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto.

(i) *Commencement of proceedings.* The period during which the alien is in deportation, exclusion, or removal proceedings or judicial proceedings relating thereto, commences:

(A) With the issuance of the Form I–221, Order to Show Cause and Notice of Hearing prior to June 20, 1991;

(B) With the filing of a Form I–221, Order to Show Cause and Notice of Hearing, issued on or after June 20, 1991, with the Immigration Court;

(C) With the issuance of Form I–122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, prior to April 1, 1997,

(D) With the filing of a Form I–862, Notice to Appear, with the Immigration Court, or

(E) With the issuance and service of Form I–860, Notice and Order of Expedited Removal.

(ii) *Termination of proceedings.* The period during which the alien is in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto, terminates:

(A) When the alien departs from the United States while an order of exclusion, deportation, or removal is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation or removal;

(B) When the alien is found not to be inadmissible or deportable from the United States;

(C) When the Form I–122, I–221, I–860, or I–862 is canceled;

(D) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(E) When a petition for review or an action for habeas corpus is granted by a Federal court on judicial review.

(iii) *Exemptions.* This prohibition shall no longer apply if:

(A) The alien is found not to be inadmissible or deportable from the United States;

(B) Form I–122, I–221, I–860, or I–862, is canceled;

(C) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(D) A petition for review or an action for habeas corpus is granted by a Federal court on judicial review;

(E) The alien has resided outside the United States for 2 or more years following the marriage; or

(F) The alien establishes the marriage is bona fide by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of a petition.

* * * * *

(f) *Concurrent applications to overcome grounds of inadmissibility.* Except as provided in 8 CFR parts 235 and 249, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212 (g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States. No fee is required for filing an application to overcome the grounds of inadmissibility of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

* * * * *

116. Section 245.2 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(4)(ii);

c. Revising paragraph (a)(5) (ii) and (iii); and by

d. Revising paragraph (c), to read as follows:

§ 245.2 Application.

(a) *General.* (1) *Jurisdiction.* An alien who believes he or she meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, and § 245.1 shall apply to the director having jurisdiction over his or her place of residence unless otherwise instructed in 8 CFR part 245, or by the instruction on the application form. After an alien, other than an arriving alien, is in deportation or removal proceedings, his or her application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 shall be made and considered only in those proceedings. An arriving alien, other than an alien in removal proceedings, who believes he or she meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, and § 245.1 shall apply to the director having jurisdiction over his or her place of arrival. An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the Director, may be renewed in removal proceedings under 8 CFR part 240 only if:

(i) The denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and

(ii) The applicant's later absence from and return to the United States was under the terms of an advance parole authorization on Form I–512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

* * * * *

(4) * * *

(ii) *Under section 245 of the Act.* The departure from the United States of an applicant who is under exclusion, deportation, or removal proceedings shall be deemed an abandonment of the application constituting grounds for termination of the proceeding by reason of the departure. The departure of an applicant who is not under exclusion, deportation, or removal proceedings shall be deemed an abandonment of his or her application constituting grounds for termination, unless the applicant was previously granted advance parole by the Service for such absence, and was inspected upon returning to the United States. If the application of an individual granted advance parole is subsequently denied, the applicant will be treated as an applicant for admission, and subject to the provisions of sections 212 and 235 of the Act.

* * * * *

(5) * * *

(ii) *Under section 245 of the Act.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status, as a preference alien, shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101–238. No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility. At the time of renewal of application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or § 245.1(g), if, in fact, those requirements were met at the time the renewed application was initially filed with the director. Nothing in this section shall entitle an alien to proceedings under section 240 of the Act who is not otherwise so entitled.

(iii) *Under the Act of November 2, 1966.* If the application is approved, the applicant's permanent residence shall be recorded in accordance with the provisions of section 1. No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility.

* * * * *

(c) *Application under section 214(d) of the Act.* An application for permanent resident status pursuant to section 214(d) of the Act shall be filed on Form I–485 with the director having jurisdiction over the applicant's place of residence. A separate application shall be filed by each applicant. If the application is approved, the director shall record the lawful admission of the applicant as of the date of approval. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. No appeal shall lie from the denial of an application by the director but such denial shall be without prejudice to the alien's right to renew his or her application in proceedings under 8 CFR part 240.

117. Section 245.5 is amended by revising the first sentence to read as follows:

§ 245.5 Medical examination.

Pursuant to section 232(b) of the Act, an applicant for adjustment of status

shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.* * *

118. Section 245.8 is amended by revising paragraph (e), to read as follows:

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

* * * * *

(e) *Removal provisions of section 237 of the Act.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the removal provisions of section 237 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 237 of the Act. The Service shall obtain current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

* * * * *

119. Section 245.9 is amended by revising paragraphs (d) and (m), to read as follows:

§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.

* * * * *

(d) *Waivers of inadmissibility under section 212(a) of the Act.* An applicant for the benefits of the adjustment of status provisions of Pub. L. 102–404 is automatically exempted from compliance with the requirements of sections 212(a)(5) and 212(a)(7)(A) of the Act. A Pub. L. 102–404 applicant may also apply for one or more waivers of inadmissibility under section 212(a) of the Act, except for inadmissibility under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

* * * * *

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Pub. L. 102–404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act. Persons who are unable to maintain lawful nonimmigrant status in the United States and are not immediately eligible to apply for adjustment of status may request voluntary departure pursuant to 8 CFR part 240.

120. Section 245.10 is amended by:

a. Revising paragraphs (a)(3) and (6); and by

b. Revising introductory text in paragraph (b), to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

(a) * * *

(3) Is not inadmissible from the United States under any provision of section 212 of the Act, or all grounds for inadmissibility have been waived;

* * * * *

(6) Remits the sum specified in section 245(i) of the Act, unless payment of the sum is waived under section 245(i) of the Act; and

* * * * *

(b) *Payment of additional sum.* An applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment of status filing fee, as shown on Form I–485 and contained in § 103.7(b)(1) of this chapter. The applicant must also pay the additional sum specified in section 245(i) of the Act, unless at the time the application for adjustment of status is filed, the alien is:

* * * * *

121. Section 245.11 is amended by:

a. Revising paragraph (a)(4)(ii)(B);

b. Revising paragraph (b)(1)(iii);

c. Revising the introductory text in paragraph (c); and by

d. Revising paragraphs (h) and (i), to read as follows:

§ 245.11 Adjustment of aliens in S nonimmigrant classification.

(a) * * *

(4) * * *

(ii) * * *

(B) Be admissible to the United States as an immigrant, unless the ground of inadmissibility has been waived;

* * * * *

(b) * * *

(1) * * *

(iii) The family member is not inadmissible from the United States as a participant in Nazi persecution or genocide as described in section 212(a)(3)(E) of the Act;

* * * * *

(c) *Waivers of inadmissibility.* An alien seeking to adjust status pursuant to the provisions of section 101(a)(15)(S) of the Act may not be denied adjustment of status for conduct or a condition that:

* * * * *

(h) *Removal under section 237 of the Act.* Nothing in this section shall prevent an alien adjusted pursuant to the terms of these provisions from being removed for conviction of a crime of moral turpitude committed within 10 years after being provided lawful permanent residence under this section or for any other ground under section 237 of the Act.

(i) *Denial of application.* In the event the district decides to deny an application on Form I–485 and an approved Form I–854 to allow an S nonimmigrant to adjust status, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny. A denial of an adjustment application under this paragraph may not be renewed in subsequent removal proceedings.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

122. The authority citation for part 246 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

§ 246.8 [Removed]

123. Section 246.8 is removed.

PART 248—CHANGE OF NONIMMGRANT CLASSIFICATION

124. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

125. Section 248.1 is amended by revising paragraph (b)(4) to read as follows:

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§ 248.1 Eligibility.

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(b) * * *

(4) The alien is not the subject of removal proceedings under 8 CFR part 240.

* * * * *

PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

126. The authority citation for part 249 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

127. Section 249.2 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b), to read as follows:

§ 249.2 Application.

(a) *Jurisdiction.* An application by an alien, other than an arriving alien, who has been served with a notice to appear or warrant of arrest shall be considered only in proceedings under 8 CFR part 240. * * *

(b) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. If the application is granted, a Form I–551, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall not be issued until the applicant surrenders any other document in his or her possession evidencing compliance with the alien registration requirements of former or existing law. No appeal shall lie from the denial of an application by the district director. However, an alien, other than an arriving alien, may renew the denied application in proceedings under 8 CFR part 240.

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

128. The authority citation for part 251 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282, 8 CFR part 2.

129. Section 251.1 is revised to read as follows:

§ 251.1 Arrival manifests and lists.

(a) *Vessels.* (1) *General.* The master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmen on board on Form I–418, Passenger List and Crew List, in accordance with the instructions contained thereon.

(2) *Longshore work notations.* The master or agent of the vessel shall indicate in writing immediately below the name of the alien listed on the Form I–418 whether or not crewmen aboard the vessel will be used to perform longshore work at any United States port before the vessel departs the United States.

(i) If no longshore work will be performed, no further notation regarding longshore work is required.

(ii) If longshore work will be performed, the master or agent shall note which exception listed in section 258 of the Act permits the work. The exceptions are:

(A) The hazardous cargo exception;

(B) The prevailing practice exception in accordance with a port's collective bargaining agreements;

(C) The prevailing practice exception in a port where there is no collective bargaining agreement, but for which the vessel files an attestation;

(D) The prevailing practice exception for automated vessels; and

(E) The reciprocity exception.

(iii) If longshore work will be performed under the hazardous cargo exception, the vessel must either be a tanker or be transporting dry bulk cargo that qualifies as hazardous. All tankers qualify for the hazardous cargo exception, except for a tanker that has been gas-freed to load non-hazardous dry bulk commodities.

(A) To invoke the exception for tankers, the master or agent shall note on the manifest that the vessel is a qualifying tanker.

(B) If the vessel is transporting dry bulk hazardous cargo, the master or agent shall note on the manifest that the vessel's dry bulk cargo is hazardous and shall show the immigration officer the dangerous cargo manifest that is signed by the master or an authorized representative of the owner, and that under 46 CFR 148.02 must be kept in a conspicuous place near the bridge house.

(iv) If longshore work will be performed under the prevailing practice exception, the master or agent shall note on the manifest each port at which longshore work will be performed under this exception. Additionally, for each port the master or agent shall note either that:

(A) The practice of nonimmigrant crewmen doing longshore work is in accordance with all collective bargaining agreements covering 30 percent or more of the longshore workers in the port;

(B) The port has no collective bargaining agreement covering 30 percent or more of the longshore workers in the port and an attestation has been filed with the Secretary of Labor;

(C) An attestation that was previously filed is still valid and the continues to comply with the conditions stated in that attestation; or

(D) The longshore work consists of operating an automated, self-unloading conveyor belt or a vacuum-actuated system.

(v) If longshore work will be performed under the reciprocity exception, the master or agent shall note on the manifest that the work will be done under the reciprocity exception, and will note the nationality of the vessel's registry and the nationality or nationalities of the holders of a majority of the ownership interest in the vessel.

(3) *Exception for certain Great Lakes vessels.* (i) A manifest shall not be required for a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes or the St. Lawrence River and connecting waterways, herein designated as a Great Lakes vessel, unless:

(A) The vessel employs nonimmigrant crewmen who will do longshore work at a port in the United States; or

(B) The vessel employs crewmen of other than United States, Canadian, or British citizenship.

(ii) In either situation, the master shall note the manifest in the manner prescribed in paragraph (a)(2) of this section.

(iii) After submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless a nonimmigrant crewman of other than Canadian or British citizenship is employed on the vessel who was not aboard and listed on the last prior manifest, or a change has occurred regarding the performance of longshore work in the United States by nonimmigrant crewmen, or a change has occurred in the exception that the master or agent of the vessel wishes to invoke which was not noted on the last prior manifest.

(4) The master or agent of a vessel that only bunkers at a United States port en route to another United States port shall annotate Form I–418 presented at the onward port to indicate the time, date, and place of bunkering.

(5) If documentation is required to support an exception, as described in § 258.2 of this chapter, it must accompany the manifest.

(b) *Aircraft.* The captain or agent of every aircraft arriving in the United States from a foreign place or from an outlying possession of the United States, except an aircraft arriving in the United

States directly from Canada on a flight originating in that country, shall present to the immigration officer at the port where the inspection is performed a manifest on United States Customs Service Form 7507 or on the International Civil Aviation Organization's General Declaration of all the alien crewmembers on board, including alien crewmembers who are returning to the United States after taking an aircraft of the same line from the United States to a foreign place or alien crewmembers who are entering the United States as passengers solely for the purpose of taking an aircraft of the same line from the United States to a foreign port. The captain or agent of an aircraft that only refuels at the United States en route to another United States port must annotate the manifest presented at the onward port to indicate the time, date, and place of refueling. The surname, given name, and middle initial of each alien crewman listed also shall be shown on the manifest. In addition, the captain or agent of the aircraft shall indicate the total number of United States citizen crewmembers and total number of alien crewmembers.

(c) *Additional documents.* The master, captain, or agent shall prepare as a part of the manifest, when one is required for presentation to an immigration officer, a completely executed set of Forms I–95, Conditional Landing Permit, for each nonimmigrant alien crewman on board, except:

(1) A Canadian or British citizen crewman serving on a vessel plying solely between Canada and the United States; or

(2) A nonimmigrant crewman who is in possession of an unmutilated Form I–184, Alien Crewman Landing Permit and Identification Card, or an unmutilated Form I–95 with space for additional endorsements previously issued to him or her as a member of the crew of the same vessel or an aircraft of the same line on his or her last prior arrival in the United States, following which he or she departed from the United States as a member of the crew of the same vessel or an aircraft of the same line.

130. Section 251.2 is revised to read as follows:

§ 251.2 Notification of illegal landings.

As soon as discovered, the master or agent of any vessel from which an alien crewman has illegally landed or deserted in the United States shall inform the immigration officer in charge of the port where the illegal landing or desertion occurred, in writing, or the name, nationality, passport number and, if known, the personal description, circumstances and time of such illegal landing or desertion of such alien crewman, and furnish any other information and documents that might aid in his or her apprehension, including any passport surrendered pursuant to § 252.1(d) of this chapter. Failure to file notice of illegal landing or desertion and to furnish any surrendered passport within 24 hours of the time of such landing or desertion becomes known shall be regarded as lack of compliance with section 251(d) of the Act.

131. Section 251.3 is revised to read as follows:

§ 251.3 Departure manifests and lists for vessels.

(a) *Form I–418, Passenger List-Crew List.* The master or agent of every vessel departing from the United States shall submit to the immigration officer at the post from which such vessel is to depart directly to some foreign place or outlying possession of the United States, except when a manifest is not required pursuant to § 251.1(a), a single Form I–418 completed in accordance with the instructions on the form. Submission of a Form I–418 that lacks any required endorsement shall be regarded as lack of compliance with section 251(c) of the Act.

(b) *Exception for certain Great Lakes vessels.* The required list need not be submitted for Canadian or British crewmembers of Great Lakes vessels described in § 251.1(a)(3).

132. Section 251.4 is revised to read as follows:

§ 251.4 Departure manifests and lists for aircraft.

(a) *United States Customs Service Form 7507 or International Civil Aviation Organization's General Declaration.* The captain or agent of every aircraft departing from the United States for a foreign place or an outlying possession of the United States, except on a flight departing for and terminating in Canada, shall submit to the immigration officer at the port from which such aircraft is to depart a completed United States Customs Service Form 7507 or the International Civil Aviation Organization's General Declaration. The form shall contain a list of all alien crewmen on board, including alien crewmen who arrived in the United States as crewmen on an aircraft of the same line and who are departing as passengers. The surname, given name, and middle initial of each such alien crewman listed shall be shown. In addition, the captain or agent of the craft shall indicate the total number of alien crewmembers and the total number of United States citizen crewmembers.

(b) *Notification of changes in employment for aircraft.* The agent of the air transportation line shall immediately notify in writing the nearest immigration office of the termination of employment in the United States of each alien employee of the line furnishing the name, birth date, birthplace, nationality, passport number, and other available information concerning such alien. The procedure to follow in obtaining permission to pay off or discharge an alien crewman in the United States after initial immigration inspection, other than an alien lawfully admitted for permanent residence, is set forth in § 252.1(f) of this chapter.

133. Section 251.5 is revised to read as follows:

§ 251.5 Exemptions for private vessels and aircraft.

The provisions of this part relating to submission of arrival and departure manifests and lists shall not apply to a private vessel or a private aircraft not engaged directly or indirectly in the carriage of persons or cargo for hire.

PART 252—LANDING OF ALIEN CREWMEN

134. The authority citation for part 252 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184, 1258, 1281, 1282; 8 CFR part 2.

135. Section 252.1 is amended by revising paragraphs (a) through (c) to read as follows:

§ 252.1 Examination of crewmen.

(a) *Detention prior to examination.* All persons employed in any capacity on board any vessel or aircraft arriving in the United States shall be detained on board the vessel or at the airport of arrival by the master or agent of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service.

(b) *Classes of aliens subject to examination under this part.* The examination of every nonimmigrant alien crewman arriving in the United States shall be in accordance with this part except that the following classes of persons employeed on vessels or aircraft shall be examined in accordance with the provisions of 8 CFR parts 235 and 240:

(1) Canadian or British citizen crewmen serving on vessels plying solely between Canada and the United States; or

(2) Canadian or British citizen crewmen of aircraft arriving in a State of the United States directly from

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Canada on flights originating in that country. The crew of a vessel arriving at a United States port that may not require inspection by or clearance from the United States Customs Service is, nevertheless, subject to examination under this part; however, the master of such a vessel is not required to present Form I–95 for any crewman who is not an applicant for a conditional landing permit.

(c) *Requirements for landing permits.* Every alien crewman applying for landing privileges in the United States must make his or her application in person before an immigration officer, present whatever documents are required, be photographed and fingerprinted as the district director may require, and establish to the satisfaction of the immigration officer that he or she is not inadmissible under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

136. Section 252.2 is revised to read as follows:

§ 252.2 Revocation of conditional landing permits; removal.

(a) *Revocation and removal while vessel is in the United States.* A crewman whose landing permit is subject to revocation pursuant to section 252(b) of the Act may be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel of arrival, if the vessel is in any port in the United States and has not departed foreign since the crewman was issued his or her conditional landing permit. Detention and removal of the crewman shall be at the expense of the transportation line on which the crewman arrived. Removal may be effected on the vessel of arrival or, if the master of the vessel has requested in writing, by alternate means if removal on the vessel of arrival is impractical.

(b) *Revocation and removal after vessel has departed the United States.* A crewman who was granted landing privileges prior to April 1, 1997, and who has not departed foreign on the vessel of arrival, or on another vessel or aircraft if such permission was granted pursuant to § 252.1(f), is subject to removal proceedings under section 240 of the Act as an alien deportable pursuant to section 237(a)(1)(C)(i) of the Act. A crewman who was granted landing privileges on or after April 1, 1997, and who has not departed foreign on the vessel of arrival, or on another vessel or aircraft if such permission was granted pursuant to § 252.1(f), shall be removed from the United States without a hearing. In either case, if the alien is removed within 5 years of the date of landing, removal of the crewman shall be at the expense of the owner of the vessel. In the case of a crewman ordered removed more than 5 years after the date of landing, removal shall be at the expense of the appropriation for the enforcement of the Act.

137. Section 252.3 is revised to read as follows:

§ 252.3 Great Lakes vessels and tugboats arriving in the United States from Canada; special procedures.

(a) *United States vessels and tugboats.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel of United States registry or a tugboat of United States registry arriving from Canada at a port of the United States who has been examined and admitted by an immigration officer as a member of the crew of the same vessel or tugboat or of any other vessel or tugboat of the same company during the current calendar year.

(b) *Canadian or British vessels or tugboats.* An alien crewman need not be presented for inspection if the alien crewman:

(1) Serves aboard a Great Lakes vessel of Canadian or British registry or aboard a tugboat of Canadian or British registry arriving at a United States port-of-entry from Canada;

(2) Seeks admission for a period of less than 29 days;

(3) Has, during the current calendar year, been inspected and admitted by an immigration officer as a member of the crew of the same vessel or tugboat, or of any other vessel or tugboat of the same company;

(4) Is either a British or Canadian citizen or is in possession of a valid Form I–95 previously issued to him or her as a member of the crew of the same vessel or tugboat, or of any vessel or tugboat of the same company;

(5) Does not request or require landing privileges in the United States beyond the time the vessel or tugboat will be in port; and,

(6) Will depart to Canada with the vessel or tugboat.

138. Section 252.4 is revised to read as follows:

§ 252.4 Permanent landing permit and identification card.

A Form I–184 is valid until revoked. It shall be revoked when an immigration officer finds that the crewman is in the United States in willful violation of the terms and conditions of his or her permission to land, or that he or she is inadmissible to the United States. On revocation, the Form I–184 shall be surrendered to an immigration officer. No appeal shall lie from the revocation of Form I–184.

139. Section 252.5 is revised to read as follows:

§ 252.5 Special procedures for deserters from Spanish or Greek ships of war.

(a) *General.* Under E.O. 11267 of January 19, 1966 (31 FR 807) and 28 CFR 0.109, and E.O. 11300 of August 17, 1966 (31 FR 11009), and 28 CFR 0.110, the Commissioner and immigration officers (as defined in § 103.1(j) of this chapter) are designated as "competent national authorities" on the part of the United States within the meaning of Article XXIV of the 1903 Treaty of Friendship and General Relations between the United States and Spain (33 Stat. 2105, 2117), and "local authorities" and "competent officers" on the part of the United States within the meaning of Article XIII of the Convention between the United States and Greece (33 Stat. 2122, 2131).

(b) *Application for restoration.* On application of a Consul General, Consul, Vice-Consul, or Consular-Agent of the Spanish or Greek Government, made in writing pursuant to Article XXIV of the treaty, or Article XIII of the Convention, respectively, stipulating for the restoration of crewmen deserting, stating that the person named therein has deserted from a ship of war of that government, while in any port of the United States, and on proof by the exhibition of the register, crew list, or official documents of the vessel, or a copy or extract therefrom, duly certified, that the person named belonged, at the time of desertion, to the crew of such vessel, such person shall be taken into custody by any immigration officer without a warrant of arrest. Written notification of charges shall be served on the alien when he or she is taken into custody or as soon as practical thereafter.

(c) *Examination.* Within a reasonable period of time after the arrest, the alien shall be accorded an examination by the district director, acting district director, or the deputy district director having jurisdiction over the place of arrest. The alien shall be informed that he or she may have the assistance of or be represented by a counsel or representative of his or her choice qualified under 8 CFR part 292 without expense to the Government, and that he or she may present such evidence in his or her behalf as may be relevant to this proceeding. If, upon the completion of such examination, it is determined that:

(1) The individual sought by the Spanish or Greek authorities had

deserted from a Spanish or Greek ship of war in a United States port;

(2) The individual actually arrested and detained is the person sought;

(3) The individual is not a citizen of the United States; and

(4) The individual had not previously been arrested for the same cause and set at liberty because he or she had been detained for more than 3 months, or more than 2 months in the case of a deserter from a Greek ship of war, from the day of his or her arrest without the Spanish or Greek authorities having found an opportunity to send him or her home, the individual shall be served with a copy of the findings, from which no appeal shall lie, and be surrendered forthwith to the Spanish or Greek authorities if they are prepared to remove him or her from the United States. On written request of the Spanish or Greek authorities, the individual shall be detained, at their expense, for a period not exceeding 3 months or 2 months, respectively, from the day of arrest to afford opportunity to arrange for his or her departure from the United States.

(d) *Timely departure not effected.* If the Spanish authorities delay in sending the individual home for more than 3 months, or if the Greek authorities delay in sending the individual home for more than 2 months, from the day of his or her arrest, the individual shall be dealt with as any other alien unlawfully in the United States under the removal provisions of the Act, as amended.

(e) *Commission of crime.* If the individual has committed any crime or offense in the United States, he or she shall not be placed at the disposal of the consul until after the proper tribunal having jurisdiction in his or her case shall have pronounced sentence, and such sentence shall have been executed.

PART 253—PAROLE OF ALIEN CREWMEN

140. The authority citation for part 253 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285; 8 CFR part 2.

141. In § 253.1, paragraph (f) is revised to read as follows:

§ 253.1 Parole.

* * * * *

(f) *Crewman, stowaway, or alien removable under section 235(c) alleging persecution.* Any alien crewman, stowaway, or alien removable under section 235(c) of the Act who alleges that he or she cannot return to his or her country of nationality or last habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, is eligible to apply for asylum or withholding of removal under 8 CFR part 208. Service officers shall take particular care to ensure the provisions of § 208.5(b) of this chapter regarding special duties toward aliens aboard certain vessels are closely followed.

* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

142. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

143. Section 274a.12 is amended by:

a. Revising paragraphs (a)(10) and (12);

b. Revising paragraphs (c)(8) and (10);

c. Removing and reserving paragraph (c)(12); and by

d. Revising paragraph (c)(18), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(10) An alien granted withholding of deportation or removal for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

* * * * *

(12) An alien granted Temporary Protected Status under section 244 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service; or

* * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR part 208, whose application has not been decided, and who is eligible to apply for employment authorization under § 208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of § 208.7 of this chapter in increments to be determined by the Commissioner and shall expire on a specified date;

* * * * *

(10) An alien who has filed an application for suspension of deportation under section 243 of the Act or cancellation of removal pursuant to section 240A of the Act. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

* * * * *

(12) [Reserved]

* * * * *

(18) An alien against whom a final order of deportation or removal exists and who is released on an order of supervision under the authority contained in section 241(a)(3) of the Act may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest. Additional factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:

(i) The existence of economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support; and

(iii) The anticipated length of time before the alien can be removed from the United States.

* * * * *

PART 286—IMMIGRATION USER FEE

144. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

145. In § 286.9, paragraph (b)(3) is revised to read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(3) A Mexican national in possession of a valid nonresident alien border crossing card or nonimmigrant B–1/B–2 visa who is required to be issued Form I–94, Arrival/Departure Record, pursuant to § 235.1(f) of this chapter, must remit the required fee for issuance of Form I–94 upon determination of admissibility.

* * * * *

PART 287—FIELD OFFICERS; POWERS AND DUTIES

146. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

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147. Section 287.3 is revised to read as follows:

§ 287.3 Disposition of cases of aliens arrested without warrant.

(a) *Examination.* An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Act will be examined by an officer other than the arresting officer. If no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or her, may examine the alien.

(b) *Determination of proceedings.* If the examining officer is satisfied that there is prima facie evidence that the arrested alien was entering, attempting to enter, or is present in the United States in violation of the immigration laws, the examining officer will refer the case to an immigration judge for further inquiry in accordance with 8 CFR parts 235, 239, or 240, order the alien removed as provided for in section 235(b)(1) of the Act and § 235.3(b) of this chapter, or take whatever other action may be appropriate or required under the laws or regulations applicable to the particular case.

(c) *Notifications and information.* Except in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act, all aliens arrested without warrant and placed in formal proceedings under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government. The examining officer will provide the alien with a list of the available free legal services provided by organizations and attorneys qualified under 8 CFR part 3 and organizations recognized under § 292.2 of this chapter that are located in the district where the hearing will be held. The examining officer shall note on Form I–862 that such a list was provided to the alien. The officer will also advise the alien that any statement made may be used against him or her in a subsequent proceeding.

(d) *Custody procedures.* Unless voluntary departure has been granted pursuant to subpart C of 8 CFR part 240, a determination will be made within 24 hours of the arrest whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued.

148. In § 287.4, paragraph (d) is revised to read as follows:

§ 287.4 Subpoena.

* * * * *

(d) *Invoking aid of court.* If a witness neglects to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the officer or immigration judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers, or documents designated in the subpoena.

149. In § 287.5, paragraphs (b) through (f) are revised to read as follows:

§ 287.5 Exercise of power by immigration officers.

* * * * *

(b) *Power and authority to patrol the border.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to patrol the border conferred by section 287(a)(3) of the Act:

(1) border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Immigration inspectors (seaport operations only);

(4) Adjustments officers and deportation officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections (seaport operations only);

(5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commission.

(c) *Power and authority to arrest.* (1) *Arrests of aliens under section 287(a)(2) of the Act for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(2) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(vii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(2) *Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(4) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(3) *Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(A) of the Act in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors (permanent full-time immigration inspectors only);

(v) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(vii) Immigration officers who need the authority to arrest persons under

section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(4) *Arrests of persons under section 287(a)(5)(B) of the Act for any felony.* (i) Section 287(a)(5)(B) of the Act authorizes designated immigration officers, as listed in paragraph (c)(4)(iii) of this section, to arrest persons, without warrant, for any felony cognizable under the laws of the United States if:

(A) The immigration officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(B) The immigration officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest;

(C) There is a likelihood of the person escaping before a warrant can be obtained of his or her arrest; and

(D) The immigration officer has been certified as successfully completing a training program that covers such arrests and the standards with respect to the enforcement activities of the Service as defined in § 287.8.

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(B) of the Act and in accordance with § 287.8(c):

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors (permanent full-time immigration inspectors only);

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified by the Director of Training as successfully completing a training course encompassing such arrests and the standards for enforcement activities as defined in § 287.8. Such certification shall be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner or the Commissioner's designee for just cause.

(5) *Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.*

(i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law. When making an arrest, the designated immigration officer shall adhere to the provisions of the enforcement standard governing the conduct of arrests in § 287.8(c).

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are authorized and designated to exercise the arrest power conferred by section 274(a) of the Act:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors;

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(6) *Custody and transportation of previously arrested persons.* In addition to the authority to arrest pursuant to a warrant of arrest in paragraph (e)(2)(i) of this section, detention enforcement officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to take and maintain custody of and transport any person who has been arrested by an immigration officer pursuant to paragraphs (c)(1) through (c)(5) of this section.

(d) *Power and authority to conduct searches.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to conduct searches conferred by section 287(c) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(7) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(e) *Power and authority to execute warrants.* (1) *Search warrants.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to execute a search warrant:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(iv) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(2) *Issuance of arrest warrants for immigration violations.* A warrant of arrest may be issued only by the following immigration officers:

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

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(x) Assistant officers in charge (except foreign);
(xi) Chief patrol agents;
(xii) Deputy chief patrol agents;
(xiii) Associate chief patrol agents;
(xiv) Assistant chief patrol agents;
(xv) Patrol agents in charge;
(xvi) The Assistant Commissioner, Investigations;
(xvii) Institutional Hearing Program Directors;
(xviii) Area Port Directors;
(xix) Port Directors; or
(xx) Deputy Port Directors.

(3) *Service of warrant of arrests for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to section 287(a) of the Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States:
(i) Border patrol agents, including aircraft pilots;
(ii) Special agents;
(iii) Deportation officers;
(iv) Detention enforcement officers (warrants of arrest for administrative immigration violations only);
(v) Immigration inspectors;
(vi) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;
(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and
(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner, for warrants of arrest for administrative immigration violations, and with the approval of the Deputy Attorney General, for warrants of criminal arrest.

(4) *Service of warrant of arrests for non-immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to execute warrants of criminal arrest for non-immigration violations issued under the authority of the United States:
(i) Border patrol agents, including aircraft pilots;
(ii) Special agents;
(iii) Deportation officers;
(iv) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and
(v) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(f) *Power and authority to carry firearms.* The following immigration officers who have successfully completed basic immigration enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to carry firearms provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force in § 287.8(a):
(1) Border patrol agents, including aircraft pilots;
(2) Special agents;
(3) Deportation officers;
(4) Detention enforcement officers;
(5) Immigration inspectors;
(6) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;
(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and
(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

150. Section 287.7 is revised to read as follows:

§ 287.7 Detainer provisions under section 287(b)(3) of the Act.

(a) *Detainers in general.* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter. Any authorized Service official may at any time issue a Form I–247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Service seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Service, prior to release of the alien, in order for the Service to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) *Authority to issue detainers.* The following officers are authorized to issue detainers:
(1) Border patrol agents, including aircraft pilots;
(2) Special agents;
(3) Deportation officers;
(4) Immigration inspectors;
(5) Adjudications officers;
(6) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and
(7) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner.

(c) *Availability of records.* In order for the Service to accurately determine the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Service of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Service with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) *Temporary detention at Service request.* Upon a determination by the Service to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Service.

(e) *Financial responsibility for detention.* No detainer issue as a result of a determination made under this chapter shall incur any fiscal obligation on the part of the Service, until actual assumption of custody by the Service, except as provided in paragraph (d) of this section.

PART 299—IMMIGRATION FORMS

151. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

152. Section 299.1 is amended by:

a. R
147",
259",
296",
541",
"I–85
I–94T
I–99
I–147
I–148
I–160
I–205
I–210
I–213
I–217
I–220A
I–220B
I–241
I–246
I–247
I–259
I–261
I–270
I–275
I–284
I–286
I–291
I–294
I–296
I–310
I–407
I–408
I–426
I–541

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a. Revising the entries for Forms "I–147", "I–205", "I–246", "I–247", "I–259", "I–284", "I–286", "I–291", "I–296", "I–310", "I–408", "I–426", "I–541", "I–589", "I–775", "I–851", and "I–851A";

b. Removing the entries for Forms "I–122", "I–221", "I–259C", "I–290A", and "I–444", and by

c. Adding the entries for Forms "I–94T", "I–99", "I–148", "I–160", "I–210", "I–213", "I–217", "I–220A", "I–220B", "I–241", "I–261", "I–270", "I–275", "I–294", "I–407", "I–546", "I–701", "I–770", "I–771", "I–826", "I–827A", "I–827B", "I–860", "I–862", and "I–863", in proper numerical sequence, to the listing of forms, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I–94T	09–22–87	Arrival-Departure Record (Transit without visa).
I–99	04–01–97	Notice of Revocation and Penalty.
I–147	04–01–97	Notice of Temporary Inadmissibility to U.S.
I–148	04–01–97	Notice of Permanent Inadmissibility.
I–160	04–01–97	Notice of Parole/Lookout Intercept.
I–205	04–01–97	Warrant of Removal.
I–210	04–01–97	Voluntary Departure Notice.
I–213	04–01–97	Record of Deportable/Inadmissible Alien.
I–217	04–01–97	Information for Travel Document or Passport.
I–220A	04–01–97	Order of Release on Recognizance.
I–220B	04–01–97	Order of Supervision.
I–241	04–01–97	Request for Travel Document to Country Designated by Alien.
I–246	04–01–97	Application for Stay of Removal.
I–247	04–01–97	Immigration Detainer—Notice of Action.
I–259	04–01–97	Notice to Detain, Deport, Remove, or Present Aliens.
I–261	04–01–97	Additional Charges of Removability.
I–270	04–01–97	Request for Consent to Return Person to Canada.
I–275	04–01–97	Withdrawal of Application/Consular Notification.
I–284	04–01–97	Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Alien.
I–286	04–01–97	Notification to Alien of Conditions of Release or Detention.
I–291	04–01–97	Decision on Application for Status as Permanent Resident.
I–294	04–01–97	Notice of Country to Which Deportation has been Directed and Penalty for Reentry without Permission.
I–296	04–01–97	Notice to Alien Ordered Removed.
I–310	04–01–97	Bond for Payment of Sums and Fines Imposed under Immigration and Nationality Act (Term or Single Entry).
I–407	04–01–97	Abandonment by Alien of Status as Lawful Permanent Resident.
I–408	04–01–97	Application to Pay Off or Discharge Alien Crewman.
I–426	04–01–97	Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America (special direct transit procedure).
I–541	04–01–97	Order of Denial of Application for Extension of Stay or Student Employment or Student Transfer.

Form No.	Edition date	Title
* * *	* * * * *	
I–546	04–01–97	Order to Appear—Deferred Inspection.
* * *	* * * * *	
I–589	04–01–97	Application for Asylum and Withholding of Removal.
* * *	* * * * *	
I–701	04–01–97	Detainee Transfer Worksheet.
* * *	* * * * *	
I–770	04–01–97	Notice of Rights and Request for Disposition.
I–771	04–01–97	Bond Computation Worksheet.
I–775	04–01–97	Visa Waiver Pilot Program Agreement.
* * *	* * * * *	
I–826	04–01–97	Notice of Rights.
I–827A	04–01–97	Request for Disposition.
* * *	* * * * *	
I–827B	04–01–97	Request for Disposition.
I–851	04–01–97	Notice of Intent to Issue Final Administrative Removal Order.
I–851A	04–01–97	Final Administrative Removal Order.
* * *	* * * * *	
I–860	04–01–97	Notice and Order of Expedited Removal.
I–862	04–01–97	Notice to Appear.
I–863	04–01–97	Notice of Referral to Immigration Judge.
* * *	* * * * *	

153. Section 299.5 is amended by:
a. Removing the entry for Form "I–259C"; and by
b. Revising the entries for Forms "I–246" and "I–589", and to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control no.
* * *	* * * * *	
I–246	Application for Stay of Removal	1115–0055
* * *	* * * * *	
I–589	Application for Asylum and Withholding of Removal	1115–0086
* * *	* * * * *	

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

154. The authority citation for part 316 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

155. Section 316.5 is amended by revising paragraph (c)(3) to read as follows:

§ 316.5 Residence in the United States.

* * * * *

(c) * * *

(3) *Removal and return.* Any departure from the United States while under an order of removal (including previously issued orders of exclusion or deportation) terminates the applicant's status as a lawful permanent resident and, therefore, disrupts the continuity of residence for purposes of this part.

* * * * *

PART 318—PENDING REMOVAL PROCEEDINGS

156. The heading for part 318 is revised as set forth above.

157. The authority citation for part 318 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1429, 1443; 8 CFR part 2.

158. Section 318.1 is revised to read as follows:

§ 318.1 Warrant of arrest.

For the purposes of section 318 of the Act, a notice to appear issued under 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) shall be regarded as a warrant of arrest.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED ON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES.

159. The authority citation for part 329 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

160. Section 329.2 is amended by revising paragraph (e)(3) to read as follows:

§ 329.2 Eligibility.

* * * * *

(e) * * *

(3) The applicant may be naturalized even if an outstanding notice to appear pursuant to 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) exists.

Dated: December 24, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–33166 Filed 12–27–96; 12:30 pm]

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Part III

Securities and Exchange Commission

17 CFR Part 200, et al.
Anti-manipulation Rules Concerning Securities Offerings; Final Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 240, and 242

[Release Nos. 33–7375; 34–38067; IC–22412; International Series Release No. 1039; File No. S7–11–96]

RIN 3235–AF54

Anti-manipulation Rules Concerning Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting new Regulation M governing the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities. Regulation M is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering. Regulation M significantly eases regulatory burdens on offering participants by eliminating the trading restrictions for underwriters of actively-traded securities; reducing the scope of coverage for other securities; reducing restrictions on issuer plans; providing a more flexible framework for stabilizing transactions; and deregulating rights offerings. Consisting of five new rules, plus a new definitional rule, Regulation M replaces Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21 ("trading practices rules") under the Securities Exchange Act of 1934 ("Exchange Act"), which are being rescinded. In addition, related amendments are being made to Items 502(d) and 508 of Regulations S–B and S–K, and to Rules 10b–18 and 17a–2 under the Exchange Act. Conforming changes to various rules under the Securities Act of 1933 ("Securities Act") and the Exchange Act are being made to reflect the repeal of the trading practices rules and the adoption of Regulation M.

EFFECTIVE DATE: March 4, 1997. The requirement of § 242.104(i) and the amendments to § 240.17a–2 are effective on April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, at 202–942–0772: Nancy J. Sanow, M. Blair Corkran, Carlene S. Kim, Heidi E. Pilpel, Barbara J. Endres, Irene A. Halpin, Marc J. Hertzberg, Denise M. Landers, Lauren C. Mullen, Mark R. Pacioni, Alan J. Reed, or Margaret A. Smith.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary of New Regulation M

A fundamental goal of the federal securities laws is the prevention of manipulation. Manipulation impedes the securities markets from functioning as independent pricing mechanisms, and undermines the integrity and fairness of those markets. Congress granted the Commission broad rulemaking authority to combat manipulative abuses in whatever form they might take. In exercising its authority, the Commission has focused on the market activities of persons participating in a securities offering, and determined that securities offerings present special opportunities and incentives for manipulation that require specific regulatory attention.

On April 11, 1996, the Commission published for comment a release ("Proposing Release") proposing Regulation M, and Rules 100 through 105 thereunder, to govern the activities of issuers, underwriters, and other persons participating in a securities offering,[1] and to replace Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21[2] under the Exchange Act.[3] The Commission received 39 comment letters from 36 commenters in response to the Proposing Release.[4] The commenters generally expressed strong support for proposed Regulation M, although several expressed concerns with specific provisions, and some suggested alternative approaches for addressing particular issues. The Commission is adopting Regulation M substantially as proposed, but with some modifications to clarify provisions or to reflect commenters' views. The new regulation represents the most significant changes to the Commission's anti-manipulation regulation of securities offerings since the adoption of the trading practices rules over 40 years ago.[5]

Regulation M is the culmination of a comprehensive review by the Commission of its anti-manipulation regulation of securities offerings.[6] This review was prompted by ongoing developments and innovations in the securities industry, including: increasing institutionalization of the markets, advances in technology and communications media, enhanced surveillance capabilities, continuing globalization of the securities markets, and new offering techniques. These developments have outpaced the existing structure of anti-manipulation regulation of securities offerings and reduced the need for broad prophylactic restrictions. Moreover, the Commission was informed by market participants that the application of the trading practices rules had become needlessly complex and involved substantial compliance costs.

Regulation M exemplifies the Commission's efforts to relax restrictions in cases where either the risk of manipulation is small or the costs of the restrictions are disproportionate to the purposes they serve. The new regulation continues the anti-manipulation objectives of the trading practices rules, but reflects developments in the securities industry, allows greater flexibility for market participants to engage in activities that enhance competition in the marketplace, and incorporates the recommendations of the Commission's Task Force on Disclosure Simplification for a more streamlined approach to regulating manipulative conduct during offerings.[7] Three of the principal elements that underlie the Commission's decision to provide greater flexibility for market activities during offerings are: securities market transparency, surveillance capabilities of the self-regulatory organizations ("SROs"), and continuing application of the general anti-fraud and anti-manipulation provisions of the federal securities laws, including Section 17(a) of the Securities Act, and Sections 9(a), 10(b), and 15(c) of the Exchange Act, and Rules 10b–5 and 15c1–2 thereunder,[8] to all activities in connection with an offering, whether or not the provisions of Regulation M apply.[9] Like the former trading practices rules, Regulation M proscribes certain activities that offering participants could use to manipulate the price of an offered security. Although some

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[1] Securities Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108.

[2] 17 CFR 240.10b–6, 240.10b–6A, 240.10b–7, 240.10b–8, and 240.10b–21.

[3] 15 U.S.C. 78a *et seq.*

[4] A summary of comments has been prepared by the staff of the Division of Market Regulation. The summary is included, along with the comment letters, in Public File No. S7–11–96, which is available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

[5] *See* Securities Exchange Act Release No. 5194 (July 5, 1955), 20 FR 5075.

[6] *See* Securities Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681 ("Concept Release").

[7] *Report of the Task Force on Disclosure Simplification*, 77–79 (March 1996) ("Task Force Report").

[8] 15 U.S.C. 77q(a); 15 U.S.C. 78i(a), 78j(b), and 78o(c); and 17 CFR 240.10b–5 and 240.15c1–2.

[9] *See* Proposing Release, 61 FR at 17109. Similarly, Regulation M and the interpretations thereof do not affect the application of the registration and prospectus delivery requirements of the Securities Act to offers and sales of securities.

commenters requested that the rules under Regulation M be formulated as non-exclusive safe harbors from the anti-manipulation provisions of the Exchange Act, the Commission continues to believe that a prophylactic approach to anti-manipulation regulation is the most effective means to protect the integrity of the offering process by precluding activities that could influence artificially the market for the offered security.

Regulation M contains six rules covering the following activities during a securities offering: (1) activities by underwriters or other persons who are participating in a distribution (*i.e.*, distribution participants) and their affiliated purchasers; (2) activities by the issuer or selling security holder and their affiliated purchasers; (3) Nasdaq passive market making; (4) stabilization, transactions to cover syndicate short positions, and penalty bids; and (5) short selling in advance of a public offering.[10] A separate rule under Regulation M, Rule 100, contains definitional provisions. Some of these definitions are new or revised; many are common to more than one rule. The Commission has endeavored to use straightforward and precise language in both the definitions and rule text.

The provisions of Regulation M that are analogous to Rule 10b–6 are contained in Rules 101 and 102, which cover distribution participants, and issuers and selling security holders, respectively. Rules 101 and 102 apply only during a "restricted period" that commences one or five business days before the day of the pricing of the offered security and continues until the distribution is over. The restricted periods are based on the trading volume value of the offered security and the public float value of the issuer, rather than the price per share and public float criteria used in Rule 10b–6, and generally are of a shorter duration than the cooling-off periods under Rule 10b–6. Furthermore, the restricted periods of Regulation M focus on the time of pricing. In contrast, Rule 10b–6 imposed restrictions during the entire distribution, which could extend over a lengthy period of time, but excepted certain trading activities prior to a two or nine business day "cooling-off period." The applicable cooling-off period was keyed off the commencement of offers or sales. While Rule 10b–6 was designed to protect the pricing of an offering, certain distribution methods, particularly in connection with foreign offerings, could result in the cooling-off periods commencing after an offering had been priced.

Rule 101 excludes from its coverage more actively-traded securities, nonconvertible and asset backed securities rated investment grade, and Rule 144A transactions. Restrictions on transactions in outstanding debt securities during a distribution of a debt security are narrowed substantially. Further, Rule 101 focuses on the security being distributed and does not cover bids for and purchases of related derivative securities. It permits, among other things, the routine dissemination of research reports, exercises of options and other securities, and transactions in baskets of securities involving the offered security. Also, bids for and purchases of rights during rights offerings are deregulated. Rule 101 deals with "inadvertent" violations during the restricted period by excusing *de minimis* transactions, provided that a distribution participant had in place written policies and procedures reasonably designed to achieve compliance with the regulation. Moreover, the scope of persons subject to Rule 101 is narrowed by recognizing "information barriers" between the distribution participant and its affiliates.

Rule 102 covers issuers, selling security holders, and related persons. The rule allows issuers and selling security holders to engage in market activities prior to the applicable restricted period. It also gives issuers greater flexibility in conducting their dividend reinvestment and stock purchase plans and odd-lot repurchase programs. During the restricted period, Rule 102 permits bids and purchases of odd-lots, transactions in connection with issuer plans, and exercises of options or convertible securities by the issuer's affiliated purchasers, and transactions in commodity pool or limited partnership interests during distributions of those securities. The rule contains a limited exception for actively-traded "reference securities."

Rule 103 replaces Rule 10b–6A and expands the scope of Nasdaq passive market making. The rule covers all Nasdaq securities and nearly all distributions, and permits more distribution participants to engage in passive market making.

Rule 104, which replaces Rule 10b–7, regulates stabilizing and other activities related to a distribution. The rule provides a more flexible framework for stabilizing transactions than Rule 10b–7. Rule 104 allows underwriters to initiate and change stabilizing bids based on the current price in the principal market (whether U.S. or foreign), as long as the bid does not exceed the offering price. Also, by providing for greater disclosure and recordkeeping of transactions that can influence market prices immediately following an offering, Rule 104 addresses the fact that underwriters now engage in substantial syndicate-related market activity, and enforce penalty bids in order to reduce volatility in the market for the offered security.

Rule 105 recodifies Rule 10b–21 governing short selling in connection with a public offering. To harmonize Rule 105 with the provisions of Rules 101 and 102, the period of Rule 105's coverage is narrowed to the five business day period before pricing, rather than the period extending from the time of filing of offering materials to the time when sales may be made.

The Commission believes that separate regulation of rights offerings, as contained in Rule 10b–8, no longer is warranted. Many rights offerings, especially by foreign issuers, involve securities that fall within the exception for actively-traded securities contained in Rule 101. Even for less actively-traded securities, purchases of rights generally are not an efficient way for a distribution participant to facilitate an offering of the underlying security. Therefore, the Commission has decided to rescind Rule 10b–8.

The new regulatory framework relieves market participants of unnecessary burdens and responds effectively to a changing marketplace, while maintaining essential investor protection. The following sections of this release describe the individual provisions of Regulation M and associated rule changes and discuss, where appropriate, how they differ from the rules as proposed and from the former trading practices rules, as well as reasons for these changes.

II. Discussion of Regulation M and Related Amendments

A. Rule 100—Definitions

Rule 100 sets forth the definitions applicable to all of the rules under Regulation M. Most of the definitions are adopted as proposed; some definitions are revised to respond to commenters' suggestions or to add clarity to the rules. Many of these definitions are discussed later in this release in conjunction with the specific

[10] Regulation M is adopted under the Securities Act, particularly Sections 7, 17(a), and 19(a), 15 U.S.C. 77g, 77q(a), and 77s(a); the Exchange Act, particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78w(a), and 78dd; and the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. 80a–1 *et seq.*, particularly Sections 23, 30, and 38, 15 U.S.C. 80a–23, 80a–29, and 80a–37.

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provisions of Regulation M to which they relate.[11]

B. Rule 101—Activities by Distribution Participants

1. Generally

Rule 101 governs the activities of persons participating in *distributions* of securities, other than issuers or *selling security holders*, and their *affiliated purchasers*. The distribution participants subject to Rule 101 will typically be financial intermediaries that routinely engage in market transactions for their own accounts or for customers as part of their businesses.

In general, Rule 101 prohibits distribution participants and their affiliated purchasers from bidding for, purchasing, or attempting to induce any person to bid for or purchase, a *covered security* during a specified period (*restricted period*). As with Rule 10b–6(c)(5), a distribution of securities under Regulation M is distinguished from ordinary trading transactions by the "magnitude of the offering" and the presence of "special selling efforts and selling methods."[12] The restricted period for a particular distribution commences one or five *business days* before the day of the pricing of the offered security and continues until the distribution is over.[13]

Even during the restricted period, Rule 101 permits distribution participants and their affiliated purchasers to engage in a variety of activities, including the following: the routine dissemination of research reports; exercises of options and other securities, including rights received in connection with a rights offering; transactions in baskets of securities involving an offered security; and certain transactions involving Rule 144A securities of foreign and domestic issuers. Rule 101 also excepts *de minimis* transactions that would otherwise violate the rule: bids that are not accepted, and one or more purchases that in the aggregate over the restricted period total less than 2% of the security's average daily trading volume, provided that the person making the unaccepted bids or purchases has maintained and enforced written policies and procedures designed to achieve compliance with the rule.

2. Persons Subject to Rule 101

a. Distribution Participant

A *distribution participant* is defined in Rule 100 as an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution. The Commission is adopting the definition as proposed.

Several commenters expressed concern that a distribution participant affiliated with an issuer or selling security holder (*e.g.*, an underwriter that is affiliated with an issuer) would be subject to the more restrictive provisions of Rule 102, rather than those of Rule 101, which they claimed could result in unwarranted adverse business and market consequences.[14] They recommended that such distribution participants be permitted to rely on the provisions of Rule 101. Other commenters recommended that any financial services affiliate of an issuer or selling security holder, whether or not it is acting as a distribution participant in connection with the distribution, should have the benefit of the additional exceptions available under Rule 101.

After considering the commenters' views, the Commission has added a proviso to paragraph (a) of Rules 101 and 102, specifying that any affiliated purchaser of an issuer or selling security holder that also is acting as a distribution participant may comply with the provisions of Rule 101, rather than Rule 102, provided that such affiliated purchaser is not itself the issuer or selling security holder.[15] Thus, during a distribution, an underwriter affiliated with the issuer will be able to comply with the provisions of Rule 101. The Commission is making this revision based upon its experience with Rule 10b–6, and the fact that underwriters affiliated with the issuer are often important market participants that are subject to SRO surveillance.

b. Prospective Underwriter

A prospective underwriter is defined as a person: who has submitted a bid to an issuer or selling security holder, and knows or is reasonably certain that such bid will be accepted, whether or not the terms and conditions of the underwriting have been agreed upon; or who has reached, or is reasonably certain to reach, an understanding with an issuer, selling security holder, or managing underwriter that such person will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon.[16] The definition differs from the proposal in that the phrase "is reasonably certain" replaces "reasonably expects." Several commenters requested that the proposed definition provide greater certainty as to when a person becomes a prospective underwriter. They believed that, as a practical matter, it may be difficult or even impossible for a broker-dealer to know when it "reasonably expects" to have its bid accepted or to reach an understanding with an issuer. Although the definition as adopted does not provide a bright line test, the practical effect should be to reduce the circumstances in which a broker-dealer will be a prospective underwriter. The definition reflects the Commission's view that there is frequently some point prior to when a bid actually has been accepted, or a broker-dealer has been told that it will be an underwriter, when it is reasonably certain that such person will be an underwriter, and that the incentive to facilitate the distribution is present at that point.

c. Completion of Participation in the Distribution

Under Regulation M, a person determines when its *completion of participation in the distribution* occurs based on the person's role in the distribution. An underwriter is deemed to have completed its participation in a distribution when its participation has been distributed, including all other securities of the same class that are acquired in connection with the distribution, and after any stabilization arrangements and trading restrictions in connection with the distribution have been terminated.

The definition contains a proviso that an underwriter's participation is not deemed to be completed, however, if a syndicate overallotment option is exercised in an amount that exceeds the net syndicate short position at the time of such exercise.[17] This proviso comports with a provision of Rule 10b–6 and is intended to assure that the underwriter's selling efforts in

[11] In this release, terms defined in Rule 100 appear in italics when discussed for the first time.

[12] Rule 100 defines distribution as "an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods."

[13] Many of the terms and concepts discussed with respect to Rule 101 also are relevant to Rule 102, which proscribes activities by issuers and selling security holders and their affiliated purchasers.

[14] *See infra* Section II.C., discussing Rule 102.

[15] The exception for actively-traded securities is not available for securities that are issued by a distribution participant or an affiliate of the distribution participant. *See infra* Sections II.C.2. and II.C.5.

[16] If a broker-dealer has entered into a continuing agreement with an issuer or selling security holder regarding takedowns of securities off a shelf, such agreement typically would make the broker-dealer reasonably certain that it would participate in a distribution off the shelf.

[17] *See Letter regarding Overallotment Options* (November 27, 1996), 1996 SEC No-Act. LEXIS 868.

connection with the distribution have in fact ceased before trading prohibitions are lifted. Consistent with Rule 10b–6 interpretation, if an overallotment option is exercised for an amount of securities that exceeds the net syndicate short position (*i.e.*, taking into account shares purchased in stabilizing or syndicate short covering transactions), the distribution will not be deemed completed and purchases made prior to the exercise of the option would constitute a violation of Regulation M.[18] Any other distribution participant will have completed its participation when its allotment has been distributed.[19] Several commenters asked the Commission to clarify that securities acquired for investment by persons participating in a distribution would be considered to be distributed. Consistent with an interpretation of Rule 10b–6, securities acquired in a distribution for investment purposes by anyone participating in the distribution, or any affiliated purchaser, are considered to be distributed.[20]

d. Affiliated Purchaser

The Commission proposed to define *affiliated purchaser* for Rules 101 and 102 as: (1) a person acting in concert with a distribution participant, issuer, or selling security holder in connection with the acquisition or distribution of a covered security; (2) an affiliate who controls the purchase of such securities by a distribution participant, issuer, or selling security holder, or whose purchases are controlled by such persons, or whose purchases are under common control with those of such persons; or (3) an affiliate of a distribution participant, issuer, or selling security holder who regularly purchases securities for its own account or for the account of others, or who recommends or exercises investment discretion with respect to the purchase or sale of securities ("financial services affiliates").

The Commission proposed excluding a financial services affiliate of a distribution participant, but not that of an issuer or selling security holder, from the definition if: (1) the affiliate was a separate and distinct organizational entity from, having no officers or employees in common with, the distribution participant; (2) the affiliate's bids for, purchases of, and inducements to purchase securities in distribution were made in the ordinary course of its business; and (3) the distribution participant maintained and enforced written policies and procedures designed to segregate the flow of information between the distribution participant and its affiliates ("information barriers"), and obtained an annual independent assessment of the operation of its information barriers.

Although commenters generally supported the Commission's efforts to revise the affiliated purchaser definition, several recommended that financial services affiliates of issuers and selling security holders also be excluded from this definition. Moreover, many commenters stated that precluding common officers and employees and requiring that the distribution participant and affiliate be separate and distinct organizational entities would prevent a large number of multi-service financial institutions from relying on this exception. Noting that large financial services providers frequently have at least some officers or employees with overlapping responsibilities, many commenters argued that the presence of common officers or employees should not preclude an affiliate from availing itself of the exclusion where the affiliate's purchases are made in the ordinary course of its business and the distribution participant has maintained and enforces appropriate information barriers.

The Commission is adopting the first two prongs of the definition substantially as proposed.[21] In response to several commenters' concerns, the Commission has determined to modify the third prong of the definition. As adopted, the exclusion is available to affiliates of distribution participants, issuers, and selling security holders. Moreover, the condition prohibiting common officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) has been narrowed to preclude commonality only with respect to those officers or employees that direct, effect, or recommend transactions in securities.[22]

A number of commenters argued that information barriers would not deter manipulative activity because general information regarding a distribution is public. The Commission nevertheless is of the view that information barriers can serve to restrict the flow of non-public information that might inappropriately influence an affiliate's transactions in covered securities. For example, appropriate information barriers would prevent the communication of the details of pricing discussions with the issuer and prospective purchasers, or knowledge as to the demand for the offering.

As adopted, the information barrier requirements specify that the distribution participant, issuer, or selling security holder must maintain and enforce written policies and procedures to prevent the flow of information to or from the affiliate that might result in a violation of Rules 101, 102, or 104 of Regulation M,[23] and obtain an annual, independent review of the operation of its information barriers. As noted in the Proposing Release, an internal audit group may perform the review if such group is independent of the distribution participant, issuer, or selling security holder's corporate financing, trading, and advisory departments.[24]

The Commission has determined to eliminate the requirement that the affiliate be a separate and distinct organizational entity from the distribution participant, issuer, or selling security holder in the sense of requiring a separate legal entity, because such a condition could result in elevating form over substance. Moreover, in response to comments regarding the growth and complexity of multi-service financial institutions, language providing that an "affiliate" may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder has been added to the second and third prongs of the definition. These changes broaden the scope of financial

[18] *See* Securities Exchange Act Release No. 19565 (March 4, 1983), 48 FR 10628, 10640 ("Release 34–19565").

[19] *See infra* Section II.C.2.a., discussing the definition of completion of participation in the distribution as it relates to issuers and selling security holders.

[20] The definition of completion of participation in the distribution codifies the approach taken by the staff in *Letter regarding VLI Corporation*, [1982–1983] Fed. Sec. L. Rep. (CCH) ¶ 77,625 (October 17, 1983) ("VLI Letter").

[21] None of the commenters objected to the substance of the first two prongs of the proposed definition, although several commenters believed that these provisions would be sufficient to capture any affiliate with both the means and the incentive to manipulate. As adopted, the first prong of the definition remains unchanged, and the only modification to the second prong is the addition of language providing that an "affiliate" may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder.

[22] The Commission believes that this modification will resolve substantially commenters' concerns that sharing one or more senior executives with a distribution participant, issuer, or selling security holder would preclude an affiliate from availing itself of the exclusion. For example, the requirement would not preclude common executives charged with risk management, compliance, or general oversight responsibilities.

[23] The Commission notes that this provision does not require the affiliate to maintain and enforce such information barriers.

[24] Proposing Release, 61 FR at 17117. Several commenters requested that the proposed exclusion clarify that an internal audit group may perform the review.

services affiliates that may be eligible for the exclusion.

The Commission believes, however, that affiliates should be restricted from engaging in certain types of activities that present the greatest potential for manipulation during the course of a distribution. As adopted, the definition provides that any affiliate that, during the applicable restricted period, acts as a market maker (other than as a specialist in compliance with the rules of a national securities exchange), or engages, as a broker or a dealer, in solicited transactions or proprietary trading activities, in covered securities is an affiliated purchaser. An affiliate (whether an internal unit or a separate legal entity) engaged in these activities is not eligible for the exclusion to the affiliated purchaser definition.[25] In contrast, an affiliate acting as an investment company or investment adviser, or in some other non-broker-dealer capacity, would be eligible for the exclusion.[26]

The Commission believes that these modifications to the definition of affiliated purchaser will resolve many of the commenters' concerns and avoid unnecessary burdens on multi-service financial organizations with affiliates engaged in financial advisory and other services.[27]

[25] This means, for example, that a broker-dealer that does not make a market in a covered security, or that ceases market maker activity in covered securities during the applicable restricted period, would not fall within the definition of affiliated purchaser. Accordingly, an issuer affiliate that engages only in unsolicited brokerage transactions in covered securities would not fall within the definition.

[26] For example, a trustee or other pension plan administrator may avail itself of the exclusion, provided such entity satisfies the remaining conditions of the exclusion.

A multi-service financial institution may engage in both investment advisory services and trading activities. To the extent that the institution's investment advisory services are performed by a separately identifiable department, with no officers or employees that direct, effect, or recommend transactions in securities in common with the trading department, then the investment advisory department may avail itself of the exclusion, provided the remaining conditions of the definition are satisfied. If the same individuals provide investment advisory services and engage in trading activities for the institution, however, it would be difficult, if not impossible, to attribute those functions to "separately identifiable" departments. Similarly, where the same individuals direct, effect, or recommend securities transactions for two separately organized affiliates, one providing investment advisory services and the other engaging in solicited activities, such persons could not avail themselves of the exclusion by simply attributing their solicited transactions to their investment advisory role.

[27] The variety and complexity of organizational structures means that Regulation M may apply to some affiliates that it may be appropriate to exclude. In such cases, the Commission, through the Division of Market Regulation, will entertain exemption requests.

3. Securities Subject to Rule 101

The Commission proposed applying the trading restrictions of Rule 101 to covered securities, which would include the security that is the subject of a distribution (*subject security*) and *reference securities*. The Commission is adopting the definition of covered security as proposed, but at the suggestion of some commenters has revised the definition of reference security to describe more specifically the situations when the term applies. The term reference security is defined as a security into which a subject security may be converted, exchanged, or exercised, or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security.

Several commenters supported the proposed definitions. In general, these commenters believed that the proposed coverage of securities represented a significant improvement from the approach under Rule 10b–6, which extended trading restrictions to any security of the "same class and series" as the security being distributed and any "right to purchase" such security.[28] One commenter additionally noted that the elimination of the same class and series analysis would ease greatly the task of identifying securities that are subject to trading restrictions during debt offerings. Other commenters indicated uncertainty regarding the applicability of Regulation M to debt offerings and requested clarification on the coverage of debt securities that are "identical in principal features."

The elimination of the same class and series concept will reduce significantly the application of trading restrictions to nonconvertible debt securities that are not rated investment grade.[29] Bids for and purchases of outstanding nonconvertible debt securities are not restricted unless the security being purchased is identical in all of its terms to the security being distributed. For example, Rule 101 does not apply to a security if there is a single basis point difference in coupon rates or a single day's difference in maturity dates, as compared to the security in distribution.[30] In the rare situations in which Rule 101 will apply to outstanding debt, the restricted period will generally be five business days.

In addition, derivative securities (*i.e.*, those that derive all or part of their value from a security being distributed) are not subject to the trading prohibition of Rule 101. Thus, for example, bids for or purchases of options, warrants, rights, convertible securities, or equity-linked securities are not restricted during a distribution of the related common stock because, while they derive their value from the security being distributed, they do not by their terms affect the value of the security in distribution. The National Association of Securities Dealers, Inc. ("NASD") expressed concern about permitting bids for and purchases of derivative securities in the case of a distribution of an underlying security, because trading in derivative securities can have a significant impact on the underlying security.[31] The NASD recommended that the Commission consider limiting the exclusion to those derivative securities that are not likely to present manipulative risk, such as "out-of-the-money" options. The Commission recognizes that derivative securities, even those that are out-of-the-money, can be used to manipulate the price of an underlying security through inducing arbitrage and other transactions involving the underlying security. It is the Commission's intention, however, to focus trading restrictions on those securities that present the greatest manipulative potential. Moreover, any attempt to manipulate a security in distribution by transactions involving derivative securities will continue to be addressed by the general anti-manipulation provisions, including Sections 9(a)(2) and 10(b) of, and Rule 10b–5 under, the Exchange Act.

Regulation M does apply to reference securities, such as common stock underlying an exercisable, exchangeable, or convertible security that is being distributed. The Commission believes that transactions in reference securities can have a direct and substantial effect on the pricing and terms of the security in distribution.

The definition of reference security also encompasses a security underlying an instrument, such as an equity-linked security, that does not give the holder the right to acquire the security, but whose value is or may be derived from such security.[32] A security will be a

[28] *See* Proposing Release, text accompanying notes 29 and 30, 61 FR 17114.

[29] Nonconvertible debt and certain other securities that are rated investment grade are excluded from Rule 101. *See infra* Section II.B.6.b.

[30] In a distribution of equity securities, however, outstanding classes of securities that differ only in voting rights from the distributed security will be deemed to be the same security for purposes of Regulation M.

[31] *See* Letter from Mary L. Schapiro, President, NASD Regulation, Inc. and Alfred R. Berkeley, III, President, Nasdaq, to Jonathan G. Katz, Secretary, SEC (July 23, 1996) ("NASD Comment Letter").

[32] Rule 10b–6 by its terms did not apply to the underlying security in these circumstances. The Commission believes, however, that Regulation M

reference security only when it, or an index of which it is a component, is referred to in the terms of a subject security. A security of the same or similar issuer will not be deemed a reference security merely because its price is used as a factor in determining the offering price of a security in distribution.

Commenters sought clarification concerning whether an issuer or distribution participant would be permitted to write a put or maintain a "short put" position during a distribution of an underlying security.[33] Transactions in derivative securities, including put options, are not subject to Rule 101 during an offering of the underlying security. In addition, maintaining a short put position is not deemed to be a continuing bid for the underlying security for purposes of Regulation M.

4. Restricted Periods of Rule 101

a. Duration. As discussed below, the Commission is adopting the exclusion from Rule 101 for actively-traded securities.[34] This provision removes from Rule 101 securities with an ADTV value of at least $1 million where the issuer's common equity securities have a public float value of at least $150 million. For the remaining securities, Rule 101 restricts transactions by distribution participants in covered securities, unless an exception applies, for the following periods:

- in a distribution of a security with an average daily trading volume (*ADTV*) value of at least $100,000, whose issuer has outstanding common equity securities having a *public float value* of at least $25 million, the restricted period begins on the later of one business day prior to the date on which the subject security's price is determined or the date on which the person becomes a distribution participant, and ends upon that person's completion of participation in the distribution; and
- in a distribution of any other security, the restricted period begins on the later of five business days prior to the date on which the subject security's price is determined or the date on which the person becomes a distribution participant, and ends upon that person's completion of participation in the distribution.

The Commission proposed that the restricted periods for an offering would begin one or five business days prior to the pricing of the offering, depending upon the security's ADTV value alone.[35] In addition, rather than using the date of commencement of offers or sales as a reference, the Commission proposed to determine the restricted period with reference to the date on which the offering is priced. Commenters generally supported shortening the restricted periods, and favored the one and five business days periods keyed off the offering's pricing.

The Commission believes that the ADTV standard is most relevant for determining which securities are more difficult to manipulate. Nevertheless, the use of a trading volume standard alone could skew the application of Rule 101 based on short-term, aberrational increases in trading volume. To prevent this result, the Commission has added a public float component to the test for determining the applicable restricted period.[36] The public float component is intended to capture within Rule 101 those securities that experience unusual trading volume relative to their public float value. While the use of a two-part test requires distribution participants to make an additional calculation, the Commission believes that the combination of these components better identifies securities that are more likely to be resistant to manipulation.

Rule 10b–6 contained restrictions that principally applied during a two or nine day "cooling-off period." Many securities that had a two day cooling-off period under Rule 10b–6 will now have a one day restricted period under Regulation M, or will be free from the restrictions of Rule 101 because they are actively-traded securities.[37] Even some nine day securities under Rule 10b–6 will now have a one day restricted period under Regulation M.[38] Approximately one-quarter of the securities that qualified for a two day cooling-off period under Rule 10b–6 are now subject to a five day restricted period because of the different criteria used in Regulation M and Rule 10b–6 for distinguishing securities. While the restricted periods under Regulation M are increased for some securities, other provisions of Regulation M, such as Rule 103 (permitting passive market making for all Nasdaq securities), will address liquidity concerns with respect to many of these securities.

b. Calculation of ADTV and Public Float Value.

The ADTV of a covered security is defined on the basis of reported worldwide average daily trading volume during a specified period prior to the filing of the registration statement or prior to the pricing of the offering, depending on the circumstances. Some commenters questioned whether ADTV can be measured uniformly across markets. The NYSE and the Amex requested that the Commission adopt different standards for determining trading volume on auction and dealer markets.[39] These exchanges asserted that the Commission's reliance on reported trading volume to determine this exclusion's availability is discriminatory and anti-competitive, because such a standard allegedly favors dealer markets where dealer interpositioning increases volume as compared with auction markets. The Commission does not believe that it is necessary or appropriate to make distinctions based on the type of market on which the security is traded.[40] The Commission proposed a three-month calendar period for calculating ADTV. The NASD recommended a rolling 60 day period, calculated as of a date within 10 business days prior to pricing, for determining ADTV.[41] Commenters also requested guidance regarding what

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should apply to a security whenever it has a price relationship to a subject security as a result of the terms of that security.

In some cases, a reference security may have an extremely attenuated relationship to the security in distribution. While the Commission does not believe that a specific percentage test is a workable means to identify these cases, the staff will provide appropriate guidance in response to specific inquiries.

[33] *Cf. Letter regarding The Chicago Board Options Exchange*, [1990–1991] Fed. Sec. L. Rep. (CCH) ¶ 79,665 (February 22, 1991).

[34] *See infra* Section II.B.6.a., discussing the actively-traded securities exception, which excludes from Rule 101 securities having an ADTV value of at least $1 million and whose issuer's common equity securities have a public float value of at least $150 million.

[35] Proposing Release, 61 FR at 17113.

[36] The Commission has determined that using a public float value component alone would not differentiate securities sufficiently with respect to the likelihood of manipulation because of the wide variations in ADTV value for securities with similar public float value.

[37] Based on 1995 volume and price data analyzed by the Commission's Office of Economic Analysis ("OEA"), the Commission estimates that 6,156 securities (out of a total of 7,822 securities listed on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), and (Nasdaq) were subject to a two day cooling-off period under Rule 10b–6. Under Regulation M, of those securities approximately 1,901, or 30.9%, are excluded from the rule; 2,693, or 43.7%, are subject to a one day restricted period; and 1,562, or 25.4%, are subject to a five day restricted period.

[38] Based on 1995 volume and price data analyzed by OEA, the Commission estimates that 1,666 securities (out of a total of 7,822 NYSE, Amex, and Nasdaq-listed securities) were subject to a nine day cooling-off period under Rule 10b–6. Under Regulation M, of those securities, 11, or 0.7%, are excluded from the rule; 278, or 16.7%, are subject to a one day restricted period; and 1,377, or 82.6%, are subject to a five-day restricted period.

[39] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC (May 31, 1996); Letter from James F. Duffy, Executive Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC (June 25, 1996).

[40] *See infra* Section IV., discussing in greater detail the anti-competitive concerns raised by the NYSE and the Amex.

[41] *See* NASD Comment Letter, at p. 3.

information sources may be used to calculate ADTV, and suggested that the Commission designate the types of information that are acceptable for determining ADTV.

The Commission believes that, with the addition of a test based on public float value that will tend to correct for volume aberrations, a 60 day rolling period provides a sufficient length of time to measure the trading volume of a security. Therefore, the rule permits distribution participants to use a two calendar month *or* a 60 day rolling period. The 60 day rolling period for calculating ADTV must end within 10 calendar days of the filing of a registration statement, or, if there is no registration statement or if the distribution is a shelf distribution, within 10 calendar days of the offering's pricing. The 10 day period will allow distribution participants in any type of distribution sufficient time to conform to the applicable restricted period. The Commission has decided not to designate acceptable information sources for determining ADTV; rather, a distribution participant should have flexibility in determining a security's ADTV value from information that is publicly available, if such participant has a reasonable basis for believing that the information is reliable.[42] Furthermore, in calculating the dollar value of ADTV, any reasonable and verifiable method may be used. For example, it may be derived from multiplying the number of shares by the price in each trade, or from multiplying each day's total volume of shares by the closing price on that day.

As for public float value, the Commission is adopting a definition that reflects its usage in Form 10–K (*i.e.*, the aggregate amount of common equity securities held by non-affiliates).[43] For example, for reporting issuers the public float value should be taken from the issuer's most recent Form 10–K or based upon more recent information made available by the issuer.

5. Offerings Subject to Rule 101

a. Generally. The provisions of Rule 101 apply in connection with a distribution of securities.[44] The same types of offerings or other transactions that satisfied the distribution criteria under Rule 10b–6 (*i.e.*, the magnitude of the offering/selling efforts test) also are subject to Rule 101. These include public offerings, private placements, shelf offerings, mergers and other acquisitions, exchange offers, forced conversions of securities, warrant solicitations, and at-the-market offerings.

b. Shelf Offerings. The Commission is modifying its approach to shelf-registered distributions by replacing the "single distribution position" taken under Rule 10b–6.[45] Under Regulation M, each takedown off a shelf is to be individually examined to determine whether such offering constitutes a distribution (*i.e.*, whether it satisfies the "magnitude" of the offering and "special selling efforts and selling methods" criteria of a distribution). Under prior Commission interpretation, if the aggregate amount of securities registered on a shelf constituted a Rule 10b–6 distribution, each takedown was deemed to be part of that single distribution for purposes of the rule, regardless of its individual magnitude.[46]

The Commission's modified approach means that a broker-dealer participating in a takedown off a shelf must determine whether it is participating in a distribution.[47] In those situations where a broker-dealer sells shares on behalf of an issuer or selling security holder in ordinary trading transactions into an independent market (*i.e.*, without any special selling efforts) the offering will not be considered a distribution and the broker-dealer will not be subject to Rule 101.[48] A broker-dealer likely would be subject to Rule 101, however, if it enters into a sales agency agreement that provides for unusual transaction-based compensation for the sales, even if the securities are sold in ordinary trading transactions.

c. Mergers, Acquisitions, and Exchange Offers. Many commenters questioned the application of Rule 101's restricted periods to mergers, acquisitions, and exchange offers. These commenters noted that during merger distributions subject to Rule 10b–6, trading restrictions were imposed during the applicable two or nine day period prior to the mailing of proxy solicitation materials and for the duration of the proxy solicitation.[49] Similarly, the Commission also considered the commencement of any valuation period or any election period as the equivalent of the "commencement of offers or sales," requiring bids and purchases to cease during the applicable two or nine day period and for the duration of the valuation or election period.[50] Several commenters stated that by requiring the restricted period to commence one or five days prior to pricing, it is possible that the restricted period for a merger distribution could begin several months prior to the mailing of the proxy materials. These commenters noted that in such situations the restricted period could be much lengthier under Regulation M, as compared to the practice under Rule 10b–6.

The Commission believes that mergers, acquisitions, and exchange offers involve distributions in which interested persons have considerable incentive to manipulate. The Commission agrees with the commenters that the Regulation M restricted periods should reflect the characteristics of these types of distributions. Accordingly, as adopted the restrictions of Regulation M begin on the day when proxy solicitation or offering materials first are disseminated to security holders and end with the completion of the distribution (*i.e.*, the time of the shareholder vote or the expiration of the exchange offer).[51]

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[42] *Cf.* Securities Exchange Act Release No. 27247 (September 14, 1989), 54 FR 39194, 39197–98 (discussing the standard under Rule 15c2–11 under the Exchange Act, 17 CFR 240.15c2–11, for a broker-dealer to have a reasonable basis that certain information is true and accurate). For instance, a distribution participant may rely on trading volume as reported by an SRO or comparable entity, or any other source believed to be reliable. Electronic information systems that provide information regarding securities in markets around the world could provide an easy means to determine worldwide trading volume in a particular security.

[43] 17 CFR 249.310. *See also* Securities Act Release No. 7326 (August 30, 1996), 61 FR 47706 (proposing the expansion of short-form registration to include companies with non-voting common equity). Form 20–F (17 CFR 249.220f), the annual report form used by foreign private issuers under the Exchange Act, does not require disclosure of public float information. Nonetheless, the public float value of such issuer should be determined in the same manner as provided in Form 10–K.

[44] *See supra* Section II.B.1., discussing the definition of distribution.

[45] *See* Release 34–19565, 48 FR at 10631.

[46] *See* Proposing Release, 61 FR at 17115, and Release 34–19565, 48 FR at 10631. *See also* Securities Exchange Act Release No. 23611 (September 11, 1986), 51 FR 33242, 33244 ("Release 34–23611").

[47] An issuer's description in a shelf registration statement of a variety of potential selling methods will not cause, by itself, any sales off the shelf to be treated as a distribution, unless the broker-dealer in fact uses special selling efforts or selling methods in connection with particular sales off the shelf, and the sales are of a magnitude sufficient to demonstrate the existence of a distribution. *Cf.* Securities Exchange Act Release No. 18528 (March 3, 1982), 47 FR 11482, 11485.

[48] This approach assumes that the broker-dealer is disposing of shares in ordinary trading transactions into an independent market (*i.e.*, one not dominated or controlled by the broker-dealer, and where the price is not manipulated by the broker-dealer or others acting in concert with the broker-dealer). Release 34–23611, 51 FR at 33247.

[49] *See* Release 34–19565, 48 FR at 10638–39.

[50] *Id.* at 10639.

[51] In addition, Rule 10b–13 under the Exchange Act continues to prohibit any purchases or arrangements to purchase securities that are the subject of an exchange offer, or a security immediately convertible into or exchangeable for those securities, from the time of public

Consistent with an interpretation under Rule 10b–6, a restricted period also will apply during any period where the market price of the offered security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or exchange offer. Thus, activity proscribed by Rules 101 and 102 must cease one or five business days before the commencement of any valuation period and for the duration of such period.[52]

d. At-the-market Offerings. In an *at-the-market offering*, sales prices are established during the course of the offering based upon market conditions at the time of individual sales.[53] Accordingly, the restricted period for such an offering would commence one or five business days before the pricing of each sale and continue until the person's participation in the distribution is completed. In practice, the application of Rule 101 will essentially be the same as in the case of a fixed price offering, where one price is established for the entire distribution, because the activities of distribution participants are restricted during the entire course of offers and sales, whether the securities are sold at fixed or varying prices.

6. Securities Excepted from Rule 101

a. Exception for Actively-traded Securities. The Commission proposed excluding from Rule 101 all securities with a published ADTV value of at least $1 million, and requested comment on whether another test, such as a public float test, should be used to determine which securities should be excluded from the rule. Commenters supported an exclusion for actively-traded securities, with two commenters suggesting a lower threshold and one recommending a threshold of $10 million. The Commission is adopting an exception for those securities that have an ADTV value of at least $1 million that are issued by an issuer whose common equity securities have a public float value of at least $150 million.

The Commission continues to believe that an exclusion for actively-traded securities is appropriate. The costs of manipulating such securities generally are high. In addition, because actively-traded securities are widely followed by the investment community, aberrations in price are more likely to be discovered and quickly corrected. Moreover, actively-traded securities are generally traded on exchanges or other organized markets with high levels of transparency and surveillance.

The reasons for incorporating a dual ADTV value/public float value test for the restricted periods similarly apply to determining whether securities qualify for the actively-traded securities exception.[54] The Commission selected $150 million for the public float value test because it believes that the securities of issuers with a public float value at or above this threshold, and that also have an ADTV value of at least $1 million, have a sufficient market presence to make them less likely to be manipulated. As discussed above, the $150 million public float value test is intended in part to exclude issuers from the actively-traded securities exception where a high trading volume level is an aberration.

The combined minimums of $1 million ADTV value for the securities and $150 million public float value removes from Rule 101 the equity securities of approximately 1,900 domestic issuers, as well as those of a substantial number of foreign issuers.[55] The Commission estimates that the addition of a public float test reduces by approximately 9% the number of domestic issuers whose common stock would be excepted from Rule 101 based solely on an ADTV test.[56]

b. Investment Grade Securities. The Commission is adopting an exception to Rule 101 for nonconvertible debt securities, nonconvertible preferred securities, and *asset-backed securities*, provided that the security being distributed is rated investment grade by at least one *nationally recognized statistical rating organization*.[57] The Proposing Release recommended excepting investment grade nonconvertible debt and preferred securities and noted that the comparable Rule 10b–6 exception was based on the premise that these securities are traded on the basis of their yields and credit ratings, are largely fungible and, therefore, are less likely to be subject to manipulation The Commission solicited comment on whether investment grade asset-backed securities have the same characteristics with respect to trading as nonconvertible investment grade debt of corporate issuers, and whether such securities should be excepted from the rule.

Several commenters stated that investment grade asset-backed securities should be excepted from Rule 101 because they are the functional equivalent of investment grade debt. One commenter suggested using the definition of asset-backed security contained in the Instruction to Form S–3 for purposes of Rule 101. Another commenter, although not proposing a definition of asset-backed security, recommended an exception for investment grade asset-backed securities backed by a fixed pool of receivables.

Asset-backed securities are excluded from Rule 101 because such securities trade primarily on the basis of yield and credit rating. The principal focus of investors in the asset-backed securities market is on the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities, rather than the identity of a particular issuer. Investment grade asset-backed securities also are similar to investment grade nonconvertible debt and preferred securities. Therefore, Rule 101 excepts securities that are "primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders" [58] and that are rated investment grade.

A few commenters also proposed that an even broader exception for debt and preferred securities be adopted, suggesting that high-yield debt securities be excepted from Rule 101 when those securities satisfy certain criteria. One commenter proposed that all debt be excluded from coverage of

announcement until the expiration of the exchange offer. 17 CFR 240.10b–13.

[52] Release 34–19565, 48 FR at 10639.

[53] The term at-the-market offering is defined as an offering of securities at other than a fixed price.

[54] For example, the Commission considered using the $75 million public float value measure included in the eligibility criteria for Forms S–3 and F–3 under the Securities Act. However, the Commission adopted that threshold for different reasons, *i.e.*, information regarding companies with a public float value of at least $75 million is efficiently assimilated by the market because they are likely to be followed by multiple analysts. See Securities Act Release No. 7053 (April 19, 1994), 59 FR 21644; Securities Act Release No. 7029 (November 3, 1993), 58 FR 60307. Therefore, it was appropriate to permit incorporation of Exchange Act filings in registration statements filed by such issuers.

[55] Based on transaction information for 1995 analyzed by OEA, approximately 1,106 securities listed on the NYSE, 770 securities quoted on Nasdaq, and 36 securities listed on the Amex would be excluded from Rule 101. The general increase in security prices and trading volume since year-end 1995 likely will increase the number of securities satisfying the ADTV minimum.

[56] Based on 1995 volume and price data analyzed by OEA, 2,103 securities have an ADTV value of at least $1 million; 1,912 securities have an ADTV value of at least $1 million and a market capitalization of at least $150 million.

[57] The term nationally recognized statistical rating organization in paragraph (c)(2) of Rule 101 has the same meaning as that term is used in 17 CFR 240.15c3–1(c)(2)(vi).

[58] This definition is identical to the definition of asset-backed security contained in General Instruction I.B.5. to Form S–3, 17 CFR 239.13(b).

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Rule 101. The Commission believes that, as a practical matter, Rule 101 and Rule 102 will have very limited impact on debt securities, except for the rare situations where selling efforts continue over a period of time.[59] In those circumstances, where the incentive to manipulate can escalate, the Commission believes that the application of Regulation M is appropriate.

c. Exempted Securities. The Commission is adopting the proposed exception to Rule 101 for "exempted securities" as defined in Section 3(a)(12) of the Exchange Act.[60] Transactions in these securities are not restricted by Rule 101. This exception is similar to a provision contained in Rule 10b–6.

d. Face-amount Certificates or Securities Issued by an Open-end Management Investment Company or Unit Investment Trust. The exception to Rule 101 for face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust, is adopted as proposed. Transactions in these securities are not covered by Rule 101. An identical provision existed in Rule 10b-6.

17. Activities Excepted from Rule 101

a. Exception 1—Research. The Commission is adopting exception 1 to Rule 101, which permits the publication or dissemination of any information, opinion, or recommendation relating to a covered security if the conditions of either Rule 138 or Rule 139 under the Securities Act are satisfied.[61] This exception more closely aligns Rule 101 with the Securities Act rules governing permissible research activities by broker-dealers participating in offerings of securities.[62]

As proposed, the exception required the research to be published or disseminated "in the ordinary course of business." Several commenters found this phrase to be confusing because Rule 138 requires that research be published or distributed in the "regular course of business,"[63] and Rule 139 requires that information, opinions, or recommendations be contained in a publication that is distributed with "reasonable regularity in the normal course of business."[64] The Commission has deleted as redundant the phrase "in the ordinary course of business" from exception 1.

Commenters also were uncertain about the application of this exception to electronically disseminated research. The Commission believes that if a distribution participant, in the normal course of its business, provides research reports to independent research services that make such reports available to their subscribers electronically, whether or not the subscribers are customers of or have previously received research from the broker-dealer, such research is excepted from Rule 101.[65] Similarly, a distribution participant may update its mailing list (*i.e.*, new persons may be added) where it is intended that they receive all future research sent to others on the list, and not just the research related to the security in distribution.

Some commenters inquired whether the exception would be available to unregistered offerings, because Rules 138 and 139 pertain to the dissemination of research during registered offerings. In the Commission's view, for purposes of Rule 101, exception 1 is available during distributions that are not registered under the Securities Act, as long as the conditions of either Rule 138 or Rule 139 are satisfied, other than those pertaining to the filing of a registration statement. A few commenters further recommended that research disseminated outside of the United States during a global offering be excepted from Rule 101's coverage, if such research is disseminated in conformity with local rule or custom. The Commission has determined that the conditions of Rules 138 and 139 (other than registration) define the appropriate parameters for research activities involving securities distributed in the United States because research activities outside the United States in connection with a distribution subject to the rule could be used to facilitate the distribution in the United States. The Commission notes, however, that many of the securities distributed in global offerings will be subject to the rule's actively-traded securities exception and, therefore, not subject to Rule 101's provisions.[66]

b. Exception 2—Transactions Complying with Certain Other Sections. Exception 2, which allows passive market making transactions and stabilizing transactions complying with Rules 103 or 104, respectively, is adopted as proposed.

c. Exception 3—Odd-Lot Transactions. Exception 3, permitting distribution participants to bid for or purchase odd-lots during the restricted period, is adopted as proposed. Accordingly, a distribution participant may purchase odd-lots during a distribution. Among other things, this exception permits distribution participants to engage in activities in connection with issuer odd-lot tender offers conducted pursuant to Rule 13e-4(h)(5) under the Exchange Act, including effecting purchases necessary to permit odd-lot holders to "round-up" their holdings to 100 shares.

d. Exception 4—Exercises of Securities. Exception 4 permits distribution participants to exercise any option, warrant, right, or any conversion privileges set forth in the instrument governing a security. This exception does not distinguish call options acquired before the person became a distribution participant from those acquired afterwards. In addition, the exception covers exercises of non-standardized call options.

Supporters of this exception noted that option exercises do not involve significant manipulative potential because of the unpredictability of the timing and the extent of purchases by persons writing call options. As noted earlier, the NASD expressed more general concerns about Regulation M's limited coverage of derivative securities.[67] The Commission believes that exercises or conversions of derivative securities generally have an uncertain and attenuated manipulative potential and, for that reason, has adopted the exception as proposed.[68]

In light of the treatment of derivative securities under Regulation M, the Commission is rescinding Rule 10b-8,

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[59] *See supra* Section II.B.3., discussing covered securities.

[60] 15 U.S.C. 78c(a)(12).

[61] 17 CFR 230.138, 230.139.

[62] Exception 1 differs from a previous staff position that certain research reports were not prohibited inducements to purchase if such research was issued by a broker-dealer in the ordinary course of business, and satisfied either Rule 138 or Rule 139(b), or satisfied Rule 139(a) and did not contain a recommendation or earnings forecast more favorable than that previously disseminated by the firm. Securities Exchange Act Release No. 21332 (September 19, 1984), 49 FR 37569, 37572 n.25.

[63] 17 CFR 230.138 (a) and (b).

[64] 17 CFR 230.139(b)(1)(i).

[65] Also, a broker-dealer may deliver research reports to its customers via electronic means as a substitute for paper delivery. *See* Securities Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644.

[66] Nevertheless, there may be other circumstances in which the dissemination of research that does not meet the conditions of Rules 138 or 139 outside the United States may be appropriate during a global offering. The staff will provide guidance on a case-by-case basis.

[67] *See supra* text accompanying note 31.

[68] The Commission cautions that in connection with exercises of non-standardized options and other securities that are privately negotiated between the parties, there may be circumstances when the exercise of a call option, for example, could be made for the purpose of requiring the other party to acquire the security. In such a case, the purchase by the party exercised against may be deemed to be a purchase by the exercising party.

which pertained to distributions through rights. This rule contained overly rigid and complex restrictions on purchases of rights and regulated sales of offered securities. Bids for and purchases of rights are not subject to Rules 101 and 102, although bids for and purchases of a security that is the subject of a rights distribution are restricted by these rules.

e. Exception 5—Unsolicited Transactions. The Commission is adopting an exception to Rule 101 for unsolicited brokerage transactions, and for certain unsolicited purchases as principal. This exception incorporates the provision contained in exception (xi)(D) to Rule 10b-6 for unsolicited principal transactions, and, similar to exception (ii) to Rule 10b-6, permits unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or *electronic communications network* ("ECN") as defined in Rule 11Ac1–1(a)(8) under the Exchange Act.[69]

This exception places no restrictions on distribution participants effecting unsolicited brokerage transactions during a distribution. [70] In addition, unsolicited purchases as principal are also unrestricted. Although the Commission did not propose an exception to Rule 101 for unsolicited principal purchases, many commenters asserted that exception (ii) to Rule 10b-6 pertaining to such purchases was, in fact, widely used. The Rule 101 exception for unsolicited purchases differs from the analogous Rule 10b-6 exception, however, because it does not require that purchases be of "block" size.[71]

Furthermore, the exception applies to purchases effected otherwise than through a broker-dealer, on a securities exchange, or through an inter-dealer quotation system or ECN, because those purchases are less likely to be used to influence the price of a security that is the subject of a distribution. This clause of the exception permits distribution participants and affiliated purchasers to purchase covered securities from persons, other than broker-dealers, who were not solicited by the distribution participant or its affiliated purchasers and precludes purchases through an exchange, Nasdaq, or alternative trading system.

This exception reflects the view that unsolicited purchases, regardless of their size, generally do not raise the concerns at which Rule 101 is directed when those purchases are not effected through market mechanisms. In such circumstances, those purchases are less likely to affect the offered security's price.

f. Exception 6—Basket Transactions. Exception 6 relates to purchases of covered securities made in connection with basket transactions. This exception permits transactions in covered securities when the aggregate dollar value of any bids for or purchases of a covered security constitutes 5% or less of the total dollar value of the basket being purchased, and the basket contains at least 20 stocks.

The exception is available with respect to both index-related baskets and customized baskets. To qualify for the exception, the basket transaction must be a *bona fide* transaction effected in the ordinary course of business (*i.e.*, the decision to include the security in distribution in the basket must be independent of the existence of the distribution).[72] The exception also permits bids and purchases for the purpose of adjusting an existing basket position related to a standardized index when made in the ordinary course of business to the extent necessary to reflect a change in the composition of the index. For example, a basket could be adjusted to reflect substitutions of securities in a standardized index.

While supporting the flexibility of the basket transaction exception, some commenters suggested alternatives, including using either a single percentage test of 5% or 10%, or a 10%/10 stock or 10%/15 stock standard. The Commission believes that the majority of stocks contained in baskets will be excepted under the actively-traded securities exception and that the 5%/20 stock standard allows trading in most basket transactions while ensuring that such transactions are not easily used to influence the price of a security. The Commission is concerned that, given the possibility that a distribution participant could time its basket transactions for maximum price effect, a less rigorous standard could lead to abuse. Further, the inclusion of the 20 stock criterion provides an objective indication of the *bona fide* nature of the basket transaction.

Commenters also stated that this exception should allow for rebalancing any customized basket covered by the exception, or for rebalancing in a covered security that is consistent with rebalancing activity in other stocks contained in the basket. In the Commission's view, allowing distribution participants to make adjustments in customized baskets may give a distribution participant the means to effect significant transactions in covered securities (*e.g.*, by deciding to include a security in distribution in a basket without a reason independent of the distribution), thereby raising manipulative concerns. Accordingly, the Commission is not permitting adjustments to rebalance customized baskets, unless the adjustments themselves qualify under the 5%/20 stock test.

g. Exception 7—*De Minimis* Transactions. The Commission is adopting exception 7 for *de minimis* transactions. As proposed, the exception applied to unaccepted bids and aggregate purchases of 1% of a security's ADTV. Several commenters stated that a 1% level was too limited to be useful. For this reason, a few commenters proposed raising the *de minimis* threshold to 5% of the security's ADTV. Commenters also requested clarification that the *de minimis* test could be applied to more than one transaction. In addition, some commenters suggested that any bid or purchase not exceeding a *de minimis* amount should be eligible for the exception.

Because the Commission believes that an exception for small, inadvertent transactions lacking market impact is appropriate, it is adopting an exception for *de minimis* transactions. The purchasing level has been increased to 2% to give distribution participants greater margin for error, while retaining the exception's *de minimis* nature. Unaccepted bids, and purchases during the restricted period that in the aggregate do not exceed 2% of the ADTV of the security in distribution, are excepted from the rule, if the person has maintained and enforces written policies and procedures reasonably designed to achieve compliance with the rule. Once inadvertent transaction(s) are discovered, subsequent transaction(s) would not be covered by this exception. Also, this *de minimis* exception does not apply to Nasdaq passive market making transactions.

Commenters recommended that the exception be extended to include solicited brokerage transactions and

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[69] 17 CFR 240.11Ac1–1(a)(8). *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48289 ("Release 34–37619A"), for a discussion of ECNs. A purchase in response to an order or quote displayed on an ECN would not constitute an unsolicited transaction.

[70] This exception incorporates the provisions of Rule 10b-6(a)(5)(B). In addition, consistent with an interpretation under Rule 10b-6, a broker-dealer who receives an unsolicited order to sell may solicit purchasers in executing the transaction as broker for the seller.

[71] Also, the exception as adopted does not incorporate the phrase "privately negotiated" because it is unnecessary in light of the other terms of the exception.

[72] Proposing Release, 61 FR at 17118.

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bids that are accepted, but that do not result in a purchase because the trade is broken. The Commission clarifies that the exception is available to transactions resulting from solicited brokerage provided that the conditions of the exception are satisfied. However, any purchase, even if the trade subsequently is broken, must be considered a purchase for purposes of this exception.

One commenter asserted that the proviso requiring written policies and procedures is unnecessary. This requirement is adopted as proposed, however, because the Commission believes that the presence of compliance procedures buttresses the inadvertent character of excepted *de minimis* transactions. The Commission notes that repeated reliance on the exception would raise questions about the adequacy and effectiveness of a firm's procedures. Therefore, upon the occurrence of any violation, a broker-dealer is expected to review its policies and procedures and modify them as appropriate.

h. Exception 8—Transactions in Connection with a Distribution. The Commission is adopting the exception for transactions in connection with a distribution substantially as proposed. Exception 8 permits transactions among distribution participants in connection with the distribution and purchases from an issuer or selling security holder in connection with the distribution that are not effected on a securities exchange or through an inter-dealer quotation system, or through an ECN. Based on commenters' views, the portion of the proposed exception relating to offers to sell or the solicitation of offers to buy the securities being distributed or offered as principal is now contained in exception 9.[73]

i. Exception 9—Offers to Sell or the Solicitation of Offers to Buy. The Commission is adopting the exception for offers to sell or the solicitation of offers to buy the securities being distributed (including securities acquired in stabilizing), or securities offered as principal by the person making such offer or solicitation.

j. Exception 10—Transactions in Rule 144A Securities. The Commission is adopting the exception for transactions in securities eligible for resale under Rule 144A(d)(3) ("Rule 144A securities") substantially as proposed.[74] As adopted, the exception permits transactions in Rule 144A securities during a distribution of such securities, provided that sales of such securities within the United States are made solely to: qualified institutional buyers ("QIBs"), or persons reasonably believed to be QIBs, in transactions exempt from registration under the Securities Act ("Rule 144A distributions"); or persons not deemed to be "U.S. persons" for purposes of Rule 902(o)(2) or (o)(7) of Regulation S under the Securities Act, during a concurrent Rule 144A distribution to QIBs.[75] The exception covers both the Rule 144A security being distributed and any reference security.

In the Proposing Release, the Commission noted that an exception based on the categories of persons to whom the securities are distributed may be viewed as a departure from the anti-manipulation approach of Regulation M, because no class of investors, including large institutions, is immune to injury from securities fraud or manipulation.[76] Nevertheless, the Commission considers it appropriate to reduce the scope of Rule 101's prophylactic protections in the case of QIBs, because QIBs have considerable ability to obtain, consider, and analyze market information, and the Commission is not aware of complaints of manipulation in this context.[77] Moreover, in light of the characteristics of Rule 144A securities (*e.g.*, eligible securities are not listed on a U.S. exchange or quoted on Nasdaq), the exception does not distinguish between Rule 144A distributions to QIBs of foreign and domestic securities.[78]

Several commenters recommended broadening the proposed exception to include contemporaneous sales within the United States to certain institutional accredited investors. Some of these commenters suggested that the exception permit sales to institutional accredited investors where sales to QIBs exceeded a certain percentage of the total distribution.[79] The Commission is not adopting these recommendations because institutional accredited investors encompass a much broader category of persons, a large segment of which do not have characteristics comparable to those of QIBs which underlie this exception.

8. Exemptive Authority

The Commission proposed to include within Rule 101 a provision permitting the Commission to exempt any transaction or transactions from the rule on a case-by-case basis. Two commenters recommended that the exemptive authority provision be expanded to permit exemptions for securities or classes of securities. To increase flexibility in the exemption process, the Commission is adopting this suggested addition. An exemption may be granted either unconditionally or on specified terms and conditions.[80]

C. Rule 102—Activities by Issuers and Selling Security Holders

1. Generally

Rule 102 covers certain activities of issuers and selling security holders, and their affiliated purchasers, during a distribution of securities. Rule 102 is similar in format to Rule 101: issuers and selling security holders, and their affiliated purchasers, must refrain from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period, unless an exception permits the activity.

Rule 102 contains fewer exceptions than Rule 101 because issuers and selling security holders have the greatest interest in an offering's outcome and generally do not have the same market access needs as underwriters. The exceptions in Rule 102 permit: transactions in nonconvertible investment grade securities and transactions during Rule 144A distributions; exercises of options and other securities, including rights; and odd-lot transactions and associated round-up transactions during an issuer odd-lot tender offer. Closed-end investment companies that engage in continuous offerings of securities also may conduct certain tender offers for those securities during such distributions. There is no general exception for actively-traded securities, although a limited exception is included

[73] A distribution participant relying on this exception must be prepared to sell the securities if the offer is accepted.

[74] *See* 17 CFR 230.144A(d)(3).

[75] 17 CFR 230.902(o)(2) and (o)(7). This follows the position taken under Rule 10b–6 in *Letter regarding Regulation S Transactions during Distributions of Foreign Securities to Qualified Institutional Buyers*, [1993–1994] Fed. Sec. L. Rep. (CCH) ¶ 76,851 (February 22, 1994), as modified by *Letter regarding Regulation S Transactions during Distributions of Foreign Securities to Qualified Institutional Buyers* (March 9, 1995).

[76] Proposing Release, 61 FR at 17119 n.61.

[77] The Commission wishes to emphasize that QIBs will continue to be protected by the general anti-manipulation and anti-fraud provisions, including Section 17(a) of the Securities Act, and Sections 9(a) and 10(b) of the Exchange Act, and Rule 10b–5 thereunder.

[78] *See* Proposing Release, 61 FR at 17119.

[79] The percentages recommended by commenters ranged from 50% to 80%.

[80] The Commission is revising its Rules of Practice and Investigations to provide that exemptions may be granted by designated persons in the Division of Market Regulation pursuant to authority delegated by the Commission. *See* 17 CFR 200.30–3 of this chapter, as amended. Rules 102, 104, and 105 include similar provisions authorizing the Commission to grant exemptions from those rules, and this authority also will be delegated to designated persons in the Division of Market Regulation.

for certain actively-traded reference securities.

Furthermore, most transactions in connection with dividend reinvestment and stock purchase plans are excluded from Rule 102. Only plan distributions involving securities obtained directly from the issuer are subject to Rule 102. Several commenters asked that the Commission further explain the treatment of plans under Rule 102. This release provides guidance on the types of plan activities that may be engaged in without constituting special selling efforts and selling methods within the meaning of the definition of distribution, and clarifies that certain dividend reinvestment and stock purchase plans offered by bank-registered transfer agents and registered broker-dealers qualify for the plan exception.

2. Persons Subject to Rule 102

a. Generally. Rule 102 applies to issuers, selling security holders, and their affiliated purchasers. Several commenters sought clarification as to whether an issuer's transactions in a covered security would be restricted during a distribution effected solely by or on behalf of a selling security holder not affiliated with the issuer. The Commission does not intend to limit an issuer's activities during a distribution effected solely by or on behalf of a selling security holder if the issuer is not an affiliated purchaser of the selling security holder, and has modified paragraph (a) of Rule 102 accordingly.[81] An issuer will be deemed to have completed its participation in a distribution when the entire distribution is completed.[82]

b. Affiliated Purchaser. As discussed earlier, several commenters recommended excepting financial services affiliates of issuers and selling security holders from the definition of "affiliated purchaser."[83] As adopted, the definition of affiliated purchaser excludes financial services affiliates of an issuer or selling security holder if the issuer or selling security holder maintains and enforces information barriers between itself and such affiliates. In addition, a proviso has been added to paragraph (a) of Rule 102 that provides that any affiliated purchaser of an issuer or selling security holder that is acting as a distribution participant may comply with Rule 101, rather than Rule 102.[84] This accommodates the ordinary market activities of broker-dealers and other financial institutions participating in a distribution because they are subject to SRO surveillance.

3. Securities Subject to Rule 102

The restrictions of Rule 102 apply to covered securities in the same manner as Rule 101.[85] Thus, persons subject to Rule 102 are precluded during the restricted period from bidding for or purchasing the subject security or any reference security.

4. Offerings Subject to Rule 102

a. Generally. As with Rule 101, Rule 102 applies only when there is a distribution of securities.[86]

b. Shelf Offerings. In the case of an offering of securities pursuant to a shelf registration statement, the Commission will apply Regulation M in a manner consistent with interpretations under Rule 10b–6 regarding the restrictions on issuers and selling security holders during shelf offerings.[87] Thus, an issuer and all of its affiliated purchasers are subject to the applicable restricted period of Rule 102 when sales off a shelf by an issuer, or by any affiliated purchaser, constitute a distribution of securities. Similarly, when a selling security holder sells off the shelf and such sales constitute a distribution, all other shelf security holders who are affiliated purchasers of the selling security holder are subject to the applicable restricted period of Rule 102.

5. Securities Excepted from Rule 102

a. Actively-traded Reference Securities. Many commenters maintained that issuers, selling security holders, and their affiliated purchasers should have the benefit of an actively-traded securities exception similar to that in Rule 101. The Commission believes that persons subject to Rule 102 should not be able to trade in their securities, whether or not they are actively traded. The Commission's view is based on issuers' and selling security holders' stake in the proceeds of the offering, and their generally lesser need to engage in securities transactions.

Certain commenters noted that, as proposed, Regulation M would have prevented an issuer of equity-linked securities, or its affiliated purchasers, from engaging in hedging activity in the associated reference security, even when that security was actively traded. According to these commenters, the ability to conduct such hedging activity immediately prior to the pricing of an equity-linked security is critical to the structure of such distributions.

In response to these comments, the Commission has determined to provide a limited exception from Rule 102 for actively-traded reference securities that are not issued by the issuer of the security in distribution, or by any affiliate of the issuer. This exception permits the type of hedging activity that was not previously subject to Rule 10b–6. Thus, the issuer of an equity linked security, or a security holder selling an equity-linked security, can purchase in a hedging transaction an actively-traded reference security issued by an unaffiliated entity. However, the issuer or selling security holder of an equity-linked security is prohibited from purchasing any reference security for which it, or any of its affiliates, is the issuer. Of course, the general anti-fraud and anti-manipulation provisions of the federal securities laws are applicable to any transactions associated with distributions of equity-linked securities.

b. Other Excepted Securities. The Commission is adopting as proposed the exceptions in Rule 102 for "exempted securities" as defined in Section 3(a)(12) of the Exchange Act, and face-amount certificates or securities issued by an open-end management investment company or unit investment trust. In addition, the Commission has determined to include in Rule 102 an exception for investment grade nonconvertible debt, nonconvertible preferred securities, and asset-backed securities, based on commenters' views and the rationales indicated above for an identical exception to Rule 101.[88]

6. Activities Excepted from Rule 102

a. Exception 1—Odd-Lot Transactions. Rule 102 contains an exception for odd-lot transactions, which permits issuer odd-lot tender offers. This exception, which is identical to exception 3 to Rule 101, will provide greater flexibility to issuers conducting odd-lot tender offers during a distribution.[89] Moreover, as modified from the proposal, this exception permits an issuer conducting an odd-lot tender offer to engage in transactions

[81] The interpretations contained in Release 34–23611 regarding shelf distributions by selling security holders will continue to have relevance. *See infra* Section II.C.4.b.

[82] *Cf. supra* Section II.B.2.c., discussing when distribution participants are considered to complete their participation in a distribution. *See also* the definition of "completion of participation in a distribution."

[83] *See supra* Section II.B.2.d.

[84] The proviso to Rule 101 specifies that, where a distribution participant or an affiliated purchaser of a distribution participant is itself the issuer or selling security holder, Rule 102 applies. *See supra* Section II.B.2.a.

[85] *See supra* Section II.B.3.

[86] *See supra* Section II.B.5., discussing the types of offerings and other transactions that are subject to Rule 101.

[87] *See* Release 34–23611, 51 FR at 33242.

[88] *See supra* Section II.B.6.c.

[89] *See supra* Section II.B.7.c.

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necessary to enable shareholders to round-up their holdings to 100 shares.[90]

b. Exception 2—Transactions by Closed-end Investment Companies. Exception 2, as it relates to transactions complying with Rule 23c–3 under the Investment Company Act,[91] is adopted as proposed. Accordingly, repurchases by closed-end investment companies that are conducted in compliance with Rule 23c–3 will not violate Rule 102.

Unlike so-called "interval" funds, which buy back their securities pursuant to Rule 23c–3, other closed-end funds are more circumscribed as to their repurchases.[92] Many of these closed-end funds advise investors in their prospectuses that investments in the funds should be considered illiquid, particularly as the fund does not intend to seek a public trading market for its securities. To provide their investors with an opportunity to sell their securities, these funds often disclose that they may consider conducting periodic tender offers to repurchase all or a portion of their outstanding securities at the then current net asset value. A few commenters raised issues about the continuation of Rule 10b–6 exemptions granted to those closed-end funds that conduct periodic tender offers for their securities pursuant to Rule 13e–4 under the Exchange Act,[93] when the funds are engaged in continuous offerings pursuant to Rule 415 under the Securities Act.[94]

Exception 2 is available to a registered closed-end investment company that engages in a continuous offering of its securities pursuant to Rule 415 and repurchases, at net asset value, securities of the same class in a tender offer conducted pursuant to Rule 13e–4, provided that there is no widely available alternative transaction mechanism for its securities (*i.e.*, the securities are not traded on a securities exchange or through an inter-dealer quotation system or ECN). This exception accommodates those closed-end funds that currently have Rule 10b–6 exemptions, and benefits additional closed-end funds with similar distribution and repurchase features, because they will not need to seek exemptive relief under Regulation M.

c. Exception 3—Redemptions by Commodity Pools or Limited Partnerships. The Commission is incorporating exception 3 to permit redemptions by commodity pools or limited partnerships that are effected at a price based on the securities' net asset value in accordance with the terms and conditions of the governing instruments, as long as the securities are not traded on an exchange, or through an inter-dealer quotation system or ECN. This exception is being adopted in response to commenter concerns, and permits commodity pools and limited partnerships to effect redemptions of their securities without seeking exemptive relief under Regulation M. Redemptions of such securities pursuant to their governing instruments at a price based on net asset value are unlikely to raise manipulative concerns.

d. Exception 4—Exercises of Securities. The Commission is adopting exception 4 relating to the exercises of call options and other securities as proposed. This exception is identical to exception 4 to Rule 101, and permits the exercise of rights in connection with convertible, exchangeable, or exercisable securities, including options received in connection with employee benefit plans.

e. Exception 5—Transactions in Connection with the Distribution. Exception 5 is adopted as proposed. This exception permits offers to sell and the solicitation of offers to buy the securities being distributed, and enables an issuer or selling security holder to conduct an offering on its own behalf.[95]

f. Exception 6—Unsolicited Purchases

In the Proposing Release, the Commission solicited comment on an exception similar to that contained in Rule 10b-6 for unsolicited privately negotiated purchases. This exception from Rule 102 is identical to the unsolicited purchases exception from Rule 101.[96]

g. Exception 7—Transactions in Rule 144A Securities

Based on commenters' views and the basis discussed above for excepting transactions in Rule 144A securities from Rule 101, the Commission has determined to include an identical exception in Rule 102.

7. Plans

a. Generally

The Commission is adopting the dividend (or interest) reinvestment and stock purchase plan provisions of Rule 102 substantially as proposed.[97] The treatment of plans under Regulation M reflects a continuation of the Commission's efforts to facilitate the use of plans as an alternative means for investors to purchase and sell securities, while maintaining essential investor protections.[98]

Paragraph (c)(1) of Rule 102 excepts most distributions of securities pursuant to plans.[99] The Commission has modified the introductory text of this paragraph to clarify that this exception includes plans operated by registered bank transfer agents or registered broker-dealers ("investor services plans"), as well as those plans operated by or on behalf of an issuer.[100]

The rule divides plans into three categories: (1) plans that are available only to employees and shareholders ("employee-shareholder plans"); (2) plans, including investor services plans, that are available to persons other than, or in addition to, employees and shareholders, where securities for the plan are purchased from a source other than the issuer or an affiliated purchaser of the issuer (i.e., in the open market or in privately negotiated transactions) by an agent independent of the issuer ("open market plans"); and (3) plans that are available to persons other than, or in addition to, employees and shareholders where securities for the

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[90] Today, the Commission also is adopting an amendment to Rule 13e–4(h)(5) to permit issuers to conduct odd-lot offers, including continuous, periodic, or extended odd-lot offers, for their equity securities without establishing a record date of ownership for shareholder eligibility to participate in the offer. Securities Exchange Act Release No. 38068 (December 20, 1996).

[91] 17 CFR 270.23c–3.

[92] *Cf.* 15 U.S.C. 80a–23(c).

[93] 17 CFR 240.13e–4.

[94] 17 CFR 230.415. *See, e.g., Letter regarding Brazilian Investment Fund, Inc.*, [1993] Fed. Sec. L. Rep. (CCH) ¶ 76,712 (August 6, 1993).

[95] Regulation M does not preclude affiliates of an issuer (*e.g.*, officers or directors) from purchasing securities in the offering. *See also supra* Section II.C.2.a., regarding a person's completion of participation in the distribution.

[96] *See supra* Section II.B.7.e., discussing exception 5 to Rule 101.

[97] The term *plan* is defined in Rule 100 as any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, stock appreciation, dividend reinvestment, or similar plan; or any dividend or interest reinvestment plan or employee benefit plan as defined in 17 CFR 230.405.

[98] *See, e.g.*, Securities Exchange Act Release No. 35041 (December 1, 1994), 59 FR 63393 ("1994 STA Letter"), as modified by *Letter regarding Dividend Reinvestment and Stock Purchase Plans*, [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,110 (May 12, 1995); *Letter regarding First Chicago Trust Company of New York*, [1994] Fed. Sec. L. Rep. (CCH) ¶ 76,939 (December 1, 1994) ("First Chicago Letter"); *Letter regarding Bank-Sponsored Investor Services Programs*, [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,122 (September 14, 1995) ("*Bank Sponsored Programs Letter*") (collectively, "Plan Letters").

[99] Of course, where an issuer plan does not involve a distribution (because there is insufficient magnitude, or because special selling efforts and selling methods are not used to sell the securities), Rules 101 and 102 do not apply.

[100] Although Regulation M supersedes the Plan Letters as they relate to Rule 10b–6, the staff positions taken in the Plan Letters on the application of other securities law provisions (*i.e.*, Section 5 of the Securities Act, 15 U.S.C. 77e, and Sections 13(e), 14(d), 14(e), 15(a), and 17A of, and Rule 10b–13 under, the Exchange Act, 15 U.S.C. 78m(e), 78n(d), 78n(e), and 17 CFR 240.10b–13, respectively) remain in effect.

plan are purchased directly from the issuer or an affiliated purchaser of the issuer ("direct issuance plans").

b. Employee-shareholder Plans

Rule 102(c)(1)(i) covers employee-shareholder plans, and excludes any distribution pursuant to a plan by or on behalf of an issuer or a subsidiary of an issuer, when the distribution is made solely to *employees* or shareholders of the issuer or its subsidiaries, or to a trustee or other person acquiring the securities for the accounts of such persons. This means that Rule 102 imposes no restrictions on transactions in the subject securities by the issuer or its affiliated purchasers during employee-shareholder plan distributions.[101] The scope of eligible employees, and therefore the scope of the exception, is broader under this provision than under Rule 10b–6.

c. Open Market Plans

Rule 102(c)(1)(ii) excepts from the rule's coverage distributions involving open market plans, including investor services plans, where purchases for the plan are made by an *agent independent of the issuer* from sources other than the issuer or an affiliated purchaser of the issuer (*i.e.*, in the open market or in privately negotiated transactions).

Several commenters suggested revising the definition of agent independent of the issuer, including permitting the issuer to specify the broker or dealer who would make purchases for the plan and to change the source of securities for its plan more than once in any three month period. The Commission has determined not to make such changes at this time, because the definition has implications beyond Regulation M (*i.e.*, it also relates to issuer repurchase programs conducted pursuant to Rule 10b–18 under the Exchange Act).[102] Nevertheless, the Commission will examine this definition in connection with its anticipated review of Rule 10b–18, and will reconsider these comments in that process.

The definition of agent independent of the issuer specifies, among other things, that an issuer may not control, directly or indirectly, the timing of purchases by the agent. The Proposing Release stated that an agent would not be considered independent if the issuer directs the timing of purchases of securities by the agent, including a requirement that securities to fund the plan must be purchased on the plan's investment date. The release provided, however, that an issuer may establish general conditions for the operation of its plan, including, for example, requirements concerning the return of uninvested funds to plan participants, or requirements that optional cash payments be invested within 35 days of receipt.[103] A number of commenters requested additional guidance on the timing element for plan purchases. The Commission notes that, although an issuer may not specify a particular time for such purchases, the issuer may specify a range of days for plan purchases based on a particular event (*e.g.*, that plan purchases will be made within five days of the plan's investment date, or the stock's dividend date), or may specify that plan purchases will be made on or as soon as practicable after the plan's investment date, or the stock's dividend date. Moreover, the plan's agent could be deemed an agent independent of the issuer for purposes of Rule 102 if the plan's formula specifies the date, but not the times, of purchases pursuant to the plan, provided that the plan provisions regarding the purchase date are not changed more than once in any three-month period.[104]

d. Direct Issuance Plans

Distributions pursuant to direct issuance plans (*i.e.*, a plan that is available to persons other than, or in addition to, employees and shareholders where the issuer or affiliated purchaser of the issuer provides the shares for the plan) are not excepted from Rule 102. In the Commission's view, if the magnitude of securities offered through such plan, and the selling efforts and selling methods used to distribute such securities would constitute a distribution as defined in Rule 100, this type of offering raises the manipulative concerns underlying Regulation M.[105] Because the issuer is receiving the proceeds of the offering, this kind of plan bears a close resemblance to a public offering. Consistent with prior interpretations concerning valuation periods for plans, Rule 102 applies during any valuation period for a direct issuance plan.

To determine the magnitude of a direct issuance plan, only those persons to whom plan communications are directed at a particular time (rather than all current plan participants) should be considered. Moreover, the Commission will not deem special selling efforts and selling methods to be present in a direct issuance plan where only one or a combination of announcements, newspaper advertisements, circulars, notices, investor fairs, or Internet home pages are used to disseminate information about the availability of the plan to the public, or the issuer provides information about the plan to persons with whom the issuer has a pre-existing, continuing relationship involving the receipt of written communications by existing means of communication (*e.g.*, a bill, annual report, or payroll stub).[106] The information contained in such materials distributed by an issuer or its agent may include no more than the information allowed, nor less than that required, under Rule 134 under the Securities Act (*i.e.*, "tombstone advertisements"):[107] generally, the issuer's name, the issuer's type of business, the type of security being offered in the direct issuance plan (*i.e.*, common or preferred stock), the price of the security or the method of price determination, and information on how and where a prospectus may be obtained.

8. Exemptive Authority

Consistent with the expansion of the exemptive authority provision in Rule 101, the Commission is adopting a provision in Rule 102 pursuant to which it may grant an exemption from Rule 102 to any transaction or class of transactions, or any security or class of securities. Such exemptions may be granted either unconditionally or on specified terms and conditions.

9. Rule 10b–18

Rule 10b–18 under the Exchange Act provides that an issuer and its affiliated

[101] However, such activity may be subject to Rule 102 if the issuer is engaged in another distribution, and the transactions for the plan are attributable to the issuer. Rule 102 provides that plan transactions will not be attributable to the issuer if they are effected by an agent independent of the issuer.

[102] 17 CFR 240.10b–18.

[103] Proposing Release, 61 FR at 17121 n.71, *citing* 1994 STA Letter (modifying *Letter regarding Lucky Stores, Inc.*, [1974–1975] Fed. Sec. L. Rep. (CCH) ¶79,903 (June 5, 1974)).

[104] Purchases by an independent agent for a plan can involve a certain magnitude, frequency, and duration that are known to the issuer. If an issuer schedules a non-plan distribution to coincide with such plan purchases, questions may be raised under the general anti-fraud and anti-manipulation provisions of the federal securities laws.

[105] Where a plan provides that securities for the plan may be purchased either in the open market or provided directly by the issuer, paragraph (c)(1)(ii) is only available when the plan securities are purchased in the open market. If the plan securities are obtained directly from the issuer, the plan must be treated as a direct issuance plan.

[106] This includes communications to shareholders, employees, customers, and other persons with a pre-existing relationship with the issuer, such as independent contractors, franchisees, and suppliers. *See* Securities Exchange Act Release No. 37182 (May 15, 1996), 61 FR 24644, 24650 (providing guidance for use of electronic media for delivery of information). *See also* Securities Exchange Act Release No. 36345 (October 13, 1995), 60 FR 53458.

[107] 17 CFR 230.134.

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purchasers will not incur liability under the anti-manipulation provisions of Section 9(a)(2) of the Exchange Act or Rule 10b–5 under the Exchange Act, if the issuer purchases common stock in compliance with the rule's conditions concerning the time, price, volume, and manner of purchases.[108] The Commission proposed to amend Rule 10b–18 to preclude an issuer from relying on this safe harbor when the issuer or its affiliated purchasers were engaged in a distribution for purposes of Rule 102.

The few comments received on this proposal were negative. The Commission has determined that significant revisions to Rule 10b–18 should be considered in connection with a comprehensive review of Rule 10b–18 to be conducted in the near future. However, the Commission is adopting an amendment to Rule 10b–18 precluding reliance on the safe harbor during the Rule 102 restricted period, when the issuer or any affiliated purchaser is distributing the issuer's common stock or any other security for which the common stock is a reference security.[109]

D. Rule 103—Passive Market Making

The Commission is adopting Rule 103 to replace Rule 10b–6A. Rule 103 and related exception 2 to Rule 101 permit, in connection with a distribution of a Nasdaq security, passive market making on Nasdaq during the restricted period of Rule 101, when market making by distribution participants otherwise is prohibited. The purpose of Rule 103 is to alleviate special liquidity problems that could exist for a Nasdaq security in distribution, if distribution participants or their affiliates who are Nasdaq market makers were required to withdraw as market makers during the restricted period. Exchange-traded securities usually do not experience this problem because specialists in most cases are not affiliated with distribution participants.

Rule 103 retains the core provisions of Rule 10b-6A with respect to the price levels of bids and purchases that can be made by a Nasdaq *passive market maker*. Rule 103 generally limits a passive market maker's bids and purchases to the highest current *independent bid* (*i.e.*, a bid of a Nasdaq market maker who is not participating in the distribution). The Commission believes that this condition is fundamental to the concept of passive market making. Additionally, the rule limits the amount of *net purchases* that a passive market maker can make on any day to 30% of its ADTV, although an initial ADTV limit of 200 shares is now available for less active market makers. The *30% ADTV limitation* is designed to prevent an amount of purchasing activity that could produce the price effects of stabilization, while generally permitting a level of activity associated with normal market making. The rule also contains a provision limiting the bid size a passive market maker may display and requirements relating to notification, identification, and disclosure of passive market making.

Rule 103 incorporates several new provisions that add significant flexibility to passive market making and permit this activity in a far greater number of contexts. The rule eliminates the offering eligibility criteria that were contained in Rule 10b-6A, except that best efforts and at-the-market offerings remain ineligible for passive market making.[110] Moreover, all Nasdaq securities qualify for passive market making, including Nasdaq reference securities. The requirement that underwriters or prospective underwriters account for at least 30% of total trading volume is eliminated because the Commission believes that passive market making could enhance liquidity, even where the syndicate accounts for a minor portion of normal market making activity. Rule 103 also permits passive market making throughout the entire applicable restricted period, rather than requiring that it cease with the commencement of offers or sales, because passive market making is now available for many more kinds of distributions, including those that can extend over a significant period of time. Passive market making is prohibited, however, when a stabilizing bid pursuant to Rule 104 is in effect.

The NASD and other commenters proposed either eliminating the 30% ADTV limitation entirely, or, alternatively, increasing it to at least 50%. Commenters did not provide any empirical evidence or other objective information supporting a different standard or demonstrating that the 30% ADTV limitation significantly decreases the liquidity of securities subject to passive market making. As with Rule 10b-6A, the 30% ADTV limitation is applicable only to *net* purchases (*i.e.*, total purchases minus total sales). Accordingly, as long as sufficient sales are made, there is no limit on total purchases. The Commission continues to believe that a purchasing limitation is fundamental to the concept of passive market making, and that the 30% ADTV limitation permits a normal level of market making activity. In addition, the Commission believes that the adjustment discussed below allowing all passive market makers to have an initial ADTV limit of at least 200 shares will enable less active market makers to participate in passive market making. Of even greater significance is the fact that actively-traded Nasdaq securities are not subject to the requirements of Rule 103 at all, and nearly all other Nasdaq securities will have shorter restricted periods. These features of Regulation M should substantially enhance liquidity for these securities.

As proposed, passive market makers would have been allowed to bid for one round lot (*i.e.*, 100 shares) if they had an initial or remaining net purchasing capacity of between one and 99 shares. This provision was intended to permit less active or smaller market makers who are syndicate members to be passive market makers. The NASD supported providing passive market makers with the ability to bid for and purchase at least 1,000 shares, irrespective of a lower ADTV limitation. The NASD argued that the ADTV limitations of many market makers are too small to make passive market making viable for them. The Commission believes that giving all passive market makers an ADTV limit of 1,000 shares largely would override the 30% ADTV limitation and unduly advantage market makers with historically small trading volumes in the security, who would be able to make net purchases several times larger than their routine market making activity. As adopted, Rule 103 provides that all passive market makers whose initial ADTV limit is between 1 and 199 shares are allowed a net purchasing capacity of 200 shares. Rule 103 also permits bids for a round lot if a passive market maker's remaining net purchasing capacity is between 1 and 99 shares.[111]

[108] 17 CFR 240.10b–18.

[109] To reflect the use in Rule 10b–18 of the Regulation M definition of plan, the Commission is adopting technical amendments to paragraphs (a)(3), (a)(5), and (a)(6) of Rule 10b–18 to change the term "issuer plan" to "plan." In addition, the term agent independent of the issuer for purposes of Rule 10b–18 is now defined in Rule 100 of Regulation M. This differs from the proposal which would have removed the safe harbor during the entire distribution period.

[110] The Commission previously noted that the NASD surveillance system, with respect to passive market making, does not easily accommodate at-the-market offerings. Securities Exchange Act Release No. 32117 (April 14, 1993), 58 FR 19598, 19600 ("Release 34–32117"). The Commission believes that NASD surveillance is an essential consideration in expanding the contexts in which passive market making is permitted.

[111] For example, a passive market maker whose 30% ADTV limitation is 743 shares and who made net purchases of 700 shares can still bid for 100 shares.

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Rule 103 allows passive market makers to make bids or purchases at a price above the highest independent bid where necessary to comply with any Commission or NASD rule relating to the execution of customer orders. For example, a passive market maker acting in accordance with the new Commission rules regarding order handling obligations is permitted to display customer bids and to execute customer orders in compliance with the new rules even if the transactions would otherwise violate Rule 103.[112] In addition, the Commission is retaining its interpretation regarding the application of passive market making in the context of NASD members' obligation not to trade ahead of customer limit orders. When a passive market maker is complying with Commission or NASD rules governing the handling of customer limit orders, it cannot initiate any transaction on the sell-side of the market that would create, directly or indirectly, an obligation to purchase a covered security at a price above that security's highest independent bid price.[113]

The NASD supported permitting the execution of riskless principal purchases (other than bids disseminated on Nasdaq) at a price higher than Rule 103 allows, as long as the passive market maker does not thereafter adjust its bids above the prevailing highest independent bid. The Commission believes, however, that market maker purchases above the highest independent bid (except as specifically permitted) are not consistent with the rule's passive structure.[114]

In response to the NASD's comment, the Commission is retaining a modified version of the interpretation regarding contemporaneous transactions, which provides that if a passive market maker is involved in a contemporaneous purchase and sale of a security, the passive market maker can "net" the transactions for purposes of the ADTV calculation as long as the two transactions are reported within 30 seconds of each other.[115]

The NASD also requested that the *de minimis* exception in Rule 101 apply to passive market making transactions. The Commission believes that permitting passive market makers to have the benefit of the *de minimis* exception would undermine efforts to achieve more rigorous compliance with passive market making restrictions. Therefore, the *de minimis* exception in Rule 101 does not apply to unaccepted bids or to purchases made by a passive market maker.

E. Rule 104—Stabilization and Other Syndicate Activities

1. Generally

Rule 104, which replaces Rule 10b–7, governs stabilizing and certain aftermarket syndicate activities in connection with an offering, and makes it unlawful for any person to stabilize, to effect any syndicate covering transaction, or to impose a penalty bid in contravention of the rule's provisions.[116] Rule 104 improves the regulation of stabilization by creating a more flexible framework for managing the offering process and eliminating much of the complexity that characterized Rule 10b-7. The Commission is adopting Rule 104 substantially as proposed, but has added provisions to address issues raised by commenters and has clarified other provisions. Related amendments to Exchange Act Rule 17a-2, governing the recordkeeping of stabilizing and certain post-offering syndicate transactions, and to Items 502(d) and 508 of Regulations S-B and S-K, governing prospectus disclosure of these activities, are adopted as proposed.

The purpose of Rule 104 is to permit underwriters and syndicate members to conduct stabilizing transactions in compliance with the rule's pricing and other terms for the purpose of preventing or retarding a decline in the market price of a security to facilitate an offering. Although stabilization is price-influencing activity intended to induce others to purchase the offered security, when appropriately regulated it is an effective mechanism for fostering an orderly distribution of securities and promotes the interests of shareholders, underwriters, and issuers.[117] The rule addresses the risk that stabilization will create a false or misleading appearance with respect to the trading market for the offered security.[118]

Rule 104 introduces several major features that are different from Rule 10b-7: a stabilizing bid may be made with reference to the principal market for the security, wherever located (rather than focusing only on U.S. markets); a stabilizing bid may be raised to match independent bids in the market; and a stabilizing bid that has not been discontinued may be carried over to another market. Rule 104 also accommodates multinational offerings by permitting stabilizing bids to be made in the currency of the market where the bid is placed, and by allowing adjustments to such stabilizing bids to account for fluctuations in the exchange rates between currencies.

Overall, commenters supported efforts to update and simplify the Commission's stabilization rule. Commenters favored the new provisions governing price levels for stabilizing bids, which codify and expand exemptive and no-action relief issued within the last decade by the Commission and its staff for stabilizing activities involving cross-border offerings. Some commenters were critical of the new provisions requiring disclosure, notification, and recordkeeping of syndicate covering transactions and penalty bids. The Commission, however, believes that these offering-related activities can influence aftermarket prices, and has adopted the provisions as an appropriate method to monitor these activities.

2. Discussion of Provisions Relating to Stabilization

As adopted, Rule 104 provides that no person, directly or indirectly, may stabilize, effect any syndicate covering transaction, or impose a penalty bid in connection with an offering of any security in contravention of the rule's provisions. The term *stabilizing* is defined in Rule 100 as the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or otherwise maintaining the price of a security. Rule 104 prohibits bids or purchases not necessary to prevent or retard a decline in the security's price, and forbids stabilizing

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[112] *See* Release 34–37619A, 61 FR 48289.

[113] *See NASD Manual*, Conduct Rules, IM–2110–2.

[114] Rule 103 permits a passive market maker to continue to bid and effect purchases at its bid at a price exceeding the then highest independent bid until the passive market maker purchases an aggregate amount of the covered security that equals or, through the purchase of all securities that are part a single order, exceeds the lesser of two times the minimum quotation size for the security, as determined by NASD rules, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of Rule 103.

[115] *See* Release 34–32117, 58 FR at 19603. The Commission also is retaining the interpretations in the Rule 10b-6A adopting release discussing appropriate interaction with other market makers and permitting the offset of two customer orders received within 15 minutes of each other without affecting net purchasing capacity. Release 34–32117, 58 FR at 19602–03.

[116] Unlike Rules 101 and 102, which apply to a "distribution," Rule 104 governs stabilizing to facilitate an "offering," a term that is broader in scope. Moreover, there is no exception to Rule 104 for actively-traded securities.

[117] *See* Section 9(a)(6) of the Exchange Act, 15 U.S.C. 78i(a)(6); Concept Release, 59 FR at 21689. *See also* Securities Exchange Act Release No. 2446 (March 18, 1940), 11 FR 10971.

[118] *See* Securities Exchange Act Release No. 28732 (January 8, 1991), 59 FR 814, 815 ("Release 34–28732").

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for manipulative purposes, at a price resulting from unlawful activity, or in an at-the-market offering. Priority must be granted to independent bids regardless of the size of the independent bid, when the market where the stabilizing takes place permits or requires such priority. The placing of more than one stabilizing bid in any one market at the same price at the same time is prohibited. The Commission is adopting these provisions substantially as proposed.

Rule 104 excludes from its provisions offerings of securities eligible for resale under Rule 144A by foreign or domestic issuers made solely to QIBs in transactions exempt under the Securities Act and to non-U.S. persons under Regulation S that are made concurrently with a Rule 144A offering.[119] As with other transactions excluded from Regulations M's coverage, stabilization during these Rule 144A placements will remain subject to the general anti-fraud and anti-manipulation provisions of the federal securities laws.

The provision in Rule 10b–7(m) pertaining to limitation of liability is eliminated. Although one commenter favored retention of this provision, the Commission believes that because lead managers now exert considerably more control over stabilizing transactions than when Rule 10b–7 was adopted, the provision is of marginal utility.

3. Stabilizing Levels

Rule 104 provides considerable flexibility to underwriters effecting stabilizing transactions. Persons stabilizing the price of a security can initiate a stabilizing bid in any market with reference to the independent prices in the *principal market* for the security, wherever located, and then maintain, reduce, or raise that bid to follow the independent market, as long as the bid does not exceed either the stabilizing bid in the principal market (including a stabilizing bid in effect at the previous close) or the *offering price* of the security.[120] Commenters favored using the price in the security's principal market as a basis for initiating a stabilizing bid when that market was open. One commenter also advocated the ability to carry over a stabilizing bid from one market to another market, irrespective of the current independent prices in any market.

Under Rule 104, the appropriate price level for initiating stabilizing is based on the security's principal market.[121] Although the rule as proposed looked to independent bids in the principal market to establish the permissible stabilizing level, the final version of Rule 104 permits a stabilizing bid to reference the last independent transaction price in the principal market. This modification responds to a commenter's concern that the public offering price of an exchange-traded security frequently is set at the last transaction price and, under Rule 10b–7, the security could be stabilized at that price. The rule covers the two possible scenarios for initiating stabilizing: initiating stabilizing in any market when the principal market is open; and initiating stabilizing in any market when the principal market is closed.

When the principal market is open, the permissible stabilizing price level in any market always is established with reference to the last independent transaction price for the security in its principal market if two conditions are met: the security must have been traded in the principal market on the day stabilizing is initiated or on the preceding business day; and the current asked price in the principal market must be equal to or greater than the last independent transaction price. If both conditions are not satisfied, stabilizing may be initiated in any market at a price no higher than the highest current independent bid in the principal market.

When the principal market is closed, but quotations have opened in the market where stabilizing will be initiated, Rule 104 provides that stabilization may be initiated with reference to the lower of: the price at which stabilizing could have been initiated in the principal market at its previous close; or the last independent transaction price in the market where stabilizing is being initiated. The independent transaction must have occurred that day or on the preceding business day and the current asked price in that market must be equal to or greater than the independent transaction price. If these conditions are not met, stabilizing may only begin at a price no higher than the highest current independent bid for the security in the market where the stabilizing is being initiated.

Rule 104 also includes a new provision for initiating a stabilizing bid in any market immediately before the opening of quotations. In this case, stabilizing may be initiated with reference to the lower of: the price at which stabilizing could have been initiated in the principal market at its previous close; or the most recent price at which an independent transaction in the offered security has been effected in any market after the close of the principal market, if the person stabilizing knows or has reason to know of such transaction.[122]

Rule 104 includes maximum caps on the stabilizing price level: no stabilizing bid may be initiated, maintained, or otherwise adjusted in any market at a price higher than the stabilizing bid in the principal market or the security's offering price.

Once a stabilizing bid has been initiated in a market, that bid may be maintained in that market, subject only to the maximum caps. It also may be carried over into another market, irrespective of intervening changes in the independent bids or transaction prices for the security. A stabilizing bid in effect at the market's close may be maintained between trading sessions and used to establish a stabilizing bid just prior to the market's opening of quotations on the next day.[123] A stabilizing bid may be maintained without reduction unless it would exceed the maximum caps. An underwriter may otherwise reduce a stabilizing bid at its discretion. If a stabilizing bid is discontinued (*i.e.*, it is not maintained continuously during a trading session or is not in effect as of the market's close), stabilizing may be resumed only at a level at which it then could be initiated in the particular market, without reference to the earlier stabilizing bid.

In perhaps the most significant change from Rule 10b–7, Rule 104 allows a stabilizing bid to be increased to the level of the highest independent bid in the principal market, or, if the principal market is closed, the highest independent bid in that market at the

[119] Identical exceptions are contained in Rules 101 and 102 of Regulation M.

[120] The term offering price is defined in Rule 100 as the price at which the security is being distributed.

[121] Rule 104, as adopted, uses the term "initiate," rather than the term "effect," to clarify that "initiating" a stabilizing bid means the first stabilizing bid made in connection with the offering. Once a stabilizing bid has been initiated, it may be increased, maintained, reduced, or adjusted in accordance with the provisions of the rule.

[122] As proposed, the reference price for initiating a stabilizing bid in any market, including the principal market, immediately before it opened was the lower of: the price at which stabilizing could have been effected at the close of the principal market; or the most current reported price at which independent transactions in the offered security have been effected in any market after the close of the principal market. Rule 104 incorporates a knowledge-based standard to avoid imposition of an undue burden on underwriters to discover the prices of obscure transactions, whether reported or not.

[123] The end of a trading session will not be deemed to discontinue a stabilizing bid in effect at the close.

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previous close, provided such bid price does not exceed the maximum caps.

Where an independent market for an offered security does not exist, the maximum stabilizing level is limited only by the offering price. Stabilization may be conducted before an offering is priced, consistent with the conditions of Rule 104. After the offering price is determined, stabilization may be resumed at a price at which stabilizing then could be initiated.

Rule 104 also provides for adjustments to a stabilizing bid when the price of the security being stabilized is adjusted for the payment of dividends, rights, or distributions, or is expressed in a currency other than the currency of the principal market and there are changes in the exchange rate between the two currencies. When securities are being offered as a unit, the component securities shall not be stabilized at prices that, in the aggregate, are higher than the then permissible stabilizing price for the unit.

4. Offerings With No U.S. Stabilizing Activities

To further accommodate cross-border transactions, the Commission is incorporating a new provision, similar to one contained in its 1991 proposing release on stabilizing in the international context,[124] that permits stabilizing outside the United States during an offering in the United States, without complying with Rule 104. The conditions for this provision are that: there be no stabilization in the United States; stabilization is not conducted above the U.S. offering price; and the foreign stabilizing is conducted in a jurisdiction with comparable regulation of stabilization.[125] For purposes of this provision, the Commission recognizes the stabilization regulations of the U.K. Securities and Investments Board.[126] The Commission invites appropriate requests to recognize additional markets as having comparable stabilization regulations for the purposes of this provision.

5. Disclosure, Notification, and Recordkeeping of Stabilizing Transactions, Short Covering Transactions, and Penalty Bids

In the Proposing Release, the Commission expressed its view that syndicate short covering transactions and the imposition of penalty bids by underwriters are activities that can facilitate an offering in a manner similar to stabilization. The Commission did not propose to extend the price conditions of Rule 104 to these aftermarket activities. Instead, the Commission proposed, and has determined to adopt, the provisions relating to disclosure, notification, and recordkeeping of syndicate covering transactions and the imposition of penalty bids.

Rule 104, like Rule 10b–7, requires any person who enters a bid that such person knows is for the purpose of stabilizing the price of any security to notify the market on which the bid is placed, and to disclose the purpose of such bid to the person to whom the bid is entered (*e.g.*, the specialist or executing broker-dealer). In the Commission's view, contemporaneous disclosure of the fact that stabilizing is occurring is beneficial to the market and its participants, because it ensures that transactions in a security are based on all available information. Consistent with this requirement, the NASD requires market makers intending to initiate stabilization to provide it with prior notification.[127] Stabilizing bids are then identified by a symbol on the Nasdaq quotation display. In this way, the person engaged in stabilization satisfies the requirement to inform the market and the person to whom the bid is made of the stabilizing purpose of the bid by notifying the NASD. On the exchanges, underwriters must notify the exchange and must provide disclosure separately to the recipient of the bid (*e.g.*, the specialist).

Rule 104 also requires any person effecting a *syndicate covering transaction*,[128] or placing or transmitting a *penalty bid*,[129] to disclose that fact to the SRO that has direct oversight authority over the principal market in the United States for the security for which the syndicate covering transaction is effected, or the penalty bid is imposed. This information will assist the exchanges and the NASD in carrying out their surveillance responsibilities. Some commenters asserted that the information regarding aftermarket activities should be kept confidential to avoid creating the perception of a weak offering, while a few commenters urged the Commission to facilitate public dissemination of this information in order to preclude an unintended manipulative effect, and to prevent the investing public from unknowingly bearing the cost of these aftermarket activities. The rule, as adopted, requires disclosure to the SRO but does not require public disclosure. Should circumstances indicate that such disclosure is warranted, the Commission may revisit this issue.

Under Rule 104, the stabilizing legend required by Rule 10b–7, and Item 502(d) of Regulations S–B and S–K,[130] would be replaced by a brief legend identifying activity that may affect the offered security's price and directing investors to a discussion in the "plan of distribution" section of the prospectus. Item 508 of Regulations S–B and S–K, governing the plan of distribution disclosure, is amended to require a brief description of any prospective stabilizing and aftermarket activities, including syndicate covering transactions and the imposition of a penalty bid, and their potential effects on the market price.[131] The objective of these proposals is to provide meaningful information to prospective investors regarding stabilizing and related activities.[132]

In addition to the foregoing disclosure requirements, when a person subject to Rule 104 conducts transactions in securities and the price of those securities may be or has been stabilized, that person is required by paragraph (h)(3) of Rule 104 to send to a purchaser, at or before the completion of the transaction, a document containing a statement similar to that required by Item 502(d)(1)(i) of Regulations S–B and S–K. This disclosure may be made by a document, including a prospectus, confirmation, or other writing that contains language indicating that the underwriter may effect stabilizing transactions in connection with an offering of securities.[133] The Commission proposed, but is not

[124] Release 34–28732. The proposals contained in Release 34–28732 are withdrawn, except to the extent they are adopted in Rule 104.

[125] The Commission by rule, regulation, or order will identify foreign statutes or regulations that are comparable to Rule 104.

[126] Chapter III, Part 10 of the Rules of the United Kingdom Securities and Investments Board.

[127] *See NASD Manual*, Marketplace Rules, IM–4614.

[128] Rule 100 defines syndicate covering transaction as the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a syndicate short position.

[129] Rule 100 defines penalty bid to mean an arrangement that permits the managing underwriter to reclaim a selling concession otherwise accruing to a syndicate member (or to a selected dealer or selling group member) in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

[130] *See* 17 CFR 228.502(d) and 229.502(d).

[131] *See* 17 CFR 228.508 and 229.508.

[132] Once a "plain English" prospectus is implemented, a stabilizing legend would no longer be required on the inside front cover of the prospectus, although the disclosure required by Item 508 of Regulations S–K and S–B would be retained. *See Task Force Report* 17–18.

[133] This disclosure requirement is not intended to extend the prospectus delivery period required by Rule 174 under the Securities Act. The required disclosure may be made by means other than the prospectus. 17 CFR 230.174.

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adopting at this time, that similar disclosure be given to purchasers of securities subject to aftermarket activities. The Commission intends to reconsider the need for this disclosure as it continues to review developments in the aftermarket area.

Amendments to Rule 17a–2 under the Exchange Act require managing underwriters to keep records of syndicate covering transactions and penalty bids, in addition to stabilizing information. Records must reflect the name and class of securities, the price, date, and time for each syndicate covering transaction and whether any penalties were assessed, the names and addresses of the syndicate group members, and their respective commitments. The records also must reflect the dates when any penalty bid was in effect. The information is required to be maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirement of Exchange Act Rule 17a–4(f). The required information must be kept for any offering registered under the Securities Act, conducted pursuant to Regulation A [134] thereunder, or where the aggregate proceeds exceed $5 million.

While several commenters opposed the disclosure, notification, and recordkeeping requirements proposed in Rule 104, particularly with respect to aftermarket activities, the Commission continues to believe that these provisions are an appropriate and effective means to monitor developments in aftermarket activities. Nevertheless, the Commission appreciates commenters' concerns that these provisions may require the implementation of new internal systems and procedures for underwriters and syndicate members. To accommodate possible revisions to broker-dealers' systems and procedures, the Commission has determined to delay the effectiveness of the recordkeeping requirements pertaining to syndicate covering transactions and penalty bids contained in Rule 17a–2 until April 1, 1997. The disclosure and notification requirements, which are contained in Rule 104 and pertain to stabilizing transactions, syndicate cover transactions, and penalty bids, will become effective on the same date as the other provisions of Regulation M.

[134] 17 CFR 230.251 *et seq.*

F. Rule 105—Short Sales in Connection With an Offering

The Commission is adopting Rule 105 to replace Rule 10b–21. Rule 105, like Rule 10b–21, prohibits certain short sales from being covered with securities obtained from an underwriter, broker, or dealer who is participating in an offering. Rule 105 is intended to prevent manipulative short selling prior to a public offering by short sellers who cover their short positions by purchasing securities in the offering, thus largely avoiding exposure to market risk. Such short sales could result in a lower offering price and reduce an issuer's proceeds. Rule 105 differs from Rule 10b–21 because it covers only those short sales effected in the period commencing five business days prior to the offering's pricing and ending with such pricing, rather than the potentially much longer period of Rule 10b–21, which commenced with the filing of a registration statement or Form 1–A.[135]

In its comment letter, the NASD expressed strong support for Rule 10b–21 and recommended that the current restricted period be retained because the date of the filing of a registration statement or Form 1–A can be identified with certainty in advance by potential short sellers. The NASD also urged that Rule 105 be amended to prohibit expressly a short seller from "directly or indirectly" covering short sales with securities purchased in a public offering. Another commenter suggested that the rule would be more effective if it covered transactions in related options. A third commenter urged that the exception in Rule 105 for shelf-registered offerings be eliminated.

The Commission believes that the application of Rule 105 should be limited to the period corresponding to the longest restricted period of Regulation M, which is five business days, and that short sellers contemplating a covering transaction will be in a position to know if any of their short sales were made within that five business day period. If short sales were made during this period, the short seller cannot cover those short sales with securities purchased in the offering.

As adopted, Rule 105 does not apply to short sales of derivative securities, because an extension of the rule's prohibitions to derivative securities would be inconsistent with the approach of Regulation M, which is to focus on those securities having the greatest manipulative potential.[136] Additionally, the rule does not expressly prohibit short sellers from "directly or indirectly" covering short sales out of the offering. The Commission decided not to add the term "indirectly" to Rule 10b–21 at the time that rule was adopted, and no different arguments have been presented that would alter its decision.[137]

Finally, Rule 105 retains the exclusion for shelf-registered offerings. However, it may be necessary for the Commission to reevaluate this exclusion if the availability of shelf registration is further expanded or offerings of shelf-registered equity become more commonplace.

[135] 17 CFR 239.90.

III. Status of Interpretations, Exemptions, No-Action Positions, Injunctions, and Orders to Cease and Desist

A. Interpretations, Exemptions, and No-action Positions

In the Proposing Release, the Commission sought comment on the implications for interpretations, exemptions, and no-action positions under the former trading practices rules in light of the adoption of Regulation M. Although a few commenters highlighted interpretive issues, and some specifically requested that certain exemption or no-action letters remain in effect,[138] there was little comment on the status of interpretations, exemptions, and no-action positions generally.

Many terms and concepts in Regulation M have the same meaning as under the former trading practices rules, and interpretations under those rules regarding such terms or concepts remain relevant to the new rules. Nevertheless, because the trading practices rules are rescinded as of the effective date of Regulation M, written exemptions that were granted and no-action positions taken under those rules no longer will be in effect as of Regulation M's

[136] Any manipulative short sales involving derivatives transactions continue to be addressed by the general anti-manipulation provisions, including Section 9(a)(2) of and Rule 10b–5 under the Exchange Act.

[137] *See* Securities Exchange Act Release No. 26028 (August 25, 1988), 53 FR 33455, 33457.

[138] *See, e.g.*, Letter from Peter Derendinger, General Counsel, CS Holding (June 24, 1996), to Jonathan G. Katz, Secretary, SEC, concerning *Letter regarding CS Holding*, [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,018 (March 31, 1995); Letter from Dan Sheridan, Head of Market Regulation Department, London Stock Exchange (July 23, 1996), to Jonathan G. Katz, Secretary, SEC, concerning *Letter regarding London Stock Exchange*, (July 12, 1993) (permitting passive market making on the London Stock Exchange during a distribution of securities) ("LSE Letter").

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effectiveness.[139] Many of the exemptions and no-action positions issued under the trading practices rules have been codified, expanded, or otherwise made redundant by Regulation M. The Commission expects, therefore, that the need to continue the relief issued under the trading practices rules after the effective date of Regulation M will be very limited. [140] Accordingly, if a recipient or beneficiary of an exemption or no-action letter issued under the former trading practices rules believes that the relief granted by such letter continues to be necessary or appropriate under Regulation M, that person may wish to contact the Office of Risk Management and Control of the Commission's Division of Market Regulation, at (202) 942–0772.

B. Injunctions and Orders to Cease and Desist

The Proposing Release did not address the status of outstanding injunctions or orders to cease and desist from violating the trading practices rules. The Commission is of the view that all such injunctions and orders continue in force and effect, and should be considered injunctions or orders to cease and desist from violating the corresponding successor rule or rules under Regulation M. For purposes of determining the status of an outstanding injunction or order, Rules 101 and 102 are each deemed a successor rule to Rule 10b–6; Rule 103 is deemed a successor rule to Rule 10b–6A; Rule 104 is deemed a successor rule to Rule 10b–7; and Rule 105 is deemed a successor rule to Rule 10b–21. Additionally, with respect to Commission cases alleging a violation of one or more of the trading practices rules, if a court or administrative law judge determines after the adoption of Regulation M that a violation of one or more of the trading practices rules occurred while such rules remained in effect, and an injunction or order to cease and desist would have been an appropriate remedy at the time such rules remained in effect, the Commission believes such court or administrative law judge should issue an injunction or order to cease and desist from violating the appropriate successor rule or rules under Regulation M.

IV. Costs and Benefits of the Amendments and Their Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [141] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, and to balance them against the benefits that further the purposes of the Act. Furthermore, Section 2 of the Securities Act [142] and Section 3 of the Exchange Act,[143] as amended by the recently enacted National Securities Markets Improvement Act of 1996 ("Markets Improvement Act"),[144] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

In the Proposing Release, the Commission stated its view that the rules would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act.[145] In fact, the Commission stated that Regulation M would reduce significantly trading restrictions on issuers, underwriters, and others participating in a distribution and, therefore, should reduce the costs of raising capital. The Commission also indicated its belief that Regulation M would enhance the posture of U.S. underwriters in relation to foreign broker-dealers in competing for underwriting business in cross-border transactions.

The NYSE and the Amex argued that use of a trading volume test to determine which securities qualify for the actively-traded securities exception and the one or five day restricted period of Regulation M would have an anti-competitive effect. The NYSE and the Amex believed that the Commission's use of ADTV is discriminatory and anti-competitive because the rules make no distinction between dealer markets, where dealer "interpositioning" is alleged to approximately double the reported volume of shares changing hands between investors, as compared with auction markets, where buyers and sellers meet directly and reported volume reflects that direct interaction as a single reported trade. These commenters asserted that the alleged "double counting" would have an anti-competitive effect on the ability of auction markets to attract new corporate listings, because it makes it more likely that distribution participants will be subject to fewer restrictions in dealer markets. The NYSE recommended that if the Commission determined that ADTV for a dealer market should be considered as the volume reported by that market, the Commission should consider the ADTV for auction markets as being twice the volume reported by those markets. Similarly, the Amex suggested that Nasdaq reported volume be adjusted downward if a measure based on ADTV is used.

As stated above, the Commission is of the view that the ADTV test provides the best measurement of a security's relative susceptibility to manipulation. Moreover, the public float test described above provides an additional control to prevent securities from being categorized based on aberrational levels of trading volume. The public float test also serves to equalize the treatment of securities traded under different market structures.

Although the NYSE and the Amex letters contend that the use of a trading volume standard in Regulation M will have an anti-competitive effect on their ability to attract corporate listings, they offer no data or other information demonstrating that the use of a trading volume concept in other rules, such as Exchange Act Rule 10b–18 or Securities Act Rule 144,[146] has resulted in an issuer deciding not to list on the NYSE or the Amex.

The NYSE and the Amex proposals also do not take into account the complex and evolving nature of both dealer and auction markets, and do not recommend a workable methodology for making such trading "comparable." The Commission notes that the Nasdaq market has a substantial and developing auction component,[147] and the exchanges have substantial dealer activity either through block positioning

[139] Regulation M is considered a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). Thus, it is subject to a Congressional disapproval process and will not become effective until March 4, 1997. The provisions of Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21 remain in effect until the effective date of their rescission, which is March 4, 1997. Persons participating in offerings are subject to the terms of the trading practices rules until they are rescinded.

[140] In response to a request from the London Stock Exchange, the LSE Letter shortly will be modified and reissued under Regulation M. To the extent that other letters have not been codified by Regulation M, appropriate requests for relief under Regulation M will be considered by the Division of Market Regulation.

[141] 15 U.S.C. 78w(a)(2).

[142] 15 U.S.C. 77b.

[143] 15 U.S.C. 78c.

[144] Pub. L. No. 104–290, § 106, 110 Stat. 3416 (1996).

[145] *See* Proposing Release, 61 FR at 17127.

[146] 17 CFR 230.144.

[147] For example, Instinet accounts for a significant proportion of the reported volume in Nasdaq securities. In addition, the Commission's recently adopted order handling rules are likely to lower the level of dealer involvement in Nasdaq order flow. *See* Release 34–37619A, 61 FR 48289.

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or specialist dealer activity.[148] The NYSE and Amex do not suggest, however, that there is any need for a reduction in exchange volume based upon dealer activity.

The complexity is magnified when the focus is on individual securities rather than aggregate volume levels for a market. For example, a portion of trading in exchange-listed securities is effected in the over-the-counter ("OTC") market (by dealers) but is reported in composite exchange volume.[149] Moreover, the level of exchange dealer activity undoubtedly varies from security to security, and the level of dealer activity for thinly-traded exchange stocks is probably high. If the approach suggested by the NYSE and the Amex were implemented, comparability would require an analysis of the dealer component in OTC and exchange trading and application of appropriate discounts. These discount calculations for each security also would need to be constantly updated. The Commission believes that this would be a cumbersome exercise of little value.

After considering carefully the views of the NYSE and the Amex, the Commission continues to believe that Regulation M will not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, the Commission believes that Regulation M is necessary and appropriate in the public interest because of the changes in securities markets and the fact that the trading practices rules had become needlessly complex and imposed substantial compliance costs. Furthermore, by reducing trading restrictions, Regulation M will promote efficiency and the competitive position of U.S. underwriters, and enhance the U.S. capital formation process.

[148] Specialists, which are the hallmark of auction markets, have important dealer obligations. They must trade for their own accounts (*i.e.*, as dealers) in order to maintain fair and orderly markets. *See* Exchange Act Rule 11b–1, 17 CFR 240.11b–1; NYSE Rule 104.

In 1995, trading by NYSE members accounted for 19.7% of NYSE reported share volume (purchases and sales) with specialist activity accounting for approximately half of this volume. *NYSE Fact Book* 20; *see generally* John F. Gould & Allan W. Kleidon, Market Maker Activity on Nasdaq: Implications for Trading Volume, 1 *Stanford Journal of Law, Business and Finance* 11 (1994).

[149] *See* The Nasdaq Stock Market, Inc., *The Nasdaq Stock Market 1996 Fact Book & Company Directory* 8 (1996) (4.3% of volume in exchange-listed securities was effected by Nasdaq market makers in 1995).

V. Final Regulatory Flexibility Analysis

This following discussion summarizes the Commission's Regulatory Flexibility Act analysis of Regulation M and the related amendments to other rules adopted today. A complete copy of the Final Regulatory Flexibility Act ("FRFA") is available in Public File No. S7–11–96.

The rules adopted today are intended to streamline and simplify the Commission's current anti-manipulation regulation of securities offerings by reducing the regulatory burdens on issuers, underwriters, and others with a significant interest in a securities offering, while retaining core investor protections. The new rules replace Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21.

Regulation M restricts offerings, activities, and persons where there is a readily identifiable incentive to manipulate the price of an offered security. The Commission believes that Regulation M reflects the improved surveillance technology of U.S. self-regulatory organizations, enhanced market transparency of securities transactions, increased globalization of securities markets, and changed offering and syndicate processes that have developed in recent years. The Commission continues to believe that prophylactic rules provide the most appropriate framework to achieve the objectives described above.

As stated in the FRFA, the Commission believes that Regulation M will enhance the ability of small issuers to raise capital. Regulation M is less restrictive than the structure under the former trading practices rules. Moreover, the Commission believes that Regulation M balances the objective of simplified, streamlined, and more flexible regulation with its statutory mandate of investor protection in a manner more appropriate than other alternatives.

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis ("IRFA") prepared in conjunction with the Proposing Release. The Commission did not receive any comments with respect to the IRFA.

A. Rules 101 and 102

The prohibitions in Rule 10b–6 are contained in two separate rules, Rules 101 and 102. Each of these rules employ restricted periods based on the dollar value of the published ADTV of the offered security and the public float value of its issuer. The restricted periods commence one or five business days prior to the pricing of the offering and continue until the distribution is over. The restricted periods cover the times when manipulative activity is most likely. The most actively-traded securities (*i.e.*, those securities having a minimum ADTV value of $1 million and whose issuer meets a $150 million public float test) are not subject to Rule 101. With respect to the vast majority of securities distributions, the trading restrictions that existed under Rule 10b–6 are substantially reduced or eliminated.

Rule 101 does not apply to distributions of Rule 144A securities made to QIBs in transactions that are exempt under the Securities Act.[150] Transactions in nonconvertible investment grade debt and preferred securities, and investment-grade asset-backed securities are not covered by the rule. Derivative securities also are excluded. Further, Rule 101 permits the routine dissemination of research reports, the exercise of options and other securities, and transactions in baskets of securities containing the offered security. Rule 101 excepts inadvertent violations during the restricted period by excusing *de minimis* violations, provided that a distribution participant has in place written policies and procedures reasonably designed to achieve compliance with Regulation M's provisions. The scope of persons subject to Rule 101 is narrowed by recognizing information barriers between a distribution participant and its affiliates.

Rule 101 applies equally to all distribution participants, regardless of size. The Commission does not believe that it is practicable to exempt small entities from Rule 101 because to do so would be inconsistent with the Commission's statutory mandate to protect investors.

Rule 102 governs the activities of issuers, selling security holders, and their affiliated purchasers. This rule does not contain an exception for actively-traded securities, or many of the other exceptions in Rule 101, because issuers and selling shareholders generally are not engaged in the securities business and do not need to trade securities on their own behalf or for others. Nevertheless, issuer participants, like underwriting participants, are able to engage in market activities prior to the beginning of the applicable restricted period. During the restricted period, Rule 102 permits: odd-lot transactions; transactions in connection with issuer plans; exercises of options, warrants, rights, and similar securities;

[150] 17 CFR 230.144A.

transactions during Rule 144A distributions; and transactions in certain nonconvertible securities and asset-backed securities that are rated investment grade.

Rule 101 permits distribution participants to engage in a greater range of market activities during a distribution in recognition of their role as market intermediaries, independent of their function as underwriters. Because issuer participants do not have such a broad range of market obligations and have a more direct interest in the offering's outcome, Rule 102 places more restrictions on their activities during a distribution.

For many issuers, Regulation M reduces the period of trading restrictions from nine or two business days to one business day. For some securities, however, the restricted periods under Rules 101 and 102 may be longer than the cooling-off periods under Rule 10b–6 (*i.e.*, five business days as opposed to two business days) because the new rules' thresholds depend on dollar value of ADTV and of public float, rather than on the offered security's price and the number of shares held by nonaffiliates. Some of these issuers may be small entities. The Commission has determined to base the new rules' thresholds on the dollar value of the security's ADTV and the issuer's public float value because the higher the value of trading and public float, the more costly and more difficult it becomes to affect the security's price.

B. Rule 103

Rule 103 governs Nasdaq passive market making and replaces Rule 10b–6A. By eliminating the eligibility criteria contained in Rule 10b–6A, Rule 103 applies to all Nasdaq securities and nearly all distributions, and provides additional flexibility by permitting more distribution participants to engage in passive market making. The Commission no longer considers it necessary or appropriate to restrict passive market making to the narrow class of offerings where the potential liquidity loss may be substantial (*i.e.*, where syndicate members account for at least 30% of market making capacity). Rule 103 also allows less active passive market makers who might otherwise not be able to engage in a passive market making a minimum net purchase allowance of 200 shares. Some of these passive market makers may be small broker-dealers.

Rule 103 benefits small issuers and small broker-dealers because it removes the eligibility criteria of Rule 10b–6A. The eligibility criteria were designed to limit the availability of passive market making to those firm commitment, fixed price offerings qualifying for the two business day cooling-off period of Rule 10b–6 and to those circumstances where the restrictions otherwise would have reduced market maker capacity significantly (*i.e.*, where syndicate members accounted for at least 30% of market maker capacity). By removing the eligibility criteria, more offerings and more market makers qualify for passive market making.

C. Rule 104

Rule 104 regulates stabilizing and other activities related to a distribution and replaces Rule 10b–7. The rule permits underwriters to follow the independent bid for a security in the principal market, wherever located. Certain disclosure and recordkeeping requirements are extended to the aftermarket transactions by distribution participants. Underwriters frequently engage in aftermarket activities, including covering syndicate short positions and establishing and enforcing penalty bids, that are analogous to traditional stabilizing under Rule 10b–7.

The Commission believes that Rule 104 generally concerns syndicate managers because of their role as stabilizing managers. For the most part, these syndicate managers are larger broker-dealers. To the extent small broker-dealers engage in stabilizing activities, Rule 104 applies to them with the same force as large broker-dealers.

In conjunction with Rule 104, the Commission is adopting amendments to Items 502(d) and 508 of Regulations S–K and S–B, and Rule 17a–2. These rules require revised disclosure and recordkeeping requirements on certain post-distribution activities of underwriters. Rule 104 and Item 502(d) of Regulations S–K and S–B require disclosure of stabilizing activities through a new, shorter stabilizing legend in place of the legend that had been required. In addition, Rule 104 and Item 508 of Regulations S–K and S–B expand the discussion in the plan of distribution section of the prospectus to include a "plain English" discussion of any expected stabilizing activities and other aftermarket activities and their potential effects on the marketplace with respect to the particular securities offering. Rule 17a–2 is amended to require the manager of an underwriting syndicate to maintain records related to syndicate covering transactions and penalty bids.

The Commission believes that the preponderance of the broker-dealers acting as distribution participants are not small broker-dealers, and that there is only a relatively small number of small broker-dealers that act as distribution participants. The Commission believes, however, that any effect on small entities will be minimal because the additional disclosure in the offering materials and notification to regulatory authorities is the responsibility of the managing underwriter who is unlikely to fall within the small entity classification because of capital requirements for underwriting. The same is true of the additional recordkeeping requirements of Rule 17a–2.

D. Rule 105

Rule 105 recodifies Rule 10b–21 governing short selling in connection with a public offering. To harmonize Rule 105 with the provisions of Rules 101 and 102, the period of Rule 105's coverage is shortened to the five business day period before pricing, rather than the time extending from the filing of offering materials to the time when sales may be made. Rule 105 is less restrictive than Rule 10b–21, and applies equally to all market participants.

VI. Paperwork Reduction Act

As set forth in the Proposing Release,[151] Rules 101, 102, 103, and 104 under Regulation M and the amendments to Rule 17a–2 and to Items 502(d) and 508 of Regulations S–B and S–K contain collections of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[152] Accordingly, the collection of information requirements contained in the rules and related amendments were submitted to the Office of Management and Budget ("OMB") for review and were approved by OMB which assigned the following control numbers: Rule 101, control number 3235–0464; Rule 102, control number 3235–0467; Rule 103, control number 3235–0466; Rule 104, control number 3235–0465; Amendments to Rule 17a–2, control number 3235–0201; Amendments to Items 502(d) and 508 of Regulation S–B, control number 3235–0418; and Amendments to Item 502(d) and 508 of Regulation S–K, control number 3235–0071. The collection of information requirements are in accordance with Section 3507 of the PRA.[153] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.

[151] 61 FR at 17127.
[152] 44 U.S.C. 3501 *et seq.*
[153] 44 U.S.C. 3507.

The collections of information under Regulation M and the related amendments are necessary for covered persons to obtain certain benefits or to comply with certain requirements. As described in more detail in the Proposing Release, the collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids.[154] The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) and Rule 17a–2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential. If the records required to be kept pursuant to these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by statutory and regulatory provisions.

Several commenters provided comments regarding the Commission's estimate of the burdens associated with the recordkeeping requirement under Rule 104 and the related amendment to Rule 17a–2. Rule 104(i) and Rule 17a–2(c) require underwriters to keep records of syndicate covering transactions and penalty bids, in addition to the stabilizing information required prior to these amendments. The NASD suggested that the Commission review its estimated time for recordkeeping for syndicate covering transactions and penalty bids.[155] While they did not challenge specific burden estimates, two other commenters noted generally that the change in recordkeeping requirements will be more burdensome than represented by the Commission.[156] The Securities Industry Association asserted that the amendments would require system changes and retraining for underwriters. None of these commenters, however, provided specific alternatives to the Commission's estimates.

After carefully considering these comments, and based upon further review of the disclosure, notification, and recordkeeping changes required by Rule 104(h) and the amendment to Rule 17a–2(c), the Commission is retaining its burden estimates for the recordkeeping obligation under Rule 104 and the amendment to Rule 17a–2. Thus, the descriptions and estimated burdens of the collection of information requirements under Regulation M have not changed, and are set forth in the Proposing Release.[157]

[154] *See* Proposing Release, 61 FR at 17127–30.

[155] NASD Comment Letter, *supra* note 31, at p. 9.

[156] Comment letter from the Securities Industry Association (July 16, 1996), at p. 13; Comment letter from J.P. Morgan Securities Inc., at p. 4.

[157] *See* Proposing Release, 61 FR at 17127–30.

VII. Statutory Basis and Text of Rules and Amendments

Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21 are removed pursuant to, and the amendments to Rule 17a–2 are adopted under, the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 10(a), 10(b), 13(e), 15(c), 17(a), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78m(e), 78o(c), 78q(a), and 78w(a). The amendments to Items 502(d) and 508 of Regulations S–B and S–K are adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 6, 7, 8, 10, and 19(a), 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 3, 4, 10, 12, 13, 14, 15, 16, and 23, 15 U.S.C. 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78p, and 78w; and the Investment Company Act, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 8 and 38(a), 15 U.S.C. 80a–8 and 80a–37(a). Regulation M is adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 7, 17(a), 19(a), 15 U.S.C. 77g, 77q(a), and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78w(a), and 78dd–1; and the Investment Company Act, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 23, 30, and 38, 15 U.S.C. 80a–23, 80a–29, and 80a–37. The necessary nomenclature amendments to Sections 200.30–3, 230.418, 230.461, 240.11a–1, 240.13e–4, 240.13e–102, and 240.14d–102 of this chapter, reflecting the removal of Rules 10b–6, 10b–6A, 10b–7, and 10b–8 under the Exchange Act and the adoption of Regulation M, are adopted pursuant to the authority cited above with respect to those amendments.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Sunshine Act.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Broker-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Broker-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by revising paragraph (a)(6) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(6) Pursuant to Rules 10b–13(d), 14e–4(c), and 15c2–11(h) (§§ 240.10b–13(d), 240.14e–4(c), and 240.15c2–11(h) of this chapter), and Rules 101(d), 102(e), 104(j), and 105(c) of Regulation M (§§ 242.101(d), 242.102(e), 242.104(j), and 242.105(c) of this chapter), to grant requests for exemptions from Rules 10b–13, 14e–4, and 15c2–11) (§§ 240.10b–13, 240.14e–4, and 240.15c2–11 of this chapter), and Rules 101, 102, 104, and 105 of Regulation M (§§ 242.101, 242.102, 242.104, and 242.105 of this chapter).

* * * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. Section 228.502 is amended by revising the introductory text of paragraph (d)(1) and paragraph (d)(1)(i) to read as set forth below and by removing the phrase "RULE 10b–6A UNDER THE SECURITIES EXCHANGE

ACT OF 1934" from paragraph (d)(2) and adding, in its place, the phrase "RULE 103 OF REGULATION M".

§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(d)(1) *Stabilizing and other transactions.* (i) Include the following statement, if true, subject to appropriate modification where circumstances require.

Certain persons participating in this offering may engage in transactions that stabilize, maintain, or otherwise affect the price of (identify securities), including (list types of transactions). For a description of these activities, see "Plan of Distribution."

* * * * *

5. Section 228.508 is amended by removing the phrase "§ 240.10b–6A of this chapter" from paragraph (i) and adding, in its place, the phrase "Rule 103 of Regulation M (§ 242.103 of this chapter)" and by adding paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of distribution.

* * * * *

(j) *Stabilizing and other transactions.* If the underwriter or any selling group member intends to engage in stabilizing, syndicate short covering transactions, penalty bids, or any other transaction during the offering that may stabilize, maintain, or otherwise affect the offered security's price, indicate such intention and briefly describe such transaction(s).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

6. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

7. Section 229.502 is amended by revising the introductory text of paragraph (d)(1) and paragraph (d)(1)(i) to read as set forth below and by removing the phrases "§ 240.10b–6A of this chapter" and "RULE 10b–6A UNDER THE SECURITIES EXCHANGE ACT OF 1934" from paragraph (d)(2) and adding, in their places, the phrases "§ 242.103 of this chapter" and "RULE 103 OF REGULATION M", respectively.

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(d)(1) *Stabilizing and other transactions.* (i) Include the following statement, if true, subject to appropriate modification where circumstances require.

Certain persons participating in this offering may engage in transactions that stabilize, maintain, or otherwise affect the price of (identify securities), including (list types of transactions). For a description of these activities, see "Plan of Distribution."

* * * * *

8. Section 229.508 is amended by removing the phrase "§ 240.10b–6A of this chapter" from paragraph (k) and adding, in its place, the phrase "Rule 103 of Regulation M (§ 242.103 of this chapter)" and by adding paragraph (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(l) *Stabilizing and other transactions.* If the underwriter or any selling group member intends to engage in stabilizing, syndicate short covering transactions, penalty bids, or any other transaction during the offering that may stabilize, maintain, or otherwise affect the security's price, indicate such intention and briefly describe such transaction(s).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

9. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.418 [Amended]

10. Section 230.418 is amended by removing the phrase "*offering at the market*, as defined in Rule 10b–7 under the Securities Exchange Act of 1934 (17 CFR 240.10b–7)" from paragraph (a)(4) and adding, in its place, the phrase "*at-the-market offering*, as defined in § 242.100 of this chapter".

§ 230.461 [Amended]

11. Section 230.461 is amended by removing the phrase "Rules 10b–2, 10b–6, and 10b–7 under the Securities Exchange Act of 1934 (§§ 240.10b–6 and 10b–7 of this chapter)" from paragraph (b)(7) and adding, in its place, the phrase "Regulation M (§§ 242.100 through 242.105 of this chapter)".

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for part 240 is amended by removing the subauthorities for "Section 240.10b–6" and "Section 240.10b–21" and the general authority continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.10a–1 [Amended]

13. Section 240.10a–1 is amended by removing the cite "§ 240.10b–7" from the introductory text of paragraph (e)(5) and paragraphs (e)(6) and (e)(11), and adding, in its place, the phrase "§ 242.104 of this chapter" and by removing the phrase "pursuant to § 240.10–8" from paragraph (e)(10).

§ 240.10b–6 [Removed and Reserved]

14. Section 240.10b–6 is removed and reserved.

§ 240.10b–6A [Removed]

15. Section 240.10b–6A is removed.

§§ 240.10b–7and 240.10b–8 [Removed and Reserved]

16. Sections 240.10b–7 and 240.10b–8 are removed and reserved.

17. Section 240.10b–18 is amended by redesignating paragraphs (a)(3)(i) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(vii), and by adding paragraph (a)(3)(i) and revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

(a) * * *

(3) * * *

(i) Effected during the restricted period specified in § 242.102 of this chapter during a distribution (as defined in § 242.100 of this chapter) of such common stock, or during a distribution for which such common stock is a reference security, by the issuer or any of its affiliated purchasers;

* * * * *

(5) The term *plan* has the meaning contained in § 242.100 of this chapter;

(6) The term *agent independent of the issuer* has the meaning contained in § 242.100 of this chapter;

* * * * *

§ 240.10b–21 [Removed and Reserved]

17. Section 240.10b–21 is removed and reserved.

§ 240.11a–1 [Amended]

18. Section 240.11a–1 is amended by removing the phrase "§ 240.10b–7 (Rule 10b–7)" from paragraph (b)(3) and adding, in its place, the phrase "§ 242.104 of this chapter".

§ 240.13e–4 [Amended]

19. Section 240.13e–4 is amended by removing the phrase "an issuer's plan as that term is defined in Rule 10b–6(c)(4) under the Act [§ 240.10b–6(c)(4)]" from paragraph (h)(5)(i) and adding, in its place, the phrase "a plan as that term is defined in § 242.100 of this chapter".

20. Section 240.13e–102 is amended by revising General Instruction III.C. to Schedule 13E–4F to read as follows:

§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

* * * * *

General Instructions

* * * * *

III. Compliance With the Exchange Act

* * * * *

C. The issuer's attention is directed to Regulation M (§§ 242.100 through 242.105 of this chapter), in the case of an issuer exchange offer, and to Rule 10b–13 under the Exchange Act (§ 240.10b–13), in the case of an issuer cash tender offer or issuer exchange offer. [*See* Exchange Act Release No. 29355 (June 21, 1991) containing an exemption from Rule 10b–13.]

* * * * *

21. Section 240.14d–102 is amended by revising General Instruction III.C. to Schedule 14D–1F to read as follows:

§ 240.14d–102 Schedule 14D–1F. Tender offer statement pursuant to Rule 14d–1(b) under the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

III. Compliance With the Exchange Act

* * * * *

C. The bidder's attention is directed to Regulation M (§§ 242.100 through 242.105 of this chapter) in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act (§ 240.10b–13) for any exchange or cash tender offer. [*See* Exchange Act Release No. 29355 (June 21, 1991) containing an exemption from Rule 10b–13.].

* * * * *

22. Section 240.17a–2 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraph (b)(1), the introductory text of paragraph (c), and paragraphs (c)(1) and (d) to read as follows:

§ 240.17a–2 Recordkeeping requirements relating to stabilizing activities.

(a) *Scope of section.* This section shall apply to any person who effects any purchase of a security subject to § 242.104 of this chapter for the purpose of, or who participates in a syndicate or group that engages in, "stabilizing," as defined in § 242.100 of this chapter, the price of any security; or effects a purchase that is a "syndicate covering transaction," as defined in § 242.100 of this chapter; or imposes a "penalty bid," as defined in § 242.100 of this chapter:

(1) With respect to which a registration statement has been, or is to be, filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(2) Which is being, or is to be, offered pursuant to an exemption from registration under Regulation A (§§ 230.251 through 230.263 of this chapter) adopted under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Which is being, or is to be, otherwise offered, if the aggregate offering price of the securities being offered exceeds $5,000,000.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) The term *manager* shall mean the person stabilizing or effecting syndicate covering transactions or imposing a penalty bid for its sole account or for the account of a syndicate or group in which it is a participant, and who, by contract or otherwise, deals with the issuer, organizes the selling effort, receives some benefit from the underwriting that is not shared by other underwriters, or represents any other underwriters in such matters as maintaining the records of the distribution and arranging for allotments of the securities offered.

* * * * *

(c) *Records relating to stabilizing, syndicate covering transactions, and penalty bids required to be maintained by manager.* Any person subject to this section who acts as a manager and stabilizes or effects syndicate covering transactions or imposes a penalty bid shall:

(1) Promptly record and maintain the following separately retrievable information, for a period of not less than three years, the first two years in an easily accessible place; *Provided, however,* That if the information is in a record required to be made pursuant to § 240.17a–3 or § 240.17a–4, or otherwise preserved, such information need not be maintained in a separate file if the person can sort promptly and retrieve the information as if it had been kept in a separate file as a record made pursuant to, and preserves the information in accordance with the time periods specified in, this paragraph (c)(1):

(i) The name and class of any security stabilized or any security in which syndicate covering transactions have been effected or a penalty bid has been imposed;

(ii) The price, date, and time at which each stabilizing purchase or syndicate covering transaction was effected by the manager or by any participant in the syndicate or group, and whether any penalties were assessed;

(iii) The names and the addresses of the members of the syndicate or group;

(iv) Their respective commitments, or, in the case of a standby or contingent underwriting, the percentage participation of each member of the syndicate or group therein; and

(v) The dates when any penalty bid was in effect.

* * * * *

(d) *Notification to manager.* Any person who has a participation in a syndicate account but who is not a manager of such account, and who effects one or more stabilizing purchases or syndicate covering transactions for its sole account or for the account of a syndicate or group, shall within three business days following such purchase notify the manager of the price, date, and time at which such stabilizing purchase or syndicate covering transaction was effected, and shall in addition notify the manager of the date and time when such stabilizing purchase or syndicate covering transaction was terminated. The manager shall maintain such notifications in a separate file, together with the information required by paragraph (c)(1) of this section, for a period of not less than three years, the first two years in an easily accessible place.

23. Part 242 is added to read as follows:

PART 242—REGULATION M

Sec.

242.100 Preliminary note; definitions.
242.101 Activities by distribution participants.
242.102 Activities by issuers and selling security holders during a distribution.
242.103 Nasdaq passive market making.
242.104 Stabilizing and other activities in connection with an offering.
242.105 Short selling in connection with a public offering.

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

§ 242.100 Preliminary note; definitions.

(a) *Preliminary note:* Any transaction or series of transactions, whether or not effected pursuant to the provisions of Regulation M (§§ 242.100–242.105 of this chapter), remain subject to the antifraud and antimanipulation provisions of the securities laws, including, without limitation, Section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)] and Sections 9, 10(b), and 15(c) of the Securities Exchange Act of 1934 [15 U.S.C. 78i, 78j(b), and 78o(c)].

(b) For purposes of regulation M (§§ 242.100 through 242.105 of this chapter) the following definitions shall apply:

ADTV means the worldwide average daily trading volume during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price.

Affiliated purchaser means:

(1) A person acting, directly or indirectly, in concert with a distribution participant, issuer, or selling security holder in connection with the acquisition or distribution of any covered security; or

(2) An affiliate, which may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder, that, directly or indirectly, controls the purchases of any covered security by a distribution participant, issuer, or selling security holder, whose purchases are controlled by any such person, or whose purchases are under common control with any such person; or

(3) An affiliate, which may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder, that regularly purchases securities for its own account or for the account of others, or that recommends or exercises investment discretion with respect to the purchase or sale of securities; *Provided, however,* That this paragraph (3) shall not apply to such affiliate if the following conditions are satisfied:

(i) The distribution participant, issuer, or selling security holder:

(A) Maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of §§ 242.101, 242.102, and 242.104; and

(B) Obtains an annual, independent assessment of the operation of such policies and procedures; and

(ii) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the distribution participant, issuer, or selling security holder that direct, effect, or recommend transactions in securities; and

(iii) The affiliate does not, during the applicable restricted period, act as a market maker (other than as a specialist in compliance with the rules of a national securities exchange), or engage, as a broker or a dealer, in solicited transactions or proprietary trading, in covered securities.

Agent independent of the issuer means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if:

(1) The agent is not an affiliate of the issuer; and

(2) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the prices or amounts of the securities to be purchased, the timing of, or the manner in which, the securities are to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the basis for determining the amount of its contributions to a plan or the basis for determining the frequency of its allocations to a plan, or any formula specified in a plan that determines the amount or timing of securities to be purchased by the agent.

Asset-backed security has the meaning contained in General Instruction I.B.5. to Form S–3 (§ 239.13 of this chapter).

At-the-market offering means an offering of securities at other than a fixed price.

Business day means a 24 hour period beginning at midnight that includes an entire trading session for the security in the principal market for the security to be distributed.

Completion of participation in a distribution. Securities acquired in the distribution for investment by any person participating in a distribution, or any affiliated purchaser of such person, shall be deemed to be distributed. A person shall be deemed to have completed its participation in a distribution as follows:

(1) An issuer or selling security holder, when the distribution is completed;

(2) An underwriter, when such person's participation has been distributed, including all other securities of the same class that are acquired in connection with the distribution, and any stabilization arrangements and trading restrictions in connection with the distribution have been terminated; *Provided, however,* That an underwriter's participation will not be deemed to have been completed if a syndicate overallotment option is exercised in an amount that exceeds the net syndicate short position at the time of such exercise; and

(3) Any other person participating in the distribution, when such person's participation has been distributed.

Covered security means any security that is the subject of a distribution, or any reference security.

Current exchange rate means the current rate of exchange between two currencies, which is obtained from at least one independent entity that provides or disseminates foreign exchange quotations in the ordinary course of its business.

Distribution means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

Distribution participant means an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution.

Electronic communications network has the meaning contained in § 240.11Ac1–1(a)(8) of this chapter.

Employee has the meaning contained in Form S–8 (§ 239.16b of this chapter) relating to employee benefit plans.

Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Independent bid means a bid by a person who is not a distribution participant, issuer, selling security holder, or affiliated purchaser.

NASD means the National Association of Securities Dealers, Inc. or any of its subsidiaries.

Nasdaq means the Nasdaq system as defined in § 240.11Ac1–2(a)(3) of this chapter.

Nasdaq security means a security that is authorized for quotation on Nasdaq, and such authorization is not suspended, terminated, or prohibited.

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Net purchases means the amount by which a passive market maker's purchases exceed its sales.

Offering price means the price at which the security is to be or is being distributed.

Passive market maker means a market maker that effects bids or purchases in accordance with the provisions of § 242.103.

Penalty bid means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

Plan means any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, stock appreciation, dividend reinvestment, or similar plan; or any dividend or interest reinvestment plan or employee benefit plan as defined in § 230.405 of this chapter.

Principal market means the single securities market with the largest aggregate reported trading volume for the class of securities during the 12 full calendar months immediately preceding the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, during the 12 full calendar months immediately preceding the determination of the offering price. For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share. For purposes of this paragraph, depositary share means a security, evidenced by a depositary receipt, that represents another security, or a multiple or fraction thereof, deposited with a depositary.

Prospective underwriter means a person:

(1) Who has submitted a bid to the issuer or selling security holder, and who knows or is reasonably certain that such bid will be accepted, whether or not the terms and conditions of the underwriting have been agreed upon; or

(2) Who has reached, or is reasonably certain to reach, an understanding with the issuer or selling security holder, or managing underwriter that such person will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon.

Public float value shall be determined in the manner set forth on the front page of Form 10–K (§ 249.310 of this chapter), even if the issuer of such securities is not required to file Form 10–K, relating to the aggregate market value of common equity securities held by non-affiliates of the issuer.

Reference period means the two full calendar months immediately preceding the filing of the registration statement or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, the two full calendar months immediately preceding the determination of the offering price.

Reference security means a security into which a security that is the subject of a distribution ("subject security") may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security.

Restricted period means:

(1) For any security with an ADTV value of $100,000 or more of an issuer whose common equity securities have a public float value of $25 million or more, the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution; and

(2) For all other securities, the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution.

(3) In the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution.

Securities Act means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

Selling security holder means any person on whose behalf a distribution is made, other than an issuer.

Stabilize or stabilizing means the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security.

Syndicate covering transaction means the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a short position created in connection with the offering.

30% ADTV limitation means 30 percent of the market maker's ADTV in a covered security during the reference period, as obtained from the NASD.

Underwriter means a person who has agreed with an issuer or selling security holder:

(1) To purchase securities for distribution; or

(2) To distribute securities for or on behalf of such issuer or selling security holder; or

(3) To manage or supervise a distribution of securities for or on behalf of such issuer or selling security holder.

§ 242.101 Activities by distribution participants.

(a) *Unlawful Activity.* In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; *Provided, however,* That if a distribution participant or affiliated purchaser is the issuer or selling security holder of the securities subject to the distribution, such person shall be subject to the provisions of § 242.102, rather than this section.

(b) Excepted Activity. The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Research.* The publication or dissemination of any information, opinion, or recommendation, if the conditions of §§ 230.138 or 230.139 of this chapter are met; or

(2) *Transactions complying with certain other sections.* Transactions complying with §§ 242.103 or 242.104; or

(3) *Odd-lot transactions.* Transactions in odd-lots; or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to § 240.13e–4(h)(5) of this chapter; or

(4) *Exercises of securities.* The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Unsolicited transactions.* Unsolicited brokerage transactions; or unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(6) *Basket transactions.* (i) Bids or purchases, in the ordinary course of business, in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased; or

(ii) Adjustments to such a basket in the ordinary course of business as a result of a change in the composition of a standardized index; or

(7) *De minimis transactions.* Purchases during the restricted period, other than by a passive market maker, that total less than 2% of the ADTV of the security being purchased, or unaccepted bids; *Provided, however,* That the person making such bid or purchase has maintained and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of this section; or

(8) *Transactions in connection with a distribution.* Transactions among distribution participants in connection with a distribution, and purchases of securities from an issuer or selling security holder in connection with a distribution, that are not effected on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(9) *Offers to sell or the solicitation of offers to buy.* Offers to sell or the solicitation of offers to buy the securities being distributed (including securities acquired in stabilizing), or securities offered as principal by the person making such offer or solicitation; or

(10) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be "U.S. persons" for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(10)(i) of this section.

(c) *Excepted Securities.* The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded securities.* Securities that have an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million; *Provided, however,* That such securities are not issued by the distribution participant or an affiliate of the distribution participant; or

(2) *Investment grade nonconvertible and asset-backed securities.* Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, that are rated by at least one nationally recognized statistical rating organization, as that term is used in § 240.15c3–1 of this chapter, in one of its generic rating categories that signifies investment grade; or

(3) *Exempted securities.* "Exempted securities" as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (c)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) shall have the meanings specified in such Act.

(d) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

§ 242.102 Activities by issuers and selling security holders during a distribution.

(a) *Unlawful Activity.* In connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; *Except That* if an affiliated purchaser is a distribution participant, such affiliated purchaser may comply with § 242.101, rather than this section.

(b) *Excepted Activity.* The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Odd-lot transactions.* Transactions in odd-lots, or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to § 240.13e–4(h)(5) of this chapter; or

(2) *Transactions by closed-end investment companies.* (i) Transactions complying with § 270.23c–3 of this chapter; or

(ii) Periodic tender offers of securities, at net asset value, conducted pursuant to § 240.13e–4 of this chapter by a closed-end investment company that engages in a continuous offering of its securities pursuant to § 230.415 of this chapter; *Provided, however,* That such securities are not traded on a securities exchange or through an inter-dealer quotation system or electronic communications network; or

(3) *Redemptions by commodity pools or limited partnerships.* Redemptions by commodity pools or limited partnerships, at a price based on net asset value, which are effected in accordance with the terms and conditions of the instruments governing the securities; *Provided, however,* That such securities are not traded on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(4) *Exercises of securities.* The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Offers to sell or the solicitation of offers to buy.* Offers to sell or the solicitation of offers to buy the securities being distributed; or

(6) *Unsolicited purchases.* Unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(7) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be "U.S. persons" for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(6)(i) of this section.

(c) *Plans.*—(1) Paragraph (a) of this section shall not apply to distributions of securities pursuant to a plan, which are made:

(i) Solely to employees or security holders of an issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons; or

(ii) To persons other than employees or security holders, if bids for or purchases of securities pursuant to the plan are effected solely by an agent independent of the issuer and the securities are from a source other than

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the issuer or an affiliated purchaser of the issuer.

(2) Bids for or purchases of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer.

(d) *Excepted Securities.* The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded reference securities.* Reference securities with an ADTV value of at least $1 million that are issued by an issuer whose common equity securities have a public float value of at least $150 million; *Provided, however,* That such securities are not issued by the issuer, or any affiliate of the issuer, of the security in distribution.

(2) *Investment grade nonconvertible and asset-backed securities.* Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, that are rated by at least one nationally recognized statistical rating organization, as that term is used in § 240.15c3–1 of this chapter, in one of its generic rating categories that signifies investment grade; or

(3) *Exempted securities.* "Exempted securities" as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (d)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) shall have the meanings specified in such Act.

(e) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

§ 242.103 Nasdaq passive market making.

(a) *Scope of Section.* This section permits broker-dealers to engage in market making transactions in covered securities that are Nasdaq securities without violating the provisions of § 242.101; *Except That* this section shall not apply to any security for which a stabilizing bid subject to § 242.104 is in effect, or during any at-the-market offering or best efforts offering.

(b) *Conditions to be Met.*

(1) *General limitations.* A passive market maker must effect all transactions in the capacity of a registered market maker on Nasdaq. A passive market maker shall not bid for or purchase a covered security at a price that exceeds the highest independent bid for the covered security at the time of the transaction, except as permitted by paragraph (b)(3) of this section or required by a rule promulgated by the Commission or the NASD governing the handling of customer orders.

(2) *Purchase limitation.* On each day of the restricted period, a passive market maker's net purchases shall not exceed the greater of its 30% ADTV limitation or 200 shares (together, "purchase limitation"); *Provided, however,* That a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in its purchase limitation being equalled or exceeded. If a passive market maker's net purchases equal or exceed its purchase limitation, it shall withdraw promptly its quotations from Nasdaq. If a passive market maker withdraws its quotations pursuant to this paragraph, it may not effect any bid or purchase in the covered security for the remainder of that day, irrespective of any later sales during that day, unless otherwise permitted by § 242.101.

(3) *Requirement to lower the bid.* If all independent bids for a covered security are reduced to a price below the passive market maker's bid, the passive market maker must lower its bid promptly to a level not higher than the then highest independent bid; *Provided, however,* That a passive market maker may continue to bid and effect purchases at its bid at a price exceeding the then highest independent bid until the passive market maker purchases an aggregate amount of the covered security that equals or, through the purchase of all securities that are part of a single order, exceeds the lesser of two times the minimum quotation size for the security, as determined by NASD rules, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of this section.

(4) *Limitation on displayed size.* At all times, the passive market maker's displayed bid size may not exceed the lesser of the minimum quotation size for the covered security, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of this section; *Provided, however,* That a passive market maker whose purchasing capacity at any time is between one and 99 shares may display a bid size of 100 shares.

(5) *Identification of a passive market making bid.* The bid displayed by a passive market maker shall be designated as such.

(6) *Notification and reporting to the NASD.* A passive market maker shall notify the NASD in advance of its intention to engage in passive market making, and shall submit to the NASD information regarding passive market making purchases, in such form as the NASD shall prescribe.

(7) *Prospectus disclosure.* The prospectus for any registered offering in which any passive market maker intends to effect transactions in any covered security shall contain the information required in §§ 228.502, 228.508, 229.502, and 229.508 of this chapter.

(c) *Transactions at Prices Resulting from Unlawful Activity.* No transaction shall be made at a price that the passive market maker knows or has reason to know is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder.

§ 242.104 Stabilizing and other activities in connection with an offering.

(a) *Unlawful Activity.* It shall be unlawful for any person, directly or indirectly, to stabilize, to effect any syndicate covering transaction, or to impose a penalty bid, in connection with an offering of any security, in contravention of the provisions of this section. No stabilizing shall be effected at a price that the person stabilizing knows or has reason to know is in contravention of this section, or is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder.

(b) *Purpose.* Stabilizing is prohibited except for the purpose of preventing or retarding a decline in the market price of a security.

(c) *Priority.* To the extent permitted or required by the market where stabilizing occurs, any person stabilizing shall grant priority to any independent bid at the same price irrespective of the size of such independent bid at the time that it is entered.

(d) *Control of Stabilizing.* No sole distributor or syndicate or group stabilizing the price of a security or any member or members of such syndicate or group shall maintain more than one stabilizing bid in any one market at the same price at the same time.

(e) *At-the-Market Offerings.* Stabilizing is prohibited in an at-the-market offering.

(f) *Stabilizing Levels.—(1) Maximum stabilizing bid.* Notwithstanding the

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other provisions of this paragraph (f), no stabilizing shall be made at a price higher than the lower of the offering price or the stabilizing bid for the security in the principal market (or, if the principal market is closed, the stabilizing bid in the principal market at its previous close).

(2) *Initiating stabilizing.*—

(i) *Initiating stabilizing when the principal market is open.* After the opening of quotations for the security in the principal market, stabilizing may be initiated in any market at a price no higher than the last independent transaction price for the security in the principal market if the security has traded in the principal market on the day stabilizing is initiated or on the preceding business day and the current asked price in the principal market is equal to or greater than the last independent transaction price. If both conditions of the preceding sentence are not satisfied, stabilizing may be initiated in any market after the opening of quotations in the principal market at a price no higher than the highest current independent bid for the security in the principal market.

(ii) *Initiating stabilizing when the principal market is closed.*

(A) When the principal market for the security is closed, but immediately before the opening of quotations for the security in the market where stabilizing will be initiated, stabilizing may be initiated at a price no higher than the lower of:

(*1*) The price at which stabilizing could have been initiated in the principal market for the security at its previous close; or

(*2*) The most recent price at which an independent transaction in the security has been effected in any market since the close of the principal market, if the person stabilizing knows or has reason to know of such transaction.

(B) When the principal market for the security is closed, but after the opening of quotations in the market where stabilizing will be initiated, stabilizing may be initiated at a price no higher than the lower of:

(*1*) The price at which stabilization could have been initiated in the principal market for the security at its previous close; or

(*2*) The last independent transaction price for the security in that market if the security has traded in that market on the day stabilizing is initiated or on the last preceding business day and the current asked price in that market is equal to or greater than the last independent transaction price. If both conditions of the preceding sentence are not satisfied, under this paragraph (f)(2)(ii)(B)(*2*), stabilizing may be initiated at a price no higher than the highest current independent bid for the security in that market.

(iii) *Initiating stabilizing when there is no market for the security or before the offering price is determined.* If no *bona fide* market for the security being distributed exists at the time stabilizing is initiated, no stabilizing shall be initiated at a price in excess of the offering price. If stabilizing is initiated before the offering price is determined, then stabilizing may be continued after determination of the offering price at the price at which stabilizing then could be initiated.

(3) *Maintaining or carrying over a stabilizing bid.* A stabilizing bid initiated pursuant to paragraph (f)(2) of this section, which has not been discontinued, may be maintained, or carried over into another market, irrespective of changes in the independent bids or transaction prices for the security.

(4) *Increasing or reducing a stabilizing bid.* A stabilizing bid may be increased to a price no higher than the highest current independent bid for the security in the principal market if the principal market is open, or, if the principal market is closed, to a price no higher than the highest independent bid in the principal market at the previous close thereof. A stabilizing bid may be reduced, or carried over into another market at a reduced price, irrespective of changes in the independent bids or transaction prices for the security. If stabilizing is discontinued, it shall not be resumed at a price higher than the price at which stabilizing then could be initiated.

(5) *Initiating, maintaining, or adjusting a stabilizing bid to reflect the current exchange rate.* If a stabilizing bid is expressed in a currency other than the currency of the principal market for the security, such bid may be initiated, maintained, or adjusted to reflect the current exchange rate, consistent with the provisions of this section. If, in initiating, maintaining, or adjusting a stabilizing bid pursuant to this paragraph (f)(5), the bid would be at or below the midpoint between two trading differentials, such stabilizing bid shall be adjusted downward to the lower differential.

(6) *Adjustments to stabilizing bid.* If a security goes ex-dividend, ex-rights, or ex-distribution, the stabilizing bid shall be reduced by an amount equal to the value of the dividend, right, or distribution. If, in reducing a stabilizing bid pursuant to this paragraph (f)(6), the bid would be at or below the midpoint between two trading differentials, such stabilizing bid shall be adjusted downward to the lower differential.

(7) *Stabilizing of components.* When two or more securities are being offered as a unit, the component securities shall not be stabilized at prices the sum of which exceeds the then permissible stabilizing price for the unit.

(8) *Special prices.* Any stabilizing price that otherwise meets the requirements of this section need not be adjusted to reflect special prices available to any group or class of persons (including employees or holders of warrants or rights).

(g) Offerings with no U.S. Stabilizing Activities—

(1) Stabilizing to facilitate an offering of a security in the United States shall not be deemed to be in violation of this section if all of the following conditions are satisfied:

(i) No stabilizing is made in the United States;

(ii) Stabilizing outside the United States is made in a jurisdiction with statutory or regulatory provisions governing stabilizing that are comparable to the provisions of this section; and

(iii) No stabilizing is made at a price above the offering price in the United States, except as permitted by paragraph (f)(5) of this section.

(2) For purposes of this paragraph (g), the Commission by rule, regulation, or order may determine whether a foreign statute or regulation is comparable to this section considering, among other things, whether such foreign statute or regulation: specifies appropriate purposes for which stabilizing is permitted; provides for disclosure and control of stabilizing activities; places limitations on stabilizing levels; requires appropriate recordkeeping; provides other protections comparable to the provisions of this section; and whether procedures exist to enable the Commission to obtain information concerning any foreign stabilizing transactions.

(h) Disclosure and Notification—(1) Any person displaying or transmitting a bid that such person knows is for the purpose of stabilizing shall provide prior notice to the market on which such stabilizing will be effected, and shall disclose its purpose to the person with whom the bid is entered.

(2) Any person effecting a syndicate covering transaction or imposing a penalty bid shall provide prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected or the penalty bid is imposed.

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(3) Any person subject to this section who sells to, or purchases for the account of, any person any security where the price of such security may be or has been stabilized, shall send to the purchaser at or before the completion of the transaction, a prospectus, offering circular, confirmation, or other document containing a statement similar to that comprising the statement provided for in Item 502(d) of Regulation S–B (§ 228.502(d) of this chapter) or Item 502(d) of Regulation S–K (§ 229.502(d) of this chapter).

(i) *Recordkeeping Requirements.* A person subject to this section shall keep the information and make the notification required by § 240.17a–2 of this chapter.

(j) *Excepted Securities.* The provisions of this section shall not apply to:

(1) *Exempted Securities.* "Exempted securities," as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(2) *Transactions of Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in a transaction exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be "U.S. persons" for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (j)(1) of this section.

(k) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

§ 242.105 Short selling in connection with a public offering.

(a) *Unlawful Activity.* In connection with an offering of securities for cash pursuant to a registration statement or a notification on Form 1–A (§ 239.90 of this chapter) filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the shorter of:

(1) The period beginning five business days before the pricing of the offered securities and ending with such pricing; or

(2) The period beginning with the initial filing of such registration statement or notification on Form 1–A and ending with the pricing.

(b) *Excepted Offerings.* This section shall not apply to offerings filed under § 230.415 of this chapter or to offerings that are not conducted on a firm commitment basis.

(c) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities. By the Commission.

Jonathan G. Katz,
Secretary.

Dated: December 20, 1996

By: Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–1 Filed 1–2–97; 8:45 am]
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Federal Register

Friday
January 3, 1997

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 589

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 96N–0135]

RIN 0910–AA91

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations to provide that animal protein derived from ruminant and mink tissues is not generally recognized as safe (GRAS) for use in ruminant feed, and is a food additive subject to certain provisions of the Federal Food, Drug, and Cosmetic Act (the act). The proposed regulations would establish a flexible system of controls, designed to ensure that ruminant feed does not contain animal protein derived from ruminant and mink tissues in a manner that encourages innovation. FDA is also considering alternatives to this proposed ruminant-to-ruminant prohibition, and is requesting comment on the relative merits and disadvantages of the alternatives. FDA is proposing this action because the feeding to ruminants of protein derived from potentially transmissible spongiform encephalopathy (TSE)-infective tissues may cause TSE in animals. TSE's are progressively degenerative central nervous system (CNS) diseases of man and animal that are fatal. Epidemiologic evidence gathered in the United Kingdom (U.K.) suggests an association between an outbreak of a ruminant TSE, specifically bovine spongiform encephalopathy (BSE) and the feeding to cattle of protein derived from sheep infected with scrapie, another TSE. Also, scientists have postulated that there is an epidemiologic association between BSE and a form of human TSE, new variant Creutzfeldt-Jakob disease (nv-CJD) reported recently in England. BSE has not been diagnosed in the United States. However, this proposed rule is intended to prevent the establishment and amplification of BSE in cattle in the United States, and thereby minimize any risk which might be faced by animals and humans.

DATES: Written comments by February 18, 1997. FDA proposes that any final rule that may issue based on this proposal become effective 60 days after the date of its publication in the **Federal Register**.

Submit written comments on the collection of information requirements by February 18, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

Regarding Scientific and Industry Issues:
George A. (Bert) Mitchell, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1761.
Regarding Procedural and Regulatory Issues:
Richard E. Geyer, Center for Veterinary Medicine (HFV–201), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1761.

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I. Summary

A. Introduction

In the **Federal Register** of May 14, 1996 (61 FR 24253), FDA published an advance notice of proposed rulemaking (ANPRM) that solicited information and public comment on the issue of using protein derived from ruminants (cattle, sheep, goats, deer, and elk) in ruminant feed. The agency requested information and comment on a number of issues because it was assessing whether to prohibit the use of ruminant protein in ruminant feed. BSE has not been identified in the United States. The agency issued an ANPRM because of its concern about the possible adverse effect on animal and human health if TSE's were to be spread through animal feed. After reviewing the ANPRM comments and other sources of information, the agency is proposing to prohibit the use of ruminant and mink animal tissue in the feed of ruminants. Because TSE has been found in U.S. mink, the agency is also including mink tissue in the proposed prohibition. The agency is also considering alternatives to the proposed ruminant-to-ruminant prohibition, including the alternative of taking no action.

B. GRAS Status of Ruminant and Mink Tissues

The agency is proposing to declare that protein derived from tissue from ruminant animals and mink is not GRAS, by qualified experts, for use in ruminant feed and is therefore a "food additive" under the law. As a result, because neither a food additive regulation nor an exemption is in effect for ruminant and mink tissues intended for feeding to ruminants, such tissues would be deemed adulterated. Milk and gelatin proteins derived from ruminants, and blood from cattle are exempt from the proposed prohibition. The proposed rule does not apply to any nonprotein animal tissues such as tallow or other fats.

Expert opinion that the tissues are GRAS would need to be supported by scientific literature, and other sources of data and information, establishing that there is a reasonable certainty that the material is not harmful under the intended conditions of use. Expert opinion would need to address topics such as whether it is reasonably certain that BSE does not, or will not, occur in the United States; whether it is reasonably certain that the BSE agent will not be transmitted through animal feed, i.e., that the processed tissues are not infected by the agent, are deactivated by the rendering process or are not transmitted orally; and whether it is reasonably certain that the agent will not be transmitted to humans through consumption of ruminant products. "General recognition" cannot be based on an absence of studies that demonstrate that a substance is unsafe; there must be studies to establish that the substance is safe. Also, the burden of establishing that substance is GRAS is on the proponent of the substance. *See U.S.* v. *An Article of Food * * * Co Co Rico*, 752 F.2d 11 (1st Cir. 1985).

Although the ANPRM did not specifically ask for opinion on the GRAS issue, a number of comments from scientific organizations and individual scientists strongly suggest that the comments would support the view that ruminant and mink tissue is not GRAS when fed to ruminants. Some of these comments submitted data and information that would support such opinions. Only a few comments included statements by scientists, or scientific organizations, to the contrary. Similarly, the opinions stated by scientists who spoke during a 1996 symposium on TSE's would, in general, support the "nonGRAS" position. The symposium, "Tissue Distribution, Inactivation and Transmission of Transmissible Spongiform Encephalopathies," was cosponsored by FDA and USDA, and was held in Riverdale, MD, on May 13 and 14, 1996.

FDA has searched for but has not found sufficient literature or other sources of data and information that would, on balance, support expert opinion that ruminant and mink protein is GRAS as a ruminant feed additive. Previous comments on the agency's proposal to prohibit the feeding of specified sheep and goat offal (59 FR 44584, August 29, 1994) did not include either written GRAS opinions from qualified experts, or data and information that would support such opinions. The relevant data and information, and lack thereof, are discussed more fully in this section, and in section II. of this document. See Section III.A., of this document, for a further explanation of "GRAS" and "food additive."

C. The "No Action" Alternative

Even when, as in this case, FDA has taken steps leading to a tentative determination that a substance added to food is not GRAS, the agency is not required to issue a proposal declaring that the substance is not GRAS and is a food additive subject to section 409 of the act. Section 570.38 provides that the agency may take such an action. The agency considered the possibility of not issuing a proposal with regard to the feeding of ruminant and mink tissues to ruminants.

The fact that the data and information do not document an immediate threat to the U.S. public health supports this "no action" alternative. Moreover, certain of the available data and information can be used to support the view that the threat, if any, is minimal.

The evidence suggesting that there is no immediate threat is summarized as follows. First, BSE has not been detected in cattle in the United States despite an extensive surveillance effort that has been in place for several years. Restrictions on the importation of cattle, cattle products and feed ingredients from BSE-affected countries are in place to minimize the possibility of BSE entering into the United States. Surveillance, training of veterinary practitioners and diagnosticians, and other efforts are in place to detect any occurrence of BSE quickly, and to minimize its spread among the cattle population. No empirical scientific evidence is available to establish that BSE will occur from any of the possible sources, such as transmission from another U.S. species in which TSE's have been diagnosed; spontaneous occurrence in cattle; or importation of live animals or animal feed products carrying the BSE agent. For example, transmission between any two species is difficult to predict, based on available data, because of variability in species barriers (Ref. 1).

Second, even if BSE did develop in the United States there is no conclusive scientific evidence that the disease would be spread through animal feed, the product that provides FDA's jurisdictional nexis. Although there is strong epidemiological evidence that the feeding of processed tissue from sheep containing scrapie to cattle caused the widespread BSE infections in the United Kingdom, many experts believe that the chances that the United States will have a BSE outbreak, similar to the epidemic that took place in the United Kingdom, are low. For example, most of the industry practices and other conditions believed to have been associated with the BSE epidemic in the United Kingdom do not exist in the United States. Further, the U.K. epidemiological evidence of transfer from sheep to cattle has not been confirmed by direct scientific data. This has caused some to question the assumption that the BSE originated from scrapie (Ref. 1). Further, some

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experimental information suggests that the TSE's in general are not readily transferred by the oral route. Experimentally, the oral route has been suggested to be the least efficient means of transmission for TSE's (Ref. 1).

Third, the postulated connection between BSE and CJD has not been definitively established. Scientists have theorized an association between BSE and the recent appearance of nv–CJD in the United Kingdom. While the epidemiological association, both in time and geography, of these two diseases in the United Kingdom provides suggestive evidence of an association between the two, the available evidence does not establish causation. Although the BSE agent has been transmitted to laboratory animals, the species barrier between cattle and humans may be higher than between cattle and mice (Ref. 1). Epidemiological evidence linking BSE with classical CJD is even less supportive. Although CJD occurs in the United States, nv–CJD has not been reported in this country.

The FDA's conclusion that there is no immediate threat to the public health in the United States is supported by a statement from the World Health Organization (WHO) that the "risk, if any, of exposure to the BSE agent in countries other than the U.K. is considered lower than in the U.K." (Ref. 2). A number of comments to the ANPRM made a similar assertion, urging that FDA's regulatory decision be made on the basis of scientific information and contending that the available information did not support the contemplated action.

D. The Basis for the Agency's Proposed Action

1. General Discussion

Even though there is no immediate threat to the U.S. public health and some information that indicates that a threat, if any, is minimal, after careful consideration the agency has tentatively concluded that regulatory action is necessary to protect animal and human health. The agency has reached that tentative conclusion because there is a growing body of data and information that affirmatively raises public health concerns.

The data and information raise concern that BSE could occur in cattle in the United States; and that if BSE does appear in this country, the causative agent could be transmitted and amplified through the feeding of processed ruminant protein to cattle, and could result in an epidemic. The agency believes that the high cost, in animal and human lives and economics, that could result if this scenario should occur, justifies the preventive measure reflected by the proposed regulation. Although the agency expects some continued voluntary reduction in the feeding of ruminant and mink tissues to ruminants, the reduction is not expected to be extensive enough to obviate the need for mandatory-preventive measures.

Statements from several prominent public and animal health organizations support this proposal to regulate the feeding of ruminant tissues to ruminant animals. For example, the Centers for Disease Control and Prevention (CDC) has urged the agency to adopt a ruminant-to-ruminant feed prohibition (Ref. 3), and USDA has recommended the same action. Although WHO considers the risk in countries such as the United States to be minimal, that organization has nevertheless called on all countries to prohibit the use of ruminant tissues in ruminant feed (Ref. 2).

A number of comments to the ANPRM, including comments by several consumer groups, supported regulatory action by FDA. The Pharmaceutical Research and Manufacturers of America urged FDA to take all necessary steps to prevent an outbreak of BSE, and to prevent the potential spread of BSE should a case occur in the United States. One pharmaceutical firm emphasized the importance of acknowledging public perception, stating that a ruminant-to-ruminant prohibition would "significantly decrease the concern regarding this perceived risk." Another pharmaceutical firm characterized the risk as "small but real." A group of livestock producers, veterinary associations and scientific organizations cited the WHO recommendations to support their call for a voluntary ruminant-to-ruminant prohibition. The group stated that such a prohibition would "eliminate any risk, no matter how remote [and would] totally prevent BSE from ever occurring in the United States."

The agency is concerned about the public health issues raised but not resolved by the available scientific information. The fact that the causative agent or agents for TSE's have not been clearly identified, and their transmissibility has not been fully characterized, adds to the concern. However, certain information that is well documented supports the agency's decision as well. TSE's are 100-percent fatal diseases that have been diagnosed in humans and a number of animal species. The diseases are progressively degenerative CNS diseases that are characterized by a relatively short clinical course of neurological signs. TSE's have a prolonged incubation period, i.e., 2 to 8 years in animals, and scientific evidence supports the view that TSE's can be transmitted in the preclinical stage. There is no practical method to detect the presence of TSE's during the preclinical stage.

2. Analysis of Risk Factors

This section describes the evidence that supports the agency's tentative conclusion. The evidence relates to the risks that BSE could occur in cattle in the United States; that the BSE agent or other TSE agents could be amplified in the cattle population by the feeding of ruminant and mink tissues to cattle; and that the agent could potentially be transmitted to humans.

a. *The risk of BSE occurring in the United States.* BSE has not been diagnosed in the United States. FDA does not have evidence to support the theory that BSE already exists, undiagnosed, in this country. However, the agency does find plausible the arguments of the theory that BSE could develop in the United States from three possible sources: Transmission of TSE's from other susceptible species, spontaneous occurrence, and importation in live animals or animal products.

The evidence concerning transmission from other species is summarized as follows. TSE's other than BSE have been diagnosed in animals in the United States. These include scrapie in sheep and goats, transmissible mink encephalopathy (TME), and chronic wasting disease (CWD) in deer and elk. Feline spongiform encephalopathy (FSE) has been diagnosed in cats in other countries. In general, the TSE's have been shown to be naturally transmissible within species and are believed by some scientists to be naturally transmissible (as distinguished from experimentally transmissible), at least to a limited extent, between species. Consumption of meat and bone meal (the predominant animal tissue-containing product fed to animals) which was produced under conditions similar to the meat and bone meal which was implicated in the U.K. BSE epidemic, as well as the feeding of raw bovine tissue, also appeared to cause TSE in exotic cats and various zoo animals. This implies that the species barrier for BSE may be uncharacteristically low. (See e.g., Refs. 3 and 4). In addition to the epidemiological evidence relating to TSE transmission from sheep to cattle in the United Kingdom, there is limited experimental evidence of transmission

of the BSE agent from cattle to sheep. Many laboratory animal species have also been experimentally infected following the administration of tissues from animals with TSE disease.

There is some evidence to support the theory that BSE can occur spontaneously in cattle. The leading theory as to the causative agent, e.g., infectious protein or prion, inherently suggests that the BSE could occur spontaneously. Additional support arises from the fact that 85 percent of CJD cases are sporadic, and have no familial or identifiable link as to their cause. Recent surveillance information from Northern Ireland and Switzerland also supports the spontaneous theory. In these countries, BSE has occurred in cases in which no exposure to rendered protein can be found, and there is no evidence of BSE in the parental stock or herd mates of affected animals (Ref. 5).

As described more fully in section II.F.1.b. of this document, USDA–APHIS has implemented import restrictions on live animals and animal products from BSE-affected countries. As a result of the restrictions, the potential risk of BSE occurring in this country as a result of exposure from imported cattle and imported animal protein products appears to be small (Ref. 6). However, the risk from foreign sources of BSE introduction into the United States cannot be dismissed entirely because the USDA import restrictions are unlikely to be 100 percent effective even though no cases of BSE have been diagnosed to date in the United States. The USDA regulations are intended to reduce or control risk, not completely eliminate it. See e.g., 56 FR 63866, December 6, 1991.

b. *The risk of amplification in the cattle population.* Research has shown that various animal tissues can transmit BSE infectivity. There is also evidence supporting the view that the agent could be transmitted orally (e.g., through animal feed). Although some experimental evidence suggests that the TSE's in general are more readily transmitted by means other that the oral route, research also suggests that the BSE agent is more susceptible to oral transmission. In most cases (e.g., the U.K. epidemic) the natural route of exposure to TSE's including BSE is suspected to be oral. This belief is supported by the dramatic decline in BSE cases in the United Kingdom following implementation of the ruminant-to-ruminant feeding prohibition. In the United Kingdom, where more than 160,000 cases of BSE have been diagnosed, a 1988 ban on the feeding of ruminant-derived protein supplements to other ruminants was associated with a steady decrease in the disease incidence starting in 1993. The 5-year period between the initiation of the ruminant-to-ruminant ban and the decline in the incidence of BSE is consistent with the known incubation period in cattle of 2 to 8 years. Further, preliminary experimental data show that the BSE agent can be transmitted orally to cattle through feeding of material from an infected cow (Ref. 3). Thus, there is a chance that BSE could be spread in animal feed if it developed in the U.S. cattle population, whether spontaneously, from another species or by some other means.

The greatest risk factor for cattle may not be the single occurrence of a BSE case. Instead, the greatest risk may arise from the potential, given the prolonged incubation period, for unrecognized amplification of BSE in the cattle population, resulting in a potential for greater animal exposure. The possibility of risk from recycling ruminant tissues is enhanced by the fact that current rendering methods have not been shown, and are not expected, to completely deactivate the BSE agent, and that practical tests are not available for detecting either the BSE agent in rendered material or the presence of ruminant material in feed.

The preliminary experimental cow-to-cow TSE transmission data previously described occurred with as little as a single dose (one-time exposure) of 1 gram of brain material from the infected cow, indicating a low transmitting dose. This means, among other things, that FDA cannot determine the level of feed ingredients from animals tissues, if any, that is considered safe in ruminants.

c. *The risk of transmission of humans.* Finally, there exists the theoretical possibility of the transmission of a TSE in animals, such as BSE, to humans. CDC agrees that the link between BSE, and TSE's in humans, has not been fully demonstrated. Some of the ANPRM comments agreed. For example, one pharmaceutical firm stated that the evidence is not entirely conclusive. Nevertheless, a body of epidemiological and experimental evidence is developing to support the postulated association between BSE and nv–CJD. This and other scientific evidence developed more fully in section II leads the agency to propose for comment the prudent risk reduction regulatory action that is incorporated in the proposed rule.

E. Enforcement Provisions

The agency is issuing this proposed rule within the context of comprehensive government-wide efforts to minimize the risks previously described, and within the statutory authority provided to the agency. The proposed rule has two major components. First, the agency proposes to prohibit feeding animal materials derived from ruminant and mink tissues to ruminants, in the absence of a food additive regulation or investigational exemption. Thus, the prohibition would ensure that tissues which could contribute to a TSE epidemic by spreading the causative agent rapidly would not be allowed in ruminant feed.

The second component of the rule provides for a system of controls to ensure that the proposed rule would achieve its intended purpose. These provisions are necessary because limited controls are in place, or available, to prevent the spread of BSE through animal feed in the United States, should BSE occur. The proposed regulation places two general requirements on persons that manufacture, blend, process and distribute animal protein products, and feeds made from such products. The first requirement is to place cautionary labeling on the protein and feed products. The second is to provide FDA with access to sales and purchase invoices, for compliance purposes.

Firms that handle animal protein products from both ruminant and nonruminant sources, and that intend to keep the two kinds of products separate, would have certain additional requirements. These requirements would relate to the need for separate facilities or cleanout procedures; the need for standard operating procedures (SOP's); and in the case of renderers, their source of nonruminant material. Similar requirements would be placed on firms that handle animal feed containing animal protein products from both ruminant and nonruminant sources, and intend to keep the two kinds of feed separate. Requirements would be greater for the firms that intend to separate the animal protein products and feeds, because of the greater risk these operations would present for the possibility that ruminant protein might be fed, inadvertently, to ruminants.

However, the regulatory system would be flexible, allowing the regulated firms to innovate and choose the most cost-effective means of compliance. For example, some or all of the regulatory requirements previously described would not apply if any of the following innovations were developed and validated by FDA: Processing methods that deactivate the agent that causes BSE; test methods to detect the presence of the agent; or methods of marking or otherwise identifying the

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material that contains ruminant protein. Further, the agency will consider modifying or revoking any final rule that is published prohibiting the use of ruminant and mink tissues in ruminant feed, if scientific and technical advances permit even greater flexibility than that offered in the proposed regulation. Conversely, the diagnosis of one or more cases of BSE in the United States, or new scientific findings, could lead to stricter regulatory requirements.

F. Alternatives

The agency is soliciting comments on several alternative means of minimizing the risk of transmitting TSE's in ruminant feed, in addition to the proposed ruminant-to-ruminant prohibition. These alternatives include:

(1) A partial ruminant-to-ruminant prohibition which would exclude all ruminant and mink tissues from ruminant feed except those bovine tissues that have not been found to present a risk of transmitting spongiform encephalopathy. Possible exclusions include slaughter byproducts from cattle that have been inspected and passed in inspected slaughter facilities, except tissues that have been shown through experimental trials and bioassays to transmit spongiform encephalopathy. Examples of the latter might include the brain, eyes, spinal cord and distal ileum. The agency solicits comments on the scope of this alternative;

(2) A prohibition on the feeding of all mammalian tissues to ruminants;

(3) A prohibition on the feeding of rendered material from those animal species in which TSE's have been diagnosed in the United States (sheep, goats, mink, elk, and deer);

(4) A prohibition on the feeding of specified offal from adult sheep and goats as proposed in 1994;

(5) Other alternative approaches that meet the agency's regulatory objectives and that might be suggested in comments to the proposed rule. The agency may in any final rule issued adopt such alternative approaches. Such alternatives may be more or less stringent than this proposal or may be a combination of provisions from this proposal and other alternatives. For example, one such option might be a proposal to exclude from the scope of any regulation certain facilities that apply specified risk-reduction measures in addition to, or in place of, those included in the regulation FDA is proposing in this publication. Therefore, the agency specifically requests comments on other approaches that would achieve the agency's regulatory objectives. Any proposed alternative approaches should be explained in detail, and their justification should be well documented. To the extent possible, please include information on costs and benefits of the proposals; and

(6) The "no action" alternative as it relates to this proposed rule. Again, detailed explanation and well-documented justification should be presented.

The agency's views on the advantages and disadvantages of these options appears in section V of this document. The agency invites comments on the relative merits and disadvantages of all these alternative concepts.

FDA has estimated that the annualized costs of the proposal, comprised of both the direct compliance costs and various indirect gains and losses, would range from $21.4 to $48.2 million. The agency also estimated that the annualized costs could range from $45.0 to $56.5 million for the mammalian-to-ruminant option; from $28.5 to $37.3 million for the partial ruminant-to-ruminant option; and would total less than $10 million for each of the remaining options. On the other hand, if the agency chooses the "no action" option and a BSE epidemic occurs, the above costs could be expanded by a great magnitude.

Because the body of scientific research related to TSE's is growing rapidly, the agency will place in the Docket copies of relevant scientific literature published after the agency completes work on this proposal, and before the agency completes work on any final regulation. The agency will add to the Docket, as appropriate, a brief statement of its assessment of the significance of the literature, and will invite comments. However, substantive changes from the proposed rule would be made in accordance with the discussions in the preceding paragraphs and the Administrative Procedure Act.

II. Background

A. TSE's

1. Scrapie

Scrapie is a slowly progressive, transmissible disease of the CNS in sheep and goats. Scrapie is characterized by a prolonged incubation period averaging 2 years, followed by a clinical course of 2 to 6 months when the animal exhibits sensory and motor malfunction, hyperexcitability, and death. The agent presumably moves from infected to susceptible animals by direct or indirect contact and enters through the gastrointestinal tract. Consequently, its spread appears to be both vertical (mother to offspring in utero) (Ref. 7) and horizontal (direct contact) between sheep (Ref. 8). Early signs of scrapie include subtle changes in behavior or temperament which may be followed by scratching and rubbing against fixed objects. Other signs include loss of coordination, weight loss despite a good appetite, biting of feet and limbs, tremor around head and neck, and unusual walking habits (Ref. 9).

The scrapie agent is found in lymphatic tissue (spleen, thymus, tonsil, and lymph nodes) in sheep with preclinical infections; however, in clinically affected sheep, the agent is identified in the intestines, nervous tissues (brain and spinal cord), and lymphatic tissues as determined by experimental infectivity studies in a susceptible animal model (Ref. 8). The brain has been demonstrated to have the highest level of infectivity of all tissues (Ref. 10).

Scrapie is known to have existed in Britain, Ireland, France, and Germany for over 200 years. It has been observed in the United States and Canada for about 50 years. The first case of scrapie in the United States was diagnosed in Michigan in 1947. From 1947 through January 1993, approximately 653 flocks have been diagnosed with scrapie (Ref. 11). At the present time, there are 67 known scrapie-infected flocks (flocks with sheep diagnosed with scrapie), and there are 8 known scrapie-source flocks (flocks to which scrapie-infected sheep were traced) (Ref. 12). In the absence of an antemortem diagnostic test, it is not possible to establish with absolute certainty that a flock is free of scrapie. Moreover, lack of reporting, the long incubation period, and open range husbandry practices in the western United States make it difficult to detect classical clinical signs and completely monitor scrapie in the United States.

2. BSE

BSE is a transmissible, slowly progressive, degenerative disease of the CNS of adult cattle. This disease has a prolonged incubation period in cattle following oral exposure (2 to 8 years) and is always fatal. BSE is characterized by abnormalities of behavior, sensation, posture, and gait. These signs are similar to those seen in sheep that are infected with scrapie. BSE is associated with spongiform lesions in the gray matter neuropil of the brainstem and neuronal vacuolization (Ref. 13). The clinical signs usually begin with changes in animal behavior, and may include separation from the rest of the herd while at pasture, disorientation, or excessive licking of the nose or flanks (Ref. 14). The most common history given by the herdsman was nervousness

or altered behavior or temperament, weakness associated with pelvic limb ataxia, paresis, and loss of body weight (Ref. 15). In some animals there are few gross pathological changes at necropsy associated with BSE other than the loss of body weight. However, postmortem histopathology of BSE distinguish it from other neurological disorders (Refs. 16 and 17). Neither vertical nor horizontal transmission has been documented for BSE.

BSE was first recognized as a new cattle disease by researchers at the Central Veterinary Laboratory of the British Ministry of Agriculture, Fisheries, and Foods at Weybridge, England in November 1986. As of November 15, 1996, BSE had been diagnosed in Great Britain in more than 165,000 head of cattle from more than 31,000 herds. Cases have been confirmed in 59.2 percent of the dairy herds and 15.3 percent of the beef herds (Ref. 18). The BSE epidemic curve for Great Britain peaked in January 1993 and is decreasing steadily, concomitantly with changes in rendering and feeding practices. BSE has also been reported in native cattle of Northern Ireland, Guernsey, Jersey, Isle of Man, the Republic of Ireland, Switzerland, France, and Portugal. BSE has been confirmed in cattle exported from Great Britain to Oman, the Falkland Islands, Germany, Denmark, Canada, and Italy.

There have been no cases of BSE in cattle in the United States. There has been one case of BSE in a cow imported into Canada from Great Britain. That cow was destroyed, along with its herdmates and other nearby cattle considered by animal health authorities in Canada to have possibly been exposed to the cow with BSE (Ref. 19).

3. Other Animal TSE's

Other animals have TSE's with typical characteristics of long incubation, neurological degeneration, and a 100-percent death rate. These animals include: Mink, elk and deer, zoo ruminants, and exotic and domestic cats.

TME is a mink disease with clinical signs and brain lesions similar to those of sheep infected with scrapie. TME is a rare disease in the United States. Since the disease was first recognized in 1947, in Wisconsin, four additional outbreaks have occurred in the United States. The last outbreak occurred in 1985 and was limited to a single mink ranch in Wisconsin (Ref. 20).

CWD of deer and elk is characterized by emaciation, changes in behavior and excessive salivation, polydipsia, and polyuria. The clinical course is from several weeks to 8 months, and the disease is invariably fatal (Ref. 20). From 1967 to 1979, CWD was observed in 53 captive mule deer in Colorado and Wyoming. Clinical signs were seen in adult deer and included behavioral alterations, progressive weight loss and death in 2 weeks to 8 months. Consistent histopathologic change was limited to the CNS and characterized by widespread spongiform transformation of the neuropil. The disease is a specific, spontaneously occurring form of spongiform encephalopathy (Ref. 21). Topographic distribution and lesion severity were most similar to those of scrapie and BSE. The duration of the clinical disease did not significantly influence lesion distribution or severity in either species (Ref. 22).

Scrapie-like encephalopathies have been described in certain zoo ruminants, i.e., a nyala, an Arabian oryx, and a greater kudu. Clinical signs included ataxia and loss of coordination with a short, progressive clinical course. Histopathological examination of the brains revealed spongiform encephalopathy characteristic of that observed in scrapie and BSE (Refs. 23, 24, and 25). Strain typing of the agent suggests that all of the cases are directly related to BSE.

Seventy domestic cats in the United Kingdom have developed FSE, a spongiform encephalopathy that was never previously reported. The cats all had progressive, neurological disease involving locomotor disturbances, abnormal behavior and, in most cases, altered sensory responses. Histopathological examination of the central nervous system revealed changes pathognomonic of spongiform encephalopathy; this included widespread vacuolization of the gray matter neuropil and neuronal perikarya (Refs. 26 and 27). Infective tissue from several of these cases, when injected into mice, resulted in brain lesions with a distribution and morphology that is undistinguishable from the lesions produced by BSE infective tissue injected into mice.

4. TSE's of Humans

The TSE's of humans are divided into specific clinical types, which may appear similar histopathologically but are either transmitted differently or demonstrate different patterns of distribution and prevalence.

a. *CJD.* CJD was first described in 1920 and 1921 when it was known as "spastic pseudosclerosis" or "subacute spongiform encephalopathy" (Ref. 28). The illness exists throughout the world and is claimed to have a similar prevalence in each of the countries tested with an annual incidence of approximately one case per million of the population. Autopsies are sometimes not performed on persons who may have died of CJD and many older people dying of a dementing illness do not have autopsies performed. There is an increased incidence among Libyan Jews (26 cases per million) and spatial or temporal clusters in areas of Slovakia, Hungary, England, the United States, and Chile. The average age of a typical CJD victim is 56 years of age, and only a few cases involving persons between 4 and 29 years have been reported prior to 1993. Between 4 and 15 percent of cases have a familial connection with other cases. There is a slightly higher incidence of CJD in women compared to men. Clinical prodromal symptoms start with changes in sleeping and eating patterns, and often include confusion, inappropriate behavior, vague visual complaints and/or ataxia. Those symptoms progress over a few weeks to a clearly neurological syndrome. A rapid onset of neurological symptoms appears in 20 percent of cases, most commonly myoclonic jerks and dementia with loss of higher brain function and behavioral abnormalities. The disease progresses with continued deterioration in cerebral and cerebellar function, and the onset of seizures. Ninety percent of the cases end in death within 1 year of onset. Diagnosis is by clinical assessment of patients and by examination of electroencephalogram patterns. Post mortem diagnosis is currently carried out by histological examination of cerebral tissue under the light microscope, although this is not always reliable. Research techniques that have been used to demonstrate CJD (and other TSE's) include electron microscopic examination of brain tissue extracts for scrapie-associated fibrils (SAF), immuno-staining of the tissue for prion-protein (PrP) antigens, western blotting of extracted PrP antigens and the intracerebral injection of tissue suspensions into test animals.

In some patients, the source of CJD has been claimed to be an infection transferred from other patients with the condition. For example, in one case, cerebral electrodes that had been sterilized with alcohol and formalin vapor after use in a patient with CJD, were used in the brains of two young epileptic patients, both of whom contracted CJD after a short incubation. The transfer of CJD by corneal transplant in 1 patient, by cadaveric dura mater grafts in several patients and by pituitary-derived human growth hormone injections in over 80 patients has also been reported.

Only the medical procedures described previously have been conclusively linked to transmission. The transmission of the disease from animal sources has been suggested; see further discussion in section II.C. of this document.

b. *nv–CJD.* A previously undetected new variant of CJD (nv–CJD) was reported by British scientists at a meeting of international experts convened by WHO on April 2 and 3, 1996 (Ref. 29), and published 3 days later (Ref. 30).

The major evidence for the existence of nv–CJD is the recognition of a new neuropathologic profile and the unusually young ages of 10 U.K. patients. Although all the cases had evidence of the pathognomonic spongiform changes characteristic of classic CJD, and therefore were appropriately classified as a form of CJD, the clinical course of the disease was atypical of classic CJD. The most striking and consistent neuropathologic feature of nv–CJD was the formation of amyloid plaques surrounded by halos of spongiform change. Plaques were extensively distributed throughout the cerebrum and cerebellum. Many of these plaques resembled those in kuru and were visible when examined by routine staining methods.

The temporal cluster of cases of nv–CJD in young patients (three were teenagers, five were in their twenties, and two were in their thirties at onset of disease) is highly unusual. Five of the eight deceased patients died before 30 years of age. (The expected annual mortality rate for CJD in persons under 30 years of age is less than five per billion.) The characteristic clinical features of the nv–CJD cases were: (1) A psychiatric presentation, (2) onset of a progressive cerebellum syndrome with ataxia within weeks or months of the initial presentation, (3) memory impairment with dementia in the late stages, (4) myoclonus, and (5) the absence of electroencephalographic changes typical of classic CJD.

Review of the patients' medical histories and consideration of various risk factors for CJD yielded no adequate clues as to the cause of this disease. The PrP genotype was determined for eight cases. The researchers noted that all genotypes were methionine homozygotes at codon 129 of the PrP gene. The research did not identify any of the known mutations associated with the inherited forms of CJD (Ref. 30).

Although scientists have stated that exposure to the BSE agent prior to the U.K. bans described in section II.F. of this document is the most plausible explanation for these findings, no clear epidemiologic link to BSE was identified. (See further discussion in section II.C. of this document.) Another potential explanation is exposure to TSE agents from animals other than cattle. Because the United Kingdom reinstituted epidemiological surveillance for CJD in 1990, increased surveillance is still another potential reason for the identification of this cluster of 10 cases of nv–CJD.

c. *Gertsmann-Straussler-Scheinker (GSS) syndrome.* GSS syndrome is an autosomal dominant condition in about 50 percent of siblings of reference cases (Ref. 28). The disease is similar to CJD except that it has a more extended onset and duration, a tendency towards cerebellar ataxia as the initial predominant neurological sign, and a large number of amyloid plaques present among the spongiform encephalopathic changes of the brain. The extensive distribution of amyloid plaques in the patient's brain is an observation shared by GSS syndrome and v–CJD. It has been transmitted to monkeys and rodents by intracerebral inoculation.

d. *Kuru.* Kuru is a condition of the Fore people of the Okapa district of the Eastern Highland in Papua New Guinea, in which a practice of ritual cannibalism of fellow tribesmen took place until approximately 1956 (Ref. 28). This TSE disease, which affected mainly adult women and children of both sexes, caused an annual disease specific mortality of approximately 3 percent. Most deaths of women in the tribe occurred through this disease. Some men who died from this disease were thought to have contracted it when they were young. Kuru may be transmitted by eating infected tissue or through open wounds. The brains of dead tribal members were eaten by women and children and the muscle tissue by men. The cohort of children born since 1957 have not suffered from kuru at all.

Clinically the disease causes a progressive cerebellar ataxia, uncoordinated movements, neurological weakness, palsies, and decay in brain stem function. Most patients dying of kuru are not demented, a major clinical difference between kuru and CJD.

e. *Fatal familial insomnia (FFI).* FFI is another inherited TSE-linked disease (Ref. 31). FFI is characterized clinically by untreatable progressive insomnia, dysautonomia, and motor dysfunctions. The disease often starts between 35 and 60 years of age and leads to death within 7 to 32 months. FFI is characterized pathologically by atrophy, neuronal loss, and gliosis in the anterior and dorsomedial nuclei of the thalamus (Ref. 32). FFI has been successfully transmitted to mice (Ref. 33), but not to primates.

5. Etiology

The cause of TSE's is controversial. The TSE agent: (1) Is presumably smaller than most viral particles and is highly resistant to heat, ultraviolet light, ionizing radiation, and common disinfectants that normally inactivate viruses or bacteria; (2) causes little detectable immune or inflammatory response in the host; and (3) has not been observed microscopically.

Resistance of the TSE agent to physical and chemical methods that destroy nucleic acid have essentially ruled out conventional microbiological agents as the cause. Currently, the infectious protein or prion theory is favored. Other proposed causes are an unconventional virus, consisting of virus-coded protein and virus-specific nucleic acid with unconventional properties, and a "virino" consisting of a core of nontranslated nucleic acid associated with host cell proteins (Ref. 34). Proposed causes of TSE's with less supporting evidence are: (1) Retroviruses (Ref. 35), (2) a spiroplasma (Refs. 36 and 37), (3) organophosphates (Ref. 38), and (4) peptide hormones (Ref. 39).

The prion theory suggests that the causative agent is a normal host protein (PrP or PrP–C) that is posttranslationally transformed into the causative agent or PrP–Sc. Transformation of the PrP can occur from rare somatic mutation of the prion gene, spontaneously or from contact with extraneous PrP–Sc. The spread of BSE in the United Kingdom is postulated to have occurred through the feeding of ruminant protein that contained the PrP–Sc protein and thus follows the portion of the theory that involves contact with extraneous PrP–Sc. This explanation requires that one accept that abnormal prion protein from sheep crossed the species barrier and resulted in BSE in cattle. An alternate explanation is that a spontaneous mutation or transformation or other nonorally induced event, occurred and resulted in undetected disease in a bovine. These explanations are not mutually exclusive and it is possible that both occurred.

Recent surveillance information from Northern Ireland and Switzerland tend to support the spontaneous mutation as a method by which BSE can occur. Northern Ireland has had more than 10 cows produce offspring, after the feeding ban, that developed BSE. Thus, 10+ cases are theorized to be spontaneous because there is no evidence of feeding meat and bone meal to the offspring and the dams are alive

and show no signs of BSE (Ref. 5). Switzerland, which has one of the most aggressive BSE investigational surveillance of any European Union (EU) country, has reported 205 cases of BSE. Some of these cases are in animals that were fed only grass and hay (Ref. 5). Regardless of how the initial cases occurred, however, the resulting unrecognized disease was amplified by the feeding of ruminant protein to ruminants.

Additional support for the feasibility of the TSE spontaneous mutation explanation is the fact that 85 percent of all CJD cases are sporadic and have no familial or identifiable link as to their cause. It is these cases that give rise to the very stable, 1 in a million per year, world wide incidence of the disease. DeArmond and Prusiner (Ref. 40), and Lansbury and Caughey (Ref. 41) have postulated that a noninduced somatic cell mutation or the spontaneous conversion of PrP–C into PrP–Sc are plausible explanations for the sporadic cases of CJD. DeArmond and Prusiner theorized that the 1 in a million

* * * may represent the combined probabilities that a mutation occurs in the PRNP gene, the probability that the mutation leads to the synthesis of the PrP–cjd (the abnormal protein), and the probability that the resultant PrP–cjd targets other neurons for the synthesis of more PrP–cjd at a rate fast enough to cause clinical disease in the patient's lifetime.

The etiology of human and animal TSE's are similar. Therefore the spontaneous mutation explanation cannot be dismissed with regard to BSE.

6. Pathogenesis

Following oral exposure of goats or sheep to the scrapie agent, the agent first accumulates in gut-associated lymphoid organs (tonsils and Peyers patches of terminal ileum) and later in other lymphoid organs, such as spleen and thymus, and finally in the spinal cord and brain (Ref. 8).

Likewise, in mice inoculated intra-peritoneally with the CJD agent, the agent localizes first in Peyer's patches and spleen, followed by the central nervous system (Ref. 42). The agent may enter the body through macrophages in the tonsils and domes over Peyer's patches in the intestine (distal ileum). The proposed routes of spread from the point of entry to other tissues and central nervous system are blood stream or nerve trunks. In experimentally inoculated animals, spread from the inoculation site in the eye of monkeys and peritoneum of mice has been shown to be by optic and splanchnic nerves respectively (Ref. 43).

Other investigators have demonstrated transient infectivity in the blood of experimentally infected laboratory animals, and naturally occurring infections of humans and mink, causing speculation that the agent is carried in the blood (Refs. 45 to 49). With one exception in serum (Ref. 50), all attempts to isolate TSE agents from the blood or milk of sheep or cattle have failed (Refs. 51 to 54). When TSE agents are injected intravenously into mice, the rate of clearance from the blood is extremely rapid (Ref. 55). In natural cases of BSE, infectivity has been found only in the brain, spinal cord, and eye; in experimental cases the agent has also been identified in the ileum (Ref. 56).

The question of disease mechanism remains open. Candidate mechanisms are the storage or accumulation of a large amount of abnormal PrP in the brain (Refs. 57 to 60), or insufficient amounts of normal PrP.

7. Transmission

There is little information about the natural transmission of TSE's of animals. In most cases the natural route of exposure to the TSE agent is suspected to be oral, although genetic disposition is known to play a role in sheep scrapie (Ref. 61). Investigators have suspected transmission of scrapie in sheep and goats by ingestion of placenta and have been successful in experimentally transmitting scrapie by feeding placenta to sheep (Ref. 62); however, genotyping of the PrP gene was not conducted.

In 1993, a study by Foster, et al., (Ref. 63) using a line of sheep in which natural scrapie does not occur demonstrated that sheep can be experimentally infected with BSE by intracerebral or oral administration. The intracerebral challenge resulted in five of six sheep developing the disease. The oral challenge resulted in one of six sheep developing the disease. Brain and spleen were recovered from the orally infected sheep and from one of the intracerebrally injected sheep. Goldmann, et al. (Ref. 64), confirmed that both sheep had the same PrP genotype. In 1996, Foster, et al. (Ref. 65) reported the results of injecting homogenized tissue harvested from these infected animals into a panel of mice. Transmission from the brains and spleen of both sheep gave incubation periods and pathology in mice similar to those seen in direct BSE transmissions from cattle to mice. Foster's work supports the position that BSE can cross species barriers by the oral route and that, when judged by the mouse bioassay, the disease manifested in sheep retains the incubation time and pathology characteristic of BSE rather than scrapie. However, the manifestation of BSE in the sheep is histopathologically and clinically indistinguishable from natural scrapie.

Information regarding the interaction of the TSE agents and the environment is limited. In 1964, Gordon reported the transmission of scrapie among bands of unrelated sheep on pasture. The mode of transmission was unknown (Ref. 66). In an effort to eradicate scrapie from Iceland a large area was depopulated of sheep and restocked with new sheep following a period of 3 years. Despite this effort, a few flocks of the new sheep developed scrapie; the origin was believed to be from scrapie that survived in the environment and not from reintroduction of the agent with the new sheep or through contaminated hay remaining on farms. However, a 1996 report suggests that six species of hay mites may be potential vectors associated with transmission of TSE's in Iceland (Ref. 67).

8. Genetics

There is a genetic component associated with several of the human TSE diseases. A specific point mutation at codon 178 is associated with fatal familial insomnia (Ref. 68). Point mutations at codons 102, 105, 117, 145, 198, and 217 are associated with GSS syndrome (Ref. 69). Point mutations at codons 178, 180, 200, 210, and 232 are associated with CJD (Refs. 68 and 70). Various insertions into the octapeptide repeat region of the PrP gene have also been associated with human TSE's (Ref. 71). It appears that the methionine/valine polymorphism at codon 129 may modify the phenotype and the transmission rate from GSS syndrome patients to mice (Ref. 72). No abnormalities in the sequence of the PrP gene in kuru patients were found.

There is also a genetic component associated with sheep scrapie. Point mutations at codon 171 of the sheep PrP gene are linked to the disease in the Corriedale, Lacaune, Romanov, Suffolk, and Texel breeds (Refs. 73 to 76).

An analysis of 370 cattle from Scotland revealed no difference between healthy cattle and cattle with BSE in the number of octapeptide repeat sequences (either five or six) and in a silent HindII restriction site polymorphism on the PrP gene (Ref. 77). No data were found that compared the sequence of the PrP gene of healthy deer, elk, mink, and goats with those afflicted by TSE's.

9. Diagnostics

Because of the long incubation period, the ability to diagnose the presence of a BSE infection prior to the onset of the

clinical disease would enhance the efficacy of surveillance and prevention programs. Because there is no fully characterized immune response to BSE or scrapie, diagnosis in live animals has been thought to be possible only when clinical signs are evident and must be confirmed by histopathology at post mortem (Ref. 10), or brain biopsy of moribund patients. Recently published research suggests antemortem tests for the TSE agent may be possible.

The observation of histopathological changes in the brain, such as vacuolization of the brainstem in BSE are positive indicators of disease (Ref. 78). Other available diagnostic tests are immunohistochemical staining and immunoblotting of the abnormal protein (Ref. 10). Detection and titration of the TSE agent can also be accomplished by intracerebral inoculation in mice or hamsters with a brain homogenate from a suspected animal. After an appropriate incubation period, the brain of the laboratory animal is examined for histopathological changes characteristic of TSE (Ref. 8).

The potential antemortem tests that have been published are described as follows: (1) Tests specific for PrP: (a) A capillary electrophoresis test (Ref. 79), and (b) a western blot test with increased sensitivity (Ref. 80); and (2) tests which identify metabolites of infected animals or humans: (a) A cyclic voltametric method which describes metabolites in urine (Ref. 81), and (b) an immunoblot test describing metabolites in cerebral spinal fluid (Ref. 82). Antemortem tests have not yet been validated for practical use.

Recent research has shown some promise for antemortem testing. Research by Shreuder et al. (Ref. 83), detected scrapie-associated PrPsc protein in tonsils from scrapie susceptible sheep about a year before the expected onset of the clinical disease. The research holds promise for preclinical detection in sheep, but needs further development. With regard to cattle, the researchers concluded that the technique may not work but is worth investigating. Research by Hsich et al. (Ref. 84), describes an experimental assay in humans and animals. The research found that a positive immunoassay in human dementia patients supports a diagnosis of CJD. The authors concluded that the assay may be helpful in premortem diagnosis of TSE in humans and animals showing clinical signs associated with TSE's. The validity of the test as a preclinical screen has not been established.

10. Inactivation

The agency considered requiring procedures for the manufacture of animal-derived proteins that would inactivate TSE infectivity. There have been several studies on the inactivation of TSE agents. The only broad generalization that can be drawn is that agents that denature protein can diminish the infectivity of the TSE agents. TSE infectivity does not appear to be markedly diminished by radiation or UV-light.

Recent research (Ref. 85) showed that 11 of the 15 rendering procedures tested produced meat and bone meal with no detectable BSE infectivity in a mouse bioassay. Only limited conclusions can be drawn about safety from these 11 procedures because the infectivity titer of the spiked starting mater[illegible] (which consisted of 10 percent bra[illegible] was several logs lower than that typically found in brain that is not minced and not stored at −20 °C. Also, the question of the adequacy of the mouse bioassay as the regulatory test which acceptably assures the absence of TSE infectivity to animals or man remains to be answered through future research investigations.

The four procedures that failed included two protocols using continuous vacuum rendering of high fat material and two protocols using continuous atmospheric rendering of natural fat material. The continuous vacuum rendering processes that failed were 120 °C for 20 minutes at a vacuum of 0.38 bar and 121 °C for 57 minutes at a vacuum of 0.4 bar. The continuous atmospheric rendering processes of natural fat material that failed were end temperatures of 112 and 122 °C after 50 minutes; however, end temperatures of 123 and 139 °C after 125 minutes both inactivated the BSE agent. Unexpectedly, the BSE agent was inactivated by three wet rendering processes that only reached a maximum temperature of 119 °C with a cooking time of 240 minutes, a maximum temperature of 101 °C with a cooking time of 120 minutes, and a maximum temperature of 72 °C with a cooking time of 240 minutes under a vacuum of 0.85 bar.

Preliminary, unpublished results indicate that the only rendering process which completely inactivates the scrapie agent (which was spiked with higher infectivity than that in the BSE experiments described in this section) is batch rendering under pressure (Ref. 86). The agency encourages more research in this area.

B. The Association Between Scrapie and BSE

Epidemiological studies of the outbreak of BSE in the United Kingdom, including a computer simulation of the BSE epidemic, have characterized it as an extended common-source epidemic. Each case has been considered a primary case resulting from exposure to a single common source of infection. It is believed in the United Kingdom that rendered feed ingredients contaminated with scrapie infected sheep, or cattle with a previously unidentified TSE, served as the common source of infection. One study demonstrated that meat and bone meal could be incorporated into cattle feed in sufficient quantity to transmit BSE to some of the animals that consumed the feed (Ref. 87). Thus far, other research including research by USDA has not confirmed that the feeding of U.S.-origin scrapie-infected feed ingredients to cattle produces BSE. Therefore, the theory that BSE evolved naturally in cattle has not been ruled out (Ref. 88). See also the discussion in II.A.5. of this document.

Furthermore, the U.K. studies suggest that the spread of BSE appeared to have been exacerbated by the practice of feeding ingredients from rendered BSE-infected cattle to cattle, including young calves, a practice that was subsequently banned. Incomplete immediate compliance with the feeding ban may account for the fact that some cattle born after the ban continue to be infected with BSE and has complicated any theory of vertical transmission of the disease. The research findings of maternal transmission of BSE are inconclusive, but if it occurs, it does so at a rate insufficient to maintain the epidemic (Ref. 89).

C. The Association Between Animal TSE's and Human TSE's

All the animal and human TSE's have been shown to be transmissible experimentally to laboratory animals. The human and animal diseases are pathologically similar and share some etiological similarities. TSE's are not officially considered zoonotic diseases, i.e., known to be naturally transmissible from animals to humans. The distribution of CJD in the world does not coincide with that of scrapie in sheep or of BSE in cattle. Human exposure to sheep or cattle has a low correlation with CJD. However, the recent report from the United Kingdom of nv-CJD, and its possible relationship to BSE, is causing scientists around the world including those at CDC to

reevaluate whether BSE may be a zoonotic disease.

This concern is further supported by the recent report of experimental BSE transmission to macaques, with the development of nv-CJD-like plaques in these monkeys (see the following discussion in this section).

The possibility of transmission of TSE's from animals to humans has been suggested, most recently in connection with the identification of nv–CJD in the United Kingdom. Scientists in the United Kingdom concluded that the nv–CJD cases may be unique to the United Kingdom, raising the possibility that they are causally linked to BSE. The scientists stated that "the common neuropathological picture may indicate infection by a common strain of the causative agent, as in sheep scrapie in which strains of the disease have been identified * * *" (Ref. 30). The United Kingdom Spongiform Encephalopathy Advisory Committee (SEAC) stated that "although there is no direct evidence of a link, on current data and in absence of any credible alternative the most likely explanation at present is that these cases are linked to exposure to BSE before introduction of the SBO [specified bovine offal] ban in 1989" (Ref. 90). A WHO consultation in April 1996 concluded that "a link has not yet been proven between v–CJD in the U.K. and the effect of exposure to the BSE agent. The most likely hypothesis for v–CJD is the exposure of the United Kingdom population to BSE" (Ref. 2). However, a second WHO consultation, in May 1996 concluded that "the clinical and neuropathological features of the newly recognized CJD variant do not provide information which could be used to prove the possible link between this disease and BSE in cattle" (Ref. 91).

The recent finding of florid amyloid plaques in the brains of macaques inoculated with suspensions of BSE-infected cow brains increases suspicion that exposure to the BSE agent may be the source of nv–CJD. Amyloid plaques have never before been seen in monkeys with TSE's, and the florid plaques resembled those in nv–CJD patients (Ref. 92). In a recent paper by Collinge, et al. (Ref. 93), it is stated that "strains of transmissible encephalopathies are distinguished by differing physicochemical properties of PrPsc, the disease-related isoform of prion protein, which can be maintained on transmission to transgenic mice. 'New variant' CJD has a strain characteristic distinct from other types of CJD and which resembles those of BSE transmitted to mice, domestic cat and macaque, and is consistent with BSE being the source of this new disease. Strain characteristics revealed here suggest that the prion protein may itself encode disease phenotypes."

The possible association between BSE and nv–CJD may be further clarified by results from studies that are under way (e.g., experimental inoculation of brain tissue from the nv–CJD patients into mice).

D. Infectivity of Specific Tissues

The WHO in a recent publication has summarized the infectivity of various tissues from sheep, goat, and cattle (Ref. 94). Scientific studies are currently being conducted in which calves are fed homogenized brain tissue from United Kingdom cattle confirmed to have BSE, and then various tissues are collected from the calves at 4-month intervals (Refs. 56 and 95). The tissues from these calves are being analyzed for the presence of the BSE agent. The study has been in progress for 18 months and only brain, spinal cord, and retina have been shown to be highly infectious. Distal ileum has been shown to be infectious, but much less than the previously mentioned tissues. No other tissues, most notably, muscle meat, milk, or blood have been shown to be infectious. The results of these current experiments parallel the previous research as summarized by WHO. However, the agency notes that infectivity of other tissues that might be fed to ruminants has not been definitively determined. This is, in part, because of the lack of desired sensitivity in the available assay methods.

In summary, meat, milk, milk products, and blood have not been shown to transmit BSE infectivity. These products are considered safe for human consumption by health authorities including the WHO.

E. Potential Risk of TSE's to the United States

1. Overview

This proposed FDA action is designed to reduce the risk of a BSE epidemic in the United States and thereby protect the health of animals and possibly of people if there is, in fact, a zoonotic relationship between BSE and CJD. Risk is defined as the probability of an adverse effect to an individual or a population. The four steps that are typically involved in risk analysis are hazard identification, hazard exposure, dose response, and risk characterization.

While BSE has not been found in the United States, the agency believes it presents a potential risk to the health of animals and people. There are incubational and symptomatic similarities (as well as several differences) among the TSE's. The scientific characterization of these diseases is incomplete. However, interspecies cross-infections have been scientifically demonstrated by parenteral injection and oral routes of exposure.

The typically long incubation period and the potentially devastating effect that a BSE outbreak would have on animal health and U.S. agribusiness also supports a conservative regulatory approach aimed at prevention. While the current level of exposure to products derived from animals with a TSE is extremely low or absent, the potential consequences of such exposure and the apparent small intake of the agent needed to achieve infection in some animals further encourage a conservative regulatory policy.

Dose response assessments will be difficult because of the lack of good exposure data and the possibility of different susceptibilities, e.g., age or genetic factors, in different subpopulations. Although the TSE's are generally transmissible to laboratory animals following intraperitoneal (ip) or intracerebral (ic) routes of administration, the limited data that are available following the oral route of administration suggests that this route is much less efficient than ip or ic. Currently, it is quite difficult to make an accurate dose response assessment for a TSE agent following oral administration.

A number of actions, in addition to this proposed rule, have been taken to manage a reduction in risk that BSE will enter the United States cattle population. Restrictions have been placed on the importation of live cattle (July 1989) and ruminant products (e.g., meat and bone meal, bone meal, blood meal, offal, fat, and glands) from countries which have BSE. Live animals imported prior to the restrictions on imports have been regularly monitored by Animal and Plant Health Inspection Service (APHIS) veterinarians, and APHIS is currently in the process of purchasing the remaining live cattle for diagnostic research purposes. Histopathological examination of brain tissues has been carried out on more than 5,000 specimens from cattle that were disabled or that demonstrated neurological signs prior to slaughter or on the farm, e.g., nonambulatory or rabies-negative cattle. Histopathological and immunohistochemical examination of the nonambulatory or "downer" cows has been carried out since 1993. There has been no finding of BSE in tissues from these animals. These animals represent the highest BSE risk in the country, however, they also represent an extremely small percentage of the cattle

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slaughtered in the United States. This active surveillance program is continuing and may be expanded. The expansion of this program was indirectly supported by a comment to the ANPRM that all "downer" cows should be examined for BSE.

Voluntary actions by industry have reduced the feeding of rendered sheep proteins to ruminants and the rendering of adult sheep. A voluntary Scrapie Flock Certification Program was implemented in 1992. The program, a cooperative effort among industry, State animal health officials and APHIS, seeks to reduce the prevalence of scrapie in U.S. sheep. A considerable educational effort continues to increase the awareness of veterinarians, veterinary laboratory diagnosticians, livestock and related industry businesses, and producers to the early clinical signs of BSE. Videos of United Kingdom BSE affected animals have been distributed to USDA veterinarians to enhance their ability to clinically diagnose BSE in suspect live animals. CDC has recently published an update (Ref. 96) of its previous review of national CJD mortality and the results of active CJD surveillance in five sites in the United States. These reviews did not detect evidence of the occurrence of the newly described variant form of CJD in the United States. As an important complement to these other public health efforts, this proposed rule would declare that animal protein derived from ruminant and mink tissues is an unapproved food additive for use in ruminant feeds, and would establish enforcement procedures. These actions, individually and collectively, contribute to a greatly reduced risk of a BSE epidemic ever occurring in the United States.

2. Comparison With the U.K. Conditions

Investigators have identified several major risk factors that apparently contributed to the emergence of the disease and the resultant epidemic in the United Kingdom. These are: (1) A large sheep population relative to the cattle population, (2) a large, uncontrolled, scrapie incidence rate, (3) the production of "greaves," an incompletely processed intermediate product in the rendering process, (4) changes in rendering processes, such as the reduced use of solvent extraction, and (5) the feeding of significant amounts, up to 4 percent of the diet, of meat and bone meal to young dairy calves.

In addition to the risk factors described in section II.E.2. of this document, the practice of processing dead sheep and cattle in the United Kingdom likely contributed to the amplification of the TSE agent. In the United Kingdom, sheep which may have died of scrapie and cattle with BSE, were picked up by "knackers" for rendering into animal feed. This material was partially rendered into "greaves," which might have contained large amounts of the scrapie/BSE agent, and was fed to dairy calves in large amounts. The spread of BSE appeared to be facilitated by the feeding of rendered BSE-infected cattle back to calves. The BSE agent is postulated to have recycled from cows to calves through ruminant-to-ruminant feeding until the practice ceased following the 1989 ban on the practice.

In the United States, the cattle population is much larger than the sheep population, the incidence of scrapie is much lower and a scrapie control program is in place; renderers in the United States do not manufacture greaves; and the rendering processes used in the United States are thought to reduce the titre (level) of TSE agents if any. The lack of a practice of feeding large amounts of meat and bone meal to calves in the United States, and the comparatively younger average age of U.S. dairy cattle are also differences that are believed to be important in protecting the United States against a U.K.-type BSE epidemic. Nevertheless, scrapie does exist in the United States, sheep are rendered and included in ruminant feed, the rendering process does not totally inactivate TSE agents, and calves are fed meat and bone meal. Therefore the risk of a BSE epidemic in the United States, while much less, cannot be completely discounted.

F. Historical Efforts to Control TSE's

1. U.S. Actions

a. *FDA.* FDA is the Federal agency responsible for the safety and effectiveness of a large number of products and commodities. Briefly, these include, drugs for use in people and animals, human biological products, medical devices, food, dietary supplements, cosmetics, and animal feeds. Each of these product groups provides the potential for the transmission of spongiform encephalopathies in man or animals. FDA formed a Working Group composed of the Deputy Commissioner for Operations and representatives from the Centers to consider TSE's in relation to FDA regulated products. As a result of the Working Group's deliberations, FDA has taken the following actions:

- In 1992, letters were sent to manufacturers of dietary supplements asking those manufacturers to reformulate their products to be certain they do not contain materials from BSE or scrapie infected animals;
- In 1993, letters were sent to manufacturers of drugs, biologics, and devices asking them not to use bovine-derived materials from countries with BSE; and
- In 1996, letters were sent to manufacturers of drugs, biologics, devices, and animal feeds noting a possible relationship between BSE and nv-CJD and asking that they not use materials from BSE countries.

In 1992, FDA conducted a survey of major sheep rendering plants to determine compliance with a 1989 voluntary industry ban on the use of adult sheep offal in ruminant feeds. The voluntary ban and results of the survey are described in section I.F.3. of this document. In the **Federal Register** of August 29, 1994 (59 FR 44584), FDA published a proposed rule proposing to declare that specified offal from adult sheep and goats is an unapproved feed additive in ruminant feed (hereinafter referred to as the August 1994 proposed rule). In the **Federal Register** of May 14, 1996, FDA published an ANPRM stating that FDA was considering whether to provide that the use of protein derived from ruminants in ruminant feed be prohibited.

An international symposium entitled "Tissue Distribution, Inactivation, and Transmission of Transmissible Spongiform Encephalopathies" and cohosted by APHIS and FDA's Center for Veterinary Medicine (CVM) was held on May 13 and 14, 1996, in Riverdale, MD. The symposium participants engaged in discussion of findings from unpublished, recently completed, and in-progress scientific investigations on TSE's, and optimal approaches to managing any risk of TSE's to animal health.

b. *USDA.* USDA policy has been both proactive and preventive. The Food Safety and Inspection Service (FSIS) and APHIS have been active in taking measures in surveillance, prevention, and education about TSE's. In 1990, APHIS created a BSE Issues Management Team to analyze risks of BSE to the United States, disseminate accurate information about the disease, and act as a reference source for responding to questions about BSE. APHIS has also collaborated in the education of veterinary practitioners, veterinary laboratory diagnosticians, industry and producers on the clinical signs and pathology of BSE.

APHIS has increased its surveillance efforts to verify that the United States is free of BSE and to detect the disease should it be introduced into the United

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States. As part of an ongoing active surveillance program, more than 60 veterinary diagnostic laboratories across the United States, and the National Veterinary Service Laboratories (NVSL) of APHIS, continue to examine bovine brains from the following sources: (1) APHIS investigations in the United States where suspected encephalitic conditions in cattle are reported under the foreign animal disease investigation program; (2) CDC and State public health laboratories (specimens from bovine that were found negative for rabies); and (3) FSIS (specimens from "downer" cows or those exhibiting CNS abnormalities). More than 5,000 bovine brains have been examined, and none of these specimens contained lesions with the characteristics and distribution typical for BSE (Refs. 12 and 97). APHIS is currently in the process of purchasing the 69 living cattle (from a total of 496 cattle) imported from the United Kingdom between 1981 and 1989. In July 1989, the importation of live ruminants and ruminant products from all countries known to have BSE in native animals was banned.

USDA continues to analyze and report epidemiologic findings and potential risks to the United States. In 1991, USDA issued two reports analyzing risk factors associated with BSE in the United Kingdom based on the British hypothesis of the disease occurring as a result of feeding scrapie-contaminated meat and bone meal (Refs. 98 and 84). Because of some similarities in the animal industries between the two countries, the possibility of BSE occurring in the United States could not be eliminated. However, the probability of occurrence was determined to be very low as the amount of sheep offal was found to be 0.6 percent of all U.S. rendered product compared to the estimate of 14 percent of all U.K. rendered product. Furthermore, the incidence of scrapie in the United States is much lower than in Great Britain; a scrapie eradication or control program has been in effect in the United States and rendered products are not routinely incorporated into calf diets as was the practice in the United Kingdom.

Since 1991, USDA has closely followed scientific findings and has updated the BSE risk factor analysis, first in 1993 (Ref. 99) and as recently as February 1996 (Ref. 4). Changes within each of the risk factors have been evaluated, and because there has either been no change or a decrease in the magnitude of risk factors, the overall risk of BSE in the United States is believed to have decreased. The February, 1996 report estimated the maximum potential 1-year period prevalence of BSE to range from 2.3 to 12 cases per 1 million adult cattle. In other words, under the worst case scenario between approximately 115 and 600 adult cattle would become infected with BSE each year, in a U.S. population of nearly 50 million adult cattle.

APHIS has had a scrapie control program in effect since 1952. Flocks that have been enrolled in the voluntary certification program for sheep for 5 years, and have not had a diagnosed case of scrapie within 5 years or a case traced back to the flock during that period, may apply for APHIS certification and be officially identified as such. This new control effort provides a mechanism to recognize flocks as scrapie-free in the absence of a live animal diagnostic test.

There is no official USDA program on TME or CWD. Although the last TME case detected in the United States was in 1985, monitoring for this disease continues. APHIS cooperates with State wildlife and diagnostic officials in Colorado and Wyoming in the limited areas where CWD has been reported.

In December 1991, APHIS placed a ban on importation of certain products of ruminant origin from countries known to have BSE (56 FR 63865, December 6, 1991). These products include: Meat and bone meal, bone meal, blood meal, offal, fat, and glands. In addition to prohibiting the materials listed previously, the regulation requires that imported meat for human or animal consumption from bovines be deboned, with visible lymphatic and nervous tissue removed; that it be obtained from animals which have undergone a veterinary examination prior to slaughter; and that it be obtained from ruminants which have not been in any country in which BSE has been reported during a period of time when that country permitted the use of ruminant protein in ruminant feed. APHIS may allow the importation of the banned products under a special permit for scientific or research purposes, or under special conditions to be used in cosmetics. No bovine meat from the United Kingdom has been allowed to be imported into the United States by FSIS for human consumption since before the BSE epidemic occurred in the United Kingdom. The network of private veterinary practitioners that refers unusual cases to veterinary schools or State diagnostic laboratories around the United States provides an extensive surveillance system. FSIS performs both antemortem and post mortem inspections at all federally-inspected slaughter establishments, and inspectors condemn all animals with central nervous system disorders. State-inspected slaughter operations follow the same procedures.

USDA also maintains a database on these and other conditions. The Veterinary Diagnostic Laboratory Reporting System (VDLRS) is a database of selected disease conditions submitted by 29 State and university veterinary diagnostic laboratories throughout the United States, and includes the results of histologic examinations for BSE. The VDLRS is a cooperative effort of the American Association of Veterinary Laboratory Diagnosticians (AAVLD), the U.S. Animal Health Association (USAHA), APHIS' Veterinary Service Centers for Epidemiology and Animal Health, and the 29 laboratories mentioned previously.

c. *Public Health Service (PHS).* i. *CDC.* CDC conducts surveillance for CJD through examination of death certificate data compiled by the National Center for Health Statistics, CDC, for U.S. residents for whom CJD was listed as one of the multiple causes of death (Ref. 100). These data indicate that the annual CJD mortality rates in the United States between 1979 and 1993 have been relatively stable, ranging between only 0.8 case per million in both 1979 and 1990 and 1.1 cases per million in 1987. In addition, CJD deaths in persons younger than 30 years of age in the United States remain extremely rare (<5 cases per billion per year) (Ref. 101).

CDC is working with the Council of State and Territorial Epidemiologists to consider expansion of current CJD surveillance. CDC is also working with its four established Emerging Infections Programs (Minnesota, Oregon, Connecticut, and the San Francisco Bay area, California), the Georgia Department of Human Resources, and the Atlanta Metropolitan Active Surveillance Program to pilot enhanced surveillance efforts for CJD (Ref. 101). This effort includes an active search for v-CJD as described in the United Kingdom (Ref. 30). On August 9, 1996, the results of this enhanced CJD surveillance effort was published; no evidence of the occurrence of the newly described variant form of CJD was found in the United States. No evidence of v-CJD has been found in the United States.

ii. *National Institutes of Health (NIH).* A project of the Laboratory of Central Nervous System Studies of the National Institute of Neurological Diseases and Stroke is conducting investigations on slow, latent, and temperate viral infections associated with chronic degenerative neurological diseases. Important areas of study are the pathogenesis of slow infections and mechanisms of persistence in kuru and

CJD. Also intensive molecular, biological, genetic, and immunological studies are being conducted on amyloid formation in the brain in Alzheimer's disease, normal aging, Down's syndrome, and slow viral infections, and the elucidation of the de novo generation of infectious amyloid proteins from normal host precursor proteins in kuru, CJD, GSS syndrome, scrapie and BSE. Research on TSE's has also been conducted by the NIH Laboratory of Persistent Viral Disease. FDA maintains close contact with scientists in the laboratories and expects to use their expertise in the evaluation of inactivation methods and transmission studies.

iii. *Other actions.* On April 8, 1996, an interagency meeting at CDC including representatives from CDC, NIH, FDA, USDA, and the U.S. Department of Defense was held to disseminate conclusions from the WHO consultation regarding v-CJD and to coordinate preventive activities among these agencies to address the BSE and CJD issues.

2. International Actions

a. *United Kingdom.* Regulatory controls taken to manage the BSE epidemic in the United Kingdom and to address public health concerns include: (1) An action in June 1988 to make the disease reportable; (2) a ban in July 1988 on the feeding of ruminant-derived protein supplements to other ruminants; (3) an order in August 1988 for the compulsory slaughter and incineration of BSE suspect cattle; (4) a ban in November 1989 on the inclusion of specified bovine offal (brain, spinal cord, thymus, spleen, tonsils, and intestines) for human consumption; and (5) a ban in September 1990 on use of specified bovine offal in any animal feed.

A CJD Surveillance Unit was established to monitor CJD numbers in the United Kingdom. SEAC, consisting of experts in neurology, epidemiology, and microbiology from outside the British government, was established in 1990 to oversee all aspects of TSE's and human and animal health. USDA has a representative on this committee.

Major regulatory actions occurring after the SEAC report on nv-CJD (Ref. 90) include legislation to ban the feeding of mammalian meat and bone meal to any farmed animal, and legislation to ban the use of cattle head meat for human consumption.

b. *WHO.* WHO has held meetings on the spongiform encephalopathies in 1991, 1993, 1995, and 1996, and a meeting in collaboration with the Office International des Epizooties (OIE) in 1994. The general purposes of these meetings were to review the existing state of knowledge on spongiform encephalopathies including BSE, to evaluate possible means of transmission, and to identify risk factors for infection. A specific purpose was to review the possible human public health implications of animal spongiform encephalopathies, with special emphasis on BSE. The group of international experts convened in April 1996 by WHO recommended that all countries should ban the use of ruminant tissues in ruminant feed. The WHO group also declared that milk and milk products, including such products from the United Kingdom, are safe for human consumption and that gelatin in the food chain is considered safe because its preparation effectively destroys BSE. Finally, the group concluded that tallow could be safe if effective rendering procedures are in place (i.e., rendered as protein-free) (Ref. 2).

c. *OIE.* OIE has supported the U.K. ban on the use of specified offals and has recommended that the same action be taken in other countries with a high incidence of the disease (Ref. 102). OIE has held meetings in 1990, 1991, 1992, 1995, and 1996, and has developed guidelines concerning animals and animal products to prevent movement to unaffected countries.

d. *European Community (EC).* The EC has held a series of meetings related to BSE. Following issuance of the U.K. SEAC statement suggesting a possible link between nv-CJD and BSE, the EC imposed a ban on British cattle, beef and bovine derivatives (Ref. 103).

3. Voluntary Measures by the U.S. Animal Industries

a. *Voluntary ban on rendering adult sheep.* In 1989, the National Renderers Association (NRA) and the Animal Protein Producers Industry (APPI) recommended to their members that they stop rendering adult sheep or providing sheep offal for sale as meat and bone meal for inclusion in cattle feed (Ref. 104). Following the recommendation of the voluntary ban, FDA carried out a survey of current practices in the United States for rendering or otherwise disposing of adult sheep carcasses and parts, specifically head, brain, and spinal cord. Limited inspections of rendering plants were conducted in 1992 to: (1) Assess compliance by U.S. renderers with the voluntary ban; (2) identify rendering plant practices concerning adult sheep; and (3) determine if rendered adult sheep protein byproducts were being sold or labeled for use as feed or feed components for cattle. Of the 19 plants surveyed, 15 rendered carcasses or offal of adult sheep. These 15 plants processed more than 85 percent of the adult sheep rendered in the United States. Eleven of the 15 plants rendered carcasses of adult sheep with heads, 7 of the 15 rendered sheep carcasses separately from other species, 6 of the 15 maintained meat and bone meal from adult sheep separate from meat and bone meal from other species, and 4 of the 15 rendered sheep that had died of causes other than slaughter. Six of the 11 renderers processing adult sheep with heads had sold meat and bone meal to manufacturers of cattle feed. Thus, the rendering industry's voluntary ban on the rendering of adult sheep or providing sheep offal for use in cattle feed was not fully implemented at the time of the survey (Ref. 105).

b. *Voluntary ban on feeding ruminant proteins to ruminants.* On March 29, 1996, the National Cattlemen's Beef Association (NCBA), the National Milk Producers Federation, the American Sheep Association, the American Veterinary Medical Association, the American Association of Veterinary Medical Colleges, and the American Association of Bovine Practitioners announced the recommendation of a voluntary ban on the feeding of ruminant-derived proteins to ruminant animals (Ref. 106). USDA, PHS, the American Society of Animal Science, and other organizations announced support for the voluntary ban (Refs. 107 and 108). According to the NCBA (Ref. 109), a comprehensive communication strategy, seeking removal of ruminant-derived proteins from the rations of ruminants, was implemented in May 1996 by the feed industry, nutritionists, veterinarians, extension specialists, and dairy and beef producers. NCBA has not conducted a survey to assess the impact of its communication strategy; however, NCBA did point out that past requests for voluntary action by the cattle industry have been quite successful, approaching 90 percent compliance. In contrast, an anonymous comment to the ANPRM suggested a compliance level of less than 5 percent (Ref. 110). FDA has not conducted a survey to ascertain the level of compliance with the voluntary ban.

G. Processing Animal Tissues for Feed Ingredients

1. Current Rendering Practices

The following discussion on current rendering practices comes directly from comments supplied to FDA in response to the ANPRM from representatives of

APPI and NRA. Knowledge about the four basic types of rendering systems that are most commonly used in the United States today may be crucial in dealing with the TSE issue in this country. Data on the inactivation of the BSE and scrapie agents following simulation of the most commonly used basic types of rendering systems in the United States could be quite useful, especially because some of these systems do not appear to have been used in the only published rendering study on BSE inactivation (Ref. 85).

Rendering, the process of cooking raw material to remove the moisture and fat from the solid protein portion of animal tissues, has been practiced by humans for more than 2,000 years. The United States rendering industry has developed over the last 160 years. Modern rendering systems are high-technology recycling processes that efficiently convert animal byproducts (shop fat and bone, beef and pork slaughterhouse materials, poultry offal, fish, etc.) to stable protein and fat supplements for feed.

Current technology consists of four basic types of rendering systems—batch cooker, continuous cooker, continuous multi-stage evaporator, and continuous preheat/press/evaporator. All systems consist of three basic steps: Grinding the raw material, cooking it to remove moisture, and separating the melted fat from the protein solids.

Batch cookers are multiple units, each consisting of a horizontal, steam-jacketed cylindrical vessel with an agitator. Batch cookers are operated at atmospheric pressure. The cooked material is discharged to the percolator drain pan, which contains a perforated screen that allows the free-run fat to drain and be separated from the protein solids known as "tankage."

Because "tankage" contains considerable fat, it is processed through a screw press to complete the separation of fat from solids. The fat discharged from the screw press usually contains fine solid particles that are removed by either centrifuging or filtration. The protein solids discharged from the screw press are known as "cracklings," which normally are screened and ground with a hammer mill to produce protein meal.

The continuous cooker rendering system normally consists of a single continuous cooker, operating at atmospheric pressure. The discharge from the continuous cooker usually passes across either a vibrating screen or stationary perforated screen to allow the free-run fat to drain. The subsequent steps in the continuous cooker rendering process are similar to those described before for the batch cooker.

In the continuous multi-stage evaporator rendering system, crushing is used as the first stage of size reduction of the raw material. A fat recycle stream is then used to deliver the material as a pumpable slurry through the secondary grinding step to reduce further the particle size. Particle size and fat ratios are important components of this system. The slurry discharge from the final stage of evaporation is pumped to a centrifuge which removes most of the fat and part of it is recycled back to the second stage of size reduction. The solids discharged from the centrifuge are conveyed to screw presses which complete the separation of fat from the protein solids.

The continuous preheat/press/evaporator rendering system is known by a variety of names including the Stord dewatering rendering system and the Atlas low temperature wet rendering system. In either case, raw material is ground in two stages and passes through the preheater to raise the temperature to 180 to 190 °EF before entry to the twin screw press. The press separates this material into two phases: A presscake of solids containing moisture and a low fat concentration, and a liquid containing mostly water (stickwater) with fine solids, soluble protein, insoluble protein and melted fat.

The press liquid is processed either by passing through a multistage evaporator system to remove the water before centrifuging to remove the fine solids from the fat, or by passing through a centrifuge to separate the fat before multistage evaporation of the remaining water/fine solids fraction. The liquid separation system consisting of two stages of centrifuges completes the separation of the melted fat from the solids and water. In this system, the screw press normally used to process the "tankage" is no longer needed. Longer drying times are needed with this system as compared to previous systems because of the early fat removal (less fat means less effective heat transfer).

The agency encourages further research into methods of deactivation of the BSE agent during the rendering process.

2. Assay Methodologies for Proteins

Enforcement of the proposed regulation would be facilitated if a test to detect and distinguish ruminant from nonruminant materials in feeds or feed ingredients was available. However, practical assays that could be used to enforce the proposed regulation are not available at this time. The test procedure would need to exhibit a high degree of sensitivity and selectivity; that is, the test must be able to detect the analyte of interest to the exclusion of other components. A test for acceptable rendered products in animal feed must therefore be able to discriminate and differentiate between permitted and prohibited animal derived proteins. Other factors of importance are the ruggedness of the test method, speed, and simplicity of design.

An enzyme-linked immunosorbant assay (ELISA) based analytic method that is both sensitive (detects low levels of analyte) and specific (detects primarily the analyte of interest) is one possibility. ELISA is a relatively straightforward methodology. There are numerous commercial sources for antisera capable of binding to bovine, ovine, porcine, and caprine proteins. Antisera have also been generated from muscle extracts and validated for use in USDA-approved ELISA methods to determine the identity of raw and cooked meats (Refs. 111 and 112). However, rendered products present a unique problem because rendering causes the destruction of most of the antibody binding epitopes needed for an ELISA test. Therefore, detection of rendered proteins by a given antibody cannot be automatically assumed.

Other potential methodologies include western blot analysis, capillary electrophoresis, and high pressure liquid chromatography. The applicability of these three methods to this issue has not been addressed. Furthermore, they require expensive, specialized equipment and a high degree of technical competence.

The agency encourages research to detect and distinguish ruminant from nonruminant materials in rendered products and animal feeds.

III. Statutory Provisions Regarding Food Additives

The term "food" as defined in the act includes animal feed. Section 201(f) of the act (21 U.S.C. 321(f)) defines food as "articles used for food or drink for man or other animals" and "articles used for components of any such article." Furthermore, any substance whose intended use results or may reasonably be expected to result in its becoming a component of food is a food additive unless, among other things, it is GRAS or is the subject of a prior sanction. Section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C)) deems food adulterated "if it is, or it bears or contains, any food additive which is unsafe within the meaning of section 409 * * *." Under section 409(a) of the act (21 U.S.C 348(a)), a food additive is unsafe unless

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a food additive regulation or an exemption is in effect with respect to its use or its intended use.

A food additive regulation is established by the submission and approval of a food additive petition, as provided in 21 CFR 571.1, or on FDA's initiative as provided in 21 CFR 570.15. FDA on its own initiative or at the request of an interested party, also may propose to determine that a substance intended for use in animal feed is not GRAS and is a food additive subject to section 409 of the act as provided in § 570.38 (21 CFR 570.38). Subsequent to the publication of such a proposal and after consideration of public comments, FDA may issue a final rule declaring the substance to be a food additive and require discontinuation of its use except when used in compliance with a food additive regulation.

A. GRAS Determination

A determination that a substance added directly or indirectly to a food is GRAS, is generally based on specific information regarding the composition of the substance, its use, method of preparation, methods for detecting its presence in food, and information about its functionality in food (21 CFR 570.35) as determined by experts qualified by scientific training and experience to evaluate the safety of such a substance. A substance added to food becomes GRAS as the result of a common understanding about the substance throughout the scientific community familiar with safety of such substances. The basis of expert views may be either scientific procedures, or, in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 570.30(a)) (21 CFR 570.30(a)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific studies required for the approval of a food additive regulation. However, substances that are GRAS based on such use must be currently recognized as safe based on their pre-1958 use. (See *United States* v. *Naremco*, 553 F.2d 1138 (8th Cir. 1977); compare *United States* v. *Western Serum*, 666 F.2d 335 (9th Cir. 1982).) A recognition of safety through common use is ordinarily to be based on generally available data and information (§ 570.30(c)). An ingredient that was not in common use in food prior to January 1, 1958, may achieve general recognition of safety only through scientific procedures.

General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation for the ingredient (§ 570.30(b)). (See *United States* v. *Naremco*, 553 F.2d at 1143.) A substance is not GRAS if there is a genuine dispute among experts as to its recognition (*An Article of Drug * * * Furestrol Vaginal Suppositories*, 251 F. Supp. 1307 (N.D. Ga. 1968), *aff'd* 415 F.2d 390 (5th Cir. 1969).) Further, general recognition of safety through scientific procedures must be based upon published studies (*United States* v. *Articles of Food and Drug Colitrol 80 Medicated*, 372 F. Supp. 915 (N.D. Ga. 1974), *aff'd*, 518 F.2d 743, 747 (5th Cir. 1975)), so that the results are generally available to experts. It is not enough, in attempting to establish that a substance is GRAS, to establish that there is an absence of scientific studies that demonstrate the substance to be unsafe; there must be studies that show the substance to be safe (*United States* v. *An Article of Food * * * Co Co Rico, supra.*)

Conversely, a substance may be ineligible for GRAS status if studies show that the substance is, or may be, unsafe. This is true whether the studies are published or unpublished (50 FR 27294 at 27296, July 2, 1985). If there are studies that tend to support a finding that a particular substance is GRAS, but also studies that tend to support a contrary position, the conflict in the studies, just as a conflict in expert opinion, may prevent the general recognition of the safe use of the substance.

B. Prior Sanction

Under section 201(s) of the act, the term "food additive" does not apply to any substance used in accordance with a sanction or approval granted prior to enactment of section 201(s) of the act and granted under the act, the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*). Section 570.38(d) provides that if the Commissioner of Food and Drugs is aware of any prior sanction for use of a substance, he will, concurrently with a notice determining that a substance is not GRAS and is a food additive subject to section 409 of the act, propose a separate regulation covering such use of the substance.

In the case of the materials subject to this proposed rule, FDA has determined that it is unaware of any applicable prior sanction. Any person who intends to assert or rely on such sanction is required to submit proof of the existence of the applicable prior sanction. The failure of any person to come forward with proof of such an applicable prior sanction in response to this notice will constitute a waiver of the right to assert or rely on such sanction at any later time.

C. Food Additive Status of Ruminant Tissues

The agency recognizes that processed ruminant byproducts have a long history of use in animal feeds without known adverse effects. However, the evidence as discussed in sections I and II.A. through II.D. of this document, for the development of a new pattern of disease transmission, now indicates that these ingredients can no longer be categorically regarded as safe. The agency tentatively concludes that, based on this evidence, use of such products in ruminant feed is not GRAS. The agency is proposing this regulation in light of the findings and conclusions described in sections I and II in this notice. Nor is the agency aware of a prior sanction for any feed products that contain these tissues. Therefore, FDA is proposing that the addition of protein derived from ruminant tissues to ruminant feed would constitute the use of an unapproved food additive because no regulation is in effect providing for such use. Any ruminant feed that contains protein derived from ruminant and mink tissues would be adulterated. Accordingly, FDA is proposing to list protein derived from ruminant tissues in part 589.

IV. Comments

FDA's May 1996 ANPRM requested public comment and information on all aspects of TSE's, including BSE, and the potential consequences of a prohibition on the feeding of ruminant protein to ruminants. The agency received nearly 600 comments, including many that were submitted long after the comment period ended. The agency has attempted to address the comments in this proposal. If there are any significant concerns that the agency has not addressed, these concerns should be brought to the agency's attention in timely comments on this proposal. Comments that were specific to the topics covered by the other sections of this preamble were considered in the preamble as written. Comments are discussed in the text of some of these sections. The following is a general discussion of the comments received.

Many comments, especially from renderers, meat packers, feed companies and farmers, opposed the prohibition of ruminant protein being fed to ruminants. The main reasons offered were the lack of evidence of BSE in the United States, lack of scientific data to support the proposal in the absence of

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BSE, environmental concerns, lack of an assay or other practical means to support enforcement, and the economic hardship that would fall upon the animal producers, slaughter facilities, renderers, feed manufacturers, and packers. Support for such a prohibition from consumer groups, pharmaceutical firms, scientists and veterinarians, and some livestock organizations, emphasized a potential effect on human health, the experience and data from the United Kingdom, and significant economic detriment if a BSE epidemic were to occur in this country. Other comments described a need to ensure that exported U.S. bovine-derived products met international standards and guidelines, and to maintain consumer confidence in the beef and dairy industries even though those comments acknowledged that there is a minimal potential risk of infectivity to animals and humans.

The agency requested scientific information regarding the occurrence, transmission, etiology, pathogenesis, epidemiology, and inactivation of TSE agents. Many comments were received that contained useful scientific information that was considered in the preparation of this proposed rule, as described in this preamble and supporting documents.

Three comments suggested that the documented existence of nonBSE TSE's, and the presence of "downer" cows (cows unable to walk) in the United States is evidence that BSE is present in this country. Three comments stated that the BSE surveillance in the United States provides sufficient assurance that BSE does not exist in this country. A number of persons commented on whether specific tissues, such as milk, blood, and gelatin, should be excluded from any prohibition, with nearly all supporting such exclusion.

The agency requested information on the economic impact of the described action. Numerous comments provided data on volume of product impacted, potential economic benefits, and cost of compliance to affected persons. The data were used to develop the preliminary economic assessment supporting this proposed rule.

The agency requested information on the environmental impact and potential mitigating factors of the described action. Many comments stated that alternative disposal of the prohibited carcasses would be less environmentally safe than rendering. These and other comments were considered in the development of the environmental assessment.

Numerous comments were received regarding the need to prohibit only tissues that have been demonstrated to be infective. Generally, the comments stated that tissues that have been proven to be noninfective should be exempted. Although the agency is proposing a rule that would prohibit the use of all ruminant-derived protein in ruminant feeds, the agency will, as explained elsewhere in this document, consider a partial ruminant-to-ruminant prohibition as well as a mammalian-to-ruminant prohibition.

Many comments supported establishment of Hazard Analysis Critical Control Points (HACCP) for the rendering industry, often with concurrent support for current good manufacturing practices (CGMP's) for animal-derived proteins. For example, the American Feed Industry Association proposed a specific set of Good Manufacturing Practices for the producers of animal protein products, and the National Renderers Association proposed a specific HACCP regulation for rendering operations. The agency agrees that the need for HACCP, perhaps supported by CGMP's, for animal-derived proteins could be considered in future rulemaking. Several comments were received regarding labeling requirements for animal-derived proteins. The majority of the comments supported a statement of the origin of animal-derived protein. The agency has included a labeling requirement in the proposed rule.

V. Analysis of Alternatives

A. Overview

In addition to the proposed ruminant-to-ruminant rule, the agency is considering alternative approaches. The alternatives include: (1) excluding from ruminant feed all ruminant and mink materials except those that have not been found to present a risk of transmitting spongiform encephalopathy (partial ruminant-to-ruminant prohibition); (2) prohibiting the use in ruminant feed of all mammalian protein (mammalian-to-ruminant prohibition); (3) prohibiting the feeding of materials from species in which TSE's have been diagnosed in the United States (sheep, goats, mink, deer, and elk); (4) prohibiting the feeding of specified sheep and goat offal, as proposed by the agency in 1994; (5) other alternatives that might be proposed by the comments; and (6) no action.

Analysis of the advantages and disadvantages of the options follows. Analysis of costs and benefits, including detailed economic analysis, also appears in section IX. of this document. Environmental consequences are discussed in section VIII. of this document.

In determining the scope of the final rule, the agency will weigh carefully the comments received, along with material contained in the administrative record for this proposal and the comments submitted in response to the ANPRM. Comments regarding the scope of the rule, including those comments supporting other options other than the proposed option, should be addressed accordingly.

B. Ruminant-to-Ruminant Prohibition

Advantages of this option, compared with the "no action" option, are discussed in detail in section I. of this document. The advantages of this option that are discussed in that section would apply if BSE were to occur in this country. As discussed in separate sections that follow, there would also be environmental and economic advantages to the ruminant-to-ruminant option, if BSE were to occur in this country. Disadvantages of the ruminant-to-ruminant option, compared to the "no action" option, would be relevant primarily if BSE did not occur in the United States. These disadvantages would include the time and expense required to comply with the provisions of the regulation, and the limited, short term environmental effects described in section VIII. of this document.

Compared with the mammalian-to-ruminant option, the ruminant-to-ruminant option has the advantages of being tailored more precisely to the identified scientific concerns, and less burdensome on the affected industries. Economic and environmental costs would be less. The major disadvantage is that the ruminant-to-ruminant option results in more complexity for the regulated industries, and thereby provides less assurance of compliance. This is explained further in the discussion of the mammalian-to-ruminant option, in section V.D. of this document.

Compared to the other remaining options, which are less restrictive, the ruminant-to-ruminant option provides greater assurance of protection of the public health and, if BSE were to occur in the United States, lower economic and environmental costs. The disadvantages relate generally to the greater economic and environmental costs that would be incurred if BSE did not occur in the United States.

C. Partial Ruminant-to-Ruminant Prohibition

As an alternative to the proposed ruminant-to-ruminant prohibition, the agency is considering a partial

ruminant-to-ruminant prohibition which would exclude from ruminant feed all ruminant and mink materials except those that have not been found to present a risk of transmitting spongiform encephalopathy. The exclusions would be in addition to milk products, gelatin and bovine blood, which are excluded in the proposed rule. Possible exclusions include slaughter byproducts from bovine that have been inspected and passed in inspected slaughter facilities, except the brain, eyes, spinal cord, and distal ileum. The four named tissues would be prohibited because they have been shown through experimental trials and bioassays to transmit spongiform encephalopathy. The remaining tissues have not been demonstrated to transmit spongiform encephalopathy.

This option has the advantage of having its prohibitions based primarily on scientific information related to infectivity of specific tissues. A number of persons who commented on the ANPRM urged the agency to base its regulation entirely on such scientific information. In addition, this option would likely involve lower lost sales revenues to the affected industries, and could have fewer adverse economic effects, than would the other options.

However, the agency has three concerns with regard to the adequacy of this option in providing sufficient protection for the public health. First, FDA recognizes that it may be impractical in the slaughter and rendering processes to segregate and exclude the bovine tissues that have not been found to present a risk. For example, USDA has expressed reservations that separating the distal ileum from the other intestinal offal could jeopardize a slaughter plant's ability to meet pathogen reduction goals required under USDA's HACCP regulations. Furthermore, regulatory enforcement of a prohibition affecting only specified bovine tissues may be impractical in the absence of specific diagnostic methods for identifying protein derived from such tissues. If a partial prohibition were adopted, it would be based on a finding that practical methods can be implemented for segregating, processing, storing, and identifying feed materials derived from tissues that have not been found to present a risk.

Second, this option would be inconsistent with actions taken in a number of other nations. For example, CDC has commented that any prohibition of lesser scope than a ruminant-to-ruminant prohibition would place the United States out of step with the international public health community.

Third, limiting the prohibition of tissues to those that have been shown to be infective would not address the risk that may be presented by other tissues. Definitive assays using methods more sensitive than currently available methods might identify such additional tissues as infective. The possibility of undetected low dose exposure cannot be eliminated, particularly for tissues such as lymph nodes and spleens which would be expected to be infective (Ref. 1).

These issues raise a substantial question as to whether the tissues could be GRAS. To achieve the highest level of public health protection, the agency believes that it may be reasonable to assume that, in the absence of scientific data definitively establishing that each tissue does not transmit spongiform encephalopathy, all ruminant tissues present a risk of infectivity.

The agency nevertheless welcomes comments on this alternative to the proposed ruminant-to-ruminant prohibition and especially invites comments on possible practical means of separating the distal ileum in compliance with USDA and industry standards, as well as the practicality of the removal of brain, spinal cord, and eye and the segregation of these tissues from others in the slaughter plant.

D. Mammal-to-Ruminant Prohibition

The agency received comments in support of a rule that would prohibit the use in ruminant feed of all mammalian-derived protein. For instance, the American Feed Industry Association, NRA, and APPI expressed concerns that segregating certain mammalian derived proteins from others would not be feasible because of regular commingling of protein products at feed mills and rendering facilities. A mammalian-to-ruminant prohibition would provide greater assurance of industry compliance than either a partial or total ruminant-to-ruminant prohibition because practical analytical methods exist for distinguishing mammalian from nonmammalian proteins. Implementation of a mammal-to-ruminant prohibition by the regulated industries would be less complex, and would reduce the potential for contamination of cattle feeds with material intended for feeding monogastric animals. Contamination of cattle feeds with material intended for feeding nonruminants was the primary reason that the United Kingdom has prohibited mammalian proteins in the rations of cattle. A mammal-to-ruminant prohibition would enable the continued use of Association of American Feed Control Officials definitions for the purpose of identifying and labeling products covered by the prohibition, and would not require additional or new labeling. Finally, concerns were expressed that allowing certain products containing meat and bone meal to be used in ruminant feeds while prohibiting others would lead to instability in financially sensitive commodity markets for animal protein.

On the other hand, the agency is not aware of any scientific data that establish or suggest TSE infectivity in nonruminant mammals except in mink. Thus, excluding nonruminant tissues from ruminant feed would be based primarily on the view that the possibility of infection of nonruminant tissue through cross-contamination or commingling with ruminant tissue is sufficient to preclude GRAS status for the nonruminant tissue. However, FDA is aware that some portions of the affected industries would prefer to segregate ruminant from nonruminant tissues, and believe that such separation is practical. Accordingly, the agency invites comments on the relative merits and disadvantages of a mammal-to-ruminant prohibition compared with a total or partial ruminant-to-ruminant prohibition.

E. Prohibition of Materials From U.S. Species Diagnosed With TSE's (Sheep, Goats, Mink, Deer, and Elk)

This option would involve requiring that ruminants not be fed any proteins derived from any U.S. animal species in which a TSE has been diagnosed. This includes sheep, goats, mink, deer, and elk. This approach would eliminate the scrapie agent, along with TME and CWD, from ruminant feed, and thereby reduce the risk of BSE in cattle caused by TSE transmission from other species. However, it would not prevent the spread of BSE among cattle if BSE occurred for some other reasons, e.g., by a spontaneous mutation in cattle or importation of animals with BSE, and the animals were processed and subsequently included in ruminant feed. As explained in section IX. of this document, this option involves lower economic costs than the three options previously described, in the absence of a BSE outbreak.

F. Sheep-Specified Offal Prohibition

The option of prohibiting only protein from specified offal from sheep and goats for use in ruminant feed would eliminate the scrapie agent from bovine feed. However, it would not prevent the spread of BSE among cattle if BSE occurred for some other reason, e.g., by

a spontaneous mutation in cattle or importation of animals with BSE, and the animals were processed and subsequently included in ruminant feed. The agency notes that if it were to select this option, it would reconsider its statement in the 1994 proposed rule that sheep less than 12 months of age presented a minimal risk. Cases of scrapie in sheep as young as 7 months have been reported (Ref. 113). Although the risk presented by young animals may be minimal, excluding them may provide inadequate protection to the public health. As explained in section IX. of this document, this option involves lower economic costs than the options described previously, in the absence of a BSE outbreak.

G. No Action

The advantages and disadvantages of this option, in relation to the other options, are discussed in detail in section I. of this document and in the preceding subsections of this section, as well as the environmental and economic sections. In general, this option offers lower economic and environmental costs if BSE does not occur in the United States, and higher such costs (in addition to public health implications) if BSE does occur.

VI. Description of the Proposed Rule

A. Introduction

1. Regulatory Alternatives

Typically, FDA regulates products that are of public health concern through a combination of regulatory tools including: labeling for appropriate use; CGMP regulations and, recently, HACCP regulations; specifications for the product or its manufacture; and testing to determine the presence or level of the agent of concern. Use of two or more of these means provides for appropriate reinforcement to ensure that the public is protected.

The agency's choice of readily available approaches for regulating animal protein products derived from ruminant and mink tissues is limited. For example, there are no practical tests for the presence of the TSE agent or of ruminant protein in animal feed. No commercial method of deactivating the TSE agent in animal protein products has been scientifically validated as effective. None of the agency's CGMP or HACCP regulations apply to this situation. Labeling requirements can be used but, by themselves, do not meet the agency's regulatory objectives.

2. The Regulated Industry

Often, the industry that manufactures and distributes an FDA-regulated product is fairly easily characterized. This facilitates regulation. That is not the case for animal protein products, as the following brief overview makes clear.

Renderers collect animal tissues from a variety of sources, and process these tissues into both protein and nonprotein products. The renderers may be specialized (packer/renderer) or independent. The packer/renderer, which involves a renderer associated with a large slaughter operation, specializes in one species—primarily cattle, swine, or poultry. Thus, whether the packer/renderer handles ruminant materials is fairly easily determined. The independent renderer, on the other hand, obtains a variety of raw materials ranging from restaurant scraps to byproducts from multi-species slaughtering operations to dead animals obtained from farmers. Typically, the independent renderer does not have a practical method to separate incoming ruminant from nonruminant materials, and thus commingles both ruminant and nonruminant materials in the rendering process. The rendered product is typically designated "meat and bone meal," but rendering operations produce a variety of other products. Renderers sell their products to animal protein blenders, animal feed manufacturers or pet food manufacturers. Virtually all rendered material at present is used ultimately for pet food or the feed of livestock or poultry.

Animal protein blenders mix animal and plant protein materials to meet a protein guarantee stated on the label, and to make a balanced nutritional product. Typically, the blender does not separate ruminant from nonruminant animal protein in its blending operation, although it may keep mammalian, poultry, fish and soybean meal protein separate at least in the initial stages. The blender sells its products to feed or pet food manufacturers. Some renderers also blend animal protein products.

Feed manufacturers use the protein material to make a complete feed (ready to be feed to animals), or a concentrated feed that needs to be further diluted (blended) before it can be fed to animals. The feed may be manufactured by an off-farm miller, or on the farm. Feed that is manufactured off-farm may be sold to one or more persons (for blending and/or further distribution) before reaching the farm.

Farmers that feed animals typically raise one species, but may have more than one (including both ruminants and nonruminants). Only about 10 percent of all animal protein products are fed to ruminants (mainly cattle) but approximately half of all animal protein products comes from ruminants.

3. Enforcement Considerations

The industry scenario described in the preceding section presents unique enforcement challenges. The agency is aware, from the comments to the ANPRM and other sources, of concerns that the regulatory impact be minimized. The agency is also aware of the need to provide incentive for innovation, e.g., in testing methodology and manufacturing technology, that would reduce the need for regulation. Finally, the agency is aware of the need, in designing a regulatory program, to acknowledge the different circumstances that exist in the industries previously described.

Therefore, the agency has designed a proposed regulatory scheme using the following principles. First, the agency has identified minimally necessary requirements to meet its regulatory objectives. The agency's goal is to apply risk management principles that minimize risk. Second, the proposed regulation applies greater restriction where the risk is greater—for example, where a firm handles both ruminant and nonruminant materials and intends to keep them separated. Third, the agency intends to rely on normal business records for much of the documentation it needs.

A fourth and most important principle concerns the related objectives of flexibility and providing incentives to reduce recordkeeping and labeling requirements. The proposed regulation provides for the reduction or elimination of recordkeeping and labeling requirements, upon the development of methods for detection, deactivation, or verification of product identity. These provisions are described further in the discussion that follows.

Industry-wide adoption of scientific advances including, or in addition to, those specified in the regulation, could ultimately lead to amendment or revocation of any final regulation. An example of an additional method would be the development of a practical method to detect the presence of ruminant protein in animal protein products or feed, which could be used for quality control by firms that separate ruminant from nonruminant protein, and by firms downstream from renderers.

Similarly, research leading to identification of the TSE causative agent and the etiology of BSE, and the characterization of the zoonotic nature of animal TSE's, could also lead to amendment or revocation of any final regulation.

The agency has tentatively decided not to place any record keeping, labeling or other specific requirement on firms that handle only protein materials from nonruminant sources. An example would be a rendering operation that is part of a swine slaughter operation. However, if these firms would use or intend to use animal protein products containing ruminant tissues in ruminant feed, or caused such use or intended use, the feed would be adulterated under the act.

The agency has also tentatively decided to require farmers (those responsible for feeding ruminant animals) only to make available copies of invoices and labeling for feed purchases. Farmers would not be required to maintain written procedures for handling animal protein products. These minimal requirements would apply even if the farmers were feeding both ruminant and nonruminant animals. Purchase records would be used primarily for traceback purposes. Because only minimal requirements would be placed on farmers, the proposed rules require that labeling for the animal protein and feed products caution against feeding the products to ruminants. Comments on these two tentative decisions are encouraged.

B. Outline of the Proposed Regulation

The proposed regulation places two general requirements on persons that manufacture, blend, process, and distribute animal protein products and feeds made from such products. The first requirement is to place cautionary labeling on the protein and feed products. The second is a requirement to provide FDA with access to sales and purchase invoices, for compliance purposes. For example, an invoice obtained from a feed manufacturer for a protein product not labeled with the cautionary statement could be used to trace back to the supplying renderer to ensure that it manufactures and distributes animal protein product from nonruminant sources.

Firms (renderers, blenders, and feed manufacturers and distributors) that handle animal protein products from both ruminant and nonruminant sources, and that intend to keep the products separate, would have certain additional requirements related to their source of nonruminant material; the need for separate facilities or cleanout procedures; and the need for SOP's. The same requirements would apply to firms that handle feeds containing animal protein products from both ruminant and nonruminant sources, and that intend to keep the feeds separate. Requirements would be greater for these operations because of the greater risk they would present for the possibility of ruminant protein being fed to ruminants.

The proposed rule provides that some or all of the regulatory requirements would not apply if innovations such as development of test methods and deactivation processes for TSE agents were scientifically validated and put into commercial use. Provisions for use of such methods do not imply that the agency believes that such agents are or will be in the animal protein products. The objective is to minimize the risk that the agent would occur in the products, regardless of the level of risk. Certain minimal but additional requirements would be imposed in such circumstances. For example, because the innovations likely would be applied by renderers, the renderers would need to certify to downstream customers that the methods were being utilized.

Section 589.2000(a) presents definitions of certain words used in the regulation. The definition of "protein derived from ruminant and mink tissues" excludes blood from bovines, milk proteins, and gelatins. Thus, those products are not subject to the regulatory provisions of the regulation. The proposed rule does not apply to any nonprotein animal tissues such as tallow or other fats. "Renderer" includes firms, not traditionally considered to be included within the definition of that term, but that collect animal tissues from various sources and subject them to minimal processing before offering the materials for use in animal feed. Also, "feed manufacturers" is defined to include both off-farm and on-farm feed manufacturing operations.

Section 589.2000(b) declares that protein derived from ruminant and mink tissues is not GRAS when intended for use in the feed of ruminant animals. The use or intended use of such material in ruminant animal feed causes the feed to be adulterated.

Section 589.2000(c) establishes regulatory requirements for renderers that manufacture products that contain or may contain protein derived from ruminant and mink tissues. ("May contain" allows for the fact that the renderer may not be able to determine the species of some incoming material). These renderers typically process both ruminant and nonruminant materials, but do not attempt to separate ruminant from nonruminant materials. Section 589.2000(e) covers renderers that intend to separate such materials. As mentioned, renderers that process exclusively nonruminant materials are not covered by the specific requirements of the regulation. Section 589.2000(c) applies to animal protein products intended for use in animal feeds, as well as animal feeds containing such products.

Two requirements would be placed on renderers covered by § 589.2000(c). First, they would be required to label their products to indicate that they contain (or may contain) protein derived from ruminant and mink tissues, and that the materials should not be fed to ruminant animals or used to manufacture feed for ruminants. Second, the renderers would be required to maintain copies of sales invoices for all their animal protein products, and to make those copies readily available for inspection. As an example, FDA would use the invoices to follow up with customers to verify that the customers are not using the products to manufacture ruminant feed. Because sales invoices are normal business records, the agency believes that the additional burden imposed by this requirement would be minimal.

Section 589.2000(c) renderers would be exempted from the labeling and record requirements if they used a manufacturing method that deactivates the agent that causes TSE's, or a test method that detects the presence of the agent that causes TSE's. Both methods would have to be validated by FDA, and made available to the public. The regulation would require "routine" use. That is, renderers would be required to use the test method on all incoming material or in each batch it manufactures.

Section 589.2000(c) renderers would be exempted from the record requirements (but not the labeling requirement) if they used a safe method to mark the presence of the materials. The marking could be visible to the naked eye, e.g., through use of a dye, or by a nonvisual means. One ANPRM comment recommended use of a colored uniform fine iron product to identify specific feed ingredients. If the marking is not visible, the marking agent must be detectable by a method that has been validated by FDA, and made available to the public. The mark must be permanent, i.e., it must be visible in mixed feed as used on the farm.

Section 589.2000(d) establishes regulatory requirements for persons other than renderers and persons responsible for feeding ruminants that handle animal protein products or feeds containing such products. This includes protein blenders, and feed manufacturers and distributors. However, as in the case of renderers, those firms that would otherwise be included in § 589.2000(d) but that handle both ruminant and nonruminant

materials and intend to separate the materials would be covered by § 589.2000(e) instead. Protein blenders, and feed manufacturers and distributors, that handle only nonruminant materials are excluded from the regulatory requirements of the proposed rule.

Persons covered by § 589.2000(d) would be subject to the same requirements as renderers, i.e., labeling and records. The records would include invoices both to cover purchases and sales of animal protein products and feeds containing those products. For on-farm mixers, production records could be substituted for sales invoices.

Section 589.2000(d) firms would be exempt from the labeling and record requirements if they purchased materials from renderers that certified the use of deactivation or detection methods as described in § 589.2000(c). They would also be exempt from the labeling and record requirements if they purchased materials from persons other than renderers who certified that they purchased materials from renderers who certified the use of deactivation and detection methods as described in § 589.2000(c). Paragraph (d) firms would also be exempt if they used the deactivation or detection methods described in § 589.2000(c), where use of such method is appropriate for the particular firm.

Paragraph (d) firms would be exempt from the record requirements if they purchased visibly-marked materials, or purchased from renderers that certified the use of marking methods as described in § 589.2000(c). They would also be exempt from the record requirements if they used the marking methods as described in § 589.2000(c).

Section 589.2000(e) establishes regulatory requirements for renderers, protein blenders, feed manufacturers and distributors, and independent haulers that handle both ruminant and nonruminant materials, and intend to keep the products separate. Section 589.2000(e) establishes four kinds of requirements. First, the firms would have the same labeling and recordkeeping requirements as specified in paragraphs (c) and (d) of § 589.2000, except that the labeling requirement would apply only to the ruminant and mink materials. Second, a renderer's source of nonruminant protein materials would be limited to single-species facilities, i.e., facilities slaughtering only swine. A renderer could purchase nonruminant protein from more than one single-species facility. The agency believes that this restriction is necessary because of its understanding that it is not likely to be feasible for mixed species slaughterhouses to undertake the additional compliance costs, and possibly additional facility costs, that would be required to assure separation of ruminant and nonruminant materials. The restriction would therefore help assure that enforcement of § 589.2000(e) would be practicable. However, the agency specifically requests comments on this provision.

Third, the firms would be required to establish separate equipment and facilities for the two kinds of materials, or cleanout procedures to prevent cross contamination. Fourth, the firms would need to establish written SOP's specifying the cleanout procedures, if used, and specifying procedures for separating the materials from the time of receipt until the time of shipment. Although § 589.2000(e) applies to several different kinds of firms, the agency's preliminary expectation is that only feed manufacturers and distributors will find it feasible to separate ruminant and nonruminant materials. As an example, a feed manufacturer might obtain ruminant materials from an independent renderer and swine materials from a packer/renderer, and use these materials to manufacture feed both for ruminants and nonruminants. The feed manufacturer would be required to meet the criteria listed previously, including the use of separate equipment and facilities or cleanout procedures, and the establishment of SOP's. The requirements of § 589.2000(e) would be applicable in the transportation process, whether the material is hauled by the feed manufacturer or another party such as an independent hauler. The requirement for separate facilities, procedures or SOP's would not apply to a firm, e.g., a feed mill or hauler, that handles only nonruminant materials, or only ruminant materials. Nor would it apply to a firm that handles both ruminant and nonruminant materials but does not attempt to separate the two kinds of materials.

The paragraph (e) firms would be exempted from the labeling and/or record keeping requirements, and the requirements related to sourcing, facilities and SOP's, if they meet the appropriate criteria for exemption. That is, renderers covered by § 589.2000(e) would be exempt from the labeling and recordkeeping requirements if they used deactivation or detection methods, and from the recordkeeping requirements if they used marking methods. Blenders and feed manufacturers and distributors would be exempt in a similar manner.

Section 589.2000(f) establishes requirements for those who are responsible for feeding ruminant animals. The only requirement contained in this paragraph is that those persons make available to FDA copies of purchase invoices and labeling for all incoming feeds. However, § 589.2000(f). does not apply to the feed manufacturing portion of farms and feedlots that have on-farm feed manufacturing operations. Section 589.2000 (d) and (e) would apply in those instances. Furthermore, persons who feed or intend to feed ruminant protein to ruminant animals would be subject to regulatory action for using or intending to use an unapproved feed additive as established in § 589.2000 (b).

Section 589.2000(g) establishes that violations of § 589.2000 (c) through (f) would cause animal protein products or feed containing animal protein products to be adulterated under sections 402(a)(4) or 402(a)(2)(d) of the act, or misbranded under section 403(a)(1).

Section 589.2000(h) establishes inspection and records retention requirements for persons covered by section 589.2000 (c) through (f). Records that are required under those paragraphs would need to be kept for a minimum of 2 years. The agency believes that this time period is adequate for purposes of verifying compliance with the regulation's procedural requirements. The agency invites comments on the need for a longer retention period related to the BSE incubation period, especially the practicality of using such records for epidemiologic investigation.

Section 589.2000(h) also requires that written procedures required by the regulation be made available for inspection and copying by FDA. The written procedures referred to are those specified in § 589.2000(e)(3). Affected firms would be required to have a copy of the current procedures available at all times.

VII. Specific Protein Sources

A number of comments discussed the exemption of certain tissues, including fluids, from any prohibitory rule. Most commentors favored the exemption of one or more tissues, including milk products; blood products; skeletal muscle and gelatin; and a variety of other tissues including both protein and nonprotein materials. Most of the comments cited published studies as well as positions taken by the European Union, European Commission, WHO and the government of France. The agency's comments on the status of milk, gelatin and blood follow. In addition, we discuss a comment on the use of canine and feline derived protein.

A. Milk Proteins

Data available to the agency suggests that milk proteins do not transmit the TSE agent. Research with oral exposure, intracerebral, and intraperitoneal administration of milk or mammary glands from BSE-infected bovine to normal and BSE-sensitive mice has not demonstrated the development of TSE's (Refs. 42 and 52). An expert group under the auspices of WHO recommended that all countries prohibit the use of ruminant tissues in ruminant feed. The WHO expert group also declared that milk and milk products, including such products from the United Kingdom, are safe for human consumption. In addition, OIE has recommended, because of lack of infectivity, that restriction of import or transit of milk products from healthy animals from BSE countries need not be instituted. Therefore, the proposed rules provide that protein derived from ruminant tissues does not include milk proteins derived from bovine, ovine, caprine, and cervine.

B. Gelatin Proteins

Data available to the agency suggest that gelatin does not transmit the TSE agent. The WHO has concluded that gelatin in the food chain is considered to be safe, as the conventional manufacturing process for gelatin has been demonstrated to significantly inactivate any residual infective activity that may have been present in source tissues (Ref. 2). FDA concurs with this statement and the scientific information on which it is based. Thus, the proposed rule excludes gelatin from protein derived from ruminant tissues.

C. Blood Meal Proteins

Data available to the agency suggests that bovine blood components do not transmit the TSE agent (Refs. 56, 78, and 94). Therefore, the proposed rule does not include blood meal from bovine as a protein derived from ruminant tissues.

D. Canine and Feline Derived Proteins

One comment suggesting that canine- and feline-derived proteins should not be fed to ruminants because of the finding of FSE in domestic cats in the United Kingdom. The agency is also aware of an ethically-based objection by some to the rendering of the carcasses of pet animals. TSE has not been diagnosed in dogs or other canines. FSE has not been diagnosed in the United States. The agency has considered the information provided by the comments and the published scientific literature (Refs. 26 and 27), and has preliminarily determined that there is no measurable risk of the spread of TSE's from canine- or feline-derived proteins to ruminants in the United States. However, the agency is inviting further comment on this issue.

VIII. Environmental Impact

FDA has carefully considered the potential environmental effects of this proposed rule and of five possible alternative actions. In doing so, the agency reviewed ANPRM comments submitted by a number of organizations and individuals. The comments were mostly concerned with the volume of material (e.g., dead animals and slaughter byproducts) that would be affected, and the nonrendering or rendering alternative means by which these materials could be disposed of, or utilized, safely. Comments suggested a number of uses for the processed materials, other than ruminant feed, including use in nonruminant animal feed and fertilizers, and disposal methods such as on-farm burial, landfilling, and incineration.

In the environmental assessment that accompanies this proposed rule, FDA evaluated the environmental consequences of six different options. These included: No action; ruminant and mink-to-ruminant prohibition (the proposed action); partial ruminant and mink-to-ruminant prohibition; mammalian-to-ruminant prohibition; prohibition of feeding tissues from any animal species in which TSE has been detected in the United States; and sheep and goat specified offal prohibition.

The environmental assessment considered each of the alternatives in the context of two scenarios. The first assumes that BSE does not occur in the United States, regardless of the alternative selected. The second scenario assumes that BSE does occur in the United States, again regardless of the alternative selected. In the first scenario, the assessment considered environmental impacts related to on-farm disposal, landfill, incineration, and industry wastes produced. The second scenario considered environmental impacts related to production losses and impacts, wildlife exposure, on-farm disposal, landfill, and incineration.

In the first scenario (no BSE), the "no action" alternative does not have environmental consequences because it is the "status quo" or baseline alternative. Environmental impacts for the other alternatives ranged from slight to moderate increases in environmental effects. For the proposed option (ruminant-to-ruminant) there would be moderate increases in environmental effects from on-farm disposal and landfill use, and slight increases in the other effects. Increases in waste disposal (on-farm, landfill, etc.) are anticipated to be temporary, however, as the markets are expected to adjust quickly to the more restricted uses of the ruminant materials.

In the second scenario (occurrence of BSE), the greatest negative environmental effect would occur in the case of the "no action" alternative. This is because the likely spread of the BSE agent through animal feed before the first BSE case is diagnosed would result in disposal of large numbers of animals by means other than rendering. Similar large impacts would occur with the sheep and goat, and TSE animal, options. Minimum environmental consequences would occur with the proposed option (ruminant-to-ruminant), because the spread of the BSE agent would have been controlled. Minimum to small effects would result from the remaining two options, partial ruminant prohibition and mammalian-to-ruminant prohibition.

The agency has concluded that the proposed rule will not have a significant impact on the human environment, and that an environmental impact statement is not required. FDA's finding of no significant impact (FONSI) and the evidence supporting that finding, contained in an environmental assessment (EA) prepared under 21 CFR 25.31, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA invites comments and submission of data concerning the EA and FONSI.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation). FDA

concludes that this proposed rule is consistent with the principles set forth in the Executive Order and in these two statutes.

A study of the impacts on industry of the proposed rule (on file with the Docket Management Branch (Ref. 114)) conducted for FDA by the Eastern Research Group (ERG), a private consulting firm, and the discussion in the remainder of this section, demonstrate that the proposed rule constitutes an economically significant rule as described in the Executive Order. The agency has further determined that the proposed rule will have a significant impact on a substantial number of small entities. The proposal makes no mandates on government entities and is estimated to result in aggregate net annual costs ranging from $21.4 to $48.2 million to the private sector.

A. The Need for Regulation

Although BSE has not been diagnosed in the United States, the need for regulatory action is based on a need to protect U.S. livestock from the risk of contracting BSE. In its guidelines for the preparation of Economic Impact Analyses, the Office of Management and Budget (OMB) directs Federal regulatory agencies to determine whether a market failure exists, and if so, whether that market failure could be resolved by measures other than new Federal regulation. In this instance, private incentive systems for both suppliers and purchasers may fail in markets for cattle, rendering, and ruminant feed. The potential for market failure among the suppliers in these sectors results from the externality that could be created by individual suppliers imposing economic hardships on other suppliers within the industry. The potential for market failure among the purchasers results from the inadequate information that would be available to purchasers of potentially infective products.

Any renderer, feed manufacturer, or cattle producer that permits animal protein derived from ruminants and mink to be placed in ruminant feed increases the risk that other renderers, feed manufacturers, or cattle producers will suffer the severe economic consequences that would follow an outbreak of BSE in the United States. The industry is aware of this risk, as evidenced by the existence of voluntary programs aimed at reducing the transmission of the infectious agent. These include an adult sheep rendering ban recommended by the NRA, a recommended ban on the feeding of rendered ruminant protein to ruminants by the NCBA and others, and scrapie-free certification programs by individual sheep producers. Although the benefits of such programs—the reduction or elimination of the risk of an outbreak of BSE and the increased consumer confidence in the safety of the industries' products—accrue to all members of these industries, compliance with these measures is incomplete, because individual noncomplying members can avoid the costs of risk reduction measures while still enjoying the benefits of compliance by others in the industry.

If purchasers could easily identify the risks of infective agent contamination associated with products from specific suppliers, they could more easily take defensive actions to reduce these risks (e.g., refusing products from cattle known to have consumed specified ruminant proteins). Purchasers are unlikely to obtain the information they need, however, for several reasons. First, the long incubation period for BSE creates a lag between the actual onset and the recognition of the disease and could lead to a suboptimal level of risk prevention by the concerned parties during the incubation period. By the time the first signs of disease are observed, many animals may have been already exposed. Moreover, renderers sell their product to feed manufacturers who frequently combine proteins from many different plant sources and animal species to produce cattle feed. Ruminant producers, therefore, have no sure way of knowing whether a particular batch of feed is free from potentially infective proteins and cannot easily avoid purchasing risky feed. Finally, if renderers or feed manufacturers do not believe that BSE is an important threat they may choose not to take preventive action, regardless of the risk levels perceived by epidemiological experts or consumers.

B. Benefits

The proposed rule would reduce the risk of an outbreak and subsequent proliferation of BSE disease in the United States. It may also forestall the loss of consumer confidence in the U.S. beef market due to concerns about BSE and its implications. Thus, the benefits of this proposal would include the value of reduced risks to human and animal health and to the economic stability of the U.S. livestock and livestock dependent industries compared to the "no action" option. In technical terms, these benefits measure the expected value of the future disease-related costs that might be averted by the proposed rule. Specifically, they are calculated as a product of three factors: (1) The probability that, in the absence of this rule, BSE would be introduced and proliferate in the United States, (2) the costs, both direct and indirect, that would be associated with the spread of BSE in the United States, and (3) the extent to which the proposed rule would reduce the likelihood of BSE proliferation.

BSE has not been detected in the United States and the probability that it currently exists is remote. Nevertheless, it is possible that BSE could develop in the future. Once developed, BSE could remain undetected for several years because of its long incubation period and because, at present, it can be diagnosed reliably only by microscopic brain examination after death. During the period between introduction and diagnosis, the disease could spread as it apparently did in the U.K. via intake of infective feed. If regulation was delayed until after discovery, the costs would be substantial. By addressing the central risk factors associated with BSE, FDA believes that the proposed rule would eliminate the vast majority of the BSE-related risks and costs.

BSE was first detected in the U.K. in November 1986, and a ban on ruminant offal in ruminant feed was imposed in the U.K. in July 1988 (Ref. 115). An analysis of cattle born before and after the feed ban went into effect suggests that the feed ban significantly decreased disease transmission (Ref. 116). This analysis found that the incidence of confirmed BSE roughly doubled each year for animals born between July 1985 and July 1988, but declined precipitously in animals born in August 1988 compared to the previous year and continued to fall thereafter. Because BSE has a long incubation period, however, a decrease in the incidence was not evident until several years after the initial feed ban was implemented. The incidence of BSE peaked in 1992 at 36,681 detected cases, or approximately 0.3 percent of the UK's 11.5 million cattle. Despite a sharp decrease in the incidence rate since then, by the end of 1996, more than 165,000 cases of BSE will have been detected, with one-third of all U.K. cattle herds infected (Refs. 115 and 117).

The likelihood that BSE will someday be developed in the United States cannot be estimated with any confidence, although U.S. risk factors are believed to be significantly smaller than existed in the United Kingdom of the early 1980's. As described previously, the various remaining modes include transmission from scrapie-infected sheep or other animals with TSE, e.g., through meat and bone meal; introduction via imported

animals; and spontaneous introduction (which in some TSE's has been hypothesized to occur at a rate of about 1 case per million per year). USDA import controls and the voluntary bans on sheep offal and ruminant tissues in ruminant foods reduce the risk of disease introduction but cannot completely eliminate it.

Although FDA cannot quantitatively estimate the risk of a significant BSE outbreak in the United States, the agency has used the U.K. experience, modified to account for major differences in circumstances, to assess the consequences of the potential spread of the disease within the United States. If BSE were introduced in this country, the pattern of disease spread would presumably be similar to that in the United Kingdom, with most symptomatic disease appearing in older cattle (the average time for BSE symptoms is approximately 5 years after infection (Ref. 115)). The rate of spread of symptomatic disease would probably differ, however, because compared with the pre-BSE U.K. dairy industry, U.S. dairy cows are younger and are exposed to meat and bone meal in feed later in life than was true in the United Kingdom (Ref. 118). United Kingdom dairy animals were historically fed meat and bone meal as calves, whereas U.S. dairy cows ingest meat and bone meal primarily as adults.

1. Methodology

To develop an illustrative estimate of the number of cattle that might be lost to BSE infection if the disease were to occur in the United States in the absence of regulation, FDA extrapolated from the experience in the United Kingdom, but adjusted for the differences in cattle age and potential age of exposure to meat and bone meal. This extrapolation assumes that the detection of BSE in this country would quickly lead to a ruminant-to-ruminant feed prohibition but that, as in the United Kingdom, BSE incidence would nonetheless continue to increase for 6 years due to the disease's long incubation time (hence several years of disease spread before the diagnosis of the first case). To account for the difference in cattle age-related risk factors, FDA assumed that, if BSE occurred in the United States, the affected animals would be predominately dairy cows of age 4 or more, rather than age 3 and up as in the U.K. (due to the differences in age of exposure.) The difference of 1 year is based on the agency's estimate that U.S. cattle are first exposed to meat and bone meal 1 year later than U.K. cattle. Therefore, the onset of the clinical disease is estimated to start 1 year later. Accordingly, only 47 percent of U.S. dairy cows are age 4 and up (about 4.8 million cows), while 90 percent of United Kingdom cows are age 3 and up (about 2.6 million cows). Thus, a lower percentage of U.S. cattle were assumed to be at risk of symptomatic BSE, and the projected rate of death was proportionately lower. Based on the relative size of the U.S. and U.K. dairy cattle populations, these projections suggest that if BSE were introduced in the United States and spread in a similar manner, the disease would destroy 299,000 U.S. cattle over 11 years (4.8 x 2.6 x 162,000 U.K. BSE deaths). (These calculations assume that a feed prohibition would be implemented very soon after the first case is diagnosed, and that the prohibition would immediately begin to affect the underlying rate of new infection. If a feed prohibition were not implemented at that time, the number of cattle deaths would be much higher.)

Other adjustments could be made to this estimate, but their effect on the direction of the results would be uncertain. For example, compared with U.K. practices before 1988, U.S. dairy cattle consume a higher proportion of concentrated feed that contains meat and bone meal. On the other hand, most U.S. concentrate contains a lower percentage of meat and bone meal (and a higher percentage of vegetable-based proteins). If BSE infectivity in feed is highly dose-dependent, these factors could cause FDA's cost estimate to be either too high or too low, if one of the factors is dominant over the other.

The risks and costs associated with BSE when it occurs are primarily of three types. First, there is the possible risk and associated cost of ruminant-to-human transmission of TSE disease. The proposed rule would reduce this risk by eliminating the main routes by which ruminants might acquire transmissible TSE, greatly reducing any risk incurred by the human consumption of ruminant-derived products. Thus, the proposed rule would reduce the risk of future mortality, morbidity, and health care costs due to human TSE. Second, there is the risk of livestock losses. These losses include not only the deaths of BSE-infected animals, but also the loss and disposal costs of other animals that would be destroyed, either to contain the immediate spread of disease or to restore consumer confidence in the safety of beef and dairy products. Third, there are the costs associated with decreased domestic sales and exports of beef and other bovine-derived products until consumer and international confidence could be restored.

2. Reduced Risk to Public Health

As discussed earlier, scientists believe that the nv-CJD cases identified in the U.K. may have been associated with the BSE epidemic. If indeed there were such an association, and if BSE were to occur in this country, there would be a risk of spreading BSE-related human TSE in the United States The proposed rule therefore might avert human deaths in the United States, although the number of deaths cannot be estimated. The proposed rule would also save the health care and other costs associated with treating individuals with the disease.

3. Reduced Risk of Direct Livestock Losses

For estimating the present value of livestock losses if BSE occurred in the United States, FDA assumed that the first case of BSE would not be detected—even in the absence of the proposed rule—for 4 years. Based on an estimated value of $502 per animal (Ref. 119) and disposal costs of $4 per animal, direct losses from the death of 299,000 BSE-infected cattle would reach $151 million over 11 years (starting 4 years from now). At a discount rate of 7 percent, the total present value of these losses is $75 million.

In addition to the animal losses from direct infection, a significant outbreak would probably lead to the eradication of high-risk animals to restore consumer confidence. Switzerland, for example, has proposed slaughtering all cattle born before that country implemented a feed ban, or approximately one-eighth of its national herd (Ref. 120). The United Kingdom has begun a program to destroy and incinerate all animals over age 30 months as they reach the end of their useful life, or about 1 million animals in 1996 and a total of 4.7 million over 6 years. In addition, the United Kingdom has a program to slaughter some unmarketable male dairy calves (126,000 had been slaughtered as of August 1996) and up to 147,000 additional "high-risk" animals (Refs. 115 and 121). Even if the U.K. eradication of animals were limited to a one-time total of 1 million cattle (about 8.7 percent of their cattle stock), similar measures in the United States, if they occurred immediately upon detection of the disease, would result in the one-time destruction of $4.58 billion worth of cattle, with a present value of $3.49 billion.

4. Costs of Future Regulation

Moreover, the ability to control a BSE outbreak once it occurred would require putting in place restrictions on the use

of ruminant proteins in ruminant feeds that would be at least as restrictive as the measure under this proposed rule. Presumably, the total costs of implementing a ruminant-to-ruminant feed prohibition at that point would be at least as great as the low estimates for this proposed rule, or $21.4 million per year. The present value of these future regulatory costs would total approximately $240 million. Moreover, this estimate may vastly understate the economic impact because the market value of ruminant-derived proteins could disappear if there were an actual outbreak.

5. Reduced Risk of Losses in Domestic Sales and Exports

If BSE were to emerge in the United States, the news could greatly reduce both domestic sales and exports of bovine products. In the United Kingdom, domestic consumption fell by more than 20 percent between 1988 and 1990 and has not yet fully recovered (Ref. 122), presumably due to continuing concerns about possible links between BSE and CJD. If U.S. consumers acted similarly, U.S. producers of beef products could lose over $9 billion in annual sales (Ref. 123). Alternatively, U.S. consumers might demonstrate considerably less concern, as the U.K. experience may have improved the ability of U.S. risk managers to communicate both the extent of the risk of contracting CJD from the consumption of beef and the responsiveness of the government's safety policies. Nonetheless, it remains probable that the uncertainty surrounding a serious BSE outbreak would lead U.S. consumers to reduce their consumption and spending on beef by a significant amount. Also, at the same time that U.K. domestic sales of beef were declining due to the fear of BSE, the volume of U.K. exported beef fell by nearly 16 percent (Ref. 122). Based on U.S. beef exports in 1994 of approximately $2.2 billion (Ref. 109), a proportional decline of this magnitude would reduce U.S. exports by up to $0.3 billion per year.

While the values of such lost domestic and international sales would reduce the profits of the U.S. beef industry and the enjoyment of some U.S. consumers of beef, they do not provide an accurate measure of societal costs, because competitor industries, such as poultry, pork, and seafood, would gain new profits. Thus, the net costs that would result from such potential shifts in consumer spending cannot be precisely discerned without extensive economic modeling. While FDA examined a partial equilibrium model for projecting the approximate losses of consumer and producer surplus within the market for beef products, the agency could not adequately quantify the likely effects on the markets for substitutes of beef. Consequently, FDA could not estimate the net economic cost of these lost sales. Nevertheless, the magnitude of these potential costs could be substantial and the agency requests public comment on how the appropriate measurement methodologies could be developed and applied.

Finally, even in the absence of evidence of BSE in the United States, consumer concern about BSE could affect beef consumption and expenditures. Thus, one benefit of implementing the proposed rule now is that it might prevent a loss of consumer confidence in the beef market, irrespective of the actual risk of BSE. FDA did not attempt to quantify this potential loss, but believes that it also may be substantial, particularly in light of the recent increased U.S. publicity of BSE and its hypothesized links to CJD.

6. Total Losses Averted

In summary, the losses averted by the proposed rule include the expected value of the costs associated with BSE itself, and the potential value of forestalling a drop in domestic and international demand for U.S. beef due to BSE-related causes. The first component largely reflects the statistical probability that BSE could occur and spread within the United States and the potential $3.7 billion cost of destroying BSE-exposed livestock. The second primarily measures the expected loss to U.S. consumers and producers that would result from reduced sales. While FDA has not quantified these latter costs, plausible scenarios indicate that they could reach billions of dollars. Moreover, these figures have not included the possibility of lost lives and treatment costs associated with treating human TSE.

Finally, the expected benefits of the proposed rule are slightly lower than the sum of the expected value of all the costs associated with BSE, because the rule would not totally eliminate all of the related risk (e.g., due to the possibility of spontaneous introduction of disease and the possible incomplete compliance with the rule). FDA believes, however, that any remaining risk would be extremely small. In addition, because the rate of BSE infection and the associated costs would probably vary geographically (as scrapie does now) (Ref. 98) , the benefits would vary across regions of the country.

7. Comparison of Alternatives

As described elsewhere in this document, FDA is considering five alternatives to the proposed rule, in addition to other options that might be offered in the comments. The first three of these alternatives are: (1) No action (relying on voluntary industry activities), (2) prohibit only materials from U.S. species in which TSE has been diagnosed, and (3) a prohibition on proteins from specified sheep and goat offal in ruminant feed. Compared with the proposed action, prohibiting proteins from all U.S. TSE species provides similar reductions in the risk that BSE might be introduced, with a sheep/goat specified offal protein ban and no action providing progressively less risk reduction. The TSE species alternative, however, would be significantly less effective in limiting the spread of BSE (e.g., after spontaneous introduction) until BSE was diagnosed and cattle were added to the list of TSE species. Likewise, the two other alternatives would be significantly less effective in inhibiting the spread of ruminant-to-ruminant transmission of disease once BSE is introduced. Thus, the expected value of the benefits of each of the three rejected options is substantially lower than the proposed rule, although the amount of difference cannot be estimated precisely.

The agency is also considering two other alternatives: (1) A mammalian-protein-to-ruminant prohibition, and (2) a partial ruminant-to-ruminant prohibition which would exclude all ruminant and mink tissues except certain bovine tissues. Compared with the proposed rule, both alternatives offer similar benefits in substantially inhibiting the initial introduction of BSE. The extent of inhibition of the spread of disease (and associated costs), however, would be different.

The mammalian protein alternative would further reduce the spread of disease compared with the proposed rule, by reducing the risk of cross-contamination within rendering and processing plants. Thus, this alternative would bring the expected value of the BSE-related costs even closer to zero than would the proposed measure. However, the incremental benefit is small if cross- contamination under the proposed measure does not pose a substantial risk.

The partial ruminant-to-ruminant prohibition would be less effective than the proposed measure, because it would be more administratively difficult to enforce. Thus, this alternative would not reduce the expected value of the

BSE-related costs as much as the proposal. Again, however, the exact difference cannot be estimated, but would vary depending on the likely level of compliance under the alternative.

C. Industry Impacts

The ERG study examines the composition, size, and scale of economic activity for the various affected industry sectors and provides estimates of the cost and high and low market impacts (depending on the size of the price change for restricted meat and bone meal of five regulatory options (see Table 1).

TABLE 1.—ESTIMATED COSTS OF ALTERNATIVE REGULATORY PROHIBITIONS [1]

Annualized Impacts	Mammalian-to-ruminant	Ruminant-to-ruminant (proposal)	Partial ruminant-to-ruminant	Sheep/Mink-to-ruminant	Sheep/Goat-to-ruminant
	($ million)				
Low Market Impact Scenario ($25/ton)					
Capital Costs	8.8	1.0	3.2	0.0	0.0
Operating/Disposal Costs	10.1	0.1	14.4	5.1	0.2
Transportation	10.7	7.6	5.3	0.0	0.0
Documentation	1.9	1.5	0.5	0.0	0.0
Substitution Costs	9.7	8.0	3.7	0.0	0.0
Renderer Revenue Losses	76.4	63.2	28.8	4.2	0.1
Nonruminant Gains	(72.6)	(60.0)	(27.4)	0.0	0.0
Totals	45.0	21.4	28.5	9.3	0.3
High Market Impact Scenario ($100/ton)					
Capital Costs	8.8	8.2	4.9	0.0	0.0
Operating/Disposal Costs	10.1	10.1	16.9	5.1	0.2
Transportation	10.7	7.6	5.3	0.0	0.0
Documentation	1.9	1.8	0.7	0.0	0.0
Substitution Costs	9.7	8.0	3.7	0.0	0.0
Renderer Revenue Losses	305.6	252.8	115.4	4.2	0.1
Nonruminant Gains	(290.3)	(240.2)	(109.6)	0.0	0.0
Totals	56.5	48.3	37.3	9.3	0.3

[1] Totals may not match text due to rounding error.

1. The Proposed Rule

The proposed alternative would prohibit the use of ruminant and mink protein in ruminant feeds. Currently, only about 10 percent of the meat and bone meal supply is used in ruminant feed, but over 80 percent of the meat and bone meal contains some ruminant material. ERG forecast that because no mixed-species slaughtering or rendering establishments would find it profitable to separate ruminant from nonruminant offal, most would continue to contain ruminant material. ERG estimated that affected renderers and feedmills would incur total direct compliance costs ranging from $10.2 to $27.6 million per year. Renderers would bear annual costs of about $6.3 million and feed mills would bear annual costs of from $3.8 to $21.3 million. Arrayed by compliance category, transportation costs were estimated at $7.6 million; documentation costs for activities to ensure control of ruminant feed constituents ranged from $1.5 to $1.8 million; and capital costs and operating costs ranged from $1.0 to $8.2 million and $0.1 to $10.1 million, respectively, due primarily to the need for some feedmills to expand their capacity to offer both ruminant and nonruminant feed products under a high market impact scenario.

Because consumer response to the rule is uncertain, ERG could not develop a precise projection of future meat and bone meal prices. ERG estimated, however, that the regulatory prohibition of marketing ruminant meat and bone meal to ruminants would lower the price of this product by from $25 to $100 per ton, decreasing rendering industry revenues by from $63.2 to $252.8 million per year. In contrast, a lower MBM price would increase sales of meat and bone meal to the nonruminant sector and the resulting increased profits for that sector would offset, at an aggregate level, most revenue losses. Although ERG did not quantify this effect, FDA determined that the assumption of a fixed supply of meat and bone meal and a linear demand for nonruminant feed implies that purchasers of mixed-species meat and bone meal for nonruminant uses would save from $60.0 to $240.2 million annually, because of the lower meat and bone meal costs. This estimate assumes a total meat and bone meal supply of 2.5 million tons, changes in price ranging from $25 to $100 per ton, and an increase in nonruminant consumption of meat and bone meal of about 250,000 tons. In addition, manufacturers of ruminant feed would incur higher costs if they could not use ruminant proteins. In an analysis prepared for the feed industry, protein substitutes, such as soybean meal and other minerals necessary to provide the same nutritional level as that provided by the meat and bone meal, were estimated to cost approximately $31.75 per ton more than meat and bone meal (Ref. 125). FDA believes that this estimate is overstated, because it assumes that soybean meal alone sells for $20 per ton more than meat and bone meal. In fact, their respective market prices are currently similar. Nevertheless, FDA used the reported $31.75 per ton differential to estimate that the higher price of alternative proteins would increase ruminant feed costs by about $8.0 million per year.

As a result, FDA estimates that the aggregated annualized costs of this proposal, comprised of both the direct compliance costs and the various indirect gains and losses, would total

from $21.4 to $48.2 million. Although the greatest initial burden would fall on the rendering and feed manufacturing sectors, ERG noted that the final distribution of these impacts would shift; renderers would pass back the economic impacts to slaughterers, who, in turn, would pass them back to cattle producers. FDA judged, however, that of the small renderers dependent upon farmers' and ranchers' dead stock for their raw materials, 20 to 25 would be likely to close. ERG also forecast that these impacts would cause a decline in prices for slaughter-weight cattle of $1 to $5 per head. In the long run, ERG foresaw a modest reduction in the size of the U.S. cattle herd.

In response to its ANPRM, FDA received comments on the possible impacts of the proposal from both individuals and industry. The submission from the American Feed Industry Association (AFIA) contained an analysis of the animal feed market that was based on the assumption that the proposal would taint the safety of all meat and bone meal (both ruminant and nonruminant), to the extent that even nonruminant animal producers would refuse to purchase the product. This loss of wholesale value was estimated at $523 million. Further, the AFIA comment estimated the cost for disposing of this meat and bone meal at $349 million and for substituting to higher priced feeds at $74 million annually.

FDA questions the conclusions of the AFIA report, largely because the proposed rule does not prohibit the use of ruminant proteins in nonruminant feeds and there is no evidence that this market would disappear. As noted earlier, nonruminant feed use currently constitutes about 90 percent of the meat and bone meal market. While some nonruminant producers may be wary of ruminant MBM after the proposal becomes final, the broad media coverage of BSE in the United Kingdom and the voluntary prohibition of ruminant MBM in ruminant feeds have already provided nonruminant producers with substantial information on the relevant risks. The implications of the ERG study are that most of the major nonruminant sectors that use ruminant meat and bone meal in their feeds would continue this practice, particularly at sharply lower MBM prices. Because ERG believed that all stocks of meat and bone meal would find a commercial outlet within the nonruminant feed sector, they projected no additional disposal costs and far smaller revenue losses than AFIA.

2. Partial Ruminant-to-Ruminant Prohibition

ERG also estimated the economic impact of a partial ruminant-to-ruminant prohibition, which would prohibit only the use of proteins from designated ruminant tissues in ruminant feeds. ERG projected that cattle packer/renderers and approximately one-half of the large cattle packers would choose to separate the designated and nondesignated tissues. As shown in Table 1, this change in processing would lead to increased costs from capital investments, increases in operating and transportation expenses, training, and documentation activities. Further, ERG projected, under the high market impact scenario, that some feedmills would expand their facilities to offer both restricted and nonrestricted meat and bone meal. They estimated the annualized direct compliance costs for this option at from $23.5 to $27.9 million. In addition, ERG projected that this option would cause price declines of from $25 to $100 per ton for the meat and bone meal derived from designated tissues, leading to decreases in renderer revenues of from $28.8 to $115.4 million per year. As discussed previously, FDA again assumed a fixed supply of meat and bone meal and a linear demand for nonruminant feed to calculate that purchasers of mixed-species meat and bone meal for nonruminant uses would save from $27.4 million to $109.6 million annually because of the lower meat and bone meal costs. Adding additional protein substitution costs of $3.7 million and other indirect costs raises the estimated net aggregate costs for this alternative to $28.6 to $37.4 million.

3. Mammalian-to-Ruminant Prohibition

The third option assessed was the prohibition of mammalian protein in ruminant feeds. ERG projected that slaughtering and rendering establishments would have no reason to separate offal because very few of these establishments process both mammals and nonmammals. They estimated annualized direct compliance costs for this option at $31.6 million. ERG forecast that, regardless of the size of the price decline for restricted meat and bone meal, some feedmills would expand their capacity to offer both restricted and nonrestricted meat and bone meal, resulting in increased capital and plant operating costs. The majority of the remaining regulatory costs are composed of documentation costs. Assuming that a regulatory prohibition on marketing restricted meat and bone meal to ruminants would cause the price of the restricted meat and bone meal to fall by from $25 to $100 per ton, ERG projected that this option would reduce renderer revenues by from $76.4 to $305.6 million per year. Alternatively, under the same assumptions as applied above, FDA found that purchasers of mixed-species meat and bone meal for nonruminant uses would save from $72.6 million to $290.3 million annually, because of the lower meat and bone meal costs. Adding additional protein substitution costs of $9.7 million and other indirect costs raises the estimated net aggregate costs for this third option to from $45.1 to $56.6 million.

4. Other Regulatory Alternatives

FDA also considered two less restrictive options for controlling the spread of an outbreak of BSE in the United States: A prohibition of all sheep, goat, mink, deer, and elk proteins in ruminant feed; and a prohibition of sheep and goat proteins in ruminant feed. The first of these alternatives would require that ruminants not be fed proteins from any species in which a TSE was diagnosed in the United States, which includes sheep, goats, mink, deer, and elk. ERG anticipated minimal regulatory impacts for sheep, lamb, and goat producers because most renderers already require that sheep, lamb, and goat offal be excluded from mixed species meat and bone meal. ERG estimated that this alternative could restrict the use of up to 34,150 tons of offal annually from the various species, or about 0.3 percent of all mammalian offal rendered. Using an estimated cost of $150/ton for landfill disposal, ERG calculated that the disposal costs for this alternative could equal $5.1 million. Furthermore, ERG estimated that the meat and bone meal and tallow manufactured from offal generates revenues of about $500/ton of processed material. Under this option, meat and bone meal production would fall by 8,450 tons per year, reducing industry revenues by an estimated $4.2 million annually.

The final alternative would restrict only sheep and goat protein from use in ruminant feed. This alternative is similar to the agency's 1994 proposal, which pertained only to adult sheep and goats. Most sheep and goats are currently excluded by renderers from being rendered into mixed species meat and bone meal. ERG estimated that this alternative would restrict the use of up to 1,200 tons of offal, or about 0.01 percent of all mammalian offal rendered. At $150/ton for landfill disposal, the disposal costs would equal $0.2 million. ERG calculated that

production of meat and bone meal under this option would be restricted by only 300 tons per year, leading to revenue losses of about $0.1 million.

ERG noted that the disposal costs presented for the latter two alternatives are high-end estimates because of the likelihood of onsite disposal for deer and elk taken by hunters. Further, these alternatives were not expected to have a measurable effect on the price of meat and bone meal because they would affect only 0.3 percent and 0.01 percent of the meat and bone meal markets, respectively. In contrast to the first three options, these rules would not change the demand for meat and bone meal, but would restrict the supply of meat and bone meal. Any postregulation increase in price, therefore, would increase revenues of renderers and costs of purchasers of meat and bone meal by an almost equal amount. ERG reported that this decrease in supply would have a negligible effect on meat and bone meal prices.

D. Small Business Impacts

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule would have a significant impact on a substantial number of small entities. The discussion in this section, as well as in other sections of this document, and the ERG report, constitute the agency's compliance with this requirement.

The Regulatory Flexibility Act asks for a succinct statement of the purpose and objectives of the rule. As explained previously in this document, FDA is proposing this measure to address the risk to U.S. livestock associated with feeding ruminant proteins to ruminants. Existing epidemiological evidence suggests a link between an outbreak of BSE in the United Kingdom and the practice of feeding products to cattle that included ruminant proteins. This rule would prohibit that practice. Thus, the need for regulatory action is based on the need to prevent the spread of BSE and thereby to protect the health of animals and to minimize any risk that might be posed to humans from BSE.

The Regulatory Flexibility Act also requires a description of the affected small entities. The ERG study includes counts of entities in each class of industry that are involved in ruminant production and meat preparation. The vast majority of all of these firms are considered small businesses according to size standards set by the Small Business Administration. There are 282 rendering plants, of which 204 have fewer than 500 employees, including all of the 152 independent renderers. ERG also estimated that 30,000 feedmills, all with fewer than 500 employees, could be affected by this rule. An estimated 1.4 million enterprises are engaged in ruminant production. These include businesses engaged in the production of beef and dairy cattle, including farmers and ranchers, stocker operators, and cattle feeders, and other ruminant producers. The slaughtering industry contains more than 4,000 establishments. Of this total, however, only 130 are packer/renderers that could have compliance requirements and about 52 of these establishments have fewer than 500 employees. ERG estimated that almost 300,000 small establishments are engaged in meat processing. These businesses would have no direct compliance activities, but could be affected indirectly by altered renderer practices. Also, about 150,000 small producers of nonruminant animals could gain from lower feed costs.

The RFA also requires a description of the recordkeeping requirements of the proposed rule. The ERG report presents detailed estimates of these costs. ERG found that the rule would require certain feed manufacturers to develop new written operating procedures. In addition, affected firms would have to retain invoices but FDA believes this activity is already generally accepted business practice.

Finally, the Regulatory Flexibility Act asks for an evaluation of any regulatory overlaps and regulatory alternatives that would minimize costs to small entities. FDA is unaware of any significant regulatory conflicts with other Federal rules. FDA examined five regulatory alternatives in addition to no action: (1) The ruminant-to-ruminant prohibition; (2) the partial ruminant-to-ruminant prohibition; (3) the mammalian-to-ruminant prohibition; (4) the prohibition of all sheep, goat, mink, deer, and elk proteins in ruminant feed; and (5) the prohibition of specified sheep and goat proteins in ruminant feed. The ERG report provides a detailed comparison of the respective impacts of these alternatives and found that the estimated direct compliance costs are lower under the proposed rule ($10.2 to $27.6 million) than under two of the alternative rules ($23.5 to $27.9 million for the partial ruminant-to-ruminant option, $31.6 million for the mammalian-to-ruminant option). The other alternatives would not be nearly as effective at reducing the risk of an outbreak and spread of BSE, but are considerably less costly. As many of the above projections are uncertain, FDA particularly invites additional data or comment on the effects of the proposed and alternative rules on any group of small businesses.

E. Unfunded Mandates Analysis

Based on the ERG study, FDA estimated that aggregate expenditures by the private sector that result from the proposed rule, issued under 21 CFR 589.2000, will range from $10.2 to $27.6 million per year. As described in section IX.B. of this document, the benefits of this measure accrue both to the general public (through decreased risks to health) and to the livestock and associated industries. The costs of the measure are borne by the private sector, primarily the rendering and animal feed industries. Because FDA anticipates no significant additional costs to State, local, or tribal governments, this regulatory action does not require an assessment under the Unfunded Mandates Reform Act.

X. The Paperwork Reduction Act of 1995

This proposed rule contains recordkeeping requirements that are subject to public comment and review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Therefore, in accordance with 5 CFR part 1320, a description of reporting requirements is given in Table 2 of this document, with an estimate of the annual collection of information burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA is soliciting comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, when appropriate.

Title: Substances Prohibited from Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed.

Description: The proposed rule (§ 589.2000) provides that protein derived from ruminant and mink tissues is not GRAS for use in ruminant feed and is a food additive subject to section 409 of the act. Proteins derived from

animal tissues contained in such feed ingredients in distribution cannot be readily determined by recipients engaged in the manufacture, processing and distribution, and use of animal feeds and feed ingredients. To achieve the public and animal health objectives of this proposed rule, the agency believes that manufacturers, processors, distributors, and users must be responsible for ensuring and appropriately maintaining the identity of the specific nature of the components of animal protein products and animal feeds containing these products.

Thus, under the agency's authority in section 701(a) (21 U.S.C. 371(a)) of the act to issue regulations for the efficient enforcement of the act, this proposed rule places three general requirements on persons that manufacture, blend, process and distribute products that contain or may contain protein derived from ruminant and mink tissues, and feeds made from such products. The first requirement is for cautionary labeling of these products with direct language developed by FDA. The second requirement is for these establishments to provide FDA with access to their purchase and sales invoices for compliance purposes. FDA believes that maintenance of such records is a usual and customary part of normal business activities for such firms. These two requirements are not within the scope of the Paperwork Reduction Act. The third requirement is recordkeeping which requires that the firms develop standard operating procedures if they intend to keep ruminant and mink material separate from nonruminant material. The agency is aware that the certification procedures provided in § 589.2000(d) of the regulation could be interpreted as imposing a paperwork burden on certain industry segments. However, the agency notes that the certification procedures apply only where new technology (e.g., a deactivation method) is developed. The agency was unable to estimate when such technology might be developed, what its characteristics and costs would be, and other essential information needed to make realistic estimates of any paperwork burden. Therefore, such costs are not included in this proposed rule. However, the agency specifically requests comments and information related to the factors that would determine the extent of any paperwork burden.

The recordkeeping burden in Table 2 has been estimated using the typical average size establishment that is expected to handle animal protein from both ruminant and nonruminant sources, or feeds containing these products, and intend to keep them separate. FDA's preliminary estimate is that only a fraction of feed manufacturers and distributors will separate their products. Independent renderers were excluded from the burden estimates based on information provided for the economic estimate. Packer/renderers were excluded because they are single species processors.

Under these recordkeeping requirements, for which records must be made available for FDA inspection, an estimated 2,000 feed mills would handle both restricted and nonrestricted products and would develop standard operating procedures for keeping ruminant and mink material separate from nonruminant material from the time of receipt to time of shipment. The estimate in the burden chart is based on the time required to develop and establish the written procedures and is a one time requirement. The 2,000 firms will also incur annual operating cost estimated at $10 million, because of the flushing, sequencing and other procedures that will be required. It is estimated that 1,000 of the firms may incur capital cost for the construction of separate facilities. These costs have been annualized for 10 years, at $7.119 million per year. The remaining firms are expected to be able to meet the regulation's requirements without incurring capital cost.

The agency has submitted copies of the proposed rule to OMB for its review of these requirements. Interested persons are requested to send comments regarding this collection of information by February 18, 1997, but not later than March 4, 1997 to the Office of Information and Regulatory Affairs, OMB (address above), Attn: Desk Officer for FDA.

Description of Respondents: Distributors, feed manufacturers, blenders and renderers.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	No. of record keepers/ firms	Frequency	Total annual records	Hours per record	Total hours	Capital cost (annualized)	Operating cost (yearly)
589.2000 (e)(1)(iv)	2,000	1	2,000	14	28,000	$7,119,000	$10,000,000

[1] Costs are only incurred under the high-impact scenario.

XI. Federalism

FDA has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612 and has determined that this proposal does not warrant the preparation of a Federalism Assessment.

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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XIII. Request for Comments

Interested persons may, on or before February 18, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 589

Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 589 be amended as follows:

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

1. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 589.2000 is added to subpart B to read as follows:

§ 589.2000 Animal proteins prohibited in ruminant feed.

(a) *Definitions.* (1) *Protein derived from ruminant and mink tissues* means any protein-containing portion of ruminant animals or mink, excluding blood from bovines, milk proteins and gelatin.

(2) *Renderer* means any firm or individual that processes slaughter byproducts, animals unfit for human consumption, meat scraps or food waste. The term includes persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers whose intended use for the products may include animal feed. The term includes renderers that also blend animal protein products.

(3) *Blender* means any firm or individual which obtains processed animal protein from more than one source or from more than one species, and subsequently mixes (blends) or redistributes an animal protein product.

(4) *Feed manufacturer and distributor* includes manufacturers and distributors of complete and intermediate feeds intended for animals, and includes on-farm in addition to off-farm feed manufacturing and mixing operations.

(5) *Nonruminant protein* includes protein from nonruminant animals and from vegetable sources.

(b) *Food additive status.* The Food and Drug Administration has determined that protein derived from ruminant and mink tissues is not generally recognized as safe for use in ruminant feed because it may contain transmissible spongiform encephalopathy (TSE)-infective material, and is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). In the absence of a regulation providing for its safe use as a food additive under section 409 of the act, the use or intended use in ruminant feed of any material that contains protein derived from ruminant and mink tissues causes the feed to be adulterated and in violation of the act, unless it is the subject of an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter. The Food and Drug Administration has determined that ruminant and mink derived protein is not prior sanctioned for use in ruminant feeds.

(c) *Requirements for renderers that are not included in paragraph (e) of this section.* (1) Renderers that manufacture products that contain or may contain protein derived from ruminant and mink tissues and that are intended for use in animal feed shall take the following measures to ensure that materials identified in paragraph (b) of this section are not used in the feed of ruminants:

(i) Label the materials as follows: "Contains (or may contain) protein derived from ruminant and mink tissues. Do not feed to ruminant animals, and do not use to manufacture feed intended for ruminant animals"; and

(ii) Maintain copies of sales invoices for the materials, and make the copies available for inspection and copying by the Food and Drug Administration.

(2) Renderers described in paragraph (c)(1) of this section will be exempted from the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section if they:

(i) Use exclusively a manufacturing method that has been validated by the Food and Drug Administration to deactivate the agent that causes TSE's and whose design has been made available to the public; or

(ii) Use routinely a test method that has been validated by the Food and Drug Administration to detect the presence of the agent that causes TSE's and whose design has been made available to the public. Products found to contain the agent that causes TSE's shall be labeled "Not for Use in Animal Feed." Records of the test results shall be made available for inspection by the Food and Drug Administration.

(3) Renderers described in paragraph (c)(1) of this section who are not exempted under paragraph (c)(2)(i) or paragraph (c)(2)(ii) of this section will be exempted from the requirements of paragraph (c)(1)(ii) of this section if they use a permanent method, approved by FDA, to mark the presence of the materials. If the marking is by the use of an agent that cannot be detected on visual inspection, the renderer must use an agent whose presence can be detected by a method that has been validated by the Food and Drug Administration and whose design has been made available to the public.

(d) *Requirements for protein blenders, and feed manufacturers and distributors, that are not included in paragraph (e) of this section.* (1) Protein blenders, and feed manufacturers and distributors, that manufacture, blend, process and distribute products that contain or may contain protein derived from ruminant and mink tissues shall:

(i) Comply with paragraph (c)(1) of this section, and

(ii) Maintain copies of invoices for purchase of animal protein products or feeds containing such products, and make copies available for inspection and copying by the Food and Drug Administration.

(2) Protein blenders, and feed manufacturers and distributors, shall be exempt from paragraphs (d)(1)(i) and (d)(1)(ii) of this section if they:

(i) Purchase animal protein products from renderers that certified compliance with paragraph (c)(2) of this section or purchase such materials from parties

that certify that the materials were purchased from renderers that certified compliance with paragraph (c)(2); or

(ii) Comply with the requirements of paragraph (c)(2) of this section where appropriate.

(3) Protein blenders, and feed manufacturers and distributors, shall be exempt from paragraph (c)(1)(ii) of this section if they:

(i) Purchase animal protein products that are marked or purchase such materials from renderers that certified compliance with paragraph (c)(3) of this section, or purchase such materials from parties that certify that the materials were purchased from renderers that certified compliance with paragraph (c)(3) of this section; or

(ii) Comply with the requirements of paragraph (c)(3) of this section where appropriate.

(4) Copies of certifications as described in paragraphs (d)(2) and (d)(3) of this section, shall be made available for inspection and copying by the Food and Drug Administration.

(e) *Requirements for persons that intend to separate ruminant/mink and nonruminant/mink materials.* (1) Renderers, protein blenders, feed manufacturers and distributors, haulers and others that manufacture, process, blend and distribute both protein products derived from ruminant and mink tissues or feeds containing such products, and protein products from other animal tissues or feeds containing such products, and that intend to keep those products separate shall:

(i) Comply with paragraphs (c)(1) or (d)(1) of this section as appropriate except that the labeling requirement shall apply only to products derived from ruminant and mink tissues or feeds containing such products;

(ii) In the case of a renderer, obtain nonruminant (excluding mink) materials only from single-species facilities;

(iii) Provide for measures to avoid commingling or cross-contamination:

(A) Maintain separate equipment or facilities for the manufacture, processing, or blending of such materials; or

(B) Use clean-out procedures or other means adequate to prevent carry-over of ruminant and mink derived protein into animal protein products or feeds that may be used for ruminants; and

(iv) Maintain written procedures specifying the clean-out procedures or other means, and specifying the procedures for separating ruminant and mink materials from nonruminant materials (excluding mink) from the time of receipt until the time of shipment.

(2) Renderers, blenders, and feed manufacturers and distributors will be exempted from appropriate requirements of paragraph (e)(1) of this section, if they meet the appropriate criteria for exemption under paragraphs (c)(2) or (c)(3), and (d)(2) or (d)(3) of this section.

(f) *Requirements for establishments and individuals that are responsible for feeding ruminant animals.* Establishments and individuals that are responsible for feeding ruminant animals shall maintain copies of purchase invoices and labeling for all feeds received, and make the copies available for inspection and copying by the Food and Drug Administration.

(g) *Adulteration and misbranding.* (1) Animal protein products, and feeds containing such products, that are not in compliance with paragraphs (c) through (f) of this section, excluding labeling requirements, will be deemed adulterated under section 402(a)(2)(C) or 402(a)(4) of the act.

(2) Animal protein products, and feeds containing such products, that are not in compliance with the labeling requirements of paragraphs (c) through (f) of this section will be deemed misbranded under section 403(a)(1) of the act.

(h) *Inspection; records retention.* (1) Records that are to be made available for inspection and copying, as required by this section, shall be kept for a minimum of 2 years.

(2) Written procedures required by this section shall be made available for inspection and copying by the Food and Drug Administration.

Dated: December 27, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–37 Filed 1–2–97; 8:45 am]

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Part V

The President

Notice of January 2, 1997—Continuation of Libyan Emergency

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Presidential Documents

Title 3—

The President

Notice of January 2, 1997

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986. The most recent notice appeared in the **Federal Register** on January 5, 1996.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. The Government of Libya has continued its actions and policies in support of terrorism, despite the calls by the United Nations Security Council, in Resolutions 731 (1992), 748 (1992), and 883 (1993), that it demonstrate by concrete actions its renunciation of such terrorism. Such Libyan actions and policies pose a continuing unusual and extraordinary threat to the national security and vital foreign policy interests of the United States. For these reasons, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1997. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
January 2, 1997.

[FR Doc. 97–230
Filed 1–2–97; 10:53 am]
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Part VI

Department of Commerce

International Trade Administration

Certain Iron-Metal Castings from India; Amended Final Results of Countervailing Duty Administrative Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Amended Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of countervailing duty administrative review.

SUMMARY: On December 6, 1996, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the 1992 Administrative Review of the countervailing duty order on Certain Iron Metal Castings from India ("castings") (61 FR 64676). Based on corrections of ministerial errors, we are now amending the final results of this review. We have corrected these errors and determine the net subsidies to be 0.00 percent *ad valorem* for Dinesh Brothers, Pvt. Ltd., 14.20 percent for Kajaria Iron Castings Pvt. Ltd., and 6.08 percent *ad valorem* for all other companies. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Marian Wells, Office of CVD/AD Enforcement I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6309.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1996, the Department of Commerce published in the **Federal Register** the final results of the 1992 Administrative Review of the countervailing duty order on *Certain Iron Metal Castings from India* (61 FR 64676). The period covered by this administrative review is January 1, 1992 through December 31, 1992.

On December 11, 1996, the Department received a timely allegation from respondents that the Department had made clerical errors in its loan calculations with respect to three companies in the final results of this review. In particular, the respondents allege that we did not take account of "penalty" interest payments in our calculations. On December 18, 1996, petitioner responded, taking the position that the alleged errors for two of the companies were not clerical in nature.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Ministerial Errors in Final Results of Review

Serampore

The respondents allege that we did not take account of "penalty" interest payments in our calculations. We have reviewed the calculations in the final results of this review and we agree with respondents that we should have included certain penalty interest payments. Our consistent practice in other reviews has been to include penalty interest as part of the effective cost of the postshipment loans. The Department also notes that in reviewing the calculations, we learned that we failed to adjust the benchmark used for certain loans to reflect inflation. With the inflation adjustment, those loans, which we found not countervailable in our final results, have become countervailable. The Department has corrected the loan calculations for all respondents to include penalty interest, and has made the inflation adjustment to the benchmark for those loans where it was not previously included.

Calcutta Ferrous

In reviewing our calculations, the Department also learned that we had entered the wrong number of days for certain postshipment loans which were outstanding for one respondent, Calcutta Ferrous. We have corrected this error.

Kajaria Iron Castings Pvt. Ltd.

In respect to Kajaria Iron Castings Pvt. Ltd., the respondents allege that the Department failed to take into account the penalty interest on most of the loans that extended into 1993. We have reviewed this calculation and disagree with respondents. The Department did in fact take into account penalty interest on loans that were extended into 1993, but only for those loans where the penalty interest was paid in whole or in part in 1992 (the POR). If a loan was received in 1992 and repaid in 1993, and all of the penalty interest paid in 1993 (outside of the POR), the penalty interest will be accounted for in the 1993 reveiw. Therefore, we do not consider this to be a clerical error and have not adjusted our calculations.

Calculation Methodology for Assessment and Cash Deposit Purposes

Pursuant to *Ceramica Regiomontana, S.A.* v. *United States*, 853 F. Supp. 431, 439 (CIT 1994), Commerce is required to calculate a country-wide CVD rate, *i.e.*, the all-others rate, by "weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms." Therefore, we first calculated a subsidy rate for each company subject to the administrative review. We then weighted the rate received by each company using its share of U.S. exports to total Indian exports to the United States of subject merchandise. We then summed the individual companies' weighted rates to determine the weighted-average country-wide subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Because the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). Two companies (Kajaria and Dinesh) received significantly different net subsidy rates during the review period. These companies will be treated separately for assessment purposes, while all other companies will be assigned the weighted-average country-wide rate. However, because the *Final Results of the 1992 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India* (61 FR 64676) was published concurrently with the final results of the

1993 administrative review, the 1993 administrative review will continue to serve as the basis for setting the cash deposit rate.

Amended Final Results of Review

For the period January 1, 1992 through December 31, 1992, we determine the net subsidies to be 0.00 percent *ad valorem* for Dinesh Brothers, Pvt. Ltd., 14.20 percent for Kajaria Iron Castings Pvt. Ltd., and 6.08 percent *ad valorem* for all other companies.

This amendment of final results of reviews and notice are in accordance with section 751(f) of the Act (19 U.S.C. 1675(f)) and 19 CFR 355.28(c).

Dated: December 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–146 Filed 1–2–97; 11:12 am]

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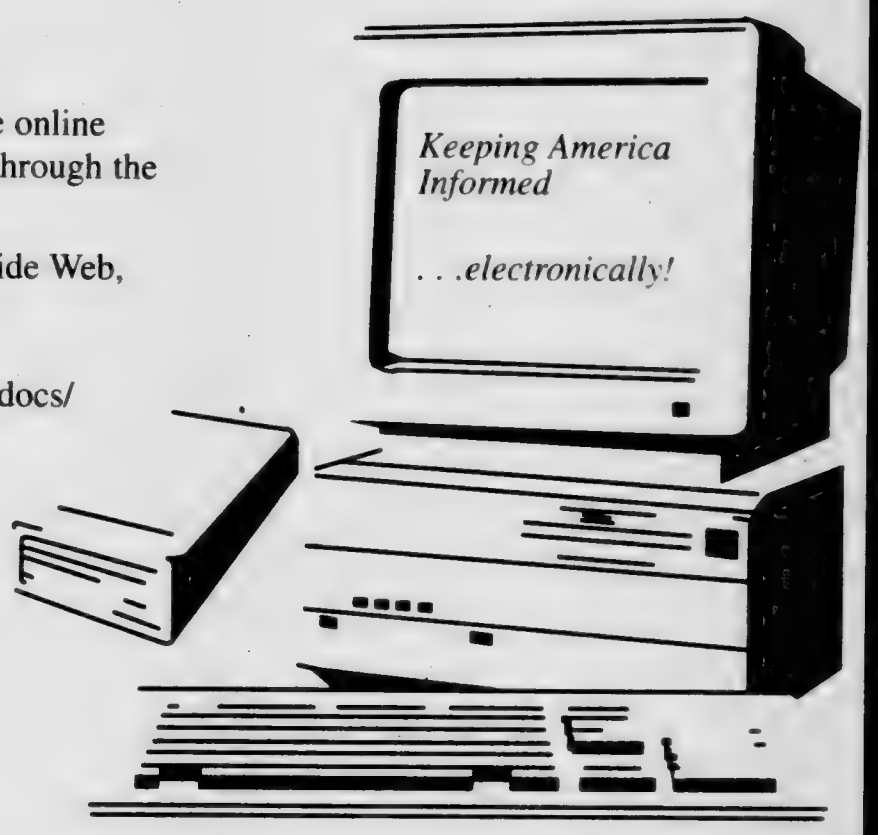

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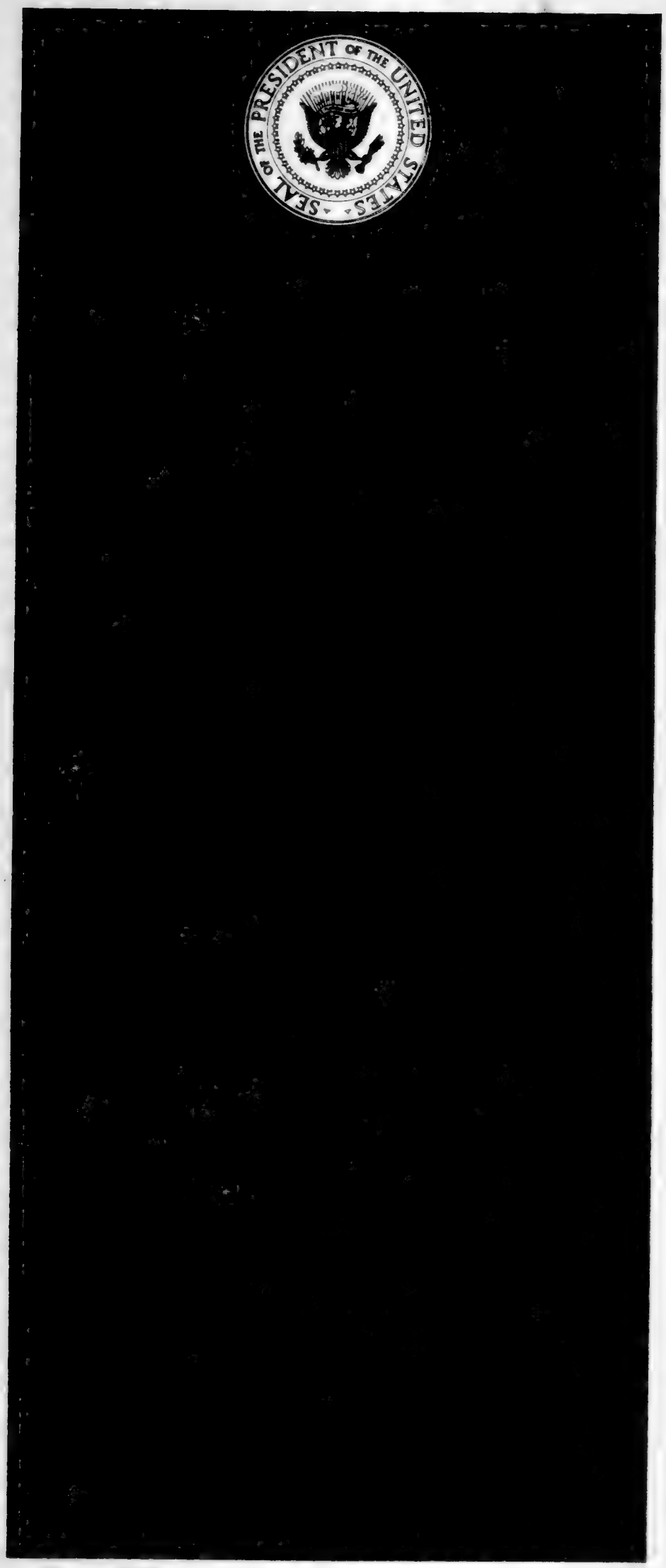

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 95–098–3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables are required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions. The removal of these prohibitions will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On July 2, 1996, we published in the **Federal Register** (61 FR 34379–34385, Docket No. 95–098–1) a proposal to amend the regulations by allowing additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk assessments that indicated that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 15 comments by that date. They were from representatives of State and foreign governments, grocery stores, industry groups, and a member of Congress. Ten commenters supported the proposed rule as written. The other commenters expressed concerns about our proposing to allow importation of citrus fruit from the Western Cape Province of South Africa. These concerns are discussed below:

Comment: How has it been determined that the Western Cape Province is free of citrus blackspot?

Response: Many factors have contributed to our determination that the Western Cape Province is free of citrus blackspot. First, citrus blackspot has never been reported in the Western Cape Province. In addition, in June 1994, we received assurances from the Director of the Directorate of Plant and Quality Control, Department of Agriculture, Republic of South Africa, that the Western Cape Province is free of citrus blackspot. In that same month, personnel of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), began a review of the testing protocol for citrus blackspot (the procedures used in testing for the presence of citrus blackspot) and the results of the testing for citrus blackspot provided by the South African Department of Agriculture. APHIS personnel determined that the testing protocol used in the Western Cape Province was scientifically sound and that the Western Cape Province showed no evidence of citrus blackspot. Later, in May (the time of the year for optimum expression of citrus blackspot in South Africa) 1995, an additional survey for citrus blackspot was conducted by personnel of the Directorate of Plant and Quality Control, and no evidence of the disease was detected. The results of these surveys give us the confidence to make the determination that the Western Cape Province is free from citrus blackspot.

Comment: The pest risk analysis for citrus fruit from South Africa notes that the Western Cape Province is free of citrus blackspot. What measures are being taken to ensure that citrus blackspot is not introduced into the Western Cape Province from other areas of South Africa that are known to be infected with the disease? Regular, on-going surveys performed in the Western Cape Province by trained plant pathologists, routine verification of South African testing programs regarding the pest-free status of the Western Cape Province, and other on-going pest exclusion activites need to be established to prevent the spread of citrus blackspot into the Western Cape Province.

Response: As stated in the proposed rule, both natural and regulatory barriers are in place that will help ensure that the Western Cape Province will remain free of citrus blackspot. The Western Cape Province's nearest citrus-producing neighbor, the Gamtoos River Valley, has, to date, had no findings or reports of citrus blackspot, and the citrus-producing areas in South Africa that are infested with citrus blackspot are separated from the Western Cape Province by mountain ranges, semi-desert areas, or long distances. Additionally, the South African Government has in place regulations that prohibit the movement of nursery trees from the northern citrus-production area of South Africa into the Western Cape Province, and the South African Government carefully monitors and regularly inspects citrus fruit for citrus blackspot in the growing areas and packing houses of the Western Cape Province. We believe that these natural and regulatory barriers are sufficient to

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help ensure that the Western Cape Province remains free of citrus blackspot.

Comment: Leaves and other debris which might result in the introduction of the citrus leaf miner, *Phyllocnistis citrella*, should not be allowed into the United States with any shipments of citrus imported from South Africa. Additionally, mitigation measures, such as limiting shipments of citrus from South Africa to early spring, need to be taken to prevent the introduction of *Toxoptera odinae*, a type of aphid, into the United States.

Response: This final rule allows the importation of citrus fruit from the Western Cape Province of South Africa. Section 319.56–2(a) of the regulations provides that all importations of fruits and vegetables must be free from plants or portions of plants, including leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from clean fruits and vegetables. Both the citrus leaf miner and *Toxoptera odinae* are associated with the leaves and other portions of citrus plants, and as citrus leaves or other debris that may harbor the citrus leaf miner or *Toxoptera odinae* are prohibited entry into the United States, we are confident that at any time of the year, the risk of the introduction of the citrus leaf miner or *Toxoptera odinae* into the United States is negligible. Additionally, both of these pests are mitigated in the Western Cape Province of South Africa by chemical controls during preharvest and postharvest and by phytosanitary export inspections. Therefore, we are making no changes to the proposed rule in response to this comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without changes.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined not to be significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that they could have introduced injurious plant pests into the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

This rule is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this rule can, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables will be required to undergo mandatory treatment for injurious plant pests as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Basil From Argentina

From 1990 to 1994, the value of U.S. basil imports averaged $3.3 million annually. This average includes import values for 1994 when, due to a record import volume of 3,220 metric tons, U.S. basil imports amounted to $4.6 million. No information is available on U.S. basil production.

It is estimated that Argentina produces about 1,500 metric tons of basil annually. If commercial conditions are favorable, basil exports to the United States could, over time, reach 200 metric tons a year. This amount is only about 6 percent of current U.S. basil imports and, therefore, is not expected to have a significant economic effect on any entities in the U.S. basil market.

Babaco From Chile

Chile produced 334 metric tons of babaco from 1994 to 1995. Of this amount, only 6.9 metric tons were exported, and all exported babaco went to Argentina. There is no data available on production or importation of babaco by the United States. We do not expect that babaco imported from Chile would have a significant economic impact on U.S. producers or other small entities.

Hyacinth Bean and Yard Long Bean From Honduras

No information is available on potential U.S. imports of hyacinth bean or yard long bean from Honduras or on U.S. production of these commodities.

Angelica From Korea

Korea produces about 1,300 metric tons of angelica a year. Of this amount, only 10 kilograms were exported in 1994 and 14 kilograms in 1995. Given the negligible quantities exported in the last 2 years, it is anticipated that very little angelica will be imported into the United States from Korea. Therefore, no significant economic impact on U.S. entities is expected.

Strawberry From Morocco

In 1994, total U.S. strawberry production was 737,580 metric tons. That year, the United States exported 57,332 metric tons of fresh strawberries and 28,637 metric tons of frozen strawberries and imported 19,843 metric tons of fresh strawberries and 25,050 metric tons of frozen strawberries. Therefore, in 1994, U.S. exports of fresh strawberries surpassed U.S. imports of fresh strawberries by nearly three times, while frozen strawberry exports and imports were more balanced.

Morocco produced about 35,000 metric tons of strawberries in the 1994–95 season. During that season, Morocco exported about 9,000 metric tons of fresh strawberries and 11,000 metric tons of frozen strawberries.

Future U.S. strawberry imports from Morocco are estimated at 160 metric tons of strawberries per year. As these estimated strawberry imports from Morocco constitute less than .02 percent of U.S. strawberry production, they are not expected to have a significant economic impact on U.S. entities, large or small.

Broad Bean, Green Bean, and Mung Bean From Nicaragua

In 1994, total U.S. green bean production was 916,750 metric tons. Of this amount, 20,324 metric tons, or 2.2 percent of total production, was exported. In 1994, green bean imports amounted to 11,230 metric tons.

U.S. production data is not available for broad bean and mung bean. However, in 1994, the United States exported 389 metric tons of dried broad bean and 2,134 metric tons of dried mung bean. U.S. imports of these commodities in 1994 totaled 610 metric tons of dried broad bean and 7,178 metric tons of dried mung bean.

No information is available on potential imports of green bean, broad bean, and mung bean from Nicaragua. Given the sizable quantity of green beans produced in the United States and given the import levels for broad bean and mung bean, potential import of these commodities from Nicaragua is not expected to have a significant economic impact on U.S. producers or other small entities.

Clementine, Grapefruit, Lemon, Minneola, Navel Orange, Satsuma, and Valencia Orange From South Africa

In the 1994–95 season, the total value of the U.S. citrus crop was $2.25 billion. The 1994–95 value of U.S.-produced navel oranges (early and midseason) was $836 million, valencia oranges $727 million, grapefruit $301 million, and lemon $265 million. Production value is not available for clementine, satsuma, and minneola.

In 1994, the United States exported fresh citrus and citrus products valued at more than $650 million and imported fresh citrus and citrus products valued at about $70 million. By weight, about 50 percent of 1994 fresh citrus exports were oranges and tangerines, about 40 percent grapefruit, and about 10 percent lemons and limes.

South Africa exports about two-thirds of its citrus crop. The 1996 projected exports of citrus from the Western Cape Province of South Africa to the United States include 10,500 metric tons of navel oranges; 12,750 metric tons of valencia oranges; 8,000 metric tons of clementines; 75 metric tons of grapefruit; 3,000 metric tons of lemons; 1,000 metric tons of satsuma; and 900 metric tons of minneola. These projections amount to only a fraction of one percent of U.S. production of citrus.

Additionally, as South Africa exports most of its fresh citrus and citrus products during the summer months, South African citrus would not compete with the late fall, winter, and early spring citrus production season in the United States.

Therefore, due to summer arrival of citrus from South Africa, the relatively negligible quantity of citrus expected to be imported into the United States from South Africa, and the fact that U.S. citrus exports are more than nine times greater than U.S. citrus imports, we expect that South African citrus exports to the United States would not have a significant economic impact on U.S. producers, exporters, and importers of citrus, or other small entities. Citrus importers in the United States could benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is at its lowest.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of the fruits and vegetables listed in this document.

Executive Order 12988

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0049.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text is revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through October 1996, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

4. A new § 319.56–2q is added to read as follows:

§ 319.56–2q Administrative instructions: conditions governing the entry of citrus from South Africa.

Clementine (*Citrus reticulata*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), minneola (*C. paradisi* x *C. reticulata*), navel orange (*Citrus sinensis*), satsuma (*Citrus reticulata*), and valencia orange (*Citrus sinensis*) may be imported into the United States from the Western Cape Province of South Africa only under the following conditions:

(a) The citrus fruit must be grown in, packed in, and shipped from the Western Cape Province of South Africa.

(b) The citrus fruit must be cold treated for false codling moth and fruit

flies of the genus *Ceritatis* and *Pterandrus* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(1) If the cold treatment is to be conducted in the United States, entry of the citrus fruit into the United States is limited to ports listed in § 319.56–2d(b)(1).

(2) If the cold treatment is conducted in South Africa or in transit to the United States, entry of the citrus into the United States may be made through any U.S. port.

(c) Each shipment of citrus fruit must be accompanied by a phytosanitary certificate issued by the South African Ministry of Agriculture stating that the conditions of paragraph (a) of this section have been met. (Approved by the Office of Management and Budget under control number 0579– 0049)

5. In § 319.56–2t, an OMB control number is added at the end of the section, and the table is amended as follows:

a. In the entries for Costa Rica, Guatemala, and Philippines, under the heading *Common name*, by removing the words "Yam bean" from each entry and adding the word "Jicama" in their places.

b. In the entries for Guatemala and Panama, the entry for Tarragon would be amended in the fourth column, under the heading Plant part(s), by removing the words "Leaf and stem" and adding the words "Above ground parts" in their place.

c. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

d. By adding, in alphabetical order, entries for Basil from Argentina, Babaco from Chile, Angelica from Korea, and Strawberry from Morocco to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina.			
	Basil	Ocimum spp.	Above ground parts.
Belize.			
	Papaya	Carica papaya	Fruit (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk, or in any portion of the district of Stann Creek *except* the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning. Papayas from other areas of Belize enterable only with treatment—see § 319.56–2x). Prohibited entry into Hawaii due to the papaya fruit fly, Toxotrypana curvicauda. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
Chile	Babaco	Carica x heilborni var. pentagona.	Fruit. (From Medfly-free areas—see § 319.56–2j. Fruit must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a Medfly-free province.)
Korea	Angelica	Aralia elata	Edible shoot.
Morocco	Strawberry	Fragaria spp.	Fruit.

* * * * *

(Approved by the Office of Management and Budget under control number 0579- 0049)

6. In § 319.56–2x, paragraph (a), the table is amended as follows:

a. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

b. By adding, in alphabetical order, entries for Hyacinth bean and Yard long bean from Honduras and Broad bean, Green bean, and Mung bean from Nicaragua to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Belize	Papaya	Carica papaya	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk, or in any portion of the district of Stann Creek except the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning—see § 319.59–2t.) Papayas prohibited entry into Hawaii due to the papaya fruit fly, Toxotrypana curvicauda. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
Honduras	Hyacinth bean	Lablab purpureus	Pod or shelled.
	Yard long bean	Vigna unguiculata, subsp. sesquipedalis.	Pod or shelled.
Nicaragua	Broad bean	Vicia faba	Pod or shelled.
	Green bean	Phaseolus spp.	Pod or shelled.
	Mung bean	Vigna radiata	Pod or shelled.

* * * * *

Done in Washington, DC, this 20th day of December 1996.

Al Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–108 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Parts 160 and 161

[Docket No. 96–075–1]

Accredited Veterinarians; Optional Digital Signature

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to accept digital signatures from accredited veterinarians as an additional option for official certificates, forms, records, and reports to the Animal and Plant Health Inspection Service. Currently, we require hand written signatures on all such documents. We believe that accepting digital signatures may benefit accredited veterinarians and the industries they serve by reducing the turn around time for these documents. This proposed action would relieve restrictions that appear to be unnecessary.

DATES: Consideration will be given only to comments received on or before March 7, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–075–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–075–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS. APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7716, or e-mail: jvantiem@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 160 and 161 (the regulations), govern the accreditation of veterinarians. Accredited veterinarians are approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to perform certain regulatory tasks to control and prevent the spread of animal diseases throughout the country and internationally. One of these regulatory tasks is preparing official documents including certificates, forms, records, and reports and submitting such documents to APHIS. Currently, we require a hand written signature by the accredited veterinarian on all official certificates, forms, records, and reports.

We are proposing to change the regulations to allow accredited veterinarians the additional option of signing official certificates, forms, records, and reports by use of a digital signature and of transmitting such documents electronically to APHIS. We will continue to accept and process official certificates, forms, records, and reports in hard copy as well, so that the technical capabilities or preferences of

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the accredited veterinarian will not hinder the processing of these documents. We believe that allowing accredited veterinarians the option of signing and transmitting documents electronically will provide them with more flexibility and allow them to choose the method which is most efficient for them.

Representatives of the poultry industry, other industries served by accredited veterinarians, and APHIS veterinarians have requested that we accept digital signatures and allow electronic transmissions between accredited veterinarians and APHIS. The proposed addition to the regulations could benefit the accredited veterinarians and the industries they serve by saving them time and money. The time delays currently experienced in transmitting documents to APHIS could be eliminated or lessened. In addition to the time saved, the costs currently incurred for the use of couriers or special handling to expedite delivery could be eliminated.

Previously Published Notice

As we stated in our Notice published in the **Federal Register** on October 31, 1996 (60 FR 56215–56216, Docket No. 96–084–1), APHIS has a waiver to use RSA [1] digital signature technology in lieu of the Digital Signature Standard specified by Federal Information Processing Standard 186. The RSA digital signature technology provides document security that can be used to verify the identity of the person who signed the document and can protect the signed document against unauthorized modifications of its text. The RSA digital signature technology is widely used in a variety of commercial software applications, for example, InForms by Novell Incorporated, Form Flow by Delrina Corporation, and Jet Form by Jet Form Corporation.

Digital Signature Pilot Project

APHIS developed a pilot project testing the use of digital signatures and electronic transmissions using the Veterinary Services (VS) Form 17–6, Certificate for Poultry or Hatching Eggs for Export. The pilot project began in December 1995 and ran through May 1996.

At the August 9–10, 1994, Livestock and Poultry Movement meeting in Fort Collins, CO, producers identified the following potential benefits from digitally signing and electronically transmitting the VS Form 17–6: (1) reduce costs associated with processing, handling, and mailing the VS Form 17–6, (2) move exports on short notice due to market conditions, and (3) reduce processing costs and turn around time between the producers and VS area offices for review and endorsement. Producers, accredited veterinarians, and VS Area Offices in Arkansas and Iowa volunteered to participate in the pilot project.

An automated copy of VS Form 17–6 was created using Novell Inc.'s InForms software. During the pilot project, the automated VS Form 17–6 was used by two producers, accredited veterinarians, and the VS Area Office in Arkansas and Iowa. The participants of the pilot project concluded that the use of digital signatures and electronic transmission was successful and beneficial. We believe that the use of digital signatures and electronic transmission of documents could be successful for other industries as well.

Other Government Use of Digital Signature Technology

As technology has advanced, various governments have begun to use or investigate the use of digital signatures. The Federal Government is using digital signatures on purchase orders. Many states have enacted legislation accepting digital signatures or are looking into the use of digital signatures, including Arizona, California, Florida, Georgia, Hawaii, Illinois, Oregon, Utah, Virginia, Washington, and Wyoming. Several foreign countries are also working on the acceptability of digital signatures, including Canada, Chile, and Germany. We expect to see continued advancements in the use of digital signatures.

Regulatory Changes

Due to the current state of technology and the technological advancements that we expect to continue, we propose to allow the maximum flexibility to use digital signatures and electronic transmission for official certificates, forms, records, and reports. We envision electronic transmission of official certificates, forms, records, and reports by various methods, including electronic mail and Internet. As technology advances, we expect new methods will be available. Therefore, we propose to approve the methods based on technological capabilities at the time of the request and not limit the regulations to a specific method, thus offering the greatest flexibility and the least restrictive regulations.

Specifically, we propose to revise several definitions, including the definitions of *issue* and *sign*. We propose to revise the definition of *issue* in § 160.1 of the regulations to include electronic transmission. We propose to revise the definition of *sign* in § 160.1 of the regulations to include digital signatures approved by the Administrator. We propose to add the following definition for *approved digital signature*:

> Digital signatures approved by the Administrator for electronic transmission, for example, via a computer. To be approved, a digital signature must be able to verify the identity of the accredited veterinarian signing the document and indicate if the integrity of the data in the signed document was compromised.

We also propose to revise § 161.3(j) of the regulations to require accredited veterinarians to be responsible for the use of approved digital signature capabilities.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We do not have enough data for a comprehensive analysis of the economic impacts of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining (1) the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and (2) the economic impact of those benefits or costs.

Under the Animal Industry Act (21 U.S.C. 112, 113–114a–1, and 115), the Animal Quarantine Acts and the Cattle Contagious Diseases Act (21 U.S.C. 105, 111–113, 120, 121, and 125), the Federal Meat Inspection Act (21 U.S.C. 612 and 613), the Foot-and-Mouth Disease Research Act (21 U.S.C. 113a), and the Horse Protection Act (15 U.S.C. 1828), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction and dissemination of communicable diseases of livestock and poultry. In accordance with the regulations in 9 CFR parts 160, 161, and 162, some veterinarians are accredited by the Federal Government to cooperate with APHIS in controlling and preventing the introduction and dissemination of animal diseases. Accredited veterinarians use their

[1] RSA was named for the inventors of the algorithm, Drs. Ronald Rivest, Adi Shamir, and Leonard Adleman.

professional training in veterinary medicine to perform certain regulatory tasks. One of these regulatory tasks is preparing official documents, including certificates, forms, records, and reports and submitting such documents to APHIS. Currently, only a hand written signature of an accredited veterinarian is acceptable.

APHIS is proposing to allow accredited veterinarians to use digital signatures in place of hand written signatures. Allowing the electronic transmission of signed documents could benefit accredited veterinarians and the industries they serve by eliminating the time-consuming step of physical transmission from the accredited veterinarian to the VS area office and others involved in the process.

An example of a document which accredited veterinarians must sign is an export health certificate. For the poultry industry, VS Form 17–6, Certificate for Poultry or Hatching Eggs for Export, is used as an export health certificate. Currently, a VS Form 17–6 is processed as follows: the producer fills out information related to the exportation on the VS Form 17–6 and sends it to the accredited veterinarian; the accredited veterinarian fills out the information about the health of the poultry or eggs on the VS Form 17–6, including any required test information, signs the VS Form 17–6 and sends it to the VS area office; the APHIS veterinarian reviews and endorses the VS Form 17–6 and sends it back to the producer, who sends the VS Form 17–6 to the importing country. Throughout this process, there can be time delays and additional expenses incurred for mailing or special handling to move the certificate from one place to the next.

With the use of digital signatures, the accredited veterinarian could receive, complete, and sign an automated document from the producer. The accredited veterinarian could electronically transmit the signed document to the VS area office. Therefore, this amendment would eliminate the need to pay couriers or package delivery companies and wait for delivery between the producers, accredited veterinarians, and the VS area office.

The proposed rule change would provide an additional option for signing and submitting official certificates, forms, records, and reports. While not requiring that this option be exercised, there are potential savings for those accredited veterinarians who make use of this option. The delivery costs associated with these documents can vary widely based on the delivery method used. Therefore, we cannot accurately estimate the potential savings. However, we expect that the proposed rule change could be beneficial to accredited veterinarians and their clients, whether large or small.

An alternative to this proposed rule is to make no changes in the regulations. We rejected this alternative because accredited veterinarians will not be required to use this alternative signature method.

This proposed rule contains no new information collection or recordkeeping requirements.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 160

Veterinarians.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, 9 CFR parts 160 and 161 would be amended as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for part 160 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612 and 613; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 160.1, the definitions for *issue* and *sign* would be revised and the definition for *approved digital signature* would be added, in alphabetical order, to read as follows:

§ 160.1 Definitions.

* * * * *

Approved digital signature. Digital signatures approved by the Administrator for electronic transmission, for example, via a computer. To be approved, a digital signature must be able to verify the identity of the accredited veterinarian signing the document and indicate if the integrity of the data in the signed document was compromised.

* * * * *

Issue. The distribution, including electronic transmission, of an official animal health document that has been signed.

* * * * *

Sign, (Signed). For an accredited veterinarian to put his or her signature in his or her own hand, or by means of an approved digital signature, on a certificate, form, record, or report. No certificate, form, record, or report is signed if:

(1) Someone other than the accredited veterinarian has signed it on behalf of or in the name of the accredited veterinarian, regardless of the authority granted them by the accredited veterinarian; or

(2) If any mechanical device, other than an approved digital signature, has been used to affix the signature.

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612 and 613; 7 CFR 2.22, 2.80, and 371.2(d).

4. In § 161.3 paragraph (j) would be revised to read as follows:

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(j) An accredited veterinarian shall be responsible for the security and proper use of all official certificates, forms, records, and reports; tags, bands, or other identification devices; and approved digital signature capabilities used in his or her work as an accredited veterinarian and shall take reasonable care to prevent the misuse thereof. An accredited veterinarian shall immediately report to the Veterinarian-in-Charge the loss, theft, or deliberate or accidental misuse of any such certificate, form, record, or report; tag, band, or other identification device; or approved digital signature capability.

* * * * *

Done in Washington, DC, this 26th day of December 1996.

Al Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–177 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–39; Amendment 39–9875; AD 97–01–05]

RIN 2120–AA64

Airworthiness Directives; Williams International, L.L.C. Model FJ44–1A Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Williams International, L.L.C. Model FJ44–1A turbofan engines. This action requires initial and repetitive eddy current inspections (ECI) for possible cracks in high pressure turbine (HPT) disk blade retention posts. In addition, this AD requires the installation of advanced design HPT disks as terminating action to the inspection requirements of this AD. This amendment is prompted by two incidents of HPT disk blade retention post separations. The actions specified in this AD are intended to locate possible cracks in HPT disk blade retention posts, thereby preventing the separation of these posts and the liberation of the turbine blades that they retain, and a subsequent loss of engine power. In addition, the actions specified in this AD are intended to prevent the possible high disk speed uncontained liberation of disk posts and turbine blades, which could cause aircraft damage.

DATES: Effective January 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Mr. John Teeter, Manager, Customer Support, Williams International, 2280 West Maple Road, P.O. Box 200, Walled Lake, MI 48390–0200; telephone (810) 624–5200, fax (810) 669–9515. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene H. Messal, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7011, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has verified two reports of inflight HPT disk post separations on Williams International model FJ44–1A turbofan engines. One of these inflight post separations was uncontained. The investigation revealed that in both cases, high pressure turbine (HPT) disk blade retention posts separated due to cracking caused by material creep/fatigue. This condition, if not corrected, could result in other engines experiencing HPT disk blade retention post separations and turbine blade liberations, and subsequent losses of engine power. In addition, this condition could, if not corrected, result in other engines experiencing high disk speed uncontained liberation of disk posts and turbine blades, which could cause aircraft damage.

The FAA has reviewed and approved the technical contents of Williams-Rolls Alert Service Bulletin (ASB) No. FJ44–A72–30, dated November 6, 1996, that describes procedures for eddy current inspections (ECI) for possible cracks in HPT disk blade retention posts; and ASB No. FJ44–A72–31, dated November 4, 1996, that describes procedures for replacement of existing HPT disks with advanced design HPT disks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same design, this AD is being issued to locate possible cracks in HPT disk blade retention posts, which could lead to the liberation of the turbine blades that they retain, and subsequent loss of engine power. In addition, this AD is being issued to prevent the separation of HPT disk posts that could lead to a high disk speed uncontained liberation of disk posts and turbine blades, which could result in aircraft damage. This AD requires initial and repetitive ECI for possible cracks in HPT disk blade retention posts. The inspection population is divided into two groups, with the higher risk group listed by engine serial number (S/N). This group of HPT disks is at a higher risk due to a lower stress rupture strength characteristic. In addition, this AD requires replacement of the existing HPT disks, Part Number (P/N) 48629, with advanced design HPT disks, P/N 55291, by July 1, 1997, as terminating action to the inspection requirements of this AD. The calendar end-dates for this AD were determined based upon each suspect disk group's time to crack initiation, subsequent crack propagation rate, and its failure probability. In addition, the total in-service cycles and hours of each of the suspect disks of both groups, and the ASB replacement parts availability were contributing factors for determining the end-dates. These actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–39." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–05 Williams International, L.L.C.: Amendment 39–9875. Docket 96–ANE–39.

Applicability: Williams International L.L.C. Model FJ44–1A turbofan engines, with serial numbers 1001–1179, 1196, and 1197, installed on, but not limited to, Cessna Citation Model 525 aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible high pressure turbine (HPT) disk blade retention post separations and the release of their retained turbine blades, subsequent loss of engine power, and possible high disk speed uncontained liberation of disk posts and the turbine blades, which could cause aircraft damage, accomplish the following:

(a) Perform initial and repetitive eddy current inspections (ECI) for cracks in HPT disks, Part Number (P/N) 48629, blade retention posts in accordance with the following schedule and requirements:

Engine serial Nos.	Initial compliance required	Repetitive inspection required
1001, 1004–1010, 1016, 1017, 1020, 1023–1026, 1031, 1033, 1036, 1039, 1041, 1042, 1043, 1046–1048, 1051–1056, 1063, 1069, 1071, 1072, 1076, 1080, 1082, 1091, 1092, 1095–1098, 1107, 1108, 1111, 1125, 1127–1129, 1133, 1134, 1165, 1172, 1178	Within 50 cycles after the effective date of this AD or by February 1, 1997, whichever occurs first.	Thereafter, at intervals not to exceed 125 cycles in service (CIS) since last inspection.
Remaining serial number engines with 575 CIS or more as of April 1, 1997	No later than May 1, 1997	Thereafter, at intervals not to exceed 125 CIS since last inspection.

(1) Perform the initial and repetitive eddy current inspections for cracks in HPT disk blade retention posts in accordance with Williams-Rolls Alert Service Bulletin (ASB) No. FJ44–A72–30, dated November 6, 1996.

(2) Remove from service HPT disks that do not meet the "return to service" criteria stated in Williams-Rolls ASB No. FJ44–A72–30, dated November 6, 1996, and replace them with serviceable HPT disks, P/N 48629, that meet the required ASB "return to service" criteria, or replace them with advanced design HPT disks, P/N 55291, in accordance with paragraph (b) of this AD.

(b) No later than July 1, 1997, replace all existing HPT disks, P/N 48629, with advanced design HPT disks, P/N 55291, in accordance with Williams-Rolls ASB No. FJ44–A72–31, dated November 4, 1996. Installation of this advanced design HPT disk constitutes terminating action to the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Williams-Rolls ASBs:

Document No.	Pages	Date
FJ44–A72–30	1–7	November 6, 1996.
Total pages: 7		
FJ44–A72–31	1–7	November 4, 1996.
Total pages: 7		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Mr. John Teeter, Manager, Customer Support, Williams International, 2280 West Maple Road, P.O. Box 200, Walled Lake, MI 48390–0200; telephone (810) 624–5200, fax (810) 669–9515. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North

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Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 21, 1997.

Issued in Burlington, Massachusetts, on December 27, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–59–AD; Amendment 39–9873; AD 97–01–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 525 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 525 airplanes. This action requires repetitively inspecting the main landing gear (MLG) trunnion pins for proper installation, and either immediately or eventually replacing the existing dry-film lubricated MLG trunnion slot bearings with sealed and self-lubricating bearings. This AD results from an incident where the left MLG collapsed during the landing roll even though the cockpit indications showed that the MLG was in the normal down and locked position. Loss of dry-film lubricant on the MLG trunnion bearings caused this incident. The actions specified by this AD are intended to prevent MLG collapse caused by trunnion bearing failure, which could result in loss of control of the airplane during landing operations.

DATES: Effective January 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277; telephone (316) 941–6000; facsimile (314) 941–8500. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eual Conditt, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4128; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to This AD

Recently, a Cessna Model 525 airplane was involved in an incident where the left main landing gear (MLG) collapsed during the landing roll even though cockpit indications showed that the MLG was in the normal down and locked position. Investigation revealed that loss of dry-film lubricant on the MLG trunnion bearings caused this incident.

Further investigation of the MLG of Cessna Model 525 airplanes indicates that this dry-film lubricant in the MLG trunnion bearings becomes inadequate over time. When these bearings are not properly lubricated, the roll pin that goes through the trunnion and bearing shaft fails, which causes the pin to back out of the bearing. This roll pin supports the entire MLG, so its failure then causes MLG collapse.

Applicable Service Information

Cessna has issued the following service information:

- Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996, which includes procedures for inspecting the MLG trunnion pins for proper installation; and
- Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996, which includes procedures for replacing the existing dry-film lubricated MLG trunnion slot bearings with sealed and self-lubricating bearings.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incident described above, including the above-referenced service information, the FAA has determined that AD action should be taken to prevent MLG collapse caused by trunnion bearing failure, which could result in loss of control of the airplane during landing operations.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 525 airplanes of the same type design, this AD requires repetitively inspecting the main landing gear (MLG) trunnion pins for proper installation, and either immediately or eventually replacing the existing dry-film lubricated MLG trunnion slot bearings with sealed and self-lubricating bearings. Only two inspections will be allowed before mandatory replacement of the MLG trunnion slot bearings. Accomplishment of the inspections required by this AD will be in accordance with Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996. Accomplishment of the replacement required by this AD will be in accordance with Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996.

Determination of the Effective Date of the AD

Since a situation exists (loss of control of the airplane during landing operations) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–59–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–01–02 Cessna Aircraft Company: Amendment 39–9873; Docket No 96–CE–59–AD.

Applicability: Model 525 airplanes (serial numbers 525–0001 through 525–0153), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) collapse caused by trunnion bearing failure, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter within 25 hours TIS after the initial inspection, inspect the main landing gear trunnion pins (four pins: both forward and aft trunnion pins on both the left and right MLG) for proper installation. Perform this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996.

(b) If any pin is not properly installed as described in Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996, prior to further flight, replace the existing dry-film lubricated MLG trunnion slot bearing with a sealed and self-lubricating bearing. Perform this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996. The repetitive inspection need not be accomplished on the trunnion pin when the bearing is replaced with a sealed and self-lubricating bearing.

(c) Within the next 75 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace the existing dry-film lubricated MLG trunnion slot bearing with a sealed and self-lubricating bearing at all four main landing gear trunnion locations (both forward and aft trunnion pins on both the left and right MLG). Perform these replacements in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996.

(d) Replacing the existing dry-film lubricated MLG trunnion slot bearing with a sealed and self- lubricating bearing in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996, on all four main landing gear trunnion locations (both forward and aft trunnion pins on both the left and right MLG) eliminates the repetitive inspection requirement of this AD. These replacements may be accomplished at any time prior to 75 hours TIS after the effective date of this AD, at which time they must be accomplished (see paragraph (c) of this AD).

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) The inspections required by this AD shall be done in accordance with Cessna Alert Service Letter SLA525–32–11, Revision 1, dated October 1, 1996. The replacements required by this AD shall be done in accordance with Cessna Service Bulletin SB525–32–08, Revision 1, dated October 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9873) becomes effective on January 15, 1997.

Issued in Kansas City, Missouri, on December 27, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–160 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–273–AD; Amendment 39–9866; AD 96–26–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that will enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off. In addition, the existing AD requires a revision to the maintenance program to incorporate instructions to perform checks of the thrust reverser system and correct thrust reverser malfunctions. That AD was prompted by results of a review, which indicated that a potential latent failure of the secondary lock actuator switch 1 of the thrust reverser system in the open position may occur, in addition to the potential failure of the secondary lock relay 1 in the energized position. This new AD adds a requirement to accomplish new modifications that will serve as terminating actions for the revisions to the AFM and maintenance program, and new repetitive checks of the thrust reverser system. The actions specified in this AD are intended to ensure protection against inadvertent deployment of the thrust reversers during flight.

DATES: Effective January 21, 1997.

The incorporation by reference of Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; and Fokker Service Bulletin SBF100–78–013, dated November 22, 1996; as listed in the regulations; is approved by the Director of the Federal Register as of January 21, 1997.

The incorporation by reference of Fokker All Operator Message TS96.67591, dated November 14, 1996, was approved previously by the Director of the Federal Register as of December 24, 1996 (61 FR 66890, December 19, 1996).

Comments for inclusion in the Rules Docket must be received on or before March 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Service B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On December 5, 1996, the FAA issued AD 96–24–10, amendment 39–9850 (61 FR 66890, December 19, 1996), applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes. That AD superseded AD 96–23–16, amendment 39–9825 (61 FR 5887, November 20, 1996). AD 96–24–10 requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off by monitoring proper engagement of the autothrottle system (ATS). It also allows dispatch of the airplane with both thrust reversers inoperative provided they are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation. In addition, that AD requires a revision to the FAA-approved maintenance program to incorporate instructions to correct malfunctions of the secondary lock relay 1 of the thrust reversers found during the operational tests; to perform a daily check to detect latent failure of the secondary lock actuator switch 1; and to take corrective actions, if necessary.

That action was prompted by results of a review and safety assessment of the thrust reverser control and indication system, which indicated that a potential latent failure of the secondary lock actuator switch 1 in the open position may occur in addition to the potential failure of the secondary lock relay 1 in the energized position addressed by AD 96–23–16.

The actions required by AD 96–24–10 are intended to prevent such failures, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight.

In the preamble to AD 96–24–10, the FAA indicated that the actions required by that AD were considered to be "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this AD follows from that determination.

New Service Information from the Manufacturer

Fokker issued Service Bulletin SBF100–78–012, dated November 22, 1996, which describes procedures for modification of the wiring of the electrical control, and indication and warning systems of the thrust reversers. This modification involves changing the wiring of the stow limit relay of the thrust reverser, which will prevent inadvertent loss of the thrust reverser stow signal during certain failure conditions (i.e., bypasses the stow limit relay to ensure that the stow solenoid is energized at all times regardless of the position of the secondary lock actuator switch 1, except during commanded deployment of the thrust reverser). This modification also involves changing the wiring of the flight warning computer (FWC), which will prevent unintended inhibition of the thrust reverser warning (i.e., bypasses the warning switch of the secondary lock relay 1). Accomplishment of this modification will eliminate the need for the revisions to the AFM and maintenance program (currently required by AD 96–24–10).

In addition, accomplishment of this modification will slightly increase the electrical loads on the emergency direct current (DC) bus on Fokker Model F28 Mark 0070 and 0100 series airplanes. The load margin for Fokker Model F28 Mark 0100 series airplanes is adequate to sustain the additional electrical loads created by accomplishment of Service Bulletin SBF100–78–012; however, Fokker Model F28 Mark 0070 series airplanes do not have an adequate load margin to sustain these additional loads. Therefore, Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996, must be accomplished on Fokker Model F28 Mark 0070 series airplanes prior to or in conjunction with Fokker Service Bulletin SBF100–78–012. Fokker Service Bulletin SBF100–24–034 describes procedures for modification of the wiring of the priority switching of the emergency inverter power supply. The modification involves reconfiguring the emergency DC bus wiring. Accomplishment of this modification

will reduce the load of the emergency DC bus on Fokker Model F28 Mark 0070 series airplanes.

In addition, Fokker has also issued Service Bulletin SBF100–78–013, dated November 22, 1996. This service bulletin describes procedures for performing repetitive operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers; and repair of the thrust reverser system, if necessary.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 1996–140 (A), dated November 25, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the New Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 96–24–10. It continues to require the following actions:

- A revision to Limitations Section of the FAA-approved AFM that will enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off by monitoring proper engagement of the authothrottle system (ATS); and
- A revision to the FAA-approved maintenance program to incorporate instructions to correct malfunctions found during the operational tests of the secondary lock relay 1 of the thrust reversers; to perform a daily check to detect latent failure of the secondary lock actuator switch 1; and to take corrective actions, if necessary.

In addition, this AD requires performing the following new requirements:

1. Modification of the wiring of the electrical control, and indication and warning systems of the thrust reversers, which terminates the currently required AFM revision and the maintenance program revision;
2. Modification of the wiring of the priority switching of the emergency inverter power supply, for certain airplanes;
3. Repetitive operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers; and repair of the thrust reverser system, if necessary; and
4. Submission of a report of any finding to Fokker following accomplishment of the operational checks.

These actions are required to be accomplished in accordance with the service bulletins described previously.

Operators should note that the FAA has deleted the previous allowance to dispatch with both thrust reversers inoperative, which was specified in paragraph (b) of AD 96–24–10. The FAA finds that such an allowance is unnecessary, since adequate spare parts are now available to accomplish any required part replacements as a result of the daily maintenance check.

Difference Between the AD and the Related Dutch AD

This AD differs from the Dutch airworthiness directive BLA 1996–140 (A) in that it does not address changes to the FAA Master Minimum Equipment List (MMEL), whereas the Dutch airworthiness directive changes the requirements of the Dutch MMEL for the autothrottle and the thrust reverser indication and alerting system. The Dutch BLA allows dispatch with both autothrottle channels inoperative and both thrust reverser indication and alerting systems inoperative provided both thrust reversers are deactivated and secured in the stowed position, and no operations or procedures are predicated on their use. The FAA MMEL only allows dispatch with one autothrottle channel inoperative and does not allow dispatch with either thrust reverser indication or alerting system inoperative. The FAA finds no safety-related reason to relax these requirements.

Interim Action

This is considered to be interim action. The exact cause of the addressed unsafe condition is still unknown at this time. The reports of operational check results that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the inadvertent thrust reverser deployment, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–273–AD." The postcard will be date stamped and returned to the commenter.

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Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9850 (61 FR 66890, December 19, 1996), and by adding a new airworthiness directive (AD), amendment 39–9866, to read as follows:

96–26–03 Fokker: Amendment 39–9866. Docket 96–NM–273–AD. Supersedes AD 96–24–10, amendment 39–9850.

Applicability: All Model F28 Mark 0070 and 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure protection against inadvertent deployment of the thrust reversers during flight, accomplish the following:

(a) Within 48 hours after November 25, 1996 (the effective date of AD 96–23–16, amendment 39–9825), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Before take-off, arm the autothrottle system (ATS).

When cleared for take-off, activate the take-off/go-around (TOGA) trigger(s), and positively verify ATS engagement [throttle movement *and* white steady AT1, AT2, or AT in the flight mode annunciator (FMA) engage window].

If the ATS does NOT engage correctly, abort the take-off, return, and report to maintenance.

If the ATS does engage correctly, you may continue take-off with either ATS engaged or disengaged, as necessary.

(b) Within 48 hours after December 24, 1996 (the effective date AD 96–24–10, amendment 39–9850), revise the FAA-approved maintenance program to include the procedures specified in Appendix 2 of Fokker All Operator Message TS96.67591, dated November 14, 1996. These procedures must be accomplished daily, and prior to further flight following failure of the operational check required by paragraph (a) of this AD. If any failure is detected during these procedures, prior to further flight, accomplish the corrective actions in accordance with the procedures. The FAA-approved maintenance program procedures required by paragraph (a)(3) of AD 96–23–16, amendment 39–9825, may be removed following accomplishment of the requirements of this paragraph.

(c) Within 60 days after the effective date of this AD, modify the wiring of the electrical control, and indication and warning systems of the thrust reversers, in accordance with Fokker Service Bulletin SBF100–78–012, dated November 22, 1996. The AFM revision required by paragraph (a) of this AD and the FAA-approved maintenance program revision required by paragraph (b) of this AD may be removed following accomplishment of this paragraph.

(d) For Model F28 Mark 0070 series airplanes: Prior to or in conjunction with the accomplishment of paragraph (c) of this AD, modify the wiring of the priority switching of the emergency inverter power supply in accordance with Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996.

(e) Within 500 flight cycles following accomplishment of paragraph (c) of this AD, perform operational checks to detect failures of the secondary lock actuator, primary lock switch, indication and warning system, and feedback cable mechanism of the thrust reversers in accordance with Fokker Service Bulletin SBF100–78–013, dated November 22, 1996. If any failure is detected, prior to further flight, repair the thrust reverser system in accordance with Chapter 78–30–00 of the Fokker Airplane Maintenance Manual. Repeat the operational checks thereafter at intervals not to exceed 500 flight cycles.

(f) Within 10 days after accomplishing the operational checks required by paragraphs (b) and (e) of this AD, submit a report of all findings to Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Fokker All Operator Message TS96.67591, dated November 14, 1996; Fokker Service Bulletin SBF100–78–012, dated November 22, 1996; Fokker Service Bulletin SBF100–24–034, Revision 1, dated September 12, 1996; and Fokker Service Bulletin SBF100–78–013, dated November 22, 1996. Fokker Service Bulletin SBF100–24–034 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3	1	September 12, 1996.
4–7	Original	October 17, 1995.

The incorporation by reference of Fokker All Operator Message TS96.67591, dated November 14, 1996, was approved previously by the Director of the Federal Register in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on January 21, 1997.

Issued in Renton, Washington, on December 20, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–161 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Docket No. 96–ACE–23]

Amendment to Class E Airspace, York, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at York Municipal Airport, York, Nebraska. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at York Municipal Airport.

DATES: Effective date: March 27, 1997.

Comment date: Comments must be received on or before January 24, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–23, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at York Municipal Airport, York Nebraska. The amendment to Class E airspace at York, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments and therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A great degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ACE–23." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will no have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant

rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment.

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulation (14 CFR part 71) as follows:

PART 71—AMENDED

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 York, NE [Revised]

York Municipal Airport, NE
(lat. 40°53'47" N., long. 97°37'26.7" W.)
York NDB
(lat. 40°53'51" N., long. 97°37'01" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the York Municipal Airport and within 2.6 miles each side of the 202° bearing from the York NDB extending from the 6.6-mile radius to 7.4 miles southwest of the airport and within 2.6 miles each side of the 334° bearing from the York NDB extending from the 6.6-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 22, 1996.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 97–173 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AAL–32]

Revision of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: It has come to the attention of the FAA that the Class E airspace at Buckland, AK, will not chart correctly. This action revises the Buckland, AK, airspace description by clarifying the airspace required from the Kotzebue Very High Frequency (VHF) omni-directional radio range (VOR) and Distance Measuring Equipment (VOR/DME) and the Selawik VOR/DME to the new Global Positioning System (GPS) waypoint coordinates. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide an accurate airspace description for the Class E airspace supporting IFR operations at Buckland, AK.

EFFECTIVE DATE: Effective 0901 UTC on January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

The FAA established Class E airspace at Buckland Airport, AK, as a result of the development of a GPS instrument approach procedure to Runway (RWY) 10 at Buckland Airport, AK. The final rule was published in the **Federal Register** (61 FR 53848, October 16, 1996). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

It has been brought to the FAA's attention that the airspace description will not chart correctly. The airspace description has been reworded to change the verbage "10.5 miles northwest on the 303° bearing from the Buckland NDB" to read "4 miles eitherside of a line between AKUDY and the Kotzebue VOR/DME, and 4 miles eitherside of a line between AKUDY and the Selawik VOR/DME, excluding that airspace inside Kotzebue, AK, and Selawik, AK, Class E airspace areas." This action will clarify the charting problem. National Oceanic and Atmospheric Administration (NOAA) needs this revision before publication of aeronautical charts and manuals with effective date January 30, 1997.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace at Buckland, AK. The Class E airspace description will not chart correctly. The airspace description verbage "10.5 miles northwest on the 303° bearing from the Buckland NDB" has been reworded to read "4 miles eitherside of a line between AKUDY and the Kotzebue VOR/DME, and 4 miles eitherside of a line between AKUDY and the Selawik VOR/DME, excluding that airspace inside Kotzebue, AK, and Selawik, AK, Class E airspace areas." This action will clarify the charting problem.

Because the circumstances described in this final rule warrant immediate action by the FAA to provide a corrected description for charting agencies, the FAA concludes that notice and public procedure under 5 U.S.C. section 553(b) are impractical and good cause, pursuant to 5 U.S.C. section 553(d), exists for making this amendment effective in less than 30 days.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Buckland, AK [Revised]

Buckland Airport, AK
(lat. 65° 58′ 40″ N, long. 161° 07′ 44″ W)
Buckland NDB
(lat. 65° 58′ 45″ N, long. 161° 08′ 56″ W)
Kotzebue VOR/DME
(lat. 66° 53′ 09″ N, long. 162° 32′ 24″ W)
Selawik VOR/DME
(lat. 66° 36′ 00″ N, long. 159° 59′ 50″ W)
AKUDY
(lat. 66° 04′ 23″ N, long. 161° 30′ 08″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles southwest and 4 miles northeast of the 303° bearing of the Buckland NDB extending from the 6.5-mile radius to 21 miles northwest, and 4 miles eitherside of a line between AKUDY and the Kotzebue VOR/DME, and 4 miles eitherside of a line between AKUDY and the Selawik VOR/DME, excluding that airspace inside Kotzebue, AK, and Selawik, AK, Class E airspace areas.

* * * * *

Issued in Anchorage, AK, on December 26, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–175 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AAL–16]

Revision of Class E Airspace; Dillingham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Dillingham Airport, AK. The development of Global Positioning System (GPS) and Microwave Landing System (MLS) instrument approaches to RWY 1 and RWY 19 at Dillingham, AK, have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for IFR operations at Dillingham Airport, AK.

EFFECTIVE DATE: 0901 UTC, February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Dillingham was published in the **Federal Register** (61 FR 53881). The development of GPS and MLS instrument approach procedures to RWY 1 and RWY 19 at Dillingham Airport, AK, has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received. However, the proposal was published with incorrect coordinates which have been corrected to read: Dillingham Airport (lat. 59°02′43″ N, long. 158°30′12″ W). The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive changes just discussed, the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996; 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraphs 6002 and 6005 are incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises Class E airspace located at Dillingham, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Dillingham, AK [Revised]

Dillingham Airport, AK
(lat. 59°02′43″ N, long. 158°30′12″ W)
Dillingham VOR/DME
(lat. 58°59′39″ N, long. 158°33′08″ W)

Within a 4.1-mile radius of the Dillingham Airport and within 3.1 miles each side of the Dillingham VOR/DME 207° radial extending from the 4.1-mile radius to 10.4 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Dillingham, AK [Revised]

Dillingham Airport, AK
(lat. 59°02′43″ N, long. 158°30′12″ W)
Dillingham VOR/DME
(lat. 58°59′39″ N, long. 158°33′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Dillingham Airport and within 3.1 miles each side of the 207° radial of the Dillingham VOR/DME extending from the 6.6-mile radius to 14.1 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 22-mile radius of the VOR/DME.

* * * * *

Issued in Anchorage, AK, on December 26, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–176 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–9–000]

Open Access Same-Time Information System (OASIS) and Standards of Conduct

Issued December 27, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting request for clarification.

SUMMARY: The Federal Energy Regulatory Commission, at the request of the How Working Group, is clarifying its Phase 1 OASIS regulations concerning "next hour" reservations of transmission service. The Commission finds that, during Phase 1, a request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be "made on the OASIS" if it is made directly on the OASIS, or, if it is made by facsimile or telephone *and* promptly (within one hour) posted on the OASIS by the Transmission Provider. In all other circumstances, requests for transmission service must be made exclusively on the OASIS.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT:
Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (202) 208–1283
William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0849
Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0321

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. CIPS is also available on the Internet through the Fed World system. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Order Granting Request for Clarification

Background

On December 23, 1996, the How Working Group [1] filed a letter seeking clarification of whether the Commission intended, in the OASIS Final Rule,[2] to require that the OASIS serve as a "next hour" reservation tool during Phase 1 of OASIS implementation. Specifically, the letter states:

It was the interpretation of the How Working Group that a Provider would accept reservation requests after 2 p.m. of the preceding day, only if practical. Otherwise, these requests would be accepted off-line and posted after-the-fact. It was our view that "next hour" functionality was not feasible in Phase 1. The How Working Group asks us to confirm its interpretation.

Discussion

The OASIS Final Rule makes a clear distinction between reserving transmission service and scheduling transmission service.[3] The Phase 1 OASIS regulations create a mechanism for making reservations of transmission service, while the inclusion of energy scheduling as part of the OASIS requirements was left as a Phase 2 OASIS issue. The problem, however, is that for near-term transactions, the distinction between scheduling and reservations tends to blur.

The OASIS regulations provide, at 18 CFR § 37.6(e)(1), that "[a]ll requests for transmission services offered by Transmission Providers under the *pro forma* tariff must be made on the OASIS." Notwithstanding the clear language of this regulation, the How Working Group would like to accommodate requests for service, made after 2:00 p.m. of the day preceding the commencement of such service, off the OASIS and states that it is not feasible to handle such requests on the OASIS during Phase 1.[4]

[1] The How Working Group is an industry-led group, with diverse industry and customer representatives, working to reach consensus on OASIS-related issues.

[2] Open Access Same-Time Information System and Standards of Conduct, Final Rule, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR 21737 (May 10, 1996), *reh'g pending.*

[3] *See* 61 FR at 21743.

[4] The 2:00 p.m. deadline is consistent with § 14.6 of the *pro forma* tariff, which provides: "Schedules for Non-Firm Point-to-Point Transmission Service must be submitted to the Transmission Provider no later than 2:00 p.m. . . . of the day prior to commencement of such service. Schedules submitted after 2:00 p.m will be accommodated, if practicable."

We find that, during Phase 1, a request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be "made on the OASIS" if it is made directly on the OASIS, or, if it is made by facsimile or telephone *and* promptly (within one hour) posted on the OASIS by the Transmission Provider. In all other circumstances, requests for transmission service must be made exclusively on the OASIS.

The Commission orders: The request of the How Working Group for a clarification of the OASIS Final Rule is hereby granted, as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–140 Filed 1–3–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Gentamicin Sulfate Intrauterine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Pharmaceutical, Inc. The ANADA provides for the use of a generic gentamicin sulfate intrauterine solution for control of bacterial infections of the uterus in horses (metritis) and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457, Fairleigh Station, St. Joseph, MO 64506–0457, is the sponsor of ANADA 200–137, which provides for the use of a generic gentamicin sulfate intrauterine solution (100 milligrams/milliliter (mg/mL)) for control of bacterial infections of the uterus in horses (metritis) and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

Approval of ANADA 200–137 for Phoenix Pharmaceutical's gentamicin sulfate intrauterine solution (100 mg/mL gentamicin) is as a generic copy of Schering's Gentocin® Solution (100 mg/mL gentamicin) in NADA 046–724. The ANADA is approved as of November 13, 1996, and the regulations are amended in 21 CFR 529.1044a to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended to read as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1044a [Amended]

2. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing "000061, 000856, 000864, 054273, and 057561" and adding in its place "000061, 000856, 000864, 054273, 057319, and 057561".

Dated: December 23, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–185 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 579

[Docket No. 92F–0317]

Food Additives; Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Ionizing Radiation for Treatment of Poultry Feed or Poultry Feed Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of requests for a hearing.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying the requests for a hearing on the final rule that amended the food additive regulations (animal use) to provide for the safe use of gamma radiation from cobalt-60 for rendering complete poultry feeds or poultry feed ingredients salmonella negative. Four parties filed objections to the final rule and submitted requests for a hearing requesting approval of additional energy sources for this use. After reviewing their submissions, FDA has concluded that the objections do not raise issues of material fact concerning the approval that justify granting a hearing. Therefore, FDA is denying the requests for a hearing.

DATES: The final rule published in the **Federal Register** of September 28, 1995, at 60 FR 50098 is effective.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of August 20, 1992 (57 FR 37825), FDA announced that a food additive petition (animal use) (FAP 2216) had been filed by Nordion International, Inc., 447 March Rd., P.O. Box 13500, Kanata, ON, Canada K2K 1X8. The petition proposed that the feed irradiation regulations be amended to provide for the safe use of gamma radiation from cobalt-60, not to exceed 25 kiloGrays (kGy) (2.5 Mrad), to control salmonella in complete poultry (chickens, turkeys, ducks, geese, cornish hens, pheasant, quail, and fowl) feeds or feed ingredients. The notice of filing of FAP 2216 provided for a 60-day comment period. No comments were received.

In a final rule published in the **Federal Register** of September 28, 1995 (60 FR 50098), FDA amended the animal feed and pet food irradiation

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regulations to provide for the use of 2 to 25 kGy of gamma radiation from sealed units of cobalt-60 to render complete poultry feeds or poultry feed ingredients salmonella negative. The rule added new § 579.40 (21 CFR 579.40) to reflect the new feed additive use.

II. Objections and Requests for a Hearing

AECL Technologies, Inc., AECL Accelerators, 20 Little Lane, Hauppage, NY 11788; E–BEAM Services, Inc., 32 Melrich Rd., Cranbury, NJ 08512; Department of Animal Sciences, Texas A&M University, College Station, TX 77843–2471; and Secretariat of the International Consultative Group on Food Irradiation; each filed objections to the final rule citing failure of that rule to provide for additional energy sources including gamma rays from cesium-137, machine generated electrons not to exceed 10 million electron volts, and machine generated x-rays not to exceed 5 million electron volts, in addition to the use of gamma radiation from cobalt-60. The petition supported use of cobalt-60 energy sources. Information filed in the objections did not object to the conditions of approval of the petition, but the information filed in the objections supported additional energy sources not previously considered. Such information should be the subject of a separate food additive petition filed in accordance with 21 CFR 571.1 to support amending the regulations to provide for the use of these additional energy sources.

III. Standards for Granting a Hearing

Section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(b)(5)) provides for publication of a notice, in general terms, of filing of a food additive petition. That notice contains provisions for a 60-day comment period. Section 409(f)(1) of the act provides for a 30-day comment period after publication of an order (final rule) relating to approval of a food additive petition to permit any person adversely affected by such an order to file objections, specifying with particularity the provisions of the order "deemed objectionable, stating reasonable grounds therefor," and requesting a public a hearing upon such objections.

Specific criteria for determining whether a request for a hearing is justified are set forth in § 12.24(b) (21 CFR 12.24(b)). A hearing will be granted if the material submitted shows that:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought * * *.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 314.300, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

FDA may deny a request for a hearing if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (*Community Nutrition Institute* v. *Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123 (1986)).

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing" (*Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980) reh. den., 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test (*Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982)). If a request for a hearing fails to identify any factual evidence that would be the subject of a hearing, then there is no basis for holding a hearing. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute, and a party is entitled to judgment as a matter of law. (See Rule 56, Federal Rules of Civil Procedure.) The same principle applies in administrative proceedings.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact upon which a meaningful hearing might be held (*Pineapple Growers Association* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (*Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959) *cert. denied*, 362 U.S. 911 (1960)). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. (See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971).) In other words, a hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue" (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958).)

In sum, a hearing request should present sufficient credible evidence to raise a material issue of fact, and that evidence must be adequate to resolve the issue as requested and to justify the action requested.

IV. Analysis of Objections and Response to Requests for a Hearing

FDA is denying the parties' request for a hearing on their objections for two reasons. First, under § 12.24(b)(5), FDA will not grant a hearing if the action requested is inconsistent with any provision in the act or any FDA regulation. The parties' requested action is inconsistent with the act and FDA's regulations, because the parties have raised an issue regarding additional energy sources for this food additive use that was not previously presented in the petition and have requested a hearing on the issue. Under the act and FDA's regulations, the scope of a proceeding for approval of a food additive use is limited to the terms and conditions of use set forth in the petition.

Under section 409(c) of the act, an action on a petition to establish a food additive use is based on the petition and other available information. The petition that led to the issuance of § 579.40 provided for use of gamma radiation from a cobalt-60 energy source for rendering complete poultry feeds or poultry feed ingredients salmonella

negative. FDA granted this petition, and in the preamble of the final rule (60 FR 50098), the agency specifically addressed each of the issues raised in evaluating the petition. The parties, however, have objected to the failure of the final rule to provide for additional energy sources, including gamma rays from cesium-137, machine generated electrons not exceeding 10 million electron volts, and machine generated x-rays not exceeding 5 million electron volts.

Under section 409(f)(1) of the act, any person adversely affected by a final rule may file objections thereto, specifying with particularity the provisions of the final rule deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. However, there is nothing in the act or in FDA's regulations that suggests or implies that, or that authorizes, interested persons to use the opportunity to object as an opportunity to expand the authorized use of a food additive beyond that use sought in the petition. On the contrary, 21 CFR 571.6 requires that if, after a petition has been filed, the petitioner submits added information which constitutes a substantive amendment, the petition will be given a new filing date; and the review process will begin anew.

Thus, under the act and FDA's regulations, the scope of a proceeding for approval of a food additive use is limited to the terms and conditions of use set out in the petition. To the extent that a person who is not the petitioner seeks to extend the petitioned-for terms and conditions of use, the person must do so by a separate petition, not by objection to the final rule. To attempt to do so by objection to the final rule, or by comment on the notice of filing, is to attempt to act in a manner that is inconsistent with the act and FDA's regulations. The proper procedure, as stated in § 12.24(b)(5), is for the objecting parties to petition for amendment of § 579.40. Thus, the objecting parties have failed to justify a hearing on the requested action.

Second, under its regulations, FDA will not grant a hearing on the basis of mere allegations (§ 12.24(b)(2)). Consistent with this regulation, the relevant case law provides that where a party requesting a hearing only offers allegations without an adequate proffer to support them, the agency may properly disregard those allegations (*General Motors Corp.* v. *FERC*, 656 F.2d 791, 798 n.20 (D.C. Cir. 1981)). The objecting parties have failed to submit any evidence showing that failure to approve the use of additional energy sources will compromise the approved use of radiation emitted from cobalt-60. Thus, because the parties have failed to offer any support for their allegation, FDA concludes that this objection does not justify a hearing.

V. Summary and Conclusion

The agency is denying the objections and the requests for a hearing on the basis that the request is beyond the scope of the petitioned action and is appropriately resolved through the submission of a separate petition (§ 12.24(b)(5)) and the requested action could not be approved on the basis of a hearing, i.e., not to be granted based on allegations or general descriptions of positions and contentions (§ 12.24(b)(2)).

The filing of the objections and requests for a hearing does not affect the provisions of § 579.40 to which the objections were made.

In the absence of any other objections and requests for a hearing, the agency further concludes that this document constitutes final action on the objections and requests for a hearing received in response to the regulation as prescribed in section 409(f)(1) of the act (21 U.S.C. 348).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409 (21 U.S.C. 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.61), notice is given that the objections and the requests for a hearing filed in response to the final rule § 579.40 that was published in the **Federal Register** on September 28, 1995 (60 FR 50098), do not form a basis for further amendment of this final rule.

Dated: December 30, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–137 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

[Public Notice 2478]

22 CFR Part 42

Bureau of Consular Affairs; Visas: Documentation of Immigrants under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: The Violence Against Women Act of 1994 (Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1902, 1953–1955), amended section 204 of the Immigration and Nationality Act (INA) to allow certain spouses and children of citizens or lawful permanent resident aliens to self-petition for immediate relative and preference classifications. This rule adds classification symbols for this category of immigrants.

EFFECTIVE DATE: This rule takes effect on January 6, 1997.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, D.C. 20522–1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: Section 40701 of the Violence Against Women Act of 1994 accords aliens who have been battered and/or abused by a U.S. citizen or alien resident spouse or parent, and who have resided in the United States with that spouse or parent, the right to self-petition for immediate relative or family preference status. *Creation of new immigrant visa categories.*

This rule amends part 42, title 22 of the Code of Federal Regulations by adding the new visa symbols for these immigrant categories: IB1 through IB3, B11 and B12, B21 through B25, BX1 through BX3, and B31 through B33 to the list of immigrant visa symbols at § 42.11. Other minor editorial changes have been made throughout.

Final Rule

This rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule imposes no reporting or record-keeping action on the public subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. No Federalism assessment is required under E.O. 12612. This rule has been reviewed as required by E.O. 12988. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith. This rule is being promulgated as a final rule pursuant to the "good cause" provision of 5 U.S.C. sec. 553(b); notice and comment are not necessary in light of the fact that this rule merely establishes visa symbols and makes no substantive rule changes.

List of Subjects in 22 CFR Part 42

Classification of immigrants, Classification symbols, Visas.

Accordingly, part 42 to title 22 of the Code of Federal Regulations is amended to read as indicated below:

PART 42—[AMENDED]

1. The authority citation for Part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

§ 42.11 [Amended]

2. In section 42.11 the introductory text and the first seven sections of the table are revised to read as follows:

§ 42.11 Classification Symbols.

A visa issued to an immigrant alien within one of the classes described below shall bear an appropriate visa symbol to show the classification of the alien.

IMMIGRANTS

Symbol	Class	Section of law
	Immediate Relatives	
IR1	Spouse of U.S. Citizen	201(b).
IR2	Child of U.S. Citizen	201(b).
IR3	Orphan Adopted Abroad by U.S. Citizen	201(b).
IR4	Orphan to be Adopted In the United States by U.S. Citizen	201(b).
IR5	Parent of U.S. Citizen at Least 21 Years of Age	201(b).
CR1	Spouse of U.S. Citizen (Conditional Status)	201(b) & 216(a)(1).
CR2	Child of U.S. Citizen (Conditional Status)	201(b) & 216.
IW1	Certain Spouses of Deceased U.S. Citizens	201(b).
IW2	Child of IW1	201(b).
IB1	Self-petition Spouse of U.S. Citizen	204(a)(1)(A)(iii).
IB2	Self-petition child of U.S. Citizen	204(a)(1)(A)(iv).
IB3	Child of IB1	204(a)(1)(A)(iii).
VI5	Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Non-immigrant Alien Adjustment Act.	201(b) & sec. 2 of the Virgin Islands, Non-immigrant Alien, Adjustment Act, (P.L. 97–271).
	Vietnam Amerasian Immigrants	
AM1	Vietnam Amerasian Principal	584(b)(1)(A).
AM2	Spouse or Child of AM1	584(b)(1)(B), and
AM3	Natural Mother of Unmarried AM1 (and Spouse or Child of Such Mother), or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of Unmarried AM1 (and Spouse or Child of Such Person).	584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (As Contained in sec. 101(e) of P.L 100–202) as amended).
	Special Immigrants	
SB1	Returning Resident	101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	101(a)(27)(B) & 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	101(a)(27)(B) & 327.
	Family-Sponsored Preferences	
	Family 1st Preference	
F11	Unmarried Son or Daughter of U.S. Citizen	203(a)(1).
F12	Child of F11	203(d).
B11	Self-petition Unmarried Son or Daughter of U.S. Citizen	204(a)(1)(A)(iv) & 203(a)(1).
B12	Child of B11	203(d).
	Family 2nd Preference (Subject to Country Limitations)	
F21	Spouse of Alien Resident	203(a)(2)(A).
F22	Child of Alien Resident	203(a)(2)(A).
F23	Child of F21 or F22	203(d).
F24	Unmarried Son or Daughter of Alien Resident	203(a)(2)(B).
F25	Child of F24	203(d).
C21	Spouse of Alien Resident (Conditional)	203(a)(2)(A) & 216.
C22	Child of Alien Resident (Conditional)	202(a)(2)(A) & 216.
C23	Child of C21 or C22 (Conditional)	203(d) & 216.
C24	Unmarried Son or Daughter of Alien Resident (Conditional)	203(a)(2)(B) & 216.
C25	Child of F24 (Conditional)	203(d) & 216.
B21	Self-petition Spouse of Lawful Permanent Resident	204(a)(1)(B)(ii).
B22	Self-petition Child of Lawful Permanent Resident	204(a)(1)(B)(iii).
B23	Child of B21 or B22	204(a)(1)(B)(ii).
B24	Self-petition Unmarried Son or Daughter of Lawful Permanent Resident	203(d).

IMMIGRANTS

Symbol	Class	Section of law
B25	Child of B24	203(d).
	Family 2nd Preference (Exempt from Country Limitations)	
FX1	Spouse of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
FX2	Child of Alien Resident	202(a)4)(A) & 203(a)(2)(A).
FX3	Child of FX1 and FX2	202(a)(4)(A) & 203(d) 203(a)(2)(A).
CX1	Spouse of Alien Resident (Conditional)	202(a)(4)(A) & 216.
CX2	Child of Alien Resident (Conditional)	202(a)(4)(A) & 216.
CX3	Child of CX1 & CX2 (Conditional)	202(a)(4)(A) & 203(d) & 216.
BX1	Self-petition Spouse of Lawful Permanent Resident	204(a)(1)(B)(ii).
BX2	Self-petition Child of Lawful Permanent Resident	204(a)(1)(B)(iii).
BX3	Child of BX1 or BX2	203(d).
	Family 3rd Preference	
F31	Married Son or Daughter of U.S. Citizen	203(a)(3).
F32	Spouse of F31	203(d).
F33	Child of F31	302(d).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	216(a)(1).
C32	Spouse of C31 (Conditional)	203(d) & 216.
C33	Child of C31 (Conditional)	203(d) & 216.
B31	Self-petition Married Son or Daughter of U.S. Citizen	204(a)(1)(A)(iv) & 203(a)(3).
B32	Spouse of B31	203(d).
B33	Child of B31	203(d).

* * * * *

Dated: November 21, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–135 Filed 1–3–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8709]

RIN 1545–AU44

Inflation-Indexed Debt Instruments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations relating to the federal income tax treatment of inflation-indexed debt instruments, including Treasury Inflation-Indexed Securities. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. This document also contains amendments to final regulations to reflect the addition of the temporary regulations. The regulations in this document provide needed guidance to holders and issuers of inflation-indexed debt instruments.

EFFECTIVE DATE: The regulations are effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Maddrey, (202) 622–3940, or William E. Blanchard, (202) 622–3950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Department of the Treasury published final rules describing the terms and conditions of new debt instruments that it plans to issue. The payments on these debt instruments (Treasury Inflation-Indexed Securities) will be indexed for inflation and deflation.

On June 14, 1996, the IRS published final regulations in the **Federal Register** relating to certain debt instruments that provide for contingent payments (61 FR 30133). The preamble to the final regulations indicates that the noncontingent bond method described in § 1.1275–4(b) might be inappropriate for the Treasury Inflation-Indexed Securities. On October 15, 1996, the IRS published Notice 96–51 (1996–42 I.R.B. 6), which announced the IRS's intention to issue temporary and proposed regulations that would provide guidance on the federal income tax treatment of the Treasury Inflation-Indexed Securities and other debt instruments with similar terms. This document contains the temporary regulations described in Notice 96–51.

Explanation of Provisions

A. In General

The temporary regulations provide rules for the treatment of certain debt instruments that are indexed for inflation and deflation, including Treasury Inflation-Indexed Securities. The temporary regulations generally require holders and issuers of inflation-indexed debt instruments to account for interest and original issue discount (OID) using constant yield principles. In addition, the temporary regulations generally require holders and issuers of inflation-indexed debt instruments to account for inflation and deflation by making current adjustments to their OID accruals.

B. Applicability

The temporary regulations apply to inflation-indexed debt instruments. In general, an inflation-indexed debt instrument is a debt instrument that (1) Is issued for cash, (2) is indexed for inflation and deflation (as described

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below), and (3) is not otherwise a contingent payment debt instrument. The temporary regulations do not apply, however, to certain debt instruments, such as debt instruments issued by qualified state tuition programs.

C. Indexing Methodology

A debt instrument is considered indexed for inflation and deflation if the payments on the instrument are indexed by reference to the change in value of a general price or wage index over the term of the instrument. Specifically, the amount of each payment on an inflation-indexed debt instrument must equal the product of (1) The amount of the payment that would be payable on the instrument (determined as if there were no inflation or deflation over the term of the instrument) and (2) the ratio of the value of the reference index for the payment date to the value of the reference index for the issue date.

The reference index for a debt instrument is the mechanism for measuring inflation and deflation over the term of the instrument. This mechanism associates the value of a single qualified inflation index for a particular month with a specified day of a succeeding month. For example, under the terms of the Treasury Inflation-Indexed Securities, the reference index for the first day of a month is the value of a qualified inflation index for the third preceding month. The reference index must be reset once a month to the current value of a qualified inflation index. Between reset dates, the value of the reference index is determined through straight-line interpolation.

A qualified inflation index is a general price or wage index that is updated and published at least monthly by an agency of the United States Government. A general price or wage index is an index that measures price or wage changes in the economy as a whole. An index is not general if it only measures price or wage changes in a particular segment of the economy. For example, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (CPI–U), which is published by the Bureau of Labor Statistics of the Department of Labor, is a qualified inflation index because it measures general price changes in the economy. By contrast, the gasoline price component of the CPI–U is not a qualified inflation index because it only measures price changes in a particular segment of the economy.

D. Coupon Bond Method

The temporary regulations provide a simplified method of accounting for qualified stated interest and inflation adjustments on certain inflation-indexed debt instruments (the coupon bond method). To qualify for the coupon bond method, an inflation-indexed debt instrument must satisfy two conditions. First, there must be no more than a de minimis difference between the debt instrument's issue price and its principal amount for the issue date. Second, all stated interest on the debt instrument must be qualified stated interest. Because Treasury Inflation-Indexed Securities that are not stripped into principal and interest components satisfy both of these conditions, the coupon bond method applies to these securities.

If an inflation-indexed debt instrument qualifies for the coupon bond method, the stated interest payable on the debt instrument is taken into account under the taxpayer's regular method of accounting. Any increase in the inflation-adjusted principal amount is treated as OID for the period in which the increase occurs. Any decrease in the inflation-adjusted principal amount is taken into account under the rules for deflation adjustments described below.

For example, if a taxpayer holds a Treasury Inflation-Indexed Security for an entire calendar year and the taxpayer uses the cash receipts and disbursements method of accounting (cash method), the taxpayer generally includes in income the interest payments received on the security during the year. In addition, the taxpayer includes in income an amount of OID measured by subtracting the inflation-adjusted principal amount of the security at the beginning of the year from the inflation-adjusted principal amount of the security at the end of the year. If the taxpayer uses an accrual method of accounting rather than the cash method, the taxpayer includes in income the qualified stated interest that accrued on the debt instrument during the year and an amount of OID measured by subtracting the inflation-adjusted principal amount of the security at the beginning of the year from the inflation-adjusted principal amount of the security at the end of the year.

E. Discount Bond Method

If an inflation-indexed debt instrument does not qualify for the coupon bond method (for example, because it is issued at a discount), the instrument is subject to the discount bond method. In general, the discount bond method requires holders and issuers to make current adjustments to their OID accruals to account for inflation and deflation.

Under the discount bond method, a taxpayer determines the amount of OID allocable to an accrual period by using steps similar to those provided in § 1.1272–1(b)(1). First, the taxpayer determines the yield to maturity of the debt instrument as if there were no inflation or deflation over the term of the instrument. Second, the taxpayer determines the length of the accrual periods to be used to allocate OID over the term of the debt instrument, provided no accrual period is longer than one month. Third, the taxpayer determines the percentage change in the value of the reference index during the accrual period by comparing the value at the beginning of the period to the value at the end of the period. Fourth, the taxpayer determines the OID allocable to the accrual period by using a formula that takes into account both the yield of the debt instrument and the percentage change in the value of the reference index during the period. Fifth, the taxpayer allocates to each day in the accrual period a ratable portion of the OID for the accrual period (the daily portions). If the daily portions for an accrual period are positive amounts, these amounts are taken into account under section 163(e) by an issuer and under section 1272 by a holder. If the daily portions for an accrual period are negative amounts, these amounts are taken into account under the rules for deflation adjustments described below.

Under Notice 96–51, the discount bond method would have allowed qualified stated interest. The temporary regulations, however, provide that no interest payments on an inflation-indexed debt instrument subject to the discount bond method are qualified stated interest. The Treasury and the IRS believe that this change simplifies the taxation of an inflation-indexed debt instrument subject to the discount bond method.

F. Deflation Adjustments

The temporary regulations treat deflation adjustments in a manner consistent with the treatment of net negative adjustments on contingent payment debt instruments under § 1.1275–4(b)(6)(iii). If a holder has a deflation adjustment for a taxable year, the deflation adjustment first reduces the amount of interest otherwise includible in income with respect to the debt instrument for the taxable year. If the amount of the deflation adjustment exceeds the interest otherwise includible in income for the taxable

year, the holder treats the excess as an ordinary loss in the taxable year. However, the amount treated as an ordinary loss is limited to the amount by which the holder's total interest inclusions on the debt instrument in prior taxable years exceed the total amount treated by the holder as an ordinary loss on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year and the amount treated as an ordinary loss for the taxable year, the excess is carried forward to offset interest income on the debt instrument in subsequent taxable years. Similar rules apply to determine an issuer's interest deductions and income for the debt instrument.

G. Minimum Guarantee

Certain inflation-indexed debt instruments may provide for an additional payment at maturity (a minimum guarantee payment) if the total amount of inflation-adjusted principal paid on the debt instrument is less than the instrument's stated principal amount. Under both the coupon bond method and the discount bond method, a minimum guarantee payment is ignored until the payment is made. If a minimum guarantee payment is made, the payment is treated as interest on the date it is paid.

In general, the temporary regulations only allow a debt instrument that is indexed by reference to the CPI–U to provide for a minimum guarantee payment. The Treasury and the IRS believe that there is only a small possibility that the total amount of principal paid on a debt instrument indexed to the CPI–U will be less than the instrument's stated principal amount. In this case, it is appropriate to ignore the minimum guarantee payment until it is paid.

H. Principal Amount for the Issue Date

For purposes of the temporary regulations, if an inflation-indexed debt instrument is issued with pre-issuance accrued interest, the principal amount of the instrument for the issue date includes an adjustment for inflation or deflation. This adjustment is measured by the change in the value of the reference index between the date on which interest starts to accrue (the dated date in the case of a Treasury Inflation-Indexed Security) and the issue date. The stated principal amount of a debt instrument under the regulations, however, is not adjusted for inflation or deflation between the date on which interest starts to accrue and the issue date. Therefore, the stated principal amount of the debt instrument is the same regardless of whether interest accrues on the instrument from the issue date or from an earlier date. The stated principal amount of a Treasury Inflation-Indexed Security is the par amount of the security, as defined in the final rules published by the Treasury Department describing the terms and conditions of Treasury Inflation-Indexed Securities.

When there is a difference between the stated principal amount of an inflation-indexed debt instrument and its principal amount for the issue date, the instrument's principal amount for the issue date generally is used for purposes of applying the rules in the temporary regulations to the instrument. For example, the debt instrument's principal amount for the issue date is used to determine whether the instrument qualifies for the coupon bond method. The temporary regulations require the use of a debt instrument's stated principal amount rather than its principal amount for the issue date to measure the amount of a minimum guarantee payment.

I. Strips

Treasury Inflation-Indexed Securities are eligible for the Department of the Treasury's Separate Trading of Registered Interest and Principal of Securities (STRIPS) program. Under this program, the interest and principal components of a Treasury Inflation-Indexed Security may be transferred as separate instruments (stripped bonds and coupons). In general, section 1286 treats the holder of a stripped bond (or coupon) as if the holder purchased a newly issued debt instrument that has OID. The temporary regulations provide that the holder of a component of a Treasury Inflation-Indexed Security that is stripped under the Treasury STRIPS program must use the discount bond method to account for the OID on the component.

J. Information Reporting

The temporary regulations do not provide any new information reporting rules for inflation-indexed debt instruments. The OID and any qualified stated interest on an inflation-indexed debt instrument should be reported on Form 1099–OID. The IRS plans to issue guidance for the reporting of OID on Treasury Inflation-Indexed Securities that are stripped under the STRIPS program.

K. Effective Date

The temporary regulations apply to an inflation-indexed debt instrument issued on or after January 6, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of the regulations is Jeffrey W. Maddrey, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding two entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1275–7T also issued under 26 U.S.C. 1275(d). * * *

Section 1.1286–2T also issued under 26 U.S.C. 1286(f). * * *

Par. 2. Section 1.1271–0 is amended by—

1. Revising the second sentence of paragraph (a);
2. Revising the introductory text of paragraph (b); and
3. Adding entries for § 1.1275–7T in paragraph (b).

The revisions and additions read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

(a) * * * Taxpayers, however, may rely on these sections (as contained in

26 CFR part 1 revised April 1, 1996) for debt instruments issued after December 21, 1992, and before April 4, 1994.

(b) *Table of contents.* This section lists captioned paragraphs contained in §§ 1.1271–1 through 1.1275–7T.

* * * * *

§ 1.1275–7T Inflation-indexed debt instruments (temporary).

(a) Overview.
(b) Applicability.
(1) In general.
(2) Exceptions.
(c) Definitions.
(1) Inflation-indexed debt instrument.
(2) Reference index.
(3) Qualified inflation index.
(4) Inflation-adjusted principal amount.
(5) Minimum guarantee payment.
(d) Coupon bond method.
(1) In general.
(2) Applicability.
(3) Qualified stated interest.
(4) Inflation adjustments.
(5) Example.
(e) Discount bond method.
(1) In general.
(2) No qualified stated interest.
(3) OID.
(4) Example.
(f) Special rules.
(1) Deflation adjustments.
(2) Adjusted basis.
(3) Subsequent holders.
(4) Minimum guarantee.
(5) Temporary unavailability of a qualified inflation index.
(g) Reopenings.
(h) Effective date.

* * * * *

§ 1.1275.4 [Amended]

Par. 3. Section 1.1275–4 is amended by—

1. Removing the word "or" from the end of paragraph (a)(2)(vi);
2. Redesignating paragraph (a)(2)(vii) as paragraph (a)(2)(viii); and
3. Adding a new paragraph (a)(2)(vii).

The addition reads as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *
(2) * * *

(vii) An inflation-indexed debt instrument (as defined in § 1.1275–7T); or

* * * * *

Par. 4. Section 1.1275–7T is added to read as follows:

§ 1.1275–7T Inflation-indexed debt instruments (temporary).

(a) *Overview.* This section provides rules for the federal income tax treatment of an inflation-indexed debt instrument. If a debt instrument is an inflation-indexed debt instrument, one of two methods will apply to the instrument: the coupon bond method (as described in paragraph (d) of this section) or the discount bond method (as described in paragraph (e) of this section). Both methods determine the amount of OID that is taken into account each year by a holder or an issuer of an inflation-indexed debt instrument.

(b) *Applicability*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to an inflation-indexed debt instrument as defined in paragraph (c)(1) of this section. For example, this section applies to Treasury Inflation-Indexed Securities.

(2) *Exceptions.* This section does not apply to an inflation-indexed debt instrument that is also—

(i) A debt instrument (other than a tax-exempt obligation) described in section 1272(a)(2) (for example, U.S. savings bonds, certain loans between natural persons, and short-term taxable obligations); or

(ii) A debt instrument subject to section 529 (certain debt instruments issued by qualified state tuition programs).

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Inflation-indexed debt instrument.* An inflation-indexed debt instrument is a debt instrument that satisfies the following conditions:

(i) *Issued for cash.* The debt instrument is issued for U.S. dollars and all payments on the instrument are denominated in U.S. dollars.

(ii) *Indexed for inflation and deflation.* Except for a minimum guarantee payment (as defined in paragraph (c)(5) of this section), each payment on the debt instrument is indexed for inflation and deflation. A payment is indexed for inflation and deflation if the amount of the payment is equal to—

(A) The amount that would be payable if there were no inflation or deflation over the term of the debt instrument, multiplied by

(B) A ratio, the numerator of which is the value of the reference index for the date of the payment and the denominator of which is the value of the reference index for the issue date.

(iii) *No other contingencies.* No payment on the debt instrument is subject to a contingency other than the inflation contingency or the contingencies described in this paragraph (c)(1)(iii). A debt instrument may provide for—

(A) A minimum guarantee payment as defined in paragraph (c)(5) of this section; or

(B) Payments under one or more alternate payment schedules if the payments under each payment schedule are indexed for inflation and deflation and a payment schedule for the debt instrument can be determined under § 1.1272–1(c). (For purposes of this section, the rules of § 1.1272–1(c) are applied to the debt instrument by assuming that no inflation or deflation will occur over the term of the instrument.)

(2) *Reference index.* The reference index is an index used to measure inflation and deflation over the term of a debt instrument. To qualify as a reference index, an index must satisfy the following conditions:

(i) The value of the index is reset once a month to a current value of a single qualified inflation index (as defined in paragraph (c)(3) of this section). For this purpose, a value of a qualified inflation index is current if the value has been updated and published within the preceding six month period.

(ii) The reset occurs on the same day of each month (the reset date).

(iii) The value of the index for any date between reset dates is determined through straight-line interpolation.

(3) *Qualified inflation index.* A qualified inflation index is a general price or wage index that is updated and published at least monthly by an agency of the United States Government (for example, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (CPI–U), which is published by the Bureau of Labor Statistics of the Department of Labor).

(4) *Inflation-adjusted principal amount.* For any date, the inflation-adjusted principal amount of an inflation-indexed debt instrument is an amount equal to—

(i) The outstanding principal amount of the debt instrument (determined as if there were no inflation or deflation over the term of the instrument), multiplied by

(ii) A ratio, the numerator of which is the value of the reference index for the date and the denominator of which is the value of the reference index for the issue date.

(5) *Minimum guarantee payment.* In general, a minimum guarantee payment is an additional payment made at maturity on a debt instrument if the total amount of inflation-adjusted principal paid on the instrument is less than the instrument's stated principal amount. The amount of the additional payment must be no more than the excess, if any, of the debt instrument's stated principal amount over the total amount of inflation-adjusted principal paid on the instrument. An additional payment is not a minimum guarantee

payment unless the qualified inflation index used to determine the reference index is either the CPI–U or an index designated for this purpose by the Commissioner in the **Federal Register** or the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter). See paragraph (f)(4) of this section for the treatment of a minimum guarantee payment.

(d) *Coupon bond method*—(1) *In general.* This paragraph (d) describes the method (coupon bond method) to be used to account for qualified stated interest and inflation adjustments (OID) on an inflation-indexed debt instrument described in paragraph (d)(2) of this section.

(2) *Applicability.* The coupon bond method applies to an inflation-indexed debt instrument that satisfies the following conditions:

(i) *Issued at par.* The debt instrument is issued at par. A debt instrument is issued at par if the difference between its issue price and principal amount for the issue date is less than the de minimis amount. For this purpose, the de minimis amount is determined using the principles of § 1.1273–1(d).

(ii) *All stated interest is qualified stated interest.* All stated interest on the debt instrument is qualified stated interest. For purposes of this paragraph (d), stated interest is qualified stated interest if the interest is unconditionally payable in cash, or is constructively received under section 451, at least annually at a single fixed rate. Stated interest is payable at a single fixed rate if the amount of each interest payment is determined by multiplying the inflation adjusted principal amount for the payment date by the single fixed rate.

(3) *Qualified stated interest.* Under the coupon bond method, qualified stated interest is taken into account under the taxpayer's regular method of accounting. The amount of accrued but unpaid qualified stated interest as of any date is determined by using the principles of § 1.446–3(e)(2)(ii) (relating to notional principal contracts). For example, if the interval between interest payment dates spans two taxable years, a taxpayer using an accrual method of accounting determines the amount of accrued qualified stated interest for the first taxable year by reference to the inflation-adjusted principal amount at the end of the first taxable year.

(4) *Inflation adjustments*—(i) *Current accrual.* Under the coupon bond method, an inflation adjustment is taken into account for each taxable year in which the debt instrument is outstanding.

(ii) *Amount of inflation adjustment.* For any relevant period (such as the taxable year or the portion of the taxable year during which a taxpayer holds an inflation-indexed debt instrument), the amount of the inflation adjustment is equal to—

(A) The sum of the inflation-adjusted principal amount at the end of the period and the principal payments made during the period, minus

(B) The inflation-adjusted principal amount at the beginning of the period.

(iii) *Positive inflation adjustments.* A positive inflation adjustment is OID.

(iv) *Negative inflation adjustments.* A negative inflation adjustment is a deflation adjustment that is taken into account under the rules of paragraph (f)(1) of this section.

(5) *Example.* The following example illustrates the coupon bond method:

Example. (i) *Facts.* On October 15, 1997, X purchases at original issue, for $100,000, a debt instrument that is indexed for inflation and deflation. The debt instrument matures on October 15, 1999, has a stated principal amount of $100,000, and has a stated interest rate of 5 percent, compounded semiannually. The debt instrument provides that the principal amount is indexed to the CPI–U. Interest is payable on April 15 and October 15 of each year. The amount of each interest payment is determined by multiplying the inflation-adjusted principal amount for each interest payment date by the stated interest rate, adjusted for the length of the accrual period. The debt instrument provides for a single payment of the inflation-adjusted principal amount at maturity. In addition, the debt instrument provides for an additional payment at maturity equal to the excess, if any, of $100,000 over the inflation-adjusted principal amount at maturity. X uses the cash receipts and disbursements method of accounting and the calendar year as its taxable year.

(ii) *Indexing methodology.* The debt instrument provides that the inflation-adjusted principal amount for any day is determined by multiplying the principal amount of the instrument for the issue date by a ratio, the numerator of which is the value of the reference index for the day the inflation-adjusted principal amount is to be determined and the denominator of which is the value of the reference index for the issue date. The value of the reference index for the first day of a month is the value of the CPI–U for the third preceding month. The value of the reference index for any day other than the first day of a month is determined based on a straight-line interpolation between the value of the reference index for the first day of the month and the value of the reference index for the first day of the next month.

(iii) *Inflation-indexed debt instrument subject to the coupon bond method.* Under paragraph (c)(1) of this section, the debt instrument is an inflation-indexed debt instrument. Because there is no difference between the debt instrument's issue price ($100,000) and its principal amount for the issue date ($100,000) and because all stated interest is qualified stated interest, the coupon bond method applies to the instrument.

(iv) *Reference index values.* Assume the following table lists the relevant reference index values for 1997 through 1999:

Date	Reference index value
Oct. 15, 1997	100
Jan. 1, 1998	101
Apr. 15, 1998	103
Oct. 15, 1998	105
Jan. 1, 1999	99

(v) *Treatment of X in 1997.* X does not receive any payments of interest on the debt instrument in 1997. Therefore, X has no qualified stated interest income for 1997. X, however, must take into account the inflation adjustment for 1997. The inflation-adjusted principal amount for January 1, 1998, is $101,000 ($100,000 × 101/100). Therefore, the inflation adjustment for 1997 is $1,000, the inflation-adjusted principal amount for January 1, 1998 ($101,000) minus the principal amount for the issue date ($100,000). X includes the $1,000 inflation adjustment in income as OID in 1997.

(vi) *Treatment of X in 1998.* In 1998, X receives two payments of interest: On April 15, 1998, X receives a payment of $2,575 ($100,000 × 103/100 × .05/2), and on October 15, 1998, X receives a payment of $2,625 ($100,000 × 105/100 × .05/2). Therefore, X's qualified stated interest income for 1998 is $5,200 ($2,575 + $2,625). X also must take into account the inflation adjustment for 1998. The inflation-adjusted principal amount for January 1, 1999, is $99,000 ($100,000 × 99/100). Therefore, the inflation adjustment for 1998 is negative $2,000, the inflation-adjusted principal amount for January 1, 1999 ($99,000) minus the inflation-adjusted principal amount for January 1, 1998 ($101,000). Because the amount of the inflation adjustment is negative, it is a deflation adjustment. Under paragraph (f)(1)(i) of this section, X uses this $2,000 deflation adjustment to reduce the interest otherwise includible in income by X with respect to the debt instrument in 1998. Therefore, X includes $3,200 in income for 1998, the qualified stated interest income for 1998 ($5,200) minus the deflation adjustment ($2,000).

(e) *Discount bond method*—(1) *In general.* This paragraph (e) describes the method (discount bond method) to be used to account for OID on an inflation-indexed debt instrument that does not qualify for the coupon bond method.

(2) *No qualified stated interest.* Under the discount bond method, no interest on an inflation-indexed debt instrument is qualified stated interest.

(3) *OID.* Under the discount bond method, the amount of OID that accrues on an inflation-indexed debt instrument is determined as follows:

(i) *Step one: Determine the debt instrument's yield to maturity.* The yield of the debt instrument is determined under the rules of § 1.1272–1(b)(1)(i). In calculating the yield under those rules for purposes of this paragraph (e)(3)(i), the payment schedule of the debt instrument is determined as if there were no inflation or deflation over the term of the instrument.

(ii) *Step two: Determine the accrual periods.* The accrual periods are determined under the rules of § 1.1272–1(b)(1)(ii). However, no accrual period can be longer than 1 month.

(iii) *Step three: Determine the percentage change in the reference index during the accrual period.* The percentage change in the reference index during the accrual period is equal to—

(A) The ratio of the value of the reference index at the end of the period to the value of the reference index at the beginning of the period,

(B) Minus one.

(iv) *Step four: Determine the OID allocable to each accrual period.* The OID allocable to an accrual period (n) is determined by using the following formula:

$$OID_{(n)} = AIP_{(n)} \times [r + inf_{(n)} + (r \times inf_{(n)})]$$

in which,

r = yield of the debt instrument as determined under paragraph (e)(3)(i) of this section (adjusted for the length of the accrual period);

$inf_{(n)}$ = percentage change in the value of the reference index for period (n) as determined under paragraph (e)(3)(iii) of this section; and

$AIP_{(n)}$ = adjusted issue price at the beginning of period (n).

(v) *Step five: Determine the daily portions of OID.* The daily portions of OID are determined and taken into account under the rules of § 1.1272–1(b)(1)(iv). If the daily portions determined under this paragraph (e)(3)(v) are negative amounts, however, these amounts (deflation adjustments) are taken into account under the rules for deflation adjustments described in paragraph (f)(1) of this section.

(4) *Example.* The following example illustrates the discount bond method:

Example. (i) *Facts.* On November 15, 1997, X purchases at original issue, for $91,403, a zero-coupon debt instrument that is indexed for inflation and deflation. The principal amount of the debt instrument for the issue date is $100,000. The debt instrument provides for a single payment on November 15, 2000. The amount of the payment will be determined by multiplying $100,000 by a fraction, the numerator of which is the CPI–U for September 2000, and the denominator of which is the CPI–U for September 1997. The debt instrument also provides that in no event will the payment on November 15, 2000, be less than $100,000. X uses the cash receipts and disbursements method of accounting and the calendar year as its taxable year.

(ii) *Inflation-indexed debt instrument.* Under paragraph (c)(1) of this section, the instrument is an inflation-indexed debt instrument. The debt instrument's principal amount for the issue date ($100,000) exceeds its issue price ($91,403) by $8,597, which is more than the de minimis amount for the debt instrument ($750). Therefore, the coupon bond method does not apply to the debt instrument. As a result, the discount bond method applies to the debt instrument.

(iii) *Yield and accrual period.* Assume X chooses monthly accrual periods ending on the 15th day of each month. The yield of the debt instrument is determined as if there were no inflation or deflation over the term of the instrument. Therefore, based on the issue price of $91,403 and an assumed payment at maturity of $100,000, the yield of the debt instrument is 3 percent, compounded monthly.

(iv) *Percentage change in reference index.* Assume that the CPI–U for September 1997 is 160; for October 1997 is 161.2; and for November 1997 is 161.7. The value of the reference index for November 15, 1997, is 160, the value of the CPI–U for September 1997. Similarly, the value of the reference index for December 15, 1997, is 161.2, and for January 15, 1998, is 161.7. The percentage change in the reference index from November 15, 1997, to December 15, 1997, (inf_1) is 0.0075 (161.2/160–1); the percentage change in the reference index from December 15, 1997, to January 15, 1998, (inf_2) is 0.0031 (161.7/161.2–1).

(v) *Treatment of X in 1997.* For the accrual period ending on December 15, 1997, r is .0025 (.03/12), inf_1 is .0075, and the product of r and inf_1 is .00001875. Under paragraph (e)(3) of this section, the amount of OID allocable to the accrual period ending on December 15, 1997, is $916. This amount is determined by multiplying the issue price of the debt instrument ($91,403) by .01001875 (the sum of r, inf_1, and the product of r and inf_1). The adjusted issue price of the debt instrument on December 15, 1997, is $92,319 ($91,403+$916). For the accrual period ending on January 15, 1998, r is .0025 (.03/12), inf_2 is .0031, and the product of r and inf_2 is .00000775. Under paragraph (e)(3) of this section, the amount of OID allocable to the accrual period ending on January 15, 1998, is $518. This amount is determined by multiplying the adjusted issue price of the debt instrument ($92,319) by .00560775 (the sum of r, inf_2, and the product of r and inf_2). Because the accrual period ending on January 15, 1998, spans two taxable years, only $259 of this amount ($518/30 days×15 days) is allocable to 1997. Therefore, X includes $1,175 of OID in income for 1997 ($916+$259).

(f) *Special rules.* The following rules apply to an inflation-indexed debt instrument:

(1) *Deflation adjustments*—(i) *Holder.* A deflation adjustment reduces the amount of interest otherwise includible in income by a holder with respect to the debt instrument for the taxable year. For purposes of this paragraph (f)(1)(i), interest includes OID, qualified stated interest, and market discount. If the amount of the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year, the excess is treated as an ordinary loss by the holder for the taxable year. However, the amount treated as an ordinary loss is limited to the amount by which the holder's total interest inclusions on the debt instrument in prior taxable years exceed the total amount treated by the holder as an ordinary loss on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year and the amount treated as an ordinary loss for the taxable year, this excess is carried forward to reduce the amount of interest otherwise includible in income by the holder with respect to the debt instrument for subsequent taxable years.

(ii) *Issuer.* A deflation adjustment reduces the interest otherwise deductible by the issuer with respect to the debt instrument for the taxable year. For purposes of this paragraph (f)(1)(ii), interest includes OID and qualified stated interest. If the amount of the deflation adjustment exceeds the interest otherwise deductible by the issuer with respect to the debt instrument for the taxable year, the excess is treated as ordinary income by the issuer for the taxable year. However, the amount treated as ordinary income is limited to the amount by which the issuer's total interest deductions on the debt instrument in prior taxable years exceed the total amount treated by the issuer as ordinary income on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise deductible by the issuer with respect to the debt instrument for the taxable year and the amount treated as ordinary income for the taxable year, this excess is carried forward to reduce the interest otherwise deductible by the issuer with respect to the debt instrument for subsequent taxable years. If there is any excess remaining upon the retirement of the debt instrument, the issuer takes the excess amount into account as ordinary income.

(2) *Adjusted basis.* A holder's adjusted basis in an inflation-indexed debt instrument is determined under § 1.1272–1(g). However, a holder's adjusted basis in the debt instrument is decreased by the amount of any

deflation adjustment the holder takes into account to reduce the amount of interest otherwise includible in income or treats as an ordinary loss with respect to the instrument during the taxable year. The decrease occurs when the deflation adjustment is taken into account under paragraph (f)(1) of this section.

(3) *Subsequent holders.* A holder determines the amount of acquisition premium or market discount on an inflation-indexed debt instrument by reference to the adjusted issue price of the instrument on the date the holder acquires the instrument. A holder determines the amount of bond premium on an inflation-indexed debt instrument by assuming that the amount payable at maturity on the instrument is equal to the instrument's inflation-adjusted principal amount for the day the holder acquires the instrument. Any premium or market discount is taken into account over the remaining term of the debt instrument as if there were no further inflation or deflation. See section 171 for additional rules relating to the amortization of bond premium and sections 1276 through 1278 for additional rules relating to market discount.

(4) *Minimum guarantee.* Under both the coupon bond method and the discount bond method, a minimum guarantee payment is ignored until the payment is made. If there is a minimum guarantee payment, the payment is treated as interest on the date it is paid.

(5) *Temporary unavailability of a qualified inflation index.* Notwithstanding any other rule of this section, an inflation-indexed debt instrument may provide for a substitute value of the qualified inflation index if and when the publication of the value of the qualified inflation index is temporarily delayed. The substitute value may be determined by the issuer under any reasonable method. For example, if the CPI–U is not reported for a particular month, the debt instrument may provide that a substitute value may be determined by increasing the last reported value by the average monthly percentage increase in the qualified inflation index over the preceding twelve months. The use of a substitute value does not result in a reissuance of the debt instrument.

(g) *Reopenings.* For purposes of § 1.1275–2(d)(2), a reopening of Treasury Inflation-Indexed Securities is a qualified reopening if—

(1) The terms of the securities issued in the reopening are the same as the terms of the original securities; and

(2) The reopening occurs not more than one year after the original securities were first issued to the public.

(h) *Effective date.* This section applies to an inflation-indexed debt instrument issued on or after January 6, 1997.

Par. 5. Section 1.1286–2T is added to read as follows:

§ 1.1286–2T Stripped inflation-indexed debt instruments (temporary).

Stripped inflation-indexed debt instruments. If a Treasury Inflation-Indexed Security is stripped under the Department of the Treasury's Separate Trading of Registered Interest and Principal of Securities (STRIPS) program, the holders of the principal and coupon components must use the discount bond method (as described in § 1.1275–7T(e)) to account for the original issue discount on the components.

Margaret Milner Richardson,

Commissioner of Internal Revenue

Approved: December 6, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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Fiscal Service

31 CFR Part 354

Regulations Governing Book-Entry Securities of the Student Loan Marketing Association (Sallie Mae)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, on behalf of the Student Loan Marketing Association, is publishing final regulations to govern Sallie Mae book-entry securities. This action is being taken in conjunction with similar amendments being made by the Department of the Treasury to the regulations governing book-entry Treasury securities, and by other government-sponsored enterprises (GSEs) for GSE securities that are maintained on the book-entry system operated by the Federal Reserve Banks. The rules incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through financial intermediaries.

EFFECTIVE DATE: January 6, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Mary A. Sheehan, Assistant General Counsel, Sallie Mae, (703) 810-7681, or Cynthia E. Reese, Deputy Chief Counsel, Bureau of the Public Debt, (202) 219-3320.

SUPPLEMENTARY INFORMATION: Virtually all government-sponsored enterprises (GSEs) have regulations governing their book-entry securities maintained in the Federal Reserve book-entry system that are nearly identical to the regulations governing marketable Treasury securities.[1]

In the case of the Student Loan Marketing Association ("Sallie Mae"), the Secretary of the Treasury is expressly authorized by the Higher Education Act of 1965, as amended,[2] to promulgate Sallie Mae's book-entry regulations. The current Sallie Mae book-entry regulations were issued by Treasury pursuant to that authority and appear in 31 CFR Part 354.[3] The regulations set forth rules for the transfer, pledge and servicing of book-entry Sallie Mae securities.

The current Treasury regulations will be superseded by new regulations (the "TRADES regulations")[4] that will go into effect January 1, 1997. As explained below, the TRADES regulations incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through financial intermediaries.[5]

Some commenters on the TRADES regulations were concerned about coordination among Treasury and the GSEs. The commenters urged simultaneous effectiveness of parallel GSE rules. Accordingly, pursuant to Sallie Mae's request, Treasury is issuing revised regulations that will be effective in January, 1997, for Sallie Mae securities maintained on the Federal Reserve book-entry system.

Consistent with the approach in the TRADES regulations, the regulations in this Part contain specific provisions that deal with the rights and obligations of Sallie Mae and the Federal Reserve Banks with respect to Sallie Mae securities and the operation of the book-entry system. The regulations are also based in large part on Revised Article 8 on Investment Securities of the Uniform

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[1] 31 CFR Part 306, Subpart O.

[2] P.L. No. 99–498, 20 U.S.C. § 1087–2(m).

[3] 52 FR 4495 (February 12, 1987). Prior to that time, Treasury had promulgated book-entry regulations only for Sallie Mae securities issued February 25, 1983 through September 30, 1983 (48 FR 8059).

[4] 61 FR 43626 (August 23, 1996).

[5] At the time the Sallie Mae regulations were issued, it was noted in the preamble that once the TRADES regulations were finalized, it was contemplated that the Sallie Mae regulations would be replaced with a similar set of rules.

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Commercial Code ("Revised Article 8"). The regulations include certain choice of law rules patterned on Revised Article 8. In the event the jurisdiction specified under the choice of law rules has not adopted Revised Article 8, Revised Article 8 will be applied nonetheless, as though it had been so adopted. At the time of the publication of the final TRADES rule, 28 states had adopted Revised Article 8.[6]

Except with respect to matters related to differences between Sallie Mae securities and Treasury securities,[7] the provisions of these rules are the same as the rules that will apply to Treasury securities. Sallie Mae intends that the analysis contained in the commentary to the TRADES final rule, Appendix B to 31 CFR Part 357, and other interpretations of the TRADES regulations published in the **Federal Register**, are to be used in interpreting the Sallie Mae regulations.

The most notable differences between these regulations and the TRADES regulations are as follows. First, Sallie Mae maintains no direct ownership system with respect to Sallie Mae securities comparable to the "TREASURY DIRECT"[8] system for Treasury securities. Second, Sallie Mae rarely has need to issue securities in definitive (certificated) form; however, Sallie Mae retains the right to issue securities in definitive form if it so chooses. Third, there are some variations in the terminology used in these regulations and in TRADES, particularly with respect to the type of documentation used to establish the terms of the security. Finally, it should be noted that these regulations apply only to Sallie Mae book-entry securities maintained on the Federal Reserve book-entry system. These regulations do not apply to Sallie Mae securities held through any other book-entry clearing systems, such as those operated by the Depository Trust Company, Euroclear or Cedel.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

These regulations are being adopted as a final rule effective upon publication. For the following reasons, the Department finds that notice and public procedure and a 30-day delayed effective date are unnecessary, impracticable, and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3). First, the rule merely conforms the regulations governing book-entry Sallie Mae securities to the TRADES regulations that will govern book-entry Treasury securities. Second, the TRADES regulations were published in various forms, as a proposed rule four times and as a final rule once. In each instance, the TRADES regulations were accompanied by extensive commentary addressing the background and rule provisions. Third, the comments on the TRADES regulations urged uniformity in substance and effectiveness for regulations for GSEs that issue book-entry securities maintained on the Federal Reserve book-entry system. Fourth, there are compelling reasons for setting the effective date as close as possible to January 1, 1997, when the TRADES regulations and those of the other GSEs will become effective. Having the rules become effective at different times for securities that are all maintained and transferred on the book-entry system would be burdensome and unworkable for market participants.

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

There are no collections of information contained in this final rule. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 354

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Incorporation by reference, Securities.

For the reasons set forth in the preamble, Title 31, Chapter II, Subchapter B, Code of Federal Regulations, is amended by revising Part 354 to read as follows:

PART 354—REGULATIONS GOVERNING BOOK-ENTRY SECURITIES OF THE STUDENT LOAN MARKETING ASSOCIATION (SALLIE MAE)

Sec.

354.0 Applicability; maintenance of Sallie Mae Securities.
354.1 Definitions of terms.
354.2 Law governing rights and obligations of Federal Reserve Banks, and Sallie Mae; rights of any Person against Federal Reserve Banks, and Sallie Mae.
354.3 Law governing other interests.
354.4 Creation of Participant's Security Entitlement; security interests.
354.5 Obligations of Sallie Mae; no adverse claims.
354.6 Authority of Federal Reserve Banks.
354.7 Withdrawal of eligible Book-entry Sallie Mae Securities for conversion to definitive form.
354.8 Waiver of regulations.
354.9 Liability of Sallie Mae and Federal Reserve Banks.
354.10 Additional provisions.

Authority: 12 U.S.C. 391; 20 U.S.C. 1087–2(m).

§ 354.0 Applicability; maintenance of Sallie Mae Securities.

(a) A Sallie Mae Security may be maintained in the form of a Definitive Sallie Mae Security or a Book-entry Sallie Mae Security. A Book-entry Sallie Mae Security shall be maintained in the Book-entry System.

(b) The Sallie Mae Securities to which the regulations in this part apply are obligations which, by the terms of their issue, are available exclusively as Book-entry Sallie Mae Securities or which, pursuant to the securities documentation, are convertible from Book-entry Sallie Mae Securities to Definitive Sallie Mae Securities or vice versa.

§ 354.1 Definitions of terms.

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Sallie Mae Security* means a Sallie Mae Security issued or maintained in the Book-entry System.

(c) *Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for Sallie Mae, on which Book-entry Sallie Mae Securities are issued, recorded, transferred and maintained in book-entry form.

(d) *Definitive Sallie Mae Security* means a Sallie Mae Security in engraved or printed form, or that is otherwise represented by a certificate.

(e) *Eligible Book-entry Sallie Mae Security* means a Book-entry Sallie Mae Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is available in either definitive or book-entry form.

(f) *Entitlement Holder* means a Person to whose account an interest in a Book-entry Sallie Mae Security is credited on the records of a Securities Intermediary.

(g) *Federal Reserve Bank* means a Federal Reserve Bank or Branch.

(h) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under

[6] California has since also adopted Revised Article 8.

[7] Sallie Mae securities, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than Sallie Mae.

[8] In TREASURY DIRECT, the beneficial owners of Treasury securities hold their securities directly, on the books of the issuer (in contrast to holding through a financial intermediary).

which the Federal Reserve Bank maintains book-entry Securities accounts (including Book-entry Sallie Mae Securities) and transfers book-entry Securities (including Book-entry Sallie Mae Securities).

(i) *Funds Account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(j) *Participant* means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

(k) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Sallie Mae Securities held for a Participant are or may be credited.

(l) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, Sallie Mae, or a Federal Reserve Bank.

(m) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Revised Article 8 of the Uniform Commercial Code is incorporated by reference in this Part pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. Article 8 was adopted by the American Law Institute and the National Conference of Commissioners on Uniform State laws and approved by the American Bar Association on February 14, 1995. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611. Copies are also available for public inspection at the Department of the Treasury Library, Room 5030, main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington D.C. 20220, and in the Office of the Federal Register, 800 North Capitol St., N.W., Suite 700, Washington D.C.

(n) *Sallie Mae* means the Student Loan Marketing Association, a stock holder-owned corporation and government-sponsored enterprise established in 1972 by, and operating pursuant to, Section 439 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087–2.

(o) *Sallie Mae Security* means any security or obligation of Sallie Mae issued in the form of a Definitive Sallie Mae Security or a Book-entry Sallie Mae Security.

(p) *Securities Documentation* means the applicable statement of terms and conditions or other documents establishing the terms of a Book-entry Sallie Mae Security.

(q) *Securities Intermediary* means:

(1) a Person that is registered as a "clearing agency" under the federal securities laws; a Federal Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) a Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(r) *Security* means any note, bond, debenture, evidence of indebtedness, or, in general, any interest or instrument commonly known as a "security."

(s) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Sallie Mae Security.

(t) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(u) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Sallie Mae Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

§ 354.2 Law governing rights and obligations of Federal Reserve Banks, and Sallie Mae; rights of any Person against Federal Reserve Banks and Sallie Mae.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the book-entry regulations contained in this Part 354, the Securities Documentation (to the extent not inconsistent with these regulations) and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of Sallie Mae and the Federal Reserve Banks with respect to:

(i) A Book-entry Sallie Mae Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Sallie Mae Securities; and

(2) The rights of any Person, including a Participant, against Sallie Mae and the Federal Reserve Banks with respect to:

(i) A Book-entry Sallie Mae Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Sallie Mae Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 354.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 354.14(c)(1), is governed by the law determined in the manner specified in § 354.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 354.1), then the law specified in paragraph (b) shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 354.3 Law governing other interests.

(a) To the extent not inconsistent with the regulations in this Part, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlement.

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(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 354.1), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Participant's Securities Account is a clearing corporation, and the Participant's interest in a Book-entry Security is a Security Entitlement.

§ 354.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Sallie Mae Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) Sallie Mae and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, Sallie Mae, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 354.2(b) or § 354.3. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 354.5 Obligations of Sallie Mae; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 354.4(c)(1), for the purposes of this Part 354, Sallie Mae and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Sallie Mae Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor Sallie Mae is liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Sallie Mae Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Sallie Mae Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of Sallie Mae to make payments of interest and principal with respect to Book-entry Sallie Mae Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Sallie Mae Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Sallie Mae Securities are redeemed at maturity or pursuant to a call for redemption in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest, as directed by the Participant.

§ 354.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of Sallie Mae to perform functions with respect to the issuance of Book-entry Sallie Mae Securities offered and sold by Sallie Mae, in accordance with the Securities Documentation, and Federal Reserve Bank Operating Circulars; to service and maintain Book-entry Sallie Mae Securities in accounts established for such purposes; to make payments of principal and interest with respect to such Book-entry Sallie Mae Securities as directed by Sallie Mae; to effect transfer of Book-entry Sallie Mae Securities between Participants' Securities Account as directed by the Participants; to effect conversions between Book-entry Sallie Mae securities and Definitive Sallie Mae Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and to perform such other duties as fiscal agent as may be requested by Sallie Mae.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this Part, governing the details of its handling of Book-entry Sallie Mae Securities, Security Entitlements, and the operation of the Book-entry System under this Part.

§ 354.7 Withdrawal of eligible Book-entry Sallie Mae Securities for conversion to definitive form.

(a) Eligible Book-entry Sallie Mae Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive Sallie Mae Securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry Sallie Mae Securities from book-entry in the Book-entry System, convert such securities into Definitive Sallie Mae Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such Sallie Mae Securities.

(c) All requests for withdrawal of Eligible Book-entry Sallie Mae Securities must be made prior to the maturity or date of call of such securities.

(d) Sallie Mae Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

§ 354.8 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of the regulations in this Part in any case or class of cases for the convenience of Sallie Mae, or in order to relieve any person or entity of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect substantial existing rights, and the Secretary is satisfied that such action will not subject Sallie Mae to any substantial expense or liability.

§ 354.9 Liability of Sallie Mae and Federal Reserve Banks.

Sallie Mae and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. Sallie Mae and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message or evidence submitted in support thereof.

§ 354.10 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under these regulations, Sallie Mae may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of Sallie Mae be necessary for the protection of the interests of Sallie Mae.

(b) *Notice of attachment for Sallie Mae Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: December 29, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 97–129 Filed 1–3–97; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA29

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of the CHAMPUS Exclusion of Unproven Drugs, Devices and Medical Treatments and Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule clarifies the CHAMPUS exclusion of unproven drugs, devices and medical treatments and procedures and describes the process that the Office of CHAMPUS follows in determining when such drugs, devices, treatments and procedures have moved from the status of unproven to the position of proven medical effectiveness. This clarification is necessary to ensure the CHAMPUS beneficiary and provider population understand the process the Office of CHAMPUS (OCHAMPUS) follows prior to endorsement by CHAMPUS of a new emerging medical technology, drug, or device for which the safety and efficacy have been proven.

DATES: This final rule is effective February 5, 1996.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Rene Morrell, Program Development Branch, OCHAMPUS, telephone (303) 361–1218.

SUPPLEMENTARY INFORMATION:

A. Discussion of Champus Policy

Under statutes governing CHAMPUS, including 10 U.S.C. 1079, CHAMPUS payments are prohibited for health care services that are "not medically or psychologically necessary." The purpose of this provision, common in health care payment programs, is to prevent CHAMPUS beneficiaries from being exposed to less than fully developed and tested medical procedures and to avoid the associated risk of unnecessary or unproven treatment. CHAMPUS regulations and program policies restrict benefits to those procedures for which the safety and efficacy have been proven to be comparable or superior to conventional therapies. In general, the CHAMPUS

regulations and program policies exclude cost-sharing of procedures which are unproven, including those that remain in a developmental status. The evolution of any medical technology or procedure from unproven status to one of national acceptance is often controversial, with those members of the medical community who are using and promoting the procedure arguing that the procedure has national acceptance. In determining whether a procedure has proven medical effectiveness, CHAMPUS uses the following hierarchy of assessment sources:

1. Well-controlled studies of clinically meaningful endpoints, published in refereed medical literature.

2. Formal technology assessments from nationally recognized technology assessment groups, such as the:

—Food and Drug Administration (FDA);
—Agency for Health Care Policy and Research (AHCPR);
—Emergency Care Research Institute (ECRI).

3. National medical policy organization positions such as the:

—Medical Advisory Panel of the National Blue Cross/Blue Shield Association.

4. National professional medical association positions such as those promulgated by the:

—American College of Obstetricians and Gynecologists.

5. National expert opinion organizations such as the:

—Diagnostic and Therapeutic Technology Assessment (DATTA) group of the American Medical Association;
—Health Care Financing Administration.

CHAMPUS policy and benefit structure are never based solely on coverage offered by other third party payers, including Medicare, since each operates under different rules and requirements.

B. Need for the Regulation

This final rule does not present new agency policy. Rather, it reaffirms and clarifies existing CHAMPUS policy in the body of the CHAMPUS regulation. We revise the regulation primarily in response to a series of U.S. district court decisions concerning one particular unproven treatment, high dose chemotherapy (HDC) with stem cell rescue (SCR) as a treatment for breast cancer (discussed more below), in which the courts held that the CHAMPUS determination regarding this treatment was not sufficiently established to be accepted by the courts. For example, in *Hawkins* v. *Mail Handlers Benefit Plan and CHAMPUS*, Civil No. 1:94CV6, W.D.N.C. (Jan. 28, 1994), the court ruled on a motion for a preliminary injunction filed by a beneficiary of both the Mail Handlers Benefit Plan and CHAMPUS, seeking a court order overruling the exclusion in both plans of coverage for HDC/SCR as a treatment for breast cancer. The court ruled in favor of the Mail Handlers Benefit Plan, but against CHAMPUS based on judgment that the determination that this procedure was experimental was not clearly established by CHAMPUS and was not supported by the evidence submitted to the court.

Similarly, in *Wheeler* v. *Dynamic Engineering Inc., and CHAMPUS*, No. 4.94CV16, E.D.Va (April 4, 1994), another case of a beneficiary covered by both an employer plan and CHAMPUS who sought a judgment that both should cover HDC/SCR for breast cancer treatment, the court made a distinction between a new company plan that specifically excluded the procedure and the former company plan and CHAMPUS, both of which did not expressly do so. After determining that the former plan was applicable (based on the date the treatment began), the court ruled that neither the plan nor CHAMPUS could properly exclude coverage of the procedure.

Two Circuit Courts of Appeals have recently addressed this issue, and reached conflicting results. In *Smith* v. *OCHAMPUS*, No. 94–3744, 7th Cir., Sept. 26, 1995, the Seventh Circuit Court of Appeals ruled that the CHAMPUS exclusion for HDC/SCR for breast cancer was justified, but the opposite answer was reached by the Fourth Circuit Court of Appeals in *Wilson* v. *OCHAMPUS*, No. 95–1016, 4th Cir., Sept. 15, 1995. The Seventh Circuit recently granted a motion for rehearing in the *Smith* case.

OCHAMPUS has carefully reviewed the evidence on HDC/SCR as a treatment for breast cancer. It is our conclusion that it continues to be an unproven treatment because the chemotherapy regimen is not approved by FDA, no well-controlled clinical trials have proven the effectiveness of HDC/SCR for breast cancer (and certain other cancers as well), and because formal technology assessment studies have concluded similarly. The CHAMPUS policy regarding the unproven nature of HDC/SCR for breast cancer is based upon a series of reports from four primary sources:

1. The 1988 study entitled "Public Health Service Reassessment: Autologous Bone Marrow Transplantation" prepared by the Office of Health Technology Assessment, Agency for Health Care Policy and Research (OHTA/AHCPR) of the Public Health Service, and authored by Harry Handelsman, D.O.;

2. The American Medical Association Diagnostic and Therapeutic Technology Assessment (AMA DATTA) evaluation of January 1990 entitled "Autologous Bone Marrow Transplantation 0 Reassessment" by Elizabeth Brown, M.D.;

3. The June 1993 study entitled "Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer" copyright by the Emergency Care Research Institute (ECRI) 5200 Butler Pike, Plymouth Meeting, Pa 19462; and

4. The February 1995 ECRI assessment of "Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer."

Since the time the 1988 and 1990 reports mentioned above were initially prepared, OCHAMPUS has performed a continuous review of the refereed medical literature on this topic, and has had numerous confirming discussions with the Office of Health Technology Assessment (OHTA) of the Public Health Service regarding their position. The latest of these discussions confirmed the lack of refereed medical literature that would support CHAMPUS coverage of this procedure for treatment of breast carcinoma. Therefore, although the initial policy classifying HDC/SCR as investigational under CHAMPUS was based upon literature and technical assessments dating from the 1988–1990 time-frame, OCHAMPUS continually monitored development of the literature and the status of ongoing well-controlled clinical trials regarding the effectiveness of this form of treatment for breast carcinoma and other carcinomas for which it is not currently authorized as a CHAMPUS benefit. The June 1993 formal assessment by ECRI provided independent reconfirmation of the CHAMPUS position. This independent reconfirmation has been substantially bolstered by the 1995 ECRI studies which indicated that "results from the experimental procedure are not any better than published results for conventional therapy to treat breast cancer," and that "the impetus for this (treatment) is more political than scientific * * * (It) is a treatment that's becoming mandated by popular opinion." This most recent information reconfirms, in even stronger terms and with new studies and literature, the earlier conclusions of previous

technology assessments that HDC/SCR has not been proven to be effective in the treatment of breast cancer. To date there has been no new evidence which would warrant a departure from the original coverage determination to exclude CHAMPUS cost-sharing of this procedure for the treatment of breast carcinoma. The CHAMPUS position is further supported by the Consensus Conference on Intensive Chemotherapy Plus Hematopietic Stem Cell Transplantation in Malignancies [(Journal of Clinical Oncology, Volume 12, Number 1, (January 1994); pages 226–231; (Attachment 5)] which states in part:

> * * * Although there is currently insufficient evidence to justify the use of HDC/plus HSC (Hematopietic Stem Cell) transplantation outside the setting of clinical trial for any stage of breast cancer, there is amply scientific background for vigorous clinical investigation in this important area * * *

Based on the evidence regarding this procedure, which demonstrates that it continues to be unproven, and the series of recent court rulings declining to follow an exclusion not clearly established in the governing instruments of the program, we believe this rule is necessary to reaffirm and clarify CHAMPUS policy on unproven drugs, devices, and medical treatments and procedures and to specifically list a number of procedures we have determined are unproven.

The Department shares public and scientific concern about disappointing cure rates under standard cancer therapies. In emphasizing refereed medical literature as the primary source of reliable evidence that a particular treatment or procedure has proven medical effectiveness, we also underscore our support for committed efforts to advance medical research. We have an interest and a responsibility to participate in the appropriate evaluation of improved therapeutic approaches for our patients. A number of military medical centers are engaged in such research protocols. In November 1994, under authority of 10 U.S.C. 1092, the Department of Defense undertook a demonstration project to authorize payment for breast cancer treatment under certain government approved clinical protocols. Initially, the demonstration project applied only to phase III clinical trials under approved National Cancer Institute protocols for high dose chemotherapy with stem cell rescue for breast cancer treatment. It was expanded in January of this year to include a broad range of National Cancer Institute sponsored Phase II and III clinical trials for other cancers. The Department has worked closely with the National Cancer Institute to establish a formal program for interagency cooperation which will provide an important contribution to the continued development of promising new cancer therapies.

C. Provisions of the Final Rule

The final rule describes the criteria we use to identify the proven medical necessity of procedures, treatments, drugs, or devices, includes a partial list of unproven drugs, devices, treatments, and procedures, and makes provision for promptly treating a drug, device, treatment or procedure as no longer unproven when reliable scientific evidence supports that conclusion. Any changes to the partial list will be published periodically as a notice in the **Federal Register**.

D. Public Comments

This final rule is based on a proposed rule published May 18, 1995 (60 FR 26705–26709). We received seven public comments. Many of the comments were quite similar in wording and content. Some were very detailed and provided helpful insight and analysis. We thank those who provided input on this important issue. Significant items raised by commenters and our analysis of the comments are summarized below:

1. *Definitions of "Experimental."* We received a significant number of comments expressing concerns about terminology used in the proposed rule, particularly the use of the term "experimental" to describe treatments that had not yet established proven medical effectiveness.

Response: We agree that use of this term causes more confusion than clarification, and have modified the final rule to delete the use of the term "experimental."

2. *Effect of CHAMPUS policy on other government agencies or other health care programs.* We wish to underscore that this final rule relates to the CHAMPUS program. It does not directly affect Medicare, Medicaid or other payers. Each program has its own set of rules, requirements, and procedures. Thus, determinations by the Office of CHAMPUS concerning medical treatments that have established proven medical effectiveness and those that have not should be understood as representing the best judgment of the Department of Defense, but not necessarily reflecting the views of any other government agency or other health care program. In addition CHAMPUS policy and benefit structure are never based solely on coverage offered by other third party payers, including Medicare, since each operates under different rules and requirements. In the interest of minimizing regulatory burden and confusion, CHAMPUS seeks to harmonize its coverage policy with other federal programs and the private sector to the extent appropriate.

3. *Discretionary waiver authority.* One commenter suggested this rule provide discretionary waiver authority to the Director, OCHAMPUS, based on coordination at the professional level between the military medical services and OCHAMPUS, to ensure that individuals who might otherwise benefit, would not be unduly penalized by the inflexibility of the rule. Such a provision would be consistent with implementation of the managed care concept, current research protocols at military facilities, and the Department of Defense demonstration programs.

Response: The CHAMPUS Regulation already allows for discretionary waiver authority for rare and unusual cases, consistent with applicable law. However, by law, CHAMPUS can only cost-share medically necessary supplies and services. Any drug, device or medical treatment or procedure whose safety and efficacy have not been established, is unproven and cannot be cost-shared by CHAMPUS.

4. *Definition of Reliable Evidence.* We received several comments expressing concern about the use of the term "reliable evidence" in the proposed rule. Many of the types of evidence demanded by the proposed regulation do not exist for many surgical and other procedures. Also, simply stating that randomized controlled trials constitute a form of reliable evidence, does not address the question whether the trial demonstrates efficacy or lack thereof. The commenter believed that CHAMPUS needs to define more clearly how it will determine the boundaries of experimental, i.e., the "gray zone" between effective and ineffective treatment.

Response: We agree that the use of this term was easily misunderstood and have modified the definition for clarity. The term "reliable evidence" means well controlled studies of clinically meaningful endpoints, published in refereed medical literature; published formal technology assessments; published reports of national professional medical associations; published national medical policy organizations positions; and published reports of national expert opinion organizations. We have also included specific examples of resources *not* included in the meaning of reliable evidence. As stated previously, the

definition of "experimental" has been deleted from the rule.

5. *Benefit Limitations.* We received several comments on the denial of payment for a procedure that uses FDA-approved products, and coverage of off-label uses of approved drugs in clinical trials. It was recommended that CHAMPUS cover the patient's care costs associated with any clinical trial (including all "phases" of evaluation) involving a life-threatening or other serious condition.

Response: Some procedures, even though the procedure uses an FDA-approved product, do not meet CHAMPUS' criteria for medically necessary treatment. The purpose of this provision is to prevent CHAMPUS beneficiaries from being exposed to less than fully developed and tested medical procedures and to avoid the associated risk of unnecessary or unproven treatment. In addition, services or supplies for which the beneficiary or sponsor has no legal obligation to pay; or for which no charge would be made if the beneficiary or sponsor was not eligible under CHAMPUS, as may be the case in clinical trials, are not covered by CHAMPUS. One of the provisions of this rule allows coverage for a device with an FDA-approved IDE categorized by the FDA as non-experimental/ investigation (FDA Category B) for CHAMPUS beneficiaries participating in FDA-approved clinical trials.

6. *Off-Label Uses of Drugs.* Several commenters were concerned that the proposed regulation does not give automatic coverage to many well-recognized off-label uses. It was recommended that CHAMPUS adopt the approach that Congress utilized in the Medicaid program for all drugs and in the Medicare program for cancer chemotherapy. Under those statutes, off-label drug uses listed in the three major drug-use compendia—U.S. Pharmacopoeia Drug Information, the American Medical Association's Drug Evaluations, and the American Hospital Formulary Service—are automatically covered.

Response: The above listed compendia do not meet the CHAMPUS criteria for "reliable evidence." CHAMPUS can consider coverage of unlabeled or off-label uses of drugs that are otherwise approved by the FDA for use in humans. Approval for reimbursement of unlabeled or off-label uses requires review for medical necessity, and also requires demonstrations from medical literature, national organizations, or technology assessment bodies that the unlabeled or off-label use of the drug is safe, effective and in accordance with nationally accepted standards of practice in the medical community.

7. *List of Excluded Procedures.* We received several comments objecting to several of the items listed. Some comments state that the descriptions used in many of the items were too vague to define accurately which procedures are being excluded for payment and some are of procedures independent of the diseases or conditions that they may treat or mitigate. Several commenters submitted literature regarding intraoperative radiation therapy; single and dual photon absorptiomentry (DEXA); videofluroscopy, herniography, percutaneous balloon valvuloplasty (PBV); interoperative monitoring of sensory evoked potentials (SEP); radioimmunoguided surgery in the detection of cancer; quantitative computed tomography (QCT); percutaneous transluminal angioplasty (PBA); light therapy for seasonal depression; immunotherapy for malignant diseases; intracavity administration of cisplatin; palladium (103Pd) seed brachytherapy; cryosurgery for liver metastases; HLA–DNA typing; and home uterine activity monitoring. The greatest disagreement involved high-dose chemotherapy with stem-cell rescue for breast cancer, ovarian cancer, testicular cancer and multiple myeloma.

Response: The issue of high-dose chemotherapy with stem-cell rescue (HSC/SCR) is addressed extensively in the preamble. The most recent information reconfirms, in even stronger terms and with new studies and literature, the earlier conclusions of previous technology assessments that HSC/SCR is unproven in the treatment of breast cancer. To date there has been no new evidence which would warrant a departure from the original coverage determination.

Since the proposed rule was published, OCHAMPUS has removed herniography, HLA–DNA typing, cryosurgery for liver metastases, bone density studies [single and dual photon absorptiometry and quantitated computed tomography (QCT)], Contigen Bard ® collagen implant, transurethral laser incision of the prostate (TULIP) and intraventricular administration of narcotics from the list of unproven procedures. We will continually monitor the development of the literature and the status of ongoing well-controlled clinical trails regarding the effectiveness of the remaining procedures on the list. If and when the Director, OCHAMPUS determines that, based on reliable evidence, a procedure has proven medical effectiveness, the Director OCHAMPUS will initiate action to remove the procedure from the partial list of unproven drugs, devices or medical treatment or procedures.

E. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities. This proposed rule is not a significant regulatory action under Executive Order 12866. This rule will not involve any significant burden on the CHAMPUS beneficiary or provider population. This rule only clarifies the CHAMPUS exclusion of unproven drugs, devices, treatments and procedures and describes the process that the Office of CHAMPUS follows in determining for purposes of benefit coverage when a procedure, treatment, drug, or device has moved from the status of unproven to the position of nationally accepted medical practice. This rule does not impose information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.2 is amended in paragraph (b) by removing the definition of "Experimental" and adding the definitions for "Clinically Meaningful Endpoints", "Rare Diseases", "Reliable Evidence", and "Unlabeled or Off-Labeled Drugs" and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Clinically Meaningful Endpoints. As used the definition of *reliable evidence* in this paragraph (b) and § 199.4(g)(15), the term clinically meaningful endpoints means objectively measurable outcomes of clinical interventions or other medical procedures, expressed in

terms of survival, severity of illness or condition, extent of adverse side effects, diagnostic capability, or other effect on bodily functions directly associated with such results.

* * * * *

Rare Diseases. CHAMPUS defines a rare disease as one which affects fewer than one in 200,000 Americans.

* * * * *

Reliable evidence. (1) As used in § 199.4(g)(15), the term reliable evidence means only:

(i) Well controlled studies of clinically meaningful endpoints, published in refereed medical literature.

(ii) Published formal technology assessments.

(iii) The published reports of national professional medical associations.

(iv) Published national medical policy organization positions; and

(v) The published reports of national expert opinion organizations.

(2) The hierarchy of reliable evidence of proven medical effectiveness, established by (1) through (5) of this paragraph, is the order of the relative weight to be given to any particular source. With respect to clinical studies, only those reports and articles containing scientifically valid data and published in the refereed medical and scientific literature shall be considered as meeting the requirements of reliable evidence. Specifically not included in the meaning of reliable evidence are reports, articles, or statements by providers or groups of providers containing only abstracts, anecdotal evidence or personal professional opinions. Also not included in the meaning of reliable evidence is the fact that a provider or a number of providers have elected to adopt a drug, device, or medical treatment or procedure as their personal treatment or procedure of choice or standard of practice.

* * * * *

Unlabeled or Off-Label Drugs. Food and Drug Administration (FDA) approved drugs that are used for indications or treatments not included in the approved labeling. The drug must be medically necessary for the treatment of the condition for which it is administered, according to accepted standards of medical practice.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(15) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) *Exclusions and limitations.* * * *

(15) *Unproven drugs, devices, and medical treatments or procedures.* By law, CHAMPUS can only cost-share medically necessary supplies and services. Any drug, device or medical treatment or procedure, the safety and efficacy of which have not been established, as described in this paragraph (g)(15), is unproven and cannot be cost-shared by CHAMPUS.

(i) A drug, device, or medical treatment or procedure is unproven:

(A) If the drug or device cannot be lawfully marketed without the approval or clearance of the United States Food and Drug Administration (FDA) and approval or clearance for marketing has not been given at the time the drug or device is furnished to the patient.

Note: Although the use of drugs and medicines not approved by the FDA for commercial marketing, that is for use by humans, (even though permitted for testing on humans) is excluded from coverage as unproven, drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered by CHAMPUS as if FDA approved.

Certain cancer drugs, designated as Group C drugs (approved and distributed by the National Cancer Institute) and Treatment Investigational New Drugs (INDs), are not covered under CHAMPUS because they are not approved for commercial marketing by the FDA. However, medical care related to the use of Group C drugs and Treatment INDs can be cost-shared under CHAMPUS when the patient's medical condition warrants their administration and the care is provided in accordance with generally accepted standards of medical practice.

CHAMPUS can also consider coverage of *unlabeled* or *off-label* uses of drugs that are Food and Drug Administration (FDA) approved drugs that are used for indications or treatments not included in the approved labeling. Approval for reimbursement of *unlabeled* or *off-label* uses requires review for medical necessity, and also requires demonstrations from medical literature, national organizations, or technology assessment bodies that the *unlabeled* or *off-label* use of the drug is safe, effective and in accordance with nationally accepted standards of practice in the medical community.

(B) If a medical device (as defined by 21 U.S.C. 321(h)) with an Investigational Device Exemption (IDE) approved by the Food and Drug Administration is categorized by the FDA as experimental/investigational (FDA Category A).

Note: CHAMPUS will consider for coverage a device with an FDA-approved IDE categorized by the FDA as non-experimental/investigational (FDA Category B) for CHAMPUS beneficiaries participating in FDA approved clinical trials. Coverage of any such Category B device is dependent on its meeting all other requirements of the laws and rules governing CHAMPUS and upon the beneficiary involved meeting the FDA-approved IDE study protocols.

(C) Unless reliable evidence shows that any medical treatment or procedure has been the subject of well-controlled studies of clinically meaningful endpoints, which have determined its maximum tolerated dose, its toxicity, its safety, and its efficacy as compared with standard means of treatment or diagnosis. (See the definition of *reliable evidence* in § 199.2 of this part for the procedures used in determining if a medical treatment or procedure is unproven.)

(D) If the consensus among experts regarding the medical treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated doses, its toxicity, its safety, or its effectiveness as compared with the standard means of treatment or diagnosis. (See the definition of *reliable evidence* in § 199.2 of this part for the procedures used in determining if a medical treatment or procedure is unproven.)

(ii) CHAMPUS benefits for rare diseases are reviewed on a case-by-case basis by the Director, Office of CHAMPUS, or a designee. In reviewing the case, the Director, or a designee, may consult with any or all of the following sources to determine if the proposed therapy is considered safe and effective:

(A) Trials published in refereed medical literature.

(B) Formal technology assessments.

(C) National medical policy organization positions.

(D) National professional associations.

(E) National expert opinion organizations.

(iii) *Care excluded.* This exclusion from benefits includes all services directly related to the unproven drug, device, or medical treatment or procedure. However, CHAMPUS may cover services or supplies when there is no logical or causal relationship between the unproven drug, device or medical treatment or procedure and the treatment at issue or where such a logical or causal relationship cannot be established with a sufficient degree of certainty. This CHAMPUS coverage is authorized in the following circumstances:

(A) Treatment that is not related to the unproven drug, device or medical treatment or procedure; e.g., medically necessary in the absence of the unproven treatment.

(B) Treatment which is necessary follow-up to the unproven drug, device or medical treatment or procedure but which might have been necessary in the absence of the unproven treatment.

(iv) *Examples of unproven drugs, devices or medical treatments or*

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procedures. This paragraph (g)(15)(iv) consists of a partial list of unproven drugs, devices or medical treatment or procedures. These are excluded from CHAMPUS program benefits. This list is not all inclusive. Other unproven drugs, devices or medical treatments or procedures, are similarly excluded, although they do not appear on this partial list. This partial list will be reviewed and updated periodically as new information becomes available. With respect to any procedure included on this partial list, if and when the Director, OCHAMPUS determines that based on reliable evidence (as defined in section 199.2) such procedure has proven medical effectiveness, the Director will initiate action to remove the procedure from this partial list of unproven drugs, devices or medical treatment or procedures. From the date established by the Director as the date the procedure has established proven medical effectiveness until the date the regulatory change is made to remove the procedures from the partial list of unproven drugs, devices or medical treatment or procedures the Director, OCHAMPUS will suspend treatment of the procedure as unproven drugs, devices, or medical treatments or procedures. Following is the non-inclusive, partial list of unproven drugs, devices or medical treatment or procedures, all of which are excluded from CHAMPUS benefits:

(A) Radial keratotomy (refractive keratoplasty).

(B) Cellular therapy.

(C) Histamine therapy.

(D) Stem cell assay, a laboratory procedure which allows a determination to be made of the type and dose of cancer chemotherapy drugs to be used, based on in vitro analysis of their effects on cancer cells taken from an individual.

(E) Topical application of oxygen.

(F) Immunotherapy for malignant disease, except when using drugs approved by the FDA for this purpose.

(G) Prolotherapy, joint sclerotherapy, and ligamentous injections with sclerosing agents.

(H) Transcervical block silicone plug.

(I) Whole body hyperthermia in the treatment of cancer.

(J) Portable nocturnal hypoglycemia detectors.

(K) Testosterone pellet implants in the treatment of females.

(L) Estradiol pellet implants.

(M) Epikeratophakia for treatment of aphakia and myopia.

(N) Bladder stimulators.

(O) Ligament replacement with absorbable copolymer carbon fiber scaffold.

(P) Intraoperative radiation therapy.

(Q) Gastric bubble or balloon.

(R) Dorsal root entry zone (DREZ) thermocoagulation or micorcoagulation neurosurgical procedure.

(S) Brain electrical activity mapping (BEAM).

(T) Topographic brain mapping (TBM) procedure.

(U) Ambulatory blood pressure monitoring.

(V) Bilateral carotoid body resection to relieve pulmonary system.

(W) Intracavitary administration of cisplatin for malignant disease.

(X) Cervicography.

(Y) In-home uterine activity monitoring for the purpose of preventing preterm labor and/or delivery.

(Z) Sperm evaluation, hamster penetration test.

(AA) Transfer factor (TF).

(BB) Continuous ambulatory esophageal pH monitoring (CAEpHM) is considered unproven for patients under age 12 for all indications, and for patients over age 12 for sleep apnea.

(CC) Adrenal-to-brain transplantation for Parkinson's disease.

(DD) Videofluoroscopy evaluation in speech pathology.

(EE) Applied kinesiology.

(FF) Hair analysis to identify mineral deficiencies from the chemical composition of the hair. Hair analysis testing may be reimbursed when necessary to determine lead poisoning.

(GG) Iridology (links flaws in eye coloration with disease elsewhere in the body).

(HH) Small intestinal bypass (jejunoileal bypass) for treatment of morbid obesity.

(II) Biliopancreatic bypass.

(JJ) Gastric wrapping/gastric banding.

(KK) Calcium EAP/calcium orotate and selenium (also known as Nieper therapy)—Involves inpatient care and use of calcium compounds and other non-FDA approved drugs and special diets. Used for cancer, heart disease, diabetes, and multiple sclerosis.

(LL) Percutaneous balloon valvuloplasty for mitral and tricuspid valve stenosis.

(MM) Amniocentesis performed for ISO immunization to the ABO blood antigens.

(NN) Balloon dilatation of the prostate.

(OO) Helium in radiosurgery.

(PP) Electrostimulation of salivary production in the treatment of xerostomia secondary to Sjogren's syndrome.

(QQ) Intraoperative monitoring of sensory evoked potentials (SEP). To include visually evoked potentials, brainstem auditory evoked response, somatosensory evoked potentials during spinal and orthopedic surgery, and sensory evoked potentials monitoring of the sciatic nerve during total hip replacement. Recording SEPs in unconscious head injured patients to assess the status of the somatosensory system. The use of SEPs to define conceptional or gestational age in preterm infants.

(RR) Autolymphocyte therapy (ALT) (immunotherapy used for treating metastatic kidney cancer patients).

(SS) Radioimmunoguided surgery in the detection of cancer.

(TT) Gait analysis (also known as a walk study or electrodynogram)

(UU) Use of cerebellar stimulators/pacemakers for the treatment of neurologic disorders.

(VV) Signal-averaged ECG.

(WW) Peri-urethal Teflon injections to manage urinary incontinence.

(XX) Extraoperative electrocorticography for stimulation and recording

(YY) Quantitative computed tomography (QCT) for the detection and monitoring of osteoporosis.

(ZZ) [Reserved]

(AAA) Percutaneous transluminal angioplasty in the treatment of obstructive lesions of the carotoid, vertebral and cerebral arteries.

(BBB) Endoscopic third ventriculostomy.

(CCC) Holding therapy—Involves holding the patient in an attempt to achieve interpersonal contact, and to improve the patient's ability to concentrate on learning tasks.

(DDD) In utero fetal surgery.

(EEE) Light therapy for seasonal depression (also known as seasonal affective disorder (SAD)).

(FFF) Dorsal column and deep brain electrical stimulation of treatment of motor function disorder.

(GGG) Chelation therapy, except with products and for indications approved by the FDA.

(HHH) All organ transplants *except* heart, heart-lung, lung, kidney, some bone marrow, liver, liver-kidney, corneal, heart-valve, and kidney-pancreas transplants for Type I diabetics with chronic renal failure who require kidney transplants.

(III) Implantable infusion pumps, *except* for treatment of spasticity, chronic intractable pain, and hepatic artery perfusion chemotherapy for the treatment of primary liver cancer or metastic colorectal liver cancer.

(JJJ) Services related to the candidiasis hypersensitivity syndrome, yeast syndrome, or gastrointestinal candidiasis (i.e., allergenic extracts of

Candida albicans for immunotherapy and/or provocation/neutralization).

(KKK) Treatment of chronic fatigue syndrome.

(LLL) Extracorporeal immunoadsorption using protein A columns for conditions other than acute idopathic thrombocytopenia purpura.

(MMM) Dynamic posturography (both static and computerized).

(NNN) Laparoscopic myomectomy.

(OOO) Growth factor, including platelet-derived growth factors, for treating non-healing wounds. This includes Procurene®, a platelet-derived wound-healing formula.

(PPP) High dose chemotherapy with stem cell rescue (HDC/SCR) for any of the following malignancies:

(1) Breast cancer, except for metastic breast cancer that has relapsed after responding to a first line treatment.

(2) Ovarian cancer.

(3) Testicular cancer.

Dated: December 30, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–101 Filed 1–6–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

32 CFR Part 813

Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 813, Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material. This rule is removed because the source document has been rescinded.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720, telephone (703) 697–4191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 813

Freedom of information.

Authority: 10 U.S.C. 8013.

PART 813—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing part 813.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–88 Filed 1–3–97; 8:45 am]

BILLING CODE 3910–01–P

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32 CFR Part 818b

Legal Assistance Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 818b, Legal Assistance Program. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720, telephone (703) 697–4191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 818b

Legal services, Military law, Military personnel.

Authority: 10 U.S.C. 8013.

PART 818b—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing part 818b.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–87 Filed 1–3–97; 8:45 am]

BILLING CODE 3910–01–P

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32 CFR Part 844

Distribution of Literature and Protest and Dissident Activities

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 844, Distribution of Literature and Protest and Dissident Activities. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720, telephone (703) 697–4191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 844

Civil disorders, Military academies, Military personnel.

Authority: 10 U.S.C. 8013.

PART 844—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing part 844.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–89 Filed 1–3–97; 8:45 am]

BILLING CODE 3910–01–P

POSTAL SERVICE

39 CFR Part 20

Global Package Link (Formerly International Package Consignment Service)

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments submitted in response to its requests in 59 FR 65961 (December 22, 1994) for comments on interim regulations implementing International Package Consignment (IPCS) service, and in 60 FR 61660 (December 1, 1995) on an amendment of the interim regulations implementing International Package Consignment Service, hereby gives notice that it is adopting the interim regulations as amended on a permanent basis, without modification. The Postal Service also announces that the name of the service has been changed to Global Package Link (GPL) service.

EFFECTIVE DATE: 12:01, a.m., January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: On December 22, 1994, the Postal Service published in the **Federal Register** interim regulations implementing Global Package Link (GPL) to Japan and

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requested comments. 59 FR 65,961 (December 22, 1994). GPL is an international mail service designed for mail order companies sending merchandise packages to other countries. The service was initially available to Japan, with Canada to be added as a destination country in the future. Other destination countries would be added as customer needs dictated. To use GPL, a customer would be required to mail at least 25,000 packages in one year to each country to which it wants to use the service, and to agree to link its information systems with the Postal Service's so that the Postal Service could extract certain information about the contents of the customer's packages for customs clearance and other purposes. The notice stated that implementation of GPL would benefit (1) U.S. mail order companies and other customers that export goods by making it easier and less costly to do so; and (2) all other users of the Postal Service by increasing the total contribution to fixed costs realized by the Postal Service from its international operations. Comments were due on or before January 31, 1995.

On December 1, 1995, the Postal Service published an amendment of the interim regulations. 60 FR 61660 (December 1, 1995). Under the original proposal, the Postal Service would pick up parcels from GPL users within 500 miles of the GPL processing facility at John F. Kennedy Airport in New York. Customers farther away from JFK would be responsible for bringing their parcels to the JFK facility. Under the amended interim regulations, the Postal Service would provide work stations to customers farther away than 500 miles that would prepare packages as required by the Postal Service. Packages would then be verified and picked up from these customers' plants and would be taken to the nearest appropriate international exchange office for dispatch to Japan. Comments were due on or before January 2, 1996.

I. Original Regulations

The Postal Service received comments on the original interim regulations from four organizations: a mail order company which sends merchandise to Japan and other countries, Lands' End; two companies engaged in the international transportation of merchandise, United Parcel Service (UPS) and Federal Express Corporation; and an association of companies engaged in the international transportation of merchandise, the Air Courier Conference of America (ACCA).

Lands' End expressed support for GPL service because GPL would help it to export goods to Japan more efficiently and cheaply. It also stated that it would eagerly evaluate similar programs to additional destination countries. It did not object to taking its packages to New York's JFK airport for posting but would like to have additional acceptance points in the Midwest and the West Coast. In particular, it suggested Chicago O'Hare airport as an additional acceptance point. These comments confirm the Postal Service's belief that GPL service will benefit U.S. exporters. Additional destinations will be considered depending on customer need. Additional acceptance points will also be considered, again depending on customer need. See 61 FR 39,592 (July 30, 1996). In addition, under the amendment of the original interim regulations, the Postal Service permits mailers to do some of the work associated with preparing packages for dispatch in exchange for the Postal Service picking up the packages at the customer's facility more than 500 miles from the JFK facility. This new option should make the service more convenient for mailers who are more than 500 miles from JFK.

UPS, Federal, and ACCA oppose GPL service on various grounds and urge that it be terminated immediately. UPS asserts that the regulations implementing GPL service are arbitrary and capricious because the Postal Service did not publish any cost or other data to support GPL rates. It asserts that such support is necessary because GPL rates appear to be below cost. Federal Express also asserts that GPL rates may not cover costs and likewise criticizes the Postal Service for not releasing cost data underlying the rates. Both companies assert that GPL rates will adversely affect mailers which do not qualify for GPL service. UPS states that the current international package mix includes both relatively higher-cost and lower-cost mail. As unit revenue decreases as presumably lower-cost mail migrates to GPL, other package rates will have to increase to cover the relatively higher-cost mail that remains in the other rate schedules to avoid cross-subsidization of package mail by other mail. Other mailers would also be injured if GPL rates were below cost, because they would be subsidizing GPL rates. Federal Express states that in the event that GPL rates are below cost or fail to make an adequate contribution to overhead, domestic mailers will be worse off. ACCA also criticizes GPL rates and asserts that they are unreasonable because the Postal Service did not state that the rates would produce a reasonable contribution to overhead.

The Postal Service does not agree with these assertions. First, no statute requires the Postal Service to publish cost or other data to support international postage rates. Such data are recognized by all in the international package business as commercially sensitive. Second, GPL rates produce revenues greater than costs. They are not subsidized by other mail. As at least one of these commenters appears to have recognized, higher volume customers mail packages that are lower cost than single piece packages. Insofar as these packages cause the Postal Service to incur lower costs, lower rates are also justified. In addition, higher volume customers have more options in selecting service providers, and will use other companies if they provide a better combination of service and price. If the Postal Service does not offer competitive rates and services, these customers will use competitive service providers, with the result that lower-cost packages will leave the other mailstreams anyway, and rates for those services will rise. Likewise, to the extent that higher-volume customers turn to other carriers because Postal Service international package rates are not competitive, the burden of overhead that they would have covered will fall in some part on other mailers. In sum, the high-volume packages carried by the Postal Service today are likely to migrate from the other mailstreams in any event, so that if users of other services are going to receive any benefit it is better that those packages migrate to another Postal Service mailstream where contribution can be maintained rather than to another service provider where the Postal Service will receive no contribution at all.

The Postal Service's experience to date also undermines the assertions of adverse impact on non-GPL mailers. A large part of the volume that GPL has attracted is new to the Postal Service, and, indeed, appears to be new volume to Japan. In this respect, this new volume is doing what the Postal Service intended it to do: adding new contribution to offset the need for obtaining contribution from other mailers.

UPS, Federal Express, and ACCA also assert that GPL rates are unduly discriminatory or preferential in viclation of 39 U.S.C. § 403(c). ACCA asserts that the rates are discriminatory because they are significantly lower than single-piece rates. ACCA and UPS assert that the rates are discriminatory because in certain rate steps the rates for express parcels are lower than the rates

for standard air parcels, and because the rates for some standard air parcels are lower than for economy air parcels. UPS asserts that GPL rates are unduly discriminatory because the discounts are tied to the annual volume tendered by the mailer rather than to per-mailing volumes. UPS and Federal Express further assert that the rates are discriminatory because customers within 500 miles of JFK are provided ground transportation to JFK while those more than 500 miles from JFK must transport their packages at their own expense. Federal Express asserts that the rates are discriminatory because the interconnection of the customers' and the Postal Service's computer systems must be negotiated and agreed.

The Postal Service again does not agree. Section 403(c) does not prohibit all discriminations or preferences, only those that are undue or unreasonable. *UPS Worldwide Forwarding* v. *U.S. Postal Service*, 66 F.3d 621 (3d Cir. 1995). Single-piece mailers and higher-volume mailers are not similarly situated. They require different kinds of services and different types of service features. For example, mailers which use GPL service forgo service features such as mailing at a local post office in favor of bulk entry of mail at the New York gateway or performing some of the dispatch preparation work in exchange for pick up at their facility. In addition, it is not possible to be all things to all customers. Judgments must be made as to which services, and how much of them, can be provided at specified rates, and the 500 mile limit on providing ground transportation to JFK reflects such a judgment. It is also important to note that the Postal Service received no comment from any potential user of GPL service objecting to the 500 mile limit. In the Postal Service's view, this disparate treatment is reasonable. In addition, as pointed out above, under the amended regulation the Postal Service will pickup packages for customers outside the 500 mile limit if the customer is willing to do some of the package preparation. That should alleviate some of the burden on such customers.

Likewise, in any task as complex as linking different computer systems, it is impossible to treat any two customers exactly alike. Even though each customer's computer system is different from another's, it cannot be reasonably said that the two customers are not similarly situated. Accordingly, any differences in the computer links does not create any undue discrimination or preference.

The differences in rates for the different levels of service reflect differences in the cost structures for those services. Economy service is available only for items which qualify as small packets for which the Postal Service pays the Japanese postal administration AO terminal dues rates. Standard Air service items are postal parcels for which the Japanese postal administration charges a per-kilogram inward land rate it establishes that is different from the per-kilogram rate for small packets. Express items are EMS items for which the Japanese postal administration charges a per-item charge it establishes. The differences in the manner in which the Japanese postal administration is compensated for the services it provides are reflected in the rates the Postal Service charges its GPL customers.

Finally, it is not unduly discriminatory to tie discounts to a customer's annual volume. First, at the higher annual volumes customers do in fact tender more parcels per mailing than do customers with lower annual volumes, which results in some cost savings. In addition, because higher-volume customers have more options than lower-volume customers, their price sensitivity is greater than lower-volume customers, which makes them not similarly situated. It is not unduly discriminatory to offer different rates to mailers who are not similarly situated.

It should also be noted that these arguments of charging the same rate to mailers who allegedly receive different services were a necessary consequence of the District Court's decision in *UPS Worldwide Forwarding, Inc.* v. *Postal Service*, 853 F. Supp. 800 (D. Del. 1994), which held that the Postal Service was not authorized to negotiate customized services and rates with large-volume customers. Rather, the court said that the Postal Service was required to offer only categories of mail services to different types of mail and mail users. That required the Postal Service to group mailers together for the purpose of providing services and establishing rates even though those mailers might have unique needs and might not actually use all the service features that might be available. This "averaging" of services rendered and rates charged is a common feature of postal services in which significantly different services can be rendered at the same price, *e.g.*, mailing a letter across the street versus mailing a letter across the country. The District Court's decision has now been reversed, but the Postal Service has decided to continue GPL as originally conceived.

Federal Express asserts that GPL to Japan is cream skimming because it is offered only to Japan. The reasoning behind this assertion is unclear, especially since Japan is not a low-cost destination. In any event, that GPL was initially offered only to Japan is not an indication that it will only be offered to Japan. Every service has to start somewhere, and since there was an expressed need for such a service to Japan, that made Japan the logical place to start. Since then, service has been implemented to Canada and the U.K. and other destination countries will be added as demand justifies them.

Federal Express and ACCA assert that the Japanese postal administration's charges for delivery in Japan might not include all the costs incurred by that administration for delivery and that, therefore, the total economic cost for GPL service might not be included in the GPL cost base. ACCA urges that the cost base for GPL rates be revised to include any costs that the Japanese postal administration might have omitted. Neither cites any data source that might support their assertions, nor is the Postal Service aware of any data that might relate to them. While Federal Express is correct in saying that Japan charges UPU terminal dues rates for those packages that are small packets, the Japanese postal administration sets its own inward land rate for parcels and imbalance charges for EMS items. It would appear unlikely that Japan would set those charges at levels that would not cover their costs. Further, the UPU Convention authorizes postal administrations to negotiate terminal dues rates different from those in the Convention. The Japanese postal administration could negotiate different rates for small packets if it believed that those rates were inadequate. It has not raised that issue with the Postal Service. Accordingly, there is no basis for believing that the Japanese postal administration's charges do not cover the costs of delivery in Japan, and no basis to make any adjustment even if there were some rational economic reason to include any cost other than what the Japanese postal administration in fact charges for its services.

Similarly, ACCA urges that the costs of GPL service be adjusted upward to account for the economic value of the customs clearance services provided by the Japanese postal administration which ACCA asserts might not be correctly priced because such customs clearance services are not available to other international transportation service providers. The Postal Service disagrees. First, there is no basis for believing that the cost of customs clearance is not included in the charges established by the Japanese postal administration, since such services are

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provided to all mail of the kind sent by GPL regardless of the rate charged by the Postal Service. Moreover, there are no data which could be used to make such an adjustment even if it were appropriate.

In a similar argument, Federal Express asserts that GPL is unfair competition because it receives postal customs clearance that it asserts is simpler than commercial customs clearance. The Postal Service disagrees. Just because postal customs clearance is different does not make it either better or worse than commercial customs clearance. In some respects the two are alike in that commercial invoices are required for both commercial and postal express shipments. In some respects, postal customs clearance is more burdensome because a customs declaration must be affixed to each item, a requirement that commercial customs clearance does not have. This is additionally burdensome for express items because the customs declaration is in addition to an invoice. It is also true that postal customs clearance requires individual inspection of each item, whereas commercial customs clearance relies on a manifest and typically only limited inspection of individual items, which also makes postal customs clearance more burdensome.

UPS asserts that the Postal Service did not comply with the Administrative Procedures Act (APA) in implementing GPL rates. In short, the APA does not apply to the establishment of international rates. Except as otherwise specifically provided by law, the APA does not apply to the Postal Service. 39 U.S.C. § 410(a). No provision of the Postal Reorganization Act or other statute makes the APA applicable to international ratemaking, even though there are provisions making the APA applicable in specific instances. *See* 39 U.S.C. § 3001(j).

UPS further asserts that even if the APA did not apply to the Postal Service, the Postal Service violated its own regulations by not publishing GPL rates until after their effective date. Part 20 of 39 C.F.R., to which UPS refers, does not specify when regulations must be published, and in fact contemplates that regulations will be published periodically regardless of their effective date. Moreover, Part 20 does not govern whether regulations can be made effective retroactively, which was the case in this instance.

UPS also asserts that there was no indication in the **Federal Register** notice announcing GPL service that the Postal Service had obtained the consent of the President to establish GPL rates. By a December 15, 1994, memorandum published in the **Federal Register** on December 19, 1994, 59 FR 65,471, the President delegated to the Governors of the Postal Service whatever authority he had under 39 U.S.C. § 407 to consent to the establishment of international postage rates. In accordance with that delegation, the Postal Service obtained the consent of the Governors of the Postal Service to establish GPL rates before implementing them, which consent was confirmed in Governors Resolution No. 95–4 adopted on March 6, 1995. In addition, the formality of obtaining the Governors' approval as the delegatee of the President has been rendered immaterial insofar as the Court of Appeals in the UPS Worldwide Forwarding case held that the prior practice of the Postal Service implementing international postage rates without the objection of the President was an acceptable interpretation of 39 U.S.C. § 407 based on over 120 years of practice.

ACCA not only asserts that GPL rates are illegal because they were not approved by the President, but also asserts that the President's delegation of authority to the Governors is unconstitutional because it violates the Due Process clause of the Fifth Amendment. ACCA cites several cases it believes support its position: *Carter* v. *Carter Coal Company*, 298 U.S. 238 (1936); *Gibson* v. *Berryhill*, 411 U.S. 564 (1973); *In re Murchison*, 349 U.S. 133 (1955); *Ward* v. *Village of Monroeville*, 409 U.S. 57 (1972); and *Tumey* v. *Ohio*, 273 U.S. 510 (1927). The Postal Service disagrees.

Tumey, *Ward*, and *Murchison* each involved judicial officers or city officials acting in a judicial capacity and stand for the principle that a person cannot act as a judge in a case in which he or she has a personal interest. The establishment of international rates is not a judicial act, nor are the Governors of the Postal Service, who are appointed to represent the public interest generally, 39 U.S.C. § 202(a), acting in a judicial capacity when they give consent to the establishment of international rates. Moreover, the Governors of the Postal Service do not have any personal stake in the revenues from the international postage rates charged by the Postal Service because they receive a fixed salary of $10,000 per year and $300 per meeting up to a total of $30,000 per year regardless of what action they take with respect to international postage rates.

Gibson involved a state optometry board proceeding in which the board, composed entirely of independent optometrists and acting in a quasi-judicial capacity, sought to revoke the licenses of all optometrists who worked for optical companies, approximately half of the optometrists in the state. The Court held that the board was biased and incompetent to proceed in view of the pecuniary benefit the board members would receive if they eliminated half of their competition. *Gibson* does not apply because the Governors of the Postal Service have no pecuniary interest in approving international postage rates.

Carter involved a New Deal program that was intended to stabilize the coal industry by regulating prices, wages, and working conditions. The Court struck down most of the legislation on the theory that coal production and sale did not involve interstate commerce. It also struck down a feature of the legislation that gave regional boards made up of coal executives and union representatives power to regulate the wages and working conditions of employees of all coal companies in the region. The Court concluded that this gave the large companies and unions the power to regulate their smaller competitors and therefore delegated a governmental function, regulation of the production of coal, to private persons. *Carter* does not apply in this case because the establishment of international rates does not involve the regulation of anyone's business other than the Postal Service, and the Governors are government officials appointed by the President with the advice of the Senate, not private persons acting in a private capacity.

ACCA also asserts that GPL is a new classification of international mail and must be submitted to the Postal Rate Commission for consideration and a recommended decision. ACCA asserts that *Air Courier Conference of America* v. *Postal Service*, 959 F.2d 1213 (3d Cir. 1992), held that 39 U.S.C. 407 excepted only international rates from submission to the Postal Rate Commission, not international classifications. ACCA is mistaken.

Section 407 has been consistently interpreted as applying to both international rates and classifications since the two things are largely inseparable from a practical point of view: one cannot establish rates without reference to the items to which the rates apply. Moreover, international mail classifications and services are established in postal treaties and conventions.

The basic classifications of LC, AO including both printed matter and small packets, and parcels are established in the Universal Postal Convention and Postal Parcels agreement, which are postal treaties ratified by the President

of the United States. The levels of service, surface, surface air lift (SAL), airmail, and EMS are also established in the Convention. GPL matches these classes and services with volume-discount rates that are attractive to large volume mailers. It does not create any new classes of mail or service. It should also be noted that the Postal Rate Commission has never asserted jurisdiction over either international rates or classifications.

II. Amendment

The Postal Service received one comment on the amendment of the original interim regulations. This commenter, United Parcel Service, reiterated the comments it made with respect to the original interim regulations. It also alleged that the amendment was unduly discriminatory because only some mailers would receive workstations with which to perform package preparation. In addition, it alleged that the Postal Service would incur additional surface transportation costs in transporting mail to the nearest airmail facility, and would incur additional air transportation costs in transporting mail from airmail facilities other than JFK, but would not charge rates different from those it established originally. Finally, UPS alleges that the reasons given in support of the amended interim regulations are contrary to the reasons given in the original interim regulations for the lower costs of GPL service.

Insofar as the comments with respect to the amendment are the same as the comments on the original interim regulations, the same responses apply, and will not be repeated.

UPS alleges that the amendment is defective because the Postal Service would provide workstations only to "selected" mailers. According to UPS, this would lead to discriminatory treatment of mailers. The Postal Service disagrees. The option of receiving work stations and performing the package preparation is selected by the mailer, not the Postal Service. Insofar as the option is available to all similarly situated mailers, there is no undue discrimination or preference.

UPS also alleges that the Postal Service would incur additional surface and air transportation expenses compared to the original proposal. The Postal Service might incur some additional transportation costs, but it will also save mail processing costs based on the package preparation performed by the mailer. These savings should largely off-set the additional expenses incurred, if any. In addition, the new option should attract new customers which would not have used GPL service as originally conceived. This additional revenue and contribution more than compensate for any additional expense that might be incurred.

UPS also asserts that the amendment is inconsistent with the original interim rule. According to UPS, the original rule was based on the rationale that the Postal Service would incur lower costs in processing GPL parcels because of greater availability of direct air transportation from JFK airport, efficiencies from processing all GPL parcels at a single facility designed for that purpose, efficiencies from dispatching all GPL shipments from a single facility, and that general operational and managerial considerations supported handling all GPL shipments at a single facility.

UPS's assertions in this regard are incorrect. The original interim rule was not based on the rationale that the Postal Service would incur lower costs because of the four factors cited. The original interim rule was based on a rationale stated in section II. A. of the **Federal Register** notice, which said that the Postal Service was implementing this new international service "In order more closely to meet the needs of mail order companies and other customers that send merchandise packages from the United States to multiple international addressees." The four factors cited by UPS were, indeed, factors that led to the decision to process and dispatching GPL parcels from the JFK Processing Plant. That decision provided economies of scale and allowed the implementation of this new service in an efficient manner. As clearly stated in the amendment to the interim rule, however, the Postal Service subsequently determined, as volumes grew, that it could further reduce costs and improve service by allowing mailers to share the package processing workload if they met certain conditions. GPL is growing, both in numbers of mailers using the service and in volume, and the Postal Service will continue to develop procedures that will facilitate the use of this service by its customers.

Accordingly, the Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1. All other changes in the original interim rule for Global Package Link which were published in the **Federal Register** as amendments of the interim rule remain in effect as interim rules.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by adding new subchapter 620 to read as follows:

CHAPTER 6—SPECIAL PROGRAMS

* * * * *

SUBCHAPTER 620—GLOBAL PACKAGE LINK

621 Description

621.1 General

Global Package Link (GPL) is a bulk mailing system that provides fast, economical international delivery of packages containing merchandise. GPL is designed to make it easier and less costly for mail order companies to export goods. The Postal Service provides GPL on a destination county-specific basic pursuant to the terms and conditions stipulated in 620.

621.2 Admissible Items

621.21 Prohibited Enclosures

GPL packages may not contain:

a. Typewritten and handwritten communications having the character of current correspondence.

b. Any item that is prohibited in international mail. Refer to the Country Conditions of Mailing in the Individual Country Listings for individual destination country prohibitions.

621.22 Exceptions

GPL packages may contain an invoice as long as the invoice is limited to the particulars that constitute an invoice.

621.3 Availability

GPL is available only to destination countries identified in 620.

622 Qualifying Mailers

To qualify, a mailer must enter into a service agreement containing the commitments stipulated in 625.2 and must be able to meet the general and destination country-specific preparation requirements stipulated in 620.

623 General

623.1 Special Services

The special services provided for in Chapter 3 are not available for packages sent by GPL unless specifically provided for in 620.

623.2 Customs Documentation

The requirements for customs forms vary by destination country as stipulated in 620.

623.3 Size and Weight Limits

Size and weight limits for packages sent by GPL vary by destination country as stipulated in 620.

623.4 Postage

623.41 Rates

Rates vary by destination country as stipulated in 620.

623.42 Postage Payment.Method

Postage must be paid by permit imprint.

623.43 Documentation

Each mailing of GPL packages must be accompanied by a manifest and other documentation in the form specified by the Postal Service.

624 Preparation Requirements

624.1 General Requirements

624.11 Barcode

Every GPL package must bear a barcode, in a format acceptable to the Postal Service, that identifies the package by a unique number. The mailer must place the barcode on the address side of the package.

624.12 Addressing

See 122. The name and address of the mailer and of the addressee also should be recorded on a separate slip enclosed in the package.

624.13 Sealing

Every GPL package must be sealed by the mailer. Wax, gummed-paper tape, nails, screws, wire, metal bands, or other materials may be used as suitable. The seal must be sufficient to allow detection of tampering.

624.14 Packaging

Every GPL package must be securely and substantially packed. In packing, the mailer should consider the nature of the contents, the climate, and the delivery method. The Postal Service will determine whether the contemplated packaging is suitable prior to the mailer's use of GPL.

624.15 Nonpostal Documentation

Forms required by nonpostal export regulations are described in Chapter 5.

624.2 Destination Country-Specific Requirements

Certain preparation requirements vary by destination country as stipulated in 620.

625 GPL Service Agreements

625.1 General

The mailer must enter into a separate service agreement for each destination country to which it wants to use GPL.

625.2 Required Provisions

Each service agreement must contain the following:

a. The mailer's commitment to send at least 25,000 packages by GPL during the next 12 months to the specified destination country.

b. The mailer's commitment to designate the Postal Service as its carrier of choice to the specified destination country.

c. The mailer's commitment to link its information systems with the Postal Service's so that (1) the Postal Service and the mailer can exchange data transmissions concerning the mailer's packages, and (2) by scanning the mailer-provided barcode on each package, the Postal Service can extract, on an as-needed basis, certain information about the package. The package-specific information that the mailer is required to make available varies by destination country as stipulated in 620.

d. For a mailer processing packages at the mailer's plant, the mailer's commitment to use Postal Service provided workstations to process all GPL packages and to sort and prepare those packages for dispatch as specified by the Postal Service.

625.3 Optional Provisions

Each service agreement may set forth any GPL-related arrangements between the Postal Service and the mailer that are technical in nature.

626 GPL to Japan

626.1 Description

626.11 General

GPL to Japan provides the mailer with three delivery options, and with preparation by the Postal Service (or on Postal Service-provided equipment) of the customs forms required by Japan Post.

626.12 JFK Processing Facility

All GPL packages processed by the Postal Service are processed at, and dispatched to Japan from, a dedicated facility located at JFK International Airport (the JFK Processing Facility).

626.13 Delivery Options

626.131 Express Service

Packages sent through Express Service are transported by air to Japan, where they receive special handling by Japan Post and expedited delivery. The mailer can track Express Service packages through delivery. Reports of delivery performance are furnished to the mailer in the formats and at the frequencies agreed upon by the Postal Service and the mailer.

626.132 Standard Air Service

Packages sent through Standard Air Service are transported by air to Japan, where they enter Japan Post's domestic airmail system for delivery. The mailer can track Standard Air Service packages through dispatch from the JFK Processing Facility or the appropriate airmail facility.

626.133 Economy Air Service

Packages sent through Economy Air Service are transported by air to Japan, where they enter Japan Post's domestic surface mail system for delivery. The mailer can track Economy Air Service packages through dispatch from the JFK Processing Facility or the appropriate airmail facility.

626.2 Acceptance

626.21 Within 500 Miles of JFK

If the plant at which the mailer's GPL packages originate is located within 500 miles of the JFK Processing Facility, the Postal Service accepts the packages at the plant and transports them by truck to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the mailer.

626.22 More Than 500 Miles From JFK

626.221 Drop Shipment to JFK

If the plant at which the mailer's GPL packages originate is more than 500 miles from the JFK Processing Facility, the mailer may present the packages for verification at the plant and transport them as a drop shipment to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the mailer.

626.222 Transport to Airmail Facility

Alternatively, the mailer may process the packages, using Postal Service-provided workstations, and prepare dispatches as specified by the Postal Service. The Postal Service verifies and accepts the dispatches at the mailer's plant according to a schedule agreed upon by the mailer, and the Postal Service transports the packages to an appropriate airmail facility for dispatch to Japan.

626.3 Required Package-Specific Information

The mailer must make available to the Postal Service, by means of data

transmissions in the formats and at the frequencies agreed upon by the Postal Service and the mailer, the following information about each GPL package:

a. Order number.
b. Package identification number.
c. Delivery option used for package.
d. Buyer's name and address.
e. Recipient's name and address.
f. Total weight.
g. Total value.
h. Total number of items in package.
i. Number of each individual item in package.
j. SKU and/or key-word description of each item.
k. Value of each item.
l. Country of origin (if available) of each item.

626.4 Insurance and Indemnity

626.41 Express Service

Packages sent through Express Service are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, Express Service packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

626.42 Standard Air Service

Packages sent through Standard Air Service weighing more than 1 pound may be insured at an additional cost. See 320.

626.43 Economy Air Service

Packages sent through Economy Air Service may not be insured.

626.5 Postage

626.51 Base Rates

See Exhibit 626.51. Postage is paid on a per-package basis.

GLOBAL PACKAGE LINK TO JAPAN BASE RATES EXHIBIT 626.51

Weight not over lbs.	Express service	Standard air service	Economy air Service
1	$14.35	$6.64	$5.43
2	15.69	9.23	9.35
3	17.80	13.63	13.27
4	19.91	15.74	17.20
5	22.02	20.14	
6	27.03	24.93	
7	29.39	29.86	
8	31.76	32.22	
9	34.12	37.15	
10	36.49	39.52	
11	38.85	41.88	
12	41.21	46.81	
13	43.58	49.17	
14	45.94	54.10	
15	48.31	56.47	

GLOBAL PACKAGE LINK TO JAPAN BASE RATES EXHIBIT 626.51—Continued

Weight not over lbs.	Express service	Standard air service	Economy air Service
16	54.29	65.78	
17	56.82	68.32	
18	59.36	73.60	
19	61.89	76.13	
20	64.42	81.42	
21	71.42	89.55	
22	74.12	92.25	
23	76.83	97.88	
24	79.53	100.58	
25	82.23	106.22	
26	84.93	108.92	
27	87.63	114.56	
28	90.34	117.26	
29	93.04	122.89	
30	95.74	125.59	
31	104.59	139.43	
32	107.47	142.30	
33	110.34	145.17	
34	113.21	151.16	
35	116.08	154.03	
36	118.95	160.02	
37	121.82	162.89	
38	124.69	168.88	
39	127.56	171.75	
40	130.43	177.73	
41	141.15	191.23	
42	144.19	197.57	
43	147.23	200.61	
44	150.27	203.65	

626.52 Discounts

Postage is reduced by the following additive discounts once the applicable volume thresholds are reached during a 12-month period:

a. 25,000 to 100,000 packages: 0.00%.
b. 100,001 to 250,000 packages: 4.75%.
c. 250,001 to 500,000 packages: additional 5.75%.
d. 500,001 to 1,000,000 packages: additional 6.00%.
e. More than 1,000,000 packages: additional 6.25%.

626.6 Size and Weight Limits

626.61 Size Limits

626.611 Express Service

Express Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 42 inches (36 inches until January 9, 1995).

c. Maximum length and girth combined: 90 inches (79 inches until January 9, 1995).

626.612 Standard Air Service

Standard Air Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 42 inches (24 inches for packages weighing 1 pound or less).

c. Maximum length and girth combined: 90 inches (79 inches until January 9, 1995). Maximum length, height, depth (thickness) combined for packages weighing 1 pound or less is 36 inches.

626.613 Economy Air Service

Economy Air Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 24 inches.

c. Maximum length, height, depth (thickness) combined: 36 inches.

626.62 Weight Limits

626.621 Express Service

Maximum weight: 44 pounds.

626.612 Standard Air Service

Maximum weight: 44 pounds.

626.613 Economy Air Service

Maximum weight: 4 pounds.

627 Customs Forms Required

The mailer is not normally required to affix customs forms to GPL packages sent to Japan if the packages are processed at the JFK Processing Facility. In such cases, the Postal Service prints the necessary customs forms based on the package-specific information transmitted by the mailer, and affixes them to the packages. If the packages are processed at the mailer's plant on Postal Service-provided workstations, those workstations print the necessary forms that the mailer normally affixes to the packages. During the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix the appropriate customs forms to the packages, as follows:

a. Express Service: Form 2966–A, *Parcel Post Customs Declaration—United States of America.*

b. Standard Air Service: Form 2966–A, Parcel Post Customs Declaration—United States of America (packages weighing 1 pound or less must bear Form 2976, Customs—Douane C1).

c. Economy Air Service: Form 2976, Customs—Douane C1.

628 Preparation Requirements

628.1 Express Service

628.11 Processing at JFK

Every package sent through Express Service must bear a label identifying it as an Express Service package. The mailer is not normally required to affix this label when such packages are processed at the JFK Processing Facility. In this case, the Postal Service prints the necessary label and affixes it to the Express Service package. During the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix Label 11–B, Express Mail Service Post Office to Addressee, or an alternative label as instructed by the Postal Service, to every Express Service package.

628.12 Processing at Mailer's Plant

When packages are processed at the mailer's plant on Postal Service-provided workstations, the workstations print the necessary label, and the mailer affixes it to the Express Service package.

628.2 Standard Air Service

There are no Japan-specific preparation requirements for packages sent through Standard Air Service (packages weighing 1 pound or less must bear the SMALL PACKET marking). See 264.21.

628.3 Economy Air Service

Packages sent through Economy Air Service must bear the SMALL PACKET marking. See 264.21.

* * * * *

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–107 Filed 1–3–97; 8:45 am]

BILLING CODE 7710–12–P

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39 CFR Part 20

Global Package Link (Formerly International Package Consignment Service)

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments submitted in response to its request in 61 FR 13,765 (March 28, 1996) for comments on interim regulations implementing International Package Consignment (IPCS) service to Canada and the United Kingdom, hereby gives notice that it is adopting the interim regulations as amended on a permanent basis, without substantive modification. The name of this service has subsequently been changed to Global Package Link (GPL).

EFFECTIVE DATE: 12:01 a.m., January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: On March 28, 1996, the Postal Service published in the **Federal Register** interim regulations implementing Global Package Link (GPL) to Canada and the United Kingdom and requested comments (61 FR 13765 (March 28, 1996)). GPL is an international mail service designed for mail order companies sending merchandise packages to other countries. The service was initially available to Japan.

For the service to Canada, a customer would be required to mail at least 25,000 packages annually and to connect its information systems to the Postal Service so that the Postal Service and the customer could exchange information about the customer's packages. The customer would also be required to designate the Postal Service as its carrier of choice to Canada. There were two levels of service to Canada and there were rate discounts for sending larger numbers of parcels during the year.

For service to the United Kingdom, a customer would be required to mail at least 10,000 packages annually and to connect its information systems to the Postal Service so that the Postal Service and the customer could exchange information about the customer's packages. The customer would also be required to designate the Postal Service as its carrier of choice to the United Kingdom. There were three levels of service to the United Kingdom and there were rate discounts for sending more than 100,000 packages annually.

Comments were due on or before May 31, 1996. Comments were received from two commenters, a company engaged in international package delivery, WorldPak, Inc., and an association of companies engaged in international package delivery, the Air Courier Conference of America (ACCA). After considering these comments, the Postal Service has decided to adopt the regulations without substantive change.

WorldPak asserts that GPL rates to Canada and the United Kingdom are not permitted under the Acts of the Universal Postal Union because the rates for the highest level of GPL service are lower than domestic rates for single-piece Express Mail. No citation of authority is given, but the Postal Service believes that the commenter is referring to article 6.2, of the Universal Postal Convention, which provides, "The charges collected, including those laid down for guideline purposes in the Acts, shall be at least equal to those collected on internal service items presenting the same characteristics (category, quantity, handling time, etc.)." The Postal Service does not agree that GPL rates are inconsistent with article 6.2. In the Postal Service's view, it is inappropriate to compare rates for the highest level of GPL service with single-piece Express Mail rates. GPL is a bulk service, in which customers tender many packages at one time. There is no bulk Express Mail service and therefore no bulk Express Mail rates. Insofar as quantity is specifically a characteristic that article 6.2 recognizes as making a difference, article 6.2 does not require a comparison with single-piece rates. In addition, GPL does not guarantee delivery within any specific time. Express Mail guarantees delivery within one or two days, depending on destination, and postage is refunded if the service standard is not met. This also makes any comparison with domestic Express Mail rates inappropriate. Accordingly, the Postal Service concludes that GPL rates are not lower than the rates for any service having the same characteristics.

WorldPak also asserts that GPL service to Canada is unauthorized because it is a freight service, not a postal service. WorldPak asserts that GPL is a freight service because GPL items are delivered by a private sector contractor, not Canada Post Corporation, and GPL items are cleared through customs using commercial customs clearance procedures. The commenter also asserts, contrary to its argument that GPL rates are illegal because they are lower than domestic Express Mail rates, that GPL delivery by private contractors is not authorized by the Universal Postal Convention because it is not EMS service. The Postal Service does not agree that GPL service is unauthorized. The distinction this commenter attempts to draw does not appear to have any significance. Delivery by a private contractor is, and long has been, one of the ways mail is delivered. Moreover, in the current environment in which postal administrations in other countries are being privatized, e.g., Netherlands and

Germany, delivery of international mail by privately owned companies is becoming more commonplace. The use of commercial customs clearance procedures is likewise not a consideration in determining whether GPL service is authorized. While the Acts of the Universal Postal Union provide for documentation that is used for clearing most postal items through customs, the procedures that are followed in the destination country are prescribed by that country. In most cases, the main difference between commercial and postal customs clearance is the preparation of a manifest. For most postal items, customs clearance can be accomplished using documents on the package without preparing a manifest, although nothing in the Acts precludes the preparation of a manifest if the law of the destination country requires it. Finally, this argument does not take into account that the Postal Service is authorized to provide nonpostal as well as postal services. 39 U.S.C. § 404(a)(6). Even if GPL could be correctly characterized as not being a postal service, that would not make it unauthorized.

ACCA also asserts that GPL service is unauthorized, but argues that it is unauthorized because it is a new classification of mail and must be recommended by the Postal Rate Commission before it can be established. The association asserts that *Air Courier Conference of America* v. *Postal Service*, 959 F.2d 1213 (3d Cir. 1992), held that 39 U.S.C. § 407 excepted only international rates from submission to the Postal Rate Commission, not international classifications. The association is mistaken. Section 407 has been consistently interpreted as applying to both international rates and classifications since the two things are largely inseparable from a practical point of view: one cannot establish rates without reference to the items to which the rates apply. Moreover, most international mail classifications and services are established in postal treaties and conventions. The basic classifications of LC, AO including both printed matter and small packets, and parcels are established in the Universal Postal Convention and Postal Parcels agreement, which are postal treaties ratified by the President of the United States. The levels of service, surface, surface air lift (SAL), airmail, and EMS are also established in the Convention. GPL matches these classes and services with volume-discount rates that are attractive to large volume mailers. It does not create any new classes of mail or service. It should also be noted that the Postal Rate Commission has never asserted jurisdiction over either international rates or classifications.

Both WorldPak and the ACCA assert that GPL rates do not make an appropriate contribution to overhead and do not take into account all of the cost attributable to the service. WorldPak asserts that the Postal Service's measurement of costs do not take into account the program managers of the service, do not take into account the travel, marketing, and related costs of the service, and do not take into account the costs of contractors to operate the GPL and CPAS information systems. ACCA asserts that the costs are understated because they use terminal dues expense as opposed to the actual cost of delivery incurred by the country of destination and do not take into account the value of services provided in the country of destination that are not generally available to the public. The Postal Service disagrees.

WorldPak appears not to understand which costs are attributable and which are not. It also appears not to understand that cost evaluations are done at a service or category level, i.e. GPL as a whole, not at a country specific level. In general, attributable costs are those that vary with volume. The costs of program managers, travel, marketing, etc., do not vary with volume and are not attributable. The other costs that are attributable are those that, while not volume variable, are exclusively associated with a particular service. An example of this from the domestic context is Express Mail advertising. Since postal managers, regardless of title, perform duties pertaining to more than one service or category of mail, there are no such costs exclusively associated with GPL service as a whole, much less GPL service to any one country. Insofar as GPL incurs contractor costs to operate the GPL and CPAS information systems, to the extent that these costs are volume variable they are included in the costs of the service.

ACCA argues that the charges for delivery in the destination country might not include all the costs incurred by the delivery agent for delivery and that, therefore, the total economic cost for GPL service might not be included in the GPL cost base. ACCA urges that the cost base for GPL rates be revised to include any costs that the delivery agent might have omitted. The association does not cite any data source that might support its assertion, nor is the Postal Service aware of any data that might relate to them. Accordingly, there is no basis for believing that the charges do not cover the costs of delivery in the destination country, and no basis to make any adjustment even if there were some rational economic reason to include any cost other than what the delivery agent in fact charges for its services.

Similarly, ACCA urges that the costs of GPL service be adjusted upward to account for the economic value of the customs clearance services provided by the delivery agent, which ACCA asserts might not be correctly priced because such customs clearance services are not available to other international transportation service providers. The Postal Service disagrees. First, insofar as Canada is concerned, the Postal Service uses commercial customs clearance procedures using a customs broker. This is the same customs clearance that private sector delivery companies use. Second, insofar as the United Kingdom is concerned, there is no basis for believing that the cost of customs clearance is not included in the charges established by the United Kingdom postal administration, since such services are provided to all mail of the kind sent by GPL regardless of the rate charged by the Postal Service. Moreover, there are no data which could be used to make such an adjustment even if it were appropriate.

ACCA asserts that the contribution to overhead could be as low as one cent, and that such a low contribution would not be appropriate. ACCA provided no data or analysis to support its position. The Postal Service has reviewed the cost and revenue for GPL and has concluded that in view of the competitive nature of the parcel market, GPL does make a reasonable and appropriate contribution to overhead.

ACCA asserts that the rates for GPL to Canada and the United Kingdom are unduly discriminatory because they are lower than rates for single-piece EMS to those countries. The Postal Service disagrees. Rates for GPL service reflect differences in the markets for bulk parcels and single-piece parcels. The market for bulk parcels is highly competitive and is characterized by substantial discounting by the various competitors. No such discounting is present in the market for single-piece parcels. The costs of the two kinds of service are also different, with the bulk parcels being less costly to handle. These differences in costs and market conditions lead the Postal Service to conclude that the rates for GPL to Canada and the United Kingdom are not unduly discriminatory.

WorldPak asserts that the interim regulations are unlawful because they contain misstatements and lend

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themselves to unreasonable discrimination. As an example, WorldPak asserts that the regulations are inaccurate in that they state that the Postal Service's Customs Pre-Advisory System (CPAS) electronically advises the GPL delivery agent and Canadian Customs of the contents of each package. According to WorldPak, the information is transmitted customs clearance information is transmitted electronically to a customs broker. The Postal Service agrees that this provision is technically inaccurate, in that the data is transmitted to a customs broker who is an agent for the Postal Service's delivery agent and who provides the data to Canadian Customs. The technical inaccuracy does not, in the Postal Service's view, make the interim regulations illegal. The provision will be amended, however, to remove the reference to transmitting data to the delivery agent and Canadian Customs.

As a second example, WorldPak asserts that the provisions concerning Air Courier Service are inaccurate in that they state that Air Courier Service packages will be transported to Canada overnight. According to WorldPak, overnight air transportation to Canada depends on a number of variables, and in certain hypothetical cases, might not be transported overnight. The Postal Service disagrees with this assertion. Overnight transportation to Canada is the service commitment for Air Courier Service and the Postal Service sees no problem in meeting this commitment.

As a third example, WorldPak asserts that the interim regulations suggest that there are or will be more GPL processing facilities than the one at New York's JFK Airport. According to WorldPak, this could be unduly discriminatory in that additional facilities could be located close to favored customers. WorldPak also asserts that the use in the regulations of the term "in general" suggests that subjective criteria would govern where facilities would be located. The Postal Service concludes that these objections have no merit. The phrase "in general" allows the possibility for customers who are more than 500 miles from a GPL processing facility to process packages at their facility for pickup by the Postal Service. At the time the interim regulations were published, the Postal Service was constructing an additional GPL facility near the Dallas-Fort Worth International Airport and was planning facilities in Chicago, San Francisco, Seattle, and Miami. Those new facilities were announced in the **Federal Register** on July 30, 1996, 61 FR 39592–93. Whatever concern might have been engendered by the wording of the provision in question was addressed in that publication.

As a fourth example, WorldPak asserts that GPL to Canada and the United Kingdom will not benefit all postal customers by generating revenues which will contribute to fixed costs because the Postal Service does not know enough about the costs of these new services. According to WorldPak, GPL to Canada and GPL to the United Kingdom should be considered as separate services which should individually satisfy the requirements of the Postal Reorganization Act. The Postal Service disagrees. First, the prices for GPL to Canada and the United Kingdom take into account the variable costs and are designed to make a contribution to fixed costs on an individual basis. However, the Postal Reorganization Act does not require that the rates of international postal services be evaluated on a country by country basis. It requires only that each type or category of service cover its variable costs and make a contribution to fixed costs. GPL as a whole certainly meets this requirement. Moreover, differences in the details of how a service is provided to different countries do not change how the requirements of the Act are applied to the service as a whole.

Accordingly, the Postal Service adopts the following amendments to the International Mail Manual which is incorporated by reference in the Code of Federal Regulations, See 39 CFR 20.1. All other interim changes in the rule for Global Package Link service which were published in the **Federal Register** as amendments of this interim rule remain in effect as interim rules.

List of Subjects in 39 CFR part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Subchapter 620 of the International Mail Manual, Issue 16, is amended as follows:

6 Special Programs

* * * * *

620 Global Package Link

621 Description

621.1 General

Global Package Link is a bulk mailing system that provides fast, economical international delivery of packages containing merchandise. Global Package Link is designed to make it easier and less costly for mail-order companies to export goods. The Postal Service provides Global Package Link on a destination country-specific basis pursuant to the terms and conditions stipulated in 620 and the Individual Country Listings.

* * * * *

621.3 Availability

Global Package Link is available only to destination countries identified in 620 and the Individual Country Listings.

622 Qualifying Customers

To qualify, a customer must enter into a service agreement containing the commitments stipulated in 625.2 and must be able to meet the general and destination country-specific preparation requirements stipulated in 620 and the Individual Country Listings.

623 General

623.1 Special Services

The special services provided for in Chapter 3 are not available for packages sent by Global Package Link unless specifically provided for in 620 or the Individual Country Listings.

623.2 Customs Documentation

The requirements for customs forms vary by destination country as stipulated in 620 and the Individual Country Listings.

623.3 Size and Weight Limits

Size and weight limits for packages sent by Global Package Link vary by destination country as stipulated in 620 and the Individual Country Listings.

623.41 Rates

Rates vary by destination country as stipulated in 620 and the Individual Country Listings.

623.42 Postage Payment Method

Postage must be paid by permit imprint or any other Postal Service approved method.

624 Preparation Requirements

624.1 General Requirements

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624.2 Destination Country-Specific Requirements

Certain preparation requirements vary by destination country as stipulated in 620 and the Individual Country Listings.

625 Global Package Link Service Agreements

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625.2 Required Provisions

a. The customer's commitment to send at least 25,000 packages (or 10,000 to the United Kingdom) by Global Package Link during the next 12 months to the specified destination country.

* * * * *

626 Global Package Link to Japan

* * * * *

[Change 627 to 626.7 Customs Forms Required]

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[Change 628 to 626.8 Preparation Requirements]

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[Change 628.1 to 626.81 Express Service]

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[Change 628.11 to 626.811 Processing at JFK]

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[Change 628.12 to 626.812 Processing Mailer's Plant]

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[Change 628.2 to 626.82 Standard Air Service]

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[Change 628.3 to 626.83 Economy Air Service]

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3. Effective immediately, chapter 6 of the International Mail Manual, Issue 16, is amended by adding new section 627 as follows:

6 Special Programs

* * * * *

620 Global Package Link

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627 Global Package Link to Other Destination Countries

Information concerning Global Package Link for the following designated countries is detailed in the Individual Country Listings (ICLs) section.

a. Canada.

b. Great Britain and Northern Ireland.

* * * * *

4. Effective immediately, the Individual Country Listing for Canada in the International Mail Manual, Issue 16, is amended by adding the following information, concerning Global Package Link, to the end of the listing.

Global Package Link

Description

Global Package Link to Canada provides the customer with two delivery options and with preparation by the Postal Service of the customs forms and delivery labels required by Canada.

Delivery Options

Air Courier Service

Air Courier Service is the fastest option. The Postal Service will transport Air Courier Service packages from the customer's plant or from the designated Global Package Link processing facility to Canada overnight where they will receive expeditious customs clearance and be released to the delivery agent. From there, the packages will receive courier service throughout Canada and be delivered to major population centers overnight. Normal delivery times will be two to three days from dispatch to final delivery.

Ground Courier Service

Ground Courier Service will offer overnight transportation to Canada and ground transportation to final destination in Canada. It will receive the same expeditious customs clearance as Air Courier Service and normal delivery times for 95 percent of all Canadian addresses will be three to six days after dispatch from the customer's plant, depending on the location of final destination. (For addresses in the Maritimes and extreme northern territories where distance and poor roads affect transportation, delivery times could be as long as eight days.)

Processing and Acceptance

Within 500 Miles of a Global Package Link Processing Facility

If the plant at which the customer's Global Package Link packages originate is located within 500 miles of a Global Package Link processing facility, the Postal Service will verify and accept the packages at the customer's plant and transport them to the Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

More than 500 Miles from a Global Package Link Processing Facility

If the customer's plant from which the Global Package Link packages will originate is located more than 500 miles from a Global Package Link processing facility, the customer can choose one of two processing options.

Option One: The customer will be required to present the packages to the Postal Service for verification at the customer's plant and transport them as a drop shipment to a Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

Option Two: The customer will process the packages using Postal Service-provided computer system workstations and sort and prepare the packages as required by the Postal Service. Then, the Postal Service verifies and accepts the packages at the customer's plant and transports them by truck to the nearest air mail facility according to a schedule agreed upon by the Postal Service and the customer. From the air mail facility, the Postal Service dispatches the Global Package Link packages to Canada, bypassing a Global Package Link processing facility.

Required Package Specific Information

Requirements are the same as those detailed in Section 626.3.

Insurance and Indemnity

Air Courier Service

Packages sent through Air Courier Service are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in event of delay.

Ground Courier Service

Packages sent through Economy Service may be insured at an additional cost. See 320.

Postage

General

The base rates for the two currently available options are set forth below. These rates may be reduced by one or more of the three additive annual discounts depending on how many packages the customer mails to Canada using either of the two Global Package Link delivery options in a twelve month period.

Base Rates

The Postal Service will charge the base rates, in 1-pound increments, for the first 100,000 packages mailed by the customer during a 12-month period.

Rate Reductions

Number of packages	Percent discount
Up to 100,000	Base Rate.
100,001 to 500,000 ...	3% off base rates.
500,001 to 1,000,000	4% off previously discounted rates.
1,000,001 and over ...	5% off previously discounted rates.

GLOBAL PACKAGE LINK TO CANADA

Pounds to:	Base Rates <100k		101k–500k 3.00%		Volume Discounts 501k–1m 4.00%		>1m 5.00%	
	Air	Ground	Air	Ground	Air	Ground	Air	Ground
1	10.15	8.55	9.85	8.29	9.45	7.96	8.98	7.56
2	11.09	9.37	10.76	9.09	10.33	8.72	9.81	8.29
3	12.74	10.92	12.36	10.60	11.86	10.17	11.27	9.66
4	14.38	11.93	13.95	11.57	13.39	11.10	12.73	10.55
5	16.03	12.95	15.55	12.56	14.93	12.06	14.18	11.46
6	17.55	13.98	17.03	13.56	16.35	13.02	15.53	12.37
7	19.19	14.93	18.61	14.48	17.87	13.90	16.98	13.20
8	20.83	15.85	20.20	15.38	19.39	14.76	18.42	14.03
9	22.46	16.80	21.79	16.29	20.92	15.64	19.87	14.86
10	24.10	17.72	23.37	17.19	22.44	16.51	21.32	15.68
11	25.55	18.55	24.78	17.99	23.79	17.27	22.60	16.41
12	27.17	19.49	26.36	18.91	25.30	18.15	24.04	17.25
13	28.81	20.45	27.95	19.84	26.83	19.05	25.49	18.09
14	30.44	21.40	29.52	20.76	28.34	19.93	26.92	18.93
15	32.06	22.36	31.10	21.69	29.85	20.82	28.36	19.78
16	33.68	23.86	32.67	23.14	31.37	22.21	29.80	21.10
17	35.32	24.84	34.26	24.09	32.89	23.13	31.25	21.97
18	36.95	25.81	35.84	25.03	34.40	24.03	32.68	22.83
19	38.57	26.99	37.41	26.18	35.92	25.14	34.12	23.88
20	40.19	27.97	38.99	27.13	37.43	26.05	35.56	24.74
21	41.53	28.74	40.29	27.88	38.68	26.76	36.74	25.43
22	43.15	29.71	41.85	28.82	40.18	27.67	38.17	26.28
23	44.76	30.69	43.42	29.77	41.68	28.58	39.59	27.15
24	46.37	31.66	44.98	30.71	43.18	29.48	41.02	28.01
25	48.00	32.65	46.56	31.67	44.69	30.40	42.46	28.88
26	49.61	33.61	48.12	32.61	46.20	31.30	43.89	29.74
27	50.85	34.60	49.32	33.56	47.35	32.22	44.98	30.61
28	52.83	35.57	51.25	34.50	49.20	33.12	46.74	31.46
29	54.46	36.55	52.83	35.45	50.71	34.03	48.18	32.33
30	56.07	37.52	54.39	36.39	52.21	34.94	49.60	33.19
31	57.27	38.21	55.55	37.06	53.33	35.58	50.66	33.80
32	58.87	39.17	57.10	37.99	54.82	36.47	52.08	34.65
33	60.49	40.14	58.67	38.94	56.32	37.38	53.51	35.51
34	62.09	41.11	60.22	39.87	57.81	38.28	54.92	36.36
35	63.69	42.08	61.78	40.82	59.31	39.19	56.34	37.23
36	65.29	43.04	63.33	41.75	60.80	40.08	57.76	38.08
37	66.90	44.02	64.90	42.70	62.30	40.99	59.18	38.94
38	68.50	45.33	66.45	43.97	63.79	42.21	60.60	40.10
39	70.10	46.49	68.00	45.09	65.28	43.29	62.02	41.12
40	71.70	47.64	69.55	46.21	66.77	44.36	63.43	42.14
41	72.79	48.26	70.60	46.81	67.78	44.94	64.39	42.69
42	74.38	49.23	72.15	47.75	69.26	45.84	65.80	43.55
43	75.97	50.21	73.69	48.71	70.74	46.76	67.20	44.42
44	77.56	51.57	75.23	50.03	72.22	48.02	68.61	45.62
45	79.16	52.56	76.78	50.99	73.71	48.95	70.03	46.50
46	80.16	53.13	77.75	51.54	74.64	49.48	70.91	47.00
47	81.74	54.94	79.28	53.29	76.11	51.16	72.31	48.60
48	83.31	56.77	80.81	55.06	77.58	52.86	73.70	50.22
49	84.78	58.64	82.24	56.88	78.95	54.60	75.00	51.87
50	86.48	60.96	83.89	59.13	80.53	56.76	76.51	53.92
51	88.06	62.45	85.42	60.58	82.00	58.15	77.90	55.24
52	89.65	63.97	86.96	62.05	83.48	59.57	79.31	56.59
53	91.23	65.52	88.49	63.56	84.95	61.01	80.70	57.96
54	92.82	67.08	90.04	65.06	86.43	62.46	82.11	59.34
55	94.40	68.64	91.57	66.58	87.90	63.92	83.51	60.72
56	95.28	69.28	92.42	67.20	88.73	64.51	84.29	61.29
57	96.85	70.37	93.94	68.26	90.19	65.53	85.68	62.25
58	98.43	71.48	95.48	69.34	91.66	66.56	87.07	63.24
59	99.99	72.58	96.99	70.40	93.11	67.58	88.46	64.20
60	101.57	74.18	98.53	71.96	94.59	69.08	89.86	65.62
61	103.14	75.30	100.05	73.04	96.04	70.12	91.24	66.61
62	104.72	76.40	101.58	74.11	97.51	71.14	92.64	67.59
63	105.51	77.48	102.35	75.16	98.25	72.15	93.34	68.54
64	107.07	78.55	103.85	76.19	99.70	73.15	94.71	69.49
65	108.63	79.70	105.37	77.31	101.16	74.22	96.10	70.51
66	110.19	80.85	106.88	78.42	102.61	75.29	97.48	71.52

Size and Weight Limits

All Air Courier and Ground Courier Service packages must meet the following size and weight limits:

Size Limits

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 60 inches.

c. Maximum length and girth combined: 108 inches.

Weight Limit

Maximum weight: 66 pounds.

Customs

Customs Forms

Normally all necessary Canadian customs forms will be automatically generated by the Postal Service computer workstations. Packages mailed to Canada through a Global Package Link facility will not be required to bear customs forms when they are tendered to the Postal Service. The Postal Service will verify, accept, and transport these packages to a designated Global Package Link processing facility. After scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will print the necessary customs forms and then affix them to the customer's packages as part of the processing operation at the Global Package Link processing facility. However, during the interim period in which the Postal Service and the customer are working together to establish the information systems linkages to enable the Postal Service to accomplish this, the customer may be required to prepare the necessary customs forms on its own and affix the forms to the packages before tendering them to the Postal Service. In those cases where the computer workstations are located at the customer's plant and operated by customer employees, the USPS computer will print the customs forms, and the customer will be required to affix these forms to the appropriate packages as instructed by the Postal Service prior to verification and acceptance of the mail.

Customs Clearance

The Postal Service has developed the Customs Pre-Advisory System (CPAS) as part of Global Package Link processing. This electronic system collects package-specific data to satisfy customs requirements as packages are processed using the USPS computer workstations located at either a Global Package Link facility or the customer's plant. The system electronically advises the USPS agent of the contents of each package mailed. Since this advisory information arrives before the mail, CPAS facilitates and simplifies customs clearance. Electronic pre-notification of the package contents and automatic preparation of required customs declarations assures the fastest clearance through Canadian Customs and reduces costs for the customer and the Postal Service.

Preparation Requirements

Air Courier Service

Every package sent through Air Courier Service must bear a label identifying it as an Air Courier Service package. The customer is not normally required to affix this label. The Postal Service prints the necessary label and affixes it to the Air Courier Service package. However, during the interim period in which the Postal Service and the customer are establishing the information systems linkages to enable the Postal Service to accomplish this, the customer is required to affix an alternative label as instructed by the Postal Service to every Air Courier Service package.

Ground Courier Service

There are no Canada-specific preparation requirements for packages sent through Ground Courier Service. Packages weighing 1 pound or less must bear the Small Packet marking (see 264.21).

* * * * *

5. Effective immediately, the Individual Country Listing for the Great Britain and Northern Ireland in the International Mail Manual, Issue 16, is amended by adding the following information, concerning Global Package Link, to the end of the listing.

Global Package Link

Description

Global Package Link to the United Kingdom (U.K.) provides the customer with three delivery options and with preparation by the Postal Service of the customs and delivery labels required by the British Post Office.

Delivery Options

Premium Service

The Postal Service will transport Premium packages to the U.K. by air. Once a package is dispatched from the customer's facility, it should clear Customs and be delivered in the U.K. by close of business on the third working day. The customer can track packages through delivery and reports on delivery performance are furnished to the customer in the formats and at the frequencies agreed upon by the Postal Service and the customer.

Standard Service

The Postal Service will transport Standard packages to the U.K. by air. Once a package is dispatched from the customer's facility, it should clear Customs and be delivered by close of business on the fourth working day. The customer can track packages through delivery and reports on delivery performance are furnished to the customer in the formats and at the frequencies agreed upon by the Postal Service and the customer.

Economy Service

The Postal Service will transport Economy packages to the U.K. by air. Once a package is dispatched from a customer's facility, it should clear Customs and be delivered by close of business the fifth or sixth working day. Tracking and tracing is available to the point of entry into the U.K. domestic mail stream.

Processing and Acceptance

Within 500 Miles of a Global Package Link Processing Facility

If the plant at which the customer's Global Package Link packages originate is located within 500 miles of a Global Package Link processing facility, the Postal Service will accept the packages at the customer's plant and transport them by truck to the Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

More than 500 Miles from a Global Package Link Processing Facility

If the customer's plant from which the Global Package Link packages will originate is located more than 500 miles from a Global Package Link processing facility, the customer can choose one of two processing options.

Option One: The customer will be required to present the packages to the Postal Service for verification at the customer's plant and transport them as a drop shipment to a Global Package Link processing facility according to a schedule agreed upon by the Postal Service and the customer.

Option Two: The customer will process the packages using Postal Service-provided computer system workstations and sort and prepare the packages as required by the Postal Service. Then, the Postal Service accepts the packages at the customer's plant and transports them by truck to

the nearest air mail facility according to a schedule agreed upon by the Postal Service and the customer. From the air mail facility, the Postal Service dispatches the Global Package Link packages to the U.K., bypassing a Global Package Link processing facility.

Required Package-Specific Information

Requirements are the same as those detailed in Section 626.3.

Insurance and Indemnity

Premium and Standard Services

Packages sent through the Premium or Standard Services are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, Premium and Standard packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in event of delay.

Economy Service

Packages sent through Economy Service may be insured at an additional cost. See 320.

Postage

General

The base rates for the three available delivery options are set forth below. These rates may be reduced by an annual discount depending on how many packages the customer mails to the U.K. using any of the three Global Package Link delivery options in a twelve month period.

Base Rates

The Postal Service will charge the base rates, in 1-pound increments, for the first 100,000 packages mailed by the customer during a 12-month period.

RATE REDUCTIONS

Number of packages	Percent discount
Up to 100,000	Base Rate.
100,001 and over	2%

GLOBAL PACKAGE LINK

Pounds to:	Base rates			For volumes > 100,000		
	Premium	Standard	Economy	Premium	Standard	Economy
1	13.87	11.17	9.95	13.59	10.95	9.75
2	15.21	12.46	11.19	14.90	12.21	10.97
3	16.54	13.75	12.43	16.21	13.47	12.18
4	17.88	15.04	13.67	17.52	14.73	13.39
5	19.21	16.32	14.91	18.83	16.00	14.61
6	20.55	17.61	16.15	20.14	17.26	15.82
7	21.88	18.90	17.39	21.44	18.52	17.04
8	23.71	20.18	18.63	23.24	19.78	18.25
9	25.08	21.47	19.87	24.58	21.04	19.47
10	26.63	22.76	21.11	26.09	22.30	20.66
11	28.00	24.05	22.35	27.44	23.57	21.90
12	29.37	25.33	23.59	28.79	24.83	23.11
13	30.96	26.62	24.82	30.34	26.09	24.33
14	32.34	27.91	26.06	31.70	27.35	25.54
15	33.96	29.20	27.30	33.28	28.61	27.76
16	35.35	30.48	28.54	34.64	29.87	27.97
17	36.99	31.77	29.78	36.25	31.13	29.19
18	38.66	33.06	31.02	37.88	32.40	30.40
19	40.61	34.35	32.26	39.80	33.66	63.62
20	42.04	35.63	33.50	41.20	34.92	32.83
21	43.47	36.92	34.74	42.60	36.18	34.05
22	44.90	38.21	35.98	44.00	37.44	35.26
23	46.33	39.49	37.22	45.40	38.70	36.48
24	47.76	40.78	38.46	46.81	39.97	37.69
25	49.19	42.07	39.70	48.21	41.23	38.91
26	50.62	43.36	40.94	49.61	42.49	40.12
27	53.44	44.64	42.18	52.37	43.75	41.34
28	54.91	45.93	43.42	53.81	45.01	42.55
29	56.38	47.22	44.66	55.25	46.27	43.77
30	57.85	48.51	45.90	56.69	47.54	44.98
31	59.31	49.79	47.14	58.13	48.80	46.20
32	60.78	51.08	48.38	59.57	50.06	47.41
33	62.25	52.37	49.62	61.01	51.32	48.63
34	63.72	53.65	50.86	62.45	52.58	49.84
35	65.19	54.94	52.10	63.88	53.84	51.06
36	66.66	56.23	53.34	65.32	55.10	52.27
37	68.13	57.52	54.58	66.76	56.37	53.48
38	69.59	58.80	55.82	68.20	57.63	54.70
39	72.45	60.09	57.06	71.00	58.89	55.91
40	73.94	61.38	58.30	72.46	60.15	57.13
41	75.44	62.67	59.54	73.93	61.41	58.34
42	76.94	63.95	60.77	75.40	62.67	59.56
43	78.44	65.24	62.01	76.87	63.94	60.77
44	79.93	66.53	63.25	78.33	65.20	61.99
45	81.43	67.82	64.49	79.80	66.46	63.20
46	82.93	69.10	65.73	81.27	67.72	64.42
47	84.42	70.39	66.97	82.74	68.98	65.63
48	85.92	71.68	68.21	84.20	70.24	66.85
49	87.42	72.96	69.45	85.67	71.51	68.0[illegible]

GLOBAL PACKAGE LINK—Continued

Pounds to:	Base rates			For volumes > 100,000		
	Premium	Standard	Economy	Premium	Standard	Economy
50	88.91	74.25	70.69	87.14	72.77	69.28
51	90.41	75.54	71.93	88.60	74.03	70.49
52	91.91	76.83	73.17	90.07	75.29	71.71
53	93.41	78.11	74.41	91.54	76.55	72.92
54	94.90	79.40	75.65	93.01	77.81	74.14
55	96.40	80.69	76.89	94.47	79.07	75.35
56	97.90	81.98	78.13	95.94	80.34	76.57
57	99.39	83.26	79.37	97.41	81.60	77.78
58	100.89	84.55	80.61	98.87	82.86	79.00
59	102.39	85.84	81.85	100.34	84.12	80.21
60	103.89	87.13	83.09	101.81	85.38	81.43
61	105.38	88.41	84.33	103.28	86.64	82.64
62	106.88	89.70	85.57	104.74	87.91	83.86
63	108.38	90.99	86.81	106.21	89.17	85.07
64	109.87	92.27	88.05	107.68	90.43	86.29
65	111.37	93.56	89.29	109.14	91.69	87.50
66	112.87	94.85	90.53	110.61	92.95	88.72

Size and Weight Limits

All packages must meet the following size and weight limits:

Size Limits

a. Minimum length and width: large enough to accommodate the necessary customs/delivery label on the address side.

b. Maximum length: 60 inches.

c. Maximum length and girth combined: 108 inches.

Weight Limit

Maximum weight: 66 pounds.

Customs

Customs Forms

Normally all necessary U.K. customs forms will be automatically generated by the Postal Service computer workstations. Packages mailed to the U.K. through a Global Package Link processing facility will not be required to bear customs forms when they are tendered to the Postal Service. The Postal Service will verify, accept, and transport these packages to a designated Global Package Link processing facility. After scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will print the necessary customs forms and then affix them to the customer's packages as part of the processing operation at the Global Package Link Processing Facility. However, during the interim period in which the Postal Service and the customer are working together to establish the information systems linkages to enable the Postal Service to accomplish this, the customer may be required to prepare the necessary customs forms on its own and affix the forms to the packages before tendering them to the Postal Service. In those cases where the computer workstations are located at the customer's plant and operated by customer employees, the USPS computer workstations will print the customs forms, and the customer will be required to affix these forms to the appropriate packages as instructed by the Postal Service prior to verification and acceptance of the mail.

Customs Clearance

The Postal Service has developed the Customs Pre-Advisory System (CPAS) as part of Global Package Link processing. This electronic system collects package-specific data to satisfy customs requirements as packages are processed using the USPS computer workstations located at either a Global Package Link facility or the customer's plant. The system electronically advises the USPS delivery agent and Customs in the U.K. of the contents of each package mailed. Since this advisory information arrives before the mail, CPAS facilitates and simplifies customs clearance. Electronic pre-notification of the package contents and automatic preparation of required customs declarations assures the fastest clearance through U.K. Customs and reduces costs for the customer and the Postal Service.

Preparation Requirements

Every package sent through Premium, Standard or Economy Service must bear a label identifying it as a Premium, a Standard or an Economy Service package. The customer is not normally required to affix this label. The Postal Service prints the necessary label and affixes it to the package. However, during the interim period in which the Postal Service and the customer are establishing the information systems linkages to enable the Postal Service to accomplish this, the customer is required to affix an alternative label as instructed by the Postal Service to every package.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–106 Filed 1–3–97; 8:45 am]

BILLING CODE 7710–12–P

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39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** on December 6, 1996 (61 FR 64618–64622). That rule announced minor amendments to mailing standards and updated references to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations under 39 CFR 111.1.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Berger, (202) 268–2859.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services; descriptions of the mail classes and special services and conditions governing their use; and

standards for rate eligibility and mail preparation. The final rule that is the subject of these corrections summarizes minor amendments to mailing standards and updated references to the contents of the DMM. As published, the final rule contains minor errors and omissions that do not accurately reflect the contents of the DMM. Accordingly, the publication on December 6, 1996, of the final rule, which was the subject of FR Doc. 96–31116, is corrected as set forth below:

§ 111.5 [Corrected]

1. On page 64620, in the third column, in § 111.5, on a separate line above the heading "A000 Basic Addressing", add the module heading "A—Addressing".

2. On page 64620, in the third column, in § 111.5, the table of contents entry "A920 Addressing Sequencing Service" is corrected to read "A920 Address Sequencing Services".

3. On page 64620, in the third column, in § 111.5, on a separate line above the heading "C000 General Information", add the module heading "C—Characteristics and Content".

4. On page 64621, in the first column, in § 111.5, on a separate line above the heading "D000 Basic Information", add the module heading "D—Deposit, Collection, and Delivery".

5. On page 64621, in the first column, in § 111.5, on a separate line above the heading "E000 Special Eligibility Standards", add the module heading "E—Eligibility".

6. On page 64621, in the first column, in § 111.5, on a separate line above the heading "F000 Basic Services", add the module heading "F—Forwarding and Related Services".

7. On page 64621, in the second column, in § 111.5, on a separate line above the heading "G000 The USPS and Mailing Standards", add the module heading "G—General Information".

8. On page 64621, in the second column, in § 111.5, on a separate line above the heading "L000 General Use", add the module heading "L—Labeling Lists".

9. On page 64621, in the second column, in § 111.5, on a separate line above the heading "M000 General Preparation Standards", add the module heading "M—Mail Preparation and Sortation".

10. On page 64621, in the third column, in § 111.5, on a separate line above the heading "P000 Basic Information", add the module heading "P—Postage and Payment Methods".

11. On page 64621, in the third column, in § 111.5, the table of contents entry "P760 Fist-Class or Standard Mail Mailings With Different Payment Methods" is corrected to read "P760 First-Class or Standard Mail Mailings With Different Payment Methods".

12. On page 64621, in the third column, in § 111.5, on a separate line above the heading "R000 Stamps and Stationery", add the module heading "R—Rates and Fees".

13. On page 64621, in the third column, in § 111.5, on a separate line above the heading "S000 Miscellaneous Services", add the module heading "S—Special Services".

14. On page 64621, in the third column, in § 111.5, on a separate line above the heading "I000 Information", add the module heading "I—Index Information".

15. On page 64621, in the third column, in § 111.5, the table of contents entry "1021 Forms Glossary" is corrected to read "I021 Forms Glossary".

16. On page 64622, in the first column, in § 111.5, the table of contents entry "1022 Subject Index" is corrected to read "I022 Subject Index".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–105 Filed 1–3–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH69–2–6680a; FRL–5646–2]

Approval and Promulgation of Air Quality Implementation Plans Ohio; Revision to the Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves submitted changes to Ohio's enhanced vehicle inspection and maintenance program (known as E-Check) as a revision to the State Implementation Plan (SIP) for ozone in all areas where the State's inspection and maintenance (I/M) program is operated. The EPA's action is based upon a request for a revision which was received by EPA from Ohio on August 29, 1996. The revision includes a vehicle repair spending cap and a temporary hardship extension of time for automobile owners with failed vehicles to perform necessary repairs on vehicles which fail the E-Check test. The repair spending cap does not affect vehicles which require repairs and are under manufacturer warranty; it also does not apply to owners whose vehicles have been mal-maintained or whose emission control devices have been tampered with. The extension of time applies to the automobile owner to which the immediate repair of the failed vehicle would present a hardship.

The changes to the E-Check program are the result of concerns expressed by citizens affected by the program in the areas where E-Check has been implemented, and by Ohio legislators representing them. The rule changes do not affect the emission reduction potential of the measure, and, therefore, do not affect the expected emission reductions in the maintenance plan for Cleveland and Dayton or in the 15 percent reasonable further progress plan for Cincinnati. Therefore, the EPA is approving the changes to the rule.

DATES: This action is effective March 7, 1997 unless adverse or critical comments are received by February 5, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (A–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and EPA's analysis are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (A–18J), Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Air Programs Branch, Regulation Development Section (A–18J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On August 29, 1996, the Director, Ohio Environmental Protection Agency, (Ohio EPA) submitted a revision to the previously approved [1] E-Check program. The submittal was reviewed for completeness and was found to meet all of the requirements of appendix V necessary to obtain EPA approval under section 110 of the Clean Air Act. The SIP revision included: copy of the rule changes, notice of public hearing, transcripts, analysis of impact, and

[1] Enhanced Motor Vehicle Inspection and Maintenance Program, 60 FR 16989, dated April 4, 1995.

responses to public comments. The legal authority was previously established, and a schedule for implementation was not required since the State had already begun to implement the changes. The revision, which is expected to provide for broader consumer acceptance of the E-Check program, is expressed in two of the State's rules: Ohio Administrative Code (OAC) 3745–26–01 and OAC 3745–26–12.

II. Analysis of State Submittal

The rule amendments include: broadening the definition of "extension certificate" which has the effect of providing a temporary hardship extension of time for qualified vehicle owners to perform necessary repairs on failed vehicles, and adds a vehicle repair spending cap. The amendments also define "low income" in the context of the E-Check program in order to qualify for the temporary hardship extension.

The Director of the Ohio EPA issued a notice to amend rule 3745–26–01 and rule 3745–26–12 which govern the E-Check I/M program in the 14 affected counties in the State. The rule amendments are intended to address the concerns of citizens affected by the I/M program and are a result of the opinions expressed by the public in the State's outreach program. Public hearings were announced and held in the three affected areas of Cincinnati, Cleveland and Dayton.

The USEPA reviewed the proposed amendments to determine the impact the changes will have on emissions in the affected areas. Further, the EPA reviewed the proposed changes for their impact on the maintenance plan in the Cleveland and Dayton areas and the 15 percent plan in the Cincinnati area. The amendments include a vehicle repair spending cap and a temporary hardship extension of time for automobile owners to perform necessary repairs on vehicles which fail the E-Check test. Neither of the changes have a direct impact on the emission reductions available from the program. The only emissions assessment method available at present is the MOBILE5a model. This model does not accommodate the program changes in this case and therefore changes in emissions, if any, cannot be determined by its use. Indirectly, the amendments may have some impact on the ability of the program to achieve total reductions expected as discussed below. However, there are no data available to show the effect of these indirect results.

The repair spending cap applies in situations where an automobile owner is required to obtain repairs because of failure of the vehicle to pass an I/M test. The spending cap, which is set at $300, represents the maximum dollar amount required to be spent for emission related repair. It includes the diagnostic fees, labor and parts, as well as any costs incurred prior to the test if performed within 60 days prior to the test and if related to the vehicle's emission control equipment. The spending cap does not include the cost of repair of tampering, nor does it include the cost of repair of any item covered by a dealer or manufacturer recall or warranty.

The temporary hardship extension is available to a vehicle owner whose vehicle fails the emissions test and meets certain criteria. The extension allows an extra six months from the date of the test to have the repairs performed. The hardship extension is not available for gas cap failures nor is it available for vehicles covered by warranty or if the failure is covered by a recall. The "low income" test is met if the applicant for a hardship extension can demonstrate the household income for the previous 12 months is not more than one-hundred fifty percent of the poverty threshold level established by the U.S. Department of Health and Human Services.

The Ohio EPA contacted EPA for assistance in assessing the impact of the amendments. However, the changes proposed by Ohio EPA do not lend themselves to assessment of emission impacts in the traditional manner using the MOBILE5a emission factor model. The extent of the temporary hardship extension cannot be accurately determined or estimated because Ohio EPA has no historical data with respect to the number of vehicle owners or lessees who would be eligible for this delay in compliance. However, the compliance extension is for a short duration relative to the compliance period, and vehicles in this category will eventually be repaired. Although delayed, vehicle emission reductions are assured. Further, the scarcity of available information on the number of vehicle owners who would take advantage of the limit to the spending cap prevents Ohio EPA from making a useful estimate of the effect on emissions. This spending cap does not affect vehicles which require repairs and are under manufacturer emissions warranty; it also, does not apply to owners whose vehicles have been mal-maintained or tampered. All tampering or mal-maintenance are to be repaired by the owner.

The EPA believes that the rule changes proposed by Ohio EPA will not have a significant impact on the emission reduction potential of the E-Check program and will improve citizen acceptability of this mobile source emission reduction program. The EPA finds there is good cause for this direct final approval to become effective thirty days from date of publication, and that a delayed effective date is unnecessary due to the noncontroversial nature of the changes.

III. Rulemaking Action

The EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. The changes were made to address concerns expressed by citizens and legislators in Ohio and are expected to be received favorably. Since this action is in response to previously expressed public concerns, no adverse comments are expected. However, EPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely significant adverse or critical comments are filed. The "direct final" approval shall be effective on March 7, 1997, unless EPA receives adverse or critical comments (which have not been already addressed) by February 5, 1997.

If EPA receives such comments adverse to or critical of the approval discussed above, EPA will publish a **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, EPA hereby advises the public that this action will be effective on March 7, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of

Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: October 16, 1996.

William E. Muno,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(112) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(112) On August 29, 1996, the United States Environmental Protection Agency received from the Ohio Environmental Protection Agency, changes to the approved vehicle inspection and maintenance (I/M) program which control the release of volatile organic compounds from vehicles. These changes provide a repair spending cap of $300 and a temporary hardship extension of time up to 6 months for owners to perform needed repairs on vehicles which fail the I/M program test.

(i) Incorporation by reference.

(A) Rule 3745–26–01—Definitions effective May 15, 1996.

(B) Rule 3745–26–12—Requirements for motor vehicle owners in the enhanced or opt-in enhanced automobile inspection and maintenance program, effective May 15, 1996.

[FR Doc. 97–194 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[LA–34–1–7300; FRL–5670–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of Classification; Approval of the Maintenance Plan; Redesignation of Pointe Coupee Parish to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 22, 1996, EPA simultaneously published a direct final notice of rulemaking and a notice of proposed rulemaking in which EPA published its decision to approve a revision to the Louisiana State Implementation Plan (SIP) to redesignate Pointe Coupee Parish to attainment for ozone. During the 30-day comment period, EPA received an adverse comment letter in response to the July 22, 1996, rulemaking. This final rule summarizes the comments and EPA's responses, and finalizes EPA's decision to correct the classification of Pointe Coupee Parish from a serious to a marginal ozone nonattainment area. This action also approves the redesignation of Pointe Coupee Parish, Louisiana to attainment for ozone.

EFFECTIVE DATE: This action is effective on December 20, 1996.

ADDRESSES: Copies of the State's request and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–

L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 1996, EPA published a direct final rulemaking approving a revision to the existing Louisiana SIP to redesignate Pointe Coupee Parish to attainment for ozone (61 FR 37833). At the same time that EPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (61 FR 37875). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking within 30 days of its publication. The EPA received a letter containing adverse comments regarding the direct final rule on August 21, 1996, and published the withdrawal of the direct final rule on September 25, 1996 (61 FR 50238).

The specific rationale EPA used to approve the redesignation of Pointe Coupee Parish to attainment for ozone was explained in the direct final rule and will not be restated here. This final rule addresses the comments received during the public comment period and announces EPA's final action regarding approval of the redesignation request.

II. Response to Public Comments

The EPA received an adverse comment letter dated August 21, 1996, from the Citizens Commission for Clean Air in the Lake Michigan Basin, and thus proceeded to withdraw the direct final rule and adequately address each comment. The EPA's responses to each comment are detailed below.

A. Comments on the Correction Action

Comment: The commenters challenge the authority of the Administrator under section 110(k)(6) of the Clean Air Act (the Act) to reclassify an ozone nonattainment area by asserting that the original classification was made in error. The EPA failed to pause and consider section 110(k)(6) in conjunction with section 107(d)(4)(A).

Response: The EPA disagrees with the commenter's contention that the Administrator exceeded her authority in correcting the classification of Pointe Coupee Parish from serious to marginal. Section 110(k)(6) of the Act clearly allows the Administrator to revise an area's classification when a determination is made that the original classification was made in error. Section 107(d)(4)(A) of the Act discusses nonattainment designations for ozone and carbon monoxide. Section 107(d)(4)(A)(iv) of the Act requires that the boundaries of any such area classified as serious, severe, or extreme nonattainment for ozone shall include the entire Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA), unless notice is received by the Administrator from the Governor of the State that additional time is necessary to evaluate the application of this clause. This notice must be received within 45 days of the initial classification. It should be noted that MSA and CMSA boundaries are established by the Bureau of the Census. Section 107(d)(4)(A)(v) of the Act further states that, in order to make a finding that a portion of the MSA or CMSA should be excluded from the nonattainment area boundaries, the Administrator should take into account such factors as population density, traffic congestion, commercial development, meteorological conditions, and pollution transport. The EPA agrees that these requirements must be considered when evaluating a proposed change to an existing MSA's or CMSA's boundary condition. As detailed in the July 22, 1996, **Federal Register**, EPA considered all of the aforementioned factors prior to making the decision to correct Pointe Coupee Parish's classification. However, it should be noted once again that Pointe Coupee Parish is not part of the Baton Rouge CMSA, and thus the requirements of 107(d)(4)(A)(iv) and 107(d)(4)(A)(v) of the Act do not demand our consideration when correcting this error under section 110(k)(6)of the Act.

B. Comments on the Urban Airshed Modeling (UAM) Study

Comment: The Baton Rouge UAM study utilized an outdated and underestimated biogenic volatile organic compound (VOC) inventory, which recent EPA modeling guidance and Ozone Transport Assessment Group (OTAG) participants concluded • warranted replacement with the Biogenic Emission Inventory System–2 (BEIS–2) inventory of biogenic VOCs. The Baton Rouge UAM study would likely not model nitrogen oxides (NO_x) reduction disbenefits if it incorporated the BEIS–2 inventory.

Response: Biogenic hydrocarbon emissions have been determined to play an important role in the chemistry of urban ozone formation, especially in warm southern cities. In light of this, the State developed the biogenic emission inventory for the Baton Rouge area based on area-specific data rather than using EPA BEIS–2 program. The area-specific land-use database used in the biogenic emission development was derived from four different sources: the Louisiana Department of Transportation and Development; a study of Baton Rouge's biogenic hydrocarbon emissions by Carlos Cardolino and William Chameides at the Georgia Institute of Technology using LANDSAT imagery; the U.S. Geological Survey's geo-ecology database; and the U.S. Forest Service's 1991 forest statistics for the southeast Louisiana parishes and forest statistics of south delta Louisiana parishes. The emission factors used in estimating biogenic emissions in the Baton Rouge area were obtained from the Rasmussen and Khalil and Zimmermann studies of biogenic sources. The emission factors from the Rasmussen and Khalil and Zimmermann studies were derived from direct measurements of various types of vegetation in the Baton Rouge and Tampa Bay, Florida areas, respectively.

In addition, the correction factors based on Guenther, *et. al.*, were used to adjust both temperature and solar radiation for isoprene, while the correction factors developed by Tingey, *et. al.*, were used to address temperature concerns for alpha-pinene and beta-pinene. The EPA believes this approach represents a site-specific approach which describes the VOC biogenic source inventory in Baton Rouge more accurately than BEIS–2.

Comment: The Baton Rouge UAM study lacked an updated chemistry component (CB–4). The EPA would be remiss in not reconsidering these improvements in UAM capability and reevaluating the accuracy of the Baton Rouge UAM study.

Response: The updated CB–4 has been developed for use with BEIS–2. As explained above, the Louisiana Department of Environmental Quality (LDEQ) developed its VOC biogenic inventory based on area-specific data instead of the BEIS–2 program. In addition, the updated chemistry component was not available at the time when LDEQ conducted the Baton Rouge UAM study.

Comment: It appears unreasonable for EPA to claim sufficient confidence in the accuracy of the Baton Rouge UAM study, that reliance upon it warrants reclassification of Pointe Coupee under section 110(k)(6) of the Act.

Response: The LDEQ used UAM version IV, an EPA-approved photochemical grid model, for reclassification of Point Coupee under section 110(k)(6) of the Act. The State has followed EPA guidance on the application of UAM. As required, the State performed quality assurance testing of model inputs and diagnostic testing of the base meteorological

episode simulation to ensure that the model functioned properly and that accurate results were obtained for the right reasons. The State applied a number of performance evaluation techniques such as diagnostic analyses to examine the effects of uncertainty and identify possible deficiencies in the model input. The sensitivity analysis investigated the sensitivity of the model to the various model inputs and ensured that the response of the model to changes in the inputs was physically realistic. In addition, the State conducted a model performance evaluation using graphical and statistical analyses to demonstrate that its model results acceptably replicated the historical ozone episodes.

Comment: The commenters believe that the Baton Rouge UAM study is equivocal and disputed by other peer-reviewed UAM studies and field research. The commenters cited a recent analysis prepared by ENVIRON Corporation which reviewed the Baton Rouge UAM study. This review commented that the model-predicted peak always occurred late in the afternoon (5 p.m.), whereas the observed peak occurred late in the morning (11 a.m. or noon). This suggested that there were meteorological and/or chemical phenomena occurring that were not being captured by the model.

Response: The mistiming of the observed peak with the simulated peak at one monitoring site is not as important a criterion in evaluating performance as the model's ability to simulate the concentrations of the observed peaks. The base case model simulations provided a good representation of the spatial and temporal characteristics of the episodes as a whole. There was good replication of the average ozone concentration throughout the entire domain and the observed peaks were well simulated. Model performance is judged by the overall statistics at all the monitoring sites, not by a microscale effect of the model being able to simulate the exact timing of the observed peak at one monitoring site. All EPA model performance criteria fell well within the limits established by EPA to judge model performance. The EPA has confidence in the accuracy of the UAM study and its results.

Comment: The commenters were concerned that the Baton Rouge UAM study excluded potentially significant contributions of ozone precursor emissions from Pointe Coupee in the Baton Rouge boundary conditions.

Response: The LDEQ selected a large modeling domain to ensure that it allowed resolution of ozone and precursor advection upwind and downwind of the area of interest. The Baton Rouge modeling domain covers all or part of 20 parishes in Louisiana, including Point Coupee Parish. The ozone precursor emissions from all the parishes in the Baton Rouge modeling domain were taken into consideration in the UAM study. The Baton Rouge boundary conditions were based on aircraft measurements, surface based measurements, and EPA-recommended background values.

C. Comments on the Redesignation Action

Comment: The commenters noted that between December 1, 1990, and June 1, 1995, EPA had approved approximately forty-one (41) redesignation requests nationwide. Several of these redesignated areas, such as Kansas City, Kansas/Missouri, Detroit, Michigan, San Francisco, California, Charlotte, North Carolina; Huntington-Ashland, West Virginia/Kentucky, and Grand Rapids violated the ozone standard after redesignation. The commenters state that the application of EPA's diluted redesignation guidance in reviewing these maintenance plans contributed to the violations. The commenters also noted that the Baton Rouge area observed 11 exceedances of the ozone standard in 1995.

Response: To date EPA has redesignated a total of 41 areas to attainment for ozone. Of these areas, only five (Detroit, Michigan, Memphis, Tennessee, San Francisco, California, Kansas City, Kansas-Missouri, and Lafourche Parish, Louisiana) subsequently monitored violations of the ozone standard. The EPA believes that this demonstrates that for the vast majority of instances the redesignation policy is appropriate, since most of the redesignated areas have not violated the ozone standard to date. Furthermore, the Act and Congress contemplated that such events may occur and therefore, required that the Administrator fully approve a maintenance plan for the area consistent with the requirements of section 175A of the Act before the area can be redesignated to attainment. Section 175A(d) of the Act requires that a maintenance plan contain contingency provisions deemed necessary by the Administrator to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area to attainment. Clearly, the Act and Congress anticipated that areas redesignated to attainment may violate the National Ambient Air Quality Standard (NAAQS) in the future and ensured that control measures to remedy the violation are available. Areas redesignated to attainment have approved maintenance plans with contingency measures that are and will be implemented in order to address any violations monitored in the area after redesignation. The maintenance plans for these areas were deemed appropriate and adequate for purposes of addressing a future violation as they were fully approved into the area's SIPs. Furthermore, if the contingency measures implemented by the State do not address future violations of the NAAQS, EPA has the authority to call for a plan revision requiring the adoption of additional control measures and/or redesignate the area to nonattainment which in turn would require the area to adopt and implement additional control measures appropriate for its classification. *See* sections 110(k)(5) and 107(d)(3).

Comment: The commenters state that EPA should stay approval of the redesignation until all specified Act requirements are met. Further, EPA should stay action on ozone redesignation requests from States participating in the OTAG until regional ozone precursor emission strategies are proposed and implemented.

Response: As discussed in the July 22, 1996, rulemaking action, EPA has identified five general criteria which must be met prior to any approval of a redesignation request. Redesignation requests which meet these five criteria have demonstrated compliance with the ozone standard and all the necessary requirements of the Act. As discussed in the July 22, 1996, rulemaking action, EPA believes that the Pointe Coupee Parish redesignation request has met all of the Act requirements and the redesignation criteria. Therefore, EPA is compelled to approve the request. However, it should be noted that redesignation to attainment does not necessarily preclude an area from any future control strategy developed by OTAG.

Comment: Exception was taken to the use of EPA's redesignation guidance, entitled *Reasonable Further Progress; Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* (Seitz memo), John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), dated May 10, 1995. The Pointe Coupee redesignation is exempted from sections 172(c)(2) and 172(c)(6) of the Act, apparently pursuant to the Seitz memo. The EPA apparently utilized the 1995 Seitz memo in determining that Pointe Coupee Parish had attained the ozone standard.

Response: The EPA's interpretation of the requirements of sections 172(c)(2) and (c)(6) of the Act was not based upon the May 10, 1995 Seitz memo, but rather upon the consistent rationale articulated much earlier in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498) and the guidance memorandum entitled *Procedures for Processing Requests to Redesignate Areas to Attainment* (Calcagni memo), dated September 4, 1992. As the Tenth Circuit recently observed:

> In that preamble, the Environmental Protection Agency determined that certain general nonattainment plan requirements do not apply in evaluating a request for redesignation to attainment under circumstances where (1) an area has in fact monitored attainment of the standard, and (2) those requirements are expressly linked by statutory language with the notion of reasonable further progress. *See* 57 FR 13564. The Environmental Protection Agency rezoned that when an area requests redesignation to attainment status, "at a minimum, the air quality data for the area must show that the area has already attained [the National Ambient Air Quality Standards]. Showing the State will make [reasonable further progress] towards attainment will, therefore, have no meaning at that point."

See 57 FR 13564. *Sierra Club* v. *EPA*, No. 95–9541 (10th Cir. November 13, 1996) Slip Opinion at 12–13.

Similarly, the General Preamble found that, with respect to section 172(c)(6)of the Act, "since attainment will have been reached, no other measures are needed to provide for attainment." *See* 57 FR 13564.

The Calcagni memo reiterated EPA's reading of sections 172 (c)(2) and (c)(6) of the Act. The Calcagni memo stated that "the requirements for reasonable further progress * * * and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard." *See* Calcagni memo at page 6.

The commenters cite the May 10, 1995, Seitz memo as the basis for EPA's interpretation that sections 172 (c)(2) and (c)(6) do not require area to adopt additional control strategies if that area has attained the standard. However, this cite is misdirected. Although the May 10, 1995, Seitz memo and determinations that rely upon it are "a logical extension of EPA's original, general interpretation of the 1990 Clean Air Act Amendments" *Sierra Club* v. *EPA*, supra at 13, the Seitz memo concerns provisions applicable to designations of moderate and above. Thus, EPA does not rely upon the Seitz memo here, but rather upon the longstanding rationale articulated in the General Preamble and the Calcagni memo.

Comment: The Administrative Procedures Act (APA) requires that "substantive rules of general applicability" be subjected to public comment before promulgation. The EPA's guidance interpreting section 107(d)(3)(E) of the Act's requirements constitutes substantive rules of general applicability and thus, required to be subjected to public comment.

Response: The EPA's reference to and reliance on guidance documents interpreting section 107(d)(3)(E) of the Act, all of which are either published or publicly available and a part of the record of the July 22, 1996, rulemaking and this rulemaking, is in no way illegal under provisions of either the Act or the APA. The commenters cite the APA's requirement that "substantive rules of general applicability" be published in the **Federal Register** and subject to public comment before promulgation. These documents do not purport to be anything but guidance. That is precisely why EPA instituted a notice and comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the Pointe Coupee reclassification and redesignation. The EPA explained the legal and factual basis for its rulemaking in the July 22, 1996, rulemaking and afforded the public a full opportunity to comment on EPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the APA.

Comment: The 1993 Nichols and 1995 Seitz memoranda are inconsistent with earlier redesignation guidance (General Preamble, Calcagni and Shapiro memoranda) pertaining to required SIP revisions for redesignations.

Response: The October 1994 Nichols memorandum and the May 1995 Seitz memorandum represented modifications of earlier policies. That does not necessarily mean these memoranda were by any means completely inconsistent with prior policies. For example, the May 1995 Seitz memorandum interpreted the more specific RFP requirements of section 182(b)(1) of the Act in a manner consistent with EPA's previous interpretation of the more general section 171 and 172 Act requirements. Furthermore, EPA notes that it is permissible to revise its policies provided that the revised policies, as is the case with these, are legally justified and reasonable.

Comment: Exempting marginal ozone nonattainment areas from compliance with applicable Title I, part D requirements, for purposes of facilitating redesignation requests for these areas is inconsistent and illegal under section 107(d)(3)(E) of the Act.

Response: The EPA has not exempted marginal ozone nonattainment areas from the applicable requirements of Title I, part D of the Act. As discussed in the July 22, 1996, rulemaking action, Pointe Coupee would be subject to the marginal requirements of section 182(a) of the Act rather than section 182(c) of the Act. Therefore, in order to be redesignated, the State must have met the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176 of the Act, as well as the applicable requirements of subpart 2 of part D. As explained in the July 22, 1996, **Federal Register** (61 FR 37835), EPA evaluated the redesignation request against those applicable part D requirements and determined that those requirements had been met.

D. Miscellaneous Comments

Comment: There is a strong argument that the Louisiana State and Local Air Monitoring Network is inadequate for Pointe Coupee Parish.

Response: The Air quality surveillance plan developed for the Baton Rouge area included Pointe Coupee Parish. The EPA evaluated the established air quality monitoring network and the surveillance plan against the 40 CFR part 58 Ambient Air Quality Surveillance requirements, determined its compliance with all applicable part 58 requirements, and approved the plan. The EPA performs annual reviews of this established air quality surveillance plan to ensure its continued compliance with part 58. The EPA believes that the current monitoring location in New Roads adequately represents ambient ozone levels in Pointe Coupee Parish.

III. Final Rulemaking Action

In this final action EPA is promulgating a revision to the Louisiana SIP and the Code of Federal Regulations, parts 52 and 81, to correct the classification of Pointe Coupee Parish from serious to marginal, and to redesignate the Parish to attainment for ozone. This redesignation request was submitted by the Governor to EPA by letter dated December 20, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific

technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified for signature by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air Pollution control, Designation of areas for air quality planning purposes.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(70) to read as follows:

§ 52.970 Identification of Plan.

* * * * *

(c) * * *

(70) The Louisiana Department of Environmental Quality submitted a redesignation request and maintenance plan for Pointe Coupee Parish on December 20, 1995. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

(i) *Incorporation by reference.* Letter dated August 31, 1995, from Mr. Gustave Von Bodungen, P.E., Assistant Secretary, Louisiana Department of Environmental Quality, transmitting a copy of the Pointe Coupee Parish maintenance plan for the EPA's approval.

(ii) *Additional material.* (A) Letter dated August 28, 1995, from Governor Edwin E. Edwards of Louisiana to Ms. Jane Saginaw, Regional Administrator, requesting the reclassification and redesignation of Pointe Coupee Parish to attainment for ozone.

(B) The ten year ozone maintenance plan, including emissions projections and contingency measures, submitted to EPA as part of the Pointe Coupee Parish redesignation request on December 20, 1995.

3. Section 52.975 is amended by adding paragraph (d) to read as follows:

§ 52.975 Redesignations and Maintenance Plans: Ozone.

* * * * *

(d) Approval—The Louisiana Department of Environmental Quality submitted a redesignation request and maintenance plan for Pointe Coupee Parish on December 20, 1995. The redesignation request and maintenance

plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.319, the ozone table is amended by revising the entry for the Baton Rouge area and by adding an entry for the Pointe Coupee area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish		Nonattainment		Serious.
East Baton Rouge Parish		Nonattainment		Serious.
Iberville Parish		Nonattainment		Serious.
Livingston Parish		Nonattainment		Serious.
West Baton Rouge Parish		Nonattainment		Serious.
* * *	*	*	*	*
Pointe Coupee Area:				
Pointe Coupee Parish	Dec. 20, 1996			

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–42 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–474]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act; Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order in WT Docket No. 96–148, the Commission adopts rules concerning geographic partitioning and spectrum disaggregation by broadband personal communications service (PCS) licensees. The rules adopted for broadband PCS will permit partitioning and disaggregation by all broadband PCS licensees. This will provide broadband PCS licensees with desirable flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve. Such flexibility will: facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; increase competition by allowing market entry by new entrants; and expedite the provision of service to areas that otherwise may not receive broadband PCS service in the near term.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This Report and Order in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on December 13, 1996, and released December 20, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 234, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Synopsis of Report and Order.

I. Background

1. The Commission's initial regulations and policies for broadband PCS were adopted in the Broadband PCS Second Report and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Second Report and Order, 58 FR 59174 (November 8, 1993) (Broadband PCS Second Report and Order), and amended in the Broadband PCS Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Memorandum Opinion and Order, 59 FR 32830 (June 24, 1994) (Broadband PCS Memorandum Opinion and Order). In the Broadband PCS Memorandum Opinion and Order, the Commission declined to adopt unrestricted geographic partitioning for broadband PCS based on its concern that licensees might use partitioning as a means of circumventing construction requirements. However, the Commission stated that it would consider the issue of geographic partitioning for rural telephone companies (rural telcos) and other designated entities in a future proceeding to establish competitive bidding rules for broadband PCS. The Commission then permitted broadband PCS geographic partitioning for rural telcos in the Competitive Bidding Fifth Report and Order, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1995) (Competitive Bidding Fifth Report and Order). The Commission observed that partitioning was one method to satisfy Congress' mandate to provide an opportunity for rural telcos to participate in the provision of broadband PCS. The Commission also found that rural telcos could take advantage of their existing infrastructure to provide broadband PCS services, thereby speeding service to rural areas. In the Competitive Bidding Further Notice of Proposed Rule Making, Implementation of Section

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309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Further Notice of Proposed Rule Making, 59 FR 41426 (August 12, 1994) (Competitive Bidding Further Notice of Proposed Rule Making), the Commission sought comment on whether to extend post-auction geographic partitioning of broadband PCS licenses to women- and minority-owned businesses.

2. Section 24.229(c) of the Commission's rules permits a broadband PCS licensee that has met its five-year construction requirement to disaggregate its licensed PCS spectrum after January 1, 2000. In the Broadband PCS Memorandum Opinion and Order, the Commission reasoned that this limit on spectrum disaggregation for broadband PCS would allow the PCS market to develop and prevent anti-competitive practices with regard to disaggregation.

3. The Commission believes that it is appropriate at this time to liberalize its rules to allow partitioning and disaggregation for broadband PCS. The rules adopted in the Report and Order will provide licensees with the flexibility to use their spectrum more efficiently, will increase opportunities for small businesses and other entities to enter into the broadband PCS market, and will speed service to underserved or unserved areas.

II. Discussion

A. Partitioning

1. License Eligibility

4. The Commission concludes that relaxing its PCS geographic partitioning rules, as discussed herein, will help to (1) remove potential barriers to entry thereby increasing competition in the PCS marketplace; (2) encourage parties to use PCS spectrum more efficiently; and (3) speed service to unserved and underserved areas. Parties that were unsuccessful bidders or that did not participate in the PCS auctions will be able to use partitioning as a method to acquire PCS licenses after the auctions. Smaller or newly-formed entities, for example, may enter the PCS market for the first time through partitioning. Under the prior rules, such entities would have been unable to qualify for partitioning because of the Commission's rural telco restriction. By eliminating that restriction, these entities will be able to negotiate for licenses for portions of the original service area at a cost that is proportionately less than that of the full geographic market.

5. The Commission also finds that increasing the number of parties that may obtain partitioned PCS licenses will lead to more efficient use of PCS spectrum and will speed service to underserved or rural areas. PCS licensees will be able to partition portions of their markets to entities more willing to serve niche markets instead of postponing service to those areas. The Commission believes that retaining the existing partitioning restrictions, as recommended by the rural telco commenters, would prevent additional small businesses and other entities from using partitioning to enter the broadband PCS market. In addition, restricting the number of parties that are eligible for partitioned PCS licenses only serves to unreasonably reduce the number of potential entrants into the PCS marketplace without any corresponding public interest benefit.

6. The rural telco commenters claim that changing the current partitioning rules would be inconsistent with the mandate set forth in Section 309(j)(3)(B) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 309(j)(3)(B), to ensure that licenses are disseminated among a wide variety of applicants including rural telcos. They contend that partitioning was the sole means by which the Commission sought to fulfill the mandate of Section 309(j)(3)(B) of the Communications Act, 47 U.S.C. 309(j)(3)(B) for rural telcos. The Commission disagrees. Rural telcos are able to take advantage of the special provision for small businesses the Commission designed in its auction rules to obtain licenses in the entrepreneur block auctions. Furthermore, Sections 309(j)(3)(A), (B), and (D) of the Communications Act, 47 U.S.C. 309(j)(A), (B) & (D), direct the Commission to further the rapid deployment of new technologies for the benefit of the public including those residing in rural areas, to promote economic opportunity and competition, and to ensure the efficient use of spectrum. While encouraging rural telco participation in PCS service offerings is an important element in meeting these goals, Congress did not dictate that this should be the sole method of ensuring the rapid deployment of service in rural areas. The Commission concludes that allowing open partitioning will further the goals of Section 309(j)(3) of the Communications Act, 47 U.S.C. 309(j)(3), by allowing PCS licensees to partition to multiple entities within their markets rather than limiting partitioning to a small number of rural telcos.

7. The rural telcos argue further that they will not be able to compete for partitioned PCS licenses unless the Commission retains its current restriction because PCS licensees will be unwilling to partition their licenses to rural telcos and will choose to partition to Commercial Mobile Radio Service (CMRS) providers with greater financial resources. The rural telco commenters also argue that they relied to their detriment upon the current partitioning restrictions when devising their business plans and that many of them chose not to participate in the broadband PCS auctions because they believed that they would be the only parties that could obtain partitioned PCS licenses. The Commission is unpersuaded that its action herein will harm the rural telcos' business plans. Under the new rules adopted herein, rural telcos will be fully able to obtain partitioned PCS licenses, as they were previously. Moreover, in many instances, rural telcos are likely to be in a superior position to obtain partitioned licenses.

8. The Commission declines to adopt the rural telcos' proposal to require a right of first refusal. Granting the rural telcos a right of first refusal would limit the number of parties that could obtain partitioned PCS licenses which would be at odds with the Commission's goals of encouraging participation in the PCS marketplace by as many parties as possible and reducing barriers to entry for small businesses. The Commission finds that increasing the number of potential entities that can acquire partitioned PCS licenses will result in better service and increased competition which may result in lower prices for PCS service.

9. The Commission also finds that the right of first refusal would be difficult to administer and could discourage partitioning. The area proposed in a partitioning agreement may not coincide exactly with the area for which a rural telco would have a right of first refusal or a single partitioning transaction may encompass more than one rural telcos' service area. In those cases, the consent of multiple rural telcos would be required before a partitioning transaction could be consummated. Additionally, a partitioning agreement may be part of a larger assignment transaction. If a rural telco were to exercise its right of first refusal to acquire the partitioned area, it may not be possible to separate out the partitioning agreement to stand on its own and the entire assignment transaction could not be consummated.

2. Available License Area, Restrictions on Timing of Partitioning, and Matters Related to Entrepreneur Block Licensees

a. *License Area.* 10. The Commission is persuaded by the commenters' arguments that limiting geographic partitioning of PCS licenses to those areas defined by county lines may not be reflective of market realities and may otherwise inhibit partitioning. As the commenters note, parties seeking a partitioned license may not desire to serve an entire county but rather a smaller niche market. The Commission believes that permitting partitioning along any service area defined by the partitioner and partitionee is the most logical approach, provided they submit sufficient information to the Commission to maintain its licensing records. This will be the rule for all parties, including rural telcos.

11. Partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every 3 seconds along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service or Economic Area) or (2) county lines are followed. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants may also supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where an FCC recognized service area or county lines are being utilized, applicants need only list the specific area(s) (through use of FCC designations) or counties that make up the newly partitioned area. Allowing partitioning along any agreed-upon service area will provide an opportunity for PCS licensees to design flexible and efficient partitioning agreements. By providing such flexibility to licensees for determining partitioned areas, the Commission will permit the market to decide the most suitable service areas.

b. *Non-entrepreneur block licenses.* 12. The Commission concludes that the public interest will be served by allowing non-entrepreneur block licensees to freely partition their licenses to any other qualifying entity following the issuance of the license. Since non-entrepreneur block licensees are permitted to assign their entire license after grant, the Commission finds they should be able to assign a portion of their license following the issuance of their license. PCS licensees will be permitted to partition their licensed market areas without limitation on the overall size of the partitioned areas consistent with the Commission's rules.

c. *Entrepreneur block licenses.* 13. The Commission will permit entrepreneur block PCS licensees to partition at any time to other parties that would be eligible for licenses in those blocks. Partitioning of entrepreneur block license areas to non-entrepreneurs will not be permitted for the first five years of an entrepreneur block license term. This restriction is necessary in order to ensure that entrepreneurs do not circumvent the Commission's restrictions on full license transfers by attempting to immediately partition a portion of their licenses to non-entrepreneurs.

14. The Commission finds that its unjust enrichment requirements should be applied if an entrepreneur block licensee partitions a portion of its license area to a non-entrepreneur, after the initial five-year license term. The Commission will apply its unjust enrichment rules to transactions where entrepreneurs obtain partitioned licenses from other entrepreneurs and subsequently seek to assign their partitioned license to a non-entrepreneur. The Commission will also apply the unjust enrichment provisions to an entrepreneur block licensee that qualifies as a small business who partitions to an entity that satisfies the entrepreneur block eligibility criteria but is not a small business that would be eligible for bidding credits or installment payments.

15. The Commission will use population as the objective measure to calculate the relative value of the partitioned area for determining all of its unjust enrichment obligations. Population will be calculated based upon the latest census data.

16. In partitioning cases involving installment payments, the Commission finds that separating the payment obligations and default provisions of the original licensee and partitionee is the best approach because it reduces each party's risk and creates payment obligations that can be enforced separately against the defaulting party without adversely affecting the other licensee. The Commission adopts the following rules to address the various combinations of parties and the relative obligations for each in the event an entrepreneur seeks to partition its license:

(a) *No Continued Installment Payments.* When an entrepreneur block licensee with installment payments partitions its license after the five-year holding period to a party that would not qualify for installment payments under our rules or to an entity that does not desire to pay for its share of the license with installment payments, the Commission will first apportion the percentage of the remaining government obligation (including accrued and unpaid interest calculated on the date the partial assignment application is filed) between the partitionee and original licensee based upon the ratio of the population of the partitioned area to the population of the entire original licensed area. Under this procedure, both parties will be responsible to the U.S. Treasury for their proportionate share of the balance due including accrued and unpaid interest calculated on the date the partial assignment application is filed. The Commission will require, as a condition of grant of the partial assignment application, that the partitionee pay its entire *pro rata* amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The partitioner will receive new financing documents (promissory note and security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the partitioner's existing financing documents which will be marked "superseded" and returned to the licensee upon receipt of the new financing documents. The original interest rate, established at the time of the issuance of the initial license in the market, will continue to be applied to the partitioner's portion of the remaining government obligation. The Commission will require, as a further condition to approval of the partial assignment application, that the partitioner execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. A

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default on an obligation will only affect that portion of the market area held by the defaulting party. The payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

(b) *Partitioning With Continued Installment Payments.* Where both parties to the partitioning arrangement qualify for installment payments under § 24.720(b)(1), 47 CFR 24.720(b)(1), the Commission will permit the partitionee to make installment payments on its portion of the remaining government obligation. Partitionees are free, however, to make a lump sum payment of their *pro rata* portion of the remaining government obligation within 30 days of the Public Notice conditionally granting the partial assignment application. Should a partitionee choose to make installment payments, the Commission will require, as a condition to approval of the partial assignment application, that both parties execute financing documents (promissory note and security agreement) agreeing to pay the U.S. Treasury their pro rata portion of the balance due (including accrued and unpaid interest on the date the partial assignment application is filed) based upon the installment payment terms for which they would qualify. These documents must be executed and returned to the U.S. Treasury within 30 days of the Public Notice conditionally granting the partial assignment application. Either party's failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The original interest rate, established at the time of the issuance of the initial license in the market, will apply to both parties' portion of the remaining government obligation. Each party will receive a license for its portion of the market area and each party's financing documents will provide that a default on its obligation would only affect their portion of the market area. These payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

3. Construction Requirements

17. The Commission will adopt two alternative construction options for broadband PCS partitioning. Under the first option, the partitionee certifies that it will satisfy the same construction requirements as the original licensee. The partitionee then must meet the same five- and ten-year service requirements as the original 10 MHz or 30 MHz licensee in its partitioned area, while the partitioner remains responsible for meeting those requirements in the area it has retained. Under the second option, the partitioner certifies that it has already met or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire market. Because the partitioner retains the responsibility for meeting the construction requirements for the entire market, the partitionee will only be required to meet the substantial service requirement for its partitioned area at the end of the ten-year license term. The definition of substantial service will be that definition found at § 24.16(a) of the rules, 47 CFR 24.16(a). If a partitionee fails to meet its construction requirements, the license for the partitioned area will automatically cancel without further Commission action.

18. At the five- and ten-year benchmarks, partitionees are required to file supporting documentation showing compliance with the construction requirements. Licensees failing to meet the coverage requirements will be subject to forfeiture, license cancellation, or other penalties.

B. Disaggregation

1. Timing of Disaggregation

19. The Commission concludes that disaggregation of broadband PCS spectrum should be allowed prior to January 1, 2000, and that the condition that the licensee must first satisfy the five-year build out requirement before disaggregating should be eliminated. To the extent that disaggregation would enable other entities to provide broadband PCS within geographic market areas, the Commission finds that allowing immediate disaggregation would encourage rather than impede competition by enabling the entry of new competitors. Moreover, the current prohibition on disaggregation may constitute a barrier to entry for small businesses that lacked the resources to participate successfully at auction for 30 MHz and 10 MHz spectrum blocks. In furtherance of the mandate prescribed by Section 257 of the Communications Act, the Commission is eliminating such market entry barriers by permitting non-entrepreneur block (A, B, D, and E block) PCS licensees to disaggregate spectrum at any time to other entities with minimum eligibility qualifications. Entrepreneur block (C and F block) licensees may disaggregate at any time to other entrepreneurs, or to non-entrepreneurs after a five-year holding period. While the Commission concludes that disaggregation should generally be allowed, it emphasizes that all proposed disaggregation agreements, like partitioning agreements, will be subject to Commission review and approval under the public interest standard of Section 310 of the Act. In addition, as discussed below, disaggregatees will be subject to the CMRS spectrum cap to ensure that disaggregation is not used to accumulate large amounts of spectrum in order to preclude entry by other competitors.

2. Amount of Spectrum to Disaggregate

20. The Commission concludes that there should be no restriction on the amount of broadband PCS spectrum that can be disaggregated. Providing the flexibility to allow parties to decide the exact amount of spectrum to be disaggregated is preferable because it will encourage more efficient use of spectrum and will permit the deployment of a broader mix of service offerings, leading to a more competitive wireless marketplace. The Commission finds that requiring parties to obtain disaggregated spectrum in a predetermined amount, such as a block of 1 MHz, may result in parties obtaining more spectrum they need, leaving some spectrum unused, and may foreclose some parties from using disaggregation as a means of obtaining the spectrum they need to provide their service offerings. Therefore, the Commission will not restrict the amount of broadband PCS spectrum that can be disaggregated. Similarly, it will not require the disaggregator to retain a minimum amount of spectrum.

21. The Commission is not adopting a limit on the maximum amount of spectrum that licensees may disaggregate, provided that the disaggregatee complies with the CMRS spectrum cap. The Commission finds no evidence at this time that a maximum limitation for disaggregation is necessary. PCS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with the rules.

3. Matters Relating to Entrepreneur Block Licensees

22. In keeping with the proposals the Commission is adopting for partitioning, it will permit entrepreneur block licensees to disaggregate at any time to other parties that qualify as entrepreneurs. Disaggregation to entities that do not qualify as entrepreneurs is not permitted for the first five years of a license term. Allowing unrestricted entrepreneur block disaggregation

would be inconsistent with the five-year restriction on full license transfers to non-entrepreneurs which was designed to ensure that entrepreneurs do not take advantage of special entrepreneur block provisions by immediately seeking to transfer their licenses to non-entrepreneurs. The Commission believes the same rationale would apply to entrepreneur block disaggregation, as licensees who have benefited from such provisions could immediately disaggregate spectrum to parties that would not qualify for such benefits.

23. The Commission declines to permit entrepreneur block licensees to swap equivalent blocks of entrepreneur spectrum with non-entrepreneurs within the same market area. The administrative burden of keeping track of such arrangements would far outweigh any benefit to the public.

24. The Commission will follow the approach outlined for partitioning and apply unjust enrichment payments to entrepreneur block licensees that disaggregate to non-entrepreneurs after the five-year holding period and to entrepreneur block licensees that qualified for bidding credits and installment payments and that disaggregate to other entrepreneurs that would not have qualified for such benefits. All such unjust enrichment payments will be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum retained by the original licensee. With respect to disaggregation from an entrepreneur block licensee to another entrepreneur that would also qualify for installment payments, the Commission adopts an approach similar to the one it adopted for partitioning. The Commission will apportion the payment obligations between the disaggregator and disaggregatee based upon the amount of spectrum disaggregated and require separate payment obligations, promissory notes and default liabilities for each party.

4. Construction Requirements

25. The Commission concludes that the proposed construction requirements for disaggregation set forth in the NRPM would be inconsistent with the approach adopted in its partitioning rules, and that a more flexible approach is appropriate. Because the rules do not dictate a minimum level of spectrum usage by the original PCS licensee, the Commission believes it would be inconsistent to impose separate construction requirements on both disaggregator and disaggregatee for their respective spectrum portions. At the same time, the Commission wishes to ensure that the parties do not use disaggregation to circumvent its underlying construction requirements. Therefore, the Commission adopts a flexible approach analogous to its approach in the partitioning context: to retain the underlying five- and ten-year construction requirements for the spectrum block as a whole, but allow either party to meet the requirements on its disaggregated portion. Thus, a PCS licensee who disaggregates a portion of its spectrum may elect to retain responsibility for meeting the five- and ten-year coverage requirements, or it may negotiate a transfer of this obligation to the disaggregatee. In either case, the rules ensure that the spectrum will be developed to at least the same degree that was required prior to disaggregation.

26. To ensure compliance with the rules, the Commission will require that parties seeking Commission approval of a disaggregation agreement include a certification as to which party will be responsible for meeting the applicable five- and ten-year construction requirements. Parties may also propose to share the responsibility for meeting the construction requirements. The specific requirements to be met will depend on whether the spectrum being disaggregated was originally licensed as a 30 MHz block or a 10 MHz block. In the event that only one party agrees to take responsibility for meeting the construction requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected. Should both parties agree to share the responsibility for meeting the construction requirements and either party later fails to do so, both parties' licenses will be subject to forfeiture. So that the CMRS rules remain consistent and competitively neutral, disaggregatees that already hold a broadband PCS license or other CMRS license in the same geographic market will be subject to the same coverage requirements as disaggregatees who do not hold other licenses for disaggregated spectrum.

C. Related Matters

1. Combination of Partitioning and Disaggregation

27. To allow parties flexibility to design the types of agreements they desire, the Commission will permit combined partitioning and disaggregation. For example, this will allow a party to obtain a license for a single county of an A block market with only 15 MHz of spectrum. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying the unjust enrichment requirements and/or for calculating obligations under installment payment plans, when a combined partitioning and disaggregation is proposed, the Commission will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.

2. Licensing

28. The Commission will follow existing partial assignment procedures for broadband PCS licenses in reviewing requests for geographic partitioning, disaggregation, or a combination of both. Such applications will be placed on Public Notice and will be subject to petitions to deny. A licensee will be required to file an FCC Form 490 that is signed by both the licensee and the qualifying entity. With respect to partitioning, the FCC Form 490 must include the attachment defining the partitioned license area and an attachment demonstrating the population of the partitioned license area. Partial assignment applications that are filed seeking partitioning or disaggregation in the entrepreneur blocks must include an attachment demonstrating compliance with the five year entrepreneur block holding period. The qualifying entity will also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 must be filed by the qualifying entity to receive authorization to operate in the market area being partitioned or to operate the disaggregated spectrum or to modify an existing license of the qualifying entity to include the new/additional market area being partitioned or the spectrum that is disaggregated. Any requests for a partitioned license or disaggregated spectrum must contain the FCC Forms 490, 430, and 600 and be filed as one package under cover of the FCC Form 490.

29. The 45 MHz CMRS spectrum cap contained in Section 20.6 of the rules applies to partitioned license areas and disaggregated spectrum.

3. License Term

30. The Commission will allow partitionees and disaggregatees to hold their licenses for the remainder of the original licensee's ten-year license term. Partitionees and disaggregatees may also earn a renewal expectancy on the same basis as other PCS licensees.

31. The Commission will not permit an existing broadband PCS licensee acquiring a partitioned license or disaggregated spectrum in a market in

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which it is already a licensee to apply its original license term to the partitioned license or spectrum. Such a proposal would be burdensome to administer because the processing staff would be required to determine the licensee's other licenses in the market and calculate the correct expiration date for the partitioned or disaggregated license. The Commission finds that such an administrative burden would outweigh the benefit that may result from such a proposal.

4. Technical Rules

32. The Commission finds that its existing technical rules are sufficient for application in the partitioning and disaggregation contexts and that no additional technical rules are required at this time. Should technical difficulties arise, however, the Commission will take whatever action is necessary to alleviate any technical or interference problems that result from partitioning or disaggregation, including appropriate modifications to its technical rules.

5. Microwave Relocation

33. The Commission concludes that partitionees and disaggregatees should be treated the same as all other PCS licensees with respect to microwave relocation issues. In particular, partitionees will have the same rights and obligations as other broadband PCS licensees under the cost-sharing plan adopted in Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95–157, Report and Order and Further Notice of Proposed Rulemaking, 61 FR 24470 (May 15, 1996). Thus, partitionees and disaggregatees may seek reimbursement under the plan if they relocate incumbents and they will be required to pay their share of microwave relocation costs if they benefit from the spectrum-clearing efforts of another party, according to the cost-sharing formula adopted by the Commission.

34. The Commission declines to require that the original PCS licensee guarantee payments under the cost-sharing plan by the partitionee or disaggregatee. To require licensees to guarantee such payments would be unfair because the original licensees would have no control over the actions of the partitionees and disaggregatees.

6. Clearinghouse for Spectrum

35. The Commission declines to create a Commission-based resource of information, but will continue to make available, in a user-friendly manner, information contained in its existing databases, concerning geographic areas open to partitioning and spectrum that would be available through disaggregation. Although a few entities offered to serve as commercial clearinghouses of PCS spectrum information, the Commission declines to establish an official Commission clearinghouse.

VI. Conclusion

36. The partitioning and disaggregation proposals the Commission has adopted are consistent with a pro-competitive policy framework. These rules will eliminate barriers to entry for small businesses seeking to enter the PCS marketplace and will promote the rapid creation of a competitive market for the provision of PCS services. These rules also meet the Congressional objectives to further the rapid development of new technologies for the benefit of the public including those residing in rural areas, without administrative delay, to promote economic opportunity and competition, and to ensure that new technologies are available by avoiding excessive concentration of licenses.

VII. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary

As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NRPM) in WT Docket No. 96–148. The Commission sought written public comment on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

Need for and Purpose of this Action

In this Report and Order the Commission modifies the broadband PCS rules to permit partitioning and disaggregation for all Part 24 licenses. The proposals adopted herein also implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D) and to reduce entry barriers for small businesses in accordance with 47 U.S.C. 257. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision of broadband PCS service without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring less than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis

Only one commenter, National Telephone Cooperative Association (NTCA), submitted comments that were specifically in response to the IRFA. NTCA argues that the Commission is required under the RFA to identify significant alternatives to the proposed rules in order to accomplish the stated objectives of Sections 309(j) and 257 of the Communications Act of 1934, as amended (Communications Act). Specifically, NTCA argues that the Commission must consider the right of first refusal approach suggested by some commenters as an alternative to allowing open partitioning of PCS licenses and how it might minimize significant economic impacts on rural telcos. NTCA contends that, for the purposes of determining which businesses are to be included in an RFA analysis, the Commission should adopt the U.S. Small Business Administration's (SBA) definition of small business, which is any company with fewer than 1,500 employees.

In the Report and Order, significant alternatives were identified and considered in order to further the mandates of Sections 309(j) and 257 of the Communications Act. In addition, significant consideration was given to the rural telcos' right of first refusal approach for partitioning; however, the Commission concluded that such an approach was unworkable and would actually discourage partitioning. Finally, the Commission declined to adopt NTCA's suggestion to utilize the SBA definition of small business (businesses with fewer than 1,500 employees). As noted below, the existing definition of small business (firms with revenues of less than $40 million in each of the last three years) was used in the PCS C-Block auction and was approved by the SBA. The Commission also notes that it has found incumbent LECs to be "dominant in their field of operation" since the early 1980's, and it has consistently certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas.

Description and Number of Small Entities Involved

The rules adopted in the Report and Order will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding broadband PCS licenses who choose to partition and/or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation. The rules will also affect rural telephone companies which, under the current rules, have the exclusive right to obtain partitioned broadband PCS licenses. Small businesses will be defined for these purposes as firms that have revenues of less than $40 million in each of the last three calendar years. This definition was used in the PCS C-Block auction and approved by the SBA. The definition of rural telephone company shall be that definition found at § 24.720(e) of the rules, 47 CFR 24.720(e).

The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has auctioned broadband PCS licenses in blocks A, B, and C. The Commission does not have sufficient information to determine whether any small businesses within the SBA-approved definition bid successfully for licenses in the A or B block PCS auctions. There were 89 winning bidders that qualified as small businesses in the C block PCS auctions. Based upon this information, the Commission concludes that the number of broadband PCS licensees affected by the rules adopted herein includes the 89 winning bidders that qualified as small entities in the block C broadband PCS auctions.

The Commission anticipates that a total of 10,370 PCS licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning and/or disaggregation. This estimate is based on the total number of broadband PCS licenses auctions and subject to auction, 2,074, and the Commission's estimate that each license would probably not be partitioned and/or disaggregated to more than five parties. Currently, the C and F block licensees and potential licensees (holding a total of 986 licenses) must be small businesses or entrepreneurs with average gross revenues over the past three years of less than $125 million. Under the rules adopted in the Report and Order, they will be permitted to partition and/or disaggregate to other qualified entrepreneurs at any time and to non-entrepreneurs after the first five years of their license term. The A, B, D, and E block licensees and potential licensees (holding a total of 1,088 licenses) will also be permitted under the proposed rules to partition and/or disaggregate to small businesses.

The Commission is presently conducting auctions for the D, E, and F blocks of broadband PCS spectrum. The Commission anticipates that a total of 1,479 licenses will be awarded in the D, E, and F block PCS auctions. Eligibility for the F block licenses is limited to entrepreneurs with average revenues of less than $125 million. It is not possible to estimate the number of licenses that will be awarded to small businesses in the F block nor is it possible to estimate how many small businesses will win the D or E block licenses. The Commission believes that it is possible that small businesses will constitute a significant number of the up to 10,370 PCS licensees or potential licensees who could take the opportunity to partition and/or disaggregate or who could obtain a license through partitioning and/or disaggregation.

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

The rules adopted in the Report and Order will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be given in a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Form 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

Steps Taken To Minimize Burdens on Small Entities

The rules adopted in the Report and Order are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

Allowing non-restricted partitioning of PCS licenses will facilitate market entry by parties who may lack the financial resources for participation in PCS auctions, including small businesses. Some small businesses may have been unable to be winning bidders at the PCS auctions due to high bidding and would have been unable to qualify for partitioning because of our current restriction which permits partitioning of PCS licenses to only rural telephone companies (rural telcos). By eliminating this restriction, small businesses will be able to obtain partitioned PCS licenses for smaller service areas at presumably reduced costs, thereby providing a method for small businesses to enter the PCS marketplace.

Similarly, allowing immediate disaggregation of PCS licenses will facilitate the entry of new competitors to the provision of PCS services, many of whom will be small businesses seeking to acquire a smaller amount of PCS spectrum at a reduced cost.

Allowing geographic partitioning of PCS licenses by services areas defined by the parties rather than only by county lines will provide an opportunity for small businesses to obtain partitioned PCS license areas designed to serve smaller, niche markets. This will permit small businesses to enter the PCS marketplace by reducing the overall cost of acquiring a partitioned PCS license.

Allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of PCS spectrum tailored to meet the needs of their proposed service.

The Commission's proposals to allow non-entrepreneur block licensees to partition or disaggregate to any party and to allow entrepreneurs to partition or disaggregate to other entrepreneurs at any time and to non-entrepreneurs after a five year holding period will significantly increase the opportunities for small businesses to enter the PCS marketplace. Allowing entrepreneur partitionees and disaggregatees to pay their proportionate share of the remaining government obligation through installment payments will provide a further opportunity for small

businesses to participate in the provision of PCS services.

The Commission's decision to allow partitioning parties to choose between two construction requirements will provide small businesses with more flexibility to construct their systems at a rate that is determined by market forces, thus allowing them to conserve their resources.

Significant Alternatives Considered and Rejected

The Commission considered and rejected a number of alternative proposals concerning partitioning and disaggregation.

The rural telephone companies (rural telcos) argued that the Commission should either retain the current partitioning restriction or adopt a right of first refusal approach that would require partitioning parties to notify the rural telco and offer it the partitioned license area under similar terms and conditions. The Commission found that retaining the current partitioning restriction would prevent small businesses from using partitioning to enter the broadband PCS market. Since retaining the partitioning restriction would constitute a significant barrier to entry for small businesses, the Commission declined to continue to limit partitioning to rural telcos.

The Commission found that the right of first refusal would be difficult to implement and could discourage partitioning. Areas proposed in partitioning agreements may not coincide exactly with areas for which a rural telco may have a right of first refusal. A single partitioning transaction may encompass more than one rural telco's service area, or a partitioning agreement may be part of a larger assignment transaction. Parties would be unwilling to enter into partitioning agreements not knowing how much of an area would ultimately be partitioned or whether they could consummate the transaction. This determination will make it easier for non-rural-telcos, including some small business entities, to enter partitioning agreements.

The Commission declined to adopt the proposal set forth in the NPRM to limit partitioning to areas defined by county lines. The Commission was convinced by the majority of commenters that geographic partitioning along county lines is too restrictive. The Commission found that parties seeking a partitioned license may not desire to serve an entire county but rather a smaller niche market. Therefore, the Commission found that allowing partitioning along service areas defined by the parties would allow the parties to design flexible partitioning agreements.

The Commission rejected proposals to permit partitioning and disaggregation during the first five years of an entrepreneur's license term. While allowing entrepreneurs to immediately partition or disaggregate to non-entrepreneurs may have resulted in additional entities participating in the provision of PCS services, the Commission concluded that the five year holding period restriction is necessary in order to ensure that entrepreneurs do not take advantage of the special entrepreneur block benefits by immediately partitioning a portion of their licenses or disaggregating a portion of their spectrum to parties that would not have qualified at auction, on their own merits, for such benefits. Furthermore, limiting partitioning and disaggregation during the first five years of an entrepreneur's license term will increase the possibility that small businesses will be able to acquire PCS licenses.

The Commission declined to adopt proposals to apply a new license term to partitioned license areas and disaggregated spectrum. Under this approach, entities obtaining partitioned licenses or disaggregated spectrum would receive a new ten-year license term beginning from the date the Commission approved the partitioning or disaggregation. The Commission found that permitting parties to "re-start" their license term would effectively allow a licensee to extend its license term and could lead to circumvention of our license term rules.

The Commission rejected the proposal to require disaggregation of broadband PCS spectrum in blocks of 1 MHz of paired frequencies (500 kHz plus 500 kHz). The Commission found that requiring parties to obtain that large a block of spectrum could act as a barrier to entry for entities that do not require that much spectrum to provide service.

Finally, the Commission declined the proposal put forth by some commenters that PCS licensees be required to assume the obligations and responsibilities for microwave relocation costs for their entire license area and spectrum block even if they partition a portion of their license area or disaggregate a portion of their spectrum to another party. The Commission found that requiring licensees to guarantee the payments of partitionees and disaggregatees would be unfair because licensees would not have control over the actions of partitionees and disaggregatees and because there was no reason to treat those parties differently than other late-entrant PCS licensees with respect to microwave relocation costs.

Report to Congress:

The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register.**

B. Ordering Clauses

Accordingly, *it is ordered* That, pursuant to the authority of Sections 4(i), 257, 303(g), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(g), 303(r), and 332(a), Part 24 of the Commission's Rules, 47 CFR 24, is amended as set forth below.

It is further ordered That the rules adopted herein will become effective March 7, 1997. This action is taken pursuant to 4(i), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(a).

List of Subjects in 47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

§ 24.229 [Amended]

2. Section 24.229 is amended by removing paragraph (c).

§ 24.707 [Amended]

3. Section 24.707 is amended by removing the phrase from the third sentence: "(and applicants seeking partitioned licenses pursuant to agreements with auction winners under § 24.714)."

4. Section 24.714 is revised to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 24.839.

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees in spectrum blocks C and F may not partition their licensed geographic service area or disaggregate their licensed spectrum for the first five years of the license term unless it is to an entity that meets the eligibility criteria set forth in § 24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in § 24.709 at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

(b) *Technical standards*—(1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment*—(1) *Installment payments.* Licensees in frequency Blocks C and F making installment payments that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for installment payments, will be subject to the provisions concerning unjust enrichment as set forth in §§ 1.2111 of this chapter and 24.716(d).

(2) *Bidding credits.* Licensees in frequency Blocks C and F that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in §§ 1.2110(f) of this chapter and 24.717(c).

(3) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *Installment payments*—(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to §§ 1.2110(e) of this chapter or 24.716, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) *Parties not qualified for installment payment plans.* (i) When a winning bidder elects to pay for its license through an installment payment plan, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay for its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest) shall be apportioned according to § 24.714(d)(1).

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked "superseded" and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. We will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

(iv) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) Parties qualified for installment payment plans. (i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to § 24.714(d)(1).

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of

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the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 24.15.

(f) *Construction requirements*—(1) *Requirements for partitioning.* Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in § 24.203 for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in § 24.203, for the entire license area. In that case, the partitionee must only satisfy the requirements for "substantial service," as set forth in § 24.16(a), for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above construction options they select.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year construction benchmarks set forth in § 24.203.

(v) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the five- and ten-year construction requirements for the PCS market as set forth in § 24.203. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

[FR Doc. 97–98 Filed 1–3–97; 8:45 am]
BILLING CODE 6712–01–P

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47 CFR Part 51

[CC Docket No. 96–98; FCC 96–483]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; motion for stay and notification of court stay.

SUMMARY: The Order released December 18, 1996 dismisses the motion for stay of three rules adopted in the *First Report and Order*, (August 29, 1996), filed by the Rural Telephone Coalition (RTC) to the extent that RTC seeks a stay of 47 CFR 51.809, and otherwise denies the motion for stay. Denial of the motion for stay allows the rules relating to local competition which have not been stayed by the United States Court of Appeals for the Eighth Circuit (*Iowa Utilities Board* v. *Federal Communications Commission*, No. 96–3321 *et al.*, 1996 WL 589284 (8th Cir. 1996 Oct. 15, 1996)) to go into effect without delay.

EFFECTIVE DATE: Sections 51.501–51.515 (inclusive), 51.601–51.611 (inclusive), 51.705–51.715 (inclusive), and 51.809 are stayed effective October 15, 1996 pursuant to court order. Motion for stay by the Rural Telephone Coalition is dismissed effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 18, 1996, and released December 18, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96483.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

There are no new rules or modifications to existing rules adopted in this Order.

Paperwork Reduction Act

There are no new or modified collections of information required by this Order.

Synopsis of Order

I. Introduction

1. On August 1, 1996, the Commission adopted rules implementing the local competition provisions of the Telecommunications Act of 1996 (1996 Act). On October 2, 1996, the Rural Telephone Coalition (RTC) filed a motion for stay of three rules adopted in the *First Report and Order*, 61 FR 45476 (August 29, 1996), pending judicial review. Oppositions to the motion for stay were filed by MCI, the Association for Local Telecommunications Service (ALTS), and the National Cable Television Association (NCTA). For the reasons set forth below, we dismiss the motion in part, and otherwise deny the motion for stay.

II. Background

2. Section 251(c) of the Communications Act of 1934, as amended, (the Act) imposes on incumbent local exchange carriers (LECs) obligations regarding interconnection, resale of services, and unbundled network elements. Section 251(f)(1) of the Act provides that a rural telephone company is exempt from the requirements of section 251(c) unless the state commission finds that the rural carrier has received a bona fide request for interconnection, services, or network elements, and the state commission determines that the request "is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof)." Section 251(f)(2) of the Act permits LECs "with fewer than 2 percent of the Nation's subscriber lines installed nationwide" to petition a state commission for suspension or modification of application of one or more requirements of sections 251(b) or 251(c). The petition

shall be granted to the extent that, and for such duration as, the state commission determines that the suspension or modification:

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

3. In the *First Report and Order*, and in § 51.405 of the Commission's rules, the Commission held that, once a requesting carrier has made a bona fide request for interconnection, services, or network elements, incumbent rural LECs bear the burden of proving that they should continue to be exempt from the requirements of section 251(c). The Commission also offered guidance on what would constitute an "unduly" economically burdensome requirement for purposes of sections 251(f)(1) and 251(f)(2), holding that the incumbent rural carrier must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause economic burden "beyond the economic burden that is typically associated with efficient competitive entry."

4. Section 252(a) of the Act, entitled "Agreements Arrived at Through Negotiation," provides, in part, that, "[t]he agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section." In the *First Report and Order*, and as set forth in Section 51.303 of its rules, the Commission concluded that interconnection agreements that were reached before the 1996 Act was enacted must be submitted to the state commission for review under section 252, including agreements between adjacent incumbent local service providers. In addition, section 252(i) of the Act requires an LEC to make available "any interconnection, service, or network element provided under an agreement approved under" section 252 to which the LEC is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. In the *First Report and Order* and § 51.809 of its rules, the Commission interpreted that provision to require an incumbent LEC to make available to a requesting telecommunications carrier, upon the same rates, terms, and conditions, any individual interconnection, service, or network element arrangement contained in any agreement approved by the state under section 252 to which the incumbent LEC is a party.

III. Summary of the Motion and Oppositions

5. RTC requests a stay of the Commission rules described above. RTC contends that the Commission unlawfully modified the standard to be used by states in considering whether to terminate the rural exemption. RTC contends that placing the burden of proof on the incumbent LEC, and the Commission's definition of "unduly economically burdensome," will cause rural LECs to suffer irreparable harm. RTC claims that certain rural LECs will lose exemptions that they would not have lost if the requesting carrier bore the burden of proof. RTC also asserts that the Commission's rules will cause rural LECs to incur costs and expend resources to retain exemptions from section 251(c) obligations. RTC further argues that the Commission's rules ignore two of the three statutory factors that must be considered in deciding whether to terminate a rural LEC's exemption. RTC also contends that the Commission failed to give adequate public notice of its intent to establish a test concerning the burden of proof and its intent to establish a rule interpreting the phrase "unduly economically burdensome."

6. In addition, RTC maintains that the Commission exceeded its authority by requiring incumbent LECs to file with state commissions interconnection agreements with neighboring LECs that predate the 1996 Act, and by requiring incumbent LECs to make the individual provisions of such agreements available to competing carriers. RTC asserts that requiring incumbent LECs to file interconnection agreements negotiated prior to the 1996 Act ultimately will force rural LECs to pay higher interconnection rates that in turn will result in higher rates for rural LEC's customers.

7. In general, parties opposing the stay motion contend that RTC's motion does not meet the four-part test for granting a stay of an agency order. These parties contend that RTC is unlikely to prevail on the merits of its claims; that it will suffer no irreparable harm if a stay is not granted; that grant of a stay will harm third parties; and that the public interest weighs in favor of denying a stay.

IV. Discussion

8. As a threshold matter, the United States Court of Appeals for the Eighth Circuit granted a stay of certain rules the Commission adopted in the *First Report and Order* (*i.e.*, 47 CFR 51.501–51.515, 51.601–51.611, 51.705–51.715, and 51.809). Therefore, we need not address RTC's motion for administrative stay of § 51.809.

9. We examine the remaining portions of RTC's motion for stay pursuant to well-established legal principles. A party seeking a stay is required to demonstrate: (1) That it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors the grant of a stay.

10. With respect to RTC's motion for stay of §§ 51.303, concerning filing of interconnection agreements negotiated before the 1996 Act became law, and 51.405, concerning rural carriers' burden of proof under section 251(f)(1) of the Act, we conclude that RTC has not shown that it will suffer irreparable harm absent a stay. A concrete showing of irreparable harm is an essential factor in any request for a stay. As the U.S. Court of Appeals for the District of Columbia Circuit has observed, "economic loss does not, in and of itself, constitute irreparable harm." Moreover, competitive harm is merely a type of economic loss, and "revenues and customers lost to competition which can be regained through competition are not irreparable." Even if the alleged harm is not fully remediable, the irreparable harm factor is not satisfied absent a demonstration that the harm is "both certain and great; * * * actual and not theoretical." We find that RTC's claims of harm do not satisfy these exacting standards.

11. RTC argues that certain rural LECs will be irreparably harmed by our finding that the LECs seeking to avoid application of section 251(c) bear the burden of proof under section 251(f), and by our interpretation that, in order for a requirement to be "unduly economically burdensome" within the meaning of section 251(f), it must cause economic burden beyond the economic burden typically associated with efficient competitive entry. RTC complains that the Commission's "burden of proof and standards requirements substantially increase the probability that the exemption will be terminated."

12. We find that RTC has not demonstrated that application of these rules has caused or will cause harm to rural incumbent LECs that is certain, irreparable, or great. As NCTA and MCI assert, RTC has not shown that rural LECs would otherwise be exempt from the obligations of section 251(c), absent

the Commission's rules. Moreover, even if RTC could establish with certainty that rural carriers would lose exemptions as a result of the Commission's rules, its contention that LECs would be irreparably harmed is speculative. First, economic harm that results from loss of customers to competitors does not constitute irreparable harm. Second, the Commission stated in the *First Report and Order* that requesting carriers must compensate the incumbent LEC for the costs of services, interconnection, or unbundled elements that the incumbent provides upon request, and RTC has not shown why, in light of such compensation, it would suffer irreparable harm from complying with the requirements of section 251(c). Nor has RTC demonstrated that any harm a rural LEC arguably might suffer would be substantial.

13. RTC also asserts that, because the Commission has placed the burden of proof on rural carriers that seek to retain exemptions from section 251(c), they will incur costs that they would not otherwise bear. For example, RTC contends that rural LECs will need to bear costs of hiring attorneys, cost consultants, and economists. If the Commission's rule is overturned by the court, RTC argues, rural LECs will have suffered irreparable harm by incurring these costs. NCTA and MCI contend that RTC has provided no evidence that, absent our rules, it would not bear similar or identical costs to respond to *bona fide* requests for interconnection, services or network elements. We find no basis for concluding that rural carriers will bear costs as a result of our rules that they would not otherwise bear. Moreover, courts have held that "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."

14. RTC further argues that the rule requiring the filing of interconnection agreements that predate the 1996 Act will irreparably harm rural LECs and their customers by "threaten[ing] higher rates, more toll calls, or both, for the affected rural customers." This argument is speculative, because it assumes without substantiation that existing agreements will have to be renegotiated, and that the resulting terms will be significantly less favorable to affected rural LECs. As the District of Columbia Circuit has noted, in evaluating a petitioner's allegations of irreparable harm, "[b]are allegations of what is likely to occur are of no value" because the critical issue is "whether the harm will *in fact* occur." RTC provides no evidence to support its allegation that higher rates for customers will in fact occur if § 51.303 of the Commission's rules is not stayed.

15. Because, as discussed above, RTC has failed to demonstrate that any rural telephone company would suffer irreparable harm due to the application of § 51.303 or 51.405 of our rules, we need not address RTC's remaining arguments concerning the other three parts of the test governing a motion for stay. Nevertheless, we take this opportunity to clarify certain aspects of § 51.405(c) of our rules that RTC challenges in its petition for stay. Section 51.405(c) states:

> In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

RTC erroneously contends that the Commission's rules implementing § 251(f)(1) improperly ignore two of the three statutory criteria that a state commission must consider in determining whether to remove a rural incumbent LEC's exemption from the requirements of § 251(c) of the Act. RTC's argument is not based on any affirmative statement in our rules that state commissions may disregard evidence of technical infeasibility or harm to universal service in deciding whether to remove an exemption. Rather, RTC incorrectly infers from the fact that our rules address only one of the statutory criteria for evaluating such issues that we intended for state commissions to ignore the other two criteria. In § 51.405(c) of our rules, we interpreted the meaning of the statutory term "unduly" as it modifies "economically burdensome," because we found that this phrase is susceptible to differing interpretations. We did not find it necessary to adopt rules that addressed the meaning of "technical feasibility" or "universal service." That decision, however, does not in any way affect a state's responsibility to consider all three of the factors set forth in § 251(f)(1)(A). We similarly interpreted the phrase "unduly economically burdensome" in adopting 47 CFR 51.405(d), and did not thereby intend to limit LECs' rights to seek suspensions or modifications by other means provided in § 251(f)(2).

V. Ordering Clause

16. Accordingly, It is ordered that the motion for stay filed by the Rural Telephone Coalition is dismissed to the extent that it seeks a stay of 47 CFR 51.809, and otherwise is Denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–50 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 93–28, RM–8172, RM–8299]

FM Broadcasting Services; Whitley City, KY, Colonial Heights, Morristown and Tazewell, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division granted the petition for reconsideration, filed by Murray Communications, of the *Report and Order in* this proceeding, 59 FR 60077, published November 22, 1994, by rejecting the rule making proposal (RM–8172) granted by the *Report and Order,* and, instead, granting the counterpropopsal (RM–8299), substituting Channel 240C2 for 290A at Colonial Heights, Tennessee, Channel 290A for Channel 231A at Tazewell, Tennessee, Channel 231A for Channel 240A at Morristown, Tennessee, and Channel 252A for Channel 290A at Whitley City, Kentucky. The *Report and Order* denied Murray's counterproposal, RM–8299, to upgrade Channel 290A at Colonial Heights, Tennessee by substituting Channel 240C2, but granted its initial proposal, RM–8172, to effect an upgrade to Channel 240C3. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The following channels can be allotted in compliance with the Commission's minimum distance separation requirements:

Channel 240C2 to Colonial Heights at Station WLJQ(FM)'s existing transmitter site, restricted to 16.7 kilometers (10.4 miles) northwest of the community at coordinates 36–35–35 North Latitude and West Longitude 82–37–16, and, to accommodate that allotment, Station WAEY(FM), Channel 240A, Princeton, West Virginia, can be relocated to a new transmitter site at coordinates North Latitude 37–25–00 and West Longitude 81–02–00 in compliance with the minimum distance separation requirements; Channel 290A to Tazewell at Station WCTU(FM)'s existing site at coordinates 36–27–32 and West Longitude 83–35–07; Channel

231A to Morristown at Station WMXK(FM)'s existing site at coordinates North Latitude 36–13–40 and West Longitude 83–19–58; and Channel 252A to Whitley City at Station WHAY(FM)'s existing site at North Latitude 36–44–39 and West Longitude 84–28–37.

This is a summary of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–28, adopted December 13, 1996 and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 reads as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, under Tennessee, is amended by removing Channel 290C3 at Colonial Heights and adding Channel 240C2; by removing Channel 231A at Tazewell and adding Channel 290A; and by removing Channel 240A at Morristown and adding Channel 231A.

3. Section 73.202(b), the Table of FM Allotments, under Kentucky, is amended by removing Channel 290A at Whitley City and adding Channel 252A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–171 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD11

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Wetland Species Found in Southern Arizona and Northern Sonora, Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for the Canelo Hills ladies-tresses (*Spiranthes delitescens*), the Huachuca water umbel (*Lilaeopsis schaffneriana* ssp. *recurva*), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). These species occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, and degradation and destruction of habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa also are threatened with extirpations or extinction from naturally occurring climatic and other environmental events, such as catastrophic floods and drought, a threat that is exacerbated by habitat alteration and small numbers of populations or individuals. This rule implements Federal protection provided by the Act for these three taxa.

EFFECTIVE DATE: February 5, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, telephone (602/640–2720), or facsimile (602/640–2730).

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh or Angie Brooks (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Cienegas in southern Arizona and northern Sonora, Mexico, are typically mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as the three taxa addressed in this final rule (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982). Although *Spiranthes delitescens* (*Spiranthes*), *Lilaeopsis schaffneriana* spp. *recurva* (*Lilaeopsis*), and the Sonora tiger salamander typically occupy different microhabitats, they all occur or once occurred in cienegas. *Lilaeopsis* is also found along streams and rivers and occurs at mid-elevations, from 1,148–2,133 meters (m) (3,500–6,500 feet (ft)). The Sonora tiger salamander occurs mostly in cattle tanks and impounded cienegas, but presumably was associated primarily with natural cienegas and other wetlands prior to human settlement.

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (AGFD)(1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered. *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander occupy small portions of these rare habitats.

Spiranthes is a slender, erect, terrestrial orchid that, when in flower, reaches approximately 50 centimeters (cm) (20 inches (in.)) tall. Five to 10, linear-lanceolate, grass-like leaves, 18 cm (7.1 in.) long and 1.5 cm (0.6 in.) wide, grow basally on the stem. The fleshy, swollen roots are approximately 5 mm (0.2 in.) in diameter. The top of the flower stalk contains up to 40 small white flowers arranged in a spiral. This species is presumed to be perennial, but mature plants rarely flower in consecutive years and, in some years, have no visible above ground structures (McClaran and Sundt 1992, Newman 1991).

Martin first collected *Spiranthes delitescens* in 1968 at a site in Santa Cruz County, Arizona (Sheviak 1990). This specimen was initially identified as *Spiranthes graminea*, a related Mexican species. Sheviak (1990) found that the *Spiranthes* specimens in Arizona, previously thought to be *S.*

graminea, displayed a distinct set of morphological and cytological characteristics and named them *S. delitescens*.

This species is known from five sites at about 1,525 m (5,000 ft.) elevation in the San Pedro River watershed in Santa Cruz and Cochise Counties, southern Arizona (Newman 1991). The total amount of occupied habitat is less than 81 hectares (ha) (200 acres (ac)). Four of the populations are on private land less than 37 kilometers (km) (23 miles (mi)) north of the U.S./Mexico border; one additional small site containing four individuals was discovered on public land in 1996 (Mima Falk, Coronado National Forest, pers. comm. 1996). This site is located near a previously known population. Potential habitat in Sonora, Mexico, has been surveyed but no *S. delitescens* populations have been found (Sheviak 1995, Newman 1991).

The dominant vegetation associated with *Spiranthes* includes grasses, sedges (*Carex* spp.), rushes (*Juncus* spp.), spike rush (*Eleocharis* spp.), cattails (*Typha* spp.), and horsetails (*Equisetum* spp.) (Cross 1991, Warren *et al.* 1991). Associated grass species include bluegrass (*Poa pratensis*), Johnson grass (*sorghum halepense*), *Muhlenbergia asperifolia*, and *Muhlenbergia utilis* (Fishbein and Gori 1994). The surrounding vegetation is semidesert grassland or oak savannah.

All *Spiranthes* populations occur where scouring floods are very unlikely (Newman 1991). Soils supporting the populations are finely grained, highly organic, and seasonally or perennially saturated. Springs are the primary water source, but a creek near one locality contributes near-surface groundwater (McClaran and Sundt 1992). As with most terrestrial orchids, successful seedling establishment probably depends on the successful formation of endomycorrhizae (a symbiotic association between plant root tissue and fungi) (McClaran and Sundt 1992). The time needed for subterranean structures to produce above ground growth is unknown. Plants may remain in a dormant, subterranean state or remain vegetative (nonflowering) for more than one consecutive year. Plants that flower one year can become dormant, vegetative, or reproductive the next year (McClaran and Sundt 1992, Newman 1991). The saprophytic/autotrophic state of orchid plants may be determined by climatic fluctuations and edaphic factors, such as pH, temperature, and soil moisture (Sheviak 1990).

Estimating *Spiranthes* population size and stability is difficult because nonflowering plants are very hard to find in the dense herbaceous vegetation, and yearly counts underestimate the population because dormant plants are not counted. McClaran and Sundt (1992) twice monitored marked individuals in a *Spiranthes* population during 2–3 year periods. They concluded that both monitored sites were stable between 1987 and 1989, although Newman (1991) later reported that one monitored site was reduced to one nonflowering plant in 1991. Due to the propensity of *Spiranthes* to enter and remain in a vegetation state and the lack of new flowering plants at one monitoring site, overall population numbers are believed to be declining. McClaran and Sundt (1992) also speculated that population numbers may be declining.

Lilaeopsis schaffneriana spp. *recurva* is an herbaceous, semiaquatic perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow-green or bright green leaves are generally 1–3 millimeters (mm) (0.04–0.12 in.) in diameter and often 3–5 centimeters (cm) tall (1–2 in.), but can reach up to 20 cm (8 in.) tall under favorable conditions. Three to 10 very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in.) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually through flowering and asexually from rhizomes, the latter probably being the primary reproductive mode. An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants, which then may reroot in a different site along aquatic systems.

Lilaeopsis schaffneriana spp. *recurva* was first described by A.W. Hill based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found east of the continental divide.

Lilaeopsis has been documented from 22 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991). The plant has been extirpated from 6 of the 22 sites. The 16 extant sites occur in 4 major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148–2,133 m (3,500–6,500 ft) elevation.

Nine *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management's (BLM) Tucson District. Two extirpated populations in the upper San Pedro watershed occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone. Surveys conducted for wildlife habitat assessment have found several discontinuous clumps of *Lilaeopsis* within the upper San Pedro River where habitat was present in 1996 prior to recent flooding (Mark Fredlake, Bureau of Land Management, pers. comm. 1996).

The four *Lilaeopsis* populations in the Santa Cruz watershed probably represent very small remnants of larger populations, which may have occurred in the extensive riparian and aquatic habitat formerly along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem is about a 130 km (80 mi) reach that flowed perennially from the Tubac area south to the U.S./Mexico border and intermittently from Tubac north to the Tucson area (Davis 1986). Davis (1982) quotes from the July 1855, descriptive journal entry of Julius Froebel while camped on the Santa Cruz River near Tucson: "* * * rapid brook, clear as crystal, and full of aquatic plants, fish, and tortoises of various kinds, flowed through a small meadow covered with shrubs. * * *" This habitat and species assemblage no longer occurs in the Tucson area. In the upper watershed of the middle Santa Cruz River, the species is now represented only by a single population in two short reaches of Sonoita Creek. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat exists (Warren *et al.* 1991).

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Tom Deecken, Coronado National Forest, pers. comm. 1994). The species remains in small areas (generally less than 1 m^2 (10.8 ft^2) in Black Draw,

Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds. Recent renovation of House Pond on private land near Black Draw extirpated the *Lilaeopsis* population. A population in the Rio San Bernardino in Sonora was also recently extirpated (Gori *et al.* 1990). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, *Lilaeopsis* occurs in microsites where interspecific plant competition is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. The types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz Rivers when channel entrenchment occurred in the late 1800's. Habitat on the upper San Pedro River is recovering, and *Lilaeopsis* has recently recolonized small reaches of the main channel.

In stream and river habitats, *Lilaeopsis* can occur in backwaters, side channels, and nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again co-dominant with watercress (*Rorippa nasturtium-aquaticum*) (Warren *et al.* 1991). The expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of "refugia" where the species can escape the effects of scouring floods, a watershed that has an unaltered hydrograph, and a healthy riparian community that stabilizes the channel. Two patches of *Lilaeopsis* on the San Pedro River were lost during a winter flood in 1994 and had still not recolonized that area as of May of 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, *in litt.* 1995).

Density of *Lilaeopsis* plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500.5 m^2 (5,385 ft^2) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 m^2 (11–22 ft^2). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger *Lilaeopsis* populations, occupying about 57 percent of the 1,450 m (4,756 ft) perennial reach (Gori *et al.* 1990; Jim Abbott, Coronado National Forest, *in litt.* 1994).

While the extent of occupied habitat can be estimated, the number of individuals in each population is impossible to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A population of *Lilaeopsis* may be composed of one or many individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino National Wildlife Refuge (Refuge) appears to be successful (Warren 1991). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other Refuge wetlands. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (Kevin Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1994; and Peter Warren, Arizona Nature Conservancy, pers. comm. 1993) that other species such as *Typha* sp. will outcompete *Lilaeopsis*.

The Sonora tiger salamander is a large salamander with a dark venter and light colored blotches, bars, or reticulation on a dark background. Snout/vent lengths of metamorphosed individuals vary from approximately 6.7 to 12.5 cm (2.6–4.9 in.) (Jones *et al.* 1988, Lowe 1954). Larval salamanders are aquatic with plume-like gills and well-developed tail fins (Behler and King 1980). Larvae hatched in the spring are large enough to metamorphose into terrestrial salamanders from late July to early September, but only an estimated 17 to 40 percent metamorphose annually. Remaining larvae mature into branchiates (aquatic and larval-like, but sexually mature salamanders that remain in the breeding pond) or over-winter as larvae (Collins and Jones 1987; James Collins, Arizona State University, pers. comm. 1993).

The Sonora tiger salamander was discovered in 1949 at the J.F. Jones Ranch stock tank in Parker Canyon, San Rafael Valley, Arizona (Reed 1951). Based on color patterns of metamorphosed animals, Lowe (1954) described the Sonora tiger salamander from southern Santa Cruz County, Arizona, as the subspecies *stebbinsi* of the broad-ranging tiger salamander (*Ambystoma tigrinum*). However, again based on color patterns, Gelhbach (1965, 1967) synonomized *Ambystoma tigrinum stebbinsi* and *Ambystoma tigrinum tahense* (from the Rocky Mountains region) with *Ambystoma tigrinum nebulosum* (from northern Arizona and New Mexico). Nevertheless, *Ambystoma tigrinum stebbinsi* continued to be recognized in the scientific literature (Jones *et al.* 1988).

Jones *et al.* (1988) found that Lowe's description of color patterns in *Ambystoma tigrinum stebbinsi* was only accurate for recently metamorphosed individuals. About 40 percent of metamorphosed adults exhibit a unique reticulate pattern, while 60 percent are marked with light colored blotches, spots, or bars on a dark background that is indistinguishable from *Ambystoma tigrinum mavortium*, found in the central United States and adjacent portions of Mexico (Jones *et al.* 1995). Starch gel electrophoresis of 21 presumptive gene loci of *Ambystoma tigrinum stebbinsi* were compared with gene loci of *Ambystoma rosaceum* (from Sonora), *Ambystoma tigrinum mavortium*, and *Ambystoma tigrinum nebulosum* (Jones *et al.* 1988). Based on this analysis, distinctive reticulate color patterns, low heterozygosity, and apparent geographic isolation, subspecific designation of *Ambystoma tigrinum stebbinsi* was considered warranted by Collins and Jones (1987) and Jones *et al.* (1988). Further analysis of mitochondrial DNA reaffirmed subspecific designation (Collins *et al.* 1988). Color pattern and allozyme data suggests that *Ambystoma tigrinum stebbinsi* is closely related to *Ambystoma tigrinum mavortium*; however, the *Ambystoma tigrinum stebbinsi* haplotype is derived from *Ambystoma tigrinum nebulosum*. The most likely explanation for these observations is that *Ambystoma tigrinum stebbinsi* arose from a hybridization between *Ambystoma tigrinum mavortium* and *Ambystoma tigrinum nebulosum* (Jones *et al.* 1995).

The grassland community of the San Rafael Valley and adjacent montane

slopes, where all extant populations of *Ambystoma tigrinum stebbinsi* occur, may represent a relict grassland and therefore a refugium for grassland species. Tiger salamanders in this area became isolated and, over time, genetically distinct from ancestral *Ambystoma tigrinum mavortium* and *Ambystoma tigrinum nebulosum* (Jones *et al.* 1995).

Based on color patterns and electrophoretic analysis, *Ambystoma* collected in Mexico at one site in Sonora and 17 sites in Chihuahua were all *Ambystoma rosaceum*, not *Ambystoma tigrinum stebbinsi* (Jones *et al.* 1988). Reanalysis of reported *Ambystoma tigrinum stebbinsi* collected in Sonora (Hansen and Tremper 1979) and at Yepomera, Chihuahua (Van Devender 1973) revealed that these specimens were actually *Ambystoma tigrinum rosaceum* (Jones *et al.* 1988).

Collins *et al.* (1988) list 18 sites for the Sonora tiger salamander. Additional extensive survey work from 1993 through 1996 revealed another 18 sites, for a total of 36 (Collins 1996; James Collins, Arizona State University, pers. comm. 1996). Salamanders tentatively identified as Sonora tiger salamanders also have been found at Portrero del Alamo at the Los Fresnos cienega in the headwaters of the San Pedro River, San Rafael Valley, Sonora, Mexico (Sally Stefferud, U.S. Fish and Wildlife Service, pers. comm. 1993) and at the lower Peterson Ranch Tank in Scotia Canyon, Cochise County, Arizona. No salamanders have been observed in recent visits to Scotia Canyon (Service files, Phoenix, AZ; James Collins, pers. comm. 1996); thus, this population may be extirpated. A single terrestrial Sonora tiger salamander was found near Oak Spring in Copper Canyon of the Huachuca Mountains (Jeff Howland, Arizona Game and Fish Department pers. comm. 1993). This individual likely moved to this site from a population at the "Game and Fish Tank" located approximately 1 km (0.6 mi) to the southwest.

All sites where Sonora tiger salamanders have been found are located in the Santa Cruz and San Pedro river drainages, including sites in the San Rafael Valley and adjacent portions of the Patagonia and Huachuca mountains in Santa Cruz and Cochise counties, Arizona. All confirmed historical and extant aquatic populations are found in cattle tanks or impounded cienegas within 31 km (19 mi) of Lochiel, Arizona. If the Los Fresnos population is the subspecies, *stebbinsi*, it is the only population known to occur in a cienega. Historically, the Sonora tiger salamander probably inhabited springs, cienegas, and possibly backwater pools where permanent or nearly permanent water allowed survival of mature branchiates.

A total of 79 aquatic sites in the San Rafael Valley and adjacent slopes of the Huachuca and Patagonia mountains have been surveyed for salamanders (Collins and Jones 1987, Collins 1996, James Collins, pers. comm. 1996). These include most potential aquatic habitats on public lands. However, private lands in the center of the San Rafael Valley have not been surveyed intensively.

Thirty sites in northeastern Sonora and 26 sites in northwestern Chihuahua, Mexico, were surveyed by Collins and Jones (1987). No Sonora tiger salamanders were found at these sites. *Ambystoma rosaceum* and *Ambystoma tigrinum velasci* occur at localities in Sonora and Chihuahua to the south and east of the extant range of the Sonora tiger salamander (Collins 1979, Collins and Jones 1987, Van Devender and Lowe 1977). *Ambystoma tigrinum mavortium* occurs at scattered localities to the east in the San Pedro, Sulphur Springs, and San Simon valleys of Arizona (Collins and Jones 1987), but at least some of these populations were introduced by anglers and bait collectors (Collins 1981, Lowe 1954, Nickerson and Mays 1969).

Populations are dynamic. In particular, drought and disease periodically extirpate or greatly reduce populations. Several tanks supporting aquatic populations went dry during drought in 1994 and again in 1996. As tanks dry out, some larval and branchiate salamanders metamorphose and leave the tanks; others desiccate and die. Disease killed all aquatic salamanders at least three sites in 1985 (Collins *et al.* 1988), and also was evident in aquatic populations at seven tanks in 1995–1996 (James Collins, pers. comm. 1996). Tanks in which salamanders have been eliminated may be recolonized through reproduction by terrestrial metamorphs. Drying of tanks also may eliminate nonnative predators and create sites suitable for salamander colonization.

Because populations are dynamic, the number and location of extant aquatic populations change over time, as exhibited by the differences between survey results in 1985 and 1993–1996 (Collins and Jones 1987; Collins 1996; James Collins, pers. comm. 1996). Determining whether a population is extant is problematic. If numbers are low, salamanders may not be detected during sampling. Also, aquatic salamanders may have been recently eliminated due to drought or disease, but terrestrial salamanders may be present in the area. Of the 36 sites where aquatic Sonora tiger salamanders were recorded since the mid or early 1980's and no salamanders have been found at 4 tanks during the last 3 visits from 1993 to 1996. Salamanders were probably extirpated from these sites. Salamanders also were found to be extirpated from the J.F. Jones Ranch Tank, the type locality (Collins and Jones 1987). Salamanders have not been found during the last three visits from 1993 through 1996 at five other tanks. Salamanders may be extirpated from these sites. Another three sites where salamanders were found from 1980 to 1983 have not been surveyed since that time. The status of populations at these tanks is unknown. At the remaining 23 tanks, salamanders have been found during 1 or more of the last 3 visits from 1993 through 1996. These populations are probably extant.

Populations of aquatic salamanders include as many as several hundred individuals. However, 10 or more salamanders in any 1 visit were found at only 16 of 32 occupied sites examined by Collins from 1993 through 1996 (James Collins, pers. comm. 1996). Large, reproducing populations of Sonora tiger salamanders were more concentrated in the southeastern portion of the San Rafael Valley in the 1990's as compared to the 1980's. Sampling during 1993–1996 revealed few populations and low numbers of salamanders in the northern portion of the valley (Collins 1996).

A variety of factors threaten the Sonora tiger salamander. Disease and predation by introduced nonnative fishes and bullfrogs (*Rana catesbeiana*) are probably the most serious and immediate threats, both of which have been implicated in the elimination of aquatic populations (Collins and Jones 1987, Collins 1996). Tiger salamanders also are widely used in Arizona as fishing bait, and this use poses additional threats. Other subspecies of tiger salamander introduced into habitats of the Sonora tiger salamander for bait propagation or by anglers could, through interbreeding, genetically swamp distinct *Ambystoma tigrinum stebbinsi* populations (Collins and Jones 1987, Collins 1996). Collecting Sonora tiger salamanders for bait could extirpate or greatly reduce populations. Furthermore, moving of salamanders among tanks by anglers or bait collectors also could transmit disease. Additional threats include habitat destruction, reduced fitness resulting from low genetic heterozygosity, and increased probability of chance extirpation characteristic of small populations.

Previous Federal Actions

Federal government action on *Spiranthes delitescens, Lilaeopsis schaffneriana* ssp. *recurva,* and Sonora tiger salamander began with their inclusion in various Service notices of review for listing as endangered or threatened species. The Sonora tiger salamander was included as a category 2 candidate in the first notice of review of vertebrate wildlife (December 30, 1982; 47 FR 58454), and in subsequent notices published September 18, 1985 (50 FR 37958) and January 6, 1989 (54 FR 554). Category 2 candidates were those species for which the Service had some evidence of vulnerability, but for which there was insufficient scientific and commercial information to support a proposed rule to list them as threatened or endangered. In notices of review published November 21, 1991 (56 FR 58804) and November 15, 1994 (59 FR 58982), the Sonora tiger salamander was included as a category 1 candidate. Category 1 includes those taxa for which the Service has sufficient information to support proposed rules to list them as threatened or endangered.

Lilaeopsis schaffneriana ssp. *recurva,* then under the name *L. recurva,* was included as a category 2 candidate in the November 28, 1983 (45 FR 82480) and September 27, 1985 (50 FR 39526) plant notices. It was included as a category 1 candidate in the February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144) notices. *Spiranthes delitescens* was included as a category 1 candidate in the September 30, 1993, plant notice.

On June 3, 1993, the Department of the Interior, Washington, D.C., received three petitions, dated May 31, 1993, from a coalition of conservation organizations (Suckling et al. 1993). The petitioners requested the listing of *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander as endangered species pursuant to the Act. On December 14, 1993, the Service published a notice of three 90-day findings that the petitions presented substantial information indicating that listing these three species may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325). On April 3, 1995, the Service published a proposal (60 FR 16836) to list *Spiranthes, Lilaeopsis,* and the Sonora tiger salamander as endangered species, and again requested public comments and biological data on their status.

The processing of this final listing rule conforms with the Service's Final Listing Priority Guidance for Fiscal Year 1997, published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2.

Summary of Comments and Recommendations

In the April 3, 1995, proposed rule (60 FR 16836) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. The original comment period closed June 2, 1995, then was reopened from June 24, 1995, to July 24, 1995 (60 FR 32483), and again from September 11, 1995, to October 27, 1995 (60 FR 47340). Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper/media notices inviting public comment were published in the following newspapers—Arizona Daily Star, Arizona Republic, Bisbee Daily Review, Eastern Arizona Courier, Environmental Network News, Green Valley News/Sun, Nogales International, Sierra Vista Herald-Dispatch, The Phoenix Gazette, The Weekly Bulletin, Tombstone Tumbleweed, and Tucson Citizen. The inclusive dates of publications were April 20 and 21, 1995, for the initial comment period; and June 28 to July 4, 1995, and September 15, 1995, to September 20, 1995, for the first and second public hearings and reopening of the comment period, respectively.

In response to requests from the public, the Service held two public hearings. Notices of hearing dates and locations were published in the **Federal Register** on June 22, 1995 (60 FR 32483) and September 12, 1995 (60 FR 47340). Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted regarding the hearings. Approximately 790 people attended the hearings, including approximately 90 people at a July 13, 1995, hearing in Patagonia, Arizona; and 700 at a September 27, 1995, hearing in Sierra Vista, Arizona. Transcripts of these hearings are available for inspection (see **ADDRESSES**).

A total of 229 written comment letters were received—40 supported the proposed listing, 164 opposed listing, and 25 others commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the proposed listing. Oral comments were received from 51 parties at the hearings—11 supported listing, 20 opposed listing, and 20 expressed neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the listing. In total, oral or written comments were received from 4 Federal and State agencies and officials, 14 local officials, and 262 private organizations, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. The Service's response to each comment is discussed below.

Issue 1: Other processes, especially conservation agreements in lieu of listing, could be more effective at protecting these species, and would impose fewer regulations and restrictions on land use as compared to Federal listing. Also, additional steps or processes, particularly closer working relationships among the Service, local governments, and landowners, should be incorporated into the listing process.

Comment: Several commenters suggested preparing a conservation agreement among the Service, other Federal agencies, State agencies, local governments, and private landowners, in lieu of listing one or more of the three species. Environmental education is needed to raise local awareness of the plight of these species. A cooperative research and conservation program should be developed. Possible components of the cooperative effort could include conservation easements, or landowners could apply for membership in Oregon Stronghold, a corporation dedicated to conservation practices on private land.

Service Response: The Service considered conservation agreements in lieu of listing for all three species. Discussions with the Coronado National

Forest, Fort Huachuca, and AGFD on development of a conservation agreement for the Sonora tiger salamander began in September 1995. Meetings were held November 28, 1995 and January 24, 1996, among landowners, Fort Huachuca, the Coronado National Forest, experts on the salamander, and the Service to discuss development of the agreement. The participants in the meetings and discussions, including the Service, generally agreed that a properly crafted and promptly-implemented conservation agreement could provide for the long-term viability of the species.

In May 1996, the Service wrote all 13 private landowners within the range of the salamander to solicit their participation. Only two landowners have agreed to participate, and only one is known to have salamander populations on their property. These populations are on lands proposed for exchange to the Coronado National Forest. The Service estimates that approximately 31 percent of the range of the salamander are owned by individuals not currently interested in participating in a conservation agreement. Because a limited conservation agreement would not protect the species throughout its range, and because no conservation actions have actually been developed or implemented, these efforts are inadequate to preclude listing. However, the Service will continue to work with and encourages the participation of any interested parties in the conservation of this species.

No interest in the development of a conservation agreement for *Spiranthes* was expressed by the owners of the species' habitat. Some interest in the development of a conservation agreement for *Lilaeopsis* was expressed; however, only a few sites would have been protected leaving the majority of the populations unprotected. Additionally, the complex nature of the water issues involving *Lilaeopsis* made it difficult for the Service to assure the few interested parties that listing would necessarily be precluded through a conservation plan. This lack of assurance was unacceptable to one of the Federal agencies. Currently, Fort Huachuca is the only Federal entity working on a conservation plan for *Lilaeopsis*. This plan would be part of a larger land use plan.

Comment: One commenter stated that the Service was trying to coerce private landowners into compliance with the Act through the use of conservation agreements. This commenter also stated that the Service was, through the use of conservation agreements, attempting to halt all ranching, farming, mining, logging, surface water diversion, groundwater pumping, and urban development, without the due process of listing the species. This commenter believed this was an attempt by the Service to gain greater control over activities on private lands. This commenter also stated that the purpose for the inclusion of the Sonora tiger salamander in the cienega species listing package was to provide a means for regulatory action on private lands for the two plants.

Service Response: Conservation agreements are voluntary plans for the conservation and recovery of species. They can preclude the need to list species by removing threats. However, any actions developed and implemented are a result of discussion and concurrence of all parties to the agreement. If decisions were made to halt or limit ranching, groundwater pumping, or other activities, these commitments would be made by the property owners and managers where these activities occur. If such commitments were unacceptable to one or more parties, they would have the option not to sign the agreement and not implement such activities. The Service characterizes conservation agreements as positive opportunities for landowners and managers to voluntarily take actions to conserve species being considered for listing and alleviate the need for listing and any resulting regulatory requirements.

The Service and other possible agencies in conservation agreements administer programs to fund and assist landowners in the implementation of conservation actions. The salamander is not known to occur with *Lilaeopsis* or *Spiranthes*, with the possible exceptions of Scotia Canyon and Los Fresnos. However, the salamanders at these sites have not been identified to subspecies. Because the salamander generally does not occur with the plants, regulatory protection afforded the salamander would have no effect on the plants.

Comment: Several commenters recommended that the Service comply with a resolution adopted by the National Association of Counties and the Arizona County Supervisors Association in regard to implementation of the Act. The "Resolution on Amending the Endangered Species Act" recommends increased participation of counties in species conservation, prelisting activities, listing and recovery decisions; analysis of economic, social and cultural impacts of listing; consultation with and compensation to affected landowners; and other provisions. Local governments should decide if species should be listed. Listing should be decided by a vote of the residents of Cochise County.

Service Response: Section 4(a) of the Act clearly assigns the responsibility of making listing decisions to the Secretaries of the Interior and Commerce, not to local governments or a voting body. However, in making those decisions, the Secretaries are required to take into account conservation actions (section 4(b)(1)(A)), notify and invite comment from states, counties, and others on the proposed rules (section 4(b)(5)), hold one public hearing on the proposed rule, if requested (section 4(b)(5)(E)), and take other steps to ensure that the concerns of local governments, citizens, and others are considered in the listing decision. The Service appreciates the concern of local governments and citizens of southeastern Arizona in regard to this and other listings. The Service will work closely with residents and officials in the management and recovery of these species.

Comment: One commenter stated that beaver reintroduction on the upper San Pedro River, proposed by AGFD and the BLM, would create pond and marsh habitat for *Lilaeopsis* and make listing unnecessary.

Service Response: The potential effects of beaver reintroduction on the upper San Pedro River have not been fully analyzed as yet; however, it is possible that a successful reintroduction could create pond and marsh habitats. While a successful reintroduction may provide increased habitat for *Lilaeopsis*, this action alone does not remove the complex threats necessitating listing *Lilaeopsis* as endangered. Water issues on the San Pedro River are discussed later in this rule. Additionally, *Lilaeopsis* has not shown an ability to successfully compete with many aquatic plant species. *Lilaeopsis* may be able to opportunistically colonize such habitats early in their development; however, other plant species may dominate the habitat at later stages in the absence of some mild disturbance holding the system in an early seral stage.

Comment: One commenter suggested planning efforts for the San Rafael Valley could be used to conserve these species.

Service Response: The Coronado National Forest has produced a draft Lone Mountain Ecosystem Plan and discussions are underway to develop ecosystem plans for other portions of the San Rafael Valley. The Service has participated in these planning efforts and believes that they have a potential to contribute to recovery of the Sonora tiger salamander, *Lilaeopsis*, and

perhaps *Spiranthes*. However, these plans have yet to be finalized and potential benefits of these planning efforts have not yet been realized. Thus, these efforts have not yet affected the status of the species. The Service will continue to work with landowners and managers in the San Rafael Valley on conservation actions. These actions are expected to contribute to recovery.

Comment: One commenter stated that *Spiranthes* is and can be propagated in botanical gardens. Growing the species in gardens should be pursued, rather than Federal listing. It might be more cost-effective to propagate the species and introduce them into a beneficial environment. Another commenter stated that *Lilaeopsis* could not be an endangered species since it could be successfully transplanted.

Service Response: The Service places priority on conservation of species in the wild rather than pursuing horticultural programs for species. The cultivation of plants with subsequent outplanting may be done for reintroduction purposes; however, that type of activity alone does not provide for conservation or recovery of a species, nor does it address the habitat modification or destruction threats to a species. The listing of a species is not evaluated on cost-effectiveness, but on the best available scientific and commercial data available. The ability to transplant a species has no bearing as to whether or not that species warrants listing.

Comment: One commenter stated that Arizona Department of Water Resources (1991) found that 50 percent of the water available in the San Pedro basin is used by riparian vegetation. The commenter stated that if the BLM would remove 60 percent of the trees in the basin, there would be ample water to supply the needs of these three species and many others.

Service Response: Clearing of riparian vegetation would be counter to the purposes of the San Pedro River Riparian National Conservation Area. In the legislation establishing the Conservation Area, the BLM was charged with conservation, protection, and enhancement of the riparian area. To clear the riparian vegetation for water salvage would counter a Congressional mandate. As noted in Stromberg *et al.* (1996), Bock and Bock (1986), McQueen and Miller (1972), Yavitt and Smith (1983), and Dawson (1993), trees in a riparian system provide for increased soil fertility and increased soil moisture as a result of hydraulic lift and serve to temper environmental extremes such as temperature. This function of the overstory in a riparian system is likely to benefit *Lilaeopsis*. Therefore, the removal of this system component could result in the loss of *Lilaeopsis* from the riparian area once the soil fertility and moisture levels drop and temperature extremes occur. In addition, riparian ecosystems are extremely important to numerous other species. Removal of large numbers of trees would damage other species' habitat and would not be a viable conservation measure.

Comment: One commenter asked why the Service placed plants on the Endangered Species list if the Act does not apply to plants on private lands.

Service Response: Under the Act private landowners have essentially no responsibilities regarding conservation or management of endangered plants located on their property; however, the Act provides for consultation by Federal entities under section 7 of the Act if their actions may affect a listed plant, regardless of whether that plant occurs on private or Federal lands. Therefore, while a private landowner may not have responsibility to protect, conserve, or manage for a listed plant, a Federal action agency is responsible if an action it authorizes, funds, or carries out may affect a listed species or its critical habitat.

Issue 2: Critical habitat should be proposed and designated for one or more of the three species. The Service did not comply with its own regulations when proposal of critical habitat was found to be not determinable for the Sonora tiger salamander and *Lilaeopsis*. Critical habitat designation is necessary to protect the habitat of these species.

Comment: Several commenters stated that the Service failed to follow its own regulations by not proposing critical habitat for all three species in the proposed rule. Another commenter requested we reissue the proposed rule with critical habitat proposed for all three species, all areas known to be occupied by the species, all historical habitat, and all areas that could be restored and reoccupied by the species.

Service Response: The Service's position on critical habitat for these species is detailed in the "Critical Habitat" section of this final rule.

Comment: One commenter stated that collecting is a relatively minor threat compared to other factors that threaten the survival and recovery of *Spiranthes;* thus the benefits of critical habitat outweigh the costs and critical habitat should be proposed. Another commenter was concerned that protection of *Spiranthes* and its habitat would be impossible without critical habitat designation. This commenter was concerned that there would be a potential threat to *Spiranthes* from continued livestock grazing of cienega habitats.

Service Response: The Service does not believe this potential benefit of critical habitat designation outweighs the threat of collection given the extreme rarity of this orchid. Due to this species' cryptic nature, potential threats or impacts to its habitat would be addressed within the consultation process. As this is a plant species provided with a different, and lesser protection than an animal, pursuant to section 9 of the Act, the Service would not address continued use of a cienega as part of a livestock operation, except through the consultation process, regardless of whether critical habitat were designated or not. Additionally, preliminary indications are that *Spiranthes* may benefit from a responsible land management plan involving light disturbance from grazing.

Comment: Several commenters stated that habitat and species protection and recovery afforded through consultation in accordance with section 7 of the Act would be inadequate without critical habitat designation.

Service Response: Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Secretaries of the Interior and Commerce, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. It is the opinion of the Service that the designation of critical habitat for these three species would not be beneficial and therefore, not prudent.

Issue 3: Economic, social, and cultural impacts of listing need to be evaluated and considered in the listing process.

Comment: Several commenters requested that the Service study the indirect and direct economic, social, and/or cultural effects of listing these three species. Concern was expressed that listing of the species would affect use and value of private property, result in increased taxes and reduced investment in the local community, and adversely affect grazing permittees on state and Federal lands. Some commenters stated that the results of this analysis should be weighed with threats, status, and other listing factors in determining whether these species should be listed.

Service Response: 50 CFR 424.11(b) requires the Secretaries of the Interior and Commerce to make decisions on listing based on "the best available scientific and commercial information regarding a species' status, without

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reference to possible economic or other impacts of such determination." The Service has determined that the designation of critical habitat for these three species is not prudent.

Comment: One commenter stated that the listing and establishment of critical habitat would give the Federal government control over water use where the species occur. This commenter also stated that the species and their critical habitat would be given a higher priority than humans in a drought situation.

Service Response: Federal actions, such as groundwater use by Fort Huachuca or actions by the BLM that may alter San Pedro River flows or hydrology, would be subject to the section 7 consultation process, which may result in changes to proposed actions to avoid jeopardizing the continued existence of a listed species. (For further discussion, see the "Available Conservation Measures" section of this final rule.) Private actions would generally be exempt from the regulatory provisions of the Act, unless Federal funds or authorization are needed, or if the action would result in the taking of a Sonora tiger salamander. In the latter case, a private party could seek a section 10(a)(1)(B) incidental take permit to legally take salamanders incidental to otherwise lawful activities. The Service is not proposing or designating critical habitat in this rule. Designation of critical habitat for these three species was determined to be not prudent (see "Critical Habitat" section).

Comment: One commenter stated that the listing of these species would eliminate mineral exploration and exploitation in the unique and rare Cananea geologic trend.

Service Response: The Service assumes the commenter refers to mineralization, particularly copper deposits, in the quartz/monzonite/porphyry/copper deposit belt in southeastern Arizona, southwestern New Mexico, and adjacent portions of Mexico, including the copper deposits near Cananea, Sonora. As discussed elsewhere herein, if mining activities involved a discretionary Federal action, that action would be subject to section 7 consultation. For instance, consultation could result in modifications to mining plans of operation. Prospecting and mining of hardrock minerals, such as copper, on Federal lands is governed by the Mining Act of 1872 (16 U.S.C. 21 *et seq.*). Under this law, Federal agencies have limited discretion over mining activities. Thus, many activities would not be subject to section 7 consultation. If mining might result in the taking of a Sonora tiger salamander, this take could be permitted through the incidental take statement in a section 7 consultation for Federal actions, or through a section 10(a)(1)(B) permit for private actions. The listing would not affect mining activities in Mexico. The Service is unaware of any current or proposed copper mines or other mineral mines in the quartz/monzonite/porphyry/copper deposit belt in Arizona or New Mexico that may affect any of the three species. These listings would not eliminate mineral exploration and exploitation of the quartz/monzonite/porphyry/copper deposit belt.

Comment: One commenter stated that the impact of this listing would decimate the Babacomari Ranch's historical livestock operation along the Babacomari River and would eliminate this viable agricultural enterprise.

Service Response: Involvement with the Service regarding operation of this ranch would only occur within the context of the consultation process if a Federal action agency were to fund, authorize, or carry out an activity related to the operation of the ranch, or if the ranch owners wished to work with the Service on voluntary conservation actions. While the Service does not analyze economic effects of a listing action, it is not anticipated that the listing of *Spiranthes* will have an adverse effect on the ranching operations.

Comment: Commenters stated that the Service intends to close Fort Huachuca and undermine the local economy and well-being of citizens with these listings. The listings will result in a cessation of Federal highway funds and home mortgages in Sierra Vista. Another commenter stated that the proposed listing of these three species was an attempt to halt growth, grazing, and multiple use of public and private lands. One commenter reported hearsay that it was the intent of the Service to control the water and lives of the people with this listing, which is an inappropriate purpose of the listing process.

Service Response: The purpose of these listings is to extend the protection of the Act to the Sonora tiger salamander, *Lilaeopsis*, and *Spiranthes*. This protection does not authorize the Service to close Fort Huachuca or assert jurisdiction over water rights, and the Service does not anticipate significant impacts to local economies or to the well-being of citizens. As described in "Available Conservation Measures" herein, with the promulgation of this rule, Federal agencies, including Fort Huachuca and those that administer Federal highway funds and Federal loans, will be required to comply with section 7 of the Act to ensure their activities do not jeopardize the continued existence of these species. Consultations with Federal agencies, such as the Coronado National Forest, Fort Huachuca, and others, may result in changes to proposed actions that are at the discretion of the action agency. For instance, in accordance with section 7, the Coronado National Forest has conferenced with the Service on proposed reissuance of several grazing permits within the range of the Sonora tiger salamander. The Service has recommended that the Forest develop and implement stock tank management plans for tanks supporting salamanders. These plans would include timing maintenance activities to reduce effects to salamanders, minimizing removal or damage to bankline cover, adding brush and logs for cover, restricting access by cattle to selected tanks or portions of tanks, public information, and monitoring and periodic removal of nonnative predators. Similar outcomes are expected from future formal section 7 consultations for all three species. Further discussion of water issues are addressed in the following comments.

Comment: One commenter stated that a moratorium on the pumping of groundwater would be financially devastating to families.

Service Response: As discussed elsewhere, pumping of groundwater or other actions by private individuals on private lands would not be affected by this listing, with the possible exception of groundwater pumping that would drain a stock tank occupied by Sonora tiger salamanders and result in taking, or other activities that might result in the taking of salamanders. The Service is unaware of any planned or ongoing groundwater pumping anywhere within the range of the Sonora tiger salamander that would result in taking. If such an action were proposed, the proponent could seek authorization from the Service for an incidental take permit. If groundwater pumping involves a Federal authorization, funding, or other discretionary Federal action, that pumping would be subject to section 7 consultation if the action may affect a listed species.

Comment: One commenter noted that the listing of these species will complicate the issues surrounding the general adjudication. In particular, this commenter believed it would add another obstacle to reaching a negotiated settlement of some water rights with Federal agencies.

Service Response: A general adjudication of water rights in the Gila River system and its source is

underway, pursuant to Arizona Revised Statutes 45–251 to 45–260. This adjudication includes the San Pedro River watershed. Major water rights holders, particularly in the Sierra Vista subwatershed (in the river's watershed from Fairbank to the international border), are attempting to negotiate a settlement agreement. Listing of these three species would not directly affect water rights. Uses of water may be subject to section 7 consultation if such use involves a discretionary Federal action. Subsequent enforcement actions in regard to take of Sonora tiger salamanders could potentially also result in the modification or cessation of water use at specific sites, but the salamander occurs almost exclusively outside of the subwatershed. Although water rights are not directly affected by these listings, the Service agrees that listing could be a factor in the issues surrounding the settlement negotiations. The Service is involved in the negotiations and is likely to be a party to any settlement agreement. Compliance with the Act in regard to water use may be addressed in the agreement, and thus could provide a framework for addressing endangered species issues to which all parties to the agreement would have input. Of the three species listed, only *Lilaeopsis* is well-represented in the subwatershed.

Comment: One commenter stated that, as a result of this listing, the section 7 consultation process will add time and expense to any urbanization project.

Service Response: If a Federal agency is involved in urbanization, it would need to evaluate its actions and possible effects on listed species. The Service is required to deliver a biological opinion, which concludes consultation, to the action agency within 135 days of receipt of a request for consultation (50 CFR 402.14(e)). If the action agency incorporates consultation into their planning process and consultation is initiated early, project delays are unlikely. Some additional costs may accrue resulting from meetings with the Service, preparation of documents, and implementation of any reasonable and prudent alternatives or measures in the biological opinion. Private actions that do not require Federal funds, actions, or authorization, such as a private individual building a house with private funds, are not subject to section 7.

Issue 4: Information presented in the proposed rule was insufficient to support listing or was in error.

Comment: Several commenters stated that the status and population trends of *Spiranthes* cannot be determined because population size is unknown and cannot be accurately determined because an unknown percentage of plants are dormant and nonflowering plants are difficult to find.

Service Response: While the Service believes that additional long-term studies are needed to more accurately determine the stability of *Spiranthes* populations, data as a result of monitoring suggest that the populations may be declining based on the tendency of plants to remain in a nonflowering state, the low numbers of new flowering plants, and the reduction to a single nonflowering individual at one site in 1991 (McClaren and Sundt 1992, Newman 1991). The definitive answers on population biology that the commenters believe necessary would involve destructive methodology in order to determine the exact number of plants and percentages of absent individuals. Such a destructive methodology would be devastating to an extremely rare species such as this one and could result in the extirpation of some populations. Mark Fishbein (University of Arizona, *in litt.* 1996), a researcher who has studied *Spiranthes* extensively, notes that the life history of this species provides difficulties in censusing; however, years of observation have enabled him to estimate the total number of individuals at somewhere below 5,000, and perhaps less than 2,000.

Comment: Several commenters stated that surveys for the Sonora tiger salamander have not been extensive enough to adequately determine its status. Many potential habitat sites on private lands have not been surveyed and the taxonomy of salamanders found in adjacent portions of Sonora needs to be clarified. The recent discovery of a population at Fort Huachuca suggests the range of the species may be greater than originally thought. The salamander is thriving in stock tanks.

Service Response: Additional survey work conducted since the proposed rule was published further clarifies the status of the Sonora tiger salamander (Collins 1996) and is summarized in "Background" and "Summary of Factors Affecting the Species." As of late 1995, Dr. James Collins (Arizona State University) and Tom Jones (Grand Canyon University) (pers. comm. 1995) estimated that roughly 75 percent of public lands within the range of the salamander had been surveyed. Additional extensive surveys occurred in 1996. Surveys of private lands, most of which are in the center of the San Rafael Valley on the historic San Rafael de la Zanja land grant and comprise about 31 percent of the range of the salamander, have been sporadic and incomplete. The Service estimates that perhaps 60 percent of lands within the range of the salamander have been thoroughly surveyed. If we consider the 23 sites where salamanders have been found during one or more of the last three visits from 1993 through 1996 as extant populations, and if breeding populations occur on unsurveyed lands in a density similar to surveyed lands, then conceivably as many as 35 to 40 "extant" breeding populations could exist in Arizona. Regardless, a limited geographic range, very limited breeding habitat, and threats to the species described herein warrant protection as an endangered species.

The Service agrees that the taxonomy of the tiger salamander population at Los Fresnos in Sonora should be clarified; however, presence of Sonora tiger salamanders at this site is not unexpected (the salamander locality at Los Fresnos is within 1.3 mi (2.2 km) of the international boundary and 2.2 mi (3.6 km) of three extant localities in Arizona). The recently discovered population at Fort Huachuca also is not unexpected. It is approximately 1.4 mi (2.2 km) west of a salamander locality (presumed to be the Sonora tiger salamander) in Scotia Canyon. Neither of these new populations constitute significant range extensions, or lead the Service to believe that the range of the salamander is much greater than indicated in the proposed rule. Other potential habitats have been surveyed outside of the known range in Arizona and Sonora, but no Sonora tiger salamanders have been found (Collins and Jones 1987).

The Service disagrees with the general statement that the salamander is thriving in stock tanks. Many tanks within the range of the salamander are occupied by nonnative predatory fish that eliminate salamander populations and prevent colonization by salamanders. Bullfrogs, which also prey on salamanders, are well-established in the San Rafael Valley and have become more widely distributed since 1985 (Collins 1996). Virtually no recruitment of salamanders was noted by Collins (1996) during his surveys in 1993–1994. Furthermore, disease killed all aquatic salamanders at 3 tanks in the 1980's and recently killed salamanders at 7 tanks, and less than 10 salamanders were found during any 1 visit at 16 of 32 sites surveyed from 1993 through 1996 (James Collins, pers. comm. 1996).

Comment: Commenters stated that data are inadequate to determine the status of any of the three species. The information upon which the proposed listing is based is subjective and premised by qualifiers such as "might be," "may," etc. One commenter stated

that presumptions rather than science were the basis for listing. The same information could be interpreted that the species are not endangered.

Service Response: All three species are of very limited distribution and occupy very limited and sensitive aquatic habitats. The reasons for their limited distributions are not fully understood; however, the Service has attempted to describe all known and potential threats to the species in the proposed and final rules. Potential threats are described as possibly affecting the species and are treated as uncertainties, with qualifiers such as "may" and "might be." Despite these uncertainties, sufficient surveys have been conducted to adequately assess the current status of the species and whether they warrant listing. The Service makes listing determinations on the basis of the best scientific and commercial data available as required under section 4(b)(1)(A) of the Act.

Comment: One commenter stated that the status of the species cannot be determined without further study and survey in Mexico.

Service Response: Collins and Jones (1987) surveyed 30 sites in northeastern Sonora and 26 sites along the eastern slope of the Sierra Madre Occidental in northwestern Chihuahua without locating Sonora tiger salamanders. Other researchers have conducted casual surveys for salamanders in northern Sonora as well, without finding Sonora tiger salamanders, with the exception of the tiger salamander population of unknown subspecies at Los Fresnos. The Service believes that if the salamander occurs in Sonora, it probably has a limited distribution and occurs at very few sites. The species is most likely to occur in tanks or cienegas near the international boundary in the Sonoran portion of the San Rafael Valley.

Three populations of *Lilaeopsis* are known from Sonora (Warren, *et al.* 1991); however, recent efforts have failed to locate additional populations of this subspecies. Mark Fishbein (University of Arizona, *in litt.* 1995) has conducted extensive floristic surveys of the Sierra de los Ajos (site of one recently-discovered *Lilaeopsis* population reported herein) and believes the potential for additional new populations in that region to be low, although not all potential habitat for the species has been surveyed. Fishbein also notes that threats to wetland habitats in Mexico are similar to those in Arizona and, therefore, *Lilaeopsis* is probably as rare and threatened there as it is in Arizona.

Surveys for *Spiranthes* species in Mexico have not located populations of *Spiranthes delitescens*. While Sheviak (1990) noted that P.M. Catling had not found *Spiranthes delitescens* in his work in Mexico, Sheviak still believed that the species likely occurred in Mexico at that time. Recently, Charles Sheviak (University of New York at Albany, *in litt.* 1995) stated that the species appears "* * * to be very restricted and critically rare." Jones, *et al.* (1995), in a discussion on the phylogenetic origins and taxonomy of the Sonora tiger salamander, also note the unique occurrences of *Spiranthes* and the Huachuca springsnail (*Pyrgulopsis thompsoni*) within the San Rafael Valley. Sheviak (*in litt.* 1995) noted in reference to this publication that it "* * * suggests that this restricted distribution is real and the result of biogeographic processes that have produced a suite of similarly restricted organisms."

Comment: One commenter stated that *Lilaeopsis* populations are increasing, thus endangered status is not warranted.

Service Response: The size of *Lilaeopsis* populations fluctuate depending on flood cycles, refugia, habitat availability, and interspecific competition. Since publication of the proposed rule, some populations of *Lilaeopsis* have been found to be more extensive in their aquatic systems, i.e. scattered throughout a canyon system or in upstream tributaries; however, only one new population has been found. The other populations to which the commenter is referring are actually new areas of clumps of plants within a larger, connected system already known to contain *Lilaeopsis*. Probably the most extensive expansion of *Lilaeopsis* in a system has been within the upper San Pedro River. At the time of the proposed rule, the Service only knew of two springs along the San Pedro River containing *Lilaeopsis*. Mark Fredlake (BLM, pers. comm. 1996) documented 43 scattered patches of plants in the upper San Pedro River prior to the 1996 monsoon floods. Regardless of this information, the Service has not seen a reduction in threats to *Lilaeopsis*. Past and present habitat modification and destruction are significant issues in the Service decision to list *Lilaeopsis* as endangered.

Comment: Spiranthes is not endangered. It has existed for years on mostly Federal grazing lands that have been well-managed by permittees.

Service Response: With the exception of four individual plants recently found on public lands, all of the known sites for *Spiranthes* occur on private land.

Comment: AGFD herpetologist Jeff Howland is cited in the proposed rule as the source for the Sonora tiger salamander localities in Scotia and Copper canyons. Mr. Howland has not identified the salamanders at these locales to subspecies; thus, these localities are in question.

Service Response: The Copper Canyon locality is the same as "Game and Fish Tank," which Collins (1996) identifies as a Sonora tiger salamander locality. Salamanders from Scotia Canyon have not yet been identified to subspecies. This has been noted and corrected in this final rule.

Comment: One commenter noted that loss of *Lilaeopsis* habitat was the result of natural rather than human-caused processes. This commenter further stated that the San Pedro River and cienega habitats have been altered by natural climatic change, the 1887 earthquake, and cattle. The commenter stated that these changes were primarily the result of the geologic cycle and did not warrant listing *Lilaeopsis* as an endangered species. The commenter further stated that *Lilaeopsis* habitats were stable, but would now be subject to lawsuits by radical environmentalists and unknown decisions by judges.

Service Response: The Service is unaware of evidence supporting the comment that natural geologic cycles are the cause behind the modification and loss of cienega and riparian habitats containing *Lilaeopsis*. The 1887 earthquake affected the distribution of cienega habitats and spring flow along the upper San Pedro River (Hendrickson and Minckley 1984), but whether *Lilaeopsis* habitats increased or decreased as a result of the earthquake is unknown. Documented loss of *Lilaeopsis* habitat has resulted from habitat modification and destruction resulting from human-related activities; however, there has been a synergistic effect of overuse of habitats coupled with drought. The Service is unaware of long-term research indicating that *Lilaeopsis* habitats are stable. The Service is unable to predict the extent (if any) that *Lilaeopsis* habitats will now be subject to legal actions; however, we believe that cooperative partnerships to help conserve and restore riparian habitats will provide a positive basis for community interaction in the recovery of *Lilaeopsis*.

Comment: One commenter requested that the Service provide the mathematical equation used in determining whether or not a species is endangered.

Service Response: No equation, mathematical or otherwise, is used to determine a species' status. An

endangered species is one that is in danger of extinction throughout all or a significant portion of its range (50 CFR 424.02(e)). Determination of whether a taxon meets the definition of an endangered species is based on the best scientific and commercial data available after conducting a review of the species' status. Species are found to be threatened or endangered based on an analysis of the five listing factors evaluated in the section "Summary of Factors Affecting the Species," herein.

Comment: One commenter found that the Service failed to prove these species are declining and also failed to establish that they perform vital biological services for their ecosystem, are necessary to maintain a balance of nature, or that they contribute to biological diversity needed for legitimate scientific purposes.

Service Response: As described in the previous response, the Act and its implementing regulations require status review and analyses to determine if species meet the definition of a threatened or endangered species. Documented declines are one line of evidence that may contribute to a decision to list a species; other factors may be important. Documented declines are not a requirement for listing. Neither do endangered species need not perform vital biological functions for their ecosystems or contribute to biological diversity (section 4(a) and 4(b) of the Act).

Comment: One commenter questioned the historical reference to habitat qualities of the Santa Cruz River and stated that the river is still a "rapid brook, clear and crystal" now, following heavy rains.

Service Response: The Service searched historical references to provide answers to the specific questions and has fully incorporated that information into the rule; however, the Service is unaware of any instances where the reach of the Santa Cruz River near Tucson presently meets the historical habitat description.

Comment: One commenter stated that information provided in the notice was not the result of scientific research nor did any of the persons referenced in the notice have scientific training or expertise. Another commenter stated that the Service either misrepresented the best scientific and commercial data available or ignored these data altogether.

Service Response: The Service considered all known sources of information in its decisions to list these species. As required in 50 CFR 424.11(b), the best scientific and commercial data available formed the basis for these decisions. These data included published and unpublished reports by qualified and reputable biologists, personal communications with researchers and biologists, and comments from the public. For instance, much of the status information on the Sonora tiger salamander is based on papers by, and communications with, Drs. James Collins and Thomas Jones. Dr. Collins is chair of the Zoology Department at Arizona State University. Dr. Jones is a professor at Grand Canyon University.

The published and unpublished data supporting listing of *Lilaeopsis* and *Spiranthes* were the result of the work of a number of experienced biologists recognized in their fields. Much of the literature cited in the proposed and final rule was published in peer reviewed scientific journals. Peer reviewed scientific journals provide a level of scrutiny that ensures publication of the best information available.

Issue 5: Threats to the three species were not adequately described or supported by the best available information. In some cases, the discussions of threats or other information presented in the proposed rule were confusing, unclear, and contradictory to available information.

Comment: One commenter questioned the reference to a loss of 90 percent of the riparian habitat in southern Arizona. This commenter stated that the loss figure was extrapolated from a study of cottonwood-willow habitat along the Colorado River in the Yuma area and does not represent an actual inventory of historical riparian areas in the Arizona. Another commenter also stated that this figure was inaccurate.

Service Response: The proposed rule stated "The State of Arizona (1990) estimates that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historic times." The Service believes this is an accurate statement. The exact percentage of riparian habitat lost, degraded, or altered cannot be determined, because knowledge of predevelopment conditions is often anecdotal or incomplete. However, numerous factors have cumulatively resulted in habitat loss and degradation throughout most of the major desert watercourses in Arizona, particularly the Colorado, Gila, Salt, Santa Cruz, and Verde rivers. These include—introduction of nonnative plants, such as salt cedar (*Tamarix* spp.); carrizo (*Phragmites australis*), and watercress (*Rorippa nasturtium-aquaticum*); construction and operation of dams, which have altered flow and flooding regimes, sedimentation, water temperatures, and channel characteristics; water withdrawals; channelization; and construction of levees and other flood or bankline structures.

In contrast, the riparian habitats of the San Pedro River are surprisingly unaltered, and provide conditions that do not occur, or are very rare, on other desert watercourses. Thus there is great biodiversity on this river and many rare species, such as *Lilaeopsis*, occur there.

Comment: One commenter stated that there were no significant current threats to any of these species in the San Rafael Valley with the exception of potential unmonitored and increased recreation that could cause habitat degradation.

Service Response: As discussed in the "Summary of Factors Affecting the Species" section, threats to the species in the San Rafael Valley are many. The Service acknowledges that recreational activities, such as off-road vehicle use, fishing that would involve illegal use or transportation of bait fish or salamanders, fire caused by recreationists and subsequent watershed erosion and degradation, wood cutting, and other activities are threats to the Sonora tiger salamander, *Lilaeopsis*, and/or *Spiranthes*, in and near the San Rafael Valley. However, these species face many other threats in the San Rafael Valley, as well. As discussed herein, all three species are vulnerable to chance extinction owing to limited numbers of populations and individuals, and climatic and other environmental variability. The Sonora tiger salamander is threatened by introduction of nonnative predators, disease, habitat degradation due to heavy use by livestock at some tanks, and a variety of other factors, all of which operate in the San Rafael Valley. Subdivision of ranches into ranchettes or housing tracts is an additional threat to all three species within the San Rafael Valley. Subdivision could result in fragmentation of cienega habitats and increased groundwater pumping.

Comment: One commenter stated that discussions of threats to the Sonora tiger salamander described by the Service at the Patagonia public hearing and in the proposed rule differed. In particular, the proposed rule indicated the salamander faced many more serious threats than were indicated at the public hearing.

Service Response: The Service's presentation at Patagonia on the proposed listing was abbreviated to allot as much time as possible to hear public comment. Rather than discuss all known or potential threats in detail, the Service presented an overview of the status of the taxa based on information in the proposed rule.

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Comment: One commenter stated that two of the three species are abundant and not in peril in Mexico, and therefore listing is not warranted.

Service Response: Neither *Spiranthes* nor the Sonora tiger salamander have been confirmed from Mexico, although a population of tiger salamanders suspected to be of the subspecies *stebbinsi* was observed at Los Fresnos, Sonora. *Lilaeopsis schaffneriana* ssp. *recurva* is known from three sites in Sonora; all of these sites face similar threats to those north of the international border, in the United States.

Comment: One commenter stated that *Lilaeopsis* occurs in some areas without perennial flows and with a regulated hydrograph, contrary to information presented in the proposed rule.

Service Response: The Service is unaware of any sites containing *Lilaeopsis* that do not have perennial flows.

Comment: One commenter believed statements in the proposed rule suggesting development in the upper San Pedro River Valley will result in increased erosion and other detrimental hydrologic effects are inaccurate and unsupported.

Service Response: Development can result in elevated runoff rates, such as from parking lots and roadways, and increased erodibility of soils due to soil disturbance, removal of vegetation, and disturbance of natural drainageways. Increased runoff rates and erosion in the Sierra Vista subwatershed can lead to more frequent "flash" floods and deposition and movement of sediment in the San Pedro River. This increased hydrologic instability would be detrimental to *Lilaeopsis*, which does not tolerate high levels of disturbance or channel instability. Additionally, flash floods could scour existing *Lilaeopsis* out of the system and could occur with frequency or intensity that would not allow for refugia sites for *Lilaeopsis* and subsequent recolonization.

The city of Sierra Vista has adopted a Surface Water Plan to address regional management of surface runoff. The plan includes construction of flood detention/retention basins at 30 locations (ASL Hydrologic & Engineering Services (ASL) 1995). New construction also includes provisions for stormwater retention and increased infiltration. Fort Huachuca also is investigating stormwater recharge as a part of their Mountain Front Recharge Project (Fort Huachuca 1995). However, development is occurring outside of the Sierra Vista/Fort Huachuca areas without these same controls, the city's plan has not been fully implemented, and the Fort is in the planning stages. Thus, the Service still considers erosion caused by development in the watershed a threat to the habitat of *Lilaeopsis* in the San Pedro River.

Comment: One commenter stated that, contrary to statements in the proposed rule, stock tank maintenance is beneficial to the Sonora tiger salamander because it removes nonnative fish. Concern also was expressed that listing would result in removal of grazing and cessation of stock tank maintenance. Another commenter stated that habitat conditions for these species, especially the salamander, have improved in the past 30 years because landowners have directly benefitted and increased the extent of habitat through stock tank construction.

Service Response: Maintenance of the tanks is necessary not only to preserve their value for livestock but also to benefit salamander populations. Tanks would silt in and aquatic habitats would be lost without periodic maintenance. The Service acknowledges that maintenance also may help remove nonnative fish species that prey upon the Sonora tiger salamander. Silt is typically removed from tanks when they are dry or nearly dry. Remaining fish might be dredged out of the tanks or killed during silt removal. As described in the proposed rule, salamanders present in the tanks would probably also be killed. The Service believes that certain mitigating precautions are possible to reduce adverse effects to salamander populations resulting from removal of silt or other maintenance activities. These mitigation measures will be addressed through the section 7 consultation process and in recovery planning. As discussed elsewhere in this final rule, the Service believes well-managed livestock grazing is compatible with viable salamander populations. Thus, listing will not result in removal of grazing or the need for well-maintained water sources, such as stock tanks.

Comment: Several commenters stated that the analysis of threats in the proposed rule did not take into account efforts by the City of Sierra Vista and the town of Patagonia to maintain flows in the San Pedro River and Sonoita Creek, respectively. Groundwater pumping by Patagonia does not affect Sonoita Creek. One commenter stated that the Service had been contemptuous and arrogant by not documenting in the proposed rule the City of Sierra Vista's efforts to protect the riparian habitat of the San Pedro River.

Service Response: The "Summary of Factors Affecting the Species section" has been revised to include efforts by the City of Sierra Vista and Fort Huachuca to maintain flows in the San Pedro River. The proposed rule did not specifically mention groundwater pumping by the Town of Patagonia as a threat to any of the three species. However, the Service acknowledges and appreciates efforts by the Town of Patagonia to avoid possible adverse effects to listed species and to maintain flows in Sonoita Creek.

Comment: One commenter stated that testimony by Dr. Thomas Maddox, Department of Hydrology and Water Resources, University of Arizona, refutes information presented in the proposed rule in regard to the effects of groundwater pumping on the San Pedro River. Another commenter noted that Maddock and Vionnet (1991) found that "the mean depletion rate of the regional aquifer in the Sierra Vista area from pumping is very small and that pumping from the regional aquifer is not the major factor imperilling stream flow." This commenter also stated that the conservation measures for recharge and reuse of sewage effluent recommended in this study will not be implemented if the listing process is finalized. One commenter stated that groundwater pumping does not pose an immediate threat to populations of *Lilaeopsis* at Lewis Spring and south of Boquillas Road.

Service Response: The point of the Service's discussion in the proposed and final rules in regard to groundwater pumping in the Sierra Vista subwatershed is that withdrawal of water from the aquifer in excess of recharge threatens the baseflow of the upper San Pedro River and, in turn, threatens *Lilaeopsis* habitat. Nothing in Dr. Maddox's testimony nor in Maddock and Vionnet (1991) refute this claim. On page 46 of Dr. Maddock's testimony he states that if pumping continues "the cone of depression continues to expand. It actually turns the stream (the San Pedro River), which is in some cases perennial in the reaches, to intermittent." On pages 65 and 66 of the testimony he states that if pumping continues the San Pedro River may become like reaches of the Santa Cruz River that are now dry and devoid of riparian vegetation due to groundwater pumping. He goes on to say on page 84 of the testimony that during the period of his study, groundwater pumping in the Palominas area had reversed the flow of groundwater so that the groundwater was flowing to the cone of depression there, rather than into the San Pedro River, which directly reduced river flows.

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Much of the pumping in the Palominas area has been halted in recent years, and this condition may have changed. However, it illustrates the potential that groundwater pumping has to affect flows in the San Pedro River. The problem is not trivial. ASL (1995) calculated that the cone of depression in the Sierra Vista/Fort Huachuca area in 1995 was in excess of 36.6 m (120 ft) deep with drawdown levels of more than 6.1 m (20 ft) extending from north of Huachuca City and the Babacomari River to well south of Highway 90, a distance of approximately 18 km (11 mi). Water and Environmental Systems Technology, Inc. (1994) estimated that even if all pumping stopped in the Sierra Vista/Fort Huachuca area, the cone of depression would continue to spread toward the river as it flattened out and river flows would continue to decline through the year 2088.

Groundwater modeling indicates that effects to upper San Pedro River baseflows may not occur for 25 years or more (ASL 1995), thus the Service concurs that groundwater pumping in the Sierra Vista/Fort Huachuca area does not pose an immediate threat to *Lilaeopsis*. However, adverse effects are likely to occur in the foreseeable future unless mitigating actions are implemented very soon. These measures could include water conservation, effluent recharge, watershed improvements, stormwater recharge, and others, many of which are in the planning stages or are being implemented to some degree in the subwatershed. Modeling suggests that if effluent recharge and other measures are implemented, flows may actually increase in some reaches over the next 100 years (ASL 1995, Water and Environmental Systems Technology, Inc. 1994). However, in the long term, unless water withdrawals are brought into balance with recharge, growing cones of depression will eventually capture effluent recharge and river flows, and *Lilaeopsis* habitat in the San Pedro River will be lost.

Groundwater elevation has already declined under portions of the Babocomari River (ASL 1995), thus *Spiranthes* occurring on that river may also be threatened in the long-term, The Service is unaware of studies or modeling that specifically addresses areas where the species occurs. Loss of *Lilaeopsis* on the San Pedro River and *Spiranthes* on the Babocomari River would not, alone, likely result in the extinction of these species. However, loss of these populations and habitats would significantly increase the likelihood of extinction and substantially reduce or preclude recovery options.

The Service does not believe that listing these three species will result in the City of Sierra Vista, Fort Huachuca or others in the Sierra Vista subwatershed abandoning efforts to reduce water use and increase recharge. These efforts are probably driven by projected increased pumping costs as groundwater elevations decline, the Gila River water rights adjudication, and other considerations. To the contrary, efforts by the City of Sierra Vista, Fort Huachuca, and other water users to conserve water, develop effluent recharge, enhance mountain front recharge, etc., complement actions to recover *Lilaeopsis* and *Spiranthes*.

Comment: Several commenters stated that, contrary to information presented in the proposed rule, livestock grazing is not detrimental to *Spiranthes*. Populations in grazed areas are larger and healthier than at a site where grazing has been excluded since 1969. Grazing may have replaced fire as a form of disturbance in cienegas. Removing or restricting grazing would be detrimental to *Spiranthes*.

Service Response: Discussions of well-managed livestock grazing and *Spiranthes* presented in the proposed rule did not indicate a detrimental effect. The Service stated that our preliminary conclusion is that well-managed livestock grazing does not harm *Spiranthes* populations. Additionally, the Service acknowledges that *Spiranthes* may favor some form of mild disturbance and would not recommend the removal of grazing as a component of responsible stewardship. However, negative effects of overgrazing remain a concern. The Service has tried to differentiate responsible, well-managed, livestock grazing from poor livestock management and overgrazing.

Comment: One commenter stated that the following statement in the proposed rule is incorrect; groundwater pumping in the Hereford-Palominas area has the largest impact on the aquifer of any groundwater pumping in the upper San Pedro River basin.

Service Response: Wells in the Hereford-Palominas area are or were located in the floodplain of the San Pedro River and draw water directly from the shallow aquifer and, in some cases, from deeper regional aquifers. Wells farther from the river, such as those at Fort Huachuca, draw water from deep aquifers, and not directly from the floodplain aquifer. Wells that draw water from the floodplain aquifer are more likely to directly affect river flow, but wells elsewhere in the watershed may intercept groundwater flow that would otherwise be discharged to the floodplain aquifer (ASL 1994). As of 1990, pumping in the Palominas-Hereford area exceeded slightly that in the Sierra Vista-Fort Huachuca area (ASL 1994, Arizona Department of Water Resources 1991). Pumping at Palominas-Hereford has probably declined since then, while pumping at Sierra Vista-Fort Huachuca has likely increased, but the former would still be the major impact on the floodplain aquifer because it extracts water primarily from that aquifer, whereas water pumped in the Sierra Vista-Fort Huachuca area comes from deeper aquifers.

Comment: One commenter stated that the drying of stock tanks inhabited by Sonora tiger salamanders is not a serious threat because the larval salamanders metamorphose and return to breed when the tanks refill.

Service Response: If tanks dry out slowly, some salamanders will metamorphose into terrestrial adults and leave the tank. Young larval salamanders, perhaps less than 6 months of age, and some branchiate salamanders (mature aquatic forms), particularly older branchiates, are incapable of metamorphosing into a terrestrial form and would be lost. The percentage of aquatic salamanders lost when a tank dries out would depend on the age structure of the population and the dryness of the season. If a tank dried during May or June, which is the dry season in the San Rafael Valley, most or all salamanders hatched that spring would not be able to metamorphose. Survival of salamanders during metamorphosis or after they leave the tank is unknown, but predation of larvae may be high as water levels decline (Webb and Roueche 1971). If aquatic habitat in a tank is lost rapidly due to sedimentation after a storm or breaching of the impoundment, salamanders would not be capable of metamorphosing into terrestrial forms and all aquatic salamanders would be lost. Terrestrial adults in the area may return to the tank when it refills, breed, and repopulate the tank with larvae and branchiates. This has apparently occurred at several sites, including Campini Mesa North Tank, Huachuca Tank, Parker Canyon Tank #1, and Inez Tank; (Collins 1996, Collins *et al.* 1988). However, as noted in the "Summary of Factors Affecting the Species" section, if a tank were dry for several years and isolated from other salamander populations, insufficient terrestrial salamanders may remain and immigration from other populations may be inadequate to recolonize a tank. In any case, drying of a tank and loss of

any salamanders may reduce the number of breeding individuals and further reduce genetic heterogeneity, which is very low in this subspecies. Further reduction of genetic diversity increases the chance of local extirpations, as described in "Summary of Factors Affecting the Species" section. The Service acknowledges, and discussions herein have been modified, to recognize that drying of tanks can control some nonnative predators, particularly fish.

Comment: One commenter recommended not listing *Spiranthes* because endangered status will increase the demand for specimens and result in increased collecting pressure.

Service Response: The Service acknowledges that listing could potentially increase demand for specimens; however, the Service believes that the benefits of listing *Spiranthes* outweigh any additional potential collecting pressures that listing may create.

Comment: One commenter stated that the three species have coexisted with cattle grazing for over 300 years, and historical grazing intensity was much greater than it is today. As a result, cattle grazing cannot be a threat. Another commenter stated that studies have shown salamander populations decline when grazing is halted.

Service Response: The Service acknowledges that these species have coexisted with cattle grazing for up to 300 years. At times in the past and in certain areas, stocking levels were much greater than today (Hadley and Sheridan 1995). However, we disagree that this long coexistence is evidence that cattle grazing has no adverse effects and does not threaten these species. As discussed in the "Summary of Factors Affecting the Species," the effects of improper cattle grazing practices on these species are many, and depending on the species and the circumstances, may have varying impacts on the three species. The Service is unaware of any studies that found salamander populations declined when grazing was halted. With the exception of the population at Fort Huachuca, the entire range of the salamander has been grazed by cattle for many years.

Comment: One commenter suggested that declining salamander populations may be attributable to predation by various birds and mammals rather than factors indicated in the proposed rule.

Service Response: Predation by coyotes, bobcats (Webb and Roueche 1971), badgers (Long 1964), raccoons, gulls, and wading birds (Degenhardt *et al.* 1996) has been documented for other subspecies of tiger salamander, and predation by a variety of birds and mammals likely contributes to mortality of Sonora tiger salamanders. However, population declines and extirpations of this subspecies have not been attributed to bird and mammal predation; the most apparent and direct causes are predation by nonnative fish and mortality due to disease (Collins and Jones 1987, Collins 1996).

Comment: The species are not adversely affected by threats because they are capable of moving to other locations.

Service Response: All three species have limited distributions and are found only in rare wetland habitats with very specific characteristics. For instance, aquatic populations of the Sonora tiger salamander only occur in stock tanks and impounded cienegas in the San Rafael Valley and adjacent areas where nonnative predators are rare or absent and other subspecies of salamander are absent. The salamander possesses limited mobility and may not be able to move outside of its current range due to competition and/or interbreeding with other subspecies or for other reasons.

Spiranthes has an extremely limited distribution that may be the result of a unique evolutionary history in the San Rafael Valley as discussed previously in this rule. There are few sites remaining that may be capable of supporting a population, were the species able to colonize them.

The ability of *Lilaeopsis* to colonize new areas within an aquatic system is dependent on the availability of habitat and the existence of refugia within that system. This has been discussed previously in this final rule. None of these three species are able to move to other locations when threats occur. The species cannot move elsewhere because there are few, if any, suitable habitats to which they can move with limited mobility.

Comment: One commenter stated that it made no sense to reestablish *Lilaeopsis* in the San Pedro River as that habitat is subject to scouring and flooding and would not be an appropriate habitat.

Service Response: Various microsites providing refugia for *Lilaeopsis* along the San Pedro River have enabled this plant to reestablish itself within the main channel in areas providing appropriate habitat.

The experts referenced in the proposed rule are reputable biologists with an extensive knowledge of *Spiranthes*. The extent of their qualifications as fire ecologists is unknown to the Service; however, as these experts (McClaren, Sundt, Gori, and Fishbein) are taxonomists and ecologists with recognition in their fields, the Service sees no reason to question their expertise because data on the effects of fire is inconclusive at this time.

Comment: One commenter stated that consumptive water use by sand and gravel operations was inadequately evaluated. The commenter stated that the Service has no substantive evidence that sand and gravel mining and processing could cause *Spiranthes* or *Lilaeopsis* habitat or population losses either upstream or downstream of a mining operation. The commenter further added that the Service failed to provide information on how sand and gravel mining at the Babacomari Ranch could affect at least one *Spiranthes* population.

Service Response: Mining of sand and gravel within riparian systems can destabilize stream banks and channels, resulting in loss of riparian vegetation and increased stream sediment loads. The Service has described herein the pumping of groundwater to process mined materials near the Babacomari River as a potential threat to one *Spiranthes* site. This groundwater pumping, combined with an expanding cone of depression in the aquifer at Sierra Vista and Fort Huachuca, could dewater portions of the Babacomari River, and the *Spiranthes* population located near the river could be lost with the elimination of surface water.

Comment: One commenter stated that the San Pedro River would not be suitable habitat for the species because it is a dynamic system, and thus would not provide habitat for successful reestablishment.

Service Response: The San Pedro River is outside of the range of the Sonora tiger salamander and *Spiranthes*. The Service does not consider the San Pedro River as recovery habitat for either of these species. While the San Pedro River is a dynamic system, *Lilaeopsis* has been able to remain established within the system because of refugia sites that have not yet undergone massive scouring or loss of perennial waters. An opportunistic species *Lilaeopsis*, has been able to recolonize some of the disturbed habitats resulting from the dynamic nature of the system. The San Pedro River is an important recovery habitat for *Lilaeopsis*.

Issue 6: The three species should be listed as threatened rather than endangered.

Comment: One commenter stated that the three species should be listed as threatened rather than endangered because threats are localized and some populations are secure. Another

commenter stated that the proposed rule should be withdrawn because there is no biological evidence that the species meet the statutory definition of endangered species. The best available scientific information does not support the contention that they are endangered throughout a significant portion of their range.

Service Response: An endangered species is one that is in danger of extinction throughout all or a significant portion its range (50 CFR 424.02(e)). A threatened species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (50 CFR 424.02(m)). The three species listed here are endangered because of widespread and serious threats that are thoroughly discussed in the " Summary of Factors Affecting the Species" section of this rule.

Issue 7: The Service failed to follow Federal or other regulations in regard to the listing of these species.

Comment: The proposed rule is void because this final rule was not published within 12 months of receipt of the listing petitions.

Service Response: The Service published a proposed rule to list these species on April 3, 1995. In accordance with 50 CFR 424.17, the Service is required to publish a final determination, withdrawal, or extension within 1 year of the date of the proposed rule. In this case, the final rule was published well over a year after the proposed rule; however, this was due in part to legislation preventing the Service from issuing final rules from April 10, 1995, to October 1, 1995; a near cessation of listing actions from October 1, 1995, to April 26, 1996, due to budget limitations. The Service disagrees that this invalidates this final rule.

Comment: One commenter stated that the Service did not provide adequate time for the public to comment on the proposed rule. The Service violated the Act and the Administrative Procedure Act (APA) by not providing the public with sufficient opportunity to comment. The Service also violated both Acts by denying public access to materials upon which the proposed rule was based. One commenter stated that the first public hearing was held in a small town located in a different county, and far away from the major population area impacted by the proposed listing—a transparent attempt to prevent public awareness in the City of Sierra Vista.

Service Response: The Service is required to allow 60 days for public comment on proposed rules (50 CFR 424.16(c)(2)). Three comment periods were provided on the proposed rule, including a 60-day period from April 3 to June 2, 1995; 30 days from June 24 to July 24, 1995; and 45 days from September 11 to October 27, 1995; a total of 135 days.

The Service is required to hold at least one public hearing if any person so requests within 45 days of publication of a proposed rule (50 CFR 424.16(c)(3)). The Service received two requests for a public hearing within the 45 day request period. In response, a public hearing was held in Patagonia, the closest town with facilities for a hearing to the residents requesting the hearing and only 36 highway miles from Sierra Vista. Additional requests for a public hearing in Sierra Vista were received more than 45 days after publication of the proposed rule. The Service granted those requests and held a second public hearing in Sierra Vista.

In response to requests from the public, and in accordance with the Act and its implementing regulations, the Freedom of Information Act, and the APA, the Service provided copies of documents to several members of the public and loaned the administrative record to the City of Sierra Vista for copying. Some requests for information were not promptly addressed because they were contained within comment letters on the proposed rule. In accordance with Service guidance on implementation of Public Law 104–06 that halted work on final rules, comment letters were filed and not read; thus granting of some information requests were delayed. However, the Service did not deny any information requests, with the exception of information withheld in accordance with exemptions to disclosure under the Freedom of Information Act.

Comment: One commenter stated that people without proper biological training influenced the listing process, and thus the process is flawed.

Service Response: The Service is required to consider all comments and information received regardless of the extent of any biological training of the people submitting them. The Service recognizes that non-biologists may have valid comments or information that may contribute to a final determination. However, the Service's decision to list these species were based only on the best scientific and commercial information available, in accordance with 50 CFR 424.11(b).

Comment: Several commenters stated that the Service failed to comply with its own regulations governing public notification of hearings on the proposed rule. Other commenters believed more public hearings were necessary and that public meetings on the proposed rule should be held in all areas potentially affected. Hearing times and locations were inconvenient and not conducive to public participation.

Service Response: In regard to public notification of public hearings, 50 CFR 424(c)(3) and provisions of the APA require the Service to publish a notice in the **Federal Register** not less than 15 days before the hearing is held. Notices announcing a public hearing were published in the **Federal Register** 21 days before the July 13, 1995, hearing in Patagonia (June 22, 1995) and 15 days before the September 27, 1995, public hearing in Sierra Vista (September 12, 1995). The Service's Listing Handbook, which is internal agency guidance, requires that notifications of public hearings be published in major and local newspapers within 20 days of the hearing. This requirement was met; publication dates and newspapers where notices were published are listed in "Summary of Comments and Recommendations" section. Hearings were held in the evenings during the week, when most people are not working and can attend. The hearing locations were in Patagonia and Sierra Vista, which are major population centers near the center of the distribution of these species, and near the homes of citizens requesting hearings.

Comment: Commenters stated that the Service, in violation of its own regulations, failed to give notice to and consult with local authorities in the Republic of Mexico, on development of the proposed rule and failed to notify Mexico of publication of the proposed rule.

Service Response: A letter notifying the Director General, Direccion General de Vida Silvestre, Mexico City, Mexico of this final determination, along with a copy of the proposed rule (60 FR 16836) was sent to for review and comment. As of December 9, 1996, no comments were received from the Mexican government.

Comment: Listing of the three species would constitute a violation of the National Environmental Policy Act of 1969 (NEPA), because the Service did not analyze the economic impacts of the action. Because the Service did not provide adequate notice and opportunity to the public to comment on the proposed rule, the Service must complete an NEPA analysis to guard against an arbitrary and capricious decision. An environmental assessment or impact statement should be completed prior to listing.

Service Response: As discussed in the "National Environmental Policy Act" section in this rule, the Service has determined that neither environmental

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assessments nor environmental impact statements need to be prepared for proposed or final listing actions.

Comment: The Act is expired and thus these species should not be listed.

Service Response: No laws or regulations limit the duration of the Act's provisions. Section 15(a) of the Act authorizes appropriations for implementation only through fiscal year 1992, but Congress has appropriated funds in each fiscal year since 1992 to fund activities such as this final rule.

Comment: De facto division of species into separate populations at the international border is unsupported by either biology or the Act, and runs counter to the 1984 Agreement of Cooperation of Wildlife between Mexico and the Service.

Service Response: The Service has not attempted to split species into separate populations with the international boundary as a dividing line. Each species or subspecies is being listed throughout its range. The term "population" is used in this rule only as a term of convenience when referring to a particular part of a taxon's range.

Comment: One commenter stated that the notice was irretrievably flawed on a legal and technical basis by its use of an obsolete address to which comments and requests for public hearings on the proposed rule were to be sent. Additionally, this commenter stated that comments and materials received were not available for public inspection at the old address; therefore, the Service must, by law, withdraw the proposed rule.

Service Response: Between the time the proposed rule was prepared and its publication, the Service moved its office location within Phoenix, Arizona. The proposed rule listed the old address and facsimile number and the correct telephone number. The Service received some comment letters mailed to the old address, indicating that the Post Office was forwarding the mail. A recorded phone message at the old phone number also informed callers of the new number in the event the old office was contacted. The Service is unaware of any comment letters, requests for hearings, or requests to inspect records that were returned to the sender, or telephone callers that were not informed of our new number. In **Federal Register** notices announcing subsequent comment periods, from June 24 to July 25, 1995, and September 12 to October 27, 1995, the correct address and phone numbers were published. The Service thus believes the public was provided adequate opportunity to provide comment on the proposed rule and inspect supporting information.

Comment: One commenter believed the Service violated Section 4(b)(1)(A) of the Act. This commenter stated that we misrepresented the known requirements of the salamander, therefore, violating the Act. This commenter said our discussion of the threats of rural and urban development, road building, chaining, agriculture, mining, and other watershed degrading activities to *Lilaeopsis* was speculation and a violation of the Act.

Service Response: Habitat and other requirements of the Sonora tiger salamander presented here and in the proposed rule were based on the best scientific and commercial information available.

Comment: One commenter questioned whether persons conducting studies on these species had landowner permission to access sites. This commenter also questioned whether landowners had been given information on what work was being done and the reasons behind the research.

Service Response: Surveys and studies on these species were conducted by many individuals over many years. The Service used the results from those studies, but the Service has no control over the conduct of independent researchers, and thus we cannot answer this question definitively. Nearly all survey work for these species conducted by Service personnel has focused on Federal lands. The few surveys conducted by the Service on private lands were with the permission of the landowner.

Comment: One commenter stated that the listing of these three species would violate State water law.

Service Response: The listing of these species does not restrict groundwater pumping or water diversions, or usurp water rights, or violate State water law.

Issue 8: The Sonora tiger salamander is a hybrid organism and all three species are recent introductions to the San Rafael Valley, and as such should not be considered for listing.

Comment: The species are not native but were introduced within the last 300 years. One commenter stated the salamander was introduced into the San Rafael Valley earlier in this century and that there is no verifiable evidence that it ever occurred in any significance in cienegas. Stock tanks are the natural habitat of the salamander. One commenter stated that the Sonora tiger salamander was introduced for use as fish bait.

Service Response: All evidence suggests the species have occurred within their present ranges for much longer than 300 years. Fossil *Ambystoma* found in the Canelo Hills date from at least 31,000 years ago (Jones *et al.* 1995). Additional *Ambystoma tigrinum* fossils dating from the late Pliocene, more than 2 million years ago, have been found in the San Pedro River Valley, east of the Huachuca Mountains (Brattstrom 1955). Hybridization is an important evolutionary process from which new taxa can arise (Harlan 1983, review in Jones *et al.* 1995). The Sonora tiger salamander likely resulted from a hybridization between the subspecies *mavortium* and *nebulosum*. The latter no longer occurs in southeastern Arizona; its range has shifted to the north, an event that likely occurred during climatic and vegetational shifts during the Pleistocene (Jones *et al.* 1995). The absence of this ancestral subspecies in southeastern Arizona is further evidence that the Sonora tiger salamander originated long before historical times. Because stock tanks are a recent phenomenon, Sonora tiger salamanders must have occupied other habitats at one time. Throughout its range, *Ambystoma tigrinum* breeds in various types of wetlands, including ponds, lakes, slow streams, and backwaters (Bishop 1943). Habitats such as these were present in the San Rafael Valley during presettlement times in the form of cienegas and streams. Although no Sonora tiger salamanders have been collected from cienegas or streams (with the possible exception of the specimen from Los Fresnos, Sonora), these wetlands are the most likely presettlement breeding habitats of the salamander.

There is no evidence that supports the commenter's claim that *Lilaeopsis* and *Spiranthes* are recent introductions by humans into the San Rafael Valley. *Lilaeopsis* has been noted from sites within the Santa Cruz, San Pedro, Rio Yaqui, and Rio Sonora watersheds. *Lilaeopsis* was first described based on a specimen collected near Tucson in 1881 (Hill 1926). There is no indication that this inconspicuous plant was introduced by humans. *Spiranthes* was not discovered until 1968; however, evidence suggests this species has a unique evolutionary history associated with the San Rafael Valley and may have arose through hybridization between *Spiranthes vernalis* (a species of the southern Great Plains) and either *Spiranthes porrifolia* (a California-Northern Cordilleran species) or *Spiranthes romanzoffiana* (a species of high elevations in northern Arizona, the southern Rockies, and Pleistocene relict habitats in the Pinalenos (Sheviak 1990, Jones *et al.* 1995; Charles Sheviak, *in litt.* 1995)).

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Issue 9: Experts on *Lilaeopsis* and the Sonora tiger salamander believe these species do not warrant listing.

Comment: Several commenters stated that experts on the Sonora tiger salamander (Dr. James Collins) and *Lilaeopsis* (Dr. Peter Warren) do not believe these species should be listed. Mexico also disagrees with the proposed endangered status. This expert testimony should convince the Service not to list these species, or the Service should publish a notice in the **Federal Register** extending the listing process to resolve differences among experts in regard to the status of these species.

Service Response: The Service discussed the listing of the salamander with Dr. Collins in October, 1996, and asked him to clarify his position. Dr. Collins has found that the status of the salamander has been stable from the mid 1980's to the present, based on numbers of occupied breeding sites. However, he believed that continued spread of nonnative predators, presence of a reoccurring, lethal disease, and other factors warrant concern and that some conservation measures are needed.

The Service has discussed the statements attributed to Dr. Warren with him. Dr. Warren has worked towards developing and implementing conservation measures in order to provide for the recovery of *Lilaeopsis* or possibly preclude its listing. As a staff member of The Nature Conservancy (TNC), neither Dr. Warren nor TNC has taken an official stand in support or opposition to the listing of *Lilaeopsis* (Peter Warren, Arizona Nature Conservancy, pers. comm. 1996).

The Mexican government has not taken or expressed an official position regarding listings of these three species. As stated previously, the Service has not received comments from Mexico. Mexico considers the tiger salamander, *Ambystoma tigrinum*, a species of special protection.

Issue 10: Current actions of the City of Sierra Vista and Fort Huachuca do not affect the species, and planned actions are not expected to affect the salamander or *Spiranthes*. Habitat of *Lilaeopsis* would not be affected for several decades.

Comment: The Director of Public Works for the City of Sierra Vista requested that the following information be included in the **Federal Register** to correct the proposed rule—"(1) Groundwater use by Sierra Vista and Fort Huachuca currently is not endangering any habitat critical to the survival of the umbel, lily, salamander, or any other listed or proposed species; is not expected to ever affect any habitat critical to the survival of the lily or the salamander; and is not expected to affect any habitat critical to the survival of the umbel for several decades; (2) Sierra Vista has determined that recharging the City's sewage effluent can protect the San Pedro River from adverse effects caused by groundwater pumping to support expected growth of the City and Fort Huachuca for at least 100 years, and probably much longer; (3) Sierra Vista is actively pursuing projects to recharge its sewage effluent and increase floodwater recharge. Fort Huachuca also is actively working to recharge effluent and increase floodwater recharge. Both the City and Fort Huachuca are making real efforts to protect the San Pedro River riparian habitat and the species that live there; and (4) the growth and development of Sierra Vista, including Fort Huachuca, does not pose any immediate threat to any critical habitat or endangered species currently under consideration, and it is anticipated that action will be taken by both entities to eliminate any such threat before it occurs."

Service Response: Information in the "Summary of Factors Affecting the Species Section" has been revised based on new information in regard to the effects of groundwater pumping in and near Sierra Vista, and efforts by Sierra Vista and Fort Huachuca to conserve water, recharge effluent, and implement other measures to reduce the potential effects of their activities on the San Pedro River and habitat of *Lilaeopsis*.

The Service has determined that designation of critical habitat for these three species is not prudent. For discussion relating to critical habitat (Item 1), see the "Critical Habitat" section of this rule. The Service concurs with item 3, but cannot concur with portions of items 2 and 4. In regard to item 2, ASL (1995) found that if effluent is recharged adjacent to the San Pedro River or at the Sierra Vista wastewater treatment plan, flows would be maintained or increased on the San Pedro River from Lewis Springs to Charleston Bridge (downslope and downstream of the recharge areas, respectively) for at least 100 years. However, in all scenarios modeled by ASL, river flow declined between Palominas and Lewis Spring. Furthermore, the model assumed that water demands outside of Sierra Vista are held at 1995 levels, which is highly unlikely. With increasing water demands throughout the subwatershed, river flows between Palominas and Lewis Spring will decline more than indicated by ASL's results, and flows between Lewis Spring and Charleston Bridge also may decline under any recharge scenario. Effective mitigation of the effects of groundwater pumping on San Pedro River flows depends on development and implementation of the effluent recharge program as outlined in ASL (1995) for at least 100 years. ASL (1995) notes that questions remain before the feasibility of long-term recharge can be assessed. Also, we are unaware of any long-term funding commitments to operate such a program. Finally, the cone of depression under Sierra Vista/Fort Huachuca continues to grow in all scenarios. The Service is concerned that as it grows, the cone will in time (perhaps more than 100 years) capture the effluent recharge and then the river itself, unless water recharge is balanced with use. With regard to item 4, and as discussed in the "Summary of Factors Affecting the Species" section growth and development at Sierra Vista and Fort Huachuca, particularly groundwater pumping, but other activities as well, potentially threaten *Lilaeopsis*. In addition, activities at Fort Huachuca could potentially affect Sonora tiger salamander and *Lilaeopsis* populations on the Fort. As of this writing, the Service is in informal conferencing with Fort Huachuca with regard to implementation of their Master Plan and possible effects to *Lilaeopsis* and the salamander. The Service's opinion on the Master Plan will be based on the effects of current and planned activities at Fort Huachuca on *Lilaeopsis*, the salamander, and other listed species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spiranthes delitescens*, *Lilaeopsis schaffneriana* spp. *recurva*, and the Sonora tiger salamander should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes delitescens* Sheviak (Canelo Hills ladies'-tresses), *Lilaeopsis schaffneriana* spp. *recurva* (A.W. Hill) Affolter (Huachuca water umbel), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Human activities have affected southwestern riparian systems over a

period of several thousand years. From prehistoric times, settlements in southern Arizona centered on oasis-like cienegas, streams, and rivers. Prior to the early 1800's, indigenous peoples and missionaries used southern Arizona cienegas and riparian areas mostly for subsistence purposes, including wood-cutting, agriculture (including livestock grazing), and food and fiber harvesting. In the early 1800's, fur trappers nearly eliminated beaver from southern Arizona streams and rivers (Davis 1986), significantly changing stream morphology. In addition, human-caused fire and trails may have significantly altered riparian systems (Bahre 1991, Dobyns 1981). Hadley and Sheridan (1995) suggest that use of fire by native Americans may have helped maintain grassland communities in the San Rafael Valley, a practice which undoubtedly affected riparian and cienega habitats, as well.

European settlement of southern Arizona and northern Sonora probably did not begin to significantly affect natural communities until the late 1600's or early 1700's when cattle were introduced (Hadley and Sheridan 1995). However, resistance by Apaches and other tribes discouraged settlement until the early to mid-1800's, after which human populations and associated livestock production and agriculture increased significantly. By the late 1800's, many southern Arizona watersheds were in poor condition due to uncontrolled livestock grazing, mining, hay harvesting, timber harvesting, and other management practices, such as fire suppression (Martin 1975, Bahre 1991, Humphrey 1958, Hadley and Sheridan 1995).

Watershed degradation caused by these management practices led to widespread erosion and channel entrenchment when above-average precipitation and flooding occurred in the late 1800's (Bahre 1991, Bryan 1925, Dobyns 1981, Hastings and Turner 1980, Hendrickson and Minckley 1984, Martin 1975, Sheridan 1986, Webb and Betancourt 1992). These events contributed to long-term or permanent degradation and loss of cienega and riparian habitat throughout southern Arizona and northern Mexico. Physical evidence of losses and changes in cienegas and other riparian areas can be found in the black organic soils of cut banks in the San Rafael Valley (Hendrickson and Minckley 1984), San Pedro River (Hereford 1992), Black Draw (Sue Rutman, Organ Pipe National Monument, pers. comm. 1992), and elsewhere. Between the 1860's and mid-1890's, the lush grasslands and cienegas of San Rafael Valley disappeared or became highly localized (Hadley and Sheridan 1995). Although these events took place nearly a century ago, the ecosystem has not yet fully recovered and, in some areas, may never recover.

Wetland degradation and loss continues today. Human activities such as groundwater overdrafts, surface water diversions, impoundments, channelization, improper livestock grazing, agriculture, mining, road building, nonnative species introductions, urbanization, wood cutting, and recreation all contribute to riparian and cienega habitat loss and degradation in southern Arizona. The local and regional effects of these activities are expected to increase with the increasing human population. Each threat is discussed in more detail below.

The largest area currently available for recovery of *Lilaeopsis* is the San Pedro River along the perennial reach from Hereford to about 4 miles north of Charleston. Whether or not the species can recover there depends largely on future perennial surface flows in the river and a natural, unregulated hydrograph. Perennial flow in the upper San Pedro River is derived from precipitation runoff and interflow through the unsaturated soil horizon, and baseflow in the form of groundwater flow from deep regional aquifers and a shallower floodplain aquifer (Arizona Department of Water Resources 1991, Arizona Department of Water Resources 1994, ASL 1994, Jackson *et al.* 1987, Vionnet and Maddock 1992).

Groundwater pumping has increased dramatically since the early 1960's (ASL 1994). Annual water use exceeds supplies by approximately 11,200 acre-feet and has resulted in cones of depression in the aquifer at areas with significant groundwater pumping. These areas include Sierra Vista and Fort Huachuca, Huachuca City, and the Hereford-Palominas areas (Water and Environmental Systems Technology, Inc. 1994). Although the relationships between groundwater pumping and river flow are complicated, continued unmitigated groundwater withdrawal threatens to reduce or eliminate baseflows in the San Pedro River (Arizona Department of Water Resources 1991, ASL 1995, Water and Environmental Systems Technology, Inc. 1994). A reduction in baseflow as a result of groundwater pumping in the Sierra Vista-Fort Huachuca area could occur within 25 years, but such effects could be reduced by water conservation, watershed management, effluent recharge or other measures to reduce water use or increase recharge (ASL 1995, Water and Environmental Systems Technology, Inc. 1994).

Such measures are being developed and implemented, including development of a Surface Water Plan and Effluent Recharge Plan, and adoption of water conservation measures by the City of Sierra Vista; and implementation of water conservation measures, enhancement of mountain front recharge, effluent recharge, and other actions by Fort Huachuca (ASL 1995, Fort Huachuca 1995). However, these measures may not be adequate to balance use with recharge, halt the eventual interception of the river by cones of depression, and ultimately, maintain baseflow throughout the upper San Pedro River (Water and Environmental Systems Technology, Inc. 1994, ASL 1995). If baseflow in the river decreases, a desertification of the riparian flora will occur (Stromberg *et al.* 1996). If the groundwater drops below the elevation of the channel bed, the wetland plant (herb) association where *Lilaeopsis* is found will be the first plant association to be lost (Arizona Department of Water Resources 1994, Stromberg *et al.* 1996).

Fort Huachuca also relies on a well and springs in Garden Canyon (Arizona Department of Water Resources 1991). These diversions and pumping could dewater the stream and damage or destroy the *Lilaeopsis* population in the canyon, particularly during below-average rainfall periods. The City of Sierra Vista is exploring means for implementing conservation and habitat restoration actions for *Lilaeopsis* and other rare plants.

Perennial flows in certain reaches of the Santa Cruz River remained perennial until groundwater pumping caused the water table to drop below the streambed. In 1908, the water table near Tucson was above the streambed, but from 1940–1969, the water table was 6.0–21.0 m (20–70 feet) below the streambed (De la Torre 1970). Recovery of perennial flow in the Santa Cruz River and of *Lilaeopsis* near Tucson is unlikely, given the importance of groundwater for the metropolitan area.

Groundwater pumping in Mexico threatens populations of *Lilaeopsis* on both sides of the border. South of the San Bernardino National Wildlife Refuge, groundwater is being pumped to irrigate farmlands in Mexico, and this pumping threatens to dry up the springs and streams that support several listed endangered fish and a population of *Lilaeopsis*. The large copper mine at Cananea, Sonora, pumps groundwater for processing and support services. Although little is known about how groundwater pumping near Cananea

may affect the spring at Ojo de Agua de Cananea, it is likely that overdrafts would decrease springflow or dewater the spring, extirpating the *Lilaeopsis* population. The spring at Ojo de Agua de Cananea is also the main source of municipal water for the town of Cananea. This water diversion, particularly if increased, may adversely affect *Lilaeopsis*. In the past, large contaminant spills from the mine have occurred, resulting in fish kills for many miles of the San Pedro River in Mexico and the United States. The effects of such spills on *Lilaeopsis* are unknown, but could be detrimental.

Reaches of many southern Arizona rivers and streams have been channelized for flood control purposes, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization modifies the natural hydrograph above and below the channelized reach, which may adversely affect *Lilaeopsis* and *Spiranthes*. Channelization will continue to contribute to riparian habitat decline. Additional channelization will accelerate the loss and/or degradation of *Spiranthes* and *Lilaeopsis* habitat. Dredging extirpated *Lilaeopsis* at House Pond, near the extant population in Black Draw (Warren *et al.* 1991). The *Lilaeopsis* population at Zinn Pond in St. David near the San Pedro River was probably lost when the pond was dredged and deepened. This population was last documented in 1953 (Warren *et al.* 1991).

Livestock grazing potentially affects *Lilaeopsis* at the ecosystem, community, population, and individual levels. Cattle generally do not eat *Lilaeopsis* because the leaves are too close to the ground, but they can trample plants. *Lilaeopsis* is capable of rapidly expanding in disturbed sites and could recover quickly from light trampling by extending undisturbed rhizomes (Warren *et al.* 1991). Light trampling also may keep other plant density low, providing favorable *Lilaeopsis* microsites. Well-managed livestock grazing and *Lilaeopsis* are compatible. The fact that *Lilaeopsis* and its habitat occur in the upper Santa Cruz and San Pedro river systems in the San Rafael Valley attests to the good land stewardship of past and current landowners.

Poor livestock grazing management can destabilize stream channels and disturb cienega soils, creating conditions unfavorable to *Lilaeopsis*, which requires stable stream channels and cienegas. Such management can also change riparian structure and diversity, causing a decline in watershed condition. Poor livestock grazing management is widely believed to be one of the most significant factors contributing to regional channel entrenchment in the late 1800's.

Livestock management in Mexico has severely degraded riparian areas along Black Draw and its watershed. The degraded habitat most likely contributed to the severity of a destructive scouring flood on San Bernardino Creek in 1988, which extirpated two patches of *Lilaeopsis*. Overgrazing is occurring immediately adjacent to the San Bernardino National Wildlife Refuge and has destabilized the channel of Black Draw. A headcut moving upstream threatens to undermine the riparian area recovery that has occurred since the refuge was acquired. The refuge is implementing management to avoid the destructive effects of downstream grazing.

Sand and gravel mining along the San Pedro, Babacomari, and Santa Cruz rivers in the United States has occurred and probably will continue, although no mining occurs within the San Pedro Riparian National Conservation Area. Sand and gravel operations remove riparian vegetation and destabilize the system, which could cause *Spiranthes* or *Lilaeopsis* population and habitat losses upstream or downstream from the mining. These mines also pump groundwater for processing purposes, and could locally affect groundwater reserves and perennial stream baseflow. Since 1983, groundwater has been used to wash sand and gravel mined near the Babacomari River, 0.8 km (0.5 mi) west of Highway 90 (Arizona Department of Water Resources 1991). This activity could affect at least one *Spiranthes* population.

Rural and urban development, road building and maintenance, agriculture, mining, and other land disturbances that degrade watersheds can adversely affect *Lilaeopsis*. These activities are common in the middle Santa Cruz basin but much less prevalent in the San Pedro basin. For these reasons, conservation and recovery of the middle Santa Cruz River is unlikely but still possible in the upper San Pedro watershed, given region-wide planning decisions favorable to good watershed management. Increased development in the upper San Pedro Valley, including the expansion of existing cities and increased rural building, will likely increase erosion and have other detrimental watershed effects.

Watershed-level disturbances are few in the upper Santa Cruz and Black Draw drainages. Irrigated farm fields were present in the Black Draw watershed, but these were abandoned when the Service acquired the area as a refuge. The fields are returning to natural vegetation. The San Rafael Valley, which contains portions of the headwaters of the Santa Cruz and San Pedro rivers, is well-managed, and currently undeveloped, with few watershed-disturbing activities. However, there is potential for commercial development in the San Rafael Valley and resulting watershed effects.

Riparian areas and cienegas offer oasis-like living and recreational opportunities for residents of southern Arizona and northern Sonora. Riparian areas and cienegas such as Sonoita Creek, the San Pedro River, Canelo Hills cienega, and the perennial creeks of the Huachuca Mountains receive substantial recreational visitation, and this is expected to increase with an increasing southern Arizona population. While well-managed recreational activity is unlikely to extirpate *Spiranthes* or *Lilaeopsis* populations, severe impacts in unmanaged areas can compact soils, destabilize stream banks, and decrease riparian plant density, including densities of *Spiranthes* and *Lilaeopsis*.

Stream headcutting threatens the *Lilaeopsis* and presumed Sonora tiger salamander populations at Los Fresnos cienega in Sonora. Erosion is occurring in Arroyo Los Fresnos downstream from the cienega and the headcut is moving upstream. The causes of this erosion are uncertain, but are presumably livestock grazing and roads in this sparsely populated region. If the causes of this erosion are left unchecked and headcutting continues, it is likely that the cienega habitat will be lost within the foreseeable future. The loss of Los Fresnos cienega may extirpate the *Lilaeopsis* and tiger salamander populations. If the salamanders at the Los Fresnos cienega are Sonora tiger salamanders, this would represent the only known natural cienega habitat occupied by an aquatic population of this species.

All confirmed Sonora tiger salamander populations have been found in stock tanks or impounded cienegas constructed to collect runoff for livestock. Many tanks probably date from the 1920's and 1930's when government subsidies were available to offset construction costs (Brown 1985); however, some tanks were constructed as early as the 1820's and as late as the 1960's (Hadley and Sheridan 1995). These stock tanks, to some degree, have created and replaced permanent or semipermanent Sonora tiger salamander water sources.

Although the tanks provide suitable aquatic habitats, current management and the dynamic nature of these artificial impoundments compromise their ability to support salamander populations in the long term. The tanks collect silt from upstream drainages and must be cleaned out periodically, typically with heavy equipment. This maintenance is done when stock tanks are dry or nearly dry, at an average interval of about 15 years (Laura Dupee, Coronado National Forest, pers. comm. 1993). As the tanks dry out, a proportion of aquatic salamanders typically metamorphose and migrate from the pond. However, if water is present during maintenance, eggs, branchiate, and larval salamanders may be present and would be lost as a result of the excavation of remaining aquatic habitat. Aquatic salamanders also may occur in the mud of dry or nearly dry tanks and would be affected. Any terrestrial metamorphs at the tank or in areas disturbed would be lost during maintenance activities.

Flooding and drought pose additional threats to stock tank populations of Sonora tiger salamanders. The tanks are simple earthen impoundments without water control structures. Flooding could erode and breach downstream berms or deposit silt, resulting in a loss of aquatic habitat. Long-term drought could dry up stock tanks, as witnessed in 1994 and 1996. Fires in watersheds above the tanks may lead to increased erosion and sedimentation following storms and exacerbate the effects of flooding.

Sonora tiger salamanders have persisted in stock tanks despite periodic maintenance, flooding, and drought. If the tanks refill soon after drought or other events that result in loss of aquatic habitat, they could presumably be recolonized through terrestrial metamorph reproduction. However, if a tank was dry for several years and isolated from other salamander localities, insufficient terrestrial salamanders may remain and immigration from other populations may be inadequate to recolonize the stock tank. Potential grazing practice changes also threaten aquatic Sonora tiger salamander populations. Stock tanks could be abandoned or replaced by other watering facilities, such as troughs supplied by windmills or pipelines. Troughs do not provide habitat for Sonora tiger salamanders.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No commercial, recreational, or educational uses of *Lilaeopsis* are known. A limited amount of scientific collecting is likely to occur but is expected to pose no threat to the species.

Although no specific cases of illegal commercial *Spiranthes delitescens* collecting have been documented, commercial dealers, hobbyists, and other collectors are widely known to significantly threaten natural orchid populations. The commercial value of an orchid already threatened by illegal commercial collection may increase after it is listed as threatened or endangered. To limit the possible adverse effects of illegal collecting, no specific *Spiranthes* population locations are discussed in this rule, nor will critical habitat be designated. No recreational or educational uses for *Spiranthes* currently are known. The small amount of legitimate scientific collecting that has occurred was regulated by the Arizona Native Plant Law (A.R.S. Chapter 7, Article 1).

Collecting of *Ambystoma* in the San Rafael Valley of Arizona is prohibited by Arizona Game and Fish Commission Order 41. Collins and Jones (1987) reported an illegal *Ambystoma* collection from the San Rafael Valley and suspected that bait collectors and anglers often move salamanders among stock tanks. The extent of this activity and its threat to populations is unknown. However, all Sonora tiger salamanders populations are relatively small (Collins and Jones 1987, Collins 1996). Collecting may significantly reduce recruitment, the size of branchiate or larval populations, and genetic diversity within a tank. This may increase the likelihood of extirpations.

C. Disease or Predation

Neither the *Lilaeopsis* nor *Spiranthes* are known to be threatened by disease or predation.

Sonora tiger salamanders populations are eliminated by nonnative fish predation, particularly sunfish and catfish (Collins and Jones 1987, Collins 1996). In laboratory studies, bullhead, mosquito fish, and sunfish ate Sonora tiger salamander eggs, hatchlings, and small larvae (Collins 1996). Introduced nonnative fish are well-established in the San Rafael Valley and have been implicated in apparent Sonora tiger salamander extirpations from five stock tanks, including the type locality (Collins *et al.* 1988, Collins 1996). Nonnative fish are known to occur at only one of 23 sites where salamanders have been found during one or more of the last three visits from 1993 through 1996. However, nonnative fish occur at 7 of 10 sites where the salamander is thought to be extirpated or where it has not been found during the last three visits. The effect of native fishes on salamander populations is unknown (Collins *et al.* 1988), some native species have a potential to prey on Sonora tiger salamanders. No native fish are known to occur with aquatic populations of salamanders.

Bullfrogs occur with Sonora tiger salamanders at 16 of 23 sites at which salamanders have been found during one or more of the last three visits from 1993 through 1996. Adult bullfrogs are known to prey on salamanders; however, bullfrog tadpoles do not eat viable salamander eggs or hatchlings (Collins 1996; James Collins, pers. comm. 1996). Bullfrogs were found to be more widely distributed in the San Rafael Valley in the 1990's as compared to 1985 (Collins 1996). The effect of predation by bullfrogs on salamander populations is unknown; however, increased mortality attributable to bullfrog predation may reduce population viability.

Virtually no recruitment was noted in recent surveys, as evidenced by a lack of surviving larvae in tanks where eggs were known to have been deposited (Collins 1996). Lack of recruitment appeared to be a result of predation by overwintering branchiate and larval salamanders. This predation may occur due to a lack of structural complexity, such as emergent and shoreline vegetation, logs, and rocks, that would provide cover and protection from predation (Collins 1996). Lack of shoreline and emergent vegetation is at least partially due to trampling and foraging by cattle.

A disease characterized by sloughing of skin and hemorrhaging killed all branchiate salamanders at Huachuca Tank, Parker Canyon Tank #1, and Inez Tank in 1985 (Collins *et al.* 1988) and has been detected at seven tanks in 1995–1996 (James Collins, pers. comm. 1996). The disease may be caused by a combination of a virus and *Aeromonas* (a bacteria) infections (James Collins, pers. comm. 1996). Parker Canyon Tank #1 and Inez Tank were recolonized by 1987, and salamanders were found once again at Huachuca Tank in 1994. These tanks were presumably recolonized by reproducing terrestrial metamorphs that survived the disease or that moved to these tanks from adjacent populations. At the seven tanks where the disease was found in 1995–1996, the effects on the populations will not be known until the disease runs its course. If the disease recurs with enough frequency, populations could be lost due to lack of recruitment of juveniles into the adult cohort. The disease also has the potential to reduce genetic variability,

which is already very low in this taxon (Jones *et al.* 1995). Low genetic variability increases the chances of population extirpation (Shafer 1990). Bullfrogs, wading birds, waterfowl, and other animals that move among tanks may facilitate spread of the disease.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal and state laws and regulations can protect these three species and their habitat to some extent. However, Federal and state agency discretion allowed under the authority of these laws still permits adverse effects to listed and rare species. Adding *Lilaeopsis*, *Spiranthes*, and the Sonora tiger salamander to the endangered species list will help to reduce adverse affects to these species.

Lilaeopsis and *Spiranthes* are not classified as rare, threatened, or endangered species by the Mexican government; nor do their habitats receive special protection in Mexico. However, *Ambystoma tigrinum*, including the Sonora tiger salamander, is a species of special protection. This designation affords certain protections to the species and its habitat (Secretario de Desarrollo Urbano y Ecologia 1994).

On July 1, 1975, all species in the Orchid family (including *Spiranthes delitescens*) were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not regulate take or domestic trade. CITES provides no protection to *Lilaeopsis* or the Sonora tiger salamander.

The Lacey Act (16 U.S.C 3371 *et seq.*), as amended in 1982, provides limited protection for these three species. Under the Lacey Act it is prohibited to import, export, sell, receive, acquire, purchase, or engage in the interstate or foreign commerce of any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any state. Interstate transport of protected species occurs despite the Lacey Act because enforcement is difficult.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct the Bureau of Land Management and the U.S. Forest Service respectively, to prepare programmatic-level management plans that will guide long-term resource management decisions. The goals of the Coronado National Forest Plan (Plan) include a commitment to maintain viable populations of all native wildlife, fish, and plant species within the Forest's jurisdiction through improved habitat management (Coronado National Forest 1986a). The Plan provides a list of rare plants and animals found on the Forest, but gives only a very general description of programmatic-level management guidelines and expected effort (Coronado National Forest 1986a). The Coronado National Forest is committed to multiple use and, where the demands of various interest groups conflict, the Forest must make decisions that represent compromises among these interests (Coronado National Forest 1986b) which could result in adverse effects to listed species.

The Plan's endangered species program includes participation in reaching recovery plan objectives for listed species, habitat coordination and surveys for listed species, and habitat improvement (Coronado National Forest 1986b). After acknowledging budget constraints, the Plan states that studies of endangered plants will occur at approximately the 1980 funding level.

Three populations of *Lilaeopsis* and four individual *Spiranthes* are known to occur on the Coronado National Forest. The Forest also manages the habitat of 17 of the 23 aquatic sites at which Sonora tiger salamanders have been observed during one or more of the last three visits during 1993 through 1996. Twenty-six of the 36 aquatic sites at which salamanders have been found are on Coronado National Forest land, underscoring the importance of Forest Service management. However, these numbers are somewhat misleading in that salamander surveys have focused on National Forest lands. Other aquatic sites likely occur on private lands, which to date have not been intensively surveyed. Nevertheless, the Coronado National Forest is the most important land manager of aquatic sites known to be occupied by Sonora tiger salamanders. The Forest considers the salamander a sensitive species and a management indicator species, which receive special consideration in land management decisions (Coronado National Forest 1986a). The ability of the Forest Service to manage the three species addressed here is limited because many of the populations do not occur on Forest Service lands and/or require ecosystem-level management that in some cases is beyond Forest Service control.

In accordance with Army Regulation 200–3, Fort Huachuca is preparing an Integrated Natural Resources Management Plan that will require preparation of Endangered Species Management Plans (ESMPs) for all listed and proposed species and critical habitat (Sheridan Stone, Fort Huachuca, pers. comm. 1996). The ESMPs are expected to provide management recommendations for conservation of Sonora tiger salamander and *Lilaeopsis* populations and habitat at Fort Huachuca. An ESMP is being prepared for the Fort Huachuca Sonora tiger salamander population. Although salamanders are known from only a single site at Fort Huachuca, the ESMP is expected to have recommendations that could be extended to other populations.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impacts. A Federal action agency may decide to choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

All three species addressed in this rule inhabit wetlands that are afforded varying protection under section 404 of the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended; and Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). Cumulatively, these Federal regulations are not sufficient to halt population extirpation and habitat losses for the three species addressed in this rule.

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Spiranthes delitescens* and *Lilaeopsis schaffneriana* ssp. *recurva* as highly safeguarded species. A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect these species on public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living, "highly safeguarded," native plant from private, State, or Federal

land without a permit. However, private landowners and Federal and State agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Despite the protections of the Arizona Native Plant Law, legal and illegal damage and destruction of plants and habitat occur.

Collecting *Ambystoma* in the San Rafael Valley is prohibited under Arizona Game and Fish Commission Order 41, except under special permit. Nevertheless, some illegal collecting occurs (Collins and Jones 1987). The species is considered a species of special concern by the State of Arizona (Arizona Game and Fish Department 1996); however, this designation affords the species and its habitat no legal protection. Transport and stocking of live bullfrogs and fishing with live bait fish or *Ambystoma* within the range of this salamander in Arizona is prohibited by Arizona Game and Fish Commission Order 41 and R12–4–316, respectively. However, bullfrogs and nonnative fish are present at numerous extant and historical Sonora tiger salamander localities (Collins and Jones 1987, Collins 1996), suggesting continued illegal introductions. Furthermore, abandonment, modification, or breaching of stock tanks is allowed on private and public lands. Such actions could eliminate Sonora tiger salamander populations.

State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed on June 10, 1989, directs state agencies to evaluate their actions and implement changes, as appropriate, to allow for riparian resources restoration. Implementation of this regulation may ameliorate adverse effects of some state actions on the species addressed in this rule.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Arizona anglers and commercial bait dealers often introduce larval tiger salamanders into ponds and tanks for future bait collecting (Collins *et al.* 1988, Lowe 1954). Collins and Jones (1987) reported that tiger salamanders were illegally collected from the San Rafael Valley and transported to at least two tanks in the northern Patagonia Mountains. Bait dealers or others moving Sonora tiger salamanders to new localities could establish new populations. Collins and Jones (1987) suggest that transport and introduction of salamanders within the San Rafael Valley may have greatly influenced their present distribution. Moving could also transmit disease and cause unintentional introductions of fish or bullfrogs, which might reduce or extirpate populations.

Transport and introduction of salamanders poses an additional threat. *Ambystoma tigrinum mavortium* is common in stock tanks and ponds to the east of the San Rafael Valley. Bait dealers and anglers probably introduced many of these populations (Collins 1981, Collins and Jones 1987). If *Ambystoma tigrinum mavortium* is introduced into Sonora tiger salamander localities, populations could be lost due to genetic swamping by interbreeding of the two subspecies.

Two populations of *Lilaeopsis* have been lost from unknown causes. Despite the presence of apparently suitable conditions, the species has not been observed at Monkey Spring near Sonoita Creek since 1965. *Lilaeopsis* was collected in 1958 in deep water along the San Pedro River by Highway 80 near St. David, but no longer exists there, nor is there now suitable habitat (Warren *et al.* 1990).

Aggressive nonnative plants disrupt native riparian plant communities. Nonnative Johnson grass (*Sorghum halepense*) is invading one *Spiranthes* site (Dave Gori, Arizona Nature Conservancy, *in litt.* 1993). This tall grass forms a dense monoculture, displacing less competitive native plants. If Johnson grass continues to spread, the *Spiranthes* population may be lost (Dave Gori, *in litt.* 1993). Bermuda grass (*Cynodon dactylon*) also displaces native riparian plants, including cottonwoods and willows that stabilize stream channels. Bermuda grass forms a thick sod in which many native plants are unable to establish. In certain microsites, Bermuda grass may directly compete with *Lilaeopsis* or *Spiranthes*. There are no known effective methods for eliminating Bermuda grass or Johnson grass from natural plant communities on a long term basis. Watercress (*Rorippa nasturtium-aquaticum*) is another nonnative plant now abundant along perennial streams in Arizona. It is successful in disturbed areas and can form dense monocultures that can outcompete *Lilaeopsis* populations.

Limited numbers of populations render each of the three taxa addressed in this rule vulnerable to extinction as a result of naturally occurring chance events that are often exacerbated by habitat disturbance. For instance, the restriction of these three species to a relatively small area in southeastern Arizona and adjacent Sonora increases the chance that a single environmental catastrophe, such as a severe tropical storm or drought could eliminate populations or cause extinction. This is of particular concern for Sonora tiger salamander populations inhabiting stock tanks that could wash out during a storm or dry out during drought. Furthermore, Sonora tiger salamander genetic heterozygosity is among the lowest reported for any salamander (Jones *et al.* 1988, Jones *et al.* 1995). Low heterozygosity indicates low genetic variation, which increases demographic variability and the chance of local extirpations (Shafer 1990).

The ability of Sonora tiger salamanders to move between populations is unknown, but arid grassland, savanna, or pine-oak woodland separate all populations and movement through these relatively dry landscapes is probably limited. Movement would be most likely during storms or where wet drainages are available as movement corridors. The distance between aquatic populations of Sonora tiger salamander is frequently more than 1.6 km (1.0 mi), and much greater distances separate several sites. For instance, Game and Fish Tank is 10.1 km (6.3 mi) from the nearest adjacent aquatic population. Thus, even if these salamanders are capable of moving relatively long distances, some populations may be effectively geographically isolated. Small, isolated populations have an increased probability of extirpation (Wilcox and Murphy 1985). Disease, predation by nonnative predators, and drying of tanks during drought further increase the chance of extirpation. Once populations are extirpated, natural recolonization of these isolated habitats may not occur (Frankel and Soule 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spiranthes delitescens*, *Lilaeopsis schaffneriana* spp. *recurva*, and the Sonora tiger salamander as endangered. These species are endangered because of widespread and serious threats that may lead to extinction in the foreseeable future. As a result, listing as threatened species would not fully address the extent and nature of threats to these species. The Service believes designation of critical habitat is not prudent for all three species. The rationale for these decisions are discussed in the following section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographic area occupied by a species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 242.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Lilaeopsis schaffneriana* ssp. *recurva*, *Spiranthes delitescens*, and *Ambystoma tigrinum stebbinsi*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat, or (2) such designation would not be beneficial to the species.

Lilaeopsis schaffneriana ssp. *recurva* and Sonora tiger salamander would not benefit from the designation of critical habitat. The Service determines that any potential benefits beyond those afforded by listing, when weighed against the negative impacts of disclosing their site-specific location, does not yield an overall benefit and is therefore not prudent. The overall habitat protection and conservation of these two species would be best implemented by the recovery process and section 7 provisions of the Act (see "Available Conservation Measures" section).

As discussed under Factor B in the "Summary of Factors Affecting the Species," *Spiranthes* is threatened by collecting. If it is listed, collecting of *Spiranthes* would be prohibited under the Act in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying *Spiranthes* in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Spiranthes delitescens* more vulnerable and increase enforcement problems. All involved parties and principal landowners are aware of the location and importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process and through the section 7 provisions of the Act. Therefore, it is not prudent to designate critical habitat for *Spiranthes delitescens*.

Protection of the habitat of these species will be addressed through the recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these species occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these three species is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All three taxa in this rule occur on the Coronado National Forest. *Lilaeopsis* and the Sonora tiger salamander also occur on Fort Huachuca, managed by the Department of the Army. In addition, *Lilaeopsis* occurs on Service lands at San Bernardino National Wildlife Refuge and at the BLM's San Pedro Riparian National Conservation Area.

Examples of Federal actions that may affect the three species addressed in this rule include managing recreation, road construction, livestock grazing, granting rights-of-ways, stock tank development and maintenance, and military activities on Fort Huachuca. These and other Federal actions would require formal section 7 consultation if the action agency determines that the proposed action may affect listed species. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as Actions that are not federally funded or permitted, would not require section 7 consultation.

Pursuant to 50 CFR 402.10(a), the Coronado National Forest conferred with the Service on the effects of issuance of grazing permits in the Duquesne, Campini, and San Rafael allotments within the range of the Sonora tiger salamander. The Service determined that issuance of the permits would not likely jeopardize the continued existence of the salamander provided that stock tank maintenance and management plans were promptly developed and implemented for the allotments. These plans would ensure the maintenance of quality aquatic habitat for the Sonora tiger salamander.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce to possession listed species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying endangered

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plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Lilaeopsis* or *Spiranthes* because these species are not common in cultivation or in the wild.

The Act and implementing regulations found at 50 CFR 17 21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any such conduct), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time an animal species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities with a species' range. The Service believes that, based on the best available information, the following are examples of actions that will not result in a violation of section 9.

Actions that would not result in a violation of section 9 for either *Lilaeopsis* or *Spiranthes* would include—

(1) Otherwise lawful activities on private lands undertaken by the landowner since plants are not protected from taking by the private landowner of the habitat by the Act; or

(2) federally-approved projects, such as issuance of livestock grazing permits, road construction, and dredge and fill activities, when such activity is conducted in accordance with section 7 of the Act.

Actions that would not result in violation of section 9 for Sonora tiger salamander would include—

(1) Recreational activities in the range of the Sonora tiger salamander that do not result in physical damage to stock tanks, vegetation at stock tanks, stock fences, and riparian habitats between occupied stock tanks; and that do not involve relocation of salamanders or nonnative aquatic vertebrates;

(2) Well-managed livestock grazing of uplands, including running of cattle, and development, operation and maintenance of range improvements; or

(3) Federally-approved projects, such as issuance of livestock grazing permits, road construction, and dredge and fill activities, when such activity is conducted in accordance with section 7 or section 10 of the Act.

The Service has determined that the following activities could potentially result in a section 9 violation. As section 9 is somewhat limited in the protection provided to plants, the possible actions that could result in a section 9 violation for *Lilaeopsis* or *Spiranthes* could include—

(1) Malicious destruction or removal on lands under Federal jurisdiction;

(2) Criminal trespass onto private lands and then removal of plants from those lands; or

(3) Removal of plants without appropriate State permits.

Some of the possible actions that could result in a section 9 violation for Sonora tiger salamander include:

(1) Unauthorized handling, collecting, or harming of Sonora tiger salamanders;

(2) Destroying or altering berms or draining of aquatic sites occupied by the salamander and diverting flows upstream of breeding sites;

(3) Livestock grazing or watering at sites occupied by the salamander when such activity results in trampling of salamanders;

(4) Actions that result in the destruction or removal of aquatic or emergent vegetation, or shoreline vegetation at aquatic sites occupied by the species;

(5) Stocking of fish, bullfrogs other subspecies of *Ambystoma tigrinum*, or other organisms within the range of the Sonora tiger salamander that prey on or transmit diseases to Sonora tiger salamanders;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting the species; and

(7) Pesticide applications at or near occupied aquatic sites in violation of label restrictions.

Questions as to whether specific activities would constitute a violation of section 9 should be addressed to the Service's Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Branch of Endangered Species/ Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248–6920; facsimile 505/248–6922).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Angie Brooks and Jim Rorabaugh, Arizona Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following in alphabetical order, under "Amphibians," to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
Amphibians.							
•	•	•	•	•	•	•	•
Salamander, Sonora tiger.	Ambystoma tigrinum stebbinsi	U.S.A. (AZ), Mexico.	Entire	E	600	NA	NA
•	•	•	•	•	•	•	•

3. Section 17.12(h) is amended by adding the following two species, in alphabetical order under "Orchidaceae" and "Unbelliferae" to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Orchidaceae—Orchid Family:						
•	•	•	•	•	•	•
Spiranthes delitescens	Canelo Hills ladies'-tresses.	U.S.A. (AZ), Mexico.	E	600	NA	NA
•	•	•	•	•	•	•
Umbelliferae—Parsley Family:						
•	•	•	•	•	•	•
Lilaeopsis schaffneriana spp. *recurva*	Huachuca water umbel.	U.S.A. (AZ), Mexico.	E	600	NA	NA
•	•	•	•	•	•	•

Dated: December 24, 1996.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–130 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 950725189–6245–04; I.D. 123096B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast sub-zone to 50 king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The 50–fish commercial trip limit is effective 12:01 a.m., local time, January 1, 1997, and remains in effect through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is

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managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast sub-zone of 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear.

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until the west coast subzone's hook-and-line fishery is closed, or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 50 per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone was reached on December 30, 1996. Accordingly, a 50–fish trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, January 1, 1997.

The Florida west coast subzone extends from 87°31′06″ W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4′ N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1997; and (2) 25°48′ N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1997, through October 31, 1997.

Classification

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–33403 Filed 12–31–96; 2:35 pm]

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Proposed Rules

Federal Register
Vol. 62, No. 3
Monday, January 6, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 96–47]

RIN 2125–AE11

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Markings, Signals, and Traffic Control Systems for Railroad-Highway Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. This document proposes new text for the MUTCD in Part III, markings; in part IV, signals; and in part VIII, traffic control systems for railroad-highway grade crossings. The purpose of this effort is to include metric dimensions and values for the design and installation of traffic control devices and to improve the organization and discussion of the contents of the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before August 30, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket 96–47, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 and 3:30 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: *Program Office:* Ms. Linda L. Brown, HHS–10, (202) 366–2192. The proposed text for the parts of the MUTCD discussed in this notice of proposed rulemaking is available in printed copy or CD–ROM format. It is also available on the FHWA home page at the following Internet address: HTTP://cti1.volpe.dot.gov/fhwa/. *Office of the Chief Counsel:* Mr. Raymond Cuprill, HCC–20, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments submitted and upon its own experience, the FHWA will issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices.

Although the MUTCD will be revised in its entirety, it will be done in phases due to the enormous volume of text. The NCUTCD has submitted to the FHWA for review and consideration the proposed text for the following MUTCD Parts: MUTCD Parts III—Markings, Part IV—Signals, and Part VIII—Traffic Control Systems for Railroad Highway Grade Crossings. The FHWA has had an opportunity to review the NCUTCD's recommendations and a majority of those recommendations are included in this notice of proposed rulemaking as the first phase of the MUTCD rewrite and reformat effort. In virtually all cases where the recommendation from the NCUTCD for a text change or a change in the "shall, should, or may" condition was not accepted, the FHWA felt there was insufficient justification presented for the change. In reviewing the proposed text submitted by the NCUTCD, the FHWA prepared a comparison table which shows the differences from the 1988 Edition of the MUTCD and the FHWA's decisions on whether or not to accept the changes. The comparison table is part of this docket and is available for inspection.

MUTCD Parts I, VII and IX will be included in Phase 2 of the rewrite effort and the remaining parts will be included in Phase 3. The public will have an opportunity to review and comment on both of these remaining phases of the MUTCD rewrite effort. The FHWA invites your comments on the proposed text for Phase 1 which includes parts III, IV, and VIII of the MUTCD. A summary of the significant changes contained in these sections is discussed in this notice of proposed rulemaking.

The proposed new style of the MUTCD would be a 3-ring binder with 8½ inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions, (2) Guidance—representing "should" conditions, (3) Options—representing "may" conditions, and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English. This will make it easier to compare text shown in the 1988 Edition with the proposed new

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edition. However, the adopted final version of the new MUTCD will be solely in metric units.

This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next 2–3 years. Some of the other issues which will be addressed in future notices of proposed rulemaking are: Standards for the placement of pavement marking center lines and edge lines; minumum retroreflectivity standards for signs and pavement markings; signing for low-volume rural roads; traffic control for light-rail grade crossings; and the addition of a new color "Fluorescent Yellow Green" for use at pedestrian and bicycle locations. These proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

Discussion of Proposed Amendments to Part III—Markings

The following items are the most significant of the many revisions to Part III of the 1988 MUTCD:

Characteristics of Islands as Traffic Control Devices

In the 1988 Edition of the MUTCD, "Islands" were covered in Part V. It is proposed to relocate this topic to part III, Section 3G.

Pavement Marking Colors

In Section 3A.4 the color "blue" would be included as a new standard pavement marking color for international symbol of access parking.

General Principles for Longitudinal Pavement Markings

In Section 3A.5 a definition for "Dotted Lines" would be included.

Widths and Patterns of Longitudinal Line Markings

The width and pattern for "dotted lines" would be added to Section 3A.6.

Warrants for No Passing Zones at Curves

The warrants for no-passing zones at curves would be moved from previous Section 3B–5 to Section 3B–1. These warrants for determining minimum passing sight distances would be based on posted or statutory speed limits as shown in Table III–1. Previously, the mimimum passing sight distances were determined based on the greater of the off-peak 85th percentile speed or the posted speed limits. In addition, Table III–1 includes incremental speed limits of five miles per hour (kilometers per hour were rounded).

Center Line Markings

A new STANDARD would be added to Section 3B.1a that requires center line markings to be placed on paved undivided streets and highways including all rural and urban arterials and collectors with specified widths and average daily travel (ADT), and including all two-way streets and highways with three or more travel lanes.

Edge Line Markings

In Section 3B.3 edge line markings would be required on all freeways and expressways and on all rural arterials with travel widths of 6.1 m (20 ft.) or more. In addition, edge line markings are recommended on rural collectors with travel widths of 6.1 m (20 ft.) or more and at locations where the edge of the traveled way is not otherwise delineated and where an engineering study indicates a need.

New Standard on Pavement Marking Extensions Through Intersections or Interchanges

Section 3B.4 would provide that when markings are extended into or continued through an intersection or interchange area, they shall be the same color and at least the same width as the line(s) they extend. This section also provides STANDARDS for dotted lines.

Raised Pavement Markers

New supporting information would be included in Section 3B.7. It states that "a raised pavement marker is a device with a height of at least 10mm mounted on or in a road surface, and intended to be used as positioning guides or to supplement or substitute for pavement markings."

The following new STANDARD would be included in Section 3B.7: The color of raised pavement markers under both daylight and nighttime conditions shall conform to the color of the marking for which they serve as a positioning guide, or for which they supplement, or substitute.

The following new GUIDANCE would be included in Section 3B.7: Raised pavement markers should not be substituted for right edge lines.

Pavement Word and Symbol Markings

In situations where through lanes become mandatory turn lanes, Section 3B.12, under GUIDANCE, would be modified to allow signs or markings to be repeated as necessary to prevent entrapment and to help the road user select the appropriate lane before reaching the queue of waiting vehicles.

A new STANDARD would also be added to this section. It states that in situations where through lanes become mandatory turn lanes, lane-use arrows shall be used and shall be accompanied by standard signs.

A pavement marking symbol for designated parking spaces for persons with disabilities would be included as an OPTION in Section 3B.12.

A lane reduction pavement arrow would be included in Section 3B.12.

Channelizing Devices

A new STANDARD would be added to Section 3F.2 which states that the color of cones and tube markers used outside construction and maintenance areas shall be the same as the pavement marking for which they supplement or substitute.

Approach End Treatment

A new STANDARD would be included in Section 3G.2 which states that bars or buttons, when used in advance of islands having raised curbs, shall not be placed in such a manner as to constitute an unexpected hazard.

Discussion of Proposed Amendments to Part IV—Signals

The following items are the most significant changes of the many revisions to Part IV.

Definitions Relating to Highway Traffic Signals

Section 4A.2 would be significantly expanded from four definitions to fifty-five definitions of technical terms that are being used throughout Part IV.

Basis for Installing Highway Traffic Signals

Section 4B.2 would state that "If changes in traffic patterns have resulted in a situation where a highway traffic control signal is no longer needed, consideration should be given to removing it and replacing it with appropriate alternative traffic control devices." The FHWA has always acknowledged this but never stated it in the MUTCD.

Alternatives to Highway Traffic Control Signals

Since vehicle delay and accident frequency are sometimes greater under traffic signal control than under STOP sign control, consideration should be given to providing less restrictive alternatives to traffic signals. Section 4B–4 would list eleven less restrictive alternative measures that should be considered before a highway traffic control signal is installed.

Studies and Factors for Justifying Highway Traffic Control Signal Installation

Section 4C would list seven warrants for justifying a highway traffic control signal installation. Warrants are a set of criteria that can be used to define the relative need for, and appropriateness of traffic control signals. The number of warrants would be reduced from eleven warrants to seven warrants. The following is a brief summary of how the warrants were reduced:

1. The interruption of continuous traffic warrant will be combined with the new warrant number 1 entitled, "Eight Hour Vehicle Volume Warrant."
2. The school crossing warrant will be placed in section 7D.4.
3. Warrant 8 will be incorporated into warrant 1.
4. The peak hour delay warrant will be included in Warrant 3.

The FHWA had been receiving a number of complaints concerning the number and complexity of the signal warrants. This modification should address these concerns.

Traffic Control Signal Features

In Section 4D.1, the following two cases where STOP signs are allowed to be used with traffic control signals would be added: (1) If the signal indication for an approach is a flashing red at all times; and (2) If a minor roadway or driveway is located within or adjacent to the controlled area, but does not require separate traffic signal control because an extremely low potential for conflict exists.

Meaning of Vehicle Signal Indications

In Section 4C.4, the phrase "Unless otherwise determined by law" in the first paragraph under STANDARDS would be deleted. If this phrase were left in the paragraph, States would have the right to assign different meanings to signal indications than are allowed by the MUTCD.

Application of Steady Signal Indication

In Section 4D.5f(3) entitled "A Steady GREEN ARROW Indication," a GREEN ARROW would not be required on the stem of "T" intersections or for turns from one-way roadways. In this same section under "Options," the application of steady RED, YELLOW, and GREEN ARROWS is discussed. In the 1988 MUTCD there was an item (e) that made it optional to use a CIRCULAR GREEN indication for protected movements. This proposal would eliminate item (e) so that the GREEN ARROW indication would be mandatory for all protected left or right turn movements.

Application of Steady Signal Indications for Left Turns

In Section 4D.6b(3), a new STANDARD would be added. It states that "A four-section signal face (CIRCULAR RED, CIRCULAR YELLOW, CIRCULAR GREEN, and left-turn GREEN ARROW) shall be used when the CIRCULAR GREEN and left-turn GREEN ARROW indications begin and terminate together." This is known as "split phasing" and would be discussed for the first time in the MUTCD.

Application of Steady Signal Indications for Right-Turns

Section 4D.7 would describe in more detail the various modes for right-turn displays.

Traffic Control Signals for One-Lane, Two-Way Facilities

Section 4G would be greatly expanded to include the application, design, and operation of traffic control signals used on one-lane, two-way facilities.

Design of Freeway Entrance Ramp Control Signals

In Section 4H.2, the requirement for a signal face being mounted on both the left and right side of a ramp that has two lanes would be eliminated. In addition, the requirement for a signal face to have a minimum nominal diameter of 8 inches has been eliminated. In this same section, the recommended height of the signal face (between 4½ and 6 feet) has been changed from a GUIDANCE to an OPTION.

Design of Movable Bridge Signals and Gates

In Section 4I.2, the following paragraph would be upgraded to a STANDARD:

"Since movable bridge operations cover a variable range of time periods between openings, the signals shall be of the following types. The first type shall consist of the standard three color (red, yellow, and green) traffic signal lenses, generally to be used if movable bridge operation is quite frequent. The second type shall consist of two red signal lenses in vertical array separated by a STOP HERE ON RED sign. (See Section 2B.37)"

Meaning of Lane-Use Control Signal Indications

In Section 4J.2, under STANDARD, the flashing YELLOW X indication would be replaced by two new lane-use control signal indications: steady WHITE TWO–WAY LEFT–TURN ARROW and steady WHITE ONE–WAY LEFT–TURN ARROW.

Warning Beacon

Section 4K.2 would replace the Hazard Identification Beacon section that was in the 1988 MUTCD. Guidance for design and application of warning beacons is described.

Speed Limit Sign Beacon

In Section 4K.3, all speed limit sign beacons would be required to have a visible diameter of not less than 200 millimeters (8 inches).

Discussion of Proposed Amendments to Part VIII—Roadway-Rail Intersections

The following are the most significant changes of the many revisions to Part VIII:

Title of Part VIII

This section of the MUTCD would be retitled "Traffic Control For Roadway-Rail Intersections" to more properly reflect the intent of this part to deal with all instances where there is an intersection between vehicles operating on fixed rail and vehicles operating on roadways.

General

The term "roadway" would be substituted for the terms "highway" and "street." The term "roadway" connotes the terms "highway" or "street" unless specifically defined in a specific section. The term "roadway-rail intersection" would be substituted for the term "grade-crossing."

Roadway Rail Intersection Closures

Section 8A.4 would be expanded to discuss situations where the railroad is closed and situations where the roadway is closed.

Traffic Controls During Construction and Maintenance

Section 8A.5 would be expanded to ensure that the standards discussed in Part VI of the MUTCD are followed for construction and maintenance operations at roadway-rail intersections. In addition, this section would require the use of a law enforcement officer or flagger at the intersection if the queuing of vehicles across the tracks cannot be avoided during construction or maintenance activities. This requirement would apply whether or not active traffic control devices are in use at the roadway-rail intersection.

Roadway-Rail Crossing (Crossbuck) Sign

Section 8B–2 would be revised to include standards for the installation of 2" minimum retroreflective white material at all grade crossings for placement on the back of each blade of the crossbuck sign for the length of the

blade. At passive grade crossings, a strip of high grade retroreflective white material would also be required on the full length of the front and back of each "Crossbuck" (R15–1) or "Number of Track" (R15–2) sign support. Figure 8–1 has been modified to reflect this change.

Roadway-Rail Intersection Signs and Markings

Some of the sections in 8B would be reordered to put all of the discussions relating to signs together before pavement markings, etc. A new Section 8B.10 "Stop Lines" would be added. This section discusses the placement of stop lines. This information is presently contained as a note on Figure 8–2. The current Section 8B.5 "Illumination at Grade Crossings" would be moved to Section 8C.1.

Flashing-Light Signals and Gates

This Section 8C would be redesignated as 8D. Section 8D in the 1988 MUTCD entitled "Systems and Devices" would be removed and the information in that section would be incorporated into revised sections 8A and 8D.

Train Detection Systems

In Section 8D–5, automatic flashing light signals would be required to flash for at least 20 seconds before the arrival of any train regardless of the train's speed. The current requirement applies to trains that operate at speeds of 20 mph or greater.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations, expand guidance and clarify application of traffic control devices. The FHWA hereby certifies that these actions would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, and 655.603; 49 CFR 1.48)

Issued on: December 27, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–33405 Filed 12–31–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–242996–96]

RIN 1545–AU45

Inflation-Indexed Debt Instruments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the federal income tax treatment of inflation-indexed debt instruments, including

Treasury Inflation-Indexed Securities. The text of the temporary regulations also serves as the text of the proposed regulations. This document also provides notice of a public hearing on the proposed regulations.

DATES: Comments must be received by April 7, 1997. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for April 30, 1997, at 10 a.m. must be received by April 9, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–242996–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–242996–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. A public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William E. Blanchard, (202) 622–3950, or Jeffrey W. Maddrey, (202) 622–3940; concerning submissions and the hearing, Mike Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 1275 and 1286 of the Internal Revenue Code. The temporary regulations provide rules relating to inflation-indexed debt instruments, including Treasury Inflation-Indexed Securities.

The text of the temporary regulations also serves as the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 30, 1997, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments by April 7, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 9, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding two entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1275–7 also issued under 26 U.S.C. 1275(d). * * *

Section 1.1286–2 also issued under 26 U.S.C. 1286(f). * * *

Par. 2. Section 1.1275–7 is added to read as follows:

§ 1.1275–7 Inflation-indexed debt instruments.

[The text of this proposed section is the same as the text of § 1.1275–7T published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.1286–2 is added to read as follows:

§ 1.1286–2 Inflation-indexed debt instruments.

[The text of this proposed section is the same as the text of § 1.1286–2T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–33397 Filed 12–31–96; 12:57 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH69–2–6680b; FRL–5646–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking action to approve, through direct final procedure, changes to the Ohio enhanced automobile inspection and maintenance program (known as E-Check) as a revision to the ozone portion of the Ohio State Implementation Plan (SIP). The program changes were submitted to satisfy a Federal requirement that any changes to the program be submitted to the EPA for approval. The Ohio ozone nonattainment areas covered by this rulemaking are the Cleveland-Akron-Lorain, Dayton-Springfield, and Cincinnati areas.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision request as a direct final rule without prior proposal because EPA views this as noncontroversial and anticipates no adverse comments. The rationale for the approval is set forth in the direct final

rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives significant adverse comments, (which have not been addressed) the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by February 5, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (A–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (A–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (A–18J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 4201–7601q.

Dated: October 16, 1996.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 97–195 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 26

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–474]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act; Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Further Notice of Proposed Rulemaking in WT Docket No. 96–148, the Commission proposes modifications to the cellular and General Wireless Communications Services (GWCS) rules to expand geographic partitioning and spectrum disaggregation provisions. The Commission solicits comment on certain issues relating to these rules.

DATES: Comments must be filed on or before February 10, 1997. Reply comments must be filed on or before February 25, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This Further Notice of Proposed Rulemaking in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on December 13, 1996, and released December 20, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 234, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Synopsis of Further Notice of Proposed Rulemaking

I. Introduction

1. There are Commercial Mobile Radio Services (CMRS) in which partitioning and disaggregation have either not been proposed or have been adopted on a more limited basis than the rules adopted for broadband PCS. For example, while partitioning is allowed for cellular licensees, there are no rules on disaggregation. Similarly, General Wireless Communications Service (GWCS) licensees are permitted to partition only to rural telcos and currently there is no rule for GWCS disaggregation.

2. The Commission believes that it is appropriate at this time to consider whether to permit full partitioning and disaggregation in cellular, GWCS and any other services that are licensed on a geographic area basis, or in spectrum blocks of sufficient size to make disaggregation practical. Therefore, the Commission seeks comment on whether these benefits similarly justify extension of partitioning and disaggregation to other services.

II. Discussion

A. Partitioning and Disaggregation for Cellular and GWCS Services

3. *Cellular.* The Commission seeks comment as to whether to permit cellular disaggregation. Commenters should address whether there are technical or other constraints, unique to the cellular service, that would make disaggregation either impractical or administratively burdensome. Commenters should address whether regulatory or technological changes expected in the near future may provide the opportunity for cellular licensees to disaggregate portions of their licensed spectrum to other parties. The Commission seeks comment as to whether such regulatory changes may create a demand for cellular disaggregation and whether, in anticipation of such changes, the Commission should adopt interim disaggregation rules for cellular.

4. *GWCS.* The Commission seeks comment as to whether open partitioning of GWCS licenses should be permitted similar to the proposal for open partitioning the Commission has adopted for broadband Personal Communications Service (PCS) licensees. In addition, the Commission seeks comment as to whether GWCS licensees should be permitted to disaggregate their spectrum. The Commission also seeks comment as to whether there are technical or regulatory constraints unique to the GWCS service that would render disaggregation impractical or administratively burdensome. Further, the Commission recognizes that there are special competitive bidding issues, similar to those raised in the broadband PCS context, that must be resolved if it permits open partitioning and disaggregation for GWCS.

B. Available License Area

5. Section 22.947(b) of the rules, 47 CFR 22.947(b), provides that a cellular licensee may partition portions of its cellular market to other eligible parties. The parties are free to define the license area or "CGSA" of the new partitioned cellular system. Because the cellular partitioning rule is sufficiently flexible to permit parties to freely define the partitioned license area, the Commission does not propose to modify the cellular rules at this time.

6. GWCS service areas are based on Economic Areas. Similar to the former rule for broadband PCS partitioning, GWCS licensees must partition along an established geopolitical boundary, such as county lines, the partitioned area must include the wireline service area

of a rural telephone company (rural telco) and it must be reasonably related to the rural telco's wireline service area. The Commission seeks comment on whether and how its existing partitioning rule for GWCS, which requires partitioning along established geopolitical boundaries and along an area that is reasonably related to a rural telco's wireline service area, should be modified, if it chooses to open partitioning of GWCS licenses to entities other than rural telcos. The Commission tentatively concludes that a more flexible approach, similar to the one it adopted for broadband PCS, is appropriate for GWCS. Partitioning of GWCS licenses would be permitted based on any license area defined by the parties. The Commission seeks comment on whether this proposal is consistent with the licensing of GWCS based on Economic Areas and whether there are any technical or other issues unique to GWCS that might impede the adoption of a flexible approach to defining the partitioned license area.

C. Amount of Spectrum To Disaggregate

7. The Commission seeks comment as to whether minimum disaggregation standards are necessary for cellular and GWCS. The Commission seeks to determine whether technological and administrative considerations warrant the adoption of such standards. Cellular licenses are currently issued for a 25 MHz block of spectrum and GWCS licenses for 5 MHz blocks. GWCS licensees are also permitted to obtain multiple 5 MHz blocks and are subject to a 15 MHz GWCS spectrum aggregation limit. The Commission finds that any such standard it adopts should be sufficiently flexible so as to encourage disaggregation while providing a standard which is consistent with the technical rules and by which the Commission will be able to track disaggregated spectrum and review disaggregation proposals in an expeditious fashion.

D. Combined Partitioning and Disaggregation

8. The Commission seeks comment as to whether combined partitioning and disaggregation should be permitted for cellular and GWCS services. The Commission tentatively concludes that it should permit such combinations to provide parties the flexibility they need to respond to market forces and demands for service relevant to their particular locations and service offerings.

E. Construction Requirements

9. *Cellular.* While the Commission does not propose to modify the existing cellular build-out procedures, it seeks comment as to whether the cellular partitioning rule is sufficiently flexible to increase the viability and value of partitioned cellular licenses and to facilitate cellular partitioning while preventing circumvention of the cellular build-out procedures. The Commission invites comment as to whether the existing cellular rules might be amended to further facilitate cellular partitioning and what types of alternative partitioning mechanisms might be adopted.

10. In addition, the Commission seeks comment as to whether it should adopt a disaggregation certification procedure similar to the type adopted for broadband PCS. The Commission proposes requiring parties seeking Commission approval of a cellular disaggregation agreement to include a certification as to which party will be responsible for building out the remainder of the market. Should that party fail to build out, the Commission proposes that the unserved portion of the market would be subject to Phase II or unserved area applications. The Commission seeks comment as to whether such an approach is feasible for cellular disaggregation given the distinctive nature of the cellular build-out rules.

11. *GWCS.* The Commission seeks comment as to whether it should amend its existing partitioning rule for GWCS to allow dual construction options for GWCS partitioning and adopt a certification procedure for GWCS disaggregation similar to the procedure it has adopted for broadband PCS.

12. For example, under the first construction option for GWCS partitioning, the partitionee would certify that it will satisfy the same construction requirement as the original GWCS licensee for its partitioned license area. Under the second construction option, the original GWCS licensee may certify that it has or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire license area. Since the original GWCS licensee retains responsibility for meeting the construction requirements, the Commission believes that the partitionee should be permitted to meet a less substantial construction requirement. The Commission seeks comment as to what lesser construction requirement would be appropriate.

13. As for GWCS disaggregation, the Commission proposes adopting a procedure similar to the one adopted for broadband PCS and proposed for cellular. Under such an approach, the disaggregating parties would be required to submit a certification, signed by both the disaggregator and disaggregatee, as to which of the parties will retain responsibility for meeting the five and ten-year construction requirements for the GWCS market. The parties would be permitted to share responsibility for meeting the construction requirements. The party or parties taking responsibility for meeting the construction requirements would be subject to license forfeiture for failing to meet the construction requirements.

F. License Term

14. The Commission seeks comment as to whether the cellular and GWCS rules should be amended to provide that parties obtaining partitioned cellular or GWCS licenses or disaggregated spectrum hold their license for the remainder of the original licensee's ten-year license term. In addition, the Commission seeks comment as to whether GWCS partitionees and disaggregatees should be afforded the same renewal expectancy as other GWCS licensees. The Commission tentatively concludes that limiting the license term of the partitionee or disaggregatee is necessary to ensure that there is maximum incentive for parties to pursue available spectrum as quickly as practicable.

G. GWCS Competitive Bidding Issues

15. The Commission tentatively concludes that GWCS partitionees and disaggregatees that would qualify as designated entities should be permitted to pay their pro rata share of the remaining government obligation via installment payments. The Commission seeks comment as to the exact mechanisms for apportioning the remaining government obligation between the parties and whether there are any unique circumstances that would make devising such a scheme for the GWCS service more difficult than for broadband PCS. Since GWCS service areas are allotted on a geographic basis, similar to broadband PCS, the Commission proposes using population as the objective measure to calculate the relative value of the partitioned area and amount of spectrum disaggregated as the objective measure for disaggregation.

16. The Commission seeks comment on whether to apply unjust enrichment rules to designated entity GWCS licensees that partition or disaggregate to non-designated entities. Commenters

should address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area and amount of spectrum disaggregated as the objective measures. The Commission further seeks comment as to how to enforce unjust enrichment payments for designated entity GWCS licensees paying via installment payments and those that were awarded bidding credits that partition or disaggregate to non-designated entities. The Commission tentatively proposes using methods similar to those adopted for broadband PCS for calculating the amount of the unjust enrichment payments that must be paid in those circumstances.

H. Licensing Issues

17. Partial assignment procedures are not used for cellular partitioning. Instead, whenever a cellular licensee enters into a partitioning agreement, the partitionee must file an application (FCC Form 600) for a new cellular system covering the partitioned market. Since this procedure provides the appropriate level of review of the partitioning transaction, the Commission proposes no modification at this time. However, should the Commission permit cellular disaggregation, it seeks comment on the method it should devise for reviewing cellular disaggregation transactions.

18. Since there are existing partial assignment rules for both cellular and GWCS, the Commission proposes utilizing partial assignment procedures, similar to those adopted for broadband PCS, to review cellular disaggregation and GWCS partitioning and disaggregation transactions. Partial assignment applications would be placed on public notice and subject to petitions to deny. The parties would be required to submit an FCC Form 490, an FCC Form 600 and, if necessary, an FCC Form 430, together as one package under cover of the FCC Form 490. The Commission invites comment whether any additional procedures are necessary for reviewing these applications.

III. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM).

Reason for Action

This rulemaking proceeding was initiated to secure comment on proposals to modify our cellular and General Wireless Communications Service (GWCS) rules to permit partitioning and disaggregation for all licensees in those services. The proposals advanced in the FNPRM are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with Sections 257 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 257, 309(j) (the Communications Act).

Objectives

The Commission proposes to change its rules for cellular and GWCS to facilitate the efficient use of cellular and GWCS spectrum, increase competition, and expedite the provision of cellular and GWCS services in the near term. These proposals seek to increase the level of small business participation in the provision of cellular and GWCS services. The Commission considers whether to modify the existing cellular rules to provide for more flexible partitioning and to allow disaggregation of cellular spectrum for the first time. In addition, the Commission proposes to allow GWCS licensees to partition and disaggregate to entities that are eligible for GWCS licenses. Designated entity GWCS licensees will be allowed to partition or disaggregate to non-designated entities, subject to unjust enrichment payments. Entities that qualify for installment payments will be permitted to pay their pro rata share of the remaining government obligation via installment payments. The Commission proposes to establish license terms that permit cellular and GWCS partitionees to hold partitioned licenses and disaggregatees to hold disaggregated spectrum for the remaining duration of the original ten-year license term. The Commission also proposes to establish construction requirements for GWCS partitioning to ensure expedient access to GWCS service in partitioned areas, to ensure coverage and to increase spectrum efficiency. Finally, the Commission proposes to allow combined partitioning and disaggregation for cellular and GWCS services and to follow the existing partial assignment procedures for cellular and GWCS.

Legal Basis

The proposed action is authorized under Sections 4(i), 257, 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

Reporting, Recordkeeping, and Other Compliance Requirements

The proposals under consideration in this FNPRM include the possibility of imposing reporting and recordkeeping requirements on small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine whether the licensee was qualified to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by an applicant requesting cellular disaggregation or GWCS partitioning or disaggregation. This information will be submitted on FCC Forms 490 (and 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. We estimate that the average burden on the applicant is three hours for the information necessary to complete these forms. We estimate that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. We estimate that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

The rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding cellular licenses who choose to partition and/or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total cellular and GWCS entities, existing and potential, would be affected by the proposed rules in the FNPRM. In particular, we seek estimates of how many cellular and GWCS entities, existing or potential, will be considered small businesses. Small business is

defined here as a firm that has revenues of less than $40 million in each of the last three calendar years. This definition was adopted for the GWCS service. We seek comment as to whether this definition is appropriate in this context. Additionally, we request each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

The Commission anticipates that a total of 8,465 cellular licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning and/or disaggregation. This estimate is based upon the current number of existing cellular licensees (1,693) and our estimate that each license would probably not be partitioned and/or disaggregated to more than five parties. However, we estimate that a significant number of the cellular and GWCS licensees and potential licensees who take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

SBA has not developed a definition of small entities specifically applicable to cellular. The closest applicable definition under SBA rules is radiotelephone (wireless) companies. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. According to our most recent data, there are 1,693 existing cellular licensees. We are unable at this time to estimate the number of cellular service carriers that would qualify as small business concerns under SBA's definition. We estimate that fewer than 1,693 small entity cellular service carriers may be affected by the decisions and rules adopted in this FNPRM.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The proposals advanced in the FNPRM are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services. The impact on small entities in the proposals in the FNPRM is the opportunity to enter the cellular and GWCS market through partitioning and disaggregation. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision of cellular and GWCS services without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring "less" than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

The rule changes proposed in the FNPRM by the Commission are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for small business in the provision and ownership of telecommunications services, and the mandate under Section 309(j) of the Communications Act, 47 U.S.C. 309(j), to utilize auctions to ensure that small, minority and women-owned businesses and rural telcos have an opportunity to participate in the provision of spectrum-based services. The proposals in the FNPRM, if implemented, will facilitate market entry by parties, including small businesses, that may lack the financial resources for participation in cellular and GWCS services. The alternative is to continue to allow GWCS partitioning only for rural telcos. Limiting GWCS partitioning to rural telcos would not permit other small businesses to obtain partitioned licenses or to partition to other parties, and thus would not promote the participation of small business in the provision of GWCS service.

In the FNPRM, the Commission proposes facilitating GWCS partitioning by offering a choice between two different build-out options, which could be negotiated by the parties. The Commission tentatively concludes that these proposed flexible build-out requirements, if adopted, will encourage partitioning to entities that have a sincere interest in providing GWCS service and will thereby expedite the provision of service to geographic areas that otherwise may not receive it as quickly.

This FNPRM solicits comments on a variety of proposals discussed herein. Any significant alternatives presented in the comments will be considered.

B. Paperwork Reduction Act

The Further Notice of Proposed Rulemaking (FNPRM) contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB comments are due March 7, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

19. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to both of the following: Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet at fain__t@al.eop.gov. For additional information regarding the information collections contained herein, contact Dorothy Conway above.

C. Ex Parte Rules—Non-Restricted Proceedings

This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR 1.1201, 1203, and 1.1206(a).

D. Comment Period

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments to the Further Notice of Proposed Rulemaking on or before February 10, 1997, and reply comments on or before February 25, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications

Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

E. Authority

Authority for issuance of this Further Notice of Proposed Rulemaking is contained in Sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

F. Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority of Sections 4(i), 257, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 257, 303(g), 303(r), and 332(a), a further notice of proposed rulemaking is hereby adopted.

It is further ordered, that comments in WT Docket No. 96–148 will be due February 10, 1997, and reply comments will be due February 25, 1997.

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 26

Communications common carriers; Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–99 Filed 1–3–97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 961227373–6373–01; I.D. 122096B]

RIN 0648–XX78

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 1997 groundfish fishery specifications and management measures; tribal whiting allocation; announcement of exempted fishing permits; request for comments.

SUMMARY: NMFS announces the 1997 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch (ABC) and harvest guideline (HG), including the distribution between domestic and foreign fishing operations. The HGs are allocated between the limited entry and open access fisheries. The management measures for 1997 are designed to keep landings within the HGs, for those species for which there are HGs, and to achieve the goals and objectives of the FMP and its implementing regulations. The intended effect of these actions is to establish allowable harvest levels of Pacific Coast groundfish and to implement management measures designed to achieve but not exceed those harvest levels, while extending fishing and processing opportunities as long as possible during the year. This action also announces issuance of exempted fishing permits (EFPs) in 1996 and applications for exempted fishing permits in 1997.

DATES: Effective 0001 hours (local time) January 1, 1997, until the 1998 annual specifications and management measures are effective, unless modified, superseded, or rescinded. The 1998 annual specifications and management measures will be published in the **Federal Register**. Comments on the 1997 annual specifications and management measures will be accepted until February 5, 1997.

ADDRESSES: Comments on these specifications and management measures, tribal whiting allocation, and EFPs should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these specifications and management measures, including the stock assessment and fishery evaluation (SAFE) report, has been compiled in aggregate form and is available for public review during business hours at the office of the Administrator (formerly Director), Northwest Region, NMFS (Regional Administrator), or may be obtained from the Pacific Fishery Management Council (Council), by writing the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that HGs or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the HGs or quotas be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. This action announces and makes effective the final 1997 fishery specifications and the management measures designed to achieve them. These specifications and measures were considered by the Council at two meetings and were recommended to NMFS by the Council at its October 1996 meeting in San Francisco, CA. NMFS received three public comments regarding the allocation of Pacific whiting (whiting) to the Makah Indian tribe prior to the publication of these specifications. These comments are addressed in paragraph V. Regulatory citations have been changed throughout this document to conform with the nationwide consolidation of Pacific and Western Pacific fisheries regulations at 50 CFR part 600 and part 660.

I. Final Specifications

The fishery specifications include ABCs, the designation of HGs or quotas for species that need individual management, the apportionment of the HGs or quotas between domestic and foreign fisheries, and allocation between the open access and limited entry segments of the domestic fishery. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore). Only changes to the specifications between 1996 and 1997 are discussed herein, otherwise they are the same as announced in 1996 (61 FR 279, January 4, 1996).

BILLING CODE 3510-22-P

Table 1. 1997 Specifications of Acceptable Biological Catch (ABC), Harvest Guidelines, and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) subareas

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1000 mt)						Harvest Guideline (1000 mt)	Commercial Harvest Guideline (1000 mt)	Allocations (x 1000 mt)			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total ABC			Limited Entry		Open Access	
									1000 mt	%	1000 mt	%
ROUNDFISH:												
Lingcod b/	1.3		0.3	0.7	0.1	2.4	2.4	1.5	1.21	80.9	0.29	19.1
Pacific cod	3.2		c/	c/	c/	3.2	--	--	--	--	--	--
Pacific whiting d/	290.0					290.0	232.0	207.0	--	--	--	--
Sablefish e/f/	8.7				0.425	9.125	7.8	7.02	6.557	93.4	0.463	6.6
Jack mackerel g/	52.6			--		52.6	52.6	--	--	--	--	--
FLATFISH:												
Dover sole e/h/	0.82-1.57	3.0	2.9	3.16-4.36	1.0	10.88-12.83	11.05 WOC 2.85 Col	--	--	--	--	--
English sole	2.0		1.1			3.1	--	--	--	--	--	--
Petrale sole	1.2		0.5	0.8	0.2	2.7	--	--	--	--	--	--
Arrowtooth flounder	5.8					5.8	--	--	--	--	--	--
Other flatfish	0.7	3.0	1.7	1.8	0.5	7.7	--	--	--	--	--	--
ROCKFISH:												
POP i/	0.0	0.0	c/	c/	c/	0.0	0.75	0.75	--	--	--	--
Shortbelly	23.5					23.5	23.5	23.5	--	--	--	--
Widow j/	7.7					7.7	6.5	6.5	6.26	96.3	0.24	3.7
Thornyheads: e/k/	8.0				-	8.0	--	--	--	--	--	--
Shortspine e/k/	1.0				-	1.0	1.38	1.38	1.376	99.75	0.003	0.25
Longspine e/k/	7.0				-	7.0	6.0	6.0	--	--	--	--
Sebastes complex: l/	7.130		9.664			7.130 N 9.664 S	6.656 N 9.284 S	6.656 N 9.284 S	6.017 N 6.257 S	90.4 N 67.4 S	0.639 N 3.027 S	9.6 N 32.6 S
Bocaccio-S m/	n/		0.265			0.265	0.387	0.332	0.224	67.4	0.108	32.6
Canary-N n/	1.22		n/			1.22	1.0	1.0	0.912	91.2	0.09	8.80
Chilipepper	c/		4.0			4.0	--	--	--	--	--	--
Yellowtail-N o/	0.454	0.984 N 0.335 S	n/			1.773	2.762	2.762	2.497	90.4	0.265	9.6

(Table 1. continued)

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1,000 mt)						Harvest Guideline (1000 mt)	Commercial Harvest Guideline (1000 mt)	Allocations (x 1000 mt)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total ABC			Limited Entry		Open Access	
									1000 mt	%	1000 mt	%
Sebastes complex (cont'd)												
Remaining rockfish b/:	2.295		1.431			2.295 N 1.431 S	--	--	--	--	--	--
bank	c/		0.081			0.08	--	--	--	--	--	--
bocaccio-N	0.424		q/			0.424	--	--	--	--	--	--
canary-S	q/		0.085			0.085	--	--	--	--	--	--
darkblotched	0.209		0.047			0.26	--	--	--	--	--	--
POP-S	q/		0.020			0.02	--	--	--	--	--	--
redstripe	0.768		c/			0.77	--	--	--	--	--	--
sharpchin	0.398		0.071			0.47	--	--	--	--	--	--
silvergrey	0.051		c/			0.05	--	--	--	--	--	--
splitnose	0.274		0.868			1.14	--	--	--	--	--	--
yelloweye	0.039		c/			0.04	--	--	--	--	--	--
yellowmouth	0.132		c/			0.13	--	--	--	--	--	--
yellowtail-S	q/		0.104	0.155		0.259	--	--	--	--	--	--
Other rockfish c/	1.842		3.968			--	--	--	--	--	--	--
OTHER FISH d/	2.5	7.0	1.2	2.0	2.0	14.7	--	--	--	--	--	--

a/ U.S. Vancouver only, except for Pacific whiting.

b/ Lingcod. The stock assessment covers the entire Vancouver INPFC area, including Canada, and the Columbia subarea north of Cape Falcon. The U.S. ABC is based on 50 percent of the ABC for this assessment area, plus 400 mt for the Columbia area south of Cape Falcon. The coastwide harvest guideline equals the sum of the ABCs and includes a 900-mt estimate of recreational harvest. The limited entry and open-access percents are applied to the commercial portion of the harvest guideline, which is 1,500 mt (the 2,400 mt harvest guideline minus 900 mt recreational harvest).

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c/ Other. These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "other rockfish" category for the areas footnoted only.

d/ Pacific whiting. The ABC is coastwide, including Canadian waters. The U.S. harvest guideline is set at 80 percent of the U.S./Canada ABC. Allocation to catcher/processor, mothership, or shore-based operations are based on the commercial portion of the harvest guideline (the U.S. harvest guideline minus the tribal allocation of 25,000 mt for 1997).

e/ DTS complex. Dover sole, thornyheads, and trawl-caught sablefish are managed together as the "DTS complex." There is no harvest guideline for the DTS complex.

f/ Sablefish. The 7,800 mt harvest guideline north of the Conception area (36° N. lat.) is the 8,700 mt ABC (for that same area) reduced by 900 mt for estimated discards. The 7,800-mt harvest guideline is reduced by 780 mt for the treaty tribes before dividing the remaining 7,020 mt between the limited entry (6,557 mt) and open-access (463 mt) fisheries. The limited entry allocation is further allocated 58 percent (3,803 mt) to the trawl fishery, and 42 percent (2,754 mt) to the nontrawl fishery, both of which are harvest guidelines.

g/ Jack mackerel. Only jack mackerel north of 39°00′ N. latitude are managed by the FMP. The ABC and harvest guideline include waters beyond 200 nm.

h/ Dover sole. The ABC for Dover sole in the Vancouver area ranges from 818 mt (the ABC recommended in the 1995 assessment) to 1,565 mt (1990-1994 average landings). The ABCs for Dover sole in the Columbia and Eureka areas are based on the stock assessment. The ABC for Dover sole in the Monterey area ranges from 3,164 mt (1990-1994 average landings) to 4,360 mt (the level recommended in the 1995 assessment).

The 11,050 mt coastwide harvest guideline for Dover sole is based on the upper end of the ABC range for the Vancouver subarea and the lower end of the ABC for the Monterey subarea (which are the recent average catches in those two subareas), plus the ABCs for the Columbia, Eureka and Conception subareas, minus 580 mt for estimated discards. The coastwide harvest guideline includes a 2,850 mt harvest guideline for the Columbia subarea (3,000 mt ABC minus 150 mt estimated discards).

i/ Pacific ocean perch. The ABC remains at zero. The harvest guideline for landed catch applies to the Vancouver/Columbia subareas combined, and is intended to represent only incidental catches.

j/ Widow rockfish. The 6,500 mt harvest guideline is derived by subtracting 16 percent for estimated discards (1,200 mt) from the ABC (7,700 mt).

k/ Thornyheads. The thornyhead ABCs and harvest guidelines apply north of Point Conception, CA (34°27′ N. lat.). The harvest guideline for shortspine thornyheads has been reduced by 120 mt to represent landings rather than total catch. The total

catch estimate of 1,500 mt (which was the harvest guideline in 1996) is 50 percent above the ABC, but below the overfishing threshold, in order to allow greater harvest of longspine thornyheads. Eight percent is deducted for discards. The harvest guideline for longspine thornyheads is 1,000 mt below its ABC to help prevent overharvest of shortspine thornyheads.

1/ Sebastes complex. The Sebastes-north ABC is the sum of the ABCs for canary, yellowtail, "remaining rockfish," and "other rockfish" in the Vancouver and Columbia areas. The Sebastes-north harvest guideline, which applies to the Vancouver/Columbia area, is the sum of the harvest guidelines for canary and yellowtail rockfish, plus the sum of the ABCs or recent catch, whichever is less, for "remaining rockfish" and "other rockfish."

Within the Sebastes-north harvest guideline are two small harvest guidelines for commercial harvest of black rockfish by the Makah, Quileute, Hoh, and Quinault Indian tribes: 20,000 lb (9,072 kg) for the EEZ north of Cape Alava (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

The Sebastes-south ABC is the sum of the ABCs for bocaccio, chilipepper, "remaining rockfish," and "other rockfish" in the Eureka, Monterey, and Conception areas. The Sebastes-south harvest guideline, which applies to the Eureka/Monterey/Conception area is the harvest guideline for bocaccio plus the sum of the ABCs or recent catch, whichever is less, for "remaining rockfish" and "other rockfish."

The harvest guidelines for the Sebastes complex, bocaccio, canary rockfish, and yellowtail rockfish are for total catch, so estimates of discards will be added during the season as data become available.

m/ Bocaccio. The bocaccio harvest guideline, which applies to the Eureka, Monterey, and Conception areas and represents total catch, is stepped down from 1,700 mt in 1996 to 387 mt in 1997, the estimated overfishing threshold. In 1997, 55 mt for estimated recreational harvest is subtracted from the harvest guideline before deriving the limited entry and open access allocations. In 1998, the harvest guideline is expected to equal the ABC.

n/ Canary rockfish. Even though the ABC increased slightly (from 1,000 mt in 1996 to 1,220 mt in 1997), landings are not intended to increase in 1997. The increase in the from 850 mt (for landed catch) in 1996 to 1,000 mt(for total catch) in 1997 results from adding an estimate for discards in 1997.

o/ Yellowtail rockfish. The stock assessment for northern yellowtail rockfish addressed three separate areas: 454 mt for the U.S. Vancouver area; 984 mt for the Columbia area north of Cape Falcon (45°46' N. lat.); and 439 mt for the Eureka area plus the Columbia area south of Cape Falcon. The ABC has been prorated to conform with management areas for other species in the Sebastes complex, at 335 mt for the southern Columbia area and 104 mt for the Eureka area. The prorated ABC for the Vancouver/Columbia area is 1,773 mt, a reduction of more than 70

percent from the 1996 ABC of 6,540 mt for this area. A separate stock assessment provided the 155 mt ABC for the Monterey/Conception area, resulting in an ABC of 259 mt for yellowtail in the Eureka/Monterey/Conception area.

The harvest guideline for yellowtail rockfish in the Vancouver/Columbia area is stepped down from 3,590 mt in 1996 to 2,762 mt in 1997, with the intent to set the harvest guideline equal to ABC in 1998. The 1997 harvest guideline represents total catch, whereas in 1996 it represented landed catch only.

p/ Remaining rockfish. Prior to 1997, this category included all species in the Sebastes complex that did not have an individual ABC, and therefore included species that in 1997 are designated as "other rockfish." In 1997, "remaining rockfish" includes only those species and areas listed in Table 1.

q/ There is a separate ABC for this species and area which is not included in "remaining rockfish" or "other rockfish."

r/ Other rockfish. "Other rockfish" includes offshore Sebastes species not identified in Table 1. It is based on the Sebastes complex assessment of commercial landings and includes estimates of recreational landings for those species without individual ABCs.

s/ Other fish. Includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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Changes to the ABCs and HGs

The ABCs, which are based on the best available scientific information, represent the total catch, including amounts that are discarded as well as retained. Stock assessment information considered in determining the ABCs is available from the Council, and was made available to the public, before the Council's October 1996 meeting, in the Council's SAFE document (see **ADDRESSES**). The 1997 ABCs are changed from 1996 for Pacific whiting, the *Sebastes* complex, bocaccio, canary rockfish, and yellowtail rockfish. New ABCs were developed for "remaining rockfish" and for a new category of "other rockfish." Changes that result only from rounding are not explained.

Those species or species groups managed with HGs in 1996 will continue to be managed with HGs in 1997. The 1997 HGs differ from 1996 for Pacific whiting, shortspine thornyheads, the *Sebastes* complex, yellowtail rockfish, bocaccio, and canary rockfish.

Stock assessments and inseason catch monitoring are designed to account for all fishing mortality, including that resulting from fish discarded at sea. Discards of rockfish and sablefish in the fishery for whiting are well monitored and are accounted for inseason as they occur. In the other fisheries, discards caused by trip limits have not been monitored consistently, so discard estimates have been developed to account for this extra catch. A discard level of about 16 percent of the total catch, previously measured for widow rockfish in a scientific study, is assumed to be appropriate for the commercial fisheries for widow rockfish, yellowtail rockfish, canary rockfish, and Pacific ocean perch (POP). A discard estimate of 8 percent is used for the deepwater thornyhead fishery, 5 percent for Dover sole, and 20 percent for sablefish.

In some cases (e.g., sablefish, widow rockfish, thornyheads, Dover sole), an estimated amount of discards has been subtracted from the ABC to determine the HG for the landed catch. In other cases (e.g., whiting, *Sebastes* complex), a HG representing total catch is more appropriate. Discards in the whiting fishery have been well documented and, therefore, the HG for whiting represents total catch and discards are accounted for during the season. In 1996, the HG for the *Sebastes* complex included only landings to be consistent with most of the other groundfish HGs. However, using HGs based only on landed catch was too rigid because it did not provide for inseason adjustments, a particular problem when actual reports of discards during the season differed from the amount assumed at the beginning of the year. Therefore, for greater management flexibility during the season, HGs for the *Sebastes* complex and its components in 1997 will include the total catch, and estimates of discards will be added to the landings during the season.

The 1997 changes to the ABCs and HGs are summarized below. More detailed information appears in the Council's SAFE document (September 1996), the "Groundfish Management Team Final Acceptable Biological Catch and Harvest Guideline Recommendations for 1997" (GMT Report C.4.) from the October 1996 Council meeting, and the Council's newsletters for its August and October 1996 meetings.

Whiting

A new stock assessment for whiting indicated that the 1994 year class was larger than previously expected. This, combined with substantive changes in the stock assessment model, resulted in an ABC of 290,000 mt for the U.S. and Canada combined, 25,000 mt higher than in 1996. Nonetheless, this ABC may be somewhat conservative. Another year of data is needed to verify whether the apparent high abundance of the 1994 year class is due to an actual increase in fish, rather than a shift in their distribution to more northern waters. Other factors considered in setting the ABC were promoting stability in landings by distributing the harvest of strong year classes over several years and the need to suppress the bycatch of yellowtail rockfish at a time when that fishery is facing a major reduction in its ABC. The U.S. HG (232,000 mt) is set at 80 percent of the U.S.-Canadian ABC, as in recent years. Allocation to the Makah treaty Indian tribe in 1997 is discussed in paragraph V.

Pacific Ocean Perch (POP)

Since 1981, POP has been managed under a schedule intended to rebuild POP to a level that would annually support removals of 1,000 mt. Landings were higher than this as recently as 1993. To achieve an annual harvest of about 1,000 mt while maintaining a biologically sound harvest rate, the current biomass would have to double. This would be a slow process unless there is a fortuitous sequence of large recruitments. The harvest guideline for POP is meant to accommodate only small, incidental catches and, therefore, is not a target to be achieved deliberately. Trip limits for POP will not be increased to achieve the harvest guideline, and may be reduced if landings are too high. The harvest guideline of 750 mt for POP is the same as last year.

Shortspine Thornyheads

The ABC for shortspine thornyheads is the same as in 1996, but the HG is reduced from 1,500 mt to 1,380 mt to more accurately represent the landed catch.

Sebastes Complex

The ABCs for the *Sebastes* complex are the sum of the ABCs of its components. The HGs (for total catch) are the sum of the HGs for each species or of the ABCs for those species without HGs. The 1997 HG for the *Sebastes* complex in the Vancouver/Columbia area is reduced from 11,900 mt for landed catch in 1996 to 7,130 mt for total catch in 1997. The 1997 HG for the *Sebastes* complex in the Eureka/Monterey/Conception area is reduced from 13,200 mt for landed catch in 1996 to 9,664 mt for total catch in 1997. The large declines are due primarily to large reductions in the ABCs and HGs for bocaccio, yellowtail rockfish, and also to new ABC estimates for the "remaining rockfish" and "other rockfish" categories.

Bocaccio

The 1997 ABC for bocaccio in the Eureka/Monterey/Conception area is 265 mt, only 15 percent of the 1,700-mt ABC in 1996. (Landings were projected at 454 mt for 1996, so the reduction in ABC, while severe, is not as extreme as it appears.) The new stock assessment indicates it is unlikely that the current stock size is greater than 17–20 percent of the 1970 level but also suggests a high degree of uncertainty in current stock size. Recruitment is highly variable for bocaccio. Assuming that future recruitment will be similar to that in 1969–1996, the level of fishing mortality that would produce spawning biomass at 35 percent of its unfished level (F35%) is 265 mt. The 1997 HG (for total catch) is 387 mt, 122 mt higher than ABC, and at, but not above, the overfishing threshold for bocaccio. The Council recommended that the bocaccio HG be set above ABC in 1997 to allow a 1-year phase-down to mitigate the economic impacts of a 60 percent reduction in catch in 1 year (from 664 mt to 265 mt). The consequences of the phase-down are that the ABC and HG in 1998, and possibly subsequent years, most likely will be lower than they would have been if 1997 catches did not exceed ABC. The Council intends that the HG be set equal to ABC in 1998.

Bocaccio also are particularly difficult to manage, because of the multiplicity of gear types involved, including trawl, set

net and recreational fisheries. The 2-month cumulative trip limit in the limited entry fishery is substantially reduced from 60,000 lb (27,216 kg) in 1996 to 12,000 lb (5,443 kg) in 1997. Additional trip limits specific to bocaccio have been placed on the open access fishery in 1997. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits to 500 lb (227 kg) in 1997, one third of the 1996 shrimp trip limit and one half of the 1996 prawn trip limit.

Canary Rockfish

The 1997 ABC for canary rockfish in the Vancouver/Columbia area is 1,220 mt, slightly higher than the 1,000-mt ABC in 1996. A new assessment for canary rockfish used two models that estimate the 1995 spawning biomass is 18–33 percent of the 1967 value. Both models predict yield and spawning biomass levels will decline during 1997–1999. For both models combined, the average catch projection for the next 3 years is 1,220 mt when average recruitment is assumed. The HG for canary rockfish is increased from 850 mt for landed catch in 1996 to 1,000 mt for total catch in 1997 to account for estimated discards.

Yellowtail Rockfish

The 1997 ABC for yellowtail rockfish in the Vancouver/Columbia/Eureka area is 1,773 mt, 4,667 mt lower than the 6,440-mt ABC in 1996. (The stock assessment determined ABCs for different areas. The 1997 ABC is prorated in Table 1 to apply north and south of the Columbia-Eureka boundary for consistency with other species in the *Sebastes* complex.) The results of the new assessment have caused a great deal of concern because they conflict with the impressions of many who fish for yellowtail rockfish. For the Eureka/south Columbia area (south of Cape Falcon (45°46′ N. lat.)), addition of 1995–96 stock assessment data resulted in substantial reductions in estimates of biomass and recruitment of the 1984 year class in 1988 (to 20 percent of its former level). For the north Columbia area (north of Cape Falcon), addition of the 1995–96 data also reduced estimates of biomass and recruitment. Major changes did not occur in the U.S. Vancouver area. Available fishery age-composition data indicate that fish older than 25 years have all but disappeared from the fishery. Additionally, there is no evidence of any strong incoming year classes. Only half the population is mature 3 or 4 years after recruiting to the fishery, so immature fish have a relatively high likelihood of being caught before they have had an opportunity to contribute to building future biomass. Given this new information, it appears that yellowtail rockfish may have been fished for the last several years above the overfishing threshold.

The recommended 1997 HG of 2,762 mt for yellowtail rockfish in the Vancouver/Columbia area represents total catch, whereas the 3,590-mt HG in 1996 was for landed catch (equivalent to 4,160 mt for total catch). The Council recommended that the 1997 HG be set at, but not above, the overfishing threshold. Fishing is allowed at, but not above, the overfishing threshold of 2,762 mt in 1997 in order to mitigate the sudden and severe economic impact to the fishing industry that would occur if the HG were reduced from the 1996 ABC of 6,440 mt to the 1997 ABC of 1,773 mt in a single year. The Council recognized, however, the need to adjust catches to the ABC level as soon as possible, and consequently, announced its intent that this phase-down in harvest last only a single year and that it intended to recommend a 1998 HG equivalent to the 1998 ABC. Fishing at the overfishing threshold for 1997 is expected to result in a lower ABC and HG in 1998 than if the 1997 harvest did not exceed ABC, but the fishing industry will have had a full year to adjust to reduced harvest levels.

The Council carefully considered the possible impacts of continuing to harvest at a level greater than ABC for 1 more year in contrast to making the full adjustment to the ABC level in a single year. The Council concluded, based on risk analysis conducted by the stock assessment scientists, that the 1-year phase-down will cause only a small further decline in the stock level while it buffers the economic impact of the harvest reductions. Lower stock levels means the likelihood of continued lower ABCs and HGs for the next few years until the stock recovers sufficiently to allow higher harvests. The Council also recommended the phase-down to allow sufficient time for further analysis of some of the components of the stock assessment in order to refine estimates of the ABC for 1998. Considerable public testimony pointed to some indicators, such as yellowtail bycatch rates in the whiting and shrimp trawl fisheries, that were contradictory to the stock assessment results. A work plan was developed to examine some of these indicators and redo the stock assessment during the upcoming year so that the results could be used to set the 1998 ABC.

Yellowtail rockfish is particularly difficult to manage because it is encountered as bycatch in other fisheries. A substantial portion of the yellowtail harvest guideline is taken as bycatch in the whiting and shrimp fisheries. Catch data from the whiting fishery have been examined, and regulatory changes to reduce bycatch are not obvious. The whiting ABC may be somewhat conservative in 1997, in part to suppress the bycatch of yellowtail rockfish. The at-sea processing sector of the whiting fishery has agreed to monitor its bycatch more closely, using daily satellite transmissions to alert them to areas of high bycatch of yellowtail rockfish, as was done to monitor salmon bycatch in 1996. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits to 500 lb (227 kg) in 1997, one third of the 1996 shrimp trip limit and one half of the 1996 prawn trip limit. The target fishery for yellowtail rockfish is addressed by reducing the trip limit, from 6,000 lb (2,722 kg) per month north of Cape Lookout OR (45°20′15″ N. lat.) and 35,000 lb per month between Cape Lookout and Cape Mendocino CA (40°30′ N. lat.) to 6,000 lb (2,722 kg) per 2-month period in both areas.

Remaining Rockfish

New assessments were provided for a number of previously unassessed rockfish species (listed in table 1). "Remaining rockfish" includes canary, POP, and yellowtail rockfish in the Eureka/Monterey/Conception area, and bocaccio in the Vancouver/Columbia area—areas not included in the individual HGs for these species. The ABCs were based on either the ABC from the assessment or recent catch, whichever is less.

Other Rockfish

Assessments were not conducted for a number of other rockfish species ("other rockfish"). The combined ABC for these species is set at the recent landed catch.

Setting HGs Greater Than ABC

In most cases, HGs are less than or equal to the ABCs. However, the Council recommended HGs that exceed the ABCs for POP and shortspine thornyheads (as in 1996), yellowtail rockfish, and bocaccio. The FMP requires that the Council consider certain factors when setting a HG above an ABC. These factors were analyzed by the Council's Groundfish Management Team (GMT) and considered at the Council's October 1996 meeting before the Council recommended the 1997 HGs. These factors also were considered when establishing the 20-year rebuilding schedule for POP in the 1981

FMP, in the most recent stock assessments for POP (in the September 1995 SAFE document) and shortspine thornyheads (in the October 1994 SAFE document), and in the GMT's recommendations for 1996 (GMT Report C.1., October 1995) and for 1997 (GMT Report C.4., October 1996).

Overfishing

The FMP defines "overfishing" as a fishing mortality rate that would, in the long term, reduce the spawning biomass per recruit below 20 percent of what it would have been if the stock had never been exploited (unless the species is above the level that would produce maximum sustainable yield (MSY)). The rate is defined in terms of the percentage of the stock removed per year. Therefore, high catch rates can cause overfishing at any stock abundance level. Conversely, overfishing does not necessarily occur for stocks at low abundance levels if the catch can be kept to a sufficiently small fraction of that stock level. The target rate for exploitation of Pacific Coast groundfish typically is the rate that would reduce spawning biomass per recruit to 35 percent of its unfished level. This desired rate of fishing will always be less than the overfishing rate, so there is a buffer between the management target and the level that could harm the stock's long-term potential productivity. If the overfishing threshold is reached, the Guidelines for Fishery Management Plans at 50 CFR part 600 require the Council to identify actions to be undertaken to alleviate overfishing. As discussed above, efforts have been taken to avoid exceeding the overfishing thresholds for bocaccio and yellowtail rockfish in 1997 by reducing their HGs to the F20% level and by instituting more restrictive trip limit management in 1997, that will make it less likely that HGs will be reached before the end of the year. In addition, the Council has expressed its intent to reduce the HGs to the F35% level in 1998.

Foreign and Joint Venture Fisheries

For those species needing individual management that will not be fully utilized by domestic processors or harvesters, and that can be caught without severely affecting species that are fully utilized by domestic processors or harvesters, foreign or joint venture operations may occur. A joint venture occurs when U.S. vessels deliver their catch to foreign processing vessels in the EEZ. A portion of the HGs or quotas for these species may be apportioned to domestic annual harvest (DAH), which in turn may be apportioned between domestic annual processing (DAP) and joint venture processing (JVP). The portion of a HG or quota not apportioned to DAH may be set aside as the total allowable level of foreign fishing (TALFF). In January 1997, no surplus groundfish are available for joint venture or foreign fishing operations. Consequently, all the HGs in 1997 are designated entirely for DAH and DAP (which are the same in this case); JVP and TALFF are set at zero.

In the unlikely event that fish are reallocated inseason and a foreign or joint venture fishery should occur, the incidental catch levels would be as follows, subject to change during the year: For a whiting fishery, the same as announced at Table 2, footnote 1, of 58 FR 2990 (January 7, 1993); for a jack mackerel joint venture, initially the same as those suggested in section 12.5.2 of the FMP.

II. The Limited Entry Program

The FMP established a limited entry program that, on January 1, 1994, divided the commercial groundfish fishery into two components: The limited entry fishery and the open access fishery, each of which has its own allocations and management measures. The limited entry and open access allocations are calculated according to a formula specified in the FMP, which takes into account the relative amounts of a species taken by each component of the fishery during the 1984–88 limited entry window period. At its October 1996 meeting, the Council recommended the species and areas subject to open access and limited entry allocations in 1997, and the Regional Administrator calculated the amounts of the allocations that are presented in Table 1. Unless otherwise specified, the limited entry and open access allocations are treated as HGs in 1997.

Open Access Allocations

The open access fishery is composed of vessels that operated under the HGs, quotas, and other management measures governing the open access fishery, using (1) exempt gear, or (2) longline or pot (trap) gear fished from vessels that do not have permits endorsed for use of that gear. Exempt gear means all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp or spot or ridgeback prawns (shrimp trawls), and, south of Point Arena, CA (38°57'30" N. lat.), California halibut or sea cucumbers.)

The open access allocation is derived by applying the open access allocation percentage to the annual HG or quota after subtracting any set-asides for recreational or tribal fishing. For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected.

Limited Entry Allocations

The limited entry fishery means the fishery composed of vessels using limited entry gear fished pursuant to the HGs, quotas, and other management measures governing the limited entry fishery. Limited entry gear means longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. (Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot prawns, or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Point Arena, CA.)

The limited entry allocation is the allowable catch (HG or quota) reduced by: (1) Set-asides, if any, for treaty Indian fisheries or recreational fisheries; and (2) the open access allocation. In 1996, a new definition was added for "commercial harvest guideline", (the commercial harvest guidelines are set forth in Table 1). It is the HG minus the amount set aside for tribal or recreational fishing and, therefore, is the number that, when multiplied by the open access allocation percentages, provides the open access and limited entry allocations. Estimates of recreational harvest are subtracted for two species in 1997, 55 mt for bocaccio (which also is reflected in the allocations for the *Sebastes* complex in the Eureka, Monterey, and Conception subareas), and 900 mt for lingcod. Allocations for Washington coastal tribal fisheries are discussed in paragraph V.

III. 1997 Management Measures

Projections of landings in 1996 are based on the information available to the Council at its October 1996 meeting (GMT Supplemental Report C.4., October 1996).

A. Limited Entry Fishery

The following management measures apply to vessels operating in the limited entry fishery starting January 1, 1997, and are designed to keep landings within the HGs or limited entry allocations. Cumulative trip limits continue to be used for most of the limited entry fishery, which allows fishers to accumulate fish over a period of time without limit on the number of landings. Two-month cumulative limits

will continue to be used for most of the limited entry fishery in 1997. As in 1996, no more than 60 percent of a 2-month limit may be taken in either calendar month, resulting in a variable monthly trip limit within the 2-month limit. This enables the limited entry fleet to maintain its current monthly fishing pattern, target on 50 percent of the 2-month cumulative limit in a month, and have the protection of a buffer equivalent to 10 percent of the 2-month cumulative limit to account for inaccuracies in weighing fish at sea or for small amounts caught above the target level. Unless otherwise announced later in the year, the 2-month periods are: January–February, March–April, May–June, July–August, September–October, and November–December. One-month periods may be used later in the year.

Platooning

An optional platooning system is added for 1997, that enables the limited entry trawl fleet to provide a more consistent supply of fish to processors. Whereas the cumulative limits normally apply by calendar month (this would be considered the "A" platoon), a vessel in the "B" platoon would choose to operate under limits out of phase by 2 weeks, from the 16th to the 15th of the month. All limited entry trawl vessels will automatically be in the "A" platoon, unless the permit owner indicated in the annual permit renewal that the permitted vessel will participate in the "B" platoon. Vessels operating in the "B" platoon will not be able to land any species of groundfish from January 1–15, 1997. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon so that a vessel's "B" limit will not be changed during its cumulative trip limit period. Special provisions will be made to accommodate "B" vessels at the end of the year so that the amount of fish made available to both "A" and "B" vessels is the same. A vessel in the "B" platoon will have the same cumulative trip limit for the final period as vessels in the "A" platoon, but the final period may be 2 weeks shorter, so that both the "A" and "B" fishing periods end on December 31, 1997. For example, if the last period is a 2-month cumulative trip limit for November–December, the vessel would be able to take it in 6 weeks (November 16–December 31) without a 60-percent monthly limit. The choice of platoon applies to the permit for the entire calendar year, even if the permit is sold, leased, or otherwise transferred. The platoon system is experimental and may not be continued in 1998 if the Council decides the benefit does not outweigh the administrative burden.

Widow Rockfish

In 1996, the 2-month cumulative limit of 70,000 lb (31,752 kg) was in effect until September, at which time it was reduced to 50,000 lb (27,680 kg). In November, a monthly cumulative limit of 25,000 lb (11,340 kg) was applied until the end of the year. Landings were projected to be 6,275 mt in 1996, within 1 percent of the HG. In 1997, the year will start with the same cumulative limits as in 1996: 70,000 lb (31,752 kg) per 2-month period.

The Sebastes Complex (Including Yellowtail Rockfish, Canary Rockfish, and Bocaccio)

Beginning in January 1996, the 2-month cumulative trip limits for the *Sebastes* complex were: 70,000 lb (31,752 kg) north of Cape Lookout (45°20′15″ N. lat.), 100,000 lb (45,359 kg) between Cape Lookout and Cape Mendocino (40°30′ N. lat.), and 200,000 lb (90,719 kg) south of Cape Mendocino. Two-month cumulative limits also applied to yellowtail rockfish, canary rockfish and bocaccio, which counted toward the limits for the *Sebastes* complex. Beginning in January 1996, these limits were: Yellowtail rockfish—32,000 lb (14,515 kg) north of Cape Lookout or 70,000 lb (31,752 kg) between Cape Lookout and Cape Mendocino; canary rockfish—18,000 lb (8,165 kg); bocaccio south of Cape Mendocino—60,000 lb (27,216 kg). These limits remained in effect until September 1996, at which time the 2-month cumulative limit for yellowtail was reduced to 20,000 lb (9,072 kg) north of Cape Lookout. In November, all the trip limits for the *Sebastes* complex north of Cape Mendocino were converted to 1-month cumulative limits to provide more management flexibility. The 1-month limits were set at half the poundage of the 2-month cumulative limits, except for yellowtail rockfish north of Cape Lookout, which was reduced to 6,000 lb (2,722 kg).

By the end of 1996, landings are projected to be as follows: *Sebastes* complex in the Vancouver/Columbia area—8,583 mt (19 percent below the HG); yellowtail rockfish north of Cape Lookout—3,144 mt (5 percent over the HG), but this projection was made before the cumulative limit was reduced in November 1996; yellowtail rockfish south of Cape Lookout—1,621 mt (33 percent below the HG); canary rockfish—868 mt (2 percent below the HG); and bocaccio—654 mt, including estimated recreational catch (56 percent below the HG).

In January 1997, the 2-month cumulative trip limits for the *Sebastes* complex are 30,000 lb (13,608 kg) north of Cape Mendocino and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these limits, no more than 14,000 lb (6,350 kg) may be canary rockfish; 6,000 lb (2,722 kg) may be yellowtail rockfish north of Cape Mendocino; and 12,000 lb (5,443 kg) may be bocaccio south of Cape Mendocino. The yellowtail and bocaccio cumulative trip limits are substantially reduced because of severe reductions in their HGs. As discussed above, both yellowtail and bocaccio will be fished at their overfishing threshold in 1997, as a 1-year step down to fishing at F35%. Both species are particularly difficult to manage because of the multiplicity of gear types involved. A substantial portion of the yellowtail HG is taken as bycatch in the whiting and shrimp fisheries. Catch data from the whiting fishery have been examined, and regulatory changes to reduce bycatch are not obvious. The whiting ABC may be somewhat conservative in 1997, in part to suppress the bycatch of yellowtail rockfish. The at-sea processing sector of the whiting fishery has agreed to monitor its bycatch more closely, using daily satellite transmissions to alert them to areas of high bycatch, as was done to monitor salmon bycatch in 1996. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits from 1,500 lb (680 kg) and 1,000 lb (454 kg), respectively, to 500 lb (227 kg) of groundfish in 1997. Management of bocaccio is further complicated by a significant recreational harvest; bag limit reductions may be necessary in the future.

The declaration procedures, instituted by the States of Oregon and Washington for vessels operating on both sides of Cape Lookout, are no longer in effect because the cumulative limits no longer differ north and south of Cape Lookout.

POP

In 1996, the 2-month cumulative trip limit for POP of 10,000 lb (4,536 kg) continued until July 1, when it was reduced to 8,000 lb (3,629 kg). Landings were projected to be 771 mt in 1996, 4 percent above the HG. With the 1997 HG the same as in 1996, the 2-month cumulative limit will be set again at 8,000 lb (3,629 kg) beginning in January 1997. POP is managed to achieve a rebuilding schedule, so trip limits will not be increased to achieve the HG.

Sablefish

The sablefish HG is subdivided among several fisheries. The tribal fishery allocation is set aside prior to dividing the balance of the HG between the commercial limited entry and open access fisheries. These three fisheries are managed differently. The limited entry allocation is further subdivided into trawl (58 percent) and nontrawl (42 percent) allocations. Trawl-caught sablefish are managed together with Dover sole and thornyheads as the DTS complex because they often are caught together. A projection for landings of nontrawl sablefish is not yet available because data from the October mop-up fishery have not been confirmed.

DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)

In 1996, the 2-month cumulative trip limits for the DTS complex remained in effect throughout the year, as follows: 70,000 lb (31,752 kg) north of Cape Mendocino and 100,000 lb (45,359 kg) south of Cape Mendocino. Within the cumulative limits for the DTS complex there were limits for Dover sole, thornyheads, and trawl-caught sablefish. The cumulative limits for thornyheads (20,000 lb (9,072 kg), of which no more than 4,000 lb (1,814 kg) could be shortspine thornyheads) and for trawl-caught sablefish (12,000 lb (5,443 kg)) remained in effect the entire year, as did the 500-lb (227-kg) "per trip" limit on sablefish smaller than 22 inches (56 cm) total length. Initially, the limit on Dover sole was the amount of the DTS cumulative limit remaining after subtracting sablefish and thornyheads. In July, this was changed north of Cape Mendocino to a specific trip limit of 38,000 lb (17,236 kg) to protect Dover sole in the Columbia area. Landings of sablefish (trawl-caught), Dover sole (coastwide and in the Columbia area), and shortspine thornyheads are expected to be within 10 percent of their respective HGs in 1996. Landings of longspine thornyheads are projected to be 33 percent below the HG in 1996. In 1997, the trip limits will continue at the same levels that have been in effect since July 1996.

Nontrawl Sablefish

Small daily trip limits were applied to the nontrawl fishery again in 1996 before and after the September 1–5, 1996 "regular" and October 1–14, 1996 "mop-up" seasons. A 300-lb (136-kg) daily trip limit was applied only north of the Conception subarea (36°00′ N. lat.), the same area covered by the HG. In the Conception area, where there is no HG and landings had been below the 425-mt ABC in 1996, the daily trip limit was set at 350 lb (159 kg) to accommodate most landings without encouraging excessive effort shifts into that area. The trip limit for sablefish smaller than 22 inches (56 cm) of 1,500 lb (680 kg) or 3 percent of all legal sablefish on board, whichever is greater, remained in effect during the regular and mop-up seasons.

In 1996, as in 1995, the regular (derby) season was preceded by a 72-hour closure for all limited entry and open access fixed gear used to take and retain groundfish, with one exception. Pot gear could be set 24 hours before the regular season because this gear takes longer to deploy.

In 1997, the same daily trip limits for the limited entry fishery will apply outside the regular and mop-up seasons and any closure. The "per trip" limit for nontrawl sablefish smaller than 22 inches (56 cm) will remain in effect during the regular and mop-up fisheries. The Council recommended a number of management changes for 1997 that have not yet been approved by NMFS. These recommendations are summarized in paragraph IV.E.(3)(c). The Council also is considering different management strategies for 1998 and beyond, but has not yet submitted a recommendation to NMFS.

Whiting

Approximately 212,900 mt of whiting was harvested in 1996, 85,125 mt by the shore-based fleet, 112,776 mt by the at-sea processing sector (which includes deliveries to motherships), and about 15,000 mt by the Makah tribal fishery. The 10,000-lb (4,536-kg) trip limit for whiting taken before and after the regular whiting season and inside the 100-fathom (183-m) contour in the Eureka subarea (40°30′–43°00′ N. lat.) continues in effect in 1997. Additional regulations, including the allocation of whiting among non-tribal sectors, are found at 50 CFR 660.323(a)(4). The Council has recommended a number of changes that are summarized in paragraph IV.F. These changes have not yet been approved by NMFS.

Lingcod

The 2-month cumulative trip limit for lingcod is the same in 1997 as throughout 1996, 40,000 lb (18,144 kg) per 2-month period. As in 1996, lingcod smaller than 22 inches (56 cm) may not be landed in the commercial or recreational fisheries except for 100-lb (45-kg) per trip for trawl-caught lingcod. Landings of lingcod are projected at 2,708 mt in 1996, including estimated recreational catch, 8 percent below the HG.

Black Rockfish

Black rockfish off the State of Washington continue to be managed under the regulations at 50 CFR 660.323(a)(1) for non-tribal fisheries. The State of Oregon implements trip limits for black rockfish off the Oregon coast.

B. Open Access Fishery

The trip limits for the open access fishery are designed to keep landings within the open access allocation, while allowing the fisheries to operate for as long as possible during the year. The overall open access limits for rockfish, sablefish, and "all groundfish" in 1997 are the same as in 1996 with several exceptions: (1) The thornyhead open access allocation of only 3 mt is expected to be taken entirely as incidental catch in open access fisheries for other species. Consequently, north of Pt. Conception thornyheads may not be taken and retained, possessed, or landed, as has been the case since May 1996; (2) the monthly cumulative trip limit for rockfish is applied coastwide in 1997, whereas in 1996, it differed north and south of Cape Lookout; (3) additional limits are established for bocaccio: For setnets or trammel nets, no more than 4,000 lb (1,814 kg) of bocaccio cumulative per month south of Cape Mendocino; and, for hook-and-line or pot gear, no more than 2,000 lb (907 kg) of bocaccio cumulative per month south of Cape Mendocino, of which no more than 300 lb (136 kg) may be taken per trip; (4) language is changed to clarify that open access nontrawl gear may not exceed limits that apply to limited entry nontrawl gear; (5) daily trip limits for sablefish will apply to all open access gear in 1997, not only to nontrawl gear as was the case in 1996; and (6) trip limits for groundfish are reduced from 1,500 lb (680 kg) in the shrimp trawl fishery and 1,000 lb (454 kg) in the prawn trawl fishery to 500 lb (227 kg), including the 300-lb (136-kg) daily trip limit for sablefish. The reduction in the groundfish limit is primarily to discourage bycatch of yellowtail and other rockfish.

C. Operating in Both Limited Entry and Open Access Fisheries

Vessels using open access gear are subject to the management measures for the open access fishery, regardless of whether the vessel has a valid limited entry permit endorsed for any other gear. In addition, a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or

size limit (for the same area) in the limited entry fishery.

A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit. For example: In January, a trawl vessel catches 7,000 lb (3,175 kg) of sablefish in the limited entry fishery, and in the same month catches 1,000 lb (454 kg) of sablefish with shrimp trawl (open access) gear, for a total of 8,000 lb (3,629 kg) of sablefish. Because the open access landings are counted toward the limited entry limit, the vessel would have exceeded its limited entry, cumulative limit of 7,200 lb (3,266 kg) (60 percent of the 12,000-lb (5,443-kg) 2-month cumulative limit for the limited entry fishery).

D. Operating in Areas With Different Trip Limits

Trip limits may differ for a species or species complex at different locations on the coast. Unless otherwise stated (as for black rockfish or for species with daily trip limits), the cross-over provisions at paragraph IV.A.(12) apply. In general, a vessel fishing for groundfish in a more restricive area is subject to the more restrictive limit for the duration of that trip limit period. In 1997, these provisions are relaxed to apply only to vessels taking and retaining groundfish rather than any species. Since trip limits for the *Sebastes* complex and yellowtail rockfish will be the same in Washington and Oregon in 1997, Washington and Oregon State declaration procedures that enabled a vessel to operate on both sides of the line and harvest the larger limit no longer are in effect.

E. Changes to Trip Limits; Closures

Unless otherwise stated, a vessel must have initiated offloading its catch before the fishery is closed or before a more restrictive trip limit becomes effective. As in the past, all fish on board the vessel when offloading begins are counted toward the landing limits (See 50 CFR 660.302, formerly 50 CFR 663.2, for the definition of "landing").

F. Designated Species B Permits

Designated species B permits may be issued if the limited entry fleet will not fully utilize the HG for Pacific whiting, shortbelly rockfish, or jack mackerel north of 39° North latitude. The limited entry fleet has requested the full use of shortbelly rockfish and Pacific whiting, but less than half of the HG for jack mackerel in 1997. Since no applications were received before the November 1 deadline, NMFS does not expect to issue Designated Species B permits in 1997.

G. Recreational Fishing

Bag limits in the 1997 recreational fishery remain the same as in 1996 with one exception. The bag limit for rockfish in Washington State is reduced to 10 fish throughout the State to be consistent with State laws protecting black rockfish.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 1997, including those that are the same as in 1996.

A. General Definitions and Provisions

The following definitions and provisions apply to the 1997 management measures, unless otherwise specified in a subsequent notice:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as explained below.

(a) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

(i) *Limited entry fishery.* Unless otherwise specified, cumulative trip limits in the limited entry fishery apply to 2-month periods. No more than 60 percent of the applicable 2-month cumulative limit may be taken and retained, possessed or landed in either month of a 2-month period; this is called the "60-percent monthly limit." The 2-month periods are: January–February, March–April, May–June, July–August, September–October, and November–December. Different cumulative periods may be announced later in the year.

(ii) *Open access fishery.* Unless otherwise specified, cumulative trip limits apply to 1-month periods in the open access fishery. Within these limits, in any calendar month, no more than 50 percent of the applicable 2-month cumulative limit for the limited entry fishery may be taken and retained, possessed, or landed from a vessel in the open access fishery; this is called the "50-percent monthly limit."

(iii) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the "A" platoon, which means a vessel's cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. If a limited entry trawl permit is authorized for the "B" platoon (which, in 1997, will require a separate letter from NMFS to be attached to the limited entry permit), then cumulative trip limit periods will begin 2 weeks later than for the "A" platoon.

(A) For a vessel in the "B" platoon, cumulative trip limit periods begin on the 16th of the month and end on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 1997, for the "A" platoon will be effective on January 16, 1997, for the "B" platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon.

(B) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 1997, through January 15, 1997.

(C) Special provisions will be made for "B" platoon vessels later in the year so that the amount of fish made available in 1997 to both "A" and "B" vessels is the same. For example, a vessel in the "B" platoon will have the same cumulative trip limit for the final period as a vessel in the "A" platoon, but the final period may be 2 weeks shorter so that both fishing periods end on the same date.

(2) Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated in the regulations at 50 CFR 660.302 (formerly 50 CFR 663.2, the definition of "landing"), once offloading of any species begins, all fish aboard the vessel are counted as part of the landing.

(3) All weights are round weights or round-weight equivalents.

(4) Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) "Legal fish" means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660 (previously 50 CFR part 663), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), any notice issued under part 660 (previously subpart B of 50 CFR part 663), and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods.

(a) For a whole fish, total length will be measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) For a fish with the head removed ("headed"), the length will be measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(7) "Closure," when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See the regulations at 50 CFR 660.302 (previously 50 CFR 663.2).) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes.

(**Note:** The Council recommended requiring fixed gear to be out of the water at the end of the regular season for sablefish rather than requiring offloading to have begun. This recommendation has not yet been approved.)

(8) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) Inseason changes to trip limits are announced in the **Federal Register**. Most trip and bag limits in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. Information concerning changes to trip limits is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p), formerly 50 CFR 663.7(t)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit.

(12) *Operating in areas with different trip limits.* Trip limits for a species or species complex may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species complex. They do not apply to species that are only subject to daily trip limits, or to the trip limits for black rockfish off the State of Washington (see 50 CFR 660.323(a)(1), previously 50 CFR 663.23(b)). In 1997, the trip limit period for cumulative trip limits is 2 months for the limited entry fishery and 1 month for the open access fishery, unless otherwise specified.

(a) *Going From A More Restrictive To A More Liberal Area:* If a vessel takes and retains any species of groundfish in an area where a more restrictive trip limit applies, before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going From A More Liberal To A More Restrictive Area:* If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and possesses or lands that species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period.

(13) *Sorting.* Regulations at 50 CFR 660.306(h) (formerly 50 CFR 663.7(l)) make it unlawful for any person to "fail to sort, prior to the first weighing after off loading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round weight equivalent)." This provision applies to both the limited entry and open access fisheries.

(**Note:** The Council has recommended that this regulation be changed to require all species or species groups with a trip limit, HG, or quota to be sorted. There would be no exception for landings under 3,000 lb (1,361 kg). The States of Washington and Oregon already have the same or similar requirements. If approved, the regulation is expected to be implemented in 1997, after publication in the **Federal Register**.)

(14) *Exempted fisheries.* U.S. vessels operating under an exempted (formerly experimental) fishing permit issued under 50 CFR part 600 (formerly 50 CFR 663.10) also are subject to these restrictions, unless otherwise provided in the permit.

(15) Paragraphs IV.B. through IV.I. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries which are described in paragraph V. The provisions in paragraphs IV.B. through IV.I. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.J. pertains to the recreational fishery.

(16) Commonly used geographical coordinates.

(a) Cape Falcon, OR—45°46′ N. lat.

(b) Cape Lookout, OR—45°20′15″ N. lat.

(c) Cape Mendocino, CA—40°30′ N. lat.

(d) Point Conception, CA—34°27′ N. lat.

(e) International North Pacific Fisheries Commission (INPFC) subareas (for more precise coordinates for the Canadian and Mexican boundaries, see 50 CFR 660.304 (formerly 663.5):

(i) Vancouver—U.S.-Canada border to 47°30′ N. lat.

(ii) Columbia—47°30′ to 43°00′ N. lat.

(iii) Eureka—43°00′ to 40°30′ N. lat.

(iv) Monterey—40°30′ to 36°00′ N. lat.

(v) Conception—36°00′ N. lat. to the U.S.-Mexico border.

B. Widow Rockfish (Commonly Called Brownies)

(1) *Limited entry fishery.* The cumulative trip limit for widow rockfish is 70,000 lb (31,752 kg) per vessel per 2-month period. The 60-percent monthly limit is 42,000 lb (19,051 kg).

(2) *Open access fishery.* Within the limits at paragraph IV.I. for the open access fishery, the 50-percent monthly limit for widow rockfish is 35,000 lb (15,876 kg).

C. Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish)

(1) *General. Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (also called thornyheads, idiots, or channel rockfish). Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bocaccio (*S. paucispinis*) are commonly called rock salmon. Canary rockfish (*S. pinniger*) are commonly called orange rockfish.

(2) *Limited entry fishery.* (a) *Cumulative trip limits.* (i) *North of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Mendocino is 30,000 lb (13,608 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 150,000 lb (68,039 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 12,000 lb (5,443 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(iii) The 60-percent monthly limits are: For the *Sebastes* complex, 18,000 lb (8,165 kg) north of Cape Mendocino, and 90,000 lb (40,823 kg) south of Cape Mendocino; for yellowtail rockfish, 3,600 lb (1,633 kg) north of Cape Mendocino; for bocaccio south of Cape Mendocino, 7,200 lb (3,266 kg); and for canary rockfish coastwide, 8,400 lb (3,810 kg).

(b) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(3) *Open access fishery.* If smaller than the limits at paragraph IV.I., the following cumulative monthly trip limits apply (within the limits at paragraph IV.I.): For the *Sebastes* complex, 15,000 lb (6,804 kg) north of Cape Mendocino, and 75,000 lb (34,019 kg) south of Cape Mendocino; for yellowtail rockfish, 3,000 lb (1,361 kg) north of Cape Mendocino; for bocaccio, 6,000 lb (2,722 kg) south of Cape Mendocino; and, for canary rockfish, 7,000 lb (3,175 kg) coastwide.

D. POP

(1) *Limited entry fishery.* The cumulative trip limit for POP is 8,000 lb (3,629 kg) per vessel per 2-month period. The 60-percent monthly limit is 4,800 lb (2,177 kg).

(2) *Open access fishery.* Within the limits at paragraph IV.I. below, the 50-percent monthly limit for POP is 4,000 lb (1,814 kg).

E. Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish

(1) *1997 Management goal.* The sablefish fishery will be managed to achieve the 7,800-mt HG in 1997.

(2) *Limited entry fishery.* (a) *Gear allocations.* After subtracting the tribal-imposed catch limit and the open access allocation from the HG for sablefish, the remainder is allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

(**Note:** The 1997 HG for sablefish north of 36° N. lat. is 7,800 mt. The 780-mt tribal allocation is subtracted, and the limited entry and open access allocations are based on the remaining 7,020 mt. The limited entry allocation of 6,557 mt for 1996 is allocated 3,803 mt (58 percent) to the trawl fishery and 2,754 mt (42 percent) to the nontrawl fishery. The trawl and nontrawl gear allocations are HGs in 1997, which means the fishery will be managed not to exceed the HGs, but will not necessarily be closed if the HGs are reached.)

(b) *Limited entry trip and size limits for the DTS complex.* "DTS complex" means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads, also called idiots, channel rockfish, or hardheads, include two species: Shortspine thornyheads (*S. alascanus*) and longspine thornyheads (*S. altivelis*). These provisions apply to Dover sole and thornyheads caught with any limited entry gear and to sablefish caught with limited entry trawl gear.

(i) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 70,000 lb (31,752 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, no more than 38,000 lb (17,236 kg) may be Dover sole, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 100,000 lb (45,359 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads.

(iii) The 60-percent monthly limits are: For the DTS complex, 42,000 lb (19,051 kg) north of Cape Mendocino, and 60,000 lb (27,216 kg) south of Cape Mendocino; for trawl-caught sablefish, 7,200 lb (3,266 kg); for Dover sole north of Cape Mendocino, 22,800 lb (10,342 kg); for both species of thornyheads combined, 12,000 lb (5,443 kg); and for shortspine thornyheads, 2,400 lb (1,089 kg).

(iv) In any trip, no more than 500 lb (227 kg) may be trawl-caught sablefish smaller than 22 inches (56 cm) total length. (See paragraph IV.A.(6) regarding length measurement.)

(v) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(c) *Nontrawl trip and size limits.* (i) *Daily trip limit.* The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg) and south of 36° N. lat. is 350 lb (159 kg). The daily trip limit, which applies to sablefish of any size, is in effect until the closed periods before or after the regular season (as specified at 50 CFR 660.323(a)(2)(i) (formerly 50 CFR 663.23(b)(2)), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season.

(ii) *Limit on small fish.* During the "regular" or "mop-up" seasons, the only trip limit in effect applies to sablefish smaller than 22 inches (56 cm) total

length, which may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 22 inches (56 cm) (total length) or larger, whichever is greater. (See paragraph IV.A.(6) regarding length measurement.)

(d) For headed and gutted sablefish:

(i) The minimum size limit for headed sablefish, which corresponds to 22 inches (56 cm) total length for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

(**Note:** The Council has recommended a number of changes to the regulations for the fixed gear sablefish fishery in 1997. Before these changes can be made effective, they must be approved by NMFS and then implemented by a regulation published in the **Federal Register**. The recommended changes are summarized below: (1) A vessel must have an endorsement on its limited entry permit in order to participate in the regular or mop-up season north of 36° N. lat.; (2) the regular and mop-up seasons would apply only north of 36° N. lat., whereas in 1996, they applied coastwide; (3) for 48 hours prior to the regular season, all fixed gear used to take and retain groundfish would be removed from the water—no advance setting of pot gear would be allowed; (4) a 48-hour closed period would be added at the end of the regular season, and all fixed gear used to take and retain groundfish, including open access gear, would be removed from the water during this period; (5) a framework season would be established (from August 1–September 30), with the date being selected each year according to certain criteria. The starting date, which has not yet been recommended for 1997, remains at noon September 1 until the new regulation becomes effective.)

(3) *Open access fishery.* Within the limits in paragraph IV.I. below, a vessel in the open access fishery is subject to the 50-percent monthly limits, which are as follows: For the DTS complex, 35,000 lb (15,876 kg) north of Cape Mendocino, and 50,000 lb (22,680 kg) south of Cape Mendocino; for Dover sole north of Cape Mendocino, 19,000 lb (8,618 kg); south of Pt. Conception, for both species of thornyheads combined, 10,000 lb (4,536 kg) of which no more than 2,000 lb (907 kg) may be shortspine thornyheads. (The open access fishery for thornyheads is closed north of Pt. Conception.) Daily trip limits for sablefish and for thornyheads south of Pt. Conception are announced at paragraph IV.I.

F. Whiting

(1) *Limited entry fishery.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 (formerly 50 CFR 663.7) and 50 CFR 660.323(a)(3) and (4)(formerly 50 CFR 663.23(b)(3) and (4)).

(a) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip before and after the regular season for whiting, as specified at 50 CFR 660.323(a)(3) and (4) (formerly 50 CFR 663.23(b)(3) and (4)). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka subarea (see paragraph IV.F.(1)(b)).

(b) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka subarea.

(**Note:** The Council recommended a number of changes to the Pacific whiting fishery that are not yet in effect, particularly separate allocations for catcher/processor, mothership, and shore-based sectors. The Council also recommended separate opening dates for catcher/processors and mothership operations (but both sectors prefer the current opening date of May 15 in 1997), and for vessels delivering shoreside (June 15 north of 42° N. lat. and April 15 south of 42° N. lat.). The dates at 50 CFR 660.323(a)(3) remain in effect until otherwise announced in the **Federal Register**.)

(2) *Open access fishery.* See paragraph IV.I. below.

G. Lingcod

(1) *Limited entry fishery.* The cumulative trip limit for lingcod is 40,000 lb (18,144 kg) per vessel per 2-month period. The 60-percent monthly limit is 24,000 lb (10,886 kg). No lingcod may be smaller than 22 inches (56 cm) total length, except for a 100-lb (45-kg) trip limit for trawl-caught lingcod smaller than 22 inches (56 cm). Length measurement is explained at paragraph IV.A.(6).

(2) *Open access fishery.* Within the limits in paragraph IV.I. below, the 50-percent monthly limit for lingcod is 20,000 lb (9,072 kg).

(3) *Conversions.* (a) *Size conversion.* For lingcod with the head removed, the minimum size limit, which corresponds to 22 inches (56 cm) total length for whole fish, is 18 inches (46 cm).

(b) *Weight conversion.* The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for lingcod that is headed and gutted, or only gutted, the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(i) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5. (The State of Washington currently uses a conversion factor of 1.5.)

(ii) *Gutted, with the head on.* The conversion factor for lingcod that has only been eviscerated is 1.1.

H. Black Rockfish

The regulations at 50 CFR 660.323(a)(1) (formerly 50 CFR 663.23(b)(1)(iii)) state: "The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." The provisions at paragraphs IV.A.(12) do not apply.

I. Trip Limits in the Open Access Fishery

Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid limited entry permit for the Pacific coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), set net (south of 38° N. lat. only), and trawls used to target non-groundfish species (pink shrimp or prawns, and, south of Pt. Arena, CA (38°57'30" N. lat.), California halibut or sea cucumbers). A vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery; or for the same area in the limited entry fishery; or, in any calendar month, 50 percent of any 2-month cumulative trip limit for the same area in the limited entry fishery,

called the "50-percent monthly limit." For purposes of this paragraph, exempted trawl gear (that is used to harvest shrimp, prawns, California halibut or sea cucumbers as provided in this paragraph I.) may not exceed any limit for the limited entry trawl fishery, or 50 percent of any 2-month cumulative limit that applies to limited entry trawl gear. The cross-over provisions at paragraph IV.A.(12) that apply to the limited entry fishery apply to the open access fishery as well.

(1) *Rockfish.* Rockfish means all rockfish as defined at 50 CFR 660.302 (formerly 50 CFR 663.2), which includes the *Sebastes* complex (including yellowtail rockfish, bocaccio, and canary rockfish), shortbelly rockfish, widow rockfish, POP, and thornyheads.

(a) *All open access gear.* (i) North of Pt. Conception, thornyheads (shortspine or longspine) may not be taken and retained, possessed, or landed.

(ii) South of Pt. Conception, the daily trip limit for thornyheads is 50 lb (23 kg).

(b) *All open access gear except shrimp, prawn, or sea cucumber trawl.* The cumulative monthly trip limit for rockfish is 40,000 lb (18,144 kg) per vessel per month, and includes the daily trip limit for thornyheads. The following trip limits also apply, which count toward the cumulative monthly limit:

(i) *Hook-and-line or pot gear:* 10,000 lb (4,536 kg) of rockfish per vessel per fishing trip, of which no more than 300 lb (136 kg) per trip, not to exceed 2,000 lb (907 kg) cumulative per month, may be bocaccio taken and retained south of Cape Mendocino.

(ii) *Setnet or trammel net gear* (which are legal only south of 38° N. lat.): 4,000 lb (1,814 kg) cumulative of bocaccio taken and retained south of Cape Mendocino.

(c) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(2) *Sablefish.* (a) *North of 36°00′ N. lat.* The cumulative trip limit for sablefish taken and retained north of 36°00′ N. lat. is 1,500 lb (680 kg) per month. The daily trip limit for sablefish taken and retained north of 36°00′ N. lat., which counts toward the cumulative limit, is 300 lb (136 kg).

(b) *South of 36°00′ N. lat..* The daily trip limit for sablefish taken and retained south of 36°00′ N. lat. is 350 lb (159 kg).

(3) *Groundfish taken by shrimp or prawn trawl.* The daily trip limits are: Sablefish, 300 lb (136 kg) coastwide; and thornyheads south of Pt. Conception, 50 lb (23 kg).

(a) *Pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 500 lb (227 kg) of groundfish, multiplied by the number of days of the fishing trip, and includes the daily trip limits for sablefish and thornyheads, which may not be multiplied by the number of days of the fishing trip.

(b) *Spot and ridgeback prawns.* The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 500 lb (227 kg) of groundfish species per fishing trip, and includes the daily trip limits for sablefish and thornyheads.

(c) This rule is not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(4) *Groundfish taken by California halibut or sea cucumber trawl.* The trip limit for a vessel participating in the California halibut fishery or in the sea cucumber fishery south of Point Arena, CA (38°57′30″ N. lat.) is 500 lb (227 kg) of groundfish per vessel per fishing trip, which includes a daily trip limit for sablefish of 300 lb (136 kg), and a daily trip limit for thornyheads south of Pt. Conception of 50 lb (23 kg).

(a) A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 (formerly 50 CFR part 663) for trawl gear;

(ii) All fishing on the trip takes place south of Point Arena; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 inches in total length, unless it weighs four pounds or more in the round, three and one-half pounds or more dressed with the head on, or three pounds or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(b) A trawl vessel will be considered participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 (formerly 50 CFR 663) for trawl gear;

(ii) All fishing on the trip takes place south of Point Arena; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code section 8396, which requires a permit issued by the State of California.

J. Recreational Fishery

(1) *California.* The bag limits for each person engaged in recreational fishing seaward of the State of California are: 5 lingcod per day, which may be no smaller than 22 inches (56 cm) total length; and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of the State of Oregon are: 3 lingcod per day, which may be no smaller than 22 inches (56 cm) total length; and 15 rockfish per day, of which no more than 10 may be black rockfish (*Sebastes melanops*).

(3) *Washington.* The bag limits for each person engaged in recreational fishing seaward of the State of Washington are: Three lingcod per day no smaller than 22 inches (56 cm) total length, and 10 rockfish per day.

V. Washington Coastal Tribal Fisheries

From 1991 through 1994, the Washington coastal treaty tribes conducted a tribal sablefish fishery of 300 mt that was accommodated in the annual management measures. In late 1994, the U.S. government formally recognized the treaty right to fish for groundfish of the four Washington Coastal Treaty tribes (the Makah, Hoh, Quileute, and Quinault), and concluded that in general terms the quantification of the right is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed fishing areas (defined at 50 CFR 660.304).

A tribal allocation is subtracted from the species HG before limited entry and open access allocations are derived. The treaty Indian fisheries for sablefish, black rockfish, and whiting allocations are separate fisheries, not governed by the limited entry or open access regulations or allocations. The tribes regulate their fisheries so as not to exceed their allocations. Tribal fishing for rockfish with fixed gear will operate under the same rules as the open access fishery. The tribal trawl fishery for rockfish will operate under the limited entry rules (50 CFR 660.324(j)). Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery (50 CFR 660.324(k)).

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The tribal allocations for sablefish and black rockfish are the same as in 1996 and for the same reasons. The tribal allocation for whiting in 1997 differs from the 1-year allocation agreement with the Makah for 1996, as discussed below.

The Council recommended that no whiting be allocated to the Makah Tribe in 1997. The Council's recommendation of no allocation is not acceptable because Federal district court Judge Rafeedie held that tribes have a right to all fish in their usual and accustomed fishing areas, with no species limitation. Some fishermen have argued that this ruling should not apply to whiting. A subproceeding is pending in *U.S.* v. *Washington* that addresses the issue of a treaty right to whiting. In that whiting subproceeding, on November 4, 1996, the court ruled that "Judge Rafeedie's ruling in Subproceeding 89–3 should remain the binding law of the case until the Ninth Circuit decides the appeal of the decision now pending before it."

NMFS acknowledges that many difficult questions have been raised and that there is much uncertainty regarding what is a complex and difficult technical and legal issue. The Tribe's proposed allocation methodology would result in an allocation of 25 percent of the U.S. HG; NMFS's proposed allocation methodology would result in an allocation of 6.5 percent of the U.S. HG. The tribal compromise falls between these two positions. NMFS finds the tribal proposal of 25,000 mt (10.8 percent) in 1997 to be an acceptable compromise given all of the uncertainties. This compromise gives NMFS time to work with the tribes, the States, and other Federal agencies to develop an agreed-upon allocation. This is a short-term compromise and is not intended to set a precedent regarding either quantification of the Makah treaty right or future allocations. If an appropriate methodology or allocation cannot be developed through negotiations, the allocation will ultimately be resolved in the pending subproceeding in *U.S.* v. *Washington*. In the absence of a resolution of the appropriate allocation in 1998, NMFS may again provide the tribes 10.8 percent of the U.S. HG. NMFS expects the quantification issue to be resolved before the 1999 season. NMFS Actions

For the reasons stated above, the Assistant Administrator announces the following tribal allocations for 1997, including those that are the same as in 1996:

Sablefish: 780 mt, 10 percent of the HG.

Rockfish: For the commercial harvest of black rockfish off Washington State a HG of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

Whiting: 25,000 mt in 1997, 10.8 percent of the HG.

Response to Public Comments

NMFS received two written comments from the nontreaty whiting industry and one from the Makah Tribe on the proposed tribal whiting allocation. One commenter argued the Secretary of Commerce does not have the authority to make this allocation because such an allocation requires an amendment of the FMP. This is not so much a comment on the allocation for 1997, as on the rule implementing the framework for treaty tribe harvest of Pacific groundfish (tribal groundfish rule) that was adopted on May 31, 1996; the response to this comment is found in the preamble to the final tribal groundfish rule published at 61 FR 28786 (June 6, 1996), specifically on pages 28789 and 28790 under the heading "Magnuson Act".

The two commenters also objected to the process used this year to make the allocation because it does not provide a "formal public comment period." NMFS followed its regulation by considering the tribal request, the Council recommendation, and public comments, before announcing the allocation with the final groundfish specifications. As explained in the preamble to the tribal groundfish rule (specifically on page 28787), NMFS is using the Council's annual groundfish management process, as much as possible, for developing and implementing the tribal allocation request. This is the best way to provide information to all of the interested parties, since they are involved in the annual process, either through attending the meetings or through receiving the Council newsletters which are sent to all persons who request to be on the Council mailing list. The tribal whiting request for 1997 was announced at the August 1996 Council meeting when the initial proposals for the 1997 management measures and specifications were discussed and adopted by the Council. The Council adopted a preliminary range for a 1997 whiting set-aside of zero to 35,000 mt. This was announced in the Council's August newsletter, along with the other 1997 management recommendations. At the October Council meeting, the tribe modified its 1997 whiting proposal to be 25,000 mt. The Council recommended an allocation of zero for 1997. The NMFS representative announced NMFS would take additional comments on the tribal allocation for another 3 weeks. The Council's October newsletter announced the tribal request for 25,000 mt, the Council's proposed tribal whiting allocation of zero, and that NMFS would "accept comments on the Council's recommendations until November 15, 1996 with special attention to yellowtail rockfish and the tribal whiting allocation decisions." This process conforms to the requirements of the tribal groundfish rule and provides the widest opportunity for the interested public to participate and provide comments, since it uses the same timeframe and public participation process as is used for the rest of the annual groundfish management decisions.

One commenter asserted the allocation violates many national standards of the Magnuson-Stevens Act, found at 16 U.S.C. 1851(a). Most of the arguments had been made last year and were responded to in the preamble to the tribal rule under the heading of "Magnuson Act." The commenter argued the allocation is not fair and equitable, does not promote conservation, and allows a particular entity to acquire an excessive share of fishing privileges in violation of national standard 4, 16 U.S.C. 1851(a)(4). This allocation is different from other discretionary allocations that the Council and NMFS might make. It is required by the treaties with the Northwest tribes as explained above, which are other applicable law with which management measures must be consistent. It promotes conservation as much as any allocation does in that the allocation is within the total allowable catch authorized for 1997. It does not provide an excessive share of fish to the tribe; it is implementing a treaty right, that is the supreme law of the land. The commenter alleged the allocation does not promote efficiency, in violation of national standard 5, 16 U.S.C. 1851(a)(5); and does not minimize costs or avoid unnecessary duplication in violation of national standard 7, 16 U.S.C. 1851(a)(7). National standard 5 (as revised by Public Law 104–297) requires that efficiency be "considered"; national standard 7 requires that measures shall, where practicable, minimize costs and avoid unnecessary duplication. The commenter has provided no specifics on why these standards have been violated or suggestions on how the treaty right can be accommodated in a way that would be more efficient, minimize costs, or avoid unnecessary duplication.

The two commenters argued that there should be a zero allocation to the tribe in 1997 because there is no

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adjudicated treaty right to whiting, and they refer to their comments on the tribal groundfish rule and the 1996 allocations. NMFS addressed their arguments in the preamble to the tribal groundfish rule under the heading of "Treaty Entitlement." NMFS had determined there is a treaty right to whiting, in part, because in a subproceeding of *U.S.* v. *Washington* regarding tribal rights to shellfish, Federal district court Judge Rafeedie held that tribes have a right to all fish in their usual and accustomed fishing areas, with no species limitation. This ruling is currently on appeal in front of the Ninth Circuit Court of Appeals. The commenters argued this ruling should not apply to whiting. A subproceeding is pending in *U.S.* v. *Washington* that addresses the issue of a treaty right to whiting. In that whiting subproceeding, on November 4, 1996, the court ruled that "Judge Rafeedie's ruling in Subproceeding 89–3 should remain the binding law of the case until the Ninth Circuit decides the appeal of the decision now pending before it."

One commenter asserted the Makah tribe already has achieved a moderate living and, therefore, the treaty right has been satisfied without providing whiting to the Makah. The commenter provided no new information to support this assertion. This assertion was answered in the preamble to the tribal groundfish rule under the heading "Moderate Living".

One commenter asserted that since the harvest in the Vancouver statistical area (an area larger than, but including, the usual and accustomed fishing area) was 9.9 percent of the total harvest from 1981 to 1995, if the tribes were entitled to a 50 percent share of the whiting, they should at most be allocated 4.95 percent of the amount available to the U.S. He further asserted that since the whiting spend a small portion of the year in the Makah area and do not spawn there, the allocation should be even smaller than 4.95 percent. These comments were responded to in the preamble to the tribal groundfish rule.

One commenter alleges the allocation violates the ESA because it has not been subject to a formal consultation under the ESA. However, a biological opinion issued on May 14, 1996, found that "(t)he timing, method, and location of the tribal fishery are comparable with how the whiting fishery has operated in recent years. As a result, there is no reason to expect that the bycatch of salmon or the effect of the fishery to other listed species including marine mammals will be different from what has be(en) reported for the existing fishery." The tribal fishery authorized for 1997 is still within the scope of what was analyzed in previous biological opinions, and thus reinitiation of consultation is not required. The other commenter argued that the tribal salmon bycatch appeared to exceed the level of concern in the fishery, which requires a new biological opinion. The current biological opinion considers salmon bycatch in the fishery as a whole, but does require consultation if the number of chinook salmon per metric ton of whiting exceeds 0.05 in either the shoreside, catcher/processor or the mothership components of the fishery (Biological Opinion, May 14, 1996). For purposes of the biological opinion, the tribal whiting fishery was considered as part of the mothership fleet. Therefore, salmon bycatch in the tribal fishery, by itself, does not necessarily trigger a requirement for reinitiation unless it results in the salmon bycatch for the mothership sector to exceed the reinitiation criteria. All three sectors were within the 0.05 rate in 1996.

VI. Issuance of EFPs in 1996

In 1995, applications were received and approved for three different types of EFPs (formerly called "experimental fishing permits") for the 1996 fishing year: (1) The first was from the State of Oregon (representing Washington and California as well) for the purpose of renewing the 1995 EFP to monitor the bycatch of salmon in the shore-based whiting fishery. Under this permit, 40 vessels were issued EFPs that required all salmon caught incidentally in the whiting fishery to be landed shoreside. A variation of the whiting EFP also was requested by the State of California so that a small number of fishers could be allowed to fish for whiting inside of the 100-fathom (183-m) contour in the Eureka Management Area, which currently is prohibited. The purpose was to see if the bycatch rate of salmon could be kept at acceptable levels by this small, shore-based sector of the fleet delivering to Eureka and Crescent City, CA. At-sea observers would be aboard all whiting trips. Even though this variation to the whiting EFP was approved, the industry declined to participate.

(2) The second EFP was for a new, enhanced data collection program that applied to the other groundfish fisheries. The application was submitted by the State of Oregon, but could include involvement by the States of Washington and California as well. This is a multi-year cooperative data collection program with the industry and state and Federal governments. Twenty vessels participated in 1996. The purpose of the experiment was to monitor trip-limit-induced discards and the bycatch of salmon and non-target species in the groundfish trawl fishery. All participating vessels were required to land salmon caught incidentally in groundfish trawl gear and to keep enhanced logbooks required by the States. Some vessels were required to carry at-sea observers to monitor trip-limit induced discards, and some vessels could have been required to bring virtually their entire catch to shore for additional monitoring although this did not occur in 1996.

(3) The third EFP application was to collect reproductive samples for sablefish to test assumptions in the stock assessment for that species. An EFP was needed because the vessel would be authorized to land 500 lb (227 kg) in excess of the cumulative trip limit for trawl-caught sablefish (for a total of 5 mt in 1996), and could sell the scientific samples. A state or Federal scientist would be aboard every trip to gather the biological data. Although this permit was approved and issued, it had not been used at the time this notice was prepared in late 1996; sampling normally occurs late in the year.

VII. Renewal of EFPs in 1997

Renewal of all three EFPs was requested for 1997, some with slight modifications. First, the whiting EFPs described in paragraph VI.(1) would be continued, pending development and implementation of an FMP amendment that would authorize salmon to be retained and landed. Fishers also are concerned that their practice of dumping codends directly in the hold would make monitoring of trip limits difficult, if not impossible, and would like the EFP continued because overages are forfeited but no penalty results. The scope of the experiment and level of participation would be the same as in 1996.

Second, continuation of the enhanced data collection program described in paragraph VI.(2) also was requested, with some modifications. The major change would enable data to be obtained on a vessel throughout its fishing activities in a month, even if not fishing for groundfish. This would provide information on groundfish bycatch in other fisheries (particularly shrimp fisheries) and on a fisher's choice to pursue alternative fisheries or fishing strategies. The program also could be expanded to include whiting fisheries when the whiting EFP no longer is in effect.

The third is renewal of the EFP to gather biological information on sablefish, as described in paragraph VI.(3) to confirm or improve data used

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in the stock assessment. This experiment would allow one vessel to retain 25 fish in excess of the trawl trip limit for sablefish and is not expected to exceed 10 mt per year. It differs from the 1996 permit in that a state or Federal scientist would not need to be aboard every trip, but would be required to be present when the vessel offloads to gather the scientific samples. Also, the scientific samples would not necessarily be sold; they also could be distributed to a food bank or otherwise disposed of consistent with state and Federal law.

Requests for these renewals were presented at the Council's October 1996 meeting. The Council recommended renewal of all three in 1997. Comments on the three EFP programs for 1997 were invited at the October 1996 Council meeting. If approved, the whiting EFPs could be issued as early as March 1 for vessels delivering in the State of California, and mid-April for vessels delivering in Washington and Oregon; and the EFP for sablefish could be issued early in 1997. The decision on whether to issue EFPs and determinations on appropriate permit conditions will be based on a number of considerations, including the Council's recommendations and comments received from the public.

Classification

The final specifications and management measures for 1997 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

Much of the data necessary for these specifications and management measures came from the current fishing year. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the 1997 fishing year, there is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment for the specifications and management measures. Amendment 4 to the FMP, implemented on January 1, 1991, recognized these timeliness considerations and set up a system by which the interested public is notified, through **Federal Register** publication and Council mailings, of meetings and of the development of these measures and is provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in August and October 1996 where these recommendations were formulated. Additional public comments on the specifications and management measures will be accepted for 30 days after publication of this document in the **Federal Register**. The Assistant Administrator (AA) will consider all comments made during the public comment period and may make modifications as appropriate.

An Environmental Assessment (EA) was prepared for the tribal groundfish rule that supported the AA's determination that the proposed 1996 Makah allocation would have no significant impact on the human environment. NMFS has updated the 1996 EA and has concluded that the 1997 Makah allocation will have no significant impact on the human environment.

The Administrative Procedure Act requires that publication of an action be made not less than 30 days before its effective date unless the AA finds, and publishes with the rule, good cause for an earlier effective date (5 U.S.C. 553(d)(3)). These specifications announce the harvest goals and the management measures designed to achieve those harvest goals in 1997. A delay in implementation could compromise the management strategies that are based on the projected landings from these trip limits. Therefore, a delay in effectiveness is contrary to the public interest and these actions are effective on January 1, 1997.

The tribal whiting allocation is developed following, as much as possible, the annual process for developing fishery specifications and management measures. This is because the information developed in this process (such as the ABC and HG for whiting) is important in the allocation process. In addition, the annual groundfish process provides the best opportunity to the interested public to receive notification of the proposed allocation and to provide comments. As described above in the response to public comments, the public received notice through the August and October Council meetings and Council newsletters. It is important to announce the tribal allocation with the other specifications and management measures so the affected industry will know the amount of whiting available to the various sectors and will be able to plan accordingly.

Dated: December 30, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–33402 Filed 12–31–96; 2:35 pm]

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50 CFR Part 622

[Docket No. 961226370–6370–01; I.D. 111896A]

RIN 0648–AI15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Amendment 2 would add brown and pink shrimp to the FMP's fishery management unit, define overfishing for brown and pink shrimp, define optimum yield (OY) for brown and pink shrimp, require the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic, and establish a framework procedure for adding to the list of certified BRDs or modifying their specifications. The intended effects are to minimize the bycatch of finfish in shrimp trawling operations in the South Atlantic and to implement consistent, and therefore more enforceable, Federal and state management measures requiring the use of BRDs for reducing finfish bycatch in the penaeid shrimp fishery.

DATES: Written comments must be received on or before February 20, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 2, which includes a regulatory impact review (RIR), a social impact analysis, and a supplemental final environmental impact statement (SFEIS), should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The shrimp fishery is the largest and most valuable commercial fishery in the South Atlantic, with approximately 1,400 large vessels and 1,000 small boats harvesting 30 million lb (13,608 mt) with an ex-vessel value of $60 million annually. Shrimp trawls have a significant bycatch of nontarget finfish and invertebrates, most of which are discarded dead. Scientific survey results indicate that the ratio of the weight of finfish bycatch to that of shrimp caught is about 2.3 to 1.

Bycatch may reduce the diversity of species within a marine ecosystem, adversely impact other fauna, and significantly reduce the yield in other fisheries that are directed at adults of the discarded species. Important fish species in the shrimp fishery bycatch include juveniles of mackerel, weakfish, spot, and croaker. If left to mature and grow, these juvenile fish possibly could be harvested later and produce a significantly higher yield in weight as well as enhancing the reproductive capacity of their stocks.

The Atlantic States Marine Fisheries Commission (ASMFC) has determined that weakfish are seriously overfished and on the verge of recruitment failure. The ASMFC adopted an Interstate Fishery Management Plan for Atlantic Weakfish (ISFMP) in 1985, primarily to address the lack of biological and fisheries data necessary for effective management of the weakfish resource. ISFMP Amendments 1 and 2 were adopted by the ASMFC to achieve significant reductions in fishing mortality of weakfish and to halt stock declines. ISFMP Amendment 2 directed the South Atlantic states to implement measures to achieve a 50 percent reduction in weakfish bycatch in the shrimp trawl fisheries for the 1996 fishing year. In order to accelerate weakfish conservation efforts, the ASMFC adopted Amendment 3 to its ISFMP in May 1996. The major goals of Amendment 3 are: Restoring the Atlantic coast weakfish resource over a 5-year period to a healthy level that will maintain commercial and recreational harvests consistent with a self-sustaining spawning stock; and providing for restoration and maintenance of habitat essential for the long term stability of the weakfish resource. Amendment 3 directs the states to require BRDs in all penaeid shrimp trawls nets above a certain size and requires that all BRDs be certified as demonstrating a 40 percent reduction by number or 50 percent reduction of bycatch mortality of weakfish when compared to catch rates in a net without a BRD. As members of the ASMFC, the southern Atlantic states have pledged to accomplish the BRD-related objectives of Amendment 3 in state waters during the 1996 shrimp season, which began in June 1996.

The Council has developed Amendment 2 to reduce bycatch of weakfish in Federal waters consistent with the objectives of Amendment 3 to the ISFMP, to enhance enforcement by requiring comparable BRDs in both state and Federal waters, and to initiate a process for certifying improved BRDs as they become available.

BRD Requirements

This rule would require the use of a certified BRD in most penaeid shrimp trawl nets in the South Atlantic EEZ. Specifically, on board a penaeid shrimp trawler, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm) stretched mesh (center of knot to center of opposite knot), and each try net that is rigged for fishing and has a headrope length greater than 16.0 ft (4.9 m), must have a certified BRD installed. BRD designs that have passed the operational testing phase of the NMFS cooperative bycatch research program (i.e., extended funnel, expanded mesh, and fisheye BRDs) are certified for use in state waters and are certified for use in the EEZ where BRDs are required.

Most shrimp trawling in the South Atlantic occurs in state waters. Because most shrimp fishermen in the South Atlantic fish in both state and Federal waters on the same trip, the requirement to use BRDs in Federal waters should pose little, if any, additional burden on fishermen.

Amendment 2 Management Measures Not Reflected in the Proposed Rule

Framework Procedure for Certifying BRDs and for Modification of BRD Certification Criteria and Testing Protocol

In addition to the management measures reflected in the proposed rule, Amendment 2 would establish a framework procedure for certifying new or modified BRDs and for establishing and modifying BRD certification criteria and testing protocol. Any BRD that is eligible for NMFS certification must be shown to reduce the bycatch component of fishing mortality for Spanish mackerel and weakfish by 50 percent, or demonstrate a 40-percent reduction in number of these fish. The Regional Administrator, Southeast Region, NMFS (Regional Administrator), would be responsible for review and certification of BRDs for use in the South Atlantic EEZ. There would be two certification procedures. Under the first procedure, a new or modified BRD that is reviewed and recommended by a state management agency, and that meets the bycatch reduction criteria under the testing protocol specified by the Council, would be certified by the Regional Administrator. Under the second procedure, an individual would submit the results of BRD certification trials directly to NMFS. Such submissions would be evaluated by NMFS with the Regional Administrator making the final decision on BRD certification pursuant to the certification criteria, testing protocol, and terms of the FMP. Under either the first or second procedure, certification of a new or modified BRD would be announced by the Regional Administrator through publication of a notice in the **Federal Register**.

The proposed BRD testing protocol for certification does not include a shrimp loss criterion (i.e., estimated loss of shrimp when a BRD is used). However, any application for BRD certification would be required to provide data and analyses on the quantity of shrimp that could be lost when using the BRD. Also, an applicant would be required to identify: The sponsor of the BRD certification tests (e.g., Sea Grant program, university, or private firm); when and where the tests were conducted; the vessel or vessels involved; any special conditions or requirements of the tests; the statistical design and analyses that were performed, including length of tow, number of tows, and the measurements of shrimp and fishes; the names and affiliations of the observers; a complete description of the BRD, including detailed descriptions of how the BRD is installed in the nets; and the types of TEDs used. It should be noted that all certification tests would be required to be conducted with a state-approved or NMFS-approved observer aboard. It would be the responsibility of the applicant, or his/her agent, conducting the certification tests to ensure that a qualified observer is aboard during the tests.

Additional details concerning the Council's recommendations regarding the certification of BRDs, certification

criteria, and the BRD testing protocol are provided in Amendment 2 (see **ADDRESSES**) under the discussion regarding proposed Action 5 (pages 73–83 of Amendment 2). Action 5 also provides: The Regional Administrator will advise an applicant if a BRD is not certified; an applicant may resubmit a rejected request for certification; and the Regional Administrator may decertify a BRD should it be determined that such BRD does not meet the bycatch reduction criteria (page 76 of Amendment 2).

Brown and Pink Shrimp Measures

Amendment 2 would add brown and pink shrimp to the FMP's fishery management unit and define overfishing and OY for these species.

Annual landings of brown and pink shrimp off the southern Atlantic states over time appear to fit a normal distribution (a common statistical distribution) and have been relatively stable since the mid-1950s without any discernible upward or downward trend. Average annual landings for brown shrimp for the 1957–93 period have been 8,346,397 lb (3,786 mt); whereas average annual landings for pink shrimp for the same period have been 1,713,067 lb (777 mt). It appears that annual abundance of these shrimp is primarily influenced by environmental factors that determine the survival rate of juvenile shrimp. Fishing pressure, at least in the past, does not appear to have been a major factor controlling brown and pink shrimp abundance.

Since brown and pink shrimp are harvested in shrimp trawls for which BRDs will be required under Amendment 2, the Council concluded that it is necessary and appropriate that these shrimp species be added to the FMP management unit. The Council believes that the addition of these two shrimp species to the management unit would provide the necessary regulatory framework for establishing and enforcing compatible state and Federal regulations. Adding these species to the management unit would result in the following revised description of the FMP management unit: The management unit includes the populations of white, brown, pink, and rock shrimp along the U.S. Atlantic coast from the east coast of Florida, including the Atlantic side of the Keys, to the North Carolina/Virginia border.

Amendment 2 would define overfishing for brown and pink shrimp as follows: Overfishing for brown or pink shrimp is occurring if annual landings for 3 consecutive years are more than two standard deviations below mean landings for the period 1957–1993. Thus, annual landings for 3 consecutive years would have to be below 2,946,157 lb (1,336 mt) (heads on) for brown shrimp and 286,293 lb (130 mt) (heads on) for pink shrimp in order for these resources to be considered overfished. Reduced landings could result from reduced fishing pressure rather than overfishing. Accordingly, under Amendment 2, if annual landings are more than two standard deviations below mean landings for the 1957–1993 period for 2 consecutive years, the Council would convene its Shrimp Stock Assessment Panel, Shrimp Advisory Panel, and Shrimp Committee to review the causes of such declines in landings and recommend, if appropriate, actions necessary to address the identified problems. In the event that declining landings are actually due to overfishing rather than reduced fishing effort or some other factor, this should ensure that the Council takes timely action to address the overfishing problem. The NMFS Southeast Science Center has certified that the Council's proposed overfishing definition is based on the best scientific information available.

Both pink and brown shrimp are short lived and produce annual crops. Thus, as long as sufficient spawners survive each year, the Council believes that there is no benefit from leaving an excess of the present year's crop for the next season. Based on the biological characteristics of brown and pink shrimp, there is a minimal chance of overfishing these species. For these reasons, the Council is proposing that OY for these species be defined as the amount of harvest that can be taken by U.S. fishermen without annual landings falling more than two standard deviations below mean landings for the 1957–1993 period for 3 consecutive years (i.e., below 2,946,157 lb (1,336 mt) (heads on) for brown shrimp and 286,293 lb (130 mt) (heads on) for pink shrimp). The Council selected this definition of OY based, in part, on the absence of evidence that present or past levels of fishing effort have caused either growth or recruitment overfishing.

Availability of Amendment 2

Additional background and rationale for the measures discussed above are contained in Amendment 2, the availability of which was announced in the **Federal Register** on November 25, 1996 (61 FR 59856). Public comment on Amendment 2 is invited through January 24, 1997.

Classification

At this time, NMFS has not made its final determination that Amendment 2 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that Amendment 2 and its implementing rule would not have a significant impact on a substantial number of small entities as follows:

The proposed rule would require the use of certified bycatch reduction devices (BRDs) in most shrimp trawls used in the fisheries for penaeid shrimp in the exclusive economic zone (EEZ) of the South Atlantic and specifies the 3 types of BRDs that are initially deemed "certified."

For the 1994 fishing season, about 1,100 large shrimp vessels were licensed in Florida, Georgia, and South Carolina, and about 300 large vessels in North Carolina. In addition, there were probably 1,000 or more small vessels and boats which have a significant dependence on shrimp trawling in the South Atlantic area; these vessels fish mostly in North Carolina waters. All entities involved in the shrimp fisheries in the southeast Atlantic EEZ are considered small entities for purposes of the RFA.

Requiring the use of BRDs for all shrimp trawls in the South Atlantic EEZ would have little or no economic impact since virtually all shrimp fishermen in this area fish primarily in state waters where BRDs are already required. Most, if not all, shrimp fishermen have already equipped their trawls with BRDs in conformity with state regulations that should meet the BRD-certification requirements of this rule. Accordingly, there should be little or no additional costs to fishermen in complying with the BRD requirements of this rule when they fish in the EEZ.

Regarding the impacts of this rule, the Council's regulatory impact review (RIR) concluded: Any economic impact would result in much less than a 5 percent reduction in annual gross revenues to small entities; any increase in compliance costs would be less than a 5 percent increase in total costs of production; all entities involved are small entities; capital costs of compliance represent a very small portion of capital available to small entities; and no entities are expected to be forced to cease business operations. For these reasons, the RIR concluded that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 30, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, definitions for "BRD", "Headrope length", "Penaeid shrimp trawler", and "Try net" are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

BRD means bycatch reduction device.

* * * * *

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

* * * * *

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of brown, pink, or white shrimp (penaeid shrimp) is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (for example, presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

* * * * *

3. In § 622.41, paragraph (g) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Shrimp in the South Atlantic—(1) BRD requirement.* On a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. A trawl net, or try net, is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use by penaeid shrimp trawlers in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

4. In § 622.48, paragraph (h) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp.* Certified BRDs and their specifications.

5. Appendix D is added to part 622 to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs in the South Atlantic Shrimp Fishery

A. *Extended Funnel.*

1. *Description.* The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed 5 meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh

escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed 5 meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed in the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend tie-off rings.

[FR Doc. 97–187 Filed 1–3–97; 8:45 am]
BILLING CODE 3510–22–P

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50 CFR Part 678

[I.D. 120696A]

RIN 0648–AH77

Atlantic Shark Fisheries; Notice of Availability of Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Highly Migratory Species Division has submitted Amendment 1 to the Fishery Management Plan for the Sharks of the Atlantic Ocean (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public. Amendment 1 would implement limited access measures for the Atlantic shark fisheries.

DATES: Written comments must be received on or before February 28, 1997.

ADDRESSES: Send comments to William Hogarth, Acting Chief, Highly Migratory Species Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of Amendment 1, which includes an environmental assessment and a regulatory impact review, should be sent to Margo Schulze, Fishery Biologist, Highly Migratory Species Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or John Kelly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), as amended, and was implemented on April 26, 1993, through regulations found at 50 CFR part 678.

If approved, Amendment 1 would redefine permits as directed or incidental, develop eligibility criteria for these permits based on historical participation, and specify rules for transferability of permits. NMFS has determined that the Atlantic shark fishery is overcapitalized, with an excessive number of permitted vessels relative to current harvest levels. The objective of this amendment is to take a first and significant step towards reducing fleet capacity to levels more closely aligned with resource production by implementing limited access, substantially reducing latent harvesting capacity, and implementing measures to prevent further overcapitalization.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–33394 Filed 12–30–96; 4:57 pm]
BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 96122063–6363–01; I.D. 120296B]

RIN 0648–AI65

Fisheries of the Exclusive Economic Zone off Alaska; Maximum Retainable Bycatch Percentages

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to reduce maximum retainable bycatch percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and to allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rate of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery. This action is intended to further the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments must be received at the following address by February 5, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at § 679.20(e) establish maximum retainable bycatch (MRB) percentages for groundfish species or species groups. These MRB percentages establish the amount of a species that is

closed to directed fishing that may be retained on board a vessel, relative to amounts of other retained species open to directed fishing. MRB percentages serve as a management tool to slow down the rate of harvest of a bycatch species and to reduce the incentive for fishing vessel operators to target on the species. Nonetheless, vessel operators may top off their retained catch of these species up to the MRB amount. MRB percentages do not necessarily reflect a natural incidental catch rate but rather reflect a balance between the recognized need to slow harvest rates, minimize the potential for undesirable discard, and, in some cases, provide an increased opportunity to harvest available total allowable catch (TAC) through limited topping off activity.

Topping off is a recognized and generally accepted activity associated with bycatch species. The incentive for fishermen to engage in this activity is directly related to the value of, and available market for, the bycatch species relative to the associated operational costs of fishing first for and retaining one species and subsequently topping off that retained catch with a bycatch species up to, and including, the allowable MRB percentage.

Current regulations prohibit the use of arrowtooth flounder as a basis species for the retention of other groundfish species closed to directed fishing. This prohibition was implemented by NMFS in 1994 to respond to industry and Council concern that directed fishing for arrowtooth flounder for the purpose of topping off with other, higher-valued species could result in unacceptably high halibut bycatch rates. Little or no market existed for arrowtooth flounder, which subsequently was discarded or rendered into meal, but the halibut bycatch amounts associated with the arrowtooth flounder fishery were credited against the overall halibut bycatch limits available to other fisheries. Directed fishing for arrowtooth flounder could increase the rates at which halibut bycatch limits or allowances are reached, thus further limiting the ability of the groundfish fleet to harvest available TAC amounts before halibut bycatch restrictions close the fisheries.

At the Council's December 1995 meeting, industry representatives and individual members of the Council requested that NMFS initiate several changes to existing MRB percentages. This request was in response to specific concerns about topping off activity and to testimony that a limited fishery for GOA arrowtooth flounder exists and that this species should be allowed as a basis species for the retention of pollock and Pacific cod. Industry representatives and NMFS in-season managers also recommended that a reduction of the GOA sablefish MRB percentage be considered to respond to fishery management issues that became evident as a result of topping off activities in the 1996 trawl fisheries. At its September 1996 meeting, the Council adopted its preferred alternative to reduce the MRB percentages for GOA sablefish relative to deep water species from 15 percent to 7 percent and to allow the use of GOA arrowtooth flounder as a basis species for the retention of pollock and Pacific cod. An MRB of 5 percent of each these species relative to arrowtooth flounder is proposed. The Council requested staff to explore other changes to MRB percentages for GOA rockfish species that may be considered at a future date. Specific rationale for each of the proposed changes follows.

Allow the Use of GOA Arrowtooth Flounder as a Basis Species

At the Council's December 1995 meeting, testimony was presented that markets now exist for arrowtooth flounder and that this species should be allowed as a basis species for purposes of retaining pollock and Pacific cod when these two species are closed to directed fishing. An MRB percentage of 5 percent was proposed for pollock and Pacific cod relative to arrowtooth flounder.

NMFS catch data show that bycatch of these two species in the arrowtooth flounder fishery since 1994 ranged between 6 and 15 percent, higher than the proposed MRB percentage. As a result, some discard of GOA pollock and Pacific cod may still occur. Nonetheless, opportunity for unacceptably high levels of topping off activity would be limited to address halibut bycatch concerns.

Reduce the MRB Percentage for GOA Sablefish

The current MRB percentage for GOA sablefish is 15 percent relative to deep water flatfish, flathead sole, rex sole, and rockfish and 1 percent relative to all other species. Sablefish typically is a bycatch species for the GOA trawl fisheries and trawl vessels maximize allowable retention of sablefish through topping off activity. In 1996, in-season monitoring and management of trawl fisheries was frustrated by unanticipated high harvest rates of Pacific ocean perch (POP) for purposes of topping off with sablefish, as well as unprecedented high harvest rates of sablefish through topping off activity. As a result of these higher than anticipated harvest rates, TACs for sablefish and POP were exceeded, these species were put on prohibited species status within 2 weeks of the July 1 opening of the trawl rockfish fishery, and these species were mandatorily discarded for the remainder of the year. NMFS proposes that the MRB percentage for GOA sablefish relative to all rockfish species or species groups and deep water flatfish be reduced from 15 percent to 7 percent. This change would reduce the harvest rate of GOA sablefish as well as that for POP and potentially other rockfish species during topping-off activity. The Council concurred in this recommendation at its September 1996 meeting.

The proposed reduction in the sablefish MRBs reflects NMFS catch data for the bycatch of sablefish in the deep water flatfish and rockfish fisheries since 1994. The bycatch of sablefish in the flathead sole and rex sole fisheries ranged between 1–4 percent since 1994, lower than the proposed 7 percent MRB. The proposed reduction in the sablefish MRB is not anticipated to result in additional discard of trawl-caught sablefish. However, it would slow down the harvest rates of sablefish. It would also slow the harvest rate of groundfish that are open to directed fishing and that serve as a basis for the retention of sablefish. A reduced harvest rate would facilitate NMFS's ability to monitor the fishery and initiate fishery closures before TAC amounts are reached, thus delaying the attainment of TAC and the required discard of fish under prohibited species status.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed regulatory amendment would reduce the maximum retainable bycatch (MRB) percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rates of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery.

The proposed action primarily would affect GOA trawl operations. In 1995, a total of 185 catcher vessels using trawl gear harvested GOA groundfish. NMFS considers

catcher vessels to be small entities for purposes of analyses required under the Regulatory Flexibility Act. The proposed change to the GOA sablefish MRB would affect only trawl operations because the retention of sablefish by nontrawl vessels is governed by regulations implementing the sablefish individual fishing quota program. In 1995, four of the eight catcher vessels participating in the GOA rockfish fisheries retained sablefish as bycatch. The proposed reduction of the sablefish MRB percentages likely would not result in decreased annual revenues to these catcher vessels that exceed 5 percent because vessels still would have the opportunity to harvest available sablefish TACs through "topping off" activity, albeit at a reduced rate or over a longer period of time. Topping off is the term applied to catching and retaining non-target species in order to increase the base used for computing the percentage of bycatch of sablefish (or other valuable species) that can be retained. Operational costs of doing so could increase as a result, but likely not to the extent of posing a significant economic impact.

This action also would provide enhanced opportunity for revenues to the extent that participants in the arrowtooth flounder fishery retain bycatch amounts of pollock and Pacific cod up to the proposed MRB percentage of 5 percent. In 1995, 39 trawl catcher vessels retained GOA arrowtooth flounder. The additional revenue to these vessels that could result from the proposed action likely would not reflect a 5 percent increase in overall annual revenue. Landings of arrowtooth flounder in 1995 totaled only about 1 percent of the total amount of groundfish landed by catcher vessels. If catcher vessel operators chose to retain any bycatch of pollock and Pacific cod up to the proposed MRB percentage, the associated landings would be 5 percent or less of the arrowtooth landings, or about 0.1 percent of the total groundfish catch.

As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In part 679, Table 10 is revised to read as follows:

TABLE 10 TO PART 679.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species[1]											
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[4]	Atka mackerel	Other species
Basis Species:												
Pollock	[3]na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	[3]na	20	20	20	20	35	1	5	10	20	20
Deep flatfish	20	20	[3]na	20	20	20	35	7	15	1	20	20
Rex sole	20	20	20	[3]na	20	20	35	7	15	1	20	20
Flathead sole	20	20	20	20	[3]na	20	35	7	15	1	20	20
Shallow flatfish	20	20	20	20	20	[3]na	35	1	5	10	20	20
Arrowtooth	5	5	0	0	0	0	[3]na	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	[3]na	15	1	20	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	20
DSR–SEEO	20	20	20	20	20	20	35	7	15	[3]na	20	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3]na	20
Other species	20	20	20	20	20	20	35	1	5	10	20	[3]na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications

[2] Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.

[3] na=not applicable.

[4] SEEO=Southeast Outside District.

[FR Doc. 97–7 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 62, No. 3
Monday, January 6, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Price Undercutting of Domestic Swiss Cheese by Imported Swiss Cheese From Canada and Germany

AGENCY: Department of Agriculture (USDA).

ACTION: Notice.

The U.S. Department of Agriculture received a complaint alleging price undercutting of domestic Swiss cheese in the United States by imported subsidized Swiss cheese subject to an in-quota rate of duty produced in Canada and Germany. Under section 702 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note), the Secretary of Agriculture must conduct an investigation and make a determination as to the validity of the allegations within 30 days.

Based on the investigation of the Director of the Dairy, Livestock and Poultry Division, Foreign Agricultural Service, conducted pursuant to the regulations at 7 C.F.R. 6.40–.44, I have determined that although available information suggests price undercutting of U.S. Swiss cheese by Swiss cheese subject to an in-quota rate of duty imported from Canada and Germany, this information is insufficient for the purposes of section 702 upon which to make a positive determination at this time that price undercutting has occurred. I am, however, directing the Department to monitor U.S. cheese markets for price undercutting by cheese imported subject to an in-quota rate of duty. I am also directing the Department, in coordination with the Office of the United States Trade Representative, to analyze the Canadian dairy price pooling system, including any implications this system would have for Canada's North American Free Trade Agreement and World Trade Organization export subsidy obligations.

Robert S. LaRussa, Acting Assistant Secretary for Import Administration, Department of Commerce, has determined that subsidies provided by the Government of Canada on Swiss cheese exported to the United States averaged $0.26 per pound during the investigations period. In the case of Germany, the Department of Commerce determined that the average export restitution payment provided by the European Union during the investigation period was $0.45 per pound on Swiss cheese exported to the United States.

Done at Washington, D.C., this 27th day of December, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–115 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Extension of Currently Approved Information Collection for Hells Canyon Private Land Use Regulations

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection. Private landowners, whose land is located within the parameters of the Hells Canyon National Recreation Area, are asked to provide information that will enable the agency to determine if the use and development of the land is compatible with existing regulations at 36 CFR 292, Subpart E.

DATES: Comments must be received in writing on or before March 7, 1997.

ADDRESSES: All comments should be addressed to: Director, Recreation, Heritage, and Wilderness Resources (MAIL STOP 1125), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jeff Bailey, Recreation, Heritage, and Wilderness Resources Staff, at (202) 205–1407.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: Hells Canyon Private Land Use Regulations: 36 CFR 292, Subpart E.

OMB Number: 0596–0135.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a previously approved information collection.

Abstract: This collected information is used to evaluate whether an estimated 235 landowners within the Hells Canyon National Recreation Area use and develop their land in compliance with the existing regulations known as Hells Canyon Private Land Use Regulations located at 36 CFR 292, Subpart E. Once a year, landowners provide written information to the Ranger that must include the following: (1) the current land category to which the land is assigned as defined at 36 CFR 292, Subpart E; (2) the use or development that exists or that is proposed for the property; (3) a statement as to whether a change in the land category assignment will be necessary to accommodate the proposed use or development; (4) a timeframe for implementing the proposed use or development, and (5) a statement as to how the proposed use or development satisfies the standards of § 292.23. Using the information collected from each landowner, the Ranger makes a determination whether private landowners existing or proposed use or development of the land within the Hells Canyon National Recreation Area complies with the standards of the regulations.

Data gathered in this information collection is not available from other sources.

Estimate of Burden: 4 hours.

Type of Respondents: Private land owners located within the Hells Canyon National Recreation Area.

Estimated Number of Respondents: 235.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 940 hours.

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 24, 1996.

David G. Unger,

Acting Chief.

[FR Doc. 97–164 Filed 1–3–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of January 1997.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Brazil, Brass Sheet & Strip, A–351–603, 52 FR 1214, January 12, 1987, Contact: Tom Killiam at (202) 482–2704.

Canada, Color Picture Tubes, A–122–605, 53 FR 429, January 7, 1988, Contact: Valerie Owenby at (202) 482–0145.

Singapore, Color Picture Tubes, A–559–601, 53 FR 432, January 7, 1988, Contact: Michael Heaney at (202) 482–4475.

South Africa, Brazing Copper Wire & Rod, A–791–502, 51 FR 3640, January 29, 1986, Contact: Valerie Owenby at (202) 482–0145.

South Korea, Brass Sheet & Strip, A–580–603, 52 FR 1215, January 12, 1987, Contact: Tom Killiam at (202) 482–2704.

South Korea, Color Picture Tubes, A–580–605, 53 FR 431, January 7, 1988, Contact: Tamara Underwood at (202) 482–0197.

Taiwan, Stainless Steel Cooking Ware, A–583–603, 52 FR 2139, January 20, 1987, Contact: Valerie Owenby at (202) 482–0145.

Canada, Potassium Chloride, A–122–701, 53 FR 1393, January 19, 1988,. Contact: Jean Kemp at (202) 482–4037

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of January 1997. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 27, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–123 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–DS–P

C–549–802

Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On July 3, 1996, the Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand for the period 1994 (61 FR 34794, July 3, 1996). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice. The countervailing duty order on ball bearings and parts thereof from Thailand was revoked effective January 1, 1995, as a result of a changed circumstances review (*see* 61 FR 20799). Because this order has been revoked, the

Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Megan Waters, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 355.22(a) of the Department's *Interim Regulations*, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. *See Antidumping and Countervailing Duties: Interim regulations; request for comments*, 60 FR 25130, 25139 (May 11, 1995) (*"Interim Regulations"*). Accordingly, this review covers the Minebea Group of Companies in Thailand, NMB Thai, Pelmec Thai, and NMB Hi-Tech, which manufacture and export the subject merchandise. During this review, the Department learned of another Minebea company, NMB Precision Ball, Ltd., which manufactures balls. The company does not export directly to the United States but it does sell balls to the other three companies which in turn export finished ball bearings to the United States and elsewhere. This company, like the other three Minebea producers in Thailand, is a wholly-owned subsidiary of Minebea Japan, and because NMB Precision Ball, Ltd. received export subsidies during the period of review (*see "Programs Conferring Subsidies"* section below) for its sales of balls to the related Thai ball bearing producers, we determine that it is appropriate to include the export subsidies to NMB Precision Ball, Ltd. in our calculations of the net subsidy.

All of these companies are wholly owned by one parent company. As a result of this affiliation, we continue to find, as we did in the investigation and in previous reviews (*see for example, Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Duty Administrative Review, 60* FR 52374, October 6, 1995), that the Minebea Group of Companies should be collapsed and treated as one corporate entity in our calculations. This review covers the period January 1 through December 31, 1994, and nine programs.

Since the publication of the preliminary results on July 3, 1996 (61 FR 34794), the following events have occurred. We invited interested parties to comment on the preliminary results. On August 2, 1996, a case brief was submitted by the Royal Thai Government ("RTG") and the Minebea Group of Companies, which exported ball bearings and parts thereof to the United States during the review period.

On November 2, 1995, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Act (*see Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews*, 60 FR 55699). As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. As a result of these extensions, the deadline for these final results is no later than December 30, 1996—180 days from July 3, 1996, the date on which the preliminary results were published in the **Federal Register**.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act").

Scope of the Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in the Appendix to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in the Appendix are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

We verified information provided by the RTG and by the Minebea Group of Companies, producers/exporters of the subject merchandise (as provided in section 782(i) of the Act). We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

Investment Promotion Act of 1977—Sections 28, 31, 36(1), and 36(4)

In the preliminary results, we found that these programs conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, our calculation of the net subsidies for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/Exporter	Rate
Minebea Group of Companies	5.25%

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Tax Certificates for Exporters
B. Electricity Discounts for Exporters
C. Export Packing Credits
D. Rediscount of Industrial Bills
E. IPA Section 33
F. Export Processing Zones
G. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
H. International Trade Promotion Fund

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Respondents argue that the Department must liquidate entries during 1994 without regard to countervailing duties because the URAA does not provide an injury test for 1994 entries as required under the Agreement on Subsidies and Countervailing Measures (*Subsidies Agreement*). Citing Article 32.3 of the *Subsidies Agreement* respondents argue that the *Subsidies Agreement* is applicable to all reviews including the instant review, initiated pursuant to requests made after January 1, 1995. Respondents argue that the requirements of the Agreement include

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the application of an injury test to entries covered by such a review. According to respondents, however, the URAA did not provide a mechanism to implement this obligation; rather, the URAA only provides an injury test for merchandise entered on or after January 1, 1995. Therefore, respondents assert that assessment of countervailing duties on 1994 entries would violate U.S. obligations under the *Subsidies Agreement*.

Department's Position: Respondents have misinterpreted both U.S. law and the Subsidies Agreement. There is no legal basis under U.S. law for respondents' claim. Because Thailand became a *Subsidies Agreement* country on January 1, 1995, only entries made on or after January 1, 1995 are entitled to the injury test. *See* section 753 of the Act; 19 U.S.C. § 1675b. Section 753 (a)(4) makes this clear by providing for the suspension of liquidation of entries of subject merchandise made "on or after . . . the date on which the country . . . becomes a *Subsidies Agreement* country . . . ." *See also Ceramica Regiomontana, S.A.* v. *United States*, 64 F.3d 1579 (Fed. Cir. 1995) (the right to an injury test is conferred at the time of importation (entry) in the United States). Therefore, countervailing duties may be assessed on Thai imports entered before January 1, 1995, without regard to an injury test.

Moreover, Article 32.3 of the *Subsidies Agreement* does not require an injury determination for merchandise entered prior to January 1, 1995. (*See also Footwear from Brazil* GATT Panel Decision confirming that liability for countervailing duties attaches at the time of importation, not assessment.) Liability for countervailing duties attaches at the time of entry and, because the subject merchandise entered in 1994, there is no obligation under the *Subsidies Agreement* to supply an injury test to these 1994 entries.

Comment 2: Respondents argue that, due to the "upstream subsidies" provision, the Department's inclusion of benefits received by NMB Precision Ball, Ltd. in the subsidy calculation is contrary to law. They claim that, because NMB Precision Ball, Ltd. is separately incorporated, any benefits it receives on inputs must be analyzed under the upstream provision. They also contend that the Department lacks authority to countervail any subsidies provided on the input balls supplied by NMB Precision Ball, Ltd. because petitioners have not made an "upstream subsidies" allegation.

Department's Position: We disagree with respondents. Including the benefits received by NMB Precision Ball, Ltd. in the benefit calculation is not contrary to the upstream provision of the statute. In fact, it is necessary to include these subsidies in order to accurately determine the total net subsidy attributable to subject merchandise.

NMB Precision Ball, Ltd. does not produce bearings; nor does it make commercial shipments of bearings to the United States. However, it does produce balls which it then supplies to other Minebea companies, including Minebea companies in Thailand. When the Department issued its questionnaire for this review, it requested information for all companies in Thailand which produced and/or exported subject merchandise that was exported to the United States. At verification, the Department learned that NMB Precision Ball, Ltd. produced balls that were exported to the United States as parts of finished ball bearings during the review period. Only then, upon request, did the Department gather information to determine whether NMB Precision Ball, Ltd. should be included in the subsidy calculations.

At verification, we found that the balls produced by NMB Precision Ball, Ltd. were exported either directly or as parts of bearings assembled by other Minebea companies in Thailand. Both the balls and bearings are merchandise subject to this review. As explained in the preliminary results of this review (61 FR 34794, July 3, 1996), the subsidies received by NMB Precision Ball, Ltd. on its sales of these balls are export subsidies. NMB Precision Ball, Ltd. receives these export subsidies not only for the balls that are exported directly but also for the balls that are sold to other Minebea companies for incorporation into ball bearings which are then exported. Therefore, the Department properly included in the subsidy calculation the benefits attributable to balls produced by NMB Precision Ball, Ltd. but exported by other Minebea companies in Thailand as parts of finished ball bearings.

Because these are export subsidies, the upstream subsidy provision is not applicable (*see* section 771A(a) of the Act). Specifically, the upstream subsidy provision, by its terms, expressly excludes export subsidies from its coverage (based on the presumption that an export subsidy paid on a nonsubject input product benefits the exportation of that product, not the downstream product). The upstream subsidy provision is not intended to cover the situation in this case. Further, separate and apart from this provision, such export subsidies on subject merchandise are plainly covered by the U.S. countervailing duty law. Accordingly, the export subsidies here on balls and ball bearings are countervailable.

Further, the fact that NMB Precision Ball, Ltd. is separately incorporated is irrelevant because these are export subsidies which are provided to balls contingent on their subsequent exportation, and the balls are covered by the order. It does not matter whether the balls are exported directly or whether the balls are sold to another company, incorporated into ball bearings, and then exported; all of the balls receive the export subsidy. Thus, the subject merchandise exported to the United States by the other Minebea companies during the period of review benefitted not only from the export subsidies on balls produced by NMB Precision Ball, Ltd. but also from the export subsidies provided on finished ball bearings.

Comment 3: Respondents claim that several of the essential materials for which BOI grants duty exemptions meet the "consumed in production" standard, and, therefore, duty exemptions on these materials should be found not countervailable. They argue that the Department improperly countervailed certain duty exemptions on inputs used in the production process because it has interpreted the meaning of the footnote 61 of Annex II of the *Subsidies Agreement* regarding "inputs consumed in the production process" too narrowly.

Department's Position: We disagree with respondents. Prior to the Uruguay Round Agreement, only duty exemptions on inputs that were physically incorporated into the product being exported (*e.g.*, raw material inputs) were considered non-countervailable. Under the *Subsidies Agreement*, this has been broadened to include duty exemptions on products that are "consumed in production." Annex II of the Agreement contains a footnote (n. 61) which defines inputs consumed in the production process as: "inputs physically incorporated, energy, fuels and oils used in the production process and catalysts which are consumed in the course of their use to obtain the exported product." Upon examination of the breakouts of duty exemptions that respondents claimed, we discovered that, with the exception of fixed assets, the RTG treated almost anything used in the production process as duty exempt. We found that a number of duty-exempt materials fall outside the definition in footnote 61 and have therefore countervailed the exemptions provided on items which fall outside that definition.

Respondents argue that the term "consumed in production" should

include all items that are worn out during the production process and that physically touch the product (*e.g.*, grinding wheels and drill bits) as well as items such as packing materials. However, it is the Department's position that the definition in Annex II is unambiguous, and therefore, the only duty exemptions that we find not countervailable are those on materials which are physically incorporated into the exported product and on oils used in the production process. The remaining duty exemptions received by the respondent companies on items such as drill bits and grinding wheels do not fit the definition in Annex II. They are not physically incorporated; nor are they energy, fuels, oils, or catalysts consumed in the course of their use. Accordingly, we continue to find those exemptions countervailable.

Final Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations*, we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As discussed above in the *Background* section, the Department considers the Minebea Group of Companies as one corporate entity. Therefore, we have calculated one subsidy rate for the Minebea Group of Companies in Thailand. For the period January 1 through December 1, 1994, we determine the net subsidy to be as follows:

Net subsidies—producer/exporter	Net subsidy rate
Minebea Group of Companies (NMB Thai, Pelmec Thai, NMB Hi-Tech, NMB Precision Ball, Ltd.)	5.25%.

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* section 355.22(a) of the *Interim Regulations*. Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate previously ordered. Accordingly, we will instruct Customs to liquidate at the cash deposit rate in effect at the time of entry all entries of subject merchandise from non-reviewed companies.

Pursuant to petitioner's statement of no further interest in the CVD order on ball bearings and parts thereof from Thailand for entries after December 31, 1994, the Department conducted a changed circumstances review and, effective January 1, 1995, revoked this countervailing duty order pursuant to section 782(h)(2) of the Act. *Ball Bearings and Parts Thereof from Thailand: Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order*, 61 FR 20799 (May 8, 1996). Accordingly, suspension of liquidation was terminated effective January 1, 1995, and the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Appendix

Scope of Review

Ball Bearings, Mounted or Unmounted, and Parts Thereof

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50. This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those parts which will be subject to heat treatment after importation.

[FR Doc. 97–184 Filed 1–3–97; 8:45 am]

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[C–475–819]

Notice of Rescission of Expedited Countervailing Duty Administrative Review: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of expedited countervailing duty administrative review.

SUMMARY: The Department of Commerce ("the Department") rescinds its expedited countervailing duty administrative review of the order covering certain pasta from Italy initiated on October 10, 1996 (61 FR 53198).

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Kristin Mowry, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 482–3798.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 1996, at the request of two exporters of pasta, Pastificio Oleificio Mangimificio Bianconi S.p.A ("Bianconi") and Pastificio Nuova Bettini S.p.A. ("Bettini"), we published

in the **Federal Register** a notice of initiation of an expedited administrative review of the countervailing duty order published in the **Federal Register** on July 24, 1996 (61 FR 38544) covering imports of certain pasta from Italy (61 FR 53198). On November 12 and 15, 1996, we received withdrawals of the requests for review from Bianconi and Bettini, respectively. These withdrawals are consistent with 19 CFR 351.214(f)(1) and (k)(3), found in *Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, published in the **Federal Register** on February 27, 1996 (61 FR 7308, 7367–68). Accordingly, the Department is rescinding the expedited review.

This rescission and this notice are pursuant to section 751 of the Tariff Act of 1930, as amended.

Dated: December 19, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–183 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued, and are encouraged to provide a nonconfidential version of their comments. An original and five (5) copies, plus two (2) copies of any nonconfidential version, should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 96–00008." A summary of the application follows.

Summary of the Application

Applicant: U.S. Rice Industry Coalition for Exports, Inc. ("US RICE"), 1615 L Street, N.W., 7th Floor, Washington, D.C. 20036. Contact: M. Jean Anderson, counsel, Telephone:(202) 682–7217.

Application No: 96–00008.

Date Deemed Submitted: December 20, 1996.

Members (in addition to applicant): Continental Grain Company, New York, New York; Newfield Partners Ltd., Miami, Florida.

US RICE seeks a Certificate to cover the following specific Export Trade, Export Markets and Export Trade Activities and Methods of Operation.

Export Trade Products

Semi-milled and wholly milled rice, whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) ("milled rice"), husked (brown) rice (Harmonized Tariff Schedule 1006.20), broken rice (Harmonized Tariff Schedule 1006.40), and paddy or rough rice (Harmonized Tariff Schedule 1006.10).

Export Markets

For purposes of allocating through an open bidding procedure the European Union's tariff rate quota: The countries of the European Union.

For purposes of Export Trade Activities and Methods of Operation paragraphs 2.–4. below: All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. US RICE will administer a system for managing the U.S. share of the European Union ("EU") tariff-rate quotas ("TRQs") for milled, brown, and broken rice (roughly 38,000 tons of milled rice, 8,000 tons of brown rice and 7,000 tons of broken rice annually) agreed to as compensation to the United States for the enlargement of the EU to include Austria, Finland, and Sweden, as follows:

a. US RICE will allocate the TRQs exclusively through an open quota tender to the highest bidder(s). Any person incorporated or domiciled in the United States is eligible to bid. Bidders need not be members of US RICE and need not be included in the Certificate.

b. The quota tender system will be administered by an independent third party ("the TRQ Administrator"), who will be retained by US RICE. The TRQ Administrator may be an individual, partnership, corporation (for profit or non-profit), or any representative thereof that is not engaged in the production, milling, distribution, or sale of milled, brown, or broken rice.

c. Normally at least 45 days before the opening of each TRQ tranche, as defined by the EU, US RICE will publish notice of the bidding process for that tranche, specifying a bid date approximately 30 days before the opening of the tranche. Bidders will submit bids to the TRQ Administrator on the bid date, together with a bid deposit, initially set at $25 per metric ton. The TRQ Administrator will retain the full bid deposit for tonnage on which bids are successful, and $5 per metric ton of the deposit for unsuccessful bids, to cover costs of administering the TRQ system. The remainder will be refunded to unsuccessful bidders.

d. Following the close of the bidding, the TRQ Administrator will disclose the bids received to all bidders, and after further review of bids for conformity with bidding procedures, will notify the high bidders. High bidders will then have 48 hours to post a five percent performance bond. When all bonds have been posted, the TRQ Administrator will issue a list of winning bidders to all participants. Upon receipt of the full amounts bid, the TRQ Administrator will promptly issue Export Certificates of Quota ("ECQs") to the winning bidders. ECQs will be freely tradable. Each performance bond will be discharged on submission of export documentation demonstrating that the

ECQ was used to export U.S. rice to the EU.

2. The bid proceeds will be distributed and otherwise used as follows:

a. All bid proceeds will be deposited in a trust fund. Each year, the TRQ Administrator will distribute funds from the preceding year's tenders to qualifying members of US RICE in proportion to each such member's percentage share by volume of total exports of U.S. rice to all destinations in the year preceding the tender (and for 1996 TRQs, 1995). No US RICE member may receive a distribution in excess of that amount.

b. Any person incorporated or domiciled in the United States that has exported U.S. rice in the current or preceding calendar year or is actively engaged in rice milling in the United States may join US RICE by executing the US RICE Operating Agreement and paying the dues of $5,000 per quota year. A member of US RICE will qualify for a particular distribution by (i) joining US RICE by January 31 of the quota year (e.g., for the distribution of proceeds from 1998 TRQs, by January 31, 1998), and in the case of distributions of proceeds from the 1996 and 1997 TRQs, by February 28, 1997; and (ii) documenting its share of U.S. rice exports for the relevant year to the TRQ Administrator.

c. Funds remaining in the trust fund after a distribution will be used as necessary to cover operating expenses, and thereafter for promotion of U.S. rice exports worldwide through activities generally comparable to those funded by the USDA's market access program.

3. The TRQ Administrator may receive confidential information and documentation of rice exports from members and prospective members of US RICE in connection with membership applications and distributions. The TRQ Administrator will maintain the confidentiality of such information and will not disclose it to any other member or any other person except to another neutral third party as necessary to process membership applications and distributions of bid proceeds.

4. US RICE and/or its Members may also:

a. exchange and discuss information regarding the structure and operation of the US RICE TRQ management system, including the types of information regarding past transactions and exports that are necessary for implementing the system;

b. assess the operation of the system and consider and implement modifications to improve the system's workability;

c. exchange and discuss information concerning U.S. and foreign agreements, legislation, and regulations affecting the US RICE TRQ management system;

d. discuss and modify association dues, bid deposit fees, and performance bonds;

e. discuss, decide on, and implement export promotion activities to be undertaken with post-distribution funds in the trust fund;

f. otherwise exchange and discuss information as necessary to implement the foregoing activities and take the necessary action to implement the US RICE TRQ management system, relating to the U.S.-EU Enlargement Agreement and any successor or related agreements, and related EU regulations;

g. provide nonconfidential information to, and consult as appropriate with, officials of the U.S. Government and the European Commission concerning the operation of the US RICE TRQ management system; and

h. meet to engage in the activities described above.

Abbreviated Amendment Procedure

New US RICE members may be included in the Certificate through an abbreviated amendment procedure. Under the procedure, US RICE will notify the Secretary of Commerce and the Attorney General, in writing, of those members of US RICE that wish to be included in the Certificate. If the Department so requests, the notification will include a certification from each such member of its domestic and export sales of rice in its preceding fiscal year. Notice of the members so identified shall be published in the **Federal Register**. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment was deemed submitted. If the Secretary of Commerce does not so amend the Certificate within 60 days of publication in the **Federal Register**, such amendment must be sought through the normal amendment procedure.

Terms and Conditions of Certificate

1. Except as expressly authorized in Export Trade Activity and Method of Operation 4(a), in engaging in Export Trade Activities and Methods of Operation, neither US RICE nor any Member shall intentionally disclose, directly or indirectly, to any other Member (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information regarding its or any other Member's costs, production, inventories, domestic prices, domestic sales, capacity to produce products for domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide export sale and the disclosure is limited to the prospective purchaser.

2. US RICE and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303 (a) of the Act.

Definitions

"Member" means a member of US RICE who has been certified as a "Member" within the meaning of Section 325.2(l) of the regulations. A US RICE member that is not a Member may join the US RICE export trade certificate of review by requesting that US RICE file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to US RICE, a copy of which US RICE will promptly transmit to the Secretary of Commerce and the Attorney General..

Dated: December 30, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97-128 Filed 1-3-97; 8:45 am]

BILLING CODE 3510-DR-P

National Oceanic and Atmospheric Administration

[I.D. 091396A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taurus Space Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of seals and sea lions by harassment incidental to launches of Taurus space launch vehicles (Taurus SLV) at Launch Support Complex 576E (LSC- 576E), Vandenberg Air Force Base, CA (Vandenberg) has been issued to the U.S. Air Force for a period of 1 year.

EFFECTIVE DATE: This authorization is effective from January 1, 1997, through December 31, 1997.

ADDRESSES: The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 301–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines "harassment" as:

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Summary of Request

On August 14, 1996, NMFS received a revised application from the U.S. Air Force, Vandenberg, requesting an authorization for the harassment of small numbers of harbor seals and possibly California sea lions and northern elephant seals, incidental to launches of Taurus SLVs at LSC–576E, Vandenberg. These launches would place commercial payloads into earth orbit. Because LSC–576E is located north of most other launch complexes at Vandenberg and because there are oil production platforms located off the coast to the south of LSC–576E, missions flown from LSC–576E do not fly directly on their final southward course. The normal trajectory for a LSC–576E launch is in a general west-southwest direction away from the coastline. The flight paths for each 1997 launch will proceed on an initial azimuth of 205° until approximately 24 kilometers (km)(15 miles (mi)) west of the shoreline. The Taurus SLV will then perform a dogleg maneuver left to a final mission-specific azimuth of between 180° and 197°. No Taurus SLV launch from LSC–576E will proceed southeast, overflying San Miguel or Santa Rosa islands. Orbital Sciences Corporation (OSC 1996) anticipates launching two Taurus SLVs during the 1-year period of validity for this proposed authorization.

As a result of the noise associated with the launch itself and the resultant sonic boom, there is the potential to cause a startle response to those harbor seals that haul out on the coastline south and southwest of Vandenberg and may be detectable to marine mammals in waters off Vandenberg and to the west of the Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of LSC–576E while a low-level sonic boom may be heard west of the Channel Islands.

A notice of receipt of the Taurus SLV application and the proposed authorization was published on September 25, 1996 (61 FR 50276) and a 30-day public comment period was provided on the application and proposed authorization.

Comments and Responses

During the 30-day comment period, one letter was received. The comments contained in this letter are addressed below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the proposed authorization notice and needs not be repeated here.

Comment 1: The Marine Mammal Commission (MMC) requested confirmation that the Air Force would be applying for a programmatic 5-year authorization under section 101(a)(5)(A) of the MMPA. The MMC believes that, because of the possible cumulative effects of launches at Vandenberg, a 5-year authorization is appropriate.

Response: NMFS anticipates that this 1-year authorization for Taurus SLV launches, along with others issued previously for Lockheed launch vehicles (61 FR 38437, July 24, 1996), McDonnell Douglas Delta II launch vehicles (61 FR 59218, November 21, 1996), and Titan II and IV (61 FR 64337, December 4, 1996) will be replaced by a new set of regulations, under section 101(a)(5)(A) of the MMPA, governing incidental takes of marine mammals by launches of all rocket types from Vandenberg. An application for a small take authorization under section 101(a)(5)(A) of the MMPA is under development by the Air Force.

Comment 2: The MMC recommends that, before issuing the requested authorization, NMFS review the results of monitoring done to date to determine (1) if there may have been cumulative effects on the haul-out patterns, abundance, or productivity of harbor seals that reside in the Vandenberg area, and (2) whether the current monitoring program is sufficient to detect such effects.

Response: By limiting incidental harassment authorizations to a single year as opposed to multi-year authorizations for Letters of Authorization (LOAs) issued under section 101(a)(5)(A) of the MMPA, NMFS does not believe that Congress intended NMFS to make negligible impact assessments on activities for periods greater than the period of the authorization, nor to require holders of IHAs to monitor for periods greater than the authorization. As a result, monitoring for most activities holding IHAs are designed to be event specific, that is, for a period of time prior to the event, during the event, and after

completion of the activity. Although this precludes the applicability of monitoring under a single IHA for determining long-term cumulative effects, in those cases where holders of IHAs request continuing authorizations, monitoring, over time and in conjunction with other measurements of population trends and abundances, provides information sufficient to make the necessary negligible impact determinations under section 101(a)(5)(D) of the MMPA. This is what was done for the negligible impact determination for this authorization.

Recognizing that short-term monitoring leaves unanswered the effect from cumulative impacts, the U.S. Air Force is designing research to investigate this concern. This research will use launches of Titan IVs (the rocket presumed to be having the greatest impact since it is the largest rocket launched from Vandenberg) to provide information vital for assessing long-term impacts on the physiology, behavior and survival of pinnipeds from launch noise and sonic booms. This research, which will be conducted under an MMPA section 104 research permit, is expected to begin within a year.

Therefore, while no long-term studies are currently underway on the effects on pinnipeds from launch noises or sonic booms, monitoring at Vandenberg for Titan IV and other rocket launches in the past has provided the baseline information on long-term and cumulative impacts. This information and the fact that the haul-outs along the Vandenberg coast remain active indicate that there are no immediately evident long-term, cumulative impacts. Launch noises are infrequent enough and divided between North and South Vandenberg so that these impacts are presumed to be less significant, cumulatively, than human, wildlife and pet disturbances including motorized vessels.

Comment 3: The MMC states that it should be made clear that the authorization is automatically rescinded if a marine mammal is killed as a result of the authorized activity.

Response: No marine mammals are anticipated to be killed or seriously injured as a result of launchings of Taurus SLV rockets. However, while section 101(a)(5)(D)(iv) of the MMPA provides NMFS authority to modify, suspend, or revoke an authorization if it is found that the provisions of the section are not being met, for IHA suspensions, NMFS follows procedures established for suspension of LOAs under section 101(a)(5)(A) of the MMPA. In that regard, an IHA may be suspended without notice and comment if emergency conditions exist that pose a significant risk to the well-being of the marine mammal stock, or if holder of an IHA is not in compliance with the conditions of the IHA. However, prior to revocation of an IHA, NMFS must satisfy the statutory notice and comment requirement. Therefore, section 101(a)(5)(B) allows NMFS to withdraw (revoke) or "suspend for a time certain" an LOA, subsequent to notice and comment, while section 101(a)(5)(C) allows a waiver of the notice and comment requirement for emergency suspensions, but not for revocations. Conditions for suspension or withdrawal of an LOA or IHA are described in 50 CFR 216.106 and 216.107.

Conclusion

Based upon the information provided in the proposed authorization, NMFS has determined that the short-term impact of the launching of Taurus SLV rockets is expected to result at worst, in a minor, temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. These launchings are not expected to result in any reduction in the number of pinnipeds and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the northern Channel Islands are unlikely.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, California sea lions, and northern elephant seals; would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS determined that the requirements of section 101(a)(5)(D) had been met and the incidental harassment authorization was issued.

Dated: December 27, 1996.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–180 Filed 1–3–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, Finance Deputate.

ACTION: Notice.

In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions concerning the proposed Personal Check Cashing Agreement Form. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before March 7, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service, Finance Deputate, ATTN: Ms. Patricia Cristiano, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Patricia J. Cristiano, at (703) 607–5039.

Title, Associated Form, and OMB Number: Personal Check Cashing Agreement Form.

Needs and Uses: The collection of information is necessary to meet the Department of Defense's (DoD) requirement for cashing personal checks overseas and afloat by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, provides guidance to DoD Disbursing Officers in the performance of this information collection. This allows the DoD disbursing officer or authorized agent the authority to offset the pay, without

prior notification, in cases where this form has been signed subject to conditions specified within the approved procedure.

Affected Public: Individuals or households.

Annual Burden Hours: 225,000.

Number of Respondents: 450,000.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Personal Check Cashing Agreement Form is designed exclusively to help the DoD disbursing offices expedite the collection process of dishonored checks. The front of the form will be completed and signed by the authorized individual requesting check cashing privileges. By signing the form, the individual is freely and voluntarily consenting to the immediate collection from their current pay, without prior notice, for the face value of any check cashed, plus any charges assessed against the government by a financial institution, in the event the check is dishonored. In the event the check is dishonored, the disbursing office will complete and certify the reverse side of the form and forward the form to the applicable payroll office for collection from the individual's current pay.

Dated: December 30, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–00102 Filed 1–3–97; 8:45 am]

BILLING CODE 5000–04–M

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Effectiveness of Defense Mergers.

Type of Request: New collection; Emergency Processing requested with a shortened public comment period ending January 21, 1997. An approval date of February 4, 1997 is requested.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 200.

Needs and Uses: This collection of information is necessary to meet the requirements of the National Defense Authorization Act of 1997. Section 826 thereof required the Secretary of Defense to report to Congress the results of a study of the effectiveness of defense mergers and acquisitions in eliminating excess capacity, and their effect on contractor dependence on defense-related contracts, defense employment, and competition for defense contracts. The information collected hereby, will provide the necessary data to conduct the study and compile the report to Congress.

Affected Public: Business or other for-profit.

Frequency: One time.

Respondent's Obligation: Voluntary.

DOD Action Officer: Mr. William M. Pegram.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pegram, at DUSD(IA&I)/FEA, Room 2A318, The Pentagon, Washington, DC 20301–3330, or via facsimile at (703) 693–7038.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302 or via facsimile at (703) 604–6270.

Dated: December 30, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–162 Filed 1–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

ENVIRONMENTAL PROTECTION AGENCY

NUCLEAR REGULATORY COMMISSION

[Docket No. A–96–44]

Draft Multi-Agency Radiation Survey and Site Investigation Manual

AGENCY: U.S. Department of Defense, U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability with request for public comment.

SUMMARY: The Department of Defense (DOD), Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the U.S. Nuclear Regulatory Commission (NRC) are announcing for public comment the availability of a draft document, entitled the "Multi-Agency Radiation Survey and Site Investigation Manual " (MARSSIM). MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys for demonstrating compliance with dose-based regulations. The MARSSIM, when finalized, will be a multi-agency consensus document. The agencies are seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is received. The agencies will review public comments received on the draft MARSSIM as well as comments from a concurrent, independent, scientific peer review. Suggested changes will be incorporated, where appropriate, in response to those comments.

DATES: Comments received by July 7, 1997 will be considered. Comments received after that date will be considered if it is practical to do so, but no assurance can be given for consideration of late comments.

ADDRESSES: Members of the public are invited to submit written comments to EITHER the U.S. Environmental Protection Agency, ATTN: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–96–44, Room M1500, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460 or the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Copies of all comments received by one agency will be periodically copied and sent to the others. Copies of the draft MARSSIM and all comments received may be examined or copied for a fee at the EPA Docket Room M1500, Docket No. A–96–44, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460; and the NRC Public Document Room, 2120 L Street, NW, Washington DC 20555–0001. The EPA docket may be inspected from 8:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays in Room M1500 at the address above. A free single copy of the draft MARSSIM may be requested by writing to: the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001 or by fax to (301) 415–2260. The document is also available through the Internet at http://www.epa.gov/radiation/cleanup and through the National Technical

Information Service (NTIS). The NTIS document number is PB97–117659, and the NTIS Sales Desk can be reached between 8:30 a.m. and 5:00 p.m., Eastern time, Monday through Friday at (703) 487–4650; TDD (hearing impaired only): (703) 487–4639.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information (see "Addresses" section above for directions on obtaining a copy of the draft MARSSIM): DOE: Kenneth Duvall, Phone: (202) 586–0242, U.S. Department of Energy (EH–412), 1000 Independence Avenue, SW, Washington, DC 20585; EPA: Mark Doehnert; Phone: (202) 233–9386, U.S. Environmental Protection Agency, Mail Stop 6603J, 401 M. Street, SW, Washington DC 20460; NRC: Robert A. Meck, Phone: (301) 415–6205, U.S. Nuclear Regulatory Commission, MS T–9C24, Washington DC 20555. Questions concerning the multi-agency document development project should be addressed to CDR Colleen Petullo, U.S. Environmental Protection Agency/U.S. Public Health Service, RIENL, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2476.

SUPPLEMENTARY INFORMATION: The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys for demonstrating compliance with dose-based regulations. The MARSSIM, when finalized, will be a multi-agency consensus document.

MARSSIM was developed collaboratively over the past three years by the technical staffs of the four Federal agencies having authority for control of radioactive materials: DOD, DOE, EPA, and NRC (60 FR 12555). Contractors to the DOE, EPA, and NRC, and members of the public have been present during the open meetings of the MARSSIM work group.

MARSSIM's objective is to describe standardized and consistent approaches for surveys, which provide a high degree of assurance that established dose-based release criteria, limits, guidelines, and conditions of the regulatory agencies are satisfied at all stages of the process, while at the same time encouraging an effective use of resources. The techniques, methodologies, and philosophies that form the bases of this manual were developed to be consistent with current Federal limits, guidelines, and procedures.

Although Federal agency personnel are involved in the preparation of this document, the manual does not represent the official position of any participating agency at this time. An earlier draft of the document has been reviewed within the Federal agencies. Comments were received and comments from the review that reflected a technical error or flaw in logic or information flow were addressed. The other comments from the Federal agencies will be addressed along with the public comments. The public review is a necessary step in the development of a final multi-agency consensus document. The document will also receive formal technical peer review. The draft has not been approved by the participating agencies for use in part or in whole and should not be used, cited, or quoted except for the purposes of providing comments as requested.

Reviewers are requested to focus on technical accuracy, and understandability. Reviewers are also requested to address five questions while reviewing the MARSSIM:

(1) Does the MARSSIM provide a practical and implementable approach to performing radiation surveys and site investigations? Are there any major drawbacks to the proposed methods?

(2) Is the MARSSIM technically accurate?

(3) Does the MARSSIM provide benefits that are not available using current methods? What is the value of the MARSSIM in comparison with other currently available alternatives?

(4) What are the costs associated with the MARSSIM in comparison with other currently available alternatives?

(5) Is the information in the MARSSIM understandable and presented in a logical sequence? How can the presentation of material be modified to improve the understandability of the manual?

Comments may be submitted as proposed modified text, or as a discussion. Comments should be accompanied by supporting bases, rationale, or data. To ensure efficient and complete comment resolution, commenters are requested to reference the page number and the line number of the MARSSIM to which the comment applies (enter only the beginning page and line number, even if your comment applies to a number of pages or lines to follow).

Comments corresponding to an entire chapter, an entire section, or an entire table should be referenced to the line number for the title of the chapter (always line number 1), section, or table. Comments on footnotes should be referenced to the line in the main text where the footnote is indicated. Comments on figures should be referenced to the page on which the figure appears (figures do not have line numbers). The figure number should be included in the text of the comment. Comments on the entire manual should be referenced to the title page.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the Department of Defense, dated this 20th day of December 1996.

Gary D. Vest,

Principal Assistant Deputy Under Secretary of Defense for Environmental Security.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the U. S. Department of Energy, dated this 5th day of December 1996.

Raymond P. Berube,

Deputy Assistant Secretary for Environment.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the U. S. Environmental Protection Agency, dated this 9th day of December 1996.

E. Ramona Trovato,

Director, Office of Radiation and Indoor Air.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual.

For the U. S. Nuclear Regulatory Commission, dated this 2nd day of December 1996.

David Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 97–170 Filed 1–3–97; 8:45 am]

BILLING CODE 7590–01–P

Department of the Army

Corps of Engineers

Availability of Surplus Land and Buildings Located at Sierra Army Depot (SIAD), Herlong, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at Sierra Army Depot (SIAD), Herlong, CA. SIAD is located approximately 55 miles north northwest of Reno, NV just north of U.S. Highway 395. SIAD is a base realignment facility and major portions of the installation are being retained for active missions.

FOR FURTHER INFORMATION CONTACT: For more information regarding a particular building or parcel (i.e., acreage, floor plans, existing utilities exact street address), contact Mr. Jimmy Spain, Base Transition Coordinator at (916) 827–4488; Mr. Larry Weed, Base Transition Officer at (916) 827–4391, or Ms. Jackie Cumpton, Realty Specialist at (916) 557–6845.

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SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

The surplus real property consists of approximately 1,504 acres which includes approximately 960 acres along the east shore of Honey Lake and approximately 544 acres of land known as the cantonment area or Herlong parcel located at the southwest corner of the installation. The Herlong parcel consists of 6 office buildings, 1 storage building, and 4 other buildings. The current range of uses include industrial, storage, commercial, educational, and housing facilities.

Notices of interest must be submitted within 90 days from December 10, 1996. Notices of interest should be forwarded to Sierra Local Redevelopment Authority, Attention: Mr. Pat Landon, 1121–A Honey Way, P.O. Box 117, Herlong, CA 96113; (916) 827–3480.

Juanita H. Maberry,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 97–122 Filed 1–3–97; 8:45 am]

BILLING CODE 3710–EZ–M

Corps of Engineers

Notice of Availability for the Draft Supplemental Environmental Impact Statement and General Reevaluation Report of the Green Brook Flood Control Project in the Green Brook Sub-Basin of the Raritan River Basin, Middlesex, Somerset, and Union Counties in the State of New Jersey

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The Army Corps of Engineers, New York District, in coordination with the project sponsor, the New Jersey Department of Environmental Protection, has conducted a General Reevaluation Study of an authorized flood protection project in the Green Brook Sub-Basin of the Raritan River in New Jersey. A supplement to the 1980 Final Environmental Impact Statement has been prepared in association with the Reevaluation Study. Public Information meetings are scheduled for January 1997.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed actions, Feasibility Study, and DSEIS can be addressed to Mr. Bill Richardson, New York District Army Corps of Engineers, ATTN: CENAN–PL–ES, 26 Federal Plaza, New York, NY 102 –0090, (212) 264–1275.

SUPPLEMENTARY INFORMATION:

Background

1. The Green Brook Sub-Basin is a component of the Raritan River drainage basin in north central New Jersey. The Green Brook Sub-Basin has a 65 square mile watershed. The Sub-Basin is located between the Watchung Mountains and the Raritan River in Middlesex, Somerset, and Union Counties.

2. In response to resolutions of the United States Senate Public Works Committee adopted 15 September 1955 and 10 July 1972 to adopt recommendations for flood control, the U.S. Army Corps of Engineers, New York District prepared a feasibility report and a final environmental impact statement in August 1980. A project similar to "Plan A" as described in the 1980 feasibility study was authorized for construction under the Water Resources Development Act of 1986.

3. The flood problems of the Green Brook Sub-Basin result from a combination of natural hydrologic and hydraulic features coupled with dense development within the floodplains. The Green Brook flows southwest from the slopes of the Watchung Mountains. The path of the streams within the sub-basin flow from relatively undeveloped mountains through a broad flat floodplain which is largely suburban and industrialized. Streams included in the study are: Ambrose Brook, Bound Brook, Bonygutt Brook, Municipal Brook, Stony Brook, Blue Brook, Cedar Brook, and Middle Brook. Flood damages in the tri-county basin are quite severe due to the level of development within the sub-basin. Notable storms which have caused flood conditions in the sub-basin occurred in May 1968, August 1971, August 1973, July 1975, September 1979, July 1984, and October 1996.

4. The Draft Supplemental Environmental Impact Statement (DSEIS) describes the impacts of the proposed project on environmental and cultural resources in the study area. The DSEIS also applies guidelines issued by the Environmental Protection Agency, under the authority of the Clean Water Act of 1977 (Public Law 96–217). An evaluation for the proposed actions on the waters of the United States was performed pursuant to the guidelines of the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. The results of the evaluation are presented in the DSEIS.

5. This Notice of Availability is being sent to organizations and individuals known to have an interest in the project. Please bring this notice to the attention of any other individuals with an interest in this matter. Copies of the DSEIS and General Reevaluation Report are available upon request for review at the following locations:

Berkley Heights Public Library, 290 Plainfield Avenue, Berkley Heights, New Jersey.
Bound Brook Public Library, 402 Ease High Street, Bound Brook, New Jersey.
Bridgewater Public Library, Box 6700, Bridgewater, New Jersey.
Dunellen Public Library, New Market Road, Dunellen, New Jersey.
Fanwood Public Library, North Avenue and Tillotson Road, Fanwood, New Jersey.
Middlesex Public Library, 1300 Mountain Avenue, Middlesex, New Jersey.
North Plainfield Public Library, 6 Rockview Avenue, North Plainfield, New Jersey.
Piscataway Public Library, 500 Hoes Lane, Piscataway, New Jersey.
Plainfield Public Library, 8th and Park Avenue, Plainfield, New Jersey.
Scotch Plains Public Library, 1927 Bartle Avenue, Scotch Plains, New Jersey.
South Plainfield Public Library, 2840 Plainfield Avenue, South Plainfield, New Jersey.
Summit Public Library, 75 Maple Street, Summit, New Jersey.
Watchung Public Library, 12 Stirling Road, Watchung, New Jersey.

6. Requests for copies of the DSEIS may be mailed to the following address: Bill Richardson, ATTN: CENAN–PL–ES, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

Juanita H. Maberry,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 97–121 Filed 1–3–97; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection

requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 7, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1996.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Six-year Followup Study of the Student Support Services Program.

Abstract: The Planning and Evaluation Service needs to survey participants in the National Study of Student Support Services now, six years after they began postsecondary education, to evaluate the effect of receipt of Student Support Services.

Additional Information: Education needs the retention rates, transfer rates from 2-year colleges to 4-year colleges and universities, graduation rates, and the impact of Student Support Services on participants' jobs and careers. For data collection to begin April 15, 1997, this information collection should be cleared by April 1, 1997.

Frequency: One time.

Affected Public: Individuals or households; Business or other for-profit.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 9,286.

Burden Hours: 2,205.

[FR Doc. 97–119 Filed 1–3–97, 8:45 am]

BILLING CODE 4000–01–P

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 28, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 7, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of

Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1996.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants Under the Strengthening Institutions Program.

Abstract: This information is required of institutions of higher education that apply for grants under the Strengthening institutions Program, Title III, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine which applicants should receive grant funds.

Additional Information: The controlling law requires that all applicants be notified of their scores and panel recommendations by June 30. To meet this deadline, the program office requests an emergency clearance, backed by the regular process.

Frequency: Annually if applying for grant.

Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 550.

Burden Hours: 40,400.

[FR Doc. 97–00120 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1996.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Semi-Annually.

Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 99.

Burden Hours: 891.

Abstract: Ronald E. McNair Postbaccalaureate Achievement Program grantees are required to submit annual performance reports. The reports are used to evaluate project accomplishments, compliance, prior experience, and collect impact data for budget submissions and Congressional hearings.

[FR Doc. 97–118 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: January 31, 1997, 8:30 a.m. to 5 p.m.

ADDRESSES: First Floor Conference Room, 80 F St., N.W., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Eve M. Bither, Executive Director, National Educational Research Policy and Priorities Board, 80 F St., N.W.,

Washington, D.C. 20208–7564. Telephone: (202) 208–0692; Fax: (202) 219–1528. Internet: Eve__—Bither@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the Untied States on the Federal educational research and development effort; and to solicit advice form practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public.

The agenda for January 31 will consider the adoption of proposed by-laws; the approval of standards for the conduct and evaluation of research, and for assessing performance on contracts, grants, and cooperative agreements, as well as standards for reviewing and designating exemplary and promising programs. A final agenda will be available from the Board's office on January 15.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., NW Washington, D.C. 20208–7564.

Dated: December 30, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–110 Filed 1–3–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–137]

Application to Export Electric Energy; New York State Electric & Gas Corporation

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: New York State Electric & Gas Corporation (NYSEG), a regulated investor-owned utility, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 5, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 5, 1996, NYSEG filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. Specifically, NYSEG proposes to sell surplus electric energy, operating capacity, and/or installed capacity, on either a firm or interruptible basis, from its own generation sources or purchased from other electric utilities or Federal power marketing agencies. NYSEG asserts that it will schedule all exports consistent with the reliability criteria, standards, and guidelines of the North American Electric Reliability Council and the Northeast Power Coordinating Council.

NYSEG would arrange for the exported energy to be transmitted to Canada over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

Owner	Location	Voltage	Presidential permit No.
Niagara Mohawk Power Corp	Devil's Hole, NY	230 kV	PP–31
New York Power Authority	Devil's Hole, NY	230 kV	PP–30
	Niagara Falls, NY	2–345 kV	PP–74
	Fort Covington, NY	765 kV	PP–56
	Massena, NY	2–230 kV	PP–25

PROCEDURAL MATTERS: Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: John R. Tigue, Manager—Bulk Power Sales, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghamton, New York 13902–5224 (Fax: 607–762–8496) *AND* Nicholas A. Giannasca, Esq., Huber Lawrence & Abell, 605 Third Avenue, 27th Floor, New York, New York 10158 (Fax: 212–661–5759).

A final decision will be made on this applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on December 30, 1996.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–167 Filed 1–3–97; 8:45 am]

BILLING CODE 6450–01–P

National Environmental Policy Act Record of Decision for the Disposal of the S1C Prototype Reactor Plant

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: This Record of Decision has been prepared on the proposed disposal

of the defueled S1C Prototype reactor plant, located in Windsor, Connecticut, pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*), and in accordance with the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR parts 1500–1508), and Department of Energy regulations implementing NEPA procedures (10 CFR part 1021). The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has decided to promptly dismantle the defueled S1C Prototype reactor plant. To the extent practical, the resulting low-level radioactive metals will be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive wastes will be disposed of at the Department of Energy Savannah River Site in South Carolina.

Requests for further information should be directed to Mr. Christopher G. Overton, Chief, Windsor Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 393, Windsor, CT 06095, telephone (860) 687–5610.

SUPPLEMENTARY INFORMATION: The S1C Prototype reactor plant is located on the 10.8-acre Windsor Site in Windsor, Connecticut, approximately 5 miles north of Hartford. As a result of the end of the Cold War and the downsizing of the Navy, the S1C Prototype reactor plant was permanently shut down in March 1993. Removal of the spent nuclear fuel from the S1C Prototype reactor was completed in February 1995. After defueling, S1C Prototype reactor plant systems were drained and placed in a stable protective storage condition. Since the S1C Prototype reactor plant is the only activity at this small site and there is no further need for this plant, a decision is needed on its disposal.

The alternatives analyzed in detail in the Final Environmental Impact Statement were the preferred alternative of prompt dismantlement, a deferred dismantlement alternative, and a "no action" alternative of keeping the defueled S1C Prototype reactor plant in protective storage indefinitely.

The alternative that DOE is selecting, the preferred alternative, involves the prompt dismantlement of the reactor plant. All structures will be removed from the Windsor Site, and the Windsor Site will be released for unrestricted use. To the extent practical, the resulting low-level radioactive metals will be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste will be disposed of at the DOE Savannah River Site in South Carolina. There will be an estimated total of twenty-three radioactive material shipments to the Savannah River Site and to commercial recycling facilities. One or two of the shipments to the Savannah River Site will be by rail and the remainder of the radioactive material shipments will be by truck. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S1C Prototype reactor plant low-level waste fall within the projections of Naval Reactors waste provided to the Savannah River Site, which were included and analyzed in the Savannah River Site Waste Management Final Environmental Impact Statement dated July 1995.

The deferred dismantlement alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage for 30 years before dismantling it. Deferring dismantlement for 30 years would allow nearly all of the gamma radiation within the reactor plant to decay away.

The "no action" alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage indefinitely. This alternative would leave long-lived radioactivity at the Windsor Site indefinitely.

Naval Reactors distributed the Draft Environmental Impact Statement on the S1C Prototype Reactor Plant Disposal in June 1996. Comments from 28 individuals and agencies were received in either oral or written statements at a public hearing or in letters. Nearly all of the commenters expressed a preference for the prompt dismantlement alternative. The Final Environmental Impact Statement, which includes responses to public comments, has been issued and distributed to interested parties.

From an environmental perspective, no single alternative stands out as the environmentally preferred alternative. The no action alternative is the least preferable since it would leave long-lived radioactivity at the Windsor Site indefinitely and does not provide for eventual re-use of the Windsor Site. Regarding prompt dismantlement and deferred dismantlement, neither alternative stands out in this comparison, and neither is considered on balance to be environmentally preferred. Deferred dismantlement has the advantage of lower occupational radiation exposure while still providing for eventual unrestricted release of the Windsor Site. Prompt dismantlement has the advantage of not requiring long term commitment of the land for surveillance and maintenance of the S1C Prototype reactor plant. The occupational radiation exposure associated with the prompt dismantlement alternative is comparable in magnitude to the radiation exposure routinely received during operation and maintenance of Naval prototype reactors. Also, the impacts associated with the prompt dismantlement alternative have a higher degree of certainty than those associated with actions thirty years in the future. Since prompt dismantlement will result in unrestricted release of the Windsor Site at the earliest time with little occupational exposure risk to the workers, and given that the impacts associated with prompt dismantlement have a higher degree of certainty, Naval Reactors has decided to proceed with the preferred alternative of prompt dismantlement.

As discussed in the Final Environmental Impact Statement, Naval Reactors implements a large number of conservative engineering practices in its operations. These conservative engineering practices will serve to assure that environmental impacts will be very small. No additional mitigative measures have been identified which are needed to further reduce the small impacts which were described in the Final Environmental Impact Statement. Accordingly, all practicable means to avoid or minimize environmental harm from the preferred alternative have been adopted.

Issued at Arlington, VA this 30th day of December 1996.

F.L. Bowman,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 97–169 Filed 1–3–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of CFM Majestic Inc. from the DOE Vented Home Heating Equipment Test Procedure. (Case No. DH–008)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to CFM Majestic Inc. from the existing Department of Energy (DOE or Department) test procedure

regarding pilot light energy consumption and weighted average steady-state efficiency for its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters.

Today's notice also publishes a "Petition for Waiver" from CFM Majestic Inc. CFM Majestic Inc.'s Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment test procedure relating to the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE) and the calculation of weighted average steady state efficiency of its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters. CFM Majestic Inc. seeks to delete the required pilot light measurement (Q_p) in the calculation of AFUE when the pilot is off, and to test at a minimum fuel input rate of two-thirds of the maximum fuel input rate instead of the specified 50 percent ± 5 percent of the maximum fuel input rate in the calculation of AFUE. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 5, 1997.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. DH–008, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

William W. Hui
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Mail Stop EE–43
Forrestal Building
1000 Independence Avenue, SW.,
Washington, DC 20585–0121
(202) 586–9145

Eugene Margolis, Esq.
U.S. Department of Energy
Office of General Counsel
Mail Stop GC–72
Forrestal Building
1000 Independence Avenue, SW.,
Washington, DC 20585–0103
(202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making informed purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding § 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. Title 10 CFR Part 430, § 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. Title 10 CFR Part 430, § 430.27(g). An Interim Waiver remains in effect for a period of 180 days, or until DOE issues a determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 31, 1996, CFM Majestic Inc. filed an Application for Interim Waiver and a Petition for Waiver regarding (a) pilot light energy consumption and (b) weighted average steady state efficiency.

CFM Majestic Inc. seeks an Interim Waiver from the DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, that requires measurement of energy input rate of the pilot light (Q_P), and the use of this data in section 4.2.6 for the calculation of AFUE, where:

$$AFUE = (4400\eta_{ss}\eta_u Q_{in\text{-}max})/(4400\eta_{ss}Q_{in\text{-}max} + 2.5(4600)\eta_u Q_P)$$

Instead, CFM Majestic Inc. requests that it be allowed to delete Q_P and accordingly, the $(2.5(4600)\eta_u Q_P)$ term in the calculation of AFUE. CFM Majestic Inc. states that instructions to turn off the transient pilot by the user when the heater is not in use are in the User Instruction Manual and on a label adjacent to the gas control valve. Therefore, the additional energy savings that result when the pilot is turned off ($Q_P = 0$) should be credited. Since the current DOE test procedure does not address pilot light energy savings, CFM Majestic Inc. asks that the Interim Waiver be granted.

CFM Majestic Inc. also seeks an Interim Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O, which requires steady state efficiency of manually controlled vented heaters with various input rates to be determined at a fuel input rate of 50 percent ± 5 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency needed in the calculation of AFUE. Instead, CFM Majestic Inc. requests that it be allowed to determine steady state efficiency, weighted average steady state efficiency, and AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate for its manually controlled vented heaters which do not adjust to an input rate as low as 50 percent ± 5 percent. Since the current DOE test procedure does not address steady state testing for manually controlled vented heaters with various input rates at fuel input rates other than 50 percent ± 5 percent of the maximum fuel input rate, CFM Majestic Inc. asks that the waiver be granted.

Previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control and allowance to determine weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate no greater than two-thirds of the maximum fuel input rate instead of the specified

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50 percent ± 5 percent of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Incorporated, 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; Superior Fireplace Company, 61 FR 17885, April 23, 1996; and Vermont Castings, Inc., 61 FR 57857, November 8, 1996.

Thus, it appears likely that CFM Majestic Inc.'s Petition for Waiver for pilot light and weighted average steady state efficiency for home heating equipment will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting CFM Majestic Inc. an Interim Waiver for its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters. CFM Majestic Inc. shall be permitted to test its models A120, A125, A130, A132, A230, A232, AB132, D130, D132, D230, D232, D332, D334, D336, DR333, DR336, DR339, DT336, DT339, DT343, DVR33, DVR36, DVR39, DVRS3, DVT36, DVT39, DVT43, DVTS2, FS22, FS32, FSDV22, FSDV32, HE25, HE32, HEB32, and HEDV32 vented heaters on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix O, with the modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency ($\eta_{SS\text{-}WT}$) is:

(1) At 50 percent ± 5 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that 50 percent ± 5 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

Where:

η_u = as defined in section 4.2.5 of this appendix.

(iv) With the exception of the modification set forth above, CFM Majestic Inc. shall comply in all respects with the procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy. The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

CFM Majestic Inc.'s Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment relating to the pilot light and weighted average steady state efficiency. CFM Majestic Inc. seeks (a) to exclude the pilot light energy consumption in the calculation of AFUE, and (b) to determine the weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate instead of the specified 50 percent ± 5 percent of the maximum fuel input rate. Pursuant to paragraph (b) of Title 10 CFR Part 430.27, the Department is hereby publishing the "Petition for Waiver."

The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC December 27, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

October 31, 1996.

The Honorable Christine Ervin,
Assistant Secretary for Energy Efficiency & Renewable Energy,
United States Department of Energy,
Forrestal Building,
1000 Independence Avenue, S.W.,
Washington, D.C. 20585,
USA.

Dear Madame: We would like to inform you that our name was recently changed to reflect the current growth in our company. Accordingly, CFM International Inc. which was previously granted with the same waivers mentioned below was changed to CFM Majestic Inc.

Furthermore, CFM Majestic Inc. now have four subsidiaries namely. The CFM Majestic Products Company; The Majestic Products Company; Vermont Casting Inc.; and Timberline Gas Logs Inc.

CFM Majestic Inc. models DV32, DV34, DV36, DV40, DVS2, DVS3, FA20, FS30, FSDV30, HE30, HEDV30/HEDV30–1 which were granted waivers for pilot energy consumption relief for manually controlled heaters in the calculation of Annual Fuel Utilization Efficiency (AFUE) and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates (please refer to **Federal Register** Notice dated Dec. 28, 1995 & April 19, 1996—Case No. DH–004)—have been upgraded with new logs, new ceramic front burner and new model number namely DVR33, DVR36, DVT36, DVT43, DVTS2, DVRS3, HE25, FS32, FSDV32, HE32, HEB32, HEDV32 respectively. However, the same transient pilot and manually controlled gas valve which were petitioned and granted in the aforementioned waivers were used to models DVR33, DVR36, DVT36, DVT43, DVTS2, DVRS3, HE25, FS32, FSDV32, HE32, HEB32, HEDV32.

Also, we would like to inform you that models HE40 and FADV20 which were granted waivers for pilot energy consumption relief for manually controlled heaters in the calculation of Annual Fuel Utilization Efficiency (AFUE) and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates (please refer to **Federal Register** Notice dated Dec. 28, 1995 & April 19, 1996—Case No. DH–004) will not be manufactured, hence waivers previously granted to these models are no longer required.

CFM Majestic Inc. would like to submit a Petition for Waiver and an Application for Interim Waiver pursuant to Title 10 Code of Federal Regulations 430.27, as amended on November 14, 1986 for models DVR33, DVR36, DVT36, DVT43, DVTS2, DVRS3, HE25, FS32, FSDV32, HE32, HEB32, HEDV32.

Accordingly, CFM Majestic Inc. would like to request acceptance of two waivers from the test procedures which appears at 10 CFR, part 430, subpart B, Appendix O—Uniform

Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment for gas appliance models included in this request. Below are excerpts from Vermont Castings Inc.'s letter to The Honorable Christine Ervin dated July 7, 1995—explaining in detail the particulars regarding the waivers requested above..

Waiver Request No. 1

This request refers to section 3.1.1—Gas fueled vented home heating equipment and section 4.2.4—Weighted average steady state efficiency. These sections state that for manually controlled heaters with various input rates the weighted average steady state efficiency is measured at a fuel rate input rate of plus or minus 5 percent of 50 percent of the maximum fuel input rate. All the gas appliance models included in this request utilize a combination gas control which has a variable pressure regulator set point which allows the user to easily vary the manifold pressure of the appliance within a fixed range of pressures. Specifically the range of manifold pressure adjustment for Natural Gas is 3.5" w.c. to 1.7" w.c. and for Propane Gas from 10.0" w.c. to 4.9" w.c. These pressure ranges allow the user to vary the fuel input rates on all models included in this request from maximum input to minimum input which is 70% of maximum input and it is therefore not possible to obtain a rate of 50% of the maximum input when the heater is operated according to Manufacturer's Installation Operating Manual. Since the 50% rate specified in the Regulations can not be normally achieved on these products we request that this requirement be waived for the gas appliances included in this request.

CFM Majestic Inc. requests to utilize the test procedure proposed by DOE on August 23, 1993—58 FR 44538. Accordingly, we request to calculate the weighted average steady state efficiency using the minimum obtainable fuel input rate provided this rate is no greater than ⅔ the maximum input rate of the heater. Specifically, the models included in this request will be tested at ⅔ of maximum fuel input rate.

The current test procedure does not credit CFM Majestic Inc. for the additional energy savings that occur when the minimum fuel input rate is limited to 70% of maximum input rate. Test data shows a significant increase in the actual overall AFUE when compared to results obtained at a rate of 50% of maximum fuel input rate. Copies of confidential test data confirming the energy savings will be forwarded to you upon request.

Waiver Request No. 2

This request refers to section 3.5—Pilot Light Measurement and section 4.2.6—Annual Fuel Utilization Efficiency (AFUE). These sections require the measurement of energy input to the pilot light (Q_p) and the use of this data in the calculation of AFUE for the energy consumed by the pilot light when the heater is not in operation.

All gas appliance models included in this request are designed with a transient pilot which is to be turned off by the user when the heater is not in use. The control knob on the combination gas control in these heaters has three positions—"OFF", "PILOT" and "ON". Gas flow to the pilot is obtained by rotating the control knob from "OFF" to "PILOT", depressing the knob, holding in, and pressing the piezo ignitor. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the "ON" position. The main burner can then be ignited by moving an "ON/OFF" switch to the "ON" position. Since the current test procedure does not credit CFM Majestic Inc. for the additional savings that occur when the pilot is turned off, we request the requirement to include energy input to the pilot light in AFUE calculation be waived for these appliances.

CFM Majestic Inc. requests to utilize the test procedure proposed by DOE on August 23, 1993—58 FR44538. Specifically, we request the term involving the pilot light energy consumption be deleted from the calculation of AFUE for all gas appliance models included in this request. This results in an AFUE which is equal to the heating seasonal efficiency.

Test data shows a significant increase in the actual overall AFUE when compared to results obtained when energy input to the pilot is included in the overall AFUE. Copies of confidential test data confirming the energy savings will be forwarded to you upon request.

CFM Majestic Inc. is confident that both of these waivers will be granted, as similar waivers have been granted in the past to Vermont Casting Inc., CFM International Inc. and other U.S. manufacturers. Also, the revisions to the test procedures which we request have been published by DOE as proposed changes on August 23, 1993—58 FR 44538.

Any question regarding this subject, please contact me at the above address. Your help is highly appreciated. Thank you.

Yours Truly,

Ferdinand M. Francisco,

Lab. Manager, CFM Majestic Inc.

[FR Doc. 97–168 Filed 1–3–97; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP97–158–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

December 30, 1996.

Take notice that on December 17, 1996, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–158–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to upgrade the Indiana Gas Company, Inc.'s (Indiana Gas) Bloomingdale Meter and Regulation Station, an existing delivery point located in Parke County, Indiana. Panhandle makes such request under its blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to replace certain inefficient and undersized facilities with more efficient upgraded facilities so as to allow increased pressure at this delivery point. The proposed facility upgrade is classified as minor, above ground modifications, which will include the upgrade of internal components of the regulators, such as removing the current 500 psi maximum spring in the pilot of each of the four 3-inch Mooney regulators and replacing it with a 400–900 psi range spring. It is stated that such facility upgrade is proposed to increase the maximum capacity of the Bloomingdale meter station to approximately 23,700 Mcf per day, and increase the operating pressure from 275 psig to 500 psig. Panhandle indicates that the increased service availability will be provided within Indiana Gas' existing entitlements.

The estimated cost of upgrading the proposed facilities is $5,000. Panhandle states that Indiana Gas will reimburse the cost of the facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–113 Filed 1–3–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5672–8]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency Certification of Equipment for the Urban Bus Retrofit/Rebuild Program.

SUMMARY: The Agency received a notification of intent to certify equipment signed December 13, 1995, from Engine Control Systems Ltd. (ECS) with principal place of business at 165 Pony Dr., Newmarket, Ontario, Canada L3Y7V1 for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401–85.1415. The equipment is applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-cycle engines originally installed in an urban bus from model year 1979 to model year 1993, exclusive of the DDC 6L71TA 1990 model year engines, all alcohol fueled engines, and models which were manufactured with particulate trap devices (see Table A). On August 8, 1996 EPA published a notice in the **Federal Register** that the notification had been received and made the notification available for public review and comment for a period of 45 days (60 F1 41408). EPA has completed its review of this notification, and the comments received, and the Director of the Engine Programs and Compliance Division has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment.

The certified equipment provides 25 percent or greater reduction in exhaust emissions of particulate matter (PM) for the engines for which it is certified.

The ECS notification, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, category XIV–A, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The effective date of certification is established in a letter to ECS dated December 9, 1996 for the equipment described in the ECS notification. This certified equipment may be used immediately by urban bus operators. Operators who have chosen to comply with program 1 or program 2 can utilize this equipment or other equipment that is certified for any engine that is listed in Table A that undergoes rebuild.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance Programs Group, Engine Program & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

By a notification of intent to certify signed December 13, 1995, ECS applied for certification of equipment applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-cycle engines originally installed in an urban bus from model year 1979 to model year 1993, exclusive of the DDC 6L71TA 1990 model year engines and models which were manufactured with particulate trap devices or alcohol fueled (see Table A). The notification of intent to certify states that the equipment being certified is an oxidation converter muffler (OCM). The OCM contains an oxidation catalyst developed specifically for diesel applications, packaged as a direct replacement for the muffler. The application demonstrates that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel engines relative to an original engine configuration with no after treatment installed. Certification is applicable to engines that are rebuilt to original specifications, or in-use engines that are not rebuilt at the time the OCM is installed provided the engine meets engine oil consumption limits specified by ECS. ECS is also certifying a 25 percent reduction in PM for engines that are retrofit/rebuilt with certified rebuild kits that do not include after treatment devices if the OCM is installed at the same time the retrofit/rebuild occurs. Currently, this applies to the DDC retrofit/rebuild kit which was certified on October 2, 1995 (60 FR 51472) for the 6V92TA MUI model and to the kit certified on July 19, 1996 (61 FR 37738) for the 6V92TA DDEC II model.

Certification of the OCM does not trigger any new program requirements for applicable engines, because the requirement to use equipment certified to achieve at least a 25% reduction has already been triggered for these engines.

Using engine dynamometer testing in accordance with the Federal Test Procedure for heavy-duty diesel engines on a 1991 DDC 6V92TA DDEC II engine, ECS documented a 26% reduction in PM emission after retrofit. The test results for this engine with the certified retrofit equipment installed meet applicable Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NOx), and smoke emissions. In chassis testing performed over the Central Business District (CBD) sequence on a 1987 DDC 6V71N engine, ECS demonstrated a 42% PM emission reduction after retrofit. Using chassis testing performed over the New York Composite (NYC) sequence on this same engine, ECS demonstrated a 37% reduction in PM emission.

Table A provides the PM emission certification levels for the ECS equipment for the specified models and model years.

TABLE A.—CERTIFICATION LEVELS

Engine models	Model year	PM Level [1] with OCM	PM Level [2] with OCM and DDC Certified Rebuild kit	Code/Family
6V92TA MUI	1979–87	0.38	0.22	All.
	1988–1989	0.23	0.17	All.
6V92TA DDEC I	1986–87	0.23	N/A	All.
6V92TA DDEC II	1988–90	0.23	0.17	All.
	1991	0.23	N/A	
	1992–93	0.19	N/A	All.

TABLE A.—CERTIFICATION LEVELS—Continued

Engine models	Model year	PM Level [1] with OCM	PM Level [2] with OCM and DDC Certified Rebuild kit	Code/Family
6V71N	1973–89 ..	0.38	N/A	All.
6V71T	1985–86 ..	0.38	N/A	All.
6L71TA	1988–89 ..	0.23	N/A	All.
6L71TA DDEC	1990–91 ..	0.23	N/A	All.

[1] The original PM certification levels for the 1991 6V92TA DDEC II, and 6L71TA DDEC engine models are based on Family Emission Limits (FELs)under EPA's averaging, banking and trading program (AB&T). These limits are higher than the 1991 PM standard of 0.25 g/bhp-hr. The PM level listed in this table for the engines that are equipped with the OCM provide at least a 25% reduction from the FEL. The 1992 to 1993 6V92TA DDEC II engine models were also certified using FELs under the AB&T program and likewise the PM levels for the engines equipped with the OCM represent at least a 25% reduction from the FEL.

[2] For 6V92TA MUI and 6V92TA DDEC II models that are rebuilt using a certified DDC emissions retrofit kit, ECS is certifying the PM engine emissions to reduced levels as provided in Table A, provided the OCM is installed at the same time the rebuild with the certified DDC upgrade kit takes place. The DDC upgrade kit certification notifications were published in the **Federal Register** on October 2, 1995 (60 FR51472) and July 19,1996 (61 FR37738) respectively.

Under Program 1, all rebuilds or replacements of applicable engines must use equipment certified to reduce PM levels by at least 25 percent. This requirement will continue for the applicable engines until such time as it is superseded by equipment that is certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars).

ECS has established PM certification levels as specified in Table A for this equipment. Operators who choose to comply with Program 2 and install this equipment, will use the specified PM emission levels in their calculation of fleet level attained.

II. Summary and Analysis of Comments

EPA received comments from two parties on this notification. The Detroit Diesel Corporation (DDC) had a number of comments in the following areas: test engine selection, extrapolation of test results, reductions in non-volatile particulate matter, certification of equipment for use on different stages of engine rebuild, certified emission levels, incomplete parts listing and representivity of test data. The Engelhard Corporation commented on the following areas: worst case demonstration, incomplete parts listing, representivity of test data to cover all engines and types, and the ability of the OCM to reduce PM emissions.

DDC stated that the test configuration of the 1991 DDC 6V92TA DDEC II engine was not clearly documented and that the original configuration of the test engine was a 1992 code 4T engine intended for use with a particulate trap. DDC questioned the relevance of testing performed on an engine with a unique calibration originally intended for use on trap equipped engines. DDC noted that test data it developed during new engine certification testing for the 1991 4C rating (a non-trap configuration) had a total PM level of 0.218 g/bhp-hr with a soluble fraction (SOF) of 21.5%. DDC questioned how this engine could be considered "worst case". Given that oxidation catalysts primarily reduce the SOF portion of PM, DDC questioned whether the OCM could reduce PM emissions on the 1991 code 4C rating by 25% when the entire SOF fraction is only 21.5%.

Based on the information presented by ECS, it is unclear whether the engine rating at the time of testing was in the 4T or the 4C configuration. It was not clear from ECS that the engine had been converted from it's original 4T rating. Also, background historical information for this engine could not be provided. Since there is nothing in the record which indicates that the engine was converted to the 4C configuration, the Agency assumes that it was tested in the original 4T configuration. Therefore, it is apparent that DDC's comments relative to SOF content of the 4C configuration relative to the test performed on the 4T configuration would not be relevant in the certification being discussed. However, it is noted that because an oxidation catalyst mainly reduces only the SOF portion of PM, it would not be possible to obtain a 25% reduction in PM for any engine for which the SOF portion of PM is less than 25%. EPA requests information from industry and the general public with regard to the percentage of SOF that particular in-use engines produce. This information would be considered for the certification being discussed in this notice and in regard to the previous certifications of oxidation catalysts under the urban bus retrofit/rebuild program.

In regard to DDC's and Engelhard's contention that the 1991 6V92TA DDEC II engine would not represent the worst case according to the regulations, EPA agrees. However, the 1987 6V71N does qualify as a "worst case" engine for testing purposes under the urban bus retrofit regulations, and test results from this engine provide the basis for the certification discussed herein.

DDC questioned the relevancy of the chassis dynamometer test results obtained on the 6V71N engine using the Central Business District (CBD) and New York Composite (NYC) cycles and noted that EPA should not rely on the chassis test results in assessing whether the OCM technology meets requirements to reduce PM emission by 25%. In response, the regulations allow a certifier to use chassis based test procedures representative of typical urban bus operation to show compliance with the 25% or greater PM reduction requirement. The CBD simulates stop and go performance of urban buses in the city and the NYC was incorporated to represent some higher average speeds not seen in the CBD which an urban bus may on occasion encounter. After review, EPA found the proposed chassis testing plan to be acceptable and approved the use of chassis testing to demonstrate the 25% reduction in PM.

EPA agrees with the comment from Engelhard and DDC that it is tenuous to base certification of OCMs, intended for engines using non-particulate trap ratings, on testing where the 4T-trap based rating was utilized. However, ECS provided acceptable chassis test results performed on a non-trap engine that demonstrate reduction of PM by at least 25%.

Engelhard also stated that the reduction of 26% demonstrated on the

6V92TA DDEC II engine does not demonstrate a sufficient margin beyond the 25% level to account for in-use deterioration of the catalyst over the 150,000 mile performance warranty period. EPA finds that the results of this test are not conclusive because the engine configuration tested apparently does not represent an urban bus engine that could be used to demonstrate PM reduction under the retrofit/rebuild program since it was apparently in a calibration for a particulate trap equipped engine. However, chassis testing data presented by ECS shows a decrease in PM of at least 37% providing ample margin beyond the required 25% reduction.

In the notification, ECS sought to use the OCM kit on engines which were not in need of rebuild at the time of OCM installation based on a review of specified engine conditions. DDC commented that certification should be approved only with respect to engines that have been rebuilt to original specifications as the retrofit/rebuild requirements do not apply until the operator rebuilds an engine. DDC agreed that under Program 2 operators could conceivably install certified add-on equipment without rebuilding the base engine and use the certified emission level in their fleet averaging, but expressed concerns that the engine may have worn cylinders or fuel injection components in need of rebuild and, as a result, the engine out PM emissions may be high. DDC stated that engine wear conditions would create difficulty in achieving the certification level when applying the OCM to an engine which has not been rebuilt.

DDC's claim that program requirements do not apply until an operator rebuilds an engine concerns compliance programs. Operators choosing to comply with Program 1 are not required to take any action until an affected engine is rebuilt or replaced. However, operators choosing to comply with Program 2 must ensure their fleet is equal to or less than their target fleet level at all times. Thus, program requirements apply continuously to Program 2 operators. In addition, if an operator desires to be able to change between programs, the regulations require that both programs be complied with prior to the switch.

While it is true that Program 1 requirements become effective when the engine is rebuilt, EPA encourages the installation of certified equipment prior to the time it is required under the regulations in accordance with the manufacturer's instructions.

In regard to DDCs' concern that engine wear needs to be evaluated prior to installing this equipment, ECS has modified its application to remove the language referring to "specified engine calibrations" which DDC stated was vague and unenforceable and will instead require that operators determine the oil consumption rate for an engine to determine engine wear and condition prior to installing the OCM. If the rate of oil consumption exceeds 1.5 quarts of consumption per 10 hours of operation, ECS will require that the engine be rebuilt prior to OCM installation. Furthermore, ECS is responsible for meeting the performance warranty for a period of 150,000 miles for each engine under this certification. EPA believes that operators will rebuild engines when necessary in order to keep their fleet in reasonable operating condition. The decision to rebuild will not be affected by the option to install a catalyst. Rather, operators will only choose to install the catalyst in order to reduce emissions, and not in place of a needed rebuild. It is noted that the chassis testing data presented demonstrates a 37% to 42% reduction in the case where the engine was rebuilt. Based on these levels of reduction, it is apparent there should be ample margin between the in-use emissions of an engine that the operator finds is not in need of a rebuild to reasonably project that the levels stated in Table A can be met.

DDC questioned reported reductions in the non-volatile PM fraction with the OCM, noting that it is commonly accepted that oxidation catalysts are effective in oxidizing volatile particulate, but have little effect on the non-volatile component. In response, ECS explains that effective diesel oxidation catalysts will have some activity towards reduction of the non-volatile or insoluble portion of diesel particulate. This activity allows the catalyst to clean itself from carbon build-up and prevents catalyst fouling, particulate build-up and eventual plugging of the substrate. ECS also stated that it is important to recognize that, in the measurements taken, the volatile organic fraction and non-volatile organic fractions were made using the direct filter injection gas chromatography analysis DFI/GC technique developed by Southwest Research Institute. Using this procedure some small amount of high molecular weight solubles that did not volatize may exist in the unvolatized particulate sample which would account for the reduction seen. ECS stated that since diesel engine oxidation catalysts all operate on the same basic principle, the points being made relative to volatile vs. non-volatile components of urban bus PM emissions apply to the industry as a whole and should not be confined to the ECS certification review process. EPA concurs that this issue should be addressed on an industry-wide basis. Further, EPA does not have sufficient information to resolve this issue based on the comments submitted. Therefore, EPA requests that industry and the public provide any additional information on this matter so that resolution may be reached in the future.

DDC and Engelhard commented that the rebuild on the 6V71N engine appeared to be incomplete. DDC noted that the rebuild performed did not include fuel injectors, piston rings, or cylinder liners all of which would be replaced during a normal rebuild and which, if not replaced, would cause inflated PM levels. DDC stated that if the Agency is to rely on the chassis test data for certification of the OCM, it should first make certain that it was properly rebuilt to the original engine configuration prior to the testing. In response, ECS has provided additional documentation that the piston rings, cylinder liners and injectors were replaced at the time of rebuild and that the engine was rebuilt to standard specifications. The failure to include this in the original notification materials was an oversight.

With regard to certified emission levels, DDC commented that the proposed certification levels do not represent a full 25% reduction. For example, for the 1991 6V92TA DDEC engine codes 3C and 4C, the original certification testing yielded PM emission levels of 0.25 and 0.22 g/bhp-hr, respectively, and the proposed certification level of 0.23 g/bhp-hr given in Table A represents only a 8% reduction on average from the original certification test levels.

In response, the pre-rebuild levels listed in section 85.1403 (c)(1)(iii)(A) were determined by EPA based on certification results or engineering data and judgement. In Table A, of today's notice, ECS has listed the PM levels to which it is certifying for listed models and years. In a number of instances the certification levels shown represent a 25% reduction from the pre-rebuild levels that were listed in section 85.1403(c)(1)(iii)(A) or the regulations. In other instances, the number reflects a 25% reduction from the level that was certified by DDC during new engine certification.

In the case of the 1991 6V92TA DDEC II 4C engine configuration, the new engine certification testing by DDC yielded a PM emission level of 0.22 g/bhp-hr. However, DDC certified the engine to a family emission level (FEL)

of 0.30 g/bhp-hr. The certification level of 0.23 g/bhp-hr PM provides for more than a 25% reduction from the original DDC certification level or FEL for this engine and from the pre-rebuild level of section 85.1403(c). In previous urban bus retrofit/rebuild certifications, EPA has based certification on the FEL which the original manufacturer certified to meet in-use. In fact, the ECS certification levels for the models listed are identical to those for which oxidation catalyst kits have been certified to date. In declaring a FEL, the engine manufacturer states the emission level it will achieve in-use. That is to say, even though the certification test level is determined, the engine manufacturer declares a different emission level that it can meet in-use. Because the urban bus retrofit/rebuild program applies to in-use buses, and since the rebuild certifier is certifying that a rebuilt engine with the retrofit equipment will meet the rebuild certification level during the warranty period, it makes sense to apply the in-use certification level or FEL as a basis for the reduction. To require certifiers of urban bus retrofit/rebuild equipment to reduce emissions from an initial level that the original manufacturer did not use during the original certification would not be reasonable. As stated, EPA used the FEL as a basis for the 25% reduction in previous decisions. EPA does not believe it would be reasonable to change the basis for the 25% reduction as DDC has requested.

DDC noted that in order to ensure optimum engine performance, emissions durability and fuel economy, DDC specifies maximum exhaust back pressure limits for all DDC engines. DDC noted that there was a small backpressure increase during testing and questioned whether the catalyst used in testing had been aged prior to the test. DDC also noted that the instructions to be given to operators did not include backpressure specifications or procedures for checking backpressure after the catalyst is installed. ECS has stated that careful attention will be paid to optimizing the exhaust backpressure to a level comparable to the original muffler. The catalyst used during testing was aged or degreened to provide representative in-use performance. ECS stated that it does not anticipate that checking the backpressure should be required under normal circumstances. However, the converter mufflers certified in this notice and produced by ECS include a port to allow in-use backpressure checks and ECS has developed a procedure for checking and cleaning the converter muffler that will be distributed to operators who purchase the kit.

DDC commented that EPA should seek assurances that the certified hardware will be available for all engine bus combinations. ECS has indicated it has completed design work on the majority of converter mufflers required for this market. If any specific design should be encountered for which a converter muffler cannot be provided which will meet the performance criterion, it will be reported to EPA. This coupled with the fact that other companies have already certified equipment for the engines covered under this application should provide adequate coverage of the marketplace.

Engelhard commented that because thermal insulation was required on the pre-catalyst exhaust on testing performed on the 6V92TA DDEC II engine, insulation should be required on all pre-catalyst components for ECS converter mufflers to be covered by certification. In response, ECS explained that no insulation was used during the chassis tests performed on the 6V71 engine for which PM reductions were demonstrated. Insulation of the exhaust system is not necessary for OCM installation on 6V71, 6V92 and 6L71 mechanical engine families as the exhaust temperatures are sufficient for proper unit function. For the engine dynamometer testing performed on the 6V92TA DDEC II engine, the entire exhaust system was insulated. ECS subsequently performed additional testing which indicates that the temperature loss between the turbocharger and converter muffler is insignificant and that insulation on the piping between the turbocharger outlet and the converter muffler is not needed. However, ECS has determined that the actual converter muffler must be insulated in order to maintain minimum catalyst temperature for the DDEC II engine. Accordingly, ECS has designed all converter mufflers for use on these engines to include either insulation located within the muffler shell or via an external wrap/blanket over the muffler casing.

Engelhard raised a concern based on the different exhaust temperature profiles and engine out emissions that exist relative to engines that are naturally aspirated, turbo charged or turbo-charged after-cooled engines. Engelhard questioned whether an engine that achieves a 25% reduction on a naturally aspirated engine could achieve the same on a turbo-charged engine. Engelhard stated that without a demonstration that 25% reduction in total PM could be obtained on all versions of the 6V71, engine certification should not be granted for all engines. Unfortunately, while Engelhard raised some interesting questions in this area, it did not provide any data or information on catalyst efficiency as it relates to different temperatures that could be used to substantiate its claim. At this point, EPA does not have information which would lead it to conclude that the ECS catalyst would not be able to provide the 25% reduction on the models it has identified. However, it is noted that in testing the 1991 6V92TA DDEC II engine, ECS provides information that the OCM reduces emissions by 26% on an engine where the temperature reached a maximum of 320 degrees Centigrade. These results address the concern relative to the ability of the OCM to reduce PM emissions on engines that operate at the lower end of the temperature spectrum. In regard to the issue of differing emission rates, EPA needs information to conclusively deal with this on an industry-wide basis and EPA welcomes such information from the public and industry.

DDC commented that certification of the ECS equipment should not cause DDC to have additional liability. DDC cited language in the preamble to the final rule published in the **Federal Register** on April 21, 1993, page 21381. DDC's concern was centered around the following statement, "* * * However, if an engine manufacturer supplies retrofit/rebuild equipment, it is responsible for the emissions performance of the equipment." DDC suggested that it was EPA's intent to make engine manufacturers accept additional liability for rebuild hardware which they sell and which is subsequently used in a rebuild which has been approved under the program. The statement simply means that if the engine manufacturer supplies retrofit equipment as part of a certified rebuild kit (such as the DDC certified upgrade kit) then the manufacturer is responsible for the warranties associated with the retrofit/rebuild regulations. If, on the other hand, the manufacturer sells equipment for rebuild through its normal sales process, and such sale is not part of a certified kit with which the manufacturer is affiliated, the manufacturer is not liable for equipment performance beyond its normal liability. That is to say, for equipment not sold by the manufacturer to be included in a certified kit under the retrofit/rebuild program, the manufacturer is not responsible for the defect warranty or the performance warranty that is associated with the retrofit/rebuild program. The retrofit/rebuild equipment

certifier, however, is responsible for these warranties.

III. Certification Approval

The Agency has reviewed this notification, along with comments received from interested parties, and finds that the equipment described in this notification of intent to certify:

(1) Reduces particulate matter exhaust emissions by at least 25 percent, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) Will not cause an unreasonable risk to the public health, welfare, or safety;

(3) Will not result in any additional range of parameter adjustability; and,

(4) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415). The Agency hereby certifies this equipment for use in the urban bus retrofit/rebuild program as discussed below in section IV.

IV. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either Program 1 or Program 2, but must be properly applied. Currently, operators having certain engines who have chosen to comply with Program 1 must use equipment certified to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's **Federal Register** notice certifies the above-described ECS equipment as meeting that PM reduction requirement. Only equipment that has been certified to reduce PM by 25% or more may be used by operators with applicable engines who have chosen Program 1. Urban bus operators who choose to comply with Program 1 may use the certified ECS equipment (or other certified equipment) until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines.

Operators who choose to comply with Program 2 and use the ECS equipment will use the appropriate PM emission level from Table A when calculating their fleet level attained (FLA).

As stated in the program regulations (40 CFR 85.1400 through 85.1415), operators are required to maintain records for each engine in their fleet to demonstrate that they are in compliance with the program requirements beginning January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–41 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5673–4]

Notice of Federal Advisory Committee Meeting, ORD Board of Scientific Counselors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development's (ORD), Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting, January 13–14, 1997, at the Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, Virginia. On Monday, the meeting will begin at 1:00 p.m. and will recess at 5:00 p.m., and on Tuesday, January 14, the meeting will begin at 8:00 a.m. and will adjourn at 4:30 p.m. All times noted are Eastern Time. Agenda items include, but are not limited to, BOSC Operating Principles, Laboratory Peer Review Discussion, ORD Research Plan Evaluation: Methods Development and Process and Procedures for Formulating Research Plans. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton (202) 260–0929. The meeting is open to the public. Any member of the public wishing to make comments at the meeting, should contact Shirley Hamilton, Designated Federal Official, Office of Research and Development (8701), 401 M Street, SW., Washington, DC 20460; by telephone at (202) 260–0468. In general, each individual making an oral presentation will be limited to a total time of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Official, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC8701), 401 M Street, SW., Washington, DC 20460, 202–260–0468.

Dated: December 24, 1996.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–104 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

December 24, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 7, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0599.

Title: Implementation of Sections 3(n) and 332 of the Communications Act.

Form No.: N/A.

Type of Review: Revision of an existing collection.

Respondents: State or local governments; Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 85.

Estimated Time Per Response: 1.66 hours.

Total Annual Burden: 141 hours.

Needs and Uses: Collection of information complies with creation of regulatory symmetry among similar mobile services. The information is necessary to ensure that commercial mobile radio service is made available to the public at reasonable rates and on resonable terms in a competitive marketplace. The information is used by Commission staff in carrying out its duties under the Communications Act. This collection is being revised to eliminate a one-time collection requirement and a collection requirement that must have been filed by August 10, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–96 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

December 27, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket 96–98 First Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit; State, Local and Tribal Governments.

Number of and Estimated Time for Response are as follows:

Type of information submitted	Responses	Time per response	Total burden
a. Submission of Information Necessary to Reach Agreement	255	100 hours	25,500 hours.
b1. Submission of Agreements to the State Commission (new)	255	1 hour	255 hours.
b2. Submission of Agreements to the State Commission (pre-existing Class A)	80	1 hour	80 hours.
b3. Submission of Agreements to the State Commission (Non Class A)	500	1 hour	500 hours.
c. Burden of Proof Regarding Interconnection and Access to Unbundled Network Elements.	1,000	25 hours	25,000 hours.
d. Collocation	1,000	25 hours	25,000 hours.
e. Notification of the State Commission	30	1 hour	30 hours.
f. Rural and Small Carriers	500	10 hours	5,000 hours.
g1. Pole Attachment Modifications	1,050,000	30 minutes	525,000 hours.
g2. Maintaince Modification Notifications	12,250	30 minutes	6,125 hours.
h1. Pole Attachment Requests	2,500	1 hour	2,500 hours.
h2. Pole Attachment Denials	250	3 hours	750 hours.
i1. Dispute Resolution Complainants	250	4–25 hours	7,250 hours.
j. Economic Cost Studies to Determine Rates for Interconnection	100	1,440 hours	144,000 hours.
k. Cost Studies on Avoidable Costs to Determine Resale Discounts	200	480 hours	96,000 hours.
l. Economic Cost Studies to Determine Reciprocal Rates	100	1,440 hours	144,000 hours.
m. Measurement of Traffic	550	700 hours	385,000 hours.
n. File Required for Arbitration	200	4 hours	800 hours.
o. Determination of Rates for Interconnection . . . State Commission Review	50	2,160 hours	108,000 hours.
p. Determination of Resale Discount Percentage . . . State Commission Review	50	640 hours	32,000 hours.
q. Petition for Incumbent LEC Status	30	1 hour	30 hours.
r. Use of Proxies by State . . . Articulating Reasons for Choice	50	120 hours	6,000 hours.
s. Preparation of Forward-looking Economic Cost Studies to Establish Rates for Transport.	50	720 hours	36,000 hours.

Total Annual Burden: 1,574,820 hours.

Needs and Uses: CC Docket 96–98, First Report and Order, the Commission adopts rules and regulations to implement parts of the Sections 251 and 252 that affect local competition. Specifically, the Order required incumbent local exchange carrier (LEC's) to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; that incumbent LECs' price such services at rates that are cost based and just and reasonable; and that they provide access to rights-of way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–97 Filed 1–3–97; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Uniform Financial Institutions Rating System

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of adoption of policy statement.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) (Board) has considered the proposed revisions to the Uniform Financial Institutions Rating System (UFIRS) as approved by the Federal Financial Institutions Examination Council (FFIEC) on December 9, 1996. On December 20, 1996, the Board adopted the updated UFIRS as a policy statement of the FDIC and rescinded the 1979 statement of policy published in the FDIC's regulatory service (*FDIC Law, Regulations and Related Acts*) at page 5079.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, (202) 898–6912, Office of Policy, Division of Supervision. For legal issues, Linda L. Stamp, Counsel, (202) 898–7310, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is a Federal financial institutions regulatory agency under the Federal Financial Institutions Examination Council Act of 1978. The FFIEC adopted an updated UFIRS after a notice and request for comment was published in the **Federal Register** on July 18, 1996 at 61 FR 37472. On December 9, 1996, the Task Force on Supervision of the FFIEC approved under delegated authority the updated UFIRS to update the rating system to address changes in the financial services industry and in supervisory policies and procedures occurring since the rating system was adopted in 1979.

Section 303(a)(2) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)) (Riegle Act) provides that the FDIC shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Section 303(a)(1) of the Riegle Act requires the FDIC to review its own regulations and written policies and to streamline those regulations and policies where possible. To fulfill the section 303 mandate, the FDIC has been reviewing on an interagency basis and internally, its regulations and written policies to identify those areas where streamlining or updating is appropriate. As a result of those reviews, the FDIC is adopting the updated UFIRS effective for examination commenced on or after January 1, 1997.

The text of the policy statement follows:

Uniform Financial Institutions Rating System

Introduction

The Uniform Financial Institutions Rating System (UFIRS) was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. Over the years, the UFIRS has proven to be an effective internal supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern. A number of changes, however, have occurred in the banking industry and in the Federal supervisory agencies' policies and procedures which have prompted a review and revision of the 1979 rating system. The revisions to UFIRS include the addition of a sixth component addressing sensitivity to market risks, the explicit reference to the quality of risk management processes in the management component, and the identification of risk elements within the composite and component rating descriptions.

The revisions to UFIRS are not intended to add to the regulatory burden of institutions or require additional policies or processes. The revisions are intended to promote and complement efficient examination processes. The revisions have been made to update the rating system, while retaining the basic framework of the original rating system.

The UFIRS takes into consideration certain financial, managerial, and compliance factors that are common to all institutions. Under this system, the supervisory agencies endeavor to ensure that all financial institutions are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the financial institutions exhibiting financial and operational weaknesses or adverse trends.

The UFIRS also serves as a useful vehicle for identifying problem or deteriorating financial institutions, as well as for categorizing institutions with deficiencies in particular component areas. Further, the rating system assists Congress in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry. As such, the UFIRS assists the agencies in fulfilling their collective mission of maintaining stability and public confidence in the nation's financial system.

Overview

Under the UFIRS, each financial institution is assigned a composite rating based on an evaluation and rating of six essential components of an institution's financial condition and operations. These component factors address the adequacy of capital, the quality of assets, the capability of management, the quality and level of earnings, the adequacy of liquidity, and the sensitivity to market risk. Evaluations of the components take into consideration the institution's size and sophistication, the nature and complexity of its activities, and its risk profile.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, strongest performance and risk management practices, and least degree of supervisory concern, while a 5 indicates the lowest rating, weakest performance, inadequate risk management practices and, therefore, the highest degree of supervisory concern.

The composite rating generally bears a close relationship to the component ratings assigned. However, the composite rating is not derived by computing an arithmetic average of the component ratings. Each component rating is based on a qualitative analysis of the factors comprising that component and its interrelationship with the other components. When assigning a composite rating, some components may be given more weight than others depending on the situation at the institution. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the financial institution. Assigned composite and component ratings are disclosed to the institution's board of directors and senior management.

The ability of management to respond to changing circumstances and to address the risks that may arise from

changing business conditions, or the initiation of new activities or products, is an important factor in evaluating a financial institution's overall risk profile and the level of supervisory attention warranted. For this reason, the management component is given special consideration when assigning a composite rating.

The ability of management to identify, measure, monitor, and control the risks of its operations is also taken into account when assigning each component rating. It is recognized, however, that appropriate management practices vary considerably among financial institutions, depending on their size, complexity, and risk profile. For less complex institutions engaged solely in traditional banking activities and whose directors and senior managers, in their respective roles, are actively involved in the oversight and management of day-to-day operations, relatively basic management systems and controls may be adequate. At more complex institutions, on the other hand, detailed and formal management systems and controls are needed to address their broader range of financial activities and to provide senior managers and directors, in their respective roles, with the information they need to monitor and direct day-to-day activities. All institutions are expected to properly manage their risks. For less complex institutions engaging in less sophisticated risk taking activities, detailed or highly formalized management systems and controls are not required to receive strong or satisfactory component or composite ratings.

Foreign Branch and specialty examination findings and the ratings assigned to those areas are taken into consideration, as appropriate, when assigning component and composite ratings under UFIRS. The specialty examination areas include: Compliance, Community Reinvestment, Government Security Dealers, Information Systems, Municipal Security Dealers, Transfer Agent, and Trust.

The following two sections contain the composite rating definitions, and the descriptions and definitions for the six component ratings.

Composite Ratings

Composite ratings are based on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The six key components used to assess an institution's financial condition and operations are: capital adequacy, asset quality, management capability, earnings quantity and quality, the adequacy of liquidity, and sensitivity to market risk. The rating scale ranges from 1 to 5, with a rating of 1 indicating: the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile; and the level of least supervisory concern. A 5 rating indicates: the most critically deficient level of performance; inadequate risk management practices relative to the institution's size, complexity, and risk profile; and the greatest supervisory concern. The composite ratings are defined as follows:

Composite 1

Financial institutions in this group are sound in every respect and generally have components rated 1 or 2. Any weaknesses are minor and can be handled in a routine manner by the board of directors and management. These financial institutions are the most capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability in their trade area. These financial institutions are in substantial compliance with laws and regulations. As a result, these financial institutions exhibit the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile, and give no cause for supervisory concern.

Composite 2

Financial institutions in this group are fundamentally sound. For a financial institution to receive this rating, generally no component rating should be more severe than 3. Only moderate weaknesses are present and are well within the board of directors' and management's capabilities and willingness to correct. These financial institutions are stable and are capable of withstanding business fluctuations. These financial institutions are in substantial compliance with laws and regulations. Overall risk management practices are satisfactory relative to the institution's size, complexity, and risk profile. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited.

Composite 3

Financial institutions in this group exhibit some degree of supervisory concern in one or more of the component areas. These financial institutions exhibit a combination of weaknesses that may range from moderate to severe; however, the magnitude of the deficiencies generally will not cause a component to be rated more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Financial institutions in this group generally are less capable of withstanding business fluctuations and are more vulnerable to outside influences than those institutions rated a composite 1 or 2.

Additionally, these financial institutions may be in significant noncompliance with laws and regulations. Risk management practices may be less than satisfactory relative to the institution's size, complexity, and risk profile. These financial institutions require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions.

Composite 4

Financial institutions in this group generally exhibit unsafe and unsound practices or conditions. There are serious financial or managerial deficiencies that result in unsatisfactory performance. The problems range from severe to critically deficient. The weaknesses and problems are not being satisfactorily addressed or resolved by the board of directors and management. Financial institutions in this group generally are not capable of withstanding business fluctuations. There may be significant noncompliance with laws and regulations. Risk management practices are generally unacceptable relative to the institution's size, complexity, and risk profile. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems. Institutions in this group pose a risk to the deposit insurance fund. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved.

Composite 5

Financial institutions in this group exhibit extremely unsafe and unsound practices or conditions; exhibit a critically deficient performance; often contain inadequate risk management practices relative to the institution's size, complexity, and risk profile; and are of the greatest supervisory concern. The volume and severity of problems are beyond management's ability or willingness to control or correct. Immediate outside financial or other assistance is needed in order for the financial institution to be viable. Ongoing supervisory attention is necessary. Institutions in this group

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pose a significant risk to the deposit insurance fund and failure is highly probable.

Component Ratings

Each of the component rating descriptions is divided into three sections: an introductory paragraph; a list of the principal evaluation factors that relate to that component; and a brief description of each numerical rating for that component. Some of the evaluation factors are reiterated under one or more of the other components to reinforce the interrelationship between components. The listing of evaluation factors for each component rating is in no particular order of importance.

Capital Adequacy

A financial institution is expected to maintain capital commensurate with the nature and extent of risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The effect of credit, market, and other risks on the institution's financial condition should be considered when evaluating the adequacy of capital. The types and quantity of risk inherent in an institution's activities will determine the extent to which it may be necessary to maintain capital at levels above required regulatory minimums to properly reflect the potentially adverse consequences that these risks may have on the institution's capital.

The capital adequacy of an institution is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The level and quality of capital and the overall financial condition of the institution.
- The ability of management to address emerging needs for additional capital.
- The nature, trend, and volume of problem assets, and the adequacy of allowances for loan and lease losses and other valuation reserves.
- Balance sheet composition, including the nature and amount of intangible assets, market risk, concentration risk, and risks associated with nontraditional activities.
- Risk exposure represented by off-balance sheet activities.
- The quality and strength of earnings, and the reasonableness of dividends.
- Prospects and plans for growth, as well as past experience in managing growth.
- Access to capital markets and other sources of capital, including support provided by a parent holding company.

Ratings

1 A rating of 1 indicates a strong capital level relative to the institution's risk profile.

2 A rating of 2 indicates a satisfactory capital level relative to the financial institution's risk profile.

3 A rating of 3 indicates a less than satisfactory level of capital that does not fully support the institution's risk profile. The rating indicates a need for improvement, even if the institution's capital level exceeds minimum regulatory and statutory requirements.

4 A rating of 4 indicates a deficient level of capital. In light of the institution's risk profile, viability of the institution may be threatened. Assistance from shareholders or other external sources of financial support may be required.

5 A rating of 5 indicates a critically deficient level of capital such that the institution's viability is threatened. Immediate assistance from shareholders or other external sources of financial support is required.

Asset Quality

The asset quality rating reflects the quantity of existing and potential credit risk associated with the loan and investment portfolios, other real estate owned, and other assets, as well as off-balance sheet transactions. The ability of management to identify, measure, monitor, and control credit risk is also reflected here. The evaluation of asset quality should consider the adequacy of the allowance for loan and lease losses and weigh the exposure to counterparty, issuer, or borrower default under actual or implied contractual agreements. All other risks that may affect the value or marketability of an institution's assets, including, but not limited to, operating, market, reputation, strategic, or compliance risks, should also be considered.

The asset quality of a financial institution is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of underwriting standards, soundness of credit administration practices, and appropriateness of risk identification practices.
- The level, distribution, severity, and trend of problem, classified, nonaccrual, restructured, delinquent, and nonperforming assets for both on- and off-balance sheet transactions.
- The adequacy of the allowance for loan and lease losses and other asset valuation reserves.
- The credit risk arising from or reduced by off-balance sheet transactions, such as unfunded commitments, credit derivatives, commercial and standby letters of credit, and lines of credit.
- The diversification and quality of the loan and investment portfolios.
- The extent of securities underwriting activities and exposure to counterparties in trading activities.
- The existence of asset concentrations.
- The adequacy of loan and investment policies, procedures, and practices.
- The ability of management to properly administer its assets, including the timely identification and collection of problem assets.
- The adequacy of internal controls and management information systems.
- The volume and nature of credit documentation exceptions.

Ratings

1 A rating of 1 indicates strong asset quality and credit administration practices. Identified weaknesses are minor in nature and risk exposure is modest in relation to capital protection and management's abilities. Asset quality in such institutions is of minimal supervisory concern.

2 A rating of 2 indicates satisfactory asset quality and credit administration practices. The level and severity of classifications and other weaknesses warrant a limited level of supervisory attention. Risk exposure is commensurate with capital protection and management's abilities.

3 A rating of 3 is assigned when asset quality or credit administration practices are less than satisfactory. Trends may be stable or indicate deterioration in asset quality or an increase in risk exposure. The level and severity of classified assets, other weaknesses, and risks require an elevated level of supervisory concern. There is generally a need to improve credit administration and risk management practices.

4 A rating of 4 is assigned to financial institutions with deficient asset quality or credit administration practices. The levels of risk and problem assets are significant, inadequately controlled, and subject the financial institution to potential losses that, if left unchecked, may threaten its viability.

5 A rating of 5 represents critically deficient asset quality or credit administration practices that present an imminent threat to the institution's viability.

Management

The capability of the board of directors and management, in their

respective roles, to identify, measure, monitor, and control the risks of an institution's activities and to ensure a financial institution's safe, sound, and efficient operation in compliance with applicable laws and regulations is reflected in this rating. Generally, directors need not be actively involved in day-to-day operations; however, they must provide clear guidance regarding acceptable risk exposure levels and ensure that appropriate policies, procedures, and practices have been established. Senior management is responsible for developing and implementing policies, procedures, and practices that translate the board's goals, objectives, and risk limits into prudent operating standards.

Depending on the nature and scope of an institution's activities, management practices may need to address some or all of the following risks: credit, market, operating or transaction, reputation, strategic, compliance, legal, liquidity, and other risks. Sound management practices are demonstrated by: active oversight by the board of directors and management; competent personnel; adequate policies, processes, and controls taking into consideration the size and sophistication of the institution; maintenance of an appropriate audit program and internal control environment; and effective risk monitoring and management information systems. This rating should reflect the board's and management's ability as it applies to all aspects of banking operations as well as other financial service activities in which the institution is involved.

The capability and performance of management and the board of directors is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The level and quality of oversight and support of all institution activities by the board of directors and management.
- The ability of the board of directors and management, in their respective roles, to plan for, and respond to, risks that may arise from changing business conditions or the initiation of new activities or products.
- The adequacy of, and conformance with, appropriate internal policies and controls addressing the operations and risks of significant activities.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems appropriate for the institution's size, complexity, and risk profile.
- The adequacy of audits and internal controls to: promote effective operations and reliable financial and regulatory reporting; safeguard assets; and ensure compliance with laws, regulations, and internal policies.
- Compliance with laws and regulations.
- Responsiveness to recommendations from auditors and supervisory authorities.
- Management depth and succession.
- The extent that the board of directors and management is affected by, or susceptible to, dominant influence or concentration of authority.
- Reasonableness of compensation policies and avoidance of self-dealing.
- Demonstrated willingness to serve the legitimate banking needs of the community.
- The overall performance of the institution and its risk profile.

Ratings

1 A rating of 1 indicates strong performance by management and the board of directors and strong risk management practices relative to the institution's size, complexity, and risk profile. All significant risks are consistently and effectively identified, measured, monitored, and controlled. Management and the board have demonstrated the ability to promptly and successfully address existing and potential problems and risks.

2 A rating of 2 indicates satisfactory management and board performance and risk management practices relative to the institution's size, complexity, and risk profile. Minor weaknesses may exist, but are not material to the safety and soundness of the institution and are being addressed. In general, significant risks and problems are effectively identified, measured, monitored, and controlled.

3 A rating of 3 indicates management and board performance that need improvement or risk management practices that are less than satisfactory given the nature of the institution's activities. The capabilities of management or the board of directors may be insufficient for the type, size, or condition of the institution. Problems and significant risks may be inadequately identified, measured, monitored, or controlled.

4 A rating of 4 indicates deficient management and board performance or risk management practices that are inadequate considering the nature of an institution's activities. The level of problems and risk exposure is excessive. Problems and significant risks are inadequately identified, measured, monitored, or controlled and require immediate action by the board and management to preserve the soundness of the institution. Replacing or strengthening management or the board may be necessary.

5 A rating of 5 indicates critically deficient management and board performance or risk management practices. Management and the board of directors have not demonstrated the ability to correct problems and implement appropriate risk management practices. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the continued viability of the institution. Replacing or strengthening management or the board of directors is necessary.

Earnings

This rating reflects not only the quantity and trend of earnings, but also factors that may affect the sustainability or quality of earnings. The quantity as well as the quality of earnings can be affected by excessive or inadequately managed credit risk that may result in loan losses and require additions to the allowance for loan and lease losses, or by high levels of market risk that may unduly expose an institution's earnings to volatility in interest rates. The quality of earnings may also be diminished by undue reliance on extraordinary gains, nonrecurring events, or favorable tax effects. Future earnings may be adversely affected by an inability to forecast or control funding and operating expenses, improperly executed or ill-advised business strategies, or poorly managed or uncontrolled exposure to other risks.

The rating of an institution's earnings is based upon, but not limited to, an assessment of the following evaluation factors:

- The level of earnings, including trends and stability.
- The ability to provide for adequate capital through retained earnings.
- The quality and sources of earnings.
- The level of expenses in relation to operations.
- The adequacy of the budgeting systems, forecasting processes, and management information systems in general.
- The adequacy of provisions to maintain the allowance for loan and lease losses and other valuation allowance accounts.
- The earnings exposure to market risk such as interest rate, foreign exchange, and price risks.

Ratings

1 A rating of 1 indicates earnings that are strong. Earnings are more than sufficient to support operations and maintain adequate capital and allowance levels after consideration is

given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings.

2 A rating of 2 indicates earnings that are satisfactory. Earnings are sufficient to support operations and maintain adequate capital and allowance levels after consideration is given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings. Earnings that are relatively static, or even experiencing a slight decline, may receive a 2 rating provided the institution's level of earnings is adequate in view of the assessment factors listed above.

3 A rating of 3 indicates earnings that need to be improved. Earnings may not fully support operations and provide for the accretion of capital and allowance levels in relation to the institution's overall condition, growth, and other factors affecting the quality, quantity, and trend of earnings.

4 A rating of 4 indicates earnings that are deficient. Earnings are insufficient to support operations and maintain appropriate capital and allowance levels. Institutions so rated may be characterized by erratic fluctuations in net income or net interest margin, the development of significant negative trends, nominal or unsustainable earnings, intermittent losses, or a substantive drop in earnings from the previous years.

5 A rating of 5 indicates earnings that are critically deficient. A financial institution with earnings rated 5 is experiencing losses that represent a distinct threat to its viability through the erosion of capital.

Liquidity

In evaluating the adequacy of a financial institution's liquidity position, consideration should be given to the current level and prospective sources of liquidity compared to funding needs, as well as to the adequacy of funds management practices relative to the institution's size, complexity, and risk profile. In general, funds management practices should ensure that an institution is able to maintain a level of liquidity sufficient to meet its financial obligations in a timely manner and to fulfill the legitimate banking needs of its community. Practices should reflect the ability of the institution to manage unplanned changes in funding sources, as well as react to changes in market conditions that affect the ability to quickly liquidate assets with minimal loss. In addition, funds management practices should ensure that liquidity is not maintained at a high cost, or through undue reliance on funding sources that may not be available in times of financial stress or adverse changes in market conditions.

Liquidity is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of liquidity sources compared to present and future needs and the ability of the institution to meet liquidity needs without adversely affecting its operations or condition.
- The availability of assets readily convertible to cash without undue loss.
- Access to money markets and other sources of funding.
- The level of diversification of funding sources, both on- and off-balance sheet.
- The degree of reliance on short-term, volatile sources of funds, including borrowings and brokered deposits, to fund longer term assets.
- The trend and stability of deposits.
- The ability to securitize and sell certain pools of assets.
- The capability of management to properly identify, measure, monitor, and control the institution's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information systems, and contingency funding plans.

Ratings

1 A rating of 1 indicates strong liquidity levels and well-developed funds management practices. The institution has reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.

2 A rating of 2 indicates satisfactory liquidity levels and funds management practices. The institution has access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses may be evident in funds management practices.

3 A rating of 3 indicates liquidity levels or funds management practices in need of improvement. Institutions rated 3 may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices.

4 A rating of 4 indicates deficient liquidity levels or inadequate funds management practices. Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs.

5 A rating of 5 indicates liquidity levels or funds management practices so critically deficient that the continued viability of the institution is threatened. Institutions rated 5 require immediate external financial assistance to meet maturing obligations or other liquidity needs.

Sensitivity to Market Risk

The sensitivity to market risk component reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. When evaluating this component, consideration should be given to: management's ability to identify, measure, monitor, and control market risk; the institution's size; the nature and complexity of its activities; and the adequacy of its capital and earnings in relation to its level of market risk exposure.

For many institutions, the primary source of market risk arises from nontrading positions and their sensitivity to changes in interest rates. In some larger institutions, foreign operations can be a significant source of market risk. For some institutions, trading activities are a major source of market risk.

Market risk is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The sensitivity of the financial institution's earnings or the economic value of its capital to adverse changes in interest rates, foreign exchange rates, commodity prices, or equity prices.
- The ability of management to identify, measure, monitor, and control exposure to market risk given the institution's size, complexity, and risk profile.
- The nature and complexity of interest rate risk exposure arising from nontrading positions.
- Where appropriate, the nature and complexity of market risk exposure arising from trading and foreign operations.

Ratings

1 A rating of 1 indicates that market risk sensitivity is well controlled and that there is minimal potential that the earnings performance or capital position will be adversely affected. Risk management practices are strong for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide substantial support for the degree of market risk taken by the institution.

2 A rating of 2 indicates that market risk sensitivity is adequately controlled and that there is only moderate potential that the earnings performance or capital position will be adversely affected. Risk management practices are satisfactory for the size, sophistication, and market risk accepted by the

institution. The level of earnings and capital provide adequate support for the degree of market risk taken by the institution.

3 A rating of 3 indicates that control of market risk sensitivity needs improvement or that there is significant potential that the earnings performance or capital position will be adversely affected. Risk management practices need to be improved given the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital may not adequately support the degree of market risk taken by the institution.

4 A rating of 4 indicates that control of market risk sensitivity is unacceptable or that there is high potential that the earnings performance or capital position will be adversely affected. Risk management practices are deficient for the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital provide inadequate support for the degree of market risk taken by the institution.

5 A rating of 5 indicates that control of market risk sensitivity is unacceptable or that the level of market risk taken by the institution is an imminent threat to its viability. Risk management practices are wholly inadequate for the size, sophistication, and level of market risk accepted by the institution.

By Order of the Board of Directors dated at Washington, D.C., this 20th day of December, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–155 Filed 1–3–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011375–027.

Title: Trans-Altantic Conference Agreement.

Parties: POL-Atlantic, Orient Overseas Container Line (UK) Ltd., Transportacion Maritima Mexicana, S.A. de C.V., Neptune Orient Lines Ltd., Hyundai Merchant Marine Co., Ltd., P&O Containers Limited, Nippon Yusen Kaisha, Tecomar S.A. de C.V., Hanjin Shipping Co., Ltd., Atlantic Container Line AB, Cho Yang Shipping Co. Ltd., Sea-Land Service, Inc., A.P. Moller-Maersk Line, Nedlloyd Lijnen BV, Hapag Lloyd Ag, Mediterranean Shipping Co., S.A., DSR-Senator Lines.

Synopsis: The proposed modification, which pertains to through intermodal point rates, exempts service contracts covering "non-containerizable cargo" and/or shipments to and/or from any place in the former Soviet Union from the requirement that rates for through transportation to and/ or from inland points covered by contracts be constructed only by combining rates covering inland portions with rates covering ocean port-to-port portions. Such shipments are also exempt from the application of standard assessorial charges published in tariffs of the contracting carrier parties. The above exemptions expire on December 31, 1997.

Agreement No.: 232–011559.

Title: CMA/Croatia Line Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: Compagnie Maritime D'Affretement ("CMA") Croatia Line Rijeka ("Croatia Line").

Synopsis: The proposed Agreement authorizes the parties to charter space to and from each other on vessels they operate in the trades between U.S. East Coast ports, and inland and coastal points served via those ports, and ports and points of the Mediterranean Sea, Red Sea, Arabian Gulf and Indian Subcontinent. The parties may also coordinate their sailings, jointly advertise sailings, establish equipment pools, and jointly contract for terminal and other shoreside services. The parties have requested expedited approval.

Agreement No.: 224–201012.

Title: Port of Oakland/American President Lines Preferential Crane Assignment.

Parties: The City of Oakland ("Port") American President Lines, Ltd. ("APL").

Synopsis: The proposed agreement authorizes APL the nonexclusive preferential right to use three container cranes and other equipment at berths 60–63 at the Port's Middle Harbor Terminal Area.

By order of the Federal Maritime Commission.

Dated: December 30, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 97–111 Filed 1–3–97; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–201014.

Title: Port of San Francisco/Madrigal-Wan Hai Lines Terminal Agreement.

Parties: City and County of San Francisco ("Port"), Madrigal-Wan Hai Lines ("Madrigal").

Synopsis: The proposed Agreement grants Madrigal the non-exclusive right to use the Port's South Container Terminal, located at piers 94/96, and provides for discounted dockage and wharfage rates. The Agreement's term is five years.

Agreement No.: 224–201014–001.

Title: Port of San Francisco/Madrigal-Wan Hai Lines Terminal Agreement.

Parties: City and County of San Francisco ("Port"), Madrigal-Wan Hai Lines ("Madrigal").

Synopsis: The proposed amendment provides that the Port will indemnify, defend and hold Madrigal harmless from all losses, expenses, claims, actions or liabilities to the extent they are caused by the negligence or willful misconduct of the Port.

By order of the Federal Maritime Commission.

Dated: December 31, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–166 Filed 1–3–97; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

International Consultants, Inc., 1032 Chuck Danley Blvd., Suite E, Mt. Pleasant, SC 29464. Officer: Paul A. Flaherty, President.

Horizon Trading Company, Inc., 1510 H Street, N.W., Suite 500, Washington, D.C. 20005. Officer: J. Browning Rockwell, Pres./Dir./Stockh.

Hilldrup Transfer and Storage, Inc., d/b/a Hilldrup Moving & Storage, 4022 Jefferson Davis Highway, Stafford, VA 22555. Officers: Charles G. McDaniel, President, Hilton G. Marshall, Vice President of Finance.

Ultimate Media Express Inc., d/b/a Ultimate Express, 144–25, 155th Street, Jamaica, NY 11434. Officers: Diane M. Correll, President, James W. Correll, Sr., Sec. Treasurer.

Dated: December 30, 1996.

[FR Doc. 97–112 Filed 1–3–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974: Altered System of Records

AGENCY: Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the U.S. Department of Health and Human Services (HHS) is publishing a notice of a proposed altered system of records, 09–90–0024, "Financial Transactions of HHS Accounting and Finance Offices." The principal purpose for the changes is in order to comply with the requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, Sec. 31001). The proposal includes new and modified routine uses described below for this system.

DATES: HHS submitted a report of an altered system to the Office of Management and Budget and to the Congress on December 24, 1996. The new routine uses and the amendments to existing routine uses will take effect without further notice 40 days after the date of publication, unless HHS receives comments which would result in a contrary determination. Other changes incorporated in the notice below will take effect upon publication.

ADDRESSES: Please address comments to: Deputy Assistant Secretary, Finance Room 739–H, Hubert H. Humphrey Building, 200 Independence Ave., SW, Washington, D.C. 20201. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Mundstuk Privacy Act Coordinator, Office of Financial Policy, DASF/ASMB, Room 705–D, Hubert H. Humphrey Building, 200 Independence Ave, SW, Washington, D.C. 20201, Telephone: (202) 690–6228.

SUPPLEMENTARY INFORMATION: The system notice was last published in full at 59 FR 7675 (1994). It was subsequently amended at 59 FR 55845 (1994).

On April 26, 1996, the Congress passed Pub. L. 104–134, Sec. 31001 known as the "Debt Collection Improvement Act of 1996" (DCIA). The purposes of this Act are to: (1) maximize collections of delinquent debts owed to the Government, (2) minimize the costs of debt collection, (3) reduce losses arising from debt management activities, (4) ensure that the public is fully informed of the Federal Government's debt collection policies, (5) ensure debtors are cognizant of their financial obligations to repay amounts owed to the Government, (6) ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures, and (7) encourage agencies, when appropriate to sell delinquent debts, particularly debts with underlying collateral, and rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

The DCIA authorizes and requires several new techniques for collecting debts and claims, and we have modified existing routine uses and added ones to implement this statute. In particular, we have modified use 1 to provide for payment by methods other than checks.

We have amended use 11(b) to allow disclosure to the Treasury Department for purposes of administrative offset even when Treasury will not be the agency that effects the offset. We have amended use 11(e) to conform with the provision for using debt collection agents or contractors in the statute as amended by the DCIA. We have added uses 18–21 to provide for new techniques authorized by the DCIA. Use 18 allows the computer matching of debtors and federal employees. Use 19 allows disclosures to commercial reporting agencies.

Use 20 allows disclosure to Treasury or a Debt Collection Center to collect the debt. Use 21 allows disclosures in connection with selling the debt. Because all of these are for purposes of recovering or liquidating debts, they are compatible with the purposes for which HHS maintains this system.

Other revisions were made (1) to eliminate areas where the Social Security Administration (SSA) is referenced since SSA is no longer a part of HHS; (2) to improve the quality of the document by making minor editorial changes; and (3) to combine the two Appendices into one Appendix, including the updating of system records locations.

The complete system notice is republished below.

Dated: December 23, 1996.

John J. Callahan,

Assistant Secretary for Management and Budget.

SYSTEM NAME:

Financial Transactions of HHS Accounting and Finance Offices, HHS/OS/ASMB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix 1.

Memoranda copies of claims submitted for reimbursement of travel and other expenditures while on official business may also be maintained at the administrative office of the HHS employee. Records concerning outstanding debts may also be maintained at the program office or by the designated claims officer apart from the finance office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who receive a payment from the Operating Divisions (OPDIV) Headquarters, Area and District offices and all persons owing monies to these HHS components. Persons receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe HHS a refund and persons who have received from HHS goods or services for which there is a charge or fee (e.g., Freedom of Information Act requesters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identification number, address, purpose of payment, accounting

classification and amount paid. Also, in the event of an overpayment and for outstanding loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950 (Pub. L. 81–784); Debt Collection Act of 1982 (Pub. L. 97–365); Debt Collection Improvement Act of 1996 (Pub. L. 104–134, Sec. 31001).

PURPOSE(S):

These records are an integral part of the accounting systems at OPDIVs Headquarters and specific Area and District locations. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When a person is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to a person, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the Internal Revenue Service (IRS) and applicable State and local taxing officials of taxable income. This is a Department-wide notice of payment and collection activities at all locations listed in Appendix 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records will be routinely disclosed to the Treasury Department in order to effect payment.

2. Records may be disclosed to members of Congress concerning a Federal financial assistance program in order for members to make informed opinions on programs and/or activities impacting on legislative decisions. Also, disclosure may be made to a congressional office from an individual's record in response to an inquiry from the congressional office made at the request of the individual in order to be responsive to the constituency.

3. In the event HHS deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

4. A record from this system may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

5. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to its decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service (IRS) or the Civil Rights Commission, issue a subpoena to HHS for records in this system of records, HHS will make such records available, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

7. Where a contract between a component of HHS and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in the system of records may be disclosed to such organization.

8. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when: (1) HHS, or any component thereof; (2) Any HHS employee in his/her official capacity; (3) Any HHS employee in his/her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (4) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

9. A record about a loan applicant or potential contractor or grantee may be disclosed from the system of records to credit reporting agencies to obtain a credit report in order to determine the person's credit worthiness.

10. When a person applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his/her application may be disclosed to the Treasury Department to find out whether he/she has a delinquent tax account, for the sole purpose of determining the person's creditworthiness.

11. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request the person's mailing address under I.R.C. 6103(m)(2) in order to help locate the person or to have a credit report prepared;

d. To agents of HHS and to other third parties, including credit reporting agencies, to help locate the person or to obtain a credit report on him/her, in order to help collect or compromise a debt;

e. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover debtors' assets;

f. To the Justice Department for litigation or for further administrative action; and

g. To the public, as provided by 31 U.S.C. 3720E, in order to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a nontax debt.

Disclosure under part (d) and (g) of this routine use is limited to the individual's name, address, social security number, and other information necessary to identify the person. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a credit report on the individual.

12. A record from this system may be disclosed to another Federal agency that

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has asked HHS to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to: name and address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

13. Disclosure with regard to claims or debts arising under or payable under the Social Security Act may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)) or the Federal Claims Collection Act of 1986 (31 U.S.C. § 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed the Federal Government. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose.

14. Information in this system of records is used to prepare W–2s and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments items considered to be included as income to a person: certain travel related payments to employees, all payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

15. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the person has given his/her credit card number for this purpose.

16. Records may be disclosed to a contractor (and/or to its subcontractor) who has been engaged to perform services on an automated data processing (ADP) system used in processing financial transactions. The contractor may have been engaged to develop, modify and test a new ADP system, including both software and hardware upgrades or enhancements to such a system; perform periodic or major maintenance on an existing ADP system; audit or otherwise evaluate the performance of such an ADP system; and/or operate such a system.

17. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

18. A record from this system may be disclosed to any Federal agency or its agents in order to participate in a computer matching of a list of debtors against a list of Federal employees. Disclosure of records is limited to debtors' names, names of employers, taxpayers identifying numbers, addresses (including addresses of employers), and dates of birth, and other information necessary to establish the person's identity.

19. A record may be disclosed to a commercial reporting agency that a person is responsible for a current claim, in order to aid in the collection of claims, typically by providing an incentive to the person to repay the claim or a debt timely. Disclosure of records is limited to information about a person as is relevant and necessary to meet the principal purpose(s) for which it is intended to be used under the law.

20. A record from this system may be disclosed to the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury in order to effect a collection of past due amounts.

21. If HHS decides to sell a debt pursuant to 31 U.S.C. § 3711(i), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

Disclosure to Consumer Reporting Agencies

Disclosure pursuant to 5 U.S.C. § 552a(b)(12): Disclosure may be made from this system to "consumer reporting agencies," as defined in 31 U.S.C. § 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically, to provide an incentive for debtors to repay their debts timely, by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, social security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. § 3711(e) have been followed.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

STORAGE:

Hard copy documents are maintained in file folders at agency headquarters and area/district office sites; and on computer disc pack and magnetic tape at central computer sites.

RETRIEVABILITY:

This varies according to the particular accounting system within the HHS Operating Divisions, Area and District Offices. Usually the hard copy document is filed by name within accounting classification. Computer records may be indexed by social security number and voucher number. Intra-departmental uses and transfers concern the validation and certification for payment, and for HHS internal audits.

SAFEGUARDS:

1. Authorized Users: Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HHS funded programs.

2. Physical Safeguards: File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. Procedural Safeguards: Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office. The safeguards described above were established in accordance with HHS Chapter 45–13 of the General Administration Manual; and the HHS ADP System Manual Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are purged from automated files once the accounting purpose has been served; printed copy and manual documents are retained and disposed of in accordance with General Accounting Office principles and standards as authorized by the National Archives and Records Service.

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SYSTEM MANAGER(S) AND ADDRESS:

Department of Health and Human Services, DHHS, Assistant Secretary for Management and Budget, Office of the Secretary, Room 510A, Hubert H. Humphrey Building, Washington, DC 20201.

NOTIFICATION PROCEDURE:

Inquiries should be made, either in writing or in person, to the organizations listed under "Location" in Appendix 1, with the exception of Food and Drug Administration records. For those records, contact:

FDA Privacy Act Coordinator (HFW–30)
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

The individual making the inquiry must show proof of identity before information is released. Give name and social security number, purpose of payment or collection (travel, grant, etc.) and, if possible, the agency accounting classification.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also clearly specify the record contents being sought, and may include a request for an accounting of disclosures that have been made of their records, if any. (These access procedures are in accordance with HHS regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Travel vouchers submitted by the individual; grant, contract and loan award document; delinquent loan, grant and scholarship record; consultant invoice of services rendered; and application for travel advance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix 1

Location

Indian Health Service Area Offices (IHS)

Aberdeen Area, IHS
Federal Building
115 Fourth Ave., SE
Aberdeen, SD 57401

Alaska Area, IHS
250 Gambell Street
Anchorage, AK 99501

Albuquerque Area, IHS
505 Marquette NW
Suite 1502
Albuquerque, NM 57102–2163

Albuquerque Headquarters West, IHS
300 San Mateo, NE
Suite 500
Albuquerque, NM 87108

Bemidji Area, IHS
203 Federal Building
Bemidji, MN 56601

Billings Area, IHS
711 Central Avenue
Billings, MT 59103

California Area, IHS
1825 Bell Street
Sacramento, CA 95825–1097

Nashville Area, IHS
3310 Perimeter Hill Drive
Nashville, TN 37211

Navajo Area, IHS
P.O. Box "G"
Window Rock, AZ 86515–5004

Oklahoma Area IHS
3625 NW 56th Street
Five Corporation Plaza
Oklahoma City, OK 73112

Phoenix Area, IHS
3738 North 16th Street
Suite "A"
Phoenix, AZ 85016–5981

Portland Area, IHS
1220 SW Third Avenue
Room 476
Portland, OR 97204–2892

Office of Health Program Research and Development, IHS
7900 South "J" Stock Road
Tucson, AZ 85746–9352

Food and Drug Administration District Offices (FDA)

Food and Drug Administration, FDA
60 Eighth Street, NE
Atlanta, GA 30309

Food and Drug Administration, FDA
Boston District Office
One Montvale Avenue
Stoneham, MA 62180

Food and Drug Administration, FDA
599 Delaware Avenue
Buffalo, NY 14202

Food and Drug Administration, FDA
Room 700
Federal Office Building
850 3rd Avenue (at 30th Street)
Brooklyn, NY 11232

Food and Drug Administration, FDA
61 Main Street
West Orange, NJ 07052

Food and Drug Administration, FDA
Room 1204
US Customhouse
2nd and Chestnut Streets
Philadelphia, PA 19106

Food and Drug Administration, FDA
900 Madison Avenue
Baltimore, MD 21201

Food and Drug Administration, FDA
San Juan District Office
PO Box 5719 PTA
De Tierra Station
San Juan, PR 00906–5719

Food and Drug Administration, FDA
Room 1222
Main Post Office Building
433 West Van Buren Street
Chicago, IL 60607

Food and Drug Administration, FDA
1560 East Jefferson Avenue
Detroit, MI 48207

Food and Drug Administration, FDA
1141 Central Parkway
Cincinnati, OH 45202

Food and Drug Administration, FDA
240 Hennepin Avenue
Minneapolis, MN 55401

Food and Drug Administration, FDA
3032 Bryan Street
Dallas, TX 75204

Food and Drug Administration, FDA
4298 Elysian Fields
New Orleans, LA 70122

Food and Drug Administration, FDA
National Center for Toxicological Research
Jefferson, AR 72079

Food and Drug Administration, FDA
1009 Cherry Street
Kansas City, MO 64106

Food and Drug Administration, FDA
US Courthouse and Courthouse Building
1114 Market Street, Room 1002
St. Louis, MO 63101

Food and Drug Administration, FDA
Building 20
Denver Federal Center
PO Box 25087
Denver, CO 80255–0087

Food and Drug Administration, FDA
Federal Office Building
Room 506
50 United National Plaza
San Francisco, CA 94102

Food and Drug Administration, FDA
1521 West Pico Boulevard
Los Angeles, CA 90015

Food and Drug Administration, FDA
22201 23rd Avenue, SE
Bothell, WA 98021–4421

Food and Drug Administration, FDA
Headquarters Office
5600 Fishers Lane
Room 11–83
Parklawn Building
Rockville, MD 20857

Centers for Disease Control and Prevention (CDC)

Centers for Disease Control and Prevention, CDC

Accounting Section (CO–5)
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226

Centers for Disease Control and Prevention, CDC
and
Agency for Toxic Substances and Disease Registry (ATSDR)
Financial Management Office
1600 Clifton Road NE, (M/S D–04)
Atlanta, GA 30333

Health Care Financing Administration (HCFA)

Health Care Financing Administration, HCFA
Room C3–0927
7500 Security Boulevard
Baltimore, MD 21244

National Institutes of Health (NIH)

National Institutes of Health, NIH
Building 1, Room 222
Rocky Mountain Laboratory
Hilton, MT 59840

National Institutes of Health, NIH
National Institute of Mental Health
WAW Building, Room 562
St. Elizabeth's Hospital
Washington, DC 20032

National Institutes of Health, NIH
Frederick Cancer Research Facility
Fort Detrick Building, Room 427
Frederick, MD 21702–1201

National Institutes of Health, NIH
National Institutes of Environmental Health Sciences
Room B2–03, Building 101
Research Triangle Park, NC 27709

National Institutes for Health, NIH
National Institute on Drug Abuse
Addiction Research Center
Building C, Room 248
4940 Eastern Avenue
Baltimore, MD 21224

National Institutes for Health, NIH
Headquarters Office
Operations Accounting Branch
Building 31, Room B1–B63
9000 Rockville Pike
Bethesda, MD 20892–0134

Individual records of the following HHS Operating Divisions may be obtained from the Program Support Center (PSC):

Administration for Children and Families (ACF)

Administration on Aging (AoA)

Agency for Health Care Policy and Research (AHCPR)

Indian Health Service (IHS)

Substance Abuse and Mental Health Services Administration (SAMHSA)

Office of the Secretary (OS)

Program Support Center (PSC)

Program Support Center, PSC
Division of Fiscal Services
5600 Fishers Lane
Room 16–05
Rockville, MD 20857

[FR Doc. 97–16 Filed 1–3–97; 8:45 am]
BILLING CODE 4150–04–P

Food and Drug Administration

[Docket No. 96N–0290]

AM–Rho Laboratories, Inc.; Revocation of U.S. License No. 991–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 991–001) and the product license issued to AM–Rho Laboratories, Inc., Jacksonville, FL, for the manufacture of Source Plasma. In a letter to FDA dated April 11, 1996, AM–Rho Laboratories, Inc., voluntarily requested revocation of its establishment and product licenses. In a letter dated July 3, 1996, FDA informed the firm that the establishment and product licenses for its Jacksonville location were revoked.

DATES: The revocation of the establishment license (U.S. License No. 991–001) and the product license became effective July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 991–001) and product license for the manufacture of Source Plasma of AM–Rho Laboratories, Inc., 4130 Salisbury Rd., suite 2100, Jacksonville, FL 32216.

FDA inspected AM–Rho Laboratories, Inc., from October 16, 1995, through November 9, 1995. The inspection also involved a concurrent investigation that included interviews with individuals knowledgeable in the daily operations of the firm. The inspection of the facility and concurrent investigation revealed serious deviations from applicable Federal regulations. The deficiencies noted included, but were not limited to, the following: (1) Failure to properly immunize donors (21 CFR 640.66) by: (a) Permitting nonphysicians, working without a physician present, to inject at least 37 donors with red blood cell antigen; (b) immunizing at least one donor during plasmapheresis; and (c) permitting nonphysicians to select antigens and schedule immunizations; (2) failure to adequately determine donor suitability by: (a) Not excluding for the required 8-week period at least 21 donors who lost whole blood (21 CFR 640.63(e)); (b) routinely reevaluating donor hematocrit without recording the initial hematocrit values; and (c) routinely not complying with established standard operating procedures that required the cross checking of donors against deferral logs; (3) failure to maintain complete, accurate, and concurrent donor records (21 CFR 606.160) by: (a) Routinely forging physician's signatures on numerous records; (b) not completing maintenance and calibration records concurrently with work done; (c) inaccurate documentation of red blood cells not returned to the donor; (d) documenting as destroyed red blood cells that were returned to the donor; and (e) not providing a unit number for certain plasmapheresis products; (4) failure to maintain and follow standard operating procedures (21 CFR 606.100(b)) by: (a) Inadequately preparing phlebotomy sites on at least 25 donors; (b) not following the procedure for verifying correct reinfusion of red blood cells; and (c) permitting donors to leave the premises before the minimum time for postimmunization observation.

FDA concluded that the serious nature of the deficiencies identified during the inspection and during the concurrent investigation of AM–Rho Laboratories, Inc., were the direct consequence of the establishment's disregard for the applicable regulations and standards in the license application. FDA determined that these deficiencies constitute a danger to the public health that warranted suspension under 21 CFR 601.5(b) and 601.6(a). Additionally, the deficiencies noted demonstrated management's failure to exercise control over the facility relating to compliance and to assure adequate training and supervision of personnel as required by 21 CFR 600.10(a) and (b) and 606.20(a) and (b).

In a November 27, 1995, letter to the firm, FDA suspended the establishment license (U.S. License No. 991–001) and product license for Source Plasma. In a February 14, 1996, letter to FDA, the firm stated it would not seek reinstatement of the suspended license (U.S. License No. 991–001) and would destroy all plasma products in inventory. In a letter to FDA dated April 11, 1996, AM–Rho Laboratories, Inc., requested voluntary revocation of U.S. License No. 991–001.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5(a), section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 991–001) and the product license for the manufacture of Source Plasma issued to AM–Rho Laboratories, Inc., Jacksonville, FL 32216, were revoked effective July 3, 1996.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67(c).

Dated: December 19, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–186 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0080]

Determination of Regulatory Review Period for Purposes of Patent Extension; Olean

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Olean and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For food and color additives: (1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test and requesting the issuance of a regulation for use of the additive under section 409 or 721 of the Federal Food, Drug, and Cosmetic Act (the act) is initially submitted to FDA. An "environmental effects" test may be any test which: (a) Is reasonably related to the evaluation of the product's health effects, or both; (b) produces data necessary for marketing approval; and (c) is conducted over a period of not less than 6-months duration, excluding time required to analyze or evaluate test results. (2) The approval phase begins on the date a petition requesting the issuance of a regulation for use of the additive under section 409 or 721 of the act is initially submitted to FDA and ends upon whichever of the following occurs last: (a) The regulation for the additive becomes final; or (b) objections filed against the regulation that result in a stay of effectiveness are resolved and commercial marketing is permitted; or (c) proceedings resulting from objections to the regulation, after commercial marketing has been permitted and later stayed pending resolution of the proceedings, are finally resolved and commercial marketing is permitted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a color or food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive product Olean (olestra). Olean is used in place of fats and oils in prepackaged ready-to-eat savory (i.e., salty or piquant, but not sweet) snacks. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Olean (U.S. Patent No. 4,005,196) from Proctor & Gamble Co. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 9, 1996, FDA advised the Patent and Trademark Office that this food additive product had undergone a regulatory review period and that the listing of Olean represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Olean is 5,418 days. Of this time, 2,191 days occurred during the testing phase of the regulatory review period, while 3,227 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test was begun:* April 2, 1981. The applicant does not specifically state a date when a test involving this food additive product was begun. However, FDA records indicate that the test was begun on April 2, 1981.

2. *The date a petition requesting the issuance of a regulation for use of the food additive under section 409 of the act was initially submitted:* April 1, 1987. FDA has verified the applicant's claim that the petition for Olean was initially submitted on April 1, 1987.

3. *The date the regulation for the food additive petition became effective:* January 30, 1996. The applicant claims that the regulation for the food additive became effective on January 24, 1996. However, FDA records indicate that, by its terms, the regulation for the food additive became effective on January 30, 1996 (61 FR 3118, January 30, 1996).

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In this application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 7, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore,

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any interested person may petition FDA, on or before July 7, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 25, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–138 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Joint Meeting of the Nonprescription Drugs and Anti-Infective Drugs Advisory Committees

Date, time, and place. January 22, 1997, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541, or Anti-Infective Drugs Advisory Committee, code 12530. Please call the hotline for information concerning any possible changes.

General function of the committee. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Anti-Infective Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 13, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The joint committees will discuss issues relating to a health-care continuum model. In the **Federal Register** of June 17, 1994 (59 FR 31402 through 31452) the agency published a proposed rule for OTC health-care antiseptic drug products, i.e., patient preoperative skin preparations, surgical hand scrubs, and health-care personnel and antiseptic handwashes. In response to the proposed rule, the agency received a number of requests to consider a health-care continuum as a model for the regulation of OTC health-care antiseptic drug products. The proposed model defines six drug product categories (preoperative skin preparation, surgical hand scrub, health-care personnel handwash, food handler handwash, antimicrobial handwash, and antimicrobial body wash) and proposes testing requirements, key characteristics, and labeling for each of the categories. The model also proposes that the public health impact of these products is the lowest for consumer use products and continuously increases through the model as follows: Antimicrobial hand washes, antimicrobial body washes, food handler handwash, health-care personnel handwash, surgical hand scrub, and preoperative skin preparation. Conversely, the model proposes that the size of the population impacted by these products continuously decreases from consumer use products to professional use products. FDA is seeking an evaluation of the model's impact on public health in light of the isolation of pathogenic bacteria-bearing plasmids encoding for both topical antiseptic and multiple antibiotic resistance and is soliciting the advice and opinions from the advisory committees on this issue. The agency encourages investigators, academicians, and manufacturers of these products to respond to this notice with information bearing on this issue and to present their views on this issue before the committees.

A Joint Meeting of the Nonprescription Drugs Advisory Committee and the Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. January 23, 1997, 8:30 a.m., Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Tracy K. Riley or Joan C. Standaert, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541, or Cardiovascular and Renal Drugs Advisory Committee, code 12533. Please call the hotline for information concerning any possible changes.

General function of the committee. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Cardiovascular and Renal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for used in cardiovascular and renal disorders.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 8, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will jointly discuss issues relevant to professional labeling indications for aspirin. A citizen petition requested that the Commissioner of Food and Drugs approve various vascular professional labeling indications for aspirin. FDA has already acted on some of the issues raised, while others have not been resolved. FDA is now soliciting advice and opinions from the advisory committees regarding the use of aspirin for expanded professional labeling indications for aspirin. Issues to be discussed include the use of aspirin in patients deemed to be at elevated risk of cardiovascular events due to some form of vascular disease or other conditions implying an increased risk of occlusive vascular disease (i.e., patients undergoing coronary, cerebral, or peripheral arterial revascularization procedures; patients with chronic nonvalvular atrial fibrillation; patients requiring hemodialysis access with a fistula or shunt; patients with chronic stable angina; and other patients deemed to be at elevated risk). The agency encourages investigators, academicians, and members of the pharmaceutical industry with information about the use of aspirin in patients at increased risk of cardiovascular events to respond to this notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 20, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–92 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

National Mammography Quality Assurance Advisory Committee

Date, time, and place. January 13, 1997, 9 a.m., and January 14 and 15, 1997, 8 a.m., Bethesda Marriott Hotel, Grand Ballroom, 5151 Pooks Hill Rd., Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–897–9400 and reference the FDA Committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, January 13, 1997, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6:30 p.m.; open committee discussion, January 14, 1997, 8 a.m. to 6 p.m.; open committee discussion, January 15, 1997, 8 a.m. to 3 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee advises the agency on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 2, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 13, 14, and 15, 1997, the committee will discuss the proposed final regulations under the Mammography Quality Standards Act (MQSA) of 1992. Copies of the proposed final regulations may be obtained by submitting a written request to MQSA, c/o KRA, 1010 Wayne Ave., suite 850, Silver Spring, MD 20910, or faxing a request to 301–495–9410.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 20, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–93 Filed 1–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4153–D–01]

Revocation and Redelegation of Authority to FHA Comptroller

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation, and redelegation of authority to the FHA Comptroller.

SUMMARY: To assist in the efficient management of the Office of Housing, the Assistant Secretary for Housing—Federal Housing Commissioner is herein transferring, from the Deputy Assistant Secretary for Operations, to the FHA Comptroller, authority regarding asset sales of Secretary-held multifamily mortgages.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, Office of Housing, Room 9116, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–0826. A telecommunications device for the hearing impaired is available via the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In this document, the Assistant Secretary for Housing—Federal Housing Commissioner is transferring responsibilities related to the asset sales

of Secretary-held multifamily mortgages. These responsibilities, previously handled by the Deputy Assistant Secretary for Operations, will now be handled by the FHA Comptroller. The Assistant Secretary for Housing—Federal Housing Commissioner has determined that, from an organizational standpoint, these functions more appropriately belong with the FHA Comptroller.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated.

The FHA Comptroller is redelegated:

1. The authority to recommend the terms and conditions under which the Department offers for sale Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any; upon approval of the recommendations, the authority to offer for sale such mortgages and assigned mortgage notes, including all related assets, if any; and the authority to execute agreements in the name of the Secretary pursuant to which the Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any, may be sold.

2. The authority to take or cause to be taken, and direct any action necessary to initiate or respond to correspondence on behalf of the Department concerning the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any;

3. The authority to take or cause to be taken, and direct any action necessary to consummate the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any. Without limiting the generality of the foregoing, this authority shall include the execution, acknowledgement, seal and delivery, on behalf of the Secretary of (i) assignments of the mortgages and/or deeds of trust; (ii) perfection and assignments of UCC financing statements; (iii) document delivery notices; (iv) assignments of collateral mortgage loan documents; (v) mortgage note endorsements, deeds of trust note endorsements and mortgage notes; (vi) release of regulatory agreements; (vii) letters to mortgagors/borrowers, insurance companies and taxing authorities advising them of the sale and/or transfer of the mortgage loans, as well as letters as may be necessary to residents of projects secured by the Secretary-held multifamily mortgage loans; and (viii) such other documents as are necessary to effect the sale and/or transfer of the Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including any related assets, if any.

4. The authority to take or cause to be taken, and direct any action necessary to compromise and resolve breach notices concerning the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including all related assets, if any. Without limiting the generality of the foregoing, this authority shall include the execution, acknowledgement, seal and delivery, on behalf of the Secretary, of all documents responding to, accepting, rejecting or compromising breach notices as well as the taking of such other action as may be necessary on behalf of the Secretary to respond to, accept, reject or compromise breach notices.

5. The authority to coordinate and be deciding official for all of the Office of Housing's responsibilities for litigation concerning the sale of Secretary-held multifamily mortgages and the accompanying assigned mortgages notes, including all related assets, if any.

6. The authority to take all other actions as may be necessary to effect the sale and/or transfer of the Secretary-held multifamily mortgages and the accompanying assigned mortgage notes, including any related assets, if any.

Section B. Authority to Further Redelegate.

The FHA Comptroller may further redelegate the authority granted within Section A, above.

Section C. Authority Revoked.

This document revokes the redelegation of authority at 61 FR 15818, published on April 9, 1996.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 8, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 97–142 Filed 1–3–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974—Public Notice Alteration of System of Records

The Department of the Interior proposes to alter a system of records managed by the Office of Occupational Safety and Health to add four new categories of information on individuals covered by the system. The system being altered, "Safety Management Information System—Interior, DOI–60," is described in the notice published in its entirety below. The system was previously described as "Safety Management Information System—Interior, OS–60," as published on January 17, 1989 (54 FR 1800).

The Safety Management Information System was established to assist the Department in reducing its employee injury and accident rate. The System presently contains employee injury, accident and personnel data records. To improve the quality, timeliness and efficiency of injury and accident reporting and analysis, four additional types of information are being added to the System: employee birth date, home address, sex and salary. This additional information will allow employees and supervisors to report injuries and accidents electronically from their computer workstations. This will eliminate duplication of costly forms and administrative processes, afford employees and supervisors a secure one-time entry process, provide a high degree of accuracy, allow timely and multiple use of injury compensation information needed by Department of Labor, permit real time safety analysis, and require no new user technical support or computer hardware.

All other changes in the notice describing "Safety Management Information System—Interior DOI–60" are editorial in nature. They clarify and update existing statements and reflect organizational, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register.**

As required by the Privacy Act of 1974, the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Reform and Oversight have been given notice of this proposed Privacy Act system alteration.

The Privacy Act of 1974 requires that the public be provided with a 30-day period in which to comment on the Department's proposal to alter "Interior—DOI–60." The Office of Management and Budget, in its Circular A–130, requires a 40-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Department of the Interior, Office of the Secretary, 1849 "C" Street NW, Mail Stop 1414 MIB, Washington, DC 20240, telephone (202) 208–6045, fax 202–208–5048. Comments received within 40 days of publication in the **Federal Register** will be considered.

The notice shall be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: December 24, 1996.

Sue Ellen Sloca,

Departmental Privacy Act Officer.

INTERIOR/DOI–60

SYSTEM NAME:

Safety Management Information System—Interior, DOI–60.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Occupational Safety and Health, P.O. Box 25007 (D–115), Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Interior, contractors, concessionaires, and public visitors to Interior facilities who have been involved in an accident resulting in personal injury and/or property damage.

CATEGORIES OF RECORDS IN THE SYSTEM:

For individuals covered by the system: Name of individual; Social Security Number, birth date, sex, home address, occupation, and salary (for employees of the Department, only) of the individual; date and location of the accident; data elements about the accident for analytical purposes; and a descriptive narrative concerning what caused the accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7901, (2) 26 U.S.C. 2671–2680, (3) 31 U.S.C. 240–243, (4) 29 CFR Part 1960, (5) Executive Order 12196.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) To provide summary data of injury, illness and property loss information to the bureaus in a number of formats for analytical purposes in order for them to improve accident prevention policies, procedures, regulations, standards, and operations; (b) To provide listings of individual cases to bureaus to insure that accidents occurring are reported through the Safety Management Information System; and (c) To adjudicate tort and employee claims.

Disclosures outside the Department of the Interior may be made: (1) To a Federal, State or local government agency that has partial or complete jurisdiction over the claim or related claims; (2) To provide to the Department of Labor quarterly summary listings of fatalities and disabling injuries and illnesses in compliance with 29 CFR 1960.6; (3) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; and (5) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING AND ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official records are maintained and stored in electronic form on a host computer housed in the system location office. They are created and updated on the individual workstations of any/all employees and supervisors, Departmentwide, that can communicate, electronically, with the host computer.

RETRIEVABILITY:

Records are retrieved both by personal identifiers of covered individuals and by data elements associated with the accidents via automated lookup tables.

SAFEGUARDS:

(1) Access to the records is limited to Departmental employees who have an official need to use the records in the performance of their duties. Access to the records is controlled by (a) required user IDs and passwords, and by (b) unique identifying personnel characteristics of users.

(2) Personal information is electronically tagged upon input into the system by employees or supervisors. It is not displayed or printed from the workstations of individuals not authorized to have access to it. It is protected from unauthorized access, during transmission, by electronic transmission encryption.

(3) Records are stored in a controlled area, secured from unauthorized access by electronic firewall, and maintained with safeguards meeting the requirements of "the Computer Security Guidelines for Implementing the Privacy Act of 1974" (43 CFR 2.51)

RETENTION AND DISPOSAL:

Records are retained in accordance with National Archives and Records Administration's General Records Schedule (GRS) 10, Item 5; GRS 18, Item 11; and GRS–20.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief System Administrator, Safety Management Information System, U.S. Department of the Interior, Office of Occupational Safety and Health, P.O. Box 25007 (D–115), Denver, Colorado 80225.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60. It shall state that the requester seeks information about himself/herself.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63. It shall state that the requester seeks information about himself/herself.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71. It shall state that the requester seeks information about himself/herself.

RECORD SOURCE CATEGORIES:

Employees involved in accidents. Supervisors of employees involved in accidents, supervisors of operations where public visitors are involved in accidents, officials responsible for oversight of contractors and concessionaires, safety professionals and other management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No parts of this system are exempted from provisions of the act.

[FR Doc. 97–84 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[OR-030-1220: G5-0288]

Notice of Postponement and Announcement of Meeting of Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management (BLM), Interior.

ACTION: Notice of postponement of meeting of Southeast Oregon Resource Advisory Council; Notice of announcement of meeting of Southeast Oregon Resource Advisory Council.

SUMMARY: Notice is given that the meeting of the Southeast Oregon Resource Advisory Council scheduled for January 27 and 28, 1997 is postponed to February 27 and 28, 1997. The meeting location remains the same: The Holiday Inn, 1249 Tapadera Avenue, Ontario, Oregon.

Public comments will be received from 12:00 p.m. to 12:15 p.m., Feb. 27, 1997. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project and the proposed rules regarding BLM's law enforcement authority.

DATES: The Southeast Oregon Resource Advisory Council meeting will be in at 8:00 a.m. and run to 5:00 p.m. Feb. 27, and, 8:00 a.m. to 12:00 noon on Feb. 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918; (Telephone 541-473-3144).

Lynn P. Findley,

Assistant District Manager, Operations.

[FR Doc. 97-127 Filed 1-3-97; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice to reinstate a previously approved collection.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) a request for emergency processing to reinstate the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by February 5, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0057), 725 17th Street, NW., Washington, DC 20503.

Send a copy of your comments to the Chief, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170-4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Minerals Management Service, telephone (703) 787-1600. You may obtain copies of the proposed collection of information and related forms by contacting MMS's Information Collection Clearance Officer at (703) 787-1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart C, Pollution Prevention and Control.

OMB Number: 1010-0057.

Abstract: The information collected consists of information that MMS uses to assess the ability of a lessee to prevent or contain pollution in offshore waters. Responses to this collection of information are mandatory.

Description of Respondents: Federal Outer Continental Shelf oil, gas, and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The reporting and recordkeeping requirements and number of respondents vary by section and are on occasion or monthly.

Estimated Annual Burden on Respondents: Reporting burden of 12,440 hours and recordkeeping burden of 137,070 hours, for a total of 149,510 burden hours. The average burden per respondent for both reporting and recordkeeping is estimated to be 1,150 hours.

Estimated Annual Other Costs to Respondents: $250,000 annualized one-time cost for the collection of meteorological data from selected sites to determine cumulative impacts of air quality within the 100-kilometer radius of the Breton National Wilderness Area.

Type of Request: Emergency reinstatement without change of a previously approved collection and subsequent extension of a currently approved collection of information.

Form Number: N/A.

Comments: The OMB is required to make a decision on a request for emergency processing within the time period requested by the agency submitting the collection of information. We requested approval within 7 days after OMB receives our request. OMB may approve an emergency request for 120 days.

During that period of emergency approval, MMS will immediately resubmit a request to OMB for a standard 3-year extension of this collection of information. OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of that request. Therefore, your comments are best ensured of being considered by OMB if OMB receives them within that time period.

The publication of this notice for comments will serve as notice for both submissions to OMB. All comments will become a matter of public record.

On July 11, 1996, MMS provided an opportunity for comments (61 FR 36565) as required by 5 CFR 1320.8(d). No comments were received in response to that notice.

Bureau Clearance Officer: Carole de Witt (703) 787-1242.

Dated: December 4, 1996.

E.P. Danenberger,

Acting Deputy Associate Director for Operations and Safety Management

[FR Doc. 97-193 Filed 1-3-97; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service; Martin Luther King, Jr., National Historic Site; Mojave National Preserve; Virgin Islands National Park.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) Visitor Services Project and three parks (Martin Luther King, Jr., National Historic Site in Georgia; Mojave National Preserve in California; Virgin

Islands National Park in the U.S. Virgin Islands) propose to conduct visitor surveys to learn about visitor demographics and visitor opinions about services and facilities in each of these three parks. The results of the surveys will be used by park managers to improve the services they provide to visitors while better protecting park natural and cultural resources. Study packages that include the proposed survey questionnaires for these three proposed park studies have been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these three proposed information collection requests (ICR). Comments are invited on: (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The purpose of the three proposed ICRs is to document the demographics of visitors to the three parks, to learn about the motivations and expectations these visitors have for their park visits, and to obtain their opinions regarding services provided by the three parks and the suitability of the visitor facilities maintained in the three parks. This information will be used by park planners and managers to plan, develop, and operate visitor services and facilities in ways that maximize use of limited park financial and personnel resources to meet the expectations and desires of park visitors.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for these three surveys.

DATES: Public comments will be accepted for thirty days from the date listed at the top of this page in the **Federal Register**.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Margaret Littlejohn; Cooperative Park Studies Unit; Department of Forest Resources; College of Forestry, Wildlife and Range Sciences; University of Idaho; Moscow, ID 83844–1133.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT:
Margaret Littlejohn, 208–885–7863.

SUPPLEMENTARY INFORMATION:

Title: National Park Service (NPS) Visitor Services Project Visitor Surveys at Three Parks.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning visitor demographics and visitor opinions about the services and facilities that the National Park Service provides in each of these three parks. The proposed information to be collected regarding visitors in these three parks is not available from existing records, sources, or observations.

Description of Respondents: A sample of visitors to each of these three parks.

Estimated Average Number of Respondents: 360 at Martin Luther King, Jr., National Historic Site; 432 at Mojave National Preserve; and 728 at Virgin Islands National Park.

Estimated Average Number of Responses: 360 at Martin Luther King, Jr., National Historic Site; 432 at Mojave National Preserve; and 728 at Virgin Islands National Park.

Estimated Average Burden Hours Per Response: 12 minutes.

Estimated Annual Reporting Burden: 72 hours at Martin Luther King, Jr., National Historic Site; 86.4 hours at Mojave National Preserve; and 146 hours at Virgin Islands National Park.

Estimated Frequency of Response: One time.

Dated: December 31, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audits and Accountability Team, National Park Service.

[FR Doc. 97–136 Filed 1–3–97; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–740 (Final)]

Sodium Azide from Japan

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing and briefs.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov or ftp://ftp.usitc.gov*).

SUPPLEMENTARY INFORMATION: On December 30, 1996, the Department of Commerce informed the Commission that a suspension agreement had been signed in the subject investigation. Accordingly, the Commission hereby cancels the hearing on the investigation currently scheduled for January 7, 1997, the prehearing briefs currently due December 31, 1996, and the posthearing briefs currently due January 14, 1997.

AUTHORITY: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 30, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–131 Filed 1–3–97; 8:45 am]

BILLING CODE 7020–02–P

PAROLE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: The first Tuesday of each month throughout Calendar Year 1997, at 3:30 p.m., with the exception of those months in which the Commission gives public notice of the holding of a quarterly business meeting.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed to the public pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: The following matters will be considered during the monthly meetings covered by this announcement:

Prisoner and parolee appeals to the National Appeals Board under 28 CFR 2.26, and initial decisions regarding original jurisdiction cases under 28 CFR 2.17,

whenever such cases are found to require discussion among the Commissioners prior to voting. These decisions pertain to cases initially heard by examiners wherein inmates of Federal prisons or persons on Federal parole have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5862.

Dated: December 20, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–287 Filed 1–2–97; 2:24 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Proposed Collection; Comment Request: Correction

ACTION: Correction.

SUMMARY: In notice document 96–33023 beginning on page 68303 in the issue of Friday, December 27, 1996, make the following correction:

On page 68303 in the first column, after the sentence, "The Department of Labor is particularly interested in comments which:" insert the following:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

On page 68303 in the second column under **ADDRESSES**, the following statement is added after the telephone number: (This is not a toll-free number).

In the section **FOR FURTHER INFORMATION CONTACT**, the following statement is added after the telephone number: (This is not a toll-free number).

Dated: December 30, 1996.

Jeffrey C. Crandall,

Director of Planning.

[FR Doc. 97–165 Filed 1–3–97; 8:45 am]

BILLING CODE 4510–79–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of a new information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Joint NRC/EPA Survey of Sewage Sludge/Ash.

2. Current OMB approval number: None.

3. How often the collection is required: This is a one-time collection.

4. Who is required or asked to report: Selected publicly owned treatment works (POTWs), and Agreement States.

5. The number of annual respondents: 600 POTWs for the questionnaire, and 300 POTWs for sample collection, plus 29 Agreement States for reporting of Zip Codes.

6. The number of hours needed annually to complete the requirement or request: An average of 2 hours per respondent for questionnaires and 6 hours each for selected respondents for collecting samples, plus 8 hours each for 29 Agreement States. The total burden is 3,232 hours.

7. Abstract: The survey will obtain national estimates of the levels of radioactive materials in sludge and ash at POTWs, estimate the extent to which radioactive contamination comes from either NRC/Agreement State licensees or from naturally occurring radioactivity, and support possible rulemaking decisions by NRC and EPA. NRC and EPA will send questionnaires to selected POTWs. Based on the results of that survey, NRC will identify approximately 300 POTWs from which samples of sewer sludge/ash will be taken and analyzed. Results of the full survey will be published for use by Federal agencies, States, POTWs, and local POTW officials.

Submit, by March 7, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th of December, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–156 Filed 1–3–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents Rescheduled; Notice of Meeting

A joint meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents scheduled to be held on January 9, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, as been rescheduled to allow more time for discussion. The meeting has been rescheduled for January 9, 1997, 12:30 p.m. until 3:30 p.m. All other items pertaining to this meeting remain the same as previously published in the **Federal Register** on December 24, 1996 (61 FR 67859).

For further information contact: Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST).

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Dated: December 30, 1996.

Paul Boehnert,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 97–178 Filed 1–3–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38094; File No. SR–NASD–96–49]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature Until July 31, 1997

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend, until July 31, 1997, the effectiveness of certain rules governing the operation of The Nasdaq Stock Market, Inc.'s ("Nasdaq") Small Order Execution System ("SOES"). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993 [1] and recently extended through January 31, 1997,[2] provide for: (1) a reduction in the minimum exposure limit for unpreferenced SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preferenced orders ("SOES Minimum Exposure Limit Rule"); and (2) implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted ("SOES Automated Quotation Update Feature"). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In it filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission originally approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature on a one-year pilot basis in December 1993, along with two other SOES rules which have since lapsed.[4] Since December 1993, the SEC has approved five NASD proposals to extend the effectiveness of the rules, with the most recent approval extending the rules through January 31, 1997.[5] With this filing the NASD proposes to further extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until July 31, 1997, so that the rules can continue on an uninterrupted basis until the SEC has had an opportunity to consider Nasdaq's proposals to amend SOES, SelectNet, and a variety of NASD rules to conform to the SEC's new limit order display rule, Rule 11Ac1–4, and amendments to SEC Rule 11Ac1–1(c)(5), the so-called ECN Rule.[6]

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effects on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors for the Commission to approve a further limited extension of the effectiveness of these rules. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intra-day trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the same arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and five extensions of these rules are just as compelling today as they were when the SEC relied on them to initially approve these rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contribute to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts. In addition, given the increased utilization of SOES since the SOES Maximum Order Size Rule lapsed at the end of March 1995, the NASD believes it is even more imperative that the SOES Minimum Exposure Limit Rule and the SOES

[1] *See* Securities Exchange Act Release No. 33377 (December 23, 1993), 58 FR 69419 (December 30, 1993) ("Interim SOES Rules Approval Order").

[2] *See* Securities Exchange Act Release No. 37502 (July 30, 1996), 61 FR 40869 (August 6, 1996) ("Interim SOES Rules Extension Order").

[3] As first approved by the Commission on December 23, 1993, the Interim SOES Rules had four components: (1) the SOES Minimum Exposure Limit; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares ("SOES Maximum Order Size"); and (4) the prohibition of short sales through SOES. The SOES Maximum Order Size Rule lapsed effective March 28, 1995 and the rule prohibiting the execution of short sales through SOES lapsed effective January 26, 1995.

[4] *See* Interim SOES Rules Approval Order, *supra* note 1.

[5] *See* Interim SOES Rules Extension Order, *supra* note 2, and Securities Exchange Act Release Nos. 35275 (January 25, 1995), 60 FR 6327 (February 1, 1995); 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995); 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995) ("October 1995 Extension Order"); and 36795 (January 31, 1996), 61 FR 4504 (February 6, 1996).

[6] *See* Securities Exchange Act Release No. 38008 (December 2, 1996), 61 FR 64550 (December 5, 1996). Should the Commission approve SR–NASD–96–43 prior to July 31, 1997, the rule amendments contained in that filing would supersede and replace the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature where appropriate.

Automated Quotation Update Feature remain in effect to help to ensure the integrity of the Nasdaq market and prevent waves of SOES orders from a handful of SOES order-entry firms from degrading market liquidity and contributing to excessive short-term market volatility.

The NASD notes that the SEC made specific findings in the Interim SOES Rules Approval Order that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweighs any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to produce accurate quotations, consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.[7]

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among market participants, and the practicality of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.[8]

c. The Commission believes that it is appropriate to restrict trading practices through SOES that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. . . . The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.[9]

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality * * *. Active intra-day trading activity through SOES can also contribute to instability in the market.[10]

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a negative effect on market prices and volatility.[11]

f. The Commission does not believe that intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.[12]

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.[13]

h. The Commission * * * has determined that the instant modifications to SOES furthers the objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.[14]

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES Rules conducted by the NASD's Economic Research Department [15] and an independent economist commissioned by the NASD.[16] When the SEC approved the Interim SOES Rules, it stated that "[a]ny further action the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act." [17] In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect "the NASD to monitor the quality of its markets and assess the effects of the approved SOES changes on market quality for Nasdaq securities." Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

• Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period of following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market ("NNM") securities experienced a sharp decline

[7] Interim SOES Rules Approval Order, *supra* note 1, 58 FR at 69423.

[8] *Id.*

[9] *Id.* at 69424–25.

[10] *Id.*

[11] *Id.* at 69425–26.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 69429.

[15] *See* letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NASD's N•PROVE filing, SR–NASD–94–13 (the NASD later withdrew this filing)).

[16] *See* The Association Between the Interim SOES Rules and Nasdaq Market Quality, Dean Furbush, Ph.D., Economists, Inc., Washington, D.C., December 30, 1994 ("Furbush Study").

[17] Interim SOES Rules Approval Order, *supra* note 1, 59 FR at 69429.

from April 28 to May 12 and from June 23 to July 18.[18]

• With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring of 1994, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and

• A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications, in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0, or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules and extensions of the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.[19] In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid-ask spread; (2) that there is a significant positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

The NASD also believes market activity since the SOES Maximum Order Size Rule lapsed on March 28, 1995, provides further support for the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the NASD's economic rationale for these rules. In particular, an analysis prepared by the NASD's Economic Research Department clearly illustrates that there has been a dramatic increase in SOES volume since the SOES Maximum Order Size Rule lapsed and that many market maker positions have been abandoned. These two phenomena appear to be linked. Those Nasdaq stocks that have experienced the greatest decline in the number of market makers are the ones that have experienced the greatest increase in SOES volume since the rule lapsed.[20] The NASD believes these figures indicate that the relaxation of one of the Interim SOES Rules may have contributed to some of the adverse market developments that the NASD was seeking to avoid through implementation of the Interim SOES Rules (*e.g.*, degradation in market maker participation and market liquidity).[21] Accordingly, the NASD believes that any further relaxation of the Interim SOES Rules by permitting the SOES Minimum Exposure Limit Rule or the SOES Automated Quotation Update Feature to lapse would further harm the Nasdaq market. In light of the significance of these figures and their indicated adverse ramifications upon the Nasdaq market, the NASD also believes that SEC reconsideration of its position with respect to the entry of 1,000-share orders into SOES is warranted.

The NASD also has prepared another report that the NASD believes illustrates that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no adverse impact on the market for Nasdaq securities.[22] This report was in response to the Commission's request in the October 1995 Extension Order that the NASD:

> Monitor the extent to which exposure limits are exhausted, the extent to which the automated quotation update feature is used, and the effects these two aspects have on liquidity. Moreover, the Commission expects the NASD to consider the possibility of enhancements to eliminate the potential for delayed and/or inferior executions.[23]

In sum, the December 1995 Monitoring Report found that it is very infrequent occurrence for a market maker to have its exposure limit exhausted in a NNM security. In particular, from the period October 2, 1995 to November 22, 1995, there were, on average, 83 instances per day where a market maker's exposure limit in NNM securities was exhausted.[24] Thus, given the fact that there was an average of 44,062 market making positions in NNM securities and 3,932 NNM securities trading per day during this time period, the impact of these individual exposure limit exhaustions on the availability of SOES to investors throughout the trading day was infinitesimal. Each market making position experienced .0019 exposure limit exhaustions per day over this time period and each NNM securities experienced .0211 exhaustions per day. Moreover, while Nasdaq could not readily determine the extent to which the exposure limit exhaustions occurred simultaneously in the same security, given the stark infrequency with which the exposure limit exhaustions occurred, the NASD believes it is extremely improbable that a NNM security would experience a situation where the SOES exposure limits for all market makers in that stock were exhausted at the same time. Indeed, this

[18] Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in *The Wall Street Journal*, *The Los Angeles Times* and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these narrower levels from mid-May until June 23, and declined again from June 23 to July 18.

[19] *See* NASD Department of Economic Research: Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) ("May 1993 SOES Study"). *See also* Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

[20] *See* letter from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Brandon Becker, Director, Division of Market Regulation, SEC, dated August 1, 1995.

[21] The NASD believes that elimination of the ban against short sales through SOES did not have a dramatic negative market effect because the NASD's short sale rule was approved during the time that the ban was in effect.

[22] *See* Monitoring Report of Exhaustion of SOES Exposure Limits and the Usage of Nasdaq Automated Quotation Update Feature, NASD Economic Research Department, December 18, 1995.

[23] October 1995 Extension Order, *supra* note 5, 60 FR at 52439, n. 12 ("December 1995 Monitoring Report").

[24] The highest number of exposure limits exhausted on any day during this period was 119 on November 21, 1995 and the lowest number was 47 on October 4, 1995.

conclusion is borne out by the extremely short time-span in which SOES orders are executed. Specifically, the report shows that, on average, SOES orders are executed 1.62 seconds after entry and that 98.5 percent of all SOES orders are executed within three seconds.[25]

The report also showed that SOES exposure limit exhaustions tend to cluster in active NNM securities with high numbers of market makers. This further illustrates the extremely low probability that all market makers in the same security would ever have their exposure limits exhausted simultaneously. Lastly, examining one trading day, the report shows that active SOES order entry firms accounted for 92 percent of the exposure limit exhaustion, as might be expected given that these firms account for 89 percent of SOES dollar volume. Accordingly, the NASD and Nasdaq believe that the SOES Minimum Exposure Limit Rule has had a very negligible, if any, impact on the availability of SOES to small, retail investors.

The report alsc found that the Automated Quotation Update Feature appears to be used extensively by some market making firms. Specifically, the report shows that the quote update feature is used by 126 market makers for 10,644 market making positions. Thus, this feature is currently being used by 26 percent of the market makers and for 24 percent of all market making positions. In addition the report showed that, on average, 3,394 quotations a day were generated by the quote update feature from October 2, 1995 to November 21, 1995. Accordingly, the NASD and Nasdaq believe that the Automated Update Feature has effectively served its intended purpose of helping to maintain continuous quotations in Nasdaq, minimize "closed quote" conditions, and avoid unexcused market maker withdrawals, thereby promoting market liquidity.

Accordingly, the NASD believes the Commission should properly view these two SOES rules as strictures that are highly correlated with improvements in market liquidity, not as rules that have had or could have a damaging effect on liquidity. The NASD and Nasdaq also believe the monitoring report illustrates that implementation of the Automated Quotation Update Feature and the SOES Minimum Exposure Limit Rule have not diminished the significant benefits provided to investors through the automatic execution capabilities of SOES. Simply put, these two SOES rules have in no way altered the operation of SOES as an automatic execution system that affords small, retail investors immediate executions at the inside market.

Moreover, in the Interim SOES Rules Extension Order, an order approving a proposal identical to the NASD's instant proposal, the SEC found that the continued effectiveness of the SOES Minimum Exposure Limit Rule "provides customers fair access to the Nasdaq market and reasonable assurance of timely executions."[26] With respect to the SOES Automated Quotation Update Feature, the SEC also stated that it believes "that extending the automated update feature is consistent with the Act and, in particular, the Firm Quote Rule. The update function provides market makers the opportunity to update their quotations automatically after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes."[27]

Therefore, in light of the above-cited statutory findings made by the SEC when it first approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and extensions of these rules, coupled with the NASD's findings that these rules have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature for an additional six-month period. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.[28]

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Specifically, the NASD is proposing to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until July 31, 1997 because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the SEC should approve an additional six-month extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through July 31, 1997, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

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[25] The report also found that SOES orders can experience brief execution delays in isolated instances, as one order took as long as 87 seconds to be executed. While the NASD could not readily identify the reasons for these infrequent execution delays, the NASD believes these delays are likely the result of two factors. First, consistent with the NASD's short-sale rule, short sales entered into SOES cannot be executed on down bids. Second, waves of SOES orders transmitted by active SOES order-entry firms cause queues to develop in the processing of SOES orders, which, in turn, causes execution delays.

[26] Interim SOES Rules Extension Order, *supra* note 2, 61 FR at 40870.

[27] *Id.* (footnotes omitted).

[28] Even if the Commission concludes that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange ("NYSE") Rule 80A on a permanent basis illustrates that the Commission and would still have a sufficient basis to approve an extension of the rules for a six-month period. In particular, the SEC's discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. *See* Securities Exchange Act Release No. 29854 (October 24, 1994), 56 FR 55963 (October 30, 1994). Accordingly the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote update feature. Accordingly, the NASD believes that these rule changes are not anticompetitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES. When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a "closed quote" condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things: (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferenced orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 7 through 14, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–147 Filed 1–3–97; 8:45 am]

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[Release No. 34–38092; File No. SR–NASD–96–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Reporting of Short Sale Transactions by Market Makers Exempt from the NASD's Short Sale Rule

December 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 17, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Automated Confirmation Transaction ("ACT") Service rules to require all Primary Market Makers ("PMMs") to mark their ACT reports to denote when they have relied on the PMM exemption to the NASD's short sale rule.[2] In order to afford NASD members ample time to modify their automated systems to comply with the proposed rule change, the NASD proposes to establish an effective date for the rule change in a Notice-to-Members announcing Commission approval of the proposal, which Notice-to-Members shall be published within thirty days of Commission approval of the proposal and which effective date shall be no longer than three weeks after the date of publication of the Notice. The text of the proposed rule change is as follows. (Deletions are bracketed.)

* * * * *

NASD Rule 6130

* * * * *

(d) Trade Information To Be Input

Each ACT report shall contain the following information:

(1)–(5). No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt [*] or cross;

(7)–(12). No change.

[* The "sell short" and "sell exempt" indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Rule 3350.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 29, 1994, the SEC approved the NASD's short sale rule applicable to short sales in Nasdaq National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.[3] The NASD's short sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[4] The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time).

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is involved, the rule provides an exemption to "qualified" Nasdaq market makers. Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the short sale rule for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements for a qualified market maker, it can remain a market maker in the Nasdaq system, although it cannot take advantage of the exemption from the rule.

To be a "qualified" market maker, a market maker must satisfy the Nasdaq Primary Market Maker ("PMM") Standards. Under the PMM Standards, a market maker must satisfy at least two of the following four criteria to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate'; volume in the stock.[5] If a market maker is a PMM for a particular stock, there is a "P" indicator next to its quote in that stock.

If a member firm is a PMM in 80 percent or more of the securities in which it has registered, the firm may immediately become a PMM (*i.e.*, a qualified market maker) in an NNM security be registering and entering quotations in that issue. Otherwise, it may become a PMM in a stock only after it has registered in the stock as a regular Nasdaq market maker an satisfied the PMM qualification standards for the next review period. The ability of a member firm to achieve and maintain PMM status in 80 percent of the NNM issues in which it is registered also has other corollary effects in market maker registration situations involving initial public offerings, secondary offerings, mergers and acquisitions.

In order to enhance the NASD's ability to surveil for compliance with the short-sale rule, when the Commission approved the NASD's short-sale rule it also approved an NASD proposal to require NASD members to append a designator to their ACT reports to denote whether their sale transactions were long sales, short sales, or exempt short sales. However, market makers exempt from the short-sale rule are not required to append "sell short" or "sell short exempt" to their ACT reports.[6] Accordingly, in order to enhance the NASD's ability to surveil for potential abuses of the market maker exemption and examine and monitor the market impacts of the market maker exemption, the NASD is

[2] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a "short sale" contained in SEC Rule 3b–3, which rule is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[3] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order"). The termination date for the pilot program has subsequently been extended through October 1, 1997. *See* Securities Exchange Act Release Nos. 36171 (August 30, 1995), 60 FR 46651; 36532 (November 30, 1995), 60 FR 62519; 37492 (July 29, 1996), 61 FR 40693; and 37919 (November 1, 1996), 61 FR 57934.

[4] Nasdaq calculated the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up bid" or a "down bid." Specifically, an "up bid" is denoted by a green "up" arrow and a "down bid" is denoted by a red "down" arrow. Accordingly, absent an exemption from the rule, a member cannot effect a short sale at or below the inside bid for a security in its proprietary account or a customer's account if there is a red arrow next to the security's symbol on the screen. In order to effect a "legal" short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green up arrow next to it, members can effect short sales in the security without any restrictions.

[5] Specifically, the proportionate volume test requires a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

[6] Specifically, the footnote to NASD Rule 6130(d)(6) provides that "[t]he 'sell short' and 'sell short exempt' indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Rule 3350."

proposing to delete the footnote to NASD Rule 6130(d)(6), thereby requiring all exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption.[7] In this connection, the NASD also notes that SEC staff has expressed preliminary concerns with the fact that the NASD's short sale rule does not apply uniformly to all market participants by virtue of the market maker exemption. As a result, to justify retention of the market maker exemption, SEC staff has indicated that the NASD must, among other things, conduct a thorough analysis of the use and effects of the market maker exemption.

The NASD believes the short-sale information that would be gathered upon approval of this rule filing would be a necessary and critical component of such an analysis of the market maker exemption.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that requiring exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption will help to enhance the ability of NASD Regulation, Inc. to monitor whether market makers are abusing the exemption and facilitate the NASD's ability to examine the market impacts of the market maker exemption from the short sale rule.

[7] In this connection, consistent with SEC statements regarding the intraday netting obligations of firms under SEC Rule 3b–3, the NASD notes that it will be permissible for firms to conduct a "firm-wide netting" of long and short positions once a day. Accordingly, the NASD believes it would be permissible for a Nasdaq trading desk to receive a stock position report at the opening and net those trades effected by the Nasdaq trading desk against this position throughout the day to determine whether particular sale was long or short. Of course, if a firm has developed the capability to continuously net its positions throughout that day, that firm would have to rely on such updated position reports to determine whether a particular sale was long or short. *See* Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949, 17950.

[8] 15 U.S.C. § 78o–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the proposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the proposed rule change be approved on an accelerated basis. The NASD believes that good cause exists to accelerate approval of the proposal because of the NASD's need to commence capturing exempt sales by exempt market makers through ACT for a sufficient time in advance of the expiration of the pilot program for the rule on October 1, 1997. With the information collected, the NASD's Economic Research Department can conduct a meaningful and statistically significant study on, among other things, the market impact of the market maker exemption from the rule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–52, and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[9] 17 CFR 200.30–3(a)(12) (1996).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–149 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38091; File No. SR–NASD–96–55]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Primary Market Maker Standards

December 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1996, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq, a wholly owned subsidiary of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), proposes to temporarily waive NASD Rule 4612, regarding primary Nasdaq market maker standards for the remainder of the current pilot period of the Nasdaq Short Sale Rule[2] or until new primary market maker standards can be devised.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] On November 1, 1996, the Commission extended the pilot period of the NASD Short Sale Rule through October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (or approving on an accelerated basis an extension to the NASD's Short Sale Rule through October 1, 1997).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq has evaluated its existing qualification criteria in the primary market maker standards rule, Rule 4612 (a) and (b), in light of the new SEC rules regarding a Nasdaq market maker's order handling obligations ("Order Handling Rules").[3] Nasdaq strongly believes that because of the potential changes in quotation and trading activity in Nasdaq securities when the Order Handling Rules become effective, the existing numerical criteria used to qualify a registered market maker as a primary market maker will be significantly affected. Because the precise effects on market maker quotes and trades are not possible to predict until Nasdaq can develop practical experience with new patterns of activity under the Order Handling Rules, Nasdaq believes that it should attempt to minimize the possible harmful unintended consequences that could occur by leaving the current standards in place. Accordingly, Nasdaq believes that the existing standards should be temporarily suspended on the same schedule for the phase in of the Order Handling Rules which commence on January 10, 1997.

Under existing Rule 4612, a registered Nasdaq Market Maker may be deemed to be a primary market maker in national market securities if the market maker meets two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify as a primary market maker if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock. The review period for meeting any of these criteria is one calendar month.

Commencing on January 10, 1997,[4] the Order Handling Rules will go into effect. These new rules will require Nasdaq market makers to change their quotes when they are in receipt of customer limit orders that improve upon their current quotations. Furthermore, under newly refined best execution principles enunciated by the SEC, market makers will be required to execute orders under different circumstances from today. Finally, entities that are not market makers, (*e.g.*, electronic communication networks ("ECNs")), will participate in Nasdaq and may have a substantial impact on quotations and executions. Nasdaq believes that each of the current criteria will be affected. For example, as to the 102% of average dealer spread test, dealer quotes will not be driven not merely by the market maker's proprietary interests, but also the interests of customers that place limit orders with the market maker. Under the new rules, a quote of a market maker driven by a customer limit order will be indistinguishable from that of a quote driven by a customer order. In addition, the test regarding the percentage of time in which the market maker's quote is at the inside will also be driven to some extent by customer limit order interest. Further, because ECNs will be able to drive the inside price, the parameters for this factor may need to be reevaluated. Finally, Nasdaq believes that the "quote change to executed trade ratio test" will also be affected by customer limit orders which may be changed or cancelled by the customer without the market maker being involved in an execution. At this time, however, Nasdaq believes it is virtually impossible to predict with any accuracy precisely how market makers will change their quotation and execution patterns.

Because of this uncertainty, Nasdaq believes that it is in the public investor's best interests to temporarily suspend the operation of the primary market maker standards that currently exist. If the standards are not suspended, and there is a significant shift in the patterns of quotation and executions, Nasdaq believes that market makers operating under the existing standards and earning the primary market maker designation could conceivably lose that status. Nasdaq believes that loss of the designation would mean that market makers without the designation would not be permitted to avail themselves of the short sale exemption for primary market makers. If a significant number of registered market makers were to lose the short sale exemption, or if a single market maker that handled a significant portion of the order flow in a security were to lose the exemption, Nasdaq believes liquidity in that particular stock could be seriously harmed.

Therefore, Nasdaq is proposing that starting on February 1, 1997, any market maker making a market in any of the initial 50 stocks selected for the first phase of implementation of the Order Handling Rules on January 10, 1997, will be able to avail itself of the short sale exemption for qualified market makers found in Rule 3350(c)(1). Similarly, Nasdaq proposes that as stocks are phased in to the new Order Handling Rules, any registered market maker in the stock would be deemed to be qualified for purposes of the short sale qualified market maker exemption.

In seeking to temporarily suspend the use of the primary market maker qualification criteria, Nasdaq believes that the suspension of the criteria is an appropriate balance between the need for limitations on the market maker short sale exemption and the potential for loss of liquidity and market disruption in a period when new patterns and practices of trading are first being developed. Nasdaq believes that the period of time in which the Order Handling Rules are first being implemented may be a period of uncertainty for market makers and investors alike and that the prudent course of action would be to identify and eliminate as many potential areas for increasing that uncertainty as possible. Nasdaq has identified this issue as a critical area of uncertainty and believes that the suspension of the market maker qualification standards on a temporary basis is an appropriate market quality response. Nasdaq believes that this relief will enable Nasdaq market makers to better satisfy investor liquidity demands and could help to promote pricing efficiency.

Nasdaq also plans to develop new standards as soon as practicable after the Order Handling Rules become effective and Nasdaq can obtain experience with the manner in which the new rules affect market makers. Nasdaq plans to obtain the data from January and discuss the practices among staff and with the Quality of Markets Committee.

Nasdaq believes that the proposed rule change is consistent with Section

[3] These rules include Rule 11Ac1-4, the customer limit order display rule and amended Rule 11Ac1-1, amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks. *See* Securities Exchange Act Release No. 37619 (September 6, 1996); 61 FR 48290 (Order Handling Rules Adopting Release).

[4] Nasdaq has requested relief from the January 10, 1997 commencement date of the Order Handling Rules. Nasdaq seeks to commence compliance with the rules on January 13, 1997, because of concerns that it would pose an untenable system change risk to attempt to rush the introduction of new trading system software during the trading week. If the SEC grants the relief sought, the commencement date for this proposed rule change would also be January 13, 1997. Thus, in the course of the filing on this proposed rule change, while Nasdaq refers to January 10, 1997, as the commencement date, if the SEC grants the relief requested, the actual implementation date would be January 13, 1997.

15A(b)(6) of the Act[5] in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, Nasdaq believes this temporary amendment to the existing rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. Nasdaq further believes the proposed rule change should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2)[6] for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The date that the Order Handling Rules go into effect and Nasdaq must make system changes to accommodate the new regulatory requirements is January 10, 1997. Because Nasdaq believes that market makers must be provided with information regarding the exemption from the short sale rule as soon as possible before February 1, 1997, Nasdaq requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The alternative is potential confusion and market disruption as market makers may be unsure about whether they are in fact eligible to sell short in the course of their market making activities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–55, and should be submitted by January 16, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–150 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38084; File No. SR–NASD–96–48]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to: (1) Rule 4770 of the SOES Rules, Regarding the Fees Charged for Executions and Cancellation of Orders Entered in SOES, and (2) Rule 7010, Related to Charges for Orders and Cancellation of Orders Entered into SelectNet

December 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1996, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), The Nasdaq Stock Market, Inc., ("Nasdaq"), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), is herewith filing a proposed rule change to amend: (1) Rule 4770 of the Small Order Execution System ("SOES") Rules, regarding the fees charged for executions and cancellation of orders entered in SOES, and (2) Rule 7010, related to charges for orders and cancellation of orders entered into SelectNet. Nasdaq has requested that the Commission approve the proposed rule change on an accelerated basis. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

Rule 4700 Small Order Execution System (SOES)

* * * * *

Rule 4770.

[A fee of $.005 per share shall be assessable to SOES Market Makers for all transactions executed through SOES provided, however, that the minimum charge per execution shall be $.50 and the maximum charge per execution shall be $1.00.]

(a) A fee for orders executed through SOES shall be assessed, to be allocated as follows: the SOES Market Maker executing the order shall be assessed $0.50 per transaction and the SOES Order Entry Firm of SOES Market Maker entering the order shall be assessed $0.50 per order.

(b) For each order entered by a SOES Order Entry Firm of a SOES Market Maker that is cancelled, the SOES Order Entry Firm or SOES Market Maker that cancels such order shall be assessed a fee of $0.25.

* * * * *

Rule 7000 Charges for Services and Equipment

* * * * *

Rule 7010 System Services

(a)–(d) No changes.

(e) SelectNet Service.

The following charges shall apply to the use of SelectNet:

Transaction Charge—$2.50/side

Cancellation Fee—$.25/per order

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD and Nasdaq have evaluated the current fee structures for SOES and the SelectNet system that will be changed to accommodate the new SEC rules regarding a Nasdaq market maker's order handling obligations, *i.e.*, Rule 11Ac1–4 (the customer limit order display rule) and amended Rule 11Ac1–1 (amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks ("ECNs").[1] The NASD and Nasdaq have determined, as explained below, to restructure SOES and SelectNet fees because of changes to their operation as addressed in recently filed NASD proposed rule changes stemming from the SEC's new rules. All of the recommended fee changes are contingent upon commencement of the new NASD rules.

(1) SOES Fees

SOES is Nasdaq's small order execution system in which orders 1,000 shares or less are automatically executed against available Nasdaq market makers.

In a separate rule filing before the Commission,[2] Nasdaq has proposed to make significant changes to SOES to permit market makers to comply with new obligations to display customer limit orders in their quotations and to execute orders at such quotes only up to actual displayed size, as opposed to an artificial "tier size", as currently occurs. Moreover, among other things, the NASD and Nasdaq have proposed to allow market makers to enter customer market and marketable limit orders into SOES, unlike the current SOES Rules which prohibit market maker entry of such orders, unless the market makers self-preference those orders, i.e., direct them to themselves. Because the order handling rules change the current approach to market maker quoting in Nasdaq securities from a pure dealer-driven quote to a more order-driven quote, the NASD and Nasdaq believe that the disparate application of the current SOES fee structure to the market maker should be changed to take into account the new process by which quotes are established and orders are executed. Accordingly, the NASD and Nasdaq propose to establish a charge assessed against both sides to the transaction regardless of the size of the transaction—both the order entry firm and the market maker will be charged for the execution in SOES. Under the new fee structure, if an order entry firm or a market maker were to enter an order of 1,000 shares into SOES, and that order were executed against a single market maker, the firm entering the order (whether a market maker or order entry firm) would be assessed $.50 and the market maker executing the order would be assessed $.50. If a SOES order entered by an order entry firm were executed against multiple market makers, the order entry firm would be charged a single $0.50 fee while each market maker participating in the executions would also be charged a $.50 fee.

The NASD and Nasdaq have proposed this charge against both parties to an execution in recognition of the significant market structure changes caused by the SEC rules, the respective use of Nasdaq facilities to support SOES operations by both market makers and order entry firms, and the significant benefits that both sides of the trade receive in the new SOES. Unlike in the past when the quotations represented solely market maker proprietary interest, in the new environment market makers may be displaying a priced order under the customer limit order display rule. Because market makers may be quoting a particular price in order to attract order flow, it is appropriate to assess them a reasonable fee for using SOES to obtain executions.

The fee structure is fair and reasonable in that it is similar to transaction charges assessed in the securities industry for automatic executions. The system that the NASD and Nasdaq are providing to the membership attempts to provide members with an economically efficient means of accessing public quotations and executing securities transactions at these published prices. Moreover, it equitably allocates charges to both sides of the transaction that are utilizing this public facility, both of whom benefit from the execution and both of whom consume resources in utilizing the system. In this new structure, there is no reason to allocate all of the costs in operating SOES to the market maker. Instead, the more equitable allocation of costs is to charge both the order entry firm and the order execution firm. In this way, both parties to the transaction are allocated the costs that Nasdaq incurs in developing and operating this system.[3]

(2) SOES and SelectNet Cancellation Fees

The NASD and Nasdaq also authorized a new fee related to cancellations entered into SOES and SelectNet.[4] The fee adopted for orders entered into either system is $0.25 for each order cancelled. Neither SOES nor SelectNet currently have an order cancellation fee. However, Nasdaq has taken note of the significant number of orders entered into both systems and cancelled, sometimes almost simultaneously with order entry. By way of example, on a typical day, approximately 161,400 SelectNet orders may be entered, while approximately 125,600 of such orders are cancelled. Only 19,000 are executed. In SOES, of approximately 100,000 orders entered, 30,000 typically are cancelled.[5] Moreover, many cancellations occur within a 30 second period after order entry. For example, on November 8, 1996, the heaviest user of SelectNet entered 70,000 orders, and cancelled a total of almost 64,000 orders, of which 30,000 were cancelled within 30 seconds of order entry. Such use of the system requires that Nasdaq construct its system to handle the large system and network utilization that occurs in such use. Accordingly, recognizing that order cancellations consume significant system resources, Nasdaq adopted a cancellation fee to achieve an equitable allocation of the communications costs associated with the Nasdaq network

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996); 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

[2] *See* Securities Exchange Act Release No. 38008 (December 2, 1996); 61 FR 64550 (December 5, 1996); (publishing notice of filing of SR–NASD–96–43).

[3] Under NASD Rules, members are permitted to either absorb the costs assessed, or to pass the fee along to the ultimate customer.

[4] It should be noted that SelectNet fees will remain as currently structured. It should also be noted that the SelectNet transaction fee applies to both sides of the transaction. Moreover, the fee will apply to all parties using the system, including electronic communications networks whose priced orders are accessed by NASD members entering orders into SelectNet.

[5] Data was extracted from November 20, 1996, data.

among all firms that utilize the capacity of the system.

Nasdaq believes that for the foregoing reasons the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act in that the proposed fees provide for the equitable allocation of reasonable fees among members using facilities and systems operated by Nasdaq meet the requirements of Section 15A(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D. C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–48 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–152 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38087; File No. SR–PSE–96–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange Incorporated Relating to its Rules on Executions of "Odd Lot" Equity Orders

December 24, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On December 17, 1996, the PSE submitted an amendment ("Amendment No. 1") to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its rules on executions of "odd lot" equity orders. Under the rule change, odd lot limit orders will be placed in the front of the book for priority and book display purposes. The rule change will also modify the basis on which limit, stop limit and stop orders must be executed. In addition, the rule change will prohibit certain practices involving the entry of odd-lot orders. Finally, the proposal will modify the Exchange's odd lot rule in order to remove certain provisions that no longer apply to executions of odd lot orders on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory Organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing this rule change in order to provide better service to customers and to be competitive with other exchanges.[4] The Exchange is proposing to modify Rule 5.34(b) ("Odd Lot Executions") to provide as follows:

First, with regard to market orders, the proposal states that an odd lot market order shall be executed off the price reflected in the consolidated quote system's best bid/offer. (The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.)

Second, with regards to limit orders, the proposed rule states that an odd lot limit order shall be filled at, or better than, the price of the first regular way round lot transaction that is at, or better than, the limit order's price printed on the consolidated tape from the security's primary market.[5] It further states that such odd lot orders shall be allowed to establish precedence without regard to priority of existing round-lot bids or offers at that price. (The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, which in the case of a buy order is below the specified limit by the amount of the trading differential, or by a greater amount; or which in the case of a sell order is above the specified limit by the amount of the trading differential, or by a greater amount; plus

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated December 17, 1996. In Amendment No. 1, the PSE clarified the purpose of the rule change and made technical corrections to the text of the rule.

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* amendment No. 1, *supra* note 3.

if a buy order, or minus if a sell order, an odd lot differential, if any).

Third, with regard to stop orders, the proposal states that an odd lot stop order to buy shall become a market order when a regular way round lot transaction takes place at or above the price of the stop order on the primary market.[6] An odd lot stop order to sell shall become a market order when a regular way round lot transaction takes place at or below the price of the stop order on the primary market.[7] (The current rule states that an odd lot stop order becomes a market order when a round lot transaction takes place on the primary market, which in the case of a buy order is at or above the stop price; or which in the case of a sell order is at or below the stop price; and it further states, that the order shall then be filled at the price of the next round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.)

Fourth, the proposed rule states that it shall be inconsistent with the purpose and intent of this Rule to engage in the following actions: (a) The unbundling of round-lots for the purpose of entering odd-lot limit orders in the comparable amounts; (b) the failure to aggregate odd-lot orders into round-lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and (c) the entry of both buy and sell odd-lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the "spread" in the stock. It further states that, in general, the Exchange views order entry practices that are intended to circumvent the round-lot auction market as abuses of the intent and purpose of the odd-lot system and such practices shall be considered violations of these rules.

Finally, the Exchange is proposing to remove several provisions from the rules relating to odd lot executions that no longer apply. First, the Exchange is proposing to eliminate all provisions in Rule 5.34(b) on odd lot differentials. Second, the proposal modifies rule 5.34(b) to eliminate the distinction between "PMP stocks" and "non-PMP stocks."[8]

2. Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–35 and should by submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–151 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

[7] *Id.*

[8] "PMP" stocks are those for which Exchange specialists provide primary market protection. Today, such protection applies to all stocks that may be executed on P/COAST, the Exchange's automatic execution system for equity securities.

[Release No. 34–38093; File No. SR-Phlx–96–32]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Index Options Exercise Advices

December 27, 1996.

I. Introduction

On July 29, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 1042A, Exercise of Option Contracts, and Floor Procedure Advice ("Advice") G–1, retitled Index Option Exercise Advice Forms. On December 4, 1996, the Exchange submitted Amendment No. 1 to their proposal to provide that the deadline for submitting a memorandum to exercise and an exercise advice form will be "no later than 4:30 p.m. or fifteen minutes after the close of trading, if it occurs at a time other than the regular close of trading."[3] Currently, the deadline for such submissions is "no later than 4:30 p.m." In addition, the Phlx proposed to codify that anyone intending to exercise index options must complete a memorandum to exercise and/or an exercise advice form in compliance with the exercise cut-off time and must exercise the amount of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated December 4, 1996 ("Amendment No. 1"). According to the Phlx, the purpose of this change is to clarify that modified hours are not limited to trading hours extending beyond 4:15 p.m., but include any modification to Exchange trading hours, including an early close. As such, the Phlx's revised rule language does not alter the Exchange's original intent. (The Commission notes that the Exchange inadvertently filed Amendment No. 1 to the rule proposal as Amendment No. 2.)

option contracts indicated on such forms.

The proposed rule change appeared in the **Federal Register** on August 28, 1996.[4] No comments were received on the proposed rule change. This order approves the Phlx's proposal, as amended.

II. Background and Description

Exchange Rule 1042A and Advice G–1 govern the exercise of index options.[5] Specifically, Exchange Rule 1042A(a)(i) requires that a memorandum to exercise any American-style index option contract must be received or prepared by the Phlx member organization no later than 4:30 p.m. on the day of exercise. In addition, Exchange Rule 1042A(a)(ii) requires the submission of an exercise advice form to the Exchange no later than 4:30 p.m. when exercising American-style index option contracts.[6]

In this regard, the Exchange has attempted to create a level playing field among option investors by maintaining a cut-off time to ensure that all exercise decisions occur promptly after the close of trading. Consequently, to prevent fraud and unfairness, a long option holder is prohibited from exercising index options on non-expiration days based on information obtained after the cut-off.[7]

The Exchange currently proposes to amend these provisions such that the exercise cut-off time would be 4:30 p.m. or fifteen minutes after the close of trading, if it occurs at a time other than the regular close of trading. For instance, on certain days prior to a holiday, the Exchange may cease trading broad-based index options at 1:15 p.m. Under the current rule, however, the exercise cut-off time would remain at 4:30 p.m., regardless of when trading ceased. In comparison, under the proposal, the exercise cut-off time in the above example would change to 1:30 p.m.

With respect to trading hours extending beyond 4:15 p.m., the Exchange notes that in certain situations a trading rotation may occur after the ordinary 4:10 or 4:15 p.m. close of trading. For instance, if a halt in the trading of a component issue causes an index option to halt trading, and if the index option re-opens at 4:00 p.m., an opening rotation may need to be conducted. Because such rotation may result in extended trading hours, the exercise cut-off time under the proposal would be fifteen minutes after the end of the rotation. In this manner, a cut-off time of fifteen minutes after the close of trading will ensure that index option traders and investors have adequate time to make exercise decisions.

In addition, the Exchange proposes to adopt an amendment procedure to facilitate changes in exercise decisions prior to the cut-off time. The amended exercise advice form and amendment procedure should add certainty to the exercise process by clarifying how a change in a decision to exercise should be indicated to the Exchange. In this manner, when amending an exercise decision, a new exercise advice form must be filed with the Exchange, listing all exercise decisions, not just the one being amended. Omitting one series means that no exercise of that series is intended and a violation of the rule occurs if that series is exercised. Further, all exercise advice forms, whether original or those amending previous submissions, must be filed prior to the exercise cut-off time.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, as well as to protect investors and the public interest, by allowing a reasonable amount of time to submit an exercise decision when trading hours are modified or extended. The Commission believes that the amendments to Exchange Rule 1042A and Advice G–1 which modify the deadline for submitting exercise advice forms and memoranda will benefit market participants by enabling them to make investment decisions based upon the evaluation of their final positions after having completed trading for the day. Specifically, the proposal clarifies the application of Exchange Rule 1042A and Advice G–1 during periods when trading ends at a non-regular time. This clarification should help ensure that market participants have neither an inadequate nor an excessive amount of time in order to make their option exercise decisions after the close of trading.[9]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, because the revised rule language contained in Amendment No. 1 only serves to clarify the Exchange's submitted proposal, no new regulatory concerns are raised. In addition, the Phlx's rule proposal was subject to a full notice and comment period, and no comments were received. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

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[4] *See* Securities Exchange Act Release No. 37593 (August 21, 1996), 61 FR 44379 (August 28, 1996).

[5] The Exchange notes that with respect to index option contracts, clearing members are also required to follow the procedures of the Options Clearing Corporation ("OCC") for tendering exercise notices. Exercise notices are the exercise instructions required by OCC and are distinct from exercise advices which are required by Exchange rules.

[6] The Phlx notes that Exchange Rule 1042A previously allowed the submission of a memorandum to exercise and an exercise advice form until five minutes after the close of trading. *See* Securities Exchange Act Release No. 32991 (September 30, 1993), 58 FR 52337 (October 7, 1993) (File No. SR-Phlx–92–31). Specifically, the exercise cut-off time for narrow-based index options was 4:15 p.m. or five minutes after the close of trading, and for broad-based index options it was 4:20 p.m. or five minutes after the close of trading. When the exercise cut-off time was changed to 4:30 p.m., however, the language "or five minutes after the close of trading" was deleted. *See* Securities Exchange Act Release No. 37077 (April 5, 1996), 61 FR 16156 (April 11, 1996) (File No. Phlx–95–86). As such, the Phlx's current proposal resurrects this concept.

[7] Pursuant to Exchange Rule 1042A(b), however, these requirements are not applicable on the last business day before expiration, generally an "expiration Friday." The above requirements are also not applicable to European-style index options which, by definition, cannot be exercised prior to expiration. Lastly, the Exchange notes that the procedures for exercising equity option contracts, contained in Exchange Rule 1042, are not affected by this rule proposal.

[8] 15 U.S.C. § 78f(b) (1988).

[9] The Commission notes that any change to the Phlx's regular trading hours for affected options would require an amendment to Exchange Rule 1042A and Advice G–1 in order to maintain the appropriate time interval allowed between the close of trading and the required submission of exercise forms and memoranda.

public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–32 and should be submitted by January 27, 1997.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–96–32), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–148 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/20/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–2026.
Date filed: December 17, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0026 dated December 10, 1996 r1; Within Southeast Asia (US Territories); PTC3 0031 dated December 10, 1996 r2; Southeast Asia-SW Pacific (US Territories); (Summary attached.); Intended effective date: expedited January 15, 1996.

Docket Number: OST–96–2027.
Date filed: December 17, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0024 dated December 10, 1996 r1; PTC3 0025 dated December 10, 1996 r2–3; PTC3 0027 dated December 10, 1996 r4; PTC3 0028 dated December 10, 1996 r5–6; PTC3 0029 dated December 10, 1996 r7; PTC3 0030 dated December 10, 1996 r8; PTC3 0032 dated December 10, 1996 r9; PTC3 0033 dated December 10, 1996 r10; PTC3 0034 dated December 10, 1996 r11; Expedited TC3 Resolutions; Intended effective date: expedited January 15, 1996.

Docket Number: OST–96–2031.
Date filed: December 19, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Reso 033f; Local Currency Rate Changes—Pakistan; Intended effective date: upon government approvals.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–124 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 20, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–2028.
Date filed: December 17, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 14, 1997.
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for renewal of authority to engage in scheduled foreign air transportation of persons, property, and mail between the terminal point Los Angeles, California, and Mexico City, Mexico, and beyond Mexico City to the following points: Guatemala City, Guatemala; San Salvador, El Salvador; Tegucigalpa, Honduras; Managua, Nicaragua; San Jose, Costa Rica; Panama City, Panama; Barranquilla, Colombia; Maracaibo and Caracas, Venezuela; Port of Spain, Trinidad and Tobago; Georgetown, Guyana; Paramaribo, Suriname; Sao Paulo, Rio de Janeiro, Brasilia and Belem, Brazil; Montevideo, Uruguay; and Buenos Aires, Argentina.

These services are authorized on segment 4 of United's Certificate of Public Convenience and Necessity for Route 566.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–125 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary of Transportation

[Docket No. OST–96–1188]

National Freight Transportation Policy

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Final Policy Statement.

SUMMARY: The Department of Transportation is publishing a final policy statement on freight transportation that establishes the most important principles that will guide Federal decisions affecting freight transportation across all modes. The aim of these guiding principles is to direct decisions to improve the Nation's freight transportation systems to serve its citizens better by supporting economic growth, enhancing international competitiveness and ensuring the system's continued safety, efficiency and reliability while protecting the environment. We are maintaining Docket No. OST–96–1188 to receive comments or suggestions that could be useful in preparing future editions of this policy statement. It is our intention to update the statement periodically as warranted by changing conditions and events.

EFFECTIVE DATE: January 6, 1997.

ADDRESSES: Submit written, signed comments to Docket No. OST–96–1188, the Docket Clerk, U.S. Department of Transportation, Room PL–401, C–55, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr Carl Swerdloff, Office of Economics, at (202) 366–5427, Office of the Secretary 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday, except Federal holidays.

Summary of Written Submissions to the Docket

Written responses to the Notice of Proposed Policy (NPP) were received

[10] 15 U.S.C. § 78s(b)(2) (1988).
[11] 17 CFR 200.30–3(a)(12).

from a total of 18 organizations representing a broad range of governmental and private sector entities. Virtually all commented favorably on the DOT's decision to prepare a freight transportation policy, in response to the Intermodal Surface Transportation Efficiency (ISTEA), which emphasized that freight transportation needed greater attention by planning and development agencies, and because it would be useful to State and local government to set out a framework for addressing freight transportation issues. Some suggestions for modifying the statement appeared in several submissions and are discussed below.

Several commentors were critical of the NPP because it was at too high a level of generality and that it was, therefore, of less utility to those outside the Department seeking information on future Federal priorities and programmatic or regulatory directions. Some thought that the policy statement should expand upon the general principles and include how the DOT would apply them in establishing strategic plans for addressing national freight transportation requirements. Several stated that the policy should, in fact, include specific actions the DOT anticipated for improving the freight transportation system. On the other hand, one commentor was concerned that the DOT's expressed role in freight transportation infrastructure planning and development not extend beyond general principles and broad national goals, leaving to the States the responsibility for setting local priorities and solutions that reflected local political and economic realities. The policy statement and the principles presented are intended as guidance for the development of more specific strategic action plans, proposals or decisions by the DOT, Congress, and State and local governments. We believe the policy principles presented in the statement describe, in general, the role and responsibilities of the DOT in freight transportation matters. In response to the comments that the policy statement include actions the DOT anticipates for improving national freight transportation, an addendum has been added to present examples of such activities that are either underway or to be initiated in the near term.

Several comments suggested that the NPP include greater attention to multi-state, regional and local economic and transportation differences that need to be taken into account in developing freight transportation solutions. This issue was also raised in regard to the general concern that as a nation we should address the growing demand on our domestic freight transportation systems from international trade. These commentors noted that the Federal Government should consider these impacts on our transportation facilities as part of future international trade agreements. The policy statement has been revised to account for variability in State, regional and local requirements and conditions that must be considered in applying these policy principles.

The integrated nature of the Nation's transportation system, freight and passenger, has been noted in the final policy statement in response to a suggestion of one commentor.

Concern was expressed by some that although there is agreement with the general goal of greater freight transportation efficiency, we should, at the same time, understand that other important goals, such as improved air quality and safety, present restraints that may not allow for maximum efficiency in our freight transportation systems. While this point is well taken, it applies to a number of the general principles stated in the policy. Under varying circumstances or local situations a number of the guiding principles can be in conflict, necessitating trade-offs and compromises in reaching solutions that satisfy all parties. We believe the original policy statement addressed this point and that added discussion is unnecessary.

Several commentors questioned the policy principle that efficient pricing systems are to be encouraged that reflect the full costs of developing, maintaining and operating public transportation infrastructure. They noted that this could lead to higher user costs or be exploited by local governments as a source of general revenue. The policy advocates the use of appropriate and efficient pricing which does not include excessive charges for general revenue purposes. We believe the principle, as presented, is correct and should be advanced.

A number of other wording changes have been made in response to specific comments submitted to the docket. These changes are, for the most part, for clarification or emphasis purposes and have not altered the purpose or objectives of the principles as stated in the NPP.

Freight Transportation Policy Statement

I. Introduction

This statement of guiding principles for the Nation's freight transportation system sets forth a DOT policy framework that will help shape important decisions affecting freight transportation across all modes. Our interest is to ensure the nation has a safe, reliable, and efficient freight transportation system that supports economic growth and international competitiveness both now and in the future, while protecting and contributing to a healthy and secure environment. The goal of this statement is to provide guidance for making the Nation's transportation system serve its citizens better. To achieve this goal, new partnerships must be formed among public agencies, the freight transportation industries and shippers.

Highways, airports, rail facilities, ports, pipelines, waterways, intermodal transportation, and the freight carriers and shippers they serve all play a vital role in the Nation's economic health. The integrated nature of the Nation's transportation facilities and operations is an important feature that must be accounted for in the establishment of principles and actions that are directed at improving freight transportation. An efficient transportation system results in lower production and logistics costs for U.S. firms and better prices for consumers. In order to compete successfully in international markets U.S. firms must be able to rely on an efficient domestic freight transportation system that is effectively managed. The system also must support achievement of other national goals by fostering safe, effective, timely and environmentally sound freight transportation that improves the quality of life for all U.S. citizens.

Effective freight transportation policy and planning must consider that much of our transportation infrastructure is provided by the different levels of government and that major portions are put in place by private capital. The policy must allow for variations in State, regional and local conditions, requirements and resources. Further, the fusion of public and private investment creates economic opportunities but also may raise regulatory conflicts, and both must be considered in national freight policy and planning.

II. Recent Trends in Freight Movements

Freight moves on systems of increasingly integrated supply chains and distribution networks operating in States and metropolitan areas, as well as regionally, nationally, and internationally. Reliance on just-in-time production and current inventory management practices have increased the demand for more efficient and reliable freight transportation. Shippers are increasingly rationalizing the mix of

transportation, inventory, handling, and loss and damage costs, striving to reduce their total logistics costs. They are using increasingly fast, reliable transportation in place of large inventories.

The productivity of freight transportation firms and their ability to provide timely and reliable service depends not only on the efficiency of individual modal systems and the effectiveness of the laws and regulations under which they operate, but also on the efficiency of intermodal facilities that govern the effectiveness of their connections to one another. U.S. intermodal freight transportation links the various modes to meet customers market needs by providing integrated origin-to-destination service. It utilizes advanced technologies and operating systems designed to enhance productivity, reduce transportation costs, increase service speed and quality for shippers and lower prices for consumers.

International freight movement takes advantage of the latest innovations in the global marketplace that reduce cost and better serve the customer. Customers are establishing global supply chains. Innovations that are developed by individual carriers are copied by others when results in savings or service are seen. The use of real-time, interactive electronic data interchange, and vessel/asset sharing agreements all provide more efficient and rapid transportation of international freight movements.

Contractual regimes governing the movement of freight have been established by the private sector which sometime result in conflicts with public regulations and create impediments to the safe and efficient operation of freight transportation. Government typically regulates the safety, and environmental aspects of infrastructure and equipment. It also may be appropriate for Government to facilitate problem solving and provide technical assistance where private and public sector requirements create barriers to safe and efficient freight movement. Economic consequences are increasingly a matter of market decisions by the private sector.

III. Principles of Federal Freight Transportation Policy

The following eight principles provide the basis for a Federal freight transportation policy and describe the Federal role in freight transportation:

1. Provide funding and a planning framework that establishes priorities for allocation of Federal resources to cost-effective infrastructure investments that support broad national goals.

2. Promote economic growth by removing unwise or unnecessary regulation and through the efficient pricing of publicly financed transportation infrastructure.

3. Ensure a safe transportation system.

4. Protect the environment and conserve energy.

5. Use advances in transportation technology to promote transportation efficiency, safety and speed.

6. Effectively meet our defense and emergency transportation requirements.

7. Facilitate international trade and commerce.

8. Promote effective and equitable joint utilization of transportation infrastructure for freight and passenger service.

1. Provide funding and a planning framework that establishes priorities for allocation of Federal resources to cost-effective infrastructure investments that support broad national goals.

Enactment of ISTEA, with its requirement for greater emphasis on intermodal and freight policy issues, marked a new era in transportation investment decision-making. The transportation planning process has become increasingly important. Metropolitan and State officials are now encouraged to include major freight distribution issues in their planning processes. They are also urged to work with carriers and industry to find ways for improving the efficiency of freight movements while protecting the environment. Thus, the transportation planning procedures adopted in ISTEA are aimed at an improved approach to developing freight transportation policy at all levels of government.

While much of the surface transportation infrastructure is provided by the private sector (e.g., rail freight facilities, waterside and truck terminals, oil and gas pipelines), much of the infrastructure would not be built or maintained without public financial support that is affected by Federal policies. Private facilities are often dependent on public investment for their effectiveness, (e.g., waterside terminals that require public channels, etc.). Federal participation may be appropriate when infrastructure investment projects have a national or regional significance or when Federal involvement may facilitate the resolution of a freight transportation problem. The value of a particular transportation facility is often dependent on the existence and effectiveness of a regional or national network that is a Federal concern and responsibility.

In cooperation with DOT and other Federal agencies, the Office of Management and Budget (OMB) has established guidelines for the economic analysis of Federal infrastructure investments.[1] The guidelines apply rigorous cost-benefit standards to all proposed investments, including a provision that requires the measurement of costs and benefits over a project's life-cycle. The OMB guidelines also encourage, when appropriate, private sector participation in infrastructure projects and more cost-effective State and local infrastructure investment programs.

2. Promote economic growth by removing unwise or unnecessary regulation and through the efficient pricing of publicly financed transportation infrastructure.

Although freight transportation services are provided almost exclusively by the private sector, the Federal Government plays an essential role in maintaining competition in the transportation marketplace and in protecting the public from unsafe and environmentally damaging transportation operations. By promoting competition, Federal policies can help to foster an environment that encourages improvements and changes, that reduce transportation and logistics costs. National objectives for the freight transportation system can be addressed through Federal activities such as the deregulation of entry and ratemaking in the trucking and air cargo industries, in order to foster an effective, competitive freight transportation environment.

As the logistical requirements of businesses become more complex, some shippers and transportation providers will rely increasingly on intermodal services. Such services should not be hindered by artificial constraints. Physical and institutional barriers that impede the flow of freight from one mode of transportation to another should be eliminated. The elimination of physical and operational barriers to freight intermodal operations is primarily the responsibility of transportation carriers, shippers, and State and local government. The Federal Government, however, may take action to improve inadequate public infrastructure to support essential freight intermodal operations or to reduce legal and regulatory barriers such as those that until 1996 impeded

[1] Executive Order 12893, "Principles for Federal Infrastructure Investments," **Federal Register**, Volume 59, No. 20, January 31, 1994.

railroad ownership of barge and trucking companies. The Federal Government may also encourage State and local governments to take necessary action, or in extreme cases even preempt them, in order to reduce statutory impediments to intermodal transportation.

The prices charged for public sector transportation facilities and services determine whether they are used efficiently. Public facilities costs that are not included in the transportation rates paid by shippers may lead to inefficient use of the Nation's limited transportation resources. Whenever feasible, fees and taxes adequate to cover the cost of building, operating, and maintaining public infrastructure facilities should be recovered from the parties that use and benefit from them. However, fees that exceed the cost of providing freight services will adversely affect the efficiency and effectiveness of the transportation system and should be avoided.

Federal actions must be evaluated not only for their short-term impacts but for their longer-term consequences for maintaining viable, competitive, multimodal freight transportation to serve the Nation. Therefore, freight regulatory and investment policies must take into account the linkages between freight transportation performance and economic performance at the local, regional, national, and international levels both today and in the future. The DOT has completed a comprehensive assessment of its regulations as part of the National Performance Review. It will reexamine its policies, programs, and regulations periodically to assess their effectiveness and whether they should be continued.

3. Ensure a safe transportation system.

Making the transportation system safer is a critical Federal policy objective. Because the marketplace alone may not be effective in producing an acceptable level of public safety, the Federal Government will continue to promote transportation safety through regulation; through enforcement, engineering and education; and through support of voluntary compliance efforts by industry. Success in maintaining and improving the safety of our freight transportation networks requires the cooperation of each level of government and the private sector.

The Federal Government will continue to support safety research and the dissemination of information related to safety. The DOT will continue to support activities to improve the information base needed to monitor the safety performance of all freight transportation modes including the full social costs of accidents. Federal research will focus on the causes of transportation accidents: the role of truck, rail, aircraft, and vessel design and performance in accidents and their solutions, as well as the contribution of human factors and infrastructure design. The Federal Government will also continue to work with the private sector on a cooperative basis, to ensure that proven safety advances are rapidly incorporated into practice, especially when substantial public benefits will result from their adoption.

4. Protect the environment and conserve energy.

Responsible environmental protection is another important Federal policy objective and, like transportation safety, environmental protection requires the cooperation of all levels of government and the private sector. The total social costs of environmental degradation are not borne by the transportation users (e.g., the social costs associated with pollution are not reflected in the costs incurred by the users or prices charged for transportation services). Thus, the Federal Government plays, and must continue to play, an important role in reducing these social costs and ensuring that they are more accurately reflected in the price of transportation services through appropriate regulation or modifications to existing programs. In addition, the Federal Government will continue to support research and technology development that is directed at increasing transportation productivity while maintaining environmental protection.

In pursuing its environmental protection objective, the Federal Government needs to continue to assess the impacts of environmental regulation on the performance of transportation operations and will work with the private sector and the environmental community to implement appropriate environmental protection measures and technologies in a cost effective and environmentally sound manner. The Federal Government will seek to develop regulations that contain performance based rather than technology specific standards or criteria so as to permit industry flexibility and innovation in meeting regulatory requirements. DOT will continue working to promote and develop techniques for conserving energy and for better quantifying the social costs of environmental and community degradation.

5. Use advances in transportation technology to promote transportation efficiency, safety and speed.

Application of advanced technology in the transportation system offers significant opportunities to improve its safety, efficiency, capacity, and productivity.

Private firms invest in advanced communication, navigation, surveillance, and information technologies which improve the efficiency of their operations. These advanced technologies facilitate the movement and tracking of goods and vehicles as well as the exchange of information among carriers and their customers in the intermodal transportation system. They also offer tools for strengthening intermodal connections. Public and private investments for applying these advanced technologies to the air, highway, marine, and rail infrastructures have improved the overall efficiency of the transportation system.

DOT's Federal role in research and development of technologies is to promote the efficiency and safety of the national transportation system and to support the application of technologies in the movement of freight. Specifically, DOT provides leadership for the interagency coordination of Federal transportation research. This includes maintaining close dialogue with the private sector and State and local governments to ensure that DOT research funding reflects the priorities of freight transportation users and providers. DOT will coordinate Federally funded research to ensure that there is no redundancy. DOT will maintain a leadership role in development of an intermodal research framework.

Advances in information technology are having a dramatic effect on transportation requirements and the planning of future capacity investments. DOT works with the private sector to facilitate communications across modes for intermodal compatibility of technology applications, such as Global Positioning Systems (GPS) and Geographic Information Systems (GIS). DOT coordinates with other Federal agencies, such as the Department of Defense and the National Oceanic and Atmospheric Administration, to ensure that underlying data (such as weather and positioning information) required as input to these various systems continue to be available.

DOT will continue to work closely with the freight industry to ensure that the United States is well represented in

international transportation technology and standards forums.

6. Effectively meet defense and emergency transportation requirements.

Recent changes in our Nation's defense strategy and the downsizing of the U.S. military establishment have increased the need for effective deployment of those forces in times of a national emergency. They have emphasized the need for rapid deployment of large numbers of people and large amounts of material on short notice. Similarly, when natural disaster strikes, a high-quality, multimodal transportation system is critical to ensuring the safety of the affected population and the ability of local, State and Federal officials to start rebuilding devastated communities. Deploying personnel, equipment, and supplies through the air, over land or on the seas, requires well-planned, maintained, and sufficient alternative transportation systems and facilities for both the military mission and disaster relief operations.

The Department of Defense has adopted policies that will require greater use of civilian transportation resources in meeting its transportation needs. The Nation's freight transportation operators, therefore, have an essential role to play in the mobilization and deployment of personnel, equipment, and supplies in the event of a national emergency or a natural disaster. The DOT will continue to work with the Department of Defense, other Federal agencies, and the transportation community to identify short- and long-term national defense and emergency transportation requirements and to ensure that the transportation system can meet those requirements.

7. Facilitate international trade and commerce.

To retain and enhance the Nation's competitive position and its economic vitality, domestic firms must have access to foreign markets through an efficient transportation system. A competitive international transportation industry requires highly efficient connections to and within the domestic transportation system. Where international trade agreements are being negotiated, as in the case of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), regulatory policy decisions that primarily affect international freight movements will also take into account their implications for domestic freight operations and competition as well as the interests of States and localities affected by such policy decisions. Government can provide new opportunities for American exporters by leading trade negotiations with the European Union, with other industrialized countries, and with emerging markets, such as those in Asia and Latin America, and by providing technical assistance programs to promote American transportation and infrastructure technologies.

8. Promote effective and equitable joint utilization of transportation infrastructure for freight and passenger service.

The efficient use of the Nation's transportation infrastructure may require the joint use of facilities by freight and passenger transport operators. When appropriate, the Federal Government, in conjunction with State and local agencies and the private sector, will support the equitable sharing of transportation facilities and infrastructure and reasonable compensation for their use.

Potential safety problems and reduced freight transportation operations efficiency may arise from the sharing of facilities. These concerns should be taken into account in policy initiatives that address the joint use of facilities. The DOT will continue to support research in this area and will encourage transportation firms to adopt new technologies and operating practices that would reduce the adverse consequences that may arise from the joint use of facilities.

Addendum

The following is a list of near term DOT initiatives that may have significant implications for freight transportation. They are representative of a much larger number of activities underway or anticipated by the DOT that will improve the safety, efficiency, reliability and environmental performance of the freight systems consistent with the guiding principles presented in this policy statement. Included are development, operating, research and regulatory activities that affect individual as well as intermodal freight systems, and the cooperation of public and private entities.

ISTEA Reauthorization: The Intermodal Surface Transportation Efficiency Act of 1991 expires at the end of fiscal year 1997, and the DOT has completed its outreach and analysis effort and is in the process of developing the Administration's proposal for reauthorization. The central elements of ISTEA—strategic infrastructure investments, intermodalism, flexibility, intergovernmental partnerships, a strong commitment to safety, and enhanced planning—have been well received and successful and should be preserved. The goal for reauthorization is to develop a proposal for the next century that allows our Nation to preserve our competitive advantage throughout the world and maintain the well being of our citizens. There are a number of freight transportation issues that are being considered, including:

Increased Funding Flexibility: Alternatives are under study for increasing the flexibility for use of Federal funds for projects that improve the connectivity of freight transportation systems and for the development or improvement of freight terminals that serve more than a single mode of transportation.

Truck Size and Weight Regulation: The DOT is currently conducting a comprehensive analysis of the effects of changing current truck size and weight regulations on safety, transportation costs, modal competition, and environmental and energy impacts. The results of this effort, which should be completed in early 1997, will be reported to the Congress and used in the evaluation of any proposed changes to current truck size and weight regulations. The range of alternatives being studied include maintaining the status quo, increasing individual State regulatory authority over truck size and weight limits, and increasing Federal responsibility in establishing greater national uniformity.

Highway Cost Allocation Study: The Department is conducting an analysis of the responsibility of highway user groups for both the direct and external costs of the highway program as well as alternative methods for collecting revenues from users. This study, which should be completed in 1996, will provide an analytic capability to evaluate alternative highway user tax and other revenue collection options that may arise in ISTEA reauthorization, including the cost responsibility of the heavy combination vehicles.

National Highway System (NHS): Programs that provide national connectivity, increase the capacity of the system and improve the flow of traffic, such as the National Highway System and its intermodal connectors, will be continued. The NHS, approximately 160,000 miles of major roads, represents only 4 percent of the total mileage but carries 75 percent of heavy truck traffic. All major rail-truck intermodal facilities will be connected to the NHS.

Border Crossings: We are concerned about the special trade-related

transportation needs of certain areas of the country, particularly along the Mexican and Canadian borders and the North-South corridors that serve them, that will facilitate trade resulting from NAFTA. Programs will be considered that are designed to improve the flow of trade and traffic across the borders.

Intelligent Transportation Systems (ITS): Consideration is being given to investments in ITS technologies that hold the promise of increasing the carrying capacity and efficiency of our current infrastructure. ITS is expected to increase the capacity of our transportation system at a fraction of the cost of traditional infrastructure building. ITS also is expected to provide substantial safety and environmental benefits. One major element of this program—particularly focused on freight transportation—is the Commercial Vehicles Information System and Networks (CVISN) which will develop standards and protocols to allow freight carriers to electronically exchange information required by regulatory authorities using commercially available communications infrastructure. The goal of the CVISN is to provide greater compatibility of the information systems owned and operated by state/local governments, carriers, and other stakeholders.

Rail-Highway Grade Crossings: The current program under ISTEA will be considered for continuation as part of the reauthorization effort. The program provides funds for rail-highway grade crossing improvements and for the conduct of studies and dissemination of information on better grade crossing designs and construction safety measures that will, in part, improve the safety performance of the freight transportation system .

Implementation of the NAFTA Agreement: We will continue working with our Canadian and Mexican partners to improve the safety, efficiency, and productivity of freight transportation among the three nations while protecting U.S. safety standards, including the improvement of enforcement of cross-border truck safety requirements.

Deploy Global Positioning System for Transportation Purposes: The DOT is the designated lead agency for all Federal civil GPS matters and will coordinate the development and implementation of Federal augmentation measures to the basic GPS for civil transportation applications. We will coordinate activities to minimize cost and duplication. The DOT will work to augment GPS to: improve aviation navigation during adverse weather conditions and increase airways capacity and efficiency; facilitate railroads' ability to implement positive train control systems increasing safety and capacity; be a component of the Intelligent Transportation System (ITS) reducing congestion and improving railroad grade crossing safety; improve harbor approach and intra-harbor safety nationwide and track movement of tankers through Prince William Sound; improve safety and efficiency of ships moving through the St. Lawrence Seaway and Panama Canal; and more rapidly locate and respond to motor vehicle accidents, hazardous materials spills and vessels in distress.

Pipeline Risk-based Programs: The DOT will continue the examination of gas and hazardous liquid pipeline regulations to incorporate up-to-date technology and to more fully incorporate risk-based factors in the prioritization and selection of safety requirements.

Conclude Additional International Aviation Agreements: We will continue efforts to reach new agreements with other nations that open new and improved opportunities for U.S. airlines in international passenger and air cargo markets, and strengthen and expand the competitive international aviation marketplace.

Shipyard Revitalization Initiative: Assist efforts within the shipbuilding and repair industry to compete internationally by helping firms convert from defense to civilian markets. This includes ensuring fair international competition, improving competitiveness through technology transfer and applied research, eliminating unnecessary regulations, financing ship sales for both export and U.S. flag operations, and assisting in international marketing.

National Dredging Policy: We are implementing the report of the Interagency Working Group on the Dredging Process, by working with Federal and State agencies to resolve impediments to dredging projects that are necessary to maintain shipping channels in the major U.S. ports.

Voluntary Intermodal Sealift Agreement: We will continue development of this program in partnership with U.S. flag carriers and the Department of Defense to achieve agreement from carriers to commit intermodal sealift capacity in time of war or national emergency and to maximize DOD's use of the U.S. maritime industry's intermodal capacity.

Issued in Washington, DC on December 27, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97–139 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on January 22 and 23, 1997 beginning at 8:30 a.m. on January 22. Arrange for oral presentations by January 15, 1997.

ADDRESSES: The meeting will be held at Allied Signal Engines, 111 South 34th, Phoenix, Arizona 85034 in the Kachina Conference Room.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held January 22 and 23, 1997 at Allied Signal Engines, 111 South 34th, Phoenix, Arizona.

The agenda for the meeting will include:

- Opening remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Review Action Items.
- Executive Committee (EXCOM) Report.
- Significant Regulatory Differences Discussion.
- Flight Test Harmonization Working Group (HWG) Report.
- Engine HWG Report and Vote.

Thursday, January 23, 1997

- Powerplant Installation HWG Report.
- Electromagnetic Effects HWG Report.

—HIRF

—Lightning

- Loads and Dynamics HWG Report and Vote.

- General Structures HWG Report.
- Braking Systems HWG Report.
- Airworthiness Assurance Working Group Report and Vote
- Systems Design and Analysis (25.1309) HWG Report.
- Closure

—Action Items
—Schedule for Future Meetings
—Draft Agenda for Next Meeting

The Aviation Rulemaking Advisory Committee will vote on the following documents during the January 1997 meeting:

- Bird Strike (Engines HWG)
- Repairs (Airworthiness Assurance Working Group)
- Revised Landing Gear Shock Absorption Test Requirements (Loads and Dynamics HWG)

Anyone interested in obtaining a copy of these documents should contact the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 15, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 30, 1996.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–174 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 96–49]

Achieving Interoperability With Dedicated Short Range Communication

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: With this notice the Federal Highway Administration (FHWA) is requesting comments on three items of concern relating to the implementation of dedicated short range communication (DSRC) systems specified in the Intelligent Transportation Systems National Architecture. These issues are as follows:

(1) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet draft standard specifications, such as that of the American Society for Testing Materials (ASTM) proposed Draft #6 standard and the Committee for European Normalisation (CEN) draft documents N473, N474, and N505 prior to their formal adoption as industry standards in an effort to reduce the proliferation of non-interoperable systems? Should the FHWA also include message set requirements, such as the Commercial Vehicle Information Systems and Networks (CVISN) Dedicated Short Range Communications Interface Requirements of April 2, 1996 (Johns Hopkins University-Applied Physics Lab)? Should compliance with specific draft standards be required for Commercial Vehicle Operations (CVO) applications only; for both CVO and Electronic Toll and Traffic Management (ETTM) applications; or for CVO, ETTM, and additional applications?

(2) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet an escalating interoperability formula? An example would be that first, all CVO applications must be nationally interoperable; second, all new (after specified date) and upgrading electronic toll collection systems and other DSRC applications must be interoperable with CVO applications.

(3) Should a single standard be developed for all applications, or should separate standards be developed with an assumption that trucks and buses, and perhaps other users, would likely require separate technology to perform those functions?

DATES: The FHWA requests comments by February 1, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 96–49, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael P. Onder, Intelligent Transportation Systems Joint Program Office, (202) 366–2639; Ms. Beverly M. Russell, Office of Chief Counsel, (202) 366–1355, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15, e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In the 1980's a novel approach to facilitating transportation developed. The dedicated short range communication (DSRC) industry, as it came to be known, utilized radio frequency systems to facilitate hands-off data communication between vehicles and electronic reading devices on the roadside. This application of communications technology to transportation has enabled motorists to pay highway tolls and commercial motor vehicles to clear weigh stations and ports of entry without stopping. The main hardware components of the DSRC system consist of a transponder, or tag, mounted on a vehicle, communicating wirelessly with a roadside reading device. The transponder, or tag, stores at a minimum a unique ID number that is received by the reading device and is matched to a corresponding record on a computer system that identifies the vehicle/container/rolling stock and its associated records. The benefits derived from installation of this new technology reflect a significant return on investment; especially in the toll and fleet management business.

The Department of Transportation's Intelligent Transportation Systems (ITS) program was established by Congress in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914). In the ISTEA, Congress directed the Department to develop and implement standards and protocols to promote widespread use of ITS. *See* Pub. L. 102–240, § 6053(b), 105 Stat. at 2190 (as codified at 23 U.S.C. 307 note). A precursor to the development of standards has been the formation of a National System Architecture which provides a framework that describes how system components should work and interact. A system architecture addresses how system data flows, how various traffic and traveler information message formats are structured, how electrical interfaces are formed, and which communication system mediums are used for data transmission. The Department began an intensive ITS National Architecture Program in December 1994, and concluded with 29 user services in July, 1996. The 29 user

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services have been defined to date as part of the national planning and architectural development process. A 30th user service (Highway-Rail Intersection) has recently been defined and is now being included in the national architectural process. The National Architecture envisions a transportation system in which DSRC is the favored method of wireless communication for Commercial Vehicle Operations (CVO) and for Electronic Toll and Traffic Management (ETTM) applications. The objectives of CVO services are to increase productivity of commercial vehicle regulatory agencies and commercial vehicle operators, and to enhance the safety of CVO drivers and vehicles. Examples of CVO services include automated permit and registration acquisition, vehicle performance monitoring, and hazardous materials incident response. ETTM allows drivers to pay highway tolls without stopping, and allows traffic managers to use transponders as probes in high traffic volume areas to facilitate incident detection.

Application of DSRC

The largest installed base of DSRC systems are in electronic toll collection (ETC) systems. The northeastern region of the United States, where nearly two-thirds of all tolls in the United States are collected, has electronic toll collection systems in place from Virginia to Maine. ETC systems are also in place in California, Texas, Louisiana, Oklahoma, Kansas, Georgia, and Florida. Upcoming ETC systems are planned for widespread use in such high travel areas as the Maryland, Illinois, and Indiana tollways and the Pennsylvania, Ohio, and Florida turnpikes. None of the electronic toll facilities are interoperable with regard to reciprocity in collecting tolls. Relatively few are interoperable in terms of either utilizing the same transponder devices or having a common reading device that could read different transponders. Recent procurement requests from Maryland and Florida have addressed regional interoperability. Today there are several hundred thousand transponders in use on tollways. In the near future there are expected to be several million transponders in use. The problems caused by this lack of standards and interoperability will grow in intensity as demand and usage grow.

Commercial Vehicle Operations do not have as large an installed base of transponders as ETC. Currently there are two major areas of operations in the United States where heavy vehicles are cleared electronically as they pass weigh stations. These are the I–75 corridor in the Mid-West and the I–5, I–8, and I–10 corridors on the West Coast. The I–75 corridor, under the Advantage CVO Project, has 29 sites electronically linked from Florida through Ontario to allow for non-stop clearance of commercial vehicles as they are weighed at highway speeds. The three corridors on the West Coast comprise the HELP, Inc. Pre-Pass system which operates in a similar fashion to the Advantage CVO Project. Soon to be installed are CVO DSRC systems along the I–95 corridor from Virginia to Maine. Both Idaho and Utah also have installed electronic clearance systems, and the State of Washington is in the process of implementing such a program. In addition, DSRC systems are currently being installed in four international border crossing sites at Otay Mesa, California, Nogales, Arizona, Buffalo, New York, and Detroit, Michigan. In the planning stages for installation of DSRC equipment are the Laredo and El Paso, Texas and the Blaine, Washington border crossings, as well as sites in seven model deployment states for CVISN. Interoperability tests have been done successfully between Advantage CVO and HELP, Inc. with equipment that is compatible with the ASTM draft #6 proposed standard. Requirements for interoperability are in place; letters of agreement, have been used to ensure that only equipment that is compatible with the ASTM draft #6 proposed standard be used at the border crossing sites and in the model deployment States. However, a major growth of DSRC systems is also expected with CVO projects, and the problem of non-seamless transportation between DSRC sites will only be exacerbated without interoperability standards.

Problem

The problem is that DSRC standards governing the wireless communication between the transponder and reader, and the message sets on the transponder, do not exist. Therefore, interoperability does not exist between the equipment of different manufacturers. Interoperability, in this case, is the ability of a roadside reading or interrogation device of one manufacturer to meaningfully process the data from any given transponder mounted in a vehicle. Over the past six years, the DSRC industry has been unable to agree upon a path for standardizing DSRC at levels one and two of the International Standards Organization's Open Systems Interconnect (OSI) reference model, which deals with the air interface and the physical properties of the system. During the same time frame, the FHWA has been developing the architecture for CVO and other ITS Programs. This development has matured to the point that the FHWA is ready to initiate seven model deployments of CVISN and the Intelligent Transportation Infrastructure in four major metropolitan areas to test the system under operational conditions. In order for the fundamental concept of wireless vehicle to roadside communication to be viable for commercial fleets, it is essential that interoperability exist nationwide. Therefore, the FHWA believes it must insist that model deployments be interoperable with each other. If the industry stalemate continues, the FHWA may be forced to seek a process to stop the proliferation of non-interoperable DSRC systems. To continue to allow Federal funds to be invested in non-compatible systems will exacerbate the problem. As a result, unless the DSRC industry can identify a solution to non-interoperability immediately, the FHWA will be forced to find an interoperability solution that will not only support the near term deployment, but also the long term expanded deployments that are expected to be utilizing Federal-aid funds.

Solicitation for Public Comment

In the House report accompanying the 1996 DOT appropriations bill, the Committee on Appropriations explicitly stated that the Department should require that Federally supported ITS operations tests be consistent and compatible with the National Architecture to promote interoperability. H.R. Rep. No. 177, 104th Cong., 1st Sess. (1995). In the spirit of that requirement, this notice is being issued to solicit public comment on the following issues.

(1) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet draft standard specifications, such as that of the American Society for Testing Materials (ASTM) proposed Draft #6 standard and the Committee for European Normalisation (CEN) draft documents N473, N474, and N505 prior to their formal adoption as industry standards in an effort to reduce the proliferation of non-interoperable systems? Should the FHWA also include message set requirements, such as the Commercial Vehicle Information Systems and Networks (CVISN) Dedicated Short Range Communications Interface Requirements of April 2, 1996 (Johns Hopkins University-Applied Physics Lab)? Should compliance with specific

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draft standards be required for Commercial Vehicle Operations (CVO) applications only; for both CVO and Electronic Toll and Traffic Management (ETTM) applications; or for CVO, ETTM, and additional applications?

The FHWA must continue to meet schedules for deployment of ITS projects using DSRC as the communications medium. Our understanding is that at least two competing products exist that comply with the open architecture of ASTM draft #6. On the other hand, it is also our understanding that the European standard (CEN) is not used in any products available in the United States that use the 902–928 MHz spectrum. To disrupt the project schedules could have a severely detrimental effect on the ITS program. Although we desire to minimize any detrimental effect on the program, we also understand the need of the industry to set the DSRC standards. Our strongest desire is for standards to be set that will best serve the users and the industry. It is not our intention to institute a standards process that would not be agreeable to the industry and users.

(2) Should the FHWA require that DSRC systems purchased with Federal-aid highway funds and ITS Federal funds meet an escalating interoperability formula? An example would be that first, all CVO applications must be nationally interoperable; second, all new (after specified date) and upgrading ETC systems must be interoperable with CVO applications; third, all other new (after specified date) and upgrading DSRC applications must be interoperable with CVO applications?

Nationwide interoperability is critical for the efficient operation of vehicles using DSRC equipment transiting the nation, especially commercial vehicles. As such, it is imperative that CVO programs be built with a national focus. ETC programs, on the other hand, are focused on regional travel, and its customers may not be very concerned about interoperability outside the local travel area, with exception to commercial carriers. The same regional emphasis may hold true with other DSRC applications, like in-vehicle signing or transit vehicle signal priority, parking payments, and traffic network performance monitoring. It may not be practical to immediately hold all users of DSRC equipment to a single national standard. Instead, a course of action to achieve national interoperability may be to include a migration plan that requires CVO applications to adhere to a national DSRC standard, followed by DSRC applications with regional emphasis. A —best fit— date can be specified for new and upgrading regional projects to begin adherence with the national standard.

(3) Should a single standard be developed for all DSRC applications, or should separate standards be developed with an assumption that trucks and buses, and perhaps other users, would likely require separate technology to perform those functions?

The FHWA recognizes that CVO and ETTM applications, as well as other DSRC applications, have different requirements that have also shaped the design and operation of the equipment. While it may be desirable to have a single standard, it may not be practical. The FHWA is requesting comments on whether the agency should pursue the single standard approach, encourage the development of dual standards (one for the short term and one for the long term), or sponsor dual standards for the short term and pursue single standards for the next generation of DSRC?

The FHWA is looking to the industry and users to come to some agreement as to DSRC standards for both the short term (1–3 years) and the long term (4–10 years). The FHWA has demonstrated its willingness to assist in this process by funding standards development organizations for this purpose. The solution to this problem must be sought together through a team effort by all of the stakeholders. The successful implementation of the ITS model deployments is not possible without a demonstrated willingness on the part of all parties to seek a solution through the established standard setting processes. The FHWA has further demonstrated its willingness to pursue a solution by funding a contractor to meet one-on-one with purchasers and manufacturers of DSRC equipment to develop a concept of operations, a migration plan, and a draft memorandum of agreement between purchasers of DSRC equipment. The FHWA has also been participating in all discussions sponsored by ITS America that have been taking place between users and manufacturers. We are now looking for the industry to do its part. The FHWA would prefer that the industry set the necessary standards through the consensus building process that the FHWA is sponsoring. In the meantime, the FHWA is seeking comments on how it can most effectively administer the ITS programs, that rely on DSRC systems, without the necessary standards in place.

Authority: Pub. L. 102–240, § 6053(b) (as codified at 23 U.S.C. 307 note); 49 CFR 1.48.

Issued on: December 24, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 97–172 Filed 1–3–97; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board

[STB Docket No. AB–488X]

Ludington & Northern Railway, Inc.—Abandonment Exemption—In Mason County, MI

Ludington & Northern Railway, Inc. (L&N) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire line of railroad from the south line of Michigan Highway 116 in Hamlin Township south and east through Pere Marquette Township to terminus in the city of Ludington, in Mason County, MI, a distance of 2.54 miles.

L&N has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10505(g) unless the evidence indicates the existence of a corporate affiliate that will: (1) continue rail operations; or (2) realize significant benefits in addition to being relieved of the burden of deficit operations by its affiliated railroad. *See T and P Railway-Abandonment-in Shawnee, Jefferson and Atchison Counties, KS*, Docket No. AB–381, *et. al.* (ICC served Apr. 27, 1993). Because these conditions do not appear to exist here, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 5, 1997, unless stayed pending reconsideration. Petitions to stay that do

not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 16, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 27, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas F. McFarland, Jr., Attorney for Ludington & Northern Railway, Inc., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

L&N has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 10, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary.

[FR Doc. 97–181 Filed 1–3–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1996 Rev., Supp. No. 4]

Surety Companies Acceptable on Federal Bonds, American Interstate Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34283 to reflect this addition:

American Interstate Insurance Company. BUSINESS ADDRESS: 1807 Highway 190 West, DeRidder, Louisiana, 70634–6005. PHONE: (318) 463–9052. UNDERWRITING LIMITATION *b/*: $2,578,000. SURETY LICENSES *c/*: AR, GA, IN, KY, LA, ME, MN, MS, PA, SC, SD, TX, VA, WI, WY. INCORPORATED IN: Louisiana.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–7116.

Dated: December 23, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–95 Filed 1–3–97; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

[IA–17–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–17–90 (TD 8571), Reporting Requirements for Recipients of Points Paid on Residential Mortgages (§§ 1.6050H–1 and 1.6050H–2).

DATES: Written comments should be received on or before March 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

OMB Number: 1545–1380.

Regulation Project Number: IA–17–90

Abstract: These regulations require the reporting of certain information relating to payments of mortgage interest. Taxpayers must separately state on Form 1098 the amount of points and the amount of interest (other than points) received during the taxable year on a single mortgage and must provide to the payer of the points a separate statement setting forth the information being reported to the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 37,644.

Estimated Time Per Respondent: 7 hrs. 31 min.

Estimated Total Annual Burden Hours: 283,056.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–94 Filed 1–3–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT:

Ms. Kathleen Kelly (Co-Executive Secretary), Supervisory Personnel Management Specialist, Office of Personnel, International Broadcasting Bureau, U.S. Information Agency, 330 Independence Avenue, S.W., Washington, D.C. 20547, Tel: (202) 619–2102; or

Ms. Patricia H. Noble (Co-Executive Secretary), Chief, Civil Service Division, Office of Human Resources, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 619–4617.

SUPPLEMENTARY INFORMATION: In accordance with Section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (P.L. 95454), the following list supersedes the U.S. Information Agency Notice (60 FR 203, October 20, 1995).

Chairperson: Associate Director for Management Henry Howard, Jr. (Presidential Appointee)

Deputy Chairperson: Acting Associate Director for International Broadcasting Bureau Eva Jane Fritzman

Career SES Members:

Hattie Baldwin, Director, Office of Civil Rights

Alfred Davidson, Deputy of Network Operations, Office of Engineering

Sidney Davis, Director of Programs, Voice of American Programs

James Hulen, Director, Office of Strategic Planning

Rick Ruth, Deputy Chief of Staff, Office of the Director

Stanley Silverman, Director, Office of the Comptroller

Alterante Career SES Members:

Daniel Campbell, Director, Office of Technology

Earl Klitenic, Director of Business Development

Ronald Linz, Deputy for Systems Engineering

This supersedes the previous U.S. Information Agency Notice (60 FR 203 October 20, 1995)

Dated: December 30, 1996.

Henry Howard, Jr.,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 97–179 Filed 1–3–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0042.

Title and Form Number: Statement of Accredited Representative in Appealed Case, VA Form 646.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The form is used by an accredited representative of a veterans' service organization to present argument to the BVA on behalf of an appellant whom the service organization represents. Further, it aids the VA in assuring that rights to representation have been honored by establishing that the record has been made available to the representative for review and presentation of argument.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 40,000 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: December 17, 1996.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–190 Filed 1–3–97; 8:45 am]

BILLING CODE 8320–01–P

Associated Health Professions Review Subcommittee of the Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the

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Associated Health Professions Review Committee of the Special Medical Advisory Group will be held January 29 and 30, 1997. This committee will review and recommend changes in Veterans Health Administration's (VHA) role and priorities in education and training, specifically with reference to the use of associated health professionals in the delivery of healthcare. Associated health disciplines are defined as all healthcare providers other than medicine. Each year, approximately 45,000 students in associated health professions receive all or part of their training program clinical experience at VA facilities. The meeting on both days will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 230, Washington, DC. The meeting will convene at 9:30 a.m. on January 29, and 8:30 a.m. on January 30. The meeting will adjourn on January 29 at 4:30 p.m., and at 12 noon on January 30.

On January 29, the Committee will review the current status of associated health training in VA and the Nation, the future of VHA, and the associated health workforce needs for future healthcare delivery systems. The Committee will plan the activities to accomplish the Committee's goals.

On January 30, the Committee will begin the activities to accomplish the Committee's goals and make additional work assignments.

Both days' meetings will be open to the public up to the meeting capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Linda Johnson, Ph.D., R.N., Acting Director, Associated Health Professions Office (143), at 202–273–8372.

Dated: December 31, 1996.

By direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–191 Filed 1–3–97; 8:45 am]

BILLING CODE 8320–01–M

VA Innovations in Nursing Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that the first meeting of the VA Innovations in Nursing Advisory Committee will be held January 15 and 16, 1997, and will start at 8:00 a.m. on both days and end approximately 4:30 p.m. The meeting will be held in Room 230, at VA Headquarters, 810 Vermont Avenue, NW, Washington, DC.

This purpose of the committee is to study and formulate recommendations to the Under Secretary for Health on how VA can generally promote and support health care innovations in which nurses play key leadership and clinical roles and which promote VHA's reengineering efforts.

On January 15, the Committee will define issues and assign tasks to subgroups. Additionally, public comment may be offered from 3:00 p.m. until 3:30 p.m. On January 16, the Committee will outline and plan future activities to accomplish the Committee's goals.

The meeting will be open to the public. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact the Designated Federal Official for the Committee: Ms. Charlotte F. Beason, Ed.D., RN, at (202) 273–8422.

Dated: December 31, 1996.

By direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–192 Filed 1–3–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
January 6, 1997

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 595

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Final Rule and Proposed Rule and Air Bag Deactivation; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 109]

RIN 2127–AG60

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule extends until September 1, 2000, the time period during which vehicle manufacturers are permitted to offer manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. Rear facing infant seats cannot be used safely in front of an air bag, and should ordinarily be placed in the back seat. The purpose of the option for manual cutoff switches is to ensure that the vehicle manufacturers have a means of accommodating their customers' need to carry rear facing infant seats in vehicles without rear seats or with rear seats that are too small for these devices. The agency is extending the time period for the option to ensure that manufacturers have adequate time to implement better, automatic solutions.

DATES: *Effective Date:* The amendments made in this rule are effective February 5, 1997.

Petitions: Petitions for reconsideration must be received by February 20, 1997.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemakings: Visit the NHTSA web site at http://www.nhtsa.dot.gov and select "AIR BAGS Information about air bags."

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Mr. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

While air bags are providing significant overall safety benefits, NHTSA is very concerned because current designs have adverse effects in some situations. Most important, while passenger side air bags are estimated to have saved 164 lives to date, they have also killed 32 children in relatively low speed collisions. Eighteen of those deaths have occurred this year. Driver air bags, by contrast, are estimated to have saved 1500 lives to date. The agency is aware of 19 relatively low speed crashes in which a driver has been killed by the air bag.

Within the past year, the agency has published two documents in the **Federal Register** to address this subject. On November 9, 1995, NHTSA published a request for comments to inform the public about NHTSA's efforts to reduce the adverse effects of air bags, and to invite the public and industry to share information and views with the agency. 60 FR 56554.

On August 6, 1996, the agency published a notice of proposed rulemaking (NPRM) to reduce the adverse effects of air bags, especially those on children. 61 FR 40784. The NPRM proposed several amendments to Standard No. 208, *Occupant Crash Protection*, and Standard No. 213, *Child Restraint Systems*.

In the August 1996 NPRM, the agency explained that eventually, either through market forces or government regulation, it expects that "smart" passenger-side air bags will be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA indicated that, for purposes of the NPRM, it considered smart air bags to include any system that automatically prevents an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys.

NHTSA proposed that vehicles lacking smart passenger-side air bags would be required to have new, attention-getting warning labels. By limiting the labeling requirement to vehicles without smart passenger-side air bags, NHTSA hoped to encourage the introduction of the next generation of air bags as soon as possible. NHTSA proposed to define smart air bags broadly to give manufacturers flexibility in making design choices. The agency requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective.

NHTSA also proposed to expand an existing option that permits manufacturers to install manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. That option is scheduled to expire on September 1, 1997 for passenger cars and September 1, 1998 for light trucks. The agency proposed to extend the option for a longer period of time, and to expand it to cover all vehicles.

II. Overview and Summary

NHTSA is implementing a comprehensive plan of rulemaking and other actions (e.g., primary enforcement of State safety belt use laws) addressing the adverse effects of air bags. As part of that plan, NHTSA is issuing three separate, but related, notices today. Each notice is intended to ensure that some or all or the risks are reduced, and benefits retained, to the maximum extent possible. They provide immediate and/or interim solutions to the problem. A later notice, a proposal to require smart air bags, would provide a permanent solution.

In this final rule, which is based on the August 1996 NPRM, NHTSA is extending until September 1, 2000, a provision in Standard No. 208 permitting vehicle manufacturers to offer manual cutoff switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.

The other rulemaking actions addressing the adverse side effects of air bags are as follows:

• Also based on the August 1996 NPRM, the agency issued on November 22, 1996, a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. The labeling places particular emphasis on placing rear-facing infant restraints in the rear seats of vehicles with operational passenger air bags. 61 Fed. Reg. 60206; November 27, 1996. The new labels are required on vehicles not equipped with smart passenger air bags beginning February 25, 1997, and on child restraints beginning May 27, 1997.

• NHTSA is also issuing an NPRM to temporarily amend Standard No. 208 to permit or facilitate approximately 20 to 35 percent depowering of current air bags.

• The agency also is issuing an NPRM proposing to permit motor vehicle dealers and repair businesses to deactivate, upon the request of consumers, driver and passenger air bags that do not meet the agency's criteria for smart air bags. Final action is expected in early 1997.

• In addition to these actions, NHTSA will issue a separate supplemental NPRM (SNPRM) to require a phasing-in of smart air bags, beginning on September 1, 1998, and to establish performance requirements for those air bags. The proposal will be issued in early 1997.

III. Current and Proposed Requirements Concerning Manual Cutoff Switches

Until smart passenger-side air bags can be installed in new vehicles, the improved labeling requirements recently announced by the agency will better ensure that drivers and other occupants are aware of the dangers posed by air bags to unbelted children and children in rear-facing child seats located in the front seat. Adult occupants will ideally respond to the labels by ensuring that, whenever possible, a child occupies the back seat of a vehicle, instead of the front, and is properly restrained there. Further, the adult will ensure that if a child, other than an infant in a rear-facing child seat, must sit in the front seat, the child is properly restrained and the seat is moved all the way back.

For rear-facing infant seats, however, securing them tightly in a front seat using the vehicle safety belts and moving the front seat all the way back will not protect an infant because the child seat would still extend too far forward. The infant's head would still be located very close to the air bag. For this reason, a rear-facing child seat should *never* be placed in a seating position with an activated air bag. However, some vehicles do not have back seats, or have back seats which are not large enough to accommodate a rear-facing child seat.

To address this dilemma, on May 23, 1995, NHTSA published a final rule allowing manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles that are manufactured on or after June 22, 1995, and that cannot accommodate rear-facing child seats anywhere except in the front seat. In addition to limiting the types of vehicles which were permitted to have the manual cutoff switch, the final rule also included a number of conditions that had to be satisfied. The manual cutoff switch had to use an ignition key to turn off the air bag and to turn on the air bag by manual means. The manufacturer had to also install a warning light that was separate from the air bag readiness indicator and would indicate when the air bag was turned off. The light had to be visible to both the driver and passenger. The manufacturer had to include information on the manual cutoff switch in the owner's manual. Finally, the option was only available for passenger cars manufactured before September 1, 1997, and light trucks manufactured before September 1, 1998. The agency decided to place a time limit on the option for manual cutoff switches because it believed that better, automatic solutions would soon be available.

In the August NPRM, NHTSA proposed to extend the period of availability of the option for manual cutoff switches and to permit installation of those devices in all vehicles with passenger air bags lacking smart capability. The agency issued this proposal out of concern that smart air bags were not becoming available as quickly as anticipated, and that the need to place rear facing infant seats in the front seat goes beyond vehicles lacking rear seats that can accommodate these devices.

The agency noted that some children have special medical problems requiring close monitoring, which cannot be accomplished if the driver places the child in the rear seat. The agency had received a number of comments concerning this problem in response to a request for comments concerning adverse effects of air bags published in the **Federal Register** on November 9, 1995 (60 FR 56554).[1]

NHTSA also noted that a second reason for permitting manual cutoff switches in all vehicles is that the deep-seated desire of some parents to keep their infants near them under their close and watchful eye may be sufficiently strong that they choose to place their children in the front seat instead of the rear seat where the child would be safer.[2] The agency stated that it was concerned that some parents may decide to place a rear-facing child seat in the front seat where the infant can be closely monitored, even in the presence of an activated air bag and warning labels. NHTSA noted that while it does not wish to encourage parents to place children in the front seat, a cutoff switch would enable these parents to eliminate the risk from the air bag.

NHTSA requested comments on the availability of alternative automatic devices, and how such availability should affect its decision regarding the manual cutoff switch option. The agency also requested comments on whether it should endeavor to further encourage smart passenger-side air bags by specifying an expiration date for the manual cutoff switch option and, if so, what date.

The agency noted that many commenters to the November 1995 request for comments expressed concern about the potential for misuse of a manual cutoff switch. A switch could be misused either by a driver or other vehicle occupant deactivating the air bag when an occupant other than a child in a rear facing child seat is present, or by a driver simply forgetting to reactivate the air bag after using such a restraint. In either case, the air bag would not be available to protect persons who could benefit from its deployment.

In the Preliminary Regulatory Evaluation (PRE) for this rulemaking, NHTSA assessed possible benefit trade-offs associated with a manual cutoff switch provided for the right front passenger seat and intended to be used when a rear-facing child restraint is placed there. The agency stated that it appeared that there would be more

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[1] Among other things, the parents of an infant with medical problems commented that those medical problems require them to be able to monitor the child and that cannot be done with the child in the back seat. The agency also noted that the National Association of Pediatric Nurse Associates & Practitioners had submitted a comment identifying a number of medical conditions for which infants would need to be monitored closely, indicating a need for those children to be transported in the front seat. That organization stated that approximately two percent of all children (which translates into about 400,000 children under the age of 5 and close to 100,000 under the age of one) have some type of medical condition or disability which requires some type of nonmedical assistive technology. Also, about 0.1 percent (or about 20,000 children under the age of five and 5,000 infants) require medical technology assistance such as respirators, surveillance devices, or nutritive assistance devices.

[2] A child is safer in the back seat of a vehicle, regardless of whether the vehicle has an activated passenger air bag in the front seat.

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benefits to allowing a cutoff switch than losses if misuse levels were below seven percent. NHTSA noted that its educational efforts would focus on preventing such misuse, and also noted that the requirement for an extra warning light would reduce the possibility of drivers forgetting to reactivate the air bag after using a rear-facing child restraint in the front seat. Currently, pursuant to Standard No. 208, a yellow warning light displays the message "AIR BAG OFF" whenever the right front passenger air bag is deactivated by someone operating the cutoff switch.

Based on discussions with Ford, the vehicle manufacturer with the largest number of manual cutoff switches,[3] NHTSA stated that it was not aware of any misuse problems with these devices. Nevertheless, NHTSA specifically requested comments on whether there are any quantitative data or other information concerning the likelihood of manual cutoff switches being misused. The agency stated that it was particularly interested in information derived from the real-world experience with the vehicles equipped with manual cutoff switches.

IV. Summary of Comments

NHTSA received comments concerning its August 1996 proposal on manual cutoff switches from vehicle manufacturers, suppliers, safety groups, and private individuals. Commenters generally supported extending the period of availability of the existing option for manual cutoff switches. The comments were mixed, however, with respect to expanding the option to cover all vehicles. A variety of commenters, including the domestic auto manufacturers and several insurance and safety groups, opposed such an expansion. Some were concerned about the potential misuse of the cutoff, while others thought that such an expansion would inadvertently and unavoidably compromise various safety messages, i.e., that rear facing infant seats should always be placed in the back seat and that the back seat is the safest place for all children.

This section summarizes comments concerning whether the option for cutoff switches should be extended in time and/or expanded in scope. Comments concerning what specific requirements should apply to cutoff switches, assuming they are permitted, are addressed later in this document.

A. Vehicle Manufacturers

The American Automobile Manufacturers Association (AAMA), representing GM, Ford, and Chrysler, recommended that the current option for installing manual cutoff switches in certain vehicle configurations be continued. It noted that its members are already on record as considering this approach to be an interim measure until systems that can discriminate occupant weight and location have been proven to be sufficiently reliable and effective for production vehicle use.

AAMA recommended, however, that the allowable use of manual cutoff switches not be expanded to cover other vehicle configurations than those currently permitted. That organization noted that the cutoff switch option currently allowed in Standard No. 208 provides a method to manually deactivate the passenger side air bag in vehicles where the alternative of placing a rear-facing child seat in the rear seat of the vehicle does not exist because of the configuration of the vehicles' interior. AAMA stated that in these vehicles, there may be specific crash situations where a properly utilized manual cutoff switch could provide a benefit. That commenter added, however, that there are no data publicly available to evaluate the net effectiveness of a cutoff switch—particularly considering the long term potential for misuse. Therefore, AAMA believes that for other vehicle configurations that already offer preferable alternatives to placing rear-facing child seats in the vehicles' front seat, the net potential benefit of a cutoff switch is questionable.

GM stated that it supports the agency's proposal to extend indefinitely the currently permitted use of manual cutoff switches for passenger air bags. That company noted that it is currently installing these switches in its 1997 regular and extended full size pickup trucks. GM stated that its review of the various automatic suppression technologies currently being developed is ongoing. According to that commenter, as automatic suppression technology becomes production capable, its ability to replace manual suppression systems will be evaluated and, when appropriate, implemented as quickly as possible. GM stated that it does not agree with the agency's proposal to expand the allowable use of manual cutoff switches to include vehicles other than the configurations currently permitted.

Ford stated that it supports extension beyond September 1, 1998 of the existing option to install manual deactivation switches in vehicles that cannot fit rear-facing infant restraints in the rear seat, because it may be unable to install automatic deactivation for children in all pickup trucks by that date. Ford stated, however, that it opposes expansion of the option to passenger cars and other vehicles that can fit rear-facing infant restraints in the rear seat, because automatic (weight threshold) deactivation technology has now advanced sufficiently to be considered for future models of such vehicles.

Chrysler stated that it is concerned about the many opportunities for misuse of cutoff switches, even if their use is limited to the vehicles in which they may now be installed. That company stated that drivers are faced with a dilemma about how to use a cutoff switch with three passenger front seating. Given the confusion associated with this problem and ordinary driver distractions, it believes that the potential for misuse of cutoff switches could exceed the seven percent "breakeven" figure cited by the agency in its Preliminary Regulatory Evaluation for the August 1996 NPRM.

Chrysler also argued that it believes cutoff switches may discourage seat belt use, and dilute the message that children should be seated in the rear seat. Chrysler stated that given NHTSA's statement that the likelihood of injuries/fatalities is 29 percent less for someone sitting in the rear seat instead of in the front seat, this encouragement of front seat use alone could negate the purported benefits of cutoff switches.

Toyota stated that it believes manual cutoff switches are the most reliable resolution currently available when used as intended, i.e., to install a rearward facing infant restraint. That company indicated that it is planning to provide such switches in its 1998 model year pickup trucks. Toyota stated that, with respect to vehicles other than those without adequate seats for rear facing infant seats, manual cutoff switches have some inherent problems.

Honda stated that it is extremely concerned about the potential for misuse or abuse of manual cutoff switches by some users. That company stated that vehicle operators may inadvertently forget to deactivate the air bag with the switch when necessary, or may intentionally deactivate the passenger air bag with the cutoff switch when it is not appropriate to do so. Honda stated it believes the manual cutoff switch represents the least

[3] At the time of the NPRM, NHTSA knew of only three models utilizing cutoff switches—the model year 1996 Ford Ranger pickup, the model year 1997 Ford F150 pickup, which was introduced in February 1996, and the LE and SE versions of the model year 1996 Mazda B-series pickup trucks, which are equipped with an optional passenger side air bag.

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effective of any solutions to the problem of air bag induced injuries.

Mercedes Benz stated that unless required by law, it will not offer any type of manual cutoff switch because of expected driver misuse or non-use.

Volvo stated that it believes manual cutoff switches should be allowed for all categories of vehicles. That manufacturer stated that this technology must be considered an interim solution. Volvo stated it believes market forces will act as soon as more advanced technology is available and will make any manually operated system obsolete. Therefore, that company believes there should be no time limit for when manual cutoff switches should no longer be allowed.

Volvo noted that in Europe, due to customer requests, most manufacturers have developed new car retail service procedures for deactivation and reactivation of passenger side air bags. Volvo recommended making new car retail service procedures legal in the U.S. for all customers who wish to deactivate the passenger side air bag.

BMW stated that it believes manual cutoff switches remain a practical alternative and allowing them on all vehicles is a reasonable interim solution. That company stated that it is important to offer parents alternatives until advanced technologies can be developed and implemented. BMW stated that if the fast pace of technology for advanced systems continues at its current rate, it expects that the need for an allowance for manual devices may be eliminated about the year 2002.

BMW noted that as an alternative to manual devices, a more direct approach consists of temporarily deactivating the air bag. That manufacturer stated that it believes that NHTSA could develop procedures similar to those being utilized by vehicle manufacturers in Europe. In Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

B. Dealers

The National Automobile Dealers Association (NADA) supported the agency's proposal to expand the option for manual cutoff switches to cover all vehicles.

C. Suppliers

TRW stated that it believes the cutoff switch to be the most positive means of shutting off the air bag if understood and used properly, and therefore supported allowing its use in all vehicles. However, TRW recommended continued use of the cutoff switch only until more inclusive, automatic means can be demonstrated and adopted.

Autoliv stated that manual cutoff switches should be considered as an interim solution. That company stated that it believes market forces will generate devices for automatic deactivation and that a time limit for permitting manual cutoff switches is unnecessary. Autoliv also argued that another reason for not setting a time limit is that there may be a justification for a combination of manual and automatic systems, highly depending on the direction that the development of automatic systems takes.

D. Child Seat Manufacturers

Cosco stated that it believes cutoff switches should immediately be permitted in all vehicles as the fastest way of providing an option for those who must, or prefer to, have a baby in the front seat. That company stated that it does not believe permitting cutoff switches will delay the introduction of smart bags, but will allow the thoughtful and intelligent introduction of effective smart systems.

Cosco also commented that certain car beds, including its "Dream Ride," are compatible with seating positions equipped with air bags. Cosco cited a test performed by NHTSA for this conclusion. Cosco stated that such car beds that have been proven to be compatible with air bags do not require the deactivation of the air bag. That commenter stated that until cutoff switches or other devices are adopted, NHTSA should make an effort to inform parents that a car bed is an acceptable alternative, especially since, for medically fragile infants and also for cars with non-compatible rear vehicle belts, a car bed is their only option.

E. Insurance, Safety, and Medical Groups

IIHS stated that it does not support NHTSA's proposal to allow manual cutoff switches in all vehicles with passenger air bags. That organization stated that it is concerned that cutoff switches will not be an effective solution to the problem of child deaths and may lead to additional harm to other vehicle occupants. According to IIHS, some people undoubtedly would use the switches correctly, but it is likely that many parents and other drivers would misuse the switches. That commenter stated that there is no reason to believe that many adults who allow children to ride unrestrained or improperly restrained would use air bag deactivation switches correctly.

IIHS also cited a danger that manual cutoff switches send consumers a mixed message by encouraging drivers to place infants and children in the front seat. That commenter noted that a central objective of the educational effort to reduce the adverse effects of passenger air bags is to convince adults that infants and children should ride in rear seats. A recent Institute survey of vehicles in parking lots found rear-facing restraints in the front seat of cars with passenger air bags only 9 percent of the time, compared with 36 percent in cars without passenger air bags. IIHS stated that it would be a mistake if, as a result of switches, more infants and children are placed in the front seat.

The National Association of Independent Insurers (NAII) stated that it is extremely concerned by the proposal to allow use of manual switches to allow vehicle users to deactivate passenger-side air bags. NAII cited several concerns about this issue previously raised by IIHS and stated that, in NAII's estimation, many people may run a greater risk of getting injured simply because they have forgotten to turn the switch back on.

Advocates for Highway and Auto Safety (Advocates) stated that while it would support an extension of time for the installation of manual cutoff switches in vehicles without back seats, it believes that NHTSA should encourage the use of automatic weight sensors and should not permit the installation of manual cutoff switches in vehicles with back seats. According to that organization, permitting the installation of manual cutoff switches in all passenger vehicles would result in potential safety risks for many passengers due to the inevitable misuse of cutoff switches. Advocates stated that the misuse of cutoff switches is foreseeable and will result in a safety trade-off that will, in fact, undermine the proven life saving benefits of air bags.

Advocates argued that permitting manual cutoff switches in all vehicles will make air bag protection subject to the vagaries of what the agency has in the past referred to as operator error. The safety benefits of air bags will then depend on the ability and willingness of adults to set the switch in the "off" position for infants or toddlers but return it to the "on" position for other passengers. Advocates stated that it is convinced that manual cutoff switches will not be correctly used. Advocates also stated that while it has not quantified the potential risk, it believes that the higher level of exposure of non-infant occupants to risk when an air bag is turned off will far exceed the present

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level of adverse effects of passenger-side air bags on children in rear-facing child restraints.

Advocates also argued that the manual cutoff switch sends the wrong safety message to parents. According to that commenter, the existence of a manual switch strongly implies that it is safe to place infants and children in the front seat.

Public Citizen stated that it opposes installation of air bag on/off switches. That organization argued that this proposal is misguided and would undercut the automatic nature of air bags. One of the disadvantages, according to Public Citizen, is the danger that the air bag will be left off for adult passengers when it should be on. That commenter also stated that the proposal sends a wrong and deadly message—that it's okay for kids to ride in the front seat. Public Citizen stated that a far preferable technical change would be a minimum trigger speed of approximately 15 mph, which would significantly reduce the number of low speed crash air bag inflations, the type of crash in which children are being killed and injured.

SafetyBeltSafe U.S.A. stated that it agrees that cutoff switches may be a necessary, temporary solution for some vehicles, but they should not be permitted beyond a specified date.

National Safe Kids Campaign (NSKC), whose chairman is C. Everett Koop, M.D., stated that it believes that in the best interest of children, manual cutoff switches should be required until smart passenger-side air bags are developed. That organization stated that while there are behavioral issues associated with cutoff switches, it recognizes that families with small children will sometimes need to transport them in the front seat as a last resort. That organization stated that the cutoff switch gives the responsible parent/driver the option to turn off the air bag deployment system and then more safely transport an infant or child in the front seat.

Kathleen Weber, Director of the Child Passenger Research Program at the University of Michigan Medical School, supported the agency's proposal. Ms. Weber stated that despite all the warnings in the world, parents want to put babies in the front seat, and older children also like to ride up front with the driver. That commenter stated that, with respect to the latter, it is becoming increasingly clear that, even when older children are suitably restrained by a lap/shoulder belt, they can easily and unpredictably move forward to adjust the radio, pick up something from the floor, or brace themselves in anticipation of a crash, inadvertently placing themselves at great risk of injury or death. Ms. Weber stated that parents need the option of suppressing deployment of passenger air bags by either manual or automatic means, and also urged the agency to address this problem for owners of current vehicles.

The American Academy of Pediatrics (AAP) stated that it is very concerned about the possibility of extending and expanding the availability of manual air bag cutoff switches. That organization stated that efforts to educate families through labels regarding the potential dangers of air bags to infants in rear facing child seats have demonstrated that compliance is extremely difficult to accomplish. AAP expressed concern that with a manual cutoff switch, drivers may fail to deactivate the air bag when the rear facing seat is present or fail to reactivate the air bag after an appropriate deactivation. That organization stated that increased availability of the manual cutoff switch would lead to the development of a much larger fleet of vehicles in which such misuse could result. AAP stated that ensuring proper use of the cutoff switch by so many drivers would entail an enormous and extremely difficult educational challenge and would almost surely result in a significant amount of misuse.

AAP stated that it is also concerned that the availability of a manual cutoff switch will dilute the important message that "Back Seat is Best." That organization stated that although many parents feel that they need a manual cutoff switch so that they can place an infant in the front seat for observation, the number of children who actually have a medical need for observation is smaller than parents realize. In fact, AAP stated the number of such children is very small. AAP argued that consumer concerns could better be addressed through a focused, short-term education effort until a passive deactivation air bag system can be implemented.

AAP stated that the transportation of children with special needs who must be observed should be addressed on a case-by-case basis by the child's physician. That organization stated that the vast majority of the small number of children for whom observation may be medically desirable can be safely transported in a car bed in the front-seat position, which would not be affected by a passenger-side air bag. AAP added that the duration of time that this level of observation is necessary is usually extremely short—i.e., a few months. AAP stated that older children with high-risk medical needs, such as children on ventilators, usually need to be the back seat anyway, since they need large quantities of equipment and must be accompanied by skilled care givers at their sides.

The National Association of Children's Hospitals and Related Institutions (NACHRI) stated that it has serious concerns with the proposal to permit manual air bag cutoff switches for any vehicle without a smart passenger side air bag, although it understands and supports the existing option for vehicles in which rear facing child seats can only be used in the front seat. That organization stated that key public awareness campaigns are currently presenting one message as an absolute—infants in rear facing child seats should never ride in the front seat of a vehicle with a passenger side air bag. NACHRI stated that while this message is only now taking hold with the public, it questions how NHTSA would, if manual switches are permitted in all vehicles, adjust the message without hampering the credibility of all child passenger safety public awareness efforts. NACHRI also stated that another message—the safest place for all children is in the back seat—would also be seriously affected by a change in regulation on manual cutoff switches.

NACHRI stated that it recognizes that there are a small number of pediatric medical conditions that require close monitoring during vehicle travel, e.g., complications of prematurity. NACHRI recommended, however, that instead of permitting cutoff switches for all vehicles—and addressing the resulting public education and safety issues—it may be simpler to educate the small number of parents of medically fragile infants to ride with another adult whenever possible or to stop the vehicle periodically to monitor the infant.

Dr. Phyllis Kiehl of LaTouche Pediatrics stated that she strongly encouraged the cutoff switch option for vehicles without smart air bags, while also arguing that the introduction of smart air bags should be mandated.

Philip O. Morton, Chairman of the Board of the American Tinnitus Association, expressed concern about the connection between vehicle air bag deployment and the corresponding incidence of tinnitus. Mr. Morton urged that on/off switches be available for all vehicle air bags, including driver air bags.

F. Other Commenters

Safe Ride News urged NHTSA to require rather than permit the use of cutoff switches for all vehicles without smart air bags.

A number of private individuals requested that cutoff switches be provided. Some, including persons concerned that air bag deployment may cause hearing problems for persons with tinnitus or hyperacusis, requested that cutoff switches be provided for both passenger and driver air bags.

V. Agency Decision

A. Option for Manual Cutoff Switches

NHTSA believes there is a consensus that the only fully effective solution to the problem of adverse effects from passenger-side air bags is smart bags. Moreover, the vehicle manufacturers have indicated that they plan to introduce these devices as soon as they become available.

The agency is encouraged that several suppliers commenting on the August 1996 NPRM indicated that smart bags can begin to be phased in beginning with the model year 1999 fleet, i.e., approximately September 1, 1998. To help ensure that these devices are introduced expeditiously, the agency plans to publish shortly a separate SNPRM to propose performance requirements for smart air bags and to propose a phase-in schedule for requiring these devices.

In the meantime, and after considering the comments, NHTSA has decided to extend until September 1, 2000, the time period during which vehicle manufacturers are permitted under Standard No. 208 to offer manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear facing infant seats. The agency has decided not to expand the option to additional vehicles. The reasons for the agency's decision are presented below.

1. Time Period for Manual Cutoff Switches

The agency initially decided to place a time limit on the current option for manual cutoff switches for passenger air bags because it believed that better, automatic solutions would soon be available. The option was only available for passenger cars manufactured before September 1, 1997, and light trucks manufactured before September 1, 1998.

A variety of circumstances have changed since the agency issued its current rule on manual cutoff switches in May 1995. First, there is uncertainty concerning the extent to which smart air bags will be available by September 1, 1998. As indicated above, NHTSA is encouraged that several suppliers commenting on the August 1996 NPRM indicated that smart bags can begin to be phased in beginning with the model year 1999 fleet, i.e., approximately September 1, 1998. However, this would not mean that vehicle manufacturers would be able to install smart bags on all of the models for which they would use manual cutoff switches by that date.

Second, a consensus has emerged concerning the need to develop and implement smart passenger air bags as soon as possible, and manufacturers and suppliers are working toward that end. Moreover, the agency is announcing plans to issue an SNPRM to propose performance requirements for smart air bags and a phase-in schedule for requiring these devices. Given these developments, the agency believes there is less reason to have concern that the availability of an option for manual cutoff switches will delay implementation of better solutions.

Given the importance of ensuring that the vehicle manufacturers have a means of accommodating their customers' need to carry rear facing infant restraints in some vehicles without rear seats or with rear seats that are too small to accommodate these devices, NHTSA has decided to extend the current option to September 1, 2000. While there is some uncertainty as to how long the option needs to be extended, the agency believes the record shows that the vehicle manufacturers should be able to implement some type of smart air bag for these vehicles by that time.

2. Types of Vehicles for Which Manual Cutoff Switch Option Should be Available

As discussed above, while NHTSA initially decided to permit manual cutoff switches to be offered only on vehicles without rear seats or with rear seats that are too small to accommodate rear-facing child restraints, it proposed to expand the option to cover all vehicles. As summarized above, a variety of commenters urged that the cutoff option be expanded to other vehicles, arguing that parents want to place their children in the front seat and that an expanded option would provide an interim solution to the problem of air bag deaths until smart air bags are introduced and would provide time for the orderly introduction of smart air bags. Proponents of wider availability of manual cutoff switches asserted that the needs of vehicle owners for a means of turning air bags off could be met by such switches because they provide a means of turning off air bags in appropriate situations. Some commenters argued that the agency should respond to those needs by adopting a requirement that manufacturers install manual cutoff switches in all vehicles, rather than a permissive option for manufacturers. Some commenters also argued that this requirement should apply to driver-side air bags as well as passenger-side air bags. One proponent expressed the view that cutoff switches provide the most "positive" means of shutting of air bags.

After considering the comments, however, the agency has decided not to expand the option to include additional vehicles. The reasons for this decision are explained below.

The agency begins by acknowledging that, given current air bag designs, there are situations in which there is a need or a strong desire to turn off passenger-side air bags in vehicles with large enough rear seats to accommodate a rear-facing child restraint. An example of this is the situation in which a rear facing infant restraint must be placed in the front seat so that a special medical condition of the infant can be closely monitored. The need to turn off passenger-side air bags by means of a manual cutoff switch or deactivation will cease when smart air bags are introduced.

NHTSA concludes that the objective of allowing air bags to be turned off in appropriate circumstances can best and most quickly be met by permitting motor vehicle dealers and repair businesses to deactivate driver and passenger-side air bags upon the request of vehicle owners without expanding the cutoff switch option to cover additional types of vehicles. As indicated above, the agency is issuing a separate NPRM on the subject of deactivation. Allowing deactivation would not only provide a means of turning off the air bags in vehicles not covered by the cutoff option, but also in vehicles covered by the option, but not equipped with a cutoff switch.

For those situations in which there is a need to turn off an air bag, deactivation is just as good a solution as a cutoff switch in some respects, and better in others. Deactivation is just as effective as a cutoff switch for enabling parents to eliminate the risk to their children. Parents who need to use the front passenger seat for transporting a child can have their passenger-side air bag deactivated. Deactivation also provides an answer to the concerns of some groups of drivers, e.g., short-statured drivers who sit very close to the steering wheel and drivers with tinnitus or hyperacusis, while the agency conducts further studies.

Deactivation, accompanied by appropriate labels, can provide as much visible assurance that an air bag has been deactivated as a cutoff switch can. Under the agency's proposal, a vehicle

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owner would be able to readily determine if the air bag was off by means of the labels that the agency is proposing be placed on vehicles whose air bags have been deactivated.

Finally, just like manual cutoff switches, deactivation would solve the immediate problem and thus buy time for the intelligent and thoughtful introduction of smart bags. By providing a means to eliminate the risk to children, the agency and industry will have the opportunity to take appropriate care in completing the development of and in introducing smart air bags.

NHTSA believes that deactivation is superior to widespread use of cutoff switches in a number of respects. First, deactivation is a much speedier answer to the need to turn off air bags than expanding the option for manual cutoff switches. Significant time would be needed by vehicle manufacturers to do the designing and retooling necessary to install cutoff switches in future vehicles for which such work has not already been done. More specifically, vehicle manufacturers have advised that development and installation of cutoff switches would take at least one year. In contrast, no redesigning or retooling is needed for deactivation. Indeed, deactivation would be available immediately upon the issuance of a final rule. Moreover, deactivation is the only method for addressing vehicles already on the road, which are the bulk of the problem. The agency notes that even if it were to require or permit cutoffs for future vehicles, it would still have to authorize deactivation for existing vehicles and those future vehicles built before the switches could be installed.

Second, deactivation is a narrower and more focused solution than a cut off switch requirement or than a cutoff switch option to which manufacturers responded by installing cutoff switches in all or most vehicles. Under that scenario of nearly universal installation, cutoff switches would be provided without regard to need. By contrast, deactivation would be sought primarily just in those circumstances in which it is needed. This more focused aspect of deactivation would reinforce the message that air bags are generally good, and that only in limited circumstances is it appropriate to turn them off.

For reasons discussed by a wide range of commenters, including auto makers, consumer groups, insurance groups, and medical groups, there is a possibility that widespread availability of manual cutoff switches could easily do more harm than good, in terms of overall effect on safety. NHTSA is seeking to provide relief where needed while minimizing, consistent with the safety of children and others, the number of air bags that are turned off. The agency believes that the possibility of a net adverse effect on safety is less likely with deactivation given the expectation noted above that deactivation would be sought primarily by persons with a particular need. Moreover, the agency has proposed procedures that would ensure that owners who are contemplating deactivation of their air bags are made aware of the circumstances in which deactivation may be appropriate, based upon the comparison of the risks of turning the air bag off versus leaving it on. This would reduce the possibility of unnecessary or inappropriate turning off of air bags, and should result in a better net effect on safety.

Third, deactivation would be less costly in terms of overall consumer costs than across-the-board provision of manual cutoff switches. Air bags would be deactivated only in those vehicles whose owners requested deactivation. As a result, costs would also be more equitably distributed, since the costs would be borne by those choosing to have their vehicles modified. Conversely, all new vehicle purchasers would have to pay for manual switches if they were universally installed.

NHTSA also believes tha 'he early introduction and availabili of smart air bag technology could b ided by allowing the vehicle manufacturers to focus their attention and resources on completing development of that technology rather than spending additional resources on, and otherwise being distracted by, designing manual cutoff switches for all vehicles. In addition, there are several other considerations that argue against diverting manufacturer efforts into expanding the availability of cutoffs. To the extent that vehicle manufacturers depower their air bags in the near future pursuant to another NHTSA proposal, the potential benefits of cutoff switches would be reduced. Further, the agency sees little point in pushing the vehicle manufacturers toward a technology that would so quickly be made obsolete by smart air bags.

NHTSA recognizes that deactivation would have some disadvantages as compared to cutoff switches. One disadvantage is that deactivation of an air bag for the benefit of one user of a particular vehicle would make the air bag unavailable for other users of that vehicle. By contrast, cutoff switches could be used by the various different occupants of a vehicle to suit their own needs with respect to air bag protection. Further, once an air bag was deactivated, a person would have to make a greater investment of time and expense to have it reactivated. While these disadvantages were considered by the agency in making its decision, the agency believes they are outweighed by the factors discussed above.

NHTSA wishes to address the suggestion by some commenters that infants with a special medical condition can be placed in a car bed instead of a rear facing infant seat, and that a car bed can safely be used in front of an air bag. Given the limited information that is available, NHTSA is not prepared to recommend placing a car bed in front of an air bag. The agency did conduct a test in which the air bag deployed primarily over the top of a car bed, barely contacting the bed. However, NHTSA used an infant dummy that was not instrumented, and thus did not obtain measurements of the potential for injury. The agency notes that there is no available infant dummy of less than 10 pounds weight that is instrumented to make such measurements. The agency does not know how hard the air bag impacted the bed, or what the effect the impact would have on a four, five or ten pound infant, with or without a medical problem. Moreover, the agency does not know the extent to which that particular test was representative of current vehicle seats and air bags. Finally, NHTSA notes that car beds cannot fit on bucket seats.

B. Performance Requirements for Manual Cutoff Switches

Several commenters urged that, assuming manual cutoff switches are permitted, various changes should be made in the requirements for those switches and accompanying indicator lights. Volvo stated that if manual cutoff switches are permitted, all modes of air bag activation should be indicated, i.e., air bag on vs. air bag off. That manufacturer also suggested that this status indication might be accompanied by symbols showing who is the appropriate occupant in the seat for the indicated mode and who is not. Volvo stated that manufacturers should be given full freedom in finding a suitable location for the air bag status indication. That company stated that it is desirable that the indication be visible for all front seat occupants, but a provision that requires the indication be close to the cutoff switch is unnecessarily design restrictive. Volvo also suggested that other options for the device used to operate the cutoff switch, i.e., other than the ignition key, should be considered.

Nissan stated that if NHTSA expands the ability of manufacturers to install manual air bag cutoff switches, the

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agency should make changes to Standard No. 208's current indicator light requirements. Nissan noted that the Standard currently specifies that if a vehicle is equipped with a single indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device, the readiness indicator must monitor only the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device. Nissan expressed concern that this requirement means that the operability of the cutoff switch indicator, the cutoff switch, and the passenger air bag cannot be diagnosed when that air bag is deactivated by the cutoff switch. That manufacturer requested that the current requirements be amended to allow use of a system that continuously monitors, diagnoses and displays system status for all components, including the driver air bag, passenger air bag, cutoff switch and the cutoff switch indicator, if the readiness indicator does not illuminate solely upon the action of deactivating the passenger air bag via the cutoff switch.

Land Rover stated that if the opportunity to install cutoff switches is expanded, additional rulemaking should be conducted to specify the mode of operation including details about whether and under what conditions the air bag should be automatically reactivated.

AAP stated that if NHTSA should choose to permit wider use of the manual cutoff switch, then it recommends that a visible, audible and non-deactivatable warning signal be required to indicate that the air bag is on or off. NSKC stated that if the agency decides to require manual cutoff switches, it also becomes absolutely necessary to require some type of warning light and warning sound in the control panel of the dashboard which informs or reminds the driver that the air bag has been deactivated. Autoliv stated that it cannot be emphasized enough that a clear indication of the passenger air bag mode to the driver is crucial to the safe use of the manual cutoff switch. Autoliv suggested that this switch could be further improved by alerting the driver about the passenger bag mode (off or on) each time the driver turns the ignition key on.

As discussed above, Standard No. 208 currently specifies a number of requirements for manual cutoff switches. The manual cutoff switch must make it necessary to use an ignition key to turn off the air bag and to turn on the air bag by manual means. The manufacturer must also install a warning light which is separate from the air bag readiness indicator and which would indicate that the air bag was turned off. The light must be visible to both the driver and passenger. The manufacturer must include information on the manual cutoff switch in the owner's manual.

For a number of reasons, NHTSA is reluctant to make any significant changes in the current performance requirements for manual cutoff switches. First, the agency has already completed a rulemaking to determine what requirements should apply to manual cutoff switches, and has no reason to believe that significant changes are necessary. Second, manual cutoff switches are now being provided in a number of vehicles, and consumers are becoming familiar with them. Some kinds of changes in the requirements for manual cutoff switches could potentially cause confusion. For example, Standard No. 208 currently requires that it be necessary to use manual means to reactivate the air bag after it has been deactivated by use of the cutoff switch. Considerable confusion could result from a change in this requirement such that air bags in newer vehicles reactivated automatically after use of a cutoff switch, while air bags in older vehicles did not.

While the agency is not adding additional performance requirements, it notes that manufacturers can voluntarily provide additional features, such as audible signals or extra lights, as long as the Standard's specific requirements are met.

NHTSA has concluded that there is merit to Nissan's request for a change in Standard No. 208's current air bag indicator light requirements. As discussed above, the Standard currently specifies that if a vehicle is equipped with a single indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device, the readiness indicator must monitor only the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device. The purpose of this requirement was to ensure that drivers would not miss a message that the driver air bag was not functional, simply because the passenger side bag was intentionally deactivated. The agency agrees with Nissan that this problem would not occur in a system that continuously monitors, diagnoses and displays system status for all components, including the driver air bag, passenger air bag, cutoff switch and the cutoff switch indicator, so long as the readiness indicator does not illuminate solely upon the action of deactivating the passenger air bag via the cutoff switch. NHTSA is therefore making a change to accommodate Nissan's suggestion. The change provides additional flexibility and does not impose any new requirements.

C. Effective Date

NHTSA is making today's amendments effective 30 days after publication in the Federal Register. The agency finds good cause for this effective date. The amendments will ensure that vehicle manufacturers can continue to have a means of accommodating their customers' need to carry rear facing infant seats in vehicles without rear seats or with rear seats that are too small for these devices. The amendments do not impose any additional requirements but instead relieve a restriction.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures. The action is considered significant because of the degree of public interest in this subject.

NHTSA estimates the cost of a voluntarily installed manual cutoff switch at a little over five dollars.

A full discussion of costs and benefits can be found in the agency's regulatory evaluation for this rulemaking action, which is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The final rule primarily affects motor vehicle manufacturers. Almost all motor vehicle manufacturers would not qualify as small businesses.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 is amended by revising S4.1.5.1(b), S4.5.2, and S4.5.4, to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S4.1.5.1 *Front/angular automatic protection system.*

* * * * *

(b) For the purposes of sections S4.1.5 through S4.1.5.3 and S4.2.6 through S4.2.6.2 of this standard, an *inflatable restraint system* means an air bag that is activated in a crash.

* * * * *

S4.5.2 *Readiness indicator.* An occupant protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position. If the vehicle is equipped with a single readiness indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, the readiness indicator shall monitor the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device, and shall not illuminate solely because the passenger air bag has been deactivated by the manual cutoff switch. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.5.1 but need not be included on the label.

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S4.5.4 *Passenger Air Bag Manual Cutoff Device.*

Passenger cars, trucks, buses, and multipurpose passenger vehicles manufactured before September 1, 2000 may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

* * * * *

Issued on December 26, 1996.

Donald C. Bischoff,

Executive Director.

[FR Doc. 96–33306 Filed 12–30–96; 11:00 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 108]

RIN 2127–AG59

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to amend the agency's occupant crash protection standard to ensure that vehicle manufacturers can depower all air bags so that they inflate less aggressively. The agency is taking this action as part of its comprehensive efforts to reduce the fatalities and injuries that current air bag designs are causing in relatively low speed crashes to small, but growing numbers of children, and occasionally to adult drivers. Taken together, these efforts would affect all existing air bag vehicles, as well as those produced in the next several model years.

Based on agency research and analysis regarding the optimal range of air bag "depowering," the agency has tentatively concluded that an average depowering of 20 to 35 percent would reduce the risk of fatalities in low speed crashes, while substantially preserving the life saving capabilities of air bags in higher speed crashes. The agency is considering the adoption of either, or both, of two different approaches that would permit or facilitate, but not require, such depowering of current air bags. One approach would be to reduce the stringency of the chest acceleration requirement which an unbelted dummy must meet in a crash test at speeds up to 30 mph. The other approach was recently requested by the American Automobile Manufacturers Association in a letter superseding its earlier petition for rulemaking. It would replace the unbelted crash test requirement with a sled test protocol incorporating a 125 millisecond standardized crash pulse. NHTSA is seeking comments and information concerning the relative desirability of these two approaches, including supporting data from industry for the sled test. The agency also seeks comments on whether the same or different requirements should apply to the passenger and driver positions.

There is a possibility that while this rulemaking would prevent a significant number of air bag fatalities, and make it possible to design air bags so that they save increased numbers of belted occupants, it could also result in an even larger number of unbelted occupants not being saved by air bags. Accordingly, the agency is requesting comments on the appropriate duration of such an amendment. If there are adverse safety tradeoffs, and smart air bags offer a way of preventing air bag fatalities while not causing similar tradeoffs, it would be desirable to limit the duration of the amendment so that depowering is only an interim measure. NHTSA currently contemplates that the amended requirement would remain in effect for both passenger and driver air bags until smart air bags are installed pursuant to a mandated phase-in schedule. Establishing that schedule and appropriate performance requirements will be the subject of a separate rulemaking proceeding.

NHTSA is also announcing its granting of a petition by Anita Glass Lindsey to commence a rulemaking proceeding to consider whether to specify the use of a dummy representing a small-statured female in testing the performance of safety belts and air bags.

DATES: Comments must be received by February 5, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemakings: Visit the NHTSA web site at http://www.nhtsa.dot.gov and select "AIR BAGS: Information about air bags."

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

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I. Background

In 1984, the Department of Transportation issued a final rule requiring the installation of automatic protection (e.g., air bags, automatic belts, passive interiors) in passenger cars. 49 Fed. Reg. 28962; July 17, 1984. The Department took this step to increase the protection of vehicle occupants, especially unbelted ones. At the time, only 12.5 percent of occupants wore their safety belts, and only one state required all motorists to buckle up.

In 1991, Congress mandated the installation of air bags in both passenger cars and LTV's with a gross vehicle weight rating (GVWR) of 8,500 pounds or less. (LTV's generally include vans, pickup trucks, buses, and sport utility vehicles with a gross vehicle weight rating of 10,000 pounds or less). The Intermodal Surface Transportation Efficiency Act required that air bags be put in all new cars by the beginning of model year 1998 and in all new LTV's by the beginning of model year 1999.

Much has changed since 1984, and even since 1991. The cumulative production of air bag cars and LTV's reached the 10,000,000 mark for driver air bag vehicles during model year 1992 and for dual air bag vehicles during model year 1995. Air bags are now standard equipment on most passenger

cars and LTV's. As of the end of model year 1996, approximately 56 million air bag vehicles have been produced for sale in the United States. [1] Safety belt use has reached approximately 68 percent. [2] Forty-nine States and the District of Columbia require the use of safety belts, and all jurisdictions require the use of child safety seats. While males account for a sizable majority of the nonusers of safety belts, females still account for 40 percent of the nonusers. [3]

NHTSA estimates that air bags have deployed more than 800,000 times in crashes and have saved approximately 1,664 lives (164 passengers and 1,500 drivers) as of November 1996. Unfortunately, air bags also have fatally injured at least 32 children, 1 adult passenger, and 19 drivers in low severity crashes in the United States. Apart from the nine fatally-injured infants (included in the figure of 32 above), most of the fatally-injured occupants were unbelted. Thus, while the number of people being saved by air bags is growing annually, so is the much smaller, but significant number of people being fatally injured by air bags.

A. How Air Bags Work

When a vehicle has a frontal impact, its occupants begin to move forward in response to pre-impact braking or the deceleration of the vehicle during the impact. If unrestrained, front-seat occupants will move forward in a fraction of a second and hit the steering wheel, dashboard or windshield. To move into place in time to catch the occupants in moderate and high speed crashes, air bags must inflate very quickly—faster than the blink of an eye.

To ensure that the air bag provides enough resistance to keep large as well as small occupants from "bottoming out" the air bag and hitting the vehicle interior, the amount of gaseous pressure within air bags must be carefully modulated. This is done by controlling both the rate at which gas is pumped into the air bag as well as the rate at which the gas is released from the air bag through vents or the porosity of the fabric.

An example from a non-automotive context will help to show the importance of modulating the air pressure in air bags. Vented air cushions are sometimes used by stunt performers who jump or dive from a great height to absorb the energy of their fall. If the vents don't allow enough of the pressure in the cushion to be released as the performer hits it, the cushion will be too rigid and will fail to absorb enough of the performer's energy, causing injury. On the other hand, if the vents release too much pressure, the cushion will "bottom out," thus allowing the performer to strike the ground, also causing injury.

B. Circumstances of Air Bag Fatalities

Air bags need time, and space, to inflate. The sudden release of energy by an inflating air bag can harm some front seat occupants, particularly if they are too close to the air bag at the time of deployment. Properly restrained occupants of a vehicle seat moved back from the dashboard as far as possible, and even most unrestrained teenagers and adults, will meet the air bag after the initial, sudden release of energy. However, some occupants either start out very close to the steering wheel or dashboard or end up there. Most child fatalities attributed to an air bag fall into one of two groups: (1) infants riding in rear-facing infant seats, thus placing them very close to the air bag at the time of deployment, or (2) older children riding forward-facing without any type of restraint, thus allowing them to slide forward during pre-crash braking so that they were too close to the air bag when it deployed. A majority of the fatally-injured drivers were short-statured women who moved the driver's seat forward. More than half of the fatally-injured drivers were not using any type of restraint.

II. The Safety Problem: Frontal Impacts and Air Bags—Lives Saved, and Lives Lost

The number of air bag fatalities and the likelihood of those fatalities must be carefully compared to the likelihood of other related events in evaluating solutions to the causes of those fatalities.

A. Frontal Impacts

Frontal impacts are the number one fatality and injury-causing mode of crash, resulting in 64 percent of all driver and right-front passenger fatalities and 65 percent of all driver and right-front passenger AIS 2–5 injuries. (AIS 2–5 stands for Abbreviated Injury Scale levels of moderate to critical injuries.) The estimated fatality and injury totals for 1994 are shown below. The injuries are those for National Accident Sampling System-Crashworthiness Data System (NASS–CDS) towaway accidents only. (See table below.)

1994 Fatalities and Moderate to Serious Injuries in Frontal Impacts

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Fatalities	13,437	3,814	17,251
Injuries	124,484	30,299	154,783
Total	[4] 137,921	[5] 34,113	172,034

[4] The numbers of fatalities and injuries for drivers far exceed those for passengers in large measure because approximately 80 percent of front seat occupants are drivers.

[5] The figures for right front passengers include the following figures for children under the age of 13: approximately 266 fatalities and 643 moderate to serious injuries.

[1] Over 27,000,000 of those vehicles have both driver and passenger air bags.

[2] Belt use among fatally injured front seat occupants of cars and LTV's is lower, approximately 37 percent, based on 1995 data from the Fatal Accident Reporting System (FARS). The lowness of this rate reflects a number of factors, including the belt use rate by motorists in general and the effectiveness of belt use in preventing fatal injury. A more useful belt use rate is the rate among occupants involved in potentially fatal crashes. Those crashes include all fatal crashes as well as all crashes in which there would have been a fatality but for belt use. The use rate in potentially fatal crashes is slightly over 50 percent.

[3] This figure is based on a September 1994 study by Reinfurt et al. of belt use in North Carolina.

B. Air Bags: Lives Saved, and Lives Lost

As the agency has confronted the problem of low speed fatalities and injuries from air bags, it has faced a serious dilemma. On the one hand, air bags have proven to be highly effective in reducing fatalities, and are resulting in substantial net benefits in terms of lives saved. The agency estimates that, to date, air bags have saved 1,664 drivers and passengers (1,500 drivers and 164 passengers).[6] Current air bags could save an estimated slightly more than 3,000 lives each year in passenger cars and light trucks when all cars on the road are equipped with dual air bags.

At the same time, air bags are actually causing fatalities in some situations, especially to children. As of November 30, 1996, NHTSA's Special Crash Investigation program had identified 32 crashes in this country in which the deployment of the passenger air bag resulted in fatal injuries to a child. The agency has examined all air bag cases with child fatalities in its Fatal Accident Reporting System (FARS) and believes it has identified all cases involving air bag-related fatalities. One adult passenger has been fatally injured (a woman in her 90's). On the driver side, 19 drivers[7] have been fatally injured in this country. (See table below.)

AIR BAGS: CUMULATIVE LIVES SAVED AND FATALITIES CAUSED (1986–PRESENT)

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Lives saved	1,500	164	1,664
Fatalities caused	19	33	52
Net lives saved	1,481	131	1,612

Passenger Fatalities. The annual number of fatalities involving children is steadily growing; all have occurred in 1993 and later calendar years. As noted above, 32 children have been fatally injured to date. (See tables below.)

It appears that the children most at risk are infants in rear-facing infant restraints and children not using any type of restraint. All of the infant fatalities (9) involved infants in rear-facing child seats. Most of the other children were not using any type of safety restraint. Of those other children, 18 were unrestrained, two more were wearing only the lap belt with the shoulder belt behind them, and two were wearing a lap and shoulder belt at the time of the crash. In addition, there was a one-year-old child who was fatally injured while riding in a child seat that was not belted to the vehicle seat. (See table below.)

Most children were either infants or children aged 4–7 years old. (See table below.)

The crashes in which the children were fatally injured involved pre-impact braking, and occurred at relatively low speeds. Infants in rear-facing child seats are very close to the dashboard even before pre-impact braking. As to almost all of the older children, the nonuse, or improper use of safety belts in conjunction with pre-impact braking resulted in their forward movement such that they were very close to the instrument panel and the air bag system when the air bag deployed. Because of this proximity, the children appear to have sustained fatal head or neck injuries from the deploying passenger air bag.

In addition to the 32 children who have been fatally injured during passenger air bag deployments, as noted above, one adult, a woman in her 90's, sustained a fatal injury that appears to be due to an air bag deployment.

INFANT PASSENGER AIR BAG-RELATED FATALITIES (IN REAR-FACING INFANT SEATS)

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of infant passenger air bag fatalities	No. of vehicles produced w/ passenger air bags
MY 89										78,000
MY 90										149,000
MY 91										44,000
MY 92										421,000
MY 93										1,352,000
MY 94							1	1	2	5,547,000
MY 95							2	4	6	8,936,000
MY 96								1	1	10,750,000
Total							3	6	9	27,277,000

[6] This estimate of gross savings is cumulative, through November 1, 1996. The net savings would be 1,612.

[7] The figure of 19 is based on information that NHTSA has developed through NHTSA's Special Crash Investigation program and is not a census. Studies of FARS data are underway to obtain a more precise figure.

CHILD (NON-INFANT) PASSENGER AIR BAG-RELATED FATALITIES

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of child (non-infant) passenger air bag fatalities	No. of vehicles w/passenger air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,000
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	1	1	1	.....	3	1,352,000
MY 94	.....	.....	.....	.....	.....	3	1	1	5	5,547,000
MY 95	.....	.....	.....	.....	.....	1	3	8	12	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	3	3	10,750,000
Total	.....	.....	.....	.....	1	5	5	12	23	27,277,000

AGE OF CHILDREN FATALLY INJURED IN AIR BAG DEPLOYMENTS

<1	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
9	1	.....	1	5	7	4	3	.....	2	.....	.....	.....	.....	32

TYPE OF RESTRAINT USED BY CHILDREN FATALLY INJURED BY AIR BAGS

Type of restraint used	No. of children
None	18
Lap belt only	2
Lap and shoulder belt	2
Rear-facing infant restraint attached to vehicle seat	9
Forward-facing child restraint attached to vehicle seat	.....
Booster seat	.....
Other[8]	1
Total	32

[8] One fatally injured child was reportedly strapped into a forward facing child seat, but the child seat was not attached to the vehicle seat.

Driver Fatalities. As of November 15, 1996, NHTSA's Special Crash Investigation (SCI) program had identified 19 minor to moderate severity crashes in which fatal injuries to the driver were associated with the deployment of the driver air bag.[9] The data suggest that unrestrained small-statured and/or older drivers are more at risk than other drivers from a driver air bag. (See tables below.) The agency notes that older drivers are more at risk than younger drivers under a wide range of crash circumstances, regardless of type of restraint used.

NHTSA notes that these driver fatalities are very rare in comparison to the number of vehicles equipped with driver air bags and to the number of drivers saved by air bags. Further, NHTSA notes that the last reported fatality in the United States of a female driver 5 feet 2 inches or shorter in an air bag deployment occurred in November 1995, 13 months ago.

Proper belt use is important. Ten of the 19 drivers were known to have been unrestrained at the time of the crash. Of the six persons properly using both lap and shoulder belts, two appeared to be out of position (slumped over the wheel due to medical conditions). (See tables below.)

DRIVER AIR BAGS: FATALITIES AND LIVES SAVED—ALL DRIVERS

[Fatalities Shown by MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Driver air bag fatalities	Drivers saved by air bag	No. of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	1	.....	1	.....	500,000
MY 90	.....	1	1	.....	1	2	1	.....	6	.....	2,500,000
MY 91	.....	.....	2	2	1	.....	1	.....	6	.....	2,867,000
MY 92	.....	.....	.....	.....	1	1	.....	.....	2	.....	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,597,000
MY 94	.....	.....	.....	.....	.....	2	1	.....	3	.....	9,886,000
MY 95	.....	.....	.....	.....	.....	.....	.....	1	1	.....	13,686,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,055,000
Total	.....	1	3	2	3	5	4	1	19	1,500	56,175,000

[9] But see footnote 7 below concerning reported driver fatalities in Canada.

DRIVER AIR BAG FATALITIES—WOMEN (5'2" OR LESS)
[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of driver air bag fatalities (women 5'2" or less)	No. of vehicles produced w/ driver air bags
MY 89							1		1	500,000
MY 90		1			1		1		3	2,500,000
MY 91			1	1			1		3	2,867,000
MY 92					1	1			2	5,084,000
MY 93										7,597,000
MY 94							1		1	9,886,000
MY 95										13,686,000
MY 96										14,055,000
Total		1	1	1	2	1	4		10	56,175,000

DRIVER AIR BAG FATALITIES—OTHER ADULTS
[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of driver air bag fatalities (other adults)	No. of vehicles produced w/ driver air bags
MY 89										500,000
MY 90			1			2			3	2,500,000
MY 91			1	1	1				3	2,867,000
MY 92										5,084,000
MY 93										7,597,000
MY 94						2			2	9,886,000
MY 95								1	1	13,686,000
MY 96										14,055,000
Total			2	1	1	4		1	9	56,175,000

AGE OF DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

<20	20–29	30–39	40–49	50–59	60–69	70–79	>80	Total
1	1	4	4	2	1	6		19

TYPE OF RESTRAINT USED BY DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

Type of restraint used	No. of drivers
None	10
Belts misused	1
Lap and shoulder belt (Driver blacked out and slumped forward at time of crash due to medical condition)	2
Lap and shoulder belt	4
Unknown	2
Total	19

Comparison of Passenger and Driver Air Bag Fatalities

Several comparisons need to be drawn between the trends and patterns of child fatalities and the apparent trends and patterns of driver fatalities. The annual number of child fatalities is clearly growing steadily as the number of deployments increases. The annual number of adult fatalities does not appear to be growing. If anything, it appears to be decreasing, based on currently identified fatalities. (See tables below.)

Most child fatalities (24 of 32) have occurred in model year 1994 and 1995 vehicles. In contrast, only 4 of the 19 driver fatalities have occurred in a vehicle manufactured after model year 1992. The absence of fatalities in recent model year vehicles appears even more pronounced in the case of women 5 feet 2 inches or shorter. Only one woman 5 feet 2 inches or shorter has died in a post model year 1992 vehicle.[10] Most fatalities of short-statured women occurred in model year 1990–1992 vehicles. (See tables below.)

[10] NHTSA is aware of a number of fatalities in Canada reportedly related to air bag deployment, but only two in recent times. One was a November 1996 crash in Canada in which a 5 foot 3 inch belted female driver was fatally injured in a model year 1996 Ford Ranger. In addition, there was a November 1996 crash in which a 5 foot 2 inch belted female driver was fatally injured in a model year 1993 Lexus. These Canadian accidents are not included in the driver fatality figures cited in this notice. (Similarly, lives saved by air bags outside the United States are not included in the savings.)

COMPARISON OF DRIVER AND CHILD AIR BAG-RELATED FATALITIES BY CALENDAR YEAR OF FATALITY

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total
Drivers									
Women (5'2" or less)	.....	1	1	1	2	1	4	.....	10
Other adults	.....	.....	2	1	1	4	.....	1	9
Total	.....	1	3	2	3	5	4	1	19
Children									
Children (non-infant)	.....	.....	.....	.....	1	5	5	12	23
Infants	.....	.....	.....	.....	.....	.....	3	6	9
Total	.....	.....	.....	.....	1	5	8	18	32

COMPARISON OF DRIVER AND CHILD AIR BAG-RELATED FATALITIES BY MODEL YEAR OF FATALITY

	MY 89	MY 90	MY 91	MY 92	MY 93	MY 94	MY 95	MY 96	Total
Drivers									
Women (5'2" or less)	1	3	3	2	.....	1	.....	.....	10
Other adults	.....	3	3	.....	.....	2	1	.....	9
Total	1	6	6	2	.....	3	1	.....	19
Children									
Non-infant Children	.....	.....	.....	.....	3	5	11	4	23
Infants	.....	.....	.....	.....	.....	2	6	1	9
Total	.....	.....	.....	.....	3	7	17	5	32

Potential Number of Persons Saved Versus the Potential Number Fatally Injured by Current Air Bags

The dilemma faced by NHTSA, and ultimately the public, is how to address the problem of low speed fatalities from air bags while preserving their substantial life-saving benefits. Based on analyses of real world data, NHTSA estimates that if all passenger cars and light trucks on the road today had current air bags, there would be more than 3,000 lives saved each year, as compared to a no-air-bag fleet (assuming current belt use rates). More than two-thirds of the persons saved would be persons not using any type of safety belt.

On the driver side, 616 belted drivers and 1,686 unbelted drivers would be saved, for a total of 2,302 lives saved. This is a *net* figure, i.e., it accounts for the possibility of 25 drivers being fatally injured annually by an air bag. Given that the average annual rate of driver fatalities for the last five years appears to be three, and that the annual rate does not appear to be increasing, the projected figure of 25 may be somewhat overstated.

The potential number of lives saved by passenger air bags is much smaller than driver air bags primarily because the passenger seat is occupied much less frequently than the driver seat. If all passenger cars and light trucks had current passenger air bags, the agency estimates that 223 belted and 491 unbelted passengers aged 13 and above would be saved annually, for a total of 714 lives.

However, this figure of 714 would be partially offset by air bag-related fatalities involving children 12 and under. If current rates of child fatalities were experienced in an all-air-bag fleet, 128 children would be fatally injured by air bags annually, again assuming no technological improvements, changes to air bags, or behavioral changes by vehicle operators (e.g., ensuring that any children placed in the front seat properly use occupant restraints or, preferably, placing children in the rear seat). The figure of 128 includes 90 forward-facing children, most of whom would be unbelted, and 38 infants in rear-facing child restraints.

NHTSA emphasizes that this and the other rulemaking proceedings and related efforts are intended to ensure that risks of adverse side effects of air bags are reduced so that these theoretically projected air bag fatalities do not materialize, while the potential benefits of air bags are retained, to the maximum extent possible. Thus, the agency anticipates, e.g., that these other actions will result in proper use of restraints by increased numbers of people and that the number of children fatally injured would not be so high as 128. However, the agency does not have a basis for estimating the exact effect. Further, NHTSA recognizes that to the extent that one countermeasure is effective, the potential benefits of another countermeasure could be reduced. The Preliminary Regulatory Evaluation (PRE) for this rulemaking gives an illustrative example of the effect that labeling could have in reducing the benefits of depowering if the labeling were 10 percent effective in inducing more parents to place their young children in the rear seat. (See page IV–54.) Likewise, a countermeasure may reduce the potential disbenefits of another countermeasure. To the extent that belt use is increased, the potential disbenefits of depowering for unbelted occupants would be reduced. NHTSA solicits suggestions for how it can attempt to quantify the interaction between its various initiatives for

increasing belt use and decreasing the adverse side effects of air bags.

Projected Annual Lives Saved by and Fatalities Due to Air Bags [11]

PASSENGER CARS AND LIGHT TRUCKS

	Drivers	Right front passengers	Total
Lives Saved	2,327	714	3,041
Fatalities	25	128	153

III. Search for Solutions

Over the last five years, NHTSA has taken a variety of steps to alert the public to the dangers posed by air bags to children and to explore measures for reducing and even eliminating those dangers. The steps taken in 1991–1995 were recounted in an NPRM published by the agency on August 6, 1996. 61 Fed. Reg. 40784.

In the August 1996 NPRM, the agency proposed several amendments to Standard No. 208, *Occupant Crash Protection*, and Standard No. 213, *Child Restraint Systems*, to reduce the adverse effects of air bags, especially those on children. The agency explained that eventually, either through market forces or government regulation, it expects "smart" passenger air bags to be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA indicated that, for purposes of the NPRM, it considered smart passenger air bags to include any system that automatically prevents an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys.

NHTSA proposed that vehicles lacking smart passenger air bags would be required to have new, attention-getting warning labels and permitted to have a manual cutoff switch for the passenger air bag. By limiting the labeling requirement to vehicles without smart passenger air bags, NHTSA hoped to encourage the introduction of the next generation of air bags as soon as possible. NHTSA proposed to define smart air bags broadly to give manufacturers flexibility in making design choices. The agency requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective. NHTSA also requested comments on whether it should, as an alternative, set a time limit on the provision permitting manual cutoff switches for passenger air bags in order to assure the timely introduction of smart passenger air bags. Finally, the agency proposed to require rear-facing child seats to bear new, enhanced warning labels. In a section in the August 1996 NPRM titled "Future Agency Considerations," the agency also provided a discussion of possible technological changes to address the forcefulness of air bag deployment, ongoing agency efforts to evaluate the effects of such changes, and possible future agency regulatory actions.

C. Recent Petitions for Rulemaking

Two weeks before the agency published its NPRM, the Parents' Coalition for Air Bag Warnings submitted a petition requesting the agency to commence a rulemaking proceeding to require that the following warning label be placed on dashboard of vehicles with passenger air bags:

"WARNING: DO NOT SEAT CHILDREN IN THE FRONT PASSENGER SEAT. AIR BAG DEPLOYMENT CAN CAUSE SERIOUS INJURY OR DEATH TO CHILDREN."

After the agency's publication of the August 1996 NPRM, the American Automobile Manufacturers Association (AAMA) submitted a petition for rulemaking requesting that NHTSA immediately announce, by means of a "direct final rule," an amendment to Standard No. 208 to replace the current 30 mph unrestrained dummy barrier crash test requirement with a sled test protocol incorporating a 143 millisecond standardized crash pulse. The petitioner contended that the standard's current requirement "directly dictates the level of the air bag's inflator power and it is the level of inflator power that unnecessarily increases the risk of injury to vehicle occupants during air bag deployment." AAMA also requested that the agency separately issue a notice of proposed rulemaking to propose requirements to improve the safety of drivers and passengers who are extremely close to the air bag at the time of deployment, based on the latest International Standards Organization (ISO) test practices. AAMA recommended the use of the Hybrid III small female dummy in the driver position and appropriate child dummy in the passenger position.

On September 1, 1996, Ms. Anita Glass Lindsey petitioned the agency to commence rulemaking to specify the use of a test dummy representing a 5th percentile female [12] in testing the performance of safety belts and air bags. Currently, Standard No. 208 specifies the use of only a 50th percentile male test dummy. [13]

On September 17, 1996, the National Transportation Safety Board (NTSB) issued a number of safety recommendations to NHTSA for reducing the problem of child fatalities caused by air bags. These recommendations are as follows:

1. Immediately evaluate passenger air bags based on all available sources, including NHTSA's recent crash testing, and then publicize the findings and modify performance and testing requirements, as appropriate, based on the findings of the evaluation.

2. Immediately revise Federal Motor Vehicle Safety Standard 208, *Occupant Crash Protection*, to establish performance requirements for passenger air bags based on testing procedures that reflect actual accident environments, including pre-impact braking, out-of-position child occupants (belted and unbelted), properly positioned belted child occupants, and with the seat track in the forward-most position.

3. Evaluate the effect of higher deployment thresholds for passenger air bags in combination with the recommended changes in air bag performance certification testing, and

[11] This projection is based on the assumption that all passenger cars and light trucks on the road have driver and passenger air bags. It does not take into consideration the impact of this proposal or any of the other agency actions described in the Overview and Summary section above.

[12] A 5th percentile Hybrid III dummy has a standing height of 5 feet and a weight of 110 pounds.

[13] A 50th percentile Hybrid III dummy has a standing height of 5 feet, 8 inches and a weight of 172 pounds.

then modify the deployment thresholds based on the findings of the evaluation.

4. Establish a timetable to implement intelligent air bag technology that will moderate or prevent the air bag from deployment if full deployment would pose an injury hazard to a belted or unbelted occupant in the right front seating position, such as a child who is seated too close to the instrument panel, a child who moves forward because of pre-impact braking, or a child who is restrained in a rear-facing child restraint system.

5. Determine the feasibility of applying technical solutions to vehicles not covered by NHTSA's proposed rulemaking of August 1, 1996, to prevent air bag-induced injuries to children in the passenger position.

On November 8, 1996, the Center for Auto Safety (CFAS) petitioned the agency to amend Standard No. 208 to specify that a vehicle's air bags must not deploy in a crash if the vehicle's change of velocity is less than 12 mph. CFAS noted that many of the crashes resulting in air bag fatalities, especially those of children, involved very low changes in vehicle velocity. CFAS also petitioned the agency to institute investigations of several vehicle models for alleged defects related to air bag deployment.

On November 13, 1996, the AAMA submitted a letter that modified the proposal in its August 1996 petition for rulemaking. In place of the 143 millisecond standardized crash pulse, AAMA requested a sled test protocol incorporating a 125 millisecond standardized crash pulse.

Finally, on November 20, 1996, CFAS and Public Citizen petitioned the agency to begin rulemaking to require dual inflation air bags. These bags would inflate more slowly, and thus less aggressively, than current air bags in low-speed crashes. In higher-speed crashes, they would inflate at the same rate as current air bags. The petitioners assert that their proposal is the best solution in the near future and is superior to depowering, since depowering involves "some trade-off in safety protection and will not add significant protection for unrestrained children."

IV. Overview of Comprehensive NHTSA Plan for Addressing Problem

NHTSA is implementing a comprehensive plan of rulemaking and other actions (e.g., primary enforcement of State safety belt use laws) addressing the adverse effects of air bags. As part of that plan, NHTSA is issuing three separate, but related, notices today. Each notice is intended to ensure that some or all of the risks are reduced, and benefits retained, to the maximum extent possible. They provide immediate and/or interim solutions to the problem. A later notice, a proposal to require smart air bags, would provide a permanent solution.

In this notice, NHTSA is proposing to temporarily amend the agency's occupant crash protection standard to help reduce the fatalities and injuries that current air bags are causing in relatively low speed crashes to small, but growing numbers of children, and occasionally to adults. Based on agency research and analysis regarding the optimal range of air bag depowering, the agency has tentatively concluded that an average depowering of 20 to 35 percent would reduce the risk of fatalities in low speed crashes, while substantially preserving the life-saving capabilities of air bags in higher speed crashes.

The agency is considering the adoption of either, or both, of two different approaches that would permit or facilitate an approximate 20 to 35 percent average depowering of current air bags. One approach would be to temporarily reduce the stringency of the chest acceleration requirement that an unbelted dummy must meet in a crash test at speeds up to 30 mph. The other approach would be to temporarily adopt the AAMA's modified proposal for a sled test protocol incorporating a 125 millisecond standardized crash pulse.

NHTSA is seeking comments and information concerning the relative desirability of these two approaches, including supporting data from industry with respect to the sled test. It is also requesting comments on the appropriate duration of such a temporary amendment. NHTSA anticipates that it would remain in effect for both the passenger and driver seating positions until smart air bags are installed pursuant to a mandated phase-in schedule, which will be the subject of a separate rulemaking proceeding. Finally, comments are sought on whether the same or different requirements should apply to the passenger and driver positions.

The other rulemaking actions addressing the adverse side effects of air bags are as follows:

- Based on the August 1996 NPRM, the agency issued on November 22, 1996, a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children. The labeling places particular emphasis on placing rear-facing infant restraints in the rear seats of vehicles with operational passenger air bags. 61 FR 60206; November 27, 1996. The new labels are required on vehicles not equipped with smart passenger air bags beginning February 25, 1997, and on child restraints beginning May 27, 1997.
- Based on the same NPRM, the agency is issuing a final rule extending until September 1, 2000, a provision in Standard No. 208 permitting vehicle manufacturers to offer manual cutoff switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.
- The agency also is issuing an NPRM proposing to permit motor vehicle dealers and repair businesses to deactivate, upon the request of consumers, driver and passenger air bags that do not meet the agency's criteria for smart air bags. Final action is expected in early 1997.
- In addition to these actions, NHTSA will issue a separate supplemental NPRM (SNPRM) to require a phasing-in of smart air bags, beginning on September 1, 1998, and to establish performance requirements for those air bags. The proposal will be issued in early 1997.

The next two tables summarize the rulemaking actions included in the agency's comprehensive program to address these air bag problems:

ACTIONS ADDRESSING PROBLEMS ASSOCIATED WITH PASSENGER AIR BAGS

	Existing vehicles	Vehicles produced in next several model years	Vehicles produced thereafter
Passenger air bags.	Labels. New, attention-getting labels focusing on dangers of air bags to children, to be mailed by vehicle manufacturers to owners of existing air bag vehicles. Deactivation. Proposal to allow deactivation of passenger air bag that doesn't have cutoff switch and doesn't qualify as a smart air bag.	Labels. Final rule requiring new, attention-getting labels focusing on dangers of air bags to children, in vehicles whose passenger air bag doesn't qualify as a smart air bag, and on child seats. Cutoff switches. Final rule extending until Sept. 1, 2000, provision allowing cutoff switch for vehicles (a) which lack a back seat that can accommodate rear-facing infant seats, and (b) whose passenger air bag doesn't qualify as a smart air bag. Deactivation. Proposal to allow deactivation of passenger air bag that doesn't have cutoff switch and doesn't qualify as a smart air bag. Depowering. Proposal to temporarily allow depowering of passenger air bags that don't qualify as smart air bags.	Smart air bags. NPRM proposing to phase in requirement for smart air bags.
Driver air bags.	Labeling. New, attention-getting labels urging all occupants to use their safety belts and sit as far back as possible to be mailed by vehicle manufacturers to owners of existing air bag vehicles. Deactivation. Proposal to allow deactivation of driver air bags.	Labeling. Final rule requiring new labels urging all occupants to use their safety belts and sit as far back as possible. Deactivation. Proposal to allow deactivation of driver air bags that don't qualify as smart air bags. Depowering. Proposal to temporarily allow depowering of driver air bags that don't qualify as smart air bags.	Smart air bags. NPRM proposing to phase in requirement for smart air bags.

In addition to these actions, the agency is participating with automobile manufacturers, air bag suppliers, insurance companies and safety organizations in a coalition effort to address the adverse effects of air bags by increasing the use of safety belts and child seats. Substantial benefits could be obtained from achieving higher safety belt use rates. If the safety belt use rate were 75 percent in potentially fatal crashes instead of the current level of 52.6 percent, an additional 4,000 lives would be saved annually.

The coalition has a three-point program that seeks to educate the public about safety belt and child seat use, work with state and local officials to improve enforcement of safety belt and child seat use laws and seek the enactment of "primary" safety belt use laws. In States with "secondary" safety belt use laws, law enforcement officials are hampered in their ability to enforce the requirement to use safety belts because their inability to stop and ticket motorists for the sole reason of the motorists' failure to use their safety belts. A motorist may be ticketed by an official for such failure only if the official has a separate basis for stopping the motorist, such as the violation of a separate traffic law.

A 1995 NHTSA analysis of FARS data on restraint use among fatally injured motor vehicle occupants from 1983 to 1994 indicates that primary enforcement is the most important aspect of a safety belt use law affecting the rate of safety belt use. For virtually all states with a primary enforcement law, statistically significant increases associated with the presence of such a law were detected using several different methods. The analysis suggests that the increase in use rates attributable to the enactment of a use law can be estimated to be (on the average) at least 25 percentage points, while the additional increase attributable to primary enforcement of the law is at least 15 additional percentage points. These increases in safety belt use translate into an estimated 12.6 percent decrease in fatalities in a state that enacts a safety belt use law, and an additional 5.9 percent decline in fatalities in a state that authorizes primary enforcement of the law.

State data support these findings. On average, states with a primary safety belt law have usage rates that are 10–15 percentage points higher than states with secondary laws. In California and Louisiana, states which recently upgraded their laws to allow for primary enforcement, safety belt usage increased by 13 and 17 percentage points, respectively.

V. Depowering Air Bags

A. Results of NHTSA Test Program

To determine whether current air bags can be depowered to a degree that makes a significant contribution to reducing the risk of serious or fatal injury to occupants, especially children, without substantial loss of protection for teenagers and adults, the agency initiated the research testing and analysis program discussed in the August 1996 NPRM. NHTSA explained:

The agency has initiated a research testing and analysis program * * * at the Vehicle Research and Test Center, the agency's in-house laboratory in Ohio. The program's objectives are to:

- Assess the performance of air bag systems in current production vehicles in particular crash conditions, including the effects on out-of-position children.
- Assess the level of improvement possible in out-of-position performance from changes to existing air bag components, including downloaded air bags, as well as newly developed pre-production systems.
- Provide visibility for air bag-related technology, thus promoting the rapid adoption of newer technologies that will

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help solve the out-of-position occupant injury problem.

The immediate focus of the program is on the passenger out-of-position problem as related to children. Several vehicle models have been selected based upon field accident investigations and air bag design characteristics. Both domestic and foreign vehicles are included in the selection. The test conditions include four different child positions similar to those recommended by ISO [International Standards Organization], and represent worst case occurrences. These tests will provide "baseline" performance of air bag systems when a child is an out-of-position occupant.

NHTSA is inviting vehicle manufacturers and air bag and component suppliers to provide state-of-the-art air bag systems. Systems that show significant improvements over baseline performance for out-of-position children will also be tested with adult-sized dummies in full-scale crash conditions required in Federal standards.

The test program will also address other aspects of air bag safety following the out-of-position child study. These include out-of-position driver tests, vehicle crash sensor testing, and testing of advanced air bag systems. The out-of-position driver testing will focus on small-sized female occupants who are sometimes injured due to the close proximity to the steering-wheel air bag system. Testing will continue into fiscal year 1997.
(61 FR 40784, at 40799; August 6, 1996.)

NHTSA has now tested the depowered air bags solicited from the vehicle manufacturers. The air bags had been depowered through the removal of certain amounts of propellant. While some of the air bags were depowered up to 60 percent, most of them were depowered an average of approximately 20 to 35 percent. However, their design (e.g., folding patterns and venting) had not been optimized for the reduced levels of power. As noted below, the agency believes optimization of the tested air bags would have significantly enhanced their performance.

NHTSA tested baseline air bags (i.e., air bags of current design) and depowered air bags on the passenger side in three different vehicles, and on the driver side in one vehicle.[14] NHTSA conducted these tests using modified versions of recommended test procedures formally adopted and issued in early 1996 by the ISO for evaluating child restraint system interactions (ISO TR 14645) and out-of-position vehicle occupant interactions (ISO TR 10982) with deploying air bags. For the passenger air bags, the agency conducted various tests using out-of-position three-year-old and six-year-old child dummies and normally-positioned, belted and unbelted 50th percentile male dummies.[15] For the driver air bags, the agency conducted various tests using out-of-position 5th percentile female dummies and normally-positioned, belted and unbelted 50th percentile male dummies. The agency also used computer-assisted mathematical modeling in an attempt to assess the effects of depowering on the forces experienced by occupants in air bag deployments.

The results of the agency's analysis of this testing, as well as other available information, are included in the PRE. Portions of the PRE are summarized below.

B. Effects of Depowering and Optimizing

Overview. The agency's testing and other available information [16] indicated that depowering by an average of 20 to 35 percent substantially reduced injury measures for persons close to the air bag, especially out-of-position children, while producing only small increases in injury measures for adult dummies. In the agency's testing, depowering more than 35 percent resulted in more substantial increases in adult dummy injury measures with a large additional reduction in out-of-position child dummy injury measures for only the more aggressive air bags. Thus, it appears that depowering at levels more than an average of 35 percent could result in losing a significant portion of the benefits being provided by air bags without a commensurate reduction in child injury risk. (However, it is possible that some of today's air bags are so aggressive that they could, if optimized, be depowered by more than 35 percent without substantial losses in adult benefits.)

The reductions in injury measures achieved by depowering an average of 20–35 percent would contribute significantly to solving the problem created by overly aggressive air bags.[17] While this average level of depowering would not eliminate all of the risk of serious injury to all persons currently at risk, it would eliminate much of the risk. The agency's other rulemaking actions would reduce the residual risk.

As noted above, the tested air bags were depowered, but not optimized. Had they been optimized, the injury measures for belted passengers would likely have decreased even more and those for belted drivers would likely have improved. Thus, they would have offered increased safety for belted occupants.[18]

Summary of Effects of Depowering on Air Bag-Related Fatalities for Particular At-Risk Occupant Groups

The ability of depowering to prevent air bag fatalities to occupants would vary depending on a number of factors, especially the location and belt use of the occupant. As shown in testing by the agency of passenger air bags, the forces exerted by a deploying air bag generally decrease as a function of increasing distance from the air bag module. Although the surface of an expanding air bag in its initial moments of inflation is potentially lethal, it rapidly changes within inches into an injury-preventing and life-saving surface as it inflates and moves away from its storage location. Thus, the farther away an occupant is from an air bag as it starts to inflate, the better off that occupant will be. While this is true for depowered as well as current air bags, depowering can significantly reduce the size of the zone within which serious injury is possible or likely.

Passengers. The at-risk groups are infants and young children. Properly belted, forward-facing children who are on a vehicle seat moved all the way back, should be at essentially no risk from a deploying, depowered air bag,

[14] The passenger air bag testing began in February 1996. The testing of passenger air bags to estimate the effects of depowering was completed in September. However, the testing of advanced passenger air bag designs and test conditions continues. Testing of driver air bags was conducted from May to September of this year. More tests of driver air bags are planned for the future.

[15] NHTSA did not conduct tests to determine the effects of the depowered air bags on an infant dummy (i.e., nine-month-old dummy) in rear-facing child restraints because the design of the depowered bags would have precluded obtaining meaningful measurements of those effects. Since all of the vehicles had top-mounted air bags (i.e., on top of the dashboard), the air bags would have tended to deploy above the child restraints instead of directly impacting them. This assessment appears consistent with the near total absence of top-mounted air bags from the list of air bags involved in the fatal injury of infants. None of the nine air bags was mid-mounted.

[16] Among the other items of information were the results of testing performed by AAMA using out-of-position dummies representing a six-year-old child, a 5th percentile female and a 50th percentile male.

[17] The actual amount that the air beg in each specific vehicle model would need to be depowered to achieve these benefits would vary depending on the aggressivity of its air beg system. The least aggressive air bags might need less than 20 to 35 percent depowering, while the most aggressive ones might need more, as much as 60 percent.

[18] The agency's belief that depowered air bags will provide increased benefits to real world occupants compared to current air bags is based in part on actual crash data regarding the performance of air bags in an Australian passenger car, the Holden Commodore, which is described below.

even if they are leaning forward while belted. Moderately out-of position, forward-facing children would receive substantial benefits. Severely out-of-position, completely unbelted forward-facing children would receive some benefits. Given their proximity to the air bag, infants in rear-facing child restraints would likely receive only small, unquantifiable benefits from depowered air bags.[19]

Drivers. To the extent that there is an at-risk group, it is short-statured women. Short, belted drivers on a vehicle seat moved as far back as their stature permits would receive substantial benefits, particularly with respect to neck injuries. They are not likely to move as far forward as unbelted drivers during pre-crash braking and during the initial stages of a crash. Benefits for unbelted drivers on a vehicle seat moved all the way forward would depend on the drivers' proximity to the air bag at the time of deployment. If they are at least two or three inches away at the time of deployment, they should receive some benefits from depowering with respect to chest and head injuries. Depowering should help all drivers with respect to arm injuries.

Overall Effects of Depowering. The PRE estimates the potential overall effects of depowering on all forward-facing children, teenage and adult occupants under the two alternative proposals, the 80 g alternative and the generic sled test alternative. Both proposals would produce a mixture of benefits and disbenefits, with the benefits primarily accruing to children and belted teenage and adult occupants, and the disbenefits primarily accruing to unbelted teenage and adult occupants.

The magnitude of the benefits and disbenefits are estimated in the PRE by two different methods. Method One includes only fatalities, while Method Two includes fatalities and serious injuries. The results of Method One, which produces slightly smaller upper end values for lives saved and for foregone savings of lives, are discussed below.

1. Passenger Air Bags

Child Passengers. *Older, Forward-Facing Children.* Depowering could prevent a significant number of the 90 annual fatalities projected above for forward-facing children[20] in an all air bag fleet for passenger cars and LTV's. The PRE estimates that 39 of the projected 90 fatalities could be prevented by depowering air bags by an average of 20 to 35 percent. This includes all of the lap and shoulder belted children who might otherwise be fatally injured and most of the moderately out-of-position children.[21] With the additional depowering possible under the generic sled alternative,[22] up to 83 of the projected 90 fatalities could be prevented since more of the severely out-of-position children could be benefited. Thus, depowering would make it safe, from the standpoint of the air bag, to place a child in the front seat when necessary, assuming that the child was properly restrained in a vehicle seat that was moved all the way back. The agency emphasizes that, even in the absence of an air bag, the rear seat is a significantly safer place for children to ride than the front seat.

Rear-Facing Children (Infants). Based on HIC reductions achieved in testing the effects of depowered air bags on three- and six-year-old dummies, the agency believes that depowering could prevent the death of some of the 38 projected fatalities of infants. However, for reasons explained below, the agency cannot quantify those savings.

As noted above, the agency did not perform any testing of depowered air bags with infants in rear-facing infant seats. Thus, the agency does not have any baseline versus depowered air bag data for rear-facing child restraints to estimate the potential benefits of depowering. However, HIC data from the testing of severely out-of-position three- and six-year-old children indicate that HIC was substantially reduced by depowering, but not typically below the assumed infant injury reference value of 500 HIC. HIC data are relevant because the primary cause of rear-facing infant fatalities in air bag deployments has been skull fractures. Since it is not possible at this time to make appropriate adjustments to reflect greater susceptibility of infants to fatal head injury, the HIC data for dummies representing older children could not be used to estimate potential benefits of depowering for infants. The agency has not made a specific, quantified estimate because of its roughness and therefore its questionable value.

Teenage and Adult Passengers. Depowering air bags to an average of 20 to 35 percent would likely benefit belted teenage and adult passengers on balance, but could necessitate foregoing the opportunity to save some unbelted teenage and adult passengers.[23] These estimates are based on chest g measures because, as noted in the PRE, chest g's are the most important measure for assessing the effects on teenagers and adults, since chest g's appear to have a stronger relationship to fatality risk than HIC. Further, the HIC increases due to depowering in this range were not that significant.

Belted Teenage and Adult Passengers. The agency's PRE assumes a 2.4 g decrease in chest g's for belted passengers under the 80 g alternative, using an air bag that had been depowered but not optimized. This assumption was based on test results showing a 2.4 g decrease in chest g's, although mathematical modeling predicted almost no change for belted passengers. Under the generic sled test alternative, a decrease of 1.9 chest g's is assumed, based on mathematical modeling. Both decreases would result in saving additional lives compared to current air bag designs.

As noted above, NHTSA believes that a greater decrease in chest g's, and therefore a greater increase in life-saving potential, would have occurred had the air bags not only been depowered, but also optimized for the new power level. The depowered air bags tested by NHTSA were not optimized in ways that would likely have reduced the chest g's even more. For example, the air bags were not optimized with respect to their venting rates.

The agency believes that it is unlikely that the vehicle manufacturers would depower their air bags without also optimizing them. NHTSA believes that the manufacturers would, out of reasonable prudence, do both.

This is significant because real world data from Australia regarding the performance of depowered driver air bags optimized for belted occupants suggests that depowering and

[19] As the agency has emphasized in numerous contexts, infants in rear-facing child restraints should NEVER be placed in the front seat of a vehicle with an operational passenger air bag.

[20] As noted above, the age range of the forward-facing children fatally injured during air bag deployments is one to nine years old.

[21] These estimated savings are based on the significant reductions in neck injury criteria values observed in all three tested vehicles. These values are the most important ones for estimating fatality risk, since neck injury has been the typical fatal injury mechanism for these children.

[22] As reflected below in the discussion of the alternative proposals, it is assumed in the PRE that the depowering of any air bags more than 35 percent is achievable only under the second alternative proposal (i.e., AAMA's generic sled pulse) since it appears that HIC or other injury criteria could not be met under the first alternative proposal (80 g limit on chest g's in the unbelted 30 mph test) with air bag systems depowered significantly above 35 percent.

[23] As noted below, the occupants can essentially eliminate the risk to them by the simple act of buckling their safety belts.

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optimizing current U.S. air bags could significantly increase the effectiveness of air bags for belted occupants and lead to large savings of lives. Those data, drawn from crashes involving Holden passenger cars,[24] indicate that air bags with lap/shoulder belts reduced AIS 2+ injuries to drivers by 39 percent compared to lap/shoulder belts alone. By comparison, current U.S. air bags have an AIS 2+ effectiveness of 22 percent when lap and shoulder belts are worn. According to the PRE:

The air bag systems in the Commodore are designed to deploy as unaggressively as possible while still providing the necessary protection to occupants of different size, weight and sex who will be potentially involved in a variety of collisions. Great efforts have been taken in the development of the inflators and cushions to ensure they present as little risk as possible to occupants during inflation. Since the air bags have been designed to operate in conjunction with the safety belts, they are only required to decelerate the occupant's head and upper torso, as the primary load path is through the belts. This is fundamentally different from many other air bag designs, especially those used to protect unrestrained occupants. Systems optimized to protect unrestrained occupants typically utilize high-performance inflators in conjunction with cushions with low venting rates. This combination ensures that the air bags are sufficiently stiff to decelerate unbelted occupants.

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If such increased effectiveness could be obtained for belted passengers, it would offset a significant portion of the potential adverse impact of depowering estimated below on unbelted passengers. As discussed in the PRE, current NHTSA analyses indicate that air bags in this country are 8.5 percent effective in reducing belted fatalities. If the relationship in overall effectiveness of the Holden bag to the U.S. air bags for AIS 2+ injuries were the same for fatalities, the effectiveness of U.S. air bags for preventing fatalities to belted occupants could be as high as 15 percent. If depowering and optimizing U.S. air bags increased their effectiveness to that level, large savings in the lives of belted occupants could result.

The agency seeks comments, on a model-by-model basis, if possible, from the vehicle manufacturers on what specific optimization measures they would adopt and on whether such optimization could be accomplished and incorporated in production air bags within the time frame projected by the vehicle industry for introduction of the depowered air bags. As noted below, AAMA projected that its members could begin introducing depowered air bags within 6–9 months and complete the process across their fleets within a year after those first introductions. NHTSA solicits comments as to what effect, if any, efforts to optimize these air bags prior to their introduction might have on the schedule for their introduction. Comment is also sought whether adoption of the sled test suggested by AAMA would enable vehicle manufacturers to accelerate the introduction of optimized and depowered air bags. The agency also requests comments on what effects, if any, the optimization of air bag performance for the benefit of belted occupants would have on air bag effectiveness for unbelted occupants. Finally, comment is sought on the Holden data and the reasonableness of the assumption in the PRE that effectiveness of U.S. air bags in reducing belted fatalities could be raised substantially in the next several years through depowering and optimizing.

Unbelted Teenage and Adult Passengers. Depowering could necessitate foregoing the opportunity to save a significant number of unbelted teenagers and adults. The PRE estimates that, as a result of a significant increase in chest g's associated with depowering by an average of 20 to 35 percent under the 80 g alternative, there could be a reduction of between 86 and 280 unbelted passengers who would have otherwise been saved by current air bags. This reduction reflects an assumed average increase of 11 g's in the chest g's for unbelted passengers as a result of depowering, but not optimizing air bags. This assumption was based on limited test results showing an 11 g increase in chest g's at 30 mph. Mathematical modeling predicted a slightly lower increase. With greater depowering under the generic sled test alternative, it was assumed that chest g's would increase by 22 g's, based on sled tests and mathematical modeling. That increase would result in a potential loss of savings of 115 to 336 unbelted passengers.

It should be noted, however, that AAMA does not anticipate such losses. AAMA provided an estimate of the effects of depowering, based on NASS data, a number of analytic assumptions, and sled/barrier test results. That organization estimates the potential savings of 30 to 200 small adults per year due to increased effectiveness of passenger and driver air bags for those persons and the potential loss of up to eight large adults annually. The agency seeks comment from AAMA on how it calculated those figures.

Further, to the extent that increased numbers of people use their safety belts, the potential losses in savings of unbelted passengers would not materialize. While increasing safety belt use would reduce the benefits of depowering, by reducing the size of some groups (i.e., unbelted children and drivers) vulnerable to air bag fatalities, there would be very large increases in the number of people saved by occupant restraints of one type or another. As noted above, if the safety belt use rate were 75 percent in potentially fatal crashes instead of the current level of 52.6 percent, an additional 4,000 lives would be saved annually. NHTSA plans to work vigorously with the States to increase safety belt use through public education and authorizing primary enforcement of safety belt use laws.

Safety Tradeoffs. NHTSA has carefully considered the potential tradeoffs implicit in depowering passenger air bags. Given the wide range of the above estimates concerning unbelted passengers, the agency believes that the net effect of depowering on safety could be positive. However, even if the net effect were negative, the agency believes that the opportunity to save a significant number of children who would otherwise be fatally injured by air bags justifies foregoing the opportunity to save some unbelted passengers. There are several reasons for this policy choice.

First, it is not acceptable that a safety device cause a significant number of fatalities in circumstances in which fatal or serious injuries would not otherwise occur. In making this statement, the agency draws a distinction between air bags which are fatally injuring young children in low speed crashes in which the other vehicle occupants are uninjured, and other safety devices which may on occasion unavoidably substitute one type of injury for another type that would occur in their absence (safety belts are a good example).[25] Those fatalities are particularly unacceptable in light of the agency's analysis showing that depowering air bags can significantly reduce the number of children being fatally injured by air bags.

Second, it is also particularly unacceptable that the vehicle occupants being fatally injured are young children, and that the number of those deaths is

[24] The Holden passenger cars have depowered air bags that have a "no-fire" threshold of 12.4 mph and an "always-fire" threshold of 17.4 mph. While thresholds vary for U.S. air bags, a typical one has a "no-fire" threshold of 9 mph and an "always-fire" threshold of 14 mph.

[25] In severe collisions, safety belts can seriously bruise the chest of an occupant or even cause rib fractures. However, the restraining force of the belt would also likely prevent even more serious chest or head injury from the occupant's striking the interior components of the vehicle.

steadily growing. In confronting the possibility of inevitable short-term safety tradeoffs between young children and unbelted occupants over 12 years of age, the agency believes that greater weight must be placed on protecting young children. NHTSA has always given a high priority to protecting children and accordingly has applied these different cost-benefit considerations to its rulemaking affecting children. The agency's activities related to school bus safety standards are an example of this policy.

A major reason for giving priority to protecting young children is that they are less mature than teenagers and adults and thus less able to exercise independent judgment, assess the risks and take action to improve their safety. The young children are more dependent on the judgment and actions of other persons. The oldest of the 32 children who have been fatally injured by an air bag was nine years old, and most of the children have been much younger. Nineteen were four to seven years old and nine were infants. Conversely, the unbelted teenagers and adults who might not be saved as a result of depowering can take action on their own to protect themselves by simply buckling their safety belts as required by the laws of 49 States and the District of Columbia.

Notwithstanding the justifications for making the safety tradeoffs, NHTSA is concerned about them. It is because of the possibility of disbenefits, especially for unbelted occupants, that the agency is proposing to make only a temporary change in Standard No. 208 to permit or facilitate the depowering of air bags. The agency will shortly issue a proposal to require a phase-in of smart air bags. Requiring smart air bags would not only enable the agency to make depowering a temporary measure, but would also ensure that the problem of adverse effects from air bags is fully addressed, and that air bags achieve their full safety potential for protecting a wide variety of vehicle occupants over an appropriate range of vehicle speeds.

2. Driver Air Bags

Analysis of the net effect of depowering driver air bags is more difficult and therefore less precise largely because the agency has conducted fewer tests of depowered driver air bags and because the test results for the unbelted drivers are a mixture of small increases and decreases in chest g's. Nevertheless, the agency believes that depowering driver air bags would enhance safety. As noted above, belted short drivers who move their seat as far back as their stature permits, would benefit substantially from depowering. Belted drivers, in general, should benefit as well since depowering appears to allow a better "tuning" of the combined safety belt-air bag system for belted occupants. Unbelted, out-of-position short drivers could receive some benefit as well. As a result, there would be some reduction in the projected figure of 25 driver fatalities per year.

Belted Drivers. Depowering alone increased the chest g's for belted drivers in NHTSA's vehicle testing. Although the tests showed a 7 g increase at 35 mpg, there appears to be no logical reason for such an increase. In the same test, chest g's decreased for the belted passenger dummy. Further, modeling suggested only a marginal increase of 2 g. The PRE assumes a 2 g increase for belted drivers under the 80 g alternative. Under the generic sled test alternative, chest g's go up or down at different speeds with the net result that there would be no change in overall fatalities for depowered, but not optimized, air bags.

As in the case of passenger air bags and belted passengers, the agency believes that the data concerning the air bags in the Australian Holden passenger car show that optimizing as well as depowering air driver bags would produce a more favorable result for belted drivers than the depowered air bags tested by NHTSA. Since most of the Holden data related to driver air bags instead of passenger air bags, the agency has good reason to be even more confident about the implications of the Holden data for belted drivers in this country. With optimization, the agency believes that, instead of an increase in chest g's under the 80 g alternative or no change under the generic sled test alternative, a decrease is likely. If depowering and optimizing U.S. driver air bags increased their effectiveness to as much as 15 percent, the savings would be 471 drivers.

Unbelted Drivers. Depowering by an average of 20 to 35 percent under the 80 g alternative appears to slightly increase the chest g's of unbelted drivers. It is believed that the energy absorbing steering column is the reason that chest g's do not increase in proportion to the amount of depowering. In vehicle tests with depowered air bags, chest g's increased by 2 g at 30 mph, but decreased by almost 3 g's at 35 mph. The results of modeling were mixed also, but consistent with the vehicle test results. Modeling predicted a slight increase at 30 mph and decrease at 35 mph. Since there was an increase at some speeds, the PRE assumes a 2 g increase under the 80 g alternative. Based on that increase, the PRE estimates a possible loss in savings of 9 to 41 unbelted drivers. Under the generic sled test alternative, the PRE assumed a 10 g increase based on modeling. That increase suggests a resulting loss of 221 to 650 unbelted drivers.

As noted above, there is reason to believe that these losses might not occur. AAMA estimates the potential savings of 30 to 200 small adults per year due to increased effectiveness of passenger and driver air bags for those persons and the potential loss of up to eight large adults annually. Further, to the extent that increased numbers of people use their safety belts, the potential losses in savings of unbelted passengers would not materialize. NHTSA plans to work vigorously with the States to increase safety belt use through public education and authorizing primary enforcement of safety belt use laws.

Arm Injuries. The agency believes that depowering would lead to a significant reduction in driver arm injuries associated with air bag deployments. Compared to MY 1994 vehicles, depowering air bags by an average of 20 to 30 percent could reduce AIS 2–3 arm injuries from 25,006 to 16,254, a reduction of about 8,800 injuries.

Safety Tradeoffs. NHTSA has carefully considered the potential tradeoffs implicit in depowering driver air bags. Despite the wide range of the above estimates concerning unbelted drivers, the agency believes that the net safety effect of depowering passenger air bags could be positive instead of negative. Even if the net effect were negative, the agency believes that the opportunity to avoid causing fatal injuries to some drivers justifies foregoing the opportunity to save more unbelted drivers. The reasons for this policy choice are similar to those for depowering passenger air bags.

First, the principle of not affirmatively causing harm when harm would not otherwise occur applies to all vehicle occupants. While it is probably unavoidable that some safety devices may on occasion substitute one type of injury for another type that would occur in their absence, it is not acceptable that safety devices cause a significant number of fatalities in circumstances in which fatal or serious injury would not otherwise occur.

Second, the drivers who might lose benefits as a result of depowering are unbelted drivers. They can protect themselves by taking the simple step of buckling their safety belts as required by the laws of 49 States and the District of Columbia.

Nevertheless, as noted above, due to the possibility of adverse safety tradeoffs, NHTSA is seeking to limit the duration of the tradeoffs by proposing to make only a temporary change in Standard No. 208 to permit or facilitate the depowering of air bags. The agency's planned proposal to require smart air bags would not only enable the agency to make depowering a temporary measure should the adverse tradeoffs actually materialize, but would also ensure that the problem of adverse effects from air bags is fully addressed, and that air bags achieve their full safety potential.

C. Alternative Proposals

The preceding sections of this notice discuss the benefits of depowering passenger and driver air bags by various amounts, and the net effects on safety. While the agency recognizes that depowering air bags may result in some adverse safety tradeoffs, primarily to unbelted teenage and adult occupants, it believes that depowering represents a desirable temporary means of addressing the problem of fatalities and injuries from air bags.

Having tentatively decided that depowering of air bags is desirable, it is necessary for the agency to determine whether a regulatory change is needed to permit this action and, if so, what the most appropriate change would be.

Manufacturers have asserted that a regulatory change is needed because if air bags were depowered to an appropriate extent, manufacturers would be unable to certify that all of their vehicles comply with Standard No. 208's unbelted test requirements.

As discussed in the PRE, the agency's testing shows that an average 20 to 35 percent depowering of passenger air bags would result in chest g's for some vehicles approaching or slightly exceeding Standard No. 208's 60 g limit for the unbelted test. This indicates that a regulatory change would be needed to permit this level of depowering for these vehicles. The agency's limited data suggest that the standard's other requirements would not preclude this level of depowering, although the 1000 HIC limit would prevent significantly higher levels of depowering.

NHTSA does not have data concerning whether a regulatory change would be needed to permit 20 to 35 percent depowering of driver air bags, but is requesting commenters to provide such data. As discussed in the PRE, when driver air bags depowered to that extent were tested by NHTSA at 30 mph, unbelted chest g's increased from 49 to 51. Ford modeling for driver air bags shows similar results, with chest g's rising by only 2 or 3 g's for belted and unbelted drivers. Available NHTSA modeling shows variable results (some chest g's going up and others down), but all were well within the standard at 30 mph. The agency believes that energy absorbing steering columns explain why the driver air bag can be depowered without significantly affecting chest g's. However, the agency conducted only limited testing and did not conduct any angle tests. The agency requests comments, including data, concerning how depowering driver air bags by various percentages would affect the manufacturers' ability to certify compliance with Standard No. 208.

The agency is proposing the adoption of either, or both of two potential changes as alternative temporary amendments to Standard No. 208: either increasing the current chest acceleration limit to 80 g's, or replacing the unbelted crash test requirement with a sled test protocol incorporating a standardized crash pulse. If the agency were to adopt both of these changes, a manufacturer could select either alternative at its option. However, a manufacturer could not mix the two options, i.e., the 80 g chest acceleration limit would not apply in the case of the generic sled test.

A discussion of each of the two alternative approaches being proposed by the agency is presented in the next two sections.

1. Approach I—Temporary Change in Unbelted Chest Acceleration Requirement

NHTSA believes that the simplest regulatory change would be to amend the requirement which appears to be the factor limiting the vehicle manufacturers' ability to depower current air bags by 20 to 35 percent. This points to reducing the stringency of the unbelted chest acceleration requirement. The agency is proposing to increase the current limit from 60 g's to 80 g's. However, the agency is requesting comments on both higher and lower values, and could select a different value for the final rule.

This alternative has other advantages in addition to its simplicity. Occupant protection would continue to be measured in full-scale vehicle tests, protection in impacts at a range of angles would be ensured, and the other injury criteria would not change. The agency notes that recent biomechanical data generated for NHTSA suggests that, with respect to potential chest injuries, the human tolerance to acceleration is higher for air bags than for belts, because the air bag delivers a more broadly distributed, uniform loading to the chest than does a safety belt. Therefore, an 80 g requirement for occupants protected by air bags appears to be at least as protective as a 60 g requirement for belted occupants.

The agency notes that amending the standard to allow chest accelerations of 80 g's does not mean that chest g measurements in crash tests would necessarily rise to that level. The agency's test data suggest that while a change to 80 g's would be sufficient to permit or facilitate 20 to 35 percent downloading, air bags with progressively higher levels of downloading (beyond 20 to 35 percent) are likely to exceed Standard No. 208's head injury criterion before they exceed the 80 g requirement.

NHTSA also notes that the PRE's estimates of safety impacts for the 80 g alternative do not assume an increase to 80 g's, or to any particular level below 80 g's. The estimates are instead based on the agency's analysis of the effects of depowering air bags by 20 to 35 percent.

The agency's analysis assumes, based on limited vehicle testing, that chest g's would rise by an average of approximately 11 g's for the unbelted 50th percentile male. Since compliance data show that chest g's for this test currently average about 43 g's, the assumed 11 g increase means that the average would increase to about 54 g's for the 50th percentile male dummy.

NHTSA intends for any regulatory change to Standard No. 208 to permit or facilitate quick depowering of air bags. In order to reduce the leadtime for depowered air bags, the agency is proposing, as part of its 80 g proposal, to establish a special two-year enforcement policy for Standard No. 208's unbelted test requirements.

The agency recognizes that, under ordinary circumstances, manufacturers making air bag design changes typically conduct extensive testing to ensure that a vehicle will continue to meet the standard's performance requirements at any particular level. They do so despite the existence of various provisions of Standard No. 208 that provide that "a vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard." See, e.g., S4.1.5.3.

While NHTSA generally considers some degree of testing to be necessary to satisfy this "due care" requirement, under the proposed two-year policy, the agency would consider engineering analyses indicating that a vehicle will pass the unbelted test requirements with a depowered air bag as sufficient during that period to establish that the vehicle's

manufacturer exercised due care to ensure that the vehicle conforms with the requirement, even in the absence of confirming crash testing. Of course, the agency would retain the right to enforce the requirements of the standard if the noncompliance was due to quality control deficiencies or other manufacturing problems. This policy would be reflected in an appendix to the standard.

2. Approach II—Temporary Replacement of Unbelted Crash Test Requirement With a Sled Test Protocol Incorporating a Standardized Crash Pulse

In August 1996, AAMA submitted a petition for rulemaking requesting, among other things, an immediate amendment to the requirements for testing the ability of air bags to protect unbelted occupants. The current requirement measures occupant protection in a full scale crash test in which a vehicle, equipped with test dummies at the outside front seating positions, is crashed into a barrier. Specified injury criteria, measured on the test dummies, must be met in barrier crashes at speeds up to 30 mph, and a range of angles up to 30 degrees off-center.

AAMA requested that this crash test requirement be replaced with a sled test protocol. Under that protocol, all of a vehicle, or a portion of the vehicle representing the interior, would be mounted on a sled. The sled would be decelerated from 30 mph according to a standard formula, called a crash pulse. There would not be an angle test, only a direct frontal test.

NHTSA notes that sled tests can be used by researchers to simulate what will happen to occupants in real world crashes. The crash pulse for a given sled test is a major determinant of the stringency of the test, and how representative the test is of how a particular vehicle will perform in particular kinds of real world crashes.

To explain further, the term "crash pulse" is defined as the acceleration-time history of the occupant compartment of a vehicle during a crash. This is typically represented in terms of g's of acceleration plotted against time in milliseconds (1/1000 second). Generally speaking, the occupant undergoes greater forces due to secondary collisions with the vehicle interior and restraint systems if the crash pulse g's are higher at the peak, or the duration of the crash pulse is shorter, which would lead to higher overall average g levels.

The crash pulse experienced by a particular vehicle will obviously differ substantially in different types of crashes, e.g., if the vehicle crashes into a rigid stone wall vs. a stack of hay. Similarly, vehicles with different designs typically experience substantially different crash pulses in the same kind of crash, depending on such things as the stiffness of the vehicle structure and amount of crush space. Large cars typically have relatively mild crash pulses, while small cars and utility vehicles typically have more severe crash pulses.

Under AAMA's recommended amendment, the same crash pulse would be used for all vehicles. The petitioner argued that the standard's current test protocol "directly dictates the level of the air bag's inflator power and it is the level of inflator power that unnecessarily increases the risk of injury to vehicle occupants during air bag deployment." AAMA asserted that its recommended test protocol would allow for lower powered inflators to be introduced into the market as quickly as possible while maintaining air bag protection for all occupants.

In its August 1996 petition, AAMA provided the parameters for its recommended pulse along with a suggested mathematical formula, called a sine pulse. The sine pulse suggested by AAMA is described by the mathematical function: $A=15 \sin (\Pi t/143)$ Gs.

After examining the sled test protocol initially advocated by AAMA, NHTSA concluded that the standardized sled pulse suggested in the petition is representative of a very soft, or benign crash. Indeed, the agency wondered whether the pulse were so benign that a vehicle could meet the requirements for protecting an unbelted dummy without an air bag.

To answer this question, NHTSA tested a 1993 Taurus according to the sled test protocol recommended by AAMA, i.e., the 143 millisecond (msec) sled pulse (15 g peak). The vehicle did not have a passenger air bag. Although the vehicle had a driver air bag, it was deactivated so that it would not deploy. Although protected by neither safety belts nor air bags, neither of the dummies had responses that exceeded the injury criteria specified in Standard No. 208.

In its November 13, 1996 letter, AAMA suggested that the agency use a more severe crash pulse, 125 msec., which corresponds to 17.1 g. AAMA also argued that the agency should consider injury measurements for the neck in evaluating the crash pulse, rather than focusing solely on whether vehicles without air bags could pass the current Standard No. 208 injury criteria (HIC, chest and femur loads) in a test using the pulse. AAMA indicated that a vehicle could not meet appropriate neck injury assessment reference values (IARV's) in a test using the pulse without an air bag.

NHTSA notes that the revised AAMA recommended crash pulse is similar to that experienced by a large car in a Standard No. 208 test, but milder than that experienced by a typical small car, utility vehicle, or light truck. The PRE provides additional information about crash pulses.

In December 1996, NHTSA conducted several tests of a 1993 Taurus according to the revised sled test protocol recommended by AAMA, i.e., 125 msec, 17.1 g. The agency repeated the same test it had conducted with the earlier pulse, i.e., a no-air-bag test with unbelted 50th percentile male dummies. However, NHTSA also measured forces on the neck so that it could make calculations relative to IARV's. The agency also conducted tests with baseline and depowered air bags, and with fifth percentile female dummies.

NHTSA was still reviewing data calculations for this new test series as this notice was being completed. The agency expects to place the data in the docket at, or shortly after, the time this notice is published. NHTSA requests comments on what conclusions should be drawn from the data and on how the results of the tests should be factored into the agency's final decision concerning this proposal.

There are potential advantages and disadvantages to the approach of using a standardized crash pulse representative of a large car as a temporary means of addressing air bag fatalities to children. The approach provides maximum flexibility to manufacturers in addressing these fatalities. In its 1984 rulemaking establishing the automatic protection requirements that were in effect until the implementation of ISTEA, NHTSA recognized that technical problems existed in designing air bags that would not pose a danger to unrestrained small children in small cars. Because the crash pulse of small cars is much more severe than that of large cars, more aggressive air bags are needed to meet the standard's injury criteria. The agency stated:

> Manufacturers claim that little development work has been done with air bags for small (e.g., subcompact or smaller) cars and that a particular problem in these vehicles is how to protect small children, who are not properly restrained, from the more rapidly deploying air cushion in such vehicles. The Department believes that this problem can be mitigated and that technical

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solutions are available, as described in the FRIA. However, the lack of experience in this area, as well as the lack of experience for some companies in any form of air bag development, make the Department reluctant to mandate across-the-board air bags. 49 Fed. Reg. 29001, July 17, 1984; See July 11, 1984 FRIA, pp. III–7 to 11.

The AAMA recommended sled test approach would essentially permit the auto manufacturers to use air bags for small cars and other vehicles with severe crash pulses (e.g., utility vehicles and trucks) that are similar to the ones they use for large cars. This would eliminate some of the problems that exist in designing air bags for these vehicles that are not aggressive to children, i.e., the risk of aggressivity would be normalized for all vehicles.

Another advantage of a sled test approach is that it reduces the time and cost of doing certification testing, since sled tests are less destructive of the vehicle. Further, many more sled tests can be conducted in the same time period, since the motor vehicle industry and its suppliers have substantially greater capacity to conduct sled tests than barrier tests.

The primary disadvantage of using a standardized crash pulse representative of a large car is that the test will be less representative of actual performance for small cars and other vehicles with severe crash pulses, i.e., the test measures only air bag performance and not total vehicle performance. The approach also eliminates the effect of angle test requirements, which ensure protection in frontal impacts that occur at a range of angles rather than purely head-on. However, given that recent NHTSA analyses indicate that current fatality reducing benefits of air bags drop off rapidly as crashes diverge from direct "head-on" collisions, deleting the requirement for meeting injury criteria in a 30 degree test might not substantially degrade the "real world" benefits of air bags in such crash configurations. ("Fatality Reduction by Air Bags, Analyses of Accident Data through early 1996," August 1996 NHTSA Technical Report, DOT HS 808 470) NHTSA requests comments on this issue.

As a practical matter, the AAMA recommended sled test approach appears to permit more depowering than the 80 g approach. Under the 80 g approach, Standard No. 208's HIC requirement appears to preclude depowering much beyond the 20 to 35 percent range. The agency does not know how much depowering would be permitted by the AAMA approach, but believes it could be considerably greater than 35 percent, at least for vehicles that currently experience a severe crash pulse in the current Standard No. 208 test. While this maximizes manufacturer flexibility in addressing the fatalities to children, it also raises the possibility of greater adverse safety tradeoffs, especially to unbelted teenage and adult occupants.

In the context of a temporary amendment to Standard No. 208, however, the agency believes it is important to distinguish between what the manufacturers might technically be permitted to do and the actions they would actually take in response to a regulatory change. Because of the substantial differences among current air bags, it is likely that very different levels of depowering are needed for different air bags in order to significantly reduce the risk of child fatalities. For some air bags, 10 percent depowering may be necessary; for others, 60 percent depowering may be necessary.

Because the same standards apply to all vehicles, it is possible that any regulatory change that would permit 60 percent depowering of the most aggressive air bags would permit greater than optimal depowering of other air bags. That does not mean, however, that manufacturers would depower all air bags to the maximum extent permitted by the amendment. Instead, the agency anticipates that the manufacturers would only depower particular air bags to the extent needed to address the child fatality problem, and preserve unbelted occupant protection to the maximum extent possible.

As part of proposing the AAMA recommended sled test approach, the agency is proposing to add neck injury criteria for the 50th percentile male dummy. As indicated above, AAMA argued that the agency should consider injury measurements for the neck in evaluating the crash pulse. The source of the proposed neck criteria is "Anthropomorphic Dummies for Crash and Escape Systems," AGARD Conference Proceedings of NATO, July 1996, AGARD–AR–330. A copy of the relevant pages is being placed in the docket. The agency notes that GM uses the same neck criteria for its IARVs. Data provided by AAMA indicate that, in general, all of these neck criteria could not be met without an air bag.

The proposed neck injury criteria represent peak values for very short duration loading. Much lower loads can be tolerated for longer duration loading. Time dependency criteria may need to be specified. The agency solicits comments on this subject.

The agency is proposing a test procedure similar to that presented in AAMA's petition. NHTSA notes that the proposed procedure specifies that the vehicle, or "a sufficient portion of the vehicle to be representative of the vehicle structure," is mounted on the sled. The agency requests comments on the practicality of conducting sled tests with whole vehicles, and on whether the quoted language can be made more objective.

NHTSA notes that AAMA included in its initial petition both a recommended crash pulse and specified corridors for that pulse. The agency believes that it is necessary to specify corridors in addition to a specific pulse, because it is generally not possible to duplicate exact pulses. Manufacturers would be required to certify that their vehicles comply with the standard's performance requirements for all tests within the specified corridors. The agency notes that AAMA has not provided corridors for its revised crash pulse, and has written to AAMA requesting it to provide a figure showing the mathematical equation for the revised pulse, a graph of the pulse and corridors for the pulse. This information will be docketed as soon as possible after it is received by the agency. While the proposed regulatory text specifies only a specific crash pulse and not the corridors for that test, the agency expects to include such corridors in the final rule.

3. Request for Additional Information

In order to help it reach a final decision, the agency is requesting additional information in several areas.

First, the agency is requesting additional information and data to help it refine its estimates of the potential benefits and net effects on safety that would be likely to result from depowering. As discussed above, the estimates presented in the PRE and summarized above are necessarily based on very limited data. The agency requests commenters to address the analyses presented in the PRE, including what conclusions should be drawn from the various test data, modeling data, Holden study, and other information presented in that evaluation, concerning the effect of depowering on fatalities and injuries. The agency also requests commenters to provide additional relevant information, including test data, real world studies, and engineering analyses.

Second, the agency recognizes that there are significant uncertainties associated with the analyses of the available data and the resulting estimates of benefits and disbenefits. If, contrary to the agency's expectation and best judgment, this rulemaking were to

result in a large net loss of life, would taking action (through the adoption of the proposed amendment) to save the children and short adult drivers being fatally injured by air bags still be the correct policy choice?

Third, the agency is seeking comment on the sled pulse test recently recommended by AAMA. The agency has written to AAMA requesting information on why AAMA selected the particular recommended pulse, the amount of depowering that would be permitted for various vehicle types, how those changes would translate into 30 mph barrier test results, and specific manufacturer plans (on a model-by-model basis, if possible) concerning the amount of depowering that would occur if that alternative is adopted in the final rule. This information will be docketed as soon as possible after it is received by the agency. The agency also requests specific estimates on the overall impacts on safety, for children, belted and unbelted passengers, and belted and unbelted drivers.

Fourth, NHTSA requests specific analysis comparing the potential benefits and net effects on safety of the two proposed alternatives. The agency notes that, in a November 13, 1996 submission, AAMA provided estimates concerning its members' ability to depower air bags under various alternative amendments to Standard No. 208. AAMA stated that, for purposes of its analysis, depowering was defined as reducing the force produced by air bags to a level which is estimated to reduce the risk of air bag related fatalities to a 5th percentile unbelted female and unbelted child as close to zero as possible, while still meeting all belted occupant injury criteria. According to AAMA, this generally corresponds to a 25 to 35 percent average reduction in total inflator output and peak mass flow. AAMA provided the following chart:

AAMA Estimates for Air Bag Depowering

The percentage of air bag systems that could be depowered noted below is based on engineering judgment of AAMA members relative to the ability to depower the current air bag design to a level needed to provide meaningful benefit.

Regulatory Action #1—Raise Chest Criterion to 80 g's

passenger cars—36%
trucks—27%
total—31%

Leadtime to implement—6 to 9 months to 4 years

Regulatory Action #2—80 g's + delete angle barrier

passenger cars—43%
trucks—41%
total—42%

Leadtime to implement—6 to 9 months to 3 years

Regulatory Action #3—80 g's + delete angle barrier + 15 msec HIC

passenger cars—48%
trucks—57%
total—53%

Leadtime to implement—6 to 9 months to 3 years

Regulatory Action #4—125 msec Generic Sled Test

100% of total fleet—leadtime to implement—6 to 9 months, complete within 2 years.

Based on compliance data and its limited testing of depowered air bags, the agency believes that an 80 g requirement would permit manufacturers to depower essentially all of their vehicles by 20 to 35 percent, while AAMA estimates that only 31 percent of vehicles could be depowered "to a level needed to provide meaningful benefit."

One reason for the difference in the assessment of the sufficiency of the 80 g requirement is that the manufacturers contemplate depowering more than 20–35 percent in the case of the more aggressive air bags. As discussed earlier in this notice, the agency's testing indicates that a considerably higher level of depowering might be needed for some vehicles to significantly reduce the chance of fatality to out-of-position children.

NHTSA has not conducted angle tests with depowered air bags, so another reason for the difference might be that Standard No. 208's current angle test requirement could be a limiting factor even with an 80 g requirement.

The agency requests the individual manufacturers to provide specific analysis, on a model-by-model basis, if possible, comparing the amount of depowering that would be permitted by an increase in the chest acceleration limit alone to that which would be permitted by the AAMA generic sled pulse test, and describing the reasons for any differences in these two levels of depowering. NHTSA has already requested this information from AAMA and will docket it as soon as possible after it is received by the agency.

Fifth, NHTSA is requesting additional information concerning the extent of the existing problem of driver fatalities and injuries from air bags, and the amount of depowering that would be needed for various vehicle types to address those fatalities and injuries. As discussed earlier in this notice, there are substantial differences between the passenger and driver air bag problems. While the annual number of child fatalities is very small but growing steadily, the annual number of adult fatalities does not appear to be growing. While the agency is aware of 18 children who have been fatally injured by air bags this year, it is aware of only one driver who has been fatally injured by an air bag in the United States during the same period. This apparent nearly total absence of driver fatalities has occurred despite the greater than two-to-one ratio of vehicles with driver air bags to vehicles with passenger air bags and the four-to-one ratio of drivers to front seat passengers. (As noted above, however, the agency's figures for driver fatalities are not the result of a census.) Moreover, while most child fatalities have occurred in very recent model year vehicles, the agency is aware of only one woman 5 feet 2 inches or less who has died in a post model year 1992 vehicle. Finally, the ratio of lives saved by air bags to persons fatally injured is very different for driver air bags than passenger air bags. Driver air bags are estimated to have saved 1500 lives, as compared to 19 persons fatally injured. Passenger air bags are estimated to have saved 164 lives, as compared to 32 persons fatally injured.

There are also considerable differences between the size and basic designs of driver and passenger air bags, and the mechanisms by which drivers and children are likely to become too close to the air bag. As discussed earlier in this notice, unrestrained or improperly restrained children are likely to be propelled up against the air bag before deployment as a result of pre-crash braking, and children in rear-facing infant restraints are positioned with their heads up against the air bags. Since drivers have their feet on the brake and/or accelerator pedals and/or floor and are holding the steering wheel, they are not likely to be propelled forward as a result of pre-crash braking to the extent that children are. Pre-braking and crash forces will, however, cause drivers to move toward the air bag. Drivers who sit very close to the steering wheel are at greater risk of being too close to the air bag at the time of deployment, especially if they are unrestrained.

Because driver air bags have been produced in large numbers for several years longer than passenger air bags, the vehicle manufacturers have had time in a number of instances to redesign driver air bags to incorporate a number of

countermeasures that reduce the risk to out-of-position occupants. In deciding whether to adopt its proposal to reduce the stringency of Standard No. 208 as it applies to driver air bags, the agency will therefore take care that it is assessing both current and expected air bag designs.

By way of illustration, General Motors commented in December 1995 that it has introduced a number of air bag system features that according to its test results should reduce the risk of inflation induced injury. These features include minimized inflator output and bag size, module cover tear seam geometry, low break-out force module cover, bag fold, and recessed air bag module. General Motors also stated that it was in the process of introducing air bag systems that include a number of features that can help to further reduce the inflation-induced loads to which an occupant can be subjected. These features (which repeat some of the earlier ones listed by that company) include recessed air bag modules, new bag folds, improved air bag module tear seam geometries, low break-out force air bag module covers, minimized bag volumes, low output inflators, and air bag venting technologies.

NHTSA is also aware that other companies have also redesigned driver air bags in ways that should reduce air bag aggressivity. Agency testing of several new designs shows a substantial reduction in the risk to out-of-position occupants, especially with respect to chest injury, measured as V*C. However, the agency also tested some driver air bags that showed a substantial reduction in some injury reference values and increases in others.

NHTSA requests information on the potential which current driver air bags have for creating adverse side effects. Among other things, the agency requests vehicle manufacturers to provide detailed information, on a model-by-model basis, if possible, concerning all relevant design changes they have made, or expect to make, in their vehicles that may have reduced, or will reduce, the risk of injury or fatality to drivers from air bags. This would include changes in air bag designs, including deployment threshold changes, and changes in related vehicle components. This information will help the agency assess the potential of adverse side effects associated with model year 1997 vehicles, as opposed to the potential associated with model year 1990–92 vehicles.

The agency also requests information on the number of driver air bag fatalities that have occurred to date. NHTSA does not have as much information on driver fatalities as child fatalities, because it does not have the resources to investigate every adult fatality that occurs in a vehicle with an air bag. Therefore, there may be driver fatalities that the agency is not aware of. NHTSA is especially interested in knowing about fatalities that have occurred over the past three years, especially involving late-model vehicles.

NHTSA also requests comments on the extent to which depowering of current air bags would address driver air bag fatalities, and on the extent of the associated safety tradeoffs. Finally, the agency requests comments and data concerning the extent of the need to change Standard No. 208 to permit various levels of depowering, and on the alternatives of raising the standard's chest g limit and/or adopting the AAMA recommended generic sled pulse test.

In view of the potentially substantial disbenefits associated with depowering driver air bags, the agency requests comment about the advisability of limiting the proposed amendment to passenger air bags only. The agency requests specific information about the cost and leadtime implications of excluding driver air bags from the amendment as well as the effects it would have on reducing the magnitude of the apparent disbenefits associated with depowering driver air bags. In making that request, NHTSA recognizes that considerable depowering of driver air bags is already possible under the current standard.

D. Consideration of Other Alternatives

In developing this proposal, NHTSA considered an array of regulatory and nonregulatory (e.g., education) approaches that would address the air bag safety problem.

Other regulatory approaches to facilitate depowering that have been advocated by the industry include dropping the unbelted test altogether, or requiring that the unbelted requirements be met at speeds up to 25 mph instead of 30 mph.

NHTSA is not proposing to drop the unbelted test altogether. A number of vehicle manufacturers have argued that the inclusion of unbelted test requirements in Standard No. 208 should be reconsidered in light of the fact that belt use has increased from 14 percent in 1983 to around 68 percent today. The agency recognizes that, at some point, belt use might rise to a point at which retention of the unbelted test requirements might no longer be appropriate. The agency notes that belt use in Australia is over 95 percent, and averages 93 percent in Canada. However, as noted above, the belt use among fatally injured vehicle occupants is less than 40 percent. Since smart air bags may soon be available that adjust air bag deployment levels based on belt use or nonuse, the possible need to amend the unbelted test requirements may be relatively short-lived. NHTSA will consider the issue of the unbelted test requirements in the context of its forthcoming rulemaking on smart air bags. If it appears that such smart air bags will not be available in the near term, the agency will also consider whether there might be a percentage of belt use at which the agency should examine changing the unbelted test requirements and whether any legislative amendments might be necessary for that purpose.

The agency is also not proposing to reduce the unbelted test speed to 25 mph. While this approach was advocated in the past by Ford, Ford has now reached consensus with the other members of AAMA on the approach of replacing the unbelted crash test requirement with a sled test protocol incorporating a standardized crash pulse. In addition, the agency believes that the proposed approaches are preferable to reducing the test speed because they would allow a more rapid introduction of depowered air bags.

Given the possibility that amending Standard No. 208 to permit significant depowering might lead to a reduction in the lives saved by air bags, NHTSA has assessed other available approaches to the air bag safety problem in terms of their relative timeliness, effectiveness and net effect on safety. The results of such a comparative assessment are relevant to deciding whether there is a need to reduce stringency of the standard and, if so, for how long. The agency has considered the following alternatives in addition to depowering. (There is some overlap between the alternatives; for example, smart air bags may incorporate some design features that could also be used individually.)

Behavior-Related Actions Only. One possibility would be for NHTSA to focus entirely on behavior-related actions, such as public information efforts, encouraging the States to improve and enforce their safety belt and child restraint use laws, requiring improved warning labels, and permitting or requiring passenger manual cut-off switches (a technological change which would also require behavioral changes to be effective) in all vehicles. Behavioral changes are especially relevant to the problem of child fatalities caused by air bags, since these fatalities can be prevented by behavioral means, e.g., ensuring that

children always buckle up and that they sit in the back seat whenever possible.

NHTSA is actively pursuing efforts to bring about behavioral changes. The agency's efforts include its public education campaigns, addressed at length in the August 1996 NPRM and other **Federal Register** notices, and the agency's final rule (issued November 22, 1996) amending Standards No. 208 and No. 213 to require improved labeling to provide better assurance that drivers and other occupants are aware of the dangers posed by air bags to children.

As discussed above, NHTSA is a part of a coalition including automobile manufacturers, air bag suppliers, insurance companies and safety organizations working to improve safety belt use by a variety of means, including education efforts, urging the States to adopt primary enforcement safety belt use laws, and improving enforcement of seat belt and child seat use laws. To the extent that these efforts are successful, belt use rates should increase.

The agency's rulemaking concerning manual cutoff switches for passenger air bags also represents a way of reducing air bag fatalities by behavioral means. The switches provide drivers, in vehicles lacking a back seat large enough to accommodate a rear-facing infant seat, with a means of ensuring that their young children, particularly infants, would not be harmed by the air bag.

However, while behavioral changes are an important part of the efforts to reduce low speed fatalities due to air bags, it is not realistic to expect that those efforts will fully solve the problem. This is illustrated by the number of drivers who continue to drive without safety belts and the number of children who remain unrestrained, despite decades of efforts to encourage people to wear safety belts and use child restraints, and the existence of laws requiring such use in most states. Accordingly, it is also necessary for the agency to pursue technological changes.

Higher Deployment Thresholds—i.e., Increasing the Vehicle Speed at Which Air Bags Deploy. NHTSA has also considered whether vehicle manufacturers should be required to increase the minimum vehicle speed at which air bags deploy, and possibly have different deployment thresholds for the unbelted and belted conditions, as a short-term solution for reducing air-bag-induced fatalities and injuries. This would lessen the number of deployments at low speed where the possibility of serious injury for occupants (even unrestrained occupants) is small.[26]

As indicated above, CFAS and Public Citizen requested in their petition that, for vehicles without dual stage inflators, a minimum "trigger speed" of 10 mph barrier equivalent velocity (BEV) be set beginning with the 1998 model year for passenger cars and 1999 for light trucks. The CFAS petition submitted a few days earlier had suggested a 12 mph minimum deployment threshold. Mercedes Benz suggested in its comment on the August 1996 NPRM the possibility of using thresholds as high as 18 mph regardless of belt use, as a short-term means of addressing the problem of low speed fatalities to children.[27] NTSB recommended that the agency evaluate the effect of higher deployment thresholds for passenger air bags in combination with certain recommended changes in air bag performance certification testing, and then modify the deployment thresholds based on the findings of the evaluation. The Holden air bag, in addition to being designed to deploy less aggressively, has significantly higher thresholds than typical U.S. air bags. As noted above, Holden bags have a "no-fire" threshold of 12.4 mph and an "always-fire" threshold of 17.4 mph. While thresholds vary for U.S. air bags, a representative one has a "no-fire" threshold of 9 mph and an "always-fire" threshold of 14 mph.[28]

NHTSA stated in its August 1996 NPRM that it is interested in whether increasing the minimum vehicle speed at which an air bag deploys, and possibly having different deployment thresholds for the unbelted and belted conditions, may be an effective way to reduce air bag-induced injuries. An examination of the child fatalities that have occurred to date shows why such an increase might be effective.

Of the 32 crashes in which deployment of the passenger air bag caused a child fatality, NHTSA has, to date, analyzed the severity of 24 of those crashes. The estimated change in velocity (delta V) was 20 mph or less in 23 cases, 15 mph or less in 20 cases, and 10 mph or less in eight cases. For the remaining case in the group of 23, delta V was estimated at 20–25 mph. For an additional four cases, the agency did not estimate crash severity but did a damage estimate. Damage severity was low in three cases and moderate in the fourth. The remaining four cases out of the 32 crashes are still under investigation. These data suggest that a moderate increase in threshold could make a significant contribution to reducing child fatalities due to air bags.

NHTSA recognizes that there are many highly complex issues involved in selecting thresholds, including leadtime issues and safety tradeoffs. The agency recognizes that the use of a higher threshold, in combination with the mechanical crash severity sensors used by some vehicle manufacturers, could delay the signal to inflate and thus provide less time for the air bag to deploy, and possibly necessitate even more aggressive air bag deployments. NHTSA believes this problem could be addressed by adding an additional mechanical sensor, but that would involve a hardware change and require additional leadtime. The agency believes that the leadtime to achieve universal usage of electronic sensors would be at least two years. For vehicles which already have electronic sensors, there would be a shorter leadtime for increasing thresholds.

Additional tradeoffs involve the possibility of increased non-fatal injuries. Auto manufacturers have stated that selection of thresholds is typically based on their analysis of the crash severity at which serious facial, head, and brain injuries may occur. However, the agency believes that current steering assembly designs might permit thresholds to be increased without affecting the risk of facial fractures.

NHTSA believes that manufacturers could significantly increase deployment thresholds and still comply with the current requirements of Standard No. 208, although the agency does not have specific information concerning how high. Standard No. 208 does not specify a threshold requirement but does require vehicles to pass crash test requirements at speeds up to 30 mph. The agency believes that most, and perhaps all current vehicles could

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[26] As part of a comprehensive rulemaking on automatic restraints (then called "passive restraints"), in 1970 NHTSA proposed to require that air bags not deploy when the vehicle impacts a fixed barrier at any velocity less than 15 miles per hour, at any angle. 35 Fed. Reg. 16937, at 16938; November 3, 1970. However, after considering opposing comments from vehicle manufacturers, the agency did not adopt this requirement because it determined that it was preferable to allow manufacturers freedom in the design of their protective systems at all speeds. 36 Fed. Reg. 4600, at 4602; March 10, 1971.

[27] That company currently uses a threshold of 12 mph for unbelted occupants and 18 mph for belted occupants. If no occupant is present, the air bag does not deploy, regardless of the speed.

[28] The agency notes that regardless of what nominal design threshold is selected by a manufacturer, some deployments will occur at speeds below that nominal value, and some air bags will not deploy at speeds slightly above that value. The range of delta V's at which a particular air bag may either deploy or not deploy is dependent on a number of factors, including manufacturer efforts to fine-tune the deployment decision to reflect different crash conditions with the same delta V, and variability inherent in air bag designs.

probably pass the unbelted crash test requirements without air bags at speeds as high as 16 mph. Therefore, for manufacturers with the capability of increasing thresholds quickly, the necessity of meeting the injury criteria at speeds below the higher thresholds does not appear to be an impediment. The agency requests comments on whether this belief is correct.

NHTSA notes that mandating a minimum deployment threshold would be design-restrictive and could undermine the development of two-stage systems that could deploy "softer" air bags at lower speeds.

The agency requests commenters to provide analysis comparing the benefits/disbenefits and leadtime for increasing deployment thresholds versus depowering.

Dual Stage Inflators. Public Citizen and CFAS petitioned for the agency to amend Standard No. 208 to require dual stage inflation air bags beginning with the 1999 model year. The petitioners stated that dual inflation bags offer the best solution in the near future, as they neither surrender protection for adults in high-speed crashes, nor sacrifice low-speed crash protection for children. The petitioners asserted that inflator deployment and trigger speeds can be adjusted now without waiting until the 21st century for smart air bags that use infrared or sonic sensors to determine whether there is an out-of-position occupant.

NHTSA notes that the leadtime for implementing dual stage inflators is longer than for depowering. As indicated above, manufacturers can begin introducing depowered air bags in six to nine months and potentially complete their introduction of depowered air bags by a year later. Based on comments from suppliers, the earliest that dual stage inflators could begin to be implemented is for model year 1999, i.e., September 1998.

While the leadtime is longer, it appears that dual stage inflators could provide essentially all of the benefits associated with depowering, without raising the same possibility of safety tradeoffs. This is because such designs would in essence provide a "depowered" air bag for low to moderate speed crashes (and possibly all belted crashes), and a fully powered air bag to provide protection to unbelted occupants in higher speed crashes. The agency notes that dual stage inflators might qualify as smart air bags.

Other Air Bag-Related Changes, Not Including Smart Bags. In its November 1995 request for comments, the agency requested comments on many variables in air bag design and related vehicle design that can affect aggressivity. Variables related to air bag design include air bag volume, fold patterns, tethering, venting, mass/material, shape and size of air bag module opening, and module location and deployment path. Related vehicle design variables include such things as recessing the inflator/air bag in the steering wheel assembly or in the dash, pedal adjusters, and safety belt pretensioners. The agency notes that Holden safety belt systems use webbing clamps, which help reduce the payout and spooling of the webbing. In its August 2, 1996 comment, CFAS cited many of these variables (as well as ones discussed above in connection with its petitions) in arguing that other means of reducing air bag aggressivity should be used before manufacturers resort to decreasing the inflation rates.

NHTSA agrees that there are many variables besides inflator power which affect air bag aggressivity, including many cited by CFAS. Many of these changes already are being made. However, any currently unplanned changes relating to these other variables would generally require unanticipated hardware changes, which would take longer to implement than depowering. The agency believes that hardware changes require leadtimes of at least two years. In addition, the agency does not have information showing that these types of changes would be as effective as depowering in addressing child fatalities.

Smart Air Bags. NHTSA has similarly considered how quickly manufacturers could begin installation of smart air bags. As discussed above, the vehicle manufacturers have indicated that they plan to introduce these devices as soon as they become available. Several suppliers commenting on the August 1996 NPRM indicated that smart air bags can begin to be phased in beginning with the model year 1999 fleet, i.e., approximately September 1, 1998.

Tentative Conclusions about Alternatives. As the agency considers technological alternatives to address the adverse side effects of air bags, several things seem evident. First, for many vehicles, depowering has a shorter leadtime than any of the other alternatives. While manufacturers can begin introducing depowered air bag vehicles in six to nine months and potentially complete the depowering of the air bags in their vehicles within about a year after they begin introduction, dual level inflators and other smart air bags cannot begin to be phased in until at least September 1, 1998. The agency has less information on the leadtime for raising deployment thresholds, but it appears that it would take at least two years to switch from mechanical to electronic sensors.

Second, there are various alternatives that may be superior to depowering, i.e., alternatives that result in equal or greater benefits without raising the possibility of adverse safety tradeoffs, but whose leadtime is longer than that of depowering. Therefore, while depowering appears to be an appropriate short-term approach, there is no need for permanently changing the Standard to enable manufacturers to fully address the adverse side effects of air bags.

NHTSA also believes it is important to emphasize that a change in Standard No. 208 is not required to permit manufacturers to implement these other alternatives.[29] The agency expects to ultimately require smart air bags through rulemaking. In the meantime, the agency is not endorsing depowering over other solutions. Instead, the agency is proposing a regulatory change to add depowering to the alternatives available to the vehicle manufacturers to address this problem on a short-term basis. To the extent that manufacturers can implement superior alternatives for some vehicles, the agency would encourage them to do so.

Some commenters, including Takata, expressed concern that a reduction in Standard No. 208's performance requirements may delay the introduction of superior alternatives. NHTSA does not believe a short-term

[29] All of these various other alternatives, i.e., dual level inflators, smart air bags, higher deployment thresholds, and the replacement of mechanical sensors by electronic ones, are permitted by the existing provisions of Standard No. 208. The Standard already provides considerable design flexibility for manufacturers. The Standard's automatic protection requirements are performance requirements and do not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on properly positioned test dummies, during a barrier crash test, at speeds up to 30 mph.

While the Standard requires air bags to provide protection for properly positioned occupants (belted and unbelted) in relatively severe crashes, and very fast air bags may be necessary to provide such protection, the standard does not require the same speed of deployment in the presence of out-of- position occupants, or even any deployment at all. Instead, the standard makes possible the use of dual or multiple level inflator systems and automatic cut-off devices for out-of-position occupants and rear-facing infant restraints. Concepts such as dual level inflator systems and devices that sense occupant position and measure occupant size or weight are not new, and were cited by the agency in its 1984 rulemaking. NHTSA also notes that Standard No. 208 does not specify a vehicle speed at which air bags must deploy, and that thresholds could be raised substantially for most current vehicles without creating a Standard No. 208 compliance problem. Therefore, regulatory changes are not needed to permit manufacturers to implement these solutions.

temporary amendment would result in such a delay. Instead, such an amendment would provide maximum flexibility to the vehicle manufacturers to address the problem, while they work on better solutions. Moreover, the agency's forthcoming proposal for smart air bags will seek to ensure that air bags reach their full fatality and injury reducing potential.

NHTSA recognizes, however, that its proposal to permit or facilitate depowering of air bags is on a faster track than the rulemaking to require smart air bags. Under the agency's rulemaking schedule, it plans to issue a final rule concerning depowering before a final rule to require smart air bags. Given that NHTSA contemplates permitting depowering until smart bags are introduced, the question arises of how the agency should limit the duration of the temporary amendment for depowering. One approach would be to specify a several year duration and revisit the issue in the context of the rulemaking on smart air bags. NHTSA requests comments on this issue.

The agency notes that Public Citizen and CFAS requested that the agency require dual stage inflators quickly rather than wait for more advanced smart air bags. The agency believes there is a consensus that smart air bags are needed to fully address the problem of child fatalities. The "first" stage of a dual stage inflator would be similar to depowered air bags in reducing but not eliminating the possibility of serious injury or fatality to an out-of-position child. In its August 1996 proposal, NHTSA noted that if it does decide to require smart passenger air bags, its leadtime decision would have to take into consideration the differing leadtimes for the various kinds of smart bags under development, and the fact that the longest leadtimes will be those for the more advanced smart bags potentially offering the greatest net benefits. The agency also noted that, as a practical matter, the longer the time needed to develop and implement the most advanced smart bags, the greater the need would be to implement interim designs that would protect children automatically.

These same types of considerations are relevant to the Public Citizen/CFAS request. If the ultimate result is for the vehicle manufacturers to add smart air bags to their fleets, the agency believes that the quickest and most efficient way of accomplishing this task would be to go directly to smart air bags, which may include dual stage inflators.

NHTSA requests commenters to address how the agency should consider this factor in reaching a final decision on this proposal. The agency also requests the vehicle manufacturers to provide their latest timetables for implementing measures that will enable them not only to solve the problem of the adverse side effects of air bags, but also to meet the current unbelted requirements of Standard No. 208, i.e., 60 g chest acceleration, 1000 HIC, etc.

With respect to Advocates' recommendation that the agency not predicate major regulatory changes on anything less than clear and convincing evidence that a modification will improve safety, NHTSA agrees that caution should be exercised in making a regulatory change. This is why the agency initiated its test program to evaluate various issues related to addressing the problem of low speed air bag fatalities and injuries, including the potential safety benefits and trade-offs associated with depowering air bags. NHTSA also believes, however, that it has a duty to act to address this problem, and promote the long term interests of safety, even in the presence of the possibility of short-term tradeoffs and inevitable remaining uncertainties about the various approaches and alternatives.

E. Effective Date and Comment Period

The proposed amendment might be major and thus subject to Congressional review under the provisions in Title 5 of the United States Code concerning Congressional review of agency rulemaking. If the amendment is major, the agency requests comments on whether the amendment should be make effective immediately upon publication because it addresses an urgent safety problem, most particularly the death of young children. The proposed amendment would permit or facilitate the immediate depowering of air bags, thereby helping to reduce child fatalities from air bags. The proposed amendment would not impose any new requirements, but instead would provide additional flexibility to manufacturers in addressing this problem.

Given the importance of enabling manufacturers to address this urgent safety problem quickly, NHTSA is providing a shortened comment period of 30 days.

F. Relationship to Other Actions

NHTSA invites commenters to address whether and how any of the other actions being taken by the agency to address adverse effects of air bags should affect its decision concerning this proposal.

VI. Response to AAMA and CFAS Petitions

This notice constitutes a granting of AAMA's petition for rulemaking. The agency is proposing the AAMA sled test as one of the alternative amendments in this rulemaking. The agency will consider AAMA's request for rulemaking concerning out-of-position occupants in the context of the anticipated SNPRM concerning smart air bags.

The agency is addressing the request of Public Citizen and CFAS concerning deployment thresholds in the context of this rulemaking. Accordingly, it considers them to have been granted to the extent that this notice analyzes and discusses thresholds and subjects that material to public comment.

VII. Granting of Petition for Use of 5th Percentile Female Dummy

NHTSA has decided to grant a petition submitted by Anita Glass Lindsey on September 1, 1996, to amend Standard No. 208 to specify use of the 5th percentile female test dummy in testing vehicles for compliance with the standard's air bag requirements. The purpose of the amendment would be to provide greater assurance of the safety of short-statured women. The agency notes that the existing 5th percentile female dummy may need further refinement before it is suitable as a device for measuring air bag performance. Further, the simple addition of this dummy to the standard would not likely have a significant effect on air bag design or performance. To have such an effect, the addition would have to be coupled with the adoption of neck injury criteria. Currently, there are no neck injury criteria for the 50th percentile male dummy used in air bag testing, although proposed criteria are included in this notice.

The agency contemplates initiating a new rulemaking proceeding in the future to propose the adoption of the 5th percentile female dummy and to specify injury criteria, including neck injury criteria, suitable for that dummy.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action has been

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determined to be "significant" under the Department of Transportation's regulatory policies and procedures. The action is considered significant because of the degree of public interest in this subject.

The proposed amendments would not impose any new requirements or costs, but instead permit or facilitate approximately 20 to 35 percent depowering of current passenger air bags. Any cost difference between baseline and depowered air bags would be negligible.

A full discussion of costs and benefits can be found in the agency's regulatory evaluation for this rulemaking action, which is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. NHTSA notes that the cost of new passenger cars or light trucks would not be affected by the proposed amendment.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. § 605(b). The proposed amendment would primarily affect passenger car and light truck manufacturers and manufacturers of air bags. The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR § 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification codes (SIC). SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer. SIC Code 3714 "Motor Vehicle Parts and Accessories" has a small business size standard of 750 employees or fewer. NHTSA believes air bag manufacturers would fall under SIC Code 3714.

For passenger car and light truck manufacturers, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Because each manufacturer serves a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most five hundred cars manufactured per year by U.S. small businesses.

In contrast, in 1996, there are approximately nine large manufacturers manufacturing passenger cars and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

For air bag manufacturers, NHTSA does not believe that there are any small manufacturers of air bags. A separate subsidiary (of a large business) set up to manufacture air bags would not be considered a small business because of SBA's affiliation rule under 13 CFR § 121.103.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism) and Unfunded Mandates Act

The agency has analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that the proposed amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

In proposing this amendment to permit or facilitate depowering, the agency notes, for the purposes of the Unfunded Mandates Act, that is pursuing the least cost alternative. As noted above, any cost difference between current and depowered air bags is expected to be negligible. This alternative was tentatively selected by NHTSA because depowering would prevent many of the air bag related fatalities that have been occurring and can be implemented more quickly than the other alternatives. Further, depowering is the measure that industry itself has been recommending as a means for preventing those fatalities.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IX. Request for Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to this action will be considered as suggestions for further rulemaking action. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Alternative One

Amendments to Regulatory Text That is Currently in Effect

2. Section 571.208 would be amended by revising S6.1.3 and S6.2.3 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S6.1.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, for vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], the acceleration limit is 80 g's, instead of 60 g's.

* * * * *

S6.2.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R incorporated by reference in part 572, subpart E of this chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, for vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], this acceleration limit is 80 g's, instead of 60 g's.

* * * * *

3. Section 571.208 would be amended by adding Appendix A at the end of the section to read as follows:

Appendix A to § 571.208, Standard No. 208

For vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], NHTSA will consider engineering analyses indicating that a vehicle will pass the unbelted test requirements with an air bag as sufficient to establish that the vehicle's manufacturer exercised due care to ensure that the vehicle conforms with the requirement, even in the absence of confirming crash testing.

Amendment to Regulatory Text That Would Become Effective September 1, 1997

4. Section 571.208 would be amended by revising S6.3 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S6.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R incorporated by reference in part 572, subpart E of this chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds. However, for vehicles manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule], this acceleration limit is 80 g's, instead of 60 g's.

* * * * *

Alternative Two

5. Section 571.208 would be amended by revising S3 to read as follows:

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9., *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash. Notwithstanding any language to the contrary, any vehicle manufactured after [date 30 days after publication of final rule in the FEDERAL REGISTER] and before [date would be selected for final rule] that is subject to a dynamic crash test requirement conducted with unbelted dummies may meet the requirements specified in S13 instead of the applicable unbelted requirement.

6. Section 571.208 would be amended by adding S13 through S13.2 to read as follows:

S13 *Alternative unbelted test for vehicles manufactured before [date would be selected for final rule].*

S13.1 *HYGE Sled—Crash Simulation Test.* Applying the appropriate conditions of S8, mount the vehicle, or a sufficient portion of the vehicle to be representative of the vehicle structure, on a dynamic test platform at the manufacturer's design attitude, so that the longitudinal center line of the vehicle is parallel to the direction of the test platform travel and so that movement between the base of the vehicle and the test platform is prevented. The test platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in SAE Recommended Practice J211 (MAR 95), "Instrumentation for Impact Tests." The accelerometer sensitive axis is parallel to the direction of test platform travel. The test is conducted at any velocity change up to and including 30 mph with acceleration of the test platform shown by the curve in Figure 6. An inflatable restraint is to be activated at 25 ±2 ms after initiation of the acceleration shown in Figure 6. The test dummy specified in S8.1.8, placed in each front outboard designated seating position as specified in S11, shall meet the injury criteria of S6.1, S6.2, S6.3, S6.4 and S6.5 of this standard.

13.2 *Neck injury criteria.* A vehicle certified to this alternative test requirement shall, in addition to meeting the criteria specified in S13.1, shall meet the following injury criteria for the neck in the unbelted sled test:

(a) Flexion Bending Moment—190 Nm. SAE Class 600.

(b) Extension Bending Moment—57 Nm. SAE Class 600.

(c) Axial Tension—3300 peak N. SAE Class 1000.

(d) Axial Compression—4000 peak N. SAE Class 1000.

(e) Fore-and-Aft Shear—3100 peak N. SAE Class 1000.

7. Section 571.208 would be amended by adding Figure 6 to read as follows:

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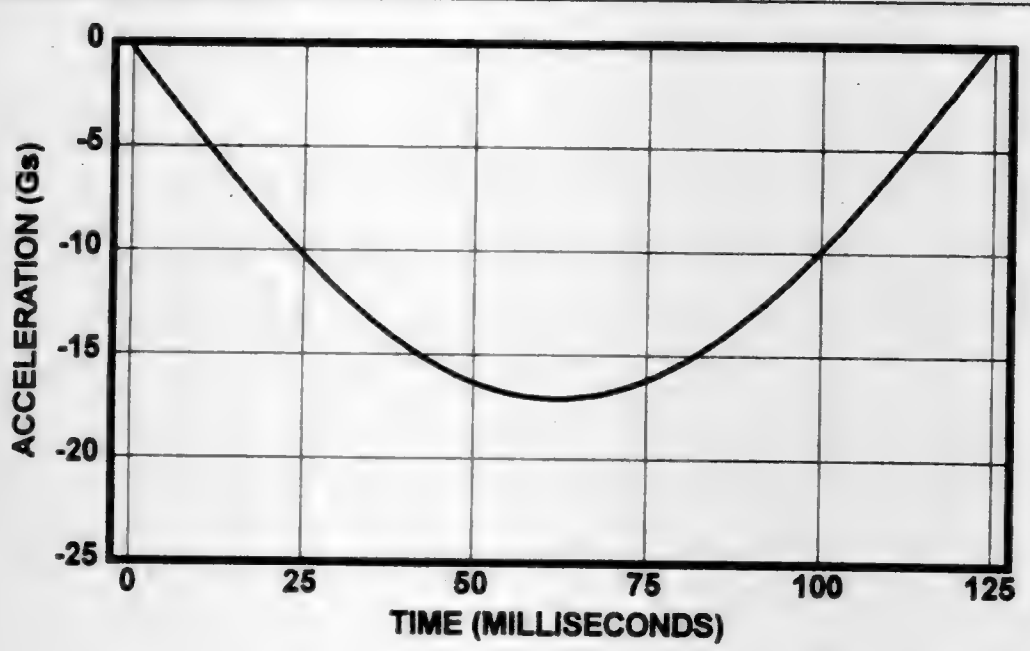

FIGURE 6. Sled test pulse.

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L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

Appendix—Past Public Comments Related to Depowering Air Bags

Note: This appendix will not appear in the Code of Federal Regulations.

While NHTSA has not issued a specific proposal concerning depowering air bags, it did request comments on this subject in both the November 1995 request for comments and the August 1996 NPRM. This section provides a summary of comments relating to depowering (or downloading) air bags, including comments recommending alternative short-term approaches. The agency notes that the views expressed on the November 1995 request for comments may in some instances be dated, since considerable research has been conducted in this area since then.

A. November 1995 Request for Comments

A number of commenters addressed the issue of depowering air bags, primarily in the context of either a recommendation that Ford made to reduce the test speed for Standard No. 208's unbelted test from 30 mph to 25 mph, or the possibility of raising the limit on chest g's from 60 to 80. The agency specifically requested comments on the possibility of such an increase. A number of commenters, including many vehicle manufacturers (Chrysler, Ford, BMW, Volkswagen, Porsche, and Toyota), an air bag supplier (Autoliv Development AB), and IIHS, expressed support for Ford's recommendation. These commenters stated that this change would allow a reduction of approximately 30 percent in the kinetic energy required in the air bag system, and that lower kinetic energy in the air bag would lower the risk of air bag-induced injuries to vehicle occupants.

GM commented that it agreed with the theory of the Ford recommendation and said that it was "directionally correct." However, GM said that it has not been shown that a reduction in the unbelted test speed to 25 mph would allow manufacturers to reduce the kinetic energy in air bag systems enough to influence the actual frequency of air bag-induced injuries to vehicle occupants. Nissan went further, saying that it would not anticipate any major changes in air bag deployment specifications because of a reduction in the unbelted test speed from 30 to 25 mph. Nissan suggested that the unbelted test speed would have to be reduced to 20 mph to reduce the risk of air bag-induced injuries in the real world.

BMW enthusiastically supported the concept of raising Standard No. 208's chest g limit, but suggested that the limit be raised to 75 g's. If this were done, BMW said it would attempt to recertify all of its vehicles with less aggressive air bags within one year.

GM said an 80 g limit would not appear likely to permit any appreciable reduction in inflator output, so GM doubted it would reduce significantly the potential for air bag-induced injuries. Ford said such a change might permit reductions in air bag aggressivity, but to a much less significant extent than under its recommendation. Chrysler stated that it could not comment on an 80 g limit because it had no data to analyze the effects of such a change.

In a presentation to the agency and supplemental comment submitted after the comment closing date, GM suggested an alternative regulatory change that it argued would be effective at reducing air bag-induced injuries. GM suggested keeping the unbelted testing speed at 30 mph, but adopting a crash pulse to "better reflect" the crash pulse in real world crashes and using a sled test for unbelted testing. This concept ultimately became the basis of the petition for rulemaking submitted by AAMA in August 1996.

No manufacturer argued that depowering air bags would totally solve the adverse effects associated with children. In commenting on the November 1995 request for comments, GM provided the results of a depowered air bag inflator study. Based on that study, GM concluded that depowered inflators are "directionally correct," but that deactivation is needed to meet injury assessment reference values for passengers who are at or near the instrument panel. This was said to be particularly true for children, because of their lower injury tolerance.

Not all commenters believed that Standard No. 208 should be changed. Takata Corporation (Takata), an air bag manufacturer, argued that restraint

system technology that has recently become available, combined with further improvements that are scheduled to be available within the next 24 months (i.e., by approximately the beginning of 1998), will significantly reduce air bag injuries without the need for any changes to Standard No. 208. Takata stated that it is concerned that the process of developing improved technology to eliminate air bag injuries will be delayed if Standard No. 208 is changed in response to the present concerns.

Advocates opposed reducing Standard No. 208's unbelted test speed. That organization claimed that there are several flaws in the Ford recommendation. According to Advocates, altering the inflation rate of air bags may only address a portion of the problem, may not make any difference at all, or may even create other safety concerns. Advocates also stated that the Ford recommendation is based entirely on static computer modeling that is limited to a single variable, air bag inflator rise rates, and that the recommendation is modeled on only an adult driver. Advocates stated that NHTSA should be reluctant to predicate major regulatory changes on anything less than clear and convincing evidence that a modification will improve safety.

Center for Auto Safety (CFAS) submitted a comment in August 1996 expressing a variety of concerns about the Ford recommendation, and arguing that other means of reducing air bag aggressivity should be used before manufacturers resort to decreasing the inflation rates. CFAS also stated that initial analysis of the limited data available strongly suggests that if NHTSA does anything, it should set a minimum threshold speed below which an air bag should not deploy.

Mercedes Benz suggested that, as a short-term solution, the agency consider higher deployment thresholds, as well as the use of weight sensors (a type of smart air bag) for passenger air bags. Mercedes noted that it currently uses a 12 mph delta V threshold for unbelted occupants, and an 18 mph delta V threshold for belted occupants. That company indicated that it could use the 18 mph delta V threshold for all occupants. Mercedes asserted, however, that this would not currently be permitted by Standard No. 208. [1]

[1] Mercedes did not explain the basis for this assertion. The Standard does not expressly prohibit such a threshold. Further, with appropriate interior design, including energy absorbing materials, it should be possible to meet the Standard's performance criteria.

B. August 1996 NPRM

As discussed above, subsequent to the agency's publication of the August 1996 NPRM, but before the comment closing date, AAMA submitted a petition for rulemaking concerning depowering air bags. AAMA requested that NHTSA immediately announce, by means of a "direct final rule," an amendment to Standard No. 208 to replace the current 30 mph unrestrained dummy barrier crash test requirement with a "standard 30 mph unrestrained dummy sled test" requirement. The petitioner contended that the standard's current requirement "directly dictates the level of the air bag's inflator power and it is the level of inflator power that unnecessarily increases the risk of injury to vehicle occupants during air bag deployment."

AAMA and each of its member companies cited the AAMA petition in their comments on the August 1996 NPRM and urged that the agency favorably respond to the petition.

The Association of International Automobile Manufacturers (AIAM) stated that until smart air bag systems are available and become widespread in the fleet, it believes that Standard No. 208 should be changed to modify or eliminate the 30 mph unbelted occupant protection requirement so that air bags could be made less aggressive. That organization stated that not only would this allow less aggressive air bags with less risk to out-of-position occupants, but also it would allow manufacturers to provide better occupant protection for belted occupants through such things as a combination of depowered air bags and other restraint system enhancements. AIAM stated that unbelted occupants would still have the benefits of air bag protection and a lowered risk of out-of-position injury in many frontal crashes.

Honda stated that it believes the passenger air bag system in its vehicles is presently one of the least aggressive relative to the air bags on other cars in North America. That company stated, however, that still lower inflator output is necessary to ensure reduction of the aggressiveness of the passenger air bag. Honda stated that if Standard No. 208 were amended to eliminate unbelted testing or to reduce the crash test speed, inflator output could be adjusted accordingly, reducing the risk of air bag induced injury to out-of position or unbelted occupants.

Takata stated again that it strongly urges NHTSA not to tamper with the 30 mph unbelted barrier test as a short-term expedient to reduce the risk of air bag injuries to children. That company stated that it does not believe this would produce a sufficient reduction in the risks to children to jeopardize the proven life saving benefits of air bags in high speed crashes.

The Insurance Institute for Highway Safety (IIHS) stated that although changes in the unbelted test requirements in Standard No. 208 alone will not eliminate all the air bag related fatalities, less aggressive inflators have the potential to reduce the risk for infants and children as well as for adults. That organization stated that as other air bag technology evolves to permit variable levels of protection based on crash severity and occupant characteristics, it will be possible to further enhance protection for unbelted occupants over a wide range of crash severities. IIHS stated that, in the meantime, the first and immediate step NHTSA could take would be to make appropriate changes to Standard No. 208 that would allow manufacturers to reduce the energy in current air bag systems.

The National Association of Independent Insurers (NAII) stated that it believes changing the unbelted test requirements in Standard No. 208 to permit less aggressive inflators should be a central part of NHTSA's efforts to encourage smart systems, and cited concerns expressed by IIHS.

[FR Doc. 96–33307 Filed 12–30–96; 11:00 am]

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49 CFR Part 595

[Docket No. 74–14; Notice 107]

RIN 2127–AG61

Air Bag Deactivation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its efforts to address the problem of the adverse effects of current air bag designs on children and certain adults, NHTSA is issuing this proposal to make it possible for vehicle owners to have their air bags deactivated by vehicle dealers and repair businesses.

Specifically, the agency is proposing to allow dealers and repair businesses, upon written authorization of a vehicle owner, to deactivate either the passenger-side air bag, the driver-side air bag, or both. Dealers and repair businesses are statutorily prohibited from making Federally required safety equipment inoperative, but NHTSA may exempt them from the prohibition in appropriate circumstances. In order to

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qualify for the exemption, the dealer or repair business would be required to provide the owner with a NHTSA information sheet describing the circumstances in which deactivation may be appropriate, based upon the comparison of the risks in those circumstances of turning the air bag off versus leaving it on. The authorization would contain a statement that the owner has received and read that sheet. The agency is proposing to require that warning labels be installed as a condition of deactivation.

Deactivating an air bag would not be permitted if the vehicle were equipped with a manual cutoff switch for the air bag, or if the air bag were a "smart" air bag, i.e., one capable of either shutting off in appropriate circumstances or controlling its deployment so as to protect against injuring a wide range of occupants.

DATES: Comments must be received by February 5, 1997. Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (Docket Room hours are 9:30 a.m.– 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemaking: Visit the NHTSA web site at http://www.nhtsa.dot.gov and click on the icon "AIR BAGS–Information about air bags."

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

While air bags are providing significant overall safety benefits, NHTSA is very concerned that current designs have adverse effects in some situations. This notice proposes one of several actions that the agency is taking to mitigate these effects.

To address those effects, the agency published in the **Federal Register** (61 FR 40784) a notice of proposed rulemaking (NPRM) on August 6, 1996 to amend Standard No. 208, *Occupant Crash Protection*, and Standard No. 213, *Child Restraint Systems*.

The NPRM proposed several amendments to reduce the adverse effects of air bags, especially those on children.

The agency explained that eventually, either through market forces or government regulation, it expects that "smart" passenger-side air bags will be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA proposed that vehicles lacking smart passenger-side air bags would be required to have new, attention-getting warning labels and be permitted to have a manual cutoff switch for the passenger-side air bag. Currently, only vehicles lacking a rear seat large enough to accommodate a rear-facing infant restraint are permitted to have such a switch. The agency also requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective. NHTSA also requested comments on whether it should, as an alternative, set a time limit on the provision permitting manual cutoff switches in order to assure the timely introduction of smart air bags. Finally, the agency proposed to require rear-facing child seats to bear new, enhanced warning labels.

II. Scope of Problem

A. Deaths and Injuries

Based on data available as of November 1, 1996, NHTSA estimates that driver-side air bags have saved a net of 1,481 lives (1,500 drivers saved, minus 19 driver deaths caused by air bags), with 826 of those lives saved in 1995 and 1996 alone. The dramatic increase in lives saved in the last two years is due both to the increased number of air bags in vehicles and improved technology. For persons aged 13 and older, passenger-side air bags have saved a net of 164 lives to date. The number, if any, of passengers aged less than 13 saved by air bags is unknown. What is known is the loss of 32 children. Thus, the net figure for passengers of all ages could be as low as 133.

This disparity between driver and passenger air bags in the number of lives saved is due in part to the fact that there are approximately twice as many vehicles with driver air bags as there are vehicles with passenger air bags. Passenger-side air bags have only been widely available since the 1994 model year. Further, the driver seat is occupied more frequently than the front passenger position.

As of November 30, 1996, however, 32 children have been killed as the result of air bag deployment in low speed collisions. Nine of these children were in rear-facing infant restraints. The number of deaths is steadily climbing. Ten of the 32 died in calendar year 1995 and another 18 have died so far in calendar year 1996. Additionally, eight children are known to have been seriously injured as a result of air bag deployment, five of whom were in rear-facing infant restraints. One adult passenger, a woman in her 90's, has been killed by an air bag.

Fewer drivers than passengers have been killed by air bags despite the fact that there are approximately twice as many vehicles with driver air bags as there are with both driver and passenger air bags. The agency has verified the deaths of 19 drivers as the result of air bag deployments in low to moderate speed collisions. Of these, 10 were women 5'2" or under, five were taller women, and four were men, all of them at least 5'9". One instance of a placental abruption, leading to stillbirth, has been reported; injuries to the pregnant woman were minor. Of the 19 adults killed by air bags, seven were age 64 or above. The agency notes that older drivers are more at risk than the average adult under most circumstances, regardless of type of restraint used. Over half the fatalities (10 out of 19) were in calendar years 1994 and 1995. Only two drivers are known to have been killed as a result of air bag deployment in 1996. Most of the driver fatalities occurred in vehicles manufactured in model years 1990 and 1991. Only four drivers have been killed in vehicles manufactured after model year 1992. The absence of any upward trend in driver fatalities contrasts sharply with the growth in the number of child fatalities.

For a more detailed discussion of the air bag deaths, and for tables that facilitate identifying the patterns associated with the occurrence of those deaths, see Appendix A of this notice.

B. Public Concerns Regarding Those Deaths and Injuries

NHTSA emphasizes that the vast majority of people, both drivers and passengers, are much safer with an air bag than without. Nevertheless, the current number of deaths and serious injuries attributed to air bag deployment in low speed crashes is disturbing.

There are particular concerns about small children, short-statured women, pregnant women, and elderly individuals. In the aggregate, this group constitutes a significant percentage of the total U.S. population.

C. Other Health Concerns

A large number of arm injuries have also been attributed to air bag deployment, both in low speed and higher speed crashes. Additionally, numerous individuals have contacted the agency regarding their concerns that a preexisting medical condition, such as a degenerative bone disease or hearing problem, could be aggravated by air bag deployment. The agency has no real-world data on how air bags aggravate preexisting medical conditions.

III. Overview of Other Agency Responses to Problem

On November 27, 1996, a separate final rule was published in the **Federal Register** (61 F.R. 60206) amending Standard No. 208 and Standard No. 213 to require improved labeling to better ensure that drivers and other occupants are aware of the dangers posed by air bags to children who occupy the front seat. The agency is also issuing a final rule extending, until September 1, 2000, the permission granted to manufacturers to install manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant seats.

NHTSA has decided to terminate rulemaking on that part of the August 1996 NPRM that would have permitted all air bag vehicles to be equipped with manual cutoff switches. This decision to terminate is based on the agency's belief that informed deactivation is an option that is easier and quicker to implement and that would not divert manufacturing resources from smart air bag technology.

Today NHTSA is also issuing an NPRM proposing to amend Standard No. 208 to permit or facilitate depowering of air bags by 20 to 35 percent across the fleet. NHTSA expects, in the near future, to issue separate supplemental notice of proposed rulemaking (SNPRM) proposing performance requirements for smart air bags and a phase-in schedule for requiring installation of those devices.

IV. Statutory Prohibition Against Deactivating Air Bags; Statutory Authorization for Exemption From Prohibition

Manufacturers, distributors, dealers [1] and motor vehicle repair businesses [2] are prohibited by 49 U.S.C. § 30122 from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable Federal Motor Vehicle Safety Standard. The statute, however, allows the agency to prescribe regulations to exempt a person from the "make inoperative" provision if such an exemption is consistent with safety concerns.

Suggestions by Public Concerning Air Bag Deactivation

In response to the August 1996 NPRM, BMW and Volvo recommended that the agency develop procedures similar to those being used in Europe for temporarily deactivating air bags. According to BMW,

> (i)n Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

BMW attached to its comment copies of the approval forms and the warning label ("Front passenger airbag deactivated") that is placed in the vehicle to indicate that the air bag has been deactivated. The "formal obligation concerning deactivation of front passenger airbag" form states that the owner of the vehicle is obliged

> (N)ot to modify the airbag system in any way or alter/remove the warning label,
>
> (T)o ensure that every front passenger in the above vehicle is aware that the front passenger airbag has been deactivated,
>
> (T)o have the front passenger airbag reactivated by an authorized BMW service station and
>
> (I)f selling the vehicle, to inform the new owner of the current state of the front passenger airbag and to hand over all relevant documentation.

BMW's comments may be found at Docket 74–14, Notice 100, item 40.

In its comment, Volvo stated that

> (i)n Europe, due to consumer requests, most manufacturers have developed new car retail service procedures for deactivation and reactivating of passenger side air bags. This is usually accompanied by clearly visible labels stating if any measures have been taken to change the air bag readiness status. Letters are sent to customers, at regular intervals, to remind them of the system status. Letters are also sent to new vehicle owners, when the car is sold, to inform them of this.

Volvo's comments may be found at Docket 74–14, Notice 100, item 22.

On October 28, 1996, Ms. DeeAnn DePaul of Tacoma, Washington, filed a petition for rulemaking to provide an exemption under 49 U.S.C. 30122 allowing motor vehicle dealers and repair businesses to respond to requests by vehicle owners to have their driver-side air bag deactivated. This notice grants that petition.

VI. Granting of Exemptions From State Safety Belt Use Laws for Medical and Psychological Reasons

State safety belt use laws present a fairly analogous problem of accommodating people with special problems that may make occupant restraint use inappropriate. Virtually all States have provisions in their safety belt use laws for granting medical exemptions to persons who obtain a statement from their physician certifying their patient's medical condition and stating why safety belt use by their patient is inappropriate. Some States also provide for exemptions based on psychological reasons.

VII. NHTSA's Use of Prosecutorial Discretion With Respect to Air Bag Deactivation

In 76 instances to date, the agency has exercised its prosecutorial discretion with respect to requests to deactivate an air bag. Eighteen of the cases involved children. NHTSA told vehicle owners whose vehicle lacked a back seat in which to carry an infant or who needed to monitor closely a child with a special medical condition [3] that the agency would not regard the temporary deactivation of the passenger-side air bag by a dealer or repair business as grounds for an enforcement proceeding.

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[1] Section 30102 defines "dealer" as "a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale."

[2] Section 30122(a) defines "motor vehicle repair business" as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." NHTSA has interpreted this term to include businesses that service vehicles with which there is nothing wrong by adding features or components to or otherwise customizing those vehicles.

[3] The majority of medical conditions were related to apnea, although exemptions have also been granted for children in wheelchairs, and children with a tendency to spit up and choke.

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The agency urged that the air bag be reactivated when the circumstances necessitating its deactivation ceased to exist. Additional requests, based on medical conditions or the absence of a rear seat, are pending.

Similarly, in the other instances, the agency told owners that if their physicians concluded that the risks associated with their medical condition and the deployment of their driver-side air bag exceeded the risks to their safety from the air bag's not deploying, NHTSA would not regard deactivation of the air bag as grounds for an enforcement proceeding.[4] There are a large number of pending requests from women of small stature and a smaller number from adults with various medical conditions.

The volume of these requests for deactivation, and the variety of concerns underlying them, necessitate a rulemaking response, as opposed to individual, case-by-case resolution.

VIII. Proposal To Permit Deactivation

NHTSA has tentatively decided to exempt dealers and motor vehicle repair businesses conditionally from the "make inoperative" prohibition so that they can deactivate either or both the driver- and passenger-side air bags at the request of a vehicle owner.

Passenger Air Bag Deactivation

While NHTSA expects that smart passenger-side air bags will, within several model years, offer a means for significantly reducing or eliminating the risk of adverse side effects to children from air bags, the agency believes that, in the interim, steps need to be taken to minimize the possibility that air bags will harm children. Fortunately, in the vast majority of cases, this can easily be accomplished by placing children in the back seat. This is the safest place for children, regardless of whether a vehicle has a passenger air bag.

However, some vehicles either do not have rear seats or have rear seats too small to accommodate rear-facing infant seats. In addition, NHTSA believes it is necessary to recognize that in a variety of circumstances and for a variety of reasons, parents sometimes need to place children in the front seat of vehicles that have back seats. In some cases, such as situations involving infants with a special medical condition, there may be a need for placing an infant in the front seat. The American Academy of Pediatrics indicated in its comments on the agency's August 6, 1996 NPRM (61 F.R. 40784) regarding the adverse effects of air bags that cases involving medical conditions are relatively few in number. The National Association of Pediatric Nurse Associates & Practitioners estimated that as many as 20,000 children under the age of 5, as well as 5,000 infants, require some type of medical technology assistance, but did not suggest how many of these children have conditions requiring them to be carried in the front seat. In still other cases, parents may need to transport a number of children greater than the number of rear seats in their vehicles. Parents may also permit children older than infants to ride in the front seat because the children strongly desire to do so.

NHTSA believes that, in the situations involving infants in the front seat, deactivation would provide parents a means of ensuring that their children would not be harmed by the air bag. Rear facing infant seats can never be placed in front of an activated passenger air bag without creating a risk of serious injury or death.

Deactivation is more problematical with respect to older children. Most of the children who were older than infants and were killed by air bags were not using any type of occupant restraint.[5] Most of the rest were using only a lap belt. Moreover, the agency believes that some properly positioned and restrained children will benefit from an air bag in some types of crashes. Nevertheless, the agency recognizes that not all older children are properly restrained and that particularly children not using any restraint at all or using only a lap belt are at some risk of being killed by an air bag. Further, there have been two instances in which a child using a lap and shoulder belt was killed, and three reports of serious injuries to children using lap and shoulder belts. NHTSA also realizes that parents may find it is difficult to keep their children properly positioned and restrained, e.g., some children may tend to remove their shoulder belt and/or move forward away from the vehicle seat back and sit on or near the front edge of the vehicle seat. An activated air bag would create an added safety risk in these situations.

In issuing this proposal, NHTSA does not wish to encourage parents to place children in the front seat. Regardless of whether a vehicle is equipped with a passenger air bag, the rear seat is the safest place for a child to sit. However, the agency believes it is necessary in establishing safety requirements to take into account how people behave in the real world.

NHTSA anticipates that depowering air bags will be the first step in reducing the risk of air bag injuries in future vehicles. A depowered air bag is intended to ensure the safety of restrained children in the front seat, but even a depowered air bag could present a risk to an infant in a rear-facing infant seat or to an unrestrained child who is thrown onto the dash as the result of pre-crash braking. Deactivation would thus continue to be permitted with depowered air bags.

However, the purpose of smart air bag technology is to eliminate the risks of deployment from passenger-side air bags by either preventing them from deploying at all or deploying them safely in situations in which children would otherwise be at risk. Accordingly, the agency proposes that deactivation of a passenger-side air bag would not be permitted if the air bag were equipped with a cutoff switch or met the criteria established by the agency for smart air bags.

While some adult passengers may be at risk from air bag deployment, NHTSA emphasizes that it is aware of only one adult passenger, a woman in her 90's, who has been killed by an air bag. Additionally, since most vehicles are now equipped with a bucket seat or split-bench seat for the front passenger, a passenger in that seat would not have to position the seat all the way forward, as some short-statured drivers must in order to drive, and would thus usually be able to keep the seat far away from the dashboard. This should eliminate potential risks in such vehicles and the need for deactivating the passenger-side air bag for reasons relating solely to stature. The distance of an adult passenger from the dashboard would likely be sufficient even in the case of a passenger sitting on a bench seat in a vehicle being driven by a person of short stature. To reenforce the need for a safe distance, the new warning labels stress the importance of sitting back from the air bag and wearing safety belts.

[4] Some waivers were granted, without the submission of a physician's statement, based upon either the unique characteristics of the medical condition involved or the existence of physician's statements attached to the deactivation requests of other individuals with the same medical condition.

[5] For situations in which there is no option other than to place children in the front seat (*not* including infants in rear facing infant seats who can *never* safely be put in the front seat in front of an air bag), NHTSA recommends the following: (1) The child should be properly restrained. This means, depending on the size of the child, a forward-facing child seat, a booster seat plus a lap/shoulder belt, or a lap/shoulder belt alone (for larger children); (2) The seat should be pushed all the way back, to maximize the distance between the child and the air bag; (3) The child should be sitting with his/her back against the seat back, and with any extra slack removed from the safety belt.

Driver Air Bag Deactivation

For the reasons stated in the "Scope of problem" section above, NHTSA sees considerably less need for deactivation of driver-side air bags and anticipates that most drivers would keep their air bags fully operable. The total number of deaths attributed to driver-side air bags is less than two percent of the total number of lives saved, i.e., 19 deaths versus 1500 lives saved. The decline in adult air bag deaths in the last several years is believed to reflect the technological improvements that have been made in driver air bags.

Nevertheless, some current driver-side air bags pose risks to some drivers, particularly if they are so short-statured that they must sit very near the steering wheel. For this reason, the agency is proposing to permit deactivation of the driver side air bag in any existing vehicle and in any future model year vehicle that is not equipped with a smart driver-side air bag. The agency will analyze future data concerning trends in driver air bag deaths and the overall effects of deactivation on driver safety and determine at a later date whether it is appropriate to limit the deactivation permission to vehicles manufactured before a specific date. As noted above, data for the last several years indicate a decline in driver air bag deaths. If, as expected, depowered air bags are found to reduce air-bag related deaths and injuries even further, NHTSA might consider limiting deactivation to vehicles that have not been depowered.

The agency acknowledges that another category of driver might also benefit from deactivation. NHTSA tentatively concludes that permitting deactivation would be the best policy for those drivers whose medical or physical condition would make them particularly vulnerable to air bag-induced injury. The proposal would enable these persons to have their air bags deactivated promptly, without having to petition the agency. By creating a general permission for deactivation, the proposal would also assure dealers and repair businesses that they would not be violating the law if they deactivated an air bag.

Specifics of proposal. The specifics of the proposal are as follows:

The proposed exemption from the "make inoperative" prohibition is a conditional one. A dealer or repair business would be permitted to deactivate an air bag only if the dealer or repair business:

• Provides the vehicle owner with the most recent edition of the NHTSA information sheet (copy attached as Appendix B of this notice) concerning the circumstances in which deactivation may be appropriate, based upon the comparison of risks in those circumstances of turning the air bag off versus leaving it on. NHTSA anticipates that it will conduct rulemaking to update the sheet from time to time, as additional data concerning air bag performance are received and analyzed.

• Obtains from the vehicle owner a signed, written authorization on the form attached as Appendix C of this notice, identifying the vehicle by make and model, by model year, by VIN number, and the seating position(s) of the deactivated air bag(s). Such authorization shall include an affirmation by the vehicle owner that he or she was given and has read a copy of the NHTSA information sheet prior to signing the authorization.

• For each deactivated air bag, places labels on both sides of the sun visor above the air bag.

The label visible when the sun visor is in a stowed (up) position shall state:

WARNING

Air Bag has been deactivated
See other side

The label visible when the sun visor is in a down position shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

both visor labels shall have the word "WARNING" in black lettering on a yellow background.

• For each deactivated air bag, places a permanent label on the adjacent door jamb.

The label shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated.

The label shall have the word "WARNING" in black lettering on a yellow background and shall also contain the name and address of the dealer or repair business that deactivated the air bag(s).

• Marks in the vehicle owner's or service manual (if available) the following warning:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified mechanic.

• Sends a copy of the signed, written authorization form to the manufacturer of the vehicle.

Each motor vehicle manufacturer shall retain for a period of not less than five years a copy or other record of each authorization form received pursuant to this regulation.

NHTSA requests comments about the appropriateness of these requirements. Among the specific issues are the following:

—In the rulemaking on cutoff switches, the agency estimated that there would be more benefits than losses if the misuse rate were less than 7 percent. Since a seat with a deactivated air bag may sometimes be occupied by a person who would benefit from the air bag, is there a percentage of such occupancy that would result in the losses from deactivation outweighing the benefits?

—Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might be reasonably expected to occur? For example, should deactivation of passenger-side air bags be allowed only in cases in which the vehicle owner needs to carry young children in the front seat? Should deactivation of driver-side air bags be allowed only in cases in which the vehicle owner or other driver of the vehicle has an acute medical condition, is of short stature, or is elderly? Would the administrative details involved in establishing and implementing these limitations overly complicate the availability of deactivation?

—If it becomes permissible to deactivate air bags, with the result an air bag could be turned off permanently, should the agency permit lesser measures as well, such as a cutoff switch that the vehicle owner could have installed to turn off air bags temporarily? In a final rule issued in today's **Federal Register**, the agency has decided that cutoff switches should not be permitted in new vehicles other than in those that do not have a rear seat large enough to carry a rear-facing infant seat. Would permitting a retrofit cutoff switch in all vehicles conflict with the decision not to allow cutoff switches in new vehicles generally? (NHTSA is not aware that any retrofit cutoff switches have been produced.) Should there be any limitations on the methods of deactivating air bags? For example, should there be a requirement that the deactivation be performed in a manner that facilitates reactivation?

—The agency solicits comments on the information contained in Appendix A. Is the information consistent with information available to manufacturers, insurance companies,

and others with knowledge about air bag safety?

—The agency requests comments about the information sheet presented in Appendix B. The purpose of the sheet is to give vehicle owners a concise description of the benefits and risks associated with air bags, to guide them in deciding whether they should disconnect their air bags. Is the information presented in a useful way? Should more information be provided, such as information from Appendix A, to help place the risk in context? Should there be a more explicit focus on particular practices, such as the carpooling of young children? What distance should be specified for a driver to sit back from the air bag? Should any information be omitted?

—The agency solicits comments on the contents of the authorization form attached as Appendix C. Use of the form would be required for the dealer or repair business that deactivates the air bag. The form will be published and sent to new and used vehicle dealers through their trade associations. Trade associations, trade publications and the Internet will be used to make the form available to others, but it may be difficult to ensure that the forms are available when needed. What additional measures should be taken to ensure the availability of the forms? Should the form state, as proposed, that the vehicle owner is willing to allow labels to be installed? Should the form provide an express statement that the person signing it owns the vehicle and is not a lessee? Alternatively, should a lessee be allowed to sign for an owner? Should the form require signature by all co-owners? Would the form protect the dealer or repair business from liability if the absence of an air bag is subsequently alleged to be the cause of an occupant's injuries? Should a more explicit release of liability be added? If so, how should it be worded?

—In a vehicle in which only the passenger-side air bag is deactivated, should labels be placed on the driver's sun visor as well as the passenger's sun visor? Such additional labels might be helpful to a driver who is unfamiliar with the vehicle or to a subsequent purchaser of the vehicle.

—While NHTSA has not proposed the size of the message area or the lettering height, it requests comments on whether it should specify the message area or lettering height and, if so, what sizes would be appropriate. Should the message area on the visor label equal the area of the new air bag warning label required by the final rule published on November 27, 1996? Should it be required to be affixed over the labels required by that final rule? Should a different area be specified for labels to be placed on vehicles manufactured with the smaller air bag warning labels formerly required?

—Should the vehicle manufacturers be required to follow the practice, described by Volvo, of sending periodic reminders to vehicle owners that one or both of their air bags are deactivated and notifying new owners after title to the affected vehicles changes? Is the proposed 5-year period for record retention the appropriate period?

—Should dealers and repair businesses be required to retain a copy or other record of the vehicle owner's signed authorization statement? If so, for what period of time?

Additional considerations. NHTSA recognizes that there are potential safety tradeoffs associated with air bag deactivation. The agency emphasizes that only in limited instances would air bag deactivation be, on balance, in the best interests of a driver or passenger. Given the number of air bag deaths to date, the chance of a teenager or adult being killed by an air bag is significantly less than the chance of being involved in a crash in which an air bag would reduce such a person's injuries, whether the individual is belted or unbelted. Moreover, while a fully restrained, forward-facing child can be killed by an air bag, the deaths of only two fully restrained, forward-facing children have been confirmed as having been caused by an air bag.

Regardless of the manner of deactivation, deactivation will cause the air bag readiness indicator (most vehicles use a single indicator for both air bags) to come on, indicating that one air bag or the other is not operational. If the passenger air bag is deactivated and the driver-side air bag subsequently malfunctioned, the indicator would not provide any separate indication of that malfunction. The agency invites comments on whether the readiness indicator should be required to remain functional.

NHTSA also notes that it may be difficult in some vehicles to deactivate one air bag without deactivating the other air bag as well. This could occur if one fuse or wire controls both bags. Under these circumstances, deactivation of one bag might unnecessarily cause the deactivation of the other bag even when the owner might prefer to keep one bag operational. Comments are requested as to the prevalence of designs that would result in the deactivation of both air bags.

However, as discussed above, the agency is dealing with an extraordinary situation. While air bags are providing significant overall benefits, they are also causing an unacceptable risk in limited circumstances. NHTSA believes it is appropriate to propose a solution that addresses that risk.

As noted above, NHTSA anticipates that the proposed exemption from the make inoperative prohibition would affect the vehicles produced in only the model years before smart air bags are available. Driver-side air bag deactivation would be permitted only for existing vehicles and vehicles that do not meet the criteria for smart air bags. The agency may consider further restricting the permission to deactivate driver-side air bags by excluding vehicles with depowered air bags. Deactivation of a passenger-side air bag would be permitted in any vehicle whose passenger-side air bag was neither equipped with a cutoff switch nor met the criteria for smart air bags. This would allow vehicle owners who either face potential risk from deployment themselves or who regularly transport other increased-risk individuals to deactivate one or both air bags.

NHTSA strongly recommends that air bag deactivation be undertaken only in instances in which the vehicle owner believes that the air bag poses an unreasonable and significant risk given that individual's particular circumstances. However, given the administrative complexity and time that would be associated with reviewing individual applications, the agency is proposing to allow any person to choose to deactivate, without having to demonstrate any particular need.

Since deactivation totally disables the air bag, thereby eliminating any safety benefit for vehicle occupants not at risk of serious injury due to air bag deployment, deactivation should be sought only if no other option is available. The agency urges all owners who choose to deactivate their air bag to reactivate the air bag once the perceived need for deactivation has abated.

IX. Effective Date

The agency tentatively concludes that there is good cause to make the proposed regulation effective immediately upon publication of a final rule. In view of the need expressed by vehicle owners for deactivation, it appears that there is a need for immediate relief. Further, the regulation

would be voluntary, since it would permit deactivations, not require them. The agency requests comment as to the appropriateness of an immediate effective date.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures, because of the degree of public interest in this subject.

This action would not be economically significant. It would not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agreed to deactivate an air bag. In such an instance, there would be costs associated with such an action *per se* as well as labeling. The agency estimates that deactivation would typically require less than one-half hour of shop time, at the prevailing local rates of between $30 and $50 per hour. Similar costs would be incurred upon reactivation of an air bag. There is no reliable way to estimate the total number of deactivations that may be performed as the result of the proposed regulation, but the agency expects that it would be more than a thousand. The agency requests comments on this estimate, as well as any estimates of the potential safety tradeoffs of deactivating the air bag for a seating position that may be occupied by a person who would have benefited from the air bag.

Based on the Final Regulatory Evaluation for the agency's final rule requiring new, enhanced warning labels relating to air bags, the labels proposed by this notice would cost between 15 and 25 cents per vehicle. In addition, motor vehicle manufacturers would have some minor recordkeeping expenses.

In view of the preceding analysis and the analysis in the regulatory evaluation on labels, the agency regards the costs associated with deactivation to be so minimal that a full regulatory evaluation for this notice is not warranted. The agency requests comments about the anticipated costs associated with this proposal. If the agency decides to adopt the proposal as a final rule, it would discuss the costs in a Final Regulatory Evaluation for this rulemaking.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. While some dealers and repair businesses would be considered small entities, the proposed requirements would not impose any mandatory significant economic impact.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

This notice contains information collections that are subject to review by the Office of management and Budget under the Paperwork Reduction Act of 1995 (P.L. 104–13). The title, description, and respondent description of the information collections are shown below with an estimate of the annual burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Authorization to deactivate an air bag.

OMB Number:

Need for Information: The authorization would be required before a motor vehicle dealer or repair business could deactivate an air bag.

Proposed Use of Information: The authorization would establish that a vehicle owner was fully informed of the consequences of disconnecting an air bag and would protect the motor vehicle or repair business from liability for any injuries occurring as the result of deactivation. The label on the vehicle would serve to inform subsequent owners that an air bag had been deactivated. The motor vehicle manufacturers would retain the authorization forms to help identify vehicles with deactivated air bags.

Frequency: As often as a motor vehicle owner requests to have an air bag deactivated.

Burden Estimate: Deactivation would affect motor vehicle owners, dealers, repair businesses, and manufacturers, but it is wholly voluntary. It is difficult to estimate the number of deactivations that will be performed or the resulting burden. As of December 1996, the agency has received approximately 1,000 explicit requests for deactivation. As an initial number, the agency is estimating that dealers will receive more than 1,000 completed authorization forms annually under this procedure.

Respondents: It is not known how many vehicle owners would be expected to request air bag deactivation, but the agency is estimating that more than 1,000 would request and execute the form annually. There are approximately 20 thousand new motor vehicle dealers, approximately 30 thousand used car dealers and several hundred thousand motor vehicle repair businesses. Any of these businesses would be required to obtain an authorization from a vehicle owner before deactivating an air bag. Assuming that some businesses would be called on to deactivate air bags by more than one vehicle owner, the number of businesses that would be called upon to deactivate would be somewhat smaller than the number of owners.

Form(s): A label and authorization form are described in this notice.

Average burden hours per respondent: NHTSA estimates that the average time required to read the information about air bag safety and to read and execute the authorization form would be

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approximately 30 minutes. The time required for the dealers to affix the labels, file the authorization forms, and send a copy to the manufacture would be minimal, as would the time required for the manufacturers to receive and file the forms.

Individuals and organizations may submit comments on the information collection requirements by [insert date 30 days after publication in the **Federal Register**] and should direct them to the docket for this proceeding and the Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, Attention: Desk Officer for DOT/OST. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

XI. Comments

NHTSA is providing an abbreviated comment period of 30 days, given the significant public attention given to the adverse effects of air bags. Moreover, while it is addressing improved labeling, extension of time for manual cutoff switches, and depowering of air bags in separate notices, they are related actions addressing the same problem. The anticipated SNPRM on smart bags is also related. Only the actions on labeling and the extension of time for manual cutoff switches have reached the final rule stage; the others are still at the proposal stage. Commenters are invited to address the relationships between these actions, e.g., the extent to which one action affects the need for, the potential benefits of or cost effectiveness of, another action.

Commenters are also invited to address alternatives not addressed by these actions. The agency requests that commenters favoring other alternatives specifically provide a comparison of costs, benefits and leadtime.

As indicated above, the agency anticipates publishing in the near future a separate SNPRM to propose performance requirements for smart air bags and to propose a phase-in schedule for requiring these devices. Since that rulemaking action may not be completed until after this action on deactivation, NHTSA requests comments on how to address the definition of smart air bag in the final rule for deactivation.

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purported confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend chapter V of Title 49 CFR of the Code of Federal Regulations as follows:

1. Part 595 would be added to read as follows:

PART 595—AIR BAG DEACTIVATION

595.1 Scope.
595.2 Purpose.
595.3 Applicability.
595.4 Definitions.
595.5 Requirements.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

§ 595.1 Scope.

This part establishes conditions under which air bags may be deactivated and associated recordkeeping requirements.

§ 595.2 Purpose.

The purpose of this part is to provide an exemption from the "make inoperable" provision of 49 U.S.C. 30122 and permit motor vehicle dealers and motor vehicle repair businesses to respond to consumer requests to deactivate driver and passenger air bags.

§ 595.3 Applicability.

This part applies to motor vehicle manufacturers, dealers and motor vehicle repair businesses.

§ 595.4 Definitions.

Statutory terms. The term motor vehicle repair business is defined in 49 U.S.C. 30122(a) as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." This term includes businesses that service vehicles without malfunctioning or broken parts or systems by adding features or components to or otherwise customizing those vehicles. The terms manufacturer and dealer, defined in 49 U.S.C. 30102(a), are used in accordance with their statutory meaning.

§ 595.5 Requirements.

(a) A dealer or motor vehicle repair business may deactivate a passenger-side air bag if that air bag:

(1) Does not have a manual cutoff switch, or

(2) Does not meet the criteria in S4.5.5 of § 571.208 of this chapter for a smart air bag.

(b) A dealer or motor vehicle repair business may deactivate a driver-side air bag if that air bag does not meet the criteria in S4.5.5 of § 571.208 of this chapter for a smart air bag.

(c) A dealer or motor vehicle repair business that deactivates an air bag pursuant to paragraph (a) or (b) of this section shall meet all of the conditions specified in paragraph (d) of this section.

(d) A dealer or motor vehicle repair business may deactivate a driver-side or passenger-side air bag subject to the condition that the dealer or repair business:

(1) Shall provide the vehicle owner with the most current NHTSA information sheet concerning the circumstances in which deactivation may be appropriate, based upon the comparison of risks in those circumstances of turning the air bag off versus leaving it on.

(2) Shall obtain from the vehicle owner a signed, written authorization

identifying the vehicle by make and model, by model year, by VIN number, and the seating position(s) of the deactivated air bag(s). Such authorization shall include an affirmation by the owner that he or she was given and has read a copy of the NHTSA information sheet prior to signing the authorization.

(3) Shall, for each deactivated air bag, place labels on both sides of the sun visor above that air bag.

(i) The label visible when the sun visor is in a stowed (up) position shall state:

WARNING
Air Bag has been deactivated
See other side

(ii) The label visible when the sun visor is in a down position shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

(iii) Both visor labels shall have the word "WARNING" in black lettering on a yellow background.

(4) Shall, for each deactivated air bag, place a permanent label on the adjacent door jamb. The label shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has (have) been deactivated.

The label shall have the word "WARNING" in black lettering on a yellow background and shall also contain the name and address of the dealer or repair business that deactivated the air bag(s).

(5) Shall mark in the vehicle owner's or service manual (if available) the following warning:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has (have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

(6) Shall send a copy of the signed, written authorization form to the manufacturer of the vehicle.

(e) Each motor vehicle manufacturer shall retain, for a period of not less than five years, a copy of each authorization form received pursuant to this section.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

Note: These appendices will not appear in the code of Federal Regulations.

Appendix A—The Safety Problem: Frontal Impacts, Air Bag Saves and Air Bag Fatalities

Frontal impacts. Frontal impacts are the number one fatality and injury causing mode of crash, resulting in 64 percent of all driver and right-front passenger fatalities and 65 percent of all driver and right-front passenger AIS 2–5 injuries. (AIS 2–5 stands for Abbreviated Injury Scale levels of moderate to critical injuries.) The estimated fatality and injury totals for 1994 are shown below: The injuries are those for National Accident Sampling System-Crashworthiness Data System (NASS–CDS) toaway accidents only.

1994 Fatalities and Moderate to Serious Injuries in Frontal Impacts

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Fatalities	13,437	3,814	17,251
Injuries	124,484	30,299	154,783
Total	137,921	34,113	172,034

B. Air Bag Saves and Fatalities

As the agency has confronted the problem of low speed fatalities and injuries from air bags, it has faced a serious dilemma. On the one hand, air bags have proven to be highly effective in reducing fatalities, and are resulting in substantial net benefits in terms of lives saved. The agency estimates that, to date, air bags have saved driver and passenger 1,664 lives (1,500 drivers and 164 passengers).[1]

At the same time, air bags are actually causing fatalities in some situations, especially to children. As of November 15, 1996, NHTSA's Special Crash Investigation program has identified 31 crashes in which the deployment of the passenger-side air bag resulted in fatal injuries to a child. One adult passenger and 19 drivers have also been fatally injured.

Air Bag Saves and Fatalities 1986—Present

[Passenger Cars and Light Trucks]

	Drivers	Right front passengers	Total
Air Bag Saves	1,500	164	1,664
Air Bag Fatalities	19	32	52

Passenger Fatalities. The fatalities involving children have occurred in 1993 and later calendar years. Nine of the fatalities involved infants in rear-facing child seats. Of the other children, 18 were unrestrained, two more were wearing only the lap belt with the shoulder belt behind them, and two were wearing a lap and shoulder belt at the time of the crash. Most children were either infants or between the ages of 4–7. See the tables below.

[1] This estimate of gross savings is cumulative, through November 1, 1996. The net savings would be 1,614.

INFANT PASSENGER-SIDE AIR BAG RELATED FATALITIES (IN REAR FACING INFANT SEATS)

[By MY of Vehicle and CY of Death]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of infant passenger-side air bag fatalities	No. of vehicles w/passenger-side air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,00
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,352,000
MY 94	.....	.....	.....	.....	.....	.....	1	1	2	5,547,000
MY 95	.....	.....	.....	.....	.....	.....	2	4	6	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	1	1	10,750,000
Total	.....	.....	.....	.....	.....	.....	3	6	9	27,277,000

CHILD (NON-INFANT) PASSENGER-SIDE AIR BAG RELATED FATALITIES

[By MY of Vehicle and CY of Death]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total No. of child (non-infant) passenger-side air bag fatalities	No. of vehicles w/passenger-side air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	78,000
MY 90	.....	.....	.....	.....	.....	.....	.....	.....	.....	149,000
MY 91	.....	.....	.....	.....	.....	.....	.....	.....	.....	44,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	421,000
MY 93	.....	.....	.....	.....	1	1	1	.....	3	1,352,000
MY 94	.....	.....	.....	.....	.....	3	1	1	5	5,547,000
MY 95	.....	.....	.....	.....	.....	1	3	7	11	8,936,000
MY 96	.....	.....	.....	.....	.....	.....	.....	3	3	10,750,000
Total	.....	.....	.....	.....	1	5	5	11	22	27,277,000

AGE OF CHILDREN FATALLY INJURED IN AIR BAG DEPLOYMENTS

<1	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
9	.....	.....	1	5	7	4	3	.....	2	.....	.....	.....	.....	31

TYPE OF RESTRAINT USED BY CHILDREN FATALLY INJURED BY AIR BAGS

Type of restraint used	No. of children
None	18
Lap belt only	2
Lap and shoulder belt	2
Unknown	
Rear-facing infant restraint	9
Forward-facing child restraint	
Booster seat	
Total	31

These cases involved pre-impact braking, and were relatively low speed crashes. The nonuse, or improper use of safety belts in conjunction with pre-impact braking resulted in the forward movement of the children such that they were close to the instrument panel and the air bag system at the time of the air bag deployment. Because of this proximity, the children appear to have sustained fatal head or neck injuries from the deploying passenger-side air bag. The agency has examined all air bag cases with child fatalities in its Fatal Accident Reporting System (FARS) and believes it has identified all cases involving fatalities.

In addition to the 31 children who have been fatally injured during passenger-side air bag deployments, one adult, a 98 year old woman, sustained a fatal injury under similar air bag deployment circumstances.

Driver Fatalities. As of November 15, 1996, NHTSA's Special Crash Investigation program had identified 19 minor to moderate severity crashes in which fatal injuries to the driver were associated with the deployment of the driver-side air bag. The data suggest that unrestrained small statured and/or older drivers are more at risk than other drivers from a driver air bag. (See tables below.) The agency notes that older drivers are more at risk than younger drivers under a wide range of crash circumstances, regardless of type of restraint used.

NHTSA notes that these driver fatalities are very rare in comparison to the number of vehicles equipped with driver air bags and to the number of drivers saved by air bags. Further, NHTSA notes that the last reported death of a female driver 5 feet 2 inches or less that was due to an air bag was

in November 1995, 12 months ago. Proper bélt use is important. Ten of the 19 drivers appear to have been unrestrained at the time of the crash. In addition, two appeared to be out-of-position (slumped over the wheel). (See tables below.)

DRIVER AIR BAGS: FATALITIES AND LIVES SAVED

[Fatalities Shown by MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Driver air bag fatalities	Drivers saved by air bag	No. of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	1	.....	1	.....	500,000
MY 90	.....	1	1	.....	1	2	1	.....	5	.....	2,500,000
MY 91	.....	.....	2	2	1	.....	1	.....	6	.....	2,867,000
MY 92	.....	.....	.....	.....	1	1	.....	.....	2	.....	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,595,000
MY 94	.....	.....	.....	.....	.....	2	1	.....	3	.....	9,890,000
MY 95	.....	.....	.....	.....	.....	.....	.....	1	1	.....	13,690,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	0	.....	14,321,000
Total	0	1	3	2	3	5	4	1	19	1,500	56,447,000

DRIVER AIR BAG FATALITIES—WOMEN (5'2" or Less)

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total # of driver air bag fatalities (women 5'2" or less)	# of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	1	.....	1	500,000
MY 90	.....	1	.....	.....	1	.....	1	.....	3	2,500,000
MY 91	.....	.....	1	1	.....	.....	1	.....	3	2,867,000
MY 92	.....	.....	.....	.....	1	1	.....	.....	2	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,595,000
MY 94	.....	.....	.....	.....	.....	.....	1	.....	1	9,890,000
MY 95	.....	.....	.....	.....	.....	.....	.....	.....	.....	13,690,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,321,000
Total	.....	1	1	1	2	1	4	.....	10	56,447,000

DRIVER AIR BAG FATALITIES—OTHER ADULTS

[By MY of Vehicle and CY of Fatality]

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total # of driver air bag fatalities (other adults)	# of vehicles produced w/ driver air bags
MY 89	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,00,000
MY 90	.....	.....	1	.....	.....	2	.....	.....	3	2,500,000
MY 91	.....	.....	1	1	1	.....	.....	.....	3	2,867,000
MY 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,084,000
MY 93	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,595,000
MY 94	.....	.....	.....	.....	.....	2	.....	.....	2	9,890,000
MY 95	.....	.....	.....	.....	.....	.....	.....	1	1	13,690,000
MY 96	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,321,000
Total	.....	.....	2	1	1	4	.....	1	9	56,447,000

AGE OF DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

<20	20–29	30–39	40–49	50–59	60–69	70–79	>80	Total
1	1	4	4	2	1	6	.....	19

TYPE OF RESTRAINT USED BY DRIVERS FATALLY INJURED IN AIR BAG DEPLOYMENTS

Type of restraint used	No. of drivers
None	10
Belts misused	1
Lap and shoulder belt (Driver blacked out and slumped forward at time of crash due to medical condition.)	2
Lap and shoulder belt	4
Unknown	2
Total	19

Comparison of passenger and driver air bag fatalities. Several comparisons between the data for child fatalities and driver fatalities need to be drawn. The annual number of child fatalities is very small, but growing steadily. The number of adult fatalities is not growing. Most child fatalities have occurred in very recent model year vehicles, model year 1994 and 1995 vehicles. In contrast, only one woman 5 feet 2 inches or less has died in post model year 1992 vehicles. Most fatalities of those women occurred in model year 1990–1992 vehicles. (See tables below.)

DRIVER AIR BAG FATALITIES BY CALENDAR YEAR OF DEATH

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total
Women (5'2" or less)	.....	1	1	1	2	1	4	.....	10
Other adults	.....	.....	2	1	1	4	.....	1	9
Total	.....	1	3	2	3	5	4	1	15

CHILD AIR BAG FATALITIES BY CALENDAR YEAR OF DEATH

	CY 89	CY 90	CY 91	CY 92	CY 93	CY 94	CY 95	CY 96	Total
Children (non-infant)	.....	.....	.....	.....	1	5	5	11	22
Infants	.....	.....	.....	.....	.....	.....	3	6	9
Total	.....	.....	.....	.....	1	5	8	17	31

DRIVERS AIR BAG FATALITIES BY MODEL YEAR OF VEHICLE

	MY 89	MY 90	MY 91	MY 92	MY 93	MY 94	MY 95	MY 96	Total
Women (5'2" or less)	1	3	3	2	.....	1	.....	.....	10
Other adults	.....	3	3	.....	.....	2	1	.....	9
Total	1	6	6	2	.....	3	1	.....	19

CHILDREN AIR BAG FATALITIES BY MODEL YEAR OF VEHICLE

	MY 89	MY 90	MY 91	MY 92	MY 93	MY 94	MY 95	MY 96	Total
Children (noninfant)	.....	.....	.....	.....	3	5	11	3	22
Infants	.....	.....	.....	.....	.....	2	6	1	9
Total	.....	.....	.....	.....	3	7	17	4	31

Potential Number of Persons Saved or Fatally Injured by Current Air Bags. The dilemma faced by NHTSA, and ultimately the public, is how to address the problem of low speed fatalities from air bags while preserving their substantial life-saving benefits. Based on analyses of real world data, NHTSA estimates that if all passenger cars and light trucks on the road today had current air bags, there would be more than 3,000 lives saved each year, as compared to a no-air-bag fleet (assuming current belt use rates). On the driver side, 616 belted drivers and 1,686 unbelted drivers would be saved, for a total of 2,302 lives saved. This is a *net* figure, i.e., it accounts for the possibility of some drivers being fatally injured by the air bag.

The potential number of lives saved by passenger-side air bags is much smaller than driver-side air bags primarily because the passenger seat is occupied much less frequently than the driver's seat, and because children ride there. If all passenger cars and light trucks had current passenger-side air bags, the agency estimates that 223 belted and 491 unbelted passengers aged 13 and above would be saved annually, for a total of 714 lives saved.

However, this 714 figure would be partially offset by fatalities caused by the air bag to children 12 and under. If current rates of child fatalities were experienced in an all-airbag fleet, 128 children would be fatally injured by air bags annually, again assuming no technological improvements, changes to air bags, or behavioral changes by vehicle operators (e.g., ensuring that any

children placed in the front seat properly use occupant restraints or, preferably, placing children in the rear seat). The figure of 128 includes 90 forward-facing children, most of whom would be unbelted, and 38 infants in rear-facing child restraints.

NHTSA emphasizes that this and the other rulemaking proceedings and related educational efforts are intended to ensure that risks of adverse effects of air bags are reduced so that the theoretically projected air bag fatalities never materialize, while the potential benefits of air bags are retained, to the maximum extent possible.

Appendix B—Information Concerning Air Bag Deactivation

This information sheet contains basic information about air bag benefits and risks. It is up to date as of November 30, 1996. If you need more information you may call the Auto Safety Hotline at (800) 424–9393 or visit the vehicle safety home page at www.nhtsa.dot.gov.

Air Bags—What They Are and What They Do

An air bag is a fabric bag that is stored within the hub of the steering wheel or in the dashboard on the passenger's side of a vehicle. It is attached to a metal housing that contains the inflator for the air bag. When crash sensors in the front of the vehicle detect a crash, they trigger the inflator, rapidly inflating the air bag.

The bag must inflate very quickly, in the blink of an eye, if it is to inflate in time to protect a vehicle occupant from striking the steering wheel, dashboard, or windshield. If it inflates fully before the occupant moves into it, it enables the occupant to stop gradually. Gradual stops are safer than sudden stops. Since the air bag also spreads the crash forces over a large area of the body, it is very effective in reducing deaths and injuries in frontal crashes.

The Requirement for Air Bags

By law, driver and passenger air bags must be installed in 95 percent of passenger cars in model year 1997 and 100 percent in model year 1998. They must be installed in 80 percent of light trucks in model year 1998 and in all light trucks in model year 1999. The manufacturers are already installing them in virtually 100 percent of passenger cars and most light trucks.

By November 1996, approximately 53 million passenger cars and light trucks were equipped with air bags. Of these vehicles, about 24 million had both driver and passenger air bags.

The Benefits

As of November 1996, the government estimates that more than 1500 drivers and 164 passengers have been saved by air bags. This number is rapidly increasing as more vehicles equipped with air bags enter the fleet. Taking all crashes together, the air bag is reducing fatal injuries by 11 percent for drivers and 13 percent for adult passengers.

The greatest protection comes from using safety belts with air bags. The safety belt keeps an occupant's hips in place during a crash and limits the forward movement of the occupant's head and upper body. The air bag prevents the occupant's head and upper body from striking the windshield or dashboard. The latest studies indicate that occupants protected by safety belts and air bags are 50 percent less likely than unrestrained occupants to suffer fatal or serious injury in a crash.

The Risks

The air bag's speed is also the source of its risk. The air bag is not a soft, pillowy cushion. If an occupant is too close to the air bag when it begins to inflate, the bag can impact the chest or head of the occupant with great force. If the occupant is extremely close to the air bag when it inflates, the injuries can be serious or fatal. As of November 1996, the government has verified reports of 19 drivers and 33 passengers, 32 of them children under 10 years old, who have been killed by air bags.

The Driver Air Bag

Of the 19 drivers fatally injured since 1990, only five were wearing their safety belts and two of these had lost consciousness before the crash and were slumped over the wheel when the air bag deployed. Ten were short women (5'2" or less), 9 of whom were driving vehicles made in 1992 or earlier model years. Most of the women drivers were 64 or older. During this same period, in contrast, air bags saved hundreds of short women from serious or fatal injuries.

The risk appears greater for unbelted drivers and for smaller and older drivers, particularly those who must be very close to the steering wheel in order to reach the pedals. The risk can be significantly reduced by wearing the safety belt, sitting as far back as access to the pedals permits, and including the seat back away from the steering wheel.

Considereing Whether To Disconnect the Driver Air Bag

For most drivers, reasonable measures (moving the seat rearward, inclining the seat back, adjusting a telescoping steering wheel toward the dashboard) can provide an adequate distance between the driver and the steering wheel. The government has not evaluated devices such as pedal blocks or extenders that enable short drivers to move back from the steering wheel. Before considering such a device as an alternative to deactivating an air bag, a driver should carefully evaluate the device's ease of use and safety. Information about them can be obtained form the National Mobility Dealers Association at 1–800–833–0427.

If a driver takes all reasonable measures but cannot get further than about [ ] inches from the air bag when wearing his or her safety belt, it is possible that pre-crash braking or the forces of a crash could move the driver too close to the inflating bag. In that case, the driver might want to consider disconnecting the air bag.

Other factors that bear on disconnection include the driver's age and physical condition. Older drivers are at greater risk of injury in a crash, with or without an air bag, and may want to consider this fact if they are also unable to sit more than [ ] inches from the air bag. Some persons with medical disabilities that require assistive appliances such as tracheotomy tubes also need to pay particular attention to their distance from the air bag. If you are uncertain whether a medical condition poses a risk, you should consult your doctor.

The Passenger Air Bag

Most of the air bag related deaths have occurred in the last three years, as passenger air bags began to enter the fleet in large numbers. Of the children killed, 9 were riding in rear-facing infant seats and 18 were riding unrestrained in the front seat. Two children were restrained by a lap belt only and two (one a small four-year-old) were restrained by a lap and shoulder belt.

In addition to the children, the death of one adult passenger, a women in her 90's, has been verified as air bag related.

Considering Whether To Disconnect the Passenger Air Bag

If the vehicle is to be used to carry adults only, there is no reason to consider disconnecting the air bag. The air bags are proving to be effective for adult passengers. With the exception of a woman in her 90's, no adult passenger is known to have been killed by an air bag. In all but the rarest circumstances, an adult passenger would be able to position the seat far enough away from the dash to obtain the benefit of the air bag without the risks. Even in the case of vehicles with bench seats operated by small drivers, the passenger seat would be far enough from the air bag to give a belted passenger adequate distance from the air bag.

If the vehicle is used to transport children under twelve, the government's recommendation is that they should ride in the rear seat wherever possible. Placing children in the rear seat will completely eliminate any risk from the air bag and make deactivation unnecessary. If for any reason you must carry a child (other than an infant) in the front seat, make sure that the child is securely buckled in a restraint appropriate for the child's size and age, move the seat back as far as possible, and make sure that the child sits back against the seat.[1] Although there are no verified reports of fatal injuries to belted children who were sitting back in the seat at the moment of impact, parents should be aware that there may still be a risk to a restrained child, since children tend to move around (adjusting the radio, reaching for a soda, etc.) even when they are restrained. Parents should decide whether to deactivate the air bag in the light of this information.

Under NO circumstances should an infant be carried on the front seat in a rear-facing infant seat unless the air bag is deactivated. In a rear-facing seat, an infant's head would

[1] Depending on the size and age of the child, the appropriate restraint could be a forward-facing child safety seat (for children from approximately one to four years, or 20 to 40 pounds), a booster seat plus a lap/shoulder belt (for children older than four or more than 40 pounds), or a lap/shoulder belt alone (for children who are large enough to wear the shoulder belt comfortably across the shoulder and to secure the lap belt across their pelvis, and who have legs long enough to dangle over the front of the seat when their backs are on the seat back).

be very close to the inflating air bag. The risk of serious or fatal injury is very high. If it is not feasible to carry an infant in the rear seat, either because the vehicle lacks a rear seat or because of a medical condition that requires constant attention, the air bag should be deactivated. Do not attempt to turn a rear-facing infant seat around or carry an infant under 20 pounds in any forward-facing seat.

How To Disconnect an Air Bag

Deactivating an air bag can be dangerous. It should not be attempted by anyone but a qualified mechanic. Although Federal regulations now permit dealers and motor vehicle repair businesses to disconnect air bags, NHTSA strongly discourages disabling except in special circumstances, since air bags use with safety belts almost always provide better protection than safety belts alone.

Appendix Authorization To Deactivate an Air Bag

► I, _____,
(Vehicle Owner's Name)
the owner of the following vehicle:

_____
(Make (e.g., Chevrolet)

_____
(Model (e.g., Lumina))

_____
(Model year)

_____
(Vehicle Identification Number)

_____
(State in which vehicle is registered)

_____
(Registration #)

► I authorize _____

_____
(Name of motor vehicle dealer or repair business)

(Address of dealer or repair business)

to modify the vehicle identified above in the following way:

In the appropriate box(es) below, initial which air bag or bags you want deactivated.

☐ Deactivate my driver air bag

☐ Deactivate my passenger air bag

► I make this authorization with the following acknowledgments and understandings:

Owner must initial *each* box below	Owner acknowledgments and understandings
	Information sheet. I acknowledge that the dealer or repair business identified above has given me a copy of an air bag information sheet prepared by the National Highway Traffic Safety Administration and that I have read the sheet.
	Loss of protection. I understand that a deactivated air bag will not deploy and thus will not provide protection in the event of motor vehicle collision.
	Attaching of labels. I understand that the dealer or repair business identified above is required by law to install labels on the sun visor and door jamb for each air bag that is deactivated pursuant to this authorization. I understand that the labels are intended to alert present and future owners and users that one or both air bags are deactivated.
	I will allow the dealer or repair business to attach the labels and ensure that they remain in place as long as the air bag(s) remain(s) deactivated.
	Waiver of claims. I acknowledge that, by authorizing the deactivation of an air bag in my vehicle, I waive any claim or cause of action that I may have against the dealer or repair business because the air bag has been deactivated.

_____ _____ (date)
(Signature of vehicle owner)

[FR Doc. 96–33305 Filed 12–30–96; 11:00 am]

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federal register

Monday
January 6, 1997

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 356
Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Circular, Public Debt Series No. 1–93); Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") is publishing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment makes changes necessary to accommodate the public offering of new Treasury inflation-indexed securities by the Department. In addition, the amendment makes certain technical clarifications and conforming changes. The proposed rule was published for public comment on September 27, 1996.

EFFECTIVE DATE: January 6, 1997.

ADDRESS: This rule has been made available for downloading from the Bureau of the Public Debt web site at the following address: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), Lee Grandy, Chuck Andreatta or Kurt Eidemiller (Government Securities Specialists), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1]

The Department has decided to offer a new type of security, referred to as a Treasury inflation-indexed security,[2] whose principal value will be adjusted for inflation as measured by the United States Government. The Department believes the issuance of these new inflation-indexed securities will reduce interest costs to the Treasury over the long term and will broaden the types of debt instruments available to investors in U.S. financial markets.

As explained in more detail below, after considering the comments provided, Treasury has determined that the structure of the inflation-indexed securities will remain unchanged from its description in the proposed rule. The securities will be based, with some modifications, on the model of the Real Return Bonds currently issued by the Government of Canada. The principal of the security will be adjusted for changes in the level of inflation. Semiannual interest payments will be made based on a constant rate of interest determined at auction. The index for measuring the inflation rate for these securities will be the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers ("CPI" or "CPI–U") published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor.

Further, the Department has announced its intention to begin auctioning inflation-indexed securities in January 1997 and quarterly thereafter. The first auction will be of 10-year inflation-indexed notes. Specific terms and conditions of each issue, including the auction date, issue date, and public offering amount, will be announced prior to each auction. Over time, the Department expects to offer additional maturities of inflation-indexed securities, such as 30-year bonds or shorter-term notes. The Department expects to offer the first additional maturity later in 1997.

The inflation-adjusted principal value of the securities can be obtained for any date by multiplying the stated value at issuance, or par amount, by the index ratio applicable to that date. The index ratio is the reference CPI applicable to a particular valuation date divided by the reference CPI applicable to the original issue date. The inflation adjustment to the principal will not be payable until maturity, when the securities will be redeemed at the greater of their inflation-adjusted principal amount or par amount. The securities will be issued with a stated rate of interest that remains constant until maturity. Interest payments for a particular security will be determined by multiplying the inflation-adjusted principal by one-half of the stated rate of interest on each semiannual interest payment date.

Inflation-indexed notes will be issued with maturities of at least one year but not more than ten years. Inflation-indexed bonds, when offered, will be issued with maturities of more than ten years. The inflation-indexed securities will be sold at discount, par, or premium and will pay interest semiannually. The auctions for inflation-indexed securities will be conducted as single-price auctions in which competitive bidders will bid in terms of a desired real yield (yield prior to inflation adjustment), expressed as a percentage with three decimals, e.g., 3.230%. The interest rate established as a result of the auction will generally be set at one-eighth of one percent increments that produce the price closest to, but not above, par when evaluated at the highest real yield at which bids were accepted. The offering announcement issued by the Department for each new inflation-indexed security will contain the specific details for that offering.

The inflation-indexed securities will be eligible for the STRIPS program (Separate Trading of Registered Interest and Principal of Securities) immediately upon their issuance by the Treasury.

The securities will also be eligible to serve as collateral for Treasury programs (e.g., Treasury Tax and Loan accounts). Anyone interested in the use of inflation-indexed securities for such collateral purposes should contact the Department's Office of the Fiscal Assistant Secretary for more information. The Department also intends to make components stripped from these securities eligible for collateral at a later date. The Department will notify the public of their eligibility when the valuation of the stripped components for collateral purposes has been determined.

II. Comments Received in Response to the Proposed Rule

The Department published for public comment a proposed amendment to the uniform offering circular on September 27, 1996,[3] which laid out the proposed structure, design, terms, and conditions of the new inflation-indexed security. The closing date for comments was October 28, 1996. A few minor typographical and technical errors in the proposed rule text and formulas were subsequently corrected and

[1] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). Amendments to the circular were published on June 3, 1994 (59 FR 28773), March 15, 1995 (60 FR 13906), July 16, 1996 (61 FR 37007), August 23, 1996 (61 FR 43626), and October 22, 1996 (61 FR 54906).

[2] This Part is being revised to accommodate offerings of both inflation-indexed notes and inflation-indexed bonds in order to give the Department the flexibility to issue both types of securities in the future. However, the Department initially plans to offer only one maturity, a 10-year note. Inflation-indexed securities were referred to as inflation-protection securities in the proposed rule.

[3] 61 FR 50924 (September 27, 1996).

changed in a correction notice published on October 4, 1996.[4]

In developing the proposed rule, the Department took into consideration the numerous comments, suggestions, and recommendations that were received in response to two Advance Notices of Proposed Rulemakings;[5] at more than 30 meetings attended by more than 800 investors, dealers and interested parties in nine cities world-wide; and at a public symposium sponsored by the Department. The Department believes that this extensive discussion with, and participation by, market participants in the design of the inflation-indexed security was extremely useful in developing a new investment product that will have wide acceptance and broad market appeal.

The Department received eight letters from seven commenters in response to the proposed rule.[6] The letters, listed chronologically in order of date received, were submitted by Apex Investment Associates, Inc.; Reed Smith Shaw & McClay; Wrightson Associates; L. Napoleon Cooper (two letters); Robert L. Elgin; HSBC Securities, Inc.; and PSA The Bond Market Trade Association.[7]

Two commenters proposed an entirely different security structure. One of these commenters submitted a proposal that would allow for a new series of federal debt, and would result in a substantially different structure. The other commenter proposed a structure for, and suggested features to be incorporated in, a non-marketable, floating rate, inflation-indexed savings bond. A third commenter expressed support for the process of involving market participants in the design and implementation of these securities, and stated, "as far as the securities themselves are concerned, there is little or nothing we would care to ask be changed." It was this commenter's view, however, that the stripped securities as designed would not provide for a very liquid market because of the lack of fungibility of the inflation-indexed stripped components. The commenter proposed and described an inflation-indexed "strip that would be entirely fungible with other inflation-protection strips." Under the commenter's proposal, the inflation-indexed securities would be stripped into pieces of equal "real" value. The commenter indicated that its approach to creating fungible STRIPS would require that Treasury relax its requirement that STRIPS be sold in $1,000 increments.

Two of the remaining commenters confined their comments to taxation issues. One of these commenters expressed its belief that inflation-indexed securities would be a great success, but that the inflation adjustment to the principal should be treated as a capital gain or as taxable income at either redemption or sale by the investor. The other commenter recommended that, before inflation-indexed securities are offered to the public, Treasury should ask Congress to provide statutory authority to exclude the inflation adjustment from taxation. The commenter said that, without such an exclusion, taxable investors would receive less than full inflation protection.

One commenter specifically addressed the subject of reopenings of the security as stated in the proposed rule. In its letter, the commenter stated its belief that it is extremely important to reopen inflation-indexed securities to consolidate issues, especially since stripped coupons from different inflation-indexed securities will not be interchangeable. The commenter indicated that rules in the tax code restrict reopenings of conventional bonds that might otherwise be desirable, and stated that this may also be true for inflation-indexed securities. The commenter offered two alternatives to resolve this "original-issue-discount" or "OID" problem. One alternative would be to relax the OID restrictions for inflation-indexed securities. A second alternative would be to make an adjustment to the current single-price auction procedures so that the coupon rate would be rounded up instead of down. As a result, the initial price would always be at or above par, causing the new security to be issued further above the OID limit and thus making it easier to reopen.

Another letter, submitted by an industry trade association, had the following comments. While expressing support for particular design details of the security (e.g., modelling the securities on Canada's Real Return Bonds, selecting the CPI–U as the inflation index, adopting a current auction technique and making the securities eligible for stripping), the commenter stressed its concern and belief "that there are a number of market practice, regulatory, operational and technical issues which must be resolved in order to foster a smooth and orderly auction and efficient secondary market for the new securities in January." To this end, "firms will have to make significant changes to their internal trading, trade processing, settlement, risk management, accounting, regulatory and tax reporting systems, among others, leaving market participants little time to build, test, and implement such internal systems changes before trading in the new securities commences in January." The commenter indicated that it previously advised Treasury that its members would need approximately six months from publication of the final rules to prepare for trading, clearance and settlement of the new securities.

The letter highlighted the commenter's specific concerns, which included: (1) The timing of the planned first issue; (2) a preference to have more time to program systems based on the final rules and more time to study the Boskin Commission's Report (methodology for calculating the CPI which was released on December 4); (3) the lack of fungibility of stripped interest components and its potential affect on liquidity, and the need to devise a viable method to create fungible strips; and (4) the need for a market convention for the appropriate factor or formula, preferably to be provided by Treasury, for valuing stripped interest components.

The letter recommended that Treasury should: (1) Provide a monthly publication of reference CPI numbers for at least the preceding three months as well as a monthly publication of daily index ratios; (2) maintain a permanent and public record of all reference CPI numbers ever used to provide for a single reference source; (3) clarify in the final rules that, in the event of any discrepancies between CPI numbers published by the Bureau of Labor Statistics of the U.S. Department of Labor and the Treasury, those published by Treasury will take precedence; (4) clarify in the final rules the payment of the minimum guarantee; (5) add to the final rules hypothetical examples and sample calculations; and (6) with other regulators, provide formal guidance as to how the securities are required to be valued, recorded and reported under different regulatory regimes.

[4] 61 FR 51851 (October 4, 1996).

[5] 61 FR 25164 (May 20, 1996) and 61 FR 38127 (July 23, 1996).

[6] The comment letters are available to the public for inspection and downloading on the Internet, at the address provided earlier in this rule, and for inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

[7] See letters from Alexander A. Lothan, President, Apex Investment Associates, Inc. (September 26, 1996); William Morris, Reed Smith Shaw & McClay (September 27, 1996); Louis Crandall, Wrightson Associates (October 21, 1996); L. Napoleon Cooper (October 23 and November 12, 1996); Robert L. Elgin (October 25, 1996); Robert D. Sbarra, Chief Operating Officer-Fixed Income, HSBC Securities, Inc. (October 25, 1996); Edwin F. Payne, Chairman, PSA Government and Federal Agency Division, PSA The Bond Market Trade Association (November 6, 1996).

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III. Changes from the Proposed Rule

A. General

After taking into consideration the comments received, the Department is adopting as a final rule this amendment to the uniform offering circular setting out the terms, conditions and features of Treasury inflation-indexed securities. The final rule adopts the proposed rule without significant changes. A summary of the main features of the final rule that remain unchanged from the proposed rule are: (1) The inflation-indexed securities will be structured similarly to the Real Return Bonds issued by the Government of Canada; (2) the interest rate, which is set at auction, will remain fixed throughout the life of the security while the principal amount of the security will be adjusted for inflation, and interest payments will be based on the inflation-adjusted principal at the time the interest is paid; (3) the non-seasonally adjusted CPI–U will be the inflation index; (4) the auction process will use a single-price auction method that is the same as that currently used for two-year and five-year Treasury notes; and (5) inflation-indexed securities will be eligible immediately for stripping into their principal and interest components.

The proposed changes in §§ 356.2; 356.3; 356.5; 356.10; 356.12; 356.13; 356.20; 356.32; Appendix B, Section I, Paragraphs A and C; Appendix B, Section II; Appendices C and D; and Exhibit A, Section IV are being adopted as originally proposed. Readers should refer to the preamble of the proposed rule[8] for a description of the above provisions being adopted in this final rule.

B. Section 356.17 Responsibility for Payment

The proposed rule, in paragraphs 356.17 (a) and (b), contained minor conforming clarifications to reflect that bidders submitting payment with their tender may have to include, in addition to announced accrued interest, an inflation-adjustment amount with their payment. The wording in paragraphs (a) and (b) has been modified from the proposed rule to reflect a recent amendment to the offering circular, which added payment by authorized electronic means as a payment option.[9]

C. Section 356.25 Payment for Awarded Securities

In the proposed rule, a conforming change was made to paragraph 356.25(a)(2) to state that additional amounts due at settlement may include inflation adjustments. The proposed rule also added a new paragraph (c) to provide that the payment amount for awarded securities will be the settlement amount, as that term is defined in § 356.2. The substance of these two provisions remains unchanged in the final rule. However, in the final rule, new paragraph (c) has been redesignated as paragraph (d) to reflect a recent amendment to the uniform offering circular authorizing payment by electronic means,[10] which was effective after publication of the proposed rule.

D. Section 356.30 Payment of Principal and Interest on Notes and Bonds

Proposed paragraph 356.30(b) has been modified in accordance with one commenter's suggestion that the Department make clear in this section its obligation to pay at maturity the greater of the inflation-adjusted principal amount or par amount.

E. Section 356.31 STRIPS

No substantive changes have been made in this section from the proposed rule, which permits inflation-indexed securities to be stripped into separate principal and interest components. Unlike the conventional STRIPS program in which interest components having the same payment/maturity date are fungible (i.e., have the same CUSIP number), interest components stripped from different inflation-indexed securities will not be fungible even if they have the same payment/maturity date.

Some commenters have maintained that the creation of fungible stripped interest components is essential to provide sufficient liquidity in the market for these components. One commenter provided an alternative method that would achieve fungibility for inflation-indexed interest components. This method was supported by a second commenter. The Department understands these concerns and strongly supports the development of an active, liquid market for inflation-indexed securities, including their stripped components. Making the securities attractive to a broad investor base and ensuring the development of a liquid market have been two of Treasury's primary objectives throughout the securities' design and development. The Department is evaluating alternative methodologies, including the recommendation mentioned above, for creating fungible stripped interest components from inflation-indexed securities. However, we are not yet in a position to adopt a methodology that would permit fungibility. We have decided to proceed with the STRIPS program as described in the proposed rule and will continue to work on making interest components fungible in a manner that is operationally feasible. We believe that this approach is preferable to not having the securities strippable at the time they are first offered.

F. Section 356.32 Taxation

No change has been made to this section from the proposed rule. However, readers should note that they are directed in paragraph (b) to the relevant Internal Revenue Service (IRS) regulations for further information about the tax treatment, and reporting, of inflation-indexed securities. The IRS rules are expected to be publicly available and published in the **Federal Register** at the same time as this final rule is published, or shortly thereafter. The IRS regulations will be issued under §§ 1275(d) and 1286 of the Internal Revenue Code.

In the meantime, prospective investors are advised to refer to IRS Notice 96–51 published in the Internal Revenue Bulletin 1996–42 (October 15, 1996) for information regarding taxation of inflation-indexed securities and the stripped components of such securities. Additionally, in September, Treasury issued a statement providing an explanation of the federal income tax treatment for these securities and their stripped components. Readers interested in receiving a copy of this statement should call the Department's Office of Public Affairs automated facsimile system at 202–622–2040 and request Document No. 1290.

The Department also wishes to respond to the concern expressed by one of the commenters regarding rules in the tax code that could limit Treasury's ability to reopen issues of inflation-indexed securities. We note that the IRS regulations will permit reopenings of inflation-indexed securities without regard to the OID rules, provided that the reopenings occur not more than one year after the original securities were first issued to the public.

G. Appendix B, Section I, Paragraph B

In the proposed rule, Treasury stated that it did not intend to publish the index ratio for use by market participants. However, in the preamble, the Department specifically asked for comments on whether a monthly publication of the daily index ratios or

[8] See *supra* note 3.

[9] 61 FR 54908 (October 22, 1996).

[10] *Id.*

reference CPIs would be useful to market participants. One of the commenters strongly urged that Treasury publish both the reference CPI numbers for at least the three preceding months and the daily index ratios on a month-to-month basis. Treasury will support this request. Although Appendix B has been revised by deleting the language from the proposed rule and is now silent with respect to publication of the daily index ratios, Treasury intends to provide monthly the daily reference CPI numbers and the daily index ratios on a pilot basis for one year. This information will be available through such means as a monthly press release, the Internet, and automated facsimile systems.

After a year, the Department will determine whether there is still a need for this information to be provided by Treasury. It is our understanding that most market participants will incorporate the formulas for calculating the reference CPIs and index ratios into their trading or other automated systems. Additionally, it is reasonable to expect that the major electronic financial service providers (e.g., Bloomberg, Telerate, Reuters) will provide this information, or substantially similar information, to their subscribers. Further, Treasury will maintain an archival record of the reference CPIs and the daily index ratios throughout the life of each inflation-indexed security. This information will be readily available to market participants.

In addition to the publication of reference CPIs and index ratios, the Treasury will provide monthly the non-seasonally adjusted CPI for each of the prior three months.

Changes have been made to the paragraph that addresses index contingencies. Language has been revised to clarify Treasury's course of action if the CPI is: Discontinued, or in the judgment of the Secretary, either fundamentally altered in a manner materially adverse to the interests of an investor in the security or altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security.

A change to the CPI would be considered fundamental if it affected the character of the CPI. Technical changes made by the Bureau of Labor Statistics (BLS) to the CPI to improve its accuracy as a measure of the cost of living would not be considered fundamental changes. Technical changes include, but are not limited to, changes in: (1) The specific items (e.g., apples or major appliances) to be priced for the index; (2) the way individual price quotations are aggregated to construct component price indices for these items (aggregation of item sub-strata); (3) the method for combining these component price indices to obtain the comprehensive, all-items CPI (aggregation of item strata); and (4) the procedures for incorporating new goods into the index and making adjustments for quality changes in existing goods.

Technical changes to the CPI previously made or announced by BLS include introducing probability sampling to select the precise items for which prices are collected and the stores in which collection takes place, and changing the way in which price movements of major components, such as shelter costs for homeowners in the early 1980s and medical care costs beginning in 1997, are measured.

The Advisory Commission to Study the Consumer Price Index (the Boskin Commission) made a number of recommendations to improve the calculation of changes in the cost of living. Some of these recommendations were directed to BLS and were designed to improve the calculation of the monthly CPI. These recommendations, if and to the extent implemented by BLS, would constitute technical changes rather than fundamental changes.

The Boskin Commission also recommended construction of an annual measure of the cost of living as a supplement to the monthly CPI. Development and use of such a supplement, by itself, would not change the monthly CPI itself. While the Boskin Commission did not suggest that such a measure replace the CPI, a decision by BLS to *replace*, rather than *supplement*, the current monthly CPI with an annual measure of consumer prices, would constitute a fundamental change.

In addition, if the Secretary determines that the CPI is altered by legislation or Executive Order in a manner that is materially adverse to the interests of an investor in the security, the Secretary would propose an alternative index.

A minor, technical change has also been made to clarify Treasury's intention in the situation where the CPI for a particular month is not reported by the last day of the following month. In such a situation, the last CPI that has been reported (including any revision of a previously reported CPI number) will be used to calculate CPI numbers for months for which the CPI has not been reported by such day.

H. Appendix B, Section III

Minor, technical changes have been made to certain formulas and examples by adding a definition of one variable, and by elaborating on the definitions of two other variables.

I. Other Issues

One commenter raised a number of issues pertaining to the regulatory treatment of inflation-indexed securities, which are outside the scope of the uniform offering circular regulations. Specifically, the commenter questioned how these securities are to be valued, recorded and reported under various regulatory regimes for purposes such as large position reporting, determining regulatory capital and margin amounts, and broker-dealer reporting. The Treasury has given informal, general guidance on some of these issues as they pertain to the Government Securities Act (GSA) regulations, 17 CFR Chapter IV, (e.g., large position reporting, capital and haircut treatment, recordkeeping and financial reporting), and will respond to additional questions as they arise. The Treasury is also considering issuing an interpretation of the GSA regulations to provide formal clarification and guidance on regulatory issues within the scope of its authority. Additionally, Treasury has been coordinating and consulting with other regulators, such as staff of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York, to address the various regulatory issues raised by the commenter and to foster consistent regulatory treatment where possible and appropriate.

The commenter also raised concerns that a number of questions remain unanswered regarding market practice, trading, accounting and operational issues related to the new securities. While these issues are also outside the scope of both the uniform offering circular rules and Treasury's authority under the GSA, Treasury appreciates the need for consistent and widely accepted trading practices and industry conventions for quoting, pricing, and valuing inflation-indexed securities. Treasury strongly supports and encourages industry efforts, including the formation of the PSA Inflation Bond Trading Practices Task Force, to develop trading and market practice conventions. We are confident the industry will be successful in this effort and we will continue to provide guidance as needed.

IV. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Although this rule was issued in proposed form to secure the benefit of public comment, the notice and public comment procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

Dated: December 30, 1996.

Donald V. Hammond,

Deputy Fiscal Assistant Secretary.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by revising the definitions of "Accrued interest," "Book-entry security," "Customer," "Interest rate," "Multiple-price auction," "Par amount," "Settlement amount," "STRIPS," and "Yield;" and adding in alphabetical order the definitions of "Business day," "Consumer Price Index," "Daily interest decimal," "Index," "Index ratio," "Inflation-adjusted principal," "Real yield," and "Reference CPI" to read as follows:

§ 356.2 Definitions.

* * * * *

Accrued interest means an amount payable to the Department for such part of the next semiannual interest payment that represents interest income attributed to the period prior to the date of issue. (See Appendix B, Section I, Paragraph C.)

* * * * *

Book-entry security means a security the issuance and maintenance of which are represented by an accounting entry or electronic record and not by a certificate. Treasury book-entry securities may generally be held in either TRADES or in TREASURY DIRECT. (See § 356.3.)

Business day means any day other than a Saturday, Sunday, or other day on which the Federal Reserve Banks are not open for business.

* * * * *

Consumer Price Index (CPI) means the monthly non-seasonally adjusted *U.S. City Average All Items Consumer Price Index for All Urban Consumers,* published by the Bureau of Labor Statistics of the Department of Labor. (See Appendix D.)

* * * * *

Customer means a bidder on whose behalf a depository institution or dealer has been directed to submit or forward a competitive or noncompetitive bid for a specified amount of securities in a specific auction. Only depository institutions and dealers may submit or forward bids for customers, whether directly to a Federal Reserve Bank or the Bureau of the Public Debt, or through an intermediary depository institution or dealer.

Daily interest decimal means, for a fixed-principal security, the interest factor attributable to one day of an interest payment period per $1,000 par amount.

* * * * *

Index means the Consumer Price Index, which is used as the basis for making adjustments to principal amounts of inflation-indexed securities. (See Appendix D.)

Index ratio means, for any particular date and any particular inflation-indexed security, the Reference CPI applicable to such date divided by the Reference CPI applicable to the original issue date (or dated date, when the dated date is different from the original issue date). (See Appendix B, Section I, Paragraph B.)

Inflation-adjusted principal means, for an inflation-indexed security, the value of the security derived by multiplying the par amount by the applicable index ratio as described in Appendix B, Section I, Paragraph B.

Interest rate means the annual percentage rate of interest paid on the par amount or the inflation-adjusted principal of a specific issue of notes or bonds. (See Appendix B for methods and examples of interest calculations on notes and bonds.)

* * * * *

Multiple-price auction means an auction in which each successful competitive bidder pays the price equivalent to the yield or rate that it bid.

* * * * *

Par amount means the stated value of a security at original issuance.

* * * * *

Real yield means, for an inflation-indexed security, the yield based on the payment stream in constant dollars, i.e., before adjustment by the index ratio.

Reference CPI (Ref CPI) means, for an inflation-indexed security, the index number applicable to a given date. (See Appendix B, Section I, Paragraph B.)

* * * * *

Settlement amount means the par amount of securities awarded less any discount amount and plus any premium amount and/or any accrued interest. For inflation-indexed securities, the settlement amount also includes any inflation adjustment when such securities are reopened or when the dated date is different from the issue date.

* * * * *

STRIPS (Separate Trading of Registered Interest and Principal of Securities) means the Department's program under which eligible securities are authorized to be separated into principal and interest components, and transferred separately. These components are maintained in book-entry accounts, and transferred, in TRADES.

* * * * *

Yield, also referred to as "yield to maturity," means the annualized rate of return to maturity on a fixed-principal security expressed as a percentage. For an inflation-indexed security, yield means the real yield. (See Appendix B.)

3. Section 356.3 is amended by revising the introductory paragraph and the heading of paragraph (a) and removing footnote 1; adding three sentences at the end of paragraph (a); and adding a second sentence at the end of paragraph (b), to read as follows:

§ 356.3 Book-entry securities and systems.

Securities issued subject to this Part shall be held and transferred in either of the two book-entry securities systems—TRADES or TREASURY DIRECT—described in this section. Securities are maintained and transferred, to the extent authorized in 31 CFR part 357, in these two book-entry systems at their par amount, e.g., for inflation-indexed

securities, adjustments for inflation will not be included in this amount. Securities may be transferred from one system to the other in accordance with Treasury regulations governing book-entry Treasury bills, notes, and bonds. See Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR Part 357).

(a) *Treasury/Reserve Automated Debt Entry System (TRADES).* * * * For accounts maintained in TRADES, Treasury discharges its payment obligations when payment is credited to the applicable account maintained at a Federal Reserve Bank or payment is made in accordance with the instructions of the person or entity maintaining such account. Further, neither Treasury nor the Federal Reserve Banks have any obligations to, nor will they recognize any claims of, any person or entity that does not have an account at a Federal Reserve Bank. In addition, neither Treasury nor the Federal Reserve Banks will recognize the claims of any person or entity with respect to any accounts not maintained at a Federal Reserve Bank.

(b) * * * In TREASURY DIRECT, Treasury discharges its payment obligations when payment is made to a depository institution for credit to the account specified by the owner of the security, or when payment is made in accordance with the instructions of the owner of the security.

* * * * *

4. Section 356.5 is amended by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 356.5 Description of securities.

Securities offered pursuant to this Part are offered exclusively in book-entry form and are direct obligations of the United States, issued under Chapter 31 of Title 31 of the United States Code. The securities are subject to the terms and conditions set forth in this Part, including the appendices, as well as the regulations governing book-entry Treasury bills, notes, and bonds (31 CFR Part 357), and the offering announcements, all to the extent applicable. When the Department issues additional securities with the same CUSIP number as outstanding securities, all securities with the same CUSIP number are considered the same security.

* * * * *

(b) *Treasury notes.*

(1) *Treasury fixed-principal*[1] *notes.* Treasury fixed-principal notes are issued with a stated rate of interest to be applied to the par amount, have interest payable semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They have maturities of at least one year, but not more than ten years.

(2) *Treasury inflation-indexed notes.* Treasury inflation-indexed notes are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date, have interest payable semiannually, and are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater. They are sold at discount, par, or premium, depending upon the auction results. They have maturities of at least one year, but not more than ten years. (See Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.)

(c) *Treasury bonds.*

(1) *Treasury fixed-principal bonds.* Treasury fixed-principal bonds are issued with a stated rate of interest to be applied to the par amount, have interest payable semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They typically have maturities of more than ten years.

(2) *Treasury inflation-indexed bonds.* Treasury inflation-indexed bonds are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date, have interest payable semiannually, and are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater. They are sold at discount, par, or premium, depending upon the auction results. They typically have maturities of more than ten years. (See Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.)

5. Section 356.10 is amended by adding a sentence at the end of the paragraph, before the parenthetical last sentence, to read as follows:

§ 356.10 Offering announcement.

* * * Accordingly, bidders should read the applicable offering announcement in conjunction with this Part. * * *

6. Section 356.12 is amended by revising the first sentence of paragraph (a); revising paragraphs (b)(2), (c)(1)(i) and (ii); and adding new paragraph (c)(1)(iii) to read as follows:

§ 356.12 Noncompetitive and competitive bidding.

(a) *General.* All bids, including bids for reopenings, must state the par amount of securities bid for and must equal or exceed the minimum bid amount stated in the offering announcement. * * *

(b) * * *

(2) *Additional restrictions.* A bidder may not bid noncompetitively for its own account if, in the security being auctioned, it holds or has held a position in when-issued trading or in futures or forward contracts at any time between the date of the offering announcement and the designated closing time for the receipt of competitive tenders. * * *

(c) * * *

(1) * * *

(i) *Treasury bills.* A competitive bid must show the discount rate bid, expressed with two decimals, e.g., 3.10. Fractions may not be used.

(ii) *Treasury fixed-principal securities.* A competitive bid must show the yield bid, expressed with three decimals, e.g., 4.170. Fractions may not be used.

(iii) *Treasury inflation-indexed securities.* A competitive bid must show the real yield bid, expressed with three decimals, e.g., 3.070. Fractions may not be used.

* * * * *

7. Section 356.13 is amended by revising paragraph (a) to read as follows:

§ 356.13 Net long position.

(a) *Reporting net long positions.* When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds the net long position reporting threshold amount. The threshold amount for any particular security will be as stated in the offering announcement for that security. (See § 356.10.) That amount will be $2 billion for bills, notes, and bonds unless otherwise stated in the offering announcement. For example, the net long position reporting threshold amount may be less than $2 billion for smaller security offerings, e.g., certain inflation-indexed securities or cash management bills. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds the threshold amount, e.g., $2 billion, a net long position of zero must be reported. * * *

* * * * *

[1] The term "fixed-principal" is used in this Part to distinguish such securities from "inflation-indexed" securities. Fixed-principal notes and fixed-principal bonds are referred to as "notes" and "bonds" in official Treasury publications, such as offering announcements and auction results press releases, as well as in auction systems.

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8. Section 356.17 is amended by revising the last sentence in the introductory paragraph and the introductory text of paragraphs (a) and (b) to read as follows:

§ 356.17 Responsibility for payment.

* * * The specific requirements, outlined in this section, depend on whether awarded securities will be delivered in TREASURY DIRECT or TRADES.

(a) *TREASURY DIRECT.* For securities to be held in TREASURY DIRECT, payment of the par amount and announced accrued interest and/or inflation adjustment, if any, must be submitted with the tender unless other provisions have been made, such as payment by an authorized electronic means providing for immediately available funds or by charge to the funds account of a depository institution.

* * * * *

(b) *TRADES.* For securities to be held in TRADES, payment of the par amount and announced accrued interest and/or inflation adjustment, if any, must be submitted with the tender unless other provisions have been made, such as payment by an authorized electronic means providing for immediately available funds or by charge to the funds account of a depository institution.

* * * * *

9. Section 356.20 is amended by revising the introductory text of paragraph (c) and adding a sentence to the end of paragraph (c)(2) to read as follows:

§ 356.20 Determination of auction awards.

* * * * *

(c) *Determining purchase prices for awarded securities.* Price calculations will be rounded to three decimal places on the basis of price per hundred, e.g., 99.954. (See Appendix B.)

* * * * *

(2) * * * For inflation-indexed securities, the price of such securities will be the price equivalent to the highest real yield at which bids were accepted.

10. Section 356.25 is amended by revising the last sentence in paragraph (a)(2), and adding paragraph (d) to read as follows:

§ 356.25 Payment for awarded securities.

* * * * *

(a) * * *

(2) * * * Such additional amount may be due if the auction calculations result in a premium or if accrued interest and/or inflation adjustment is due.

* * * * *

(d) *Amount of payment for awarded securities.* The payment amount for awarded securities will be the settlement amount as defined in § 356.2. (See formulas in Appendix B.)

11. Section 356.30 is amended by redesignating the text of the current section as (a), adding a heading of "General" and revising the last sentence in newly redesignated paragraph (a), and adding paragraph (b) to read as follows:

§ 356.30 Payment of principal and interest on notes and bonds.

(a) *General.* * * * In the event any principal or interest payment date is not a business day, the amount is payable (without additional interest) on the next business day.

(b) *Treasury inflation-indexed securities.* At maturity, the inflation-adjusted principal will be paid, unless the inflation-adjusted principal is less than the par amount of the security, in which case an additional amount will be paid at maturity so that the additional amount plus the inflation-adjusted principal equals the par amount. If a security has been stripped, any such additional amount will be paid at maturity to holders of principal components only. Regardless of whether or not an additional amount is paid, the final interest payment will be based on the inflation-adjusted principal at maturity.

12. Section 356.31 is amended by revising paragraph (a) and the first sentence of paragraph (b), redesignating paragraphs (c) and (d) as paragraphs (g) and (h) respectively, adding new paragraphs (c) through (f), adding a third and fourth sentence to newly redesignated paragraph (g) and revising newly redesignated paragraph (h) to read as follows:

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be "stripped," i.e., divided into separate principal and interest components. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Minimum par amounts required for STRIPS.* For a note or bond to be stripped into the components described above, the par amount of the note or bond must be in an amount that, based on its interest rate, would produce a semiannual interest payment, before adjustment for inflation, in a multiple of $1,000. * * *

(c) *Principal components stripped from fixed-principal securities.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, in TRADES at their par amount. The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(d) *Interest components stripped from fixed-principal securities.* Interest components stripped from fixed-principal securities are maintained in accounts, and transferred, in TRADES at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component.

(e) *Principal components stripped from inflation-indexed securities.* Principal components stripped from inflation-indexed securities are maintained in accounts, and transferred, in TRADES at their par amount. At maturity, the holder will receive the inflation-adjusted principal value or the par amount, whichever is greater. (See § 356.30.) Principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted security.

(f) *Interest components stripped from inflation-indexed securities.* Interest components stripped from inflation-indexed securities are maintained in accounts, and transferred, in TRADES at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. Each such component has a unique CUSIP number that is different from the CUSIP number of any interest components stripped from different securities, even if the components have the same maturity date. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal

component. At maturity, the payment to the holder will be derived by applying the semiannual interest rate to the inflation-adjusted principal of the underlying security.

(g) *Reconstituting a security.* * * * Interest components stripped from inflation-indexed securities are different from interest components stripped from fixed-principal securities and, accordingly, are not interchangeable for reconstitution purposes. Interest components stripped from one inflation-indexed security are not interchangeable for reconstitution purposes with interest components stripped from another inflation-indexed security.

(h) *Applicable regulations.* Unless otherwise provided in this Part, notes and bonds stripped into their STRIPS components are governed by Subparts A, B and D of Part 357 of this title.

13. Section 356.32 is revised to read as follows:

§ 356.32 Taxation.

(a) *General.* Securities issued under this Part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986, or successor. Under section 3124 of Title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

(b) *Treasury inflation-indexed securities.* Special federal income tax rules for inflation-indexed securities, and principal and interest components stripped from such securities, are set forth in Internal Revenue Service regulations.

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14. Appendix B to Part 356 is amended by revising the list of section titles, and adding two new paragraphs following the list to read as follows:

APPENDIX B TO PART 356--FORMULAS AND TABLES

I. Computation of Interest on Treasury Bonds and Notes.

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.

III. Formulas for Conversion of Inflation-Indexed Security Yields to Equivalent Prices.

IV. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

The numbers in this appendix are examples given for illustrative purposes only and are in no way a prediction of interest rates on any bills, notes, or bonds issued under this Part.

In some of the following examples, intermediate rounding is used to allow the reader to follow the calculations. In actual practice, the Department generally does not round prior to determining the final result.

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15. Appendix B, Section I is amended as follows: by redesignating paragraphs A through D and their corresponding Examples as paragraphs A.1. through A.4. respectively, and adding a new title for paragraph A, revising newly redesignated paragraph A.1., revising the first sentence in newly redesignated paragraphs A.2., A.3. and its Example, and A.4. and its Example; by adding a new paragraph B; and by redesignating paragraph E as paragraph C, revising the second paragraph, adding a third paragraph prior to the Examples in newly redesignated paragraph C., redesignating the headings for Examples C.(1) and (2) as C.(1)(i) and C.(1)(ii) respectively, and adding a new heading for Example C.(1).

I. COMPUTATION OF INTEREST ON TREASURY BONDS AND NOTES

A. Treasury Fixed-Principal Securities

1. Regular Half-Year Payment Period

Interest on marketable fixed-principal securities is payable on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a fixed-principal security with a par amount of $1,000 and an interest rate of 8% is made in this manner:

($1,000 x .08)/2 = $40. Specifically, a semiannual interest

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payment represents one-half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

2. Daily Interest Decimal

In cases where an interest payment period for a fixed-principal security is shorter or longer than six months or where accrued interest is payable by an investor, a daily interest decimal, based on the actual number of days in the half-year or half-years involved, must be computed. *** *****

3. Short First Payment Period

In cases where the first interest payment period for a fixed-principal security covers less than a full half-year period (a "short coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the first interest payment date, resulting in the amount of the interest payable per $1,000 par amount. ***

EXAMPLE. A 2-year fixed-principal note paying 8-3/8% interest was issued on July 2, 1990, with the first interest payment on December 31, 1990. ***

4. Long First Payment Period

In cases where the first interest payment period for a

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fixed-principal security covers more than a full half-year period (a "long coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the last day of the fractional period that ends one full half-year before the interest payment date. ***

EXAMPLE. A 5-year 2-month fixed-principal note paying 7-7/8% interest was issued on December 3, 1990, with the first interest payment due on August 15, 1991. ***

B. Treasury Inflation-Indexed Securities

1. Indexing Process

Interest on marketable Treasury inflation-indexed securities is payable on a semiannual basis. The inflation-indexed securities are issued with a stated rate of interest which remains constant for the term of the particular security. Interest payments are based on the security's inflation-adjusted principal at the time interest is paid. This adjustment is made by multiplying the par amount of the security by the applicable Index Ratio.

2. Index Ratio

The numerator of the Index Ratio, the Ref CPI_{Date}, is the index number applicable for a specific day, and the denominator of the Index Ratio is the Ref CPI applicable for the original issue date. However, when the dated date is

different from the original issue date, the denominator is the Ref CPI applicable for the dated date. The formula for calculating the Index Ratio is:

$$\text{Index Ratio}_{\text{Date}} = \frac{\text{Ref CPI}_{\text{Date}}}{\text{Ref CPI}_{\text{Issue Date}}}$$

Where Date = valuation date

3. Reference CPI

The Ref CPI for the first day of any calendar month is the CPI for the third preceding calendar month. For example, the Ref CPI applicable to April 1 in any year is the CPI for January, which is reported in February. The Ref CPI for any other day of a month is determined by a linear interpolation between the Ref CPI applicable to the first day of the month in which such day falls (in the example, January) and the Ref CPI applicable to the first day of the next month (in the example, February). For purposes of interpolation, calculations with regard to the Ref CPI and the Index Ratio for a specific date will be truncated to six decimal places and rounded to five decimal places such that the Ref CPI and the Index Ratio for that date will be expressed to five decimal places. The formula for the Ref CPI for a specific date is:

$$\text{Ref CPI}_{\text{Date}} = \text{Ref CPI}_{M} + \frac{t - 1}{D} [\text{Ref CPI}_{M+1} - \text{Ref CPI}_{M}]$$

Where Date = valuation date

D = the number of days in the month in which Date falls

t = the calendar day corresponding to Date

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

Ref CPI_M = Ref CPI for the first day of the calendar month in which Date falls, e.g., Ref $CPI_{April\ 1}$ is the $CPI_{January}$

Ref CPI_{M+1} = Ref CPI for the first day of the calendar month immediately following Date

For example, the Ref CPI for April 15, 1996 is calculated as follows:

$$\text{Ref } CPI_{April\ 15,\ 1996} = \text{Ref } CPI_{April\ 1,\ 1996} + \frac{14}{30}\left[\text{Ref } CPI_{May\ 1,\ 1996} - \text{Ref } CPI_{April\ 1,\ 1996}\right]$$

where D = 30, t = 15

Ref $CPI_{April\ 1,\ 1996}$ = 154.40, the non-seasonally adjusted CPI-U for January 1996.

Ref $CPI_{May\ 1,\ 1996}$ = 154.90, the non-seasonally adjusted CPI-U for February 1996.

Putting these values in the equation above:

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.40 + \frac{14}{30}\,[154.90 - 154.40]$$

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.633333333$$

This value truncated to six decimals is 154.633333; rounded to five decimals it is 154.63333.

To calculate the Index Ratio for April 16, 1996, for an inflation-indexed security issued on April 15, 1996, the Ref $\text{CPI}_{\text{April 16, 1996}}$ must first be calculated. Using the same values in the equation above except that t=16, the Ref $\text{CPI}_{\text{April 16, 1996}}$ is 154.65000.

The Index Ratio for April 16, 1996 is:

$\text{Index Ratio}_{\text{April 16, 1996}} = 154.65000/154.63333 = 1.000107803.$

This value truncated to six decimals is 1.000107; rounded to five decimals it is 1.00011.

4. Index Contingencies

If a previously reported CPI is revised, Treasury will continue to use the previously reported CPI in calculating the principal value and interest payments.

If the CPI is rebased to a different year, Treasury will continue to use the CPI based on the base reference period in effect when the security was first issued, as long as that CPI continues to be published.

If, while an inflation-indexed security is outstanding, the applicable CPI is: (1) discontinued, (2) in the

judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security, or (3) in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, Treasury, after consulting with the Bureau of Labor Statistics, or any successor agency, will substitute an appropriate alternative index. Treasury will then notify the public of the substitute index and how it will be applied. Determinations of the Secretary in this regard will be final.

If the CPI for a particular month is not reported by the last day of the following month, the Treasury will announce an index number based on the last twelve-month change in the CPI available. Any calculations of the Treasury's payment obligations on the inflation-indexed security that rely on that month's CPI will be based on the index number that the Treasury has announced. For example, if the CPI for month M is not reported timely, the formula for calculating the index number to be used is:

$$CPI_M = CPI_{M-1} \times \left[\frac{CPI_{M-1}}{CPI_{M-13}} \right]^{\frac{1}{12}}$$

Generalizing for the last reported CPI issued N months prior to month M:

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$$CPI_M = CPI_{M-N} \times \left[\frac{CPI_{M-N}}{CPI_{M-N-12}} \right]^{\frac{N}{12}}$$

If it is necessary to use these formulas to calculate an index number, it will be used for all subsequent calculations that rely on that month's index number and will not be replaced by the actual CPI when it is reported, except for use in the above formulas. When it becomes necessary to use the above formulas to derive an index number, the last CPI that has been reported will be used to calculate CPI numbers for months for which the CPI has not been reported timely.

5. Computation of Interest for a Regular Half-Year Payment Period

Interest on marketable Treasury inflation-indexed securities is payable on a semiannual basis. The regular interest payment period is a full half-year or six calendar months. Examples of half-year periods are January 15 to July 15, and April 15 to October 15. An interest payment will be a fixed percentage of the value of the inflation-adjusted principal, in current dollars, for the date on which it is paid. Interest payments will be calculated by multiplying one-half of the specified annual interest rate for the inflation-indexed securities by the inflation-adjusted principal for the interest payment date.

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Specifically, a semiannual interest payment is computed on the basis of one-half of one year's interest regardless of the actual number of days in the half-year.

Example. A 10-year inflation-indexed note paying 3% interest was issued on July 15, 1996, with the first interest payment on January 15, 1997. The Ref CPI on July 15, 1996 (Ref $CPI_{Issue\ Date}$) was 120, and the Ref CPI on January 15, 1997 (Ref CPI_{Date}) was 132. For a par amount of $100,000, the inflation-adjusted principal on January 15, 1997, was (132/120) x $100,000, or $110,000. This amount was then multiplied by .03/2, or .015, resulting in a payment of $1,650.00.

C. Accrued Interest

*****

For a fixed-principal security, if accrued interest covers a fractional portion of a full half-year period, the number of days in the full half-year period and the stated interest rate will determine the daily interest decimal to be used in computing the accrued interest. The decimal is multiplied by the number of days for which interest has accrued. If a reopened fixed-principal security has a long first interest payment period (a "long coupon"), and the dated date for the reopened issue is less than six full months before the first interest payment, the accrued interest will fall into two separate half-year periods, and

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a separate daily interest decimal must be multiplied by the respective number of days in each half-year period during which interest has accrued. All accrued interest computations are rounded to five decimal places for a $1,000 inflation-adjusted principal, using normal rounding procedures. Accrued interest for a par amount of securities greater than $1,000 is calculated by applying the appropriate multiple to accrued interest payable for $1,000 par amount, rounded to five decimal places.

For an inflation-indexed security, accrued interest will be calculated as shown in Section III, Paragraphs A and B of this Appendix.

EXAMPLES. (1) Fixed-Principal Securities

(i) Involving One Half-Year: ***

(ii) Involving Two Half-Years: ***

16. Appendix B, Section II is amended by removing footnote 1, revising the Section heading, revising the definition of "C=", and revising the headings of paragraphs A through G to read as follows:

II. FORMULAS FOR CONVERSION OF FIXED-PRINCIPAL SECURITY YIELDS TO EQUIVALENT PRICES

Definitions

*****

C = the regular annual interest per $100, payable semiannually, e.g., 10.125 (the dollar equivalent of a 10-1/8% interest rate)

*****

A. For fixed-principal securities with a regular first interest payment period:

*****

B. For fixed-principal securities with a short first interest payment period:

*****

C. For fixed-principal securities with a long first interest payment period:

*****

D. (1) For fixed-principal securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.

(2) For new fixed-principal securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.

*****

E. For fixed-principal securities reopened during the regular portion of a long first payment period:

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*****

F. For fixed-principal securities reopened during a short first payment period:

*****

G. For fixed-principal securities reopened during the fractional portion (initial short period) of a long first payment period:

*****

17. Appendix B is amended by redesignating Section III as Section IV and adding a new Section III to read as follows:

III. FORMULAS FOR CONVERSION OF INFLATION-INDEXED SECURITY YIELDS TO EQUIVALENT PRICES

Definitions

P = unadjusted or real price per 100 (dollars)

P_{adj} = inflation adjusted price; P x Index $Ratio_{Date}$

A = unadjusted accrued interest per $100 original principal

A_{adj} = inflation adjusted accrued interest; A x Index $Ratio_{Date}$

SA = settlement amount including accrued interest in current dollars per $100 original principal; $P_{adj} + A_{adj}$

r = days from settlement date to next coupon date

s = days in current semiannual period

i = real yield, expressed in decimals (e.g., 0.0325)

C = real annual coupon, payable semiannually, in terms of real dollars paid on $100 initial, or real, principal of the security

n = number of full semiannual periods from issue date to maturity date, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining until maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on July 15, 2026 would have coupon frequency dates of January 15 and July 15.

$v^n = 1/(1 + i/2)^n$ = present value of 1 due at the end of n periods

$a_{\overline{n}|} = (1 - v^n)/(i/2) = v + v^2 + v^3 + \ldots + v^n$

= present value of 1 per period for n periods

Date = valuation date

D = the number of days in the month in which Date falls

t = calendar day corresponding to Date

CPI = Consumer Price Index number

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

Ref CPI_M = reference CPI for the first day of the calendar month in which Date falls, e.g., Ref $CPI_{April\ 1}$ is the $CPI_{January}$

Ref CPI_{M+1} = reference CPI for the first day of the calendar

month immediately following Date

$$\text{Ref CPI}_{\text{Date}} = \text{Ref CPI}_{M} + [(t - 1)/D][\text{Ref CPI}_{M+1} - \text{Ref CPI}_{M}]$$

$$\text{Index Ratio}_{\text{Date}} = \text{Ref CPI}_{\text{Date}}/\text{Ref CPI}_{\text{Issue Date}}$$

A. For inflation-indexed securities with a regular first interest payment period:

Formulas:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^{n}}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P_{adj} = P \times \text{Index Ratio}_{\text{Date}}$$

$$A = [(s - r)/s] \times (C/2)$$

$$A_{adj} = A \times \text{Index Ratio}_{\text{Date}}$$

$$SA = P_{adj} + A_{adj}$$

$$\text{Index Ratio}_{\text{Date}} = \text{Ref CPI}_{\text{Date}}/\text{Ref CPI}_{\text{Issue Date}}$$

Example. The Treasury issues a 10-year inflation-indexed note on July 15, 1996. The note is issued at a discount to yield 3.1% (real). The note bears a 3% real coupon, payable on January 15 and July 15 of each year. The base CPI index applicable to this note is 120.[1] Calculate the settlement amount.

[1] This number is normally derived using the interpolative process described in Appendix B, Section I, Paragraph B.

Definitions:

C = 3.00

i = 0.0310

n = 19 (There are 20 full semiannual periods but n is reduced by 1 because the issue date is a coupon frequency date.)

r = 184 (July 15, 1996 to January 15, 1997)

s = 184 (July 15, 1996 to January 15, 1997)

Ref CPI_{Date} = 120

Ref $CPI_{Issue\ Date}$ = 120

Resolution:

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{Issue\ Date}$ = 120/120 = 1

A = [(184 - 184)/184] x 3/2 = 0

A_{adj} = 0 x 1 = 0

$v^n = 1/(1 + i/2)^n = 1/(1 + .031/2)^{19} = 0.74658863$

$a_{\overline{n}|} = (1 - v^n)/(i/2) = (1 - 0.74658863)/(.031/2)$

= 16.34912065

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3/2) + (3/2)(16.34912065) + 100(0.74658863)}{1 + (184/184)(0.031/2)} - [(184 - 184)/184](3/2)$$

$$P = \frac{1.5 + 24.52368098 + 74.658863}{1.01550000} - 0$$

$$P = \frac{100.68254398}{1.01550000}$$

P = 99.145784

P = 99.146

$P_{adj} = P \times \text{Index Ratio}_{Date}$

$P_{adj} = 99.146 \times 1 = 99.146$

$SA = P_{adj} + A_{adj}$

SA = 99.146 + 0 = 99.146

B. For inflation-indexed securities reopened during a regular interest period where the purchase price includes predetermined accrued interest:

Bidding:

The dollar amount of each bid is in terms of the par amount. For example, if the Ref CPI applicable to the issue date of the note is 120, and the reference CPI applicable to the reopening issue date is 132, a bid of $10,000 will in effect be a bid of $10,000 x (132/120), or $11,000.

Formulas:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$P_{adj} = P \times \text{Index Ratio}_{Date}$

$A = [(s - r)/s] \times (C/2)$

A_{adj} = A x Index $Ratio_{Date}$

SA = P_{adj} + A_{adj}

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{Issue\ Date}$

Example. A 3% 10-year inflation-indexed note was issued July 15, 1996, due July 15, 2006, with interest payments on January 15 and July 15. For a reopening on April 15, 1997, with inflation compensation accruing from July 15, 1996 to April 15, 1997, and accrued interest accruing from January 15, 1997 to April 15, 1997 (90 days), solve for the price per 100 (P) at a real yield, as determined in the reopening auction, of 3.40%. The base index applicable to the issue date of this note is 120 and the reference CPI applicable to April 15, 1997, is 132.

Definitions:

C = 3.00

i = 0.0340

n = 18

r = 91 (April 15, 1997 to July 15, 1997)

s = 181 (January 15, 1997 to July 15, 1997)

Ref CPI_{Date} = 132

Ref $CPI_{Issue\ Date}$ = 120

Resolution:

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{Issue\ Date}$ = 132/120 = 1.100

$$v^n = 1/(1 + i/2)^n = 1/(1 + .0340/2)^{18} = 0.73828296$$

$$a_{\overline{n}|} = (1 - v^n)/(i/2) = (1 - 0.73828296)/(.0340/2)$$

$$= 15.39512000$$

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3/2) + (3/2)(15.39512000) + 100(0.73828296)}{1 + (91/181)(0.0340/2)} - [(181 - 91)/181](3/2)$$

$$P = \frac{1.5 + 23.09268 + 73.828296}{1.00854696} - (90/181)(1.5)$$

$$P = \frac{98.420976}{1.00854696} - 0.745856$$

$$P = 97.586905 - 0.745856$$

$$P = 96.841049$$

$$P = 96.841$$

$$P_{adj} = P \times \text{Index Ratio}_{Date}$$

$$P_{adj} = 96.841 \times 1.100 = 106.5251$$

$$P_{adj} = 106.525$$

$$A = [(181 - 91)/181] \times 3/2 = 0.745856$$

$$A_{adj} = A \times \text{Index Ratio}_{Date}$$

$$A_{adj} = 0.745856 \times 1.100 = 0.820442$$

$$SA = P_{adj} + A_{adj} = 106.525 + 0.820442$$

$$SA = 107.345442$$

*****

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18. Part 356 is amended by adding new Appendixes C and D to read as follows:

Appendix C To Part 356—Investment Considerations

I. Inflation-Indexed Securities

A. Principal and Interest Variability

An investment in securities with principal or interest determined by reference to an inflation index involves factors not associated with an investment in a fixed-principal security. Such factors may include, without limitation, the possibility that the inflation index may be subject to significant changes, that changes in the index may or may not correlate to changes in interest rates generally or with changes in other indices, that the resulting interest may be greater or less than that payable on other securities of similar maturities, and that, in the event of sustained deflation, the amount of the semiannual interest payments, the inflation-adjusted principal of the security, and the value of stripped components, will decrease. However, if at maturity the inflation-adjusted principal is less than a security's par amount, an additional amount will be paid at maturity so that the additional amount plus the inflation-adjusted principal equals the par amount. Regardless of whether or not such an additional amount is paid, interest payments will always be based on the inflation-adjusted principal as of the interest payment date. If a security has been stripped, any such additional amount will be paid at maturity to holders of principal components only. (See § 356.30.)

B. Trading in the Secondary Market

The Treasury securities market is the largest and most liquid securities market in the world. While Treasury expects that there will be an active secondary market for inflation-indexed securities, that market initially may not be as active or liquid as the secondary market for Treasury fixed-principal securities. In addition, as a new product, inflation-indexed securities may not be as widely traded or as well understood as Treasury fixed-principal securities. Lesser liquidity and fewer market participants may result in larger spreads between bid and asked prices for inflation-indexed securities than the bid-asked spreads for fixed-principal securities with the same time to maturity. Larger bid-asked spreads normally result in higher transaction costs and/or lower overall returns. The liquidity of an inflation-indexed security may be enhanced over time as Treasury issues additional amounts or more entities participate in the market.

C. Tax Considerations

Treasury inflation-indexed securities and the stripped interest and principal components of these securities are subject to specific tax rules provided by Treasury regulations issued under sections 1275(d) and 1286 of the Internal Revenue Code of 1986, as amended.

D. Indexing Issues

While the CPI measures changes in prices for goods and services, movements in the CPI that have occurred in the past are not necessarily indicative of changes that may occur in the future.

The calculation of the index ratio incorporates an approximate three-month lag, which may have an impact on the trading price of the securities, particularly during periods of significant, rapid changes in the index.

The CPI is reported by the Bureau of Labor Statistics, a bureau within the Department of Labor. The Bureau of Labor Statistics operates independently of the Treasury and, therefore, Treasury has no control over the determination, calculation, or publication of the index. For a discussion of how the CPI will be applied in various situations, see Appendix B, Section I, Paragraph B. In addition, for a discussion of actions that Treasury would take in the event the CPI is: discontinued; in the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security; or, in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, see Appendix B, Section I, Paragraph B.4.

Appendix D to Part 356—Description of the Consumer Price Index

The Consumer Price Index ("CPI") for purposes of inflation-indexed securities is the non-seasonally adjusted *U.S. City Average All Items Consumer Price Index for All Urban Consumers*, published monthly by the Bureau of Labor Statistics of the Department of Labor. The CPI is a measure of the average change in consumer prices over time in a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, charges for doctors' and dentists' services, and drugs.

In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The contents of the market basket of goods and services and the weights assigned to the various items are updated periodically to take into account changes in consumer expenditure patterns.

The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100. For example, if the CPI for the 1982–84 reference period is 100.0, an increase of 16.5 percent from that period would be shown as 116.5. The CPI for a particular month is released and published during the following month. From time to time, the CPI is rebased to a more recent base reference period. The base reference period for a particular inflation-indexed security will be provided on the offering announcement for that security.

Further details about the CPI may be obtained by contacting the Bureau of Labor Statistics.

19. Exhibit A to Part 356 is amended by adding a new Section IV to the list of section titles and to the text of Exhibit A to read as follows:

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

* * * * *

IV. Treasury Inflation-Indexed Note Announcement

* * * * *

IV. TREASURY INFLATION-INDEXED NOTE ANNOUNCEMENT

Embargoed Until 2:30 P.M., October 2, 20XX
CONTACT: Office of Financing, 202/219–3350

Treasury to Auction $5,500 Million of 10-Year Inflation-Indexed Notes

The Treasury will auction $5,500 million of 10-year inflation-indexed notes to raise cash. In addition, there is $7,906 million of publicly-held securities maturing October 15, 20XX.

In addition to the public holdings, Federal Reserve Banks hold $327 million of the maturing securities for their own accounts, which may be exchanged for additional amounts of the new securities.

The maturing securities held by the public include $584 million held by Federal Reserve Banks as agents for foreign and international monetary authorities. Amounts bid for these accounts by Federal Reserve Banks will be added to the offering.

The auction will be conducted in the single-price auction format. All competitive and noncompetitive awards will be at the highest yield of accepted competitive tenders.

Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform Offering Circular (31 CFR Part 356) for the sale and issue by the Treasury to the public of marketable Treasury bills, notes, and bonds.

Details about the new security are given in the attached offering highlights.

Highlights of Treasury Offering to the Public of 10-Year Inflation-Indexed Notes to be Issued October 15, 20XX

October 2, 20XX
Offering Amount: $5,500 million.
Description of Offering:

Term and type of security: 10-year inflation-indexed notes
Series—D–20XX
CUSIP number—912XXX XX X
Auction date—October 9, 20XX
Issue date—October 15, 20XX
Dated date—October 15, 20XX
Maturity date—October 15, 20XX
Interest Rate—Determined based on the highest accepted bid
Real yield—Determined at auction

Interest payment dates: April 15 and October 15.

Minimum bid amount—$1,000
Multiples—$1,000

Accrued interest payable by investor: None.

Premium or discount: Determined at auction.

STRIPS Information:

Minimum amount required—Determined at auction

Corpus CUSIP number—912XXX XX X

STRIPS Information:

Due dates and CUSIP numbers for additional TINTs: 912XXX.

April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X
April 15, 20XX—XX X
October 15, 20XX—XX X

Submission of Bids:

Noncompetitive bids:—Will be accepted in full up to $5,000,000 at the highest accepted yield.

Competitive bids:

(1) Must be expressed as a real yield with three decimals, e.g., 3.120%.

(2) Net long position for each bidder must be reported when the sum of the total bid amount, at all yields, and the net long position is $_____ billion or greater.

(3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.

Maximum Recognized Bid at a Single Yield—35% of public offering.

Maximum Award—35% of public offering.

Receipt of Tenders:

Noncompetitive tenders: Prior to 12:00 noon Eastern Daylight Saving time on auction day.

Competitive tenders: Prior to 1:00 p.m. Eastern Daylight Saving time on auction day.

Payment Terms: Full payment with tender or by charge to a funds account at a Federal Reserve Bank on issue date.

Indexing Information:

CPI Base Reference Period:—19XX–XX

Ref CPI 10/15/20XX:—XXX.XXXXX

[FR Doc. 96–33396 Filed 12–31–96; 10:08 am]

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federal register

Monday
January 6, 1997

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Potato Research; Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice.

SUMMARY: The Cooperative State Research, Education, and Extension Service announces the availability of grant funds and requests proposals for the Special Research Grants Program, Potato Research. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1997 (Public Law 104–180) appropriated funds for special grants for agricultural research (7 U.S.C. 450i(c)). The Special Research Grants Program intends to use $1,134,612 of this appropriation to support potato research that focuses on varietal development/testing.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Potato Research Project grant. To obtain application forms, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

DATES: Applications must be received on or before February 7, 1997. Proposals received after February 7, 1997, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Dr. James Parochetti, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, Washington, D.C. 20250–2220; telephone (202) 401–4354; Internet: jparochetti@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Part I—General Information

A. Legislative Authority

The authority for this program is contained in section 2(c)(1)(B) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 405i(c)(1)(B)).

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president, chief executive officer or functional equivalent of the applicant organization or the official, designated by the president, chief executive officer or functional equivalent of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Department or USDA* means the United States Department of Agriculture.

(6) *Grantee* means the entity designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) *Peer review panel* means a group of experts qualified by training and experience in particular fields to give expert advice on the scientific and technical merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(8) *Principal Investigator* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project. Note that a proposal may have multiple secondary co-principal investigators but only one principal investigator.

(9) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(10) *Project* means the particular activity within the scope of the program supported by a grant award.

(11) *Project period* means the total length of time that is approved by the Administrator for conducting the research project, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(12) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, land-grant colleges and universities, research foundations established by land-grant colleges and universities, colleges and universities receiving funds under the Act of October 10, 1962 (16 U.S.C. 582a et seq.), and accredited schools or colleges of veterinary medicine. The proposals must be directly related to potato varietal development/testing. Although an applicant and a proposal may be considered eligible based on the eligibility requirements, there are factors which may exclude an applicant or a proposal from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarred or suspended individual, it is determined that an applicant is not responsible based on submitted organizational management information).

Part II—Program Description

A. Purpose of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Potato Research for Fiscal Year 1997. The purpose of this grant program is to support potato research that focuses on varietal development/testing. As used herein, varietal development/testing is research using traditional and biotechnological genetics to develop improved potato variety(s). Aspects of evaluation, screening and testing must support or compliment the development of improved varieties. This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of USDA.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support regional research projects that are composed of potato research that focuses on varietal development/testing. The total amount of funds available in Fiscal Year 1997 for support of this program is approximately $41,134,612. Each proposal submitted in Fiscal Year 1997 shall request funding for a period not to exceed a period of one year. Funding for additional years will depend upon the availability of funds and progress toward objectives. Fiscal Year 1997 awardees would need to recompete in future years for additional funding.

Under this program, and subject to the availability of funds, the Secretary may make grant awards available for up to five years, for the support of research projects to further the program.

In addition, pursuant to Section 716(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. No. 104–180, in the case of any equipment or products that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Part III—How to Obtain Application Materials

Copies of this solicitation and the Application Kit may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; Washington DC 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997 Special Research Grants Program, Potato Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Part IV—Content of a Proposal

All applications should be typed on 8½"x11" white paper, single-spaced, and on one side of the page only. It would be helpful if the name of the submitting institution were typed at the top of each page for easy identification in the event the proposal becomes disassembled while being reviewed. All proposals must contain the following forms and narrative information to assist CSREES personnel during the review and award processes:

A. "Application for Funding" (Form CSREES–661)

Each copy of each grant proposal must contain an "Application for Funding." One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/ project director(s) and the endorsement of the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed principal investigator or co-principal investigator whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

1. *Title of Project (Block 6).* The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of " or "research on" should not be used.

2. *Program to Which You Are Applying (Block 7).* "Special Research Grants Program, Potato Research" should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

3. *Program Area and Number (Block 8).* The name of the program area, "Potato Research," should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

4. *Type of Award Request (Block 13).* If the project being proposed is a renewal of a grant that has been supported under the same program during the previous five fiscal years, it is important that you show the latest grant number assigned to the project by CSREES.

5. *Principal Investigator(s) (Block 15).* The designation of excessive numbers of co-principal investigators creates problems during final review and award processes. Listing multiple co-principal investigators, beyond those required for genuine collaboration, is therefore discouraged.

6. *Type of Performing Organization (Block 18).* A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

7. *Other Possible Sponsors (Block 22).* List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

B. Table of Contents

For consistency and ease of locating information, each proposal submitted should contain a Table of Contents.

C. Objectives

Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals. For renewal applications, a restatement of the objectives outlined in the active grant also should be provided.

D. Progress Report

If the proposal is a renewal of an existing project supported under the same program, include a clearly identified summary progress report describing the results to date. The progress report should contain the following information:

1. A comparison of actual accomplishments with the goals established for the active grant;
2. The reasons for slippage if established goals were not met;
3. Other pertinent information, including, when appropriate, cost analysis and explanation of cost overruns or unexpectedly high unit costs.

E. Procedures

The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

1. A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;
2. Techniques to be employed, including their feasibility;
3. Kinds of results expected;
4. Means by which data will be analyzed or interpreted;
5. Pitfalls which might be encountered; and
6. Limitations to proposed procedures.

F. Justification

This section should include in-depth information on the following, when applicable:

1. Estimates of the magnitude of the problem and its relevance to ongoing State-Federal food and agricultural research programs;
2. Importance of starting the work during the current fiscal year, and
3. Reasons for having the work performed by the proposing institution.

G. Cooperation and Institutional Units Involved

Cooperative and multi-state applications are encouraged. Identify each institutional unit contributing to the project. Identify each state in a multiple-state proposal and designate the lead state. When appropriate, the project should be coordinated with the efforts of other state and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

H. Literature Review

A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

I. Current Work

Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

J. Facilities and Equipment

All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

K. Project Timetable

The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

L. Personnel Support

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

1. An estimate of the time commitment involved;
2. Vitae of the principal investigator(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings; and
3. A chronological listing of the most representative publications during the past five years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

M. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. A letter of intent from the individual or organization will satisfy this requirement. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR Part 3019 Sections 40–48 ("Procurement Standards") and Appendix A ("Contract Provisions") should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension. This latter requirement is explained further under subsection "Q" of these guidelines.

N. "Budget" (Form CSREES–55)

Each proposal must contain a detailed budget for up to 12 months of support. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles and can be identified as necessary and reasonable for the successful conduct of the project.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

Note: In accordance with Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (91 Stat. 981), as amended, tuition remission is not an allowable cost under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets, as the equipment item(s) and amount(s) may change.

Note: No funds will be awarded for the purchase or installation of fixed equipment.

In addition, pursuant to Section 716(b) of Pub. L. No. 104–180 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997), in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Note: For projects awarded under the authority of Sec. 2(c)(1(B) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* Pursuant to Section 1473 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977 (91 Stat. 981), indirect costs are not allowable costs under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose. Further, costs that are a part of an institution's indirect cost pool (e.g., administrative or clerical salaries) may not be reclassified as direct costs for the purpose of making them allowable.

10. *Cost-sharing.* Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

O. "Current and Pending Support" (Form CSREES–663)

All proposals must contain Form CSREES–663 listing this proposal and any other current or pending support to which keep project personnel have committed or are expected to commit portions of their time, whether or not salary support for the person(s) involved is included in the budget. This proposal should be identified in the pending section of this form.

P. "Assurance Statement(s)" (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

1. *Recombinant DNA or RNA Research.* As stated in 7 CFR Part 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 ("Application for Funding") and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

2. *Animal Care.* Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

3. *Protection of Human Subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and

complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

Q. Certifications

Note that by signing the Application for Funding form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended by 61 FR 250, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

R. Compliance With the National Environmental Policy Act

As outlined in 7 CFR Part 3407 (CSREE's implementing regulations of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.)), environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA, which includes determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions. To assist CSREES in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, "NEPA Exclusions Form" (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, "Application for Funding," in the proposal.

The following Categorical Exclusions apply:

(1) USDA Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6(a)(2))

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

S. Additions to Project Description

Each project description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in Part V(A) below. Each set of such materials must be identified with the title of the project and the name(s) of the principal investigator(s)/project director(s) as they appear on the "Application for Funding." Examples of additional materials include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

T. CRIS Forms AD–416 and AD–417

In order to document research projects in the Current Research Information System's (CRIS) data base, CSREES requires the submission of the CRIS Forms AD–416 and AD–417 prior to the release of grant funds. One completed copy of each form must be submitted with the original pen-and-ink copy of the proposal. Fields 1, 19, 20, 21, 28, 29, 30 and "Duration" should be left blank, as these will be completed by CSREES upon award. Appropriate institutional signatures on Form AD–416 should be obtained prior to submission to CSREES. CSREES will not release funds for the proposed award until the completed CRIS forms are received; therefore, prompt action on this requirement is essential for the initiation of the project.

Part V—Submission of a Proposal

A. What to Submit

An original and three copies of each grant proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½"x11" white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. Staple each copy of the proposal in the upper left-hand corner. Please do not bind copies of the proposal.

B. Where and When To Submit

Proposals must be received on or before February 7, 1997, and submitted to the following mailing address: Proposal Services Unit, Grants

Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, Washington, D.C. 20250–2245, Telephone (202) 401–5048.

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; CSREES/USDA; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain a proposal identification number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part VI—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a review panel.

The individual panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer reviewers, and the proposed principal investigator(s), to the extent permitted by law.

B. Evaluation Criteria

1. Overall scientific and technical quality of the proposal—10 points.

2. Scientific and technical quality of the approach—10 points.

3. Revelance and importance of proposed research to solution of specific areas of inquiry—30 points.

4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment; the cooperation and involvement of multiple institutions or states—50 points.

Part VII—Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the principal investigator of the reasons for its decision on a proposal.

B. Grant Awards

1. General: Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3018, and 3019 of 7 CFR).

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant if such information has not been provided previously under this or another program for which the sponsoring agency, CSREES, is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the pre-award process.

3. Grant Award Document and Notice of Grant Award: The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Grant identification number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award: The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without any guarantee of additional support at a future date.

C. Use of Funds; Changes

Unless otherwise stipulated in the terms and conditions of the grant award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans:

a. The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Authorized Departmental Officer prior

to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Authorized Departmental Officer prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the Authorized Departmental Officer determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the Authorized Departmental Officer, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal costs principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended by 61 FR 250—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—USDA implementation of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 30th day of December 1996.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–157 Filed 1–3–97; 8:45 am]

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Part V

Department of Agriculture

Special Research Grants Program, Pest Management Alternatives Research; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1997; Solicitation of Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice

PURPOSE: Proposals of regional research significance are invited for competitive grant awards under the Special Research Grants Program-Pest Management Alternatives Research (the program) for fiscal year (FY) 1997. This program implements the Memorandum of Understanding (MOU) between the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (USEPA) signed August 15, 1994, and amended April 18, 1996, which establishes a coordinated framework for collaborative efforts to develop and implement activities that will make alternative pest management materials available to agricultural producers when regulatory action by the USEPA or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. In this MOU, the USDA and USEPA agreed to: (1) cooperate in providing for agricultural pest management that is conducted in the most environmentally-sound manner possible, with sufficient pest management alternatives to reduce risks to human health and the environment, to reduce the incidence of pest resistance to pesticides and to ensure economical agricultural production, and (2) cooperate in establishing a process to conduct the research, technology transfer and registration activities necessary to ensure adequate pest management alternatives are available to meet important agricultural needs for situations in which regulatory action would result in pest management problems. The goal of this program is to develop alternatives for critical needs to insure that farmers, foresters, ranchers, and urban pest management specialists and other users have reliable methods of managing pest problems. Emphasis is placed on current and potential loss of select pesticides due to increased worker and food safety and environmental concerns leading to regulatory review and actions, and the loss of pest management practices due to performance failures such as those caused by genetic changes in pests.

Authority

The program is administered by the USDA Cooperative State Research, Education, and Extension Service (CSREES). The authority is contained in section 2(c)(1)(A) of the Act of August 4, 1995, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this program, subject to the availability of funds, the Secretary may make grants, for periods not to exceed five years, to State Agricultural Experiment Stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

Proposals from scientists affiliated with non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the registration of pesticides for profit; however, their collaboration with funded projects is encouraged.

Available Funding

Subject to the availability of funds, the amount available for support of this program in FY 1997 is $1,516,865. Proposals should be for no more than a two-year period.

Puruant to Section 712 of Pub. L. No. 104–180, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 ("1997 Appropriations Act"), CSREES may not use funds available in FY 1997 to pay indirect cost on research grants awarded competitively that exceed 14 percent of the total Federal funds provided under each award.

In addition, pursuant to Section 716(b) of the 1997 Appropriations Act, in the case of any equipment or product that may be authorized to be purchased with grant funds provided under this program, entities are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

This Program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR Part 3400 (56 FR 58147, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include, but are not limited to:

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations implementing OMB Circular A–110; and

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

This competitive grants program addresses the need for development of pest management alternatives to provide for production of abundant and affordable food supplies, to increase the availability of biological and cultural methods as pest management options, and to meet the policy goals set forth in sections 1439 and 1484 of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101–624. These activities pertain to pesticides identified for possible regulatory action under section 102 of the Food Quality Protection Act of 1996, Pub. L. 104–170, that amends the Federal Insecticide, Fungicide and Rodenticide Act.

Funding Categories for Fiscal Year 1997

The following priority areas have been identified by the USDA and USEPA through interaction with State Agricultural Experiment Station research and extension faculty via the National Agricultural Pesticide Impact Assessment Program and state and regional Integrated Pest Management (IPM) program. In addition, commodity groups and producers of affected crops were involved in the identification of project areas. Needs were identified to address replacement technologies for pesticides under current and potential regulatory review or where pesticides are unavailable due to voluntary cancellation by the registrant and for which producers and other users do not have effective alternatives or where regulatory actions trigger pest resistance problems that limit IPM options. Replacements for methyl bromide are not addressed by this request for proposals. The identified priority areas for FY 1997 projects are:

Note: Projects dealing with other crop and pest combinations will not be considered. However, proposals may address the development of an IPM system that will result in economic management of the targeted crop/pest combination.

Commodity	Pests
Alfalfa	Aphids.
Apples	Mites.
Apricots	Mites.

Commodity	Pests
Artichokes	Aphids.
Blackberry/raspberry	Pear psylla.
	Rhizopus.
	Rust
Cabbage	Thrips.
	Mites.
Carrot	Dodder.
	Mites.
	Fungal leaf diseases.
Cole crops	Aphids.
Collards	Alternaria.
	Anthracnose.
	Cercospora.
Cranberry	Mites.
Cruciferous greens	Alternaria.
	White rust.
Grape	Grape phlloxera.
	Black vine weevil.
Leafy greens	Aphids.
Leek/shallot	Alternaria.
	Botrytis.
	Downy mildew.
Lemon/tangerine	Pale color.
Lettuce	Aphids.
Millet	Annual grasses.
Peaches	Mites.
Pecans	Yellow pecan aphid.
Peppermint/spearmint	Weeds.
Plums/prunes	Mites.
	Brown rot.
Pumpkin	Pigweed.
	Nightshade.
Radicchio	Aphids.
Rice	Rice water weevil.
Sorghum	Chinch bug.
	Broadleaf weeds.
Spinach	Fungal leaf diseases.
Sugar cane	Weeds.
	Aphids.
Sweet potato	Weeds.

The proposal should address:

(1) Identification of the pest management problem, estimation of economic impact, and documentation of the pest management problem and losses associated with the pest(s).

(2) Analysis of the availability of options and their applicability as possible solutions including their compatibility with integrated management systems.

(3) Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns which make the present management options impractical.

(4) A summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s).

(5) A detailed plan for the research, education and technology transfer to achieve the alternative development and field implementation with identified milestones.

(6) An analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution.

(7) Demonstrated growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups.

(8) An overview of the availability of natural controls (biological, cultural, and host resistance) as solutions or partial solutions to the pest management problem and compatibility with IPM or crop management systems. This Program will not support basic plant breeding or other tactics where significant progress toward implementation cannot be accomplished within two years. However, this program will support research on the incorporation of pest resistant cultivars into a production system.

(9) Where registrations of new management options by state and Federal agencies are required, the proposal should describe the collaborative actions being taken with regulators which lead toward registration and use of Good Laboratory Practices (GLP).

(10) Demonstrate appropriate budget and collaborative funding to accomplish the proposed project.

All projects that involve a new registration of a product or expanded labelling must be done in compliance with GLP Standards (40 CFR Part 160). IR–4 coordinators are available in every state to advise or assist with GLP and registration requirements. Projects involving collaborative registration and funding are encouraged.

Proposal Evaluation

Proposals will be evaluated by the Administrator of CSREES assisted by a peer panel with IPM expertise. CSREES seeks proposals which address the following issues: (1) A significant reduction of risk of human health or the environment that would result; (2) no current viable alternatives and documented significant potential losses; (3) significant producer involvement; (4) natural controls as partial or effective solutions to pest management problems; and (5) solutions capable of being rapidly brought to bear on critical problems. Registration considerations must be addressed when they are required for solution implementation.

1. Executive Summary—10 points

(An evaluation of how well the proposal summary can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff and the general public.)

2. Appropriateness of the Budget—5 points

(An evaluation of appropriate and detailed budget request and collaborative funding to accomplish the proposed project; collaborative arrangements clearly documented.)

3. Problem Statement, Background and Rationale—15 points

(Includes the evaluation of significant reduction of risk to human health or the environment; no viable alternatives presently exist; and significant potential losses would occur without the alternative(s) being developed under this proposal.)

4. Research, Education & Technology Transfer Plan—40 points

(In addition to the evaluation of a detailed plan for research, education, and technology transfer and summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s), includes the evaluation of whether the proposed solutions could rapidly be brought to bear on critical problems and registration consideration are addressed where they are required for solution implementation.)

5. Producer Involvement—15 points

(Evaluation includes growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups.)

6. Professional Competence of the Project Team—5 points

7. Integration of Natural Control Solutions—10 points

(Includes the evaluation of natural controls as partial or effective solutions to the pest management problems being addressed and an analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution.)

Programmatic Contact

For additional information on the Program, please contact; Dr. Michael Fitzner, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, Washington, D.C. 20250–2220; Telephone: (202) 401–4939; Fax Number: (202) 401–4888; E-mail address: mfitzner@reeusda.gov.

How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3400), and the

Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, Washington, D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Pest Management Alternatives Research.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psh@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1997 Special Research Grants Program, Pest Management Alternatives Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR Part 3400, set forth instructions for the preparation of grant proposals. The following requirements deviate from those contained in section 3400.4(c). The following provisions of this solicitation shall apply.

Proposals submitted to the Program should address the described criteria. Each proposal should provide a detailed plan for the research, education and technology transfer required to implement the alternative solution in the field. Involvement of growers or other users in the project is essential and should be clearly identified.

Proposals should adhere to the following format: items 3 through 6 should not exceed 12 single spaced/single-sided pages altogether, using no type less than 12 point (10 cpi) font size with one-inch margins. The pages should be numbered.

(1) *Application for Funding (Form CSREES–661).* All full proposals submitted by eligible applicants should contain an Application for Funding, Form CSREES–661, which must be signed by the proposed principal investigator(s) and endorsed by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(2) *Executive Summary.* Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff, and the general public. This should be on a separate page, no more than one page in length and have the following format: Name(s) of principal investigator(s) and institutional affiliation, project title, key words and project summary. A computer disc indicating the word processing program used and the file name for the Executive Summary should be submitted with the original copy of the proposal.

(3) *Problem Statement.* Identify the pest management problem addressed, its significance and options for solution. Define the production area addressed by the proposed solution and the potential applicability to other production regions.

(4) *Rationale and Significance.* Provide information on the basis and rationale for the proposed project. Compatibility with current IPM and crop production practices, technologic economic feasibility and potential durability should be addressed. Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns that make present management options impractical.

(5) *Research, Education and Technology Transfer Plan.* Provide a detailed plan with milestones identified.

(6) *Producer Involvement.* Provide information on producer or other user involvement in identification of the proposed solution and involvement in implementing the proposed solution.

(7) *Facilities and Equipment.* All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed with the amount for each item.

(8) *Collaborative Arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(9) *Personnel Support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be clearly identified. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, martial status, or community activities should not be included. Each vitae shall be no more than two pages in length, excluding the publication lists. USDA reserves the option of not forwarding for further consideration a proposal in which each vitae exceeds the two-page limit; and

(iii) Publication List(s). A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(10) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, Form CSREES–55, along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as

necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute. However, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(11) *Research Involving Special Considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Application Kit contains a form which is suitable for such certification of compliance (Form CSREES–662).

(ii) *Experimental vertebrate animal care.* The responsibility for the humane care and treatment of any experimental vertebrate animal, which has the meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3, and 4.

The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The Application Kit contains a form which is suitable for such certification (Form CSREES–662).

(iii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by USDA rests with the performing entity. Regulations have been issued by USDA under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit contains a form which is suitable for such certification (Form CSREES–662).

(12) *Current and Pending Support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator of CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit contains a form which is suitable for listing current and pending support (Form CSREES–663).

Note: This proposal should be listed in the pending section of the form.

(13) *Additions to Project Description.* The Administrator of CSREES, the members of peer review groups, and the relevant program staff expect each project description to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(14) *Organizational Management Information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this Program if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. USDA will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 (the CSREES regulations implementing NEPA), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The USDA and CSREES exclusions are listed in 7 CFR 1b.3 and 7 CFR 3407.6, respectively.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–1234 should follow Form CSREES–661, Application for Funding, in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

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Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals must be received on or before February 26, 1997. Proposals sent by First Class mail must be sent to the following address: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Proposals that are delivered by Express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024; Telephone: (202) 401–5048.

Supplementary Information

For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Action of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 30th day of December 1996.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–159 Filed 1–3–97; 8:45 am]

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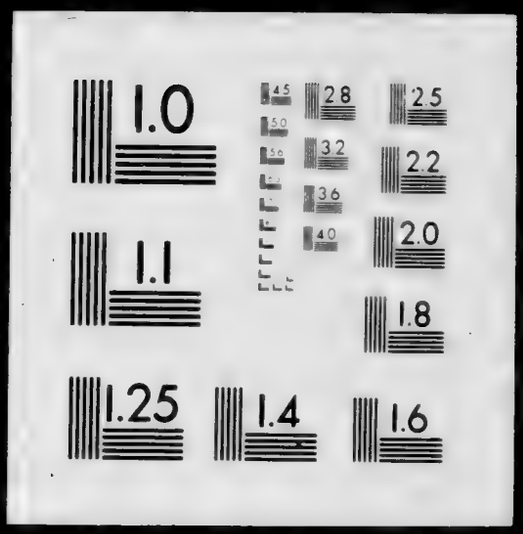
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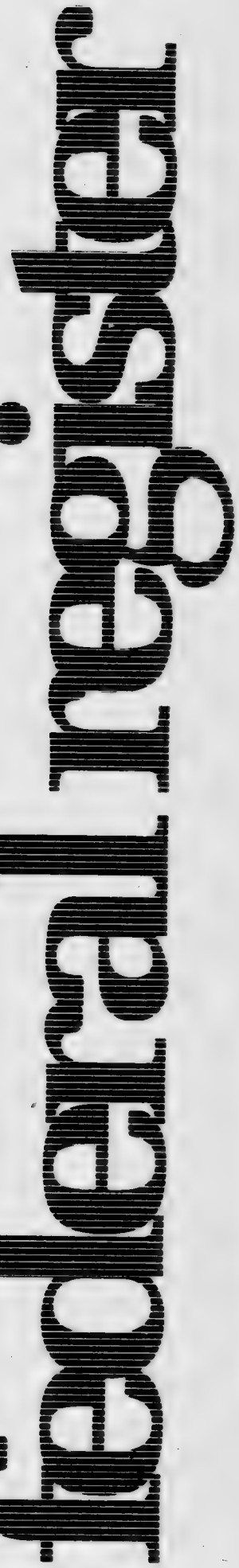

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Federal Register
Vol. 62, No. 4
Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 226

RIN 0584–AC42

Child and Adult Care Food Program; Improved Targeting of Day Care Home Reimbursements

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Child and Adult Care Food Program regulations governing reimbursement for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Specifically, this rule establishes a two-tiered reimbursement rate structure for day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by economic need based on: the location of the day care home; the income of the day care provider; or the income of individual children's households. In addition, this rule makes a minor amendment to the National School Lunch Program regulations to facilitate the provision of elementary school data on free and reduced price eligibility determinations to sponsors of family day care homes. These revisions are intended to target higher CACFP reimbursements to low-income providers and children.

DATES: Effective July 1, 1997, except for sections 210.9(b)(20), 210.19(f), 226.6(f)(2) and 226.6(f)(9), which are effective March 10, 1997. To be assured of consideration, comments must be postmarked on or before April 7, 1997, except for comments on the information collection which must be received by March 10, 1997.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the above address during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or Edward Morawetz at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule is expected to have a significant impact on a substantial number of small entities. Specifically, it will impact day care homes classified as tier II day care homes. Additional discussion of this impact is contained in the Economic Impact Analysis following this rule.

Executive Order 12372

The Child and Adult Care Food Program (CACFP) and the National School Lunch Program (NSLP) are listed in the Catalog of Federal Domestic Assistance under No. 10.559 and 10.555, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Paperwork Reduction Act

Summary: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the adjustments to be made to the information collections for the Child and Adult Care Food Program and the National School Lunch Program as a result of the interim rule, Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements.

To be assured of consideration, comments on the information collection must be received by March 10, 1997.

Comments on the information collection should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302.

Comments are invited on the following areas: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Titles: 7 CFR Part 226, Child and Adult Care Food Program and 7 CFR Part 210, National School Lunch Program.

OMB Numbers: 0584–0055 and 0584–0006.

Type of request: Revision of existing collections.

Abstract: The interim rule, Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements, is intended to implement the provision included in Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that establishes a two-tiered reimbursement system for day care homes participating in the Child and Adult Care Food Program. Under this structure, the level

of reimbursement for day care homes will be determined by economic need based on: (1) The location of the day care home; (2) the income of the day care home provider; or (3) the household income of each participating child.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to comment on the information requirements of this interim rule as noted below:

Section	Annual No. of respondents	Annual frequency	Annual responses	Per response	Annual burden hours
7 CFR 210.9(b)(20) School food authorities provide State agencies with a listing of elementary schools with at least 50% eligibility					
New	4,969 school food authorities	1	4,969	.50	2,485
7 CFR 210.19(f) State agency collects and maintains a listing of all elementary schools participating in the National School Lunch Program with at least 50% eligibility					
New	54 State agencies	1	54	2	108
7 CFR 210.19(f) State agency provides Child and Adult Care Food Program State agencies with a listing of all elementary schools participating in the National School Lunch Program with at least 50% eligibility					
New	12 State agencies	1	12	.50	6
7 CFR 226.6(f)(9) State agencies administering CACFP provide listing of eligible schools to sponsoring organizations					
New	54 State agencies	23	1,242	1	1,242
7 CFR 226.6(f)(9) State agencies administering CACFP provide census data to sponsoring organizations					
New	54 state agencies	2.3	124	1	124
7 CFR 226.6(f)(10) Sponsoring organizations submit tier I and tier II enrollment information to State agencies					
New	1,240 sponsors	1	1,240	1	1,240
7 CFR 226.15(e)(3) Sponsoring organizations maintain documentation used to classify homes as tier I					
New	1240 sponsors	40	49,600	1	49,600
7 CFR 226.13(b) Sponsoring organizations collect and report meals by category to State agency each month					
New	1,240 sponsors	12	14,880	2	29,760
7 CFR 226.13(d)(1)–(3), 226.18(e) Tier I and Tier II homes submit monthly meal counts to sponsors					
New	193,000 homes	12	2,316,000	1.25	2,895,000
7 CFR 226.13(d)(3)(i)–(iii) Sponsoring organizations establish reimbursement amounts for tier II homes with income-eligible children					
New	496 sponsors	78	38,688	.50	19,344
7 CFR 226.15(e)(3) Sponsoring organizations, upon request, collect free and reduced applications from enrolled children in Tier II that are not providers own at least once a year and maintain eligibility determination of each enrolled child					
New	496 sponsors	39	19,344	.50	9,672
7 CFR 226.23(e)(1) Households of children enrolled in tier II day care homes complete free and reduced price applications					
New	166,752 households	1	166,752	.075	12,506
7 CFR 226.23(h)(6) Sponsoring organizations collect information to conduct verification of homes that qualify as tier I based on provider's income					
New	1,240 sponsors	16	19,840	1	19,840

Total Proposed Burden Hours: 3,040,927.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This

rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Care Food Program: (1) Institution appeal procedures are set forth in 7 C.F.R. § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR 3015.

This rule implements the amendments set forth under sections 708(e) (1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (the Act), which was enacted on August 22, 1996. The Act made several fundamental changes affecting the reimbursement provided for meals served in family or group day care homes under the Child and Adult Care Food Program. Section 708(k)(3) of Pub. L. 104–193 requires that interim regulations implementing these amendments be issued by January 1, 1997, and that final regulations be issued by July 1, 1997. For this reason, the Administrator of the Food and Consumer Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is impracticable and contrary to the public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public notice and comment. Comments are being solicited until April 7, 1997. A longer comment period is not practicable given the Act's requirement that final regulations be issued by July 1, 1997. All comments will be carefully considered prior to final rulemaking.

Background

Under the Child Care Food Program (CCFP), as it was initially established and authorized in November 1975 by section 16 of the National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975 (Pub. L. 94–105), application requirements, enrollee eligibility determinations, and reimbursement rates were the same for both family and group day care homes and centers. Specifically, individual eligibility determinations based on household size and income statements were required, and the meal reimbursement rates paid to centers and to sponsors on behalf of day care homes were based on each enrolled child's eligibility for free, reduced price, or paid meals. Eligibility for free and reduced price meals was based on income thresholds and procedures essentially the same as those used by the National School Lunch Program (and still in use by the National School Lunch Program). At this time, in both day care centers and day care homes, approximately 70 percent of enrolled children were eligible for free and reduced price meals; the remaining 30 percent were eligible for paid meals.

Over the next several years, concern was raised that licensing, paperwork, and recordkeeeping requirements were creating barriers to day care home participation in the CCFP, and it became clear that there were major differences between the administrative capabilities and operating methods of day care home providers and child care center operators. Specifically, differences in size of facility, relationship with parents, and management sophistication suggested the need for simpler administrative procedures in day care homes. In 1978, these concerns were addressed in the Child Nutrition Amendments of 1978 (Pub. L. 95–627). This law eliminated individual free and reduced price eligibility determinations (i.e., means testing) in day care homes and established a single reimbursement rate for each type of meal served. This rate was slightly less than the rate paid for comparable meals served at the "free" rate in child care centers. These changes encouraged day care home provider participation in the Program by reducing their administrative paperwork burden.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) introduced a requirement to means test households of providers' own children by eliminating reimbursement for providers' own children if the providers' households had incomes greater than 185 percent of the Federal income poverty guidelines. Otherwise, the simplified procedures established by Public Law 95–627 were left intact. With the sole exception of means testing of providers' own children, day care homes have continued to receive reimbursement under the Program for meals served to all enrolled children, without application and regardless of income.

Simpler administrative procedures for family and group day care homes led to significant growth in their program participation. This growth was especially evident among family day care homes serving middle and upper-income children. The Study of the Child Care Food Program (CCFP) conducted for FCS by Abt Associates, Inc., showed that by 1986 approximately 70 percent of children then receiving reimbursement for meals served in family day care homes would have qualified for "paid" meals prior to the changes to the law in 1978. ("Paid" meals are for children from households with incomes over 185 percent of poverty.) These percentages were exactly opposite from the percentages of income-eligible children participating in the program before the means test was eliminated. Led by growth in the family day care portion of the CCFP—renamed the Child and Adult Care Food Program (CACFP) in 1989—Program expenditures increased from $300 million in 1983 to $1.44 billion by 1995.

To illustrate the current difference between reimbursement in day care homes and centers, in 1996, for example, if a child eligible for paid meals and a child eligible for free meals both transferred from a center to a day care home, reimbursement provided for lunches for the paid child would change from $0.32 in the center to $1.54 in the day care home. The change for the child eligible for free meals would change from $1.94 in the center to $1.54 in the home. The rate difference for the "free" child is largely due to administrative costs, which are paid separately to sponsoring organizations of day care homes, while center administration is included in the reimbursement rate they receive.

The goal of reducing overall Federal expenditures has prompted a review of many programs and led to a decision to improve the targeting of benefits to low-income children in the CACFP. To accomplish this targeting, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two "tiers" of day care homes and reimbursement rates. Under the law, tier I homes are those that are located in low-income areas or those in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. All meals served to enrolled children in tier I homes will continue to be reimbursed at essentially the same rates that they currently receive, adjusted for inflation. Tier II homes, in contrast, are those which do not meet the location or provider income criteria for a tier I home. The meals served in tier II homes are reimbursed at lower rates, unless the provider elects to have the sponsor collect free and reduced price applications from the households of children enrolled for day care in the home. In that case, the meals served to identified income-eligible children (i.e., children from households with incomes at or below 185 percent of the Federal income poverty guidelines) are reimbursed at the higher, tier I rates.

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These and other related provisions of the law are discussed in greater detail in the preamble that follows.

Tier I Family or Group Day Care Homes

Definition

Section 708(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended section 17(f)(3)(A) of the National School Lunch Act (NSLA) (42 U.S.C. § 1766(f)(3)(A)) by defining a "tier I family or group day care home" as:

> [1] a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9 [of the NSLA]; [2] a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this Act [the NSLA] or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or [3] a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 9 [of the NSLA] and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary."

Also, providers whose day care homes qualify as tier I day care homes on the basis of the provider's household income may demonstrate that they meet the criteria for free or reduced price meals by virtue of their receipt of food stamp, Food Distribution Program on Indian Reservation, or certain State programs for Temporary Assistance to Needy Families (formerly Aid to Families with Dependent Children) benefits.

This rule amends section 226.2 of the CACFP regulations by adding a definition of "tier I day care home."

Provision of Data

Except in cases in which a provider demonstrates its household income meets the free or reduced price eligibility standards, the Act requires that either elementary school eligibility data or census data must be utilized in order for a day care home to qualify as a tier I family or group day care home. Section 708(e)(3) of the Act further amended section 17(f)(3) of the NSLA to set forth requirements pertaining to the provision of this data to family or group day care home sponsoring organizations.

School Data

Section 708(e)(3) of the Act added section 17(f)(3)(E)(ii) to the NSLA to require that each State agency that administers either the National School Lunch or School Breakfast Programs annually provide to approved family or group day care home sponsoring organizations a list of elementary schools in the State in which at least one-half of the enrolled children are certified to receive free or reduced price meals. That provision of the Act further stipulates that, when determining whether a day care home qualifies as a tier I day care home, the CACFP State agency and sponsors shall use the most current data available at the time of the determination. Finally, the Act directs State agencies which administer the school nutrition programs to collect on an annual basis the data necessary to comply with these requirements.

The Department considers that aggregate school data on the percentage of enrolled children eligible for free and reduced price meals is a highly effective way of determining whether or not day care homes are located in low-income areas. To enable sponsors to obtain this information, this interim regulation amends the National School Lunch Program (NSLP) regulations to require school food authorities to provide the State agency administering the NSLP with a list of all elementary schools under their jurisdiction in which 50 percent or more of the enrolled children are determined eligible for free or reduced price meals as of the last operating day in October. Although the law refers to both the State agency which administers the NSLP and the State agency which administers the School Breakfast Program, in fact there are no States in which the NSLP and School Breakfast Program are operated by separate State agencies. Furthermore, in accordance with section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), we are planning to consolidate the regulations for the NSLP and School Breakfast Program in the near future in order to eliminate duplication and to streamline program requirements. Therefore, the Department has determined that it is unnecessary to amend 7 CFR Part 220, regulations for the School Breakfast Program, to include the provision of data requirements discussed above.

The Department notes that this information is already collected and maintained at the local school food authority level. Section 210.8(c) requires school food authorities to report the total number of enrolled free, reduced price and paid children to the State agency on the October claim for reimbursement. To submit this data, the school food authority consolidates the enrollment data submitted by the individual schools under its jurisdiction. Moreover, school food authorities are required pursuant to section 210.9(a)(8) to analyze monthly meal counts submitted by their schools for accuracy. This is generally done by comparing the free, reduced price and paid meal counts to an attendance factor developed using the October enrollment data. Therefore, this new statutory requirement will not result in an additional information collection burden at the local level.

Likewise, there should be little, if any, increase in reporting burden. While there is no Federal requirement for school food authorities to report the names of participating schools to the State agency, many States do collect this information. The Department also notes that some school food authorities are accustomed to providing individual school data for severe need reimbursement under the School Breakfast Program. In most instances, these will be the same low-income schools as those meeting the criteria for a tier I low-income area determination. For these reasons, the increase in reporting burden should not be large.

The law directs the State agency administering the NSLP to provide this information directly to sponsors that request it. However, the Department is concerned that some sponsors, particularly smaller ones, may not know whom to contact in the State agency administering the NSLP to obtain this information. This would be especially true of sponsors operating in States in which an agency other than the State education agency administers the CACFP.

Therefore, this interim regulation requires the NSLP State agency to provide the CACFP State agency with a list of elementary schools in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals in addition to requiring NSLP State agencies to provide the list to requesting sponsors. This will facilitate sponsors' access to local school data while minimizing confusion. The first list shall be submitted by school food authorities to the NSLP State agency no later than March 1, 1997, from the NSLP State agency to the CACFP State agency no later than March 15, 1997, and by the CACFP State agency to sponsoring organizations by April 1, 1997. In subsequent years, this list must be provided by school food authorities no later than December 31, and from the

NSLP State agency to the CACFP State agency no later than February 1 of each year. This schedule gives school food authorities 60 days after the end of October to report this data to the NSLP agency, and the February 1 deadline will provide that agency with one month in which to compile the list and forward it to the CACFP State agency, which would then make the information available to sponsors by February 15 each year.

Census Data

Section 708(e)(3) of the Act amended section 17(f)(3)(E)(i) of the NSLA to require that the Secretary provide each State agency administering CACFP with appropriate census data showing the areas of the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. Each CACFP State agency, in turn, must provide the data to day care home sponsoring organizations in the State.

Section 708(e)(3) of the Act further provides that the sponsoring organization's determination that a day care home is located in an eligible low-income area be in effect for three years when such determination is based on school data. When census data are used, the determination remains in effect until such time as more recent census data are available. Regardless of the type of data used, section 708(e)(3) of the Act further amended section 17(f)(3) of the NSLA to give the State agency the discretion to change the determination if it subsequently learns that the area in which a home is located no longer qualifies as an eligible area. Since we believe that in order to ensure program integrity all levels of program administration should have the responsibility to amend tier I determinations based upon the benefit of new information, this interim rule provides FCS and sponsors, as well as State agencies, with this authority. This expanded authority is being granted under the Department's general authority to issue regulations necessary for the administration of the Program.

The Department has experience in the Summer Food Service Program with area eligibility determinations and the data available to document area eligibility. Based on this experience, the Department believes that census data should not be used when relevant, current information on free and reduced price eligibility in local elementary schools is available. Since census data are collected only once every ten years, and release of the data by the Bureau of the Census typically does not occur until several years after the data are collected, school data is far more current and will, in most cases, more accurately represent current economic conditions in a given area. However, we recognize that there may be certain circumstances which warrant the use of census data to establish a day care home's eligibility, even when current-year school data are available. Therefore, when providing the required census data, the Department will provide specific guidance as to the use of such data to all State agencies for making determinations in such situations.

We also recognize that there may be situations in which census data and school data provide conflicting results of an area's eligibility. Our guidance accompanying the census data will outline very specific instances in which using census data, instead of current-year school data, is appropriate. Using this guidance, the Department expects State agencies to exercise their oversight to resolve conflicts between the data sources so as to ensure that decisions on classifying tier I homes are appropriate. Of primary concern to the Department is that sponsoring organizations use the data that is most reflective of the socio-economic status of a given area when classifying homes as tier I or tier II.

Accordingly, this interim rule adds a new paragraph (b)(20) to section 210.9 to require school food authorities to provide their NSLP State agencies, by March 1, 1997, and by December 31 of each year thereafter, with a list of all elementary schools under their jurisdiction in which 50 percent or more of the enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. Furthermore, a new paragraph (f) is added to section 210.19 requiring the State agency administering the NSLP to provide by March 15, 1997, and by February 1 each year thereafter, to the State agency administering the CACFP, and to sponsoring organizations upon request, a list of all elementary schools participating in the NSLP in which at least 50 percent of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. In addition, this rule amends section 226.6(f) by adding a new paragraph (9) to require that the CACFP State agency provide all approved day care home sponsoring organizations in the State the school and census data as described above. For school data, this would require coordination with the NSLP State agency. New section 226.6(f)(9) also requires that, when using school or census data, the most recent available data be used in making the determination of a home's eligibility as a tier I day care home; that determinations of a home's eligibility as a tier I home will be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data; and that a sponsor, a State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

Making Tier I Day Care Home Determinations

Section 708(e)(3) of the Act amended section 17(f)(3)(E) of the NSLA to require that school and census data ultimately be provided to sponsoring organizations. Sponsoring organizations, consequently, will be responsible for determining which day care homes are eligible as tier I day care homes. As discussed above, this will be accomplished applying the school or census data provided by the CACFP State agency, or by determining that the households of day care home providers not located in low-income areas are eligible for free or reduced price meals by use of a free and reduced price application.

Since there is a significant financial benefit associated with the classification of a day care home as a tier I day care home, this rule requires State agencies to establish overclaims against sponsors which improperly classify a home as a tier I day care home. The Department recognizes that, because day care home classification is a new process, there are various circumstances which may result in the misclassification of a day care home as a tier I day care home as sponsors and State agencies begin these new procedures. Therefore, FCS will issue guidance, in advance of the implementation of the two-tiered reimbursement structure, to address circumstances under which a State agency may decide not to assess overclaims for tier I misclassifications.

In addition, this rule requires that sponsoring organizations of day care homes include in their annual management plans a description of their system for making tier I day care home determinations. As is the case with all items included in the management plans, State agencies are required by section 226.6(f)(2) to review and approve the system. For the initial implementation period, sponsors are required to amend their plans to include this description by April 1, 1997. The Department recognizes that this requirement will impose an additional

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administrative burden on sponsors and State agencies during the transition period to the two-tiered structure. However, given the potential for significant financial liability for sponsors and State agencies resulting from incorrect determinations, it is extremely important to ensure that each sponsor's method for making tier I determinations is appropriate and achieves the most accurate determinations possible using the most current available data.

Accordingly, this rule amends section 226.15 by redesignating paragraphs (f) through (j) as paragraphs (g) through (k), respectively, and by adding a new paragraph (f) to require sponsoring organizations to make tier I day care home determinations. New paragraph (f) also indicates, as discussed above and indicated in revised section 226.6(f)(9), that determinations of a home's eligibility as a tier I day care home will be valid for one year if based on the provider's household income, three years if based on school data, or until more current data are available if based on census data. Additionally, as discussed above, a sponsor, State agency, or FCS may change a determination if information becomes available indicating that a home is no longer in a qualified area. In addition, section 226.14(a) is amended to require that State agencies establish overclaims against sponsoring organizations of day care homes when they misclassify day care homes as tier I day care homes unless the State agency determines, in accordance with FCS guidance, that the misclassification was inadvertent. Finally, section 226.6(f)(2) is amended to add the requirement that the annual management plan include a description of the sponsor's system for making tier I day care home determinations. For initial implementation, each sponsoring organization of day care homes shall amend its plan, subject to review and approval by the State agency, to include this information by April 1, 1997.

Reimbursement Factors for Tier I Homes

Section 708(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act amended section 17(f)(3)(A) of the NSLA to establish the reimbursement factors for meals served in tier I day care homes as the factors in effect on July 1, 1996, with adjustments made to the factors on July 1, 1997, and each July 1 thereafter. This section of the Act further amended section 17(f)(3)(A) of the NSLA to require that the factors be rounded to the nearest lower whole cent, instead of to the nearest quarter-cent increment as previously required. Subsequent adjustments must be based on the unrounded rate from the preceding school year. In addition, annual adjustments, which were previously based on changes in the Consumer Price Index for food away from home, must now be made based on the Consumer Price Index for food at home.

Section 226.4(c) of the current regulations contains the base reimbursement rates for day care homes. These rates are adjusted annually on July 1 and announced in a notice in the **Federal Register**. Since the base reimbursement rates become out-of-date as soon as they are adjusted for inflation, including them in the regulation serves no useful purpose. Therefore, this rule will not include the base reimbursement rates established for tier I homes under Pub. L. 104–193. A notice announcing the reimbursement rates will continue to be published in the **Federal Register** each July 1, as provided for under section 226.4(g).

Accordingly, this rule amends section 226.4(c) to remove the base reimbursement rates and to indicate that meals served in tier I day care homes will be reimbursed at the current rates for such homes. Also, section 226.4(g) is amended to incorporate the revised method of making annual adjustments to the rates of reimbursement. Additional discussion of reimbursement for meals served in day care homes may be found in the next section of this preamble.

Tier II Family or Group Day Care Homes

Definition

Section 17(f)(3)(A)(iii) of the NSLA, as amended by section 708(e)(1) of the Act, describes a "tier II family or group day care home" as a day care home that does not meet the criteria set forth for a tier I family or group day care home. Specifically, a tier II family or group day care home would not be located in an area that meets the 50 percent free or reduced price eligibility criteria, based on elementary school or census data, nor would the day care home provider's household income be at or below 185 percent of the Federal income poverty guidelines.

Accordingly, this rule amends section 226.2 to add a definition of "tier II day care home" which defines such a home as one which does not meet the criteria for a tier I day care home.

Election by Providers

In contrast to tier I day care homes, the law provides that meals served in tier II day care homes may be eligible for two levels of reimbursement—the tier I day care home rates for meals served to income-eligible children and tier II rates for meals provided to all other children. The Act further amended section 17(f)(3)(A)(iii) of the NSLA to give providers operating tier II homes three options with regard to how meals served in such homes are reimbursed.

While the law does not specifically require sponsors to provide notification to tier II homes of their reimbursement options, section 17(f)(3)(A)(iii)(II), as amended by the Act, clearly gives day care homes, not their sponsoring organizations, the authority to elect the reimbursement option. Therefore, this rule requires sponsors to provide such notification.

Under the first option, a day care home provider may elect to have its sponsoring organization distribute income applications to the households of all children enrolled in the home. In that case, for all meals served to enrolled children who are determined to meet the criteria for free or reduced price meals, the home would receive the tier I reimbursement rates. Meals served to enrolled children who are not eligible for free or reduced price meals, or children from whose households completed income applications are not received, would be reimbursed at the tier II reimbursement rates.

These free and reduced price eligibility determinations could be made in several ways. First, as with the current method, families may document their child's eligibility for tier I reimbursements by completing an application which shows that their household income is at or below 185 percent of poverty. The categorical eligibility options at current section 226.23(e), which are based on section 9(d)(2) of the NSLA would continue to be available to all households submitting applications. In addition, section 17(f)(3)(A)(iii)(III)(bb) of the NSLA, as amended by section 708(e)(1) of the Act, provides other categorical eligibility options for households applying for tier I meal reimbursements on behalf of children in tier II homes. Such households may demonstrate eligibility if the child or parent participates in, or is subsidized under, any "federally or State supported child care or other benefit program with an income eligibility limit that does not exceed" 185 percent of poverty. As quickly as possible, the Department will issue a list of Federal programs which meet this criterion, and then each State will be required to do the same for its own State-funded programs. The Department wishes to emphasize that the process of providing these lists will be ongoing, and that both the

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Department and the States will be updating the lists at least annually, or more often if necessary.

Alternatively, under the second option, if a day care home provider does not want to have income applications collected from the households of enrolled children, section 17(f)(3)(A)(iii)(III)(cc), as amended by the Act, provides that the provider may elect to have the sponsor identify only those children in tier II homes who are considered categorically eligible by virtue of their participation, or their parent's participation, in a Federally or State supported program with an income eligibility limit that does not exceed the standard for free or reduced price meals. In this situation, the day care home would receive the tier I reimbursements for meals served to the categorically eligible children, and the tier II rates of reimbursement for meals served to all other children.

It is the Department's position that the above option is only possible in those limited situations where the provider knows which enrolled children are categorically eligible, or when the sponsoring organization has direct access to eligibility information for other qualifying programs. For example, a day care home sponsoring organization which is also a school food authority would be able to identify, without applications being collected from households, children in tier II homes who are categorically eligible based on their or a sibling's receipt of free or reduced price school meals. Similarly, a provider may be able to identify as categorically eligible those children in tier II homes whose care is paid through State child care vouchers that are issued based on equivalent eligibility guidelines (assuming that programs permit the provider to share the eligibility information with the sponsor). In these cases, the sponsor would distribute income applications only to the households of the children identified as participating in programs making them categorically eligible for tier I rates. The households would have the option of completing the information relating to the qualifying program rather than the income information.

In most situations, however, providers and/or sponsors will only be able to identify children whose meals are eligible for tier I reimbursement by having income applications distributed to the households of all enrolled children, a fact that the Act does not explicitly recognize. Therefore, we envision that, when the provider elects this option, the process will most often operate as it does now in child care centers and as under the first option discussed above: applications will be distributed to all households of children in the care of the tier II day care provider in order to identify all income-eligible children in that home. These applications will gather information on participation in other qualifying programs, or will request family size and income information.

Though direct certification of eligibility can be a more streamlined, less burdensome method of determining eligibility, it also raises issues related to access to information and household confidentiality. The Department is interested in receiving comments on the merits of permitting direct certification of eligibility for sponsoring organizations of day care homes. Depending on the nature of these comments, we may issue a proposed rule on such a provision in the future.

Finally, as a third option set forth in the Act, a provider may elect to receive tier II reimbursements for meals served to all children in the home, regardless of income. In this case, the sponsoring organization would not be required to collect any income applications, nor would it need to attempt to identify categorically eligible children.

The law is deliberately structured to give the provider in a tier II day care home, rather than the sponsor, the choice as to whether or not income applications will be collected from households of children enrolled in the home since this choice will have an effect on the amount of reimbursement received by the provider. When a provider elects to have income applications collected, however, it is the responsibility of the sponsoring organization to collect them, to determine the eligibility of the children, and to maintain the confidentiality of the information collected.

Sponsors also will now have the responsibility of informing providers of their reimbursement options under the law. It is important for States to assist sponsors in carrying out this responsibility. Therefore, in addition to amending the regulations to incorporate the above-discussed provisions, the Department encourages State agencies during the implementation phases of this regulation to utilize a portion of the grant money provided under section 17(f)(3)(D) of the NSLA, as amended by section 708(e)(2) of Pub. L. 104–193, to further the efforts of sponsors in informing and educating day care home providers of their options.

It is the Department's opinion that in making the sponsoring organization, rather than the day care home provider, responsible for eligibility determinations, Congress recognized the need to provide an extra level of confidentiality to the households of children attending day care homes. Therefore, this rule also prohibits sponsoring organizations of day care homes from making free and reduced price eligibility information concerning individual households available to day care homes and otherwise limits the use of such information to persons directly connected with the administration and enforcement of the Program. Although sponsors are prohibited from releasing eligibility information concerning individual households, this rule will permit sponsors to inform providers in tier II homes of the numbers (not names) of identified income-eligible enrolled children. This will afford providers in tier II homes with more precise information concerning the accuracy of the reimbursement being paid to them by their sponsors, while protecting the confidentiality of individual households, as the law intended. In addition, the Department notes that section 9(b)(2)(C)(iii) of the NSLA was amended by section 108 of the Healthy Meals for Healthy Americans Act (Pub. L. 103–448) to clarify the permissible uses of free and reduced price information. The Department is currently developing regulations concerning this provision, and will make any necessary changes to the CACFP regulations at that time.

In addition, there is a concern that a provider in a tier II home will be unable to precisely calculate reimbursement without knowing the income eligibility status of each enrolled child in the home. The Department believes that allowing sponsoring organizations to inform providers in tier II homes of the numbers of identified income-eligible children, as discussed above, addresses this concern to a great extent, while at the same time protecting the confidentiality of the households of enrolled children. However, the Department is interested in receiving public comment on how best to balance the confidentiality of households with the needs of tier II day care home providers. Any comments that we receive will be addressed in a future rulemaking.

Accordingly, this rule amends sections 226.2, 226.6(f)(2), 226.18(b) and 226.23(e)(1) to incorporate the above provisions and to help ensure that providers are informed of their reimbursement options under the law. Specifically, the definition of *Documentation* in section 226.2 is amended to incorporate the expanded categorical eligibility provided in the law for use by tier II day care homes.

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Section 226.6(f)(2) is further amended to require that the annual management plan submitted to the State agency by sponsoring organizations include a description of the sponsor's system of notifying tier II day care home providers of their options for reimbursement. For the implementation period, this rule requires that sponsors submit a plan amendment describing this system by April 1, 1997. Section 226.6(f) is further amended by adding a new paragraph, (10), which requires State agencies to annually provide sponsoring organizations with a list of State-funded programs which meet the special categorical eligibility requirements for children in tier II homes. Section 226.18(b) is amended to require that the agreement between the sponsoring organization and the day care home specify the responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and to determine the income eligibility of enrolled children, and/or to identify categorically eligible children. In addition, section 226.18(b) is further amended to require that the agreement include the sponsor's responsibility to inform providers of their options for reimbursement under the law. Finally, sections 226.23(e)(1)(i) and (iv) are amended by deleting the language exempting sponsoring organizations of day care homes from distributing income applications; by adding language to clarify that sponsors, at the request of the provider, must collect applications, determine the income eligibility of children in tier II day care homes, and maintain the information in a confidential manner; by adding language to indicate that sponsoring organizations may inform providers in tier II homes of the numbers of income-eligible enrolled children; and by clarifying the categorical eligibility procedures that apply to households of children in tier II day care homes, as discussed above.

Meal Counting and Reporting Procedures

Under this rule, all meals served in tier I homes or in tier II homes without any identified income-eligible children will be reimbursed at one rate—all tier I or all tier II, respectively. In such homes, meals can continue to be counted and reported to the sponsor as required by current regulations. However, for those tier II homes with a mix of income-eligible and non-income-eligible children, the introduction of two levels of reimbursement for meals necessitates a change in the way meals are counted and reported.

The following sections of the preamble discuss the various options available under the law for meal counting and reporting in tier II day care homes with a mix of income-eligible and nonincome-eligible children. It is important to consider the options in the context of the affected population. In the Department's opinion, it is likely that a relatively small percentage of day care homes participating in the program will contain a mix of income-eligible and non-income-eligible children, and therefore, be eligible for two levels of reimbursement. The majority of homes will likely be either tier I day care homes (i.e., those located in low-income areas or operated by a low-income provider) or tier II day care homes without any income-eligible children. The Department also recognizes that the mix of participating homes may vary significantly from one sponsor to another, thus making it important to provide as much flexibility as possible to sponsors in their meal counting and claiming options, while at the same time continuing to maintain program integrity.

Actual Meal Counts

Though it is a common current method of meal counting and reporting, taking actual meal counts is not currently required by regulations, and under a two-tiered reimbursement rate structure could impose an additional burden on some providers and sponsoring organizations. Under an actual counts system, for all tier II homes which elect to have income-eligible children identified, sponsors would have to collect and evaluate additional income applications, and/or identify new categorically eligible children, each time the enrollment of such a tier II home changes, or reimburse meals served to newly enrolled children whose income status has not been determined at the lower tier II rates. Because of the potential financial benefit, it is likely that providers under an actual meal count system will expect their sponsoring organizations to take immediate action to determine the income status of newly enrolled children.

Since only sponsors have access to the income eligibility information for each enrolled child in each of their day care homes, providers under an actual count system would now be required to record meal counts by each enrolled child's name. [Though we understand that a number of sponsoring organizations currently require providers to record meal counts by each enrolled child's name for monitoring purposes, it is not currently required by regulation.] Recording meal counts by each enrolled child's name is necessary under an actual count system because providers will not have access to income eligibility information or income status. Then, each provider would submit the meal count records, by child's name, to the sponsor. Finally, using the information collected and maintained by the sponsor on the income status of each enrolled child, the sponsor would identify and aggregate the total number of meals served which are eligible for tier I reimbursements, and the total number of meals served which are eligible for tier II reimbursements. This process would be performed for each "mixed" tier II home under a sponsor which uses actual meal counts in order to prepare the sponsoring organization's monthly claim for reimbursement.

One benefit of an actual count system is that reimbursements are more precisely targeted, as is the intention of the Act. However, the management sophistication of the sponsoring organization, the number of "mixed" tier II homes under a particular sponsorship, and the stability or instability of day care home enrollment in a sponsorship are also factors which must be considered when assessing the merits of various counting and claiming systems. The Act recognizes the potential burden on some sponsors and providers of performing actual meal counts, and includes a provision for simplified meal counting and reporting procedures, which is discussed below.

"Simplified" Meal Counts

In addition to the usual method of recording and reporting actual meal counts, section 708(e)(1) of the Act added section 17(f)(3)(A)(iii)(IV) to the NSLA to require that the Department establish simplified meal counting and reporting procedures for tier II day care homes that receive two levels of reimbursement for meals served to enrolled children. The Act sets forth two possible alternatives that may be used, and also gives the Department the authority to develop its own simplified procedures.

The first simplified alternative set forth in the Act involves the sponsor setting, for each tier II day care home, annual percentages of the number of meals served that are to be reimbursed at the tier I and tier II reimbursement rates. The percentages would be based on the number of enrolled children identified as being from income-eligible households, and the number not from such households, in a specified month or other period. This procedure is currently an option for State agencies

for providing reimbursement in CACFP child care centers, adult day care centers, and outside-school-hours care centers, and is referred to in section 226.9(b)(2) of the regulations as "claiming percentages."

For example, under the "claiming percentages" alternative, if in the month of September a tier II day care home had 5 enrolled children, 2 of whom were determined by the sponsor to be eligible for free or reduced price meals, the home's claiming percentage for the coming year would be set at 40 percent tier I reimbursement and 60 percent tier II reimbursement. To receive reimbursement, the provider would only need to submit total meal counts by type (breakfast, lunch/supper, and supplements) each month, as is currently the case. The sponsor would apply the established claiming percentage to determine the home's reimbursement: 40 percent of all meals served in the month would receive the tier I reimbursement rates; 60 percent would receive the tier II rates.

A variation of "claiming percentages" is the "blended rates" method, also used by child care centers, adult day care centers, and outside-school-hours care centers, and contained in section 226.9(b)(3) of current regulations. Using the circumstances from the above example, by multiplying the tier I rate for lunches by 0.40 (40 percent), the tier II rate by 0.60 (60 percent), and then adding the products together, a "blended rate" would be derived. If the tier I rate for lunches is $1.5750 (the current rate through June 30, 1997), and the tier II rate is $0.95, this would result in a blended reimbursement rate of $1.20. All lunches served to enrolled children in the home would be reimbursed at this single rate. Again, the day care home would only need to submit total meal counts by type (breakfast, lunch/supper, supplements) to the sponsor. The total reimbursement paid to the home would be the same using either claiming percentages or blended rates.

The other alternative, presented in new section 17(f)(3)(A)(iii)(IV)(bb) of the NSLA, would annually place a tier II home into one of two or more "reimbursement categories" based on the percentage of income-eligible children in the home. Each reimbursement category would "carry [ ] a set of reimbursement factors" (i.e., the tier I rate, the tier II rate, or some other rate(s) within the range defined by tier I and tier II rates).

One example of the second alternative could involve establishing multiple reimbursement rates within the range defined by the tier I and tier II rates, and then assigning a home a rate based on the percentage of income-eligible children in the home. For example, four lunch rates could be established as follows: at $0.95 (the tier II rate), $1.5750 (the tier I rate for FY 1997), and two approximately equal points between the tier I and tier II rates—$1.16 and $1.36. Tier II homes with no income-eligible children would, of course, receive $0.95 for each lunch served to enrolled children, while tier II homes with all income-eligible children would receive the maximum rate (i.e., $1.5750) for each lunch served. However, homes with a mix of income-eligible and non-income-eligible children would be assigned one of the intermediate lunch rates ($1.16 or $1.36) based on the percentage of income-eligible children served. Homes with more than zero and up to 33.3 percent income-eligible children would receive $1.16 per lunch; homes with more than 33.3 percent and less than 66.7 percent income-eligible children would receive $1.36 per lunch; and homes with 66.7 percent or more income-eligible children would receive the maximum tier I rate of $1.5750. Again using the previous example, a home in which 40 percent of the children were income-eligible would receive $1.36 per lunch, an amount which is 16 cents per lunch higher than that derived with claiming percentages or blended rates.

Another variation of the "reimbursement categories" alternative set forth in the law would also involve assigning a home a rate based on the percentage of income-eligible children in the home. However, in this variation, only the tier I and tier II rates would be used. Any home with 50 percent or more income-eligible children would receive the tier I rates for all meals served; a home with less than 50 percent income-eligible children would receive the tier II rates for all meals served. In the above example, a home with 2 of 5 enrolled children identified as income-eligible (40 percent), would receive the tier II reimbursement rate of $0.95 for all lunches served.

Given the small number of children enrolled in the typical family day care home, any method other than actual counts would be especially sensitive to changes in enrollment. Any change in enrollment which results in a different mix of eligibility categories will change the actual percentage of income-eligible children in the home, thus skewing the reimbursements above or below the level which the home would receive under an actual meal count system. Again using the above example, if one income-eligible child is withdrawn from care, the home's actual percentage of children eligible for tier I meal reimbursements would decline from 40 percent to 25 percent. Under most of the simplified methods described above, the provider would then receive more reimbursement than would be the case if actual meal counts by category of reimbursement were used.

Counting and Claiming Methods Permitted by This Regulation

Based on its analysis of the relative advantages and disadvantages of each of the methods discussed above, the Department has decided to allow actual meal counts, claiming percentages, or blended rates for counting, reporting, and reimbursement of meals served in tier II day care homes serving children eligible for both tier I and tier II rates. In order to provide maximum flexibility, and recognizing the diversity and varying levels of management sophistication of sponsoring organizations, this interim rule provides sponsoring organizations the option of which of the methods to use for their day care homes. However, each sponsor must use only one method for all of its homes, and will be permitted to change this method no more frequently than annually. This limitation will minimize the potential for administrative confusion and allow State agencies to track each sponsor's system for oversight and claims edit purposes. Further, to mitigate the effects of enrollment changes when using the simplified methods, we are exercising the discretion provided to the Department under new section 17(f)(3)(A)(iii)(IV)(cc) of the NSLA, which permits "such other simplified procedures as the Secretary may prescribe," by requiring that claiming percentages or blended rates for each home be adjusted at least semiannually by the sponsor, rather than annually as is the case for centers.

At this time, we are not adopting the use of the "reimbursement categories" approach described in the law and in two examples above. The above example involving multiple rates makes clear that at this time such an approach is potentially a far more complicated and unfamiliar method that does not offer any distinct advantages over claiming percentages or blended rates. Further, the option of reimbursing at the tier I rates for all meals served in a tier II home with 50 percent or more income-eligible children is far less precise in targeting benefits. The Department is also concerned that there is potential for abuse with this method, since a provider would gain substantial financial benefit when there are 50 percent or more income-eligible

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children in the home during the month of the "category" determination. Finally, the use of the "reimbursement categories" approach could significantly reduce the Federal cost savings attributed to this provision.

To further alleviate the potential burden on sponsors of the meal counting and reporting provisions being implemented, this interim rule will not establish any specific dates for recalculation of claiming percentages or blended rates for homes, or for determining the income eligibility of enrolled children when utilizing either the simplified methods or actual counts. Rather, by requiring changes to the percentages/rates at each home no less frequently than every six months, and redeterminations of individual eligibility at least annually (as discussed below), sponsors will be able to implement a system to more evenly distribute the work load associated with these options over the course of the year.

The claiming percentages/blended rates alternative set forth in section 708(e)(1) of the Act indicates that the claiming percentage or blended rate be established based on the percentage of identified income-eligible children enrolled in a home "in a specified month or other period." Although this interim regulation does not prescribe a specific time period for the enrollment determination, the Department believes it may be appropriate to consider methods which more accurately capture the income status of children enrolled in the home. Therefore, we are interested in receiving comments on two potential alternatives which would provide greater accuracy. The first alternative would involve a sponsor calculating the claiming percentage or blended rate based on a home's enrollment for an entire month using a list of enrolled children submitted by the day care home. The sponsor would assess the income eligibility status of each of the children enrolled in the home during the month and, using the enrollment list, derive the appropriate claiming percentage or blended rate. For example, if a home's enrollment list for the month of January indicates that 10 children were enrolled during the month, the home's claiming percentage or blended rate would be based on the number of identified income-eligible children, divided by 10. The second alternative would involve the day care home submitting an attendance list for the specified month. In contrast to the enrollment list, the sponsor using an attendance list would determine the claiming percentage or blended rate for the home using a weighted average of each enrolled child's level of participation during the month. The Department believes that both of these methods achieve greater accuracy in reimbursement payments, though, especially in the case of the attendance list, may impose an additional burden on the sponsor and day care homes.

Under the claiming percentages/blended rates option, for all tier II homes which elect to have the sponsor determine the income eligibility of enrolled children, the sponsor would make individual income eligibility determinations for enrolled children on an annual basis. The claiming percentage or blended rate would be set for the home at least every six months, taking into account any changes in enrollment that occurred in the six-month period. For example, for a tier II day care home that enters the program in January, the sponsor would take applications and determine the income eligibility of all enrolled children prior to the beginning of program operations. Based on the income status of the children enrolled in the home, a claiming percentage or blended rate would be established for the home. That percentage or rate would be used to reimburse meals served in the home for the next six months, regardless of changes in the home's enrollment during that period. By July, the sponsor would have assessed the income eligibility of those children new to the home since the January calculation, and would calculate a new claiming percentage or blended rate, to be used for the next six months, based on the income eligibility of each child enrolled in the home. Any child whose income status has not been determined at the time of the recalculation would be figured in the calculation at the tier II rate. The status of all children whose income eligibility had been determined in January would remain the same for the July calculation; redeterminations for these children would occur the following January.

The Department has some concerns about the potential for abuse of the claiming percentage/blended rates method; for example, low-income children who will not be in care on a regular basis could be enrolled by the provider during the month of the calculation so that the claiming percentage or blended rate is more favorable to the provider. Therefore, in an attempt to minimize potential abuse, this rule provides State agencies the authority to require a sponsoring organization to recalculate the claiming percentage or blended rate of any of its homes before the required semiannual calculation if a State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. State agencies and sponsors should be aware of and look for such potential abuse when conducting their monitoring activities. The Department is especially interested in receiving comments on ways to further minimize this potential abuse. This issue will be considered further and may be addressed in future guidance or in a future rulemaking concerning the overall management and integrity of the Program.

Although the claiming percentages/blended rates method will be adopted by this interim rule as the "simplified meal counting and reporting procedures" required by law, the Department is especially interested in receiving public comment on the second possible alternative in the law, described above as the "reimbursement categories" method, which is not being included in this interim rule. The Department is also interested in suggestions on other systems of meal counting and reporting that would not place undue burden on day care home providers or sponsors, but would provide for reimbursement payments that accurately reflect the income level of the households of enrolled children.

Accordingly, this rule amends section 226.13(c) to require that State agencies reimburse sponsoring organizations of day care homes based on the number of meals served to enrolled children, by meal type (breakfast, lunch/supper, and supplements) and by category (tier I and tier II), multiplied by the appropriate rates of reimbursement as established in the law. For the reasons discussed previously in this preamble, section 226.13(c) will no longer include the specific base reimbursement rates. The rule also adds a new section, 226.13(d), to set forth the meal counting requirements for day care homes, and to allow sponsoring organizations to select the reimbursement method (either actual counts, claiming percentage, or blended rates) that they will use to pay providers in tier II day care homes with a mix of incomeeligible and non-income-eligible children. If a sponsoring organization elects to use claiming percentages or blended rates, this rule requires in section 226.13(d) that they be recalculated at least every six months, unless the State agency requires the sponsor to recalculate a home's claiming percentage or blended rate before the required semiannual calculation if it has reason to believe that a home's percentage of income-eligible children has changed

significantly or was incorrectly established in the previous calculation. The claiming percentages or blended rates are based on individual income eligibility determinations made on an annual basis in accordance with section 226.23(e)(1).

For a detailed discussion of the implementation phases of this regulation, please refer to the Implementation section in the preamble below.

Implementation

In order to comply with the Act and implement the provisions of this regulation on July 1, 1997, sponsoring organizations will have to undertake several duties in advance of that date. First, using census data provided to the CACFP State agency by the Department, school data provided by the CACFP State agency by the State agency that administers the NSLP, or day care home providers' income information, all day care homes must be determined to be either tier I or tier II day care homes. As discussed above, once a home is designated as a tier I day care home, all meals served to enrolled children in the home are eligible for tier I rates of reimbursement (except for providers' own children, who must be income eligible). All tier II homes, unless they elect otherwise, will receive the tier II rates of reimbursement for all meals served to enrolled children.

For all tier II homes in which the provider elects to have income-eligible children identified, however, the sponsor must: (1) Collect applications and/or identify categorically eligible children; and (2) elect to use either actual meal counts, claiming percentages or blended rates as the method of reimbursement for all of its homes. If the information is not collected in order to separate actual meal counts by incomeeligible and non-income-eligible children, or to calculate a claiming percentage or blended rate for a tier II day care home by the July 1 implementation date, such a home must receive the lower tier II reimbursement rates for all meals served until the claiming percentage or blended rate is calculated, or the income status of children in an "actual counts" home is determined.

Reimbursement Factors for Tier II Homes

Section 708(e)(1) of the Act amended section 17(f)(3)(A)(iii)(I) of the NSLA to establish the reimbursement factors for meals served in tier II day care homes at 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements, with adjustments made to the rates on July 1, 1997, and each July 1 thereafter. As is the case with tier I day care home reimbursement factors, the Act further amended section 17(f)(3)(A)(iii)(I)(bb) of the NSLA to require that these factors be rounded to the nearest lower cent increment, and that adjustments be based on changes to the Consumer Price Index for "food at home" instead of "food away from home." As provided for in the Act, adjustments to the rates in subsequent years will be based on the unrounded rate from the preceding school year. As discussed in the preamble above, the base reimbursement rates will not be included in the regulatory language.

Accordingly, this rule further amends section 226.4(c) to indicate that, except for meals served to children identified as income eligible, as discussed above, all meals served in tier II day care homes will be reimbursed at the rates established in the law for tier II day care homes. Section 226.4(g) is also further amended to incorporate the revised method of adjusting the rates of reimbursement for tier II day care homes.

General Requirements for State Agencies, Sponsors and Homes

State Agency Program Reviews

Section 226.6(l) currently requires State agencies to maintain documentation of reviews of sponsoring organizations conducted, corrective actions prescribed, and follow-up efforts. This section further indicates that State agency reviews shall assess sponsoring organizations' compliance with regulations and Departmental and FCS instructions. Due to the significant financial benefit associated with classification of a day care home as a tier I home, this interim rule specifically requires that State agency reviews of sponsoring organizations of day care homes include an evaluation of the documentation used by sponsors to classify homes as tier I homes. Furthermore, due to the potentially significant financial liability to a State agency if homes are misclassified as tier I homes by sponsors, the Department strongly encourages—but will not require—State agencies to review the documentation supporting classification of tier I day care homes which qualify on the basis of school or census data at the time the sponsor initially makes the determination. Verification requirements for tier I homes qualifying on the basis of the provider's household income are addressed in this preamble below.

Accordingly, this rule amends section 226.6(l) to require that State agency reviews include the provision discussed above.

Documentation

In addition to changing the method by which sponsoring organizations reimburse meals served in day care homes, the amendments made to the CACFP by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 also necessitate changes in the records that day care home sponsors and providers are required to maintain. Section 226.15(e) sets forth the recordkeeping requirements for institutions, including sponsoring organizations of day care homes. In addition to documentation of the enrollment of each child in day care, and income eligibility information for enrolled providers' children, sponsors will now be required to maintain income eligibility information for children enrolled in tier II day care homes that have elected to have sponsors collect free or reduced price information. This includes family size and income information and/or evidence of categorical eligibility for children who participate in, or who have a parent participating in, a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the standard for free or reduced price meals. Finally, sponsors will also be required to maintain documentation of information used to classify day care homes as tier I day care homes. This would include the appropriate school or census data, and/or applications from providers whose households have been verified as eligible for free or reduced price meals.

Sections 226.18 (e) and (f) set forth similar recordkeeping requirements for day care homes. These provisions include the requirement that day care home providers maintain daily records of the number of children in attendance and the number of meals, by type (breakfast, lunch/supper, supplements), served to enrolled children. In addition, sponsors are required to submit family size and income information only for providers' own children, and day care homes must maintain documentation of this information. Under this rule, tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and whose sponsor employs "actual counts" claiming methods, will now be required to maintain and submit to the sponsor the number and types of meals (breakfast, lunch/supper, supplements) served each day to each enrolled child by name.

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Accordingly, this rule amends section 226.15(e)(3) to add the above requirements for documentation for sponsoring organizations of day care homes. In addition, section 226.18(f) is amended by removing the second sentence, which restricts the collection and maintenance of family size and income information to that used to determine the eligibility of providers' own children, since this information may now also be collected from the households of children in tier II homes. Finally, section 226.18(e) is amended to add the recordkeeping requirements for tier II day care homes in which actual meal counts are used, as discussed above.

Verification

Section 17(f)(3)(A)(iii)(V) of the NSLA, as amended by section 708(e)(1) of Pub. L. 104–193, authorizes the Secretary to establish any necessary minimum verification requirements for tier II day care homes. In addition, the definition of tier I day care home in section 17(f)(3)(A)(ii)(I) of the NSLA requires that a day care home that qualifies as a tier I home on the basis of the provider's household income must have this income "verified by the sponsoring organization of the home under regulations established by the Secretary," as mentioned earlier in this preamble.

Current requirements for conducting verification of eligibility of participants in various types of institutions, which include sponsoring organizations of day care homes, are contained in section 226.23(h). Because day care homes are considered "nonpricing programs," State agencies currently follow the provisions of section 226.23(h)(1), for "nonpricing programs," to verify the applications of day care home providers' own children. This section requires that State agencies review all applications on file to ensure that (1) the application has been correctly and completely executed by the household; (2) the institution (i.e., sponsoring organization) has correctly determined and classified the eligibility of enrolled participants; and (3) the institution (i.e., sponsoring organization) has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced price eligibility and the number that do not. This section also permits States to conduct additional verification to determine the validity of information provided by households on the application, in accordance with section 226.23(h)(2), the verification procedures for "pricing programs."

Now that applications will be collected from the households of some children enrolled in tier II day care homes, the amount of verification activity required to be conducted by State agencies will increase. However, this interim rule is not making any change to the current regulations for verification by State agencies, which will continue to follow the requirements set forth in sections 226.23(h)(1)–(2). Therefore, under this interim rule, State agencies will have the option of conducting the more extensive verification of applications under section 226.23(h)(2), which would include parental contact to verify the information provided on the applications, but are not required to do so. The Department recognizes the importance of verification to reduce the potential for fraud and abuse in the program and is considering what amount of additional verification is appropriate. The Department is considering the possibility of addressing the broad subject of verification of applications in a future proposed rulemaking concerning the overall management and integrity of the Program.

However, as required by the law, this rule adds the requirement that sponsoring organizations conduct verification of the provider's income, prior to approving the application, for all day care homes that qualify as tier I homes on the basis of the provider's income. Since the information provided on the application results in a large direct benefit to the provider, in the form of higher reimbursements (tier I) for meals served to all children in care, sponsors will be required to perform the more extensive verification of the provider's eligibility as described for pricing programs in current section 226.23(h)(2)(i). This involves verifying the income and other information provided on the approved application through collection of information from the household.

Accordingly, this rule amends section 226.23(h) by adding a new paragraph, (6), that contains these new requirements for verification by sponsors of family day care homes.

Annual Requirements for Sponsoring Organizations

Section 226.6(f) sets forth requirements that institutions, including sponsoring organizations of day care homes, must comply with on an annual basis. In addition to the current requirements, this rule also adds a requirement that sponsors annually submit current information on the total number of tier I and tier II day care homes, and a breakdown showing the total number of children enrolled in tier I homes, the total number of children enrolled in tier II homes, and the number of identified income-eligible children in tier II homes (i.e., those for whom tier I reimbursements would be claimed). Submission of these data will provide States with information necessary to help ensure that the reimbursement claims subsequently submitted by sponsors accurately reflect enrollment by reimbursement category. In addition, this information will be necessary to conduct the study of the tiering system's impact mandated by section 708(l) of the Act and will provide information regarding the characteristics of program beneficiaries.

Accordingly, this rule further amends section 226.6(f) by adding new paragraph (11) to require that the above described information on tier I and tier II day care homes and enrolled children be provided by sponsoring organizations to State agencies on an annual basis.

Monthly Reporting by Sponsoring Organizations

Section 226.13(b) requires that each sponsoring organization report, on a monthly basis to the State agency, the total number of meals, by type (breakfast, lunch/supper, supplements), served to children enrolled in day care homes. Due to the changes made to the reimbursement structure for day care homes by Pub. L. 104–193, sponsoring organizations will now be required to report the number of meals served by type and by category (i.e., tier I and tier II). This information will enable State agencies to pay claims to sponsoring organizations at the appropriate levels of reimbursement.

Accordingly, this rule amends section 226.13(b) to add the requirement that sponsoring organizations of day care homes report to the State agency on a monthly basis the number of meals served by type and by category.

Free and Reduced Price Policy Statements

Section 226.23 of the regulations requires that each institution, including a day care home sponsoring organization, submit when it applies for participation in the Program, a written policy statement concerning free and reduced price meals for use in all facilities under its jurisdiction. Under section 226.23(b), the policy statement for sponsoring organizations of day care homes must consist of an assurance to the State agency that all participants are served the same meals at no separate charge, and that there is no discrimination in the course of food

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service. With the establishment of tier I and tier II day care homes under the Personal Responsibility and Work Opportunity Reconciliation Act, different meal reimbursements may now be received for children in the same day care home. Therefore, the Department believes it is important for the sponsoring organization's policy statement to also include an assurance that there will be no identification of tier I and tier II recipients in day care homes, and that sponsoring organizations will not share income eligibility information concerning individual households with the day care homes and will limit the use of the information to persons directly connected with the administration and enforcement of the Program.

The Department notes that section 703 of Pub. L. 104–193 amended section 9(b)(2)(D) of the NSLA to prohibit the requirement of annual submission of free and reduced price policy statements once the initial policy has been submitted unless there are substantive changes to the original statement. However, it is the Department's position that a change of the magnitude of the institution of the tiering system for day care homes in the CACFP constitutes a "substantive change" in the free and reduced price policy, and thus the revised free and reduced price policy statement must be submitted to the State agency for approval. Accordingly, this rule amends section 226.23(b) to add the above requirement.

Providers' Own Children

The Personal Responsibility and Work Opportunity Reconciliation Act did not make any changes to the current requirements concerning providers' own children. In order to receive reimbursement for meals served to providers' own children, the provider's household must meet the income eligibility guidelines for free or reduced price meals. The definitions of tier I and tier II homes in the law are such that meals served to providers' own children could only be eligible for reimbursement in tier I day care homes. Any provider in a non-needy area whose own children are eligible for reimbursement would, by virtue of being low income, meet the definition of a tier I home. It should be noted, however, that income eligibility still must be determined for providers' own children in homes that sponsors approve as tier I homes based on census or school data. Since current regulations already reflect the requirements of the law, this rule does not make any changes to the regulatory language concerning providers' own children.

List of Subjects

7 CFR Part 210

Breakfast, Children, Food assistance programs, Grant programs—Social programs, Lunch, Meal Supplements, Nutrition, Reporting and recordkeeping requirements, School Nutrition Program, Surplus agricultural commodities.

7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, infants and children, Records, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.9, a new paragraph (b)(20) is added to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) *Annual agreement.* * * *

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October.

* * * * *

3. In § 210.19, a new paragraph (f) is added to read as follows:

§ 210.19 Additional responsibilities

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* No later than March 15, 1997, and no later than February 1 each year thereafter, the State agency shall provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.2:

a. The definition of *Documentation* is amended by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c); and

b. definitions of *Tier I day care home* and *Tier II day care home* are added.

The additions read as follows:

§ 226.2 Definitions.

* * * * *

Documentation means * * *

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals:

(1) the name(s), appropriate case number(s) and name of the qualifying program(s) for the child(ren); and

(2) the signature of an adult member of the household.

* * * * *

Tier I day care home means (a) a day care home that is operated by a provider whose household meets the income standards for free or reduced-price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with § 226.23(h)(6);

(b) a day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price meals; or

(c) a day care home that is located in a geographic area, as defined by FCS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.

Tier II day care home means a day care home that does not meet the criteria for a *Tier I day care home*.

* * * * *

3. In § 226.4:

a. Paragraph (c) is revised; and

b. Paragraph (g)(1) is revised.

The revisions read as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(c) *Day care home funds.* For meals served to children in day care homes, funds shall be made available to each State agency in an amount no less than the sum of products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for breakfasts;

(2) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for breakfasts;

(3) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for breakfasts;

(4) The number of lunches and suppers served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for lunches/suppers;

(5) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for lunches/suppers;

(6) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for lunches/suppers;

(7) The number of supplements served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for supplements;

(8) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for supplements; and

(9) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for supplements.

* * * * *

(g) * * *

(1) The rates for meals served in tier I and tier II day care homes shall be adjusted annually, on July 1 (beginning July 1, 1997), on the basis of changes in the series for food at home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be rounded to the nearest lower • cent based on changes measured over the most recent twelve-month period for which data are available. The adjustments shall be computed using the unrounded rate in effect for the preceding school year.

* * * * *

4. In § 226.6:

a. The second sentence of paragraph (f)(2) is revised;

b. Paragraphs (f)(9), (f)(10), and (f)(11) are added; and

c. A new sentence is added after the third sentence of paragraph (l) introductory text.

The additions and revision read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(f) * * *

(2) * * * Such a plan shall include: detailed information on the organizational administrative structure; the staff assigned to Program management and monitoring; administrative budget; procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction; and, for sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement. For initial implementation of the two-tiered reimbursement structure for day care homes, by April 1, 1997, each sponsoring organization of day care homes shall submit an amendment to its plan, subject to review and approval by the State agency, describing its systems for making tier I day care home determinations and for notifying tier II day care homes of their options for reimbursement.

* * * * *

(9) Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals. The State agency shall provide the list to sponsoring organizations by April 1, 1997, and by each February 15 thereafter. The State agency also shall provide each sponsoring organization with census data, as provided to the State agency by FCS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. In addition, the State agency shall ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school or census data. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

(10) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(11) Require each sponsoring organization of day care homes to submit the total number of tier I and tier II day care homes that it sponsors; a breakdown showing the total number of children enrolled in tier I day care homes; the total number of children enrolled in tier II day care homes; and the number of children in tier II day care homes that have been identified as eligible for free or reduced price meals.

* * * * *

(l) * * * Program reviews shall include State agency evaluation of the documentation used by sponsoring organizations to classify their day care homes as tier I day care homes. * * *

* * * * *

5. In § 226.13:

a. Paragraph (b) is revised;

b. Paragraph (c) is revised; and

c. New paragraph (d) is added.

The addition and revisions read as follows:

§ 226.13 Food service payments to sponsoring organizations for day care homes.

* * * * *

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and

supplements) and by category (tier I and tier II), served to children enrolled in approved day care homes.

(c) Each sponsoring organization shall receive payment for meals served to children enrolled in approved day care homes at the tier I and tier II reimbursement rates, as applicable, and as established by law and adjusted in accordance with § 226.4. However, the rates for lunches and suppers shall be reduced by the value of commodities established under § 226.5(b) for all sponsoring organizations for day care homes which have elected to receive commodities. For tier I day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served, by type, to enrolled children. For tier II day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served to enrolled children by type, and by category (tier I and tier II) as determined in accordance with paragraphs (d)(2) and (d)(3) of this section. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization on behalf of the home and with the home provider's written consent.

(d) As applicable, each sponsoring organization for day care homes shall:

(1) Require that tier I day care homes submit the number of meals served, by type, to enrolled children.

(2) Require that tier II day care homes in which the provider elects not to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals submit the number of meals served, by type, to enrolled children.

(3) Not more frequently than annually, select one of the methods described in paragraphs (d)(3) (i)–(iii) of this section for all tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals. In such homes, the sponsoring organization shall either:

(i) Require that such day care homes submit the number and types of meals served each day to each enrolled child by name. The sponsoring organization shall use the information submitted by the homes to produce an actual count, by type and by category (tier I and tier II), of meals served in the homes; or

(ii) Establish claiming percentages, not less frequently than semiannually, for each such day care home on the basis of the number of enrolled children determined eligible for free or reduced-price meals. The State agency may require a sponsoring organization to recalculate the claiming percentage for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children; or

(iii) Determine a blended per-meal rate of reimbursement, not less frequently than semiannually, for each such day care home by adding the products obtained by multiplying the applicable rate of reimbursement for each category (tier I and tier II) by the claiming percentage for that category. The State agency may require a sponsoring organization to recalculate the blended rate for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children.

6. In § 226.14, the introductory text of paragraph (a) is amended by adding a sentence after the first sentence to read as follows:

§ 226.14 Claims against institutions.

(a) * * * State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FCS. * * *

* * * * *

7. In § 226.15:

a. Paragraph(e)(3) is revised;

b. Paragraphs (f) through (j) are redesignated as paragraphs (g) through (k), respectively; and

a. A new paragraph (f) is added.

The addition and revision read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(3) Documentation of: the enrollment of each child at day care homes; information used to determine the eligibility of enrolled providers' children for free or reduced price meals; information used to classify day care homes as tier I day care homes; and information used to determine the eligibility of enrolled children in tier II day care homes that have been identified as eligible for free or reduced price meals in accordance with § 226.23(e)(1).

* * * * *

(f) *Day care home classifications.* Each sponsoring organization of day care homes shall determine which of the day care homes under its sponsorship are eligible as tier I day care homes. A sponsoring organization may use current school or census data provided by the State agency or free and reduced price applications collected from day care home providers in making a determination for each day care home. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

* * * * *

8. In § 226.18:

a. Paragraphs (b)(11) and (b)(12) are added;

b. Paragraph (e) is amended by adding a new sentence after the first sentence; and

c. Paragraph (f) is amended by removing the second sentence.

The additions and revision read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(11) The responsibility of the sponsoring organization to inform tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children.

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced price meals.

* * * * *

(e) * * * Each tier II day care home in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and in which the sponsoring organization employs a meal counting and claiming system in accordance with § 226.13(d)(3)(i), shall maintain and submit each month to the sponsoring organization daily records of the

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number and types of meals served to each enrolled child by name. * * *

* * * * *

9. In § 226.23:

a. Paragraph (b) is amended by adding a sentence at the end of the paragraph;

b. Paragraph (e)(1)(i) is revised;

c. Paragraph (e)(1)(iv) is revised; and

d. Paragraph (h)(6) is added.

The additions and revisions read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(b) * * * This statement shall also contain an assurance that there will be no identification of children in day care homes in which meals are reimbursed at both the tier I and tier II reimbursement rates, and that the sponsoring organization will not make any free and reduced price eligibility information concerning individual households available to day care homes and will otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program.

* * * * *

(e)(1) * * *

(i) For the purpose of determining eligibility for free and reduced price meals, institutions shall distribute applications for free and reduced price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to day care home providers who wish to enroll their own eligible children in the Program. At the request of a provider in a tier II day care home, sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to households of all children enrolled in the home, or, if the provider in a tier II day care home so elects, shall distribute such applications only to households identified as being categorically eligible for tier I meals. These applications, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced price meals. Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions other than sponsoring organizations of day care homes shall state that, if a child is a member of a food stamp household or AFDC assistance unit, the child is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section; such forms and materials distributed by sponsoring organizations of day care homes shall state that, if a child or a child's parent is participating in or subsidized under a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals, meals served to the child are automatically eligible for tier I reimbursement, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section, and shall list any programs identified by the State agency as meeting this standard; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(iii) of this section. Sponsoring organizations of day care homes shall not make free and reduced price eligibility information concerning individual households available to day care homes and shall otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program. However, sponsoring organizations may inform tier II day care homes of the number of identified income-eligible enrolled children.

* * * * *

(iv) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. In addition, households of children enrolled in tier II day care homes who are participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households, AFDC assistance units, or, for children enrolled in tier II day care homes, other qualifying Federal or State programs, shall be required to provide:

(A) The names and food stamp, AFDC, or for tier II homes, other case number of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) the signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

* * * * *

(h) * * *

(6) Verification procedures for sponsoring organizations of day care homes. Prior to approving an application for a day care home that qualifies as tier I day care home on the basis of the provider's household income, sponsoring organizations of day care homes shall conduct verification of such income in accordance with the procedures contained in paragraph (h)(2)(i) of this section.

Dated: December 30, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

Appendix to the Preamble

Note: This appendix will not appear in the Code of Federal Regulations

ECONOMIC IMPACT ANALYSIS

1. Title: Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements

2. Statutory Authority: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)

3. Background

This interim rule amends the Child and Adult Care Food Program (CACFP) regulations governing reimbursement rates for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193); these provisions reduce the reimbursement rates for meals served to children who do not qualify for low-income subsidies. Specifically, this rule develops a two tier reimbursement structure for meals served to children enrolled in family or group day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by: (1) the location of the day care home; (2) the income of the day care provider; or (3) the income of each enrolled child's household.

This interim rule targets CACFP meal reimbursement payments to low-income children and the day care home providers who serve them, where low-income is defined as not exceeding 185 percent of the Federal income poverty guidelines. This interim rule retains near-current reimbursement rates for meals served to children by providers residing in low-income areas or served by providers who are low-income. Near-current reimbursements will also be retained for meals served to children who are identified as low-income even if the provider neither resides in a low-income area nor is low-income. Meals served to all other children will be reimbursed at the lower rates. These changes will be effective July 1, 1997.

4. Cost/Benefit Assessment of Economic and Other Effects

Benefits

The need to reduce overall Federal expenditures has prompted a review of many programs and led to the legislative decision to improve the targeting of CACFP benefits to low-income children. To accomplish targeting of benefits, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two tiers of day care homes and reimbursement rates. Under tiering, any CACFP participating day care home (DCH) located in a low-income area or operated by a low-income provider is eligible for tier I status, where low-income areas are determined by local school or census data. All meals served in tier I DCHs are reimbursed at the higher set of reimbursement rates. All DCHs not qualifying for tier I are tier II DCHs. Meals served in tier II DCHs are reimbursed at the lower set of rates, with the exception that meals served to documented low-income children are reimbursed at the higher set of rates.

The initial establishment of the Child Care Food Program (CCFP) in November, 1975 required both types of CCFP providers, day care centers and DCHs, to make individual eligibility determinations based on each participating child's household size and income. Meal reimbursement rates paid to sponsors for meals served in DCHs were based on each enrolled child's documented eligibility for free, reduced price or paid meals. In order to be a DCH, which denotes a CCFP participating home in this analysis, a home has always had to (1) meet State licensing requirements, or be approved by a State or local agency and (2) be sponsored by an organization that assumes responsibility for ensuring the DCH's compliance with Federal and State regulations (these licensing and sponsorship requirements are still in effect).

In the years following establishment of the program, concerns were raised that the paperwork and recordkeeping requirements were creating barriers to DCH participation in the CCFP. In 1978, P.L. 95–627 eliminated free and reduced price eligibility determinations for individual children in DCHs (but left unchanged day care centers' individual eligibility determination requirements), and established a single reimbursement rate for each type of meal served in DCHs (lunches/suppers, breakfasts), and such changes encouraged day care providers' participation in the CCFP by reducing their administrative paperwork burden. The Omnibus Budget Reconciliation Act of 1981 added the requirement of a means test for providers to claim reimbursements for meals served to their own children in care. With this sole exception, all DCHs continued to receive the same reimbursements for all meals served to children in care, regardless of each child's income.

The day care portion of the CCFP (The CCFP was renamed the Child and Adult Care Food Program (CACFP) in 1989 when an adult day care component was added.) has experienced dramatic growth in both DCH participation and Federal government costs. From fiscal year 1986 to fiscal year 1995, the number of participating DCHs increased from 82,000 to 193,000, an increase of 134 percent. During the same period, meal reimbursements in nominal dollars increased from around $190 million to about $730 million, a 280 percent increase.[1,2] Program growth has occurred primarily among non-low-income children: table 1 shows that the proportion of low-income DCH participants decreased rapidly after individual eligibility determinations were eliminated in 1978. The table shows the proportion of DCH children with household incomes below 130 percent of the Federal income poverty guidelines decreased by 33 percentage points between 1977 and 1982 and by an additional 9 between 1982 and 1986. During the same periods the percentage of non-low-income children (above 185 percent of poverty) increased 46 and 7 percentage points, respectively. While empirical data is unavailable, it is believed that the income status of children in DCHs in 1996 was comparable to that in 1986. The growth in DCHs among non-low-income children is the impetus for P.L. 104–193's targeting of DCH benefits to low-income children.

TABLE 1.—INCOME ELIGIBILITY STATUS OF CHILDREN IN DCHS BY YEAR

Percent of poverty	Percent of DCH children in poverty strata by year(s)				
	1977[a]	1982[b]	Change between 1977–1982	1986[c]	Change between 1982–1986
≤130	58	25	−33	16	−9
131–185	24	11	−13	13	+2
≥185	18	64	+46	71	+7
Total	100	100	N/A	100	N/A

[a] Percentage represent the proportion of meals served by category: free (to children from hoseholds with income ≤130% of Federal income poverty guidelines), reduced price (131–185% of poverty), and paid (≥185% of poverty). Since most DCHs operating in 1977 were non-pricing, that is did not charge separately for each meal served, it is assumed children in care of different income strata have equal propensitves consume meals, which implies the proportion of meals served by category in 1977 is a reasonable proxy for children's income eligibility percentages (assuming children eligible for free or reduced-price benefirts generally became approved to receive them).

[b] Taken from a citation of the Evaluation of Child Care Food Program: Results of the Child Care Food Program: Results of the Child Impact Study Telephone Survey and Pilot Study in the Study of the Child Care Food Program[1] report.

[c] Taken from Study of the Child Care Food Program.[1]

The 1986 Study of the Child Care Food Program (CCFP Study)[1] that was conducted by Abt. and sponsored by USDA Food and Nutrition Service, found that approximately 70 percent of the children enrolled in DCHs in 1986 would not have been eligible for free or reduced price meals had a means test been performed on them. The establishment of a two tier reimbursement system focuses Federal child care benefits on children who are low-income.

The two tier reimbursement rate structure is expected to effect significant Federal budgetary savings. The six year projected savings (fiscal years 1997–2002) are approximately $2.2 billion (see table 4). The savings would result from 1) a reduction in the reimbursement rates for meals served in tier II (non-low-income) DCHs and 2) a decrease in the rate of growth of day care home participation in the CACFP and savings in sponsor administrative payments and audit expenditures resulting from this slower rate of growth. The estimated savings assume that in fiscal years 1997–2002 approximately 70 percent of the children in care will be ineligible for the higher reimbursement rates. This 70 percent assumption follows from the income levels of the children who participated in 1986.1

The reduction in reimbursement rates for meals served to children in tier II DCHs who are not documented income-eligible would result in savings of approximately $1.9 billion over the next six years (fiscal years

1997–2002). Rates for all meals served to these children-lunches/supper, breakfasts, and supplements-would decrease as shown in table 2. The rate change would result in a savings of about $0.63 for every lunch or supper served during fiscal year 1998, the first full fiscal year in which the new two tier system will be in effect. The savings would increase to about $0.70 per meal by fiscal year 2002. Breakfast savings would range from almost $0.61 per meal served in fiscal year 1998 to almost $0.66 in fiscal year 2002, and supplement savings would range from about $0.35 cents in fiscal year 1998 to almost $0.39 cents in fiscal year 2002.

TABLE 2.—CHANGES IN TIER II DCH MEAL REIMBURSEMENT RATES DUE TO TIERING

Fiscal year	Meal type	Projected meal reimbursement rates			
		DCH rates before P.L. 104–193	Tier II DCH rates after P.L. 104–193	Difference	Percent change
1998	Lunch/Supper	$1.6175	$0.9900	$0.6275	−38.8
	Breakfast	0.8850	0.2800	0.6050	−68.4
	Supplement	0.4825	0.1300	0.3525	−73.1
1999	Lunch/Supper	1.6600	1.0100	0.6500	−39.2
	Breakfast	0.9050	0.2900	0.6150	−68.0
	Supplement	0.4950	0.1400	0.3550	−71.7
2000	Lunch/Supper	1.7050	1.0400	0.6650	−39.0
	Breakfast	0.9275	0.3000	0.6275	−67.7
	Supplement	0.5075	0.1400	0.3675	−72.4
2001	Lunch/Supper	1.7500	1.0700	0.6800	−38.9
	Breakfast	0.9525	0.3100	0.6425	−67.5
	Supplement	0.5225	0.1400	0.3825	−73.2
2002	Lunch/Supper	1.7975	1.1000	0.6975	−38.8
	Breakfast	0.9750	0.3200	0.6550	−67.2
	Supplement	0.5350	0.1500	0.3850	−72.0

The growth of day care home participation in the CACFP is projected to slow as a result of the two tier rate structure, as some would-be providers are expected to perceive the program as offering insufficient financial incentive and/or being more administratively burdensome, relative to the financial benefits, than under prior law. This slowing in homes' participation is projected to cause a slowing in the rate of growth of sponsor administrative payments and meals served. As shown in table 3, it is estimated that in fiscal year 1998, the first full year of tiering, 27 million fewer meals will be served than would have been served under the current reimbursement rate structure (due to a slower growth rate in day care home participation). The six year effect (fiscal years 1997–2002) of this projected slowing of growth is a decrease in the number of meals served by 376 million, which is measured relative to the number projected under pre-July 1, 1997 reimbursement rates. The six year (fiscal years 1997–2002) projected savings from this slowing of program growth is approximately $300 million, measured in nominal dollars.

TABLE 3.—CHANGES IN DCH MEAL GROWTH RATE DUE TO TIERING

Fiscal year	Projected meals (in thousands)[b]					
	Before P.L. 104–193	After P.L. 104–193			Difference (total)	Percent change
		Tier I	Tier II	Total		
1997[a]	817,177	243,528	568,232	811,760	−5,417	−0.7
1998	860,488	249,982	583,290	833,272	−27,216	−3.2
1999	904,372	256,356	598,164	854,520	−49,852	−5.5
2000	948,687	262,637	612,819	875,456	−73,231	−7.7
2001	993,275	268,809	627,221	896,029	−97,246	−9.8
2002	1,039,959	275,126	641,960	917,086	−122,873	−11.8
1997–2002	5,563,958	1,556,437	3,631,687	5,188,124	−375,834	−6.8

[a] Tiering does not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.
[b] In fiscal year 1995, national DCH meal counts imply the average DCH served 19 breakfasts, 31 lunches/suppers, and 31 supplements in an average week.

Costs

This interim rule promulgates the two tier CACFP meal reimbursement system specified in P.L. 104–193. This system was designed to reduce Federal child care subsidies to providers and parents who are non-low-income. Tiering will reap a projected $2.2 billion in Federal savings over the next six fiscal years through (1) lower meal reimbursement payment rates for non-low-income DCH providers and non-low-income children and (2) secondary savings stemming from the lower rates, including the decrease in DCH growth rate. The non-low-income providers will likely pass some of their revenue loss on to their clientele (primarily non-low-income parents) through higher child care fees. Non-low-income providers and parents will thus bear most of ing from the projected $2.2 billion reduction in Federal expenditures—as was the intent of P.L. 104–193. In addition to these fiscal costs, operating the two tier system will place new

administrative burdens (costs) on DCH sponsors, State CACFP and State National School Lunch Program (NSLP) agencies, and NSLP school food authorities. The following analysis will show these administrative costs are minor in comparison with the costs to non-low-income providers and parents.

TABLE 4.—FEDERAL CACFP DCH COSTS BEFORE AND AFTER P.L. 104–193

Fiscal year	Before P.L. 104–193			After P.L. 104–193					Change			
	Total DCH	Total meals	Admin. and audit	Total DCH	Meal			Admin. and audit	Total DCH		Meal (percent)	Admin. and audit (percent)
					Tier I meal	Tier II meal	Total meal		Dollars	Percent		
1997*	$952,099	$809,639	$142,460	$871,012	$242,083	$487,300	$729,383	$141,630	−$81,087	−8.5	−9.9	−0.6
1998	1,026,020	875,034	150,986	693,686	257,400	289,518	546,918	146,768	−332,324	−32.4	−37.5	−2.8
1999	1,104,105	943,294	160,810	727,323	270,711	305,178	575,950	151,374	−376,781	−34.1	−38.9	−5.9
2000	1,186,699	1,015,754	170,945	758,701	284,903	321,110	606,013	152,688	−427,998	−36.1	−40.3	−10.7
2001	1,273,343	1,091,954	181,389	796,114	299,951	337,907	637,858	158,256	−477,229	−37.5	−41.6	−12.8
2002	1,365,473	1,173,027	192,446	835,559	315,070	356,536	671,607	163,952	−529,913	−38.8	−42.7	−14.8
1997–2002	6,907,739	5,908,702	999,035	4,682,396	1,670,179	2,097,550	3,767,729	914,667	−2,225,342	−32.2	−36.2	−8.4

*Tiering does not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.

The costs of tiering for DCH providers will be addressed first and then followed by a discussion of the costs for families with children in tier II DCHs. The new administrative burdens that tiering imposes on DCH sponsors will be discussed next and then followed by an examination of the administrative costs for CACFP State agencies, NSLP State agencies, and NSLP school food authorities.

Implementation and use of the tiering system will have both implementation and periodically recurring costs for the entities discussed above. The implementation costs will depend highly on the specifics of the State and local CACFP procedures currently in place and on the reimbursement procedures selected under the new rule, and will therefore vary greatly across States and localities. Because of the lack of information on these current practices, quantification of the implementation costs, within a reasonable degree of accuracy, is precluded. It is recognized that these costs may be significant, especially for State CACFP agencies (sponsors will need more technical assistance). The recurring costs are more evident and quantifiable, and what follows is a discussion of the recurring costs the affected entities will incur.

I. Costs to Providers

For CACFP providers the costs of tiering will have an administrative burden component, but will be primarily financial, due to the lower meal reimbursement rates, and will fall on providers operating tier II DCHs tier II DCHs will experience a decrease in CACFP reimbursements; the majority of the $2.2 billion in projected savings is due to lower reimbursements to non-mixed tier II DCHs (a mixed tier II DCH is a tier II DCH where at least one child in care is documented income-eligible; meals served to such children are reimbursed at the higher rates). Non-mixed tier II DCHs comprise an estimated 64 percent of all DCHs (see Costs to Sponsors for explanation). For the average non-mixed tier II DCH, the July 1, 1997 tier II rate decrease will cause weekly CACFP revenues to decline 51 percent, from $82 to $402, which follows directly from the average DCH's weekly meal mix footnoted in table 3 and the meal reimbursements shown in table 2. Since the average DCH has about 6 children in care,[6] this $42 decrease ($82–$40) represents about $7 per child.

a. Potential Tier II Provider Responses to Lower CACFP Reimbursements

Providers of tier II DCHs will most likely respond to decreased CACFP revenues through some combination of raising fees, absorbing the loss, providing care for more children, and reducing operating costs. Studies of the day care market corroborate this. They find that in general providers will not try to pass all of the CACFP loss on to the families they serve,[3,4] but rather employ some of these other options as well.

The amount which non-low-income providers can pass on through higher fees will depend on the character of their local day care market. Tier II providers in markets that are competitive on the basis of fee will be discouraged from passing all of the loss on to parents, as they need to keep fees approximately in line with the local going rate to retain their customers.[4] Providers in less competitive markets, such as those where there is a child care shortage, will be able to raise fees and pass most of their loss along to parents. An example of a fee competitive market is one where there are several day care homes operating in a moderate income neighborhood, all having nearly equal appeal to parents and nearly equal fees, but with only a few of the homes being tier II DCHs (the rest being non-CACFP homes or tier I DCHs). Although the tier II DCH providers would be tempted to raise fees in response to the CACFP reimbursement rate decrease, the non-CACFP and tier I DCHs would probably leave their fees unchanged; their doing so may cause the tier II DCHs to leave their fees unchanged as well. Empirical data on the relative extent of these two market scenarios is unavailable. However, because the markets affected by tiering serve mostly non-low-income families who, if fees are raised, would probably choose to pay higher fees to stay with their current provider, fee competitive markets may be the less common variety.

Data from the 1990 Profile of Child Care Settings Study[3] (PCCS) and the 1976 National Day Care Home Study[3] (NDCH) provide information on the likelihood that providers will respond to decreased CACFP reimbursements by absorbing the loss or providing care for more children. The PCCS and NDCH studies indicate that most tier II CACFP providers are not in a position to completely absorb a significant portion of the reduction in meal reimbursements. The 1976–80 NDCH study found that homes like DCHs (sponsored and regulated) do not make even moderate operating surpluses (profits)- the mean net hourly wage for providers in regulated, sponsored homes was $1.92 (in 1976 dollars), 83 percent of the 1976 minimum wage rate of $2.30 per hour (all DCHs are sponsored and regulated, but not all sponsored, regulated homes are DCHs, i.e., participate in the CACFP). The PCCS study suggests that providers' economic situation may have even worsened since the NDCH study: PCCS found that in real dollars, fees for regulated, sponsored homes decreased between the period 1976–80 and 1990. Thus, the PCCS data suggests that providers in sponsored homes, such as DCHs, do not have much of an operating surplus to buffer a cut in subsidies. Other PCCS findings indicate that most providers will not consider taking more children into care as a means of increasing revenues to offset the decrease in CACFP reimbursements. PCCS found that most providers of sponsored, regulated homes are operating near their legal capacity and that over half of all such providers surveyed indicated they are unwilling to take more children into care.

b. Most Probable Provider Responses to Lower CACFP Reimbursements

The PCCS and NDCH data, and the data suggesting that some day care markets may discourage the raising of fees4 imply that in general tier II providers will respond to decreased meal reimbursements by reducing operating costs; absorbing a small portion of the decrease; and raising fees a modest amount, but will not respond by providing care for more children.

c. Effects on Non-Mixed Tier II Providers

Tier II providers who respond to decreased CACFP revenues by noticeably reducing operating costs or sharply raising fees may, however, only exacerbate their income shortage, as parents may be unwilling to accept the providers' decreased child care expenditures (reduced operating costs) or higher fees and could respond by moving their children to other providers, which would decrease the original provider's income until replacement children could be found. However, given that fees for DCHs (i.e., regulated and sponsored providers) tend to be higher than those found in unregulated

day care homes,[5,6] parents who patronize DCHs have demonstrated a willingness to pay a premium for regulated care and are therefore less likely to be sensitive to an increase in provider fees.

The new reimbursement rates will have a significant economic impact on non-mixed tier II DCHs. Based on FCS program data[2] and projected increases in the food at home series of the Consumer Price Index, when DCH reimbursement rates are first tiered on July 1, 1997 the weighted average per meal rate for non-mixed tier II DCHs will drop from the tier I level of $1.01 down to $0.49, a 51 percent decrease. The July 1, 1997 rate cut will cause the average non-mixed tier II DCH's weekly CACFP revenues to decline from $82 to $40, a $42 decrease (a 51 percent decline), where the average DCH serves an average weekly meal mix of 19 breakfasts, 31 lunches/suppers, and 31 supplements[2] to six children.[6] These estimates incorporate the dynamic nature of the regulated day care market, where the annual provider turnover rate is approximately 20 percent[1]: they assume that lowering the meal reimbursement rates will decrease the incentive for day care homes to join the CACFP and also increase the rate of departure for existing DCHs. Numerically, this translates into the expectation that the lower rates will cause the annual rate of growth in DCHs to decrease from around 5 percent to about 2.5 percent.

d. Effects on Mixed Tier II Providers

Although minor in comparison with non-mixed tier II CACFP revenue decreases, tiering's actual meal count system will place a new administrative burden on some portion of the sub-group of mixed tier II providers (an estimated 10 percent of DCHs are mixed tier II) whose sponsors require them to use an actual meal counts system (some providers already keep such counts). There will be no new burden for providers using either of the "simplified" meal counts systems (as explained in the Costs to Sponsors, Sponsor Meal Claiming Burden section). In an actual counts system, the mixed tier II DCHs would provide the sponsor, for each child in care, the number of reimbursable meals the child was served, by meal type and would also identify each child by name. This reporting requirement represents an increase in burden over the current system where some providers only record and provide sponsors with the total number of reimbursable meals served, by meal type. Few DCHs are expected to incur this burden, however, as this system is burdensome for the sponsors; it is being assumed that only 5 percent of sponsors will choose an actual count system, and that in addition, all such sponsors will be small-serving no more than 50 DCHs, on average only 30 (see the Costs to Sponsors, Sponsor Meal Claiming Burden section). The estimated weekly provider burden associated with an actual count system in an average DCH (serving 6 children[6] and operating 5 days a week[1]) is 30 minutes, which assumes a burden of 1 minute per child per day. The estimated annual burden for such a home is therefore 25 hours. This translates into an annual fiscal er provider. This calculation assumes that providers of regulated, sponsored care are making about $5.30 per hour for their services ($5.30 is an inflation adjusted version of the NDCH study[5] finding that providers of sponsored, regulated homes earned an average of $1.92 per hour in 1976).

II. Costs to Families

Tiering imposes few costs on low-income families. One cost, limited to low-income families with children in mixed tier II DCHs, is their being asked to provide household income information. Although the families are not obligated to provide this information, based on NSLP data,[7] it is expected that 90 percent will (see Costs to Sponsors section for explanation). Providing this information consumes time and could lessen a family's privacy. Sponsors have the authority to verify the income information at a later time, in which case the family would be contacted and asked to submit supporting documentation for the income figures provided, representing a second burden and further intrusion on family privacy. Despite being authorized to conduct income verifications, few sponsors are expected to do so in light of the associated burden. As explained below, there may also be a limited number of low-income families with children in non-mixed tier II DCHs; these families will experience costs similar to those described below for non-low-income families.

Tiering is intended to reduce subsidies to non-low-income families, which as previously stated, is the intent of P.L. 104–193. This reduction has potential cost implications for these families. The Costs to Providers section explained that providers will likely respond to the decrease in CACFP reimbursements through some combination of reducing operating expenses, raising fees, and absorbing the loss. At one extreme of the day care market, an area not fee-competitive in which DCH providers have the freedom to increase fees to completely offset the reduced reimbursements, fees could increase by about $7 a week per child. This would recent increase over the average weekly fees, $70, that parents of non-low-income children currently pay for care ($70 is an inflation-adjusted version of the CCFP Study's figure of $49).[1] At the other extreme of the day care market, a highly fee competitive setting, fees would remain unchanged. Although empirical data on the relative extent of these market types is unavailable, data from the Costs to Providers section suggest that the former market type may be more common: first, the markets affected by tiering are serving non-low-income families who, if fees are raised, would probably choose to pay the higher fees to stay with their current provider; and second, families patronizing DCHs, which tend to charge higher fees than unregulated providers, have demonstrated a willingness to pay more for the higher quality of regulated care.

a. Competitive Markets

In child care markets where providers need to hold fees down to retain customers, providers are constrained to react to the rate decrease through some mixture of absorbing the cut and cutting operating costs. The providers being considered here are primarily those operating non-mixed tier II DCHs, the group that will experience the greatest tiering related CACFP revenue drop. To cut costs, these tier II providers may change their management practices relating to food service and developmental opportunities and materials, among other potential changes. Although intended as cost cutting measures, some of these changes could have effects on the children in care. In the area of developmental opportunities and materials, lower reimbursements may leave providers somewhat less able to afford the non-essential games, books, audio or video tapes, etc. that were attainable when CACFP reimbursements were covering a greater proportion of food expenses. There are also a number of areas in food service where providers could reduce costs, and these would impact children in tier II DCHs. One way to reduce costs would be deciding that certain snacks under the old, higher CACFP reimbursements will not be served under the new, lower rates, such as an afternoon snack. Providers might also respond by decreasing meal portions, although by specifying minimum serving sizes, CACFP regulations limit the extent to which this could be done. Other means of cutting food service costs could include replacing more expensive ingredients and food items with less expensive ones. While purchasing lower quality items and ingredients may have detrimental nutritional implications, substituting something more affordable could also represent a nutritional improvement if wise choices are made. The CACFP study mandated by P.L. 104–193 will compare the nutritional quality of meals served in post-tiering tier II DCHs with the quality of meals served in those DCHs before tiering, among other pre/post-tiering comparisons.

Should a tier II provider choose to cut operating costs, a family may find the resulting conditions unacceptable and seek out another provider. The search for a new provider entails costs in the time spent finding a new provider, the potential for lost wages, and the potential for subsequent transportation and added inconvenience costs if the more suitable providers are not as conveniently located as the original caregiver. It is also possible that providers constrained to hold fees down will exit the DCH market, which would also require a family to find another provider.

Under the fee competitive market scenario just considered, which primarily affect non-low-income families, there is the potential that some of the low-income children in mixed tier II DCHs will experience some of the same costs the children in non-mixed tier II DCHs will experience. Although some of the meals served in a mixed tier II DCH will be eligible for the higher reimbursement rates, others will not. If the provider is constrained to not raise fees to recoup the decreased reimbursements for the non-low-income families, the provider will experience a net decrease in revenue as discussed above, the provider will likely respond to this net decrease by either reducing operating costs or absorbing the loss. Reducing operating costs would affect the low-income children in care. However, USDA believes only 10 percent of all DCHs will be mixed and that only a portion of these mixed homes are in competitive fee markets; under these conditions, few low-income children would be affected.

b. Non-Competitive Markets

In the other child care market being considered, where providers are not as constrained to hold fees down, providers will likely respond to the rate decrease primarily through increased fees. As suggested earlier in this section, because tiering mainly affects non-low-income families who will likely choose to pay increased provider fees, this type of market may be more common than the competitive fee variety. In non-fee competitive markets, families can respond to increased fees by either paying the higher fees, moving their children to more affordable providers, or dropping out of the labor force (fully or in part) to care for their children. Each choice has different costs for families. In cases where the parents elect not to move the child, the parents will be assuming greater responsibility for food costs than under the previous system where the Federal government was performing that function (the intent of P.L. 104–193). In the case where the provider raises fees enough to completely offset the reduced reimbursements, fees could increase by about $7 a week per child, representing a 10 percent increase over pre-tiering average fees.1 In the second case, where the parents move a child to achieve lower fees, the child may have to break established relationships with the current provider and other children in care. The third alternative, dropping out of the labor force, would presumably occur rarely, as the raising of fees will primarily affect higher income families who will probably choose to absorb the increase.

c. Effects of Tiering on Child Care Choices

Studies show that child care regulations enforce practices beneficial to childhood development,[5] but the preceding discussion on the relationship between lower meal reimbursements and higher fees implies that under tiering the number of families choosing sponsored, regulated care may decrease. The 1976–80 NDCH Study compared fees among unregulated providers; regulated but unsponsored providers; and providers who are both regulated and sponsored. The study found that providers who are both regulated and sponsored had the highest fees. In the years since that study, fees charged by regulated and sponsored providers have decreased until equaling the fees charged by regulated but unsponsored providers.[3] This equaling of fees in regulated homes coincided with the post-1978 rapid growth of DCHs. CACFP reimbursements—available only to sponsored, regulated homes—may have played a role in bringing down fees charged by regulated, sponsored providers to equal fees of regulated, unsponsored providers, which suggests that tiering's lowering of CACFP rates may cause regulated, sponsored fees to rise. Even if the post-1978 decline in regulated, sponsored provider fees is attributable to other factors, it is likely (as discussed in the Costs to Providers section) that decreased CACFP reimbursements will cause regulated, sponsored providers to raise fees, at least in some markets, which may shift children into more affordable, possibly unregulated homes. Similarly, the decreased CACFP reimbursements might cause some currently regulated and sponsored providers to consider moving out of regulated care. Therefore, the possibility that CACFP rates will no longer encourage the placement of children in regulated care is another cost that tiering may bring to non-low-income children and even some low-income children.

d. Intended Effect of Tiering

An important fact, worth reiterating, is that tiering primarily affects families with incomes above 185 percent of the Federal income poverty guidelines (non-low-income), as intended by P.L.104–193 The only low-income families potentially affected by tiering will be those with children in tier II DCHs. This presumably encompasses few families, as it is believed, as mentioned earlier, that (1) only 10 percent of all DCHs will be mixed (having both non-low-income and documented low-income children in care) and that only 40 percent of the children in an average mixed DCH will be low-income (see Tier II Household Income-Eligibility Determination Burden under Costs to Sponsors); and (2) that the clear majority of all other low-income children will be in tier I DCHs. Similarly, the providers affected by tiering will presumably be all non-low-income, since providers with incomes below 185 percent of the Federal income poverty guidelines are eligible for tier I status. The Federal income poverty guidelines are designed to take into account family size, so that a given household will qualify for low-income status at a lower income level than will a household that has more children.

III. Costs to Sponsors

The two tier structure will impose several new administrative burdens on organizations that sponsor DCHs, including determining and documenting which DCHs and children are entitled to receive the higher set of reimbursement rates; verifying the income of all providers who qualify for tier I status based on provider income; and collecting and reporting separate tier I and tier II meal, enrollment, and provider counts.

a. Tiering Determination Burden

All sponsors will be responsible for determining whether each of their DCHs is tier I or II. A sponsor can approve a DCH for tier I status if the DCH is located in a low-income area or the provider is low-income. A low-income area is defined as one in which the local elementary school has at least one-half of its enrollment approved for free or reduced price NSLP lunches, or an area in which at least one-half of the resident children are low income, according to the most recent census data. A sponsor can also approve a DCH for tier I status if sponsor can demonstrate low-income status (income no more than 185 percent of the Federal income poverty guidelines). If a sponsor finds a provider to be low-income, the sponsor must verify the provider's income before formally approving the DCH for tier I status. Sponsors must annually re-determine every Tier I eligibility determination based on a provider's income. Because verification is a non-trivial burden to sponsors, it is expected that whenever possible sponsors will approve providers for tier I on the basis of area eligibility. Area eligibility determinations offer sponsors the added benefit of being valid for three years when school data is used and until more recent data is available, when census data is used, at most ten years.

The verification that sponsors will perform on income-approved tier I providers consists of obtaining pay stubs, tax returns, or some other form of independent income documentation to establish that the information provided on providers' tier I income applications is accurate. The proposed rule mandates this verification to protect the government against providers' financial incentive to qualify for tier I; the average tier I provider would receive 42 more dollars a week in CACFP meal reimbursements in 1998 than would the average non-mixed tier II provider (as was explained in the Costs to Providers section). Collecting corroborating income documentation from providers for tier I income eligibility determinations represents an increase over the current CACFP DCH application review requirements, which were established by the Omnibus Budget Reconciliation Act of 1981, P.L. 97–35. P.L. 93–35 eliminated CACFP DCH meal reimbursements for providers' own children in care, unless a provider submits an application demonstrating low-income status. Sponsors are not required to obtain supporting income information for these applications and typically make eligibility determinations based on the application information alone. After P.L. 104–193 providers will submit enrollment applications, which have different sponsor verification requirements. The first type will be submitted by providers seeking to qualify for tier I, so that, if approved for tier I, all meals served in the applying provider's home, including those to the provider's own children in care, would be reimbursed at the higher rates. The second type of application would be submitted by providers approved for tier I by area eligibility seeking to claim meals served to their own children in care. P.L. 104–193 does not supersede P.L. 97–35, so the requirement that a DCH provider demonstrate low-income status in order to claim meals served to the provider's own children will remain in effect. For income applications for tier I status, P.L. 104–193 requires that income verification (collection of substantiating income documentation) be performed. For applications from area-approved tier I providers seeking to claim meals served to their own children, sponsors will continue to approve these applications based on application content alone, which entails no new burden for sponsors.

Provider income data from special tabulations of PCCS data[6] together with data on average household sizes[8] indicate that about 20 percent of all DCH providers are low-income and are therefore eligible for tier I on the basis of income. Empirical data on the percentage of DCHs that qualify for tier I on the basis of area eligibility is unavailable. An estimate for this percentage was derived using (1) the finding from the CCFP Study that 30 percent of all enrolled DCH children are low-income and (2) the assumption that DCH children are equally

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distributed across all DCHs, i.e., 10 percent of DCHs provide care for 10 percent of total DCH enrollment, regardless of the DCH's tiering status. Applying this distribution assumption to income-eligible tier I DCHs (20 percent of all DCHs) implies they enroll 20 percent of total DCH enrollment. Applying the distribution assumption to mixed tier II DCHs, which comprise 10 percent of all DCHs implies they enroll 10 percent of total DCH enrollment. Then, taking the assumption that 40 percent of mixed tier II DCH enrollment is low-income and applying it to the mixed tier II enrollment percentage (10 percent of total DCH enrollment) implies the low-income children in mixed tier II DCHs comprise 4 percent of total DCH enrollment (4% is 40% of 10%). Therefore, the enrollment in income-eligible tier I DCHs and mixed tier II DCHs, whose meals are all reimbursed at the higher rates, represents 24 percent of total DCH enrollment. The CCFP Study's finding that 30 percent of total DCH enrollment is low-income was then used as a basis for assuming that approximately 30 percent of all DCH meals will be reimbursed at the higher rates. When the 30 percent assumption is compared to the 24 percent of DCH enrollment receiving higher rates (in income-eligible tier I and mixed tier II DCHs), it implies that the residual percentage of enrollment whose meals are reimbursed at higher rates, 6 percent of total (30–24), is receiving care in area-eligible tier I DCHs. Since 6 percent of total DCH enrollment resides in area-eligible tier I DCHs, the enrollment distribution assumption implies area-eligible tier I DCHs represent 6 percent of all DCHs. With 20 percent of all DCHs being income-eligible for tier I and another 6 percent being area-eligible for tier I, a total of 26 percent of all DCHs are expected to become tier I DCHs.[m]

It is assumed that a substantial proportion of low-income, income-eligible tier I providers reside in low-income areas, thereby making them area-eligible also. The burden associated with verifying incomes for income-eligible providers will presumably cause sponsors to approve DCHs for tier I on the basis of area eligibility whenever possible. It was therefore assumed that one-half of the income-eligible DCHs (10 percent of total) will be approved for tier I on the basis of area eligibility rather than income, which together with the 6 tier I by area eligibility. The remaining one-half of tier I income-eligible DCHs, 10 percent of total, will be approved on the basis of income.

The dynamic nature of the DCH market will increase sponsors' tiering determination burdens. Data from the CCFP Study indicates the DCH market has an annual provider turnover rate of approximately 20 percent.[l] This volatility will lead sponsors to make more tiering determinations than would be necessary for a stable DCH population. See section e: Quantification of New Burdens for Sponsors for the quantification of sponsors' tiering determination burden.

b. Household Income-Eligibility Determination Burden on Sponsors

This interim rule mirrors P.L. 104–193 in the method it prescribes for approving low-income children in tier II DCHs for the higher meal reimbursement rates. Tier II DCHs wishing to secure higher reimbursements for their low-income children ("mixed" tier II DCHs) are to direct their sponsor to collect income information from the households of the children in care. Sponsors so directed must request information from every household served by the requesting DCH. Sponsors have the responsibility of determining the income-eligibility for each responding household. Meals served to children with household incomes not exceeding 185 percent of the Federal income poverty guidelines—income-eligible/low-income children—are eligible to receive the higher reimbursement rates. Also eligible for the higher rates are meals served to children who participate in or live in households that participate in any Federal or State means tested program with an equivalent income eligibility standard-at or below 185 percent of the Federal income poverty guidelines.

Sponsors must maintain supporting documentation for all children approved for higher meal reimbursement rates. At least annually, sponsors must re-determine the eligibility of all children previously deemed income-eligible and also give all children previously deemed not income-eligible another opportunity to demonstrate low-income status. For the purposes of this analysis, it is assumed that sponsors will meet the annual re-determination requirement by cycling through each of their mixed DCHs once a year and making income-eligibility determinations on all children currently enrolled at that time. Sponsors must also make income-eligibility determinations for children who enter a mixed tier II DCH after the sponsor has made its annual income-eligibility determinations for that DCH. The schedule that sponsors will use to perform these latter income determinations is determined by the sponsor's choice of meal claiming system. Although it is providers who decide whether the sponsor must make income-eligibility determinations, sponsors decide which meal count system the sponsor and all its DCHs will use. The meal count system chosen determines the schedule on which income-eligibility determinations are made for children who enter mixed DCHs after the annual eligibility re-determination review has occurred. Sponsors can choose between an actual counts system and a "simplified" counts version. Each of these systems and its associated income-eligibility determination schedule is described below.

The interim rule does not prescribe any additional income eligibility determination requirements, beyond annual re-determinations, for sponsors using an actual counts system. Rather, the provider's incentive structure under this system will determine the income-eligibility determination schedule used. In this system, providers of mixed tier II DCHs must report the number of meals served to each child by type and identify each child by name. Sponsors then use income-eligibility information to determine which set of reimbursements each child's meals are entitled to, with meals served to documented income-eligible children entitled to reimbursement at the higher rates. With reimbursements being determined on a per-child basis in actual meal count systems, providers of mixed tier II DCHs have the incentive to maximize the number of documented income-eligible children in their care. A provider can do this by directing its sponsor to make an eligibility determination on each new child upon the child's entering the provider's DCH. Assuming that most providers in actual count systems will behave in this manner, sponsors in these systems will be making income-eligibility determinations on an irregular, ongoing basis.

The interim rule prescribes the income-eligibility determination schedule that sponsors employing simplified counting must use to determine the income-eligibility of children who enter mixed tier II DCHs outside the sponsor's annual income-eligibility determination cycle. The schedule requires that at least semi-annually, sponsors make income-eligibility determinations on all children who enter a mixed DCH in the prior 6 months. Given that sponsors are already required to annually re-determine eligibility, sponsors using a simplified counting system will likely perform income-eligibility determinations twice a year: annual re-determinations at the beginning of the year and a second determination at mid-year for those children who entered a mixed DCH sometime in the preceding 6 months.

The two meal count systems will require sponsors to make near equal numbers of eligibility determinations; the burdens are expected to be equal. See section e: Quantification of Burdens for the burden estimates.

c. Data Collection and Reporting Burden for Sponsors

Tiering will place several new, although minor, reporting requirements on sponsors. Sponsors will now have to annually collect and report to their State CACFP agency separate enrollment counts for tier I and tier II DCHs and an enrollment count for documented income-eligible children in mixed tier II DCHs (those DCHs serving at least one documented low-income child). Sponsors must also annually report the number of tier I and tier II DCHs they sponsor. Finally, in the management plan that every sponsor submits to its agency, the sponsor will now have to include a description of how it will make DCH tiering determinations.

d. Sponsor Meal Claiming Burden

Under tiering, sponsors will have new burdens related to meal counting and claiming. Before tiering, sponsors were only required to claim meals by meal type. Under tiering, sponsors will have to claim meals both by reimbursement category and, within each category, by meal type. The claiming of meals served in tier I and tier II DCHs remains straightforward. It simply entails separating claims submitted by tier I and tier II DCHs, which amounts to categorizing the meals, and then, within each category, summing meal counts by type. In contrast, claiming for mixed DCHs requires that for each mixed DCH sponsors split out the meals by reimbursement category, which will typically be a more time consuming process than that for non-mixed DCHs. After the

meals from mixed DCHs are separated by category, the meals are summed, within each category, by meal type, just as was done for claims from tier I and tier II DCHs. The method that sponsors use to split out mixed DCH claims depends on whether the sponsor is using an actual or simplified meal counting system, as described below.

As previously noted, in an actual count system, mixed tier II DCHs record the number of meals served to each enrolled child, by meal type, and provide the sponsor with a claim that lists the meals served to each child by type and identifies each child by name. In such a system, the sponsor splits the meals into reimbursement categories by determining the appropriate reimbursement category for each child's meals based on the child's income eligibility status—the reason each child is identified by name. In contrast, in a simplified count system, the sponsor splits the counts into the two reimbursement categories by applying either blended rates or claiming percentages to the provider's aggregated counts (both blended rates and claiming percentages produce identical claims). In the case of claiming percentages, a sponsor computes, for each DCH, the number of meals of each type entitled to the higher reimbursements by multiplying the total number of meals claimed of that type by the proportion of children in that DCH who have been determined income-eligible (all other meals are reimbursed at the lower reimbursements). The procedure for blended rates is essentially the same. In simplified count systems, the semi-annual collection of income information described in section b: Household Income-Eligibility Determination Burden is used to update the claiming percentages/blended rates for each DCH every six months. The updated claiming percentages/blended rates reflect the current proportion of income eligible children in the DCH.

Simplified counting is less burdensome to sponsors than an actual count system. Actual counts require the sponsor to compare the provider's meal claim against a list of the DCH's income-eligible children to identify which children's meals are entitled to the higher rate. The sponsor then groups meals by reimbursement category and finally, sums by type within each category to produce an aggregated count of meals by category and by type. In contrast, to reach the same result in a simplified system, the sponsor need only multiply the aggregate meal counts by the DCH's claiming percentages/blended rates. Because of the relative ease of meal claiming in a simplified counts system, it is expected that only 5 percent of all sponsors will opt for actual counts and that all will be small sponsors (serving no more than 50 DCHs).

e. Quantification of New Burdens for Sponsors

To quantify the effects of this interim rule on sponsors, a framework of estimates and assumptions, based on previous studies of the program and current program data, was constructed. Creating this framework, which enables the scaling of burden estimates according to sponsor size, produces more precise burden estimates. The first step in creating it, was dividing the approximately 1,240 current sponsors into three groups, as shown in table 5: (1) small sponsors which serve no more than 50 DCHs, on average about 30 DCHs; (2) medium sponsors which serve between 51 and 300 DCHs, on average about 200; (3) large sponsors which serve more than 300 DCHs, on average about 400.[1,2]

TABLE 5.—SPONSOR AND DCH CHARACTERISTIES

Sponsor characteristics	Sponsor size		
	Small	Medium	Large
Percent of all Sponsors	50%	30%	20%
Percent of all DCHs Served	9%	40%	51%
Average Number of DCHs Served per Sponsor	30	200	400
Number of Sponsors (Total = 1,240) in Category	620	372	248

Based on these definitions, 50 percent of all sponsors are small in size and account for 9 percent of all DCHs; 30 percent are of medium size and account for 40 percent of all DCHs; and 20 percent are large and account for 51 percent of all DCHs.[1,2] Next, based on DCH providers' and enrolled children's income data, respectively from special PCCS tabulations[6] and the CCFP Study[1] and other assumptions discussed above under Tiering Determination Burden, it was estimated that 26 percent of all DCHs will be approved for tier I; 64 percent will be tier II, and 10 percent will be mixed tier II, as shown in table 6.

TABLE 6.—DCH CHARACTERISTICS

DCH Type	Percent of All DCHs
Tier I	26
Area Eligible Only	6
Income Eligible Only	10
Area & Income Eligible	10
Sum	26

TABLE 6.—DCH CHARACTERISTICS—Continued

DCH Type	Percent of All DCHs
Approved by Area	16
Approved by Income	10
Sum	26
Tier II	74
Mixed	10
Non-Mixed	64

Finally, it was assumed that 40 percent of sponsors will serve at least one mixed tier II DCH. This last assumption is rooted in the finding from the CCFP study[1] that almost 70 percent of DCH children are non-low-income. When this finding is coupled with the assumption that smaller sponsors are more likely to serve economically homogeneous DCHs, by virtue of their limited geographic coverage, the implication is that small sponsors are less likely than medium or large sponsors to serve mixed tier II DCHs. This conclusion, together with the CCFP Study[1] data that indicates nearly 50 percent of all sponsors are small, is the basis for assuming 40 percent of sponsors will serve at least one mixed tier II DCH. Based on these estimates and assumptions, the approximately 193,000 DCHs in operation[2] were distributed across the three size categories of sponsors based on the number of mixed tier II DCHs predicted for the average sponsor in each sponsor category and the relative sizes of the tier I and tier II DCH populations.

The estimates for new sponsor burden contained in the interim rule are presented in table 7. Shown are estimates for the annual burden hours imposed on each sponsor category, and the percentage of sponsors affected within each sponsor category. Of the listed burdens, only Meal Claiming recurs periodically (monthly). The other burdens occur only once or twice a year (with the exception of household income determinations in an actual meal count system, but the number of sponsors involved is minimal, 5 percent of total, i.e., 60). The estimates make the assumption that economies of scale are realized only for Meal Claiming burdens, where the recurring nature of the burden would presumably give larger sponsors a sufficient incentive to establish efficient meal claiming systems.

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TABLE 7.—ESTIMATED ANNUAL SPONSOR BURDEN FROM TWO TIER DCH SYSTEM

Burden	Estimated Annual Sponsor Burden by Sponsor Size (Hours)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations:						
1. Low income Providers (Includes Verification)	4	52	96	100	100	100
2. Area Eligibility	2	28	51	100	100	100
Tier II Household Income-Eligibility Determinations	9	40	80	27	53	50
Data Collection and Reporting[a]	4	15	28	100	100	100
Meal Claiming:						
1. Actual Counts System (with mixed tier II DCHs)	20	N/A[b]	N/A[b]	10	N/A[b]	N/A[b]
2. Simplified Counts System (with mixed tier II DCHs)	10	45	67	16	52	50
3. No Mixed Tier II DCHs	5	22	34	74	48	50

[a] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.
[b] Due to the burden associated with actual meal counts systems, it is expected that only small sponsors will choose actual counts.

The tiering determinations burden estimates were calculated using data from the CCFP Study [1] and special tabulations from PCCS [6], which indicate that 26 percent of all DCHs are eligible for tier I and the assumption that sponsors will choose to approve providers for tier I on the basis of area eligibility whenever possible. Thus, it is assumed that 16 percent of all DCHs will be approved for tier I using area eligibility information, while the remaining tier I eligible DCHs (10 percent) will be approved using provider income information. For the burden estimate, these percentages were assumed to hold for the average sponsor in each sponsor category so that, for example, the average small sponsor (serving 30 DCHs) with its 4.8 tier I homes would approve 3.0 of the 4.8 on the basis of area eligibility (4.8 * 16% / 26%) and the remaining 1.8 DCHs on the basis of the provider's income (4.8 * 10% / 26%). The estimates incorporate the dynamic nature of the DCH market, which has an annual provider turnover rate estimated to be between 18 and 25 percent.[1] This volatility will require sponsors to make more tiering determinations than would be necessary for a stable DCH population. Finally, the estimates for area eligibility assume that sponsors identify income-eligible DCHs using sponsors' preexisting knowledge of economic conditions in areas where DCHs reside and that sponsors are thereby able to easily identify DCHs lying far outside all income-eligible areas. This approach would allow sponsors to focus their efforts on DCHs with reasonable probabilities of qualifying for tier I by area eligibility. This analysis assumes such an approach will be taken and that the average sponsor will consider 3 homes for low-income area eligibility for every 2 it finds eligible and approves.

The tier II household income-eligibility determinations estimates were calculated by estimating the income-eligibility burden associated with the average DCH and then multiplying that figure by the average number of DCHs a sponsor in each of the three categories oversees.[1] The number of children in care in an average DCH was used as the starting point.[6] This figure was then inflated to account for the fact that on average, there is a 30 percent turnover of children every 6 months in the average day care home.[9] This inflated figure represents the number of children who could potentially submit an application over a year's time. From this group of potential applicants, the number of submitted applications was calculated using an assumed 90 percent application response rate (based on the NSLP's 80 percent rate) [7] and the assumption that on average about 40 percent of the children in mixed tier II DCHs are income-eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen. The assumption that 40 percent of children in mixed tier II DCHs are income-eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen. The assumption that 40 percent of children in mixed tier II DCHs are income eligible is based on two assumptions: (1) most DCHs with more than 60 percent of their enrollment income-eligible will be tier I and 2) some tier II DCH providers that serve one or two income-eligible children will not realize or avail themselves of the children's low-income status and therefore will not ask their sponsor to determine the children's income-eligibility (placing the DCH in the non-mixed tier II category). The two preceding assumptions suggest a percentage below 50 percent; forty percent was chosen.

The data collection and reporting burden was calculated assuming that the average sponsor will spend about 12 hours complying with the new requirements in this area, with 10 of these hours for the new data related requirements and the remaining 2 for the requirement that each sponsor now provide a description of its plan for making DCH tiering determinations in its management plan. The 12 hour burden implies annual burdens of 4, 15, and 28 hours for small, medium, and large sponsors, respectively. These estimates are consistent with this burden being an expansion on the current CACFP requirement that sponsors report quarterly the number of DCHs served and the DCHs' enrollment and submit annually a sponsor management plan.

The meal claiming burden was calculated assuming that the monthly burden resulting from the new meal claiming requirements will be 2 hours for the average sponsor. This weighted average implies a burden that increases with sponsor size and the number of mixed tier II DCHs being served. The estimates make the assumption that an actual counts system will impose twice the meal claiming burden of a simplified counts system due to the relative difficulty that sponsors using actual counts are expected to have in producing meal claims broken down by reimbursement category and meal type (relative to the effort required under a simplified counts system). The estimates further assume that among sponsors using a simplified count system, the average meal claiming burden for sponsors without any mixed DC one-half the average burden for sponsors serving mixed DCHs. This assumption is consistent with the lower level of effort required to process meal claims from non-mixed DCHs. In addition, as described above, the estimates assume economies of scale so that the burdens are not directly proportional to the number of DCHs a sponsor serves.

Table 8 translates the burdens displayed in table 7 into fiscal costs. The fiscal costs were produced assuming that wage rates for employees of child care centers3, $8.00 per hour in 1997 dollars (which has been adjusted for inflation), are reasonable proxies for the wage rates of workers in DCH sponsors. The table implies that the annual increase in administrative costs due to tiering, for the average small, medium, and large sponsor, are about $160, $1,200, and $2,100 (in 1997 dollars), respectively. These costs represent less than one percent of the total annual administrative payments the average small, medium, and large sponsor would receive from USDA (in 1997 dollars):

$27 thousand, $150 thousand, and $270 thousand (in 1997 dollars), respectively.

TABLE 8[a].—ESTIMATED ANNUAL SPONSOR FISCAL COST FROM TWO TIER DCH SYSTEM

Burden	Estimated Annual Sponsor Fiscal Cost by Sponsor Size (In 1997 Dollars)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations:						
1. Low Income Providers (Includes Verification)	$32	$416	$768	100	100	100
2. Area Eligibility	16	224	408	100	100	100
Tier II Household Income-Eligibility Determinations	72	320	640	27	53	50
Data Collection and Reporting[b]	32	120	224	100	100	100
Meal Claiming:						
1. Actual Counts System (with mixed tier II DCHs)	160	[c]N/A	[c]N/A	10	[c]N/A	[c]N/A
2. Simplified Counts System (with mixed tier II DCHs)	80	360	536	16	52	50
3. No Mixed Tier II DCHs	40	176	272	74	48	50
Weighted Average Cost	158	1,201	2,124			
Average USDA Administrative Payments, Annual	27,000	150,000	270,000			
Wght. Avg. Cost as Percent of Admin. Payments	0.6	0.8	0.8			

[a] The sponsor costs shown in table 8 equal the burden hours multiplied by a wage rate of $8.00/hour, as described in the text.
[b] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.
[c] Due to the burden associated with actual counts systems, it is expected that only small sponsors will choose actual counts.

IV. Costs to CACFP State Agencies

The costs to CACFP State agencies consist of their being required to provide sponsors with low-income area eligibility data; increased requirements related to sponsor review, particularly the auditing of the documentation for income-eligible children; and their obligation to provide sponsors with technical assistance. In terms of area eligibility data, these agencies will be responsible for providing (1) census data identifying all State census blocks where at least 50 percent of the children are from low-income households (no more than 185 percent of the Federal income poverty guidelines) and (2) an annually updated list of all State elementary schools that have more than 50 percent of their enrollment certified to receive free or reduced-price lunches under the NSLP (implies hof no more than 185 percent of Federal income poverty guidelines). The agencies' other responsibility relating to area eligibility data is determining in which instances census data should be used over NSLP information: The interim rule states that sponsors are in general supposed to use the most recent school data available in making tiering determinations, but that the State CACFP agency should determine when census data should supersede it, by following instructions in forthcoming guidance from USDA. For the average State CACFP agency, it is estimated that its obligation to provide sponsors with elementary school data annually and providing census data as it becomes available represents an average annual burden of 23 hours, which assumes each instance of data transmittal and subsequent follow-up takes 1 hour. This estimated burden is equivalent to $184 using the same wage assumptions used in table 8.

Tiering will also increase State agencies' sponsor review requirements. When reviewing sponsors, State agencies will now have to review the documentation used to deem children in tier II DCHs income-eligible for the higher meal reimbursements as well as the documentation for tier I providers approved on the basis of income. However, the agency is only held responsible for ensuring that the application form is completed correctly and that the stated income actually falls below 185 percent of the Federal income poverty guidelines. The state is given the option to verify the documentation, but because of the amount of time involved in verification, it is expected that very few will routinely do so. The agencies are also responsible for ensuring that the most current data available was used in making area eligibility determinations (a negligible burden), but are not required to verify the determinations. For the average State CACFP agency, it is estimated that performing these reviews amounts to an annual burden of 23 hours, with some States expending much less than this amount and others much more, depending on the size and number of sponsors in the State. This estimated burden is equivalent to $184 using the same wage assumptions used in table 8.

State CACFP agencies will likely see an appreciable increase in their training and technical assistance burden as the transition to the new two tier system is made. Under the new system, State agencies will have to provide new guidance and training on all new aspects of CACFP introduced by tiering, for example, DCH tiering determinations, new meal counting and claiming procedures, and new data reporting requirements. This burden will likely persist for the first several years the new system is in place. It is believed that the new training and technical assistance burdens represents about 10–20 hours of new burden per sponsor per year for a State agency. For the average State, this implies an annual burden of between 230 and 460 hours (between $1,840 and $3,680) for the first several years of tiering and presumably abating thereafter. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) provides some funds to help State CACFP agencies make the transition. It directs the Secretary of Agriculture to set aside $5 million of fiscal year 1997 CACFP funds for one-time grants to State CACFP agencies. These grants must be used to aid States, sponsors, and DCHs with making the transition to the new system. P.L. 104–193 allows each of the 54 State agencies to retain up to 30 percent of its total grant for State agency use. If all States agencies retained the maximum allowable, a total of approximately $1.5 million would be retained at the State level, with the remaining $3.5 million going to DCHs and their sponsors.

The interim rule adds a new requirement to the management plans that sponsors must submit annually. Now, each sponsor must describe the approach it will use to make DCH tiering determinations. Reviewing this component of the plan will presumably place minimal additional burden on the State agency.

There is the potential that in some States the decreased CACFP reimbursements will lead to an increase in the State-wide average fee charged by providers. This increase may have the effect of increasing State expenditures for subsidized child care, as a State's subsidized care payments are often based on the average fee that providers in the State are charging. Being unable to predict a numerical value for the effect the reimbursement rate cut will have on provider fees, as discussed previously under Costs to Providers, quantifying this potential cost to States is precluded. However, this interim rule does not require States to increase their payments for subsidized child care.

V. Costs to NSLP State Agencies and NSLP School Food Authorities

Under P.L. 104–193, State NSLP agencies are required to annually provide a list of all State elementary schools in which at least 50 percent of the enrollment is certified to receive free or reduced-price NSLP lunches. However, these agencies do not currently collect school-level information. NSLP School Food Authorities (SFAs), which are generally school districts, are the only

entities other than the schools that collect this data. SFAs are also more able than schools to provide the data to the NSLP State agency. The interim rule accommodates this situation by directing SFAs to inform their State NSLP agency of the elementary schools that have at least 50 percent of their enrollment certified to receive free or reduced-price NSLP lunches. It is estimated [10] that roughly 5,000 SFAs will contain the approximately 11,000 elementary schools meeting this criterion, and that the annual average reporting burden on an SFA will be roughly 1.5 hours ($12). The NSLP State agencies will receive the lists of elementary schools from their SFAs, compile and presumably do basic error checking on them, and pass the compiled listings on to the State CACFP agencies. It is estimated that the average NSLP State agency burden associated with this work will be 2.5 hours.

Comparison of Costs and Benefits

The analysis presented here finds that the DCH tiering structure established by P.L. 104–193 and promulgated by this interim rule will accomplish its objective of targeting Federal child care benefits to low-income children. This targeting will save a projected $2.2 billion in Federal tax revenues over the next 6 years (fiscal years 1997–2002). Non-low-income providers (tier II DCHs providers) and non-low-income families with children in tier II DCHs will bear most of the costs resulting from the Federal government's $2.2 billion savings. Low-income families with children in tier II DCHs may also bear some costs, but States may offset this by opting to increase child care subsidies. The analysis further found that while targeting will place new administrative burdens on sponsors, State CACFP and NSLP agencies, and NSLP school food authorities, these burdens are relatively modest.

5. Requirements for Regulatory Analyses Established by Regulatory Flexibility Act

The Regulatory Flexibility Act (P.L. 96–354) establishes requirements for analyses of regulatory actions that are expected to have a significant economic impact on a substantial number of small entities. P.L. 96–354 was enacted at the urging of small businesses after repeated claims that uniform application of regulations regardless of business size was disproportionately damaging to small entities. It is expected that this rule will have an economically significant impact on tier II DCH providers due to the large decrease in reimbursement rates for meals served in those DCHs. This rule will also affect sponsoring organizations, considered to be "small organizations" by P.L. 96–354, although the economic impact on them is expected to be minimal. The specific effects for sponsors and tier II providers were discussed under the Costs to Providers and Costs to Sponsors sections of the Cost/Benefit Assessment.

The Act also requires that analyses estimate the type of professional skills necessary to reporting or record keeping requirements. The new reporting and record keeping required by this rule require no skills beyond those necessary for current program reporting and record keeping requirements.

Another P.L. 96–354 requirement is that analyses describe the steps taken by the promulgating agency (Food and Consumer Service, FCS) to minimize the economic impact on small entities. Specifically, the "analysis shall also contain a description of any significant alternatives to the interim rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." There are no significant alternatives available to FCS that both (1) accomplish the stated objectives of P.L. 104–193 AND (2) minimize any significant economic impact on small entities.

The interim rule implements, in accordance with statute and with the statutory intent to target benefits, the programmatic changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193). The rule's only economically significant impacts are the decreased meal reimbursements for meals served in tier II DCHs; FCS cannot mitigate this effect other than by making targeting less accurate, which would be contrary to the spirit of P.L. 104–193. The only other class of small entities affected by this regulatory action are sponsors. The analysis finds that the costs that sponsors will incur in meeting the new program requirements established by this interim rule will be less than one percent of the payments each sponsor receives from USDA for operating the CACFP in its DCHs. The small size of this burden implies that this interim rule's economic impact on sponsors is minimal and that in the few areas where FCS had discretion, it made choices free from deleterious economic effects for sponsors. For example, FCS considered several alternatives for how often sponsors using simplified meal counting systems must re-determine the claiming percentage or blended reimbursement rate for each of their mixed DCHs using the income-status of currently enrolled children. P.L. 104–193 required that these re-determinations be made at least annually. FCS considered annual, semi-annual, and quarterly re-determinations and chose, for the interim rule, to require semi-annual re-determinations, having decided semi-annual represents the best compromise between effective targeting of benefits and limiting sponsor burden. The interim rule places no reporting requirements on homes or sponsors beyond those mandated by P.L. 104–193.

FCS is soliciting comments on the less-economically significant, burde elated provisions of this rule and will nsider all received comments when craft g the final rule and when revising the burden estimates for the final economic impact analysis.

6. References

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9. Hoffereth, Sandra L., April Brayfield, Sharon Deich, and Pamela Holcomb. National Child Care Survey, 1990. Washington, DC: Urban Institute, 1991.
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Approved:

This analysis is consistent with the possibility that a limited number of non-low-income children will be in tier I DCHs, and that a similar limited number of low-income children will be in non-mixed tier II DCHs.

Dated: December 5, 1996.
William E. Ludwig,
Administrator, Food and Consumer Services.
Dated: December 20, 1996.
Stephen B. Dewhurst,
Director, Office of Budget and Program Analysis.
Dated: December 20, 1996.
Keith Collins,
Chief Economist.
Dated: December 23, 1996.
Dan Dager,
Acting Executive Assistant to the Under Secretary for Food, Nutrition, and Consumer Services.
[FR Doc. 97–116 Filed 1–6–97; 8:45 am]
BILLING CODE 3410–30–P

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV–96–929–2FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the reporting requirements currently prescribed under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule allows the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule will provide more accurate information to the cranberry industry to be used in making marketing decisions.

EFFECTIVE DATE: This final rule becomes effective February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax #(202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax #(202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,400 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

Handlers are already required to complete a form four times a year reporting all regulated cranberries on hand for a specified period, all cranberries acquired and sold, and the new balance of cranberries on hand. This rule authorizes adding data to this form requiring information on a new variety of cranberries not regulated under the order. The form has an estimated burden time of two hours. No additional burden time will be added to this form to acquire this information. In addition, because the industry relies on the comprehensive information provided by the committee, it is critical that the committee obtain accurate information. This information will be used in making marketing decisions and the additional burden on handlers, if any, will not be significant.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule changes the reporting requirements currently prescribed under the cranberry marketing order. This rule allows the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule will provide more accurate information to the cranberry industry to be used in making marketing decisions. The committee unanimously recommended the above change.

The request for this information will be incorporated on the handler inventory report, a form already used by the committee. The request of this information should not constitute a significant burden on a business unit, large or small. Currently, the estimated reporting burden per response for the handler inventory report is two hours. The burden time will not change with the additional data request.

Section 929.62(e) of the cranberry marketing order provides authority to require handlers to furnish to the committee information with respect to acquisitions and dispositions of cranberries. This section also provides authority to require handlers to file reports to the committee as to the quantity of cranberries handled by such handler during any designated period.

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Under the marketing order, cranberries are defined as all varieties of the fruit *Vaccinium macrocarpon* grown in the production area. In 1995, the cranberry industry experienced a short crop coupled with increased demand. To replace the shortage of *Vaccinium macrocarpon*, handlers have supplemented their inventories with *Vaccinium oxycoccus* which is a European species of cranberry, recognized by the Food and Drug Administration as a cranberry. Because of the increase in volume of this species of cranberry, it is important to the cranberry industry to know the amount of *Vaccinium oxycoccus* that is being acquired and utilized by handlers.

The order authorizes the committee to recommend limiting the quantities of cranberries which may be handled during any fiscal period. The Secretary would establish a volume regulation based on information received from the committee if the Secretary found that such regulation would effectuate the declared policy of the Act. The committee is considered by the industry as the source for comprehensive cranberry related data, primarily data relating to production, supplies, utilization and inventories. Therefore, it is critical to the committee to receive comprehensive information on cranberries.

The committee will be able to use this information on *Vaccinium oxycoccus* when considering its decisions to implement volume regulation within the industry. Since this species is not regulated under the order, the committee needs to know the quantities and which handlers have acquired *Vaccinium oxycoccus* in order to keep the data on the non-regulated species separate and apart from the data on the regulated species, *Vaccinium macrocarpon*.

Therefore, the committee recommended that section 929.105 be revised by adding a new subparagraph (c) that requires that handlers also report on the same form as currently filed with the committee, the total quantity of *Vaccinium oxycoccus* cranberries the handler acquired and the disposition of such cranberries. Also, the handler are required to report the respective quantities of *Vaccinium oxycoccus* cranberries and cranberry products held by the handler.

The committee and its staff are responsible for keeping information on individual handlers' inventories and receipt confidential. Information gathered by the committee, including information relating to supplies of this non-regulated species of cranberries, will only be reported in the aggregate, along with other pertinent cranberry data.

The proposed rule concerning this action was published in the August 21, 1996, **Federal Register** (61 FR 43186), with a 30-day comment period ending September 20, 1996. No comments were received. The proposed rule also announced AMS's intention to request a revision to the currently approved information collection requirements issued under the marketing order. The information collection requirements contained in the referenced sections have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0103.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

§ 929.105 [Amended]

2. In § 929.105, paragraphs (b) (1) and (2) are amended by adding the words "and *Vaccinium oxycoccus* cranberries" after the word "cranberries" everywhere they appear and paragraph (b)(2) is amended by adding the words "and *Vaccinium oxycoccus* cranberry products" after the words "cranberry products".

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–276 Filed 1–6– 97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 959

[Docket No. FV96–959–1 IFR]

Onions Grown in South Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the South Texas Onion Committee (Committee) under Marketing Order No. 959 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess Texas onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by February 6, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833, FAX 210–682–5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090- 6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090-6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South

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Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the District court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 48 producers of South Texas onions in the production area and approximately 36 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

Texas onion producers and handlers may be classified as small entities.

The Texas onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee, in a telephone vote, unanimously recommended 1996–97 administrative expenses of $100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in October 1996. The assessment rate and funding for research and promotion projects, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on November 19, 1996, and unanimously recommended 1996–97 expenditures of $448,000 and an assessment rate of $0.07 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were $585,250. The assessment rate of $0.07 is $0.03 lower than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period include $80,000 for personnel and administrative expenses, $120,000 for compliance, $150,000 for promotion, and $98,000 for onion breeding research. Budgeted expenses for these items in 1995–96 were $96,250, $144,000, $246,000, and $99,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the year are estimated at 5 million 50-pound equivalents, which should provide $350,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further, rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to

have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled "Assessment Rates" consisting of a new § 959.237 and a new subpart heading titled "Handling Regulations" are added immediately preceding § 959.322, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 959.237 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.07 per 50-pound container or equivalent is established for South Texas onions.

Subpart—Handling Regulations

* * * * *

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–282 Filed 1–6– 97; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 1011 and 1046

[Docket No. DA–96–15]

Milk in the Tennessee Valley and Louisville-Lexington-Evansville Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule, correction.

SUMMARY: The Agricultural Marketing Service is correcting FR Doc. 96–33000, published December 31, 1996, pertaining to the termination of base-excess payment plan provisions contained in five Federal milk marketing orders.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of this correction inadvertently omitted regulatory language terminating the base-excess payment plan provisions of five Federal milk marketing orders.

Need for Correction

As published, the final rule contains errors in amendatory instructions 24 and 32 which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, amendatory instructions 24 and 32, respectively, as published on December 31, 1996 (61 FR 69018), are corrected as follows:

§ 1011.61 [Corrected]

24. In § 1011.61, paragraph (a) introductory text is amended by removing the words "of July through February", paragraph (a)(6) is amended by removing the words "for the months of July through February", paragraph (b) is removed, and the section heading is revised as follows:

§ 1046.61 [Corrected]

32. In § 1046.61, paragraph (a) introductory text is amended by removing the words "of July through February", paragraph (a)(6) is amended by removing the words "for the months of July through February", paragraph (b) is removed, and the section heading is revised to read as follows:

Dated: December 30, 1996.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 97–280 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1079

[DA–96–16]

Milk in the Iowa Marketing Area; Temporary Revision of Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises certain provisions of the Iowa Federal milk marketing order for the months of December 1996 through March 1997. This action decreases the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage will be decreased 10 percentage points, from 30 percent to 20 percent, for the months of December 1996 through March 1997. The revision is being made in response to a request by a pool supply plant that is regulated under the Iowa order. This action is necessary to prevent the uneconomic shipment of milk.

EFFECTIVE DATES: Amendment 1 is effective January 8, 1997. Amendment 2 is effective December 1, 1996, through March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas__X__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision: Issued December 6, 1996; published December 12, 1996 (61 FR 65366).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the "Act"), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to

review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended, the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The revised supply plant shipping percentages are incorporated into the order to prevent the uneconomic shipment of milk. This action will decrease the percentage of milk receipts that handlers are required to move to fluid milk distributing plants. With a decrease in the shipping percentage, supply plant operators will not have to move milk uneconomically to pool distributing plants to keep the milk received at their plants priced under the order.

The reduction of the required supply plant shipping percentage for the months of December 1996 through March 1997 would allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. The revision would lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market and would result in savings in hauling costs for handlers and producers.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the Iowa order.

Issuance of Notice of Proposed Revision

Notice of proposed rulemaking was issued concerning a proposed reduction in the percentage of a supply plant's receipts which must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa order. The revisions were proposed to be effective for the months of December 1, 1996, through March 31, 1997. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by December 19, 1996.

Two comments were received. One comment supported the recommended reduction, while the other comment supported a reduction with modification.

Statement of Consideration

After consideration of all relevant material, including the proposed set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1079.7(b) of the Iowa Federal milk order should be decreased 10 percentage points, from 30 percent to 20 percent, for the months of December 1996 through March 1997.

Beatrice Cheese, Inc., a supply plant regulated under the Iowa order, proposed decreasing the supply plant shipping percentage by 10 percentage points, from 35 percent of plant receipts to 25 percent of such receipts, for the month of November 1996, and from 30 percent to 20 percent for the months of December 1996 through March 1997. The proponent contends that the decrease is necessary to prevent the uneconomic shipment of milk.

According to Beatrice, the Department's October 23, 1996, decision increasing the shipping percentage requirements to 35 percent for the months of September through November beginning with October 1996, and to 30 percent for the months of December through March has caused unjust financial losses and the uneconomic shipment of milk to occur. In order to comply with Federal order requirements, Beatrice states that a significant amount of milk was unable to be pooled to the detriment of Iowa's dairy farmers. Additionally, proponent claims that market conditions have changed drastically in Iowa since October 1996 due to a drop in the cheese and butter markets which has made more than enough milk available for fluid use eliminating the need for increased shipping percentages.

While Beatrice's proposal included a temporary revision of the supply plant shipping percentage requirements for November 1996, the proposed revision issued December 6, 1996, requesting comments limited the revision period to December 1996 through March 1997. The inclusion of November 1996 was impractical and infeasible given the amount of time necessary for required procedures, including a comment period.

Wapsie Valley Creamery, a supply plant regulated under Order 79, submitted a comment in support of a reduction in the supply plant shipping requirement by 10 percentage points for the months of December 1996 through March 1997. Wapsie states that milk marketing conditions have changed since October 1996, and that due to the increased shipping requirements recently put into effect, it has been forced to make uneconomic shipments of milk to meet order regulations.

Anderson Erickson Dairy Co. (A–E), a proprietary distributing plant regulated under the Iowa order, submitted a comment supporting a reduction in the supply plant shipping percentage requirements for the Iowa order, but argues that the decrease should be limited to 5 percentage points, from 30 percent to 25 percent, for the months of December 1996 through March 1997. A–E contends that, given past experiences which have caused A–E to request increased shipping percentages due to a lack of available milk supplies for the fluid market, the percentage should be reduced only 5 percentage points from the current level. A–E also states that under no circumstances should the shipping requirements for September through December of future years be reduced.

At the time of A–E's previous request to have the shipping percentages increased, the Department had found that in the Iowa marketing area the percentage of pooled milk used in Class I had noticeably increased for the months of June through August 1996 as compared to earlier years. This situation indicated the need for shipping percentage increases in order to attract an adequate supply of milk for fluid use. However, Class I utilization for the month of October 1996 in the Iowa marketing area illustrates that there is no need to maintain the shipping percentages at the current level of 30 percent. The Class I utilization for the months of October and November 1996

(33.8% and 32.7%, respectively) has decreased as compared to October and November 1995 (49.6% and 36.1%, respectively). A decrease in Class I utilization is also apparent for the January through March 1996 period as compared to the same months of 1995. Class I utilization declined from 34.7 percent for January 1995 to 32.1 percent in January 1996, 35.7 percent to 33.1 percent for the month of February, and from 34.2 percent to 31.7 percent for March of such years. This suggests that sufficient supplies of milk for fluid use should be available during the months of December 1996 through March 1997 for Iowa order distributing plants. Therefore, a decrease in the shipping requirement is warranted. By reducing the shipping requirement percentage for the December 1996 through March 1997 period to 20 percent, a reasonable balance will be reached which will prevent uneconomic shipments from occurring, as well as assure a sufficient milk supply.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of December 1996 through March 1997;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective less than 30 days from the days from the date of issuance.

List of Subject in 7 CFR Part 1079

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1079 is amended as follows:

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority for 7 CFR Part 1079 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 1079.7 [Amended]

2. In § 1079.7(b), the introductory text is amended by revising the words "30 percent" to read "20 percent" effective December 1, 1996, through March 31, 1997.

Dated: December 31, 1996.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 97–278 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1314

Book-Entry Procedures for TVA Power Securities Issued Through the Federal Reserve Banks

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule revises the procedures governing the issuance of, and transactions in, all TVA Power Securities issued in book-entry form through the Federal Reserve Banks. These revisions incorporate recent changes in commercial and property law and bring TVA's book-entry procedures into accord with the revised book-entry procedures of the United States Department of Treasury.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Edward S. Christenbury at (423) 632–2241.

SUPPLEMENTARY INFORMATION: TVA, a wholly owned corporate agency and instrumentality of the United States, is authorized to issue bonds, notes, and other evidences of indebtedness to assist its power program. Many TVA Power Securities are available exclusively in book-entry form and are thus subject to TVA's book-entry procedures. This final rule revises TVA's book-entry procedures to incorporate recent changes in commercial and property law and to bring them into accord with the revised book-entry procedures of the United States Department of Treasury published in the **Federal Register** on August 23, 1996 (61 FR 43,626).

Because the revised Treasury Regulations become effective on January 1, 1997, it is in the public interest that this final rule become effective as close to this date as possible to facilitate TVA's performance of its responsibilities under Section 15d and other sections of the TVA Act, 16 U.S.C. 831–831dd. The notice, public comment, and delayed effective date are therefore contrary to the public interest and inapplicable to this final rule.

List of Subjects in 18 CFR Part 1314

Accounting, Bonds, Brokers, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, part 1314 of chapter XIII of title 18 of the Code of Federal Regulations is revised to read as follows:

PART 1314—BOOK-ENTRY PROCEDURES FOR TVA POWER SECURITIES ISSUED THROUGH THE FEDERAL RESERVE BANKS

Sec.

1314.1 Applicability and effect.
1314.2 Definition of terms.
1314.3 Authority of Reserve Banks.
1314.4 Law governing the rights and obligations of TVA and Reserve Banks; law governing the rights of any Person against TVA and Reserve Banks; law governing other interests.
1314.5 Creation of Participant's Security Entitlement; security interests.
1314.6 Obligations of TVA.
1314.7 Liability of TVA and Reserve Banks.
1314.8 Identification of accounts.
1314.9 Waiver of regulations.
1314.10 Additional provisions.

Authority: 16 U.S.C. 831–831dd.

§ 1314.1 Applicability and effect.

(a) *Applicability.* The regulations in this part govern the issuance of, and transactions in, all TVA Power Securities issued by TVA in book-entry form through the Reserve Banks.

(b) *Effect.* The TVA Power Securities to which the regulations in this part apply are obligations which, by the terms of their issue, are available exclusively in book-entry form through the Reserve Banks' Book-entry System.

§ 1314.2 Definition of terms.

Unless the context requires otherwise, terms used in this part 1314 that are not defined in this section have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should be read as though modified to effectuate their application to Book-entry TVA Power Securities where applicable.

Book-entry System means the automated book-entry system operated by the Reserve Banks acting as the fiscal agent for TVA on which Book-entry TVA Power Securities are issued, recorded, transferred, and maintained in book-entry form.

(b) *Book-entry TVA Power Security* means any TVA Power Security issued or maintained in the Book-entry System of the Reserve Banks.

(c) *CUSIP Number* is a unique identification for each security issue established by the Committee on Uniform Security Identification Procedures.

(d) *Depository Institution* means any Participant.

(e) *Entitlement Holder* means a Person to whose account an interest in a Book-

entry TVA Power Security is credited on the records of a Securities Intermediary.

(f) *Funds Account* means a reserve and/or clearing account at a Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(g) *Other TVA Power Evidences of Indebtness* means any TVA Power Security issued under section 2.5 of the TVA Basic Bond Resolution (see paragraph (r) of this section).

(h) *Participant* (also called "holder" in the TVA Basic Bond Resolution) means a Person that maintains a Participant's Security Account with a Reserve Bank.

(i) *Participant's Security Account* means an account in the name of a Participant at a Reserve Bank to which Book-entry Securities held for a Participant are or may be credited.

(j) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States or a Reserve Bank.

(k) *Reserve Banks* means the Federal Reserve Banks of the Federal Reserve System and their branches.

(l) *Reserve Bank Operating Circular* means the publication issued by each Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry securities accounts and transfers book-entry securities.

(m) *Securities Documentation* means the applicable documents establishing the terms of a Book-entry TVA Power Security.

(n) *Securities Intermediary* means:

(1) A Person that is registered as a "clearing agency" under the Federal securities law; a Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry TVA Power Security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws), including a bank or broker, that in the ordinary course of business maintains securities accounts for others and is acting in that capacity.

(o) *Security Entitlement* means the rights and property interests of an Entitlement Holder with respect to a Book-entry TVA Power Security.

(p) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(q) *TVA* means the Tennessee Valley Authority, a wholly owned corporate agency and instrumentality of the United States of America created and existing under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831–831dd).

(r) *TVA Basic Bond Resolution* means the Basic Tennessee Valley Authority Power Bond Resolution [1] adopted by the TVA Board of Directors on October 6, 1960, as heretofore and hereafter amended.

(s) *TVA Power Bond* means any TVA Power Security issued by TVA under section 2.2 of the TVA Basic Bond Resolution and the supplemental resolution adopted by the TVA Board of Directors authorizing the issuance thereof.

(t) *TVA Power Bond Anticipation Obligation* means any TVA Power Security issued under section 2.3 of the TVA Basic Bond Resolution.

(u) *TVA Power Note* means any Other TVA Power Evidences of Indebtedness in the form of a note having a maturity at the date of issue of less than one year.

(v) *TVA Power Security* means a TVA Power Bond, TVA Power Bond Anticipation Obligation, TVA Power Note, or Other TVA Power Evidence of Indebtedness issued by TVA under section 15d of the TVA Act, as amended, and the TVA Basic Bond Resolution.

§ 1314.3 Authority of Reserve Banks.

(a) Each Reserve Bank is hereby authorized as fiscal agent of TVA to perform the following functions with respect to the issuance of Book-entry TVA Power Securities offered and sold by TVA to which this part 1314 applies, in accordance with the Securities Documentation, Reserve Bank Operating Circulars, this part 1314, and procedures established by the Secretary of the United States Treasury consistent with these authorities:

(1) To service and maintain Book-entry TVA Power Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by TVA;

(3) To effect transfer of Book-entry TVA Power Securities between Participants' Securities Accounts as directed by the Participants;

(4) To perform such other duties as fiscal agent as may be requested by TVA.

(b) Each Reserve Bank may issue Reserve Bank Operating Circulars not inconsistent with this part 1314, governing the details of its handling of Book-entry TVA Power Securities, Security Entitlements, and the operation of the Book-entry System under this part 1314.

§ 1314.4 Law governing the rights and obligations of TVA and Reserve Banks; law governing the rights of any Person against TVA and Reserve Banks; law governing other interests.

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the book-entry regulations contained in this part 1314, the Securities Documentation (but not including any choice of law provisions in such documentation), and Reserve Bank Operating Circulars;

(1) The rights and obligations of TVA and Reserve Banks with respect to:

(i) A book-entry TVA Power Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to TVA Power Securities; and

(2) The rights of any Person, including a Participant, against TVA and Reserve Banks with respect to:

(i) A Book-entry TVA Power Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to TVA Power Securities.

(b) A security interest in a Security Entitlement that is in favor of a Reserve Bank from a Participant and that is not recorded on the books of a Reserve Bank pursuant to § 1314.5(c) is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Reserve Bank maintaining the Participant's securities account is located. A security interest in a Security Entitlement that is in favor of a Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Reserve Bank pursuant to § 1314.5(c), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this part 1314, and

[1] A copy of the TVA Basic Bond Resolution may be obtained upon request directed to TVA, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, Attn.: Treasurer.

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notwithstanding any provision in the Security Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and should be read as though modified to effectuate the application of 31 CFR 357.11 to Book-entry TVA Power Securities.

§ 1314.5 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Reserve Bank indicates by book-entry that a Book-entry TVA Power Security has been credited to a Participant's security account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation or agreement, and that is marked on the books of a Reserve Bank, is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a participant is marked on the books of a Reserve bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Reserve Bank is a party governing the security interest.

(c) TVA and Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Reserve Bank or in a Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Reserve Bank or a Person may be created and perfected by a Reserve Bank marking its books to record the security interest. Subject to paragraph (b) of this section with respect to a security interest in favor of the United States, a security interest in a Security Entitlement marked on the books of a Reserve Bank shall have priority over any other interest in the securities.

(d) In addition to the method provided in paragraph (c) of this section, a security interest, including a security interest in favor of a Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1314.4(b) or (d). The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by such applicable law. A security interest in favor of a Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1314.6 Obligations of TVA.

(a) Except in the case of a security interest in favor of the United States or a Reserve Bank or otherwise as provided in § 1314.5(c), for the purposes of this part 1314, TVA and Reserve Banks shall treat the Participant to whose securities account an interest in a Book-entry TVA Power Security has been credited as the Person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof, and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. Neither TVA nor the Reserve Banks are liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry TVA Power Security in a Participant's security account, including any such claim arising as a result of the transfer or disposition of a Book-entry TVA Power Security by a Reserve Bank pursuant to a transfer message that the Reserve Bank reasonably believes to be genuine.

(b) The obligation of TVA to make payments with respect to Book-entry TVA Power Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry TVA Power Securities are either credited by a Reserve Bank to a Funds Account maintained at such bank or otherwise paid as directed by the Participant.

(2) Book-entry TVA Power Securities are redeemed in accordance with their terms by a Reserve Bank withdrawing the securities from the Participant's security account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a Funds Account at such bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry TVA Power Security.

§ 1314.7 Liability of TVA and Reserve Banks.

TVA and the Reserve Banks may rely on the information provided in a transfer message and are not required to verify the information. TVA and the Reserve Bank shall not be liable for any action taken in accordance with the information set out in a transfer message or evidence submitted in support thereof.

§ 1314.8 Identification of accounts.

Book-entry accounts may be established in such form or forms as customarily permitted by the entity (e.g., Depository Institution, Securities Intermediary, etc.) maintaining them, except that each account established by such entity (other than a Reserve Bank) should include data to permit both customer identification by name, address, and taxpayer identifying number, as well as a determination of the Book-entry TVA Power Securities being held in such account by amount, maturity, date, and CUSIP number, and of transactions relating thereto.

§ 1314.9 Waiver of regulations.

TVA reserves the right in TVA's discretion to waive any provision of the regulations in this part in any case or class of cases for the convenience of TVA or in order to relieve any Person of unnecessary hardship, if such action is not inconsistent with law and does not adversely affect any substantial existing rights, and TVA is satisfied that such action will not subject TVA to any substantial expense or liability.

§ 1314.10 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this part, TVA may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of TVA be necessary for the protection of the interests of TVA.

(b) *Notice of attachment for TVA Power Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The

regulations in this part do not purport to establish whether a Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: December 31, 1996.

John L. Dugger,

Assistant General Counsel.

[FR Doc. 97–228 Filed 1–6–97; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the delegations of authority regulations that cover general redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates the FDA Deputy User Fee Waiver Officer authority to consider and decide requests under certain circumstances for waivers or reductions of user fees. Redelegation of this authority would allow for more efficient operations.

EFFECTIVE DATE: Janaury 7, 1997.

FOR FURTHER INFORMATION CONTACT:

Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) by revising § 5.20(h) to add the title of Deputy User Fee Waiver Officer to those authorized to perform all of the functions of the Commissioner under the Prescription Drug User Fee Act of 1992 (21 U.S.C. 379h(d)), as amended hereafter, relating to the authority to waive or reduce user fees. The Chief Mediator and Ombudsman and the Deputy Chief Mediator and Ombudsman currently have this authority. This action is being taken in order to redelegate authority to the Deputy User Fee Waiver Officer, which will provide a more efficient process for considering and making decisions on requests for waivers or reduction of user fees.

Further redelegation of this authority is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.20 is amended by revising paragraph (h) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(h) The Chief Mediator and Ombudsman is designated as User Fee Waiver Officer and is authorized to perform all of the functions of the Commissioner under the Prescription Drug User Fee Act of 1992 (21 U.S.C. 379h(d)), as amended hereafter, relating to the authority to waive or reduce user fees. The User Fee Waiver Officer's authority may be redelegated to the Deputy Chief Mediator and Ombudsman and to the Deputy User Fee Waiver Officer, without further redelegation. The Deputy Commissioner for Operations is designated User Fee Appeals Officer and is authorized to hear and decide user fee waiver appeals. The decision of the User Fee Appeals Officer will constitute final agency action on such matters.

* * * * *

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–290 Filed 1–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8708]

RIN 1545–AL98

Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations relating to the computation of foreign taxes deemed paid under section 902. Changes to the applicable law were made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). These regulations provide guidance needed to comply with these changes and affect foreign corporations and their United States corporate shareholders.

DATES: These regulations are effective January 7, 1997.

Applicability: For the specific dates of applicability of these regulations, see §§ 1.902–1(g) and 1.902–3(l).

FOR FURTHER INFORMATION CONTACT: Caren S. Shein (202) 622–3850 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 15451458. Responses to these collections of information are required by the IRS to implement the section 902 pooling regime enacted in the Tax Reform Act of 1986.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

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The burden for the collection of information is reflected in the burden for Form 1118.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to the collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 902 (26 CFR part 1) was amended by section 1202(a) of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 1085), and section 1012(b) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Public Law 100–647, 102 Stat. 3242). On January 6, 1995, the IRS published a notice of proposed rulemaking in the **Federal Register** (60 FR 2049 [INTL–933–86 (1995–1 C.B. 959)]). The proposed regulations provide guidance needed to comply with section 902 as amended in 1986 and 1988. No public hearing was requested or held, but numerous written comments were received. The proposed regulations, with certain changes made in response to comments, are adopted in this Treasury decision as final regulations. The principal changes to the regulations, as well as the major comments and suggestions, are discussed below.

Explanation of Provisions

Section 1.902–1

In the preamble to the proposed regulations, the IRS requested comments on whether the holding of Revenue Ruling 71–141 (1971–1 C.B. 211) should be expanded to allow taxes paid by a foreign corporation to be considered deemed paid by domestic corporations that are partners in domestic limited partnerships or foreign partnerships, shareholders in limited liability companies, beneficiaries of domestic or foreign trusts and estates, or interest holders in other pass-through entities. The revenue ruling held that two 50-percent domestic corporate general partners of a domestic general partnership that owned 40 percent of a foreign corporation were entitled to compute an amount of foreign taxes deemed paid under section 902 with respect to dividends they received from the foreign corporation through the partnership.

The IRS received numerous comments in response to the request in the preamble. The commenters uniformly argue that the aggregate theory of partnerships should apply to allow domestic corporate partners to compute an amount of foreign taxes deemed paid with respect to dividends paid to any partnership by a foreign corporation, provided that the partner owns at least 10 percent of the voting stock of the foreign corporation through the partnership.

The final regulations do not resolve under what circumstances a domestic corporate partner may compute an amount of foreign taxes deemed paid with respect to dividends received from a foreign corporation by a partnership or other pass-through entity. That issue will be the subject of a future proposed regulations project. However, in recognition of the holding in Revenue Ruling 71–141 (1971–1 C.B. 211) that a general partner of a domestic general partnership may compute an amount of foreign taxes deemed paid with respect to a dividend distribution from a foreign corporation to the partnership, § 1.902–1(a)(1) is amended to define a domestic shareholder as a domestic corporation that "owns" the requisite voting stock in a foreign corporation rather than one that "owns directly" the voting stock. The IRS is still considering under what other circumstances the revenue ruling should apply.

Section 1.902–1(a)(8) is amended to clarify under what circumstances the pool of post-1986 foreign income taxes must be reduced to account for distributions made in prior post-1986 taxable years. The regulations require a reduction in the taxes pool for taxes attributable to earnings distributed to shareholders ineligible for the deemed paid credit (for example, a foreign shareholder, a U.S. individual shareholder, or a domestic corporate shareholder that owns less than 10 percent of the foreign corporation's voting stock) and to shareholders that are eligible for the credit but that choose to deduct foreign taxes under section 164(a) in the year of the distribution rather than claim a credit.

The IRS understands that some taxpayers have taken the position, contrary to the position taken in § 1.902–1(a)(8) of the proposed regulations, that although post-1986 undistributed earnings must be reduced to account for all distributions out of current or accumulated earnings and profits, post-1986 foreign income taxes should be reduced only to account for taxes attributable to distributions with respect to which a shareholder both is eligible to claim a credit for foreign taxes deemed paid under section 902(a) and in fact elects to credit foreign taxes for the taxable year under section 901(a). These taxpayers argue that only in those circumstances are foreign taxes "deemed paid" and thus required to be removed from the taxes pool under a literal reading of sections 902(a) and 902(c)(2)(B).

The IRS has not changed its position as reflected in § 1.902–1(a)(8)(i) of the proposed regulations that the foreign taxes pool must be reduced to account for foreign taxes attributable to all distributions and deemed distributions or inclusions to all shareholders. However, the text of the final regulations has been amended to clarify the rule. The requirement that the foreign taxes pool must be reduced proportionately as the earnings pool is reduced is consistent with the legislative history of the Tax Reform Act of 1986 (Public Law 99–514). The House Report states that under the pooling regime, "[a] dividend or subpart F inclusion is considered to bring with it a pro rata share of the accumulated foreign taxes paid by the subsidiary." H.R. Rep. No. 426, 99th Cong., 1st Sess. 357 (1985). In addition, removing taxes attributable to distributions to ineligible shareholders and eligible shareholders that choose to deduct foreign taxes is supported by the general matching principles of section 902, which presume that a dividend distribution will carry with it a ratable share of the foreign corporation's taxes. If taxes paid with respect to distributed earnings remained in the pool, eligible shareholders eventually could receive credits for more than their ratable share of the foreign corporation's taxes, a result at odds with the statutory scheme.

Section 1.902–1(a)(8)(i) is amended to correct an oversight in the proposed regulation. In the case of a distribution out of current earnings and profits that is treated as a "nimble" dividend under section 316(a)(2) when there is a deficit in accumulated earnings and profits, post-1986 foreign income taxes are not reduced. This rule is not inconsistent with the general rule of paragraph (a)(8)(i) that the foreign taxes pool must be reduced to account for taxes attributable to all distributions and deemed distributions out of post-1986 undistributed earnings. Rather, it reflects the fact that under section 902 and these regulations, no taxes are deemed paid with respect to a nimble

dividend under section 316(a)(2) because the post-1986 undistributed earnings pool is zero or less than zero.

Section 1.902–1(a)(9), defining post-1986 undistributed earnings, is amended to clarify that the earnings pool is reduced only to account for distributions or deemed distributions that reduce earnings and profits and inclusions that result in previously-taxed amounts described in sections 959(c)(1) and (c)(2) or 1293(c). Thus, for example, in the case of a controlled foreign corporation owned 60 percent by a domestic corporate shareholder and 40 percent by a foreign shareholder, the earnings and taxes pools are reduced only to account for 60 percent of the foreign corporation's subpart F income.

The rules precluding special allocations of earnings and taxes in § 1.902–1(a)(9)(iv) and (10)(ii) of the proposed regulations have been retained in the final regulations. These regulations are intended to reverse the result in *Vulcan* v. *Commissioner*, 96 T.C. 410 (1991), aff'd per curiam, 959 F.2d 973 (11th Cir. 1992), nonacq. 1995–1 C.B. 1, for post-1986 taxable years. Several commenters argued that the *Vulcan* decision was correct and should be applied to both pre-1987 and post-1986 taxable years, and the regulations should be revised to reflect the decision. For the reasons stated in the preamble to the proposed regulations, the IRS declines to do so.

Commenters also argued that the rule precluding special allocations of earnings and taxes is inconsistent with § 1.904–6(a)(2). Section 1.904–6(a)(2) is an anti-abuse rule designed to prevent the use of accommodation parties to improve a United States taxpayer's foreign tax credit position. The rule states that if a taxpayer receives or accrues a dividend from a noncontrolled section 902 corporation and the Commissioner establishes the existence of an express or implied agreement that the dividend is paid out of the foreign corporation's passive or high withholding tax interest earnings, then only taxes imposed on passive or high withholding tax interest earnings will be considered related to the dividend. The IRS may invoke this rule to prevent a shareholder from sheltering investment income from tax by investing it through a noncontrolled section 902 corporation that distributes only the investment earnings to the shareholder, which then treats the distribution as a dividend sheltered by taxes paid on the corporation's hightaxed active business income. The IRS believes that this narrowly defined anti-abuse rule is an appropriate exception to the general rule of § 1.902–1(a)(9)(iv) and (a)(10)(ii) barring special allocations of earnings and taxes.

Section 1.902–1(a)(11) has been amended to clarify that the definition of a dividend in section 316(a) applies for purposes of section 902, and that the section 902 definition of a dividend also includes deemed dividends under sections 551 and 1248. Deemed inclusions under sections 951(a) and 1293 are not dividends for purposes of section 902. However, sections 960(a)(1) and 1293(f) provide that deemed paid taxes with respect to inclusions under sections 951(a) and 1293 are determined under section 902 in the same manner as if a dividend was paid.

Paragraph (a)(11) also has been amended to add a crossreference to section 1291 and § 1.1291–5 of the proposed regulations, which provide special rules for computing foreign taxes deemed paid with respect to distributions from section 1291 funds. These distributions are treated as dividends solely for foreign tax credit purposes, but the general section 902 computational rules do not apply.

A commenter correctly pointed out that the regulation's inclusion of deemed distributions under section 551 as dividends for purposes of section 902 is contrary to the holding in Revenue Ruling 74–59 (1974–1 C.B. 183) that an amount includible in gross income under section 551 is not considered a dividend received for purposes of the allowance of a foreign tax credit under section 902. The holding of the revenue ruling is based on language in the 1937 legislative history of the foreign personal holding company provisions. The Report of the Joint Committee on Tax Evasion and Avoidance of the Congress of the United States, H.R. Doc. No. 337, 75th Cong., 1st Sess. 18 (1937), recommended that shareholders of foreign personal holding companies not be allowed a credit for foreign income taxes paid by the foreign corporation with respect to amounts deemed distributed. The Report goes on to state that the committee recommended against allowing a credit because "it is not administratively feasible, although it might seem equitable under the circumstances."

Section 551(b) provides that amounts required to be included in the gross income of a U.S. shareholder under section 551(a) are treated as dividends, and under current law it is administratively feasible to allow deemed paid taxes to be computed with respect to deemed dividends. In addition, the Code now includes other anti-deferral regimes, e.g., the subpart F and passive foreign investment company provisions, the application of which may overlap with the foreign personal holding company rules. Shareholders are permitted to compute deemed paid taxes with respect to subpart F and passive foreign investment company inclusions.

The IRS, therefore, has concluded the revenue ruling is not supported by current law. A shareholder of a foreign personal holding company should be entitled to compute deemed paid taxes with respect to amounts required to be included in gross income as dividends under section 551(a). Revenue Ruling 74–59 (1974–1 C.B. 183) is hereby revoked effective as of the date these regulations are published in the **Federal Register**.

A commenter argued that the rule in § 1.902–1(b)(4), providing that no taxes are deemed paid with respect to dividends out of current earnings and profits when the foreign corporation has no post-1986 undistributed earnings and no accumulated earnings and profits (so-called "nimble" dividends) conflicts with the general purpose of the foreign tax credit to prevent double taxation. The rule is retained in the final regulations for two reasons. First, the legislative history of the Tax Reform Act of 1986 (Public Law 99–514) clearly indicates that Congress was aware of the issue and agreed with the position stated in the regulation. See S. Rep. No. 313, 99th Cong., 2d Sess. 321 (1986). Second, because no taxes can be deemed paid under the computational rules of section 902 when post-1986 undistributed earnings are zero or less than zero, no taxes are removed from the post-1986 foreign income taxes pool. Thus, all of the foreign corporation's taxes remain in its post-1986 foreign income taxes pool and are available to be credited if the corporation pays another dividend in a later year in which the post-1986 undistributed earnings pool is positive.

Section 1.902–1(c)(8) of the proposed regulations reserved on the application of section 902 in section 304 exchanges. Commenters suggested that the regulations should address this area by incorporating the holdings in Revenue Ruling 91–5 (1991–1 C.B. 114), and Revenue Ruling 92–86 (1992–1 C.B. 199). In addition, the commenters argued that the regulations should state that a deemed paid credit is available in a section 304 exchange involving a foreign parent corporation. The IRS is still studying the area and the regulations thus continue to reserve on the application of section 902 in a section 304 exchange.

Section 1.902–1(c)(9) of the proposed regulations is reserved in these final regulations. The proposed regulation

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provided a cross-reference to regulations under section 905(c) with respect to adjustments to post-1986 undistributed earnings and taxes that result from a section 482 allocation of income. There currently are no regulations under section 905(c) addressing section 482 allocations and the IRS, therefore, has reserved this paragraph pending issuance of final regulations under section 905(c).

Section 1.902–1(d)(3) (ii) through (iv) of the proposed regulations is not included in the final regulations. Paragraph (d)(3) set out rules and examples exercising a grant of regulatory authority under the last sentence of section 904(d)(2)(E)(i) to limit beyond the statute the circumstances under which a dividend paid to a new U.S. shareholder by a controlled foreign corporation out of earnings accumulated while it was a controlled foreign corporation will be treated as dividends from a noncontrolled section 902 corporation. Identical rules were proposed in 1992 under section 904(d). See § 1.904–4(g)(3) (ii) through (iv) of the proposed regulations. The rules address the character of a dividend distribution under section 904(d) and are more appropriately placed in the regulations under that section. After considering the comments received, the rule will be finalized as part of the section 904 regulations.

Section 1.902–2

A commenter suggested that the deficit carryback rules in § 1.902–2(a)(1) should be amended to provide that a deficit in post-1986 undistributed earnings will not be carried back to pre-1987 years on a return of capital or capital gain distribution. The rule states that a deficit will be carried back when "* * * a corporation makes a distribution to shareholders that is a dividend or would be a dividend if there were current or accumulated earnings and profits, * * *." The commenter suggests that the rule in the proposed regulation can result in "locked-in" taxes when earnings attributable to one or more pre-1987 years are eliminated by the deficit carryback. If the deficit stays in the post-1986 pool there is a chance it can be absorbed by future earnings, leaving the pre-1987 earnings and taxes intact. In support of its position, the commenter argues that section 902 establishes rules that minimize double taxation by allowing a taxpayer to compute a deemed paid credit on a taxable dividend. The legislative history indicates that the pooling provisions of section 902 are to apply solely for purposes of computing the deemed paid credit. Because a return of capital or capital gain distribution is not a taxable dividend and no section 902 credit is allowable, the commenter argues that the pooling rules (including the deficit carryback rules) should not apply.

The IRS declines to adopt the commenter's suggestion. When an amount is distributed in a post-1986 taxable year and there is a deficit in post-1986 undistributed earnings, the deficit must be carried back and reduce earnings and profits in pre-1987 years to determine whether any earnings remain to support treatment of the distribution as a dividend. To the extent there are earnings remaining in one or more pre-1987 years after a deficit is carried back, the distribution is a dividend. Any remaining amount is a return of capital and capital gain. It would be incongruous to adopt a rule providing a different result if a single dollar of pre-1987 accumulated profits remains in a pre-1987 year after a post-1986 deficit is carried back than if the deficit carryback eliminated all pre-1987 accumulated profits and the entire distribution were treated as a return of capital.

Another commenter argued that the interplay among § 1.902–2(b)(1) (pre-1987 accumulated deficit carries over to become the opening balance of post-1986 undistributed earnings pool) and § 1.902–1(b)(4) (no taxes deemed paid if a dividend is a nimble dividend) of the proposed regulations, and section 960 (incorporating the section 902 rules with respect to deemed inclusions under subpart F) results in a denial of deemed paid taxes to a U.S. shareholder if a controlled foreign corporation has both a pre-1987 accumulated deficit and post-1986 earnings and profits that are entirely subpart F income. The commenter suggests that regulations be issued under section 960 to provide, solely for purposes of that section, that accumulated deficits in pre-1987 accumulated profits will not carry over into the post-1986 pool.

The IRS cannot adopt the rule the commenter suggests. Congress amended sections 902 and 960 in 1986 specifically to eliminate different earnings and profits and deemed paid taxes computations for purposes of sections 902 and 960. Further, in the situation the commenter posits, the credits are deferred but not permanently disallowed. If the controlled foreign corporation earns enough post-1986 income to eliminate the accumulated deficit, any distribution or deemed distribution will carry with it a ratable share of post-1986 foreign income taxes.

A commenter argued that § 1.902–2(b)(2) and (3), Example 1, are incorrect because they imply that annual deficits in pre-1987 accumulated profits were required to be carried back under pre-1987 section 902 regardless of how foreign income taxes were determined. The commenter argues that pre-1987 section 902 requires a "correlation" between accumulated profits as determined under U.S. law and the foreign law method by which foreign taxes were determined.

The IRS disagrees with the comment and the proposed regulation has not been amended. The regulation reflects the IRS' longstanding position that in the case of a deficit in accumulated profits of a foreign corporation for a particular pre-1987 year, the deficit first reduces prior years' accumulated profits on a LIFO basis to the extent thereof, and then the remaining deficit reduces accumulated profits in subsequent years. That rule applies regardless of whether foreign law permits or requires the carryback or carryforward of losses. See Revenue Ruling 74–550 (1974–2 C.B. 209) and Revenue Ruling 87–72 (1987–2 C.B. 170).

Effect on Other Documents

The following revenue ruling is revoked as of January 7, 1997:

Revenue Ruling 74–59, 1974–1 C.B. 183.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Caren Silver Shein of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.902–1 also issued under 26 U.S.C. 902(c)(7).

Section 1.902–2 also issued under 26 U.S.C. 902(c)(7). * * *

§§ 1.902–1 and 1.902–2 [Redesignated §§ 1.902–3 and 1.902–4]

Par. 2. Sections 1.902–1 and 1.902–2 are redesignated §§ 1.902–3 and 1.902–4, respectively.

Par. 3. Sections 1.902–0, 1.902–1 and 1.902–2 are added to read as follows:

§ 1.902–0 Outline of regulations provisions for section 902.

This section lists the provisions under section 902.

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

(a) Definitions and special effective date.
(1) Domestic shareholder.
(2) First-tier corporation.
(3) Second-tier corporation.
(4) Third-tier corporation.
(5) Example.
(6) Upper- and lower-tier corporations.
(7) Foreign income taxes.
(8) Post-1986 foreign income taxes.
(i) In general.
(ii) Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.
(iii) Foreign income taxes paid or accrued with respect to high withholding tax interest.
(9) Post-1986 undistributed earnings.
(i) In general.
(ii) Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.
(iii) Reduction for foreign income taxes paid or accrued.
(iv) Special allocations.
(10) Pre-1987 accumulated profits.
(i) Definition.
(ii) Computation of pre-1987 accumulated profits.
(iii) Foreign income taxes attributable to pre-1987 accumulated profits.
(11) Dividend.
(12) Dividend received.
(13) Special effective date.
(i) Rule.
(ii) Example.
(b) Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation.
(1) General rule.
(2) Allocation rule for dividends attributable to post-1986 undistributed earnings and pre-1987 accumulated profits.
(i) Portion of dividend out of post-1986 undistributed earnings.
(ii) Portion of dividend out of pre-1987 accumulated profits.
(3) Dividends paid out of pre-1987 accumulated profits.
(4) Deficits in accumulated earnings and profits.
(5) Examples.
(c) Special rules.
(1) Separate computations required for dividends from each first-tier and lower-tier corporation.
(i) Rule.
(ii) Example.
(2) Section 78 gross-up.
(i) Foreign income taxes deemed paid by a domestic shareholder.
(ii) Foreign income taxes deemed paid by an upper-tier corporation.
(iii) Example.
(3) Creditable foreign income taxes.
(4) Foreign mineral income.
(5) Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.
(6) Foreign oil and gas extraction income.
(7) United States shareholders of controlled foreign corporations.
(8) Credit for foreign taxes deemed paid in a section 304 transaction.
(9) Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings.
(d) Dividends from controlled foreign corporations.
(1) General rule.
(2) Look-through.
(i) Dividends.
(ii) Coordination with section 960.
(3) Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation.
(i) General rule.
(ii) Dividend distributions out of earnings and profits for a year during which a shareholder that is currently a more-than-90-percent United States shareholder of a controlled foreign corporation was not a United States shareholder of the controlled foreign corporation.
(e) Information to be furnished.
(f) Examples.
(g) Effective date.

§ 1.902–2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid § 1.902–1.

(a) Carryback of deficits in post-1986 undistributed earnings of a first-, second-, or third-tier corporation to pre-effective date taxable years.
(1) Rule.
(2) Examples.
(b) Carryforward of deficits in pre-1987 accumulated profits of a first-, second-, or third-tier corporation to post-1986 undistributed earnings for purposes of section 902.
(1) General rule.
(2) Effect of pre-effective date deficit.
(3) Examples.

§ 1.902–3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.

(a) Definitions.
(1) Domestic shareholder.
(2) First-tier corporation.
(3) Second-tier corporation.
(4) Third-tier corporation.
(5) Foreign income taxes.
(6) Dividend.
(7) Dividend received.
(b) Domestic shareholder owning stock in a first-tier corporation.
(1) In general.
(2) Amount of foreign taxes deemed paid by a domestic shareholder.
(c) First-tier corporation owning stock in a second-tier corporation.
(1) In general.
(2) Amount of foreign taxes deemed paid by a first-tier corporation.
(d) Second-tier corporation owning stock in a third-tier corporation.
(1) In general.
(2) Amount of foreign taxes deemed paid by a second-tier corporation.
(e) Determination of accumulated profits of a foreign corporation.
(f) Taxes paid on or with respect to accumulated profits of a foreign corporation.
(g) Determination of earnings and profits of a foreign corporation.
(1) Taxable year to which section 963 does not apply.
(2) Taxable year to which section 963 applies.
(3) Time and manner of making choice.
(4) Determination by district director.
(h) Source of income from first-tier corporation and country to which tax is deemed paid.
(1) Source of income.
(2) Country to which taxes deemed paid.
(i) United Kingdom income taxes paid with respect to royalties.
(j) Information to be furnished.
(k) Illustrations.
(l) Effective date

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§ 1.902–4 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.

(a) In general.
(b) Combined distributions.
(c) Distributions of a first-tier corporation attributable to certain distributions from second- or third-tier corporations.
(d) Illustrations.

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

(a) *Definitions and special effective date.* For purposes of section 902, this section, and § 1.902–2, the definitions provided in paragraphs (a) (1) through (12) of this section and the special effective date of paragraph (a)(13) of this section apply.

(1) *Domestic shareholder.* In the case of dividends received by a domestic corporation from a foreign corporation after December 31, 1986, the term domestic shareholder means a domestic corporation, other than an S corporation as defined in section 1361(a), that owns at least 10 percent of the voting stock of the foreign corporation at the time the domestic corporation receives a dividend from that foreign corporation.

(2) *First-tier corporation.* In the case of dividends received by a domestic shareholder from a foreign corporation in a taxable year beginning after December 31, 1986, the term first-tier corporation means a foreign corporation, at least 10 percent of the voting stock of which is owned by a domestic shareholder at the time the domestic shareholder receives a dividend from that foreign corporation. The term first-tier corporation also includes a DISC or former DISC, but only with respect to dividends from the DISC or former DISC that are treated under sections 861(a)(2)(D) and 862(a)(2) as income from sources without the United States.

(3) *Second-tier corporation.* In the case of dividends paid to a first-tier corporation by a foreign corporation in a taxable year beginning after December 31, 1986, the foreign corporation is a second-tier corporation if, at the time a first-tier corporation receives a dividend from that foreign corporation, the first-tier corporation owns at least 10 percent of the foreign corporation's voting stock and the product of the following equals at least 5 percent—

(i) The percentage of voting stock owned by the domestic shareholder in the first-tier corporation; multiplied by

(ii) The percentage of voting stock owned by the first-tier corporation in the second-tier corporation.

(4) *Third-tier corporation.* In the case of dividends paid to a second-tier corporation by a foreign corporation in a taxable year beginning after December 31, 1986, a foreign corporation is a third-tier corporation if, at the time a second-tier corporation receives a dividend from that foreign corporation, the second-tier corporation owns at least 10 percent of the foreign corporation's voting stock and the product of the following equals at least 5 percent—

(i) The percentage of voting stock owned by the domestic shareholder in the first-tier corporation; multiplied by

(ii) The percentage of voting stock owned by the first-tier corporation in the second-tier corporation; multiplied by

(iii) The percentage of voting stock owned by the second-tier corporation in the third-tier corporation.

(5) *Example.* The following example illustrates the ownership requirements of paragraphs (a) (1) through (4) of this section:

Example. (i) Domestic corporation M owns 30 percent of the voting stock of foreign corporation A on January 1, 1991, and for all periods thereafter. Corporation A owns 40 percent of the voting stock of foreign corporation B on January 1, 1991, and continues to own that stock until June 1, 1991, when Corporation A sells its stock in Corporation B. Both Corporation A and Corporation B use the calendar year as the taxable year. Corporation B pays a dividend out of its post-1986 undistributed earnings to Corporation A, which Corporation A receives on February 16, 1991. Corporation A pays a dividend out of its post-1986 undistributed earnings to Corporation M, which Corporation M receives on January 20, 1992. Corporation M uses a fiscal year ending on June 30 as the taxable year.

(ii) On February 16, 1991, when Corporation B pays a dividend to Corporation A, Corporation M satisfies the 10 percent stock ownership requirement of paragraphs (a) (1) and (2) of this section with respect to Corporation A. Therefore, Corporation A is a first-tier corporation within the meaning of paragraph (a)(2) of this section and Corporation M is a domestic shareholder of Corporation A within the meaning of paragraph (a)(1) of this section. Also on February 16, 1991, Corporation B is a second-tier corporation within the meaning of paragraph (a)(3) of this section because Corporation A owns at least 10 percent of its voting stock, and the percentage of voting stock owned by Corporation M in Corporation A on February 16, 1991 (30 percent) multiplied by the percentage of voting stock owned by Corporation A in Corporation B on February 16, 1991 (40 percent) equals 12 percent. Corporation A shall be deemed to have paid foreign income taxes of Corporation B with respect to the dividend received from Corporation B on February 16, 1991.

(iii) On January 20, 1992, Corporation M satisfies the 10-percent stock ownership requirement of paragraphs (a)(1) and (2) of this section with respect to Corporation A. Therefore, Corporation A is a first-tier corporation within the meaning of paragraph (a)(2) of this section and Corporation M is a domestic shareholder within the meaning of paragraph (a)(1) of this section. Accordingly, for its taxable year ending on June 30, 1992, Corporation M is deemed to have paid a portion of the post-1986 foreign income taxes paid, accrued, or deemed to be paid, by Corporation A. Those taxes will include taxes paid by Corporation B that were deemed paid by Corporation A with respect to the dividend paid by Corporation B to Corporation A on February 16, 1991, even though Corporation B is no longer a second-tier corporation with respect to Corporations A and M on January 20, 1992, and has not been a second-tier corporation with respect to Corporations A and M at any time during the taxable years of Corporations A and M that include January 20, 1992.

(6) *Upper- and lower-tier corporations.* In the case of a third-tier corporation, the term upper-tier corporation means a first- or second-tier corporation. In the case of a second-tier corporation, the term upper-tier corporation means a first-tier corporation. In the case of a first-tier corporation, the term lower-tier corporation means a second- or third-tier corporation. In the case of a second-tier corporation, the term lower-tier corporation means a third-tier corporation.

(7) *Foreign income taxes.* The term foreign income taxes means income, war profits, and excess profits taxes as defined in § 1.901–2(a), and taxes included in the term income, war profits, and excess profits taxes by reason of section 903, that are imposed by a foreign country or a possession of the United States, including any such taxes deemed paid by a foreign corporation under this section. Foreign income, war profits, and excess profits taxes shall not include amounts excluded from the definition of those taxes pursuant to section 901 and the regulations under that section. See also paragraphs (c)(4) and (5) of this section (concerning foreign taxes paid with respect to foreign mineral income and in connection with the purchase or sale of oil and gas).

(8) *Post-1986 foreign income taxes—* (i) *In general.* Except as provided in paragraphs (a)(10) and (13) of this section, the term post-1986 foreign income taxes of a foreign corporation means the sum of the foreign income taxes paid, accrued, or deemed paid in the taxable year of the foreign corporation in which it distributes a dividend plus the foreign income taxes paid, accrued, or deemed paid in the foreign corporation's prior taxable years beginning after December 31, 1986, to

the extent the foreign taxes were not paid or deemed paid by the foreign corporation on or with respect to earnings that in prior taxable years were distributed to, or otherwise included (e.g., under sections 304, 367(b), 551, 951(a), 1248 or 1293) in the income of, a foreign or domestic shareholder. Except as provided in paragraph (b)(4) of this section, foreign taxes paid or deemed paid by the foreign corporation on or with respect to earnings that were distributed or otherwise removed from post-1986 undistributed earnings in prior post-1986 taxable years shall be removed from post-1986 foreign income taxes regardless of whether the shareholder is eligible to compute an amount of foreign taxes deemed paid under section 902, and regardless of whether the shareholder in fact chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion. Thus, if an amount is distributed or deemed distributed by a foreign corporation to a United States person that is not a domestic shareholder within the meaning of paragraph (a)(1) of this section (e.g., an individual or a corporation that owns less than 10% of the foreign corporation's voting stock), or to a foreign person that does not meet the definition of a first- or second-tier corporation under paragraph (a)(2) or (3) of this section, then although no foreign income taxes shall be deemed paid under section 902, foreign income taxes attributable to the distribution or deemed distribution that would have been deemed paid had the shareholder met the ownership requirements of paragraphs (a)(1) through (4) of this section shall be removed from post-1986 foreign income taxes. Further, if a domestic shareholder chooses to deduct foreign taxes paid or accrued for the taxable year of the distribution or inclusion, it shall nonetheless be deemed to have paid a proportionate share of the foreign corporation's post-1986 foreign income taxes under section 902(a), and the foreign taxes deemed paid must be removed from post-1986 foreign income taxes. In the case of a foreign corporation the foreign income taxes of which are determined based on an accounting period of less than one year, the term year means that accounting period. See sections 441(b)(3) and 443.

(ii) *Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.* Post-1986 foreign income taxes shall include foreign income taxes that are deemed paid by an upper-tier corporation with respect to distributions from a lower-tier corporation out of nonpreviously taxed pre-1987 accumulated profits, as defined in paragraph (a)(10) of this section, that are received by an upper-tier corporation in any taxable year of the upper-tier corporation beginning after December 31, 1986, provided the upper-tier corporation's earnings and profits in that year are included in its post-1986 undistributed earnings under paragraph (a)(9) of this section. Foreign income taxes deemed paid with respect to a distribution of pre-1987 accumulated profits shall be translated from the functional currency of the lower-tier corporation into dollars at the spot exchange rate in effect on the date of the distribution. To determine the character of the earnings and profits and associated taxes for foreign tax credit limitation purposes, see section 904 and § 1.904–7(a).

(iii) *Foreign income taxes paid or accrued with respect to high withholding tax interest.* Post-1986 foreign income taxes shall not include foreign income taxes paid or accrued by a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)(i)) with respect to high withholding tax interest (as defined in section 904(d)(2)(B)) to the extent the foreign tax rate imposed on such interest exceeds 5 percent. See section 904(d)(2)(E)(ii) and § 1.904–4(g)(2)(iii). The reduction in foreign income taxes paid or accrued by the amount of tax in excess of 5 percent imposed on high withholding tax interest income must be computed in functional currency before foreign income taxes are translated into U.S. dollars and included in post-1986 foreign income taxes.

(9) *Post-1986 undistributed earnings*—(i) *In general.* Except as provided in paragraphs (a) (10) and (13) of this section, the term post-1986 undistributed earnings means the amount of the earnings and profits of a foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years of the foreign corporation beginning after December 31, 1986, determined as of the close of the taxable year of the foreign corporation in which it distributes a dividend. Post-1986 undistributed earnings shall not be reduced by reason of any earnings distributed or otherwise included in income, for example under section 304, 367(b), 551, 951(a), 1248 or 1293, during the taxable year. Post-1986 undistributed earnings shall be reduced to account for distributions or deemed distributions that reduced earnings and profits and inclusions that resulted in previously-taxed amounts described in section 959(c) (1) and (2) or section 1293(c) in prior taxable years beginning after December 31, 1986. Thus, post-1986 undistributed earnings shall not be reduced to the extent of the ratable share of a controlled foreign corporation's subpart F income, as defined in section 952, attributable to a shareholder that is not a United States shareholder within the meaning of section 951(b) or section 953(c)(1)(A), because that amount has not been included in a shareholder's gross income. Post-1986 undistributed earnings shall be reduced as provided herein regardless of whether any shareholder is deemed to have paid any foreign taxes, and regardless of whether any domestic shareholder chose to claim a foreign tax credit under section 901(a) for the year of the distribution. For rules on carrybacks and carryforwards of deficits and their effect on post-1986 undistributed earnings, see § 1.902–2. In the case of a foreign corporation the foreign income taxes of which are computed based on an accounting period of less than one year, the term year means that accounting period. See sections 441(b)(3) and 443.

(ii) *Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.* Distributions by a lower-tier corporation out of non-previously taxed pre-1987 accumulated profits, as defined in paragraph (a)(10) of this section, that are received by an upper-tier corporation in any taxable year of the upper-tier corporation beginning after December 31, 1986, shall be treated as post-1986 undistributed earnings of the upper-tier corporation, provided the upper-tier corporation's earnings and profits for that year are included in its post-1986 undistributed earnings under paragraph (a)(9)(i) of this section. To determine the character of the earnings and profits and associated taxes for foreign tax credit limitation purposes, see section 904 and § 1.904–7(a).

(iii) *Reduction for foreign income taxes paid or accrued.* In computing post-1986 undistributed earnings, earnings and profits shall be reduced by foreign income taxes paid or accrued regardless of whether the taxes are creditable. Thus, earnings and profits shall be reduced by foreign income taxes paid with respect to high withholding tax interest even though a portion of the taxes is not creditable

pursuant to section 904(d)(2)(E)(ii) and is not included in post-1986 foreign income taxes under paragraph (a)(8)(iii) of this section. Earnings and profits of an upper-tier corporation, however, shall not be reduced by foreign income taxes paid by a lower-tier corporation and deemed to have been paid by the upper-tier corporation.

(iv) *Special allocations.* The term post-1986 undistributed earnings means the total amount of the earnings of the corporation determined at the corporate level. Special allocations of earnings and taxes to particular shareholders, whether required or permitted by foreign law or a shareholder agreement, shall be disregarded. If, however, the Commissioner establishes that there is an agreement to pay dividends only out of earnings in the separate categories for passive or high withholding tax interest income, then only taxes imposed on passive or high withholding tax interest earnings shall be treated as related to the dividend. See § 1.904–6(a)(2).

(10) *Pre-1987 accumulated profits*—(i) *Definition.* The term pre-1987 accumulated profits means the amount of the earnings and profits of a foreign corporation computed in accordance with section 902 and attributable to its taxable years beginning before January 1, 1987. If the special effective date of paragraph (a)(13) of this section applies, pre-1987 accumulated profits also includes any earnings and profits (computed in accordance with sections 964(a) and 986) attributable to the foreign corporation's taxable years beginning after December 31, 1986, but before the first day of the first taxable year of the foreign corporation in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a) (1) through (4) of this section are met with respect to that corporation.

(ii) *Computation of pre-1987 accumulated profits.* Pre-1987 accumulated profits must be computed under United States principles governing the computation of earnings and profits. Pre-1987 accumulated profits are determined at the corporate level. Special allocations of accumulated profits and taxes to particular shareholders with respect to distributions of pre-1987 accumulated profits in taxable years beginning after December 31, 1986, whether required or permitted by foreign law or a shareholder agreement, shall be disregarded. Pre-1987 accumulated profits of a particular year shall be reduced by amounts distributed from those accumulated profits or otherwise included in income from those accumulated profits, for example under sections 304, 367(b), 551, 951(a), 1248 or 1293. If a deficit in post-1986 undistributed earnings is carried back to offset pre-1987 accumulated profits, pre-1987 accumulated profits of a particular taxable year shall be reduced by the amount of the deficit carried back to that year. See § 1.902–2. The amount of a distribution out of pre-1987 accumulated profits, and the amount of foreign income taxes deemed paid under section 902, shall be determined and translated into United States dollars by applying the law as in effect prior to the effective date of the Tax Reform Act of 1986. See §§ 1.902–3, 1.902–4 and 1.964–1.

(iii) *Foreign income taxes attributable to pre-1987 accumulated profits.* The term pre-1987 foreign income taxes means any foreign income taxes paid, accrued, or deemed paid by a foreign corporation on or with respect to its pre-1987 accumulated profits. Pre-1987 foreign income taxes of a particular year shall be reduced by the amount of taxes paid or deemed paid by the foreign corporation on or with respect to amounts distributed or otherwise included in income from pre-1987 accumulated profits of that year. Thus, pre-1987 foreign income taxes shall be reduced by the amount of taxes deemed paid by a domestic shareholder (regardless of whether the shareholder chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion) or a first-tier or second-tier corporation, and by the amount of taxes that would have been deemed paid had any other shareholder been eligible to compute an amount of foreign taxes deemed paid under section 902. Foreign income taxes deemed paid with respect to a distribution of pre-1987 accumulated profits shall be translated from the functional currency of the distributing corporation into United States dollars at the spot exchange rate in effect on the date of the distribution.

(11) *Dividend.* For purposes of section 902, the definition of the term dividend in section 316 and the regulations under that section applies. Thus, for example, distributions and deemed distributions under sections 302, 304, 305(b) and 367(b) that are treated as dividends within the meaning of section 301(c)(1) also are dividends for purposes of section 902. In addition, the term dividend includes deemed dividends under sections 551 and 1248, but not deemed inclusions under sections 951(a) and 1293. For rules concerning excess distributions from section 1291 funds that are treated as dividends solely for foreign tax credit purposes, (see Regulation Project INTL–656–87 published in 1992–1 C.B. 1124; see § 601.601(d)(2)(ii)(*b*) of this chapter).

(12) *Dividend received.* A dividend shall be considered received for purposes of section 902 when the cash or other property is unqualifiedly made subject to the demands of the distributee. See § 1.301–1(b). A dividend also is considered received for purposes of section 902 when it is deemed received under section 304, 367(b), 551, or 1248.

(13) *Special effective date*—(i) *Rule.* If the first day on which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are met with respect to a foreign corporation, without regard to whether a dividend is distributed, is in a taxable year of the foreign corporation beginning after December 31, 1986, then—

(A) The post-1986 undistributed earnings and post-1986 foreign income taxes of the foreign corporation shall be determined by taking into account only taxable years beginning on and after the first day of the first taxable year of the foreign corporation in which the ownership requirements are met, including subsequent taxable years in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are not met; and

(B) Earnings and profits accumulated prior to the first day of the first taxable year of the foreign corporation in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are met shall be considered pre-1987 accumulated profits.

(ii) *Example.* The following example illustrates the special effective date rules of this paragraph (a)(13):

Example. As of December 31, 1991, and since its incorporation, foreign corporation A has owned 100 percent of the stock of foreign corporation B. Corporation B is not a controlled foreign corporation. Corporation B uses the calendar year as its taxable year, and its functional currency is the u. Assume 1u equals $1 at all relevant times. On April 1, 1992, Corporation B pays a 200u dividend to Corporation A and the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are not met at that time. On July 1, 1992, domestic corporation M purchases 10 percent of the Corporation B stock from Corporation A and, for the first time, Corporation B meets the ownership requirements of section 902(c)(3)(B) and paragraph (a)(2) of this section. Corporation M uses the calendar year as its taxable year. Corporation B does not distribute any dividends to Corporation M during 1992. For its taxable year ending December 31, 1992, Corporation B has 500u of earnings and profits (after foreign taxes but before taking into account the 200u

distribution to Corporation A) and pays 100u of foreign income taxes that is equal to $100. Pursuant to paragraph (a)(13)(i) of this section, Corporation B's post-1986 undistributed earnings and post-1986 foreign income taxes will include earnings and profits and foreign income taxes attributable to Corporation B's entire 1992 taxable year and all taxable years thereafter. Thus, the April 1, 1992, dividend to Corporation A will reduce post-1986 undistributed earnings to 300u (500u–200u) under paragraph (a)(9)(i) of this section. The foreign income taxes attributable to the amount distributed as a dividend to Corporation A will not be creditable because Corporation A is not a domestic shareholder. Post-1986 foreign income taxes, however, will be reduced by the amount of foreign taxes attributable to the dividend. Thus, as of the beginning of 1993, Corporation B has $60 ($100–[$100×40% (200u/500u)]) of post-1986 foreign income taxes. See paragraphs (a)(8)(i) and (b)(1) of this section.

(b) *Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation*—(1) *General rule.* If a foreign corporation pays a dividend in any taxable year out of post-1986 undistributed earnings to a shareholder that is a domestic shareholder or an upper-tier corporation at the time it receives the dividend, the recipient shall be deemed to have paid the same proportion of any post-1986 foreign income taxes paid, accrued or deemed paid by the distributing corporation on or with respect to post-1986 undistributed earnings which the amount of the dividend out of post-1986 undistributed earnings (determined without regard to the gross-up under section 78) bears to the amount of the distributing corporation's post-1986 undistributed earnings. An upper-tier corporation shall not be entitled to compute an amount of foreign taxes deemed paid on a dividend from a lower-tier corporation, however, unless the ownership requirements of paragraphs (a) (1) through (4) of this section are met at each tier at the time the upper-tier corporation receives the dividend. Foreign income taxes deemed paid by a domestic shareholder or an upper-tier corporation must be computed under the following formula:

$$\text{Foreign income taxes deemed paid by domestic shareholder (or upper-tier corporation)} = \text{Post-1986 foreign income taxes of first-tier corporation (or lower-tier corporation)} \times \frac{\text{Dividend paid to domestic shareholder (or upper-tier corporation) by first-tier corporation (or lower-tier corporation)}}{\text{Post-1986 undistributed earnings of first-tier corporation (or lower-tier corporation)}}$$

(2) *Allocation rule for dividends attributable to post-1986 undistributed earnings and pre-1987 accumulated profits*—(i) *Portion of dividend out of post-1986 undistributed earnings.* Dividends will be deemed to be paid first out of post-1986 undistributed earnings to the extent thereof. If dividends exceed post-1986 undistributed earnings and dividends are paid to more than one shareholder, then the dividend to each shareholder shall be deemed to be paid pro rata out of post-1986 undistributed earnings, computed as follows:

$$\text{Portion of Dividend to a Shareholder Attributable to Post-1986 Undistributed Earnings} = \text{Post-1986 Undistributed Earnings} \times \frac{\text{Dividends to } \textit{Shareholder}}{\text{Total Dividends Paid To all Shareholders}}$$

(ii) *Portion of dividend out of pre-1987 accumulated profits.* After the portion of the dividend attributable to post-1986 undistributed earnings is determined under paragraph (b)(2)(i) of this section, the remainder of the dividend received by a shareholder is attributable to pre-1987 accumulated profits to the extent thereof. That part of the dividend attributable to pre-1987 accumulated profits will be treated as paid first from the most recently accumulated earnings and profits. See § 1.902–3. If dividends paid out of pre-1987 accumulated profits are attributable to more than one pre-1987 taxable year and are paid to more than one shareholder, then the dividend to each shareholder attributable to earnings and profits accumulated in a particular pre-1987 taxable year shall be deemed to be paid pro rata out of accumulated profits of that taxable year, computed as follows:

$$\text{Portion of Dividend to a Shareholder Attributable to Accumulated Profits of a Particular Pre-1987 Taxable Year} = \text{(Dividend Paid Out of Pre-1987 Accumulated Profits with Respect to the Particular Pre-1987 Taxable Year} \times \frac{\text{Dividend to Shareholder}}{\text{Total Dividends Paid to all Shareholders}}$$

(3) *Dividends paid out of pre-1987 accumulated profits.* If dividends are paid by a first-tier corporation or a lower-tier corporation out of pre-1987 accumulated profits, the domestic shareholder or upper-tier corporation that receives the dividends shall be deemed to have paid foreign income taxes to the extent provided under section 902 and the regulations thereunder as in effect prior to the effective date of the Tax Reform Act of 1986. See paragraphs (a) (10) and (13) of this section and §§ 1.902–3 and 1.902–4.

(4) *Deficits in accumulated earnings and profits.* No foreign income taxes shall be deemed paid with respect to a distribution from a foreign corporation out of current earnings and profits that is treated as a dividend under section 316(a)(2), and post-1986 foreign income taxes shall not be reduced, if as of the end of the taxable year in which the dividend is paid or accrued, the corporation has zero or a deficit in post-1986 undistributed earnings and the sum of current plus accumulated earnings and profits is zero or less than zero. The dividend shall reduce post-

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1986 undistributed earnings and accumulated earnings and profits.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Domestic corporation M owns 100 percent of foreign corporation A. Both Corporation M and Corporation A use the calendar year as the taxable year, and Corporation A uses the u as its functional currency. Assume that 1u equals $1 at all relevant times. All of Corporation A's pre-1987 accumulated profits and post-1986 undistributed earnings are non-subpart F general limitation earnings and profits under section 904(d)(1)(I). As of December 31, 1992, Corporation A has 100u of post-1986 undistributed earnings and $40 of post-1986 foreign income taxes. For its 1986 taxable year, Corporation A has accumulated profits of 200u (net of foreign taxes) and paid 60u of foreign income taxes on those earnings. In 1992, Corporation A distributes 150u to Corporation M. Corporation A has 100u of post-1986 undistributed earnings and the dividend, therefore, is treated as paid out of post-1986 undistributed earnings to the extent of 100u. The first 100u distribution is from post-1986 undistributed earnings, and, because the distribution exhausts those earnings, Corporation M is deemed to have paid the entire amount of post-1986 foreign income taxes of Corporation A ($40). The remaining 50u dividend is treated as a dividend out of 1986 accumulated profits under paragraph (b)(2) of this section. Corporation M is deemed to have paid $15 (60u×50u/200u, translated at the appropriate exchange rates) of Corporation A's foreign income taxes for 1986. As of January 1, 1993, Corporation A's post-1986 undistributed earnings and post-1986 foreign income taxes are 0. Corporation A has 150u of accumulated profits and 45u of foreign income taxes remaining in 1986.

Example 2. Domestic corporation M (incorporated on January 1, 1987) owns 100 percent of foreign corporation A (incorporated on January 1, 1987). Both Corporation M and Corporation A use the calendar year as the taxable year, and Corporation A uses the u as its functional currency. Assume that 1u equals $1 at all relevant times. Corporation A has no pre-1987 accumulated profits. All of Corporation A's post-1986 undistributed earnings are non-subpart F general limitation earnings and profits under section 904(d)(1)(I). On January 1, 1992, Corporation A has a deficit in accumulated earnings and profits and a deficit in post-1986 undistributed earnings of (200u). No foreign taxes have been paid with respect to post-1986 undistributed earnings. During 1992, Corporation A earns 100u (net of foreign taxes), pays $40 of foreign taxes on those earnings and distributes 50u to Corporation M. As of the end of 1992, Corporation A has a deficit of (100u) ((200u) post1986 undistributed earnings + 100u current earnings and profits) in post-1986 undistributed earnings. Corporation A, however, has current earnings and profits of 100u. Therefore, the 50u distribution is treated as a dividend in its entirety under section 316(a)(2). Under paragraph (b)(4) of this section, Corporation M is not deemed to have paid any of the foreign taxes paid by Corporation A because post-1986 undistributed earnings and the sum of current plus accumulated earnings and profits are (100u). The dividend reduces both post-1986 undistributed earnings and accumulated earnings and profits. Therefore, as of January 1, 1993, Corporation A's post-1986 undistributed earnings are (150u) and its accumulated earnings and profits are (150u). Corporation A's post-1986 foreign income taxes at the start of 1993 are $40.

(c) *Special rules*—(1) *Separate computations required for dividends from each first-tier and lower-tier corporation*—(i) *Rule.* If in a taxable year dividends are received by a domestic shareholder or an upper-tier corporation from two or more first-tier corporations or two or more lower-tier corporations, the foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under sections 902 (a) and (b) and paragraph (b) of this section shall be computed separately with respect to the dividends received from each first-tier corporation or lower-tier corporation. If a domestic shareholder receives dividend distributions from one or more first-tier corporations and in the same taxable year the first-tier corporation receives dividends from one or more lower-tier corporations, then the amount of foreign income taxes deemed paid shall be computed by starting with the lowest-tier corporation and working upward.

(ii) *Example.* The following example illustrates the application of this paragraph (c)(1):

Example. P, a domestic corporation, owns 40 percent of the voting stock of foreign corporation S. S owns 30 percent of the voting stock of foreign corporation T, and 30 percent of the voting stock of foreign corporation U. Neither S, T, nor U is a controlled foreign corporation. P, S, T and U all use the calendar year as their taxable year. In 1993, T and U both pay dividends to S and S pays a dividend to P. To compute foreign taxes deemed paid, paragraph (c)(1) of this section requires P to start with the lowest tier corporations and to compute foreign taxes deemed paid separately for dividends from each first-tier and lower-tier corporation. Thus, S first will compute foreign taxes deemed paid separately on its dividends from T and U. The deemed paid taxes will be added to S's post-1986 foreign income taxes, and the dividends will be added to S's post-1986 undistributed earnings. Next, P will compute foreign taxes deemed paid with respect to the dividend from S. This computation will take into account the taxes paid by T and U and deemed paid by S.

(2) *Section 78 gross-up*—(i) *Foreign income taxes deemed paid by a domestic shareholder.* Except as provided in section 960(b) and the regulations under that section (relating to amounts excluded from gross income under section 959(b)), any foreign income taxes deemed paid by a domestic shareholder in any taxable year under section 902(a) and paragraph (b) of this section shall be included in the gross income of the domestic shareholder for the year as a dividend under section 78. Amounts included in gross income under section 78 shall, for purposes of section 904, be deemed to be derived from sources within the United States to the extent the earnings and profits on which the taxes were paid are treated under section 904(g) as United States source earnings and profits. Section 1.904–5(m)(6). Amounts included in gross income under section 78 shall be treated for purposes of section 904 as income in a separate category to the extent that the foreign income taxes were allocated and apportioned to income in that separate category. See section 904(d)(3)(G) and § 1.904–6(b)(3).

(ii) *Foreign income taxes deemed paid by an upper-tier corporation.* Foreign income taxes deemed paid by an uppertier corporation on a distribution from a lower-tier corporation are not included in the earnings and profits of the upper-tier corporation. For purposes of section 904, foreign income taxes shall be allocated and apportioned to income in a separate category to the extent those taxes were allocated to the earnings and profits of the lower-tier corporation in that separate category. See section 904(d)(3)(G) and § 1.904–6(b)(3). To the extent that section 904(g) treats the earnings of the lower-tier corporation on which those foreign income taxes were paid as United States source earnings and profits, the foreign income taxes deemed paid by the upper-tier corporation on the distribution from the lower-tier corporation shall be treated as attributable to United States source earnings and profits. See section 904(g) and § 1.904–5(m)(6).

(iii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

Example. P, a domestic corporation, owns 100 percent of the voting stock of controlled foreign corporation S. Corporations P and S use the calendar year as their taxable year, and S uses the u as its functional currency. Assume that 1u equals $1 at all relevant times. As of January 1, 1992, S has –0– post-1986 undistributed earnings and –0– post-1986 foreign income taxes. In 1992, S earns 150u of non-subpart F general limitation income net of foreign taxes and pays 60u of foreign income taxes. As of the end of 1992, but before dividend payments, S has 150u of post-1986 undistributed earnings and $60 of post-1986 foreign income taxes. Assume that 50u of S's earnings for 1992 are from United States sources. S pays P a dividend of 75u

which P receives in 1992. Under § 1.904–5(m)(4), one-third of the dividend, or 25u (75u×50u/150u), is United States source income to P. P computes foreign taxes deemed paid on the dividend under paragraph (b)(1) of this section of $30 ($60×50%(75u/150u)) and includes that amount in gross income under section 78 as a dividend. Because 25u of the 75u dividend is United States source income to P. $10 ($30×33.33%(25u/75u)) of the section 78 dividend will be treated as United States source income to P under this paragraph (c)(2).

(3) *Creditable foreign income taxes.* The amount of creditable foreign income taxes under section 901 shall include, subject to the limitations and conditions of sections 902 and 904, foreign income taxes actually paid and deemed paid by a domestic shareholder that receives a dividend from a first-tier corporation. Foreign income taxes deemed paid by a domestic shareholder under paragraph (b) of this section shall be deemed paid by the domestic shareholder only for purposes of computing the foreign tax credit allowed under section 901.

(4) *Foreign mineral income.* Certain foreign income, war profits and excess profits taxes paid or accrued with respect to foreign mineral income will not be considered foreign income taxes for purposes of section 902. See section 901(e) and § 1.901–3.

(5) *Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.* Certain income, war profits, or excess profits taxes paid or accrued to a foreign country in connection with the purchase and sale of oil or gas extracted in that country will not be considered foreign income taxes for purposes of section 902. See section 901(f).

(6) *Foreign oil and gas extraction income.* For rules relating to reduction of the amount of foreign income taxes deemed paid with respect to foreign oil and gas extraction income, see section 907(a) and the regulations under that section.

(7) *United States shareholders of controlled foreign corporations.* See paragraph (d) of this section and sections 960 and 962 and the regulations under those sections for special rules relating to the application of section 902 in computing foreign income taxes deemed paid by United States shareholders of controlled foreign corporations.

(8) *Credit for foreign taxes deemed paid in a section 304 transaction.* [Reserved].

(9) Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings. [Reserved].

(d) *Dividends from controlled foreign corporations*—(1) *General rule.* Except as provided in paragraph (d)(3) of this section, if a dividend is received by a domestic shareholder that is a United States shareholder (as defined in section 951(b) or section 953(c)(1)(A)) from a first-tier corporation that is a controlled foreign corporation (as defined in section 957(a) or section 953(c)(1)(B)), or by an upper-tier corporation from a lower-tier corporation if the corporations are related look-through entities within the meaning of § 1.904–5(i), the following rule applies. If a dividend is paid out of post-1986 undistributed earnings or pre-1987 accumulated profits of the upper- or lower-tier controlled foreign corporation attributable to more than one separate category under section 904(d), the amount of foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under section 902 and paragraph (b) of this section shall be computed separately with respect to the post-1986 undistributed earnings or pre-1987 accumulated profits in each separate category out of which the dividend is paid. See § 1.904–5(c)(4) and paragraph (d)(2) of this section. The separately computed deemed paid taxes shall be added to other taxes paid by the U.S. shareholder or upper-tier corporation with respect to income in the appropriate separate category.

(2) *Look-through*—(i) *Dividends.* Except as otherwise provided in paragraph (d)(3) of this section, any dividend distribution out of post-1986 undistributed earnings of a look-through entity to a related look-through entity shall be deemed to be paid pro rata out of each separate category of income. See §§ 1.904–5(c)(4) and 1.904–7. The portion of the foreign income taxes attributable to a particular separate category that shall be deemed paid by the domestic shareholder or upper-tier corporation must be computed under the following formula:

$$\text{Foreign taxes deemed paid by domestic shareholder or upper-tier corporation with respect to a separate category under section 904(d)} = \text{Post-1986 foreign income taxes of first-tier or lower-tier corporation allocated and apportioned to a separate category under § 1.904–6} \times \frac{\text{Dividend amount attributable to a separate category}}{\text{Post-1986 undistributed earnings of first-tier or lower-tier corporation attributable to the separate category}}$$

(ii) Coordination with section 960. For rules coordinating the computation of foreign taxes deemed paid with respect to amounts included in gross income under section 951(a) and dividends distributed by a controlled foreign corporation, see section 960 and the regulations under that section.

(3) *Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation*—(i) *General rule.* Any dividend distributed by a controlled foreign corporation out of earnings accumulated before the controlled foreign corporation became a controlled foreign corporation shall be treated as a dividend from a noncontrolled section 902 corporation regardless of whether the earnings were accumulated in a taxable year beginning before January 1, 1987, or after December 31, 1986.

(ii) *Dividend distributions out of earnings and profits for a year during which a shareholder that is currently a more-than-90-percent United States shareholder of a controlled foreign corporation was not a United States shareholder of the controlled foreign corporation.* [Reserved].

(e) *Information to be furnished.* If the credit for foreign income taxes claimed under section 901 includes foreign income taxes deemed paid under section 902 and paragraph (b) of this section, the domestic shareholder must furnish the same information with respect to the foreign income taxes deemed paid as it is required to furnish with respect to the foreign income taxes it directly paid or accrued and for which the credit is claimed. See § 1.905–2. For other information required to be furnished by the domestic shareholder for the annual accounting period of certain foreign corporations ending with

or within the shareholder's taxable year, and for reduction in the amount of foreign income taxes paid, accrued, or deemed paid for failure to furnish the required information, see section 6038 and the regulations under that section.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. Since 1987, domestic corporation M has owned 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Z, a foreign corporation. Corporation A is not a controlled foreign corporation. Corporation A uses the u as its functional currency, and 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. In 1992, Corporation A pays a 30u dividend out of post-1986 undistributed earnings, 3u to Corporation M and 27u to Corporation Z. Corporation M is deemed, under paragraph (b) of this section, to have paid a portion of the post-1986 foreign income taxes paid by Corporation A and includes the amount of foreign taxes deemed paid in gross income under section 78 as a dividend. Both the foreign taxes deemed paid and the dividend would be subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. Under paragraph (a)(9)(i) of this section, Corporation A must reduce its post-1986 undistributed earnings as of January 1, 1993, by the total amount of dividends paid to Corporation M and Corporation Z in 1992. Under paragraph (a)(8)(i) of this section, Corporation A must reduce its post-1986 foreign income taxes as of January 1, 1993, by the amount of foreign income taxes that were deemed paid by Corporation M and by the amount of foreign income taxes that would have been deemed paid by Corporation Z had Corporation Z been eligible to compute an amount of foreign income taxes deemed paid with respect to the dividend received from Corporation A. Foreign income taxes deemed paid by Corporation M and Corporation A's opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for 1993 are computed as follows:

1. Assumed post-1986 undistributed earnings of Corporation A at start of 1992	25u
2. Assumed post-1986 foreign income taxes of Corporation A at start of 1992	$25
3. Assumed pre-tax earnings and profits of Corporation A for 1992	50u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992	15u
5. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	60u
6. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$40
7. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M in 1992	3u
8. Percentage of Corporation A's post-1986 undistributed earnings paid to Corporation M (Line 7 divided by Line 5)	5%
9. Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) (Line 6 multiplied by Line 8)	$2
10. Total dividends paid out of post-1986 undistributed earnings of Corporation A to all shareholders in 1992	30u
11. Percentage of Corporation A's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 10 divided by Line 5).	50%
12. Post-1986 foreign income taxes paid with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 6 multiplied by Line 11).	$20
13. Corporation A's post-1986 undistributed earnings at the start of 1993 (Line 5 minus Line 10)	30u
14. Corporation A's post-1986 foreign income taxes at the start of 1993 (Line 6 minus Line 12)	$20

Example 2. (i) The facts are the same as in *Example 1*, except that Corporation M has also owned 10 percent of the one class of stock of foreign corporation B since 1987. Corporation B uses the calendar year as the taxable year. The remaining 90 percent of Corporation B's stock is owned by Corporation Z. Corporation B is not a controlled foreign corporation. Corporation B uses the u as its functional currency, and 1u equals $1 at all relevant times. In 1992, Corporation B has earnings and profits and pays foreign income taxes, a portion of which are attributable to high withholding tax interest, as defined in section 904(d)(2)(B)(i). Corporation B must reduce its pool of post-1986 foreign income taxes by the amount of tax imposed on high withholding tax interest in excess of 5 percent because that amount is not treated as a tax for purposes of section 902. See section 904(d)(2)(E)(ii) and paragraph (a)(8)(iii) of this section. Corporation B pays 50u in dividends in 1992, 5u to Corporation M and 45u to Corporation Z. Corporation M must compute its section 902(a) deemed paid taxes separately for the dividends it receives in 1992 from Corporation A (as computed in *Example 1*) and from Corporation B. Foreign income taxes of Corporation B deemed paid by Corporation M, and Corporation B's opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for 1993 are computed as follows:

1. Assumed post-1986 undistributed earnings of Corporation B at start of 1992	(100u)
2. Assumed post-1986 foreign income taxes of Corporation B at start of 1992	$0
3. Assumed pre-tax earnings and profits of Corporation B for 1992 (including 50u of high withholding tax interest on which 5u of tax is withheld).	302.50u
4. Assumed foreign income taxes paid or accrued by Corporation B in 1992	102.50u
5. Post-1986 undistributed earnings in Corporation B for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	100u
6. Amount of foreign income tax of Corporation B imposed on high withholding tax interest in excess of 5% (5u withholding tax—[5%×50u high withholding tax interest]).	2.50u
7. Post-1986 foreign income taxes in Corporation B for 1992 (pre-dividend) (Line 2 plus [Line 4 minus Line 6 translated at the appropriate exchange rate]).	$100
8. Dividends paid out of post-1986 undistributed earnings to Corporation M in 1992	5u
9. Percentage of Corporation B's post-1986 undistributed earnings paid to Corporation M (Line 8 divided by Line 5)	5%
10. Foreign income taxes of Corporation B deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9)	$5
11. Total dividends paid out of post-1986 undistributed earnings of Corporation B to all shareholders in 1992	50u
12. Percentage of Corporation B's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 11 divided by Line 5).	50%
13. Post-1986 foreign income taxes of Corporation B paid on or with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 7 multiplied by Line 12).	$50
14. Corporation B's post-1986 undistributed earnings at start of 1993 (Line 5 minus Line 11)	50u
15. Corporation B's post-1986 foreign income taxes at start of 1993 (Line 7 minus Line 13)	$50

(ii) For 1992, as computed in *Example 1*, Corporation M is deemed to have paid $2 of the post-1986 foreign income taxes paid by Corporation A and includes $2 in gross income as a dividend under section 78. Both the income inclusion and the credit are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. Corporation M also is deemed to have paid $5 of the post-1986 foreign income taxes paid by Corporation B and includes $5 in gross income as a deemed dividend under section 78. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from Corporation B, a noncontrolled section 902 corporation.

Example 3. (i) Since 1987, domestic corporation M has owned 50 percent of the one class of stock of foreign corporation A. The remaining 50 percent of Corporation A is owned by foreign corporation Z. For the same time period, Corporation A has owned 40 percent of the one class of stock of foreign corporation B, and Corporation B has owned 30 percent of the one class of stock of foreign corporation C. The remaining 60 percent of Corporation B is owned by foreign corporation Y, and the remaining 70 percent of Corporation C is owned by foreign corporation X. Corporations A, B, and C are not controlled foreign corporations. Corporations A, B, and C use the u as their functional currency, and 1u equals $1 at all relevant times. Corporation B uses a fiscal year ending June 30 as its taxable year; all other corporations use the calendar year as the taxable year. On February 1, 1992, Corporation C pays a 500u dividend out of post-1986 undistributed earnings, 150u to Corporation B and 350u to Corporation X. On February 15, 1992, Corporation B pays a 300u dividend out of post-1986 undistributed earnings computed as of the close of Corporation B's fiscal year ended June 30, 1992, 120u to Corporation A and 180u to Corporation Y. On August 15, 1992, Corporation A pays a 200u dividend out of post-1986 undistributed earnings, 100u to Corporation M and 100u to Corporation Z. In computing foreign taxes deemed paid by Corporations B and A, section 78 does not apply and Corporations B and A thus do not have to include the foreign taxes deemed paid in earnings and profits. See paragraph (c)(2)(ii) of this section. Foreign income taxes deemed paid by Corporations B, A and M, and the foreign corporations' opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for Corporation B's fiscal year beginning July 1, 1992, and Corporation C's and Corporation A's 1993 calendar years are computed as follows:

A. Corporation C (third-tier corporation):

1. Assumed post-1986 undistributed earnings in Corporation C at start of 1992	1300u
2. Assumed post-1986 foreign income taxes in Corporation C at start of 1992	$500
3. Assumed pre-tax earnings and profits of Corporation C for 1992	500u
4. Assumed foreign income taxes paid or accrued in 1992	300u
5. Post-1986 undistributed earnings in Corporation C for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	1500u
6. Post-1986 foreign income taxes in Corporation C for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$800
7. Dividends paid out of post-1986 undistributed earnings of Corporation C to Corporation B in 1992	150u
8. Percentage of Corporation C's post-1986 undistributed earnings paid to Corporation B (Line 7 divided by Line 5)	10%
9. Foreign income taxes of Corporation C deemed paid by Corporation B under section 902(b)(2) (Line 6 multiplied by Line 8).	$80
10. Total dividends paid out of post-1986 undistributed earnings of Corporation C to all shareholders in 1992	500u
11. Percentage of Corporation C's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 10 divided by Line 5).	33.33%
12. Post-1986 foreign income taxes paid with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 6 multiplied by Line 11).	$266.66
13. Post-1986 undistributed earnings in Corporation C at start of 1993 (Line 5 minus Line 10)	1000u
14. Post-1986 foreign income taxes in Corporation C at start of 1993 (Line 6 minus Line 12)	$533.34

B. Corporation B (second-tier corporation):

1. Assumed post-1986 undistributed earnings in Corporation B as of July 1, 1991	0
2. Assumed post-1986 foreign income taxes in Corporation B as of July 1, 1991	0
3. Assumed pre-tax earnings and profits of Corporation B for fiscal year ended June 30, 1992, (including 150u dividend from Corporation B).	1000u
4. Assumed foreign income taxes paid or accrued by Corporation B in fiscal year ended June 30, 1992	200u
5. Foreign income taxes of Corporation C deemed paid by Corporation B in its fiscal year ended June 30, 1992 (Part A, Line 9 of paragraph (i) of this Example 3).	$80
6. Post-1986 undistributed earnings in Corporation B for fiscal year ended June 30, 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	800u
7. Post-1986 foreign income taxes in Corporation B for fiscal year ended June 30, 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	$280
8. Dividends paid out of post-1986 undistributed earnings of Corporation B to Corporation A on February 15, 1992	120u
9. Percentage of Corporation B's post-1986 undistributed earnings for fiscal year ended June 30, 1992, paid to Corporation A (Line 8 divided by Line 6).	15%
10. Foreign income taxes paid and deemed paid by Corporation B as of June 30, 1992, deemed paid by Corporation A under section 902(b)(1) (Line 7 multiplied by Line 9).	$42
11. Total dividends paid out of post-1986 undistributed earnings of Corporation B for fiscal year ended June 30, 1992	300u
12. Percentage of Corporation B's post-1986 undistributed earnings for fiscal year ended June 30, 1992, paid to all shareholders (Line 11 divided by Line 6).	37.5%
13. Post-1986 foreign income taxes paid and deemed paid with respect to post-1986 undistributed earnings distributed to all shareholders during Corporation B's fiscal year ended June 30, 1992 (Line 7 multiplied by Line 12).	$105
14. Post-1986 undistributed earnings in Corporation B as of July 1, 1992 (Line 6 minus Line 11)	500u
15. Post-1986 foreign income taxes in Corporation B as of July 1, 1992 (Line 7 minus Line 13)	$175

C. Corporation A (first-tier corporation):

1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992	250u
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992	$100
3. Assumed pre-tax earnings and profits of Corporation A for 1992 (including 120u dividend from Corporation B)	250u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992	100u
5. Foreign income taxes paid or deemed paid by Corporation B as of June 30, 1992, that are deemed paid by Corporation A in 1992 (Part B, Line 10 of paragraph (i) of this Example 3).	$42
6. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	400u
7. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	$242
8. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M on August 15, 1992	100u
9. Percentage of Corporation A's post-1986 undistributed earnings paid to Corporation M in 1992 (Line 8 divided by Line 6).	25%
10. Foreign income taxes paid and deemed paid by Corporation A in 1992 that are deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9).	$60.50
11. Total dividends paid out of post-1986 undistributed earnings of Corporation A to all shareholders in 1992	200u

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12. Percentage of Corporation A's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 11 divided by Line 6).	50%
13. Post-1986 foreign income taxes paid and deemed paid by Corporation A with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 7 multiplied by Line 12).	$121
14. Post-1986 undistributed earnings in Corporation A at start of 1993 (Line 6 minus Line 11)	200u
15. Post-1986 foreign income taxes in Corporation A at start of 1993 (Line 7 minus Line 13)	$121

(ii) Corporation M is deemed, under section 902(a) and paragraph (b) of this section, to have paid $60.50 of post-1986 foreign income taxes paid, or deemed paid, by Corporation A on or with respect to its post-1986 undistributed earnings (Part C, Line 10) and Corporation M includes that amount in gross income as a dividend under section 78. Both the income inclusion and the credit are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation.

Example 4. (i) Since 1987, domestic corporation M has owned 100 percent of the voting stock of controlled foreign corporation A, and Corporation A has owned 100 percent of the voting stock of controlled foreign corporation B. Corporations M, A and B use the calendar year as the taxable year. Corporations A and B are organized in the same foreign country and use the u as their functional currency. 1u equals $1 at all relevant times. Assume that all of the earnings of Corporations A and B are general limitation earnings and profits within the meaning of section 904(d)(2)(I), and that neither Corporation A nor Corporation B has any previously taxed income accounts. In 1992, Corporation B pays a dividend of 150u to Corporation A out of post-1986 undistributed earnings, and Corporation A computes an amount of foreign taxes deemed paid under section 902(b)(1). The dividend is not subpart F income to Corporation A because section 954(c)(3)(B)(i) (the same country dividend exception) applies. Pursuant to paragraph (c)(2)(ii) of this section, Corporation A is not required to include the deemed paid taxes in earnings and profits. Corporation A has no pre-1987 accumulated profits and a deficit in post-1986 undistributed earnings for 1992. In 1992, Corporation A pays a dividend of 100u to Corporation M out of its earnings and profits for 1992 (current earnings and profits). Under paragraph (b)(4) of this section, Corporation M is not deemed to have paid any of the foreign income taxes paid or deemed paid by Corporation A because Corporation A has a deficit in post-1986 undistributed earnings as of December 31, 1992, and the sum of its current plus accumulated profits is less than zero. Note that if instead of paying a dividend to Corporation A in 1992, Corporation B had made an additional investment of $150 in United States property under section 956, that amount would have been included in gross income by Corporation M under section 951(a)(1)(B) and Corporation M would have been deemed to have paid $50 of foreign income taxes paid by Corporation B. See sections 951(a)(1)(B) and 960. Foreign income taxes of Corporation B deemed paid by Corporation A and the opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for Corporation A and Corporation B for 1993 are computed as follows:

A. Corporation B (second-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation B at start of 1992	200u
2. Assumed post-1986 foreign income taxes in Corporation B at start of 1992	$50
3. Assumed pre-tax earnings and profits of Corporation B for 1992	150u
4. Assumed foreign income taxes paid or accrued in 1992	50u
5. Post-1986 undistributed earnings in Corporation B for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	300u
6. Post-1986 foreign income taxes in Corporation B for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$100
7. Dividends paid out of post-1986 undistributed earnings of Corporation B to Corporation A in 1992	150u
8. Percentage of Corporation B's post-1986 undistributed earnings paid to Corporation A (Line 7 divided by Line 5)	50%
9. Foreign income taxes of Corporation B deemed paid by Corporation A under section 902(b)(1) (Line 6 multiplied by Line 8).	$50
10. Post-1986 undistributed earnings in Corporation B at start of 1993 (Line 5 minus Line 7)	150u
11. Post-1986 foreign income taxes in Corporation B at start of 1993 (Line 6 minus Line 9)	$50
B. Corporation A (first-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992	(200u)
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992	0
3. Assumed pre-tax earnings and profits of Corporation A for 1992 (including 150u dividend from Corporation B)	200u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992	40u
5. Foreign income taxes paid by Corporation B in 1992 that are deemed paid by Corporation A (Part A, Line 9 of paragraph (i) of this Example 4).	$50
6. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	(40u)
7. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	$90
8. Dividends paid out of current earnings and profits of Corporation A for 1992	100u
9. Percentage of post-1986 undistributed earnings of Corporation A paid to Corporation M in 1992 (Line 8 divided by the greater of Line 6 or zero).	0
10. Foreign income taxes paid and deemed paid by Corporation A in 1992 that are deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9).	0
11. Post-1986 undistributed earnings in Corporation A at start of 1993 (line 6 minus line 8)	(140u)
12. Post-1986 foreign income taxes in Corporation A at start of 1993 (Line 7 minus Line 10)	$90

(ii) For 1993, Corporation A has 500u of earnings and profits on which it pays 160u of foreign income taxes. Corporation A receives no dividends from Corporation B, and pays a 100u dividend to Corporation M. The 100u dividend to Corporation M carries with it some of the foreign income taxes paid and deemed paid by Corporation A in 1992, which were not deemed paid by Corporation M in 1992 because Corporation A had no post-1986 undistributed earnings. Thus, for 1993, Corporation M is deemed to have paid $125 of post-1986 foreign income taxes paid and deemed paid by Corporation A and includes that amount in gross income as a dividend under section 78, determined as follows:

1. Post-1986 undistributed earnings in Corporation A at start of 1993	(140u)
2 Post-1986 foreign income taxes in Corporation A at start of 1993	$90
3. Pre-tax earnings and profits of Corporation A for 1993	500u
4. Foreign income taxes paid or accrued by Corporation A in 1993	160u
5. Post-1986 undistributed earnings in Corporation A for 1993 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	200u
6. Post-1986 foreign income taxes in Corporation A for 1993 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$250

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7. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M in 1993	100u
8. Percentage of post-1986 undistributed earnings of Corporation A paid to Corporation M in 1993 (Line 7 divided by Line 5)	50%
9. Foreign income taxes paid and deemed paid by Corporation A that are deemed paid by Corporation M in 1993 (Line 6 multiplied by Line 8).	$125
10. Post-1986 undistributed earnings in Corporation A at start of 1994 (Line 5 minus Line 7)	100u
11. Post-1986 foreign income taxes in Corporation A at start of 1994 (Line 6 minus Line 9)	$125

Example 5. (i) Since 1987, domestic corporation M has owned 100 percent of the voting stock of controlled foreign corporation A. Corporation M also conducts operations through a foreign branch. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A uses the u as its functional currency and 1u equals $1 at all relevant times. Corporation A has no subpart F income, as defined in section 952, and no increase in earnings invested in United States property under section 956 for 1992. Corporation A also has no previously taxed income accounts. Corporation A has general limitation income and high withholding tax interest income that, by operation of section 954(b)(4), does not constitute foreign base company income under section 954(a). Because Corporation A is a controlled foreign corporation, it is not required to reduce post-1986 foreign income taxes by foreign taxes paid or accrued with respect to high withholding tax interest in excess of 5 percent. See § 1.902–1(a)(8)(iii). Corporation A pays a 60u dividend to Corporation M in 1992. For 1992, Corporation M is deemed, under paragraph (b) of this section, to have paid $24 of the post-1986 foreign income taxes paid by Corporation A and includes that amount in gross income under section 78 as a dividend, determined as follows:

1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest	20u
(b) Section 904(d)(1)(I) general limitation income	55u
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest	$5
(b) Section 904(d)(1)(I) general limitation income	$20
3. Assumed pre-tax earnings and profits of Corporation A for 1992 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest	20u
(b) Section 904(d)(1)(I) general limitation income	20u
4. Assumed foreign income taxes paid or accrued in 1992 on or with respect to:	
(a) Section 904(d)(1)(B) high withholding tax interest	10u
(b) Section 904(d)(1)(I) general limitation income	5u
5. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 1(a) + Line 3(a) minus Line 4(a))	30u
(b) Section 904(d)(1)(I) general limitation income (Line 1(b) + Line 3(b) minus Line 4(b))	70u
(c) Total	100u
6. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 2(a) + Line 4(a) translated at the appropriate exchange rates)	$15
(b) Section 904(d)(1)(I) general limitation income (Line 2(b) + Line 4(b) translated at the appropriate exchange rates)	$25
7. Dividends paid to Corporation M in 1992	60u
8. Dividends paid to Corporation M in 1992 attributable to section 904(d) separate categories pursuant to § 1.904–5(d):	
(a) Dividends paid to Corporation M in 1992 attributable to section 904(d)(1)(B) high withholding tax interest (Line 7 multiplied by Line 5(a) divided by Line 5(c)).	18u
(b) Dividends paid to Corporation M in 1992 attributable to section 904(d)(1)(I) general limitation income (Line 7 multiplied by Line 5(b) divided by Line 5(c)).	42u
9. Percentage of Corporation A's post-1986 undistributed earnings for 1992 paid to Corporation M attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 8(a) divided by Line 5(a))	60%
(b) Section 904(d)(1)(I) general limitation income (Line 8(b) divided by Line 5(b))	60%
10. Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) attributable to:	
(a) Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) with respect to section 904(d)(1)(B) high withholding tax interest (Line 6(a) multiplied by Line 9(a)).	$9
(b) Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) with respect to section 904(d)(1)(I) general limitation income (Line 6(b) multiplied by Line 9(b)).	$15
11. Post-1986 undistributed earnings in Corporation A at start of 1993 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 5(a) minus Line 8(a))	12u
(b) Section 904(d)(1)(I) general limitation income (Line 5(b) minus Line 8(b))	28u
12. Post-1986 foreign income taxes in Corporation A at start of 1989 allocable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 6(a) minus Line 10(a))	$6
(b) Section 904(d)(1)(I) general limitation income (Line 6(b) minus Line 10(b))	$10

(ii) For purposes of computing Corporation M's foreign tax credit limitation, the post-1986 foreign income taxes of Corporation A deemed paid by Corporation M with respect to income in separate categories will be added to the foreign income taxes paid or accrued by Corporation M associated with income derived from Corporation M's branch operation in the same separate categories. The dividend (and the section 78 inclusion with respect to the dividend) will be treated as income in separate categories and added to Corporation M's other income, if any, attributable to the same separate categories. See section 904(d) and § 1.904–6.

(g) *Effective date.* This section applies to any distribution made in and after a foreign corporation's first taxable year beginning on or after January 1, 1987.

§ 1.902–2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid under § 1.902–1.

(a) *Carryback of deficits in post-1986 undistributed earnings of a first-, second-, or third-tier corporation to pre-effective date taxable years*—(1) *Rule.* For purposes of computing foreign income taxes deemed paid under § 1.902–1(b) with respect to dividends paid by a first-, second-, or third-tier corporation, when there is a deficit in the post-1986 undistributed earnings of that corporation and the corporation makes a distribution to shareholders that is a dividend or would be a dividend if there were current or accumulated earnings and profits, then the post-1986 deficit shall be carried

back to the most recent pre-effective date taxable year of the first-, second-, or third-tier corporation with positive accumulated profits computed under section 902. See § 1.902–3(e). For purposes of this § 1.902–2, a pre-effective date taxable year is a taxable year beginning before January 1, 1987, or a taxable year beginning after December 31, 1986, if the special effective date of § 1.902–1(a)(13) applies. The deficit shall reduce the section 902 accumulated profits in the most recent preeffective date year to the extent thereof, and any remaining deficit shall be carried back to the next preceding year or years until the deficit is completely allocated. The amount carried back shall reduce the deficit in post-1986 undistributed earnings. Any foreign income taxes paid in a post-effective date year will not be carried back to preeffective date taxable years or removed from post-1986 foreign income taxes. See section 960 and the regulations under that section for rules governing the carryback of deficits and the computation of foreign income taxes deemed paid with respect to deemed income inclusions from controlled foreign corporations.

(2) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. (i) From 1985 through 1990, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits and post-1986 undistributed earnings or deficits in post-1986 undistributed earnings, pays pre-1987 and post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1985	1986	1987	1988	1989	1990
Current E & P (Deficits) of Corp. A	150u	150u	(100u)	100u	0	0
Current Plus Accumulated E & P of Corp. A	150u	300u	200u	250u	250u	200u
Post-'86 Undistributed Earnings of Corp. A			(100u)	100u	100u	50u
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (increased by deficit carryback).			0	100u	50u	50u
Foreign Income Taxes of Corp. A (Annual)	120u	120u	$10	$50	0	0
Post-'86 Foreign Income Taxes of Corp. A			$10	$60	$60	$30
12/31 Distributions to Corp. M	0	0	5u	0	5u	0
12/31 Distributions to Corp. Z	0	0	45u	0	45u	0

(ii) On December 31, 1987, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has a deficit of (100u) in post-1986 undistributed earnings and $10 of post-1986 foreign income taxes. The (100u) deficit (but not the post-1986 foreign income taxes) is carried back to offset the accumulated profits of 1986 and removed from post-1986 undistributed earnings. The accumulated profits for 1986 are reduced to 50u (150u – 100u). The dividend is paid out of the reduced 1986 accumulated profits. Foreign taxes deemed paid by Corporation M with respect to the 5u dividend are 12u (120u×(5u/50u)). See § 1.902–1(b)(3). Corporation M must include 12u in gross income (translated under the rule applicable to foreign income taxes paid on earnings accumulated in pre-effective date years) under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. No accumulated profits remain in Corporation A with respect to 1986 after the carryback of the 1987 deficit and the December 31, 1987, dividend distributions to Corporations M and Z.

(iii) On December 31, 1989, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has 100u of post-1986 undistributed earnings and $60 of post-1986 foreign income taxes. Therefore, the dividend is considered paid out of Corporation A's post-1986 undistributed earnings. Foreign taxes deemed paid by Corporation M with respect to the 5u dividend are $3 ($60×5%[5u/100u]). Corporation M must include $3 in gross income under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. Corporation A's post-1986 undistributed earnings as of January 1, 1990, are 50u (100u – 50u). Corporation A's post-1986 foreign income taxes must be reduced by the amount of foreign taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes. Section 1.902–1(a)(8)(i). The amount of foreign income taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 50u dividend distributed by Corporation A is $30 ($60×50%[50u/100u]). Thus, post-1986 foreign income taxes as of January 1, 1990, are $30 ($60 – $30).

Example 2. The facts are the same as in *Example 1*, except that Corporation A has a deficit in its post-1986 undistributed earnings of (150u) on December 31, 1987. The deficit is carried back to 1986 and reduces accumulated profits for that year to -0-. Thus, the foreign income taxes paid with respect to the 1986 accumulated profits will never be deemed paid. The 1987 dividend is deemed to be out of Corporation A's 1985 accumulated profits. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend paid on December 31, 1987, are 4u (120u×5u/150u). See § 1.902–1(b)(3). As a result of the December 31, 1987, dividend distributions, 100u (150u – 50u) of accumulated profits and 80u (120u reduced by 40u[120u×50u/150u] of foreign taxes that would have been deemed paid had all of Corporation A's shareholders been eligible to compute an amount of foreign taxes deemed paid with respect to the dividend paid out of 1985 accumulated profits) remain in Corporation A with respect to 1985.

Example 3. (i) From 1986 through 1991, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Corporation Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits and post-1986 undistributed earnings or deficits in post-1986 undistributed earnings, pays pre-1987 and post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1986	1987	1988	1989	1990	1991
Current E & P (Deficits) of Corp. A	100u	(50u)	150u	75u	25u	0
Current Plus Accumulated E & P of Corp. A	100u	50u	200u	175u	200u	80u
Post-'86 Undistributed Earnings of Corp. A		(50u)	100u	75u	100u	0
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (increased by deficit carryback).		(50u)	0	75u	0	0
Foreign Income Taxes (Annual) of Corp. A	80u	0	$120	$20	$20	0

Post-'86 Foreign Income Taxes of Corp. A		0	$120	$20	$40	0
12/31 Distributions to Corp. M	0	0	10u	0	12u	0
12/31 Distributions to Corp. Z	0	0	90u	0	108u	0

(ii) On December 31, 1988, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. At that time Corporation A has 100u in its post-1986 undistributed earnings and $120 in its post-1986 foreign income taxes. Corporation M is deemed, under § 1.902–1(b)(1), to have paid $12 ($120×10%[10u/100u]) of the post-1986 foreign income taxes paid by Corporation A and includes that amount in gross income under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. Corporation A's post-1986 undistributed earnings as of January 1, 1989, are 0 (100u–100u). Its post-1986 foreign taxes as of January 1, 1989, also are 0, $120 reduced by $120 of foreign income taxes paid that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of foreign taxes deemed paid on the dividend from Corporation A ($120×100%[100u/100u]).

(iii) On December 31, 1990, Corporation A distributes a 12u dividend to Corporation M and a 108u dividend to Corporation Z. At that time Corporation A has 100u in its post-1986 undistributed earnings and $40 in its post-1986 foreign income taxes. The dividend is paid out of post-1986 undistributed earnings to the extent thereof (100u), and the remainder of 20u is paid out of 1986 accumulated profits. Under § 1.902–1(b)(2), the 12u dividend to Corporation M is deemed to be paid out of post-1986 undistributed earnings to the extent of 10u (100u×12u/120u) and the remaining 2u is deemed to be paid out of Corporation A's 1986 accumulated profits. Similarly, the 108u dividend to Corporation Z is deemed to be paid out of post-1986 undistributed earnings to the extent of 90u (100u×108u/120u) and the remaining 18u is deemed to be paid out of Corporation A's 1986 accumulated profits. Foreign income taxes deemed paid by Corporation M under section 902 with respect to the portion of the dividend paid out of post-1986 undistributed earnings are $4 ($40×10%[10u/100u]), and foreign taxes deemed paid by Corporation M with respect to the portion of the dividend deemed paid out of 1986 accumulated profits are 1.6u (80u×2u/100u). Corporation M must include $4 plus 1.6u translated under the rule applicable to foreign income taxes paid on earnings accumulated in taxable years prior to the effective date of the Tax Reform Act of 1986 in gross income as a dividend under section 78. The income inclusion and the foreign income taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 Corporation A. As of January 1, 1991, Corporation A's post-1986 undistributed earnings are 0 (100u–100u). 80u (100u–20u) of accumulated profits remain with respect to 1986. Post-1986 foreign income taxes as of January 1, 1991, are 0, $40 reduced by $40 of foreign income taxes paid that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 100u dividend distributed by Corporation A out of post-1986 undistributed earnings ($40×100%[100u/100u]). Corporation A has 64u of foreign income taxes remaining with respect to 1986, 80u reduced by 16u [80u×20u/100u] of foreign income taxes that would have been deemed paid if Corporations M and Z both were eligible to compute an amount of deemed paid taxes on the 20u dividend distributed by Corporation A out of 1986 accumulated profits.

(b) *Carryforward of deficits in pre-1987 accumulated profits of a first-, second-, or third-tier corporation to post-1986 undistributed earnings for purposes of section 902*—(1) *General rule.* For purposes of computing foreign income taxes deemed paid under § 1.902–1(b) with respect to dividends paid by a first-, second-, or third-tier corporation out of post-1986 undistributed earnings, the amount of a deficit in accumulated profits of the foreign corporation determined under section 902 as of the end of its last pre-effective date taxable year is carried forward and reduces post-1986 undistributed earnings on the first day of the foreign corporation's first taxable year beginning after December 31, 1986, or on the first day of the first taxable year in which the ownership requirements of section 902(c)(3)(B) and § 1.902–1(a)(1) through (4) are met if the special effective date of § 1.902–1(a)(13) applies. Any foreign income taxes paid with respect to a pre-effective date year shall not be carried forward and included in post-1986 foreign income taxes. Post-1986 undistributed earnings may not be reduced by the amount of a pre-1987 deficit in earnings and profits computed under section 964(a). See section 960 and the regulations under that section for rules governing the carryforward of deficits and the computation of foreign income taxes deemed paid with respect to deemed income inclusions from controlled foreign corporations. For translation rules governing carryforwards of deficits in pre-1987 accumulated profits to post-1986 taxable years of a foreign corporation with a dollar functional currency, see § 1.985–6(d)(2).

(2) *Effect of pre-effective date deficit.* If a foreign corporation has a deficit in accumulated profits as of the end of its last pre-effective date taxable year, then the foreign corporation cannot pay a dividend out of preeffective date years unless there is an adjustment made (for example, a refund of foreign taxes paid) that restores section 902 accumulated profits to a pre-effective date taxable year or years. Moreover, if a foreign corporation has a deficit in section 902 accumulated profits as of the end of its last pre-effective date taxable year, then no deficit in post-1986 undistributed earnings will be carried back under paragraph (a) of this section. For rules concerning carrybacks of eligible deficits from post-1986 undistributed earnings to reduce pre-1987 earnings and profits computed under section 964(a), see section 960 and the regulations under that section.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. (i) From 1984 through 1988, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Corporation Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits or deficits in accumulated profits and post-1986 undistributed earnings, pays pre-1987 and post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1984	1985	1986	1987	1988
Current E & P (Deficits) of Corp. A	25u	(100u)	(25u)	200u	100u
Current Plus Accumulated E & P (Deficits) of Corp. A	25u	(75u)	(100u)	100u	50u
Post-'86 Undistributed Earnings of Corp. A				100u	50u
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (reduced by deficit carryforward)				(50u)	50u
Foreign Income Taxes (Annual) of Corp. A	20u	5u	0	$100	$50
Post-'86 Foreign Income Taxes of Corp. A				$100	$50
12/31 Distributions to Corp. M	0	0	0	15u	0
12/31 Distributions to Corp. Z	0	0	0	135u	0

(ii) On December 31, 1987, Corporation A distributes a 150u dividend, 15u to Corporation M and 135u to Corporation Z. Corporation A has 200u of current earnings and profits for 1987, but its post-1986 undistributed earnings are only 100u as a result of the reduction for pre-1987 accumulated deficits required under paragraph (b)(1) of this section. Corporation A has $100 of post-1986 foreign income taxes. Only 100u of the 150u distribution is a dividend out of post-1986 undistributed earnings. Foreign income taxes deemed paid by Corporation M in 1987 with respect to the 10u dividend attributable to post-1986 undistributed earnings, computed under § 1.902–1(b), are $10 ($100 × 10%[10u/100u]). Corporation M includes this amount in gross income under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. After the distribution, Corporation A has (50u) of post-1986 undistributed earnings (100u–150u) and -0- post-1986 foreign income taxes. $100 reduced by $100 of foreign income taxes paid that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 100u dividend distributed by Corporation A out of post-1986 undistributed earnings ($100 × 100%[100u/100u]).

(iii) The remaining 50u of the 150u distribution cannot be deemed paid out of accumulated profits of a pre-1987 year because Corporation A has an accumulated deficit as of the end of 1986 that eliminated all pre-1987 accumulated profits. See paragraph (b)(2) of this section. The 50u is a dividend out of current earnings and profits under section 316(a)(2), but Corporation M is not deemed to have paid any additional foreign income taxes paid by Corporation A with respect to that 50u dividend out of current earnings and profits. See § 1.902–1(b)(4).

Example 2. (i) From 1986 through 1991, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Corporation Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits or deficits in accumulated profits and post-1986 undistributed earnings, pays post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1986	1987	1988	1989	1990
Current E & P (Deficits) of Corp. A	(100u)	150u	(150u)	100u	250u
Current Plus Accumulated E & P (Deficits) of Corp. A	(100u)	50u	(200u)	(100u)	50u
Post-'86 Undistributed Earnings of Corp. A		50u	(200u)	(100u)	50u
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (reduced by deficit carryforward).		(50u)	(200u)	(200u)	0
Foreign Income Taxes (Annual) of Corp. A	0	$120	0	$50	$100
Post-'86 Foreign Income Taxes of Corp. A		$120	0	$50	$150
12/31 Distributions to Corp. M	0	10u	0	10u	5u
12/31 Distributions to Corp. Z	0	90u	0	90u	45u

(ii) On December 31, 1987, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. At the time of the distribution, Corporation A has 50u of post-1986 undistributed earnings and 150u of current earnings and profits. Thus, 50u of the dividend distribution (5u to Corporation M and 45u to Corporation Z) is a dividend out of post-1986 undistributed earnings. The remaining 50u is a dividend out of current earnings and profits under section 316(a)(2), but Corporation M is not deemed to have paid any additional foreign income taxes paid by Corporation A with respect to that 50u dividend out of current earnings and profits. See § 1.902–1(b)(4). Note that even if there were no current earnings and profits in Corporation A, the remaining 50u of the 100u distribution cannot be deemed paid out of accumulated profits of a pre1987 year because Corporation A has an accumulated deficit as of the end of 1986 that eliminated all pre-1987 accumulated profits. See paragraph (b)(2) of this section. Corporation A has $120 of post-1986 foreign income taxes. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend out of post-1986 undistributed earnings are $12 ($120 × 10%[5u/50u]). Corporation M includes this amount in gross income as a dividend under section 78. Both the foreign taxes deemed paid and the deemed dividend are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. As of January 1, 1988, Corporation A has (50u) in its post-1986 undistributed earnings (50u – 100u) and -0- in its post-1986 foreign income taxes. $120 reduced by $120 of foreign taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the dividend distributed by Corporation A out of post-1986 undistributed earnings ($120 × 100%[50u/50u]).

(iii) On December 31, 1989, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. Although the distribution is considered a dividend in its entirety out of 1989 earnings and profits pursuant to section 316(a)(2), post-1986 undistributed earnings are (100u). Accordingly, for purposes of section 902, Corporation M is deemed to have paid no post-1986 foreign income taxes. See § 1.902–1(b)(4). Corporation A's post-1986 undistributed earnings as of January 1, 1990, are (200u) ((100u) – 100u). Corporation A's post-1986 foreign income taxes are not reduced because no taxes were deemed paid.

(iv) On December 31, 1990, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has 50u of post-1986 undistributed earnings, and $150 of post-1986 foreign income taxes. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend are $15 ($150 × 10%[5u/50u]). Post-1986 undistributed earnings as of January 1, 1991, are -0- (50u – 50u). Post-1986 foreign income taxes as of January 1, 1991, also are -0-, $150 reduced by $150 ($150 × 100%[50u/50u]) of foreign income taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 50u dividend.

Par. 4. Newly designated § 1.902–3 is amended by revising the section heading and paragraph (a) introductory text, and by designating the last paragraph as paragraph (l) and revising it to read as follows:

§ 1.902–3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.

(a) *Definitions.* For purposes of section 902 and §§ 1.902–3 and 1.902–4:

* * * * *

(l) *Effective date.* Except as provided in § 1.902–4, this section applies to any distribution received from a first-tier corporation by its domestic shareholder after December 31, 1964, and before the beginning of the foreign corporation's first taxable year beginning after December 31, 1986. If, however, the first day on which the ownership requirements of section 902(c)(3)(B) and § 1.902–1(a)(1) through (4) are met with respect to the foreign corporation is in a taxable year of the foreign corporation beginning after December 31, 1986, then this section shall apply to all taxable years beginning after December 31, 1964, and before the year in which the ownership requirements are first met. See § 1.902–1(a)(13)(iii). For corresponding rules applicable to distributions received by the domestic shareholder prior to January 1, 1965, see § 1.902–5 as contained in the 26 CFR part 1 edition revised April 1, 1976.

§ 1.902–4 [Amended]

Par. 5. Newly designated § 1.902–4, paragraph (b), in the last sentence, the

language "§ 1.902–1" is removed and "§ 1.902–3" is added in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part of section where identified and described	Current OMB control No.
* * * * *	
1.902–1	1545–1458
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1996.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 97–153 Filed 1–6–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; amendment.

SUMMARY: The Department of Defense published a final rule concerning Collection From Third Party Payers of Reasonable Costs of Healthcare Services. This part is published to suspend the effectiveness of 32 CFR 220.8(k)(2). The effective date initially established for this change was June 1, 1996. Due to unanticipated administrative requirements that extended the timeframe for implementation, this effective date is now suspended until April 1, 1997.

DATES: Effective January 7, 1997, section 220.8(k)(2), as published at 61 FR 6542, February 21, 1996, is suspended until April 1, 1997.

FOR FURTHER INFORMATION CONTACT: LCDR Patrick Kelly, (703) 681–8910.

SUPPLEMENTARY INFORMATION: The amendment published on February 21, 1996, was not self-implementing. Rather, implementation required a change in billing practices by military treatment facilities and TRICARE resource sharing providers. Due to unanticipated administrative requirements that extended the timeframe for implementation, the changes in billing practices were suspended briefly. In view of these circumstances, the solicitation of additional public comment prior to establishing a deferred effective date is unnecessary.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For the reasons stated in the preamble, 32 CFR part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for 32 CFR Part 220 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 1095.

2. The last sentence of paragraph 220.8(k)(2) is revised to read as follows:

§ 220.8 Reasonable costs.

* * * * *

(k) * * *

(2) * * * This paragraph (k)(2) becomes effective April 1, 1997.

* * * * *

Dated: December 31, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–163 Filed 1–6–97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 4
Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–96–985–4 PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1997–98 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1997–98 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by February 6, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2043; Fax: (503) 326–7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1997–98 marketing year, which begins on June 1, 1997. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdictton to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1997–98 marketing year at its October 2, 1996, meeting, and reconfirmed its recommendation following review of additional information at its meeting held on November 14, 1996. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil with one member opposing the motion because he favored the establishment of a higher salable quantity and allotment percentage. In a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil.

This proposed rule would establish a salable quantity of 996,522 pounds and an allotment percentage of 55 percent for Scotch spearmint oil, and a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent for Native spearmint oil. This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1997–98 marketing year, which begins on June 1, 1997. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of both classes of spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced

in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 65 percent of the world total. Thus, in recent marketing years, the Committee has taken a different approach in its method of addressing the historical fluctuations in supply and price. In conjunction with the goal of maintaining price and market stability, the Committee seeks a moderate growth rate in terms of total North American market share. The Committee's recommendation is intended to find a stable price level while keeping Far West Scotch spearmint oil in a competitive and viable position in the international market. To that end, the Committee is targeting a specific percentage of the North American market share for use in its salable quantity and allotment percentage calculations. For 1997–98, the Committee is targeting 73 percent of the North American market, compared to the nearly 65 percent targeted for the 1996–97 season. Preliminary figures indicate that the Far West Scotch spearmint oil market share in North America will reach approximately 60 percent in 1996–97, up from 55 percent in 1995–96.

Records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. Prior to 1980, grower prices for Native spearmint oil were historically cyclical. For example, between 1971 and 1975 the price of Native spearmint oil increased from $3.00 per pound to $11.00 per pound. In contrast, under the marketing order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. With approximately 90 percent of U.S. production of Native spearmint oil located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand for Far West Native spearmint oil.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1997–98 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—309,927 pounds. This figure is derived by subtracting the estimated 1996–97 marketing year trade demand of 900,000 pounds from the revised 1996–97 marketing year total available supply of 1,209,927 pounds.

(B) Estimated North American production (U.S. and Canada) for the 1997–98 marketing year—1,511,461 pounds. This figure is an estimate based on information provided to the Committee by producers and buyers.

(C) Percentage of North American market targeted—73 percent. This figure is an approximate average of the recommended target percentages made at each of the five regional producer meetings held throughout the Far West production area during the month of September, 1996.

(D) Total quantity of Scotch spearmint oil needed to reach targeted percentage—1,103,367 pounds. This figure is the product of the estimated 1997–98 North American production and the targeted percentage.

(E) Minimum amount desired to have on hand throughout the season—200,000 pounds. Producers at all of the five regional meetings had recommended this amount, which continues to reflect the Committee's commitment to regain market share by maintaining a minimum quantity on hand.

(F) Total supply required—1,303,367 pounds. This figure is derived by adding the minimum desired on hand amount to the total quantity required to meet the targeted percentage.

(G) Additional quantity required—993,440 pounds. This figure represents the actual amount of additional or new oil needed to meet the Committee's projections, and is computed by subtracting the estimated carry-in of 309,440 pounds from the total supply required of 1,303,367 pounds.

(H) Total allotment base for the 1997–98 marketing year—1,811,859 pounds.

(I) Computed allotment percentage—54.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(J) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage.

(K) The Committee's recommended salable quantity—996,522 pounds. This figure is the product of the recommended allotment percentage and the total 1997–98 allotment base.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—71,764 pounds. This figure is derived by subtracting the estimated 1996–97 marketing year trade demand of 1,162,500 pounds from the revised 1996–97 marketing year total available supply of 1,234,264 pounds.

(B) Estimated trade demand (domestic and export) for the 1997–98 marketing year—1,212,500 pounds. This figure represents an average of buyer estimates and the amounts recommended at the regional producer meetings.

(C) Salable quantity required from 1997 production—1,140,736 pounds. This figure is the difference between the estimated 1997–98 marketing year trade demand and the estimated carry-in on June 1, 1997.

(D) Total allotment base for the 1997–98 marketing year—2,009,556 pounds.

(E) Computed allotment percentage—56.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—56 percent. This is the Committee's recommendation based on the computed allotment percentage.

(G) The Committee's recommended salable quantity—1,125,351 pounds. This figure is the product of the recommended allotment percentage and the total 1997–98 marketing year allotment base.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 996,522 pounds and allotment percentage of 55 percent are based on anticipated supply, demand, and a targeted percentage of the North American market during the 1997–98 marketing year. The Committee's recommended Native spearmint oil salable quantity of 1,125,351 pounds and allotment percentages of 56 percent are based on anticipated supply and trade demand during the 1997–98 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce

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more than their annual allotments during the 1997–98 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1997–98 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of the provisions as set forth in 7 CFR Part 985.50. Conformity with other USDA guidelines has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) oil allotment base, and approximately 115 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. A normal spearmint producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint producing farm would thus have to have considerable more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint producing farms would fall into the category of large businesses.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities as all are national and multinational corporations involved in the buying and selling of essential oils and the products of such essential oils. The Committee also estimates that 17 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1997–97 marketing year. The committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

The small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

Records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. Prior to 1980, grower prices for Native spearmint oil were historically cyclical. For example, between 1971 and 1975 the price of Native spearmint oil increased from $3.00 per pound to $11.00 per pound. In contrast, under the marketing order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years.

Alternatives to this proposal included not regulating the handling of spearmint oil during the 1997–98 marketing year, and recommending either higher or lower salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of oil after careful consideration of all available information, and believe that the levels recommended will achieve the objectives sought. Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1,300,000 pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended balance between market and price stability and market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicitous

information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.216 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.216 Salable quantities and allotment percentages—1997–98 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1997, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 996,522 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–281 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–215–AD]

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That AD was prompted by reports of fatigue cracks in those outboard chords. This action would add inspections for certain airplanes, and would revise certain compliance times for all airplanes. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2785; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–215–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 5, 1995, the FAA issued AD 95–12–17, amendment 39–9268 (60 FR 36981, July 19, 1995), applicable to certain Boeing Model 737–100 and –200 series airplanes, to require various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That AD also provides for an optional terminating action for the required inspections. That action was prompted by reports of fatigue cracks in those outboard chords. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has become aware that certain airplanes that should be subject to the requirements of that AD were omitted inadvertently. At the time AD 95–12–17 was issued, the Boeing service bulletins cited in the AD did not describe initial or repetitive inspections for unmodified airplanes that had accumulated less than 27,000 total flight cycles. The FAA has determined that airplanes that have accumulated less than 27,000 total flight cycles as of August 18, 1995, (the effective date of AD 95–12–17) are subject to the addressed unsafe condition. The FAA finds that these airplanes also must be inspected to detect cracking in the outboard chords in order to address the identified unsafe condition in a timely manner.

Additionally, several operators have expressed their concern with the complexity of the compliance times of AD 95–12–17. The operators have advised the FAA that the currently required "progressive" or "sliding" compliance times are difficult to track and to schedule. These operators maintain that the complexity of the compliance times, in itself, will increase the risk and likelihood of a missed inspection occurring because of an inadvertent scheduling oversight.

The FAA acknowledges the commenters' concern. Since the issuance of AD 95–12–17, the FAA has held further discussions with the manufacturer in an effort to clarify and simplify the compliance times. For airplanes on which the upper outboard chord has been replaced, the compliance times of this proposal reflect a revised initial threshold of "prior to the accumulation of 50,000 flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles as of the effective date of this AD, whichever occurs later." For all other airplanes, the compliance times of this proposal reflect a revised initial threshold of "prior to the accumulation of 50,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later." The repetitive inspections would be required at intervals not to exceed 4,500 flight cycles for all affected airplanes. The FAA has determined that the revised compliance times will address the unsafe condition in a timely manner.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–12–17 to continue to require various inspections to detect cracking in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. This action would add inspections for certain airplanes. This action also would revise the threshold for accomplishment of the initial inspection and would revise the repetitive inspection interval for all affected airplanes. This action also continues to provide for an optional terminating action for the required inspections. The actions would be required to be accomplished in accordance with Boeing Alert Service Bulletin 737–53A1166, which is cited in AD 95–12–17 as the appropriate source of service information.

Cost Impact

There are approximately 999 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 296 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–12–17 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $71,040, or $240 per airplane, per inspection cycle.

This proposed AD specifies inspection requirements for airplanes that were omitted inadvertently from the existing AD. However, the costs associated with the inspections for those airplanes were included previously in the cost impact on U.S. operators for accomplishment of AD 95–12–17. Therefore, the FAA estimates that no additional costs would be required for accomplishment of the proposed requirements of this AD.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that will be provided by this AD action, it will take approximately 50 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,680 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,680 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9268 (60 FR 36981, July 19, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–215–AD. Supersedes AD 95–12–17, Amendment 39–9268.

Applicability: Model 737–100 and –200 series airplanes; line numbers 1 through 999 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane, accomplish the following:

(a) For airplanes on which the body station (BS) 727 frame upper outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 50,000 flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A. Perform the inspections in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat these inspections at intervals not to exceed 4,500 flight cycles.

(b) For airplanes on which the BS 727 frame outboard chord has not been replaced or on which only the lower outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 50,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform close visual, PESW, and HFEC inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A. Perform the inspections in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat these inspections at intervals not to exceed 4,500 flight cycles.

(c) If any crack is found in the outboard chord of stringer 18A during any inspection required by this AD, prior to further flight, repair in accordance with either paragraph (c)(1) or (c)(2) of this AD.

(1) Repair in accordance with Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or

(2) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, (ACO) FAA, Transport Airplane Directorate.

(d) If any crack is found in the outboard chord of the frame at BS 727 during any inspection required by this AD: Accomplish paragraph (d)(1) or (d)(2) of this AD, as applicable, in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat the inspections required by either paragraph (a) or (b) of this AD, as applicable, at intervals not to exceed 4,500 flight cycles.

(1) If any crack extends from the forward edge of the chord or from the forward fastener hole, but does not extend past the second fastener hole, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD.

(i) Prior to further flight, install the time-limited repair. Prior to the accumulation of 4,500 flight cycles or within 18 months after accomplishment of the repair, whichever occurs first, replace the outboard chord. Or

(ii) Prior to further flight, replace the outboard chord.

Note 2: Boeing Alert Service Bulletin 737–53A1166 references Boeing Service Bulletin 737–53–1088 as an additional source of service information for procedures to replace the chord.

(2) If any crack extends from the forward edge of the chord, or from the forward fastener hole, and extends past the second fastener hole, prior to further flight, replace the outboard chord in accordance with either the original issue or Revision 1 of the service bulletin.

(e) Accomplishment of the following actions in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995, constitutes terminating action for the requirements of this AD.

(1) For airplanes on which no crack is found: Install the preventative modification in accordance with either the original issue or Revision 1 of the service bulletin.

(2) For airplanes on which any crack is found: Prior to further flight, replace the cracked chord and install the preventative modification in accordance with either the original issue or Revision 1 of the service bulletin.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 31, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–254 Filed 1–6–97; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge. The proposed AD also would require replacing the existing hydraulic fuses in the standby hydraulic system with new fuses. This proposal is prompted by reports of a performance test of the hydraulic fuses, which revealed that the positioning of the flow limiter in the existing configuration, and excessive fusing volumes of some of the fuses, can adversely affect the operation of the fuse. The actions specified by the proposed AD are intended to prevent such adversely affected operation of the fuse, which could result in the loss of all hydraulic system pressure and consequent severely reduced controllability of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

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Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–207–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report indicating that a performance test of the fuses in the hydraulic systems of certain Boeing Model 737 series airplanes was conducted. Results of that performance test revealed that, in the existing configuration, the flow limiter of the standby hydraulic system of the leading edge is positioned upstream of the hydraulic fuse. Such positioning of the flow limiter can adversely affect the operation of the fuse.

The FAA also received a report indicating that certain fuses installed in the standby hydraulic system exceed specified "fusing volumes" (the fluid volume allowed to pass through the fuse before it shuts off) at low hydraulic fluid temperatures. This condition also can adversely affect the operation of the fuse. The fuses in hydraulic systems A and B are not affected by this condition. However, the fuses in the standby hydraulic system are affected, since they are exposed to low temperatures because of the intermittent operation of the standby system.

The standby hydraulic system provides a backup system after the pressure of either (or both) the A or B hydraulic system drops below a minimum pressure setting. The hydraulic fuse is designed to prevent total loss of the hydraulics systems after a certain volume of fluid passes through the fuse within a specified time following the development of a leak downstream of the fuse. The hydraulic fuse also allows part of the hydraulic system to remain pressurized if such a leak develops. If the A and B hydraulic systems fail, and the standby hydraulic system develops a leak downstream of a failed fuse, the airplane could lose all hydraulic system pressure. This condition, if not corrected, could result in severely reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–29–1070, dated June 8, 1995, which describes procedures for interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter. Accomplishment of this action will ensure normal operation of the hydraulic fuse.

The FAA also has reviewed and approved Boeing Service Bulletin 737–29–1071, dated May 16, 1996, which describes procedures for replacing the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation. Installation of these new fuses will prevent the possible loss of the standby hydraulic system as a result of fluid depletion if a leak occurs downstream of the fuses.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter. The proposed AD also would require replacing the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 1,791 Boeing Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 596 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed interchange of the hydraulic fuse and the flow limiter, and that the average labor rate is $60 per work hour. The cost for required parts would be minimal. Based on these figures, the cost impact of the proposed interchange on U.S. operators is estimated to be $71,520, or $120 per airplane.

The FAA also estimates that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $143,040, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–207–AD.

Applicability: Model 737–300, –400, and –500 series airplanes having line numbers 1001 through 2791, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent adversely affected operation of the fuse, which could result in the loss of all hydraulic system pressure and consequent severely reduced controllability of the airplane, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 737–29–1070, dated June 8, 1995: Within 4,000 flight hours after the effective date of this AD, interchange the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter, in accordance with Boeing Service Bulletin 737–29–1070, dated June 8, 1995.

(b) For airplanes listed in Boeing Service Bulletin 737–29–1071, dated May 16, 1996: Within 4,000 flight hours after the effective date of this AD, replace the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation, in accordance with Boeing Service Bulletin 737–29–1071, dated May 16, 1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 31, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–253 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 and A321 series airplanes. This proposal would require replacement of two elevator aileron computers (ELAC) with ELAC's that contain new software. This proposal is prompted by reports indicating that some of these airplanes have experienced uncommanded movements of the ailerons. The actions specified by the proposed AD are intended to prevent situations, such as uncommanded rolls during turbulent conditions, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamp postcard on which the following statement is made: "Comments to Docket Number 95–NM–143–AD." The postcard will be date stamped and returned to the commenter.

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Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 and A321 series airplanes. The DGAC advises that it has received reports indicating that some of these airplanes have experienced uncommanded rolls; flight crews reported these rolls as ranging from 5 degrees to 30 degrees.

The flight control system for both airplane models uses fly-by-wire technology. There are situations where the sensitivity of the fly-by-wire design creates safety concerns. Among these situations are:

• When the flaps are set on CONF 3 or CONF FULL and turbulence is encountered: The flight crew's responses, coupled with the handling characteristics of the airplane, could cause roll oscillations.

• When the flaps, during approach, have jammed in the fully-extended position and CONF 3 is subsequently selected: It becomes difficult for the flight crew to maintain the intended flight path.

• When contaminants interfere with proper operation of the sidestick transducer unit: A possible consequence is the transmission of transient signals from the sidestick to the ELAC. These signals could cause the ailerons to "jerk," and result in an uncommanded roll, regardless of the automatic pilot mode and the stage of flight.

All of these situations, if not corrected, could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A320–27–1082, dated April 25, 1995, which describes procedures for replacing the two ELAC's installed in the aft electronic rack 80VU with two ELAC's that have been modified. The modifications entail the installation of new software identified as "L69J Standard," a program that alters the airplane's flying qualities to reduce the risk of encountering situations where uncommanded roll and other unsafe conditions are likely to occur. [This service bulletin references Sextant Service Bulletins 394512–27–014, dated August 11, 1995 (for airplanes on which modification 24136P3436 is not installed), and C12370A–27–001, dated May 2, 1995 (for airplanes on which modification 24136P3436 is installed), as additional sources of procedural service information for modification of the ELAC's. Sextant is the supplier of the ELAC's.]

The DGAC classified the Airbus Industrie service bulletin as mandatory and issued French airworthiness direction (C/N) 95–203–072(B), dated October 11, 1995, as corrected by Erratum, dated November 8, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in French and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require replacement of the two ELAC's installed in the aft electronic rack 80VU with two ELAC's that have been modified to include L69J Standard software. The actions would be required to be accomplished in accordance with the Airbus Industrie service bulletin described previously.

Cost Impact

The FAA estimates that 108 Airbus Industrie Model A320 and A321 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $19,440, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–143–AD.

Applicability: Model A320 and A321 series airplanes as listed in Airbus Industrie Service Bulletin A320–27–1082, dated April 25, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to problems associated with the elevator aileron computer (ELAC), accomplish the following:

(a) Within 1 year after the effective date of this AD, replace the ELAC's having part numbers (P/N) 3945122307 and/or P/N C12370AAA01 and located in aft electronics rack 80VU, with modified ELAC's having P/N 3945122502, in accordance with Airbus Industrie Service Bulletin A320–27–1082, dated April 25, 1995.

Note 2: Airbus Industrie Service Bulletin A320–27–1082 references Sextant Service Bulletins 394512–27–014, dated August 11, 1995 (for airplanes on which Airbus Industrie modification 24136P3436 has not been installed); and C12370A–27–001, dated May 2, 1995 (for airplanes on which Airbus Industrie modification 24136P3436 has been installed); as additional sources of procedural service information for modification of the ELAC's.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 31, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–252 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–SW–32–AD]

Airworthiness Directives; Hiller Aircraft Corporation Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Hiller Aircraft Corporation (Hiller) Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, that currently requires a dye penetrant inspection of the head of the main rotor outboard tension-torsion (T–T) bar pin for cracks; a visual inspection of the outboard T–T bar pin for proper alignment and an adjustment, if necessary; and, installation of shims at the inboard end of the drag strut. This action would require the same actions required by the existing AD, but would allow a magnetic particle inspection of the T–T bar pin as an alternative to the currently required dye penetrant inspection, and would require reporting the results of the inspections only if cracks are found, rather than reporting all results of inspections as required by the existing AD. This proposal is prompted by an FAA analysis of a comment to the existing AD, and the fact that no cracks have been reported since the issuance of the existing AD. The actions specified by the proposed AD are intended to prevent cracks in the head area of the outboard T–T bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Matheis, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5235, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 25, 1995, the FAA issued AD 95–12–02, Amendment 39–9252 (60 FR 30184) to require for Hiller Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, within 25 hours time-in-service (TIS) or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS: (1) an inspection of the alignment of the outboard T–T bar pin and an adjustment, if necessary; and (2) an inspection for cracks in the head of the outboard T–T bar pin using a dye

penetrant method. Additionally, that AD requires, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, the installation of shims between the inboard end of the drag strut and the outboard T–T bar pin. That action was prompted by two accidents involving failure of the outboard T–T bar pin on Hiller UH–12E helicopters. The requirements of that AD are intended to prevent cracks in the head area of the outboard T–T bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has received a comment suggesting that paragraph (b) of the existing AD should specifically identify the compliance time for the inspection, even though the compliance time is stated in paragraph (a). The FAA agrees with the commenter, and the wording of paragraph (b) has been changed to clarify the inspection compliance time. Additionally, the same commenter requested that an alternate method of compliance for the inspection be included in paragraph (b) of the existing AD. The FAA agrees, and paragraph (b) has been changed to allow the use of a magnetic particle inspection as well as a dye penetrant inspection required by the existing AD. One additional commenter states that misalignment of the drag strut fork and the main rotor blade may be causing cracks. While the cause of the cracks is uncertain, the FAA has determined that the recurring inspections required by this AD should detect misalignments and cracks that could lead to failure of the T–T bar pin.

Since an unsafe condition has been identified that is likely to exist or develop on other Hiller Model UH–12A, UH12B, UH–12C, UH–12D, and UH–12E helicopters of the same type design, the proposed AD would supersede AD 95–12–02 to require, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS: (1) an inspection of the alignment of the outboard T–T bar pin and an adjustment, if necessary; and (2) an inspection for cracks in the head of the outboard T–T bar pin using a dye penetrant method or a magnetic particle method. Additionally, the proposed AD requires, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, the installation of shims between the inboard end of the drag strut and the outboard T–T bar pin.

The FAA estimates that 700 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $700 per pin. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $574,000, assuming one pin must be replaced on every helicopter in the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9252 (60 FR 30184, June 8, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Hiller Aircraft Corporation: Docket No. 96–SW–32–AD. Supersedes AD 95–12–02, Amendment 39–9252.

Applicability: Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the head area of the outboard tension-torsion (T–T) bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the alignment of the outboard T–T bar pin, part number (P/N) 51452, and adjust the alignment, if necessary, in accordance with Hiller Aviation Service Letter (SL) 51–2, dated March 31, 1978.

(b) Within 25 hours TIS after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the head of the outboard T–T bar pin for cracks using a dye penetrant or magnetic particle inspection method.

(c) If a crack is found as a result of the inspection required by paragraph (b) of this AD, report the results within 7 working days following the inspection to the Manager, Los Angeles Aircraft Certification Office, Attention Charles Matheis, ANM–120L, 3960 Paramount Blvd., Lakewood, California 90712–4137. Include the helicopter model number, serial number, and total TIS of the outboard T–T bar pin in the report. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) Within 25 hours TIS after the effective date of this AD, or at the next 100 hours TIS inspection, whichever occurs first, install shims between the inboard end of the drag strut and the outboard T–T bar pin in accordance with the Accomplishment Instructions of Hiller Aviation Service Bulletin No. 51–9, dated April 8, 1983.

(e) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished. Issued in Fort Worth, Texas, on December 30, 1996.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–251 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 95N–0342]

Export Requirements for Medical Devices; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for a proposed rule that appeared in the **Federal Register** of November 27, 1995 (60 FR 58308). The document proposed to amend FDA's regulations for investigational devices to streamline requirements for persons seeking to export unapproved medical devices. FDA is seeking comments on whether this rulemaking is still needed in light of recent changes in the export provisions of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments by March 10, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–827–3380, electronic mail: PChao@bangate.FDA.gov.

SUPPLEMENTARY INFORMATION:

I. The National Performance Review and the Proposed Rule on Device Exports

At present, two statutory provisions in the act govern the export of devices that are not approved for marketing in the United States.

The first provision, in section 801(e)(2) of the act (21 U.S.C. 381(e)(2)), became law as part of the Medical Device Amendments Act of 1976 (Pub. L. 94–295) and required FDA approval of certain exports of unapproved devices. The second provision, in section 802 of the act (21 U.S.C. 382), was the result of the FDA Export Reform and Enhancement Act of 1996 (the Export Act of 1996) (Pub. L. 104–134, and amended by Pub. L. 104–180).

Before the latter provision became law, FDA had undertaken a program to streamline the requirements for the exportation of unapproved devices under section 801(e) of the act. In the **Federal Register** of November 27, 1995 (60 FR 58308), FDA issued a proposed rule to simplify the agency's export approval process for certain unapproved devices. The proposed rule was intended, in part, to respond to concerns in the device industry that the statutory requirement of FDA approval of device exports may undermine a firm's ability to compete in international markets and may represent an unnecessary regulatory barrier. (It should be emphasized, however, that FDA's approval times for device export applications have decreased significantly, from an average of 91 days per request in 1992 to 10 days in 1995, and further decreased to 8 days in fiscal year 1996.)

The proposed rule was also intended to implement part of the President's and Vice-President's "National Performance Review" pertaining to the exportation of unapproved devices (as announced in an April 1995 report entitled "Reinventing Drug and Device Regulations"). Under the National Performance Review, the agency would permit the export of unapproved devices to certain advanced industrialized countries without prior FDA review and approval, provided that the device complied with the importing country's laws. The report also stated that the Administration would seek the necessary legislative changes and would consult Congress on the appropriate list of advanced industrialized countries. Furthermore, the report stated that FDA would initiate administrative changes to permit exports to countries that are not on the list of advanced industrialized countries "if the exporter has an investigational device exemption (IDE) permitting testing on humans in the United States, the importing country has given FDA a letter providing blanket approval for IDE-type devices, and the device is in compliance with the importing country's laws."

To implement the administrative reform aspects of the report, FDA proposed to amend § 812.18 (21 CFR 812.18) to state that a person who wishes to export an investigational device subject to part 812—Investigational Device Exemptions (21 CFR part 812) must comply with the requirements in section 801(e)(1) of the act, but that, for purposes of section 801(e)(2), prior FDA approval would be unnecessary if the investigational device to be exported is the subject of an approved IDE (including nonsignificant risk devices which, under FDA regulations, are considered to have an approved IDE) and "will be marketed or used in clinical trials in the foreign country for the same intended use as that in the approved IDE and is to be exported to a country that has expressed its approval of the importation of investigational devices" that are the subject of an approved IDE. The proposed rule also stated that, if the device is the subject of an approved IDE and has received a "CE" mark from the European Union (EU), the device may be exported to any country in the European Economic Area (EEA).

Proposed § 812.18(b)(1) also would have FDA's Center for Devices and Radiological Health (CDRH) make available a list of countries that have approved the importation of investigational devices that are the subjects of approved IDE's. The list would be maintained electronically.

Proposed § 812.18(b)(2) would require prior FDA approval to export an investigational device if FDA withdrew approval of the IDE or the sponsor terminated any or all parts of investigations because unanticipated adverse device effects present an unreasonable risk to subjects.

In the preamble to the proposed rule, FDA also stated that it would amend the proposed rule to reflect any legislative changes (60 FR 58308 at 58309).

Thus, the changes in the proposed rule would have benefited those companies wishing to export devices: (1) That have an approved U.S. IDE; (2) to countries that have agreed to accept U.S. IDE products; and (3) whose intended use is the same as the U.S. IDE. FDA believed this was as much

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relief as could be provided under existing law at the time.

The agency received seven comments on the proposed rule. Most comments supported the rule, but recommended expanding the rule to explicitly mention certain devices (such as intraocular lenses and certain in vitro diagnostic devices), amending the rule so that a "CE" mark would permit exportation of the device to any country, or amending the rule to consider marketing authorization by developed countries as permitting exportation to any country. One comment questioned the likelihood that a country would agree to the importation of all devices having approved IDE's.

II. The Export Act of 1996 and Its Impact on the Proposed Rule

On April 26, 1996, the President signed the Export Act of 1996 (Pub. L. 104–134, and later amended by Pub. L. 104–180). The Export Act of 1996 amended, among other things, sections 801 and 802 of the act. The Export Act of 1996 amended section 801(e)(2) of the act to state, in part, that export of an unapproved device could occur only if the agency has determined that exportation of the device is not contrary to the public health and safety and has the approval of the country to which it is intended for export or "the device is eligible for export under section 802" of the act. Section 802 of the act, as amended, authorizes exports of unapproved drugs and devices if certain conditions or requirements are met. Under section 802(b)(1) of the act, an unapproved device may be exported to any country if the device complies with the laws of that country and has valid marketing authorization in Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, or in any country in the EU or the EEA (often referred to as the "listed countries"). At present, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, plus Iceland, Liechtenstein, and Norway. As new countries join the EU or the EEA, they will automatically be treated as listed countries without any need for FDA action. Additionally, the Secretary of Health and Human Services may designate additional countries to be added to the list if certain requirements are met.

Another provision of the Export Act of 1996 pertains specifically to drugs and devices exported for investigational use. Section 802(c) of the act states that a drug or device intended for investigational use in any country described in section 802(b)(1)(A)(i) and (b)(1)(A)(ii) of the act may be exported in accordance with the laws of that country and shall be exempt from regulation under sections 505(i) and 520(g) of the act (21 U.S.C. 355(i) and 360j(g)). Thus, under section 802(c) of the act, as amended, a device may be exported for investigational use to any of the listed countries without prior FDA approval and without compliance with the IDE regulations in part 812.

However, all devices exported under section 802 of the act are subject to certain requirements, under section 802(f) of the act. For example, the device must be manufactured, processed, packaged, and held in substantial conformity with current good manufacturing practice (CGMP) requirements or meet international standards as certified by an international standards organization recognized by the agency; must not be adulterated under section 501(a)(1), (a)(2)(A), (a)(3), and (c) of the act (21 U.S.C. 351(a)(1), (a)(2)(A), (a)(3), and (c)); and must comply with section 801(e)(1)(A) through (e)(1)(D) of the act, which require the device to be intended for export, accord to the foreign purchaser's specifications, not be in conflict with the laws of the foreign country to which the device is being exported, be labeled on the outside of the shipping package that the device is intended for export, and not be sold or offered for sale in domestic commerce.

The Export Act of 1996 affects the proposed rule in several ways. First, it accomplished some changes to the proposed rule that the comments requested, particularly those comments that requested that FDA expand the proposed rule to cover other devices and other FDA-regulated products or requested FDA to permit exportation to any country if a device received marketing authorization in the EU or marketing authorization in a "developed country." Second, the Export Act of 1996 also distinguishes between exports under section 801(e) of the act and exports under section 802 of the act. For example, when FDA published the proposed rule on November 27, 1995, devices were subject only to the requirements in section 801(e) of the act. The Export Act of 1996 gives firms an option whether to export a device under section 801(e) of the act or under section 802 of the act, and assigned different requirements to exports under each section of the act. Thus, any final rule on device exports that FDA publishes would have to reflect these changes in the law.

Finally, as stated earlier in this document, section 802(b)(1)(A) of the act authorizes export of an unapproved device to any country if the device complies with the laws of the importing country and the device has a valid marketing approval in any of the 25 countries identified in the act. Devices exported under section 802(b)(1)(A) of the act are also not required to obtain prior FDA approval, although they are subject to certain notification requirements, nor are they required to have an IDE. In contrast, the proposed rule's reference to exports of investigational devices for marketing purposes is limited to devices exported under section 801(e)(1) of the act and presumes that the person exporting the device has an IDE or is considered to have an approved IDE; thus, at a minimum, the proposed rule would have to be changed to reflect the requirements in section 802(b)(1)(A) of the act.

Section 802(c) of the act also has a significant impact on the proposed rule. Under section 802(c) of the act, devices exported for investigational use to any listed country are not subject to the IDE requirements and can be exported without prior FDA approval. In comparison, the proposed rule would have required the exported device to have an approved IDE or to be a nonsignificant risk device and be considered to have an approved IDE, and the streamlined requirements described in the proposal would have applied only to exports to countries that had notified FDA of their willingness to accept IDE devices.

The Export Act of 1996 contains other provisions that affect device exports. For example, devices exported under section 801(e) of the act do not have to comply with CGMP's, but devices exported under section 802 of the act must be in "substantial conformity" with CGMP's or meet international standards as certified by an international standards organization recognized by the agency. Devices exported under section 801(e) of the act must: (1) Accord to the foreign purchaser's specifications; (2) not conflict with the laws of the foreign country; (3) be labeled on the outside of the shipping package that the device is intended for export; and (4) not be offered for sale in the United States. In contrast, the labeling for devices exported under section 802 of the act must, in addition to the requirements in section 801(e)(1) of the act, be in accordance with the requirements and conditions of use of the listed country that authorized its marketing as well as the requirements and conditions of use

in the foreign country that will receive the device. The labeling for devices exported under section 802 of the act also must be in the language and units of measurement of the foreign country or in the language designated by that country.

III. Issues for Public Comment

Considering these changes in the export authority for devices, FDA is reopening for 60 days the comment period for the proposed rule. FDA is soliciting public comment on the following issues:

1. Is a final rule still necessary? Given that section 802 of the act now provides additional flexibility for device exports and to export devices without the need to make export requests under section 801(e)(2) of the act, is there still a need to streamline the export procedure under section 801(e)(2) of the act? If so, what specific relief for exports under § 801(e)(2) of the act is sought for U.S. IDE devices that is not preceded by the new legislation?

2. If a final rule is still necessary, what changes to the rule should be made? For example, the proposed rule included a program option under which foreign countries would notify FDA of their willingness to accept devices that are the subject of an approved IDE. However, there is little evidence to suggest that foreign governments will be willing to accept all IDE devices. Conceivably, a foreign government might be inclined to impose conditions on its acceptance of IDE devices, or accept some, but not all, devices. What are some alternatives to this program option? FDA invites interested persons to submit draft language for any suggested regulatory change.

Interested persons may, on or before March 10, 1997 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

During this comment period and FDA's review of the comments, FDA will issue export permits under section 801(e)(2) of the act using current CDRH procedures. A copy of the procedures may be obtained through the Information Processing and Office Automation Branch (HFZ–307), Division of Program Operations, CDRH, by calling 301–594–4520 or by faxing a request to 301–594–4528. In the event that FDA decides, after considering the comments received, not to issue a final rule or to issue a new proposal, FDA will continue to issue export permits under section 801(e)(2) of the act using current CDRH procedures.

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–292 Filed 1–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–208172–91]

RIN 1545–AU71

Basis Reduction Due to Discharge of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide ordering rules for the reduction of bases of property under sections 108 and 1017 of the Internal Revenue Code of 1986. The regulations will affect taxpayers that exclude discharge of indebtedness from gross income under section 108.

DATES: Written comments must be received by April 7, 1997. Outlines of oral comments to be presented at the public hearing scheduled for April 24, 1997, at 10 a.m. must be received by April 3, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208172–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208172–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations generally, Sharon L. Hall or Christopher F. Kane of the Office of Assistant Chief Counsel (Income Tax & Accounting) at (202) 622–4930; concerning partnership adjustments under section 1017, Brian M. Blum of the Office of Assistant Chief Counsel (Passthroughs & Special Industries) at (202) 622–3050; concerning submissions and the hearing, Evangelista C. Lee of the Regulations Unit at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by March 10, 1997. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§ 1.108–4(b), 1.1017–1(e)(2), and 1.1017–1(f)(2)(ii) and (iii). This information is required for a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(1) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property. This information will be used to determine

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whether taxpayers have properly reduced the bases of their properties. The collections of information are required to obtain a benefit. The likely respondents are individuals, farms, businesses or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: *100,000* hour.

Estimated average annual burden per respondent: *1* hour.

Estimated number of respondents: *100,000*.

Estimated annual frequency of responses: *On occasion*.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This notice contains proposed amendments to the income tax regulations (26 CFR Parts 1 and 301) under sections 108 and 1017 of the Internal Revenue Code of 1986 (Code). The amendments are proposed to conform the regulations to amendments to sections 108 and 1017 made by the Bankruptcy Tax Act of 1980, Pub. L. 96–589, § 2, 94 Stat. 3389 (1980), 1980–2 C.B. 607 (Bankruptcy Tax Act); the Technical Corrections Act of 1982, Pub. L. 97–448, § 102(h)(1), 96 Stat. 2365, 2372 (1983), 1983–1 C.B. 451; the Deficit Reduction Act of 1984, Pub. L. 98–369, §§ 474(r)(5) and 721(b)(2), 98 Stat. 494, 839, 966 (1984), 1984–3 C.B. (Vol. 1) 1; the Tax Reform Act of 1986, Pub. L. 99–514, §§ 104(b)(2), 231(d)(3)(D), 822, and 1171(b)(4), 100 Stat. 2085, 2105, 2179, 2373, 2513 (1986), 1986–3 C.B. (Vol. 1) 2; and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, § 13150, 107 Stat. 312, 446 (1993), 1993–3 C.B. 1.

In general, section 108 excludes from gross income discharges of indebtedness if the discharge occurs in a title 11 case or when the taxpayer is insolvent, or if the indebtedness is "qualified farm indebtedness" or "qualified real property business indebtedness." Taxpayers generally must reduce specified tax attributes, including adjusted bases of properties, to the extent income from discharge of indebtedness is excluded from gross income under section 108. Section 1017 provides rules regarding any basis reductions required by, or elected under, section 108.

Explanation of Provisions

Overview

The legislative history of the Bankruptcy Tax Act states that the exclusion of discharge of indebtedness (COD income) from gross income under section 108 is intended to promote a debtor's fresh start. S. Rep. No. 1035, 96th Cong., 2d Sess. 10 (1980), 1980–2 C.B. 620, 624; H.R. Rep. No. 833, 96th Cong., 2d Sess. 11 (1980). The exclusion provided by the statute generally operates, however, to defer, rather than eliminate, income from discharge of indebtedness.

The deferral of income provided by statute is generally achieved by requiring a taxpayer to reduce specified tax attributes (including adjusted bases of property) under section 108(b) by an amount equal to the COD income excluded from gross income under section 108(a). Section 108(b)(2) requires a taxpayer to reduce tax attributes in the following order: (A) net operating loss; (B) general business credit; (C) minimum tax credit; (D) capital loss carryovers; (E) adjusted bases of property; (F) passive activity loss and credit carryovers; and (G) foreign tax credit carryovers. If the excluded COD income exceeds the sum of the taxpayer's tax attributes, the excess is permanently excluded from the taxpayer's gross income.

When basis reductions are necessary, section 1017(a) requires the taxpayer to reduce the adjusted bases of property held on the first day of the following tax year. Section 1017(b)(1) provides that the amount of the basis reduction required under section 1017(a), and the particular properties the bases of which are to be reduced, shall be determined under regulations.

General Rules for Basis Reduction

Consistent with the legislative history of the Bankruptcy Tax Act, the proposed regulations generally retain the "tracing" approach of the existing regulations issued under prior law. Thus, the proposed regulations require a taxpayer to reduce the adjusted basis of the property that secured the discharged indebtedness before reducing the adjusted bases of other property.

In addition, the proposed regulations modify the categories in the existing regulations to simplify the process of basis reduction. First, the distinction between purchase-money indebtedness and other secured indebtedness is eliminated. Second, the order of basis reduction for property that secured discharged indebtedness is changed. Thus, the first category of the general ordering rule is real property used in the taxpayer's trade or business or held for the production of income (other than section 1221(1) real property) that secured the discharged indebtedness, and the second category is personal property used in the taxpayer's trade or business or held for the production of income (other than inventory, accounts receivable, and notes receivable) that secured the discharged indebtedness. Therefore, if an indebtedness secured by a building, a parcel of land used in the taxpayer's trade or business, office equipment, and office furniture is discharged, the taxpayer proportionately reduces the adjusted bases of the building and the parcel of land, based upon their relative adjusted bases, to the full extent of the excluded COD income before reducing the adjusted bases of the office equipment and the office furniture. The IRS and Treasury Department believe that this modification of the current regulations will simplify the process of basis reduction for many taxpayers.

Special Rules for Depreciable Properties

Instead of reducing tax attributes in the order specified by section 108(b)(2), a taxpayer may elect under section 108(b)(5) first to reduce the adjusted bases of depreciable property (real and personal) to the extent of the excluded COD income. If the adjusted bases of depreciable property are insufficient to offset the entire amount of excluded COD income, the taxpayer must reduce any remaining tax attributes in the order specified in section 108(b)(2). Section 108(c) requires that excluded COD income from the cancellation of qualified real property business indebtedness must be applied against depreciable real property.

Section 1017(b)(3)(C) provides that a taxpayer must treat a partnership interest as depreciable property when reducing adjusted bases under section 108(b)(5), and as depreciable real property when reducing adjusted bases under section 108(c), to the extent the partnership correspondingly reduces the partner's proportionate interest in the adjusted bases of depreciable property (or depreciable real property) held by the partnership (inside basis).

The proposed regulations generally provide that a taxpayer may freely choose whether or not to request that a partnership reduce the partner's share of depreciable basis in partnership property and thereby permit the taxpayer to treat the partnership interest

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as depreciable property (or depreciable real property). In addition, the proposed regulations generally provide that the partnership is free to grant or deny its consent. In order to prevent avoidance of the general ordering rules of the proposed regulations through the use of partnerships, however, a partner is required to request consent if the partner owns (directly or indirectly) more than 50 percent of the capital and profits interests of the partnership, or if the partner receives a distributive share of COD income from the partnership. In addition, the partnership is required to grant consent if requests are made by partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership.

The proposed regulations provide that a partner requesting a reduction in inside basis must make the request before the due date (including extensions) for filing the partner's Federal income tax return for the taxable year in which the partner has COD income. A partnership that consents to a basis reduction must include a consent statement with its Form 1065, U.S. Partnership Return of Income, and must also provide a copy of that statement to the affected partner on or before the date the Form 1065 is filed. The IRS and Treasury Department recognize that under current law a partner may not always have sufficient information with which to decide to request a basis reduction until on, or shortly before, the due date (including extensions) for filing the partner's tax return. For example, for calendar year taxpayers, a partner's tax return and a partnership's Form 1065 are generally due on the same day. *See* sections 6031 and 6072. Comments are requested as to whether additional rules (such as requiring a partnership to inform partners of COD income prior to the date the Form 1065 is filed) are necessary to ensure that information is exchanged between the partnership and its partners in a timely fashion.

The proposed regulations remove § 301.9100–13T, which governs elections under section 108(b)(5), and add new proposed § 1.108–4. Under the temporary regulations, a taxpayer is required to make the election with the taxpayer's Federal income tax return for the taxable year in which the discharge occurs, but is permitted to file an election with an amended return, or claim for credit or refund, if the taxpayer establishes reasonable cause for failing to file the election with the original return. New proposed § 1.108–4 requires the taxpayer to make the election on the timely filed (including extensions) Federal income tax return for the taxable year the taxpayer has COD income that is excluded under section 108(a). Therefore, a taxpayer that fails to make the election on that return must request the Commissioner's consent to file a late election under § 301.9100–3T or any regulations that supersede § 301.9100–3T.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Initial Regulatory Flexibility Act Analysis

This initial analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). In certain circumstances, the proposed regulations will require a partnership to include a statement with its Form 1065, U.S. Partnership Return of Income, and provide a copy of that statement with the taxpayer's Schedule K–1 (Form 1065), Partner's Share of Income, Credits, Deductions, etc., for the taxable year in which the COD income is excluded under section 108(a), stating the amount of the partner's share of the reduction in the partnership's adjusted bases of depreciable real or personal property (inside basis). This requirement will ensure that the partner knows it is entitled to reduce the adjusted basis of the partnership interest and that the affected partnership knows it must reduce the partner's interest in inside basis. The legal basis for this requirement is contained in sections 1017(b), 6001, and 7805(a).

Though the proposed regulations might affect any partnership owning depreciable property, the IRS and Treasury Department believe that partnerships owning depreciable real property are the most likely to be affected. Approximately 1,560,000 partnership returns were filed for 1993. Approximately 620,000 of these were for partnerships owning real property. It is unlikely, however, that many of these partnerships will be affected by the proposed regulations in any given year.

After a partner conveys information concerning the amount of COD income excluded from gross income under section 108(a) to the affected partnership, the partnership must reduce the partner's interest in inside basis. Accordingly, the partnership must prepare and maintain special entries on its books because this basis reduction will reduce the partner's share of the partnership's depreciation deductions, and ultimate gain or loss on the sale of the property, in subsequent years. In many cases, partnership returns are prepared using computer software that can prepare and maintain these special entries after the initial year.

The IRS and Treasury Department are not aware of any federal rules that may duplicate, overlap, or conflict with the proposed rule.

As an alternative to the disclosure described above, the IRS and Treasury Department considered, but rejected as too burdensome, a rule that would have required an affected partnership to disclose the reductions of adjusted basis on a property-by-property basis. There are no known alternative rules that are less burdensome to small entities but that accomplish the purpose of the statute. The IRS and Treasury Department request comments from small entities concerning possible alternatives.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 29, 1997, at 10 a.m. in IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 7, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 3, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Leo F. Nolan II, Office of Assistant Chief Counsel (Income Tax

and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.108–4 also issued under 26 U.S.C. 108.

Section 1.108–5 also issued under 26 U.S.C. 108.

Section 1.1017–1 also issued under 26 U.S.C. 1017.

§ 1.108(a)–1 [Removed]

Par. 2. Section 1.108(a)–1 is removed.

§ 1.108(a)–2 [Removed]

Par. 3. Section 1.108(a)–2 is removed.

§ 1.108(b)–1 [Removed]

Par. 4. Section 1.108(b)–1 is removed.

§ 1.1016–7 [Removed]

Par. 5. Section 1.1016–7 is removed.

§ 1.1016–8 [Removed]

Par. 6–7. Section 1.1016–8 is removed.

§ 1.1017–2 [Removed]

Par. 8. Section 1.1017–2 is removed.

Par. 9. Section 1.108–4 is added to read as follows:

§ 1.108–4 Election to reduce basis of depreciable property under section 108(b)(5).

(a) *Description.* An election under section 108(b)(5) is available whenever a taxpayer excludes discharge of indebtedness (COD income) from gross income under sections 108(a)(1)(A), (B), or (C) (concerning title 11 cases, insolvency, and qualified farm indebtedness, respectively). See sections 108(d)(2) and (3) for the definitions of *title 11 case* and *insolvent*. See section 108(g)(2) for the definition of *qualified farm indebtedness*.

(b) *Time and manner.* To make an election under section 108(b)(5), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, and attach the form to the timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this section may be revoked only with the consent of the Commissioner.

(c) *Effective date.* This section is effective for elections concerning discharges of indebtedness occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 10. Section 1.108–5 is added to read as follows:

§ 1.108–5 Limitations on the exclusion of income from the discharge of qualified real property business indebtedness.

(a) *Indebtedness in excess of value.* The amount excluded from gross income under section 108(a)(1)(D) (concerning discharges of qualified real property business indebtedness) shall not exceed the excess, if any, of the outstanding principal amount of that indebtedness immediately before the discharge over the net fair market value of the qualifying real property, as defined in § 1.1017–1(c)(1), immediately before the discharge. For purposes of this section, *net fair market value* means the fair market value of the qualifying real property (notwithstanding section 7701(g)) reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by that property immediately before and after the discharge.

(b) *Overall limitation.* The amount excluded from gross income under section 108(a)(1)(D) shall not exceed the aggregate adjusted bases of all depreciable real property held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of the discharge) reduced by the sum of any—

(1) Depreciation claimed for the taxable year the taxpayer excluded discharge of indebtedness from gross income under section 108(a)(1)(D); and

(2) Reductions to the adjusted bases of depreciable real property required under section 108(b) or section 108(g) for the same taxable year.

(c) *Effective date.* This section is effective for discharges of qualified real property business indebtedness occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 11. Section 1.1017–1 is revised to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

(a) *General rule for section 108(b)(2)(E).* This paragraph (a) applies to basis reductions under section 108(b)(2)(E) that are required by section 108(a)(1) (A) or (B) because the taxpayer excluded discharge of indebtedness (COD income) from gross income. A taxpayer must reduce in the following order, to the extent of the excluded COD income but not below zero, the adjusted bases of property held on the first day of the taxable year following the taxable year that the taxpayer excluded COD income from gross income (in proportion to adjusted basis):

(1) Real property used in a trade or business or held for investment, other than real property described in section 1221(1), that secured the discharged indebtedness immediately before the discharge (see paragraph (f)(1) of this section for the treatment of partnership indebtedness as indebtedness secured by the taxpayer's interest in the partnership);

(2) Personal property used in a trade or business or held for investment, other than inventory, accounts receivable, and notes receivable, that secured the indebtedness immediately before the discharge (see paragraph (f)(1) of this section for the treatment of partnership indebtedness as indebtedness secured by the taxpayer's interest in the partnership);

(3) Remaining property used in a trade or business or held for investment, other than inventory, accounts receivable, notes receivable, and real property described in section 1221(1);

(4) Inventory, accounts receivable, notes receivable, and real property described in section 1221(1); and

(5) Property not used in a trade or business nor held for investment.

(b) *Operating rules*—(1) *Prior tax-attribute reduction.* The amount of excluded COD income applied to reduce basis does not include any COD income applied to reduce tax attributes under sections 108(b)(2) (A) through (D) and, if applicable, section 108(b)(5). For example, if a taxpayer excludes $100 of COD income from gross income under section 108(a) and reduces tax attributes by $40 under sections 108(b)(2) (A) through (D), the taxpayer is required to reduce the adjusted bases of property by $60 ($100–$40) under section 108(b)(2)(E).

(2) *Multiple discharged indebtednesses.* If a taxpayer has COD

income attributable to more than one discharged indebtedness resulting in the reduction of tax attributes under sections 108(b)(2) (A) through (D) and, if applicable, section 108(b)(5), paragraph (b)(1) of this section must be applied by allocating the tax-attribute reductions among the indebtednesses in proportion to the amount of COD income attributable to each discharged indebtedness. For example, if a taxpayer excludes $20 of COD income attributable to secured indebtedness A and excludes $80 of COD income attributable to unsecured indebtedness B (a total exclusion of $100), and if the taxpayer reduces tax attributes by $40 under sections 108(b)(2) (A) through (D), the taxpayer must reduce the amount of COD income attributable to secured indebtedness A to $12 ($20 − ($20 ÷ $100 × $40)) and must reduce the amount of COD income attributable to unsecured indebtedness B to $48 ($80 − ($80 ÷ $100 × $40)).

(3) *Limitation on basis reductions under section 108(b)(2)(E) in bankruptcy or insolvency.* If COD income arises from a discharge of indebtedness in a title 11 case or while the taxpayer is insolvent, the amount of any basis reduction under section 108(b)(2)(E) shall not exceed the excess of—

(i) The aggregate of the adjusted bases of property and the amount of money held by the taxpayer immediately after the discharge; over

(ii) The aggregate of the liabilities of the taxpayer immediately after the discharge.

(c) *Modification of ordering rules for basis reductions under sections 108(b)(5) and 108(c)*—(1) *In general.* The ordering rules prescribed in paragraph (a) of this section apply, with appropriate modifications, to basis reductions under sections 108 (b)(5) and (c). Thus, a taxpayer may reduce only the adjusted bases of depreciable property under section 108(b)(5) and may reduce only the adjusted bases of depreciable real property under section 108(c). Furthermore, for basis reductions under section 108(c), a taxpayer must reduce the adjusted basis of the qualifying real property to the extent of the discharged qualified real property business indebtedness before reducing the adjusted bases of other depreciable real property. The term *qualifying real property* means real property with respect to which the indebtedness is qualified real property business indebtedness within the meaning of section 108(c)(3). See paragraphs (e) and (f) of this section for elections relating to section 1221(1) property and partnership interests.

(2) *Partial basis reductions under section 108(b)(5).* If the amount of basis reductions under section 108(b)(5) is less than the amount of the COD income excluded from gross income under section 108(a), the taxpayer must reduce the balance of its tax attributes, including any remaining adjusted bases of depreciable property, under section 108(b)(2). For example, if a taxpayer excludes $100 of COD income from gross income under section 108(a) and elects to reduce the adjusted bases of depreciable property by $10 under section 108(b)(5), the taxpayer must reduce its remaining tax attributes by $90 under section 108(b)(2).

(3) *Modification of fresh start rule for prior basis reductions under section 108(b)(5).* After reducing the adjusted bases of depreciable property under section 108(b)(5), a taxpayer must compute the limitation on basis reductions under section 1017(b)(2) using the aggregate of the remaining adjusted bases of property. For example, if, immediately after the discharge of indebtedness in a title 11 case, a taxpayer's adjusted bases of property is $100 and its undischarged indebtedness is $70, and if the taxpayer elects to reduce the adjusted bases of depreciable property by $10 under section 108(b)(5), section 1017(b)(2) limits any further basis reductions under section 108(b)(2)(E) to $20 (($100 − $10) − $70).

(d) *Changes in security.* Any change in the property securing an indebtedness during the one-year period preceding the discharge of that indebtedness shall be disregarded if a principal purpose of that change is to affect the taxpayer's basis reductions under section 1017.

(e) *Election to treat section 1221(1) real property as depreciable*—(1) *In general.* For basis reductions under sections 108 (b)(5) and (g), a taxpayer may elect under sections 1017(b) (3)(E) and (4)(C), respectively, to treat real property described in section 1221(1) as depreciable property. This election is not available, however, for basis reductions under section 108(c).

(2) *Time and manner.* To make an election under section 1017(b) (3)(E) or (4)(C), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, and attach the form to a timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this paragraph (e) may be revoked only with the consent of the Commissioner.

(f) *Partnerships*—(1) *Partnership COD income.* For purposes of paragraph (a) of this section, a taxpayer must treat a distributive share of a partnership's COD income as attributable to a discharged indebtedness secured by the taxpayer's interest in that partnership.

(2) *Partnership interest treated as depreciable property*—(i) *In general.* For purposes of making basis reductions, if a taxpayer makes an election under section 108 (b)(5) or (c) the taxpayer must treat a partnership interest as depreciable property (or depreciable real property) to the extent of the partner's proportionate share of the partnership's basis in depreciable property (or depreciable real property), provided the partnership consents to a corresponding reduction in the partnership's basis (inside basis) in depreciable property (or depreciable real property) with respect to such partner.

(ii) *Request by partner and consent of partnership*—(A) *In general.* Except as otherwise provided in this paragraph (f)(2)(ii), a taxpayer may choose whether or not to request that a partnership reduce the inside basis of its depreciable property (or depreciable real property) with respect to the taxpayer, and the partnership may grant or withhold such consent, in its sole discretion. A request by the taxpayer must be made before the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a).

(B) *Request for consent required.* A taxpayer must request a partnership's consent to reduce inside basis if the taxpayer owns (directly or indirectly) a greater than 50 percent interest in the capital and profits of the partnership, or if reductions to the basis of the taxpayer's depreciable property (or depreciable real property) are being made with respect to the taxpayer's distributive share of COD income of the partnership.

(C) *Granting of request required.* A partnership must consent to reduce its partners' shares of inside basis if consent is requested by partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership. For example, if there is a cancellation of partnership indebtedness securing real property used in a partnership's trade or business, and if partners owning (in the aggregate) 60 percent of the capital and profits interests of the partnership elect to exclude the COD income under

section 108(c), the partnership must make the appropriate reductions in those partners' shares of inside basis.

(iii) *Partnership consent statement*—(A) *Partnership requirement.* A consenting partnership must include with the Form 1065, U.S. Partnership Return of Income, for the taxable year of the partnership that ends with or within the taxable year the taxpayer excludes COD income from gross income under section 108(a), and must provide to the taxpayer on or before the date the Form 1065 is filed, a statement that—

(*1*) Contains the name, address, and taxpayer identification number of the partnership; and

(*2*) States the amount of the reduction of the partner's proportionate interest in the adjusted bases of the partnership's depreciable property or depreciable real property, whichever is applicable.

(B) *Taxpayer's requirement.* Statements described in paragraph (f)(2)(iii)(A) of this section must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a).

(iv) *Partner's share of partnership's adjusted basis.* [Reserved.]

(3) *Partnership basis reduction.* The rules of this section (including this paragraph (f)), apply in determining the properties to which the partnership's basis reductions must be made.

(g) *Special allocation rule for cases to which section 1398 applies.* If a bankruptcy estate and a taxpayer to whom section 1398 applies (concerning only individuals under Chapter 7 or 11 of title 11 of the United States Code) hold property subject to basis reduction under section 108(b)(2)(E) or (5) on the first day of the taxable year following the taxable year of discharge, the bankruptcy estate must reduce all of the adjusted bases of its property before the taxpayer is required to reduce any adjusted bases of property.

(h) *Effective date.* This section is effective for discharges of indebtedness occurring on or after the date these regulations are published as final regulations in the **Federal Register.**

PART 301—PROCEDURE AND ADMINISTRATION

Par. 12. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.9100–13T [Removed]

Par. 13. Section 301.9100–13T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–154 Filed 1–6–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270 and 271

[FRL–5672–6]

RIN 2050–AF01

Hazardous Waste Combustors; Revised Standards; Proposed Rule—Notice of Data Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: This announcement is a notice of availability and invitation for comment on the Agency's updated database of emissions and ancillary information on hazardous waste combustors (HWCs) pertaining to the proposed revised standards for hazardous waste combustors (61 FR 17358 (April 19, 1996)).

Readers should note that only comments about new information discussed in this notice will be considered during the comment period. Issues related to the April 19, 1996, proposed rule that are not directly affected by the documents or data referenced in this Notice of Data Availability are not open for further comment.

DATES: Written comments must be submitted by February 6, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–96–CS2A–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–CS2A–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, OSW (5305W), 401 M Street, SW, Washington D.C. 20460. For other information regarding submitting comments electronically, or viewing the comments received or supporting information, please refer to the proposed rule (61 FR 17358 (April 19, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired) including directions on how to access electronically the database document (USEPA, "Updated Hazardous Waste Combustor Database," December 1996) via EPA's Cleanup Information Bulletin Board System (CLU–IN). The database document is posted on CLU–IN in Portable Document Format (PDF) and can be viewed and printed using Acrobat Reader. The CLU–IN modem access phone number is 301–589–8366 or Telnet to clu-in.epa.gov for Internet access. The RCRA Hotline is open Monday–Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). For other information on this notice, contact Bob Holloway (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, phone (703) 308–8461, e-mail: holloway.bob@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed revised standards for hazardous waste combustors (i.e., incinerators and cement and lightweight aggregate kilns that burn hazardous waste). See 61 FR 17358. After an extension of the comment period, the comment period closed on August 19, 1996.

The Agency also published a notice of data availability (NODA) on August 23, 1996 (61 FR 43501) inviting comment on information pertaining to a peer review of aspects of the proposed rule, additional analyses of fuel oils that

would be used to establish a comparable fuel exclusion, and information on a synthesis gas process. The comment period on that NODA closed on September 23, 1996.

The Agency is today providing notice and opportunity to comment on an updated hazardous waste combustor database that presents the emissions and ancillary data that the Agency plans to use to develop the final rule. We note that changes in the proposed MACT floor levels could result from applying the alternative MACT methodologies discussed in the proposed rule to the updated database. In addition, changes in cost-effectiveness, and baseline and residual risk could result from using the updated database. Finally, the Agency will use the updated data in making decisions such as whether and how to subdivide source categories, whether to use normal versus compliance test data to develop standards, and whether to use older emissions data when more recent data are available from a source.

Updated HWC Data Base

EPA compiled a database containing the results of hazardous waste combustor (HWC) trial burns and facility operating and design characteristics as part of the development of the April 1996 proposed "Maximum Achievable Control Technology" (MACT) standards for HWCs (61 FR 17358, April 19, 1996). The database contains information from facilities in three source categories which burn hazardous wastes: incinerators (over 90 units), cement kilns (40 units), and lightweight aggregate kilns (13 units).[1] The database contains stack gas emissions data (including data on metals, chlorine, particulate matter, chlorinated dioxins and furans (PCDD/PCDF), carbon monoxide (CO), and hydrocarbons (HC)), process operating data (including waste, fuel, and raw materials compositions and feed rates), and facility equipment design and operational data (including combustor and air pollution control device temperatures, pressures, etc.).

Since the proposal of the rule, the Agency has received comments from stakeholders identifying: (1) errors in the database used for the proposed rule; and (2) new HWC trial burn and certification of compliance reports that were not considered for the proposed rule. Additionally, the Agency has received new compliance test reports through other data-gathering efforts since the proposed rule. The Agency has updated and revised the HWC database based on these comments and other data collection efforts.

The updated database is provided in: USEPA, "Updated Hazardous Waste Combustor Database," December, 1996. This document is referred to in this notice as the database document. Hard copy printouts of the updated and revised database are contained in the "Data Summary Reports", found as Appendices to the document. The database document is provided in the administrative docket for this rule. In addition, an electronic version of the document can be accessed electronically via CLU–IN. (See the **FOR FURTHER INFORMATION** section of this notice.) Finally, the database is also available to interested persons in the database application Paradox (Version 5.0 for Windows). Refer to the database document for details.

The updated database has the same structure and main fields as that used for the proposed rule. It has nine related files:

- Site Information: Contains general information on each combustor unit, including database identification number, EPA identification number, EPA Region, company name, location (city and state), device name, air pollution control system, system type (commercial or onsite incinerator, cement kiln, lightweight aggregate kiln), waste burning status, and cement kiln design identifiers.
- Test Condition Information: Contains information on each test condition, including test condition and run identification number (both internal database and site identification numbers), condition and run dates, type of wastes and auxiliary fuels burned during the condition, description of the condition, as well as newly added condition descriptors identifying the condition as "baseline," "normal," or "permit mode" (as described in more detail below), and whether the condition was conducted with the most recent facility equipment and design.
- Stream Information: Contains information on the type and sampling location of each process stream (system outputs including stack gas emissions and solid effluents as well as system inputs including waste streams, auxiliary fuels, spiking streams, etc.), as well as stack information (including height and diameter).
- Process Stream Information: Contains information on each process stream, including rates (feed rates and discharge rates of solid, liquid and gas streams), as well as other stream properties (such as stack gas conditions including temperature, moisture, oxygen, and solid and liquid densities).
- Process Analysis Information: Contains feed input and effluent rates for a variety of constituents (including metals, chlorine, organics, ash, particulate matter, carbon monoxide, and hydrocarbons) associated with each of the process streams (both system inputs and effluents).
- Air Pollution Control Device Design Parameters: Contains information on design parameters of each air pollution control device (e.g., baghouse cloth area, cloth type, cleaning method).
- Air Pollution Control Device Operating Parameters: Contains information, by test condition run, on operating parameters of each air pollution control device (e.g., ESP specific collection area, operating temperature, power input).
- Combustor Design Parameters: Contains information on design parameters of the combustor (e.g., combustor size, manufacturer, type, number of chambers, cement kiln design).
- Combustor Operating Parameters: Contains information, by test condition run, on operating parameters of the combustor (e.g., combustor temperature, pressure).

The use and contents (including a comprehensive "data element dictionary") of the database are described in detail in the database document.

Updates to the Database

1. Changes to Existing Data Used to Support the Proposed Rule

The Agency received comments on additions and errors to data contained in the proposed rule database from three sources. The Chemical Manufacturers Association (CMA) provided specific comments on data from 21 incinerator facilities (RCSP–00182). The Cement Kiln Recycling Coalition provided specific comments on data from 23 cement kiln facilities (RCSP–00170) as well as some incinerators (overlapping generally with the CMA comments). For lightweight aggregate kilns, Solite provided specific comments on individual LWAK facilities (RCSP–00187).

The comments included identification of: (1) transcription errors (those made in transferring the data from the test report to the database); (2) test report errors; (3) missed or missing data; (4) non-representative conditions (such as baseline non-hazardous waste burning conditions); (5) updated reports (some Certification of Compliance tests that were used have since been revised and

[1] Data on boilers are also included in the database even though hazardous waste burning boilers would not be subject to this rule.

updated); (6) facilities not currently burning hazardous waste; (7) unsubstantiated and/or incorrect air pollution control device characteristics; and (8) inaccurate conversion of concentration emissions from mass based levels using gas flow rates and oxygen level. Changes and responses made as appropriate to each of the specific comments in each of these areas are discussed in detail in the database document.

2. New Test Reports Added to the Database

The Agency added results from many new test reports (from both new facilities as well as new test reports from facilities already in the database) to the HWC database. For incinerators, a few new trial burn reports were obtained through comments on the proposed rule, including reports from First Mississippi Corp., American Cyanamid, and Ciba Geigy. Various other reports from approximately 15 new incinerators, as well as new reports from facilities already in the database, including Waste Technologies Industries and DuPont, were added based on collection from the individual companies and/or EPA Regional Office archives.

The Agency added data from many new cement kiln test reports received from the Cement Kiln Recycling Coalition. Additionally, other individual cement companies including Ash Grove, Lafarge, Citadel/Medusa, and Continental provided separate test reports as part of their comments. The data are comprised of many new "second round" Certification of Compliance reports from testing done in 1994–1996, as well as various miscellaneous stack testing reports from conditions under "normal" non-trial burn type waste burning operations.

For LWAKs, the Agency added three new reports from Solite (all from new units) and a new report from Norlite based on comments on the proposed rule and other data collection efforts.

All new data that the Agency has incorporated into the database since the rule was proposed are tabulated in detail in the database document.

3. Other Database Additions

In addition to the above described database updates and changes, the Agency has added the following new information to the database:

• Device Descriptors:

—Waste Burning Status: Field identifying if the facility is currently burning hazardous waste.

—Mixed Waste Burner: Field identifying if the combustor accepts and routinely treats hazardous and radioactively contaminated "mixed" wastes.

—Cement Kiln Descriptors: Fields identifying long vs short kilns, those with alkali bypasses, and those with in-line raw mills.

• Condition Descriptors:

—Test Condition Date: Field identifying the test condition date.

—Baseline Conditions: Field identifying whether the condition was conducted under "baseline" conditions, baseline conditions being those where hazardous waste is not being fired.

—"Normal" Conditions: Field identifying whether the condition was conducted under "normal" conditions. Normal conditions are defined as conditions conducted where hazardous waste is being burned, and where the unit is operating under typical "every day" procedures. During such testing, there is no intentional spiking of waste materials with POHC, chlorine, or metals compounds. Additionally, the unit is not operating under "stressed" conditions designed to maximize or minimize factors such as waste feed rates, temperatures, and air pollution control device operating parameters.

—"Permit" Mode: Fields identifying whether the source used the test condition for setting permit or interim status operating limits for each individual constituent (each hazardous air pollutant or surrogate, including individual metals). For example, for metals and chlorine being controlled under the Boilers and Industrial Furnaces Rule, the condition would be a "permit mode" for all Tier II or Tier III constituents since the source testing was designed to evaluate acceptable feed rate limits based on the demonstrated system removal efficiency of the facility. Alternately, the condition would not be a permit (or operating limit) mode for Tier I or adjusted Tier I constituents since the source testing is not used for any direct regulatory-setting purpose. Only tests conducted with the purpose of complying with or establishing permit conditions (or interim status operating limits) and intended to be used to establish a facility "operating envelope" with respect to the specific HAP were identified with the "permit" mode marker.

—Latest Retrofits: Field identifying whether the condition is conducted using the most recent equipment and configuration.

Dated: December 19, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 97–34 Filed 1–6–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 4
Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–097–1]

General Conference Committee of the National Poultry Improvement Plan Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held at the World Congress Center, Room 204 Red East, Atlanta, GA; (404) 223–4300. The General Conference Committee will meet on January 22, 1997 from 1:30 p.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, NPIP, VS, APHIS, 1500 Klondike Road, Suite A 102, Conyers, GA 30207, (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Tentative topics for discussion at the upcoming meeting include:

1. The Georgia pullorum-typhoid study of susceptibility in the ostrich.
2. Technical evaluation of the current pollorum-typhoid serological assays as they apply to the ostrich.
3. Technical review of alternative testing for pullorum-typhoid at the hatchery for the ostrich.
4. California's ostrich health program.
5. Ratite diseases.
6. USDA import requirements for the ostrich.
7. Export requirements for the ostrich (China and Taiwan).
8. Proposed changes to the provisions of the NPIP.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the committee's discussions. Written statements on the meeting topics may be filed with the committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. 96–097–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 3rd day of January 1997.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–427 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–34–P

Rural Housing Service

Housing Preservation Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: RHS hereby announces that it will begin receiving preapplications on January 7, 1997. The closing date for acceptance by RHS of preapplications is April 7, 1997. This period will be the only time during the current fiscal year that RHS accepts preapplications. Preapplications must be received by or postmarked on or before the closing date.

ADDRESSES: Submit preapplications to Rural Development servicing offices for the HPG program; applicants must contact their Rural Development State Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris-Green, Senior Loan Officer, Multi-Family Housing Processing Division, RHS, USDA, Room 5337, South Building, Washington, DC 20250, telephone (202) 720–1606. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information and copies of the preapplication package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433, Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are also referred to 7 CFR 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established, although based on fiscal year (FY) 1997 funding availability, the Agency anticipates that the average grant will be $50,000 for a 1-year proposal. For FY 97, $7,063,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant

Program Funds." Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: December 30, 1996.

Eileen M. Fitzgerald,

Acting Associate Administrator, Rural Housing Service.

[FR Doc. 97–275 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–XV–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 27 and October 25, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 50804 and 55268) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Cap, Garrison, Men's, Army Enlisted
8405–01–334–1493 thru –1505
(20% of the Government's requirement)

Service

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Broken Arrow, Oklahoma

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 97–200 Filed 1–6–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Library Services, Basewide, Beale Air Force Base, California
NPA: Yolo Employment Services, Woodland, California

Publication Distribution Services, Beale Air Force Base, California
NPA: Yolo Employment Services, Woodland, California

Temporary Administrative/General Support Services for GSA Regions 1, 2, 3, 4, 5, 6, 8, 9, 10 and the National Capitol Region
(Up to 50% of the Government's requirement)
NPA: (the following is not a complete list)
Columbia Lighthouse for the Blind, Washington, DC
The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Seattle Lighthouse for the Blind, Seattle, Washington
Alabama Industries for the Blind, Talladega, Alabama
Arizona Industries for the Blind, Phoenix, Arizona
Fedcap Rehabilitation Service, Inc., New York, New York
Brevard Achievement Center, Inc., Rockledge, Florida
Challenge Unlimited, Inc., Alton, Illinois
Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota
Yuma Work Center, Inc., Yuma, Arizona

Cooperative Workshop, Inc., Sedalia, Missouri

G. John Heyer,

General Counsel.

[FR Doc. 97–201 Filed 1–6–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 9, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMs) of one megabit or above from the Republic of Korea (61 FR 36029). The review covers two manufacturers/exporters of the subject merchandise to the United States for the period May 1, 1994 through April 30, 1995. These manufacturers/exporters are LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.) and Hyundai Electronics Industries, Inc. (HEI/Hyundai).

As a result of our analysis of the comments received, the antidumping margins have changed from those presented in our preliminary results.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1995, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period of May 1, 1994, through April 30, 1995 (60 FR 24831). We received timely requests for review from three manufacturers/exporters of subject merchandise to the United States: Hyundai Electronics Industries, Co. (Hyundai), LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.), and Samsung Electronics Co. (Samsung). The petitioner, Micron Technologies Inc., requested an administrative review of these same three Korean manufacturers of DRAMs. On June 15, 1995, the Department initiated a review of the above Korean manufacturers (60 FR 31447). The period of review (POR) for all respondents was May 1, 1994, through April 30, 1995.

On June 26, 1995, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, we also initiated an investigation to determine if Hyundai and LGS made sales of the subject merchandise below the cost of production (COP) during the POR based upon the fact that we disregarded sales found to have been made below the COP in the original less-than-fair-value (LTFV) investigation.

Samsung, formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996). Accordingly, we terminated this review with respect to Samsung.

On July 9, 1996, the Department published the preliminary results (61 FR 36029) of administrative review of the antidumping duty order on DRAMs of one megabit or above from the Republic of Korea. We received timely comments from the petitioner and both respondents.

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

United States Price

We calculated U.S. price according to the methodology described in our preliminary results.

Normal Value

We calculated normal value (NV) according to the methodology described in our preliminary results.

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Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received timely comments from the petitioner and both respondents.

General Comments

Comment 1

The petitioner argues (1) that the Department should not have allowed a level of trade adjustment for both respondents, and (2) that the Department inappropriately applied a constructed export price (CEP) offset to respondents' CEP sales for this level of trade adjustment. The petitioner maintains that the Department erred in determining that one level of trade existed in the home market (direct sales by the parent corporation to the domestic customer) and a different level of trade existed in the U.S. market, where the Department used the level of trade of the sale to the affiliated importer rather than the resale to the unaffiliated customer (i.e., a "constructed" level of trade). According to the petitioner, the Act and the SAA do not permit the Department to use a "constructed" level of trade for CEP sales when identifying the level of trade. The petitioner argues that section 773(a)(7)(A) of the Act, which provides for a level of trade adjustment, does not make any distinction between export price (EP) sales and CEP sales, and that the distinction between EP and CEP sales in subsections 772(a) and 772(b) of the Act does not warrant any different treatment when identifying levels of trade.

The petitioner argues that, in view of the sections of the Act mentioned above, the Department's interpretation of the SAA as permitting a constructed level of trade means that the home market level of trade will always be a more advanced stage of distribution than the level of trade of the CEP and that the data available will never provide an adequate basis to determine a level of trade adjustment, and thus that the CEP offset will always be used. The SAA, according to the petitioner, intended the application of the CEP offset to be an exception, rather than the rule. The Department's acceptance of a constructed level of trade, the petitioner argues, contradicts the SAA's intent and the intent of the statute in section 773(a)(7)(A).

The petitioner argues further that, even if the Department adheres to the distinction between EP and CEP sales in determining the starting price for determining the level of trade, neither respondent has adequately demonstrated that it is entitled to a level of trade adjustment. The petitioner argues that the simple enumeration of selling functions in both the home market and in the U.S. market is not sufficient to demonstrate the significance of the differing selling functions in both markets.

LGS and Hyundai argue that the Department correctly applied the CEP offset to adjust for differences in the levels of trade in the two markets which were not able to be quantified. Both respondents assert that the Department's use of a "constructed" level of trade when analyzing CEP sales is in accordance with past interpretation of the SAA and of the Act. LGS maintains that the Department has consistently followed this approach and has explicitly stated in the antidumping questionnaire that constructed level of trade will be used.

LGS and Hyundai also reject the petitioner's argument that respondents have not adequately documented differences in selling functions in the home and in the U.S. markets. Respondents point out that the petitioner only referenced the brief discussion of the selling function differences contained in the notice of preliminary results and ignores the detailed analysis presented in its questionnaire response and in the Department's preliminary analysis memorandum. LGS and Hyundai argue that, because respondents' home market sales were at levels of trade more advanced than its U.S. sales and it was not possible to quantify the price differential caused by these differences, the Department should continue to allow a CEP offset to NV or to constructed value (CV) to adjust for the differences of trade in the two markets.

DOC Position

We agree with respondents. We have consistently determined that the statute and the SAA both support analyzing the level of trade of CEP sales at the constructed level, after expenses associated with economic activities in the United States (section 772(d) of the Act) have been deducted. We believe that it is neither reasonable nor logical to base level of trade on the starting price for both EP and CEP sales. We stated in Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7347 (February 27, 1996), the following:

> With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price ("EP") and CEP sales...The Department believes that this position is not supported by the SAA...If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

We have consistently stated that, in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act (see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Notice of Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38143 (July 23, 1996). In every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. See, e.g., Aramid Fiber Formed of Poly para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 15766, 15768 (April 9, 1996); Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review, FR 8915, 8916 (March 6, 1996); Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et. al., Preliminary Results of Antidumping Duty Administrative Review, 61 FR 25713, 35718–23 (July 8, 1996). In accordance with this clear precedent, our instructions in the questionnaire response issued to respondents in this administrative review stated that constructed level of trade should be used.

We disagree that respondents have not adequately documented the differences in selling functions in the home and in the U.S. markets. As noted by respondents, the petitioner based this argument solely upon the content of the preliminary results of review and ignored the detailed data on the record of this proceeding in respondents' questionnaire responses and in our preliminary analysis memorandum concerning the differences in selling functions. These data contained detailed

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information and descriptions of the differences in selling functions in the two markets (for example, the differences in shipments per month from respondents to U.S. and home market customers is described in detail).

Comment 2

The petitioner maintains that the Department's preliminary calculations contained the following clerical errors with respect to both respondents: (1) the preliminary calculations double counted interest expenses by including both reported interest expense and imputed home market credit and inventory carrying expenses in its calculation of total cost of production for purposes of calculating profit for home market, CEP, and further-processed U.S. sales; (2) the preliminary calculations failed to add U.S. packing expenses to the foreign unit price in dollars for comparisons of U.S. sales to CV; and, (3) the Department erred in computing profit for CV based upon all home market sales, including those with negative profits, maintaining that section 773(e)(2)(A) of the Act, as amended by the URAA, has changed the calculation of profit to consider only profitable sales and to exclude sales below the cost of production.

DOC Position:

We agree with the petitioner that our preliminary calculations inadvertently double counted interest expense in the computation of the total cost of production for purposes of calculating profit for home market, CEP, and further-processed U.S. sales. We also agree that U.S. packing expenses should have been added to the foreign unit price in dollars. We have revised our calculations accordingly.

While we agree that our inclusion of all home market sales for purposes of calculating profit for CV was an error, we do not agree that it was a clerical error. Section 773(e)(2)(A) of the Act specifies the addition of "the actual amounts incurred and realized by the specific exporter or producer * * * for selling, general, and administrative expenses, and for profits, in connection with the production and sales of a foreign like product in the ordinary course of trade * * *" Although the petitioner argues that sales below cost are outside of the ordinary course of trade, section 773(b) of the Act is clear that sales below cost may be disregarded as being outside the ordinary course of trade only if made within an extended period of time in substantial quantities and at prices which do not permit the recovery of costs within a reasonable period of time. Section 771(15) of the Act provides that sales which failed the cost of production test provided for under section 773(b) of the Act are outside the ordinary course of trade. However, section 771(15) of the Act does not provide that sales made below the cost of production per se are outside the ordinary course of trade. Thus, sales below cost are not in and of themselves outside the ordinary course of trade, only those sales which fail our cost of production test and are thus disregarded. Accordingly for both respondents, as a result of this analysis, we have revised our calculations to base profit on CV for both respondents upon those home market sales which do not fail our cost of production test.

Company-Specific Comments

LGS

Comment 3

The petitioner argues that the Department erred in its preliminary results in calculating research and development expenses for LGS by allocating only a portion of LGS' semiconductor research and development expenses over a portion of LGS' cost of sales. The petitioner maintains that, in accordance with the precedent set in the first administrative review, the Department should allocate all of LGS' semiconductor research and development expenses over all of LGS' 1994 semiconductor cost of sales. The petitioner also maintains that the Department erred in allocating LGS' purchased research and development over the applicable contract periods. According to the petitioner, any purchased research and development should be included with all semiconductor research and development expenses allocated over LGS' 1994 cost of sales.

LGS agrees with the petitioner that purchased research and development should be included in those research and development expenses allocated over cost of sales for 1994. LGS contends that since the Department rejected LGS' allocation of purchased research and development over contract periods in the previous administrative review, it should allocated research and development purchased in 1994 over 1994 cost of sales.

LGS disagrees with the petitioner that all semiconductor research and development expenses should be allocated over all cost of sales. LGS maintains that non-DRAM research and development does not benefit LGS' DRAM production and that the Department should calculate a product-specific research and development rate for LGS.

DOC Position

We agree with the petitioner that, in calculating a research and development rate for LGS, all semiconductor research and development expenses should be allocated over all of LGS' semiconductor cost of sales reported in its audited 1994 financial statements. This method of allocation is consistent with our practice in the last administrative review, where we determined that sufficient evidence of cross-fertilization exists in the semiconductor industry to rule out the use of only product or DRAM-related research and development expenses. See Dynamic Random Access Memory Semiconductors from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 20216, 20218 (May 6, 1996).

We agree with both the petitioner and LGS that research and development purchased in 1994 should be included in those research and development expenses allocated over LGS' 1994 cost of sales.

Comment 4

LGS argues that the Department erred in the preliminary calculations by deducting indirect selling expenses and inventory carrying costs incurred in Korea from U.S. price. LGS maintains that under the revised antidumping law, such expenses which do not result from or bear relationship to selling activities in the United States should not be deducted from U.S. price. LGS argues that the SAA only permits the deduction from U.S. price of selling expenses which result from, and bear a direct relationship to, selling activities in the United States.

The petitioner argues that the Department was correct in deducting these Korean expenses from U.S. price for LGS. The petitioner maintains that section 772(d) of the Act clearly requires the Department to reduce CEP by all expenses generally incurred by or for the account of the producer. According to the petitioner, the SAA is a clarification of prior law and was not intended to change current law.

DOC Position

We agree with the respondent. Section 772(d)(1) provides for the deduction of all expenses generally incurred by or for the account of the producer or exporter, or the affiliated reseller in the United States. However, the deductions under section 772(d) of the Act do not involve all direct and indirect selling expenses. The deductions under section 772(d) of the Act remove only expenses associated

with economic activities in the United States. Thus, the CEP is not a price necessarily exclusive of all selling expenses. Therefore, we have not deducted indirect selling expenses and inventory carrying costs incurred in Korea from U.S. price because these expenses do not result from or bear relationship to selling activities in the United States.

Comment 5

LGS and the noted the following clerical errors in the Department's computer program: (1) a programming error caused several home market sale dates to be mistakenly changed; (2) the Department's preliminary results failed to deduct home market packing expenses in its calculations of net home market price; (3) the preliminary calculations mistakenly double counted U.S. repacking expense; (4) the preliminary calculations mistakenly included duty drawback and movement expenses in the calculation of CEP profit; and, (5) the preliminary results mistakenly excluded non-profitable sales when computing profit for CEP.

DOC Position

We agree with LGS on each of these points and have revised our calculations accordingly.

Hyundai

Comment 6

The petitioner maintains that Hyundai misclassified its advertising expenses in the home market as direct selling expenses. Insofar as Hyundai did not submit samples of these advertisements, the petitioner maintains that Hyundai did not meet the burden of demonstrating that these home market advertising expenses were direct in nature. The petitioner urges the Department to reclassify all of Hyundai's home market advertising expenses as indirect expenses.

Hyundai argues that its home market advertising classification is correct. Hyundai notes that its home market advertising classification methodology remains unchanged from the previous administrative review where the Department accepted Hyundai's classification of home market advertising expenses. Hyundai maintains that there is no justification for reclassifying its home market advertising expenses.

DOC Position

We agree with Hyundai. Hyundai fully complied with our instructions in the antidumping questionnaire issued for this administrative review with respect to information requested for home market advertising expenses. Because Hyundai's methodology remained unchanged from the previous administrative review, we chose not to require Hyundai to submit further documentation on its home market advertising expenses during the POR. Therefore, we have accepted Hyundai's classification of its home market advertising expenses as direct selling expenses.

Comment 7

The petitioner maintains that the Department's preliminary results did not include Hyundai's sales of DRAMs sold by the ISD and Axil divisions of Hyundai's U.S. subsidiary Hyundai Electronics America, Inc. (HEA) in its dumping margin calculations. These DRAMs were further processed by ISD and Axil in the production of personal computers and computer workstations, some of which were sold with the memory modules separately invoiced (option sales) and some of which were sold without separately invoiced memory modules (embedded sales). The petitioner argues that the Department should include these sales in its margin analysis by setting the margin for these sales equal to the margin found on other further-processed sales and averaging the two margins together to derive one margin for all further-processed sales of DRAMs.

Hyundai agrees with the petitioner that these further-processed sales should be included in the Department's margin analysis, but disagrees with the petitioner on the method of including them. Hyundai maintains that, since there are other U.S. sales of merchandise identical to the ISD/Axil sales, the Department should apply the margin found on U.S. sales of identical merchandise to these ISD/Axil sales.

DOC Position

We agree with the petitioner and with Hyundai that the further-processed sales of DRAMs by ISD and Axil should be included in the dumping analysis of U.S. sales in the POR because it is the Department's longstanding practice to include all U.S. sales in its dumping calculations except in instances where title does not transfer to the U.S. customer or in the case of statistical sampling (see Color Television Receivers from the Republic of Korea, 58 FR 50333 (1993)). We agree with Hyundai that, because Hyundai had other U.S. sales identical models of DRAMs, the margins on these identical sales should be applied to the ISD/Axil sales. We revised our final calculations for Hyundai's ISD/Axil sales by applying the margin found on the other U.S. sales of models identical to those sold by ISD/Axil to Hyundai's ISD/Axil further-processed U.S. sales.

Comment 8

Hyundai asserts that the Department's preliminary calculations contained a clerical error in the computation of Hyundai's antidumping margin on sales of DRAMs in the United States further processed into memory modules. Hyundai maintains that the preliminary calculations incorrectly compared the U.S. price of these memory modules to NV, rather than to the foreign unit price in dollars.

DOC Position

We agree with Hyundai and have adjusted our final calculations accordingly.

Final Results of Review

Upon review of the comments submitted, the Department has determined that the following margins exist for the period of May 1, 1994 through April 30, 1995:

Manufacturer/exporter	Percent margin
May 1, 1994 through April 30, 1995:	
LG Semicon Co., Ltd.	0.01
Hyundai Electronic Industries, Inc.	0.10

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firms will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash

deposit rate will be 3.85 percent, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 24, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–295 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

A–122–047

Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers the period December 1, 1994 through November 30, 1995.

As a result of the review, we have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 17, 1973, the Department of the Treasury published in the **Federal Register** (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On December 4, 1995, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping finding for the period December 1, 1994 through November 30, 1995 (60 FR 62070).

On January 11, 1996, Mobil Oil Canada, Ltd. (Mobil) requested an administrative review of its sales. On January 22, 1996, Husky Oil Ltd. (Husky) requested an administrative review of its sales. The review was initiated on February 1, 1996 (61 FR 3670–71).

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

The period of review ("POR") is December 1, 1994 through November 30, 1995, and covers two companies.

Verification

As provided in section 782(i) of the Act, we verified information provided by Mobil, using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Mobil

Facts Available

On May 31, 1996, petitioners alleged that Mobil made home market sales of subject merchandise below cost of production ("COP"). On June 28, 1996, we concluded that petitioners' allegation provided the Department with "reasonable grounds to believe or suspect" that Mobil made below cost sales in the home market within the meaning of section 773(2)(A)(i) of the Act. Therefore, we initiated a COP investigation of Mobil's sales, and directed Mobil to respond to Section D of the Department's February 8, 1996 questionnaire.

Mobil has maintained throughout this review that because sulphur is a "waste product", it does not track sulphur production and handling costs. In its August 5, 1996 cost response, Mobil estimated its cost of manufacture ("COM") based on an engineering estimate of sulphur loading costs at one plant, representing 5% of Mobil's sulphur production. However, Mobil could not prove that this estimate bore any relation to Mobil's actual costs as recorded in Mobil's cost accounting system. Moreover, the estimate only applied to 5% of Mobil's production of

subject merchandise. Therefore, in response to the Department's September 3, 1996 request for supplemental information, Mobil submitted a response on September 25, 1996 based on an entirely different methodology, in which total plant costs (including production of gas, oil, and sulphur) were reported and then allocated to the production of subject merchandise.

In accordance with section 782(i) of the Act, during the week October 21–25, 1996, the Department conducted verification of Mobil's cost responses. At verification, Mobil revealed for the first time that two of its 22 plants maintained sulphur cost centers, including one whose sulphur cost center was active during the POR. The Department verification team then found that sulphur cost centers in fact were maintained during the POR for five of Mobil's plants, accounting for over 50% of Mobil's sulphur production during the POR. In response to the verification team's inquiry, Mobil stated while it was preparing its responses, it had not sought to ascertain whether the producing plants maintained sulphur cost centers. Moreover, the verification team found that the allocation methodology employed by Mobil in its September 25, 1996 response was based on a barrel of oil equivalent ("BOE"), a unit of measurement not used in the normal course of business by Mobil to allocate costs and not relevant to sulphur because sulphur is not burned.

Section 776(a)(2) of the Act provides that if an interested party or other person—(A) withholds information that has been requested by the Department, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(d) provides that if the Department "determines that a response to a request for information . . . does not comply with the request, {the Department} shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide the person with an opportunity to remedy or explain the deficiency in light of the time limits established for completion of investigations or reviews under this title." In accordance with that section, the Department provided Mobil ample opportunity to correct the defects in its submitted cost response. As indicated above, the deficiency in Mobil's original cost response methodology was brought to Mobil's attention in a supplemental questionnaire. *See Supplemental Cost Questionnaire Concerning the 1994–1995 Administrative Review of the Antidumping Finding on Elemental Sulphur from Canada*, Question 6, September 3, 1996 ("Please report costs for all facilities in which Mobil has an interest and which produce sulphur, and included costs from each facility in your calculations of the cost of production and constructed value. . . . Although you need not provide cost information with respect to any facility accounting for less than five percent of Mobil's total *production volume*, not sales volume, you must account for at least 90 percent of Mobil's total *production volume* in reporting Mobil's costs" {emphasis in original}). In response to the Department's supplemental questionnaire, Mobil developed another methodology, yet continued to claim that it was unable to report costs in the form and manner requested by the Department. Only at verification did the Department discover that Mobil maintained cost centers specific to sulphur in its accounting records for the majority of its reported POR production.

Mobil's failure to provide the Department with the requested cost information constitutes a withholding of information within the meaning of section 776(a)(2)(A) of the Act. We must therefore consider whether the submitted cost data is usable under section 782(e) of the Act.

Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

When examined in light of the requirements of section 782(e), the facts of the case indicate that Mobil's cost data is so fundamentally flawed as to render it unusable. Because the discovery of sulphur cost centers occurred only at verification (and therefore, would have remained undiscovered were it not for the Department's decision to verify Mobil's response), this information was not provided to the Department by the deadlines established for its submissions, as required by subsection (e)(1).

Additionally, as a consequence of the discovery at verification of these sulphur cost centers, the Department was unable to verify this information, as required by subsection (e)(2). It is a central tenet of Departmental practice that verification is not intended to be an opportunity for submitting new factual information. Further, the Department also stated in its verification outline that new information will be accepted at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. *See Letter to Mobil Oil Canada: Sales and Cost Verification: Administrative Review of the Antidumping Duty Order on Elemental Sulphur from Canada*, page 2 (October 11, 1996). The discovery of sulphur cost centers meets none of these qualifications. As such, the Department could not verify this information during its verification of Mobil.

We also find the information which Mobil supplied in its responses to be so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, as required by subsection (e)(3). First, we have determined that the use of facts available for Mobil's cost data renders its sales data unusable. Because of the flawed nature of the cost data, home market sales cannot be tested to determine whether they were made at prices above production cost. Insofar as the Department only makes price-to-price comparisons (normal value to export price) using those home market sales that are made above cost, the flawed nature of the cost data makes these comparisons impossible.

In the absence of home market sales data, (*i.e.*, when the home market is viable but there are no comparison sales for a particular U.S. sale), the Department would normally resort to the use of constructed value as normal value. However, the constructed value information reported by Mobil is based on the discredited cost data. Therefore, the use of facts available for cost of production data precludes the use of the submitted constructed value information.

The Department's prior practice has been to reject a respondent's submitted information *in toto* when flawed and unreliable cost data renders any price-to-price comparison impossible. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30311 (June 14, 1996). The rationale for this policy is contained in *Notice of Final Determination of Sales at Less than Fair Value: Grain Oriented Electrical Steel From Italy*, 59 FR 33952, 33594 (July 1, 1994), where the respondent failed the cost verification. The Department explained that the rejection of a respondent's questionnaire response *in toto* is appropriate and consistent with past practice in instances where a respondent failed to provide verifiable COP information:

"[I]f the Department were to accept verified sales information when a respondent's cost information (a substantial part of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation."

This situation applies to Mobil, which provided sales information in proper form, but did not provide cost data which could be verified. Although *Electrical Steel from Italy* was a case involving best information available (BIA) under the pre-URAA statute, it is evidence of the Department's practice of regarding verified sales information as unusable when the corresponding cost data is so flawed that price-to-price comparisons are rendered impossible. The Department has reiterated this position in its *Notice of Preliminary Results of Antidumping Administrative Review: Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 51898, 51900 (October 4, 1996), a case under the post-URAA statute.

In addition, we find that Mobil has not demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department in this review. As noted in the verification report, Mobil did not ask any of its plants whether they maintained sulphur-specific cost centers when preparing its responses. *See Cost Verification of Mobil Oil Canada, Ltd. ("Mobil"): Administrative Review of Elemental Sulphur From Canada*, November 18, 1996, pp. 7–8. Thus, we find that section 782(e)(4) of the Act provides a further basis for declining to consider Mobil's information.

Accordingly, we find that there is no reasonable basis for determining normal value for Mobil in this review. As a result, we could not use Mobil's U.S. sales data in determining an antidumping margin, in accordance with section 782. The Department has no choice, therefore, but to resort to a total facts available methodology.

Section 776(b) provides that adverse inferences may be used in selecting from the fact otherwise available if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* SAA at 870.

We have determined that Mobil did not act to the best of its ability to comply with our requests for information. As discussed above, Mobil did not even ask the producing plants whether they maintained sulphur cost centers. Accordingly, as authorized by section 776(b) of the Act, we have applied an adverse inference in selecting Mobil's margin.

Section 776(b) authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or any other information placed on the record. The SAA provides that "[i]n employing adverse inferences, one factor the [Department] will consider is the extent to which a party may benefit from its own lack of cooperation." SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate "secondary information" by reviewing independent sources reasonably at its disposal. The SAA, at 870, makes it clear that "secondary information" includes information from the petition in the less-than-fair-value (LTFV) investigation and information from a previous section 751 review of the subject merchandise. The SAA also provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*

For our total adverse FA margin, we chose to apply the highest calculated margin from any prior administrative review which the Department is able to corroborate, 7.17%. This rate was calculated in the 1991–92 administrative review of this proceeding, the most recently concluded portion of this proceeding.

As the Department noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

The Department notes that the above rate, in addition to being calculated, was also used as "second-tier" (cooperative) BIA in the 1991–92 administrative review. Because we have determined that Mobil has not acted to the best of its ability to comply with our requests for information, we also considered the application of 28.9%, which was the "first tier" BIA rate for nine companies (not including Mobil) in the 1991/1992 review of this finding. However, we could not corroborate this rate based on the Department's official records of this proceeding. If this rate is corroborated subsequent to these preliminary results, we will consider its application as total adverse facts available for Mobil for the purposes of the final results of review.

Finally, we will also consider final rates calculated in the 1992/93 and the 1993/94 administrative reviews in determining total adverse facts available for Mobil for the purposes of the final results of this review.

Husky

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

For calculation of the price to the United States, we used EP, in accordance with section 772(a) of the Act, because Husky's subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and use of

CEP methodology was not otherwise warranted. We calculated export price based on f.o.b. plant or delivered prices to unrelated customers. We made adjustments, where applicable, for brokerage and handling, foreign inland freight, and tank car expenses, in accordance with section 772(c) of the Act.

Normal Value

We found that Husky's quantity of sales in its home market of the foreign like product exceeded five percent of its sales to the United States. Therefore, we have determined that Husky's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C)(ii) of the Act. Moreover, there is no evidence on the record indicating a particular market situation in the exporting country that would not permit a proper comparison of home market and U.S. prices. *See* section 773(a)(1)(C)(iii). Thus, we based NV on the prices at which the foreign like products were first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP sales.

We based NV on home market prices to unaffiliated purchasers (Husky made no sales to affiliated parties). Home market prices were based on ex-factory or delivered prices. We made adjustments, where applicable, for movement expenses in accordance with sections 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale ("COS") in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56 by deducting home market direct selling expenses and adding U.S. direct selling expenses. These amounts included imputed credit expenses in the home market and imputed credit expenses in the U.S. market.

On May 31, 1996, petitioners alleged that Husky made home market sales of foreign like product below cost of production ("COP"). On June 28, 1996, we concluded that petitioners' allegation provided the Department with "reasonable grounds to believe or suspect" that Husky made below cost sales in the home market within the meaning of section 773(2)(A)(i) of the Act. Therefore, we initiated a COP investigation of Husky's sales.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition for shipment. In our COP analysis, we used home market sales and COP information provided by Husky in its questionnaire response.

After calculating COP, we tested whether home market sales of the foreign like product were made at prices below COP and, if so, whether they were made within an extended period of time in substantial quantities and at prices which did not permit recovery of all costs within a reasonable period of time. *See* section 773(b)(1). Because each individual price was compared against the POR-long weighted average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. We compared the COP for liquid sulphur to the reported home market prices less any applicable movement charges.

Pursuant to section 773(b)(2)(C) of the Act, we concluded that Husky's below cost sales were made in substantial quantities because the volume of these sales represented more than 20 percent of the volume of sales under consideration for the determination of normal value. We also concluded that these below-cost sales were made within an extended period of time (*i.e.*, within the period of review) within the meaning of section 773. *See* SAA at 832.

In accordance with section 773(b)(2)(D), we concluded that Husky's below-cost sales were not at prices which permit recovery of all costs within a reasonable period of time because the prices for the below-cost sales were below the weighted average per unit cost of production for the period of review.

Based on these tests, we disregarded below-cost sales with respect to Husky.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1994 through November 30, 1995:

Manufacturer/Exporter	Time period	Margin (percent)
Husky Oil Ltd.	12/1/94–11/30/95	[1] 0.33
Mobil Oil Canada, Ltd.	12/1/94–11/30/95	[2] 7.17

[1] This is a de minimis rate.
[2] As described above, this total adverse facts available rate is subject to change for the final results of review.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit

rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1991–1992 administrative review of this order (*see Elemental Sulphur from Canada: Final Results of Administrative Review*, 61 FR 8239, 8252 (March 4, 1996)). As noted in those final results, the Department determined this rate to be 5.56 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

[A–588–839]

Suspension of Antidumping Duty Investigation: Sodium Azide From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving sodium azide from Japan. The basis for this action is an agreement between the Department and producers/exporters accounting for substantially all imports of sodium azide from Japan wherein each signatory producer/exporter has agreed either to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value or to cease exports of this merchandise to the United States.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: William H. Crow II or Michelle A. Frederick, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–0116 or (202) 482–4162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of sodium azide from Japan are being or are likely to be sold in the United States at less than fair value (61 FR 4959 (February 9, 1996)). On March 8, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation No. 731–TA–740). On August 9, 1996, the Department preliminarily determined that sodium azide is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (61 FR 42585, (August 16, 1996)).

The Commerce Department and the Japanese producers of sodium azide initialed a proposed agreement suspending this investigation on November 13, 1996. On that date, we invited interested parties to provide written comments on the agreement. On December 20, 1996, American Azide Corporation, the petitioner, filed comments with the Department.

The Department and the signatory producers/exporters of sodium azide from Japan signed the final suspension agreement on December 26, 1996.

Scope of Investigation

The product covered by this investigation is sodium azide (NaN_3) regardless of use, and whether or not combined with silicon oxide (SiO_2) or any other inert flow assisting agent. The merchandise under investigation is currently classifiable under item 2850.00.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Interested Party Comments

Having analyzed all comments filed by interested parties, we conclude that the Agreement meets the requirements of the statute. The petitioner raised the following concerns:

First, the petitioner emphasized that the agreement, in its opinion, was in the public interest, and stated its reasons for this conclusion. Second, the petitioner requested that the Department revise the language in the proposed agreement to identify product types by physical characteristics and not by end use, in order to preclude possible future circumvention of the agreement. Third, the petitioner asked the Department to ensure that the language of the agreement reflect the statutory definition of profit for constructed value, whereby the Department would base profit "only on amounts realized in connection with sales in the ordinary course of trade."

As to the first point, the Department agrees that this agreement is in the public interest, as outlined in the December 26, 1996, memorandum from David Mueller, Director of the Office of Policy, to Robert S. LaRussa, Acting Assistant Secretary for Import Administration ("Public Interest Memorandum"). With respect to the second point, the Department has modified the product type language in the final agreement using physical characteristics to define such types. Third, the Department has added citations to the statute in the agreement in order to define profit for constructed value.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(b) of the Act, we have determined that the agreement will either eliminate exports of this merchandise to the United States or eliminate completely sales of this merchandise to the United States at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See December 26, 1996, Public Interest Memorandum. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed December 26, 1996, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective January 7, 1997, the suspension of liquidation of all entries of sodium azide from Japan entered or withdrawn from warehouse, for consumption, as directed in our notice of "Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Sodium Azide from Japan" is hereby terminated. Any cash deposits on entries of sodium azide from Japan pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation if it receives a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Annex 1: Suspension Agreement: Sodium Azide From Japan

Under section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) ("the Act"), and 19 CFR 353.18, the U.S. Department of Commerce ("the Department") and the signatory producers/exporters of sodium azide from Japan enter into this suspension agreement ("the Agreement"). On the basis of the Agreement, the Department shall suspend its antidumping investigation initiated on February 9, 1996 (61 FR 4959) of sodium azide from Japan, subject to the terms and provisions set forth below.

A. Product Coverage

(1) The merchandise subject to the Agreement is sodium azide (NaN_3), regardless of use, and whether or not combined with silicon oxide (SiO_2) or any other inert flow assisting agent, that has Japan as its origin.

(2) Sodium azide is presently classifiable under subheading 2850.00.50.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

(3) Sodium azide is presently classifiable under subheading 2850.00.50.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The products covered are sodium azide regardless of form, dose, or purity. Sodium azide includes, but is not limited to: (1a) ground sodium azide with flow assisting agents (hereinafter referred to as ground airbag sodium azide); (1b) unground sodium azide with flow assisting agents (hereinafter referred to as unground airbag sodium azide); and (2) sodium azide without flowing agents, hereinafter referred to as sodium azide for pharmaceutical use.

B. U.S. Import Coverage

(1) The signatory producers/exporters collectively are the producers and exporters in Japan that, during the antidumping investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at any time during the period of the Agreement require additional producers/exporters in Japan to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

(2) In reviewing the operation of the Agreement for the purpose of determining whether the Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: Volume of trade, pattern of trade, and the reseller's export price.

C. Basis of the Agreement

(1) This Agreement is entered into pursuant to 19 U.S.C. 1673c(b). On or after the effective date of the Agreement, each signatory producer/exporter individually agrees either to make any necessary price revisions to eliminate completely any amount by which the normal value ("NV") exceeds the U.S. price of its merchandise subject to the Agreement or to cease exports of its merchandise subject to the Agreement. The Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(2) For sales occurring on or after the effective date of the Agreement through May 31, 1997, each signatory producer/exporter agrees not to sell merchandise subject to the Agreement to unaffiliated purchasers to the United States at prices that are less than the merchandise's normal value as determined by the Department based on the cost information for the period of investigation, April 1, 1995-March 31, 1996, already submitted to the Department.

(3) Starting June 1, 1997 and each semi-annual period thereafter beginning on June 1 and December 1, each signatory producer/exporter agrees not to sell merchandise subject to the Agreement to any unaffiliated purchaser to the United States at prices that are less than the merchandise's NV for that time period or to cease exports of its merchandise subject to this Agreement.

D. Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department deems necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement.

1. U.S. Sales Reporting

(1) The Department will require each signatory producer/exporter to report on a quarterly basis whether or not it has had sales or shipments to the United States and, if so, to report each sale, shipment and all related adjustments of the merchandise subject to the Agreement, sold either directly or indirectly to unaffiliated purchasers in the United States. Such reports shall be made not later than 30 days following the close of the reporting period using the specified format and method of data compilation and U.S. price calculation as set forth in Appendix A.

(2) The first report of U.S. sales data for sales occurring on or after the effective date of the Agreement through March 31, 1997 shall be submitted to the Department in the prescribed format and using the prescribed method of data compilation, not later than April 30, 1997.

(3) If the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data more frequently.

2. Cost Reporting

(1) Each signatory producer/exporter must request NVs for all subject merchandise that will be sold either directly or indirectly to unaffiliated purchasers for the United States. To calculate NV, the Department will require each signatory producer/exporter to report, using the specified format and method of data compilation, cost information for sodium azide for the immediately preceding six month time period. Such report will be due not later than 30 days following the close of the reporting period. For those products for which a signatory producer/exporter is requesting NVs, the Department will require the signatory producer/exporter to report its cost of manufacturing; selling, general and administrative ("SG&A") expenses; and profit data for the immediately preceding six-month period in the prescribed format to enable use of the data to calculate NV as indicated in Appendix B. When reporting costs, the signatory producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs, resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

(2) The first report of cost information on or after implementation of this Agreement shall be submitted to the

Department in the prescribed format and using the prescribed method of data compilation, not later than April 30, 1997. This cost data will cover the period April 1, 1996 through March 31, 1997.

(3) The Department shall use the cost data in accordance with Appendix B to calculate a NV. The NV shall be effective the first day of the month after issuance, but no sooner than 5 days after issuance, and shall remain in effect for the next six-month period.

(4) If the Department receives information that a possible violation of the Agreement may have occurred, the Department may request additional cost data more frequently.

(5) If the Department determines that the NV it determined for a previous period was erroneous because the reported data for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that section E of the Agreement applies.

3. Other Provisions

(1) Upon proper application for an APO covering the suspension agreement, the representative(s) of the U.S. industry producing the subject merchandise may obtain business proprietary information submitted to the Department for each reporting period, as well as the results of the Department's analysis under section 773 of the Act.

(2) All submissions to the Department by any signatory to this Agreement shall also be served promptly on the designated representatives of the U.S. industry subject to the terms and conditions of any applicable administrative protective order ("APO"). The Department will provide the representatives of the U.S. industry an opportunity to comment on such submissions.

(3) When the Department identifies, as a result of its own price monitoring or as a result of comments provided by representative(s) of the U.S. industry, that one or more sales to the United States may have been made at prices that are inconsistent with the requirements of this Agreement, the Department will notify the party concerned. The Department will consult with that party for a period of up to 30 days to review the matter. During the consultation period, the Department will notify representative(s) of the U.S. industry and will provide an opportunity for comments by all parties, and the Department will examine any information that it develops or that is submitted.

(4) Each signatory producer/exporter agrees to verification of all sales and costs information, as the Department deems necessary. A signatory producer/exporter who has not undergone verification in the investigation stage of this proceeding shall undergo verification prior to being given a NV under this Agreement.

(5) Signatory producers/exporters agree not to circumvent the Agreement. Upon request of the Department, signatory producers/exporters will submit a written statement to the Department certifying that the sales reported hereunder were not, or are not, part of or related to on-site processing arrangements, discounts, free goods, or financing packages, swaps, other exchanges, or any other arrangements, where such arrangements are designed to circumvent the basis of the Agreement.

Where there is reason to believe that an arrangement circumvents the basis of this Agreement, the Department will request signatory producers/exporters to provide within 14 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and noncovered merchandise that is manufactured or sold by signatory producers/exporters. The Department will accept written comments, not to exceed 15 pages, from all parties no later than 7 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems appropriate, utilize one of two options: (a) the amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with section D.2(5) of this Agreement or (b) the Department shall determine that the Agreement has been violated and take action according to the provisions under section E.

(6) The Department may reject any information submitted after the deadlines set forth in this Agreement or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate normal value and/or U.S. price based on facts available, as it determines appropriate, unless the Department determines that section E applies.

E. Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

F. Other Provisions

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less-than-fair-value or that the methodology used in the Department's preliminary determination to calculate antidumping margins is appropriate.

G. Termination

(1) Any signatory producer/exporter may withdraw its participation in the Agreement at any time upon notice to the Department, after which the Department may terminate the Agreement. Such withdrawal shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(2) Absent affirmative determinations under the five-year review provisions of sections 751 and 752 of the Act, the Department expects to terminate this Agreement and the underlying investigation no later than five years from the effective date of the Agreement.

H. Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. Price: The amount determined by the Department under section 772 of the Act.

(2) Normal Value: The amount determined by the Department under section 773(e) of the Act.

(3) Producer/Exporter: This term means (1) the foreign manufacturer or producer or (2) the foreign producer or reseller which also exports, as defined in section 771(28) of the Act.

(4) Date of Sale: This term means the date on which the material terms are set. For purposes of this definition, requirements contracts are deemed to establish a fixed quantity. Any change in price or change in terms or conditions that impacts price will be deemed to have established a new date of sale.

(5) Affiliated Purchasers: This term shall be interpreted consistent with section 771(33) of the Act.

(6) The effective date of the Agreement is the date on which it is published in the **Federal Register**.

For Japanese Producers/Exporters.

Masuda Chemicals Industries Co., Ltd.

Kenneth G. Weigel, Esq.,
Kirkland & Ellis

Date _____

Toyo Kasei Kogyo Co., Ltd.

Name: Matsuhei Kametaka,
Title: Director, General Manager.

Nippon Carbide Industries Company, Inc.

Date _____

Name: N. Kaneke
Title:

Dates _____

For U.S. Department of Commerce.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

Dates _____

Appendix A: Reporting U.S. Sales

I. U.S. Sales Records

A. Each signatory shall report all of their U.S. shipments of sodium azide products sold in the United States during the reporting period by type including, but not limited to, the following types: (1) Pharmaceutical sodium azide, (2) ground airbag sodium azide, and (3) unground airbag sodium azide.

B. Below is a model record layout for reporting U.S. sales. Additional fields should be added to the model record, as necessary, to provide complete information on each shipment. Each shipment will be reported as a record in a electronic file. Each record will contain complete information identifying the sale and all adjustments related to the sale.

Field No.	Field Description	Field Name
1.0	Complete Product Code	PRODCODU
2.0	Matching Control Number	CONNUMU
3.0	Type of Transaction	TTYPEU
3.1	Particle Size	PARTICLU
3.2	Silicon Dioxide	SIO2U
4.0	Sale Type	SALEU
5.0	Customer Code	CUSCODU
6.0	Customer Category	CUSCATU
7.0	Date of Sale	SALEDTU
8.0	Shipment Number	INVOICU
10.0	Date of Shipment	SHIPDTU
11.0	Date of Receipt of Payment	PAYDTU
12.0	Quantity of Shipment	QTYU
12.1	Quantity Unit of Measure	QTUMU
13.0	Gross Unit Price	GRSUPRU
14.0	Discounts	EARLPYU
15.0	Rebates	REBATEU
16.0	Inland Freight—Plant from Grinder	DINLFRGU
16.1	Inland Freight—Plant/Warehouse to Port of Exit	DINLFTPU
17.0	Destination	DESTU
18.0	Credit Expense	CREDITU
19.0	Duty Drawback	DTYDRWU
20.0	Packing Cost	PACKU
21.0	Net U.S. Sales Price	NETUPRU

II. Net U.S. Sales Price

A. Net U.S. Sales Price, reported in field 21.0 above, will be calculated either as Export Price ("EP") , the price at which the subject merchandise is sold to the first unaffiliated buyer when the sale occurs prior to the importation, or as constructed export price ("CEP"), the price at which the sale occurs subsequent to importation. Net U.S. Sales Price shall be calculated using the following values weight averaged by product ("CONNUMU") as follows:

Gross Unit Price
LESS:
  Price adjustments (14.0, 15.0)
  Movement Expenses
PLUS:
  Duty Drawback

B. A Net Weighted Average U.S. Sales Price shall be calculated for the reporting period for each product type for use in determining compliance with the Agreement.

Appendix B: Cost Reporting

I. General

The cost information reported to the Department for purposes of the Agreement must be:

—Comprehensive in nature, based on the company's accounting system, and able to be tied to the company's audited financial statements;
—Representative of the company's costs incurred to produce the specific models subject to this Agreement;
—Calculated on a semi-annual, weighted-average basis of the plants or cost centers manufacturing the product;
—Based on fully-absorbed costs of production, including any downtime;
—Valued in accordance with generally accepted accounting principles;
—Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
—Reflective of the actual cost of producing the product.

A. Cost of Manufacturing ("COM")

(1) Cost of manufacturing is reported by major cost categories. Weighted-average costs are used for a product that is produced at more than one facility based on the cost at each facility.

(2) Direct materials—costs of those materials which are input into the production process and physically become part of the final product.

(3) Direct labor—labor costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary,

bonus, and overtime pay, training expenses, and all fringe benefits.

(4) Factory overhead—overhead costs including indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

(5) Grinding cost is the cost paid for the grinding of the product type which includes transportation to and from the processor.

(6) Grinding loss is the cost incurred as a result of product lost in the grinding process.

B. Cost of Production ("COP")

(1) Cost of production is equal to the sum of materials, labor, and overhead ("COM") plus SG&A expenses in the home market ("HM").

(2) G&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses and research and development expenses. G&A expenses should be the ratio of the company's total G&A expenses relative to total cost of sales for the most recently completed fiscal year that corresponds to the reporting period.

(3) Selling expenses are those expenses incurred in selling the specific products in the home market calculated by product type ("CONNUM").

C. Constructed Value ("CV")

(1) Constructed value is equal to the COP plus profit in accordance with section 773 of the Act.

(2) Profit—HM profit shall be calculated based on HM sales of sodium azide, in accordance with 773(e) of the Act.

(3) Cost of Packing—the cost of materials, labor and overhead and all other expenses incidental for preparing the product for shipment to the U.S. in accordance with section 773(e).

II. Reporting Cost of Production Data

A. Each signatory shall report costs for all of the sodium azide products sold in the United States during the reporting period including, but not limited to, the following types: (1) Pharmaceutical sodium azide, (2) ground airbag sodium azide, and (3) unground airbag sodium azide.

B. This information shall be reported for each sodium azide product in an electronic file. Additional fields should be added to the record described below as necessary. Worksheets should be submitted showing the calculation of each of the per unit costs and expenses.

Field No.	Field Description	Field Name
1.0	Matching Control Number	CONNUM
2.0	Production Quantity	PRODQTY
3.0	Direct Materials Cost	DIRMAT
4.0	Direct Labor Cost	DIRLAB
5.0	Variable Overhead Cost	VOH
6.0	Fixed Overhead Cost	FOH
7.0	Grinding Cost	GRINDING
8.0	Grinding Loss	GYL
9.0	Total Cost of Manufacturing	TOTCOM
10.0	General and Administrative Expenses	GNA
11.0	Interest Expense	INTEX
12.0	Indirect Selling Expense	INDSEL
13.0	Profit	PROFIT
14.0	HM Credit Expense	HMCREDIT
15.0	Direct Selling Expenses	DIRSELL

III. NV Based on Constructed Value

(1) For EP NVs, the CV will be adjusted for packing costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion, in accordance with sections 772 and 773 of the Act.

(2) For CEP NVs, the NV will be calculated in accordance with the relevant statutory and regulatory provisions, including sections 772 and 773 of the Act.

(3) Direct selling expenses in either the U.S. or the home market are expenses that are incurred as a direct result of a sale.

(4) Credit expenses are expenses incurred for the extension of credit to the HM and U.S. customers.

IV. Calculation of NV Based on Constructed Value

Normal value for EP transactions will be calculated for pharmaceutical sodium azide, unground airbag sodium azide and ground airbag sodium azide as follows:

Direct Materials

+Direct Labor Cost
+Overhead Cost
+Grinding Cost (if relevant)
+*Grinding Loss* (if relevant)
=Cost of Manufacture
+General & Administrative Expenses (including financing)
+Home Market Indirect Selling Expense
+*Home Market Direct Selling Expense*
=Cost of Production
+Home Market Profit
+*U.S. Packing*
=Constructed Value
-Home Market Direct Selling Expense
-Home Market Credit Expense
+U.S. Direct Selling Expense
+*U.S. Credit Expense*
=Normal Value

[FR Doc. 97–297 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Centers for Disease Control and Prevention; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and

Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–108. *Applicant:* Centers for Disease Control and Prevention, Atlanta, GA 30333. *Instrument:* Mass Spectrometer, Model Reflex II. *Manufacturer:* Bruker Analytical, Germany. *Intended Use:* See notice at 61 FR 55972, October 30, 1996. *Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a data digitizer operating at 1.0 GHz, (2) a POSIX-compliant computer interface and (3) a gridless reflector design. The National Institutes of Health advises in its memorandum dated October 21, 1996 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–300 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–072R. *Applicant:* Penn State University, 118 Research Building West, University Park, PA 16802. *Instrument:* Nano Indentor System, Model UMIS 2001. *Manufacturer:* CISRO, Australia. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of August 12, 1996.

Docket Number: 96–076R. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Eye Tracking System, Model EYELINK. *Manufacturer:* SR Research Ltd., Canada. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of August 12, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–299 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Santa Rosa Outpatient Rehabilitation Hospital, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–080R. *Applicant:* Santa Rosa Outpatient Rehabilitation Hospital, San Antonio, TX 78229. *Instrument:* 3-Dimensional Motion Analyzer System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides: (1) infra-red based light emitting diodes for marker recognition, (2) autoidentification of joint centers from exo-skeletal markers and body segment measurements and (3) exact synchronization of position and force data used in inverse dynamic analysis.

Docket Number: 96–098. Applicant: University of Arizona Foundation, Tucson, AZ 85721. *Instrument:* Noble Gas Mass Spectrometer, Model 215–50. *Manufacturer:* Mass Analyser Products Ltd., United Kingdom. *Intended use:* See notice at 61 FR 54156, October 17, 1996. *Reasons:* The foreign instrument provides: (1) a Baur type ion source with high sensitivity and linearity, (2) static-mode isotopic analysis of He, Ne, Ar, Kr and Xe and (3) vacuum pressure $<10^{-9}$ torr with background specified as mass 36 and 132 M/e 36 $<5\times10^{-14}$ cm^3 STP and M/e 132 $<10^{-15}$ cm^3 STP.

Docket Number: 96–099. Applicant: University of South Carolina, Columbia, SC 29208. *Instrument:* Stopped-Flow Spectrophotometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended use:* See notice at 61 FR 54156, October 17, 1996. *Reasons:* The foreign instrument provides: (1) a dead volume of 310 µl, (2) a single 150W xenon light source and (3) fully automated mixing capability under computer control.

Docket Number: 96–107. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Three (3) Mass Spectrometers, MAT Models 262, ELEMENT and 252. *Manufacturer:* Finnigan MAT, Germany. *Intended use:* See notice at 61 FR 55973, October 30, 1996. *Reasons:* The foreign instruments comprise a suite of compatible mass spectrometers which employ: (1) magnetic sector mass analyzers, (2) either six Faraday multicollectors (models 252 and 262) or an analog/ion counting detector (model ELEMENT) and (3) automated preparation of samples resolvable to the femtogram level.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–301 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of

Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–119. *Applicant:* University of Pennsylvania, 3231 Walnut Street, Philadelphia, PA 19104–6272. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the structure and chemistry of structural metals and alloys, fuel cell materials, conducting polymers, catalytic materials, dielectrics, ferroelectrics and composites. In addition, the instrument will be used for educational purposes in the graduate course, MSE610, Electron Microscopy by providing training in electron microscopy techniques. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–121. *Applicant:* State University of New York, P.O. Box 6000, Vestal Parkway East, Binghamton, NY 13902–6000. *Instrument:* Binocular Eye Tracking System, Model ET4. *Manufacturer:* AMTech, Germany. *Intended Use:* The instrument will be used for studies of two related phenomena: the fluency and seeming effortlessness of skilled reading, and oculomotor control in the reading task, where readers' eyes need to "jump" along lines of text to obtain new information. In addition, the instrument will be used for training of doctoral and undergraduate students in courses referred to as "thesis credit" and "independent study". *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–122. *Applicant:* University of Nebraska-Lincoln, Chemistry Department, Lincoln, NE 68588–0304. *Instrument:* Diamond Anvil Cells, Model Diacell. *Manufacturer:* Diacell, United Kingdom. *Intended Use:* The instrument will be used to investigate the role of high pressure on solid state chemical reactions and phase transitions of solids. In particular, the research will involve study of high pressure on chemical reactions, phase transitions, the dynamics of the crystal lattice, electronic and magnetic properties, crystal structure, and solidification processes. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–123. *Applicant:* William Marsh Rice University, 6100 Main Street, Houston, TX 77005. *Instrument:* Stopped-Flow Fluorescence Spectrophotometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of the processes of protein-mediated DNA strand exchange that occur during genetic recombination; specifically, homologous genetic recombination directed by the RecA protein of *Escherichia coli*. These investigations will involve the use of recombinant proteins and synthetic DNA oligomers containing fluorescent analogs of the four natural bases. During these investigations, the instrument will be used for monitoring the rate of changes in either fluorescence emission intensity or absorbance of the nonnatural DNA analogs as they interact with the RecA protein and take part in the events of recombination. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–124. *Applicant:* Federal Highway Administration, Special Projects & Engineering Division, HNR–20, 6300 Georgetown Pike, McLean, VA 22101–2296. *Instrument:* ACFM Crack Microgauge, Model U9. *Manufacturer:* Technical Software Consultants, Ltd., United Kingdom. *Intended Use:* The instrument will be used to detect fatigue crack in welded steel girders. The speed, practicality, accuracy and reliability of the device for fatigue crack detection are compared with conventional techniques currently in use. Also, the equipment's ability to detect crack by its non-contact method is compared with contact methods available. *Application accepted by Commissioner of Customs:* November 26, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–298 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

The U.S. GOES Data Collection System (DCS) Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 10, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marlin O. Perkins, NOAA/NESDIS, Office of Satellite Data Processing and Distribution, Data Services Division, 5627 Allentown Road Suite 200, Code E/SP3, Camp Springs, MD 20233, telephone 301–763–8063 (Fax 301–763–8449).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Geostationary Operational Environmental Satellite (GOES) Data Collection System (DCS) collects and transmits environmental data from remote platforms. NOAA allows other users access to any excess capacity on the system if they meet certain criteria, primarily that they are sponsored by another government agency and that no other adequate common carrier is available. NOAA needs a minimal amount of information from applicants to determine if their request for access meets the requirements as stated in 15 CFR Part 911(a)-(c).

II. Method of Collection

Applicants prepare narrative applications. No forms are used.

III. Data

OMB Number: 0648–0157.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals, businesses, not-for-profit institutions, Federal government, and State, local, or tribal governments.

Estimated Number of Respondents: 9.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 27 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 2, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–288 Filed 1–6–97; 8:45 a.m.]

BILLING CODE 3510–12–P

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the closure of the following Weather Service offices:

(1) Grand Island Weather Service Office (WSO), with services being provided by the future Hastings Weather Forecast Office (WFO);

(2) Residual St. Louis WSO, with services being provided by the future St. Louis WFO;

(3) Cape Hatteras WSO, with services being provided by the future Morehead City and Wakefield WFOs;

(4) Harrisburg WSO, with services being provided by the future Central Pennsylvania WFO;

(5) Residual New York City WSO, with services being provided by the future New York City WFO;

(6) Reading WSO, with services being provided by the future Philadelphia WFO;

(7) Apalachicola WSO, with services being provided by the future Tallahassee WFO;

(8) Athens WSO, with services being provided by the future Atlanta and Greenville/Spartanburg WFOs;

(9) Austin WSO, with services being provided by the future Austin/San Antonio, Dallas/Fort Worth, Houston/Galveston and San Angelo WFOs;

(10) Bristol WSO, with services being provided by the future Knoxville/Tri-Cities, Roanoke, and Charleston WFOs;

(11) Columbus, Georgia WSO, with services being provided by the future Birmingham, Tallahassee, and Atlanta WFOs;

(12) Del Rio WSO, with services being provided by the future Austin/San Antonio WFO;

(13) Fort Myers WSO, with services being provided by the future Tampa Bay Area WFO;

(14) Galveston WSO, with services being provided by the future Houston/Galveston WFO;

(15) Macon WSO, with services being provided by the future Atlanta and Tallahassee WFOs;

(16) Residual New Orleans WSO, with services being provided by the future New Orleans/Baton Rouge WFO;

(17) Orlando WSO, with services being provided by the future Melbourne WFO;

(18) Pensacola WSO, with services being provided by the future Mobile and Tallahassee WFOs;

(19) Port Arthur WSO, with services being provided by the future Lake Charles and Shreveport WFOs;

(20) Roswell WSO, with services being provided by the future Albuquerque and Midland/Odessa WFOs;

(21) Waco WSO, with services being provided by the future Dallas/Ft. Worth and Houston/Galveston WFOs;

(22) Bakersfield WSO, with services being provided by the future San Joaquin Valley WFO;

(23) Residual Billings WSO, with services being provided by the future Billings WFO;

(24) Eugene WSO, with services being provided by the future Portland and Medford WFOs;

(25) Helena WSO, with services being provided by the future Great Falls and Missoula WFOs;

(26) Klamath Falls WSO, with services being provided by the future Medford WFO;

(27) Residual Los Angeles WSO, with services being provided by the future Los Angeles WFO;

(28) Olympia WSO, with services being provided by the future Seattle/Tacoma and Portland WFOs;

(29) Residual Phoenix WSO, with services being provided by the future Phoenix WFO;

(30) Residual Reno WSO, with services being provided by the future Reno WFO;

(31) Salem WSO, with services being provided by the future Portland WFO;

(32) Winslow WSO, with services being provided by the future Flagstaff WFO;

In accordance with Public Law 102–567, the public will have 60 days in which to comment on these proposed closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed closure certifications in the **Federal Register**. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action:

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(7) An Air Safety Appraisal, if applicable, for offices which are located on an airport; and

(8) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just

review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the **Federal Register** and transmit the certification to the appropriate Congressional committees prior to closing these offices.

Dated: December 31, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–223 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–12–M

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the automation and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Chicago-O'Hare (AV) Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Chicago Weather Forecast Office (WFO);

(2) Columbia WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future St. Louis, Kansas City/Pleasant Hill and Springfield WFOs';

(3) Detroit WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Detroit WFO;

(4) Flint WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Detroit WFO;

(5) Residual Moline WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Quad Cities WFO;

(6) Sioux City WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Sioux Falls and Omaha WFOs;

(7) Akron WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Cleveland, Pittsburgh, and Charleston, WV WFOs;

(8) Allentown WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Philadelphia, Binghamton and Central Pennsylvania WFOs;

(9) Atlantic City WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Philadelphia WFO;

(10) Baltimore WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Baltimore, MD/Washington D.C., Philadelphia and Wakefield WFOs. As the only field office in Maryland, an evaluation of services to in-state users, included in the meteorologist-in-charge's memorandum recommending certification, has concluded that users in Maryland are receiving equal or better services from the future Baltimore, MD/Washington D.C., Philadelphia and Wakefield WFOs.

(11) Residual Boston WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Boston WFO,

(12) Bridgeport WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future New York City WFO;

(13) Residual Charleston, West Virginia WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Charleston WFO;

(14) Columbus, Ohio WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Cincinnati, Cleveland, Pittsburgh, and Charleston, WV WFOs;

(15) Dayton WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Cincinnati WFO;

(16) Hartford WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Boston, New York City and Albany WFOs;

(17) Lynchburg WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Roanoke WFO;

(18) Mansfield WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Cleveland WFO;

(19) Norfolk WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Wakefield WFO;

(20) Residual Portland, Maine WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Portland, WFO;

(21) Providence WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Boston WFO. As the only field office in Rhode Island, an evaluation of services to in-state users, included in the meteorologist-in-charge's memorandum recommending certification, has concluded that users in Rhode Island are receiving equal or better services from the future Boston WFO.

(22) Residual Raleigh WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Raleigh/Durham WFO;

(23) Richmond WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Wakefield, Baltimore, MD/Washington D.C. and Roanoke WFOs;

(24) Roanoke WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Roanoke WFO;

(25) Toledo WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Cleveland and Cincinnati WFOs;

(26) Wilkes-Barre WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Binghamton and Central Pennsylvania WFOs;

(27) Williamsport WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Central Pennsylvania and Binghamton WFOs;

(28) Wilmington WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Philadelphia WFO. As the only field office in Delaware, an evaluation of services to in-state users, included in the meteorologist-in-charge's memorandum

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recommending certification, has concluded that users in Delaware are receiving equal or better services from the future Philadelphia WFO.

(29) Worcester WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Boston WFO;

(30) Youngstown WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Cleveland and Pittsburgh WFOs;

(31) Residual Atlanta WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Atlanta WFO;

(32) Baton Rouge WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future New Orleans/Baton Rouge, Lake Charles and Jackson WFOs;

(33) Daytona Beach WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Melbourne and Jacksonville WFOs;

(34) Residual El Paso WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future El Paso WFO;

(35) Knoxville WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Knoxville/Tri-Cities and Nashville WFOs;

(36) Residual Lubbock WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Lubbock WFO;

(37) Montgomery WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Birmingham, Mobile and Tallahassee WFOs;

(38) Residual Oklahoma City WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Oklahoma City WFO;

(39) Residual San Antonio WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Austin/San Antonio WFO;

(40) Residual Tulsa WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Tulsa WFO;

(41) West Palm Beach WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Miami and Melbourne WFOs;

(42) Residual San Diego WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future San Diego WFO; and

(43) Stockton WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Sacramento WFO.

In accordance with Pub. L. 102–567, the public will have 60 days in which to comment on these proposed automation and closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed automation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these automations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation and closure certification in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NMS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committee prior to automating and closing these offices.

Dated: December 31, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–224 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–12–M

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Fargo Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Eastern North Dakota, Bismarck, Aberdeen, and Minneapolis Weather Forecast Offices (WFOs);

(2) Muskegon WSO which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Grand Rapids and North Central Lower Michigan WFOs;

(3) Residual Rapid City WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Rapid City WFO;

(4) Springfield WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Central Illinois and St. Louis WFOs;

(5) Asheville WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Greenville/Spartanburg, Knoxville/Tri-Cities, and Roanoke WFOs;

(6) Cincinnati WSO which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the future Cincinnati WFO;

(7) Greensboro WSO which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the future Raleigh/Durham, Greenville/Spartanburg, and Roanoke WFOs;

(8) Augusta WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Columbia, Charleston, and Atlanta WFOs;

(9) Meridian WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Jackson, Mobile, and Birmingham WFOs;

(10) Savannah WSO which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Charleston, Jacksonville, Tallahassee, and Atlanta WFOs; and

(11) Lewiston WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Spokane, Pendleton, and Missoula WFOs.

In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed consolidation, automation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. all comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations, automations, and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation, automation, and closure certification in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(8) Warning and forecast verification statistics for pre-modernized and modernized service which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certification. Instead, the Committee would just review certification after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comment have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to consolidating, automating, and closing these offices.

Dated: December 31, 1996.
Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97–225 Filed 1–6–97; 8:45 am]
BILLING CODE 3510–12–M

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations and closures of:

(1) Omaha Residual Weather Service Office (RWSO) which will have its services consolidated into the future Omaha Weather Forecast Office (WFO); and

(2) Sacramento RWSO which will have its services consolidated into the future Sacramento WFO. In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation and closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed consolidation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal, if applicable, for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating and closing the offices.

Dated: December 31, 1996.
Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97–226 Filed 1–6–97; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–16–000]

Amoco Power Finance (BVI) Limited; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 1996.

Take notice that on December 19, 1996, Amoco Power Finance (BVI) Limited tendered for filing an amendment to its application for exempt wholesale generator status filed in the above-referenced docket on November 8, 1996.

Any person desiring to be heard concerning the amendment to the Application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 10, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 97–205 Filed 1–6–97; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT97–16–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 20, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing Attachment A to the filing which details, by customer, the historical load factors calculated using total firm entitlements for the 12-month period ended October 31, 1996. Columbia proposes to charge its firm customers the GRI demand rate indicated by these

calculations, and any new customer added after January 1, 1997, will be billed GRI each month based on the actual throughput for each month of prior service until a 12-month history is established.

In Opinion 407, issued by the Commission on September 27, 1996, in Docket No. RP96–267–000, the Commission waived the requirements of individual pipeline tariffs so that presently effective tariff sheets reflecting the 1996 GRI funding surcharges need not be restated since the approved charges for 1997 are the same as the GRI charges approved for 1996. Nevertheless, Columbia is filing Attachment A so as to insure that the load factors resulting from its calculations are a matter of public record.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–206 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ97–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 27, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of January 1, 1997.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an increase of $0.6852 per dt in the Commodity Charge, as measured against ESNG's Out-Of-Cycle Quarterly PGA filing, Docket No. TQ97–2–23–000, *et al.*, filed on November 26, 1996 to be effective on December 1, 1996.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the month of January 1997, and has been calculated using its best estimate of available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–221 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT97–17–000]

Equitrans L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Equitrans, L.P. (Equitrans), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1997.

Fourth Revised Sheet No. 400
Fifth Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on January 1, 1997, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be herd or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. in accordance with section 385.214 or 385.211 of the Commission's Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–207 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–12–000]

Hidro Iberica B.V.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 1996.

On December 30, 1996, Hidro Iberica B.V. (the "Applicant") whose address is 4e Etage, 3012 CA Rotterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an amendment to its application (the "Application") for exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations, filed in the above-referenced Docket on November 4, 1996, as previously amended on December 11, 1996.

Any person desiring to be heard concerning the amendment to the Application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will

limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 10, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–204 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–201–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, National Fuel Gas Supply Corporation (National Fuel), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective April 1, 1997.

National Fuel states that this filing is submitted as a companion filing to its December 16, 1996 Order No. 587 compliance filing. National Fuel states that the purpose of this filing is to make certain changes intended to facilitate its compliance with Order No. 587 and to streamline its tariff and operations, including: (1) expedition of the nomination and scheduling process, (2) simplification of the allocation process, (3) contracts with operators of interconnecting facilities, (4) a new bulletin board system, (5) consolidation of provisions regarding requests for service, (6) removal of certain provisions relating to National Fuel's Order No. 636 restructuring, (7) timing of flowback credits, (8) removal of certain forms from the tariff, and (9) conversion of service under the SS–1 and SS–2 Rate Schedules to a dekatherm basis.

National Fuel states that it is serving copies of the filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary. Copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–222 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–202–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 23, 1997:

First Revised Sheet No. 135D
Fourth Revised Sheet No. 144

Reason for Filing

Northern states that the purpose of this filing is to modify Northern's FDD and IDD Rate Schedules applicable to firm and interruptible storage services by providing increased service flexibility through the addition of eight (8) points available for receipt and delivery of storage services.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–216 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–306–001]

Paiute Pipeline Company; Notice of Motion To Place Suspended Rates Into Effect

December 31, 1996.

Take notice that on December 26, 1996, Paiute Pipeline Company (Paiute) filed a motion pursuant to Section 4(e) of the Natural Gas Act and Section 154.206(a) of the Commission's regulations to make effective on January 1, 1997, certain rates and a tariff sheet in connection with Paiute's request for general rate relief in Docket No. RP96–306–000. Specifically, Paiute has moved to place into effect on January 1, 1997, Fifth Revised Sheet No. 10 of Second Revised Volume No. 1–A of its FERC Gas Tariff.

Paiute states that on July 1, 1996, Paiute filed certain revised tariff sheets in this proceeding, pursuant to Section 4 of the Natural Gas Act, to implement a proposed general rate increase. Paiute further states that by order issued July 31, 1996, the Commission accepted Paiute's proposed rates and suspended their effectiveness for five months to become effective January 1, 1997, subject to refund. Paiute states that in its suspension order, the Commission accepted the proposed rates subject to the condition that Paiute revise its rates to remove the costs of facilities not placed in service as of December 31, 1996.

With its motion, Paiute submitted Fifth Revised Sheet No. 10. Paiute indicates that Fifth Revised Sheet No. 10, in accordance with the Commission's suspension order, sets forth the rates proposed by Paiute in its July 1, 1996, filing in this proceeding, modified to reflect the exclusion of costs associated with facilities which will not be placed in service as of December 31, 1996. Paiute also states that Fifth Revised Sheet No. 10 incorporates the change in the annual charge adjustment surcharge rate which was approved by the Commission in Docket Nos. TM97–1–41–000 and TM97–1–41–001 by orders issued September 27 and November 6, 1996 respectively. Paiute moves that Fifth Revised Sheet No. 10 be made effective January 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–213 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–11–000]

PMDC Netherlands B.V.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 1996.

On December 30, 1996, PMDC Netherlands (the "Applicant") whose address is 4e Etage, 3012 CA Rotterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an amendment to its application (the "Application") for exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations, filed in the above-referenced Docket on November 4, 1996, as previously amended on December 11, 1996.

Any person desiring to be heard concerning the amendment to the Application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 10, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–203 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP 97–203–000]

Questar Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 81A, First Revised Sheet No. 82 and Original Sheet No. 82A, to be effective January 1, 1997.

Quester explains that the proposed tariff sheets revise Section 12.13 of the General Terms and Conditions of Part I of Questar's tariff by incorporating tariff language that will implement a mechanism for tracking fuel-use and lost-and-unaccounted-for gas. Questar states that it has submitted its fuel tracker filing pursuant to paragraph III B(5) of its March 8, 1996, rate case settlement agreement in Docket No. RP95–407, approved by Commission order issued July 1, 1996. Questar has requested waiver of 18 CFR 154.207 so that the proposed tariff sheets may become effective January 1, 1997, consistent with its Docket No. RP95–407 settlement agreement.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–217 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–205–000]

Sabine Pipe Line Company; Notice of Compliance Filing

December 31, 1996.

Take notice that on December 24, 1996, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective January 1, 1997:

Title Page
1st Rev Original Sheet No. 245
Original Sheet No. 248A
1st Rev Original Sheet No. 265

Sabine states that it is submitting the referenced tariff sheets to comply with Order No. 582 issued September 28, 1995, in Docket No. RM95–3–000. The tariff revisions include a statement of Sabine's rate discount policy (Tariff Sheet No. 248A) and other miscellaneous compliance changes.

Sabine respectfully requests that the Commission grant a waiver of Section 154.207 of its Regulations, and any other waivers that may be necessary, in order that the tariff sheets be made effective on January 1, 1997 as proposed.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–219 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–199–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets set forth on Appendix A to the filing, to become effective January 1, 1997.

SGPC states that the purpose of this filing is to comply with Order Nos. 582

and 582–A, issued September 28, 1995 in Docket No. RM95–3, in which the Commission revised, reorganized and updated its regulations governing the form composition, and filing of rates and tariffs for interstate pipeline companies.

Specifically SGPC indicates the tendered tariff sheets revise its tariff to:

(1) Update Title page in accordance with 154.102(d) to include a mailing address, telephone number and facsimile number. SGPC is also updating its area code from 713 to 281 (as required by the Texas Public Utility Commission) on this and other applicable sheets;

(2) expand the table of contents to include the sections of the general terms and conditions in accordance with section 154.104;

(3) add a statement for SGPC's discount policy in accordance with section 154.109(c);

(4) delete the index of customers from the tariff in accordance with section 154.111(a);

(5) update references throughout the tariff to the updated sections of the Commission's Regulations that have been changed;

(6) add a statement to SGPC's general terms and conditions for periodic reports in accordance with section 154.502; and

(7) change the rates to reflect a thermal unit in accordance with section 154.107(b).

SGPC submits that the Commission should grant it all waivers necessary to place these provisions into effect January 1, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–214 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–166–000]

Southern Natural Gas Company, Tennessee Gas Pipeline Company; Notice of Application

December 31, 1996.

Take notice that on December 23, 1996, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 and Tennessee Gas Pipeline Company (Tennessee) (jointly referred to as Applicants), 1010 Milam Street, P.O. Box 2511, Houston, Texas, 77252-2511, filed in Docket No. CP97–166–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Applicants, which was authorized in Docket No. G–4715, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to abandon an exchange service between themselves under Southern's Rate Schedule X–8 and Tennessee's Rate Schedule X–2. Applicants state that the exchange service was last utilized in May, 1993. Applicants assert that there is no outstanding imbalance. Applicants further state that by letter agreement, both parties to the exchange service have agreed to terminate the exchange.

Any person desiring to be heard or to make protest with reference to said application should on or before January 21, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–202 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–151–000, RP94–39, RP94–127, RP94–197, RP94–309, RP94–425, RP95–89, RP95–368, RP95–451, RP96–85, RP96–195, RP96–297, RP97–7, RP93–148, RP95–62, RP96–73, RP94–222, RP94–202, RP94–309, and RP95–112]

Tennessee Gas Pipeline Company; Notice of Conference

December 31, 1996.

Take notice that an informal conference will be convened in this proceeding on Thursday, January 16, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of discussing the draft settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Dennis H. Melvin at (202) 208–0042.

Lois D. Cashell,

Secretary.

[FR Doc. 97–212 Filed 1–6–97; 8:45 am]

BILLING CODE 6712–01–M

[Docket No. RP97-200-000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Tennessee Gas Pipeline Company tendered for filing as part of its Fifth Revised FERC Gas Tariff the following tariff sheets to become effective February 1, 1997:

Thirteenth Revised Sheet No. 20
Fifteenth Revised Sheet No. 21A

Twentieth Revised Sheet No. 22
Fifteenth Revised Sheet No. 22A
Twelfth Revised Sheet No. 23
Seventh Revised Sheet No. 23B
Seventeenth Revised Sheet No. 24
Twelfth Revised Sheet No. 25
Thirteenth Revised Sheet No. 26B

Tennessee states that the purpose of the filing is to recover gas supply realignment costs (GSR costs) paid or known and measurable at the time of the filing, consistent with the GSR cost recovery provisions reflected in Section XXVI of the General Terms and Conditions of Tennessee's Fifth Revised FERC Gas Tariff. The charges include a GSR demand surcharge applicable to firm customers and a unit GSR component applicable to Tennessee's interruptible services.

Tennessee is proposing to amortize the costs reflected in this filing over the five-month period necessary to maintain the level of the existing firm GSR surcharges and is seeking any necessary waivers of the Commission's regulations and its tariff provisions to effectuate the same. In the event that the requested waivers are not granted, Tennessee has also submitted herewith the following alternate tariff sheets to be effective February 1, 1997:

Alternate Thirteenth Revised Sheet No. 20
Alternate Fifteenth Revised Sheet No. 21A
Alternate Twentieth Revised Sheet No. 22
Alternate Fifteenth Revised Sheet No. 22A
Alternate Twelfth Revised Sheet No. 23
Alternate Seventh Revised Sheet No. 23B
Alternate Seventeenth Revised Sheet No. 24
Alternate Twelfth Revised Sheet No. 25
Alternate Thirteenth Revised Sheet No. 26B

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–215 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–206–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 26, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of February 1, 1997:

Nineteenth Revised Sheet No. 10
Third Revised Sheet No. 10A
Sixteenth Revised Sheet No. 11
Third Revised Sheet No. 11B

Texas Gas herein adjusts its February 1, 1997, rates to remove the ISS Revenue Credit Adjustment which expires January 31, 1997. The impact of this rate change is to increase Rate Schedules NNS and FT daily demand rates by $0.0001 and Rate Schedule SGT rates by $0.0002.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–220 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–204–000]

Young Gas Storage Company, Ltd., Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariffs, Original Volume No. 1 the tariff sheets listed on attached Appendix A to the filing, to be effective December 31, 1996.

Young states that the purpose of this compliance filing is to conform Young's tariff to the requirements of Order No. 582.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–218 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11437–001 North Carolina]

Hydro Matrix Partnership, Ltd; Notice of Availability of Draft Environmental Assessment

December 31, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for license for the proposed Jordan Hydroelectric Project, located on the Haw River, Chatham County, North Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at

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888 First Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 11437 to all comments. For further information, please contact Mark Pawlowski, Environmental Coordinator, at (202) 219–2795.

Lois D. Cashell,

Secretary.

[FR Doc. 97–210 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

December 31, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 1984-056.

c. Date filed: January 25, 1996.

d. Applicant: Wisconsin River Power Company.

e. Name of Project: Petenwell and Castle Rock Hydroelectric Project.

f. Location: On the Wisconsin River in Adams, Juneau, and Wood Counties, Wisconsin.

g. Filed pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Richard L. Hilliker, President, Wisconsin River Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422-3722.

i. FERC Contact: Frank Karwoski at (202) 219-2782.

j. Deadline Date: See standard paragraph D10.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of Project: The Petenwell and Castle Rock project consists of the 20–MW Petenwell Development and the 15–MW Castle Rock Development. Together these developments provide average annual generation of about 200,000 Mwh. Wisconsin River Power Company (WRPCo) is owned by Consolidated Water Power Company (CWPCo), Wisconsin Public Service Corporation (WPSC), and Wisconsin Power & Light Company (WP&L). These owners each use about one-third of the project's power.

Project operation and administration is provided by CWPCo. Maintenance and plant surveillance is provided by WRPCo. The project is operated on a seasonal basis for flood control, power generation, and recreation enhancement. The Petenwell Development is operated in a peaking mode when river flows fall below the development's hydraulic capacity, although it is generally operated such that daily average outflows equal inflows. The reservoir's water level varies seasonally to provide for flood control, reservoir recreation, and downstream power production. The Castle Rock Development is operated in a modified run-of-river mode allowing some peaking superimposed on a base-level flow and providing for a recreation flow through the Wisconsin Dells.

Petenwell Development—The Petenwell Development consists of: (1) a reservoir with a drainage area of 5,800 square miles, a normal surface area of 25,180 acres and a storage volume of 495,000 acre-feet at the normal operating water surface elevation of 923.9 feet NGVD which is controlled by Petenwell Dam located at river mile 171.9 on the Wisconsin River in Wisconsin; (2) and East Dike which is 7,000 feet long and 20 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H: 1V, constructed of compacted sand with riprapped upstream face; (3) an East Dam which is 8,000 feet long and 50 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face and gravel toe drains; (4) a West Dike which is five miles long and 20 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face; (5) a West Dam which is 500 feet long and 50 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face and gravel toe drains; (6) a 525-foot-long concrete overflow spillway with 30-foot-deep sheetpile cutoff and a crest elevation of 905.9 feet NGVD, with 15 radial gates, each 30 feet wide and 18 feet high, operated by individual hydraulic cylinder hoists and separated by concrete piers; (7) a regulating bay containing one electric chain hoist operating a 30-foot-wide by 18-foot-high radial gate and a stilling basin separated from the rest of the spillway by a concrete wall; (8) a 159-foot-long powerhouse with 110-foot-wide concrete substructure, including intake and draft tubes, 50-foot-wide masonry superstructure and truss supported roof, containing four turbine/generating units having a total rated capacity of 20 MW and total hydraulic capacity of 6,720 cfs, protected by trashracks with 4.5-inch openings; (9) four S. Morgan Smith 110-inch diameter four-blade vertical Kaplan turbines with rated head of 41 feet and rated output of 7,200 horsepower, operating at 163.6 rpm and controlled by Woodward type H.R. governors rated at 60,000 ft-lbs; (10) four vertical General Electric synchronous generators operating at 163.6 rpm with power factor of 0.8 rated at 6,250 KVA; (11) a switchyard containing two Westinghouse 6.9/138 Kv power transformers rated at 15 MVA; and (12) accessory equipment including a 50-ton overhead traveling crane in the powerhouse, two gantry cranes, a compressed air system, spillway bubbler system, and a battery bank.

Castle Rock Development—The Castle Rock Development consists of: (1) a reservoir with a drainage area of 6,870 square miles, a normal surface area of 14,900 acres and a storage volume of 136,000 acre-feet at the normal operating water surface elevation of 881.9 feet NGVD which is controlled by Castle Rock Dam located at river mile 156.7 on the Wisconsin River in Wisconsin; (2) an East Dike which is 3.3 miles long and less than 25 feet high with top width of 12 feet at a crest elevation of 891.4 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face; (3) an earth dam which is 1,400 feet long and 45 feet high with top width of 12 feet at a crest elevation of 891.4 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face and gravel toe drains; (4) a saddle dike which is 500 feet long; (5) a 590-foot-long concrete overflow spillway with 35-foot-deep sheetpile cutoff and a crest elevation of 863.4 feet NGVD with 17 radial gates, each 30 feet wide and 18 feet high, operated by individual hydraulic cylinder hoists and separated by concrete piers; (6) a regulating bay containing one electric chain hoist operated 30-foot-wide by 18-foot-high radial gate and stilling basin separated from the rest of the spillway by a concrete wall; (7) a 193-foot-long powerhouse with 107-foot-wide concrete substructure, including intake and draft tubes, 50-foot-wide masonry superstructure and truss supported roof, containing five turbine/generating units having a total rated capacity of 15 MW and total hydraulic capacity of 7,520 cfs protected by trashracks with 4.5-inch openings; (8) five S. Morgan Smith 110-

inch diameter four-blade vertical Kaplan turbines with rated head of 28 feet and rated output of 4,370 horsepower operating at 150 rpm; (9) five vertical Allis Chalmers synchronous generators operating at 150 rpm with power factor of 0.8 rated at 3,750 KVA; (10) a switchyard containing two 4.2/69 Kv power transformers rated at 15 MVA; (11) accessory equipment including a 34-ton overhead traveling crane in the powerhouse, two gantry cranes, a compressed air system, spillway bubbler system, and a battery bank; and (12) three parcels of land owned by the United States comprising a total of 3.71 acres.

m. Purpose of Project: Project power would be provided to CWPCo, WPSC, and WP&L; who would either use the power or utilize it for sale to their customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Richard L. Hilliker, President, Wisconsin River Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3722.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 Fed. Reg. 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting and filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–208 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

December 31, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor License.

b. Project No.: P–11428–000.

c. Date Filed: August 5, 1993.

d. Applicant: The City of St. Louis, Michigan.

e. Name of Project: Municipal Dam Hydro Project.

f. Location: On the Pine River, in The City of St. Louis, Gratiot County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Nancy Roehrs, 108 West Saginaw Street, St. Louis, MI 48880, (517) 681–2137.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Deadline Date: See paragraph D9.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The existing project consists of the following: (1) A 21-foot-high, 126-foot-long reinforced concrete dam surmounted by six 19-foot-wide, 8-foot-high radial gates; (2) a 60-foot-long left embankment, 55-foot-long center embankment, and 250-foot-long right embankment; (3) a 1,575-acre-foot reservoir at a normal water surface elevation of 719 feet; (4) a gated 18-foot-wide, 12-foot-deep intake flume; (5) a powerhouse containing two generating units rated at 225-kW for a total installed capacity of 450-kW; (6) a tailrace; (7) a short 2400-volt transmission line; and (8) appurtenant electric and mechanical facilities. The applicant estimates the average annual generation for this project would be 1,599 MWh. The dam and existing project facilities are owned by the applicant.

m. This notice also consists of the following standard paragraphs: A4 and D9.

n. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the City of St. Louis, 108 Saginaw Street, St. Louis, MI 48880, or by calling (517) 681–2137.

o. Scoping Process: In gathering background information for preparation of the environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental analysis as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues

will be identified and the reasons for not providing a more detailed analysis will be given.

p. Request for Scoping Comments: Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

• Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.

• Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.

• Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic river quality data and the reasons for improvement or degradation of the quality, and wetland habitat loss or proposals to develop land and water resources within the basin.

• Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.

• Documentation that would support a conclusion that the project(s) *does not* contribute, or *does* contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not be limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental document should be filed by the deadline established in paragraph D9.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–209 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

December 31, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 11162–002.

c. *Date filed:* April 18, 1994.

d. *Applicant:* Wisconsin Power and Light Company.

e. *Name of Project:* Prairie du Sac Hydroelectric Project.

f. *Location:* On the Wisconsin River in Dane, Sauk, and Columbia Counties, Wisconsin.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Norman E. Boys, Vice President, Power Production, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

i. *FERC Contact:* Frank Karwoski at (202) 219–2782.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The 29–MW Prairie du Sac Hydroelectric Project provides average annual generation of 151,800 MWh when operated in run-of-river mode. Wisconsin Power & Light Company has operated the project in a run-of-river mode since 1978 and proposes to continue this mode of operation.

The project consists of: (1) a reservoir with a normal surface area of 9,180 acres and a storage volume of 119,950 acre-feet at the normal operating water surface elevation of 744.4 feet NGVD; (2) an east dike which is 1,775 feet long with an average height of 20 feet and top width of 8 feet at a crest elevation of 781.0 feet NGVD, and side slopes of 2H:1V, constructed of sand with a clay core wall having a top width of 3 feet at elevation 770.4 feet NGVD; (3) a 1,010-foot-long concrete hollow ogee spillway supported on piles with a crest elevation of 760.4 feet NGVD, 41 radial

gates, each 20 feet wide and 14 feet high, separated by concrete piers 4-feet thick, two traveling electric hoists, and a concrete walkway at elevation 781.4 feet NGVD; (4) an unused concrete navigation lock which is 211 feet long by 35 feet wide by 47 feet high with split leaf vertical lock gates at each end; (5) a 329-foot-long pile-supported powerhouse with concrete substructure, masonry superstructure and truss supported roof, containing eight turbine/generating units having a total rated capacity of 29 MW; (6) eight 4-runner horizontal Francis turbines with diameters of 64 inches and rated head of 32 feet installed between 1914 and 1922 (four have ratings of 4,050 horsepower, two of 5,600 horsepower, and one of 5,000 horsepower); (7) eight horizontal Allis-Chalmers generators operating at 120 rpm with power factor of 0.8 (four are rated at 4,375 kVA, two at 6,000 kVA, one at 3,525 kVA and one at 2,590 kVA); (8) two 69–kV transmission lines approximately 400 feet long; (9) accessory equipment including relays, switchboards, sensors, panels, cubicles, synchronizing units, supervisory control equipment, lighting, station service power, plumbing, ventilating systems, and a compressed air system; and (10) maintenance buildings, offices, and equipment.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street NE., Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting and filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 5A–01, at the above address. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–211 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 9, 1997, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

Regulations

1. Capital Adequacy and Customer Eligibility [12 CFR Parts 613, 614, 615, 618, 619, and 620] (Final)

2. General Financing Agreement [12 CFR Part 614] (Proposed)

3. Loan Underwriting Standards [12 CFR Parts 614 and 619] (Final)

Dated: January 2, 1997

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–406 Filed 1–3–97; 3:05 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, January 9, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 9, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Cable Services—Title: Closed Captioning and Video Description of Video Programming and Implementation of Section 305 of the Tele-communications Act of 1996: Video Programming Accessibility (MM Docket No. 95–176). Summary:

The Commission will consider action concerning closed captioning requirements for video programming.

2—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHZ Frequency Range (ET Docket No. 96–102, RM–8648 & RM–8653). Summary: The Commission will consider action to make available 300 megahertz of spectrum in the 5.15–5.35 GHz and 5.725–5.825 GHz bands for broadband U-NII devices.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax numbers (202) 857–3805 or (202) 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their internet address is: http://www.itsi.com.

Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460 or TTY (202) 418–1388; fax numbers (202) 418–2809 or (202) 418–7286. This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The meeting can be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044.

Dated January 2, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–425 Filed 1–3–97; 2:29 pm]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 96–24]

Adtranz (North America), Inc. Individually, and as Successor in Interest to ABB Traction, Inc. v. UniTrans International, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by ADtranz (North America), Inc. individually, and as successor in interest to ABB Traction, Inc. ("Complainant") against UniTrans International, Inc. ("Respondent") was served December 31, 1996. Complainant alleges that Respondent has violated sections 10(b)(1), (b)(5) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(b)(1), (b)(5), and (d)(1), by demanding greater or different compensation for the transportation of property than the rates and charges shown in its tariff and by retaliating against Complainant through attempting to rerate cargo, billing a third party (i.e., the cargo's manufacturer), filing a court case and arresting and attaching cargo, all because Complainant patronized another carrier.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by December 31, 1997, and the final decision of the Commission shall be issued by April 30, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–227 Filed 1–6–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 13, 1996

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 13, 1996.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that growth in economic activity slowed substantially in the third quarter, and the limited available information indicates continued moderate expansion more recently. Private nonfarm payroll employment increased appreciably on balance over September and October. The civilian unemployment rate remained at 5.2 percent in October. Industrial production, which continued to rise in the third quarter, appears to have declined in October owing in important measure to work stoppages in the motor vehicles industry. Total retail sales turned up in September after slumping earlier in the summer. Housing starts fell in September from the exceptionally high level registered in August. Outlays for business equipment were strong in the third quarter and new orders continued to trend upward; business spending on nonresidential structures posted a moderate advance. Inventory investment was substantial in the third quarter, but inventory-sales ratios remained relatively low. The nominal deficit on U.S. trade in goods and services widened considerably in July-August from its average rate in the second quarter. Increases in labor compensation, though moderating in the third quarter, have trended up this year; consumer price inflation also has picked up this year, owing to larger increases in food and energy prices.

Market interest rates have moved lower since the Committee meeting on September 24, 1996, with the largest declines occurring in intermediate- and long-term maturities. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has depreciated slightly over the intermeeting period.

Growth of M2 in September and October remained below its pace in the first half of the year, while expansion of M3 was substantially higher over those two months. For the year through October, M2 is estimated to have grown at a rate in the upper half of the Committee's annual range, and M3 at a rate around the top of its range. Expansion in total domestic nonfinancial debt has been moderate on balance over recent months and has remained in the middle portion of its range.

[1] Copies of the Minutes of the Federal Open Market Committee meeting of November 13, 1996, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in January for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The monitoring range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1997 the Committee agreed on a tentative basis to set the same ranges as in 1996 for growth of the monetary aggregages and debt, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and relatively strong expansion in M3 over coming months.

By order of the Federal Open Market Committee, December 27, 1996.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 97-250 Filed 1-6-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N-0491]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for premarket approval applications (PMA's) that are submitted under part 814 (21 CFR part 814).

DATES: Submit written comments on the collection of information requirements by March 10, 1997.

ADDRESSES: Submit written comments on the collection of information requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Approval of Medical Devices—Part 814 (OMB Control Number 0910–0231—Reinstatement)

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth requirements for premarket approval of certain medical devices. Under section 515 of the act, an application must contain several pieces of information, including: Full reports of all information concerning investigations showing whether the device is safe and effective; a statement of components; a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device; and labeling specimens. The implementing regulations, contained in part 814, further specify the contents of a PMA for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMA's for class III (premarket approval) medical devices, in order to facilitate the approval of PMA's for devices that have been shown to be safe and effective and otherwise meet the statutory criteria for approval and to ensure the disapproval of PMA's for devices that have not been show to be safe and effective and that do not otherwise meet the statutory criteria for approval.

Under § 814.15, an applicant may submit in support of a PMA studies from research conducted outside the United States, but an applicant must explain in detail any differences between standards used in a study to support the PMA's and those standards found in the Declaration of Helsinki. Section 814.20 provides a list of information required in the PMA, including: A summary of information in the application, a complete description of the device, technical and scientific information, and copies of proposed labeling. Section 814.37 provides requirements for an applicant who seeks to amend a pending PMA. Under § 814.39, an applicant must submit a supplement to the PMA before making a change affecting the safety or effectiveness of the device. Section 814.82 sets forth postapproval requirements FDA may propose, including periodic reporting on safety,

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effectiveness, and reliability, and display in the labeling and advertising of certain warnings. Section 814.84 specifies the contents of periodic reports. Section 814.82 requires the maintenance of records to trace patients and the organizing and indexing of records into identifiable files to enable FDA to determine whether there is reasonable assurance of the device's continued safety and effectiveness. The applicant determines what records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required to be maintained as conditions of approval to ensure the device's continuing safety and effectiveness.

Respondents to this information collection are persons filing an application with the Secretary of Health and Human Services for approval of a Class III medical device. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments).

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15, 814.20, and 814.37	545	1	545	837.28	456,320
814.39	545	1	545	73.15	39,865
814.82	545	1	545	9.14	4,983
814.84	545	1	545	18.29	9,966
Total Hours					511,134

There are no capital costs or operating and maintenance costs associated with this collection of information.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82(a)(5) and (a)(6)	567	1	567	16.7	9,469
Total					9,469

There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–291 Filed 1–6–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: January 6, 1997.

Place: Natcher Building, Room 6AS–25F, National Institutes of Health, 45, Center Drive, Bethesda, Maryland 20892-6600.

Contact Person: Lakshmanan Sankaran, Ph. D., Scientific Review Administrator, Natcher Building, Room 6AS–25F, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600; Phone: 301-594-7799.

Agenda/Purpose: To review and evaluate a research grant application.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Application and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: December 26, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 97–319 Filed 1–2–97; 4:43 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Notice of amendment to Approved Tribal-State Compact

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Tribal-State Compact for Regulation of Class III Gaming Between The Klamath Tribes and the State of Oregon, which was executed on November 13, 1996.

DATES: This action is effective January 7, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240 (202) 219–4068.

Dated: December 26, 1996.

Elizabeth L. Homer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–245 Filed 1–6–97; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming; Notice of Approved Second Amendment to Tribal-State Compact

AGENCY: Bureau of Indian Affairs, Interior.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Second Amendment to the Tribal-State Gaming Compact Between the Swinomish Indian Tribal Community and the State of Washington executed on October 4, 1996.

DATES: This action is effective January 7, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240 (202) 219–4068.

Dated: December 26, 1996.

Elizabeth L. Homer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–244 Filed 1–6–97; 8:45 am]

BILLING CODE 4310–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–001)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Advisory Subcommittee.

DATES: Wednesday, January 15, 1997, 8:30 a.m. to 5:00 p.m.; Thursday, January 16, 1997, 8:30 a.m. to 5:00 p.m.; and Friday, January 17, 1997, 8:30 a.m., 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Jurgen Rahe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Office of Space Science Activities
—Board of Directors Overview
—Reserch Program Management Overview
—Advanced Technology and Mission Studies Overview
—Mission and Payload Development, Overview
—Roadmap to the Solar System
—Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to a sign a visitor's register.

Dated: January 2, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–289 Filed 1–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185)

Date and Time: January 24, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted NSF for financial support.

Agenda: Panel review of CISE Postdoctoral Research Associates in Computational Science and Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–273 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Career Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on January 30–31, 1997, (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. James P. Wright, Program Director, Education, Human Resources, and Special Programs, Division of Astronomical Sciences, National Science Foundation, Room 1030, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1819.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–271 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: January 26–27, 1997; 8:30 am–5:00 pm

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Barbara P. Kearn, Program Director, Environmental Technology, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–263 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: January 22-24, 1997; 8:30 am-5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward H. Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–264 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: January 28–29, 1997.

Place: Room 1060, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margaret Cavanaugh, Program Director, Inorganic, Bioinorganic, Organometallic Chemistry, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1842.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Faculty Early Career Development Program (CAREER) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–268 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: January 30–31, 1997; 8:00 a.m. to 5:00 p.m.

Place: Arlington Hilton, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. S.C. Liu, Program Director for Structural Systems, Dr. Cliff Astill, Siting & Geotechnical System & Dr. William Anderson, Earthquake Systems Integration, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1362.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Earthquake Centers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–260 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 27 and January 28, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–272 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: January 24, 1997; 8:30 a.m.–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Rita V. Rodriguez, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Postdoctoral Research Associates in Experimental Computer Science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–262 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications System; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (1196)

Date ans Time: January 27–28, 8:30 a.m. to 5:00 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Closed.

Contact Person: Dr. Radhakisan Baheti, Program Director, Systems Theory, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1340

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate System Theory career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietory or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–259 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Sepcial Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: January 27-28, 1997, 8:30 a.m. to 5:00 p.m.

Place: Doubletree Hotel Pentagon, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine and Intelligence Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–269 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: January 31, 1997, 8:30 a.m. to 5:00 p.m.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209–9990.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Interactive Systems Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–270 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research #1203.

Dates and Times: 1/28–29/97, 8:00 am–6:00pm and 1/30–31/97, 8:am–5:00pm

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 & 340 and 380 & 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning CAREER proposals submitted to the Condensed Matter Physics Program.

Agenda: Evaluation of career proposals.

Reason for Closing: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–257 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

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Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203

Date and Time: January 28, 1997, 8:00 am–5:00 pm.

Place: National Science Foundation; 4201 Wilson Blvd., Arlington, VA; Room 1020.

Type of Meeting: Closed.

Contact Person: Dr. Liselotte J. Schioler, Program Director, Ceramics Program, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for Cermanic CAREER awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–261 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications (#1207).

Date and Time: January 27, 28 & 29, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Aubrey Bush, Deputy Division Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Career Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–265 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time:

January 30, 1997; 8:30 a.m. to 6:00 p.m.
January 31, 1997; 9:00 a.m. to 4:30 p.m.

Place: Room 1285, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Christopher J. Dede, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to Career Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–266 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time:

January 27, 1997; 8:30 a.m. to 6:00 p.m.
January 28, 1997; 9:00 a.m. to 4:30 p.m.

Place: Room 1280, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Christopher J. Dede, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Research on Education, Policy and Practice (REPP) Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–267 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time:

January 29, 1997; 7:30 p.m. to 9:00 p.m.
January 30, 1997; 8:30 a.m. to 5:00 p.m.
January 31, 1997; 8:30 a.m. to 5:00 p.m.
February 1, 1997; 8:30 a.m. to 2:00 p.m.
February 5, 1997; 7:30 p.m. to 9:00 p.m.
February 6, 1997; 8:30 a.m. to 5:00 p.m.
February 7, 1997; 8:30 a.m. to 5:00 p.m.
February 8, 1997; 8:30 a.m. to 2:00 p.m.

Place: The Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Duncan McBride, Section Head; Dr. Daniel Hodge, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Instrumentation and Laboratory Improvement Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–274 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

United States Antarctic Program (USAP) Blue Ribbon Panel; Notice of Meeting

In accordance with the Federal advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: United States Antarctic (USAP) Program Blue Ribbon Panel (5131)

Date and Time: 1997. January 31, 8 am–6 pm; February 1, 8:30 am–6 pm

Place: NSF, room 1235

Type of Meeting: Open

Contact Person: Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of the research and implement U.S. policy in Antarctica under realistic budget scenarios.

Agenda: Draft panel report to NSF

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–258 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Consumers Power Company, Big Rock Point Nuclear Power Plant; Notice of Receipt and Availability for Comment of Post Shutdown Decommission Activities Report and Notice of Public Meeting

[Docket No. 50–155]

The U.S. Nuclear Regulatory Commission (NRC) is in receipt of and is making available for pubic inspection and comment the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Big Rock Point Nuclear Power Plant (BRP) located 4 miles northeast of Charlevoix, Michigan. A public meeting on the BRP PSDAR will be held in the Charlevoix Town Hall on Tuesday, March 4, 1997, at 7:00 p.m.

The operating license for BRP will expire on May 31, 2000. Consumers Power Company (CPC) submitted the BRP Decommissioning Plan (DP) dated February 27, 1995, to the NRC in accordance with NRC regulations in effect at that time. The NRC conducted a public meeting regarding the BRP DP on May 11, 1995, at which CPC presented its plan for decommissioning BRP. By letter dated February 14, 1996, the licensee requested that the review of the DP be delayed pending further notice by CPC. Amendments to the NRC's decommissioning regulations were published in the **Federal Register** on July 29, 1996 (61 FR 39278) and became effective on August 28, 1996. By letter dated September 5, 1996, to the NRC, CPC discussed the effect of the amended regulations and acknowledged that the BRP DP, as supplemented, was considered to be the BRP PSDAR pursuant to 10 CFR 50.82, as amended.

The public meeting, required by 10 CFR 50.82(a)(4)(ii), is informational and will include a presentation by the NRC staff on the changes to the decommissioning regulations resulting from the final rule published on July 29, 1996. The meeting will also provide an opportunity for the licensee to update it's planned decommissioning activities for BRP. A question and answer period will follow the presentations.

The BRP PSDAR is available for public inspection at the BRP local public document room (LPDR), located at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770, and at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037. The BRP PSDAR is filed as the BRP Decommissioning Plan (NUDUCS microfiche accession number 9503020323). A transcript of the May 11, 1996, public meeting regarding the BRP DP is also available as NUDOCS microfiche accession number 9506210181.

Comments regarding the BRP PSDAR may be submitted in writing and addressed to Mr. Paul W. Harris, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone number (301) 415–1169. Comments previously submitted in writing regarding the BRP DP will be considered by the NRC and need not be resubmitted.

Dated at Rockville, Maryland, this 31st day of December 1996.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–248 Filed 1–6–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Specifications for Information Based Indicia Program "Host Systems"; Correction

AGENCY: Postal Service.

ACTION: Correction to Notice of proposed specifications with request for comments.

SUMMARY: The original notice (61 FR 55676; October 28, 1996) included incorrect dates. Additionally, the Postal Service will be hosting a general meeting on the Host System specification. All persons who have expressed an interest in the proposed specifications will be invited to attend the meeting. This meeting will focus solely on technical aspects of the Host System specification.

The **DATES** section is corrected to read as follows:

DATES: Comments on the specification must be received on or before March 15, 1997. Comments addressing intellectual property issues must be received on or before March 15, 1997. The general meeting on this subject is being planned for January 31, 1997, in Washington, DC. Interested parties may submit questions by January 17, 1997, which will be considered for incorporation into the meeting presentation.

FOR FURTHER INFORMATION CONTACT: Terry Goss (202) 268–3757.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–249 Filed 1–6–97; 8:45 am]

BILLING CODE 7710–12–P

Information Based Indicia Program Interim Product Submission Procedures

AGENCY: Postal Service.

ACTION: Notice of proposed procedures with request for comments.

SUMMARY: There are approximately 1.5 million postage meters in use in the United States, which collectively account for approximately $20 billion in postal revenue annually. For several years the Postal Service has been

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actively pursuing a solution of the problem of inadequate postage meter security. To respond to the threat of fraudulent use of meters by physical tampering, the Postal Service intends to decertify and remove from the market, in risk-driven phases, all mechanical and electro-mechanical postage meters. Another problem the Postal Service has faced is that currently available meter indicia are susceptible to counterfeiting. The Postal Service is exploring using current technology special purpose units such as computers and independent printers to provide prepaid postage. This notice describes interim product submission procedures for the Information Based Indicia Program (IBIP) which the Postal Service is developing to support these corrective efforts.

DATES: Comments on the proposed procedures must be received on or before February 6, 1997.

ADDRESSES: Copies of the all draft specifications published to date under the Information Based Indicia Program may be obtained from: Terry Goss, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6807, (202)–268–3757. Mail or deliver written comments to: Manager, Retail Systems and Equipment, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–6807. Copies of all written comments may be inspected and photocopied between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Goss, (202) 268–3757.

SUPPLEMENTARY INFORMATION: The Information Based Indicia Program (IBIP) is a Postal Service initiative supporting the development and implementation of a new form of postage indicia. The Postal Service envisions that the new indicium standard may eventually support new or existing products and services. Specific products and services have not been determined. An IBIP indicium (**Federal Register** Volume 61 Number 128 Tuesday, July 2, 1996) substitutes for a postage stamp or a postage meter imprint as evidence of the fact that postage has been paid on mailpieces. An IBIP Postal Security Device indicium (**Federal Register** Volume 61 Number 128 Tuesday, July 2, 1996) provides cryptographic signature, financial accounting, indicium creation, device authorization, and audit functions. An IBIP Host System indicium (**Federal Register** Volume 61 Number 209 Monday, October 28, 1996) creates the indicium using data provided by the Postal Security Device and the user, supports communications with the vendor's infrastructure, provides a user interface, employs current postage rates, supports use of standardized addresses, and maintains records regarding host system use.

The goal for IBIP is to provide an environment in which customers can apply postage through new technologies that improve postal revenue security. This requires a new form of postage indicia and the adoption of standards to facilitate industry investment and product development.

The manufacture and use of postage meters is governed by Postal Service regulations (see 39 CFR Part 501; Domestic Mail Manual P030). With the development of new proposed specifications under the IBI Program that increases product security along with integrating advances in technology, a new approach to product submission is required. This new interim approach for product submission procedures covers product/devices intended to meet IBIP specifications. Please note this proposed procedure applies to product service providers of IBI products/devices. It does not apply to users of IBI product/devices nor producers of mail bearing the IBI as a form of evidence of postage.

As explained in detail below, there are nine steps proposed for the Interim IBIP product submission process. These steps are entitled: (1) Letter of Intent, (2) Non-Disclosure Agreements, (3) Concept of Operations, (4) Documentation Requirement, (5) Vendor Infrastructure Plan, (6) Product Submission/Testing, (7) Vendor Infrastructure Testing, (8) Field Test (Beta) Approval (Limited Distribution), and (9) Vendor/Product Approval (Full Distribution).

The proposed Interim IBIP product submission procedures [Draft] include nine steps:

A. Letter of Intent

1. The vendor must submit a letter of intent to the Manager, Retail Systems and Equipment (RSE), United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–6807. Include in this letter of intent (a) Date of correspondence, (b) Name and address of parties involved in the proposal: manufacturer, assembly, distribution, and management of the product/device, (c) Name and phone number of official point of contact for each company identified, (d) Proposed manufacturers' business qualifications (i.e., certifications and representations, proof of ability to be responsive and responsible), (e) a product/device concept narrative, (f) a vendor infrastructure concept narrative, and (g) the target Postal Service market segment the proposed IBIP product/device is envisioned to serve.

2. The vendor must submit with the letter of intent a proposed IBIP product/device development plan of actions and milestones (POA&M) with a start date coinciding with the date of the letter of intent.

B. Non-Disclosure Agreements

The vendor must sign non-disclosure agreements with the Postal Service and its agents. These agreements are intended to assure confidentiality and fairness in business.

C. Concept of Operations

The vendor must submit a "Concept of Operations" (CONOPS) that discusses at a moderate level of detail the features and usage conditions for the proposed product/device. Vendors should provide five hard copies and one electronic copy on a PC-formatted 3.5" floppy disk. The CONOPS should cover the following areas at a minimum:

1. System Overview

(a) Concept Overview/Business Model
(b) Concept of Production Administration
(c) PC Postage System (hardware/software)
  (1) Features
  (2) Components
(d) Product Lifecycle Overview
(e) Adherence to Industry Standards

2. Proposed PC Postage System Components—Details

(a) Postal Security Device Features and Functions
(b) Host System Features and Functions
(c) Other components required for normal use conditions

3. Proposed PC Postage Product Lifecycle

(a) Manufacture
(b) USPS certification of product/device
(c) Production
(d) Distribution
(e) Product/device licensing and registration
(f) Initialization
(g) Product/Device Authorization and Installation
(h) Postage Value Download (PVD) process
(i) Product audits (Device and Host System)
(j) Inspections (print quality assurance)
(k) Device/Product Withdrawal/Replacement
  (1) Overall process
  (2) Product failure/malfunction procedures

(l) Scrapped device process

4. Finance Overview

(a) Customer account (lock box) management
  (1) Coupon acquisition
  (2) Payment
  (3) Statement of Account
  (4) Refund
(b) Individual product finance account management
  (1) Postage Value Download
  (2) Refund
(c) Daily account reconciliation
  (1) Vendor reconciliation
  (2) USPS detailed transaction reporting
(d) Periodic summaries
  (1) Monthly reconciliation
  (2) Other reporting

5. Interfaces

(a) Communications and message interfaces with Postal Infrastructure
  (1) PVDs
  (2) Scanning Support
  (3) Support for Mailpiece spoils
  (4) Refunds
  (5) Inspections (print quality assurance)
  (6) Product Audits
  (7) Lost or Stolen Procedures
(b) Communications and message interfaces with USPS financial institutions
  (1) Postage refill
  (2) Daily Account reconciliation
  (3) Deposit slip management
  (4) Refunds
(c) Communications and message interfaces with Customer Infrastructure
  (1) Key Management
  (2) Product Audits (Device and Host System)
  (3) Inspections (print quality assurance)
(d) Message Error Detection and Handling

6. Technical Support and Customer Service

(a) User Training and Support
(b) Software Configuration Management (CM) and update procedures
(c) Hardware CM and update procedures

7. Other

(a) Postal Rate Change Procedures
(b) ZIP+4 CD updates
(c) Physical Security
(d) Personnel Security

Appendix A Security Features

The CONOPS must be accompanied by substantiated market analysis supporting the target Postal Service market segment the proposed IBIP product/device is envisioned to serve as identified in the Letter of Intent.

D. Documentation Requirements

1. The vendor must submit to the Postal Service a detailed design document of the product/device. FIPS 140–1 Appendix A provides a checklist summary of documentation requirements for the FIPS 140–1 standard. Additionally, the Postal Service requires design documentation which includes, but is not limited to, the following:

(a) Full source code of all software involved in the IBIP Postal Security Device and the IBIP Host System,
(b) Operations manuals for product usage,
(c) Interface description documents for all proposed communications interfaces,
(d) Maintenance manuals,
(e) Schematics,
(f) Product initialization procedures,
(g) Finite state machine models/ diagrams,
(h) Block diagrams,
(i) Security features descriptions, and
(j) Cryptographic operations descriptions.

Detailed references for much of this documentation is listed in FIPS 140–1 Appendix A. The Postal Service will determine the number of copies needed of the aforementioned documentation based on review of the CONOPS.

2. The vendor must submit a test plan that, if passed by a product/device, provides compliance by the product/ device with all Postal Service requirements and FIPS 140–1 requirements, as applicable to IBIP. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes for all special test equipment and non-standard or non-commercial instrumentation. Finally, this test plan must include a proposed schedule of major test milestones.

E. Vendor Infrastructure Plan

The Vendor must submit a Vendor Infrastructure Plan which describes how you will meet or enforce the processes and procedures described in your concept of operations. This includes but is not limited to a detailed description of all Information Based Indicia Program and Postal Service related operations, computer systems, and interfaces with both customers and the Postal Service that the vendor shall use in manufacturing, producing, distribution, customer support, product/device life cycle, inventory control, print readability quality assurance, and reporting on IBIP product/devices.

F. Product Submission/Testing

1. The vendor must submit, of each product/device requested for approval, a minimum of five combinations of each product/device to the Postal Service for evaluation and review. The vendor must provide directly, or through lease or rental, any equipment required for use in conjunction with the proposed product/device needed to represent usage conditions as proposed in the CONOPS (see section C).

2. The vendor must supply the Postal Service with sample mailpieces that represent the range of impression styles possible (including Ad plates) and envelop (size) types, envelop (paper) types, envelop colors, and envelop styles acceptable to the IBIP product/ device submitted for testing. Separate sample mailpieces from each printer driver supported by the IBIP product/ device will be required. Quantities of sample mailpieces required for testing will be determined by the Postal Service based on product/device characteristics.

3. The vendor must submit simultaneously to IBIP product/device submission to the Postal Service the identical IBIP product/device to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for product/device FIPS 140–1 certification, as applicable. Upon completion of this evaluation, the Postal Service requires the following be forwarded directly from the accredited laboratory to the Manager, Retail Systems & Equipment for review:

(a) A copy of letter of recommendation to the National Institute of Standards and Technology (NIST) of the United States of America.

(b) Copies of all proprietary and non-proprietary reports and recommendations generated.

(c) A copy of NIST issued certificate.

Additional Security Testing Note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any IBIP product/ device submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

G. Vendor Infrastructure Testing

1. Testing of all reporting requirements, including Postal Service/ customer licensing support, IBIP product/device status activity reporting, total IBIP product/device population inventory, irregularity reporting, lost and stolen reporting, financial transaction reporting, account

reconciliation, digital certificate acquisition, product initialization, cryptographic key changes, rate table changes, print quality assurance, device authorization, device audit, product audit, and remote inspections must be achieved by vendors prior to any product/device approval for distribution.

2. Testing of these activities and functions includes computer based testing of all interfaces with the Postal Service including but not limited to the following:

a. Product Manufacture and Life Cycle (including leased, unleased, new meter stock, installation, withdrawal, replacement, key management, lost, stolen, and irregularity reporting)
b. Product Distribution and Initialization (including device authorization, product initialization, customer authorization, and product maintenance)
c. Licensing (including license application, license update and license revocation)
d. Finance (including lock box account management, individual product financial accounting, refunds, daily summary reports, daily transaction reporting, and monthly summary reports)
e. Audits and Inspections

3. The vendor must complete an IBIP Product/Device—Vendor Infrastructure—Financial Institution—USPS Infrastructure (ALPHA) Test involving all entities in the proposed architecture; at a minimum this includes the proposed IBIP product/device, Vendor Infrastructure, financial institution and USPS Infrastructure systems and interfaces. ALPHA testing is intended to demonstrate the proposed IBIP product/devices' utility, functionality and compatibility with other systems, and may be conducted in a laboratory environment.

Vendor Infrastructure Testing—(ALPHA) Test Note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any Vendor Infrastructure system supporting an IBIP product/device approved by the Postal Service for manufacture and distribution. Initial Vendor Infrastructure testing and (ALPHA) testing schedules will be supported at the convenience of the Postal Service. In addition, as all IBIP products/devices will have to conform to the Product/Infrastructure specs, vendors are also strongly encouraged to initiate dialogue regarding systems specifications with the Postal Service at the earliest possible date.

H. Field Test (BETA) Approval (Limited Distribution)

1. The vendor will submit a proposed Field Test (BETA) Test Plan identifying test parameters, product/device quantities, geographic location, test participants, test duration, test milestones, and product recall plan (if needed). The purpose of the BETA test is to demonstrate the proposed IBIP product/devices' utility, functionality and compatibility with other systems in a real-world environment. The BETA test will employ available communications and interface with current operational systems to conduct all IBIP functions. The Manager, Retail Systems & Equipment will determine acceptance of vendor proposed BETA Test Plans based on, but not limited to, assessed risk of product/device, product/device impact on Postal Service operations, and requirements for Postal Service resources.

2. The vendor has a duty to report security weaknesses to the Postal Service to ensure that each product/device model and every product/device in service protects the Postal Service against loss of revenue at all times. A grant of Field Test Approval (FTA) does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the product/device. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Retail Systems & Equipment.

1. Vendor/Product Approval (Full Distribution)

1. Upon receipt of the final certificate of evaluation from the national laboratory, and after obtaining positive results of internal testing of the product/device, successful completion of vendor infrastructure testing, ALPHA testing, and demonstration of limited distribution activities (BETA testing), the submitted product/device, vendor infrastructure and vendor/manufacturer qualification requirements will be administratively reviewed for final approval. Note: Copies of Draft 39 Code of Federal Regulation Part 502 containing IBIP Vendor/Manufacturer qualification requirements are available by contacting Terry Goss at (202) 268–3757.

2. The Postal Service may require at any time, that models/versions of approved products/devices, and the design and use manuals and specifications applicable to such product/devices and any revisions thereof be deposited with the Postal Service.

It is emphasized that this proposed procedure is being published for comments and is subject to final definition. Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553b(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the proposed procedures.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–256 Filed 1–6–97; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Biovail Corporation International, Common Stock, $0.01 Par Value) File No. 1–11145

December 31, 1996.

Biovail Corporation International ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the AMEX by filing with the AMEX a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its security from listing on the Amex and by setting forth in detail the reasons for such proposed withdrawal, and the facts in support thereof. The Security of the Company has been listed for trading on the New York Stock Exchange, Inc. ("NYSE") effective December 11, 1996. In making the decision to withdraw the Security from listing on the AMEX, the Company considered the increase visibility of the Company's shares from being listed on the NYSE and the wishes of institutional shareholders.

Any interested person may, on or before January 22, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application

has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–240 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22425; International Series Release No. 1041; 812–10184]

Canadian Imperial Holdings Inc.; Notice of Application

December 31, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Canadian Imperial Holdings Inc.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company, Canadian Imperial Bank of Commerce ("CIBC"), and certain companies controlled by CIBC.

FILING DATE: The applicant was filed on June 6, 1996 and was amended on December 20, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 27, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 425 Lexington Avenue, 9th Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation formed in December, 1981. All of applicant's outstanding voting securities are owned by CIBC. CIBC, a diversified financial institution governed by the Bank Act (Canada), provides, directly and through its subsidiaries, a broad range of personal, commercial, investment, and corporate banking services for its customers throughout the world. CIBC Inc. ("CI") is a wholly-owned subsidiary of applicant that engages in the business of making loans primarily to commercial and industrial companies, real estate related loans and lease activities, and loans to depository institutions and foreign governments. CIBC Leasing Inc., also a wholly-owned subsidiary of applicant, engages in commercial leasing activities, primarily equipment leases to manufacturing companies.

2. In addition to owning CI and CIBC Leasing Inc., applicant acts as a holding company for CIBC's United States subsidiaries ("U.S. Subsidiaries"). Applicant also engages in financing activities and provides funds for CIBC, CI, CIBC Leasing Inc., and the U.S. Subsidiaries (collectively, the "CIBC Entities"). Applicant proposes to obtain funds through the offer and sale of its debt securities in the United States and in overseas markets, and to lend the proceeds to the CIBC Entities.

3. Due to the nature of the debt markets, applicant may borrow in amounts exceeding the amounts required by the CIBC Entities at any given time. However, at least 85% of the cash or cash equivalents raised by applicant through the sale of debt securities will be loaned to the CIBC Entities as soon as practicable, but in no event later than six months after applicant's receipt of such cash or cash equivalents. Amounts that are not loaned to the CIBC Entities will be invested in government securities, securities of CIBC, CI or a company controlled by CIBC (or, in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 (the "Securities Act") by section 3(a)(3) of the Securities Act, or equity securities of unaffiliated companies in an amount that does not exceed 4% of applicant's assets.

4. Any issuance of debt securities by applicant will be guaranteed unconditionally by CIBC as to the payment of principal, interest, and premium on the securities, if any (the "Guarantee"), in accordance with rule 3a–5(a)(1). The Guarantee will provide each holder of applicant's debt securities a direct right of action against CIBC to enforce CIBC's obligations under the Guarantee without first proceeding against applicant.

Applicant's Legal Analysis

1. Applicant requests relief under section 6(c) of the Act for an exemption from all provisions of the Act. The Commission has determined that it is appropriate to exempt a finance subsidiary from all provisions of the Act where the primary purpose of the finance subsidiary is to finance the business operations of its parent or other subsidiaries controlled by its parent and where any purchaser of the finance subsidiary's securities ultimately looks to the parent for repayment and not to the finance subsidiary.[1]

2. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Certain of the CIBC Entities do not fit within the technical definition of "companies controlled by the parent company" because they derive their non-investment company status from section 3(c) of the Act.

3. In the release adopting rule 3a–5, the Commission stated that it may be appropriate to grant exemptive relief to the finance subsidiary of a section 3(c) issuer, but only on a case-by-case basis upon an examination of all relevant

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[1] Investment Company Act Release No. 14275 (Dec. 14, 1984) (release adopting rule 3a–5 under the Act). Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

facts. According to the adopting release, the concern was that a company may be considered a non-investment company for the purposes of the Act under section 3(c) and still be engaged primarily in investment company activities. Applicant states that none of the CIBC Entities to which applicant may loan money are engaged primarily in investment company activities. In addition, if CIBC issued the securities that are to be issued by applicant and use the proceeds, none of the CIBC Entities would be subject to regulation under the Act. While CIBC has chosen instead to use applicant as a financing vehicle, the Guarantee ensures that holders of applicant's securities will have direct access to CIBC's credit.

4. Under rule 3a–5(a)(6), a finance subsidiary may only invest in government securities, securities of its parent company or a company controlled by its parent company, or debt securities exempt under section 3(a)(3) of the Securities Act. Applicant intends to invest in equity securities of unaffiliated companies in an amount that does not exceed 4% of its assets. Applicant will hold such securities due to non-U.S. tax constraints applicable to CIBC. Applicant's primary purpose, however, will continue to be the financing of the business operations of CIBC and companies controlled by CIBC. In addition, purchasers of applicant's debt securities will receive disclosure documents that make clear that such purchasers should ultimately look to CIBC for repayment pursuant to CIBC's guarantee. Thus, applicant asserts that, because neither its structure nor its mode of operation will resemble that of an investment company, the holders of applicant's securities will not rely on applicant's management of securities issued by unaffiliated companies.

5. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the relief requested satisfies the section 6(c) standard.

Applicant's Condition

Applicant agrees that any order issued on this application shall be subject to the following condition:

Applicant will comply with all of the provisions of rule 3a–5 under the Act, except: (a) applicant will be permitted to invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by section 3(c) (1), (3), (4), (6), or (7), *provided* that any such entity excluded from the definition of investment company pursuant to section 3(c)(1) will only engage in lending, leasing or related activities (such as entering into credit derivatives to manage that credit risk exposures of its lending and leasing activities) and will not be structured solely as a means of avoiding regulation under the Act, and *provided further,* that any such entity excluded from the definition of investment company pursuant to section 3(c)(6) of the Act will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act; and (b) applicant will be permitted to invest in, reinvest in, own, hold, or trade in equity securities of unaffiliated companies with a purchase price not in excess of $200 million (or any higher amount not in excess of 4% of applicant's assets).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–239 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22421; 811–7069]

Senior High Income Portfolio II, Inc.; Notice of Application

December 30, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Senior High Income Portfolio II, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1996 and amended on December 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, non-diversified management investment company organized as a Maryland corporation. On July 19, 1993, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–2 under the Act and the Securities Act of 1933. The registration statement became effective on September 17, 1993, and applicant commenced the initial public offering the same day.

2. On December 6, 1995, applicant's board of directors approved an Agreement and Plan of Merger (the "Plan") whereby applicant would transfer its assets to Senior High Income Portfolio, Inc. ("SHIP I"), a registered closed-end management investment company, in exchange for shares of SHIP I. Pursuant to rule 17a–8 under the Act,[1] applicant's board of directors determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

diluted as a result of the proposed reorganization.

3. In approving the Plan, the directors identified certain benefits which were likely to result from the reorganization. It was anticipated that the applicant's shareholders would remain invested in a closed-end fund with investment objectives and policies virtually identical to those of applicant, and applicant's shareholders would also benefit from a reduced overall operating expense ratio based on the combined assets of the surviving fund and from greater efficiency and flexibility in portfolio management.

4. On December 29, 1995, applicant filed a proxy statement with the SEC that was declared effective on February 5, 1996 and distributed to shareholders on or about February 5, 1996. In addition to solicitation by mail, certain agents of applicant solicited shareholder proxies by telephone. Applicant's shareholders approved the Plan at a special meeting held on March 14, 1996.

5. Pursuant to the Plan, on April 15, 1996, applicant transferred all of its assets and liabilities to SHIP I. Upon transfer, each share of applicant's common stock converted into the right to receive an equivalent dollar amount (to the nearest one ten-thousandth of one cent) of full shares of SHIP I common stock plus cash in lieu of any fractional shares, computed based on the net asset value per share of each of applicant and SHIP I.

6. Expenses incurred in connection with the reorganization included proxy solicitation expenses, filing fees, legal and audit fees and printing and stock exchange fees. All expenses applicant incurred in connection with the reorganization were paid by SHIP I after the reorganization.

7. As of the date of the application, applicant had no shareholders and no securities outstanding, and has no debts or other liabilities outstanding. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor proposes to engage, in any business activities other than those necessary for the winding up on its affairs.

9. Applicant filed articles of merger with the State of Maryland on April 12, 1996, which became effective on April 15, 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–243 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22422; 811–7131]

Senior Strategic Income Fund, Inc.; Notice of Application

December 30, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Senior Strategic Income Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1996 and amended on December 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 27, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, non-diversified management investment company organized as a Maryland corporation. On July 19, 1993, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–2 under the Act and the Securities Act of 1933. The registration statement became effective on September 17, 1993, and applicant commenced the initial public offering the same day.

2. On December 6, 1995, applicant's board of directors approved an Agreement and Plan of Merger (the "Plan") whereby applicant would transfer its assets to Senior High Income Portfolio, Inc. ("SHIP I"), a registered closed-end management investment company, in exchange for shares of SHIP I. Pursuant to rule 17a–8 under the Act,[1] applicant's board of directors determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

3. In approving the Plan, the directors identified certain benefits which were likely to result from the reorganization. It was anticipated that the applicant's shareholders would remain invested in a closed-end fund with investment objectives and policies virtually identical to those of applicant, and applicant's shareholders would also benefit from a reduced overall operating expense ratio based on the combined assets of the surviving fund and from greater efficiency and flexibility in portfolio management.

4. On December 29, 1995, applicant filed a proxy statement with the SEC that was declared effective on February 5, 1996 and distributed to shareholders on or about February 5, 1996. In addition to solicitation by mail, certain agents of applicant solicited shareholder proxies by telephone. Applicant's shareholders approved the Plan at a special meeting held on March 14, 1996.

5. Pursuant to the Plan, on April 15, 1996, applicant transferred all of its assets and liabilities to SHIP I. Upon transfer, each share of applicant's common stock converted into the right to receive an equivalent dollar amount (to the nearest one ten-thousandth of one cent) of full shares of SHIP I common stock plus cash in lieu of any fractional shares, computed based on the net asset value per share of each of applicant and SHIP I.

6. Expenses incurred in connection with the reorganization included proxy solicitation expenses, filing fees, legal and audit fees and printing and stock exchange fees. All expenses applicant

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

incurred in connection with the reorganization were paid by SHIP I after the reorganization.

7. As of the date of the application, applicant had no shareholders and no securities outstanding, and has no debts or other liabilities outstanding. Applicant is not a party to any litigation or administrative hearing. Applicant is neither engaged, nor proposes to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed articles of merger with the State of Maryland on April 12, 1996, which became effective on April 15, 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–242 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 6, 1997.

A closed meeting will be held on Wednesday, January 8, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 8, 1997, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 3, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–441 Filed 1–3–97; 3:53 pm]

BILLING CODE 8010–01–M

[Release No. 34–38098; File No. SR–CHX–96–26]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Enhanced SuperMAX and Timed Enhanced SuperMAX

December 30, 1996.

I. Information

On October 9, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal relating to its SuperMAX system, seeking permanent approval of the existing pilot program. The proposed rule change was published for comment in the **Federal Register** on November 20, 1996.[3] The CHX filed an amendment ("Amendment No. 2") to the proposal on December 30, 1996.[4] No comments were received on the proposed rule change. This order approves the Exchange's proposal as amended.

II. Description of the Proposal

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[5] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options available under this new rule.[6] These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX, were approved on a pilot basis until July 31, 1996. The Commission extended the pilot program until December 31, 1996 and requested that the CHX provide a report to the Commission, by August 31, 1996,[7] describing its experience with the pilot program. On August 30, 1996, the CHX submitted a report.

The Exchange, based on its amended proposal, has requested a further extension for its Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program[8] through March 1, 1997. As stated above, the two options available in the pilot program are Enhanced SuperMAX and Timed Enhanced SuperMAX. Enhanced SuperMAX is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[9] The proposed Enhanced SuperMAX program differs from the original pilot program approved in 1991 in that it is available starting at 8:45 a.m. instead of 9:00 a.m. This program also differs from the Exchange's SuperMAX program in that under this program, certain orders are "stopped" at the consolidated best bid or offer and are executed with reference to the *next* primary market sale instead of the previous primary market sale. Timed Enhanced SuperMAX is a slight variation on the Enhanced SuperMAX program. It executes orders in the same manner as the Enhanced SuperMAX program except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37947 (November 13, 1996), 61 FR 59124. In Amendment No. 1 to the proposed rule change, submitted on November 8, 1996, the Exchange replaced the text of the proposed rule change originally filed with rule text changed to reflect previously inadvertently omitted language. *See* Securities Exchange Act Release No. 37947 at note 2.

[4] Letter from David T. Rusoff, Esq., Foley & Lardner, to Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated December 23, 1996. In Amendment No. 2, the CHX amended the proposed rule change to request an extension of the pilot through March 1, 1997, rather than a request for permanent approval of the program, and agreed to submit additional data regarding the pilot by January 31, 1997.

[5] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007.

[6] *See* Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465.

[7] *See* Securities Exchange Act Release No. 37491 (July 29, 1996), 61 FR 40690.

[8] CHX Rule 37 (e)–(f).

[9] *See* Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765.

a month, and may be no less than 30 seconds.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act, in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission continues to believe that the pricing and execution procedures of Enhanced SuperMAX and Timed Enhanced SuperMAX are consistent with the maintenance of fair and orderly auction markets on national securities exchanges.The Commission asked the Exchange to monitor the operation of the systems and determine their effectiveness and to submit a report to the Commission describing its experience with the pilot program.[10] While the Exchange submitted a report on August 30, 1996, the Commission has requested and the Exchange has agreed to submit, by January 31, 1997, certain supplemental data regarding the pilot program.

The Commission believes that this additional data and conclusions reached therefrom will be critical in determining whether to further extend or permanently approve the program. Moreover, extending the effectiveness of the pilot program until March 1, 1997 will give the Commission an opportunity to carefully and comprehensively evaluate the information provided by the Exchange. Accordingly, the Commission believes it is reasonable to extend the Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program until March 1, 1997, and to request that the Exchange submit additional data to the Commission by January 31, 1997.

Any requests to modify this pilot program, extend its effectiveness, or to seek permanent approval for the pilot program should be submitted to the Commission by January 31, 1997 as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 requests that rather than being approved on a permanent basis, that the Enhanced SuperMAX and Timed Enhanced SuperMAX features of the SuperMAX system be approved through March 1, 1997, which will permit the pilot program to remain in effect without interruption. In addition, the Exchange has represented that no problems have arisen and no complaints have been received concerning the pilot program since its implementation.[11] Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR–CHX–96–26 and should be submitted by January 28, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–96–26), as amended, is approved, and accordingly, that the pilot program is extended until March 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–237 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

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[10] See Securities Exchange Act Release No. 36027, *supra* note 6.

[11] Telephone conversation between David T. Rusoff, Esq. Foley & Lardner, and Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on December 23, 1996.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.20–3(a)(12).

[Release No. 34–38097; File No. SR–NASD–96–45]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES") and the minimum quote size requirements for Nasdaq market makers in NNM securities. Specifically, under the proposal, 762 NNM securities will be reclassified into a different SOES tier size effective January 2, 1997. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES and the minimum quote size requirements for Nasdaq market in NNM securities. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of September 30, 1996, pursuant to the following established criteria: [1]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 762 NNM securities will be reclassified effective January 2, 1997. These 762 NNM securities are set out in the NASD's *Notice To Members 96–88* (December, 1996).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reassignment of NNM securities within SOES tier size levels and minimum quotation size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–45 and should be submitted by January 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–236 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38101; File No. SR–NASD–96–58]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board ® Service through March 31, 1997

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 27, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

[1] The classification criteria are set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[2] 17 CFR 200.30–3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as "OTC Equities").[2]

Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation II™ authorized devices. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under an interim approval that expires on December 31, 1996.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through March 31, 1997. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service.[4] For the month ending November, 1996, the Service reflected the market making positions of 411 NASD member firms displaying quotations/indications of interest in approximately 5,700 OTC Equities.

During the proposed extension, unregistered foreign securities and American Depositary Receipts (collectively, "Foreign Equity Securities") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for unregistered Foreign Equity Securities will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (currently under NASD Rule 6740) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service, including those related to the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act") particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that this proposed rule change is consistent with Sections 11A(a)(1), 15A(b)(6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through March 31, 1997 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 19124.

[2] With the Commission's approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not quality for dissemination of transaction reports via the facilities of the Consolidated Tape Association.

[3] Securities Exchange Act Release No. 37387 (June 28, 1996), 61 FR 36098.

[4] Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281. *See also* Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808 providing notice of Amendment No. 1 to the proposed rule change.

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system for penny stocks, pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System ("QEQS") status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2).

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approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through December 31, 1996. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market-making in approximately 5,700 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the transactional data now reported by member firms pursuant to NASD Rule 6600.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–58 and should be submitted by January 28, 1997.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular with the requirements of Section 15A(b)(11) of the Act, which provides that the rule of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice. The Commission finds that approval of this proposed rule change to continue operation of the pilot program is appropriate. The Commission has solicited and continues to solicit comments from the OTCBB Service. An extension of the pilot program will provide the Commission with sufficient time to consider the issues raised by the various interested parties.

Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in OTC Equities and that facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in OTC Equities that are quoted in the Service, including certain non-Tape B securities that are listed on regional exchanges and quoted in the Service.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through March 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–238 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38095; File No. SR–NYSE–96–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Extending the Current $400,000 Limit on Transaction Charges through 1997

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1996, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In January 1996, the NYSE implemented a rate revision to its equity transaction charges. The revision included the elimination of all systems credits, a reduction of charges for shares 5,000 and under, the elimination of charges for non-market-maker system orders from 100 to 2,099 shares, the elimination of the growth limitation of 4% over 1988 levels, and the implementation of a monthly $400,000 transaction charge cap per firm, a limitation which would be indexed annually to average daily volume, and would be removed January 1, 1999.[1] The proposed revision for the 1997 transaction charge extends the current $400,000 cap rather than raising the cap based on the increase in volume from 1995 to 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

[1] Securities Exchange Act Release No. 36465 (November 8, 1995), 60 FR 57473 (November 15, 1995).

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the change is to respond to the needs of our constituents with respect to overall competitive market conditions and customer satisfaction.

(2) Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–96–39 and should be submitted by January 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–234 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38103; File No. SR–OCC–96–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Membership Standards

December 31, 1996.

On August 30, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–96–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 11, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change amends OCC's by-laws and rules regarding OCC's initial membership standards and the ongoing duties of clearing members as follows.

A. Article V, Section 1 of the By-Laws

Clause d. has been added to Interpretation .02 of the Interpretations and Policies ("Interpretations") under Article V, Section 1 of OCC's by-laws. Clause d. provides that the Membership/Margin Committee ("Committee") of the Board of Directors ("Board") will not recommend approval of an application for clearing membership unless the applicant's Designated Examining Authority ("DEA") has stated that it has no objections to the application for clearing membership.[3] Pursuant to that clause, the Committee, if requested in writing by the applicant, is permitted to waive the requirement in exceptional cases and where good cause is shown.

Interpretation .03 is amended to require that if an applicant elects to use an associated person[4] to satisfy the applicable requirements of clause a. through c. thereof, the designated associated person must be a full time employee of the applicant.[5] Interpretation .03 also is amended to require that the key operations employees required to have attended applicable OCC operations readiness review sessions and successfully completed any applicable OCC operational and financial examinations for operations employees be full time employees and attend all such review sessions. Interpretation .04 is amended to eliminate the ability of an applicant for clearing membership to enter into a facilities management arrangement with a non-clearing member.[6]

Interpretation .05 is added to authorize the Committee to recommend to the Board that additional financial requirements be imposed on an applicant for clearing membership (*e.g.*, an increase in net capital or a requirement to make and maintain

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37792 (October 7, 1996), 61 FR 53475.

[3] Under OCC's current membership review procedures, an applicant's DEA is contacted for information regarding the applicant and is requested to provide advice or any objections with respect to the applicant's ability to self-clear option transactions.

[4] Associated person is defined in Interpretation .03 as any partner, officer, director, or branch manager of such applicant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such applicant, or any employee of such applicant.

[5] Clauses a. through c. require that: an applicant that is a registered broker-dealer must be registered as a "Limited Principal—Financial Operations" with the National Association of Securities Dealers; an applicant that is applying for clearing membership as an exempt Canadian clearing member must be registered as a principal/director/officer and as a designated registered options principal with the Investment Dealers Association of Canada; and an applicant that is a non-U.S. securities firm must have completed any applicable OCC financial and operational examination for employees who are responsible for supervising the preparation of applicant's financial reports.

[6] Currently, OCC has two clearing members that use the same non-clearing member facilities manager.

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initial margin deposits) or that restrictions be imposed on the applicant's clearance of option transactions if the Committee has determined that the applicant's financial or operational condition in relation to the business that the applicant has proposed to transact through OCC makes such action necessary or advisable for the protection of OCC, clearing members, or the general public. The Board is required to review independently such a recommendation to determine whether it should be imposed on an applicant. Any requirements or restrictions so imposed would remain in force for the period determined by the Board but will last no longer than the end of the first three calendar months commencing after the applicant's admission to clearing membership. Furthermore, Interpretation .05 states that the imposition of any additional requirements or restrictions so imposed shall not preclude OCC from imposing contemporaneous requirements or restrictions pursuant to other provisions of OCC's by-laws and rules.[7]

B. Article V, Section 3 of the By-Laws

Interpretation .01 has been added to Section 3 of Article V. That interpretation requires an applicant approved for clearing membership subject to the satisfaction of specified conditions to meet those specified conditions within six months from the date on which its application is approved unless the Board prescribes a shorter time period at the time of approval. If an applicant fails to meet the specified conditions within the applicable time period, the approval of the application will be deemed withdrawn, and the application will be deemed to have lapsed unless the period to satisfy those conditions is extended by OCC. Any applicant seeking an extension will be required to make a written request specifying any material changes that have occurred in its ability to transact business with OCC. The Chairman or the President is vested with the authority to approve or disapprove an extension request. No deadline can be extended beyond one year from the date the application originally was approved.

C. Chapter II of the Rules

Rule 201 is amended (i) to delete the requirement that each clearing member maintain an office in the vicinity of the office of OCC and (ii) to require every clearing member to provide OCC with prompt written notice of the relocation of its principal office or the office maintained by the clearing member to comply with the requirements of Rule 201(a) and with respect to a non-U.S. clearing member, prompt notice of a material change in the office arrangements OCC had previously found satisfactory.

Rule 214(a) is amended to require that only associated persons who are full time employees of a clearing member may satisfy the applicable requirements of that rule.[8] Interpretation .02 thereunder is amended (i) to shorten the time period from one year to three months within which a clearing member must replace an associated person through whom a clearing member has been meeting the requirements of the rule and (ii) to require prompt, written notice of any separation between the clearing member and such associated person.

Rule 215 has been added to require each clearing member to provide OCC with prompt, prior, written notice of material changes to its operations including: (i) its involvement in any merger, combination, or consolidation; (ii) the acquisition of another entity; (iii) the sale of a significant portion of its assets; (iv) a change in its form of business organization or the name under which it does business; and (v) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the clearing member. Clearing members will be required to provide OCC with such documents as OCC might require with respect to such events as well as a list of persons or entities that are the beneficial owners directly or indirectly of 10% or more of the equity of the clearing member.

II. Discussion

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control. The proposal should assist OCC in this regard by helping to ensure that only entities that meet certain standards are standards are admitted to OCC membership. For example, seeking the approval of an applicant's DEA prior to admission should help OCC to confirm that the admission is consistent with the applicant's current operations. Furthermore, by allowing the Committee to recommend that additional requirements or restrictions be placed on an applicant, OCC should be better able to monitor such applicant and evaluate the risks such applicant poses to OCC. Similarly, by requiring applicants to meet all conditions of membership within six months of admission, OCC limits the risk that such applicant poses to OCC while permitting an applicant a reasonable amount of time to comply with OCC rules.

Members are now required to provide OCC prompt notice of such events as a change in office or a material change in operations. By providing prompt notice of these changes, the proposal should enable OCC to better monitor the financial and operational status of its members. By admitting applicants subject to certain conditions and by monitoring members' conditions, OCC should be able to further reduce the risk of member default and thereby further reduce the risk that OCC may need to expend funds in satisfaction of a defaulting member's obligations. Thus, the proposal should assist OCC in safeguarding funds and securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–231 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38105; File No. SR–OCC–96–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Unit Investment Trusts as Margin Collateral

December 31, 1996.

On September 6, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–96–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register**

[7] *E.g.*, OCC Rule 305.

[8] Rule 214(a) contains provisions similar to Interpretation .03 of Article V, Section 1 of the by-laws, *supra* notes 4 and 5 and accompanying text.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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on October 11, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change adds subparagraph (4) to Rule 604(d) to permit clearing members to deposit as margin with OCC publicly traded units of beneficial interest ("trust units") in unit investment trusts that hold portfolios or baskets of common stocks. These classes of trust units are traded and cleared like shares of common stock and are typically held in book entry form at a securities depository. The trust units must met the requirements applicable to stocks under Rule 604(d). Rule 604(d) requires that to be eligible as margin deposits, stock must have a market value greater than $10 per share and must either (a) be traded on a national securities exchange and have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan or (b) be traded in the over-the-counter market and designated as a national market system security pursuant to the Commission's Rule 11Aa2–1.[3] Pursuant to Rule 604(d)(1), trust units will be valued on a daily basis at 60% of currently market value.

In order to be eligible for deposit, the trust units must be of a class approved by OCC's Membership/Margin Committee ("Committee") for deposit as margin. At the present time, the Committee has approved Standard & Poor's ("S&P") depository receipts on the S&P 500 Index and S&P MidCap 400 Index as being classes approved for deposit as margin.

In addition, the proposed rule change replaces the term "stocks" with the term "securities" in subparagraphs (2) and (3) to Rule 604(d). Subparagraphs (2) and (3) of Rule 604(d) limit the use of customer securities as margin and prescribe the method of depositing margin securities. The amendment clarifies that such sections apply not only to stocks but also corporate bonds eligible as margin deposits under rule 604(d)(1).

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control. Because the trust units must be either traded on a national securities exchange or designated as a national market system security to be eligible as collateral, the proposal ensures that only very liquid securities will be accepted. Furthermore, by initially limiting eligibility to S&P depository receipts on the S&P 500 Index and the S&P MidCap 400 Index, OCC will be able to gain experience in accepting trust units before expanding the types of trust units it will accept. Therefore, the Commission believes that OCC's acceptance of these classes of trusts units is consistent with OCC's obligation to safeguard securities and funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–232 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38099; File Nos. SR-Philadep–96–20 and SR–SCCP–96–09]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Permanent Approval on an Accelerated Basis of Proposed Rule Changes Concerning the Adoption of Article 8 of the New York Uniform Commercial Code to Govern Certain Transactions

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 15, 1996, the Philadelphia Depository Trust Company ("Philadep") and the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-Philadep–96–20 and SR–SCCP–96–09) as described in Items I and II below, which Items have been prepared primarily by Philadep and SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant permanent approval of the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Philadep and SCCP request permanent approval for their respective adoption of Article 8 of the State of New York's Uniform Commercial Code ("UCC") to govern certain transactions involving Philadep, SCCP, their participants, and pledgees. On June 28, 1996, the Commission temporarily approved through December 31, 1996, Philadep's and SCCP's adoption of New York's U.C.C. Article 8.[2]

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, Philadep and SCCP included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep and SCCP have prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

Philadep and SCCP propose to permanently adopt Rule 32 and Rule 41, respectively, and to permanently amend Rule 1 of their rules. The proposed rule change codifies Philadep's and SCCP's decision to elect Article 8 of the New York UCC to govern certain transactions for the purpose of providing a uniform, consistent, and predictable body of law. Specifically, Rule 32 and Rule 41 will assure that the rights and obligations of Philadep and SCCP, their participants, and their pledgees with respect to transfers and pledges of securities, to the extent Article 8 of the UCC applies thereto, will be governed by and construed in accordance with Article 8 of the UCC of New York in effect from

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[2] Securities Exchange Act release No. 37793 (October 7, 1996), 61 FR 53477.

[3] 17 CFR 240.11Aa2–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 36781 (January 26, 1996), 61 FR 3958 [Files Nos. SR–SCCP–96–01 and SR–Philadep–96–01] and 37382 (June 28, 1996), 61 FR 35291 [File Nos. SR–Philadep–96–08 and SR–SCCP–96–04] (orders granting accelerated approval on a temporary basis of proposed rule changes to provide for the application of Article 8 of the New York UCC).

time to time. Rule 1 will define the term "security" by citing the definition of security in Article 8 of New York's UCC.

Philadep and SCCP note that uncertainty exists as to whether New York law or Pennsylvania law applies to particular transfers and as to whether some transfers within Philadep's or SCCP's systems may be governed by Pennsylvania's UCC Article 8 while other transaction within such systems may be governed by New York's UCC Article 8. With so many of the transactions for which Philadep and SCCP provide depository, clearance, and settlement services potentially being affected [*e.g.*, those transactions effected through interface with broker-dealers, banks, and other institutions which are participants in The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC")], it is problematic that different rules of law under Article 8 of the UCC may govern the rights and obligations of parties to such transfers. Therefore, Philadep and SCCP have chosen to elect the application of New York's UCC Article 8 rather than Pennsylvania's UCC Article 8. The choice of New York law also assures that DTC, NSCC, and their respective participants and pledgees will find harmonious commercial code provisions governing their extensive dealings with Philadep and SCCP, their participants, and pledgees in this area as the New York based groups already are subject to New York law.

Philadep and SCCP state that they believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities, to remove impediments to and perfect the mechanism of a national market system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

Philadep and SCCP do not believe that the proposed rule changes will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [3] requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities. As stated in previous orders,[4] the Commission believes the proposed rule changes are consistent with this requirement because the adoption of Article 8 of the New York UCC should help provide certainty with respect to the substantive rights and obligations under UCC Article 8 that are applicable to Philadep and SCCP and their participants particularly with respect to transactions with broker-dealers, banks, and other institutions that are participants of other foreign or domestic clearing entities.

Philadep and SCCP have requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Currently, the Canadian Depository for Securities ("CDS") acts as a corresponding depository for Philadep and is a participant of SCCP so that transactions in certain Canadian and U.S. brokers-dealers can be cleared and settled through the facilities of Philadep and SCCP.[5] According the Philadep and SCCP, their arrangement with CDS is possible because Article 8 of New York's UCC, unlike Article 8 of Pennsylvania's UCC, provides for book-entry transfers of securities when the certificated security is in the custody of certain foreign clearing organizations. Therefore, to enable Philadep and SCCP to continue to provide without any disruption clearance, settlement, and depository services for certain securities transactions between U.S. broker-dealers and Canadian broker-dealers, the Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing.[6] The Commission also notes that during the previous temporary approval periods neither SCCP, Philadep, nor the Commission have received any adverse comments regarding the adoption of Article 8 of the New York UCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of Philadep and SCCP. All submissions should refer to File Nos. SR–Philadep–96–20 SR–SCCP–96–09 and should be submitted by January 28, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–Philadep–96–20 and SR–SCCP–96–09) be, and hereby are, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–241 Filed 1–6–97; 8:45 am]

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[3] 15 U.S.C. 78q-1(b)(3)(F).

[4] Securities Exchange Act Release Nos. 36781 and 37382, *supra* note 2.

[5] For a complete description of the clearance and settlement activities among CDS, Philadep, and SCCP, refer to Securities Exchange Act Release No. 37918 (November 8, 1996), 61 FR 57938 [File No. SR–Philadep–96–17] (order granting accelerated approval on a temporary basis of a proposed rule change to appoint CDS as a correspondent depository).

[6] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (December 30, 1996).

[7] 17 CFR 200.30-3(a)(12).

[Release No. 34–38104; File No. SR-PHLX–96–51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Automated Options Market Pilot Program

December 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 6, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to extend the Exchange's Automated Options Market ("AUTOM") system pilot program for a six month period ending June 30, 1997.

The text of the proposal is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1996,[1] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X, which was approved as part of the AUTOM pilot program in 1990.[2] AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the Options Price Reporting Authority ("OPRA") as well as the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist and, upon execution of the order, are inputted into Exchange systems for reporting to OPRA and the delivering firm.

Originally, the AUTOM pilot program was approved by the Commission for market orders of up to five contracts for 12 PHLX near-month equity options.[3] Since that time, AUTOM has been amended and extended several times, generally in one-year increments.[4]

In the most recent extension of the pilot program until December 31, 1996,[5] the Commission stated that the Exchange's request for permanent approval should be accompanied by a report covering the period between January 1, 1996, and June 30, 1996, describing: (1) the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO–X system; (3) the system capacity of AUTOM and AUTO–X; and (4) any problems the Exchange has encountered with the routing and execution features. Generally, the Exchange believes that AUTOM has functioned properly and efficiently since the last extension of the pilot program.

Thus, the PHLX proposes to extend the AUTOM pilot program for a six-month period ending June 30, 1997. The PHLX believes that this should provide time for the Exchange to submit a proposed rule change requesting permanent approval of AUTOM as well as an AUTOM rule to govern the system. During this time, the PHLX can continue to study the effectiveness of AUTOM prior to permanent approval.

According to the PHLX, AUTOM provides option orders with the benefits of electronic delivery and reporting, while AUTO–X provides automatic executions. Accordingly, the Exchange believes that AUTOM increases the speed and efficiency of order delivery, execution and reporting. This, in turn, promotes liquidity as well as fair and orderly markets. For these reasons, the PHLX believes that extending the AUTOM pilot program for six months through June 30, 1997, is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act in that AUTOM is intended to improve,

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[1] *See* Securities Exchange Act Release No. 36582 (December 13, 1995), 60 FR 65364 (December 19, 1995) (order approving File No. SR-PHLX–95–78) ("1996 AUTOM Order").

[2] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR-PHLX–89–03).

[3] *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[4] *See* 1996 AUTOM Order, *supra* note 1. *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR-PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX–90–34), extending pilot through December 31, 1991); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX–90–03, extending pilot through December 31, 1993); 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX–94–41, extending pilot through December 31, 1995); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX–91–31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX–91–33, permitting AUTO-X for all strike prices and expiration months); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX–92–38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (File No. SR-PHLX–94–40, codifying use of AUTOM for index options); 35601 (April 13, 1995), 60 FR 19616 (File No. SR-PHLX–95–18, codifying the use of AUTOM for certain order types); 35681 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR-PHLX–95–29, increasing AUTO-X for USTOP 100 Index ("TPX") options to 50 contracts); 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (File No. SR-PHLX–95–30, increasing the maximum AUTOM order size from 100 to 500 contracts); 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (File No. SR-PHLX–95–35, allowing broker-dealer TPX option orders to be routed through AUTOM); and 36467 (November 8, 1995), 60 FR 57615 (November 16, 1995) (order approving File No. SR-PHLX–95–33, limiting AUTO-X for National Over-the-Counter Index options to series where the bid is $10 or less).

[5] *See* 1996 AUTOM Order, *supra* note 1.

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through the use of new data processing and communications techniques, the efficiency with which transactions in PHLX equity and index options are executed. Further, the Exchange believes that AUTOM fosters competition among options exchanges, which have similar systems in place.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[6] Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in PHLX options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time.[7] The Commission does not object to an extension of the pilot program until June 30, 1997, in response to the PHLX's assertion that continuation of the pilot will provide the Exchange with an opportunity to continue to study its effectiveness prior to permanent approval of the program.[8]

The Commission notes further that the Exchange has represented that from January 1996 through November 1996, no significant problems have been reported with AUTOM's routing or execution functions, which have functioned properly and efficiently.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the PHLX to continue the AUTROM pilot program on an uninterrupted basis. Specifically, the Commission believes that the PHLX's proposal to extend the AUTOM pilot program does not raise any new issues since it merely extends the pilot program as it is currently operating. Further, the Commission believes that the pilot is beneficial in maintaining the quality and efficiency of the PHLX's market. In addition, the Commission notes that there have been no adverse comments concerning the pilot program since its implementation. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PHLX–96–51) is approved through June 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–235 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. § 78f and 78k–1 (1988).

[7] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[8] The PHLX will submit a request for permanent approval of the program no later than May 1, 1997. This request will be accompanied by a report covering the period between June 30, 1996, and January 1, 1997, that will include: (1) a description of the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO–X system; (3) the system capacity of AUTOM and AUTO–X; and (4) any problems the Exchange has encountered with the routing and execution features.

[9] 15 U.S.C. § 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–38100; File Nos. SR–SCCP–96–10 and SR–Philadep–96–19]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Changes Relating to Participants Fund Formulas

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 15, 1996, the Stock Clearing Corporation of Philadelphia ("SCCP") and the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–SCCP–96–10 and SR–Philadep–96–19) as described in Items I and II below, which items have been prepared primarily by SCCP and Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval on a temporary basis of the proposed rule changes through June 30, 1997.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes seek permanent approval of SCCP's and Philadep's participants fund formulas. On February 22, 1996, the Commission granted partial temporary approval to proposed rule changes establishing SCCP's and Philadep's participants fund formulas in connection with the industry conversion to same-day funds settlement ("SDFS").[2] On August 29, 1996, the Commission extended the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 36675 (February 22, 1996), 61 FR 7846 [SR–SCCP–95–06] and 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (orders granting partial permanent and partial temporary approval through August 31, 1996, of proposed rule changes).

temporary approval of the proposed rule changes through December 31, 1996.[3]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, SCCP and Philadep included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments that they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP and Philadep have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

On February 22, 1996, SCCP and Philadep converted their processing environment from a next-day funds settlement system to a SDFS system. In an effort to reduce risk in a SDFS environment, SCCP and Philadep put in place a new system and new controls with enhanced processing capabilities. As a part of their conversion to SDFS, SCCP and Philadep established new participants fund formulas.

Both Philadep's and SCCP's Rule 4, which govern the participants fund and the procedures regarding the participants fund formulas, currently provide for an all cash participants funds. The all cash requirement applies to both the required deposits and any additional or voluntary deposits made by participants.

Pursuant to Rule 4 of SCCP's rules and the procedures thereunder, SCCP calculates participants' required cash deposits pursuant to the following formulas:

(a) Inactive Account: $5,000[5]

(b) Full Service ("CNS") Account—The contribution of a CNS Participant is based upon the larger of: (1) the participant's monthly average of trading activity during the preceding three months, $1,000 for every twenty-five trading units of one hundred shares; or (2) the participant's aggregate dollar amount of all long trades at their execution price for the prior three months divided by the number of days in the prior three months multiplied by two percent. The required contributions are rounded upward to $5,000 increments, and the average is a rolling average.

(c) Regional Interface Operations ("RIO") Account—The contribution of a RIO Participant is based on the participant's monthly average of trading activity during the preceding three months, $1,000 for every twenty-five trading units of one hundred shares (with a $10,000 minimum and a $75,000 maximum contribution). The required contributions are rounded upward to $5,000 increments. A RIO Account is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP.

(d) Layoff Account—The contribution of a Layoff Participant is set at a uniform rate of $25,000. A Layoff Participant Account is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP for trades not executed on the Philadelphia Stock Exchange.

(e) Specialist Margin Account—The contribution of a Specialist Margin Participant is set at a uniform rate of $35,000.

(f) Non-Specialist Margin Account—The contribution of a Non-Specialist Margin Participant is set at a uniform rate of $35,000.

Pursuant to Rule 4 of Philadep's rules and the procedures thereunder, Philadep calculates participants' required cash deposit pursuant to the following formulas:

(a) Inactive Accounts: $5,000.00[6]

(b) Specialized Services: (maximum $50,000 required with $100 or greater in average monthly billings for either Deposit or Transfer activity)

—Deposit Activity: $25,000.00 plus

—Transfer Activity: $25,000.00

(c) Participants not doing Specialized Service activity with service fees of $100 or greater in average monthly billings. The greater of either:

(1) $25,000 or

(2) 1% of the average of the three highest net debits over the past three months (rounded to the next $5,000 increment).

Both SCCP and Philadep recalculate each participant's deposit requirement at the end of each month based on a participant's activity for the previous three months prior to the most recent month. SCCP and Philadep notify their participants of the amount of any required deposit increase within ten business days of the end of the month. Participants whose deposit requirements have decreased are notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund. SCCP participants with deposits in excess of $50,000 receive interest rebates from SCCP.

The temporary approval periods for SCCP's and Philadep's participants fund formulas expire on December 31, 1996. Therefore, SCCP and Philadep have requested that the Commission permanently approve their participants fund formulas.

SCCP and Philadep believe the proposed rule changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposals will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of SCCP and Philadep or for which SCCP and Philadep are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

SCCP and Philadep do not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments have been solicited or received. SCCP and Philadep will notify the Commission of any written comments received by SCCP and Philadep.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. While the Commission believes at this time that some of SCCP's and Philadep's participants fund formulas are consistent with this obligation, the Commission continues to have concerns about the adequacy of some of SCCP's and Philadep's participants fund formulas in providing a sufficient source of cash liquidity and in meeting the standards set forth by the

[3] Securities Exchange Act Release Nos. 37623 (August 29, 1996), 61 FR 47229 [SR–SCCP–96–07] (order granting temporary approval through December 31, 1996 of a proposed rule change) and 37625 (August 30, 1996), 61 FR 47227 [SR–Philadep–9–14] (order granting partial permanent approval and partial temporary approval of a proposed rule change through December 31, 1996).

[4] The Commission has modified the text of the summaries submitted by SCCP and Philadep.

[5] Securities Exchange Release No. 37554 (August 9, 1996), 61 FR 42929 [File No. SR–SCCP–96–03] (order granting temporary approval of a proposed rule change to establish a separate participant category for inactive accounts through December 31, 1996).

[6] Securities Exchange Release No. 37554 (August 9, 1996), 61 FR 42929 [File No. SR–Philadep–96–07] (order granting temporary approval of a proposed rule change to establish a separate participant category for inactive accounts through December 31, 1996).

[7] 15 U.S.C. 78q–1(b)(3)(F).

Division of Market Regulation ("Division").[8]

The Commission believes that clearing agencies operating SDFS systems must have sufficient liquidity from a combination of cash and lines of credit to ensure that settlement occurs at the end of the business day even if a participant fails to settle with the clearing agency or if the clearing agency experiences a systems problem. The Commission further believes that a clearing agency must have immediate access to an amount of cash which will enable the clearing agency to fund settlement for most participant failures or systems problems without having to immediately draw on its lines of credit (*i.e.*, a clearing agency's lines of credit should be its secondary source of liquidity and not its primary source). Given the demand for liquidity under an SDFS environment and in light of SCCP's use of its participants fund to finance specialists purchases, the Commission has concerns about the sufficiency of the levels of cash liquidity provided by SCCP's and Philadep's formulas.[9] For these reasons, the Commission is approving the proposed rule changes through June 30, 1997, in order that the Commission, SCCP, and Philadep can continue to analyze the adequacy of SCCP's and Philadep's participants formulas.

SCCP and Philadep have requested that the Commission approve the proposed rule changes on an accelerated basis. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing because the proposed rule changes will allow SCCP and Philadep to continue to apply their participants fund formulas when the current temporary approvals expire on December 31, 1996.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP and Philadep.

All submissions should refer to file numbers SR–SCCP–96–10 and SR–Philadep–96–19 and should be submitted by January 28, 1997.

It is therefore ordered pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–SCCP–96–10 and SR–Philadep–96–19) be, and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–233 Filed 1–6–97; 8:45 am]

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[8] Securities Exchange Act Release No. 18900 (June 17, 1980), 45 FR 41920 (order publishing standards to be used by the Division in reviewing the grant of full registration of clearing agencies).

[9] For a complete description of SCCP's and Philadep's financing program, refer to Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order approving full registration of SCCP, Philadep, *et al.*).

[10] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval of Philadep's proposed rule change. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division, Commission (December 30, 1996).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extensions for eight currently approved information collections coming up for renewal, and reinstatement, without change, of a previously approved collection for which approval has expired. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 22, 1996 [FR 61, page 54832]. 1. Transfer Procedures/ Waste Management Plans; 2. Vital System Automation; and 3. Vessels Reporting Requirements. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 29, 1996 [FR 61, page 55834–55835]. These ICRs include: 1. Boating Accident Report; 2. Certificate of Discharge to Merchant Mariners; 3. Report of Oil or Hazardous Substance Discharge; 4. Plan Approval and Records for Marine Engineering Systems; 5. Benzene; and 6. Vessel Identification System (VIS).

DATES: Comments on this notice must be received on or before February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

U.S. Coast Guard

1. Title: Boating accident Report.
OMB Control Number: 2115–0010.
Form Number(s): CG–3865, CG–3865A.
Type of Request: Extension of a currently approved collection.
Affected Entities: Operators of recreational boats.
Abstract: The collection of information requires operators of recreational boats that are involved in an accident to notify the nearest reporting authority of the accident and submit a casualty or accident report to that authority.
Need: Title 46 U.S.C. 6102(a) requires the establishment of a uniform marine casualty reporting system, with regulations prescribing casualties to be reported and the manner of reporting. The statute requires a State to compile and submit to the Coast Guard; reports, information and statistic on casualties that are reported to the State.
Estimated Burden: The estimated burden is 4,232 hours annually.

2. Title: Certificate of Discharge to Merchant Mariners.
OMB Control Number: 2115–0042.
Form Number(s): CG–718A.
Type of Request: Extension of a currently approved collection.
Affected Entities: Masters or Mates of Shipping Companies and Merchant Mariners.
Abstract: This collection of information requires a master or mate of a shipping company to submit information on merchant mariners to the U.S. Coast Guard that: (1) establishes their sea service time; (2) sets forth their qualifications for their original or upgrading their existing credentials; and

(3) sets forth their qualifications for retirement or insurance benefits.

Need: Under Title 46 U.S.C. 10311, the information collected is used to show eligibility for merchant mariners documents and to provide information to the Maritime Administration on the availability of mariners in a time of National emergency.

Estimated Burden: The estimated burden is 4,500 hours annually.

3. Title: Transfer Procedures/Waste Management Plans.

OMB Control Number: 2115–0120.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Vessel and facility owners or operators.

Abstract: The collection of information requires vessels with a capacity of 250 or more barrels of oil to develop and maintain on board the vessel, oil transfer procedure plans which will provide basic safety information for operating the transfer system. (1) Vessels with a capacity of 250 or more barrels of oil must have written procedures for transferring oil to and from the vessel and from tank to tank and must follow the written procedures in operating the transfer system; (2) vessels with vapor control systems must include operating procedures and a line diagram of the system in the vessel's transfer procedures; (3) tank vessels with a capacity of 1,000 or more cubic meters that load oil or oil residue as cargo must include procedures regarding overfill devices in the transfer procedures; and (4) all oceangoing ships 40 feet or more in length, engaged in commerce or equipped with galleys and berths, must maintain management plans for the handling and disposal of ship generated-garbage.

Estimated Burden: The estimated burden is 29,797 hours annually.

4. Title: Report of Oil or Hazardous Substance Discharge.

OMB Control Number: 2115–0137.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Persons in charge of a vessel or onshore/offshore facility.

Abstract: The collection of information requires any person in charge of a vessel or an onshore or offshore facility to report to the National Response Center, as soon as they have knowledge of, any discharge of oil or hazardous substance by telephone, radio, telecommunication or a similar means of rapid communication.

Need: Title 49 CFR 171.15, 33 CFR 153.203 and 40 CFR 264, mandates that the National Response Center be the central place to report all pollution spills by the public.

Estimated Burden: The estimated burden is 32,832 hours annually.

5. Title: 46 CFR Subchapter F—Plan Approval and Records for Marine Engineering Systems.

OMB Control Number: 2115–0142.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Owners and builders of commercial vessels.

Abstract: The collection of information requires owners or builders of commercial vessels to submit to the U.S. Coast Guard for review and approval, plans pertaining to the marine engineering system prior to construction to ensure that the vessel, if built in accordance with the plans, will meet the regulatory standards.

Need: Under 46 U.S.C. 3306, 46 U.S.C. 8105, and 49 CFR 1.46, the U.S. Coast Guard has promulgated safety regulations for the marine engineering systems on board commercial vessels to ensure that safety standards are met.

Estimated Burden: The estimated burden is 5,304 hours annually.

6. Title: Vital System Automation: 46 CFR Parts 52, 56, 58, 61, 62, 110, 111 and 113.

OMB Control Number: 2115–0548.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Vessel designers, shipyards, manufacturers and owners of inspected commercial vessels.

Abstract: The collection of information requires the vital machinery and engineering spaces of inspected commercial vessels to be automated for the convenience of operation, improvement of efficiency, reduction of personnel and the detection and control of unsafe conditions.

Need: Under 46 U.S.C. 3306, 46 U.S.C. 8105 and 49 CFR 1.46, the Coast Guard promulgated safety regulations for automated vital systems on inspected commercial vessels to ensure safety of life at sea.

Estimated Burden: The estimated burden is 14,400 hours annually.

7. Title: Vessel Reporting Requirements.

OMB Control Number: 2115–0551.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Form Number(s): N/A.

Affected Entities: Owners, charterers, managing operators, or agents.

Abstract: The collection of information requires the owner, charterer, managing operator or agent of a U.S.-flagged vessel to immediately notify the Coast Guard if there is reason to believe the vessel is in distress or lost. The report must be followed up with written confirmation within 24 hours to the Coast Guard.

Need: Title 46 U.S.C. 2306 authorizes the Coast Guard to implement the reporting requirements necessary to determine if a vessel is in distress or lost and to take appropriate action to provide needed assistance.

Estimated Burden: The estimated burden is 93 hours annually.

8. Title: Benzene.

OMB Control Number: 2115–0586.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Owners of inspected vessels, tank ships and barges.

Abstract: The collection of information requires owners of U.S. Coast Guard inspected vessels, including tank ships and barges that transport benzene (except vessels of foreign registry) to: (1) test and monitor those vessels for benzene vapor; (2) provide medical surveillance, training and other protective measures for those employees exposed to benzene vapor in excess of the action level; and (3) keep records to show that they have met each requirement.

Need: Under 46 U.S.C. 3703 and 49 CFR 1.46 the Coast Guard is authorized to issue regulations dealing with the handling and storage of cargo and the protection of life and property in the marine area.

Estimated Burden: The estimated burden is 59,755 hours annually.

9. Title: Vessel Identification System (VIS).

OMB Control Number: 2115–0607.

Type of Request: Revision of a currently approved collection.

Form Number(s): N/A.

Affected Entities: State agencies and U.S. Territories.

Abstract: The collection of information requires States and U.S. Territories, who wish to participate, to provide data on State numbered and titled recreational vessels to a central database known as the "Vessel Identification System" (VIS) which is maintained by the U.S. Coast Guard.

Need: Under Title 46 U.S.C. Chapters 121, 123, 125 and 33 CFR, Part 187, the U.S. Coast Guard has established a national vessel identification system for State numbered and titled vessels to be used by State and Federal agencies and local law enforcement.

Estimated Burden: The estimated burden is 2,057 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory

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Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 30, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–284 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 12, 1996 (61 FR page 41820) and March 28, 1996 (61 FR page 13918) respectively.

DATES: Comments must be submitted on or before February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION: Research and Special Programs Administration (RSPA).

Title: Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Materials.

OMB Control Number: 2137–0579.

Form Number(s): N/A.

Affected Entities: Pipeline operators.

Type of Request: Extension of an existing information collection.

Abstract: Drug abuse is a major societal problem and it is reasonable to assume the problem exists in the pipeline industry as it does in society as a whole. The potential harmful effect of drug abuse on safe pipeline operations warrants imposing comprehensive drug testing regulations on the pipeline industry. These rules are found in 49 CFR Part 199. These regulations require annual information collection of the results of the drug testing program.

Estimated Total Annual Burden on Respondents: The estimated burden is 59,755 hours annually.

Title: Alcohol Misuse Prevention Program.

OMB Number: 2137–0587.

Form Number(s): N/A.

Type of Request: Extension of an existing information collection.

Affected Entities: Pipeline Operators.

Abstract: Alcohol misuse has been identified by the Federal government as a significant danger to safety in the United States, and it is reasonable to assume that the problem exists in the pipeline industry. The potential harmful effects of alcohol misuse on safe pipeline operations warrant the comprehensive alcohol misuse testing regulation imposed on the pipeline industry. These rules (49 CFR Part 199) require information collection in the form of an alcohol misuse prevention plan and associated recordkeeping.

Estimated Total Annual Burden: The estimated burden is 10,278 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 30, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–285 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–60–P

The Secretary of Transportation Has Now Determined That Eldorado International Airport, Bogota, Colombia, Maintains and Carries Out Effective Security Measures

Notice

By notice published on September 21, 1995, I announced that I had determined that Eldorado International Airport, Bogota, Colombia, did not maintain and administer effective security measures and that, pursuant to 49 U.S.C. 44907(d), I was providing public notification of that determination. I now find that Eldorado International Airport maintains and carries out effective security measures. My determination is based on a recent Federal Aviation Administration (FAA) assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my September 15, 1995, determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Bogota, Colombia.

Dated: December 20, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97–286 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Finance Docket No. 33319]

Charles City Area Development Corporation—Acquisition and Operation Exemption—Trains Unlimited, Incorporated

Charles City Area Development Corporation has filed a verified notice of exemption under 49 CFR 1150.31: (1) to acquire and operate a total of

approximately 3.6 miles of rail line owned by Trains Unlimited and located at Charles City, in Floyd County, IA (the Charles City line), between milepost 0.0 and milepost 3.6. The proposed transaction was expected to be consummated on December 18, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33319 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: December 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–182 Filed 1–6–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Dispute Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (P.L. 92–41). For example, the Contract Dispute Act of 1978 (P.L. 95–563) and the Prompt Payment Act (P.L. 97–177) provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1997 and ending on June 30, 1997, is 6⅜ percentum per annum.

Dated: December 27, 1996.

Donald V. Hammond,

Deputy Fiscal Assistant Secretary.

[FR Doc. 97–199 Filed 1–6–97; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, January 23, 1997, 9:00 a.m–5:30 p.m.

LOCATION: 1550 M Street, NW., M Street Lobby Conference Room, Washington, DC 20005.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January Board Meeting; Approval of Minutes of the Seventy-eighth Meeting of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Review of Unsolicited Grant Applications; Selection of 1998 National Peace Essay Contest Topic; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 2, 1997.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 97–446 Filed 1–3–97; 3:53 pm]

BILLING CODE 6820–AR–M

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Corrections

Federal Register

Vol. 62, No. 4

Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

[DEA-143P]

RIN 1117-AA36

Establishment of Freight Forwarding Facilities for DEA Distributor Registrants

Correction

In proposed rule document 96–32077 beginning on page 66637 in the issue of Wednesday, December 18, 1996, make the following correction:

§1301.02 [Corrected]

On page 66638, in the third column, §1301.02 (m), in the last line in the paragraph, "returners" should read "returns".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95-1]

Margaret E. Sarver, M.D., Suspension of Registration; Reinstatement With Restrictions

Correction

In notice document 96–28766 beginning on page 57896 in the issue of Friday, November 8, 1996 make the following corrections:

1. On page 57899, in the second column, in the second paragraph, in the ninth line from the bottom, "codeine produces" should read "codeine products".

2. On the same page, in the third column, in the last paragraph, in the eleventh line from the bottom, insert "glutethimide" after "Respondent's".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95-11]

Stanley Dubin, D.D.S.; Revocation of Registration

Correction

In notice document 96–30378 beginning on page 60727 in the issue of Friday, November 29, 1996 make the following correction:

On page 60728, in the second column, in the first full paragraph, in the last line, "January 28, 1997" should read "December 30, 1996".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 28745; Amendment Nos. 107-9 and 108-14]

RIN 2120-AG27

Falsification of Security Records

Correction

In rule document 96–30776 beginning on page 64242 in the issue of Tuesday, December 3, 1996 make the following correction:

On page 64243, in the first column, in the third full paragraph, in the first line, "FDA" should read "FAA".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #153F]

Controlled Substances: Established Initial 1997 Aggregate Production Quotas

Correction

In notice document 96–31889 beginning on page 66311 in the issue of Tuesday, December 17, 1996, make the following correction:

On page 66313 add the following seven entries that were inadvertently omitted from the table.

Pentobarbital	16,772,000
Phencyclidine	60
Phenmetrazine	2
Phenylacetone	10
Secobarbital	491,000
Sufentanil	1,000
Thebaine	9,325,000

BILLING CODE 1505–01–D

federal register

Tuesday
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Part II

Department of Housing and Urban Development

Site-Based Waiting Lists; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4131–N–01]

Notice on Site-Based Waiting Lists

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice invites certain public housing agencies ("PHAs") to request approval of tenant selection and assignment plans that vary from general program requirements in order to implement site-based waiting lists at public housing sites under certain circumstances. The notice explains HUD policy on this matter and describes the procedure for making such requests. HUD will approve under this notice only those requests that are consistent with Title VI of the Civil Rights Act of 1964 ("Title VI") and that meet the other requirements of this notice.

EFFECTIVE DATE: January 7, 1997.

COMMENT DUE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Senior Director for Policy and Legislation, or Stephen I. Holmquist, Policy Development Advisor, Office of Policy, Program, and Legislative Initiatives, Room 4116, (202) 708–0713, or Linda Campbell, Director, Marketing, Leasing and Management Division, Office of Public and Assisted Housing, Room 4206, (202) 708–0744, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–0713; or Larry Pearl, Office of Fair Housing and Equal Opportunity, Room 5226, (202) 708–0288, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–4252. Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been approved and assigned OMB control number 2577–0214, which expires March 31, 1997. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Solicitation of Comments

HUD invites comments on this notice. The comments will be taken into consideration in the event HUD decides to revise the procedures.

III. Site-Based Waiting Lists

1. Purpose

This notice invites certain public housing agencies ("PHAs") to request approval of tenant selection and assignment plans that vary from general program requirements in order to implement site-based waiting lists at public housing sites under certain circumstances. The notice explains HUD policy on this matter and describes the procedure for making such requests. HUD will approve under this notice only those requests that are consistent with Title VI of the Civil Rights Act of 1964 ("Title VI") (42 U.S.C. 2000d–1 *et seq.*) and that otherwise meet the requirements of this notice.

2. Applicability

This notice applies only to PHAs that have Annual Contributions Contracts covering a total of 1,250 or more public housing units. For each such PHA, the applicability of this notice (under the criteria described below in this Section) may be determined with respect to all of the PHA's public housing sites, or may be determined separately with respect to either the PHA's mixed-population and elderly-designated sites or the PHA's general occupancy sites (i.e., all sites other than mixed-population and elderly-designated sites). Regardless of which of these options a PHA chooses, this notice is applicable where:

(a) At least 90 percent of the occupants of the sites and at least 90 percent of the applicants on the applicable public housing waiting list(s) are persons of the same race; or

(b) At least 90 percent of the occupants of the sites and at least 90 percent of the applicants on the applicable public housing waiting list(s) are of the same ethnicity.

This notice does not apply to PHAs which are operating under a court order involving civil rights violations; to PHAs for which HUD has made a determination of apparent non-compliance with Title VI or which are currently operating under a Voluntary Compliance Agreement; or to PHAs that are operating under a settlement or conciliation agreement providing for class-wide relief for race or national origin discrimination under the Fair Housing Act.

HUD's authority under 24 CFR 1.4(b)(2)(iii) to approve tenant selection and assignment plans that vary from general program requirements remains in effect for PHAs that do not fit within the bounds of this notice.

For purposes of this notice, each "site" may consist of:

(a) One public housing development,

(b) More than one public housing development (by reason of proximity or other geographic characteristics), or

(c) A portion of one or more public housing developments (in the case of scattered-site developments), as proposed by the PHA and approved by HUD under this notice. For purposes of this notice, a PHA proposing site-based waiting lists at its general occupancy sites must include all of its general occupancy units in an identified site, and a PHA proposing site-based waiting lists at its mixed population and elderly-designated sites must include all of its mixed population and elderly-designated units in an identified site.

3. Background.

Title VI prohibits discrimination on the grounds of race, color, and national origin in any program or activity receiving Federal financial assistance. PHAs, as recipients of HUD funds, are barred by Title VI from subjecting housing residents to segregation or separate treatment on any of these grounds. HUD has implemented Title VI through regulations at 24 CFR part 1. With respect to public housing admissions, the provisions of 24 CFR 1.4(b)(2)(ii) require PHAs to assign eligible applicants to dwelling units in accordance with a plan providing for assignment on a community-wide basis. Under this authority, HUD generally requires assignment of applicants to dwelling units from a single waiting list (although PHAs may have one waiting list for general occupancy units and another for mixed population and elderly-designated units). However, HUD also has existing authority to approve plans that vary from the general requirement when such plans involve housing programs in which persons of one race or of one ethnicity predominate and when such plans would be consistent with Title VI. For the reasons stated below, this notice invites PHAs to request approval of such plans.

PHAs that do not meet the criteria set forth in Section 2 of this notice may request approval of site-based waiting lists. However, such requests will not be considered under the special processing guidelines in this notice.

4. Statement and Explanation of HUD Policy

Federal funding of public housing began with the United States Housing Act of 1937. For the first 25 years of that Act, the Federal government permitted, if not encouraged, segregation by race in public housing developments. Active attempts by the Federal government to desegregate public housing began only with Executive Order 11063 issued by President Kennedy in November 1962. The order banned discrimination prospectively in federally funded housing, but sought to end discrimination in existing developments only through persuasion and voluntary activity. Executive Order 11063 was followed by passage of the 1964 Civil Rights Act, Title VI of which barred discrimination in all federally assisted programs and provided for termination of funding where discrimination continued.

Policies to implement Title VI through tenant selection and assignment policies thereafter took a variety of forms. The first iteration embodied "freedom of choice" principles. Applicants were allowed to apply to the housing development of their choice based on available units and their place on a waiting list. During implementation of this policy, segregation did not appreciably diminish. Freedom of choice policies did not address the effects of the site selection process, by which developments had been located in all-white and all-black areas with tenants assigned accordingly. In many cases, the choice for tenants after these patterns were established was between an all-black development in a black neighborhood or an all-white development in a white neighborhood. An integrated development, much less an integrated neighborhood, was rarely an option. Even assuming fair administration of the policy, which was not always the case, it did not effectively address the complexities of the legacy of segregation.

HUD next required PHAs to adopt community-wide waiting lists in which applicants were offered vacancies based on tenant selection preferences and the date and time of application. If offers were rejected, the applicants lost their standing on the waiting list. In spite of this effort, segregation continued, apparently unabated and the situation in many communities grew worse; compliance was spotty and mechanisms to ensure it (hearings and fund cut-offs) were either unwieldy or politically controversial. Where the policy was enforced, it sometimes acted to discourage all but the most desperate applicants. Over time, the policy led applicants to self-select: applicants willing to be placed in those developments with vacancies (often less desirable developments) tended over time to be minority families for whom public housing was a last resort.

Other low-income federally assisted housing programs created after Executive Order 11063 and Title VI provided housing in privately owned apartment buildings and developments. Unlike public housing, each private development established its own waiting list. This housing was disproportionately utilized by non-minority applicants, leading to further isolation of minority tenants in public housing. Segregation was thus exacerbated, and the use of a community-wide waiting list to promote integration in general occupancy public housing was rendered even more ineffective.

For these and other reasons, the resident populations of a number of large PHAs today are predominately of one race or of one ethnicity. Assignment of applicants to dwelling units in accordance with a plan providing for assignment from a single waiting list is not an effective means of furthering desegregation for such PHAs. Abandoning this policy in favor of one that allows applicants more options in these circumstances should not be expected to diminish civil rights protections and will likely promote other important values.

For instance, in an almost exclusively one race public housing system, it is very common to see only members of that race applying for housing with that PHA. In this situation, a change in tenant policy is unlikely to worsen segregation. It may, in fact, improve the racial diversity and integration within the PHA and its developments. Individuals may be more willing to apply for a particular public housing site with which they are familiar, even if they would be a racial minority within that site. Thus, the site-based waiting list option may increase racial or ethnic diversity within the PHA's developments. As long as it did not lead to resegregation or similar problems, the policy will likely have a positive impact on the fair housing environment within the PHA.

On the other hand, if as a result of implementing site-based waiting lists, a PHA showed signs of becoming more segregated, the fact that HUD had approved the original application for site-based lists would not insulate the PHA from compliance with Title VI and other applicable civil rights laws. This circumstance could arise if an approved PHA began marketing its various developments on a racial or ethnic basis. It could also occur if other changes in operations, such as changes to preference rules or demolition of a significant portion of the PHA's stock, appear to cause the site-based waiting list policy to have an unanticipated discriminatory impact.

Site-based waiting lists can help to foster a sense of community in public housing neighborhoods by strengthening existing ties to family, school, work, and neighborhood institutions and can also promote other policy objectives of the public housing program. For example, allowing applicants to move to the development of their choice, rather than assigning them the first available unit, may attract to public housing communities a more diverse population with a broader range of incomes. As a result, more working families may apply to and move into public housing, providing role models and possibly access to information about job opportunities for current public housing residents. Serving households with a broader range of incomes would also lead to a reduction in PHA operating subsidy needs.

In addition, recently-enacted and proposed program reforms will make PHAs in the future much more closely linked to local housing markets. PHAs will be required to make market-influenced decisions about rent levels, income range preferences, the viability of their developments, and other issues that are necessarily site-based. Site-based waiting lists could be an important part of that new approach to public housing management.

Therefore, for the reasons stated above, this notice announces that HUD will, subject to specific conditions, grant approval of tenant selection and assignment plans involving site-based waiting lists where HUD determines that, due to the predominance of persons of one race or of one ethnicity both in the current resident population and on the applicable community-wide applicant waiting list, a community-wide waiting list does not serve the goals of Title VI in any demonstrable way, and that site-based waiting lists are consistent with Title VI.

5. Submission and Review of Requests

A. PHA Submission Requirements

A PHA may request HUD approval to implement site-based waiting lists under this notice by submitting its plan and the rationale for it to HUD under the procedures described in Section 6, below. No such request shall be granted

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without the approval of the Assistant Secretary for Fair Housing and Equal Opportunity ("FHEO") and the Assistant Secretary for Public and Indian Housing ("PIH"). Any such plan must include all of the PHA's general occupancy sites and/or all of the PHA's mixed-population and elderly-designated sites. This notice does not address a PHA's request to implement site-based waiting lists at some of its sites and not at others within these two occupancy types.

A PHA's request for HUD approval of site-based waiting lists under this notice must also include the information described below. Where a site is composed of more than one development or a portion of one or more developments, then the PHA must provide the required information for both the site and for the corresponding development(s).

a. For each development/site operated by the PHA:

—The development name, development number, occupancy type (i.e., general occupancy, mixed-population, or elderly-designated), and number of units by bedroom size;
—Date the development/site originally became available for public housing occupancy;
—Whether the development/site was originally occupied on a segregated basis by race or by ethnicity (as applicable), if that information is available; and
—Racial or ethnic composition (as applicable), by bedroom size;

b. For the general occupancy and for the mixed-population and elderly-designated waiting lists, respectively, the PHA must provide the date of the oldest active application, the number of applicants on the list, the racial or ethnic composition, (as applicable), of the waiting list by bedroom size and an estimate of the length of the wait for an offer by bedroom size.

c. For the PHA's Section 8 program:

—The number of certificates and vouchers currently in use by race or by ethnicity (as applicable), and bedroom size; and
—The length and composition of the waiting list by race or by ethnicity (as applicable), and by bedroom size.

d. All location(s) (e.g., developments, sites, offices, or other places) at which the PHA accepts applications for public housing.

e. The PHA's explanation of:

(1) How the proposed site-based waiting list plan will improve the PHA's public housing program through offering greater choice to applicants, attracting working families to public housing, or through other benefits, and

(2) Why the plan is consistent with Title VI.

f. A summary of the PHA's current and proposed public housing tenant selection and assignment procedures along with a description of any Consent Decrees, Voluntary Compliance Agreements, or other documentation related to past or current occupancy problems and any measures taken to correct such problems.

B. Other Information for HUD Review

In reviewing such requests, HUD will also consider the following information, which is already available to HUD:

a. Race, ethnicity, family (i.e., non-elderly), disabled, and elderly population data for:

(1) Persons living in the relevant Metropolitan Statistical Area ("MSA");

(2) Persons living in the PHA's jurisdiction;

(3) Income-eligible persons living in the relevant MSA; and

(4) Income-eligible persons living in the jurisdiction.

b. Racial or ethnic composition of the non-PHA housing in the neighborhood around the PHA development/site.

6. HUD Processing of Requests

PHA requests for HUD approval of site-based waiting lists shall be processed in the following manner:

a. A PHA must submit one copy of its request to the Assistant Secretary for Fair Housing and Equal Opportunity ("FHEO") at HUD Headquarters, who shall have lead responsibility to review the request, and who shall provide a copy of it to the Assistant Secretary for Public and Indian Housing ("PIH"), Attention: Marketing and Leasing Management Division. The PHA must also submit one copy of the request to the Director of FHEO at the local HUD office, who shall provide copies of it to the local Director of PIH, the Secretary's Representative, and the State Coordinator or Area Coordinator. The PHA's request must include the name and telephone number of a contact person who understands how the proposed system is to work, who can answer relevant questions, and who can clarify the policies and procedures described in the request. The Assistant Secretary for FHEO and the Assistant Secretary for PIH will make the final determination on the request. HUD will endeavor to process all complete requests within 60 days of receipt by the Assistant Secretary for FHEO.

b. HUD will approve PHA requests to implement site-based waiting lists that are consistent with Title VI and that meet the other requirements of this notice, as follows:

(1) The PHA has Annual Contributions Contracts covering 1,250 or more public housing units;

(2) (a) At least 90 percent of the occupants of all of the PHA's public housing units, of the PHA's mixed-population and elderly-designated units, or of the PHA's general occupancy units, as applicable, and at least 90 percent of the applicants on the applicable public housing waiting list(s), are persons of the same race; or (b) at least 90 percent of the occupants of all of the PHA's public housing units, of the PHA's mixed-population and elderly-designated units, or of the PHA's general occupancy units, as applicable, and at least 90 percent of the applicants on the applicable public housing waiting list(s) are of the same ethnicity. (See Section 2, above, regarding the separate application of this notice to a PHA's mixed-population and elderly-designated sites and to its general occupancy sites);

(3) The PHA is not operating under a court order involving civil rights violations; has not been found to be in non-compliance with Title VI and is not currently operating under a Voluntary Compliance Agreement; and is not operating under a settlement or conciliation agreement providing for class-wide relief for race or national origin discrimination under the Fair Housing Act; and

(4) The PHA submits Multi-Family Tenant Characteristics Survey (MTCS) reports (HUD Form 50058) in a complete and timely manner.

c. In addition, all HUD approvals under this notice will be subject to the following conditions:

(1) Site-based waiting lists must be implemented for all general occupancy sites and/or all mixed-population and elderly-designated sites;

(2) All locations where a PHA accepts applications, including development/site offices or a central office, must accept applications for admission at all of the PHA's sites. If a PHA implements site-based waiting lists at its general occupancy sites, but not at its mixed-population and elderly-designated sites, then the PHA may choose not to accept general occupancy applications at its mixed-population and elderly-designated sites. If a PHA implements site-based waiting lists at its mixed-population and elderly-designated sites, but not at its general occupancy sites, then the PHA may choose not to accept mixed-population and elderly-designated applications at its general occupancy sites.

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(3) The PHA must make available basic information about each site (location, occupancy, number and size of units, number and size of accessible units, availability and accessibility of amenities such as day care, security, transportation, and training programs) to all applicants at all sites;

(4) Preference policies established by PHAs must operate in accordance with law and HUD regulation. Preference policies must be applied in a non-discriminatory manner.

(5) All applicants may apply to any site(s) they choose, subject to valid, current PHA admissions policies. Applicants currently on the waiting list will maintain their original application date. However, in its request under this notice, a PHA may request HUD approval to limit, for reasons of administrative efficiency, the number of site-based waiting lists to which an applicant may apply.

(6) The PHA must provide each applicant with an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each of the different sites.

(7) All offers of housing must be made from a central location. Regardless of how many site-based waiting lists an applicant may be on, an applicant's refusal of an offer, without good cause, at any site, will result in the applicant's name being dropped to the bottom of all public housing waiting lists at that PHA on which the applicant's name appears.

7. HUD Monitoring

HUD will monitor the implementation of site-based waiting lists approved under this notice for continued compliance with Title VI annually.

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this notice under Executive Order 12866, Regulatory Planning and Review. OMB determined that this notice is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Dated: December 30, 1996.

Susan M. Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

Dated: December 30, 1996.

Kevin E. Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–294 Filed 1–6–97; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 62, No. 5
Wednesday, January 8, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate the authority vested in the Secretary pursuant to section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 to provide outreach and technical assistance to socially disadvantaged farmers and ranchers and to make grants and enter into contracts and other agreements to provide such outreach and technical assistance.

EFFECTIVE DATE: January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, 1400 Independence Avenue, S.W., Washington, DC 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: Pursuant to section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 2279(a), the Secretary of Agriculture is authorized to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Under the authority of 7 U.S.C. 2279(a)(2), the Secretary may make grants and enter into contracts and other agreements with certain community based organizations and educational institutions to provide outreach and technical assistance to socially disadvantaged farmers and ranchers.

The delegations of authority of the Department of Agriculture are amended to delegate to the under Secretary for Natural Resources and Environment the authority vested in the Secretary by 7 U.S.C. 2279(a) to provide outreach and technical assistance to socially disadvantaged farmers and ranchers and to make grants and enter into contracts and other agreements to provide such outreach and technical assistance. Further, that authority is redelegated by the Under Secretary for Natural Resources and Environment to the Chief, Natural Resources Conservation Service.

Prior delegations of authority by the Secretary to the Under Secretary for Farm and Foreign Agricultural Services, and by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Farm Service Agency, to make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279 are removed.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, this rule may be made effective upon publication in the **Federal Register.**

Accordingly, 7 CFR part 2 is amended as set forth below.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

§ 2.16 [Removed and reserved]

2. In § 2.16, paragraph (a)(2)(iv) is removed and reserved.

3. In § 2.20, paragraph (a)(9) is added as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(9) Related to outreach and technical assistance to socially disadvantaged farmers and ranchers. Provide outreach and technical assistance to socially disadvantaged farmers and ranchers and make grants and enter into contracts and other agreements to provide such outreach and technical assistance under 7 U.S.C. 2279.

* * * * *

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.42 [Amended]

4. In § 2.42, paragraph (a)(31) is removed and reserved.

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

5. In § 2.61, paragraph (a)(25) is added as follows:

§ 2.61 Chief, Natural Resources Conservation Service.

(a) * * *

(25) Provide outreach and technical assistance to socially disadvantaged farmers and ranchers and make grants and enter into contracts and other agreements to provide such outreach and technical assistance under 7 U.S.C. 2279.

* * * * *

For Subpart C.

Dated: October 1, 1996.

Dan Glickman,

Secretary of Agriculture.

For Subpart F.

Eugene Moos,

Under Secretary for Farm and Foreign Agriculture Services.

For Subpart J.

Dated: October 2, 1996.

James R. Lyons,

Under Secretary for Natural Resources and Environment.

[FR Doc. 97–360 Filed 1–7–97; 8:45 am]

BILLING CODE 3410–14–M

Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV96–33–1 FIR]

Regulations Issued Under the Export Apple and Pear Act; Relaxation of Grade Requirements for Apples and Pears Shipped to Pacific Ports of Russia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule relaxing the minimum grade requirements issued under the Export Apple and Pear Act for U.S.-grown apples and pears shipped to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. These changes are designed to develop Eastern Russia as an export market for apples and pears. This rule was recommended by the Northwest Horticultural Council (Council), an organization representing the Northwest fruit industry.

EFFECTIVE DATE: This final rule becomes effective January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax # (503) 326–7440; or William R. Addington, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2412, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under authority of the Export Apple and Pear Act, as amended, [7 U.S.C. 581–590], hereinafter referred to as the "Act." This rule amends "Regulations Issued Under Authority of the Export Apple and Pear Act" [7 CFR part 33].

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and regulations effective thereunder apply to exporters and export carriers of apples and pears. In the United States, there are approximately 450 firms which pack and export apples and 300 firms which pack and export pears that are potentially subject to regulations under the authority of the Act. Small agricultural service firms, which include firms that pack and export apples and pears, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000. The majority of apple and pear exporters regulated under the Act may be classified as small entities. This rule relaxes the minimum grade requirements issued under the Act for U.S.-grown apples and pears shipped only to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. This rule provides all exporters additional flexibility in marketing apples and pears of different grades and quality in Russian port cities and areas along the Pacific Ocean. These changes are designed to develop export markets for apples and pears in these areas. This rule does not preclude shipments of apples and pears of higher than the minimum quality from being shipped to Russian Pacific ports. This benefits both large and small exporters of apples and pears. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Section 33.10 of the "Regulations Issued Under Authority of the Export Apple and Pear Act" establishes minimum grade and container marking requirements for export shipments of apples and pears. Prior to the issuance of the interim final rule, export shipments of apples were required to meet a minimum grade of U.S. No. 1 or U.S. No. 1 Early as specified in the United States Standards for Grades of Apples (7 CFR part 51, sections 51.300–51.323). Exports of summer and fall pears were required to meet a minimum grade of U.S. No. 2 as specified in the United States Standards for Grades of Summer and Fall Pears (7 CFR part 51, sections 51.1260–51.1280). Exports of winter pears were required to meet a minimum grade of U.S. No. 2 as specified in the United States Standards for Grades of Winter Pears (7 CFR part 51, sections 51.1300–51.1323). Additional restrictions for apple maggot and San Jose scale apply to both apples and pears.

This final rule continues in effect the reduction of the minimum grade requirements, as follows:

The minimum grade for fresh apples exported to Russian Pacific ports is reduced to U.S. Utility grade (7 CFR part 51, section 51.303) or U.S. No. 1 Hail (7 CFR part 51, section 51.302(b)) for apples damaged by hail.

The minimum requirements for summer and fall pears exported to Russian Pacific ports are listed in the regulatory text of this final rule. The requirements provide that the pears be of one variety that are mature, hand picked, clean, sound and free from hard-end; and free from serious damage caused by broken skin, insects, disease, hail marks, limbrubs, heavy russet, or other means; and not so excessively elongated or flattened as to preclude the cutting of one good half. The requirements also include necessary definitions and explanations of some provisions and a list of tolerances which are applied to each lot at the time of packing.

Finally, the minimum requirements for winter pears exported to Russian Pacific ports also are listed in the regulatory text of this final rule. The requirements provide that the pears be of one variety which are mature, hand

picked, clean, sound, not very seriously misshapen, free from black end, free from damage caused by hard end, broken skins, and free from serious damage caused by cork spot or bruises. "Very seriously misshapen" means that the pear is excessively flattened, elongated for the variety, or is constricted or deformed so it will not cut one good half or two fairly uniform quarters. The requirements also include necessary definitions and explanations of some provisions and a list of tolerances which are applied to each lot at the time of packing.

Handlers may ship apples and pears of higher grade quality than the minimum requirements established in this regulation.

The additional restrictions for apple maggot and San Jose scale continue to apply to apples and pears shipped to any foreign destination.

The Council, an organization that represents a substantial portion of the fruit industry in the Northwest States of Oregon, Washington, and Idaho, recommended these changes in the current export regulations.

The Council advised that a change in requirements is needed to develop export markets for apples and pears to Pacific ports of Russia. According to the Council, exporters indicate that there is a demand in this relatively new export market of Eastern Russia for apples and pears of a lower grade than the previous requirements allowed. This change will increase sales opportunities in a market willing to accept apples and pears that are lower in overall quality and less uniform in appearance than most export markets will accept.

The Council reported that weather and growing conditions are expected to adversely affect the appearance and quality of a significant portion of the 1996 pear crop. The Council believes this change will facilitate market development efforts for apples and pears to Pacific ports of Russia. Apples and pears which are not shipped for fresh consumption in either domestic or foreign markets are usually disposed of in processing outlets, such as juice. Processing outlets are not normally as profitable as fresh market outlets.

The interim final rule concerning this action was published in the September 26, 1996, **Federal Register** (61 FR 50421), with a 30-day comment period ending October 28, 1996. One comment was received in favor of the interim final rule suggesting several revisions.

The comment was submitted by Northwest Fruit Exporters (NFE), a non-profit organization, whose members grow, pack, ship, and export fresh apples and pears regulated under the Act. NFE members are located in Washington, Oregon, and Idaho. NFE suggested that the U.S. Utility grade not be added as an option for apple exports because the intent of the rule is to allow shipments of hail damaged apples. NFE suggested using U.S. No. 1 Hail grade which is specifically designed to allow shipment of hail damaged apples. NFE stated further that the Utility grade makes an allowance for other quality factors but remains restrictive regarding hail damaged apples. The Department believes that it would not be appropriate to remove the U.S. Utility grade because it allows exporters the opportunity to sell apples of a lower grade even though they are not hail damaged. This provision is intended to provide exporters with flexibility. Therefore, no change is being made to the rule in response to this comment.

NFE pointed out the word "apples" is incorrectly used in paragraph (b) in Section 33.10. The paragraph refers to pears. The Department will make this correction in the regulatory text.

NFE pointed out that the proposed general definition of "damage by hard end" does not apply to the quality requirements for winter pears as stated in Section 33.10 (b)(2) and should be replaced with language commonly used to describe damage to winter pears. The following language was recommended: "Damage by skin break means any pear with one skin break larger than 3/16 inch in diameter or depth, or with more than one skin break 1/8 inch or larger in diameter or depth. Such pear shall be considered damaged, and scored against the grade tolerance." The Department concurs with this recommended change. The regulatory text will be modified accordingly.

NFE further suggested additional language establishing grade defect lot tolerances be included under Section 33.10(b)(2) because grade defect tolerances for a lot of pears were omitted. The Department inadvertently omitted lot tolerances for pears and therefore, the regulatory text will be modified accordingly.

NFE went on to suggest that grade defect tolerances are applicable at the time of packing; however, subsequent to storage and/or transit, only permanent type quality defects should be considered as grade defects and applied to the stated grade tolerance. NFE stated that the provision "condition after storage or transit" exists in the current U.S. Standards for Grades of Winter Pears and a new paragraph should be added to section 33.10 to capture this type of language. The Department recognizes that this provision currently exists in the U.S. Standards for Grades of Winter Pears as well as in the U.S. Standards for Grades of Summer/Fall pears and apples. For the sake of clarity, the regulatory text will be modified by adding a new paragraph (c) to state that decay, scald or any other deterioration which may have developed on apples or pears after they have been in storage or transit shall be considered as affecting condition and not the grade.

Finally, NFE suggested that requirements be modified to permit shipments of U.S. No. 1 Hail grade apples to Mexico, using the same rationale and justification for this request as stated for shipments of U.S. No. 1 Hail grade apples to Russia. The Department believes this recommendation is beyond the scope of the interim final rule.

After analyzing the comment received and other available information, the Department finds that this final rule is appropriate.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule continues in effect a relaxation of the grade requirements for apples and pears shipped to Pacific ports of Russia; (2) exporters have indicated that sales opportunities exist in Eastern Russia and shipments have already begun to take advantage of these opportunities; (3) apples and pears are shipped throughout the year, and this rule should be in effect promptly so exporters can make marketing plans; and (4) a 30-day comment period was provided for in the interim final rule and recommended modifications should be implemented as soon as possible.

List of Subjects in 7 CFR Part 33

Administrative practice and procedure, Apples, Exports, Pears, Reporting and record keeping requirements.

Accordingly, the interim rule amending 7 CFR part 33 which was published at 61 FR 50421 on September 26, 1996, is adopted as a final rule with the following changes:

PART 33—EXPORT APPLE AND PEAR ACT

1. The authority citation for 7 CFR part 33 continues to read as follows:

Authority: 7 U.S.C. 581–590.

2. In § 33.10, paragraphs (c) and (d) are redesignated as (d) and (e), respectively; a new paragraph (c) is added; and paragraph (b) is revised to read as follows:

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§ 33.10 Minimum requirements.

* * * * *

(b) Pears grade at least U.S. No. 2 as specified in the United States Standards for Summer and Fall Pears, such as Bartlett, Hardy, and other similar varieties (Sections 51.1260–51.1280 of this chapter), or in the United States Standards for Winter Pears, such as Anjou, Bosc, Comice, and other similar varieties (Sections 51.1300–51.1323 of this chapter), do not contain apple maggot, and do not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears infested with San Jose scale or scale of similar appearance: *Provided*, That the minimum quality requirements for pears exported to Pacific ports of Russia are as follows:

(1) Summer and fall pears shall be of one variety which are mature, hand picked, clean, sound and free from hard-end; and free from serious damage caused by broken skin, insects, disease, hail marks, limbrubs, heavy russet, or other means; and shall not be so excessively elongated or flattened as to preclude the cutting of one good half. Broken skin must not exceed 1/4 inch in diameter. The following definitions shall apply to all varieties:

Clean means reasonably free from dust, dirt, or honey dew.

Free from serious damage means defects when taken singly or collectively shall not seriously affect the edible or culinary value of the fruit.

Hand picked means that pears do not show evidence of rough handling or of having been on the ground.

Hard-end means pears which show an abnormally yellow or green color at the blossom end or an abnormally smooth rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody. Pears affected by hard-end shall be considered defects. Rat-tail shaped pears, or second bloom pears that are tough or ridged shall be considered defects. At the time of packing, not more than 10 percent, by count, of any lot may be below the requirements of the grade, and not more than one-tenth of this amount or 1% shall be allowed for decay and/or breakdown. For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 15 specimens or less, individual packages may contain not more than double the tolerance specified. For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified, provided at least one specimen which does not meet the requirements shall be allowed in any one package. Slight imperfections which are not discernible in good commercial sorting practice shall not be considered as defects. Small inconspicuous skin breaks of less than 1/8 inch in diameter or depth shall not be considered as damage, and not more than 15 percent of the pears in any container may have not more than one skin break from 1/8 inch to 3/16 inch, inclusive, in diameter or depth. After pears have been placed in storage, or in transit; scald, breakdown, decay, bitter pit, or physical injury affecting keeping quality, which may have developed or may only have become evident after pears are packed, are defined as applying to condition rather than to grade. Pears also shall not contain apple maggot, and shall not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears infested with San Jose scale or scale of similar appearance.

Mature means having reached the stage of maturity which will insure a proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

Sound means that pears at time of packing are free from visible defects such as decay, breakdown, scald, bitter pit, or physical injury affecting keeping quality. The following conditions shall not be considered serious damage: healed insect depressions or other surface blemishes which do not prevent the cutting of one good half;

(2) Winter pears shall be of one variety which are mature, hand picked, clean, sound, not very seriously misshapen, free from black end, free from damage caused by hard end, broken skins, and from serious damage caused by cork spot or bruises. The following definitions shall apply to all varieties:

Black end is evidenced by an abnormally deep green color around the calyx, or black spots usually occurring on one-third of the surface nearest to the calyx, or by an abnormally shallow calyx cavity.

Clean means free from excessive dirt, dust, spray residue, or other foreign material. *Damage* by skin break means any pear with one skin break larger than 3/16 inch in diameter or depth, or with more than one skin break 1/8 inch or larger in diameter or depth. Such pear shall be considered damaged, and scored against the grade tolerance.

Damage by skin break means any pear with one skin break larger than 3/16 inch in diameter or depth, or with more than one skin break 1/8 inch or larger in diameter or depth. Such pear shall be considered damaged, and scored against the grade tolerance.

Handpicked means that the pears do not show evidence of having been on the ground.

Hard end is an abnormal yellow color at the blossom end, or an abnormally smooth, rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody.

Mature means that the pear has reached the stage of maturity which will insure the proper completion of the ripening process.

Overripe means dead ripe, very mealy or soft, past commercial utility.

Serious damage by *cork spot* is when more than two cork spots are visible externally, or when the visible external injury affects an aggregate area of more than 1/2 inch in diameter. *Serious damage* by bruising is bruising which seriously affects the appearance, edible or shipping quality. For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 15 specimens or less, individual packages may contain not more than double the tolerance specified. For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified, provided at least one specimen which does not meet the requirements shall be allowed in any one package. Pears also shall not contain apple maggot, and shall not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears infested with San Jose scale or scale of similar appearance;

(c) Decay, scald or any other deterioration which may have developed on apples or pears after they have been in storage or transit shall be considered as affecting condition and not the grade.

* * * * *

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–279 Filed 1–7–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 982

[Docket No. FV96–982–2 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1996–97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes interim and final free and restricted percentages for domestic inshell hazelnuts for the 1996–97 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: Effective January 9, 1997 through June 30, 1997; comments which are received by February 7, 1997, will be considered prior to any finalization of the interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., Room 369, Portland, OR 97204; telephone (503) 326–2055 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 205–2830. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Order No. 982 (7 CFR Part 982), hereinafter referred to as the "order," both as amended, regulating the handling of hazelnuts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 1996–97 marketing year (July 1, 1996–June 30, 1997). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts the handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine released percentages are specified in section 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 20,000 tons for the Oregon and Washington area. After discussion, the consensus of the Board was to use the NASS estimate as the basis for the preliminary, interim final and final free and restricted percentage computations.

The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The quantity marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which are exported, shelled or otherwise disposed of (restricted). The preliminary free percentage releases 80 percent of the adjusted inshell trade demand. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate. The Board used the NASS crop estimate of 20,000 tons.

At its August 29, 1996, meeting, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,238 tons of hazelnuts from the 1996 supply for domestic inshell use. The preliminary restricted percentage of the 1996 supply for export and kernel markets totaled 13,007 tons.

Under the order, the Board must meet a second time, on or before November 15, to recommend interim final and final percentages. The Board uses then current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining

20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective by June 1, at least 30 days prior to the end of the marketing year, June 30. The final free and restricted percentages can be made effective earlier, if recommended by the Board and approved by the Secretary. Revisions in this marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with section 982.40(e).

The Board met on November 12, 1996, and reviewed and approved an amended marketing policy. The Board recommended that the three-year average trade acquisition figure of 4,513 tons be increased by 100 tons to provide product for an experimental marketing program using roasted inshell hazelnuts. The Board also recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 20 percent free and 80 percent restricted. The interim final percentage makes an additional 809 tons of inshell hazelnuts available for the domestic inshell market including roasted product. The interim final marketing percentages are based on the industry's final production estimates (20,000 tons) and release 4,047 tons to the domestic inshell market from the 1996 supply subject to regulation. The interim final restricted percentage resulted in a restricted obligation of 13,007 tons.

The final free and restricted percentages were recommended at 23 percent and 77 percent, respectively. The Board also recommended that the final percentages be effective on June 1, 1997. The established final marketing percentages release for domestic inshell use an additional 677 tons from the supply subject to regulation. Thus, a total of 4,724 tons of inshell hazelnuts will be released from the 1996 supply for domestic inshell use.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1996–97 marketing year:

	Tons
Inshell Supply:	
(1) Total production (NASS estimate)	20,000
(2) Less substandard, farm use (disappearance)	1,362
(3) Merchantable production (the Board's adjusted crop estimate)	18,638
(4) Plus undeclared carryin as of July 1, 1996, subject to regulation	1,668
(5) Supply subject to regulation (Item 3 plus Item 4)	20,306
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,513
(7) Increase to encourage increased sales (2.2 percent of Item 6)	100
(8) Less declared carryin as of July 1, 1996, not subject to regulation	566
(9) Adjusted Inshell Trade Demand	4,047
(10) 15 percent of the average trade acquisitions of inshell hazelnuts for three prior years (Item 6)	677
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)	4,724

Percentages	Free	Restricted
(12) Interim final percentages (Item 9 divided by Item 5) × 100	20	80
(13) Final percentages (Item 11 divided by Item 5) × 100	23	77

In addition to complying with the provisions of the marketing order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situation. At its November 12, 1996, meeting, the Board recommended that an increase of 2.2 percent (100 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 677 tons for desirable carryout. The total free supply for the 1996–97 marketing year is 5,290 tons of hazelnuts, which is the final trade demand of 4,724 tons plus the declared carryin of 566 tons. This amount is 117 percent of prior years' sales and exceeds the goal of the Guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of hazelnuts in the production area and approximately 23 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Using this criteria, virtually all of the producers are small

agricultural producers and an estimated 20 of the 23 handlers are small agricultural service firms. Thus, the great majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. The current volume control procedures fully supply the domestic inshell market, provide for market expansion, and help prevent oversupplies in that market.

Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The inshell market is inelastic and is characterized as having limited demand and being prone to oversupply.

Industry statistics show that total hazelnut production has varied widely over the last ten years, from a low of 13,000 tons in 1989 to a high of 41,000 tons in 1993. Average production has been around 24,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all growers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 54 percent of the ten-year average (1985–1995). Production in the biggest crop year (1993) was 170 percent of the ten-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the grower price per pound has increased steadily over the last four years from $.28 in 1992 to $.46 in 1995.

While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents approximately 3 percent of total U.S. tree nut production and approximately 3 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the U.S. Section 982.40 or the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of quality. Europe, and Germany in particular, is the primary world market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens have been accepted by the handlers as necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Written comments as to the effect of this action on small business entities, timely received will be considered before finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1996–97 marketing year began July 1, 1996, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.244 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.244 Free and restricted percentages—1996–97 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 1996–97 marketing year shall be 20 and 80 percent, respectively.

(b) On June 1, 1997, the final free and restricted percentages for merchantable hazelnuts for the 1996–97 marketing year shall be 23 and 77 percent, respectively.

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Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–277 Filed 1–7–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–276–AD; Amendment 39–9876; AD 96–26–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered By Rolls Royce Model RB211 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T96–26–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 747 series airplanes powered by Rolls Royce Model RB211 series engines by individual telegrams. This AD requires a one-time inspection to detect cracks and corrosion of various areas at all four engine pylons, and repair of any cracked or corroded engine pylon. This action is prompted by reports of cracking of the aft torque bulkhead at the number 1 and number 2 engine pylons. The actions specified by this AD are intended to detect and correct such cracking, which could result in failure of the pylon and consequent separation of the engine from the wing.

EFFECTIVE DATE: January 13, 1997, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–26–51, issued on December 13, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–276–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this AD may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On December 13, 1996, the FAA issued telegraphic AD T96–26–51, which is applicable to certain Boeing Model 747 series airplanes powered by Rolls Royce Model RB211 series engines.

That action was prompted by two reports of cracking of the aft torque bulkhead at the number 1 and number 2 engine pylons. This cracking occurred on a Boeing Model 747–200F series airplane powered by Rolls Royce Model RB211 series engines. The airplane had accumulated 69,506 total flight hours and 17,499 total flight cycles.

Investigation revealed that the aft torque bulkhead at the number 1 pylon was cracked completely through just above the lower spar fitting where the fitting attaches to the diagonal brace. The crack extended eight inches forward on the outboard side skin of the number 1 pylon. In addition, the lower portion of the aft torque bulkhead at the number 1 pylon had separated and had dropped down approximately 0.5 inch.

Investigation also revealed that the aft torque bulkhead at the number 2 pylon was cracked (1.2 inch) in approximately the same location as the cracking on the number 1 pylon.

The cause of this cracking is unknown at this time. Modification of the strut/wing, which is currently required by AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995), had not yet been accomplished on the airplane at the time of discovery of the cracking. However, it also is not known if this modification would have prevented this condition.

Cracking of the aft torque bulkhead at the engine pylons, if not detected and corrected in a timely manner, could result in failure of a pylon and consequent separation of the engine from the wing.

FAA's Determination

The FAA has determined that a one-time inspection to detect cracks and corrosion of the aft torque bulkhead at all four engine pylons is necessary to address the identified unsafe condition in a timely manner.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T96–26–51 to require a one-time detailed visual inspection to detect cracks and corrosion in the following areas: (1) The external surface of the lower half of the aft torque bulkhead at all four engine pylons, and (2) the external surface of the inboard and outboard side skins for a distance of 36 inches forward of the plane of the aft torque bulkhead at all four engine pylons. The AD also requires repair of any cracked or corroded engine pylon. In addition, the AD requires that operators submit a report of all inspection findings to the FAA.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 13, 1996, to all known U.S. owners and operators of certain Boeing Model 747 series airplanes powered by Rolls Royce Model RB211 series engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Interim Action

This is considered to be interim action. The reports of inspection results that are required by this AD will enable the FAA to obtain better insight into the nature, cause, and extent of cracking found at the number 1 and number 2 engine pylons, and eventually to develop final action to address the subject unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–276–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–26–51 Boeing: Amendment 39–9876. Docket 96–NM–276–AD.

Applicability: Model 747 series airplanes powered by Rolls Royce Model RB211 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the aft torque bulkhead, which could result in failure of a pylon and consequent separation of the engine from the wing, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight cycles, or within 10 days after the effective date of this AD, whichever occurs later, gain access to the aft torque bulkhead at each of the four engine pylons through the aft fairing doors. Prior to further flight after gaining access, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a one-time detailed visual inspection to detect cracks and corrosion of the external surface of the lower half of the aft torque bulkhead at all four engine pylons. Pay particular attention to the area near the diagonal brace fitting.

(2) Perform a one-time detailed visual inspection to detect cracks and corrosion of the external surface of the inboard and outboard side skin for a distance of 36 inches forward of the plane of the aft torque bulkhead at all four engine pylons.

(b) If any crack or corrosion is detected during any inspection required by this AD, prior to further flight, repair the cracked/corroded pylon in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Within 10 days after accomplishing the inspections required by paragraphs (a)(1) and (a)(2) of this AD, submit a report of any findings to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, fax (206) 227–1181; and to the appropriate FAA Principal Maintenance Inspector. The report shall include the items specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2120–0056.

(1) Airplane serial number;

(2) Total number of landings accumulated; and

(3) Location, size, and orientation of each crack.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) This amendment becomes effective on January 13, 1997, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–26–51, issued on December 13, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 31, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–255 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–ANE–06; Amendment 39–9864; AD 96–26–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines, that requires replacement of the gas generator turbine stage 2 forward cooling plates prior to the published cyclic life limits. The AD also defines the new, reduced cyclic life limits for the affected forward cooling plates. This amendment is prompted by reports of gas generator turbine stage 2 forward

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cooling plate failures. The actions specified by this AD are intended to prevent gas generator turbine stage 2 forward cooling plate failure, which could result in an uncontained engine failure.

DATES: Effective March 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594–3140, fax (617) 594–4805. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7139, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines was published in the **Federal Register** on September 17, 1996 (61 FR 48866). That action proposed to require replacement of the gas generator turbine stage 2 forward cooling plate within 30 days after the effective date of the AD, or prior to reaching the new, reduced cyclic life limits listed in the Accomplishment Instructions of GE Aircraft Engines (CT7–TP Series) SB A72–381, dated January 17, 1996, whichever occurs later.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public.

The FAA has determined that an additional paragraph (e) is necessary to fully implement the new life limits for gas generator turbine (GGT) stage 2 forward cooling plates, Part Number (P/N) 60604T10P01 and P/N 5086T91P02. The FAA has determined that air safety and the public interest require the adoption of the rule with this change, and that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,100 engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Parts will be supplied by the manufacturer to operators under GE's Engine Care Maintenance Plan (ECMP). At this time, all operators fall under the ECMP. Based on these figures, the total cost impact of the AD of U.S. operators is estimated to be $240,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–26–01 General Electric Aircraft Engines: Amendment 39–9864. Docket 96–ANE–06.

Applicability: General Electric Aircraft Engines (GE) Models CT7–5A2, –7A, –9B, and –9C turboprop engines, with gas generator turbine (GGT) stage 2 forward cooling plates, Part Number (P/N) 6064T10P01 and P/N 5086T91P02, installed. These engines are installed on but not limited to Construcciones Aeronauticas, SA (CASA) CN–235 series and SAAB–SCANIA SF340 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair of the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent GGT stage 2 forward cooling plate failure, which could result in an uncontained engine failure, accomplish the following:

(a) Within 30 days after the effective date of this AD, or prior to reaching the new, reduced cyclic life limits listed in the Accomplishment Instructions of GE Aircraft Engines (CT7–TP Series) Service Bulletin (SB) A72–381, dated January 17, 1996, whichever occurs later, remove from service GGT stage 2 forward cooling plates, and replace with a serviceable part, which is defined as a GGT stage 2 forward cooling plate that has less than the new, reduced cyclic limits on the effective date of this AD, as defined in that SB.

(b) This action establishes the following new, reduced cyclic life limits for affected GGT stage 2 forward cooling plates:

(1) 8,000 cycles since new (CSN) for GGT stage 2 forward cooling plates, P/N 6064T10P01, identified by serial numbers listed in Tables 1 and 2 of GE Aircraft Engines (CT7–TP Series) SB No. A72–381, dated January 17, 1996, for GE CT7–5A2, –7A, –9B, and –9C engine models.

(2) 12,000 CSN for GGT stage 2 forward cooling plates, P/N 6064T10P01 (not listed in (1) above), and P/N 5086T91P02, for GE CT7–5A2 and –7A engine models.

(3) 9,000 CSN for GGT stage 2 forward cooling plates, P/N 6064T10P01 (not listed in (1) above), and P/N 5086T91P02, for GE CT7–9B/–9C engine models.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) Thereafter, except as provided in paragraphs (c) and (d) of this AD, no alternative replacement times may be approved for GGT stage 2 forward cooling plates, P/N 6064T10P01, and P/N 5086T91P02.

(f) The actions required by this AD shall be done in accordance with the following GE Aircraft Engines (CT7–TP Series) SB:

Document No	Pages	Date
A72–381 ..... Total Pages: 13.	1–13	Jan. 17, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594–3140, fax (617) 594–4805. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 10, 1997.

Issued in Burlington, Massachusetts, on December 16, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–474 Filed 1–7–97; 8:45am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–66; Amendment 39–9863; AD 96–25–20]

RIN 2120–AA64

Airworthiness Directives; Hamilton Standard 14RF and 14SF Series, and Hamilton Standard/British Aerospace Model 6/5500/F Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Hamilton Standard 14RF and 14SF series, and Hamilton Standard/British Aerospace Model 6/5500/F propellers, that requires initial and repetitive inspections of critical control components, and removal and replacement with serviceable parts those critical control components that do not meet the return to service criteria. This amendment is prompted by failure modes effects analysis (FMEA), certification test data, engineering analysis, and repair actions performed at overhaul depots. The actions specified by this AD are intended to prevent loss of propeller control due to failure of critical control components, which could result in loss of control of the aircraft.

DATES: Effective February 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 7, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Publication Distribution, Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010; fax (860) 654–6906. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21; 14SF–5, 14SF–7, 14SF–11, 14SF–11L, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and Hamilton Standard/British Aerospace 6/5500/F propellers was published in the **Federal Register** on December 13, 1995 (60 FR 63988). That action proposed to require initial and repetitive inspections of critical aspects of the transfer tube assembly, actuator assembly, and propeller control unit (PCU) for wear. This AD would also require, prior to further flight, removing and replacing with serviceable parts those critical components that do not meet the return to service criteria.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters state that the initial AD inspection interval for the transfer tube should be 10,500 hours time in service (TIS) as noted in the appropriate Hamilton Standard Service Bulletin (SB) and supported by the manufacturers wear data. The commenters also indicated that the time interval of 10,500 hours TIS is significant since it coincides with the Major Inspection Interval (MII) that many operators adhere to on certain propeller installations. In addition, the commenters requested that credit be given to MII inspections that have been done recently that meet the inspection requirements of the appropriate SBs.

The FAA concurs in part. Although the wear data supports an inspection interval by more than 3 times the 10,500 hour TIS interval, the FAA has determined that the initial inspection should be accomplished within 6,000 hours TIS, or 3 years, whichever occurs first, after the effective date of this AD. The initial inspection compliance time was selected because the transfer tubes have not been time tracked. The 6,000 hours TIS initial inspection compliance time will result in all transfer tubes to be inspected within a time interval supported by the wear data. Also, credit cannot be given to components inspected during the MII unless the components were inspected in accordance with the appropriate critical parts inspection SBs. The FAA intends to give credit for critical parts inspections performed in accordance with the appropriate SBs that have already been performed within the 10,500 hours TIS interval.

The initial inspection also coincides with the installation of the new major alteration feature, Secondary Drive Quill (SDQ) that is mandated by AD 95–22–12 to be completed prior to June 30, 1998. This coordination effort will give a smooth phase-in of all requirements with a minimal impact on record keeping and operational commitments. To conclude, the FAA has determined that an initial inspection within 6,000 hours TIS, or 3 years whichever occurs first, after the effective date of this AD will safely introduce the transfer tube into a repetitive inspection at 10,500 hours TIS intervals thereafter.

Two commenters state that at present there is no tracking of time in service for these components and that tracking will be unduly burdensome. The FAA concurs that there is no current requirement to track component time in service, but disagrees that adding the requirement to track time would be unduly burdensome since time tracking

is currently conducted on other propeller components. Systems to track time on propeller components have already been established. The FAA program to introduce these components to time tracking begins with an initial phase in interval of 6,000 hours TIS, or 3 years, whichever occurs first, after the effective date of this AD, followed by a repetitive inspection of these components at a 10,500 hours TIS interval that was not required at certification.

Two commenters state that the total economic impact of the proposed rule has been underestimated because the FAA did not include costs such as loss of revenue from having aircraft sit idle while awaiting the required inspections. The FAA does not concur. The cost impact of this AD was calculated using data from the industry as to the time and parts needed to accomplish the required actions. The FAA does not include the costs of secondary effects of performing the actions required by the AD in its economic analysis. As a matter of law, in order to be operated in commercial service, an aircraft must conform to its type design and be in a condition for safe flight. The type design of the affected propellers was certificated only after the FAA found that the design complied with all applicable airworthiness requirements. In adopting those certification requirements, the FAA already determined a level of safety that is cost beneficial. With this AD, the FAA has determined that an unsafe condition exists, that means that a cost-beneficial level of safety is no longer achieved, and that additional requirements must be performed in order to restore that level of safety. Because that level of safety was already determined to be cost-beneficial, a full cost analysis is not required for each AD, and the costs of the secondary effects of performing the actions required by the AD are not added to the cost analysis of the AD.

In addition the FAA has increased the initial inspection compliance time to 6,000 hours TIS, or 3 years, whichever occurs first, after the effective date of this AD. The increase in initial inspection compliance time will smooth the transition to the 10,500 hours TIS repetitive inspection program and minimize the impact on aircraft operation.

Three commenters state that, to date, there is no evidence of in-service wear of the affected components. The FAA concurs in part. The engineering and repair data indicate wear does exist but at an extremely low level. Since wear does occur on these critical components they must be inspected periodically and these components must be removed from an unspecified repair status to a defined inspection interval category.

Two commenters state that the PCU inspection is already required by another AD. The FAA concurs in part. The purpose of this new AD is to integrate inspection items not covered by AD 95–22–12 into a comprehensive coordinated inspection requirement for the propeller control system. Airworthiness directive 95–22–12 only addresses inspection of the PCU servo ballscrew internal spline, installation of a secondary drive quill, and a torque check inspection of the primary ballscrew quill.

One commenter states that the repetitive inspection interval should be reduced from 10,500 hours TIS to 2,500 hours TIS. The FAA does not concur. Engineering investigation, analysis, and field and laboratory testing reveal these components can operate safely within the 10,500 hours TIS inspection interval so the interval does not need to be reduced further.

Two commenters state that credit should be given for Critical Parts Inspections (CPIs) that have already been performed within the previous 10,500 hours TIS MII. The FAA concurs in part. This final rule increases the initial inspection interval from 1,000 hours TIS to 6,000 hours TIS, or 3 years, whichever occurs first, after the effective date of this AD, for these CPI items, and thereafter requires inspection at intervals of 10,500 hours TIS in accordance with the applicable SBs. The FAA intends to give credit for those CPIs conducted in accordance with the SBs applicable to this AD.

One commenter requests clarification on the definition of time in service, TIS. The FAA concurs. The FAA interprets this question that time in service, for the purpose of this AD, is defined as operating time since issuance of this AD or operating time since last inspection in accordance with this AD. The FAA has added this definition to the AD as new paragraph (d).

One commenter states that there is insufficient time to accomplish the inspections based upon limited repair shop capacity. The FAA re-evaluated the overall phase in program and determined that an initial inspection compliance interval 6,000 hours TIS, or 3 years, whichever occurs first, after the effective date of this AD would safely introduce components to the repetitive inspection program while alleviating the repair shop capacity problem.

Since publication of the NPRM, Hamilton Standard has issued Revision 1, dated April 23, 1996, to the following SBs: 14RF–9–61–64, 14RF–19–61–32, 14RF–21–61–51, 14SF–61–70, and 6/5500/F–61–25. This revision modifies a figure, adds an additional figure, deletes the requirement to inspect the PCU retaining nut, and makes minor editorial changes for clarification only. This final rule references this new revision as well as the original issuances.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 3,280 propellers of the affected design in the worldwide fleet (excluding spares). The FAA estimates that 1,370 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 4.3 work hours per propeller to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $353,460 per fleet inspection.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–25–20 Hamilton Standard: Amendment 39–9863. Docket 95–ANE–66.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14SF–5, 14SF–7, 14SF–11, 14SF–11L, 14SF–15, 14SF–17, 14SF–19, 14SF–23 and Hamilton Standard/British Aerospace 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120–RT; SAAB–SCANIA SF 340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72; DeHavilland DHC–8–100 series, DHC–8–300 Series; Construcciones Aeronauticas SA (CASA) CN–235 series and CN–235–100; Canadair CL–215T and CL–415; and British Aerospace ATP Airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft, accomplish the following:

(a) Inspect transfer tube assemblies and propeller control units (PCUs) for wear within 6,000 hours time in service (TIS), or 3 years, whichever occurs first, after the effective date of this AD. Perform inspections of the critical aspects of these components in accordance with the applicable service bulletins (SBs) listed in paragraph (c) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SBs. (For PCUs that have a Secondary Drive Quill (SDQ) installed in accordance with AD 95–22–12, it is not necessary to conduct an initial inspection again. They may advance to the repetitive inspection interval based on the TIS since SDQ installation.)

(b) Inspect actuator assemblies for wear within 10,500 hours TIS after the effective date of this AD, or at the next major inspection interval (MII), whichever occurs first. Perform inspections of the critical aspects of these components in accordance with the applicable service bulletins (SBs) listed in paragraph (c) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SBs.

(c) Perform the inspections for wear required by this AD in accordance with, and use the return to service criteria defined in, the following applicable Hamilton Standard SBs, Revision 1, all dated April 23, 1996, or Original, dated November 27, 1995: 14RF–9–61–64, 14RF–19–61–32, 14RF–21–61–51, 14SF–61–70, and 6/5500/F–61–25.

(d) For the purpose of this AD, time in service (TIS) is defined as operating time since issuance of this AD or operating time since last inspection in accordance with this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following Hamilton Standard SBs:

Document No.	Pages	Revision	Date
14RF–9–61–64	1, 2	1	April 23, 1996.
	3	Original	November 27, 1995.
	4	1	April 23, 1996.
	5–11	Original	November 27, 1995.
	12, 13	1	April 23, 1996.
	14–28	Original	November 27, 1995.
	29	1	April 23, 1996.
	30, 31	Original	November 27, 1995.
	32	1	April 23, 1996.
	33	Original	November 27, 1995.
	34	1	April 23, 1996.
Total Pages: 34.			
14RF–9–61–64	1–33	Original	November 27, 1995.
Total Pages: 33.			
14RF–19–61–32	1, 2	1	April 23, 1996.
	3	Original	November 27, 1995.
	4	1	April 23, 1996.
	5–11	Original	November 27, 1995.
	12, 13	1	April 23, 1996.
	14–28	Original	November 27, 1995.
	29	1	April 23, 1996.
	30, 31	Original	November 27, 1995.
	32	1	April 23, 1996.
	33	Original	November 27, 1995.
	34	1	April 23, 1996.
Total Pages: 34.			
14RF–19–61–32	1–33	Original	November 27, 1995.
Total pages: 33.			
14RF–21–61–51	1, 2	1	April 23, 1996.
	3	Original	November 27, 1995.

Document No.	Pages	Revision	Date
	4	1	April 23, 1996.
	5–11	Original	November 27, 1995.
	12, 13	1	April 23, 1996.
	14–27	Original	November 27, 1995.
	28	1	April 23, 1996.
	29–31	Original	November 27, 1995.
	32	1	April 23, 1996.
	33	Original	November 27, 1995.
	34	1	April 23, 1996.
Total Pages: 34.			
14RF–21–61–51	1–33	Original	November 27, 1995.
Total Pages: 33.			
14SF–61–70	1, 2	1	April 23, 1996.
	3	Original	November 27, 1995.
	4	1	April 23, 1996.
	5, 6	Original	November 27, 1995.
	7	1	April 23, 1996.
	8–11	Original	November 27, 1995.
	12–14	1	April 23, 1996.
	15–29	Original	November 27, 1995.
	30	1	April 23, 1996.
	31, 32	Original	November 27, 1995.
	33	1	April 23, 1996.
	34	Original	November 27, 1995.
	35	1	April 23, 1996.
Total Pages: 35.			
14SF–61–70	1–34	Original	November 27, 1995.
Total Pages: 34.			
6/5500/F–61–25	1, 2	1	April 23, 1996.
	3	Original	November 27, 1995.
	4	1	April 23, 1996.
	5, 6	Original	November 27, 1995.
	7	1	April 23, 1996.
	8–10	Original	November 27, 1995.
	11–13	1	April 23, 1996.
	14–28	Original	November 27, 1995.
	29	1	April 23, 1996.
	30, 31	Original	November 27, 1995.
	32	1	April 23, 1996.
	33	Original	November 27, 1995.
	34	1	April 23, 1996.
Total Pages: 34.			
6/5500/F–61–25	1–33	Original	November 27, 1995.
Total Pages: 33.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Publication Distribution, Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010; fax (860) 654–6906. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 7, 1997.

Issued in Burlington, Massachusetts, on December 11, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–475 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–88–AD; Amendment 39–9869; AD 96–26–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires an inspection to detect cracking of the torque tube assembly of the left-hand (LH) elevator and surrounding structure; and to detect loose or sheared rivets in that assembly. This amendment also requires either replacement or repair of discrepant parts, as appropriate. This amendment is prompted by a report of fatigue cracking found on the torque tube support of the LH elevator. The actions specified by this AD are intended to ensure that cracking is detected and corrected in a timely manner so as to prevent failure of the torque tube or its support structure, which could result in reduced controllability of the airplane.

DATES: Effective February 12, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport

Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on September 13, 1996 (61 FR 48439). That action proposed to require a one-time inspection to detect fatigue cracking of the torque tube of the left-hand (LH) elevator and its surrounding structure, and repair, if necessary. That action also proposed to require an inspection to detect loose or sheared rivets of the same torque tube assembly, and replacement with serviceable rivets, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,160, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to replace the torque tube assembly of the LH elevator, the FAA estimates that it will take approximately 2 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Replacement of the assembly will cost approximately $1,500 per airplane. Based on these figures, the cost impact of the replacement is estimated to be $1,620 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–26–05 Fokker: Amendment 39–9869. Docket 96–NM–88–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that cracking is detected and corrected in a timely manner so as to prevent failure of the torque tube of the left-hand (LH) elevator or its support structure, which could result in reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 45,000 total flight cycles, or within 4 months after the effective date of this AD, whichever occurs later, perform an inspection to detect cracking of the torque tube assembly and the surrounding structure of the LH elevator, and to detect any loose or sheared rivets of that assembly, in accordance with "Part 1" of the Accomplishment Instructions of Fokker Service Bulletin F27/55–66, dated December 21, 1994.

(b) If no cracking is detected, and if no loose or sheared rivet is detected, during the inspection required by paragraph (a) of this AD: No further action is required by this AD.

(c) If any discrepancy is detected during the inspection required by paragraph (a) of this AD: Accomplish the applicable requirements of paragraph (c)(1), (c)(2), or (c)(3) of this AD at the time specified in that paragraph, and in accordance with Fokker Service Bulletin F27/55–66, dated December 21, 1994.

(1) If any cracking of the torque tube is detected, or if any loose or sheared rivet is detected: Prior to further flight, replace the discrepant part(s) in accordance with "Part 2," paragraph A., of the Accomplishment Instructions of the service bulletin.

Note 2: Fokker Service Bulletin F27/55–66 references Fokker Service Bulletin F27/55–40 as an additional source of service information for procedures to replace the torque tube assembly with a serviceable assembly.

(2) If any cracking of the rib at station 300 is detected: Prior to further flight, repair in accordance with "Part 2," paragraph B., of the Accomplishment Instructions of the service bulletin.

(3) If any cracking in the torque tube support is detected: Prior to further flight, accomplish the requirements of either paragraph (c)(3)(i) or (c)(3)(ii) of this AD, as applicable.

(i) If the crack length does not exceed 30 mm, stop drill the crack and, thereafter, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 50 flight hours, in accordance with "Part 2," paragraph C., of the Accomplishment Instructions of the service bulletin.

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(ii) If the crack length exceeds 30 mm, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Fokker Service Bulletin F27/55–66, dated December 21, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 12, 1997.

Issued in Renton, Washington, on December 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–476 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–ASO–25]

Amendment to Class D Airspace; Hollywood, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D surface area airspace at Hollywood, FL. A GPS RWY 9R Standard Instrument Approach Procedure (SIAP) has been developed for North Perry Airport Additional controlled airspace extending upward from the surface is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at North Perry Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On October 21, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class D airspace at Hollywood, FL (61 FR 54585). This action would provide adequate Class D airspace for IFR operations at the North Perry Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D airspace at Hollywood, FL. A GPS RWY 9R SIAP has been developed for North Perry Airport. Additional controlled airspace extending upward from the surface is needed to acommodate this SIAP and for instrument flight rules (IFR) operations at North Perry Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Hollywood, FL [Revised]

Hollywood, North Perry Airport, FL
(Lat. 26°00′05″ N, long. 80°14′26″ W)
Opa Locka Airport
(Lat. 25°54′26″ N, long. 80°16′48″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 3.5-mile radius of the North Perry airport; excluding the portion north of the north boundary of the Miami, FL, Class B airspace area and that portion south of a line connecting the 2 points of intersection with a 3.5-mile circle centered on the Opa Locka Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–304 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–28]

Amendment to Class E Airspace; Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Miami, FL. A GPS RWY 9R Standard Instrument Approach Procedure (SIAP) has been developed for the North Perry Airport at Hollywood, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On October 21, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Miami, FL (61 FR 54587). This action would provide adequate Class E airspace for IFR operations at the North Perry Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Miami, FL. A GPS RWY 9R Standard Instrument Approach Procedure (SIAP) has been developed for the North Perry Airport at Hollywood, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Miami, FL [Revised]

Miami International Airport, FL
(Lat. 25°47′35″ N, long. 80°17′25″ W)
Dade County-Homestead Regional Airport
(Lat. 25°29′18″ N, long. 80°23′01″ W)
Opa Locka Airport
(Lat. 25°54′25″ N, long. 80°16′42″ W)
Fort Lauderdale-Hollywood International Airport
(Lat. 26°04′21″ N, long. 80°09′10″ W)
Kendall-Tamiami Executive Airport
(Lat. 25°38′52″ N, long. 80°25′58″ W)
QEEZY LOM
(Lat. 25°38′14″ N, long. 80°30′17″ W)
Fort Lauderdale Executive Airport
(Lat. 26°11′50″ N, long. 80°10′14″ W)
Pompano Beach Airpark
(Lat. 26°14′49″ N, long. 80°06′40″ W)
North Perry Airport
(Lat. 26°00′05″ N, long. 80°14′26″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Miami International Airport, Dade County-Homestead Regional Airport, Opa Locka Airport, Fort Lauderdale-Hollywood International Airport and Kendall-Tamiami Executive Airport, and within 2.4 miles each side of the 267° bearing from the QEEZY LOM extending from the 7-mile radius to 7 miles west of the LOM, and within a 6.5-mile radius of Fort Lauderdale Executive Airport, Pompano Beach Airpark and North Perry Airport.

* * * * *

Issued in College Park, Georgia, on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–305 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–24]

Amendment to Class E Airspace; Claxton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Claxton, GA. A NDB RWY 9 Standard Instrument Approach Procedure (SIAP) has been developed for the Claxton-Evans County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, PO. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On October 21, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Claxton, GA (61 FR 54586). This action would provide adequate Class E

airspace for IFR operations at the Claxton-Evans County Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Claxton, GA. A NDB RWY 9 SIAP has been developed for the Claxton-Evans County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Claxton, GA [Revised]

Claxton-Evans Airport, GA
(Lat. 32°11'42" N, long. 81°52'17" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Claxton-Evans County Airport.

* * * * *

Issued in College Park, Georgia on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–303 Filed 1–7–97; 8:45 am]

BILLING CODE: 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–8]

Establishment of Class E Airspace; Hemet, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Hemet, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 05 to Hemet-Ryan Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hemet-Ryan Airport, Hemet, CA.

EFFECTIVE DATE: 0901 UTC March 27, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On November 20, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Hemet, CA (61 FR 59041). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 05 at Hemet-Ryan Airport, Hemet, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Hemet, CA. The development of a GPS SIAP to RWY 05 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 05 SIAP at Hemet-Ryan Airport, Hemet, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective

September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Hemet, CA [New]

Hemet-Ryan Airport, CA
(Lat. 33°44'02" N, long. 117°01'21" W)

* * * * *

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Hemet-Ryan Airport and within 2 miles each side of the 242° bearing from the Hemet-Ryan Airport extending from the 6-mile radius to 10.2 miles southwest of Hemet-Ryan Airport, excluding the Riverside, CA, Class E airspace area.

Issued in Los Angeles, California, on December 19, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97-396 Filed 1-7-97; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 28767; Amdt. No. 1775]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand along GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, there—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 27, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR

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part 97), is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 30, 1997*

Walnut Ridge, AR, Walnut Ridge Regional, NDB or GPS RWY 17, Amdt 3B Cancelled
Walnut Ridge, AR, Walnut Ridge Regional, NDB RWY 17, Amdt 3B
Jefferson, GA, Jackson County, VOR/DME or GPS RWY 34, Amdt 1 Cancelled
Jefferson, GA, Jackson County, VOR/DME RWY 34, Amdt 1
Norfolk, NE, Karl Stefan Memorial, VOR or GPS RWY 1, Amdt 6 Cancelled
Norfolk, NE, Karl Stefan Memorial, VOR RWY 1, Amdt 6
Frederick, OK, Frederick Muni, NDB or GPS RWY 35L, Amdt 1A Cancelled
Frederick, OK, Frederick Muni, NDB RWY 35L, Amdt 1A

[FR Doc. 97–316 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28766; Amdt. No. 1774]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on December 27, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication

FORT LAUDERDALE-HOLLYWOOD INTL, FORT LAUDERDALE, FL. VOR OR GPS RWY 27R AMDT 10C
FORT LAUDERDALE-HOLLYWOOD INTL, FORT LAUDERDALE, FL. RADAR-1 AMD 3B12/17/96
FORT LAUDERDALE-HOLLYWOOD INTL, FORT LAUDERDALE, FL. ILS RWY 27R AMDT 5
ST AUGUSTINE, ST AUGUSTINE, FL. VOR RWY 31 ORIG
ST AUGUSTINE, ST AUGUSTINE, FL. VOR OR GPS RWY 13 AMDT 5
FAIRFIELD COUNTY, WINNSBORO, SC. GPS RWY 22 ORIG
PORTLAND INTL, PORTLAND, OR. ILS RWY 10R AMDT 30A
CRAIG MUNI, JACKSONVILLE, FL. ILS RWY 32 AMDT 3A
MONROE, MONROE, NC. VOR OR GPS-A AMDT 11
MONROE, MONROE, NC. VOR/DME OR GPS-B AMDT 6
MONROE, MONROE, NC. NDB OR GPS RWY 5 AMDT 2
MONROE, MONROE, NC. ILS RWY 5 ORIG
METROPOLITAN OAKLAND INTL, OAKLAND, CA. ILS RWY 29 'CAT II' AMDT 23...ILS RWY 29 'CAT III' AMDT 23
STUART/WITHAM FIELD, STUART, FL. GPS RWY 29, ORIG
CHARLOTTE/DOUGLAS INTL, CHARLOTTE, NC. LOC BC RWY 23 AMDT 10
BURLINGTON-ALAMANCE REGIONAL, BURLINGTON, NC. NDB OR GPS RWY 6, AMDT 3
BURLINGTON-ALAMANCE REGIONAL, BURLINGTON, NC. VOR/DME OR GPS-A, ORIG
TAMPA INTL, TAMPA, FL. ILS RWY 18L, AMDT 38D
TAMPA INTL, TAMPA, FL. VOR OR GPS RWY 9, AMDT 7A
CRAIG FIELD, SELMA, AL. ILS RWY 33, ORIG-C
FI/P AUBURN-OPELIKA ROBERT G. PITTS, AUBURN, AL. RNAV OR GPS RWY 36, AMDT 3
AUBURN-OPELIKA ROBERT G. PITTS, AURBURN, AL. VOR/DME OR GPS-A, AMDT 6
AUBURN-OPELIKA ROBERT G. PITTS, AUBURN, AL. VOR OR GPS RWY 28, AMDT 9
AUBURN-OPELIKA ROBERT G. PITTS, AUBURN, AL. NDB RWY 36, ORIG
AUBURN-OPELIKA ROBERT G. PITTS, AUBURN, AL. LOC RWY 36, AMDT 2
BEAUMONT-PORT AUTHUR/JEFFERSON COUNTY, BEAUMONT-PORT AUTHOR, TX. GPS RWY 34, ORIG

[FR Doc. 97-315 Filed 1-7-97; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 28765; Amdt. No. 1773]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is

contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, and effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on December 27, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 30, 1997*

Anvik, AK, Anvik, GPS RWY 35, Orig
Noatak, AK, Noatak, NDB/DME RWY 36, Amdt 1
Harrisburg, IL, Harrisburg-Raleigh, NDB RWY 24, Amdt 10
Newberry, MI, Luce County, VOR or GPS RWY 11, Amdt 10
Newberry, MI, Luce County, VOR or GPS RWY 29, Amdt 10
Weslaco, TX, Mid Valley, VOR/DME–A, Orig
Weslaco, TX, Mid Valley, VOR/DME OR GPS–A, Orig, cancelled

** * * Effective February 27, 1997*

San Diego, CA, Brown Field Muni, VOR OR GPS–A, Amdt 4
Houston, TX, Houston Intercontinental, ILS RWY 9, Amdt 4
Houston, TX, Houston Intercontinental, ILS RWY 26, Amdt 15
Houston, TX, Houston Intercontinental, GPS RWY 27, Orig
Leesburg, VA, Leesburg Muni/Godfrey Field, RNAV RWY 17, Amdt 9, Cancelled
Manassas, VA, Manassas Muni/Harry P. Davis Field, VOR–B, Amdt 3, Cancelled

** * * Effective March 27, 1997*

Lake Village, Lake Village Muni AR, GPS RWY 1, Orig
Lake Village, Lake Village Muni AR, GPS RWY 19, Orig
Magnolia, AR, Magnolia Muni, NDB RWY 36, Amdt 1
Magnolia, AR, Magnolia Muni, GPS RWY 18, Amdt 1
Magnolia, AR, Magnolia Muni, GPS RWY 36, Amdt 1
Monticello, AR, Monticello Muni/Ellis Field, VOR–A, Amdt 5
Monticello, AR, Monticello Muni/Ellis Field, GPS RWY 3, Orig
San Diego, CA, Brown Field Muni, GPS RWY 8L, Orig
Hays, KS, Hays Muni, GPS RWY 16, Orig
New Orleans, LA, New Orleans (Moisant Field), GPS RWY 10, Orig
New Orleans, LA, New Orleans (Moisant Field), GPS RWY 19, Orig
Bedford, MA, Laurence G. Hanscom, GPS RWY 23, Orig
Adrian, MI, Lenawee County, GPS RWY 5, Orig
Jefferson City, MO, Jefferson City Memorial, GPS RWY 12, Orig
Jefferson City, MO, Jefferson City Memorial, GPS RWY 30, Orig
Albany, NY, Albany County, ILS RWY 19, Amdt 20
Hudson, NY, Columbia County, NDB OR GPS–A, Amdt 3
Hudson, NY, Columbia County, GPS RWY 21, Orig
Penn Yan, NY, Penn Yan, NDB RWY 28, Amdt 6
Penn Yan, NY, Penn Yan, NDB RWY 1, Orig
Penn Yan, NY, Penn Yan, NDB RWY 19, Orig
Hazen, ND, Mercer County Regional, GPS RWY 14, Orig
Hazen, ND, Mercer County Regional, GPS RWY 32, Orig
Chandler, OK, Chandler Muni, GPS RWY 17, Orig
Chandler, OK, Chandler Muni, GPS RWY 35, Orig
Providence, RI, Theodore Frances Green State, GPS RWY 16, Orig
Hondo, TX, Hondo Muni, NDB OR GPS RWY 35R, Amdt 4
Hondo, TX, Hondo Muni, VOR RWY 17L, Orig, Cancelled
Hondo, TX, Hondo Muni, GPS RWY 17L, Amdt 1
Houston, TX, Ellington Field, NDB RWY 22, Orig
Houston, TX, Ellington Field, GPS RWY 4, Orig
Houston, TX, Ellington Field, GPS RWY 17R, Orig

Houston, TX, Ellington Field, GPS RWY 35L, Orig
Waco, TX, McGregor Muni, GPS RWY 17, Orig
Waco, TX, McGregor Muni, GPS RWY 35, Orig
Blacksburg, VA, Virginia Tech, NDB OR GPS–A, Amdt 2

[FR Doc. 97–314 Filed 1–7–97; 8:45 am]
BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE61

Reduction in Supplemental Security Income (SSI) Payable to Institutionalized Children Whose Medical Costs Are Covered by Private Insurance

AGENCY: Social Security Administration.

ACTION: Interim final rules with request for comments.

SUMMARY: These regulations implement an amendment to section 1611(e)(1)(B) of the Social Security Act (the Act) made by section 214 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 214 extends applicability of the reduced SSI benefit rate (currently $30.00 per month) to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider. With these rule changes, children with private health insurance coverage will be treated the same as children with Medicaid coverage in terms of the amount of benefits for which they are eligible. While the major impact of these regulations will be to reduce benefits for those children described above, some children residing in public institutions, which receive private health insurance payments and which currently do not receive any SSI benefits on their behalf, will become eligible for SSI benefits up to $30 per month.

DATES: These interim final rules are effective beginning January 8, 1997. To be sure that your comments are considered, we must receive them no later than March 10, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(e)(1)(A) of the Act generally precludes eligibility for SSI benefits when a claimant is a resident of a public institution throughout a month. Section 1611(e)(1)(B) provided an exception to that bar. Under that section, payments could be made at the reduced Federal benefit rate to individuals in institutions "receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX * * *." This language was implemented through regulations to mean that individuals in institutions would receive only the reduced benefit amount when "Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of" the claimant's care (§ 416.211(b)).

Section 214 of Public Law 104–193, effective for benefits beginning with the month of December 1996, amends section 1611(e)(1)(B) of the Act by extending applicability of the reduced SSI benefit rate to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider (hereinafter referred to as private health insurance). Prior to the enactment of section 214, children under the age of 18 in private institutions with private health insurance generally could be eligible for a full SSI payment. Section 214 now restricts the SSI payment for such children to the Federal reduced benefit rate. Also, as is noted above, prior to this legislation, individuals in public institutions not receiving substantial Medicaid payments on their behalf generally were ineligible for SSI. However, as a result of this legislation, children under age 18 in public institutions receiving private health insurance on their behalf now are eligible for SSI payments at the reduced Federal benefit amount.

Section 214 could be interpreted as requiring application of the reduced benefit amount where *any* amount of private health insurance payments is being made on behalf of an institutionalized child for the cost of the child's care in the institution. However, if the private health insurance is not paying for a significant amount of the cost of care, we believe that application of the reduced SSI payment would be at odds with the intent of the SSI program to help provide for the basic needs of the child for food, clothing, and shelter.

Moreover, the legislative history indicates that "[c]hildren in medical institutions whose medical costs are covered by private insurance would be treated the same as children whose bills are currently paid by Medicaid (that is, their monthly SSI cash benefit would be reduced to $30 per month)." H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 333 (1996). In addition, the legislative history references children whose costs are "covered," not children for whom any private insurance payments are being made. Since Congress used the same phrase, "receiving payments," in referring to cases where Medicaid is paying towards the cost of care and to cases where private health insurance is paying towards the cost of care, we believe that the extent of the medical coverage which would reduce the SSI payment to $30 should be the same. Therefore, we have decided that the more equitable approach is to apply the reduced benefit amount to children under age 18 with private health insurance when it pays a substantial part (more than 50 percent) of the cost of their care in the institution. Similarly, since Congress apparently wanted to treat all children with significant medical coverage in the same manner, we also have decided that the reduced benefit amount will apply in those cases where children under age 18 are in medical care facilities receiving a combination of Medicaid and private health insurance payments which combined pay a substantial part (more than 50 percent) of the cost of their care.

Regulatory Changes

Section 416.211 explains the general prohibition against SSI eligibility for residents of public institutions, as well as the statutory exceptions to that prohibition. We have revised § 416.211(b) to include a reference to private health insurance as a factor in applying the exception that permits SSI payments at a reduced rate for certain individuals in medical care facilities. The introductory text of paragraph (b)

refers to § 416.414, where the reduced benefits are described and the requirements are explained more thoroughly.

Section 416.212 explains the two statutory provisions that permit continuation of full benefits in certain cases of medical confinement. Under section 1611(e)(1)(E) of the Act, as originally implemented, a recipient whose SSI eligibility is based on section 1619(a) or (b) of the Act for the month preceding the first full month of residence in (1) a public medical or psychiatric institution or (2) a public or private institution where Medicaid is paying more than 50 percent of the cost of care can remain eligible for an SSI benefit for up to 2 full months after entering the institution, if the recipient is allowed, under agreement with the medical institution, to retain any SSI benefits. Also, under 1611(e)(1)(G) of the Act, a recipient is eligible for continuation of full SSI benefits for up to 3 full months after entering certain medical or psychiatric institutions if a physician certifies, within certain time restrictions, that the recipient's stay in the facility is likely not to exceed 3 months and if the recipient needs to continue to maintain and provide for the expenses of the home to which he or she may return.

To include the provisions of section 214, we have revised § 416.212(a) to include children under age 18 whose benefits are reduced because of residence in a public or private institution where private health insurance, or a combination of Medicaid and private health insurance, is paying a substantial part (more than 50 percent) of the cost of their care. We have also revised § 416.212(b) to extend applicability of the continued benefits to children under age 18 whose SSI benefits otherwise would be reduced because of residence in a public institution where private health insurance, or a combination of Medicaid and private health insurance, is paying a substantial part (more than 50 percent) of the cost of care.

Section 1611(e)(1)(G) specifies that the recipient must be "* * * an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or which is a hospital, extended care facility, nursing home, or intermediate care facility receiving payments * * * under a State plan approved under title XIX * * *." Because Public Law 104–193 did not amend this section of the Act, SSI payments to children in *private* medical care facilities for whom private health insurance, or a combination of Medicaid and private health insurance, is paying more than 50 percent of the cost of care, will be limited to the reduced benefit amount beginning with their first full month of institutionalization.

Section 416.414 explains that reduced benefits are payable where Medicaid paid more than 50 percent of the cost of care, or where Medicaid would have paid more than 50 percent of the cost of care but for the application of section 1917(c) of the Act due to a transfer of assets for less than fair market value. To include the provisions of section 214, we have revised § 416.414(a) to explain that for children under age 18, the reduced benefits also apply where private health insurance, or a combination of Medicaid and private health insurance is paying a substantial part (more than 50 percent) of the cost of care in the medical facility.

Section 416.1149 explains what is a temporary absence from a living arrangement and explains how we value in-kind support and maintenance (ISM) received by an eligible individual during a temporary absence. In general, during a temporary absence we continue to value ISM the same way that we did in the permanent residence. Currently, paragraph (a)(1) of § 416.1149 states that a temporary absence from the permanent living arrangement exists if the eligible individual (or eligible individual and eligible spouse) becomes a resident of a public or private medical care facility where over 50 percent of the cost of care is paid by Medicaid, and who is eligible for the continuation of benefits payable under § 416.212. During this temporary absence we continue to value the eligible individual's support and maintenance the same way that we did in the permanent living arrangement.

We are changing paragraph (a)(1) of § 416.1149 to conform to the changes we are making in § 416.212 and § 416.414. For purposes of determining ISM, we also will consider as temporarily absent from the permanent living arrangement a child under 18, who receives a reduced benefit because of residence in a public or private medical facility where private health insurance (or a combination of Medicaid and private health insurance) pays a substantial part (more than 50 percent) of the cost of care and who is eligible for the continuation of benefits under § 416.212. For such a child, during the temporary absence we continue to value the ISM the same way that we did in the permanent living arrangement.

The existing paragraph (c) of § 416.1149 describes an exception to the general rule for temporary absences described in paragraph (b). In paragraph (c), an eligible individual is considered temporarily absent from the permanent living arrangement regardless of the length of stay, if he or she enters a medical care facility in which Medicaid pays over 50 percent of the cost of care, is eligible for a reduced payment under § 416.414, and is not eligible under § 416.212. In this situation, ISM is valued using the rules that apply to the permanent living arrangement for the month the individual enters the facility and the month the individual leaves the facility. No ISM is chargeable for the full months the individual is in the facility and receives a reduced payment under § 416.414.

We are changing paragraph (c) of § 416.1149 to conform to the changes we are making in § 416.212 and § 416.414. Thus, we will also consider as temporarily absent from the permanent living arrangement a child under 18, who is not eligible under § 416.212, and who receives a reduced payment under § 416.414 because of residence in a public or private medical facility where private health insurance (or a combination of Medicaid and private health insurance) pays a substantial part (more than 50 percent) of the cost of care. ISM will be valued for these children as it is for the eligible individuals described in the preceding paragraph.

We are also revising § 416.1165(i)(1) and § 416.1202(b)(2)(i) so that those rules conform with the revised rules in § 416.414. Section 416.1165 describes how we deem income to a child from the child's ineligible parent(s). Subsection (i) describes a situation when we do not deem income to a child. Paragraph (1) is revised so that it conforms with the revised rules in § 416.414.

Subsection 416.1202(b) describes how we deem resources to a child from the child's ineligible parent(s). Paragraph (b)(2) describes a situation when we do not deem resources to a child. Paragraph (b)(2)(i) is revised so that it conforms with the revised rules in § 416.414.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by

section 102 of Public Law 103–296, the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these interim final rules, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the prior notice procedures.

Public Law 104–193 was signed into law on August 22, 1996. As noted above, section 214 of Public Law 104–193, which is the subject of these interim final rules, was made effective December 1, 1996. Moreover, section 215 requires the Commissioner to issue regulations necessary to carry out the amendments made by section 214 within 3 months after the date of enactment (i.e., by November 22, 1996). Accordingly, to issue these rules as an NPRM would have delayed issuance of final rules until well past the statutorily mandated deadlines.

In light of the above statutory deadlines, we believe that, under the APA, good cause exists for waiver of the prior notice procedures since issuance of proposed rules would be impracticable. While we are issuing these rules as interim final regulations, we are interested in receiving public comments regarding the substance of these interim rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, these regulations reflect and implement statutory provisions effective December 1, 1996 for which publication of implementing regulations is required by November 22, 1996. In order for these regulations to be effective as close as possible to the mandated dates, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

These interim final rules reflect and implement the provisions of section 214 of Public Law 104–193. The Office of Management and Budget (OMB) has reviewed these interim final rules and determined that they meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, we prepared and submitted to OMB, separately from these interim final rules, an assessment of the potential costs and benefits of this regulatory action. This document also contains an analysis of alternative policies we considered and chose not to adopt. This assessment is available for review by members of the public.

Regulatory Flexibility Act

We certify that these interim final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These interim final rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006–Supplemental Security Income.)

List of Subjects in 20 CFR Part 416:

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: December 6, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts B, D, K, and L of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.211 is amended by revising paragraph (b)(1) to read as follows:

§ 416.211 You are a resident of a public institution.

* * * * *

(b) * * *

(1)(i) You reside throughout a month in a public institution that is a medical care facility where Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of your care; you are a child under the age of 18 residing throughout a month in a public institution that is a medical care facility where a substantial part (more than 50 percent) of the cost of your care is paid under a health insurance policy issued by a private provider of such insurance; or, you are a child under the age of 18 residing throughout a month in a public institution that is a medical care facility where a substantial part (more than 50 percent) of the cost of your care is paid by a combination of Medicaid payments and payments made under a health insurance policy issued by a private provider of such insurance; or

(ii) You reside for part of a month in a public institution and the rest of the month in a public institution or private medical facility where Medicaid pays a substantial part (more than 50 percent) of the cost of your care; you are a child under the age of 18 residing for part of a month in a public institution and the rest of the month in a public institution or private medical facility where a substantial part (more than 50 percent) of the cost of your care is paid under a health insurance policy issued by a private provider of such insurance; or you are a child under the age of 18 residing for part of a month in a public institution and the rest of the month in a public institution or private medical facility where a substantial part (more than 50 percent) of the cost of your care is paid by a combination of Medicaid payments and payments made under a health insurance policy issued by a private provider; and

* * * * *

3. Section 416.212 is amended by revising paragraphs (a) introductory text and (b)(1) introductory text to read as follows:

§ 416.212 Continuation of full benefits in certain cases of medical confinement.

(a) *Benefits payable under section 1611(e)(1)(E) of the Social Security Act.* Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(E) of the Social Security Act for up to 2 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays a substantial part (more than 50 percent) of the cost of your care or, if

you are a child under age 18, reduced because of residence in a public or private institution which receives payments under a health insurance policy issued by a private provider, or a combination of Medicaid and a health insurance policy issued by a private provider, pay a substantial part (more than 50 percent) of the cost of your care if—

* * * * *

(b) *Benefits payable under section 1611(e)(1)(G) of the Social Security Act.* (1) Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(G) of the Social Security Act for up to 3 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays a substantial part (more than 50 percent) of the cost of your care or, if you are a child under age 18, reduced because of residence in a public institution which receives payments under a health insurance policy issued by a private provider, or a combination of Medicaid and a health insurance policy issued by a private provider, pay a substantial part (more than 50 percent) of the cost of your care if—

* * * * *

Subpart D—[Amended]

4. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

5. Section 416.414 is amended by revising paragraph (a) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

(a) *General rule.* Except where the § 416.212 provisions provide for payment of benefits at the rates specified under §§ 416.410 and 416.412, reduced SSI benefits are payable to persons and couples who are in medical care facilities where a substantial part (more than 50 percent) of the cost of their care is paid by a State plan under title XIX of the Social Security Act (Medicaid). This reduced SSI benefit rate applies to persons who are in medical care facilities where a substantial part (more than 50 percent) of the cost would have been paid by an approved Medicaid State plan but for the application of section 1917(c) of the Social Security Act due to a transfer of assets for less than fair market value. This reduced SSI benefit rate also applies to children under age 18 who are in medical care facilities where a substantial part (more than 50 percent) of the cost of their care is paid by a health insurance policy issued by a private provider of such insurance, or where a substantial part (more than 50 percent) of the cost of their care is paid for by a combination of Medicaid payments and payments made under a health insurance policy issued by a private provider of such insurance. Persons and couples to whom these reduced benefits apply are—

(1) Those who are otherwise eligible and who are in the medical care facility throughout a month. (By *throughout a month* we mean that you are in the medical care facility as of the beginning of the month and stay the entire month. If you are in a medical care facility you will be considered to have continuously been staying there if you are transferred from one medical facility to another or if you are temporarily absent for a period of not more than 14 consecutive days.); and

(2) Those who reside for part of a month in a public institution and for the rest of the month are in a public or private medical care facility where Medicaid pays or would have paid (but for the application of section 1917(c) of the Act) a substantial part (more than 50 percent) of the cost of their care; and

(3) Children under age 18 who reside for part of a month in a public institution and for the rest of the month are in a public or private medical care facility where a substantial part (more than 50 percent) of the cost of their care is being paid under a health insurance policy issued by a private provider or by a combination of Medicaid and payments under a health insurance policy issued by a private provider.

* * * * *

Subpart K—[Amended]

6. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

7. Section 416.1149 is amended by revising paragraph (a)(1) and the first sentence of paragraph (c)(1)(i) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

(a) * * *

(1) Become a resident of a public institution, or a public or private medical care facility where you otherwise would be subject to the reduced benefit rate described in § 416.414, and you are eligible for the benefits payable under § 416.212; or

* * * * *

(c) *Rules for temporary absence in certain circumstances.* (1)(i) If you enter a medical care facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. * * *

* * * * *

8. Section 416.1165 is amended by revising paragraph (i)(1) to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent(s).

* * * * *

(i) * * *

(1) You previously received a reduced SSI benefit while a resident of a medical facility, as described in § 416.414;

* * * * *

Subpart L—[Amended]

9. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

10. Section 416.1202 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) * * *

(2) * * *

(i) Previously received a reduced SSI benefit while a resident of a medical facility, as described in § 416.414;

* * * * *

[FR Doc. 97–247 Filed 1–7–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

RIN 1076–AD84

25 CFR Part 151

Land Acquisitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correcting amendment.

SUMMARY: This document corrects a section title in the regulation at 25 CFR part 151 governing land acquisitions by an Indian individual or tribe. The correction eliminates the word "nongaming" from the title It is being published to prevent possible confusion over the applicability of the rule.

EFFECTIVE DATE: January 8, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Office of the Commissioner, Bureau of Indian Affairs, Room 2070, Main Interior Building, 1849 C Street NW, Washington, D.C. 20240, Telephone No. (202) 219–4066.

SUPPLEMENTARY INFORMATION:

Background

On Friday, June 23, 1995, the Bureau of Indian Affairs published a final rule on Land Acquisitions, at 60 FR 32874. This rule was amended on September 21, 1995, at 60 FR 48894. The rule created a new section which contained additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the United States in trust for Federally recognized Indian tribes when lands are outside and noncontiguous to the tribe's existing reservation boundaries.

Need for Correction

As published, the final rule contains an error that may prove to be misleading and is in need of clarification. The word "(nongaming)" was mistakenly included in the title of § 115.11 and was not removed when a correction was published on September 21, 1995. The provisions of § 151.11 cover gaming acquisitions, and it was always the intent of the Secretary to evaluate off-reservation gaming acquisitions under the § 151.11 criteria. Therefore this correction is necessary to effect Secretarial intent and remove the word "(nongaming)" from the title of § 151.11.

List of Subjects in 25 CFR Part 151

Indians—Lands.

Accordingly, 25 CFR part 151 is corrected by making the following correcting amendment:

PART 151—LAND ACQUISITIONS

§ 151.11 Off-reservation acquisitions.

1. In § 151.11, revise the section heading to read as set forth above.

Dated: December 26, 1996.

Elizabeth L. Homer,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 97–246 Filed 1–7–97; 8:45 am]

BILLING CODE 4310–4N–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–20

[FPMR Amendment D–95]

RIN 3090–AG00

Small Purchase Authority

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This General Services Administration (GSA) final rule revises the regulations regarding the delegation of authority to occupant agencies to contract for reimbursable space alterations. The present FPMR provisions stated in 101–20.106–1 cite a project accomplishment threshold of $25,000. This threshold was established based on the small purchase authority in place at the time of the original publication of this provision.

Since the purpose of this FPMR provision is to provide occupant agencies choices in their use of a service provider, it is recommended that the Simplified Acquisition Procurement threshold be used. Rather than establish an authority at a selected value, the reference should be changed to link it to the Federal Acquisition Streamlining Act of 1994. Therefore, if the value of the statute changes, the FPMR would not require a change. The present Simplified Acquisition Threshold (SAT) authority is $100,000 for GSA procurement activities.

Modifying the FPMR provisions to tie to the SAT authority gives occupants increased flexibility in accomplishing alteration tasks and fully delegates the authority to do the work.

No other changes are required.

EFFECTIVE DATE: January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neely, Director, Portfolio Support Division, PMX, (202) 501–1464.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

The Paperwork Reduction Act does not apply because the revisions do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

This rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–20

Concessions, Federal buildings and facilities, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101–20 is amended as follows:

PART 101–20—MANAGEMENT OF BUILDINGS AND GROUNDS

1. The authority citation for part 101–20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–20.1—Building Operations, Maintenance, Protection, and Alterations

2. Section 101–20.106–1 is amended by revising paragraphs (b), (c) and (e) to read as follows:

§ 101–20.106–1 Placing of orders for reimbursable alterations by occupant agencies.

* * * * *

(b) No individual order, or combinations of orders for a single alteration project, shall exceed the simplified acquisition threshold, as defined in 41 U.S.C. 252a, and agencies shall not split orders so as to circumvent this limitation.

(c) For all orders placed against GSA contracts or agreements, agency ordering officials shall obtain prior written project review by GSA and provide a copy of the ordering document and final payment document to the GSA buildings manager. Agencies are responsible for inspecting and certifying satisfactory completion of the work, and for ensuring contractor compliance with contract provisions. The final payment document shall be supported by GSA Form 1142, Release of Claims; GSA Form 2419, Certification of Payments to Subcontractors and Supplies; and certification that the work has been inspected and accepted.

* * * * *

(e) Where no GSA contracts or agreements are in effect, an agency may

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contract directly for services up to the simplified acquisition threshold per project after written review by GSA. Agencies contracting directly must provide GSA with complete documentation of the scope of work and contract specifications at the time of submission. Each project shall include appropriate reviews by the regional safety staff. If contracting for security systems, agencies must submit the design work for regional Federal Protective Service Division review. Agencies shall be responsible for inspecting and certifying satisfactory completion of the ordered work. All work must conform to GSA fire and safety standards. GSA at anytime has the authority to make inspections and require correction if the project is found not in compliance with GSA reviews or fire and safety standards. As-built drawings must be submitted to GSA's buildings manager within 30 days of completion of the work.

Dated: December 13, 1996.

David J. Barram,

Acting Administrator.

[FR Doc. 97–420 Filed 1–7–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 96–D327]

Defense Federal Acquisition Regulation Supplement; MILCON—Environmental Restoration

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add an exception to the restriction on the use of cost-plus-fixed-fee contracts for military construction. The exception applies to contracts for environmental restoration at installations that are being closed or realigned where payments are made from a Base Realignment and Closure Account.

EFFECTIVE DATE: January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 96–D327 in all correspondence related to this case.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 216.306 to implement Section 101 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104–196). Section 101 continues to restrict the use of cost-plus-fixed-fee contracts for military construction, but provides an exception for contracts for environmental restoration at installations that are being closed or realigned where payments are made from a Base Realignment and Closure Account.

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR. 1.501 and Public Law 98–577 and publication for public consent is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D327 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 216.306 is revised to read as follows:

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.*

(i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed $25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply—

(A) To contracts for environmental restoration at an installation that is being closed or realigned where payments are made from a Base Realignment and Closure Account; or

(B) To contracts specifically approved in writing, setting forth the reasons therefore, in accordance with the following:

(1) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(2) The Secretary of Defense or designee must approve such contracts are not for environmental work only or are for environmental work classified as construction.

[FR Doc. 97–381 Filed 1–7–97; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Part 239

[DFARS Case 96–D017]

Defense Federal Acquisition Regulation Supplement; Information Technology Management Reform Act (ITMRA)

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise guidance regarding the acquisition of information technology, for conformance with recent amendments to the Federal Acquisition Regulation.

DATES: Effective date: January 8, 1997

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 96–D017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) was amended on August 8, 1996 (61 FR 41467; Federal Acquisition Circular 90–41, Item I), to implement Division E of the Information Technology Management Reform Act of 1996 (Public Law 104–106). This interim rule amends DFARS Part 239 for conformance with the August 8, 1996, FAR amendments.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to internal Government considerations regarding the acquisition of information technology. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and cite DFARS Case 96–D017 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule amends the DFARS for conformance with the FAR implementation of Division E of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), which was effective upon its publication in the **Federal Register** on August 8, 1996. However, public comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 239

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 239 is amended as follows:

PART 239—ACQUISITION OF INFORMATION RESOURCES

1. The authority citation for 48 CFR Part 239 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

239.001 through 239.002 [Removed]

2. Sections 239.001 through 239.002 are removed.

3. Subpart 239.70 is revised to read as follows:

Subpart 239.70—Exchange or Sale of Information Technology (IT)

Sec.

239.7000 Scope of subpart.
239.7001 Policy.
239.7002 Conditions for using exchange/sale.
239.7003 Procedures.

Subpart 239.70 Exchange or Sale of Information Technology (IT)

239.7000 Scope of subpart.

This subpart contains unique DoD procedures for the exchange or sale of information technology using the exchange authority of the General Services Administration (GSA). This subpart only applies to items with an original acquisition cost of $1,000,000 or more.

239.7001 Policy.

Agencies should consider exchange/sale when replacing Government-owned information technology. Exchange/sale is a method of—

(a) Transferring the equipment to be replaced to—

(1) Another Government agency, with reimbursement (sale); or

(2) The supplier of the replacement information technology for a trade-in allowance (exchange).

(b) Applying the proceeds of sale or the exchange allowance toward the purchase of replacement information technology.

239.7002 Conditions for using exchange/sale.

(a) The requiring activity must make a written determination that—

(1) The trade-in allowance of the exchange or the proceeds of the sale will be applied to acquire the replacement information technology; and

(2) The exchange/sale transaction will foster the economic and efficient accomplishment of a continuing requirement.

(b) The replacement equipment must be information technology—

(1) Similar to the resource being sold or exchanged;

(2) Which will satisfy the continuing requirement currently met by the resource being replaced.

239.7003 Procedures.

(a) Comply with—

(1) This subpart;

(2) Subpart 217.70; and

(3) The Defense Automation Resources Management Manual.

(b) Solicit offers both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis.

(c) Retain the option to exercise any exchange offer at the time of award.

(d) List and describe the information technology to be exchanged in the solicitation. At a minimum include—

(1) A brief description of each item;

(2) Name of manufacturer;

(3) Equipment type;

(4) Model number; and

(5) The condition code and explanation of the code.

(e) Allow sufficient time in the contracting schedule to permit screening within the Government of the information technology to be exchanged prior to contract award.

(f) Immediately upon receipt of offers, determine the highest exchange offer (if any) and use it to initiate screening under the Defense Automation Resources Management Manual.

(1) Send an SF 120, Report of Excess Personal Property, to the Defense Automation Resources Management Program Division (ATTN: DARMP Division). Prominently display the following note on the original and five copies of the SF 120:

Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of "sale" to the acquisition of similar items.

(2) Include the following additional information with the SF 120:

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The acquisition method for the replacement equipment;

(iv) The anticipated purchase price of the replacement equipment; and

(v) The name and telephone number of the contracting officer.

(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made

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whether or not the replaced information technology is exchanged.

(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see the Defense Automation Resources Management Manual for disposal instructions.

239.7102–3 [Amended]

4. Section 239.7102–3 is amended by removing the paragraph (a) designation and by removing paragraph (b).

239.7201 [Removed and Reserved]

5. Section 239.7201 is removed and reserved.

6. Section 239.7202 is amended by revising paragraphs (a) and (b) to read as follows:

239.7202 Waivers.

(a) The Secretary of Commerce has delegated to the Secretary of Defense the authority to waive FIP standards, in accordance with procedures established by the Secretary of Commerce. The Secretary of Defense redelegated that waiver authority to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). The ASD(C3I) has redelegated to the senior information technology official of each military department the authority to approve waivers to FIP standards that are applicable to military department requirements.

Waivers to FIP standards that are applicable to the requirements of DoD components outside the military departments must be approved by the ASD(C3I).

(b) Contracting officers shall ensure that all applicable FIP standards are incorporated into solicitations, except for those FIP standards for which the requiring activity has obtained a waiver from the appropriate military department or DoD senior information technology official.

* * * * *

7. Section 239.7302 is amended by revising paragraph (a), the introductory text of paragraph (b), and paragraph (b)(2) to read as follows:

239.7302 Approvals and screening.

(a) The requirements of this section highlight the redistribution requirements of the Defense Automation Resources Management Manual, and are in addition to those at FAR 45.302.

(b) If the contractor proposes acquiring ADPE subject to 239.7301(a)(1) and (2), and the unit acquisition cost is $50,000 or more—

* * * * *

(2) The administrative contracting officer—

(i) Submits a request for screening the requirement against the pool of Government-owned ADPE to determine if available excess equipment could satisfy the contractor's needs. The request should include the contractor's supporting documentation. The request is sent to—Defense Information Systems Agency, Chief Information Officer, ATTN: Defense Automation Resources Management, Program Division (D03D), 701 S. Courthouse Road, Arlington, VA 22204–2199; or

(ii) Uses the Automation Resources Management System (ARMS) to screen on-line. System access may be requested from the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program (DARMP) Division. Customers may apply for an ARMS Account Number by calling the DARMP Help Desk at (703) 696–1904; DSN 426–1904, FAX (703) 696–1908; E-mail DARMP@NCR.DISA.MIL.

(iii) Documents the result of the System query.

(iv) Upon receipt of and based on screening results from DARMP, advises the contractor that excess ADPE—

(A) Is available pursuant to the Defense Automation Resources Management Manual; or

(B) Is not available and the contractor may proceed with acquisition of the equipment.

* * * * *

8. Section 239.7304 is amended by revising paragraph (c) to read as follows:

239.7304 Purchase option credits.

* * * * *

(c) Report purchase option credits as prescribed in the Defense Automation Resources Manual.

9. Section 239.7400 is revised to read as follows:

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services may also meet the definition of information technology.

239.7402 [Amended]

10. Section 239.7402 is amended in paragraph (b)(4) by removing the reference "FAR 45.303–1(a)" and inserting the reference "FAR 45.303" in its place.

11. Section 239.7501 is revised to read as follows:

239.7501 Major automated information systems restriction.

Section 8028 of the FY 1992 Defense Appropriations Act (Pub. L. 102–172) and similar sections of the FY 1993, FY 1994, and FY 1995 Defense appropriations acts prohibit use of DoD appropriations for acquisition of major automated information systems, unless the systems have successfully completed oversight reviews required by DoD regulations.

239.7501–1 and 239.7501–2 [Removed]

12. Sections 239.7501–1 and 239.7501–2 are removed.

[FR Doc. 97–382 Filed 1–7–97; 8:45 am]
BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 62, No. 5
Wednesday, January 8, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model BAe ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model BAe ATP series airplanes. This proposal would require modification of certain parts in the elevator flight control system and the propeller pitch warning system. This proposal is prompted by a report indicating that these parts could interfere with the proper operation of these systems. The actions specified by the proposed AD are intended to prevent the flight crew from having to engage the standby elevator control system in order to regulate the pitch of the airplane; and to prevent malfunctioning of the pitch warning system for the propellers; either of which could lead to reduced controllability of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–100–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that two unrelated unsafe conditions, which could lead to similar consequences, may exist on certain Jetstream Model BAe ATP series airplanes. The CAA advises that it has received a report indicating that there have been occurrences of restriction or interference with movement of the elevator flight control system on some of these airplanes. The manufacturer conducted a zonal survey of this airplane model to detect where movement of these controls could be impeded. That survey revealed the following information:

The flight control system for the elevators, which is located in an area under the flight deck, has small clearances between some of its components and surrounding structures. This design creates the potential for foreign objects to interfere with or restrict movement of the stop lever for this system's bellcrank assembly. If movement of this lever is impeded, the flight crew must engage the standby control system for the elevators, which enables one, but not both elevators to be operated. When only one elevator is working, it becomes more difficult for the flight crew to control the pitch of the airplane. This condition, if not corrected, could lead to reduced controllability of the airplane.

The zonal survey also indicated that there could be interference with the controls for the propeller pitch warning system on airplanes on which Jetstream Modification 35205A has been installed. (That modification is described in Jetstream Service Bulletin ATP–53–19, dated January 13, 1993, which contains procedures for installing of two access panels in the floor of the flight deck to make it easier for maintenance personnel to adjust the microswitches for the powerplant.). During normal operation of this system, a green warning light stays on when the propellers are in low pitch and the airplane does not exceed 60 knots Indicated Airspeed (IAS); when that airspeed is exceeded, a red warning light comes on and the flight crew knows that the pitch of the propellers must be increased. Should a retaining cord on the access panel impede operation of the microswitches, the green warning light could remain on when the airplane is flying at a speed greater than 60 knots IAS, and the flight

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crew may not be immediately aware of the need to increase propeller pitch. This malfunctioning of the propeller low pitch warning system, if not corrected, could lead to the propeller operating at low pitch and high airspeed, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin ATP–27–78, Revision 1, dated January 31, 1996, which describes procedures for modification of the stop lever for the bellcrank assembly in the elevator flight control system. This modification, which entails shortening the lever and thus increasing clearance at its end, is intended to remove potential impediments to proper movement of the lever.

This service bulletin also describes procedures for modification of the two access panels to the powerplant microswitches on airplanes that have been fitted with Jetstream Modification 35205A. This modification, which entails removal of the retaining cords on these panels, is intended to remove potential impediments to proper operation of these switches and the propeller pitch warning system.

The CAA classified this service bulletin as mandatory and issued British airworthiness directive 003–12–95, dated January 31, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since unsafe conditions have been identified that are likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the stop lever for the bellcrank assembly of the elevator flight control system. It also would require that retaining cords on the access panels to the powerplant microswitches be removed from airplanes on which Jetstream Modification 35205A has been installed previously.

These actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 10 Jetstream Model BAe ATP series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hours per airplane to accomplish the proposed modification of the stop lever for the bellcrank assembly of the elevator flight control system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification of this lever on U.S. operators is estimated to be $4,200, or $420 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed removal of the retaining cords on airplanes that have been fitted with Jetstream Modification 35205A. The average labor rate is $60 per work hour. Based on these figures, the cost impact of this proposed removal on U.S. operators of airplanes fitted with Jetstream Modification 35205A is estimated to be $600, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 96–NM–100–AD.

Applicability: Model BAe ATP series airplanes as listed in Jetstream Service Bulletin ATP–27–78, Revision 1, dated January 31, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from having to engage the standby elevator control system in order to regulate the pitch of the airplane, and to prevent malfunctioning of the pitch warning system for the propellers, either of which could lead to reduced controllability of the airplane, accomplish the following:

(a) For airplanes on which Jetstream Modification 35205A has been installed: Within 3 months after the effective date of this AD, remove the retaining cords on the access panels to the powerplant microswitches, in accordance with Part 2 of Jetstream Service Bulletin ATP–27–78, Revision 1, dated January 31, 1996.

Note 2: Jetstream Modification 35202A is described in Jetstream Service Bulletin ATP–53–19, dated January 13, 1993.

(b) For all airplanes: Within 18 months after the effective date of this AD, modify the stop lever for the bellcrank assembly of the elevator flight control system, in accordance with Part 1 of Jetstream Service Bulletin ATP–27–78, Revision 1, dated January 31, 1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 2, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–363 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AWP–34]

Proposed Revision of Class D and Class E Airspace; Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class D and Class E airspace areas at Los Angeles, CA. This action is a reduction of the surface areas for the Los Angeles Hawthorne Municipal Airport, CA. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this proposal is to reduce the complexity of the air traffic procedures and reduce the number of facilities controlling traffic within this area.

DATES: Comments must be received on or before February 26, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented as particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AWP–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class D and Class E airspace areas at Los Angeles Hawthorne Municipal Airport, CA. During airspace reclassification, the Hawthorne Airport Traffic Area (ATA) and the Los Angeles ATA were combined to form the Hawthorne Class D airspace. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this proposal is to reduce the complexity of the air traffic procedures and reduce the number of facilities controlling traffic within this area. Class D airspace areas are published in Paragraph 5000 and Class E airspace designations for airspace areas designated as an extention to a Class D or Class E surface area are published in Paragraph 6004 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113,40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

Los Angeles Hawthorne Municipal Airport, CA
(Lat. 33°55′22″N, long. 118°20′06″W)
Los Angeles VORTAC
(Lat. 33°55′59″N, long. 118°25′55″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 2.6-mile radius of the Hawthorne Municipal Airport and within 1.8 miles each side of the Los Angeles VORTAC 096° radial, extending from the 2.8-mile radius to 8.8 miles east of the Los Angeles VORTAC and within 1.8 miles each side of the Hawthorne Municipal Airport Localizer east course extending from the 2.6-mile radius to the Harbor Freeway, excluding the Los Angeles, CA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

Los Angeles Hawthorne Municipal Airport, CA
(Lat. 33°55′22″N, long. 118°20′06″W)

That airspace extending upward from the surface within 1.8 miles each side of the Hawthorne Municipal Airport Localizer east course extending from the Harbor Freeway to 5.8 miles east of the Hawthorne Municipal Airport and within 1.8 miles each side of the 224° bearing from the Hawthorne Municipal Airport, extending from the 2.6-mile radius of the Hawthorne Municipal Airport to 4.0 miles west of the Hawthorne Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on December 23, 1996.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–394 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–033]

Proposed amendment of Class E airspace, Jackson, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Jackson, Wyoming, Class E airspace to accommodate a Standard Terminal Arrival Route (STAR) to the Salt Lake City (SLC) International Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–033, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–033, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–033." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Jackson, Wyoming, to accommodate a new STAR to SLC International Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83 Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation of reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

ANM WY E5 Jackson, WY

Jackson Hole Airport, WY
(lat. 43°36'23"N, long. 110°44'17"W)
Jackson VOR/DME
(lat. 43°36'30"N, long. 110°44'05"W)
Dunoir VOR/DME
(lat. 43°49'42"N, long. 110°20'08"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 21.4 miles south of the VOR/DME, and within 2.2 miles each side of the Jackson VOR/DME 020° radial extending from the VOR/DME to 10.5 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7 miles west and 10.5 miles east of the Jackson VOR/DME 020° radial extending from the VOR/DME to 33.5 miles north of the VOR/DME, and within 4.3 miles each side of the Jackson VOR/DME 107° radial extending from the VOR/DME to 13.1 miles east of the VOR/DME, and within 5.3 miles north and 7.9 miles south of the Dunoir VOR/DME 102° and 282° radials extending from 7 miles east to 18.2 miles west of the Dunoir VOR/DME, and that airspace south of the Jackson VOR/DME bounded on the northwest by the southeast edge of V–465, on the east by the southwest edge of V–328, on the south by the north edge of V–4, and on the west by long. 112°00'00"W; excluding the Big Piney, WY, and the Rock Springs, WY, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on December 20, 1996.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–313 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–33–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–28]

Establishment of Class E Airspace; Gregory, SD, Gregory Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Gregory, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for the Gregory Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–453, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–28." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date of comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

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The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Gregory, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 31 SIAP at Gregory Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Gregory, SD [New]

Gregory Municipal Airport, SD
(lat. 43°13′18″N, long. 99°24′12″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Gregory Municipal Airport, and that airspace extending upward from 1,200 feet above the surface beginning at lat. 43°41′00″ N. long. 99°29′00″ W, southeastbound to lat. 43°00′00″N, long. 99°00′00″W, westbound to V71, northwestbound to lat. 43°29′30″N, long. 99°39′00″W, to the point of beginning, and that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 43°20′00″N, on the east by V71, on the south by lat. 43°00′00″N, and on the west by long. 100°05′00″W, excluding that airspace within the Winner, SD, E5 airspace.

* * * * *

Issued in Des Plaines, Illinois on December 19, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–312 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–29]

Establishment of Class E Airspace; Lemmon, SD, Lemmon Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace Lemmon, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 29 has been developed for the Lemmon Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other, aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGl–7, Rules Docket No. 96–AGL–29, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for

examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Lemmon, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 29 SIAP at Lemmon Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Lemmon, SD [New]

Lemmon Municipal Airport, SD
(lat. 45°55′08″N, long. 102°06′18″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Lemmon Municipal Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°10′00″N, on the east by V169, on the south by lat. 46°33′00″N, and on the west by V491, northbound to lat. 45°45′00″N, thence eastbound to lat. 45°45′00″N, long. 102°09′00″W, thence northwestbound to lat. 46°10′00″N, long. 102°04′00″W.

* * * * *

Issued in Des Plaines, Illinois on December 19, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–311 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–30]

Establishment of Class E Airspace; Shawano; WI, Shawano Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Shawano, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 29 has been developed for the Shawano Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related

aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–30." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Shawano, WI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 29 SIAP at Shawano Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Shawano, WI [New]

Shawano Municipal Airport, WI
(lat. 44°47′14″N, long. 88°33′35″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Shawano Municipal Airport, and within 2 miles each side of the 115° bearing from the airport extending from the 6.4-mile radius to 10 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 19, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–310 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–31]

Establishment of Class E Airspace; Oakes, ND, Oakes Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Oakes, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 30 has been developed for Oakes Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–31." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Oakes, ND; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 30 SIAP at Oakes Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.2 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Oakes, ND (New)

Oakes Municipal Airport, ND
(lat. 46°10'27"N, long. 98°04'49"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Oakes Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on December 19, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–309 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–27]

Establishment of Class E Airspace; Hot Springs, SD, Hot Springs Municipal Airport

AGENCY: Federal Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Hot Springs, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 19 has been developed for the Hot Springs Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon

Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–27." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Hot Springs, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 19 SIAP at Hot Springs Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Hot Springs, SD [New]

Hot Springs Municipal Airport, SD
(Lat. 43°22′09″N, long. 103°23′21″W)

That airspace extending upward from 700 feet above the surface with a 7.4-mile radius of the Hot Springs Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on December 19, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–308 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–38]

Proposed Amendment to Class E Airspace; Columbia, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Columbia, SC. A GPS RWY 31 Standard Instrument Approach Procedure (SIAP) has been developed for Columbia Owens Downtown Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–38, Manager, Operations

Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–38." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Columbia, SC. A GPS RWY 31 SIAP has been developed for Columbia Owens Downtown Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO SC E5 Columbia, SC [Revised]

Columbia Metropolitan Airport, SC
(Lat. 33°56′26″ N, long. 81°07′09″ W)
Corporate Airport
(Lat. 33°47′41″ N, long. 81°14′45″ W)
Columbia Owens Downtown Airport
(Lat. 33°58′15″ N, long. 81°59′44″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbia Metropolitan airport and within a 6.4-mile radius of Corporate Airport and within a 6.5-mile radius of Columbia Owens Downtown airport.

* * * * *

Issued in College Park, Georgia, on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–307 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–33]

Proposed Establishment of Class E Airspace; Milton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to establish Class E airspace at Milton, FL, to accommodate a GPS RWY 36 Standard Instrument Approach Procedure (SIAP) for Peter Prince Field. The NPRM is being withdrawn, as the current Class E airspace at Milton, FL, for NAS Whiting Field is of sufficient size to accommodate the GPS RWY 36 SIAP and for instrument flight rules (IFR) operations at Peter Prince Field, which is adjacent to NAS Whiting Field.

DATES: the withdrawal is effective January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On November 27, 1996, a NPRM was published in the **Federal Register** to establish Class E airspace at Milton, FL, to accommodate a GPS RWY 36 SIAP for Peter Prince Field Airport (61 FR 60240).

Conclusion

In consideration of the existence of Class E airspace at Milton, FL, for NAS Whiting Field being of sufficient size to accommodate the GPS RWY 36 SIAP and for IFR operations at Peter Prince Field, action is being taken to withdraw the proposal to establish Class E airspace at Milton, FL, for Peter Prince Field Airport.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

Withdrawal of Proposal Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96–ASO–33, as published in the **Federal Register** on November 27, 1996 (61 FR 60240), is hereby withdrawn.

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in College Park, Georgia, on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division, Southern Region

[FR Doc. 97–306 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–35]

Proposed Establishment of Class E Airspace; Fallbrook, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Fallbrook, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 at Fallbrook Community Airpark has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Fallbrook Community Airpark, Fallbrook, CA.

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–35, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AWP–35." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Fallbrook, CA. The development of GPS SIAP at Fallbrook Community Airpark has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 18 SIAP at Fallbrook Community Airpark, Fallbrook, CA. Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AWP CA E4 Fallbrook, CA [New]

Fallbrook Community Airpark, CA
(Lat. 33°21′15″N, long. 117°15′03″W)

Within 4 miles west and 5.3 miles east of the 014° bearing from the Fallbrook Community Airpark extending from Fallbrook Community Airpark to 20.5 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on December 23, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–395 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–32]

Proposed Amendment of Class E Airspace; Battle Mountain, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the airspace description and allows for an extension of the comment period of a proposed notice of rulemaking that was published in the **Federal Register** on December 18, 1996, Airspace Docket No. 96–AWP–32.

DATES: Comments must be received on or before February 18, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–32018, Airspace Docket No. 96–AWP–32, published on December 18, 1996 (61 FR 66620), revised the description of the Class E airspace area at Battle Mountain, NV. An error was discovered in the airspace description for the Battle Mountain, NV, Class E airspace area. This action corrects that error and extends the comment period until February 18, 1997.

Correction to Proposed Notice of Rulemaking

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Battle Mountain, NV, as published in the **Federal Register** on December 18, 1996 (61 FR 66620), (Federal Register Document 96–32018), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP NV E5 Battle Mountain, NV [Corrected]

Battle Mountain Airport, NV
(Lat. 40°35′54″ N, long. 116°52′31″ W)
Battle Mountain VORTAC
(Lat. 40°34′09″ N, long. 116°55′20″ W)

On page 66621, in the first column, the airspace description for Battle Mountain, NV, is corrected to read as follows:

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Battle Mountain Airport and within 4.3 miles southeast and 12 miles northwest of the Battle Mountain VORTAC 218° radial extending from the Battle VORTAC to 25 miles southwest of the VORTAC. That airspace extending upward from 1,200 feet above the surface within 8.7 miles southeast and 11.7 miles northwest of the Battle Mountain VORTAC 218° and 038° radials extending from 25 miles southwest to 10.4 miles northeast of the Battle Mountain VORTAC and within 5.6 miles south and 7.8 miles north of the Battle Mountain VORTAC 077° and 257° radials, extending from 7 miles west to 161.1 miles east of the Battle Mountain VORTAC.

* * * * *

Issued in Los Angeles, California, on December 24, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–393 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–003]

Standards for Business Practices of Interstate Natural Gas Pipelines

December 18, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; Notice of comment schedule.

SUMMARY: The Commission's proposed rule in this proceeding would amend its open access regulations by incorporating by reference standards promulgated by the Gas Industry Standards Board (GISB). A staff technical conference was held on December 12 and 13, 1996, to discuss the future direction of GISB's electronic communication standards and the possible need for standards in disputed areas. Comments are requested on issues considered at that technical conference.

DATES: Comments on issues considered at the technical conference are due on or before February 21, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 208–2294.

SUPPLEMENTARY INFORMATION: Notice is given that comments on issues considered at the technical conference held on December 12 and 13, 1996, are to be filed by February 21, 1997. Commenters should address the issues and questions identified in the Notice of Proposed Rulemaking [1] as the subjects for discussion at the technical conference. Further, commenters should address the issues identified by staff at the technical conference, including: whether it is important for the creation of an efficient interstate pipeline grid to have the Commission or GISB develop standards in the disputed areas; whether there are policy questions that the industry, through the Gas Industry Standards Board, will be unable to resolve and that the Commission should resolve to permit further progress in developing standards in these areas;

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 58790 (Nov. 19, 1996), 77 FERC ¶61,143 (Nov. 13, 1996).

and, if there are such policy questions, how and why they should be resolved in a particular manner.

Commenters are encouraged to submit their comments electronically and, in particular, are encouraged to participate in the Commission's pilot project using the Internet for filing comments. Comments can be submitted on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM96–1–003 on the outside of the diskette. Internet comments should be submitted through Internet E-Mail to "comment.rm@ferc.fed.us" in the following format: on the subject line, specify Docket No. RM96–1–003; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number and E-Mail address of a contact person; and attach the comment in WordPerfect® 6.1 or lower format or in ASCII format as an attachment to the E-Mail message.

Lois D. Cashell,

Secretary.

[FR Doc. 97–378 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[AK–005, Amendment No. V]

Alaska Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to self-bonding. The amendment is intended to revise the Alaska program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., February 7, 1997. If requested a public hearing on the proposed amendment will be held on February 3, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., January 22, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202.

Bob Loeffler, Project Manager, Division of Mining and Water Management, Department of Natural Resources, 3601 C Street, Suite 800, Anchorage, Alaska 99503–5935.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844–1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, **Federal Register** (48 FR 12274). Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

II. Proposed Amendment

By letter dated December 12, 1996, Alaska submitted a proposed amendment to its program pursuant to SMCRA (Amendment number V, administrative record No. AK–F–1, 30 U.S.C. 1201 *et seq.*). Alaska submitted the proposed amendment in response to required program amendments at 30 CFR 902.16(b)(1). The provisions of the Alaska Administrative Code (AAC) that Alaska proposes to revise and add are 11 AAC 90.207(f)(3), concerning requirements for self-bonds and 11 AAC 90.207(f)(8), concerning definitions of specific terms used for self-bonding.

Specifically, Alaska is proposing to revise 11 AAC 90.207(f)(3) to provide, in pertinent part, that the Commissioner [of Natural Resources] will, in the Commissioner's discretion, accept a written guarantee from a corporate guarantor if the applicant for a self-bond meets certain conditions, including designating and maintaining its own agent for service of process in Alaska.

Alaska proposes the addition of new language at 11 AAC 90.207((f)(8) (A) through (H) to provide definitions for the terms "self-bond," "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," "parent corporation," and "tangible net worth" as follows:

(A) "self-bond" means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority with or without a separate surety;

(B) "current assets" means cash or other assets or resources which are reasonable expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business;

(C) "current liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business;

(D) "fixed assets" means plants and equipment, but does not include land or coal in place;

(E) "liabilities" means obligations to transfer assets or provide services to other entities to the future as a result of past transactions;

(F) "net worth" means total assets minus total liabilities and is equivalent to owners' equity;

(G) "parent corporation" means a corporation which owns or controls the applicant; and

(H) "tangible net worth" means net worth minus intangibles such as good will and rights to patents or royalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Denver Field Division, Western Regional Coordinating Center, will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., January 23, 1997. Any disabled

individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and budget (OMB) under Executive Order 12866 (regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or private sector.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 23, 1996.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–302 Filed 1–7–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH97

Veterans Education: Submission of School Catalogs to State Approving Agencies

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). The current regulations provide that schools must submit a catalog or bulletin to the State Approving Agency (SAA) when seeking approval for courses for training under VA-administered education programs. Public Law 102–568 removed this requirement for elementary and secondary schools. Accordingly, VA intends to amend the regulations to state that accredited schools, other than elementary and secondary schools, as part of the approval process must submit catalogs to the State agencies that approve courses for training under VA-administered education programs. The purpose of this document is to request Paperwork Reduction Act comments concerning requirements that accredited schools, other than elementary and secondary schools, submit a catalog or bulletin to SAAs.

DATES: Comments on this collection of information should be submitted must be received on or before March 10, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH97". All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202–273–7187.

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that the proposed 38 CFR 21.4253(d)(1) would constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review of the collection of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH97".

Title: Submission of School Catalog to State Approving Agency (SAA).

Summary of collection of information: The provisions of the proposed 38 CFR 21.4253(d)(1) would restate a statutory requirement (under 38 U.S.C. 3675(a)) which provides that before an SAA may approve a course of an accredited educational institution (other than an elementary or secondary school) for training under VA-administered educational assistance programs (VA training), the educational institution must submit to the SAA certified copies of its catalog or bulletin containing the school's graduation requirements; institution policy and regulations containing certain information relative to standards of progress required of the student; institution policy and regulations relating to student conduct and conditions for dismissal; and any attendance standards, if enforced.

Description of need for information and proposed use of information: VA contracts with agencies of the various State governments (SAAs) to approve courses for VA training. The catalogs or bulletins referred to in this rulemaking are required by 38 U.S.C. 3675(a) to be submitted to the SAAs, not to VA. Hence, VA is not the primary user of the information, except in those rare instances where, under 38 U.S.C. 3671, VA is acting as an SAA. The SAAs use the information contained in the catalogs to help determine whether the educational institution's courses may be approved for VA training.

Description of likely respondents: Accredited educational institutions (other than elementary and secondary schools) applying to SAAs for approval of the institutions' courses for VA training.

Estimated number of respondents: 5,990.

Estimated frequency of responses: Annually. Generally, the SAAs collect this information when an educational institution applies for approval of a new course of study. Essentially, educational institutions develop new courses of study for which they seek approval with enough frequency so that the SAAs collect each new catalog the educational institutions may issue. This generally means a collection annually or less frequently, depending on the nature of the educational institution applying for course approval.

Estimated total annual reporting and recordkeeping burden: 1,497.5 hours. VA estimates that there would be no additional recordkeeping burden imposed. Educational institutions would develop catalogs or bulletins and would develop written policies and requirements concerning the matters required to be included in the catalogs and bulletins even if the statutory requirements restated in the proposed rule did not exist.

Estimated annual burden per collection: ¼ hour.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although it is possible that a small entity could be subject to this rulemaking, all schools prepare a catalog or bulletin that would meet the requirements of this rulemaking. Consequently, there would be no significant economic impact on small entities from this rulemaking.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 24, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart D is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4253, paragraph (d)(1) is revised to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) School qualification. * * *

(1) The institution (other than an elementary or secondary school) has submitted to the State approving agency copies of its catalog or bulletin which are certified as true and correct in content and policy by an authorized representative, and the publication shall:

(i) State with specificity the requirements of the institution with respect to graduation;

(ii) Include institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the institution, conditions of reentrance for those students dismissed for unsatisfactory progress, and a statement regarding progress records kept by the institution and furnished the student);

(iii) Include institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct; and

(iv) Include any attendance standards of the institution if the institution has and enforces such standards.

(Authority: 38 U.S.C. 3675(a), 3676(b))

* * * * *

[FR Doc. 97–355 Filed 1–7–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–65; Notice 2]

RIN 2127–AG58

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates rulemaking based upon oral presentations at the agency's public meetings and written comments received on the appropriate classification and safety regulations for golf carts and other small, light-weight vehicles that are capable of being driven on the public roads. In response to these comments, NHTSA proposes that a new category of motor vehicle be established, called "low-speed vehicle." A low-speed vehicle (LSV) would be any motor vehicle, other than a motorcycle, whose top speed does not exceed 25 mph. Under a proposed new standard, Federal Motor Vehicle Safety Standard No. 100, LSVs would be equipped with certain basic items of motor vehicle safety equipment, such as seat belts, in lieu of complying with the Federal motor vehicle safety and bumper standards that would apply if the vehicles were categorized according to existing vehicle types. LSVs would also have a label warning against driving them at speeds that exceed 25 mph. A "golf cart", a vehicle that is used to carry golfers on golf courses and that has a top speed of 15 mph or less, would not be considered a motor vehicle, consistent with the agency's past interpretations. A "golf car", a vehicle that is used to carry golfers on golf courses and that has a top speed that exceeds 15 mph, but does not exceed 25 mph, would be a motor vehicle and required to comply with Standard No. 100. This rulemaking action is intended to supersede the agency's past interpretations excluding from regulation motor vehicles with a distinctive configuration and a top speed of not more than 20 mph, and to bring all such vehicles under the statutory requirements to notify and remedy safety related defects, and when effective, noncompliances with Standard No. 100.

DATES: Comments are due February 24, 1997.

ADDRESSES: Comments should refer to Docket No. 96–65; Notice 2, and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Z. Taylor Vinson, Office of Chief Counsel, NHTSA, Room 5219, 400 7th Street, SW, Washington, DC 20590 (telephone 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Introduction

In order to afford the reader a full understanding of the agency's tentative decision, this notice will repeat, rather than refer the reader to, much of the discussion that appeared in Notice 1, published at 61 FR 30848 on June 18, 1996.

As discussed below in greater detail, vehicles such as golf carts have not been regulated by NHTSA because they were not considered to be manufactured for use on the public roads. Even when a vehicle is being used on the roads, NHTSA has not regulated if it had an unusual configuration, and if it had a top speed of 20 mph or less. However, the agency has become aware that the design and use of some of these vehicles are evolving in previously unanticipated ways. Although golf carts have traditionally been limited in their operations to golf courses, some states have taken legislative actions that permit the use of golf carts on some public roads at speeds up to 25 mph. In addition, there appears to be a growing interest worldwide in small vehicles of unconventional configurations that are capable of exceeding 20 mph, and that are intended for on-road use as city or commuter cars. While some of these vehicles do not resemble very small passenger cars, neither do they resemble the traditional golf cart.

The agency decided to review its historical position in light of these changing circumstances. To aid it in its review, NHTSA established Docket No. 96–65 and held two public meetings to receive the comments of manufacturers and users of these vehicles, local elected and law enforcement officials, public interest groups, and other interested persons, on safety and regulatory issues affecting golf carts and other light-weight limited-speed vehicles. The first meeting was held in Palm Desert, California, on July 18, 1996. The second meeting took place on July 25, 1996, at NHTSA headquarters in Washington, D.C. Written comments were requested to be submitted by August 8, 1996.

II. Legal Considerations

A. Federal Law

Title 49 U.S.C. Chapter 301 grants NHTSA regulatory authority over "motor vehicles." All "motor vehicles" are subject to the Federal motor vehicle safety standards promulgated by NHTSA pursuant to 49 U.S.C. 30111, and to the notification and remedy provisions of 49 U.S.C. 30118–30121. Those provisions must be followed in the event a motor vehicle is determined to fail to comply with a safety standard, or incorporates a safety related defect. A "motor vehicle" is defined as a vehicle "manufactured primarily for use on the public streets, roads, and highways" (Sec. 30102(a)(6)). The agency's interpretations of the definition have centered on the meaning of the word "primarily." The agency has generally interpreted "primarily" to mean that a significant portion of a vehicle's use must be on the public roads in order for the vehicle to be considered to be a motor vehicle.

NHTSA's principal interpretation of the definition of "motor vehicle" dates

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from 1969, and addressed the status of mini-bikes. NHTSA said that the capability of a vehicle to be operated on the public roads would be an important criterion in determining whether it was a "motor vehicle", but that test would not be reached if there were clear evidence as a practical matter that the vehicle was not being used on the public roads. In NHTSA's view, "in the case of self-propelled riding mowers, golf carts, and many other similar self-propelled vehicles, such clear evidence exists." Thus, since 1969, the agency has declined to regulate golf carts since they were not being operated on the public roads.

The agency's interpretations have also excluded from regulation motor vehicles that had "abnormal" configurations and a top speed of 20 miles per hour or less. As an example, NHTSA informed Trans2 Corporation in 1994 that its "low-speed electric vehicle" intended for use in residential communities, university campuses, and industrial complexes was not a "motor vehicle" because it had a top speed of 20 mph and unusual body features that made it readily distinguishable from other "motor vehicles." These features included an oval-shaped passenger compartment, taillamps built into headrests, and a configuration the approximate size and height of a golf cart. On the other hand, in 1995, NHTSA informed Goodlife Motors Corporation that its "super golf car" was a motor vehicle because it had a top speed of 29 mph and its configuration resembled that of a prototype Volkswagen passenger car.

NHTSA is aware that several companies want to manufacture small battery-powered vehicles for use on the public roads which they call "Neighborhood Electric Vehicles" ("NEV"). The configuration of a NEV may or may not be "abnormal", and its top speed may be as high as 35 mph. Any vehicle with a top speed over 20 mph is a "motor vehicle" under NHTSA's existing interpretations, regardless of its configuration. As such, a NEV would have to comply with all Federal vehicle safety standards that apply to heavier and faster passenger cars. Whether conformance of NEVs with these standards is reasonable, practicable and appropriate is an issue that NHTSA must consider.

B. State Laws

1. California

a. Definitions of "Motor Vehicle" and "Golf Cart"

Since 1959, the California Vehicle Code ("CVC") has defined a motor vehicle as any "vehicle which is self-propelled" (CVC Sec. 415). California defines a golf cart as "a motor vehicle having not less than three wheels in contact with the ground, having an unladen weight less than 1,300 pounds which is designed to be and is operated at not more than 25 miles per hour and designed to carry golf equipment and not more than two persons, including the driver" (CVC Sec. 345).

b. 1994 Cal SB 2610 and 1995 Cal AB 110

In 1992, California amended its Streets and Highway Code ("CSHC") to establish a Golf Cart Transportation Pilot Program for the City of Palm Desert (CSHC Secs. 1930–37). The 1992 law was replaced in 1994 by SB 2610 which added Chapter 6, CSHC, to establish a "Golf Cart Transportation Plan" applicable to the City of Palm Desert and the City of Roseville.

Chapter 6 was amended in 1995 by AB 110 to apply to any city or county in California. Chapter 6, as amended by AB 110, allows local jurisdictions to establish a Golf Cart Transportation Plan area in which golf carts are permitted to operate on "golf cart lanes", defined as "roadways * * * shared with pedestrians, bicyclists, and other motorists in the plan area" (CSHC 1951). Each plan must include minimum design criteria for safety features on golf carts. Only seat belts and covered passenger compartments are specifically required. However, the law states that a plan "may include" other safety features such as headlamps, turn signals, mirrors, stop lamps, and windshields.

A plan under the California law must also include a permit process for golf carts to ensure that they meet the minimum design criteria, and golf cart operators meet minimum safety criteria. At a minimum, an operator must have a valid California driver's license and carry a minimum amount of insurance.

In addition, the law requires a plan to allow only carts equipped with the requisite safety equipment to be operated on "separated golf cart lanes" identified in the plan. Lane striping on the pavement surface is sufficient for a lane to qualify as a "separated golf cart lane." Under the Palm Desert plan, there are two types of on-road lanes, a "Class II Golf Cart Lane" for use only by golf carts and bicycles, and a "Class III Golf Cart Route" for shared use with automobile traffic at speeds up to 25 mph (the Route is identified by placing Golf Cart Route signs along roadways).

In summary, through its Vehicle Code and Streets and Highway Code, California now has in place a regulatory scheme under which golf carts may use "separated", limited-speed portions of the public roads at speeds up to 25 mph when equipped with the safety features required by local authorities. Under NHTSA's existing interpretation, golf carts and other vehicles designed for use in such jurisdictions that are capable of operating at speeds above 20 mph in golf cart lanes would be "motor vehicles", subject to the Federal motor vehicle safety standards that apply to heavier and faster motor vehicles. Moreover, under 49 U.S.C. 30103(b), Federal standards would preempt the local requirements referred to in the California statutes.

The evolution in the use of golf carts presents a number of policy issues that need to be addressed. This notice proposes to resolve those issues.

2. Legislation in Other States

In Arizona, Senate Bill 1298 was enacted in 1996. It permits NEVs to be operated at speeds up to 25 mph on public roads with posted speeds of not more than 35 mph. The law does not require either that separated lanes be created or that the NEVs be operated in those lanes only. Florida House Bill 1329, which has passed both Houses of the Florida Legislature, would also permit increased use of golf carts on public roads.

III. Expression of Support by State Officials and Others

During the spring of 1996, NHTSA received letters from several elected officials in California asking the agency to support the concept of golf cart transportation plans and the use of golf carts and NEVs at speeds up to 25 mph on public roads. The agency held a public meeting in Palm Desert, California, on July 18, 1996, to hear first hand the comments of interested persons. NHTSA's public meeting in Palm Desert provided a forum for the expression of views by local officials responsible for the implementation of golf cart transportation plans and enforcement of traffic and safety laws, as well as by residents who use golf carts pursuant to such plans. Earlier in the day, with the assistance of the City of Palm Desert, NHTSA representatives were able to make an on-site examination of the practical details of an actual golf cart transportation plan in action. Activities included operating golf carts on designated lanes in the plan area, crossing intersections, and mixing with the local traffic.

After the second public meeting, held at NHTSA headquarters in Washington on July 25, 1996, transcripts of both meetings were placed in Docket No. 96–65.

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IV. Market Forces

Another purpose for the public meetings was for NHTSA to achieve a better understanding of the market and the vehicles that may emerge to serve the consumer preferences reflected in the legislative developments in California, Arizona, and Florida.

At least one specialty manufacturer, Bombardier, Inc. (Bombardier) informed NHTSA that it would like to enter the market for a "new and growing segment of the transportation fleet: low-powered electric vehicles." It has developed a NEV with a top speed of 25 mph for this market, and believes that its vehicle will provide a low cost, low speed, zero emissions mode of localized transportation to meet the special needs of retirees, older Americans and others living in gated communities for travel within their community or for limited activities such as local golfing and other recreation-related, shopping, or short distance trips.

According to Bombardier, municipal governments endorse the concept as a way of helping them meet Clean Air Act mandates for National Ambient Air Quality Standards by eliminating the polluting effects of short distance automobile trips.

Bombardier has asked NHTSA for an interpretation that the NEV it wishes to manufacture and market in these communities is not a "motor vehicle" for purposes of the Federal motor vehicle safety standards. Bombardier's request was premised on the agency's concluding that the NEV has an abnormal configuration and deciding to raise the maximum speed criterion from 20 mph to 25 mph.

V. Comments Requested by NHTSA

It is in the context discussed above that NHTSA has reexamined its current interpretation of "motor vehicle" to determine the reasonable and appropriate treatment of golf carts, NEVs, and other low-speed vehicles under Federal law. In Notice No. 1, NHTSA invited comments on the following issues to be discussed at the public meetings and to be submitted to the docket:

1. Current and anticipated state and municipal regulations, including infrastructure requirements, relating to the use of public roads by golf carts or NEVs at speeds between 20 and 35 mph.
2. The text of any existing or proposed state or local safety standards applicable to golf carts, NEVs, and other low-speed vehicles.
3. The views of owners and users of golf carts, NEVs, and other low-speed vehicles.
4. Any data relating to on-road safety of golf carts, NEVs, and other low-speed vehicles.
5. The views of law enforcement, safety, and health officials concerning the on-road use of golf carts, NEVs, or other low-speed at various speeds.
6. The views of manufacturers of golf carts, NEVs, and other low-speed vehicles as to the burdens of compliance with Federal motor vehicle safety standards and other regulations.
7. The views of commenters as to safety and bumper standards that would be reasonable, practicable, and appropriate for golf carts, NEVs, and other low-speed vehicles.
8. The views of state and local officials as to Federal regulation of golf carts, NEVs, and other low-speed vehicles.
9. The views of other affected associations, advocacy groups, business entities and individuals.

VI. Analysis and Discussion of Comments

Oral presentations were made in Palm Desert, in the following order by the persons indicated: Roy Wilson (Riverside County Board of Supervisors), Ramon Diaz (Palm Desert city manager), Commander Steven Bloomquist (Palm Desert Section, Riverside County Sheriff's Office), Kim Estock (district manager for Assemblyman Jim Battin), Bob Stranger (regional manager, California Edison), David Bentler (electric transportation project manager, Arizona Public Service Economic and Community Development), Steve Pohle (president, Golf Cars Ltd.), Mark Boutin (vice president of market development, Bombardier), Gus Gonzalez (golf cart owner), Lisa Constande (environmental conservation manager, City of Palm Desert), Betty Carapellese (resident of Palm Desert), and James Thomas (vice-president of sales and marketing, Trans2 Corporation), who also spoke in Washington.

In addition to Mr. Thomas, presentations were made at the Washington meeting by Fred L. Somers, Jr. (general counsel, National Golf Cars Manufacturers Association (NGCMA)), Karen Strickland (Department of Motor Vehicles, State of Arizona), Bonnie Singer (consultant), Lou Finch (president of Electric Vehicle Systems Corporation, a prospective manufacturer of vehicles for the mobility impaired), and David Snyder (American Insurance Association).

Written comments were received from Rep. Sonny Bono, and, in the order received, from Lois Wolk (mayor, City of Davis), J. Douglass Lynn (Lynn & Associates with a subsequent submission as well, Bombardier, Dr. Tim Lynch (Director, Center for Economic Forecasting and Analysis, Institute for Science and Public Affairs, Florida State University), the City of Palm Desert, Richard S. Kelley (president, Southern California Association of Governments, two comments by Mr. Thomas of Trans2 Corporation, Jim Douglas (assistant director, Motor Vehicle Division, Arizona Department of Transportation, the written remarks of Mr. Somers, several video tapes, Dr. James M. Lents (executive officer, South Coast Air Quality Management District), George Boal (resident of Palm Desert), Marilyn D. McLaughlin (resident of Palm Desert), David Guthrie (deputy director, Arizona Department of Commerce, Harry C. Gough (automotive engineering professional specialist, Connecticut Department of Motor Vehicles), Paul and Jacklyn Schlagheck (residents of Lady Lake, Florida), Dr. Gerald Donaldson (senior research director, Advocates for Highway and Auto Safety ("Advocates")), Jim Prentice (resident of Port St. Lucie, Florida), Paul Jackson Rice, Esq. (Arent Fox Kintner Plotkin & Kahn), Sheriff Ralph E. Ogden of Yuma, Arizona, Lawrence Lingbloom (Sierra Club California), Cynthia Kelly, Esq., (government relations counsel, Golf Course Superintendents Association of America), the Board of Directors of the Palm Desert Country Club Association, Gerald W. ("Wally") Powell (reliability engineer, EZGO Textron ("EZGO")), Bob Doyle (assistant sheriff, patrol and investigations division, Riverside County Sheriff's Office), Wayne Balmer (community development director, Mesa, Arizona), and Marvin B. Jaques (vice president special projects, Ransomes American Corporation ("Cushman"), the manufacturer of Cushman utility vehicles.

The commenters thus included representatives of state and local governments including law enforcement officials, manufacturers and users of NEVs and golf carts, representatives of utilities, a public interest group, and other interested persons. NHTSA therefore considers that the public and private interests that would be affected by its decision were fairly and fully represented, and that its tentative decision in this matter is consistent with the comments received and with motor vehicle safety.

NHTSA's Docket Room has assigned a number to each comment. For example, the first comment is denoted "96–65–NO1–001." For simplicity, in discussing specific submissions, this notice uses

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only the last three digits to identify the comment, i.e., "001."

In brief, the political authorities and the public supported electric golf carts and NEVs as addressing the public interest in a cleaner environment (see, for example, comments by the City of Palm Desert, 005). Users noted approvingly the mobility that is afforded by the ability to use golf carts and NEVs on the public roads as an alternative to the passenger car for short in-town trips (see, for example, comments by Paul and Jacklyn Schlagheck, 020). These groups testified to the absence of any on-road safety problems to date involving golf carts and opposed any regulation by NHTSA that would curtail driving them on the public roads, or that would increase their costs. Golf cart manufacturers objected to the possible classification their products as "motor vehicles" and wished to remain free of Federal regulation.

After having reviewed these comments, the agency has reached the tentative decisions discussed below.

A. Exclusions of Motor Vehicles From Regulation Based on Existing Configuration and Speed Tests Are no Longer Viable

Dr. Lents asked NHTSA to "recognize that a major revolution in transportation is occurring with the increasing commercialization of zero emission vehicles." (015). Realizing that resolution of the issues would have ramifications beyond Bombardier and California, NHTSA decided to begin its deliberative process by reviewing its current interpretative posture.

Under these interpretations, vehicles that clearly were "motor vehicles" manufactured for on-road use were nonetheless excused from compliance with the agency's regulations if they had an abnormal configuration and if their top speed did not exceed 20 mph. Because of the increase in severity of motor vehicle crashes that occur at 25 mph compared with those that occur at 20 mph, NHTSA never considered it a viable option to raise the definitional criterion to the higher speed as Bombardier requested. Advocates, in fact, asked that the speed be lowered to 15 mph (021).

In the agency's opinion, the test of whether a particular configuration is "abnormal" has evolved to the point at which its results are arbitrary and subjective. It was initially applied to vehicles such as street sweepers whose unusual configuration, in conjunction with their large size, enabled drivers of other vehicles to spot them at a distance in traffic. Over the years, the agency's interpretations have come simply to inquire whether a vehicle has an unusual configuration without regard to the bottomline significance of that configuration, i.e., whether the vehicle could be readily spotted at a distance in traffic. The extent of the evolution is illustrated by conclusions in some recent interpretations that various small vehicles met the configuration/speed criteria, notwithstanding that the vehicles were so small that they could not in fact be readily seen in approaching or preceding traffic. Further, perceptions of "abnormality" are subject to change in time as the shapes of motor vehicles evolve to more aerodynamic forms. In addition, upon reexamination, the basis for the criterion of a top speed of 20 mph was unclear. As Lynn asked, why not 19 or 21? (002). For these reasons, the agency has tentatively decided that the existing tests should no longer be followed.

Instead, the agency believes it should follow and apply the statutory definition of "motor vehicle" with no embellishments. Thus, the only question to answer would be whether a vehicle is manufactured primarily for use on the public streets, roads, and highways. If the answer is "yes," then the vehicle in question is a motor vehicle subject to NHTSA's jurisdiction, regardless of speed and configuration. NHTSA intends this policy to apply to vehicle types previously excluded on the basis of their configuration and speed. However, with respect to individual motor vehicles, it would apply to only those manufactured on or after the effective date of a final rule in this rulemaking proceeding.

NHTSA wishes to assure manufacturers of off-road vehicles that the basic legal test of whether a motorized vehicle is a "motor vehicle" has never been at issue in these proceedings. If a vehicle is not manufactured primarily for use on the public streets, roads, and highways, it is not a "motor vehicle". Under this test, the agency has given opinions, for example, that a vehicle whose use of the public roads is occasioned only by the infrequent need to travel from one off-road site to another is not a "motor vehicle." Other examples of vehicles that are not regarded "motor vehicles" because of the lack of public road use are airport crash and rescue vehicles, buses used to transport passengers from parking lots to air terminals, and small utility vehicles used in plants and for grounds maintenance on private property regardless of their top speed. This line of interpretations remains in effect and is not affected by the agency's contemplated abandonment of its exclusionary interpretations based on speed and configuration.

After reaching this decision, the agency proceeded to the issues of classification and regulations that might be appropriate for NEVs, on-road golf carts, and other small vehicles.

B. Motor Vehicles With a Top Speed of 25 mph or Less Should be Classified as "Low-Speed Vehicles" (LSVs)

If the agency ceases to exclude vehicles based on their configuration and speed, vehicles previously excluded on those bases would, without further regulatory action, be treated as motor vehicles and classified according to the agency's existing definitions for vehicle types, such as "passenger car" and "truck." This raises the question of whether the Federal motor vehicle safety standards applicable to these categories of vehicles would also be suitable for vehicles previously excluded from them on the basis of their configuration and speed. Sheriff Ogden commented that it would be in the best interests of law enforcement to classify NEVs as automobiles (i.e., passenger cars) and that they be made to comply with the same criteria as automobiles (026). But it is apparent to NHTSA that requests for an expansion of the exclusionary interpretation would not have been made in the first instance if golf carts and NEVs as currently designed for production were able to be readily conformed in a practicable manner to the full range of Federal safety standards.

NHTSA gathered some data on small motor vehicles manufactured in other countries, specifically Japan and France, in order to determine how other countries classify and regulate small vehicles. In Japan, "kei" class cars must be no wider than 1400 mm (approximately 4.6 feet), and no longer than 3300 mm (approximately 11 feet). These dimensions are similar to those of the Trans2, which is 4.5 feet wide and 11.75 feet long. To qualify for the "kei" class, gasoline-powered engines must not have a displacement greater than 660 cc. In the limited time available, NHTSA has been unable to determine whether there was a speed limitation on "kei" class cars, or how or even if these vehicles are regulated by the Japanese government.

According to the January 1997 issue of the American magazine "Automobile", there are two similar vehicle classes in France. The first is "Voitures sans Permis" (VSP), allowed to be operated without a driver's license, and the second, "Tricycles et Quadricycles a Moteur" (TOM), slightly larger and faster cars that may be driven

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by persons with a partial permit. NHTSA understands that approximately 9,000 VSPs and 1,000 TOMs are sold each year in Europe, and that there are more than 100,000 of them in operation. Data gathered on seven current vehicles indicates that they are similar in size to the "kei" class, with displacement of their one or two-cylinder engines ranging from 315 cc to 505 cc. Five VSP vehicles had an apparent top speed of 45 kph (approximately 27 mph, reflecting a legal limit of 28 mph) and two TOMs, 75 kph (45 mph, reflecting a legal limit of 47 mph). VSPs are two-seater cars whose drivers must not be younger than 14 years; TOMs are designed to carry four, and must not be driven by a person younger than 16. It was not possible to determine in the time available whether France requires compliance with any safety requirements, though basic safety equipment such as lights, mirrors, and wipers were visible in photographs of these cars. NHTSA notes that all the Japanese and French cars considered resemble conventional passenger cars, albeit much smaller, while NEVs and golf carts do not. Thus, if they are subject to some foreign regulations, those regulations might not be appropriate and practicable for small vehicles of the less conventional types anticipated to be on the American market in the near future.

Seeking to draw a distinction between golf carts and NEVs, that is to say, between off-road and on-road small vehicles, Somers of NGCMA asked that NHTSA create a separate categories for golf carts and NEVs (010), as did Powell of EZGo (032). Douglas of Arizona DOT suggested that NHTSA adopt his State's definitions of "golf cart" and "NEV" (008). Lynn, on the other hand, recommended that NHTSA create a new category of motor vehicle "designed for local transportation applications" (002).

NHTSA concurs with Lynn's suggestion that it would be the preferable regulatory solution to have a single definition, one that is able to encompass the entire population of golf carts, NEVs, and small vehicles that might not fit a definition for either. Thus, NHTSA began to look for a common characteristic of all these vehicles in order to develop a definition for them. A classification based on vehicle dimensions such as the "kei" class appeared design restrictive, as did one based on weight, a feature of state definitions.

Ultimately NHTSA realized that the comments pointed to a common factor upon which a classification could be based, a maximum vehicle speed of 25 mph. This speed value appears in the definitions of golf carts by Arizona and California, as well as in Arizona's definition of NEV. Twenty-five miles per hour is the maximum speed in the lanes on the public streets on which the City of Palm Desert allows a mixture of golf carts and larger vehicles to operate (005). The City was resolute that it would never allow golf carts to operate on its streets at a speed greater than 25 mph. In justification of its support of a threshold of 25 mph, one NEV manufacturer commented that a vehicle with a top speed of 25 mph flows "with local traffic in speed limited areas rather than inhibiting traffic at a lower speed. A maximum speed of 25 mph also provide increased maneuverability and consistent power, even on hills" (Thomas of Trans2 (007)). This speed was also supported by Commander Bloomquist of the Sheriff's Office: "[i]f the golf carts have a greater speed, it is a detriment on the one hand, but it also allows it to get out of its own way from time to time. It's also important in avoiding accidents and the such." (011, Palm Desert Meeting Transcript, p. 17). Since there is a ready consensus that NEVs and on-road golf carts should have a top speed of not more than 25 mph, NHTSA believes that a maximum speed of 25 mph should be the keystone of any common definition encompassing NEVs and on-road golf carts (to the contrary were comments by Somers and Donaldson of Advocates who asked for a speed limit of 15 mph for golf carts used on the public roads (005, 021)), and Lynch who surmised that a poll of states, municipalities, and townships would show support for a 35 mph top speed for NEVs (004)).

To encompass the wide variety of NEVs, golf carts, and other small vehicles which may be manufactured in the future, NHTSA is proposing creation of a new class of vehicle called "low-speed vehicle" (LSV) with a definitional criterion of speed alone. LSVs would include all motor vehicles, other than motorcycles ("motor driven cycles", those of low power, have always been regulated), whose speed attainable in 1 mile does not exceed 25 mph, regardless of the vehicle's size or weight. This would mean that any motor vehicle, whether an NEV, an on-road golf cart or other vehicle, would be likely be treated as a passenger car and thus subject to all Federal motor vehicle safety standards applicable to that class of vehicles if its top speed is more than 25 mph.

C. Safety of Small Vehicles in Low-Speed Environments

The agency considered what Federal safety requirements might be appropriate for LSVs, vehicles with a top speed of 25 mph or less. This required an examination of the safety problems that may presently exist for small, slow-moving vehicles. Intuitively, it appears that passengers in LSVs might be at significant risk because of the small size and relative fragility of LSVs (none of the NEVs or golf carts are, for example, equipped with metal doors). The possibility of such a risk was the express concern of Advocates which observed that "small light weight vehicles are vulnerable to serious crashes even at low operating speeds." (021). However, because of the scarcity of four-wheeled low-speed motor vehicles in operation in the United States, there are virtually no accident data concerning them. Further, data for more numerous types of small vehicles, such as motor scooters and motor bikes, are not really indicative of the possible risk associated with NEVs, given the greater vulnerability of all two-wheeled vehicles in traffic.

Comments indicated that safety is not a problem for those persons who presently regulate and use on-road golf carts. According to Assistant Sheriff Doyle, "[t]o date [August 5, 1996] there has not been one traffic collision relating to the Palm Desert Golf Cart Transportation Program [which has been in effect for three years]. One citation has been issued a golf cart operator * * * for a city ordinance violation prohibiting operation on a non-designated roadway. The Department has received no reports or complaints about hazardous or unsafe operation of these vehicles in the program. From a police management perspective, the program to date has been a complete success." (033). A similar statement was made by Commander Bloomquist who admitted to having had initial concerns "about the mixing of slow moving vehicles with faster moving vehicles and also the size difference, mentioning the physics of the speed difference between golf carts and passenger vehicles and trucks and the like," but concluded by saying he was pleased and relieved "that we have not had any accidents involving the larger vehicles which move at a greater speed with the slower moving golf carts." (011, Transcript, pp. 16–17). Indeed, there has only been one incident that might be termed an accident—an overturn created by a joy-riding teenager using a golf cart without the owner's authorization. Given the fact that only 183 golf carts had been registered by the City as of the date of the public meeting, July 18, 1996, the lack of accidents may not be statistically significant. However, they are the only

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relevant "data" that NHTSA has found concerning the on-road safety of golf carts.

Nevertheless, the Palm Desert experience is supported by anecdotal evidence from other commenters covering a time span longer than three years (the reader will recall that California has authorized a more limited use of the public roads since 1959). Palm Desert resident Marilyn D. McLaughlin said that "[f]or more than 34 years, golf cart owners here in Palm Desert Country Club have shared the streets with automobiles, trucks, etc. and I have not heard of any reports of accidents during that entire period". In her opinion, "safety does not appear to be an issue." (017). Her view was supported by another Palm Desert resident, George Boal: "[i]n over 30 years I cannot recall one accident involving moving vehicles and golf carts." (016). A somewhat similar comment was made by Paul and Jacklyn Schlagheck of Lady Lake, Florida, indicating that the Palm Desert experience may not be unique: "[t]he use of golf carts has been safe, with residents very responsible about where and when they use them * * * It goes without saying that people don't take their golf carts out * * * on busy roads with speeds posted at 50 mph." (020).

These comments are consistent with a conclusion reached in the City of Palm Desert's "Golf Cart Transportation Program Monitoring Report" (January 1994) (Attachment 3, 005) about the safety of NEVs. In a discussion of safety issues (The U.C. Davis Neighborhood Electric Vehicle Research Project, p. 22), the Report observes that "[w]hen the vehicle is well matched with the driving environment the vehicle will be very safe." Specifically, "[f]or the NEV, a driving environment which consists of lower speed streets is well matched to the vehicle's safety capabilities." Conceding that NEVs are less visible than other vehicles, are less able to maintain safe operating speeds, and that occupants are at greater risk of injury in higher speed collisions, the Report concluded that "[a]t lower speeds, these issues are negligible."

Part of the reason for the lack of accidents involving on-road golf carts may be certain ordinances of Palm Desert intended to minimize the possibility of accidents involving golf carts and other motor vehicles. One of these prohibits operation of golf carts on the public streets during the hours between one hour after dusk and one hour before dawn. Another restricts their operation on the public streets to designated lanes where the speed limit for all vehicles using the lane is 25 mph. Golf carts may not otherwise be operated on public roads. In short, the City has taken steps under State law to create a structured environment for the operation of golf carts on the public roads consistent with its views of traffic safety. There is no assurance, of course, that other states or municipalities will take these steps or otherwise address operational safety in allowing golf carts on the public roads, but NHTSA commends the Palm Desert regulatory scheme to their attention.

On the basis of comments discussed above, the agency has tentatively concluded that motor vehicle safety does not demand, for the present, a comprehensive and detailed regulatory scheme under which LSVs must comply with the full range of Federal motor vehicle safety standards that apply to faster vehicles. However, the risk of exposure to accidents may increase as the numbers of LSVs increase. Thus, at a future time, more stringent regulation might become appropriate. NHTSA intends to monitor LSV accident data carefully. Accordingly, the agency asks the public to assist it in filing relevant information in Docket No. 96–65 which will remain open for this purpose.

D. A Federal Motor Vehicle Safety Standard for LSVs

If the agency were to cease relying upon the interpretative criteria of abnormal configuration and 20 mph maximum speed, and to adopt the proposed definition of LSVs, certain unique vehicles found on the public roads would be treated as LSVs. Examples of these vehicles are street sweepers, steamrollers and road graders. The common characteristics of these vehicles is that they are work-performing and transport only their operator. Consistent with its past interpretative treatment of such vehicles, the agency proposes to exclude work-performing LSVs from compliance with any Federal motor vehicle safety standard including the new Standard No. 100 proposed in this document. However, as motor vehicles, they would become subject to the statutory provisions regarding notification and remedy of safety related defects.

NHTSA is also faced with the regulatory dilemma of appropriate treatment for golf carts, a type of vehicle historically exempt from NHTSA regulation. The agency has no wish to regulate golf carts. However, it is faced with an increasing number of state and local laws specifically permitting their use on the public streets, roads, and highways.

As in the case of LSVs, maximum vehicle speed appears to be a rational basis on which to base a distinction between those golf carts that should not be considered motor vehicles and those that should. Until recently, California and Arizona defined a golf cart, in part, as a vehicle with a top speed of 15 mph. Golf cart manufacturers seem to have adhered to this limit over the years. ANSI/NGCMA Standard Z130.1–1993 prescribing voluntary safety and performance requirements for golf carts contains a maximum vehicle speed test under which "[t]he average speed shall not exceed 15 mi/h (24 km/h)" (9.6.1.3) Average speed is determined through runs in opposite directions and by averaging the results. Thus, historically, the industry appears to have designed golf carts for a maximum speed of not more than 15 mph. Historically, this is the type of golf cart that NHTSA has not regulated. The agency has therefore tentatively concluded that a golf cart with a maximum speed that does not exceed 15 mph is a vehicle that is not primarily manufactured for use on the public roads, and therefore is not a "motor vehicle".

If a golf cart manufacturer decides to increase the maximum speed capability of its golf carts to above 15 mph in response to the decision in some states to increase the speed thresholds in their definitions of "golf carts" and to allow such vehicles to operate on certain public roads, it seems evident to NHTSA that such a manufacturer intends its vehicles to be used on the public roads as well as on golf courses. Mr. Rice brought the agency's attention to an engine of 3.75 HP offered by one golf cart manufacturer as an alternative to the standard 3.1 HP engine. The manufacturer's product literature states specifically that the motor does not meet Z130.1's standard for "speed requirements." (025). NHTSA interprets this statement to mean that golf carts equipped with the optional engine have a maximum speed in excess of 15 mph. In recognition of the apparent intent that these higher speed vehicles be used on public roads, NHTSA is proposing a definition of "golf car" (the term preferred by the NGCMA), as a vehicle designed to convey golfers on a golf course and whose maximum speed is between 15 mph and 25 mph. Golf cars would be considered to be LSVs and thus required to meet LSV requirements. NHTSA would use the term "golf cart" to refer to only those vehicles designed to convey golfers on a golf course and whose maximum speed is 15 mph.

As indicated, there was some sentiment to applying a rigorous set of safety standards to LSVs (Sheriff Ogden, 026; Advocates, 021). Lynn believed that NHTSA should "create a new body

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of safety standards that will challenge the nation's engineering community." (002). Cushman took the gradualist approach, commenting that "[s]tatistics regarding frequency and severity of accidents in these communities will help determine appropriate safety regulations and features. The bumper standard may be appropriate for occupant protection rather than limiting body damage." (037).

Two sources emerged from the meeting and comments upon which a safety standard for LSVs might be based. These sources are NEV manufacturers and the equipment regulations of the City of Palm Desert for golf carts.

NHTSA received comments from two NEV manufacturers, Bombardier and Thomas. The Bombardier NEV will be equipped with a safety glass windshield, a lighting system designed around automotive safety standards, a 3-point belt system, horn, and mirror. (003). According to Thomas, the Trans2 NEV is equipped with front and rear turn signals, anchored 3-point belts, full exterior lighting, a laminated safety glass windshield, and windshield wipers. (007). Thomas added that NHTSA could add these features to a 25-mph requirement for classification purposes.

The City of Palm Desert requires that golf carts registered for use on the public roads in its plan area be equipped with head lamps, stop lamps, taillamps, front and rear turn signal lamps, mirrors (left and right side, or left side and rearview, or a "multi-directional cross bar," which is an elongated interior mirror that reflects the driving environment on both sides of the vehicle), red reflex reflectors on each side at the rear of the cart between 15 and 60 inches above the ground, parking brake, horn, windshield, seat belts, a golf cart locking device, and "safely equipped or properly loaded to conform with CVC Section 24002." (Attachment 4, 005, p. 5).

There appears, then, to be a consensus among manufacturers of NEVs and the City of Palm Desert, the leading local regulator of golf carts, as to requirements meeting the local need for safety of small, slow-moving vehicles. Given that there does not appear to be any present need to apply the full range of Federal motor vehicle safety standards to LSVs at this time, and that an equipment standard is already in place which LSVs must meet if they are to be operated on the public roads of at least one jurisdiction, NHTSA has tentatively concluded that the Palm Desert standard affords a basis upon which a reasonable, practicable, and appropriate standard may be promulgated on the Federal level as an initial effort to address LSV safety.

The agency proposal differs from the requirements of Palm Desert in the following manner. The agency does not require a horn on other motor vehicles, so none is proposed for LSVs. NHTSA understands that a "locking device" simply means that a golf cart cannot be operated without a key to turn on the power, and assumes that this will be the way that LSVs will be manufactured.

NHTSA is not proposing to require the use of a "multi-directional cross bar mirror." However, its proposed term, "interior mirror," is broad enough to accommodate its use. The "seat belts" would be specified to be either Type 1 or Type 2 conforming to Motor Vehicle Safety Standard No. 209 "Seat Belt Assemblies." The agency requests comments on the practicability of requiring all LSVs including golf cars to have Type 2 lap and shoulder belt assemblies. The windshield would have to be glazing marked "AS 1" by its prime manufacturer.

NHTSA is proposing that these requirements be placed in a new Federal motor vehicle safety standard called Standard No. 100 *Low-speed vehicles*. A "low-speed vehicle," or LSV, would be a motor vehicle, other than a motorcycle, whose speed attainable in 1 mile does not exceed 25 mph ("speed attainable in 1 mile" is the expression used in other Federal standards to denote maximum speed). LSVs would include, but not be limited to "golf cars" (defined as vehicles that are used to convey golfers on golf courses and whose speed attainable in 1 mile exceeds 15 mph but does not exceed 25 mph.) LSVs would not include "golf carts" (defined as vehicles that are used to convey golfers on golf courses and whose speed attainable in 1 mile is not greater than 15 miles per hour.) This is essentially the same definition the industry uses in ANSI/NGCMA Z130.1–1993 for golf car.

LSVs would not be required to meet Federal Motor Vehicle Safety Standards Nos. 101 through 304 and the bumper standard. LSVs, other than LSVs with work-performing equipment, would have to be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, rear reflex reflectors mounted on each side not less than 15 inches and not more than 60 inches above the road surface, a driver's side exterior rear view mirror plus either an interior rear view mirror or an exterior mirror on the passenger side, a windshield marked "AS 1", and Type 1 or Type 2 seat belt assemblies that conform to Standard No. 209. Lighting equipment would not need to meet either the lighting standard, Standard No. 108 or the rear view mirror standard, Standard No. 111. Thus, the performance characteristics of lamps, reflectors, and mirrors would be left to the manufacturer. The manufacturers' certifications of compliance of LSVs as required by 49 CFR Part 567 would simply be an affirmation that the LSV had been manufactured with the equipment specified by Standard No. 100. Finally, NHTSA deems it advisable that such LSVs also be equipped with a label warning that it must not be operated on the public roads at a speed more than 25 mph. This is to ensure that the operator of an LSV that may have been modified so that its top speed exceeds 25 mph would have a permanent reminder that the vehicle was not designed to be operated at speeds greater than 25 mph.

LSVs with work-performing equipment would not be subject to Standard No. 100. Their work-performing nature makes it unlikely that they would be used for on-road transportation purposes in jurisdictions like Palm Desert.

E. Modifying the Speed Capabilities of LSVs

Since the advent of the Palm Desert plan, NHTSA is aware that the speed capability of some golf carts may have been modified to exceed 15 mph, to take advantage of the mobility offered by the plan. Similarly, it may be possible to modify LSVs, through removal of a governor or otherwise, so that their maximum speed exceeds 25 mph. If an LSV in use were modified so that its maximum speed exceeds 25 mph, it would no longer be an LSV under the definition. Further, operation at a speed exceeding 25 mph would be in violation of local traffic laws. Increasing the speed of most LSVs would convert them into passenger cars. However, they would not conform to passenger car standards and would not afford the protection that NHTSA deems needed for the public at speeds higher than 25 mph. As a result of the speed modification, the equipment required by Standard No. 100 would no longer afford the anticipated level of protection. Thus, speed modification would, in a sense, make the vehicle's compliance with Standard No. 100 "inoperative" within the meaning of 49 U.S.C. 30122 when an LSV is modified to exceed 25 mph without being conformed to Federal motor vehicle safety standards applicable to its vehicle type. This section prohibits a manufacturer, dealer, distributor, or motor vehicle repair business from making inoperative any element of

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design or device installed in accordance with a Federal motor vehicle safety standard.

If a golf cart in use were modified so that its maximum speed exceeds 15 mph, it would become a "golf car" and an LSV, if its speed did not exceed 25 mph, and it would become a "passenger car," if its speed exceeded 25 mph. However, there would not be any violation of section 30122 since the making inoperative prohibition does not apply either to a vehicle that was not a motor vehicle as originally manufactured or to a vehicle or motor vehicle that was not subject to any Federal safety standards as originally manufactured. When operated on the public roads, the modified golf cart would have to comply with local regulations which, in Palm Desert, requires licensing and retrofitting with the safety equipment required by the City, essentially the same that is required by Standard No. 100.

F. Effect on State and Local Registration and Use Laws

Some commenters misunderstood the limits of NHTSA's regulatory authority and NHTSA wishes to correct these misimpressions.

Supervisor Wilson asked the agency for its "approval in allowing Neighborhood Electric Vehicles and other slow-moving vehicles to operate on public roadways * * *." (011, Transcript, Palm Desert meeting, p. 9). NHTSA understands this to be a broad request not to take any regulatory action that would restrict or prohibit the public from using LSVs. The agency has no authority to "approve" or "allow" any type of vehicle to operate on the public roads. That is solely a function of local government. However, imposition of costly-to-meet regulations would have the probable effect of curtailing future production of LSVs and hence their availability for the ends deemed desirable by local regulatory authorities. NHTSA's initial regulatory effort for LSVs would not affect the availability of low-speed vehicles, and would not affect the way they will be used in the plan area.

Powell of EZGo asked NHTSA to initiate steps to preempt all state and local regulation of golf carts on the public roads until a safety analysis can be made of the safety issues and an optimum response fashioned to them (032). He also asked that NHTSA mandate speed limits not to exceed 15 mph for golf carts used on public roads. NHTSA has no legal authority to set local speed limits or to prescribe regulations governing the operation of low-speed vehicles. NHTSA has authority to set standards that apply to vehicles from the time of manufacture to the time of initial sale, but not regulations that directly control how they are operated on the public roads.

Gough of DMV Connecticut commented that his state does not allow registration of low-performance vehicles of golf cart-like performance, and feared that it would be forced to "allow general use if the vehicles are sanctioned by NHTSA." (019). He urged the agency "to require some form of state approval of areas where such vehicles would be allowed before any consideration of approval or sanctioning is to be made." As noted above, NHTSA does not have authority to "approve" or "disapprove" the use of on-road vehicles in designated areas. The question raised by Gough in actuality is whether a state is preempted from refusing to register a motor vehicle for use on the public roads if that vehicle has been certified to comply with all applicable Federal motor vehicle safety standards.

Gough has raised an important issue concerning the extent of preemption under the NHTSA's statute, Under 49 U.S.C. 30103(b)(1), "When a motor vehicle safety standard is in effect * * * a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." The agency has interpreted the preemption clause as meaning that a State cannot impose a heavier burden upon a vehicle for purposes of registration where the vehicle has been manufactured to meet a Federal standard covering the same aspect of performance. Thus, a State could not require LSVs to be equipped with mirrors conforming to Standard No. 111 because that would not be required by proposed Standard No. 100. But a State could specify requirements for braking system performance since there is no similar requirement proposed in Standard No. 100.

The legislative history of the preemption clause is clear that it was the purpose of the drafters that "[t]he centralized, mass production, high volume character of the motor vehicle manufacturing industry * * * requires that motor vehicle safety standards * * * be uniform throughout the country." (S. Rpt. No. 1301, 89th Cong. 2d Sess. (1966), p. 12). The preemption section "is intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards." (H. Rpt. No. 1776, 89th Cong. 2d Sess. (1966), p. 17). With respect to Gough's concern, Connecticut simply does "not allow registration of low performance vehicles of golf-cart like performance." The State is not seeking to establish or maintain a standard different from Standard No. 100. Connecticut has issued no standard at all, and the question of preemption does not arise. By its action (or lack thereof), Connecticut has imposed no additional manufacturing burden upon manufacturers of LSVs. NHTSA does not attribute to the drafters of 49 U.S.C. 30103(b)(1) a Congressional intent to force a State to accept and register a class of vehicles where a State has chosen not to do so, even if that class of vehicles is certified as meeting all applicable Federal motor vehicle safety standards. It should be noted that NHTSA has no authority to impose use restrictions upon registered, certified vehicles, so that even if Connecticut were preempted and required to register LSVs, the State could impose operating restrictions that would significantly limit their use on the public roads.

G. Costs to Conform to Standard No. 100

In its program monitoring report of January 1994, Palm Desert included the questionnaire that it had sent in November 1993 to the 80 persons who at that time had registered their golf carts with the city. One of the questions asked was the cost to modify golf carts to meet City requirements. Sixty-one responded to the questionnaire, and the average cost was reported to be $150. (Attachment 3, 005, p. 10).

However, two and one half years later, at the Palm Desert hearing on July 18, 1996, Steve Pohle, a dealer in golf carts, estimated that the cost to a golf cart owner to retrofit the vehicle with the equipment required by the City is approximately $400, including "about $115" for the windshield (011, Transcript, p. 54). NHTSA anticipates that manufacturers of LSVs (NEVs and on-road golf carts) would be able to achieve economies of scale so that their direct costs would be substantially less than $400 per vehicle. NHTSA requests that commenters address the costs associated with conforming to Standard No. 100, and to explain the basis for their estimates.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be

appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting for the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too later for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available to inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

Because there is a standard already in effect which manufacturers of LSVs must meet if they wish to sell their product in at least one regional market, and because such manufacturers wish to introduce LSVs at the earliest possible time, it is hereby tentatively found that an effective date earlier than 180 days after issuance of a final rule would be practicable and in the public interest. Accordingly, proposed Standard No. 100 would be effective 45 days after publication of the final rule in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. Because LSVs are a new type of motor vehicle for which a national market does not yet exist, it is not possible to determine a yearly cost impact. There are at present two types of vehicles that meet the definition of LSV: NEVs and golf cars. Because they are distinctly different—NEVs are purpose built for on road use and can be operated on golf courses, while golf cars are simply golf carts with equipment added for on road use—no manufacturer known to NHTSA produces both NEVs and golf cars. As discussed previously in this document, both the Bombardier NEV and Trans2 NEV will be manufactured with essentially all items of equipment required by the City of Palm Desert for on-road operation (see comments 003 and 007), so that the only additional cost likely to be incurred in complying with proposed Standard No. 100 are the minor ones of the warning label, and the manufacturer's label certifying compliance. Given the golf cart industry's position that it does not intend its vehicles to be operated off golf courses, the industry may choose to limit the speed of all its production of golf carts to a maximum of 15 mph rather than incur the costs of complying golf cars with Standard No. 100 through add-ons to existing designs for a limited percentage of its production. Until new designs are developed, add-ons to golf cars during manufacture will be in the nature of retrofits. Information presented at the California public meeting indicated that the average cost of 61 respondent owners to retrofit a golf cart with the prescribed equipment was an average of $150 in January 1994, and could be as high as $400 in July 1996. However, the cost to a manufacturer who buys this equipment in quantity and adds it to a NEV or golf car during the original manufacturing process is likely to be much lower. So that NHTSA might better assess the cost impact of this rulemaking action, the agency invites manufacturers to submit data and market estimates, if need be on a confidential basis, so that it may have a more accurate idea of costs when the final rule is issued.

NHTSA is preparing a regulatory evaluation for placement in the docket concurrent with, or shortly after publication of, this document.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. Information presented to NHTSA indicated that any increase in the production of LSVs is likely to be largely in those powered by electricity.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq*). I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The proposed amendment would primarily affect manufacturers of non-conventional motor vehicles not heretofore regulated by NHTSA. Under 15 U.S.C. Chapter 14A "Aid to Small Businesses", a small business concern is "one which is independently owned and operated and which is not dominant in its field of operation" (15 U.S.C. Sec. 632). The Small Business Administration's (SBA) regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." NHTSA believes that there is at present only one entity that has been manufacturing LSVs as defined by the proposed rule, and that therefore it is "dominant in its field of operation." A second entity that intends to manufacture LSVs in the near future operates primarily outside the United States. Golf cart manufacturers can avoid being classified as manufacturers of LSVs by ensuring that the maximum speed of their vehicles does not exceed 15 m.p.h.

Further, small organizations and governmental jurisdictions would not be significantly affected as the purchasers of LSVs are anticipated to be private individuals who want a small, alternative mode of transportation instead of a conventional motor vehicle, as a second vehicle for use in their immediate residential area.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30163 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166; delegation of authority at 49 CFR 1.50.

2. A new § 571.100 would be added to subpart B to read as set forth below:

§ 571.100 Motor Vehicle Safety Standard No. 100 Low-speed vehicles.

S1. Scope. This standard specifies requirements for low-speed vehicles.

S2. Purpose. The purpose of this standard is to ensure that low-speed vehicles operated on the public streets, roads, and highways are furnished with the minimum motor vehicle equipment necessary for motor vehicle safety.

S3. Applicability. This standard applies to low-speed vehicles. This standard does not apply to golf carts.

S4. Definitions.

Golf car means a motor vehicle, whose speed attainable in 1 mile exceeds 15 mph but does not exceed 25 mph, used to convey one or more persons and equipment to play the game of golf in an area designated as a golf course.

Golf cart means a vehicle, whose speed attainable in 1 mile does not exceed 15 mph, used to convey one or more persons and equipment to play the game of golf in an area designated as a golf course.

Low-speed vehicle means a motor vehicle, other than a motorcycle, whose speed attainable in 1 mile does not exceed 25 mph. With respect to vehicles used to convey golfers on golf courses, it excludes golf carts, but includes golf cars. Any motor vehicle that meets this definition is excluded from the classes of vehicles defined in § 571.3 of this subpart, and is not a "passenger motor vehicle" for the purposes of Part 581 of this Chapter.

S5. Requirements.

(a) A low-speed vehicle, other than a low-speed vehicle with work performing features, shall be equipped with:

(1) Headlamps,

(2) Front and rear turn signal lamps,

(3) Taillamps,

(4) Stop lamps,

(5) One red reflex reflector on each side as far to the rear as practicable and located not less than 15 inches nor more than 60 inches above the road surface,

(6) An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror,

(7) A parking brake,

(8) A windshield marked "AS 1" by its prime glazing material manufacturer, and

(9) A Type 1 or Type 2 seat belt assembly conforming to Sec. 571.209 Motor Vehicle Safety Standard No. 209, *Seat belt assemblies*, installed at each designated seating position.

(b) Each vehicle to which paragraph (a) of this S.5 applies shall bear a label permanently affixed, visible to the operator when seated, which reads "WARNING: This vehicle must not be operated on the public roads at a speed more than 25 mph."

Issued: January 3, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–386 Filed 1–3–97; 2:19 pm]

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Notices

Federal Register
Vol. 62, No. 5
Wednesday, January 8, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino National Forest, Arizona; Draft Environmental Impact Statement, Windmill Range Allotment

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Coconino National Forest of the Forest Service is planning to prepare an environmental impact statement on proposals to change cattle management on the 248,792 acre Windmill Allotment planning area.

DATES: This analysis has been ongoing and public participation has occurred at various stages. The Draft Environmental Impact Statement will be published in February of 1997. Preliminary comments can be made on this Notice of Intent before January 31, 1997.

ADDRESSES: Send comments to Peaks Ranger District, 5075 N. Hwy 89, Flagstaff, Arizona 86004, Reference: Windmill EIS.

RESPONSIBLE OFFICIAL: Fred Trevey, Coconino Forest Supervisor.

FOR FURTHER INFORMATION CONTACT: Peaks District Range Staff, Mike Hannemann, (520) 526–0866.

SUPPLEMENTARY INFORMATION: The Windmill Allotment Management Plan was updated in 1982 to improve the distribution of areas scheduled for cattle use. In 1988 the Allotment plan for the Winter Division was updated to change the grazing system to improve the growth of cool-season *Stipa* grasses and overall range conditions.

In 1994, the Peaks, Mormon Lake and Sedona Ranger Districts in partnership with the Arizona Game and Fish Department initiated the comprehensive analysis for the Windmill Allotment to update the Allotment Management Plan. The Allotment was selected for this update for the following reasons: Large, open meadows are in poor condition indicating an imbalance between plant growth and use of plants throughout the meadows; riparian conditions could be improved on the Allotment; a need exists to address threatened, endangered and sensitive species; an opportunity exists to increase administrative efficiency by consolidating the three portions of the Allotment under one Allotment Management Plan; an opportunity exists to examine the forest floor on a broad landscape scale; the Arizona Game and Fish Department can help describe existing conditions on the Allotment by combining the Department's information on elk with that obtained from joint-agency utilization monitoring.

Under the 1995 Range Permit Issuance effort, a Burns amendment permit was issued for 10 years for the Windmill Allotment. As required by the Burns amendment the Allotment was than scheduled for comprehensive analysis within the 10 year period. The Burns decision for Windmill included some mitigating measures which included fencing riparian and sensitive plant habitats, sweeping cattle from driveways and shipping culled cows. Public participation occurred prior to issuance of the Burns Amendment decision in the form of public response to a proposed action.

In 1996, the comprehensive analysis was re-initiated and will result in publication of an Environmental Impact Statement. This analysis attempts to gain more understanding about the relationship of the lands forage production which is affected by soils, tree densities, climatic conditions and past grazing and the dietary needs of cattle and elk. We had the opportunity to judge where forage dietary needs and grazing use were out of balance with the lands ability to produce forage in upward trends. We then had the opportunity to determine management actions which responded to what we found. A 10-year adaptive management plan will be developed which strives to take advantage of future opportunities, adapt to changing landscape conditions and progress toward a better balance between the landscape and forage grazers.

A new Allotment management plan will be developed to guide grazing practices and a new permit may be issued. The option of eliminating cattle grazing from this Allotment will also be cosnidered.

Tentative alternatives are,

1. Alternative A is designed to meet all the current grazing management issues while maintaining a viable ranching operation. This alternative uses permittee and range conservationist knowledge to determine proper livestock numbers, graze periods, graze rotations, and pasture splits. Total livestock numbers are 1,252 to 1,257.

2. Alternative B is the no action alternative as required by the National Environmental Policy Act regulations. Selection of this alternative would mean that no cattle grazing would occur on this allotment for the next 10 years.

3. Alternative C is the management system currently in place. This alternative permits a total of 1,252 to 1,257 cattle to graze year-round on the Windmill Range Allotment.

4. Alternative D is designed to respond to grazing capacity and proper use guideline issues. This alternative uses timber stand data base and Terrestrial Ecosystem Survey data to project total yearly forage production for each pasture. Total livestock numbers are 635.

5. Alternative F is the same as Alternative A except for adjusting the Luke Mountain pasture of the Foxboro Herd from a two-way pasture split to a three-way pasture split. This third pasture reduces graze periods in Little T-Six from 20 to 10 days and Highway Camp from 14–20 days to 10 days. This responds to concerns over poor and declining range conditions in the Foxboro summer range area. Total livestock numbers are 1,252 to 1,257.

6. Alternative G is designed to better meet resource concerns of poor and declining range conditions in parts of Munds-Pocket and Foxboro Herd areas. This alternative improves on Alternative A in these areas by reducing livestock numbers, adjusting graze periods and providing additional pasture splits. Total livestock numbers are 1,090 to 1,125.

Items common to alternatives include fencing some riparian areas to exclude livestock. The areas chosen for fencing are easily accessed by cattle, are fairly large and have adjacent wet meadows and are estimated to have high potential for improvement. Not all riparian springs located on the Allotment are fenced. Those not chosen for fencing are

less accessible to cattle, are not associated with wet meadows and are very small. Major creeks and rivers will not have direct cattle access under any of the alternatives. Other items common to all alternatives include tank relocation and/or waterlot construction where tanks occur in dry meadows. Pastures that will not be used in the 10 year management plan period are also identified.

Environmental analysis has been ongoing. It is anticipated that a draft environmental impact statement will be published in February of 1997. A ninety day comment period pursuant to 36 CFR 219.10(b) will be provided for the public to make comments on the draft environmental impact statement. A record of decision will be prepared and filed with the final environmental impact statement. A ninety day appeal period pursuant to 36 CFR 217.8(a) will be applicable. The ninety day comment period on the draft environmental impact statement will begin when the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**.

To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

Fred Trevey,

Coconino Forest Supervisor.

[FR Doc. 97–353 Filed 1–7–97; 8:45 am]

BILLING CODE 0521–00–M

Rural Utilities Service

Central Virginia Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request by Central Virginia Electric Cooperative for financing assistance to construct a headquarters office facility in Nelson County, Virginia. The FONSI is based on a borrower's environmental report (BER) submitted to RUS by Central Virginia Electric Cooperative. RUS conducted an independent evaluation of the report and concurs with its scope and content. In accordance with RUS Environmental Policies and Procedures, 7 CFR part 1794.61, RUS has adopted the BER as its environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, D.C. 20250–1571, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The headquarters office facility is proposed to be located west of the unincorporated community of Colleen, Virginia, south of the intersection of State Routes 56/158 and 665. The size of the proposed site for the headquarters office facility is approximately 170 acres of which approximately 40 acres would be developed.

The headquarters office facility would consist of a 23,000 square foot headquarters office building, a 15,000 square foot combination warehouse/division office building, a 6,500 foot mechanics garage and electrical equipment maintenance shop, a 4,000 square foot open sided covered truck shed, a 1-acre pole storage yard, a 2-acre electrical equipment storage area, a 50 foot, self-supporting steel pole to support microwave and radio communications equipment, a 100 kilowatt diesel electric generator, a 200 gallon fuel storage tank, and parking for 100 employee vehicles, 10 visitor vehicles, and 50 service vehicles.

RUS considered the alternatives of no action, expansion of Central Virginia Electric Cooperative's existing facilities, renovation of an existing commercial building, and four alternative site locations. Under the no action alternative, RUS would not approve financing assistance for construction of the headquarters office facility. Since RUS believes that Central Virginia Electric Cooperative has a need to expand its headquarters facility to adequately accommodate employees, vehicles, and equipment, RUS considered the no action alternative unacceptable.

Copies of the BER and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Darryl Mawyer, Central Virginia Electric Cooperative, Front Street, P.O. Box 247, Lovingston, Virginia, 22949, telephone (804) 263–8336.

Dated: January 3, 1997.

Blain D. Stockton,

Assistant Administrator, Electric Program.

[FR Doc. 97–00389 Filed 1–7–97; 8:45 am]

BILLING CODE 3410–15–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Telecommunications Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and location of the meetings of the Telecommunications Access Advisory Committee.

DATES: The Telecommunications Access Advisory Committee will meet on January 13 and 14, 1997 beginning at 9:00 a.m. each day.

ADDRESSES: The meetings will be held at 1331 F Street, NW., Washington, DC in the 8th floor conference room.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov. This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request. It is also available on the Internet at http://www.access-board.gov/notices/taacmtg.htm.

SUPPLEMENTARY INFORMATION: On May 24, 1996, the Access Board published a notice appointing members to its Telecommunications Access Advisory Committee (Committee). 61 FR 26155 (May 24, 1996). The Committee will make recommendations to the Access Board on accessibility guidelines for telecommunications equipment and customer premises equipment. These recommendations will be used by the Access Board to develop accessibility guidelines in conjunction with the Federal Communications Commission (FCC) under section 255(e) of the Telecommunications Act of 1996. The Committee is composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines.

The Committee has met five times since June 1996. This will be the Committee's last meeting. During the meeting in January, the Committee will finalize its recommendations. The Committee will make a presentation to the Access Board at the Board's regular business meeting on January 15th. The Board will meet on January 15th from 1:30–3:30 p.m. at the Marriott at Metro Center hotel, 775 12th Street, NW., Washington, DC.

The Committee will meet on the dates and at the location announced in this notice. The meetings are open to the public. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real time transcription will be available.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–336 Filed 1–7–97; 8:45 am]

BILLING CODE 8150–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: January 14, 1997; 9:00 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: January 6, 1997.

David W. Burke,

Chairman.

[FR Doc. 97–521 Filed 1–6–97; 1:40 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 950329080–5080–01]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives and scientists (also referred to as "interns") from the New Independent States (NIS) of the former Soviet Union. The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the NIS with U.S. firms which provide them with three to six months of hands-on training in a U.S. market economy.

Under the SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. ITA will interview and recommend eligible interns to participating companies. Interns may be from any of the following Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management or commercially-oriented scientific operations. At the end of the training program, interns must return to the NIS.

DATES: The closing date for applications is March 31, 1997. An original and two copies of the application (Standard Form 424 (Rev. 4–92) and supplemental material) are to be sent to the address designated in the Application Kit and postmarked by the closing date. Applications will be considered on a "rolling" basis as they are received, subject to the availability of funds. If available funds are depleted prior to the closing date, a notice to that effect will be published in the **Federal Register**. Processing of complete applications takes approximately two to three months.

ADDRESSES: Request for Applications: Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please E-mail: sabitapply@usita.gov (please signify which format, e.g. WordPerfect© 6.1), telephone (202) 482–0073, facsimile (202) 482–2443 (these are not toll free numbers), or send a written request with two self-addressed mailing labels to: Application Request, The SABIT Program, HCHB Room 3319, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: The SABIT Program, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester.

SUPPLEMENTARY INFORMATION: SABIT exposes NIS business managers and scientists to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers traveling to their territories.

Business Executives

SABIT assists economic restructuring in the NIS by providing top-level business managers with practical training in American methods of innovation and management in such areas as strategic planning, financing, production, distribution, marketing, accounting, wholesaling, and labor relations. This first-hand experience in the U.S. economy enables interns to become leaders in establishing and operating a market economy in the NIS, and creates a unique opportunity for U.S. firms to familiarize key executives from the NIS with their products and services.

Scientists

SABIT provides opportunities for gifted scientists to apply their skills to peaceful research and development in the civilian sector, in areas such as defense conversion, medical research, and the environment, and exposes them to the role of scientific research in a market economy where applicability of research relates to business success. Sponsoring firms in the U.S. scientific

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community also benefit from exchanging information and ideas, and different approaches to new technologies.

All internships are for three to six months; however, ITA reserves the right to allow an intern to stay for a shorter period if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities.

Funding Availability

Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the "Act") funding for the program will be provided by the United States Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The estimated amount of financial assistance available for the program is $1 million. Additional funding may become available at a future date.

Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. ITA will reimburse companies for the round trip international travel of each intern from the intern's home city in the NIS to the U.S. internship site, upon submission to ITA of the paid travel invoice, payment receipt, or other evidence of payment and the form SF–270, "Request for Advance or Reimbursement." Travel under the program is subject to the Fly America Act. Recipient firms provide $30 per day directly to interns; ITA will reimburse recipient firms for this stipend of $30 per day per intern for up to six months, upon submission by company of an end-of-internship report and form SF–270. In general, each award will have a cap of $7,500 per intern for total cost of airline travel and stipend. ITA reserves the right to allow an award to exceed this amount in cases of unusually high costs, such as airfare from remote regions of the NIS. However, the total payment cannot exceed the award amount. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including: visa fees, housing, insurance, any food and incidentals costs beyond $30 per day, any training-related travel within the U.S., and provision of the hands-on training for the interns.

U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. However, prior to acceptance as a SABIT intern, work plans and candidates must be approved by the SABIT Program. Furthermore, program training will be monitored by SABIT staff and evaluated upon completion of training.

Eligibility

Eligible applicants for the SABIT program will be any for profit or non-profit U.S. corporation, association, organization or other public or private entity. Agencies or divisions of the federal government are not eligible.

Evaluation Criteria

Consideration for financial assistance will be given to those SABIT proposals which:

(1). Demonstrate a commitment to the intent and goals of the program to provide practical, on-the-job, non-academic, non-classroom training: in the case of manager interns, an appropriate management training experience, or, in the case of scientist interns, a practical, commercially-oriented scientific training experience.

(2). Respond to the priority needs of senior business managers and scientists in the NIS, as determined by ITA.

(3). Host firms must be solidly committed to interns' return to their own countries upon completion of the internships.

(4). Present a realistic work plan describing in detail the training program to be provided to the SABIT intern(s). Work plans must include the following:

(a). whether Applicant is applying to host managers or scientists, or both (and the number of each); (b). the duration of the internship (at least three but not more than six months.) As noted above, ITA reserves the right to allow an intern with very senior management responsibilities to stay for a shorter period (minimum of one month) if the U.S. company agrees and the intern demonstrates a compelling need for a shorter internship based on his or her management responsibilities; (c). the location(s) of the internship; (d). the name, address, and telephone number of the designated internship coordinator; (e). name(s) of division(s) in which the intern(s) will be placed; (f). the individual(s) in the U.S. company under whose supervision the intern will train; (g). the proposed internship training activities. The components of the training activities must be described in as much detail as possible, preferably on a week-by-week basis. The description of the training activities should include an accounting of what the intern's(s') duties and responsibilities will be during the training; (h). the anticipated housing arrangements to be provided for the intern(s). Note that housing arrangements should be suitable for mid- and senior-level professionals, and that each intern must be provided with a private room.

(5). Include a brief objectives section indicating why the Applicant wishes to provide an internship to a manager(s) or scientist(s) from the NIS, and how the proposed internship would further the purpose of the SABIT program as described above. If Applicant is nominating a specific individual for training, this objectives section must describe any existing relationship between the Applicant and the individual.

(6). Provide a general description of the profile of the intern(s) the Applicant would like to host, including: educational background; occupational/professional background (including number of years and areas of experience); size and nature of organization at which the intern(s) is/are presently employed; preference for the region of the NIS where the intern(s) is/are employed; and whether Applicant is open to sponsoring interns from a variety of NIS countries.

(7). Indicate whether Applicant organization operates in one or more of the following business sectors: (a). Agribusiness (including food processing and distribution, and agricultural equipment), (b). Defense conversion, (c). Energy, (d). Environment (including environmental clean-up), (e). Financial services (including banking and accounting), (f). Housing, construction and infrastructure, (g). Medical equipment, supplies, pharmaceuticals, and health care management, (h). Product standards and quality control, (i). Telecommunications, and (j). Transportation. Applicant proposal must provide an explanation including description and extent of involvement in the sector(s). While Applicants involved in any industry sector may apply to the program, priority consideration is given to those operating in the above sectors.

Evaluation criteria 1–6 will be weighted equally. ITA does not guarantee that it will match Applicant with the profile provided to SABIT.

Selection Procedures

Each application will receive an independent, objective review by one or more three or four-member ITA review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a

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competitive, "rolling" basis as they are received in accordance with the selection evaluation set forth above. Awards will be made to those applications which successfully meet the selection criteria. If funds are not available for all those applications which successfully meet the criteria, awards will be made to the first applications received which successfully do so. ITA review panel(s) reserve(s) the right to reject any application; to limit the number of interns per applicant; to waive informalities and minor irregularities in applications received; and to consider other than competitive procedures to distribute assistance under this program and in accordance with the law. ITA review panel(s) reserve(s) the right to make awards based on U.S. geographic and organization size diversity among applicants. Recipients may be eligible, pursuant to approval of an amendment of an active award, to host additional interns under the program.

Additional Information

Applicants must submit: (1). Evidence of adequate financial resources of Applicant organization to cover the costs involved in providing an internship(s). As evidence of such resources, Applicant should submit financial statements audited by an outside organization or an annual report including such statements. If these are not available, a letter should be provided from the Applicant's bank or outside accountant attesting to the financial capability of the firm to undertake the scope of work involved in training an intern under the SABIT program. (2). Evidence of a satisfactory record of performance in grants, contracts and/or cooperative agreements with the Federal Government, if applicable. (Applicants who are or have been deficient in current or recent performance in their grants, contracts, and/or cooperative agreements with the Federal Government shall be presumed to be unable to meet this requirement). (3). A statement that the Applicant will provide medical insurance coverage for interns during their internships. Recipients will be required to submit proof of the interns' medical insurance coverage to the Federal Program Officer, before the interns' arrivals. The insurance coverage must include an accident and comprehensive medical insurance program as well as coverage for accidental death, emergency medical evacuation, and repatriation.

Other Requirements

All applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

2. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

3. Recipients and subrecipients are subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

4. Participating companies will be required to comply with all relevant U.S. tax and export regulations. Export controls may relate not only to licensing of products for export, but also to technical data transfer.

5. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover pre-award costs.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(a) Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

(b) Drug Free Workplace: Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

(c) Anti-Lobbying: Funds provided under the SABIT program may not be used for lobbying activities. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(d) Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

10. Lower Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11. Indirect Costs: Indirect costs are not allowed under the SABIT program.

12. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

13. The following statutes apply to this program: Restriction on Assistance to the Government of Azerbaijan (Section 907 of the FREEDOM Support Act, Public Law 102–511); Chapter 11 of Part I of the Foreign Assistance Act of 1961, as amended, including section 498A (b), regarding ineligibility for assistance; provisions in annual Foreign Operations, Export Financing, and Related Programs Appropriations Act,

including the following provisions contained in Public Law 103–87: Use of American Resources (Section 559 of the Foreign Operation, Export Financing, and Related Programs Appropriations Act, 1995, Public Law 103–87); Impact on Jobs in the United States (Section 545 of the Foreign Operation, Export Financing, and Related Programs Appropriations Act, 1995, Public Law 103–87); Bumpers Amendment (Section 513(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Public Law 103–87); Lautenberg Amendment (Section 513(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, Public Law 103–87); and Section 660(a) of the Foreign Assistance Act of 1961, as amended.

14. *Audit Requirements:* The Grants Officer has the discretion to require by the terms and conditions of SABIT awards that recipients have an audit conducted in accordance with Government Auditing Standards. In addition, the DoC Office of Inspector General has authority under the Inspector General Act of 1978, as amended, to conduct an audit of any DoC award at any time.

15. *Payments.* As required by the Debt Collections Improvement Act of 1996, all Federal payments to award recipients pursuant to this announcement will be made by electronic funds transfer.

FOR FURTHER INFORMATION CONTACT: Special American Business Internship Training, International Trade Administration, at (202)482–0073. This is not a toll free-number.

Dated: January 2, 1997.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 97–398 Filed 1–7–97; 8:45 am]

BILLING CODE 3510–HE–P

National Institute of Standards and Technology

Economic Impact of NIST Thermocouple Program

ACTION: Proposed Data Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 10, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the information collection instruments(s) and instructions should be directed to George Burns, Chemical Science and Technology Laboratory, Building 221 (Physics), Room B–230, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301–975–4817) phone; e-mail: george.burns@nist.gov

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST seeks to assess economic impacts of its thermocouple calibration program. The respondents will be U.S. thermocouple manufacturers and their customers as well as the providers of independent thermocouple calibration services. The results will be used by NIST for program evaluation purposes.

II. Method of Collection

Personnel of firms in the U.S. thermocouple industry and their customers, as well as providers of independent thermocouple calibration services, may respond to questionnaires by mail, fax, E-mail, or telephone.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: None.
Affected Public: Personnel of firms in the U.S. thermocouple industry and their customers as well as providers of independent thermocouple calibration services.
Estimated Number of Respondents: 50.
Estimated Time Per Response: 0.5 hours.
Estimated Total Annual Burden Hours: 25 hours.
Estimated Total Annual Cost: $2,500 (25 X $100 per hour fully burdened cost for a senior level technical manager.) There are no equipment or maintenance costs associated with this collection.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques and other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: January 2, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–417 Filed 1–7–97; 8:45 am]

BILLING CODE 3510–13–P

Economic Impact of NIST Alternative Refrigerants Program

ACTION: Proposed data collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 10, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the information collection instruments(s) and instructions should be directed to Richard Kayser, Chemical Science and Technology Laboratory, Building 221 (Physics), Room B–230, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301–975–4817) phone; e-mail: richard.kayser@nist.gov e-mail.

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST seeks to assess economic impacts of its alternative refrigerants program. The respondents will be U.S.

refrigeration equipment manufacturers and chemical refrigerant manufacturers and their customers. The results will be used by NIST for program evaluation purposes.

II. Method of Collection

Personnel of firms in the U.S. clinical laboratories and clinical instrument producers and their customers may respond to questionnaires by mail, fax, E-mail, or telephone.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: None.

Affected Public: Personnel of firms in the U.S. refrigeration equipment manufacturing industry and the U.S. chemical refrigerant manufacturing industry and their customers.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Total Annual Cost: $2,500 (25 X $100 per hour fully burdened cost for a senior level technical manager.) There are no equipment or maintenance costs associated with this collection.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques and other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: January 2, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–418 Filed 1–7–97; 8:45 am]

BILLING CODE 3510–13–P

Economic Impact of Cholesterol SRMs/ Definitive Methods Program

ACTION: Proposed data collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 10, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the information collection instruments(s) and instructions should be directed to Michael Welch, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Building 324 (Chemistry), Room B–156, Gaithersburg, MD 20899, (301–975–3100), e-mail: michael.welch@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST seeks to assess economic impacts of its alternative refrigerants program. The respondents will be U.S. refrigeration equipment manufacturers and chemical refrigerant manufacturers and their customers. The results will be used by NIST for program evaluation purposes.

II. Method of Collection

Personnel of firms in the U.S. clinical laboratories and clinical instrument producers and their customers may respond to questionnaires by mail, fax, E-mail, or telephone.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: None.
Affected Public: Personnel of firms in the U.S. clinical laboratories and clinical instrument industries and their customers.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Total Annual Cost: $2,500 (25 × $100 per hour fully burdened cost for a senior level technical manager.) There are no equipment or maintenance costs associated with this collection.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques and other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: January 2, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–419 Filed 1–7–97; 8:45 am]

BILLING CODE 3510–13–P

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Cotton Exchange for Designation as a Contract Market in Futures and Options on the Pound Sterling-Swiss Franc and Pound Sterling-Japanese Yen Cross Rates

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in futures and futures options on the NYCE pound sterling-Swiss franc and pound sterling-Japanese yen currency cross rates. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication

of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 7, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the NYCE pound sterling-Swiss franc and pound sterling-Japanese yen currency cross rate applications.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC, 20581, telephone 202–418–5277. Facsimile number: (202) 418–5527. Electronic mail: ssherrod@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 2, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–317 Filed 1–7–97; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Monday, January 13, 1997; 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

Matter To Be Considered

Petition CP 96–1 on Multi-Purpose Lighters

The Commission will consider options regarding Petition CP 96–1, from Judy L. Carr, requesting the Commission to amend the safety standard for cigarette lighters to include multi-purpose lighters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207; (301) 504–0800.

Dated: January 6, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–517 Filed 1–6–97; 1:42 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on January 29–30, April 30–May 1, and October 22–23, 1997 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition & Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: January 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–391 Filed 1–7–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Aviation Safety

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Aviation Safety will meet in closed session on January 9 and January 16, 1997 at Strategic Analysis, Inc., Alexandria, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will identify and recommend actions to significantly reduce the rate of military aviation accidents that erode our readiness and resources.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: January 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–390 Filed 1–7–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Record of Decision for a Dry Storage Container System for the Management of Naval Spent Nuclear Fuel

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969; the Council on Environmental Quality regulations implementing NEPA procedures, 40 CFR Parts 1500–1508; and Chief of Naval Operations Environmental and Natural Resources Program Manual, OPNAV Instruction 5090.1B; the Department of the Navy announces its decision to implement the preferred alternative (dual-purpose canisters) identified in the final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel (EIS) dated November 1996. The Department of Energy (DOE), which participated as a cooperating agency, formally adopted the final EIS on October 9, 1996 (designated as DOE/EIS–0251) (61 FR 59435) and has concurred in this Record of Decision. The DOE was a cooperating agency because the DOE, under the Nuclear Waste Policy Act, is responsible for the ultimate disposition of all spent nuclear fuel, including civilian and military. The DOE is also responsible for the facilities at the Idaho National Engineering Laboratory (INEL) where naval spent nuclear fuel is currently stored. The Navy will utilize a dual-purpose canister system for the management of naval spent nuclear fuel and the management of naval special case low-level radioactive waste. A dual-purpose canister system will be used for the loading, dry storage, transport, and possible disposal of naval spent nuclear fuel following examination at the INEL. This Record of Decision neither decides nor presumes that naval special case waste will be shipped to a geologic repository or a centralized interim storage site as naval spent nuclear fuel.

ADDRESSES: Copies of the final EIS and other information related to this Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** notice that announced the availability of the Final EIS (61 FR 59423). For further information on the Navy's utilization of a dry storage container system for naval spent nuclear fuel, or to receive a copy of the final EIS, contact William Knoll, Department of the Navy, Code NAVSEA 08U, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, (703) 603–6126. For information on the DOE's NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

Introduction

More than 40% of the Navy's principal combatants are nuclear powered. Since 1955, U.S. nuclear powered warships have steamed safely more than one hundred million miles and accumulated over 4,700 reactor years of safe operation. Continued operation of the Navy's nuclear powered warships remains a vital element of the Navy's ability to fulfill its national security mission in support of our nation's defense.

The Navy creates spent nuclear fuel through the operation of its nuclear powered warships and training reactors. When a warship is refueled for continued service or is defueled because it is being inactivated, its spent nuclear fuel is removed at a shipyard. Similarly, naval spent nuclear fuel is removed from afloat and land-based training reactors when they are refueled or deactivated. In all cases, the naval spent nuclear fuel is transported to the INEL in southeastern Idaho where it is examined at the Expended Core Facility (ECF) located at the Naval Reactors Facility (NRF). This examination is essential to verify the performance of current naval nuclear fuel and to support the design of naval fuel with longer lifetimes. After examination, the naval spent nuclear fuel is transferred to the Idaho Chemical Processing Plant (ICPP) for storage in water pools pending final disposition. Currently, there are approximately 13 metric tons of heavy metal of naval spent nuclear fuel at the INEL. A total of approximately 65 metric tons of naval spent nuclear fuel will exist by the year 2035.

The Navy is committed to ensuring that post-examination naval spent nuclear fuel is managed in a fashion which (1) facilitates ultimate safe shipment to a permanent geologic repository or centralized interim storage site outside the State of Idaho;

(2) protects the Idaho environment while being temporarily stored at the INEL;

(3) is consistent with the DOE Programmatic Spent Nuclear Fuel Management and INEL Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (April 1995); and

(4) complies with the court ordered agreement among the State of Idaho, the DOE, and the Navy, which is discussed in this Record of Decision under Legal and Regulatory Considerations.

Until a geologic repository or centralized interim storage site outside the State of Idaho (discussed in Section 2.8.2 of the final EIS) is available, the Navy is committed to a number of actions to ensure uninterrupted operation of the Navy's nuclear powered fleet. These include transfer of all naval spent nuclear fuel at the INEL out of wet storage facilities into dry storage, completion of a Dry Cell expansion project at the ECF, completion of Hot Cell facility upgrades at the ECF, construction of an ECF dry storage container loading station, and performance of certain environmental restoration work at the NRF. The high integrity and rugged nature of naval spent nuclear fuel make it exceptionally well suited for safe transport, storage, and ultimate disposal after service. The Navy must make a decision on the type of dry storage container system now in order to support planning required to meet its commitment as discussed in this Record of Decision under Legal and Regulatory Considerations for dry storing naval spent nuclear fuel and ultimately shipping it out of the State of Idaho.

Alternatives Considered

The Navy considered six alternative dry storage container systems for the loading, storage, transport, and possible disposal of post-examination naval spent nuclear fuel and the management of special case waste. The alternatives may use either of the existing dry storage containers or of dry storage containers that could be produced by manufacturers of such equipment. Because of differences in configurations of naval spent nuclear fuel assemblies, all of the alternatives require containers to have internal baskets designed for specific naval spent nuclear fuel types.

Two time frames were used for analyses. For complete system operations, 1996–2035, a time period of 40 years is used. For analyses concerning transportation to a spent nuclear fuel repository and handling of post-examination naval spent nuclear fuel at the INEL, the period 2010 to 2035 (25 years) was used because a repository would be expected to begin accepting spent nuclear fuel before 2010. The actual date that a repository would begin accepting spent nuclear fuel would have minimal impact on the results presented in the final EIS and would not change the number of shipments to be made.

There is also the possibility that a centralized storage site may be designated for interim storage of civilian

spent nuclear fuel until a repository is available. If such a centralized interim storage site were opened and if naval spent nuclear fuel were allowed by law to be stored there, transportation of naval spent nuclear fuel might begin before 2010. A range of transportation routes was analyzed in the EIS. As such, the transportation analyses are suitable for comparison of the impacts associated with transportation to a centralized interim storage site among alternatives.

A brief description of the six alternatives follows:

(1) No-Action Alterative—Use of existing technology to handle, store, and subsequently transport naval spent nuclear fuel to a geologic repository or a centralized interim storage site using the Navy M–140 transportation cask. Prior to shipment to a repository or centralized interim storage site, naval spent nuclear fuel would be managed at the INEL in water pools or commercially available dry storage containers, then loaded into M–140 transportation casks. At a repository, the naval spent nuclear fuel would be unloaded from the M–140 transportation casks and placed in a geologic repository's surface facilities for loading into disposal containers. Following unloading, the M–140 transportation casks would be returned to the INEL for reuse. Because existing M–140 transportation casks are needed to maintain scheduled fleet refuelings and defuelings, approximately 24 additional M–140 transportation casks would have to be manufactured to handle the shipment of about 425 cask loads of naval spent nuclear fuel to a repository between 2010 and 2035. Two hundred and twenty-five dry storage containers would be required for use at the INEL, and 300 disposal containers would be required under this alternative. For the management of special case waste, up to 30 additional dry storage containers, four additional M–140 transportation casks, and 60 additional disposal containers would be needed.

(2) Current Technology/ Supplemented by High Capacity Rail Alternative—This alternative uses the same storage methods and M–140 transportation casks described in the no-action alternative, but with redesigned internal structures for the M–140 cask to accommodate a larger amount of naval spent nuclear fuel per cask, thus reducing the total number of shipments required. For the purpose of analysis, the EIS assumes that approximately 24 additional M–140 transportation casks would be needed in order to expedite shipment of approximately 325 containers of naval spent nuclear fuel by rail to a repository or centralized interim storage site. One hundred and fifty dry storage containers would be required for use at the INEL, and 300 disposal containers would be required under this alternative. For the management of special case waste, up to 26 additional dry storage containers, four additional M–140 transportation casks, and 60 additional disposal containers would be needed.

(3) Transportable Storage Cask Alternative—This alternative uses an existing, commercially available transportable storage cask for storage at the INEL as well as for transportation to a repository or centralized interim storage site. At a repository, individual assemblies of naval spent nuclear fuel would be unloaded from the casks and placed in surface facilities for loading into disposal containers. The unloaded transportable storage casks would be returned to the INEL for further storage and transport. Approximately 325 shipments of the reusable transportable storage cask (150 casks required) would be necessary for the shipment of all naval spent nuclear fuel and 300 containers would be required for disposal. For the management of special case waste, up to 21 additional storage casks and 60 additional disposal containers would be needed.

(4) Dual-Purpose Canister Alternative—This alternative uses an existing, commercially available canister and overpack system for storage at the INEL and shipment of naval spent nuclear fuel to a geologic repository or centralized interim storage site. At a repository, the naval spent nuclear fuel would be unloaded from the canisters and placed in surface facilities for loading into disposal containers. Approximately 300 canisters would be required for dry storage and shipment of naval spent nuclear fuel by rail to a repository or centralized interim storage site. In addition, 150 dry storage overpacks for use at the INEL, 15 transportation overpacks, and 300 disposal containers would be required. For the management of special case waste, up to 45 additional canisters, 23 additional storage overpacks, three additional transportation overpacks, and 60 additional disposal containers would be needed.

(5) Multi-Purpose Canister Alternative—This alternative uses about 300 large (125-ton) multi-purpose canisters for storage, transportation, and disposal of naval spent nuclear fuel, without repackaging or further handling of individual spent nuclear fuel assemblies. In addition to the sealed metal canisters, specialized casks or overpacks would be required for different stages of the process, including 150 dry storage overpacks for use at the INEL, 15 transportation overpacks for transporting naval spent nuclear fuel to a geologic repository or centralized interim storage site, and 300 disposal overpacks for disposal in a repository. For the management of special case waste, up to 60 additional canisters, 30 additional storage overpacks, three additional transportation overpacks, and 60 additional disposal overpacks would be needed.

(6) Small Multi-Purpose Canister Alternative—This alternative uses about 500 smaller (75 ton) multi-purpose canisters, rather than large multi-purpose canisters. The small multi-purpose canisters would be similar in design, operations, and function to the large multi-purpose canisters, but would offer a lower weight and size alternative for transportation and handling at a geologic repository or centralized interim storage site. Two hundred and twenty-five dry storage overpacks for use at the INEL, 25 transportation overpacks for transporting naval spent nuclear fuel to a geologic repository or centralized interim storage site, and 500 disposal overpacks for disposal in a repository would be required. For the management of special case waste, up to 85 additional canisters, 39 additional storage overpacks, five additional transportation overpacks, and 85 additional disposal overpacks would be needed.

Decisions

The Navy announces its decision to use a dual-purpose canister system for the management of post-examination naval spent nuclear fuel and special case low-level radioactive waste. The primary benefits of a dual-purpose canister system are efficiencies in container manufacturing and fuel reloading operations and potential further reduction in radiation exposure. A dual-purpose canister system will allow the safe storage and shipment of naval spent nuclear fuel for ultimate disposition. The system might also be found to be acceptable for disposal purposes once the disposal requirements for a geologic repository have been formulated and finalized, making it functionally equivalent to a multi-purpose canister system.

The Navy evaluated each of the alternatives to a set of criteria in order to select a preferred alternative. The results of that evaluation are summarized briefly below.

There was no obvious preference for any dry storage container system based on public comments. Further, all of the alternative dry storage container

systems technically support the storage, shipment, and disposal of naval spent nuclear fuel.

The Department of the Navy's analysis of the environmental and public health impacts from the following would be small and would differ little among alternatives: the manufacture of any of the dry storage container systems; the operations of handling, storage, transportation and unloading at a repository; and the construction of facilities. All alternatives are considered comparable and indistinguishable under this criterion, thus, there is no environmentally preferred alternative.

Cost comparisons were based on procurement costs for equipment, as well as handling, storage, transportation and container disposal costs. Under this criterion, the dual-purpose canister system has a medium comparative cost. The multi-purpose canister has the lowest comparative cost, in part because the fuel assemblies would only be handled one time, but since no multi-purpose canisters currently exist the cost comparison is somewhat conjectural. If the dual-purpose canister alternative meets the repository design criteria for disposal packages when those criteria are established, fuel assemblies would be handled once instead of twice, and the cost would decrease such that it would be comparable with the multi-purpose canister. There is a high probability that a dual-purpose canister system for naval spent nuclear fuel can be produced successfully and economically because it is similar to currently available systems for civilian spent fuel.

To evaluate operational efficiency, the Navy evaluated the processes which must be performed for any of the alternatives, including: loading fuel into dry storage containers, unloading fuel from dry storage containers for shipment, off-site transport, and loading or reloading fuel at a geologic repository surface facility for ultimate disposal. Each of these general operations may be performed once, multiple times, or not at all, depending on the system implemented. Each of the alternatives can be categorized as either a cask or a canister system based on whether the naval spent nuclear fuel would be transferred from storage for shipment as collections of individual fuel assemblies (cask) or as a unit inside a sealed package (canister).

It was concluded from the process evaluation that multi-purpose canister systems would be the most efficient systems when considering the handling of fuel. Individual fuel assemblies would not have to be unloaded from the canisters once they had been loaded for the multi-purpose canister alternatives. The individual fuel assemblies would be handled only one time: during the initial loading of the canister. The most inefficient systems from this standpoint are the No-Action and the Current Technology/Rail Alternatives because individual fuel assemblies must be handled three times, once for each packaging operation.

For the dual-purpose canister system, the individual fuel assemblies would be loaded into a canister prior to storage. The canister would not need to be reopened prior to packaging the canister for transportation. It is possible that at a geologic repository the individual fuel assemblies may need to be handled in the process of packing disposal containers. However, if the canisters meet repository disposal criteria when these criteria are established, the dual-purpose canister system would be functionally equivalent to a multi-purpose canister system in that the individual fuel assemblies would be handled only once. Although handling fuel is routinely accomplished safely without impact on human health or the environment, doing it multiple times is inefficient, and incurs additional occupational radiation exposure and some risk.

With respect to regulatory and disposal criteria impacts, the only anticipated changes that may affect the selected alternative are in the area of repository disposal regulations. The Environmental Protection Agency (EPA) is expected to issue revised draft standards (40 CFR part 197) for a geologic repository in 1997. The Nuclear Regulatory Commission (NRC) plans to issue changes to its repository disposal regulations (10 CFR part 60) to establish design criteria within one year of the issue of the EPA standards.

Based on the uncertainties and far term nature of the disposal regulations, there are no discernible advantages or disadvantages associated with any of the alternatives based on potential impact of disposal regulations. No changes affecting this evaluation in the storage and transportation regulations are anticipated and all of the alternatives would meet the current regulations.

The Navy anticipates that final waste acceptance criteria for a geologic repository will not be established for at least five years. As a result there is some uncertainty in implementing a multi-purpose canister system at this time. The Navy cannot wait five years for the establishment of waste criteria plus any additional time required to develop a multi-purpose canister based on such criteria in order to meet its commitment as discussed in this Record of Decision under Legal and Regulatory Considerations. If a multi-purpose canister is not compatible with geologic repository criteria, the fuel canisters may need to be opened and the individual fuel assemblies handled and placed into acceptable disposal containers. In this event the multi-purpose canister system would essentially become a dual-purpose canister system.

The Navy also considered the direction of industry and standardization in selecting an alternative. In implementing a dry storage container system for the management of naval spent nuclear fuel, there is an advantage in utilizing a system compatible with the systems in use or planned for use by operators of reactors which commercially generate electricity. All spent nuclear fuel, commercial and naval, is destined for the same geologic repository or could be destined for the same centralized interim storage site if such a site were opened and naval spent nuclear fuel were allowed by law to be stored there. Naval spent nuclear fuel containers will represent only about one to four percent of the total number of containers that would be shipped to a repository or centralized interim storage facility. Therefore, to the extent that the most widely used systems for commercial spent nuclear fuel drive any repository design or acceptance criteria, it is considered prudent to utilize a system which is similar to the systems being used or planned for use by commercial electric utilities. Other advantages to using the same system or one similar to that which the commercial utilities have recently licensed through the NRC include prior completion of extensive technical reviews, prior completion of peer and public review, and some proven applications which may be in operation.

The majority of the new spent nuclear fuel storage systems being designed or in review by the NRC are dual-purpose systems with different overpacks for storage and transport. The 125-ton multi-purpose canister, the 75-ton multi-purpose canister, the transportable storage cask and the dual-purpose canister system were all found to reflect current industry direction. The No-Action and the Current Technology/Rail Alternatives do not.

Finally, the Navy looked at technical uncertainties and risks. There are no substantial technical uncertainties associated with the loading of naval nuclear spent fuel into dry storage containers, the storage of the containers at the INEL, or the transportation off-site

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to a geologic repository. All of the alternatives assume the use of dry storage containers which will meet the storage requirements of 10 CFR part 72 and the transportation requirements of 10 CFR part 71. Several licensed systems are currently in use and other new systems are in the review cycle for NRC approval for use.

As discussed in this Record of Decision under Legal and Regulatory Considerations, the Navy must select a dry storage container system now to support completion of its commitments for dry storing naval spent nuclear fuel. Thus, the Navy cannot wait a minimum of five years anticipated for the establishment of waste criteria plus any additional time required to develop a multi-purpose canister based on such criteria. Dual-purpose canisters represent the best system given the need to make a decision now and their favorable comparison to the other alternatives considering cost, operational efficiency, industry trends, regulatory acceptance, and the other criteria discussed above.

Mitigation

The strictly controlled conduct of operations associated with the DOE and Naval Nuclear Propulsion Program spent fuel management activities are mitigation measures integral to the selected alternative. The DOE and the Naval Nuclear Propulsion Program have directives and regulations for conduct of spent nuclear fuel management operations. All government spent fuel shipments must comply with the DOE and Department of Transportation regulations. The DOE and the Navy have adopted stringent controls for minimizing occupational and public radiation exposure. The policy of these programs is to reduce radiation exposures to as low as reasonably achievable (ALARA). Singly and collectively, these measures avoid, reduce, or eliminate any potentially adverse environmental impacts from spent nuclear fuel management activities, including those associated with containerization. The Navy and the DOE have not identified a need for additional mitigation measures.

Legal and Regulatory Considerations

The Record of Decision for the DOE Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement was issued on June 1, 1995 (60 FR 28680). On October 17, 1995, the federal District Court entered a Consent Order that resolved all issues related to the EIS raised by the State of Idaho and the Governor of Idaho. The Consent Order incorporated as requirements all of the terms and conditions of the parties' Settlement Agreement, including a reduction in the number of spent nuclear fuel shipments coming to the State of Idaho.

All proposed actions by the Navy will be in full compliance with the requirements of the Consent Order/ settlement agreement among the State of Idaho, the U.S. Navy, and the DOE. The settlement agreement included an obligation of the Naval Nuclear Propulsion Program to fund a dry storage container loading station at ECF, expending no less than $20 million on that project by October 2000. This Record of Decision is consistent with that obligation. The settlement agreement also obligates the DOE to commence moving spent nuclear fuel currently in water pool storage into dry storage by July 1, 2003.

In addition to the Consent Order, Chapter 8 of the final EIS identifies the major applicable laws and regulations which the Department of the Navy is mandated to comply with in the fabrication and utilization of a dry storage container system for the management of naval spent nuclear fuel.

Public Involvement

On October 24, 1994, the DOE published a Notice of Intent in the **Federal Register** (59 FR 53442) to prepare an EIS for a multi-purpose canister system for the management of civilian spent nuclear fuel. As part of the public scoping process, the scope of the EIS for the multi-purpose canister system was broadened to include naval spent nuclear fuel. This determination was included in the Implementation Plan whose availability was announced in the **Federal Register** on August 30, 1995 (60 FR 45147). However, the DOE halted its proposal to fabricate and deploy a multi-purpose canister based system and ceased preparation of that EIS.

On December 7, 1995 the Department of the Navy published a notice in the **Federal Register** (60 FR 62828) assuming the lead responsibility for an Environmental Impact Statement evaluating dry storage container systems for the management of naval spent nuclear fuel. The Department of the Navy assumed the lead responsibility from the DOE and narrowed the focus of the EIS to include only naval spent nuclear fuel. Despite the narrowing of the focus to only naval spent nuclear fuel and the change in lead agency, the range of dry storage container alternatives being considered did not change. Thus the EIS did not require another scoping process. The DOE became a cooperating agency rather than the lead agency in the preparation of that EIS.

On May 1, 1996, the Navy distributed the Draft EIS. The Notice of Availability of the Draft EIS was announced in the **Federal Register** on May 14, 1996 along with the locations and dates of public hearings (61 FR 24293). The Draft EIS was widely distributed to public officials, tribal officials, and state agencies in the areas of potential interest, as well as to individuals requesting the document. The public comment period for the EIS was originally scheduled to be 45 days, but a 15-day extension was granted based on a request from the State of Nevada. During the public comment period, six public hearings were held and both written and oral comments were received. Oral and written comments were received from 51 parties, representing: federal, state, and local agencies and officials; special interest groups; and individuals.

Although no substantive changes to the Draft EIS were needed as a result of public comments, several clarifications and editorial changes were made in response to comments. For example, the Final EIS was modified to clearly state that the effect of a terrorist attack or an act of sabotage is expected to be conservatively bounded by the limiting accidents already discussed. The discussion of transportation routes used in the analysis was expanded to explain their application. In addition, the EIS was modified to enhance the reader's ability to use the results of analyses to evaluate the possibility that any of the alternatives might have a disproportionately high and adverse impact on minority or low-income populations.

A new Chapter 11 was added to the Final Environmental Impact Statement in which each comment was reprinted in its entirety, followed immediately by individual responses to each of the major points. The EPA formally announced the availability of the final EIS on November 22, 1996 (61 FR 59435). The Navy also announced the availability of the final EIS on November 22, 1996 (61 FR 59423).

Approval

This Record of Decision constitutes the Department of the Navy's final action with regard to selection of a dry storage container system for the management of post-examination naval spent nuclear fuel and naval special case low-level radioactive waste. This Record of Decision does not constitute

final action for location(s) for dry loading naval spent nuclear fuel which is currently stored at the ICPP or which will be stored at ICPP prior to establishment of a dry storage facility, or for location(s) for temporary dry storage of naval spent nuclear fuel at the INEL. Those actions will be the subject of an upcoming Record of Decision.

Issued in Washington, D.C., this 26th day of December 1996.

Richard Danzig,

Acting Secretary of the Navy.

Alvin L. Alm,

Assistant Secretary for Environmental Management U.S. Department of Energy.

[FR Doc. 97–411 Filed 1–7–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Wetlands Involvement for Environmental Remediation at Argonne National Laboratory-East

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of Wetlands Involvement.

SUMMARY: DOE proposes to conduct a Resource Conservation and Recovery Act (RCRA) corrective-action program and other environmental remediation activities at contaminated sites at Argonne National Laboratory-East (ANL–E). Two of the contaminated sites include small wetlands. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR 1022), DOE will prepare a wetlands assessment for this proposed action. The wetlands assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the National Environmental Policy Act.

DATES: Comments are due to the address below no later than January 22, 1997.

ADDRESSES: Comments should be addressed to: Dr. W. S. White, NEPA Compliance Officer, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Avenue, Argonne, IL 60439. (630) 252–2101.

FOR FURTHER INFORMATION CONTACT: Further information on this proposed action and wetlands assessment can be obtained from Donna Green, Document Manager, U.S. Department of Energy, Argonne Group, 9800 S. Cass Avenue, Argonne, IL 60439. (630) 252–2264.

SUPPLEMENTARY INFORMATION: The proposed action would involve two small palustrine emergent wetlands. One of the wetlands is 0.004 hectares (0.0016 acres); the other is 0.036 hectares (0.015 acres). Contaminant hazards at these wetlands would be reduced by excavation, containment, or phytoremediation.

Issued in Chicago, IL on December 18, 1996.

Dr. W. S. White,

NEPA Compliance Officer, Chicago Operations Office, Department of Energy.

[FR Doc. 97–392 Filed 1–7–97; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[FERC–423]

Agency Information Collection Under Review by the Office of Management and Budget

January 3, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of request submitted for review to the Office of Management and Budget.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission received public comments from two entities in response to an earlier **Federal Register** notice of August 12, 1996 (61 FR 41779) and has replied to these comments in its submission to OMB.

DATES: Comments must be filed on or before February 7, 1997.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 726 Jackson Place N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information*: FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants".

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.*: 1902–0024. The Commission is now requesting that OMB approve a three year extension of these mandatory collection requirements.

4. *Necessity of Collection of Information*: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of the Federal Power Act (FPA) as amended by the Public Utility Regulatory Policies Act (PURPA). The Commission uses the information reported on FERC Form No. 423 to conduct fuel reviews under Section 205 (a) and (e) of the FPA, and to prepare expert testimony in electric utility rate cases filed with the Commission. The Form 423 data provides the only effective means for assessing the potential impact of new developments on the future utility fuel supply patterns. The Commission's staff compare delivered fuel costs for utilities receiving like fuels of similar quality; detect consistently high cost patterns or irregularities indicative of possible uneconomic fuel purchase practices; evaluate the economic effect of unusual fuel purchases practices, such as buying fuel from affiliate fuel sources, as opposed to selecting buyers by competitive bids, and investigate a broad range of fuel costs and fuel purchase practice issues raised in contested rate proceedings.

5. *Respondent Description*: The respondent universe currently comprises approximately 230 public utilities.

6. *Estimated Burden:* 17,112 total burden hours, 228 respondents, 713 responses annually, 2.0 hours per response (average).

Statutory Authority: Section 205, of the Federal Power Act, as amended by Section 208 of the Public Utility Regulatory Policies Act. (49 Stat. 851; 16 U.S.C. 824d).

Lois D. Cashell,

Secretary.

[FR Doc. 97–376 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[FERC–714]

Agency Information Collection Under Review by the Office of Management and Budget

January 3, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of request submitted for review to the Office of Management and Budget.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission received public comments from three entities in response to an earlier **Federal Register** notice of September 9, 1996 (61 FR 47507) and has replied to these comments in its submission to OMB.

DATES: Comments must be filed on or before February 7, 1997.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 726 Jackson Place N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form No. 714, "Annual Electric Control and Planning Area Report".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0140. The Commission is now requesting that OMB approve a three year extension on these mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of the Federal Power Act (FPA). The Commission uses the information reported on FERC Form No. 714 to provide timely electric system operational data to facilitate analyses of control area practices, to examine actual electricity flows, to prepare reports on the electric utility industry or individual utilities, to monitor electric utility forecasts of loads and plans for system expansion, and to obtain a comprehensive picture of energy generation, transfers, and load distribution.

5. *Respondent Description:* The respondent universe currently comprises approximately 250 public utilities.

6. *Estimated Burden:* 12,500 total burden hours, 250 respondents, 250 responses annually, 50.0 hours per response (average).

Statutory Authority: Sections 4, 202, 203, 205, 206(b), 207, 210, 211, 212, 304(a) and 311 of the Federal Power Act, as amended (49 Stat. 838, 16 U.S.C. 791a–825r).

Lois D. Cashell,

Secretary.

[FR Doc. 97–377 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–212–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 2, 1997.

Take notice that on December 30, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Title Page

Third Revised Sheet No. 1
First Revised Sheet No. 21
Second Revised Sheet No. 251
First Revised Sheet No. 253
First Revised Sheet No. 266
First Revised Sheet No. 336
Second Revised Sheet No. 348
Fourth Revised Sheet No. 349
Third Revised Sheet No. 354
Second Revised Sheet No. 358A
First Revised Sheet No. 387
Original Sheet No. 388
Original Sheet No. 389

CNG requests a waiver of the 30-day notice requirement so that these substitute tariff sheets may become effective on December 31, 1996.

CNG states that the revised tariff sheets are submitted to comply with the regulations promulgated under Order Nos. 582 and 582–A.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E. Washington, DC, 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–350 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–213–000, RP95–366–002, and RP94–96–020]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 2, 1997.

Take notice that on December 30, 1996, CNG Transmission Corporation (CNGT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Twenty-Fourth Revised Sheet No. 32
Twenty-Fourth Revised Sheet No. 33
Substitute Second Revised Sheet No. 361

CNGT requests an effective date of February 1, 1997, for revised Sheet Numbers 32 and 33, and an effective date of January 1, 1997, for substitute Sheet Number 361.

CNGT states that the purpose of this filing is to submit CNGT's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing February 1, 1997. The charge for the quarter ending January 31 has been $0.0000 per Dt, as authorized by Commission order dated October 21, 1996, in Docket No. RP96–401. CNGT's proposed Section 18.2.B Surcharge for the next quarterly period is $0.0119 per Dt.

CNGT also submits Substitute Second Revised Sheet No. 361 to correct a language omission from the January 12, 1996, compliance filing in Docket No. RP94–96.

CNGT states that copies of this letter of transmittal and enclosures are being mailed to CNGT's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Sheet, N.E., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–351 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–209–000]

Columbia Gas Transmission Corporation; Notice of Filing Calculations of Excess Revenues

January 2, 1997.

Take notice that on December 27, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing a report in order to set forth adjustments to the Excess Revenue credited to its firm transportation customers. Columbia filed its last report of Excess Revenue calculations of March 13, 1996 following termination of its Excess Revenue Crediting Mechanism pursuant to the order of the Commission in Docket No. RP95–408.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed on or before January 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–347 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–208–000]

Columbia Gulf Transmission Company; Notice of Filing

January 2, 1997.

Take notice that on December 27, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following report.

Pursuant to Section 34 (Crediting of Excess Revenues) of the General Terms and Conditions (GTC) of Columbia Gulf's FERC Gas Tariff, Second Revised Volume No. 1, Columbia Gulf calculated revenues applicable to Rate Schedules ITS–1 and ITS–2 (Applicable Rate Schedules) for the twelve-month period ended October 31, 1996. Based upon the calculations, the revenues generated were not sufficient to result in any Excess Revenues for crediting.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–346 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–207–000]

Distrigas of Massachusetts Corporation; Notice of Compliance Filing

January 2, 1997.

Take notice that on December 27, 1996, Distrigas of Massachusetts Corporation (DOMAC) made a compliance filing submitting new and revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1.

DOMAC states that its filing includes revisions to bring its tariff into compliance with the newly revised Part 154 of the regulations of the Federal Energy Regulatory Commission Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] (CCH) 31,025 (October 11, 1995) (Order No. 582). Its filing also includes revisions that will create consistency with the Gas Industry Standards Board business practice standards, Standards For Business Practices of Interstate Natural Gas Pipelines; Order 587; Final Rule, III FERC [Regs. Preambles] (CCH) 31,038 (July 26, 1996) (Order No. 587). DOMAC states that revisions do not include changes in substantive provisions of its tariff. With respect those tariff sheets tendered pursuant to Order No. 582, DOMAC has requested waiver of applicable rules and regulations as may be necessary to permit acceptance of the tariff sheets with the effective date of December 31, 1996.

DOMAC states that copies of the filing have been served upon all of DOMAC's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such notices or prptests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–345 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–214–000]

Florida Gas Transmission Company; Notice of Filing of Report of Cash-Out Activity

January 3, 1997.

Take notice that on December 31, 1996, Florida Gas Transmission

Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism from December 1, 1995 through September 30, 1996. No tariff changes are proposed therein.

FGT states that Section 19.1 of the General Terms and Conditions (GTC) of its FERC Gas Tariff provides for on Annual Report containing an accounting for of costs and revenues associated with the Cash-Out Mechanism, Fuel Recovery Mechanism and various Balancing Tools provided for in FGT's Tariff. FGT states the instant filing is made in compliance with those provisions.

FGT proposes to directly refund $1,227,048 of excess revenues to shippers identified in Schedule B to FGT's filing. FGT proposes to make these refunds within 30 days following a final Commission Order accepting the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 10, 1997. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–373 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–210–000]

Honeoye Storage Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 2, 1997.

Take notice that on December 30, 1996 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, revised tariff sheets to be effective January 1, 1997.

Honeoye states that the purpose of the filing is to reflect a change in address and to convert Honeoye's volume 2 from a volumetric (MCF) to a thermal energy basis (MMBTU). Honeoye states that there will be no change in rates and revenues under the proposed revisions.

Honeoye requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1997.

Honeoye states that copies of the filing are being mailed to Honeoye's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with the Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–348 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–211–000]

K N Interstate Gas Transmission, Notice of Filing of Reconciliation Report

January 2, 1997.

Take notice that on December 30, 1996 K N Interstate Gas Transmission Co. (KNI) filed its reconciliation report in the above captioned docket. The filing relates to KNI's reporting requirement pursuant to Section 27 (Crediting of Excess Rate Schedule IT Revenue); Section 28 (Crediting of Excess Fixed Storage Cost Revenue); Section 34 (Crediting of Out of Path Zone Revenue); and Section 35 (Crediting of Imbalance Revenue) of its FERC Gas Tariff, Third Revised Volume No. 1–B and for its Buffalo Wallow system pursuant to Section 31 (Crediting of Excess Rate Schedule IT Revenue) for its FERC Gas Tariff, First Revised Volume No. 1–D. The reconciliation report addresses in conjunction with the effectiveness of the terms of KNI's tariff the reporting period October 1, 1995 through September 30, 1996 and presents the results of KNI's various revenue crediting requirements and displays the proposed disposition of any amounts to be refunded.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 9, 1997. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–349 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–164–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 3, 1997.

Take notice that on December 20, 1996, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP97–164–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate as a jurisdictional facility a meter station placed in service under Section 311(a) of the NGPA, under Koch's blanket certificate issued in Docket No. CP82–430–00 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch proposes to operate as a jurisdictional facility a meter station placed in service under Section 311(a) of the NGPA which will enable it to provide services to Louisiana Gas Service Company in Plaquemines Parish, Louisiana.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is

filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–371 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–6–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 3, 1997.

Take notice that on December 31, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 5A, with a proposed effective date of January 1, 1997.

National states that under Article II, Section 1, of the approved settlement approved in Docket Nos. 94–367–000, *et al.*, National is required to recalculate semi-annually the maximum Interruptible Gathering (IG) rate to be effective on July 1 and January 1. The recalculation produced an IG rate of 11 cents per dth.

In addition, pursuant to Article I, Section 4, National is required to redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 13.77 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed in accordance with 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–375 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. LP97–167–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

January 2, 1997.

Take notice that on December 23, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above docket a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authority to operate an existing delivery point located in Love County, Oklahoma, that was originally constructed as a receipt point to deliver natural gas to Texaco Exploration & Production, Inc. (Texaco), a producer; and to provide Natural Gas Act jurisdictional service, including transportation services under Subpart G of Part 284 of the Commission's Regulations at such delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it can deliver up to approximately 1,000 MMBtu per day of natural gas to Texaco. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capacity.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–340 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–57–000]

NorAm Gas Transmission Company; Notice of Cancellation of Technical Conference

January 3, 1997.

Take notice that the technical conference originally scheduled to be held on Thursday, January 8, 1997, has been canceled until further notice. See also 61 FR 67007, Dec. 19, 1996.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–372 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–16–001]

Northern Natural Gas Company; Notice of Compliance Filing

January 2, 1997.

Take notice that on December 23, 1996, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1. Northern asserts that the purpose of this filing is to comply with the Commission's order issued October 31, 1996, in Docket No. RP97–16–000.

Northern states that this filing is to establish the revised 1996–1997 SBA Cost Recovery surcharge rate. Therefore, Northern states that it is filing 31 Revised Sheet Nos. 50 and 51 and 6 Revised Sheet No. 53 to revise these surcharges effective January 1, 1997.

Northern states that copies of its filing were served upon the company's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–343 Filed 1–7–97; 8:45 am]

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[Docket No. RP97–100–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

January 2, 1997.

Take notice that on December 27, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 27, 1996:

Second Revised Sheet No. 1
First Revised Substitute Sixth Revised Sheet No. 5–A
Substitute First Revised Third Revised Sheet No. 200
Substitute First Revised Sheet No. 212

Northwest states that this filing is being submitted to provide revised tariff sheets to comply with the Commission's December 17, 1996 Letter Order in this docket related to tariff changes previously submitted by Northwest as required by Order Nos. 581, 582, and 582–A.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–344 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Amendment of License

January 2, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 135.

c. *Date Filed:* December 26, 1996.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Oak Grove Project.

f. *Location:* Clackamas County, Estacada, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary Hackett, Portland General Electric Company, 121 S.W. Salmon Street, Portland, OR 97204.

i. *FERC Contact:* Susan Tseng, (202) 219–2798.

j. *Comment Date:* February 3, 1997.

k. *Description of Project:* The licensee proposes to modify the Frog Lake embankment dam of the Oak Grove Hydroelectric Project. Frog Lake is the forebay of the powerhouse and is formed by two embankment dams. In order to control significant seepage and cracking of the reservoir bottom, the licensee proposes to reconfigure Dam B by installing a new central embankment and removing the western portion of Dam B. The new embankment would reduce Frog Lake from about 13 acres to 6 acres and reduce the storage from approximately 446 acre-feet to about 175 acre-feet.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–341 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3195–068 California]

Sayles Hydro Associates; Notice of Availability of Draft Environmental Assessment

January 2, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed an application to surrender the license for the Sayles Flat Hydroelectric Project, No. 3195–068. The Sayles Flat Project is located on the South Fork American River in El Dorado County, California. A Draft Environmental Assessment (DEA) was prepared for the surrender request. The DEA finds that approving the plan would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Public Reference Branch, Room 1C–1, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comments within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 3195–068 to all comments. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 97–342 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–162–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

January 2, 1997.

Take notice that on December 19, 1996, Southern Natural Gas Company (Southern), 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP97–162–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon by retiring and dismantling the Berry Meter Station (Berry M.S.), located in Tuscaloosa County, Alabama, under the blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that the Berry M.S. was constructed and installed pursuant to a certificate issued in Docket No. CP69–24, by order dated November 11, 1968. Southern notes that the Berry M.S. was utilized to provide natural gas service to the Gas Board of the Town of Berry (Berry). Berry's sales service agreement with Southern expired on October 1, 1992. Southern notes that effective November 1, 1993, it abandoned its existing sales service to Berry pursuant to the terms of Commission Order No. 636 in Docket No. RS92–10. Southern asserts that since that time, it has not provided any natural gas service to Berry, and Berry disconnected its distribution facilities from Southern's measurement facilities. Southern Claims that at the time the sales service was abandoned, it proposed to leave the measurement facilities in place in the event Berry desired to receive transportation service from Southern. Southern states that no transportation service has been requested, and the station has been out of service since October 15, 1993. According to Southern, Berry has confirmed that it no longer desires natural gas service from Southern and that it has other natural gas suppliers. Southern states that Berry does not object to the abandonment of the facilities.

Southern seeks authorization to abandon the Berry M.S. by retiring and dismantling all of the above-ground facilities, including the meter runs, pipeline, valves, building, and fence. Southern alleges that the abandonment will decrease maintenance costs for Southern. Southern contends that the abandonment will not result in any termination of an existing service. Southern states that the proposed abandonment is not prohibited by any of its existing tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–339 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 3, 1997.

Take notice that on December 31, 1996 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective February 1, 1997.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account.

Texas Eastern states that these revised tariff sheets are being filed to reflect a small increase in Texas Eastern's EPC Adjustment effective February 1, 1997. Texas Eastern states that the primary cause of the rate change is attributable to the lower negative balance of the Deferred EPC Account as of October 31, 1996 as compared to the negative balance of the Deferred EPC account as of October 31, 1995. Texas Eastern states that it has utilized its latest actual twelve months of electric power costs and its latest actual twelve months service quantities as its projections for the future period. Texas Eastern states that the impact of this EPC filing on rates at February 1, 1997 for typical long haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) equates to an overall increase of $0.0076/dth of which $0.0040/dth impacts the reservation component of rates and $0.0036/dth impacts the usage component.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–374 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–161–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

January 2, 1997.

Take notice that on December 19, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa Oklahoma 74101, filed in the above docket, a request pursuant to Sections 157.205 157.212(a) and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to relocate and replace the Kansas Gas & Electric Burden town border meter setting and appurtenant facilities,

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located in Cowley County, Kansas, under the authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that the projected volume of delivery through the relocated facilities will remain unchanged. The total project cost is estimated to be $23,780.

WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–338 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC97–10–000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 31, 1996.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. EC97–10–000]

Take notice that on December 23, 1996, Consolidated Edison Company of New York, Inc. (Con Edison) submitted an application pursuant to Section 203 of the Federal Power Act for authority to carry out a "disposition of facilities" that would be deemed to occur as the result of a proposed corporate reorganization that would create a holding company. The proposed reorganization is described more fully in the application, which is on file with the Commission and open to public inspection.

The application states that Con Edison would become a subsidiary of the proposed holding company. It also states that the proposed holding company structure is intended to be a response to the New York Public Service Commission requirements in its "competitive opportunities" proceeding. It further states that the purposes of the proposed transaction are to better position Con Edison for industry restructuring, to increase financial flexibility and to better insulate utility customers from the risks of non-utility ventures. The application declares that the proposed Transaction will not affect jurisdictional facilities, rates or services.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Nantahala Power & Light Company

[Docket No. ER96–1484–001]

Take notice that on December 13, 1996, Nantahala Power & Light Company tendered for filing its refund report in the above-referenced docket.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Anoka Electric Cooperative

[Docket No. ER96–2387–000]

Take notice that on December 20, 1996, Anoka Electric Cooperative (Anoka) submitted for filing an amendment to its filing in this docket.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Wholesale Power Services, Inc.

[Docket Nos. ER96–2504–001 and ER96–2506–001]

Take notice that on December 2, 1996, Wholesale Power Services, Inc. tendered for filing its compliance filing in the above-referenced dockets.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER97–300–000]

Take notice that on December 20, 1996, New England Power Company tendered for filing an amendment to its filing in this docket.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light

[Docket No. ER97–484–000]

Take notice that on December 23, 1996, Pennsylvania Power & Light Company (PP&L) filed a Service Agreement, dated December 20, 1996, with PP&L for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff (the Tariff). The Service Agreement adds PP&L as an eligible customer under its own Tariff.

PP&L requests an effective date of July 9, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to the Pennsylvania Public Service Commission.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power & Light Company

[Docket No. ER97–814–000]

Take notice that on December 16, 1996, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 6 to its Electric Service Agreement with the City of Keewatin, Minnesota (Keewatin). MP requests an effective date of sixty days from the filing date. MP states that the amendment extends the terms of the Agreement to December 31, 2011.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER97–815–000]

Take notice that on December 16, 1996, Florida Power & Light Company (FPL), filed the Contract for purchases and Sales of Power and Energy between FPL and National Gas & Electric L.P. FPL requests an effective date of December 20, 1996.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER97–816–000]

Take notice that on December 16, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with AES Power, Inc. for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

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10. Southern Indiana Gas and Electric Company

[Docket No. ER97–817–000]

Take notice that on December 16, 1996, Southern Indiana Gas and Electric Company (SIGECO), submitted for filing a Notice of Cancellation of the following interchange agreements.

LG&E Power Marketing, Inc., Enron Power Marketing, Inc., AES Power, Inc., Louis Dreyfus Electric Power, Inc., InterCoast Power Marketing Company, Heartland Energy Services, Inc., Catex Vitol Electric, L.L.C., Electric Clearinghouse, Inc., Rainbow Energy Marketing Corp., Industrial Energy Applications, Inc., Koch Power Services, Inc.

[Rate Schedule No. 46, Rate Schedule No. 47, Rate Schedule No. 48, Rate Schedule No. 49, Rate Schedule No. 50, Rate Schedule No. 51, Rate Schedule No. 52, Rate Schedule No. 53, Rate Schedule No. 54, Rate Schedule No. 55, Rate Schedule No. 56]

Copies of this filing have been served upon each of the parties to the agreements.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER97–818–000]

Take notice that on December 16, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to MidCon Power Services Corp. and The Power Company of America, L.P., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreements can be made effective as of December 13, 1996.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER97–819–000]

Take notice that on December 16, 1996, Duke Power Company tendered for filing copies of estimated billing information for calendar year 1997 to which the Southwestern Power Administration will be billed by Duke Power Company under Article II of the Settlement in Docket No. ER90–315–000.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER97–820–000]

Take notice that on December 16, 1996, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Delmarva Power & Light Company, Engelhard Power Marketing, Inc., Plum Street Energy Marketing, Inc., and The Power Company of America, L.P. (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of December 17, 1996 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Interstate Power Company

[Docket No. ER97–821–000]

Take notice that on December 17, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 146.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Power & Light Company

[Docket No. ER97–822–000]

Take notice that on December 17, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 26, 1996, with PanEnergy Trading and Marketing Services, L.L.C. (PanEnergy) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds PanEnergy as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1996 for the Service Agreement.

PP&L states that copies of this filing have been supplied to PanEnergy and to the Pennsylvania Public Utility Commission.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER97–823–000]

Take notice that on December 17, 1996, New England Power Company, filed a Service Agreement with Freedom Energy Company, L.L.C. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER97–824–000]

Take notice that on December 17, 1996, New England Power Company filed a Service Agreement with Consolidated Edison Company of New York, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Company

[Docket No. ER97–825–000]

Take notice that on December 17, 1996, New England Power Company, filed a Service Agreement with Cinergy Services, Inc. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Company

[Docket No. ER97–826–000]

Take notice that on December 17, 1996, New England Power Company, filed a Service Agreement with Consolidated Edison Company of New York, Inc., under NEP's FERC Electrict Tariff, Original Volume No. 5.

Comment date: January 14, 1997, in accordance with Stardard Paragraph E at the end of this notice.

20. Pennsylvania Power & Light Company

[Docket No. ER97–827–000]

Take notice that on December 17, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 29, 1996, with AYP Energy, Inc. (AYP) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds AYP as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to AYP and to the Pennsylvania Public Utility Commission.

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Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Resource Energy Services Company, LLC

[Docket No. ER97–828–000]

Take notice that on December 17, 1996, Resource Energy Services Company, LLC (Resource Energy), petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) acceptance of Resource Energy's Rate Schedule FERC No. 1; (3) waiver of certain Commission Regulations; and (4) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in Resource Energy's petition on file with the Commission. Resource Energy has requested expedited action on its petition.

Resource Energy states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where Resource Energy acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–829–000]

Take notice that on December 17, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Northeast Utilities Service Company (NEU).

Con Edison states that a copy of this filing has been served by mail upon NEU.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–830–000]

Take notice that on December 17, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Noram Energy Services, Inc. (NES).

Con Edison states that a copy of this filing has been served by mail upon Noram.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER97–831–000]

Take notice that on December 17, 1996, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with PanEnergy Trading and Market Services for service under its non-firm point-to-point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Pennsylvania Power & Light Company

[Docket No. ER97–832–000]

Take notice that on December 17, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 12, 1996, with WPS Energy Services, Inc. (WPS) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds WPS as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to WPS and to the Pennsylvania Public Utility Commission.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Pennsylvania Power & Light Company

[Docket No. ER97–833–000]

Take notice that on December 17, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 5, 1996, with TransCanada Power Corp. (TransCanada) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds TransCanada as an eligible customer under the Tariff.

PP&L requests an effective date of December 17, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to TransCanada and to the Pennsylvania Public Utility Commission.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Central Maine Power Company

[Docket No. ER97–834–000]

Take notice that on December 17, 1996, Central Maine Power Company (CMP), tendered for filing a service agreement for sale of capacity and/or energy entered into with Southern Energy Marketing, Inc. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Central Maine Power Company

[Docket No. ER97–835–000]

Take notice that on December 17, 1996, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Plum Street Energy Marketing, Inc. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–836–000]

Take notice that on December 17, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. El Paso Electric Company

[Docket No. ER97–846–000]

Take notice that on December 18, 1996, El Paso Electric Company tendered for filing Supplement No. 3 to Rate Schedule FERC No. 80, the Long Term Firm Transmission Service Agreement between EPE and Plains Electric Generation and Transmission Cooperative, Inc.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Central Minnesota Municipal Power Agency

[Docket No. OA97–90–000]

Take notice that on December 16, 1996, Central Minnesota Municipal Power Agency and its members cities of Delano, Glencoe, Janesville, Kenyon, Lake Crystal, Mountain Lake and Truman, Minnesota tendered for filing a request for waiver of separation of functions requirement.

Comment date: January 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Minnesota Power & Light Company

[Docket No. OA97–91–000]

Take notice that on December 16, 1996, for the purpose of clarifying the unbundling of its wholesale generation, transmission, and ancillary services rates pursuant to the Commission's Order No. 888 for transactions under its Wholesale Coordination Sales Tariff, WCS–2, Docket No. ER95–1823–000, as FERC Electric Tariff Original Volume No. 5, Original Sheets 1–4, Minnesota Power & Light Company (Company) filed revised Sheet Nos. 2 and 3 to the WCS–2 tariff for the information of, and, to the extent required under 18 CFR 35.28(c)(2)(ii), section 206 of the Federal Power Act, other applicable law and regulation, compliance with the Commission's Order No. 888.

Comment date: January 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Minnesota Power & Light Company

[Docket No. OA97–92–000]

Take notice that on December 16, 1996, for the purpose of unbundling its wholesale rates pursuant to Order No. 888, Minnesota Power & Light Company filed Exhibit B (Unbundled Power Sale Rate Information, Pages 1–4) as an addendum to Supplement No. 4 to the Electric Service Agreement between Minnesota Power & Light Company and the City of Buhl, Minnesota, Docket No. ER96–3007–000 modifying Rate Schedule FERC No. 121, (Buhl Supplement) to the extent required under 18 CFR 35.28(c)(2)(ii), section 206 of the Federal Power Act, other applicable law and regulation. The Company also requested that the Commission accept the Buhl Supplement for filing previously submitted in Docket No. ER96–3007–000 supplemented with this rate unbundling information.

Comment date: January 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Inland Power & Light Company

[Docket No. OA97–94–000]

Take notice that on December 17, 1996, Inland Power & Light Company tendered for filing an Application for Waiver of Reciprocity Requirement, in accordance with Section 35.28(e)(2) of the Rules of the Federal Energy Regulatory Commission (18 CFR 35.28(e)(2)), or in the Alternative, Application for Waiver of Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Commission, 18 CFR 35.28(d), as more fully set forth in the Application which is on file with the Commission and open to public inspection.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. OA97–95–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 18, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and The Power Company of America, L.P.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on The Power Company of America, L.P., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Cinergy Services, Inc.

[Docket No. OA97–96–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 18, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Coral Power, L.L.C.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Coral Power, L.L.C., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Atlantic City Electric Company

[Docket No. OA97–97–000]

Take notice that on December 18, 1996, Atlantic City Electric Company tendered for filing Standards of Conduct pursuant to Order No. 889.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Vermont Electric Power Company, Inc.

[Docket No. OA97–98–000]

Take notice that on December 18, 1996, Vermont Electric Power Company, Inc. (VELCO), on behalf of itself and other transmitting utilities in the state of Vermont, submitted for filing pursuant to Section 35.28(d) of the Commission's Regulations, as amended by Order No. 888, *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, FERC Stats. & Regs. ¶ 31,036 (1996), an application for limited waiver of certain obligations relating to the operation of an Open Access Same-Time Information System (OASIS) under Order No. 889, *Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct*, FERC Stats. & Regs. ¶ 31,035 (1996).

VELCO states that it has served a copy of its compliance filing on each of the Vermont distribution utilities served by VELCO, the Vermont Department of Public Service, and the Vermont Public Utility Board.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Montana-Dakota Utilities Company

[Docket No. OA97–99–000]

Take notice that on December 19, 1996, Montana-Dakota Utilities Company tendered for filing a request for waiver of Order 889 to the Standards of Conduct.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Cinergy Services, Inc.

[Docket No. OA97–100–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between PSI and Big Rivers Electric Corporation.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order

No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Big Rivers Electric Corporation, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Cinergy Services, Inc.

[Docket No. OA97–101–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, the Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Central Illinois Public Service Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order NO. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Central Illinois Public Service Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Cinergy Services, Inc.

[Docket No. OA97–102–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing, on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Northern Indiana Public Service Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Northern Indiana Public Service Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Cinergy Services, Inc.

[Docket No. OA97–103–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Indiana Michigan Power Company.

The modications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Indiana Michigan Public Service Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Cinergy Services, Inc.

[Docket No. OA97–104–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between PSI and American Municipal Power—Ohio, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on American Municipal Power—Ohio, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. Carolina Power & Light Company

[Docket No. OA97–105–000]

Take notice that Carolina Power & Light Company) on December 19, 1996, tendered for filing written procedures implementing Order No. 889 Standards of Conduct.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

46. Cinergy Services, Inc.

[Docket No. OA97–106–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Electric Agreement between PSI and Tennessee Valley Authority.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Tennessee Valley Authority, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–337 Filed 1–7–97; 8:45 am]

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[Docket No. ER97–326–000, et al.]

West Texas Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

January 2, 1997.

Take notice that the following filings have been made with the Commission:

1. West Texas Utilities Company

[Docket No. ER97–326–000]

Take notice that on December 27, 1996, West Texas Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER97–632–000]

Take notice that on December 12, 1996, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. IGM, Inc.

[Docket No. ER97–742–000]

Take notice that on December 10, 1996, IGM, Inc., tendered for filing a Notice of Cancellation of FERC Electric Rate Schedule No. 1.

Comment date: January 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric & Gas Company

[Docket No. ER97–837–000]

Take notice that on December 17, 1996, Public Service Electric & Gas Company (PSE&G), tendered for filing an application for authorization to sell electric capacity and energy at market-based rates.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Oklahoma, Southwestern Electric Power Co., Central Power and Light Company, and West Texas Utilities Company.

[Docket No. ER97–838–000]

Take notice that on December 17, 1996, Public Service Company of Oklahoma, Southwestern Electric Power Company, Central Power and Light Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing service agreements under which they will provide transmission service to Sonat Power Marketing L.P. (Sonat) and Vitol Gas & Electric L.L.C. (Vitol) under their point-to-point transmission service tariffs. The December 17, 1996 filing also includes a Notice of Cancellation of Service Agreements that terminates obsolete service agreements. The CSW Operating Companies request that the filing be accepted to become effective as of December 3, 1996.

The CSW Operating Companies state that a copy of the filing has been served on Sonat and Vitol.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER97–839–000]

Take notice that on December 17, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Construction Agreement dated November 11, 1996 (Agreement) between PacifiCorp and Eugene Water & Electric Board (EWEB).

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of one day after the date the Commission receives this filing be assigned to the Agreement.

Copies of this filing were supplied to EWEB, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (53) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Great Bay Power Corporation

[Docket No. ER97–840–000]

Take notice that on December 17, 1996, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Commonwealth Electric Company and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The revised form of service agreement is proposed to be effective December 15, 1996.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. NESI Power Marketing, Inc.

Docket No. ER97–841–000

Take notice that on December 17, 1996, NESI Power Marketing, Inc. (NESI PM), filed its Rate Schedule providing for wholesale sales of power and energy by NESI PM to eligible purchasers at agreed upon rates.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER97–842–000]

Take notice that on December 18, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric tariff, First Revised Volume No. 2, an executed Service Agreement with Amoco Energy Trading Corporation.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective December 1, 1996.

A copy of this filing was caused to be served upon Amoco Energy Trading as noted in the filing letter.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER97–843–000]

Take notice that on December 18, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which American Electric Power Service Corporation, as agent for AEP Companies, will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 9, 1996.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER97–844–000]

Take notice that on December 18, 1996, UtiliCorp United Inc. (UtiliCorp) filed service agreements with CNG Power Services for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. National Gas & Electric L.P.

[Docket No. ER97–845–000]

Take notice that on December 17, 1996, National Gas & Electric L.P. (NG&E), tendered for filing with the Federal Energy Regulatory Commission service agreements with Western Area Power Administration, dated November 20, 1996, and Southwestern Power Administration, dated November 26,

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1996. Under the tendered service agreements, NG&E and Western Area Power Administration agree to contracts enabling the sale and transmission of nonfirm electric service; and NG&E and Southwestern Power Administration agree to a contract to enable the transmission of non-Federal power on an interruptible basis. NG&E requests an effective date of November 20, 1996, for the Western Area Power Administration service agreements, and December 1, 1996 for the Southwestern Area Power Administration service agreement.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER97–847–000]

Take notice that on December 18, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between AYP Energy, Inc. and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to AYP Energy, Inc. as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Pennsylvania Power & Light Company

[Docket No. ER97–848–000]

Take notice that on December 18, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 10, 1996 with WPS Energy Services, Inc. (WPS) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds WPS as an eligible customer under the Tariff.

PP&L requests an effective date of December 18, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to WPS and to the Pennsylvania Public Utility Commission.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER97–849–000]

Take notice that on December 18, 1996, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Heartland Energy Services, Inc. as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon Heartland Energy Services, Inc., and the Public Utilities Commission of Ohio.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Maine Power Company

[Docket No. ER97–850–000]

Take notice that on December 18, 1996, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with Northeast Utilities Service Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. H.Q. Energy Services (US) Inc.

[Docket No. ER97–851–000]

Take notice that on December 19, 1996, H.Q. Energy Services (US) Inc., (HQUS), tendered for filing a petition for an order accepting its proposed FERC Electric Rate Schedule No. 1, authorizing market-based rates, and granting waivers of certain Commission Regulations and granting certain blanket approvals. HQUS has requested that its rate schedule be accepted for filing and allowed to become effective as of the date of filing. HQUS intends to engage in transactions in which it will sell electric power at rates and on terms and conditions negotiated with the purchaser.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Ontario Hydro Interconnected Markets Inc.

[Docket No. ER97–852–000]

Take notice that on December 18, 1996, Ontario Hydro Interconnected Markets Inc. (OHIM), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

OHIM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where OHIM sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in the petition, OHIM is an affiliate of Ontario Hydro, an integrated electric utility serving customers in Ontario, Canada.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER97–853–000]

Take notice that on December 19, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing executed umbrella service agreements with Aquila Power Corporation, Baltimore Gas & Electric Company, Coral Power, L.L.C., Enron Power Marketing, Inc., Niagara Mohawk Power Corporation, Plum Street Energy Marketing, USGen Power Services, L.P., and Virginia Electric & Power Company under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER97–854–000]

Take notice that on December 17, 1996, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Cinergy under Rate GSS.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER97–855–000]

Take notice that on December 19, 1996, New England Power Company (NEP), filed a Security Analysis Services Agreement and the REMVEC II Agreement. The REMVEC II Agreement establishes REMVEC II, an organization that will operate as a satellite of the New England Power Exchange. Under the Security Analysis Services Agreement, NEP will provide security

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analysis services to the REMVEC II participants.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Montaup Electric Company

[Docket No. ER97–856–000]

Take notice that on December 19, 1996, Montaup Electric Company (Montaup), requested waiver of § 35.14 of the Commission's Regulations in order to flow through the wholesale fuel adjustment clause as a credit $88,052 in proceeds received by it from the Environmental Protection Agency (EPA) from the sale of Clean Air Act emissions allowances in 1994 and 1995. Montaup requests that it be allowed to flow through those proceeds by deducting that amount from current period fuel costs in determining the fuel adjustment as applied to service in the first month after this request for waiver is granted. This request is made upon the recommendation of the Office of Chief Accountant in a draft audit report.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER97–857–000]

Take notice that on December 19, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to the United States Department of Interior, Bureau of Indian Affairs, Colorado River Agency (the Agency) under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on the Agency and the Arizona Corporation Commission.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–379 Filed 1–7–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5674–3]

Access to Confidential Business Information by Booz, Allen & Hamilton

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz, Allen & Hamilton of McLean, VA and its team subcontractor PRC–EMI, of McLean, VA access to information which has been submitted to EPA under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information.

DATES: EPA will begin transferring data to Booz, Allen & Hamilton and its team subcontractor PRC–EMI five working days from the date of this notice.

ADDRESSES: Send or deliver written comments to Charles Young, Superfund Accounting Branch, Financial Management Division, Office of the Comptroller (3303F), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Cooke, Chief, Superfund Accounting Branch (3303F), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Telephone (202) 260–9268.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W4–0010 Booz, Allen & Hamilton and its team subcontractor PRC–EMI will provide support services and resources to the Environmental Protection Agency to (1) develop an intergrated system to perform on-screen reconciliation of documented expenditures from the accounting systems to the electronic images that support the expenditures and (2) perform other administrative functions in support of CERCLA in the Research Triangle Park, NC which includes, but is not limited to, indexing and scanning of documents into the Superfund Cost Recovery Imaging Processing System (SCRIPS); data preparation for data entry; data entry into local PC applications; document retrieval and quality assurance review.

In providing this support, Booz, Allen & Hamilton and PRC–EMI employees will have access to Agency documents for the purpose of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking and more. The documents to which Booz, Allen & Hamilton will have access potentially include all financial documents submitted under CERCLA. Some of these documents may contain information which may be claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR Part 2, Subpart B, EPA has determined that Booz, Allen & Hamilton and PRC–EMI requires access to Confidential Business Information to provide the support and services required under the contract. These regulations provide for five working days notice before contractors are given CBI.

Booz, Allen & Hamilton and PRC–EMI will be required by contract to protect confidential information. These documents are maintained in EPA office and file space.

Dated: December 20, 1996.

Kathryn S. Schmall,

Acting Chief Financial Officer.

[FR Doc. 97–412 Filed 1–7–97; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00205; FRL–5581–8]

Notice of Availability of FY 1997 Multimedia Environmental Justice Through Pollution Prevention Grant Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting grant proposals under the Environmental Justice Through Pollution Prevention (EJP2) grant program. EPA anticipates that $4.2 million will be available in Fiscal Year 1997. The purpose of this program is to support pollution prevention approaches that address environmental justice concerns in affected communities. The grant funds will support (1) local environmental, environmental justice, community grass-roots organizations, as well as tribal governments that promote environmental justice using pollution prevention as the preferred approach, and (2) national and regional organizations who will, in partnership with local environmental, environmental justice, community grass-roots organizations, as well as tribal governments, promote environmental justice using pollution prevention as the preferred approach.

DATES: All applications must be received by EPA's contractor, ERG, located in Arlington, Virginia, by April 15, 1997.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the EJP2 grant program guidance and application package, or to obtain more information regarding the EJP2 grant program, please contact Chen Wen at (703) 841–0483. A complete electronic copy of the EJP2 grant program guidance and application package is also available on the EPA Homepage on the Internet. The EJP2 grant program guidance and application package is located at: http:/www.epa.gov/opptintr/ejp2

SUPPLEMENTARY INFORMATION:

I. Scope and Purpose of the EJP2 Grant Program

The purpose of the FY 1997 EJP2 grant program is to support the use of pollution prevention approaches to address the environmental problems of minority communities and/or low-income communities. This grant program is designed to fund projects which have a direct impact on affected communities. Funds awarded must be used to support pollution prevention programs in minority and/or low-income communities. The Agency strongly encourages cooperative efforts between communities, business, industry, and government to address common pollution prevention goals. Projects funded under this grant may involve public education, training, demonstration projects, public-private partnerships, or approaches to develop, evaluate, and demonstrate non-regulatory strategies and technologies.

II. Definition of Environmental Justice and Pollution Prevention

Environmental justice is defined by EPA as the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, programs, and policies. Fair treatment means that no racial, ethnic, or social economic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises, and from the execution of federal, state, local, and tribal programs and policies.

The Pollution Prevention Act of 1990 establishes a hierarchy of environmental preferences. These practices include, in order of preference:

- Pollution prevention
- Recycling
- Treatment
- Disposal

Pollution prevention means source reduction. That is, any practice that reduces or eliminates any pollutant at the source of generation prior to recycling, treatment, or disposal. Pollution prevention also includes practices that reduce or eliminate the creation of pollutants through:

Increased efficiency in the use of raw materials, energy, water, or other resources; and

Protection of natural resources by conservation.

This grant program is focused on using the top of the hierarchy--pollution prevention--to bring about better environmental protection.

III. Eligibility

Any affected, non-profit community organizations with section 501(c)(3) or section 501(c)(4) [1] IRS tax status, or state and federally recognized tribal organizations may submit an application upon the publication of this solicitation. "Non-profit organization" is defined as any corporation, trust, association, cooperative, or other organizations that is:

(1) Operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest.

(2) Not organized primarily for profit.

(3) Uses its net proceeds to maintain, improve, and/or expand its operations. While state and local governments and academic institutions are also eligible to receive grants, preference will be given to private, non-profit, community-based/grassroots organizations, and state and federally recognized tribal organizations. Organizations must be incorporated by April 15, 1997, in order to be eligible to receive funds. Private businesses, federal agencies, and individuals are ineligible for this grant. Organizations excluded from applying directly, as well as those inexperienced in grant-writing, are encouraged to develop partnerships and prepare joint proposals with national, regional, or local organizations.

No applicant can receive two grants for the same project at one time. EPA will consider only one proposal for a given project. Applicants may submit more than one application as long as the applications are for separate and distinct projects.

Organizations seeking funds from the EJP2 grant program can request up to $100,000 for local projects, and up to $250,000 for projects that involve multiple communities located in more than one EPA Region, or projects that are national in scope. In accordance with 40 CFR parts 30 and 23, EPA no longer requires cost sharing or matching under this grant program as it applies to institutions of higher education, hospitals, and other non-profit organizations, unless otherwise required by statute, regulation, Executive Order, or official Agency policy. Therefore, any matching requirements may need to be determined on a case-by-case basis depending upon the substantive focus of the grant proposal. Applicants that are governmental entities, such as state and local governments, are subject to a twenty-five (25) percent matching or cost-sharing requirement. Matching or cost-sharing requirement may be satisfied through either cash or in-kind contributions.

Dated: December 23, 1996.

William H. Sanders, III

Director, Office of Pollution, Prevention, and Toxics.

[FR Doc. 97–414 Filed 1–7–97; 8:45 am]

BILLING CODE 6560–50–F

[1] As a result of the Lobbying Disclosure Act of 1995, EPA (and other federal agencies) may not award grants to non-profit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a secton 501(c)(4) organization without distinguishing between lobbying funded by federal money and lobbying funded by other sources.

[PF–688; FRL–5582–6]

Interregional Research Project Number 4; Pesticide Tolerance Petitions Filing

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: This notice announces the filing of amendments to pesticide petitions 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162. These amendments propose to extend the effective date for time-limited tolerances established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also referred to in this document as sethoxydim) and its metabolites in or on various raw agricultural commodities. This notice contains a summary of the amended petition prepared by BASF Corporation (BASF) and submitted by the Interregional Research Project Number 4 (IR–4), the petitioner.

DATES: Comments, identified by the docket number [PF–688; FRL–5582–6], must be received on or before February 7, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St. SW.,

Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: OPP-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF–688. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783, e-mail:jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received amendments to pesticide petitions 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162 from the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. These amendments propose, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 by extending the effective date to expire on December 31, 1998, for time-limited tolerances established for residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus at 4.0 parts per million (ppm), carrot at 1.0 ppm, cranberry and endive at 2.0 ppm, and peppermint and spearmint at 30 ppm. Registration for use of sethoxydim on endive is limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

EPA has determined that the amendment contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The nature of the residue is adequately understood, and practical and adequate analytical methods are available for enforcement purposes. Enforcement methods for sethoxydim are listed in the Pesticide Analytical Manual, Volume II (PAM II). Enforcement methods have also been submitted to the Food and Drug Administration for publication in PAM II.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, IR–4 submitted a summary of amendments to the pesticide petitions and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary was prepared by and represents the views of BASF; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Toxicological Profile

1. *Data summary.* A summary of toxicological studies for sethoxydim follows:

i. A 1–year feeding study with dogs fed diets containing 0, 8.8C/9.41, 17.5/19.9, and 110/129 milligrams (mg)/kilogram (kg)/day (males/females) with a no-observed-effect-level (NOEL) of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

ii. A 2–year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360 ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice.

iii. A 2–year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOEL greater than or equal to 18 mg/kg/day (highest dose tested). There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and an MTD was not achieved.

iv. A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, and 1,080 ppm (equivalent to 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve an MTD or define a lowest effect level (LEL). Slight decreases in body weight in rats at the 1,080-ppm dose level, although not biologically significant, support a free-standing no-observed-adverse-effect-level (NOAEL) of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

v. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 mg/kg/day with a maternal NOAEL of 180 mg/kg/day and a maternal LEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day and a developmental LEL of 650 mg/kg/day (21 to 22 percent decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

vi. A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOEL of 320 mg/kg/day and a maternal LOEL of 400 mg/kg/day (37 percent reduction in

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body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOEL greater than 400 mg/kg/day (highest dose tested).

vii. A 2–generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

viii. Mutagenicity studies including: Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA1537, with and without metabolic activity; a Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*; and recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100 percent.

ix. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

2. *Chronic toxicity.* Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for sethoxydim at 0.09 milligrams (mg)/kilogram (kg) bw/day. The RfD for sethoxydim is based on a 1–year feeding study in dogs with a threshold no-observed effect level (NOEL) of 8.86 mg/kg/day and an uncertainty factor of 100.

3. *Acute toxicity.* Based on the available acute toxicity data, sethoxydim does not pose any acute dietary risks. Several acute toxicology studies place technical sethoxydim in acute toxicity category IV for primary eye and dermal irritation and acute toxicity category III for acute oral, dermal, and inhalation. The dermal sensitization-guinea pig study was waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18 percent active ingredient).

4. *Carcinogenicity.* These tolerances were established as time-limited tolerances since an acceptable carcinogenicity study is needed in one rodent species. A repeat chronic feeding/carcinogenicity study in rats was submitted to EPA in November of 1995 and is awaiting review. The Agency will reassess sethoxydim tolerances based on the outcome of the rat chronic feeding/carcinogenicity study and, if appropriate, will establish permanent tolerances for asparagus, carrot, cranberry, endive, peppermint and spearmint. In the interim, there is little risk from the proposed time extension for these uses of sethoxydim, since available studies in rats and mice indicate no carcinogenic effects, there are adequate data to establish a RfD, existing tolerances (including these time-limited tolerances) do not exceed the RfD, and the tolerances for asparagus, carrot, cranberry, endive, and mint utilize less than 1 percent of the Reference Dose. Thus a cancer risk assessment is not necessary.

B. Aggregate Exposure

For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances of sethoxydim on: asparagus at 4.0 ppm, carrot at 1.0 ppm, cranberry and endive at 2.0 ppm, and peppermint and spearmint at 30.0 ppm. (The TMRC is a "worst case" estimate of dietary exposure since it is assumed that 100. percent of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels.) The TMRC from existing tolerances for the overall U.S. population is estimated at 0.0311961 mg/kg bw/day, or 36 percent of the RfD. Dietary exposure to residues of sethoxydim in or on asparagus, carrot, cranberry, endive and mint increases the TMRC by 0.000701 mg/kg bw/day and accounts for less than 1 percent of the RfD for the overall U.S. population. EPA estimates indicate that dietary exposures will not exceed the RfD for any population subgroup for which EPA has data [See Proposed Rule at 60 FR 13941, March 15, 1995]. This exposure assessment relies on very conservative assumptions—100 percent of crops will contain sethoxydim residues and those residues would be at the level of the tolerance which results in an overestimate of human exposure.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, BASF does not anticipate exposure to residues of sethoxydim in drinking water. There is no established Maximum Concentration Level (MCL) for residues of sethoxydim in drinking water under the Safe Drinking Water Act (SDWA).

EPA has not estimated non-occupational exposure for sethoxydim. Sethoxydim is labeled for use by homeowners on the following use sites: flowers, evergreens, shrubs, trees, fruits, vegetables, ornamental ground covers, and bedding plants. Hence, the potential for non-occupational exposure to the general population exists. However, these use sites do not appreciably increase exposure. Protective clothing requirements, including the use of gloves, adequately protect homeowners when applying the product. The product may only be applied through hose-end sprayers or tank sprayers as a 0.14% solution. Sethoxydim is not a volatile compound so inhalation exposure during and after application would be negligible. Dermal exposure would be minimal in light of the protective clothing and the low application rate. Post-treatment (re-entry) exposure would be negligible for these use sites as contact with treated surfaces would be low. Dietary risks from treated food crops are already adequately regulated by the established tolerances. The additional uses endive, asparagus , carrots, cranberries, peppermint, and spearmint will not increase the non-occupational exposure appreciably, if at all. Thus, BASF believes that the potential for non-occupational exposure to the general population is insignificant.

BASF also considered the potential for cumulative effects of sethoxydim and other substances that have a common mechanism of toxicity. BASF is aware of one other active ingredient which is structurally similar, clethodim. However, BASF believes that consideration of a common mechanism of toxicity is not appropriate at this time. BASF does not have any reliable information to indicate that toxic effects produced by sethoxydim would be cumulative with clethodim or any other chemical; thus, BASF is considering only the potential risks of sethoxydim in its exposure assessment.

C. Determination of Safety for U.S. Population

Reference Dose (RfD). Using the conservative exposure assumptions described above, based on the completeness and the reliability of the toxicity data, EPA has estimated that aggregate exposure to sethoxydim will utilize 37 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

D. Determination of Safety for Infants and Children

1. *Developmental toxicity.* Developmental toxicity was observed in a developmental toxicity study using rats but was not seen in a developmental toxicity study using rabbits. A developmental NOAEL of 180 mg/kg/day and developmental LEL of 650 mg/kg/day were established for the rat study. Effects noted in the rat study included decrease in fetal weights (21 to 22 percent), filamentous tail, lack of tail (due to absence of sacral and/or caudal vertebrae), and delayed ossification (hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes). The developmental NOEL for the rabbit study was greater than 400 mg/kg/day and was the highest dose tested. The developmental effects observed in the rat study are believed to be secondary effects resulting from maternal stress.

2. *Reproductive toxicity.* A two-generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) produced no reproductive effects during the course of the study. Although the dose levels were insufficient to elicit a toxic response, the Agency has considered this study usable for regulatory purposes and has established a free-standing NOEL of 3,000 ppm (approximately 150 mg/kg/day) [See Proposed Rule at 60 FR 13941, March 15, 1995].

RFD. Based on the demonstrated lack of significant developmental or reproductive toxicity BASF believes that the RfD used to assess safety to children should be the same as that for the general population, 0.09 mg/kg/day. Using the conservative exposure assumptions described above, BASF has concluded that the most sensitive child population is that of children ages 1 to 6. BASF calculates the exposure to this group to be less than 70 percent of the RfD for all uses (including those proposed in this document). The proposed tolerances in endive, asparagus, carrot, cranberry, peppermint and spearmint represent an exposure to this group of less than 1 percent. Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of sethoxydim, including dietary exposure and all other non-occupational exposures.

3. *Endocrine effects.* No special studies investigating potential estrogenic or endocrine effects of sethoxydim have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies.

II. Other Considerations

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry from the proposed uses of sethoxydim on asparagus, cranberries, endive, and mint; there are no livestock feed commodities associated with these commodities. Any secondary residues occurring in meat, fat, meat byproducts and milk of cattle, goats, hogs, horses and sheep from the proposed use on carrots will be covered by existing tolerances. There are no residues expected to occur in poultry meat, meat byproducts, fat or eggs since carrots are not considered a poultry feed item. There are no Codex maximum residue levels established for residues of sethoxydim on asparagus, carrots, cranberry, endive, or mint.

III. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notation indicating the docket number, [PF–688; FRL–5582–6]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PF–688; FRL–5582–6] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Authority: 21 U.S.C. 346a.

Dated: December 31, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–415 Filed 1–7–97; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 23, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gib S. Nichols, Helena, Montana; to acquire an additional 6.4 percent, for a

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total of 28.1 percent, of the voting shares of Flathead Holding Company of Bigfork, Bigfork, Montana, and thereby indirectly acquire Flathead Bank of Bigfork, Bigfork, Montana.

Board of Governors of the Federal Reserve System, January 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–367 Filed 1–7–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma; to acquire 100 percent of the voting shares of First TexCorp, Inc., Dallas, Texas, and thereby indirectly acquire First Texas Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, January 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–369 Filed 1–7–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; to engage through its subsidiary, BNY Capital Markets, Inc., New York, New York, in underwriting and dealing in debt and equity securities of all types, other than shares of open-end investment companies. *See Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990); *J. P. Morgan & Co. Incorporated*, 75 Fed. Res. Bull. 192 (1989), *aff'd sub nom. Securities Industries Ass'n* v. *Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); and *Citicorp*, 73 Fed. Res. Bull. 473 (1987), *aff'd sub nom. Securities Industry Ass'n* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988).

2. The Toronto-Dominion Bank, Toronto, Canada and Waterhouse Investor Services, Inc., New York, New York; to acquire 50 percent of the voting shares of Marketware International, Inc., and thereby engage in providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis Minnesota; to acquire Statewide Mortgage Company, Birmingham, Alabama, and thereby engage in the purchase, origination, and sale of mortgage loans and related servicing rights, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–368 Filed 1-7-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 13, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–458 Filed 1–6–97; 9:49 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System **Federal Register** Citation of Previous Announcement: 62 FR 408, January 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:45 a.m., Wednesday, January 8, 1997.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Guidance on international supervisory coordination.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–459 Filed 1–6–97; 9:49 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part J (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 61 FR 9710, dated March 11, 1996) is amended to reflect the following organizational changes within the Division of Health Education (DHE), Agency for Toxic Substances and Disease Registry (ATSDR): (1) Retitle the Division of Health Education to the Division of Health Education and Promotion; (2) revise the functional statement for DHE; and (3) establish a substructure within the Division.

Delete the title and functional statement for the *Division of Health Education (JB7)* and insert the following:

Division of Health Education and Promotion (JB7). (1) Develops and implements strategies and programs to educate individuals, communities (including underserved and minority), and health care providers about the health effects of hazardous substances in the environment; (2) in collaboration with other ATSDR programs, evaluates the outcome and impact of public health activities in communities affected or potentially affected by hazardous wastes sites or releases; (3) develops, delivers, and evaluates health messages and materials to increase public awareness, promote the adoption of healthy behaviors, and improve the quality of life in communities exposed to hazardous substances in the environment; (4) works with Federal, state, tribal governments, and local health entities to develop, implement, or facilitate health promotion strategies, based on the scientific findings developed through ATSDR programs, for communities at risk, and particularly susceptible populations (e.g., women, children, minorities, and underserved populations) at risk or exposure to hazardous substances in the environment; (5) provides the agency's leadership in developing and implementing education, training, and evaluation programs developed by national health organizations; (6) conducts activities that involve affected communities in the development and implementation of public health strategies that address the health impact of hazardous substances in their environment; (7) develops and disseminates health education materials to meet the environmental health information needs of communities and health professionals; (8) conducts qualitative and quantitative research of strategies for site-specific health education, promotion, and health risk communication.

Office of the Director (JB71). (1) Plans, directs, coordinates, evaluates, and manages the operations of the Division of Health Education and Promotion; (2) develops goals and objectives and provides leadership, formulates policy, and provides guidance in program planning and development; (3) provides program management, administrative and logistical support services for the division; (4) coordinates division activities with other components of ATSDR, other Federal, state, and local agencies, community groups, national associations, and nonprofit organizations; (5) oversees a quality assurance and training program for the division's activities.

Communication and Research Branch (JB72). (1) Develops and disseminates innovative communications methods and materials to enhance site-specific public health and diverse populations (e.g., women, children, minorities, and underserved populations) at risk of exposure to hazardous substances in the environment; (2) conducts qualitative and quantitative research to develop model standards for defining site-specific health risk communication objectives and to measure performance and outcomes; (3) coordinates the division's site-specific applied research program.

Health Education Branch (JB73). (1) Plans, directs, coordinates, evaluates, and provides leadership in environmental health education; (2) develops effective health education tools and applies these tools through continuing education, curriculum development, and advances in information technology; (3) provides environmental health education expertise, resources, and training to public health partners and communities; (4) plans, implements, and evaluates community involvement strategies to advance health education, promotion, and health risk communication among populations (e.g., women, children, minorities, and underserved populations) at risk of exposure to hazardous substances in the environment; (5) conducts qualitative and quantitative research of strategies for site-specific health education.

Health Promotion Branch (JB74). (1) Plans, coordinates, evaluates, and manages the health promotion, evaluation, and quality assurance activities of the division and provides support and technical advice to the evaluation and assurance activities of ATSDR; (2) develops strategies and implements methods for evaluating the outcome and impact of public health activities undertaken by ATSDR in communities exposed to hazardous

waste sites and releases; (3) collaborates with Federal, state, tribal governments, and local health entities to develop, implement, or coordinate public health promotion actions based on the scientific findings developed through ATSDR programs for communities (e.g., children, women, minorities and underserved populations) at risk of exposure to hazardous substances in the environment; (4) based on scientific findings developed through ATSDR programs, collaborates with individuals, communities, and medical and public health entities to promote implementation of public health actions to prevent or mitigate health impacts from hazardous waste sites and releases; (5) provides the agency's leadership in developing and implementing education, training, and evaluation programs developed by national health organizations; (6) coordinates the division's management information system; (7) conducts qualitative and quantitative research to develop innovative public health practice strategies to identify and address emerging public health issues associated with hazardous substances from waste sites or unplanned releases.

Dated: December 23, 1996.

David Satcher,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–405 Filed 1–7–97; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety, Subcommittee on Immunization Coverage, Subcommittee on Future Vaccines, and the Advisory Commission on Childhood Vaccines (ACCV), Subcommittee on Vaccine Safety: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2 p.m., January 13, 1997; 8:30 a.m.–12:45 p.m., January 14, 1997.

Place: Hubert H. Humphrey Building, Room 503A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: The Committee shall advise and make recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: Agenda items include: A discussion of the National Vaccine Program Office highlights; managed care and Medicaid: ensuring optimal childhood immunization; managed care and immunization: American Association of Health Plan vaccine promotion activities; implementation of new recommendations for polio immunization; Public Broadcasting System's Nova Tape: Deadly Deception; report of meeting on case studies in vaccine research and developments from the Cold Spring Harbor meeting; adult immunization, Department of Health and Human Services Work Group; role of non-traditional providers for adult immunization; pandemic influenza preparedness plan; update on personal responsibility concept paper and leverage paper from the Subcommittee on Immunization Coverage; report from NVAC's Subcommittee on Vaccine Safety; status of the National Vaccine Plan.

Agenda items are subject to change as priorities dictate.

Name: NVAC Subcommittee on Vaccine Safety and the ACCV Subcommittee on Vaccine Safety.

Time and Date: 2 p.m.–5 p.m., January 13, 1997.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This joint NVAC/ACCV subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matter to be Dicussed: The Subcommittee will discuss an update on the recommendations of the Task Force on Safer Childhood Vaccines; update on HHS/CDC response to funding on active surveillance; update on vaccine risk communication; and clarification of mouse toxicity test.

Name: NVAC Subcommittee on Immunization Coverage.

Time and Date: 2 p.m.–5 p.m., January 13, 1997.

Place: Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: The Subcommittee will discuss the forum on assessment and related immunization issues; the outline for the Subcommittee's report; and the assessment of immunization coverage.

Name: NVAC Subcommittee on Future Vaccines.

Time and Date: 2 p.m.–5 p.m., January 13, 1997.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will develop policy options and guide the National Vaccine Program activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: The Subcommittee will discuss an update on vaccine procurement strategies and case studies in vaccine development. This notice is being published less than 15 days prior to the meeting due to programmatic issues that had to be resolved.

CONTACT PERSON FOR MORE INFORMATION: Felecia D. Pearson, Committee Management Specialist, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: January 3, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–461 Filed 1–6–97; 11:53 am]

BILLING CODE 4163–18–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the

Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB No. 0915–0174)—Extension, no change—The Division of Facilities Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under Section 621 of Title VI and Section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the Section 242 Hospital Mortgage Insurance Program of the Fair Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed. Because of the relatively small level of effort associated with submitting this report, there are no plans to develop a system for electronic transmission of the data. The estimate of annual burden hours is as follows:

Form	No. of respondents	Responses per respondent	Hours per response	Total hour burden
Hospital Facility Data Abstract	250 hospitals	1	1 hour	250 hours.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 2, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–424 Filed 1–7–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Submission for OMB Review; Comment Request; Pilot Research for Epidemiologic Studies of Migrant and Seasonal Farmworkers

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 24, 1996, page 55159, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, any information collection that has been extended, revised, or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Pilot Research for Epidemiologic Studies of Migrant and Seasonal Farmworkers. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* A pilot study will be conducted to evaluate the ability to trace farmworkers over extended periods of time, to determine cancer diagnosis and treatment patterns among migrant and seasonal farmworkers, and to assess the reliability of farm work histories from farmworkers and from their spouses. The information will be used by the NCI to identify the most appropriate study design, case ascertainment procedures, and exposure assessment methods for a full-scale epidemiologic study of cancer among migrant and seasonal farmworkers. Determining the feasibility of using automated data collection techniques to obtain occupational histories from farmworkers will be part of this project. *Frequency of Response:* One-time study. *Affected public:* Individuals or households. *Type of Respondents:* Farmworkers and relatives. The annual reporting burden is as follows:

Type of respondents	Estimated No. of respondents	Estimated No. of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Farmworkers	78	1.0	.333	26
Farmworkers with family history of cancer	67	1.0	.167	11
Farmworkers' relatives with cancer	33	1.0	.333	11
Farmworkers and spouses	53	1.2	1.000	64
Farmworker Opportunity Program Clients	13,333	1.0	.167	2,222
Total				2,334

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection or information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Shelia Hoar Zahm, Project Officer, National Cancer Institute, Executive Plaza North, Room 418, Rockville, MD 20892–7364, or call non-toll-free number (301) 496–9093, or FAX your request to (301) 402–1819, or E-mail your request, including your address, to ZahmS@epndce.nci.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before February 7, 1997.

Dated: December 6, 1996.

Nancy L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 97–334 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes Of Health

National Eye Institute; National Institute of Arthritis and Musculoskeletal and Skin Diseases: Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Use of Antiflammins

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees and/or CRADA partners for the further development and commercialization of its patent portfolio for antiflammins. The inventions claimed in U.S. Patent No. 5,266,562 issued 30 Nov 1993, "Anti-Inflammatory Agents," are available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs in several clinically important applications as described below in the Supplementary Information.

To speed the research, development and commercialization of this new class of drugs, the National Institutes of Health is seeking one or more license agreements and/or CRADAs with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents. Any proposal to use antiflammins in the treatment of inflammatory disease processes will be considered.

ADDRESSES: CRADA proposals and questions about this opportunity should be addressed to: Ms. Sue Patow, Office of Technology Transfer, National Heart, Lung, and Blood Institute, Building 31, Room 1B30, Bethesda, MD 20892 (301/402–5579). CRADA proposals must be received by the date specified below.

Licensing proposals and questions about this opportunity should be addressed to: Ms. Carol Lavrich, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, MD 20852 (301/496–7735 ext. 287). Respondees interested in licensing the invention will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

DATES: There is no deadline by which license applications must be received. CRADA proposals must be received on or before April 8, 1997.

SUPPLEMENTARY INFORMATION: Antiflammins are biologically active synthetic oligopeptides, derived from the sequence similarity between lipocortin-1 and uteroglobin, an anti-flammatory protein. These peptides have antiphospholipase A_2 and immunomodulatory properties. Because of the great therapeutic potential of specific and potent antiflammin drugs that may be developed, scientists in several Institutes at the National Institutes of Health are examining the use of antiflammins in the treatment of Health are examining the use of antiflammins in the treatment of a variety of inflammatory processes, including acute anterior ocular inflammation (uveitis) and psoriasis.

Dr. Chi-Cho Chan, a clinical investigator at the National Eye Institute (NEI), has an IND for the use of antiflammin 2 in acute anterior uveitis, and seven patients have previously been enrolled in a clinical trial. To date, no toxicity has been observed in patients treated with this drug. Dr. Chan and Dr. Whitcup at the NEI are interested in developing new topical formulations of antiflammins and the initiation of multi-center randomized clinical trials of antiflammins for the treatment of anterior uveitis, post-operative ocular inflammation, and allergic conjunctivitis.

Dr. John DiGiovanna, an investigator in the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), is studying the use of antiflammins to treat psoriasis, a hyperproliferative inflammatory skin disease. Dr. DiGiovanna would like to continue these studies with a collaborator capable of expanding these studies to include other inflammatory skin diseases such as atopic and contact dermatitis, as well as develop animal and *in vitro* models to study the effects of antiflammins on skin.

In addition, Dr. Dimitrios T. Boumpas, also of NIAMS, is studying the use of anti-inflammatory/immunosuppressive compounds to treat psoriatic arthritis, rheumatoid arthritis, and systemic lupus erythematosus. Dr. Boumpas would like to initiate studies with a collaborator to investigate the effects of antiflammins in animal models of these diseases including toxicity studies and its use and toxicity in patients with autoimmune rheumatic diseases.

CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner(s) will enjoy rights of first negotiation for licensing Government rights to any inventions arising under the agreement and will be expected to advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the NEI and NIAMS in these CRADAs will be as follows:

1. Provide the Collaborator(s) with samples of the subject compounds for pharmaceutical evaluation.

2. Continue the detailed physicochemical characterization of the test compounds as well as research on their mechanism of biological action, and publish these results and provide

all data to the Collaborator as soon as they become available.

3. Conduct controlled clinical trials of antiflammin formulations that have been determined to have therapeutic potential in ocular and skin inflammatory diseases.

The role of the Collaborator(s) will be to:

1. Perform an exhaustive evaluation of these compounds with respect to their biological activities and to develop appropriate vehicles for drug delivery for disease processes covered under the CRADA. The Collaborator(s) will supply data to the NEI and/or NIAMS in a timely fashion.

2. Synthesize and formulate structural variants of these subject compounds to optimize desired effects.

3. Expand the basic toxicological data as needed in preparation for additional clinical studies.

4. Conduct basic studies designed to better understand the potential for antiflammins in the treatment of inflammatory diseases, bioavailability and how to best administer these agents.

5. Support the execution of clinical trials designed to evaluate efficacy and toxicity. This may include providing pharmaceutical grade compound, equipment and supplies, and support personnel.

6. Provide new and improved formulations in appropriate vehicles.

Selection criteria for choosing the CRADA partner(s) will include but not be limited to:

1. Ability to complete the quality pharmacological evaluations required according to an appropriate timetable to be outlined in the Collaborator's proposal. The target commercial application as well as the strategy for evaluating the test agents' potential in that capacity must be clearly delineated therein.

2. The level of financial support the Collaborator will supply for CRADA-related Government activities.

3. A willingness to cooperate with the NEI and NIAMS in publication of research results.

4. An agreement to be bound by the DHHS rules involving human subjects, patent rights, ethical treatment of animals, and randomized clinical trials.

5. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the CRADA(s). Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: December 23, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–333 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Center for Research Resources: Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Technologies and Applications for Spatial and Temporal Control of Gene Expression Using a Heat Shock Protein Promoter in Combination With Local Heat

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: The National Center for Research Resources (NCRR) and collaborating institutes of the NIH are seeking CRADA partners and/or licensees for the development of different technologies and applications to provide a safe and efficient introduction of exogenous genes under the control of a heat-sensitive promoter and to assess the efficacy of spatial and temporal control of gene expression using MRI guided FUS. This project is with the In Vivo NMR Research Center, NCRR, in a collaborative study with the National Institute on Aging, the National Heart Lung and Blood Institute, and the National Institute of Dental Research of the National Institutes of Health, Bethesda, Maryland

The NCRR has applied for patents claiming this core technology. Non-exclusive and/or exclusive licenses for these patents covering core aspects of this project are available (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) to interested parties.

DATES: There is no deadline by which license applications or CRADA proposals must be received.

ADDRESSES: CRADA capability statements/proposals and questions about this opportunity should be addressed to Mr. Tom Ingalls, Technology Transfer Specialist, NCRR, Bldg. 12A/Room 4057, Bethesda, Maryland 20892–2490; Phone: 301/496–6235.

Licensing applications and licensing inquiries regarding this technology should be addressed to Mr. Larry Tiffany, Office of Technology Transfer, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Phone: 301/496–7735, ext. 206; Fax: 301/402–0220.

Information on the patent and patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

SUPPLEMENTARY INFORMATION: In many instances, it is desirable to express exogenous genes only in certain tissues, and/or at will at certain times, and/or only to a certain degree. However, current gene transfer and exogenous gene expression protocols do not provide adequate means of simultaneously controlling which cells in a heterogeneous population are transformed and when, where, and to what degree the transferred genes are expressed. Here, we seek to accomplish the spatial and local control of expression of exogenous genes using a heat-inducible promoter (such as the inducible hsp70 promoter) in combination with local heat, preferably provided by Magnetic Resonance Imaging (MRI) guided Focused Ultrasound (FUS).

The goals of this project are to use the respective strengths of both parties to achieve one or more of the following:

1. Evaluate the feasibility and safety of gene therapy utilizing a range of suitable vectors as a treatment approach to carry out a systemic gene transfer in which the therapeutic gene is under the control of a heat-sensitive promoter showing negligible constitutive expression at normal body temperature.

2. Evaluate the feasibility of controlling the local and temporal induction of gene expression (pharmacokinetics) using local heat provided by Magnetic Resonance Imaging guided Focused Ultrasound.

3. Develop and evaluate gene therapy products for use in experimental animal models and for human use based on the above control of expression.

It is anticipated that the commercial collaborator(s) will participate in ongoing studies on one or more of the research projects involving:

1. The transfer of genes for various lymphokines into experimental animal

models based on an adenovirus vector or other vectors. It is highly desirable that the collaborator have the resources to provide new effective vectors for gene transfer.

2. The modulation of the inducibility of the heat-sensitive promoter using appropriate modifications of the promoter and by using anti-inflammatory or other drugs.

3. Dosage and toxicity of local production of lymphokines applied to cancer and other diseases.

4. Initial applications in the field of anticancer therapy, immunomodulatory gene products and angiogenesis.

The collaborator may also be expected to contribute financial support under this CRADA for supplies and personnel to support these projects.

Dated: December 19, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–335 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications and issued patents listed below may be obtained by contacting the indicated licensing specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Chimeric GAG Pseudovirions

GJ Tobin, MA Gonda (NCI)
OTT Reference No. E–105–96/0 filed 16 May 96
Licensing Contact: Cindy K. Fuchs, J.D., 301/496–7735 ext 232

This technology is based upon a novel method for generating pseudovirions containing HIV Gag and chimeric Gag-Env fusion proteins that may be used in a prophylactic vaccine or to boost the immune response of HIV-infected individuals. In addition to the foregoing method, the invention provides recombinant chimeric nucleic acids encoding a Gag-frameshift (fs)-fusion partner fusion protein; a pseudovirion comprising a retroviral Gag protein and a fusion partner; an immunogenic composition comprising a pseudovirion; and a Gag-fs-fusion partner fusion protein. Mice inoculated with the pseudovirions developed cytotoxic T lymphocyte responses specific to both HIV Gag and Env epitopes as well as a strong humoral response to Gag. The method allows the packaging of other non-viral proteins such as interleukins, interferons, and other cytokines. (portfolio: Infectious Diseases—Vaccines, viral, AIDS)

MHC Class II–Restricted Melanoma Antigens and Their Use in Therapeutic Methods

SL Topalian, SA Rosenberg, P Robbins (NCI)
Serial No. 08/533,895 filed 26 Sep 95
Licensing Contact: Joseph Contrera, M.S., J.D., 301/496–7056 ext 244

The present invention relates to MHC class II-restricted melanoma antigens and their use in the treatment of human cancers. Cytotoxic $CD8^+$ T cells have been shown to recognize autologous and MHC class I compatible allogenic melanomas expressing shared tumor-associated antigens. Several class I-restricted melanoma-associated antigens have been identified on a molecular level. These antigens and derivative class I-restricted peptides 8 to 10 amino acids in length are being developed as clinical vaccines to stimulate $CD8^+$ T cell responses against melanoma. While $CD8^+$ T cells are important in the effector phase of the immune response, the $CD4^+$ helper arm has been shown to mediate critical priming and effector functions as well. T cell receptors on $CD4^+$ T cells recognize a complex of antigenic peptide in conjunction with MHC class II molecules. Most of these antigenic peptides are 10–34 amino acids in length. Strong and lasting immunity depends, in part, on $CD4^+$ T cell function. Therefore, class II-restricted melanoma antigens may be useful in immunotherapeutic approaches to melanoma.

The present invention relates to MHC class II-restricted melanoma antigens recognized by $CD4^+$ T cells and the nucleic acid sequences that encode them. The invention contains claims to MHC class II immunogenic peptides of tyrosinase and methods of producing an immune response to these peptides. This invention also provides a method for identifying additional class II-restricted melanoma antigens. (portfolio: Cancer—Therapeutics, vaccines; Cancer—Therapeutics, immunomodulators and immunostimulants; Cancer—Therapeutics, biological response modifiers)

eps15, Substrate for the Epidermal Growth Factor Receptor Kinase

PP DiFiore, F Fazioli (NCI)
Filed 07 Jun 95
Serial Nos. 08/480,145 and 08/477,389 (both DIV of 08/095,737, now U.S. Patent 5,487,979)
Licensing Contact: Susan Rucker, J.D., 301/496–7056 ext 245

These applications describe eps15, a substrate for the Epidermal Growth Factor Receptor (EGFR). This substrate is distinct from a previously identified substrate for the EGFR known as eps8 (U.S. Patent 5,378,809). EGFR is a cell surface receptor, with tyrosine kinase activity, which as been implicated in mitogenesis via a process known as mitogenic signal transduction. Substrates for the EGFR, such as eps15, may be useful in research on signal transduction involving EGFR, and as diagnostic or prognostic indicators due to their ability to be used in determining the tyrosine kinase activity of tissue sample. In particular, recent work with eps15 fusion proteins has shown that eps15 may be linked to myeloid leukemia due to its translocation. Thus, eps15 may also serve as a tumor marker. In addition to the cDNA, constructs expressing eps15, antibodies to eps15, and methods for assaying eps15 (immunological and DNA based) are described. (portfolio: Research Tools and Reagents, receptors and cell lines; Cancer—Research Reagents)

T-Cell Receptors and Their Use In Therapeutic and Diagnostic Methods

P Hwu, M Nishimura, SA Rosenberg (NCI)
Serial No. 08/411,098 filed 27 Mar 95
Licensing Contact: Joseph Contrera, M.S., J.D., 301/496–7056 ext 244

Tumor infiltrating lymphocytes (TIL) play an important role in tumor regression. TIL cells that recognize a variety of specific tumor antigens have been identified. This invention embodies nucleic acid and amino acid sequences of T-cell receptors which recognize or bind tumor antigens. The claims of this invention relate to the use of these T-cell receptors or hematopoietic stem cells engineered to carry these receptors or chimeric receptors comprised of an antibody variable region joined to the cytoplasmic region of CD28 from a T-cell for therapeutic uses. This

application addresses technologies which encompass the broad category of T-cell receptor and chimeric T-cell technologies. As such, it is likely that the technologies will have numerous applications in the field of immunotherapy and will potentially be licensable to multiple applicants for a variety of novel therapeutic approaches. (portfolio: Gene-Based Therapies—Therapeutics, delivery systems; Cancer—Therapeutics, immunomodulators and immunostimulants; Cancer—Therapeutics, vaccines; Cancer—Therapeutics, gene therapy, genes)

Process for Producing Monoclonal Antibodies Reactive With Human Breast Cancer

J Schlom, D Colcher, M Nuti, PM Hand, FC Austin (NCI)
Serial No. 06/330,959 filed 15 Dec 81
U.S. Patent No. 4,522,918 issued 11 June 85
Licensing Contact: Joseph Contrera, M.S., J.D., 301/496–7056 ext 244

Breast cancer is the second leading cause of cancer death among women, having only recently been surpassed by lung cancer. The incidence rate has remained somewhat steady, and is currently about 108 per 100,000. This invention describes a process to produce antibodies from hybridoma cultures for the detection, prognosis, and treatment of human breast cancer. These eleven antibodies are activated only by tumor cells from human mammary cells and not by apparently normal human tissues. The isotopes of ten and the antibodies are IgG of various subclasses, and one is IgM. The antibodies may be useful in five major areas in the management of human breast cancer: (1) The diagnosis of primary and metastatic breast tumor lesions by assay of human body fluids; (2) the in-situ detection, via gamma scanning, of primary or metastatic breast tumor lesions; (3) the treatment of primary or metastatic breast cancer using one or a combination of the antibodies either alone or coupled with toxic drugs, compounds, or radioactive isotopes; (4) use of the antibodies in the staining of populations of human cells in tissue sections from tumor lesions to indicate the degree of malignancy of the cell populations; and (5) the detection of micro-lesions containing only a few cells that could not be detected by conventional staining techniques. A patent for this invention has been issued by the U.S. Patent and Trademark Office. (portfolio: Cancer—Diagnostics, in vitro, MAb based; Cancer—Research Materials, MAb based)

Dated: December 23, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–332 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 12–14, 1997 at the Belmont Conference Center, Manor House Conference Room, 6555 Belmont Woods Road, Elkridge, Maryland.

The meeting will be open to the public from 9 a.m. to 10 a.m. on February 12, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until recess on February 12, from 9 a.m. until recess on February 13, and from 9 a.m. until adjournment on February 14. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301–496–3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–321 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council on January 27–28, 1997. The meeting will be held in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be open on January 27. The Subcommittee meeting will be held in Building 31, Room 2A03, from 8:00 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

The Council meeting will be open to the public on January 27 from 10:00 a.m. until 5:30 p.m. The agenda includes a report by the Director, NICHHD, a report by the Mental Retardation and Developmental Disabilities Branch, an update on the Inclusion of Children in Clinical Research, and other business of the Council. The meeting will be open on January 28 upon completion of applications at approximately 1:00 p.m. to adjournment if any policy issues are raised which need further discussion.

In accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on January 28 from 8:00 a.m. to approximately 1:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NACHHD, 6100 Executive

Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland 20892–7510, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–327 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on January 27–28, 1997. The meeting of the full Council will be open to the public on January 27 from 8:30 a.m. to approximately 4:30 p.m., Conference Room 6, Sixth Floor, Building 31, National Institutes of Health, Bethesda, Maryland, for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on January 27, 4:30 p.m. until recess and on January 28, 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and information concerning individuals associated with the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: December 30, 1996.

Paula N. Hayes,

Acting, Committee Management Officer, NIH.

[FR Doc. 97–323 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Pathology and Veterinarian Support Service.

Date: January 15, 1997.

Time: 9:00 a.m.

Place: EPN, 6th Floor Conference Room, Rm. 640, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 640, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7575.

Purpose/Agenda: To evaluate and review contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being submitted less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: December 26, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 97–320 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Clinical Trials Review Committee

Date: February 23–26, 1997

Time: 7:00 p.m.

Place: Hyatt Regency One Bethesda Metro Center Bethesda, Maryland 20814

Contact Person: Dr. Joyce A. Hunter 6701 Rockledge Drive, Rm. 7192, MSC 7924 Bethesda, Maryland 20892 (301) 435–0287

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–322 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contract Person listed below in advance of the meeting.

Name of Panel: Opportunities and Obstacles to Genetic Research in NHLBI Clinical Studies.

Dates of Meeting: February 5, 1997.

Time of Meeting: 8:00 a.m.
Place of Meeting: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, D.C. 20007.
Agenda: Discussion of Future Initiatives with Emphasis on Stored Samples for Genetic Research.
Contact Person: Susan E. Old, Ph.D., NHLBI/DHVD, Two Rockledge Center, 6701 Rockledge Drive, Rm. 9150, MSC 7940, Bethesda, Maryland 20892, (301) 435–0560.
(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–326 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Tuberculosis Academic Award Review.
Date: January 28, 1997.
Time: 9:00 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Reference Laboratory to Evaluate Therapies for Sickle Cell Disease (Telephone Conference Call).
Date: February 26, 1997.
Time: 1:30 p.m.
Place: Rockledge Building II, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland 20892.
Contact Person: Diane M. Reid, M.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Molecular Genetics of Coagulation Disorders.
Date: February 26–27, 1997.
Time: 7:30 p.m.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Contact Person: Louis M. Ouellette, Ph. D., Two Rockledge Center, Room 7216, 6701 Rockledge Driver, Bethesda, MD 20892–7924, (301) 435–0310.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Hepatic Gene Therapy for Hemophilia B.
Date: February 27–28, 1997.
Time: 7:30 p.m.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Contact Person: Louis M. Ouellette, Ph.D., Two Rockledge Center, Room 7216, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0310.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–328 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Radio Frequency Coils for High Field MRI (Telephone Conference Call).
Date: January 22, 1997.
Time: 2:00 p.m.
Place: Rockledge Building Two, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland.
Contact Person: Ivan Baines, Ph.D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: ECG Monitoring in MRI to Detect Cardiac Ischemia (Telephone Conference Call).
Date: January 22, 1997.
Time: 2:45 p.m.
Place: Rockledge Building Two, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland.
Contact Person: Ivan Baines, Ph D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.
Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c) (4) and 552b(c) (6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to these meetings due to the urgent need to meet timing limitations imposed by the contract review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–329 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council and its subcommittee meetings will be open to the public as indicated below. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive

Secretary or the Scentific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.
Date: February 12, 1997.
Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:30 p.m.–recess.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.
Dates: February 13–14, 1997.
Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.
Open: February 13, 8:30 a.m.–approximately 3 p.m.
Agenda: A report by the Director, NINDS; a report by the Director, Division of Extramural Activities, NINDS; a report by the Scientific Director, NINDS; a report by the Director, DRG; and a scientific presentation by an NINDS intramural scientist.
Closed: February 13, approximately 3 p.m.–recess. February 14, 8:30 a.m.–adjournment.
Executive Secretary: Constance W. Atwell, Ph.D., Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

The following meetings will be totally closed to review and evaluate grant applications:

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Subcommittee A.
Date: February 9–10, 1997.
Time: February 9, 8 a.m.–recess. February 10, 8 a.m.–adjournment.
Place: Disneyland Hotel, 1150 West Cerritos, Anaheim, CA 92802.
Contact Person: Dr. Katherine Woodbury, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Subcommittee B.
Date: February 17–19, 1997.
Time: February 17, 7:30 p.m.–recess. February 18, 8 a.m.–recess. February 19, 8 a.m.–adjournment.
Place: Lodge at Torrey Pines, Torrey Pines Boulevard, La Jolla, CA 92037.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.
Date: February 27, 1997.
Time: 8 a.m.–adjournment.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Dr. Alfred W. Gordon, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Reserach Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: December 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–331 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institutes of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review and evaluate a research grant application.
Name of SEP: Training Grant in Academic Orthopedics (Telephone Conference Call).
Date of Meeting: January 6, 1997.
Time: 10:00 a.m.–adjournment.
Place of Meeting: Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500.
Scientific Review Administrator: Tommy Broadwater, Ph.D., Chief, Grants Review Branch, NIAMS, Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: January 2, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–448 Filed 1–3–97; 4:15 pm]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: January 17, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5192, Telephone Conference.
Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.
This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Multidisciplinary Sciences.
Date: February 21–22, 1997.
Time: 2:00 p.m.
Place: Laguna Hotel, Laguna Beach, CA.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Biological and Physiological Sciences.
Date: February 26, 1997.
Time: 12:00 p.m.
Place: Double Tree Hotel, Rockville, MD.
Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.
The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–324 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division

of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: January 17, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Name of SEP: Biological and Physiological Sciences.
Date: January 24, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–325 Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: February 10, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Kathleen Michels, Scientific Review Administrator, 6701 Rockledge Drive, Room 5180, Bethesda, Maryland 20892, (301) 435–1250.

Name of SEP: Multidisciplinary Sciences.
Date: February 24–25, 1997.
Time: Holiday Inn, Chevy Chase, MD.
Place: 9:00 a.m.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: March 3–4, 1997.
Time: 1:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: March 10–11, 1997.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

The meetings will be closed in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 30, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–330, Filed 1–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–01]

Notice of Native American Housing Assistance and Self-Determination Act of 1996 Implementation Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of implementation meetings for the Native American Housing Assistance and Self-Determination Act of 1996.

SUMMARY: This notice announces the first meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

DATES: A meeting to discuss the allocation formula requirements will be held on January 7, 8, and 9, 1997. A meeting to discuss regulations required under NAHASDA will be held on January 14, 15, and 16 1997.

ADDRESSES: The meetings will be held at the Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 106 of NAHASDA requires the publication of a notice in the **Federal Register** within 90 days of its enactment to establish transition requirements, provide notice of negotiated rulemaking, and invite public comment. HUD will hold a series of meetings in the National Office of its Office of Native American Programs to discuss the regulatory implementation of NAHASDA. As indicated above, under the heading **DATES,** the first series of meetings on January 7, 8, and 9, will focus on the allocation formula requirements of NAHASDA section 302. A second series of meetings, on January 14, 15, and 16, will focus on the other regulatory requirements of NAHASDA. The input from these meetings will be utilized in the development of HUD's regulations implementing NAHASDA.

Dated: January 6, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–491 Filed 1–6–97; 1:43 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–612–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council. The meeting will be held January 31, 1997, beginning at 10:00 a.m. in the 1A Conference Room at the Bureau of Land Management

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona. The agenda items to be covered at the one-day business meeting include review of previous meeting minutes, and review and evaluation of incoming public comments on the Standards and Guidelines Statewide Plan Amendment. A public comment period will take place at 11:30 a.m. January 31, 1997 for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens or Ken Mahoney Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9512.

Terrance P. O'Sullivan,

Acting Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 97–229 Filed 1–7–97; 8:45 am]

BILLING CODE 4310–32–M

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 16 N., R. 81 W., accepted December 26, 1996
T. 41 N., R. 86 W., accepted December 26, 1996
T. 32 N., R. 107 W., accepted December 26, 1996
T. 43 N., R. 115 W., accepted December 26, 1996
T. 42 N., R. 116 W., accepted December 26, 1996

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: December 27, 1996.

Jerry L. Messick,

Acting Chief, Cadastral Survey Group.

[FR Doc. 97–354 Filed 1–7–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 to 9675

Notice is hereby given that a proposed consent decree modification in *United States* v. *Accurate Partitions Corp., et al.*, Civil Action No. S91–00646M, was lodged on December 20, 1996 with the United States District Court for the Northern District of Indiana, South Bend Division. The proposed consent decree resolves the United States' claims against four settling defendants and sixteen settling *de minimis* defendants for unreimbursed past costs incurred in connection with the Fisher-Calo Superfund Site located in Kingsbury, Indiana in return for a total payment of $333,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Accurate Partitions Corp., et al.*, DOJ Ref. #90–11–2–549.

The proposed consent decree may be examined at the office of the United States Attorney, 204 South Main Street, MO1 Federal Building, South Bend, Indiana 44601; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environment and Natural Resources Division.

[FR Doc. 97–358 Filed 1–7–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Extension of Comment Period for Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

On December 5, 1996, at 61 FR 64532, the Department of Justice published a notice that a proposed consent order in *United States* v. *BASF Corporation, et al.*, Civil Action No. 96–CV–75279–DT, had been lodged with the United States District Court for the Eastern District of Michigan on November 18, 1996. The proposed consent order resolves certain claims alleged against 35 parties under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, for the United States' response costs at the Metamora Landfill Site in Lapeer County, Michigan.

The Department of Justice has been requested to extend the thirty day comment period to permit interested parties additional time to review the consent decree and prepare comments. The Department of Justice will extend the comment period to January 21, 1997. Persons wishing to submit comments should follow the procedures set out in the Notice of Lodging on December 5, 1996, at 61 FR 64532.

Joel Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 97–359 Filed 1–7–97; 8:45 am]

BILLING CODE 4410–15–M

[AAG/Order No. 125–96]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Office of Community Oriented Policing Services ("COPS"), Office of the Police Corps and Law Enforcement Education, proposes to establish a new system of

records entitled, "Police Corps System, Justice/COPS–001."

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system.

Therefore, please submit any comments by February 7, 1997. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850, WCTR).

A description of the system of records is provided below. In addition, the Department has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: December 9, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

SYSTEM NAME:

Police Corps System, Justice/COPS–001.

SYSTEM LOCATION:

Records may be retained at the U.S. Department of Justice ("DOJ"), Office of Community Oriented Policing Services ("COPS"), Office of the Police Corps and Law Enforcement Education, 1100 Vermont Ave., NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for educational scholarships under the Police Corps Program; individuals who have been approved to receive such scholarships; and individuals who either are receiving, or have received, funds provided under the Police Corps Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Included are any records which may assist COPS in its administration of the Police Corps Program. Records may include an individual's name; Social Security number; current residence and telephone number; financial data; scholarship application and associated forms; personal, professional and demographic background information (including age, race and gender); educational background and achievements; progress reports; designated police department assignment; and employment record within the assigned police department. Records may also include those generated as a result of a scholarship recipient's failure to serve in a designated agency or otherwise fulfill the terms of the agreement (e.g. amounts due; status of claim; history of claim; and other records relevant to the scholarship recipient's failure to fulfill the terms of the agreement).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is established and maintained under the authority of 5 U.S.C. 552a and 42 U.S.C. 14095, 14097, 14102.

PURPOSE(S):

The purpose of the Police Corps System of Records is to support COPS in its administration of the Police Corps program which provides educational scholarships to students in exchange for their commitment to serve in a designated police department upon graduation. It will enable COPS to monitor the progress of the Police Corps program and its scholarship recipients, to maintain records on and to verify that all of the scholarship applicants and/or recipients have provided accurate background information, to calculate and verify amounts of educational assistance to be awarded, to process scholarship-related payments, and to select the State agencies which will participate in the Police Corps program. It will also allow COPS to pursue the collection of debts associated with the granting of scholarships.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Relevant information may be used by Department of Treasury personnel in the processing of scholarship-related payments.

2. Relevant records may be disclosed, as appropriate, to designated State agencies to assist them in recruiting, screening and matching individuals with an appropriate police department.

3. Relevant records may be disclosed to contractors and subcontractors to the extent necessary to perform the required law enforcement training, administrative tasks, technical installations, maintenance operations and/or other similar duties.

4. In the event that a record(s) indicates a violation or a potential violation of the law, whether civil, criminal or regulatory in nature, the relevant records may be disclosed to the agency charged with enforcing or implementing such law.

5. Relevant records may be disclosed to a court or adjudicative body before which DOJ is authorized to appear when any of the following is a party to the litigation or has an interest in the litigation, and such records are determined by COPS to be arguably relevant to the litigation: a) COPS or any subdivision thereof; b) any COPS or other DOJ employee in his or her official capacity; c) any COPS or other DOJ employee in his or her individual capacity where DOJ has agreed to represent the employee; or d) the United States, where COPS has determined that the litigation is likely to affect it or any of its subdivisions.

6. Relevant records may be disclosed to an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

7. Relevant records may be disclosed to a Federal agency in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of any employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

8. Relevant records may be disclosed to Federal, State, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

9. Relevant records may be disclosed to the National Archives and Records Administration and the General Services Administration for use in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

10. Relevant records may be disclosed to other Federal or State agencies as specified in applicable law or implementing regulations.

11. Relevant records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

12. Relevant records may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

13. Relevant records may be disclosed to the Internal Revenue Service to obtain addresses which may be used to locate a scholarship recipient, including

delinquent scholarship recipients; or, where appropriate, to obtain information such as will enable COPS to assess and verify the ability of a delinquent scholarship recipient to repay debts owed to the Federal Government, e.g., information as to whether a scholarship applicant has a delinquent tax account, or a tax refund due.

14. Relevant records may be provided to another Federal agency to effect either a salary offset or an authorized administrative offset to a delinquent account in order to collect debts owed to the Federal Government; or, when other collection efforts have failed, to the IRS to effect an offset against Federal income tax refund due, but only after due process requirements have been met.

15. Relevant records may be disclosed to any third party who may possess the information such as the U.S. Post Office, a State motor vehicle administration, a professional organization, an alumni association, etc,, to obtain a current mailing address of the scholarship recipient, including delinquent scholarship recipients, in order to locate such individual(s).

16. Relevant records may be disclosed to a Federal, State, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the identity or location of the debtor, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency.

17. Addresses obtained from the IRS may be redisclosed as follows:

(a) To debt collection agencies (or agents), but only for the purpose of locating an individual(s) to collect or compromise a claim;

(b) To consumer reporting agencies as part of the information provided under subsection (b)(12) (described below) which is directly related to the identity of the debtor.

DISCLOSURE TO CONSUMER REPORTING AGENCIES IN ACCORDANCE WITH SECTION 3711(F) OF TITLE 31 (AS AUTHORIZED UNDER SUBSECTION (B)(12) OF THE PRIVACY ACT (5 U.S.C. 552A)):

Information may be disclosed to a consumer reporting agency (as defined by 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3)) where such information is directly related to the identity of the debtor, i.e., name, address, and taxpayer ID (SS#), together with the amount, status, and history of claim, and agency or program under which claim arose, for the purpose of encouraging repayment of overdue debts, e.g., to provide an incentive for delinquent scholarship recipients to repay Federal Government debts by making these debts a part of their credit records. Such disclosure may be made only when a claim is overdue and only after due process steps have been taken to notify the delinquent recipient and give him or her a chance to meet the terms of the debt. Prior to such disclosure, satisfactory assurances will be obtained from such consumer reporting agency concerning compliance by that agency with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and any other Federal law governing the provisions of consumer credit information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information may be stored on electronic media via a configuration of personal computers, servers and mainframes, using hard disks, floppy diskettes, magnetic tape, compact disks, and/or optical disks. Documentary records will be maintained in file folders.

RETRIEVABILITY:

Records will be retrievable by identifying an individual's name; Social Security number; police department assignment; educational institution; or other identifying number or characteristic.

SAFEGUARDS:

Information will be safeguarded in accordance with U.S. Department of Justice rules and policies governing the security and access to automated information systems. These safeguards include the use of passwords and user identification codes to limit access only to authorized personnel in the performance of their official duties with respect to the Police Corps program. Additionally, paper records will be stored in secured areas to prevent unauthorized access. Moreover, any individual who has access to the system of records will be required to protect the information from public view and from unauthorized use.

RETENTION AND DISPOSAL:

Records will be retained and/or destroyed in accordance with U.S. Department of Justice rules and policies. The retention and destruction schedule for these records in pending approval. Computerized records will be destroyed by shredding, degaussing, etc., and documentary records will be destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Community Oriented Policing Services, Office of the Police Corps and Law Enforcement Education, 1100 Vermont Avenue, N.W. Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Please direct any inquiries concerning the system of records, including questions relating to whether the system contains information about you, to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Address requests in writing to the System Manager identified above, and provide a reasonable description of the record being sought.

CONTESTING RECORD PROCEDURES:

Address requests in writing to the System Manager identified above and provide a reasonable description of the record; state clearly and concisely the information being contested, the reasons for requesting the correction, and the proposed amendment to the information. In addition, provide supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

All information contained in the system of records is obtained from the individuals covered by the system; their educational institutions; consumer reporting agencies; designated State agencies; other Federal agencies, including but not limited to the IRS and the U.S. Postal Service; and third parties who serve as references for the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–356 Filed 1–7–97; 8:45 am]
BILLING CODE 4410–01–M

[AAG/A Order No. 126-96]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new system of records to be maintained by the Justice Management Division, Security and Emergency Planning Staff.

The Security Access Control System (SACS), JUSTICE/JMD–014, is a new

system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30 day period in which to comment on the proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40 day period in which to conclude its review of the system. Therefore, please submit any comments by February 7, 1997. The public, OMB, and Congress are invited to submit any comments to Patricia E. Neely, Program Analyst, Information Management Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850 WCTR).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system on OMB and the Congress.

The system of records is described below.

Dated: December 12, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/JMD–014

SYSTEM NAME:

Security Access Control System (SACS)

SYSTEM LOCATION:

U.S. Department of Justice, Main Building, Room 6538, 950 Pennsylvania Ave. N.W., Washington, D.C. 20530–0001

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Justice (DOJ) employees, contractors, or other individuals who have been granted access to the Main Building, and/or to such other DOJ satellite buildings as are served by this system i.e., those buildings which are served by a direct terminal from the Main Building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, badge number, picture of badge containing picture ID and signature, social security number, division (company name), home telephone number, office telephone number, office room number and building, date, time, and location of entry into or exit from the Main Building or such other DOJ satellite buildings as are served by this system. Letters of request from individuals, e.g., contractors, for issuance of badges are also included.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

The maintenance of the system is authorized by Executive Order 12958, the Privacy Act of 1974 (5 U.S.C. 552a(e)(10)), and Pub. L. No. 90–620, as amended (44 U.S.C. Chapters 21 and 23), 5 U.S.C. 301, and 40 U.S.C. 486(c), as implemented by 41 CFR 101–20.3 and 41 CFR 101–20.103. The Executive Order and Statutes address the security of records maintained by Federal agencies, Public Buildings, Property and Works to include Conduct on Federal Property and Physical Protection and Building Security.

PURPOSE OF THE SYSTEM:

The purpose of the system is to enhance the safety of DOJ employees, and the security of Federal records and property by effectively restricting access to authorized personnel and by detecting unauthorized entry into the Main Building (and to such other DOJ satellite buildings as are served by a direct terminal from the Main Building). Specifically, access badges, or other similar devices, must be inserted into a reader to gain entry into such DOJ buildings. Similarly, access badges, etc., may be required to exit from such buildings. Management officials and selected staff personnel (on a need-to-know basis) may use the information to determine the status of individuals entering DOJ buildings, and to maintain control of access badges issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information may be disclosed as follows: (a) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (c) to a court or adjudicative body before which the DOJ is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the DOJ to be arguably relevant to the litigation: (i) The DOJ, or any component or subdivision thereof, or (ii) any employee of the DOJ in his or her official capacity, or (iii) any employee of the DOJ in his or her individual capacity where the DOJ has agreed to represent the employee, or (iv) the United States, where the DOJ determines that the litigation is likely to affect it or any of its components or subdivisions; (d) to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2006; and (e) to private contractors and/or maintenance personnel but only to the extent that access is needed to perform their duties such as maintenance or similar administrative support operations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on a hard drive Winchester disk, magnetic tape reels, and on floppy disks. Letters of requests are stored in file folders and file cabinets.

RETRIEVABILITY:

Records are retrieved by name and by badge number.

SAFEGUARDS:

Access to the Main Building is controlled by guards and the SACS. Access to the room housing the system is protected by a three way combination lock, key in knob, and a simplex lock. Software safeguards include a password required to access the system, and restrictions on screens or files permitted to be accessed. Paper records are stored in locked cabinets.

RETENTION AND DISPOSAL:

Records generated by inserting the badge for entry and exit, e.g., badge number, date, time, and location of entry into or exit from the DOJ buildings, are maintained for a period of twelve months and are destroyed by overwriting with new information. Other records are retained until such time as the record subject has no need to enter the DOJ buildings, except that letters of request are retained for three months.

SYSTEM MANAGER AND ADDRESS:

Director, Security and Emergency Planning Staff, Department of Justice, Room 6525, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530–0001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be in writing and made to the system manager identified above.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the System Manager at the address identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide full name and date of

birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in the record to the System Manager at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE PROCEDURES:

Individuals covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–357 Filed 1–7–97; 8:45 am]
BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 15, 1996, Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basis classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
Levo-alphacetylmethadol (LAAM) (9648).	II

The firm plans to manufacture methadone and methadone-intermediate for the production of LAAM.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 10, 1997.

Dated: December 17, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–430 Filed 1–17–97; 8:45 am]
BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 16, 1996, Pharmacia & Upjohn Company, 7000 Portage Road, 2000–41–109 Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396) a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the controlled substance for distribution as bulk product to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 10, 1997.

Dated: December 17, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–431 Filed 1–7–97; 8:45 am]
BILLING CODE 4410–09–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; petition by entrepreneur to remove conditions.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 19, 1996, at 61 FR 49351, allowing for a 60-day public comment period. One comment was received by the Immigration and Naturalization Service. The comment is being addressed by the form originator.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1534.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection or information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection*: *Extension of a currently approved collection.*

(2) *Title of the Form/Collection*: Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection*: Form I–829. Office of

Examinations, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or Households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove the conditions on his or her conditional resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 200 respondents at 65 minutes (1.08) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 216 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 2, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–352 Filed 1–7–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 2, 1997.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 x 166. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 9:00 a.m. and 12:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarify of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Benzene (1910.0128).

OMB Number: 1218–0129.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 13,441.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 130,457.

Total Annualized capital/startup costs: - 0 -.

Total annual costs (operating/maintaining systems or purchasing services): $7,895,301.

Description: The purpose of the Benzene standard and its information collection is designed to provide protection for employees from the adverse effects associated with the occupational exposure to benzene. The standard requires employers to monitor employee exposure to benzene, to monitor employee health and to provide employees with information about their exposures and the health effects of injuries.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–397 Filed 1–7–97; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[IA 96–103]

Cecil Ray Owen; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Between January 25, 1995 and May 23, 1995, Mr. Cecil Ray Owen was employed by Westinghouse Electric Corporation (WEC) as a millwright at Virginia Electric and Power Company's (VEPCO) North Anna Power Station (NAPS). VEPCO holds License Nos. NPF–4 and NPF–7 for North Anna Units 1 and 2, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 1, 1978 and August 21, 1980, respectively. The licenses authorize VEPCO to operate NAPS in accordance with the conditions specified therein. WEC is a contractor to VEPCO and provides various services at NAPS.

II

10 CFR 73.56 requires, in part, that nuclear power plant licensees implement access authorization programs or accept a contractor's access authorization program for individuals seeking unescorted access to protected and vital areas of nuclear power plants. The objective of the regulation is to provide high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation, including an individual's employment history. The decision to grant unescorted access authorization must be based upon the licensee's review and evaluation of all pertinent information developed.

III

In order to be certified for unescorted access at NAPS, Mr. Owen was required to complete a WEC preemployment security questionnaire which included a requirement that he list all prior employment for the last five years. Mr. Owen completed the questionnaire in January 1995. The questionnaire was used by WEC to conduct a background investigation. Mr. Owen was granted unescorted access authorization to NAPS on the basis of information he submitted on this WEC preemployment security questionnaire. Information regarding prior drug usage is material to the NRC in that licensee fitness-for-duty

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programs must provide reasonable assurance that plant personnel will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, which in any way adversely affects their ability to safely and competently perform their duties. Fitness-for-duty programs must also provide reasonable measures for early detection of persons not fit to perform activities. Withholding information regarding prior drug usage circumvents these provisions of the fitness-for-duty programs. Deliberate misconduct demonstrates untrustworthiness to conduct activities at an NRC-licensed facility.

The Nuclear Regulatory Commission Office of Investigations (OI) conducted an investigation, completed on June 26, 1996, which found that Mr. Owen completed the WEC background questionnaire for a position at NAPS and deliberately failed to identify previous employment, within the five year period, where his employment was terminated for a positive drug test.

The deliberate misconduct rule in 10 CFR 50.5(a)(2) provides, in part, that an employee of a licensee, or employee of a contractor or subcontractor of a licensee, may not deliberately submit to the licensee, or the licensee's contractor or subcontractor, information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Mr. Owen violated this provision in that he was employed by WEC, a contractor to VEPCO, an NRC licensee, and deliberately provided information to WEC that was not complete, in that he did not identify one previous employer on an access authorization questionnaire he filled out at WEC's request. This information was material to the NRC as WEC and VEPCO relied on it in order to satisfy the requirement of 10 CFR Part 26 (Fitness for Duty Programs) and 10 CFR 73.56 (Personnel access authorization requirements for nuclear power plants).

Other pertinent information call into question Mr. Owen's credibility and trustworthiness. Mr. Owen, when questioned by OI, did not admit that he had falsified the questionnaire. Mr. Owen asserted that the questionnaire he completed had a statement on the bottom that only those periods of employment in excess of 30 days be included. When confronted with a photocopy of the questionnaire he signed, which contained instructions to list all employment for the previous five years, Mr. Owen remained steadfast in his assertion that the form he signed only required periods of employment in excess of 30 days. During the OI interview, Mr. Owen repeatedly denied using illegal drugs. However, when confronted with the laboratory results from his previous employer, Mr. Owen admitted that he used marijuana on isolated occasions.

Mr. Owen also told OI that he had not begun working at NAPS when he was advised of his denial of unescorted access when, in fact, he was employed at NAPS during the period between January 25 and May 23, 1995.

On August 19, 1996, the NRC sent a certified letter to Mr. Owen advising him of the apparent violation of NRC requirements and offering him the opportunity to attend a predecisional enforcement conference. The letter required a written response within 30 days of receipt and advised Mr. Owen that if he decided not to participate in a conference, the NRC would proceed based on the OI findings. After Mr. Owen received the letter, he telephoned Mr. A. Gibson, Director, Division of Reactor Safety, in the Region II office. Mr. Owen commented that a ban would affect his livelihood in that a large portion of his work was at nuclear sites. Mr. Gibson said that Mr. Owen should address this potential impact in his written response. As of the date of this Order, the NRC had not received a written response from Mr. Owen.

IV

Based on the results of the OI investigation and the lack of any additional information from Mr. Owen, the staff concludes that Mr. Owen's omission was deliberate and in violation of 10 CFR 50.5(a)(2).

The NRC must be able to rely on licensees, contractors and their employees to provide information that is complete and accurate in all material respects. This is essential with respect to access authorization programs at nuclear power plants because: (1) temporary access determinations are made on the basis of information provided by individuals prior to completion of a full background check; and, (2) the purpose of an access authorization program is to assure the trustworthiness and reliability of individuals granted unescorted access. Mr. Owen's deliberate omission raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees and their contractors. His omission also raises doubts about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected if Mr. Owen were permitted at this time to be involved in NRC-licensed activities. Therefore, public health and safety and the public interest require that Mr. Owen be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order and, if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Owen is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Owen's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, *It is hereby ordered*, effective immediately, that:

A. Mr. Cecil Ray Owen is prohibited for one year from the date of this Order from engaging in or exercising control over individuals engaged in NRC-licensed activities, including obtaining unescorted access at an NRC-licensed facility. If Mr. Owen is currently involved in NRC licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For one year following the period of prohibition set forth in Paragraph V.A. above, Mr. Cecil Ray Owen shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph V.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities.

The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

UMI

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. Owen of good cause.

VI

In accordance with 10 CFR 2.202, Mr. Owen must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Owen or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. Owen if the answer or hearing request is by a person other than Mr. Owen. If a person other than Mr. Owen requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Owen or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Owen may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 2nd day of January 1997.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Research, and Regional Operations.

[FR Doc. 97–399 Filed 1–7–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No.: 40–8027]

Sequoyah Fuels Corporation, Gore, Oklahoma; Consideration of Amendment to Source Material License and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–1010, issued to Sequoyah Fuels Corporation, at the Sequoyah Facility, Gore, Oklahoma. The licensee requested the amendment in a letter dated November 18, 1996, to remove the special process commitments contained in Chapter 6. These commitments are generally requirements for support system operation during processing. Because processing is prohibited, system operation is not required.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requester in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, to the attention of Mr. John H. Ellis, President, P.O. Box 610, Gore, OK 74435; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, refer to the application for the amendment dated November 18, 1996, available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, Oklahoma 74955.

Dated at Rockville, Maryland, this 31st day of December 1996.

For the U.S. Nuclear Regulatory Commission.

John W. N. Hickey, Chief,

Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–402 Filed 1–7–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority (Sequoyah Nuclear Plant Units 1 and 2); Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its May 19, 1995, application for proposed amendment to Facility Operating License Nos. DPR–77 and DPR–79 for Sequoyah Nuclear Plant Units 1 and 2, located in Soddy Daisy, Tennessee.

The proposed amendment would have revised Technical Specification surveillance requirement 4.1.1.3 to conditionally exempt the end-of-life measurement of moderator temperature coefficient.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 21, 1995 (60 FR 32372). However, the licensee made a decision to withdraw the proposed change on December 17, 1996 on the basis that the change is no longer required. This notice is to document withdrawal of the subject amendment request.

For further details with respect to this action, see the application for amendment dated May 19, 1995.

The above document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 30th day of December 1996.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–401 Filed 1–7–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 6, 13, 20, and 27, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 6
Tuesday, January 7
9:30 a.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)
2:00 p.m. Discussion of Procedures for NRC Strategic Assessment (Closed—Ex. 2)
Thursday, January 9
12:00 noon. Affirmation Session (PUBLIC MEETING) (if needed)
Week of January 13—Tentative
Monday, January 13
10:00 a.m. Briefing on NRC Strategic Assessment (PUBLIC MEETING) (Contact: John Craig, 301–415–3812)
11:30 a.m. Affirmative Session (PUBLIC MEETING) (if needed)
Week of January 20—Tentative
Tuesday, January 21
3:30 p.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)
Wednesday, January 22
10:00 a.m. Briefing on Codes and Standards (PUBLIC MEETING) (Contact: Gil Millman, 301–415–5843)
11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)
Week of January 27—Tentative
Monday, January 27
10:00 a.m. Briefing by DOE on Plutonium Disposition (PUBLIC MEETING) (Contact: Vanice Perin, 301–415–8143)
Wednesday, January 29
10:00 a.m. Briefing on Operating Reactors and Fuel Facilities (PUBLIC MEETING) (Contact: Victor McCree, 301–415–1711)
11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)
Thursday, January 30
10:00 a.m. Briefing on Millstone by Northeast Utilities and NRC (PUBLIC MEETING) (Contact: Bill Travers, 301–415–8500)
Friday, January 31
10:00 a.m. Briefing on Integrated Materials Performance Evaluation Program (PUBLIC MEETING) (Contact: Don Cool, 301–415–7197)

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: January 3, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–473 Filed 1–6–97; 10:21 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 10.12, "Preparation of Petitions for Rulemaking Under 10 CFR 2.802 and Preparation and Submission of Proposals for Regulatory Guidance Documents," provides guidance to persons who submit petitions for rulemaking to the NRC concerning the type and quantity of information that would allow the NRC to process the petition in an expeditious manner. This guide also provides the procedures for submitting proposals to change existing regulatory guidance documents.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or copying for a fee at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides, both active and draft, may be obtained free of charge by writing the Office of Administration, Attn: Distribution and

Services Section, USNRC, Washington, DC 20555–0001, or by fax at (301) 415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of December 1996.

For the Nuclear Regulatory Commission.

David L. Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 97–400 Filed 1–7–97; 8:45 am]

BILLING CODE 7590–01–P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, January 14 and 15, 1997, at the Madison Hotel, 15th & M Streets, NW., Washington, DC, 202/862–1600.

The Full Commission will convene at 9:00 a.m. on January 14, 1997, and adjourn at approximately 5:15 p.m. On Wednesday, January 15, 1997, the meeting will convene at 8:00 a.m. and adjourn at approximately 3:30 p.m. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 97–361 Filed 1–7–97; 8:45 am]

BILLING CODE 6820–BW–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 15, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Letter to Mr. Ken Apfel, OMB, Re Bulletin No. 96–02. Consolidation of Agency Data Centers

(2) Consultative Medical Examinations Contract

(3) Medicare Solicitation Notice

(4) Potential Option for Co-Location of Branch Offices (Westbury)

(5) Phase IV Office Closures (Options A thru D)

(6) Proposed Buyout Offers

(A) Buyouts for Year 2000 Employees

(7) Senior Executive Service Allocation, Fiscal Years 1998 and 1999

(8) Outleasing of the First Floor

(9) Publication of Monthly Benefit Statistics

(10) Coverage Determinations:

A. Discussion of Hearings Officer's Report on Coverage Decision For CSX Sealand Terminals

B. Status of Intermodal Services under the Railroad Retirement and Railroad Unemployment Insurance Acts

C. South Central Rail Management, LLC

D. CSX Technology, Inc.

E. Belvidere & Delaware River Railway Company, Inc.

F. Industrial Temps, Inc.

G. Minnesota River Bridge Company

H. Response to Letter of 12/4/96 from Mr. Damen K. McCaddon Concerning Refunds of Railroad Retirement Taxes Paid to Employees Of the Durango & Silverton Narrow Gauge Railroad

(11) Regulations:

A. Part 211, Pay for Time Lost

B. Parts 230, 255 and 261

(12) December 18, 1996 Board Meeting—Recommendation Regarding Public Attendance at Future Board Meetings

(13) Labor Member Truth in Budgeting Status Report

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: January 3, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–462 Filed 1–6–97; 9:49 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38107; File Nos. SR–SCCP–96–11 and SR–Philadep–96–21]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to Participants Fund Contributions for Inactive Account(s)

December 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 15, 1996, the Stock Clearing Corporation of Philadelphia ("SCCP") and the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–SCCP–96–11 and SR–Philadep–96–21) as described in Items I and II below, which items have been prepared primarily by SCCP and Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change seeks permanent approval of SCCP's and Philadep's participants fund formulas with respect to inactive accounts and the account monitoring procedures related to such inactive accounts. The Commission previously approved these formulas and account monitoring procedures on a temporary basis through December 31, 1996.[2]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, SCCP and Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP and Philadep have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The proposed rule change seeks permanent approval of amendments to both SCCP's and Philadep's Rule 1 and Rule 4 governing (i) the $5,000 minimum cash participants fund contribution for inactive accounts and (ii) the inactive account monitoring procedures designed to detect and collect additional participants fund contributions when an inactive account

[1] 15 U.S.C. 78s(b)(1).

[2] Securities and Exchange Act Release No. 37554 (August 9, 1996), 61 FR 42929 [File Nos. SR–SCCP–96–03 and SR–Philadep–96–07] (order granting temporary approval of proposed rule changes to establish separate participant categories for inactive accounts).

[3] The Commission has modified the text of the summaries submitted by SCCP and Philadep.

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becomes active. The Commission previously approved these participants fund formulas, the procedures monitoring levels of account activity, and the procedures for collecting additional participants fund contributions on a temporary basis through December 31, 1996.[4] Throughout the temporary approval period, SCCP and Philadep have provided monthly reports to the Commission detailing inactive account activity. At this time, SCCP and Philadep are requesting that the Commission grant permanent approval to the inactive account participants fund contribution and the inactive account monitoring procedures.

SCCP and Philadep believe the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of SCCP and Philadep or for which SCCP and Philadep are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

SCCP and Philadep do not believe that the proposed rule changes will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments have been solicited or received. SCCP and Philadep will notify the Commission of any written comments received by SCCP and Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission believes the proposed rule changes are consistent with SCCP's and Philadep's obligations under Section 17A(b)(3)(F) because in connection with establishing separate participant categories designed for participants that conduct limited activity, the proposals establish procedures to monitor the level of activity in those participants accounts and procedures to collect additional participants fund deposits if the activity in the accounts increase above certain thresholds.

SCCP and Philadep have established new surveillance procedures to monitor inactive participants' accounts to ensure that inactive participants are not able to conduct levels of activity above the inactive account thresholds without depositing additional funds. Pursuant to the temporary approval order, SCCP and Philadep have submitted on a monthly basis reports detailing the number of inactive participants, the value of their participants fund deposits, and the total activity in each inactive account for the prior month. After review of the monthly reports, the Commission believes that it is appropriate to grant permanent approval of the proposals. The inactive accounts reflect a small volume of activity that the Commission currently believes is adequately covered by the inactive account minimum participants funds deposit. Additionally, SCCP's and Philadep's procedures provide for the monitoring of activity in those participant accounts and the prompt collection of additional funds as the level of activity nears the maximum level of activity allowed in an inactive participants account.

However, SCCP and Philadep are to continue to submit on a monthly basis reports detailing the number of inactive participants, the value of their participants fund deposits, the total activity in each inactive account for the prior month, and the steps taken in the event that an inactive participant exceeded the inactive thresholds or became active. SCCP and Philadep must continue to submit such reports to the Commission so that the Commission can continue to monitor SCCP's and Philadep's administration of these new surveillance procedures established under these proposed rule changes.

SCCP and Philadep have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. Because accelerated approval will enable SCCP and Philadep to keep in place without interruption their inactive participant procedures, the Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP and Philadep. All submissions should refer to the file number SR–SCCP–96–11 and SR–Philadep–96–21 and should be submitted by January 29, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–96–11 and SR–Philadep–96–21) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–385 Filed 1–7–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2921]

Pennsylvania; and Contiguous Counties in New Jersey; Declaration of Disaster Loan Area

Philadelphia County and the contiguous counties of Bucks, Delaware, and Montgomery in the Commonwealth of Pennsylvania, and Burlington, Camden, and Gloucester Counties in the State of New Jersey constitute a disaster area as a result of damages caused by a fire which occurred on December 19 and 20, 1996 in the City of Philadelphia. Applications for loans for physical

[4] For a complete discussion of SCCP's and Philadep's inactive account rules and procedures, refer to Securities and Exchange Act Release No. 37554, *supra* note 2.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval of Philadep's proposed rule change. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (December 30, 1996).

[7] 17 CFR 200.30–3(a)(12).

damage may be filed until the close of business on February 28, 1997 and for economic injury until the close of business on September 30, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	8.000
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.250
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 292105 for Pennsylvania and 292205 for New Jersey. For economic injury the numbers are 932800 for Pennsylvania and 932900 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 30, 1996.

Katherine D. Kincaid,

Acting Administrator.

[FR Doc. 97–370 Filed 1–7–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2501]

Significant Projects Which Have Been Tendered in the Oil and Gas Sector in Iran

Pursuant to section 5(e) of the Iran and Libya Sanctions Act of 1996 (Public Law 104–172), the Department of State is presenting the following list of significant projects which have been publicly tendered in the oil and gas sector in Iran. We have made no determinations with respect to the imposition of sanctions in connection with the projects on the list. A project's inclusion on or absence from the list should not be seen as relevant to a determination on the imposition of sanctions.

—South Pars Gasfield Development Project
—AMAK Gas Processing Facility
—Doroud Oilfield Expansion Project
—Salman Field Khuff Gas Reservoir (Dalan Formation) Development
—Bandar Abbas Condensate Refinery (Number 9 Refinery)
—Shiraz Refinery Expansion
—NGL–1200 Facility
—NGL–1300 Facility
—Lavan Island LPG Facility
—Balal Oilfield Development Project
—Soroush Oilfield Development Project.

Dated; January 2, 1997.

William Weingarten,

Deputy Assistant Secretary, Acting, Energy, Sanctions, and Commodities.

[FR Doc. 97–409 Filed 1–7–97; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice Number 2502]

International Joint Commission; Boundary Waters Treaty of 1909

Notice of Public Hearing on the Safety of Dams and Other Structures Operated under International Joint Commission Orders.

Certain dams and other structures along the United States-Canada border are operated under Orders of the International Joint Commission pursuant to the Boundary Waters Treaty of 1909 and the Rainy Lake Convention. Currently, oversight of safety considerations varies.

The International Joint Commission will hold a public hearing in Ottawa, Ontario on February 19, 1997 to evaluate these individual procedures and authorities, to hear the views of all interested persons on how best to ensure the safety of structures subject to Commission Orders, and to consider how long such Orders should remain in force.

The hearing will begin at 10 a.m. on February 19, 1997 at the location below: Canadian International Trade Tribunal, Hearing Room #2, 333 Laurier Avenue West, 18th floor, Ottawa, Ontario.

Everyone is invited to offer relevant information and views to the Commission, whether on their own behalf or in a representative capacity. Persons intending to participate in the hearing are encouraged to provide either Commission Secretary with copies of their remarks prior to the hearing.

Written submissions are encouraged from both those who attend and from those unable to attend the hearing. They may be sent to either Commission Secretary on or before March 21, 1997 at the addresses below:

Secretary, U.S. Section, 1250 23rd Street, NW., Suite 100 Washington, DC 20440 Telephone: (202) 736–9000 Fax: (202) 736–9015 Email: Bevacquaf@ijc.achilles.net

Secretary, Canadian Section 100 Metcalfe Street, 18th Floor Ottawa, ON K1P 5M1 Telephone: (613) 995–2984 Fax: (613) 993–5583 Email: Trippg@ijc.achilles.net

The International Joint Commission has approved construction and operation of certain structures along the border. Structures operating under Commission Orders include:

St. Croix River

Grand Falls Dam
Milltown Dam
Forest City Dam
Vanceboro Dam

Saint John River

Grand Falls Dam

Richelieu River

Fryers Island Dam

St. Lawrence River

Moses-Saunders Dam
Long Sault Dam
Iroquois Dam

Niagara River

Niagara Falls Control Structure
Lake Erie Ice Boom
Peace Bridge

St. Marys River

Compensating Works
Great Lakes Power Dam

Rainy and Namakan Lakes

Prairie Portage Dam
Kettle Falls Dam
Fort Frances-International Falls Dam

Kootenay River

Kootenay River Dyking
Corra Linn Dam

Columbia River

Grand Coulee Dam

Pend'Oreille River

Waneta Dam

Okanagan River

Zosel Dam

Dated: January 2, 1997.

Kathy Prosser,

Secretary, United States Section, International Joint Commission.

[FR Doc. 97–407 Filed 1–7–97; 8:45 am]

BILLING CODE 4710–14–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identifications of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public concerning acts, policies, and practices to be considered with respect to identification of countries under section 182 of the Trade Act of 1974, as amended.

SUMMARY: Section 182 of the Trade Act of 1974, as amended (Trade Act), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. 19 U.S.C. 2242. In addition, the USTR is required to determine which of the countries identified should be designated as priority foreign countries. Priority foreign countries typically are subject to a "special" 301 investigation of the acts, policies or practices which led to their designation. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Tuesday, February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395–6864; Claude Burcky, Director for Intellectual Property (202) 395–6864; or Thomas Robertson, Associate General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries.

USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under article 2106 of the North American Free Trade Agreement (NAFTA). The identification of any such act, policy or practice shall have the same status as a priority foreign country designation under section 182(a)(2) of the Trade Act (i.e., the rules regarding initiation of a "special" 301 investigation will apply), unless the United States has already taken action pursuant to section 2106 of the NAFTA.

USTR must make the above-referenced identifications and designations within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1997. Priority foreign countries typically are subject to a "special" 301 investigation of the acts, policies or practices which led to their designation.

Requirements for Submissions: Submissions should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b)(55) FR 20593) and must be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, Room 223, 600 17th Street, NW., Washington, D.C. 20508, no later than 12:00 noon on Tuesday, February 18, 1997. Because submissions will be placed in a file open to public inspection at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions: Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 12:00 noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday.

Joseph Papovich,

Deputy Assistant USTR for Intellectual Property.

[FR Doc. 97–416 Filed 1–7–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 22, 1996 [FR 61, page 54833].

DATES: Comments must be submitted on or before February 7, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Transition to an all Stage 3 Fleet operating in the 48 contiguous United States and the District of Columbia.

OMB No. 2120–0553.

Type of Request: Extension of A Currently Approved Collection.

Affected Public: U.S. and foreign air carriers.

Abstract: 14 CFR Part 91 implements Sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990, by establishing a schedule of reductions of Stage 2 airplanes and prohibiting their use in the contiguous U.S. after 12/31/99. Also, it precludes the operation of airplanes in the contiguous U.S. that

were imported pursuant to contracts executed after 11/5/90.

Burden Estimate: The estimated burden is 280 hours annually.

2. *Title:* Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities.

OMB No. 2120–0571.

Type of Request: Extension of A Currently Approved Collection.

Affected Public: The respondents are an estimated 5,300 specified aviation employers.

Abstract: This regulation requires specified aviation employers to implement an FAA-approved alcohol misuse prevention program, (AMPP), to provide the FAA with an AMPP certification statement, and to report annually on alcohol testing results.

Burden Estimate: The estimated burden is 14,000 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 23, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–383 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 96–070]

National Baseline Requirements Group Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard is undertaking an effort to identify the minimum capabilities a Vessel Traffic Service (VTS) must have to serve its wide range of users. The Coast Guard needs to establish national baseline operating requirements that will permit it to take advantage of available, off-the-shelf systems that will be less expensive to build and operate. In order to have a comprehensive representation of all waterway users, the Coast Guard has invited national representatives of several maritime organizations to provide input to assist in the development of these requirements. This is the first meeting of the National Baseline Requirements Group. There will be a series of 4–6 meetings which will continue through early 1997.

DATES: The meeting will be held January 15, 1997, from 9 a.m. to approximately 5 p.m.

ADDRESSES: The meeting will be held in the Marine Board Offices, National Academy of Science, 2001 Wisconsin Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Johnson, Marine Board, National Academy of Science, 2001 Wisconsin Avenue, Washington, DC, telephone (202) 334–3157, fax (202) 334–3789.

SUPPLEMENTARY INFORMATION: Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under the **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

The agenda for the meeting consists of the following items:

(1) VTS Program Update and VTS Authority.

(2) Overview of Coast Guard Mission Needs.

(3) Scope—Critical Areas for VTS.

(4) Coast Guard Strawman Operational Requirements Menu and Coast Guard Expectations and Needs.

(5) Development of Minimum Safety Baseline VTS.

(6) Plans for Next Meeting.

(7) Adjournment.

Dated: December 31, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–421 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 96–126; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1986 Mazda RX–7 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1986 Mazda RX–7 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1986 Mazda RX–7 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 7, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

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Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

LPC of New York, Inc. of Ronkonkoma, New York ("LPC") (Registered Importer 96–100) has petitioned NHTSA to decide whether 1986 Mazda RX–7 passenger cars are eligible for importation into the United States. The vehicle which LPC believes is substantially similar is the 1986 Mazda RX–7 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1986 Mazda RX–7 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

LPC submitted information with its petition intended to demonstrate that the non-U.S. certified 1986 Mazda RX–7, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1986 Mazda RX–7 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner states that the vehicle also complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) inscription of the word "Brake" on the lens of the brake failure indicator lamp; (b) replacement of the speedometer/odometer with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.- model sealed headlight assemblies; (b) installation of U.S.- model rear sidemarker lights.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 114 *Theft Protection*: installation of a U.S.- model warning buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: installation of a seat belt warning buzzer. Petitioner states that the vehicle is equipped with U.S.-model seat belt assemblies identical to those found on its U.S.-certified counterpart.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that a VIN plate will be installed in the vehicle so that it can be read from outside the left windshield pillar, and a VIN reference label will be installed on the edge of the door or latch post nearest the driver to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination Mazda in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 3, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–387 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–132; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1984 Nissan 300ZX Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1984 Nissan 300ZX passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1984 Nissan 300ZX that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 7, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA

has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

LPC of New York, Inc. of Ronkonkoma, New York ("LPC") (Registered Importer 96–100) has petitioned NHTSA to decide whether 1984 Nissan 300ZX passenger cars are eligible for importation into the United States. The vehicle which LPC believes is substantially similar is the 1984 Nissan 300ZX that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1984 Nissan 300ZX to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1984 Nissan 300ZX, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1984 Nissan 300ZX is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1984 Nissan 300ZX complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b)replacement of the speedometer/odometer with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.- model headlight, and sidemarker assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a U.S.- model warning buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a VIN plate will be installed on the vehicle so that it can be read from outside the left windshield pillar, and a VIN reference label will be installed on the edge of the door or latch post nearest the driver to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 3, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–422 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–131; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Through 1996 BMW 325i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 through 1996 BMW 325i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992 through 1996 BMW 325i passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 7, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle

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Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1992 through 1996 BMW 325i passenger cars are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1992 through 1996 BMW 325i passenger cars that were manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992 through 1996 BMW 325i passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that non-U.S. certified 1992 through 1996 BMW 325i passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992 through 1996 BMW 325i passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1992 through 1996 BMW 325i passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) replacement of the headlight assemblies; (b) replacement of the turn signal lens assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning device to be activated if the key is left in the steering lock and the driver's side door is opened.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning system; (b) installation of a U.S.-model driver's side air bag and knee bolster; (c) installation of a U.S.-model passenger's side air bag on model years for which this component was included as standard equipment on the U.S. certified counterpart. The petitioner states that the vehicles are equipped with Type 2 seat belts in all four outboard designated seating positions, and with a Type 1 seat belt in the rear center seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that non-U.S. certified 1992 through 1996 BMW 325i passenger cars must be marked to comply with the Theft Prevention Standard at 49 CFR Part 541.

The petitioner also states that a VIN plate will be installed on the vehicles so that it can be read from outside the left windshield pillar, and a VIN reference label will be installed on the edge of the door or latch post nearest the driver, in compliance with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 3, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–423 Filed 1–7–97; 8:45 am]

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Surface Transportation Board

[STB Ex Parte No. 619]

Petition of Fieldston Co., Inc. To Establish Procedures Regarding Ex Parte Communications in Railroad Merger Proceedings

AGENCY: Surface Transportation Board.

ACTION: Statement of policy.

SUMMARY: The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), at 49 U.S.C. 11324(f), permits, but does not require, ex parte communications in certain circumstances involving the consolidation, merger, or acquisition of control of railroads in a transaction that involves at least one Class I railroad. The Board announces that it will not entertain ex parte communications in railroad merger proceedings.

EFFECTIVE DATE: January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In response to a petition filed by Fieldston Co., Inc., the Board has announced that it will not entertain ex parte communications in railroad merger proceedings. While a change in the law permits ex parte communications in railroad merger proceedings under certain conditions, the Board has decided not to entertain ex parte communications in these proceedings because entertainment of ex parte communications would impede efficiency, fairness, and public confidence in the Board's railroad merger review procedures.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Ave., N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 31, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–410 Filed 1–7–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on February 4 and 5, 1997, of the following debt management advisory committee: Public Securities Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff on February 4, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On February 5, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on February 4 and will be open to the public. The remaining sessions on February 4 and the committee's reporting session on February 5 will be closed to the public, pursuant to 5 U.S.C. App. section 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. section 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: January 2, 1997.

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 97–364 Filed 1–7–97; 8:45 am]

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federal register

Wednesday
January 8, 1997

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; California—Ozone; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA114–0023; FRL–5665–8]

Approval and Promulgation of Implementation Plans; California—Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTIONS: Final rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) for ozone for 6 nonattainment areas: South Coast, Southeast Desert, Ventura, Sacramento, San Diego, and San Joaquin Valley. In addition, EPA is approving specific local and statewide air pollution control measures, including the California enhanced motor vehicle inspection and maintenance program. The California Air Resources Board (CARB) submitted these SIP revisions to EPA on November 14, 1994, November 15, 1994, December 28, 1994, December 29, 1994, February 7, 1995, March 30, 1995, January 22, 1996, April 4, 1996, May 17, 1996, June 13, 1996, July 10, 1996, and July 12, 1996.

EPA is approving these revisions to the California SIP under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals for nonattainment areas.

EPA is also establishing a consultative process on the potential for additional mobile source controls that can contribute to attainment in the South Coast, and the Agency is committing to undertake rulemaking on those controls deemed to be appropriate for EPA.

EFFECTIVE DATE: This approval is effective on February 7, 1997.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–96–13, which is available for viewing during normal business hours at the following location: Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

Environmental Protection Agency, Air Docket (6102), 401 M Street, S.W., Washington, DC

California Air Resources Board, 2020 L Street, Sacramento, California

In addition, copies of the relevant local plan, the State plan (1994 California Ozone SIP), public comments, and EPA's technical support documents for this rulemaking are available at the following locations:

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Fresno, California

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, California

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California

Electronic Availability

This document and related materials are available at Region 9's site on the World Wide Web at http://www.epa.gov/region09 (please look under Air Programs). The **Federal Register** is also available on the Internet by pointing a web browser at: http://www.access.gpo.gov/su_docs/ or by telnet to swais.access.gpo.gov.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Office of Planning, Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 744–1230.

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I. Background

A. Summary

EPA is finalizing approval of the 1994 California Ozone SIP.[1] This action was proposed on March 18, 1996 (61 FR 10920–10962). The reader is referred to that notice for additional detail on the affected areas and the SIP submittals, as well as a summary of relevant Clean Air Act requirements and EPA interpretations of those requirements.

Specifically, EPA is approving in this document:

- The emission inventories in San Diego, San Joaquin, Sacramento, Ventura, the Southeast Desert, and the South Coast;[2]
- The 15% rate-of-progress plans for San Diego, San Joaquin, Ventura, and the South Coast;
- The post-1996 rate-of-progress plans for San Diego, San Joaquin, Sacramento, Ventura, and the South Coast;
- The modeling and attainment demonstrations in San Diego, San Joaquin, Sacramento, Ventura, the Southeast Desert, and the South Coast;
- All of the individual local control measures and the State control measures not previously approved; and
- The State's motor vehicle inspection and maintenance (I/M) program and regulations.

This approval indicates EPA's belief that this SIP, if faithfully implemented, will achieve clean air for California. The health of all Californians now depends on the dedication of the State to see that the plans are carried out. While the State may submit revisions to change individual strategies, EPA intends to hold it accountable for timely delivery of the commitments in the plans approved today.

An important aspect of EPA's approval involves the establishment of a public consultative process intended to identify the future mobile source strategies to provide the remaining emission reductions needed for attainment in the South Coast, which remains the Nation's only extreme ozone nonattainment area.

In submitting its 1994 SIP, the State maintained that achievement of clean air goals in the South Coast required further emission reductions from national and international mobile sources, as a supplement to the State's own aggressive mobile source control program and the massive contribution made by locally adopted regulations and control measures. The State argued that California lacked the legal authority or practical ability to control these sources, and that the Federal efforts were essential for progress and attainment in the South Coast because there are no feasible alternatives, in light of the stringent State and local controls on all other sources.

The State identified in the proposed SIP specific mobile sources requiring future Federal controls: onroad and nonroad vehicles and engines, pleasure craft, marine vessels, aircraft, and locomotives. For each source, the State specified a desired level of emission reductions and the years for Federal adoption and implementation.

Under the Constitution and the Clean Air Act, EPA does not believe that a state has authority to assign emission reduction responsibilities to the Federal government. Nevertheless, EPA believes that the Federal government should help speed clean air, not only in California but on a national basis.

Since the Clean Air Act Amendments of 1990, EPA has already issued 30 national regulations to help reduce emissions from mobile sources. Examples of important recent national controls include: (1) The heavy duty truck and bus rules for NO_x and PM issued in May 1993; (2) the NO_x standards for nonroad diesel engines 37kW and above promulgated in 1994; (3) the small nonroad gasoline engine standards (primarily for lawn and garden equipment) finalized in July 1995; and (4) the pleasurecraft engine standards issued in August 1996.

EPA will issue further national controls for remaining mobile source categories. In doing so, the Agency must set controls based on national considerations and criteria established by Congress in the applicable sections of Title II of the Act.

Since the 1994 California Ozone SIP was submitted, EPA has been working cooperatively with California and other stakeholders to develop more stringent controls for both onroad and nonroad vehicles and engines. These constructive, consensus-building activities have received widespread national support from the affected industries, states, and the environmental community, and have already resulted in agreement on stringent new national controls for highway trucks and buses, proposed on June 27, 1996 (61 FR 33421–33469), and for nonroad compression-ignition engines (agreement signed by EPA, California, and industry, on September 13, 1996). The proposed controls achieve California's reduction targets for these source categories while at the same time avoiding the inefficiencies and dislocation that would result from different and possibly conflicting Federal and California standards.

As a result of such successes, EPA is optimistic that the year-long consultative process will succeed and provide emission reductions that complement the California State and local controls contained in the South Coast SIP. The current status of EPA's activities in developing further mobile source controls is presented in Appendix A of this document.

In order to allow time to evaluate what additional mobile source reductions can contribute to ozone attainment in the South Coast, EPA intends to continue and broaden the consultation with the State and other affected parties through June 1997. As stated in the proposal, the Agency believes that this period provides the opportunity to agree on future mobile source reductions that will meet our environmental goals expeditiously and without adverse consequences to the State and the South Coast, whether the controls come from national and international standards or from new State and local measures.

On July 19, 1996, EPA held the first of several meetings in Los Angeles to describe the public consultative process and stimulate a useful exchange of ideas on innovative and ambitious approaches to achieve our pollution reduction targets. Appendix B to this document gives more details on the public consultative process and proposed future meetings.

At the conclusion of the consultative process, EPA believes that the State will have the information it needs to amend

[1] EPA will take action on the Santa Barbara SIP separately. After EPA's proposed approval was issued, ozone violations were recorded, which prevent the Santa Barbara area from meeting its attainment goals this year.

[2] The respective Federal ozone nonattainment areas are: San Diego Area, San Joaquin Valley Area, Sacramento Metro Area, Ventura County Area, Southeast Desert Modified AQMA Area, and Los Angeles-South Coast Air Basin Area. The boundaries of these areas are set forth at 40 CFR 81.305.

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the South Coast attainment demonstration appropriately, based on the final mix of international, national, State, and local mobile source controls. The State has agreed, and has committed to submit a revised attainment demonstration by December 1997, and to adopt and submit any needed State measures by December 1999. As proposed, EPA is making a comparable enforceable commitment to undertake rulemakings, after the consultative process, on any controls which are determined to be appropriate for EPA.

EPA believes that, by working together with the State, local government, affected industry, environmental groups, and the general public, we can identify approaches to fulfill our public health obligations in ways that support progress in other areas of public concern.

The data collected and analyses performed as part of EPA's forthcoming report to Congress on the Benefits and Costs of the Clean Air Act demonstrate that air pollution control activities, while costly, have returned far greater economic benefits.[3] Similarly, California-specific studies have recently underscored the State's historic success in reconciling economic growth with air quality progress.[4]

If successfully implemented, the 1994 California Ozone SIP will succeed even more completely than previous clean air plans in harmonizing public health progress with the social and economic goals of the State's citizens. Federal approval of the 1994 SIP will help to provide the regulatory certainty needed to sustain and accelerate California's progress in achieving State and Federal clean air objectives. EPA will continue to work together with California to achieve the clean air that our citizen's deserve.

B. Response to Public Comments on General SIP Issues

1. Federal Assignments.

a. Importance of Federal Contribution and Difficulty of Further Local Controls. As discussed in the proposal, the 1994 California Ozone SIP includes 7 specific mobile source control measures assigned to the Federal government. These measures, which were in addition to those already promulgated by EPA, comprised a more stringent heavy-duty diesel vehicle standard, an off-road diesel equipment standard, a standard for gasoline- and LPG-fueled industrial equipment, national and international standards for marine vessels, national standards for locomotives with a South Coast clean locomotive fleet program, national standards for aircraft, and standards for pleasurecraft.

EPA received many comments underscoring the critical need for reductions from additional national regulations if California areas, particularly the South Coast, are to achieve healthy air quality. Most of these comments added a corollary: Further State and local controls could not reasonably be expected, given the comprehensiveness and stringency of existing regulations and committal measures in the SIP. As stated in the proposal, EPA recognizes that national and international mobile sources are increasingly significant components of the ozone problem, especially in the South Coast, and EPA is committing at this time to undertake the rulemaking on those controls that are determined to be appropriate. The increased Federal contribution that will come from ongoing national mobile source control measures, plus the State and local control measures in the SIP, add up to almost all of the needed emission reductions. EPA is confident that a small shortfall, if it still exists at the end of the public consultative process, will be addressed by cooperative Federal, State, and local strategies, without adverse impacts.

b. Public Consultative Process. The California Environmental Protection Agency (CEPA) commented that the proposed consultative process is much like the participatory approach California has used for many years to develop new environmental programs. CEPA stated that CARB's staff are prepared to begin work right away with EPA and other stakeholders to develop appropriate controls.

The American Association of Railroads (AAR) commented in support of EPA's proposed consultative process as an innovative and useful method to help assure that the SIP's goals are met.

Over twenty years of efforts to clean the air in Southern California have taught that cooperation and innovation by all parties are essential if attainment is to be achieved while retaining a healthy economy. The proposed consultative process builds on that experience, and in that manner provides a reasonable basis for EPA approval of the South Coast attainment demonstration.

The Western Riverside Council of Governments (WRCOG) supported the continuation and expansion of the collaborative process. WRCOG asked that a formal participation program should be developed as part of the consultative process, to provide a framework in which local governments and business communities could participate, since local agencies are required to implement whatever control measures are adopted from this process and success depends upon local government "buy-in." The City of Los Angeles also requested that EPA establish a list of key stakeholders and begin seeking input through a formal process.

EPA agrees that local government participation in the design and review of control measures is critically important to ensure that the measures are efficient, acceptable to the affected communities, and successfully implemented. The Agency hopes that the process can be an open and informal exchange of ideas from the community at large. EPA believes that this is the most efficient structure and approach, in the limited amount of time, to share and receive important information that will help all participants to understand the issues involved and the opportunities to achieve the remaining emissions reductions needed from mobile sources.

c. Legal and Policy Issues. The Environmental Defense Center opposed EPA's proposed public consultative process to resolve the SIP's future mobile source component. EDC expressed perplexity at EPA's reliance on and endorsement of California's assignment of emissions reductions to meet California's shortfall in attainment demonstration for the South Coast:

> The novel "consultative" process is without basis in law or propriety under the facts. EPA should not accept "assignment" of California's shortfall; this action violates the Act, perverts the local air quality planning process, and rewards California's unwillingness to address its own air quality problems. The precedent is highly disfavorable to clean air and jeopardizes the health and well being of everyone in the United States.

As stated in the Notice of Proposed Rulemaking (NPRM), EPA believes that California does not have the authority to assign SIP responsibility to the Federal government. However, EPA recognizes that massive further reductions are needed for attainment in the South Coast and that attainment may be either

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[3] See *The Benefits and Costs of the Clean Air Act, 1970 to 1990*, USEPA report prepared for US Congress under section 812 of the Clean Air Act, Draft report issued May 3, 1996. USEPA expects to issue the final report in the near future, along with a similar prospective analysis on benefits and costs of the 1990 Clean Air Act Amendments.

[4] See Alan Gordon, *Myths of Jobs vs. Resources: Environmental Protections and Economic Growth*, March 1996 (report prepared for the California Senate Office of Research), and Anil Puri, *Significance of California Air Pollution Control Regulations for Business Location Decisions*, May 1995 (report prepared for the California Air Resources Board Research Division).

very costly and disruptive or impossible if further reductions are not achieved from national and international sources.

EPA therefore established the public consultative process to resolve the complex issues associated with national and international sources and to determine what combination of controls at various levels are appropriate to contribute to the remaining emission reduction needs in the South Coast. Both EPA and the State have made enforceable commitments to prepare the controls that are determined, after the public consultation process, to be appropriate for them. Under these commitments, any new Federal or State rules both can and will be adopted before they are required to meet progress or attainment requirements in the South Coast. EPA also believes that those national or international controls that issue from the public consultative process will benefit, rather than disfavor, clean air elsewhere in the United States.

The "Federal Assignments" portion of the SIP is approvable because it is consistent, in the overall context of the California SIP, with the Clean Air Act requirements. The California SIP as a whole is approvable as long as, among other things, it includes "[a] demonstration that the plan * * * will provide for attainment" of the NAAQS. CAA section 182(c)(2)(A). As set forth in the proposal and below in section II.B.6., the South Coast SIP regulations and commitments, coupled with promulgated Federal measures, provide the great bulk of reductions needed for attainment. The amount of reductions expected from the consultative process is a small percentage of the overall amount of reductions needed for attainment. In addition, granting additional time for identifying and adopting the remaining measures is consistent with the statutory scheme because the time delays are relatively brief, in the context of the SCAB attainment process, and thus do not interfere with the deadline for ROP and attainment.

EPA counts towards the attainment demonstration reductions from measures resulting from the consultative process, even though those measures have not yet been determined, in part because of the practical and technical challenges of providing for attainment in the South Coast. The SIP provisions for the South Coast already include control requirements that, in general, are more expensive and technologically advanced, and apply to smaller emitters, than any other SIP in the nation.[5] Generating additional emissions reductions from additional SIP measures presents a high magnitude of complexity. Such additional SIP reductions may prove unnecessary depending on whether and how many additional reductions from other Federal measures will occur.

Both EPA and the State are committing to undergo the consultative process described above, and to promulgate controls determined by that process to be appropriate. Those EPA and State commitments are enforceable by citizens. Based on these commitments, EPA will assure that the gap in emissions reductions represented by the consultative process, and needed to attain, will be closed. For example, at the close of the consultative process, EPA may promulgate a rulemaking that identifies (i) additional SIP reductions that EPA considers appropriate for California to undertake, and additional Federal measures that EPA intends to promulgate; as well as (ii) schedules for the adoption or promulgation and implementation of both sets of measures.

For these reasons, EPA has concluded that the SIP for the South Coast, with its limited reliance on additional reductions to be determined through a consultative process, "provide[s] for" attainment, under section 182(c)(2)(A) of the Act.

EPA believes that CAA section 172(c)(6) supports its conclusion that the California SIP, including the consultative process commitments, "provide[s] for" attainment under section 182(c)(2)(A). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP "include enforceable emission limitations, and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * *." (Emphasis added.) The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment. Under these circumstances, the emission limitations and control measures generate reductions in an amount that falls short of the amount needed to attain; yet those limitations and measures are all that is necessary or appropriate to attain in light of the additional SIP rules for commitments.

EPA finds further support for its action in the Ninth Circuit's decision in *Kamp* v. *Hernandez*, 752 F.2d 1444 (1985). There, the court upheld EPA's full approval of a SIP that relied on a State's agreement to submit a fugitive emission control plan in the future. Although recognizing that lack of any controls on fugitive emissions would prevent attainment, the court justified its holding on the grounds that the plan was substantially complete, and that the remaining shortfall would be covered under the state's future submission. The court also interpreted the predecessor provision to section 172(c)(6) in a manner consistent with EPA's interpretation of section 172(c)(6) above.

EDC commented that it is unclear how the "meet and confer" commitments meet the minimal requirements of the Administrative Procedures Act (APA) and the public participation elements of the CAA.

EPA believes that these requirements will be met and intends a process with more than the legally-mandated public opportunities for input. All Federal mobile source measures will be issued through rulemaking that complies with the CAA and APA provisions. EPA will ensure that all other future SIP measures go through a fully public process that complies with applicable APA and CAA requirements for public involvement. Finally, any necessary revisions to the South Coast attainment demonstration must comply with all applicable public notification, public hearing, and public participation requirements.

EDC commented that the practical and legal insufficiency of the "Federal Assignments" portion of the SIP is reflected in EPA's proposal to make enforceable commitments to undertake additional rulemakings after a

[5] See, for example, SCAQMD rules 1111 (NO_x from Gas Fired Furnaces), 1109 (Refinery Boilers & Process Heaters), 1134 (NO_x from Stationary Gas Turbines), 1135 (NO_x from Electric Power Generating Systems), 431.2 (Liquid Fuel Sulfur Content), 1142 (Marine Tank Vessel Operations), 1113 (Architectural Coatings), 1128 (Paper, Fabric & Film Coating Operations), 1106.1 (Pleasure Craft Coating Operations), 1130.1 (Screen Printing Operations), 1168 (VOCs from Adhesive Applications), 1175 (Polymeric Cellular Products—Blowing Foam), 1146 and 1146.1 (Industrial, Institutional, and Commercial Boilers, Generators, & Heaters), 1162 (Polyester Resin Operation), 1110.1 & 1110.2 (Emissions from Internal Combustion Engines), 1151 (Motor Vehicle Non-Assembly Line Coatings), 1124 (Aerospace Assembly & Component Manufacturing Operations), 1153 (Commercial Bakery Ovens), 462 (Organic Liquid Loading, 461 (Gas Transfer and Dispensing), 1136 (Wood Products Coatings), and Regulation XX (NO_x/So_x RECLAIM program). See also the CARB rules for motor vehicles and fuels (generally), off-highway recreational vehicles and engines, consumer products (generally), and aerosol coating products.

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consultative process (which EDC described as "secret") on control measures necessary to achieve the emissions reductions determined to be appropriate for EPA. EDC added: "This promise to make future promises provides no certainty, specificity or meaning, and violates the spirit and letter of the CAA."

In today's action, EPA finalizes its commitment to undertake rulemaking on any measures which are determined to be EPA's responsibility, and EPA finalizes its approval of California's enforceable commitment to adopt measures determined to be the State's responsibility. These enforceable commitments, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and ROP. As noted in the discussion of the "Federal Assignments" (see Appendix A), significant progress has already occurred or is expected in the near future with respect to accomplishing, in enforceable form, specific regulations (such as EPA's recently proposed national standards for heavy-duty onroad vehicles) that achieve the vast majority of required reductions.

EPA has authority to commit itself to promulgate additional Federal measures determined through the consultative process to be appropriate, under CAA section 301. This provision authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under [the Clean Air Act]." In title I of the Act, Congress set out what amounts to a "blueprint" by which nonattainment areas will attain the NAAQS. This blueprint couples SIP reductions with reductions from various Federal measures, such as reductions from mobile source measures promulgated by EPA under Title II of the Act. The EPA commitment prescribed in today's rulemaking is necessary to carry out EPA's functions both in promulgating mobile source regulations under Title II and in fulfilling its share of the "blueprint" reductions needed for attainment.

EPA proposed a public, not a secret, consultative process, and the Agency sets forth in Appendix B to this document more details on opportunities for the public to be involved in the difficult decisionmaking on what additional controls on mobile sources need to be adopted at the Federal, State, and local level. EPA's commitment, finalized in this action, is as specific and enforceable as possible, prior to the completion of critically important public input and consultation. After the consultative process is completed, in June 1997, responsibility for the small increment of necessary additional emission reductions should be fully resolved.

The Natural Resources Defense Council (NRDC) and the Coalition for Clean Air (CCA) submitted joint comments opposing EPA's proposed resolution of the "Federal Assignments." The environmental groups stated that EPA's proposed approval violates the CAA by providing full credit toward attainment for "Federal Assignments" in the SIP. Although NRDC and CCA encouraged federal-state cooperation to achieve healthful air in the South Coast, they felt that the consultative process combined merely with gap-filling commitments cannot be used to circumvent the November 1994 deadline in the CAA for the State to provide evidence that it has the legal authority to implement and enforce all SIP provisions. NRDC and CCA commented that EPA cannot approve a SIP which relies for ROP and attainment on prospective federal measures over which CARB has no control and which have neither been formally proposed nor promulgated.

NRDC and CCA observed that some of what they describe as the "nonexistent" federal measures are given credit as early as 1999, but CARB is not required to submit replacement measures until the end of 1999. NRDC and CCA argued that the State should cover the "Federal Assignments" emissions in its 1994 SIP, which could then be revised to decrease the State's responsibilities as EPA adopts new federal regulations. The environmental groups stated that there is no reason why CARB cannot immediately begin development of these rules concurrent with the consultative process. Finally, NRDC and CCA commented that EPA should require that CARB immediately adopt rules, scheduled for implementation in the year 2000 or later, as backstop measures which will go into effect to the extent necessary to make up a shortfall that remains after the consultative process.

EPA's responses to EDC's comments address many of these concerns. EPA believes that the public consultative process for resolving mobile source emission reductions is appropriate to the unique facts of the South Coast attainment demonstration. The 1994 SIP submittal includes massive reductions achieved by combined State and local regulations and commitments, covering every significant source category. It is not clear what feasible measures could be adopted by the State and local agencies at this time to cover the entire emission reductions included in the "Federal Assignments." The additional time which EPA is allowing for the evaluation and development of future Federal controls, revision to the SIP's attainment demonstration, and then adoption, if necessary, of any gap-filling measures, is justified by the magnitude and complexity of the issues involved in regulating sources that have never previously been subject to emission standards and sources that are critical components of interstate and, in some cases, international commerce.

Furthermore, for the larger emission reduction categories in the "Federal Assignments," CARB has matched the national controls with its own measures to adopt and implement at least equivalent State controls under the State's unique CAA authorities to regulate mobile sources. The success of this enterprise to develop cooperative and consistent Federal-State mobile source emission standards would eliminate for manufacturers and users the costs of compliance with conflicting standards and test procedures.

d. Comments Specific to Source Categories. (1) Military Exemption.

The U.S. Navy and U.S. Coast Guard expressed concern about any reconsideration of the exempt status of military aircraft as part of the exploration of more stringent standards for aircraft engines, and both agencies expressed a desire to be involved in future discussions. EPA hopes that these agencies will participate fully in the public consultative process to help in Federal, State, and local cooperative efforts to identify viable strategies for achieving our air quality goals.

(2) Locomotives. The Association of American Railroads (AAR) commented that the consultative process should not be used as a route to develop any State or local regulations imposing locomotive controls for the purpose of reducing emissions. AAR expressed concern that SIP measure M14 indicates that CARB "will also consider operational controls, such as reduced idling and use of California diesel fuel, if * * * additional emission reductions are needed." AAR argued that these types of state and local standards and requirements must be avoided in order to avert adverse effects on interstate commerce. AAR recommended that the consultative process be used to devise ways to maintain the competitiveness of railroads and improve their volume of intercity, long-haul freight, given the significant emissions advantages of rail transportation over trucks. AAR further requested that EPA work with the railroads and other stakeholders to design mechanisms to properly account

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in the SIP for the NO_x benefits of rail transportation.

EPA trusts that the rail industry will raise these important issues in the public consultative process.

AAR also raised legal issues regarding the authority of States to adopt and implement any type of emission-related standard or other requirement for locomotives. These issues are more germane to EPA's forthcoming rulemaking to establish national locomotive regulations and to clarify the extent to which States are preempted from adopting or implementing locomotive controls.

(3) Ships and Shipping Channel. The U.S. Coast Guard reiterated its concerns expressed at the time of EPA's proposed Federal Implementation Plan for California areas regarding any operational controls on marine vessels, including international legal implications. The U.S. Navy supported EPA's position that recommendations regarding movement of the shipping channel should await the results of ongoing studies. The Navy opposed any strategy that would increase traffic in the Pt. Mugu Sea Test Range.

EPA welcomes the involvement of these agencies in the public consultative process. EPA will particularly appreciate the assistance of the Coast Guard in clarifying international issues as they affect potential controls on the emissions or operations of ocean-going vessels, and the continued constructive involvement of the Navy in studies to help assess the air quality benefits of moving the shipping channel.

e. EPA Action. EPA approves the State's commitments to revise the South Coast attainment demonstration and adopt appropriate measures following the conclusion of the public consultative process, and EPA finalizes its commitment to undertake rulemaking on any controls which are determined to be appropriate for EPA.

2. EPA Approval of Attainment Demonstrations that Rely, in Part, on Commitments. The Natural Resources Defense Council and the Coalition for Clean Air (NRDC/CCA), in a joint comment letter, contended that EPA cannot approve the California ozone SIP because the majority of emission reductions in the plan are in the form of commitments and not adopted rules as required by the CAA. NRDC/CCA also asserted that approval of such committal SIP provisions would lead to an inappropriate delay in the statutory SIP submittal deadline. To support these propositions, NRDC/CCA cite the holding of *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994); the alleged effect of EPA's interpretation of the conditional approval provision of the CAA, section 110(k)(4); and the language of EPA's regulation at 40 CFR 51.281.[6]

In the *NRDC* case, the Court addressed the merits of EPA's interpretation, as set forth in various policy memoranda, that in certain circumstances section 110(k)(4) of the CAA allows conditional approval of commitments unaccompanied by regulatory measures.[7] In these policy memoranda, EPA provided that it would consider conditional approval of SIP submittals, which were meant to fulfill certain specific SIP requirements and which consisted entirely of a commitment letter to submit the required measure by a date certain, but no later than one year after conditional approval. In reviewing these policies, the Court concluded, based on the express language of section 110(k)(4), the CAA's general SIP approval scheme, and the legislative history of section 110(k)(4), that:

> * * * the conditional approval mechanism was intended to provide the EPA with an alternative to disapproving substantive, but not entirely satisfactory, SIPs submitted by the statutory deadlines and not, as the EPA has used it, a means of circumventing those deadlines. 22 F.3d at 1134–35.

The Court found that on its face the language of section 110(k)(4) "seems to authorize conditional approval of a substantive SIP or SIP revision which, though not approvable in its present form, can be made so by adopting specific EPA-required changes within the prescribed conditional period." 22 F.3d at 1134. The Court also noted that the CAA requires EPA to make completeness determinations on required plan submittals and that such determinations could not reasonably be made unless the submittal contains "something more than a mere promise to take appropriate but unidentified measures in the future." *Id.* Finally, the Court determined from the legislative history of section 110(k)(4) that the contemplated specific and enforceable measures are to be additional to some specific enforceable measures already in the SIP. *Id.*

NRDC/CCA apparently interpret the *NRDC* holding as precluding EPA from accepting in a SIP submittal *any* commitments to adopt rules at a future date, even where that submittal includes a significant quantity of emission reductions in adopted form. We believe that such an interpretation is far too broad a reading of the *NRDC* case and that the circumstances presented by today's action are readily distinguishable from those in the *NRDC* case.

First, and most importantly, EPA is not approving the California SIP commitments under section 110(k)(4), but rather under sections 301 and 110(k)(3), as discussed below. Thus the Court's analysis of the express language of section 110(k)(4) and its specific legislative history is not, as NRDC/CCA claim, applicable to EPA's action here. For the reasons set forth below, EPA's authority to approve *enforceable* commitments under sections 110(k)(3) and 301 is not constrained by section 110(k)(4).

Furthermore, to the extent that the *NRDC* case has any relevance to EPA's action under sections 110(k)(3) and 301, in the present case, EPA has not proposed to approve submittals that consist only of a commitment. The EPA policies at issue in *NRDC* permitted a state to initially satisfy an individual CAA requirement (e.g., an inspection and maintenance program) with only a commitment to adopt such a requirement in the future. In contrast, the SIP approved by EPA today contains in adopted, enforceable form a large percentage of the emission reductions that make up the required submittal, in this case, the attainment demonstrations.[8] In addition, the California ozone SIP, because of its many substantive, adopted rules, does not pose the barrier to a completeness determination that the Court in *NRDC* perceived where only a commitment existed.

NRDC/CCA claim that full approval of the commitments in the California ozone SIP (pursuant to sections 110(k)(3) and 301) would render section

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[6] NRDC/CCA also claim that the SIP inappropriately relies on a September 1994 EPA memorandum, "November 1994 Ozone SIP's—Rulemaking Policy," to support the inclusion of commitments in the plan. As NRDC/CCA correctly point out, this memorandum was rescinded in 1995. Because EPA is not relying on the 1994 memorandum to support its approval of California's SIP commitments, it is irrelevant to this rulemaking and is therefore not addressed further in this notice.

[7] Section 110(k)(4) of the CAA provides:

(4) Conditional approval—

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

[8] Because they include such major substantive components, the attainment demonstrations do not circumvent the submittal deadline in the CAA as NRDC/CCA claim. See, e.g, tables for each area on ROP Forecasts and Targets, Local Control Measures, and Attainment Demonstrations. These tables summarize far more expansive discussions and data in the actual SIP submittals, which for some areas amount to many volumes and thousands of pages of relevant information and analyses in support of the attainment demonstrations.

110(k)(4)'s conditional approval mechanism meaningless. We disagree with this conclusion. Historically, EPA has interpreted the CAA to allow states to submit enforceable commitments to adopt rules in the future. The enactment of section 110(k)(4) in 1990 provided a new type of approval for a limited set of commitments that, in general, could not be enforced under sections 113 and 304 of the Act[9]; there is no evidence that Congress intended this limited provision to replace EPA's well-established policy of using its general approval authority to approve enforceable commitments. In fact, other provisions in the statute belie that result. Finally, there continue to be strong policy considerations for interpreting the statute to allow for approvals under section 110(k)(3) of enforceable commitments.

EPA interpreted the pre-amended Act to allow for approval of attainment demonstrations that included, in part, enforceable commitments to adopt rules in the future. And courts have found these commitments to be enforceable by the public under the citizen suit provisions of the Act. See, e.g., *American Lung Association of New Jersey* v. *Kean*, 670 F.Supp. 1285 (D.N.J. 1987), affirmed, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Environmental Conservation*, 668 F.Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Environment* v. *Deukmejian*, 731 F. Supp. 1448, reconsideration granted in part, 746 F.Supp. 976 (N.D. Cal. 1990); *Coalition* v. *City of New York*, 967 F.2d 764 (2d Cir. 1992); *Trustees for Alaska* v. Fink, 17 F.3d 1209 (9th Cir. 1994).[10]

In enacting section 110(k)(4), Congress enacted a much more limited type of approval of commitments. First, conditional approval under section 110(k)(4) is for a very limited duration—the commitment must provide a date certain for submittal that cannot exceed one year after conditional approval. Furthermore, in contrast to the enforceable commitments historically accepted by the Agency and the courts, section 110(k)(4) anticipates that the commitment made by the State will not be an enforceable commitment. Under the express language of section 110(k)(4), upon the State's failure to meet the commitment, the conditional approval must be converted to a disapproval. Once a SIP is disapproved, there is no longer any commitment left to enforce under section 113 or 304 of the Act.[11]

There is nothing in the legislative history of the 1990 CAA Amendments to suggest that Congress's addition of section 110(k)(4), which is much more limited in scope, was intended to preclude EPA's prior practice. Furthermore, other provisions of the amended Act indicate that Congress contemplated continued approval of enforceable commitments. For example, section 182(e)(5) of the CAA, which concerns attainment demonstrations for extreme ozone nonattainment areas, addresses the "anticipate[d] development of new control technologies." This section provides that EPA may approve provisions relying on such technologies if, among other things, the state submits "enforceable commitments to develop and adopt contingency measures to be implemented * * * if the anticipated technologies do not achieve planned reductions. These enforceable commitments would clearly need to extend well-beyond the maximum one-year period that may be granted for conditional approval under section 110(k)(4). Nothing in the language of section 182(e)(5) indicates that Congress authorized those enforceable commitments "notwithstanding" section 110(k)(4).

Nor does EPA agree with NRDC/CCA's assertion that approval of enforceable commitments constitutes an inappropriate delay in the statutory SIP submittal dates. Congress anticipated that section 110(k)(4) would result in submittal delays for some SIP measures beyond the initial submittal deadlines. EPA believes that the delays in submittal of final rules that would result in this action are permissible under section 110(k)(3) because the State has obligated itself to submit the rules by specified, short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as noted above, the SIP submittal approved today contains major substantive components submitted as adopted regulations. As such, the California submittal is readily distinguishable from the submittals that were the subject of the *NRDC* case.

Finally, as matter of policy it is important to continue to read section 110 as allowing for full approval of SIP submittals containing some enforceable commitments. The conditional approval provision is most effectively used where a State makes a short term commitment to correct a problem or fill a gap in a SIP submission. If the State fails to meet the commitment, the conditional approval is converted to a disapproval and an 18-month clock for sanctions and a 2-year period for promulgation of a federal implementation plan (FIP) start. However, neither EPA nor citizens have authority under the CAA to take action to enforce those commitments that have been converted to a disapproval. While a disapproval may motivate a state to ultimately meet its commitments, through the potential for sanctions and a FIP, in some cases it may be more desirable to have an approved commitment that EPA or a citizen can enforce directly in court. Approval under section 110(k)(3) allows for enforcement action. Such a remedy is frequently preferable in promoting actual air quality improvements. Moreover, even with respect to an approved commitment, EPA may start the sanctions process through a finding of failure to implement if the state does not meet its enforceable commitment.

EDC commented, with apparent approval, on the vehicle of enforceable commitments. EDC maintained, however, that the Administrative Procedure Act and notions of fairness require that they be more fully articulated. EPA believes that the SIP commitments approved today are sufficiently specific to be enforceable by the Agency or the public. For example, the control measure commitments are for particular agencies to adopt and implement specific controls by definite dates to achieve precise emission reductions from identified source categories for each milestone year through attainment. In the case of the South Coast, the plan also provides detailed discussions of the source category, the regulatory history, proposed method of control (including descriptions of available control technologies and operational approaches), control efficiency assumptions, rule compliance approaches (e.g., reporting and recordkeeping requirements, source testing, certification programs, etc.), test methods, cost effectiveness calculations, and references to document assumptions and provide for further information. The rules to fulfill these commitments will be subject to notice-and-comment at the State level prior to

[9] In commenting on EPA's proposed SIP approval action, the Environmental Defense Center (EDC) suggested that EPA approve the SIP's commitments under section 110(k)(4) rather than section 110(k)(3) because of the important enforceability benefits of a conditional approval. As discussed below, commitments that are conditionally approved cannot be enforced.

[10] Courts have also upheld EPA's approval of SIPs that contain enforceable commitments. See, e.g., the cases cited below in the discussion of 40 CFR 51.281.

[11] A disapproved SIP—i.e., a plan rejected by EPA—is not considered to be federally enforceable. Both sections 113(a)(1) and 304(a) and (f)(3) provide for enforcement regarding a violation of only an "applicable implementation plan," which CAA § 302(q) defines as a plan "which has been "approved" or "promulgated" under section 110.

adoption and submittal to EPA; furthermore, EPA will approve or disapprove those measures through notice-and-comment rulemaking procedures.

Reading the statute as a whole, it is clear that Congress did not intend section 110(k)(4) to be the sole mechanism for approving submittals that contain at least some commitments. Furthermore, for the above reasons, enforceable commitments serve several distinct purposes not addressed by section 110(k)(4). Under these circumstances, EPA's interpretation of the statute is entitled to considerable deference. *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984).[12]

NRDC/CCA also assert that EPA is precluded from approving the commitments in the California ozone SIP because EPA's regulation at 40 CFR 51.281 [13] requires SIPs to include adopted rules and regulations. EPA has long interpreted this regulation to require States, when submitting rules and regulations, to submit those regulations in adopted rather than proposed form.[14] EPA has not interpreted this regulation to require that every submittal must be in regulatory form.

EPA promulgated this regulation long before the enactment of the 1990 CAA Amendments. See 36 FR 22398 (Nov. 25, 1971), codified as 40 CFR 51.22; recodified as 40 CFR 51.281 with minor modifications at 51 FR 40674 (Nov. 7, 1986). As discussed above, EPA has historically accepted enforceable commitments in SIPs and courts have found these provisions to be enforceable by the public under section 304 of the CAA. In addition, in a number of cases, courts of appeals in some circuits, including the Ninth Circuit, have upheld EPA's approval of plans that included commitments to fill gaps. See *Kamp* v. *Hernandez*, 752 F.2d 1444, 1445 (9th Cir. 1985); *Connecticut Fund for the Environment* v. *EPA*, 672 F.2d 998 (2d Cir.), cert. denied 459 U.S. 1035 (1982); *Friends of the Earth* v. *EPA*, 499 F.2d 1118, 1124 (2d Cir. 1974).

The cited cases demonstrate that, over a long period of time, EPA has not interpreted 40 CFR 51.281 as limiting the permissible procedural vehicles for SIP measures to rules and regulations. Rather, the Agency has viewed the primary purpose of section 51.281 as ensuring that SIP submittals contain adopted, not proposed, emission limitations and other measures. The commitments at issue here are not merely proposed; they have been adopted by the various local air districts and ARB. Because EPA's interpretation of its regulation is a reasonable interpretation, it is entitled to deference. *Chevron*, 467 U.S. 837.

3. Additional Clean Air Act Issues

a. Attainment as Expeditiously as Practicable. The Environmental Defense Center commented that the SIPs should be disapproved because they fail to meet the CAA requirement of attaining the NAAQS as expeditiously as practicable. The commenter provided no further statutory interpretation or information relating to this CAA provision and defects in the SIPs relating to it. EPA continues to believe that the SIPs meet the progress requirements of the Act, as discussed in the proposal, and provide for expeditious attainment.

b. Contingency Measures. NRDC and CCA commented that only SCAQMD's measure CTY–01 meets the section 182(c)(9) CAA requirement for contingency measures that take effect without further action by the State or EPA upon a failure of the State to meet the applicable milestone. The commenters stated that EPA should require further definition and refinement of the contingency measures and the schedule, funding and enforcement responsibilities required for the measure to succeed.

EPA's proposal addressed only the following CAA requirements: section 181(a)(1) relating to emissions inventories; section 182(b)(1) relating to 15% ROP Plans; section 182(c)(2)(B) relating to Post-1996 ROP Plans; sections 182(b)(1)(A) and 182(c)(2) relating to modeling and attainment demonstrations, and sections 182(b)(4) and 182(c)(3) relating to I/M Programs. The remaining requirements of Part D of the Act, including the sections 172(c)(9) and 182(c)(9) requirements for contingency measures, will be acted upon in separate rulemakings.

c. Adequacy of SIP's Technical Foundations. (1) Modeling and Treatment of Transport. The Engine Manufacturers Association (EMA) submitted a comment that EPA has failed to provide all data and documentation relating to the modeling in the SIPs. Noting that EPA has admitted that problems in model performance and transport led to California's inability to follow EPA's modeling guidelines in its analyses, EMA asked that EPA not take final action on modeling but should require that appropriate adjustments be made in order to provide accurate modeling assumptions on which to base California's proposed measures.

EPA has not provided all data and documentation relating to the modeling analyses. For each area, modeling input and documentation include hundreds of thousands of data. This information is available from local air pollution agencies.

Again, EMA failed to provide specific information to support its general conclusion. EPA recognizes the opportunities to refine the modeling in each of the areas, including the data upon which the modeling is based. Major modeling projects or modeling refinements are underway in each area. EPA contributes technical and funding support to these projects, which may provide information helpful in enhancing the SIP strategies in the future. However, EPA believes that the current modeling in each area meets the requirements of the Act and provides a reasonable basis for estimating the emission reductions needed for attainment and the ambient impact of the control measures.

(2) Impact of Changes to the ZEV Program. The Environmental Defense Center commented that the state has already rescinded the Zero Emission Vehicle (ZEV) program, demonstrating immediately their willingness and intent to renege on the SIP's commitments. EDC stated that both the Sacramento and South Coast attainment demonstrations should be disapproved because CARB has rescinded the ZEV program. NRDC and the Coalition for Clean Air commented that EPA needs to quantify the increased emissions that will result from changes to the ZEV program and should demand compensating reductions.

At a public hearing on March 28 and 29, 1996, CARB approved revisions to the ZEV program in the California motor vehicle control regulations. These changes included elimination of the ZEV production requirement for the 1998 through 2002 model years. CARB retained the 10% ZEV requirement for

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[12] As one court has observed: The need for flexibility in the administration of a statute whose provisions have been described as 'virtually swim[ming] before one's eyes,' * * * should not be underestimated. We have in the past been careful to defer to EPA's choice of methods to carry out its 'difficult and complex job' as long as that choice is reasonable and consistent with *the Act* * * *. *Connecticut Fund for the Environment, Inc.* v. *EPA*, 672 F.2d 998, 1006 (2d Cir.), cert. denied, 459 U.S. 1035 (1982).

[13] 40 CFR 51.281 provides, in pertinent part: Emissions limitations and other measures necessary for attainment and maintenance of any national standard * * * must be adopted as rules and regulations * * *. Submittal of a plan setting forth *proposed* rules and regulations will not satisfy the requirements of this section * * *. (Emphasis added.)

[14] In order to expedite SIP approval, EPA has occasionally proposed to approve a state's draft rules that have been fully developed but have not yet been adopted. An EPA approval using this "parallel processing" procedure, of course, cannot be finalized until the rules have been adopted and formally submitted to EPA as a SIP revision.

the 2003 and later model years. In order to offset the loss of emission reductions, CARB negotiated an enforceable contractual agreement with the vehicle manufacturers, committing them to produce cleaner 49-state cars in the 2001 through 2003 model years. CARB prepared a staff report demonstrating that the emission reductions achieved within the South Coast by the cleaner 49-state vehicles exceed the emission losses from delay of the ZEV program (See CARB Staff Report: Initial Statement of Rulemaking—PROPOSED AMENDMENTS TO THE ZERO–EMISSION VEHICLE REQUIREMENTS FOR PASSENGER CARS AND LIGHT–DUTY TRUCKS, February 9, 1996).

EPA shares the commenters' concerns that the SIP must be implemented fully and that substitute measures should immediately correct any SIP shortfalls. However, the State has argued that successful implementation of the ZEV program requires the March 1996 rule amendments, in order to ensure that concerns relating to battery technology and ZEV sales potential can be resolved and the ultimate sales mandate be fully accomplished. The State has also provided evidence that the loss in emissions from the elimination of the ZEV mandate for the first 5 years will be offset by provisions of CARB's enforceable contract with the automakers. EPA will carefully monitor implementation of the contractual agreement and the ZEV program and will require the State to revise the SIP to provide new emission reductions if needed to meet the progress and attainment requirements of the Act.

(3) Control Measures. NRDC and CCA commented that EPA cannot approve the South Coast SIP because it fails to include as measures all already adopted regulations and measures characterized as assumptions. The environmental groups argued that the CAA and EPA's regulations require quantification of reductions from each adopted regulation, and that these regulations themselves should be an enforceable part of the SIP.

With respect to the quantification of reductions from the various regulations that comprise the existing California motor vehicle program, the State has submitted reductions from the program as a whole, without a disaggregation by program element. In recent correspondence, the State has provided further detail, including an estimate of Statewide emission reductions from each severable component.[15]

The rate-of-progress and ozone attainment demonstrations for each area rely, in part, on emission reductions from regulations adopted by local air pollution control districts, since the impact of these regulations is factored into the projections of future year baseline emissions.[16] EPA has already approved the great majority of these local regulations and expects in the near future to complete final action on the remaining regulations. With respect to those few regulations which are relied upon in the SIP for rate-of-progress or attainment and which have not yet been approved as part of the SIP, EPA construes that reliance and the fact that the local agencies have adopted and the State has submitted the rules as SIP revisions to constitute an enforceable commitment by these agencies to implement the rules to achieve the reductions assumed in the rate-of-progress plans and the attainment demonstrations.

If the State withdraws (before EPA's final action) any of these regulations that have been submitted but not yet approved as part of the SIP, or if EPA's final action is a disapproval, or if EPA determines that the rule will achieve fewer emissions reductions than relied upon in the SIP, EPA will call upon the State to fulfill its commitment by submitting replacement measures on an expeditious schedule and the State will be obligated to provide such replacements.

EPA requires identification of emission reductions associated with each of the new measures that are incorporated in the plan's rate-of-progress and attainment demonstrations and that reduce emissions below the baseline inventory levels. The South Coast SIP fulfills this requirement, and EPA has included, in the tables of new measures, the specific credit assigned.

The Engine Manufacturers Association (EMA) stated that, based on the information provided in the NPRM, EPA and California have not established a reasonable, cost-effective basis for certain of the proposed regulatory measures. EMA provided no specific information to support the comment. EPA believes that the SIP control measures are, in fact, reasonable. Moreover, EPA does not find statutory authority for the Agency to require states to submit analyses demonstrating that proposed measures are reasonable, cost-effective and appropriate. Finally, due to the nature of the Federal/state relationship under the Act, EPA analysis of the cost-effectiveness of SIP measures would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

d. Consistency of Local Nonroad Measures with Clean Air Act Preemption. The Engine Manufacturers Association commented that EPA should not finalize approval of local measures without a determination that they have met CAA requirements respecting preemptions on a state's authority to regulate certain nonroad engines and applications. The commenter did not identify any State or local measure that was inconsistent with the Clean Air Act. EPA has not identified any measure, approved at this time, that violates the Act's preemptions. When regulations are adopted and submitted for SIP approval, EPA reviews the regulations to ensure that they fall within the authority of the State or local agency and that the regulations are otherwise consistent with statutory and regulatory requirements.

4. Future SIP Updates and Improvements

Western Riverside Council of Governments commented that the SIP should provide the flexibility to replace measures with local programs that are more sensitive to local political, economic and social conditions. EPA supports and encourages SIP flexibility that respects the superior ability of local agencies to reconcile environmental progress with other community goals.

The California Environmental Protection Agency (CEPA) commented that, as EPA recognized in the proposed approval, some of California's specific strategies may require adjustment as actual rules are developed. CEPA stated that "we will retain the flexibility to revise the SIP as long as the emission reductions continue to provide for attainment."

As stated in the NPRM, EPA supports the State's flexibility to revise the SIP, but cautions that EPA must review SIP revisions for approvability under Sections 110(l) and 193. Section 110(l) prevents EPA from approving a revision if it would interfere with any applicable

[15] Table 1 ("Adopted state regulations in the SIP baseline, with implementation dates in 1996 or later") in a letter from Lynn Terry, Assistant Executive Officer, CARB, to Julia Barrow, Chief, Planning Office, Air & Radiation Division, USEPA, dated September 19, 1996, This correspondence is part of EPA's rulemaking docket.

[16] In a letter from Barry R. Wallerstein, Deputy Executive Officer, SCAQMD, to Dave Howekamp, Division Director, Air & Toxics Division, Region IX, dated September 18, 1996, the SCAQMD has provided a list of local measures and associated emission reductions assumed in the baseline of the South Coast SIP. This correspondence is part of EPA's rulemaking docket.

requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Section 193 prevents modification of control requirements "in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990 in any area which is a nonattainment area for any air pollutant * * * unless the modification insures equivalent or greater emission reductions of such air pollutant."

5. Overall Approvability of Plans

Almost all of the commenters supported EPA's proposed approvals of the plans for each area. However, comments opposing full approval of the plans at this time were received from the Engine Manufacturers Association, the Environmental Defense Center, the Natural Resources Defense Council, and the Coalition for Clean Air. These comments are addressed elsewhere in section I.B., or in discussions relating to individual areas.

6. Importance of SIP Implementation

Several commenters reflected on the critical importance of follow through at the local, State, and Federal levels if the SIPs are to achieve the air quality standards. EPA agrees that all parties, including local government and the general public, must work together to ensure that each responsible agency honors its commitments. Because these challenging SIPs are so important from the perspective of public health, the success of the SIPs requires widespread public participation and public support. EPA encourages California agencies to report frequently to the public on progress in implementing the plans and to involve the public in resolving implementation issues. Through the Public Consultative Process and other forums, EPA intends to inform and engage the public as the Agency proceeds to develop future mobile source controls.

C. SIP Submittals

1. SIP Submittals Before EPA's Proposal

On November 15, 1994, CARB submitted a revision to the "State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards" (ozone SIP)

The revision consists of: (a) The State's comprehensive ozone plan, including the State's own measures and the State's summaries of, and revisions to, the local plans; (b) the State's previously adopted regulations for consumer products and reformulated gasoline and diesel fuels; and (c) local plans addressing the ozone attainment demonstration and ROP requirements.

On August 21, 1995 (60 FR 43379), EPA approved the State's consumer products and reformulated gasoline and diesel fuels regulations. At the same time, EPA took interim approval action on CARB and SCAQMD New-Technology Measures, under the provisions of section 182(e)(5) of the CAA, which authorizes the Administrator to approve fully and credit as part of an extreme ozone area SIP conceptual measures dependent upon new control technologies or new control techniques. The new-technology measures approved at that time were: CARB's measures M2 (Improved Control Technology for Light-Duty Vehicles), M9 (Off-Road Diesel Equipment), CP–4 (Consumer Products Advanced Technology and Market Incentives), and Additional Measures; and SCAQMD measures ADV–CTS–01 (Coating Technologies), ADV–FUG (Fugitives), ADV–PRC (Process Related Emissions), ADV–UNSP (Unspecified, Stationary Sources), ADV–CTS–02 (Coatings Technologies).

On December 14, 1995 (60 FR 64126), EPA issued the final SIP approval of the State's mid-term control measures M3 (Accelerated Ultra-Low Emission Vehicle requirement for Medium-Duty Vehicles), M5 (Heavy-Duty Vehicle NO_x regulations), M8 (Heavy-Duty Gasoline Vehicles lower emissions standards), M11 (Industrial Equipment, Gas and LPG), and CP2 (Mid-Term Consumer Products).

The remaining portions of the ozone SIP submittal, upon which EPA is acting today, include the following separate documents:

1. "The 1994 California State Implementation Plan for Ozone," volumes I–IV. The November 15, 1994, submittal letter refers to other submittals, described below, as completing the 1994 California Ozone SIP. Volume I provides an overview of the entire submittal; Volumes II and III include the State's measures for mobile sources, consumer products, and pesticides; and Volume IV treats the local plans.

On December 29, 1994 and February 7, 1995, the State submitted updates to these documents, incorporating changes made by CARB at the time of adoption, and providing other technical and editorial corrections.

2. "1994 Ozone Attainment and Rate-of-Progress Plans for San Diego County."

3. "San Joaquin Valley Attainment and Rate-of-Progress Plans." On December 28, 1994, the State submitted the "Rate-of-Progress and Attainment Demonstration Plans for the Kern County Air Pollution Control District," applicable to the Kern desert portion of the San Joaquin Valley nonattainment area.

4. "Sacramento Area Proposed Attainment and Rate-of-Progress Plans." On December 29, 1994, the State replaced this with the "Sacramento Area Attainment and Rate-of-Progress Plans."

5. "1994 Air Quality Management Plan for Ventura County."

6. "Rate-of Progress and Attainment Demonstration Plans for the Mojave Desert."

7. "1994 Air Quality Management Plan for South Coast Air Basin, Antelope Valley and Coachella/San Jacinto Planning Area." On December 29, 1994, the State submitted the "Rate of-Progress Plan Revision: South Coast Air Basin & Antelope Valley & Coachella/San Jacinto Planning Area." [17]

8. On March 30, 1995, CARB submitted revised 1990 base year emission inventories for each of the California ozone nonattainment areas.

9. On June 30, 1995, CARB submitted desriptive materials relating to the State's motor vehicle inspection and maintenance program, adopted by the California Bureau of Automotive Repair. On January 22, 1996, CARB submitted the motor vehicle inspection and maintenance regulations adopted by the California Bureau of Automotive Repair.

2. SIP Submittals After EPA's Proposal

On April 4, 1996, CARB submitted a revision for the San Joaquin Valley, withdrawing an obsolete transportation control measure (Exclusive High Occupancy Vehicle Lanes on Freeway 41, included in the 1982 Air Quality Management Plan for Fresno).

On May 17, 1996, CARB submitted Executive Order G–96–031, the State's commitment to participate in the public consultative process, submit a revised attainment demonstration for the South Coast as appropriate after the consultative process, and submit control measures needed to achieve emission reductions determined to be appropriate.

On June 13, 1996, CARB submitted supplemental information regarding the 1994 California SIP, including

[17] Antelope Valley and Coachella-San Jacinto Planning Area are portions of the Southeast Desert Modified Air Quality Management Area which are currently under the jurisdiction of the South Coast Air Quality Management District. California has recently revised its air basin classifications, so that Antelope Valley is part of Mojave Desert Air Basin and the Coachella-San Jacinto Planning Area is part of Salton Sea Air Basin.

additional information on emission reductions from the State's measures (Letter from James D. Boyd to David Howekamp, with Attachments A, B, and C).

On July 10, 1996, CARB submitted updates to the South Coast rule adoption schedule ("Control Measure Adoption Schedule").

On July 12, 1996, CARB submitted updates to the Ventura AQMP ("Ventura County 1995 Air Quality Management Plan Revision" and "Appendix E–95") and an updated post-96 ROP for San Joaquin Valley ("Revised Post-1996 Rate-of-Progress Plan").

3. EPA Completeness Findings

On January 30, 1995, EPA issued a finding of completeness under Section 110(k)(1) of the Act for the following portions of the California ozone SIP submittal: Diesel Fuel Regulations; Reformulated Gasoline Regulations; CARB Measures M2, M3, M5, M8, M9, M11, CP–2, CP–3, CP–4, Additional Measures; and SCAQMD Long Term Measures ADV–CTS–01/02, ADV–FUG, ADV–PRC, ADV–UNSP. These elements of the revision were found complete based on EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.[18]

On April 18, 1995 the EPA issued a finding of completeness for the remaining portions of the November and December 1994 submittals with regard to: (1) attainment and post-1996 RFP requirements at section 182(c)(2) of the Act; (2) 15% ROP requirement of section 182(b)(1)(A); and (3) 1990 base year inventory requirements of section 182(a)(1). The CARB emission inventory submittal of March 30, 1995, was included in the completeness determination of April 18, 1995.

On June 30, 1995, and February 5, 1996, EPA issued a finding of completeness for the State's I/M program submittals.

On August 14, 1996, EPA issued a finding of completeness for updates to the San Joaquin Valley plan (submitted on April 4, 1996, and July 12, 1996); the South Coast plan (submitted on July 10, 1996); the Ventura plan (submitted on July 12, 1996); the State's commitment to participate in the public consultative process and revise the South Coast plan as appropriate (submitted on May 17, 1996); and technical information on State and local measures (submitted on June 13, 1996).

[18] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

4. Rationale for EPA Approval of Minor SIP Changes without Further Opportunity for Public Comment

The NPRM indicated that EPA intended to approve in the final action SIP updates if received before the Notice of Final Rulemaking (NFRM) was signed. The State, local agencies, and other commenters requested EPA to absorb these updates and corrections into the final plan action.

In the NFRM, EPA has also made numerous changes to the tables of control measures, in response to State and local agency requests for correction and clarification. These changes make minor adjustments to the measures, the arrangement of the measures in the table, the schedule of measure adoption and implementation, or the emission reductions associated with the measures. Since the changes are administrative or clerical in nature, or otherwise are not significant, and neither individually nor cumulatively affect ROP or attainment, EPA has incorporated the changes in this action without further opportunity for public comment.[19] Notice and comment are not required under the Administrative Procedures Act, "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b).

The State and involved local agencies in the San Joaquin Valley, South Coast, and Ventura all requested that the final notice clarify the original intent of the 1994 SIP submittal that, coincident with approving the new Transportation Control Measures (TCMs) in the current SIP, EPA would delete from the applicable SIP the prior TCMs, which are out-dated and not relied upon in the new ROP and attainment demonstrations. Because these rescissions were mistakenly omitted either from the original submittals or EPA's proposed action on the submittals, and because the rescissions are inconsequential and fully consistent with the 1994 SIP submittal respecting progress and attainment, EPA is finalizing the TCM replacement without further opportunity for public comment.

[19] The State's 15% ROP plans for each area do not rely on reductions from any of the measures (all reductions come from fully adopted regulations), and the changes do not reduce the amount of emission reductions from the measures in post-1996 ROP milestone years or the attainment years.

II. Review of the State Submittal, Response to Comments on Specific SIP Issues, and EPA Final Action

A. State Measures

1. General Comments

The California Environmental Protection Agency (CEPA) commented that EPA's proposal to approve the State's measures on a statewide basis (if, under State law, they apply throughout California) did not reflect the intent of the State, which was to limit the Federally enforceable State measures only to the serious, severe, and extreme nonattainment areas. EPA is so limiting the final approval action. Accordingly, under Federal law the statewide measures will not count toward attainment and maintenance of the NAAQS except in the ozone nonattainment areas classified as serious and above. As a result, the State must submit a SIP revision if it wishes in the future to extend the geographic applicability of the measures. Because EPA is accepting the State's request that Federal approval of the measures in the SIP apply narrowly to the ozone ROP and attainment needs in serious and above areas, the State must submit a SIP revision if, at any time in the future, the emission reductions associated with the measures in other areas are needed as components of attainment or maintenance SIPs for other areas.

CEPA also requested that EPA not approve the reductions shown for State measures M1, M2, M7, and M9 in the South Coast in the year 2007, because 2007 is not a milestone year for the South Coast. EPA is complying with the State's request in this final action. The year 2007 reductions in the South Coast may need to be resubmitted by the State if federally enforceable 2007 reductions from these measures in the upwind South Coast nonattainment area are needed for the 2007 attainment demonstration in the Southeast Desert.

Finally, CEPA asked that EPA not assign emission reduction credits from measures M3, M5, M8, and CP–2/CP–3 to San Diego, since the area did not use them for rate-of-progress or attainment. EPA is deleting this credit. If reductions from these measures are needed in San Diego in the future, the CARB must resubmit for SIP approval the State measures with associated San Diego emission reductions.

2. Mobile Source Measures

a. Review of Measures. The following is a brief description of the State's mobile source measures, or M Measures, identification of minor corrections and clarifications to the measures or their

associated emission reductions, summary of public comment on the measures and EPA's response, and EPA's final approval actions on the measures.

(i) M1—Accelerated Retirement of Light-Duty Vehicles. The SIP commits to secure a financing mechanism by the end of 1995, adopt the measure in 1996, undertake a demonstration program from 1996 through 1998, and implement the program fully from 1999 to 2010, through the annual retirement (scrappage or removal) of up to 75,000 older, high-emitting vehicles in the South Coast Air Basin. CARB has clarified in recent correspondence that the State's commitments for M–1 and for M–7, the other vehicle retirement program in the 1994 Ozone SIP, are for the specified emission reductions, rather than a particular number of vehicles to be retired.[20] While M1 is a commitment to implement an accelerated vehicle retirement program only in the South Coast, the SIP states that "implementation of light-duty vehicle retirement programs in other non-attainment areas will be considered as a means of further reducing emissions" (Vol. II, p. B–2).

The Environmental Defense Center commented that M1 is illusory until an adequate and enforceable funding source is identified. EPA considers the State's progress in implementing the measure to be acceptable at this time. During 1995, the California Legislature enacted SB501, which established a statewide scrappage program to work in concert with the scrap component of the I/M program. Current funding comes from legislation authorizing fees in lieu of smog check at first registration renewal. EPA believes that timely program implementation requires the State to develop an adequate long-term funding approach by the end of 1997.

EPA will continue to monitor M1. If the program does not mature on a schedule likely to deliver the reductions needed for progress and attainment, EPA will work with the State to correct implementation or substitute other measures that provide the needed emission reductions.

Under sections 110(k)(3) and 301(a) of the Act, EPA is taking final action to approve M1, its implementation schedule, and the emission reductions to be achieved in the South Coast, as displayed in the table below, labeled "Reductions from California Mobile Source Measure M1."

[20] Letter from Lynn Terry to Julia Barrow, dated September 20, 1996.

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M1 SOUTH COAST AIR BASIN

[Tons per day]

	1999	2002	2005	2008	2010
ROG	5	8	11	13	14
NO_x	4	6	9	10	11

(ii) M2—Improved Control Technology for Light-Duty Vehicles. CARB commits to adopt this measure in 2000 and begin implementation in 2004–2005. This measure will achieve emission reductions from LDVs through the use of one or more market-based and/or technology-forcing approaches. Emission reductions associated with this measure are relied upon in the South Coast only.

The Western States Petroleum Association commented that the description of the measure in the NPRM appeared to limit the flexibility of the State. EPA's description, which was excerpted from the SIP, was not intended to prescribe the ways in which the measure could be implemented.

The Environmental Defense Center (EDC) noted that M2 relies on the ZEV program, which was recently revised to rescind the interim milestones. EDC also commented that M2 is highly speculative and unenforceable and inappropriate for SIP credit.

On August 21, 1995, EPA approved M2 and assigned it SIP credit in the South Coast under the provisions of section 182(e)(5) of the Act.

EPA will continue to work with CARB to ensure that the measure is developed on schedule. CARB has recently provided additional information regarding the development of this measure in a letter from Lynn Terry to Julia Barrow, dated September 19, 1996: "We expect to begin developing this advanced technology measure following the 1998 biennial report to the ARB on the Low-Emission Vehicle Program. To meet our commitment for adoption in 2000, we would need to hold public workshops on the technical basis and regulatory concepts by 1999. However, as part of the on-going Low-Emission Vehicle Program review, staff continue to evaluate advanced control technologies that may contribute to post-2003 emission reduction strategies for this measure." The State has indicated that compliance options include advanced gasoline vehicles, alternative fueled vehicles, and fuel cell technologies.

Under sections 110(k)(3) and 301(a) of the Act, EPA is taking final action to approve the emission reductions to be achieved in the South Coast by milestone year in the table below, labeled "Reductions from California Mobile Source Measure M2."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M2 SOUTH COAST AIR BASIN

[Tons per day]

	1999	2002	2005	2008	2010
ROG	0	0	3	6	10
NO_x	0	0	5	9	15

(iii) M3—Accelerated Ultra-Low Emission Vehicle (ULEV) Requirement for Medium-Duty Vehicles (MDVs). CARB commits in the SIP to adopt regulations for this measure in 1997, with implementation occurring from 1998 to 2002. This measure commits to an increase in the fraction of MDV ULEVs from 10 percent of sales of new MDVs in the 1998 model year to 100 percent in the 2002 and later model years. This measure offers some flexibility by allowing other mixes of vehicles and technologies that generate equivalent emission reductions.

In their joint comments, the Natural Resources Defense Council and the Coalition for Clean Air noted that, at a public hearing in September 1995, CARB announced that it had made a calculation error which resulted in an overallocation of emission reductions to this measure. As a result, the regulations adopted at that time will achieve 2 tpd VOC and 23.9 tpd NO_x reduction, compared to M3's claimed credits of approximately 4 tpd VOC and 32 tpd NO_x in the South Coast in 2010. The environmental groups stated that EPA must require CARB to submit an additional measure to make up this shortfall before EPA can approve the SIP. Despite CARB's error, EPA expects and requires CARB to adhere to the State's enforceable commitment to adopt by 1997 regulations that achieve the full credit assigned to M3 for the milestone dates specified for each of the 5 areas where reductions are claimed.[21]

[21] The State has clarified its intentions in this regard (letter from Lynn Terry to Julia Barrow, dated September 19, 1996): "The SIP binds the State to develop enforceable measures that deliver the emission reductions needed for rate-of-progress and attainment, as identified in the plan and subsequent technical transmittals. Volume I of the SIP says '* * * Once the SIP is approved by U.S. EPA, these enforceable commitments become mandatory and must be carried out * * *. [they] compel the State or local air districts to obtain the reductions or to substitute alternative measures by formal revision of the SIP.' Thus, if we discover that a rule to implement a plan measure will not generate the targeted emission reductions, we are obliged to find replacement reductions or to demonstrate that rate-of-progress and attainment

Continued

EPA approved M3 on December 14, 1995 (60 FR 64126). Under sections 110(k)(3) and 301(a) of the Act, EPA here takes final action to approve the emission reductions associated with the measure, as displayed by nonattainment area and milestone/attainment year in the table below, labeled "Reductions from California Mobile Source Measure M3."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M3

[Tons per day]

	1999		2002		2005		2008		2010	
	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
So. Coast	0	.89	.78	9.51	1.85	21.1	2.31	26.7	3.37	33.16
SE Desert	0	.1	.1	1.4	.2	3.5	.....	.....	.....	.....
Ventura	0	0	0	.5	.1	1.0	.....	.....	.....	.....
Sacramento	.2	.2	0	1.7	.4	3.9	.....	.....	.....	.....
S. Joaquin	0	.4	.....	.....	.....	.....	.....	.....	.....	.....

(iv) M4—Heavy-Duty Diesel Vehicles (HDDV); Early Introduction of 2.0 g/bhp-hr NO_x engines. The SIP commits to implementation of this measure beginning in 1996. CARB and the Districts share responsibility for this measure. M4 is a commitment to increase the use of existing low-emission engines among on-road HDDVs through locally implemented demand-side programs and market incentives. This program is intended to result in a 5% sales penetration of 2.0 g/bhp-hr NO_x engines through the period 1996–1999, and a 10% sales penetration of these engines between 2000 and 2002. Other combinations of penetrations and emission levels that provide equivalent emission reductions could be implemented.

CEPA commented that the NPRM omits SIP credits for this measure outside of the South Coast. EPA agrees to include the State's M4 reductions for the remaining State areas. The credits for these areas are taken from tables provided by CARB in Attachment C to a June 13, 1996 letter from James D. Boyd to David Howekamp.

EPA approved M4 on December 14, 1995 (60 FR 64126). Under sections 110(k)(3) and 301(a) of the Act, EPA here takes final action to approve the emission reductions associated with the measure, as displayed by nonattainment area and milestone/attainment year in the table below, labeled "Reductions from California Mobile Source Measure M4."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M4

[Tons per day of NO_x]

	1999	2002	2005	2007	2008	2010
So. Coast	2.17	3.90	2.93	.....	2.34	1.36
SE Desert	0.31	0.57	0.39	0.35	.....	.....
Ventura	0.1	0.18	0.14	.....	.....	.....
Sacramento	0.28	0.49	0.36			
S. Joaquin	0.74	.....	.....	.....	.....	.....
Kern	0.04	.....	.....	.....	.....	.....

(v) M5—Heavy-Duty Diesel Vehicles (HDDVs); Additional NO_x Reductions. The SIP commits to adopt this measure in 1997 and begin implementation in 2002. CARB commits to achieve emission reductions through adoption of a 2.0 g/bhp-hr NO_x emissions standard for new HDDV engines sold in California beginning in 2002, or by implementation of alternative measures which achieve equivalent or greater reductions.

This measure is designed to achieve emission reductions prior to the introduction of a national HDDV standard in 2004. The 1994 California Ozone SIP ("Federal Measure" M6) assigns to EPA responsibility for adopting such a national standard. See discussion in the NPRM (61 FR 10928–9). Since EPA's proposal, further progress toward fulfilling the M5 and M6 commitments has been made by CARB and EPA. On June 27, 1996 (61 FR 33421–33469), EPA published an NPRM proposing a national onroad heavy-duty engine standard giving manufacturers the flexibility to choose between two options: (1) A combined non-methane hydrocarbon (NMHC) plus NO_x standard of 2.4 g/bhp-hr and (2) a combined NMHC plus NO_x standard of 2.5 g/bhp-hr together with a NMHC cap of .5 g/bhp-hr. EPA and CARB expect that the combined standard will result in NO_x reductions comparable to those achieved with a 2.0 g/bhp-hr standard.

EPA approved M5 on December 14, 1995 (60 FR 64126). Under sections 110(k)(3) and 301(a) of the Act, EPA here takes final action to approve the emission reductions associated with the measure, as displayed by nonattainment area and milestone/attainment year in the table below, labeled "Reductions from California Mobile Source Measure M5." Future SIP updates may need to redistribute the emissions assigned to the State (M5) and Federal (M6) measures.

requirements will still be met. Further, we recognize that any shortfall in emission reductions would have to be made up on an expedited basis because of the need for those reductions in the South Coast and other areas for rate-of-progress and attainment. ARB will be looking at any feasible alternatives proposed during the process of developing each measure into a regulation. This process includes several rounds of public review and a thorough consideration of the economic impacts on the affected industries."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M5

[Tons per day]

	1999		2002		2005		2007		2008		2010	
	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
So. Coast	0	0	0.2	1.7	1.8	22.0	.....	.....	3.1	37.6	4.8	56.2
SE Desert	0	0	0	0.2	0.2	3.9	0.4	5.1	.....	.....	.....	.....
Ventura	0	0	0	0.1	0.1	1.0	.....	.....	.....	.....	.....	.....
Sacramento	0	0	0	0.2	0.2	2.7	.....	.....	.....	.....	.....	.....
S. Joaquin	0	0	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

(vi) M7—Accelerated Retirement of Heavy-Duty Vehicles. CARB commits to adopt this measure in 1996 and begin implementation in the same year. This measure involves the annual retirement (scrapping or removal) of about 1600 of the oldest, high emitting trucks in the South Coast Air Basin, beginning in 1999. A smaller number of trucks would be scrapped in 1996 to 1998 in order to gain experience with the program and determine the impacts on the used truck market. The SIP commits to secure a financing mechanism for this measure by the end of 1995. While the SIP commits only to implement this measure in the South Coast, the State indicates that consideration is being given to establishing a truck retirement program in Sacramento and other nonattainment areas.

The Environmental Defense Center notes that M7 relies on an enforceable funding mechanism to be secured by the end of 1995. EDC comments that it is capricious to fail to identify the secure, enforceable funding source for this speculative scrappage program. State funding legislation has been prepared to establish the Accelerated Vehicle Replacement Program, and the State is continuing to pursue viable funding options. EPA will monitor program implementation and ensure that the State and involved parties meet the SIP's schedule for program adoption and implementation in 1996.

CARB requested that the ROG emission reductions shown for the South Coast in the year 2002 be reduced from 1 to zero (0.21). EPA is doing so at this time.

Under sections 110(k)(3) and 301(a) of the Act, EPA is taking final action to approve M7, its implementation schedule, and the emission reductions to be achieved in the South Coast, as displayed in the table below, labeled "Reductions from California Mobile Source Measure M7."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M7—SOUTH COAST AIR BASIN

[Tons per day]

	1999	2002	2005	2007	2008	2010
ROG	0	0	1	1	1	1
NO_x	3	6	7	8	9	10

(vii) M8—Heavy-Duty Gasoline Vehicles (HDGVs), Lower Emission Standards. The SIP commits to adoption of this measure by 1997 and implementation beginning in 1998. This measure generates emission reductions through the adoption of a LEV/ULEV program for HDGV engines to obtain 50% reductions of NO_x and ROG emissions through the application of 3-way catalyst technology.

EPA approved M8 on December 14, 1995 (60 FR 64126). Under sections 110(k)(3) and 301(a) of the Act, EPA here takes final action to approve the emission reductions associated with the measure, as displayed by nonattainment area and milestone/attainment year in the table below, labeled "Reductions from California Mobile Source Measure M8."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M8

[Tons per day]

	1999		2002		2005		2007		2008		2010	
	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
So. Coast	0	0	0	0.8	0.1	1.8	.....	.....	0.2	2.3	0.3	3.0
SE Desert	0	0	0	0.1	0	0.3	0	0.4	.....	.....	.....	.....
Ventura	0	0	0	0	0	0.1	.....	.....	.....	.....	.....	.....
Sacramento	0	0	0	0.2	0	0.4	.....	.....	.....	.....	.....	.....
S. Joaquin	0	0	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

(viii) M9—Off-road Diesel Equipment; 2.5 g/bhp-hr NO_x Standard, California. CARB commits to adopt this measure in 2001 and begin implementation in 2005. The measure requires CARB to adopt a 2.5 g/bhp-hr NO_x standard effective in the 2005 model year for new off-road industrial equipment diesel engines that are not preempted from California authority. California is preempted from adopting or enforcing any standard or other requirement relating to the control of emissions from new construction and farm equipment or vehicles which are smaller than 175 hp (see section 209(e) of the Act).

CARB requested that the ROG emission reductions shown for the South Coast in the year 2005 be increased from zero to 0.5. EPA is doing so at this time.

On August 21, 1995, EPA approved M9 and assigned it SIP credit in the South Coast under the provisions of section 182(e)(5) of the Act. Under sections 110(k)(3) and 301(a) of the Act, EPA is taking final action to approve

the emission reductions to be achieved in the South Coast by milestone year in the table below, labeled "Reductions from California Mobile Source Measure M9."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M9—SOUTH COAST AIR BASIN

[tons per day]

	1999	2002	2005	2007	2008	2010
ROG	0	0	0.5	4	1	3
NO_x	0	0	4	35	14	34

(ix) M11—Industrial Equipment; Gas and LPG-California; 3-way catalyst technology. CARB commits to adopt this measure in 1997 and implement it beginning in 2000. The measure requires CARB to adopt emission standards for new gas and liquid petroleum gas (LPG) engines 25 to 175 horsepower that are not primarily used in construction or farm equipment. As noted above, California is preempted from regulating new farm and construction equipment smaller than 175 hp. The standards will be phased-in beginning in 2000, and are intended to reduce ROG emissions by 75% and NO_x by at least 50%.

CEPA commented that the NPRM omits SIP credits for this measure in Ventura, Sacramento, and the Southeast Desert. EPA agrees to include the State's M11 reductions for these areas. The credits for these areas are taken from tables provided by CARB in Attachment C to a June 13, 1996 letter from James D. Boyd to David Howekamp. Since the reductions in these areas are all considerably less than one ton per day and EPA's proposal showed credits only for whole number reductions in the South Coast, EPA is also amending the reductions for the South Coast by showing estimated reductions to the nearest tenth of a ton.

EPA approved M11 on December 14, 1995 (60 FR 64126). Under sections 110(k)(3) and 301(a) of the Act, EPA here takes final action to approve the emission reductions associated with the measure by milestone/attainment year for each area in the table below, labeled "Reductions from California Mobile Source Measure M11."

REDUCTIONS FROM CALIFORNIA MOBILE SOURCE MEASURE M11

[Tons per day]

	1999		2002		2005		2007		2008		2010	
	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
So. Coast	0	0	4.2	2.0	8.8	4.4	.....	.....	15.1	7.7	23.0	11.6
SE Desert	0	0	0.1	0	0.2	0.1	0.2	0.1				
Ventura	0	0	0.1	0	0.1	0.1	.....	.....	.....	.....	.....	.....
Sacramento	0	0	0.1	0.1	0.2	0.1	.....	.....	.....	.....	.....	.....

(x) Additional New Control Technologies. In addition to the new control technologies described above in measures M2 and M9, CARB has committed to the implementation of additional innovative measures to achieve the emission reductions needed in the South Coast to reach attainment by 2010. CARB anticipates that these additional measures will include a combination of market-based and technology-based measures. CARB has committed to adoption of these measures no later than 2006 to ensure the needed emissions reductions (55 tpd of ROG and 20 tpd of NO_x) are achieved by 2009.

The Environmental Defense Center commented that these new-technology measures jeopardize the efficacy of the entire SIP. EDC stated that many of the State's example controls are unrealistic (speed controls) or illegal (episodic controls).

On August 21, 1995, EPA approved CARB's additional new control technologies measure under the provisions of section 182(e)(5), with 2010 emission reduction credits of 79 tpd ROG and 60 tpd NO_x in the South Coast. CARB has subsequently clarified that the emissions reductions associated with this measure are 55 tpd ROG and 20 tpd NO_x.

CARB has also furnished additional information regarding the State's approach to developing the control measure. A September 19, 1996 letter from Lynn Terry to Julia Barrow provides the following description of the State's proposed schedule: "We anticipate kicking off development of this measure in 1997 with an international symposium on clean transportation to solicit ideas for new technologies and approaches. We intend to follow up with technical work (including any appropriate research contracts), meetings, and workshops on the most promising ideas through 2000. At that point, we expect to develop regulatory concepts for discussion in 2001–2003, followed by release of specific proposals in 2004–2005, and adoption of appropriate regulations by 2006." EPA remains eager to work with the State to ensure that progress is made to develop approvable mobile source controls as necessary in the South Coast to meet the SIP's progress and attainment goals.

c. EPA Action. As described above, EPA has already approved most of the State's M Measure commitments. On August 21, 1995, EPA approved the CARB new-technology measures M2, M9, and Additional New Technology Mobile Source Measures (described above), and assigned credit in the South Coast ozone attainment demonstration to the measures. At the same time, EPA proposed approval of the State's control measure commitments for M3, M5, M8, and M11. EPA issued final approval of the measures on December 14, 1995 (60 FR 64126). Because EPA was at that time not acting on the State's ROP and attainment demonstrations, EPA's approval of the State's commitments did not include assignment of specific emission reduction credits associated with the measures. EPA is here approving the ROP and attainment demonstrations of California ozone nonattainment area plans which rely, in part, on the M Measure commitments. Therefore, under sections 110(k)(3) and

301(a) of the Act, EPA now takes final action to assign credit to the State's enforceable commitments to achieve the specific emission reductions associated with M3, M5, M8, and M11, and displayed in the tables above for each measure.

EPA is also approving, under sections 110(a)(3) and 301(a) of the Act, and assigning credit to measures M1, M4, and M7 as part of the ROP and attainment demonstrations for appropriate nonattainment areas, as shown in the tables above. EPA believes that CARB is making significant progress toward the development and adoption of regulations to fulfill the M measure commitments. EPA therefore takes final action to approve and credit CARB's enforceable commitments to these M measures under sections 110(k)(3) and 301(a) of the Act, as part of the demonstrations of ROP and attainment in the California ozone nonattainment areas.

2. I/M

a. Review of Program. CARB initially submitted its motor vehicle inspection and maintenance (I/M) program, known as the Smog Check program, as a revision to its SIP on June 30, 1995. The submittal was made to fulfill EPA's requirements for basic and enhanced I/M programs as set forth in 40 CFR Part 51, Subpart S. EPA found the submittal complete on June 30, 1995. A revised and final revision was submitted by the State on January 22, 1996 and found complete on February 5, 1996. Section 348 of the National Highway System Designation Act (Public Law 104–59), hereafter referred to as the Highway Act, which was enacted on November 28, 1995, modified EPA's I/M regulation. In this notice EPA is finalizing approval of California's basic program as meeting the requirements of 40 CFR, Part 51, Subpart S as amended (see 60 FR 48029, September 18, 1995) and approval of California's enhanced I/M program as meeting the high enhanced performance standard requirements of 40 CFR Part 51, Subpart S, as amended and section 348(c) of the Highway Act.

The table labeled "California I/M Program Coverage by County" shows for every county in the State whether the I/M program is implemented as enhanced or basic, or is required only upon change of ownership. For many counties, the type of I/M program in effect varies depending upon air quality designations and whether the area is urbanized. The State has established these I/M program boundaries within counties based upon ZIP code. The reader may contact the Bureau of Automotive Repair (BAR) to obtain specific program applicability information by ZIP code.

CALIFORNIA I/M PROGRAM COVERAGE BY COUNTY

County	Enhanced	Basic	Change of ownership
Alameda		X	
Alpine			X
Amador			X
Butte		X	
Calaveras			X
Colusa		X	
Contra Costa		X	
Del Norte			X
El Dorado		X	X
Fresno	X	X	
Glenn		X	
Humboldt			X
Imperial			X
Inyo			X
Kern	X	X	
Kings		X	
Lake			X
Lassen			X
Los Angeles	X		
Madera		X	
Marin		X	
Mariposa			X
Mendocino			X
Merced		X	
Modoc			X
Mono			X
Monterey		X	
Napa		X	
Nevada		X	
Orange	X		
Placer	X	X	X
Plumas			X
Riverside	X	X	X
Sacramento	X	X	
San Benito		X	
San Bernardino	X	X	X
San Diego	X	X	X
San Francisco		X	
San Joaquin	X	X	
San Luis Obispo		X	
San Mateo		X	
Santa Barbara		X	
Santa Clara		X	
Santa Cruz		X	

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CALIFORNIA I/M PROGRAM COVERAGE BY COUNTY—Continued

County	Enhanced	Basic	Change of ownership
Shasta		x	
Sierra			x
Siskiyou			x
Solano	x	x	
Sonoma		x	x
Stanislaus	x	x	
Sutter		x	
Tehama		x	
Trinity			x
Tulare		x	
Tuolumne			x
Ventura	x	x	
Yolo	x	x	
Yuba		x	

The SIP revision submitted to EPA by CARB includes the Laws and Regulations relating to California's I/M program which comprises pertinent sections of the California Business and Professions Code, the Health and Safety Code, the Vehicle Code, and the California Code of Regulations. Included in the supplemental submittal are final regulations for the mandatory exhaust emissions inspection standards and test procedures for the enhanced program and for the licensing of I/M stations and technicians which became legally effective on December 1, 1995 and December 5, 1995, respectively. Other documents in the submittal are: The Request for Conceptual Design for Test-only Networks and Referee Services; the BAR–90 Test Analyzer System Specifications (June 1995); the California Smog Check Inspection Manual; the Quality Assurance Operations Manual, Chapter 27 of the Department of Motor Vehicles Manual of Registration Procedures; the Smog Check Diagnostic and Repair Manual; the Request for Proposal for On-Road Emissions Measurement Systems Services, and the Radian Report entitled "Evaluation of the California Pilot Inspection/Maintenance (I/M) Program."

EPA's I/M regulation establishes minimum performance standards for basic and enhanced I/M programs as well as requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act. The high performance standard for enhanced I/M programs is based on high-technology loaded mode exhaust testing for HC, CO, and NO_x and testing of the integrity and performance of the evaporative control system.

California's basic program is a test-and-repair program utilizing two-speed idle testing. California's enhanced program is a hybrid program in which 15% of the dirtiest vehicles, based upon high-emitter profile and remote sensing results as well as other factors, are targeted for test-only inspection. All vehicles in the enhanced areas will be subject to loaded mode testing. More stringent requirements apply to technicians licensed in the enhanced areas. The two programs are essentially the same in all other respects, excepting that frequency of enforcement related activities such as remote sensing will be much greater in the enhanced areas. (A more detailed discussion of how the elements of California's I/M programs address the requirements of EPA's I/M regulations is contained in the TSD for the NPRM.) The SIP submittal includes modeling which demonstrates that the program design for California's basic program will meet EPA's performance standard for basic programs. EPA is, therefore, approving this revision to California's SIP for the basic I/M program.

The Highway Act prohibits the Administrator from disapproving or applying an automatic discount of emission reduction credits to a SIP revision because the I/M program is decentralized or a test-and-repair program. The Highway Act directs the Administrator to propose approval of the program for the full credit proposed by the state if the proposed credits reflect good faith estimates by the state and the revision is otherwise in compliance with the Clean Air Act. The approval remains effective for up to 18 months after the date of final rulemaking. After the 18-month period, permanent approval of the SIP revision based on the credits proposed by the state shall be granted if the data collected on the operation of the program demonstrates that the credits are appropriate and the program is otherwise in compliance with the Act.

EPA issued guidance regarding approval of I/M plans under the Highway Act on December 12, 1995. The Highway Act is clear that approval under its provisions shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be at the latest, 12 months after the effective date of the approval, so that at least 6 months of operational program data can be collected to evaluate the performance of the program. "Start-up" is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of the state's required areas. If the state fails to start its program on this schedule, the approval granted under the provisions of the Highway Act will convert to a disapproval after a finding letter is sent to the state.

As mentioned above, the Highway Act specifies that EPA grant approval if good faith estimates of credits are made.

The Conference Report states that good faith estimates may be based on previous I/M program performance, remote sensing programs, or other evidence relevant to effectiveness of I/M programs. EPA has further suggested that good faith estimates could be based on innovative program designs.

The program evaluation to be used by the state during the 18-month period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of State (ECOS) group that is convening now and that was organized for this purpose. California is an active participant in the ECOS group. EPA further expects that in addition to the interim, short term evaluation to be conducted within 18 months, the state will conduct a long term, ongoing evaluation of its I/M program as required by the I/M Rule in sections 51.353 and 51.366.

At the end of the 18-month approval period, EPA will review the state's final I/M SIP revision, which will include the state's program evaluation, and take action to make the approval of the I/M program permanent, if the program evaluation data collected by the state demonstrates that the I/M program is achieving the emission reduction credits claimed in the SIP.

According to the schedule submitted by California test-only inspection began in Sacramento in August 1995. The program is expected to be fully operational in Fresno, Bakersfield and San Diego by the fall of 1996, and in the South Coast areas in early 1997. Although this schedule appears to be slipping, EPA anticipates that California will start its program within 12 months of this approval.

California has made a good faith estimate that its hybrid enhanced I/M program will meet EPA's high performance standard based on the California Pilot Program and innovative program features including an electronic transmission project with a trigger program used for enforcement, a high visibility remote sensing program, and stringent licensing and training requirements.

The pilot program conducted as part of the Memorandum of Agreement between EPA and California provided data on the effectiveness of targeting high emitting vehicles through the use of the high-emitter profile (HEP) and remote sensing combined with the HEP, and the use of Acceleration Simulation Mode (ASM) testing. The vehicles required to go to test-only facilities for inspection will comprise likely high-emitters as identified through use of the HEP and remote sensing, previously identified high emitters which must undergo annual testing for 2 to 5 years, high emitters identified by test-and-repair stations, high mileage fleet vehicles, vehicles for hire, a 2% random sample, and motorists voluntarily choosing to go to test-only stations.

California's program includes an electronic transmission program. A central Vehicle Information Database has been created and an electronic network enabling the test analyzer system units to connect automatically to the database has been established. The central database will be able to restrict the issuance of certificates under certain circumstances, e.g., if a test-only inspection is required, when the vehicle is identified as a high emitter, or when an enhanced test is required. The database will also furnish a real-time communications link to vehicle emissions data which will provide information to BAR enforcement teams to help immediately identify illicit activity. The database will also be used to develop a trigger program to identify shops that are performing improper inspections and to track the location and performance of licensed smog check technicians.

The State is also phasing in a high-visibility remote sensing program. California plans to identify as least 200,000 high emitting vehicles annually in the enhanced program areas. Data collected from the program will be used as a target parameter for the enforcement program. The program will also serve as a visible reminder to both motorists and test-and-repair stations that improper inspections and/or program avoidance may be detected. Stringent licensing and training requirements are being required for test-and-repair stations and repair technicians, respectively.

California has committed to performing quarterly evaluations of its program to determine if EPA's performance standard is being met and the credits taken for the program are being achieved. California plans to adjust the number of vehicles sent to test-only stations based on these evaluations.

b. Response to Comments. The Environmental Defense Center commented that the State's I/M program must be bolstered to return the emissions reduction necessary to meet attainment. California has committed to performing quarterly program evaluations to determine whether SIP emission reduction requirements and EPA's performance standard are being met. EPA's approval under section 348(c) of the Highway Act requires the State to collect data on the operation of the program to demonstrate with an 18 month period that the I/M credits are valid and the program is otherwise in compliance with the CAA. EPA will work with the State to help ensure that data are timely collected and that the program delivers SIP-required reductions or is promptly modified to do so.

c. Emissions Reductions. The emission reductions to be achieved by the measure are displayed by nonattainment area and milestone/attainment year in the table below, labeled "Reductions from California Enhanced I/M Program." The table reflects the revisions to the estimated reductions shown in the NPRM. These changes were requested by CARB in Attachment A to a letter dated June 13, 1996 (James D. Boyd to David Howekamp). South Coast 2002 NO_x is changed from 35.5 to 35.6; Southeast Desert 2005 ROG is changed from 2.9 to 2.6; Southeast Desert 2007 NO_x is changed from 2.8 to 2.7; Sacramento 2005 ROG is changed from 5.1 to 5.2; and San Joaquin Valley 1999 NO_x is changed from 4.9 to 5.0. The emission reductions claimed for the San Joaquin Valley are based on implementation of the enhanced I/M program in Bakersfield, Fresno, Stockton, and Modesto.

REDUCTIONS FROM CALIFORNIA ENHANCED I/M PROGRAM

[Tons per day]

	1999		2002		2005		2007		2008		2010	
	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
So. Coast	34.8	32.4	40.3	35.6	32.5	33.0	.....	.....	30.2	34.8	26.2	31.1
SE Desert	2.4	2.3	3.0	2.6	2.6	2.8	2.6	2.7				
Ventura ...	1.6	1.9	1.8	2.0	1.4	1.9						

REDUCTIONS FROM CALIFORNIA ENHANCED I/M PROGRAM—Continued

[Tons per day]

	1999		2002		2005		2007		2008		2010	
	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
Sacramento	5.4	5.7	6.3	6.5	5.2	6.4						
S. Joaquin	4.3	5.0										
S. Diego ..	0	0										

c. *EPA Action.* EPA is finalizing approval of the California I/M regulations submitted on January 22, 1996, under sections 110(k)(3) and 301(a) of the Act as strengthening the SIP and contributing specific emission reductions toward the progress, attainment, and maintenance requirements of the Act.

EPA is also finalizing, under sections 110(k)(3) and 301(a) of the Act, approval of the California I/M program and regulations submitted on January 22, 1996, as meeting the requirements of section 182(b)(4) of the Act for basic I/M in applicable areas of the State classified as moderate for ozone.[22] By mistake EPA's proposed approval was limited to ozone. In this final action EPA is also approving the California I/M program as meeting the requirements of section 187(a)(4) of the Act for basic I/M for the following areas of the State classified as moderate for CO with design values less than 12.7: Fresno, Sacramento, Modesto, Chico, Stockton and San Diego.

Under section 348(c) of the Highway Act, EPA is finalizing, for a period of 18 months, approval of the California I/M submittal of January 22, 1996, as meeting the requirements of section 182(c)(3) of the CAA for enhanced I/M in applicable areas of the State classified as serious and above for ozone. In addition, EPA is approving the I/M submittals as meeting the requirements of section 187(a)(6) of the Act for enhanced I/M for the South Coast which is classified as a serious nonattainment area for carbon monoxide; by mistake, this aspect of EPA's approval of the I/M program was also omitted from the NPRM. Finally, EPA is finalizing, for a period of 18 months, approval of the emission reductions to be achieved by the enhanced I/M program, as displayed in the table above, labeled "Reductions from California Enhanced I/M Program." Section 348(c)(3) of the Highway Act provides that EPA will take regulatory action to make the approval permanent if, at the expiration of the 18-month period or at an earlier time, the data collected on the operation of the State program demonstrates that "the credits are appropriate and the revision is otherwise in compliance with the Clean Air Act."

If EPA finds that California has failed to start its program within 12 months from the effective date of this notice, or by February 9, 1998, and issues a letter so informing California, then this approval will convert to a disapproval as of the date of such letter. If the required State demonstration is not completed within 18 months and submitted to EPA as a SIP revision or does not show that the credits are appropriate and that the program is otherwise in compliance with the CAA, EPA will take regulatory action to disapprove the program for purposes of compliance with the enhanced I/M requirements of sections 182(c)(3) and 187(a)(6). After 18 months have elapsed, unless and until EPA approves a new SIP submittal, the SIP will no longer meet the specific requirements of the Act relating to enhanced I/M, but the State's regulations will continue in the SIP as contributing to progress, attainment, and maintenance of the NAAQS.

3. Consumer Products.

a. *Introduction.* As discussed in the NPRM, CARB classifies the emissions reductions resulting from regulations on consumer products regulations into 3 main categories: near-term, mid-term, and long-term with regard to date of promulgation and implementation.

CARB's near-term measures consist of rules adopted prior to May 1995. The existing consumer products regulations, antiperspirant and deodorant regulations, and the 1996 and 1999 VOC content standards of the recently adopted aerosol paints rule comprise the near-term measures.

CARB's mid-term measures consist of anticipated regulations from categories of consumer products for which regulations had not yet been adopted at the time of the submittal. These regulations are expected to be adopted by July 1, 1997 and implemented by the year 2005, and will cover various consumer product categories which are currently not regulated by the State of California. These mid-term measures are needed for attainment demonstrations in the Sacramento Metropolitan and Ventura County air basins. In the SIP, CARB asserts that these measures, like the near-term measures, rely on available or reasonably foreseeable technology. CARB has also committed to investigating the feasibility of incorporating reactivity considerations into the mid-term measures to reduce ozone-forming potential while providing additional flexibility at reduced costs to industry and consumers.

CARB has committed to obtaining further reductions (as compared to the near- and mid-term measures) from consumer products after 2000. These reductions may rely on available or in-the-pipeline technology, and may also rely on various combinations of traditional control strategies, technology-forcing standards, innovative market-based approaches, and consumer education programs. These long-term measures would be enforced on a statewide basis, but only the South Coast plan relies on the emissions reductions to demonstrate attainment.

CARB has further categorized their emission reduction commitments into 4 classifications, or "measures": CP–1, CP–2, CP–3, and CP–4. These measures are either adopted rules or commitments to adopt rules to reduce VOC emissions from consumer products and aerosol paints. A description of each of these measures follows.

b. *Review of Measures.* (1) Measure CP–1. Measure CP–1 includes two rules, both adopted prior to November 1994, that are designed to control VOC emissions from commercial products. One rule controls VOC emissions from antiperspirants and deodorants; the other rule controls emissions from household products, such as air fresheners, shaving cream, and hairsprays. Both rules were submitted to EPA on November 15, 1994. EPA

[22] The January 22, 1996 SIP submittal includes and supersedes materials contained in the State's earlier submittal of June 30, 1995.

approved these rules into the SIP on August 21, 1995 (see 60 FR 43379).

(2) Measure CP–3 (Aerosol Paints). Measure CP–3 is a near term commitment to adopt and implement VOC content standards in aerosol paints. Regulations meeting these commitments were adopted in mid-1995. These regulations limit the VOC content of aerosol paints by establishing sets of VOC content standards for various coating types. These standards establish the maximum percentage of VOC by weight allowed in the various types of aerosol coatings. The coating standards are divided into two phases. In the first phase, effective January 1, 1996, aerosol coatings' VOC content must comply with limits that range from 60 percent to 95 percent, depending on the coating.

In the second phase, currently due to take effect December 31, 1999, aerosol coatings' VOC content limits will range from 30 percent to 80 percent, depending on the type of coating. Before the second phase of content limits can be implemented, CARB must conduct a public hearing to determine if the limits are commercially and technologically feasible. If the Board determines that they are not feasible, the implementation of some or all of the limits may be postponed for up to 5 years. However, CARB must ensure that the 1999 limits do not become federally enforceable prior to the final effective date, including any extension, according to section 41712 (f)(3) of the California Health and Safety Code.

EPA approval action on both phases of the aerosol paint rules will be taken in separate rulemakings following SIP submittal of the rules.

(3) Mid-Term Committal Measure CP–2. Measure CP–2 is a mid-term commitment to adopt additional regulations in 1997 to further reduce VOC emissions from currently unregulated household, industrial and institutional, and commercial consumer products. These reductions are anticipated to result from the further regulation of new categories of consumer products through technology that is currently feasible and commercially viable. EPA approved CP–2 on December 14, 1995 (60 FR 64126).

(4) Long-Term Committal Measure CP–4. Measure CP–4 is a long-term measure to further reduce emissions after measures CP–1, CP–2, and CP–3 are implemented. On August 21, 1995, EPA approved CARB's Measure CP–4 as meeting the requirements of section 182(e)(5).

(5) Alternative Control Plans (ACPs). In order to provide industry with flexibility in meeting the VOC content limits, CARB has adopted regulations that will allow manufacturers to meet the VOC standards on an emissions average basis. The regulations, CARB's Alternative Control Plan (ACP) for consumer products and aerosol coatings, require that manufacturers carefully track sales and VOC content of all products being averaged together in order to determine total VOC emissions from their products and compliance with the rule. EPA will act on the ACP regulations following submittal by the State.

c. Emission Reductions. The following table, "Reductions from California Consumer Products and Aerosol Paint Program," describes the ROG emission reductions in terms of tons per day, as identified in the SIP submittal. Credits for near-term consumer products (CP–1) are not included, since they were presumed in baseline emissions projections as adopted regulations. The table combines credits for consumer products and aerosol paints. Credit for CP–4 is claimed only for South Coast.

The ROP and attainment demonstrations for San Diego and San Joaquin Valley do not rely on reductions from the consumer products measures. The State has submitted for SIP approval no emissions reductions for these areas associated with consumer products and aerosol paints measures, although real reductions will occur in those areas. San Joaquin Valley Unified APCD requested that EPA identify a 1.1 tpd VOC emissions reduction in the San Joaquin Valley area from these measures. Since the State does not wish to claim SIP credit for these measures in the San Joaquin Valley, EPA is not assigning the credits to San Joaquin Valley.

REDUCTIONS FROM CALIFORNIA CONSUMER PRODUCTS AND AEROSOL PAINT PROGRAM [REDUCTIONS BEYOND THOSE ACHIEVED BY CP–1]

[Tons per day of ROG]

	1999	2002	2005	2007	2008	2010
South Coast	0	8	39.2	.....	42.2	89.2
SE Desert	0	0.6	3.5	3.9	.....	.....
Ventura	0	0.4	2.2	.....	.....	.....
Sacramento	0	1.1	5.6	.....	.....	.....
San Joaquin	0	.....	.....	.....	.....	.....
San Diego	0	.....	.....	.....	.....	.....

d. EPA Action. As discussed above, EPA has already fully approved all of the State's consumer products rules and committal measures with the exception of CP–3 (Aerosol Paints). EPA is now approving CP–3 under sections 110(k)(3) and 301(a) of the Act, and assigning credit to this measure, as well as to the previously approved consumer products measures, as part of the ROP and attainment demonstrations for appropriate nonattainment areas. EPA will take regulatory action on the recently adopted ACP and Aerosol Paints regulations themselves in separate rulemakings.

4. Pesticides

a. Review of Measure. California's 1994 SIP submittal includes a commitment to reduce VOC emissions from the application of agricultural and structural pesticides. The submittal describes relevant authority in Section 6220 of Title 3 of the California Code of Regulations that has been granted to the California Department of Pesticide Regulation (DPR).

b. Response to Comments. The Environmental Defense Center (EDC) questioned whether the pesticides measure should be granted credit. EDC stated that pest management research alone will not create any reductions and the SIP is entirely vague as to how these air quality benefits will be accomplished. While the NPRM refers to a June 1997 date for promulgation of regulations should the voluntary measures fail, the SIP itself recites a possible, not obligatory, 1998 date. Finally, EDC recommends that the pesticides rule that was included in EPA's 1995 Federal Implementation

Plan (or some comparable rule) must be included in the SIP.

On May 11, 1995, CARB submitted a clarification by the California Department of Pesticide Regulation (Memo from James W. Wells to James D. Boyd) to the pesticide element of the SIP, submitted on November 15, 1994. This SIP clarification, which was cited in the NPRM, states, in part, that "The Department of Pesticide Regulation commits to adopt and submit to U.S. EPA by June 15, 1997, any regulations necessary to reduce volatile organic compound emissions from agricultural and commercial structural pesticides by specific percentages of the 1990 base year emissions, by specific years, and in specific nonattainment areas * * * as listed in the following table * * *." California assigns to the pesticides measure less emission reductions than were associated with EPA's proposed FIP rule but the SIP reductions are sufficient to meet progress and attainment requirements in each area for this control category.

c. Emission Reductions As described in the SIP, California has committed to adopt and submit to U.S. EPA by June 15, 1997, any regulations necessary to reduce VOC emissions from agricultural and commercial structural pesticides by 20 percent of the 1990 base year emissions in the attainment years for Sacramento, Ventura, Southeast Desert, and the South Coast, and by 12 percent in 1999 for the San Joaquin Valley. The table labeled "Reductions from Pesticides Measure" shows reductions counted toward attainment in each area. EPA has revised the table to reflect CEPA's request that emission reductions for interim years be excluded from the SIP, since CARB elects not to assign credit to the pesticides measure except for purposes of attainment. If reductions from the measure are, in the future, needed to meet ROP milestones, CARB must resubmit the measure and interim reduction estimates as an SIP revision.

REDUCTIONS FROM PESTICIDES MEASURE

[Tons per day of ROG]

	1999	2002	2005	2007	2008	2010
South Coast	0	0	0	0	0	1.7
Southeast Desert	0	0	0	1.5		
Ventura	0	0	2.4			
Sacramento	0	0	2.8			
San Joaquin	13					

d. EPA Action. EPA is approving the Pesticides measure under sections 110(k)(3) and 301(a) of the Act, and assigning credit to the measure as part of the attainment demonstrations for appropriate nonattainment areas. EPA will take regulatory action on the State's Pesticides regulations, if any regulations are required and are submitted, in separate rulemakings.

B. Local ROP and Attainment Plans and Measures

1. Emission Inventories

a. Response to Comments. The Engine Manufacturers Association (EMA) commented that EPA has not provided all of the data or documented all of the assumptions that were part of California's inventory and modeling analyses. EMA added that it has serious concerns that the baseline emissions inventories include potentially significant overestimates of growth in VMT, trips, and vehicle and equipment sales and usage. EMA indicated that these estimates do not accurately reflect the emissions reductions that will result from the imposition of current and future national and state regulations. Finally, EMA noted that EPA acknowledged that its baseline and projected emissions are uncertain, and EMA requested that EPA should not take final action on the proposed inventories but should require that appropriate adjustments be made in order to provide accurate and reasonable inventory calculations on which to base California's proposed measures.

EPA does not believe that it is necessary or practical for the Agency to set forth the complete emission inventory data and documentation. This information is available from the State and local agencies, and amounts to thousands of pages of emissions and activity data, emissions factors, calculations, and quality assurance programs.

The commenter provided no specific information relating to inaccuracies in the SIP emission inventories. EPA recognizes that, in general, the accuracy of inventories for any area can be improved. If EMA has specific corrections to suggest, they should be provided to the State, EPA, and local agencies for review and possible inclusion in future SIP revisions. However, EPA has determined that the existing inventories meet applicable SIP requirements and provide reasonable foundations for the SIP.

The City of Los Angeles commented that the South Coast is preparing a 1997 AQMP update, which will improve the inventory. EPA recognizes that the improved inventory in progress may allow for SIP refinement. If and when inventory updates and improvements are submitted as SIP revisions for any of the nonattainment areas, EPA will consider them.

b. EPA Action. EPA is finalizing approval of the emission inventories for each of the nonattainment areas as meeting the requirements of section 182(a)(1) of the Act.

2. San Diego

a. SIP Control Measures. Only one comment was received on the San Diego plan. As discussed above in Section II.A.1, CEPA asked EPA to exclude from the San Diego SIP those emission reductions that will result from implementation of State measures M3, M5, M8, and CP–2/CP–3, since these reductions are not needed for purposes of progress or attainment. EPA is deleting these credits from the emission reduction tables for State measures in Section II.A.

EPA is not approving any new State or local measures as part of the San Diego ozone SIP, since none were included in the State's submittal. The State demonstrated that the ROP and attainment demonstration provisions of the Act could be met with pre-existing regulations.

b. ROP Provisions. EPA is finalizing approval of the ROP plan as meeting the 15% ROP requirements of section 182(b)(1) and the post-1996 ROP requirements of section 182(c)(2) of the Act. The ROP VOC targets, projected VOC emissions, and creditable VOC and NO_x reductions are shown below in the table labeled "San Diego ROP Forecasts and Targets."

SAN DIEGO ROP FORECASTS AND TARGETS

[Tons per summer day]

Milestone Year	1996	1999
1990 Base Year VOC Inventory	312.6	312.6
VOC Projections (Adopted Measures)	236.1	232.0
ROP VOC Target	241.2	212.2
VOC Shortfall	0	19.8
NO_x Substitution in VOC Equivalents	0	19.8

c. Modeling and Attainment Demonstration. EPA is approving the State's modeling analysis and attainment demonstration under section 182(c)(2)(A) of the Act. A summary of the emission reductions needed to attain the standard and reductions projected from the SIP control strategy is provided below in the table labeled "San Diego Attainment Demonstration."

SAN DIEGO ATTAINMENT DEMONSTRATION

[Tons per summer day]

	VOC	NO_x
1990 Baseline Emissions Inventory	313	238
Carrying Capacity	232	175
Reductions Needed	81	63
Reductions from Adopted Measures	81	63
Reductions from Committed Local Measures	0	0
Reductions from Committed State Measures	1	1
Total SIP Reductions	82	64
Remaining Emissions in 1999	231	174

d. Overall EPA Action. EPA approves the San Diego ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, and demonstrations of 15% ROP, post-1996 ROP, and attainment.

3. San Joaquin Valley

a. Control Measures. The San Joaquin Valley Unified APCD commented that no reductions are tied to any of the transportation control measures (TCMs) individually, but rather to the overall TCM package, since the overall emission reductions target is expected to be achieved but it is not anticipated that all of the measures would be implemented. EPA's table of control measures is consistent with the APCD's position in both the proposal and final action.

On April 4, 1996, CARB submitted a SIP revision (letter from James D. Boyd to Felicia Marcus, attaching CARB Executive Order G–125–203). This submittal requests EPA to delete from the existing SIP an obsolete TCM that was originally adopted by the Fresno County APCD as part of a 1982 ozone SIP. (The Fresno County APCD has since been absorbed into the San Joaquin Valley Unified APCD). The 1994 San Joaquin Valley AQMP does not assume emission reductions from this TCM, but rather substitutes a TCM package listed among the local measures in the table labeled "San Joaquin Local Control Measures." In this document, EPA is taking final action to delete the obsolete measure, which is entitled "Exclusive High Occupancy Vehicle Lanes on Freeway 41."

The table labeled "San Joaquin Local Control Measures" indicates the dates of rule adoption and implementation and the emission reductions presumed to occur by 1999, the applicable attainment deadline. These measures are relied upon in meeting the attainment requirements of the Act. Accordingly, and because the measures strengthen the SIP, EPA is approving, under sections 110(k)(3) and 301(a) of the Act, the enforceable commitments to adopt and implement the control measures by the dates specified to achieve the emission reductions shown. EPA also is assigning credit to the measures for purposes of attainment. EPA approval of the adopted regulations will be completed in separate rulemakings in the future.

SAN JOAQUIN LOCAL CONTROL MEASURES

Rule No.	Control Measure Title	Implementing Agency	Adoption Date	Implementation Date	Reductions	
					VOC	NO_x
1999 Emission Reductions						
4403 (VOC).	Components Serving Gas Production	SJVUAPCD	2Q/91	2Q/91	4.55	
4703	Stationary Gas Turbine Engines	SJVUAPCD	3Q/94	3Q/2000		11.92
4653	Adhesives	SJVUAPCD	1Q/94	1Q/95	1.3	
4623	Organic Liquid Storage	SJVUAPCD	2Q/91	2Q/96	13.2	
	TCMs		Ongoing	Ongoing	1.8	1.5
4601	Architectural Coatings	SJVUAPCD	1Q/96	1Q/98	1.51	
4692	Commercial Charbroiling	SJVUAPCD	2Q/96	2Q/98	0.39	
4354	Glass Melting Furnaces	SJVUAPCD	1Q/96	4Q/99		2.87
4607	Graphic Arts	SJVUAPCD	4Q/95	4Q/97	0.84	
4642	Landfill Gas Control	SJVUAPCD	1Q/95	4Q/99	1.41	
4412	Oil Workover Rigs	SJVUAPCD	2Q/96	2Q/98		0.87
4623	Organic Liquid Storage	SJVUAPCD	3Q/95	3Q/98	3.0	
4662	Organic Solvent Degreasing	SJVUAPCD	1Q/96	1Q/98	2.44	
4663	Organic Solvent Waste	SJVUAPCD	2Q/96	2Q/98	0.19	
4306	Small Boilers, Process Heaters and Steam Generators.	SJVUAPCD	3Q/95	3Q/99		7.6
4611	Smaller Printer Operations	SJVUAPCD	4Q/95	4Q/97	0.30	
4702	Stationary IC Engines	SJVUAPCD	2Q/95	4Q/99		12.44
4621 and 4622.	Stationary Storage Tanks/Fuel Transfer into Vehicle Tanks.	SJVUAPCD	2Q/96	2Q/98	0.41	
	Waste Burning	ND	ND	ND		
4411	Well Cellars	SJVUAPCD	2Q/96	2Q/98	0.56	

b. ROP Provisions. On July 12, 1996, CARB submitted a revised post-1996 ROP plan for San Joaquin Valley (letter from James D. Boyd to Felicia Marcus, attaching CARB Executive Order G–125–200). The revised ROP, which was adopted on September 20, 1995, excludes NO_X reductions from specified controls at facilities located west of Interstate 5 in Fresno, Kings, and Kern Counties. This change is consistent with the 1994 San Joaquin Valley Ozone Attainment Demonstration Plan. EPA is taking final action on this substitute plan, as requested by CARB and by the San Joaquin Valley APCD (letter from David L. Crow to Regional Administrator, dated May 2, 1996).

EPA is finalizing approval of the ROP plans (the original 1994 submittal for 15% ROP requirements and the Kern District portion of the San Joaquin Valley, and the 1996 substitute submittal for post-1996 requirements) as meeting the 15% ROP requirements of section 182(b)(1) and the post-1996 ROP requirements of section 182(c)(2) of the Act. The ROP VOC targets, projected VOC emissions, and creditable VOC and NO_X reductions are shown below in the tables labeled "San Joaquin Valley ROP Forecasts and Targets" and "San Joaquin Valley (Kern District) ROP Forecasts and Targets."

SAN JOAQUIN VALLEY ROP FORECASTS AND TARGETS

[Tons per summer day]

Milestone Year	1996	1999
VOC Emissions to Meet ROP Target	433	383
VOC Emissions with Plan Reductions	430	430
NO_X Substitution in VOC Equivalents	0	47

SAN JOAQUIN VALLEY (KERN DISTRICT) ROP FORECASTS AND TARGETS

[Tons per summer day]

Milestone Year	1996	1999
VOC Emissions to Meet ROP Target	13.2	11.7
VOC Emissions with Plan Reductions	13.2	13.3
NO_X Substitution in VOC Equivalents	0	1.6

c. Modeling and Attainment Demonstration. San Joaquin Valley Unified APCD commented that the area was modeled as a single domain, with 3 areas of special study modeled on a finer scale. The APCD further stated that the air basin is not separated into subregions, and the carrying capacities referenced should not be considered separable targets in lieu of properly constructed modeling analyses. EPA's tables should not be divided into subregions. All references to carrying capacity should be deleted since the concept is not effective or accurate for a domain as large as the San Joaquin Valley and carrying capacities fail to account for the influence of spatial location of reductions or transport from one area to another. Finally, the APCD commented that the reductions in the attainment demonstration table do not add up and do not correspond to those in the District's adopted plan. The APCD stated that CARB would make the needed changes.

EPA agrees that the State's tables in the 1994 California Ozone SIP that display carrying capacities for the 3 subregions may be less accurate than reliance on basinwide modeling information, but there are also benefits, from a planning perspective, in dividing the area into subregions. The State has not employed a single, unified attainment analysis summary, and EPA is, in the final action, continuing to use the subregion information contained in the State's SIP summary document (1994 California Ozone SIP, Volume IV, Tables G–1, G–3, and G–5). EPA believes that the data included in the "San Joaquin Valley Attainment and Rate-of-Progress Plans" is also helpful in characterizing, from both a subregional and basinwide perspective, the attainment requirements for, and emission reduction contributions from, each area.

The San Joaquin Valley Transportation Planning Agencies Directors Association commented that the San Joaquin Valley motor vehicle emission and activity projections are outdated. The Association asked EPA to approve them but state that conformity demonstrations be allowed to be made with models or assumptions consistent with those used in the plan. The Association asked EPA to commit to rapidly expediting development of a SIP revision to reflect the new information for the development of the emission budget.

EPA will continue to work with the agencies involved in the update and refinement of the activity, emissions, and modeling data used in the SIP. EPA agrees that models and assumptions consistent with the plan should be used, in the interim, for purposes of conformity determinations. Improvements to the technical foundations of the plan's attainment demonstration are underway and should be substituted in the SIP when they are completed. Nevertheless, EPA believes that the existing plan adequately addresses applicable Clean Air Act requirements relating to emission inventories, projected inventories, and modeling analyses.

EPA is therefore taking final action to approve the State's modeling analysis and attainment demonstration under section 182(c)(2)(A) of the Act. A summary of the emission reductions needed to attain the standard and reductions projected from the SIP control strategy is provided below in the table labeled "San Joaquin Valley Attainment Demonstration."

SAN JOAQUIN VALLEY ATTAINMENT DEMONSTRATION

[Tons per summer day]

	North		Central		South	
	ROG	NO_x	ROG	NO_x	ROG	NO_x
1990 Baseline Emissions Inventory	129	124	126	115	217	367
Carrying Capacity	>129	>124	88	90	145	165
Reductions Needed	0	0	38	25	72	202
Adopted measures	15	8	27	9	58	164
Committed Local Measures	5	5	8	6	22	20
Committed State Measures	8	2	4	2	3	1
Total Reductions	28	15	39	17	83	185
Remaining Emissions	101	109	87	98	134	182

For purposes of the attainment demonstration, the Kern District portion of the San Joaquin Valley was not separately modeled, under the assumption that attainment in this area should result primarily from upwind reductions achieved in the South San Joaquin sub-region.

d. Overall EPA Action. EPA approves the San Joaquin Valley ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, and demonstrations of 15% ROP and post-1996 ROP and attainment. EPA also approves SJVAPCD's commitments to adopt and implement the listed control measures to achieve the specified emissions reductions.

4. Sacramento

a. Control Measures. CEPA commented that EPA's proposal listed a measure that was not in the SIP submittal: Placer County's Woodwaste Boilers measure. EPA is deleting the measure in this final approval action. CARB provided minor corrections to the list of adoption and implementation dates. All of these changes have been incorporated in the final action.

The table labeled "Sacramento Local Control Measures" indicates the dates of rule adoption and implementation and the emission reductions presumed to occur by the 1999 and 2002 milestone years and by 2005, the applicable attainment deadline. The proposal contained a typographical error, in labeling as "1996" the column for 1999 emission reductions.

These measures are relied upon in meeting the attainment and post-1996 ROP requirements of the Act. Accordingly, and because the measures strengthen the SIP, EPA is approving, under sections 110(k)(3) and 301(a) of the Act, the enforceable commitments to adopt and implement the control measures by the dates specified to achieve the emission reductions shown. EPA also is assigning credit to the measures for purposes of ROP and attainment. EPA approval of the adopted regulations will be completed in separate rulemakings in the future.

SACRAMENTO LOCAL CONTROL MEASURES

[Tons per day]

VOC control measure title	Implementing agency	Adoption date	Implementation date	Emission reductions		
				1999	2002	2005
ROG Control Measures						
Adhesives	ECAPCD	2/95	1996	1.2	1.3	1.4
	PCAPCD	2/95.				
	SMAQMD	5/95.				
	YSAPCD	Adopted '94.				
Architectural Coatings	ECAPCD	Adopted 4/95	1996	0.9	1.3	1.6
	PCAPCD	Adopted 3/95.				
	Amendment to existing rule SMAQMD YSAPCD.	Adopted 3/95.				
Auto Refinishing	ECAPCD	Adopted '94	1996	2.1	2.6	3.2
	PCAPCD	Adopted '94.				
	SMAQMD	5/95.				
	YSAPCD	Adopted '94.				
Fugitive HC Emissions	ECAPCD	4/95	1999	1.4	1.4	1.4
	PCAPCD	Adopted.				
	SMAQMD	Adopted.				
	YSAPCD	Adopted 4/94.				
Graphic Arts	ECAPCD	Adopted 9/94	June 1995	0.4	0.5	0.5
	PCAPCD	11/94.				
	SMAQMD	'81, '93.				
	YSAPCD	Adopted 5/94.				
Landfill Gas Control	ECAPCD	11/95	1996	1.2	1.2	1.2
	PCAPCD	Adopted	1996.			
	SMAQMD	2/95	1997.			
	YSAPCD	Adopted	1996.			
Pleasure Craft Coating Operations.	ECAPCD	4/96	1996–1999	0.2	0.2	0.2
	PCAPCD	12/94.				

SACRAMENTO LOCAL CONTROL MEASURES—Continued

[Tons per day]

VOC control measure title	Implementing agency	Adoption date	Implementation date	Emission reductions		
				1999	2002	2005
	SMAQMD	1998.				
	YSAPCD	4/95.				
Pleasure Craft Refueling	ECAPCD	1998	1999	0.1	0.1	0.2
	PCAPCD	1998.				
	SMAQMD	1998.				
	YSAPCD	1998.				
Polyester Resin Operations	ECAPCD	2/96	1997	0.2	0.2	
	PCAPCD	1/96	1997.			
	SMAQMD	1998	1999.			
	YSAPCD	Adopted '93.				
Semiconductor Mfg.	PCAPCD others?	2/95	1996	0.1	0.2	0.2
SOCMI Distillation/Reactors	SMAQMD others?	9/95	1997	1.4	1.5	1.6
Surface Preparation & Cleanup.	ECAPCD	2/95	1996	3.0	3.3	3.6
	PCAPCD	2/95.				
	SMAQMD	2/95.				
	YSAPCD	Adopted 5/94.				
Vents on Underground Gasoline Storage Tanks.	SMAQMD	2/95	1996	0.1	0.2	0.2
	YSAPCD (both amend current rules).	1/95.				
Wood Products Coatings	ECAPCD	4/95	1996	0.5	0.5	0.5
	PCAPCD	Adopted 11/94	1996.			
	SMAQMD	2/95	1996.			
	YSAPCD	2/95.				
Regional NO_x Control Measures						
Boilers & Steam Generators.	ECAPCD	Adopted '94	1996–1997	0.8	0.9	1.0
	PCAPCD	Adopted '94.				
	SMAQMD	2/95.				
	YSAPCD	Adopted '94.				
Gas Turbines	PCAPCD	Adopted 10/94	1997	0.2	0.3	0.3
	SMAQMD	2/95.				
	YSAPCD	Adopted 7/94.				
Internal Combustion Engines.	ECAPCD	Adopted '94	Phased in 1997.	0.3	0.4	0.5
	PCAPCD	12/95.				
	SMAQMD	2/95.				
	YSAPCD	Adopted '94.				
Residential Water Heaters	ECAPCD	1996	1995–1997	0.3	0.4	0.5
	PCAPCD	12/95.				
	SMAQMD	1996.				
	YSAPCD	Adopted 11/94.				
Mobile NO_x Measures 1. Off-Road Heavy Duty Vehicles 2. On-Road Heavy Duty Vehicles.	All	12/95	1/97	2.0	3.0	5.0

b. ROP Provisions. EPA is finalizing approval of Sacramento area's post-1996 ROP plan under section 182(b)(2) of the Act. EPA will act on Sacramento's 15% ROP Plan in separate rulemaking. The ROP VOC targets, projected VOC emissions, and creditable VOC and NO_x reductions are shown in the table below labeled "Sacramento ROP Forecasts and Targets."

SACRAMENTO ROP FORECASTS AND TARGETS

[Tons per summer day]

Milestone Year	1996	1999	2002	2005
1990 Base Year VOC Inventory	211	211	211	211
VOC Inventory Projection	175	167	163	159
ROP VOC Target	162	142	124	107
Preliminary VOC Shortfall	13	25	39	52
VOC Reductions from Committal Measures	0	19	23	14

SACRAMENTO ROP FORECASTS AND TARGETS—Continued

[Tons per summer day]

Milestone Year	1996	1999	2002	2005
Total VOC Shortfall	13	6	16	38
NO_x Substitution in VOC Equivalents	13	6	16	38

c. Modeling and Attainment Demonstration. The Environmental Defense Center commented that Sacramento's attainment demonstration must be disapproved because CARB has rescinded the ZEV program, which was relied upon to produce emissions reductions necessary to demonstrate Sacramento's timely attainment. As discussed in Section I.B.3.c.(3) above, EPA strongly supports the State's ZEV program and, while CARB's March 1996 amendments to the ZEV mandate eliminates the ZEV production requirements for the 1998 through 2002 model years, the State's 10% production requirement for 2003 and later years remains in place and some new compensating reductions are expected from the national LEV program. EPA does not have information to support the commenter's contention that the ZEV amendments invalidate Sacramento's attainment demonstration.

EPA is taking final action to approve the modeling analysis and attainment demonstration under section 182(c)(2)(A) of the Act. A summary of the emission reductions needed to attain the standard and reductions projected from the SIP control strategy is provided below in the table labeled "Sacramento Attainment Demonstration."

Sacramento attainment demonstration (tons per summer day)	VOC	NO_x
1990 Baseline Emissions Inventory	222	164
Attainment Inventory	137	98
Reductions Needed	85	66
From Adopted Measures	55	40
From Committed Local Measures	17	7
From Committed State Measures	15	14
From National Measures[1]	1.6	4.3
Total	88.6	65.3
Remaining Emissions	133.4	98.7

[1] Credit shown is EPA's estimate of reductions from statutorily-mandated national rules.

d. Overall EPA Action. EPA approves the Sacramento ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, and demonstrations of post-1996 ROP and attainment. EPA also approves the local agencies' commitments to adopt and implement the listed control measures to achieve the specified emissions reductions by the dates shown.

5. Ventura.

a. 1995 AQMP Update. Ventura's 1994 Air Quality Management Plan (AQMP), adopted on November 8, 1994, was submitted as part of the 1994 California Ozone SIP. On December 19, 1995, Ventura adopted a 1995 AQMP revision, with slightly revised emission inventories, control measures, modeling analyses, and attainment demonstration. At the time of the proposed action, CARB had not yet submitted this updated plan as a replacement for the 1994 AQMP, but the State indicated that it would do so in the near future and requested EPA to act upon portions of the 1995 AQMP in the final approval action. On July 12, 1996, CARB submitted the previously agreed upon portions of the 1995 AQMP intended to replace portions of the 1994 AQMP.

EPA's proposal addressed much of the new information from the 1995 AQMP, and EPA is now finalizing approval of the 1994 AQMP as modified by portions of the 1995 AQMP. The specific modifications submitted by CARB are the "Revised Rule Adoption and Implementation Schedule" (Table 4–2) and Appendix E–95 (revised emissions from architectural coatings in Tables E–43 and E–45) from the 1995 AQMP.

In their comment letters, the District and Environmental Defense Center (EDC) requested that EPA rulemaking reflect the 1995 AQMP revision. EPA is not acting on the entire 1995 AQMP revision at this time because the entire revision has not been submitted by the State. EPA is only acting on the portions of the 1995 AQMP which have been submitted by the State. In their SIP submittal, the State indicated that the remaining updates "will be submitted at a later date after revisions to CARB's mobile source inventory are incorporated by the District." After the remaining portions of the 1995 AQMP are submitted, EPA intends to act expeditiously to take action on the submittal.

b. 1990 Base Year Inventories. Ventura County APCD requested in their comment letter that the Ventura County SIP emissions inventory used in the NPRM be revised by excluding OCS emissions, since these OCS emissions are outside the District's nonattainment area. EPA is not proposing to change the inventory estimates because CARB has not requested this change, and the totals are consistent with their SIP submittal. EPA will continue to work with the District and CARB regarding the District's comment.

1990 VENTURA SIP INVENTORIES

[Tons per summer day]

Category	ROG	NO_x
Stationary	44	17
Mobile	41	56
Outer Continental Shelf	2	8
Total	87	81

c. Control Measures. EPA's proposal addressed the 1995 AQMP updates to the control measures, with slightly revised adoption dates, implementation dates, and reductions for numerous district measures already contained in the 1994 SIP. After EPA's proposal, Ventura adopted very minor further revisions to the rule adoption schedule for 5 measures (N–102, R–317, R–410, R–421, and R–425). No change was made to the implementation dates for the measures. Ventura adopted these minor changes on January 9, 1996. If the changes are submitted as a further revision to the SIP rule adoption schedule, EPA intends to approve them since they do not adversely affect rate-of-progress or attainment. Because the changes have not been submitted at the time of this action, however, EPA is finalizing approval of the schedule as revised by Ventura on December 19, 1995, and submitted by CARB on July 12, 1996.

Also subsequent to EPA's proposal, the State and Ventura County APCD indicated that measures R–303, Architectural Coatings, and R–700/N–700, Transportation Control Measures, should be included in the list of control measures. The addition of these two measures and minor adjustments to the adoption and implementation schedules and estimates of emission reductions for some of the control measures are reflected in the table of measures below, labeled "Ventura Local Control Measures." EPA's proposed approval

stated: "If a SIP revision with the revised reduction estimates and measure R–303 is submitted before EPA's final action, EPA proposes to approve it without further opportunity for public comment." EPA's proposal also indicated the following finding: "Overall, the revised reduction estimates do not negatively impact ROP or attainment."

The State and Ventura County APCD both requested that EPA approve in the final action measure R–700/N–700, Transportation Control Measures, and delete from the existing SIP prior transportation measures. Measure R–700/N–700 was included in the 1994 Ventura AQMP but mistakenly omitted by the State from the list of measures in the State's SIP. No emission reductions from any prior transportation measures were assumed in the 1994 or 1995 Ventura AQMP. In this document, EPA is taking final action to approve measure R–700/N–700, Transportation Control Measures, and rescind from the existing SIP all prior transportation control measures.

The table labeled "Ventura Local Control Measures" indicates the dates of rule adoption and implementation and the emission reductions presumed to occur by each ROP milestone year and by 2005, the applicable attainment deadline. At the request of CARB and the District, EPA has deleted from this table the 1996 column of reductions, since no reductions from new local measures were used to demonstrate compliance with the 1996 ROP target.

The Environmental Defense Center commented that Ventura's measures are not fully articulated, that this violates the Administrative Procedures Act, and that the measures should be disapproved or conditionally approved. EPA disagrees with the commenter's characterization of the Ventura control measures. The commenter does not give any examples of what it perceives as ambiguities or vagueness. The measures are set forward with sufficient detail to understand the control category, the type of emission standard expected to be adopted, likely compliance options, scheduled adoption and implementation dates, base year emissions for the category, and expected emission reductions from the measure by milestone year. As discussed in section I.B.2., EPA also disagrees with the commenter's conclusion that EPA may not fully approve specific enforceable commitments to adopt control measures.

The Ventura control measures are relied upon in meeting the post-1996 ROP and attainment requirements of the Act. Accordingly, and because the measures strengthen the SIP, EPA is approving, under sections 110(k)(3) and 301(a) of the Act, the enforceable commitments to adopt and implement the control measures by the dates specified to achieve the emission reductions shown. EPA also is assigning credit to the measures for purposes of post-1996 ROP and attainment.

Some of the measures have been adopted in regulatory form. These include N–101, adopted 3/14/95; R–105, adopted 12/13/94; R–403, adopted 5/9/95; R–419, adopted 11/8/94; R–424, adopted 5/9/95; and R–606, adopted 10/10/95. EPA has already approved R–105, and EPA approval of the remaining regulations will be completed in separate rulemakings in the future.

VENTURA LOCAL CONTROL MEASURES

[tons per day]

Rule No.	Control measure	Adoption date	Implementation date	1999	2002	2005
N–101	Gas Turbines	3/95	4/97	0.45	0.47	0.49
N–102	Boilers, Steam generators, Heaters, <1 mmbtu	12/96	1/97	0.05	0.06	0.06
R–105	Glycol Dehydrators	12/94	7/96	0.73	0.65	0.57
R–303	AIM Architectural Coatings	12/96	12/97	0.0	0.0	0.89
R–317	Clean-up Solvents and Solvent Wastes	6/96	7/96	1.57	1.67	1.76
R–322	Painter Certification Program	6/97	12/97–12/98	0.48	0.51	0.53
R–324	Screen Printing Operations	6/96	7/97	0.29	0.30	0.31
R–327	Electronic Component Manufacture	6/96	7/97	0.07	0.07	0.08
R–403	Vehicle Gas Dispensing—Phase II	5/95	1/96	0.22	0.22	0.23
R–410	Marine Tanker Loading	9/96	7/97	0.0	0.0	0.0
R–419	Tank Degassing Operations	11/94	3/95	0.03	0.03	0.02
R–420	Pleasure Craft Fuel Transfer	6/97	7/98	0.08	0.08	0.08
R–421	Utility Engine Refueling Operations	12/96	9/97	0.19	0.20	0.20
R–424	Gasoline Transfer/Dispensing	5/95	1/96	0.03	0.04	0.04
R–425	Enhanced Fugitive I/M Program	9/96	5/97	1.21	1.07	0.95
R–606	Soil Decontamination	10/95	4/96	0.10	0.10	0.11
R–700	Transportation	96–05	1996–2005	0.0	0.0	0.58
N–700	Control Measures	.....	.....	0.0	0.0	0.50

[1] "R" refers to ROG control measures, "N" refers to NO_X control measures.

d. ROP Provisions. CARB and the District commented that the Ventura ROP Forecasts and Targets table in the NPRM contained erroneous information in the line titled "VOC Inventory Including Committals." EPA concurs and has deleted the line from the table below labeled "Ventura ROP Forecasts and Targets."

EPA is finalizing approval of Ventura's ROP plan as meeting the 15% ROP requirements of section 182(b)(1) and the post-1996 ROP requirements of section 182(c)(2) of the Act. The ROP VOC targets, projected VOC emissions, and creditable VOC and NO_X reductions are shown in the table below labeled "Ventura ROP Forecasts and Targets."

VENTURA ROP FORECASTS AND TARGETS

[Tons per summer day]

Milestone Year	1996	1999	2002	2005
1990 Base Year VOC Inventory	85	85	85	85
VOC Inventory after Adopted Measures	64	60	57	55
ROP VOC Target	68	60	53	45
VOC Shortfall	0	0	4	10
NO_x Substitution in VOC Equivalents	0	0	4	10

e. Modeling and Attainment Demonstration. EPA's proposal reflected the additional modeling refinements and technical clarifications made in the 1995 AQMP, as requested by the State and Ventura County APCD.

The Environmental Defense Center (EDC) commented that, "Assuming the competence of the Ventura County model, EDC is concerned that the 2005 prediction of a .12 ppm peak ozone concentration provides virtually no buffer or room for error. Any relaxation, slippage or difficulties in adopting each of the control measures, local, state and federal jeopardizes Ventura County's timely attainment. Already CARB has rescinded the bulk of the ZEV program, thereby impairing Ventura County's prospects for attainment." The Act does not require SIPs to overcontrol and, under the current ozone NAAQS, a .12 ppm ozone concentration is not treated as a violation. With respect to CARB's amendments to the ZEV program, see the discussion in section I.B.3.c.(2).

EDC also commented that "EDC does not believe that the Ventura County AQMP and attendant state and national control measures are sufficient to provide for timely attainment of the ozone NAAQS in Ventura County. EDC questions the validity of the model, including its assumptions." The commenter provided no new information or rationale for its assertions, and EPA continues to conclude that the attainment demonstration is approvable.

On June 13, 1996, CARB provided supplemental information to EPA which clarified the ROG reductions needed for attainment in Ventura. EPA has incorporated this minor change in the attainment demonstration shown below. This minor change affects ROG reductions from "Committed Local Measures" (increased from 5 tpd to 6 tpd) and the ROG "TOTAL" column (increased from 42 tpd to 43 tpd ROG).

VENTURA ATTAINMENT DEMONSTRATION

[In tons per summer day]

	ROG	NO_x
1990 Baseline Emissions Inventory	87	81
Carrying Capacity	45	52
Reductions Needed	42	29
Reductions from Adopted Measures	30	24
Committed Local Measures	6	1
Committed State Measures	6	4
Reductions from National Measures[1]	1	1
Total	43	30

[1] Credit shown is EPA's estimate of reductions from statutorily-mandated national rules.

f. Overall EPA Action. EPA approves the Ventura ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, and demonstrations of 15% ROP and post-1996 ROP and attainment. EPA also approves the Ventura County APCD's commitments to adopt and implement the listed control measures to achieve the specified emissions reductions by the dates shown.

7. South Coast

a. SIP Control Measures. (1) Updated Rule Adoption Schedule. EPA's proposal discussed the failure of the SCAQMD to adopt regulations on the schedule contained in the 1994 Ozone SIP, and asked the SCAQMD to adopt and submit a revised schedule that is "reasonable and aggressive." EPA indicated its intention to approve substitute dates if the revision would not interfere with any applicable requirement of the Act.

On April 12, 1996, the SCAQMD adopted an updated rule schedule for the South Coast. On July 10, 1996, CARB submitted the schedule as a SIP revision. In submitting the revision, CARB summarized the State's findings regarding impacts of the delayed adoption dates:

> As stated in the Notice, the 1990–1996 rate-of-progress requirement for the South Coast was met with previously adopted state and local rules and regulations. Although the revised schedule may delay by a year or two the implementation dates of a few control measures and the associated emission reductions, all of the planned emission reductions will be on track by the year 2000. This will not affect compliance with the Act's progress requirement since the 1994 Ozone SIP currently accounts for 68 tons per day of volatile organic compound emission reductions above and beyond the minimum progress requirement through 1999. Finally, because the 2010 emission reductions from the control measures remain unchanged, the attainment demonstration will not be affected by this revised schedule.

EPA concludes that the revision would not violate applicable provisions of the Act, including ROP and attainment, assuming that the SCAQMD adheres to the new schedule. EPA therefore takes final action to approve the revised adoption dates as listed in the table labeled "South Coast Local Control Measures."

(2) TCM Substitution. The State and the Southern California Association of Governments both requested that EPA's final approval of the South Coast TCMs and Indirect Source control measures be accompanied by deletion of prior TCMs approved as part of previous SIPs and replaced by these new measures. The previously approved TCMs have become outdated, and were not assumed in the current attainment demonstration. The request for TCM deletion was included in the 1994 SIP submittal as one of the elements of the SCAQMD's resolution of adoption of the 1994 AQMP. In this document, EPA is taking final action to rescind from the applicable SIP all previously approved TCMs—an action which was mistakenly omitted from the proposal.

(3) Near-Term Control Measures. The State submitted comments making minor adjustments to the dates and emission reductions associated with the control measures. EPA is making those changes in this final action, as reflected in revisions to the table labeled "South Coast Local Control Measures."

The State also requested several adjustments to the table of measures. First, EPA's proposal included 12 SCAQMD measures which the State did not intend to submit as part of the ozone

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SIP on the grounds that they are not needed for ozone attainment: CMB–01A, CMB–01B, CMB–01C, CMB–01D, CMB–01E, CMB–02A, CMB–02B, CMB–02C, CMB–06, CMB–10, CMB–11, and MON–07. The State requested deletion of the measures in the final action. EPA is correcting the mistake in the NPRM and eliminating these measures from the table.

Second, the State requested that EPA amend the table of measures to substitute for VOC RECLAIM the "Substitute Measures for CTS–01 VOC RECLAIM" listed in Table A–10 of Volume IV of the 1994 California Ozone SIP, along with the reductions originally associated with the VOC RECLAIM program. After submittal of the 1994 SIP, the SCAQMD decided not to adopt the VOC RECLAIM program, but to pursue instead these alternative sources of equivalent reductions. To correct the mistake in the proposal, EPA has revised the table to incorporate this list of substitute measures from the 1994 submittal, along with the reductions originally assigned to VOC RECLAIM.

Third, the State requested that EPA amend the table to list the South Coast transportation control measures (TCM–01, ATT–01, ATT–02, ATT–03, ATT–04, and ATT–05) under measure RME–01, which was intended to subsume them. In the final action, EPA has rearranged the table to display more accurately this relationship.

Fourth, the State asked EPA to clarify that the South Coast's market-based measures (MKT–01, MKT–02, and MKT–03 [23]) are intended as possible alternatives to the 7 indirect source (ISR) measures in the SIP. In the final action, EPA has added a footnote and rearranged the table to place the 3 market-based measures under the ISR measures as potential replacements for them.

Finally, the State requested that EPA not make part of the SIP any emission reductions from new local measures for the 1996 ROP milestone year, since the 15% ROP plan assumes reductions only from adopted State and local rules. In the final action, EPA has deleted the 1996 column from the table of local measures.

Environmental groups commented on EPA's proposed approval of the control measures portion of the plan. NRDC and the Coalition for Clean Air commented extensively on the issue of whether EPA should approve the South Coast commitments to adopt control measures and a SIP that is based on those commitments rather than fully adopted rules. EPA has responded to these comments in section I.B.2.

The Environmental Defense Center (EDC) stated that the South Coast plan lacks potentially applicable controls and fails the "as expeditiously as practicable" standard. The commenter provided no examples of controls that were either not included in the South Coast SIP or were not scheduled for expeditious adoption and implementation. EPA believes that the SCAQMD and CARB adopted control measures and enforceable schedules for adoption and implementation of additional measures together represent a thorough list of control measures in light of currently available control technologies and control techniques. EPA further believes that the schedules for developing and adopting measures in the future reflects expeditious progress. CARB's adopted and scheduled mobile source, consumer product, and pesticides measures all go beyond (in many cases, they go considerably beyond) existing control requirements applicable elsewhere in the Country. SCAQMD's existing regulations generally represent the most complete and stringent controls for each subject source category in the Country.

EPA believes that SCAQMD's schedule for adopting rules meets any reasonable test for expeditious action, given the complexity of most of the pending regulations and the fact that most of the controls are for source categories previously unregulated or never yet controlled to the extent contemplated. SCAQMD's rate-of-progress demonstration exceeds the Clean Air Act 3% per year requirement. Finally, both SCAQMD and CARB supplemented their comprehensive lists of near-term measures with new-technology measures. The SCAQMD's advanced control technology research and development activities attract worldwide interest as the most significant air pollution control technology development program of any local air pollution control agency, and CARB's programs for investigating new technologies and fuels, particularly for motor vehicle emission reductions, receives similar acclaim.

(4) New-Technology Measures. NRDC and the Coalition for Clean Air (CCA) had extensive comments on EPA's proposed approval of the new-technology measures submitted by CARB and the SCAQMD for inclusion in the SIP under provisions of section 182(e)(5) of the Act. As discussed in the proposal, this CAA section authorizes EPA to approve conceptual measures that rely on new technologies or new control techniques as part of the attainment demonstration for the South Coast, the only "extreme" ozone nonattainment area. The Act requires that the measures not be needed to meet progress requirements for the first 10 years and that the submittal be accompanied by a commitment to adopt contingency measures 3 years before the new-technology measures are scheduled for implementation. EPA approved the CARB and SCAQMD new-technology measures on August 21, 1995 (60 FR 43379).[24]

NRDC and CCA asked that EPA include adoption dates for all section 182(e)(5) measures in the table of South Coast Local Control Measures. EPA agrees and has inserted the applicable dates, which were inadvertently omitted from the proposal.

NRDC and CCA commented that the SIP does not include adequate schedules and resource commitments for the measures. Both CARB and the SCAQMD have provided further information as updates to and elaboration on the development approach for the new-technology measures.[25]

Joint NRDC-CCA comments argued that the SIP does not include an adequate commitment from the State to adopt contingency measures at least 3 years before proposed implementation of the measures, as required by section 182(e)(5)(B). In a letter from Lynn Terry to Julia Barrow dated September 19, 1996, CARB has clarified that the State's "commitment in the SIP with respect to the contingency measure requirement is intended to provide the commitment required by the Clean Air Act."

NRDC and CCA argued that the South Coast SIP cannot be approved because it over-relies on speculative section 182(e)(5) new technologies, which the SIP fails to define adequately. EPA does not believe that the Act provides a quantitative limit on the extent to which the attainment demonstration may rely on new-technology measures. Moreover, the majority of needed reductions in the South Coast attainment demonstration (roughly 75% of the required VOC and

[23] Measure M–3, Congestion Pricing, was inadvertently omitted from the proposal.

[24] Under section 307(b)(1) of the CAA, petitions for review of EPA's action in approving the measures would need to have been properly filed within 60 days of this final action. Since new information has been provided relating to the section 182(e)(5) new-technology measures, however, EPA is addressing most of the comments that apply to EPA's prior approval action.

[25] Letter from Lynn Terry, Assistant Executive Officer, CARB, to Julia Barrow, Chief, Planning Office, Air & Radiation Division, USEPA, dated September 19, 1996; letter from Barry Wallerstein, Deputy Executive Officer, SCAQMD, to Dave Howekamp, Division Director, Air & Toxics Division, Region IX USEPA, dated September 18, 1996. This correspondence is part of EPA's rulemaking docket.

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NO_x reductions) derive from currently adopted rules or enforceable commitments to adopt rules in the near future.

Nevertheless, EPA agrees with the commenters that all the responsible parties should work together to reduce the size of the new-technology component of the SIP by expeditiously converting these measures first into carefully defined control development projects and then into feasible regulations. EPA commits to do its share to support the needed research and development activities of CARB and the SCAQMD.

Measures which the 1994 South Coast Ozone SIP scheduled for near-term adoption and implementation, or any portion of the emissions reductions scheduled to be achieved as a result of implementation of those near-term measures, may not be converted, at some future time, into section 182(e)(5) new-technology measures or moved into emissions reductions associated with section 182(e)(5) new technology measures, without a convincing showing in a SIP revision that the technologies relied upon in the near-term rules have been found to be technologically infeasible or ineffective in achieving emissions reductions in the near-term. The near-term measures in the 1994 SIP have not been determined to "anticipate development of new control techniques or improvement of existing control technologies" (section 182(e)(5)). On the contrary, they were evidently determined by the SCAQMD and CARB to be both available and necessary for expeditious progress in reducing emissions in the near term in the South Coast. Should either CARB or the SCAQMD determine that new information requires a reconsideration of the near-term feasibility of the 1994 SIP near-term measures, the agencies must submit a SIP revision demonstrating convincingly that the standard defined in this paragraph above for conversion of near-term measures to section 182(e)(5) new technology measures has been met. Absent such a convincing showing, a SIP revision will not be approved by EPA.

In view of continuing progress in the development and successful application of control technologies and control techniques, the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5), as compared to measures already adopted in regulatory form or scheduled for near-term adoption, should clearly decrease in any future SIP update. EPA will not approve a SIP revision that contains an increase in the amount and relative proportion of reductions scheduled for long-term adoption under section 182(e)(5) that is inconsistent with the standard defined in the preceding paragraph. Further, to the extent new modeling performed in any subsequent SIP revision demonstrates that there is an increase in the year 2010 carrying capacity for ROG and NO_x, this change shall not be used to decrease the amount of emissions reductions scheduled to be achieved by any near-term measure from the 1994 SIP unless CARB or the SCAQMD make the convincing showing required by the preceding paragraph.

EPA also agrees with the commenters that, as part of California's 1997 SIP revision, the SCAQMD should provide greater specificity in the description of the South Coast Air Basin long-term control measures. In order to help ensure that the measures are successfully developed and adopted pursuant to the requirements of section 182(e)(5), the 1997 SIP and a summary from publicly available budget documents submitted to EPA must define the long-term measures more precisely with respect to the affected source categories, expected reductions from each category (or as many categories as may be feasible), the most likely control technologies and control techniques to be employed, the agency's working schedule for each phase in the development and adoption of the control measures, evidence of adequate resources committed to the activities, and opportunities for the public to be informed and involved in the process. Furthermore, to ensure approvability of the 1997 SIP, the revision must contain a level of specificity for the non-budgetary items noted above at least containing the level of detail in the clarification to draft Appendix IV to the 1997 Air Quality Management Plan, which further defines the section 182(e)(5) measures, attached as Attachment 2 to the letter from Barry Wallerstein to Dave Howekamp, dated September 18, 1996. The level of specificity in the Long-Term Control Measure for Miscellaneous VOC Sources should be enhanced as additional information becomes available. EPA understands that this clarification to draft Appendix IV is being made available for public review and will be formally considered for adoption by the SCAQMD Governing Board.

(5) EPA Action. EPA concludes that the control measures should be approved in the final action. The South Coast control measures are relied upon in meeting the post-1996 ROP and attainment requirements of the Act. Accordingly, and because the measures strengthen the SIP, EPA is approving, under sections 110(k)(3) and 301(a) of the Act, the enforceable commitments to adopt and implement the near-term control measures by the dates specified to achieve the emission reductions shown. EPA also is assigning credit to the near-term and new-technology measures for purposes of post-1996 ROP and attainment.

SOUTH COAST LOCAL CONTROL MEASURES

[Tons per day of VOC/NO_x]

Control measure No.	Control measure title	Implementing agency	Adoption date	Implementation dates	1999	2002	2005	2008	2010
CTS–01	Substitute Measures for VOC RECLAIM (12 rules listed immediately below).	SCAQMD		1998–2010	22.5/0	29.9/0	37.4/0	44.9/0	49.9/0
CTS–A	Electronic Components	SCAQMD	1996						
CTS–B	Petroleum Cold Cleaning	SCAQMD	1996						
CTS–C	Solvent Cleaning Operations	SCAQMD	7/96						
CTS–D	Marine/Pleasure Craft Coatings	SCAQMD	1996						
CTS–E	Adhesives	SCAQMD	1996						
CTS–F	Motor Vehicle Non-Assembly Coating.	SCAQMD	12/96						
CTS–G	Paper/Fabric/Film Coatings	SCAQMD	9/96						
CTS–H	Metal Parts/Products Coatings	SCAQMD	10/96						
CTS–I	Graphic Arts/Screen Printing	SCAQMD	1996						
CTS–J	Wood Products Coatings	SCAQMD	6/96	-					
CTS–K	Aerospace/Component Coatings	SCAQMD	11/96						

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SOUTH COAST LOCAL CONTROL MEASURES—Continued

[Tons per day of VOC/NO_X]

Control measure No.	Control measure title	Implementing agency	Adoption date	Implementation dates	1999	2002	2005	2008	2010
CTS–L	Automotive Assembly Operations.	SCAQMD	1997						
CTS–02	Emission Reductions from Solvents and Coatings at Non-RECLAIM Sources.	SCAQMD	1997	1998–2005	25.0/0	58.1/0	80.9/0	88.3/0	92.8/0
CTS–03	Consumer Product Labeling Program.	SCAQMD		1998–2005	0/0	0/0	0/0	0/0	0/0
CTS–04	Public Awareness/Education Programs—Area Sources.	SCAQMD		1997–1997	0/0	0/0	0/0	0/0	0/0
CTS–05	Further Emission Reductions from Perchloroethylene Dry Cleaning Operations.	SCAQMD	1994	1996–1996	2.49/0	2.73/0	2.9/0	2.99/0	2.99/0
CTS–07	Further Emission Reductions from Architectural Coatings (Rule 1113).	SCAQMD	8/96	2001–2006	0/0	27.49/0	40.5/0	60.65/0	62.26/0
FUG–01	Emission Reductions from Organic Liquid Transfer.	SCAQMD	1995	1996–1996	4.96/0	5.11/0	5.01/0	4.98/0	4.98/0
FUG–02	Emission Reductions from Active Draining of Liquid Products.	SCAQMD	7/96	1996–1996	5.52/0	5.73/0	5.49/0	5.05/0	4.76/0
FUG–03	Further Emission Reductions from Floating Roof Tanks.	SCAQMD	1996	1998–1998	0/0	0/0	0/0	0/0	0/0
FUG–04	Further Emission Reductions of Fugitive Emissions.	SCAQMD	10/96	2000–2010	0/0	.75/0	.75/0	.75/0	.75/0
RFL–01	Emission Reductions from Utility Engine Refueling Operations.	SCAQMD	1997	2000–2010	0/0	.04/0	.04/0	.05/0	.06/0
RFL–02	Further Emission Reductions from Gasoline Dispensing Facilities.	SCAQMD	1995	1996–2000	4.94/0	5.06/0	5.2/0	5.44/0	5.58/0
RFL–03	Emission Reductions from Pleasure Boat Fueling Operations.	SCAQMD	1996	1996–1996	.77/0	.80/0	.83	.86/0	.88/0
CMB–02F	Further Controls of Emissions from Internal Combustion Engines.	SCAQMD	11/96	1998–2008	1.52/6.83	1.74/6.62	1.99/5.43	2.19/3.67	2.29/2.20
CMB–03	Area Source Credits for Commercial and Residential Combustion Equipment.	SCAQMD	11/96	1997–2000	0/0	0/0	0/0	0/0	0/0
CMB–04	Area Source Credits for Energy Conservation.	SCAQMD	11/96	1997–2000	0/0	0/0	0/0	0/0	0/0
CMB–05	Clean Stationary Fuels	SCAQMD	1996	1996–2008	1.22/1.01	2.27/1.76	3.53/2.84	3.99/2.71	4.09/2.41
CMB–07	Emission Reductions from Petroleum Refinery Flares.	SCAQMD	1997	1999–1999	0/0	0/0	0/0	0/0	0/0
MSC–01	Promotion of Lighter Color Roofing and Road Materials and Tree Planting.	SCAQMD/local govts.		1996–1998	0/0	0/0	0/0	0/0	0/0
MSC–02	In-Use Compliance Program for Air Pollution Control Equipment.	SCAQMD	12/96	1997–1997	0/0	0/0	0/0	0/0	0/0
PRC–02	Further Emission Reductions from Bakeries.	SCAQMD	1996	1998–2001	.24/0	.64/0	.68/0	.72/0	.75/0
PRC–03	Emission Reductions from Restaurant Operations.	SCAQMD	10/96	1996–2001	8.55/0	10.77/0	11.14/0	11.49/0	11.7/0
PRC–04	Emission Reductions from Rubber Products Manufacturing.	SCAQMD	1996	1997–1997	.13/0	.13/0	.13/0	.13/0	.13/0
PRC–05	Emission Reductions from Malt Beverage Production Facilities and Wine or Brandy Making Facilities.	SCAQMD	1996	1997–1997	0/0	0/0	0/0	0/0	0/0
SIP–01	SIP Amendments—for Miscellaneous Sources.	SCAQMD	Various	1998–1998	.06/0	.06/0	.06/0	.05/0	.05/0
WST–01	Emission Reductions from Livestock Waste.	SCAQMD	12/96	1996–2003	8.39/0	8.86/0	9.31/0	9.77/0	10.07/0
WST–02	Emission Reductions from Composting of Dewatered Sewage Sludge.	SCAQMD	1997	1998–2000	0/0	0/0	0/0	0/0	0/0
WST–03	Waste Burning	SCAQMD	1996	1998–1998	.07/0	.07/0	.06/0	.06/0	.06/0
WST–04	Disposal of Materials Containing Volatile Organic Compounds.	SCAQMD	1996	1998–2001	.8/0	2.12/0	2.21/0	2.31/0	2.37/0
RME–01	Regional Mobility Adjustment (subsumes next 6 measures in table).				11.3/1.15	15.98/6.58	18.5/13.74	20.64/21.77	22.26/27.67
TCM–01	Transportation Improvements	SCAG	1997	2000–2010	0/0	0/0	0/0	0/0	0/0
ATT–01	Telecommunications	SCAQMD/SCAG/local govts.		1995–2010	0/0	0/0	0/0	0/0	0/0
ATT–02	Advanced Shuttle Transit	SCAQMD/SCAG/local govts.		1995–2010	0/0	0/0	0/0	0/0	0/0

SOUTH COAST LOCAL CONTROL MEASURES—Continued

[Tons per day of VOC/NO_x]

Control measure No.	Control measure title	Implementing agency	Adoption date	Implementation dates	1999	2002	2005	2008	2010
ATT–03	Zero Emission Vehicles/Infrastructure.	Partnership		1995–2010	0/0	0/0	0/0	0/0	0/0
ATT–04	Alternative Fuel Vehicles/Infrastructure.	Partnership		1995–2010	0/0	0/0	0/0	0/0	0/0
ATT–05	Intelligent Vehicle Highway Systems.	SCAQMD/SCAG/local govts.		1995–2010	0/0	0/0	0/0	0/0	0/0
ISR–01	Special Event Centers (SCAG Measure TCM #10).	SCAQMD/local govts.	1996	1997–2010	.77/.84	1.4/1.67	1.07/1.43	.81/1.26	1.33/2.2
ISR–02	Shopping Centers (SCAG Measure TCM #11).	SCAQMD/local govts.	1996	1997–2010	1.36/1.5	2.3/2.73	1.75/2.35	1.34/2.07	1.69/2.89
ISR–03	Registration and Commercial Vehicles (SCAG Measure TCM #12).	SCAQMD	1996	1997–2010	0/0	0/0	0/0	0/0	0/0
ISR–04	Airport Ground Access (SCAG Measure TCM #13).	SCAQMD/local govts.	1996	1997–2010	.38/.42	.77/.92	.59/.79	.45/.7	.38/.65
ISR–05	Trip Reduction for Schools (SCAG Measure TCM #14).	SCAQMD/local govts.	1996	1997–2010	.21/.24.	.47/.63	.46/.72	.35/.64	.38/.74
ISR–06	Enhanced Rule 1501 (SCAG Measure TCM #15).	SCAQMD/local govts.	1996	1997–2010	2.86/3.15	3.01/3.59	2.30/3.08	1.75/2.72	1.48/2.51
ISR–07	Parking Cash-Out (SCAG Measure TCM #16).	SCAQMD/local govts.	1995	1997–2010	.17/.17	.13/.14	.10/.12	.08/.11	.06/.1
MKT–01	Emission/VMT	SCAG	*	2000–2010	*	*	*	*	*
MKT–02	At-the-Pump Fee	SCAG	*	2000–2010	*	*	*	*	*
MKT–03	Congestion Pricing	SCAG	*	2000–2010	*	*	*	*	*
MON–01	Emission Reduction Credits for Low-Emission Retrofit Fleet Vehicles.	SCAQMD/CARB.	1996	1996–2010	0/0	0/0	0/0	0/0	0/0
MON–02	Eliminate Excessive Car Dealership Vehicle Starts; Educational.	SCAQMD/local govts.	1996		0/0	0/0	0/0	0/0	0/0
MON–04	Eliminate Excessive Curb Idling; Educational.	SCAQMD/local govts.	1996		0/0	0/0	0/0	0/0	0/0
MON–05	Emissions Reduction Credit for Heavy-Duty Buses.	SCAQMD	1995	1995–2010	0/0	0/0	.12/.65	.11/.65	.11/.65
MON–06	Emissions Reduction Credit for Heavy-Duty Trucks.	SCAQMD	1995		0/0	0/0	0/0	0/0	0/0
MOF–03	Emission Reduction Credits for Leaf Blowers.	SCAQMD/local govts.	5/96	1996–2010	0/0	0/0	0/0	0/0	0/0
MOF–04	Off-Road Mobile Source Emission Reduction Credit Programs.	SCAQMD	1995	1996–2010	0/0	0/0	0/0	0/0	0/0
FSS–01	Stage I Episode Plans	SCAQMD		2005–2010	0/0	0/0	0/0	0/0	0/0
ADV–CTS–01	Advanced Technology—Coating Technologies.	SCAQMD	2003–2005	2006–2010	0/0	0/0	0/0	14.35/0	23.88/0
ADV–FUG	Advanced Technology—Fugitive Emission Controls.	SCAQMD	2003–5	2006–2010	0/0	0/0	0/0	14.13/0	23.11/0
ADV–PRC	Advanced Technology—Process Related Emissions.	SCAQMD	2003–5	2006–2010	0/0	0/0	0/0	7.55/0	12.27/0
ADV–UNSP	Advanced Technology—Unspecified Stationary Source Controls.	SCAQMD	2003–5	2006–2010	0/0	0/0	0/0	39.45/0	66.97/0
ADV–CTS–02	Advanced Technology—Coating Technologies.	SCAQMD	1996–2000	1997–2010	0/0	20.44/0	32.37/0	45.38/0	54.69/0

* Alternative to ISR measures above.

c. ROP Provisions. EPA is finalizing approval of the South Coast ROP plan as meeting the 15% ROP requirements of section 182(b)(1) and the post-1996 ROP requirements of section 182(c)(2) of the Act. The ROP VOC targets, projected VOC emissions, and creditable VOC and NO_x reductions are shown in the table below labeled "South Coast ROP Forecasts and Targets." The table reflects CARB's request that the State's ROP forecasts be substituted for the SCAQMD plan forecasts, which EPA erroneously displayed in the proposal.

SOUTH COAST ROP FORECASTS

[In tons per summer day]

	1996	1999	2002	2005	2008	2010
VOC emissions to meet ROP target	1181	1019	890	767	647	568
VOC emissions with plan reductions	1144	951	818	686	530	323

e. Modeling and Attainment Demonstration. The Environmental Defense Center (EDC) commented that EPA should reject the South Coast's attainment demonstration because CARB has abandoned the ZEV program.

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EPA does not have information to support the commenter's contention that the ZEV amendments invalidate the attainment demonstration. See discussion in section I.B.3.c.(2).

As discussed above in the proposal and in section I.B.1., EPA's proposed approval of the South Coast attainment demonstration was based, in part, on the State's submission of an enforceable SIP commitment to adopt and submit as a SIP revision:

(a) a revised attainment demonstration for the South Coast as appropriate after a consultative process on future mobile source controls. This SIP revision would be due December 31, 1997; and

(b) enforceable emission limitations and other control measures needed to achieve the emission reductions which are determined to be appropriate for the State. This SIP revision would be due no later than December 31, 1999.

On May 17, 1996, CARB submitted this commitment in the form of Executive Order G–96–03, attached to a letter from John D. Dunlap, III, to Felicia Marcus. The Executive Order includes the following language:

Now, Therefore, it is Ordered that pursuant to Board Resolution 94–60, ARB hereby commits to participate in the consultative process described above, and to adopt and submit as a SIP revision: (a) By December 31, 1997, a revised attainment demonstration for the South Coast Air Basin as appropriate after the consultative process, and (b) by December 31, 1999, control measures needed to achieve any additional emission reductions which are determined to be appropriate.

EPA is taking final action to approve this commitment under sections 110(k)(3) and 301(a), and the modeling analysis and attainment demonstration under section 182(c)(2)(A) of the Act. A summary of the emission reductions needed to attain the standard and reductions projected from the SIP control strategy is provided below in the table labeled "South Coast Attainment Demonstration."

SOUTH COAST ATTAINMENT DEMONSTRATION

[Tons per summer day]

	VOC	NO_x
1990 Baseline Emissions Inventory	1517	1361
Carrying Capacity	323	553
Reductions Needed	1194	808
Reductions from Adopted measures	463	429
Committed Local measures	453	43
Committed State measures	231	227

SOUTH COAST ATTAINMENT DEMONSTRATION—Continued

[Tons per summer day]

	VOC	NO_x
"Federal Assignments"	47	109
Total	1194	808

The South Coast attainment demonstration relies, in part, on reductions from a fully-enhanced I/M program. As discussed in EPA's proposed approval of California's enhanced I/M program and above in section II.A.3., credits associated with this control measure will become permanent following the State's submission of the required analysis demonstrating that the enhanced I/M program is achieving the emission reductions claimed in the attainment demonstration. At that point, EPA's approval of the South Coast attainment demonstration will also become permanent.

f. Overall EPA Action. EPA approves the South Coast ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, and demonstrations of 15% ROP, post-1996 ROP, and attainment. EPA approves SCAQMD's commitments to adopt and implement the near-term control measures to achieve the specified emission reductions by the dates shown. EPA also approves CARB's commitments relating to the public consultative process and future SIP revisions.

7. Southeast Desert

(a) Control Measures. As discussed in EPA's proposal, the Southeast Desert Modified Air Quality Maintenance Area ("Southeast Desert") covers the Victor Valley/Barstow region in San Bernardino County ("Mojave"), the Coachella Valley/San Jacinto region in Riverside County ("Coachella"), and the Antelope Valley region in Los Angeles County ("Antelope").[26] The first of these areas is the responsibility of the Mojave Desert Air Quality Management District (MDAQMD). The second and third areas are currently the responsibility of the SCAQMD. Separate control measures, ROP and attainment demonstrations were prepared for each of the areas.

The SCAQMD's existing rules and committal measures apply not only throughout the South Coast Air Basin but also in the SCAQMD's portions of the Southeast Desert. The SIP includes the State measures and a subset of the SCAQMD measures approved above in sections II.A. and II.B.6., but does not add to that list any unique State or local controls for the Coachella and Antelope regions.

The MDAQMD included in the Mojave Plan 7 measures, all of which have now been adopted in regulatory form. Three of the rules have been approved as part of the SIP: 461 Gasoline Transfer Dispensing, 1103 Asphalt Paving, and 1160 Internal Combustion Engines. The table labeled "Mojave SIP Control Measures and VOC/NO_x Reductions lists the rules that have not yet been approved. This table includes Rules 1157, 1158, and 1159, which were mistakenly omitted from the proposal.

The MDAQMD control measures are relied upon in meeting the attainment requirements of the Act. Accordingly, and because the measures strengthen the SIP, EPA is approving, under sections 110(k)(3) and 301(a) of the Act, the enforceable commitments to adopt and implement the control measures to achieve the emission reductions shown. EPA also is assigning credit to the measures for purposes of attainment.

MOJAVE SIP CONTROL MEASURES AND VOC/NO_x REDUCTIONS

[In Tons/Day for 1996]

MDAQMD Measure	VOC	NO_x
Rule 1113 Architectural Coatings	0.92	0
Rule 1157 Boilers/Process Heaters	0	0.04
Rule 1158 Electric Power Generation	0	0.13
Rule 1159 Gas Turbines	0	0.13

b. ROP Provisions. EPA will take action on the ROP provisions for the Southeast Desert in separate rulemakings.

c. Modeling and Attainment Demonstration. As discussed in the proposal, the SIP includes modeling information, based on the South Coast UAM analysis, demonstrating that reductions from the South Coast SIP (along with SIP reductions within the area) will bring the Southeast Desert into attainment by the statutory deadline. EPA therefore proposes to approve the Southeast Desert modeling and attainment demonstration under section 182(c)(2) of the Act.

d. Overall EPA Action. EPA approves the Southeast Desert ozone SIP with

[26] The State has recently changed the names of the respective air basins. Under State law, the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin, and Antelope Valley is part of the Mojave Desert Air Basin. In its 1996 session, the California State Legislature passed legislation that would establish a new air agency to have the responsibility for local air pollution plans and measures in the Antelope Valley area.

respect to the Act's requirements for emission inventories, control measures, modeling, and demonstration of attainment. EPA also approves MDAQMD's commitments to adopt and implement the listed control measures to achieve the specified emissions reductions. EPA will take action on the 15% ROP and the post-1996 ROP plan elements for the three Southeast Desert subregions in separate rulemakings.

III. Summary of EPA Actions

EPA approves the following elements of the 1994 California Ozone SIP for the listed areas, as meeting applicable CAA requirements:

(1) Emission Inventories for San Diego, San Joaquin, Sacramento, Ventura, South Coast, and Southeast Desert, under section 182(a)(1) of the CAA.

(2) 15% ROP Plans for San Diego, San Joaquin, Ventura, and South Coast, under section 182(b)(1).

(3) Post-1996 ROP Plans for San Diego, San Joaquin, Sacramento, Ventura, and South Coast, under section 182(c)(2)(B) of the CAA.

(4) Modeling and Attainment Demonstrations for San Diego, San Joaquin, Sacramento, Ventura, Southeast Desert, and South Coast, under section 182(c)(2) of the CAA.

(5) All of the local control measures listed above in section II.B., for each of the nonattainment areas, including the specific emissions reductions for each milestone year, under sections 110(k)(3) and 301(a) of the CAA.

(6) All of the State's control measures contained in the 1994 California Ozone SIP that EPA has not previously approved: M1—Accelerated Retirement of LDVs, M4—Early Introduction of 2g/bhp-hr Heavy-Duty Diesel Vehicles, M7—Accelerated Retirement of HDVs, CP3— Aerosol Paints, and Pesticides, under sections 110(k)(3) and 301(a). EPA approval includes assignment of specific emissions reductions by nonattainment area and milestone year (as displayed in the tables in section II.A.) for all of the State control measures, including those previously approved under sections 110(k)(3), 182(e)(5), and 301(a) of the CAA. Under sections 110(k)(3) and 301(a) of the Act, EPA approves CARB's commitments to revise the South Coast attainment demonstration and adopt appropriate measures following the conclusion of the public consultative process. Under section 301 of the Act, EPA issues the Agency's commitment to undertake rulemaking to promulgate additional Federal measures determined to be appropriate.

EPA approves California's I/M regulations under sections 110(k)(3) and 301(a). EPA also approves the State's basic I/M program under sections 182(b)(4) and 187(a)(4) of the CAA and the enhanced I/M program, including the assignment of specific emissions reductions identified in section II.A.3. above, under sections 182(c)(3) and 187(a)(6) of the CAA and section 348(c) of the Highway Act.

In final action, EPA deletes from the applicable SIP all transportation control measures included in prior SIPs for Ventura and the South Coast, and Fresno measure "Exclusive High Occupancy Vehicle Lanes on Freeway 41."

EPA will take separate regulatory action on the 15% ROP Plans for Sacramento and the Southeast Desert and the post-1996 ROP Plan for the Southeast Desert.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Regulatory Process

A. Executive Order 12886

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Appendix A: Current Status of EPA's Activities Relating to the "Federal Assignments" in the California SIP Submittal

Note: The 1994 California Ozone SIP includes "Federal" mobile source assignments (SIP Measures M6, M10, M12, M13, M14, M15, and M16). In so doing, the State not only asked EPA to complete statutorily mandated responsibilities but also to undertake discretionary regulations to achieve specific mobile source emission reductions needed for the California attainment demonstrations, particularly for the South Coast. This fact sheet summarizes the current status of Federal activities relating to the source categories covered by each of the State's "Federal Assignments."

Heavy Duty Diesel Vehicles

Measure M6 of the 1994 California Ozone State Implementation Plan ("the SIP") provides for adoption by EPA of a Federal oxides of nitrogen (NO_X) standard for new heavy-duty diesel on-highway vehicles. The NO_X standard called for in the SIP is 2.0 grams per brake horsepower-hour (g/bhp-hr), to be implemented beginning in 2004. A Federal standard would help reduce emissions from the large number of out-of-state trucks which operate in California.

EPA is fulfilling its commitment to propose tighter NO_X emission standards for Federal on-highway heavy-duty vehicles as part of the NO_X/PM (particulate matter) Initiative. On July 11, 1995, EPA, the California Air Resources Board (CARB), and the leading manufacturers of heavy-duty engines signed a Statement of Principles (SOP) that established a consensus plan to substantially reduce emissions from future trucks and buses on a nationwide basis. The goal of the SOP is to ensure cleaner air in a manner which is both realistic for the heavy-duty engine industry and responds to environmental needs as well. As a result of the SOP, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) on August 31, 1995. The ANPRM announced plans to propose a choice of standards for combined non-methane hydrocarbon (NMHC) plus NO_X: 2.4 g/bhp-hr, or 2.5 g/bhp-hr with an NMHC cap of 0.5 g/bhp-hr. Engines meeting these future standards are expected to be over 80 percent cleaner than pre-control engines. EPA formally proposed these standards and related provisions in a Notice of Proposed Rulemaking (NPRM) published on June 27, 1996 (61 FR 33421–33469). The Final Rule has a target publication date of winter 1996–1997. The new standards would be implemented beginning in 2004 and would apply to all on-highway heavy-duty engines.

CARB played a very important role in the achievement of the Statement of Principles (SOP). In addition, CARB has given EPA tremendous support in the development of the ANPRM and the NPRM. As a result of the SOP and rulemaking processes, EPA and CARB will have harmonized programs for new heavy-duty engines, an advantage for engine manufacturers.

Off-Road Industrial Equipment (Diesel)

Measure M10 of the SIP provides for adoption by EPA of a Federal NO_X standard for, at a minimum, new farm and construction equipment with diesel engines rated at less than 175 hp (130 kw). These are the engines which California is preempted from regulating under the 1990 Clean Air Act Amendments. The NO_X standard called for in the SIP is 2.5 g/bhp-hr (3.3 g/kw-hr), to be implemented beginning in 2005.

In its 1991 Nonroad Study, EPA determined that nonroad diesel engines rated at 37 kw and more, including those covered in SIP measure M10, emit a substantial portion of the nation's NO_X inventory. In response, EPA set a 9.2 g/kw-hr NO_X standard for these engines in 1994, to be phased-in beginning in 1996. The Agency also expressed its intent to undertake a second tier of standard setting to further control these emissions. The Clean Air Act provides for this as a discretionary effort and contains no requirements or guidance regarding the level or timing of the standards.

Initial work on this second tier of standard setting is currently underway as part of the NO_X/PM Initiative. The NO_X/PM Initiative has been a joint program of both EPA and CARB. EPA and CARB recognize that harmonizing Federal and California standards would help to achieve air quality goals in all states by eliminating the potential for equipment with higher-emitting engines being transported across state borders. Harmonized standards would also have obvious advantages for manufacturers. The participation of CARB staff on this initiative has been invaluable.

EPA, CARB, and all key nonroad diesel engine and equipment manufacturers signed an SOP on September 13, 1996, similar in many ways to the SOP signed in 1995 relating to highway heavy-duty engines. EPA expects to propose standards for diesel engines used in most land-based nonroad equipment and in some marine applications. The proposed standards will represent second and third tiers of control for larger engines and will also include Tier 1 and Tier 2 standards for small diesel engines. These standards are expected to result in major reductions in this very large class of emission sources, with NO_X reductions ranging from 40–75%, depending on engine size. Also based on the SOP, EPA expects to propose special provisions which provide implementation flexibility to manufacturers of the nonroad equipment in which these engines are used to account for engine modifications which the engine manufacturers may choose to make. In addition to resulting in a common set of standards for this category for EPA and CARB, these standards will essentially achieve harmonization of standards between the U.S. and Europe.

Gas and LPG Equipment 25–175 Horsepower

Measure M12 of the SIP provides for adoption by EPA of a Federal program that will implement three-way catalyst technology on new nonroad equipment powered by gasoline or liquefied petroleum gas (LPG) engines rated at between 25 hp (18 kw) and 175 hp (130 kw). The goal of this measure it to reduce NO_X emissions by at least 50 percent and hydrocarbon emissions by 75 percent. This is a complementary measure to measure M10 and much of the discussion of that measure applies here as well.

EPA does not currently have any emission standards for gasoline or LPG engines in this category. However, under a consent decree signed by EPA with the Sierra Club on June 10, 1993, EPA agreed to determine by November 30, 1996 whether or not to regulate large gasoline nonroad engines and, if so, by what schedule. At this time, the Agency is considering setting standards for these engines as part of the NO_X/PM Initiative and has begun discussions about a possible SOP. Although substantial emission reductions may be pursued, there is no assurance that setting standards as low as those sought by CARB would be the most appropriate approach nationwide.

Marine Vessels

Measure M13 of the SIP assumes that the U.S. EPA and International Maritime Organization (IMO) will adopt emission standards that will reduce NO_X emissions from new marine diesel engines by 30 percent. M13 also assumes that EPA will issue standards for new marine diesel engines used in vessels operated primarily in domestic waters that will reduce NO_X emissions by at least 65 percent.

The IMO, a special agency of the United Nations, is developing regulations for the reduction of NO_X and sulfur oxides (SO_X) from ships. These regulations are part of a new Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), which addresses the control of air pollution from ships. An IMO committee, the Marine Environmental Protection Committee (MEPC) is scheduled to finalize the draft Annex in March 1997. A diplomatic conference will be held in September 1997 to review and adopt the Annex. After adoption, each signatory country will consider the Annex for ratification and, after the ratification requirements specified in the Annex are met, it will go into effect. Before the Annex can be enforced within U.S. waters, Congress will have to ratify it and provide appropriate authority to a government agency to implement it.

The emission requirements set out in the Annex will apply only to engines larger than

130 kW (175 hp) installed on ships constructed on or after January 1, 2000; engines installed on ships constructed before that date are exempt. However, the standards will apply to any replacement engine installed on any ship beginning January 1, 2000, as well as to engines that undergo "substantial modification" or whose power is increased by 10 percent. Because existing engines are not covered by the standards, achieving the target 30 percent reduction will require considerable time (turnover of ships is estimated to be about 30 years). Also, it will be necessary for the annex to achieve full implementation by flag states.

Only one-third of the commercial marine fleet will have turned over by 2010; therefore, the full 30 percent emission reduction from marine vessels will not be realized. To achieve greater reductions more quickly, it will be necessary to explore operational controls on ocean-going commercial marine vessels that operate off California's coasts, particularly in the South Coast region. Three studies are underway to investigate issues relating to the contribution of these marine vessels to air quality in the South Coast area and along the Santa Barbara channel. Collectively, these studies will help EPA and other interested parties understand and explore potential operational control strategies needed for further emissions reductions from marine sources. EPA is involved in all of these efforts, along with the United States Navy, the United States Coast Guard, the South Coast Air Quality Management District, and CARB.

The largest of these studies is sponsored by the United States Navy. This goal of this study is to better characterize ship traffic and its impact on ozone exceedances in Ventura County. It will investigate air trajectory and transport mechanisms, clarify ship traffic patterns, collect ozone measurement data, and collect weather parameters for modeling. This on-going study is not complete at this time. A second study, sponsored by SCAQMD, will measure the marine vessel emission inventory and explore potential control strategies. The SCAQMD study should be completed by June 1996. A third study, the Southern California Transport Study, led by CARB, will examine air pollution transport in Southern California. This study will provide an enhanced air quality and meteorological database for Southern California, which will provide the basis for improved modeling. Data will be collected at the surface and aloft, as well as over water.

As originally drafted, the standards set out in MARPOL Annex VI would apply to any engine larger than 130 kW installed on a vessel that operates in the "marine environment." This means that the Annex would apply to vessels operating in domestic as well as international waters. To preserve the ability to set more stringent standards for engines installed on vessels that operate in U.S. domestic waters, the U.S. sought to limit the application of the Annex. Specifically, at the July 1996 MEPC meeting, the U.S. succeeded in obtaining an exemption to the Annex for high speed engines installed on vessels that are not engaged in international voyages. This exemption gives EPA the ability to pursue more stringent national emission control for high speed diesel marine engines on vessels that operate primarily in domestic waters. EPA is currently preparing an NPRM to set standards for these engines.

Locomotives

In Measure M14, CARB assumed locomotive emission reductions from two EPA programs. The first of these programs was the statutorily required EPA national regulation for locomotives and locomotive engines, (national locomotive regulation). EPA expects that the planned national locomotive regulation will provide all of the CARB SIP credits with the exception of the 67% reduction in NO_X emissions in the South Coast by 2010.

To address the South Coast's need for further emission reductions EPA has considered a special locomotive program for the South Coast. This program would ensure that all locomotives operating in the South Coast achieve on average, an emission level equal to EPA national locomotive regulation tier 2 standards. Since these standards are technology forcing, the practical requirement would be to require an accelerated fleet turnover in the South Coast such that only the newest engines meeting the EPA tier 2 standards would operate in the South Coast. This program would provide an approximately two-thirds reduction in locomotive NO_X emissions in the South Coast by 2010 and result in a NO_X emission level of 12 tons/day in the South Coast. The railroads that operate in the South Coast have indicated support for this program. EPA is continuing to explore innovative approaches to establish the South Coast clean locomotive fleet program as part of the SIP.

Aircraft

Measure M15 calls for U.S. EPA to adopt standards to effect a 30 percent reduction in reactive organic gases (ROG) and NO_X emissions beginning in 2000. M15 apparently applies to new commercial aircraft engines, but also suggests reconsideration of the exempt status of military aircraft.

The federal Clean Air Act authorizes EPA to establish emission standards for aircraft engines. In recognition of this preemptive authority, the SIP assigns new nationwide emission standards for commercial aircraft engines to EPA that would reduce ROG and NO_X emissions from this source by 30 percent beginning in 2000. The SIP also correctly acknowledges that military aircraft engines are currently exempt from emission standards, which otherwise apply to commercial aircraft engines. In this regard, the SIP recommends that the exempt status of these aircraft be reconsidered.

The International Civil Aviation Organization (ICAO) is the most appropriate forum for establishing commercial aircraft engine emission standards due to the international nature of the aviation industry. EPA is currently preparing a direct final rule to formally adopt the existing ICAO NO_X and CO standards.

EPA has actively participated in considering more stringent NO_X standards as part of ICAO's Committee on Aviation Environmental Protection (CAEP) in the intervening period since the FIP. In December 1995, CAEP recommended a 16 percent increase in stringency for the NO_X standard that applies to medium and large turbine engines used on commercial aircraft. The revised standard would affect newly certified engines (i.e., engine models produced for the first time) beginning in 2000, and all newly manufactured engines (i.e., engines already being produced) in 2008. The revised standard would not affect engines already in air service. No revision of the hydrocarbon emission standard was considered by CAEP at the time, principally because modern turbine engines are considered very "clean" in this regard.

The CAEP recommendation will now move through the ICAO hierarchy for consideration. Initially, the ICAO Council will act on the recommendation. If the Council finds it acceptable, the revision moves to the full ICAO Assembly for final action. This process may not be complete until the spring of 1998.

The emission benefits of any new NO_X standard will occur worldwide. These benefits, however, will gradually accrue over an extended period of time. More specifically, the full benefits of the revised standard will not occur until well after 2010, because of the 2008 date for full implementation of the standard and the slow fleet turnover to new, cleaner engines (e.g., aircraft last about 25 years in active service.) Therefore, very few of the potential benefits will be realized by the SIP's attainment date.

Turning to the exemption for military engines, EPA agrees with the SIP recommendation that such a blanket exemption should be reconsidered in the consultative process. EPA hopes to address the feasibility of applying emission standards to military engines in the public consultative process.

EPA has also continued to explore other ways to reduce the environmental effects of air travel in California and throughout the nation in the intervening period since the FIP. More specifically, the Agency and the Federal Aviation Administration (FAA) are working cooperatively to encourage continuing progress in reducing emissions from ground service equipment and aircraft auxiliary power units. EPA has sponsored additional work to compile technical data and emission inventory methods. This information will be used by the Federal Aviation Administration to develop an Advisory Circular for use by airlines and airport authorities interested in reducing the emissions from these sources.

Pleasurecraft

Measure M16 assumes that U.S. EPA finalizes proposed national ROG and NO_X standards for various categories of new engines used in watercraft.

EPA has finalized its proposed emission standards for spark-ignition marine engines. The final rule is expected to reduce by about 75% the HC emissions from outboard motors, personal watercraft, and jet boats beginning in model year 1998. EPA has issued guidance to states on the amount of credit that will be allowed due to this rulemaking. There is no second phase rulemaking planned.

EPA has not yet finalized the proposed emission standards for compression-ignition marine engines. The court ordered deadline for completion of this action is December 1996. EPA has not yet issued guidance to states on the amount of credit that will be allowed due to this rulemaking.

Appendix B: Schedule for Public Consultative Process

Background: The Need to Achieve Our Public Health Goals

Air pollution remains a significant public health concern in many parts of the country, including many areas of California. The Clean Air Act requires states to develop state implementation plans (SIPs) that lay out how areas will reduce pollution and attain the health-based air quality standards for a number of pollutants including ground level ozone—smog.

Despite the dramatic progress that aggressive air quality regulations have made in reducing smog levels, residents of the South Coast continue to experience by far the worst air pollution in the United States. The 1994 ozone SIP for the South Coast shows the need for massive additional reductions to reach target emission levels of VOC and NO_x—volatile organic compounds and nitrogen oxides, the pollutants that react with sunlight to form ozone.

The South Coast SIP includes federal, state and local regulations and commitments to achieve the emission reductions needed to attain the national ozone health standard by 2010. U.S. EPA has already issued or is in the process of issuing stringent national controls on most categories of mobile sources, including heavy-duty trucks and buses; construction, farm, and lawn and garden equipment; pleasure craft; some categories of marine vessels; and locomotives.

Purpose of the Public Consultative Process on Future Mobile Source Controls

Through a public process, we hope together to identify the best options for achieving further emission reductions from mobile source controls, at least to the extent they are needed for attainment of the ozone health standard in the South Coast, and to ensure that appropriate parties accept responsibility for adopting and implementing the controls expeditiously.

Schedule

July 19, 1996—Los Angeles public meeting to introduce to the general public the consultative process and to allow California stakeholders an opportunity to provide input to the proposed national truck and bus rules during the public comment period.

November 1996—Los Angeles public meeting to discuss pending national and international ship controls, possible reductions from port measures, pending national and international aircraft controls, and possible reductions from airport measures.

November 1996 to May 1997—Los Angeles informal workshops to provide further input on desirable control measures for airports/aircraft and (separately) ports/ships.

February 1997—Los Angeles public meeting to continue discussions of opportunities for reductions from future mobile source measures and to allow California stakeholders to provide informal input to the proposed national nonroad rules during the public comment period.

June 1997—Los Angeles public meeting or public hearing to summarize findings during the consultative process, identifying SIP reductions from specific new measures and setting out an approach for dealing with the remaining shortfall (if any).

Future Updates to the Schedule

Information on the date and location of public meetings will be placed on EPA Region 9's site on the Internet's World Wide Web at http://www.epa.gov/region09 (go to Air Programs). Those wishing to be placed on EPA's mailing list for public consultative process meeting announcements should write or phone Julia Barrow (see the Addresses portion of this document).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 25, 1996.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(204)(i)(A)(*6*), (c)(204)(i)(B)(*2*), (c)(204)(i)(C) through (F), (c)(205)(i)(A), (c)(213), and (c)(233) through (238) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(204) * * *

(i) * * *

(A) * * *

(*6*) State control measures: Accelerated Retirement of LDV's (Measure M1), Early Introduction of 2g/bhp-hr Heavy Duty Diesel Vehicles (Measure M4), Accelerated Retirement of Heavy-Duty Vehicles (Measure M7), Aerosol Paints (Measure CP3), and California Department of Pesticide Regulation's Pesticide Plan, as contained in "The California State Implementation Plan for Ozone, Volume II: The Air Resources Board's Mobile Source and Consumer Products Elements," adopted on November 15, 1994, and tables of local agency control measures and revisions to local Rate-of-Progress plan elements as contained in "The California State Implementation Plan for Ozone, Volume IV: "Local Plans," adopted on November 15, 1994.

(B) * * *

(*2*) Control measures, emissions inventory, modeling, and ozone attainment demonstration, as contained in "1994 Air Quality Management Plan," adopted on September 9, 1994.

(C) San Diego Air Pollution Control District.

(*1*) Emissions inventory, 15% Rate-of-Progress plan, Post-1996 Rate-of-Progress plan, modeling, and ozone attainment demonstration, as contained in "1994 Ozone Attainment and Rate-of-Progress Plans for San Diego County," adopted on November 1, 1994.

(D) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Control measures, emissions inventory, 15% Rate-of-Progress plan, Post-1996 Rate-of-Progress plan, modeling, and ozone attainment demonstration, as contained in "San Joaquin Valley Attainment and Rate-of-Progress Plans," adopted on November 14, 1994.

(E) Ventura County Air Pollution Control District.

(*1*) Control measures, emissions inventory, 15% Rate-of-Progress plan, Post-1996 Rate-of-Progress plan, modeling, and ozone attainment demonstration, as contained in "1994 Air Quality Management Plan for Ventura County," adopted on November 8, 1994.

(F) Mojave Desert Air Quality Management District.

(*1*) Control measures, emissions inventory, modeling, and ozone attainment demonstration, as contained in "Rate-of-Progress and Attainment Demonstration Plans for the Mojave Desert," adopted on October 26, 1994.

(205) * * *

(i) * * *

(A) Kern County Air Pollution Control District.

(*1*) Emissions inventory, modeling, and ozone attainment demonstration, as contained in "Rate-of-Progress and Attainment Demonstration Plans for the Kern County Air Pollution Control District," adopted on December 1, 1994.

* * * * *

(213) California Statewide Emission Inventory submitted on March 30, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) 1990 Base-Year Emission Inventory for Ozone Nonattainment Areas in California.

(*i*) Sacramento, San Diego, San Joaquin Valley, South Coast, Southeast Desert, Ventura.

* * * * *

(233) New and amended plans for the following agencies were submitted on December 29, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) 15% Rate-of-Progress plan and Post-1996 Rate-of-Progress plan for the Los Angeles-South Coast Air Basin Area, as contained in the "Rate-of-Progress Plan Revision: South Coast Air Basin & Antelope Valley & Coachella/San Jacinto Planning Area," adopted on December 9, 1994.

(B) Sacramento Metropolitan Air Quality Management District.

(*1*) Emissions inventory, Post-1996 Rate-of-Progress plan, modeling, and ozone attainment demonstration, as contained in "Sacramento Area Attainment and Rate-of-Progress Plans," adopted by Sacramento Metropolitan Air Quality Management District on December 1, 1994; by Feather River Air Quality Management District on December 12, 1994; by El Dorado County Air Pollution Control District on December 13, 1994; by Yolo-Solano Air Pollution Control District on December 14, 1994; and by Placer County Air Pollution Control District on December 20, 1994.

(234) The California Vehicle Inspection and Maintenance Program was submitted on January 22, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) Motor Vehicle Inspection and Maintenance Program adopted on January 22, 1996.

(*i*) Health and Safety Code: Division 26, Part 5 § 39032.5; Chapter 5. Motor Vehicle Inspection Program, Article 1, Article 2, Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9.

(*ii*) Business and Professions Code, Chapter 20.3, Automotive Repair, Article 4, § 9886, § 9886.1, § 9886.2, § 9886.4.

(*iii*) Vehicle Code § 4000.1, § 4000.2, § 4000.3, § 4000.6.

(*iv*) Title 16, California Code or Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, § 3340.1, § 3340.5, § 3340.6, § 3340.10, § 3340.15, § 3340.16, § 3340.16.5, § 3340.16.6, § 3340.17, § 3340.18, § 3340.22, § 3340.22.1, § 3340.22.2, § 3340.22.3, § 3340.23, § 3340.24, § 3340.28, § 3340.29, § 3340.30, § 3340.31, § 3340.32, § 3340.32.1, § 3340.33, § 3340.33.1, § 3340.35, § 3340.35, § 3340.36, § 3340.41, § 3340.41.3, § 3340.41.5, § 3340.42, § 3340.42.1., § 3340.50, § 3340.50.1, § 3340.50.3, § 3340.50.4, § 3340.50.5.

(235) New and amended plans for the following agencies were submitted on May 17, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) Executive Order G–96–031, dated May 17, 1996, State commitment to participate in public consultative process, submit a revised attainment demonstration for the South Coast as appropriate by December 31, 1997, and submit control measures to achieve emission reductions determined to be appropriate, if any, by December 31, 1999.

(236) New and amended plans for the following agencies were submitted on June 13, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) Letter dated June 13, 1996, from James D. Boyd to David Howekamp, including "Corrections to State and Local Measures" (Attachment A) and "Summary Emission Reduction Spreadsheets" (Attachment C).

(237) New and amended plans for the following agencies were submitted on July 10, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Revised rule adoption schedule, adopted on April 12, 1996.

(238) New and amended plans for the following agencies were submitted on July 12, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) "Revised Rule Adoption and Implementation Schedule" (Table 4–2) and "Architectural Coatings" (Appendix E–95, Tables E–43 and E–45) contained in "Ventura County 1995 Air Quality Management Plan Revision," adopted on December 19, 1995.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Post-1996 Rate-of-Progress plan, as contained in "San Joaquin Valley Revised Post-1996 Rate-of-Progress Plans," adopted on September 20, 1995.

3. 40 CFR part 52 is amended by adding a new section 52.238 to read as follows:

§ 52.238 Commitment to undertake rulemaking.

(a) The Administrator shall undertake rulemaking, after the South Coast mobile source public consultative process, to promulgate any VOC and NO_x mobile source controls which are determined to be appropriate for EPA and needed for ozone attainment in the Los Angeles-South Coast Air Basin Area.

4. 40 CFR part 52 is amended by adding a new section 52.241 to read as follows:

§ 52.241 Interim approval of enhanced inspection and maintenance program.

(a) Under section 348(c) of the National Highway Systems Designation Act (Pub. L. 104–59), the California SIP is approved as meeting the provisions of section 182(c)(3) for applicable ozone areas and section 187(a)(6) for applicable carbon monoxide areas with respect to the requirements for enhanced motor vehicle inspection and maintenance. This approval expires on August 7, 1998, or earlier if by such earlier date the State has submitted as a SIP revision the required demonstration that the credits are appropriate and that the program is otherwise in compliance with the Clean Air Act and EPA takes final action approving that revision.

* * * * *

[FR Doc. 97–144 Filed 1–7–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[CA114–0025; FRL–5665–9]

Approval and Promulgation of Implementation Plans; California; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the California State Implementation Plan (SIP) for ozone for Santa Barbara County. Specifically, EPA is approving the emissions inventory, control measures, and 15% rate-of-progress plan. The California Air Resources Board (CARB) submitted this SIP revision to EPA on November 14, 1994.

EPA is approving this revision to the California SIP under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals for nonattainment areas.

EFFECTIVE DATE: This approval is effective on February 7, 1997.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No.

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A–96–13, which is available for viewing during normal business hours at the following location: Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

Environmental Protection Agency, Air Docket (6102), 401 M Street, S.W., Washington, DC.

California Air Resources Board, 2020 L Street, Sacramento, California.

In addition, copies of the relevant local plan, the State plan (1994 California Ozone SIP), public comments, and EPA's technical support documents for this rulemaking are available at the following location: Santa Barbara Air Pollution Control District, 26 Castilian Drive B–23, Goleta, California.

Electronic Availability

This document and related materials are available at Region 9's site on the World Wide Web at http://www.epa.gov/region09 (please look under Air Programs). The **Federal Register** is also available on the Internet by pointing a web browser at: http://www.access.gpo.gov/su_docs/ or by telnet to swais.access.gpo.gov.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Office of Planning, Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1230.

SUPPLEMENTARY INFORMATION

I. Background.

A. Summary

EPA is finalizing approval of the emissions inventory, control measures, and 15% rate-of-progress (ROP) plan for the Santa Barbara County ozone nonattainment area, as included in the 1994 California Ozone SIP.[1] This action was proposed on March 18, 1996, as part of action on the 1994 California Ozone SIP (61 FR 10920–10962). EPA has separately finalized approval of all elements proposed for approval in that document, with the exception of Santa Barbara plan elements. The reader is referred to the notice of proposed rulemaking for additional detail on the SIP submittal (including State measures and analyses), as well as a summary of relevant Clean Air Act requirements and EPA interpretations of those requirements.

Santa Barbara is currently classified as a moderate nonattainment area for ozone (40 CFR 81.305). As a result, the SIP must contain adequate control measures and commitments to demonstrate attainment of the ozone national ambient air quality standards (NAAQS) by 1996, in accordance with sections 181(a)(1) and 172(c)(6) of the CAA.

The 1994 SIP employed an urban airshed modeling analysis to demonstrate that the control strategy will result in NAAQS attainment by the deadline. After the 1994 SIP had been prepared, exceedances of the ozone NAAQS were recorded during both 1994 and 1995. This precluded Santa Barbara from achieving the ozone standard by 1996.[2]

Section 181(a)(5) of the Act, however, authorizes EPA to grant a one-year extension of the attainment date upon request by the State, if an area has complied with all requirements in the SIP and records no more than one exceedance during the attainment year. Based on this provision, EPA proposed to approve Santa Barbara's plan as meeting the attainment demonstration requirements of section 182(b)(1)(A) of the Act, assuming that the area experienced no more than one exceedance during the 1996 ozone season.

After the proposed approval of the Santa Barbara plan was issued in March 1996, several locations in Santa Barbara recorded exceedances of the ozone standard. These exceedances now disqualify the area from receiving a one-year attainment deadline extension. Therefore, there is no longer a basis for EPA's proposed approval of the attainment demonstration and the supporting modeling analysis. For this reason, CARB has withdrawn the attainment demonstration portion of the SIP.[3]

Because the State has withdrawn this SIP element, EPA is not responding in this document to extensive Environmental Defense Center comments on EPA's proposed approval of Santa Barbara's modeling and attainment demonstration. EPA encourages the State and local agencies to address those comments, to the extent that they remain relevant, in the preparation of attainment demonstrations in the future.

B. SIP Submittals

On November 15, 1994, CARB adopted and submitted a revision to the "State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards" (ozone SIP). The revision consists of: (a) The State's comprehensive ozone plan, including the State's own measures and the State's summaries of, and revisions to, the local plans; (b) the State's previously adopted regulations for consumer products and reformulated gasoline and diesel fuels; and (c) local plans addressing the ozone attainment demonstration and ROP requirements. EPA has previously finalized approval of all of the State's measures and most of the elements of the local plans, with the exception of the plan for Santa Barbara.

EPA is today approving elements from the following ozone SIP submittals:

1. "1994 Clean Air Plan for Santa Barbara County," adopted by the Board of the Santa Barbara County Air Pollution Control District on November 2, 1994. The November 14, 1994, submittal letter for this plan is from James Boyd, Executive Officer of CARB, to EPA Regional Administrator Felicia Marcus.

2. On March 30, 1995, CARB submitted revised 1990 base year emission inventories for each of the California ozone nonattainment areas. EPA is approving in this document the Santa Barbara portion of the State's submittal.

C. EPA Completeness Findings

On April 18, 1995 the EPA issued a finding of completeness, pursuant to 40 CFR Part 51, Appendix V, for the Santa Barbara plan portion of the November 1994 and March 1995 submittals with regard to: (1) 15% ROP requirement of section 182(b)(1)(A); and (2) 1990 base year inventory requirements of section 182(a)(1).[4]

[1] The Federal ozone nonattainment area is the "Santa Barbara-Santa Maria-Lompoc Area," which comprises the entire County of Santa Barbara (see 40 CFR 81.305).

[2] Attainment of the ozone NAAQS is achieved when the number of exceedances at each monitoring site within the area, averaged over the past 3 calendar years, is less than or equal to 1. An exceedance is a daily maximum hourly average ozone concentration that is greater than the 0.12 ppm standard. (40 CFR 50, App. H)

[3] November 6, 1996 letter from Michael P. Kenny, Executive Officer, CARB, to Felicia Marcus, Regional Administrator, EPA, withdrawing the Santa Barbara ozone attainment demonstration. The letter also encloses an October 18, 1996 letter from Douglas W. Allard (SBCAPCD) to Michael P. Kenny, requesting withdrawal of the attainment demonstration. Allard's letter notes that, on October 17, 1996, "the Air Pollution Control Board directed me to request that the Air Resources Board withdraw the attainment demonstration element from the 1994 Clean Air Plan (CAP), a component of the State Implementation Plan."

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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II. Review of the SIP Submittal, Response to Comments on Specific SIP Issues, and EPA Final Action

A. Emissions Inventory

The Environmental Defense Center (EDC) provided two comments on the emissions inventory. First, EDC stated that significant amounts of emissions from variances and violations, construction activities, and small source exemptions are excluded from the inventory. Second, EDC stated that the 1996 inventory misstates emissions by not removing from the inventory those emissions associated with the shutdown of the Battles Gas plant in July 1995, thus allowing banking of these emissions.

The emission inventories for Santa Barbara were developed in accordance with EPA guidance, using the most accurate data available.[5] The SIP's base year and projected inventories include the District's best estimations of emissions from construction activities and, to the extent data are available, emissions from unpermitted sources. The 1990 baseline inventories and the projected inventories also address variances and violations through use of control factors that reflect general estimations of rule effectiveness.

The Battles Gas Plant was not shut down but under permit and in operation when the Clean Air Plan was adopted. EPA's emissions inventory guidelines and 15% rate-of-progress guidelines do not require that projected inventories eliminate emissions from sources that may be shut down in the future.[6]

EPA is finalizing approval of the Santa Barbara emission inventories as meeting the requirements of section 182(a)(1) of the Act.

B. Control Measures

EDC objected to the SBCAPCD's wholesale deletion of 1982 control measures, including measures which required development of rules incorporating the relative ozone formation potential of various emissions.

In general, the 1994 SIP does not delete the 1982 SIP measures but rather updates them. EPA does not believe that the CAA requires the District to retain its prior commitments to develop reactivity-based rules, which are neither specifically mandated by the CAA nor associated with particular emission reductions or ambient air quality benefits in the 1982 SIP.

EDC stated that the inadequacy of the SIP control measures is apparent, given Santa Barbara's violations of the ozone NAAQS. EPA interprets the comment as meaning that EDC does not believe that the control measures achieve sufficient emission reductions to attain the ozone NAAQS by 1996. The Agency is not addressing this issue because, as noted above, the State has withdrawn the attainment demonstration portion of the Santa Barbara plan. EPA is, however, approving the individual control measures in the SIP (1994 Clean Air Plan, Tables 4–2 and 5–1) under the provisions of CAA sections 110(k)(3) and 301(a), because they strengthen the SIP.

Table 5–1 of Santa Barbara's plan describes the area's transportation control measures (TCMs), which supersede the TCM list in the previously approved 1982 SIP. On May 1, 1995, EPA took direct final action to approve TCM–5, and to delete the Goleta Transit Center from the 1982 SIP (60 FR 21045). The 1994 Clean Air Plan shows that all of the 1982 TCMs have either been fully implemented or replaced by 1994 TCMs.

All non-transportation related control measures identified in the Santa Barbara Clean Air Plan have been fully adopted in regulatory form. If any of these regulations, which are assumed in the baseline of the Clean Air Plan, are relaxed or in practice achieve fewer emission reductions than relied upon in the SIP, the District must submit replacement rules on an expeditious schedule.

Under sections 110(k)(3) and 301(a) of the Clean Air Act, EPA takes final action to approve the SIP control measures, including contingency measure T–21, because these measures strengthen the SIP.

C. ROP Provisions

EPA is finalizing approval of the ROP plan as meeting the 15% ROP requirements of section 182(b)(1) of the Act. The ROP ROG targets, projected ROG emissions, and creditable ROG reductions are shown below in the table labeled "Santa Barbara ROP Forecasts and Targets." Creditable emission reductions from fully adopted regulations reduce emissions below the ROP target level for 1996.

SANTA BARBARA ROP FORECASTS AND TARGETS

[In tons of ROG per summer day; excludes OCS emissions]

1990 Base Year Inventory	57
1996 Projections (Adopted Measures)	41
1996 ROP Target	42

III. Summary of EPA Actions

EPA approves the following elements of the 1994 California Ozone SIP for Santa Barbara, as meeting applicable CAA requirements:

(1) Emission Inventories for Santa Barbara under section 182(a)(1) of the CAA.

(2) 15% ROP Plan for Santa Barbara under section 182(b)(1).

(3) Santa Barbara's control measures, including contingency measure T–21, under sections 110(k)(3) and 301(a) of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Regulatory Process

A. Executive Order 12886

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the

[5] See the list of SIP inventory guidance documents in the supplement to EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, issued on April 28, 1992 (57 FR 18070–18071).

[6] Indeed, Rate-of-Progress projected inventories generally should be based on allowable levels. See EPA's Emission Inventory Requirements for Ozone State Implementation Plans (EPA–450/4–91–010), March 1991, pp. 36–7. Until permits are surrendered, sources should be assumed to be in operation.

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Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 1996.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(211)(i)(A)(*2*), and (c)(213)(i)(A)(*1*)(*i*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(211) * * *

(i) * * *

(A) * * *

(*2*) Emissions inventory, 15% Rate-of-Progress plan, and control measures, as contained in "1994 Clean Air Plan for Santa Barbara County," adopted on November 2, 1994.

* * * * *

(213) * * *

(i) * * *

(A) * * *

(*1*) * * *

(*i*) Santa Barbara.

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[FR Doc. 97–145 Filed 1–7–97; 8:45 am]

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January 8, 1997

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91, et al.

Special Flight Rules in the Vicinity of the Rocky Mountain National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, and 135

RIN 2120–AG11

[Docket No. 28577; Amendment Nos. 91–254, 119–3, 121–263, 135–67 Special Federal Aviation Regulation (SFAR) No. 78]

Special Flight Rules in the Vicinity of the Rocky Mountain National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary Special Federal Aviation Regulation (SFAR) at Rocky Mountain National Park (RMNP) to preserve the natural enjoyment of visitors to RMNP by preventing any potential adverse noise impact from aircraft-based sightseeing overflights. This action temporarily bans commercial air tour operations over RMNP while the FAA develops a broader rule that will apply to RMNP as well as other units of the National Park system. The final rule will expire as soon as a general rule on such overflights is adopted.

EFFECTIVE DATE: February 7, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Saunders, Airspace and Rules Division, ATA–400, Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: 202–267–8783. For the Final Environmental Assessment and Finding of No Significant Impact, contact Mr. William J. Marx, Manager, Environmental Programs Division, ATA–300, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling 202–267–9677. Communications must identify the amendment number of this final rule.

Background

The designation of an area as a National Park is one of the highest recognition given to any area in the country for its natural beauty and the importance of its protection. In view of the significance of this designation, Congress requires that National Parks by managed consistently with the "high public value and integrity of the National Park System and [such management] shall not be exercised in derogation of the values and purposes for which these areas have been established to conserve the scenery and the nature and the historic objects and the wildlife therein, and to leave them unimpaired for future generations." Organic Act, 16 U.S.C. § 1a–1; 16 U.S.C. 273–273d, 273f. The National Park Service ("NPS") and the Federal Aviation Administration ("FAA") recognize that noise from aircraft may interfere with the natural park experience for visitors on the ground and with efforts to preserve these and other park values.

On December 22, 1993,the Department of the Interior and the Department of Transportation joined to form an interagency working group ("IWG") with the objective of protecting National Parks from the adverse effects due to excessive aircraft noise. The IWG's tasks included reviewing the environmental and safety concerns caused by park overflights, and working towards resolution of impacts on specific parks.

The FAA's role in the IWG is to ensure the maintenance of aviation safety and provide for the safe and efficient use of airspace, while working with the Department of the Interior to achieve its role in the IWG to protect public land resources in the national park system, preserve environmental values for those areas, and provide for the public enjoyment of those areas.

On April 22, 1996, President Clinton issued a memorandum for Heads of Executive Departments and Agencies, in which he announced his Earth Day initiative, Parks for Tomorrow. Included in that initiative was the directive to the Secretary of Transportation, in consultation with other appropriate officials, to consider a rulemaking to address the potential adverse impact on Rocky Mountain National Park and its visitors of overflights by sightseeing aircraft. The President's announcement also directed that the value of natural quiet and the natural experience of the park be factors in any rulemaking action, along with protection of public health and safety.

FAA Statutory Authority

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. 49 U.S.C. 40104, et seq., 49 U.S.C. 40103(b). Subtitle VII of Title 49 U.S.C. provides guidance to the Administrator in carrying out this responsibility. However, the FAA's authority is not limited to regulation for aviation safety and efficiency.

The FAA has authority to manage the navigable airspace to protect persons and property on the ground. The Administrator is authorized to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for * * *. (B) protecting individuals and property on the ground" 49 USC 40103(b)(2). In addition, under 49 USC Section 44715(a) the Administrator of the FAA, in consultation with the Environmental Protection Agency, is directed to issue such regulations as the FAA may find necessary to control and abate aircraft noise and sonic boom to "relieve and protect the public health and welfare."

The FAA construes these provisions, taken together, to authorize the adoption of this regulation, which is intended to minimize the limit the adverse effects of aircraft noise to protect visitor enjoyment of RMNP. The FAA finds that the regulation of the navigable airspace, as authorized under 49 U.S.C. 40103(b)(2), is necessary, on a temporary, limited basis, as discussed below, to control and abate aircraft noise at RMNP under 49 U.S.C. 44715. Current policies support the exercise of FAA authority to protect the RMNP in these unique circumstances, at least as an interim step while the FAA proceeds to complete a rulemaking that will address the larger issue of protecting national parks. See generally, Section 101 of the National Environmental Policy Act of 1969, as amended 42 U.S.C. 4321 and Executive Order 11514, as amended by Executive Order 11991.

Rocky Mountain National Park

RMNP receives approximately three million visitors a year, making it the sixth most visited national park in the United States, despite its relatively small size (for a major Western national park) of 265,727 acres. RMNP is located approximately 40 miles outside the city limits of Denver, Colorado, and approximately 50 miles from the Denver International Airport. The topography of the park is characterized by steep mountains, narrow valleys, and high elevations (8,000 to 14,250 ft). Seventy percent of park terrain is above 10,000 feet. In fact, excluding Hawaii and Alaska, RMNP has the highest percentage of mountainous elevations above 10,000 feet, compared to any other national park.

RMNP presents pilots with a challenging flying environment. It has high winds, often in excess of 100 mph. The Park's high altitudes diminish engine performance and propeller efficiency, making it more difficult for an aircraft to perform in high winds. The rugged terrain limits maneuverability, and the rapidly changing weather can unexpectedly envelop an aircraft. Perhaps in part for these reasons, the use of the airspace over RMNP for commercial air tour operations has so far not been extensive. Unlike many other national parks, there are currently no air tour operators overflying the park or operating in the surrounding airspace. However, other aviation users do operate in the airspace above RMNP. Due to the Park's proximity to the Denver International Airport, aircraft operating to or from the airport overfly RMNP. Arrival and departure routes above the Park are necessary to ensure the safe and efficient handling of air traffic into the airport. Traffic into the airport operates at minimum altitudes of 19,000 feet above mean sea level (MSL) for jets and 16,000 feet above MSL for turboprop aircraft. Non-commercial general aviation aircraft also overfly the Park. While these non-commercial aircraft have not themselves created any noise problem, their presence establishes the feasibility of relatively low-level overflights within the park of operators of commercial sightseeing tours with comparable equipment.

The Park provides for automobile access within its boundaries from which there are numerous opportunities for viewing the park's vistas. Park officials estimate that 54 percent of the park can be seen from points along the 149 miles of roads.

Ninety-two percent of the park is proposed for inclusion in the National Wilderness Preservation System and is required by law to be managed by the National Park Service as a de facto wilderness until action is taken by Congress. This means that, among other things, most motorized vehicles must be contained within the existing roadway system, and future development is limited.

The Governor of Colorado, members of the Colorado Congressional delegation, and other officials have requested the Department of Transportation to place a preemptive ban on commercial air tour operations at RMNP. Even though there are no commercial air tour operations at the Park currently, some operators have expressed an interest in starting commercial air tours to officials of Estes Park, Colorado and to the NPS. The government officials who have requested regulatory action are concerned that an influx of commercial air tour operations at RMNP would undermine the enjoyment of the Park by visitors on the ground.

The FAA wishes to be responsive to concerns about the effects of overflights on the national park system. Although the FAA is still developing nationwide standards for overflights of national parks, a relatively unusual set of circumstances has occurred at RMNP. Judging from the requests received by the FAA, there is broad support to protect the park environment by a ban on overflights among local leaders, even in the absence of current commercial air tour overflights. In addition, the FAA acknowledges the value in being able to take the initiative now, before any commercial overflights occur. At this point, there has been no environmental loss from commercial air tour overflights, and a temporary ban on such flights will cause no economic loss to any incumbent operator.

This temporary Special Federal Aviation Regulation will expire as soon as a general rule on overflights over the national park system is adopted. The FAA and DOI will be collecting quantitative data in conjunction with the development of this broader rule that will apply to all units of the National Park System.

Within 24 months of the effective date of this temporary ban, the FAA, in conjunction with the NPS, will complete a review of this temporary ban on commercial air tour operations over RMNP and publish its findings in the **Federal Register**. The FAA will determine whether the ban continues to be necessary to meet the objectives of the FAA and NPS. This review will consider any data collected during the development of the broader rule, as well as any other additional data that could be relevant to the temporary ban. The FAA also will consider any new issues relevant to RMNP that may have arisen, the effect of the temporary ban on the benefits of the park experience, including natural quiet, and any unanticipated burden the ban may have imposed on the air tour industry.

Discussion of Comments

A. Introduction

On May 15, 1996 (61 FR 24582), the FAA published an NPRM proposing several alternative methods of preserving the natural park experience of Rocky Mountain National Park by imposing restrictions on commercial aircraft-based sightseeing overflights. Commenters were invited to address three alternatives: (1) A total ban; (2) limits on operations, and (3) a voluntary agreement. As of September 1, 1996, the FAA received 4,527 comments from individuals, air tour operators from other geographic locations, environmental and civic organizations, state and local governments, and groups representing the interests of various segments of aviation. The overwhelming majority of these commenters favor Alternative One, a ban on overflights of RMNP, while a minority of commenters, virtually all representing aviation interests (e.g., National Air Transport Association (NATA), Airline Owners and Pilots Association (AOPA), and Helicopter Association International (HAI)) state opposition to any regulation of overflights at RMNP. Specifically, 4,479 or 98.94 percent of the commenters favor Alternative One; 14 or .30 percent favor Alternative Two; and 7 or .15 percent favor Alternative Three. Opposition to the NPRM and to any regulation of RMNP overflights is expressed by 27 or .60 percent of the commenters.

The vast majority of the comments that opposed sightseeing overflights are from private citizens who appear to have been informed about the NPRM by newsletters and other publications distributed by organizations such as the National Parks and Conservation Association (NPCA). In addition, the public was informed of this proposed action through public involvement activities at Rocky Mountain National Park.

A summary of the views presented by the commenters follows. First, the general issues raised by the commenters are discussed. Second, the three alternatives included in the NPRM are explained and commenters' arguments supporting and opposing each alternative are summarized.

B. General Issues Raised by Commenters

1. FAA Authority and Procedural Rules

Helicopter Association International (HAI) (comment 4357) states that this NPRM does not cite a statutory basis for the proposed action, but if the basis is 49 U.S.C. 44715, the FAA failed to consult the Environmental Protection Agency (EPA). HAI also states that the NPRM exceeds the mandate of Congress as stated in Public Law 100–91 to "provide for the substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight in the Grand Canyon National Park." The primary concern of HAI is that there is no Congressional mandate to restore the

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natural quiet in the RMNP.

Additionally, HAI claims that the NPRM is not in compliance with the Administrative Procedure Act, in that the NPRM is not informative enough to allow a concerned party the opportunity to comment appropriately, is not promulgated on the basis of safety, but on the unsubstantiated and subjective environmental impacts of future overflights, and is not in compliance with the FAA's own procedural requirements in Title 14 of the Code of Federal Regulations (14 CFR § 11.65. HAI also cites the lack of an Environmental Impact Statement (EIS).

National Air Transport Association (NATA) (comment 4229) states that this NPRM allows federal land management agencies like the NPS to "effectively usurp FAA jurisdiction over air traffic and airspace itself" which is contrary to the Federal Aviation Act of 1958 that" * * * specifically charge[d] the FAA with assuring safety and fostering the development of air commerce." NATA and HAI state that this NPRM represents an undue threat to the public right of transit through the navigable airspace of the U.S. as provided for in Section 104 of the Federal Aviation Act. For the FAA to propose such a rulemaking would be to remove its authority to promote air commerce and safety, which would be "an incomprehensible dereliction of responsibility," in NATA's opinion.

The United States Air Tour Association (USATA) (comment 4563) states that the FAA fails to cite the statutory authority for the rulemaking, which it suggests is a tacit indication that the FAA does not have the requisite statutory authority to enact the rules put forth in the NPRM.

The Colorado Pilots Association, Inc. (comment 4429) states that the proposed ban would act as an unreasonable interference with interstate and intrastate commerce.

The National Association of State Aviation Officials (NASAO) (comment 4433) points out in a resolution issued at its Washington conference on March 10, 1996, that the proposed rule would give the NPS authority to direct the FAA in the use of the national airspace, which would be interfering with the FAA's mandate under Federal law.

Southwest Safaris (comment 4583) comments that the FAA does not have the regulatory power, as determined by Congress, to regulate that which does not exist. This commenter adds that the FAA was mandated by Congress to foster and promote the growth of commercial aviation, not to "regulate it out of existence" and that if the NPRM is implemented, commercial aviation would be discouraged instead of constructively regulated on behalf of the general public's interests.

The Northern California Airspace Users Worker Group (NCAUWG) (comment 4424), claims that the NPRM is inconsistent with the NPS Organic Act, unduly discriminatory against aviation, and would establish an undesirable precedent that could be used in other areas to affect negatively the safe and efficient use of airspace. This commenter states that the NPS was created by Congress to "promote and regulate the use of Federal areas known as national parks * * * [so as to] conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. 1). This commenter contends that regulating overflights over the RMNP does nothing to maintain the objectives listed above.

In contrasts, the Sierra Club/Grand Canyon Chapter (comment 2035) and the Citizens for Aircraft Noise Abatement/Sedona (CANA/S) (comment 4227) contend that natural quiet has been identified by the Park Service as a resource, citing the National Park Service Organic Act, as amended by the Redwoods Act of 1978, that defines resource preservation as the primary goal of the national parks. In addition, these commenters cite the Wilderness Act of 1964, which was enacted to protect the "primeval character" of designated lands and to provide "outstanding opportunities for solitude."

The Utah Air Travel Commission (comment 1113) oppose the NPRM because it questions the thoroughness and completeness of the scientific basis of the NPS's Report to Congress, in which aircraft noise alone was singled out as obtrusive, making this report both incomplete and biased. This commenter believes a new study is required, complete with the identification of all obtrusive noise source, before further regulation of park airspace is enacted. In addition, this operations of national parks may violate the Americans with Disabilities Act. This commenter is also concerned with the unconditional restriction imposed on aircraft due to noise, and asks if silent engines of the future will still be restricted.

The Utah Air Travel Commission also cites the conclusion of a study, Tour Passenger Survey Results, that the NPS considered biased because it was a survey of air tour passengers. The Commission believes that while the study may be incomplete, it does not recommend the elimination of park overflights; rather, it identifies the major value of overflights. This, in the commenter's opinion, indicates that no further regulation of overflights is warranted or needed.

2. Lack of Safety Justification of Any Rulemaking

The HAI (comment 4357) opposed the NPRM because there are no studies stating that the proposed rules will promote aviation safety or protect the environment and there has been no research conducted stating that health issues will be advanced.

The Montana Department of Transportation (comment 4349) asserts that aircraft overflights do not damage scenery, natural and historical objects or wildlife in the parks. Therefore, this commenter opposes this NPRM as it believes that "all categories of aviation are already by the use of navigable airspace for all respective flight activities at this time."

The Colorado Pilots Association, Inc. (comment 4429) states that the proposed ban is unnecessary because aerial tours do not operate over RMNP for obvious reasons: the high altitudes of the park; aircraft loading factors; and the attendant operating costs associated with running successful aerial tour operations. Thus, "it is inappropriate to restrict an activity that is unlikely to ever occur."

Geo-Seis (comment 4350), a part 135 certificate holder and provider of certain air tour operations in various parts of the U.S., oppose the NPRM, contending that "while no specific plans currently exist, [it] is an operator that is contemplating operations in the RMNP," especially given the close proximity of its offices to the Park and the type of helicopters this company operates. This commenter asserts that since it operates high altitude helicopters with an excellent safety record, it requests the FAA to reconsider prohibiting helicopter operations in the RMNP in the future.

3. National Standards/General Aviation

National Business Aircraft Association, Inc. (NBAA) (comment 1843), the Grand Canyon Air Tour Council (comment 2006), NATA (comment 4229), Aircraft Owners and Pilots Association (AOPA) (comment 4356), and the NCAUWG (comment 4424) are concerned about the potential for this proposed rule becoming the model for national overflight standards affecting all national parks. While the NBAA (comment 1843) has no vested interest in commercial sightseeing operators, it takes issue with a

requirement to detour around the airspace of national parks while engaging in normal operations. NBAA is opposed to regulation prohibiting overflights by persons other than those engaged in for-hire sightseeing service because "there is no substantial evidence of significant noise impact on park area from normal (non-sightseeing) overflights by general aviation aircraft." Each of these commenters are wary of the implications of the NPRM based on the Grand Canyon National Park Rule, that is their opinion, are inherently discriminatory towards general aviation. AOPA (comment 4356) contends that due to the Grand Canyon National Park Rule, general aviation is required to fly higher altitudes than air tour operators, even though it constitutes very little transient traffic, as opposed to the thousands of overflights conducted by air tour operators. A similar point is made by NASAO (comment 4433). Several of the commenters point out that general aviation does not disturb the natural quiet of RMNP, and the current voluntary overflight altitude of 2,000 feet is one result of voluntary cooperation.

The Grand Canyon Air Tour Council (comment 2006) comments that the RMNP proposal is not separable from the FAA's and the Department of the Interior's project to develop national standards that will attempt to regulate all air traffic over all national parks and other possible federal land, and states that the broader issue "needs to be brought into the public domain for proper viewing." The council recommends a voluntary agreement until the debate on national standards for park overflights is available for national scrutiny.

AOPA (comment 4356) opposes any altitude restrictions for general aviation over RMNP. It asserts that general aviation does not disturb the natural quiet of the RMNP, and the current voluntary overflight altitude of 2,000 feet has served well to negate the potential impact of general aviation overflights.

4. Economic Considerations

Since there are no operators currently performing sightseeing air tour operations over RMNP, the FAA in the NPRM determined that the expected impact of this regulatory action is negligible and that this proposed amendment would not have a significant impact on a substantial number of small entities. Since operators may be considering starting these types of operations over the park in the future, the FAA asked for comment on whether any person intends to institute commercial sightseeing operations at RMNP.

HAI (comment 4357) disagrees with the rationale that there was no need to conduct a regulatory impact analysis because "there are no operators currently performing sightseeing air tour operators over RMNP, therefore the regulatory impact is negligible." HAI states that it is incumbent upon the FAA that an analysis of the future impact of this rule be conducted.

The Grand Canyon Air Tour Council (comment 2006) claims that the cost issue is not fully considered by the FAA. This commenter asserts that if the FAA can use a potential noise issue to justify its proposal it can use potential air tour operation in determining what is and what is not a cost on society. It recommends that the FAA: (1) Assess the monetary value of the RMNP's worth to society; (2) examine the potential revenue that could be appropriately generated through present and future business development (including air tours); and (3) develop a financial mode that would attempt to ascertain cost to society versus other values, e.g., the opportunity to see the seventy percent of the RMNP terrain that is above 10,000 feet.

The Grand Canyon Air Tour Council further asserts that it is very difficult to comprehend how the FAA concluded in the Regulatory Evaluation section that "this rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade." The council states that the majority of air tour operators fall within the federal definition of a small business and that the majority of revenue produced by air tour operators are from foreign visitors.

5. Quiet Aircraft

McDonnell Douglas Helicopter Systems (MDHS) (comment 4552) states that the use of quiet aircraft technology would be more effective in reducing noise than would flight restrictions or the imposition of a ban. This commenter cites Congressional testimony and reports by the NPS and FAA/National Aeronautics and Space Administration (NASA) on the use of quiet aircraft technology and how it can be used as a noise reduction methodology. For example, in a 1994 report to Congress, the NPS recommended the use of quiet aircraft technology as a means to reduce the noise effect on National Parks.

C. Proposed Alternatives

The NPRM outlined three alternative methods of preserving the natural enjoyment at RMNP and requested specific comments on how such agreements could be handled. Alternative One would ban commercial aviation sightseeing tours in the vicinity of RMNP. Alternative Two would allow commercial sightseeing tours, but would restrict the operations to routes that would be restricted to minimum altitudes and would follow the existing road system, among other restrictions. Variations of this alternative were presented in the NPRM. Alternative Three would call for voluntary agreements between air tour operators and the NPS.

Since there were no air tour operators conducting overflights at the time the NPRM was proposed, the three proposed alternatives were an attempt to provide a fair representation of the possible ways to mitigate the predicted effect of aircraft noise generated by future air tour operators. Using the alternatives, which included suggestions ranging from the maintenance of the status quo through the use of voluntary agreements and restrictions on time, season, and altitudes, to a complete ban on all future air tour operations, the FAA made an informed decision. After considering the public policy favoring the preservation of the natural enjoyment of our National Parks, the strong demand from Colorado residents to ban commercial air tour overflights, the special situation and unique features of RMNP, and the numerous comments and alternatives, the FAA concluded that a ban on commercial air tour operations over RMNP will ultimately inure to the benefit of all. In effect, the ban will operate to preserve the status quo, because there are currently no commercial air tour operations at RMNP. The ban clearly protects the enjoyment of the park while avoiding the imposition of restrictions that would result in a less than meaningful opportunity for commercial air tours to operate over RMNP.

1. Alternative One—Ban Sightseeing Tours

a. *Support.* The majority of commenters (99 percent) support a ban on commercial aviation sightseeing tours. Most of these commenters are individuals who live near the park and/or have visited the park. Organizations that support a ban include: CANA/S, Sierra Club, NPCA, Wilderness Land Trust, League of Women Voters, Town of Estes Park, Estes Valley Improvement Association, Inc., Larimer County Board of County Commissioners, The Wilderness Society, and other local governmental and non-governmental organizations. Reasons that commenters give for supporting the ban include:

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(i) *Preserve the Natural Enjoyment of the Park.* Commenters stress that the total ban would preserve the natural enjoyment and tranquillity of the park, which is what visitors value most in their national park experience. Some commenters cite statistics. e.g., 96 percent of park visitors value tranquillity, and 81 percent of park visitors are directly opposed to tour overflights. Some commenters point out that most of the park's visitors come from urban areas and are seeking the peace and quiet offered by the park. Others point out that the original purpose of national parks and wilderness areas was to provide this natural tranquillity and that overflights would destroy this objective.

Commenters assert that the allowance of overflights at other national parks (e.g., Grand Canyon National Park) has resulted in unacceptable noise levels which spoil the experience of park visitors. For example, commenter #2698 says that commercial sightseeing tours in Sedona, Arizona's Red Rock and Canyon regions continually violate FAA regulations which limit flight altitudes.

Roy Romer, the Governor of Colorado (comment 2156), supports Alternative One. He cites the counties, chambers of commerce, and hundreds of area citizens who have shown their unanimous support for a ban on helicopter tour overflights and who believe that helicopter tours of the park would be inconsistent with the long-term economic development goals and quality of life in their communities. Similarly, CANA/S (comment 4227) references two memos: One from Department of Agriculture, Secretary Dan Glickman, to Department of Transportation, Secretary Federico Peña (dated July 31, 1996); and the other from the Forest Service Chief Jack Ward Thomas to Secretary Glickman (dated April 11, 1996): "We believe that commercial helicopter flights over wildernesses are inconsistent with the values for which these areas were established by Congress."

Estes Valley Improvement Association (comment 155) claims that tour operations would shatter the silences in the RMNP "bowl of a valley." It is this commenter's belief that because the air is thin in this area, larger and stronger helicopter engines would be necessary. This would result in unendurable noise in the valley, thereby negatively impacting the ground tourism as well as the quality of life for the residents of the area.

The NPCA (comment 3634) states that, unlike commercial passenger jets and general aviation operations, commercial air tour operations are characterized by frequent, low-altitude flying to maximize contact with scenic points of interest. From the perspective of NPCA's members, this impacts on the park visitor's experience and the preservation of natural quiet.

(ii) *Safety.* Estes Valley Improvement Association (comment 155) cites the danger that tour operators would put themselves in by flying in an area known for extreme variations in weather, as sudden storms are common in the Great Divide and have been known to destroy airplanes. This, in turn, is a great source of danger for helicopters, people on the ground, and rescue operations.

Another commenter (comment 1335), based on his experience as a park ranger at the RMNP, states that bursts of wind would prove difficult for piston-engine aircraft to maintain altitude, air speed, and control when operating in the "rarefied air of these altitudes" of the RMNP. Also, he comments that the terrain of the park is more vertical than horizontal and is not safe for the operation of any aircraft and that a further danger would be for rescue personnel and victims of an incident. He cites the specific example of a recent airplane accident on Mount Epsilon, where the plane exploded from impact on the mountainside; when the airplane and pilot were found, there was no safe way to retrieve the pilot's body due to the potential of avalanches caused by the perilous plane position on the snow cornices on top of the cliff.

One commenter asserts that Alternative One would ensure the safety of park visitors (passengers on overflights and visitors on the ground) by preventing flying in a potentially unsafe mountainous area with varying elevations and unpredictable weather conditions (e.g., quick-forming thunderstorms, strong mountain wave winds and accompanying turbulence). One commenter (comment 540) also asserts that the crash of any aircraft could likely ignite a catastrophic forest fire.

(iii) *Wildlife.* From an ecological standpoint, commenters 295 and 1335 assert that increased air traffic can affect animals in many negative ways: adversely affecting breeding behaviors of birds and mammals, interrupting nesting habits, and causing stress to certain species. Animals indigenous to these areas are apt to respond to this noise stress by either migrating from the area or simply dying off, unable to handle the stress to their natural habitat. In addition, there may be an increased danger from rock falls and avalanches. To this commenter, the most important issue is that the RMNP should serve as a tranquil refuge to the wildlife. Posing a similar ecological concern, a park ranger (comment 1335) mentions the greater pollution problem when dealing with airplane crashes, scattering fuel loads and airplane parts throughout the fragile tundra ecosystems, which require years to recover from such accidents.

A complete ban would prevent potential negative impacts on wildlife. Some commenters state that RMNP is one of the last refuges for many species, and that overflights would devalue their natural habitat and safety. This, in turn, would impact visitors' experience of the park because many of them value wildlife sightings. It would also be consistent with the national policy of providing protection for national park lands.

(iv) *Access for Disabled.* To counter the claim that prohibiting the flight of helicopters would disadvantage the elderly or disabled from enjoying the park, the Estes Park Accommodations Association (comment 257) states that there are areas for cars to travel as well as tour vans to accommodate them. The Wilderness Land Trust (comment 2027) similarly assert that there are opportunities to partake of the scenic vistas, making aviation sightseeing unnecessary.

Visitors who cannot or choose not to see the park on foot can already get a good view of the park and look down on the mountains by driving on one of the park's several roads (e.g., Trail Ridge Road) or by using the handicap accessible trails. Thus, overflights are unnecessary.

(v) *Cost.* CANA/S (comment 4227) states that the benefit (natural quiet for the vast majority of visitors and residents who value this resource) of Alternative One justifies its costs (a disappointed prospective air tour operator of some unknown time in the future). The same analysis applies to the option of maintaining the status quo (avoiding any additional expenses now), which according to this commenter does not "justify its costs (uncertainty about the advent of RMNP air tours, as well as the failure of FAA to address problems in their early or pre-existent stages, not to mention even higher expenses to solve problems retroactively.)" The benefits of Alternatives Two and Three (economic transactions between the few and the fewer) do not justify their costs (shattered natural quiet for most individuals, and enormous governmental expenses for dealing with the problems).

(vi) *Other.* The Wilderness Society (comment 4457) states that, as has occurred at other national parks, correction of overflight problems will be

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virtually impossible once commercial flights have become established. Thus, FAA action is necessary to preclude the establishment of commercial air tour operations within RMNP and provide the highest degree of protection for the park's resources and visitors.

The Sierra Club, Grand Canyon Chapter (comment 2035) strongly supports Alternative One and adds the following recommendations: the rule should be implemented permanently; four bordering Congressionally designated wilderness areas should also be covered under this no-air-tour-flight rule, specifically, Comanche Peak, Indian Peak, Neota, and the Neversummer Wildernesses; general aviation should be subjected to the same rule as air tour operators, except that low altitude flights may be required for emergency purposes like search and rescue, fire-fighting, etc.; and the rule should apply to airspace adjacent to the protected areas as well.

b. *Oppose.* (i) Air Transportation—Least Damaging. Commenters such as the HAI (comment 4357) and Geo-Seis (comment 4350) claim that helicopters and other air tours are the most environmentally sound means to enjoy RMNP because, unlike those visitors on foot, the air tour visitors do not trample vegetation, disturb artifacts or leave behind any refuse. In addition, air tours do not require roads or other infrastructure development. More importantly, they provide a service to the handicapped and elderly, who would not otherwise be able to visit the park. Finally, these tours may fulfill the need to provide rescue and emergency airlift.

NATA (comment 4229) and HAI (comment 4357) state that these proposals are discriminatory in nature as no other modes of access to the Park have been proposed to be limited. NATA states that ground traffic "extol a much more tangible price on the natural beauty of the Park" while air tours "leave no residual effects within the Park that affect the enjoyment of the Park by persons on the ground."

(ii) *Temporary Ban While Studying.* NATA (comment 4229) notes that the idea behind the prohibition of all flights is to allow the FAA and NPS the opportunity to "study the situation and to develop a plan for controlling these overflights to minimize or eliminate their effect on park visitors on the ground." This commenter thinks that this alternative is counter-intuitive to this stated objective, as no data would be able to be collected if no flights were permitted to take place in the RMNP. In order to accurately determine the effect of air tours within the Park, air tours must be allowed within the Park, as extrapolating or estimating the data from other sources would be inaccurate due to the unique characteristics of all parks. In conclusion, NATA believes that the fact no sightseeing operators provide service to the Park is irrelevant and future opportunities to provide access to the Park are eliminated unfairly.

(iii) *Air Tour Operators comparable to General Aviation Aircraft.* The USATA (comment 4563) points out that, according to the NPRM, commercial aircraft currently overfly the park on a daily basis at 19,000 and 16,000 feet above mean sea level (MSL). USATA says that these altitudes are less than 2,000 feet above the highest peaks and also adds that, since seventy percent of the park terrain at RMNP is 10,000 feet MSL, most of the general aviation aircraft currently flying through RMNP are following routes where the Park's peaks rise above these aircraft. USATA states that with numerous aircraft moving in, around and above RMNP, NPS officials, in discussions with the FAA, have found that these aircraft have not caused any serious noise problem. USATA believes that air tour aircraft are akin to general aviation aircraft and commercial overflights, and if used properly, would present negligible effects.

(iv) *Other.* Temsco Helicopters (comment 4575), an operator that conducts air tours in Alaska, says that prohibiting air tours would be discriminatory to air tour operators. This commenter also says that alternative one would create interpretation problems. For example, "are flights that are point to point but fly through RMNP air tours? Is a photo flight an air tour?"

2. Alternative Two—Permit Sightseeing tours with Limitations

a. *Support.* Geo-Seis (comment 4350) would support some time-specific restrictions under this option and suggests that the times be modified to parallel optimum flight conditions, which are primarily earlier in the mornings to mid-afternoon.

b. Oppose. (i) Enforcement. The Estes Valley Improvement Association (comment 155) claims that limiting operations is completely unsatisfactory primarily because of the inability of any agency to monitor this regulation. This commenter and others believe that the proposed requirement of flying 2,000 feet above ground-level is not practical or enforceable since the ground-level varies so drastically from 7,500 to 14,255 feet.

CANA/S (comment 4227) claims that the FAA's 2,000-foot above-ground-level guideline for flights over noise-sensitive areas is routinely ignored by air tour operators. In addition, HAI's flight guidelines are also often ignored.

An individual commenter (comment 325) says that a 2,000 ft. above ground level restriction is meaningless because "[o]ver much of the park's terrain hikers could throw rocks down on the occupants of a plane complying with the restriction." Also, seasonal restrictions are meaningless because the park is used year-round by skiers and others.

(ii) Noise Issue. Estes Valley Improvement Association (comment 155) states that since noise from aircraft reverberates all over the valley, this option to keep flying only over roads would not solve the reduction in noise issue, as this area is where the highest percentage of residents, visitors and lower groups of animals would be affected.

Similarly, CANA/S (comment 4227) adds, noise from aircraft flying at 2,100 feet above ground is, for all intents and purposes, indistinguishable from that at 2,000 feet. Therefore, this alternative and the voluntary agreement fail to address many aspects of the natural quiet equation. This commenter adds, according to NPS's 1992 *Aircraft Overflight Study: Effect of Aircraft Altitude upon Sound Levels at the Ground*, any doubling of flight altitude (say from 2,000 feet to 4,000 feet) would, based on divergence alone, result in only a 12 decibel reduction (NPS, page 3). This commenter contends that this may be helpful in the instance of already quiet aircraft, but loud aircraft would still shatter the quiet.

The Wilderness Society (comment 4457) states that the restrictions of Alternative Two would not eliminate the degradation of visitors' experiences. Routing flights over road corridors would mean that more visitors would be affected by the noise, and routing flights over backcountry areas would affect the highest quality wilderness and wildlife habitat. In addition, restrictions on elevation above ground level would not eliminate the noise problem, and would result in as a de facto ban at those altitudes where noise levels were reduced to an acceptable level because the distance from the ground to the aircraft would be too great to afford a decent view. Finally, it would also be extremely difficult to enforce an altitude restriction.

(iii) Lack of Data. Taking a different approach to this alternative, NATA (comment 4229) perceives that the variants presented by this alternative

offer nothing more than varying forms of restrictions. This commenter assumes that the basis for this action is to enhance the environment of the Park by visitors on the ground by limiting air tour operations during these periods. However, NATA asserts, no quantifiable data exists as to how limiting air access to the Park will enhance the experience of visitors on the ground. According to a survey of Park users conducted by the NPS, about 90 percent of the visitors to the Park stated that their enjoyment of the Park would be affected by helicopter noise. This commenter states that using this data to limit all overflight operations is ludicrous, and "the FAA cannot apply theoretical data to a nonexisting situation."

HAI (comment 4357) believes that this NPRM does not provide sufficient information for meaningful comment. For instance, no information on what routes are considered in Alternative Two was included and there are no maps or charts provided for an analysis of proposed routes. This lack of information makes it impossible to comment in detail.

(iv) Other. NPCA (comment 3634) states that, in a park environment that is totally free of commercial air tour activity, placing limitations on operations would invite the establishment of such activity. NPCA adds that any limit, less restrictive than a total and permanent ban, would result in the derogation of park values rather than any improvement of current conditions.

Temsco Helicopters (comment 4575), which supports alternative three, states that time and seasonal restrictions of alternative two would make any kind of air tour operation unworkable. For example, seasonal restrictions would make operations economically unfeasible and would close the park to one type or class of visitor for a portion of the year.

USATA (comment 4563) disapproves of imposing limits on the routes used by air tour aircraft and points out that the ability of these aircraft to operate away from populated areas is a positive factor. USATA states that air tours would cause the least amount of environmental damage to wilderness areas and would therefore be supporting the mission of the Wilderness Act to preserve the "primeval character and influence" of these areas.

USATA goes on to point out its difficulties with Variants A, B, and C. USATA says that the 2,000 feet AGL limitation of Variant A would be in effect a "one-size-fits-all" approach would could exacerbate the presence of sound from aircraft: this was the case in Haleakala National Park which was required to meet a 1,500 foot AGL minimum by SFAR 71. USATA also states that the time limitations of Variant B would be unreasonable because it would be impossible to present many of the wonders of the park in the absence of flight. Finally, USATA says that the seasonal limitations of Variant C would threaten the viability of air tour operations seeking to operate in RMNP because many of these companies would need to operate year round in order to stay in business.

3. Alternative 3—Voluntary Agreement

a. *Support.* The Grand Canyon Air Tour Council (comment 2006) contends that this is the only viable option. This commenter believes that a voluntary agreement is necessary, because such an agreement provides a solution "where no authority exists for effecting regulatory options (as in the case of this RMNP NPRM)." This commenter provides reasons why the other two alternatives are not acceptable: the disregard to the interests of the elderly and handicapped to have air tour availability in the RMNP, the lack of an Environmental Impact Statement prior to the implementation of the proposed SFAR, and the fact that this proposal is based on a request by Colorado's Governor, the Congressional delegation, and other officials from Colorado specifically, none of whom are the owners of this national park and do not represent a federal statutory authority nor a legislative mandate. Therefore, in this commenter's opinion, it "would appear incumbent upon the FAA to decide to proceed only with Alternative Three and request the involvement of potential tour operators in the establishment of a voluntary agreement to prohibit or limit operations."

Temsco Helicopters (comment 4575) points out that there are good examples of existing voluntary agreements that are working well. For example, in Alaska, where this commenter operates, the best routes and altitudes have been refined over the years and have resulted in the least impact and very few complaints. This commenter states that an SFAR would not allow for the kind of refinements and positive results that such agreements have fostered.

Geo-Seis (comment 4350), an air tour operator, believes that given the personal preferences of paying customers on these flights and limitations on flights due to adverse weather conditions, voluntary and satisfactory operating agreements could easily be established with most operators.

AOPA (comment 4356) believes "cooperation between general aviation pilots and the NPS has always been a cornerstone of aviation's efforts to preserve the park experience of ground visitors. The current voluntary overflight altitude of 2,000 feet is one result of this cooperation."

USATA (comment 4563) supports the use of voluntary agreements and says that its organization would work with the FAA, NPS, and others in drafting a letter of agreement. The agreement should address these issues: (1) areas that would be covered, (2) possible restrictions and identities of the participants, (3) discussion on how an agreement would be implemented in the necessary time frame, (4) how an altitude restriction would be enforced, (5) suggested penalties for violations, and (6) the circumstances under which an agreement could be terminated.

b. *Oppose.* Many commenters say that voluntary compliance is unrealistic because operators would not voluntarily limit their own profits and because it would be difficult to enforce. For example, commenter #325 says that the park is sufficiently large to be a challenge to monitoring of compliance.

The Estes Valley Improvement Association (comment 155) believes that this proposal is completely unrealistic since, currently, operators do not exist in the RMNP, and no possible route of overflights could make tolerable the noise which would fill the Valley and the Park.

NPCA (comment 3634) states that voluntary agreements have a history of failure and cites the experience at Hawaii Volcanoes National Park where many operators, after having given verbal agreements to park management, backed away from written agreements for fear that a rogue operator would capitalize on non-compliance and seize market share. Similarly, the Wilderness Society (comment 4457) states that voluntary agreements have not successfully protected park resources and that violations occur for which the Park Service has no recourse.

On the NPRM's use of the Statue of Liberty and Jefferson National Expansion Memorial as examples of successful voluntary flight agreements, CANA/S (comment 4227) refutes the ability of the FAA to use them as examples. These locales are site-specific, urban ones, where "natural quiet" did not already exist to any appreciable degree, particularly with the 500-foot above ground level altitude agreements in effect. These locales are in no way comparable to those of much more vast territory, much of it wilderness, and much of it relatively

quiet. The sightseeing objective of those two examples is to swoop around a single entity. Similarly, NATA (comment 4229) claims that while these self-regulated, self-policing cases have been successful for those specific parks, no air tour operators currently provide service to the RMNP, and no agreements can be made between the government and "air tour operators which may exist in the future."

Response to Comments

As will be described in greater detail below, the comments offered many cogent and informative remarks for consideration by the FAA. The number and quality of the comments received demonstrated to the FAA the importance and complexity of this issue as it relates to RMNP. All comments were thoroughly read and analyzed.

Many of the commenters offered similar arguments for either acceptance or rejection of the various alternatives presented in the NPRM. Due to the vast number of the comments, the section below is a summary of the assertions alleged in the comments and the corresponding response by the FAA.

FAA Authority To Manage the Airspace

Several commenters questioned what they considered was the apparent usurpation by the NPS of the FAA's statutory authority and jurisdiction to regulate the national airspace system. They asserted that the NPS, through this rule, had gained control over the navigable airspace in complete disregard to the FAA's statutory mandate. The regulation of navigable airspace is the sole responsibility of the FAA. The United States Congress has clarified this issue by vesting the FAA with sole authority for the management and control of the navigable airspace. In addition, safety remains the FAA's primary consideration and plays a necessary and integral role in any decision made by the agency.

The allegation that the NPS has assumed jurisdiction for the management of the national airspace is unfounded. The FAA and NPS worked closely together, however, to base any regulatory action on FAA's statutory authority and responsibility. Toward this end, for example, no action was even proposed until the FAA made a determination that there would be no adverse effect on aviation safety in navigable airspace from any of the proposals stated in the NPRM.

Several commenters argued that the FAA lacked the authority to regulate a problem that "does not exist." These commenters argue that it is premature for the FAA to regulate this area, where commercial air tours do not presently operate over RMNP. The Administrator of the FAA is charged with the duty of regulating the use of the navigable airspace, adopting regulations deemed necessary to abate aircraft noise, and protecting persons and property on the ground. The Administrator has the authority to regulate whenever previous history or evidence has revealed a propensity for future problems.

The FAA acknowledges that each of the national parks differ in their topography, nature, size and purpose, but certain experiences found in one park also occur in other parks. Experience with commercial air tour operations in Badlands National Park, Bryce Canyon National Park, Glacier National Park, Glacier Bay National Park, Great Smokey Mountains National Park, Grand Canyon National Park and Mt. Rushmore National Memorial have demonstrated the rise in the number of commercial air tour operations conducted over the parks and a concomitant increase in the noise from such operations.

For example, at Glacier National Park, The NPS estimates that from 1986–1996 the number of fixed wing and helicopter tours at the park increased from 100 to 800 and the number of tour operators from one to five. At Badlands National Park, NPS estimates that the single air tour operator offering helicopter tours conducted over 400 flights in a five month period, or an average of three flights per hour during peak periods. These flights are repetitive in nature concentrated in two basic circular flight patterns over the same area again and again, constantly disturbing the quiet of the park. The air tour operations have led to numerous complaints by visitors to the park.

Bryce Canyon has air tour operations from several locations within the vicinity of the park. At Bryce Canyon Airport, located 3.5 miles north of the park, NPS reports that the number of enplanements has increased dramatically from 1299 in 1991 to approximately 4700 per year in the current year. Likewise, the number of air tour operators, from all locations, has increased from one to five. At the Mt. Rushmore National Memorial, the Park Service estimates that the number of overflights has increased from 2400 per year to 4000 per year along with an increase of tour operators from one to four. All of the tour operators use helicopters and the majority of these flights are concentrated in the summer months at the rate of approximately 30 per day.

In addition, the Park Service has conducted a survey of park users at RMNP, which indicated that ninety-three percent of visitors considered tranquility to be an "extremely" or "very" important value in the park. Approximately ninety percent of the visitors surveyed stated that noise from helicopter tours would affect their enjoyment of the park. A copy of the survey has been placed in the docket of this proceeding.

Based upon this information from RMNP visitors, the growth of tour operations at these other parks, and the apparent representations of potential tour operators, the FAA has concluded that the introduction of air tour operations at RMNP is a real possibility in the absence of regulation. Further, if commercial air tours are established at RMNP, the actions by commercial air tour operators at the other parks suggests that the number of commercial air tour operators and the number of daily over flights would both increase beyond *de minimus* levels. Air tour operations would tend to visit many of the points of interest where ground-based visitors are likely to concentrate and to conduct operations at altitudes so as to maximize contact with these points of interest. The increase in operations and their proximity to major points of interest would lead to increased noise levels thereby impacting the quiet enjoyment of RMNP expected and desired by visitors to the park.

While the FAA has determined that a permanent rule regarding oversights of Rocky Mountain National Park by commercial tour operators should be made part of the overall rulemaking on overfights of all national park units, the FAA is taking this temporary action now to avert the introduction of such operators into RMNP while the national rule is completed. The experience gained from other national parks forms part of the basis for the Administrator's decision to move at this time to protect Rocky Mountain National Park.

Administrative Procedure Act

One commenter alleged that the FAA has failed to comply with the Administrative Procedure Act's notice and opportunity for comment requirements by failing to provide sufficient information to allow a meaningful response to Alternative Two. As an example, the commenter suggests that, under Alternative Two, the absence of maps and charts deprives the commenter of a meaningful opportunity to analyze the proposed routes.

Section 553(b) of the Administrative Procedure Act provides that "notice shall include—(3) either the terms of substance of the proposed rule or a

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description of the subjects and issues involved." Under the alternatives section, the FAA solicited comments on numerous proposals, while requesting new ideas on possible restrictions. The Agency received many comments on the proposed alternatives, but no new alternative that had not already been proposed. (Had the FAA received a new, significantly different, proposal on which it relied, the FAA would have issued a Supplemental NPRM to solicit comments on the new proposal prior to taking action.) The number and specificity of the received comments demonstrate a general understanding of the proposed alternatives. Therefore, the FAA concludes that it has provided sufficient detailed information concerning the description of the subjects and issues involved to comply with the terms of the Administrative Procedure Act by affording interested parties with a meaningful opportunity to comment on the proposal.

"Natural Quiet" Standard

One commenter challenged the action of the FAA as proposed in the NPRM by alleging that the actions of the FAA exceeded the Congressional mandate provided under Public Law 100–91 to substantially restore the natural quiet of the Park, because that standard was devised solely for the protection of the Grand Canyon. The commenter further opined that the attempt to achieve "natural quiet" in RMNP was inappropriate and without any Congressional mandate.

It is true that Public Law 100–91 was directed to restoring the "natural quiet" of Grand Canyon National Park only and not to the other parks in the national system. Public Law 100–91 provides for the substantial restoration of the natural quiet and experience of the Grand Canyon National Park and protection of public health and safety from adverse affects associated with aircraft overflights. The FAA is taking separate action on restoring the quiet of Grand Canyon National Park.

In this final rule, however, the FAA is carrying out President Clinton's directive to promote natural quiet at Rocky Mountain National Park. As noted above, the President's *Parks for Tomorrow* initiative specified that the restoration of natural quiet, and the natural enjoyment of RMNP are goals to be addressed by this rulemaking. By promulgating this final rule, the FAA is cooperating with the NPS to further the goal of protecting Rocky Mountain National Park, its environment, and visitors' enjoyment, to ensure that the potential problems associated with noise from commercial air tour operations do not arise while a long-term solution is developed to protect RMNP and other national park units from the adverse effects of overflights by tour operators.

Another commenter asserted that NPS's report to Congress, while espousing the restoration of natural quiet, singled out only noise as being obtrusive. The commenter alleged that this made the report incomplete and biased.

The NPS's report to Congress: *Report on Effects of Aircraft Overflights on the National Park System* responded to the Congressional mandate set forth in Public Law 100–91. The scope of the mandate was limited to the impacts of aircraft overflight on the national park system with distinctions to be made among various categories of aircraft overflights. The law made no provision to identify or compare any impacts on the national park system from other activities or sources. To the extent that other activities, such as ground transportation, may have an adverse effect on parks' environment or visitor experience, these effects can be dealt with by the NPS under its authority.

NEPA Requirements

Some commenters maintain that the FAA should prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969, prior to issuing the final rule because they contend that implementation of any of the alternatives of the proposed SFAR, except the ban alternative (Alternative 1), will have a significant adverse affect on the quality of the human environment.

According to the FAA's Environmental Order 1050.1D, the final rule is a Federal action which requires compliance with the NEPA. Consistent with the FAA Order 1050.1D, Para. 35, the FAA prepared a draft environmental assessment (DEA). The DEA did not disclose potentially significant direct or indirect impacts affecting the quality of the human environment. On November 21, 1996, the FAA announced the availability of the DEA for notice and comment. The comment period on the DEA remained open until December 23, 1996. Based on the comments received on the DEA and further analysis, the FAA has issued a Final EA. The FAA has determined that no additional environmental analysis is required and has issued a finding of no significant impact (FONSI). The final EA and FONSI has been issued and is available for review in the Docket. For copies of the documents, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section listed above.

This final rule constitutes final agency action under 49 U.S.C. 46110. Any party to this proceeding having a substantial interest may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after entry of this Order.

EPA Consultation

One commenter states that the NPRM does not cite a statutory basis for the proposed action, but if the basis is 40 U.S.C. 44715, the FAA failed to consult the EPA.

The FAA is, in fact, relying on 40 U.S.C. 44715 and has consulted with EPA. The EPA believes that the environmental assessment adequately supports a finding of no significant impact.

Airline Deregulation Act

Another commenter believes that by promulgating the NPRM, the FAA has violated Section 102 of the Airline Deregulation Act of 1978 by failing to: (1) Encourage the entry of new carriers into air transportation, (2) foster the expansion of existing carriers into additional air transportation markets, and (3) insure the existence of a competitive airline industry. The commenter cites the possibility that interstate operators might become interested in commercial air tours in the future.

The statutory obligation to encourage development and competition among air carriers is not unconstrained. The FAA has authority to regulate, restrict, or prohibit activities by operators when necessary in the public interest. The final rule effects a temporary ban on commercial air tour operations over the Rocky Mountain National Park; the FAA has determined such a ban is necessary to allow for the orderly development of a comprehensive approach to regulating air tour operations at RMNP and other parks in a manner that is consistent with the needs of park visitors on the ground. The potential that an interstate operator will become interested in commercial air tour operations at RMNP at some unspecified point, let alone during this interim period, is pure speculation, irrespective of the informal remarks of the commenters, and fails to rise to the level of a protectable interest. Moreover, it is important to recognize that a major reason the final rule has been promulgated, prior to the existence of commercial air tours, is to avoid the unnecessary interruption of established commercial service by whatever

regulation is adopted in the broader national rulemaking now underway on park overflights.

This rulemaking arose in response to public demand. The policy for preserving the natural enjoyment at our national parks has been formulated by the FAA to facilitate the adaptation of the air transportation system to the present and future needs and interests of the public. Any potential air tour operator currently evaluating whether to provide air tour operations within Rocky Mountain National Park will be able to participate in the development of the rulemaking on national park overflights at all parks, including RMNP.

Americans With Disabilities Act

Several comments were received alleging that the final rule will violate the Americans With Disabilities Act, § 2(a)(8) by depriving disabled persons of equal opportunity for full participation in the enjoyment of the Rocky Mountain National Park. According to these comments, commercial air tour operations will be the only way disabled individuals can enjoy the vistas of RMNP.

To the contrary, Rocky Mountain National Park offers an unique opportunity for disabled individuals to enjoy its spectacular vistas via its extensive road system. Approximately 54% of the RMNP can be viewed from some point along its 149 miles of winding road. In this aspect, RMNP is unique in its ability to provide access to recreational experiences via trails which allow access to backcountry and scenic vistas. Moreover, the NPS has established facilities and programs within RMNP to enhance the opportunities for visitors with disabilities to experience the Park. Thus, FAA believes that this rule does not violate the ADA.

Economic Costs

One commenter suggested that the FAA should conduct a cost/benefit analysis to determine whether the costs of implementing the NPRM will exceed its ultimate value to society. The imposition of this ban will not have an economic impact on commercial air tour operations over RMNP today because they are non-existent. Nor does the FAA consider it probable that significant levels of new services will arise during the temporary period between adoption of this rule and completion of the more comprehensive rulemaking on national park overflights. The FAA's intent is specifically to avert economic damage to commercial air tour operators by acting prior to one of more operators commencing business on the assumption that they will be allowed to operate over RMNP once the general rule is adopted. By acting expeditiously, the FAA will enable these operators to avoid making the capital investments necessary to engage in these operations that may be subject to future restrictions as part of the national rule.

However, it would be an error to minimize the true impetus for the final rule which is to preserve the natural resources at RMNP, including the quiet and solitude. In this respect, it is difficult to assign a monetary value to the benefit to be gained by this rule. Specifically with respect to the economic value attached to the preservation of environmental values, some economic analysis models (such as use of a "willingness to pay" analysis) could ascertain an economic value to society of such an asset. However, such analysis is not necessarily directly comparable in a cost/benefit basis with the economic valuations of costs and benefits that the FAA undertakes for other rulemakings. As a result, the information provided through such an effort would have little analytical or probative value.

National Standards/General Aviation

Many of the commenters that expressed opposition to this rule stated that it is premature for the FAA to take action concerning one park within the national park system when it is currently drafting a rule to cover all aviation operations within the total national park system. The commenters felt that parks should not be dealt with on a case-by-case basis, but should be incorporated into any national standards that are promulgated.

To some extent, the FAA agrees with these concerns. For that reason, this rule will terminate when national standards are adopted. However, in view of the strong local demand for action to ensure preservation of Rocky Mountain National Park and the ripeness of this proceeding, the FAA is taking the opportunity to establish temporary protective measures at RMNP while the national standards are being adopted. By Presidential Declaration dated April 22, 1996, the President directed the Secretary of Transportation to consider and draft a Notice of Proposed Rulemaking that would propose national standards for air tour overflights of the national parks. The FAA is working on that national rule currently and will follow rulemaking procedures, including proceeding with notice and opportunity for comment, prior to taking any final action. The FAA has designed its Rocky Mountain National Park rule to terminate on the adoption of national standards.

Certain commenters raised an objection that even though the air tour ban would apply to only commercial air tour operators, the rule proposed still represents an undue threat to the public right, including that of general aviation aircraft, to transit the navigable airspace of the United States. This final rule is strictly limited to overflights by commercial air tour operators over RMNP. Air tour operations differ from general aviation operations in the frequency of trips and their operational altitudes. In addition, air tours generally operate over picturesque areas where ground traffic congregates and at altitudes intended to maximize contact with these areas. Therefore, air tour operations are distinguishable from general aviation operations to such a degree as to remove any perceived threat to the right of general aviation aircraft to transit RMNP. Under the provisions of the final rule, all other aircraft will remain undisturbed in their current routes and altitudes of flight.

Quiet Technology

Another commenter recommends that rather than banning commercial air tours over the RMNP, the FAA should follow the recommendations of a 1994 report to Congress where the NPS suggested the use of quiet aircraft technology as a means of reducing the noise effect on National Parks. The NPS report to Congress suggested that quieter aircraft could be used in substantial restoration of natural quiet in Grand Canyon National Park (GCNP). It identified Dtt C–6–300, Vistaliner and Cessna 208 Caravan airplanes, and the McDonnell Douglas "No Tail Rotor" helicopters as the quietest aircraft currently operating in GCNP. The NPS made this determination based on its evaluation of aircraft certification data derived from applicable noise certification standards in Part 36 of Title 14 of the CFR, and from NPS flyover noise measurements taken in the park. Because of the temporary nature of this rule, the FAA determined that quiet technology would not provide an adequate alternative. Quiet technology ultimately holds great promise for ensuring the compatibility of air tour overflights and the maintenance of quiet for ground-based visitors of national parks. Indeed, movement toward the use of quiet technology forms a cornerstone of the FAA's proposal for a long-term solution to overflights of the Grand Canyon. And the FAA will want to explore the role quiet technology should play in the national rule. However, for this interim period, a temporary ban on

commercial air tour operations will maintain the status quo and allow an orderly resolution of questions pertaining to quiet technology and other issues. To the extent that technological change would allow the operation of commercial air tours within RMNP in a manner consistent with the protection of the Park, its resources, and its enjoyment by visitors, the FAA will review this rule in the future.

The Lack of Air Tour Operators

Certain commenters questioned whether this rule was even necessary, because aerial tours do not operate over RMNP for obvious reasons: the high altitudes of the park; aircraft loading factors; and the attendant operating costs associated with running successful aerial tour operations. The FAA, in cooperation with the NPS, is currently developing regulations to govern aircraft overflight of national parks. Since the inception of that effort, interest has been expressed by an operator to commence commercial air tour service at RMNP. As a practical matter, it was the fact that a commercial air tour operator was contemplating engaging in flights over RMNP that caused the Governor of Colorado, members of the Colorado Congressional delegation, and Estes Park, Colorado officials to request the FAA to preemptively ban such operations at RMNP.

The fact that commercial air tour service is being contemplated for RMNP supported the FAA determination that immediate action was necessary to preserve the natural enjoyment of visitors to RMNP by implementing a *temporary* ban on commercial air tour operations. In addition, the FAA believes it is critical to act expeditiously on this matter to avoid any potential environmental and economic impact.

Alternatives

As previously mentioned, the FAA is attempting to implement a regulation over RMNP that achieves the goal of preserving the natural enjoyment of the Park by visitors by averting the future and potential adverse effects of aircraft noise. The comments received on the alternatives were crucial in the FAA's decision. Based on the comments, the FAA determined that Alternatives 2 and 3 would not achieve the desired goal. Therefore, the FAA has determined that the best alternative in application and result would be Alternative One on a temporary basis.

In response to the voluntary agreement alternative and the comments received on that alternative, the FAA determined that since there are currently no air tour operators conducting operations over the Park, there are no operators to participate in a meaningful discussion and negotiation with the NPS officials at the Park. The FAA is appreciative of the willingness of certain aviation groups, such as USATA and HAI, to participate in the drafting and implementation of a voluntary agreement. However, without actual operators that would be willing to be made a party to the voluntary agreement, the FAA determined that this alternative would not achieve its desired goal.

Alternative 2 proposed to permit sightseeing tours with several suggested limitations. The FAA partially agrees with some of the commenters who stated that the imposition of partial restrictions would not provide a meaningful result for the commercial air tour operators or achieve the goal of this rulemaking. Moreover, in reviewing the different options that could be used in conjunction with air tour restrictions listed in Alternative 2, the FAA concluded that the application of these options would be operationally difficult for the commercial air tour operators. The terrain within RMNP is quite varied and irregular, with mountain peaks and valleys differing in elevations by thousands of feet. This forces a pilot to be more attentive to the varying topography.

The FAA agrees with the commenters that cited the difficulty in requiring air tour operators to conduct operations only over the existing roadways in RMNP. Certain flight corridors may become necessary in the future, but their establishment will necessitate a much more comprehensive aeronautical and environmental review that just designating the existing roadways. Given the challenging operational environment, the FAA agrees with those comments which claim that restrictions based on the season, time of day, or day of the week would be economically unfeasible for air tour operators.

As noted above, the FAA can reasonably infer from the varied and instructional information received at other parks as to the effects of aircraft noise due to commercial air tour operations. An altitude restriction that would increase the minimum altitude above 2,000 feet above ground level would still have the potential to adversely impact both visitors and resources. Therefore, the FAA determined that the most efficient method of mitigating the potential adverse effects from aircraft noise in this particular case would be to place the preemptive ban on all commercial air tour operations.

Comments Received During the Reopened Comment Period

On November 21, 1996, the FAA reopened the comment period on this rule in order to allow comment on the Draft Environmental Assessment (DEA) that was made available at that time; public responses were also invited to material from the National Park Service that was placed in the docket on December 11, 1996, concerning commercial air tour operations over national park lands.

The information showed that commercial sightseeing operations have become very popular at a number of units of the national park system, and are growing in popularity in others. Many park areas have either documented or estimated significant increases in the volume of air tour activity over the last ten years. For example, air tour flights over Grand Canyon National Park have increased from a few hundred flights per year in the 1960's, to 40,000 to 50,000 per year in 1986, to 80,000 to 95,000 per year in 1996, with up to 40 companies offering sightseeing flights over the park, according to industry, FAA and/or media estimates. Experience at Hawaii Volcanoes and Haleakala National Park in Hawaii has been similar in trend but lower in magnitude, with highs of 23,000 flights per year and 10 operators estimated at Hawaii Volcanoes.

Hard statistics are lacking on the number of sightseeing operations conducted over national park areas because, with the exception of recent fee legislation for Grand Canyon, Hawaii Volcanoes, and Haleakala National Parks, there are no requirements for operators to provide such data. Even at the three parks in the fee legislation, accurate data has not been readily available. In virtually all cases, overflight data has to be estimated based upon a variety of sources, such as airport operations data, limited field observations, FAA projections for airport master planning, industry publications, and voluntary responses to surveys and requests for information.

The trends based upon such numbers indicate increasing interest and levels of sightseeing operations over many national park areas, which correlates with trends for ground visitation. For example, Glacier National Park estimates that between 1986 and 1996 the number of overflights increased from 100 to 800 per year, and the number of commercial air tour operators increased from one to five. Mount Rushmore estimated an increase from 2,400 to 4,000 overflights and from one to four operators during the same time

period. Sightseeing tour operators have become based within a few miles of the park boundary during the past two years at Bryce Canyon and Canyonlands, with major expansion of airport facilities either proposed or approved to accommodate increasing tour operations at both places. At present, a new helicopter tour operation is in the process of starting up at Chickamauga-Chattanooga National Military Park.

The extended comment period closed on December 23, 1996. Forty-nine submissions were received during the reopened comment period, most of which were substantive comments on the proposed rule. Many of the commenters during the reopened period had commented previously, but were either supplementing their prior comments or were adding to or extending their arguments.

Thirty-one commenters used the reopened comment period to express overall support for a complete ban on commercial tour overflights. These include the comments from the Estes Valley Improvement Association, the Town of Grand Lake, CO, the National Parks and Conservation Association, the Pourdre Canyon Group of the Sierra Club, the Estes Park League of Women Voters, and the League of Women Voters of the United States and numerous individuals. These commenters typically stressed the need to maintain the natural enjoyment of the Park's solitude and quiet and argued that overflights by commercial air tour operators would adversely affect that enjoyment. Among those expressing general opposition to the proposal were several other individuals and Bell Helicopters Textron, Inc. Every comment submitted during the reopened comment period was read and considered, although neither all comments nor all points raised will be addressed individually in this preamble. Many of the arguments presented are similar to those that were submitted earlier and discussed above. Several comments, however, suggested new arguments against the imposition of a ban on commercial tour overflights, and these are discussed below.

The new comments that addressed the DEA are discussed in the Final Environmental Assessment for this rule and are not mentioned in the preamble to this rule. A copy of the Final Environmental Assessment has been placed in the rulemaking docket and is available upon request to the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Alleging that the reopened comment period was too short, the Helicopter Association International, the Grand Canyon Air Tour Council, and the United States Air Tour Association requested that the DEA be withdrawn and/or the comment period extended to allow additional time for further analysis. However, several commenters such as the League of Women Voters, the Estes Valley Improvement Association, Inc., and the Town of Grand Lake, stated that the time allowed was sufficient to analyze the DEA and found the document adequate in its review of the relevant environmental consequences associated with this rule. Further, as discussed above, the FAA believes that prompt completion of this rulemaking is necessary, because the proposed ban on commercial air tours contained in the NPRM may affect the business and investment decisions of operators. Therefore, while in the abstract it is always desirable to have more rather than less time for public comments, that desire must be balanced against the need to complete the rulemaking in a timely manner. This means that the temporary ban should be implemented before any air tour operator attempts to start commercial air tour operations at RMNP and then is adversely affected financially by the imposition of the subsequent ban. Experience at other national park units suggests that while commercial air tour operations do not cease in the winter months, the number of commercial air tour operations in the winter (as well as the number of new start-up air tour businesses) is not as high as in the warmer months of the year. Therefore, the FAA wants to impose the temporary ban in the more dormant months of the year before new air tour operations are started.

Even though the comments offered by Southwest Safaris (Safaris) focus on the DEA, Safaris alleges certain points that pertain both to the DEA and this final rule. Safaris argues, among other things, that the FAA has no basis on which to ban overflights by commercial air tour operations, because there are no such operations currently. In the absence of such operations, Safaris argues, there is no "measurable" need to prohibit them. Safaris also dismisses National Park Service data indicating that approximately 90 percent of park visitors surveyed stated that noise from helicopters would affect their enjoyment of the park. ("In the last sentence, the word, 'would,' does not mean 'does.' The impact of helicopter noise over RMNP is entirely hypothetical.") The problem with Safaris' argument is that it necessarily implies that the FAA has no authority to act to prevent reasonably foreseeable problems before they occur, and this is simply false. The agency is not obliged to wait until damage occurs before exercising its authority to stop such damage. This issue arises more frequently in the safety context, where most of FAA's regulations arise, but it applies with no less force in the exercise of FAA's other authorities.

Safaris also challenges the FAA's right to apply information gained from experience with commercial tour overflights of other national parks to RMNP. While each park has unique characteristics, the FAA believes that some general understanding can be gained with respect to the business of conducting tour overflights, including its growth pattern and market considerations. The FAA's and NPS experience extends as well to an appreciation of the effect of such overflights on park visitors and resources. While specific topography and park characteristics must be taken into account, the agencies general knowledge can and must inform its projections about the nature and effects of any air tour operations at RMNP. The FAA acknowledges that additional information would improve our ability to forecast specific noise impacts. The agency has determined to impose only a temporary ban on commercial tour overflights at RMNP while a broader rule is considered. This rulemaking allows the FAA to prevent an overflight problem from air tour overflight from developing in RMNP, as it has in so many other national parks.

Safaris goes on to argue, as does the Northern California Airspace Users Working Group, that air tour operations increase rather than diminish the value of parks, and that compared to automobile visitors, air tour visitors cause less damage to park resources. The FAA will not be drawn into any attempt to compare the benefits and costs to park resources of air and ground visits. Experience from other parks that do have air tour operations is that most air tour national park visitors (though by no means all) are also ground visitors. Indeed, this was confirmed by representatives of the air tour industry at the Grand Canyon in discussions with FAA staff earlier this year. Therefore, air tour operations do not in any large measure replace ground visits. In view of RMNP's ready accessibility to a major metropolitan area and the convenience with which it may be visited by automobile, it is reasonable to assume that this will be particularly true at RMNP.

HAI argues that the NPRM should be withdrawn because, in HAI's view, the regulatory language is too vague to be enforceable. HAI claims that the

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proposed rule would prohibit regional air carrier and on-demand air taxi flights that now traverse the park. The FAA has already addressed the argument that a prohibition on air tours at RMNP would also apply to other kinds of air operations. The short answer is that it would not. The FAA has the same response to the comment of the Soaring Society of America. The Soaring Society's comment argues that gliders do not pollute measurably, either in noise or emissions, and it states the Society would therefore oppose a general ban of aircraft flights over a National Park. The FAA has not imposed any general ban on all aircraft at Rocky Mountain National Park. Only commercial air tour operations would be affected by the temporary ban adopted in this rule.

As to HAI's suggestion here that air tour operations cannot be distinguished from point-to-point service, we believe that neither the operators nor the FAA will have any difficulty in understanding the difference between the high-frequency air tour service that concentrates at places of particular interest and flights that travel as directly as feasible between two distant cities, and happen to traverse the park on a particular route. However, if HAI believes, as it says, that a more specific definition is necessary, we invite HAI to propose one, either for future use at RMNP or as part of the development of a national rule on air tour overflights at national parks.

Regulatory Evaluation

Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is a "significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, small non-profit organizations, and airports located in small cities. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities, defined by FAA Order 2100.14A—"Regulatory Flexibility Criteria and Guidance," is more than one-third, but not less than eleven, of the small entities subject to the existing rule. To determine if the rule will impose a significant cost impact on these small entities, the annualized cost imposed on them must not exceed the annualized cost threshold established in FAA Order 2100.14A.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA's criteria for "substantial number" are a number which is not less than 11 and which is more than one third of the small entities subject to this rule.

This regulatory evaluation examines the costs and benefits of special flight rules in the vicinity of Rocky Mountain National Park (RMNP). The rule is intended to preserve the natural enjoyment of RMNP from any potential adverse impact from aircraft-based sightseeing overflights. Since the impacts of the changes are relatively minor as well as temporary, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared.

Costs

At present there are no air tour operations over RMNP and, despite some expression of interest, none have taken definitive action to initiate service at this time. Considering the historical record, the FAA assumed that this final rule will not lead to increased costs to an operator over the next ten years since there are no operators. Moreover, applications for air tour operations have been repeatedly turned down by the town of Estes Park, and it is unlikely that opposition to air tour operators will lessen over time there.

However, while there are no air tour operators that are currently expected to operate in RMNP, information supplied to the docket shows that from time to time small operators have tried to gain approval for operating over RMNP from local authorities. In order not to overlook the potential costs imposed by this rule to potential operators in this analysis, the FAA has attempted to estimate this potential cost. To estimate the potential costs to these potential operators, the FAA employed recent data from the proposed rulemaking on "Flight Rules in the Vicinity of Grand Canyon National Park."

Financial data from two small scheduled fixed wing operators and a helicopter operator that operate over the Grand Canyon were utilized. The three operators chosen are: a 5 passenger CE 206 operator, a 3 passenger Piper Pa–28–180 airplane operator, and a SA–341–G helicopter operator. The estimated annual operating revenues for these operators are respectively, $53,000, $10,000, and $16,000.

Even if the FAA assumes that three relatively small operators would eventually gain authority to operate over RMNP in the next ten years, the costs will still be quite small. The FAA estimates costs in lost revenues to operators due to this rule will range from zero, which is most likely, to $79,000 per year if three operators are denied the ability to do business over RMNP due to the rule.

Benefits

This rule serves to preserve the desired state of quiet and solitude in the park. Currently, the natural enjoyment of the Park is not disturbed by air tour operators and will not be after the rule is promulgated.

Conclusion

Small entities potentially affected by the final rule are potential air tour operators that in the absence of the rule would operate over Rocky Mountain National Park. The FAA estimates from zero to three operators might be affected by the rule, well below the substantial number criteria. The FAA thus concludes that there will not be a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The final rule will not have any impact on international trade because the potentially affected operators do not

compete with foreign operators. The rule also will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States.

Federalism Implications

This action will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Indeed, State and local government representatives have been among the advocates for FAA regulatory action to protect RMNP from the noise created by overflights. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with United States obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this action will not present any differences.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), there are no requirements for information collection associated with the proposed regulation.

Conclusion

For the reasons set forth above, the FAA has determined that this rule is a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation Safety.

14 CFR Part 119

Air carriers, Aircraft, Aviation safety, Charter flights.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Safety, Transportation.

14 CFR Part 135

Air Taxis, Aircraft, Airmen, Aviation safety.

The Amendment

The FAA wishes to be responsive to concerns about the effects of overflights on the national park system. For that reason and due to the unique situation at RMNP the FAA is temporarily banning commercial air tour operations in the vicinity of the RMNP for sightseeing purposes for the limited duration of the SFAR. In consideration of the foregoing, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations (14 CFR) parts 91, 119, 121, and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

2. The Authority citation for part 19 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 4010, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

4. The authority citation for part 135 is revised to read as follows.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

5. In parts 91, 119, 121, and 135, Special Federal Aviation Regulation No. 78, the text of which will appear at the beginning of part 91 is added to read as follows:

SFAR No. 78—Special Operating Rules for Commercial Air Tour Operators in the Vicinity of the Rocky Mountain National Park

Section 1. Applicability. This Special Federal Aviation Regulation prescribes operating rules for commercial air tour flight operations within the lateral boundaries of the Rocky Mountain National Park, CO.

Section 2. Definition. For the purpose of this SFAR: "commercial air tour" means: the operation of an aircraft carrying passengers for compensation or hire for aerial sightseeing.

Section 3. Restriction. No person may conduct a commercial air tour operation in the airspace over Rocky Mountain National Park, CO.

Expiration: This SFAR will expire on the adoption of a final rule in Docket No. 27643.

Issued in Washington on January 3, 1997.

Linda Hall Daschle,

Acting Administrator.

[FR Doc. 97–435 Filed 1–3–97; 3:46 pm]

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Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Hazardous Materials in Intrastate Commerce and Improvements to Hazardous Materials Identification Systems; Final Rules

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180

[Docket HM–200; Amdt. Nos. 171–150, 173–259, and 180–11]

RIN 2137–AB37

Hazardous Materials in Intrastate Commerce

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires that all intrastate shippers and carriers comply with the Hazardous Materials Regulations (HMR) with certain exceptions. This action is necessary to comply with amendments to the Federal hazardous materials transportation law mandating that DOT regulate the transportation of hazardous materials in intrastate commerce. The intended effect of this rule is to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States.

DATES: *Effective date:* October 1, 1997.

Permissive compliance date: Compliance with the requirements as adopted herein is authorized as of April 8, 1997. This time period provides sufficient time for receipt and resolution of any petitions for reconsideration received on this final rule.

FOR FURTHER INFORMATION CONTACT: Diane LaValle or Deborah Boothe, (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) do not apply to highway transportation by intrastate carriers, except for the transportation of hazardous substances, hazardous wastes, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks. The HMR apply to all hazardous materials transported in commerce by rail car, aircraft, or vessel. A July 1986 report by the Office of Technology Assessment (OTA), then an agency of Congress, entitled "Transportation of Hazardous Materials," highlighted the need for national uniformity in the regulation of hazardous materials transportation and packaging requirements.

In response to the OTA report, RSPA published an advance notice of proposed rulemaking in the **Federal Register** on June 29, 1987 [52 FR 24195] which requested comments on extending the application of the HMR to all intrastate transportation in commerce as a means of promoting national uniformity and transportation safety. In 1990, the Federal hazardous material transportation law was amended to require the Secretary to regulate hazardous materials transportation in intrastate commerce. 49 U.S.C. 5103(b)(1)

RSPA proposed to extend the application of the HMR to all intrastate transportation of hazardous materials in commerce in a notice of proposed rulemaking (NPRM) published on July 9, 1993 [58 FR 36920]. A correction to the NPRM was published on July 15, 1993 [58 FR 38111]. The NPRM requested comments on the need for, and possible consequences of, extending the application of the HMR to all intrastate transportation of hazardous materials in commerce.

More than 200 comments were received in response to the NPRM. While most of the commenters supported the idea of uniformity, a significant number requested relief from the application of the HMR (or portions thereof). Among the concerns expressed were the appropriateness of regulating: (1) Small quantities of hazardous materials that are used incidental to a primary business that is other than transportation; and (2) the operation of small cargo tank motor vehicles.

The major objections raised were that: (1) uniform treatment of all intrastate hazmat shippers and carriers under the HMR would be extremely detrimental to rural and small businesses, including petroleum marketers and farmers; (2) although all States have adopted the HMR, certain States have deviated from the regulations, particularly regarding highway shipments, e.g., by "grandfathering" non-DOT specification cargo tanks, or exempting farm operations; and (3) regulation of user quantities of hazardous materials transported incidental to the primary responsibility of the carrier (i.e., materials of trade) could create burdens for these carriers.

In response to comments to the NPRM, RSPA published a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** on March 20, 1996 [61 FR 11484]. The three proposals addressed in the SNPRM were exceptions from the HMR for: (1) "Materials of trade," (2) non-specification small cargo tank motor vehicles (i.e., less than 13,250 liters (3,500 gallon) capacity) used exclusively in intrastate transportation of flammable liquid petroleum products, and (3) certain requirements addressing use of registered inspectors for these small cargo tank motor vehicles used to transport flammable liquid petroleum fuels.

II. Summary of Regulatory Amendments

RSPA received more than 1200 comments on the SNPRM from a variety of organizations, including trade associations, petroleum marketers, public service commissions, state police, farmers and farm co-operatives, water and power companies, members of Congress, State and Federal government agencies, waste haulers and fertilizer associations.

A. Extension of the HMR to Intrastate Transportation

Commenters in support of the expansion of the HMR to intrastate carriage stated that deviations from a uniform domestic scheme should be minimized. One commenter stated that the report by OTA entitled "Transportation of Hazardous Materials" was right on target by identifying the need for uniformity in transportation of hazardous materials, and that the action taken by RSFA in response to the report and the Federal hazardous materials transportation law was correct.

Petroleum marketers and the agricultural community, many of whom are small businesses, opposed extending the HMR to intrastate movement of hazardous materials. Some of these commenters stated that the additional requirements, such as for shipping papers and placarding, would provide little or no benefit to public safety when compared to the increased cost of regulation. These commenters urged RSPA to issue an exception from the regulations that recognizes the needs of agricultural producers by waiving the application of certain requirements of the HMR. Other commenters expressed concerns about the requirements for specification cargo tanks used to transport hazardous materials (other than combustible liquids) and stated that the cost of retrofitting non-specification cargo tanks would be prohibitive.

As required by the Federal hazardous materials transportation law, this rule extends the application of the HMR to intrastate transportation of hazardous materials by highway and provides exceptions for: (1) Materials of trade transported by interstate and intrastate motor carriers; (2) certain non-

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specification packagings in intrastate transportation; (3) inspectors of small cargo tank motor vehicles, used for flammable liquid petroleum fuels in interstate and intrastate transportation; and (4) certain agricultural products transported in intrastate commerce under specified conditions. Section 171.1 is revised to extend the scope of the HMR to intrastate transportation of hazardous materials. In addition § 171.8 is reorganized for clarity and therefore republished in its entirety for the convenience of the reader.

B. Exceptions for Materials of Trade

Prompted by comments submitted to the NPRM and petitions for rulemaking, RSPA proposed in the SNPRM to limit regulatory requirements for the transportation of certain hazardous materials used as materials of trade. Factors leading to RSPA's determination included: (1) The relatively small quantity of these hazardous materials that are normally carried on a motor vehicle; (2) the general reliance on a DOT specification or U.N. standard packaging (or components thereof) as the principal packaging; and (3) a motor vehicle operator's familiarity with the hazardous material being transported.

Materials of trade include, subject to certain limitations, hazardous materials carried on a motor vehicle for protecting the health and safety of the motor vehicle operator (such as insect repellant or self-contained breathing apparatus) or for supporting the operation or maintenance of a motor vehicle (such as a spare battery or engine starting fluid). They also include certain hazardous materials carried by a private motor carrier engaged in a principal business which is other than transportation, such as lawn care, plumbing, welding, door-to-door sale of consumer goods, and farm operations.

In proposed § 173.6, RSPA identified types and quantities of hazardous materials for which exceptions would be provided. Specific limitations (such as maximum gross weight of materials of trade that may be carried on a motor vehicle) and safety provisions (such as packaging and hazard communication) were proposed to strike a balance between safety and the impact of full application of the HMR.

Most commenters to the SNPRM supported the materials of trade proposal, and offered many suggestions for its modification or expansion.

1. Definition of material of trade (§ 171.8)

One commenter requested that the first two criteria (carried for the purpose of protecting the health and safety of the motor vehicle operator or passengers; and carried for the purpose of supporting the operation or maintenance of the motor vehicle) should be expanded to all modes allowing materials of trade to be carried by air or water. The same commenter also requested that the third criteria (carried by a private carrier in direct support of a principal business that is other than transportation) should be limited to materials used that day which would limit the scope of the materials of trade exception. Two commenters requested that RSPA expand the third criteria of the definition from private motor carrier to include use of a contract carrier dedicated to a private carrier (i.e., an exclusive use contract carrier). In addition, some commenters noted that the materials of trade definition would exclude maintenance vehicles such as tow trucks and railroad motor vehicles that carry materials of trade for the purpose of supporting the operation or maintenance of another motor vehicle or a rail car.

RSPA believes that the materials of trade exception should apply only to highway transportation, as proposed. The HMR already provide modal exceptions for certain hazardous materials used as carrier's equipment and supplies (e.g, § 175.10). This final rule is intended to provide similar relief for highway transportation. The second criteria, however, is expanded to include maintenance vehicles that carry materials of trade for the purpose of supporting the operation or maintenance of motor vehicles rather than "the motor vehicle on which it is carried" as was originally proposed. Under the third criteria, any private carrier, including a railroad operating its motor vehicles in maintenance-of-way service, is eligible for the materials of trade exception. RSPA did not intend to limit the materials of trade exception to materials used the same day. Rather, the primary factor is that the hazardous material is used incidental to the private carrier's principal business.

2. Limitation of Materials of Trade Exception to Certain Classes of Hazardous Materials (§ 173.6(a))

Commenters requested inclusion of the following additional classes and divisions of hazardous materials within the materials of trade exception:

Test kits containing Division 4.3 materials;
Power cartridge devices, Division 1.4;
Division 1.4S igniters used by railroads for welding rail;
Division 1.4G railway torpedoes;
Division 6.2 infectious substances (home health care);
Display fireworks; and
Chlorine gas in 20-pound cylinders.

RSPA agrees that test kits containing small amounts of Division 4.3 materials may be safely transported as materials of trade. These types of test kits are frequently transported and used by electric utilities and used oil handlers and contain very small quantities of a Division 4.3 material. Therefore, § 173.6 includes Division 4.3 materials when transported in quantities that correspond to the small quantity exceptions in § 173.4. A power device cartridge (used to project fastening devices) which is classed in Division 1.4 Compatibility Group S (1.4S) may be reclassed as ORM–D if transported in accordance with the requirements of § 173.63(b). A power cartridge device that is reclassed as ORM–D meets the criteria for a material of trade.

The level of hazard posed by other materials suggested by commenters is not consistent with the intent of the materials of trade exception. For that reason, explosives such as igniters used for welding rail, railway torpedoes, Division 6.2 materials (infectious substances and regulated medical waste), Division 2.3 materials (such as chlorine gas, a poison by inhalation material in Hazard Zone B) and display fireworks are not included in the materials of trade exception.

3. Gross Mass or Capacity of Packagings for Materials of Trade (§ 173.6(a))

Some commenters requested that larger container capacities be authorized for materials of trade, such as a permanently attached tanks having a capacity not greater than 400 gallons for dilute mixtures of hazardous materials.

Commenters expressed concern that, while a small container filled with a concentrated hazardous material may meet the criteria for material of trade, when the same amount is transported in an aqueous solution in a bulk packaging, it no longer qualifies for the material of trade exception. An example is chlorpyrifos, a pesticide, which has a reportable quantity of one pound. As a concentrate, chlorpyrifos would qualify as a material of trade. However, due to its one-pound reportable quantity, when diluted with water in a 300-gallon capacity cargo tank or portable tank to the 1 or 2 percent concentration in which the product is normally applied, the tank will contain a reportable quantity and would be a hazardous substance subject to the HMR as a Class 9 material. Notwithstanding the fact that the same amount of chlorpyrifos (in concentrated form) would be excepted from most regulatory requirements when transported in conformance with

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§ 173.6, under the proposal a tank of diluted material would not be subject to regulatory relief. In some cases these solutions may be diluted to such an extent that they are no longer subject to the HMR. RSPA agrees that the increased volume that comes with dilution poses no additional threat to the environment. Accordingly, § 173.6(a)(1)(iii) authorizes a dilute mixture (up to 2 percent concentration) in a non-specification bulk packaging having a capacity equal to or less than 1500 liters (400 gallons) when properly classed as a Class 9 liquid. A material of trade is authorized in a packaging having a maximum capacity of 30 liters (8 gallons). When the 30 liter quantity is diluted with 1500 liters of water, it produces a 2 percent concentration mixture. A condition specified in § 173.6(c)(2) requires that the bulk packaging (capacity greater than 119 gallons) containing the diluted material of trade must be marked with the four-digit identification number marking (as prescribed by § 172.332) to be authorized for transportation as a material of trade.

4. Materials Excluded From the Materials of Trade Exception (§ 173.6(a)(4))

A few commenters stated that hazardous materials associated with the identification numbers UN2924 and UN2925 should not be excluded from the materials of trade exception. These commenters contended that other dual hazard materials are authorized under proposed § 173.6(a)(1), and use of a generic proper shipping name for such dual hazard materials is not reason to exclude them from the materials of trade exception. Commenters also stated that the list of prohibited hazardous materials associated with certain identification numbers was recently removed from the small quantity exception in § 173.4. RSPA agrees and the identification numbers proposed for inclusion in paragraph (a)(4) are not adopted.

Commenters requested clarification on the inclusion of hazardous wastes as materials of trade. RSPA confirms that hazardous wastes are not included in the materials of trade exception. Inclusion of hazardous wastes as materials of trade would conflict with other requirements such as those pertaining to manifests (40 CFR Part 262 and 49 CFR 171.3 and 172.205).

5. Packaging for Materials of Trade (§ 173.6(b))

Many commenters requested clarification of the packaging requirements for materials of trade. Some commenters stated that it would not be possible to determine whether a non-tested package has equal or greater strength and integrity as one that meets DOT's performance standards. Another commenter stated that the packaging requirements for materials that are not manufactured should be clarified. No alternatives were suggested by commenters.

By requiring the manufacturer's original packaging, RSPA is effectively requiring DOT-authorized packagings or their equivalent for materials of trade. A packaging that has equal or greater strength and integrity should be capable of passing the performance tests required for a packaging for that particular hazardous material. As with all hazardous materials packagings, the packaging must be compatible with the lading. If the manufacturer's original packaging is not available, shippers may refer to the HMR to determine what type of packaging is authorized or required and then make a determination as to what packaging may be used for that material of trade. If doubt remains, shippers and carriers are advised to use a specification packaging.

Commenters also requested an exception from the packaging requirements for salespersons to transport hazardous materials in an open box. An exception is already provided from the outer packaging requirements for receptacles that are secured against movement in cages, carts, bins, boxes or compartments in § 173.6(b)(3). Therefore, a salesperson may transport an open box containing inner receptacles as long as they are secured against movement.

One commenter stated that requirements for packaging gasoline should reference the Occupational Safety and Health Administration's (OSHA) regulations applicable to construction activities (29 CFR 1926.152). These OSHA requirements address storage and use of gasoline at construction sites rather than transportation. The OSHA standard that addresses safety cans for gasoline is 29 CFR 1910.106 which is referenced as an option for packaging gasoline in § 173.6(b)(4).

One commenter stated that RSPA should require that all cylinders have the gauge removed and a protective cap in place for cylinders capable of receiving a cap. Another commenter asked whether manifolding is authorized for compressed gas cylinders. RSPA believes that it is unnecessary for cylinders to have the gauges removed and protective caps in place. Section 173.6(b)(1) requires all materials of trade packages to be securely closed, secured against movement, and protected against damage. Accordingly, all valves must be closed on all cylinders, but manifolding of cylinders charged with gases that are materials of trade is not prohibited.

6. Hazard Communication (§ 173.6(c))

Several large shipping and manufacturing companies requested that the materials of trade marking requirement include the manufacturer's name and telephone number, precautionary/warning statements, trade name and associated hazard, or at least the proper shipping name and identification number.

RSPA is satisfied that marking each package with an indication of the hazardous material it contains (with the addition of marking "RQ" on a package containing a reportable quantity of a hazardous substance) is adequate for a material of trade. In case of a spill, carriers need to know if the spill needs to be reported to the National Response Center, thus the requirement for the "RQ" marking. Additional marking requirements would be of small value due to the quantity limits of most hazardous materials allowed under the materials of trade exception, and in view of the fact that a cylinder containing compressed gas must bear the required DOT hazard warning label. A provision is added in § 173.6(c)(1) to require a packaging to be marked "RQ" when it contains a hazardous substance in a reportable quantity.

One commenter stated that vehicle operators should be made aware of appropriate emergency action. A few of the commenters believe that hazardous materials require more than a passing knowledge that they exist to transport them safely. One commenter stated that carriers should still be required to provide training for their employees.

One purpose of the materials of trade exception is to provide appropriate relief to private carriers transporting small quantities of hazardous materials. These private carriers generally transport the same types of materials repeatedly. Through experience, they gain a basic knowledge of the hazardous material being transported. RSPA does not believe these types and quantities of hazardous materials warrant more restrictive regulation than what was proposed other than the retention of the "RQ" marking requirement, which has been in effect since 1980.

7. Aggregate gross weight of materials of trade on a vehicle (§ 173.6(d))

Many commenters wanted the maximum gross weight allowed on the vehicle raised from 150 kg (330

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pounds), especially when transporting compressed gas cylinders. They stated that cylinders can weigh up to 200 pounds each, and various commenters suggested raising the weight restriction to levels between 500 and 1000 pounds. RSPA agrees that steel cylinders could easily exceed the maximum gross weight for materials of trade on a transport vehicle. Paragraph (d) allows a maximum gross weight of 200 kg (440 pounds) which would typically accommodate two cylinders of compressed gas, each having a gross weight of 100 kg (220 pounds) as limited by § 173.6(a)(2).

C. Exceptions for Certain Non-Specification Packagings Used in Intrastate Transportation (§ 173.8)

The proposals in § 173.8 generated numerous comments both in support of the proposals and in opposition to the exceptions proposed. Comments in support of the proposals were generally submitted by petroleum marketer associations and individual marketers. Comments opposed to the proposals were submitted by State agencies, chemical manufacturers, interstate motor carrier associations, and the National Transportation Safety Board (NTSB).

Some commenters, such as the NTSB, oppose any use in hazardous materials service (other than for combustible liquids) of any non-specification cargo tank past the three year transition provision proposed in the SNPRM. Commenters, including State agencies, stated that an authorization to allow the continued use of non-specification cargo tanks beyond the three year transition period will continue to place the public at risk, by allowing substandard levels of safety. Commenters believe that the level of potential hazard presented by a cargo tank motor vehicle of less than 3,500 gallons is comparable to risks presented by larger cargo tanks and that the fact that these cargo tank motor vehicles operate within a single State does not diminish the risk. The Hazardous Materials Advisory Council stated that deviations from a uniform domestic regulatory scheme should be minimized. The State Police of Idaho described a scenario involving a small cargo tank motor vehicle that resulted in a major hazardous materials incident and forest fire. As a result of this incident, Idaho implemented a complete statewide inspection program on similar type motor vehicles. In support of their opposition to the proposal in this section the Idaho State Police stated:

> The result of this incident caused us to complete a statewide inspection effort on all similar type vehicles. We were alarmed at what we found. Several tanks of the same size as the one involved with the fire were found to have the same type of leaks, going directly on the exhaust system under the tank. Other violations noted included domes with missing seals, inspections that were many years expired, many drivers with no hazardous materials training at all, and much of the equipment in disrepair. We found that in many cases the people operating this type of tankers had just bought the business and started hauling gasoline * * *.
>
> * * * Yet we found a huge majority of this type of tankers that were literally bombs waiting to go off. We believe this is not a problem unique to Idaho, and it is representative of this type of tankers across the nation.
>
> There are many reasons for the poor condition of this type of tankers. They typically travel state and county roads. They rarely, if ever travel through ports of entry or weigh stations and are almost never inspected. Yet, this type of vehicle in a poor state of repair present the greatest danger to safety when compared to large semi-tanker type units.
>
> Small "Mom and Pop" tanks load and unload right next to homes, schools, hospitals and businesses of all kinds and sizes. They are close to large numbers of people as they travel around loading and unloading. Yet the drivers/owners/operators have the least training and the poorest equipment.

Comments in support of the proposed exceptions provided in this section state that the proposal is a good first step in reducing the regulatory burdens on the small business petroleum marketer. Commenters believe that States should be allowed to provide exceptions for businesses within their State. They stated that the safety record of these small cargo tank motor vehicles is very good. They also state that it would be extremely burdensome to totally replace the fleet of non-specification cargo tanks with specification cargo tanks, without quantifiable data that demonstrate significant increases in safety.

RSPA believes that the exceptions provided in § 173.8 are responsive to concerns about the economic and regulatory impacts on small businesses that currently operate non-specification small cargo tanks. RSPA also believes that the conditions prescribed in this section provide for an acceptable level of safety. As provided in this final rule, a small non-specification cargo tank motor vehicle may only be operated by an intrastate motor carrier of flammable liquid petroleum products in a State that allows its use and it must be operated in conformance with the requirements of that State. In addition, after June 30, 2000, the tank would have to meet the Part 180 requirements (except for § 180.405(g)) in the same manner as required for DOT MC 306 cargo tank motor vehicles. Since the exception for continued use of non-specification cargo tanks applies only to those in operation within a State prior to July 1, 1998, no additional non-specification cargo tanks may be placed in service after that date. Therefore, as the non-specification cargo tanks are replaced, they would be replaced with cargo tanks meeting the specification requirements of the HMR.

The Petroleum Marketers Association of America (PMAA) requested that RSPA extend the date that a non-specification cargo tank may be authorized by a state statute or regulation. They requested an additional two years, until July 1, 1998, so that state legislatures would be able to provide such exceptions prior to implementation of these regulations. As requested, the dates within this section have been revised to provide an additional two years for States to incorporate any additional exceptions in their State laws or regulations. Additionally, a three year transition was intended for bulk packagings under § 173.8 (a) and (d)(6); therefore, the dates referenced in these paragraphs have been changed to read "June 30, 2000."

PMAA also asked that RSPA adopt a "truck by truck interpretation" of what constitutes an "intrastate motor carrier," because it believes that a company should not be considered an interstate carrier of hazardous materials when its hazardous materials vehicles never leave its "home" State, but other vehicles used by the carrier transport non-hazardous materials across State lines. In addition, PMAA asked that "intrastate" transportation be interpreted to include movements that are no more than 100 miles outside the carrier's "home" State, because one delivery out of State "to a person who would otherwise never receive any gasoline or diesel fuel * * * will cause all of the other trucks in the fleet to be subject to the federal HMR."

In essence, PMAA is asking RSPA to create new exceptions from requirements in the HMR that have, for many years, been applicable to all interstate motor carriers. If RSPA were to adopt PMAA's request, regarding movements up to 100 miles, an adjacent State would be compelled to accept exceptions that apply in a carrier's "home" State even if those exceptions had not been adopted in the adjacent State. RSPA has consistently interpreted "interstate motor carrier" as any carrier that, in the course of its business, travels between States, or between a State and a foreign country, or between two points in a single State through another State or a foreign country. For this reason,

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RSPA believes that the proper meaning of the term "intrastate commerce," as used in 49 U.S.C. 5103(b)(1) and the HMR, includes only those carriers who transport property or persons solely within the boundaries of a single State.

One commenter requested that the capacity of a cargo tank motor vehicle be revised to read "3,500 gallons or less" rather than "less than 3,500 gallons." RSPA is not adopting this request. Limiting the capacity of these cargo tanks to "less than 3,500 gallons" is consistent with the registration requirements in § 107.601.

The California Highway Patrol (CHP) stated that the proposed volume limitations are inadequate for gasoline used to refuel other vehicles and equipment. According to CHP, in the State of California currently there are thousands of tanks smaller than 119 gallons used to transport gasoline as cargo. These tanks are permanently secured to transport vehicles and are protected from damage or leakage in the event of a rollover. CHP states that these tanks provide farm, timber and construction industries with a practical, safe and economical means of dispensing gasoline for equipment used on job sites. Currently, these packagings are not considered cargo tanks, since by definition a cargo tank is a bulk packaging (i.e., has a capacity greater than 119 gallons). Since the small 119-gallon tanks are not cargo tanks they are not covered by the exceptions provided in this section. RSPA has determined that the exception in proposed § 173.8 for small "cargo tanks" used to transport flammable liquid petroleum products should be equally applicable to non-bulk metal permanently secured tanks that are authorized by the State in which they are transported. Therefore, a provision is added in paragraph (c) to authorize non-bulk tanks, that are permanently mounted and protected against leakage or damage in the event of a turnover, for transportation of flammable liquid petroleum products. As such, after June 30, 2000, these non-bulk tanks would be required to meet the part 180 inspection and testing requirements (except § 180.405(g) which addresses manhole assemblies) as if they were MC 306 cargo tank motor vehicles. Packagings that cannot meet the part 180 requirements must be removed from hazardous materials service by the end of the three year transition period, consistent with the transition period for other non-specification bulk packagings authorized under § 173.8 (b) and (c).

The Petroleum Marketers of Iowa (PMI) requested that RSPA delay publication of this final rule as it relates to the hydrostatic or pressure testing of cargo tanks used in intrastate transportation. PMI states that they are in the process of requesting that the Iowa State University Center for Nondestructive Testing conduct a review and study of the testing of these cargo tanks. RSPA is not delaying publication of this final rule as requested by PMI because any proposal for alternative non-destructive testing procedures for cargo tanks would be beyond the scope of this rulemaking proceeding. In addition, a three-year transition period is being provided for application of the testing and inspection requirements of Part 180 to intrastate carriers. This should be sufficient time for the submission and handling of a well supported petition for rulemaking on the subject. Adoption of alternative or substitute testing procedures for the currently required hydrostatic and pressure testing requirements for cargo tanks could have a substantial effect on the manner of determining the continuing qualification and integrity of all cargo tanks, specification and non-specification alike. RSPA has encouraged PMI to consult with potentially affected parties, such as the Truck Trailer Manufacturers Association, National Tank Truck Carriers, Inc., the Federal Highway Administration's Office of Motor Carrier Safety, as well as RSPA, in regard to the methodologies to be employed in such a study.

Other commenters requested an expansion of the exception to include products such as petroleum crude oil, and natural gas liquids and condensates. Petroleum crude oil and natural gas liquids are flammable liquid petroleum products and, as such, are already afforded the exception. RSPA is clarifying that although all flammable liquid petroleum products are included in the exception in § 173.8 (b) and (c), liquefied petroleum gases are not. The HMR currently provide for the use in intrastate commerce of certain non-specification cargo tanks for propane, see 173.315(k). RSPA does not believe that an expansion of the materials covered by the exceptions provided in this section is necessary or warranted.

Based on the foregoing and the changes described above, § 173.8 is otherwise adopted as proposed.

D. Exception for use of a Registered Inspector

RSPA received several comments regarding the proposed exception in § 180.409 that allows a person to perform an annual external visual inspection and leakage test on small cargo tank motor vehicles used exclusively for flammable liquid petroleum fuels without being a registered inspector. Commenters to the SNPRM disagreed over this exception.

Commenters who opposed the exception stated that the use of substandard cargo tanks to transport hazardous materials over public highways would reduce safety. One commenter stated that registered inspector test costs were nominal, and that initially over 90% of all 3500-gallon tanks required repairs to pass the tests when such tests became mandatory under the part 180 requirements. After five years of annual testing, only 20–25% of tanks required repairs to pass the tests. Other commenters opposed to the proposal stated that the current requirement that inspectors be registered should be retained. They also believe that the training and qualifications of persons performing inspections, who are not registered, would not be adequate. The Idaho State Police stated: "Our previous first hand observations and experience indicate this absolutely will not work. Our inspections revealed all the tank defects that would have been found had the tanks been inspected. Several owners told us they had checked their tanks and did not see anything wrong with them. Many did not even know how to check internal valves for correct operation."

Commenters in support of the exception stated that it would provide "valuable relief to industry." They noted that using a registered inspector resulted in time away from their business to travel to a registered inspector site and financial hardship. A few commenters requested elimination of the annual leak test and the 5-year hydrostatic test altogether, and that RSPA should require a monthly visual inspection to be performed by the owner, including recordkeeping requirements. RSPA has also been asked by the Federal Highway Administration to clarify that the exception applies only to persons who perform visual inspection and leakage tests on their own cargo tank motor vehicles.

Prior to January 1, 1991, the HMR's inspection and periodic retest requirements did not apply to cargo tank motor vehicles with a capacity of 3,000 gallons or less used exclusively in flammable liquid service. This exception was fully evaluated and ultimately removed in a final rule published June 12, 1989 under Docket HM–183, [54 FR 24982]. RSPA determined that periodic tests were necessary for these small cargo tanks to ensure that product retention integrity is maintained. No new data was presented

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for consideration sufficient to support a revision of this requirement.

After consideration of all comments, RSPA believes that the regulatory relief requested by small businesses, is not from the registration procedure itself, but is relief from the educational and years of experience requirements that prevent more persons who wish to perform these tests from registering. In addition, RSPA is clarifying that the exception from registration provided in § 180.409(c) for inspectors of non-bulk permanently secured tanks for flammable liquid petroleum fuel applies only to motor carriers who perform the annual visual inspection and leakage test on motor vehicles that they own or control.

In this final rule RSPA is providing exceptions from the education and years of experience requirements in the definition of "Registered Inspector" in § 171.8 for inspectors of small cargo tank motor vehicles carrying flammable liquid petroleum fuels. These inspectors must still register under Part 107 of this chapter. RSPA is also clarifying that this exception applies only if the person performs the annual external visual inspection and leakage tests on cargo tanks that they own or operate. In addition, inspectors of permanently mounted non-bulk tanks authorized under § 173.8(c) are totally excepted from the registration requirements. Motor carriers should be aware that the other tests required for these permanently mounted tanks by § 180.407(c), e.g., the periodic hydrostatic test, must be performed by a registered inspector. Cargo tank repair, modification, stretching and rebarreling are also required to be performed by a registered facility.

E. Exceptions for Agricultural Operations

RSPA received more than 500 comments from farmers and agricultural supply businesses who expressed concern that a final rule would prohibit states from granting exceptions for farmers. Some of these commenters agreed that, although uniform regulations promote consistent enforcement of the HMR, the nature of agriculture and its importance to their state's economy demands that farmers be granted some reasonable relief from the impact of full application of the HMR. Commenters alleged that the loss of intrastate exemptions would undoubtedly have a major economic impact on the agricultural industry. They also claimed that costs would be approximately $2,000 to $3,500 per year per farm. They strongly encouraged RSPA to develop an exception for agricultural movements consistent with currently authorized state exceptions. Specific requests included exceptions for: (1) Agricultural products in movements of up to 5,000 pounds of a single class of hazardous material on a transport vehicle; (2) any quantity of agricultural products when diluted in water in preparation for field application; (3) ammonium nitrate fertilizer when transported in fertilizer application equipment in quantities of less than 468 cubic feet; and (4) diesel fuel and gasoline when transported in metal cargo tanks of up to 300 gallons capacity.

In a conference report (H.R. Rep. No. 785, 104th Cong., 2d Sess. 67 (1996)) accompanying the FY 1997 DOT appropriations bill, Congress expressed concerns that this rulemaking might increase compliance costs to farmers and agribusinesses and encouraged RSPA "to give serious consideration to establishing an agriculture exemption consistent with similar exemptions already granted by the department."

RSPA believes that confusion exists on the estimates of the burden of complying with the HMR. For example, a carrier who routinely transports the same hazardous material may use a "permanent" shipping paper by laminating a document containing the required description of the materials and emergency response information. In this circumstance, it is not necessary to prepare a new document for each trip. Other commenters believe that this final rule will require more farmers to obtain a commercial drivers license (CDL) or comply with a different level of financial responsibility. Nothing in this final rule will require any additional person to obtain a CDL, nor does it eliminate any waivers from the CDL authorized by the Federal Highway Administration. Other commenters still mistakenly believe that this final rule will require compliance with the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390–397). For example, the Illinois Farm Bureau stated that for those farmers who haul hazardous materials, under the proposed regulation, part 391 of the FMCSR would be applied to them. As stated the preamble to the SNPRM, RSPA has determined that this final rule will not subject additional motor carriers, including farmers, to the provisions of the FMCSR. RSPA did not propose to and has not subjected any new motor carriers to the provisions of the FMCSR. The provisions of § 177.804 remain unchanged and do not extend the application of FMCSR requirements to motor carriers not currently required to comply with the FMCSR. The regulations that address CDL requirements, financial responsibility requirements, and drug testing are independent requirements and nothing in this final rule impacts their applicability to a motor carrier.

RSPA agrees that agricultural operations should be recognized (see § 173.5 in the present regulations) in those States that have chosen to provide exceptions, but not necessarily to the same extent as the present state exceptions.

RSPA is adding definitions for "agricultural product" and "farmer" in § 171.8 and is providing exceptions from the requirements of Subparts G (Emergency Response Information) and H (Training) of Part 172 of this subchapter, in addition to exceptions already provided in § 173.5 for transport by farmers when such a transportation activity is authorized before July 1, 1998 by the State in which the transportation takes place. RSPA believes that the exceptions provided in §§ 173.5 (Agricultural operations), 173.6 (Materials of trade), and 173.8 (Exceptions for non-specification packagings used in intrastate transportation) will provide substantial though not total relief to farmers. For example, many small quantities of packaged hazardous materials meet the definition of materials of trade and may be transported with minimum shipping requirements, such as a general marking on the package to communicate hazard warning information, and notification to the motor vehicle operator of the materials of trade provisions for stowage and securely closing packages. Dilute materials (up to 2 percent concentration) in aqueous solutions that are properly classed as Class 9 materials will qualify for the materials of trade exception when in packagings having a capacity equal to or less than 1500 liters (400 gallons). In addition, flammable liquid petroleum products in intrastate transportation are authorized to be transported in small non-specification cargo tanks if authorized by the State before July 1, 1998. The other requirements of the HMR, including marking and placarding vehicles, hazmat training, shipping papers, emergency response information and emergency response telephone number requirements, except as stated in § 173.5(a) apply to the hazardous materials being transported under this section.

In addition to the other exceptions provided in this section, RSPA is providing an exception, under specified conditions, from the HMR for movements of agricultural products, excluding Class 2 materials, that are

moved between fields of a single farm. This exception applies to a farmer, who is an intrastate private motor carrier, and who transports an agricultural product between fields of his farm over local roads. Movement of the agricultural product must conform to the requirements of the State in which it is transported and must be specifically authorized by current State law or regulation in effect before July 1, 1998. For the purposes of this section, a local road does not include an "interstate highway." RSPA believes that this exception provides regulatory relief for farmers without compromising safety.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) due to significant public and congressional interest. A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This rule concerns the packaging, marking, labeling, placarding and description of hazardous materials on shipping papers. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above.

Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted. Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is January 1, 1998.

C. Regulatory Flexibility Act

This final rule will affect many small business entities that ship or transport hazardous materials, but any adverse economic impact should be minimal. Many small entities affected by this final rule will receive relief from current regulatory requirements. The regulatory evaluation developed in support of this final rule includes a benefit-cost analysis that favors its adoption, primarily due to the positive net benefits that may be realized by small entities.

RSPA estimates that 8,400 for-hire intrastate carriers that are small business entities will be affected by this rule. This is based on the best available data indicating there are approximately 420,000 trucks used in intrastate (208,000) or local (212,000) transportation services, and that nationwide statistics on truck use indicate approximately 2% of all trucks engaged in for-hire transportation carry hazardous materials. RSPA conservatively estimates that each of the 8,400 affected trucks is owned by a separate entity and that each operator is a small business.

In addition to entities engaged in purely intrastate for-hire transportation of hazardous material, this rule applies to motor vehicle operators engaged in agriculture, mining, construction, manufacturing, wholesale trade, retail trade, utilities, and a broad assortment of service industries, including lawn maintenance, plumbing, painting and welding. The Associated Builders and Contractors and the National Association of Plumbing-Heating-Cooling Contractors cite Bureau of Labor Statistics data in Employment and Wages Annual Averages 1992 that estimate there are 629,779 construction establishments, and that 533,455 of these entities employ less than 10 persons. Data from the Small Business Administration indicate there are 73,000 plumbing companies, 24,000 welding companies, 26,000 lawn care service companies, and 31,000 painting companies. For these industries, there is no data readily available that distinguishes entities engaged in purely intrastate operations. RSPA conservatively estimates 90% of the total number do not operate outside their home state.

The minimal adverse economic impact on small entities is attributed to the fact that, because every State has already adopted hazardous materials transportation safety regulations, virtually every intrastate shipper or carrier of hazardous materials is already subject to regulations that are the same as or similar to those in the Federal Hazardous Materials Regulations (HMR). Twenty States have adopted the HMR in their entirety, and the vast majority of remaining States have adopted transportation safety regulations similar to the HMR. Many exceptions provided by the latter group of States are being incorporated in this final rule, especially with respect to agricultural operations (§ 173.5), materials of trade exceptions (§ 173.6), and exceptions for non-specification packagings used in intrastate transportation (§ 173.8).

The scope of the materials-of-trade exception is not restricted to purely intrastate motor carriers. Thus, RSPA is providing significant regulatory relief to small (and many large) entities that currently transport hazardous materials by motor vehicle in interstate commerce. These small entities now may carry certain hazardous materials in alternative packagings that provide equal or greater strength and integrity to DOT specification packagings, and the paperwork burden associated with preparation and retention of hazardous materials shipping papers is completely removed, as is the requirement for reporting incidents involving the unintentional release of a hazardous material that meets the criteria for a material-of trade. In effect, RSPA believes there could be an aggregate net benefit to small entities whose transportation of hazardous materials is limited to materials of trade.

Based upon readily available information concerning the size and nature of entities likely affected by this final rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. Information collection requirements in 49 CFR parts 172 and 177 pertaining to shipping papers are currently approved under OMB control number 2137–0039. Information collection requirements contained in 49 CFR part 171 pertaining to incident reporting are currently approved under OMB control number 2137–0039. Information collection requirements pertaining to cargo tank specification requirements, including testing, in 49 CFR part 180 are approved under OMB control number 2137–0014. Requirements pertaining to marking of bulk containers in 49 CFR part 172 are approved under OMB control number 2137–0575. RSPA believes that any increase in burden as a result of this final rule has been offset by exceptions provided in this and other recent final rules. For example: increases in the burden for the preparation of shipping papers for intrastate transportation of hazardous materials will be offset by the exceptions from shipping paper requirements provided for materials of trade; and increased burdens resulting from intrastate motor carriers being required to submit incident reports have been offset by the elimination of the incident reporting requirements for limited quantities (see HM–222B; 61 FR 27166). RSPA will submit revised information collection burden estimates as a result of this final rule to OMB for approval prior to the compliance dates in this rulemaking.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 173, and 180 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. Section 171.1 is revised to read as follows:

§ 171.1 Purpose and scope.

(a) This subchapter prescribes requirements of the Department of Transportation governing—

(1) The offering of hazardous materials for transportation and transportation of hazardous materials in interstate, intrastate, and foreign commerce by rail car, aircraft, motor vehicle, and vessel (except as delegated at § 1.46(t) of this title).

(2) The representation that a hazardous material is present in a package, container, rail car, aircraft, motor vehicle, or vessel.

(3) The manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold for use in transportation of hazardous materials.

(4) The use of terms and symbols prescribed in this subchapter for the marking, labeling, placarding and description of hazardous materials and packagings used in their transport.

(b) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of a hazardous material shall be subject to and comply with all provisions of the Federal hazardous materials transportation law, all orders and regulations issued thereunder, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Federal hazardous materials transportation law or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

3. In § 171.8, the following definitions are added in alphabetical order:

§ 171.8 Definitions and abbreviations.

* * * * *

Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity including, but not limited to a fertilizer, pesticide, soil amendment or fuel. An *agricultural product* is limited to a material in Class 3, 8 or 9, Division 2.1, 2.2, 5.1, or 6.1, or an ORM–D material.

* * * * *

Farmer means a person engaged in the production or raising of crops, poultry, or livestock.

* * * * *

Material of trade means a hazardous material, other than a hazardous waste, that is carried on a motor vehicle—

(1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers;

(2) For the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or

(3) By a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. Section 173.5 is revised to read as follows:

§ 173.5 Agricultural operations.

(a) The transportation of an agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of this subchapter when:

(1) It is transported by a farmer who is an intrastate private motor carrier; and

(2) The movement of the agricultural product conforms to requirements of the

State in which it is transported and is specifically authorized by a State statute or regulation in effect before July 1, 1998.

(b) The transportation of an agricultural product to or from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of this subchapter when:

(1) It is transported by a farmer who is an intrastate private motor carrier;

(2) The total amount of agricultural product being transported on a single vehicle does not exceed:

(i) 7,300 kg (16,094 lbs.) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 1900 L (502 gallons) for liquids or gases, or 2,300 kg (5,070 lbs.) for solids, of any other agricultural product;

(3) The packaging conforms to requirements of the State in which it is transported and is specifically authorized for transportation of the agricultural product by a State statute or regulation in effect on or before July 1, 1998; and

(4) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of this subchapter.

(c) Formulated liquid agricultural products in specification packagings of 220 L (58 gallons) capacity, or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(d) See § 173.315(m) pertaining to nurse tanks of anhydrous ammonia.

(e) See § 173.6 pertaining to materials of trade.

6. A new § 173.6 is added to read as follows:

§ 173.6 Materials of trade exceptions.

When transported by motor vehicle in conformance with this section, a material of trade (see § 171.8 of this subchapter) is not subject to any other requirements of this subchapter besides those set forth or referenced in this section.

(a) *Materials and amounts.* A material of trade is limited to the following:

(1) A Class 3, 8, 9, Division 4.1, 5.1, 6.1, or ORM–D material contained in a packaging having a gross mass or capacity not over—

(i) 0.5 kg (1 pound) or 0.5 L (1 pint) for a Packing Group I material;

(ii) 30 kg (66 pounds) or 30 L (8 gallons) for a Packing Group II, Packing Group III, or ORM–D material;

(iii) 1500 L (400 gallons) for a diluted mixture, not to exceed 2 percent concentration, of a Class 9 material;

(2) A Division 2.1 or 2.2 material in a cylinder with a gross weight not over 100 kg (220 pounds); or

(3) A Division 4.3 material in Packing Group II or III contained in a packaging having a gross capacity not exceeding 30 ml (1 ounce).

(4) This section does not apply to a hazardous material that is self-reactive (see § 173.124), poisonous by inhalation (see § 173.133), or a hazardous waste.

(b) *Packaging.* (1) Packagings must be leak tight for liquids and gases, sift proof for solids, and be securely closed, secured against movement, and protected against damage.

(2) Each material must be packaged in the manufacturer's original packaging, or a packaging of equal or greater strength and integrity.

(3) Outer packagings are not required for receptacles (e.g., cans and bottles) that are secured against movement in cages, carts, bins, boxes or compartments.

(4) For gasoline, a packaging must be made of metal or plastic and conform to requirements of this subchapter or requirements of the Occupational Safety and Health Administration of the Department of Labor contained in 29 CFR 1910.106.

(5) A cylinder or other pressure vessel containing a Division 2.1 or 2.2 material must conform to packaging, qualification, maintenance, and use requirements of this subchapter, except that outer packagings are not required. Manifolding of cylinders is authorized provided all valves are tightly closed.

(c) *Hazard communication.* (1) A non-bulk packaging other than a cylinder (including a receptacle transported without an outer packaging) must be marked with a common name or proper shipping name to identify the material it contains, including the letters "RQ" if it contains a reportable quantity of a hazardous substance.

(2) A bulk packaging containing a diluted mixture of a Class 9 material must be marked on two opposing sides with the four-digit identification number of the material. The identification number must be displayed on orange panels or, alternatively, a white square-on-point configuration having the same outside dimensions as a placard (at least 273 mm (10.8 inches) on a side), in the manner specified in § 172.332 (b) and(c) of this subchapter. Each digit in the identification number marking must be at least 25 mm (one inch) high and 6 mm (0.24 inch) wide.

(3) A DOT specification cylinder (except DOT specification 39) must be marked and labeled as prescribed in this subchapter. Each DOT–39 cylinder must display the markings specified in § 178.65–14.

(4) The operator of a motor vehicle that contains a material of trade must be informed of the presence of the hazardous material (including whether the package contains a reportable quantity) and must be informed of the requirements of this section.

(d) *Aggregate gross weight.* Except for permanently mounted tanks authorized by paragraph (a)(1)(iii) of this section, the aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds). A material of trade may be transported on a motor vehicle under the provisions of this section with other hazardous materials without affecting its eligibility for exceptions provided by this section.

7. A new § 173.8 is added to read as follows:

§ 173.8 Exceptions for non-specification packagings used in intrastate transportation.

(a) *Non-specification bulk packagings.* Notwithstanding requirements for specification packagings in subpart F of this part and parts 178 and 180 of this subchapter, a non-specification bulk packaging may be used for transportation of a hazardous material by an intrastate motor carrier until July 1, 2000, in accordance with the provisions of paragraph (d) of this section.

(b) *Non-specification cargo tanks for petroleum products.* Notwithstanding requirements for specification packagings in subpart F of this part and parts 178 and 180 of this subchapter, a non-specification cargo tank motor vehicle having a capacity of less than 13,250 liters (3,500 gallons) may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with the provisions of paragraph (d) of this section.

(c) *Permanently secured non-bulk tanks for petroleum products.* Notwithstanding requirements for specification packagings in subpart F of this part 173 and parts 178 and 180 of this subchapter, a non-specification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 450 liters (119 gallons), may be used by an intrastate motor carrier for transportation of a flammable liquid

petroleum product in accordance with the provisions of paragraph (d) of this section.

(d) *Additional requirements.* A packaging used under the provisions of paragraphs (a), (b) or (c) of this section must—

(1) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(2) Be operated in conformance with the requirements of the State in which it is authorized;

(3) Be specifically authorized by a State statute or regulation in effect before July 1, 1998, for use as a packaging for the hazardous material being transported;

(4) Be offered for transportation and transported in conformance with all other applicable requirements of this subchapter;

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant; and

(6) On and after July 1, 2000, for a tank authorized under paragraph (b) or (c) of this section, conform to all requirements in part 180 (except for § 180.405(g)) of this subchapter in the same manner as required for a DOT specification MC 306 cargo tank motor vehicle.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

8. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 180.409, the introductory text of paragraph (a) is revised, paragraph (b) is redesignated as paragraph (d), and new paragraphs (b) and (c) are added to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(a) Except as otherwise provided in this section, any person performing or witnessing the inspections and tests specified in § 180.407(c) must—

* * * * *

(b) A person who only performs annual external visual inspections and leakage tests on a cargo tank motor vehicle, owned or operated by that person, with a capacity of less than 13,250 liters (3,500 gallons) used exclusively for flammable liquid petroleum fuels, is not required to meet the educational and years of experience requirements set forth in the definition of "Registered Inspector" in § 171.8 of this subchapter. Although not required to meet the educational and years of experience requirements, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter, and must register with the Department as required by subpart F of part 107 of this chapter.

(c) A person who performs only annual external visual inspections and leakage tests on a permanently mounted non-bulk tank, owned or operated by that person, for petroleum products as authorized by § 173.8(c) of this subchapter, is not required to be registered in accordance with subpart F of part 107 of this chapter. In addition the person who signs the inspection report required by § 180.417(b) of this subpart for such non-bulk tanks is not required to be registered. Although not required to register, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter.

* * * * *

Issued in Washington, DC on December 30, 1996 under authority delegated in 49 CFR, part 1.

D.K. Sharma,

Administrator.

[FR Doc. 97–188 Filed 1–7–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176 and 177

[Docket No. HM–206; Amdt. Nos. 171–151, 172–151, 173–260, 174–84, 175–85, 176–42, 177–89]

RIN 2137–AB75

Improvements to Hazardous Materials Identification Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to better identify hazardous materials in transportation. Changes include adding a new "POISON INHALATION HAZARD" (PIH) label and placard to enhance the ready identification of materials which are poisonous if inhaled, lowering the quantity for specific hazard class placarding from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) of one class or division of material loaded on a transport vehicle, expanding requirements for transport vehicles and freight containers that have been fumigated, and other enhancements to the hazard communication system. Improved identification of, and information about, hazardous materials in transportation assists emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and improves safety to transportation workers and the public.

DATES: *Effective date:* October 1, 1997.

Compliance date: Voluntary compliance is authorized beginning February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Current Hazard Communication System

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) include a wide variety of hazard identification and communication requirements for hazardous material shipments. These requirements are designed, in part, to provide fire and emergency response personnel, the public, and transport workers with information in the event of a transportation incident involving hazardous materials. Hazard communication and emergency response information requirements are set forth in Subparts C through G of Part 172 of the HMR.

During transportation, most non-bulk packages of a hazardous material must be marked with the shipping name and identification number of the material and must have a hazard warning label affixed to the package. Many shipments of hazardous materials must be identified by placards attached to the transport vehicle or bulk package. Most hazardous materials must be described and identified on a shipping paper that accompanies a shipment in transportation. A shipping paper must contain an emergency response telephone number that is monitored at all times the hazardous material is in transportation. This telephone number is used by emergency responders to

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obtain more detailed, product specific information on the hazardous material being transported. A carrier is required to have on each vehicle transporting a hazardous material appropriate emergency response information intended to provide guidance for the initial actions to be taken in the event of an incident.

The hazard communication system in the HMR generally is consistent with international standards. In a number of rulemaking actions from 1976 to the present, DOT has revised hazard communication requirements in the HMR, by adoption of shipping descriptions, labels, and placards, for consistency with standards in the United Nations Recommendations on the Transport of Dangerous Goods (U.N. Recommendations).

The changes to hazard communication requirements made by this final rule are intended to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. These changes should result in better response by, and protection for, emergency response personnel, (e.g., local fire or police department personnel), and help ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

B. Rulemaking History

On June 9, 1992, RSPA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** [57 FR 24532]. The ANPRM was issued in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. Law 101–615). The section required the Secretary of Transportation to initiate a rulemaking to determine methods of improving the existing system of placarding vehicles transporting hazardous materials and to determine methods for establishing and operating a central reporting system and computerized telecommunications data center that could provide information to facilitate responses to incidents involving hazardous material. DOT was required to contract with the National Academy of Sciences (NAS) to study the need for establishing the central reporting system and telecommunications center. The NAS and DOT reports are included in this docket.

In the ANPRM, RSPA requested comments on 63 primary questions, many of which had sub-elements, addressing: (1) Methods of improving the current system of placarding vehicles transporting hazardous materials; (2) methods to improve the system of identifying hazardous materials in transportation; (3) the feasibility and necessity of requiring carriers to maintain continually-monitored telephone contacts for emergency response information; and (4) methods for establishing and operating a central reporting system and center that could provide information to facilitate responses to incidents involving the transportation of hazardous materials. More than 230 comments were submitted in response to the ANPRM. Most commenters did not support a comprehensive modification of the existing hazard communication requirements. The commenters were overwhelmingly opposed to establishing a central reporting system and center, on the grounds that it would not be workable and would be too costly.

On August 15, 1994, RSPA issued a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing certain changes to the hazard communication requirements of the HMR. [59 FR 41848; Corrections to the NPRM were published Aug. 26, 1994 (59 FR 44230) and Aug. 30, 1994 (59 FR 44795)] RSPA agreed with the central recommendation in the NAS report and most of the commenters to the ANPRM not to establish a national, central reporting system and computerized telecommunications data center. Accordingly, RSPA did not propose to establish a central reporting system and computerized telecommunications data center.

More than 80 written comments from chemical companies, transport companies, farmers, trade associations, explosives manufacturers and distributors, police departments and fire associations, State governments, and the National Transportation Safety Board (NTSB) were received in response to the NPRM. In addition, on October 18, 1994, a public hearing was held in Washington, DC. Twenty-four persons attended, and several presented written and oral statements. A transcript of the public hearing is on file in the Docket.

II. Regulatory Issues

A. Summary

A majority of commenters supported RSPA's narrowing of the issues related to improvements to the current hazard identification and communication system and supported most of the proposals.

The following is a discussion of the comments and regulatory changes made in this final rule.

B. Labeling and Placarding Requirements

1. *PIH label and placard.* RSPA is adopting, as proposed, in Subparts E and F of Part 172, respectively, unique labels and placards for both liquids and gases that are poisonous by inhalation (PIH).

Based on their severe inhalation hazards, certain materials are designated as poisonous by inhalation. The term "material poisonous by inhalation" is defined in 49 CFR 171.8. Classification criteria are set forth in § 173.115 for gases and § 173.132 for liquids. Specific regulations in Subparts C and D of Part 172 generally require that the words "Inhalation Hazard" be entered on each shipping paper and marked on each packaging in association with the proper shipping name for PIH materials. Packages of PIH materials must also be labeled and transport vehicles must be placarded, as appropriate. Currently emergency responders are alerted to the presence of materials poisonous by inhalation in transportation by these special package markings and shipping paper information. Since harmonizing domestic regulations with international standards in the U.N. Recommendations and adopting international labels and placards, hazard warning words on a label or placard are no longer required in the HMR. Because of the lack of hazard warning words or a distinguishing characteristic in the symbol on a POISON vs. POISON GAS label or placard to immediately warn emergency responders of the dangers associated with poisonous liquids or gases, RSPA believes the existing POISON or POISON GAS label and placard are not adequate in communicating the inhalation hazard of these materials.

In the NPRM, RSPA proposed a distinctive label and placard for PIH materials. A majority of commenters supported adoption of a PIH label and placard, and others indicated that they would support a PIH label and placard if adopted by the U.N. Most commenters, both for or against the proposal, linked their positions to concerns for maintaining harmonization with the U.N. Recommendations in hazard communication. Commenters supporting a PIH label and placard stated that the new warnings would improve DOT's hazard communication system by creating an instantly recognizable difference between PIH materials and other poisons, thus further enhancing responder safety. The International Association of Fire Chiefs stated that changing the labeling/placarding from "Poison" to "Poison

Inhalation Hazard" is very appropriate and will be extremely beneficial to emergency responders. The Chemical Manufacturers Association (CMA) supported creation of a new placard for liquids and gases deemed poisonous by inhalation because of the additional guidance that would be provided to emergency responders; however, CMA urged RSPA to work with the U.N. to develop and gain acceptance of a new label and placard before modifying the HMR. The American Trucking Associations (ATA) supported adoption of a PIH label and placard in its comments to the ANPRM and continued that support in its comments to the NPRM. ATA indicated that the present system for identifying PIH materials is inadequate and confusing. ATA also suggested revisions to §§ 171.11, 171.12, and 171.12a, to allow continued use of the existing POISON and POISON GAS labels and placards for international shipments. The Chemical Waste Transportation Institute (CWTI) suggested that the "Inhalation Hazard" marking prescribed in the current § 172.313 be eliminated if PIH labels and placards are displayed in domestic transportation.

Several supporters believe that, if RSPA adopts a PIH label and placard, the INHALATION HAZARD text "must" be displayed on the label and placard at all times. Many commenters supporting the proposed PIH label and placard asked RSPA to provide a transition period of at least one year for implementation.

Commenters opposed to a U.S.-only PIH label and placard said such a provision would depart from the hazard communication system established in Docket HM–181 to achieve international uniformity. Other commenters opposing a PIH label and placard asserted that existing POISON and POISON GAS labels and placards clearly convey an adequate warning and are generally well understood.

RSPA believes that a new PIH label and placard provide a distinctive warning to emergency responders of the unique hazards (extreme toxicity, high volatility) of PIH gases and vapors. RSPA intends to propose classification, hazard communication and packaging requirements for PIH materials for adoption in international transportation regulations during the 1997–98 biennium of the U.N. Committee of Experts on the Transport of Dangerous Goods. Requiring a specific PIH label and placard is an additional step in RSPA's effort, begun in 1985, to enhance safety in the transportation of PIH materials by establishing a complete system of transportation controls: Classification; hazard communication; and packaging. Adding a PIH label and placard to the hazard communication requirements also responds to a petition (P–1132) for rule change from the Compliance and Investigation Committee of the Cooperative Hazardous Materials Enforcement Development (COHMED) program. The COHMED program, made up of participants from Federal, State and local government agencies, and industry, is an outreach activity of RSPA that promotes coordination, cooperation, education and communication for the safe transportation of hazardous materials.

In response to concerns expressed by commenters, if the new PIH label or placard is displayed, the "Inhalation Hazard" marking specified in § 172.313 is not required on a package. However, packages being transported under the provisions in §§ 171.11, 171.12, or 171.12a, which are not labeled as required in this final rule, must display the "Inhalation Hazard" marking. RSPA is not adopting a requirement requested by commenters that display of text be required on labels and placards. RSPA believes that the distinct design and dark color of the symbol depicted on the new PIH label and placard adequately convey the appropriate information to alert responders to the dangers involving materials poisonous by inhalation. Also as requested by commenters, for highway and rail shipments of a material poisonous by inhalation, RSPA is including transitional provisions for continued use of the old POISON or POISON GAS placards until October 1, 2001, which is consistent with the current transitional provisions in § 171.14 for placarding highway shipments of hazardous materials (i.e., October 1, 2001).

2. *Lowering the placarding exception for use of the DANGEROUS placards from 2,268 kg (5,000 pounds) to 1,000 kilograms (2,205 pounds).* As proposed, RSPA is adopting, in the placarding provisions in Part 172, a requirement that limits use of the DANGEROUS placard for mixed loads of hazardous materials. RSPA is lowering from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) the quantity of one class or division of a hazardous material loaded at one facility for which a specific placard (e.g., CORROSIVE or FLAMMABLE) is required.

A number of commenters opposed this proposal, citing the potential for confusion, additional training, placard proliferation, decreased hazard warning effectiveness, additional drivers needing a Commercial Driver's License (CDL), and cost to industry. The Conference on Safe Transportation of Hazardous Articles, Inc., urged RSPA not to implement the proposed change, stating that it would increase costs and cause a regulatory "ripple effect" associated with the reduction of the current placarding threshold.

Farmland Industries, Inc. (Farmland), opposed lowering the quantity for which specific hazard class placarding is required and believed that modification of the use of the DANGEROUS placard would require greater investment in additional placards and training to obtain compliance with the regulations. Farmland stated that each of these investments adds costs to its products, which will ultimately be borne by the consumer. The International Sanitary Supply Association (ISSA) opposed limiting use of the DANGEROUS placard. ISSA stated that, at a time when industry is still coming to terms with the massive changes brought about by HM–181, it is imperative to provide some consistency in the regulations to facilitate overall compliance and transportation safety.

A number of commenters supported the proposal stating that safety would be improved by requiring more shipments to display specific hazard class and division warnings. The IAFC expressed support for the proposal because use of the DANGEROUS placard increases the risk to response personnel arriving at the scene of an emergency because the nature or characteristics of the hazardous material are not specifically identified, resulting in delaying decisions on how to mitigate the incident. Another commenter stated the DANGEROUS placard does not provide enough significant information to emergency responders trying to identify hazardous materials in a transport vehicle. The Compressed Gas Association supported the proposal to better identify the hazards. Shell Oil stated the presence of a DANGEROUS placard may, in some instances, delay effective action. Monsanto stated that the DANGEROUS placard should be eliminated altogether because its elimination will serve to further increase compliance and safety.

RSPA believes that further limiting the use of the DANGEROUS placard by lowering the quantity from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) for which a specific placard is required will improve communication relative to the hazardous materials being transported on a vehicle. RSPA does not agree with the comments asserting that additional drivers will be requiring a CDL. Since these motor vehicles are already

placarded with a DANGEROUS placard, display of a specific placard will not affect or increase the number of drivers needing a CDL.

3. *Lowering the placarding exception threshold from 454 kg (1,001 pounds) to 400 kg (882 pounds) aggregate gross weight of Table 2 hazardous materials.* In this final rule, RSPA is not lowering the placarding exception threshold in § 172.504(c). RSPA proposed lowering the placarding exception threshold for hazardous materials in Table 2 from 454 kilograms (1,001 pounds) to 400 kilograms (882 pounds). The exception allows for the transportation of up to 454 kilograms (1,001 pounds) aggregate gross weight of "Table 2" hazardous materials in non-bulk packagings on a transport vehicle without placarding.

More than 50 comments were received in opposition to the proposal. In support of their opposition to this proposal, commenters cited the potential for increased confusion, increased costs to industry, an increase in the number of drivers requiring a CDL, increased burden on small shippers, more placard-related prohibitions (i.e., tunnels, some expressway restrictions), training, placard "proliferation," and reduced effectiveness of the placarding requirements.

Some commenters in support of the lowering of the placarding exception, indicated that even small amounts of hazardous materials can cause injury or damage to the public, property, and the environment, and that without placards communication of this important information would be lacking. Monsanto said that the exception to the placarding requirement is inconsistent with other parts of the hazardous materials regulations requiring labeling and marking for smaller quantities of hazardous materials found in other sections of the regulations. Monsanto indicated that reduction of the weight limitation would lead to better communication for hazardous materials shipments, enhanced safety and better emergency response.

RSPA views the proposed lowering of the placarding exception threshold as an incremental enhancement to safety. RSPA agrees with commenters that the number of drivers needing a CDL would increase because more vehicles would be placarded and that such a change would substantially increase compliance costs. Upon further consideration, RSPA has determined that the benefits of this safety enhancement do not outweigh the potential costs and is not adopting this proposal.

4. *Table 1 placard assignment—Organic peroxide, Type B, liquid or solid, temperature controlled.* In § 172.504, RSPA is adopting the proposal to require placarding of any quantity of "Organic peroxides, Type B, temperature controlled" material. In the NPRM, a proposal was made to include "Organic peroxide, Type B, liquid *or* solid, temperature controlled" in Table 1 of § 172.504(e), which would require placarding in any quantity. Only two comments were received on this issue. PPG Industries, Inc., supported the change. J. B. Hunt Transport, Inc., recommended changing the classification of Organic peroxide, Type B, temperature controlled materials to a Class [Division] 1.3 Explosive, but did not provide any information to substantiate its proposal.

RSPA believes that organic peroxides that require refrigeration for stabilization purposes during transport pose a substantial hazard in any incident that results in a loss of temperature control. These organic peroxides can decompose with such rapidity within a package that the resultant heat and gas will violently burst the package, creating a dangerous situation during which emergency measures and possible evacuation of the areas would need to be initiated. In order to make emergency responders aware of organic peroxides requiring temperature control, it is necessary to communicate the fact without regard to quantity. Therefore, RSPA is adding "Organic peroxide, Type B, temperature controlled" in placarding Table 1 of § 172.504(e). The placarding requirements applicable to other organic peroxides remain in Table 2.

5. *Prohibited and permissive placarding: Extraneous information on placards and in placard holders.* RSPA is revising § 172.502 to prohibit extraneous information (e.g., "DRIVE SAFELY") on placards, in placard holders and on placard-type displays, as proposed. RSPA received 18 comments supporting the proposal to prohibit the display of extraneous information, such as the "DRIVE SAFELY" slogan, on a placard, placard-type display, and in a placard holder. Most of the commenters believed the prohibition will reduce confusion among emergency responders and increase placard effectiveness. ATA urged RSPA to allow a 7 year phase-out period. Dow Chemical Company supported this change, and requested that a reasonable phase-out period be allowed. Yellow Freight System, Inc. supported removal of extraneous information on placards, placard-type displays, and in placard holders and stated that other venues exist on tractors and trailers for carriers to more appropriately place messages unrelated to the safe transportation of hazardous materials. The State of Michigan, Department of State Police stated that elimination of the "DRIVE SAFELY" sign is an excellent change and should be adopted. The National Tank Truck Carriers, Inc. (NTTC) had no opposition to this proposal, but questioned whether "DRIVE SAFELY" slogans on placard-type displays could be confused with "alert words" used on placards.

Five commenters, including the National Private Truck Council, opposed the proposed prohibition, asserting that there is no evidence the "DRIVE SAFELY" display on placards and in placard holders confuses responders. The National Industrial Transportation League (NITL) stated that it could better support a rule which would simply forbid the marking of signs or slogans on vehicles, bulk packaging and containers in the "future," but not require the removal of signs and slogans which currently exist. A commenter opposed to this change stated the current requirement in § 172.502(a)(2), as it is currently written, is sufficient to prevent displays of conflicting slogans or markings on transport vehicles carrying hazardous materials.

RSPA believes that extraneous information displayed on placards, placard-type displays, and in placard holders, such as "DRIVE SAFELY" and other slogans, detracts from the basic function of placards, and reduces the ability of emergency responders to readily recognize vital hazard alerting information. Placards must be strictly reserved for hazard communication with all other confusing or conflicting displays prohibited. Accordingly, RSPA is prohibiting the display of extraneous information on placards, placard-type displays, and in placard holders.

RSPA agrees with those commenters requesting an extended compliance date consistent with the transitional provisions for placarding highway shipments (October 1, 2001) of hazardous materials for phasing out extraneous information. In the NPRM, RSPA proposed a compliance date of October 1, 1997, for mandatory removal of these slogans. Upon further consideration, RSPA believes a transition period consistent with the current provisions in § 171.14(b) is appropriate and is providing a phase-out period until October 1, 2001, for industry to remove, cover, or obliterate extraneous slogans from placard displays.

C. Marking Requirements

1. *Identification number marking for packaged Poison Inhalation Hazard (PIH) materials.* RSPA is revising § 172.313 and adopting the proposal, with modification, to require that identification number markings be displayed on transport vehicles and freight containers to improve identification of a hazardous material poisonous by inhalation (PIH) offered in amounts of more than 1,000 kilograms (2,205 pounds) aggregate gross weight. RSPA proposed to require identification number markings on a transport vehicle or freight container containing non-bulk packages having more than 400 kilograms (882 pounds) aggregate gross weight of a PIH material.

Commenters, such as the Association of American Railroads (AAR), opposed this identification number marking on the basis that it would be redundant and burdensome to industry given RSPA's proposal to add a new PIH label and placard to more specifically communicate the inhalation hazard to emergency response personnel. Several commenters said it would not provide any safety benefit. Others warned the existing, well understood hazard communication system for poisonous materials could be weakened by introducing a plethora of confusing, redundant markings. Air Products and Chemicals, Inc. said that this change would cause it to modify existing customer delivery patterns to reduce the likelihood of multiple mixed loads of PIH materials.

Other commenters, such as CWTI, supported the change, stating that this proposed change would more "efficiently convey essential information" from available sources and provide essential information not previously available because the shipment was not subject to the display of identification number markings on transport vehicles and freight containers. CMA expressed general support for the proposal, and believed that while this change would be relatively minor in nature, the change should help improve the hazard communication system and increase the safety of emergency responders. The 3M company recommended a 1,001 pound threshold for consistency with the existing placarding exception in § 172.504.

RSPA believes that requiring certain quantities of a packaged PIH material to be identified by an identification number marking display on a transport vehicle or freight container will increase the effectiveness of DOT's communication system for high hazard poisonous liquids and gases. This requirement will further enhance the effectiveness of the new PIH labels and placards by providing immediate information to emergency responders assisting them in addressing the hazards of PIH materials.

In response to the concerns expressed by several commenters in regard to shipping mixed loads, (e.g., different kinds of poisonous gases in cylinders, assigned different identification numbers, which may weigh as much as 150 pounds gross weight), RSPA is raising the quantity threshold for identification number marking of a packaged PIH material from the proposed 400 kilograms (882 pounds) to 1,000 kilograms (2,205 pounds) aggregate gross weight on a transport vehicle or freight container.

2. *Identification number marking on vehicles transporting non-bulk packages in large quantities.* Section 172.301 is revised, and the proposal is adopted with modification, to require an identification number marking display on transport vehicles and freight containers containing large quantities of non-bulk packagings of hazardous materials having a single identification number, and includes a threshold of 4,000 kilograms (8,820 pounds) for those quantities. RSPA proposed to require display of identification numbers on vehicles transporting, in truckload or carload quantities, non-bulk packages of hazardous materials that are identified by a single identification number.

Nineteen commenters supported this proposal. Nine commenters opposed it; however, six of these commenters said they would support it if RSPA clarified what constitutes a "truckload" or "carload" quantity.

Several commenters urged RSPA to define "truckload" as "fully loaded" when a substantial capacity of the vehicle is "occupied" by packaged hazardous materials, or restrict application to common freight container size dimensions, such as 8′× 8′× 20′ or 8′× 8′× 40′. Several commenters were unclear whether RSPA intended the marking requirements to be based on package weight or number; or whether the terms "truckload" or "carload" would include vans and other similar vehicles.

Commenters opposed to the proposal asserted that the marking requirement might force businesses to change delivery patterns or customer service or to avoid mixing certain hazardous and non-hazardous loads.

RSPA believes that a requirement for the display of identification number marking on transport vehicles and freight containers containing large quantities of hazardous materials in non-bulk packagings having a single identification number will assist emergency responders in accessing hazard mitigation information. In response to commenters concerns regarding the phrase "truckload" or "carload" quantity, RSPA has decided to avoid use of terms that could be confused with economic terminology. In this final rule, large quantities of hazardous materials in non-bulk packagings having a single identification number and having an aggregate gross weight of not less than 4,000 kilograms (8,820 pounds) on a transport vehicle or freight container would be subject to the requirement. Accordingly, the identification number specified for the hazardous material in the § 172.101 Table must be displayed on a placard, orange panel or plain white square-on-point configuration as prescribed in §§ 172.332 or 172.336, as appropriate.

A new § 172.323 was proposed for the new identification number requirement. After further consideration, RSPA believes it is more appropriate to consolidate this requirement under the general requirements for marking non-bulk packagings, in § 172.301.

3. *Identification number marking visibility on closed transport vehicles or freight containers carrying cargo tanks and other bulk packagings.* In Subpart D of Part 172, RSPA is adopting as proposed a requirement to specify that identification number markings are required on the outside of closed transport vehicles and freight containers carrying cargo tanks and other bulk packagings (e.g., intermediate bulk containers (IBCs)), when the identification number marking on the bulk package is not visible during transportation.

NTTC and three other commenters supported the clarification to assure that markings will be visible on the exterior of a closed transport vehicle or freight container containing a hazardous material in a bulk packaging. The Rigid Intermediate Bulk Container Association (RIBCA) opposed the proposal, saying it is not unusual for one vehicle to contain four or more IBCs bearing four or more different identification numbers. RIBCA said the proposed clarification would require display of many identification numbers on vehicles that would confuse responders. RIBCA suggested use of primary class placards or identification number displays for IBCs bearing "a single identification number."

RSPA believes that the display of identification numbers on the outside of

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transport vehicles that contain bulk packages of hazardous materials is consistent with the requirement that identification numbers on the bulk package be visible in transportation. RSPA does not agree that identification number marking displays on closed transport vehicles containing other bulk packagings (e.g., IBCs) should only apply if the IBCs in the transport vehicle or freight container bear the same identification number. Accordingly, RSPA is requiring the display of identification numbers on the outside of closed transport vehicles and freight containers when they contain any bulk packaging.

4. *FUMIGANT marking on transport vehicles or freight containers which contain fumigated lading.* In § 173.9, RSPA is adopting its proposal, with modification, to revise and expand the requirements for display of a FUMIGANT marking that is consistent with international requirements. RSPA is: (1) extending the requirements to display the fumigant marking to every material used to fumigate the contents of a transport vehicle or freight container; (2) expanding the requirements to cover all modes of transportation; (3) specifying that a fumigated transport vehicle or freight container is a "package" for application of the fumigation requirements; (4) adopting the international fumigant marking; and (5) consistent with the U.N. Recommendations, specifying that a shipping paper accompanying an international shipment must contain hazard warning information concerning the fumigant.

Most commenters supported application of the FUMIGANT marking to all modes of transportation and revision of the marking for consistency with the U.N. Recommendations. The IAFC stated that even though there are not many documented incidents where the lack of a FUMIGANT marking has caused an accident, the potential for such accidents exists throughout the country. The Arizona Department of Public Safety supported the change, stating:

> Your proposed revision would have undoubtedly prevented the injury of one of our Arizona Highway Patrol Commercial Vehicle Safety Specialists last year, when he entered a trailer on a state highway to inspect its contents. He was unaware that it had recently been fumigated with methyl bromide, and was quickly injured by the fumigant. He was treated at a hospital and by his personal physician, and lost time off work from the incident.
>
> This officer was one of our hazardous materials emergency responders, and had been trained to the OSHA 1910–120 [sic] Hazardous Materials Technician level, with over 200 hours of training. However, since he was unaware of the toxic fumigated nature of the trailer, he did not utilize the personal protective clothing and self-contained-breathing-apparatus he was equipped with.

One commenter supported the proposal and stated that the fumigation issue is of particular interest in Washington and Oregon because both States have ports and receive grain from other States via highway and rail.

Only one commenter, a large motor carrier, opposed the proposal, pointing out that the fumigant marking was designed for large enclosed places with little or no opportunity for escape of toxins upon opening (such as a cargo aircraft or vessel). The commenter stated that it would not be beneficial to small ground transportation vehicles that are rarely, if ever, opened in confined spaces.

The Air Transport Association of America inquired whether this provision would require "small shippers of agricultural products to provide a fumigant warning (if product has been treated) on shipper provided packaging." The requirement to display a FUMIGANT warning is applicable to freight containers which contain fumigated lading, and not to aircraft compartments containing crates, boxes or other packages containing agricultural produce or perishable products.

In response to another commenter, the wording "should indicate" in proposed § 173.9(f) is changed to read "must indicate," relative to fumigation information on international transport documents.

After further consideration, RSPA is not adopting as proposed, the training and testing requirement prescribed in Subpart H of Part 172, as it applies to persons who offer and accept a material for transportation which has been fumigated. However, if other hazardous materials are being transported, the training requirements of the HMR apply. RSPA believes that persons offering or transporting fumigated loads must have knowledge relative to the fumigated load. Accordingly, § 173.9 is revised to specify that such persons must be informed of the requirements of this section which are applicable solely because the lading has been fumigated and, for the purpose of this section, is a package containing a hazardous material.

For the purposes of compliance with this section of the HMR, RSPA has made the determination that a fumigated load is a "package." This should resolve concerns relative to the potential for increased financial responsibility levels, as required by the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR part 387.

Based on the forgoing, RSPA believes that a FUMIGANT marking for all modes of transportation is necessary and that display of the proposed FUMIGANT marking will minimize the risk of exposure and prevent injury from poisonous or noxious materials. It should be noted that requirements in § 176.76(i) [issued under the final rule in HM–215A; 59 FR 67390] for fumigants transported by vessel became effective October 1, 1996. On April 29, 1996, a final rule [HM–222A; FR 61 18926] was published in the **Federal Register** which redesignated § 176.76(i) as § 176.76(h).

D. Emergency Response Information

1. *Emergency response information readily available to authorities.* RSPA proposed to clarify certain provisions of the emergency response information requirements in Subpart G of Part 172, and corresponding §§ 175.33, 176.30, and 177.817. Upon further consideration, based on comments received in opposition to this proposal, RSPA is not adopting the changes proposed in § 172.602 and the corresponding sections. RSPA believes that the basic elements of the proposed change are already adequately covered by the requirements in § 172.600(c).

2. *Carrier notification and information contact.* RSPA is adding § 172.606 to the HMR and adopting, as proposed, a requirement that each carrier who transports a hazardous material, for which a shipping paper is required, to instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier in the event of an incident involving the hazardous material.

Generally, most commenters supported improvements to emergency response information requirements. Most of these commenters did not specifically address their comments to the proposal for carrier information contact and notification. Of the ten comments which specifically addressed this proposal, approximately five commenters supported it. The American Trucking Associations had no comment on this proposal.

Many of the commenters confused the proposal for carrier information contact with the proposal for marking an emergency response telephone number on a motor vehicle when disconnected from its motive power and stored at other than a carrier's, consignee's, or consignor's facility. One commenter said that the proposal was unnecessary because carriers should already be instructing their operators to contact

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them in the event of an incident involving hazardous materials, as part of the driver training requirements under Subpart H of Part 172.

RSPA believes that required information available at the scene of a hazardous materials incident meets most of the immediate information needs of responders. However, in some instances the operator of a motor vehicle may not be able to initiate appropriate mitigation procedures without the carriers involvement. RSPA believes better coordination of emergency response and spill mitigation actions will result from specific requirements for carrier instruction to operators regarding incident notification; therefore, RSPA agrees with NAS's recommendation that requiring a carrier information contact will respond in part to concerns addressing improvements to the hazardous materials identification system. In this final rule, RSPA is requiring that a carrier who transports or accepts a hazardous material for transportation instruct the operator of a transport vehicle to contact the carrier following an incident.

3. *Mark carrier telephone number on transport vehicle, or have shipping papers and emergency response information located on transport vehicle when a transport vehicle is separated from its motive power.* RSPA is adopting, as proposed in new § 172.606, a requirement that a motor carrier mark its telephone number on a highway transport vehicle, trailer or semi-trailer, or have shipping papers and emergency response information located on the transport vehicle, when separated from its motive power away from a consignee's, consignor's, or carrier's facility. Most comments on this proposal supported the concept, but differed on how to implement it. Several motor carriers noted that many carriers already mark their names on transport vehicles and asked RSPA to exempt companies already displaying this information. Other commenters cited confusion over marking trailers used by more than one carrier; they said such trailers should bear the lessee's name and phone number. Illinois DOT supported the proposal and stated that a consistent location should be specified, such as a holder on the right front corner, to ensure copies of shipping papers and emergency response information are on a transport vehicle when disconnected from its motive power. NITL generally supported RSPA's proposal in § 172.606(b), but requested exceptions for those carriers who already prominently display their names and principal place of business from having to mark their vehicles with the telephone number of the motor carrier.

RSPA believes that an unattended motor vehicle (e.g., a trailer or semi-trailer disconnected from its motive power) carrying hazardous materials must be sufficiently identified to communicate information regarding hazardous materials in the transport vehicle or to provide a telephone number where the information would be available. In some instances, a semi-trailer may be in an interchange operation in which the motor carrier using the semi-trailer is not the motor carrier whose name is displayed on the vehicle, or a leasing company name may be prominently displayed on a semi-trailer. In either of these instances, the company's name appearing on the semi-trailer would not lead directly to information regarding the hazardous material being transported. RSPA acknowledges that many transport vehicles identified and operated by the same company are marked with the company's name and address. RSPA does not believe such operations should be excepted from complying with any method prescribed in § 172.606(b) (1), (2), or (3).

E. Editorial Correction and Clarification

1. *Notice to train crews of placarded cars.* In § 174.26, RSPA is adopting, as proposed, a requirement that a train consist be updated to reflect the current position in the train of each rail car containing hazardous materials. NTSB supported clarification of a provision in § 174.26, which requires that a train crew must have a document that reflects the current position in the train of each rail car containing a hazardous material, stating:

> The Board supports the proposed change to 49 CFR Section 174.26(b) that would require a traincrew [sic] to have a current record or updated consist to reflect the position in the train of each rail car containing a hazardous material. The proposed revision would satisfy action requested in Safety Recommendation R–9–38, which was issued by the Board to the Federal Railroad Administration following a train derailment in Akron, Ohio, on February 26, 1989.

RSPA proposed that an updated train consist be permitted to meet this requirement. The existing requirement in the HMR specifies that the train crew must have a document indicating the position in the train of each loaded placarded car containing hazardous materials, except when the position is changed or the placarded car is placed in the train by a member of the train crew. Although the provision specifies that a train consist may be used, it does not state that the train consist must be "updated" to meet this requirement. AAR and several rail carriers expressed concern that the proposed language as written does not clearly state that train crews can attach a document, which reflects current train placement, to the train consist to indicate changes in the placement of hazardous materials cars in trains. AAR stated that train crews should be specifically authorized to modify consists by inserting a "reference" in the consist to additional documents in the train crew's possession.

Along with NTSB, FRA and RSPA believe this section should be clarified to specify that an updated train consist must be used to meet this requirement. In response to AAR's and several rail carriers' concerns for further clarification of the term "updated" as it applies to modifying train consists to reflect the train placement requirement, RSPA is revising this section to allow the use of appended or attached documents that reflect current train placement. This addresses situations in which modifying a train consist is accomplished by inserting attachments (e.g., track lists and work orders, etc.) that reflect the current position in the train of cars containing hazardous materials. In this final rule, a train consist must be updated (i.e., modified, changed, or appended) and used by the train crews to accurately reflect changes in the placement of hazardous materials cars in trains.

III. Related Rulemakings

On June 5, 1996, RSPA issued a final rule [HM–216; 61 FR 28666], which contained a number of changes to the rail requirements in the HMR. RSPA revised §§ 172.510 and 172.526 to delete reference to the use of the RESIDUE placard and removed the RESIDUE placard as shown in the placarding examples, respectively. RSPA also removed the special documentation requirements of § 174.25 requiring placard notations or endorsements on shipping papers (e.g., waybills, switching ticket, or switching order). In addition, RSPA deleted paragraph (a) of § 174.26, regarding notices showing the location in each train of each rail car placarded EXPLOSIVES 1.1 or 1.2, POISON GAS, Division 2.3 Hazard Zone A, and Division 6.1, PG I, Hazard Zone A materials, and revised and redesignated paragraph (b) as paragraph (a).

Since the provisions applying to the specifications and use of the RESIDUE placard have been removed in HM–216, the change proposed in § 172.510 (HM–206), regarding reference to the POISON-RESIDUE and POISON

INHALATION HAZARD-RESIDUE placards, is no longer necessary. The action taken in HM–216 in § 174.25 to remove the requirements for placard endorsement and notation on rail billings, makes the proposed change in this section referencing the POISON INHALATION-HAZARD placard unnecessary. In this final rule, for ease of understanding, the text of § 174.26 contained in Docket HM–216 is republished.

On May 30, 1996, RSPA issued a final rule [Docket HM–222B; 61 FR 27166], which revised the requirement in § 177.841 to allow foodstuffs which are loaded in a closed unit load device to be transported in the same motor vehicle with poisons that are loaded in a separate closed unit load device. In this final rule, RSPA is revising § 177.841 to include reference to the new POISON INHALATION HAZARD label.

IV. Section-by-section highlights

This section-by-section summary addresses highlights of the changes to the hazard communications requirements. In addition, the following table is provided as an aid to readers and provides a summary of changes made in this final rule and their respective compliance dates.

Section	Action	Discussion	Compliance date
§ 172.301	ID No. marking on vehicle for large quantities (≥4,000 kg) in non-bulk packages.	New requirement	Oct. 1, 1997.
§ 172.313	ID No. marking on vehicle for a PIH material with ≥ 1,000 kg in non-bulk packages.	New requirement	Oct. 1, 1997.
§ 172.328	ID No. marking display on closed vehicle containing cargo tanks.	New requirement	Oct. 1, 1997
§ 172.331	ID No. marking display on closed vehicle containing other bulk packages (e.g., IBCs).	Expansion of current requirement applicable to portable tanks.	Oct. 1, 1997
§§ 172.416 & 172.429	PIH labels for both liquids and gases that are poisonous if inhaled.	Replaces POISON label and POISON GAS label design.	Oct. 1, 1997.
§ 172.504(b)	Specific placard required when ≥ 1,000 kg of one class on a vehicle.	Reduction of quantity from 2,268 kg for use of DANGEROUS placard for mixed loads.	Oct. 1, 1997.
§ 172.606(a)	Carrier must instruct operator of motor vehicle to contact the company in the event of a hazmat incident.	New requirement	Oct. 1, 1997.
§ 172.606(b)	Requiring information with parked (dropped) motor vehicle.	New requirement	Oct. 1, 1997.
§§ 172.302 & 173.9	FUMIGANT marking, applying to all modes	Expansion of existing requirements and adoption of international design.	Oct. 1, 2001.
§ 172.502	Prohibited display of extraneous information on placard and in placard holder.	Expansion of existing requirements.	Oct. 1, 2001.
§§ 172.540 & 172.555	PIH placards for both liquids and gases that are poisonous if inhaled.	Replaces POISON and POISON GAS placard design.	Oct. 1, 2001.

Section 171.8. Although not proposed, in order to assist persons in locating the requirements for transporting lading which has been fumigated, the entry "'Fumigated lading' (See §§ 172.302(g) and 173.9)" is being added to the definitions in § 171.8.

Section 171.11, 171.12 and 171.12a. In §§ 171.11(d)(9)(iii), 171.12(b)(8)(iii) and 171.12a(b)(5)(iii), the words "POISON INHALATION HAZARD" replace the word "POISON" in reference to labeling poison inhalation hazard materials other than gases.

Section 171.14. On September 26, 1996, a final rule was published in the **Federal Register** [Docket HM–181H; 61 FR 50616] which removed obsolete transition dates in § 171.14. New paragraphs (a), (b), and (c) contain all remaining transitional provisions implementing changes adopted under Docket HM–181. In this final rule (HM–206), paragraph (b) is revised to allow continued use of the old placards for PIH materials, in accordance with the Placard Substitution Table provided in this section. Accordingly, for highway and rail shipments, mandatory use of the new PIH placards [for Division 2.3 and Division 6.1, PG I materials] begins on October 1, 2001, which is consistent with other transitional placarding provisions for highway shipments of hazardous materials.

Section 172.101. On April 29,1996, a final rule was published in the **Federal Register** [Docket HM–222A; 61; FR 18926]. In this final rule, the § 172.101 Hazardous Materials Table (§ 172.101 HMT) was reformatted to reduce the volume of the regulations and make them easier to use. A numerical identifier is now shown in the § 172.101 HMT in place of the label name. A "Label Substitution Table," was added preceding the HMT to identify which label corresponds to a label code (i.e., numerical identifier) in Column (6). In this final rule (HM–206), the "Label Substitution Table," in § 172.101(g), is amended to include the new label name "Poison Inhalation Hazard" and label code "6.1 (I, Zone A and B, inhalation hazard)," in its appropriate sequence.

Section 172.301. A new paragraph (a)(3) is added in this section requiring an identification number marking on transport vehicles and freight containers containing large quantities (i.e., not less than 4,000 kilograms (8,820 pounds)) of hazardous materials in non-bulk packagings having a single identification number. Paragraph (a)(1) is also revised to more appropriately include the exception from identification number marking for ORM–D and limited quantity materials, currently provided in paragraph (f)(1). Accordingly, paragraph (f)(1) is removed, and paragraph (f)(2), which is obsolete, is removed.

Section 172.302. A new paragraph (g) is added to reference the fumigation marking requirements in § 173.9.

Section 172.313. Paragraph (a) is revised to include an exception from the

"Inhalation Hazard" marking requirement, provided packages are already labeled or placarded with the new PIH label or placard. Paragraph (c) is added to require that transport vehicles or freight containers containing more than 1,000 kilograms (2,205 pounds) aggregate gross weight of non-bulk packages containing a material poisonous by inhalation must be marked with the identification number of that material. This is an increase in the quantity threshold (i.e., 2,205 pounds) for the identification number marking display for a PIH shipment in non-bulk packagings from the proposed 400 kilograms (882 pounds).

Section 172.328. Paragraph (a)(3) is added to clarify that an identification number marking must be displayed on a transport vehicle or freight container containing a hazardous material in a cargo tank, if the identification number marking on the cargo tank is not visible during transportation.

Section 172.331. Paragraph (c) is added to clarify that an identification number marking must be displayed on a transport vehicle or freight container containing a hazardous material in a bulk packaging (e.g., an IBC) other than a cargo tank, portable tank, tank car and multi-unit tank car tank, if the identification number marking on the bulk packaging is not visible during transportation.

Section 172.332. Paragraph (a) is revised to reference new marking requirements in §§ 172.301 and 172.313.

Section 172.400. The table of label designations in paragraph (b) of this section is revised by adding reference to the new POISON INHALATION HAZARD label (§ 172.429) for Division 6.1, PG I, Zone A and B materials. The entry for the POISON label applying to 6.1, PG I and II materials is revised to read "other than inhalation hazard."

Section 172.416. This section is revised to prescribe the new POISON GAS label.

Section 172.429. This section is added to prescribe the new POISON INHALATION HAZARD label.

Section 172.502. Paragraph (a)(2) is revised to specifically prohibit display of extraneous information, signs, or slogans (e.g., DRIVE SAFELY) on placards, placard-type displays, and in placard holders that by their color, shape, design or content could be mistaken for a hazard warning placard. A mandatory compliance date of October 1, 2001 is provided for removal of extraneous information from placards, placard-type displays, and in placard holders.

Section 172.504. Paragraph (b) is revised by lowering from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) aggregate gross weight, the amount of one category of material contained on a transport vehicle, freight container or rail car for which specific placarding is required, limiting use of the DANGEROUS placard. In paragraph (e), Table 1 placard assignments are revised to add the new POISON INHALATION HAZARD placard (§ 172.555) for Division 6.1, PG I, Zone A and B materials and to include the entry "5.2 (Organic peroxide, Type B, liquid or solid, temperature controlled)" in the first column, the placard name "ORGANIC PEROXIDE" in the second column, and "§ 172.552" in the third column. In Table 2, the entry "5.2" is replaced by the entry "5.2 (Other than Organic peroxides, Type B, liquid or solid, temperature controlled)" in the first column. In paragraph (f), an exception is provided from displaying a POISON placard in those instances when a POISON INHALATION HAZARD placard or POISON GAS placard is required.

Section 172.505. Paragraph (a) is revised to replace the word "POISON" with the words "POISON INHALATION HAZARD" to correctly reference the new placard in the new § 172.555 for Division 6.1, PG I, Zone A and B materials.

Section 172.510. Since the provisions applying to the specifications and use of the RESIDUE placard have been removed (HM–216), the change proposed in § 172.510 (HM–206), regarding reference to the POISON-RESIDUE and POISON INHALATION HAZARD- RESIDUE placards, is no longer necessary. In this final rule, paragraph (b) is removed, as requirements for fumigated transport vehicles are relocated to §§ 172.302(g) and 173.9, and paragraph (c) is redesignated as paragraph (b), and the words "POISON GAS or POISON" are replaced with the words "POISON GAS or POISON INHALATION HAZARD."

Section 172.540. This section is revised to prescribe the new POISON GAS placard.

Section 172.555. Section 172.555 is added to prescribe the new POISON INHALATION HAZARD placard.

Section 172.602. RSPA proposed to revise paragraph (c) of this section to clarify that emergency response information must be "readily available to authorities"; however RSPA is not adopting the proposed language in paragraph (c) because the basic elements of the proposed change are adequately covered by the requirements in § 172.600(c). Paragraph (c)(1) of this section is revised to include reference to the new § 172.606, relative to carrier information contact.

Section 172.606. This section is added to require each carrier who transports a hazardous material to instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier in the event of an incident involving a hazardous material in transportation. This section prescribes information requirements for a motor vehicle (e.g. trailer or semi-trailer) separated from its motive power and parked at other than a consignee's, consignor's or carrier's facility.

Section 173.9. The FUMIGANT marking requirements are revised and expanded by (1) making them applicable to every material used to fumigate the contents of a transport vehicle or freight container; (2) expanding their application to all modes of transportation; (3) specifying that a fumigated transport vehicle or freight container is a "package" for application of the fumigation requirements; (4) adopting the international fumigant marking format; and (5) specifying that a shipping paper accompanying an international shipment must contain hazard warning information concerning the fumigant. In this final rule, the proposed paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to specify that persons subject to the requirements of this section must be informed of the requirements of this section.

Section 173.29. For clarity, the introductory text of paragraph (b)(1) is revised to add the phrase "any other markings indicating the material is hazardous (e.g., RQ, INHALATION HAZARD)."

Section 174.26. Paragraph (a) is revised to specify that a train consist must be "updated" to reflect the current position in the train of each rail car containing a hazardous material. The text is modified to allow the use of appended or attached documents to reflect train placement. For ease of understanding, the complete text in this section is republished as contained in the final rule in Docket HM–216.

Section 174.680. An editorial correction is made in this section to add a reference to the new POISON INHALATION HAZARD label to prohibit carrying poisonous materials in the same rail car with foodstuffs.

Section 175.630. This section is revised to add reference to the new POISON INHALATION HAZARD label to prohibit carrying poisonous materials in the same compartment of an aircraft with foodstuffs, and to delete obsolete references to "etiologic" substances.

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Section 176.600. An editorial correction is made in this section to add a reference to the new POISON INHALATION HAZARD label to prohibit carrying poisonous materials in the same vessel stowage area with foodstuffs.

Section 177.841. This section is revised for consistency with the changes in the final rule under Docket HM–222B [61 FR 27166; May 30, 1996], which revised requirements to prohibit carrying poisonous materials in the same motor vehicle with foodstuffs, and an editorial correction is made to add a reference to the new POISON INHALATION HAZARD label.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking proceeding was originally considered significant because it was required by Sec. 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), and included consideration of methods for establishing and operating a central reporting system and computerized telecommunications data center covering all shipments of hazardous materials by any mode of transportation, as well as improving the system for placarding vehicles transporting hazardous materials. However, this final rule makes relatively minor, incremental changes in the regulations concerning placarding and other means of communicating the hazards of materials in transportation. RSPA ended its consideration of the central reporting system and computerized data center, based on the adverse recommendation of the National Academy of Sciences (NAS) study (also required by Sec. 25), the lack of support from the regulated community, and the estimated high costs of establishing such a system.

The original regulatory evaluation was reexamined and modified. The economic impact of this rule will result in only minimal costs to certain persons subject to the HMR. A significantly revised regulatory evaluation reflecting the reduced economic impact of this final rule is available for review in the docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1997. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Although this final rule applies to all shippers and carriers of hazardous materials, some of whom are small entities, the requirements contained herein would not result in significant economic impacts.

D. Paperwork Reduction Act

The information collection requirements in 49 CFR Parts 172 through 177 pertaining to shipping papers have been approved under OMB approval number 2137–0035. The requirements in § 173.9 that a shipping paper contain hazard warning information concerning the fumigant for an international shipment insignificantly increases the amount of burden imposed by this collection. This information is a current requirement for international shipments by vessel. RSPA believes that this change in burden is not sufficient to warrant revision of the currently approved information collection. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.8 [Amended]

2. In § 171.8, the definition for "Fumigated lading" is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Fumigated lading. See §§ 172.302(g) and 173.9.

* * * * *

§ 171.11 [Amended]

3. In § 171.11, in paragraph (d)(9)(iii), the words "with 'POISON'" are replaced with the words "with 'POISON INHALATION HAZARD'".

§ 171.12 [Amended]

4. In § 171.12, in paragraph (b)(8)(iii), the words "with 'POISON'" are replaced with the words "with 'POISON INHALATION HAZARD'".

§ 171.12a [Amended]

5. In § 171.12a, in paragraph (b)(5)(iii), the words "with 'POISON'" are replaced with the words "with 'POISON INHALATION HAZARD'".

6. In § 171.14, paragraph (b) is revised to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) *Transitional placarding provisions.* (1) Until October 1, 2001, placards which conform to specifications for placards in effect on September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

PLACARD SUBSTITUTION TABLE

Hazard class or division No.	Current placard name	Old (Sept. 30, 1991) placard name
Division 1.1	Explosives 1.1	Explosives A.
Division 1.2	Explosives 1.2	Explosives A.
Division 1.3	Explosives 1.3	Explosives B.
Division 1.4	Explosives 1.4	Dangerous.
Division 1.5	Explosives 1.5	Blasting agents.
Division 1.6	Explosives 1.6	Dangerous.
Division 2.1	Flammable gas	Flammable gas.
Division 2.2	Nonflammable gas	Nonflammable gas.
Division 2.3	Poison gas	Poison gas.
Class 3	Flammable	Flammable.
Combustible liquid	Combustible	Combustible.
Division 4.1	Flammable solid	Flammable solid.
Division 4.2	Spontaneously combustible	Flammable solid.
Division 4.3	Dangerous when wet	Flammable solid W.
Division 5.1	Oxidizer	Oxidizer.
Division 5.2	Organic peroxide	Organiic peroxide.
Division 6.1, PG I (Zone A and B, inhalation hazard)	Poison inhalation hazard	Poison.
Division 6.1, PG I and II (other than Zone A and B)	Poison	Poison
Division 6.1, PG III	Keep away from food	(not applicable).
Class 7	Radioactive	Radioactive.
Class 8	Corrosive	Corrosive.
Class 9	Class 9	(none required).

(2) For materials poisonous by inhalation, for highway and rail transportation only, placards specified in the January 8, 1997, final rule may be used, in accordance with the Placard Substitution Table in paragraph (b)(1) of this section.

* * * * *

PART 172— HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

7. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 172.101, in the Table in paragraph (g), the entries for label code 6.1 (I) [2] and 6.1 (II) [2] are removed and the following entries are added in their place:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) * * *

LABEL SUBSTITUTION TABLE

Label code	Label name
* *	* *
6.1 (I, Zone A and B inhalation hazard) [2].	Poison Inhalation Hazard.
6.1 (I, other than Zone A and B) [2].	Poison.

LABEL SUBSTITUTION TABLE—Continued

Label code	Label name
6.1 (II, other than Zone A and B) [2].	Poison.
* *	* *

* * * * *

9. In § 172.301, paragraph (a)(1) is revised, paragraphs (f)(1) and (f)(2) are removed, and a new paragraph (a)(3) is added to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(1) Except as otherwise provided by this subchapter, each person who offers for transportation a hazardous material

in a non-bulk packaging shall mark the package with the proper shipping name and identification number (preceded by "UN" or "NA", as appropriate) for the material as shown in the § 172.101 Table. Identification numbers are not required on packages which contain only limited quantities, as defined in § 171.8 of this subchapter, or ORM-D materials.

* * * * *

(3) *Large quantities of hazardous materials in non-bulk packages.* A transport vehicle or freight container containing 4,000 kg (8,820 pounds) or more aggregate gross weight of a hazardous material having a single identification number must be marked with the identification number designated for the hazardous material in § 172.101 as specified in § 172.332 or § 172.336. This provision does not apply to ORM-D materials or limited quantities of hazardous materials.

* * * * *

10. In § 172.302, paragraph (g) is added to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(g) A rail car, freight container, truck body or trailer in which the lading has been fumigated with any hazardous material, or is undergoing fumigation, must be marked as specified in § 173.9 of this subchapter.

11. In § 172.313, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 172.313 Poisonous hazardous materials.

(a) For materials poisonous by inhalation (see § 171.8 of this subchapter), the package shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, or shipping name when required. The "Inhalation Hazard" marking is not required provided the package is already labeled as prescribed in § 172.429, or placarded as prescribed in § 172.555. (See § 172.302(b) of this subpart for size of markings on bulk packages.) Bulk packages must be marked on two opposing sides.

* * * * *

(c) A transport vehicle or freight container loaded with more than 1,000 kg (2,205 pounds) aggregate gross weight of packages containing a material poisonous by inhalation shall be marked as required by § 172.332 with the identification number specified for the material, in the § 172.101 Table, on each side and each end of the transport vehicle or freight container.

12. In § 172.328, paragraph (a)(3) is added to read as follows:

§ 172.328 Cargo tanks.

(a) * * *

(3) For a cargo tank transported on or in a transport vehicle or freight container, if the identification number marking on the cargo tank required by § 172.302(a) is not visible, the transport vehicle or freight container must be marked as required by § 172.332 on each side and each end with the identification number specified for the material in the § 172.101 Table.

* * * * *

13. In § 172.331, paragraph (c) is added to read as follows:

§ 172.331 Bulk packagings other than portable tanks, cargo tanks, tank cars and multi-unit tank car tanks.

* * * * *

(c) For a bulk packaging contained in or on a transport vehicle or freight container, if the identification number marking on the bulk packaging (e.g., an IBC) required by § 172.302(a) is not visible, the transport vehicle or freight container must be marked as required by § 172.332 on each side and each end with the identification number specified for the material in the § 172.101 Table.

14. In § 172.332, paragraph (a) is revised to read as follows:

§ 172.332 Identification number markings.

(a) *General.* When required by §§ 172.301, 172.302, 172.313, 172.326, 172.328, 172.330, or 172.331 of this subpart, identification numbers must be displayed on orange panels or placards as specified in this section or, when appropriate, on plain white square-on-point configurations as prescribed in § 172.336(b).

* * * * *

15. In § 172.400, the table of label designations in paragraph (b) is revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design or section reference
1.1	EXPLOSIVES 1.1	172.411
1.2	EXPLOSIVES 1.2	172.411
1.3	EXPLOSIVES 1.3	172.411
1.4	EXPLOSIVES 1.4	172.411
1.5	EXPLOSIVES 1.5	172.411
1.6	EXPLOSIVES 1.6	172.411
2.1	FLAMMABLE GAS	172.417
2.2	NONFLAMMABLE GAS	172.415
2.3	POISON GAS	172.416
3 (flammable liquid) Combustible liquid	FLAMMABLE LIQUID (none)	172.419
4.1	FLAMMABLE SOLID	172.420
4.2	SPONTANEOUSLY COMBUSTIBLE	172.422
4.3	DANGEROUS WHEN WET	172.423
5.1	OXIDIZER	172.426
5.2	ORGANIC PEROXIDE	172.427
6.1 (Packing Group I, Zone A and B)	POISON INHALATION HAZARD	172.429
6.1 (Packing Groups I and II, other than inhalation hazard)	POISON	172.430
6.1 (Packing Group III)	KEEP AWAY FROM FOOD	172.431
6.2	INFECTIOUS SUBSTANCE [1]	172.432
7 (see § 172.403)	RADIOACTIVE WHITE-I	172.436
7	RADIOACTIVE YELLOW–II	172.438
7	RADIOACTIVE YELLOW–III	172.440
7 (empty packages, see § 173.427)	EMPTY	172.450
8	CORROSIVE	172.442

Hazard class or division	Label name	Label design or section reference
9	CLASS 9	172.446

[1] The ETIOLOGIC AGENT label specified in regulations of the Department of Health and Human Services at 42 CFR 72.3 may apply to packages of infectious substances.

16. Section 172.416 is revised to read as follows:

§ 172.416 POISON GAS label.

(a) Except for size and color, the POISON GAS label must be as follows:

BILLING CODE 4910-60-P

(b) In addition to complying with § 172.407, the background on the POISON GAS label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 14 mm (0.54 inches) above the horizontal center line.

17. Section 172.429 is added to read as follows:

§ 172.429 POISON INHALATION HAZARD label.

(a) Except for size and color, the POISON INHALATION HAZARD label must be as follows:

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(b) In addition to complying with § 172.407, the background on the POISON INHALATION HAZARD label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 14 mm (0.54 inches) above the horizontal center line.

18. In § 172.502, paragraph (a)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 172.502 Prohibited and permissive placarding.

(a) * * *

(2) Any sign, advertisement, slogan (such as "Drive Safely"), or device that, by its color, design, shape or content, could be confused with any placard prescribed in this subpart.

(b) * * *

(3) The restrictions in paragraph (a)(2) of this section do not apply until October 1, 2001 to a safety sign or safety slogan (e.g., "Drive Safely" or "Drive Carefully"), which was permanently marked, on or before October 1, 1996, on a transport vehicle, bulk packaging, or freight container.

* * * * *

19. In § 172.504, paragraph (f)(11) is added, and paragraphs (b) and (e) are revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(b) *DANGEROUS placard.* A freight container, unit load device, transport vehicle, or rail car which contains non-bulk packages with two or more categories of hazardous materials that require different placards specified in Table 2 of paragraph (e) of this section may be placarded with a DANGEROUS placard instead of the separate placarding specified for each of the materials in Table 2 of paragraph (e) of this section. However, when 1,000 kg (2,205 pounds) aggregate gross weight or more of one category of material is loaded therein at one loading facility on a freight container, unit load device, transport vehicle, or rail car, the placard specified in Table 2 of paragraph (e) of this section for that category must be applied.

* * * * *

(e) *Placarding tables.* Placards are specified for hazardous materials in accordance with the following tables:

TABLE 1

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
1.1	EXPLOSIVES 1.1	172.522
1.2	EXPLOSIVES 1.2	172.522
1.3	EXPLOSIVES 1.3	172.522
2.3	POISON GAS	172.540
4.3	DANGEROUS WHEN WET	172.548
5.2 (Organic peroxide, Type B, liquid *or* solid, temperature controlled).	ORGANIC PEROXIDE	172.552
6.1 (PG I, inhalation hazard, Zone A and B)	POISON INHALATION HAZARD	172.555

TABLE 1—Continued

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
7 (Radioactive Yellow III label only)	RADIOACTIVE [1]	172.556

[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material in accordance with § 173.425 (b) or (c) of this subchapter.

TABLE 2

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
1.4	EXPLOSIVES 1.4	172.523
1.5	EXPLOSIVES 1.5	172.524
1.6	EXPLOSIVES 1.6	172.525
2.1	FLAMMABLE GAS	172.532
2.2	NON-FLAMMABLE GAS	172.528
3	FLAMMABLE	172.542
Combustible liquid	COMBUSTIBLE	172.544
4.1	FLAMMABLE SOLID	172.546
4.2	SPONTANEOUSLY COMBUSTIBLE	172.547
5.1	OXIDIZER	172.550
5.2 (Other than organic peroxide, Type B, liquid or solid, temperature controlled).	ORGANIC PEROXIDE	172.552
6.1 (PG I or II, other than PG I inhalation hazard)	POISON	172.554
6.1 (PG III)	KEEP AWAY FROM FOOD	172.553
6.2	(None)	
8	CORROSIVE	172.558
9	CLASS 9	172.560
ORM-D	(None)	

(f) * * *

(11) For domestic transportation, a POISON placard is not required on a transport vehicle or freight container required to display a POISON INHALATION HAZARD or POISON GAS placard.

* * * * *

20. In § 172.505, paragraph (a) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

(a) Each transport vehicle, freight container, portable tank, unit load device, or rail car that contains a poisonous material subject to the "Poison Inhalation Hazard" shipping description of § 172.203(m)(3) must be placarded with a POISON INHALATION HAZARD or POISON GAS placard, as appropriate, on each side and each end, in addition to any other placard required for that material in § 172.504. Duplication of the POISON INHALATION HAZARD or POISON GAS placard is not required.

* * * * *

§ 172.510 [Amended]

21. In § 172.510, the following changes are made:

a. Paragraph (b) is removed.

b. Paragraph (c) is redesignated as paragraph (b), and the phrase "POISON GAS or POISON" is replaced with the phrase "POISON GAS or POISON INHALATION HAZARD."

22. Section 172.540 is revised to read as follows:

§ 172.540 POISON GAS placard.

(a) Except for size and color, the POISON GAS placard must be as follows:

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(b) In addition to complying with § 172.519, the background on the POISON GAS placard and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 38 mm (1½ inches) above the horizontal center line. The text, class number, and inner border must be black.

23. Section 172.555 is added to read as follows:

§ 172.555 POISON INHALATION HAZARD placard.

(a) Except for size and color, the POISON INHALATION HAZARD placard must be as follows:

BILLING CODE 4910–60–C

(b) In addition to complying with § 172.519, the background on the POISON INHALATION HAZARD placard and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 38 mm (1½ inches) above the horizontal center line. The text, class number, and inner border must be black.

24. In § 172.602, paragraph (c)(1) is revised to read as follows:

§ 172.602 Emergency response information.

* * * * *

(c) * * *

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section and § 172.606 of this part in the same manner as prescribed for shipping papers, except that the information must be maintained in the same manner aboard aircraft as the notification of pilot-in-command, and aboard vessels in the same manner as the dangerous cargo manifest. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials.

* * * * *

25. Section 172.606 is added to read as follows:

§ 172.606 Carrier information contact.

Each carrier who transports or accepts for transportation a hazardous material for which a shipping paper is required—

(a) Shall instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier (e.g., by telephone or mobile radio) in the event of an incident involving the hazardous material.

(b) For transportation by highway, if a transport vehicle, (e.g., a semi-trailer or freight container-on-chassis) contains hazardous material for which a shipping paper is required and the vehicle is separated from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility, the carrier shall—

(1) Comply with the emergency response information requirements for facility operators specified in § 172.602(c)(2);

(2) Mark the transport vehicle with the telephone number of the motor carrier on the front of the transport vehicle near the brake hose and electrical connections; or

(3) Have the shipping paper and emergency response information readily available on the transport vehicle.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

26. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

27. Section 173.9 is revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

(a) For the purpose of this section, not including 49 CFR part 387, a rail car, freight container, truck body, or trailer in which the lading has been fumigated with any material, or is undergoing fumigation, is a package containing a hazardous material, unless the transport vehicle or freight container has been sufficiently aerated so that it does not pose an unreasonable risk to health and safety.

(b) No person may offer for transportation or transport a rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, unless the FUMIGANT marking specified in paragraph (c) of this section is prominently displayed so that it can be seen by any person attempting to enter the interior of the transport vehicle or freight container. For domestic transportation, a hazard warning label authorized by EPA under 40 CFR part 156 may be used as an alternative to the FUMIGANT marking.

(c) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of red letters on a white background that is at least 30 cm (11.8 inches) wide and at least 25 cm (9.8 inches) high. Except for size and color, the FUMIGANT marking must be as follows:

BILLING CODE 4910-60-P

DANGER

THIS UNIT IS UNDER FUMIGATION

WITH *_____ APPLIED ON

Date_____

Time_____

DO NOT ENTER

BILLING CODE 4910–60–C

(2) The "*" shall be replaced with the technical name of the fumigant.

(d) No person may affix or display on a rail car, freight container, truck body, or trailer (a package) the FUMIGANT marking specified in paragraph (c) of this section, unless the lading has been fumigated or is undergoing fumigation.

(e) The FUMIGANT marking required by paragraph (b) of this section must remain on the rail car, freight container, truck body, or trailer until:

(1) The fumigated lading is unloaded; and

(2) The transport vehicle or freight container has undergone sufficient aeration to assure that it does not pose an unreasonable risk to health and safety.

(f) For international shipments, transport documents must indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices.

(g) Any person subject to the requirements of this section, solely due to the fumigated lading, must be informed of the requirements of this section and the safety precautions necessary to protect themselves and others in the event of an incident or accident involving the fumigated lading.

(h) Any person who offers for transportation or transports a rail car, freight container, truck body or trailer that is subject to this subchapter solely because of the hazardous materials designation specified in paragraph (a) of this section is not subject to any other requirements of this subchapter.

28. In § 173.29, paragraph (b)(1) is revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(b) * * *

(1) Any hazardous material shipping name and identification number markings, any hazard warning labels or placards, and any other markings indicating that the material is hazardous (*e.g.*, RQ, INHALATION HAZARD) are removed, obliterated, or securely covered in transportation. This provision does not apply to transportation in a transport vehicle or a freight container if the packaging is not visible in transportation and the packaging is loaded by the shipper and unloaded by the shipper or consignee;

* * * * *

PART 174—CARRIAGE BY RAIL

29. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

30. Section 174.26 is revised to read as follows:

§ 174.26 Notice to train crews of placarded cars.

(a) The train crew must have a document that reflects the current position in the train of each rail car containing a hazardous material. The train crew must update the document to indicate changes in the placement of a rail car within the train. For example, the train crew may update the document by handwriting on it or by appending or attaching another document to it.

(b) A member of the crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by part 172 of this subchapter.

31. In § 174.680, paragraph (a) is revised to read as follows:

§ 174.680 Division 6.1 (poisonous) materials with foodstuffs.

(a) A carrier may not transport any package bearing a POISON or POISON INHALATION HAZARD label in the same car with any material marked as or known to be a foodstuff, feed, or any other edible material intended for consumption by humans or animals.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

32. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

33. Section 175.630 is revised to read as follows:

§ 175.630 Special requirements for Division 6.1 (poisonous) material and Division 6.2 (infectious substance) material.

(a) A hazardous material bearing a POISON, POISON INHALATION HAZARD, KEEP AWAY FROM FOOD, or INFECTIOUS SUBSTANCE label may not be carried in the same compartment of an aircraft with material which is marked as or known to be a foodstuff, feed, or any other edible material intended for consumption by humans or animals unless either the Division 6.1 (poisonous) material or material in Division 6.2 (infectious substance) and the foodstuff, feed, or other edible material are loaded in separate unit load devices which, when stowed on the aircraft, are not adjacent to each other, or the Division 6.1 (poisonous) material or material in Division 6.2 (infectious substance) are loaded in one closed unit load device and the foodstuff, feed or other material is loaded in another closed unit load device.

(b) No person may operate an aircraft that has been used to transport any package bearing a POISON or POISON INHALATION HAZARD label unless, upon removal of such package, the area in the aircraft in which it was carried is visually inspected for evidence of leakage, spillage, or other contamination. All contamination discovered must be either isolated or removed from the aircraft. The operation of an aircraft contaminated with such Division 6.1 (poisonous) materials is considered to be the carriage of poisonous materials under paragraph (a) of this section.

PART 176—CARRIAGE BY VESSEL

34. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

35. In § 176.600, paragraph (a) is revised to read as follows:

§ 176.600 General stowage requirement.

(a) Each package required to have a POISON GAS, POISON INHALATION HAZARD, or POISON label thereon being transported on a vessel must be stowed clear of living quarters and any ventilation ducts serving living quarters and separate from foodstuffs.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

36. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

37. In § 177.841, paragraph (e) introductory text is republished and paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.

* * * * *

(e) A motor carrier may not transport a package:

(1) Bearing or required to bear a POISON or POISON INHALATION HAZARD label in the same motor vehicle with material that is marked as or known to be a foodstuffs, feed or edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

(i) Overpacked in a metal drum as specified in § 173.25(c) of this subchapter; or

(ii) Loaded into a closed unit load device and the foodstuffs, feed, or other

edible material are loaded into another closed unit load device;

(2) Bearing or required to bear a POISON, POISON GAS or POISON INHALATION HAZARD label in the driver's compartment (including a sleeper berth) of a motor vehicle; or

* * * * *

Issued in Washington, DC on December 30, 1996, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

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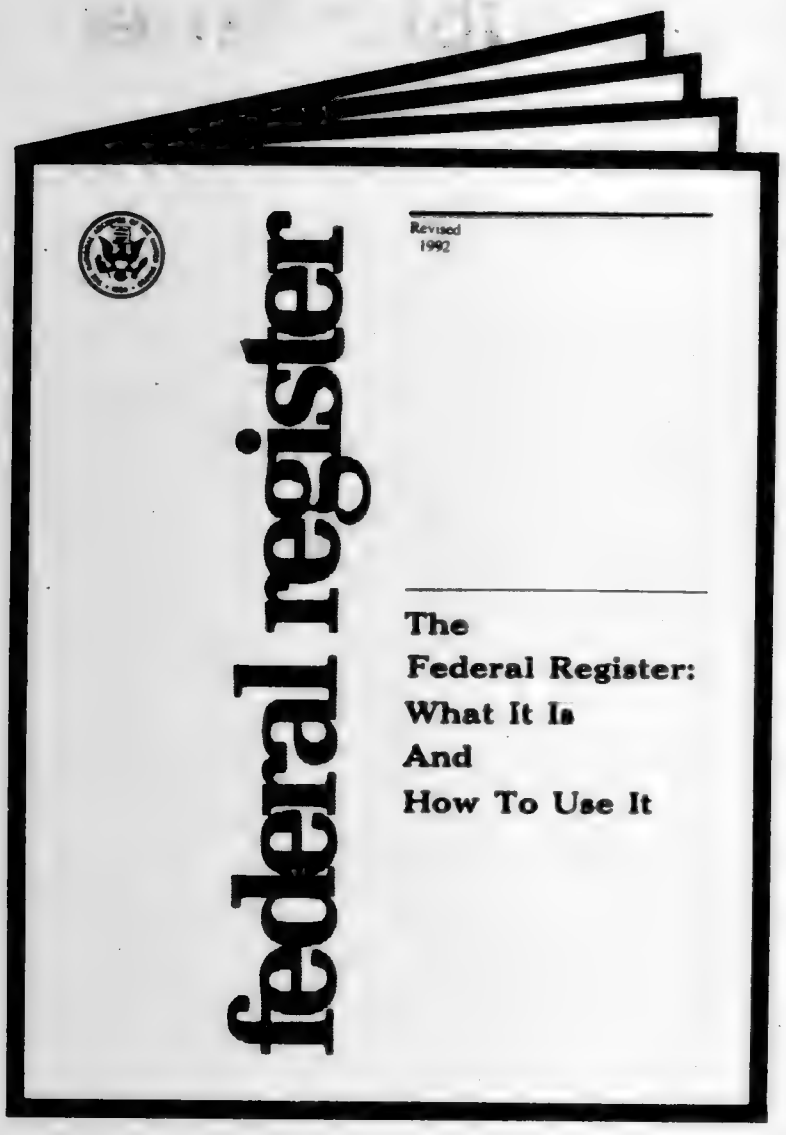

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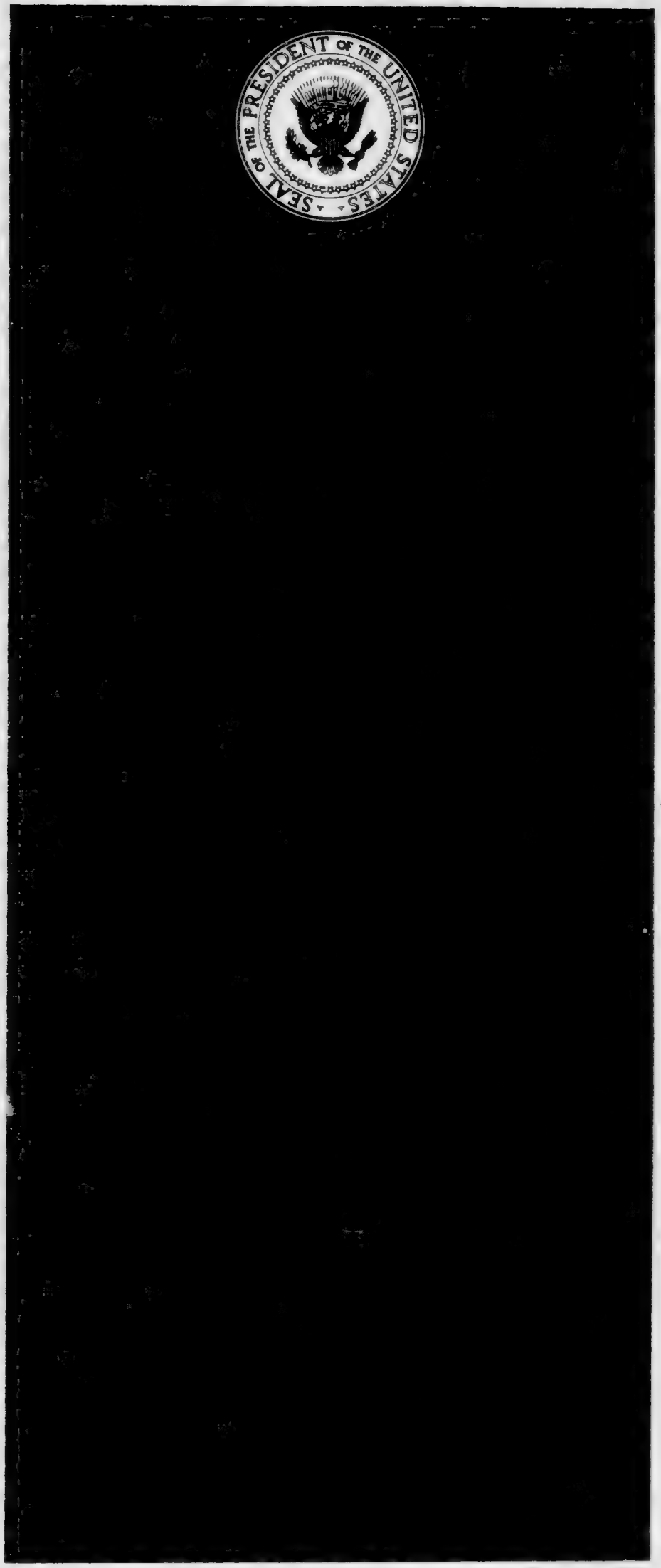

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Rules and Regulations

Federal Register
Vol. 62, No. 6
Thursday, January 9, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV96–932–2 FR]

Olives Grown in California and Imported Olives; Establishment of Minimum Quality Requirements for California and Imported Olives, and Revision of Outgoing Inspection Requirements and Procedures for California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum quality requirements for California olives under Marketing Order 932 and imported olives by replacing grade requirements which have been based on the U.S. Standards for Grades of Canned Ripe Olives (standards). This final rule also revises outgoing inspection requirements and procedures for California olives. This action is expected to result in reduced handling costs, especially inspection costs, and improved consumer satisfaction.

EFFECTIVE DATES: This final rule becomes effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487–5901; Fax # (209) 487–5906; or Caroline Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC. 20090–6456; telephone (202) 720–8139; Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically-produced commodities.

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 4 handlers of olives who are subject to regulation under the order, and approximately 1,350 producers of olives in the regulated area. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. None of the handlers is considered a small entity, but the majority of olive producers and some of the importers may be classified as small entities.

The California Olive Committee (committee) met on March 27, 1996, and unanimously recommended establishing minimum quality requirements to be incorporated within the rules and regulations of the order and revising outgoing inspection requirements and procedures. At a meeting on July 10, 1996, the committee recommended a change in their recommendations of March 27, 1996, with regard to an outgoing inspection requirement.

Incoming inspection requirements at § 932.51 require handlers to weigh and size-grade olives prior to processing, and dispose of non-canning size (undersized) olives into appropriate non-canning outlets. Such weighing and size-grading is done under the

supervision of the Federal or Federal-State Inspection Service. These requirements provide the basis for handler payments to producers, and ensure that olives are properly sized into the various canning and non-canning size categories.

Once the olives have been size-graded, they are stored in tanks, ensuring that the various sizes of olives remain segregated. Non-canning size olives are disposed of into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing inspection requirements at § 932.52 and § 932.149 specify the minimum quality of canned ripe olives as a modified U.S. Grade C as certified by inspectors of the USDA, Processed Products Branch (PPB). Certification as to grade provides handlers and their customers with a uniform level of quality familiar to both parties. The outgoing inspection requirements also ensure that canned ripe olives meet applicable size designations prior to shipment. Two methods of outgoing inspection are authorized: A Quality Assurance Program (QAP) approved by the PPB or in-line inspection.

This rule adds the option of lot inspection to assist handlers in reducing inspection costs. Currently, during in-line inspection, an inspector is required to be present any time olives are in the final stage of processing prior to packaging. The current cost for an inspector ranges from $31.50 per hour for handlers in California under the marketing order to $42.00 per hour depending on the contract. For an 8-hour day, the cost of one inspector ranges from $252.00 to $328.00. Because of this, handlers may benefit from economies of scale: the more canned olives packaged, the lower the cost per can of olives.

In 1994, QAPs were added as an option to reduce inspection costs. Under QAPs, savings are more likely to accrue to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from QAPs for similar reasons.

Adding lot inspection offers handlers a less-costly inspection option. During lot inspection, an inspector does not need to be present during the final processing, unlike in-line inspection. However, an inspector will inspect a statistical percentage of a lot of olives whether the lot is large or small. Thus, there is less benefit of economies of scale because for large lots more olives will be inspected and for small lots fewer olives will be inspected.

The committee recommended changes in some of the inspection requirements to reduce handlers' costs, especially the costs of inspection, and to address the concerns of consumers of canned ripe olives. The changes simplify the inspection process by eliminating steps which have been made unnecessary by modern olive processing and pitting equipment. This can reduce handling costs, including inspection costs, thereby improving returns to California producers and handlers.

The changes address consumer concerns, as identified through a 1995 consumer survey which the committee undertook. Surveyed consumers indicated that flavor, color, and character are quality criteria most important to them. The term "character" is used to include olive firmness, tenderness and texture. The changes address consumer concerns by evaluating quality based upon those criteria. This will help ensure that consumer satisfaction is met, benefitting the California olive industry, importers, and consumers.

Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Establishment of Minimum Quality Requirements

Currently, § 932.149 specifies that canned olives meet a minimum grade requirement of a modified U.S. Grade C. Additional specific requirements are established for the various styles of canned ripe olives, including whole, pitted, broken pitted, halved, segmented (wedged), sliced, and chopped styles. Section 932.149 references various definitions from the standards.

In place of these grades and definitions, the committee recommended a set of minimum quality requirements for four styles of canned olives: (1) Whole and pitted style olives; (2) sliced, segmented (wedged), and halved style olives; (3) chopped style olives; and (4) broken pitted olives. These quality requirements include criteria pertaining to flavor, saltiness, color, character, uniformity of size and freedom from defects. These factors are similar to those currently specified in the standards and handling regulations, and have been determined to be of importance to consumers through the committee's consumer survey.

Olives are currently graded based upon five factors: flavor, saltiness, color, character, and defects. Currently, Table I in § 932.149 only sets limits for defects of canned ripe olives. Limits for the other four factors, flavor, saltiness, color, and character, are defined in the standards. In place of Table I, based upon information from the 1995 consumer survey, the committee recommended establishing four new tables which would specify the limits for defects for each of the canned ripe olive styles (whole and pitted styles; sliced, segmented (wedged), and halved styles; chopped style; and broken pitted style). The new tables also define the limits of the four characteristics (flavor, saltiness, color, and character) currently defined in the standards. The four new tables provide all the definitions and tolerances necessary to establish minimum quality requirements in place of grade requirements.

To effectuate the establishment of minimum quality requirements, references to "grade" in § 932.149 will be replaced with "quality", canned broken pitted olives will be defined separately in a new paragraph designated as (a)(4), and four new tables depicting minimum quality requirements for (1) canned whole and pitted olives; (2) canned sliced, segmented (wedged), and halved olives; (3) canned chopped style olives; and (4) canned broken pitted style olives will be added to § 932.149, replacing the current Table 1.

In conforming changes, the word "grade" will be replaced with the words "minimum quality" or "minimum quality requirements," as necessary, in § 932.150,§ 932.152, § 932.153, and § 932.155.

Section 932.149(a)(2) currently sets the tolerance for identifiable pieces of pit caps, end slices, and slices at 5 percent, by weight, for canned chopped style olives. The committee recommended a relaxed tolerance of 10 percent, by weight, in an effort to encourage handlers to cut olives of the chopped style in larger pieces. The committee was concerned that canned chopped style olives are currently chopped too finely, rendering the product nearly an olive "flour" rather than identifiable pieces of olives consumers indicated they preferred. This change will reduce the costs of packing canned chopped style olives.

The committee recommended that the definition of "broken pitted" olives be modified from the definition provided in the standards. To accomplish this, the committee proposed a modified definition in § 932.149 of the regulations. The current definition is considered too restrictive by the committee. Under the current definition, broken pitted olives are

defined as "olives [which] consist substantially of large pieces that may have been broken in pitting but have not been sliced or cut." Currently, each handler packing broken pitted olives is prohibited from using olives which have been improperly pitted but unbroken because the olives have not been "broken" in the pitting process. (Improperly pitted olives do not contain pits or pit fragments.) Each such handler, therefore, pays an employee to "break" the unbroken, improperly pitted olives so that such olives meet the requirement for broken pitted olives. As recommended by the committee, the definition for broken pitted olives deletes the word "substantially," thereby permitting a greater percentage of unbroken, improperly pitted olives to be included in the broken pitted style category. Such change is intended to reduce the costs of packing broken pitted olives while maintaining the quality of the product.

The committee further recommended basing outgoing inspections on a pass-fail basis, eliminating the requirement that the inspection service certify that canned ripe olives are either Grade A, Grade B, or Grade C. Under a pass-fail outgoing inspection, canned ripe olives either meet the minimum quality requirements and pass inspection, or fail to meet the minimum quality requirements and not pass inspection. There will be no need to calculate the grade of each sample in order to assign Grade A, Grade B, or Grade C. Elimination of the requirement to certify to a grade will simplify the inspection of such olives, thereby reducing inspection time and overall inspection costs.

Authorized Methods of Outgoing Inspection

Pursuant to § 932.52 of the order and § 932.152 of the current outgoing regulations, handlers are required to maintain continuous in-line outgoing inspection or a certified QAP. Under continuous in-line outgoing inspection, at least one inspector must be present at all times when a plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products. The current cost for an inspector ranges from $31.50 for handlers under the marketing order to $42.00 per hour depending on the contract. For an 8-hour day the cost of one inspector ranges from $252.00 to $328.00.

By contrast, under a QAP, each certified plant has trained quality-control personnel who perform most of the same functions as a PPB inspector. The PPB inspectors continue to issue certificates of inspection based upon the outgoing inspection records maintained by the certified quality-control personnel. These records are verified through spot-checks and samples taken by PPB inspectors.

A QAP may decrease outgoing inspection costs for a handler compared to inspection costs under continuous in-line outgoing inspection. However, cost savings under a QAP accrue more to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from a QAP for similar reasons. However, olive crop sizes may vary substantially from one year to the next due to the alternate-bearing characteristics. This variability further reduces the efficiency of operations at most of the olive processing plants and the cost-savings of QAP, since handlers' fixed costs must be paid independent of the size of the crop.

To enable handlers to minimize their inspection costs, the committee recommended that handlers be allowed to utilize any inspection method permitted by PPB, so that each may choose the method most economical for their operations. Thus, in addition to a QAP and in-line inspection, lot inspection will also be authorized for meeting outgoing inspection requirements. Under lot inspection, a specified number of containers of the same size and type, containing olives of the same type and style, at the same location, are inspected. Lot inspection occurs after processing, rather than during processing. Inspecting by lot has the potential to reduce costs for handlers because lot inspection does not require the presence of an inspector at all times while olives are being processed.

To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, are revised to add authority for handlers to use either continuous in-line outgoing inspection, QAP, or lot inspection. Because lot inspection does not require the presence of an inspector at all times during the processing of olives, paragraph (b)(1) is revised by deleting the final sentence, thereby removing the requirement that an inspector be present when olives are processed. This change is expected to reduce overall inspection costs by eliminating overtime hours which accrue when an inspector is required to remain in an olive processing plant at all times while processing is underway.

Outgoing Inspection for Size of Canning-Size Olives

The committee also recommended revising the current requirements that canning-size olives, which have been sized and stored in tanks prior to pitting, be inspected for size prior to packaging. Currently, such olives are required under incoming inspection requirements to be weighed and size-graded. Olives are then stored in tanks prior to processing. The outgoing requirements mandate that such olives be submitted for size inspection prior to packaging. However, handlers size olives upon receipt and keep the sizes separate throughout the packaging process because doing so facilitates more efficient operation of modern processing and pitting equipment. Eliminating the requirement for inspection for size prior to packaging will simplify the inspection process and reduce overall inspection costs while maintaining the integrity and quality of canned ripe olives.

To effectuate this change, paragraph (b)(2) of § 932.152 is deleted. This deletion necessitates the redesignation of paragraph (b)(1) as (b).

However, olives which are smaller than authorized for use as canned ripe olives (undersized olives) will still be held under surveillance by the inspection service, as required in the incoming inspection requirements and specified in paragraph (e)(2) of § 932.151, since handlers must dispose of such olives into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing Inspection for Size of Limited-Use Olives

Section 932.152, paragraphs (g)(1) and (g)(2), of the current outgoing regulations specify that olives used in the production of limited-use styles are not required to be submitted for an outgoing inspection for size prior to packaging if they were size-graded by the inspection service during the incoming inspection process. Limited-use styles include halved, segmented (wedged), sliced, or chopped styles. Typically, smaller olives may be used for limited-use styles rather than for whole styles.

According to the requirements of § 932.51(a)(ii) of the order, canning size olives are sized by the inspection service during the incoming inspection process. The olives are then either placed in storage tanks or sent immediately to processing.

Olives process more efficiently when all the olives in the processing tank are uniform in size. Modern, high-speed

pitting equipment produces higher yields and inflicts less damage to olives when the sizes being pitted are uniform. This is especially true for the smaller canning sizes. Currently, over 95 percent of all olives are pitted prior to packaging.

Olive handlers have an additional incentive to maintain strict control over various sizes of olives—retail customers' demands for uniform size and quality.

For those reasons, the committee recommended changes in § 932.152, paragraphs (g)(1) and (g)(2) to eliminate the requirement for inspection for size prior to packaging.

To effectuate the change, the words "without an outgoing inspection for size designation" are deleted from § 932.152, paragraphs (g)(1) and (g)(2).

These changes establish minimum quality requirements of flavor, saltiness, color, character, and defects for whole and pitted style olives; sliced, segmented (wedged), and halved style olives; chopped style olives; and broken pitted style olives. They also revise outgoing inspection requirements and procedures under the marketing order by eliminating requirements that sized and stored olives be submitted for sizing prior to packaging, and permitting lot inspection. These revisions eliminate requirements no longer deemed necessary, thereby reducing handling costs, while maintaining quality and size requirements needed to ensure customer satisfaction.

This rule also changes § 932.153 (as amended in the **Federal Register** on August 5, 1996, 61 FR 40507), which specifies current minimum grade and size requirements for limited use olives. All references to "grade" in that section are replaced by the words "minimum quality" or "minimum quality requirements," as necessary.

Olive Import Requirements

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This rule establishes minimum quality requirements to replace current minimum grade requirements for California olives under the marketing order. Therefore, a corresponding change is made in the olive import regulation.

This rule modifies paragraphs (a)(8), (b)(1), (g), and (j) of § 944.401 by deleting certain references to the standards and adding specific quality criteria for imported olives which are the same as those for California olives.

The proposed rule concerning this action was published in the November 8, 1996, **Federal Register** (61 FR 57782), with a 15-day comment period ending November 25, 1996. No comments were received.

Although no comments were received, the Department is making several changes in the regulatory text that appeared in the proposed rule for purposes of clarification.

In tables 1 through 4 of sections 932.149 and 944.401, with respect to color criteria, the proposed rule stated, in part, that olives must have "a color equal or darker than the comparator." This rule replaces the word "comparator" with the term "USDA Composite Color Standard." This is a more precise term for the standard used to determine the appropriate color of olives, and does not materially affect the color requirement. In table 1 of those same two sections, with respect to pits and pit fragments, the allowance of "Not more than 1.3 average by count" is changed to read "Not more than 1.3% by count." This is a clarifying change.

In section 932.152(c)(2)(xi), the word "standard" is replaced by the word "quality." This is a more accurate word.

Finally, a paragraph (5) is added to section 932.149(a) and a paragraph (v) is added to section 944.401(b) to provide a tolerance for olives that do not meet the quality criteria set forth in those sections. Absent such tolerances, one failed unit would result in an entire lot failing to meet the specified quality requirements. The tolerances specified are those that appear in the standards and that are currently used by the olive industry. The proposed rule did not contain such tolerances. Adding these provisions to the final rule corrects this oversight.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this proposed rule.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be implemented as soon as possible since the crop year for olives grown in California began on August 1, 1996, and olives from the 1996 crop are already being processed and shipped. Further, handlers are aware of this rule, which was recommended at two public meetings. Additionally, interested parties had the opportunity to comment on the proposed rule, and no comments were received.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.149 is revised to read as follows:

§ 932.149 Modified minimum quality requirements for specified styles of canned olives of the ripe type.

(a) Except as otherwise provided in this section, the minimum quality requirements prescribed in §932.52(a)(1) are modified as follows, for specified styles of canned olives of the ripe type:

(1) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 1 of this section;

(2) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 2 of this section;

(3) Canned chopped olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 3 of this section; and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and,

(4) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 4 of this section;

(5) A lot of canned ripe olives is considered to meet the requirements of this section if all or most of the sample units meet the requirements specified in Tables 1 through 4 of this section: *Provided*, That the number of sample units which do not meet the

requirements specified in Tables 1 through 4 of this section does not exceed the acceptance number prescribed for in the sample size provided in Table I of 7 CFR 52.38: *Provided further,* That there is no off flavor in any sample unit.

TABLE 1.—WHOLE AND PITTED STYLE

[Defects by count per 50 olives]

FLAVOR	Reasonably good; no "off" flavor.
FLAVOR (Green Ripe Type)	Free from objectionable flavors of any kind.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with not less than 60% having a color equal or darker than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 5 soft units or 2 excessively soft units.
UNIFORMITY OF SIZE	60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm.
DEFECTS:	
Pitter Damage (Pitted Style Only)	15.
Major Blemishes	5.
Major Wrinkles	5.
Pits and Pit Fragments (Pitted Style Only)	Not more than 1.3 % average by count.
Major Stems	Not more than 3.
HEVM	Not more than 1 unit per sample.
Mutilated	Not more than 3.
Mechanical Damage	Not more than 5.
Split Pits or Misshapen	Not more than 5.

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.
Broken Pieces and End Caps	Not more than 125 grams by weight.

TABLE 3.—CHOPPED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

TABLE 4.—BROKEN PITTED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR part 52): Provided, That the definition of "broken pitted olives" is as follows: "Broken pitted olives" consist of large pieces that may have

been broken in pitting but have not been sliced or cut.

3. Section 932.150 is revised to read as follows:

§ 932.150 Modified minimum quality requirements for canned green ripe olives.

The minimum quality requirements prescribed in § 932.52 (a)(1) of this part are hereby modified with respect to canned green ripe olives so that no requirements shall be applicable with respect to color and blemishes of such olives.

4. In section 932.152, paragraphs (a), (b), (c)(2), the heading of paragraph (d), (d)(1), (g)(1) introductory text (table remains unchanged), and (g)(2) introductory text (table remains unchanged) are revised to read as follows:

§ 932.152 Outgoing regulations.

(a) *Inspection stations.* Processed olives shall be sampled and inspected only at an inspection station which shall be any olive processing plant having facilities for in-line or lot inspection which are satisfactory to the Inspection Service and the Committee; or an olive processing plant which has an approved Quality Assurance Program in effect.

(b) *Inspection—General.* Inspection of packaged olives for conformance with § 932.52 shall be by a Quality Assurance Program approved by the Processed Products Branch (PPB), USDA; or by in-line or lot inspection. A PPB approved Quality Assurance Program shall be pursuant to a Quality Assurance contract as referred to in § 52.2.

(c) * * *

(2) The Inspection Service shall issue for each day's pack a signed certificate covering the quantities of such packaged olives which meet all applicable minimum quality and size requirements. Each such certificate shall contain at least the following:

(i) Date;
(ii) Place of inspection;
(iii) Name and address of handler;
(iv) Can code;
(v) Variety;
(vi) Fruit size;
(vii) Can size;
(viii) Style;
(ix) Total number of cases;
(x) Number of cans per case;
(xi) And statement that packaged olives meet the effective minimum quality requirements for canned ripe olives as warranted by the facts.

(d) *Olives which fail to meet minimum quality and size requirements.* (1) Whenever any portion of a handler's daily pack of packaged olives fails to meet all applicable minimum quality and size requirements, the Inspection Service shall issue a signed report covering such olives. Each such report shall contain at least the following:

(i) Date;
(ii) Place of inspection;
(iii) Name and address of handler;
(iv) Can code;
(v) Variety;
(vi) Fruit size;
(vii) Can size;
(viii) Style;
(ix) Total number of cases;
(x) Number of cans per case; and
(xi) Reason why the applicable requirements were not met.

* * * * *

(g) *Size Certification.* (1) When limited-use size olives for limited-use styles are authorized during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(i), any lot of limited-use size olives may be used in the production of packaged olives for limited-use styles if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

(2) When limited-use size olives are not authorized for limited-use styles during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(ii), any lot of canning-sized olives may be used in the production of packaged olives for whole, pitted, or limited-use styles if such olives are within the average count range in Table III contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

5. In § 932.153, the section heading and paragraph (a) are revised to read as follows:

§ 932.153 Establishment of minimum quality and size requirements for processed olives for limited uses.

(a) *Minimum quality requirements.* On or after August 1, 1996, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1996, and meet the minimum quality requirements specified in § 932.52(a)(1) as modified by § 932.149.

* * * * *

6. In § 932.155, paragraph (c) is revised to read as follows:

§ 932.155 Special purpose shipments.

* * * * *

(c) In accordance with the provisions of §932.55(b), any handler may use processed olives in the production of packaged olives for repackaging, and ship packaged olives for repackaging, if the packaged olives meet the minimum quality requirements, except for the requirement that the packaged olives possess a reasonably good flavor: *Provided,* That the failure to possess a reasonably good flavor is due only to excessive sodium chloride.

PART 944—FRUITS; IMPORT REGULATIONS

7. In § 944.401, paragraphs (a)(8), (b)(1), (g), and (j) are revised to read as follows:

§ 944.401 Olive Regulation 1.

(a) * * *

(8) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR part 52) including the terms "size", "character", "defects" and "ripe type": *Provided,* That the definition of "broken pitted olives" is as follows: "Broken pitted olives" consist of large pieces that may have been broken in pitting but have not been sliced or cut.

(b) * * *

(1) *Minimum quality requirements.* Canned ripe olives shall meet the following quality requirements, except that no requirements shall be applicable with respect to color and blemishes for canned green ripe olives:

(i) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 1 of this section;

(ii) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements prescribed in Table 2 of this section;

(iii) Canned chopped olives of the ripe type shall meet the minimum quality requirements prescribed in Table 3 of this section and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and

(iv) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 4 of this section, *Provided,* That broken pitted olives consist of large

pieces that may have been broken in pitting but have not been sliced or cut.

(v) A lot of canned ripe olives is considered to meet the requirements of this section if all or most of the sample units meet the requirements specified in Tables 1 through 4 of this section: *Provided,* That the number of sample units which do not meet the requirements specified in Tables 1 through 4 of this section does not exceed the acceptance number prescribed for in the sample size provided in Table I of 7 CFR 52.38: *Provided further,* That there is no off flavor in any sample unit.

TABLE 1.—WHOLE AND PITTED STYLE

[Defects by count per 50 olives]

FLAVOR	Reasonably good; no "off" flavor.
FLAVOR (Green Ripe Type)	Free from objectionable flavors of any kind.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with not less than 60% having a color equal or darker than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 5 soft units or 2 excessively soft units.
UNIFORMITY OF SIZE	60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm.
DEFECTS:.	
Pitter Damage (Pitted Style Only)	15.
Major Blemishes	5.
Major Wrinkles	5.
Pits and Pit Fragments (Pitted Style Only)	Not more than 1.3% average by count.
Major Stems	Not more than 3.
HEVM	Not more than 1 unit per sample.
Mutilated	Not more than 3.
Mechanical Damage	Not more than 5.
Split Pits or Misshapen	Not more than 5.

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES

[Defects by count per 255]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.
Broken Pieces and End Caps	Not more than 125 grams by weight.

TABLE 3.—CHOPPED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

TABLE 4.—BROKEN PITTED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

* * * * *

(g) It is hereby determined, on the basis of the information currently available, that the minimum quality requirements and size requirements set forth in this part are comparable to those applicable to California canned ripe olives.

* * * * *

(j) The minimum quality, size, and maturity requirements of this section shall not be applicable to olives imported for charitable organizations or processing for oil, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–449 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[FV96–985–3 IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1996–97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996–97 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

DATES: Effective on January 9, 1997 through May 31, 1997; comments received by February 10, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2043; Fax: (503) 326–7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1996–97 marketing year, which ends on May 31, 1997. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1996–97 marketing year, which ends on May 31, 1997. This rule increases the salable quantity from 1,074,902 pounds to 1,213,692 pounds and the allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996–97 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year were recommended by the Committee at its September 26, 1995, meeting. The Committee recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 24, 1996, issue of the **Federal Register** (61

FR 1855). Comments on the proposed rule were solicited from interested persons until February 23, 1996. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year was published in the March 20, 1996, issue of the **Federal Register** (61 FR 11291).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996-97 marketing year be increased by 7 percent from 54 percent to 61 percent. The 1996–97 marketing year salable quantity of 1,074,902 pounds will therefore be increased to 1,213,692 pounds.

However, some Native spearmint oil producers did not produce all of their individual salable quantities for the 1996–97 marketing year, or fill their deficiencies from the prior year's production. The marketing order authorizes such producers to have their deficiencies filled by other producers who have production in excess of their salable quantities. This is optional for producers, but must be done before November 1 of each marketing year.

The original total industry allotment base for Native spearmint oil for 1996–97 was established at 1,990,559 pounds and was revised to 1,989,659 pounds to reflect loss of base due to non-production of producer's total annual allotments. This adjustment resulted in a 900 pound loss of total industry base, which is reflected in the calculations for the revised salable quantity.

This interim final rule makes an additional amount of Native spearmint oil available by increasing the salable quantity which releases oil from the reserve pool. Only producers with Native spearmint oil in the reserve pool will be able to use this increase in the salable quantity. Prior to November 1, 1996, producers without reserve pool oil or producers with an insufficient supply of reserve oil could have deficiencies in meeting their salable quantities filled by producers having excess Native spearmint oil. If all producers could use their salable quantity, this 7 percent increase in the allotment percentage would have made an additional 135,276 pounds of Native spearmint oil available (1,989,659 × 7 percent). However, Native spearmint oil producers having 25,546 pounds of Native spearmint oil will not be able to use their reserve pool deficiencies this marketing year. Deficiencies usually exist because of unplanned problems that may reduce spearmint production. Thus, rather than 135,276 additional pounds being made available, this action makes 113,730 additional pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

NATIVE SPEARMINT OIL RECOMMENDATION

(a) Actual Carry In on June 1, 1996	45,632 pounds.
(b) 1995–96 Salable Quantity	1,074,902 pounds.
(c) 1995–96 Available Supply	1,120,534 pounds (a + b).
(d) Total Sales as of November 14, 1996	1,036,058 pounds.
(e) Calculated Available Supply as of November 14, 1996	84,476 pounds ((c – d).
(f) Reserve Deficiency Affecting Salable Quantity	25,546 pounds.
(g) Revised Total Allotment Base	1,989,659 pounds.
(h) Recommended Allotment Percentage as of November 14, 1996	61 percent.
(i) Calculated Revised Salable Quantity	1,213,692 pounds (g x h).
(j) Actual Oil Available as Salable Quantity	1,188,146 pounds (i – f).

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1996–97 marketing year began on June 1, 1996. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 1997. Without the increase, the Committee believes the industry would not be able to meet market needs. As of November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991–92 to a low of 92,658 pounds in 1992–93. The five year average is 157,531 pounds. Therefore, based on past history the industry would be unlikely to meet market demand without this change. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1996–97 marketing year, it had anticipated that the year would end with an ample available supply. This revision adds 113,730 pounds of Native spearmint oil to the amount available for market during the remainder of the 1996–97 marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 61 percent should be established for Native spearmint oil for the 1996–97 marketing year. This percentage will provide an increased salable quantity of 1,213,692 and a new allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996–97 marketing year.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improved returns. In conjunction with the issuance of this rule, the Department has reviewed the Committee's revised marketing policy statement for the 1996–97 marketing year. The Committee's marketing policy statement has been reviewed under the provisions as set forth in 7 CFR §985.50 and with other USDA guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) oil allotment base, and approximately 115 producers hold

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Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

This interim final rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996–97 marketing year. This rule was recommended by the Committee, the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996–97 marketing year be increased by 7 percent from 54 percent to 61 percent. The 1996–97 marketing year salable quantity of 1,074,902 pounds will therefore be increased to 1,213,692 pounds. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. A normal spearmint producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint producing farms would fall into the category of large businesses.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities as all are national and multinational corporations involved in the buying and selling of essential oils and the products of such essential oils. The Committee also estimates that 20 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. This is based on production information gathered from assessments. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage of larger producers, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns. In addition, this change may potentially benefit the small producer more than large producers. This is because the change ensures that small producers are more likely to maintain a profitable cash flow and meet annual expenses.

Alternatives to this rule included not to increase the available supply of Native spearmint oil, which could potentially hurt small producers. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native class oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991–92 to a low of 92,658 pounds in 1992–93. The five year average is 157,531 pounds. Therefore, based on past history the industry would be unlikely to meet market demand without this change.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicitous information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.215 (61 FR 11291) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which began on June 1, 1996; (2) The quantity of Native spearmint planted for the 1997–98 marketing year may be affected, thus handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage of Native spearmint oil contained in this interim final rule; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) This rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

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PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.215 is amended by revising paragraph (b) to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§985.215 Salable quantities and allotment percentages 1996–97 marketing year.

* * * * *

(b)Class 3 (Native) oil—a salable quantity of 1,213,692 pounds and an allotment percentage of 61 percent.

Dated: January 3, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–450 Filed 1–8–97; 8:45 am]

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7 CFR Parts 997, 998, and 999

[Docket Nos. FV96–997–1 FR; FV96–998–4 FR and FV96–999–3 FR]

Peanuts Marketed in the United States; Changes in Handling and Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes, for 1996 and subsequent crop peanuts, several provisions regulating the handling and disposition of domestically and foreign-produced peanuts marketed in the United States. The rule eliminates several requirements covering the disposition of inedible peanuts. At the same time, it provides safeguard measures including amendments to the aflatoxin provisions to prevent inedible peanuts from entering human consumption outlets. The rule increases opportunities for reconditioning failing peanut lots and reduces inspection and handling costs to handlers and importers. The changes were recommended by the Peanut Administrative Committee (Committee), the administrative agency which oversees the quality assurance program under Peanut Marketing Agreement No. 146 (7 CFR Part 998, Agreement). By law, the same or similar regulations issued under the Agreement also must be issued under Part 997 regulating non-signatory peanut handlers, and Part 999.600 regulating peanut importers. This rule includes changes recommended by the Department to help ensure effective safeguard measures. The changes should enable the industry to be more competitive in the changing international peanut market.

EFFECTIVE DATES: 1. Sections 997.20, 997.30, 997.40, 997.50, 997.51, 997.52, 997.53, 997.54, 998.100, and 998.200 are effective January 13, 1997. Section 999.600 is effective January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170, or fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Peanut Marketing Agreement No. 146 (7 CFR Part 998); the non-signatory handler peanut regulation (7 CFR Part 997); and the peanut import regulation published in the June 19, 1996, issue of the **Federal Register** (61 FR 31306, 7 CFR Part 999.600). These programs regulate the quality of domestically produced peanuts handled by Agreement signers and non-signers as well as imported peanuts. The first two Parts are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." Part 999 is effective under section 108B(f)(2) of the Agricultural Act of 1949, as amended (7 U.S.C. 1445c–3).

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Domestic peanut production in 1995 was 1.76 million tons, with a farm value of slightly over $1 billion.

The objective of the two domestic programs and the import regulation is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production. The 1995 duty-free import quota was equal to approximately 2 percent of 1995 domestic production.

Under the three regulations, farmers stock peanuts with visible Aspergillus flavus mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an assessment levied on handlers in the respective programs.

The Committee, which is composed of producers and handlers of peanuts, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department assesses Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Public Law 101–220 amended section 608b of the Act in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Similarly, recent amendments to the Agricultural Act of 1949 require that all foreign produced peanuts in the domestic market fully comply with all quality standards under the Agreement. Section 999.600—Specialty Crops; Import Regulations was added to 7 CFR part 999 on June 19, 1996 (61 FR 31306), to establish minimum quality, identification, certification and safeguard requirements for foreign-produced farmers stock, shelled and cleaned-inshell peanuts presented for importation into the United States.

Thus, the changes to the Agreement's regulations, as established in this final rule, also are established for the peanut non-signer and import regulations.

According to the Committee, the domestic peanut industry is undergoing a period of great change. The Committee bases its view, in part, on findings in a

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May, 1996 study entitled "United States Peanut Industry Revitalization Project" developed by the National Peanut Council and the Department's Agricultural Research Service. According to the study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because of: (1) Decreasing consumption of peanuts and peanut products; (2) accompanying decreases in U.S. peanut production and increases in production costs; and (3) increasing imports of peanuts and peanut products.

The study shows that peanut consumption has declined. Between 1991 and 1994, per capita peanut consumption steadily declined a total of 11 percent. Peanuts used in primary products declined 12 percent, and peanuts used in peanut butter (the largest product usage) declined 20 percent.

Among other things, the study shows that harvested acreage of peanuts in the U.S. declined 25 percent between 1991 and 1995. Production has fluctuated downward, with 1995 production 30 percent below that of 1991. Farm value of peanut production has dropped 29 percent (from $1.4 billion to slightly over $1 billion) in the same period.

The study points to recent increases in the duty-free import quota for raw peanuts. The volume of imported peanuts has, indeed, increased due to recent relaxations of the duty-free quota enacted through the legislation to implement the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Prior to 1994, the volume of imported peanuts was limited, in most cases, to 1.71 million pounds annually. However, the Schedule of the United States annexed to NAFTA, implemented on January 1, 1994, provided duty-free entry for up to approximately 7.43 million pounds of qualifying peanuts from Mexico. The duty-free access for Mexican peanuts increased to approximately 7.88 million pounds in 1996 and is scheduled to be approximately 8.1 million pounds in 1997. In calendar year 2008, access for Mexican peanuts will be unlimited. In addition, the United States Schedule to the Uruguay Round Agreements under GATT increased the peanut import quota to 76.8 million pounds in 1996 from all countries except Mexico, with additional annual increases of approximately 10 million pounds to reach a ceiling of 125 million pounds by the year 2000 for all imported peanuts.

The study shows that imports of peanut butter from 1991 to 1996 increased 116 percent. More significantly, the study reports that imported peanut butter's share of U.S. peanut butter consumption increased 12 fold between 1988 and 1993.

The study also makes projections for the near future. Farmer production costs and revenue are projected to be equal by the year 2000, as are handler costs and revenue. Total imports of shelled peanuts and paste are expected to increase 50 percent by the year 2000 and the U.S. position in the world market is expected to drop 7 percent between 1995 and 1996.

In addition, the modifications in the Federal government's peanut quota and price support program under the Federal Agriculture Improvement and Reform Act of 1996 will result in the domestic industry undergoing changes over the next few years. The study shows that the quota poundage was reduced over 20 percent between 1991 and 1995, and the support price dropped from $670 per ton in 1995 to $610 in 1996.

The Committee contended that all of these factors combined show that the domestic peanut industry is in decline and that the outlook is not expected to change without some positive intervention by the industry.

In mid-1994, the Committee appointed a subcommittee to evaluate the present program and to recommend changes. The Agreement's handling regulations were evaluated with the intent of streamlining procedures and making them consistent with current industry economies and technological developments.

Different recommendations were developed for streamlining both incoming and outgoing handling procedures. The recommendations focused on handlers' freedom to prepare and dispose of peanut lots according to economic incentives of the marketplace. For instance, restrictions that prevent certain lots failing quality requirements from being blanched or remilled would be removed so that more peanuts could be reconditioned to meet human consumption requirements. Also, provisions throughout the Agreement regulations require that certain lots be kept separate and apart from other, similar peanut lots. For the most part, these provisions tend to limit handlers' flexibility to move and recondition peanuts. The subcommittee contended that such provisions may work against optimum utilization of equipment and facilities and prevent handlers from making the most economic use of their peanut inventories. Further, peanut processing machinery has been improved through technological advances to the point that virtually any lot of peanuts, regardless of original (incoming) quality, can now be shelled, remilled and/or blanched (processed) to meet outgoing quality requirements of the Agreement and the non-signer program. It was the opinion of the subcommittee that handlers should have the option of deciding whether it is more economically advantageous to recondition a lot or send it to an inedible peanut outlet.

Subcommittee members also recommended that many of the requirements controlling disposition of inedible peanuts be removed because those requirements should be placed on buyers rather than handlers. The subcommittee contended that peanuts either pass or fail quality and aflatoxin requirements, and the requirements limiting disposition based on aflatoxin content (restricted and unrestricted dispositions) should be removed.

The subcommittee contended further that these changes, primarily relaxations, could be made without limiting the effectiveness of the Agreement's quality assurance program. As long as all peanut lots intended for human consumption continue to be sampled and tested against current outgoing requirements, the industry's high quality standards would be maintained.

These recommendations represented a fundamental change in the Agreement's handling regulations. The full Committee met three times from March to May 1996, to review all of the recommendations. At a May 23, 1996, meeting the Committee recommended the changes to the Agreement's incoming and outgoing regulations for 1996 and subsequent crop peanuts. After review and modifications to some of the recommendations, the Department added an additional safeguard procedure for imported peanuts and published the recommendations in the **Federal Register** (61 FR 51811) on October 4, 1996. Because of extent of the recommended changes, the three peanut regulations were published in their entirety. A three-week comment period was provided for interested parties to submit comments. Twelve comments were received by the end of the comment period, October 24, 1996.

Seven comments were received from signatory handlers, two from growers cooperatives, and one on behalf of the Committee. All of the comments support the changes which effect the domestic signer and non-signer programs. Two comments were received from importers opposing the proposed additional reporting requirement on importers.

The Department requested comments on whether implementation of the proposed changes after the beginning of the crop year would have an unequal effect on one or more of the production areas or unequally affect small or large handlers. Nine commenters responded that the proposed changes should be implemented as soon as possible and should be in effect for the entire 1996 crop year. No comments were received opposing implementation of the changes for the 1996 crop year.

Further, seven commenters stated that the proposed changes would not have an adverse affect on small peanut handlers. No comments were received from persons claiming to be or to represent small businesses.

The comment submitted on behalf of the Committee recommended revising the proposed regulatory text covering the requirement that all peanuts be chemically tested for aflatoxin prior to disposition for human consumption. The comment does not change the meaning or intention of the proposal. This comment is addressed below.

One commenter suggested that the handling regulations be further changed by eliminating the Segregation categories specified in the incoming regulations. Such a relaxation could increase the volume of cheaper peanuts available for processing for edible consumption. The idea was considered and ultimately rejected by the Committee at meetings prior to the May meeting because no agreement could be reached on provisions to ensure appropriate compensation for producers. After considering the comment and deliberations taken by the Committee at the previous meetings, the Department has determined that the comment should not be included in this rulemaking action.

Two commenters correctly pointed out that the support price of the Department's Farm Service Agency (FSA) peanut quota program is not scheduled to be reduced below the current $610 per ton, as indicated in the proposed rule. This statement is corrected.

One comment was received from a peanut producers association which addressed several issues relating to FSA's quota program. The comments did not have relevance to the proposed handling changes in this rulemaking.

Three commenters addressed the Department's proposed additional import requirement covering foreign-produced peanuts which are admitted into the U.S. and stored in warehouses for more than 30 days prior to the opening of the duty-free import quota. Two importers opposed the requirement and one commenter representing a domestic growers cooperative agreed with the additional requirement. The requirement and the Department's decision not to accept the opposing comments are discussed below.

Of the nine comments received which addressed the effective date of the regulations, all indicated that the rule should be implemented as soon as possible. Several commenters stated that the entire industry is expecting the changes to be made effective for the entire 1996 crop year. However, handling actions already taken should not be subject to such requirements. Thus, the actions taken in this final rule are not intended to cover the entire 1996 crop year. Four commenters stated that additional delays in implementation will adversely affect the industry.

This final rule changes, for 1996 and subsequent crop peanuts, several provisions regulating the handling of domestic and foreign-produced peanuts and relaxes disposition requirements of such peanuts to inedible peanut outlets. The rule increases the volume of peanuts that can be handled and used for human consumption without decreasing the quality requirements for such disposition. Restrictions are removed on handler acquisition for human consumption use of certain farmers stock lots failing incoming inspection because of excess loose shelled kernels and fall-through peanuts. Positive lot identification (P.L.I.) requirements for seed peanuts are removed. Shelled peanut lots meeting Indemnifiable Grade or Superior Grade requirements may be sent to human consumption outlets prior to the handler receiving aflatoxin certification of the lot. Restrictions are removed on remilling and blanching of peanut lots exceeding certain damage and foreign material content levels. The maximum allowable aflatoxin content of peanut lots disposed to inedible peanut outlets, such as animal feed or wildlife seed, or are exported, is raised from 25 ppb to 300 ppb. Previous provisions on "restricted" and "unrestricted" dispositions, "fragmented" peanuts, and peanut meal are removed. Peanut lots testing above 300 ppb aflatoxin content, which are not reconditioned, may only be crushed for oil. Safeguard measures are established requiring aflatoxin certifications for inedible lots exceeding 15 ppb aflatoxin content. Finally, the volume and storage location of foreign-produced peanuts arriving in the U.S., which are inspected and stored in Customs bonded warehouses for more than one month prior to filing for consumption entry, must be filed with AMS.

Because this rulemaking involves substantial changes to the text of the three peanut regulations, the explanation of the changes to each program is repeated in this final rule. Comments received are included in the discussion of each change in regulation. The Department also makes a few changes to correct inadvertent omissions and redundancies in the regulatory text of the three programs.

Incoming Regulations

Loose shelled kernels: The Committee recommended amending § 998.100 Incoming quality regulation by removing paragraph (d) *Loose shelled kernels* which regulates the acquisition of loose shelled kernels (LSKs) and other defective kernels. The regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. New, high technology milling and blanching equipment enables handlers to recondition failing peanut lots that could not have been reconditioned when the regulations were promulgated. It is no longer necessary to impose restrictions that hinder efficiency of handling operations and result in the loss of potentially good quality peanuts. Therefore, this final rule removes paragraph (d)(1) from the incoming regulations. In doing so, restrictions are removed on acquiring farmers stock peanuts with more than 14.49 percent LSKs and 5 percent fall-through from specified screen sizes.

For the non-signer regulation, paragraph (d) *Loose shelled kernels* in § 997.20 corresponds to paragraph (d) of the Agreement's § 998.100 and is removed for the reasons cited above and to be consistent with corresponding changes to the Agreement. For the import regulation, paragraph (b)(1)(iv) *Loose shelled kernels* of § 999.600 also is removed for the reasons cited above.

The Committee recommended removing paragraph (d)(2) of § 998.100 which requires that handlers submit to the Committee diagrams of their handling facilities and procedures. This provision is no longer considered necessary for the Committee's oversight of the signatory handlers and is removed.

The non-signer regulation and the import regulation do not have paragraphs corresponding to paragraph (d)(2) of § 998.100.

Seed peanuts: The Committee recommended removing the requirement in old § 998.100, paragraph (e) *Seed peanuts* that required handlers who receive or acquire seed residuals to hold and mill such peanuts separate and

apart from other edible quality peanuts. As long as the peanuts sent to human consumption outlets must ultimately meet outgoing requirements, including certification as negative to aflatoxin, it is not necessary to hold those peanuts separate and apart from other lots also destined for edible consumption. Therefore, this final rule amends paragraph (e) of § 998.100 by removing the requirement that handlers hold and mill seed residuals separate and apart from other edible quality peanuts.

The Department makes a correction to paragraph (d)(2) as published on page 51824 of the proposed rule. The second sentence is not correctly worded and should refer to seed peanuts which "have" visible *Aspergillus flavus* mold. The words "are free from" are removed from the second sentence as published in the proposed rule. The sentence has been revised accordingly in this final rule.

For the non-signer regulation, paragraph (e) *Seed peanuts* in § 997.20 contains different wording but the same meaning and intent as the Agreement regulation's seed provisions. The changes made to paragraph (e) of the Agreement regulation concerning holding and milling seed peanuts separate and apart from other peanuts also are made to § 997.20 paragraph (e) of the non-signer regulation for the reasons cited above and to be consistent with corresponding changes to the Agreement.

For the import regulation, paragraph (b)(2) *Seed peanuts* in §999.600, also is changed accordingly. Further, old paragraph (b)(2) provided that Segregation 2 and 3 peanuts may be shelled for seed purposes, but must be dyed or chemically treated to indicate the peanuts are unfit for human or animal consumption. That requirement was provided in paragraphs (i)(1) and (2) of §998.200—which are removed in this final rule (discussed below). Thus, this rule finalizes changes to import regulation paragraph (b)(2) by removing the requirement that Segregation 2 and 3 seed peanuts must be dyed or chemically treated. Finally, the second sentence of the import regulation paragraph (b)(2), which covered reporting disposition to the Secretary, is removed because the information is adequately covered in the last two sentences of the same paragraph.

Oilstock: In old paragraph (f) of §998.100, the Committee recommended removing the prohibition on exporting inedible quality peanuts to Canada or Mexico and removing references to "fragmented" peanuts. The Committee members expressed the point that other countries ship inedible and unfragmented peanuts to Canada, Mexico, and other international markets, so domestic handlers should not deny themselves access to the same international markets. Further, removing the term "fragmented" from paragraph (f) of §998.100 allows the term "peanuts" to refer to peanuts in any form, including fragmented kernels, which may be acquired by handlers for crushing or export. Therefore, this final rule removes from old paragraph (f), the prohibition on exporting inedible quality peanuts to Canada and Mexico, and references to fragmented peanuts and the term "shelled" is also removed, where appropriate, for the same reason. Old paragraph (f) also is redesignated as paragraph (e).

For the non-signer regulation, the prohibition on exports to Canada and Mexico and the requirement of fragmentation is removed to make paragraph (f) of §997.20 consistent with the changes to the regulations under the Agreement.

In §999.600 of the import regulation, paragraph (b)(3) *Oilstock and exportation* does not restrict exports and so no corresponding change is needed.

Finally, in §998.100, the Committee recommended removing paragraph (j) which covers disposition of shelled peanuts for use as animal feed. This paragraph contained restrictions which are not necessary to safeguard the quality of peanuts for human consumption. Appropriate safeguard measures are provided in replacement provisions discussed below. Therefore, this final rule removes paragraph (j) from the Agreement regulations.

In this final rule, corresponding paragraph (h) in §997.20 of the non-signer regulation is removed for the reason cited above. Paragraph (i) of §997.29 is retained because it applies to producer/handlers handling peanuts of their own production. Such farm-stored peanuts must meet the requirements of the non-signer regulation. Paragraph (i) is redesignated as paragraph (g) in §997.20.

The import regulation does not have a paragraph corresponding specifically to the Agreement regulation's paragraph (j) on animal feed. The topic is addressed in paragraph (e) of the outgoing regulations, the removal of which is discussed below.

Outgoing Regulations

Paragraph (a) of §998.200 Outgoing quality regulation provides that peanut lots meeting the indemnifiable grade requirements in Table 2 do not have to be tested and certified as negative as to aflatoxin. The Committee recommended modifying this requirement to provide that all lots (including indemnifiable grade lots) intended for human consumption be chemically tested and certified "negative" as to aflatoxin content. The change makes the Agreement regulations consistent with current industry practice. Most, if not all, buyers require that all peanuts for human consumption be certified negative as to aflatoxin. This change has a twofold purpose—it codifies a practice which is common in the industry, and ensures that the regulations effectuate the objectives of the Agreement. This final rule modifies paragraph (a) accordingly.

Currently, peanut lots meeting the grade requirements of Table 1, Other Edible Quality, must be certified negative to aflatoxin prior to shipment to the buyer. This requirement is not changed. Further, under previous industry practice, indemnifiable grade peanut lots were chemically tested and certified while the lot was in transit to the buyer. This practice is continued under the final rule and the actual transfer of lot ownership should not normally occur until certification has been received by the handler. A shorter turn-around time for chemical analysis is now possible with current testing practices and equipment, overnight and express mail services, and fax transmissions of test results.

The comment filed on behalf of the Committee correctly points out that proposed paragraph (a)(2) in § 998.200, which is between the two tables on page 51826, could be interpreted to mean that all shelled peanut lots must meet indemnifiable grade requirements. The Department agrees that this is not the intent of the Committee's recommendation. The commenter suggested that paragraph (a)(2) in the proposed rule be re-arranged to read as follows: "Prior to disposition to human consumption outlets, peanuts which have been certified as meeting the requirements for indemnifiable grades must also be certified "negative" as to aflatoxin. Maximum limitations for indemnifiable grades are as follows:" This final rule makes the commenter's recommended change to paragraph (a)(2) of § 998.200 of the Agreement regulations and also to paragraph (a)(1)(ii) of § 997.30 of the non-signer regulations. The corresponding paragraph in the import regulation does not need to be changed.

The Department also corrects the title of Table 1 in § 998.200 of the Agreement regulations. The word "Non" was inadvertently left out of the title, which should read: Table 1—"Other Edible Quality" (Non-Indemnifiable) Grades—Whole Kernels and Splits. This error

appears twice in the proposed rule because Table 1 begins on page 51825 and is continued on page 51826. The titles of the corresponding tables in the non-signer or import regulation do not refer to "indemnifiable" peanuts and do not have to be corrected.

The Committee recommended changing the title of paragraph (c) of § 998.200 to read *Sampling and testing shelled peanuts.* The new title includes the peanut sampling process which comprises a significant part of paragraph (c). As a conforming change, the beginning of the first sentence of revised paragraph (c) is changed to add the words "Prior to shipment, * * *." In addition, this final rule designates the old introductory paragraph (c) as paragraph (c)(1) because a paragraph (c)(2) is cited in the Code of Federal Regulations. New paragraph (c)(1) is otherwise unchanged.

A conforming change is made to the title of corresponding paragraph (c) of § 997.30 of the non-signer regulation. No conforming change is necessary in the import regulation. A conforming change also is made to non-signer paragraph (c)(2) to specify that handlers shall cause samples to be ground by the Federal or Federal-State Inspection Service (inspection service) prior to shipment.

Paragraph (c)(4) of § 998.200 specifies the maximum allowable aflatoxin content for edible peanut lots as 15 parts per billion (ppb). Such lots are certified as "negative" to aflatoxin. Consistent with current industry practice, the aflatoxin certificates for such lots are not required to specify the numerical aflatoxin count of the lot. This requirement is not changed in this final rule.

Previous paragraph (c)(4) of § 998.200 also specified a "negative" content for inedible peanut lots as 25 ppb or less. Under the regulation, failing lots with aflatoxin content in excess of 15 ppb but 25 ppb or less were considered "unrestricted," which means the peanuts could be used in certain non-human consumption peanut outlets such as animal feed, wildlife feed, etc. "Unrestricted" uses could provide more of a financial return for handlers while not posing a food safety threat to consumers. Peanut lots with aflatoxin content of more than 25 ppb were certified as "restricted" and could only be crushed for oil or exported. Aflatoxin certificates from USDA and Committee-approved private laboratories specified unrestricted lots as "negative" and usually did not include the numerical count of the lot's aflatoxin content. Restricted lot certificates cited the numerical aflatoxin count of the failing lot.

The Committee recommended revising paragraph (h) and removing paragraphs (j) and (l) of § 998.200 to remove, among other things, procedures relevant to "unrestricted" and "restricted" lots of peanuts. Under the proposal, restrictions on the disposition of failing peanut lots would be relaxed under the proposed rule. Failing lots of peanuts composed of LSKs, fall through and pickouts from initial shelling operations would be limited to crushing or export unless certified as to aflatoxin content. If so certified, the lots could be disposed to other non-edible uses. Other failing lots and residuals from blanching and remilling also could be sold to any buyer provided that the lot is PLI, certified as to aflatoxin content, and in specified containers. Therefore, under the proposal, there is no reason to retain the phrase in paragraph (c)(4) of § 998.200 that specifies 25 ppb or less as "negative" to aflatoxin for inedible peanuts. Continued reference to 25 ppb relative to inedible peanuts would only cause confusion in the revised regulations. The Department accepts these recommendations of the Committee and revises, in this final rule, the paragraphs as stated.

Replacement paragraphs (f), (g), and (h) of the new § 998.200 (discussed below) require that failing lots disposed to inedible outlets other than crushing or export be "certified as to aflatoxin content"—which means entering a numerical count rather than a general statement covering a ppb spread from 16 to 26 ppb. Therefore, this final rule establishes that, for peanut lots testing more than 15 ppb, the aflatoxin certificate must show the lot's numerical aflatoxin count.

This final rule establishes that aflatoxin laboratories specify the numerical aflatoxin content on certificates issued on inedible peanut lots testing more than 15 ppb. Also, aflatoxin certificates on lots which fail grade requirements but are tested at 15 ppb or less should be certified as "negative to aflatoxin" for inedible peanuts. The certificates for such lots may specify the ppb aflatoxin content of the lots.

This final rule makes corresponding changes to paragraph (a)(2) of § 997.30 of the non-signer regulations and paragraph (f)(3) of § 999.600 of the import regulation.

The Department believes these certification guidelines will assist handlers in marketing inedible quality peanuts.

Paragraph (d) *Identification* of § 998.200 is amended in this final rule by adding a clause in the first sentence establishing the maximum lot size as 200,000 pounds. Two hundred thousand pounds of peanuts is the largest lot size which the inspection service has determined can be efficiently and accurately sampled. The maximum limit specification is removed from other paragraphs in the Agreement's regulatory language and is added to paragraph (d) for consistency and clarity. The 200,000 pound maximum lot size applies to all sampling situations.

The Department makes a correction to the regulatory text of paragraph (d) of § 998.200. Text regarding P.L.I. was inadvertently left out of the second to last sentence at the end of paragraph (d). The corrected text does not change the meaning or regulatory nature of the paragraph.

In the non-signer regulation, § 997.50 Inspection, chemical analysis, certification and identification applies to identification, among other topics. While the maximum lot size of 200,000 pounds is specified elsewhere in the regulations, the 200,000 pound maximum lot size is added to § 997.50. In the import regulation, paragraph (d)(3)(ii) in § 999.600 specifies the 200,000 pound maximum lot size and is not changed.

Paragraph (f) *Interplant transfer* of § 998.200 was revised last year and provides that peanut lots may be transferred to any handler or storage without P.L.I. and certification, and that, upon disposition for human consumption such transferred peanuts must meet edible requirements. This paragraph is consistent with the Committee's intention to remove provisions which restrict movement and increase costs of handling peanuts. As long as any lot of peanuts intended for human consumption are required to be sampled and meet outgoing quality requirements and are P.L.I., any additional requirements on the transfer of peanuts between a handler's plants, that do not affect outgoing quality, are irrelevant. Therefore, paragraph (f) is not changed in this final rule. Handlers are required to keep records of all such transfers.

Corresponding paragraph (f) of § 997.30 of the non-signer regulation covers the transfer of non-signer peanuts between plants. This paragraph is removed (as discussed below). The import regulation does not have corresponding requirements on the transfer of imported peanuts between plants, and, therefore, no conforming change is necessary.

Disposition of Failing Quality, Inedible Peanuts

The Committee recommended streamlining § 998.200 Outgoing regulation by removing 16 paragraphs covering disposition requirements and procedures concerning inedible (failing quality) peanuts used for research projects, wildlife feed, rodent bait, chemically treated seed, fragmented export, meal from crushing, and animal feed. The paragraphs removed from § 998.200 are:

(1) Paragraph (g)(1) which defined LSKs, fall through, and pickouts and inedible quality peanuts;

(2) Paragraph (g)(2) which required that inedible peanuts be kept separate and apart from edible quality peanuts;

(3) Paragraph (g)(3) which provided for: (a) disposition of inedible peanuts to research projects, wildlife feed, rodent bait, chemical treatment for seed, and export to countries other than Canada and Mexico; (b) designations of restricted and unrestricted failing lots; and (c) limits on disposition of meal from crushing;

(4) Paragraph (g)(4) which specified further requirements on the transfer of inedible peanuts;

(5) Paragraph (h)(1) which specified further requirements on identifying and reporting the transfer of inedible peanuts;

(6) Paragraph (h)(3) which specified further requirements regarding the disposition of failing quality Segregation 1 peanuts to specified outlets;

(7) Paragraph (i)(1) which specified disposition of seed peanuts and seed residuals;

(8) Paragraph (i)(2) which required chemical treatment of seed peanuts;

(9) Paragraph (j)(1) which specified requirements on commingling and disposition of Segregation 2 and 3 peanuts;

(10) Paragraph (j)(2) which specified further requirements on commingling and disposition of Segregation 2 and 3 peanuts;

(11) Paragraph (k)(1) which regulated exportation of Segregation 1 peanuts;

(12) Paragraph (k)(2) which specified further requirements on the disposition of Segregation 1 peanuts to inedible outlets;

(13) Paragraph (l)(1) which specified categories of unrestricted shelled peanuts for disposition to crushing or export;

(14) Paragraph (l)(2) which specified categories of restricted shelled peanuts for disposition to crushing or export;

(15) Paragraph (m)(1) which specified requirements for the disposition of shelled peanuts for domestic animal feed; and

(16) Paragraph (m)(2) which specified coloring or dyeing and other requirements for inedible peanuts disposed to domestic animal feed.

This final rule removes paragraphs (j) and (k) which specified disposition requirements for farmers stock peanuts. The Committee believed that these two paragraphs are no longer needed because paragraph (f) *Oilstock* of § 998.100 *Incoming quality regulation* provides that handlers may acquire Segregation 2 and 3 peanuts for crushing or export and that the Area Association supervise such dispositions. Handlers may also acquire for crushing or export peanuts originating from Segregation 1 farmers stock which are milled and fail human consumption quality and are P.L.I.

Under the previous Agreement regulations, paragraph (j)(3) of § 998.200 provided handlers with an exemption from assessments for acquisitions of Segregation 2 and 3 peanuts used for crushing or export. Paragraph (j)(3) was added to the regulatory language last year (60 FR 36208, July 14, 1995) to clarify Agreement provisions §§ 998.31 and .48. The Department clarifies in this final rule that the assessment exemption applies to Segregation 2 and 3 peanuts acquired only for crushing, whether domestic or export. The exemption paragraph is redesignated as paragraph (i) in § 998.100 of the incoming regulation, and is revised to remove the references to the removed paragraphs (j)(1) and (j)(2) in § 998.200.

This final rule also relaxes restrictions on blanching and remilling certain inedible lots. The Committee recommended relaxing restrictions in paragraphs (h)(2) and (h)(4) which prohibited blanching or remilling peanut lots exceeding defect levels of 10 percent total unshelled peanuts and damaged kernels, 10 percent foreign material, and, for remilling, 10 percent fall through. The restrictions on the amount of damage and foreign material in out-of-grade lots are removed so that handlers have more opportunity to recondition failing lots. This change increases handler flexibility, reduces inspection and handling costs, and enables more peanuts to be reconditioned and shipped for human consumption. The restriction on 10 percent fall-through for remilling peanuts remains in effect.

The corresponding paragraphs of the non-signer and import regulations (§ 997.40(a) and § 999.600(f) respectively) do not contain similar limitations on blanching and remilling of defective lots and do not need to be changed.

The Committee indicated that the regulations were too restrictive and limited handlers' ability to recondition potentially edible peanuts. Further, as long as peanuts are required to meet the outgoing requirements, including negative aflatoxin certification, it should not matter from which categories the peanuts originated. The Committee recommended removal of many restrictions and the addition of appropriate safeguards. The Committee believed these safeguard requirements would help ensure that inedible peanuts do not end up in human consumption outlets.

The provisions covering peanut disposition are replaced by two new paragraphs and revisions are made in two existing paragraphs. New paragraphs (f) (1), (2) and (3) of the outgoing regulation modify § 998.32 of the Agreement and specify disposition requirements for edible and non-edible peanut lots. New paragraph (g) provides for disposition of inedible milled peanuts ("sheller oilstock residuals"). New paragraph (h)(1) covers the blanching of inedible peanuts (revised from current paragraph (h)(2)). New paragraph (h)(2) covers the remilling of inedible peanuts (revised from current paragraph (h)(4)).

The Committee believed that safeguard measures in the regulations should be maintained because peanut lots sent to human consumption outlets still need to meet the quality requirements of paragraph (a) and be certified negative to aflatoxin. Peanuts which cannot be reconditioned (or which a handler chooses not to recondition) to meet outgoing quality requirements would continue to be required to be P.L.I., red tagged, and maintained in appropriate containers. If disposed of to inedible peanut outlets other than domestic or export crushing, failing peanuts would be required to be certified as to aflatoxin content and that certification would accompany the lot to the inedible peanut outlet. In addition, new paragraph (f)(2) also requires that the shipping papers state that the inedible peanuts are not to be used for human consumption. All inedible dispositions would continue to be reported to the Committee.

In new paragraph (f)(3) of § 998.200, failing quality peanuts not sent to inedible outlets such as livestock feed, wild animal feed, rodent bait, etc., must be either crushed or exported as prescribed in new paragraph (g) or blanched or remilled pursuant to new paragraphs (h) (1) and (2), respectively. Segregation 2 and 3 farmers stock peanuts may be milled for seed.

New paragraph (g) of § 998.200 provides that peanuts and portions of peanuts which result from milling operations be identified as "sheller oilstock residuals." Such peanuts include loose shelled kernels, fall through, and pick-outs as defined in that paragraph and whole lots of failing peanuts that a handler may choose to crush or export for crushing. Under new paragraph (g), sheller oilstock residuals which are certified as to aflatoxin content may be disposed of "domestically," which means that the peanuts may be used for livestock feed, wild animal feed, rodent bait, or other non-human consumption uses, pursuant to paragraph (f)(2), or crushed for oil. Such peanuts also may be exported. Seller oilstock residuals not certified as to aflatoxin content must be crushed or exported as specified in new paragraph (g). Further, shipping papers accompanying such crushed or exported lots must specify that disposition limitation. All sheller oilstock residuals moved under paragraph (g) of § 998.200 must be reported to the Committee—which is consistent with current reporting requirements. Corresponding reporting requirements to report disposition of inedible peanut lots to the AMS are established for non-signatory handlers in paragraph (c) of § 997.40 and for importers in paragraph (e)(4) of § 999.600.

This final rule removes nearly all restrictions on handlers selling peanuts to inedible peanut outlets. To help ensure the peanut lots with excessively high aflatoxin content are not used in inedible outlets where aflatoxin contamination could be transferred to human consumption products, the Department establishes in this final rule that no peanut lot exceeding 300 ppb aflatoxin content may be disposed to an inedible peanut outlet, other than crushing or export. The 300 ppb content ceiling is the maximum aflatoxin content recommended by the Food and Drug Administration (FDA) for peanuts used for finishing (i.e. feedlot) beef cattle. To make this change, an additional paragraph (2) specifying the restriction is added to paragraph (g) covering sheller oilstock residuals. The same provision is added to the non-signer regulation as paragraph (c)(2) of § 997.40 and the import regulation as paragraph (e)(2)(ii) of § 999.600. This requirement will help ensure peanut lots which are excessively high in aflatoxin are not disposed to inedible outlets such as livestock feed where the aflatoxin can be transferred in the food chain to other food products intended for human consumption.

Thus, this final rule raises the aflatoxin content limit to 300 ppb from the current 25 ppb for failing peanut lots which can be disposed of to any inedible outlet.

Under this final rule, handlers are allowed to recondition failing peanut lots, and have more incentive to do so. Handlers have the option of crushing a lot for oil or reconditioning the lot. Lots above 300 ppb aflatoxin content which are not economically beneficial to recondition must be crushed or exported. Only lots testing 300 ppb or less should be disposed of for use as animal feed. With current technologies, reconditioning should be possible for most all failing peanut lots. Whole and residual lots exceeding 300 ppb aflatoxin content may be commingled until sufficient volume is accumulated for crushing disposition.

According to the FDA, residuals from the reconditioning of lots exceeding 300 ppb and the meal from crushed lots exceeding 300 ppb should not be used as animal feed. The recommended maximum aflatoxin content for domestic animal feed, provided below, is summarized from FDA's Compliance Policy Guides (Sec. 683.100). The section is entitled "Action Levels for Aflatoxin in Animal Feed" and was last revised March 28, 1994. The action levels provided below apply to peanut products, peanuts, peanut meal, peanut hulls, peanut skins and ground peanut hay. The FDA guide provides the following action levels for animal feeds:

—Peanut products intended for finishing (i.e., feedlot) beef cattle: Action level 300 ppb.
—Peanut products intended for finishing swine of 100 pounds or greater: Action level 200 ppb.
—Peanut products intended for breeding beef cattle, breeding swine, or mature poultry: Action level 100 ppb.
—Peanut products and feed ingredients intended for immature animals: Action level 20 ppb.
—Peanut products and other feed ingredients intended for dairy animals, for animal species or uses not specified above, or when the intended use is not known: Action level 20 ppb.

In the previous Agreement regulations, inedible peanut lots certified at 26 or more ppb could not be sent to inedible peanut outlets where the peanuts would not be subject to heating in the preparation for inedible use or sent to outlets which allow the aflatoxin to be passed to another food product entering human consumption channels. This is a food safety measure which helps prevent aflatoxin-contaminated peanut lots from being used in certain inedible outlets—such as dairy cattle feed where the aflatoxin could be passed to human consumption in the milk.

This final rule continues to require that handlers dispose of inedible peanuts based on aflatoxin content. However, the action level restricting inedible disposition is relaxed significantly and the restrictions limiting disposition to different inedible peanut outlets are removed, except that lots containing aflatoxin in excess of 300 ppb are required to be crushed for oil.

This final rule retains, as proposed, the phrase "which originated from Segregation 1 peanuts" in paragraphs (h)(1) and (h)(2) of § 998.200. This phrase was not included in the text for the revised blanching and remilling paragraphs recommended by the Committee and no explanation was provided by the Committee as to the benefit of removing this important safeguard provision. The phrase, at the very least, serves as a reminder that only Segregation 1 peanuts may be shelled and sent to edible consumption outlets. The phrase is included in corresponding paragraphs (d) and (e) of § 997.400 and the introductory paragraph (e) of § 999.600.

Also, the Committee recommended that the titles of the revised blanching (h)(1) and remilling (h)(2) paragraphs include reference to Committee-approved blanchers and remillers. However, the references are not necessary for the meaning of the paragraphs and are not included in this final rule.

In non-signer § 997.30 Outgoing regulation, paragraphs (f) *Transfer between plants* and (g) *Residuals from seed peanuts* correspond to the same topics covered in the Agreement's outgoing regulation, and are removed in this final rule. The subject matter in the two paragraphs is replaced with revised § 997.40 Reconditioning and disposition of peanuts failing quality requirements. Paragraphs (a)(1) and (2) of old § 997.40, covering remilling and blanching of inedible shelled peanuts are revised and the order is reversed to conform with revised blanching and remilling paragraphs in § 998.200. The new non-signer blanching and remilling paragraphs are designated as paragraphs (d) and (e), respectively. These new paragraphs are not identical to the Agreement's blanching and remilling paragraphs because non-signers are not required to receive approval prior to moving a failing shelled lot to a blancher or remiller (as are signatory

handlers under the Agreement regulations). Also, the non-signer regulations do not limit remilling and blanching to Committee-approved remillers, blanchers or exporters. Therefore, those requirements are not included in revised non-signer paragraphs (d) blanching and (e) remilling finalized in this rule.

The provisions of the previous non-signer paragraph (a)(3) of § 997.40 covering the ownership of peanuts moved for custom blanching or remilling, and the certification and reporting of such peanuts, are included in new § 997.40 blanching and remilling paragraphs (d) and (e). Likewise, previous paragraph (a)(4) provisions on the bagging, red tagging and disposition of blanched and remilled peanuts are included in the revised paragraphs (d) and (e) of § 997.40. These changes make the non-signer blanching and remilling paragraphs conform with the Agreement regulation's revised blanching and remilling paragraphs.

Four paragraphs in old § 997.40(b) *Disposition of shelled peanuts failing quality requirements for human consumption* cover the various disposition procedures and outlets for failing quality, inedible peanuts. These requirements are the same as, but are organized and worded differently from corresponding paragraphs (g) through (m) in § 998.200 of the Agreement regulations. The provisions removed from old paragraph (b) of § 997.40 are:

(1) Paragraph (b)(1) which regulated the disposition of shelled peanuts to unrestricted crushing, fragmenting or dyeing, export, animal feed, wildlife feed, and rodent bait;

(2) Paragraph (b)(2) which specified further requirements for disposition to animal feed (coloring or dyeing, P.L.I., valid aflatoxin certification, and reporting);

(3) Paragraph (b)(3) which regulated the disposition of shelled peanuts to restricted crushing, and export;

(4) Paragraph (b)(4) which regulated the disposition of Segregation 2 and 3 farmers stock peanuts to restricted and unrestricted meal, crushing and export; and

(5) Paragraph (b)(5) which specified reporting requirements for LSKs, fall through, and pickouts.

These paragraphs are removed for the same reasons cited above and to correspond to changes to the Agreement's outgoing regulation. This final rule removes all references to "restricted" and "unrestricted" failing imported peanuts and limitations on the disposition of restricted and unrestricted lots.

Old paragraph (b)(6) of § 997.40 is retained because it exempts from assessments, Segregation 2 and 3 farmers stock peanuts acquired by non-signatory handlers for crushing or export. The corresponding paragraph in the Agreement is retained and redesignated in this final rule. Therefore, such Segregation 2 and 3 peanuts acquired by non-signatory handlers also continues to be exempt from assessments. Old paragraph (b)(6) is revised and redesignated as paragraph (b) under § 997.51 Assessments and the existing text in § 997.51 is redesignated as paragraph (a).

There is no authority to assess imported peanuts.

Several changes are made to § 999.600 of the import regulation regarding disposition of inedible peanuts. Old paragraph (c)(3) (reconditioned peanuts) is redesignated as the new introductory paragraph of paragraph (e). Further, the provisions in old paragraphs (e) and (f) (disposition and reconditioning of failing peanuts, respectively) are revised and combined in new paragraph (e). Also, paragraphs (g) and (h) (safeguard procedures and additional requirements, respectively) are redesignated as paragraphs (f) and (g), respectively.

The introductory paragraph of new paragraph (e) of § 999.600 provides an overview for reconditioning imported peanut lots. New paragraphs (e)(1), (e)(2), and (e)(3) of the import regulation correspond to new paragraphs (f), (g), and (h) of the Agreement regulations. New paragraph (e)(1) covers failing lots disposed of to inedible uses such as animal feed, wildlife feed, seed peanuts and meal—specified in previous paragraphs (e) and (f). Disposition to these inedible outlets must be positive lot identified with red tags, bagged, and the bill of lading must state that the peanuts cannot be used for human consumption.

New paragraph (e)(2) of the import regulation covers disposition of failing quality peanuts ("sheller oilstock residuals") to crushing or export. Peanuts covered under the new paragraph (e)(3) are primarily loose shelled kernels, fall through and pickouts from milling operations, but may also include any other failing lot that an importer chooses to crush or export.

New paragraph (e)(4) specifies that identification, certification, and movement of inedible peanuts covered under paragraph (e) must be reported to AMS pursuant to safeguard procedures in paragraphs (f)(2) and (f)(3) of § 999.600. This does not represent additional reporting or recordkeeping requirements of inedible dispositions for importers. The requirements correspond to reporting requirements in the revised Agreement regulations for signatory handlers who are required to report dispositions and maintain records of all inedible peanut transactions.

Finally, a new paragraph (i) is added at the end of § 998.200 of the Agreement regulations. The new paragraph specifies that certain records are required to be maintained pursuant to § 998.43 of the Agreement. The records pertain to peanuts which are not certified for human consumption. In addition to maintaining certain records, the Agreement provides that all records are made available to Committee staff and to representatives of the Secretary, as is necessary to document compliance with Agreement regulations.

The additional provision does not represent an increase in the number of forms handlers and importers complete, report, or maintain under the three programs.

No corresponding changes in reporting and recordkeeping requirements are necessary in the non-signer and import regulations. However, in § 997.52 Reports of acquisition and shipments and elsewhere in the non-signer regulation, references regarding specific Fruit and Vegetable Division form numbers are replaced with the generic statement "forms provided by the Division." This will enable the Department to revise the forms and reduce the number of forms without the additional rulemaking expense of changing the non-signer peanut regulation each time a form is revised or deleted. All such changes still must be submitted for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The unchanged portions of incoming and outgoing regulations of all three peanut programs, in effect for 1995 and subsequent crop peanuts, remain in effect for 1996 and subsequent crop peanuts.

Additional Change to § 999.600 Import Regulation

Early Entry and Bonded Storage Pending New Quota

Experience shows that some importers ship peanuts to the U.S. several months prior to filing a consumption entry for the peanuts. Such peanuts are sampled and inspected when off-loaded at the port and then stored in Customs Service bonded warehouses until the opening of the next year's duty-free quota.

Depending on how quickly one year's quota fills, storage could be as long as 10 or 11 months. For instance, new crop peanuts from Argentina may be harvested as early as May or June but arrive in the U.S. too late to be included in the duty-free quota that opened a month or two earlier on April 1. The peanuts are then placed in bonded storage awaiting the next quota year the following April 1. Further, if the quota is filled before all peanuts in storage can be entered for one year, it is possible that some peanuts would have to be stored for another full year, and the total storage time could approach 2 years.

Because of the possibility of deterioration while in storage, the Department needs to know which peanut shipments are held in bonded storage for an extended period of time, so that the wholesomeness of such peanuts can be verified, if necessary, when the peanuts are removed from storage and entered for consumption. The Department proposed adding an additional safeguard measure, new paragraph (f)(6) *Early arrival and storage*, to the import regulation. This provision requires that importers report peanut shipments which are sampled, inspected, and held in bonded storage in excess of a stated period of time.

AMS sought comments on this new requirement, including comments as to whether one month is an appropriate maximum storage period that does not have to be reported. Two comments opposed the new requirement and one comment concurred with the new requirement.

Both comments opposing the added provision stated that similar requirements concerning reporting are not required under Agreement regulations for domestically produced peanuts placed in storage, and therefore should not be required of imported peanuts. Domestic peanut handlers maintain records of all peanuts placed in storage and make those records available to Committee employees (fieldmen) who routinely visit handler offices to review records and inspect facilities. The Department, not the Committee, is responsible for monitoring the storage of imported peanuts. It is not practical for the Department to make such routine on-site inspections of all importers' records and facilities to monitor arrival on new shipments. Therefore, the Department believes that such notification of shipments after arrival and inspection is, at this time, the least burdensome and most practical way for the Department to meet its safeguard obligation.

AMS is working with the Customs Service to obtain a weekly data base of information on shipments of fresh agricultural commodities, including peanuts, imported into the U.S. The data received will include shipments of commodities submitted for warehouse entries. When those procedures are complete, and when AMS has assurance that all incoming shipments are included in the weekly computerized report, AMS will remove this requirement on importers.

The rule proposed that entry data, as well as grade and aflatoxin certificates for the stored peanut lot, be filed with AMS. One commenter stated that this is logistically cumbersome and requires additional paperwork for importers. After review of the information needed, AMS agrees that the only information necessary for AMS awareness is a copy of the Customs Service documentation identifying the location and identification of the storage warehouse, the quantity of peanuts entered for storage, and the date of storage entry. This information is shown on Customs Form 7501 and is sufficient for notification of lots placed in bonded storage. Therefore, it is not necessary, as stated in the proposed rule, that importers file copies of the grade and aflatoxin certificates for peanut lots admitted for bonded warehouse storage. This final rule is changed to reflect this change.

The wording of two comments indicated a possible misunderstanding of the focus of this requirement. It is added to the import regulation to apply to peanut lots that arrive in the U.S. and are placed in storage prior to the filing of a Customs Service consumption entry when the next quota period opens. It does not apply to peanut lots which the Customs Service has already entered for consumption or peanut lots which have met all import requirements and are placed in storage pending shipment to buyers.

The Department indicated in the proposed rule, and establishes in this final rule, that the grade and aflatoxin certificates issued on such peanuts upon arrival continue to be valid for the following quota year. This is consistent with Agreement regulation which does not place any time limits on the applicability of grade and aflatoxin inspection certificates or the storage of domestically produced peanuts.

One commenter suggested that as long as the Customs Service knows the location of the bonded warehouses where peanuts are stored, the importer should not have to report storage to AMS. Storage data is not currently available from the Customs Service.

The commenter suggested also that as long as the Customs Service knows the condition of the bonded warehouses where peanuts are stored, the importer should not have to certify as to the storage conditions when later filing for consumption entry. It is true that the Customs Service inspects and certifies the structural integrity and security of bonded warehouses. However, the Customs Service does not monitor such things as whether cold storage equipment is available and maintained, or whether the peanuts are protected from rodent or insect infestation or rain damage from leaks in the roof. Therefore, for compliance purposes, it is necessary that the importer certify to the Customs Service that the peanuts have been stored consistent with industry standards.

The commenter suggested that AMS should inspect the warehouses. AMS will inspect such warehouses when necessary. However, inspection does not guarantee that peanuts subsequently placed in the warehouses will be maintained in conditions consistent with industry standards. Knowledge of which warehouses contain imported peanuts will allow AMS to spot check warehouses which are used and monitor weather conditions in the area so that potentially adverse situations are known to AMS.

Finally, one commenter stated that the reinspection requirement should not be included in the import regulations. However, to meet the Department's statutory mandate that all peanuts in the domestic market meet requirements applied to peanuts under the Agreement regulations, it is necessary that the Secretary have the authority to reinspect imported peanuts, particularly those that might be subject to deteriorating conditions while in storage. As stated above, the Secretary has the same reinspection authority over domestically produced peanuts under Agreement and non-signer regulations. The Department exercises this oversight only to ensure that wholesome peanuts enter human consumption channels.

The proposed rule asked for comments on the minimum length of the storage period which would require notification of AMS. One month was proposed. No comments were received suggesting other lengths of time. Therefore, this final rule establishes the minimum storage period requiring notification of AMS as any period exceeding one month. Peanuts produced in Mexico arriving in the U.S. and placed in storage prior to December 1—in anticipation of withdrawal and entry for consumption on or after the following January 1—must be reported

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to AMS. Peanuts produced in Argentina or any other country, except Mexico, which arrive and are placed in storage prior to March 1 of any year—in anticipation of withdrawal and entry for consumption on or after the following April 1—must be reported to AMS. The reports may be sent via facsimile transmission or mailed pursuant to paragraphs (f) (2) and (3) of § 999.600 at the time of entry into a bonded warehouse for storage. The report should be a copy of Customs Form 7501 identifying the importer and showing the volume of peanuts being stored and the location of the storage warehouse.

As a safeguard measure, old paragraph (b)(4) of the import regulation provided that if the Secretary has reason to believe that imported peanuts have been damaged or deteriorated while in storage, the Secretary may reject the then effective inspection certificate and require reinspection of the peanuts. This paragraph is redesignated as safeguard paragraph (f)(5) *Reinspection*. This reinspection authority corresponds to paragraph (e) of § 998.200 of the Agreement regulations.

To avoid deterioration, peanuts should be stored in clean, dry, odor free, warehouses and under sanitation and cold storage conditions consistent with industry standards. While Agreement regulations do not specify cold storage conditions, the following points should be used as a cold storage guide:

—Temperatures should range from 34 to 41 degrees Fahrenheit with a relative humidity of 55 to 70 percent.
—Daily or weekly recording charts of temperature and humidity should be maintained.
—Interior air circulation should be adequate to maintain uniform temperatures.
—Pans under refrigeration equipment should prevent condensation from dripping onto the peanuts.
—Peanuts should be gradually removed from cold storage over 2 to 3 days.

This and other information on sanitation, facilities, management practices, and dry storage is taken from *Good Management Practices for Shelled Goods Cold Storage and Shelled Goods Dry Storage* distributed by the National Peanut Council. Copies are available for a nominal price to non-members by calling (703)–838–9500.

Imported peanut lots certified as meeting human consumption requirements and subsequently stored under such conditions and in appropriate warehouses, may be entered for consumption when the next quota year begins—without further reporting to AMS.

One commenter stated that importers should not have to certify to the Customs Service that stored peanuts have been stored consistent with industry standards for the entire length of the storage period. However, the Department believes that such certification is necessary for compliance purposes.

Paragraph (b)(4) of the import regulation provides authority for the Secretary to require a reinspection of an imported peanut lot. If the documentation provided to AMS, or if any evidence subsequently received by AMS, indicates that appropriate storage standards have not been met or maintained and that the peanuts may have been damaged or deteriorated while in storage, the Secretary will demand reinspection of the lot prior to the importer's filing for consumption entry of the lot.

Paragraph (b)(4) of § 999.600 is moved from incoming quality regulation to paragraph (f)(5) and entitled *Reinspection*. Experience indicates that reinspections are more likely to be needed when shelled peanuts are placed under bonded storage several months prior to the beginning of the next quota year, as discussed above. As a safeguard provision, the paragraph applies to farmers stock, shelled, and inshell imported peanuts. The intent and requirements of the paragraph remain unchanged.

The new requirements as applied to imports are effective five days after publication of this rule in the **Federal Register**, should any peanuts be imported under duty prior to the opening of the next duty-free quota periods. The reporting requirement is not made retroactive for shipments which have already arrived and been placed in storage. Peanut shipments from countries other than Mexico arriving five days after publication and before March 1, 1977, should be reported to AMS under the new requirement. Importers may voluntarily notify AMS of shipments which have been entered into warehouses since closure of the 1996 duty-free quotas and currently are in storage pending the 1997 quota year.

Some paragraphs of the three peanut regulations are not changed in this final rule. However, for a better understanding of all changes, the three regulations are published in their entirety in this final rule, including paragraphs which are not changed.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

About 80 signatory and non-signatory peanut handlers are subject to regulation under the two domestic programs. There are about 47,000 peanut producers in the 16-state production area. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, most all of the non-signers, and virtually all of the producers may be classified as small entities. The import requirements have not been in place long enough to determine the number of peanut importers or the percentage which qualify as small businesses. However, it can be assumed that some importers are small entities.

This final rule removes or relaxes several provisions regulating the handling and disposition of domestic and foreign-produced peanuts. Overall, the changes are intended to increase the amount of peanuts that can be prepared for and meet the requirements for human consumption. Such peanuts almost always bring the highest prices in the marketplace. Thus, the value of farmers stock peanuts that can be prepared for human consumption is higher than the value of those that must be disposed of to inedible outlets. Producers receive increased returns for farmers stock peanuts that can be prepared for human consumption. Handlers and importers also receive increased returns from shelled and inshell peanuts that are prepared for and meet human consumption requirements. Peanut lots that fail human consumption requirements, and that a handler or importer decides not to try to recondition, must be disposed of as inedible peanuts to different inedible peanut outlets. Such inedible disposition brings varying prices for the handler or importer, almost always less than prices for human consumption quality peanuts. The changes finalized in this rulemaking should increase the value of certain failing peanut lots, and thus, increase returns for both producers and handlers.

—Restrictions are removed on acquisitions of certain farmers stock lots failing incoming inspection because of excess loose shelled

kernels and fall-through peanuts. This relaxation enables more farmers stock peanuts to be processed into product that meets requirements for human consumption. Producers receive higher prices for such farmers stock peanut lots and handlers are able to shell and recondition those lots into shelled peanuts which meet human consumption requirements.

—Restrictions on remilling and blanching for human consumption use are removed on shelled peanut lots exceeding certain damage and foreign material content levels. This change enables handlers to recondition more lots of failing peanuts for disposition to human consumption outlets.

—This rule also removes requirements that handlers and importers maintain PLI, and report and keep disposition records on "restricted" and "unrestricted" inedible peanut lots. This should reduce some inspection and reporting and recordkeeping costs.

—The maximum allowable aflatoxin content of domestically- produced and imported shelled peanut lots which could be used as animal feed, wildlife seed, and rodent bait is raised from 25 ppb to 300 ppb. Depending on several market factors, such inedible peanut use can bring higher prices than crushing the peanuts. This change provides more opportunity for handlers and importers to increase the value, and thus, the returns, of the peanuts they handle or import.

—Positive lot identification (PLI) requirements for seed peanuts are removed. This will save handlers and importers inspection costs and enable better use of storage space.

—Shelled peanut lots meeting Indemnifiable Grade or Superior Grade requirements may be sent to human consumption outlets prior to the handler or importer receiving aflatoxin certification of the lot. This is a clarification of requirements to make the domestic requirements consistent with current industry practice. Handler and importer inspection costs should not be increased because of this provision.

The changes to handling requirements in this final rule will enable more peanuts to be prepared for human consumption, save some inspection and storage costs, enable handlers and importers to more efficiently manage their peanut inventories, and make better use of inedible peanut lots, thus, increasing returns to both producers, handlers and importers. The changes are made without jeopardizing safeguard provisions in the current domestic and import regulations because all peanuts intended for human consumption still must be certified for such use. Finally, these changes are intended to benefit peanut handlers, peanut importers, and consumers by ensuring that all peanuts in domestic U.S. human consumption markets are wholesome.

The proposed rule requested comments on the effect of the rule on small businesses and no comments were received stating that the changes would adversely affect small entities in the peanut industry.

This final rule does not increase the reporting and recordkeeping burden on domestic peanut handlers and peanut importers regulated under the three programs, and should result in an overall reduction in reporting and recordkeeping burden. To verify the reduced burden, another OMB reporting and recordkeeping burden analysis will be conducted after the regulations and the sharing of computerized import data between Customs Service and AMS have been implemented.

Therefore, the AMS determines that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), information collection requirements in this final rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0067 (for signatory handlers), 0581–0163 (for non-signatory handlers), and 0581–0176 (for importers).

Because these changes could not be implemented before the beginning of the 1996 domestic crop year, comments were requested on whether final implementation of the changes after the beginning of the crop year would have an unequal effect on one or more of the three production areas. No commenters claimed implementation after the start of the year would unequally affect the three production areas. Seven of the commenters stated that the regulations should be in place as soon as possible for the 1996–97 domestic marketing season. Several of the comments suggested that unnecessary delays in implementation would hurt the industry.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to postpone the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The changes should be in effect as soon as possible to cover as much of the remaining crop year as possible; (2) the rule relaxes requirements currently in place with the exception of one requirement which codifies current industry practice; (3) the domestic industry has been aware of the issues and proposed changes since May when the Committee recommended the changes; (4) all known handlers and other affected members of the domestic industry, as well as all known importers, were sent copies of the proposed rule and they and all other interested persons were given a 20-day opportunity to file comments on the recommended changes; and (5) comments addressing the effective date were unanimous in recommending immediate implementation and several commented that further delays in implementation would be harmful to the industry. Thus, the Department sets the effective date of this final rule as three days after publication in the **Federal Register** for domestically produced peanuts and five days after publication in the **Federal Register** for imported peanuts.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Peanuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 997, 998 and 999 are amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Under the center heading "Quality Regulations," §§ 997.20, 997.30, 997.40 and 997.50 are revised to read as follows:

Quality Regulations

§ 997.20 Incoming regulation.

(a) No handler shall receive or acquire peanuts intended for human

consumption, either from a producer or other person, unless such peanuts are inspected pursuant to § 997.50 and are determined to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1 and meet the following additional requirements specified in this section: *Provided*, That a handler may—

(1) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from other handlers, a handler as defined in 7 CFR 998.8, or from buyers who have purchased such peanuts from handlers or from the CCC, if the lot has been certified as meeting the requirements of § 997.30(a) and the identity is maintained; and/or

(2) Perform services for an area association pursuant to a peanut receiving and warehouse contract.

(b) *Moisture and foreign material.* (1) *Moisture.* Except as provided under paragraph (d) of § 997.20, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. For farmers stock peanuts, moisture determinations shall be rounded to the nearest whole number. Moisture determinations on shelled peanuts shall be carried to the hundredths place.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Seed peanuts.* Peanuts which are not Segregation 1 peanuts and therefore cannot be acquired for human consumption may be acquired, shelled and delivered for seed purposes. Peanuts intended for seed use, produced under the auspices of a State agency which regulates or controls the production of seed peanuts, which do not meet Segregation 1 requirements shall be stored and shelled separate from peanuts intended for human consumption. However, Segregation 2 seed peanuts, produced under the auspices of the State agency, which contain up to 3.00 percent damaged kernels and are free from visible *Aspergillus flavus* may be stored and shelled with Segregation 1 peanuts which are also produced under the auspices of the State agency. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the requirements of this section and, therefore, shall not be required to be inspected and certified as meeting these requirements, and the handler shall report to the Division the weight of each lot of farmers stock peanuts received on such basis on a form provided by the Department. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another person may mill such residuals with other receipts or acquisitions of the handler, and such peanuts which meet the requirements specified in §997.30(a) may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. Handlers may act as accumulators and acquire, for other handlers; a handler as defined in 7 CFR 998.8 or from other persons, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire shelled peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of peanuts from Segregation 1 farmers stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in §997.30(d), which failed to meet the requirements for human consumption pursuant to §997.30(a): *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions to the Division as prescribed on a form prescribed by the Division. Handlers who acquire grades or sizes of shelled peanuts which fail to meet the requirements for human consumption for disposition to domestic crushing and subsequent export to countries shall report such disposition on a form provided by the Division.

(f) *Shelled peanuts.* Handlers may acquire shelled peanuts (which originated from "Segregation 1 peanuts") from other handlers or a handler as defined in 7 CFR 998.8, for remilling and subsequent disposition to human consumption outlets. Further disposition of such peanuts shall be regulated by §997.40.

(g) No producer may handle, process, prepare for sale, or otherwise alter peanuts of his own production from the condition of farmers stock, for disposition in human consumption outlets unless such peanuts are first inspected and certified pursuant to §997.50 and meet the applicable requirements of this section.

§997.30 Outgoing Regulation.

(a) *Shelled peanuts.* (1)(i) No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin and certified as meeting the requirements in Table 1:

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]
Maximum limitations
Excluding lots of "splits"

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64 x 1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels)..	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 13/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Prior to disposition to human consumption outlets, peanuts which have been certified as meeting the requirements for Indemnifiable Grades must also be certified "negative" as to aflatoxin. Maximum limitations for Indemnifiable Grades are as follows:

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]
Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanutes, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No. 1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64x3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 18/64x1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better..	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64x3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64x3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 20/64 inch round screen).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64x1 inch, slot screen.	4.00%; both screens.	.20	9.00

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TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued

[Whole Kernels and Splits]

Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanutes, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 15/64 inch, round screen.	3.00%; 13/64x3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64x3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64x1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 15/64 inch, round screen.	2.00%; 15/64x3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

(2) The term "fall through", as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (c) of this section from each lot of Superior Quality peanuts. For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements.

(b) *Cleaned inshell peanuts.* No handler shall ship, sell, or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") or a laboratory listed in paragraph (c) of this section and found to be wholesome relative to aflatoxin;

(2) With more than 2.00 percent peanuts with damaged kernels;

(3) With more than 10.00 percent moisture; or

(4) With more than 0.50 percent foreign material.

(c) *Sampling and testing shelled peanuts.* (1) Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1N", "Sample #2N", and "Sample #3N" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service. Sample #1N may be prepared for immediate testing or Sample #1N, Sample #2N, and Sample #3N may be returned to the handler for testing at a later date.

(2) The handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service, a USDA laboratory or a laboratory listed herein, in a "subsampling mill" approved by the Division. The resultant ground subsample from Sample #1N shall be of a size specified by the Division and shall be designated as "Subsample 1—ABN" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1N. It shall be designated as "Subsample 1—CDN". Subsample 1—CDN may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or other laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1—CDN shall be for the account of the requester. Subsample 1—ABN shall be analyzed only in a USDA laboratory or a laboratory listed herein. Both Subsamples 1—ABN and 1—CDN shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Division.

(3) The samples designated as Sample #2N and Sample #3N shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1N are known.

(4) Upon call from the laboratory, handler shall cause Sample #2N to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #2N shall be of a size specified by the Division and it shall be designated as "Subsample #2—ABN." Upon call from the laboratory, the handler shall cause Sample #3N to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3N shall be of a size specified by the Division and shall be designated as "Subsample #3—ABN". "Subsamples 2—ABN and 3—ABN" shall be analyzed only in a USDA laboratory or a laboratory listed herein and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Division. The results of each assay shall be reported by the laboratory to the handler and to the Division. All costs involved in the sampling and testing of peanuts required by this regulation shall be for the account of the applicant.

(5) Information on making arrangements for the required inspection and certification can be obtained by contacting the Fresh

Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2049–S, Washington, DC, 20090–6456, telephone (202) 690–0604 or facsimile (202)720–0393.

(i) Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Science and Technology Division.

Science and Technology Division, AMS, USDA, P.O. Box 279, 301 West Pearl St., Aulander, NC 27805, Tel: (919) 345–1661 Ext. 156, Fax: (919) 345–1991

Science and Technology Division, AMS, USDA, 1211 Schley Ave., Albany, GA 31707, Tel: (912) 430–8490/8491, Fax: (912) 430–8534

Science and Technology Division, AMS, USDA, P.O. Box 488, Ashburn, GA 31714, Tel: (912) 567–3703

Science and Technology Division, AMS, USDA, 610 North Main St., Blakely, GA 31723, Tel: (912) 723–4570, Fax: (912) 723–3294

Science and Technology Division, AMS, USDA, 1557 Reeves St., Dothan, AL 36303, Tel: (334) 794–5070, Fax: (334) 671–7984

Science and Technology Division, AMS, USDA, 107 South Fourth St., Madill, OK 73446, Tel: (405) 795–5615, Fax: (405) 795–3645

Science and Technology Division, AMS, USDA, P.O. Box 272, 715 N. Main Street, Dawson, GA 31742, Tel: (912) 995–7257, Fax: (912) 995–3268

Science and Technology Division, AMS, USDA, P.O. Box 1130, 308 Culloden St., Suffolk, VA 23434, Tel: (804) 925–2286, Fax: (804) 925–2285

ABC Research, 3437 SW 24th Avenue, Gainesville, FL 32607–4502, Tel: (904) 372–0436, Fax: (904) 378–6483

J. Leek Associates, Inc., P.O. Box 50395, 1200 Wyandotte (31705), Albany, GA 31703–0395, Tel: (912) 889–8293, Fax: (912) 888–1166

J. Leek Associates, Inc., P.O. Box 368, 675 East Pine, Colquitt, GA 31737, Tel: (912) 758–3722, Fax: (912) 758–2538

J. Leek Associates, Inc., P.O. Box 6, 502 West Navarro St., DeLeon, TX 76444, Tel: (817) 893–3653, Fax: (817) 893–3640

Pert Laboratories, P.O. Box 267, Peanut Drive, Edenton, NC 27932, Tel: (919) 482–4456, Fax: (919) 482–5370

Pert Laboratory South, P.O. Box 149, Hwy 82 East, Seabrook Drive, Sylvester, GA 31791, Tel: (912) 776–7676, Fax: (912) 776–1137

Professional Service Industries, Inc., 3 Burwood Lane, San Antonio, TX 78216, Tel: (210) 349–5242, Fax: (210) 342–9401

Southern Cotton Oil Company, 600 E. Nelson Street, P.O. Box 180, Quanah, TX 79252, Tel: (817) 663–5323, Fax: (817) 663–5091

Quanta Lab, 9330 Corporate Drive, Suite 703, Selma, TX 78154–1257, Tel: (210) 651–5799, Fax: (210) 651–9271.

(ii) Handlers should contact the nearest laboratory from the list in paragraph (c)(5)(i) of this section to arrange to have samples chemically analyzed for aflatoxin content, or for further information concerning the chemical analyses required pursuant to this part handlers may contact: The Science and Technology Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 3507–S, Washington, D.C., 20090–6456, telephone (202) 720–5231, facsimile (202) 720–6496.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for appeal inspection. Handler shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Division on request.

(e) *Reinspection.* Whenever the Division has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Division may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed of for non-human consumption uses which are not regulated or limited by the provisions specified in this section: *Provided,* That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(b) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of § 997.30 shall be disposed of as prescribed hereinafter in this section.

(c) *Sheller Oil Stock Residuals—For Crushing or Export.* Peanuts, or portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or they may be commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market, in bulk or bags or other suitable containers. The movement of such peanuts shall be reported to the Division by the shipping handler and the crusher, as requested by the Division.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the

following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(d) *Blanching peanuts failing quality requirements.* Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by a negative aflatoxin certificate. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher to crushers who agree to comply with the terms of paragraph (c) of this section.

(e) *Remilling peanuts failing quality requirements.* Handlers may remiller or cause to have remilled shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided,* That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection-Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by a negative aflatoxin certificate. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to crushers who agree to comply with the terms of paragraph (c) of this section.

§ 997.50 Inspection, chemical analysis, certification and identification.

Each handler shall, at the handler's own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether such peanuts meet the applicable grade requirements effective pursuant to this part, and shall comply with such identification requirements prescribed by this part or which the Secretary may prescribe. Each handler shall also cause appropriate samples to be drawn and chemically analyzed by a USDA laboratory, or laboratory listed in § 997.30, for wholesomeness as provided in § 997.30 of this part. Such handler shall obtain grade and aflatoxin certificates stating that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the Division. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary and USDA laboratories or those listed in § 997.30 of this part. Each handler shall furnish, or cause the inspection service or the laboratory to furnish, to the Division, a copy of the inspection certificate and a copy of the results of the chemical analyses issued to the handler on each lot of shelled peanuts or cleaned inshell peanuts.

3. Under the center heading "Assessments," section 997.51 is revised to read as follows:

Assessments

§ 997.51 Assessments.

(a) Each first handler shall pay to the Secretary, with respect to Segregation 1 peanuts received or acquired by the handler, including the handler's own production, an administrative assessment as approved by the Secretary. The rate of assessment shall be the same as the administrative assessment approved by the Secretary and applied to signatory handlers under the Peanut Marketing Agreement No. 146. Such administrative assessment shall be applied during the crop year beginning July 1 and ending June 30 of the following year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired, other than those peanuts described in § 997.20(a) (1) and (2). During the crop year, the Secretary may increase the rate of assessment if such an increase is established under the Agreement.

(b) Segregation 2 and Segregation 3 farmers stock peanuts disposed to crushing or exported are exempt from assessments under this section.

4. Under the center heading "Reports, Books and Records," §§ 997.52, 997.53 and 997.54 are revised to read as follows:

Reports, Books and Records

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers stock peanuts on a form provided by the Division and file such other reports of acquisitions and shipments of peanuts, as prescribed in this part. Upon the request of the Division, each handler shall furnish such other reports and information as necessary to enable the Division to carry out the provisions of this part. All reports and records furnished or submitted by handlers to the Division which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler shall not be disclosed unless such disclosure is determined necessary by the Secretary to enforce the provisions of this part.

§ 997.53 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed

of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Under the center heading "Implementing Regulations," §§ 998.100 and 998.200 are revised to read as follows:

Implementing Regulations

§ 998.100 Incoming quality regulation for 1996 and subsequent crop peanuts.

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers stock peanuts to read respectively as follows:

(b) *Segregation 1. Segregation 1 peanuts* means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2. Segregation 2 peanuts* means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) Segregation 3. Segregation 3 peanuts means farmers stock peanuts with visible Aspergillus flavus.

(b) *Moisture and foreign material.*—

(1) *Moisture.* Except as provided under paragraph (d) of this section, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus,* and, in addition, the following moisture content, as applicable:

(1) Seed peanuts produced in the Southeastern and Virginia-Carolina areas, may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) Seed peanuts produced in the Southwestern area may contain up to 10.49 percent moisture.

Any seed peanuts produced under the auspices of a State agency which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus,* may be stored and shelled with Segregation 1 seed peanuts which are also produced under the auspices of the State agency. Any seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residuals not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements, and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee, as requested, the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. Handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another producer or sheller may mill such residuals with other receipts or acquisitions of the handler, and such residuals which meet the Outgoing Quality Regulation requirements, may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of § 998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified pursuant to § 998.34, to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire for crushing or export from other handlers peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled peanuts from Segregation 1 farmers stock or lots of peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of § 998.200, Outgoing quality regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of § 998.200, Outgoing quality regulation: *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled peanuts originating therefrom, a handler shall pay to the Area Association a fee

for the purpose of covering cost of supervision of the disposition of such peanuts.

(f) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(g) *Farmers stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(h) *Shelled peanuts.* Handlers may acquire shelled peanuts, which originated from "Segregation 1 peanuts," from other handlers, for remilling and subsequent disposition to human consumption outlets.

(i) Segregation 2 and Segregation 3 farmers stock peanuts held separate and apart or commingled, and disposed of to domestic or export crushing are exempt from assessments under this section.

§ 998.200 Outgoing quality regulation for 1996 and subsequent crop peanuts.

The following modify or in addition to the peanut marketing agreement restrictions of §998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* (1) No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin, and certified as meeting the requirements in the following "Other Edible Quality * * *" grades:

TABLE 1.—"OTHER EDIBLE QUALITY" (NON-INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS

[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64x3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64x1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64x3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64x1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64x3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64x1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 13/64x3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(2) Prior to disposition to human consumption outlets, peanuts which have been certified as meeting the requirements for Indemnifiable Grades must also be certified "negative" as to aflatoxin. Maximum limitations for Indemnifiable Grades are as follows:

TABLE 2.—INDEMNIFIABLE GRADES

[Maximum limitations]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better..	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 29/64 inch round screen).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64 x 1 inch, slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 16/64 inch, round screen.	3.00%; 13/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

(3) The term "fall through", as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin;

(2) with more than 2.00 percent peanuts with damaged kernels;

(3) with more than 10.00 percent moisture; or

(4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Sampling and testing shelled peanuts.* (1) Prior to shipment, each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1," "Sample #2," and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1–CD." Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on

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such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB." Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of $0.0027 per pound or $0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler, who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements as determined by the Committee's sampling plan applicable to the respective grade categories.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Further modification of § 998.32.*

(1) The provisions of § 998.32(a) restricting the disposition of peanuts which fail to meet the requirements specified heretofore in this section to the Commodity Credit Corporation or in such manner as may be prescribed by the Committee with the approval of the Secretary, is hereby modified to specify that only peanuts which have been certified as meeting the requirements specified in paragraphs (a) or (b) of this section, which have been sampled pursuant to paragraph (c) of this section, and which have been identified pursuant to paragraph (d) of this section are eligible for disposition to human consumption outlets.

(2) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed for non-human consumption uses which are not regulated or limited by the provisions specified hereinafter in this section: *Provided,* That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(3) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of this section shall be disposed of as prescribed hereinafter in this section.

(g) *Sheller oil stock residuals—for crushing or export.* Peanuts and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to handlers who are crushers or to domestic crushers who

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are not handlers under the Agreement only on the condition that they agree to comply with the terms of this paragraph and all other applicable requirements of the Agreement. The movement of such peanuts shall be reported to the Committee by the shipping handler and the crusher, as requested by the Committee.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(h) *Blanching and remilling peanuts failing quality requirements.* (1) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee-approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Prior to movement of such peanuts under these provisions to a Committee-approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection-Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Documentation of compliance.* Each handler shall keep and maintain records of all receipts and acquisitions and all milling, remilling, blanching, use and disposition of peanuts which have not been certified as meeting the requirements for disposition to human consumption, pursuant to paragraph (a) or (b) of this section, as will document and substantiate compliance and performance under this agreement.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674; and 7 U.S.C. 1445c–3.

2. Section 999.600 is revised to read as follows:

§ 999.600 Regulation governing imports of peanuts.

(a) *Definitions.* (1) *Peanuts* means the seeds of the legume *Arachis hypogaea* and includes both inshell and shelled peanuts produced in countries other than the United States, other than those marketed in green form for consumption as boiled peanuts.

(2) *Farmers stock peanuts* means picked and threshed raw peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the form in which customarily marketed by producers.

(3) *Inshell peanuts* means peanuts, the kernels or edible portions of which are contained in the shell.

(4) *Incoming inspection* means the sampling and inspection of farmers stock peanuts to determine Segregation quality.

(5) *Segregation 1 peanuts*, unless otherwise specified, means farmers stock peanuts with not more than 2.00 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus* mold.

(6) *Segregation 2 peanuts*, unless otherwise specified, means farmers stock peanuts with more than 2.00 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus* mold.

(7) *Segregation 3 peanuts*, unless otherwise specified, means farmers stock peanuts with visible *Aspergillus flavus* mold.

(8) *Shelled peanuts* means the kernels of peanuts after the shells are removed.

(9) *Outgoing inspection* means the sampling and inspection of either: shelled peanuts which have been cleaned, sorted, sized and otherwise prepared for human consumption markets; or inshell peanuts which have been cleaned, sorted and otherwise prepared for inshell human consumption markets.

(10) *Negative aflatoxin content* means 15 parts-per-billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements, and 25 ppb or less for inedible quality peanuts.

(11) *Person* means an individual, partnership, corporation, association, or any other business unit.

(12) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture (Department or USDA) who is, or who may hereafter be, authorized to act on behalf of the Secretary.

(13) *Inspection service* means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, USDA.

(14) *USDA laboratory* means laboratories of the Science and Technology Division, Agricultural Marketing Service, USDA, that chemically analyze peanuts for aflatoxin content.

(15) *PAC approved laboratories* means laboratories approved by the Peanut Administrative Committee, pursuant to Peanut Marketing Agreement No. 146 (7 CFR Part 998), that chemically analyze peanuts for aflatoxin content.

(16) *Conditionally released* means released from Customs Service custody for further handling (sampling, inspection, chemical analysis, or storage) before final release.

(17) *Importation* means the arrival of a peanut shipment at a port-of-entry with the intent to enter the peanuts into channels of commerce of the United States.

(b) *Incoming regulation.* (1) Farmers stock peanuts presented for consumption must undergo incoming inspection. Only Segregation 1 peanuts may be used for human consumption. All foreign produced farmers stock peanuts for human consumption must be sampled and inspected at a buying point or other handling facility capable of performing incoming sampling and inspection. Sampling and inspection shall be conducted by the inspection service. Only Segregation 1 peanuts certified as meeting the following requirements may be used in human consumption markets:

(i) *Moisture.* Except as provided under paragraph (b)(2) *Seed peanuts,* of this section, peanuts may not contain more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storage or milling.

(ii) *Foreign material.* Peanuts may not contain more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(iii) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(2) *Seed peanuts.* Farmers stock peanuts determined to be Segregation 1 quality, and shelled peanuts certified negative to aflatoxin (15 ppb or less), may be imported for seed purposes. Residuals from the shelling of Segregation 1 seed peanuts may be milled with other imported peanuts of the importer, and such residuals meeting quality requirements specified in paragraph (c)(1) of this section may be disposed to human consumption channels. Any portion not meeting such quality requirements shall be disposed to inedible peanut channels pursuant to paragraphs (f) and (g) of this section. All disposition of seed peanuts and residuals from seed peanuts , whether commingled or kept separate and apart, shall be reported to the Secretary pursuant to paragraphs (f)(2) and (f)(3) of this section. The receiving seed outlet must retain records of the transaction, pursuant to paragraph (g)(7) of this section.

(3) *Oilstock and exportation.* Farmers stock peanuts of lower quality than Segregation 1 (Segregation 2 and 3 peanuts) shall be used only in inedible outlets. Segregation 2 and 3 peanuts may be commingled but shall be kept separate and apart from edible quality peanut lots. Commingled Segregation 2 and 3 peanuts and Segregation 3 peanuts shall be disposed only to oilstock or exported. Shelled peanuts and cleaned-inshell peanuts which fail to meet the requirements for human consumption in paragraphs (c)(1) or (c)(2), respectively, of § 997.600, may be crushed for oil or exported.

(c) *Outgoing regulation.* No person shall import peanuts for human consumption into the United States unless such peanuts are lot identified and certified by the inspection service as meeting one of the following requirements:

(1) *Shelled peanuts.* (i) No importer shall ship or otherwise dispose of shelled peanuts to human consumption markets unless such peanuts are lot identified, certified as "negative" to aflatoxin, and meet the requirements specified in Table 1.

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]
Maximum limitations
Excluding lots of "splits"

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64 × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64 × 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64 × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued

[Whole Kernels and Splits]
Maximum limitations
Excluding lots of "splits"

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64 x 1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 13/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Shelled peanuts which are lot identified, certified as "negative" to aflatoxin pursuant to paragraph (d)(4)(v) of this section, and meet requirements specified in the Table 2, may be shipped to human consumption markets prior to the importer receiving such aflatoxin certification.

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]
Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better.	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels)..	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 20/64 inch round screen)..	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64 x 1 inch, slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels)..	1.25	2.00	2.00%; 16/64 inch, round screen.	3.00%; 13/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits)..	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued

[Whole Kernels and Splits]

Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Virginia with splits (not more than 15% sound splits)..	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 × 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits)..	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

(iii) The term "fall through", as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (d) of this section from each lot of Superior Quality peanuts.

(2) *Cleaned-inshell peanuts.* Peanuts declared as cleaned-inshell peanuts may be presented for sampling and outgoing inspection in bags at the port-of-entry. Alternatively, peanuts may be conditionally released as cleaned-inshell peanuts but shall not subsequently undergo any cleaning, sorting, sizing or drying process prior to presentation for outgoing inspection as cleaned-inshell peanuts. Cleaned-inshell peanuts which fail outgoing inspection may be reconditioned or redelivered to the port-of-entry, at the option of the importer. Cleaned-inshell peanuts determined to be unprepared farmers stock peanuts must be inspected against incoming quality requirements and determined to be Segregation 1 peanuts prior to outgoing inspection for cleaned-inshell peanuts. Cleaned-inshell peanuts intended for human consumption may not contain more than:

(i) 1.00 percent kernels with mold present, unless a sample of such peanuts is drawn by the inspection service and analyzed chemically by a USDA or PAC approved laboratory and certified "negative" as to aflatoxin.

(ii) 2.00 percent peanuts with damaged kernels;

(iii) 10.00 percent moisture (carried to the hundredths place); and

(iv) 0.50 percent foreign material.

(d) *Sampling and inspection.* (1) All sampling and inspection, quality certification, chemical analysis, and lot identification, required under this section, shall be done by the inspection service, a USDA laboratory, or a PAC-approved laboratory, as applicable, in accordance with the procedures specified herein. The importer shall make arrangements with the inspection service for sampling, inspection, lot identification and certification of all peanuts accumulated by the importer. The importer also shall make arrangements for the appropriate disposition of peanuts failing edible quality requirements of this section. All costs of sampling, inspection, certification, identification, and disposition incurred in meeting the requirements of this section shall be paid by the importer. Whenever peanuts are offered for inspection, the importer shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection.

(2) For farmers stock inspection, the importer shall cause the inspection service to perform an incoming inspection and to issue an CFSA–1007, "Inspection Certificate and Sales Memorandum" form designating the lot as Segregation 1, 2, or 3 quality peanuts. For shelled and cleaned-inshell peanuts, the importer shall cause the inspection service to perform an outgoing inspection and issue an FV–184–9A, "Milled Peanut Inspection Certificate" reporting quality and size of the shelled or cleaned-inshell peanuts, whether the lot meets or fails to meet quality requirements for human consumption of this section, and that the lot originated in a country other than the United States. The importer shall provide to the Secretary copies of all CFSA 1007 and FV–184–9A applicable to each peanut lot conditionally released to the importer. Such reports shall be submitted as provided in paragraphs (f)(2) and (f)(3) of this section.

(3) *Procedures for sampling and testing peanuts.* Sampling and testing of peanuts for incoming and outgoing inspections of peanuts presented for consumption into the United States will be conducted as follows:

(i) *Application for sampling.* The importer shall request inspection and certification services from one of the following inspection service offices convenient to the location where the peanuts are presented for incoming and/or outgoing inspection. To avoid possible delays, the importer should make arrangements with the inspection service in advance of the inspection date. A copy of the Customs Service entry document specific to the peanuts to be inspected shall be presented to the inspection official prior to sampling of the lot.

(A) The following offices provide incoming farmers stock inspection:

Dothan, AL, tel: (334) 792–5185,
Graceville, FL, tel: (904) 263–3204,
Winter Haven, FL, tel: (941) 291–5820, ext 260,
Albany, GA, tel: (912) 432–7505,
Williamston, NC, tel: (919) 792–1672,
Columbia, SC, tel: (803) 253–4597,
Suffolk, VA, tel: (804) 925–2286,
Portales, NM, tel: (505) 356–8393,
Oklahoma City, OK, tel: (405) 521–3864,
Gorman, TX, tel: (817) 734–3006,
Yuma, AZ, tel: (602) 344–3869.

(B) The following offices, in addition to the offices listed in paragraph (A), provide outgoing sampling and/or inspection services, and certify shelled and cleaned-inshell peanuts as meeting or failing the quality requirements of this section:

Eastern U.S.

Mobile, AL, tel: (205) 690–6154,

Jacksonville, FL, tel: (904) 359–6430,
Miami, FL, tel: (305) 592–1375,
Tampa, FL, tel: (813) 272–2470,
Presque Isle, ME, tel: (207) 764–2100,
Baltimore/Washington, tel: (301) 344–1860,
Boston, MA, tel: (617) 389–2480,
Newark, NJ, tel: (201) 645–2670,
New York, NY, tel: (212) 718–7665,
Buffalo, NY, tel: (716) 824–1585,
Philadelphia, PA, tel: (215) 336–0845,
Norfolk, VA, tel: (804) 441–6218,

Central U.S.

New Orleans, LA, tel: (504) 589–6741,
Detroit, MI, tel: (313) 226–6059,
St. Paul, MN, tel: (612) 296–8557,
Las Cruces, NM, tel: (505) 646–4929,
Alamo, TX, tel: (210) 787–4091,
El Paso, TX, tel: (915) 540–7723,
Houston, TX, tel: (713) 923–2557,

Western U.S.

Nogales, AZ, tel: (602) 281–0783,
Los Angeles, CA, tel: (213) 894–2489,
San Francisco, CA, tel: (415) 876–9313,
Honolulu, HI, tel: (808) 973–9566,
Salem, OR, tel: (503) 986–4620,
Seattle, WA, tel: (206) 859–9801.

(C) Questions regarding inspection services or requests for further assistance may be obtained from: Fresh Products Branch, P.O. Box 96456, room 2049–S, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20090–6456, telephone (202) 690–0604, fax (202) 720–0393.

(ii) *Sampling.* Sampling of bulk farmers stock lots shall be performed at a facility that utilizes a pneumatic sampler or approved automatic sampling device. The size of farmers stock lots, shelled lots, and cleaned-inshell lots, in bulk or bags, shall not exceed 200,000 pounds. For farmers stock, shelled and cleaned-inshell lots not completely accessible for sampling, the applicant shall be required to have lots made accessible for sampling pursuant to inspection service requirements. The importer shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by the inspection service. The amount of such peanuts drawn shall be large enough to provide for a grade and size analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. Because there is no acceptable method of drawing official samples from bulk conveyances of shelled peanuts, the importer shall arrange to have bulk conveyances of shelled peanuts sampled during the unloading process. A bulk lot sampled in this manner must be positive lot identified by the inspection service and held in a sealed bin until the associated inspection and aflatoxin test results have been reported.

(4) *Aflatoxin assay.* (i) The importer shall cause appropriate samples of each lot of shelled peanuts intended for edible consumption to be drawn by the inspection service. The three 48-pound samples shall be designated by the inspection service as "Sample 1IMP," "Sample 2IMP," and "Sample 3IMP" and each sample shall be placed in a suitable container and lot identified by the inspection service. Sample 1IMP may be prepared for immediate testing or Samples 1IMP, 2IMP and 3IMP may be returned to the importer for testing at a later date, under lot identification procedures.

(ii) The importer shall cause Sample 1IMP to be ground by the inspection service or a USDA or PAC-approved laboratory in a subsampling mill. The resultant ground subsample shall be of a size specified by the inspection service and shall be designated as "Subsample 1–ABIMP." At the importer's option, a second subsample may also be extracted from Sample 1IMP and designated "Subsample 1–CDIMP" which may be sent for aflatoxin assay to a USDA or PAC-approved laboratory. Both subsamples shall be accompanied by a notice of sampling signed by the inspector containing identifying information as to the importer, the lot identification of the shelled peanut lot, and other information deemed necessary by the inspection service. Subsamples 1–ABIMP and 1–CDIMP shall be analyzed only in a USDA or PAC-approved laboratory. The methods prescribed by the Instruction Manual for Aflatoxin Testing, SD Instruction-1, August 1994, shall be used to assay the aflatoxin level. The cost of testing and notification of Subsamples 1–ABIMP and 1–CDIMP shall be borne by the importer.

(iii) The samples designated as Sample 2IMP and Sample 3IMP shall be held as aflatoxin check-samples by the inspection service or the importer until the analyses results from Sample 1IMP are known. Upon call from the USDA or PAC-approved laboratory, the importer shall cause Sample 2IMP to be ground by the inspection service in a subsampling mill. The resultant ground subsample from Sample 2IMP shall be designated as "Subsample 2–ABIMP." Upon further call from the laboratory, the importer shall cause Sample 3IMP to be ground by the inspection service in a subsampling mill. The resultant ground subsample shall be designated as "Subsample 3–ABIMP." The importer shall cause Subsamples 2–ABIMP and 3–ABIMP to be sent to and analyzed only in a USDA or PAC-approved laboratory. Each subsample shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the importer. All costs involved in the sampling, shipment and assay analysis of subsamples required by this section shall be borne by the importer.

(iv)(A) Importers should contact one of the following USDA or PAC-approved laboratories to arrange for chemical analysis.

Science and Technology Division, AMS, USDA, P.O. Box 279, 301 West Pearl St., Aulander, NC 27805, Tel: (919) 345–1661 Ext. 156, Fax: (919) 345–1991

Science and Technology Division, AMS, USDA, 1211 Schley Ave., Albany, GA 31707, Tel: (912) 430–8490 / 8491, Fax: (912) 430–8534

Science and Technology Division, AMS, USDA, P.O. Box 488, Ashburn, GA 31714, Tel: (912) 567–3703

Science and Technology Division, AMS, USDA, 610 North Main St., Blakely, GA 31723, Tel: (912) 723–4570, Fax: (912) 723–3294

Science and Technology Division, AMS, USDA, 1557 Reeves St., Dothan, AL 36303, Tel: (334) 794–5070, Fax: (334) 671–7984

Science and Technology Division, AMS, USDA, 107 South Fourth St., Madill, OK 73446, Tel: (405) 795–5615, Fax: (405) 795–3645

Science and Technology Division, AMS, USDA, P.O. Box 272, 715 N. Main Street, Dawson, GA 31742, Tel: (912) 995–7257, Fax: (912) 995–3268

Science and Technology Division, AMS, USDA, P.O. Box 1130, 308 Culloden St., Suffolk, VA 23434, Tel: (804) 925–2286, Fax: (804) 925–2285

ABC Research, 3437 SW 24th Avenue, Gainesville, FL 32607–4502, Tel: (904) 372–0436, Fax: (904) 378–6483

J. Leek Associates, Inc., P.O. Box 50395, 1200 Wyandotte (31705), Albany, GA 31703–0395, Tel: (912) 889–8293, Fax: (912) 888–1166

J. Leek Associates, Inc., P.O. Box 368, 675 East Pine, Colquitt, GA 31737, Tel: (912) 758–3722, Fax: (912) 758–2538

J. Leek Associates, Inc., P.O. Box 6, 502 West Navarro St., DeLeon, TX 76444, Tel: (817) 893–3653, Fax: (817) 893–3640

Pert Laboratories, P.O. Box 267, Peanut Drive, Edenton, NC 27932, Tel: (919) 482–4456, Fax: (919) 482–5370

Pert Laboratory South, P.O. Box 149, Hwy 82 East, Seabrook Drive, Sylvester, GA 31791, Tel: (912) 776–7676, Fax: (912) 776–1137

Professional Service Industries, Inc., 3 Burwood Lane, San Antonio, TX 78216, Tel: (210) 349–5242, Fax: (210) 342–9401

Southern Cotton Oil Company, 600 E. Nelson Street, P.O. Box 180, Quanah, TX 79252, Tel: (817) 663–5323, Fax: (817) 663–5091

Quanta Lab, 9330 Corporate Drive, Suite 703, Selma, TX 78154–1257, Tel: (210) 651–5799, Fax: (210) 651–9271.

(B) Further information concerning the chemical analyses required pursuant to this section may be obtained from: Science and Technology Division, AMS, USDA, P.O. Box 96456, room 3507–S, Washington, DC 20090–6456, telephone (202) 720–5231, or facsimile (202) 720–6496.

(v) *Reporting aflatoxin assays.* A separate aflatoxin assay certificate, Form CSSD–3 "Certificate of Analysis for Official Samples" or equivalent PAC approved laboratory form, shall be issued by the laboratory performing the analysis for each lot. The assay certificate shall identify the importer, the volume of the peanut lot assayed, date of the assay, and numerical test result of the assay. The results of the assay shall be reported as follows.

(A) For the current peanut quota year, "negative" aflatoxin content means 15 parts per billion (ppb) or less aflatoxin content for peanuts which have been certified as meeting edible quality grade requirements. Such lots shall be certified as "Meets U.S. import requirements for edible peanuts under § 999.600 with regard to aflatoxin."

(B) Lots containing more than 15 ppb aflatoxin content shall be certified as "Fails to meet U.S. import requirements for edible peanuts under § 999.600 with regard to aflatoxin." The certificate of any inedible peanut lot also shall specify the aflatoxin count in ppb. The importer shall file USDA Form CSSD–3, or equivalent form, with the Secretary, regardless of the test result.

(5) *Appeal inspection.* In the event an importer questions the results of a quality and size inspection, an appeal inspection may be requested by the importer and performed by the inspection service. A second sample will be drawn from each container and shall be double the size of the original sample. The results of the appeal sample shall be final and the fee for sampling, grading and aflatoxin analysis shall be charged to the importer.

(e) *Disposition of peanuts failing edible quality requirements.* Peanuts shelled, sized and sorted in another country prior to arrival in the U.S. and shelled peanuts which originated from imported Segregation 1 peanuts that fail quality requirements of Table 1 (excessive damage, minor defects, moisture, or foreign material) or are positive to aflatoxin may be reconditioned by remilling and/or blanching. After such reconditioning, peanuts meeting the quality requirements of Table 1 and which are negative to aflatoxin (15 ppb or less) may be disposed for edible peanut use. Residual peanut lots resulting from milling or reconditioning of such lots shall be disposed of as prescribed below:

(1) Failing peanut lots may be disposed for non-human consumption uses (such as livestock feed, wild animal feed, rodent bait, seed, etc.) which are not otherwise regulated by this section; *Provided*, that each such lot is lot identified and certified as to aflatoxin content (actual numerical count). On the shipping papers covering the disposition of each such lot, the importer shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice) are not to be used for human consumption."

(2) Peanuts, and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process ("sheller oilstock residuals"), may be sent to inedible peanut markets pursuant to paragraph (e)(1) of this section, crushed or exported. Such peanut may be commingled with other milled residuals. Such peanuts shall be positive lot identified, red tagged in bulk or bags or other suitable containers.

(i) If such peanuts have not been certified as to aflatoxin content, as prescribed in paragraph (d) of this section, disposition is limited to crushing and the importer shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(ii) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(3) Shelled peanuts which originated from Segregation 1 peanuts that fail quality requirements of Table 1, peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, and peanuts which are positive to aflatoxin may be remilled or blanched. Residuals of remilled and/or blanched peanuts which continue to fail quality requirements of Table 1 shall be disposed of pursuant to paragraphs (e)(1) or (2) of this section.

(4) All certifications, lot identifications, and movement to inedible dispositions, sufficient to account for all peanuts in each consumption entry, shall be reported to the Secretary by the importer pursuant to paragraphs (f)(2) and (f)(3) of this section.

(f) *Safeguard procedures.* (1) Prior to arrival of a foreign produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall mail or send by facsimile transmission (fax) a copy of the Customs Service entry documentation for the peanut lot or lots to the inspection service office that will perform sampling of the peanut shipment. More than one lot may be entered on one entry document. The documentation shall include identifying lot(s) or container number(s) and volume of the peanuts in each lot being entered, and the location (including city and street address), date and time for inspection sampling. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall present the stamped document to the Customs Service at the port-of-entry and send a copy of the document to the Secretary. The importer also shall cause a copy of the entry document to accompany the peanut lot and be presented to the inspection service at the inland destination of the lot.

(2) The importer shall file with the Secretary copies of the entry document and grade, aflatoxin, and lot identification certifications sufficient to account for all peanuts in each lot listed on the entry document filed by the importer. Positive lot identification of residual lots, transfer certificates, and other documentation showing inedible disposition or export, such as bills of lading and sales receipts, export declarations, or certificates of burying, which report the weight of peanuts being disposed and the name, address and telephone number of the inedible peanut receiver, must be sent to the Marketing Order Administration Branch, Attn: Report of Imported Peanuts. Facsimile transmissions and overnight mail may be used to ensure timely receipt of inspection certificates and other documentation. Fax reports should be sent to (202) 720–5698. Overnight and express mail deliveries should be addressed to USDA, AMS, FV, Marketing Order Administration Branch, 14th and Independence Avenue, SW, Room: 2525–S, Washington, D.C., 20250, Attn: Report of Imported Peanuts. Regular mail should be sent to FV, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, Attn: Report of Imported Peanuts. Telephone inquiries should be made to (202) 720–6862.

(3) Certificates and other documentation for each peanut lot must be filed within 23 days of the date of filing for consumption entry, or, if a

redelivery notice is issued on the peanut lot, subsequently filed prior to conclusion of the redelivery period which will be 60 days, unless otherwise specified by the Customs Service.

(4) The Secretary shall ask the Customs Service to issue a redelivery demand for foreign produced peanut lots failing to meet requirements of this section. Extensions in a redelivery period granted by the Customs Service will be correspondingly extended by the Secretary, upon request of the importer. Importers unable to account for the disposition of all peanuts covered in a redelivery order, or redeliver such peanuts, shall be liable for liquidated damages. Failure to fully comply with quality and handling requirements or failure to notify the Secretary of disposition of all foreign produced peanuts, as required under this section, may result in a compliance investigation by the Secretary. Falsification of reports submitted to the Secretary is a violation of Federal law punishable by fine or imprisonment, or both.

(5) *Reinspection.* Whenever the Secretary has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Secretary may reject the then effective inspection certificate and may require the importer to have the peanuts reinspected to establish whether or not such peanuts may be disposed of for human consumption.

(6) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to AMS at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. Pursuant to paragraph (f)(5) of this section, the Secretary may require reinspection of the lot at the time the lot is declared for entry with the Customs Service.

(g) *Additional requirements.* (1) Nothing contained in this section shall preclude any importer from milling or reconditioning, prior to importation, any shipment of peanuts for the purpose of making such lot eligible for importation into the United States. However, all peanuts presented for entry for human consumption use must be certified as meeting the quality requirements specified in paragraph (c) of this section.

(2) Conditionally released peanut lots of like quality and belonging to the same importer may be commingled. Defects in an inspected lot may not be blended out by commingling with other lots of higher quality. Commingling also must be consistent with applicable Customs Service regulations. Commingled lots must be reported and disposed of pursuant to paragraphs (f)(2) and (f)(3) of this section.

(3) Inspection by the Federal or Federal-State Inspection Service shall be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). The importer shall make each conditionally released lot available and accessible for inspection as provided herein. Because inspectors may not be stationed in the immediate vicinity of some ports-of-entry, importers must make arrangements for sampling, inspection, and certification through one of the offices and laboratories listed in paragraphs (d)(3) and (d)(4) of this section, respectively.

(4) Imported peanut lots sampled and inspected at the port-of-entry, or at other locations, shall meet the quality requirements of this section in effect on the date of inspection.

(5) A foreign-produced peanut lot entered for consumption or for warehouse may be transferred or sold to another person: *Provided,* That the original importer shall be the importer of record unless the new owner applies for bond and files Customs Service documents pursuant to 19 CFR §§141.113 and 141.20; and *Provided further,* That such peanuts must be certified and reported to the Secretary pursuant to paragraphs (f)(2) and (f)(3) of this section.

(6) The cost of transportation, sampling, inspection, certification, chemical analysis, and identification, as well as remilling and blanching, and further inspection of remilled and blanched lots, and disposition of failing peanuts, shall be borne by the importer. Whenever peanuts are presented for inspection, the importer shall furnish any labor and pay any costs incurred in moving, opening containers, and shipment of samples as may be necessary for proper sampling and inspection. The inspection service shall bill the importer for fees covering quality and size inspections; time for sampling; packaging and delivering aflatoxin samples to laboratories; certifications of lot identification and lot transfer to other locations, and other inspection certifications as may be necessary to verify edible quality or inedible disposition, as specified herein. The USDA and PAC-approved laboratories shall bill the importer separately for fees for aflatoxin assay. The importer also shall pay all required Customs Service costs as required by that agency.

(7) Each person subject to this section shall maintain true and complete records of activities and transactions specified in these regulations. Such records and documentation accumulated during entry shall be retained for not less than two years after the calendar year of acquisition, except that Customs Service documents shall be retained as required by that agency. The Secretary, through duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted, at any such time, to inspect such records and any peanuts held by such person.

(8) The provisions of this section do not supersede any restrictions or prohibitions on peanuts under the Federal Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, any other applicable laws, or regulations of other Federal agencies, including import regulations and procedures of the Customs Service.

Dated: December 31, 1996.

Larry B. Lace,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–283 Filed 1–8–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–51–AD; Amendment 39–9878; AD 97–01–07]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that requires modification of the left and right elevators, and replacement of the elevator spring with a stiffer spring. This amendment is prompted by reports indicating that water and ice have accumulated at the trailing edge of the left and right elevators; this accumulation can cause

the elevators to become unbalanced, and oscillate or flutter. The actions specified by this AD are intended to prevent this oscillation or flutter. Elevator oscillation, if not corrected, could result in reduced controllability of the airplane. Elevator flutter, if not corrected, could couple with the natural vibrations of the airplane, and result in loss of the airplane's structural integrity.

DATES: Effective February 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on October 18, 1996 (61 FR 54362). That action proposed to require modification of the left and right elevators by installation of mass balance weights at the leading edge of the horn, forward of the hinge line; and replacement of the elevator spring with a stiffer spring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 52 British Aerospace Model BAe 146 and Avro 146–RJ series airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $700 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $73,840, or $1,420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–07 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9878. Docket 96–NM–51–AD.

Applicability: All Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the left and right elevators from oscillating or fluttering, which could result in either reduced controllability of the airplane, or loss of the airplane's structural integrity, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the left and right elevators by installing mass balance weights at the leading edge of the horn, forward of the elevator hinge line, in accordance with British Aerospace Service Bulletin SB.55–014–01510A, dated December 15, 1995. And

(2) Replace the left and right elevator spring with a stiffer spring, in accordance with British Aerospace Service Bulletin SB.27–150–01510B, dated December 15, 1995.

(b) As of 12 months after the effective date of this AD, no person shall install on any airplane an elevator that has not been modified in accordance with paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification and replacement shall be done in accordance with British Aerospace Service Bulletin SB.55–014–01510A, dated December 15, 1995; and British Aerospace Service Bulletin SB.27–150–01510B, dated December 15, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 13, 1997.

Issued in Renton, Washington, on January 2, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–365 Filed 1–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–28–AD; Amendment 39–9879; AD 97–01–08]

RIN: 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower wing skin, and repair, if necessary. In lieu of the one-time visual inspection or in addition to that inspection, the AD also requires replacement of certain rivets with certain new rivets in all applicable rib-to-stringer connections of the upper and lower wings. This amendment is prompted by reports of missing rivet heads at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6. The actions specified by this AD are intended to prevent reduced structural integrity of the wings that is caused by problems associated with missing and/or loose rivets.

DATES: Effective February 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on July 24, 1996 (61 FR 38407). That action proposed to require a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, and repair, if necessary. In lieu of the one-time visual inspection, or in addition to that inspection, that action also proposed to require replacement of certain rivets with certain new rivets in all applicable rib-to-stringer connections of the upper and lower wings.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request to Cite the Latest Dutch AD

One commenter notes that the preamble to the notice stated that "the RLD classified [Fokker Service Bulletin F27/57–74, dated November 15, 1994] as mandatory and issued Dutch airworthiness directive BLA 93–094 (A), dated July 16, 1993 * * *." The commenter points out that the reference to BLA 93–094 (A) is incorrect, since that BLA 93–094 (A) was issued in 1993, a year earlier than the release of Fokker Service Bulletin F27/57–74. The commenter states that the Dutch BLA that mandated that service bulletin is BLA 94–148, dated November 24, 1994.

The FAA concurs. The FAA inadvertently referenced the wrong BLA number and issue date in the preamble to the notice; it should have referenced BLA 94–148 as the applicable Dutch airworthiness directive. However, since that information is not restated in this final rule, no specific change is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 6 Fokker Model 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry will be affected by this AD.

The required inspection will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection action on U.S. operators is estimated to be $240 per airplane.

The required replacement will take approximately 19 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $1,140 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–08 Fokker: Amendment 39–9879. Docket 96–NM–28–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, serial numbers 10653 through 10692 inclusive; on which Part 1 of the Accomplishment Instructions of Fokker Service Bulletins F27/57–68 and F27/57–70 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose or missing rivets at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6, which could result in reduced structural integrity of the wings; accomplish the following:

(a) Except as provided by paragraph (c) of this AD: Prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–74, dated November 15, 1994.

(1) If no missing rivet head and no loose rivet is detected, no further action is required by paragraph (a) of this AD.

(2) If any missing rivet head or loose rivet is detected, prior to further flight, repair the affected rib-to-stringer connection, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(b) Prior to the accumulation of 10,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, replace rivets having part number (P/N) MS20600AD4W2 with new rivets having P/N CR3553P4 in all applicable rib-to-stringer connections of the upper and lower wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–74, dated November 15, 1994.

(c) Airplanes on which the replacement required by paragraph (b) of this AD is performed within the compliance time specified in paragraph (a) of this AD are not required to accomplish the inspection required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, repair, and replacement shall be done in accordance with Fokker Service Bulletin F27/57–74, dated November 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 13, 1997.

Issued in Renton, Washington, on January 2, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–362 Filed 1–8–97; 8:45 am]

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14 CFR Part 39

[Docket No. 96–SW–03–AD; Amendment 39–9877; AD 97–01–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.-Manufactured Restricted Category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI)-manufactured restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, that requires a one-time inspection of the tail rotor slider (slider) to verify that it was manufactured with the correct outside diameter. This amendment is prompted by a United States (U.S.) Army Safety of Flight message that reports that some sliders may have been improperly manufactured with an undersized wall thickness by U.S. Army vendors. The actions specified by this AD are intended to prevent fatigue failure of the slider, which could cause loss of tail rotor control and subsequent loss of control of the helicopter.

EFFECTIVE DATE: February 13, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5157, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Bell Helicopter

Textron, Inc. (BHTI)-manufactured restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters was published in the **Federal Register** on September 5, 1996 (61 FR 46742). That action proposed to require a one-time inspection of the tail rotor slider (slider) to verify that it was manufactured with the correct outside diameter.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with one exception. The word "barrel" was added to paragraph (a) of the AD to indicate that the splined shaft of the slider is also known as the barrel of the slider. This change neither increases the costs associated with the AD nor increases the scope of the AD.

The FAA estimates that 80 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the required inspection, and that the average labor rate is $60 per work hour. Replacement of the slider requires 8 hours, and required parts cost approximately $72 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $46,560 if replacement of the slider is required in all of the fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 97–01–06 California Department of Forestry; Erickson Air Crane Co.; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Smith Helicopters; Southwest Florida Aviation; West Coast Fabrications; Western International Aviation, Inc.; Williams Helicopter Technology, Inc.; and UNC Helicopters: Amendment 39–9877. Docket No. 96–SW–03–AD.

Applicability: Bell Helicopter Textron, Inc.-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, certificated in the restricted category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 5 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the tail rotor slider (slider), which could cause loss of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Using a calibrated caliper or micrometer, measure the outside diameter of the splined shaft (barrel) of the slider, part number (P/N) 204–010–720–3 or P/N 204–010–720–003, at two points that are 90 degrees apart on the outside circumference of the barrel, one-half to one inch from either end of the slider. If the outside diameter of the slider is less than 1.300 inches, remove the slider and replace it, prior to further flight, with a slider that has an outside diameter of 1.300 inches or greater.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on February 13, 1997.

Issued in Fort Worth, Texas, on December 31, 1996.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–404 Filed 1–8–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–38110; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; revised effective date; revised compliance dates.

SUMMARY: The Securities and Exchange Commission is revising: (1) The effective date of Rule 11Ac1–4 ("Limit Order Display Rule") and amendments

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to Rule 11Ac1–1 ("ECN Amendment" to the "Quote Rule") from January 10 to January 13, 1997; (2) the effective date of the amendment to subsection (a)(25)(ii) of the Quote Rule ("Subject Security Definition") to April 10, 1997; and (3) the compliance dates of the ECN Amendment with respect to most over-the-counter ("OTC") securities.

DATES: Effective January 9, 1997, the effective date for the Limit Order Display Rule, and the amendments to the Quote Rule, adopted August 28, 1996, by the Securities and Exchange Commission, and published on September 12, 1996 (61 FR 48290) (collectively, "Order Execution Rules"), is being changed to January 13, 1997, except that the effective date for the amendment to § 240.11Ac1–1(a)(25)(ii) the Subject Security Definition in the Quote Rule is April 10, 1997. The compliance date with respect to the ECN Amendment (except for the Subject Security Definition) for exchange-traded securities and 50 of the 1000 most actively traded OTC securities is January 13, 1997. The compliance date of the ECN Amendment for an additional 100 of these 1,000 securities is January 31, 1997, and the compliance date for the remaining 850 most actively traded securities is February 21, 1997. The final compliance date for the remainder of the securities is March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Betsy Prout Lefler, Special Counsel, Gail Marshall-Smith, Special Counsel, or David Oestreicher, Special Counsel, (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1996, the Securities and Exchange Commission ("Commission") adopted Rule 11Ac1–4,[1] the "Limit Order Display Rule," and amendments to Rule 11Ac1–1, the "ECN Amendment," to require OTC market makers and exchange specialists to display certain customer limit orders, and to publicly disseminate the best prices that the OTC market maker or exchange specialist has placed in certain electronic communications networks ("ECNs"), or to comply indirectly with the ECN Amendment by using an ECN that furnishes the best market maker and specialist prices therein to the public quotation system. The Commission also expanded the definition of "subject security" under the Quote Rule, which brought all exchange-traded securities, rather than just the subset of such securities known as "Rule 19c–3 securities," under the scope of the mandatory quotation requirements of the Quote Rule. In the Adopting Release, the Commission deemed the effective date of all these initiatives January 10, 1997. Thereafter, the Commission modified the compliance dates with respect to the Limit Order Display Rule so that the display of customer limit orders in OTC securities now will be phased-in over several months.[2]

More recently, the Commission received a letter from the National Association of Securities Dealers ("NASD") requesting additional relief from the Limit Order Display Rule and the ECN Amendment.[3] First, the NASD letter requests that the implementation date of both the Limit Order Display Rule and the ECN Amendment be delayed by one business day to ensure an orderly and safe introduction of the software necessary to operate in accordance with the new rules. Second, the NASD letter requests that the ECN Amendment be phased-in according to the same schedule as the Limit Order Display Rule.

The Commission is hereby modifying the effective dates and compliance dates in response to the NASD letter. In addition, in order to address concerns about the impact on marketwide quotation systems and third market makers upon implementation of the mandatory quotation requirement of the Order Execution Rules, the Commission is moving from January 10, to April 10, 1997, the effective date of the new definition of "subject security" under the Quote Rule (Rule 11Ac1–1(a)(25)(ii)), as discussed below.

II. Discussion

A. Implementation Date of the ECN Amendment

With regard to the implementation date of the Limit Order Display Rule and the ECN Amendment (collectively, "rules"), the NASD letter expresses concern that introducing software that has been significantly revised during the evening of January 9 poses a serious risk of potential system malfunction or an untimely start-up of the market. Instead, the NASD believes that introduction of the new software over the weekend preceding Monday, January 13, 1997, would provide the NASD with an opportunity to take the appropriate time to carefully load the software and build the necessary databases to ensure a smooth transition. According to the NASD letter, the NASD's technology staff, several ECNs, and many industry members including members of the Quality of Markets Committee (made up of institutions, retail investors and broker-dealers) agree that it would be imprudent to commence implementation, and the attendant software changes, on Friday, January 10th. Moreover, the NASD letter notes that several broker-dealers that are revising their own internal systems would not introduce their software changes on January 10 because of the risks in migrating to the new code within a limited period of time during a trading week.

B. ECN Amendment Phase-in

The NASD letter also requests that the phase-in schedule for securities under the Limit Order Display Rule be extended to the ECN Amendment. This request is intended to ensure that investors and other market participants have an opportunity to obtain experience with the ECN Amendment scaled over a manageable set of securities. The NASD believes this phase-in will enable all interested parties to more accurately determine the impact that full implementation of the ECN Amendment will have on issues such as system capacity and trading patterns.

C. Implementation of the Subject Security Definition

The Order Execution Rules' amendment to the definition of the term "subject security" under the Quote Rule brought all exchange-traded securities, rather than just the subset of such securities known as "Rule 19c–3 securities," under the scope of the mandatory quotation requirements of the Quote Rule. Under this amendment, an OTC market maker must publish firm two-sided quotations for any exchange-traded security in which its executed volume, during the most recent calendar quarter, comprised more than one percent of the aggregate trading volume of the security. Thus, firms that previously did not quote in certain exchange-traded securities may be required to publish quotations in such securities when the amendment becomes effective. In the Adopting Release, the Commission asked the NASD and the Intermarket Trading System ("ITS") Participants to review their existing limitations on the automated generation of quotations.

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[1] 17 CFR 240.11Ac1–4.

[2] *See* Securities Exchange Act Release No. 37972 (November 22, 1996), 61 FR 63709.

[3] *See* Letter from Alfred R. Berkeley, III, President Nasdaq, to Richard R. Lindsey, Director, Division of Market Regulation ("Division"), Commission, dated December 18, 1996 ("NASD letter").

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This review has not been completed. The Commission believes that additional time should be provided for this review, prior to implementation of the expanded definition of "subject security," because of the additional quotation obligations that may result from the rules. The Commission also believes that extending the effective date will give additional time to evaluate the effect on existing systems of the potential increase in quotation traffic that may be caused by the mandatory quotation requirement for exchange-traded securities.

III. Conclusion

For the reasons described above, the Commission is modifying the effective date of the Limit Order Display Rule and the amendments to the Quote Rule (except as discussed below concerning subsection (a)(25)(ii) of the Quote Rule) until the start of business on Monday, January 13, 1997, rather than on January 10, 1997.

In addition the Commission is modifying the compliance dates of the ECN Amendment in order to phase-in the implementation of the ECN Amendment. Accordingly, beginning on January 13, 1997, compliance with the ECN Amendment will be required with respect to all exchange-traded securities and 50 of the 1000 Nasdaq securities, as identified by Nasdaq for the first phase of compliance with the Limit Order Display Rule. On January 31, 1997, compliance with the ECN Amendment will be required with respect to the additional 100 of these 1,000 securities selected by Nasdaq. The ECN Amendment will apply to the remaining 850 of the 1,000 securities on February 21, 1997, as identified by Nasdaq. The next phase-in date will be on March 28, 1997, and, unlike the Limit Order Display Rule, will cover all remaining Nasdaq securities. The Commission will review the operation of the markets during this phase-in period.

Finally, the Commission is modifying the effective date of the amendment to Rule 11Ac1–1(a)(25)(ii) from January 10, 1997, to April 10, 1997. In the interim, the Commission expects the NASD and the ITS Participants to continue to review the NASD's and ITS Plan's limitations on automated quotations.

Dated: January 2, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–440 Filed 1–8–97; 8:45 am]

BILLING CODE 8010–01–M

FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 33, 34, 35, 36, 292 and 300

[Docket No. RM96–16–000; Order No. 593]

Revision of Form of Notice Requirements; Final Rule

Issued January 2, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising the form of notice requirements applicable to filings under several parts of its regulations. The final rule establishes requirements for submitting diskette copies of the notices of filing for the **Federal Register**, in addition to the paper copies currently required, in order to speed the process of noticing such filings. In addition, the final rule makes a minor correction to the regulations being revised, to delete a reference to filing fees.

EFFECTIVE DATE: This final rule is effective on February 10, 1997.

FOR FURTHER INFORMATION CONTACT:

L. Jorn Dakin, (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St. NE., Washington, D.C. 20426, (202) 208–2172

Michael Miller, (Technical Information), Office of Executive Director, Federal Energy Regulatory Commission, 888 First St. NE., Washington, D.C. 20426, (202) 208–1415.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street N.E., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920 if dialing long distance. CIPS is also available on the Internet through the FedWorld System (by modem or Internet). To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ACSII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street N.E., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission is revising the form of notice requirements for filings under Parts 33, 34, 35, 36, 292 and 300 of the Commission's regulations.[1] The revised requirements provide that an electronic version, in addition to the paper copy, of the draft notice of filing (in either ASCII text, WordPerfect 5.1 for DQS or WordPerfect 5.2 for Windows format) be submitted on a 3½" diskette. This diskette is to be a part of the filing. In addition, all entities submitting filings for which there is not a requirement of a draft notice (but for which the entity expects the Commission to issue a notice) are encouraged to provide a draft notice in the same fashion as set out in these revised regulations. Finally, a reference to filing fees under Part 33 of the regulations, in the caption and text of 18 CFR 33.2, will be deleted. The Commission no longer charges filing fees for applications under Part 33.

II. Public Reporting Burden

The final rule, if adopted, would amend reporting requirements, but would result in insignificant changes to the reporting burden. In the long term, the Commission's switch to electronic filing should result in further reductions in reporting burden and savings to the entities that make such filings. These reporting requirements are associated with the following data collections:

Data collection	CFR	Respondents	Frequency	Responses	Hrs. per filing	Total
FERC–516	Part 35	328	2.97	975	901	878,500

[1] 18 CFR Parts 33, 34, 35, 36, 292, and 300.

Data collection	CFR	Respondents	Frequency	Responses	Hrs. per filing	Total
FERC–519	Part 33	30	1	30	80	2,400
FERC–523	Part 34	60	1	60	110	6,600
FERC–556	Part 292	332	1	332	[1]6	2,047
FERC–716A	Part 36	20	1	20	5	100

[1] Rounded off.

To send comments regarding the burden estimates or other aspects of these collections of information, including suggestions for reducing burdens, please direct them to the contacts listed under "Information Collection Statement."

Data Collection/Requirement Costs: The Commission believes that there will be minimal cost to implement these requirements. The Commission believes that the vast majority of filing entities are currently preparing these draft notices in electronic form as a preliminary to preparing paper copies of the draft notices, and many filing entities are already voluntarily providing draft notices in electronic form. The Commission is merely formalizing an existing business practice.

Internal Review: The Commission has reviewed in general the requirements and determined that they are necessary to expedite the process of preparing and publishing notices of filings. The requirements conform to the Commission's plan for efficient information collection, communication and respond to the requirements of the Paperwork Reduction Act of 1995 (P.L. 104–13) and the Office of Management and Budget's implementing regulations in 5 CFR 1320 to minimize the burden on those who are to respond through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements established in this final rule.

III. Background

Under various provisions of Parts 33, 34, 35, 36, 292, and 300 of the Commission's regulations, an applicant must file a draft notice of filing for publication in the **Federal Register**. In this final rule, the Commission is revising the applicable specific sections of its regulations to require that the filing entity submit its draft notice on paper and in electronic form, on a separate 3½" diskette, either in ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format, marked with the name of the applicant and the words "Notice of Filing." This revision of the notice requirements in specific provisions of Parts 33, 34, 35, 36, 292, and 300 will enable the Commission to accelerate the process by which notice of filings is provided through publication in the **Federal Register** and, especially, through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that requires that text be in ASCII text format in order for it to provide electronic access to the text information.

In this final rule, the Commission is also deleting a reference to filing fees in Part 33 of its regulations. The Commission no longer requires filing fees for applications under Part 33, and so the reference no longer is necessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[2] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most, if not all, of the applicants required to comply with this final rule are entities which do not fall within the RFA's definition of small entity. Further, most, if not all, of these entities already have this material in electronic form and therefore, forwarding a diskette to the Commission would not be an additional burden.

The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations (5 CFR 1320.12) require that OMB approve certain information and recordkeeping requirements. Since this order does not increase the reporting burden and formally adopts current business practices, OMB approval will not be requested for these collections of information. When the rule is issued, the Commission will submit a copy to OMB for informational purposes only.

Title:
- FERC–516, Electric Rate Schedule Filings
- FERC–519, Corporate Applications, Dispositions of Facilities, Mergers and Acquisitions of Securities
- FERC–523, Applications for Authorization of Issuance of Securities
- FERC–556, Cogeneration and Small Power Production
- FERC–716A, Application for Transmission Services Under Section 211 of the Federal Power Act

OMB Control No: The following OMB control numbers correspond to the collections of information listed above: 1902–0096; 1902–0082; 1902–0043; 1902–0075; and 1902–0168.

Failure to comply with this collection of information will not result in a penalty, if you were unaware that a valid control number assigned by the Office of Management and Budget must be displayed on this collection of information.

Action: Proposed Data Collection Requirements

Respondents: Public utilities, small power production and cogeneration facilities, and Federal Power Marketing Administrations.

Frequency of Responses: On Occasion

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller (202) 208–1415, fax: (202) 273–0873] and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

VI. National Environmental Policy Act Analysis

The Commission concludes that promulgating this rule does not represent a major Federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National

[2] 5 U.S.C. 601–612.

Environmental Policy Act.[3] This rule is procedural in nature and does not substantially change the effect of the regulation being amended. Therefore, this rule falls within the categorical exemptions provided in the Commission's regulations.[4] Consequently, neither an environmental impact statement nor an environmental assessment is required.

VII. Administrative Findings and Effective Date

This final rule is a matter of agency organization, procedure, or practice. Since this rule does not itself alter the substantive rights or interests of any interested persons, prior notice and comment are unnecessary under Section 4 of the Administrative Procedure Act.[5]

This final rule is effective February 10, 1997.

VIII. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[6] That reporting requirement does not apply to this final rule because it falls within a statutory exception for rules relating to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.[7]

List of Subjects in 18 CFR Parts 33, 34, 35, 36, 292 and 300

Electricity, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Parts 33, 34, 35, 36, 292, and 300, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 33—APPLICATION FOR SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

1. The authority citation for Part 33 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In §33.2, the section heading, introductory text and paragraph (l) are revised to read as follows:

§ 33.2 Contents of application.

Each such applicant shall set forth in its application to the Commission, in the manner and form and in the order indicated, the following information which should insofar as possible be furnished as to said applicant and each company whose facilities or securities are involved:

* * * * *

(l) A form of notice suitable for publication in the **Federal Register**, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose.

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

1. The authority citation for Part 34 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 34.3, paragraph (k) is revised to read as follows:

§ 34.3 Contents of application for issuance of securities.

* * * * *

(k) A form of notice suitable for publication in the **Federal Register**, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," setting forth:

(1) The legal name of the applicant;

(2) The securities offered for issuance including the proposed issue date; and

(3) The comment procedure.

* * * * *

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.8, the introductory text to paragraph (a) is revised to read as follows:

§ 35.8 Comments by interested parties.

(a) *Form of notice for* **Federal Register**. The public utility shall file a form of notice suitable for publication in the **Federal Register**, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," which shall be in the following form:

* * * * *

PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

1. The authority citation for Part 36 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 16 U.S.C. 791a–825r; 31 U.S.C. 9701; 42 U.S.C. 7107–7352.

2. In § 36.1, the first sentence of paragraph (b)(1) is revised to read as follows:

§ 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

* * * * *

(b) * * *

(1) A form of notice suitable for publication in the **Federal Register**, as well as a copy of the same statement in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing."

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for Part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 292.207, the first sentence of paragraph (b)(4)(i) is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(4) *Notice.* (i) Applications for certification filed under paragraph (b) of this section must include a form of notice of the request for certification suitable for publication in the **Federal Register**, as well as a copy of the same

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[3] 42 U.S.C. 4332.

[4] 18 CFR 380.4(a)(2)(ii).

[5] 5 U.S.C. 553(b).

[6] Pub. L. No. 104–121, 110 Stat. 847 (1996).

[7] Pub. L. No. 104–121, 110 Stat. 847, 804(3)(C) (1996).

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notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing."

* * * * *

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

1. The authority citation for Part 300 continues to read as follows:

Authority: 16 U.S.C. 825s, 832–832l, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

2. In § 300.10, paragraph (a)(1) is revised to read as follows:

§ 300.10 Application for confirmation and approval.

(a) *General provisions*—(1) *Contents of filing.* Any application under this subpart for confirmation and approval of rate schedules must include, as described in this section a letter of request for rate approval, a form of notice suitable for publication in the **Federal Register**, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," the rate schedule, a statement of revenue and related costs, the order, if any, placing the rates into effect on an interim basis, the Administrator's Record of Decision or explanation of the rate development process, supporting documents, a certification, and technical supporting information and analysis.

* * * * *

[FR Doc. 97–380 Filed 1–8–97; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300447; FRL–5579–7]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerances for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the fungicide myclobutanil in or on the crop group cucurbit vegetables in connection with EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of myclobutanil on cucurbit vegetables in California. This regulation establishes a maximum permissible level for residues of myclobutanil in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997.

DATES: This regulation becomes effective January 9, 1997. This regulation expires and is revoked automatically without further action by EPA on November 30, 1997. Objections and requests for hearings must be received by EPA on March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300447], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP–300447], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300447]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8337, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H–1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenol)-1H–1,2,4-triazole-1-propanenitrile (free and bound), hereafter referred to as myclobutanil, in or on cucurbit vegetables at 0.3 part per million (ppm). This tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and

children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemption for Myclobutanil on Cucurbits and FFDCA Tolerances

On July 29, 1996, the State of California availed itself of the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of myclobutanil on watermelons to control powdery mildew (*Sphaerotheca fuliginea*). This crisis exemption was amended August 7, 1996 to cover all cucurbit vegetables. California stated that emergency conditions developed due to the outbreak of this particular strain of powdery mildew which is resistant to the registered product Bayleton. Though considered a minor pest in the past, environmental conditions in the last 2 years have contributed to this disease outbreak. Without the use of myclobutanil, it is claimed that watermelon growers specifically, and growers of cucurbits in general, will suffer severe economic losses.

As part of its assessment of this crisis declaration, EPA assessed the potential risks presented by residues of myclobutanil in or on cucurbits. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemption only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. This tolerance for myclobutanil will permit the marketing of cucurbits treated in accordance with the provisions of the section 18 emergency exemption. Consistent with the need to move quickly on the emergency exemption and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997, under FFDCA section 408(l)(5), residues of myclobutanil not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemption. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether myclobutanil meets the requirements for registration under FIFRA section 3 for use on cucurbits, or whether a permanent tolerance for myclobutanil for cucurbit vegetables would be appropriate. This action by EPA does not serve as a basis for registration of myclobutanil by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than California to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for myclobutanil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of every crop considered in the analysis is treated with the pesticide being evaluated. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances and that the market for pest control on any given crop seldom belongs to a single pesticide.

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Myclobutanil is already registered by EPA for numerous food and feed uses, as well as residential use on annuals and perennials, turf, shrubs and trees, and African violets (indoor). EPA has received a petition requesting establishment of a tolerance for myclobutanil on cucurbits. The time-limited tolerance associated with the current emergency exemption does not constitute a decision regarding the pending petition for tolerance on cucurbit vegetables. For the purposes of this emergency exemption, EPA has sufficient data to assess the hazards of myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of myclobutanil on cucurbit vegetables at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

IV. Aggregate Risk Assessment and Determination of Safety

A. Toxicological Profile

1. *Chronic toxicity.* The RfD of 0.025 milligram(mg)/kilogram(kg)/day was established by the Agency based on the chronic feeding study in rats with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. There was testicular atrophy at the lowest effect level (LEL) of 9.9 mg/kg/day.

2. *Acute toxicity.* OPP has determined that data do not indicate the potential for adverse effects after a single dietary exposure.

3. *Short-term toxicity.* OPP has determined that short- and intermediate-term risk assessments are appropriate for occupational and residential routes of exposure. OPP recommends that the NOEL of 100 mg/kg/day, taken from the 21–day dermal toxicity study in rats, be used for the short term dermal MOE calculations. This dose level was the highest tested in the study. For intermediate term MOE calculations, OPP recommended using the NOEL of 10 mg/kg/day from the 2–generation rat study. Effects seen at the LEL in this study (50 mg/kg/day) were decreases in pup body weight, an increased incidence in number of stillborns, and atrophy of the prostate and testes. Though these endpoints have been identified, no acceptable reliable exposure data to assess these potential risks are available at this time.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified myclobutanil as Group E chemical—"no evidence of carcinogenicity for humans"—based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk.

B. Aggregate Exposure

Established U.S. tolerances for myclobutanil and its alcohol metabolites (free and bound) are found in 40 CFR 180.443, and range from 0.05 ppm for milk to 5 ppm for cherries (sweet and sour). The proposed time-limited tolerance of 0.3 ppm is based on residue field trial data on cantaloupes submitted in support of PP 9G3765 and PP 2F4155. There are no livestock feed items associated with the proposed use on cucurbits, so no additional livestock dietary burden will result from this Section 18 registration. Therefore, existing meat, milk, and poultry tolerances are adequate.

For the purpose of assessing potential chronic dietary exposure from myclobutanil, EPA assumed tolerance level residues and percent of crop treated refinements to estimate the Anticipated Residue Contribution (ARC) from the proposed and existing food uses of metolachlor. The use of percent of crop treated data for most of the existing food uses in this analysis results in a more refined estimate of exposure than the TMRC. In conducting this exposure assessment, EPA has made conservative assumptions—all foods considered in the analysis were assumed to have myclobutanil residues present at the level of the tolerance. Percent crop treated data were used for many commodities with existing myclobutanil tolerances (stone fruits, pome fruits, grapes, and cottonseed) in the chronic exposure assessment, but were not considered when calculating the dietary burden from which secondary residue tolerances in meat, milk and poultry were derived or for the proposed use on cucurbit vegetables. Thus, in making a safety determination for the subject Section 18 tolerances, EPA is taking into account this conservative exposure assessment.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of myclobutanil in drinking water. Review of terrestrial field dissipation data by the Agency indicates that myclobutanil did not leach into groundwater in either sandy loam or coastal soil. There is no established Maximum Concentration Level for residues of myclobutanil in drinking water. No drinking water health advisories have been issued for myclobutanil. The "Pesticides in Groundwater Database (EPA 734–12–92–001, September 1992) has no

information concerning myclobutanil. Based on the available data, the Agency does not anticipate that there will be significant exposure to the general population from myclobutanil residues in drinking water.

There are residential uses of myclobutanil and EPA acknowledges that there may be short-, intermediate- and long-term non-occupational exposure scenarios. OPP has identified toxicity endpoints for short- and intermediate-term residential risk assessment. However, no acceptable reliable exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that myclobutanil and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment. For purposes of this tolerance only, the Agency is considering only the potential risks of myclobutanil in its aggregate exposure.

C. Determination of Safety for U.S. Population

EPA has calculated that chronic dietary exposure to myclobutanil will utilize 13.5 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of myclobutanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

From the rat developmental study, the maternal (systemic) NOEL was 93.8 mg/kg/day, based on rough hair coat, and salivation at the LOEL of 312.6 mg/kg/day. The developmental (pup) NOEL was 93.8 mg/kg/day, based on increased incidences of 14th rudimentary and 7th cervical ribs at the LOEL of 312.6 mg/kg/day. From the rabbit developmental study, the maternal (systemic) NOEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the LOEL of 200 mg/kg/day. The developmental (pup) NOEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LEL of 200 mg/kg/day.

From the rat reproduction study, the maternal (systemic) NOEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOEL of 10 mg/kg/day. The developmental (pup) NOEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the LEL of 50 mg/kg/day. The reproductive (parental) NOEL was 10 mg/kg/day, based on increased incidence of stillborns, and atrophy of the testes, epididymides, and prostate at the LEL of 50 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for myclobutanil relative to pre- and post-natal toxicity is complete. The Agency notes that there is approximately a 25–fold difference between the developmental NOEL of 60 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 2.5 mg/kg/day from the chronic rat feeding study which was the basis of the RfD. It is further noted that in both the rabbit and rat developmental toxicity studies, the developmental NOEL and maternal NOEL are the same (60 mg/kg/day for the rabbit and 93.8 mg/kg/day for the rat). In the rat reproduction study, the maternal NOEL (2.5 mg/kg/day) was four times lower than the developmental (pup) and reproductive NOELs (10 mg/kg/day). These studies indicate that there does not appear to be additional sensitivity for infants and children in the absence of maternal toxicity.

EPA has calculated that the percent of the RfD that will be utilized by chronic dietary exposure to residues of myclobutanil ranges from 21.8 percent for children 7 to 12 years old, up to 73.1 percent for non-nursing infants. Given the conservative assumptions used in the calculation of dietary risk, it is felt that even a conservative assumption of transfer of residues to drinking water would result in an aggregate exposure below the Agency's level of concern. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to myclobutanil residues.

V. Other Considerations

The metabolism of myclobutanil in plants and animals is adequately understood for the purposes of this tolerance. There is no Codex maximum residue level established for residues of myclobutanil on cucurbits. There is a practical analytical method for detecting and measuring levels of myclobutanil in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–5805.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemption is established for residues of myclobutanil in cucurbits at 0.3 ppm. This tolerance will expire and be automatically revoked without further action by EPA on November 30, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new sections 408 (e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing

requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300447] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C). Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 2, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.443, by adding a new paragraph (d) to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

* * * * *

(d) A time-limited tolerance is established for residues of the fungicide myclobutanil, in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerance is specified in the following table. This tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/revocation date
Cucurbit vegetables.	0.3	Nov. 30, 1997.

[FR Doc. 97–514 Filed 1–8–97; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300448; FRL–5581–9]

RIN 2070–AB78

Zinc Phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the

raw agricultural commodities sugarbeets and potatoes in connection with crisis exemptions declared by the state of Idaho under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of zinc phosphide on sugarbeets and potatoes. This regulation establishes maximum permissible levels for residues of phosphine in these foods pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997.

DATES: This regulation becomes effective January 9, 1997. This regulation expires and is revoked automatically without further action by EPA on October 15, 1997. Objections and requests for hearings must be received by EPA on or before March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300448], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300448], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300448]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on potatoes and sugar beet roots at 0.05 part per million (ppm) and in or on sugar beet tops at 0.1 ppm. These tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, 11/13/96).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Zinc Phosphide on Potatoes and Sugar beets and FFDCA Tolerances

On August 5, 1996, the Idaho Department of Agriculture availed itself of the authority to declare the existence

of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of zinc phosphide on potatoes and sugar beets for control of meadow voles and field mice. Potato and sugarbeet growers in Idaho have experienced substantial losses in recent years due to vole and mouse damage. The only registered option available to sugarbeet and potato growers in Idaho is to use zinc phosphide on non-crop land surrounding their fields. Where fields are surrounded by other crops or bare ground, there are no registered controls or other effective non-chemical methods.

As part of its assessment of this crisis exemption, EPA assessed the potential risks presented by residues of phosphine on potatoes and sugar beets. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for residues of phosphine will permit the marketing of potatoes and sugar beets treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997, under FFDCA section 408(l)(5), residues of phosphine not in excess of the amount specified in these tolerances remaining in or on potatoes and sugar beet roots and tops after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether zinc phosphide meets the requirements for registration under FIFRA section 3 for use on potatoes or sugar beets or whether permanent tolerances for zinc phosphide for potatoes, or sugar beet roots or tops would be appropriate. This action by EPA does not serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than Idaho to use this product on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for zinc phosphide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or Margin of Exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Zinc phosphide is already registered by EPA for outdoor residential lawn, nursery, right-of-way, recreational area and other non-food uses, as well as several food use registrations. EPA has also assessed the toxicology data base for zinc phosphide in its evaluation of an application for a regional registration on sugarbeets. Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a Registration Standard for Zinc

Phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70 percent of the bound phosphate residues in treated commodities as consisting of oxy-acids of phosphorus, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30 percent of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities. EPA believes it has sufficient data to assess the hazards of zinc phosphide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of phosphine resulting from the use of zinc phosphide in or on potatoes and sugar beet roots at 0.05 ppm and in or on sugar beet tops at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has established the RfD for zinc phosphide at 0.0003 milligrams(mg)/kilogram(kg)/day. The RfD was established based on an lowest effect level (LEL) of 3.48 mg/kg/day from an open literature 90–day rat feeding study. Effects observed at the LEL were decreased food consumption and body weight. An uncertainty factor of 10,000 was used due to data gaps and the absence of a NOEL in the study.

2. *Acute toxicity.* No toxicology studies were identified by OPP which demonstrated the need for an acute dietary risk assessment.

3. *Short-term non-dietary inhalation and dermal toxicity.* Since 10 percent zinc phosphide tracking powder has been classified in Toxicity Category IV (LC50 >19.6 mg/L), inhalation exposure resulting from this section 18 action is not considered toxicologically significant. For short-term and intermediate dermal MOE calculations, the Health Effects Division (HED), of OPP recommended use of the adjusted acute dermal LD_{50} NOEL of 1,000 mg/kg from the acute dermal toxicity study in rabbits. In the absence of other dermal toxicity data, the acute NOEL dose of 1,000 mg/kg was divided by a 100–fold uncertainty factor to approximate a 3–month dermal NOEL for worker dermal exposure. The 3 month dermal NOEL is 10 mg/kg/day. At the LEL of 2,000 mg/kg in the rabbit dermal LD_{50} study, the animals lost weight, but no mortalities were observed up to 5,000 mg/kg highest dose tested (HDT). Actual risk from dermal exposure is likely to be significantly less, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure.

4. *Carcinogenicity.* Zinc phosphide has not been reviewed for carcinogenicity, as there are no adequate carcinogenicity studies in rodents available in the toxicology data base. OPP has waived carcinogenicity data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate.

B. Aggregate Exposure

Tolerances are established for residues of the phosphine resulting from the use of zinc phosphide on several raw agricultural commodities (40 CFR 180.284(a) and (b)). There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs (paragraph (a)(3) of 40 CFR 180.6). Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds.

For the purpose of assessing chronic dietary exposure from zinc phosphide, EPA assumed tolerance level residues and 100 percent of crop treated for the proposed and existing food uses of zinc phosphide. These conservative assumptions result in overestimation of human dietary exposures.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. There is no information on zinc phosphide (phosphine) residues in ground water and runoff in the EFED One-Liner Data Base. There is no established Maximum Concentration Level (M.C.L.) for residues of zinc phosphide (phosphine) in drinking water. No drinking water health advisory levels have been established for zinc phosphide (phosphine). There is no entry for zinc phosphide (phosphine) in the "Pesticides in Groundwater Database" (EPA 734–12–92–001, September 1992). Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of zinc phosphide (phosphine) in drinking water.

There are residential uses of zinc phosphide and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable dermal exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that zinc phosphide and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of zinc phosphide in its aggregate exposure.

C. Safety Determinations For U.S. Population

Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to zinc phosphide will utilize 27.5 percent of the RfD for the U.S. population. EPA does not anticipate chronic exposure to residues of zinc phosphide (phosphine) in drinking water. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

D. Determination of Safety for Infants and Children

There were no developmental findings in rats up to a maternally toxic dose of 4.0 mg/kg/day zinc phosphide nor in mice at 4.0 mg/kg/day (HDT). A comparison of the NOEL of 0.1 mg/kg/day in the recent 90–day rat gavage study and the NOELs for developmental toxicity in rats and mice (4.0 mg/kg/day) provides a 40–fold difference, which demonstrates that there are no special pre-natal sensitivities for infants and children. Since there are no

reproduction studies with zinc phosphide, the post-natal potential for effects from zinc phosphide in infants and children cannot be fully evaluated. However, the above information, together with the uncertainty factor of 10,000 utilized to calculate the RfD for zinc phosphide, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to zinc phosphide residues.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of zinc phosphide ranges from 6.8 percent for nursing infants (<1 year old) up to 59.9 percent for children 1 to 6 years old. However, this calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before, EPA does not expect chronic exposure from drinking water. EPA therefore concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zinc phosphide.

V. Other Considerations

The metabolism of zinc phosphide in plants and animals is adequately understood for the purposes of these tolerances. The residue of concern is unreacted zinc phosphide, measured as phosphine, that may be present. Adequate methods for purposes of data collection and enforcement of tolerances for zinc phosphide residues as phosphine gas are available. Methods for determining zinc phosphide residues of phoshine gas are described in PAM, Vol. II, as Method A.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of phosphine resulting from the use of zinc phosphide in potatoes and sugar beet roots at 0.05 ppm and sugar beet tops at 0.1 ppm. These tolerances will expire and be automatically revoked without further action by EPA on October 15, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300448] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110

Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 2, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.284, by adding a new paragraph (c) to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

* * * * *

(c) Time-limited tolerances are established for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire and are automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/ Revocation Date
Potatoes	0.05	October 15, 1997
Sugar beet (roots)	0.05	October 15, 1997
Sugar beet (tops) ..	0.1	October 15, 1997

[FR Doc. 97–512 Filed 1–8–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382, 383, and 390

[FHWA Docket No. MC–93–17]

RIN 2125–AE13

Federal Motor Carrier Safety Regulations; Intermodal Transportation; Withdrawal of Final Rule

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; withdrawal.

SUMMARY: On December 29, 1994, the FHWA published a final rule [59 FR 67544] which implemented the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act). On October 11, 1996, the President signed the Intermodal Safe Container Transportation Amendments Act of 1996 (the 1996 Act) which substantially amended the 1992 Act and removed the requirement that the Secretary of Transportation promulgate implementing regulations. The FHWA, therefore, is withdrawing its December 29 final rule. The FHWA has determined that regulations are not necessary to implement the 1992 Act as amended by the 1996 Act. The 1996 Act will become effective on April 9, 1997. The FHA is also amending the applicability provisions of the regulations on controlled substances and alcohol use and testing.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Summary of the 1992 Act

Almost every intermodal container and trailer travels over the highway at least once during shipment. Motor carriers are usually at the beginning or end of the intermodal transportation chain. It is difficult for motor carriers to comply with highway weight limitations without knowledge of the weight and transportation characteristics of the contents of a container or trailer. The purpose of highway weight laws is to minimize highway and bridge wear and protect the motoring public.

In the 1980s, motor carriers complained that they had little or no control over the loading of the containers or trailers, were forced to accept containers and trailers with an unknown cargo and weight by threat of economic retaliation, and yet were held responsible for compliance with weight laws. A motor carrier might suspect that a loaded container or trailer was too heavy for the equipment or illegal under State law, but would have no reasonable grounds for refusing to transport it without knowledge of the cargo weight.

On October 28, 1992, the President signed the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act) [Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901–5907 (formerly 49 U.S.C. 501 and 508)]. The 1992 Act requires the person who loads an intermodal container or trailer to prepare a written certification that includes a reasonable description and the actual gross weight of the cargo, and to give the certification to the initial carrier. Each carrier is required to forward the certification to the next carrier transporting the container or trailer. The information will enable motor carriers, which are already familiar with the tare weights of containers, trailers, and chassis, to better estimate the axle weights and gross weight of a given combination. If the certified cargo weight is incorrect and the motor carrier is fined for operating an overweight vehicle as a result of that error, the motor carrier has a lien on the cargo until the shipper or owner of the cargo reimburses it for the fine and all costs associated with the incident. Coercing a person to transport a loaded container or trailer without a certification or with a weight that would make the vehicle combination illegally overweight under applicable State law was prohibited by the 1992 Act.

Summary of Events Between the Enactment of the 1992 Act and the 1996 Act

The FHWA published a notice of proposed rulemaking (NPRM) on July 14, 1993 (58 FR 37895). The NPRM proposed to amend part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart C, Intermodal Transportation. Most of the proposed regulations simply codified the statutory requirements. The comment period for the NPRM originally closed on September 13, 1993. In response to several requests, the FHWA reopened the comment period and extended it until October 28, 1993.

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On December 29, 1994, the FHWA published a final rule implementing the 1992 Act with an effective date of the rule was June 27, 1995. On April 7, 1995, the American Trucking Associations, Inc. (ATA) filed a petition to exempt three types of motor carrier operations from the final rule. During April and May, the FHWA received letters from several companies and industry groups petitioning for an extension of the effective date of the final rule. These petitioners explained that the intermodal transportation industry relies heavily on electronic data interchange (EDI) and that the time necessary to develop EDI standards and complete computer programming and training for electronic forwarding of certifications made it impossible to achieve compliance through the use of EDI by June 27, 1995. On May 16 [60 FR 26001], the FHWA administratively extended the June 27 effective date until September 27, 1995, to allow the agency sufficient time to consider public comment on whether a further extension was warranted. On May 25 (60 FR 27700), the FHWA requested comments on whether an extension of the effective date of the final rule beyond September 27 was necessary. As a part of the May 25 publication, the FHWA requested comments on the April 7 petition filed by the ATA. In their comments to the May 25 publication, the ATA and National Industrial Transportation League (NITL) informed the FHWA that the organizations would file a joint petition for amendments to the final rule. The FHWA, therefore, deferred discussion of the April 7 petition until after the agency had an opportunity to consider the forthcoming petition. The FHWA determined that a further extension was warranted and, therefore, on August 10 (60 FR 40761) extended the effective date of the final rule until September 1, 1996, to allow the intermodal transportation industry sufficient time to comply by means of EDI.

On August 31, 1995, the NITL, ATA, and Interstate Truckload Carriers Conference filed a joint petition for amendments to the final rule. Between November 1995 and February 1996, the FHWA and the petitioners exchanged letters about the petitions. On March 29, the NITL, the Intermodal Conference of the ATA, and the Intermodal Safe Container Coalition asked the FHWA to delay its decision on both petitions until after April 30. The organizations explained that they were engaged in negotiations to reach agreement on amendments to the final rule which they believed were needed. On May 21, the three organizations notified the FHWA that they had reached consensus and would seek amendments to the 1992 Act. The organizations asked the FHWA to delay its decision on both petitions until July 1, 1996. The petitions and letters discussed above are available for review in the public docket.

On July 16, 1996, a bill to amend the 1992 Act, S. 1957, was introduced by the Chairman of the Senate Committee on Commerce, Science, and Transportation with co-sponsorship of the Chairman and ranking minority member of the Subcommittee on Surface Transportation and Merchant Marine. On July 23, 1996, the sponsors of the bill wrote to the Secretary of Transportation requesting that the September 1, 1996, effective date of the FHWA's rule be extended. The Senators expressed concern that implementation as currently planned could have devastating consequences for intermodal transportation, including delays and severe congestion at the nation's ports. On August 19 (61 FR 42822), the FHWA administratively extended the September 1, 1996, effective date until January 2, 1997, because (1) the two petitions before the agency had not been resolved, (2) a significant number of foreign entities were not familiar with their responsibilities, and (3) implementation of the final rule prior to possible enactment of S. 1957 could disrupt both interstate and foreign commerce. A revised version of S. 1957 was approved by both chambers of Congress as title II of H.R. 3159 which was signed by the President on October 11, 1996 [Pub. L. 104–291, 110 Stat. 3452].

Highlights of the 1996 Act

The 1996 Act amends the 1992 Act in several significant ways. Among other things, the 1996 Act:

1. Raises the jurisdictional weight threshold from 4,536 kilograms (10,000 pounds) to 13,154 kilograms (29,000 pounds);
2. Creates a presumption that the cargo weight of an intermodal container or trailer is less than 13,154 kilograms (29,000 pounds) if no certification is provided to the motor carrier;
3. Exempts highway/railroad intermodal movements where one motor carrier performs all of the highway transportation itself or assumes responsibility for overweight fines incurred by any other motor carrier that handles part of the highway transportation;
4. Makes explicit the applicability of the 1992 Act to foreign persons who tender a loaded container or trailer for intermodal transportation within the United States;
5. Treats a bill of lading or other shipping document prepared by the person who tenders a loaded container or trailer as a certification if it includes certain information specified by the 1996 Act;
6. Prohibits the use of the term "Freight All Kinds" as a reasonable commodity description after December 31, 2000, if the weight of any single commodity is 20 percent or more of the total cargo weight;
7. Makes any person—in most cases an intermediate carrier—who inaccurately converts a paper certification into an electronic format or fails to forward a certification, indirectly liable for any fine or other costs incurred by a motor carrier as a result of that incorrect information or missing certification;
8. Provides that a copy of the certification is not required to accompany the loaded container or trailer during intermodal transportation;
9. Removes language prohibiting a motor carrier from transporting an intermodal container or trailer for which a certification is required, before receiving a certification;
10. Requires motor carriers to give leased operators written notice of the gross cargo weight of an intermodal container or trailer if they know that it would cause a vehicle combination to violate gross vehicle weight limits. If no such notice is given and the leased operator is fined for violating a gross vehicle weight law or regulation, the operator is entitled to reimbursement from the motor carrier; and
11. Removes the requirement that the Secretary of Transportation promulgate implementing regulations.

Overview of the 1996 Act

General Applicability

The certification requirements of the 1992 Act, as amended by the 1996 Act, apply to any domestic or foreign person who first tenders a container or trailer for intermodal transportation in the United States. The notification and certification requirements do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if such motor carrier performs all highway portions of the intermodal transportation or assumes responsibility for any weight-related fine incurred by any other motor carrier that transports the loaded container or trailer.

Notification and Certification

Any person within the United States who tenders a loaded container or

trailer having a projected gross cargo weight more than 29,000 pounds to a first carrier that is a motor carrier must provide written notification of the projected gross cargo weight and a reasonable description of the contents of the container or trailer to the first carrier before tendering. The notification may be communicated by electronic transmission, telephone, or paper copy. A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation, must provide a certification of its contents in writing or electronically, before or when the container or trailer is so tendered. A copy of the certification is not required to accompany the loaded container or trailer at any time during intermodal transportation.

The elements of a certification are the following:

(1) The actual gross cargo weight (including packing materials, pallets, and dunnage);

(2) A reasonable description of the contents of the container or trailer;

(3) The identity of the certifying party;

(4) The container or trailer number; and

(5) The date of certification, or transfer of data to another document for forwarding to the next carrier.

Any shipping document which includes this information (though it need not be in the above order or even in a consecutive format) and is prepared by the person who tenders the container or trailer qualifies as a certification. If a separate document is used as a certification, it must be conspicuously marked "INTERMODAL CERTIFICATION." The use of the term "Freight All Kinds" or "FAK," as a reasonable description of the contents of the container or trailer, is prohibited after December 31, 2000, if the weight of any one commodity is 20 percent or more of the total cargo weight.

Forwarding and Transfer of Certifications

Carriers and intermediaries that receive a certification must forward it to the next carrier in the intermodal chain. A carrier or intermediary that receives a certification may transfer the information into a different document or convert a paper certification into an electronic format, for forwarding to a subsequent carrier. The party transferring or converting the information must identify itself on the forwarded document and give the date on which the information was converted or transferred.

Liens

A motor carrier which is fined or required to post a bond for transporting an overweight container or trailer subject to the amended 1992 Act has a lien against its contents equal to the fine (including costs) or bond if the penalty results from (1) failure to provide the initial certification, (2) erroneous information in the initial certification, (3) failure to forward the certification or (4) an error in the conversion of a paper certification to an electronic format or in the transfer of certification elements from one document to another. The lien remains in effect until the motor carrier is reimbursed by the party responsible for the error or failure that caused the overweight fine, or by the owner or beneficial owner of the cargo. If reimbursement is not made within a reasonable time, the motor carrier may sell the cargo to recover the amount of the fine or bond. Liens cannot be exercised against perishable agricultural commodities.

The lien provisions of the amended 1992 Act are especially complicated when an intermediate carrier or party makes an inaccurate conversion or transfer, or fails to forward the certification to a subsequent carrier. If a motor carrier incurs a fine and costs for an overweight violation resulting from such error or failure, the amended 1992 Act provides that the intermediate party is liable to the motor carrier for the fine and costs. The motor carrier, however, is expected to recover its costs by exercising its right to a lien by seizing the cargo. In this case, the owner of the cargo (usually the shipper or consignee) is not responsible for the error or failure that resulted in the fine. The amended 1992 Act, therefore, gives any person who reimburses the motor carrier for its fine and costs (usually the shipper or consignee who wants to get the cargo to its destination) a cause of action for that amount against the intermediate carrier or party whose error or failure caused the problem. The reimbursing party will then have to file suit against the intermediate carrier or party in the appropriate court to recover the amount it paid the motor carrier. The statutory scheme is complex and should be reviewed carefully by all intermodal shippers and carriers. This description is not intended to be an exhaustive analysis.

Notice to Leased Operators

If a motor carrier knows, because of the certification it has received, that a loaded container or trailer would cause a vehicle combination to be in violation of gross vehicle weight laws, it must give written notice of the gross cargo weight to an owner-operator leased to the motor carrier. This amounts to a motor carrier certification within the broader shipper certification scheme of the statute. If no such notice is given and the owner-operator is fined for a violation of a gross vehicle weight law or regulation, the owner-operator is entitled to reimbursement from the motor carrier in the amount of the fine and court costs. The motor carrier bears burden of proof to establish that it gave the required notice to its leased owner-operator.

Unlawful Coercion and State Enforcement

The 1996 Act did not substantially amend 49 U.S.C. 5903(c) which contains prohibitions regarding coercion. Coercing a person to transport a loaded container or trailer subject to the amended 1992 Act without a certification (or a shipping document that qualifies as such) or with a weight that would make the combination vehicle illegally overweight under applicable State law, remains prohibited. However, if no certification is provided to a motor carrier when a loaded container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight is less than 29,000 pounds. This should significantly reduce instances of alleged coercion.

The 1996 Act did not amend 49 U.S.C. 5904 which addresses State enforcement. States retain the authority to fine the motor carrier for all overweight violations, but they may also impound the intermodal container or trailer and levy the fine on the shipper when the violation was caused by inaccurate information in the certification. The absence of certifications from commercial motor vehicles, however, will hinder the ability of State enforcement officials to determine at roadside whether an overweight violation was caused by incorrect information in a certification. This may influence their choice of enforcement options.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action only withdraws a previously

issued rule, it is anticipated that the economic impact of this action will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that, since this action withdraws regulations previously issued, it will not place a significant economic burden on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This withdrawal of a recently published final rule will not preempt any State law or State regulation and no additional costs or burdens will be imposed on the States. This action will not affect the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The information collection requirements contained in the final rule previously issued on December 29, 1994, were approved by the OMB in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 and assigned the control number of 2125–0557 which expires on June 30, 1997. This action reduces paperwork burdens previously established and results in the FHWA no longer conducting or sponsoring a collection of information to implement 49 U.S.C. chapter 59. The FHWA, therefore, will not seek extension of the OMB's approval of the information collection assigned control number 2125–0557.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Recordkeeping requirements.

In consideration of the foregoing and under the authority of 49 U.S.C. 31132, 31133, 31502, and 31504, the FHWA hereby amends title 49, Code of Federal Regulations, parts 382, 383, and 390 as set forth below.

Issued on: December 31, 1996.

Rodney E. Slater,

Federal Highway Administrator.

PART 382—[AMENDED]

1. The authority citation for Part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

§382.103 [Amended]

2. Section 382.103 is amended by revising paragraph (c) to read as follows:

§382.103 Applicability

* * * * *

(c) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

* * * * *

PART 383—[AMENDED]

3. The authority citation for Part 383 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and

49 CFR 1.48.

§383.3 [Amended]

4. Section 383.3 is amended by revising paragraph (b) to read as follows:

§383.3 Applicability

* * * * *

(b) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part, unless otherwise provided in this section.

* * * * *

PART 390—[AMENDED]

5. The authority citation for Part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504, and Sec. 204, Pub.L. 104–88, 109 Stat. 803, 941; 49 U.S.C. 701 note, and 49 CFR 1.48.

§390.3 [Amended]

6. Section 390.3 is amended by removing paragraph (b), and redesignating paragraphs (c) through (g) as (b) through (f), respectively.

Subpart C [Removed]

7. Subpart C of part 390, (§§ 390.50–390.60) Intermodal Transportation, is removed and reserved.

Appendix H to Subchapter B [Removed]

8. Subchapter B is amended by removing appendix H.

[FR Doc. 97–384 Filed 1–8–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket Number 950407093–6298–03; I.D. 012595A]

Endangered and Threatened Species; Threatened Status for Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU); Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: NMFS is making a technical correction to the final rule (61 FR 56138, October 31, 1996) determining that the Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU) is a threatened species. The correction specifies that the ESU consists of all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Wingert, NMFS, Southwest Region, (310) 980–4021; or Marta

Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Need for Correction

On October 31, 1996, NMFS published a final rule listing the Central California Coho Salmon ESU as a threatened species (61 FR 56138). In the last paragraph of the "Listing Determination" section of the preamble to the rule (see page 56146, bottom of second column and top of third column), NMFS clearly defined the Central California Coho Salmon ESU as consisting of "all coho salmon naturally reproduced in streams between Punta Gorda, Humboldt County, CA, and the San Lorenzo River, Santa Cruz County, CA." However, the definition of the listed ESU in the regulatory text codified at section 227.4(h) was ambiguous as to the geographic extent of the listed ESU and whether the listed ESU specifically included hatchery populations or only naturally reproduced populations.

Correction of Publication

Accordingly, the publication on October 31, 1996, of the final rule (I.D. 012595A), which was the subject of FR Doc. 96–56138, is corrected as follows:

§ 227.4—[Corrected]

On page 56149, in the third column, in § 227.4, paragraph (h) is corrected to read as follows:

* * * * *

(h) Central California Coast Coho Salmon. Includes all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

* * * * *

Dated: January 3, 1997.

P. Michael Payne,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–477 Filed 1–6–97; 1:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 6
Thursday, January 9, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–32]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, – 17, and –17R series turbofan engines. This proposal would require initial and repetitive fluorescent penetrant and eddy current inspections of 4th stage low pressure turbine (LPT) hubs for cracks, and, if necessary, replacement with serviceable parts. This proposal is prompted by a report of an uncontained 4th stage LPT blade release. The actions specified by the proposed AD are intended to prevent a 4th stage LPT blade release due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–32." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of an uncontained engine failure on a Pratt & Whitney (PW) JT8D–15 turbofan engine. On January 30, 1996, this engine, installed on a Boeing Model 727–200 aircraft, experienced an uncontained 4th stage low pressure turbine (LPT) blade release during takeoff roll. The aircraft sustained damage to the vertical stabilizer and the engine cowling. Inspection of the engine revealed that the LPT blade release resulted from a radial fracture of the 4th stage LPT hub. The investigation determined that the failure was due to a crack which initiated in and propagated in low cycle fatigue from an inclusion located in the hub bore. This condition, if not corrected, could result in a 4th stage LPT blade release due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft.

Further investigation revealed that a certain population of PW JT8D 4th stage LPT hubs may contain inclusions of aluminum/titanium carbonitrides rich in cerium and lanthanum in the hub bore that may initiate a crack in the bore, and if undetected, may propagate, resulting in a hub fracture and LPT blade release. The cause of the inclusion occurred during the material melting process where a small amount of slag created during the desulfurization/deoxidization process of the vacuum induction melt survived a subsequent melt and was not detected by the required nondestructive test inspections for this material/part. The FAA has determined that material produced prior to April 31, 1983, has more susceptibility to inclusions, whereas subsequent to that date process improvements have been implemented to produce material that is less susceptible to inclusions. Due to these process improvements, the FAA has identified certain 4th stage LPT hubs produced prior to April 1983 that have a greater potential for contamination. Prior to the uncontained engine failure on January 30, 1996, the FAA received reports of two previous incidents of cracks in the 4th stage LPT hub due to inclusions that were discovered during routine shop visits.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6274,

Revision 1, dated December 9, 1996, that identifies by serial number (S/N) affected 4th stage LPT hubs, and describes procedures for fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of 4th stage LPT hubs for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive FPI and ECI of affected 4th stage LPT hubs for cracks, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that 381 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $137,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 96–ANE–32.

Applicability: Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, 9, –9A, –11, –15, –17, and –17R turbofan engines, with 4th stage low pressure turbine (LPT) hubs identified by serial number (S/N) in Table A of PW Alert Service Bulletin (ASB) No. A6274, Revision 1, dated December 97, 1996. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent 4th stage LPT blade failure due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Perform fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of affected 4th stage LPT hubs for cracks, in accordance with Paragraph 2A of PW ASB No. A6274, Revision 1, dated December 9, 1996, as follows:

(1) Inspect at the next time after the effective date of this AD that the hub is removed from the module and has been debladed.

(2) Thereafter, inspect each time the hub is removed from the module and has been debladed.

(3) Remove from service any cracked 4th stage LPT hub and replace with a serviceable part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on January 2, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–469 Filed 1–8–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–ANE–35]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, that currently requires installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. This action would require the installation and periodic inspection of temperature indicators to all PW JT8D–200 series engines, including those incorporating the containment hardware specified in with AD 93–23–10. This proposal is prompted by report of an uncontained turbine failure due to a high pressure turbine (HPT) shaft fracture on an engine that had the containment hardware installed. The actions specified by the proposed AD are intended to prevent fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

DATE: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–35, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–35." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–35, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 3, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive AD 94–23–03, Amendment 39–9065 (59 FR 61789, December 2, 1994), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, to require installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. That action was prompted by reports of high pressure turbine (HPT) shaft fractures caused by oil fires that resulted from internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment. That condition, if not corrected, could result in fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

Airworthiness directive 94–23–03 excluded from the applicability engines that had installed HPT containment hardware in accordance with AD 93–23–10. Since the issuance of AD 94–23–03, the FAA has received a report of an uncontained turbine failure due to an HPT shaft fracture on a PW Model JT8D–219 engine that had the containment hardware installed.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 17, 1994, and Revison 2, dated June 8, 1992, that describe procedures for installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–23–03 to require installation and periodic inspection of temperature indicators to all PW JT8D–200 series engines, including those incorporating the containment hardware specified in AD 93–23–10. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 2,432 engines of the affected design in the worldwide fleet. The FAA estimates that 1,044 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $93,960.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9065 (59 FR 61789, December 2, 1994) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 96–ANE–35. Supersedes AD 94–23–03, Amendment 39–9065.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines, installed on but not limited to McDonnell Douglas MD–80 series and Boeing 727 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless

of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure turbine (HPT) shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage, accomplish the following:

(a) Install and inspect one or two temperature indicators, part number (P/N) 810486, or a single or double set of P/N 809129 and P/N 809130 temperature indicators, on the No. 4 and 5 bearing compartment scavenge oil tube, as follows:

(1) Install temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, within 90 days after the effective date of this airworthiness directive (AD).

(2) Visually inspect temperature indicators within 65 hours TIS of installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(3) If upon inspection, the color of any temperature indicator window(s) has turned completely black, perform troubleshooting and diagnostic testing and corrective action as required, in accordance with Section 2.A.(2) (c) and (d) or (f) and (g), as applicable, of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992. Prior to returning the engine to service, replace any temperature indicator that has turned black and inspect in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(b) For aircraft installations utilizing one P/N 810486 indicator or one set of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator, inspect the remaining temperature indicator, if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (a)(3) of this AD. If the indicator window has not turned completely black or if there are no additional indicators installed, then install a new indicator in accordance with Section 2.A.(1) of the Accomplishment Instruction of PW ASB No. 5944, Revision No. 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, prior to return to service, and visually inspect the temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(c) For aircraft installations utilizing two P/N 810486 indicators or two sets of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator(s), inspect the remaining temperature indicator(s), if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (a)(3) of this AD. If the indicator window has not turned completely black, install a new indicator(s) in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, prior to return to service, and visually inspect the temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(d) Report the data elements identified in Appendix E of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, whenever an overtemperature condition is observed on any color temperature indicator which is the result of an internal engine problem only and not resulting from an external cause corrected by the published troubleshooting procedures. Data elements should be reported within 30 days of determining that the overtemperature condition is the result of an internal engine problem, to Diane Cook, Aerospace Engineer, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803–05299; telephone (617) 238–7134, fax (617) 238–7199; Internet: Diane.Cook@faa.dot.gov. The reporting requirements of this AD terminate six months from the effective date of the AD.

(e) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 2, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–468 Filed 1–8–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–7377, 34–38118, 35–26841, 39–2345, IC–22439, IA–1603; File No. S7–2–97]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Public comments are due by January 31, 1997.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 6184, Stop 6–9, Washington, D.C. 20549. All submissions should refer to File No. S7–2–97, and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, Office of the General Counsel, Securities and Exchange Commission, 202–942–0954.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA") (Pub. L. No. 96–354, 94 Stat. 1165) (September 19, 1980) requires that each agency review every ten years each of its rules that has a significant economic impact upon a substantial number of small entities. The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of small entities" (5 U.S.C. 610(a)).

The RFA stipulates the following specific considerations that must be

addressed in the review of each rule: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule (5 U.S.C. 610(c)).

Pursuant to the RFA, the rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The rules are grouped according to which Division or Office of the Commission has responsibility for, and will review, each rule.

Rules To Be Reviewed by the Office of the Chief Accountant

Title: Article 5 of Regulation S–X (Commercial and Industrial Companies).
Citation: 17 CFR 210.5–01 through 210.5–04.
Authority: 15 U.S.C. 77f, 77g, 77s(a), 77aa (25) to (26). 78*l*, 78m, 78*o*(d), 78w(a), 79e(b), 79n, 79t(a), 80a–8, and 80a–29.

Rules and Forms To Be Reviewed by the Division of Corporation Finance

Title: Guide 3 (Statistical disclosure by bank holding companies).
Citation: 17 CFR 299.801(c) and 229.802(c).
Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*

Rules To Be Reviewed by the Division of Market Regulation

Title: Rule 10b–6 (Prohibition against trading by persons interested in a distribution).
Citation: 17 CFR 240.10b–6.
Authority: 15 U.S.C. 78b, 78c, 78i(a)(6), 78(b), 78m(e), 78*o*(c), and 78w(a).

Title: Rule 11Aa2–1 (Designation of national market system securities).
Citation: 17 CFR 240.11Aa2–1.
Authority: 15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78*o*, 78q, and 78w.

Title: Rule 11Aa3–1 (Dissemination of transaction reports and last sale data with respect to transactions in reported securities).
Citation: 17 CFR 11Aa3–1.
Authority: 15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78*o*, 78q, and 78w.

Title: Rule 15b2–2 (Inspection of newly registered brokers and dealers).
Citation: 17 CFR 240.15b2–2.
Authority: 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w.

Title: Rule 15C Cal-1 (Notice of government securities broker-dealer activities).
Citation: 17 CFR 240.15Cal-1.
Authority: 15 U.S.C. 78c, 78*o*, 78*o*–5(a), and 78w.

Title: Rule 15Cal-1 (Application for registration as a government securities broker or government securities dealer).
Citation: 17 CFR 240.15Ca2–1.
Authority: 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w.

Title: Rule 15Ca2–3 (Registration of successor to registered government securities broker or government securities dealer).
Citation: 17 CFR 240.15Ca2–3.
Authority: 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w.

Title: Rule 15Ca2–4 (Registration of fiduciaries).
Citation: 17 CFR 240.15Ca2–4.
Authority: 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a, and 78w.

Title: Rule 15Ca2–5 (Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers).
Citation: 17 CFR 240.15Ca2–5.
Authority: 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w.

Title: Rule 15Cc1–1 (Withdrawal from registration of government securities brokers or government securities dealers).
Citation: 17 CFR 240.15Cc1–1.
Authority: 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w.

Rules and Forms To Be Reviewed by the Division of Investment Management

Title: Public Utility Holding Company Act ("PUHCA"), Rule 29 (Filing of reports to State Commissions).
Citation: 17 CFR 250.29.
Authority: 15 U.S.C. 79t.

Title: PUHCA Rule 40 (Exemption of certain acquisitions from nonaffiliates).
Citation: 17 CFR 250.40.
Authority: 15 U.S.C. 79g, 79h, 79i, 79j, and 79s.

Title: PUHCA Rule 42 (Acquisition, retirement and redemption of securities by the issuer thereof).
Citation: 17 CFR 250.42.
Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g,79j, 79j(a), 79*l*, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 43 (Sales to affiliates).
Citation: 17 CFR 250.43.
Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g,79j, 79j(a), 79*l*, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 44 (Sales of securities and assets).
Citation: 17 CFR 250.44.
Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79*l*, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 46 (Dividend declarations and payments on certain indebtedness).
Citation: 17 CFR 250.46.
Authority: 15 U.S.C. 79b(a)(7).

Title: PUHCA Rule 65 (Exependitures in connection with solicitation of proxies).
Citation: 17 CFR 150.65.
Authority: 15 U.S.C. 79*l*.

Title: PUHCA Rule 71 (Statements to be filed pursuant to section 12(i)).
Citation: 17 CFR 250.71.
Authority: 14 U.S.C. 79*l*.

Title: PUHCA Rule 83 (Exemption in the case of transactions with foreign associates).
Citation: 17 CFR 250.83.
Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79*l*, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 87 (Subsidiaries authorized to perform services or construction or to sell goods).
Citation: 17 CFR 250.87.
Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79*l*, 79m, 79n, 79q, 79t, and 79t(a).

Title: Rule 17f–5 (Custody of investment company assets outside the United States).
Citation: 17 CFR 270.17f–5.
Authority: 15 U.S.C. 80a–6(c) and 80a–37(a).

Title: Investment Company Act Rule 32a–2 (Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts).
Citation: 17 CFR 270.32a–2.
Authority: 15 U.S.C. 80a–6.

Title: Rule 17f–1 (Custody of securities with members of national securities exchanges).
Citation: 17 CFR 270.17f–1.
Authority: 15 U.S.C. 80a–37 and 80a–39.

Title: Form N–6EI–1 (Notification of claim of exemption pursuant to Rule 6e–2 or Rule 6e–3(T) under the Investment Company Act).
Citation: 17 CFR 274.301.
Authority: 15 U.S.C. 80a–6(e) and 80a–37(a).

Title: Form N–27I–1 (Notice of right of withdrawal and refund for variable life insurance contractholders).
Citation: 17 CFR 274.302.
Authority: 15 U.S.C. 80a–6(c), 80a–6(e), and 80a–37(a).

Title: Investment Advisers Act Rule 202(a)(1)–1 (Certain transactions not deemed assignments).

Citation: 17 CFR 275.202(a)(1)–1.

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, and 80b–11.

Title: Investment Advisers Act Rule 206(4)–4 (Financial and disciplinary information that investment advisers must disclose to clients).

Citation: 17 CFR 275.206(4)–4.

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, and 80b–11.

Title: Form ADV–W (Notice of withdrawal from registration as investment adviser).

Citation: 17 CFR 279.2.

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, and 80b–11.

The Commission invites public comment on both the list and the rules to be reviewed.

Dated: January 3, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–488 Filed 1–8–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI45

Survivors and Dependents Education: Extension of Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It restores provisions that govern the extension of the period eligible spouses and surviving spouses have to use Survivors' and Dependents' Educational Assistance (DEA). These provisions previously were removed by error. Also, this document requests Paperwork Reduction Act comments concerning the requirement that a spouse or surviving spouse must apply for the extension.

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI45". All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on May 24, 1996 (61 FR 26107), VA published a final rule removing many regulatory provisions. As explained in that document, many of the provisions were removed because they contained "sunsetted" provisions authorized by the Vietnam Era GI Bill. No benefits can be paid under the Vietnam Era GI Bill for training that occurred after December 31, 1989.

Among those provisions that were removed was § 21.1043. This section provided that if a veteran training under the Vietnam Era GI Bill could not complete a program of education within the ten-year period due to a physical or mental disability that is not the result of willful misconduct, that period (the delimiting period) could be extended.

A similar extension is authorized by statute for eligible spouses and surviving spouses under DEA. Unfortunately, by removing § 21.1043, VA inadvertently removed the provisions that governed whether such a spouse or surviving spouse could receive an extension of the delimiting period, since § 21.3046(e) states that the provisions of § 21.1043 are to be used to determine whether the extension should be granted.

To correct this error, VA would restate the provisions of the former § 21.1043 in the appropriate places in part 21, subpart C, since that subpart governs DEA claims. The definition formerly contained in § 21.1043 would be restated in § 21.3021. The remainder of § 21.1043 would be restated in a new section, § 21.3047. References would be updated and some minor changes would be made for clarification. There would be no substantive changes.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the provisions of the proposed 38 CFR 21.3047 would include a collection of information. Accordingly, as required by the Act at section 3507(d), VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI45".

Title: Application for an Extension of Eligibility Period under Survivors' and Dependents' Educational Assistance.

Summary of collection of information: The collection of information in the proposed § 21.3047 implements a statutory provision that requires that an individual who wishes to receive a benefit must apply for it.

Description of need for information and proposed use of information: A spouse or surviving spouse under DEA may qualify for an extension of her or his eligibility period if training during that period was medically infeasible. VA needs an application for this extension in order to learn who wants the extension. VA may need medical evidence in order to determine if training was medically infeasible and to determine the time when training became medically feasible.

Description of likely respondents: Eligible spouses and surviving spouses who would like an extension of the delimiting period under DEA.

Estimated number of respondents: 100.

Estimated frequency of responses: Once.

Estimated total annual reporting and recordkeeping burden: 100 hours of reporting burden. VA does not believe that there will be an additional recordkeeping burden.

Estimated average burden per collection: 60 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of

the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule affects only individuals. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 64.117.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 9, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts C and F) is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566.

2. In §21.3021, paragraph (l) is redesignated as paragraph (m); and new paragraph (l) is added, to read as follows:

§ 21.3021 Definitions.

* * * * *

(l) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

* * * * *

§ 21.3046 [Amended]

3. In § 21.3046, paragraph (e) is removed.

4. Section 21.3047 is added, to read as follows:

§ 21.3047 Extended period of eligibility due to physical or mental disability.

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by § 21.3046 provided the eligible spouse or surviving spouse:

(i) Applies for the extension within the appropriate time limit;

(ii) Was prevented from initiating or completing the chosen program of education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.3046(c); and

(2) Must be on or before the 90th day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the 90th day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or

surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046(c); or

(iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the eligible spouse's or surviving spouse's training became medically feasible; or

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046.

(Authority: 38 U.S.C. 3512(b))

Subpart F—Education Loans

5. The authority citation for subpart F continues to read as follows:

Authority: 38 U.S.C. 501, 3537, 3698, 3699.

§ 21.4501 [Amended]

6. In § 21.4501, paragraphs (b)(1), (b)(2)(iv), (b)(2)(v)(A), (b)(2)(v)(B), (c)(1), and (c)(3) are each amended by removing "(d)" and adding, in its place, "(d), or § 21.3047".

[FR Doc. 97–437 Filed 1–8–97; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50610C; FRL–5578–5]

Certain Acrylate Esters; Withdrawal of Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a proposed significant new use rule (SNUR) for certain acrylate substances based on receipt of new toxicity data. The data, which were generated through a voluntary industry testing program, resulted in a significant lowering of hazard concerns for acrylate substances such that EPA can no longer support a finding that activities designated by the proposed SNUR are significant new uses under section 5(a) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 22, 1993 (58 FR 61649) (FRL–4186–2), EPA proposed a SNUR to be codified at 40 CFR 721.340 establishing significant new uses for certain acrylate esters. EPA is withdrawing this proposal in light of additional toxicity data received for acrylate substances

I. Rulemaking Record

The rulemaking record for the proposed rule which is being withdrawn by today's rule was designated as OPPTS–50610. That record includes information considered by the Agency in developing the proposed rule and includes the test data to which the Agency has responded with this notice of withdrawal.

II. Background

EPA is withdrawing the significant new use and recordkeeping requirements proposed for certain acrylate esters under 40 CFR part 721, subpart E. Further background information for the substances is contained in the rulemaking record referenced in Unit I of this preamble.

EPA proposed a SNUR which was to be codified at 40 CFR 721.340, establishing certain significant new uses for all acrylate substances falling within the "acrylate category" description, based on EPA's systematic regulation of this category of chemicals. The proposed SNUR was intended to serve as a chemical category-wide substitute for the Agency's current practice of regulating individual acrylate substances one-at-a-time as those substances underwent premanufacture notice review pursuant to section 5(e) of TSCA. The proposed SNUR would have saved time and resources for both EPA and PMN submitters. The Agency believed that available data were sufficient to warrant regulation, including the promulgation of a category SNUR, based on the potential unreasonable risk of cancer from uncontrolled exposure to acrylates.

While the final rule was being developed, a voluntary testing program was being developed jointly by EPA and industry and was subsequently conducted by a group of acrylate manufacturers affected by acrylate regulation, the Specialty Acrylates Manufacturers (SAM). EPA and SAM negotiated this voluntary testing program for this category of chemicals based on SAM's commitment to conduct toxicity testing for acrylate and methacrylate substances. The purpose of the testing program was to cooperatively supply test data to address EPA's health concerns for the acrylate category. SAM conducted several short term studies on a series of acrylates and two long-term dermal bioassays on Triethylene Glycol Diacrylate (TREGDA) and Triethylene Glycol Dimethacrylate (TREGDMA). This testing was intended to correlate activity in certain short term assays with longer-term carcinogenic potential, as well as to better characterize the toxicity of the acrylate chemical category generally.

After reviewing the test data generated by the voluntary testing program, including the long term bioassays, EPA found that neither TREGDA nor TREGDMA were carcinogenic under the conditions of the studies. Based on the TREGDMA bioassay and data for other methacrylates, EPA no longer supports the carcinogenicity concern for methacrylates. However, in the case of TREGDA, the maximum tolerated dose (MTD) may not have been attained because skin irritation noted in the range finding studies was not present over the entire term of the bioassay. Therefore, because the MTD may not have been attained in the TREGDA study, and based on available data for other acrylates, EPA still has concerns that some acrylates may be carcinogenic after repeated application at higher doses.

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Based on these findings EPA's regulation of the acrylates category under TSCA section 5(e) has changed. EPA no longer regulates these chemicals as a category for health concerns. However, if an acrylate or methacrylate substance is structurally similar to a substance for which EPA has positive toxicity data, EPA may regulate that substance under section 5(e) of TSCA based on its potential unreasonable risk. Henceforth this will be done on a case-by-case basis and is expected to effectively eliminate regulation of most acrylates and methacrylates for health concerns, especially higher molecular weight and polymeric substances. EPA will continue to evaluate the acrylate category for ecotoxicity; although these substances typically have low environmental releases during their manufacture, processing, and use which will continue to limit unreasonable risk findings under section 5(e) of TSCA for the environmental toxicity of this class of chemicals.

Despite the fact that EPA no longer expects to make a potential unreasonable risk finding under TSCA section 5(e) for most new acrylates and methacrylates, EPA still recommends the use of personal protective equipment for workers exposed to new or existing chemical acrylates and methacrylates. In the case of dermal exposure, impervious gloves and protective clothing are recommended, and in the case of inhalation exposure, an appropriate National Institute of Occupational Safety and Health (NIOSH)-approved respirator or engineering controls to reduce or eliminate workplace exposures.

III. Objectives and Rationale of Withdrawing the Proposed Rule

Based on the review of acrylate esters that are the subject of this withdrawal of a proposed SNUR, EPA concluded that for these substances, regulation was warranted under section 5(a) of TSCA pending the development of information sufficient to make reasoned evaluations of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is referenced in Unit II of this preamble. Based on these findings, a SNUR was proposed pending certain toxicity testing.

EPA reviewed the toxicity testing conducted for certain acrylate substances, that were the result of a voluntary acrylates testing program and determined that it could no longer support a finding that activities designated by the proposed SNUR are significant new uses under section 5(a) of TSCA.

In light of the above, EPA is withdrawing the proposed SNUR provisions for acrylate esters.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

For the reasons set forth in the preamble, the proposed rule published at 58 FR 61649, November 22, 1993, is withdrawn.

Dated: December 26, 1996.

Paul J. Campanella,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–513 Filed 1–8–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300–6369–02; I.D. 120996A]

RIN 0648–AJ30

Magnuson Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of availability; request for comments.

SUMMARY: NMFS has developed a framework for guidelines to implement the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as mandated by the Sustainable Fisheries Act. This framework will be expanded into guidelines, by regulation, that will assist Fishery Management Councils (Councils) in the description and identification of essential fish habitat (EFH), including adverse impacts on EFH, in fishery management plans (FMPs) and in the consideration of actions to conserve and enhance EFH. An advance notice of proposed rulemaking was published on November 8, 1996, soliciting comments to assist NMFS in developing this framework and eventually the guidelines by regulation. NMFS now announces the availability of this framework and invites interested persons to submit written comments, information, and suggestions.

DATES: Written comments must be received on or before February 12, 1997.

ADDRESSES: Comments should be sent to the Director, Office of Habitat Conservation, Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. A copy of the framework is available (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713–2325.

SUPPLEMENTARY INFORMATION:

A copy of the framework is available via the Internet at: http://kingfish.ssp.nmfs.gov/rschreib/html/anpr2.htm, or by contacting one of the following NMFS Offices:

Office of Habitat Conservation, Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282; 301/713–2325.

Northeast Regional Office, Attention: Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930; 508/281–9328.

Southeast Regional Office, Attention: Habitat Conservation Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702; 813/570–5317.

Southwest Regional Office, Attention: Habitat Conservation Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802; 310/980–4041.

Northwest Regional Office, Attention: Habitat Conservation Branch, 911 NE. 11th Avenue, Room 620, Portland, OR 97232; 503/230–7235.

Alaska Regional Office, Attention: Protected Resources Management Division, 9109 Mendenhall Road, P.O. Box 21668, Juneau, AK 99801; 907/586–7235.

NMFS invites comments and information to support efforts to implement the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) mandate to develop guidelines by regulation to describe and identify EFH, including adverse impacts and conservation and enhancement actions, for fisheries managed by any Council or NMFS.

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Specifically, NMFS is interested in receiving comments and information on: (1) The proposed tiered approach to the description and identification of EFH; (2) the proposed approach to the identification of adverse impacts to EFH; (3) the use of geographic information systems to display EFH; (4) potential impacts of fishing on EFH and conservation and management measures to minimize or mitigate those impacts; (5) the proposed process for NMFS to provide EFH recommendations to the Councils; (6) the proposed process for Federal and state agencies to consult with NMFS on activities that may adversely impact EFH; (7) the proposed procedures for NMFS to provide EFH conservation recommendations to Federal and state agencies; (8) the proposed process for Councils to comment on Federal and state activities that may adversely affect EFH; and (9) the proposed process for NMFS and the Councils to coordinate consultations and recommendations. NMFS also invites comments on which portions of the framework should be adopted by regulation.

Background and rationale were provided in the previous advance notice of proposed rulemaking (61 FR 57843, November 8, 1996) and are not repeated here.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 3, 1997.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–515 Filed 1–8–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 6
Thursday, January 9, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–091–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the exportation of animals and animal products.

DATES: Comments on this notice must be received by March 10, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 96–091–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 96–091–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the import health requirements of other countries for animals and animal products exported from the United States, contact Dr. Andrea Morgan, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, (301) 734–8068; or e-mail: amorgan@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Support Services Specialist, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: United States Origin Health Certificate.

OMB Number: 0579–0020.

Expiration Date of Approval: 6/30/97.

Type of Request: Extension of a currently approved information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission to facilitate the export of U.S. animals and products, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service, Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Most countries require a certification that our animals are disease free. This certification generally must carry the USDA seal and be endorsed by an authorized veterinarian. VS Form 17–140, United States Origin Health Certificate, is generally used to meet these requirements. The requirements concerning origin health certificates for animals intended for export from the United States are contained in 9 CFR part 91. These regulations are authorized by 21 U.S.C. 112.

We are seeking approval from the Office of Management and Budget (OMB) to continue the use of this form.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5002 hours per response.

Respondents: State and Federal veterinarians, accredited veterinarians.

Estimated Number of Respondents: 2,800.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 21,009 hours.

All responses to this notice will be summarized and included in the request for OMB approval of the information collection.

Done in Washington, DC, this 2nd day of January 1997.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–426 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–34–P

Food and Consumer Service

Summer Food Service Program for Children; Program Reimbursement for 1997

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, this year's operating rates are lower as a result of amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1966.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1997 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 1995 through November 1996.

The operating rates being adjusted in this notice are lower than those which were in effect during the 1996 Program. This is due to the enactment of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, on August 22, 1996. Section 706(b) of this statute amended section 13(b) of the NSLA to set new maximum SFSP operating rates and to require the rates to be adjusted down to the nearest whole cent. This resulted in the lowering of the rates from $2.1675 to $1.97 for lunches and suppers, from $1.2075 to $1.13 for breakfasts, and from $.5700 to $.4600 for supplements. Finally, after adjusting these rates by 3 percent (to reflect an increase in the CPI for food away from home, from 150.2 in November 1995 to 154.7 in November 1996), the resulting operating rates were rounded *down* to the nearest whole cent, as opposed to the nearest quarter cent, as was previously the case.

The new 1997 reimbursement rates in dollars are as follows:

MAXIMUM PER MEAL REIMBURSEMENT RATES

Operating Costs	
Breakfast	$1.16
Lunch or Supper	2.02
Supplement	.47
Administrative Costs	
a. For meals served at rural or self-preparation sites:	
Breakfast	.115
Lunch or Supper	.2125
Supplement	.0575
b. For meals served at other types of sites:	
Breakfast	.09
Lunch or Supper	.175
Supplement	.045

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served.

The Department points out that Public Law 104–193 established new maximum operating rates for all SFSP sponsors but did not change the base administrative rates or the rounding method for those rates. The administrative rates being adjusted in this notice are the rates which were in effect during 1996. In addition, the SFSP administrative reimbursement rates continue to be adjusted to the nearest quarter-cent as has previously been the case.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: December 30, 1996.

George A. Braley,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–485 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–30–P

Forest Service

Southwest Washington Provincial Advisory Committee Meeting; Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on January 22 and 23, 1997, in Woodland, Washington, at the Oak Tree Restaurant, near Exit No. 21 on Interstate 5. The purpose of the meeting is to update and finalize subcommittee tasks from previous meetings, provide information on previous meeting topics, and review and prioritize the 1997 Watershed Restoration Program. On January 22, the meeting will begin at 9 a.m. and continue until 4:30 p.m. On January 23, the meeting will begin at 8 a.m. and conclude at 3:30 p.m. Agenda items to be covered include: January 22: (1) Subcommittee recommendations on Advisory Committee work priorities and field trips, (2) Response and discussion of November's topic on "What the Forest Looks Like," (3) Presentations on Partnerships and Special Forest Products, (4) Executive Committee response to Advisory Committee vision and role statements, (5) Subcommittee update on socioeconomic health measures, and (6) Public Open Forum. January 23: (1) Review and prioritize watershed restoration projects for 1997 and (2) Public open forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (6) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 750–5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., P.O. Box 8944, Vancouver, WA 98668–8944.

Dated: January 2, 1997.

Tom Knappenberger,

Acting Forest Supervisor.

[FR Doc. 97–465 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service; Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for an revision to a currently approved information collection, the Aquaculture Survey.

DATES: Comments on this notice must be received by [insert date 65 days from publication] to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Aquaculture Surveys.
OMB Number: 0535–0150.
Expiration Date of Approval: June 30, 1997.
Type of Request: Intent to extend and revise a currently approved information collection.
Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production.

The Aquaculture Surveys collect information on trout sales, catfish processed, inventory, acreage, and sales. Survey results are used by government agencies in planning farm programs. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.
Respondents: Farms.
Estimated Number of Respondents: 5,550.
Estimated Total Annual Burden on Respondents: 1,480 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., January 2, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97–493 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–20–M

National Agricultural Statistics Service; Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the List Sampling Frame.

DATES: Comments on this notice must be received by March 17, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: List Sampling Frame.
OMB Number: 0535–0140.
Expiration Date of Approval: June 30, 1997.
Type of Request: Intent to extend and revise a currently approved information collection.
Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production.

The Listing Sampling Frame is used to maintain as complete a list as possible of farm operations. The goal is to produce relatively complete, current, and unduplicated lists of names used for sampling purposes to conduct surveys of agricultural operations. Information from this survey is used by government agencies in planning, farm policy analysis, and program administration. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.
Respondents: Farms.
Estimated Number of Respondents: 205,000.
Estimated Total Annual Burden on Respondents: 17,083 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room

4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., January 2, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97–494 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–20–M

National Agricultural Statistics Service; Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Milk and Milk Products Surveys.

DATES: Comments on this notice must be received by [insert date 65 days from publication] to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator,National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Milk and Milk Products Surveys.

OMB Number: 0535–0020.

Expiration Date of Approval: May 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Services is to prepare and issue State and national estimates of crop and livestock production. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the Nation. Data are gathered for milk production, dairy products, evaporated and condensed milk, manufactured dry milk, and manufactured whey products. Milk production and manufactured dairy products statistics are used by the U.S. Department of Agriculture to help administer programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. Approval to add a monthly Manufacturer's Cheddar Cheese Report to the information collection is requested.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 159,000.

Estimated Total Annual Burden on Respondents: 18,500 hours.

Copies of this information collection and repeated instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., January 2, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97–495 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–20–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Releases, Corrections, and Reconsideration

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on December 16–17, 1996, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On December 16–17, 1996, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124–10175–10009; 2; 0; n/a
124–10178–10054; 3; 0; n/a
124–10178–10385; 2; 0; n/a
124–10178–10395; 3; 0; n/a
124–10178–10405; 10; 0; n/a
124–10178–10432; 3; 0; n/a
124–10184–10329; 1; 0; n/a
124–10186–10053; 1; 0; n/a
124–10258–10499; 17; 0; n/a
124–10261–10409; 6; 0; n/a

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CIA Documents: Open in Full

104–10001–10163; 24; 0; n/a
104–10004–10275; 2; 0; n/a
104–10005–10188; 3; 0; n/a
104–10015–10432; 6; 0; n/a
104–10015–10433; 6; 0; n/a
104–10016–10016; 5; 0; n/a
104–10055–10026; 4; 0; n/a
104–10055–10103; 2; 0; n/a
104–10055–10104; 4; 0; n/a
104–10063–10246; 8; 0; n/a
104–10068–10150; 6; 0; n/a

HSCA Documents: Open in Full

180–10072–10179; 1; 0; n/a
180–10087–10108; 5; 0; n/a
180–10092–10065; 2; 0; n/a
180–10103–10473; 1; 0; n/a
180–10117–10262; 1; 0; n/a

FBI Documents: Postponed in Part

124–10006–10292; 4; 1; 12/2006
124–10126–10314; 48; 11; 07/2006
124–10159–10358; 10; 1; 10/2017
124–10171–10424; 0; 1; 10/2017
124–10177–10234; 5; 13; 12/2006
124–10178–10184; 2; 12; 12/2006
124–10178–10188; 8; 3; 12/2006
124–10178–10389; 1; 1; 12/2006
124–10178–10416; 3; 5; 12/2006
124–10233–10236; 39; 1; 12/2006
124–10238–10287; 3; 1; 10/2017
124–10258–10491; 60; 4; 12/2006

CIA Documents: Postponed in Part

104–10004–10213; 19; 9; 05/1997
104–10015–10056; 4; 1; 12/2006
104–10015–10057; 13; 1; 12/2006
104–10051–10106; 4; 4; 05/1997
104–10051–10161; 2; 2; 10/2017
104–10052–10019; 8; 2; 05/2001
104–10052–10045; 4; 1; 05/2001
104–10052–10275; 74; 4; 12/2006
104–10054–10007; 85; 4; 12/2006
104–10055–10025; 6; 1; 12/2006
104–10055–10036; 2; 2; 05/1997
104–10055–10040; 12; 2; 12/2006
104–10055–10072; 83; 4; 12/2006
104–10055–10102; 6; 1; 12/2006
104–10056–10432; 15; 6; 12/2006
104–10057–10116; 1; 14; 12/2006
104–10059–10223; 35; 8; 12/2006
104–10059–10231; 24; 20; 05/1997
104–10059–10236; 7; 8; 05/1997
104–10059–10395; 3; 4; 05/1997
104–10061–10117; 2; 1; 12/2006
104–10061–10127; 10; 7; 05/1997
104–10061–10260; 5; 7; 05/1997
104–10061–10292; 9; 5; 05/1997
104–10062–10073; 17; 2; 05/1997
104–10062–10100; 4; 3; 12/2006
104–10062–10162; 14; 1; 05/1997
104–10063–10058; 1; 1; 10/2017
104–10063–10293; 5; 7; 12/2006
104–10063–10302; 5; 3; 12/2006
104–10063–10303; 1; 1; 10/2017
104–10063–10305; 13; 8; 12/2006
104–10063–10308; 0; 1; 05/1997
104–10063–10321; 12; 12; 12/2006
104–10063–10325; 4; 4; 12/2006
104–10063–10329; 6; 5; 12/2006
104–10063–10335; 5; 5; 12/2006
104–10063–10337; 6; 3; 12/2006
104–10063–10338; 9; 14; 12/2006
104–10063–10350; 2; 4; 12/2006
104–10063–10389; 0; 4; 10/2017
104–10063–10390; 0; 1; 05/1997
104–10063–10393; 3; 4; 12/2006
104–10063–10421; 0; 1; 05/1997
104–10065–10008; 2; 5; 05/1997
104–10065–10061; 4; 4; 10/2017
104–10065–10105; 5; 5; 05/1997
104–10065–10113; 0; 5; 10/2017
104–10065–10115; 4; 5; 05/1997
104–10065–10121; 15; 3; 12/2006
104–10065–10122; 7; 1; 12/2006
104–10065–10132; 7; 7; 05/1997
104–10065–10134; 3; 7; 05/1997
104–10065–10136; 13; 11; 05/1997
104–10065–10137; 7; 4; 05/1997
104–10065–10138; 13; 3; 05/1997
104–10065–10139; 8; 3; 05/1997
104–10065–10140; 4; 4; 12/2006
104–10065–10144; 5; 3; 05/1997
104–10065–10146; 9; 8; 12/2006
104–10065–10151; 2; 3; 05/2001
104–10065–10152; 2; 2; 10/2017
104–10065–10158; 8; 10; 12/2006
104–10065–10160; 6; 3; 05/1997
104–10065–10163; 2; 3; 05/1997
104–10065–10195; 2; 4; 05/2001
104–10065–10199; 11; 3; 05/1997
104–10065–10238; 0; 8; 05/2001
104–10065–10299; 0; 1; 05/1997
104–10065–10319; 5; 5; 05/1997
104–10065–10323; 6; 8; 05/1997
104–10065–10348; 7; 4; 05/1997
104–10065–10360; 5; 10; 12/2006
104–10065–10364; 2; 6; 05/2001
104–10065–10367; 1; 3; 05/2001
104–10065–10369; 1; 3; 05/1997
104–10065–10386; 2; 15; 05/1997
104–10065–10394; 0; 1; 05/1997
104–10066–10000; 2; 3; 10/2017
104–10066–10032; 2; 3; 05/1997
104–10066–10132; 14; 20; 12/2006
104–10066–10169; 4; 1; 05/1997
104–10066–10183; 2; 5; 05/1997
104–10066–10184; 18; 1; 12/2006
104–10066–10186; 6; 2; 05/1997
104–10066–10225; 11; 4; 10/2017
104–10066–10227; 2; 4; 05/1997
104–10066–10228; 0; 3; 05/1997
104–10066–10233; 12; 11; 12/2006
104–10066–10236; 8; 4; 05/1997
104–10066–10244; 4; 1; 05/1997
104–10066–10245; 4; 6; 10/2017
104–10066–10252; 1; 1; 10/2017
104–10066–10253; 10; 8; 12/2006
104–10067–10029; 0; 2; 05/1997
104–10067–10056; 8; 4; 05/1997
104–10067–10071; 13; 4; 05/1997
104–10067–10080; 3; 6; 12/2006
104–10067–10087; 8; 4; 05/1997
104–10067–10103; 1; 2; 05/1997
104–10067–10134; 0; 7; 10/2017
104–10067–10138; 0; 1; 05/1997
104–10067–10143; 0; 2; 05/1997
104–10067–10151; 0; 2; 05/1997
104–10067–10156; 0; 2; 05/1997
104–10067–10166; 3; 3; 05/1997
104–10067–10197; 2; 1; 12/2006
104–10067–10211; 0; 2; 05/1997
104–10067–10212; 13; 4; 05/1997
104–10067–10215; 6; 1; 05/1997
104–10067–10240; 28; 3; 05/1997
104–10067–10245; 2; 1; 10/2017
104–10067–10369; 18; 3; 05/1997
104–10067–10383; 0; 2; 10/2017
104–10067–10388; 7; 1; 10/2017
104–10067–10404; 2; 5; 12/2006
104–10067–10413; 47; 1; 10/2017
104–10068–10001; 6; 2; 05/1997
104–10068–10010; 5; 2; 05/1997
104–10068–10070; 11; 3; 05/1997
104–10068–10114; 18; 6; 12/2006
104–10068–10116; 75; 28; 12/2006
104–10068–10121; 19; 8; 05/1997
104–10068–10122; 20; 8; 12/2006
104–10068–10124; 4; 4; 12/2006
104–10068–10125; 4; 5; 05/2001
104–10068–10127; 6; 1; 12/2006
104–10068–10130; 4; 8; 12/2006
104–10068–10131; 12; 1; 12/2006
104–10068–10134; 6; 1; 05/1997
104–10068–10138; 4; 1; 12/2006
104–10068–10140; 7; 2; 05/1997
104–10068–10141; 1; 2; 05/1997
104–10068–10142; 7; 3; 10/2017
104–10068–10145; 24; 2; 12/2006
104–10068–10151; 5; 7; 12/2006
104–10068–10152; 9; 9; 05/1997
104–10068–10154; 13; 18; 12/2006
104–10068–10155; 10; 7; 05/1997
104–10068–10156; 63; 95; 12/2006
104–10068–10160; 8; 11; 05/1997
104–10068–10162; 5; 3; 10/2017
104–10068–10163; 10; 2; 10/2017
104–10068–10172; 3; 3; 12/2006
104–10068–10177; 8; 1; 12/2006
104–10068–10178; 5; 3; 12/2006
104–10068–10179; 12; 2; 12/2006
104–10068–10181; 6; 2; 12/2006
104–10068–10184; 26; 1; 12/2006
104–10068–10185; 7; 1; 12/2006
104–10068–10186; 7; 1; 05/1997
104–10068–10187; 18; 8; 12/2006
104–10068–10188; 31; 8; 12/2006

HSCA Documents: Postponed in Part

180–10070–10404; 1; 6; 05/1997
180–10078–10183; 0; 1; 10/2017
180–10078–10184; 1; 1; 10/2017
180–10078–10185; 0; 2; 10/2017
180–10078–10186; 0; 2; 10/2017
180–10078–10187; 0; 2; 10/2017
180–10078–10188; 0; 2; 10/2017
180–10078–10190; 0; 1; 10/2017
180–10078–10191; 0; 2; 10/2017
180–10078–10204; 0; 1; 10/2017
180–10078–10271; 1; 16; 05/1997
180–10078–10383; 0; 1; 10/2017
180–10082–10078; 0; 1; 10/2017
180–10102–10097; 0; 1; 10/2017
180–10104–10394; 5; 5; 05/1997
180–10107–10127; 0; 1; 10/2017
180–10110–10006; 0; 19; 05/1997

180–10110–10026; 1; 7; 05/1997

CIA Documents: Postponed in Full

104–10009–10224; 0; 1; 07/1997
104–10012–10080; 0; 1; 07/1997

Notice of Additional Releases

After consultation with appropriate Federal Agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full: 124–10003–10494; 124–10023–10300; 124–10132–10092; 124–10173–10088; 124–10181–10229; 124–10187–10165; 124–10246–10493; 124–10273–10215

After consultation with appropriate Federal Agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full: 180–10025–10228; 180–10025–10235; 180–10065–10377; 180–10067–10293; 180–10067–10397; 180–10067–10400; 180–10067–10429; 180–10067–10433; 180–10067–10473; 180–10067–10481; 180–10068–10380; 180–10068–10383; 180–10068–10449; 180–10068–10462; 180–10069–10452; 180–10070–10247; 180–10072–10323; 180–10074–10400; 180–10074–10439; 180–10075–10042; 180–10075–10057; 180–10075–10060; 180–10076–10016; 180–10076–10295; 180–10076–10427; 180–10076–10428; 180–10076–10429; 180–10076–10430; 180–10076–10483; 180–10076–10484; 180–10076–10495; 180–10078–10021; 180–10078–10022; 180–10078–10027; 180–10078–10029; 180–10078–10030; 180–10078–10031; 180–10078–10032; 180–10078–10033; 180–10078–10034; 180–10078–10035; 180–10078–10036; 180–10078–10037; 180–10078–10073; 180–10078–10075; 180–10078–10077; 180–10080–10016; 180–10080–10170; 180–10080–10171; 180–10080–10404; 180–10080–10471; 180–10080–10476; 180–10081–10397; 180–10081–10398; 180–10081–10400; 180–10081–10401; 180–10081–10492; 180–10082–10241; 180–10082–10242; 180–10082–10243; 180–10082–10487; 180–10083–10103; 180–10085–10124; 180–10085–10326; 180–10085–10346; 180–10085–10379; 180–10086–10259; 180–10086–10260; 180–10086–10261; 180–10086–10262; 180–10086–10270; 180–10086–10271; 180–10086–10274; 180–10086–10275; 180–10086–10276; 180–10086–10277; 180–10087–10311; 180–10087–10411; 180–10087–10412; 180–10088–10103; 180–10088–10104; 180–10089–10025; 180–10089–10281; 180–10090–10127; 180–10090–10130; 180–10090–10132; 180–10091–10129; 180–10091–10214; 180–10092–10032; 180–10094–10361; 180–10095–10115; 180–10095–10147; 180–10095–10308; 180–10096–10254; 180–10096–10373; 180–10097–10290; 180–10099–10092; 180–10099–10304; 180–10099–10434; 180–10099–10492; 180–10101–10078; 180–10103–10079; 180–10103–10266; 180–10103–10460; 180–10103–10479; 180–10104–10273; 180–10104–10274; 180–10104–10306; 180–10104–10307; 180–10104–10308; 180–10104–10309; 180–10104–10310; 180–10104–10311; 180–10104–10312; 180–10104–10313; 180–10104–10314; 180–10104–10315; 180–10104–10402; 180–10104–10463; 180–10105–10079; 180–10105–10174; 180–10105–10185; 180–10105–10216; 180–10105–10297; 180–10106–10047; 180–10106–10186; 180–10106–10187; 180–10106–10188; 180–10106–10189; 180–10106–10244; 180–10106–10360; 180–10107–10160; 180–10107–10499; 180–10108–10078; 180–10108–10212; 180–10108–10316; 180–10109–10153; 180–10109–10160; 180–10109–10161; 180–10109–10162; 180–10109–10163; 180–10109–10164; 180–10109–10166; 180–10109–10167; 180–10109–10168; 180–10109–10169; 180–10109–10170; 180–10109–10171; 180–10109–10172; 180–10109–10173; 180–10109–10174; 180–10109–10175; 180–10109–10176; 180–10109–10177; 180–10109–10178; 180–10109–10179; 180–10109–10180; 180–10109–10181; 180–10109–10182; 180–10109–10183; 180–10109–10184; 180–10109–10185; 180–10109–10186; 180–10109–10187; 180–10109–10188; 180–10109–10189; 180–10109–10190; 180–10109–10191; 180–10109–10192; 180–10109–10193; 180–10109–10194; 180–10109–10195; 180–10109–10196; 180–10109–10197; 180–10109–10198; 180–10109–10199; 180–10109–10200; 180–10109–10201; 180–10109–10202; 180–10109–10203; 180–10109–10204; 180–10109–10205; 180–10109–10206; 180–10109–10207; 180–10109–10208; 180–10109–10209; 180–10109–10210; 180–10109–10211; 180–10109–10212; 180–10109–10213; 180–10109–10214; 180–10109–10215; 180–10109–10216; 180–10109–10217; 180–10109–10218; 180–10109–10219; 180–10109–10220; 180–10109–10221; 180–10109–10222; 180–10109–10223; 180–10109–10224; 180–10109–10225; 180–10109–10226; 180–10109–10227; 180–10109–10228; 180–10109–10229; 180–10109–10230; 180–10109–10231; 180–10109–10232; 180–10109–10233; 180–10109–10234; 180–10109–10235; 180–10109–10236; 180–10109–10237; 180–10109–10238; 180–10109–10239; 180–10109–10240; 180–10109–10241; 180–10109–10242; 180–10109–10243; 180–10109–10244; 180–10109–10245; 180–10109–10246; 180–10109–10247; 180–10109–10262; 180–10109–10263; 180–10110–10236; 180–10112–10045; 180–10112–10325; 180–10112–10353; 180–10112–10398; 180–10112–10423; 180–10112–10487; 180–10113–10098; 180–10113–10103; 180–10113–10118; 180–10113–10364; 180–10113–10404; 180–10113–10407; 180–10113–10408; 180–10113–10409; 180–10114–10064; 180–10114–10091; 180–10114–10129; 180–10114–10178; 180–10114–10250; 180–10115–10047; 180–10115–10065; 180–10115–10208; 180–10115–10215; 180–10115–10258; 180–10115–10318; 180–10115–10321; 180–10115–10347; 180–10115–10348; 180–10116–10414; 180–10117–10250; 180–10118–10063; 180–10118–10071; 180–10118–10072; 180–10118–10073; 180–10118–10091; 180–10118–10098; 180–10118–10099; 180–10120–10323; 180–10120–10444; 180–10131–10319; 180–10147–10272; 180–10147–10273; 180–10147–10277; 180–10147–10278; 180–10147–10280; 180–10147–10281; 180–10147–10282; 180–10147–10283; 180–10147–10284

Notice of Corrections

On September 27, 1996, the Review Board made formal determinations that were published in the October 18, 1996 **Federal Register** (FR Doc. 96–26742, 61 FR 54411). For that notice, make the following corrections:

Record number	Previously published	Correct data
154–10002–10415	5; 2; 10/2017	4; 3; 12/2006

Notice of Reconsideration

On December 16–17, 1996, the FBI provided additional evidence to the Review Board regarding one record that previously had been the subject of Review Board determinations. Upon receiving and evaluating this additional evidence, the Review Board voted to sustain postponements as follows from original **Federal Register** Notice 96–31046, 61 FR 64662:

Record number	Number of original releases	Number of original postponements	Number of revised releases	Number of revised postponements	Date of revised re-review
124–10126–10314	47	9	48	11	11/2006

On November 14, 1996, the Review Board made formal determinations that were published in the December 6, 1996 **Federal Register** (FR Doc. 96–31046, 61 FR 64662). At its December 16–17, 1996 meeting, the Review Board voted to withdraw its votes on the following NSA documents for reconsideration at a future meeting: 144–10001–10058, 144–10001–10119.

Dated: January 3, 1997.

David G. Marwell,

Executive Director.

[FR Doc. 97–492 Filed 1–8–97; 8:45 am]

BILLING CODE 6118–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 17, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of December 6, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. Project Planning FY 1999
VI. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–609 Filed 1–7–97; 11:48 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)–2–94]

Foreign-Trade Zone 50—Long Beach, CA; Withdrawal of Request for Export Manufacturing Authority J.M. William & Company, Inc. (Poly/Cotton Bed Linens)

Notice is hereby given of the withdrawal of the request submitted by the Port of Long Beach, California, grantee of FTZ 50, requesting authority on behalf of the J.M. William & Company, Inc., to manufacture textile bed linens under zone procedures for export within FTZ 50. The request was filed on May 20, 1994 (59 FR 29410, 6/7/94).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: December 30, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–501 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 860]

Grant of Authority for Subzone Status; Federal-Mogul World Trade, Inc., (Vehicle Parts Warehouse/Distribution Facility), Ft. Lauderdale, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from Broward County, Florida, grantee of Foreign-Trade Zone 25, for authority to establish special-purpose subzone status at the vehicle parts warehouse/distribution facility of Federal-Mogul World Trade, Inc., in Ft. Lauderdale, Florida was filed by the Board on January 19, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 5–96, 61 FR 3000, 1/30/96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 25A) at the Federal-Mogul World Trade, Inc., facility, in Ft. Lauderdale, Florida, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–502 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 862]

Grant of Authority for Subzone Status; Texaco Inc., (Oil Refinery), Butler County, KS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Commissioners of Sedgwick County, Kansas, grantee of Foreign-Trade Zone 161, for authority to establish special-purpose subzone status at the oil refinery complex of Texaco

Inc., in Butler County, Kansas, was filed by the Board on April 2, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 26–96, 61 FR 17874, 4–23–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 161B) at the oil refinery complex of Texaco Inc., in Butler County, Kansas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050, # 2710.00.2500 and # 2710.00.4500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 97–504 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 865]

Grant of Authority for Subzone Status; Ashland Inc. (Oil Refinery); Boyd and Daviess Counties, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Cincinnati Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 47, for authority to establish special-purpose subzone status at the oil refinery complex of Ashland Inc., at sites in Boyd and Daviess Counties, Kentucky, was filed by the Board on June 17, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 51–96, 61 FR 33093, 6–26–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 47B) at the oil refinery complex of Ashland Inc., at sites in Boyd and Daviess Counties, Kentucky, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—products for export; and,
—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–500 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 864]

Grant of Authority for Subzone Status; Ashland Inc. (Oil Refinery); Stark and Allen Counties, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Akron-Canton Regional Airport Authority, grantee of Foreign-Trade Zone 181, for authority to establish special-purpose subzone status at the oil refinery complex of Ashland Inc., at sites in Stark and Allen Counties, Ohio, was filed by the Board on June 4, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 49–96, 61 FR 29530, 6–11–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 181A) at the oil

refinery complex of Ashland Inc., at sites in Stark and Allen Counties, Ohio, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–499 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 861]

Expansion of Foreign-Trade Subzone 183A; Dell Computer Corporation, Austin, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, for authority to expand Foreign-Trade Subzone 183A at the Dell Computer Corporation plant in Austin, Texas, was filed by the Board on June 19, 1996 (FTZ Docket 53–96, 61 FR 33899, 7/1/96); and,

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand Subzone 183A is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of December 1996.

Jeffrey P. Bialo,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–503 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 863]

Grant of Authority for Subzone Status; Basis Petroleum, Inc. (Oil Refinery), Texas City, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Texas City Foreign Trade Zone Corporation, grantee of Foreign-Trade Zone 199, for authority to establish special-purpose subzone status at the oil refinery complex of Basis Petroleum, Inc., in Texas City, Texas, was filed by the Board on April 11, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 29–96, 61 FR 17875, 4–23–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 199C) at the oil refinery of Basis Petroleum, Inc., in Texas City, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–505 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Standard Pipes and Tubes From Taiwan; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United

States and the period May 1, 1995 through April 30, 1996.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4475 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

Because it is not practicable to complete this review within the time limits mandated by the Uruguay Rounds Agreements Act (245 days from the last day of the anniversary month for preliminary determinations, 120 additional days for final determinations), pursuant to Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until June 2, 1997. See Memorandum to the file dated December 13, 1996.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 19, 1996.

Ronald L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 97–497 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On October 1, 1996, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on certain stainless steel flanges (SSF) from India (61 FR 51261). This review covers exports of this merchandise to the United States by one manufacturer/exporter, Viraj Forgings Ltd. (Viraj), during the period March 1, 1995 through August 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The review indicates the existence of no dumping margins for this firm for this period.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The antidumping duty order on SSF from India was published February 9, 1994 (59 FR 5994). On October 1, 1996, the Department published in the **Federal Register** the preliminary results of its new shipper review of the antidumping duty order on SSF from India (61 FR 51261). The Department has now completed this new shipper review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The review covers one Indian manufacturer/exporter, Viraj, and the period March 1, 1995 through August 31, 1995.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. We have determined that a margin of zero percent exists for Viraj for the period March 1, 1995 through August 31, 1995.

The Department shall instruct the U.S. Customs Service to assess no antidumping duties on all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for Viraj will be zero percent;

(2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent. This rate is the "All Others" rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR § 353.22.

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–507 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–801]

Fresh Cut Flowers From Mexico; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial termination of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. This review was initiated in response to requests by respondents, Rancho del Pacifico (Pacifico) and Rancho Guacatay (Guacatay). Although we initiated a review of both producers, we are terminating the review with respect to Guacatay because the respondent timely withdrew its request for review. This review covers one producer/exporter and entries of the subject merchandise into the United States during the period April 1, 1995 through March 31, 1996.

We have preliminarily determined that sales have not been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel Singer or Leon McNeill, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department published in the **Federal Register** an antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491).

On April 30, 1996, Pacifico and Guacatay requested that the Department conduct an administrative review in accordance with § 353.22 (a)(1) of the Department's regulations. Pacifico and Guacatay also requested that the Department revoke the antidumping duty order as it pertains to them upon completion of the review. We published a notice of initiation on May 24, 1996 (61 FR 26518), covering Pacifico and Guacatay, and the period April 1, 1995 through March 31, 1996. On July 2, 1996, Guacatay timely withdrew its request for review. Because there were no other requests for review for Guacatay from any other interested party, the Department is now terminating this review in part in accordance with § 353.22(a)(5). We shall instruct the U.S. Customs Service to liquidate Guacatay's entries for this period at the rates in effect at the time of entry. Because Guacatay is a previously reviewed company, the cash deposit rate will continue to be the company-specific rate currently in effect.

The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review, such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers sales of the subject merchandise entered into the United States during the period April 1, 1995 through March 31, 1996.

Determination Not To Revoke

On April 30, 1996, Pacifico requested revocation of the antidumping order, pursuant to § 353.222(d) of the Department's proposed regulations. According to § 351.222(d) of the proposed regulations, the Department need not conduct a review of the second year of the three-year period of sales at not less than fair value (LTFV) required for revocation. Because the proposed regulations have not been issued as final regulations, the current regulations remain in effect.

Under § 353.25(a)(2)(i) of the Department's current regulations, the Department may revoke an order if one or more producers or resellers covered by the order have sold subject merchandise at not less than NV for a period of at least three consecutive years. Although Pacifico was a respondent in the administrative reviews of the 1992/1993 POR and 1993/1994 POR, earning zero margins in both reviews, Pacifico did not participate in the administrative review of the 1994/1995 POR. *See* 61 FR 28166 (June 4, 1996). Therefore, the Department finds Pacifico ineligible for revocation at this time.

Duty Absorption

On June 21, 1996, the petitioner requested that the Department determine whether antidumping duties had been absorbed by Pacifico during the period of review (POR) pursuant to section 751(a)(4) of the Act. Section 751 (a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995,

section 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the Act. This approach assures that interested parties will have the opportunity to request a duty absorption determination prior to the time for sunset review of the order under section 751(c). Because the order on certain fresh cut flowers from Mexico has been in effect since 1987, this is a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, Pacifico is itself the importer, *i.e.*, the exporter and the importer are the same entity; therefore, 751(a)(4) is applicable. We have preliminarily determined that there is no dumping margin on any of Pacifico's U.S. sales during the POR. We, therefore, preliminarily find that antidumping duties have not been absorbed by Pacifico on its U.S. sales.

United States Price

In calculating United States Price (USP), we used constructed export price (CEP), in accordance with subsections 772(b), (c), and (d) of the Act, because Pacifico's sales to the first unaffiliated purchaser occurred after importation into the United States. As in the original LTFV investigation and in all prior administrative reviews, all United States prices were weight-averaged on a monthly basis to account for perishability of the product. CEP was based on the packed F.O.B. prices to the first unaffiliated purchaser after importation into the United States.

Where appropriate, we made deductions from CEP for U.S. inland freight, U.S. and Mexican brokerage and handling charges, and for credit expenses incurred on sales in the United States. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act. No other adjustments were claimed or allowed.

Normal Value

In calculating NV, we used home market prices to unaffiliated purchasers, as defined in section 773 of the Act. In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Pacifico's volume of home market sales of the subject merchandise to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Pacifico's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Pacifico.

Home market price was based on the F.O.B. farm gate unit price of subject merchandise sold to unaffiliated purchasers in the home market. No adjustments were claimed or allowed.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period April 1, 1995 through March 31, 1996:

Manufacturer/exporter	Margin (percent)
Rancho del Pacifico	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication. Parties who submit comments are requested to submit with their comments (1) a statement of the issue and (2) a brief summary of the comment. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751 (a)(2)(c) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review;

(2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of the merchandise, the cash deposit rate shall be 18.20 percent, the rate established in the LTFV investigation. *See* 52 FR 6361 (March 3, 1987).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d)(1) of the Act (19 U.S.C. 1675(a)) and § 353.22 and § 353.25.

Dated: December 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–506 Filed 1–8–97; 8:45 am]

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[A–351–824]

Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicomanganese from Brazil in response to a request from one manufacturer/exporter, Companhia Paulista de Ferroligas (CPFL) and Sibra Eletro-Siderurgica Brasileira S.A. (Sibra) (collectively "Ferro-Ligas Group"). This review covers the period June 17, 1994, through November 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 22, 1994, the Department published in the **Federal Register** the antidumping duty order on silicomanganese from Brazil (59 FR 66003). On December 4, 1995, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicomanganese from Brazil covering the period June 17, 1994, through November 30, 1995 (60 FR 62070). On January 11, 1996, we received a request for review from the Ferro-Ligas Group covering the period June 17, 1994 through November 30, 1995.

On May 31, 1996, Elkem Metals Company, petitioner in the less-than-fair value investigation (LTFV) (hereafter petitioner), requested that the Department conduct an investigation to determine whether the Ferro-Ligas Group made sales at prices below the cost of production (COP) during the 1994–1995 review period. On September 16, 1996, based on petitioner's allegation and the evidence on the record, the Department determined, in accordance with section 773(b)(2)(A)(i) of the Act, that there were reasonable grounds to believe or suspect that the Ferro-Ligas Group made sales at prices below its COP and initiated a COP investigation of the Ferro-Ligas Group, pursuant to section 773 (b) (1) of the Act (see Memorandum to the File (September 16, 1996)).

Verification

From November 18 through November 26, 1996, in accordance with section 782(i) of the Act, we verified information provided by the Ferro-Ligas Group using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports.

Scope of Review

The merchandise covered by this review is silicomanganese from Brazil. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains, by weight, not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This review covers all silicomanganese currently classifiable under subheading 7202.30.000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

The review period is June 17, 1994 through November 30, 1995, and involves one manufacturer/exporter of silicomanganese from Brazil.

United States Price

For sales to the United States, we used export price (EP) as defined in section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We based EP on the packed, F.O.B. price to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight and domestic brokerage and handling in accordance with section 772 (c)(2)(A) of the Act.

The Ferro-Ligas Group reported inventory carrying costs (ICCs) and indirect selling expenses which were attributed to sales in the U.S. market. Since nothing on the record shows that ICCs are direct selling expenses, we consider them to be indirect selling expenses. We did not make an adjustment for these expenses since these are indirect selling expenses which are not included among the adjustments applicable to EP under section 772(e) of the Act.

No other adjustments to EP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product the Ferro-Ligas Group sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act, because the Ferro-Ligas Group had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, it was appropriate to look at the prices at which the foreign like products were first sold for consumption in the exporting country for NV.

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However, in accordance with section 773(a)(4) of the Act, we used constructed value (CV) as NV because all sales were below cost and, therefore, we disregarded all home market sales pursuant to section 773(b) of the Act. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing (COM) of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit and U.S. packing expenses (*see* our description of adjustments to cost information below). The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses and profit, because all sales of the subject merchandise were below the COP, we calculated SG&A and profit for CV in accordance with section 773(e)(2)(B)(i) of the Act, the actual amounts incurred and realized by the respondent in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. In accordance with section 773(a)(8) of the Act, we made circumstance-of-sale (COS) adjustments to CV by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Cost of Production Analysis

As stated above, the Department initiated a COP investigation of the Ferro-Ligas Group to determine whether sales were made below cost in the home market. *See* section 773(b) of the Act. Before making any fair-value comparisons, we conducted the COP analysis described below.

Calculation of COP

We calculated COP, in accordance with section 773(b)(3) of the Act, based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in packed condition ready for shipment to the United States. In conducting our calculations, we relied on the home market sales and COP information for the six-month period surrounding the Ferro-Ligas Group's sole sale to the United States, except in the following circumstances:

A. Major Inputs (Use of Facts Available)

The Ferro-Ligas Group purchased most major inputs for silicomanganese solely from affiliated parties. Sections 773(f) (2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Sections 773(f)(2) indicate that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration (where the production takes place). Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) indicates that, if transactions between affiliated parties involve a *major input*, then the Department may value the *major input* based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under 773(f)(2). Section 773(f)(3) applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation is being conducted in this case, the Department requested in its Section D questionnaire of September 16, 1996, and in its supplemental questionnaire of October 31, 1996, that the Ferro-Ligas Group provide both COP and market prices for each of the major inputs obtained from affiliates. In its October 16, 1996 response, the Ferro-Ligas Group declined to provide these data for "commercial and competitive reasons." (*See* the Ferro-Ligas Group October 16, 1996 section D questionnaire response at 10–11.) In its November 15, 1996 supplemental cost response the Ferro-Ligas Group further stated that its affiliates, Usinas Siderurgicas de Minas Gerais S/A (USIMINAS) and Companhia Siderurgica Paulista S/A (COSIPA), were unwilling to provide cost data and claimed that affiliate Companhia Vale do Rio Doce (CVRD) was unable to provide cost data because access to CVRD's business proprietary information was subject to strict pre-privatization procedures established by the Brazilian government. No evidence of, or details regarding, such procedures were provided in that submission. Because the Department's verification team left for Brazil on November 16, 1996, the Department was unable to follow up on this claim until verification.

At verification we again requested cost information for the major inputs. The Ferro-Ligas Group again claimed that USIMINAS and COSIPA were unwilling, and CVRD unable, to provide the requested data. On the last day of verification, the Ferro-Ligas Group provided the verification team with a Brazilian court order issued in an unrelated case as sole support for its claim that CVRD could not provide the cost data requested by the Department.

In the absence of costs for five of the eight major inputs for silicomanganese, the Department was unable to perform an analysis to determine whether the transfer prices were below the COP. Section 776(a) of the Act requires that the Department use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. In addition, section 776(b) permits the Department to use "adverse inferences" in determining facts available where a party does not cooperate to the best of its ability.

In this case, as explained above, respondent declined to provide COP data for several major inputs purchased from affiliates. Furthermore, the Ferro-Ligas Group did not adequately show that it cooperated to the best of its ability to obtain these costs. If the Department were to accept a refusal by affiliated parties to provide data required in antidumping proceedings, this would allow such parties to provide data only when it would be advantageous to respondents and to selectively deny access to data which was disadvantageous to respondents. Therefore, in such situations, the Department treats affiliated parties as a single entity for purposes of supplying data. Because USIMINAS and CVRD have, directly or indirectly, controlling interests in the Ferro-Ligas Group, the Department presumes that these entities share the same economic interests as the Ferro-Ligas Group. Therefore, any non-disclosure of required data by USIMINAS and CVRD is treated as non-disclosure on behalf of the Ferro-Ligas Group. Finally, the Ferro-Ligas Group has not supported its claim that CVRD is barred from providing cost data on the major inputs because it is preparing for privatization. The court order provided at verification was issued to another party and did not apply to an antidumping proceeding; furthermore, the Ferro-Ligas Group provided no documentation clarifying what information was covered by the court order. Therefore, the Department has concluded that the Ferro-Ligas Group has not cooperated to the best of its ability and that the use of adverse facts

available for the costs of the affected major inputs is appropriate.

For our preliminary results of review, we used publicly available data and other information to value those major inputs purchased by the Ferro-Ligas Group from its affiliated suppliers for which cost information was not provided. *See* Calculation Memo of the Office of Accounting to the File, dated December 31, 1996 (Calculation Memo).

For the three remaining major inputs, cost data was provided. In accordance with sections 773(f) (2) and (3), we used the highest of transfer price, market price or COP. *See* Calculation Memo.

B. Financial Expense

In calculating net financial expense in its response, respondent subtracted what it claimed to be financial income from short-term sources. At verification, however, company officials stated that certain amounts included in the financial income value were generated from assets held longer than one year and were investment income, not income earned on working capital. Moreover, respondent failed to provide support for the short-term nature of the remaining items included in the financial income value. The Department considers financial income from long-term investments as not being related to the production activities of the company and, therefore, does not allow financial income from long-term investments as offsets to financial expense in calculating COP and CV. The Department only allows financial expense to be offset by interest income from short-term sources (*i.e.*, working capital). Because the Ferro-Ligas Group did not provide any documentation supporting the short-term nature of the financial income offsets, we disallowed its claimed offsets.

C. Value-Added Taxes (VAT)

When calculating the CV for the subject merchandise, respondent did not include value-added ICMS and IPI taxes in the material and energy costs. Section 773(e) of the Act directs the Department to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the VAT paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, as in the present case, whether the producer actually recoups its VAT through domestic market sales is irrelevant. The Department reasons that the VAT taxes paid on inputs used in manufacturing merchandise for export is a real cost that must be recovered by being included in the price of the finished product sold in the export market. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added the amount to the reported CV.

D. Restructuring Costs

The Ferro-Ligas Group classified certain manufacturing costs as non-operating expenses, thereby excluding them from the reported COP. These costs fall into three major categories: depreciation and other costs associated with plants that were closed in prior years; costs associated with reducing the work force; and costs associated with lower production levels resulting from the bankruptcy and reorganization proceedings during 1995.

The costs associated with plants that were closed in prior years were treated as "other operating expenses" on the respondent's audited financial statements. Such items represent the cost to the respondent of holding idle assets and, as such, should be included in general and administrative expenses. The second category, costs associated with work-force reduction, were treated as manufacturing costs on the respondent's audited financial statements. However, the bulk of these costs relate to severance, pension payments, and a settlement with the workers' union. Such costs would properly be considered period costs (*i.e.*, costs that are more closely related to the accounting period rather than the current manufacturing costs) and, therefore, we have included them in general and administrative expenses. The third category, costs associated with lower production levels resulting from the bankruptcy and reorganization proceedings, were treated as non-operating expenses on respondent's audited financial statements. However, the Department normally treats such costs as a part of the COP. Furthermore, only one of the two producers owned by the Ferro-Ligas Group reduced the manufacturing costs on the financial statement to account for the lower production levels. The other producer treated these costs as normal manufacturing costs on the company-specific financial statement, even though for several months during the period a number of its facilities were shut down completely by the bankruptcy. Therefore, we added these costs back to the reported manufacturing costs.

The Ferro-Ligas Group also deducted the minority shareholder's portion of the company's net loss, as well as bankruptcy and reorganization costs, from the general and administrative expenses reported to the Department. The minority shareholder's portion of the company's net loss is not an expense but rather is its share of the result of subtracting all of the company's expenses from its revenues. This figure is presented on the financial statement to inform investors of the portion of the entity's income or loss belonging to the non-controlling shareholders. The bankruptcy and reorganization costs consist of items, such as legal fees, identified by respondent as arising from this event. Although the Department does allow for the exclusion of extraordinary expenses, bankruptcy and reorganization costs do not fall into this category. Extraordinary expenses under U.S. generally accepted accounting principles (GAAP) are both unusual in nature and infrequent in occurrence. Neither bankruptcy nor reorganization costs can be considered either unusual or infrequent. Such costs are typically incurred by entities and, therefore, should be included in general and administrative expenses along with other period costs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands*, 58 FR 37199–37204 (July 9, 1993).

Test of Home Market Prices

In determining whether to disregard home market sales made at prices below the COP, the statute directs us to examine whether (1) within an extended period of time, such sales were made in substantial quantities below their respective COPs, and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We compared model-specific COPs to the reported home market price less any applicable movement charges and direct selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the six-month period surrounding the U.S. sale were at prices less than the COP, we disregarded, in accordance with sections 773(b)(2) (B) and (C) of the Act, the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities." Respondent reported home market sales and COP data for the six months

surrounding the sole U.S. sale. Given respondent's request to limit home market reporting, as neutral facts available, we tested whether respondent recovered its costs within a reasonable period of time based on the six months of data respondent submitted and we found that respondent did not recover its costs.

We found that all of Ferro-Ligas reported home market sales were at below-cost prices and that such sales were in substantial quantities. As a result, we disregarded all of Ferro-Ligas home market sales and instead used CV in accordance with section 773(b)(1)(B) of the Act.

Preliminary Results of Review

As a result of our comparison of EP and NV based on CV, we preliminarily determine that the following weighted-average dumping margin exists for the period June 17, 1994 through November 30, 1995:

Manufacturer/exporter	Margin (percent)
The Ferro-Ligas Group	80.54

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of silicomanganese from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in the original LTFV investigation, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review, the cash deposit rate shall be 17.60 percent, the all-others rate established in the LTFV investigation (59 FR 55432, November 7, 1994).

This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22 of the Department's regulations.

Dated: December 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–498 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of export trade certificate of Review No. 92–00006.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Chris D. McFarland (d/b/a McChris International). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Chris D. McFarland (d/b/a McChris International).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [Pub. L. No. 97–290, 15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ["the Regulations"] are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on July 2, 1992 to Chris D. McFarland (d/b/a McChris International).

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14(a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On June 21, 1996, the Department of Commerce sent to Chris D. McFarland (d/b/a McChris Internationa) a letter containing annual report questions with a reminder that its annual report was due on August 16, 1996. Additional reminders were sent on August 26, 1996 and on October 10, 1996. The Department has received no written response from Chris D. McFarland (d/b/a McChris International) to any of these letters.

On November 20, 1996, and in accordance with Section 325.10(c)[2] of the Regulations, [15 CFR 325.10(c)(2)], the Department of Commerce sent a letter by certified mail to notify Chris D. McFarland (d/b/a McChris International) that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Chris D. McFarland (d/b/a McChris International) thirty days to respond was published in the **Federal Register** on November 26, 1996 at 61 FR 60091. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Chris D. McFarland (d/b/a McChris

International) to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Chris D. McFarland (d/b/a McChris International) for its failure to file an annual report. The Department has sent a letter, dated January 2, 1997, to notify Chris D. McFarland (d/b/a McChris International) of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: January 2, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–454 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request; Customer Satisfaction Surveys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed collection of information consisting of three surveys of users of the Commission's Hot-line, National Injury Information Clearinghouse, and State Partners program. The Commission will use the results of these surveys to measure customer satisfaction with these three activities and to prepare a report on customer satisfaction required by Executive Order 12862 and the Government Performance and Review Act of 1993.

DATES: Written comments concerning the proposed collection of information must be received by the Office of the Secretary not later than March 10, 1997.

ADDRESSES: Written comments should be captioned "Customer Service Surveys" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed collection of information, or to obtain a copy of any of the survey forms to be used for this collection of information, call or write William Zamula, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0962, extension 1331.

SUPPLEMENTARY INFORMATION:

A. Background

The Government Performance and Review Act (GPRA) (Pub. L. 103–62, 107 Stat. 287; 31 U.S.C. §§ 1115–1119) directs Federal agencies to improve their effectiveness and public accountability by promoting "a new focus on results, service quality, and customer satisfaction." Executive Order 12862, dated September 11, 1993, requires Federal agencies to establish customer service standards and to publish customer service plans. That order further requires agencies to measure results against their customer service standards and to report those results to their customers at least once each year. Agencies are also required to report those results to the National Performance Review, which will transmit them to the President and Vice President. Reports are due each September from 1997 through 1999.

Three Commission activities provide services directly to the public:

The CPSC Hot-line, a toll-free service that provides consumers with information about recalls of unsafe consumer products and information about using products safely;

The National Injury Information Clearinghouse, which provides data about incidents involving injuries associated with consumer products; and

The State Partners program, which supports product safety efforts of states and territories by providing news releases, training, speakers, and exhibits.

B. Surveys of Customer Satisfaction

During 1997, the Commission proposes to conduct three brief surveys to measure customer satisfaction with each of these programs. These surveys will be conducted by mail and telephone. The Commission will use the results of these surveys to prepare the report required by Executive Order 12862 and the GPRA, and to make any appropriate improvement to the programs. In 1996, the Commission conducted customer-service surveys on the Hot-line, the Clearinghouse, and the State Partners program.

C. Estimated Burden

The Commission staff estimates that the total hourly burden to the public imposed by these three surveys will be approximately 13.5 hours. The number of respondents, amount of time for each response, and hourly burden of each of the three surveys are listed below:

TOTAL HOUR BURDEN FOR THREE SURVEYS

Survey	Number of completed interviews	Time per respondent (minutes)	Total hour burden (hours)
Hot-line Survey	180	2	6
Clearinghouse Survey	150	2	5
State and Local Partners	49	3	2.5
Total	379		13.5

The staff estimates that the total monetary cost to the public of the three surveys will be approximately $160. This cost estimate was obtained by estimating the value of respondents' time at $12, the average hourly wage in the private sector.

The Commission staff estimates that the agency will expend approximately 200 hours of professional staff time to collect the information during these three surveys, and another 240 hours of professional staff time to analyze the data and prepare the reports required by the Executive Order. The average cost of professional staff time to the Commission is $35 an hour. Thus, the

total cost of the three surveys to the Commission is estimated to be $15,400.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information about the hourly burden and monetary costs imposed by this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: January 6, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–518 Filed 1–8–97; 8:45 am]

BILLING CODE 6355–01–P

Proposed Collection; Comment Request—Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from persons who have been involved in or have witnessed incidents associated with consumer products. The Commission will consider all comments received in response to this notice before requesting a reinstatement of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than March 10, 1997.

ADDRESSES: Written comments should be captioned "Product-Related Injuries" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of any of the interview guides used for this collection of information, call or write Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products. That legislation also requires the Commission to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses resulting from incidents involving consumer products.

The Commission uses this information to support development and improvement of voluntary standards, rulemaking proceedings, information and education campaigns, and administrative and judicial proceedings. These safety efforts are vitally important to remove unsafe products from channels of distribution and consumers' homes and to help make consumer products safer.

Persons who have sustained injuries or who have witnessed incidents associated with consumer products are an important source of safety information. From consumer complaints, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of incidents for investigation. These investigations may involve face-to-face or telephone interviews with accident victims or witnesses. The Commission also receives information about product-related injuries from persons who provide written information by using forms displayed on the Commission's internet web site or printed in the Product Safety Review and other Commission publications.

The Office of Management and Budget (OMB) approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on May 31, 1997. The Commission now proposes to request an extension of approval with changes of this collection of information. The changes consist of the addition of 140 burden hours to cover responses to telephone questionnaires used by hot-line operators to obtain information about deaths, injuries, or illnesses associated with selected products, and written information submitted on forms listed on the Commission's internet web site and printed in Commission publications.

B. Estimated Burden

Each year, the Commission staff obtains information about incidents involving consumer products from approximately 4,160 persons. The staff conducts face-to-face interviews at incident sites with approximately 700 persons each year. On average, an on-site interview takes approximately five hours. The staff will also conduct approximately 2,200 in-depth investigations by telephone. Each in-depth telephone investigation requires approximately 20 minutes. Additionally, the Commission's hotline staff interviews approximately 160 persons each year about incidents involving selected consumer products. These interviews take an average of 1.5 minutes each. Each year, the Commission also receives information from about 1,000 persons who complete forms requesting information about product-related incidents or injuries. These forms appear on the Commission's internet web site and are printed in the Product Safety Review and other Commission publications. The staff estimates that completion of the form takes about 12 minutes.

The Commission staff estimates that this collection of information imposes a total annual hourly burden of 4,452 hours on all respondents: 3,500 hours for face-to-face interviews; 748 hours for in-depth telephone interviews; 200 hours for completion of written forms; and four hours for responses to hot-line telephone questionnaires.

The Commission staff values the time of respondents to this collection of information at $12 an hour. This is the average hourly wage for all private industry workers reported by the U.S. Bureau of the Census in the 1996 edition of the Statistical Abstract of the United States. At this valuation, the estimated annual cost to the public is about $53,500.

The Commission staff estimates that this collection of information will require approximately 330 weeks of professional staff time each year. That estimate includes the time required to prepare the questionnaires, interviewer guidelines, and other instruments and instructions used to collect the information; to conduct the face-to-face and telephone interviews; and to record, review, and evaluate the responses

obtained from the interviews and completed written forms. Each week of professional staff time costs the Commission approximately $1,400. Thus, the annual cost to the Federal government of this collection of information is estimated to be about $462,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information concerning product-related injuries. The Commission specifically solicits information about the hourly burden and monetary costs imposed by this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: January 6, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–519 Filed 1–8–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Act (44 U.S.C. Chapter 35).

Title, OMB Number, and Associated Forms: Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember; OMB No. 0704–0347, DD Forms 2627 and 2628.

Type of Request: Reinstatement.

Number of Respondents: 42.

Responses per Respondent: 1.9.

Annual Responses: 81.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 7.

Needs and Uses: This collection of information is necessary to meet the requirements of Defense Logistics Agency Manual 8210.1, Contractor's Ground and Flight Operations. The information collected hereby, will provide the necessary data for DoD to determine approval for training in Government aircraft, or to function as a flight crewmember therein.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–432 Filed 1–8–97; 8:45 am]

BILLING CODE 5000–04–M

Submission for OMB Review, Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Forms: Custody and Control of Unaccompanied Housing Rooms and Furnishings; AF Forms 228 and 191.

Type of Request: New collection.

Number of Respondents: 20,000.

Responses per Respondent: 1.

Annual Responses: 20,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: This collection of information is necessary to meet the requirements of Air Force Instruction 32–6005, Unaccompanied Housing Management and Operations. The information collected hereby, will provide the necessary data for responsible Air Force officials to manage and control unaccompanied housing rooms and furnishings, and to effect assignment and termination thereto.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 3, 1997.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–433 Filed 1–8–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Military Traffic Management Command; Notice of Availability of Form "Criteria for Eligibility as a Small Business for the Purpose of Transportation Service Acquisition"

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Notice.

SUMMARY: Notice is given that any carrier wanting their small business classification updated in their carrier approval file maintained at MTMC will need to request a form from MTMC.

DATES: Request for the form "Criteria for Eligibility as a Small Business for the Purpose of Transportation Service Acquisition" should be done on or before February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mrs. Sylvia Walker (Personal Property) or Mr. Rick Wirtz (Freight) both at 703–681–6393. To request a blank "Criteria for Eligibility as a Small Business for the Purpose of Transportation Service Acquisition" form, contact Ms. Patricia McPhail also at 703–681–6393. Questions regarding Small Business may be directed to The Small Business Administration, 202–606–4000.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform carriers that the Small Business Administration (SBA) has raised the ceiling on the amount of annual receipts a company can make and still be classified as a small business. That dollar amount rose from $12.5 million to $18.5 million. For the purpose of transportation service acquisition, a small business concern is one which is independently owned and operated, is not dominant in its field of operations, and together with its affiliates has annual receipts not exceeding $18.5 million. Interested parties may refer to the SBA's regulations in 13 Code of Federal Regulations, part 121 for additional details.

Juanita H. Maberry,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 97–466 Filed 1–8–97; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given that the Board will extend the date for holding the record open until February 28, 1997.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Previously announced in the December 2, 1996, **Federal Register** notice of December 12, 1996, Sunshine Act Meeting, 61 FR 63833.

PREVIOUSLY ANNOUNCED DATE FOR HOLDING THE RECORD OPEN: January 13, 1997, as announced at the hearing on December 12, 1996.

CHANGES IN MEETING NOTICE: The Board is extending the date to receive additional comments or supplements to the record from January 13, 1997, to February 28, 1997.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Dated: January 7, 1997.

Robert M. Andersen,

General Counsel.

[FR Doc. 97–577 Filed 1–7–97; 9:50 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 10, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary for the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 1997.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Combined Application for the Talent Search and Educational Opportunity Centers Program.
Frequency: Annually.
Affected Public: Business or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 1,200.
Burden Hours: 40,800.
Abstract: The application form is needed to conduct a national competition for program years 1997–98 for the Talent Search and Educational Opportunity Centers. These programs provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies and, in exceptional cases, secondary schools to establish and operate projects designed to provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and assist individuals to apply for admission to institutions that offer programs of postsecondary education.

[FR Doc. 97–451 Filed 1–8–97; 8:45 am]

BILLING CODE 4000–01–P

Office of Educational Research and Improvement; Notice of Proposed Information Collection Requests for Combined Application for the OERI Visiting Scholars Fellowship Program

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 4, 1996, a notice of proposed information collection for the Combined Application

for the OERI Visiting Scholars Fellowship Program was published in the **Federal Register** at 61 FR 64343 which solicited public comments for a 60 day period through February 3, 1997. Policymakers and librarians were not included in the abstract for this program. The abstract is corrected as the following: "The OERI Visiting Scholars Fellowship provides support to senior scholars, researchers, policymakers, education practitioners, librarians, and statisticians to engage in the use, collection, and dissemination of information about education and education research to work at OERI in Washington, DC. The information collected in the application will be used to determine who is selected for these fellowships."

FOR FURTHER INFORMATION CONTACT: Patrick Sherrill, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–4651. Telephone: (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: January 3, 1997.

Gloria Parker,

Director for Information Resources Group.

[FR Doc. 97–453 Filed 1–8–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer of the Office of the Chief Information Officer publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 3, 1997.

Gloria Parker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Case Service Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 82.
Burden Hours: 3,690.

Abstract: As required by Section 13 of the Rehabilitation Act, the data are submitted by State rehabilitation agencies each year. They contain the personal and program related characteristics, including economic outcomes, of disabled persons whose cases are closed.

[FR Doc. 97–452 Filed 1–8–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–57–000]

NorAm Gas Transportation Company; Notice of Change in Date of Technical Conference

January 3, 1997.

Take notice that the technical conference originally scheduled to be held on Thursday, January 8, 1997, at 10:00 a.m., will now be held on Thursday, January 23, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested parties and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[JR Dos. 97–480 Filed 1–8–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–858–000, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 3, 1996.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER97–858–000]

Take notice that on December 19, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Niagara Mohawk Power Corporation.

Cinergy and Niagara Mohawk Power Corporation are requesting an effective date of December 23, 1996.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket No. ER97–859–000]

Take notice that on December 19, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its market-based sales tariff with Progress Power Marketing, Inc. (Progress). This service agreement provides for

Southwestern's sale and Progress's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–860–000]

Take notice that on December 19, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 18 to add one (1) new customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of December 18, 1996, to Sonat Power Marketing, L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric

[Docket No. ER97–861–000]

Take notice that on December 19, 1996, Portland General Electric Company (PGE), tendered for filing the 1996–1997 One Year Share-the-Shortage Agreement (the Agreement), among the following parties: Idaho Power Company; The Montana Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Power & Light Company; The Washington Water Power Company; Bonneville Power Administration; Public Utility District No. 1 of Chelan County; Public Utility District No. 1 of Cowlitz County; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Pend Oreille County; Public Utility District No. 1 of Snohomish County, The Eugene Water & Electric Board; City of Seattle acting by and through its City Light Department; City of Tacoma acting by and through its Public Utilities Department.

PGE states that the Agreement relates to service for the purpose of alleviating energy shortages of one or more of the parties to the Agreement and to help ensure that all of the parties can meet their obligations to serve their respective retail customer loads. A copy of the filing was served upon the parties to the Agreement.

The Parties request that the commission allow the Agreement to become effective December 1, 1996.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER97–862–000]

Take notice that on December 20, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing a proposed change to its Rate Schedule FERC No. 13, as supplemented. Such change consists of the Fifth Amendment, dated December 12, 1996, entered into by MidAmerican and Interstate Power Company (Interstate) to the Facilities Agreement dated September 4, 1981 entered into by Interstate and a predecessor of MidAmerican.

MidAmerican states that the purpose of the Fifth Amendment is to continue to provide Interstate with generation outlet transmission from Raun Substation to Lakefield Junction for Interstate's partial ownership share of Neal Generating Station Unit 4 (Neal 4) upon termination of the Coordinating Agreement dated January 22, 1968 relating to the Twin Cities-Iowa-Omaha-Kansas City 345 Interconnection. MidAmerican further states that MidAmerican, Interstate and the other four parties to the Coordinating Agreement have agreed to terminate such agreement and that, in the absence of the Fifth Amendment, such termination would eliminate Interstate's generation outlet transmission arrangement for its Neal 4 generation.

MidAmerican proposes that the Fifth Amendment become effective immediately upon termination of the Coordinating Agreement and requests a waiver of the 60-day notice requirement.

Copies of the filing were served upon representatives of Interstate, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER97–863–000]

Take notice that on December 20, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Aquila Power Corporation, Morgan Stanley Capital Group Inc., Heartland Energy Services, Inc., and Baltimore Gas and Electric Company. An effective date of December 20, 1996 for these service agreements, with waiver of notice, is requested.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER97–864–000]

Take notice that on December 20, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Western Power Services, Inc. (Western Power). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Western Power to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Western Power a Participant in the Pool. NEPOOL requests an effective date on or before February 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Western power.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Dayton Power and Light Company

[Docket No. ER97–865–000]

Take notice that on December 20, 1996, The Dayton Power and Light Company (Dayton), submitted a service agreement establishing JPower Inc. as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreement. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon JPower Inc. and the Public Utilities Commission of Ohio.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER97–866–000]

Take notice that on December 20, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to Florida Power Corporation pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on December 23, 1996.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER97–867–000]

Take notice that on December 20, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 5 to the Interconnection Agreement between Edison and Wisconsin Electric Power Company (Wisconsin Electric). Amendment No. 5 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Wisconsin Electric's unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 16.

ComEd requests an effective date of December 31, 1996 for Amendment No. 5, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Wisconsin Electric, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER97–868–000]

Take notice that on December 20, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to acting as agent for The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (Northeast Utilities) pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of December 1, 1996.

Copies of the filing have been served upon Northeast Utilities and the New Jersey Board of Public Utilities.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER97–869–000]

Take notice that on December 20, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated December 19, 1996 between Central Illinois Public Service Company (CIPS) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to IP pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Sunoco Power Marketing, L.L.C.

[Docket No. ER97–870–000]

Take notice that on December 20, 1996, Sunoco Power Marketing, L.L.C. (Sunoco), tendered for filing pursuant to Rule 204, 18 CFR 385.204, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Sunoco intends to serve the electric power market as both a broker and a marketer of electric power. Sunoco seeks authority to purchase electric capacity, energy or transmission services from third parties, and to sell such capacity and energy to others at market-based rates. Sunoco is not affiliated, directly or indirectly, with any investor-owned utility or any entity owning or controlling electric transmission facilities. Sunoco is affiliated with a single "qualifying facility" under PURPA. However, Sunoco does not propose in this filing to market any affiliate-generated power (without prejudice to its right to seek such authority at a later date). Sunoco Rate Schedule No. 1 provides for the sale of electricity at negotiated market-based rates.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), (January 3, 1997)

[Docket No. ER97–872–000]

Take notice that on December 19, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 9 to add Allegheny Power Service Corporation, Duke/Louis Dreyfus L.L.C., Federal Energy Sales, Inc., Plum Street Energy Marketing, Inc., and Sonat Power Marketing L.P. to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is December 18, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER97–873–000]

Take notice that on December 20, 1996, New England Power Company, filed a Service Agreement and Certificate of Concurrence with Coral Power, L.L.C. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER97–874–000]

Take notice that on December 20, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to the Pan Energy Trading & market Services, L.L.C. (Pan Energy) under APS' Open Access transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on Pan Energy and the Arizona Corporation Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

[Docket No. ER97–875–000]

Take notice that on December 20, 1996, Puget Sound Power & Light Company, as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with the Bonneville Power Administration, as Transmission Customer (Bonneville). A copy of the filing was served upon Bonneville.

The Service Agreement is for firm point-to-point transmission service.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER97–876–000]

Take notice that on December 20, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Coral Power, L.L.C.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Coral Power, L.L.C. under Northern Indiana Public Service Company and Coral Power, L.L.C. request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER97–877–000]

Take notice that on December 20, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Central Illinois Public Service Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Central Illinois Public Service Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER97–878–000]

Take notice that on December 20, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and American Electric Power Service Corporation.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to American Electric Power Service Corporation under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and American Electric Power Service Corporation requested waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER97–879–000]

Take notice that on December 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Federal Energy Sales, Inc. under Rate GSS.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–438 Filed 1–8–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Protection Agency

Coastal Nonpoint Pollution Control Program: Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of Availability of Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact on Approval of Coastal Nonpoint Pollution Control Programs for New Jersey, New York, and Florida.

SUMMARY: Notice is hereby given of the availability of the Proposed Findings Documents, Environmental Assessments (EA's) and Findings of No Significant Impact for New Jersey, New York, and Florida. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. The Findings documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint pollution control program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs. The EA's were prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321 *et seq.*, to assess the environmental impacts associated with the approval of

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the coastal nonpoint pollution control programs submitted to NOAA and EPA by New Jersey, New York, and Florida.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control programs submitted by New Jersey, New York, and Florida. The requirements of 40 CFR Parts 1500–1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of the Environmental Assessments. Specifically, 40 CFR section 1506.6 requires agencies to provide public notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Copies of the Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3121, x201.

DATES: Individuals or organizations wishing to submit comments on the proposed Findings or Environmental Assessments should do so by February 10, 1997.

ADDRESSES: Comments should be made to: Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3155, x195. (Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: January 6, 1997.

Robert H. Wayland,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 97–520 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–12–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5673–5]

Notice of Public Meeting on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a two-day public meeting in Cincinnati, Ohio, on January 9 and 10, 1997, for the purpose of information exchange on technical issues related to the expedited development of a Stage I Disinfectants/Disinfection Byproducts Rule and an Interim Enhanced Surface Water Treatment Rule. Discussion will focus on treatment processes that impact byproduct formation, microbial control and related drinking water quality parameters, with particular emphasis on enhanced coagulation.

EPA is inviting all interested members of the public to participate in the meeting, which will be held in Room G–51 of the Andrew Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio. For further information regarding the agenda or other aspects of the meeting, members of the public are requested to contact Crystal Rodgers of EPA's Office of Ground Water and Drinking Water at (202) 260–0676, or contact via e-mail at rodgers.crystal@epamail.epa.gov.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

Dated December 30, 1996.

[FR Doc. 97–559 Filed 1–8–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

December 31, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 10, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0448.

Title: Section 63.07, Special Procedures for Non-dominant Common Carriers.

Form No.: Not applicable.

Type of Review: Extension of an existing collection.

Respondents: Businesses or others for profit, which may include small businesses.

Number of Respondents: 5.

Estimate Hour Per Response: 100 hours (avg.).

Total Annual Burden: 500.

Estimated Costs To Respondents: Estimated engineer hourly salary $18.42×500=$9,210.

Needs and Uses: The National Environmental Policy Act (NEPA) requires all federal agencies to consider the impact of their actions upon the environment, 42 U.S.C. §§ 4321 *et seq.* Section 63.07 subjects domestic, facilities-based common carriers to the same requirements imposed on all Commission applicants and licensees. Commission applicants and licensees are required to submit an Environmental Assessment where their proposals may have a significant effect on the environment, as set forth in section 1.1307 of the Commission's rules. *See* 47 CFR § 1.1307. An Environmental Assessment is a narrative statement that describes the proposal, the environmental ramifications of the proposal, and the alternatives, if any, to the proposal. *See* 47 CFR § 1.1311. Without the information contained in Environmental Assessments, the Commission would be deprived of the environmental information needed to consider the environmental consequences of its actions approving the applications of domestic, facilities-based common carriers, and thus could not fulfill its statutory obligation under NEPA.

OMB Approval Number: 3060–0141.
Title: Application for Renewal of Private Operational Fixed Microwave Radio Station License.
Form No.: FCC 402R.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals, State or Local Governments, Businesses or other for-profit, non-profit institutions.
Number of Respondents: 4,000.
Estimated Time Per Response: 20 minutes.
Total Annual Burden: 1,320 hours.
Needs and Uses: Private Operational Fixed Microwave licensees are required to apply for renewal of their radio station authorization every five years. Commission personnel will use the data to determine eligibility for a renewal authorization and issue a radio station license. Data is also used by compliance personnel in conjunction with field engineers for enforcement purposes. This form is required by the Communications Act, International Treaties and FCC Rules 47 CFR Parts 1.922 and 101.

The form will be revised to include a space for the applicant to provide an Internet address, as well as a Taxpayer Identification Number. The Commission is required to collect a Taxpayer Identification Number (EIN or SSN) to comply with the Debt Collection Improvement Act of 1996 and the Internet address will provide another alternative for contacting the applicant. The information collected on FCC Form 402R may be electronically submitted to the Commission using the recently developed FCC Form 900. The number of respondents on FCC Form 402R will be adjusted accordingly after the Commission evaluates the use of the new electronic form and can provide an estimate of the number of renewals being submitted electronically versus FCC Form 402R.

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.
[FR Doc. 97–479 Filed 1–8–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission
DATE & TIME: Tuesday, January 14, 1997 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
DATE & TIME: Thursday, January 16, 1997 at 10:00 a.m.
PLACE: 999 E Street, N.W. Washington, D.C. (Ninth floor).
STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1996–50: Farm Credit Council, a corporation, Jan Witold Baran.
Advisory Opinion 1996–52: Robert E. Andrews for Congress, by Ronald S. Ladell, counsel
1997 Legislative Recommendations.
Administrative Matters.
PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.
Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 97–679 Filed 1–7–97; 3:40 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Emerald Coast Bancshares, Inc., Panama City Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Emerald Coast Bank, Panama City Beach, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Financial Bancorporation, Iowa City, Iowa; to acquire 100 percent of the voting shares of West Branch Bancorp, Inc., West Branch, Iowa, and thereby indirectly acquire West Branch State Bank, West Branch, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. FGH Bancorp, Inc., Herrin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Herrin, Herrin, Illinois, and thereby indirectly acquire Carterville State & Savings Bank, Carterville, Illinois.

2. NCF Financial Corporation, Bardstown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Nelson

County Bank & Trust, Bardstown, Kentucky.

Board of Governors of the Federal Reserve System, January 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–478 Filed 1–8–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System Federal Register Citation of Previous Announcement: 62 FR 408, January 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, January 8, 1997.

CHANGES IN THE MEETING: Change in the time of the open meeting to 11:00 a.m., Wednesday, January 8, 1997.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–647 Filed 1–7–97; 2:44 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Record of Decision; Proposed Expansion Pacific Highway Port of Entry, Blaine, Whatcom County, Washington

I. Introduction

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) and the regulations issued by the Council on Environmental Quality, to expand to existing Pacific Highway Port of Entry (POE) in Blaine, Whatcom County, Washington. This Record of Decision (ROD) documents my decision regarding this proposal.

The existing facility is located on the west side of State Route 543 in Blaine, and serves as a major Port of Entry between the United States and the province of British Columbia, Canada. This ROD describes the alternatives considered and the rationale for selecting the environmentally preferred alternative.

The principal function of the proposed facility will be to accommodate the expansion requirements of the U.S. Customs Service, the Immigration and Naturalization Service, the U.S. Department of Agriculture, Animal and Health Inspection Service, Food and Drug Administration, Food and Safety Inspection Service, U.S. General Services Administration/Public Buildings Service, and the U.S. Fish and Wildlife Service. The proposed expansion would replace the present facility, which is overcrowded and functionally obsolete.

II. Decision

Based upon review of the written materials associated with the environmental process, including the transcripts of the Scoping and Public Hearings and the comments received from those who reviewed the Draft, Final, and Supplemental Environmental Impact Statements, I have decided to proceed with the expansion of the POE. The site will expand from approximately 7 acres to 16 acres, part of which is already owned by the U.S. Government (approximately 9 acres would be acquired prior to construction). This ROD is in keeping with the statutory mission of General Services Administration to design, build, or lease, appraise, repair, operate, protect, and maintain federal properties. My decision is based upon the following factors:

The Pacific Highway POE is the largest commercial truck crossing port in Washington state, and is the U.S. Customs headquarters for Western Whatcom County, Washington and ports. Serving a major arterial highway, the POE also processes a significant amount of auto traffic as well as a majority of the state's bus traffic. Inspection agencies at the POE are responsible for monitoring vehicular and pedestrian traffic entering the U.S. This entails the use of surveillance equipment, inspection and detainment facilities for vehicles and cargo, and detention facilities for people.

The present facility in Blaine can no longer efficiently nor effectively accommodate the volume of traffic encountered at this location, which has increased steadily in recent years. From 1978 to 1992, auto crossings have increased approximately 172 percent and truck crossings have increased approximately 252 percent. Between 1986 and 1991, the POE processed more than 6.7 million cars, trucks and buses. The flow of all traffic north and south bound has been severely affected. Furthermore, it is anticipated the growth in border traffic volume would continue, resulting from the 1989 Free Trade Agreement and the North America Free Trade Agreement (NAFTA), between the U.S. and Canada.

Because of the POE's location on a major north-south trucking route, traffic volumes that are processed directly reflect the level of trade between the two countries. Therefore, the continued increase in trade is anticipated to result in a concomitant increase in border traffic especially truck traffic, in the near future. In FY 1994, truck traffic increased 10.4 percent according to U.S. Customs. The inability of the POE to process current traffic volumes is not only related to the lack of capacity of individual processing units, but also because of an outdated site layout and inadequate site size, both of which are inadequate to ensure a safe and expedient flow of traffic.

In addition to the increase in traffic volume, the nature of transportation has changed a substantial degree during the past 20 years since the facility was constructed. New transportation technology that requires specific dimensions and handling systems, as well as automated cargo processing systems have rendered the existing facilities obsolete. The present 20-year facility is inadequately equipped to handle increasingly large loads of cargo and livestock at one time both in terms of space and processing equipment. Finally, structural and utility constraints of existing buildings do not allow for full utilization of modern office technology.

III. Alternatives Considered

The GSA has examined a range of alternatives that could feasibly attain the objectives of the proposed project. These alternatives are described in the Final EIS and Final Supplemental EIS and are summarized as follows:

A. Site Configuration

As reflected in the Draft and Final Environmental Impact Statements and the Draft and Final Supplemental Environmental Impact Statements, the GSA has conducted an intensive effort over a two-year period to study the best way to expand the POE facility. Because of the unique requirements of POE's, alternative sites on State route 543 have not been considered. POE's must, by law, be located at treaty designated locations set by the International Boundary Commission. Federal inspection facilities are by policy, situated at these points in order to perform their legal mission requirements. Therefore, expansion of the existing site was considered the only feasible alternative. A number of potential site configurations were investigated, two of which were deemed more desirable for expansion of the POE: Alternative 3B and Alternative 5.

B. Take No Action

This alternative assumes the existing facility would be maintained in its current condition. Existing processing capacities would become increasingly more inadequate as the volume of border traffic, particularly trucks, continues to increase. Increased traffic and processing delays would result in queuing conditions at the POE and possible also on State Route 543 north of the POE and into Canada. The absence of adequate facilities at Pacific Highway and associated delays may ultimately force truck traffic to utilize smaller border crossings not located along a major state highway. The inefficiencies and disadvantages associated with inadequate facilities would be worsened if the Take No Action Alternative were selected.

IV. Environmentally Preferred Alternative

As required by the National Environmental Policy Act (NEPA), a lead agency must identify its preferred alternative. The environmentally preferred alternative is the alternative which best promotes the national environmental policies incorporated in NEPA. In general, this would be the alternative resulting in the least damage to the human environment and which best protects natural and cultural resources.

While Design Alternative 3B and 5 are similar, Design Alternative 5, is identified as GSA's environmentally preferred alternative. Design Alternative 5 would impact the least amount of wetlands by shifting the development focus on the western side of the site farther south than Design Alternative 3B. Design Alternative 5 would also include additional northbound truck parking to the east of State Route 543 for use by our client agencies.

V. Environmental Impacts and Mitigation Measures

In terms of environmental harm, this alternative would have only minor impacts to: topography; soils; hydrology; visual resources; fiscal considerations; land use and zoning; transportation; and noise. However, moderate impacts would occur to biological resources (wetlands). No significant impacts were identified.

All practicable means to alleviate, minimize and/or compensate environmental harm will be considered in the development of the project. Although several mitigation measures were recommended in the Draft EIS, only those that can be implemented under the authority of GSA were adopted. For example, additional land is to be purchased to minimize the loss of wetlands. GSA shall monitor the implementation of those adopted mitigation measures necessary to assure measures specified in the Draft and the Record of Decision are carried out.

VI. Conclusion

Environmental and other relevant concerns presented by interested agencies and private citizens have been addressed sufficiently in the Final Environmental Impact Statement and Final Supplemental Environmental Impact Statement and are hereby acknowledged and incorporated into this ROD by reference. The General Services Administration believes there are no outstanding environmental issues to be resolved with respect to the proposed project and which are within the mission capabilities of this agency.

After consulting with the GSA staff, reviewing both the Final EIS and the Final Supplemental EIS and all of its related materials, it is my decision the GSA will proceed with Design Alternative 5 as the environmentally preferred alternative for the expansion of the Pacific Highway Port of Entry in Blaine, Whatcom County, Washington.

Dated: December 23, 1996.

L. Jay Pearson,

Regional Administrator.

[FR Doc. 97–525 Filed 1–8–97; 8:45 am]

BILLING CODE 6820–23–M

Office of Acquisition Policy; Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

ACTION: Notice.

SUMMARY: Title VII of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The program has been extended for an additional one-year period by the Omnibus Consolidated Appropriations Act (Public Law 104–208). The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from October 1, 1995 to September 30, 1996. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after January 1, 1997.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procedure Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 2, 7, and 8 in SIC Group 15, the National Capital Region in individual SIC code 1794, and Regions 2, 3, 5, 6, 7, and 9 in individual SIC code 1796) shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 2, 7, and 8, and individual SIC code 1794 in the National Capital Region, and in individual SIC code 1796 in Regions 2, 3, 5, 6, 7, and 9, shall be set aside for

small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges Counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Trash/garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 4, 5, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 4, 5, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted bases.

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: December 16, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 97–526 Filed 1–8–97; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Health Data Needs, Standards, and Security.

Times and Dates:

9:00 a.m.–5:30 p.m., January 21, 1997.
9:00 a.m.–5:30 p.m., January 22, 1997.
9:00 a.m.–5:30 p.m., February 10, 1997.
9:00 a.m.–5:30 p.m., February 11, 1997.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Status: Open.

Purpose: Under the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104–191), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The Secretary is required to consult the NCVHS in complying with these provisions. As part of the consultation process, the Committee will submit recommendations to the Secretary during 1997.

To assist in the development of the NCVHS recommendations to HHS, the NCVHS Subcommittee on Health Data Needs, Standards, and Security is holding a series of public meetings to obtain the views, perspectives and concerns of interested and affected parties. The Subcommittee recognizes that there are natural tensions which exist between those who generate the information which goes into these transactions and those who use the information. At the meetings, the Subcommittee will discuss these and other issues which may arise when a uniform set of standards must be implemented by all data generators and users. Generators of this data include hospitals, physicians, nurses, dentists, pharmacists, and other providers of health care. Users of this data include health insurers, health plans, researchers, and managers of quality, utilization and risk.

For the meetings, specific organizations representing both the generators and users of this data will be invited by the Subcommittee to provide answers to the following questions in writing, to make brief oral presentations of their answers, and to answer further questions from the Subcommittee. Representatives of ANSI accredited Standards Developing Organizations will be asked to present their views of these issues as well.

Questions To Be Addressed

1. What are your organization's expectations for the results of the Administrative Simplification standards requirements in the Health Insurance Portability and Accountability Act of 1996 (HIPAA)? In what ways will the outcome affect the members of your organization, both positively and negatively?

2. Does your organization have any concerns about the process being undertaken by the Department of Health and Human Services to carry out the Administrative Simplification requirements of this law? If so, what are those concerns and what suggestions do you have for improvements?

3. What major problems are experienced by the members of your organization with the current transactions specified under the HIPAA? For generators of the data, how readily available is the information that you need to provide for the transactions and how meaningful is that information from a clinical perspective? For users of the data, are you receiving the information you need from the transactions to pay the bill, manage the care process, etc., and what is your perception of its quality?

4. How can the goal of administrative simplification best be achieved while meeting the business needs of all stakeholders?

In addition, the Subcommittee will receive a presentation from the Health Care Financing Administration on unique identifiers for providers and payers on January 21. On January 22, the Subcommittee will discuss other business consistent with its charge.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:30 and 9:00 a.m. or 12:30 and 1:00 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

FOR FURTHER INFORMATION CONTACT: Substantive program information

as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 444–D. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Acting Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS homepage: http://aspe.os.dhhs.gov/ncvhs/index.htm.

Dated: January 2, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–434 Filed 1–8–97; 8:45 am]

BILLING CODE 4151–04–M

Centers for Disease Control and Prevention

Epidemiology Program Office, Office of the Director, Centers for Disease Control and Prevention (CDC), Notice of Meeting

Name: Guide to Community Preventive Services Task Force Meeting.

Times and Dates: 8:30 a.m.–5 p.m., January 27, 1997; 8:30 a.m.–5 p.m., January 28, 1997.

Place: Terrace Garden Inn, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services. The primary purpose of this second meeting is to continue in the development of a shared vision for the Guide; review and assess the methods used in the initial development of the first two chapters; and to select additional topics to be included in the Guide.

Matters to be Discussed: Agenda items include the definition of "community" for the Guide; defining target audiences of the Guide; process for selection of topics to be included in the Guide; updates on current chapters in progress: the prevention of (a) motor vehicle injuries and (b) vaccine preventable diseases; and selection of new topics for upcoming chapters.

Agenda items are subject to change as priorities dictate.

FOR ADDITIONAL INFORMATION CONTACT: Marguerite Pappaioanou, Chief, Community Preventive Service Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301.

Persons wishing to reserve a space for this meeting should call 404/639–4311 by close of business on January 21, 1997.

Dated: January 3, 1997.

Joseph E. Salter

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–467 Filed 1–8–97; 8:45 am]

BILLING CODE 4163–18–P

National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC); Notice of Meeting

Name: Translating Advances in Genetics into Public Health Action.

Times and Dates: 10 a.m.–5:30 p.m., January 27, 1997; 8 a.m.–3 p.m., January 28, 1997.

Place: Terrace Garden Hotel, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: CDC has established a Task Force on Genetics in Disease Prevention to: (1) develop a strategic plan for CDC-wide genetics programs, (2) coordinate and support program efforts, and (3) convene constituents and consultants for their individual advice on strategic planning, priorities for CDC activities, and policy development. This Task Force was formed in October, and is in the process of collecting and summarizing information about CDC efforts related to genetics that will be used during strategic planning.

This meeting will enable invited participants (individuals from academia, public health, professional organizations, consumer groups, and industry) to provide input and discuss strategic planning issues and needs associated with the translation of advances in genetics into public health action. Information gained from this meeting will be considered, along with that previously received, in drafting strategic planning documents. These documents will then be distributed for further comment.

Matters to be Discussed: Agenda items include discussions on population-based assessment functions, development of public health policies and guidelines, quality assurance and prevention effectiveness functions, and needs for professional education and information dissemination efforts.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Dometa Williams, Genetics Task Force, NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341, telephone 770/488–7120, FAX 770/488–7197.

Dated: January 3, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–460 Filed 1–8–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 97N–0003]

Hoffman-LaRoche, Inc., et al.; Withdrawal of Approval of 11 New Drug Applications, 1 Abbreviated Antibiotic Application, and 20 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 new drug applications (NDA's), 1 abbreviated antibiotic application (AADA), and 20 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: February 10, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application no.	Drug	Applicant
NDA 6–525	Gantrisin (sulfisoxazole) Tablets	Hoffman-La Roche, Inc., 340 Kingsland St., Bldg. 719–4, Nutley, NJ 07110.
NDA 12–486	Taractan (chlorprothixene) Tablets	Do.
NDA 12–772	Haldrone (paramethasone acetate) Tablets	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.

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Application no.	Drug	Applicant
NDA 12–966	Masterone (dromostanolone propionate)	Hoffman-La Roche, Inc.
NDA 13–071	Libritabs (chlordiazepoxide) Tablets, 5, 10, 25 milligrams (mg).	Do.
NDA 13–664	GANTANOL (sulfamethoxazole) Suspension	Do.
NDA 16–109	Sinubid (acetaminophen, phenylpropanolamine HCl, and phenyltoloxamine citrate) Extended Release Tablets.	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 16–943	Halotex (haloprogin) 1% Solution	Westwood-Squibb Pharmaceuticals, Inc.,100 Forest Ave., Buffalo, NY 14213–1091.
NDA 17–914	OTIC–TRIDESILON (desonide-acetic acid) Solution 0.05%	Bayer Corp., 400 Morgan Ln., West Haven, CT 06516–4175.
NDA 18–366	Chymex (bentiromide) Solution	Savage Laboratories, Division of Altana, Inc., 60 Baylis Rd., Melville, NY 11747.
NDA 18–470	Cibacalcin (calcitonin-human, for injection)	Ciba-Geigy Corp., Summit, NJ 07901.
AADA 62–078	Ampicillin Trihydrate (bulk)	Sandoz Pharmaceuticals, 59 Route 10, East Hanover, NJ07936–1080.
ANDA 70–120	Propranolol Hydrochloride Tablets, 10 mg	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
ANDA 70–121	Propranolol Hydrochloride Tablets, 20 mg	Do.
ANDA 70–122	Propranolol Hydrochloride Tablets, 40 mg	Do.
ANDA 70–123	Propranolol Hydrochloride Tablets, 60 mg	Do.
ANDA 70–124	Propranolol Hydrochloride Tablets, 80 mg	Do.
ANDA 85–288	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg.	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144–2555.
ANDA 85–484	Chlorpromazine Hydrochloride Tablets, USP, 50 mg	Do.
ANDA 85–748	Chlorpromazine Hydrochloride Tablets, USP, 200 mg	Do.
ANDA 85–750	Chlorpromazine Hydrochloride Tablets, USP, 10 mg	Do.
ANDA 85–751	Chlorpromazine Hydrochloride Tablets, USP, 25 mg	Do.
ANDA 85–752	Chlorpromazine Hydrochloride Tablets, USP, 100 mg	Do.
ANDA 87–819	Hydroxyzine Hydrochloride Tablets, USP, 10 mg	Do.
ANDA 87–820	Hydroxyzine Hydrochloride Tablets, USP, 25 mg	Do.
ANDA 87–821	Hydroxyzine Hydrochloride Tablets, USP, 50 mg	Do.
ANDA 87–822	Hydroxyzine Hydrochloride Tablets, USP, 100 mg	Do.
ANDA 88–344	Triprolidine Hydrochloride Pseudoephedrine Hydrochloride Syrup, 1.25 mg/30 mg per 5 milliliters (mL).	H. R. Cenci Laboratories, Inc., P.O. Box 12524, Fresno, CA 93778–2524.
ANDA 88–814	Promethazine with Codeine Syrup (Promethazine Hydrochloride and Codeine Phosphate Oral Solution, 6.25 mg/10 mg/5 mL).	Do.
ANDA 88–815	Promethazine VC Plain Syrup (Promethazine Hydrochloride and Phenylephrine Hydrochloride Oral Solution, 6.25 mg/5 mg/5 mL).	Do.
ANDA 88–816	Promethazine Hydrochloride, Phenylephrine Hydrochloride, Codeine Phospate Syrup, 6.25 mg/5 mg/10 mg per 5 mL.	Do.
ANDA 89–018	Triprolidine Hydrochloride Pseudoephedrine Hydrochloride and Codeine Phosphate Cough Syrup, 1.25 mg/30 mg/10 mg per 5 mL.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective February 10, 1997.

Dated: December 30, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–524 Filed 1–8–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form No.:* HCFA–2082; *Use:* The data reported in the HCFA–2082 are the basis of actuarial forecasts for Medicaid service utilization and costs; of analysis and cost savings estimates required for legislative initiatives relating to

Medicaid and for responding to requests for information from HCFA components, the Department, Congress and other customers.; Frequency: Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 17,214.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 31, 1996.

Edwin J . Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–455 Filed 1–8–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1997:

Name: Council on Graduate Medical Education

Date and Time: February 5, 1997, 1:00 p.m.—5:00 p.m., February 6, 1997, 8:30 a.m.—4:00 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008, Palladian Room.

This meeting is open to the Public.

Agenda: The agenda will include two panel discussions, one is a summary of the current policy environment, the other academic medicine, managed care and GME. Discussions on the suggested future directions for COGME. Reports and recommendations in the following areas: International Medical Graduates and Options Paper—Reducing First-Year Resident Numbers.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: January 3, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–522 Filed 1–8–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Biomedical Research Technology (Telephone Conference Call).

Date: January 30, 1997.

Time: 2:00 p.m.

Place: National Institutes of Health, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.

Contact Person: Dr. Sharon Moss, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0822.

Purpose/Agenda: To evaluate and review contract proposals.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: January 3, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–447 Filed 1–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of a Joint Environmental Impact Statement /Environmental Impact Report for Federal and State Actions Associated With Furthering the Purposes of the September 28, 1996, Agreement Between the United States, State of California, and MAXXAM, Inc. and its Subsidiary, Pacific Lumber Company

AGENCY: Fish and Wildlife Service, Interior.

Cooperating Agencies: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce, Environmental Protection Agency, Forest Service, Agriculture, Bureau of Land Management, Interior, California State Resources Agency, California State Department of Forestry and Fire Protection, California State Department of Fish and Game.

ACTION: Notice of additional public scoping meeting and extension of scoping comment period.

SUMMARY: As specified in the official Notice of Intent (FR, Vol. 61, No. 250, p. 68285), five public scoping meetings were scheduled and all scoping comments to the notice were requested to be received by February 10, 1997. This present Notice announces that a sixth public scoping meeting has been scheduled and the above agencies request all scoping comments to this notice be received by February 18, 1997. The sixth public scoping meeting has been scheduled for Tuesday, February 11, 1997, Radisson Plaza Hotel, 1400 Parkview Avenue, Manhattan Beach, California, from 1 p.m. to no later than 4 p.m., and from 6 p.m. to no later than 9 p.m.

ADDRESSES: Comments regarding the scope of the EIS should be addressed to Mr. Bruce Halstead, U.S. Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, CA 95521–5582. Comments should be received on or before February 18, 1997, at the above address. Written comments may also be sent by facsimile to (707) 822–8136. Comments received will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the above office; please call for an appointment.

FOR FURTHER INFORMATION CONTACT: Dennis Mackey, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland,

Oregon 97232–4181, Telephone: (503) 231–6241.

John H. Doebel,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–463 Filed 1–8–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–930–97–1430–01; N–56717]

Termination of Recreation and Public Purposes Classification; Nevada

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification N–56717 in its entirety and provides for opening the land to disposal by exchange to American Land Conservancy, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 CFR 2200).

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Frassa, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, NV 89108, (702) 647–5116.

SUPPLEMENTARY INFORMATION: On February 22, 1995, a lease was issued to the Armenian Apostolic Church in Las Vegas for a church and community center pursuant to the Recreation and Public Purposes Act (43 CFR 2740) for the following described land comprising 5 acres:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
SEC. 18, E½NE¼NE¼SE¼.

The church and community center were not constructed and the proponent relinquished the lease on November 25, 1996. American Land Conservancy has requested the parcel in an exchange. The lands are segregated for exchange purposes by notation to the public land records and will remain closed to other forms of disposition.

Pursuant to Recreation and Public Purpose Act of July 25, 1979 (43 CFR 2740), classification of the above described lands, serial number N–56717, is hereby terminated in its entirety. And in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 CFR 2200), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 CFR Parts 2090 and 2200), the land will remain closed to all other forms of appropriation including the mining and mineral laws, pending disposal of the land by exchange.

Dated: December 30, 1996.

Michael F. Dwyer,

District Manager.

[FR Doc. 97–456 Filed 1–8–97; 8:45 am]

BILLING CODE 4310–HC–P

[WY–040–07–1430–01; WYW–137885]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Sublette County has been examined and found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at not less than the fair market value.

Sixth Principal Meridian

T. 32 N., R. 107W.,
Sec. 23, Lot 1.

The above lands contain .06 acres, more or less.

SUPPLEMENTARY INFORMATION: The BLM proposes to sell the surface estate of the above described land to Kenneth and Mary J. Hallinan. A portion of their home was inadvertently constructed on public land.

FOR FURTHER INFORMATION CONTACT: Grace Jensen, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307–367–4358.

The proposed sale is consistent with the Pinedale Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The land contains no other known public values. Detailed information concerning this action is available for review at the Bureau of Land Management, Pinedale Resource Area Office, 432 E. Mill Street, Pinedale, Wyoming, 82941.

Conveyance of the public land will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals to the United States of America, together with the right to prospect for, mine and remove the minerals.

3. All valid existing rights documented on the official public land records at the time of conveyance.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Federal Land Policy and Management Act and leasing under the mineral leasing laws. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever occurs first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, 280 Highway 191 North, Rock Springs, Wyoming 82901. Any adverse comments will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: December 18, 1996.

Michelle J. Chávez,

District Manager.

[FR Doc. 97–510 Filed 1–8–97; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 28, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 24, 1997.

Carol D. Shull,

Keeper of the National Register.

Florida

Brevard County, Gleason, William H., House, 1736 Pineapple Ave., Melbourne, 96001608

Louisiana

Ouachita Parish, Bynum House, 604 Grammont St., Monroe, 96001611

Harvey House, 608 Grammont St., Monroe, 96001610

St. Martin Parish, Bonin House, 421 N. Main St., St. Martinville, 96001609

Minnesota

Meeker County, District No. 48 School, off Co. Hwy. 6, approximately 1 mi.

S of US 12, Collinwood Township, Dassel vicinity, 96001612
Steele County, Bridge No. L–5573 (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 95 over the Straight River, E of US 65, Clinton Falls Township, Owatonna vicinity, 96001613

Nebraska

Lancaster County, Charlton, William H., House, US 77, approximately 1 mi. S of jct. with NE 33, Roca vicinity, 96001614
Scotts Bluff County, Tri-State Land Company Headquarters Building, 13 W. Overland St., Scottsbluff, 96001615

New Mexico

Sierra County, Elephant Butte Historic District, Roughly, along NM 51 from the Elephant Butte Dam to Mescal Canyon and along NM 52 from Ash Canyon to Long Ridge, Elephant Butte vicinity, 96001616

Ohio

Ashland County, City Hall and Opera House, 156 N. Water St., Loudonville, 96001618
Myers Block—Home Company Building, 1 E. main St., Ashland, 96001620
Clark County, Ollie's Tavern, 10516 Marquart Rd., New Carlisle vicinity, 96001619
Cuyahoga County, Humphrey Concrete House, 128 E. 156th St., Cleveland, 96001617
Lake County, Penfield, Louis A., House, 2203 River Rd., Willoughby Hills, 96001622
Lorain County, Smith, Charles William and Anna, House, 651 W. Broad St., Elyria, 96001623
Stark County, Eagles Building—Strand Theater, 243 E. Main St., Alliance, 96001624
Stahl—Hoagland House, 330 W. Wooster St., Navarre, 96001621

Texas

Hunt County, Katy Depot, 3201 Lee St., Greenville, 96001625
Travis County, Wroe—Bustin House, 506 Baylor St., Austin, 96001626

Virginia

Loudoun County, Cleremont Farm, E side of VA 619, .6 mi. NE of VA 743, Upperville vicinity, 96001627

Wisconsin

Calumet County, High Cliff Mounds, SW of jct. of High Cliff Rd. and S entrance to High Cliff State Park, Sherwood vicinity, 96001629
Columbia County, Church Hill Historic District, Roughly bounded by Adams, Pleasant, Lock, and Franklin Sts., Portage, 96001628

Wyoming

Natrona County, Church of Saint Anthony, (Buildings Designed by Garbutt, Weidner, and Sweeney in Casper MPS), 604 S. Center St,, Casper, 96001631
Elks Lodge No. 1353, (Buildings Designed by Garbutt, Weidner, and Sweeney in Casper MPS), 108 E. 7th St., Casper, 96001632
Roosevelt School, (Buildings Designed by Garbutt, Weidner, and Sweeney in Casper MPS), 140 E. K St., Casper, 96001633
Sweetwater County, Wardell Court Historic Residential District, Wardell Crt., jct. with D St., Rock Springs, 96001630.

[FR Doc. 97–487 Filed 1–8–97; 8:45 am]
BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Proposed Collection: Comment Request

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before February 21, 1997.

ADDRESS INFORMATION TO: Mary Ann Ball, Bureau of Management, Office of Administration Services, Information Support Services Division, U.S. Agency for International Development, Room 1113, SA–16, Washington, D.C. (703) 736–4743 or via e-mail MBall@USAID.Gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–552.
Form Number: N/A.
Title: Financial Status Report.
Type of Submission: Renew.

Purpose: USAID wants to require grant and cooperative agreement recipients who work in multiple countries in Eastern Europe and the New Independent States to provide expenditure reports by country. USAID/ENI has stated in the "remarks" section of SF–269 or SF–269A, or other applicable approved financial report form that "For assistance programs in Eastern Europe or the New Independent States which cover programs in more than one country, recipients shall specify the amount of the total Federal share which was expended for each country * * *." The USAID/ENI has sought a class deviation to the statue from the Office of Budget and Management in accordance with the 22 CFR 226.4. The information are being collected so that USAID will know how much of its funds are being spent for each country in order to report to Congress, the Office of Management and Budget and other requesters. Also, the reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Reporting Burden

Respondents: 80,
Annual responses: 320,
Total Annual responses: 5120.

Dated: December 6, 1996.

Willette L. Smith,

Acting Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 97–508 Filed 1–8–97; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 20, 1996, Ansys, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce

standards and controls for in-vitro diagnostic drug testing systems.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: December 31, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–428 Filed 1–8–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that in a letter dated November 12, 1996, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of n-ethylamphetamine (1475) a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the listed controlled substance to supply a customer in Switzerland.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 10, 1997.

Dated: December 18, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–429 Filed 1–8–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIME AND DATE: Wednesday, January 22, 1997; 8:30 A.M. to 5:00 P.M. and Thursday, January 23, 1997; 8:30 A.M. to 3:30 P.M.

PLACE: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center Education Center Auditorium, One Columbus Circle, N.E., Washington, D.C. 20544. The public should enter through the South Lobby entrance of the Thurgood Marshall Federal Judiciary Building.

STATUS: The meeting will be open to the public.

NOTICE: At its public meeting, the Commission will consider general administrative matters and substantive agenda items including small business, future claims and the United States Trustee Program; Commission working groups will consider the following substantive matters: Chapter 11, government, jurisdiction and procedure, small business, consumer bankruptcy, and service and ethics. Two open forum sessions for public participation will be held on January 23, 1997 from 8:30 A.M. to 10:00 A.M. and from 2:30 P.M. to 3:30 P.M.

SUPPLEMENTARY INFORMATION: Any individual or organization who wants to make an oral presentation to the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities may do so at the open forum sessions. Persons who would like to make an oral presentation to the Commission at the open forum sessions may register in advance by contacting the National Bankruptcy Review Commission at (202) 273–1813 no later than Tuesday, January 21, 1997 before 5:00 P.M. EST and providing name, organization (if applicable), address and phone number, or may register in person at the National Bankruptcy Review Commission registration desk at the meeting site by providing, name, organization (if applicable), address and phone number. If the volume of requests to speak to the Commission at the open forum sessions exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration.

Oral presentations will be limited to five minutes per speaker. Persons speaking are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations to the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, DC 20544. Written submissions are not subject to any limitations.

FOR FURTHER INFORMATION CONTACT: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 97–530 Filed 1–8–97; 8:45 am]

BILLING CODE 6820–36–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.

2. Current OMB approval number: 3150–0036.

3. How often the collection is required: On occasion.

4. Who is required or asked to report: Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of 10 CFR 110 or to export incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. The number of annual reporting respondents: 100. *The number of annual recordkeeping respondents:* 125.

6. The number of hours needed annually to complete the requirement or request: reporting, 130 hours (1.3 hours

per response); *recordkeeping*, 150 hours (1.2 hours per respondent).

7. Abstract: 10 CFR 110 provides application, reporting, and recordkeeping requirements for exports and imports of nuclear material and equipment subject to the requirements of a specific license or a general license and exports of incidental radioactive material. The information collected and maintained pursuant to 10 CFR 110 enables the NRC to authorize only imports and exports which are not inimical to U.S. common defense and security and which meet applicable statutory, regulatory, and policy requirements.

Submit, by March 10, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this second day of January, 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–472 Filed 1–8–97; 8:45 am]

BILLING CODE 7590–01–P

Commonwealth of Massachusetts: Staff Assessment of Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed Agreement with the Commonwealth of Massachusetts.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) has received, from the Governor of the Commonwealth of Massachusetts, a proposal to enter into an Agreement pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Act). The proposed Agreement would permit Massachusetts to assume certain portions of the Commission's regulatory authority. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing a summary of the NRC staff assessment of the proposed Massachusetts radiation control program. Comments are requested on the proposed Agreement, especially public health and safety aspects, and the assessment.

The Agreement will effectively release (exempt) persons in Massachusetts from certain portions of the Commission's regulatory authority. The Act also requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires January 23, 1997.

Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, along with copies of the request by Governor Weld including referenced enclosures, applicable legislation, regulations for the control of radiation, and the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail RLB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Commission has received a request from Governor William Weld of Massachusetts to enter into an Agreement whereby the NRC would discontinue, and the Commonwealth would assume, certain regulatory authority as specified in the Act. Section 274 of the Act authorizes the Commission to enter into such an agreement.

Section 274e of the Act requires that the terms of the proposed Agreement be published for public comment once each week for four consecutive weeks. This notice is being published in the **Federal Register** in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism whereby a State may assume regulatory authority, otherwise reserved to the NRC, over certain radioactive materials [1] and uses thereof. In a letter dated March 28, 1996, Governor Weld certified that the Commonwealth of Massachusetts has a program for the control of radiation hazards that is adequate to protect health and safety of the public within the Commonwealth with respect to the materials covered by the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The specific authorities requested by the Commonwealth of Massachusetts under this proposed Agreement are (1) the regulation of byproduct materials as defined in Section 11e.(1) of the Act, (2) the regulation of source materials, (3) the regulation of special nuclear materials in quantities not sufficient to form a critical mass, (4) the evaluation

[1] The materials, sometimes referred to as "agreement materials," are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) Byproduct materials as defined in Section 11e.(2) of the Act; (c) Source materials as defined in Section 11z. of the Act; and (d) Special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

of the safety of sealed sources and devices (containing materials covered by the Agreement) for distribution in interstate commerce, and (5) the land disposal of low-level radioactive waste (as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. 2021b) received from other persons. The Commonwealth does not wish to assume authority over the regulation of byproduct materials as defined in Section 11e.(2) of the Act, that is over tailings from the recovery of source materials from ore, but does reserve the right to apply at a future date for an amended agreement to assume authority in this area.

(b) The proposed agreement contains nine articles that (1) list the materials and activities to be covered by the Agreement; (2) specify the activity for which the Commission will retain regulatory authority; (3) allow for future amendment of the Agreement; (4) allow for certain regulatory changes by the Commission; (5) reference the continued authority of the Commission for purposes of safeguarding nuclear materials and restricted data; (6) commit the Commonwealth and NRC to exchange information necessary to maintain coordinated and compatible programs; (7) recognize reciprocity of licenses issued by the respective agencies; (8) identify criteria for the suspension or termination of the Agreement; and (9) specify the proposed effective date. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes in style. Also, because of several issues posed by this request which required resolution before the Agreement could be concluded, the effective date requested by the Governor could not be realized. The final text of the Agreement, with the actual effective date, will be published after the Agreement is approved by the Commission.

(c) The Massachusetts radiation control program currently regulates users of naturally-occurring and accelerator-produced radioactive materials, and users of certain radiation-producing electronic machines. The program was enabled by Massachusetts law (Massachusetts General Law [M.G.L.] Chapter 111, §5B) in 1958. This statute was later replaced by M.G.L. Chapter 111, Sections 5M through 5P. In 1987, M.G.L. Chapter 111H was added to provide for the regulation of low-level radioactive waste. Section 7 of the legislation contains the authority for the Governor to enter into an Agreement with the Commission.

The Massachusetts regulations contain provisions for the orderly transfer of authority over NRC licenses to the regulatory control of the Commonwealth. After the effective date of this proposed Agreement, licenses issued by NRC will continue in effect under Massachusetts regulatory authority until these licenses expire or are replaced by Commonwealth issued licenses.

(d) The NRC staff assessment finds the proposed Massachusetts program adequate to protect public health and safety, and compatible with the NRC program for materials regulation.

II. Summary of the NRC Staff Assessment of the Massachusetts Program for the Control of Agreement Materials

NRC staff has examined the proposed Massachusetts radiation control program with respect to the ability of the program to regulate agreement materials. The examination was based on the Commission's policy statement *"Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement"* (referred to herein as the "criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The proposed program unit responsible for regulating agreement materials will consist of 13 technical/professional positions within the existing radiation control program of the Massachusetts Department of Public Health. The qualifications for staff members specified in the personnel position descriptions, and the qualifications of the current staff members, meet the criteria for education, training and experience. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Most staff members hold advanced degrees, and have had additional training and experience in radiation protection. Senior staff have more than five years experience each in radiation control programs. The program director has a master's degree in public health and 15 years experience in regulatory health physics.

(b) *Legislation and regulations.* The Massachusetts Department of Public Health is designated by statute to be the radiation control agency. The Department is provided by statute with the authority to promulgate regulations, issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required by law to provide access to inspectors.

The Department has adopted regulations (Massachusetts Regulations for the Control of Radiation or MRCR) providing radiation protection standards essentially identical to the standards in 10 CFR Part 20. Technical definitions in the MRCR are also essentially identical. The MRCR require consideration of the total radiation doses to individuals from all sources of radiation (except background radiation and radiation from medical treatment or examinations, as is the case in the NRC rules), whether the sources are in the possession of the licensee or not. The MRCR also require appropriate surveys and personnel monitoring under the close supervision of technically competent people, and the use of radiation labels, signs and symbols essentially identical to those contained in 10 CFR Part 20. Posting requirements and instruction of workers requirements adopted in the MRCR are compatible with the equivalent current requirements of the NRC.

Nothing in the Massachusetts statutes or regulations seeks to regulate areas not permitted by the Atomic Energy Act. The MRCR contain a provision to avoid interference with those regulatory requirements imposed by NRC pursuant to the Act, and for which Commonwealth licensees have not been exempted under the agreement.

(c) *Storage and Disposal.* The MRCR also contain compatible requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both waste disposal by material users and the land disposal of waste received from other persons. The NRC staff noted some differences in the MRCR waste regulations as compared to the NRC regulations in 10 CFR Part 61, but determined that the differences are related either to the prohibition of shallow land burial as a disposal technology or to the ownership of the disposal site by the Massachusetts Low-Level Radioactive Waste Management Board. Because of these special provisions, NRC staff determined that the differences in the regulations do not reduce the ability of the Massachusetts radiation control program to protect health and safety, nor reduce the compatibility of the program or the regulations themselves.

(d) *Transportation of Radioactive Material.* The MRCR contains rules equivalent to 10 CFR Part 71 as in effect prior to April 1, 1996. Effective on that date, the NRC amended Part 71. Under current policy, an existing Agreement State is allowed up to three years after

NRC adopts a final rule to adopt a compatible rule, or to impose each regulatory provision of the rule using an alternate legally binding requirement (LBR), such as an order or license condition. A State seeking an agreement is expected to have effective rules or LBRs compatible with those of NRC in effect at the time the agreement becomes effective. The intent of this expectation is to spare licensees in the new Agreement State from the "whipsaw" effect of being subjected first to the new NRC requirements, then the old requirements when the agreement takes effect, then again to the new requirements when later adopted by the State. Massachusetts is in the process of adopting rules compatible with the revised 10 CFR Part 71. However, these rules may not become effective before the Agreement is signed. Massachusetts intends to impose the requirements of the new Part 71 rules in the interim by issuing appropriate orders to the affected licensees.

(e) *Recordkeeping and Incident Reporting.* The MRCR incident reporting requirements are similar to the requirements in the NRC rules. The NRC staff noted that for some NRC rules that specify a records retention period of less than five years, the retention period specified in the MRCR is shorter. The NRC staff concluded, however, that the retention periods specified in the MRCR rules are adequate since the retention periods are long enough to permit examination of the records during routine inspections. The MRCR imposes retention requirements similar to the NRC rules for records which must be retained indefinitely or until the license is terminated.

(f) *Evaluation of License Applications.* The MRCR contains requirements equivalent to the current NRC regulations specifying the required content of applications for licenses, renewals, and amendments. The MRCR also provide requirements equivalent to the NRC requirements for issuing licenses and specifying the terms and conditions of licenses. The agreement materials program unit has adopted a procedure for processing applications that assures the regulatory requirements will be met, or, if appropriate, exceptions granted. The program unit has the authority by Statute to impose requirements in addition to the requirements specified in the regulations. The program unit also retains by regulation the authority to grant specific exemptions from the requirements of the regulations. The MRCR specifies qualifications for the use of radioactive materials in or on humans that are similar to the NRC requirements in 10 CFR Part 35.

The Massachusetts licensing procedures manual, along with the accompanying regulatory guides, are adapted from similar NRC documents and contain adequate guidance for the agreement materials program unit staff to use when evaluating license applications.

(g) *Inspections and Enforcement.* The Massachusetts radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The agreement materials program unit has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted procedures for enforcement in the MRCR.

(h) *Regulatory Administration.* The Massachusetts Department of Public Health is bound by procedures specified in Commonwealth statute for rulemaking. The program has adopted procedures to assure fair and impartial treatment of license applicants.

(i) *Cooperation with Other Agencies.* The MRCR deems the holder of an NRC license on the effective date of the Agreement to possess a like license issued by Massachusetts. The MRCR provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. The MRCR also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. Licenses in timely renewal are not excluded from the transfer continuation provision. The MRCR provide exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The Department of Public Health and the Department of Labor and Industries have entered into a Memorandum of Understanding, as authorized elsewhere in Massachusetts law, which provides for the Department of Public Health to exercise the responsibility and authority of the Department of Labor and Industries with respect to radiation and radioactive materials. The Department of Environmental Protection is designated as the agency to adopt the suitability standards for any proposed disposal site under the Massachusetts Low-Level Radioactive Waste Management Act. The Department of Public Health will license and regulate the site only after the Executive Secretary for Environmental Affairs has determined that the report on the site characterization study is in conformance with the suitability standards, and the Low-Level Radioactive Waste Management Board has selected the operator.

The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of like materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff has concluded that the Commonwealth of Massachusetts meets the requirements of Section 274 of the Act. The Commonwealth's statutes, regulations, personnel, licensing, inspection, and administrative procedures are compatible with those of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Since the Commonwealth is not seeking authority over byproduct material as defined in Section 11e.(2) of the Act, Subsection 274o is not applicable to the proposed Agreement. The language of the Agreement requested by Governor Weld has been

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revised to reflect that the effective date of the proposed Agreement and the location at which it will be signed remain to be determined. Certain conventions have been used to highlight the proposed revisions. New language is shown inside boldfaced arrows, while language that would be deleted is set off with brackets.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 19th day of December, 1996.

For the U. S. Nuclear Regulatory Commission.

Paul H. Lohaus,

Acting Director, Office of State Programs.

Appendix A Proposed Agreement

Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Massachusetts for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in Sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Massachusetts is authorized under Massachusetts General Laws, Chapter 111H, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Massachusetts certified on [June 1, 1995,] ♦March 28, 1996,♦ that the Commonwealth of Massachusetts (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect [the] public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [November 1, 1995,] ♦(date to be determined)♦ that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation[s] between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth, acting in behalf of the Commonwealth, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. By-product materials as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. Licensing of Low-Level Radioactive Waste Facilities.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of by-product, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of by-product, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other by-product, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting by-product material.

Article III

This Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E, whereby the Commonwealth can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against

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hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of like materials. The Commonwealth and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on [April 24, 1996,] (date to be determined) and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Boston, Massachusetts] (location to be determined), in triplicate, this [24]th Day of [April, 1996] (date to be determined).

For the United States Nuclear Regulatory Commission.

Shirley Ann Jackson,

Chairman.

For the Commonwealth of Massachusetts.

William F. Weld,

Governor.

[FR Doc. 97–403 Filed 1–8–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26640]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 3, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 27, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation (70–8977)

Entergy Corporation, 639 Loyola Avenue, New Orleans, Louisiana 70113 ("Entergy"), a registered holding company, has filed a declaration with the commission pursuant to sections 6(a) and 7 of the Act.

Entergy adopted an employee stock option plan, known as the Entergy Stock Investment Plan ("Plan"), dated October 29, 1993. In connection with the implementation of the Plan, the Commission, by order dated December 28, 1993 (HCAR No. 25963), authorized Entergy, from time to time through March 31, 1997, to (i) grant options ("Options") to eligible employees (as hereinafter defined) to purchase up to 2,000,000 shares of its common stock, $5 par value, or any successor security ("Stock"), and (ii) to issue and sell up to 2,000,000 shares of such Stock upon the exercise of such Options. In addition, Entergy was authorized to purchase, from time to time through March 31, 1997, up to 2,000,000 shares of Stock to be held as treasury shares, pending resale to such employees, for the purpose of satisfying the anticipated requirements of the Plan.

The Plan, as currently in effect, provides for three consecutive annual offerings of Stock, with the first such annual period commencing on April 1, 1994 and the third and final such annual period termininating March 31, 1997. Entergy now proposes to renew and extend the Plan for an additional three year period commencing April 1, 1997, and to amend the Plan to provide for such renewal and extension and for the sale of up to 2,000,000 additional shares of Stock during this extended term.

Accordingly, Entergy requests authorization, from time to time during the period through March 31, 2000, to grant additional Options pursuant to the terms of the Plan, as amended, and, in connection with the execution of such Options (and the Options previously granted), to sell up to an aggregate maximum of 4,000,000 shares of its Stock (including the 2,000,000 shares currently authorized) which may be either authorized but unissued shares or previously issued shares purchased by Entergy on the open market and held by the Corporation as treasury shares. Entergy intends, pursuant to rule 42, to purchase on the open market, from time to time through March 31, 2000, up to an aggregate maximum of 4,000,000 shares of Stock (including the 2,000,000 shares currently authorized), to be held as treasury shares pending resale to participating employees pursuant to the terms of the Plan.

Funds for the purchase of shares of Stock on the open market to satisfy the requirements of the Plan will be obtained from internally generated funds. Proceeds from the sale of shares of Stock under the Plan will become part of the general coporate funds of Entergy and will be used (i) to purchase Stock of Entergy sold or to be sold by Entergy under the Plan, or (ii) for other general corporate purposes. Any authorization that is required under the

Act for entergy to issue or sell shares of Stock for corporate purposes other than as set forth herein would be the subject to a separate filing or filings with the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–444 Filed 1–8–97; 8:45 am]

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Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 13, 1997.

An open meeting will be held on Monday, January 13, 1997, at 10:00 a.m. A closed meeting will be held on Thursday, January 16, 1997, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, January 13, 1997, at 10:00 a.m., will be: Consideration of whether to issue a release proposing rules and soliciting comments to require the front of prospectuses to be drafted in plain English and amending current rules to provide standards on the meaning of clear, concise and understandable disclosure in prospectuses. For further information, contact Ann D. Wallace in the Division of Corporation Finance at (202) 942–2980, or Kathleen Clarke in the Division of Investment Management at (202) 942–0724.

The subject matter of the closed meeting scheduled for Thursday, January 16, 1997, at 2:30 p.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 7, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–621 Filed 1–7–97; 12:34 pm]

BILLING CODE 8010–01–M

[Release No. 34–38114; File No. SR–CHX–96–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Standards for Approved Lessors of Exchange Memberships

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On December 11, 1996, the Exchange filed Amendment No. 1 [3] to the proposed rule change, on December 17, 1996, the Exchange filed Amendment No. 2 [4] and on December 30, 1996, filed Amendment No. 3 [5] to the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article I, Article VIII and Article XIV of, and add a new Article IA to, the CHX's Rules, to create standards for Approved Lessors (as defined below) of Exchange memberships.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create a new form of membership known as an "Approved Lessor." An Approved Lessor will be an individual or entity that desires to purchase a membership in the CHX for the sole purpose of providing a financing mechanism for another person or entity that desires to become a member or member organization ("lessee"). A lessor that registers with and is approved by the CHX will be an Approved Lessor.

When an Approved Lessor has entered into this financing relationship (or lease) with a lessee, the Approved Lessor will not be considered a "member" or "member organization" of the CHX for purposes of the Act, or for purposes of the CHX's Certificate of Incorporation, Constitution and Rules except that an Approved Lessor will have the right to vote on proposals to liquidate or dissolve the Exchange and shall possess liquidation rights, as set forth in Article IX, Sec. 2 of the Constitution, upon such dissolution. In addition, an Approved Lessor shall be

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from David T. Rusoff, Foley & Lardner to David Sieradzki, SEC, dated December 11, 1996 ("Amendment No. 1"). Amendment No. 1 changes the period of time for an Approved Lessor to lease a seat on the exchange from "a reasonable time" to within 60 days after becoming an Approved Lessor. The Exchange will have the authority to extend the 60 day time period upon the request of an Approved Lessor for good cause shown. In addition, Article IA, Rule 1, Interpretation and Policy .01 is amended to reduce the percentage ownership required to be considered a control person from 10% to 5%. This is consistent with recent changes to Article VI, Rule 2, where the 5% standard was used.

[4] *See* Letter from David T. Rusoff, Foley & Lardner to David Sieradzki, SEC, dated December 17, 1996 ("Amendment No. 2"). Amendment No. 2 adds language describing the amendment to Article XIV, Rule 2, relating to the imposition of transaction fees.

[5] *See* Letter from David T. Rusoff, Foley & Lardner to Katherine England, SEC, dated December 30, 1996 ("Amendment No. 3"). Amendment No. 3 changes language in Article I, Rule 10 relating to the ability of the Exchange to waive the requirement that no person own or have voting power for more than ten percent of the outstanding memberships. The former language, which provided that the requirement may be waived by the Exchange "under appropriate circumstances," has been replaced by "for good cause shown." In addition, the Amendment makes several technical, non-substantive changes to the filing.

subject to the Exchange's member arbitration rules. Among other things, this means that an Approved Lessor will be inactive with respect to CHX activities. For example, Approved Lessors will not be permitted to vote (except as stated above) or trade on the CHX as a member or have any access to the CHX trading floor unless an Approved Lessor is also a "member" (i.e., is a registered broker-dealer and has been approved by the Exchange as as "member" or "member organization") pursuant to another membership.

A lessee will be deemed a "member" or "member organization," and, as a result, a lessee must satisfy all the requirements to become a member or member organization currently set forth in CHX Certificate of Incorporation, Constitution, Rules and the federal securities laws. A lessee will not, however, be entitled to vote on a proposal to dissolve or liquidate the Exchange and will not have any liquidation rights.

Because Approved Lessors will not be "members" of the CHX, they will not be required to be registered as broker-dealers. However, to prevent inappropriate persons or entities from having indirect dealings on the CHX, Approved Lessors will be required to submit information to the CHX on Form BD and/or Form U–4. The CHX will be permitted to disapprove registration as an Approved Lessor if the lessor is the subject of a statutory disqualification or fails to meet other pre-requisites set forth in the rule. For example, a lessor may be denied registration as an Approved Lessor if, among other things, it or its employees or control persons are subject of or a party to a disciplinary proceeding, are or have been, suspended, barred or expelled by a regulatory entity (including a self-regulatory organization) described in the rule, have been convicted of certain criminal offenses set forth in the rule, or have not paid dues, fines, charges or other debts to a regulatory entity.

In addition, an Approved Lessor will be required to enter into a financing arrangement (or lease) with a lessee within sixty days (this time period may be extended upon request of an Approved Lessor for good cause shown) after becoming approved as an Approved Lessor or the termination of an earlier financing arrangement (or lease). If a financial arrangement (or lease) is not entered into, the Approved Lessor will be required to promptly dispose of the membership. If not promptly disposed of, the CHX will be permitted to sell the membership on the Approved Lessor's behalf. This provision will prevent Approved Lessors from acquiring one or more memberships purely to speculate on the price of the membership and will ensure that memberships do not sit idle.

Until the Approved Lessor enters into a financing arrangement (or lease) with a lessee, or, after such financing arrangement (or lease) has been terminated and the seat transferred to Approved Lessor, the Approved Lessor will still not be a "member" for purposes of the federal securities laws or the Exchange's Certificate of Incorporation, Constitution and Rules (except with respect to voting on dissolution, rights to net proceeds on dissolution, and the Exchange's member arbitration rules). During this time, the membership shall be viewed as inactive, but the dues shall continue to accrue and will be the obligation of the Approved Lessor.

Current CHX rules protect the CHX and other CHX members by providing that the proceeds received in the transfer of a membership are first to be applied to satisfy the debts owed by the transferor member to the Exchange or certain other persons. However, because Approved Lessors are not "members" of the Exchange, the Exchange will require Approved Lessors, and their lessees, to enter into a standard subordination and sale agreement with the CHX that provides that the CHX is authorized to sell the membership under certain circumstances when obligations are owed to the CHX or certain other creditors by the lessee and whereby the Approved Lessor agrees to be bound by CHX rules relating to Approved Lessors, among other things.

The proposed rule change also makes technical, nonsubstantive changes to improve the clarity of Article I, Rule 17.

The proposed rule change sets forth specific provisions that the CHX will require in any financing agreement or lease. The CHX will require that these agreements be filed with, and approved by, the CHX. Additionally, the transfer of the title to the membership to a lessee will be posted in the same manner as all other transfers of memberships.

Furthermore, the proposed rule change prohibits members and Approved Lessors from owning or controlling 10% or more of the outstanding memberships on the Exchange.

Finally, the proposed rule change amends Article XIV, Rule 2, relating to the imposition of transaction fees to reflect present practice. The rule currently provides that the rate of these fees shall be fixed before the close of each fiscal year. The proposed rule provides that they are fixed from time to time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[6] 15 U.S.C. § 78f(b).

[7] 15 U.S.C. § 78f(b)(5)

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CXH–96–30 and should be submitted by January 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–443 Filed 1–8–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38112; File No. SR–NASD–96–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Registering and Termination the Registration of Registered Individuals

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 19, 1996, NASD Regulation Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NASD Regulation has designated this proposal as one constituting a rule through which the Association imposes dues, fees and other charges under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 2 of Schedule A to the By-Laws of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to eliminate the scheduled fee rollbacks and to retain the current fee level for registration and termination of registration of individuals indefinitely. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Fees

Sec. 2.

(b) Each member shall be assessed a fee of $85.00 for each application filed with the Association for registration of a registered representative or registered principal [from August 1, 1995 through December 31, 1996. Such fee shall be $70.00 from January 1, 1997 through December 31, 1997 and shall be $65.00 thereafter]. Additionally, each member shall be assessed a surcharge of $95.00 for registrations involving a special registration review filed with the Association [from August 1, 1995 through December 31, 1997 and shall be $85.00 thereafter]. The following shall apply to the filing of applications to register or transfer the registration of registered persons or registered principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount in percent
1,000–1,999	10
2,000–2,999	20
3,000–3,999	30
4,000–4,999	40
5,000 and over	50

(h) (i) Each member shall be assessed a fee of $40.00 for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws [from August 1, 1995 through December 31, 1996. Such fee shall be $35.00 from January 1, 1997 through December 31, 1997 and shall be $25.00 thereafter].

(ii) A late filing fee of $65.00 shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination [from August 1, 1995 through December 31, 1996. Such fee shall be $60.00 from January 1, 1997 through December 31, 1997 and shall be $50.00 thereafter].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation has a major systems development project underway to completely redesign the Central Registration Depository ("CRD"). The CRD is a computerized system for one-stop registration and licensing of NASD members and their associated persons. The system was developed in 1981 to standardize and streamline the registration process by accommodating a single filing and payment of fees for registration in multiple jurisdictions. Today the system processes filing on behalf of 50 states, the District of Columbia and Puerto Rico, seven (7) self-regulatory organizations and the Commission.

The redesigned CRD, scheduled for a staged implementation in 1996 and 1997, will feature electronic filings, re-engineered work processes, expedited relicensing and a highly structured, relational database to better serve the information requirements of regulators, members and investors. In addition, the new system will include investment adviser registration for the SEC and states, an E-mail communication capability for system participants and a document imaging/storage/retrieval service for support documents required in certain filing situations.

NASD Regulation had originally intended to fund the CRD redesign effort from the current registration filing fees based on expected activity levels in the 1995-1997 period. In 1995 registration activity declined significantly, and the resulting lower revenue levels are now expected to continue through 1997. As a result, in 1995 the NASD adopted a temporary fee increase in order to continue the investment in this

[8] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

important systems project.[2] The temporary fees were implemented on August 1, 1995, and applied to all filings received on or after that date. The fee increase was to be reduced for most types of filings made in calendar year 1997 and was to return to the pre-1995 levels in calendar year 1998.

NASD Regulation has added functionality to the new CRD system and improved the system's compatibility with various computer operating systems, such as Windows 95 and Windows NT. This has resulted in delays and cost increases in implementing the redesigned CRD. Accordingly, NASD Regulation is proposing to amend Schedule A, Section 2 to eliminate the scheduled fee rollbacks and to retain the current fee level indefinitely. This fee level will provide $4 million in extra revenue each year over the revenue produced by the pre-1995 fee levels.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[3] which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule provides a consistent basis for assessments among member firms and fairly assesses a charge to cover the costs incurred by the Association in the implementation of the redesigned CRD System.

2. Statutory Basis

The proposed rule change is consistent with Section 15A of the Act[4] in general and furthers the objectives of Section 15A(b) (5)[5] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the NASD's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments on the proposed rule change.

[2] Securities Exchange Act Release No. 36025 (July 26, 1995), 60 FR 39200 (Aug. 1, 1995).

[3] 15 U.S.C. § 78o-3.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the NASD and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the National Association of Securities Dealers. All submissions should refer to File No. SR–NASD–96–53 and should be submitted by January 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–439 Filed 1–8–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–38115; File No. SR–NASD–95–54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to a Modification of the Operation of the Small Order Execution System During Locked and Crossed Markets

January 3, 1997.

On November 15, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change amends NASD Rule 4730(b)(4)[4] to provide that during locked or crossed markets, SOES will execute orders in five-second intervals against a locked or crossed market maker at the best price, regardless of whether the market maker entered the quotation locking or crossing the market.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37845, October 21, 1996) and by publication in the **Federal Register** (61 FR 55342, October 25, 1996). One comment letter was received.[5] This order approves the proposed rule change.

I. Description of Rule Change

The rule change approved today modifies SOES to provide that during

[1] The NASD amended the proposed rule change four times subsequent to its initial filing. Amendment No. 4 filed October 16, 1996, changed the narrative in the proposed rule change. Amendment No. 3, filed October 2, 1996, replaced Amendment No. 2, which was filed September 23, 1996. Amendment No. 2, in turn, replaced Amendment No. 1, which was filed August 5, 1996.

The proposed rule change, as originally submitted, would have provided market makers with a 15-second grace period following their receipt of a Small Order Execution System ("SOES") execution report during locked and crossed markets in which to update their quotation in that security before being required to execute another SOES order in that security. The filing as amended would establish a 5 second grace period between SOES executions in locked and crossed markets. *See* letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market to Katherine England, Assistant Director, Division of Market Regulation, Commission (October 2, 1996).

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *NASD Manual*, Marketplace Rules (CCH), Rule 4730.

[5] Letter from Edward J. Johnsen, Vice President & Counsel, Morgan Stanley & Co. Inc. ("Morgan Stanley"), to Jonathan G. Katz, Secretary, Commission, dated November 14, 1996.

locked or crossed markets, SOES will execute orders in five-second intervals against a market maker whose quotation is locked or crossed at the best price, regardless of whether the market maker entered the quotation locking or crossing the market. Currently, when markets are not locked or crossed, SOES provides market makers with a 15-second period of time following their receipt of a SOES execution report to update their quotation before being required to execute another order in that security through SOES. The NASD represented in its filing that when the market for a Nasdaq National Market security is locked or crossed,[6] however, SOES is currently designed so that the market maker whose quotation is locked or crossed and the market maker who has entered a locking or crossing quotation will have SOES orders representing shares equal to the SOES minimum exposure limit[7] or the firm's exposure limit, whichever is greater, executed by SOES against the market maker's account without any delay between SOES executions ("locked and crossed market rule").[8] Thus, in such instances, unlike the operation of SOES during non-locked or crossed markets, the market maker's account will receive SOES executions without any delay between executions until its exposure limit is exhausted. In addition, during locked or crossed markets, SOES orders are executed against market makers whose quotations are locked or crossed irrespective of any preference indicated by the SOES order entry firm.

The locked and crossed market rule was intended to increase the accuracy of displayed quotations in NNM securities by providing an incentive for market makers to reduce the frequency and duration of locked and crossed markets.[9]

The NASD stated in its filing that the magnitude of SOES orders received and executed during locked and crossed markets is such that market makers execute significant volume through SOES before they are able to rectify locked and crossed markets. The NASD further stated the rule change was intended to continue to provide market makers an incentive to update their quotations in locked and crossed markets while enhancing market makers' ability to react to SOES transactions in locked and crossed markets.[10]

II. Comments

Morgan Stanley opposes the proposed rule change. It states that the interval proposed is too short for it to react to a locked or crossed market. It recommends a 15 second interval at a minimum, but argues that a SOES market maker whose quotation has been locked or crossed should not be subject to SOES executions for: (i) 90 seconds after its quotation has been locked or crossed; or (ii) whatever period of time is needed for the locking or crossing market maker to notify the NASD, and for the NASD, in turn, to notify the market maker that its quotation has been locked or crossed. It also recommends that NASD provide a market maker whose quotation has been locked or crossed with a warning window on its screen.

III. Discussion

The Commission finds that the rule change is consistent with the provisions of Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act and Rule 11Ac1–1 ("Quote Rule") thereunder.[11] Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The Commission believes that the rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing Nasdaq market makers with a brief period to update their quotations during locked and crossed markets before being subject to a SOES execution. The Commission recognizes that a locked or crossed market can occur during unusual market conditions. Consequently, it is not unreasonable to provide market makers with a very brief period to update their quotes. At the same time, market makers should have an incentive to fix a locked or crossed market as quickly as possible in order to correct the quotation anomaly. Thus, the quote update period for locked and crossed markets should be as short as possible. The Commission believes that the rule strikes this balance by encouraging market makers to remedy quickly locked and crossed markets that occur, given that market makers will continue to face executions at intervals that are less than one-third of the length of intervals between unpreferenced SOES executions during times when markets are not locked or crossed.

The Commission does not believe that the alternatives recommended by Morgan Stanley provide market makers with a sufficient incentive to remedy locked and crossed markets that occur. Therefore, it disagrees with Morgan Stanley's argument. The Commission also notes that the rules change will continue to permit retail investors to have immediate access to the best prices displayed by Nasdaq market makers on Nasdaq because SOES will continue to execute trades during locked and crossed markets. By contrast, Morgan Stanley's suggestion that the NASD not permit executions against a market maker's quotation that has been locked

[6] Quotations are "locked" when the bid price quoted by one market maker in a security equals the ask price quoted by another market maker in the same security. Quotations are "crossed" when the bid price quoted by one market maker in a security is greater than the ask price quoted by another market maker in the same security.

[7] The minimum exposure limit for SOES is currently twice the maximum SOES order size for a given security. Thus, the minimum exposure limit for a Nasdaq/National Market security in the 1,000-share tier size is 2,000 shares. The NASD has filed a proposed rule change that would, among other things, eliminate minimum exposure limits in SOES. *See* Securities Exchange Act Release No. 38008 (December 2, 1996), 61 FR 64550 (December 5, 1996) (publishing notice of filing of SR–NASD–96–43).

[8] *See* Rule 4730(b)(4). The Commission notes that Rule 4730(b)(4) currently provides that "a Market Maker with a quotation for that security in the Nasdaq System that is causing the locked or crossed market may have orders representing shares equal to the minimum exposure limit or the firm's exposure limit, whichever is greater, executed by SOES for that Market Maker's account at its quoted price if that price is the best price." Rule 4730(b)(4) by its terms does not apply to market makers whose quotations have been locked or crossed. The proposed rule would change this distinction and both types of firms to the Rule.

[9] *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (order approving SR–NASD–88–1). The NASD stated in its filing that prior to the approval of SR–NASD–88–1, SOES would not execute orders in locked and crossed markets.

[10] The NASD indicated that many locked and crossed markets occur after trading halts are lifted or when market makers are adjusting their quotations in response to material news disclosed concerning the issuer of the security.

[11] Section 15A(b)(9) provides that the rules of the NASD must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) directs the NASD to adopt rules designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market.

or crossed until the locking or crossing market maker has notified the NASD, and the NASD, in turn, has notified the market maker that its quotation has been locked or crossed, would be highly inefficient and would be inconsistent with the NASD's statutory mandate that its rules remove impediments to and perfect the mechanism of a free and open market. The Commission also notes that each of the alternatives suggested by Morgan Stanley would inhibit the ability of investors to obtain executions at a market maker's displayed quotations if it were implemented. Thus, the Morgan Stanley alternatives do not give due recognition to the interests of investors or to the interest of the NASD in discouraging locked and crossed markets.

The 5-second interval between SOES executions during locked and crossed markets will apply to all SOES users and participants. Although the proposal will limit to a small extent the ability to investors to obtain executions in locked and crossed markets by providing a 5-second interval between executions, the Commission believes that the rule change appropriately balances the interests of investors and the need for market makers to have a very brief period to update their quotations expeditiously in locked or crossed markets. The rule change also is intended to enhance the production of fair and orderly quotations in NNM securities. This, in turn, should encourage market makers to enter more competitive quotations.

The Quote Rule requires that brokers and dealers execute orders to buy and sell securities at their published quotes unless communicating a revised bid or offer or unless updating their quotations in response to an execution. The 5-second interval is intended to provide market makers with an opportunity to update their quotations in response to an execution. Market makers who do not so will be required to execute further transactions at their published bid or offer.[12] The Commission notes that if the NASD adopted either alternative suggested by Morgan Stanley, Nasdaq market makers would not be required to execute orders to buy and sell securities at their published quotes even when they are not communicating a revised bid or offer or updating their quotations in response to an execution.[13]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–54 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

[FR Doc. 97–445 Filed 1–8–97; 8:45 am]

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[12] See Securities Exchange Act Release No. 29801 (October 10, 1991), 56 FR 52098 (approving 15-second interval following a market maker's receipt of a SOES execution report to update its quotation before being required to execute another order in that security through SOES).

[13] Morgan Stanley argues that market makers whose quotes have been locked or crossed may not always have adequate notice that their quotation has been locked or crossed. It recommends that the NASD provide a market maker whose quotation has been locked or crossed with a warning window on its screen. While the suggestion has merit, the Commission does not believe that it is a necessary prerequisite for approving a rule change providing market makers with five additional seconds to update their quotations.

[14] 17 CFR 200.30–3(a)(12) (1969).

[Release No. 38106; File No. SR–NYSE–96–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to an Interpretation of Rule 409 ("Statements of Accounts to Customers")

December 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 5, 1996,[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed with the Commission a proposed rule change which consists of an interpretation with respect to the meaning and administration of existing Exchange Rule 409 ("Statements of Accounts of Customers"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

RULE 409: STATEMENTS OF ACCOUNTS TO CUSTOMERS

(a)

/01 Applicability

Compliance with Rule 409(a) and the accuracy of statements of accounts thereunder is the responsibility of the member organization carrying the customer account for which the statement is required, unless such responsibility has been allocated to a non-member carrying organization pursuant to an Exchange approved agreement under Rule 382.

/02 Information To Be Disclosed

Statements of accounts to customers must clearly and prominently disclose on the front of the statement:

1. the identity of the introducing and carrying organization and their respective phone numbers for service;[1]

2. where the customers' assets included on the statement are carried;

3. that the carrying organization is a member of SIPC and whether any of the customers' assets included on the statement are not covered by SIPC;

4. the opening and closing balances for the account.

/03 Use of Third Party Agents

Prior to utilizing a "third party agent" to prepare and/or transmit statements of accounts to customers, a member organization shall represent/undertake in writing to the Exchange that:

1. the third party is acting as agent for the member organization;

2. the member organization retains responsibility for compliance with Rule 409(a);

3. the member organization has developed procedures/controls for reviewing and testing the accuracy of statements of accounts prepared and/or transmitted by the third party agent;

4. the member organization will retain copies of statements of accounts prepared and/or transmitted by the third party agent in accordance with applicable books and records requirements.

Allocation of responsibilities for preparation and/or transmission of statements to any person other than a carrying organization pursuant to an agreement approved by the Exchange in accordance with Rule 382 (Carrying

[1] 15 U.S.C. 78s(b)(1).

[2] On December 5, 1996, the NYSE filed Amendment No. 1 with the Commission. The proposed rule change was submitted on September 25, 1996. However, amendments to the rule language were improperly identified in contravention of Section 19(b); therefore, the filing is deemed to be filed on the later date. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 5, 1996.

[1] *If the phone number of the clearing organization appears on the back of the statement it must be in "bold" or "highlighted" letters.*

Agreements) shall be deemed to be utilization of a "third party agent".

An introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a "third party agent" and may not itself prepare and or transmit such statements.

/04 Assets Not In Possession/Control of Member Organization

Where a statement of account includes assets that are not within the possession or control of the member organization such assets must be clearly and distinguishably separated on the statement, and it must be clearly indicated on the statement that such externally held assets: are not within the possession or control of the member organization, are included on the statement solely as a service to the customer, information (including valuation) is derived from the customer or other external source for which the member organization is not responsible, and are not covered by SIPC.

/05 Use of Logos, Trademarks, etc.

Where the logo, trademark or other similar identification of a person (other than the carrying or introducing organization) appears on a customer account statement, the identify of such person(s) and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be utilized in a manner which is misleading or causes customer confusion.

/06 Combined Statements

Where a member organization carrying a customer's account and another person(s) who separately offers financial related products/services to the same customer (e.g. mutual fund sales/custodial services, banking products/services, insurance products/services, securities products/services, etc.) seek to jointly formulate and/or distribute their respective customer account statements together with a statement summarizing or combining assets held in different accounts, ("summary statement"), the Exchange will require:

1. That the summary statement:

a. indicate that the "summary statement" is provided for informational purposes and includes assets held at different entities;

b. identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing/carrying brokerage firms, fund distributor, banking/insurance product providers, etc.);

c. clearly distinguish between assets held by each entity by way of use of columns, coloring or other district form of demarcation;

d. identify the customer's account number at each entity;[2]

e. provide a telephone number for customer service at each entity;[2]

f. disclose which entity carries each of the different assets or categories of assets included on the summary;

g. identify and distinguish between those accounts/assets covered and not covered by SIPC.

2. To the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation shall be recognizable as having been arithmetically derived from the separately stated totals or their components.

3. That the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) be clearly distinguishable by color, pagination or other distinct form of demarcation.

4. That there be a written agreement between the carrying organization and each other person jointly formulating and/or distributing its respective customer account statements attesting that each such person has developed procedures/controls for reviewing and testing the accuracy of its respective statements or any information included by it on a summary statement.

5. The summary statement shall comply with Rule 409 and all interpretations thereof.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[2] Where the customer account number and telephone number for customer service at each entity are included on each entit[ies]y's respective customer account statement, such account and telephone numbers need not be included on the summary statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to set forth an interpretation concerning the meaning and administration of Exchange Rule 409 with respect to the establishment of standards regarding the distribution of "summary statements" and the use of "third party agents" to prepare and/or distribute customer account statements. The proposed interpretation also codifies existing Exchange policy as to certain information that must be disclosed on account statement. Other items in the proposed interpretation address statements that include assets not in possession or control of a member organization and the use of logos and trademarks on statements.

Exchange Rule 409 addresses the responsibility of member organizations carrying customer accounts to send statements of these accounts to their customers. The Exchange has received requests from member organizations to allow them jointly, with other financial institutions (*e.g.*, banks and investment companies), to formulate and distribute to common customers a "summary statement" together with their respective customer account statements. These requests generally involve entities that are part of a financial services "group" or "family" or where the Exchange member organization carries accounts for a broker-dealer that is part of such a group. The "summary statement" provides an overview of the customer's accounts at the separate entities and is supported by the detail on the separate respective statements.

The Exchange has worked with industry representatives to develop parameters so that this may be accomplished in a manner that will provide customers with accurate account statements that clearly identify the respective entities involved and distinguish brokerage from non-brokerage assets.

Specifically, the Exchange will require that the summary statement: indicate that the statement is informational and includes assets held at different entities; identify each entity, their relationship to each other and their respective functions; distinguish clearly between assets held by each entity[3]; identify the customer's account numbers at each entity and provide a

[3] Columns, coloring or other distinct form of demarcation should be used to clearly distinguish assets.

customer service telephone number at each entity [4]; disclose which entity holds each of the different assets on the summary; and distinguish between accounts that are or are not covered by SIPC. Additionally, any aggregation of account values must be recognizable as having been derived from the separately stated totals; the beginning and end of each separate underlying statement must be clearly distinguishable; and there must be a written agreement between the parties jointly distributing the statements that each has developed procedures/controls for testing the accuracy of its own information on the customer statement.

The proposed interpretation will codify that carrying firms are responsible for sending statements to customers and for ensuring the accuracy of such statements. However, it is recognized that in many cases "third party agents" (*e.g.*, service bureaus or other independent entities) prepare or transmit customer account statements. Therefore, the proposed interpretation to Rule 409 would also establish Exchange policy regarding use of "third party agents" to prepare and transmit statements of accounts and to set forth certain representations which must be made in writing by the member organization to the Exchange. Specifically, the member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with Rule 409(a), that the member organization has developed procedures and implemented controls for reviewing and testing the accuracy of statements and that it will retain copies of all such statements. In addition, the interpretation states that an introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a "third party agent" and may not itself prepare and or transmit such statements.

The proposed interpretation also clarifies that certain information must be disclosed on the front of account statements, *i.e.*, the identity of the introducing and carrying organizations, where customer assets included on the statement are held, whether such customer assets are covered by SIPC, and the opening and closing account balances.

[4] Where the customer account number and telephone number for customer service at each entity are included on each entity's respective customer account statement, such account and telephone numbers need not be included on the summary statement.

The interpretation also requires that where the account statement includes assets not within the possession or control of the member organization, such assets must be clearly separated on the statement. In addition, the statement must clearly indicate that such externally held assets: are not within the possession or control of the member organization; are included on the statement solely as a service to the customer; and are not covered by SIPC. Moreover, the summary statement must indicate that the member organization is not responsible for any information derived from the customer or other external source relating to such assets.

As to the use of logos and trademarks, the proposed interpretation provides that were the logo, trademark or other identification of a person (other than that of the carrying or introducing organization) appears on an account statement, then the identity of such person and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be misleading or cause customer confusion.

The Exchange believes that this proposed interpretation will give member organizations the flexibility to distribute summary statements to customers or use third party agents to prepare and transmit customer account statements, while providing appropriate safeguards through detailed disclosure to customers and required undertakings to the Exchange.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) [5] of the Act which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. This proposal complies with the Act in that it establishes standards enabling members and member organizations to distribute summary statements and to use third party agents to prepare and distribute these statements, while providing customer protection through appropriate disclosures and implementation of specified procedures and controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commissions' Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to the File No. SR–NYSE–96–27 and should be submitted by January 30, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–489 Filed 1–8–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

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[Release No. 34–38113; International Series Release No. 1042; File No. SR–PHLX–96–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Approval of Proposed Rule Change Relating to Minimum Transaction Size for Customized Foreign Currency Options

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 1, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to revise the minimum opening and closing transaction size and responsive quotation size for customized foreign currency options from 100 to 50 contracts. The proposal was published for comment in the **Federal Register** on November 20, 1996.[2] No comments were received on the proposed rule change. This order approves the Exchange's proposal.

On November 1, 1994, the Commission approved the Exchange's proposal to trade customized foreign currency options.[3] Users now have the ability to customize the strike price and quotation method and choose any underlying and base currency combination out of all Exchange listed currencies, including the U.S. dollar. The product was introduced to attract institutional customers who like the flexibility and variety offered in the over-the-counter market but would prefer the benefits attributed to an exchange auction market to hedge their exchange rate risks.

The Exchange originally instituted a 300 contract minimum opening transaction size pursuant to Rule 1069(a)(6). A number of mid-sized corporations and institutions then told the Exchange that the contract value was too large for their purposes. They believed that customized currency options would fill a market need for them, but that the opening transaction size was prohibitive. The Exchange, thus, determined to reduce the transaction size in stages. In March of 1995, the Exchange reduced the size of an opening transaction to 200 contracts[4] and then reduced it further to 100 contracts in August of that year.[5] According to the Exchange, that size, however, still remains too large for a significant segment of medium sized corporations, especially those that are located in Canada and the Pacific basin. Those companies would like the opportunity to hedge their currency risk using an exchange traded customized option contract in a cost-effective manner. Therefore, the Exchange now proposes to reduce the minimum opening transaction size to 50 contracts. which would be equivalent in dollar terms to an average minimum transaction value for customized foreign currency options of between $2 and $3 million.[6]

The minimum size of the closing transaction and the minimum responsive quote size obligation would also be reduced form 100 contracts to the lesser of 50 contracts or the remaining contracts.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5),[7] in that the proposal is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change is designed to make the customized foreign currency option market accessible to more medium sized corporate foreign currency option users while maintaining the focus of this market towards institutional investors. As a result, the Commission believes that the proposal may serve to add liquidity to this market, which would benefit all users of customized foreign currency options.

Even with lowering the minimum opening transaction size to 50 contracts, the minimum value of an opening customized foreign currency option transaction involving any approved currency will be between $2 and $3 million. The Commission believes that because the customized foreign currency option market is used almost exclusively by institutional investors, and because the dollar value of opening transactions in customized foreign currencies is still very substantial, lowering the minimum transaction size to 50 contracts should not result in the entrance of unsophisticated investors into this market. Furthermore, the Exchange, in publicizing the reduction of the minimum contract size for customized foreign currency options to its members in a regulatory circular, will emphasize the necessity for compliance with the Phlx suitability rule, Rule 1026, applicable to options transactions.[8] Rule 1026(b), among other things prohibits a member from recommending to a customer an opening transaction in any option contract, unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer is capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract. Based on the foregoing, the Commission believes that this proposal does not raise any regulatory concerns that were not adequately addressed by the Exchange when the Commission approved the trading of customized foreign currency options.[9] Moreover, the institutional nature of customized foreign currencies should remain unchanged, even with the reduction in minimum opening transaction size being approved herein.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–95–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[FR Doc. 97–442 Filed 1–8–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

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[1] 15 U.S.C. § 78s(b)(1)

[2] Securities Exchange Act Release No. 37944 (November 13, 1996), 61 FR 59125.

[3] Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720.

[4] Securities Exchange Act Release No. 35464 (March 9, 1995), 60 FR 14043.

[5] Securities Exchange Act Release No. 6176 (August 31, 1995), 60 FR 46879.

[6] *See* Securities Exchange Act Release No. 37944, *supra* note 2.

[7] 15 § 78f(b)(5).

[8] Telephone conversation between Michelle R. Weissbaum, Vice President and Associate General Counsel, Phlx, and Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on November 13, 1996.

[9] *See* Securities Exchange Act Release No. 34925, *supra* note 3.

[10] The Commission notes that it would have serious concerns about any further reductions in the minimum opening contract size, which could change the institutional nature and intent of the product.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 18, 1996 [FR 61, page 16968].

DATES: Comments must be submitted on or before February 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Coles, Office of Information Management Programs, (202) 366–054, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Driver Qualification Files.
OMB Control Number: 2125–0065.
Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.
Form Number: N/A.
Affected Public: Motor Carriers.
Abstract: The authority for driver qualification files is contained in 49 U.S.C. 504, 31133, 31136, and 31502, and 49 CFR 1.48, with penalty provisions in 49 U.S.C. 521 and 522. 49 CFR 391.51 requires a motor carrier to maintain a driver qualification file for each regularly employed driver and each intermittent, casual, and occasional driver. The file contains the minimum amount of information necessary to document that a driver is qualified to drive a commercial motor vehicle in interstate commerce. A driver qualification file is used by the FHWA and motor carrier to ensure that a driver who operates a commercial motor vehicle in interstate commerce, can by reason of experience and/or training, safely operate a type of commercial motor vehicle; has been issued an appropriate driver's license; and has not been disqualified to operate a commercial motor vehicle. Public demand for highway safety requires that the hiring of commercial motor vehicle drivers be restricted to those drivers with records which prove their ability to safely operate a commercial motor vehicle.

Estimated Annual Burden: The total annual burden is 1,076,166 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 3, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–523 Filed 1–8–97; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

[STB Finance Docket No. 33323]

Chicago Rail Link, L.L.C.; Lease and Operation Exemption; Union Pacific Railroad Company

Chicago Rail Link, L.L.C. (CRL), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 8.5 miles of rail lines owned by the Union Pacific Railroad Company (UP). CRL will be leasing and operating track numbers 1 through 9, 110, 500, 501, 702, 710, and 711 in UP's Irondale Yard, Chicago, IL, east of Torrence Avenue between 117th Street and 122nd Street.

The transaction was expected to be consummated on or shortly after December 26, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33323, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: January 2, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–482 Filed 1–8–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33324]

Northern Plains Railroad, Inc.; Lease and Operation Exemption; Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway

Northern Plains Railroad, Inc. (NPR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease and operate approximately 377.55 miles of railroad owned by the Soo Line Railroad Company, d/b/a Canadian Pacific Railway: (1) between Thief River Falls, MN (MP 309.69) and Harlow, ND (MP 472.24); and (2) between Fordville, ND (MP 390.99) and Kenmare, ND (mp 605.99).

The transaction is expected to be consummated on or about January 6, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33324, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Byron D. Olsen, Esq., Felhaber, Larson, Fenlon & Vogt, P.A., 601 Second Avenue South, Suite 4200, Minneapolis, MN 55402.

Decided: January 2, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary

[FR Doc. 97–483 Filed 1–8–97; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–55 (Sub-No. 500)]

CSX Transportation, Inc.—Abandonment—in Barbour, Randolph, Pocahontas, and Webster Counties, WV

AGENCY: Surface Transportation Board.

ACTION: Notice of findings.

SUMMARY: The Board has issued a certificate and decision authorizing CSX Transportation, Inc. (CSXT), to abandon that portion of its rail line extending between milepost BUI–28.40 at Elkins, WV, and milepost BUK–121.7 at Bergoo, WV, subject to environmental and historic preservation conditions if there is salvage. The transaction also was exempted from the offer of financial assistance and public use procedures of 49 U.S.C. 10904 and 10905.

EFFECTIVE DATE: The abandonment certificate will become effective on January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(c) of the ICCTA provides, in general, that, if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10903–05. Thus, the provisions of current 49 U.S.C. 10903–05 apply to this proceeding on remand.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impared is available through TDD services (292) 927–5721.

Decided: December 31, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–481 Filed 1–8–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–471X]

South Kansas and Oklahoma Railroad, Inc.; Abandonment Exemption; In Sumner County, KS

South Kansas and Oklahoma Railroad, Inc. (SKO) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 9.2-mile portion of its line of railroad between milepost 257.2, at Oxford, and milepost 266.4, near Wellington, in Sumner County, KS.

SKO has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line in over 3 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 21, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 29, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

SKO has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by

January 14, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–484 Filed 1–8–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Office of the Secretary

Credit Union Study; Request for Comments

AGENCY: Office of the Secretary, DOT.

SUMMARY: Legislation recently enacted by Congress requires the Secretary of the Treasury (Secretary) to conduct a study of credit unions and submit a report to Congress by September 30, 1997.

This notice invites all interested parties to provide their views on the topics listed below and on any other issues relating to the study that they may wish to bring to our attention. We strongly encourage all interested parties to submit comments for the record.

DATES: Comments should be in writing and must be received by February 28, 1997.

ADDRESSES: Send written comments to: Credit Union Study, Department of the Treasury, Room 3025, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: For further information, please contact: Joan

Affleck-Smith, Director, Office of Financial Institutions Policy, at (202) 622–2740, or Edward DeMarco, Financial Economist, at (202) 622–2792.

SUPPLEMENTARY INFORAMTION: Section 2606 of the Omnibus Consolidated Appropriations Act for 1997 (Public Law No. 104–208) requires the Secretary to conduct a study of corporate credit unions and other credit union issues. In conducting the study, the Secretary must consult with the National Credit Union Administration (NCUA), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

Suggested Format of Comments

Please comment on some or all of the issues under study, as listed below.

I. National Credit Union Share Insurance Fund

In 1970, Congress created the National Credit Union Share Insurance Fund (NCUSIF) as a way for credit unions to obtain federal deposit insurance. Like the Federal Deposit Insurance Corporation's Bank Insurance Fund and Savings Association Insurance Fund, the NCUSIF insures each depositor for up to $100,000. However, the NCUSIF is structured and administered differently than the insurance funds for banks and thrifts. In the legislation, Congress directs the Secretary to study specific issues pertaining to the NCUSIF.

First, the Secretary must evaluate the treatment of the NCUSIF's required 1 percent deposit by member credit unions. Legislation enacted in 1984 required each credit union to maintain a deposit with the NCUSIF equal to 1 percent of its insured shares. Credit unions count these deposits as assets while the NCUSIF counts these same funds as part of its equity. Congress raises the question of whether or not the accounting treatment of the 1 percent deposit is appropriate. Congress also requires the Secretary to study how the NCUA uses the deposit amounts when determining equity capital ratios.

Second, the Secretary must analyze the potential for, and potential effects of, having some entity other than the NCUA administer the NCUSIF.

We request comments on:

1. The NCUA's oversight of the NCUSIF;

2. The desirability of having credit unions expense the 1 percent deposit that they maintain at the NCUSIF; and

3. The advantages and disadvantages of separating the NCUSIF from the NCUA.

We also request responses to the following specific questions regarding the NCUSIF:

4. Does the current accounting treatment of credit unions" 1 percent deposit create risks to the NCUSIF, credit unions, or both? In particular, what is the risk that large losses in the NCUSIF would impair the 1 percent deposit at a time when credit unions were under stress?

5. If you believe that the 1 percent deposit should remain refundable (i.e., should continue to be treated as an asset), explain why. In particular, identify how such treatment promotes safety and soundness and protects the NCUSIF and ultimately the taxpayers. If the 1 percent deposit remains refundable, how should the deposit be used in determining a credit union's equity capital ratio?

If you believe that the 1 percent deposit should be expensed, explain why. In particular, identify how expensing the deposit would promote safety and soundness and protect the NCUSIF and ultimately the taxpayers. In addition, please describe how the existing deposits should be expensed.

6. The NCUA currently has a single office—the Office of Examination and Insurance—handle both examination and share insurance. Do any conflicts arise from that structure? Would any such conflicts be most properly handled by separating examination and insurance within the NCUA or by establishing management and oversight of the NCUSIF outside of the NCUA? If the latter, should the NCUSIF be a stand-alone agency or incorporated into the FDIC or some other existing federal agency? Explain.

7. What changes, if any, are needed in the NCUA's current oversight or operation of the NCUSIF? If you advocate changes, explain why those changes are needed. Identify the safety and soundness or taxpayer risk issues involved, and how your proposed solution deals with the identified problem.

II. Corporate Credit Unions

The network of corporate credit unions, including U.S. Central Credit Union, emerged in the 1970s to meet the liquidity and investment demands of the growing number of natural person credit unions. Currently, corporate credit unions provide liquidity to member credit unions, invest member credit unions' excess funds, and perform check-clearing and other related transactional services for member credit unions. In this study, we will examine, in cooperation with federal banking agencies, the ten largest corporate credit unions, including examining their investment practices, financial stability, financial operations, and financial controls.

In addition, Congress directed the Secretary to evaluate the NCUA's supervision of corporate credit unions. Concern has been raised that, at least until recently, the NCUA did not adequately oversee the risk-taking of corporate credit unions and had no specialized examination group to deal with the unique circumstances of corporate credit unions. While the NCUA has addressed many of these shortcomings, Congress requested an assessment of the NCUA's supervision of corporates today.

At the time of this notice's publication, the NCUA is finalizing substantial changes to its regulation governing corporate credit unions, 12 CFR Part 704. The proposed changes to Part 704 would significantly alter certain regulatory requirements applicable to corporate credit unions. The NCUA received extensive public comments on those proposed changes, and we have reviewed those comments. In your comments, be careful to distinguish between Part 704 as in effect at the time this notice is published and the revised Part 704 proposed by the NCUA. Should the NCUA complete the rulemaking process and issue a final Part 704 regulation before the comment period for this notice ends, you should focus your comments on the new Part 704.

We request comments on:

8. The safety and soundness of corporate credit unions; and

9. The NCUA's supervision of corporate credit unions.

We also request responses to the following specific questions regarding corporate credit unions:

10. What is the appropriate scope of activities for corporate credit unions?

11. What risks, if any, do corporate credit unions pose today to natural person credit unions or to the NCUSIF?

12. Are the current investment practices of corporate credit unions appropriate? Are NCUA regulations and NCUA oversight adequate for the risks undertaken by corporate credit unions?

III. NCUA Regulations

Congress directed the Secretary to examine the NCUA's current regulations. In particular, we will focus on NCUA regulations affecting (i) the NCUSIF, (ii) corporate credit unions, and (iii) credit union safety and soundness.

At the time of this notice's publication, the NCUA is finalizing substantial changes to its regulation governing the investment and deposit activities of natural person credit unions

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at 12 CFR Part 703. The proposed changes to Part 703 would significantly alter certain regulatory requirements applicable to such credit unions. The NCUA received extensive public comments on those proposed changes, and we will review those comments. In your comments, be careful to distinguish between Part 703 as in effect at the time this notice is published and the revised Part 703 proposed by the NCUA. Should the NCUA complete the rulemaking process and issue a final Part 703 regulation before the comment period for this notice ends, you should focus your comments on the new Part 703.

We request comments on:

13. NCUA regulations in the specified areas.

We also request responses to the following specific questions regarding NCUA regulations:

14. In order to improve credit unions' safety and soundness, what changes, if any, should be made in the Federal Credit Union Act or the NCUA's regulations? Explain.

15. Are there elements of safety and soundness regulation of banks and thrifts that, if carried over to credit union regulation, would make a meaningful improvement in the NCUA's oversight of credit unions' safety and soundness? Explain.

Dated: December 26, 1996.

Richard S. Carnell,

Assistant Secretary for Financial Institutions.

[FR Doc. 97–141 Filed 1–8–97; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 62, No. 6

Thursday, January 9, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

Correction

In rule document 96–31837 beginning on page 66830 in the issue of Wednesday, December 18, 1996, make the following corrections:

§2640.201 [Corrected]

1. On page 66845, in the third column, in paragraph (c)(1), "**Note to paragraph (a)(1)**" should read "**Note to paragraph (c)(1)**".

§2640.202 [Corrected]

2. On page 66846, in the second column, in paragraph (b), in the second line, insert "(1)" before "An".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–07–1320–01; MTM 80697]

Notice of Hearing

Correction

In notice document 96–31502 appearing on page 65418 in the issue of Thursday, December 12, 1996, in the second column, in the land description, under T. 1 N., R. 40 E., P.M.M., "Sec. 8: E½, SW¼SE¼" should read "Sec. 8: E½, N½NW¼" and "Sec. 14: S½N¼, NW¼" should read "Sec. 14: S½SW¼, SE¼".

BILLING CODE 1505–01–D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives

Correction

In rule document 96–31571 beginning on page 65323 in the issue of Thursday, December 12, 1996 make the following correction:

On page 65325, in the third column, footnote 3 was omitted and should read as follows: "As indicated in the comment to Rule 3.9 of the ABA Model Rules of Professional Conduct, "administrative agencies have a right to expect lawyers to deal with them as they deal with the courts."

BILLING CODE 1505–01–D

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Federal Register

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Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket 95–8]

RIN 2125–AD57

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Amendments to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains amendments to the MUTCD which have been adopted by the FHWA for inclusion therein. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: The final rule is effective January 9, 1997. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Linda L. Brown, Office of Highway Safety (202) 366–2192, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3416, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD, 1988 Edition is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The purchase of the MUTCD includes the new MUTCD Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operation published September 1993.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received. This document contains the disposition of proposed changes which were published on June 12, 1995, at 60 FR 31008. Text changes required as a result of amendments contained herein will be distributed to everyone currently appearing on the FHWA **Federal Register** mailing list and will be published in the next edition of the MUTCD. Those wishing to be added to this **Federal Register** mailing list should write to the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590.

The FHWA has reviewed the comments received in response to FHWA Docket No. 95–8 and other information related to the MUTCD and these proposals. The FHWA is acting on the following requests for change to the 1988 edition of the MUTCD. Each action and its basis is summarized below:

Request I–10(C)—Standardization of Traffic Control Devices on Private Property

This amendment to the MUTCD adds language to section 1A–3 to encourage each State to adopt Section 15–117 of the Uniform Vehicle Code (UVC). This section of the UVC states that traffic control devices used on private property (e.g. shopping center, business complex or sports arena) open to the public shall be installed and maintained pursuant to the standards contained in the MUTCD. Although adoption of this amendment as a vehicle code is a State decision, we believe that it is in the interest of the public's safety that we strongly encourage the use of standard traffic control devices on private property open to public travel.

The FHWA received a total of 29 comments in response to this change to the MUTCD. Twenty-six comments supported this amendment to extend the provisions contained in the MUTCD to all streets and highways open to public travel, regardless of ownership. Three of the 29 comments opposed including this language in the MUTCD but agreed with the idea of encouraging traffic control devices on private property at the State's option.

This change will not impose any additional costs on State and local highway jurisdictions but will encourage uniformity of traffic control devices.

Request I–12(C)—Add New Highway Classification for Special Purpose Roads

Although 20 of the 28 comments in response to this request were in favor of the concept to add a new highway classification and appropriate standards to the MUTCD to address the special needs for low volume and low speed road signs, most comments indicated that further study is needed to define appropriate categories and standards. The National Committee on Uniform Traffic Control Devices (NCUTCD) is developing proposed text for the MUTCD on traffic control devices for low-volume roads.

The FHWA believes that the information contained in the NCUTCD proposal will provide more substantive data. Additional information will be published in a future notice of proposed rulemaking and the public will be given another opportunity to review and comment. This request is deferred until that time.

Request II–118(C)—Standard Motorcycle Warning Sign

The FHWA conducted research evaluation on seven possible motorcycle symbol signs to warn motorcyclists of possible hazardous roadway conditions. Since the motorcycle symbols did poorly in the motorist comprehension test, the FHWA is not adopting a standard symbol at this time. Twenty-two of the 27 people responding to this request agreed with this FHWA position. The evaluation results indicated that the intended message is difficult to portray. Generally, the motorist is used to seeing the hazard for which the driver is being warned shown in the sign. Many of the incorrect test responses indicated that the signs were warning of a "hazard" *and* the presence of "motorcycles" ahead.

The FHWA will research this concept further and try to develop a symbol sign which may be understood by both the motorist and the motorcyclist. Meanwhile, the FHWA recommends that the State and local highway agencies develop special word message signs as allowed in MUTCD section 2C–40 and use existing symbol signs to warn both motorcyclists and motorists of specific hazardous roadway conditions.

Request II–120(C)—Standard Warning Sign for Substandard Vertical Curves Over Railroad Crossing (W10–5)

The FHWA is adopting a new advance symbol sign for railroad grade crossings where conditions are sufficiently abrupt to create a hang-up of long wheelbase vehicles or trailers with low ground clearance. The MUTCD already contains provisions for the placement of special word message signs where there is a need to give advance notice of special hazardous conditions at railroad grade crossings. Based on conducted research, the FHWA amends the MUTCD to also

include the following new warning symbol sign for "Low Ground Clearances" (W10–5) which may be used at these special locations:

BILLING CODE 4910–22–P

W10-5

BILLING CODE 4910–22–C

This symbol is used by the New York State Department of Transportation (NYSDOT) and is similar to the research symbol tested and found to be acceptable with the truck driver population. Sometimes a change from word messages to symbols requires time for public education and transition. New warning and regulatory symbol signs such as this that may not be readily recognizable by the public, shall be accompanied by an educational plaque which is to remain in place for at least 3 years after initial installation. Advisory messages and speed plates may also be used to supplement these signs. The appropriate color is yellow background with black symbol and border. This information is included as a new section 8B–11 to the MUTCD.

Since the decision for a State or local highway jurisdiction to use this sign is optional, no additional costs are imposed.

Request II–138(C)—Stop Sign Placement

The FHWA received 21 out of 30 comments in agreement with the 50 feet maximum placement distance for intersection Stop Signs as shown in Figure 2–2. Nine of the comments which opposed the 50 feet maximum felt that more placement flexibility was needed. Although the FHWA believes that 50 feet is an optimum distance for sign conspicuity reasons, we do recognize that there may be times when flexibility is needed. It is important to note that Figure 2.2 is a typical drawing and not a standard drawing. A typical drawing provides recommended practice for the design, application, and installation of traffic control devices. In this specific case, 50 feet is the recommended maximum placement distance for the Stop Sign unless an engineering study by a State or local highway agency determines that an increased distance is needed.

MUTCD Section 2A–21 is modified to reflect the flexibility allowed in this typical drawing. This change will not impose any additional costs on State or local highway jurisdictions.

Request II–179(C)—Don't Drink and Drive Symbol Sign

The FHWA received requests from concerned citizens including Mothers Against Drunk Driving (MADD) to adopt a symbol sign in the MUTCD to deter the drinking public from driving while intoxicated. Based on research studies and docket comments, the FHWA does not intend to include a symbol in the MUTCD. However, State and local highway agencies do have the option of developing special regulatory word message signs such as "Drive Sober" and other appropriate word messages as provided in Section 2B–44 of the MUTCD.

The FHWA Office of Research and Development collected comprehension and recognition data for several variations of symbol signs but found the word message sign to be better. The FHWA initially proposed to add the word message "Drive Sober" sign into MUTCD section 2B–44 "Other Regulatory Signs," instead of a symbol sign because it performed very well in the evaluation study. Its message of "drive sober" covers both drivers under the influence of alcohol and drivers under the influence of illicit drugs. Based upon the comments we received, there was wide variation in what the appropriate word message should be for this sign.

The FHWA received 31 comments in response to this change to the MUTCD. A total of seventy-seven percent (24 of 31) of the respondents oppose the use of this sign. Of the 23 percent that support the sign, 12 percent want its use limited or made optional. There were also four related letters addressed to the Office of Highway Safety regarding a "Drunk Driving Victim Memorial Sign Program" that is being tried in Oregon and Washington. Although the results of this program are not yet available, these letters imply support of a "Drive Sober" sign. The inclusion of these additional letters change the numbers to 69 percent (24 of 35) in opposition and 31 percent (11 of 35) in support. The primary reasons given in the comments for opposing the sign are as follows:

1. No need for sign,
2. Will encourage vandalism,
3. Costly to install and maintain,
4. It does not regulate, warn or give guidance.

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Request II–193(C)—Logos on Specific Service Signs

This item is more of a clarification rather than a change to the MUTCD. The FHWA is modifying the language in section 2G–5.2 to clarify that a business LOGO can be either a business identification symbol, trademark, or a word message. When a business LOGO is a word message then it should have a blue background with a white legend and border. Twenty-one of the 25 comments received agree with this clarification. This amendment does not impose any additional requirements or costs to State and local highway jurisdictions.

Request II–194(C)—Recycling Collection Center Sign (I–11)

This amendment adopts a symbol sign for Recycling Collection Centers (I–11). Since the symbol is already in use and recognized by the public, the FHWA intends to include this symbol in MUTCD Section 2D–48 for directing motorists to recycling centers. Twenty one of the 26 comments received supported this symbol. These signs should not be used on freeways and expressways. If used on these facilities, the recycling center sign is considered as one of the supplemental sign destinations. Since the decision for a State or local highway jurisdiction to use this sign is optional, no additional costs are imposed.

BILLING CODE 4910–22–P

COLORS
RETROREFLECTIVE WHITE LEGEND AND BORDER ON RETROREFLECTIVE GREEN BACKGROUND

Request II–199(C)—Reclassify Reduced Speed Signs From Regulatory Series to Warning Series

This request to reclassify the Reduced Speed Signs as a warning sign rather than regulatory sign is denied. Twenty of the 27 comments received supported this decision.

All of the speed limit signing series are currently regulatory. The Reduced Speed Ahead signs perform adequately as regulatory signs. The commenters indicated, and FHWA agrees, there is not a need to change this sign from a regulatory sign to a warning sign. The driver is familiar with the current signing.

Additionally, to change the present signs from black on white to black on yellow would impose an unnecessary cost burden to the State and local highway jurisdictions.

Request II–204(C)—Golf Cart Crossing Symbol

The FHWA received a request from both Virginia Beach, Virginia, and Palm Desert, California, to develop a warning symbol for golf cart crossings. Palm Desert has also indicated the need to warn motorists to share the roadway with these slower moving vehicles. There are really two issues to address in this section: (1) The need for a golf cart crossing symbol, and (2) The need for a sign to warn motorists to share the roadway with the slower moving golf carts.

(1) The need for a golf cart crossing symbol:

A total of 73 percent (19 of 26) of the respondents agree that a standard symbol sign is needed for golf cart crossings. A total of 27 percent (7 of 26) were opposed to a standard symbol sign for golf cart crossings.

(2) The need for a sign to warn motorists to share the roadway with the slower moving golf carts:

A total of 42 percent (11 of 26) of the respondents agree that there may be a need for a sign to warn motorists to share the roadway with the slower moving golf carts. A total of 58 percent (15 of 26) of the respondents opposed the use of such a sign because they feel these golf carts should not be sharing the roadway since they do not meet the safety requirements of motor vehicles.

BILLING CODE 4910–22–P

W11-11

BILLING CODE 4910-22-C

Based on modifications to the conducted research, the FHWA approves the "Golf Cart Crossing" warning symbol sign (W11–11) shown above. This new warning symbol shall be accompanied by an educational plaque which is to remain in place for at least 3 years after initial installation (see MUTCD section 2A–13). This same symbol may also be used at the State's discretion in those situations where it is necessary to warn motorists to share the road with golf carts and other slower-moving forms of transportation, such as bicycles and mopeds. This amendment does not impose any additional costs on State or local highway jurisdictions. The "Share the Road" sign is addressed in more detail in Request II–228(C).

Request II–205(C)—Mandatory Turn Sign Alternatives

After further review of this request to allow the mandatory movement overhead sign (R3–5) to be post-mounted as an alternate to the mandatory turn word message sign (R3–7), the FHWA has decided not to approve this application. Although 19 of the 27 comments received agreed with FHWA's initial position to relax the requirements in this section of the MUTCD, the FHWA is concerned that the single arrow and word message "ONLY" on a post-mounted R3–5 sign does not adequately indicate to the motorist the applicable lanes for the required movement. Eight of the 27 comments received also expressed this concern. The FHWA is also concerned about the increased cost associated with the need for higher sign posts and additional warning panels. Therefore, this request for change to the MUTCD is denied.

Request II–209(C)—Signs for the Disabled

The signs for two types of facilities designated for persons with disabilities were considered in this request: (1) The sign for "Van Accessible" parking and (2) the sign for telephone facilities accessible to the hearing impaired.

The MUTCD section 2B–31 is amended to add a "Van Accessible" sign (R7–8a) for placement below the Reserved Parking sign (R7–8) where parking spaces are designed to accommodate wheelchair-accessible vans. The "Van Accessible" sign should have green legend on a white background or the same colors as any alternate design used for R7–8. If used as a guide sign, the "Van Accessible" sign should have white legend on a blue background and include a directional arrow. Twenty-one of the twenty-eight comments supported this amendment. Since use of the sign is optional for State or local highway jurisdictions, no additional costs are imposed.

The request to add to the MUTCD the special hearing impaired telephone symbols for text telephones and for assistive listening systems is denied. Sixteen of the twenty-eight comments received opposed the use of this signing. Most comments expressed concern regarding the types of signs and many comments indicated that other adequate types of signs and information are available for these accessible facilities. Also these facilities increasingly are being provided at many public facilities and through mobile telephone. The road user's misunderstanding of the symbol and the proliferation of signs were also concerns discussed in the comments.

Request II–211(C)—Non-Carrier Airport Symbol

This request to adopt a new symbol sign to distinguish non-carrier airports is denied. Although the FHWA is not adopting a new symbol, provisions are contained in MUTCD section 2D–48 for distinguishing between different types of transportation facilities. They provide for the use of a supplemental plaque with the specific name of the facility.

The text in MUTCD section 2D–48 is expanded to specifically address airport signing. The text indicates that supplemental plaques with the name of the airport may be used below the current airport symbol sign (I–5). The addition of the airport name to the guide sign provides specific and commonly used destination information which the motorist can readily associate with their destination and type of airport service available, including commercial and/or non-carrier services. Eighteen of the twenty-five comments received agreed with this FHWA position.

Request II–212(C)—Increased Letter Size of Street Name Signs

The section 2D–39 of the MUTCD is modified to increase the recommended letter sizes for street name signs to a minimum of 6 inch uppercase letters, 4½ inch lowercase letters, and 3 inch letters for street abbreviations or city sections (e.g., Avenue, Road, NW.). However, for local roads with speed limits 25 mph or less, the existing MUTCD language is modified to provide an option for the continued use of a minimum 4 inch uppercase letter size with 2 inch lowercase letters for street abbreviations or city sections. All street name signs are required to be retroreflective.

Twenty-seven of the forty comments agreed with the proposed changes. However, many of these and of the opposing comments indicated that for roads with low volume and low speeds, the current letter sizes are adequate. The 4-inch option was added in response to these concerns and because it reduces associated costs of installing larger sign posts.

Since the recommended change from 4 inch to 6 inch letter size may impose some additional costs on State and local jurisdictions, the FHWA is establishing a compliance date for the installation of street name signs. The compliance date is 15 years after the issue date of this final rule or as signs are replaced within the 15 year period. This will allow replacement after a normal service life of the signs.

Request II-214(C)—Golf Course Recreational Area

This request to include a symbol sign for guiding motorists to golf courses is denied. Although 13 of the 24 comments supported the use of a symbol, the type of symbols recommended varied widely in design. The comments opposing the use of a symbol, including those from States with many golf courses, indicated that word messages such as "Public Golf Course" or the golf course name are more effective for the guide signs. Comments also indicated concerns regarding sign proliferation particularly associated with a seasonal or low traffic generating facility.

Request II-215(C)—Regulatory and Street Name Signs on Same Post

This amendment to the MUTCD allows the option of installing regulatory and street name signs on the same sign post. Twenty-three of the twenty-seven comments supported this amendment since its use may simplify the sign installation process and improve motorist guidance information. Two of the four commenters who opposed adoption agree with the concept, but disagree with the requirement for vertical separation of 6 inches. The purpose of vertical separation is to ensure that the shape of the sign, particularly the STOP sign, is recognized by motorists.

Sections 2B and 2D are changed to allow this alternate application. Vertical separation of the signs is not required as long as the shape of the signs are not compromised. This amendment does not impose any additional requirements or costs to State and local highway jurisdictions.

Request II-218(C)—Reduce Number of Panels Shown on Directional Assemblies

This amendment to reduce the amount of information displayed on directional assemblies by displaying only one route shield and route number with appropriate cardinal directions and arrows is denied. Experience and performance history indicate that the present system performs well and the public understands it. Although 16 of the 25 comments supported the concept of reducing the amount of information displayed, many expressed concern that the proposed assembly method may be confusing.

Request II-224(C)—Cellular Phone Sign for Emergency Situations

The proposed cellular phone symbol sign for use in emergency situations is denied. However, the FHWA will conduct further research and will consider other alternates for a symbol including those submitted in the docket responses. The FHWA received a total of 24 comments in response to this proposal. Many of the 21 comments in agreement with the proposal expressed concern that this particular symbol was confusing. Although they agreed with the concept of a sign to inform the motorist how to dial for emergency assistance, they recommended a word message sign instead of the symbol.

Until an appropriate symbol is developed through research, the FHWA recommends using a word message sign similar to the standard D12-3 sign. The sign would read, "Emergency Dial——" along with the appropriate number to dial. MUTCD section 2D-45 is revised to reflect this change. This amendment will not impose any additional requirement or costs on State and local highway jurisdictions.

Request II-225(C)—Local Transit Logo and Carpool Symbol

This amendment increases the maximum vertical dimension of transit system logos on Park and Ride signs to 36 inches for freeways and expressways. All 25 of the comments received supported this change. The larger signs will provide greater legibility on high speed facilities such as freeway and expressways and sections 2D and 2E are revised accordingly. This amendment will not impose any additional requirements or costs on State and local highway jurisdictions.

Request II-226(C)—General Motorist Service Signing for Alternative Fuels

The FHWA revises MUTCD sections 2D-45 and 2F-33 to include within the current "GAS" category for general services the use of word message alternative fuel designations for compressed natural gas (CNG) and electric vehicle (EV) charging. As an option, the D9-11 symbol sign may be used with the appropriate letter abbreviations substituted for the appropriate alternative fuel. The FHWA will conduct research on an appropriate symbol sign for electric vehicle charging.

Twenty-one of the thirty comments received agreed that signing for alternative fuels is needed. With the increasing number of vehicles using alternative fuels in response to the Clean Air Act Amendments of 1990, consideration of additional signs to provide availability information to the motorist has merit. This change allows States and local highway agencies to place signs for whatever alternative fuels are available at various locations. Since the decision for a State or local highway jurisdiction to use this sign is optional, no additional costs are imposed.

Request II-228(C)—Share the Road Warning Signs

This amendment to the MUTCD adds a new section 2C-39 to include a discussion regarding the "Share the Road" word message sign (W16-1) which may be used with the farm machinery symbol (W11-5), the bicycle symbol (W11-1), and other appropriate symbol signs where a need exists to warn drivers to share the road with other modes of roadway transportation. The "Share the Road" sign shall have a yellow background with black message and shall be rectangular as shown below.

This amendment also adopts an updated version of the farm machinery symbol also shown below (W11-5a). This symbol may be used as an alternate to the W11-5 symbol currently shown in the MUTCD. The FHWA conducted research on the "Share the Road with Farm Equipment" sign and, based on the results of the study, found that the adopted sign's meaning comprehension rate was 92 percent and its action comprehension rate was 100 percent. The results indicated that almost all drivers were aware of the meaning the sign conveyed and the appropriate action to be taken.

BILLING CODE 4910-22-P

W11-5a

BILLING CODE 4910-22-C

There were 49 comments received of which 38 agreed with the FHWA position, 10 opposed and one was undecided. This amendment does not impose any additional requirements or costs on State and local highway jurisdictions.

Request II-229(C)—General Service Sign for Truck Parking

This amendment to MUTCD section 2D–45 and 2F–33 permits the word message "Truck Parking" to be included on General Motorist Service Signs. Twenty-five of the twenty-eight comments received agreed with this concept and indicated that they would like a symbol sign for truck parking. The FHWA intends to conduct a research evaluation to develop an appropriate symbol for truck parking. In the interim, State and local highway agencies have the option of using the word message "Truck Parking" sign (D9–15) in conjunction with other general motorist service information signs. The word message "Truck Parking" should be placed on a panel below the other general motorist services.

This change does not impose any additional requirements or costs on State and local highway jurisdictions.

Request II-241(C)—Overhead Guide Sign Arrows

This request to improve overhead guide signs by using consistent directional arrows which point upwards and which indicate if the roadway turns left or right is denied. Nineteen of the thirty comments received opposed this request. Eight commenters agreed and three were undecided.

Upon FHWA's initial observation, this request for change appeared to have the potential of providing more consistent, timely, and useful information to the motorist. However, further review suggests a departure from the established standards would require additional in-depth research and analysis before making such a significant change. A change of this nature has the potential of imposing extreme burden and additional costs to the States. Therefore, the FHWA is denying this request due to the absence of further data to substantiate the change. Experience and history in the use of the arrows indicate no adverse problems.

Request II-246(C)—Adopt-A-Highway Signs

This request to include a standard sign in the MUTCD for "Adopt-A-Highway" programs is denied because of the wide variances in the suggested size of signs, the background and letter colors, the lateral placement, and the frequency of placement for these signs. In many cases, standardizing of these signs would result in adverse local publicity, decreased participation, and would impose unnecessary cost burdens on State and local highway jurisdictions. However, because of the national interest in the Adopt-A-Highway program, the FHWA is modifying the MUTCD section 2D–48 to include general guidance for States to follow when establishing this local program.

The FHWA received 35 comments in response to this request to include standards for the design and placement of "Adopt-A-Highway" signs in the MUTCD. Twenty-two of the comments agreed with the idea of having standards but many of those who agreed were not consistent in their recommended design and placement standards. Thirteen of the thirty-five comments opposed the idea of standards. Fifty percent of those opposing were State highway agencies.

Request III-54(C)—Variation of Line Width and Spacing for Crosswalks

This request to increase the maximum spacing for crosswalks from 24 inches to 48 inches with a maximum spacing not to exceed twice the line width is denied. The FHWA received 29 comments to this docket, of which 18 were in agreement with FHWA's position. Eleven of the eighteen were State highway agencies and two were cities.

The FHWA considers the current maximum longitudinal spacing of 24 inches adequate in that the crossing area is highly visible and recognizable both for the motorist and for the pedestrian. In addition, the FHWA has no record of any operational problems related to the standard 24-inch maximum spacing. Since the FHWA has no statistical data to show that the proposed 48-inch maximum spacing would not adversely affect visibility, we hesitate to change the MUTCD without evaluation data which supports the design safety of the proposed crosswalk configuration. Therefore, this request is denied.

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Request III–68(C)—Lane Drop Marking Pattern

This approved amendment to the MUTCD adds lane drop marking patterns to section 3A–6 which describes widths and patterns of longitudinal lines. Since lane drop markings are already described in the fourth paragraph of MUTCD section 3B–11, it is appropriate to include a discussion in section 3A–6. This amendment also changes the term "special marking" as used in section 3B–11 to "lane drop marking." In addition, the lane drop marking is not restricted to interchange ramps but is also available for use with mandatory lane drops on arterial streets and highways. Twenty-four of the twenty-six comments received agreed with this change.

This change does not impose any additional requirements or costs on State and local highway jurisdictions but instead furthers consistency and clarity in traffic control and operations.

Request IV–47(C)—Use of Steady and Flashing Downward Yellow Arrows in Lane Control Signals

This approved amendment to the MUTCD allows lane control signals to be darkened on non-reversible freeway lanes. The FHWA also is denying further experimentation with the flashing and steady DOWNWARD YELLOW ARROW because the Minnesota evaluation report found that the experimental YELLOW ARROW was not understood by motorists. The FHWA received a total of 22 comments in response to this change to the MUTCD. Four of the comments disagreed with FHWA's recommendation to darken signals because it may imply that a signal is not functioning. The FHWA does not believe that this will create a problem since other special types of signals such as ramp metering signals are currently allowed to be darkened when not in use and there have been no identified problems with this practice.

This change does not impose any additional costs on State and local highway jurisdictions but will encourage uniformity of traffic control devices.

Request IV–95(C)—Intersection Control Beacons

This approved amendment to MUTCD section 4E–3, Intersection Control Beacons, involves two separate issues. The first amendment requires a beacon on each intersection approach that is controlled by a "RED" Intersection Control Beacon. Although the original request for change suggested two beacons, the FHWA believes that in the majority of situations, one beacon would provide adequate visibility. Twenty-one of the twenty-three comments received agreed with the FHWA position. However, section 4E–3 currently allows for the use of a supplemental beacon if needed.

The second issue involves mandatory use of a STOP sign in conjunction with a red intersection control beacon. The FHWA received no adverse comments to this request for change. Therefore, the next to last paragraph in section 4E–3 is modified to require a STOP sign in conjunction with a flashing red intersection control beacon.

This amendment does not impose any significant increase in costs on State and local highway jurisdictions.

Request IV–118(C)—Relocat Section 4C, Signal Warrants

This amendment redesignates the MUTCD section 4C, Warrants for Traffic Signals, as the new section 4B, and the current section 4B, Traffic Control Signals, as the new section 4C. This transposition allows the MUTCD users to determine, firstly, if a signal is warranted and, secondly, to read the description for signal design and application.

The FHWA received a total of 24 comments in response to this change to the MUTCD. All but one of the comments agreed to transposing sections 4B and 4C.

This change does not impose any additional costs on State and local highway jurisdictions.

Request IV–122(C)—Disabled Pedestrians

This request included two items. The first item included in this request was the concept of allowing a second signal button that permits additional time for slow walking pedestrians to cross the roadway. There is nothing currently in the MUTCD to prevent highway agencies from extending the pedestrian crossing interval in areas of demonstrated need. Therefore this request is denied. Twenty-one of the twenty-seven comments received were opposed to this concept of a second signal button. Some of the other major concerns expressed with the installation of the second button are the following:

1. The MUTCD already allows a highway agency to establish pedestrian signal timing to accommodate the needs of the user at the specific location.

2. The second button would just be another button for all pedestrians to push and then the signal would likely be using the longer timing every cycle.

3. Intermittent, longer, pedestrian clearance intervals may jeopardize coordination flow.

The second request was to allow the installation of pedestrian detectors that are easily activated for pedestrians with physical disabilities. There were no adverse comments addressing this issue. The FHWA adopts this recommendation and is including it as an option in MUTCD section 4B–29.

This change which allows the option of installing easily activated pedestrian detectors for persons with physical disabilities does not impose any additional costs on State and local highway jurisdictions.

Request IV–124(C)—Educational Plaque for Pedestrian Signals

This amendment will allow the use of an educational plaque that can be used in conjunction with pedestrian signal indications. The FHWA is adopting the use of this optional educational plaque where both symbol-type and word message pedestrian signal indications are used.

A total of 27 of the 30 comments received agreed with the use of the educational plaque. The wording of the plaque shown in the notice of proposed rulemaking has been slightly modified to reflect the following comments:

1. After the wording DONT START use FINISH CROSSING IF STARTED.

2. Pedestrians should be aware of all vehicles, not just turning cars.

3. The highlighted flashing hand symbol is more easily understood.

4. All intersections do not have marked crosswalks.

5. Eliminate the wording WAIT ON CURB because all intersections do not have curbs.

6. Many intersections in the United States do not have push buttons for operating signals and, therefore, the bottom section of the sign with the caption "TO CROSS. . .PUSH BUTTON" should be made optional.

7. Since both symbols and word messages are allowed for pedestrian signal indications, two plaque designs are necessary.

This change will not impose any additional costs on States and local jurisdictions.

BILLING CODE 4910–22–P

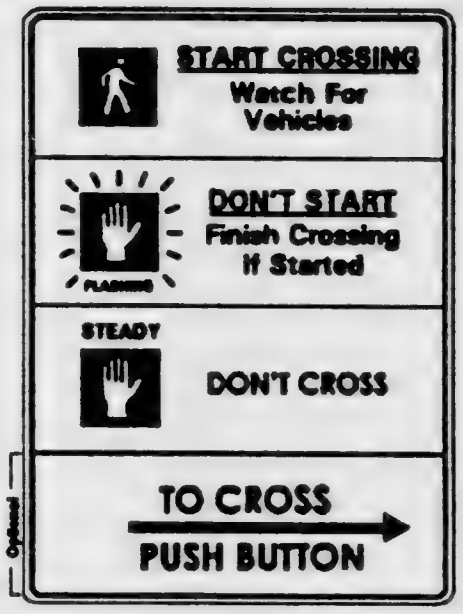

R10-3b
225 mm x 300 mm
(9" x 12")

BILLING CODE 4910-22-C

Note: Word message (R10-3c) may be used in place of WALK/DON'T WALK symbol.

Request VI-88(C)—Emergency Flashers

This amendment to the MUTCD allows the use of vehicle hazard warning signals to supplement rotating dome or strobe lights as flashing identification beacons.

The intent of the original request was to allow the use of emergency flashers (vehicle hazard warning signals) or rotating domes and strobe lights on maintenance vehicles.

In the notice of proposed rulemaking, the FHWA originally proposed to allow the use of emergency flashers on maintenance vehicles during normal daytime maintenance operations without addressing the issue of rotating domes and strobe lights.

From a review of the comments, the intent of the amendment as originally stated in the NPRM was evidently not clear. The FHWA received a total of 26 comments in response to this change to the MUTCD. Eleven comments agreed, eight opposed and seven suggested use as a supplement. Some respondents viewed it as allowing vehicle hazard warning signals to be used in lieu of rotating domes and strobe lights. Other commenters viewed the amendment as allowing them to be used in addition to rotating domes and strobe lights.

The FHWA believes it may bolster motorists" safety if the difference in what the motorist expects between seeing a disabled vehicle or from seeing a work area is preserved. Therefore, the FHWA adopts the optional use of vehicular hazard warning signals as a supplement to rotating domes or strobe lights and MUTCD section 6F-7c is changed accordingly.

This change does not impose any additional costs on State and local jurisdictions but encourages uniformity of traffic control devices.

Request VII-2(C)—School Bus Stop Ahead Symbol Sign

This request to adopt the School Bus Stop Ahead symbol sign submitted by the North Carolina Department of Transportation is denied. This symbol did not perform well in the FHWA research study. In addition, 23 of the 30 comments in response to this request were either opposed or indicated that further study is needed to define a more appropriate symbol.

This request is denied but FHWA will conduct further research and will consider other alternates for a symbol including those submitted by respondents.

Request VIII-26(C)—Maximum Flash Rate at Railroad Highway Grade Crossings

This approved amendment increases the maximum flash rate from 55 to 65 flashes per minute. This will make the AAR Signal Manual of Recommended Practices, the Railroad Highway Grade Crossing Handbook, and the MUTCD all compatible with one another. In addition, this amendment is compatible with research and standard practices.

All 27 of the comments received were in support of this amendment. This change imposes no additional costs on State and local highway jurisdictions but will encourage uniformity of traffic control devices.

Request VIII-29(C)—Symbol for Railroad Advance Warning Sign

The request to replace the standard round Railroad Advance Warning Sign(W10-1) with a diamond-shaped sign is denied. The W10-1 sign is intentionally unique from other warning signs and is intended to convey to motorists the special attention they need to apply when approaching a railroad highway grade crossing.

All but one of the twenty-nine comments supported the FHWA position.

Request VIII-30(C)—Symbol for Number of Tracks Sign

The request to replace the word message "Tracks" in the standard Number of Tracks Sign (R15-2) with a symbol showing railroad tracks is denied.

Twenty-six of the twenty-seven comments received were in support of denying this amendment because the current sign is well understood and the proposed sign offered no proven benefit.

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Request VIII–36(C)—Signs and Markings for No Lane Change Zones at Railroad Crossings

The request to require pavement markings at railroad-highway grade crossings to prohibit vehicle lane changing on the tracks when there are two or more lanes in one direction is denied. All 26 comments received supported the FHWA recommendation that this request not be adopted.

No-passing markings continue to be required on 2-lane, 2-way roadways approaching railroad-highway grade crossings as discussed in Section 8B–4 of the MUTCD. The MUTCD already contains provisions for pavement markings and signing where an engineering study determines a need to prohibit lane change movements in the vicinity of multi-lane approaches to railroad highway grade crossings.

Request VIII–37(C)—Fast Train Signs

This request to develop a warning sign and warrants for its use on approaches to high speed (80 to 110 mph) rail crossings that may or may not be equipped with automatic warning devices is deferred. Warrants are a set of criteria that can be used to define the relative need for and appropriateness of traffic signs. Of the 27 comments received for this request, 14 supported and 13 opposed its adoption. There was little consensus on the message to be used on the sign although several of the respondents suggested a succinct message, such as "HIGH SPEED TRAINS" or "FAST TRAIN." Several of those supporting this request suggested that it be republished when more specific information on the size, shape, and warrants for the sign are developed.

The Railroad-Highway Grade Crossing Technical Committee of the NCUTCD is currently developing a proposal on the shape, message, and warrants for use of this sign. The FHWA believes that the information in this NCUTCD proposal will provide more substantive data upon which to evaluate this request. This request will be published with additional information in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request VIII–38(C)—Supplementary Plaques on STOP and YIELD Signs Used at Railroad-Highway Grade Crossings

The request to permit the use of a supplementary plaque with STOP or YIELD Signs at Railroad-Highway Grade Crossings to indicate the number of tracks or to WATCH FOR SECOND TRAIN is deferred. The proposal to include the number of tracks sign under the STOP or YIELD sign, received 27 comments of which 17 supported, 8 opposed, and 2 were undecided. A number of those supporting this proposal requested that the number of tracks sign be black and yellow rather than red and white as proposed.

The proposal to include the supplemental plaque message "WATCH FOR SECOND TRAIN," received 27 comments of which 9 supported, 16 opposed, and 2 were undecided. Many of those opposed expressed concern that such a long message would detract from the purpose of the STOP or YIELD sign.

The Railroad-Highway Grade Crossing Technical Committee of the NCUTCD is currently evaluating this proposal concerning the color and message length of this sign. The FHWA believes that the information provided in this NCUTCD proposal will provide more substantive data upon which to evaluate this request. This request will be published with this additional information in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request VIII–39(C)—Warrants for Warning Devices at Railroad- Highway Grade Crossings With High-Speed Train Operations

This request to include recommended warrants for use of warning devices at railroad crossings hosting high speed trains (80 to 110 mph) is deferred. There were 26 comments received of which 23 supported, 2 opposed and 1 was undecided. The two that opposed adoption felt that warrants for warning devices at railroad-highway grade crossings should be the same whether or not high-speed trains were involved. None of the 26 comments suggested specific warrants to be used. Until specific warrants can be developed this request is deferred.

The Railroad-Highway Grade Crossing Technical Committee of the NCUTCD is currently addressing this issue of warrants for warning devices. The FHWA believes that the information developed by the NCUTCD will provide more substantive data upon which to evaluate this request. This request will be published with proposed warrants in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request VIII–40(C)—Placement of the Crossing Identification Number Tag

The request to include in Part VIII standards for the design and placement of the U.S. DOT/AAR National Rail-Highway Crossing Inventory number plate is deferred. There were 23 comments received of which 18 supported, 3 opposed, and 2 were undecided. The 3 that opposed this request expressed the opinion that this number plate is not a traffic control device and does not belong in the MUTCD.

The FHWA number plate can provide valuable information to identify a specific crossing to authorities in an emergency situation (i.e. stalled vehicle on tracks), and the number should be displayed in a prominent and consistent location at all railroad-highway grade crossings. Since this identification plate is displayed on railroad right-of-way, its location should be agreed to by the railroads, FRA, and the FHWA. Until the placement issue is resolved this request is deferred. This request will be published with proposed location of the number plate in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request IX–6(I)—Marking Hazardous Bicycle Conditions

The language in MUTCD section 9C–6 is modified to clarify that object markers as discussed in this section, not only apply to bicycle trails which are exclusively for bicycles but to any roadway open to bicycle travel. Twenty-one of the twenty-three comments agreed with this change. This change is editorial and does not impose any additional costs to the State and local jurisdictions.

Rulemaking Analyses and Notices, Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. Most of the changes in this notice provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This final rule adds some alternative

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traffic control devices and only a very limited number of new or changed requirements. Most of the changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, and Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and; 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways [Amended]

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including revision No.1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, Errata No. 1 to the 1988 MUTCD Revision 3, dated November 1994, Revision No. 4 dated November 1, 1994, and Revision No. 5 dated December 24, 1996. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The amendments to the MUTCD titled, "1988 MUTCD Revision No. 1," dated January 17, 1990, "1988 MUTCD Revision No. 2" dated March 17, 1992, "1988 MUTCD Revision No. 3," dated September 3, 1993, "1988 MUTCD Errata No. 1 to Revision No. 3," dated November 1994, "1988 MUTCD Revision No. 4," dated November 1, 1994, and "1988 MUTCD Revision No. 5," dated December 24, 1996 are available from the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, apppendix D.

* * * * *

Issued on: December 24, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 97–196 Filed 1–6–97; 8:45 am]

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Part III

Department of Education

Postsecondary Education; National Direct and Federal Perkins Student Loan Programs; Directory of Designated Low-Income Schools; Notice

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Availability of the 1996–97 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1996–97 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the 1996–97 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for teacher cancellation benefits for the 1996–97 school year.

SUMMARY: The Secretary announces that the 1996–97 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a designated elementary or secondary school having a high concentration of students from low-income families. In the 1996–97 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1996–97 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Patricia Reese, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4621), Washington, DC 20202–5447, Telephone (202) 708–5182.

Information concerning deferment and cancellation of a Federal Perkins Loan or National Direct Student Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4310), Washington, DC 20202–5447, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; (3) each of the major Federal Perkins Loan billing services; and (4) the U.S. Department of Education, including its regional offices.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures contained in the Federal Perkins Loan program regulations at 34 CFR 674.53, 674.54 and 674.55.

The Secretary has determined that, for the 1996–97 academic year, full-time teaching in the schools set forth in the 1996–97 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with the institution that awarded their loan, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1996–97 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Direct and Federal Perkins Loan Cancellations)

Dated: January 6, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–516 Filed 1–8–97; 8:45 am]

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federal register

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January 9, 1997

Part IV

The President

Presidential Determination No. 97–14—Drawdown From DoD Articles and Services for Assistance for the Victims of Conflict and Other Persons at Risk From Northern Iraq

Presidential Determination No. 97–15—Assistance Program for the New Independent States of the Former Soviet Union

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Presidential Documents

Title 3—

The President

Presidential Determination No. 97–14 of December 27, 1996

Drawdown From DoD Articles and Services for Assistance for the Victims of Conflict and Other Persons at Risk From Northern Iraq

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense for the purpose of providing assistance to the victims of conflict and other persons at risk for Northern Iraq.

Therefore, I hereby direct the drawdown of up to $10,000,000 of such articles and services from the inventory and resources of the Department of Defense, for the purposes and under the authorities of the Migration and Refugee Assistance Act of 1962, as amended, section 2(c).

The Secretary of State is authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 27, 1996.

[FR Doc. 97–711
Filed 1–8–97; 9:57 am]
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Presidential Documents

Presidential Determination No. 97–15 of December 27, 1996

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (d) under the heading "Assistance for the New Independent States of the Former Soviet Union" in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as enacted in Public Law 104–208), I hereby determine that it is in the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 27, 1996.

[FR Doc. 97–712
Filed 1–8–97; 9:57 am]
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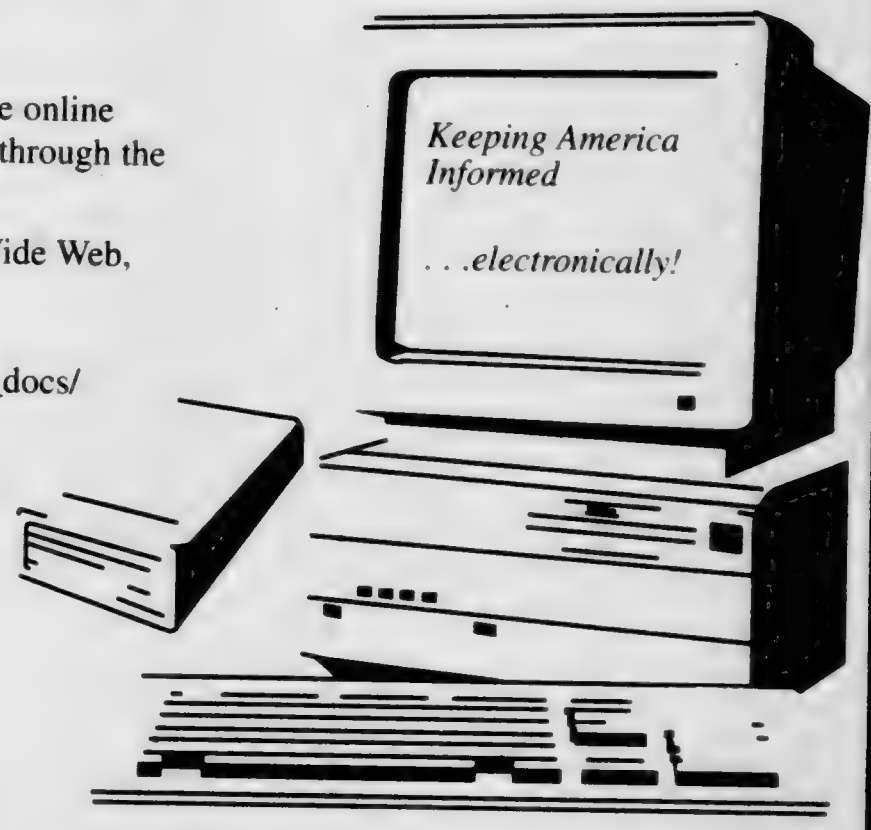

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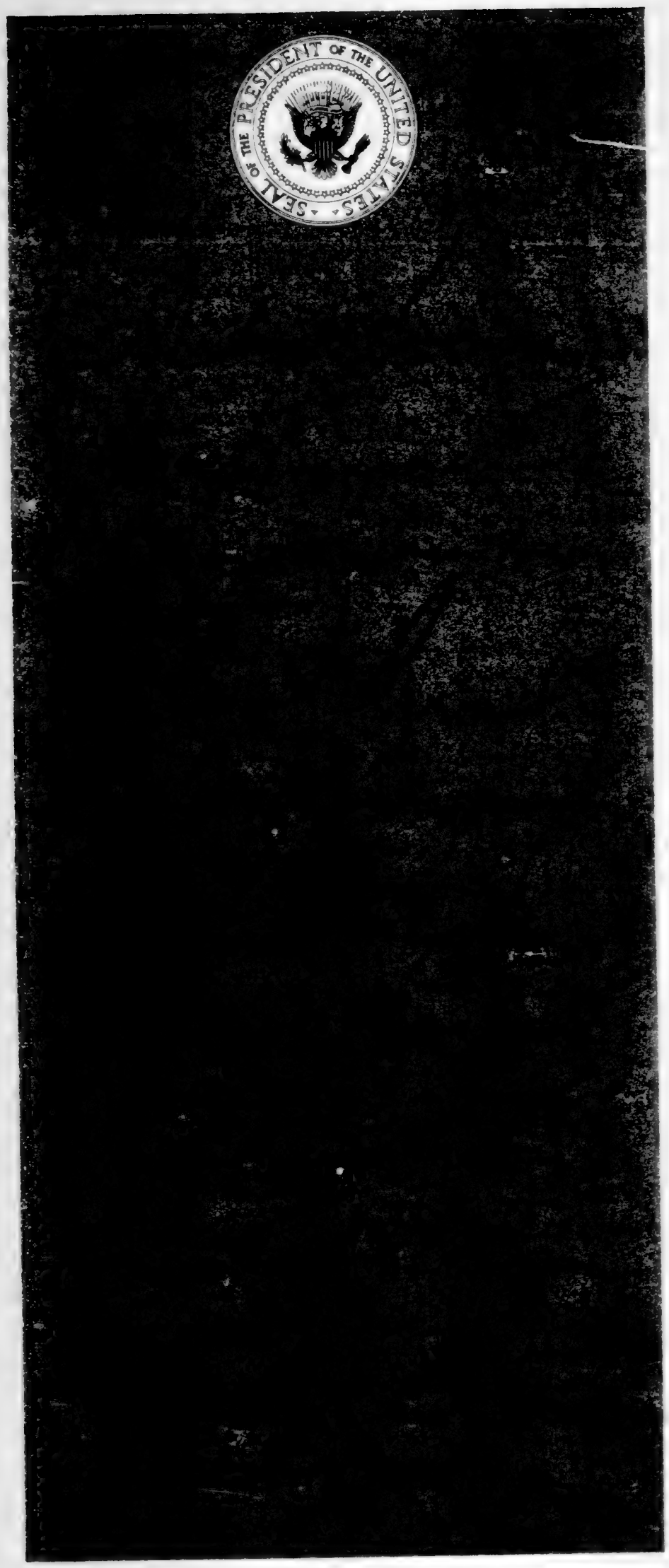

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Rules and Regulations

Federal Register
Vol. 62, No. 7
Friday, January 10, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–225–AD; Amendment 39–9882; AD 97–01–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that is applicable to certain Airbus Model A320 series. The AD requires detailed visual inspections to detect cracking of a certain fuselage frame, and repair, if necessary; and provides for an optional terminating action for the repetitive inspections. The AD was prompted by reports of a fatigue crack found initiating at hole "I" of frame 47 on two of these airplanes. The actions specified by the AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the airplane. This action corrects the applicability of the currently existing AD to cite an airplane model that was inadvertently omitted.

DATES: Effective February 10, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of November 4, 1996 (61 FR 50988, September 30, 1996).

FOR FURTHER INFORMATION CONTACT: Charles D. Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On September 19, 1996, the FAA issued AD 96–20–02, amendment 39–9768 (61 FR 50988, September 30, 1996) that is applicable to certain Airbus Model A300 series airplanes. That AD requires repetitive detailed visual inspections to detect cracking of fuselage frame 47, and repair, if necessary. It also provides for an optional terminating action for the repetitive inspections.

That action was prompted by reports of a fatigue crack found initiating at hole "I" of frame 47 on two of these airplanes. The actions specified by that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of AD 96–20–02

Recently, the FAA has become aware of an incongruity between the stated applicability for AD 96–20–02 and certain of the requirements of that AD. Specifically, the applicability statement for AD 96–20–02 was published as follows:

"Applicability: Model A300 B2–1C, B2K–3C, B2–203, B4–2C, and B4–103, series airplanes, on which Modification 2626 has not been installed; certificated in any category."

Paragraph (a)(3) of that AD, however, states:

"(3) For *Model A300 B4–203* series airplanes: Perform the inspection prior to the accumulation of 14,100 total landings, or within 50 landings after the effective date of this AD, whichever occurs later."

Because Model A300 B4–203 series airplanes were not cited in the applicability statement of AD 96–20–02, the only U.S. operator of those models was unsure whether it was required to perform the actions stated in paragraph (a)(3) of the AD. That operator contacted the FAA to resolve this issue.

The FAA acknowledges the discrepancy between the applicability of AD 96–20–02 and the applicability of paragraph (a)(3) of that AD. A typographical error on FAA's part resulted in the Model A300 B4–203 being omitted inadvertently from the applicability statement of that AD. In all other respects, the AD is correct as published.

FAA's Determination

Although the single U.S. operator of Model A300 B4–203 series airplanes has advised the FAA that it will comply with AD 96–20–02 within the compliance time that is stated in that AD, the FAA has determined that it is appropriate to take action to correct AD 96–20–02 to include the Model A300 B4–203 in the applicability statement. Since those airplanes are subject to the unsafe condition addressed by that AD, correction of the applicability of the AD is necessary to ensure that any airplane that is imported and placed on the U.S. Register in the future will be inspected as required.

Corrections Made to the Current AD

This action revises the applicability of AD 96–20–02 by correcting the applicability statement to include Model A300 B4–203 series airplanes.

In making this correction, the formatting of the text of the AD has been revised somewhat: Paragraph (a)(3) that appeared in AD 96–20–02 has been designated as new paragraph (b); it pertains only to the initial inspection action required of Model A300 B4–203 series airplanes. Accordingly, all other paragraphs of the AD have been redesignated to account for the new paragraph (b).

Since this action only clarifies the applicability of an existing rule, it has no additional economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

Cost Impact

The economic analysis that was iterated in the preamble to AD 96–20–02 correctly included affected Model A300 B4–203 series airplanes in its figures. This correction of the previously-issued AD poses no new, additional economic burden on any operator.

However, for the convenience of all affected operators, the cost impact information is repeated below:

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD. (Of this number, 2 are Model A300 B4–203 series airplanes.) It will take approximately 10 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,000, or $600 per airplane.

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Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9768 (61 FR 50988, September 30, 1996), and by adding a new airworthiness directive (AD), amendment 39–9882, to read as follows:

97–01–11 Airbus Industrie: Amendment 39–9882. Docket 92–NM–225–AD. Supersedes AD 96–20–02, amendment 39–9768.

Applicability: Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 series airplanes, on which Modification 2626 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For Model A300 B2–1C, B2K–3C, B2–203, B4–2C, and B4–103 series airplanes: Perform a detailed visual inspection to detect cracking of the fuselage, frame 47 at hole "I", in accordance with Airbus All Operator Telex (AOT) 53–02, dated November 2, 1992, at the times specified in paragraphs (a)(1) or (a)(2), as applicable.

(1) For Model A300 B2–1C, B2K–3C, and B2–203 series airplanes: Perform the inspection prior to the accumulation of 15,000 total landings, or within 50 landings after November 4, 1996 (the effective date of AD 96–20–02, amendment 39–9768), whichever occurs later.

(2) For Model A300 B4–2C and B4–103 series airplanes: Perform the inspection prior to the accumulation of 18,700 total landings, or within 50 landings after November 4, 1996, whichever occurs later.

(b) For Model A300 B4–203 series airplanes: Prior to the accumulation of 14,100 total landings, or within 50 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the fuselage, frame 47 at hole "I", in accordance with Airbus All Operator Telex (AOT) 53–02, dated November 2, 1992.

(c) If no crack is detected during the inspection required by paragraph (a) or (b) of this AD, repeat the detailed visual inspection at intervals not to exceed 200 landings.

(d) If a crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD, prior to further flight, repair in accordance with either paragraph (d)(1), (d)(2), or (d)(3) of this AD:

(1) Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or

(2) Repair in accordance with crack repair procedures specified in Airbus A300 Service Bulletin 53–265, Revision 2, dated March 10, 1992; or

(3) Repair in accordance with crack repair procedures specified in Airbus Service Bulletin A300–53–299, dated December 14, 1993.

(e) Conducting a repetitive Rototest inspection of hole "I" in accordance with Airbus A300 Service Bulletin 53–265, Revision 2, dated March 10, 1992, or Airbus Service Bulletin A300–53–299, dated December 14, 1993, constitutes terminating action for the detailed visual inspections required by this AD. If any crack is found during a Rototest inspection, prior to further flight, repair it in accordance with that service bulletin.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The visual inspection shall be done in accordance with Airbus All Operator Telex (AOT) 53–02, dated November 2, 1992. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of November 4, 1996 (61 FR 50988, September 30, 1996). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 10, 1997.

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–536 Filed 1–9–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–38111]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate authority to the Director of the Division of Market Regulation to provide exemptive relief

pursuant to the recently adopted Limit Order Display Rule (Rule 11Ac1–4(d)), and to delegate authority to delay the effective dates or compliance dates for any aspect of the implementation or operation of the Limit Order Display Rule or the recent amendments to the Quote Rule (Rule 11Ac1–1). This delegation will help to expedite and enhance the orderly implementation of the recently adopted Limited Order Display Rule and the amendments to the Quote Rule.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Betsy Prout Lefler, Special Counsel, Division of Market Regulation, 202/942–0170.

SUPPLEMENTARY INFORMATION: On August 28, 1996, the Securities and Exchange Commission adopted amendments to the Quote Rule and a new Limit Order Display Rule.[1] The Limit Order Display Rule generally requires exchange specialists and OTC market makers to display customer limit orders that are at prices superior to the market maker's or specialist's own quote, subject to certain exceptions. The amendments to the Quote Rule, among other things, (1) require OTC market makers and exchange specialists to include in their public quotes any better prices that they have placed in certain electronic communications networks ("ECN Amendments"); (2) deems an OTC market maker or specialist in compliance with the ECN Amendment if it inputs such prices into an ECN that furnishes the best market maker and specialist prices therein to an exchange or association for inclusion in the public quotation system, and provides access to those prices equivalent to the access that would have been afforded market participants if the market maker or specialist had updated its own quote; and (3) expands the definition of "OTC market maker" to mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a security covered under the Quote Rule for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

Both the Limit Order Display Rule and the Quote Rule contain provisions that allow the Commission to grant exemptive relief from various provisions of the rules to market participants and self-regulatory organizations.[2] While the Director of the Division of Market Regulation already has delegated authority to grant exemptive relief under the Quote Rule, the present amendment to Rule 30–3[3] authorities the Director of the Division of Market Regulation to grant the exemptive the relief described in the Limit Order Display Rule. This delegation will provide flexibility to ensure orderly implementation of the recently adopted Limit Order Display Rule in instances where immediate action is necessary to ensure the protection of investors and the maintenance of fair and orderly markets. The present amendment to Rule 30–3 also authorizes the Director of the Division of Market Regulation to modify as needed the compliance dates and effective dates for operation of the Quote Rule, as amended, or of the Limit Order Display Rule.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,[4] that this amendment relates solely to agency organization, procedures, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*11*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraphs (a)(61) and (a)(62) as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulations.

* * * * *

(a) * * *

(61) To grant exemptions from Rule 11Ac1–4 ("Rule") (§ 240.11Ac1–4), pursuant to paragraph (d) of the rule.

(62) From January 2, 1997 through February 17, 1997, to modify for a period not to exceed 60 days, the effective date or the compliance date of Rule 11Ac1–1 (§ 240.11Ac1–1) or Rule 11Ac1–4 (§ 240.11Ac1–4), or amendments to Rule 11Ac1–1 or Rule 11Ac1–4, with respect to any party affected by such rules.

* * * * *

By the Commission.

Dated: January 2, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–620 Filed 1–9–97; 8:45 am]

BILLING CODE 8010–01–M

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[1] Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 ("Adopting Release").

[2] 17 CFR 240.11Ac1–4(d); 17 CFR 240.11Ac1–1(d).

[3] 17 CFR 200.30–3.

[4] 5 U.S.C. 553(B)(3)(A).

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17 CFR Part 240

[Release No. 34–38139; File No. S7–30–95

RIN 3235–AG66]

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Revised Effective Date; Revised Compliance Dates.

SUMMARY: The Securities and Exchange Commission is delaying the effective date and compliance dates for Rule 11Ac1–4 ("Limit Order Display Rule") and amendments to Rule 11Ac1–1 ("ECN Amendment") (cumulatively "Order Execution Rules").

DATES: *Effective Date:* The effective date shall be January 20, 1997 for § 240.11Ac1–4 and amendments to § 240.11Ac1–1, published on September 12, 1996 (61 FR 48290), and revised by rule published on January 9, 1997, except that the effective date for § 240.11Ac1–1(a)(25)(ii) remains April 10, 1997.

Compliance Dates: Each of the first three scheduled phase-in dates for compliance with the Order Execution Rules are being delayed one week, so that the first compliance date with respect to exchange-traded securities and 50 Nasdaq stocks shall be January 20, 1997, the phase-in date for an additional 100 Nasdaq securities shall be February 7, 1997, and the phase-in date for an additional 850 Nasdaq securities shall be February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Betsy Prout Lefler, Special Counsel, Gail Marshall-Smith, Special Counsel, or David Oestreicher, Special Counsel, (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1996, the Securities and Exchange Commission

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("Commission") adopted Rule 11Ac1–4,[1] the "Limit Order Display Rule," and amendments to Rule 11Ac1–1, the "ECN Amendment," to require OTC market makers and exchange specialists to display certain customer limit orders, and to publicly disseminate the best prices that the OTC market maker or exchange specialist has placed in certain electronic communications networks ("ECNs"), or to comply indirectly with the ECN Amendment by using an ECN that furnishes the best market maker and specialist prices therein to the public quotation system.[2] In the Adopting Release, the Commission deemed the effective date of these initiatives January 10, 1997. Thereafter, the Commission modified the effective date of the rules to January 13, 1997, and established compliance dates with respect to the Limit Order Display Rule and the ECN Amendment so that compliance with the rules would be phased-in over several months.[3]

In order to allow market participants more time to adapt to the Order Execution Rules and the National Association of Securities Dealers' recently proposed amendments to its Small Order Execution System, SelectNet, and other rules to accommodate the Order Execution Rules, the Commission is hereby modifying the effective dates and compliance dates as follows: (1) the effective date for the Limit Order Display Rule and the amendments to the Quote Rule adopted August 28, 1996, shall be January 20, 1997. The effective date for the Quote Rule definition of "subject security," § 240.11Ac1–1(a)(25)(ii), remains April 10, 1997; (2) each of the first three scheduled phase-in dates for compliance with the Order Execution Rules are being delayed one week, so that the first compliance date with respect to exchange-traded securities and 50 Nasdaq stocks shall be January 20, 1997, the phase-in date for an additional 100 Nasdaq securities shall be February 7, 1997, and the phase-in date for an additional 850 Nasdaq securities shall be February 28, 1997. The remaining compliance dates for the Limit Order Display Rule and the ECN Amendment remain unchanged.

[1] 17 CFR 240.11Ac1–4.

[2] The Commission also amended subsection (a)(25)(ii) of the Quote Rule, thereby expanding the coverage of the Quote Rule to all exchange-traded securities. Thereafter, the Commission determined that it was appropriate to make this aspect of the amendments effective April 10, 1997. *See* Securities Exchange Act Release No. 38110, *infra* note 3. The present order does not change that date and, therefore, the effective date of subsection (a)(25)(ii) of the Quote Rule remains April 10, 1997.

[3] *See* Securities Exchange Act Release Nos. 37972 (November 22, 1996), and 38110 (January 2, 1997).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30(a)(62).

Dated: January 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–823 Filed 1–9–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 845; Re: Regulatory Flexibility Act (Public Law 96–354)]

RIN 1512–AB48

Explosive Materials in the Fireworks Industry

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: General notice of regulatory review.

SUMMARY: Complying with the Regulatory Flexibility Act (Public Law 96–354), the Bureau of Alcohol, Tobacco and Firearms (ATF) is required to review the regulations in 27 CFR part 55, issued in T.D. ATF–293, effective March 7, 1990. This document requests comments from members of the explosives industry and other interested persons as to the effectiveness of the regulations issued in T.D. ATF–293.

DATES: Comments and/or responses should be received by April 10, 1997.

ADDRESSES: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50204, Washington, DC 20091–0204, ATTN: Notice No. 845. Copies of written comments received in response to this general notice will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Mark D. Waller, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Background

Due to the number and severity of explosions that have occurred on the premises of special fireworks plants, the Bureau of Alcohol, Tobacco and Firearms (ATF) issued T.D. ATF–293, 55 FR 3717, which amended certain regulations contained in 27 CFR part 55. The regulations were effective on March 7, 1990.

These amendments implemented storage and recordkeeping requirements for industry members engaged in the manufacturing, importing, dealing, or using of fireworks and implemented the provisions of Pub. L. No. 99–308, 100 Stat. 449 (1986) relating to black powder. Some of the major provisions of the amendments were: (1) Extending the high explosive definition to flash powder and bulk salutes for storage purposes, since these materials can be made to detonate by means of a blasting cap when unconfined; (2) limiting the amount of flash powder used in special fireworks that can be kept outside an approved magazine and in any one processing building during a day's assembling operations to no more than 10 pounds; (3) limiting the amount of other explosive materials that can be kept outside an approved magazine and in any processing building or area during a day's assembling operations to no more than 500 pounds; (4) requiring that processing buildings or areas holding no more than 10 pounds of flash powder or 500 pounds of other explosive materials used in special fireworks be located in accordance with the table of distances in 27 CFR 55.218; (5) established new minimum separation of distance tables applicable to fireworks plants, fireworks process buildings, and fireworks plant magazines; (6) amended the recordkeeping requirements to include information regarding quantity and description of special fireworks; and (7) eliminated the recordkeeping requirements for licensees and permittees selling or disposing of exempt quantities of black powder for sporting, recreational, or cultural purposes in antique firearms or antique devices.

The periodic review of regulations under 5 U.S.C. 610(b) requires agencies to consider the following factors: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Continued Need for Rule

ATF continues to believe that these regulations help to avoid accidental explosions on the premises of special fireworks plants.

Nature of Complaints Received

ATF has received no complaints about the regulating from members of the fireworks industry, and believe the regulations should remain in place.

Complexity of the Rule

The requirements were determined to be the minimum necessary to improve the safe storage of special fireworks.

Conflicting, Duplicative or Overlapping Federal Rules

None of the requirements of the regulation conflict, duplicate, or overlap other Federal rules.

Changes in Area Affected by Rule

The Regulatory Flexibility Act requires an agency to review all affected rules within ten years of the publication of the final rule. This is the first such review of final rule, T.D. ATF–293, since the effective date of March 7, 1990. ATF is unaware of any changes in the fireworks industry having a significant impact on the effectiveness of these regulations.

Public Participation

One of ATF's primary missions is protection of the public. To successfully accomplish this goal, we are requesting comments on the following questions concerning the amended regulations stemming from T.D. ATF–293:

(1) Have any of the changes in the regulations issued in T.D. ATF–293 caused any unnecessary burdens on business activities or practices?

(2) How could the existing regulations be altered to assure the same security, protection, and traceability of explosive materials, while further reducing expenses to industry members?

(3) Are there any areas of the explosives regulations which need strengthening? Are there any areas of the amendments contained in T.D. ATF–293 that need more stringent regulation?

(4) Are there any areas contained in the regulations issued in T.D. ATF–293 that need to be relaxed, rethought, or rewritten?

(5) Have there been any changes in the industry which would necessitate changes in these regulations?

Written comments must be received within the 90-day comment period. ATF will not recognize any material as confidential. Any materials submitted may be disclosed to the public. Any material which the transmitter considers to be confidential or inappropriate for disclosure should not be included in the suggestion. The name of the person submitting the suggestion is not exempt from disclosure.

Drafting Information

The author of this document is Mark D. Waller, Firearms and Explosives Regulatory Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Signed: November 27, 1996.

John W. Magaw,

Director.

Approved: December 16, 1996.

John P. Simpson,

Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 97–593 Filed 1–9–97; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI001; FRL–5674–1]

Clean Air Act Final Interim Approval of the Operating Permits Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the operating permits program submitted by the State of Michigan for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, Permits and Grants Section (AR–18J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2703. E-mail address: valenziano.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the Clean Air Act Amendments of 1990 (title V), and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Clean Air Act (Act) and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the expiration of the interim approval period, it must establish and implement a Federal program.

On June 24, 1996, EPA proposed interim approval of the operating permits program for the State of Michigan. See 61 FR 32391. The EPA received public comment from five organizations on the proposal and compiled a Technical Support Document (TSD) responding to the comments and briefly describing and clarifying aspects of the operating permits program. In this document EPA is taking final action to promulgate interim approval of the operating permits program for the State of Michigan.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The EPA received comments on a total of 12 topics from five organizations. The EPA's response to these comments as developed for the response to comments TSD is included in this section.

1. Indian Country

The EPA proposed that the interim approval of Michigan's operating permits program shall not extend to any sources of air pollution on Indian lands, including lands within the exterior boundaries of any Indian reservation in the State of Michigan. MDEQ commented that Michigan's part 70 authority should extend to some lands within the exterior boundaries of Indian reservations, and identifies a specific

source on an Indian reservation that the State believes is within its jurisdiction. MDEQ states that it intends to develop legal arguments to support its determination that lands within the exterior boundaries of reservations that have been sold for non-tribal uses are within the State's jurisdiction. MDEQ also states that it expects such sources to submit operating permit applications in accordance with the State regulations.

Because Michigan has not demonstrated the legal authority to regulate sources in Indian country, including sources on non-Indian owned fee lands within the exterior boundaries of Indian reservations, the final interim approval of Michigan's part 70 program does not extend to such sources. However, EPA will carefully consider any evaluation Michigan submits in the future regarding State authority over such sources. The EPA retains the authority to issue part 71 permits to all sources in Indian country until such time as EPA approves a part 70 program. Part 71 application submittal deadlines for Indian country are established in 40 CFR 71.4(b) and 40 CFR 71.5(a)(1), and will be no later than November 15, 1998. Any sources located in Indian country required to submit applications earlier than this date will be notified in accordance with the requirements of part 71. The EPA takes no position on the State seeking voluntary compliance with State permitting requirements in Indian country.

2. Delegation of State Program to Local Governments

The proposed interim approval of Michigan's part 70 program confirmed the State's authority to delegate the program to certain county governments, such as Wayne County. MDEQ asked EPA to clarify whether a delegation would require a part 70 program revision, and what the timing and content of any required program revision would be.

Title V of the Act and the part 70 regulations specify the elements of a State operating permits program. In addition to the criteria for the permits themselves, these elements address various program infrastructure and administration issues. Examples include the adequacy of the agency's legal authorities and staffing. Thus, the delegation of the program authorities to another agency would by its nature entail revision of the State's part 70 program.

40 CFR 70.4(i) requires that program revisions be approved by EPA before they become finally effective. However, EPA is developing a program revision process that will meet the requirements of 40 CFR 70.4(i) while also providing continuity as States modify and update their programs. Although the details of this process have yet to be established, this process will focus on ongoing cooperation between the State and EPA, with real-time evaluation of program revision efforts. The EPA will work with Michigan as this process is developed so that any program revision, including any delegation of the State program to a local agency, can take advantage of this approach.

The content of a revised part 70 program submittal to EPA would depend on the nature and scope of the actual delegation. The information provided to EPA should address the changes and additions that the delegation makes to the program that has already been approved by EPA. The State should review the program submittal requirements in 40 CFR 70.4 and determine what elements are necessary to address the delegation. For example, the submittal of State regulations would not be necessary if they are not revised; however, the adoption of any local regulations necessary for the delegation should be included in the submittal. Similarly, a revised legal opinion from the Attorney General would likely be needed to verify that the local agency has the authority to carry out its part 70 program responsibilities established by the delegation. The EPA will provide Michigan additional guidance as necessary to address the program revision requirements for any particular State delegation to a local agency.

3. Definition of Potential to Emit

As a condition of full approval, EPA proposed that Michigan must revise its definition of "potential to emit" to require that limits on potential to emit be federally enforceable. Two commenters noted that a recent court case (*Clean Air Implementation Project* v. *EPA*, no. 96–1224 (D.C. Cir. June 28, 1996)) vacated the federally enforceable requirement from the 40 CFR 70.2 definition of potential to emit. Both commenters stated that this issue should be removed from Michigan's list of interim approval issues. The EPA agrees with the commenters, and has removed this issue as a condition of full approval. The EPA intends to develop a rulemaking to address the enforceability requirements on potential to emit limits for the title V program, the New Source Review program, and the section 112 toxics program.

4. Research and Development (R&D) Activities

In the proposed interim approval of Michigan's part 70 program, EPA acknowledged the State's regulatory provision that allows R&D activities on the same contiguous site as manufacturing activities to be treated as a separate source for purposes of determining operating permit program applicability. Although EPA believes that R&D should be treated as having its own industrial grouping for purposes of determining major source status, EPA stated in the Michigan proposal that separate treatment will not exempt R&D facilities in all cases. This is because some R&D activities may be individually major, or because they may be a support facility that makes significant contributions to the product of a collocated major facility. One commenter noted the R&D discussions in the part 70 supplemental proposal preamble (60 FR 45556–45558), and asked EPA to clarify whether EPA maintains its position in the supplemental proposal regarding the applicability of the support facility test in the R&D context.

As discussed in the supplemental proposal preamble, EPA believes that R&D activities should not generally be considered support facilities to collocated industrial facilities, since the support provided is directed towards development of new processes or products and not to current production. However, if an activity does contribute to the ongoing product produced or service rendered at a facility in more than a de minimis manner, those activities should be considered part of the source for applicability purposes.

5. Exemptions From Major Source Determinations

The EPA proposed as a condition of full approval that Michigan must remove its exemptions of certain small activities from determining major source status. Two commenters objected to this interim approval issue. One commenter stated that there is no express regulatory requirement mandating that insignificant activities be considered in major source determinations under title V. The commenter also believes the inclusion of such activities is inconsistent with EPA's July 10, 1995 guidance memorandum entitled "White Paper for Streamlined Development of Part 70 Permit Applications".

Neither the applicability requirements in 40 CFR 70.3 nor the "major source" definition in 40 CFR 70.2 provide any exemptions for insignificant activities in determining major source status. The

concept of insignificant activities originates under 40 CFR 70.5(c), and only establishes reduced title V permit application requirements for activities defined as insignificant. 40 CFR 70.5(c) does not modify the title V applicability provisions, and specifically states that "an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement." In addition, the White Paper provides guidance on the permit application requirements for insignificant activities; it does not address major source applicability considerations.

One commenter expressed concern that counting insignificant activities in major source determinations would be very burdensome. The commenter was also concerned that the use of engineering judgement in determining emissions from insignificant activities does not provide sources sufficient certainty and protection from lawsuits. The EPA does not agree that the calculation of emissions from insignificant activities need be a burdensome and resource intensive task. As discussed in the proposed interim approval of Michigan's part 70 program, EPA expects that such emissions would only be examined in those cases where the insignificant activity emissions might impact whether the source is major. In addition, sources and permitting authorities have significant discretion in determining the rigor of analysis necessary for calculating insignificant activity emissions. Such analysis may not even need to be performed on a source by source basis, and could instead establish a general emission level for a particular insignificant activity that can be used for all sources. For example, a permitting authority could determine that sources may assume 1,000 pounds of emissions from a particular insignificant activity. With respect to the commenter's concerns about protection from lawsuits, EPA sees no distinction between the emissions calculations for significant activities and insignificant activities. For example, a source with a potential to emit that is just under a title V applicability threshold should do what is necessary to ensure that the source indeed is not subject to the operating permits program, as additional emissions from either significant or insignificant activities could make the source major.

Another commenter stated that Michigan's rule is consistent with the actual application of major source determinations made throughout the country, and commented that other States are not including insignificant activities in determining applicability. The commenter also stated that there is no EPA guidance for determining emissions from such activities. The EPA is unaware of any other approved part 70 program that has regulatory exclusions for insignificant activities in determining a source's potential to emit. If EPA determines that a State's part 70 program is not being administered in accordance with part 70, EPA has the authority under 40 CFR 70.10 to require the State to correct the deficiencies. In addition, EPA has the authority to pursue enforcement actions against sources for violations of the Act, including the requirement to obtain a title V permit. With respect to the lack of EPA guidance for determining insignificant activity emissions, EPA generally issues emissions factor guidance on a source category basis. The EPA will consider developing guidance for any particular insignificant activities of concern that are not addressed in current guidance.

6. Certification of Compliance

The EPA proposed a condition for full approval requiring Michigan to adopt statutory or regulatory authority that ensures permit applications include a certification of compliance and a statement of the methods used for determining compliance. MDEQ commented that it will work with EPA to resolve this issue during the interim approval period. The EPA also agrees to work with MDEQ to resolve this issue, and would like to clarify that this is a condition of full approval because it is not clear that the underlying State requirements legally obligate sources to include the compliance certification requirements in their permit applications.[1]

Another commenter commented that Michigan's program does require applications to include compliance certifications, and states that this issue should be deleted. The following analysis addresses the commenter's arguments.

40 CFR 70.5(c)(9)(i) and (iv) require permit applications to include a statement of compliance for all applicable requirements. This statement must be certified by a responsible official in accordance with 40 CFR 70.5(d). Although Michigan's statute and regulations require applications to include a certification by a responsible official, they do not require applications to include a certified statement of compliance for all applicable requirements.

40 CFR 70.5(c)(9)(ii) requires the compliance certification to include a statement of the methods used for determining compliance. Although section 324.5507(1)(f)(ix) of Michigan's Natural Resources and Environmental Protection Act (NREPA) requires applications to include proposed compliance method information, the State provision does not associate this compliance method information to compliance certification requirements. The compliance certification provisions must therefore include a statement of the methods used for determining compliance. Of course, this does not preclude Michigan from expanding the scope of its current application requirement to serve this purpose if the State provides a means by which a source can certify that it made its compliance determination using its proposed compliance determination method.

40 CFR 70.5(c)(9)(iii) requires applications to include a schedule for submission of compliance certifications at least annually or more frequently if specified by the underlying requirement or the permitting authority. The EPA agrees that section 324.5507(1)(d) of NREPA satisfies this requirement and is clarifying in the final condition of full approval that this provision is not an issue.

7. Definition of Emergency

The EPA proposed as a condition of full approval that Michigan revise its definition of emergency in section 324.5527(1) of NREPA to ensure that the State's definition is not broader than that provided by 40 CFR 70.6(g)(1). Two commenters disagreed with this condition of full approval. Both commenters stated that the Michigan definition is not broader, and only clarifies what could be considered "sudden and reasonably unforeseeable events". The EPA has reevaluated this issue and agrees with the commenters that the State definition of emergency meets the requirements of 40 CFR 70.6(g).

The additional language in the State definition of emergency includes the following as events that could be considered an emergency: "war, strike, riot, catastrophe, or other condition as to which negligence on the part of the person was not the proximate cause". These situations are eligible for the affirmative defense only if they meet all the provisions of 40 CFR 70.6(g). Specifically, such events must arise from sudden and reasonably unforeseeable events beyond the control

[1] Despite this regulatory deficiency, the State application forms do include the compliance certification requirements.

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of the source; require immediate corrective action to restore normal operation; and not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. Further, the emergency defense only applies to exceedances of technology based emission limitations that are due to unavoidable increases in emissions attributable to the emergency. These provisions are important qualifications, because the specific State examples would not qualify as emergencies in all situations. For example, exceedances at a source due to increased production would not qualify as an emergency even if the increase is due to additional demand caused by a strike at another source. Similarly, an exceedance at the source involved in a strike may not qualify as an emergency if the strike was not reasonably unforeseeable, or if the exceedance was not an unavoidable increase attributable to the strike. The EPA believes that the additional Michigan events are properly qualified because the State definition includes all of the requirements of 40 CFR 70.6(g). Therefore, EPA is removing this issue as a condition of full approval.

8. Source Category Limited Interim Approval

In its program submittal, the State of Michigan requested source category limited (SCL) interim approval of its 4 year permit issuance schedule. In the proposed interim approval notice for Michigan, EPA acknowledged Michigan's 4 year schedule as part of the State's permit fee sufficiency demonstration. However, EPA could only propose in the alternative the State's request for SCL interim approval because Michigan's regulations currently require a 3 year permit issuance schedule. MDEQ requested that EPA clarify the State's obligations for submitting a program revision once the 4 year schedule is incorporated into the State's regulations.

The EPA proposed SCL interim approval in the alternative so that a program revision would have been unnecessary if Michigan had been able to finalize and submit its rule revisions prior to this final action on Michigan's part 70 program. Because the State has not yet submitted the regulatory revision that would change the State permit issuance schedule from 3 to 4 years, this final action on Michigan's part 70 program fully approves the 3 year schedule contained in the current State regulations.

Once Michigan finalizes its 4 year issuance schedule, the State will be obligated to submit a part 70 program revision to EPA for SCL interim approval. Although 40 CFR 70.4(i) requires that program revisions be approved by EPA before they become finally effective, EPA expects that it will be able to quickly process Michigan's request for SCL interim approval. If the final 4 year schedule is identical to the draft rule that EPA proposed for SCL interim approval, EPA will be able to finalize SCL interim approval without having to repropose the action. If there are changes to the schedule, EPA would still be able to expedite the SCL interim approval through a direct final action. As discussed above in section II.A.2., EPA is also developing a program revision process that may help expedite the program revision process for this situation.

9. Startup, Shutdown, and Malfunction (SSM) Provisions

The EPA proposed as a condition of full approval that Michigan revise its SSM provisions to be consistent with the emergency defense provisions in 40 CFR 70.6(g), or adopt an enforcement discretion approach consistent with the Act. Two commenters expressed concern with this interim approval issue. MDEQ disagreed that the SSM rules affect the State's ability to enforce the requirements of title V, but agreed to work with EPA to address the issue during the interim approval period. The EPA believes it is important that MDEQ and EPA work together during the interim approval period, and commits to working with MDEQ to address this and other interim approval issues.

Another commenter stated that EPA's consideration of Michigan's SSM rules is too inflexible, as the SSM rules provide an affirmative defense only in narrowly defined and highly prescriptive circumstances. The commenter also believes that EPA overlooked the potential for environmental benefits resulting from the SSM requirements to use good air pollution control practices and implement preventative maintenance and malfunction abatement plans. Irrespective of the control and work practice provisions that Michigan's SSM rules require for sources to be eligible for the affirmative defense, EPA has no authority under its part 70 rules to approve an affirmative defense that is less stringent than that contained in 40 CFR 70.6(g). The commenter extolled the benefits of the safeguards contained in Michigan's SSM rules, but did not offer anything to counter EPA's finding that these rules are broader than 40 CFR 70.6(g) and are therefore inconsistent with the federal rule. As discussed in the Michigan proposal, however, EPA could also consider an enforcement discretion approach as a means for resolving this interim approval issue. Such an approach would allow Michigan to retain the specific SSM provisions that may provide environmental benefit.

The EPA would also like to clarify that the Michigan SSM regulations do not affect EPA's enforcement capabilities under the Act during the two year interim approval period. The EPA reserves the right to pursue enforcement of applicable requirements, in accordance with EPA's enforcement discretion policy, notwithstanding the existence of the State's SSM regulations. Similarly, the Michigan rules do not affect citizen suit rights under section 304 of the Act. The interim approval of Michigan's part 70 program establishes the mechanism for the State to issue federally enforceable part 70 permits; EPA will continue to implement the operating permits program in accordance with Title V of the Act and the implementing Federal regulations.

10. Environmental Audit Privilege and Immunity Law

The EPA proposed several conditions for full approval based on the enforcement deficiencies created by Michigan's Environmental Audit Privilege and Immunity Law (audit law), part 148 of NREPA. Four commenters disagreed with EPA's position that Michigan's audit law adversely affects Michigan's ability to comply with the enforcement requirements of part 70.[2]

MDEQ generally commented that Michigan's law does not affect the State's ability to enforce the requirements of title V. The Michigan State Senator sponsoring the bill that became Michigan's audit law also commented that the law does not adversely affect Michigan's authority to assure compliance with and enforce permits. Both commenters stated that regulated entities remain fully liable for any damages they cause, and self reporting data, agency inspections, and other information required by law is not privileged and remains available to the State and the public. However, both commenters supported the interim approval of Michigan's part 70 program, as it will allow the program to be implemented while EPA and MDEQ resolve these issues during the interim approval period.

For the reasons outlined in the Michigan proposal and as further discussed below, EPA remains

[2] One commenter also submitted comments on a fifth commenter's behalf.

concerned that Michigan's audit law affects the State's ability to meet the enforcement requirements of part 70. The EPA recognizes that Michigan may have a different interpretation of the provisions in the audit law, and has provided as an alternative condition for full approval that the State need only submit a revised title V Attorney General's opinion that addresses EPA's concerns and certifies that Michigan's operating permits program meets the part 70 requirements in light of the audit law. The EPA believes that a new Attorney General's opinion would be appropriate, as the Attorney General's opinion in the original program submittal to EPA was developed prior to the passage of the State audit law. The EPA appreciates Michigan's willingness to work with EPA during the interim approval period to resolve these issues.

The EPA also received extensive adverse comments from two law firms that represent nationwide trade organizations and industries. The following subsections address the issues raised by these commenters.[3]

a. Effect of the Michigan audit law on Michigan's enforcement authority.

The commenters stated that nothing in the Act or part 70 prohibits a State from establishing a new protection for audits, expanding existing privileges, providing an additional affirmative defense, or determining that criminal or civil prosecution is inappropriate in certain defined situations, such as those specified in the Michigan audit law.

The EPA disagrees. Section 502(b)(5)(E) of the Act lays out the minimum enforcement authorities which Congress required a State to have in order to secure Federal approval to implement and enforce a title V operating permits program. That section requires, as a condition of Federal approval, that a State have adequate authority to issue permits and assure compliance; to terminate or revoke such permits for cause; and to enforce permits, permit fee requirements and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation and to provide appropriate criminal penalties. The part 70 implementing regulations, at 40 CFR 70.11, elaborate upon those authorities. Part 70 requires a State to have authority to issue emergency orders and seek injunctive relief (40 CFR 70.11(a) (1) and (2)), to assess civil and criminal penalties in a maximum amount of not less than $10,000 per day per violation (40 CFR 70.11(a)(3)), and to assess appropriate penalties (40 CFR 70.11(c)). Although neither title V nor part 70 expressly prohibits State audit privilege and/or immunity laws, the analysis in the proposed interim approval of Michigan's program shows how EPA believes the Michigan audit law interferes with Michigan's general enforcement authority and its civil penalty authority as required in title V and the part 70 implementing regulations so as to preclude full approval of Michigan's operating permits program.[4] For example, as EPA explained in the Michigan proposal, the immunity provisions of the Michigan audit law alter and in fact eliminate the State's authority to recover *any* civil penalties under the circumstances identified in the State law. *See* 61 FR 32394–32395. Moreover, the privilege provisions of the Michigan audit law prevent the State from obtaining potentially important information on whether a civil or criminal violation occurred or has been corrected. If the State, by virtue of such laws, surrenders its ability to thoroughly investigate potential violations or its discretion to assess appropriate penalties in the face of violations, then the State's fundamental enforcement authority is significantly compromised. The EPA believes that this is the case with the Michigan audit law.

In a similar vein, the commenters argue that the State of Michigan has the general authorities enumerated in section 502(b)(5)(E) and 40 CFR 70.11 to enforce permits, permit fee requirements and the requirement to obtain a permit and to recover civil and criminal penalties in a maximum amount of not less than $10,000 per day of violation, and that nothing in the text of section 502(b)(5)(E) of the Act or the part 70 regulations authorizes EPA to consider the effect of State laws of general applicability on a State's title V civil and criminal enforcement authorities. The commenters further argue that the logical corollary of EPA's proposed action with respect to the Michigan audit law is that *every* State procedural and evidentiary rule must be evaluated and amended whenever EPA believes that it could in some fashion, directly or indirectly, interfere with environmental enforcement.

Laws of general applicability are an appropriate subject for EPA review as is evident from the language of the part 70 regulations themselves. The regulations require that a State applying for a title V operating permits program include copies of "all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program *or restrict its implementation.*" 40 CFR 70.4(b)(2) (emphasis added). The regulations also require a legal opinion from the State Attorney General asserting that the laws of the State provide adequate authority to carry out "all aspects of the program." 40 CFR 70.4(b)(3). It is certainly EPA's expectation that, in issuing such a legal opinion, the Attorney General is certifying that no State laws, even laws of general applicability or laws of evidence, interfere with the State's authority to administer and enforce the title V program. *See* 59 FR 47105, 47108 (September 14, 1994) (requiring Oregon to revise or clarify meaning of criminal statute appearing to limit criminal liability of corporations as a condition of full title V approval); 59 FR 61820, 61825 (December 2, 1994) (accepting Oregon Attorney General's opinion regarding effect of statute).[5]

Both commenters also argued that the Michigan audit law does not interfere with the enforcement requirements of title V because it is qualified in a number of important respects. The commenters note that the Michigan audit law does not offer protection from disclosure for information obtained by observation, sampling, or monitoring by any regulatory agency; machinery and equipment maintenance records; information legally obtained independent of the environmental audit; and information required by law to be collected, developed, reported or otherwise made available to a government agency. *See* section

[3] These commenters also commented on various EPA documents, including the memorandum entitled "Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce Title V Requirements", April 5, 1996, and the policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations", December 22, 1995. These comments are addressed to the extent that they are relevant to EPA's action on Michigan's title V operating permits program.

[4] In addition, part 70 does not provide for any affirmative defenses beyond that provided by the emergency defense provisions in 40 CFR 70.6(g). See subpart II.A.9. of this notice regarding Michigan's affirmative defense for startups, shutdowns, and malfunctions.

[5] One commenter argues that section 116 of the Act bars EPA from seeking to preempt State audit privilege and/or immunity laws. Section 116 states that, subject to limited exceptions, nothing in the Act shall preclude or deny the right of any State to adopt or enforce emissions standards or limitations or requirements respecting the control or abatement of air pollution "except where such emission standard or limitation is less stringent than required by the Clean Air Act." Such an interpretation would mean that EPA had no authority to disapprove any State enforcement provisions as a condition of title V approval. Section 502(b)(5)(E), which requires EPA to promulgate minimum enforcement authorities required for approval of a State title V program, clearly belies such an argument.

14802(3), part 148 of NREPA. The commenters state that the privilege is further limited because it only applies to an environmental audit report as defined in the Michigan audit law. In addition, the commenters state that the immunity provisions in the Michigan audit law are limited by the provisions in section 14809 of NREPA, which, among other things, require the source to promptly disclose violations, make a good faith effort to achieve compliance, pursue compliance with due diligence, and promptly correct the noncompliance.

The EPA noted in the proposed interim approval of Michigan's program that, although the Michigan audit law appears to contain several exemptions from the otherwise broad scope of the privilege protection, EPA is unable to determine the extent to which the exemptions limit the application of the privilege. In other words, the extent to which evidence of violations of title V permits and permit program requirements would be exempted from the privilege provisions of the Michigan audit law is not clear. For example, the Michigan audit law appears to provide privilege protection for a source that determines through an environmental audit that it is operating without a title V permit. This violation appears eligible for the privilege because part 70 does not have any source notification requirements prior to the submittal of the permit application that would exclude this violation from the privilege provisions. The EPA does not agree with the commenters' assertion that the privilege is further limited by the definition of an environmental audit report. The Michigan audit law broadly defines such a report to include any documents created as a result of an environmental audit, such as supporting information and implementation plans that address correcting violations and improving current compliance. In addition, the Michigan audit law's exemptions from privilege protection do not appear to apply to the penalty immunity in section 14809, part 148 of NREPA. Therefore, it appears that any violation discovered during an environmental audit, regardless of whether it is eligible for the privilege, is eligible for the immunity as provided in section 14809. Despite the limitations on the scope of the State's immunity provisions imposed by the requirement that disclosure be "voluntary", EPA believes that application of the immunity provisions is so broad that it potentially could apply to any title V violation. Because the privilege and immunity exemptions could apply to title V requirements, EPA must therefore infer that there could be violations at a title V source discovered through an environmental audit that would be entitled to the privilege or immunity provided by the Michigan audit law. The EPA again notes that Michigan may have a different interpretation of its audit law, in which case an Attorney General's opinion may help to resolve these interim approval issues.

The commenters also take issue with EPA's interpretation of the title V and part 70 requirements for enforcement authority, as evidenced in the April 5, 1996 memorandum entitled "Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce Title V Requirements" (hereinafter, the "April 5 Title V Memorandum") and the proposed interim approval of Michigan's part 70 program. The commenters argue that EPA's interpretation and application of the title V enforcement requirements improperly interferes with the States' role as independent sovereigns, improperly divests States of their primary responsibility for implementing and enforcing the Act, and conflicts with the Clinton Administration's stated policy to allow States to experiment with alternative approaches to achieve environmental protection. The commenters further argue that the determination of the Michigan legislature that criminal or civil penalties are inappropriate under the circumstances set forth in the Michigan audit law is within the statutory boundaries and flexibility provided by the Act. The commenters continue that the immunity provisions of the Michigan audit law reflect the Michigan legislature's judgment as to the "appropriate" penalty for companies that voluntarily disclose and correct instances of environmental noncompliance and reflect a reasonable allocation of the State's enforcement resources.

The EPA agrees that, in enacting the Act, Congress believed that States and local governments should have the primary responsibility for controlling air pollution at its source. *See* Section 101(a)(3) of the Act. The EPA also agrees with the commenters that the States are to be given broad flexibility to select alternative means to achieve the minimum Federal requirements established in the Act by Congress and by EPA in the part 70 regulations, and fully supports State experimentation to achieve greater compliance with environmental laws. Such flexibility and experimentation, however, must be, as the commenters acknowledge, *within* the bounds of the statutes enacted by Congress and the implementing regulations promulgated by EPA. It cannot cancel out the requirement that States must meet some minimum Federal requirements as a condition of Federal approval of their programs.

In the case of the operating permits program, those minimum Federal requirements are set forth in title V and the part 70 regulations. It is these requirements that EPA is insisting that the State of Michigan meet as a condition of full approval of its title V program. In short, EPA does not believe that the Michigan title V program is within the statutory boundaries established by Congress or the flexibility provided by the Act because the Michigan audit law would limit the enforcement authority Congress and EPA required States to have as a condition of Federal approval.

Moreover, the commenters' argument that the Michigan audit law governs areas of law traditionally committed to States in their role as independent sovereigns—if taken to its logical conclusion—would mean that a State could not be required to have any civil or criminal penalty authority to get approval for a title V program. It is an argument that goes to the validity of section 502(b)(5)(E) and 40 CFR 70.11 themselves and therefore is untimely in this context. As stated above, Congress through title V, and EPA through the part 70 implementing regulations, required States to satisfy certain minimum requirements for enforcement authority as a condition of Federal approval of a Clean Air Act operating permits program. By conditioning full approval of the Michigan title V program on changes to the Michigan audit law or a demonstration by the State satisfactory to EPA that the Michigan audit law does not interfere with the enforcement requirements of title V, EPA is simply seeking to assure that Michigan has the required enforcement authorities before receiving Federal approval of its program. *Cf. Commonwealth of Virginia* v. *Browner*, 80 F.3d 869, 880 (4th Cir. 1996) (in rejecting Virginia's argument that requiring the State to change its judicial standing rules as a condition of title V approval violated State's sovereignty, the Court stated: "Even assuming *arguendo* the accuracy of Virginia's assertion that its standing rules are within the core of its sovereignty, we find no constitutional violation because federal law 'may, indeed, be designed to induce state action in areas that would otherwise be beyond Congress' regulatory authority.'" *citing FERC* v. *Mississippi*, 456 U.S. 742, 766 (1982)).

The commenters also assert that EPA's use of its title V program approval authority to "force" States to modify their audit privilege and/or immunity legislation is contrary to Congress' general expression of intent against the automatic use of audit reports for enforcement of the Act, as expressed in the Joint Explanatory Statement of the Conference Committee Report for the 1990 Amendments. S. Conf. Rep. 101–952, 101st Cong. 2d Sess. 335, 348 (Oct. 26, 1990), *reprinted in* Legislative History at 941–42, 955, 1798. The commenters further assert that Michigan's decision to provide qualified audit immunity is consistent with that Congressional intent.

As an initial matter, EPA disagrees that it is using the title V approval process to "force" States to modify their audit legislation. Instead, as stated above, EPA is simply analyzing to what extent the audit privilege and/or immunity laws of a particular State compromise the enforcement authorities required by Congress in title V and interpreted by EPA through the part 70 regulations, as a condition of Federal approval of the State's operating permits program.

With respect to the issue of Congress' intent, the language from the Conference Report cited by the commenters does not clearly express a desire that audit reports not be used for enforcement of the Act requirements. Rather, the text expresses some general support for the concept of auditing and a desire that the *criminal penalties* of section 113(c) "should not be applied in a situation where a person, acting in good faith, promptly reports the results of an audit and promptly acts to correct any deviation. Knowledge gained by an individual solely in conducting an audit or while attempting to correct deficiencies identified in an audit or the audit report should not *ordinarily* form the basis for intent which results in criminal penalties." (emphasis added). The legislative history merely indicates that the circumstances involving violations discovered through an audit report and voluntarily disclosed by the company will generally not meet the requirements for criminal liability. Importantly, Congress did not in any way suggest that a company which self-disclosed violations discovered through an environmental audit should be immune from civil penalties. In any case, when Congress amended the Act in 1990, there were no audit privilege and/or immunity laws on the books in any State. Any legislative history on auditing and enforcement from that period must be read in light of that reality. EPA does not believe Congress intended that the growth of environmental auditing—in itself a laudable goal fully supported by EPA—comes at the expense of the enforcement of environmental laws.[6] If Congress had wished to give special status to self-disclosed violations detected during an environmental compliance audit or to prohibit the use for general enforcement purposes of audits conducted under the Act and EPA approved programs, Congress could have done so in the language of the 1990 amendments. If anything, the legislative history of the Act is evidence of Congress' intent that such incentives for audits should be a basis for the exercise of prosecutorial discretion, and not a legislative grant of immunity or protection from disclosure.

The commenters also argue that Congress intended to vest the States with discretion in enforcing title V permit requirements and that the part 70 regulations merely provide that penalties assessed under a title V program must be "appropriate" to the violation. Nothing requires a State to obtain a penalty for every violation or prohibits a State from rewarding good actors who identify, disclose and correct violations, the commenters continue.

The EPA agrees that a State is not required to collect a penalty for every violation or is precluded from using its discretion to reward companies that conduct environmental audits and disclose and correct any violations discovered through such an audit. The EPA disagrees, however, that the only inquiry for title V approval is whether a State has authority to assess "appropriate" penalties. The part 70 regulations first state that civil and criminal fines must be recoverable "in a maximum amount of *not less than $10,000 per day per violation*." 40 CFR 70.11(a)(3)(i)–(iii) (emphasis added).[7] Section 70.11(c) then provides that "[a] civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate *to the violation*." (emphasis added). By interpreting title V and part 70 to require only that States have authority to assess "appropriate" penalties, the commenters are reading out of the regulations the independent requirement that States have the authority to assess civil and criminal penalties of an amount not less than $10,000 per day per violation. Read together, 40 CFR 70.11(a)(3) and 70.11(c) require that a State have authority to assess a civil or criminal penalty of up to $10,000 per day per violation and that, in addition, the penalty assessed in any particular case be "appropriate" to the violation at issue. Thus, EPA agrees with the commenters that it is within Michigan's discretion not to impose the statutory maximum penalty for violations as to which a lesser penalty is appropriate or to determine that criminal or civil prosecution is inappropriate under the facts and circumstances of a particular case so long as the State has the *authority* to assess penalties for each day of violation. The legislative history cited by the commenters in support of their position is, in fact, consistent with EPA's position on this issue. *See* Legislative History at 5815 ("states are not going to be required to impose these minimum fines of $10,000 for permit violations. Instead, the bill is revised to make clear that states shall ensure that they have the *authority* to impose this. It is not mandated, it is authority.") (emphasis added).

Several commenters stated that section 113(e) of the Act only sets forth penalty factors that EPA or a Federal court must consider in imposing civil penalties for noncompliance with the Act, that section 113(e) has no bearing on EPA's authority to approve or disapprove State title V programs, and that nothing in section 113, title V or part 70 authorizes EPA to condition approval of a State's title V permit program on the State's ability to consider penalty factors comparable to those set out in section 113(e). The commenters further assert that, although section 113(e) is inapplicable, section 113(a) authorizes EPA in certain defined circumstances to take appropriate action, namely, filing an action against a facility where EPA believes the State's response was inadequate. This back-up

[6] That distinction is also reflected in EPA's Self-Disclosure policy, which offers significant incentives for businesses to audit and self-disclose violations, while at the same time retaining safeguards to ensure the protection of public health and the environment.

[7] One commenter appears to assert that a State need only have the authority to assess "appropriate" criminal penalties. In doing so, the commenter ignores the clear language of the part 70 regulations. Section 502(b)(5)(E) requires States to have authority to "recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties." In promulgating part 70, EPA determined that to provide "appropriate criminal penalties" for purposes of title V approval, a State must have authority to issue criminal penalties in a maximum amount of not less than $10,000 per day per violation. *See* 40 CFR 70.11(a)(3)(ii) and (iii). If the commenter believes that the enforcement authorities enumerated in the part 70 regulations, including the requirement for criminal penalty authority of up to $10,000 per day per violation, are excessive or in any way inconsistent with the statutory authorities, the commenter should have challenged the part 70 regulations at the time of promulgation in 1992.

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authority, and not wholesale invalidation of a State's title V permits program, the commenters continue, is EPA's tool for ensuring to its own satisfaction that State audit legislation does not allow egregious Act violations to go unsanctioned. In any event, one commenter asserts that the Michigan audit law does take into account a violator's full compliance history in establishing the disclosure and immunity provisions.

The EPA agrees that the purpose of section 113(e) is, as the commenters assert, to set forth factors which EPA and the Federal courts must consider in assessing civil penalties under the Act. The EPA believes, however, that the section 113(e) factors can also serve as guidance in determining what civil penalty authority is minimally necessary in a State title V program.

In order for a State to have the authority to assess penalties that are "appropriate" to the violation in any particular case as required by 40 CFR 70.11(c), a State must have, in addition to the authority to assess a penalty of at least $10,000 per day per violation, the authority to consider mitigating or aggravating factors. In enacting section 113(e), Congress set forth factors it believed EPA and Federal judicial and administrative courts should consider in determining an appropriate penalty under the specific facts and circumstances before it. Although EPA believes that the factors enumerated by Congress in section 113(e) are the most fundamental, EPA believes that States may consider other factors as well. To the extent that a State has surrendered its ability to consider factors such as those set forth in section 113(e), EPA believes that a State does not have adequate authority, on a case-by-case basis, to collect penalties that are "appropriate" to the violation, as required by 40 CFR 70.11(c).

Industry commenters argue that since the section 113(e) factors do not apply to State programs, it must follow that Congress did not prescribe factors a State must apply in assessing "appropriate" penalties under title V, and that a State must therefore be given full approval as long as it possesses "appropriate" enforcement authority. As explained above, the question for EPA at the program approval stage is not how the State will exercise its enforcement discretion to assess penalties in any particular case. Rather, it is whether the State has sufficient authority to assess appropriate penalties in every case. Before granting full approval to a title V program, EPA must ensure, first, that the State has the general authority to assess penalties up to the amounts specified in section 70.11. The EPA must also ensure that the State has authority to consider factors, similar to those in section 113(e), such that the penalty actually assessed in any case may be appropriate to the violation. Because the immunity provisions of the Michigan audit law preclude the State from considering the factors set forth in section 113(e) or any other factors in determining an "appropriate" penalty in cases in which the source has disclosed and corrected violations discovered in an environmental audit, EPA believes that Michigan lacks this authority. The EPA also disagrees with the commenters' assertion that EPA's sole remedy where EPA believes a State does not have adequate enforcement authority is to take its own enforcement actions to address violations in that State. Although EPA does file Federal actions where the State fails to take enforcement action or where State action is inadequate to address a particular violation, before approving a State title V program EPA must also ensure that the State has demonstrated the capacity to administer and fully enforce the program as required by law and regulation. If Federal action were the only remedy for situations in which a State does not possess adequate enforcement authority, there would have been no need for Congress to direct EPA to promulgate rules setting forth minimum enforcement requirements for Federal approval of a State operating permits program. *See* 59 FR 61825 (rejecting similar comment in acting on Oregon's title V program).

Finally, regardless of one commenter's assertion that the Michigan audit law does take into account a violator's full compliance history in establishing the disclosure and immunity provisions, it is EPA's position that the Michigan audit law nonetheless prevents consideration of other critical factors in determining appropriate civil penalties, including but not limited to serious harm or risk of harm to the public or the environment, and substantial economic benefit to the violator. To the extent the Michigan audit law prevents consideration of mitigating or aggravating factors, EPA believes that Michigan has surrendered its authority to assess appropriate penalties as required by section 502(b)(5)(E) of the Act and 40 CFR 70.11.

The commenters stated that EPA's approach on State audit privilege and/or immunity laws is bad policy and not supported by empirical evidence. The commenters expressed strong support for environmental auditing as a means of obtaining compliance with increasingly complex environmental requirements. These commenters argue that EPA's reaction against such audit statutes is a "knee-jerk" reaction that ignores the potentially huge benefits that these laws offer. EPA has wrongly concluded, the commenters continue, that the existence of a limited and qualified affirmative defense to penalties for violations discovered through environmental audits and protection for information in audit reports weakens Michigan's authority to enforce the law or to ensure compliance, and that the evidence to date in other States with such laws shows in fact that audit privilege and/or immunity legislation encourages self-correction and increased compliance. At the same time, the commenters argue, EPA has not cited to any specific instance in which the Michigan audit law or some other State audit privilege and/or immunity law has compromised or inhibited enforcement of the Act or a title V permit program.

The EPA has expressed strong support for incentives which encourage responsible companies to audit to prevent noncompliance and to disclose and correct any violations that do occur. *See, e.g.*, EPA's Self-Disclosure Policy. The issue involved in this **Federal Register** action, however, is not whether environmental auditing is good or bad policy. Rather, the issue is whether the Michigan audit law, in offering privilege and immunity to companies conducting environmental audits, so deprives the State of its authority to take enforcement action for violations of title V requirements such that the State does not have the necessary authority required for full title V approval.

Moreover, EPA believes that it is premature at this point to expect significant empirical evidence to document whether environmental audit privilege and/or immunity laws enhance or impede environmental compliance. Most of the State audit statutes are little more than one year old and only a few States have issued permits under approved title V programs. In any event, EPA is aware of several on-going environmental enforcement actions in certain States with audit privilege and/or immunity laws in which the audit privilege appears to be interfering with prosecutors' efforts to obtain and utilize certain evidence. [8]

[8] The confidentiality prerequisites that attach to all on-going enforcement actions, however, prevent the Agency from revealing additional details at this time.

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The commenters go on to argue that the reasoning set forth in the April 5 Title V Memorandum and the proposed interim approval of Michigan's program could have far-reaching and unintended effects on the relationship between EPA and States in the implementation of the Act and other environmental laws such as approvals of State Implementation Plans and State programs under the Clean Water Act and Resource Conservation and Recovery Act.

The EPA agrees that the rationale behind the April 5 Title V Memorandum and EPA's action on the Michigan title V program has implications for other Federal programs delegated to the States. Because of that, the Agency has for some months been analyzing the effects of State audit privilege and/or immunity laws on enforcement authorities under the Clean Water Act, the Resource Conservation and Recovery Act, and other statutes. The rationale behind the April 5 Title V Memorandum and EPA's action on the Michigan title V program as it relates to the Michigan audit law, however, is dictated not by political or policy considerations, but rather by statutes and regulations that were finalized after public notice and comment.

The commenters also stated that EPA's proposed interim approval of Michigan's program based on the Michigan audit law is inconsistent with existing EPA and Department of Justice (DOJ) enforcement policies, which reflect the appropriateness of limiting enforcement discretion. The commenters point to "Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator," DOJ, July 1, 1991; "The Exercise of Investigative Discretion", EPA, January 12, 1994; "Policy on Flexible State Enforcement Responses to Small Community Violations" EPA, November 1995 ("EPA Policy on Small Communities"); "Policy on Compliance Incentives for Small Businesses," EPA, May 1996; and EPA's Self-Disclosure Policy.

There is an important distinction between the policies cited by the commenters, which adopt an "enforcement discretion" approach, and the Michigan audit law.[9] The EPA and DOJ have announced policies guiding the exercise of their enforcement discretion under certain narrowly defined circumstances, while preserving the underlying statutory and regulatory authority.[10] State audit privilege and/or immunity laws, such as the Michigan audit law, by contrast, constrain enforcement discretion as a matter of law, impermissibly surrendering the underlying statutory and regulatory enforcement authorities required for Federal approval of the State programs.

Both commenters stated that EPA's proposed action on the Michigan program is inconsistent with several previous title V approvals where audit privilege and/or immunity legislation has not posed a bar to full approval. As examples of previous title V approvals which the commenters believe are inconsistent with EPA's proposed action on the Michigan program, as it relates to the Michigan audit law, the commenters cite to EPA's action on the Oregon, Kansas and Colorado title V programs. Relying on the recent Ninth Circuit decision in *Western States Petroleum Association* v. *EPA*, 87 F.3d 280 (9th Cir 1996) ("WSPA"), the commenters state that, where EPA is departing from a prior course of action, more is required of the Agency than conclusory statements concerning the potential impact of the Michigan audit law on the State's title V enforcement authority. Instead, the commenters argue that EPA must provide a basis for deviating from its earlier approaches in Oregon, Kansas and Colorado.

As an initial matter, EPA notes its action on Michigan's title V program is consistent with its action on the Texas title V program, 61 FR 32693, 32696–32699 (June 25, 1996) (final interim approval), and the Idaho title V program, 61 FR 64622–64635 (December 6, 1996) (final interim approval). Moreover, EPA has notified the States of Ohio, Arizona, and Florida that audit privilege and/or immunity laws that these States have enacted or are contemplating enacting could interfere with the enforcement requirements of title V and part 70.

With respect to the three programs cited by the commenters as inconsistent with EPA's proposed action on the Michigan program, EPA is still in the process of reviewing the audit privilege and/or immunity statutes in Oregon, Kansas and Colorado and their effects on the title V enforcement requirements in those States in order to determine whether EPA acted inconsistently in approving those programs. If EPA determines that it acted inconsistently, EPA intends to take appropriate action to follow the *WSPA* Court's mandate that EPA act consistently or explain any departures.

Finally, one commenter challenges the April 5 Title V Memorandum itself arguing that the guidance document imposes requirements on EPA approval of a State operating permits program in addition to those required by section 502(b)(5)(E) of the Act and the part 70 rules. Because the April 5 Title V Memorandum sets additional substantive and binding standards for approval of State title V operating permits programs not included in the part 70 regulations, the commenter continues, the guidance is a rule disguised as guidance and must be promulgated in accordance with the Administrative Procedures Act. This requires, among other things, public notice and comment.

The EPA disagrees. The April 5 Title V Memorandum does not, as the commenters assert, "purport to change fundamentally the requirements in section 70.11 by adding provisions that (1) effectively prohibit a state from adopting an audit protection or immunity law and (2) impose at least four new penalty criteria." Rather, the guidance simply recounts and reiterates existing statutory and regulatory requirements for enforcement authority under the title V program and shows how audit privilege and/or immunity laws may prevent a State from meeting those requirements. It creates no new "substantive and binding standards" for approval of title V programs, and therefore is not subject to notice and comment rulemaking of the Administrative Procedures Act.[11]

[9] In addition, the criminal enforcement policies noted by the commenters are irrelevant, as Michigan's audit law does not create deficiencies in the State's part 70 criminal enforcement penalty authority.

[10] Although the EPA Policy on Small Communities does encourage States to provide small communities an incentive to request compliance assistance by waiving all or part of a penalty under certain circumstances, it does not provide an unqualified waiver of civil penalties. The policy directs States to assess a small community's good faith and compliance status before granting any relief from penalties and identifies a number of factors that a State should consider in determining whether relief from civil penalties is appropriate in the particular circumstances. In addition, EPA's Policy on Small Communities directs a State to consider the seriousness of the violation. *See* EPA's Policy on Small Community Violations, page 4. Although the policy does not direct the State to consider economic benefit in determining the appropriate enforcement response, the policy is available only to those small communities that are financially unable to satisfy all applicable environmental mandates without the State's compliance assistance.

[11] One commenter also stated that EPA expressly recognized in its earlier approval of the Oregon title V program that EPA would have to use rulemaking to modify its part 70 rules before EPA could prohibit States from adopting audit privilege and/or immunity laws. The commenter misstates the Agency's position. As an initial matter, the Oregon audit statute, Oregon Revised Statute 468.963, contains only an audit privilege and does not contain an immunity provision. In proposing interim approval of the Oregon title V program, EPA

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Moreover, in explaining why the Michigan audit law precludes full approval, EPA is relying on the requirements of title V and part 70 themselves, and not the April 5 Title V Memorandum. Finally, EPA's application of the title V and part 70 enforcement requirements to the specific circumstances before EPA in the case of the Michigan audit law is subject to notice and comment rulemaking.[12]

b. Additional concerns regarding the effect of the privilege provisions of the Michigan audit law on the State's enforcement authority. Both commenters disagreed with EPA's position that the Michigan audit law contains a privilege for environmental audit reports which impermissibly interferes with the enforcement requirements of title V and part 70. The commenters note that the Michigan audit law does not prohibit the State from gaining access to underlying data not prepared for or during the audit. One commenter states that EPA is directly linking title V enforcement authority to State evidentiary rules, and that every State procedural and evidentiary rule must therefore be evaluated and amended whenever it interferes with environmental enforcement. The commenters continue that EPA has singled out audit privilege laws while not taking issue with State attorney-client privilege provisions.

As discussed in the proposed interim approval of Michigan's part 70 program, EPA believes that the Michigan audit law prevents the State from requiring an owner or operator to produce an environmental audit report under the State's general information gathering authority. Although a source must voluntarily disclose the relevant portions of the audit report in order to obtain immunity from civil penalties, an owner or operator can hold as privileged audit reports containing information on violations in the hopes that the violations will not otherwise come to the attention of the State agency. Further, a source can rely on the privilege provisions to avoid disclosing criminal violations, as the Michigan audit law does not provide immunity for disclosed criminal violations (other than for negligent acts or omissions). Similarly, a facility could elect to disclose the fact of a violation under the immunity provisions, but not the related evidence of whether the violation was knowing or intentional. Although EPA agrees that the Michigan audit law does not preclude access to information that is not part of an environmental audit report, EPA remains concerned that the data that led the source to conduct the environmental audit may by itself be insufficient to demonstrate either compliance or noncompliance with an applicable requirement. Furthermore, there may not be any documented information or event which caused a source to conduct an environmental audit. In such a situation, all information regarding a potential violation would exist only in the environmental audit report. The EPA therefore believes that the Michigan audit law so interferes with the State's information gathering authority as to prevent the State from obtaining appropriate civil and criminal penalties and assuring compliance with the Act, as required by section 502(b)(5)(E) of the Act and 40 CFR 70.11.

As discussed previously in this notice, EPA agrees with the commenters that State procedural and evidentiary rules are an appropriate subject for EPA review, as provided by 40 CFR 70.4(b)(2) and 40 CFR 70.4(b)(3). However, EPA does not agree with the commenters that the attorney-client privilege and the privilege provisions in the Michigan audit law are analogous. The attorney-client privilege merely prevents an attorney from revealing information disclosed by a client in a confidential communication made for the purpose of obtaining legal advice. It does not preclude the enforcement authority from obtaining the information from the source by any legal means. On the other hand, the privilege created by the Michigan audit law completely prevents an enforcement authority from obtaining any information labeled as an environmental audit report.

One commenter also stated that adequate title V enforcement authority cannot depend on access to voluntarily prepared audit reports. If such were the case, the commenter reasoned, State regulators would necessarily lack adequate enforcement authority over those entities that do not conduct audits voluntarily.

The EPA agrees that access to voluntarily prepared audit reports is not *per se* a prerequisite for adequate enforcement authority for title V approval. However, such access is important if the report exists and it contains information on violations or whether violations have been promptly corrected. The lack of such access can adversely affect the adequacy of enforcement authority.

One commenter also stated that State audit protection legislation does not inhibit whistle blowers but instead merely prohibits unauthorized disclosure of an audit report because whistle blowers are free to disclose any "non audit" information to support their allegations without fear of violating the laws.

As an initial matter, EPA notes that this concern is irrelevant in EPA's action on Michigan's title V program. To EPA's knowledge, neither the Michigan audit law nor any other provision of Michigan law specifically restricts the information that a whistle blower may disclose to a State agency, and EPA therefore did not raise this as a concern in proposing action on Michigan's title V program.

The commenter appears to be responding to an issue discussed in the April 5 Title V Memorandum. In that memorandum, EPA expressed concern with State audit privilege and/or immunity statutes that impose special sanctions upon persons who disclose privileged information. *See* April 5 Title V Memorandum, pp. 5–6. Although irrelevant to action on Michigan's title V program, EPA believes, as stated in the guidance, that the Act provision

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stated it was in the process of developing a national position regarding EPA approval of environmental programs in States which have environmental audit privileges, and that therefore, it proposed to take no action on the Oregon audit provision in the context of the Oregon title V approval. EPA noted, moreover, that it might consider such a privilege grounds for withdrawing program approval under 40 CFR 70.10(c) in the future if EPA later determined that the Oregon audit provision interfered with Oregon's enforcement responsibilities under title V and part 70. 59 FR 47105, 47106 (September 14, 1994). During the public comment period on EPA's proposal, one commenter stated that EPA's suggestion that a State audit privilege could be grounds for interim approval or withdrawal was bad policy and that Oregon's audit privilege statute was consistent with the Act. In addition to responding to the merits of the comment, EPA stated that the commenter's concerns were premature because, as the commenter acknowledged, EPA had not proposed to take any action on Oregon's environmental audit privilege statute in the context of final interim approval of the Oregon program. EPA further stated that any such concerns about EPA's position on the Oregon audit privilege statute would be properly made if EPA later proposed to withdraw Oregon's title V approval based on Oregon's audit privilege or if EPA "revised part 70 to prohibit environmental audit provisions such as Oregon's." 59 61820, 61824 (December 2, 1994). EPA did *not* say in that **Federal Register** notice that a rulemaking would be required in order for the Agency to disapprove a title V program in a State with an environmental audit privilege and/or immunity statute.

[12] EPA also disagrees with one commenter's assertion that the Congressional review provisions of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104–121 (SBREFA), requires EPA to submit the April 5 Title V Guidance Memorandum to Congress. EPA does not believe that April 5 Title V Memorandum is subject to Congressional review under SBREFA because it is not a rule and it does not substantially affect the rights or obligations of a nonagency party. Even if the Memorandum were subject to review, EPA has not relied on that Memorandum as a basis for this action. Therefore, any procedural defect with respect to the April 5 Title V Memorandum would be irrelevant to the legal sufficiency of this action.

which gives explicit protection to whistle blowers makes no distinctions with respect to the source of the information relied upon by the whistle blower. The EPA believes that it is inconsistent with section 322 of the Act for States to remove audit reports from the universe of information which employees may rely upon in reporting violations to local or State authorities.

c. Summary. The EPA continues to believe that the privilege and immunity provisions of the Michigan audit law impermissibly interfere with the enforcement authorities required for full title V approval. Accordingly, Michigan must narrow the applicability of the privilege provided in section 14802, part 148 of NREPA, and narrow the applicability of the immunity provided by section 14809, part 148 of NREPA, to ensure that the State title V program has the authority to: assure compliance with part 70 permits and the requirements of the operating permits program [40 CFR 70.4(b)(3)(i)]; enforce permits and the requirement to obtain a permit [40 CFR 70.4(b)(3)(vii)]; and meet the general enforcement authority requirements of 40 CFR 70.11(a) and (c), as addressed above. In addition, the State must submit a revised title V Attorney General's opinion that addresses EPA's concerns in subpart II.A.10. above and in subpart II.A.2.i. of the proposed interim approval of Michigan's program [61 FR 32391–32398], in which the Attorney General certifies that the revised part 148 does not affect Michigan's ability to meet the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), 40 CFR 70.11(a), and 40 CFR 70.11(c).

Alternatively, the State may submit a revised title V Attorney General's opinion certifying that the current part 148 does not affect the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), 40 CFR 70.11(a), and 40 CFR 70.11(c). Such an opinion must also specifically address why EPA's interim approval provision requiring revisions to the currently enacted law is not valid. Finally, Michigan must also submit a supplemental Attorney General's opinion certifying that all other title V authorities that may be affected by part 148 are met, including but not limited to: Michigan's authority to bring suit to restrain any person from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment [40 CFR 70.11(a)(1)]; Michigan's authority to seek injunctive relief to enjoin any violation of any program requirement, including permit conditions [40 CFR 70.11(a)(2)]; Michigan's authority to recover criminal fines [40 CFR 70.11(a)(3)(ii) and (iii), and 40 CFR 70.11(c)]; and the requirement that the burden of proof for establishing civil and criminal violations is no greater than the burden of proof required under the Act [40 CFR 70.11(b)]. The supplemental Attorney General's opinion must specifically address these requirements in light of the provisions contained in the State's audit law. Although EPA does not believe that the Michigan audit law affects any title V requirements other than the ones specifically identified in this action, a supplemental Attorney General's opinion is appropriate because Michigan's current part 70 Attorney General's opinion was written before the existence of the Michigan audit law.

11. Additional State Comments

MDEQ noted that it is pursuing changes to Michigan's operating permit regulations to address the interim approval issues pertaining to the definition of "schedule of compliance", the definition of "stationary source", and the applicability requirements for nonmajor solid waste incineration units. The EPA has reviewed Michigan's proposed rules revision package, and submitted comments to MDEQ during the package's public comment period.

MDEQ also acknowledged the condition for full approval that requires removal of section 5534 of NREPA. MDEQ agrees to pursue an amendment to NREPA to remove section 5534.

B. Final Action

1. Interim Approval

The EPA is promulgating interim approval of the Michigan operating permits program received by EPA on May 16, 1995, July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996. The scope of Michigan's part 70 program approved in this notice applies to all part 70 sources within Michigan, except for any sources of air pollution in Indian country. The State must make the following changes to receive full approval:

a. Revise the definition of "schedule of compliance" in R 336.1119(a) to provide that the schedule of compliance for sources that are not in compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. This provision is required by 40 CFR 70.5(c)(8)(iii)(C).

b. Revise the definition of "stationary source" in R 336.1119(q) to provide that the definition includes all of the process and process equipment which are located at one or more *contiguous or adjacent properties.* The emphasized phrase is not currently included in the State regulation. This provision is required in the definition of "major source" in 40 CFR 70.2.

c. Revise R 336.1211(1) to provide that nonmajor solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are subject to the title V permits program. The permitting deferral for nonmajor section 111 sources in 40 CFR 70.3(b) does not apply to solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act.

d. Revise R 336.1212(1) to delete the exemption of certain activities from determining major source status. Part 70 and other relevant Act programs do not provide for such exemptions from major source determinations. This interim approval issue does not apply to the State's use of R 336.1212(1) as an insignificant activities list pursuant to 40 CFR 70.5(c).

e. Revise the State statutes or regulations, as appropriate, to require that permit applications include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance, as specified in 40 CFR 70.5(c)(9) (i), (ii), and (iv).

f. Remove the provisions of section 324.5534 of NREPA, which provide for exemptions from penalties or fines for violations caused by an act of God, war, strike, riot, catastrophe, or other condition as to which negligence or willful misconduct was not the proximate cause. Title V does not provide for such broad penalty and fine exemptions.

g. Revise R 336.1913 and R 336.1914 to be consistent with the affirmative defense provisions in 40 CFR 70.6(g). Alternatively, adopt an enforcement discretion approach consistent with the Act. These State regulations provide an affirmative defense that is broader than that provided by 40 CFR 70.6(g). They are also inconsistent with agency enforcement discretion permissible under the Act. These regulations, therefore, affect the State's ability to enforce permits and assure compliance with all applicable requirements and the requirements of part 70 [40 CFR 70.4(b)(3)(i) and 70.4(b)(3)(vii)]. For the same reasons, they also affect the State's general enforcement authority under 40 CFR 70.11.

h. Address all of the following issues relating to the State's audit privilege and immunity law, part 148 of NREPA. These conditions are proposed interim approval issues to the extent that they affect the State's title V operating

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permits program and the requirements of part 70.

i. Narrow the applicability of the privilege provided in section 14802, part 148 of NREPA, and narrow the applicability of the immunity provided by section 14809, part 148 of NREPA, to ensure that the State title V program has the authority to: assure compliance with part 70 permits and the requirements of the operating permits program [40 CFR 70.4(b)(3)(i)]; enforce permits and the requirement to obtain a permit [40 CFR 70.4(b)(3)(vii)]; and meet the general enforcement authority requirements of 40 CFR 70.11 (a) and (c) as addressed in subpart II.A.10. of this notice.

ii. Submit a revised title V Attorney General's opinion that addresses EPA's concerns in subpart II.A.10. above and in subpart II.A.2.i. of the proposed interim approval of Michigan's program [61 FR 32391–32398], and certifies that the revised part 148 does not affect Michigan's ability to meet the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), 40 CFR 70.11(a), and 40 CFR 70.11(c).

iii. In lieu of subparts i. and ii. above, submit a revised title V Attorney General's opinion certifying that the current part 148 does not affect the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), 40 CFR 70.11(a), and 40 CFR 70.11(c). The Attorney General's opinion must also specifically address why EPA's interim approval provision requiring revisions to the currently enacted law is not valid.

iv. Submit a supplemental Attorney General's opinion certifying that all other title V authorities that may be affected by part 148 are met, including but not limited to: Michigan's authority to bring suit to restrain any person from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment [40 CFR 70.11(a)(1)]; Michigan's authority to seek injunctive relief to enjoin any violation of any program requirement, including permit conditions [40 CFR 70.11(a)(2)]; Michigan's authority to recover criminal fines [40 CFR 70.11(a)(3) (ii) and (iii), and 40 CFR 70.11(c)]; and the requirement that the burden of proof for establishing civil and criminal violations is no greater than the burden of proof required under the Act [40 CFR 70.11(b)]. The supplemental Attorney General's opinion must specifically address these requirements in light of the provisions contained in the State's privilege and immunity law.

This interim approval extends until February 10, 1999. During this interim approval period, Michigan is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate, administer, and enforce a Federal operating permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Michigan fails to submit a complete corrective program for full approval by August 10, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State of Michigan then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Michigan has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Michigan, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Michigan has come into compliance. In any case, if, 6 months after application of the first sanction, Michigan still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Michigan's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Michigan has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Michigan, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, 6 months after EPA applies the first sanction, Michigan has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Michigan's program by the expiration of this interim approval because that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Michigan upon expiration of interim approval.

2. Other Actions

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is promulgating approval under section 112(l)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA is also promulgating approval of Michigan's preconstruction permitting program found in Part 2 of Michigan's Air Pollution Control Rules (R 336.1201–336.1299) under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the Federal section 112(g) rule and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Michigan adequate time for the State to

adopt regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Official File

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments on the proposal received and reviewed by EPA, are maintained in the official file at the EPA Regional Office. The file is an organized and complete record of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The official file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the final interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Valdas V. Adamkus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for Michigan in alphabetical order to read as follows:

Appendix A to Part—70–Approval Status of State and Local Operating Permits Programs

* * * * *

Michigan

(a) Department of Environmental Quality: received on May 16, 1995, July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996; interim approval effective on February 10, 1997; interim approval expires February 10, 1999.

(b) (Reserved)

* * * * *

[FR Doc. 97–643 Filed 1–9–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1311

RIN 0970–AB56

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to implement a new statutory provision authorizing the Secretary to create a Head Start Fellows Program for staff in local Head Start programs or other individuals working in the field of child development, child care, early childhood education, health, and family services.

EFFECTIVE DATE: February 10, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis Gray, Head Start Bureau, Administration on Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013; (202) 205–8404.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Public Law 103–252, the Human Services Amendments of 1994, amended the Head Start Act to authorize the creation of a Head Start Fellows Program (HSFP), which will support professional development of individuals working in Head Start or related programs.

The Head Start Bureau is pleased with the opportunity to develop the HSFP. The Bureau anticipates that the HSFP will provide Head Start Fellows with a unique opportunity to be exposed to activities, issues, resources, and new approaches through placements that will include national and regional Head Start offices, academia, and other public or private nonprofit entities and organizations concerned with services to children and families. The Head Start Bureau will benefit from the valuable perspectives brought by the Fellows currently working in Head Start and other programs across America to the national policy making process.

II. Summary of the Final Rule

The authority for this final rule is section 1150 of Public Law 103–252, the Human Services Amendments of 1994 (the Act) which added section 648A(d) to the Head Start Act (42 U.S.C. 9843). Section 648A(d) authorizes the Secretary to establish a program of Head Start Fellowships. Section 648A(d)(6) authorizes the Secretary to make expenditures not to exceed $1,000,000 for any fiscal year for stipends and other reasonable expenses for the Fellows Program. Additional authority is found in section 648A(d)(8), which mandates that the Secretary promulgate regulations to carry out section 648A(d).

The Act specifies:

- To whom Fellowships may be competitively awarded;

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- Placement locations for Head Start Fellows;
- The duration of Head Start Fellowships; and
- The status of Head Start Fellows.

III. Rulemaking History

On May 15, 1996, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (61 FR 24467) proposing to establish a rule to implement the statutory provision establishing the Head Start Fellows Program, including selection, placement, duration and status of the Head Start Fellows. Interested persons were given 60 days in which to comment on the proposed rule. During the 60 day comment period the Department received comments from seven individuals in Head Start, child care, and early intervention programs.

IV. Section by Section Discussion of the Comments Received

No comments were received on sections 1311.1 (Head Start Fellows Purpose), 1311.2 (Definitions), and 1311.3 (Application Process).

Section 1311.4 Qualifications, Selection, and Placement

Comment: We received one comment that a specified number of Fellows slots should be reserved for people employed in Head Start at the local level. The individual also commented that non-Head Start program staff, especially early childhood specialists and consultants, should receive a lower priority rating in the selection process.

Response: It is anticipated that some local Head Start program staff will emerge as Fellows from each year's selection process. However, the purpose of the program is broader than Head Start and is aimed at a wider audience than the current Head Start community. The program's purpose is to build leadership and enhance the ability of the Fellows to make significant contributions throughout the early childhood and family services field. Establishing a quota for Head Start employees or otherwise placing eligible individuals from non-Head Start programs at a disadvantage would distort the nature of the competitive process and, we believe, is not in accordance with the intent of the legislation.

Comment: One comment suggested that the final rule should identify all organizations involved in the selection process and describe the role of each.

Response: This comment is in reference to the Council for Early Childhood Professional Recognition ("the Council"), a Washington, D.C.-based non-profit organization which is assisting with the implementation of the HSFP through a Cooperative Agreement between it and the Administration on Children, Youth and Families. The Council competed successfully for this Cooperative Agreement and is providing support for the development and operation of this program in myriad ways. Also involved is the Commission on National Head Start Fellowship, which is an entity which the Council and the Head Start Bureau jointly established and consists of nationally prominent individuals in early childhood and family services. The Commission is also providing substantial support in the ongoing development of the program, including the formulation and application of selection criteria and the actual recommendation of Fellows for selection.

Although we anticipate that these entities will remain involved throughout the currently legislated duration of the program, the HSFP is still in its developmental stage. It may become necessary at some point to change these relationships or establish entirely new relationships. For this reason it is our judgment that this should not be written into the regulation.

Comment: One comment to this section maintained that the selection criteria for choosing the Fellows should be published and weighted.

Response: There is merit to this argument in that the applicants would know with greater specificity the criteria on which they are being judged and the weight accorded each criterion and would therefore be able to respond more appropriately. Nevertheless, it is our judgment that specifying and precisely formulating the criteria and their relative weights would unduly restrict current Commissioners and future Commissioners in the selection process. However, we will be discussing this issue and the possibility of inclusion of criteria and their weights in the application package for future classes of Fellows at the next meeting of the Commission on National Head Start Fellowships.

Section 1311.5 Duration of Fellowships and Status of Head Start Fellows

Comment: We received one comment that, although the NPRM is clear, other information regarding the Fellowship is unclear as to whether the Fellowship placement is for one or for two years.

Response: We appreciate this comment and will assure that all documents to be used in the future regarding the Fellows Program specifically state that the Fellowship are for one year but may be renewed for a term of one additional year.

V. Impact Analysis

Executive Order 12866

This final rule implements the statutory authority to create a HSFP. Congress authorized expenditures allotted under section 640(a)(2)(D) of the Head Start Act, not to exceed $1 million in any fiscal year. This section allows for expenditures at the Secretary's discretion.

Regulatory Flexibility Act of 1980

The Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed rule or, if necessary, a final rule. This final rule contains an information collection requirement in section 1311.3 with regard to the application process for individuals applying for the HSFP. No comments were received on section 1311.3. The information collection remains the same as set forth in the NPRM.

We submitted section 1311.3 to OMB for review and approval in accordance with the Paperwork Reduction Act. The OMB control number is 0970–0140 and has been inserted at the end of section 1311.3. The expiration date is 7/31/99.

List of Subjects in 45 CFR Part 1311

Education of disadvantaged, Grant programs—social programs, Scholarships and fellowships.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Approved: December 17, 1996.

Olivia A. Golden,

Acting Assistant Secretary for Children and Families.

For the reasons set forth in the Preamble, 45 CFR Chapter XIII is amended by adding a new Part 1311 as follows:

PART 1311—HEAD START FELLOWS PROGRAM

Sec.

1311.1 Head Start Fellows Program purpose.
1311.2 Definitions.
1311.3 Application process.

1311.4 Qualifications, selection, and placement.
1311.5 Duration of Fellowships and status of Head Start Fellows.

Authority: 42 U.S.C. 9801 *et seq.*

§ 1311.1 Head Start Fellows Program Purpose.

(a) This part establishes regulations implementing section 648A(d) of the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*, applicable to the administration of the Head Start Fellows Program, including selection, placement, duration and status of the Head Start Fellows.

(b) As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

§ 1311.2 Definitions.

As used in this part:

Act means the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

Associate Commissioner means the Associate Commissioner of the Head Start Bureau in the Administration on Children, Youth and Families.

Head Start Fellows means individuals who participate in the Head Start Fellows Program, who may be staff in local Head Start programs or other individuals working in the field of child development and family services.

§ 1311.3 Application process.

An individual who wishes to obtain a Fellowship must submit an application to the Associate Commissioner. The Administration for Children and Families will publish an annual announcement of the availability and number of Fellowships in the **Federal Register**. Federal employees are not eligible to apply. (The information collection requirement contained in this section is approved under OMB Control Number 0970–0140.)

§ 1311.4 Qualifications, selection, and placement.

(a) The Act specifies that an applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed. The Associate Commissioner will make the final selection of the Head Start Fellows.

(b) Head Start Fellows may be placed in:

(1) The Head Start national and regional offices;

(2) Local Head Start agencies and programs;

(3) Institutions of higher education;

(4) Public or private entities and organizations concerned with services to children and families; and

(5) Other appropriate settings.

(c) A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies.

(d) Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence Federal, State or local legislation.

§ 1311.5 Duration of Fellowships and status of Head Start Fellows.

(a) Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.

(b) For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the Federal Government.

(c) Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the Federal Government for the purposes of chapter 11 of title 18, United States Code, and for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

[FR Doc. 97–576 Filed 1–9–97; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 111]

RIN 2127–AG24

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In response to a petition from the Ford Motor Company, this document grants a four-month extension of the date by which vehicles with a gross vehicle weight rating (GVWR) of more than 8,500 pounds and less than 10,000 pounds must comply with the requirements for safety belt fit.

DATES: *Effective Date:* The amendments made in this rule are effective September 1, 1997.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than February 24, 1997.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Clarke Harper, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–2264, facsimile (202) 366–4329, electronic mail "charper@nhtsa.dot.gov".

For legal issues: Edward Glancy, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail "eglancy@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION: On August 3, 1994, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection*, to improve safety belt fit and thus the rate of belt use by requiring that Type 2 safety belts installed for adjustable seats in vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less either be integrated with the vehicle seat or be equipped with a means of adjustability to improve the fit and increase the comfort of the belt for a variety of different sized occupants (59 FR 39472). The final rule specified that the amendment take effect September 1, 1997.

On December 22, 1995, the Ford Motor Company (Ford) petitioned the agency to extend the effective date of this new requirement for vehicles with a GVWR between 8,500 and 10,000 pounds from September 1, 1997 to January 1, 1998. In its petition, Ford stated that unexpected developmental problems with a new truck platform prevented it from beginning production by September 1, 1997, as originally expected. Ford stated that redesigning the existing truck platform to meet the September 1, 1997 effective date would cost $4.5 million or $100 per vehicle. A more detailed explanation of Ford's basis for the extension was included in the notice of proposed rulemaking (NPRM) (61 FR 39432).

On July 29, 1996, NHTSA published an NPRM proposing to extend the

amendment's effective date to January 1, 1998 for vehicles with a GVWR between 8,500 and 10,000 pounds. In the NPRM, NHTSA noted that, due to the demographics of the occupants of the affected trucks, the benefits from applying the belt fit requirement to those trucks would be less than the benefits of applying it to lower GVWR vehicles. NHTSA also noted in the NPRM that the economic impact of requiring Ford to go ahead and comply with the September 1, 1997 effective date would be much greater than the costs anticipated by the agency for compliance with the belt fit requirement. In the NPRM, NHTSA tentatively decided that since the safety benefits for the affected trucks was likely to be very small, and the costs accentuated, a four-month extension of leadtime was reasonable. Interested persons are encouraged to read the July 29, 1996 NPRM for a detailed explanation of the agency's reasoning (61 FR 39432).

NHTSA received only one comment on the proposal to extend the compliance date for trucks with a GVWR of more than 8,500 pounds. In that comment, Ford supported the extension, citing the reasons included in its original petition and the NPRM. Accordingly, NHTSA has decided to adopt the proposed rule without change.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. As explained earlier, the agency estimates a cost savings of $4.8 to $4.9 million.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this final rule has no significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate a significant economic impact on any manufacturer from this proposal. For consumers, granting this extension will slightly reduce the cost of these trucks, especially the Ford trucks, compared to their cost if the extension is not granted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this final rule has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S7.1.2 and adding a new S7.1.2.3 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S7.1.2 Except as provided in S7.1.2.1, S7.1.2.2, and S7.1.2.3, for each Type 2 seat belt assembly which is required by Standard No. 208 (49 CFR 571.208), the upper anchorage, or the lower anchorage nearest the intersection of the torso belt and the lap belt, shall include a movable component which has a minimum of two adjustment positions. The distance between the geometric center of the movable component at the two extreme adjustment positions shall be not less than five centimeters, measured linearly. If the component required by this paragraph must be manually moved between adjustment positions, information shall be provided in the owner's manual to explain how to adjust the seat belt and warn that misadjustment could reduce the effectiveness of the safety belt in a crash.

* * * * *

S7.1.2.3 The requirements of S7.1.2 do not apply to any truck with a gross vehicle weight rating of more than 8,500 pounds manufactured before January 1, 1998.

* * * * *

Issued on December 16, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 97–388 Filed 1–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 940553–4223; I.D. 010697B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The closure is effective 12:00 noon, local time, January 7, 1997, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish

(king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast sub-zone of 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42 (c)(1)(i)(A)(*2*)).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone was reached on January 7. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 noon, local time, January 7, 1997, through June 30, 1997, the end of the fishing year.

The Florida west coast sub-zone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1997; and (2) 25°48' N. lat. (due west the Monroe/Collier County, FL, boundary) from April 1, 1997, through October 31, 1997.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 6, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–610 Filed 1–7–97; 3:07 pm]

BILLING CODE 3510–22–F

50 CFR Parts 648 and 649

[Docket No. 960926275–6372–02; I.D. 091196A]

RIN 0648–AI83

Fisheries of the Northeastern United States; Amendments to the Northeast Multispecies, Atlantic Sea Scallop, and American Lobster Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster Fishery Management Plans (FMPs) to provide a framework abbreviated rulemaking process to address gear conflicts in the New England and Mid-Atlantic regions. These amendments: Add an objective to the Atlantic Sea Scallop and Northeast Multispecies FMPs to allow management of gear conflicts in these fisheries (the American Lobster FMP currently has an objective sufficiently broad in scope to allow management of gear conflicts), adapt the framework process currently in place for the Northeast multispecies and Atlantic sea scallop conservation management programs to allow implementation of a gear conflict management program for all three FMPs, and add a list of management measures to each FMP from which the Council could select future solutions to gear conflicts through the framework adjustment process. The intent of this action is to provide mechanisms to reduce the economic loss caused by gear conflicts.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Copies of the amendments, their regulatory impact review and the environmental assessment are available from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster FMPs were prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic Fishery Management Council. A notice of availability for the proposed amendment was published on September 20, 1996 (61 FR 49430), and a proposed rule was published on October 9, 1996 (61 FR 52903). Details of this action are described in the proposed rule and will not be repeated here.

Approved Management Measures

These amendments add an objective to the Atlantic Sea Scallop and Northeast Multispecies FMPs to allow management of gear conflicts in these fisheries. This final rule amends the fisheries' framework process to allow implementation of a gear conflict management program for the FMPs and adds the following list of management measures to each FMP from which the Council could select future solutions to gear conflicts through the framework adjustment process: (1) Designation of restricted areas in one degree square increments (2700 nm), (2) mandatory monitoring of a radio channel by fishers, (3) fixed gear location reporting and plotting requirements, (4) standards of operation when gear conflicts occur, (5) fixed gear marking and setting practices, (6) gear restrictions for specific areas (including time and area closures), (7) vessel monitoring systems, (8) restrictions on the number of fishing vessels or amount of gear, and (9) special permit conditions.

Each framework adopted and submitted by the Council under this process would be an individual action to be reviewed under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Approval of these amendments implements a process and provides a list of measures as potential options that may be used to resolve gear conflicts. This final rule does not implement any of the measures listed above. To implement one or more of the measures listed, an individual framework action would require documentation and analyses sufficient to determine consistency with all applicable laws.

A framework action would only be used to address gear conflicts occurring in Federal waters. The Council determined, and NMFS agrees, that the gear conflict framework procedure is principally designed to address true gear conflicts and not as a proxy for addressing what may be an allocation issue between users.

For the purpose of these amendments, the definition of gear conflict (at 50 CFR 600.10) is any incident at sea involving

one or more fishing vessels: (1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (2) that results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Comments and Responses

Written comments were received from the U.S. Coast Guard (USCG), the U.S. Department of State, and two individuals. Specific comments are discussed and responded to below.

Comment: The USCG, the U.S. Department of State, and two individuals support implementation of the amendments to provide a framework process to address gear conflicts in the New England and Mid-Atlantic regions.

Response: The comments have been noted and the amendments are approved.

Comment: The USCG expressed concern over the burdensome requirement of fixed gear location reporting and plotting. They state that any economic benefits achieved by implementing this measure would be significantly reduced by the costs to manage it. *Response*: NMFS understands this problem and does not intend to approve future framework actions with this management measure until these problems are sufficiently worked out.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that the amendments are necessary for the conservation and management of the Northeast multispecies, Atlantic sea scallop, and American lobster fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Specific findings supporting that conclusion were summarized in the proposed rule and are not repeated here. No public comments on the certification were received. As a result, no regulatory flexibility analysis was prepared.

NMFS reinitiated consultation on the Northeast Multispecies, Atlantic Sea Scallop and American Lobster FMPs, which was completed on December 13, 1996. These consultations considered new information concerning the status of the northern right whale. Based on the reinitiation of the Section 7 consultation, NMFS determined that: (1) The fishing activities carried out under the Northeast Multispecies and American Lobster FMPs are likely to jeopardize the continued existence of the northern right whale, but a reasonable and prudent alternative has been developed and is being implemented with this rulemaking, to avoid jeopardy, (2) the prosecution of the multispecies, lobster, and scallop fisheries will not adversely modify right whale critical habitat, (3) the fishing practices allowed under the American Lobster FMP and the Northeast Multispecies FMP may affect, but are not likely to jeopardize, the continued existence of the harbor porpoise and the distinct population segment of Atlantic salmon stocks found in certain Maine rivers, which are both currently proposed to be listed as threatened, and (4) no new information has become available that changes the basis for previous determinations that the Atlantic Scallop FMP and prosecution of the scallop fishery is not likely to adversely affect endangered, threatened, or proposed species, or adversely modify critical habitat. The new information provided above does not change the basis for the conclusions of the 1994 Biological Opinion that the fishing activities carried out under the American Lobster and Northeast Multispecies FMPs may affect, but are not likely to jeopardize the continued existence of the other endangered and threatened whale and sea turtle species under NMFS' jurisdiction.

List of Subjects

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 649

Fisheries.

Dated: January 6, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.55, the section heading is revised, paragraphs (d) through (f) are redesignated as paragraphs (f) through (h), respectively, new paragraphs (d) and (e) are added, and newly redesignated paragraph (f)(3) is revised to read as follows:

§ 648.55 Framework specifications.

* * * * *

(d) The Council may make recommendations to the Regional Director to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under 50 CFR 600.10. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2700 mi² (5000.4 km²), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Director. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) Vessel monitoring systems.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(e) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(f) * * *

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

* * * * *

3. In § 648.90, paragraph (b) introductory text and paragraph (b)(1) are revised, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, a new paragraph (b)(2) is added and newly redesignated paragraph (b)(3)(iii) is revised to read as follows:

§ 648.90 Framework specifications.

* * * * *

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Northeast Multispecies FMP or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflict as defined under 50 CFR 600.10, in accordance with the procedure specified in § 648.55(d) and (e).

(3) * * *

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

* * * * *

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.44, the section heading is revised, paragraphs (e) through (g) are redesignated as paragraphs (f) through (h), respectively, new paragraph (e) is added, and newly redesignated paragraph (f)(3) is revised to read as follows:

§ 649.44 Framework specifications.

* * * * *

(e) The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10 in accordance with the procedure specified in § 648.55(d) and (e).

(f) * * *

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

* * * * *

[FR Doc. 97–590 Filed 1–9–97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 7
Friday, January 10, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96–090–1]

Brucellosis; State and Area Classification Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations to provide for the Administrator to conduct a special review of areas with fewer than 10,000 herds of cattle or bison in order to determine whether an area may qualify for Class A brucellosis status. Currently, the brucellosis regulations provide for such reviews to be conducted at the State level. Extending the provisions for special review to the area level would allow areas with a herd infection rate over 0.25 percent, but that might otherwise meet the criteria for Class A status, to undergo a special review to determine whether Class A status should be conferred on the area.

DATES: Consideration will be given only to comments received on or before March 11, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–090–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–090–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Brucellosis Eradication Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1228, (301) 734–7708; or E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. In its principal animal hosts, brucellosis is characterized by abortion and impaired fertility.

Through a cooperative State and Federal effort, the United States is now approaching total eradication of the field strain *Brucella abortus* in domestic cattle and bison herds. As of November 30, 1996, there were only 40 known infected domestic cattle and bison herds, and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHiS) had declared 36 States, Puerto Rico, and the U.S. Virgin Islands free of the disease.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States (areas) according to the rate of *Brucella abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area. The classifications are Class Free, Class A, Class B, and Class C; States or areas that do not meet the minimum standards for Class C may be placed under Federal quarantine. At this point in the cooperative State/Federal brucellosis eradication program, all States have achieved either Class Free or Class A status; there are no classified areas. (An "area" is defined in the regulations as "that portion of any State which has a separate brucellosis classification under this part.")

The definition of "Class A State or area" provides, in part, that for a State or area to qualify for Class A status, no more than 0.25 percent of all herds in the State or area (i.e., 2.5 herds per 1,000 herds) may contain brucellosis reactors during any consecutive 12-month period. However, those regulations also provide for an exception to be made to that herd infection rate requirement when a State contains 10,000 or fewer herds. In such cases, the Administrator may conduct a special review to determine whether a State with such a small herd population would qualify for Class A status; the location of herds in the State, sources of brucellosis, and the brucellosis control measures taken by the State are considered in that review. Based on the results of the review, the Administrator may determine that the State may be granted Class A status despite a herd infection rate higher than 0.25 percent. As currently written, this special review exception applies only to States—no provision is made for a special review of an area with fewer than 10,000 herds.

In some Class A States where there are only a few remaining affected herds, it is likely that most of the area within the State could qualify for Class Free area status. However, the lack of a special review exception to qualify areas as Class A is deterring the States from requesting that the brucellosis-free portions of the State be considered a Class Free area. This is because the remaining area within the State—i.e., that portion of the State that still contains affected herds—would likely have its status downgraded from Class A to Class B or lower because the ratio of affected herds to total herds in that area would place its herd infection rate above 0.25 percent. Given that the potentially downgraded area has met the criteria for, and enjoyed the benefits of, the Class A status held by the State as a whole, it does not appear reasonable to downgrade that area's status in the absence of any actual increase in the incidence of brucellosis within that area.

Therefore, we are proposing to amend the definition of "Class A State or area" to extend the provisions for special review in States with fewer than 10,000 herds to areas with fewer than 10,000 herds. The same considerations that factor into the special review of States—i.e., locations of herds, sources of brucellosis, and brucellosis control measures—would apply to the special review of areas. Thus, an area with fewer than 10,000 herds that has a herd infection rate greater than 0.25 percent, but that might otherwise be eligible for Class A status, could be the subject of a special review by APHIS. If the disposition of the herds within that area made the transmission of brucellosis from affected herds to other herds unlikely, if the sources of brucellosis infection within the brucellosis-affected herds were found to not present a threat

of also infecting other herds, and if the measures taken within the area to control brucellosis were found to be satisfactory, then the area could be granted Class A status. We believe that granting an area Class A status based on the satisfactory outcome of such a review would not result in an increased likelihood that brucellosis might be spread to adjacent States or areas, especially given that one of the factors that would be considered is the measures taken within the area to control the spread of brucellosis. If those measures were found to be inadequate, the area would not be granted Class A status.

Miscellaneous

We are also proposing to amend several sections of the regulations that contain references to cattle without also referring to bison. In nearly all instances, those general provisions of the regulations that apply to cattle also apply to bison; however, several definitions in §78.1, as well as one sentence in §78.40 and several sentences in §78.44, refer only to cattle when the reference should include both cattle and bison. We would amend those three sections to rectify those omissions.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the brucellosis regulations to provide for the Administrator to conduct a special review of areas with fewer than 10,000 herds of cattle or bison in order to determine whether an area may qualify for Class A brucellosis status. Extending the provisions for special review to the area level would allow areas with a herd infection rate over 0.25 percent, but that might otherwise meet the criteria for Class A status, to undergo a special review to determine whether Class A status could be conferred on the area.

This proposed rule would allow the brucellosis status of some parts of a State to advance without triggering a concomitant decrease in the brucellosis status of the remaining areas within the State. Thus, the status quo in terms of testing requirements would be maintained in the area of the State that maintains Class A status, while testing requirements would be eased in that portion of the State gaining Class Free status, which would result in an overall positive economic effect due to decreased testing costs within the State.

Test-eligible cattle and bison from Class A States or areas must have a negative blood test for brucellosis within 30 days prior to movement to be moved to a Class Free State or area. If a portion of a State were to qualify as a Class Free area and the remaining area within the State retained Class A status, the regulations would allow breeding cattle and bison to be moved from the Class Free area of the State to herds in Class Free States without prior testing for brucellosis. Therefore, cattle and bison owners in that portion of a State that qualified as a Class Free area would collectively realize a savings in testing expenses, which is, on average, approximately $5.00 per head. The testing requirements for the movement of cattle and bison from the Class A area of the State would remain the same, so there would be neither an increase nor a decrease in testing costs for cattle and bison owners within the Class A area.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 78.1 would be amended as follows:

§ 78.1 [Amended]

a. In the definition of *Certificate*, paragraph (a), the second sentence, by adding the words "or bison" immediately after the word "cattle".

b. In the definition of *Class A State or area*:

i. In paragraph (a)(3), by adding the words "or bison" immediately after the word "cattle" each time it appears;

ii. In paragraph (b)(1), the first sentence, by removing the word "cattle" and by adding the words "or areas" after the words "except in States";

iii. In paragraph (b)(1), the second sentence, by adding the words "or areas" after the word "States"; and

iv. In paragraph (b)(1), the third sentence, by adding the words "or area" after the word "State".

c. In the definition of *Class B State or area*, paragraph (a)(3), by adding the words "or bison" immediately after the word "cattle" each time it appears; and in paragraph (b)(1), the first sentence, by removing the word "cattle".

d. In the definition of *Class C State or area*, paragraph (a)(3), by adding the words "or bison" immediately after the word "cattle" each time it appears; and in paragraph (b)(1), the first sentence, by removing the word "cattle".

e. In the definition of *Class Free State or area*, in paragraph (a)(3), by adding the words "or bison" immediately after the word "cattle" each time it appears; and in paragraph (b)(1), by removing the word "cattle" both times it appears.

f. By revising the heading and definition of *Market cattle identification test cattle* to read as set forth below.

g. In the definition of *Official brand inspection certificate*, by adding the words "or bison" immediately after the word "cattle".

h. In the definition of *Official brand recording agency*, by adding the words "or bison" immediately after the word "cattle".

i. In the definition of *Originate*, paragraph (c), by adding the words "or

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bison" immediately after the word "cattle" both times it appears.

j. In the definition of *Permit for entry*, by adding the words "or bison" immediately after the word "cattle".

§ 78.1 Definitions.

* * * * *

Market cattle identification test cattle and bison. Cows and bulls 2 years of age or over that have been moved to recognized slaughtering establishments, and test-eligible cattle and bison that are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. Such cattle and bison shall be identified by an official eartag and/or United States Department of Agriculture backtag prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach.

* * * * *

§ 78.40 [Amended]

3. In § 78.40, paragraph (c) would be amended by adding the words "and bison" immediately after the word "cattle".

§ 78.44 [Amended]

4. Section 78.44 would be amended as follows:

a. In paragraph (c), in paragraph (9) of the Agreement, by adding the words "and bison" immediately after the word "cattle".

b. In paragraph (c), in paragraph (10) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

c. In paragraph (c), in paragraph (11) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

d. In paragraph (c), in paragraph (12) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

e. In paragraph (c), in paragraph (13) of the Agreement, by adding the words "or bison" immediately after the word "cattle" both times it appears.

f. In paragraph (d), in paragraph (9) of the Agreement, by adding the words "and bison" immediately after the word "cattle".

g. In paragraph (d), in paragraph (10) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

h. In paragraph (d), in paragraph (11) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

i. In paragraph (d), in paragraph (12) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

j. In paragraph (d), in paragraph (13) of the Agreement, by adding the words "or bison" immediately after the word "cattle" both times it appears.

Done in Washington, DC, this 7th day of January 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–624 Filed 1–9–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: The State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) are proposing to amend the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana under the permanent regulatory program. The proposed rulemaking would streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on Federal lands under the revised Federal lands program regulations, and would eliminate duplicative permitting requirements, thereby increasing governmental efficiency, which is one of the purposes of the cooperative agreement. This amendment would also update the cooperative agreement to reflect current regulations and agency structures. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice provides information on the proposed changes to the cooperative agreement.

DATES: *Written comments:* Written comments must be received by 4:00 p.m., M.S.T. on March 11, 1997.

Public hearing: Anyone wishing to testify at a public hearing must submit a request on or before 4:00 p.m., M.S.T. on January 31, 1997. Because OSM will hold a public hearing only if one is requested, hearing arrangements, dates and times, if any, will be announced in a subsequent **Federal Register** notice. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Any disabled individual who has need for special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Suite 3320, 1999 Broadway, Denver, CO 80202–5733.

Copies of the Montana program, proposed amendments to the cooperative agreement and the related information required under 30 CFR Part 745 will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed revisions by contacting any one of the following persons.

Ranvir Singh, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202–5733, Telephone: (303) 844–1489.

Guy Padgett, Director, Casper Field Office, Office of Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 261–6550.

Jan Sensibaugh, Montana Department of Environmental Quality, 1520 East Sixth Avenue, Helena, MT 59620–0901, Telephone: (406) 444–5270.

FOR FURTHER INFORMATION CONTACT:

Ranvir Singh, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO, 80202–5733, Telephone: (303) 844–1489.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Cooperative Agreement

On June 4, 1980, the Governor submitted a request for a cooperative agreement between the Department of the Interior and the State of Montana to give the State primacy in the administration of its approved regulatory program on Federal lands within Montana. The Secretary approved the cooperative agreement on January 19, 1981 (46 FR 20983, April 8, 1981). The text of the existing cooperative agreement can be found at 30 CFR § 926.30.

On July 5, 1994, the Governor, pursuant to 30 CFR § 745.14 and at the recommendation of OSM, submitted a proposed modified cooperative agreement to address among other things, elimination of duplicative State/Federal permitting efforts and streamlining of the permitting processes. The proposed modifications would amend the existing cooperative agreement and delegate to Montana the sole responsibility to issue coal mining and reclamation permits on Federal lands consistent with the revised Federal lands regulations at 30 CFR Part 740 (48 FR 6912, February 16, 1983). This rulemaking would also amend the existing cooperative agreement to reflect current agency organizations.

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

II. Proposed Revisions to the Cooperative Agreement

A summary of the proposed changes to the existing cooperative agreement appears below. These proposed revisions are subject to further changes because of public comments and further discussions with Montana. The full text of the proposed revised cooperative agreement is being published for continuity, and the convenience of the reader.

The introductory language preceding existing Article I would be revised to read "(t)he Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a State-Federal Cooperative Agreement (Agreement) to read as follows:" This change would be made to assure language consistency with other State-Federal cooperative agreements, and to specify position designations of representatives of the two entities of the State and Federal governments that would sign the cooperative agreement. The second paragraph of the existing introductory language would be deleted because it would essentially duplicate the proposed language.

Existing Article I: Introduction and Purpose

Proposed Revised Article I: Authority, Purposes, and Responsible Agencies

The heading of existing Article I would be revised to read *Article I: Authority, Purposes, and Responsible Agencies.* This revision is proposed so that the revised heading correctly represent the three paragraphs that comprise this article as described below.

Authority

Existing paragraph A would be given the heading *A. Authority* to make it consistent with other cooperative agreements. The language in existing paragraph A would be revised to delegate to Montana the responsibility to review and approve coal exploration operations that are not subject to 43 CFR Group 3400. This change is in conformance with the Federal lands regulations at 30 CFR 740.4(c)(6).

Purposes

Existing paragraph B would be given the heading *B. Purposes*, and minor word changes would be made for clarity.

Responsible Agencies

A new paragraph *C. Responsible Agencies* would be added to replace and consolidate in one place the provisions of paragraphs A and B of existing Article IV and would specify, as in the existing cooperative agreement, that the Office of Surface Mining Reclamation and Enforcement (OSM) would administer the cooperative agreement on behalf of the Secretary. However, since there has been a change in the name of the State agency with authority to regulate coal mining in Montana subsequent to the date of existing cooperative agreement, the Montana Department of Environmental Quality (DEQ), instead of the Montana Department of State Lands (State Lands), would administer the cooperative agreement on behalf of the Governor.

Existing Article II: Effective Date

Proposed Revised Article II: Effective Date

Existing Article II would be revised by replacing the roman numeral "X" at the end of the last sentence with roman numeral "XI" to correspond to the proposed renumbering of existing Article X. No change in effect is intended.

Existing Article XVI: Definitions

Proposed Revised Article III: Definitions

Existing *Article XVI: Definitions* would be renumbered to read *Article III: Definitions.* This change is proposed to assure that this article appears in the same sequence as in other State-Federal cooperative agreements. The existing language would be retained to provide that the terms and phrases used in the cooperative agreement would have the same meanings as they have in SMCRA, 30 CFR Parts 700, 701, 740, and the State Program. Additional language would be included to define the term "Permit Application Package (PAP)" to describe the material submitted by an applicant for a surface coal mining and reclamation operation permit on Federal lands (See 48 FR 6912, February 16, 1983). OSM adopted the term because there are requirements for mining on Federal lands that are in addition to those required by permit application under the State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency or of the Secretary under Federal laws other than SMCRA. The PAP would include such additional information as would be required by the State program. See definition of "permit application package" under 30 CFR 740.5.

The definition of PAP in the revised cooperative agreement includes the term "permit amendment" in addition to all other terms in the definition of PAP

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under CFR 740.5. The term "permit amendment" under the Montana State Program means any change in the mine or reclamation plan that results in expansion or decrease of the operation's permitted boundaries, excluding incidental boundary changes (ARM 26.4.301(13).

Existing Article III: Scope

Proposed Revised Article IV: Applicability

The heading of existing Article III would be revised to read *Article IV: Applicability.* This revision is proposed because the word "applicability" is more appropriate than the word "scope" to describe what is contained in this article. The new heading would also be consistent with that in other State-Federal cooperative agreements. Existing language would be revised to delete an obsolete reference to conditional approval of Montana's permanent State program, and to include additional current regulatory and statutory references that are relevant but are not presently included. These revisions would not change the intent of existing Article III.

Existing Article IV: Requirements for Cooperative Agreement

Proposed Revised Article V: Requirements for the Agreement

Existing Article IV would be renumbered and retitled to read *Article V: Requirements for the Agreement.* This as well as other proposed changes to Article IV are discussed below.

The change from the existing roman numeral IV to roman numeral V is being made to conform to the revised numbering of preceding articles. The word "agreement" would be used in place of phrase "cooperative agreement" to conform to the introductory paragraph of the Cooperative Agreement and is intended to be merely an editorial change.

As explained above, the provisions of existing paragraphs A and B have been consolidated into new paragraph *C. Responsible Agencies* of proposed Article I. The remaining provisions of existing Article IV would be reorganized into six paragraphs as explained below. The introductory language in the existing Article IV would be included without any substantive changes in paragraph A to affirm that the Governor and the Secretary would comply with all provisions of the Agreement.

Funds

Existing paragraph *C. Funds* would become paragraph *B. Funds* of proposed Article V, and would consist of three proposed subparagraphs.

Proposed subparagraph 1 would retain all the language of the first two sentences of existing paragraph C. This subparagraph would also provide that the Federal Assistance Manual (FAM) would be used in determining the amount of grant funds to be reimbursed to DEQ. The existing cooperative agreement does not include this provision. Therefore, in order to comply with regulations at 30 CFR Part 735, reference to the use of FAM would be included to specify that the amount of reimbursement of DEQ for administration and enforcement on Federal lands is not limitless but is subject to the provisions of FAM.

Proposed subparagraph 2 contains a new provision to address the possibility when necessary funds referred to in subparagraph 1 may not be appropriated to OSM to reimburse the State. This new provision would describe the procedure to be used in dealing with the emergencies that may be caused by unavailability of sufficient Federal funds, and to insure that mining operations on Federal lands in Montana would be regulated in accordance with the State Program.

Proposed subparagraph 3 would be added to clarify that the amount of funds reimbursed to DEQ are not fixed but are subject to adjustments in accordance with the program income provisions of 43 CFR Part 12. This provision is added to comply with Financial Management requirements of 30 CFR 735.25.

Reports and Records

Existing paragraph *D. Reports* and Records would become paragraph *C. Reports and Records* of proposed Article V, and would be revised to make minor changes to improve clarity, and to remove reference to an OSM organizational structure that is no longer in use. As stated above OSM would administer the cooperative agreement on behalf of the Secretary, the word "Secretary" has been replaced by the acronym "OSM". A new provision has been added regarding the final evaluation report that OSM prepares and submits to the Congress and other interested parties about State administration and enforcement of the cooperative agreement. According to this provision OSM would be required to attach DEQ's comments on the report prior to its being submitted to the Congress and disseminated to other interested parties. This requirement would provide the Congress and the public an opportunity to know not only how OSM considers the State's performance but also the State's views on its own performance.

Personnel

Existing paragraph *E. Personnel* would become paragraph *D. Personnel* of proposed Article V, and the existing language would be incorporated in the renumbered paragraph. No change in the meaning is intended.

Equipment and Facilities

Heading of the existing paragraph *F. Equipment and Laboratories* would be revised to read as *E. Equipment and Facilities,* to more appropriately describe the contents of this paragraph. The language in the existing paragraph would be retained without any substantive changes in its intent.

Permit Application Fees and Civil Penalties

Existing paragraph *G. Permit Application Fees* would be renumbered and retitled as paragraph *F. Permit Application Fees and Civil Penalties.* The change in title is to assure conformance with other cooperative agreements. The existing provision regarding all permit fees to retained by the State and deposited in the General Fund would be deleted because it does not comply with revised Federal regulations. In order to comply with the Federal regulations regarding financial management, new language would be added to incorporate current regulatory references, and Federal and State program requirements with respect to civil penalties that are not included in the existing cooperative agreement.

Existing Article V: Policies and Procedures: Mine Plan Review

Proposed Revised Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

The number and heading of the existing *Article V: Policies and Procedures: Mine Plan Review* would be revised to read *Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights.* Renumbering is necessary to conform to revised numbering of preceding articles. The change in heading is proposed to accurately represent various topics that are parts of this article.

Provisions of existing Article V would be revised to be consistent with other cooperative agreements, to include additional requirements of the Federal lands program regulations at 30 CFR Parts 740, 745, and 746, to delete references to obsolete regulations, and to add references to current regulations.

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The proposed Article VI would include all relevant provisions of existing Article V, and would consist of three major headings A, B, and C as described below.

Receipt and Distribution of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

The title of existing paragraph A would be revised to read *A. Receipt and Distribution of the PAP or Application for Transfer, Assignment or Sale of Permit Rights*. This change is proposed to assure consistency with the revised Federal lands regulations at 30 CFR 740.

Some of the provisions of existing paragraph A would be revised and incorporated in proposed subparagraph A.1. The existing requirement that the operator submit to the State and the Regional Director an appropriate number of identical copies of the mining and reclamation plan and permit application or an application for major modification to an approved mining plan and permit, would be replaced by the provision that the applicant submit to DEQ an appropriate number of copies of the PAP or application for transfer, assignment or sale of permit rights. This change is proposed to eliminate duplication and make DEQ the sole recipient of the permit applications. Other existing requirements with respect to the form and contents of the application to ascertain compliance with various State and Federal laws and regulations would be retained in subparagraph A.1 but would be revised to incorporate minor editorial changes and current statutory and regulatory citations.

A new subparagraph A.2 would be added to provide that after receipt of the PAP, or application for transfer, assignment or sale of permit rights, DEQ would ensure that an appropriate number of copies of the PAP or applicant for transfer, assignment or sale of permit rights, are provided to OSM, the Federal Land Management Agency, and any other appropriate Federal agency. This provision would further give DEQ the sole responsibility for distributing copies of permit applications to appropriate agencies, and would eliminate duplication of effort.

Review of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

The title of existing paragraph *B. Mine Plan Review Procedures* would be revised to read *B. Review of the PAP Application for Transfer, Assignment or Sale of Permit Rights*. This change is being proposed to assure clarity, and consistency with Federal lands regulations at 30 CFR Part 740.

Most of the relevant provisions of existing paragraph B comprised of subparagraph 1 through 9 would be incorporated into four subparagraphs of the proposed paragraph B. However, in order to keep the various provisions in a logical sequence and under appropriate headings, the relevant language would be moved from the existing subparagraph to another proposed subparagraph. Also, the phrase "mine plan and permit application" extensively used in the existing cooperative agreement would be replaced by the phrase "permit application package (PAP) or application for transfer, assignment or sale of permit rights" to conform to the language in revised Federal regulations. Furthermore, the phrase "State Lands" would be replaced by Department of Environmental Quality (DEQ), and the "Regional Director" and "Secretary" would be replaced by "OSM", where appropriate. These modifications are proposed because of recent changes in the organizational structure of the Montana State government and OSM.

Responsibilities of DEQ, OSM and the Secretary

As described below, the proposed paragraph B would consist of four subparagraphs delineating the responsibilities of DEQ, OSM and the Secretary relating to the review of the PAP or application for transfer, assignment or sale of permit rights, and coordination procedures between DEQ and OSM before and after DEQ's approval of a permit.

The provision in existing paragraph B.1 that State Lands shall assume responsibility for the analysis and review of applications required by 30 CFR 741.13 for surface coal mining and reclamation permits on Federal lands in Montana, would be revised by deleting reference to an obsolete regulation at 30 CFR 741.13. The revised language would be moved, without any changes in its meaning, to proposed subparagraph B.1.a(2) in order to keep this provision in a logical sequence and under the appropriate subparagraph heading. The requirement in existing paragraph B.1 that the Secretary shall, as requested, assist the State through the Regional Director in the analysis and review of applications, would be changed to provide that OSM would review the appropriate portions of applications. The revised language would be moved and included as subparagraph a(2) of proposed paragraph B.2 where other responsibilities of OSM are described.

The remaining provision in existing paragraph B.1 stating that the Secretary shall, in addition, evaluate the State's analysis and conclusions as necessary to independently determine whether the Secretary concurs in the State's decision, would be deleted. Such Secretarial concurrence would be duplication of effort and hence, would not be necessary if, as proposed in this agreement (see proposed subparagraph C.1), DEQ assumes the responsibility to make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP or application for transfer, assignment or sale of permit rights.

Thus, the proposed paragraph B.1 which describes the responsibilities of DEQ, would incorporate some of the provisions of existing paragraph B.1 as described above, also of existing paragraphs B.2, B.7 of Article V, and of paragraph B of existing Article VIII as discussed below. In addition, the following new requirements would be included in the proposed paragraph B.1. The first new requirement in proposed subparagraph B.1.a(3) would make DEQ responsible to obtain the requests from Federal agencies with jurisdiction or responsibility over Federal lands for additional information, comments and findings. This requirement is necessary to provide Federal agencies the full opportunity to communicate to DEQ their concerns and comments before DEQ approves a permit. The second new provision in proposed subparagraph B.1.a(4) would require DEQ to obtain OSM's determination whether or not the PAP involving leased Federal coal would require a mining plan modification under 30 CFR 746.18 and informing the applicant of such determination. This provision would ensure that the applicant, in addition to obtaining a DEQ permit, would also need to get a mining plan approval from the Secretary as required by the Mineral Leasing Act, and regulations at 30 CFR 746.11. Proposed subparagraph a(5) would require DEQ to consult with and obtain the consent, as necessary, of Federal land management agency would respect to post-mining land use and to any special requirements to protect non-coal resources. This new responsibility would be delegated to DEQ as provided in 30 CFR 740.4(c)(2). Proposed subparagraph a(6) would be added to delegate to DEQ the responsibility to consult with and obtain consent, as necessary, of the Bureau of Land Management (BLM) with respect to requirements relating to the development, production and recovery of mineral resources on lands that may

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be affected by coal mining operations involving leased Federal coal, as authorized by 30 CFR 740.4(c)(3). Proposed subparagraph a(7) would provide for delegation to DEQ the responsibilities of approval and release of performance bonds with the concurrence of OSM, and approval and maintenance of liability insurance as authorized by 30 CFR 740.49(c)(4). Another new requirement in proposed subparagraph a(8) would delegate to DEQ the responsibility to review and approve exploration operations that are not subject to the requirements of 43 CFR Group 3400, as provided in 30 CFR 740.4(c)(6).

Proposed new subparagraph B.1.b(2) would require DEQ to prepare a State decision document in cases when a mining plan action would need to be taken by the Secretary. This decision document is one of the documents that comprises the mining plan decision document and serves the basis for OSM's recommendation to the Secretary for an action on a mining plan.

The provision in existing paragraph B.2 that State Lands will be the primary contact for operators regarding the processing of mining plans and permit applications, would be revised to make, in addition to those already mentioned, a number of corrections to conform to the current regulations. The word "applicant" would be used in place of the word "operators" to more accurately define the person submitting the PAP. The revised language would be moved to proposed subparagraph B.1.a(1) so that this provision is in a logical sequence and under the appropriate subparagraph heading without making any change in its intent.

The requirement of existing paragraph B.2 regarding State Lands being responsible for informing the applicant of all joint State-Federal determinations would be moved to the proposed paragraph C.4 of this article in order to keep this provision under the appropriate subject heading. However, the phrase "joint State-Federal determinations" would be deleted because DEQ would assume the primary responsibility to make determinations on approval or disapproval of permits.

The provision in existing paragraph B.2 requiring that State Lands shall send a copy of all correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the mine plan and permit application to the Regional Director, and the provision that requires OSM to send to the State a copy of all independent correspondence with the applicant that may have a bearing on decisions regarding the mining plan and permit application, would be modified and moved to subparagraph B.4.d where coordination responsibilities of OSM and DEQ are described.

The provision in existing paragraph B.2 stating, "Except in exigent circumstances, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of State Lands", would be moved to proposed subparagraph B.4.a. No change in the meaning is intended.

The existing paragraph B. provides that the Secretary shall reser e the right to act independently of the ate to carry out his responsibilities under laws other than the Federal Act and in instances of disagreement under the Federal Act, would be moved to subparagraph B.3.b where other responsibilities and rights of the Secretary are listed.

The proposed paragraph B.2, which describes the responsibilities of OSM, would incorporate the appropriate requirements of existing paragraphs B.1, B.4, B.5, B.7, and B.8. In addition, this paragraph would include four new provisions required by Federal regulations. The first new provision would be proposed subparagraph B.2.a(3), that would require OSM to consult with the Federal land management agency to determine whether the PAP constitutes a mining plan modification, and to inform DEQ of such determination within 30 days of receiving a copy of the PAP. This provision is required to comply with 30 CFR 746.18(c)(1). The second new provision, proposed subparagraph B.2.b(1), would be included to comply with the requirements of 30 CFR 746.13(e). Proposed subparagraph B.2.b(1) would require OSM to consult with and obtain the concurrences of BLM, and the Federal land management agency, or any other Federal agency, as necessary, prior to recommending to the Secretary to approve or disapprove the mining plan. The third new proposed subparagraph B.2.b(2) would address the situations that may arise when DEQ would be unable to include in the permit certain conditions that other Federal agencies may require to assure compliance with Federal laws other than SMCRA. In order to assure compliance with 30 CFR 740.13(c)(1), proposed paragraph C in subparagraph 2 would require DEQ to consider the comments of Federal agencies and, to the extent allowed by Montana law, include in the permit, terms and conditions imposed by the Federal law management agency or any other Federal agency with any interest in the proposed project. Montana is concerned that 30 CFR 740.13(c)(1) appears to require the State to include and enforce conditions required by other Federal laws. The State has pointed out that it lacks the authority to enforce other Federal laws and regulations.

The proposed amendments to the Cooperative Agreement do not require nor authorize the State of Montana to enforce Federal laws other than SMCRA. However, the State will enforce its own permits, including those permit conditions required under 30 CFR 740.13(c)(1). The State must consider the comments of Federal agencies in the context of permit issuance and must document these comments in the record of permit decisions. After considering the comments and proposed conditions of Federal agencies, the State may adopt the recommended conditions. If the State does not incorporate a permit condition proposed pursuant to other Federal laws and regulations, the State will document why the condition was not accepted and transmit the documentation to OSM. OSM may agree with the State that the condition is not necessary. When OSM believes the proposed conditions are necessary, it has a variety of options to consider to improve those conditions:

(1) OSM may work with the Federal land management agency to find another means to resolve the issue.

(2) Those conditions associated with Federal laws other than SMCRA could be included as part of the mining plan approval, surface use permit, or other Federal authorization.

(3) In rare instances where no other Federal authorizations would be required, OSM will, after consulting with other Federal agencies as required by the Cooperative Agreement, issue a supplemental SMCRA permit attaching only those conditions which are necessary to assure compliance with other Federal laws. The State shall not be required to enforce the conditions of the Federal permit.

The fourth new proposed subparagraph B.2.b(3) would provide for OSM to be responsible for providing a mining plan decision document to the Secretary recommending approval, disapproval, or conditional approval of mining plans or modifications thereof. This new provision is needed to assure compliance with 30 CFR 740.4(b) and 746.13.

The gist of the first sentence of existing paragraph B.3 making the Regional Director responsible to ensure that any information OSM receives concerning the application is sent to

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State Lands, would be contained in proposed subparagraph B.4.d where other coordination responsibilities of OSM and DEQ are described. The requirement of the second sentence of existing paragraph B.3 would be moved to proposed subparagraph B.4.b where other responsibilities of OSM and DEQ regarding coordination are described.

Proposed paragraph B.3, which delineates the responsibilities of the Secretary, in addition to incorporating in proposed subparagraph B.3.b the requirements of existing paragraph B.2 as discussed above, would also include two new subparagraphs. The first proposed subparagraph B.3.a would be added to provide for the Secretary to concurrently carry out the non-delegable responsibilities listed in 30 CFR 745.13. This is necessary to expedite the mining plan approval process such that the Secretary simultaneously carries out his responsibilities without waiting for the State to complete its actions. The second proposed subparagraph B.3.c would be added to implement 30 CFR 740.4(a) which requires the Secretary to be responsible for approval, disapproval, or conditional approval of a mining plan action pursuant to the Mineral Leasing Act of 1920.

The provision in existing paragraph B.4 making the Regional Director responsible for obtaining, on a timely basis, the views of all Federal agencies with jurisdiction or responsibility over a mine plan or permit application on Federal lands in Montana and for making these views known to State Lands, would be revised. The proposed amendments to the Agreement would delegate this responsibility to DEQ as provided in proposed subparagraphs B.1.a(3). This delegation is permissible under 30 CFR 740.4(c). But as provided in subparagraph B.2.a(5)(b), OSM may also assist DEQ, if requested, in obtaining comments and findings of other Federal agencies. Another provision in existing paragraph B.4 requiring State Lands to keep the Regional Director informed of findings during the review which bear on the responsibilities of other Federal agencies, would be included in proposed subparagraph B.4. after making appropriate modifications regarding the name of the State regulatory agency. Another provision of existing paragraph B.4 requiring the Regional Director to take appropriate steps to facilitate discussions between State Lands and the concerned agencies wherever desirable to resolve issues or problems, would be included in the proposed subparagraphs B.2a(5)(a) and B.2.a(5)(c), where other OSM responsibilities are listed, without making any change in its meaning.

As discussed above and in the following paragraph B.5, the proposed paragraph B.4 would incorporate some of the provisions of existing paragraphs B.2, B.3, B.4, and B.5. In addition, five new subparagraphs would be added to comply with the Federal regulations that were promulgated subsequent to the date the existing Agreement became effective. The first proposed subparagraph B.4.c would provide for OSM and DEQ to coordinate with each other for scheduling a meeting with the applicant. This is necessary to enhance communications between the two agencies as they interact with the applicant, as well as to minimize duplication of communications with the applicant. The second proposed subparagraph B.4.e would be added to comply with the provisions of 30 CFR 745.12(g)(1) that requires DEQ to allow OSM access to files relating to coal mining operations on Federal lands. This is necessary to safeguard the interests of the Federal government. The third proposed subparagraph B.4.g would be added to ensure compliance with the provisions of 30 CFR 740.4 (c) and (d) relating to coordination between BLM and DEQ on matters relating to regulations at 43 CFR Group 3400. The fourth proposed subparagraph B.4.h would allow OSM and DEQ to develop working agreements specifying any delegable responsibilities of other Federal laws and regulations which may be delegated to DEQ without amendment to the Agreement. This provision recognizes that in the interest of reducing duplication in the review of permit application packages (PAPs), DEQ may assume certain responsibilities that are fully or partially delegable that would otherwise be performed by OSM. For example, a working agreement may specify how DEQ can assist the Secretary in meeting his responsibilities under the National Environmental Policy Act (NEPA). It is possible for DEQ to perform much of the basic research and analysis required for the Secretary to meet his NEPA responsibilities, although the Secretary will assume full responsibility for ensuring compliance with NEPA. Joint preparation of NEPA documents is an authorized means of achieving that compliance and is consistent with 30 CFR 740.4(c)(7). The fifth new provision in proposed subparagraph B.4.i provides that when valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of SMCRA and the proposed operation will adversely affect either a publicly-owned park or a historic place listed on the National Register of Historic Places (NRHP), DEQ would work with the agency that has jurisdiction over the publicly-owned park, or with the agency that has jurisdiction over the historic place, to develop mutually acceptable terms and conditions for incorporation into the permit to mitigate adverse impacts.

In existing paragraph B.5, the Regional Director is required to begin a review of a mining plan and permit application for apparent completeness. As provided in 30 CFR 740.4(c)(1), this requirement would be revised to delegate the responsibility to DEQ and moved to proposed subparagraphs B.1.a(2) where other DEQ responsibilities are described, and to proposed subparagraph B.2.a(5)(d) OSM's responsibilities to assist DEQ are described. The provision in paragraph B.5 requiring State Lands to inform the Regional Director where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work, would be paraphrased and included in proposed subparagraph B.2.a(5)(e). The remaining provisions of existing paragraph B.5, would be modified to make editorial changes and would be included in proposed subparagraph B.4.f.

The requirements of existing paragraph B.6 providing for joint public meetings and hearings on permit decisions, would be deleted because all permit decisions would be made by DEQ under the amended cooperative agreement.

The requirements of existing paragraph B.7 relating to the preparation of an environmental impact statement and/or environmental assessment to comply with NEPA and the Montana Environmental Policy Act (MEPA) would remain the same and would be included in proposed subparagraph B.1.b(1) where all other responsibilities of DEQ are described. In addition, the gist of the last sentence of existing paragraph B.7 relating to independent evaluation and approval of a NEPA compliance documents would be included as proposed subparagraph B.2.a(1).

Existing paragraph B.8 would be revised significantly relating to the preparation of a technical analysis, environmental analysis, and proposed written decision on the mining plan and permit application review, independent evaluation of these documents, written concurrence by the Regional Director, and the requirement that "State Lands shall consider the comments of the Regional Director and send a final technical analysis, environmental analysis, and proposed decision to the

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Regional Director for his written concurrence. The Regional Director shall have 30 days to act after receipt of State Lands' final technical analysis, environmental analysis, and proposed decision. If no further changes are required, the Regional Director shall proceed in accordance with 30 CFR 741.21." The regulation at 30 CFR 741.21(a)(2), and now superseded by current regulation, was promulgated on March 13, 1979 and required that "(t)he Director approve, or deny all applications for permits under the Federal lands program. .*.*." (44 FR 15335, March 13, 1979). In accordance with the Circuit Court of Appeals decision (*National Wildlife Federation vs. Donald Hodel*, 839 F.2d 694 (D.C. Cir. 1988)) that upheld OSM's 1983 Federal program regulations (48 FR 6936, February 16, 1983), OSM is not required to issue permits under the Federal lands program in States that have a State-Federal cooperative agreement. However, due to the above language in paragraph B.8 of existing Article V, OSM has continued to issue Federal permits in Montana under the Federal lands program. It is the intent of these proposed amendments that OSM would not issue Federal permits in Montana under the Federal lands program.

Therefore, in accordance with regulations at 30 CFR 740.4(c)(1), OSM would delegate to DEQ the responsibility to make a decision on approval, disapproval, or conditional approval of the permit application component of the PAP as provided in proposed paragraph C.1 of Article VI. The existing requirement that "the Regional Director shall have 30 days to act after receipt of State Lands' final technical analysis, environmental analysis, and proposed decision", has been included in proposed subparagraph B.2.a(4) after making two modifications. First, the existing requirement for "the Regional Director to act on State Lands' technical analysis, environmental analysis and proposed decision" has been replaced by the catchall phrase "exercising its responsibilities". Two, the "30-day" time limit has been replaced by the phrase "timely manner governed, to the extent possible, by the deadlines established in the State Program". As stated above DEQ would have the responsibility to make a decision on approval, disapproval, or conditional approval of the permit application component of the PAP, and OSM would not need to act on DEQ's final technical analysis, environmental analysis, and proposed decision. Further, due to dwindling staff resources adherence to strict time limits could be very difficult.

The provisions in existing paragraph B.9 refer to sections of obsolete regulations at 30 CFR 741.16, 741.17 and 741.21, and hence would be deleted.

Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

Proposed paragraph C would be titled *Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights.* As discussed earlier subparagraph C.1 would provide that DEQ shall make a decision on approval, conditional approval or disapproval of the permit application component of the PAP or application for transfer, assignment or sale of permit rights on Federal lands as authorized by 30 CFR 740.4(c)(1). Proposed subparagraph C.2 would require DEQ to consider the comments of the Federal agencies and, to the extent allowed by the State Act, incorporate in the permit any terms or conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations as required by 30 CFR 740.13(c)(1). Proposed subparagraph C.3 would provide that when a mining plan is required to be approved by the Secretary, DEQ may make a decision on the permit application component of the PAP on Federal lands prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that Secretarial approval of the mining plan must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands. This provision would serve two purposes. One, it would enable DEQ to issue a State permit within time limits dictated by the State program, and two, it would inform the applicant that a mining plan approval from the Secretary must be obtained, when necessary, prior to commencing certain coal mining operations. Finally, to bring the permitting process to conclusion and close the communication loop, proposed subparagraph C.4 would require that after DEQ has made a decision on the permit application component of the PAP, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency and, when necessary, to the agency with jurisdiction over a publicly-owned park or historic property listed in the NRHP that would be adversely affected by the surface coal mining and reclamation operations.

Existing Article VI: Inspections

Proposed Revised Article VII: Inspections

This article would be renumbered as *Article VII: Inspections* to correspond to the revised numbering of preceding articles. Existing paragraphs A, B, C, D, and E would be reorganized and revised to delete references to OSM's organizational structure that is no longer in use, and obsolete regulations. In order to increase clarity, existing paragraph F would be moved under proposed *Article VIII: Enforcement* to become paragraph E. No change in the meaning is intended.

Existing Article VII: Enforcement

Proposed Revised Article VIII: Enforcement

This article would be renumbered as *Article VIII: Enforcement* to correspond to the revised numbering of preceding articles. Changes in the language are for clarification purposes only, and also to ensure consistency with other cooperative agreements.

Existing paragraph A would be revised to include references to 30 CFR Part 740, to replace "State Lands" with "DEQ", and to add that enforcement authority given to the Secretary under other Federal laws and Executive Orders, including but not limited to those listed in Appendix A, is reserved to the Secretary. No change in its meaning is intended.

Existing paragraph B would essentially remain the same except for few word changes for clarification purposes.

In order to comply with revised Federal regulations a new paragraph C would be added to provide that during any inspection made solely by OSM or during any joint inspection where DEQ and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 842, 843, 845 and 846.

Existing paragraph C would be renumbered D but would retain the same provisions. As mentioned above a proposed paragraph E would be added to incorporate the language of existing paragraph F of *Article VI: Inspections.*

Existing paragraph D would be renumbered F, without making any change in its meaning.

Existing Article VIII: Bonds

Proposed Revised Article IX: Bonds

This article would be renumbered as *Article IX: Bonds* to correspond to the revised numbering of preceding articles.

Existing paragraph A would be revised to delete reference to the Regional Director because of organizational changes in OSM. Addition of the new word "performance" in front of the word "bond" is necessary to conform to the regulatory language. The phrase "jointly payable to both the United States and DEQ", and the sentence "such bond shall provide that if this Agreement is terminated under the provisions of 30 CFR 745.15, the portion of the bond covering the Federal lands shall be payable only to the United States" would be added to ensure conformance with the provisions of Federal lands program regulations at 30 CFR 740.15(b).

Existing paragraph B would be expanded to provide DEQ with the primary responsibility for approval and release of performance bonds. The revised paragraph B would require OSM concurrence in the release by DEQ of a performance bond on lands subject to an approved mining plan. However, prior to such concurrence, OSM shall coordinate with other Federal agencies that have authority over the lands involved. This requirement would ensure the protection of interests of all Federal agencies. DEQ would also be required to annually advise OSM of adjustments to the performance bond as provided in the existing paragraph B.

Proposed paragraph C would be added to safeguard the interests of the U.S. government, and provide that performance bonds will be subject to forfeiture with the concurrence of OSM, in conformance with the requirement of the State program, and OSM may not withhold its concurrence unless DEQ's forfeiture decision is not in accordance with the requirements and procedures of the State program.

Proposed paragraph D would be added to ensure consistency with other cooperative agreements. This paragraph would seek to remind the applicant, OSM, and DEQ that submission of a performance bond does not satisfy the requirements of a Federal lease bond required by 43 CFR 3474, or the requirements of a Federal lessee protection bond pursuant to section 715 of SMCRA. Distinct from the performance bond, the Federal lease bond, made payable to the United States through BLM, is required to be posted by the applicant for a coal lease to assure compliance with the terms and conditions of a Federal coal lease, whereas the Federal lessee protection bond, made payable to the United States or the State, whichever is applicable, is required to be posted by the applicant for a coal mine and reclamation permit for use and benefit of a permittee or lessee of surface lands to secure payment of any damages to crops or tangible improvements on Federal lands.

Existing Article IX: Designation of Lands as Unsuitable

Proposed Revised Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, and Valid Existing Rights and Compatibility Determinations

This article would be renumbered and retitled as *Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, and Valid Existing Rights and Compatibility Determinations*. The change in numbering would ensure conformance with the revised numbering of preceding articles. The change in article heading would reflect expansion in the subject matter to incorporate regulatory requirements that have been promulgated over the years since the execution of the existing cooperative agreement. Proposed article X would consist of two paragraphs.

Unsuitability Petitions

Existing paragraph A would be redesignated *A. Unsuitability Petitions*, and would include two proposed subparagraphs.

Proposed subparagraph A.1 would include the opening language from existing paragraph B stating that the authority to designate Federal lands as unsuitable for mining, would be reserved to the Secretary. The language in the second sentence of existing paragraph B would be modified and included in proposed subparagraph A.1. The modified language would state that unsuitability petitions would be filed with OSM and would be processed in accordance with 30 CFR 769.

Proposed subparagraph A.2 would include the existing requirements of paragraph A regarding cooperation between OSM and DEQ in processing petitions to designate lands as unsuitable for mining. During processing of such petitions, OSM would also be required to coordinate with, and solicit comments from the appropriate Federal land management agency.

Valid Existing Rights (VER) and Compatibility Determinations

Existing paragraph B would be redesignated *B. Valid Existing Rights (VER) and Compatibility Determinations*.

As stated above the provisions of existing paragraph B would be incorporated in subparagraph A.1. Proposed paragraph B would include five proposed subparagraphs that would describe roles and responsibilities of OSM and DEQ in VER and compatibility determinations for coal mining operations pursuant to the requirements of section 522(e) of SMCRA.

Proposed subparagraph B.1 would provide that the Secretary will make the VER determination for Federal lands within the boundaries of areas specified under section 522(e)(1) of SMCRA. For coal mining operations conducted both on Federal and non-Federal lands, the Secretary will make the VER determinations for the Federal lands and DEQ will make such determinations for the State and private lands.

Subparagraph B.2 would provide that the Secretary will make VER determinations for Federal lands within the boundaries of any area specified in section 522(e)(2), and OSM will process requests for determination of compatibility for these areas.

Subparagraph B.3 would provide that DEQ will make the VER determination for the publicly-owned park or places included in the National Register of Historic Places (NRHP) protected under section 522(e)(3) of SMCRA; DEQ will consult with the State Historic Preservation Officer to determine if the proposed operation will adversely affect any publicly-owned park or place listed on the NRHP. This subparagraph would also provide that surface coal mining and reclamation operations may be permitted on Federal lands protected under section 522(e)(3) of SMCRA if jointly approved by DEQ, and the Federal, State, or local agency with jurisdiction over the publicly-owned park or the historic place, and DEQ will coordinate with these agencies for developing mutually acceptable permit conditions to mitigate environmental impacts on such park and place.

Subparagraph B.4 would provide that DEQ will make the VER determination, on Federal lands for all areas specified in section 522(e) (4) and (5) of SMCRA as unsuitable for mining.

Subparagraph B.5 summarizes that whenever DEQ will make VER determinations for Federal lands, DEQ will consult with OSM and the appropriate Federal agency.

Existing Articles X through XII would be renumbered as proposed Articles XI through XIII. The word "cooperative" before the word "agreement", however, would be deleted from the heading of each Article in conformance with the introductory language preceding Article I. No substantive changes are proposed.

Existing Article XIII: Changes in State or Federal Standards

Proposed Revised Article XIV: Changes in State or Federal Standards

Article XIII would be renumbered to read *Article XIV: Changes in State or Federal Standards*. It would include two paragraphs that would include revisions in existing language to increase clarity and to add relevant statutory and regulatory cites.

Existing Article XIV: Changes in Personnel and Organization

Proposed Revised Article XV: Changes in Personnel and Organization

Article XIV would be renumbered to read: *Article XV: Changes in Personnel and Organization*. Paragraph A of this Article would include the language of existing Article XIV but would be revised to make minor editorial changes to increase clarity. The new paragraph B would be added to obviate the need for changes to this agreement in the event of any changes in the State Act that may transfer administration of this Agreement to another State agency. In that event, all references to DEQ in this agreement would apply to that agency.

Existing Article XV: Reservation of Rights

Proposed Revised Article XVI: Reservation of Rights

Article XV would be renumbered to read: *Article XVI: Reservation of Rights*. Existing language would be revised to make minor editorial changes to delete references to several statutes without changing its meaning.

Article XVI: Definitions would be renumbered as proposed *Article III: Definitions* and would be revised to include additional 30 CFR references.

III. Procedural Determinations

1. Executive Order 12866

This proposed rule is exempt from review by the Office of Management and Budget (OMB) Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The rule would amend the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana under the permanent regulatory program. The proposed rulemaking would streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on Federal lands under the Federal lands program regulations, and would eliminate duplicative permitting requirements, thereby increasing governmental efficiency, which is one of the purposes of the cooperative agreement. This amendment would also update the cooperative agreement to reflect current regulations and agency structures.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

7. Author

The principal author of these proposed regulations is Ranvir Singh, P.E., Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, CO 80202–5733.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 926 is proposed to be amended as follows:

PART 926—[AMENDED]

1. The authority citation for Part 926 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq., Public Law 95–87.

2. Section 926.30 is revised to read as follows:

§ 926.30 State-Federal cooperative agreement.

The Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a State-Federal Cooperative Agreement (Agreement) to read as follows:

Article I: Authority, Purposes, and Responsible Agencies

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. § 1273(c), which allows a State with a permanent regulatory program approved by the Secretary, under 30 U.S.C. 1253, to elect to enter into an agreement for State control and regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations [1] not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands consistent with SMCRA, the Federal lands program (30 CFR Chapter VII, Subchapter D), and the Montana State Program (State Program), including among other things, the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82, Montana Code Annotated (State Act or MCA).

B. Purposes

The purposes of the Agreement are to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands and coal exploration operations not subject to 43 CFR Group 3400; (2) minimize intergovernmental overlap and duplication; and (3) provide effective and uniform

[1] The term "Exploration operations" is referred to as "Prospecting" in the Montana State Program.

application of the State Program on all non-Indian lands in Montana.

C. Responsible Agencies

The Montana Department of Environmental Quality (DEQ) has, and shall continue to have, authority under State law to administer this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

Article II: Effective Date

Upon signing by the Secretary and the Governor, this Agreement will take effect [30 days after final publication as rule making in the **Federal Register**].[2] This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement, except the term "permit application package (PAP)," will be given the meanings set forth in SMCRA, 30 CFR Parts 700, 701, 740, and 761, and the State Program, including the State Act and the regulations promulgated pursuant to the State Act. Where there is a conflict between the above-referenced State and Federal definitions, the definitions used in the State Program will apply, unless otherwise required by Federal regulation.

The term "permit application package (PAP)," for the purposes of this cooperative agreement, means a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program, this agreement, and all other applicable laws and regulations, including, with respect to leased Federal coal, the Mineral Leasing Act and its implementing regulations.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13 or other applicable Federal laws, Executive Orders, or regulations.

Article V: Requirements for the Agreement

A. The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

B. Funds

1. The State shall devote adequate funds to the administration and enforcement on Federal lands in Montana of the requirements contained in the State Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of SMCRA and 30 CFR 735.16 for the costs associated with carrying out responsibilities under this Agreement. The amount of such funds shall be determined in accordance with the provisions of Chapter 3–10 and Appendix 111 of the Federal Assistance Manual.

2. If DEQ applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DEQ shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Montana are regulated in accordance with the State Program.

3. Funds provided to DEQ under this Agreement will be adjusted in accordance with the program income provisions of 43 CFR Part 12.

C. Reports and Records

DEQ shall submit annual reports to OSM containing information with respect to its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DEQ and OSM shall exchange, except where prohibited by Federal or State law, information developed under this Agreement. OSM shall provide DEQ with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DEQ comments on the report will be attached before being sent to the Congress or other interested parties.

D. Personnel

DEQ shall maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the State Program.

E. Equipment and Facilities

DEQ shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit to conduct surface coal mining and reclamation operations on Federal lands in Montana shall be determined in accordance with section 82–4–223(1) of MCA, and the applicable provisions of Federal law. All permit fees and civil penalty fines shall be accounted for in accordance with the provisions of 43 CFR Part 12. Permit fees will be considered program income. Civil penalties will not be considered program income. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include the amount of permit application fees collected and attributable to Federal lands during the State fiscal year.

Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

A. Receipt and Distribution of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

1. DEQ shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit to DEQ the appropriate number of copies of a PAP or application for transfer, assignment or sale of permit rights. The PAP or application for transfer, assignment or sale of permit rights shall meet the requirements of 30 CFR Part 740, shall be in the form required by DEQ, and shall contain, at a minimum, the information required by 30 CFR 740.13(b), including:

a. Information necessary for DEQ to make a determination of compliance with the State Program;

b. Any supplemental information required by OSM, the Bureau of Land Management (BLM), and the Federal land management agency. This information shall be appropriate and adequate for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Mineral Leasing Act (MLA) of 1920, as amended, the Federal lands program, and other Federal laws, Executive Orders, and regulations which these agencies administer.

2. Except as otherwise agreed in writing by Federal agencies, upon receipt of a PAP or application for transfer, assignment or sale of permit rights, DEQ shall ensure that an appropriate number of copies of the PAP or application for transfer, assignment or sale of permit rights are provided to OSM, the Federal land management agency, and any other appropriate Federal agency.

B. Review of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

1. DEQ is responsible for:

a. As authorized by 30 CFR 740.4(c),

(1) Being the primary point of contact with the applicant regarding the review of the PAP or application for transfer, assignment or sale of permit rights and communications regarding all decisions and determinations with respect to the PAP or application for transfer, assignment or sale of permit rights;

(2) Analysis, review, and approval, conditional approval, or disapproval of the permit application component of the PAP or application for transfer, assignment or sale of permit rights for surface coal mining and reclamation operations on Federal lands in Montana;

(3) Obtaining the comments and findings of Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP or application for transfer, assignment or sale of permit rights, unless otherwise agreed in writing by Federal agencies. DEQ shall request such Federal agencies to provide to DEQ their requests for additional information or their findings within 45 days of the receipt of the request;

(4) Obtaining OSM's determination whether the PAP involving leased Federal coal constitutes a mining plan modification under 30 CFR 746.18, and informing the applicant of such determination;

(5) Consulting with and obtaining the consent, as necessary, of the Federal land management agency pursuant to 30 CFR 740.4(c)(2), with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas that will be affected by surface coal mining and reclamation operations;

(6) Consulting with and obtaining the consent, as necessary, of BLM pursuant to 30

[2] See explanation in Article II at 46 FR 20983, April 8, 1981.

CFR 740.4(c)(3), with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Group 3400;

(7) Approval and release of performance bonds pursuant to Article IX.B, and approval and maintenance of liability insurance;

(8) Review and approval of exploration operations not subject to the requirements of 43 CFR Group 3400, as provided in 30 CFR 740.4(c)(6).

b. In addition, where a mining plan action is required under 30 CFR Part 746, as determined by OSM:

(1) Preparation of documentation to comply with the requirements of the National Environmental Policy Act (NEPA). However, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i) through (vii). DEQ and OSM shall coordinate and cooperate with each other so that, if possible, one Environmental Assessment or Environmental Impact Statement is produced to comply with NEPA and the Montana Environmental Policy Act (MEPA);

(2) Preparation of a State decision package, which includes written findings indicating that permit application component of the PAP is in compliance with the terms of the State Program, a technical analysis of the PAP, and supporting documentation.

2. OSM is responsible for:

a. When the PAP includes Federal lands,

(1) Making determinations and evaluations for NEPA compliance documents as required by 30 CFR 740.4(c)(7)(i) through (vii);

(2) Reviewing the appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13, and for compliance with the requirements of other Federal laws, Executive Orders, and regulations;

(3) Consulting with the Federal land management agency, and determining whether the PAP constitutes a mining plan modification under 30 CFR 746.18, and informing DEQ, whenever practical within 30 days of receiving a copy of the PAP for operations on Federal lands, of such determination;

(4) Exercising its responsibilities in a timely manner governed, to the extent possible, by the deadlines established in the State Program;

(5) Assisting DEQ, upon request, in carrying out its responsibilities by:

(a) Coordinating resolution of conflicts between DEQ and other Federal agencies in a timely manner;

(b) Obtaining comments and findings of other Federal agencies with jurisdiction or responsibility over Federal lands;

(c) Scheduling joint meetings between DEQ and Federal agencies;

(d) Reviewing and analyzing the PAP, to the extent possible, and providing to DEQ the work product within 50 days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DEQ; and

(e) Providing technical assistance, if available OSM resources allow.

b. In addition, where a mining plan action is required pursuant to 30 CFR Part 746:

(1) Consulting with and obtaining the concurrences of BLM, the Federal land management agency, and any other Federal agency, as necessary, prior to making recommendation to the Secretary concerning approval of the mining plan;

(2) Upon notification from the DEQ that certain permit conditions required by the Federal land management agency are not incorporated in the State permit, OSM will determine whether such conditions are necessary. When OSM believes the conditions are necessary, OSM will work with the Federal land management agency to find another means to resolve the issue and, where appropriate, OSM will facilitate the attachment of conditions to the appropriate Federal authorizations; and

(3) Providing a decision document to the Secretary recommending approval, disapproval, or conditional approval of mining plans or modifications thereof.

3. The Secretary:

a. Shall concurrently carry out his responsibilities that cannot be delegated to DEQ pursuant to SMCRA and 30 CFR 745.13, the Federal lands program, the Mineral Leasing Act (MLA), NEPA, this Agreement, and other applicable Federal laws including, but not limited to, those listed in Appendix A. The Secretary shall carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the State Program;

b. Reserves the right to act independently of DEQ to carry out his responsibilities under laws other than SMCRA, and where Federal law permits, to delegate some of the responsibilities to OSM; and

c. Shall be responsible for approval, disapproval, or conditional approval of mining plans and modifications thereof with respect to lands containing leased Federal coal in accordance with 30 CFR 740.4(a)(1).

4. Coordination:

a. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of a PAP or application for transfer, assignment or sale of permit rights with respect to matters covered by the State Program.

b. OSM and DEQ shall coordinate with each other during the review process of a PAP or application for transfer, assignment or sale of permit rights as needed.

c. OSM and DEQ may request and schedule meetings with the applicant with adequate advance notice to each other.

d. DEQ shall keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. DEQ shall send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP or application for transfer, assignment or sale of permit rights. OSM shall send to DEQ copies of all OSM correspondence with the applicant and any other information received from the applicant which may have a bearing on the PAP or application for transfer, assignment or sale of permit rights. Any conflicts or differences of opinions that may develop during the review process should be resolved at the lowest possible staff level.

e. OSM shall have access to DEQ files concerning operations on Federal lands.

f. Where a mining plan action is required pursuant to 30 CFR Part 746, OSM and DEQ shall develop a work plan and schedule for the PAP review and each will designate a project leader. The project leaders will serve as the primary points of contact between OSM and DEQ throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSM shall furnish DEQ with its review comments on the PAP and specify any requirements for additional data. DEQ shall provide OSM all available information that may assist OSM in preparing any findings for the mining plan action.

g. On matters concerned exclusively with regulations under 43 CFR Group 3400, BLM will be the primary contact with the applicant and shall inform DEQ of its actions and provide DEQ with a copy of documentation on all decisions.

h. Responsibilities and decisions which can be delegated to DEQ under applicable Federal laws other than SMCRA may be specified in working agreements between OSM and DEQ, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

i. In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect either a publicly-owned park, or a historic place listed in the NRHP, DEQ shall work, respectively, with the agency with jurisdiction over the publicly-owned park or the agency with jurisdiction over the historic place, to develop mutually acceptable terms and conditions for incorporation into the permit to mitigate adverse impacts.

C. Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

1. DEQ shall make a decision on approval, conditional approval, or disapproval of permit application component of the PAP or application for transfer, assignment or sale of permit rights on Federal lands.

2. DEQ must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. To the extent allowed by Montana law, permits issued by DEQ will include terms and conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations other than SMCRA, in accordance with 30 CFR 740.13(c)(1). When Federal agencies recommend permit conditions and these conditions are not adopted by DEQ, DEQ will provide OSM with documentation as to why they were not incorporated as permit conditions.

3. When a mining plan action is required pursuant to 30 CFR part 746, DEQ may make a decision on approval, conditional approval, or disapproval of permit application component of the PAP on Federal lands in accordance with the State Program prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that Secretarial approval of the mining plan action must be obtained before the applicant may conduct surface coal

mining and reclamation operations on the Federal lands. To the extent allowed by the State law, DEQ shall reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

4. After making its decision on the permit application component of the PAP, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction over a publicly-owned park, or historic property included in the National Register of Historic Places (NRHP) which would be adversely affected by the surface coal mining and reclamation operations.

Article VII: Inspections

A. DEQ shall conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the approved State Program.

B. DEQ shall, subsequent to conducting any inspection on Federal lands, file with OSM's appropriate Field Office an inspection report describing: (1) The general conditions of the lands under the lease, permit, or license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance standards and reclamation requirements.

C. DEQ will be the point of contact and inspection authority in dealing with the operator concerning operations and compliance with requirements covered by this Agreement, except as described in this Agreement and in the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

D. Authorized representatives of the Secretary may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843, and with the Secretary's obligations under laws other than SMCRA.

E. OSM shall give DEQ reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint supplying adequate proof of an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it shall contact DEQ no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, must be referred initially to DEQ for action. The Secretary reserves the right to conduct inspections without prior notice to DEQ, if necessary, to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DEQ shall have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the State Program in accordance with 30 CFR 740.4(c)(5) and 740.17(a)(2). Enforcement authority given to the Secretary under SMCRA, and its implementing regulations, or other Federal laws and Executive Orders, including, but not limited to, those listed in Appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and DEQ, DEQ will have primary responsibility for enforcement procedures, including issuance of cessation orders and notices of violation. DEQ shall consult with OSM prior to issuance of any decision to suspend, rescind or revoke a permit on Federal lands. DEQ shall notify BLM of any suspension, rescission or revocation of a permit containing leased Federal coal pursuant to 30 CFR 740.13(f)(2).

C. During any inspection made solely by OSM or any joint inspection where DEQ and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 842, 843, 845 and 846.

D. DEQ and OSM shall promptly notify each other of all violations and of all actions taken with respect to such violations.

E. Personnel of DEQ and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DEQ and the Secretary shall require all operators on Federal lands to submit a single performance bond jointly payable to both the United States and DEQ. The bond shall be of sufficient amount to cover the operator's responsibilities under SMCRA and the State Program. The bond shall be conditioned upon continued compliance with all requirements of SMCRA, 30 CFR Chapter VII, the State Program, and the permit. Such bond shall provide that if this Agreement is terminated under the provisions of 30 CFR 745.15, the portion of the bond covering the Federal lands shall be payable only to the United States.

B. DEQ will have primary responsibility for the approval and release of performance bonds required for surface coal mining and reclamation operations on Federal lands. However, release of a performance bond on lands subject to an approved mining plan requires the concurrence of OSM as provided in 30 CFR 740.15(d)(3). Prior to such concurrence, OSM shall coordinate with other Federal agencies having the authority over the lands involved. DEQ shall annually advise OSM of adjustments to the performance bond.

C. Performance bonds will be subject to forfeiture with the concurrence of OSM, in accordance with the procedures and requirements of the State Program. OSM may not withhold its concurrence unless DEQ's forfeiture decision is not in accordance with the requirements and procedures of the State program.

D. Submission of a performance bond does not satisfy the requirements for either a Federal lease bond required by 43 CFR Part 3474 or a lessee protection bond which is required in certain circumstances by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions

1. Authority to designate or terminate the designation of areas of Federal lands as unsuitable for mining is reserved to the Secretary. Unsuitability petitions shall be filed with OSM and would be processed in accordance with 30 CFR 769.

2. When either DEQ or OSM receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt of the petition and the anticipated schedule for reaching a decision. OSM shall coordinate with and solicit comments from the applicable Federal land management agency. OSM and DEQ shall fully consider data, information, and recommendations of all agencies.

B. Valid Existing Rights (VER) and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, Secretary will make the VER determination. If surface coal mining and reclamation operations would be conducted on both Federal and non-Federal lands within such areas, the Secretary will make the VER determination for the Federal lands and DEQ will make the VER determination for State and private lands.

2. For Federal lands within the boundaries of any national forest where proposed surface coal mining and reclamation operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), the Secretary will make VER determinations. OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and part 30 CFR 761.12(c).

3. Where a VER determination is requested for Federal lands protected under section 522(e)(3), DEQ will make the VER determination. DEQ will determine, in consultation with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or place listed on the NRHP.

Surface coal mining and reclamation operations of Federal lands protected under section 522(e)(3) of SMCRA may be permitted if approved jointly by DEQ, and the Federal, State, or local agency with jurisdiction over the park or historic place. DEQ will coordinate with any agency with jurisdiction over the publicly-owned park or historic place to develop mutually acceptable terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

4. DEQ will process determinations of VER on Federal lands for all areas limited or

prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining.

5. For operations on Federal lands, whenever DEQ is responsible for making the VER determinations, DEQ will consult with OSM and any affected agency.

Article XI: Termination of the Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of the Agreement

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendments of the Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Secretary or the State may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its respective laws or regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DEQ and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

A. DEQ and OSM shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of the principal offices of the program. DEQ and OSM shall advise each other in writing of changes in the location of their respective offices, addresses, telephone numbers, as well as changes in the names, addresses, and telephone numbers of their respective personnel.

B. Should the State Act be amended to transfer administration of the State Act to another agency, all references to DEQ in this Agreement shall be deemed to apply to the successor regulatory agency as of the date of transfer. The provisions in this Agreement shall thereafter apply to that agency.

Article XVI: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under laws other than the Act and the State Program, including, but not limited to those listed in Appendix A.

Dated:

Governor of Montana

Dated:

Secretary of the Interior

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq., and implementing regulations, including 43 CFR Part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and implementing regulations, including 40 CFR Part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 et seq., and implementing regulations, including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., and implementing regulations, including 36 CFR Part 800.
6. Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001 et seq.
7. The American Indian Religious Freedom Act, 42 U.S.C. 1986 et seq.
8. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa et seq.
9. The Clean Air Act, 42 U.S.C. 7401 et seq., and implementing regulations.
10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and implementing regulations.
11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., and implementing regulations.
12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 et seq.
13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
14. Executive Order 11988 (May 24, 1977), for flood plain protection.
15. Executive Order 11990 (May 24, 1977), for wetlands protection.
16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.
17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 et seq., and implementing regulations.
18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 et seq.
19. The Constitution of the United States.
20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.
21. 30 CFR Chapter VII.
22. The Constitution of the State of Montana.
23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), Part 2, Chapter 4, Title 82, Montana Code Annotated.
24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.
25. Montana Environmental Policy Act (MEPA).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5674–4]

Calls for State Implementation Plan Revisions for Certain States To Reduce Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: In accordance with section 110(k)(5) and 110(a)(2)(D) of the Clean Air Act (Act), the EPA plans to require States to submit State implementation plan (SIP) measures to ensure that emission reductions are achieved as needed to prevent significant transport of ozone (smog) pollution across State boundaries in the Eastern United States. These precursors include volatile organic compounds (VOC) and oxides of nitrogen (NO_x).

Today's notice announces the Agency's intention to publish a Notice of Proposed Rulemaking in the March 1997 timeframe, with final action scheduled for summer 1997. Ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), inflammation of the lung, and possible long-term damage to the lungs. Today's notice announces EPA's intention to conduct the formal process for implementing the regional reductions in ozone precursors that are necessary for areas in the Eastern United States to reach attainment. The Ozone Transport Assessment Group (OTAG) was established approximately 1½ years ago to undertake an assessment of the regional transport problem. The OTAG is a collaborative process conducted by the affected States. The OTAG also includes representatives from EPA and interested members of the public, including environmental groups and industry, to evaluate the ozone transport problem and the development of solutions.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

Documents related to OTAG are available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS). The telephone number for the TTN BBS is (919) 541–5742. To access the bulletin board a modem and communications software are necessary. The following parameters on the communications software are required: Data Bits-8; Parity-N; and Stop Bits-1. The documents will be located on the OTAG BBS. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC. Other documents related to OTAG can be downloaded from OTAG's webpage at http://www.epa.gov/oar/otag/otag.html.

I. Background

A. Overview of 1990 Amendments to the Clean Air Act (1990 Amendments)

In 1990, Congress amended the Act to address, among other things, continued nonattainment of the ozone national ambient air quality standard (NAAQS) (Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Several of the provisions added, or revised, by the 1990 Amendments are relevant to today's notice.

The 1990 Amendments divide ozone nonattainment areas into, in general, five classifications based on air quality design value and establish specific requirements, including new attainment dates, for each classification (sections 181–182).

The 1990 Amendments require States containing ozone nonattainment areas classified as serious, severe, or extreme to submit several SIP revisions, including controls to progressively reduce emissions of ozone precursors by 9 percent over each 3-year period from 1996 through the attainment date (the rate-of-progress (ROP), or SIP submittals), under section 182(c)(2)(B);[1] a demonstration of attainment (including air quality modeling) for the nonattainment area (the attainment demonstration), as well as SIP measures containing any additional reductions that may be necessary to attain by the appropriate attainment date under section 182 (c)–(e). These Act provisions established November 15, 1994 as the required date for these SIP submittals.[2] On March 2, 1995, EPA Assistant Administrator for Air and Radiation, Mary D. Nichols, sent a memorandum to EPA Regional Administrators (Memorandum) to provide guidance on an alternative approach to provide States with serious and above ozone nonattainment areas flexibility in their planning efforts for the submittals due November 15, 1994.

The 1990 Amendments reflect general awareness by Congress that in some areas of the country, ozone is not merely a local problem, but rather is a regional problem in that ozone and its precursors can be transported long distances across State lines to combine with ozone and precursors downwind, thereby exacerbating the ozone problems downwind. As a result, section 184 delineates a multistate ozone transport region (OTR) in the Northeast part of the country, establishes the Northeast Ozone Transport Commission (OTC) for the purpose of implementing regionwide controls affecting all areas (including attainment areas) in the OTR, and requires specific controls in that region.

Section 110(a)(2)(D) provides an additional tool for addressing the problem of transport. This provision, which applies by its terms to all SIP's for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation, provides that a SIP must contain provisions preventing its sources from contributing significantly to nonattainment problems downwind. Specifically, this provision states, in relevant part, that the SIP must—

> contain adequate provisions * * * prohibiting * * * any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—
>
> (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such [NAAQS], or
>
> (II) interfere with measures required to be included in the applicable implementation plan for any other State * * * to prevent significant deterioration of air quality or to protect visibility. * * *

Section 110(k)(5) provides EPA with a tool for assuring that SIP's include required controls by authorizing EPA to make a finding that a SIP is inadequate to meet an Act requirement, thereby requiring the State to submit, within a specified period, a SIP revision to correct the inadequacy. Specifically, this provision, which may be termed the SIP call provision, provides, in relevant part—

> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS], to mitigate adequately the interstate pollutant transport described in section 176A or section 184, or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.

All of the Act provisions summarized above are described in more detail in EPA's rulemaking notices concerning low emission vehicles (LEV) in the Northeast OTR (OTC LEV), "Proposed Rulemaking on Ozone Transport Commission; Emission Vehicle Program for the Northeast Ozone Transport Region," 59 FR 21720 (April 26, 1994); "Supplemental Notice of Proposed Rulemaking on Ozone Transport Commission; Emission Vehicle Program for the Northeast Ozone Transport Region," 59 FR 48664 (September 22, 1994); "Final Rule on Ozone Transport Commission; Emission Vehicle Program for the Northeast Ozone Transport Region," 60 FR 4712 (January 24, 1995).

B. State Actions and EPA Administrative Policy

Notwithstanding significant efforts, the States generally were not able to meet the November 15, 1994 deadline for the attainment demonstration and other SIP submissions required under section 182(c).

The March 2, 1995 Memorandum recognized the efforts made by States and the remaining difficulties in making the ROP and attainment demonstration SIP submittals. The Memorandum recognized that in general, many States were unable to complete these SIP requirements within the deadlines prescribed by the Act due to circumstances beyond their control. These States were hampered by unavoidable delays in developing the underlying technical information needed for the required SIP submittals. The EPA recognized that development of the necessary technical information, as well as the control measures necessary to achieve the large level of reductions likely to be required, had been particularly difficult for the States affected by ozone transport.

Accordingly, as an administrative remedial matter, the Memorandum

[1] These ozone nonattainment areas, as well as those classified as moderate, were also required to submit, by November 15, 1993, a SIP revision providing for reductions in VOC emissions of 15 percent by November 15, 1996 under section 182(b)(1).

[2] For ozone nonattainment areas classified as moderate, the attainment demonstration was due November 15, 1993 (section 182(b)(1)(A)), except that if the State elected to conduct an urban airshed model, EPA allowed an extension to November 15, 1994.

indicated that EPA would establish new timeframes for SIP submittals. The Memorandum indicated that EPA would divide the required SIP submittals into two phases. The Phase I submittals generally consisted of (i) SIP measures providing for ROP reductions due by the end of 1999 (the first 9 percent of ROP reductions); (ii) a SIP commitment (sometimes referred to as an enforceable commitment) to submit any remaining required ROP reductions on a specified schedule after 1996 (with submission no later than the end of 1999); and (iii) a SIP commitment to submit the attainment demonstration by mid-1997, with submission by no later than the end of 1999 of any additional rules needed to attain. By notice dated July 10, 1996 (61 FR 36292–36295 July 10, 1996), EPA issued findings (July 1996 Findings), and thereby started sanctions clocks, for 10 States and the District of Columbia. The findings were made for nine nonattainment areas in those States under the Act for failure to make complete Phase I ozone SIP submittals as described above.

The Phase II submittals were due at specified times after 1996 and primarily consisted of the remaining ROP SIP measures, the attainment demonstration and additional rules needed to attain, and any regional controls necessary for attainment by all areas in the region. The Memorandum contemplated that regional controls needed for serious areas to reach their 1999 attainment date would be submitted and implemented in a timeframe consistent with that deadline, and that regional controls needed for severe/extreme areas to attain would be submitted by the end of 1999.

In addition, the Memorandum called for a collaborative process among the States in the Eastern half of the country to evaluate and address transport of ozone and its precursors. Subsequently, the OTAG was formed, which includes representatives from States, EPA officials, and interested members of the public, including environmental groups and industry, to provide for an assessment of the transport problem and the development of consensus solutions.

It is becoming increasingly apparent that some of the most highly polluted ozone nonattainment areas will not be able to demonstrate attainment simply through the implementation of control measures within the nonattainment area. In some cases, significant ozone concentration and precursor emission reductions within the upwind air mass being transported into the nonattainment area also appear to be necessary.

C. OTAG Process

The OTAG is organized into a number of subgroups and workgroups. The OTAG's Policy Group provides overall direction to its subgroups for the assessment of ozone formation and transport, as well as the development of controls strategies that will reduce concentrations of ozone and its precursors. The Modeling and Assessment Subgroup addresses issues relating to emissions inventories, monitoring, and modeling. It's goal is to assess ozone transport and its impacts. The Strategies and Controls Subgroup evaluates the availability, effectiveness, and costs of potential national, regional and local air pollution control strategies. The Financial Assessment and Implementation Subgroup addresses funding and budget issues. The Outreach and Communications Subgroup educates and informs the public about OTAG's mission and goals, specifically the environmental benefits of reducing the transport of ozone and its precursors. There are also work groups that address other issues such as trading and market-based incentives, criteria for evaluating strategies and implementation issues.

The OTAG's first meetings were on May 18, 1995, in Reston, Virginia, and June 19, 1995, in Washington, DC. The OTAG has continued to meet regularly since then. The goal of OTAG is to—

> Identify and recommend a strategy to reduce transported ozone and its precursors which, in combination with other measures, will enable attainment and maintenance of the national ambient ozone standard in the OTAG region. A number of criteria will be used to select the strategy including, but not limited to, cost-effectiveness, feasibility, and impacts on ozone levels.[3]

In addition to sensitivity modeling analyses, OTAG is modeling three rounds of strategies in order to have the technical information necessary to make a recommendation to EPA on what is needed to meet the OTAG goal. The first round of modeling was performed during September and October 1996 and provided an initial evaluation of possible OTAG emission reductions. The results from the sensitivity analyses and the first round of strategy runs indicate that NO_X reductions provide benefits across State or multi-state boundaries and local disbenefits in some urban areas. Regionwide VOC reductions provide little benefit on a regional scale but decrease ozone in urban areas, which also may lessen the disbenefits associated with certain NOx controls. The second round is being performed during November and December 1996 and is refining the emission reduction level for the strategies. The third round will be performed during January and February 1997 and will evaluate the geographic applicability of the OTAG strategies.

As indicated in the Memorandum, EPA envisioned that OTAG would complete its work by the end of 1996. The modeling timetable described above goes beyond the original schedule called for in the Memorandum. While EPA believes that the results from the third round of modeling runs are important, the Agency recognizes that the delay, although relatively brief, will result in some further delay in the development of regionwide controls based on the OTAG regional assessment.

In addition, according to the March 2, 1995 memorandum, States must submit, by mid-1997, the Phase II submittals that include a plan for attainment of the ozone NAAQS and any regional controls necessary for attainment by all areas in the region. The policy contemplates that these submittals will take account of the assessment of air quality controls and modeling runs performed by OTAG, as well as recommendations as to control strategies that OTAG may develop.

D. Revised Ozone NAAQS and Interim Implementation Policy

On December 13, 1996, EPA issued a notice of proposed rulemaking to revise the ozone NAAQS (61 FR 65716), as well as set out the Interim Implementation Policy (IIP) (61 FR 65764), which describes the SIP requirements applicable to areas during the period from the promulgation of a revised NAAQS to the creation of the new SIP's required to attain the revised NAAQS. The proposal noted that a standard set at a level of 0.09 ppm would result in approximately equivalent public health protection as that afforded by the current standard; a 0.08 ppm level would provide greater protection. Thus, OTAG control strategies targeted at the reduction of boundary ozone and its precursors would be effective and consistent with any of the proposals for the new NAAQS.

In the proposed IIP, EPA recognized that replacing the existing NAAQS has ramifications for the controls scheme for existing ozone nonattainment areas. For example, the attainment dates for nonattainment areas under the current NAAQS would be replaced by revised attainment dates under the revised NAAQS. Also, the proposed IIP states that nonattainment areas currently classified as serious and higher must continue to meet the same ROP

[3] OTAG Policy Paper approved by the Policy Group on December 4, 1995.

requirements as under the current NAAQS, which are provided by section 182(c)(2)(B), except that if the NAAQS is revised as proposed, areas should submit ROP controls covering only the period up to the time they submit new SIPs to attain the revised NAAQS and not up to their attainment date under the current NAAQS. In addition, if the NAAQS is revised as proposed, areas would not be required to submit attainment demonstrations (including the controls) geared towards the existing NAAQS and attainment dates; rather, they would be required at a future time to submit an attainment demonstration geared to the revised NAAQS.

The IIP further proposes to require States to submit, within 90 days after promulgation of the final ozone NAAQS, a preliminary estimate of the amount of emissions reductions needed for their ozone nonattainment area to attain the revised NAAQS. Finally, the IIP proposes making revisions to the July 1996 Findings consistent with its principles.

II. Notice of Intent To Propose Rulemaking

In this notice, the Agency is announcing its plans to issue SIP calls, under section 110(k)(5) of the Act, as needed to ensure that the necessary regional reductions are achieved that will allow current nonattainment areas to prepare attainment demonstrations for the current NAAQS. This action will reflect the technical work done by OTAG, as well as any OTAG recommendations for adoption of additional NO_X and/or VOC controls. The EPA wants to ensure that the necessary regional reductions would be implemented by the relevant States within a specified timeframe. It is EPA's intention to review the assessments, modeling work, and any recommendations made by OTAG, and to base the SIP call on this review as well as any other information available. In the March 1997 timeframe, EPA intends to publish a Notice of Proposed Rulemaking (NPR). The EPA anticipates that the NPR will propose overall amounts or ranges of NO_X and/or VOC emission reductions that each State would need to achieve to reduce the boundary condition concentrations of ozone and its precursors within a specified timeframe and require the submission of SIP controls to achieve these reductions. The EPA may or may not identify or require specific control measures. The SIP revision must also contain a schedule for adoption and implementation of these measures, and EPA intends to set out this schedule in more detail in the proposed rulemaking. The EPA intends to publish the final SIP call notice in summer 1997.

Under section 110(k)(5) of the Act, EPA has the authority to establish the date by which a State must respond to a SIP call. This date can be no later than 18 months after the SIP call is issued. The EPA believes that it is appropriate for attainment areas to meet the same schedule as nonattainment areas for making SIP submittals. The EPA could thus allow up to 18 months for these submittals. However, EPA is considering a more accelerated schedule for submittals under this SIP call to attain air quality benefits sooner and to facilitate area specific SIP planning. The EPA will be requesting comment on deadlines ranging from 6 months to 18 months following the date of publication of the notice of final rulemaking.

If EPA makes a finding under section 179(a) that the appropriate States have not made the required complete submittals by the date established in the SIP call, EPA plans to provide by rule that the offset sanction identified in section 179(b) will be applied in the affected areas, pursuant to section 179(a) and 40 CFR 52.31. If the States have still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment areas in accordance with 40 CFR 52.31. In addition, section 110(c) provides that EPA promulgate a Federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The EPA believes that expedited implementation of regional control strategies to facilitate attainment of the current standard would also be beneficial if the Agency makes a final decision to revise the ozone NAAQS standard. In fact, it is likely that regional reductions in ozone and ozone precursors in upwind States will be even more critical to allow downwind States to attain a revised standard. Regional reductions could also minimize the number of areas designated nonattainment under a revised standard and/or lessen the severity of the nonattainment problem. In addition, as EPA goes through the process of developing an implementation program for the new standard, it will be able to take advantage of the information gathered by OTAG and account for emission reductions that result from the recommended strategy.

The EPA's authority under section 110(k)(5) to issue a SIP call will not be changed by promulgation of a revised NAAQS because the requirements of section 110(a)(2)(D) will not be affected by the revised NAAQS. Under the revised NAAQS, upwind States must continue to demonstrate that their sources do not significantly contribute to nonattainment problems downwind.

Dated: January 6, 1997.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 97–645 Filed 1–9–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93–55; FCC 96–108]

Metric Conversion of Tariff Publications and Supporting Information

AGENCY: Federal Communications Commission.

ACTION: Termination of proposed rulemaking proceeding.

SUMMARY: In a 1993 Notice of Proposed Rulemaking, the Commission sought comment on a proposal to amend Part 61 of its rules to mandate metric conversion of common carrier tariff publications and supporting information ("tariff materials"). The Commission made this proposal to facilitate use of these materials in light of the increased employment of metric units of measurement in this country and Congressional policy that the metric system of measurement be employed wherever possible. Based upon the comments received and its own analysis, the Commission concluded, in this Report and Order, that it would not be in the public interest to require common carriers to convert to the metric system those units of measure appearing in their tariff materials. Specifically, the Commission found that the benefits to carriers and their customers of such mandatory metric conversion—or of requiring that conversion tables be included in such materials—were not clear enough to justify the carrier burdens involved. Accordingly, the Commission declined to adopt any of the proposed conversion options and, instead, terminated this proceeding.

DATES: The proposed rulemaking proceeding is terminated February 10, 1997.

FOR FURTHER INFORMATION CONTACT: Allen A. Barna, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: The Commission opened this docket with the release of a Notice of Proposed Rulemaking: Amendment to Part 61 of the Commission's Rules Requiring Metric Conversion of Tariff Materials and Supporting Information, CC Docket No. 93–55, 10 FCC Rcd 6483 (1993) (1993 NPRM), 58 FR 26087, April 30, 1993. The 1993 NPRM was one of several actions that the Commission took in response to the Metric Conversion Act of 1975, Public Law 94–168, 89 Stat. 1007 (1975), as amended by Public Law 100–418, 102 Stat. 1107 (1988) (codified at 17 U.S.C. § 205 *et seq.*) (Metric Conversion Act). This is a summary of the Commission's later Report and Order in this docket adopted March 12, 1996, and released March 29, 1996, 11 FCC Rcd 3617 (1996) (Report and Order). The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 239), 1919 M St., NW., Washington, DC. The complete text of this Report and Order may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

Regulatory Flexibility Analysis

Because the Commission did not impose any of the proposed metric conversion options on common carriers and, instead, simply terminated this proceeding, the Commission has determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the adoption of this Report and Order because termination of this proceeding does not have any significant economic impact on small entities.

Summary of Report and Order

In the 1993 NPRM, the Commission expressed its belief that distance-sensitive units in tariff filings under Part 61 of its rules should be expressed in metric units. Accordingly, that NPRM proposed three options for conversion of common carrier tariff materials to the metric system. Under Option 1, the Conversion Table Option, carriers would be required to include, in the general rules section of their tariff materials, a table for converting non-metric units of measurement to metric units. Under Option 2, carriers would be required to include—in the applicable rate sections of their tariff materials—the metric unit and corresponding rate in parenthesis beside the non-metric unit and related rate (*e.g.*, $4.00 per mile ($2.50 per kilometer)). Under Option 3, carriers would be required to include only the metric unit and related rate in the applicable rate sections of their tariff materials. To aid tariff users not familiar with the metric system, Option 3 would also require carriers to include appropriate conversion tables in their tariff materials.

Most commenting parties urged the Commission not to adopt any rule requiring metric conversion of common carrier tariff materials. Some parties noted that the Metric Conversion Act does not obligate the Commission to require metric conversion of such materials. A number of parties argued that the anticipated costs for carriers to convert these materials and the related administrative burdens on each carrier to revise tariff materials far outweigh any benefits to those who use these materials.

The National Institute of Standards and Technology at the U.S. Department of Commerce (NIST) recommended that these tariff materials include either (a) the metric unit and corresponding rate followed in parenthesis by the non-metric unit and rate, or (b) the non-metric unit and corresponding rate followed by the metric unit and rate. Thus, NIST would allow carriers to choose which measurement system would be dominant in their tariff materials and which would be included in parenthesis. Should the Commission not adopt that approach, NIST urged that common carriers be required to comply with Option 2 in the 1993 NPRM because, in the view of NIST, that option most closely met the goals of the Metric Conversion Act. In addition, the Chairman of the Standards and Metric Practices Subcommittee of the Metrification Operating Committee of the Interagency Council on Metric Policy urged the Commission to allow carriers to use only metric units in their tariff materials because use of any other option would require carriers to continue to use two sets of units in these materials.

The Commission found that the carrier burdens associated with both Option 2 and Option 3 clearly outweigh the benefits to the public that each offers. Although Option 1, the Conversion Table Option, would be less burdensome than either of the other two options, the Commission found that it, too, would impose additional burdens on carriers. While the Commission recognized that inclusion of such conversion tables in tariff materials would promote its metric conversion program and would potentially benefit some tariff users, the Commission, nevertheless, found that the benefits associated with such a requirement would be outweighed by the estimated burdens on carriers.

Thus, in light of the record established in response to the 1993 NPRM, the Commission no longer found that the benefits of having metric units or metric conversion tables in tariff materials exceeded the related burdens on those carriers that filed these materials. Instead, the Commission found that the benefits to carriers and their customers of converting tariff materials to the metric system—or of including conversion tables in such materials—were not sufficiently clear to justify the burdens involved. Accordingly, the Commission declined to adopt any of the conversion options proposed in the 1993 NPRM and terminated this proceeding.

Ordering Clause

Accordingly, *It is ordered*, that the proceeding initiated in CC Docket No. 93–55 *Is terminated*.

List of Subjects in 47 CFR Part 61

Communications common carriers, Metric system, Telecommunications.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–529 Filed 1–9–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122396B]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 1-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Tuesday, January 16, 1997, at 9 a.m.

ADDRESSES: The meeting will be held at the Tara Ferncroft Conference and Resort, 50 Ferncroft Road, Danvers, MA 01923; telephone (508) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council, (671) 231–0422.

SUPPLEMENTARY INFORMATION: This 1-day meeting is being held to discuss right whale and groundfish management issues.

Background Information for Abbreviated Rulemaking—Northeast Multispecies

The Council will consider taking action on framework adjustments to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. Initial action will be taken on a framework adjustment to the FMP that would restrict fixed gear in the Great South Channel area to protect right whales in critical habitat during high use periods.

The remainder of the day will be used to consider Framework Adjustment 20, an action that would establish groundfish stock rebuilding measures for the 1997 fishing year. The range of options under consideration include area closures, gear modifications, and possible reductions in days-at-sea allocations. As part of this action, the Council also will discuss effort reduction measures for gillnet vessels, alternatives to the current haddock trip limit, incentives to reduce fishing effort on inshore groundfish stocks, and measures to protect the 1992 year class of winter flounder.

The Council will consider other adjustments that will be submitted as part of Framework Adjustment 20. These concern an exempted fishery for monkfish with 10–inch (25.4 cm) or larger mesh gillnets, an exempted fishery for mussel dredges in Southern New England, and modification of the bycatch allowances in the northern shrimp fishery. Any other outstanding business will be addressed at the end of the day.

The Council will consider public comments at a minimum of 2 Council meetings prior to making any final recommendations to the Regional Administrator, Northeast Region, NMFS, under the provisions for abbreviated rulemaking cited above. If the Regional Administrator concurs with the measures proposed by the Council, he will publish them as a final rule in the **Federal Register**.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Christopher B. Kellogg (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 6, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–588 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 62, No. 7
Friday, January 10, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on January 30, 1997 in Campbell's Conference Center (River Room), 104 W. Wooden, Chelan, Washington. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. The focus of this meeting will be to discuss grazing management under the Northwest Forest Plan, agency updates on Northwest Forest Plan implementation, and discuss the focus for future advisory committee meetings. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509–662–4335.

Dated: January 6, 1997.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–586 Filed 1–9–97; 8:45 am]

BILLING CODE 3410–11–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on January 22, 1997 at Cle Elum Ranger Station conference room, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. This meeting will focus on the Adaptive Management Area plan and agency updates on the Northwest Forest Plan implementation. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington, 98807, 509–662–4335.

Dated: January 6, 1997.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–587 Filed 1–9–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled
ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial

Sierra Army Depot, Herlong, California
NPA: Tehama County Opportunity Center, Inc., Red Bluff, California

Janitorial/Custodial

Edward Hines, Jr. VA Hospital, Consolidated Mail Outpatient Pharmacy, Building #37, Hines, Illinois
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois

Linen Distribution

VA Medical Center, 1900 E. Main Street Danville, Illinois
NPA: Rehab Products and Services, Inc. Danville, Illinois

Litter Pick-Up

Robins Air Force Base, Georgia
NPA: Family Support Alliance for the Mentally Ill, Inc., Warner Robins, Georgia

Storage and Distribution of Uniform Accessories

(Vendor Parts Accessories)

Defense Personnel Support Center, Philadelphia, Pennsylvania

NPA: Travis Association for the Blind, Austin, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–657 Filed 1–9–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 28, November 8 and 22, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 33711, 57849 and 59401) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies

(Requirements for Fort McClellan Air Force Base, Alabama)

Services

Administrative Services

Poff Federal Building and Courthouse, 210 Franklin Road, SW, Roanoke, Virginia

Janitorial/Custodial

Naval Command Control & Ocean Surveillance Center, Naval Weapons Station, East Coast Division Complex, Charleston, South Carolina

Operation of Central Issue Facility, Fort Drum, New York

Petroleum Support, Fort Sam Houston/ Camp Bullis, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–658 Filed 1–9–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 1, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 56511) of proposed addition to the Procurement List. Comments were received from the current contractor for this service. The contractor noted that loss of this service proposed for addition to the Procurement List would leave it with only one source of revenue until it is successful in bidding for other business. However, that single source of revenue which the contractor would retain is responsible, by the contractor's own figures, for over 90 percent of its sales. Consequently, the Committee does not believe that its action in adding to the Procurement List a service which constitutes a very small percentage of the contractor's total sales will have a severe adverse impact on the contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Operation of Postal Service Center

Nellis Air Force Base, Nevada

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–659 Filed 1–9–97; 8:45 am]

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Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 25, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 FR 55268) of proposed additions to the Procurement List. Comments were received from the current contractor for the Air Force women's garrison caps. That contractor described its position as precarious and attributed the reductions in its workforce over the past six years to Committee decisions to place several other military caps on its Procurement List. The contractor advised that the addition of the cap to the Procurement List would put an end to its enterprise.

The Committee is aware that substantial reductions in troop strength in all military services in recent years have decreased the requirements for these caps and other types of headgear. In fact, the nonprofit agency that would produce these caps has experienced significant reductions in orders for the Air Force men's caps, which is why it is seeking the additional work represented by the women's caps.

The Committee believes it is primarily the changes in troop strength and the current contractor's failure to secure other Federal and commercial business that have led to the decline in that firm's workforce and sales and not previous actions by the Committee. This belief is supported by the fact that the current annual value of the types of caps made under the JWOD Program that have been made in the past by the current contractor is substantially less than the decline in the current contractor's sales over the past six years.

The Committee also noted that while it has placed the Air Force men's garrison caps and a small portion of the Army men's garrison caps on its Procurement List, the current contractor will continue to have the ability to bid on substantial other Government business. This business includes the vast majority of the Army men's garrison caps, the Army women's garrison caps, and all the Marine and Coast Guard garrison caps. The current contractor will also have the opportunity to continue to bid on all service cap covers. Moreover, the Committee will not be adding any more caps of this type or any service cap covers to the Procurement List for at least five years without the prior approval of the current contractor and another firm that makes these types of caps.

The Committee also noted that the caps in question did not represent a substantial portion of the current contractor's business during the past year and prior to August of 1996 had not been supplied by the current contractor for several years.

Since it has remained in business without sales of this cap or the Air Force men's cap tor three to five years, the firm is not, in the Committee's opinion, dependent on the sales of either cap for its continued survival.

Overall, the Committee has concluded that because of the significant opportunities that will continue to be available to the current contractor to bid on other caps and cap covers and the firm's lack of dependence on this particular item, addition of these caps is not likely to result in an end to the enterprise. However, to give the current contractor additional time to adjust to the market changes, the Committee has decided to permit half of the initial FY 1997 requirement for the caps in question to be procured competitively.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Cap, Garrison, Women's (USAF)

8410–01–381–5481
8410–01–381–5559
8410–01–381–5544
8410–01–381–5566
8410–01–381–5521
8410–01–381–5536
8410–01–381–5507
8410–01–381–5612
8410–01–381–5627
8410–01–381–5647
8410–01–381–5504

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–660 Filed 1–9–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 10, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as

otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Duplicating/Copying of Court Documents

(GPO Program #C414–S)

NPA: Alliance, Inc., Baltimore, Maryland.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–661 Filed 1–9–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Initiation of Anticircumvention Inquiry on Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of anticircumvention inquiry.

SUMMARY: In response to a request from petitioners in this case [1], the Department of Commerce (the Department) is initiating an anticircumvention inquiry to determine whether imports of (i) pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe) and (ii) pipe certified to both the API 5L line-pipe specifications and the less stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual certified pipe [2]), falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on certain welded non-alloy carbon steel pipe from Mexico (57 FR 49453, November 2, 1992).

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1993, petitioners requested that the Department conduct an anticircumvention inquiry pursuant to section 781(c) of the Tariff Act covering imports of API 5L line pipe and dual-certified pipe from Mexico. Petitioners alleged that, following publication of the antidumping duty order, exporters of standard pipe from Mexico began circumventing the order by having pipe intended for use as standard pipe certified as line pipe or certified for use as both line and standard pipe. Petitioners further alleged that pipe distributors were substituting pipe certified to the more stringent line and dual-certified specifications for the standard pipe subject to the order, and that end users of standard pipe began using imported line and dual-certified pipe in "standard pipe applications." According to petitioners, the "transformation of standard pipe into * * * pipe which also meets the line pipe standard is a "minor alteration of merchandise" within the meaning of section 781(c) of the [Tariff] Act." See Anticircumvention Petition, April 23, 1993 at 1.

After examining petitioners' allegations, we instead initiated a scope inquiry under 19 CFR 353.29(i) on June 7, 1993, to determine whether both API 5L line pipe and dual-certified pipe, when actually used in standard pipe applications, are within the scope of the orders. On March 21, 1996, we determined that both line and dual-certified pipe were explicitly excluded from the orders. Final Negative Scope Determination (61 FR 11608).

On April 12, 1996, Wheatland Tube Company (Wheatland), one of the original petitioners, filed a lawsuit before the Court of International Trade (the Court) challenging the final scope determination and the fact that the Department did not initiate an anticircumvention inquiry, as petitioners originally requested. On July 12, 1996, we requested a remand from the Court in order to provide a full explanation on the record as to why we did not initiate an anticircumvention inquiry or, if appropriate, to initiate such a proceeding. On October 9, 1996, the Court denied our motion for a voluntary remand and, in response to a separate motion filed by Wheatland, also dismissed all counts of the original complaint as to Mexico. [3]

Initiation of Anticircumvention Proceeding

Section 353.29(b) of our regulations provides that applications for anticircumvention determinations contain (1) a detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification number; (2) a statement of the interested party's position as to whether the product is within the scope of an antidumping order, including (i) a summary of the reasons for this conclusion, (ii) citations to any applicable statutory authority, and (iii) attachment of any factual support for this position, including applicable portions of the Secretary's or the Commission's investigation. Where all of these conditions are met, our regulations state we will evaluate the application to determine whether an inquiry is warranted.

Upon review of petitioners' application, we find that it contains a detailed description of the products and

[1] Petitioners are: Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co.; Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc.

[2] This merchandise, sometimes referred to as "dual-stenciled," may also include "multiple-stenciled" pipe.

[3] Based on the Court's denial of our request for voluntary remand, the Department is not initiating an anticircumvention inquiry with respect to pipe imports from Brazil and Korea.

a statement of the petitioners' position as to whether the product is included within the order, as required by 19 CFR 353.29(b). Based on our evaluation of the petition (see Memorandum, Joseph A. Spetrini to Robert S. LaRussa, December 19, 1996, on file in Room B–099 of the Main Commerce Building), we determine that a formal inquiry is warranted.

Accordingly, we are initiating a circumvention inquiry concerning the antidumping duty order on standard pipe from Mexico, pursuant to section 781(c) of the Tariff Act. In accordance with 19 CFR 353.29(j), we will not instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties on the merchandise which is the subject of this inquiry unless and until we issue an affirmative preliminary determination.

The Department will, following consultation with the interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j(c)) and 19 CFR 353.29.

Dated: December 20, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–632 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Final Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of new shipper antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) issued preliminary results in the 1995 new shipper administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (61 FR 51910). The review covers one manufacturer/exporter Nordic Group A/L (Nordic) of the subject merchandise to the United States. The period of review (POR) is May 1, 1995, through October 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results and received a case brief from petitioner and a rebuttal brief from respondent. The final results remain unchanged from the preliminary results. The final dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review".

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4195 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On October 4, 1996, the Department issued preliminary results (61 FR 51910) of its new shipper review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. The preliminary results indicated that Nordic sold subject merchandise at not less than normal value during the POR. We invited parties to comment on the preliminary results.

The Department has now conducted this review in accordance with section 751 of the Act and section 353.22 of its regulations (19 CFR 353.22).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on our preliminary results. We received a case brief from petitioner and a rebuttal brief from respondent.

Comment 1:

Petitioner contends that Nordic's one sale was made prior to the POR on April 28, 1995, and not on June 30, 1995, as claimed by respondent. Petitioner argues that the essential terms (i.e. price and quantity) of Nordic's sale to its U.S. customer were set in a letter dated April 28, 1995, and not changed substantially before completion of the transaction two months later. Based on this argument, petitioner maintains that the respondent entered into a binding agreement on April 28, 1995, and that this constitutes the correct date of sale.

Respondent contends that the reported sale date of June 23, 1995, (*i.e.* date of shipment) is correct. Respondent argues that it is the Department's established practice to rely on date of shipment as the date of sale when the quantity of the sale is not fixed until date of shipment. *See Cold-Rolled Steel Flat Products from Korea,* (60 FR 65284) December 19, 1995.

Respondent points to the Department's termination of the first new-shipper review of Nordic where the petitioner successfully argued that April 28, 1995, was not the date of sale for the same transaction reported in this review because the price and quantity differed materially between April 28, 1995, and the date of shipment. *See Fresh and Chilled Atlantic Salmon from Norway: Termination In-Part of New Shipper Antidumping Duty Review,* 60 FR 53162, (October 12, 1995).

Department's Position

We agree with respondent. The Department terminated Nordic's first new shipper review, at the request of the petitioner, because the Department determined that Nordic made the U.S. sale to the first unrelated customer based on the invoice date of June 30, 1995, which was outside the POR of November 1, 1994, through April 30,

1995. In making this determination, we concluded that April 28, 1995, was not the correct date of sale because Nordic's April 28, 1995, letter did not identify the unrelated customer in the U.S. We also concluded that there were differences in the price and quantity specified in Nordic's April 28, 1995, letter and the June 30, 1995, invoice date. Accordingly, the Department determined the June 30, 1995, date of invoice to be the correct date of sale. *See* Memorandum from Joseph Spetrini to Susan Esserman, September 20, 1995.

Comment 2

Petitioner argues that Nordic's sole U.S. sale cannot be the basis for Nordic's dumping margin because it is not a *bona fide* sale. Petitioner states that in such situations, the U.S. Court of International Trade (CIT) has recognized that the Department has the authority to disregard U.S. sales that are not the result of a *bona fide* transaction to "prevent fraud upon its proceedings." *See Chang Tieh Industry Company, Ltd.* v. *United States*, 840 F. Supp. 141–46 (CIT 1993). In addition, petitioner points to *Sulfanilic Acid from Hungary*, (58 FR 8257) to demonstrate that the Department has a history of disregarding U.S. sales where it is established that such sales are not *bona fide* transactions.

Petitioner argues that there is abundant evidence to demonstrate that Nordic's single sale under review is not a *bona fide* transaction but rather is a transaction that was contrived for the purpose of escaping dumping liability. As support for this allegation, petitioner offers several arguments. Petitioner asserts that Nordic did not follow its own sales procedure in making this sale. According to petitioner, it is highly unusual for the U.S. customer to have traveled to Norway to arrange this transaction. In addition, there is no evidence of a written order confirmation produced by the U.S. customer that is typically the first document produced in the sales process.

Petitioner contends that Nordic should not qualify as a new entrant into the fresh Atlantic salmon market based on making only one U.S. sale of the subject merchandise during the period November 1994 through October 1995. During this period, petitioner claims that there were no other sales of the subject merchandise to other markets. Rather, petitioner charges that respondent will enter the U.S. market after obtaining a zero dumping margin for its contrived sale.

Petitioner contends that Nordic's U.S. customer, a smoker, paid an above market price for the sale under review. In support of this allegation, petitioner submitted an affidavit from a large U.S. salmon smoker that states that smokers can use frozen salmon at a price far less than the price incurred to Nordic for fresh salmon. The U.S. smoker also states that his company has not had an order for the covered merchandise because it is too expensive as a result of the antidumping duties and high movement charges. Petitioner points to U.S. import statistics which show that Nordic's U.S. smoker could have purchased frozen salmon at a price far below the price commanded by the fresh salmon it purchased from Nordic.

Petitioner insists that the sale in question was not based on commercial considerations, but rather, Nordic's illegitimate purpose of achieving a zero rate. Petitioner supports this by pointing to the fact that less that one-half of one percent of Nordic's total sales to the U.S. customer were fresh salmon; the rest were frozen salmon. Petitioner further points out that Nordic has never sold fresh salmon to any another U.S. smoker. Petitioner argues that there is nothing on record to support why the U.S. customer would purchase such a small amount of fresh salmon.

Petitioner provides documentation to demonstrate that Nordic's U.S. customer could have purchased fresh salmon from alternative sources such as Canada, Maine and Chile at significantly lower prices. Petitioner insists that not only was the sale in question priced higher than other comparable U.S. sales, but it was also priced higher than other world sales of fresh Norwegian salmon. Petitioner provides documentation to support his assertion that the European price is higher than the price paid in the sale under review.

Petitioner insists that in order for the Department to accept the *bona fide* nature of this sale, the Department must investigate Nordic's U.S. customer. Petitioner points to *PQ Corporation* v. *United States*, 652 F. Supp. 724 (CIT 1987) *(PQ Corporation)*, to demonstrate that when there is a question pertaining to the *bona fide* nature of U.S. sales, the Department vigorously investigates to determine whether the U.S. sales are indeed *bona fide* sales. Thus, petitioner advocates a thorough investigation of the U.S. customer.

Respondent contends that there is nothing on record to support the argument that the sale in question is not a *bona fide* transaction. The respondent points to *Chang Tieh Industry Co., Ltd.* v. *United States*, 840 F. Supp. 141, 145 (CIT 1993) to show that the CIT has noted that antidumping laws do not contain provisions to disregard U.S. sales in the same manner that the statute directs the Department to disregard home market sales intended to establish a fictitious market. Therefore, respondent states *arguendo*, even had this one U.S. sale been considered outside the ordinary course of trade, the Department is not required by statute to disregard that sale. However, respondent concedes that the Department has the discretion, citing to *Ipsco, Inc.* v. *United States*, 714 F. Supp. 1211 (CIT 1989), to disregard U.S. sales that are considered to be atypical and not representative of a respondent's U.S. sales. Because there was only one sale, this standard cannot be relied on as the one sale is entirely representative of all U.S. sales. Respondent refutes the applicability of *Sulfanilic Acid from Hungary*, 58 FR 8256 February 12, 1993, where U.S. sales were disregarded because of fabricated verification documents. Similarly, respondent refutes the applicability of *Manganese Metal From the People's Republic of China*, 60 FR 56045 November 6, 1995 (Manganese). Unlike this review, in the *Manganese* investigation, the Department disregarded sales based on the suspicious timing of the petition filing relative to the sales being made and the "significantly higher prices reported for this fungible commodity."

Respondent argues the fact that there was one sale cannot form the basis for a determination that the sale is not a *bona fide* transaction. In *PQ Corporation*, the CIT found it proper for the Department to review the respondent's one sale to the United States with the intention of eliminating a dumping margin. Respondent points to the Memorandum from Holly Kuga to the File of July 26, 1995, stating that "a new shipper review for salmon based on one sale would be consistent with prior practice."

Respondent further substantiates the *bona fide* nature of the transaction under review, contending that the record evidence demonstrates that its U.S. sale was made in the ordinary course of trade. Respondent argues that it followed customary sales procedures for this sale. Part of the customary procedure is for the President of Nordic Group, Inc. (the U.S. subsidiary) to travel back to Norway, often with U.S. customers as a means to educate the U.S. customer. *See* Sales Verification report.

Respondent argues that petitioner is wrong in its claim that Nordic is not a new entrant to the U.S. fresh Atlantic salmon market because Nordic has made only one sale during the POR. Respondent states that by definition, to qualify for a new shipper review, Nordic did not sell any salmon prior to the

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POR. Since Nordic is currently assessed an "all-others" rate of 23.80 percent, U.S. customers are difficult to attract. Thus Nordic's one sale is justifiable and does not disqualify Nordic as a new shipper in the U.S. market.

Respondent argues that Nordic's price for fresh Norwegian salmon is within the price range charged by others for fresh Norwegian salmon sold to the United States. Nordic claims that it was aware of the antidumping duty order and did its best to negotiate a price that would not violate U.S. antidumping laws. Respondent argues that in alleging Nordic's U.S. customer paid an above market price for the sale under review, the petitioner incorrectly compared the price of frozen salmon from other countries to that of fresh salmon from Norway. Frozen salmon is outside the scope of the order. The International Trade Commission found that fresh salmon is more expensive than frozen and that Norwegian Atlantic salmon is also considered by purchasers to be a higher priced product and is typically more expensive than U.S. produced salmon. Thus, the price of Norwegian Atlantic salmon cannot be compared to world market prices. Respondent dismisses the U.S. smoker's claim that the U.S. smoker cannot profitably purchase premium Norwegian Atlantic salmon because he either sells "low end" salmon or he runs an inefficient, high cost operation.

Respondent states that to the extent price is relevant to determine the *bona fide* nature of the U.S. transaction, the comparison should be limited to the prices of subject merchandise sold in the United States in June 1995. According to the June 1995 Report IM 145, Department of Commerce, Bureau of the Census, Foreign Trade Division, Trade Data Services, Washington, D.C. (IM 145 Report), the price of Nordic's sale is consistent with other contemporaneous sales of fresh Norwegian salmon sold in the United States.

Respondent argues that *PQ Corporation* does not compel the Department to investigate the U.S. customer to verify the *bona fide* nature of a transaction simply because a petitioner thinks the U.S. price is too high. Rather the result of *PQ Corporation* is that an administrative review could be based on one sale even though the importation was made for the purpose of adjusting the antidumping cash deposit rate.

Department's Position

We disagree with petitioner. While there is no specific statutory or regulatory provision for the exclusion of U.S. sales as "outside the ordinary course of trade," the Department's authority to prevent fraud upon its proceedings has been recognized. *See Chang Tieh*, 840 F. Supp. at 146. The Department may disregard a U.S. sale if it is determined that the sale is not the result of a *bona fide* arm's length transaction. *PQ Corp.*, 652 F. Supp. at 729. We are very mindful of this issue, especially in the context of new shipper reviews, and take appropriate steps to investigate credible allegations. Based on our review of this here, we conclude that there is no evidence on the record to indicate that the single U.S. sale under review was not a *bona fide* transaction or that the transaction was in any way fraudulent. Further, insofar as there was no written order confirmation for the transaction under review, we relied on Nordic's June 30, 1995, invoice to determine the date of sale. *See* Department's position on Comment 1.

At the outset, we note that the fact that there is only one U.S. sales transaction does not suggest that the transaction is not *bona fide*. As reflected in the Department's practice, the dumping analysis may be based upon a single sale even where the sale is designed for the express purpose of reducing the cash deposit rate. *See P.Q. Corp.*, 652 F. Supp. at 729. This may be even more true in the context of a new shipper review, where new entrants into the market are likely to assess (based on the Department's antidumping analysis) whether they can sell on a sustained basis. In this case, the Department advised that such a review could be based on one sale provided that the transaction be completed and all relevant data available prior to verification. *See* July 26, 1995 Memorandum from Holly Kuga to File. Moreover, the fact that the quantity involved in this transaction represents a small fraction of Nordic's total sales is not a determining factor in our analysis of the *bona fide* nature of the sale of subject merchandise. Thus, the fact that Nordic engaged in only one transaction cannot detract from the *bona fide* nature of the transaction.

We also disagree with petitioner's assertion that Nordic employed an unusual sales procedure with respect to this transaction. At verification, we confirmed that the President of Nordic Inc. (the U.S. subsidiary) often traveled to Norway with U.S. customers. *See* Nordic Sales Verification Report at 3. Nordic officials indicated that they were expanding their relationship with the U.S. customer which had previously focused on frozen salmon. *Id.* There is no evidence on the record to contradict this statement. Moreover, we are not persuaded by the statement submitted by a U.S. salmon smoking operation that it would not use fresh salmon as an input. As Nordic explained in its October 7, 1996, supplemental questionnaire response, the U.S. customer could be expected to keep both fresh and frozen salmon on hand in order to serve a range of customers.

With regard to petitioner's comments on the price of the sale, according to the IM 145 Report, the price Nordic charged was within the range of prices of other sales of the subject merchandise from Norway during the relevant June 1995 time period. Petitioner incorrectly compared prices of the subject merchandise to that of non-subject merchandise (frozen salmon) or salmon from other countries. Given evidence that Norwegian salmon is typically a higher priced product due to it being considered a premium product, we determine that the use of fresh salmon prices from other producing countries is an inaccurate basis for comparison.

Finally, we disagree with petitioner's suggestion that the Department has not sufficiently investigated this transaction. Based on the Department's review of Nordic's initial and supplemental questionnaire responses, its on-site verification of Nordic's records, and other information of record, we conclude that there is no evidence on record to indicate that the single U.S. sale under review was not a *bona fide* transaction or that the transaction was in anyway fraudulent.

Comment 3

Petitioner contends that the Department's constructed value methodology is improper given the facts of this review. In past reviews of this proceeding, petitioner contended that the third-country export prices used as foreign market value were made at prices below the cost of production. Thus, petitioner argued for use of the salmon farmers' actual cost of production as opposed to the acquisition prices paid by the exporters to the farmers. In this review, however, there are no home market or third country sales. Therefore, the petitioner argues that these different circumstances require foreign market value to be based on constructed value using the price Nordic actually paid for the merchandise. Petitioner argues that by using the actual price paid, the Department would fulfill the original concern of petitioner.

Respondent contends that the Department correctly determined constructed value on the basis of cost of cultivation. Respondent argues that

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petitioner's argument is essentially a middleman dumping argument and should be rejected. The Department is not free to choose the higher of fish farmer cost or exporter acquisition price. The Department's policy for using the fish farmers' cost of production rather than the exporter's acquisition price was established in the Memorandum from David Mueller, dated December 18, 1990, and has been used as the basis for determining cost of production in all salmon reviews.

Department's Position

We agree with respondent. We consider the live salmon produced by the fish farmers and sold to the exporters to be the same merchandise covered by the antidumping duty order, but at an earlier stage of production. Accordingly, we consider the live salmon produced by the fish farmers to be the identical merchandise and not an input of the subject merchandise. As we found in all prior administrative reviews of this proceeding, the responding exporter is not transforming the merchandise. To determine the cost of producing salmon, the Department properly reviewed respondent's costs as well as the fish farm cost of cultivation.

Insofar as the Department used the same methodology described in the preliminary results, the final results remain unchanged from the preliminary results. As a result of our comparison of constructed export price (CEP) and normal value (NV), we determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin
Nordic Group A/L.	5/1/95–10/31/95	0.00

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. The posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's regulations, will no longer be permitted for this firm. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be zero percent; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.80 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h).

Dated: December 30, 1996.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–634 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–832]

Pure Magnesium From the People's Republic of China (PRC): Rescission of Notice of Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Dorothy Tomaszewski, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4194 or 482–0631, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(2)(ii) of the Act and 19 CFR 353.22(h)(6) Taiyuan Heavy Machinery Import and Export Corporation (Taiyuan) requested a new shipper administrative review of the antidumping duty order on pure magnesium from the PRC. The Department of Commerce (the Department) inadvertently published two notices of initiation, one on December 30, 1996 (*Notice of Initiation of New Shipper Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China* (60 FR 68712, 68713 December 30, 1996) and one on December 31, 1996 (*Notice of Initiation of New Shipper Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China* (61 FR 69067 December 31, 1996).

Rescission of Initiation of Review

The December 30, 1996, notice of initiation was published in error and is hereby rescinded. We are proceeding to conduct a review of Taiyuan for the period May 1, 1996 through October 31,

1996, pursuant to the December 31, 1996, notice of initiation.

Dated: January 6, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary, Import Administration.

[FR Doc. 97–635 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–508]

Porcelain-on-Steel Cooking Ware From Taiwan: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request from General Housewares Corporation (GHC), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing a notice of preliminary intent to revoke in part the antidumping duty order on porcelain-on-steel cooking ware from Taiwan. GHC requested that the Department revoke the order in part with regard to teakettles. Based on the fact that GHC, who filed the original petition in this case, has expressed no interest in the importation or sale of teakettles, we intend to partially revoke this order.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On September 12, 1996, GHC requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order on porcelain-on-steel cooking ware from Taiwan with regard to teakettles. GHC stated that it is the only U.S. producer of porcelain-on-steel cooking ware and that, in the original petition, it requested that the scope of the order include teakettles. GHC also stated that it no longer manufactures porcelain-on-steel teakettles and has no further interest in the antidumping duty order with respect to teakettles.

Scope of Review

The products covered by this antidumping order are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware is not subject to this order. *See Antidumping Duty Order; Porcelain-on-Steel Cooking Ware from Taiwan*, 51 FR 43416 (December 2, 1986).

The merchandise covered by this changed circumstances review are teakettles from Taiwan. Imports of teakettles are currently classifiable under the harmonized tariff schedule (HTS) subheading 7323.94.00.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive. The order with regard to imports of other porcelain-on-steel cooking ware is not affected by this request.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 353.25(d)(2) permit the Department to conduct a changed circumstances administrative review under section 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding. Section 782(h) of the Act and 19 CFR 353.25(d)(1)(i) further provide that the Department may revoke an order or revoke an order in part if it determines that the order, or part of the order, under review is no longer of interest to interested parties. In addition, in the event that the Department concludes that expedited action is warranted, section 353.22(f)(4) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(b)(1) and 751(d) of the Act, 19 CFR 353.25(d), and 353.22(f), we are initiating this changed circumstances administrative review and have determined that expedited action is warranted. Based on an affirmative statement of no interest by petitioner with respect to teakettles, we have preliminarily determined that the portion of the order on porcelain-on-steel cooking ware from Taiwan concerning teakettles no longer is of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order as to imports of teakettles from Taiwan.

If final revocation in part occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated antidumping duties collected for all unliquidated entries of teakettles that are not subject to a final results of administrative review. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first working day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those case briefs or comments, may be filed no later than 21 days after the date of publication of this notice. All written comments shall be

submitted in accordance with 19 CFR 353.31(e) and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g). Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with sections 751 (b)(1) and (d) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: December 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–631 Filed 1–9–97; 8:45 am]

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[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review.

SUMMARY: In response to a request by respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A–583–815). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period December 1, 1994 through November 30, 1995.

We preliminarily determine that sales of welded stainless steel pipe (WSSP) have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price and NV. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues; and (2) a brief summary of the argument.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on WSSP from Taiwan (57 FR 62300). On December 4, 1995, the Department published the notice of "Opportunity to Request Administrative Review" for the period December 1, 1994 through November 30, 1995 (60 FR 62070). In accordance with 19 CFR 353.22(a)(1) (1995), Ta Chen requested that we conduct a review of its sales. On February 1, 1996, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period December 1, 1994 through November 30, 1995 (61 FR 3670).

Because it was not practicable to complete this review within the normal time frame, on September 12, 1996, we published in the **Federal Register** our notice of extension of time limits for this review (61 FR 48126). As a result, we extended the deadline for these preliminary results to December 30, 1996. The deadline for the final results will continue to be 120 days after publication of these preliminary results.

Scope of the Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The period for this review is December 1, 1994 through November 30, 1995. This review covers one manufacturer/exporter, Ta Chen.

Use of Facts Available

We preliminarily determine that the use of facts available is appropriate for a portion of Ta Chen's U.S. sales, in accordance with section 776(a) of the Tariff Act, because Ta Chen mischaracterized a portion of its U.S. sales as EP sales when, in fact, these are properly considered Constructed Export Price (CEP) sales. Ta Chen reported in its initial questionnaire response of April 30, 1996 that all of its U.S. sales were EP sales with each reported sale being made to an unaffiliated customer. However, in its November 12, 1996, supplemental questionnaire response, Ta Chen provided additional information with respect to one U.S. customer which clearly indicates that Ta Chen and this customer were affiliated within the meaning of section 771(33) of the Tariff Act.

Section 771(33)(G) of the Tariff Act holds that two parties shall be considered "affiliated" if one party "controls" the other. One party controls another if the party "is legally or operationally in a position to exercise restraint or direction over the other person." From the information provided by Ta Chen, we have preliminarily determined that Ta Chen was "operationally in a position to exercise restraint or direction over" the U.S. customer at issue. Ta Chen reported that it controlled this customer's disbursements and had physical custody of its signature stamp used to

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execute checks and other instruments. The two parties also shared common sales department personnel. Further, Ta Chen had full and complete access, via computer modem, to this customer's accounting system, including its accounts receivable, accounts payable, payroll, and other company books. Ta Chen also indicated that its president participated directly in negotiating the terms of certain sales this customer made to subsequent purchasers of WSSP in the United States. Finally, this customer offered its accounts receivable and inventory as security for a line of credit obtained from a local bank by Ta Chen International (TCI), Ta Chen's wholly-owned U.S. subsidiary. Thus, this customer placed its continued ability to operate in the hands of a putatively unaffiliated party, TCI. Based upon the totality of evidence before the Department in this matter, we preliminarily determine that Ta Chen effectively exercised operational control over this putatively unaffiliated customer. *See* the public version of the Department's Preliminary Analysis Memorandum to the File, on file in Room B–099 of the Main Commerce Building.

Since Ta Chen reported its sales prices to this affiliated customer, and not the customer's sales prices to the first unaffiliated customer in the United States, Ta Chen failed to provide the Department with a complete and reliable listing of its U.S. sales. We preliminarily determine, therefore, pursuant to section 776(a)(2) of the Tariff Act, that Ta Chen withheld information requested by the Department by failing to report all of its sales to its first unaffiliated customers in the United States. In selecting the facts available, section 776(b) of the Tariff Act provides that where, as here, an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting among the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) notes that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for dumping margins. Thus, when in an administrative review the Department chooses as facts available a dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for the time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. In this case, there are no circumstances present to indicate that the selected margin is not appropriate as facts available. In this case, we have used the highest rate from any prior segment of the proceeding, 31.9 percent, the highest rate from the less-than-fair-value (LTFV) determination, for Ta Chen's sales made through this particular U.S. customer.

Export Price

Ta Chen reported in its initial and supplemental questionnaire responses that all of its U.S. sales were first sold to unrelated purchasers prior to importation into the United States. A substantial portion of these sales were made through Ta Chen's U.S. subsidiary, TCI. Ta Chen claims that for each of these sales, TCI acted merely as a "facilitator," handling sales- and Customs-related paper work. In each instance, according to Ta Chen, the price and quantity of the U.S. sale were determined prior to importation into the United States. The remainder of Ta Chen's U.S. sales were to an unrelated importer, who subsequently resold the merchandise after importation into the United States. Therefore, with the exception noted above under "Use of Facts Available," in calculating U.S. price we used export price (EP) for all of Ta Chen's sales, as defined in section 772(a) of the Tariff Act. We calculated EP as the packed, delivered or ex-U.S. port price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Tariff Act, we reduced this price by Taiwanese pre-sale inland freight, international ocean freight, marine insurance, Taiwanese brokerage and handling, U.S. brokerage and handling, U.S. duty, and U.S. inland freight. Where appropriate, we also reduced the EP by Taiwanese and U.S. bank charges.

Duty Absorption

On July 16, 1996, petitioners requested that the Department determine whether Ta Chen had absorbed antidumping duties during the period of review (POR) pursuant to section 751(a)(4) of the Tariff Act. Section 751(a)(4) requires the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Tariff Act by the URAA. The Department's interim regulations do not address this provision of the Tariff Act.

For transition orders as defined in section 751(c)(6)(C) of the Tariff Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See Notice of Proposed Rulemaking*, 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in applying section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). Because the order on WSSP from Taiwan has been in effect since 1992, this qualifies as a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding.

The statute provides for a determination on duty absorption if the

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subject merchandise is sold in the United States through an affiliated importer. In this case, TCI, Ta Chen's wholly owned subsidiary, is the importer of record for a majority of Ta Chen's U.S. sales, *i.e.*, the exporter and the importer are the same entity. Therefore, the importer and the exporter are "affiliated" within the meaning of 751(a)(4). Furthermore, we have preliminarily determined that there is a dumping margin for Ta Chen on 13.47 percent (by quantity) of its U.S. sales during the POR. In addition, we cannot conclude from the record that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Under these circumstances, therefore, we preliminarily find that antidumping duties have been absorbed by Ta Chen on 13.57 percent of its U.S. sales.

Normal Value

A. Viability

Based upon (i) our comparison of the aggregate quantity of home market and U.S. sales, (ii) the absence of any information that a particular marketing situation in Taiwan does not permit a proper comparison, and (iii) the fact that Ta Chen's quantity of sales in the home market exceeded five percent of its sales to the U.S. market, we determined that the quantity of foreign like product Ta Chen sold in Taiwan was sufficient to permit a proper comparison with the sales of subject merchandise to the United States pursuant to section 773(a) of the Tariff Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting market, *i.e.*, Taiwan.

B. Cost-of-Production Analysis

Because we disregarded sales below the cost of production in the LTFV investigation (the most-recently completed segment of these proceedings), we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Tariff Act (see Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Pipe from Taiwan, 57 FR 53705 (November 12, 1992)). Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Ta Chen (see Memorandum to the File, dated February 13, 1996, available in Room B–099 of the Main Commerce Building).

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information Ta Chen provided in its questionnaire responses.

After calculating COP, we tested whether home market sales of subject WSSP were made at prices below COP within an extended period of time and whether such prices permit the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, and post-sale price adjustments (reported as discounts).

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than twenty percent of Ta Chen's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below cost sales were not made within an extended period of time in "substantial quantities." Where twenty percent or more of Ta Chen's home market sales were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (B) and (C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COPs for the POR.

The results of our cost test for Ta Chen indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for Ta Chen also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Tariff Act) for certain other home market models more than twenty percent of the home market sales were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Tariff Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Product Comparisons

We compared Ta Chen's U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered pipe identical based on product nomenclature and considered specifications/alloy, nominal pipe size, and wall thickness in determining the most similar types of pipe. We used a twenty percent cap in reported differences in merchandise as the maximum difference in cost allowable for similar merchandise. For purposes of these preliminary results, we have used the difference-in-merchandise information Ta Chen submitted with its supplemental questionnaire response of November 12, 1996.

D. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Tariff Act and in the SAA at 829 through 831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When we are unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, we may compare U.S. sales to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Tariff Act, if sales at allegedly different levels of trade are compared, we will adjust the NV to account for the difference in levels of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sale used to determine NV. Second, the differences between levels of trade must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

In order to determine that there is a difference in level of trade, the Department must find that two sales have been made at different stages of marketing, or the equivalent. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial differences) are not, in and of themselves, sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as "distributor" and "wholesaler"), while useful in identifying different levels of trade, are insufficient to establish that there is, in fact, a difference in the level of trade.

To implement these principles in this review, we asked Ta Chen to provide detailed information regarding its selling activities/functions at each phase of marketing, and to establish any claimed level of trade based on these activities. In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling activities associated with each phase of marketing claimed by Ta Chen. Pursuant to section 773(a)(1)(B)(i) of the Tariff Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

We considered all types of selling activities performed by Ta Chen in our review of Ta Chen's questionnaire responses. We found that no single selling function in the pipe industry was sufficient to indicate that a separate level of trade existed (see Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7307, 7348 (February 27, 1996)). In addition, in determining whether separate levels of trade existed in or between the U.S. and home markets, we analyzed the selling activities associated with the stages of marketing Ta Chen reported and expected the functions and activities of the seller to be similar if, as in the instant review, Ta Chen claimed the levels of trade to be the same.

Ta Chen reported two stages of marketing in the home market (to unrelated distributors and end users) and a single phase of marketing in the United States (to unrelated distributors). With respect to the home market, Ta Chen claimed that its two stages of marketing constituted a single level of trade. Based upon our examination of information supplied by Ta Chen in its original and supplemental questionnaire responses, we agree that only one level of trade existed for Ta Chen in the home market.

For its U.S. sales, Ta Chen reported a single stage of marketing, i.e., distributors. In determining whether, in fact, a single stage of marketing existed, we examined the selling functions as reflected in the starting price to the unaffiliated U.S. customer. While TCI processed the paperwork and provided certain selling functions for the majority of Ta Chen's U.S. sales, the remainder of these sales involved direct contact between the unaffiliated U.S. customer and Ta Chen without TCI's "facilitation." We find preliminarily, however, that TCI provided very limited selling functions for those sales TCI facilitated and, therefore, found no significant differences in selling functions between sales through either channel. As a result, we preliminarily agree with Ta Chen that Ta Chen's EP sales constitute a single level of trade. We have requested additional clarification from Ta Chen on this point, and will incorporate this information in our final results of review.

When we compared Ta Chen's sales at its EP level of trade to its home market level of trade, we found that the record indicated that Ta Chen provided little or no strategic or economic planning, market research, engineering services, advertising, after-sales services, or post-sale warehousing at either the EP or home market level of trade. Ta Chen reported that it provided the "same" degree of technical assistance at both the EP and home market level of trade. All packing expenses at either level were borne by Ta Chen; freight and delivery arrangements varied between the two markets in that U.S. movement expenses on certain U.S. sales were incurred by TCI. Based upon our analysis of the selling functions performed by Ta Chen in both markets, the similarities lead us to agree preliminarily that the level of trade of Ta Chen's EP and home market sales is the same.

E. Home Market Price

While we found below-cost home market sales for Ta Chen in this review, Ta Chen's remaining home market sales at or above cost were sufficient to serve as the basis for NV.

We based home market prices on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 353.56. We made further adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Finally, where the comparison EP sale involved a commission, we increased home market price by the amount of this commission and subtracted home market indirect selling expenses up to the amount of the U.S. commission, as provided at 19 CFR 353.56(b).

Fair Value Comparison

To determine whether Ta Chen made sales of subject WSSP in the United States at prices that were less than fair value, we compared the EP to NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average prices for NV and compared these monthly averages to individual U.S. sales transactions.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average margin for Ta Chen for the period December 1, 1994 through November 30, 1995 is 2.65 percent.

Parties to these proceedings may request disclosure within five days of the date of publication of this notice and may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be submitted no later than 37 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 180 days of issuance of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Ta Chen will be the rate established in the final results of this administrative review;

(2) For previously reviewed or investigated companies other than Ta Chen, the cash deposit rate will

continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992).

All U.S. sales by the respondent Ta Chen will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, we will use the entered value of the subject merchandise to determine the appraisement rate.

This notice serves as preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–633 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Decision of Binational Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of Binational Panel.

SUMMARY: On December 16, 1996, the Binational Panel issued its decision in the matter of Fresh Cut Flowers from Mexico, Secretariat File No. USA–95–1904–05.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information

On October 26, 1995, Rancho El Aguaje, Rancho El Toro and Rancho Guacatay filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review made by the International Trade Administration respecting Fresh Cut Flowers from Mexico. This determination was published in the **Federal Register** on September 26, 1995 (60 FR 49569). The request was assigned File No. USA–95–1904–05.

Panel Decision

The Panel decided that the Department properly determined that the Complainants provided misleading and evasive statements concerning their respective tax statuses and that the Department properly invoked BIA given the substantial evidence on the record in this action. However, the first-tier BIA rate imposed by the Department was not justified by substantial evidence on the record and was not otherwise in accordance with law. Based upon the substantial evidence on the record, the Panel remanded the action with instructions to assign a second-tier rate of 18.20 percent, which is taken from the Department's original investigation and takes into account the substantial cooperation provided by the Ranches.

The Panel ordered the Department to issue a determination on remand consistent with the instructions and findings set forth in the Panel's decision. The determination on remand shall be issued within forty-five (45) days of the date of the Order (not later than January 30, 1997).

Dated: December 18, 1996.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 97–509 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Federal Approval of the Texas Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service.

ACTION: Notice of the National Oceanic and Atmospheric Administration, National Ocean Services's approval of the Texas Coastal Management Program pursuant to the Coastal Zone Management Act of 1972, as amended 16 U.S.C. 1451 *et seq.*

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) approved the Texas Coastal Management Program (TCMP) on December 23, 1996, pursuant to the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455 (CZMA). The TCMP is described in the Texas Coastal Management Program and Final Environmental Impact Statement (P/FEIS) published in August 1996.

Texas is the 30th state to receive federal approval of its coastal management program and the first state program to be approved by NOAA in ten years. Texas submitted a proposed coastal program to NOAA in October 1995. Upon reaching a preliminary decision that the program met the requirements of the CZMA, and in order to meet its responsibilities under the National Environmental Policy Act, NOAA published the Texas Coastal Management Program and Draft Environmental Impact Statement (P/DEIS) for public review on June 23, 1996. NOAA published the P/FEIS including public comments on the P/DEIS and responses to those comments on August 23, 1996. NOAA has also fulfilled its responsibilities under the Endangered Species Act through

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consultations with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

The TCMP is the culmination of several years of development by the State of Texas, interest groups, the general public, federal agencies, and in consultation with NOAA. The TCMP consists of numerous state policies on diverse coastal management issues which are prescribed by statute and other legal mechanisms and made enforceable under state law. The TCMP will improve the decision making process for determining appropriate coastal land and water uses in light of resource consideration and increase public awareness of coastal resources and processes. The TCMP will increase long term protection of the state's coastal resources, while providing for sustainable economic development.

NOAA approval of the TCMP makes the state eligible for federal financial assistance for program administration and enhancement under sections 306, 306A, 308 and 309 of the CZMA (16 U.S.C. §§ 1455, 1455a, 1456a, and 1456b). Texas has submitted an application for $800,000 in FY 1996 Federal CZMA funds which are available to Texas. These funds will generally be used to assist the state administer the various state and local authorities included in the TCMP as well as be used to fund local management efforts to increase public access, restore damaged resources and manage coastal erosion.

NOAA approval of the TCMP also makes operational, as of the date of this **Federal Register** notice, the CZMA federal consistency requirement with respect to the TCMP (16 U.S.C. 1456; 15 CFR part 930). Therefore, as of today, direct federal activities occurring within or outside the Texas Coastal Zone that are reasonably likely to affect any land or water use or natural resources of the Texas Coastal Zone must be consistent to the maximum extent practicable with the enforceable policies of the TCMP. In addition, activities within or outside the Texas Coastal Zone requiring a federal license or permit listed in the P/FEIS, and federal financial assistance to state agencies and local governments that are reasonably likely to affect any land or water use or natural resource of the Texas Coastal Zone must be consistent with the enforceable policies of the TCMP.

Chapter 4 and Appendix C1 of the P/FEIS identify the enforceable policies of the Texas program. Chapter 5 and Appendix C4 of the P/FEIS identify federally licensed or permitted activities subject to the federal consistency requirements. Chapter 5 and Appendix C4 of the P/FEIS, as well as the CZMA regulations at 15 CFR part 930, provide specific procedures to be used in the Federal/State coordination process.

For further information please contact Bill O'Beirne at (301) 713–3109, ext. 160; or via fax at (301) 713–4367; or via the Internet at <bobeirne@coasts.nos.noaa.gov>.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

David L. Evans,

Deputy Assistant Administrator for Ocean Service and Coastal Zone Management.

[FR Doc. 97–457 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 123096A]

Marine Mammals; Permit No. 738 (P77#51)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that permit no. 738, issued to The Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, was amended to extend the expiration date until June 30, 1997.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 26, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–589 Filed 1–9–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on February 4, 1997; February 11, 1997; February 18, 1997; and February 25, 1997; at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the date will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: January 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–533 Filed 1–9–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Active Duty Service Determination for Civilian or Contractual Groups

On December 24, 1996, the Secretary of the Air Force determined that the service of the group known as "All U.S. Civilians of the American Field Service, who served Overseas Operationally

From April 6, 1917, to January 1918, and November 10, 1941, to August 1945" shall not be considered "active duty" under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veterans Affairs (VA).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–648 Filed 1–9–97; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Notice of Public Scoping Meetings for the Environmental Impact Statement for Developing Homeport Facilities for Three Nimitz-Class Aircraft Carriers in Support of the United States Pacific Fleet

SUMMARY: The Department of the Navy announced its intent to prepare this Environmental Impact Statement (EIS) and open scoping in the **Federal Register** on December 3, 1996 and also mailed the announcement to interested parties. This notice is to announce the public scoping meetings.

The scope of the proposed actions is to: (1) determine the appropriate home port for two nuclear-powered aircraft carriers (CVNs) that will replace two conventionally-powered aircraft carriers (CVs) that are currently homeported at Naval Air Station (NAS) North Island in the Naval Complex San Diego, CA, and (2) reevaluate the current location of one CVN homeport at Naval Station (NAVSTA) Everett in order to increase efficiency of support infrastructure, maintenance, and repair capabilities, to reduce costs, and to enhance crew quality of life. Decisions for facilities development need to be made as soon as possible to accommodate planned arrival schedules of the CVNs to the Pacific Fleet (one as early as 2001) and to gain infrastructure benefits prior to upcoming ship maintenance periods (commencing in 1999).

There are three major U.S. areas of Navy concentration in the Pacific: San Diego, CA complex; Puget Sound, WA complex; and Pearl Harbor, HI complex. Naval Air Station (NAS) North Island in the San Diego Naval Complex and Puget Sound Naval Shipyard (PSNS) Bremerton and NAVSTA Everett in the Pacific Northwest are currently designated as CVN home ports. All three locations will be considered as alternative locations for the proposed actions. Although not currently designated as a CVN home port, Pearl Harbor is capable of accommodating deep-draft ships and will also be evaluated as a potential home port.

The EIS will analyze the potential environmental effects of the proposed actions at the alternative locations discussed above, including any associated facilities development and dredging, and other reasonable alternatives identified during the public scoping process. Environmental issues to be addressed in the EIS include: geology, topography, and soils; dredging, hydrology, and water quality; pollution prevention; biology and natural resources; noise; air quality; land use; historic and archaeological resources; socioeconomics, schools, and housing; transportation/circulation/parking; public facilities and recreation; safety and environmental health; aesthetics; utilities; and environmental justice. Issue analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts associated with the proposed actions. No decision to implement the proposed actions will be made until the NEPA process is complete.

ADDRESSES: The Department of the Navy has initiated a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to these proposed actions. Public meetings to receive oral comments from the public will be held in the four primary areas of consideration (San Diego, CA; Bremerton, WA; Everett, WA; and Honolulu, HI). The dates and locations of these meetings are as follows: Bremerton, WA: February 3, 1996, 7:00 pm, Bremerton High School, 1500 13th Street, Bremerton, WA; Everett, WA: February 4, 1996, 7:00 pm, Snohomish County Administration/Courthouse Building, 3000 Rockefeller, Everett, WA; Pearl Harbor, HI: February 6, 1996, 7:00 pm, Farrington High School, 1564 North King Street, Honolulu, HI; Coronado, CA: February 11, 1996, 7:00 pm, Village Hall, Village Elementary School, 600 6th Street, Coronado, CA. These meetings will also be announced in local area newspapers. Navy representatives will be available at the scoping meetings to receive comments from the public regarding issues of concern. A brief presentation describing the proposed actions and the NEPA process will precede a request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns that they feel should be addressed during the preparation of the EIS. Oral comments will be limited to three minutes. Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. Written comments or questions regarding the scoping process and/or the EIS should be postmarked no later than February 28, 1997 and sent to the following address.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Muslin (Code 03PL), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190; telephone (619) 532–3403.

Dated: Janaury 7, 1997.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–596 Filed 1–9–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; ED.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Nominations Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 11, 1997.

TIME: 8:30 a.m.–12:00 p.m.

LOCATION: The Brown Palace Hotel, 321 Seventeenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and

establishing standards and procedures for interstate and national comparisons.

On February 11, 1997, between the hours of 8:30 a.m. and 12:00 p.m. there will be discussing the qualifications of nominees for vacancies in the membership of the National Assessment Governing Board. The review and subsequent discussions of this information relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with the policy of 5 U.S.C., 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: January 7, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–581 Filed 1–9–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–135 and EA–136]

Applications to Export Electric Energy; Newco US, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Newco US, L.P. (Newco), a limited partnership, has submitted an application to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 10, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 29, 1996, Newco filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico (Docket EA–135) and Canada (Docket EA–136), as a power marketer, pursuant to section 202(e) of the FPA.[1] Specifically, Newco has proposed to transmit to Mexico and Canada electric energy purchased from electric utilities and federal power marketing agencies.

Newco would arrange for the exported energy to be transmitted to Mexico over one or more of the following international transmission or subtransmission lines for which Presidential permits (PP) have been previously issued:

Owner	Location	Voltage	Presidential permit No.
San Diego Gas & Elect.	Miguel, CA	230 KV	PP–68
	Imperial Valley, CA	230 KV	PP–79
El Paso Electric	Diablo, NM	115 KV	PP–92
	Ascarate, TX	115 KV	PP–48
Central Power and Light	Brownsville, TX	138 KV	PP–94
		69 KV	PP–94
Comision Federal de Electricidad	Eagle Pass, TX	138 KV	PP–50
	Laredo, TX	138 KV	PP–57
	Falcon Dam, TX	138 KV	PP–57

Newco would arrange for the exported energy to be transmitted to Canada over one or more of the following international transmission or subtransmission lines for which Presidential permits (PP) have been previously issued:

Owner	Location	Voltage	Presidential permit No.
Basin Electric	Tioga, ND	230-kV	PP–64
Bonneville Power Administration	Blaine, WA	2–500-kV	PP–10
	Nelway, WA	230-kV	PP–36
	Nelway, WA	230-kV	PP–46
Citizens Utilities	Derby Line, VT	120-kV	PP–66
Detroit Edison	St. Clair, MI	345-kV	PP–38
	Maryville, MI	230-kV	PP–21
	Detroit, MI	230-kV	PP–21
	St. Clair, MI	345-kV	PP–58
Eastern Maine Elect. Coop	Calais, ME	69-kV	PP–32
Joint Owners of Highgate Project	Highgate, VT	345-kV[2]	PP–82
Maine Electric Power Co	Houlton, ME	345-kV	PP–43
Maine Public Service Co	Limestone, ME	69-kV	PP–12
	Fort Fairfield, ME	69-kV	PP–12
	Aroostook County, ME	138-kV	PP–29
	Madawaska, ME	2–69-kV	PP–29
Minnesota Power and Light Co	International Falls, MN	115-kV	PP–78

[1] Newco is a limited partnership in which Westcoast Power Marketing, Inc. and Coastal Gas Services Company each owns indirectly a 49.5% limited partnership interest, and Newco US, Inc. owns a 1% general partnership interest.

Owner	Location	Voltage	Presidential permit No.
Minnkota Power	Roseau County, MN	230-kV	PP–61
New York Power Authority	Massena, NY	765-kV	PP–56
	Massena, NY	2–230–kV	PP–25
	Niagara Falls, NY	2–345–kV	PP–74
	Devils Hole, NY	230-kV	PP–30
Niagara Mohawk Power Corp	Devils Hole, NY	230-kV	PP–31
Northern States Power	Red River, ND	230-kV	PP–45
	Roseau County, MN	500-kV	PP–63
Vermont Electric Transmission Co	Norton, VT	±450-kV DC	PP–76

[2] These facilities were constructed at 345-kV but operated at 120-kV.

As noted above, Newco proposes to export electricity to Mexico over lines owned and operated by the El Paso Electric Company (EPE) and permitted under Presidential Permits Nos. PP–48, as amended, and PP–92. On October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204–163 which delegated and assigned to the Federal Energy Regulatory Commission (FERC) authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over the facilities of EPE. This authority was delegated to FERC for the sole purpose of authorizing FERC to take any actions necessary to effectuate open access transmission over the United States portion of EPE's electric transmission lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. Notice and a copy of the Delegation Order were published in the **Federal Register** on November 1, 1996, at 61 FR 56525.

PROCEDURAL MATTERS: Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on Newco's request to export to Mexico should be clearly marked with Docket EA–135. Comments on Newco's request to export to Canada should be clearly marked with Docket EA–136. Additional copies are to be filed directly with: Jeffrey D. Watkiss; Sarah G. Novosel, Bracewell and Patterson, L.L.P., 2000 K St., NW, Suite 500; Washington, DC 20006, Fax: (202) 223–1225 *and* Peter Leier, Westcoast Power Marketing, Inc., 421–7th Avenue, SW., Suite 1100, Calgary, Alberta, Canada, 728 4K9 *and* Laurence C. Mosher, Jr., Fulbright & Jaworski, L.L.P., 1301 McKinney, Suite 5100, Houston, TX 77010–3095, Fax (713) 651–5246).

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on January 2, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–594 Filed 1–9–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES:

Monday, January 27, 1997:

6:00 p.m.–6:30 p.m. (Joint Meeting of Issues-based Committee Chairs)

6:30 p.m.–7:00 p.m. (Public Comment Session)

7:00 p.m.–9:00 p.m. (Subcommittee Meetings

Tuesday, January 28, 1997: 8:30 a.m.–4:00 p.m.

ADDRESSES: The Hilton, Palmetto Dunes, Hilton Head Island, South Carolina.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

Monday, January 27, 1997

6:00 p.m.—Joint meeting of issues-based subcommittee chairs

6:30 p.m.—Public comment session (5-minute rule)

7:00 p.m.—Subcommittee meetings

9:00 p.m.—Adjourn

Tuesday, January 28, 1997

8:30 a.m.

Approval of minutes, agency updates (~ 15 minutes)

Public comment session (5-minute rule) (~ 15 minutes)

Facilitator update and review of recommendations (~ 1 hour)

Election of subcommittee chairs and administrative subcommittee report and proposal to amend bylaws (~ 1 hour 15 minutes)

Spent fuel forum update (~ 15 minutes)

Nuclear materials management subcommittee report (~ 30 minutes)

12:00 p.m.—Lunch

1:00 p.m.

Cancer registry presentation (~ 30 minutes)

Allied General Nuclear Services presentation (~ 30 minutes)

Environmental restoration and waste management subcomittee report (~ 1 and half hours)

—Riverwater shutdown system environmental impact statement

—Russian melter

—F/H groundwater phase I and II

4:00 p.m.—Adjourn

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If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, January 27, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on January 5, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–595 Filed 1–9–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–222–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Attachment A to the filing, to be effective February 1, 1997.

ANR states that the referenced tariff sheets are being submitted as part of ANR's Eighth Annual Reconciliation of Order Nos. 500/528 buyout buydown costs being recovered by means of Volumetric Buyout Buydown Surcharges contained in Docket Nos. RP91–33, et al., RP91–192, RP92–4, RP92–199, RP93–29, RP93–149, RP96–10, and RP96–328, and Fixed Monthly Charges associated with Docket Nos. RP96–10, and RP96–328.

With respect to the Volumetric Buyout Buydown Surcharges, the proposed charges are designed to recover $3.2 million less on an annual basis than the currently effective volumetric surcharge. This decrease is due to lower interest on decreasing principal. With respect to Fixed Monthly Charges, the proposed charges are designed to recover $32,868 less on a monthly basis than the currently effective Fixed Monthly Charges.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–544 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–217–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to be effective December 31, 1996.

CIG states that the purpose of this compliance filing is to conform CIG's tariff to the requirements of Order No. 582.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with the Sections 385.214 or 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–549 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–165–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

January 7, 1997.

Take notice that on December 20, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP97–165–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to establish a new delivery point for Public Service Company of Colorado (PSCo), under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that during the summer of 1996, it constructed approximately 21 miles of 12-inch-diameter (Indian Creek Lateral) and installed two 1478 horsepower compressors (Big Canyon Compressor Station) in Potter County, Texas pursuant to the provisions of Section 311 of the Natural Gas Policy Act (NGPA) and the Commission's regulations under the NGPA. CIG states that these facilities have been used as receipt facilities to receive gas for the account of PSCo, a local distribution company, for transportation to their distribution system.

CIG states that it received a request from PSCo requesting CIG to establish a certificated delivery point (Nichols Delivery Point) off its Indian Creek Lateral. CIG states that PSCo will use

the Nichols Delivery Point to deliver gas to Southwestern Public Service Company. CIG states the new delivery point could deliver up to 110,000 Mcf of natural gas per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–597 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–170–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

January 7, 1997.

Take notice that on December 27, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944 filed in Docket No. CP97–170–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to construct a delivery facility, under the blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that it proposes to construct a point of delivery to be located in Las Animas County, Colorado. CIG further states that the facility will consist of a two-inch meter run and facilities appurtenant thereto for the delivery of natural gas to Consolidated Industrial Service (Consolidated), a producer, for start up fuel gas for Consolidated's compression facility. CIG asserts that the new facility will be capable of delivering up to 1,000 Mcf per day.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–598 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–219–000]

Columbia Gas Transmission Corporation; Notice of Filing of Request for Waiver

January 6, 1997.

Take notice that on December 31, 1996, Columbia Gas Transmission Corporation (Columbia) filed a letter requesting that it be permitted to defer filing any additional Stranded Facilities Charge (SFC) Adjustment Filings while a settlement submitted in its Docket No. RP95–408 remains pending. General Terms and Conditions (GTC) Section 46 of Columbia's tariff contains Columbia's SFC mechanism. Columbia filed its SFC tariff provision and initial SFC as part of its August 1, 1996 general rate case filing in Docket No. RP95–408. GTC Section 46 provides for Columbia's recovery of certain "Stranded Facilities Costs" and requires Columbia to restate the SFC twice a year (Adjustment Filings) to be effective each February 1 and August 1.

On November 22, 1996, Columbia filed an Offer of Settlement (Settlement) in Docket No. RP95–408, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602, which provides for the disposition of the outstanding SFC issues. Article III, Section C of that Settlement specifically states that the charge for the SFC shall remain at the current level through December 31, 1997. By a separate filing, Columbia is today seeking to place into effect the rates established under the Settlement, including the SFC, on an interim basis effective February 1, 1997, while the Settlement remains pending. In light of the fact that the SFC will be modified by the Settlement, as well as the fact that Columbia is seeking to implement the Settlement rates on an interim basis, Columbia is seeking a waiver of GTC Section 46.2(b) of its tariff to defer any additional Adjustment Filings pursuant to Section 46 while the above-referenced Settlement remains pending.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests must be filed on or before January 13, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–547 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–014]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets set forth on Appendix A to the filing, to become effective February 1, 1997.

Columbia states that on November 22, 1996, it filed an Offer of Settlement (Settlement) in this proceeding and in several other dockets. In submitting the Settlement, Columbia represented that it would seek Commission authorization to move the Settlement rates into effect pending evaluation of the Settlement by the Presiding Administrative Law Judge and the Commission.

Columbia states further that the Settlement is supported, or not opposed, by all of Columbia's customers, as well as other parties of interest, including producers, industrial users, and representatives of consumer interests at the State level. Accordingly, the filing seeks to move the Settlement rates into effect on February 1, 1997, as to all customers. Columbia states that it is submitting this request at the urging of its customers, who desire to realize the

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benefits of their bargain as soon as possible.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–555 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ97–4–23–000 and TM97–7–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of February 1, 1997.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Sections 21 and 23 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect a decrease of $0.4057 per dt in the Demand Charge and a decrease of $0.6870 per dt in the Commodity Charge, as measured against ESNG's Out-Of-Cycle Quarterly PGA filing, Docket No. TQ97–3–23–000, et al., filed on December 27, 1996 to be effective on January 1, 1997.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–539 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ97–3–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of January 1, 1997.

On December 26, 1996, ESNG filed with the Commission revised rates to reflect an out-of-cycle purchased gas adjustment, proposed to be effective January 1, 1997. The instant filing is being made in compliance with a FERC Order dated December 20, 1996 which sited incorrect pagination of tariff sheets found in Docket Nos. TQ97–2–23–000, et. al., and TM97–6–23–000, et. al. The incorrect pagination carried forward to Docket No. TQ97–3–23–000, et. al., and the sheets filed in the original docket ESNG is requesting to be withdrawn and the tariff sheets found in Appendix A of the instant filing be accepted in their place.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–540 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ97–2–23–002 and TM97–6–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned dockets as part of its FERC Gas Tariff, First Revised Volume No. 1, with proposed effective dates of November 1, 1996 and December 1, 1996, respectively.

On November 26, 1996, ESNG filed with the Commission revised rates to reflect an out-of cycle purchased gas adjustment (PGA), proposed to be effective December 1, 1996. Subsequently, on December 6, 1996, ESNG filed tariff sheets to track rate changes attributable to storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) and to correct a clerical error in its previously accepted tracker filing. It has since come to ESNG's attention, per FERC Order dated December 20, 1996, that ESNG's original filings contained incorrectly paginated tariff sheets. The instant filing is being made to correct the pagination errors made in the original filings.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–541 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–55–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

January 6, 1997.

Take notice that on December 31, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for consideration the following pro forma tariff sheets:

Second Revised Volume No. 1

Pro Forma Sheet No. 20
Pro Forma Sheet No. 23
Pro Forma Sheet No. 50B
Pro Forma Sheet No. 53
Pro Forma Sheet No. 55
Pro Forma Sheet No. 60

Original Volume No. 2

Pro Forma Sheet No. 68–B
Pro Forma Sheet No. 68–G
Pro Forma Sheet No. 101
Pro Forma Sheet No. 106
Pro Forma Sheet No. 152
Pro Forma Sheet No. 153
Pro Forma Sheet No. 161
Pro Forma Sheet No. 170
Pro Forma Sheet No. 172
Pro Forma Sheet No. 225
Pro Forma Sheet No. 233
Pro Forma Sheet No. 247
Pro Forma Sheet No. 255
Pro Forma Sheet No. 270
Pro Forma Sheet No. 272
Pro Forma Sheet No. 281
Pro Forma Sheet No. 297
Pro Forma Sheet No. 306
Pro Forma Sheet No. 617
Pro Forma Sheet No. 618
Pro Forma Sheet No. 627

Great Lakes states that the above mentioned tariff sheets are being filed in compliance with the Federal Energy Regulatory Commission's Order of December 20, 1996 in Docket No. RP97–55–000. 77 FERC ¶ 61, 292 (1996).

Any person desiring to protest said filing should file a or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–553 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–290–001]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff and of Motion to Make Suspended Rates Effective

January 6, 1997.

Take notice that on December 31, 1996, Michigan Gas Storage Company (MGS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets in compliance with the Commission's July 31, 1996 Order:

Fourth Revised Sheet No. 4
Fifth Revised Sheet No. 5
Second Revised Sheet No. 34

The Order required that MGS make certain changes to its filed tariff sheets, including eliminating costs associated with facilities, if any, not in service by December 31, 1996. MGS also tendered on December 31, 1996 its motion to make effective the rates originally filed in this docket (as modified in compliance with the Order) on January 1, 1997—the first day after the period for which the rates were suspended.

MGS states that copies of the filing were served upon those on the service list, MGS's jurisdictional customers and the Michigan Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–554 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–223–000]

Midwestern Gas Transmission

January 7, 1997.

Take notice that on January 2, 1997, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective on February 1, 1997:

First Revised Sheet No. 106

Midwestern States that it is filing the proposed tariff change in order to eliminate the provision in its tariff that prevents requests for service from being submitted more than 90 days in advance of the date that the requested service is to commence.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–601 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2942–000]

National Power Marketing Company, L.L.C.; Notice of Issuance of Order

January 6, 1997.

National Power Marketing Company, L.L.C. (National Power) submitted for filing a rate schedule under which National Power will engage in wholesale electric power and energy transactions as a marketer. National Power also requested waiver of various Commission regulations. In particular, National Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by National Power.

On December 31, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by National Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, National Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of National Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 30, 1997.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–558 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–654–000]

Newco US, L.P.; Notice of Issuance of Order

January 6, 1997.

Newco US, L.P. (Newco) submitted for filing a rate schedule under which Newco will engage in wholesale electric power and energy transactions as a marketer. Newco also requested waiver of various Commission regulations. In particular, Newco requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Newco.

On December 30, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Newco should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Newco is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Newco's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 29, 1997.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–557 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–015]

NorAm Gas Transmission Company; Notice of Filing

January 7, 1997.

Take notice that on January 2, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective January 1, 1997:

Ninth Revised Sheet No. 7
Second Revised Sheet No. 7A
Second Revised Sheet No. 7B
Second Revised Sheet No. 7C
Second Revised Sheet No. 7D
Second Revised Sheet No. 7E

NGT states that these tariff sheets are filed herewith to reflect specific negotiated rate transactions for the month of January, 1997.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–600 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1988–007]

Pacific Gas & Electric Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 6, 1997.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding (18 CFR 385.2010). The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the California Office of Historic Preservation (hereinafter, "SHPO") and the Advisory Council on Historic Preservation (hereinafter, "Council") pursuant to the Council's regulations, 36 CFR Part 800, implementing § 106 of the National Historic Preservation Act, *as amended* (16 U.S.C. § 470f), to prepare a programmatic agreement for managing historic properties—i.e., those included in, or eligible for inclusion in, the National Register of Historic Places—that may be affected by a license issuing for Project No. 1988.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's § 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated.

The Commission's responsibilities pursuant to the § 106 for Project No. 1988 would be fulfilled through one programmatic agreement which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any order issuing license.

Thus, we propose, as an initial consideration, to restrict the service list to the SHPO and the Council, with

whom we propose to execute the Programmatic Agreement. Pacific Gas & Electric Company, moreover, as prospective licensee for Project No. 1988, and the Sierra National Forest, the entity managing the land on which the project is located, are invited to participate in consultations to develop the Programmatic Agreement and to sign it as concurring parties. Our proposed restricted service list for executing a Programmatic Agreement for Project No. 1988, follows:

Cherilyn Widell, Director, Office of Historic Preservation, Department of Parks and Recreation, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–6624.

Carol Glickman, Historic Preservation Specialist, Advisory Council on Historic Preservation, 12136 West Bayaud Avenue, Suite 330, Lakewood, CO 80228, telephone (303) 969–5110.

Terry A. Morford, Manager, Hydro Generation, Pacific Gas & Electric Company, 245 Market Street, Room 1103, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177, telephone (415) 973–5311.

Mr. James L. Boynton, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611–0532, telephone (209) 297–0706.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with Secretary, Federal Energy Regulatory Commission, 888 First Street, Northeast, Washington, DC 20426, and must be served on each person whose name appears on the official service list.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–556 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–221–000]

Sea Robin Pipeline Company Notice of Flowthrough Crediting Report

January 6, 1997.

Take notice that on December 31, 1996, Sea Robin Pipeline Company (Sea Robin) tendered for filing a report setting forth amounts due shippers through its Annual Flowthrough Crediting Mechanism.

Sea Robin states that this report is filed pursuant to Section 27 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiables shippers and under its operational balancing agreements, and imposing scheduling penalties during the 12 month period ending October 31, 1996.

Sea Robin states that copies of Sea Robin's filing will be served upon all of Sea Robin's shippers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214 and 385.211). All such petitions or protests should be filed on or before January 13, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–545 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–216–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

January 6, 1997.

Take notice that on December 31, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 1997:

Tariff Sheets Applicable to Contesting Parties:

Twentieth Revised Sheet No. 14
Forty-Second Revised Sheet No. 15
Twentieth Revised Sheet No. 16
Forty-Second Revised Sheet No. 17
Twenty-Seventh Revised Sheet No. 29

Southern states that it submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, resulting from a credit for interim firm transportation provided during December 1996 and an increase in GSR billing units effective January 1, 1997.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–550 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–171–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

January 7, 1997.

Take notice that on December 27, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston Texas, 77056–5310, filed in the above docket, a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon M&R Station No. 70531 located at approximate Mile Post 294.47 on Texas Eastern's Line 1 in Jackson County, Arkansas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that this Meter Station has not been used since 1967 and that it anticipates no future use of this facility. Texas Eastern states that this Meter Station was authorized in Docket No. G–15076 pursuant to Federal Power Commission Order No. 240 issued August 27, 1958.

Texas Eastern states that because all abandonment activity will take place on Texas Eastern's permanent right-of-way

(ROW), Texas Eastern submits that the abandonment of M&R Station No. 70531 will not result in any significant environmental impact.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–599 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–71–003]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

January 6, 1997.

Take notice that on December 20, 1996, in compliance with the Commission's order issued on November 29, 1996 [1] Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing illustrative rates and workpapers reflecting the change in its filed rates in Docket No. RP97–71–000 due to the Phase II Settlement in Docket No. RP95–197–000.

Transco states that the November 29 order directed Transco to file, within 30 days of the issuance of such order, illustrative rates and workpapers reflecting the effect of the Phase II Settlement in Docket No. RP95–197–000 on the rates proposed in the November 1 filing. Transco states that the filing is in compliance with the Commission's directive.

Transco states that it is serving copies of the instant filing on the parties to Docket No. RP97–71–000.

Any person desiring to protest said filing should file a protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before January 13, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–552 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–220–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of February 1, 1997:

Eighteenth Revised Sheet No. 6A
Third Revised Sheet Nos. 8C and 8D

WNG states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG hereby submits its fourth quarter report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–546 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–49–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 6, 1997.

Take notice that on December 31, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets to become effective February 1, 1997:

Second Revised Volume No. 1

Twenty-first Revised Sheet No. 15
Ninth Revised Sheet No. 15A
Twenty-fourth Revised Sheet No. 16
Ninth Revised Sheet No. 16A
Twenty-first Revised Sheet No. 18
Ninth Revised Sheet No. 18A
Ninth Revised Sheet No. 19
Ninth Revised Sheet No. 20
Eighteenth Revised Sheet No. 21

Original Volume No. 2

Sixty-fifth Revised Sheet No. 11B

Williston Basin states that these tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

[1] 77 FERC ¶61,2325 (1996).

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–542 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–215–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following original and revised tariff sheets to become effective February 1, 1997:

Second Revised Volume No. 1

First Revised Sheet No. 322A
Original Sheet No. 322B
First Revised Sheet No. 323
Original Sheet No. 323A
First Revised Sheet No. 324
Original Sheet No. 324A
First Revised Sheet No. 325
Original Sheet No. 325A
First Revised Sheet No. 326
Original Sheet No. 326A
First Revised Sheet No. 327
Original Sheet No. 327A
First Revised Sheet No. 328
Original Sheet No. 328A
Original Sheet No. 328B
First Revised Sheet No. 329
Original Sheet No. 329A
Original Sheet No. 329B
First Revised Sheet No. 330
First Revised Sheet No. 331
First Revised Sheet No. 333
First Revised Sheet No. 334
Original Sheet No. 334A
First Revised Sheet No. 335
Original Sheet No. 335A
Original Sheet No. 335B
Third Revised Sheet No. 336
Original Sheet No. 336A
First Revised Sheet No. 337
Original Sheet No. 337A
First Revised Sheet No. 338
Original Sheet No. 338A
First Revised Sheet No. 339
Original Sheet No. 339A
Original Sheet No. 339B
Third Revised Sheet No. 340
Original Sheet No. 340A
First Revised Sheet No. 341
Original Sheet No. 341A
Original Sheet No. 341B

Williston Basin states that these tariff sheets reflect the Company's proposal to incorporate the recovery of electric power purchased for use in the operation of its electric compressor stations into the current fuel reimbursement adjustment provision. By doing so, Williston Basin's electric power costs will be tracked in a manner very similar to the Company's current method for tracking gas fuel requirements as outlined in Section 38 of its FERC Gas Tariff, Second Revised Volume No. 1. Williston Basin further states that although such electric costs will be tracked independently of the gas costs, for billing purposes the gas and electric compressor rates or in-kind percentages will be added together in order to reflect only one applicable fuel rate or percentage rate for each rate schedule.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–551 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–218–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

January 6, 1997.

Take notice that on December 31, 1996, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2, the tariff sheets listed in Appendix A to the filing, to be effective December 31, 1996.

WIC states that the purpose of this compliance filing is to conform WIC's tariff to the requirements of Order No. 582.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance Sections 385.214 or 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–548 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–119–000]

Young Gas Storage Company, Ltd.; Notice of Filing

January 6, 1997.

Take notice that on December 31, 1996, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, to become effective February 1, 1997:

Second Revised Sheet No. 4
Third Revised Sheet No. 47

Young states it is adjusting the rates for Rate Schedules FS–1 and IS–1 resulting from the currently effective Average Thermal Content of Gas in Storage (ATC) posted on Young's electronic bulletin board on December 27, 1996 pursuant to Section 1.2 of the General Terms and Conditions of this tariff. Further, Young states the combination of the revised ATC, the revised entitlements and the revised storage rates will not change the current customer storage reservation payments under the instant proposal.

Young states that copies of this filing have been served on Young's affected jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.214 and 385.211). All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must also file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–543 Filed 1–9–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5476–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 23, 1996 Through December 27, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (65 FR 15251).

Draft EISs

ERP No. D–FHW–J40140–MT Rating EC2, US 93 Highway Transportation Improvements, between Hamilton (Milepost) 49.0 to Lolo (Milepost 83.2), Funding and COE Section 404 Permit, Ravalli and Missoula Counties, MT.

Summary: EPA expressed environmental concerns regarding indirect impacts, and the preservation of environmentally sensitive areas, which should be mitigated in order to fully protect the environment.

ERP No. D–USN–K11074–CA Rating EC2, Las Pulgas and San Mateo Basin, Cease and Desist Order, Sewage Effluent Compliance Project, NPDES Permit, Marine Corps Base, Camp Pendleton, San Diego County, CA.

Summary: EPA expressed environmental concerns regarding the lack of a complete alternatives analysis and a full description of the purpose and need.

Final EISs

ERP No. F–FEM–E36160–GA, Albany Flood Recovery Activities, Replacement of Damaged Public Schools, Housing and Businesses, Albany and Dougherty Counties, GA.

Summary: EPA continued to have a lack of objection to the proposed actions.

ERP No. F–FHW–C40126–NJ, NJ–21 Freeway Extension Project, Construction and Modification, Monroe Street in Passaic to Route 46/Lexington Avenue Intersection, Funding, and COE Section 10 and 404 Permits, Cities of Passaic and Clifton, Passaic County, NJ.

Summary: EPA continued to have environmental concerns regarding the measures to mitigate impacts to aquatic resources. Accordingly, the mitigation plan should be included as part of the Record of Decision.

ERP No. F–NOA–C91003–00, Queen Conch Resources Fishery Management Plan, Implementation, Atlantic Ocean and Caribbean Portions of the Exclusive Economic Zone (EEZ) adjacent to the State Waters of Puerto Rico and the US Virgin Islands.

Summary: EPA had no objections to the implementation of the proposed project.

ERP No. F–NOA–E64016–FL, Florida Keys National Marine Sanctuary Comprehensive Management Plan, Implementation and Special-Use-Permit, Monroe County, FL.

Summary: EPA had no objection to the preferred action.

ERP No. F–SFW–K39038–NV, Lahontan Valley Wetlands Water Rights Acquisition Program, Implementation, Churchill County, NV.

Summary: EPA continued to express environmental concerns regarding potential water quality impacts due to agriculture drainage. EPA requested that the project include a monitoring program and active management to mitigate any agriculture drainage.

ERP No. FS–USA–K11016–CA, Fort Ord Disposal and Reuse Installation, Implementation, Additional Information, Establishment of Presido of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA.

Summary: EPA had no objection with the proposed project.

ERP No. FS–VAD–G99005–OK, Oklahoma City Area National Cemetery Construction and Operation, Updated Information on a New Potential Site, Fort Sill, Comanche County, OK.

Summary: EPA had no objection to the selection of the Preferred Alternative.

Dated: January 6, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–650 Filed 1–9–97; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5476–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed December 30, 1996 Through January 03, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 960603, Final EIS, FRC, OR, Leaburg-Walterville Hydroelectric (FERC. No. 2496) Project, Issuance of New License (Relicense), Funding and Land Trust Acquisition, McKenzie River, Lane County, OR, Due: February 10, 1997, Contact: Edward R. Meyer (202) 208–7998.

EIS No. 960604, Draft Supplement, NOA, Snapper Grouper Fishery, Amendment 8 to the Fishery Mange Plan, Regulatory Impact Review, South Atlantic Region, Due: February 24, 1997, Contact: Paula Evans (301) 713–2341.

EIS No. 970000, Final EIS, FRC, ME, Eel Weir Hydroelectric Project (FERC. No. 2984) Implementation, Water Level Management Plan, Sebago Lake, Cumberland County, ME, Due: February 10, 1997, Contact: Thomas J. LoVullo (202) 219–1168.

EIS No. 970001, Final EIS, AFS, MT, Elk Creek Land Exchange and Granting an Easement to Plum Creek, Implementation, Flathead National Forest, Swan Lake Ranger District, MT, Due: February 10, 1997, Contact: Ken Meckel (406) 892–4372.

EIS No. 970002, Final EIS, NPS, AK, Denali National Park and Reserve, "Frontcountry" Entrance Area and Road Corridor, Development Concept Plan, AK, Due: February 10, 1997, Contact: Mike Tranel (907) 683–9552.

EIS No. 970003, Draft EIS, TVA, TN, Columbia Dam Component of the Duck River Project, Implementation, Use of Lands Acquired, Possible COE Section 404 Permit, Maury County, TN, Due: March 07, 1997, Contact: Daniel H. Ferry (423) 632–8876.

Amended Notices

EIS No. 960560, Final EIS, GSA, NY, US Brooklyn Court Project, Demolition of the Emanuel Celler Federal Building, Construction of a New Courthouse and Renovation/Adaptive Reuse of the General Post Office at Cadman Plaza East, Kings County, NY, Due: January 27, 1997, Contact: Peter A. Sneed (212) 264–3581. Published FR 12–13–96—Review Period extended.

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Dated: January 7, 1997.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 97–651 Filed 1–9–97; 8:45 am]

BILLING CODE 6560–60–U

[FRL–5674–9]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Daylight Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Ecological Risk Subcommittee of the Integrated Risk Project (IRP)

The Ecological Risk Subcommittee of the Integrated Risk Project (IRP) of the Science Advisory Board (SAB) will hold a teleconference meeting on January 27 from 2:00 pm—4:30 pm to discuss the Subcommittee's draft methodology for assessing relative ecological risks from a variety of biological, chemical and physical stressors.

Background—In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA–SAB–EC–90–021). In response to that the charge, the ERS has held a series of meetings over the past nine months and is now finalizing its recommendations and relative risk ranking methodology.

For Further Information—Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Anyone wishing to make an oral presentation on the teleconference must contact Ms. Stephanie Sanzone, Designated Federal Official for the Subcommittee, no later than 4:00 pm (Eastern Daylight Time) January 22, 1997, at telephone (202) 260–6557, fax (202) 260–7118, or via the Internet at: Sanzone.Stephanie@EPAMAIL.EPA.GOV. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed.

2. Environmental Economics Advisory Committee (EEAC) and the Economic Analysis Subcommittee (EAS) of the Integrated Risk Project (IRP)

The Environmental Economic Advisory Committee, sitting as the Economic Analysis Subcommittee of the Integrated Risk Project Committee (IRP) of the Science Advisory Board (SAB), will meet on February 7, 1997, from 9:00 a.m. to no later than 5:00 p.m. (Eastern Daylight Time) in Room 2103 of Waterside Mall, US EPA, 401 M Street SW, Washington, DC 20460. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The purpose of the meeting is to continue Committee efforts in support of the larger IRP effort of the SAB.

Background—In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA–SAB–EC–90–021). In subsequent discussions with the Deputy Administrator, the SAB has also agreed to provide insights on economic analysis of risk reduction options. The current charge to the Economic Analysis Subcommittee is to explore and report on ways to assess the economic values associated with regulatory options that the agency often proposes in response to its statutory mandates for environmental protection. This will be the second meeting of the Subcommittee on this issue.

For Further Information—Single copies of the information provided to the Subcommittee can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington DC 20460, telephone (202) 260–6552, fax (202) 260–7118, or Internet at: Pozun.Diana@ EPAMAIL.EPA.GOV. Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Official for the Economic Analysis Subcommittee-IRP, *in writing* no later than 4:00 pm (Eastern Daylight Time) February 3, 1997, at the above address, via fax (202) 260–7118, or via the Internet at: Miller.Tom@EPAMAIL.EPA.GOV. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–5886.

3. Valuation Subcommittee (VS) of the Integrated Risk Project (IRP)

The Valuation Subcommittee (Committee) of the Integrated Risk Project Committee (IRP) of the Science Advisory Board (SAB) will meet from February 19 through 21, 1997, from 9:00 am on February 19 to no later than 5:00 pm (Eastern Daylight Time) on February 21 at the Holiday Inn-Baltimore Inner Harbor, located at 30–1 W. Lombard Street, Baltimore, MD, 21201. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The purpose of the meeting is to continue Committee efforts in support of the larger IRP effort of the SAB.

Background—In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA–SAB–EC–90–021). In subsequent discussions with the Deputy Administrator, the SAB has also agreed to provide insights on economic analysis of risk reduction options and ecosystem valuation. In summary, the current charge to the Valuation Subcommittee is to propose a new framework for assessing the value of ecosystems to humans, including ecological services and environmentally mediated health and quality of life values.

For Further Information—Single copies of the information provided to the Committee can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington DC 20460, telephone (202) 260–6552, fax

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(202) 260–7118, or Internet at: Pozun.Diana@EPAMAIL.EPA.GOV. Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Official for the Valuation Subcommittee IRP, *in writing* no later than 4:00 pm (Eastern Daylight Time) February 12, 1997, at the above address, via fax (202) 260–7118, or via the Internet at: Miller.Tom@EPAMAIL.EPA.GOV. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–5886.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: January 2, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–646 Filed 1–9–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5674–6]

CWA 303(d): Proposed Withdrawal of Phase I Total Maximum Daily Loads (TMDLs) for Copper in the New Jersey Waters of New York-New Jersey Harbor

AGENCY: Environmental Protection Agency, Region II (EPA).

ACTION: Notice.

SUMMARY: EPA has determined that the New Jersey waters of the New York-New Jersey Harbor are not water quality-limited for copper, and therefore, Phase I copper TMDLs are not required for these water segments. EPA is hereby issuing public notice of its intent to withdraw the Phase I TMDL for copper established by EPA on January 24, 1996.

DATES: Comments on the proposed action must be submitted to EPA on or before February 10, 1997.

ADDRESSES: Copies of the relevant supporting documents may be obtained by writing to Ms. Rosella T. O'Connor, Fate & Effects Team, U.S. Environmental Protection Agency Region II, 290 Broadway, 24th Floor, New York, New York 10006–1866 or calling (212) 637–3823.

The administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region II office between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Ms. Rosella T. O'Connor.

FOR FURTHER INFORMATION CONTACT: Ms. Rosella T. O'Connor, telephone (212) 637–3823.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action

I. Background

A TMDL, or total maximum daily load, is the maximum amount of the pollutant that a waterbody can assimilate and still meet ambient water quality standards. TMDLs are established for water quality-limited segments, which are defined as "any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of technology-based effluent limitations * * *" (40 CFR 130.2(i)).

On January 24, 1996, EPA established certain phased TMDLs, including waste load allocations (WLAs) and load allocations (LAs) for copper and mercury. (61 FR 1930). Phased TMDLs were developed for copper and mercury because of the limited ambient data and uncertainty in the model calibration for the New Jersey Harbor waters. The Phase I TMDLs established in January 1996 required additional data collection in the New Jersey Harbor waters before the establishment, as necessary, of revised Phase II TMDLs. Phase II TMDLs were to be established only if the additional data and/or modeling indicated that it was necessary to reduce point and/or nonpoint sources of certain metals below Phase I levels. The New Jersey Harbor waters are Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Raritan River below the Fieldville Dam and Raritan Bay.

The New Jersey Harbor Dischargers Group (NJHDG), in cooperation with the State of New Jersey and EPA, agreed to undertake the required additional monitoring and modeling. The first phase of the monitoring was designed to enhance the existing ambient data base and to confirm whether copper, lead, nickel and mercury exceed or potentially exceed applicable water quality standards in the New Jersey Harbor waters. Based on the results of this data collection effort, it was determined that certain metals and/or New Jersey Harbor waters would require additional monitoring and modeling to develop Phase II TMDLs. These data are contained in a report entitled, "Summary of the Phase I Metals Sampling and Analysis Program for the New Jersey Component of the New York/New Jersey Harbor Estuary Program" (March 5 and 26, 1996). The monitoring program included one station in each of the Hackensack, Passaic, and Raritan Rivers, and in Raritan and Newark Bays. Each of these stations was sampled twice per month for six months (from June 1995 through December 1995). The twelve sampling events included three wet-weather and two tidal cycle events. Overall, ninety water samples and five sediment samples were collected in twelve sampling events over a six month study period. These data were used to project water quality exceedances of copper, mercury, nickel and lead in the New Jersey waters of the Harbor.

Based on the ambient water quality data contained in the above-referenced report, EPA has determined the following:

- The New Jersey Harbor waters are not water quality-limited for copper, neither Phase I nor Phase II copper TMDLs are required. EPA is, therefore, proposing to withdraw the Phase I copper TMDLs promulgated on January 24, 1996;

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- The New Jersey Harbor waters are not water quality-limited for lead, no Phase II lead TMDLs are required;
- The Passaic and Hackensack Rivers are water quality-limited for nickel, additional monitoring and/or modeling is required to develop Phase II nickel TMDLs for these waterbodies, as necessary; and
- Since all Harbor waters, including all New Jersey Harbor waters, continue to be water quality-limited for mercury, the Phase I mercury TMDLs established on January 24, 1996 remain in effect.

II. Proposed Action

The action proposed, the withdrawal of the Phase I copper TMDLs, is appropriate given the specific circumstances, monitoring data, and management approach agreed upon by the States of New Jersey and New York and EPA, for the waters of the New York-New Jersey Harbor. The Phase I TMDLs which were established included Waste Load Allocations which reflect existing effluent quality. Phased TMDLs were established while the conflict between the limited ambient data then available (which did not indicate an exceedance of the applicable water quality standard for copper) and the uncertainty in model calibration (which indicated a potential to exceed the copper standard) could be addressed through additional monitoring and/or modeling. The ambient water quality data contained in the NJHDG's above-referenced report is now sufficient to support that the New Jersey Harbor waters are not water quality-limited for copper.

EPA is soliciting public comments on the proposed withdrawal of the copper TMDLs for the New Jersey Harbor waters.

Dated: December 23, 1996.

Signed:

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–642 Filed 1–9–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

BACKGROUND: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. A proposed revision of the following currently approved collection of information is hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 11, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to the OMB control number 3064–0122. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Project 3064–0122, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Revise the Following Currently Approved Collection of Information

Title: Forms Relating to FDIC Outside Counsel Services Contracting.

Form Number: FDIC 1600/05, FDIC 5200/01.

OMB Number: 3064–0122.

Frequency of Response: On occasion.

Affected Public: Law firms wishing to do business with the FDIC and those under contract with the FDIC.

Estimated Number of Respondents: FDIC Form 1600/05—2,500; FDIC Form 5200/01—500.

Estimated Time per Response: FDIC Form 1600/05—.5 hours; FDIC Form 5200/01—1.25 hours.

Estimated Annual Burden: The OMB previously approved an information collection for FDIC outside counsel budgeting and invoicing with an annual burden of 3,804 hours under OMB No. 3064–0122 (November 25, 1996). The estimated additional burden imposed by FDIC Form 1600/05 is 1,250 burden hours and by FDIC Form 5200/01 is 625 hours, or a total additional burden of 1,875 hours. The annual burden, including both the already approved budgeting and invoicing collection of information and the additional request would be a total of 5,679 burden hours.

General Description of Collection: Section 19 of the Resolution Trust Corporation Completion Act required the FDIC to prescribe a regulation to ensure that persons providing services to be FDIC meet minimum standards of competence, experience, integrity and fitness, and to govern conflicts of interest. Pursuant to that mandate, the FDIC established a "Contractor Conflicts of Interest" regulation, 12 CFR Part 366, that became effective April 10, 1996. The FDIC's Contractor Conflicts of Interest regulation requires FDIC contractors, including law firms covered by this collection of information, to submit representations and certifications about themselves and their employees, agents and subcontractors who will perform services under an FDIC contract. Law firms desiring to provide services for the FDIC will use Form 5200/01 to make the representations and certifications about themselves required by 12 CFR Part 366. Individual employees, agents and subcontractors will use Form 1600/05 to make representations and certifications about themselves, and to authorize the release of information about themselves so that the FDIC can verify the representations and certifications.

Request for Comment

Comments submitted in response to this Notice will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record. Written comments should address the accuracy of the burden

estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated at Washington, DC, this 6th day of January 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–563 Filed 1–9–97; 8:45 am]

BILLING CODE 6714–01–M

Alternative Dispute Resolution

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of adoption of policy statement.

SUMMARY: The FDIC has adopted a Statement of Policy to further its commitment to the use of Alternative Dispute Resolution for resolving appropriate disputes in a timely and cost efficient manner and to comply with the spirit of the Administrative Dispute Resolution Act of 1996.

EFFECTIVE DATE: December 11, 1996.

FOR FURTHER INFORMATION CONTACT: Martha W. McClellan, Counsel (202) 736–0512, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has modified its Statement of Policy on Alternative Dispute Resolution to reflect technical adjustments necessary in light of the reenactment of the Administrative Dispute Resolution Act (Pub. L. 104–320), and to reflect recent FDIC administrative and organizational changes. The text of the revised Policy Statement follows:

Statement of Policy on Alternative Dispute Resolution

The Federal Deposit Insurance Corporation (FDIC) has been and continues to be committed to the use of Alternative Dispute Resolution (ADR) for resolving appropriate disputes in a more timely, less costly manner than litigation or administrative adjudication. The FDIC hereby adopts this policy to reiterate its commitment to ADR, to express its full support for ADR and to set forth a framework for the continuing and expanding use of ADR. The Corporation views ADR not as an end in itself, but rather, as an additional tool to accomplish its business efficiently, economically and productively. To that end, the FDIC believes that its ADR policy should be dynamic and continually developing.

The FDIC fully supports the cost-effective use of ADR, including negotiation, mediation, early neutral evaluation, neutral expert fact-finding, mini-trials and other hybrid forms of ADR in appropriate instances. The purpose of this policy is to use ADR in appropriate instances to resolve disputes at the earliest stage possible, by the fastest and least expensive method possible and at the lowest possible organizational level consistent with applicable delegation of authority.

The Senior Deputy Director (Division of Resolutions and Receiverships) serves as the Dispute Resolution Specialist for the Corporation. In addition, an ADR Steering Committee, composed of the Dispute Resolution Specialist (or his/her designee) and representatives from each Division and Office, was established by the Board of Directors in 1994 to coordinate and encourage appropriate and cost-effective conflict management practices in all aspects of FDIC operations and programs. The Dispute Resolution Specialist, working with the ADR Steering Committee, shall report to the Board of Directors on an annual basis regarding the Corporation's ADR efforts, implementation of this policy, and any revisions or actions necessary.

It is the responsibility of all FDIC employees to implement this policy and to practice and promote cost-effective dispute resolution in FDIC programs and other areas of Corporation operation. All management and employees of the FDIC are hereby directed to take the necessary steps to implement this policy and to cooperate to the fullest extend with the ADR Steering Committee and the Dispute Resolution Specialist (and his/her designee) to promote effective and appropriate use of ADR at the Corporation in furtherance of this policy.

The FDIC welcomes and encourages input on the use of ADR and comment on current and potential uses of ADR from both within and outside the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, the 11th day of December, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–562 Filed 1–9–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3122–EM]

Hawaii; Amendment to Notice of a Presidential Declaration of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the State of Hawaii (FEMA–3122–EM), dated November 18, 1996, and related determinations.

EFFECTIVE DATE: December 11, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective December 9, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–613 Filed 1–9–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1147–DR]

Hawaii; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Hawaii (FEMA–1147–DR), dated November 26, 1996, and related determinations.

EFFECTIVE DATE: December 11, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 9, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–614 Filed 1–9–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1146–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1146–DR), dated November 19, 1996, and related determinations.

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include Public Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 19, 1996:

Westchester County for Public Assistance and Hazard Mitigation.

Suffolk County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–615 Filed 1–9–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for North Carolina, (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 6, 1996, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Hurricane Fran on September 5 through October 21, 1996, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of North Carolina and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–612 Filed 1–9–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011481–003.
Title: AMA Agreement.
Parties:

Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co., Ltd.
DSR–Senator Lines
United Arab Shipping Co. (S.A.G.) ("United Arab")

Synopsis: The proposed amendment adds United Arab as a party to the Agreement. It also provides that the parties may charter or sub-charter space and/or vessels among themselves and further provides that any such space may be sub-chartered to third party VOCCs pursuant to lawfully effective agreements. The amendment would also permit parties to the Agreement to be both an owner and a charterer or a charterer only and makes other non-substantive changes to the Agreement.

Agreement No.: 224–201013.
Title: City of Los Angeles/American President Lines Non-exclusive Preferential Crane Assignment Agreement.
Parties:

City of Los Angeles ("City")
American President Lines, Ltd. ("APL")

Synopsis: The Agreement provides that the City will allow APL to use certain shipping cranes on a non-exclusive, preferential basis for an initial term which will expire, unless renewed, on July 31, 1997.

By order of the Federal Maritime Commission.

Dated: January 6, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–566 Filed 1–9–97; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011497–001.
Title: Unigreen Marine S.A./Flota Mercante Grancolombiana Space Charter and Sailing Agreement.
Parties:

Unigreen Marine S.A.
Flota Mercante Grancolombiana S.A.

Synopsis: The parties are amending their agreement to substitute Transportation Maritima Grancolombiana S.A. for Flota Mercante Grancolombiana S.A. as a party and to

add Costa Rica to the geographic scope of the agreement. The parties have requested shortened review.

Dated: January 7, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–570 Filed 1–9–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Community Capital Corporation, Greenwood, South Carolina; to acquire 100 percent of Bank of Barnwell County, Barnwell, South Carolina (in organization), and 100 percent of the voting shares of The Bank of Belton, Belton, South Carolina (in organization).

Board of Governors of the Federal Reserve System, January 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–569 Filed 1–9–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 24, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, and Norwest Financial Services, Inc., Des Moines, Iowa; to acquire The United Group, Inc., Charlotte, North Carolina, and thereby engage in making direct installment loans and purchasing sales finance contracts and merchant revolving charge accounts, pursuant to § 225.25(b)(1) of the Board's Regulation Y; in selling credit life, credit accident and health, property, and credit-related casualty insurance sales activities, pursuant to §§ 225.25(b)(8)(i),(ii), and (vii) of the Board's Regulation Y, and; in underwriting, directly or through reinsurance arrangements, credit life and credit accident and health insurance, pursuant to §§ 225.25(b)(8)(i),(ii), and (vii) of the Board's Regulation Y. These activities will be conducted in the States of North Carolina and South Carolina.

Board of Governors of the Federal Reserve System, January 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–568 Filed 1–9–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

Time and Date: 10:00 a.m., Wednesday, January 15, 1997.

Place: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Status: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

Contact Person for More Information: Mr. Joseph R. Coyne, Assistant to the Board; (202)

452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–720 Filed 1–8–97; 10:32 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 961–0056]

Phillips Petroleum Company; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Bartlesville, Oklahoma based company to divest approximately 160 miles of its natural gas pipeline system in Oklahoma. The agreement settles allegations that Phillips' acquisition of gas-gathering assets from ANR Pipeline Company would substantially reduce competition for natural gas gathering services in areas of five Oklahoma counties, because Phillips and ANR are the only, or two of very few, companies that provide gas gathering services in these areas. The Commission had alleged that the acquisition could have resulted in higher rates and reduced drilling and production.

DATES: Comments must be received on or before March 11, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

William J. Baer, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2932.

George S. Cary, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W.; Washington, D.C. 20580. (202) 326–3741.

Phillip L. Broyles, Federal Trade Commission, S–2105, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 30, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("Commission") has accepted for public comment from Phillips Petroleum Co. ("Phillips") an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement, the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns Phillips' proposed acquisition, through its wholly-owned subsidiary, GPM Gas Services Corp., of certain pipeline gathering systems owned by ANR Pipeline Co. ("ANR"), a subsidiary of Coastal Corporation. Phillips and ANR are engaged in gas gathering—the transportation of natural gas, for their own or for others' use, from a wellhead or producing area to a gas transmission pipeline or a gas processing plant. The Commission's investigation of this matter found potential anticompetitive problems in certain areas within the following Oklahoma counties: Beaver, Ellis, Harper, Woods, and Woodward ("the Oklahoma counties"). For certain gas and oil producers in the Oklahoma counties, Phillips and ANR are the only, or two of very few, choices available to provide gas gathering services. The Commission was concerned that the proposed merger would eliminate competition between Phillips and ANR in providing gas gathering services. The Commission was also concerned that the proposed merger would lead to anticompetitive increases in gathering rates to these producers, and an overall reduction in gas drilling and production.

The Agreement Containing Consent Order would, if finally issued by the Commission, settle charges alleged in the Commission's Complaint that Phillips' acquisition of ANR's gas gathering systems substantially lessened competition in the gathering of natural gas in the Oklahoma counties. The nature of such competition to be preserved is the actual and potential competition to provide gas gathering services to producers and other customers. The Commission's Complaint further alleges that Phillips' acquisition agreement with ANR violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The order accepted for public comment contains provisions that would require Phillips to divest seven parts of a pipeline system, consisting of approximately 160 miles of pipe within the Oklahoma counties. The gas gathering assets to be divested are listed, with accompanying maps showing the locations of the pipelines, in Schedule A of the proposed Consent Order. Phillips must divest the assets by April 30, 1997 or 30 days following the consummation of the acquisition, whichever is later. The divestiture must be made to a person approved by the Commission and in a manner approved by the Commission. The purposes of the divestiture are to ensure the continued use of the Schedule A assets in the same type of business in which the assets are used at the time of the acquisition, and to remedy the lessening of competition resulting from the acquisition.

If Phillips does not divest the assets to a buyer acceptable to the Commission by the deadline, the Commission may appoint a trustee to sell the assets. The trustee may include additional assets with those specified in Schedule A to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of the order.

For ten (10) years from the date that the order becomes final, the order would require prior Commission notification before Phillips could

acquire from any one person during any 18-month period more than five miles of gas gathering pipelines located within certain portions of the Oklahoma counties.

In a separate agreement with Phillips, the Commission expressed concern that it might not have an adequate legal remedy if the proposed acquisition were consummated prior to Commission action. Phillips has agreed to maintain the assets that are being divested in their current condition and provide gathering service at existing terms and conditions to customers under contract with ANR until the Schedule A assets are either sold or the Commission decides not to accept this order.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 97–606 Filed 1–9–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of February 1997:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: February 7, 1997, 8:00 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Halpine Room, Rockville, Maryland 20852.

Open February 7, 1997, 8:00 a.m. to 8:15 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications requesting dissertation support for health services research undertaken as part of an academic program to qualify for a doctorate.

Agenda: The open session of the meeting on February 7 from 8:00 a.m. to 8:15 a.m., will be devoted to a business meeting covering administration matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 3, 1997.

Clifton R. Gaus,

Administrator.

[FR Doc. 97–654 Filed 1–9–97; 8:45 am]

BILLING CODE 4150–90–M

Food and Drug Administration

[Docket No. 95N–0200]

Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products." This guidance, prepared by the Center for Biologics Evaluation and Research (CBER) in consultation with the Center for Devices and Radiological Health, is intended to assist applicants in the preparation of the chemistry, manufacturing, and controls (CMC) section and the establishment description section of a biologics license application (BLA) or in the preparation of a product license application (PLA) and establishment license application (ELA) for all autologous somatic cell therapy products. This guidance may assist in complying with certain requirements in the Code of Federal Regulations.

DATES: Written comments may be submitted at any time; however, comments submitted by April 10, 1997, will be considered for the next revision.

ADDRESSES: Submit written requests for single copies of the guidance entitled, "Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products" to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail or by calling the CBER Voice Information System at 1–800–835–4709, or 301–827–1800, or FAX at 1–800–CBER–FAX, or 301–827–3844.

Persons with access to the Internet may obtain the document in several ways. Users of "Web Browser" software, such as Mosaic, Netscape, or Microsoft Internet Explorer may obtain this document via the World Wide Web by using the following Uniform Resource Locators:

http://www.fda.gov/cber/cberftp.html
ftp://ftp.fda.gov/CBER/

The document may also be obtained via File Transfer Protocol (FTP). Requests should connect to the FDA's FTP Server, FTP.FDA.GOV(192.73.61.21). CBER documents are maintained in a subdirectory called "CBER" on the server. Logins with the user name of anonymous are permitted, and the user's e-mail address should be sent as the password. The "READ.ME" file in that subdirectory describes the available documents which may be available as an ASCII text file (*.TXT), or a Word Perfect 5.1 or 6.x document (*.w51,wp6), or both. Finally, the guidance can be obtained by "bounce-back e-mail". A message should be sent to: "XVCMC@al.cber.fda.gov".

Submit written comments on the guidance to the Dockets Managements Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

Over the last several years, FDA has worked to clarify its approach to the

regulation of products that are comprised in whole or in part of living cellular materials. Recognizing that sponsors developing tissue and cell based therapies would soon want to make these products commercially available, FDA issued a notice in the **Federal Register** of October 14, 1993 (58 FR 53248), entitled "Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Cell Therapy Products;" this notice explained the regulatory framework for somatic cell and gene therapy products, but it did not provide detailed technical guidance. As announced in the **Federal Register** of July 18, 1995 (60 FR 36808), FDA held a public hearing on November 16 and 17, 1995, to solicit information on the nature and diversity of a subset of autologous somatic cell therapy products for structural repair or reconstruction called manipulated autologous structural cell products (MAS cell products) and to receive comments on the formulation and implementation of any new regulatory requirements. As announced in the **Federal Register** of March 7, 1996 (61 FR 9185), the agency held a Commissioner's roundtable public meeting on March 15, 1996, to present the elements of a planned regulatory framework intended to help ensure patient safety and confirmation of patient benefit, while accommodating the development of these therapies and the need for a flexible regulatory approach. Many of the concepts presented at the meetings were derived from ongoing FDA Reinventing Government initiatives. In the **Federal Register** of May 28, 1996 (61 FR 26523), FDA announced the availability of a guidance document entitled "Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction." FDA now is providing the CMC guidance document that describes product characterization and establishment information for MAS cell products and other autologous somatic cell therapy products. This document is intended to assist manufacturers of all autologous somatic cell therapy products, whether used for structural repair or reconstruction, or for other purposes.

As outlined in the President's November 1995, National Performance Review, "Reinventing the Regulation of Drugs Made From Biotechnology," and as part of FDA's continuing effort to reduce unnecessary burdens for industry without diminishing public health protection, FDA committed to using a standardized, single application format for drug and biological product approvals. An interim form for submission of the BLA, FDA Form 3439, is available from the Office of Communication, Training and Manufacturers Assistance (address above). Use of this form is voluntary. Establishments wishing to engage in clinical studies of autologous somatic cell therapy products, including MAS cell products, should submit an investigational new drug application (IND). Establishments seeking approval of autologous somatic cell therapy products for clinical use should either submit, as appropriate, a BLA or a product license application (PLA) and companion establishment license application (ELA).

The information FDA received at the public hearing of November 16 and 17, 1995, as well as comments received on the FDA Commissioner's roundtable meeting of March 15, 1996, were considered in developing the guidance for preparation of the CMC and establishment description sections of the BLA for autologous somatic cell therapy products.

The guidance document is divided into three parts. The general information section provides background information. Part 1, the CMC section, is divided into the following sections: (1) Introduction; (2) Biological Substance/Product, including discussions of Description and Characterization, Manufacturer(s), and Method(s) of Manufacture, Process Controls, Specifications/Analytical Methods, Container and Closure Systems/Shipping Containers, and Biological Substance Stability; (3) Biological Product, including discussions of Method(s) of Manufacture and Packaging, Specifications and Test Methods for Final Biological Product, Biological Product Stability, Container and Closure System, and Microbiology; (4) Environmental Assessment; and (5) Method Validation. Part 2, the establishment description section, provides a description of establishment information that should be submitted and related good manufacturing practice (GMP) controls for the manufacture of autologous somatic cell therapy products. Part 2 is divided into the following sections: (1) Introduction; (2) General Information; (3) Water Systems, including discussions of General Description of Water System, Validation Summary and Routine Monitoring; (4) Heating, Ventilation and Air Conditioning Systems; and (5) Contamination/Cross Contamination Issues, including discussions of Cleaning Procedures and Validation and Containment Features. This document provides guidance to manufacturers for providing the information describing establishment standards and GMP controls that would be submitted as part of the BLA or PLA and ELA.

As with other procedural guidance documents, FDA does not intend that this guidance would be all-inclusive. Alternative approaches could be warranted in specific situations, and certain aspects might not be applicable in all situations. If an applicant believed a procedure described in this guidance was inapplicable to a specific situation for a particular product, the applicant could provide, for CBER's consideration, information supporting an alternative process. If an applicant chooses to use alternative processes, the applicant may wish to discuss the matter further with the agency to prevent expenditure of money and resources on activities that later might be determined to be inappropriate by FDA. Additionally, FDA intends to further revise this guidance, as needed. FDA also encourages applicants who use the BLA to contact CBER to discuss use of the application further inasmuch as the agency's experience with its use will evolve. Although this guidance document does not create or confer any rights for or on any person, and does not operate to bind FDA or the public, it does represent the agency's current thinking on the CMC and establishment description sections of a BLA or PLA and ELA submitted for an autologous somatic cell therapy product.

Interested persons may, on or before April 10, 1997, submit written comments on the guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information are to be identified with the

docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Written comments on this document will be considered in determining whether revisions to the guidance are warranted.

Dated: January 6, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–579 Filed 1–9–97; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 60 FR 65350, December 19, 1995) is amended to reflect the realignment of the Office of Health and Industry Programs, Center for Devices and Radiological Health (CDRH), Office of Operations, in the Food and Drug Administration (FDA).

The Immediate Office of the Director, Office of Health and Industry Programs will consist of two new staffs; the Regulations Staff and the Staff College. CDRH believes that the establishment of these two new staffs within the Immediate Office of the Director, Office of Health and Industry Programs, will increase visibility to important program areas of the Center.

Under section HF–B, Organization:

1. Insert the following new subparagraphs under paragraph *Office of Health and Industry Programs (HFWG), Center for Devices and Radiological Health (HFW)*, reading as follows:

Program Operations Staff (HFWG–1). Provides all necessary administrative support to the Office.

Provides services to track the status of on-going Office programs as well as all incoming and outgoing congressional and FDA or Center-tracked correspondence.

Provides personnel computer support to Office staff including the evaluation of hardware and software, installation of hardware and software and assistance in resolving hardware and software problems.

Responds to public and government requests for information about medical device and radiation-emitting products. Serves as the Center Consumer Affairs Representative.

Regulations Staff (HFWG–2). Advises the Center Director and appropriate Agency officials on FDA regulation development responsibilities relating to medical devices and radiological health activities. Serves as the Center focal point for liaison on regulations development activities with the Office of Chief Counsel.

Coordinates the development, review and submission of Federal Register publications for the Center. Prepares position statements for the Center on standards promulgated by other organizations.

Staff College (HFWG–3). Develops necessary training courses for Center employees by providing continuing education credits for selected programs; providing live satellite teleconferences and distance learning telecasts; and coordinating and sponsoring a variety of seminars and lectures.

Performs needs assessments and develops training objectives. Designs courses and course evaluations.

2. **Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 13, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–578 Filed 1–9–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Black Lung Clinic Program Regulatory Requirements (42 CFR 55a) (OMB No. 0915–0081) Extension/No Change—The purpose of the Black Lung Clinics Program (BLCP) is to stimulate and encourage local public and private agencies to improve the health status of coalworkers and to increase coordination with other programs to assist the coalworkers population. The goal of the BLCP is to provide services to minimize the effects of respiratory and pulmonary impairments of coal miners. Grantees provide specific diagnostic and treatment procedures required in the management of problems associated with black lung disease which improve the functional status, i.e., "quality of life", of the miner and reduce economic costs associated with morbidity and mortality arising from pulmonary diseases.

This request is for approval of the reporting and recordkeeping requirements in program regulations as follows:

1. 42 CFR 55a.201 and 55a.301—Reporting—Grantees must submit applications for continued grant support. The regulations outline the requirements for grant applications for States (55a.201) and for entities other than States (55a.301).

2. 42 CFR 55a.201 (a) (3)—Recordkeeping—The regulations require that grantees conduct outreach to active and inactive miners, which requires maintenance of a register of persons with pulmonary impairments.

3. 42 CFR 55a.201 (a) (4)—Recordkeeping—The regulations require that individual patient care plans be provided for all patients. This includes development and periodic updating of the patient plans.

Estimates of annualized hour burden are as follows:

Regulatory requirement [1]	Number of record-keepers	Annual hours per record-keeper	Total burden
55a.201(a)(3)—patient registry	14	357	5,000
55a.201(a)(4)—development of patient plans	14	1,214	17,000

Regulatory requirement [1]	Number of record-keepers	Annual hours per record-keeper	Total burden
55a.201(a)(4)—patient plan update	14	1,429	20,000
Total	14	3,000	42,000

[1] The grant application form is cleared under another OMB approval (OMB No. 0937–0189). The burden for completing the application is not reflected in the table above because the burden is reported in the clearance of the application form.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 7, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–580 Filed 1–9–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Proposed Collection; Comment Request; Special Volunteer and Guest Researcher Assignment

SUMMARY: In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, National Institutes of Health (HIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Special Volunteer and Guest Researcher Assignment. *Type of Information Collection Request:* Revision of OMB No. 0925–0177; 4/30/97. *Need and Use of Information Collection:* Form NIH –590 records, names, address, employer, education, and other information on prospective Special Volunteers and Guest Researchers, and is used by the responsible NIH approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignment. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Guest Researcher and Special Volunteer candidates. *Estimated Number of Respondents:* 1560. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Per Response:* .08. *Estimated Total Annual Burden Hours Requested:* 125.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Guest Researcher	370	1	.08	29.6
Special Volunteer	1190	1	.08	95.2
Total	1560	1	.08	125

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Yetta Patterson, Personnel Management Specialist, Office of Human Resource Management, OD, NIH Building 31, Room 1C39, 31 Center Drive MSC 2272, Bethesda, MD 20892–2272.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before March 11, 1997.

Dated: December 26, 1996.

Marvene S. Horwitz,

Acting Director, Office of Human Resource Management.

[FR Doc. 97–640 Filed 1–9–97; 8:45 am]

BILLING CODE 4140–01–M

Proposed Collection: Comment Request; NIH Intramural Research Training Award, Program Application

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* NIH Intramural Research Training Award, Program Application. *Type of Information Collection Request:* Revision of OMB No. 0925–0299; 4/30/97. *Need and Use of Information Collection:* The proposed information collection activity is for the purpose of collecting data related to the availability of training fellowships under the NIH Intramural Research Training Award Program. This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardess. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Postdoctoral, Predoctoral, Supplemental, Technical,

Summer, and Student Support IRTA applicants. *Estimated Number of Respondents:* 12110. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Per Response:* 54. *Estimated Total Annual Burden House Requested:* 6542.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral IRTA	600	1	1	600
Predoctoral IRTA	100	1	1	100
Supplemental IRTA	10	1	1	10
Technical IRTA	60	1	1	60
Summer IRTA	3000	1	1	3000
Student Support IRTA	30	1	1	30
References	8310	.....	.33	2742
Total	12110	1	.54	6542

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Yetta Patterson, Personnel Management Specialist, Office of Human Resource Management, OD, NIH, Building 31, Room 1C39, 31 Center Drive MSC 2272, Bethesda, MD 20892–2272.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 26, 1996.

Marvene S. Horwitz,

Acting Director, Office of Human Resource Management.

[FR Doc. 97–641 Filed 1–9–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Clinical Psychopathology Review Committee.

Date: February 6–February 7, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.

Date: February 6–February 7, 1997.

Time: 8 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Health Behavior and Prevention Review Committee.

Date: February 10–February 11, 1997.

Time: 8:30 a.m.

Place: Embassy Suites, 4300 Military Road, N.W., Washington, DC 20015.

Contact Person: Monica F. Woodfork, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: Services Research Review Committee.

Date: February 11–February 12, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: Clinical Neuroscience and Biological Psychopathology Review Committee.

Date: February 12–February 14, 1997.

Time: 9 a.m.

Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Mental Disorders of Aging Review Committee.

Date: February 13–February 14, 1997.

Time: 8:30 a.m.

Place: Hampshire Hotel, 1310 New Hampshire Ave., N.W., Washington, DC 20036.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Clinical Centers and Special Projects Review Committee.

Date: February 13–February 21, 1997.

Time: 8 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: Psychobiology, Behavior, and Neuroscience Review Committee.

Date: February 20–February 21, 1997.

Time: 9 a.m.

Place: Renaissance Hotel, Downtown, 999 9th Street, Washington, DC 20001.

Contact Person: Deborah A. DeMasse, , Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Violence and Traumatic Stress Review Committee.

Date: February 20–February 21, 1997.

Time: 9 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: Social and Group Processes Review Committee.

Date: February 20–February 21, 1997.

Time: 9 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Child/Adolescent Development, Risk, and Prevention Review Committee.
Date: February 20–February 21, 1997.
Time: 9 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Cognitive Functional Neuroscience Review Committee.
Date: February 20–February 21, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–3936.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.
Date: February 24–February 25, 1997.
Time: 8 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–3936.

Committee Name: Epidemiology and Genetics Review Committee.
Date: February 24–February 25, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Shirley Williams, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–1367.

Committee Name: Child Psychopathology and Treatment Review Committee.
Date: February 27–February 28, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Perception and Cognition Review Committee.
Date: February 27–February 28, 1997.
Time: 9 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Treatment Assessment Review Committee.
Date: March 3–March 4, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–4868.

Committee Name: Mental Health AIDS and Immunology Review Committee—2.
Date: March 4–March 5, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Mental Health AIDS and Immunology Review Committee—1.
Date: March 10, 1997.
Time: 8:30 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 6, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–639 Filed 1–9–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism on February 13, 1997.

The meeting will be open to the public, as noted below, to discuss Institute programs and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ida Nestorio at 301–443–4376.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463 for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and the roster of committee members may be obtained from: Ms. Ida Nestorio, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: 301–443–4376. Other information pertaining to the meeting may be obtained from the contact person indicated.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.
Executive Secretary: James F. Vaughan, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–4375.
Date of Meeting: February 13, 1997.
Place of Meeting: Conference Room E1 & E2, Building 45 (Natcher), NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: February 13, 1997—8:00 a.m. to 10:00 a.m.
Agenda: To review and evaluate grant applications.
Open: February 13, 1997—10:00 a.m. to 5:00 p.m.
Agenda: Discussion of Institute extramural research programs, and other program and peer review issues relevant to Council activities.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: January 6, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–636 Filed 1–9–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting:

Purpose/Agenda: To evaluate and review contract proposals.
Name of Committee: NIDA Special Emphasis Panel.
Date: January 22, 1997.
Time: 9:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientific Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Program, National Institutes of Health)

Dated: January 6, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–637 Filed 1–9–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Mental Health Small Business Research Review Committee.

Date: February 24–February 25, 1997.

Time: 8:30 a.m.

Place: River Inn, 924 25th Street NW, Washington, DC 20037.

Contact Person: Yolanda M. Davis-White, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 6, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–638 Filed 1–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 3, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–408 Filed 1–9–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Tribal Self-Governance Notice of Availability of Self-Governance Negotiation/Planning Grants

AGENCY: Office of self-Governance, Office of the Secretary, Interior.

ACTION: Notice of grants availability.

SUMMARY: In this notice, the Office of Self-Governance (OSG) announces the availability of fiscal year 1997 negotiation grants (up to 10 grants of no more than $40,000 each); advance planning grants (up to 5 grants of no more than $50,000 each); and negotiation/planning grants to negotiate for DOI non-BIA programs (up to 10 grants of no more than $40,000 each). The timeframes for application and selection vary with each type of grant and are specified in this announcement.

DATES: Applications must be submitted in accordance with the table below:

Type of grant	Deadline for submitting application
Negotiation	March 31, 1997.
Advance Planning	May 1, 1997.
Negotiation/Planning	March 31, 1997.

ADDRESSES: Completed applications for grants should be sent to the Director, Office of Self-Governnance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfield, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW., Mail Stop 2548, Washington DC 20240, 202–219–0204.

SUMMARY INFORMATION: The tribal self-governance program is designed to promote self-determination by allowing tribes to assume more control through negotiated annual funding agreements of programs operated by the Department of the Interior. The Tribal Self-Governance Act of 1994 (Public Law 103–413) allows for negotaitions to be conducted for programs operated by BIA and for programs operated by other bureaus and offices within the Department that are otherwise available to Indians or when there is an historical, cultural, or geographic connection to an Indian tribe.

The purpose of this notice is to announce the availability of planning and negotiation grants in accordance with the self-governnance interim rule published in the **Federal Register** on April 23, 1996. The interior rules were established at 25 CFR 1001.7 to 1001.10

and will be used to govern the application and selection process for tribes/consortia to receive fiscal year 1997 negotiations and planning grants as specified in this notice. Applicants should be guided by the requirements in 25 CFR §§ 1001.7 to 1001.10 in preparing their applications. Copies of the interim rules published in the **Federal Register** on April 23, 1996, may be obtained from the information contact person identified in this notice.

Subject to the discretion of the Director, Office of Self-Governance, the following types of grants are avialable to tribes/consortia in 1997 with the deadlines as stated below:

(1) *Negotiation Grants:* Up to 10 grants of no more than $40,000 may be made available. As announced in today's **Federal Register**, the closing date for submitting completed applications to begin participation in tribal self-governance in fiscal year 1998 or calendar year 1998 is March 1, 1997. Applications requesting to be included in the applicant pool to begin participation in tribal self-governnance may be submitted at any time. Tribes/consortai selected from the applicant pool to begin participation in tribal self-governance in fiscal year 1998 or calendar year 1998, may be eligible to receive a negotiation grant. Each selected tribe/consortium will be notified by March 15, 1997, and must submit a written application for a negotiation grant, no later than March 31, 1997, indicating its intention to negotiate an annual funding agreement with any bureau within DOI for 1998.

(2) *Advance Planning Grants:* Up to five grants of no more than $50,000 may be made available. The closing date for submitting applications to receive a grant to plan for future participation in the tribal self-governance program is May 1, 1997. No later than June 1, 1997, each applicant will be notified by letter from the Director, Office of Self-Governance whether it has been selected to receive an advance planning grant.

(3) *Negotiation/Planning Grants to Negotiate Non-BIA Programs:* Up to 10 grants of no more than $40,000 may be made available. The closing date for submitting applications to receive a negotiation/planning grant for existing self-governance tribes to negotiate for DOI non-BIA programs is March 31, 1997. No later than May 1, 1997, each applicant will be notified by letter from the Director, Office of Self-Governance whether it has been selected to receive a negotiation/planning grant to negotiate non-BIA programs.

In order to provide sufficient time for tribes/consortia to effectively use the planning and negotiation grants, the following target dates have been established for the awarding of grants:

(1) *Negotiation Grants:* Since agreements for the 1997 fiscal year need to be signed and submitted by July 1, 1997, to allow sufficient time to prepare for negotiations, new participating tribes will be selected and awarded negotiation grants by May 1, 1997.

(2) *Advance Planning Grants:* In order to avoid delays in planning activity and future participation in tribal self-governance, advance planning grants will be awarded to tribes/consortia by July 1, 1997.

(3) *Negotiation/Planning Grants to Negotiate Non-BIA Programs:* Since agreements for the 1998 fiscal year need to be signed and submitted by July 1, 1997, to allow sufficient time to prepare for negotiation of DOI non-BIA programs, negotiation/planning grants for existing self-governance tribes to negotiate non-BIA program will be awarded by May 15, 1997.

Submitting Applications

(1) Application must be submitted in accordance with the interim rule published in the **Federal Register** on April 23, 1996, and by the deadlines identified in this announcement.

(2) Application may be mailed or hand-delivered.

(3) Applications which are mailed must be postmarked no later than the date given in this notice for the particular type of grant being applied for.

Dated: January 6, 1997.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 97–560 Filed 1–9–97; 8:45 am]

BILLING CODE 4310-02-M

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 1998 or Calendar Year 1998

AGENCY: Office of Self-Governance, Office of the Secretary, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 1997, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 1998 or calendar year 1998.

DATES: Completed application packages must be received by the Director, Office of Self-Governance by March 1, 1997.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW, Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW, Mail Stop 2548, Washington, DC 20240, 202–219–0240.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Public Law 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Public Law 104–208) the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into annual written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in an area and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 fiscal year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 fiscal year need to be signed and submitted by October 1.

Background

On February 15, 1995, an interim rule was published in the **Federal Register** announcing the criteria for tribes to be included in an applicant pool and the establishment of the selection process for tribes/consortia to negotiate agreements pursuant to the Tribal Self-Governancet Act of 1994. This interim rule was added to Title 25 of the Code of Federal Regulations at Part 1001 of Chapter VI. While it may be changed by later rulemaking, the Act stipulates that the lack of promulgated regulations will not limit its effect. It should be noted that a proposed rulemaking has been negotiated between tribal and Federal members of a self-governance negotiated rulemaking committee and is currently in the process of being prepared for publication in the **Federal Register** for review and comment.

Purpose of Notice

The interim rules established at 25 CFR Parts 1001.1 to 1001.5 will be used

to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 1998 and calendar year 1998. Applicants should be guided by the requirements in 25 CFR Parts 1001.1 to 1001.5 in preparing their applications. Copies of the interim rules published in the **Federal Register** on February 15, 1995, may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 1998 or calendar year 1998 must respond to this notice, except for those which are (1) currently involved with negotiations with the Department; (2) one of the 62 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

The Director's decision on the actual number of tribes that will enter negotiations will be made at a later date. Tribes already in the applicant pool will retain their existing ranking with tribes entering the applicant pool under these rules receiving a lower ranking. Being in the applicant pool will not guarantee that a tribe will actually be provided the opportunity to negotiate in any given year. However, it does mean that a tribe will not be passed over by a tribe with a lower ranking in the applicant pool or by a tribe not in the applicant pool, with the exception of a tribe already in the negotiation process.

For example, if the Department determines that five tribes will be afforded the opportunity to negotiate self-governance agreements for fiscal year 1998 and calendar year 1998, the five tribes with the highest rankings would be notified and negotiations would be scheduled. The tribe ranked sixth on the list would then have the highest ranking to negotiate a self-governance agreement for 1999 or might enter negotiations for 1998 if one of the first five tribes discontinued negotiations. In such a case, the tribe that discontinued negotiations would remain in the application pool with its original ranking and would be the first to be selected in 1998 for negotiating agreements commencing in 1999.

Dated: January 6, 1997.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 97–561 Filed 1–9–97; 8:45 am]

BILLING CODE 4310–02–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Harold L. Ahlberg, Irving, TX, PRT–823758.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

Applicant: Patricia L. Zerbini, Williston, FL, PRT–823609.

The applicant requests a permit to reexport one Asian elephant (*Elephas maximus*) born in captivity to accompany applicant to Circus Krone, Munchen, Germany for the purpose of enhancement of the survival of the species. The elephant is not being exported for exhibition purposes.

Applicant: McCarthy's Wildlife Center, Inc., West Palm Beach, FL, PRT–822008.

The applicant has requested a permit to import two male and two female captive-born cheetah (*Acinonyx jubatus*), from the De Wildt Cheetah Centre, South Africa, for the purpose of enhancement of the species through captive propagation and education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Sea World, Inc., Orlando, FL, PRT–823561.

Type of Permit: Import for public display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import to Sea World of California for the purpose of public display one male captive-born polar bear for the purposes of public display.

Source of Marine Mammals for Public Display: Hagenbeck Zoo, Germany.

Period of Activity: Up to five years from issuance of a permit, if issued.

Applicant: Sea World, Inc., Orlando, FL, PRT–823560.

Type of Permit: Import for public display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import to Sea World of California one female captive-born polar bear for the purposes of public display.

Source of Marine Mammals for Public Display: Wuppertal Zoo, Germany.

Period of Activity: Up to five years from issuance of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,!* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: January 7, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–652 Filed 1–9–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Distribution of Fiscal Year 1997 Contract Support Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of method for distribution and use of Fiscal Year (FY) 1997 contract support funds (CSF).

SUMMARY: The purpose of this Announcement is to issue the Bureau of

Indian Affairs (BIA) administrative instructions for the implementation of Public Law (Pub. L.) 93–638 as amended by Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994 (the Act). These administrative instructions are designed to provide BIA personnel with assistance in carrying out their responsibilities when distributing CSF. These instructions are not regulations establishing program requirements.

DATES: The CSF Needs Report for ongoing/existing contracts and annual funding agreements are due on July 15, 1997. The CSF Needs Reports for new and expanded contracts and annual funding agreements are due periodically throughout the year as the need arises. All new and expanded contracts and annual funding agreements starting between October 1, 1996, and January 1, 1997, will be considered to have a January 1, 1997, start date.

ADDRESSES: Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, N.W., MS–4603–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Thomas, Chief, Division of Self-Determination Services, (202) 208–5727.

SUPPLEMENTARY INFORMATION: A total of $95,829,000 is available for contract support requirements (excluding construction requirements) during FY 1997. Congressional language sets a ceiling on the amount of CSF available in FY 1997. Of this amount $90,829,000 is available for contract support requirements associated with FY 1997 costs of ongoing self-determination and self-governance awards for programs under contract prior to FY 1997. The balance of $5,000,000 is provided to continue the Indian Self-Determination (ISD) Fund to provide contract support for new and expanded contracts and annual funding agreements first entered into in FY 1997. Each BIA Area Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective area to work with the tribes in identifying new and expanded contracts and annual funding agreements and reporting this information to the Division of Self-Determination Services as specified in this announcement. CSF shall be added to awards made under Sec. 102 and Title IV of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under the authority of Sec. 103 of this Act shall not receive CSF to meet indirect costs, as contract support provisions do not apply to Sec. 103 grants.

Basis for Payment of CSF

BIA will utilize tribal indirect cost rates to determine the amount of CSF to be paid to eligible contracting tribes and tribal organizations and eligible self-governance tribes and tribal consortia. In determining legitimate indirect cost requirements each area and self-governance director should fund only those contracting or compacting tribal organizations that have an approved indirect cost rate for either FY 1995, 1996 or 1997 or indirect cost proposal currently under consideration by the Office of Inspector General. In those instances where a tribe or tribal organization has more than one approved rate or a current proposal under consideration by the Office of the Inspector General, the director should use the most current rate or pending proposal in determining the amount to award. For those tribes who are unable for good cause to negotiate an indirect cost rate, area contract officers may negotiate reasonable lump sum amounts with these tribes.

Ongoing/Existing Contracts/Annual Funding Agreements—Method of Distribution

Each area office will submit CSF need reports to the Central Office for ongoing contracts and annual funding agreements by July 15, 1997. A final distribution of contract support will be made on or about July 31, 1997. CSF will be provided to each office from the remaining available $90,829,000 based on these reports. If these reports indicate that $90,829,000 will not be sufficient to cover the entire need, this amount will be distributed pro rata, so that all contractors and compactors receive the same percentage of their reported need.

Should the amount provided for these existing contracts and annual funding agreements prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds for programs located in the Tribal Priority Allocation (TPA) portion of the tribal budget. Congressional language does not provide authority for the Bureau to reprogram funds from other Bureau programs to meet any CSF shortfalls.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program.

Each office will be suballotted 75 percent of the total amount which was provided in FY 1996, as soon as possible. Accordingly, each office should then award 75 percent of required contract support to each contract/compact meeting the criteria established below.

All contractors and self-governance tribes/consortia with either a FY 1995, 1996, or 1997 approved indirect cost rate, current indirect cost proposal, or FY 1997 approved lump sum amount are eligible for 75 percent of the appropriate total amount to be paid with the first allotment of CSF in FY 1997. After the second allotment of CSF is made (approximately July 31, 1997) all contractors and self-governance tribes/consortia should again receive their pro rata share of CSF, based on the amount provided at that time.

An ongoing/existing contract or annual funding agreement is defined as a BIA program operated by the tribal contractor on an ongoing basis which has been entered into prior to the current fiscal year. An increase or decrease in the level of funding from year to year for such contracts or annual funding agreements would not affect the designation of such contracts or annual funding agreements as being ongoing. An assumption of additional BIA program responsibilities would be required to trigger a change in designation.

Method of Distribution for New and Expanded Contracts/Annual Funding Agreements

Each office will submit CSF need reports to the Central Office for new and expanded contracts and annual funding agreements periodically throughout the year as new contracts or annual funding agreements are awarded or existing contracts or annual funding agreements are expanded. Funds will be provided to the offices as these reports are received and will be taken from the $5,000,000 ISD Fund. These funds will be distributed on a first-come-first-serve basis at 100 percent of need using the office reports.

In the event the $5,000,000 is depleted, new or expanded contracts or annual funding agreements awarded after this fund has been exhausted will not be provided any CSF during this fiscal year. Requests received after this fund has been exhausted will be considered first for funding in the following year, from funds appropriated for this purpose. It should be noted that there were a number of FY 1996 new and expanded contracts and annual funding agreements which were not funded during FY 1996, and, in line with the process outlined herein, they will be given priority for funding over

FY 1997 new and expanded contracts and annual funding agreements.

Priority of Funding for New and Expanded Contracts/Annual Funding Agreements

Contract support will be awarded from the ISD fund to all new and expanded contracts/annual funding agreements based on the start date of the award, and the application date, on a first-come-first-serve basis. An Indian Self-Determination Fund "applicant roster" shall be maintained, which shall list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of approved Indirect Cost Rate agreement or lump sum agreement.

"Start date" means the date or commencement of operation of the new or expanded portion of the contract or annual funding agreement by the tribe/consortium or tribal organization. However, because the Self-Determination Act provides that contracts/annual funding agreements will be on a calendar year basis unless otherwise provided by the tribe, any start date on or prior to January 1 of each year shall be considered a January 1 start date.

"Application date" shall be the date of the request by the tribe which includes: (1) a tribal resolution requesting a contract or annual funding agreement; (2) a summary of the program or portion thereof to be operated by the Tribe/consortium or Tribal organization; and (3) a summary identifying the source and amount of program or services funds to be contracted or included in an annual funding agreement and contract support requirements. In the event that two tribes or tribal organizations have the same start date and application date, then the next date for determination of priority shall be the date the fully complete application was received by the BIA.

If all of the above are equal, and if funds remaining in the ISD fund are not adequate to fill the entire amount of each award's contract support requirement, then each will be awarded a proportionate share of its requirement and shall remain on the Indian Self-Determination Fund Roster in appropriate order of priority for future distributions.

New contract/annual funding agreement is defined as the initial transfer of a program, previously operated by the BIA to the tribe/consortium or tribal organization.

An expanded contract/annual funding agreement is defined as a contract/annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs previously operated by the BIA.

Criteria for Determining CSF Need for New and Expanded Contracts/Annual Funding Agreements

CSF for new and expanded contracts/annual funding agreements will be determined using the following criteria:

1. All contracts/annual funding agreements initially entered into in FY 1997 that transfer the operation of a program that was operated by the BIA in the previous fiscal year to the tribe. (TPA programs started or expanded in FY 1997 that are a result of a change in priorities from other already contracted programs are not considered new or expanded.)

2. All expansions of existing contracts/annual funding agreements that call for the tribe to assume more or additional programs previously operated by the BIA.

3. New and expanded program assumptions under Self-Governance annual funding agreements.

Criteria for Determining CSF Need for Ongoing/Existing Contracts/Annual Funding Agreements

CSF for ongoing and existing contracts/annual funding agreements will be determined using the following criteria:

1. All TPA contracted programs or those programs included in annual funding agreements in FY 1996 and continued in FY 1997, including contracted or annual funding agreement programs moved to TPA in FY 1997, such as New Tribes, HIP, and Road Maintenance.

2. Direct program funding increases due to inflation adjustments and general budget increases.

3. TPA programs started or expanded in FY 1997 that are a result of a change in priorities from other already contracted/annual funding agreement programs.

4. CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated in accordance with the criteria prescribed in the Choctaw decision dated September 18, 1992, issued by the Contracting Officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in this announcement. Tribes that received differential funding under this category in FY 1996 are eligible to receive funding from this account in FY 1997. Tribes that did not receive differential funding under this category in FY 1996 are eligible for funding from the ISD fund.

5. CSF will be distributed to the Office of Self-Governance for ongoing annual funding agreements, on the same basis as area offices. All additional CSF requirements will be met from the ISD fund in accordance with the criteria established above.

6. Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for the purposes of payment of contract support costs.

7. The use of CSF to pay prior year shortfalls is not authorized.

8. Programs funded from sources other than those listed above that were contracted in FY 1996 and are to be contracted in FY 1997 are considered as ongoing.

Dated: December 31, 1996.

Elizabeth L. Homer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–573 Filed 1–9–97; 8:45 am]

BILLING CODE 4310–02–P

Receipt of Petition for Reassumption of Jurisdiction From the Chevak Traditional Council of Chevak, Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Indian Child Welfare Act of 1978 (Pub. L. 95–608) provide, subject to certain specified conditions, that Indian tribes may petition the Secretary of the Interior for reassumption of jurisdiction over Indian child custody proceedings.

In accordance with 25 CFR Part 13, this is notice that a petition has been received by the Secretary from the Chevak Traditional Council of Chevak, Alaska, for the tribal reassumption of jurisdiction over Indian child custody proceedings in the State of Alaska. The petition is under review and may be inspected or copied at the Bureau of Indian Affairs, Office of Tribal Services, 1849 C St., NW., room 4603 MIB, Washington, DC 20240.

Dated: December 26, 1996.
Elizabeth L. Homer,
Acting Assistant Secretary—Indian Affairs.
[FR Doc. 97–571 Filed 1–9–97; 8:45 am]
BILLING CODE 4310–02–M

Approval of Petition for Reassumption of Exclusive Jurisdiction by the Forest County Potawatomi Community of Crandon, Wisconsin, Over Indian Child Custody Proceedings Involving Indian Children Who Are Enrolled or Eligible for Enrollment With the Forest County Potawatomi Community, Crandon, Wisconsin and Who Reside or Are Domiciled Within the Exterior Boundaries of the Forest County Potawatomi Communities, in the State of Wisconsin, in the Counties of Forest, Oconto, and Marinette

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Forest County Potawatomi Community of Crandon, Wisconsin, has filed a petition with the Department of the Interior to reassume exclusive jurisdiction over Indian child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the Forest County Potawatomi Community, Crandon, Wisconsin and who reside or are domiciled within the exterior boundaries of the Forest County Potawatomi Communities, in the State of Wisconsin, in the Counties of Forest, Oconto, and Marinette.

The Assistant Secretary—Indian Affairs has reviewed the petition and determined that tribal exercise of jurisdiction is feasible and that the tribe has a suitable plan for exercising such jurisdiction. This notice constitutes the official approval of the the Forest County Potawatomi Community's petition by the Department of the Interior.

EFFECTIVE DATE: The Forest County Potawatomi Community, Crandon, Wisconsin, reassumes exclusive jurisdiction by March 11, 1997.

FOR FURTHER INFORMATION CONTACT: The principal author of this document is Betty Tippeconnie, Department of the Interior, Bureau of Indian Affairs, Office of Tribal Services, 1849 C St., N.W., Mail Stop 4603 MIB, Washington, D.C., 20240. (202) 208–2721.

SUPPLEMENTARY INFORMATION: The authority for the Assistant Secretary—Indian Affairs to publish this notice is contained in 25 CFR 13.14 and 209 DM 8. Section 108 of the Indian Child Welfare Act of 1978, Pub. L. 95–608, 92 Stat. 3074, 25 U.S.C. 1918, authorizes Indian tribes that occupy a reservation as defined in 25 U.S.C. 1903(10) over which a state asserts jurisdiction over Indian child custody proceedings, pursuant to Federal statute, to reassume jurisdiction over such proceedings.

To reassume such jurisdiction, a tribe must first file a petition in the manner prescribed in 25 CFR Part 13. Notice of receipt of this petition was published in the **Federal Register**, Vol. 60, No. 211, page 55588, on November 1, 1995. The petition is then reviewed by the Department of the Interior using criteria set out in 25 CFR 13.12. If the Department finds that the tribe has submitted a suitable plan and that tribal exercise of jurisdiction is feasible, the petition is approved by publication in the **Federal Register**.

The geographic areas subject to the reassumption of exclusive jurisdiction by the Forest County Potawatomi Community, Crandon, Wisconsin, are within the exterior boundaries of the Forest County Potawatomi Communities, in the State of Wisconsin, in the Counties of Forest, Oconto, and Marinette.

Dated: December 23, 1996.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 97–572 Filed 1–9–97; 8:45 am]
BILLING CODE 4310–02–M

Minerals Management Service

Outer Continental Shelf, Alaska Region, Cook Inlet Oil and Gas Lease Sale 149

AGENCY: Minerals Management Service.

ACTION: Availability of Environmental Assessment (EA) and finding of no significant impact (FONSI) for a revision to the oil and gas lease sale proposal for Cook Inlet, sale 149.

SUMMARY: The Minerals Management Service (MMS) has prepared an EA for a revision to the Cook Inlet, Sale 149 proposal. The revised proposal reduces the area being considered for leasing. Based on the conclusions of the EA, the MMS has prepared a FONSI. A 45-day comment period on the revised proposal and EA will commence upon publication of this Notice in the **Federal Register.**

ADDRESSES: A copy of the EA and FONSI is available to the public upon request from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, Attention: Public Information. Copies can be requested by telephone, (907) 271–6070, or 1–800–764–2627. A copy can also be requested by fax at (907) 271–6805. Ask for the "Cook Inlet EA." Address comments to the Regional Supervisor, Leasing and Environment at the address or fax number stated above.

SUPPLEMENTARY INFORMATION: A final Environmental Impact Statement (EIS) made available on January 30, 1996 (61 FR 3052) analyzed the Cook Inlet Sale 149 proposal as offering approximately 2 million acres. The revised proposal for Sale 149 would offer for lease approximately 430,000 acres north of Anchor Point in Cook Inlet. Based on the conclusions presented in the EA, a FONSI was prepared and a determination was made that a supplemental EIS is not needed.

Dated: January 7, 1997.
Carolita U. Kallaur,
Deputy Director, Minerals Management Service.
[FR Doc. 97–603 Filed 1–9–97; 8:45 am]
BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Notice of Information Collection Under Review; Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program—"Aggregate Data forms: Police and School."

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 11, 1997.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evacuate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Marilyn Landon, Program Manager, Office of Juvenile Justice and Delinquency Prevention at (202) 307–0586. To receive a copy of the proposed information collection instrument with instructions, or additional information, please contact Marilyn Landon, 202–307–0586, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531. Additionally, comments may be submitted to the Department of Justice, (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530, or via facsimile to (202) 514–1534.

Overview of this information collection:

(1) *Type of Information Collection: New Collection.*

(2) *Title of the Form/Collection:* Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program "Aggregate Data Forms: Police and School."

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Sponsored by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Program, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-Profit Institutions. Other: State, Local, or Tribal Government. The study will obtain interview and test information on youth background, social adjustment, deviancy/crime activity, self-esteem, and depression/personality adjustment. It will determine the effectiveness of the program, comparing program subjects to non-program gang youth of the same ages, approximately 13 to 20 years old, and their backgrounds.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 31 (11 police + 20 school at 5 sites @ 11.88 hrs per respondent).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 368.28 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 6, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–567 Filed 1–9–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT960001 (Mar. 15, 1996)
CT960003 (Mar. 15, 1996)
CT960004 (Mar. 15, 1996)

Volume II

Virginia
VA96005 (Mar. 15, 1996)
VA96014 (Mar. 15, 1996)
VA96018 (Mar. 15, 1996)
VA96022 (Mar. 15, 1996)
VA96023 (Mar. 15, 1996)
VA96031 (Mar. 15, 1996)
VA96033 (Mar. 15, 1996)
VA96036 (Mar. 15, 1996)
VA96054 (Mar. 15, 1996)
VA96065 (Mar. 15, 1996)
VA96067 (Mar. 15, 1996)
VA96085 (Mar. 15, 1996)
VA96087 (Mar. 15, 1996)
VA96088 (Mar. 15, 1996)
VA96108 (Mar. 15, 1996)

Volume III

Kentucky
KY960001 (Mar. 15, 1996)
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KY960003 (Mar. 15, 1996)
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KY960029 (Mar. 15, 1996)
KY960035 (Mar. 15, 1996)
South Carolina
SC960033 (Mar. 15, 1996)

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IN960001 (May 17, 1996)
IN960002 (Mar. 17, 1996)
IN960004 (Mar. 17, 1996)
IN960006 (Mar. 17, 1996)
IN960017 (Mar. 17, 1996)
IN960018 (Mar. 17, 1996)
Minnesota
MN960005 (Mar. 15, 1996)
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MN960008 (Mar. 15, 1996)
MN960015 (Mar. 15, 1996)
MN960027 (Mar. 15, 1996)
MN960031 (Mar. 15, 1996)
MN960039 (Mar. 15, 1996)
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MN960059 (Mar. 15, 1996)
MN960061 (Mar. 15, 1996)
Ohio
OH960001 (Mar. 15, 1996)
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OH960038 (Mar. 15, 1996)

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Nebraska
NE960001 (Mar. 15, 1996)
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California
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CO960002 (Mar. 15, 1996)
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CO960009 (Mar. 15, 1996)
CO960010 (Mar. 15, 1996)
CO960022 (Mar. 15, 1996)
CO960025 (Mar. 15, 1996)
South Dakota
SD960005 (Mar. 15, 1996)
SD960006 (Mar. 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 3rd day of January 3, 1997.

Phillip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–366 Filed 1–9–97; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Proposed Collection; Comment Request Consumer Price Index Revision Housing Survey; Correction

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Correction.

SUMMARY: In notice document 96–33025 beginning on page 68299 in the issue of Friday, December 27, 1996, make the following corrections:

On page 68299 in the second column, the notice stated that the Bureau of Labor Statistics is soliciting comments concerning the "proposed revision of the 'Consumer Price Index Revision Housing Survey'." This should be corrected to read comments concerning the "proposed new 'Consumer Price Index Revision Housing Survey'." On page 68300 in the first column, the title is listed as the "Consumer Price Index Housing Survey". This should be corrected to read the "Consumer Price Index Revision Housing Survey". Also on page 68300 in the first column, "Total Respondents: 149,482" should be corrected to read "Total Responses: 149,482."

Signed at Washington, D.C., this 6th day of January, 1997.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–623 Filed 1–9–97; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 96–145]

AGENCY: National Aeronautics and Space Administration (NASA)

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The reports will be utilized by the Office of Small and Disadvantaged Business Utilization as a method for determining if developmental assistance provided to small disadvantaged businesses by prime contractor's performance meets the standards established in NASA policy. The Agency's ability to manage the program effectively would be greatly diminished without receiving the described reports, which are part of the ongoing performace fee evaluation process.

DATES: All comments should be submitted by March 20, 1997.

ADDRESSES: Written comments should be addressed to Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for Office of Management and Budget (OMB) approval.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: Small Business and Small Disadvantaged Business Concerns.

Type of review: Extension.

Need and Uses: For contracts over $500,000, uncompensated overtime information is used to evaluate offerors' proposals to determine (i) whether a contractor will be able to hire and retain qualified individuals, (ii) whether uncompensated overtime hours will be properly accounted, and (iii) the validity of the proposed uncompensated hours.

Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local, or Tribal Government.

Number of Respondents: 657.

Responses Per Respondent: 1.

Annual Responses: 657.

Hours Per Request: 4.

Annual Burden Hours: 2,628.

Frequency of Report: As required.

Dated: December 19, 1996.

Russell S. Rice,

Director, IRM Division.

[FR Doc. 97–133 Filed 1–9–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice 97–003]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Monday, February 3, 1997, 8:30 a.m. to 5:00 p.m.; Tuesday, February 4, 1997, 8:30 a.m. to 5:00 p.m.; and Wednesday, February 5, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC Room 7H46 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

George L. Withbroe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Sun-Earth Connection Program Overview: Budget, Ongoing Program, Future Activities.

—Program Reports for Magnetospheric Physics; Heliospheric Physics; Solar Physics; and Ionospheric-Thermospheric-Mesopheric Physics

—Strategic Planning Activities and Development of Sun-Earth-Heliosphere Roadmap

—Discussion and writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 3, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–532 Filed 1–9–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice 97–002]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: February 6, 1997, 2 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 7H46 (MIC–7), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Norman B. Starkey, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–0914).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be the Space Shuttle, International Space Station, Computer Hardware/Software and Aeronautical Programs. The Aerospace Safety Advisory Panel is chaired by Paul M. Johnstone and is composed of 8 members and 6 consultants. The meeting will be open to the public up to the capacity of the room (approximately 60 persons including members and consultants of the Panel).

Type of Meeting: Open.

Agenda

Thursday, February 6

2:00 p.m.—Presentation of the findings and recommendations of the Aerospace Safety Advisory Panel

3:30 p.m.—Adjourn

All attendees will be requested to sign an attendance register.

Dated: January 3, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–531 Filed 1–9–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 24, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–97–5). Immediate disposal of temporary fire protection records no longer being created because they are superseded by a DOD electronic recordkeeping system.

2. Department of Commerce, Patent and Trademark Office (N1–241–96–3). Revisions to the comprehensive schedule for the Office of the Assistant Commissioner for Patents.

3. Department of Labor, Employment Standards Administration (N1–155–96–1). Reduction in retention period for general correspondence files of the Wage and Hour Division.

4. Department of Treasury, Bureau of Public Debt (N1–53–97–2). One time reduction in retention period for U.S. Savings Bond records.

5. Small Business Administration, Disaster Assistance Loan Program Office (N1–309–96–1). Declined disaster declaration files.

Dated: January 3, 1997.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 97–575 Filed 1–9–97; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL INSTITUTE FOR LITERACY

Proposed Agency Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted by March 11, 1997.

FOR FURTHER INFORMATION CONTACT: Jaleh Behroozi Soroui at (202) 632–1506 or e-mail: JSoroui@nifl.gov

SUPPLEMENTARY INFORMATION:

Title

Application for technology award to provide funding to expand Literacy Information and Communication System (LINCS) activities, resources and services for the adult literacy community.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the NIFL conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by organizations to apply for funding to expand LINCS regional hubs activities, resources, and services that will enhance technological capacity for electronic exchange across the literacy community. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a minimum of one cooperative agreement award for a period of up to 3 years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Statewide Adult Basic Education and Literacy Organizations, Regions II, III and IV.

Estimated Number of Respondents: 15.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 210 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to: Jaleh Behroozi Sorouí, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006.

Request for Comments

NIFL solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 97–622 Filed 1–9–97; 8:45 am]

BILLING CODE 8055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–31 and DPR–41 issued to Florida Power and Light Company (FPL or the licensee) for operation of the Turkey Point Nuclear Generating Station, Units 3 and 4, located in Dade County, Florida.

The proposed amendment would modify the Turkey Point Units 3 and 4 Technical Specifications (TS) to change the Reactor Coolant Pump (RCP) flywheel surveillance requirement. The proposed change will require RCP flywheel inspections once every ten years.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The safety function of the RCP flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large LOCA [loss-of-coolant accident]. The estimated maximum obtainable speed in the event of a LOCA was established conservatively. The proposed change does not affect that analysis. Reduced coastdown times due to a single failed flywheel is bounded by the locked rotor (instantaneous seizure) analysis, therefore, it would not place the plant in an unanalyzed condition. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the change in flywheel inspection frequency since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are basically unchanged by the proposed amendments. The [Westinghouse Owners Group] WOG effort includes FPL Turkey Point Units 3 and 4 flywheels. FPL has performed 37 flywheel inspections with no indications affecting flywheel integrity. The margins of safety defined in RG [Regulatory Guide] 1.14, Revision 1 used in the analysis are not significantly changed. Detailed stress and fracture analyses as well as risk analysis have been completed with the results indicating that there would be no change in the probability of failure for RCP motor flywheels if all inspections were eliminated. Therefore these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be

delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 10, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J.R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 17, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 6th day of January 1997.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Project Directorate II–3, Division of Reactor Projects-I/II.

[FR Doc. 97–591 Filed 1–9–97; 8:45 am]

BILLING CODE 7590–01–P

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[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Wolf Creek Nuclear Operating Corporation (the licensee) to withdraw its December 13, 1995, application for proposed amendment to Facility Operating License No. NPF–42 for the Wolf Creek Generating Station, located in Coffey County Kansas.

The proposed amendment would have revised Surveillance Requirement 4.1.3.1.3 to delete the requirement for performing the control rod drop surveillance test with T_{avc} greater than or equal to 551°F. This would have allowed performing the test with T_{avc} below 551°F. This change would have also added justification to the Bases for the performance of the rod drop test with T_{avc} below 551°F.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 22, 1996 (61 FR 1640). However, by letter dated December 12, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 13, 1995, and the licensee's letter dated December 12, 1996, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C., and the local public documents rooms located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 6th day of January 1997.

For the Nuclear Regulatory Commission.

James C. Stone,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–592 Filed 1–9–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:00 a.m., February 3, 1997.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. MC96–3.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 97–769 Filed 1–8–97; 2:56 pm]

BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Extension:

Rule 17a–8, SEC File No. 270–53, OMB Control No. 3235–0092

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment.

Rule 17a–8 under the Securities Exchange Act of 1934 (the "Act") requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") and with the Department of Treasury regulations under that Act.

The reports and records required under this rule initially are required under Department of the Treasury regulations, and additional burden hours and costs are not imposed by this rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the property performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: December 31, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–616 Filed 1–9–97; 8:45 am]

BILLING CODE 8010–01–M

Submission for OMB Review; Comment Request

Extension:

Form 13F, SEC File No. 270–22, OMB Control No. 3235–0006

Rule 204–3, SEC File No. 270–42, OMB Control No. 3235–0047

Reinstatement:

Rule 6a–3, SEC File No. 270–15, OMB Control No. 3235–0021

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension and reinstatement on previously approved collections of information.

Form 13F is used by certain large investment managers to report quarterly with respect to certain securities over which they exercise investment discretion. Each report takes about 24.6 hours to fill out.

It is estimated that approximately 1,804 institutional investment managers are subject to the rule. Each reporting manager files Form 13F quarterly. It is estimated that compliance with the Form 13F imposes a total annual burden per manager of approximately 98.4 hours. The total annual burden for all managers is estimated at 177,513.6 hours.

Rule 203–4 requires an investment adviser to deliver or offer to deliver to clients a written disclosure containing specified information concerning the background and business practices of

the adviser. Investors need this information to determine whether to retain or continue to employ the investment adviser.

There are 22,500 investment advisers subject to this rule. It is estimated that the burden resulting from the rule is 551,250 total annual hours.

Rule 6a–3 requires a registered or exempted exchange to file with the Commission (i) notification of any action that renders its application or annual amendment inaccurate, (ii) material it issues or makes available to members, and (iii) a monthly report concerning the activities on the exchange.

There are 8 registered exchanges and 1 exempted exchange that must comply with Rule 6a–3. Each of these 9 respondents file supplemental information under Rule 6a–3 approximately 25 times each year, for a total of 225 annual responses. Each response requires no more than one-half hour. Thus, the total compliance burden for registered and exempted exchanges per year is 112.5 hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: December 30, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–617 Filed 1–9–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22440; 811–4638]

The Arch Tax-Exempt Trust

January 3, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Arch Tax-Exempt Trust.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that if has ceased to be an investment company.

FILLING DATE: The application was filed on September 18, 1996 and amended on December 27, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 28, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state that nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 3435 Stelzer Road, Columbus, Ohio 43219–3035.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company organized as a Massachusetts business trust and consisting of four portfolios: Arch Tax-Exempt Money Market Portfolio, Arch Tax-Exempt Money Market Portfolio Class B,[1] Arch Missouri Tax-Exempt Bond Portfolio, and Arch Kansas Tax-Exempt Bond Portfolio.[2]

2. On April 16, 1986, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) under the Act and a registration statement on Form N–1A under the Securities Act of 1933. The registration statement became effective on June 30, 1986 and the initial public offerings commenced thereafter.

3. On June 27, 1995, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Plan") whereby applicant would exchange its net assets shares of The Arch Fund, Inc., a Maryland corporation registered under the Act as an open-end management investment company, in exchange for common shares of The Arch Fund, Inc. Pursuant to rule 17a–8 under the Act,[3] applicant's board of directors determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

4. In approving the Plan, the directors considered the impact of the proposed reorganization on applicant's shareholders, including the elimination of duplicative professional and other costs, the potential for increased operational and administrative efficiencies, and the reduction of certain fixed costs on a per share basis.

5. On August 21, 1995, applicant filed definitive proxy materials with the SEC that were mailed to its shareholders on August 22, 1995. Applicant's shareholders approved the Plan at a special meeting held on September 26, 1995.

6. Pursuant to the Plan, on October 2, 1995, applicant transferred all of the assets and liabilities of The Tax-Exempt Money Market and The Missouri Tax-Exempt Bond Portfolio (the "Transferor Portfolios") to "shell" portfolios of The Arch Fund, Inc. ("New Portfolios") in exchange for shares of the New Portfolios. Each shareholder of the Transferor Portfolios received a like number and type of full and fractional shares of the corresponding New Portfolio having an aggregate net asset value equal to the aggregate net asset value of such shareholder's interest in the respective Transferor Portfolio immediately prior to the reorganization. No brokerage commissions were paid in connection with the transfer.

7. Expenses incurred in connection with the reorganization totaled $38,569.88 and included legal expenses, filing fees, and proxy solicitation and shareholder meeting expenses. These expenses were assumed by the corresponding portfolios of The Arch

[1] The Arch Tax-Exempt Money Market Portfolio Class B was liquidated through redemeption of all publicly held Class B shares of beneficial interest during the period June 30 through July 13, 1989.

[2] The Arch Kansas Tax-Exempt Bond Portfolio never commenced operations and there was no public offering of its shares.

[3] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

Fund, Inc. upon consummation of the reorganization.

8. As of the date of the application, applicant had no shareholders, securities, debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor proposes to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant intends to file the necessary documentation with the Commonwealth of Massachusetts to effect its termination as a Massachusetts business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–618 Filed 1–9–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38117; File No. SR–CSE–96–08]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Granting Approval to Proposed Rule Change Relating to Continuous or Regular Quotation Obligations

January 3, 1997.

I. Introduction

On October 3, 1996, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to issue a reiteration and clarification of its rules concerning dealer obligations to provide continuous or regular two-sided quotations.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37811 (October 11, 1996), 61 FR 54472 (October 18, 1996). No comments were received on the proposal.

II. Description

The purpose of the proposed rule change is to clarify the obligations of CSE Designated Dealers, Qualified Dealers, and Contributing Dealers (collectively, "CSE Dealers") to provide continuous or regular two-sided quotations, as the case may be, during the trading day.[3] Currently, CSE Rules 11.8 and 11.9 set forth the requirements for CSE Dealers' quotations obligations. To clarify these requirements, the CSE is proposing to adopt a Regulatory Circular ("Circular"), which sets forth the obligations of a CSE Dealer to comply with CSE Rule 11.8 and 11.9 in providing quotes. Upon Commission approval of the Circular, the CSE will be disseminating the Circular to CSE Dealers and the requirements in the Circular will be fully enforceable as a rule of the Exchange. The Circular will provide guidance concerning quotation obligations at the opening and intra-day, during computer systems problems, and in unusual market conditions. In addition, the Circular will delineate enforcement standards for non-compliance with CSE rules pertaining to quotation obligations.

Specifically, the Circular will reiterate the obligations of a Designated Dealer or Qualified Dealer to display a two-sided quotation for a security immediately following the opening of the security on the primary market, and immediately to reestablish a quotation if that quotation is taken out during the day as a result of a transaction. The Exchange will thus reemphasize the need for Designated Dealers and Qualified Dealers to maintain continuous, two-sided quotations throughout the trading day.

Moreover, the Circular will specify the notification procedures to be followed in the event of a computer system problem that prevents a CSE Dealer from providing continuous or regular two-sided quotations. Frequent systems problems may result in the CSE Dealer's deregistration in certain issues by the Exchange's Market Performance Committee ("MPC"), or may be considered by the MPC as a factor in a request to become a dealer in additional securities. In addition, the Circular states that the existence of unusual market conditions will not exempt a CSE Dealer from its continuous or regular quotation obligations.

Finally, the Circular will place CSE members on notice that they will be informed of their compliance status at least quarterly, and will set forth possible sanctions resulting from non-compliance. In this regard, the Circular states that initial non-compliance may lead to a warning letter or a fine, while further non-compliance may lead to the imposition of sanctions, which may include a fine and deregistration in one or more issues. The Circular also states, however, that the MPC may impose sterner or swifter action, including sanctions, as it may find appropriate.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[4] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission finds that the Circular sets forth an adequate reiteration of CSE Dealers' existing obligations under Exchange rules to provide continuous or regular two-sided quotations, as the case may be,[5] during Exchange trading hours. As was noted above, the Circular states that a Designated Dealer or Qualified Dealer shall immediately display a two-sided quotation as soon as the security opens on the primary market and that the dealer must immediately reestablish a bid or offer if its quote has been taken out as the result of a transaction.

In addition, the Commission believes that the Circular will provide CSE Dealers with appropriate clarification as to their continuous or regular quotation obligations under Exchange rules during the occurrence of unusual market conditions and in the event of systems problems at the Exchange or a member firm. The Circular clearly states that a CSE Dealer is not exempted from its obligation to provide continuous or regular two-sided quotations during the occurrence of unusual market conditions. Moreover, the Circular references the procedures, adopted in a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Designated Dealer" is defined by the Exchange as a member who maintains a minimum net capital amount and who has been approved by the CSE's Securities Committee to perform market making functions by entering bids and offers into the Exchange's trading systems. *See* CSE Rule 11.9(a)(3). During Exchange trading hours, a Designated Dealer is required to provide continuous bids and offers for round lots of issues for which the member is registered as a Designated Dealer. *See* CSE Rule 11.9(c)(iii).

A "Contributing Dealer" is defined as a member who maintains a minimum net capital amount and during Exchange trading hours provides regular bids and offers for round lots of issues for which the member is registered. *See* CSE Rule 11.9(a)(4). Currently, no CSE member is registered with the Exchange as a Contributing Dealer. Telephone Conversation between Adam Gurwitz, Director of Legal Affairs, CSE, and Jon Kroeper, Attorney, SEC, dated January 2, 1997.

A "Qualified Dealer" is defined as a member who has been approved by the CSE's Securities Committee to provide to all members during Exchange trading hours a continuous two-sided market in odd-lots of issues for which the member is designated a Qualified Dealer. *See* CSE Rule 11.8.

[4] 15 U.S.C. 78f(b).

[5] *See supra* note 3.

previous Regulatory Circular,[6] that are to be followed in the event that systems problems at a member firm or the Exchange temporarily prevent a CSE Dealer from providing continuous or regular quotations.

Furthermore, the Commission believes that the Circular is consistent with Section 6(b)(1) of the Act[7] in that it provides a means of notifying CSE Dealers of their compliance with the Exchange's rules regarding quotation obligations and delineates enforcement standards that will be applied by the Exchange as a result of member non-compliance with such obligations. The Circular states that members will be notified of their compliance status at least quarterly. In the event of non-compliance, the Circular provides that initial non-compliance may lead to a warning letter or a fine, while further non-compliance may lead to the imposition of sanctions, which may include a fine and deregistration in one or more issues. The Circular also states, however, that the MPC may impose sterner or swifter action, including sanctions, as it may find appropriate. The Commission would particularly expect the CSE to impose sterner sanctions for egregious or continued violations. Accordingly, given the flexibility inherent in the Circular's enforcement standards, the Commission believes that such standards should provide the Exchange with an appropriate framework to address instances of CSE Dealer non-compliance with the Exchange's rules regarding quotation obligations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CSE–96–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–619 Filed 1–9–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Subchapter S4L, the Office of Telecommunications (OTC), is being deleted. Subchapter S4E, the Office of Systems Operations (OSO), is being retitled to the Office of Telecommunications and Systems Operations (OTSO), and amended to reflect the transfer of functions from OTC to OSO. The changes are as follows:

Section S4.10 *The Office of the Deputy Commissioner, Systems*—(Organization):

Delete:

I. The Office of Telecommunications (S4L).

Retitle:

D. "The Office of Systems Operations" (S4E) to "The Office of Telecommunications and Systems Operations" (S4E).

Section S4.20 *The Office of the Deputy Commissioner, Systems*—(Functions):

Delete in its entirety:

I. The Office of Telecommunications (S4L).

Retitle:

D. "The Office of Systems Operations" (S4E) to "The Office of Telecommunications and Systems Operations" (S4E).

Amend to read as follows:

D. The Office of Telecommunications and Systems Operations (OTSO) (S4E) directs, manages and coordinates the planning, acquisition, implementation, security, operation and maintenance of SSA's computer systems operations, and plans, implements and evaluates SSA's communications technology and systems. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems support software, including diagnostic software. It is responsible for evaluating current and emerging communications technologies and for designing, acquiring, implementing, operating and maintaining new integrated telecommunications systems combining voice, data, video, facsimile and other SSA communications requirements. OTSO directs, manages and coordinates the planning, analysis, design, acquisition, implementation, operation and maintenance of SSA's existing telecommunications systems. It manages the telecommunications operations complexes located at the Central Office, Regional Offices and field sites. It is responsible for SSA's comprehensive voice communication management program. OTSO interfaces with other systems components in the transition and implementation of redesigned programmatic and administrative systems to progressively replace existing application systems. It manages the computer operations complex which processes SSA's programmatic support, administrative, management information and statistical application systems. OTSO conducts continuing assessments and engineering analyses of the computer operations, as well as equipment performance analyses and coordinates the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of ADP equipment, software and technical services for SSA to maintain operational systems and to prevent progressive deterioration. OTSO develops, controls and implements operational plans which include the preparing of technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates to maintain operational systems. It advises the Deputy Commissioner, SSA Executive Staff and external monitoring authorities such as the General Services Administration, the General Accounting Office, the Office of Management and Budget and Congress on SSA's computer systems operations.

Delete: Existing Subchapter S4L, the Office of Telecommunications.

Retitle: Existing Subchapter S4E, "The Office of Systems Operations" (S4E) to "The Office of Telecommunications and Systems Operations" (S4E).

Change all references to the "Office of Systems Operations" to the "Office of Telecommunications and Systems Operations" and all references to "OSO" to "OTSO" throughout all Subchapters of Chapter 4.

Section S4E.00 *The Office of Telecommunications and Systems Operations*—(Mission):

Amend to read as follows:

The Office of Telecommunications and Systems Operations (OTSO) (S4E) directs, manages and coordinates the planning, acquisition, implementation, security, operation and maintenance of SSA's computer systems operations and the telecommunications systems. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems support software, including diagnostic software. It is responsible for evaluating current and emerging communications technologies and for designing, acquiring, implementing, operating and maintaining new integrated telecommunications systems combining

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[6] *See* CSE Regulatory Circular 96–07.

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

voice, data, video, facsimile, and other SSA communications requirements. OTSO designs and implements the critical interface between telecommunications facilities and teleprocessing complexes. OTSO manages the telecommunications operations complexes located at the Central Office, Regional Offices and field sites. It is responsible for SSA's comprehensive voice communication management program. OTSO manages the implementation of production application software at all network platforms and interfaces other systems components in the transition and implementation of redesigned programmatic, and administrative systems to progressively replace existing application systems. OTSO administers all activities pertaining to configuration management, change management and problem management with respect to ongoing and telecommunications operations. It manages the computer operations complex which processes SSA's programmatic support, administrative, management information and statistical application systems. OTSO conducts continuing assessments and engineering analyses of the computer operations, as well as equipment performance analyses and coordinates the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of all ADP equipment, software and technical services for SSA to maintain operational and telecommunications systems and to prevent progressive deterioration. OTSO develops, controls and implements operational plans which include the preparing of technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates to maintain operational and telecommunications systems. It advises the Deputy Commissioner, SSA Executive Staff and external monitoring authorities such as the General Services Administration, the General Accounting Office, the Office of Management and Budget and Congress on SSA's computer systems operations.

Section S4E.10 *The Office of Telecommunications and Systems Operations*—(Organization):

C. The Immediate Office of the Associate Commissioner for Telecommunications and Systems Operations (S4E), which includes:

Establish:

1. The Distributed Data Processing Management Staff (S4E–1).

Retitle:

H. "The Division of Standards and Control" (S4EK) to "The Division of Telecommunications Security and Standards" (S4EK).

I. "The Division of Operational Resource Management" (S4EL) to "The Division of Resource Management and Acquisition" (S4EL).

K. "The Division of Teleprocessing Systems Operations" (S4EN) to "The Division of Telecommunications Systems" (S4EN).

Establish:

L. The Division of Integrated Telecommunications Management (S4EP).

M. The Division of National Network Services and Operations (S4EQ).

N. The Division of Network Engineering (S4ER).

Section S4E.20 *The Office of Telecommunications and Systems Operations*—(Functions):

C. The Immediate Office of the Associate Commissioner for Telecommunications and Systems Operations (S4E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

Establish:

1. Distributed Data Processing Management Staff (S4E–1).

a. Directs the plans and activities to implement distributed data processing systems across SSA.

b. Initiates major program, subprogram, project and task activities in support of the implementation of Distributed Data Processing Management Staff (DDPMS) plans outlined in the Integrated Systems Plan and the Agency Strategic Plan.

c. Oversees/coordinates all DDPMS implementation activity among all systems components including the incorporation of office automation, programmatic systems, existing distributed-type systems, stand-alone personal computer-based systems, pilot systems and user-developed systems into a unified distributed processing environment.

d. Develops and manages the DDPMS procurement plan, outlining all acquisitions related to the project. Manages the development of distributed data processing acquisitions in the Intelligent Workstation/Local Area Network (IWS/LAN) areas.

e. Develops and manages the delivery, implementation and acceptance plans for DDPMS acquisitions.

f. Manages the evaluation process for all technology substitutions, technology refreshments, upgrades and unsolicited proposals for DDPMS. Manages the administration of DDPMS contracts to include amendments, cancellations and renewals.

g. Establishes and maintains the coordination and liaison interfaces to all other systems components, all SSA central office and field components and external committees,-conferences and organizations involved in and affected by DDPMS.

h. Approves technical specifications, technical evaluation criteria, technology substitution specifications for DDPMS-related workstation, network and application acquisitions.

i. Directs project activities to ensure that SSA-level DDPMS initiatives maintain compatibility with Governmentwide Information Technology Systems (ITS) standards.

G. The Division of Operational Capacity Performance Management (S4EJ).

Add:

6. Responsible for analysis of configuration, topology, connectivity, automation and availability of SSA's national network in support of performance management, resource utilization and capacity planning.

7. Performs network modeling and analysis of new applications and designs to determine network performance impacts. Projects future capacity requirements for network components and continually monitors performance to validate projections.

Retitle:

H. The "Division of Standards and Control" (S4EK) to "Division of Telecommunications Security and Standards" (S4EK).

Amend to read as follows:

7. Manages a centralized inventory of all SSA ITS and telecommunications equipment, and manages the ITS excess equipment process.

Delete "8" in its entirety.

Retitle:

I. The "Division of Operational Resource Management" (S4EL) to "Division of Resource Management and Acquisition" (S4EL)

Amend to read as follows:

1. Directs OTSO's participation in the Information Technology Systems (ITS) procurement process. Manages, plans and coordinates the activities relating to business and financial planning of SSA's telecommunications needs.

2. Performs technical and cost reviews of all OTSO/ITS procurements. Performs technical review of procurement proposals for ITS resources, network hardware, software and related services.

11. Develops short-term and long-range tactical planning and maintains the OTSO macroprocurement plan which relates to planned acquisitions of ITS and telecommunications equipment, software, system design and

system support services and implementation of telecommunication expansion.

Delete "8" in its entirety.

Renumber:

"9" through "13" to read "8" through "12".

J. The Division of Integration and Environmental Testing (S4EM).

Add:

12. Supports operating system and connectivity software on the LANs and IWS. It researches and tests current off-the-shelf products for their network configuration to LAN and workstation needs.

13. Performs systems analysis, configuration design, software selection, implementation and procurement support for micro-computers, minicomputers and computer graphics systems and equipment for various components of OTSO. Provides state-of-the-art technical expertise including the evaluation of new and existing systems activities and provides support for enhancements, modifications, design and/or redesign. It researches and tests current off-the-shelf products for their network configuration to LAN and workstation needs. Researches and analyzes emerging office systems developments to ensure technology awareness and provide supporting systems development, design and planning implementation.

14. Manages the OTSO technical training program. Assesses needs, and formulates and executes strategies to upgrade individual knowledge and skills levels.

Retitle:

K. The "Division of Teleprocessing Systems Operations" (S4EN) to "Division of Telecommunications Systems" (S4EN).

Delete "4", and "7" in their entirety.

Renumber "5" to "4", and "6" to "5".

Establish:

L. The Division of Integrated Telecommunications Management (S4EP).

1. Plans and manages the strategic and tactical direction of the SSA voice communications and voice-data integration programs.

2. Provides technical and analytical support for the National 800 Number and other communications initiatives and programs.

3. Provides and manages voice communications systems hardware, software, services and ancillary equipment for SSA nationwide.

4. Directs the acquisition, operations, maintenance, retention and disposal of voice communications systems and services SSA-wide. Develops and administers voice communications ITS contracts.

5. Administers Federal Telecommunication System (FTS) 2000 services SSA-wide and supports OTSO in representing SSA in all related negotiations within SSA and with GSA and FTS vendors and carriers.

6. Directs the evaluation, acquisition, installation, operation and disposal of voice communications systems and services for SSA nationwide.

7. Serves as the SSA focal point for voice communications capacity planning.

8. Manages SSA-wide programs for imaging, video, facsimile, satellite, radio and emergency communications.

9. Manages SSA headquarters voice communications systems.

10. Serves as SSA-level liaison with Federal, State and other government and private-sector entities on voice communications and voice-data integration.

11. Manages within SSA the development and application of emerging voice communications technology.

12. Manages technical solutions for "800" and other toll-free services SSA-wide.

13. Manages the acquisition of data circuits.

Establish:

M. The Division of National Network Services and Operations (S4EQ).

1. Manages the installation, relocation and operation of SSA's telecommunications network facilities for the transmission of program and management data over SSA established networks.

2. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

3. Develops and directs the implementation of new procedures and updates existing procedures for network node operations.

4. Reports outages to vendor management for prompt resolution and is responsible for the repair of advanced communications electronics equipment.

5. Provides emergency support services for equipment reconfiguration as well as repair, assembly/disassembly and installation of advanced telecommunications electronics.

6. Serves as the initial point of contact for user and technical problem determination for telecommunications. Diagnoses data-center hardware and network problems and coordinates network operations issues with applications and systems support staff.

7. Monitors and controls functions for the nationwide telecommunications system. Develops operational procedures to modernize and streamline network operation and develops plans for automation.

8. Manages traffic flow between telecommunications complexes and other SSA complexes.

9. Communicates status of the network to other network nodes and advises users of abnormal or extraordinary situations affecting network operations.

10. Monitors voice communications operations, analyzes equipment problems and effects proper maintenance and repair.

11. Directs all teleprocessing system software problem determination and resolution.

12. Coordinates with other OSO components in addressing teleprocessing software concerns regarding system capacity issues and system configuration proposals.

13. Operates and maintains an integrated systems and technical coordination control center and help desk to coordinate problem identification and resolution activities.

Establish:

N. The Division of Network Engineering (S4ER).

1. Directs the design, development, implementation, maintenance and support of specialized data communications software (i.e., Email and Internet) to support SSA's international network (SSANet).

2. Researches network prototypes and performs testing of new network technologies and implements and monitors network standards.

3. Supports SSA components as well as other Government agencies to provide optimum network interface design, management capabilities, connectivity, availability and response time.

4. Integrates and validates new network hardware such as assistive devices, software products, versions and maintenance levels into SSANet and SSANet connectivity management.

5. Manages and coordinates all change management system control relating to network hardware and software changes to SSANet under the auspices of the change management facility.

6. Performs Level 3 network monitoring and problem determination for the SSANet.

7. Develops and implements a network backup recovery.

8. Performs network software planning, installation and management at all remote sites.

9. Serves as the SSA-level liaison with Federal, State, and local Government agencies and with the private sector to integrate them into the SSA network.

10. Responsible for SSANet software distribution and version management.

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11. Interfaces with SSANet users to determine the impact of new applications and workloads and supports user liaison and systems development activities of other SSA components in the resolution of network technical and operational problems.

12. Manages communications software changes to ensure compatibility with hardware modifications at Central Office and all remote network platform locations.

13. Directs the planning, analysis and design of specialized network software systems for providing information relevant to the development of existing and proposed data communications systems.

14. Responsible for all aspects of engineering, design, configuration, implementation and support of LAN Operating System (OS) software, telecommunications and connectivity service functions at SSA.

15. Responsible for telecommunications and connectivity projects, including acquisition, implementation, integration and control.

16. Develops, disseminates and enforces standards and policies relating to workstations, workstation configurations, peripherals, LANs, LAN OS, local bridges and routers and related customer support and service.

17. Works with SSA users to provide solutions to LAN telecommunications needs that are consistent with SSA-network architecture policies; determines network and interfacing hardware needs, implementing solutions, planning and expansion; and determines staff hardware training needs. It assists SSA telecommunications users in determining and refining services and support requirements, configuration and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

18. Provides a full range of initial and followup telecommunications and connectivity services and support for SSA users in network requirements analysis, system design, LAN needs determination, engineering, implementation, network control, OS software support and training.

19. Develops and distributes research papers on applied technology and its relationship to existing and future telecommunications and connectivity requirements. It also develops alternate systems configurations to meet specific alternative requirements (non-traditional technology approaches).

20. Solves network problems by applying information on state-of-the-art OS, telecommunications and connectivity software and hardware currently available in the marketplace. It develops turn-key telecommunications systems and special menus to meet unusual customer requirements.

21. Responsible for all aspects of network design, network engineering, network connectivity, development and customization of network management processes/tools, network automation processes and network performance.

Dated: November 15, 1996.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 97–583 Filed 1–9–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 27, 1996 [FR 61, page 44118].

DATES: Comments must be submitted on or before February 10, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Application for Construction Reserve Fund and Annual Statements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0032.

Affected Public: U.S. citizens who own or operate one or more vessels in the foreign or domestic commerce of the United States and wish to receive benefits under the CRF program.

Abstract: The collection consists of an application required from all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire "tax" benefits under the Construction Reserve Fund (CRF) program. The annual statements set forth a detailed analysis of the status of the CRF when each income tax return is filed. Checks for withdrawals from the CRF must be sent to MARAD for countersignature and return for effecting the withdrawal.

Need and Use of the Information: The application is required in order for MARAD to determine whether the applicant qualifies for the benefits and for the applicant to obtain benefits under the CRF program. The annual statements are required from each respondent in order for MARAD to assure that the requirements of the program are being satisfied.

Annual Burden: 54 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 6, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–607 Filed 1–9–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 3, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the

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application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–2040.

Date filed: December 31, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 28, 1997.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 526, issued by Order 87–5–5, served May 8, 1987, and renewed by Order 92–6–21 (served June 12, 1992), authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal points Cincinnati, Ohio and London (Gatwick), England.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–608 Filed 1–9–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 96–071]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways.

DATES: Applications and any supporting information must be received on or before April 14, 1997.

ADDRESSES: Application forms may be obtained by writing Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–0087; or by faxing (202) 267–4570. Completed application forms must be submitted to the same address.

FOR FURTHER INFORMATION CONTACT: Commander Kevin S. Cook, Executive Director of CTAC, or Lieutenant J.J. Plunkett, Assistant to the Executive Director, telephone (202) 267–0087, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating U.S. positions prior to meetings of the International Maritime Organization.

CTAC meets at least once a year at Coast Guard Headquarters, Washington, DC. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

The Coast Guard will consider applications for ten positions that expire or become vacant in September 1997. To be eligible, applicants should have experience in chemical manufacturing, marine transportation of chemicals, occupational safety and health, or environmental protection issues associated with chemical transportation. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: January 3, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–604 Filed 1–9–97; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 96–106; Notice 2]

Decision That Nonconforming 1997 Mercedes-Benz Gelaendewagen Type 463 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1997 Mercedes-Benz Gelaendewagen Type 463 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1997 Mercedes-Benz Gelaendewagen Type 463 MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The decision is effective January 10, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

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Europa International, Inc. of Santa Fe, New Mexico ("Europa") (Registered Importer No. R–91–002) petitioned NHTSA to decide whether 1997 Mercedes-Benz Gelaendewagen Type 463 MPVs are eligible for importation into the United States. NHTSA published notice of the petition on October 9, 1996 (61 FR 52990) to afford an opportunity for public comment. As described in the notice of the petition, Europa claimed that the 1997 Mercedes-Benz Gelaendewagen Type 463 MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * * (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on visual inspection), 104 *Windshield Wiping and Washing Systems* (based on operation), 113 *Hood Latch Systems* (based on information in owner's manual describing operation of secondary latch mechanism), 116 *Brake Fluids* (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation and comparison to U.S.-certified vehicles), 201 *Occupant Protection in Interior Impact* (based on test data and certification of vehicle to European standard), 202 *Head Restraints* (based on Standard No. 208 test data for prior model year vehicle with same head restraint and certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film for prior model year vehicle), 205 *Glazing Materials* (based on visual inspection of certification markings), 207 *Seating Systems* (based on test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on wiring diagram of seat belt warning system and visual inspection of certification markings), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 214 *Side Impact Protection* (based on test results for prior model year vehicle), and 219 *Windshield Zone Intrusion* (based on test results and certification information for prior model year vehicle).

The petitioner also contended that the 1997 Mercedes-Benz Gelaendewagen Type 463 MPV is capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors; (c) installation of a high mounted stop lamp. The petitioner asserted that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* inscription of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 118 *Power-Operated Window Systems:* rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard. The petitioner asserted that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification by the British Standards Association and the Rim Association of Australia.

Standard No. 206 *Door Locks and Door Retention Components:* installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 *Occupant Crash Protection:* (a) installation of complying driver's and passenger's side air bag systems; (b) installation of a seat belt warning system; (c) placement of an air bag warning label on the visors of vehicles manufactured after November 1996. The petitioner stated that the vehicle will meet frontal impact test requirements with structural modifications described in a submission that has been granted confidentiality by NHTSA's Office of Chief Counsel under 49 CFR Part 512.

Standard No. 210 *Seat Belt Assembly Anchorages:* insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner certified that the vehicle complies with this standard on the basis of tests performed to the standard's requirements by an independent testing and engineering laboratory.[1]

Standard No. 212 *Windshield Retention:* application of cement to the windshield's edges.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve.

Standard No. 302 *Flammability of Interior Materials:* treatment of fabric seating surfaces with a flame-proof spray.

The petitioner additionally stated that a vehicle identification number (VIN) plate must be attached to the vehicle's dash so that it is visible to an observer at the driver's side "A" pillar, as required by 49 CFR Part 565. The petitioner also stated that a vehicle rollover warning statement must be inserted in the owner's manual and on a sticker affixed to the driver's side visor of short wheelbase Gelaendewagens, as required by 49 CFR 575.105.

No comments were received in response to the notice of the petition. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–15 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1997 Mercedes-Benz Gelaendewagen Type 463 MPVs are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. § 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–602 Filed 1–9–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Finance Docket No. 33318]

Port of Columbia—Acquisition Exemption—Union Pacific Railroad Company

Port of Columbia (Port) has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 37.4 miles of rail line owned by Union Pacific Railroad Company (UP) between milepost 48.0 near Walla Walla, WA, and milepost 71.3 at Bolles, WA, and between milepost 0.0 at Bolles, WA, and milepost 14.06 at Dayton, WA.[1] Consummation was expected to occur on or shortly after December 19, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33318, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Karl Morell, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: January 6, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–629 Filed 1–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Blue Mountain Railroad, Inc. (BMR) currently operates over the line pursuant to a lease agreement that was the subject of a notice of exemption in Finance Docket No. 32193. The agreement between UP and the Port is subject to that lease agreement and BMR will continue to operate the line after this transaction is consummated under an assignment of the lease from UP to the Port.

[STB Finance Docket No. 33322]

Georgetown Railroad Company, Acquisition and Operation Exemption, Missouri Pacific Railroad Company

Georgetown Railroad Company (GRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate over approximately 8,338 feet of Missouri Pacific Railroad Company's (MP) line of railroad known as MP's ICC Track No. 11 in Georgetown, which extends from the terminus of GRR's line at milepost 0.0 (MP's former milepost 923.70) in Georgetown, to the east side of Church Street in Georgetown, at milepost 0.54; and MP's undivided one-half interest in ICC Track No. 48, extending from milepost 0.54 south and west 5,470 feet to a point connecting with GRR's line from Kerr, in Williamson County, TX.[1] GRR is also acquiring MP's undivided one-half interest in the 5,478-foot ICC Track No. 47, and a 120-foot section of Track No. 11, in Georgetown, but as these will be used as side tracks, no exemption from 49 U.S.C. 10902 is necessary, due to the statutory exemption for acquisition and operation of side tracks in 49 U.S.C. 10906.

The exemption was effective on December 20, 1996. The parties indicate that consummation of the transaction will occur within 90 days after the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33322, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036.

Decided: January 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–628 Filed 1–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] This transaction involves GRR's acquisition and operation of a 1.58-mile segment of track connecting GRR's line from Kerr to Georgetown, TX, with a 16.32-mile line from Georgetown to Granger, TX, that GRR purchased from MP. Abandonment of the line was authorized in *Missouri Pacific Railroad Company—Abandonment—in Williamson County, TX* (Georgetown Branch), Docket No. AB–3 (Sub-No. 94) (ICC served Oct. 21, 1991).

[STB Finance Docket No. 33301]

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly—Continuance in Control Exemption—New York & Atlantic Railway Company

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly (Applicants), noncarrier individuals, have filed a verified notice of exemption to continue in control of New York & Atlantic Railway Company (NYAR), upon NYAR's becoming a Class III rail carrier.

The exemption was to become effective on December 12, 1996, and the transaction is expected to be consummated in the first quarter of 1997.

This transaction is related to STB Finance Docket No. 33300, *New York & Atlantic Railway Company—Operation Exemption—The Long Island Rail Road Company*, wherein NYAR seeks to acquire the freight operations of The Long Island Rail Road Company, including the right to operate the freight business on an exclusive basis.[1]

In addition to the filings mentioned in footnote 1, the Board received a number of letters from local governments, officials, and community leaders concerned with the movement of municipal solid waste (MSW) through their communities. LIRR submitted to the Board's Section of Environmental Analysis (SEA) an Environmental Assessment (EA), which was prepared under the New York State Environmental Quality Review Act by ICF Kaiser Consulting Group, and summary information drawn from its EA. The information provided by LIRR states that MSW carloads are projected to increase regardless of whether LIRR continues to conduct freight operations or the operations are transferred to NYAR.

SEA has carefully reviewed the EA and summary information submitted by LIRR. SEA has determined that the information satisfies the Board's obligations under the National Environmental Policy Act and provides the sufficient analysis which would normally be prepared by SEA in railroad operations that exceed the Board's thresholds at 49 CFR 1105.7(e)(4)(5). Therefore, the EA and summary information will be adopted as the Board's own with a finding that there will be no significant environmental impacts associated with the proposed transaction.

Applicants own and control two existing Class III common carriers by

[1] On December 31, 1996, International Brotherhood of Locomotive Engineers (IBLE) filed a petition to reject the notices of exemption filed in STB Finance Docket Nos. 33300 and 33301 or to revoke the exemptions. The petition also supports a statement by Claire Shulman, President of the Borough of Queens (Shulman), filed December 11, 1996, which IBLE characterizes as a petition for rejection or revocation. By decision served on December 20, 1996, NYAR was granted an extension until January 10, 1997, for its reply to Shulman. The Shulman and IBLE filings, as well as any replies, will be considered by the entire Board in a separate decision.

rail operating in three states: Chicago SouthShore & South Bend Railroad Co., operating in Northern Illinois and Northern Indiana; and Louisville & Indiana Railroad Company, operating in Southern Indiana and Northern Kentucky.

Applicants state that: (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33301, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Paul C. Oakley, Esq., Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

Decided: January 7, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–626 Filed 1–9–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33300]

New York & Atlantic Railway Company; Operation Exemption; The Long Island Rail Road Company

New York & Atlantic Railway Company (NYAR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the freight operations of The Long Island Rail Road Company (LIRR), a New York State public benefit corporation, including the right to operate the freight business on an exclusive basis, and conduct other freight operations on approximately 268.6 route miles in the State of New York, as follows: (1) The Bay Ridge Branch (MP 4.0 to MP 16.0), the Central Extension (MP 19.1 to MP 21.2), and the Bushwick Branch (MP 4.0 to MP 6.0) (collectively, the Freight Line); and (2) the Main Line (MP 9.3 to MP 94.3), the Montauk Branch (MP 0.0 to MP 115.8), the Port Jefferson Branch (MP 24.9 to MP 58.0), the Central Branch (MP 28.7 to MP 35.9), the Central Extension (MP 18.7 to MP 19.1), the Hempstead Branch (MP 13.3 to MP 18.7), the West Hempstead Branch (MP 15.5 to MP 20.1), and the Montauk Cut-off (MP 0.3 to MP 1.3) (collectively the Joint Use Line, and, together with the Freight Line, the Subject Line). LIRR will continue to provide passenger operations on the Joint Use Line. NYAR will conduct exclusive freight operations on the Subject Line for an initial term of 20 years, with an extension option, under certain circumstances, for an additional 10 years.

The exemption was to become effective on December 12, 1996, and the parties expect to consummate the transaction in the first quarter of 1997.

This transaction is related to a concurrently filed verified notice to continue in control of NYAR, upon its becoming a Class III rail carrier in STB Finance Docket No. 33301, *Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly —Continuance in Control Exemption—New York & Atlantic Railway Company.*[1]

In addition to the filings mentioned in footnote 1, the Board received a number of letters from local governments, officials, and community leaders concerned with the movement of municipal solid waste (MSW) through their communities. LIRR submitted to the Board's Section of Environmental Analysis (SEA) an Environmental Assessment (EA), which was prepared under the New York State Environmental Quality Review Act by ICF Kaiser Consulting Group, and summary information drawn from its EA. The information provided by LIRR states that MSW carloads are projected to increase regardless of whether LIRR continues to conduct freight operations or the operations are transferred to NYAR.

SEA has carefully reviewed the EA and summary information submitted by LIRR. SEA has determined that the information satisfies the Board's obligations under the National Environmental Policy Act and provides the sufficient analysis which would normally be prepared by SEA in railroad operations that exceed the Board's thresholds at 49 CFR 1105.7(e)(4)(5). Therefore, the EA and summary information will be adopted as the Board's own with a finding that there will be no significant environmental impacts associated with the proposed transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33300, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Paul C. Oakley, Esq., Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

Decided: January 7, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–627 Filed 1–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 31, 1996, International Brotherhood of Locomotive Engineers (IBLE) filed a petition to reject the notices of exemption filed in STB Finance Docket Nos. 33300 and 33301 or to revoke the exemptions. The petition also supports a statement by Claire Shulman, President of the Borough of Queens (Shulman), filed December 11, 1996, which IBLE characterizes as a petition for rejection or revocation. By decision served on December 20, 1996, NYAR was granted an extension until January 10, 1997, for its reply to Shulman. The Shulman and IBLE filings, as well as any replies, will be considered by the entire Board in a separate decision.

[STB Finance Docket No. 33331]

Respondek Railroad Corporation; Acquisition and Operation Exemption; Evansville Terminal Company

Respondek Railroad Corporation (Respondek), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 17.7 miles of line owned by the Evansville Terminal Company (Evansville): (1) Between milepost 227.5

at Poseyville, IN, and milepost 244.7 at Evansville, IN; and (2) between milepost B–204.3 and milepost B–205 at Browns, IL.

The transaction was expected to be consummated on or after the December 30, 1996 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33331, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Andrew P. Goldstein, Esq., McCarthy, Sweeney & Harkaway, P.C., Suite 1105, 1750 Pennsylvania Avenue, NW., Washington, DC 20006.

Decided: January 3, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–625 Filed 1–9–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–55 (Sub-No. 538X)]

CSX Transportation, Inc.; Abandonment Exemption; in Fayette and Nicholas Counties, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 15.27 miles of its line of railroad between milepost CAF–43.7, Valuation Station 1240+00, at Russ Junction and milepost CAF–58.97, Valuation Station 436+00, at Peters Junction, in Fayette and Nicholas Counties, WV.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 9, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 21, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 15, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–630 Filed 1–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Privacy Act of 1974, as Amended, System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of altered Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury (Treasury), gives notice of a proposed alteration to an existing system of records entitled the "Bank Secrecy Act Reports File—Treasury/Customs .067" and its renaming and renumbering as a Treasury-wide system of records "Bank Secrecy Act Reports System—Treasury/DO .213." The system notice was last published in its entirety in the **Federal Register**, Volume 60, page 56776, November 9, 1995.

DATES: Comments must be received no later than February 10, 1997. The system of records will be effective as of February 19, 1997, unless comments are received that result in a contrary determination and notice is published to that effect.

ADDRESSES: Written comments should be sent to Office of Legal Counsel, FinCEN, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182–2536, Attention: BSA System of Records. Comments will be made available for inspection and copying by appointment. To make an appointment, please contact Eileen Dolan, Office of Legal Counsel, FinCEN, at 703–905–3590.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Langwiser, Attorney Advisor, Office of Legal Counsel, FinCEN, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182–2536, (703) 905–3582.

SUPPLEMENTARY INFORMATION: The Department of the Treasury is amending

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the existing Privacy Act notice for this system of records, "Bank Secrecy Act Reports File—Treasury/Customs .067"[1] and renaming and renumbering it as "Bank Secrecy Act Reports System—Treasury/DO .213." This alteration will conform the notice to changes in the designation of the system manager and the location of the system of records as a result of changes in organizational responsibilities in the Department and will more accurately describe the categories of individuals covered by the system, the categories of records included in the system, and the policies and procedures for storage, retrieval, access, retention, and disposal of the records. In addition, three new routine uses for the records will be added. Finally, for purposes of clarity, the proposed alteration makes certain minor editorial changes to the notice and adds text to certain elements.

The system of records contains information collected under the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 1951–1959 and 31 U.S.C. 5311–5314, 5316–5330, which authorizes the Secretary of the Treasury to issue regulations requiring records and reports of financial transactions that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. These regulations appear at 31 CFR Part 103. Currently, the system of records containing the reports required by these regulations is a United States Customs Service Privacy Act system of records; however, the authority of the Secretary to administer these regulations, including the authority to disseminate BSA information, was delegated by memorandum dated May 13, 1994 to the Director of FinCEN, an officer reporting to the Office of the Under Secretary (Enforcement). Therefore, it is necessary to move this system of records from the Privacy Act system of records inventory maintained by the Customs Service to the Privacy Act system of records inventory maintained by Treasury's Departmental Offices and to make conforming changes in the notice to reflect the authority of FinCEN's Director over this system of records.

In addition, three new routine uses for the records contained in this system are proposed. The first proposed new routine use, which will be added as routine use (3), will permit disclosure, by electronic means, to Federal and State criminal law enforcement agencies, of information to identify or permit the identification of patterns of suspected illegal activity occurring within their areas of jurisdiction. The second proposed new routine use, which will be added as routine use number (4), will permit disclosure of relevant information to any Federal or State regulatory agency or self regulatory organization that examines for BSA compliance when necessary to their supervisory or compliance responsibilities. The third proposed new in computer matching with requesting Federal and State agencies under agreements approved in accordance with the Privacy Act. The matches will be performed to help eliminate waste, fraud, and abuse in government programs by identifying individuals who may not be eligible for benefit programs and/or potentially in violation of law and regulation. The information disclosed will be limited to those data elements relevant to the purpose of the match. The new routine uses, which are compatible with the criminal and regulatory purposes for which the information is collected, reflect the role technology plays in combating criminal, civil, and regulatory violations and waste, fraud and abuse in government programs, as well as the increasing importance of Federal and State cooperation in law enforcement. Current routine use numbers (3) through (5) will be renumbered as routine uses (6) through (8).

Because information in this system of records may be retrieved by personal identifier, the Privacy Act of 1974 requires the Treasury Department to give general notice and seek public comments.

The altered system of records report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, Committee on Government Reform and Oversight of the United States House of Representatives, and the Office of Management and Budget ("OMB"). See Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," 61 FR 6428, 6436 (February 20, 1996).

The proposed altered system of records, renamed and renumbered as "Bank Secrecy Act Reports System—Treasury/DO .213," is republished in its entirety below.

[1]The notice for this system of records was published December 2, 1975 at 40 FR 56194 under the title "Currency and Monetary Instrument Reporting System (CMIR)." The title "Currency and Monetary Instrument Reporting System (CMIR)" was changed to "Bank Secrecy Act Report File" by notice published 48 FR 36052 (August 8, 1983), effective October 7, 1983.

Dated: December 27, 1996.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/DO .213

SYSTEM NAME:

Bank Secrecy Act Reports System—Treasury/DO .213.

SYSTEM LOCATION:

Electronic Records: Currency and Banking Retrieval System, Internal Revenue Service Detroit Computing Center, 985 Michigan Avenue, Detroit, Michigan, 48226–1129 and Treasury Enforcement Communications System, United States Customs Service Newington, 7681 Boston Boulevard, Springfield, Virginia, 22153–3140.

Paper Records: Form 4790—U.S. Customs Service, Newington, VA. All other forms, including, but not limited to, Form 4789, TDF 90.22–1 and Form 8362—Internal Revenue Service, Detroit, MI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons identified in reports required to be filed under the Bank Secrecy Act and its implementing regulations (31 CFR part 103) including, but not limited to, reports made on IRS Form 4789 (Currency Transaction Report), IRS Form 8362 (Currency Transaction Report by Casinos), Customs Form 4790 (Report of International Transportation of Currency or Monetary Instruments), Treasury Form TDF 90–22.1 (Report of Foreign Bank and Financial Accounts), and forms filed by casinos located in the State of Nevada in lieu of Form 8362. (This system of records does not cover persons identified in Suspicious Activity Reports, TDF 90–22.47. Those reports are included in another system of records, "Suspicious Activity Reporting System—Treasury/DO .212").

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports required to be filed under the Bank Secrecy Act and its implementing regulations (31 CFR part 103) including, but not limited to, reports made on IRS Form 4789 (Currency Transaction Report), IRS Form 8362 (Currency Transaction Report by Casinos), Customs Form 4790 (Report of International Transportation of Currency or Monetary Instruments), Treasury Form TDF 90–22.1 (Report of Foreign Bank and Financial Accounts), and forms filed by casinos located in the State of Nevada in lieu of Form 8362. (This system does not include Suspicious Activity Reports, TDF 90–22.47, required under 31 CFR part 103. Those reports are included in another

system of records, "Suspicious Activity Reporting System—Treasury/DO .212"). These reports include names of individuals and other entities filing the reports, names of the owners of monetary instruments, the amounts and kinds of currency or other monetary instruments transported, reported, or in foreign banking accounts, account numbers, addresses, dates of birth, and other personal identifiers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5330; 5 U.S.C. 301; 31 CFR part 103; Treasury Department Order No. 105–08.

PURPOSE(S):

The Bank Secrecy Act, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314, 5316–5330, authorizes the Secretary of the Treasury to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. The Secretary's authority has been implemented through regulations promulgated at 31 CFR part 103. The purpose of this system of records is to maintain the information contained on the reports required under these regulations. This information is disseminated, both electronically and manually, in accordance with strict safeguards, to appropriate Federal, State, local and foreign criminal law enforcement and regulatory personnel in the official performance of their duties. The information is used in a wide range of criminal investigations, including, but not limited to, investigation of international and domestic money laundering, tax evasion, fraud, and other financial crimes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used to:(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) Disclose information to Federal, State, or local agencies, maintaining civil, criminal or other relevant information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) Disclose to appropriate Federal, State, or local agencies engaged in the identification, investigation, and prosecution of violations or potential violations of criminal statutes, information, in a computerized format, to identify or to permit the identification of patterns of suspected criminal activity that fall within the jurisdiction of the agency requesting the information; (4) Disclose information to Federal or State regulatory agencies or self regulatory agencies responsible for supervising compliance with the Bank Secrecy Act, limited to information relevant to meeting supervisory or compliance responsibilities; (5) Disclose relevant information on individuals to authorized Federal and State agencies through computer matching in order to help eliminate waste, fraud, and abuse in Government programs and identify individuals who are potentially in violation of civil law, criminal law, or regulation; (6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (7) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2, that relates to an agency's functions relating to civil and criminal proceedings; and (8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media and on hard paper copy.

RETRIEVABILITY:

By name and other unique identifier.

SAFEGUARDS:

All persons with electronic access to records in the system will have successfully completed a background investigation. All State and local agency personnel, and all Federal personnel outside the U.S. Department of the Treasury with electronic access will have successfully completed appropriate training. Passwords and access controls will be utilized. Signed agreements outlining usage and dissemination rules are required of all non-Treasury agencies before electronic access is authorized. Procedural and physical safeguards include: The logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy documents and magnetic tapes; encryption of electronic communications; intruder alarms and other security devices; and 24–hour building guards. The system complies with all applicable security requirements of the Department of the Treasury.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEMS MANAGER(S) AND ADDRESS:

General Policy: Director, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, Virginia 22182–2536

Computer Systems Maintenance and Administration: Director, IRS Computing Center, 985 Michigan Avenue, Detroit, Michigan, 48226–1129 and Director, Office of Information Technology, U.S. Customs Service Newington, 7681 Boston Boulevard, Springfield, Virginia, 22153–3140.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the requirement that the record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

[FR Doc. 97–605 Filed 1–9–97; 8:45 am]

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Internal Revenue Service

Proposed Collection; Comment Request For Form 8508

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media.

DATES: Written comments should be received on or before March 11, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Waiver From Filing Information Returns on Magnetic Media.

OMB Number: 1545–0957.

Form Number: Form 8508.

Abstract: Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which Internal Revenue Service will base its waiver determination.

Current Actions: On Form 8508 box 10 was eliminated because box 11 provided sufficient information and more closely follows the regulation regarding undue hardship. Also, box 7 will include territorial W–2s which now have the same magnetic/electronic filing requirements as other information returns.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, non-profit institutions, farms, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–528 Filed 1–9–97; 8:45 am]

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federal register

Friday
January 10, 1997

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926
Occupational Exposure to Methylene Chloride; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

RIN 1218–AA98

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby amends its existing regulations for employee exposure to methylene chloride (MC), (also known as methylene dichloride, dichloromethane or DCM). OSHA has determined, based on animal and human data, that the current permissible exposure limits (PELs) allow employee exposure to a significant risk of material impairment of health. OSHA is reducing the existing 8-hour time-weighted average (TWA) exposure from 500 parts MC per million parts (ppm) of air to 25 ppm. Also, OSHA is deleting the existing ceiling limit concentration of 1,000 ppm and is reducing the existing short-term exposure limit from 2,000 ppm (measured over five minutes in any 2 hour period) to 125 ppm, measured as a 15-minute TWA. In addition, the Agency is setting an "action level" of 12.5 ppm, measured as an 8-hour TWA. The final rule also contains provisions for exposure control, personal protective equipment, employee exposure monitoring, training, medical surveillance, hazard communication, regulated areas, and recordkeeping. Together, these provisions will substantially reduce significant risk to the extent feasible. This standard applies to all employment in general industry, shipyards and construction. Small employers, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, are defined as firms with fewer than twenty employees. The final standard will prevent an estimated 31 cancer deaths per year and an estimated three deaths per year from acute central nervous system and carboxyhemoglobinemic effects, and will also reduce cardiovascular disease and material impairment of the central nervous system. The estimated cost, on an annualized basis, is $101 million per year.

DATES: This final rule becomes effective April 10, 1997.

Compliance: Start-up dates for specific provisions are set in § 1910.1052(n) of the regulatory text. However, affected parties do not have to comply with the information collection requirements in § 1910.1052(d) exposure monitoring, § 1910.1052(e) regulated areas, § 1910.1052(j) medical surveillance, § 1910.1052(l) employee information and training; and § 1910.1052(m) recordkeeping, until the Department of Labor publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Comments: Interested parties may submit comments on the information collection requirements for this standard until March 11, 1997.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, as the recipient of petitions for review of the standard.

Comments on the paperwork requirements of this final rule are to be submitted to the Docket Office, Docket No. ICR96–15, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the Methylene Chloride Final Standard and the Information Collection Request, contact OSHA's WebPage on Internet at http://www.osha.gov/.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210; Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Collections of Information: Comment Request

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, OSHA is soliciting comments concerning the proposed approval for the paperwork requirements of the Methylene Chloride Final Standard. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background: The Methylene Chloride Standard and its information collection requirements are designed to provide protection for employees from adverse health effects associated with occupational exposure to MC. The standard requires employers to monitor employee exposure to MC and inform employees of monitoring results. If monitoring results are above the 8-hour TWA PEL or the STEL, then employers must also inform employees of the corrective action that will be taken to reduce employee exposure to or below the 8-hour PEL or STEL. Employers may also be required to provide medical surveillance to employees who are or may be exposed to MC. Employers are also required to provide information and training to employees on the following: health effects of MC, specifics regarding use of MC in the workplace, the contents of the standard, and means the employee can take to protect themselves from overexposure to MC.

Current Actions: This notice requests public comment on the paperwork requirements in the Methylene Chloride Final Standard. The Agency previously sought clearance on three Methylene

Chloride Notice of Proposed Rulemaking Information Collection Requests: Shipyards, 1218–0177; Construction, 1218–0178; and General Industry, 1218–0179. Since the information requirements are identical for each industry, the Agency has combined these three packages into one entitled Methylene Chloride § 1910.1052, OMB number 1218–0179.

Type of Review: Revision of a currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: Methylene Chloride § 1910.1052.

OMB Number: 1218–0179.

Agency Number: Methylene Chloride Docket Number H–71.

Recordkeeping: Employers must maintain employee medical records for at least the duration of employment plus thirty years. Employee exposure monitoring records must be maintained for at least 30 years. Objective data, data showing that any materials in the workplace containing MC will not release MC at levels which exceed the action level or the STEL under foreseeable condition of exposures, must be maintained as long as the employer is relying on the data in support of the initial monitoring exemption.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 92,000.

Frequency: On Occasion.

Total Responses: Initial 719,948; Recurring 299,620.

Average Time per Response: 0.26 hour.

Estimated Total Burden Hours: Initial 188,728; Recurring 74,299.

Estimated Total Burden Cost: Initial $32,496,380; Recurring $12,282,420.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Federalism

This standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such State Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See section 18(c)(2)).

The final MC standard is drafted so that employees in every State will be protected by general, performance-oriented standards. States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular state. Moreover, the performance nature of this standard, of and by itself, allows for flexibility by States and employers to provide as much leeway as possible using alternative means of compliance.

This final MC rule addresses a health problem related to occupational exposure to MC which is national in scope.

Those States which have elected to participate under section 18 of the OSH Act would not be preempted by this regulation and will be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal Standard.

State Plans

The 23 States and two territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication of this final standard for occupational exposure to methylene chloride or amend their existing standards if it is not "at least as effective" as the final Federal standard. The states and territories with occupational safety and health state plans are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states and territories.

Unfunded Mandates

The MC final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed below in the Summary of the Final Economic Analysis (FEA) (Section VIII of this document), OSHA estimates that compliance with the revised MC standard will require the expenditure of slightly more than $100 million each year by employers in the private sector. Therefore, the MC final rule establishes a federal private sector mandate and is a significant regulatory action, within the meaning of Section 202 of UMRA (2 U.S.C. 1532). OSHA has included this statement to address the anticipated effects of the MC final rule pursuant to Section 202.

OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA State Plan. Consequently, the MC standard does not meet the definition of a "Federal intergovernmental mandate" (Section 421(5) of UMRA (2 U.S.C. 658(5)). In addition, the Agency has concluded, based on review of the rulemaking record, that few, if any, of the affected employers are state, local and tribal governments. Further, OSHA has found that any impact on such entities would be insignificant. In sum, the MC standard does not impose unfunded mandates on state, local and tribal governments.

The anticipated benefits and costs of this final standard are addressed in the Summary of the FEA (Section VIII of this document), below, and in the FEA [Ex. 129]. In addition, pursuant to Section 205 of the UMRA (2 U.S.C. 1535), having considered a reasonable number of alternatives as outlined in this Preamble and in the FEA [Ex. 129], the Agency has concluded that the final rule is the most cost-effective alternative for implementation of OSHA's statutory objective of reducing significant risk to the extent feasible. This is discussed at length in the FEA [Ex. 129] and in the Summary and Explanation (Section X of

this document) for the various provisions of the MC standard.

I. General

The preamble to the final rule on occupational exposure to Methylene Chloride (MC) discusses the events leading to the final rule, the physical and chemical properties of MC, the health effects of exposure, the degree and significance of the risk presented by MC exposure, the Final Economic Analysis and Regulatory Flexibility Analysis, and the rationale behind the specific provisions set forth in the final standard. The discussion follows this outline:

I. General
II. Pertinent Legal Authority
III. Events Leading to the Final Standard
IV. Chemical Identification
V. Health Effects
VI. Quantitative Risk Assessment
VII. Significance of Risk
VIII. Summary of the Final Economic Analysis
IX. Environmental Impact
X. Summary and Explanation of the Final Standard
A. Scope and Application
B. Definitions
C. Permissible Exposure Limits
D. Exposure Monitoring
E. Regulated Areas
F. Methods of Compliance
G. Respiratory Protection
H. Protective Clothing and Equipment
I. Hygiene Facilities
J. Medical Surveillance
K. Hazard Communication
L. Employee Information and Training
M. Recordkeeping
N. Dates
O. Appendices
XI. Authority and Signature
XII. Final Rule and Appendices
Appendix A: Substance Safety Data Sheet and Technical Guidelines for Methylene Chloride
Appendix B: Medical Surveillance for Methylene Chloride
Appendix C: Questions and Answers—Methylene Chloride Control in Furniture Stripping

II. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* ("the Act") is to "assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. § 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. U.S.C. §§ 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of the Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards.)

A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. § 652(8).

A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk, and is economically feasible, technologically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency actions, supported by substantial evidence, and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 FR 16612–16616 (March 30, 1993).

The Supreme Court has noted that a reasonable person would consider a fatality risk of 1/1000 to be a significant risk, and would consider a risk of one in one billion to be insignificant. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607, 646 (1980) (the "Benzene decision"). So a risk of 1/1000 (10^{-3}) represents the uppermost end of a million-fold range suggested by the Supreme Court, somewhere below which the boundary of acceptable versus unacceptable risk must fall. The Court further stated that "while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is significant will be based largely on policy considerations." See, e.g., *International Union, UAW* v. *Pendergrass*, 878 F.2d 389 (D.C. Cir. 1989) (formaldehyde standard); *Building and Constr. Trades Department, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1265 (D.C. Cir. 1988) (asbestos standard).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA* 452 U.S. 490, 513 (1981) ("*ATMI*"), *American Iron and Steel Institute* v. *OSHA*, 939 F.2d 975, 980 (D.C. Cir 1991) ("*AISI*").

A standard is economically feasible if industry can absorb or pass on the cost of compliance without threatening its long term profitability or competitive structure. See *ATMI*, 452 U.S. at 530 n. 55; *AISI*, 939 F. 2d at 980.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI*, 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA*, 37 F. 3d 665, 668 (D.C. Cir. 1994) ("*LOTO III*").

All standards must be highly protective. See 58 FR 16614–16615; *LOTO III*, 37 F. 3d at 668. However, health standards must also meet the "feasibility mandate" of Section 6(b)(5) of the Act, 29 U.S.C. 655(b)(5). Section 6(b)(5) requires OSHA to select "the most protective standard consistent with feasibility" that is needed to reduce significant risk when regulating health hazards. *ATMI*, 452 U.S. at 509.

Section 6(b)(5) also directs OSHA to base health standards on "the best available evidence," including research, demonstrations, and experiments. 29 U.S.C. § 655(b)(5). OSHA shall consider "in addition to the attainment of the highest degree of health and safety protection * * * the latest scientific data * * * feasibility and experience gained under this and other health and safety laws." *Id.*

Section 6(b)(7) of the Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions. 29 U.S.C. § 655(b)(7).

III. Events Leading to the Final Standard

The present OSHA standard for MC requires employers to ensure that employee exposure does not exceed 500 ppm as an 8-hour TWA, 1000 ppm as a ceiling concentration, and 2000 ppm as a maximum peak for a period not to exceed five minutes in any two hours (29 CFR 1910.1000, Table Z–2). This standard was adopted by OSHA in 1971 pursuant to section 6(a) of the OSH Act, 29 U.S.C. 655, from an existing Walsh-Healey Federal Standard. The source of this Walsh-Healey Standard [Ex. 7–1] was the American National Standards Institute (ANSI) standard for acceptable concentrations of MC (ANSI–Z37.23–1969), which was intended to protect workers from injury to the neurological system including loss of awareness and functional deficits linked to anesthetic and irritating properties of MC which had been observed from excessive, acute or large chronic exposures to MC in humans and experimental animals.

In 1946, the American Conference of Governmental Industrial Hygienists (ACGIH) recommended a Threshold Limit Value (TLV) of 500 ppm for MC [Ex. 2]. In 1975, the ACGIH lowered the

recommended TLV to 100 ppm [Ex. 7–11].

In March 1976, the National Institute for Occupational Safety and Health (NIOSH) published "Criteria for a recommended standard for Methylene Chloride" [Ex. 2], which recommended a reduction of occupational exposures to MC to 75 ppm as an 8-hour TWA, and a lower peak exposure not to exceed 500 ppm. Further exposure reduction based on the ambient level of carbon monoxide was also recommended.

In February 1985, the National Toxicology Program (NTP) reported the final results of animal studies indicating that MC is a potential cancer causing agent [Ex. 7–8]. Subsequently, the U.S. Environmental Protection Agency (EPA), upon receipt of the NTP studies, initiated a risk assessment evaluation to determine whether or not MC presents an unreasonable risk to human health or the environment and to determine if regulatory actions are needed to eliminate or reduce exposures.

On May 14, 1985, EPA announced its determination that MC was a probable human carcinogen. EPA classified MC as Group B2, in accordance with its interim guidelines for cancer risk (49 FR 46294), and hence announced the initiation of a 180-day priority review (50 FR 20126) under section 4(f) of the Toxic Substances Control Act (TSCA). In meeting its mandate under section 4(f) of TSCA to initiate a regulatory action, on October 17, 1985, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (50 FR 42037) for the purpose of collecting the necessary information required for initiating a rulemaking. In this notice, EPA established December 16, 1985, as its deadline for receiving comments.

On April 11, 1985, the U.S. Consumer Product Safety Commission (CPSC) released its risk assessment findings for MC and began to consider a regulatory action to ban MC containing products and to develop a voluntary hazard communication program for consumers.

On December 18, 1985, the U.S. Food and Drug Administration (FDA) published a proposal to ban the use of MC as an ingredient in aerosol cosmetic products (50 FR 51551). This proposal was based on a risk assessment that used the NTP animal data.

On July 19, 1985, Owen Bieber, President of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), petitioned OSHA to act expeditiously on reducing workers' exposure to MC. Specifically, Mr. Bieber requested that OSHA: (1) Publish a hazard alert; (2) issue an emergency temporary standard (ETS); and (3) begin work on a new permanent standard for controlling MC exposure. Subsequently, the following unions joined UAW in petitioning OSHA to act on revising the current standard:

A. International Union, Allied Industrial Workers of America;
B. Glass, Pottery, Plastics and Allied Workers International Union;
C. United Furniture Workers of America;
D. The Newspaper Guild;
E. Communication Workers of America; and
F. United Steelworkers of America.

In March 1986, as a preliminary response to this petition, OSHA issued "Guidelines for Controlling Exposure to Methylene Chloride." That document, which was canceled by OSHA Notice ADM 8 (July 12, 1994), provided information to employers and workers on risks of MC exposure and methods for controlling such exposure [Ex. 8–11].

In April 1986, NIOSH published a Current Intelligence Bulletin #46 (CIB) on MC reflecting the findings of the NTP study [Ex. 8–26]. The CIB concluded that MC should be regarded as a potential occupational carcinogen and that exposure should be controlled to the lowest feasible level.

On August 20, 1986, the CPSC issued a proposed rule [51 FR 29778] "that would declare household products containing other than contaminant levels of MC to be hazardous substances." The CPSC noted the proposal was prompted by evidence that inhalation of MC vapor increased the incidence of various malignant and benign tumors in rats and mice. Accordingly, the Commission proposed to require that household products which can expose consumers to MC vapor be treated as hazardous substances and be labeled as provided by section 2(p)(1) of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(p)(1)). The FHSA requires the use of labels which (1) indicate that exposure to a product may present a cancer risk; (2) explain the factors (such as level and duration of exposure) that control the degree of risk; and (3) explain the precautions to be taken.

On November 17, 1986, OSHA denied the petition for an Emergency Temporary Standard, but agreed that work on a permanent standard should commence [Ex. 3A]. On November 24, 1986, OSHA announced, in an Advance Notice of Proposed Rulemaking (ANPR) [51 FR 42257], that it was considering revision of the occupational health standard for MC. The Agency based this action on animal studies which indicated that the PEL of 500 ppm did not provide adequate protection against potential cancer risks and other adverse health effects. The ANPR summarized OSHA's information regarding the production and use of MC, occupational exposure to MC, and the potential adverse health effects associated with MC exposure. In addition, the notice invited interested parties to submit comments, recommendations, data, and information on a variety of issues related to the regulation of MC. OSHA received 43 comments in response to the ANPR. Those comments are discussed, as appropriate, below.

On December 5, 1986, the FDA reopened the comment period for 30 days on the above-cited proposal to ban the use of MC in cosmetic products [51 FR 43935]. The reopening enabled interested parties to submit comments on studies received after the close of the initial comment period regarding MC comparative pharmacokinetics, metabolism, and genotoxicity.

On September 14, 1987, the CPSC issued a statement of interpretation and enforcement policy, in lieu of continuing with rulemaking, which expressed the Commission's determination that consumer products containing MC and capable of exposing consumers to significant amounts of MC may pose cancer risk to humans and, therefore, are subject to the above-described hazardous substance labeling requirements. The CPSC explicitly retained the option of resuming the rulemaking if voluntary compliance with and enforcement of the Commission's interpretation did not adequately induce firms to label their products appropriately.

In 1988, based on the response to the ANPR, OSHA began contacting small businesses and conducting a number of site visits, to develop a clear understanding of how revisions to OSHA's MC standard would affect small entities. For example, on April 27, 1989, OSHA participated in a NIOSH conference on MC controls for the furniture stripping industry (54 FR 11811, March 22, 1989) to learn how that industry, which is dominated by small businesses, was dealing with MC exposure. That conference focused on the progress of a NIOSH pilot program aimed at developing affordable engineering controls for the furniture stripping industry. OSHA continued to seek input from small businesses throughout the MC rulemaking, as discussed below in the Preamble and in the Final Economic Analysis [Ex. 129].

Also, in 1988, ACGIH officially lowered the TLV for MC to 50 ppm as an 8-hour TWA. OSHA considered whether the TLV recommended by the

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ACGIH would be an appropriate OSHA standard. The ACGIH is a professional society devoted to administrative and technical aspects of occupational and environmental health. Voting members of ACGIH are scientists who work for government agencies or educational institutions. Every year the ACGIH adopts new or revised TLVs for several substances by a majority vote, not by consensus. OSHA has not adopted the MC TLV (50 ppm) as the 8-hour TWA PEL because the Agency's criteria for setting standards differ from those used by the ACGIH. OSHA standards must eliminate significant risks to the extent feasible, whereas the ACGIH sets limits under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse health effects. Also, as evidenced by their "Documentation of the TLVs," the ACGIH does not perform quantitative risk assessments. This difference between OSHA and ACGIH practice is critical because the Supreme Court has required OSHA to perform quantitative risk assessments when data permit, and to use these assessments to set exposure limits.

On June 29, 1989, the FDA issued a final rule that banned the use of MC in cosmetic products [54 FR 27328]. The Agency based its final rule on scientific studies that showed inhalation of MC caused cancer in laboratory animals. The FDA concluded, accordingly, "that continued use of MC in cosmetic products may pose a significant risk to human health * * *" The Agency considered comments and information regarding the application of a physiologically-based pharmacokinetic model to the prediction of human cancer risk. The FDA determined that the risk assessment developed using animal studies should not be changed to reflect the "pharmacokinetic and metabolic data and hypothesized GST metabolic mechanism of carcinogenicity."

On August 8, 1990, the Consumer Product Safety Commission (CPSC) issued a General Order (55 FR 32282) that required manufacturers, importers, packagers and private labelers of consumer products containing 1% or more of MC to report to the CPSC information on the labeling and marketing of those products. The CPSC indicated that the information obtained would aid the Commission in evaluating the CPSC's policy concerning the labeling of MC-containing products as hazardous substances, pursuant to the Federal Hazardous Substances Act.

On November 11, 1990, then-President Bush signed the Clean Air Act Amendments (CAAA) of 1990. Title VI of the CAAA requires the phaseout of ozone-depleting chemicals by the year 2000 (section 604) and requires the EPA to determine which alternatives to ozone-depleting chemicals are safe for use (section 612). MC was among the potential substitutes studied by the EPA. In addition, section 112 of the CAAA requires the EPA to address the residual risks of MC and other specified Hazardous Air Pollutants (HAPs) by establishing Maximum Achievable Control Technology (MACT) standards. In particular, section 112(d) requires EPA to promulgate National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR part 63) over a 10-year period. In addition, EPA regulates MC as a-priority pollutant under the Clean Water Act as amended (33 U.S.C. 1251, *et seq.*)

On February 12–13, 1991, EPA convened an international conference on "Reducing Risk in Paint Stripping" that was well attended by representatives of small businesses which use MC or its substitutes in a wide range of operations. OSHA actively participated in the workgroup and panel discussions to elicit information regarding the anticipated impacts of a revised MC standard on paint stripping operations.

OSHA determined, based on animal and human data, that the existing PELs for MC did not adequately protect employee health. Accordingly, on November 7, 1991, OSHA issued a notice of proposed rulemaking (NPRM) (56 FR 57036) to address the significant risks of MC-induced health effects. The proposed rule required employers to reduce occupational exposure to MC and to institute ancillary measures, such as employee training and medical surveillance, for further protection of MC-exposed workers. The provisions of the proposed rule are discussed in detail in the Summary and Explanation, Section X, below. The Agency published a correction notice on January 6, 1992 (57 FR 387). The NPRM solicited comments on the proposed rule and raised 48 specific issues to elicit information about MC health effects, use, and exposure controls, as well as input regarding the appropriateness and impacts of particular provisions. The written comment period, which ended on April 6, 1992, produced 58 comments, including several hearing requests.

On February 11, 1992, then-President Bush announced an accelerated phaseout schedule for ozone depleting substances and ordered the EPA to accelerate its review of substitutes (such as MC) whose use would reduce damage to the ozone layer.

On May 19, 1992, OSHA presented the MC proposal to the newly reconstituted Advisory Committee on Construction Safety and Health (ACCSH) for consultation. The Advisory Committee established a MC work group to generate information and recommendations regarding MC use and exposure in the construction industry.

In response to the hearing requests and to concerns raised by commenters, the Agency issued a notice of informal public hearing (57 FR 24438, June 9, 1992), which scheduled hearings to start in Washington, D.C. on September 16, 1992 and in San Francisco, California on October 14, 1992. That notice also reopened the written comment period until August 24, 1992. The hearing notice raised 16 issues, based on the NPRM comments, which solicited input regarding the human health risks of MC exposure and the impact of the proposed rule on MC users. San Francisco was selected as a hearing site to facilitate participation by small businesses, particularly foam blowers and furniture refinishers, for whom attendance at the Washington, D.C. hearing would have been economically burdensome.

On July 28, 1992, the MC work group's report was presented to the ACCSH and was adopted as the Advisory Committee's recommendation to OSHA. Based on the input from the ACCSH, OSHA issued a supplemental hearing notice (57 FR 36964, August 17, 1992) which raised MC use, exposure and control issues specific to the construction industry. The supplemental notice extended the deadline for submission of comments regarding the construction issues until September 22, 1992.

OSHA convened public hearings in Washington, D.C. on September 16–24, 1992 and in San Francisco on October 14–16, 1992, with Administrative Law Judge James Guill presiding. At the conclusion of the hearings, Judge Guill set a post hearing period for the submission of additional data, which ended on January 14, 1993, and for the submission of additional briefs, arguments and summations, which ended on March 15, 1993. The posthearing comment period elicited 35 comments.

On March 31, 1993, pursuant to section 112 of the CAAA, the EPA issued a notice (58 FR 16808) requesting information on the anticipated impacts of a National Emission Standard for Hazardous Air Pollutants (NESHAP) for the halogenated solvent cleaning-vapor degreasing source category. This notice characterized MC as the third most commonly used halogenated solvent,

based on 1991 data. On November 29, 1993, the EPA issued a notice of proposed rulemaking (58 FR 62566) describing MACT rules for the use of MC and other HAPs in halogenated solvent cleaning-vapor degreasing operations.

On March 11, 1994, OSHA reopened the rulemaking record for 45 days (59 FR 11567) to receive public comment on reports related to engineering controls for MC exposure in the furniture refinishing industry, MC carcinogenicity, and the availability of water-based substitutes for MC-based adhesives in the manufacture of flexible foam products. In particular, OSHA solicited input regarding the extent to which it was feasible for small businesses with furniture stripping operations to comply with the proposed PELs using engineering controls addressed in an OSHA contractor's report [Ex. 114]. The limited reopening, which ended on April 25, 1994, elicited 29 comments.

OSHA has evaluated the impact of the final rule on the identified application groups (except for farm equipment [Ex. 115–23], insofar as this rulemaking does not address agricultural employment). The Agency's analysis and conclusions are presented in the Final Economic Assessment for this rulemaking [Ex.129], summarized in Section VIII, below.

On March 18, 1994, the EPA issued a final rule (59 FR 13044) which addressed the use of MC as a substitute for ozone-depleting chemicals being phased out under section 612 of the CAAA of 1990. The EPA has found the use of MC to be acceptable in the production of flexible polyurethane foam; polyurethane integral skin foams; metal cleaning; electronics cleaning; precision cleaning; and adhesives, coatings and inks. That Agency expressed concern regarding MC toxicity, stating "methylene chloride use will be subject to future controls for hazardous air pollutants under Title III section 112 of the CAA. In addition, use of the compound must conform to all relevant workplace safety standards * * * Use is also subject to waste disposal requirements under RCRA (59 FR at 13088)." The EPA also noted that it is encouraging companies to decrease emissions of MC through the "30/50" pollution prevention program, under which companies voluntarily commit to reduce emissions 33 percent by the end of 1992 and 50 percent by the end of 1995 (59 FR at 13093).

On April 21, 1994, the Department of Housing and Urban Development (HUD) issued a notice (59 FR 19084) announcing that funds were available for the removal of lead-based paint. That notice explicitly provided that paint removal activities funded by HUD could not use products containing MC.

On May 31, 1994, Judge Guill closed and certified the hearing record for OSHA's MC rulemaking.

Pursuant to section 112(d) of the CAAA, the EPA has already finalized NESHAP rulemakings that cover halogenated solvent cleaning (59 FR 61801, December 4, 1994, 40 CFR part 63, subpart T), aerospace manufacture and rework facilities (September 1, 1995, 40 CFR part 63, subpart) and wood furniture manufacturing (60 FR 62930, December 7, 1995, 40 CFR part 63, subpart JJ). MC-related NESHAP proceedings for several industries (e.g., pharmaceuticals, flexible polyurethane foam, polycarbonates and nylon 6 are currently underway.

Pursuant to its CAAA, CWA, RCRA and PPA mandates, EPA has proposed effluent limitation guidelines for the pharmaceutical industry (60 FR 21592, May 2, 1995) which characterize MC as one of the most significant priority pollutants to be addressed under the CWA. In particular, EPA has addressed the use of stream stripping and distillation technology to recover MC from wastewater for reuse or sale for use in other industries. That Agency has also proposed requirements for compliance monitoring of MC that, due to dilution with wastewater, would be found at levels below current analytical limits of detection.

OSHA has attempted to consider the foreseeable impact of EPA action on the use of MC because EPA-driven changes in such use would affect the data on which OSHA relies to estimate the impact of this final rule. In brief, while EPA action to reduce HAP exposure may encourage employers to reduce or eliminate MC use, simultaneous EPA efforts to reduce the emission of ozone-depleting chemicals may encourage employers to maintain or increase MC use. Given the time frame for EPA action and that Agency's need to coordinate proceedings that arise from several statutory mandates, it is inappropriate to draw conclusions regarding the impact of EPA regulatory action on the need for OSHA action.

OSHA has also consulted with EPA to determine whether any potential overlapping or conflicting requirements exist in OSHA's MC standard and various EPA NESHAPs, and has committed to continue working with EPA on future NESHAP compliance issues. OSHA discussed the MC regulation with project officers for all recent, current and planned NESHAPs projects and has determined that there are no overlapping or conflicting requirements in the NESHAPs and OSHA's MC standard. Indeed, employers can choose among a variety of means to comply which would not entail any conflict in OSHA and EPA regulations.

In particular, OSHA conducted a thorough analysis of the EPA Solvent Degreasing NESHAP. OSHA determined, and EPA agreed, that there are no conflicting requirements in the two regulations. OSHA does not require or recommend specific compliance strategies. One common method of reducing worker exposure is local exhaust ventilation. In addition, some of the alternative compliance strategies suggested in the EPA solvent degreasing NESHAP include reducing room draft. OSHA has determined that even if an employer chooses reducing room draft as its compliance strategy for the EPA NESHAP, employers may use some local exhaust ventilation to reduce worker MC exposures and still be in compliance with both the OSHA MC standard and the EPA NESHAP. There are also other combinations of compliance strategies that can be utilized to comply with both regulations. OSHA plans further discussion of this issue in its compliance assistance documents. The purpose of these documents is to assist employers in selecting among the many appropriate control strategies which satisfy requirements under both OSHA and EPA regulations.

On October 25, 1995, OSHA reopened the rulemaking record (60 FR 54462) to obtain input regarding studies submitted by the Halogenated Solvents Industry Alliance (HSIA) [Ex. 118–125] which address the use of animal data to estimate human cancer risk from MC exposure. The comments received on those studies [Exs. 126–1 through 126–37] are discussed in relation to the Quantitative Risk Assessment (Section VI), below.

The rulemaking record contains 129 exhibits, and 2717 pages of hearing transcript. A wide range of employees, employers, union representatives, trade associations, government agencies and other interested parties contributed to the development of the rulemaking record. The Agency appreciates these efforts to help OSHA develop a record that provides a sound basis for the promulgation of this final rule.

Throughout the ten years since OSHA initiated MC proceedings, the Agency has sought and evaluated input regarding the anticipated impact of a MC health standard on small entities. For example, Issue K of OSHA's Advance Notice of Proposed

Rulemaking for MC (ANPRM) (51 FR 42257, November 24, 1986) solicited comments, recommendations, data and information regarding the anticipated impacts of a MC standard on small entities. Responses from manufacturers of flexible polyurethane foam [Exs. 10–4 and 10–17] and industrial paint removers [Ex. 10–7] indicated that rulemaking regarding MC would affect small entities. Based on the response to the ANPRM, OSHA initiated contacts with small businesses and conducted a number of site visits, to develop a clear understanding of how revisions to OSHA's MC standard would affect small entities.

Based on OSHA's contacts with small business and the response to the ANPRM, the Preliminary Regulatory Impact Analysis (PRIA) for the MC NPRM (56 FR 57036, November 7, 1991) considered small firms to be those with fewer than 20 total employees. In addition, the PRIA estimated that 45 percent of establishments using MC were "small businesses."

Issue 25 of the NPRM for MC stated that OSHA had analyzed the impacts of the proposed rule on small businesses and had adapted the standard to take into account the circumstances of small businesses, where appropriate. The performance-oriented language covering the demarcation of regulated areas (proposed paragraph (e)(4)) and the 30/10 days of exposure thresholds for medical surveillance (proposed paragraph (i)(1)(i)) reflected the Agency's determination to avoid imposing unnecessary burdens on small entities. In addition, Issue 25 solicited information regarding anticipated small business impacts so that OSHA could update the initial regulatory flexibility analysis performed pursuant to 5 U.S.C. 604 of the Regulatory Flexibility Act.

Small businesses, particularly in the furniture refinishing [Exs. 19–1, 19–4, 19–6, 19–8, 19–10 and 19–11] and polyurethane foam blowing industries [Ex. 19–3], expressed concern that the proposed rule would impose excessive compliance burdens on their operations. Based in part on these concerns, the Agency convened informal public hearings (57 FR 24438, June 9, 1992) in Washington, D.C. and San Francisco, CA. San Francisco was selected as a hearing site to facilitate participation by small businesses, particularly foam blowers and furniture refinishers, for whom attendance at the Washington, D.C. hearing would have been economically burdensome.

Hearing Notice Issue 8 solicited comments and testimony, with supporting documentation, regarding the impact of the proposed rule on small businesses, particularly in the furniture refinishing sector. A significant number of small businesses participated in the Washington, D.C. and San Francisco hearings, providing OSHA with useful testimony and posthearing submissions. For example, Harold Markey of the Markey Restoration Company proposed [Tr. 2660, 2672, 10/16/92] that "furniture refinishing businesses be exempt from [25 ppm PEL] due to the financial hardship that enforcement would cause." In addition, Mr. Markey expressed appreciation for OSHA's efforts to facilitate his participation in the hearing. As discussed above, OSHA subsequently solicited (59 FR 11567, March 11, 1994) additional input regarding the extent to which it was feasible for small businesses with furniture stripping operations to comply with the proposed PELs using the engineering controls addressed in an OSHA contractor's report [Ex. 114].

OSHA has had numerous contacts with furniture refinishers, particularly with members of the National Association of Furniture Refinishers and Refurbishers (NAFRR), the trade association for the industry. In 1994, OSHA was represented at the NAFRR's annual conference in Williamsburg, VA. The Agency has continued to provide assistance to NAFRR members and other furniture refinishers regarding appropriate industrial hygiene measures for workplaces where MC is used. For example, OSHA has disseminated information about the engineering controls developed by NIOSH for the furniture stripping industry. OSHA will continue to strive for a cooperative relationship with the small businesses affected by the MC final rule through careful compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8) and the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), as amended. In addition, the Agency's "Outreach Program" for the MC final rule will involve a commitment of significant consultation and other resources by OSHA and other concerned parties, building on the relationships established during the rulemaking.

OSHA has developed a multifaceted outreach plan to provide information and compliance assistance to the regulated community. In particular, OSHA:

—Has developed a booklet which summarizes the provisions of the MC standard;
—Has developed a compliance directive for the MC standard which answers compliance-related questions about the MC standard;
—Is developing compliance guides directed at assisting small businesses in complying with the MC standard, consistent with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996;
—Has recruited interested trade associations to assist in the distribution of MC standard-related information, and the convening of workshops to help small businesses understand available compliance strategies;
—Has spoken to trade association meetings and distributed MC standard-related materials;
—Has contacted manufacturers of MC to develop a strategy for inclusion of OSHA MC-standard information in existing product stewardship programs; and
—Is working with individuals interested in conducting workshops for impacted industries, such as polyurethane foam manufacturers and furniture refinishers, to train small businesses on compliance with OSHA and EPA regulations.

All 50 states and the territories covered by the OSH Act provide free consultation services for small businesses to assist them in achieving compliance with OSHA standards. Those services are funded by federal OSHA but supplied by the states in state plan states and by private contractors in other areas. Those consultation services will provide free assistance for small business so it will be easier to come into compliance with the MC standard.

OSHA will also set up Cooperative Assessment Programs (CAP's) for individual employers to assist them in achieving compliance in a reasonable manner. In a CAP, an OSHA industrial hygienist works with the employer and employee representatives, to determine a reasonable number of cost-effective engineering controls and work practices to bring the employer into compliance. A reasonable schedule is determined for the implementation of those controls. Good faith efforts to implement a CAP are generally considered to be in compliance with the provisions of the standard. OSHA has had success in implementing CAP's for the arsenic, lead and other standards. Employers have found that working with OSHA or CAP's has led to cost effective compliance with OSHA standards.

IV. Chemical Identification

Methylene chloride (MC), also called dichloromethane (DCM) [Chemical Abstracts Service Registry Number 75–09–2] is a halogenated aliphatic hydrocarbon with a chemical formula of CH_2Cl_2, a molecular weight of 84.9, a

boiling point of 39.8°C (104°F) at 760 mm Hg, a specific gravity of 1.3, a vapor density of 2.9 and a vapor pressure of 350 mm Hg at 20°C (68°F). Concentration of MC in saturated air at 25°C reaches 550,000 ppm. MC has low water solubility (1.3 gm per 100 gm of water at 20°C), an extensive oil and fat solubility, and a low flammability potential. It is used as a flame suppressant in solvent mixtures (lower explosive limit of 12% and upper explosive limit of 19%). It is a colorless volatile liquid with a chloroform-like odor and its odor threshold varies between 100 and 300 ppm. Contact with strong oxidizers, caustics and active metal powder may cause explosions and fires. Decomposition products during combustion or fire include phosgene, hydrogen chloride and carbon monoxide.

V. Health Effects

A. Introduction

The toxicology of MC is summarized below. A more detailed review of MC toxicology can be found in the NPRM [56 FR 57036].

B. Absorption and Disposition of Methylene Chloride

Inhalation is the most significant route of entry for MC in occupational settings. The quantity of MC taken into the body depends on the concentration of MC in inspired air, the breathing rate, the duration of exposure to MC, and the solubility of MC in blood and tissues. Because MC is volatile, inhalation exposures to MC can be quite high, especially in poorly ventilated spaces.

Dermal absorption of MC is a slow process relative to inhalation. In the NPRM, OSHA described the rate of skin absorption of pure MC as insignificant relative to inhalation. In contrast, Mr. Harvey Clewell, in comments prepared for the U.S. Navy [Ex. 19–59], stated that substantial occupational exposure could occur through the dermal route when the employee is exposed to high concentrations of MC vapor and protective clothing is not worn [Ex. 19–59]. Mr. Clewell provided a physiologically-based pharmacokinetic (PBPK) model to describe the potential absorption through skin exposed to high vapor concentrations of MC. Where the employee is protected from inhalation exposure by use of an air-supplied respirator and the skin (exposed surface area = two hands) is unprotected in high MC-vapor concentrations, the primary route of exposure in this case will be dermal exposure. Mr. Clewell has determined that sufficient MC may be absorbed by the dermal route over an 8-hour shift to give an internal concentration which would exceed that experienced by workers exposed to MC through inhalation of 25 ppm for 8 hours.

In the NPRM, OSHA also indicated that the burning sensation associated with dermal exposure to liquid MC would likely lead employers and employees to limit skin absorption. However, exposure to high concentrations of vapor may not be associated with a burning sensation, and there is evidence in the record [Tr. 2468–70, 10/15/92] to suggest that employees are exposed to liquid MC without protective clothing. OSHA believes that dermal exposure to liquid and high vapor concentrations of MC should be limited to the extent feasible to protect the employee from overexposure. For this reason, in this standard OSHA has required that employers provide personal protective clothing and equipment appropriate to the hazard. For example, if an employee will be at risk of hand contact with liquid MC, impermeable gloves must be provided.

C. Metabolism of MC

Once MC is absorbed into the body, it is widely distributed in the body fluids and in various tissues. The uptake and elimination of MC has been well described in human and animal studies [Exs. 7–156, 7–157, 7–174].

The carcinogenic mechanism of action for MC has not been clearly established. Although it has not been proven whether MC is carcinogenic through a genotoxic or non-genotoxic mechanism, current evidence supports the hypothesis that MC is a genotoxic carcinogen. Genotoxic carcinogens typically are reactive compounds or metabolized to reactive compounds. MC is unreactive in the body until it is metabolized. Therefore, many investigators believe that one or more of the metabolites of MC, and not MC itself, is the ultimate carcinogen.

It has been established by Kubic and Anders [Ex. 7–167] and Ahmed and Anders [Ex. 7–25] that MC is metabolized by rat liver enzymes *in vitro* by two distinct pathways. The first pathway is the mixed function oxidase system (MFO pathway) associated with the microsomal cell fraction and the second is the glutathione dependent pathway localized primarily in the cytoplasm and mediated by glutathione-S-transferase (GST pathway). The metabolism of MC is illustrated in Figure 1.

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Metabolism of Methylene Chloride

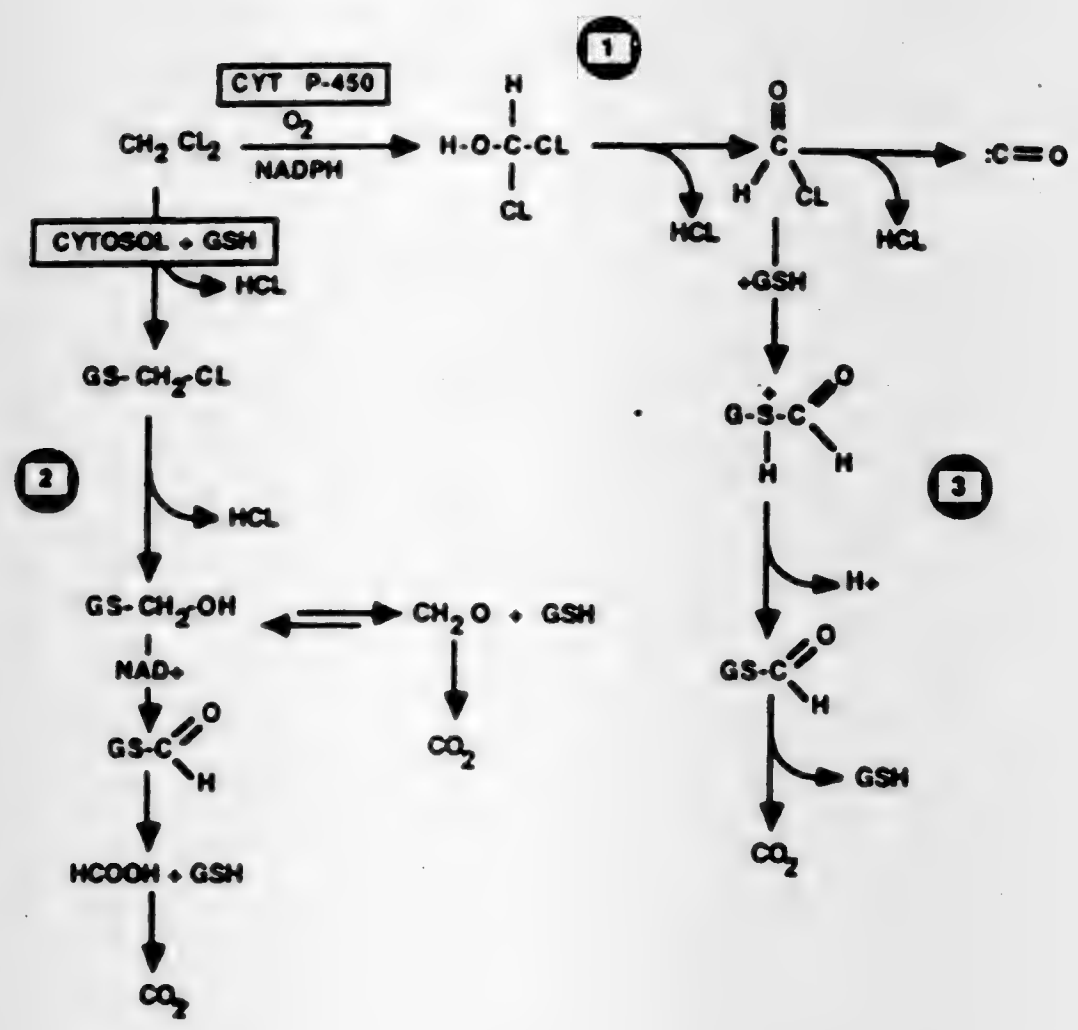

Figure V-1. Proposed metabolic pathways for methylene chloride metabolism. (Adapted from Andersen et al. (1987) [Ex. 7-125]

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The MFO pathway metabolizes MC via a cytochrome-P450 dependent oxidative dehalogenation [Ex. 7–167] which produces formyl chloride. The formyl chloride decomposes to give chloride ion and carbon monoxide. It has been postulated that if the MFO pathway contributes to the carcinogenicity of MC, it is through the production of the reactive compound, formyl chloride. The end product of the MFO pathway, carbon monoxide, can be detected in the blood and breath of humans and animals exposed to MC, and has been used as a surrogate measure of MC exposure in humans.

The GST pathway metabolizes MC to formaldehyde and chloride ions via a postulated S-chloromethylglutathione conjugate [Ex. 7–25]. Formaldehyde is further metabolized to carbon dioxide in mammalian systems. Potential reactive metabolites in this pathway are the S-chloromethylglutathione conjugate and formaldehyde (known to react with protein, RNA and DNA).

Animal data indicate that the MFO pathway is saturated at ambient concentrations less than 500 ppm, while the GST pathway remains linear throughout the exposure levels examined [Exs. 7–161, 7–171]. Saturation of the MFO pathway in humans has been estimated to occur at a level which is within the range of the animal data (estimates range from 200 to 1000 ppm MC) [Exs. 7–114, 7–115, 8–32]. The GST pathway is not thought to be saturated for any of the species investigated at doses up to 4000 ppm.

D. Carcinogenicity

The evidence for the carcinogenicity of MC has been derived from mutagenicity studies, animal bioassays and human epidemiological studies. OSHA analyzed data from each of these sources in determining that MC is carcinogenic to test animals and a potential occupational carcinogen. The evidence that OSHA evaluated in making this determination is summarized below. Additional evidence pertaining to the hazard identification of MC is discussed in the Quantitative Risk Assessment, Section VI, below.

1. Mutagenicity Studies

Mutagenicity and genotoxicity studies are useful in describing the possible carcinogenic mechanism of action of MC. Evidence for the interaction of MC or MC metabolites with DNA (producing mutations or toxicity) is consistent with a genotoxic mechanism for the carcinogenic action of MC, rather than a non-genotoxic action (i.e., by acting as a promoter, increasing cell turnover).

The EPA reviewed the literature on the mutagenic potential of MC in their "Health Assessment Document for Dichloromethane (Methylene Chloride)" (HAD) [Ex. 4–5] and studies conducted by ECETOC in the "Technical Analysis of New Methods and Data Regarding Dichloromethane Hazard Assessments" [Ex. 7–129].

As described in the MC Notice of Proposed Rulemaking (56 FR 57036), the documentation of positive responses in the production of mutations in bacteria, yeast and Drosophila, chromosomal aberrations in CHO cells and sister chromatid exchanges (SCE) in CHO and V79 cells and equivocal responses in other systems indicated the potential genotoxicity of MC.

A paper submitted to the record by Dr. Trevor Green [Ex. L–107], for the Halogenated Solvents Industry Alliance (HSIA), investigated the role of metabolites of the GST pathway in the bacterial mutagenicity of MC. The authors of this study found that in glutathione-deficient strains of *Salmonella typhimurium* there was approximately a two-fold decrease in mutations. Mutation rates returned to normal when bacteria were supplemented with exogenous glutathione. They also investigated whether individual metabolites in the GST pathway were likely to be responsible for mutagenesis. Experiments in S. typhimurium strains were consistent with the S-chloromethylglutathione conjugate as the mutagenic moiety. Experiments in *Escherichia coli* strains implicated formaldehyde as the active mutagen. Overall, these results support the hypothesis that MC may act as a genotoxic carcinogen, but the ultimate reactive species still remains to be identified.

Dillon et al. [Ex. 21–89] also conducted experiments on the mechanism of MC mutagenicity in bacterial cells, using wild type and glutathione-deficient *Salmonella typhimurium* TA100. Dose-related increases in mutagenicity were observed with and without metabolic (cytosolic or microsomal) activation. The authors characterized the mutagenicity as marginally highest in the presence of cytosol at the highest MC concentrations. The glutathione-deficient strain was slightly less responsive to MC-induced mutation than the wild type. In contrast to the study by Green, Dillon et al. found that MC mutagenicity was not appreciably enhance by the addition of microsomal or cytosolic liver fractions or exogenous glutathione. They concluded that it was not clear to what extent, if any, glutathione was involved in MC mutagenicity, and noted that "* * * the residual glutathione present in the glutathione-deficient strain may have been sufficient to facilitate the mutagenic responses observed."

The differing results in these studies suggest that the exact mechanism of MC mutagenicity, even in bacterial cells, has not been determined with certainty. However, OSHA has concluded that the evidence that MC is genotoxic is compelling. Additional studies supporting classification of MC as a genotoxin were submitted to the Agency in late 1995 and are discussed in the Quantitative Risk Assessment, Section VI, below.

2. Animal Studies

The evidence for the carcinogenicity of MC has been derived primarily from data obtained in chronic toxicity studies in rodents. Table V–1 contains a summary of the major bioassays. These bioassays have been conducted in three rodent species (rat, mouse and hamster) using two routes of administration (oral and inhalation) and a wide range of doses (from 5 mg/kg/d, oral to 4000 ppm inhaled for 6 hr/d, 5 d/wk).

The National Toxicology Program conducted two 2-year inhalation bioassays [Ex. 7–8] using B6C3F1 mice and Fischer 344 rats. In the NTP mouse study [Ex. 7–8], groups of 50 male and 50 female B6C3F1 mice were exposed to 0, 2000 or 4000 ppm MC, 6 hr/day, 5 d/wk for 102 weeks. All animals were necropsied and examined histopathologically.

Treated male and female mice had increased incidences of alveolar or bronchiolar adenomas and carcinomas as compared with control animals. In addition, there was an increased number of lung tumors per tumor-bearing animal (multiplicity of tumors) with increasing dose of MC.

In the liver, the toxic effects of MC were expressed as cytologic degeneration in male and female mice which was not present in the controls. An increased incidence of hepatocellular adenomas and carcinomas (combined) was observed in male mice. The incidence of hepatocellular carcinomas in male mice was statistically significantly increased at 4000 ppm. Female mice also experienced dose-related increases in the incidences of hepatocellular adenomas and carcinomas. An increased multiplicity of liver tumors was also found in both male and female mice.

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TABLE V–1.—METHYLENE CHLORIDE LIFETIME BIOASSAYS

Reference	Species/strain	Route and dosing schedule	Dosage (No. of animals)	Comments
NTP (1985)	B6C3F$_1$ mouse	Inhalation 6 hr/day, 5 days/week.	0, 2000, 4000 ppm (50 mice/ sex/ dose).	Lung and liver tumors both sexes, both doses.
Serota (NCA) (1986).	B6C3F$_1$ mouse	Daily in water	0 (125M, 100F), 60 (200M, 100F), 125 (100M, 50F), 185 (100M, 50F), and 250 (125M, 50F) mg/kg/d.	No tumors observed.
NTP (1985)	Fischer 344 rat	Inhalation 6 hr/day, 5 days/week.	0, 1000, 2000 and 4000 ppm (50 rats/sex/dose).	Mammary and integumentary fibromas and fibrosarcomas in both sexes.
Burek (DOW) (1980).	Sprague-Dawley rat	Inhalation 6 hr/day, 5 days/week.	0, 500, 1500 and 3500 ppm (95 rats/sex/dose).	Malignant salivary gland tumors at 3500 ppm, dose-related increase in mammary tumors.
Nitschke (DOW) (1982).	Sprague-Dawley rat	Inhalation 6 hr/day, 5 days/week.	0, 50, 200 and 500 ppm (70 rats/ sex/dose.	No tumors observed.
Serota (NCA) (1986).	Fischer 344 rat	Daily in water	0, 5, 50, 125 and 250 mg/kg/d (135/sex at 0, 85/sex/dose).	No tumors observed.
Burek (DOW) (1980).	Syrian Golden hamster ..	Inhalation 6 hr/day, 5 days/week.	0, 500, 1500, 3500 ppm (90 hamsters/sex/ dose).	No tumors observed.

The dose-related increase in the incidence of lung and liver tumors in mice, and the increased multiplicity of these tumors, present the strongest evidence for the carcinogenicity of MC. NTP concluded that, based on the evidence from these lung and liver tumors, there was clear evidence of the carcinogenicity of MC in both male and female mice.

In a second two-year bioassay, the NTP examined the effects of inhalation of MC at 0, 1000, 2000 and 4000 ppm in F344 rats [Ex. 7–8]. Body weights of all exposure groups were comparable. The highest dose female rats experienced reduced survival after 100 weeks of exposure.

The incidence of mammary tumors in the high dose group in both sexes was statistically significantly higher than in control animals (concurrent and historical). The incidence of mammary fibroadenomas alone and the combined incidence of fibroadenomas and adenomas in male and female rats occurred with statistically significant positive trends. When subcutaneous fibromas or sarcomas in the male rat, which were believed to have originated in the mammary chain, were included in comparisons, differences between control and exposed animals were even greater.

MC-exposed male and female rats also showed increased incidence of liver effects, characterized by hemosiderosis, hepatocytomegaly, cytoplasmic vacuolization and necrosis. Neoplastic nodules alone and combined incidence of neoplastic nodules and hepatocellular carcinomas in female rats occurred with significant positive trends by the life table test. Pair-wise comparisons did not indicate statistically significant effects at any one dose. Although this is suggestive of a carcinogenic response in the female rat liver, NTP did not use this response in their determination of the carcinogenicity of MC.

NTP based its determination of the carcinogenicity of MC in the rat on the mammary tumor incidence data. NTP has concluded that the increased incidences of mammary gland tumors in the female rats provided clear evidence of carcinogenicity and, in the male rats, some evidence of carcinogenicity.

The Dow Chemical Company [Ex. 7–151] conducted experiments in which Sprague-Dawley rats and Syrian Golden hamsters were exposed to 0, 50, 1500 or 3500 ppm MC, 6 hr/d, 5 d/wk for 2 years. A dose-related statistically-significant increase in the number of mammary tumors per tumor-bearing female rat was observed. These results support the NTP findings of increased mammary tumors in F344 rats. The background mammary tumor response in the Sprague-Dawley rat is higher than in F344 rats, so a quantitative analysis of risk is easier to perform on the data from the NTP study.

A statistically significant increase in male rat salivary tumors was also observed in this study, although the authors believed that this response should be discounted because of the presence of sialodacryoadenitis virus in the rats. OSHA believes that the presence of this virus in the rats would complicate the interpretation of the data, and so has relied on the NTP studies for its quantitative risk assessments.

No statistically significant excess incidence of tumors was observed in either sex of hamsters at any exposure level. This suggests that hamsters are less sensitive to the carcinogenic effects of MC than either mice or rats. Metabolism data gathered in hamsters indicate that hamsters have less capability to metabolize MC by the GST pathway than rats or hamsters (or humans). This correlation between lack of GST metabolism capacity and lack of tumor response supports the hypothesis that GST metabolism is important in MC carcinogenesis and also indicates that it would not be protective to use the hamster response to MC as the basis for a carcinogenic risk assessment.

A second inhalation study in Sprague-Dawley rats conducted by investigators at Dow Chemical [Ex. 7–173], with exposures up to 500 ppm, showed an increase in the number of mammary tumors per tumor-bearing animal in female rats at the highest dose level only. This study extended the finding of excess mammary tumors in rats to the 500 ppm level. However, because of the high background rates of mammary tumors in Sprague-Dawley rats, the NTP study showed a clearer dose-response relationship between MC exposure and incidence of mammary tumors.

In a study conducted for the National Coffee Association [Ex. 7–180], no statistically significant increased incidence of tumors was observed in B6C3F1 mice or F344 rats exposed to up to 250 mg/kg/d MC in drinking water. These studies used the drinking water route of exposure instead of inhalation and exposed animals to lower doses (on an mg/kg/d basis) than the NTP and high-dose Dow studies. These factors most likely accounted for the lack of a positive tumor response. The NCA studies were used by Reitz et al. in the development of the physiologically-

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based pharmacokinetic models for MC. Specifically, these studies helped to determine that the lack of tumor development was consistent with model predictions of the amount of GST metabolites in lung and liver of mice and that the MFO pathway was most likely not primarily responsible for the mouse tumor response.

The Agency believes that the NTP studies show the clearest evidence of a carcinogenic effect of MC and has used these studies as the basis of its risk assessment for the following reasons: (1) The studies were well conducted and underwent extensive peer review. (2) The inhalation route of exposure was used, which is the most appropriate route for extrapolation to occupational exposures. (3) Dose-related, statistically significant increases in tumor incidence were observed in both sexes in mice and in female rats. OSHA believes that because of the clear tumor response, and quality of the studies, the NTP studies provide the best data for quantitative cancer risk assessment. OSHA concludes from these studies that MC causes cancer in two species of test animals by the inhalation route, and that a clear dose-response has been demonstrated.

3. Epidemiological Studies

Epidemiological studies of occupational exposure to MC have been conducted in the manufacturing of triacetate fibers, photographic film production, and the manufacturing of paint and varnish. Those studies were reviewed by OSHA in the preamble to the proposed rule [56 FR 57075] and are summarized and updated in this document. In addition, an epidemiological study of MC exposure and astrocytic brain cancer is reviewed in this text.

a. Studies of triacetate fiber production workers. Ott et al. [Ex. 7–76] performed a retrospective cohort study using a cellulose diacetate and triacetate plant in Rock Hill, South Carolina to examine the effects of MC on a working population. In particular, Ott et al. evaluated the effects that were possibly mediated through the metabolism of MC to carboxyhemoglobin. Employees at this plant had MC exposures close to OSHA's time weighted average (TWA) permissible exposure limit (PEL) of 500 ppm. Ott et al. used workers in a plant in Narrows, Virginia as a comparison population because it had operations similar to those at the Rock Hill plant, but did not use MC. In this study, Ott et al. compared the number of deaths within the exposed cohort with the United States population and the Narrows, Virginia referent group. Ott et al. observed that the overall mortality of the cohort was comparable to that of the age, sex, and race-matched U.S. population. Comparing exposed and referent cohorts, statistical differences in risk were observed in white men for "all causes" (risk ratio=2.2, $p<0.01$), "diseases of the circulatory system" (risk ratio=2.2, $p<0.5$), and "ischemic heart disease" (risk ratio=3.1, $p<0.05$).

In interpreting the results of this study, Ott noted that there may have been differences in hiring practices in the two plants which could have contributed to the observed differences in mortality. In their conclusion, Ott et al. stated that a healthy worker effect (HWE) and the low power of their study did not permit them to dismiss the possibility of increased health risks within the working population exposed to MC.

Dr. Mirer of UAW testified [Tr. 1896–6, 9/24/92] that there is some evidence that there is excess work-related heart disease mortality in epidemiological studies that have observed SMRs greater than 80% for ischemic heart disease or any other cardiovascular disease. Furthermore, when the MC epidemiological studies are looked at together, there is evidence, although limited, that MC exposure has an effect on cardiovascular mortality.

On the other hand, Kodak [Ex. 91D] questioned the appropriateness of the referent population in the Rock Hill study, alleging that the SMR for ischemic heart disease in the referent population was unusually low, and that this fact, rather than an effect of MC exposure, caused the observed differences in ischemic heart disease rates.

In contrast, NIOSH considered the Rock Hill study to be suggestive of an effect of MC on risk of cardiac disease. According to NIOSH [Tr. 879, 9/21/92] the Ott study did not use appropriate analytic techniques that would allow the acute effects of MC on cardiac disease risk to be examined. Furthermore, NIOSH suggested [Tr. 969, 9/21/92] that future epidemiological studies should examine risks from MC exposure during the period when employees are actively working.

In an update to the Rock Hill study, Lanes et al. followed the Ott et al. cohort through September 1986 [Ex. 7–260] and December 1990 [Ex. 106]. Lanes et al. used the population of York County, South Carolina as the comparison group. Statistically significant excess mortality was observed for cancer of the liver and biliary passages (SMR=5.75, CI:1.82–13.78) in the study group. Excess mortality was also observed for buccal cavity and pharynx cancer (SMR=2.31, 95% CI:0.39–7.60) and melanoma (SMR=2.28, CI:0.38–7.51), although mortality from these causes did not reach statistical significance. No excess mortality was observed for ischemic heart disease (SMR=0.90, CI:0.62–1.27).

Examination of the liver and biliary cancers indicated that the workers had ten or more years of employment and at least 20 years since first employment (4 observed v. 0.35 expected). Three of the four employees who died from liver/biliary cancer had tumor sites in the intrahepatic and common bile duct, common bile duct, and ampulla of Vater. Approximate durations of employment for these three cases were 28 years, 20 years, and less than one year. No medical record for the third case could be obtained. However, an autopsy report indicated adenocarcinoma of the liver for this case. To estimate the expected number of biliary cancer deaths, Lanes et al. used Surveillance, Epidemiology, and End Results (SEER) mortality rates of the continental United States. The computed risk estimate, based on 0.15 cases expected, was SMR=20 (95% CI:5.2–56.0).

The authors hypothesized that the biliary duct cancer cases may have been due to factors such as oral contraceptive use, gallstones, or ulcerative colitis. However, it appeared that medical records showed no indication of gallstones or ulcerative colitis in workers who died of biliary cancer. Moreover, although these factors were not specifically controlled for, there is no reason to believe the rates of these factors would be different in the exposed cohort compared to the general U.S. population.

Lanes et al. updated their study through December 31, 1990 [Ex. 106] using the National Death Index and focused on mortality from pancreatic cancer, biliary and liver cancer, and ischemic heart disease. Lanes et al. ascertained fifty more death certificates from the end of the last follow-up period on September 1, 1986. As before, York County, South Carolina was used as the comparison population.

The overall SMR from all causes of death was 0.90, and for malignant neoplasms, the SMR was 0.82. In this follow-up, the SMR for liver and biliary cancer dropped from 5.75 to 2.98 (95% CI:0.81–7.63). No additional deaths from biliary or liver cancer were observed. In the original and updated studies combined, four deaths from biliary/liver cancer were observed and 0.64 were expected. Using a Poisson distribution, Lanes et al. calculated the probability of failing to observe any liver/biliary

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cancer deaths in this update if the "true" value of the SMR for liver/biliary cancer was 5.75 (from the previous study) and then expecting 3.68 deaths in this follow-up (0.64×5.75). They estimated the probability that this update would have no observed biliary/liver cancer deaths if the true SMR were 5.75, as $e^{-3.68}$=0.025. On the other hand, if MC had no effect on liver and biliary cancer mortality, Lanes et al. estimated that the probability of observing zero deaths would have been 0.527 ($e^{-0.64}$). Lanes et al. used the likelihood ratio (0.527/0.025=21.08) to compare these two hypotheses. The authors concluded that the null hypothesis that the SMR=1.0 was 21 times more probable than the hypothesis that the SMR=5.75.

Because of the small number of cases involved and the instability of the numbers generated in this type of statistical analysis, OSHA believes that this study, overall, is suggestive (but not definitive) of an association between occupational exposure to MC and elevation of human cancer risk. Furthermore, the Agency has determined that the study results are not inconsistent with the results of the NTP cancer bioassay.

Hoechst-Celanese [Ex. 19–65, pp. 6–8; Ex. 19–19] was concerned that OSHA considered the incidence of biliary cancer as evidence of a positive effect. They argued that the reported excess in biliary tract cancer did not support the conclusion that MC exposure is associated with an increased risk of cancer. Specifically, they noted that,

(1) Biliary cancers have not been reported in any of the animal cancer studies of MC; (2) no statistically significant increase in biliary cancers was seen in the Cumberland study (described below); (3) no statistically significant excess in biliary cancers was reported in the Kodak studies (described below); (4) It was unlikely that MC could have been responsible for the biliary tract cancer observed in one employee who had been exposed to MC for less than one year; and (5) the Rock Hill study did not control for other chemical exposures.

Comments by the Halogenated Solvents Industry Alliance (HSIA) [Ex. 19–45, p. 47] were in accord with those of Hoechst-Celanese.

Dr. Shy, on behalf of Kodak, asserted [Tr. 1303, 9/22/92; Ex. 91F] that MC exposure failed to meet Bradford Hill's criteria for causality (e.g., biological plausibility, dose-response, and consistency) for producing biliary tract cancer. Dr. Shy acknowledged that animal bioassays have demonstrated liver tumors from MC exposure, but he noted that there is no evidence in humans that liver and biliary tract cancers have the same etiology. Furthermore, Dr. Shy argued that,

(1) the results from the Lanes study is not supported by *in vitro* or pharmacokinetic studies.

(2) a dose-response relationship could not be determined from the Lanes study because there were no direct measurements of worker exposure to MC.

(3) the observed association between MC exposure and liver/biliary cancer was an isolated finding and the existence of a causal relationship could not be concluded.

(4) the excess biliary tract cancer in the Lanes study was not consistent with the other three epidemiological studies (Hearne, 1987, 1990, 1992; Hearne, 1992; Gibbs, 1992).

Dr. Shy did recognize that there was a strong association between MC exposure and biliary tract cancer in the Lanes study (SMR=20). Moreover, the 20 year time interval between first exposure and death from biliary tract cancer provided evidence that "exposure preceded cancer with an appropriate interval for induction of the tumor [Ex. 91F]."

OSHA disagrees with the conclusions reached by Dr. Shy. The Agency believes that the risks of biliary cancer observed in these studies is consistent with risks derived from its pharmacokinetic analysis (see the Quantitative Risk Assessment, Section VI). Since the occupational exposures in these studies are likely to have been among the highest in any of the epidemiologic cohorts, there is no evidence that the increased biliary/liver cancer result is inconsistent with other reported epidemiological findings. Regarding the biological plausibility, the Agency notes that human biliary cells appear to contain high concentrations of the mRNA for GST (the enzyme many investigators believe to be responsible for MC-induced carcinogenesis) [Exs. 124 and 124A]. Although this requires more investigation to determine if there is a direct relationship, OSHA believes there is a plausible mechanistic argument for MC causality in human biliary tract cancers. The Agency agrees with Dr. Shy, however, that the lack of dose-response data and the small number of cases in this cohort limit the strength of conclusions that can be drawn from this study. After weighing these considerations, the Agency has determined that there is suggestive evidence of a causal role for MC in these cases of biliary cancer.

Gibbs et al. conducted a study of another cellulose acetate and triacetate fibers plant in Cumberland, Maryland [Ex. 54] to evaluate the possible relationship between MC exposure and biliary/liver cancer. This plant, which ceased to operate in 1982, had operations similar to the plant in Rock Hill, and it was assumed to have had similar MC exposure levels as well. However, exposure measurements were not submitted for the Cumberland plant and it is unknown whether the Cumberland employees experienced the same exposures as their Rock Hill counterparts.

The Gibbs study investigated the mortality of 3,211 workers who were employed at this plant on or after January 1970. There were 2,187 men and 1,024 women in the cohort. Most of the workers in the cohort were hired prior to 1979 (2,566 total). The study population was divided into three subcohorts based on their estimated exposure to MC: 1) 834 men and 146 women in the "high exposure" group (estimated to be 350–700 ppm), 2) 1095 men and 832 women in the "low but never high exposure" group (estimated to be 50–100 ppm), and 3) 256 men and 46 women in the "no exposure" group. This cohort was followed through December 1989. The observed mortality was compared to expected death rates for Allegany County, Maryland (where the plant was located and where most of the cohort deaths occurred), the State of Maryland, and the United States.

The author of this study believed that the county rates were the most appropriate to use because the city of Cumberland is located in a rural area of Maryland and the state rates may have been influenced by rates in large urban areas such as Baltimore. In addition, local rates tend to adjust for social, economic, ethnic, and cultural factors which may be related to disease risk, access to medical care, etc. However, if the fiber plant was the major employer in this rural area, then county rates may reflect the cohort's mortality rather than the background risk, in which case, state rates or U.S. population rates would be more appropriate. The overall mortality rate for the high MC-exposed group was below the expected rates for Allegany County, Maryland, and the U.S. population.

As in the Rock Hill study, mortality from biliary tract cancer was observed in the Cumberland study, although no statistically significant elevated incidence of biliary cancer was found (two cases of biliary tract cancer were observed). In the high exposure group, there was one death (1.24 expected with Allegany rates (SMR=80.5) and 1.42 expected with Maryland rates (SMR=70.4)). In the low MC-exposed group, there was also one death from biliary/liver cancer. For the high MC-

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exposed subcohort, Gibbs et al. estimated SMRs of 80.4, 70.3, and 75.1 when comparisons were made with Allegany County, Maryland, and U.S. rates, respectively. In the low MC-exposed subcohort, the SMRs using Allegany and Maryland rates were 75.4 and 76.4, respectively. This cohort should be followed for a longer period of time to help clarify the suggested association between MC exposure and biliary cancer observed in the Rock Hill cohort.

Statistically significant excess mortality was also observed from prostate, uterine, and cervical cancers, although these also represented small numbers of cases: 13, 2, and 1, respectively.

The excess of prostate cancer in the Gibbs et al. study suggested an exposure-response relationship (3 deaths in no MC-exposure group, 9 in low MC-exposure group, and 13 in high MC-exposure group). According to Gibbs et al. and Shy [Tr. 1303, 9/22/92; Exs. 19–64, 91F], this response may have been related to other chemical exposures (occupational or non-occupational). In support of this hypothesis, no other epidemiological or animal studies of MC exposure have suggested a relationship between prostate cancer and MC. Hoechst-Celanese [Ex. 19–65, pp. 10–12; Ex. 91D, p. 12] cautioned OSHA not to overinterpret the excess of prostate cancer in the Cumberland study for the following reasons:

(1) of all the epidemiological studies, only the Cumberland study has shown an excess of prostate cancer; (2) of the thirteen high subcohort men who died of prostate cancer, twelve worked in the extrusion area of the Cumberland plant before methylene chloride was used as a solvent in cellulose triacetate fiber production. Thus, these men may have had longer exposure to other chemicals; (3) the study did not control for other personal risk factors; (4) Gibbs reported an increased incidence of prostate cancer elsewhere in the textile industry; and (5) the large number of statistical tests may have increased the probability of finding the death rate of a specific cause to be elevated or depressed.

OSHA believes that the increased risk of prostate cancer should be noted as a possible positive effect of MC exposure on cancer risk, particularly considering the exposure-response relationship. However, because of potential confounding factors and lack of corroborating findings in other studies, OSHA believes this is suggestive rather than conclusive evidence of a human carcinogenic effect.

b. Studies of film production workers. In their original study of film production workers, Friedlander et al. [Ex. 4–27] conducted both a proportionate mortality study and a retrospective mortality cohort study to determine if workers exposed to MC experienced an increased risk for specific causes of mortality. The cohort in these studies consisted of workers who worked in any department in film production that used MC as its primary solvent for approximately thirty years. The cohort was followed through 1976.

Proportionate mortality analysis for those workers ever employed in the study area versus a comparison group of workers in other Kodak Park departments produced a proportionate mortality ratio (PMR) of 143.88 for liver (intrahepatic ducts-primary) cancer. For ischemic heart disease, Friedlander et al. calculated a PMR of 94.74. No statistically significant differences were observed at $p \leq 0.05$.

For the cohort mortality study, Friedlander et al. used rates from the 1964–70 hourly males age group exposed to MC in the film department and the other Kodak Park departments for internal comparison. Mortality rates for New York State, excluding New York City, males age group were used for external comparisons.

Forty-five deaths from circulatory diseases were observed in the MC-exposed cohort versus 38.5 expected in the Kodak Park referent group. Also, 6 deaths from respiratory diseases were reported in the MC-exposed group versus 3.2 expected for the Kodak Park comparison group. No liver deaths were observed in this cohort. Thirty-three deaths from ischemic heart disease were observed in this cohort compared with 28.7 expected in the Kodak Park population. None of these observed differences in mortality reached statistical significance.

Hearne et al. conducted several updates to the cohort study involving MC exposure and mortality among workers in film production areas at the Kodak plant in Rochester, New York [Exs. 7–122, 7–163, 49 A–1]. In the first update, the study cohort was followed through 1983. Two referent groups were utilized in this study: the general population of upstate New York men, excluding New York City, and Kodak Park employees.

No statistically significant findings were observed for any cause of death. However, Hearne et al. did find a relatively large number (8 observed) of pancreatic cancer deaths compared with the New York State (3.2 expected) and Kodak (3.1 expected) populations. This observation did not achieve statistical significance and a dose-response relationship was not observed when Hearne et al. considered latency and dose.

Hearne et al. then updated this study through 1988 [Ex. 7–163] and 1990 [Ex. 49 A–2]. In the 1988 update, nonsignificant deficits in observed-expected ratios for lung and liver cancer were found. Also, overall mortality from 1964 to 1988 was significantly less than in both referent groups. Since 1986, the number of pancreatic cancer deaths remained the same. As before, dose-response analysis showed no statistically significant pattern when latency or dose were considered.

The 1990 update showed that deaths due to liver cancer, lung cancer, and ischemic heart disease were below the expected numbers in both referent groups. Also, no additional pancreatic cancer deaths were observed in this second update. Since the start of the follow-up, Hearne et al. observed 8 deaths from pancreatic cancer compared with 4.5 expected (SMR = 1.78, p = 0.17).

Hearne et al. [Ex. 49 A–1] conducted a second Kodak cohort study involving workers in cellulose triacetate preparation and film base manufacturing between 1946 and 1970. Hearne et al. addressed the potential selection bias in the 1964–70 Kodak cohort by including only workers exposed primarily to MC after it was introduced in these areas and making the study more complete by adding workers in the Dope Department, which prepares the viscous cellulose triacetate mixture used in the film base coating, and the Distilling Department, which redistills and reblends solvents recovered from the coating operations.

The 1,311 men in the cohort were followed through 1990. An occupational control group could not be formed because death rates for Kodak employees before 1964 were unavailable. Instead, male residents of upstate New York living outside of the five New York City counties were used.

Hearne et al. combined exposures by job and time period with occupational history information to produce a career exposure estimate for each individual in the study for dose-response analyses. The mean career individual exposure was approximately 40 ppm for 17 years and the average interval between first exposure and end of follow-up was about 32 years.

Total mortality for this cohort was 22% below the expected mortality (statistically significant). Circulatory diseases and ischemic heart disease mortality were also statistically significantly below expectation. For lung cancer there were 22 deaths (28.7 expected) and for liver/biliary cancer

there was one death (1.5 expected). Hearne et al. found that the number of pancreatic cancer deaths observed (4) was similar to the expected number (4.4). In this cohort, the number of observed deaths was greater than expected for diseases of the colon/rectum (13 observed v. 10.8 expected), brain (5 v. 2.3), and for leukemia (7 v. 3.4), but were not statistically significant.

Hearne et al. concluded that the findings in the 1964–70 cohort were consistent with the 1946–70 cohort: mortality from all causes, cancer (including lung and liver malignancies), and ischemic heart disease was lower than expected. Also, since the number of observed pancreatic cancer deaths in this cohort was similar to the expected number, Hearne et al. believed that this provided further evidence that the earlier finding of an excess of pancreatic cancer in the 1964–70 cohort was due to chance or to factors other than MC exposure.

Kodak [Tr. 1287–88, 9/22/92] also investigated the risk of adverse health effects during active occupational exposure to MC, as suggested by NIOSH [Tr. 970, 9/21/92]. Using person-years of active employment only in their analysis, Hearne observed 27 deaths (36 were expected in the internal Kodak reference group) from ischemic heart disease in the 1964–70 Kodak cohort; in the 1946–70 cohort, Kodak recorded 33 deaths compared with 43 expected in the New York State comparison population.

NIOSH testified [Tr. 877–83, 9/21/92] that the healthy worker effect (HWE) could have obscured any excess mortality from ischemic heart disease caused by MC exposure. NIOSH has stated that the HWE may be particularly strong for cardiovascular diseases.

The HWE is likely to be less of a factor when occupational comparison groups are used. Kodak's use of the Kodak Park employees as a comparison group should reduce the HWE in its studies. However, there are two potential problems with using occupational comparison groups in this instance:

(1) Cancer rates are more stable in larger populations, so comparison with state and national rates may be more appropriate.

(2) Due to the volume of MC used in the Kodak plant, the occupational comparison group may be exposed to air- or water-borne environmental concentrations of MC which could obscure the impact of occupational exposure to MC on cancer incidence.

c. Study of workers in paint and varnish manufacturing. The NPCA submitted to the record an epidemiological study of employees who worked for at least one year in the manufacture of paint or varnish [Ex. 10–29B]. OSHA's review of this study was published in the proposed rule [56 FR 57077]. Although no statistically significant excess of mortality was reported, OSHA noted that there were 4 pancreatic cancers (1.93 expected) and 15 cancers of digestive organs and peritoneum (10.66 expected) among MC-exposed workers.

d. Astrocytic brain cancer among workers in electronic equipment production and repair. In its March 11, 1994 Notice of Limited Reopening of the Rulemaking Record, OSHA solicited comments on a case-control study submitted to the Agency by the National Cancer Institute (NCI) [Exs. 112 and 113].

Heineman et al. conducted a case-control study to examine the potential association between brain cancer and exposure to organic solvents as a group and six chlorinated aliphatic hydrocarbons (CAHs) including MC. Cases were defined as white males who died from brain or other central nervous system tumors in southern Louisiana, northern New Jersey, and Philadelphia, Pennsylvania. Controls were randomly selected from death certificates and included white males who died of causes other than brain tumors, cerebrovascular diseases, epilepsy, suicide, and homicide. Controls were frequency-matched to cases by age, year of death, and geographic area.

Four-digit Standard Industrial Classification (SIC) and 4-digit Standard Occupational Classification (SOC) codes were employed to code occupational histories of study subjects. These codes linked work histories to job-exposure matrices which "characterized likely exposure to the six CAHs and to organic solvents" [Ex. 112]. Gomez et al. [Ex. 112] used an algorithm to assign estimates of probability and intensity of exposure to each industry/occupation combination in subjects' work histories. As noted by Gomez et al., these estimates were based on "occupation alone, industry alone, or both occupation and industry, depending on the specificity of the exposure environment that could be inferred from the occupational (SOC) code."

The following surrogate measures of dose, for each substance, were used to summarize "likely" exposure histories for each study subject: duration of employment in occupation/industry combinations considered exposed, a cumulative exposure score, and "average" intensity of exposure. Odds ratios were calculated for exposure intensity categories to refrain from using weights. These categories did not include duration in jobs with lower intensity for subjects with high or medium intensity jobs. In their statistical analyses, Heineman et al. controlled for age, geographic area, and employment in electronics-related occupations/industries.

Astrocytic brain cancer was not found to be associated with "ever" being exposed to organic solvents as a group or to any of the six CAHs examined in this study. However, as probability of exposure to organic solvents as a group, and MC in particular, increased, the risk of brain cancer increased (chi-squared statistics for trend for organic solvents and MC were 1.93 and 2.29 ($p<0.05$), respectively). For MC there was a 2.4-fold increase in risk for subjects with a high probability of exposure (confidence interval=1.0–5.9).

Risk of brain cancer significantly increased with duration of exposure for subjects with high probabilities of MC exposure (OR=6.1; CI=1.1–43.8). Heineman et al. found that, in the high probability of MC exposure category, risk significantly increased with duration (chi for trend=2.58, $p<0.01$). Similar results were seen for organic solvents and methyl chloroform for all probabilities combined (chi-squared statistics for trend were 2.35 ($p<0.01$) and 1.87 ($p<0.05$), respectively).

Lagging exposure by 10 years produced findings analogous to those noted above. Higher risks and a sharper increase with duration was observed for organic solvents when exposure was lagged by 20 years (all probabilities: 2–20 years, OR=1.3 (95% CI=0.9–2.0); 21+ years, OR=2.8 (1.1–3.7); p for trend=0.006; high probability: 2–20 years, OR=1.2 (95% CI=0.7–1.9); 21+ years, OR=3.1 (1.3–7.4), p=0.009).

Subjects with a high probability of MC exposure experienced a statistically significant increased risk as the cumulative exposure score increased (chi-squared statistics for trend=2.18, $p<0.05$). However, risk did not increase monotonically with cumulative exposure.

Lagging exposure 20 years supported the odds ratios and the trends for organic solvents, particularly in men with a high probability of exposure (low cumulative score: OR=1.1 (95% CI=0.5–2.3); medium: OR=1.4 (0.8–2.5); high: OR=2.2 (1.0–4.5); p for trend=0.02). Few individuals had high cumulative scores when exposure was lagged 20 years for the individual CAHs.

Compared with jobs with medium or low intensity exposures to organic solvents and all six CAHs, risk of brain cancer was higher for subjects who

worked in jobs with high intensity exposures. Brain cancer was associated most strongly, and increased with probability of exposure, among subjects who worked 20 or more years with high intensity exposure to MC (all probabilities: OR=6.7, CI=1.3–47.4; high probability: OR=8.8, CI=1.0–200.0).

Since many subjects were determined to have been exposed to more than one of the CAHs, sometimes even in the same job, Heineman et al. used logistic regression to examine, simultaneously, the effects of MC, carbon tetrachloride, tetrachloroethylene, and trichloroethylene, controlling for age, geographic area, and employment in electronics-related occupations/industries. MC was the only substance to show a statistically significant increase in risk as the probability of exposure increased (low: OR=0.9, CI=0.5–1.6); medium: OR=1.4, CI=0.6–3.1; high: OR=2.4, CI=0.9–6.4; chi-squared statistics for trend=2.08, $p<0.05$). Risks associated with MC increased when adjustments for exposure to the other agents were made. In addition, subjects employed for 20 years or more in jobs with high average intensity MC exposure showed an eight-fold excess of brain cancer (OR=8.5, CI=1.3–55.5), taking all probabilities into consideration.

Among the six CAHs examined in this study Heineman et al. found the strongest association between brain cancer and MC-exposure, for which relative risks rose with probability, duration, and average intensity of exposure, though not with the cumulative exposure index.

According to Heineman et al., the major weakness of this study was not having direct information on exposure to solvents. Next-of-kin data, poor specificity of some work histories for specific solvents, and the interchangeability of solvents may have resulted in misclassification of individuals with respect to any of the exposure measurements used in this study. However, Heineman et al. pointed out that the potential sources of error probably did not significantly bias risk estimates away from the null or generate the observed trends.

Another limitation of this study, pointed out by Heineman et al., was that over one-third of the next-of-kin of eligible cases and controls were not interviewed. According to Heineman et al., this could have artificially created the associations seen in this study "only by underrepresenting cases who were unexposed, and/or controls who were exposed, to solvents in general, and MC in particular" [Ex. 113]. Heineman further remarked that differential misclassification was probably not a problem in this study because occupational histories came from next-of-kin of both cases and controls.

In light of the limitations of this study, however, Heineman et al. commented that the consistency of exposure-response trends for MC was surprising and suggestive. Moreover, Heineman et al. believed that the trends and consistency of the associations between brain cancer and MC could not be explained by chance alone.

Several commenters [Exs. 115–1, 115–31, 115–32, 115–36] indicated that Heineman et al. relied too heavily on next-of-kin information. Information provided by next-of-kin concerning jobs held, job descriptions, dates of employment, and hours worked per week may be flawed with recall bias. Next-of-kin may not be able to accurately recall job-related information, especially for jobs held early in life. If next-of-kin for cases or controls had better recall than the other group, differential misclassification could occur. HSIA [Ex. 115–36] stated that even small differences in error rates between cases and controls could produce false associations. Both HSIA and NIOSH [Ex.115–31] agreed that this indirect source of exposure information was likely to produce some degree of misclassification. However, NIOSH noted that misclassification "is a typical problem in population based case-control studies of this type [Ex. 115–31]" and that this misclassification could also explain the fact that no associations were found between brain cancer and the cumulative exposure score.

Organization Resources Counselors (ORC) [Ex. 115–2] and Abbott Laboratories [Ex. 115–30] were concerned that the lack of exposure verification made this NCI study unreliable for setting MC exposure limits. ORC stated that exposure values were assigned to all SIC and SOC codes, and not developed based on job history information, which would have given the study more validity. Kodak also expressed some concern regarding this study due to lack of accurate records of past exposures, reliance on expert judgement to a large degree, use of next-of-kin to determine potential exposure, and undocumented qualifications of those making judgements concerning the different occupations and industries involved. In addition, Kodak felt that the exposure data were "at best, unsubstantiated semi-qualitative judgements of likelihood and intensity of exposure [Ex. 115–1]." Organization Resources Counselors [Ex. 115–2] and Abbott Laboratories [Ex. 115–30] asserted that it was impossible to tell if those who died of cancer had been exposed to MC because there was no exposure verification. Vulcan Chemicals [Ex. 115–32] criticized the investigators for not going to work sites and determining the actual magnitude of exposure to the CAHs. HSIA [Ex. 115–36] argued that "concordance of proxy reports with actual work histories may range from 0–50% for decedents' first jobs and from 50–70% for last jobs." OSHA believes that exposure verification would have increased the validity of the findings of this study. However, lack of exposure verification does not nullify the results of the study. The Agency believes that the associations observed are suggestive of a human carcinogenic effect of MC.

Another issue that Kodak [Ex. 115–1] and Vulcan [Ex. 115–32] emphasized was the possible exposure to other chemicals or sources of potential human carcinogens, such as ionizing radiation, electromagnetic fields, smoking history, and place of residence. Vulcan [Ex. 115–32] noted that there may have been selection bias in this study because of the large ratio of astrocytic brain cancer tumors to the total number of brain tumors. Although they offered no explanation of how this selection bias would operate, Vulcan did suggest that this issue should be investigated further.

Vulcan was also concerned that the matching of controls and cases with respect to occupations and socioeconomic status may be inadequate. In particular, Vulcan criticized the Heineman study for not presenting the occupations of the control group and for not matching the socioeconomic status of the two groups. Similarly, Kodak [Ex. 115–1] stated that some adjustment should have been made in order to match across educational levels.

Kodak [Ex. 115–1] also believed that the estimates of trends observed in this study could have been affected, if workers in the longest duration or the higher probability of exposure categories had longer dates of employment, worked in more stable industries, and had better health benefits, better access to medical care, and more sophisticated diagnostic procedures. OSHA believes that there is no evidence that this is the case in this study.

HSIA [Ex. 115–36] criticized the methodology for assessing the number of industries with exposures to CAHs. HSIA argued that Gomez et al. did not fully explain how they determined that workplaces in the specific SICs would have CAH exposures. According to HSIA, Gomez et al. reported inaccurate

information regarding industry use of MC. HSIA cited EPA's "Toxic Air Pollutant/Source Crosswalk, A Screening Tool for Locating Possible Sources Emitting Toxic Air Pollutants (EPA–450/4–87–023A, Dec. 1987)" which revealed a higher number of SIC codes using MC. In conclusion, HSIA asserted that Gomez et al.'s "exposure scenario" was incorrect.

Several commenters [Exs. 115–1, 115–31, 115–36] argued that the Heineman et al. study should only be considered a hypothesis-generating study and should not be used to adjust the PEL.

OSHA agrees with NIOSH that the Heineman et al. study was well-conducted because there was a systematic attempt to estimate exposure by work experience. Furthermore, there was a remarkably high correlation between exposure to MC and brain tumors. OSHA concludes that the results from this study strongly suggest a possible association between MC and brain cancer. However, in the absence of quantified exposure data for these workers, it remains relatively speculative to attempt to estimate a quantitative dose-response relationship. Therefore, OSHA concludes that the risk estimate based on the animal data is the best available and accordingly it retains that estimate for its significant risk analysis.

e. Summary of epidemiological studies. Considered as a whole, the available epidemiologic evidence did not demonstrate a strong, statistically significant cancer risk associated with occupational exposures to MC. However, the positive trend for biliary tract/liver cancer deaths, the association between occupational MC exposure and astrocytic brain cancer and the statistically significant excess prostate cancer results are suggestive of an association between MC exposure and cancer risk. In addition, the non-positive epidemiological studies summarized here are not of sufficient power to rule out the positive results from the animal studies. This issue is addressed further in the Quantitative Risk Assessment section of this document.

In summary, the epidemiological results are suggestive of an association between occupational exposure to MC and elevated cancer risk which offers supporting evidence to the positive animal bioassay results.

4. Conclusion

OSHA concludes from the mutagenicity, animal bioassay and human epidemiology data that MC causes cancer in test animals and that it is a potential occupational carcinogen. The Agency has determined that, because of the quality of the studies, the clear dose-response relationship and the appropriateness of the route of administration, the NTP rodent bioassay data are the best available for quantitative cancer risk assessment.

OSHA also concludes that the epidemiology data, in some cases, suggest a positive association between human MC exposure and cancer incidence, but the dose-response relationships are not clear. The Agency has determined that the remaining epidemiology data (the non-positive studies) are not of sufficient power to rule out the results obtained in the animal bioassay data and that the animal data provide the best available data for quantitative risk assessment.

E. Other Toxic Responses

1. Central Nervous System Toxicity

MC acts on the central nervous system (CNS) as a CNS depressant. CNS depression has been described in humans exposed to MC concentrations as low as 175 ppm (8-hour TWA). This depression in CNS activity was manifested as increased tiredness, decreased alertness and decreased vigilance. These effects could compromise worker safety by leading to an increased likelihood of accidents following MC exposure.

a. Animal studies. In the NPRM, OSHA reviewed two animal studies of MC CNS toxicity (briefly summarized below) and concluded that the CNS was potentially susceptible to reversible and irreversible effects due to MC exposure.

Savolainen et al. [Ex. 7–178] studied biochemical changes in the brains of rats exposed to MC. Rats were exposed to 500 ppm MC for 6 hr/d. On the fifth day, after 3 and 4 hours of exposure to MC, levels of acid proteinase in rat brains were significantly increased, but no change in brain RNA levels was reported. The authors suggested that the increase in acid proteinase may have been the result of increased levels of CO from metabolism of MC. OSHA believes that this study shows that MC can cause specific changes in the neurological system at a biochemical level. The Agency intends to monitor the scientific literature for additional developments on these effects, but has not used this information in setting the MC exposure limits because it is presently unclear how changes in acid proteinase are related to the observed CNS depressive effects of MC in humans.

Rosengren et al. [Ex. 7–56] looked at the effects of MC on glial cell marker proteins and DNA concentrations in gerbil brains after continuous exposure to 210, 350 or 700 ppm MC. Because of high mortality in the 2 higher doses, no data were collected at 700 ppm and exposure was terminated after 10 weeks at 350 ppm. Exposure to 210 ppm was continued for three months. Exposure to MC was followed by four months of no exposure before animals were examined for irreversible CNS effects. The authors found increased levels of glial cell marker proteins in the frontal cerebral cortex and sensory motor cortex after exposure to 350 ppm MC. These findings are consistent with glial cell hypertrophy or glial cell proliferation. Levels of DNA were decreased in the hippocampus of gerbils exposed to both 210 and 350 ppm and in the cerebellar hemispheres after 350 ppm MC. Decreased DNA concentrations indicate decreased cell density resulting from cell death or inhibition of DNA synthesis.

The neurotoxic mechanism of action of MC in gerbil brains is not understood. However, since the metabolism of MC to CO was determined to be saturated at both 210 and 350 ppm (COHb levels were equivalent at both exposure concentrations), the changes in glial cell proteins and DNA concentrations was attributed to either a direct effect of MC or an effect of a metabolite of the GST pathway. Although this study describes biochemical changes in the CNS subsequent to MC exposure, the high mortality of the experimental animals and the lack of MC toxicity data in the gerbil make it difficult to determine the significance of this study for extrapolation to other species. It is also unclear how these effects would relate to CNS depression observed in humans after MC exposure. In addition, continuous exposure to MC has been shown in other experimental situations [Exs. 7–14 and 7–130] to elicit more severe health effects than exposure to similar or higher concentrations when the animals are allowed a recovery period (for example, 6 hours' exposure per day). Exposure on a 6 or 8-hour per day schedule is also more like occupational exposure scenarios and therefore those experiments are generally easier to interpret when assessing risk to workers.

In summary, OSHA believes that the rat and gerbil data described above shows that MC can cause specific changes in the neurological system at a biochemical level. The Agency intends to monitor the scientific literature for additional developments on these effects to determine if these types of effects have implications for human CNS risks.

b. Human studies. The CNS depressant effects of MC have been well described in the literature [Exs. 7–4, 7–153, 7–154, 7–160, 7–175, 7–182, 7–183, 7–184]. MC causes CNS depression which is characterized by tiredness, difficulty in maintaining concentration, decreased task vigilance, dizziness, headaches, and, at high concentrations, loss of consciousness and death. Accidental human overexposures to MC [Exs. 7–18, 7–19] (for example, at concentrations greater than 10,000 ppm) have resulted in narcosis and death. CNS depression has been described after humans were exposed to experimental MC concentrations as low as 200 ppm [Ex. 7–175] and occupational concentrations as low as 175 ppm [Ex. 7–153].

i. Experimental studies. CNS depression was detected in human subjects exposed to MC at concentrations as low as 200 ppm for 4 hours or 300 ppm for 1.5 hours [Exs. 7–4, 7–160, 7–175, 7–182 and 7–184]. In these experiments, which measured subtle CNS depression (such as dual task performance and visual evoked response), it was not possible to determine a no observed effect level (NOEL), because the lowest experimental concentration used (200 ppm) elicited CNS effects. Since a NOEL was not determined for the CNS effects of MC, those effects may occur at lower exposures or after exposure for shorter durations.

The HSIA questioned whether bias was introduced into the results of these studies by inadequate procedures to establish a "double blind." This criticism raises a legitimate concern about the validity of the study. However, since Putz et al. did not describe the blinding procedures used in their experiments, the Agency concludes that there is not enough evidence publicly available to make the conclusion that the study is biased. OSHA believes that these studies were well conducted and is relying on the quality of the studies overall as evidence of the validity of the results. Absent evidence demonstrating the inadequacy of the blinding procedures, OSHA has determined that these studies show that MC can cause mild CNS depression in humans exposed at concentrations as low as 200 ppm.

NIOSH expressed concern regarding the potential for neurobehavioral impairment (expressed as CNS depression) at lower exposures and shorter durations, particularly in relation to the setting of a STEL for MC [Exs. 23–18 and 94]. In order to assess the potential impact of the CNS effects of MC, NIOSH looked at data gathered from several studies and compared breath concentrations of MC (as a surrogate for brain tissue MC concentrations) at different ambient exposure levels with the CNS depression described by Putz et al. [Ex. 7–175]. NIOSH concluded that:

> At the proposed STEL of 125 ppm, increased uptake of MC in active workers may place them in the breath concentration range associated with mild neurobehavioral impairment. Although there are insufficient data to draw firm conclusions, extrapolation from existing studies suggests that the proposed STEL of 125 ppm may not fully protect physically active workers from CNS impairment. Therefore, a lower STEL should be considered, if feasible.

In response to concerns raised by NIOSH, the HSIA [Ex. 105] noted that NIOSH's analysis of breath MC concentration versus neurobehavioral impairment "seemed highly speculative." HSIA emphasized that the exposures which produced the reported neurobehavioral effects were observed only after 2 to 4 hours of exposure and that the effects were observed only when difficult tasks were measured.

To support their position, the HSIA asked Mr. Richard Reitz to use a PBPK model to estimate the concentration of MC in brain tissue. This analysis [Ex. 105] indicated that at exposures of 200 ppm for 15 minutes with persons exercising at 50 watts, the brain concentration of MC would be predicted to be similar to that observed in the Putz et al. study for subjects engaged in "light activity" for 2 hours at 200 ppm MC, which did not produce measurable CNS depression. (Putz et al. did not detect CNS depression in subjects exposed to 200 ppm for 2 hours). The model also predicted that 15-minute exposures to 125 ppm while the subject was exercising at 50 watts would produce brain MC concentrations substantially less than that predicted for the 4 hour exposure to 200 ppm MC.

OSHA considered the PBPK analysis presented by the HSIA, but was concerned that there has been no experimental validation of the predicted brain MC concentrations or any evidence as to what MC concentration would produce detectable CNS depression. OSHA believes the primary value of both the NIOSH and HSIA analyses is in demonstrating the relative effect that exercise and duration of exposure is likely to have on brain (or breath) concentrations of MC. The PBPK analysis clearly demonstrates that increasing exercise level increases brain concentration of MC, which is consistent with the detected CNS depression. Workers engaged in strenuous activity while exposed to MC should take special precautions, such as frequent breaks in fresh air, especially if dizziness or lightheadedness occurs.

Although OSHA found the PBPK model to be useful for demonstrating the interaction between exercise and brain concentration of MC, the Agency did not use the model quantitatively (for example, in determining the STEL). OSHA believes that the data suggest that there may be CNS effects at levels below those tested. There are no studies which directly address whether there are CNS effects after exposure to STEL concentrations of MC. To the extent that these effects occur, the STEL would not be protective. Mild and reversible CNS depression was detected at 200 ppm for 4 hours and 300 ppm for 1.5 hours. The Agency shares NIOSH's concern, based on extrapolation of breath MC concentrations, that the proposed STEL may not be adequately protective for physically-active workers.

OSHA concludes that there are clearly sufficient data to determine that a 125 ppm 15-minute STEL is needed to prevent a significant risk of material impairment to the CNS. Impairment of the CNS would also increase the risk from accidents. Measured data show risks at 200 ppm for four hours of exposure. A lower level at shorter duration is needed to avoid that risk. NIOSH's calculations show that for active workers a level lower than 125 ppm may be needed. However, because of feasibility concerns, which would be greater at lower levels and the suggestion that short duration of exposure (i.e., 15-minutes) may mitigate the effects, OSHA is retaining the proposed level, but will carefully monitor and follow up data to determine if this level eliminates significant risk.

ii. Occupational exposure studies. In the NPRM, OSHA summarized studies which it believed described a neuropathy associated with chronic occupational exposure to solvents. Weiss [Ex. 7–196] described the case of a 39-year old chemist who worked for 5 years with airborne concentrations of MC as high as 660 ppm to 3600 ppm in a room with poor ventilation. After 3 years of exposure, the worker developed neurological symptoms, characterized by restlessness, palpitations, forgetfulness, poor concentration, sleep disorders, and finally, acoustical delusions and optical hallucinations. No hepatic damage or cardiac toxicity was found. At the first appearance of symptoms, cessation of exposure produced an immediate cessation of symptoms. Later, longer and longer periods were required after termination of exposure in order to alleviate the

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symptoms. The increasing persistence of symptoms is consistent with a diagnosis of toxic encephalosis.

Hanke et al. [Ex. 7–195] examined 32 floor tile setters who were exposed primarily to MC at concentrations from 400 to 5300 ppm for an average tenure of 7.7 years. Clinical examination of 14 of the workers who had neurological symptoms (headache, vertigo, sleep disturbance, digestive complaints and lapses in concentration and memory) revealed changes in the EEG patterns of the exposed workers which persisted over a weekend pause in exposure. These EEG changes were characteristic of a toxic encephalosis produced by chronic intoxication with a halogenated solvent (MC). The persistence of the EEG changes over the weekend break indicated a prolonged effect of MC exposure on EEG patterns. (Additional changes in the EEG found during exposure could be attributed to an acute effect of MC). Although these studies represent a small number of cases with very high chronic exposures, the evidence is suggestive of a relationship between chronic MC exposure and toxic encephalosis.

In a case study report, Barrowcliff et al. [Ex. 7–123] attributed cerebral damage in a case study to CO poisoning caused by exposure to MC. Axelson [Ex. 7–150] has described an increased number of neuropsychiatric disorders among occupations with high solvent exposures.

In the NPRM, OSHA expressed the opinion that these studies, taken together, "provide suggestive evidence of a permanent toxicity [different from the observed reversible CNS depression] which may be the result of chronic exposure to MC." NIOSH stated that this assessment was too speculative and stated,

> in the Hanke study, MC was apparently only one component of a solvent mixture and may not have been the only neurotoxic agent* * * In addition, the observation interval of 2.5 days was not long enough to provide convincing evidence of irreversible effect, regardless of the active agent.

Upon reexamination of these studies, OSHA agrees with NIOSH [Ex. 19–46] that although a prolonged effect (over a weekend break in exposure) of MC on EEG patterns has been demonstrated, these studies do not support a determination that MC exposure is associated with irreversible brain damage in humans.

OSHA reviewed several other studies of occupational exposure to MC for evidence of CNS effects of MC. The first study was provided as an English translation of a Czechoslovakian paper by Kuzelova et al. [Ex. 7–26]. These investigators examined workers in a film production plant who were exposed to MC concentrations from 29 to 4899 ppm. Several workers suffered frank MC intoxication and many workers showed signs of MC-induced CNS depression. Toxicity associated with chronic MC exposure was observed in workers exposed to MC for up to two years, but the authors recommended continuing studies of the long-term health effects.

OSHA believes that this study shows CNS depression in workers exposed to MC. The Agency agrees with the authors that this study was not sufficient to adequately characterize the long-term CNS health effects that may be induced by MC exposure.

Cherry et al. [Ex. 7–154] studied the effects of occupational exposure to MC at 28 to 175 ppm in two exposed populations. In a 1981 study, the authors found a marginal increase in self-reported neurological symptoms among exposed workers. This increase disappeared when an appropriate reference group was used for comparison. However, in a 1983 investigation, Cherry [Ex. 7–153] showed statistically significant increases in tiredness and deficits in reaction time and digit symbol substitution which correlated with MC in blood. Ambient MC exposures for this population ranged from 28 to 175 ppm for the full shift. This study demonstrated CNS effects due to occupational MC exposures below 200 ppm (the lowest dose which was administered in the experimental studies).

The HSIA [Ex. 105, p. 34] commented as follows:

> Decades of experience with worker populations exposed even at levels up to the current 500 ppm TWA have provided no evidence that such workers have higher rates of accidents or other signs of significant neurobehavioral impairment.

To the contrary, OSHA believes that the occupational studies discussed above demonstrate that MC has an effect on the CNS at occupational exposure levels as low as 175 ppm.

The Agency believes that the 1983 study by Cherry shows that occupational exposure to MC concentrations below the former 8-hour TWA PEL of 500 ppm can produce detectable CNS effects. Although the 1981 study, which relied on self-report of neurological symptoms, did not demonstrate a CNS effect, the 1983 study examined more objective measures of CNS depression and correlated the observed effects with a direct measure of MC exposure. OSHA believes that this study demonstrates that, although the CNS depression may be mild, it is demonstrable in occupational settings and at concentrations in the range of the STEL (although the exposures in this study were over an 8-hour work day). As described above, OSHA is sufficiently concerned about the potential for health effects at concentrations below the STEL of 125 ppm that it will continue to gather information and revisit this issue, if warranted.

2. Cardiac Toxicity

As described in the section on the metabolism of MC, MC is metabolized *in vivo* (in animals and humans) to CO and CO_2. Cardiovascular stress has been observed after exposure to CO, so it is reasonable to suspect that similar health effects would be observed after exposure to MC (and metabolism to CO) [Ex. 7–73, 4–33]. Carbon monoxide successfully competes with oxygen and blocks the oxygen binding site on hemoglobin, producing carboxyhemoglobin (COHb) and reducing delivery of oxygen to the tissues. This reduces the oxygen supply to the heart itself, which can result in myocardial infarction (heart attack) [Ex. 4–33].

Generally, humans have a baseline level of COHb of less than 1% COHb due to the endogenous production of CO from normal metabolic processes. The measured level of COHb in the general non-smoking population is from 1% to 3% because of direct exposure to CO from combustion sources such as automobiles, etc. In smokers, COHb generally ranges from 2% to 10% because of the additional CO exposure during smoking. CO generated from exposure to MC would be additive to the COHb burden already experienced by an individual from direct exposure to CO. The cardiac health effects anticipated from exposure to MC itself or CO as the result of metabolism of MC are described below.

a. Animal studies. There is no evidence from animal studies in the MC rulemaking record that MC has a direct toxic effect on cardiac tissue. After lethal doses of MC, death has been primarily attributed to CNS and respiratory depression [Exs. 7–27, 7–28]. Also, chronic studies (in which COHb levels have been maintained at 10% and higher) [Exs. 7–3, 7–8, 7–14, 7–130, 7–151] have not shown direct cardiotoxicity.

Chlorinated solvents have been shown to sensitize the cardiac tissue to epinephrine- induced fatal cardiac arrhythmias [Ex. 7–226]. However, MC is less effective in sensitizing cardiac

tissue than other chlorinated analogues. MC caused sensitization of cardiac tissues only at doses well above doses which produce a narcotic effect. This finding indicates that compliance with an 8-hour TWA of 25 ppm MC would likely be sufficient to protect against such sensitization.

b. Human studies. The metabolism of MC to CO and measurement of COHb in human subjects exposed to MC were described in detail in the NPRM. In summary, it was found that exercising increased MC uptake and, subsequently, increased blood COHb levels compared to that of sedentary individuals [Ex. 7–222]. In addition, COHb levels due to smoking were found to be additive to the COHb produced by MC metabolism. Taken together, these results suggested that smokers or individuals engaged in physical exertion (as in a workplace) may be at increased risk from CO-induced toxicity from MC exposure. This risk may be especially elevated in individuals with silent or symptomatic cardiac disease who may be susceptible to very small increases in COHb because of an already impaired blood supply to the heart. Many American workers have silent or symptomatic heart disease. This increased OSHA's concern for the potential cardiac effects of MC and its metabolites.

Elevated COHb has been measured in humans experimentally and occupationally exposed to MC [Exs. 7–4, 7–5–R0327, 7–102, 7–115, 7–157, 7–159, 7–169, 7–174, 7–176]. The effects of elevated COHb are primarily increased risk of myocardial infarction, especially in susceptible individuals. Atkins and Baker [Ex. 7–198] described two cases of myocardial infarction in workers subsequent to CO exposure. COHb was measured at 30% and 24% in these individuals, which is much higher than normal general population levels of COHb. Humans exposed to MC would not be expected to experience COHb at those levels unless the exposure to MC was extremely high (greater than 500 ppm).

In a laboratory study of humans with coronary artery disease, subjects were exposed to CO and observed for cardiac health effects during exercise. In subjects with 3 to 10% COHb, decreased exercise tolerance and increased anginal pain were observed [Ex. 7–198]. In an epidemiological study submitted to OSHA by NIOSH during the MC public hearings, the investigators observed a statistically significant excess of ischemic heart disease mortality among tunnel workers when compared with rates for the New York City population [Ex. 23–18]. This increase in mortality is supported by clinical findings. Allred et al. [Ex. 23–18] observed that elevation of COHb from 0.6% to as low as 2% decreased time to myocardial ischemia and anginal pain during laboratory tests. OSHA believes that these studies, taken together, suggest that small increases in COHb can adversely affect persons with compromised cardiac health. The results observed in the tunnel workers are particularly relevant because they show an increased risk in a working population. NIOSH used these studies to support its recommendation that the COHb effects of MC be carefully considered in the MC rulemaking [Tr. 881–2, 9/21/92]. OSHA agreed with NIOSH that the effects observed at low levels of COHb are cause for concern about the risks of MC metabolism to CO.

In the NPRM, OSHA also reviewed case reports in which individuals exposed to MC experienced myocardial infarctions [Exs. 7–102, 7–73]. These case reports suggested that exposure to MC increased cardiac stress, although it was not determined whether this was a direct effect of MC or as the result of metabolism of MC to CO. OSHA believes that these case studies support the hypothesis that CO generated through metabolism of MC would have the same adverse health effects as direct CO exposure.

Two epidemiological studies (in film coating and fiber production workers) [Exs. 7–75, 7–76, 7–122, 7–163] examined cardiac mortality due to occupational exposure to MC. Ott [Ex. 7–76] compared mortality from a plant in South Carolina that used MC to a reference plant in Virginia. An increased risk ratio for ischemic heart disease (risk ratio = 3.1) was observed in the MC-exposed workers compared to the reference population.

This approach controls for the healthy worker effect by comparing two working populations, and excess risk was demonstrated. The authors believed that the apparent excess risk was due to geographical variability in the incidence of ischemic heart disease. The population from the reference plant was found to have an unusually low death rate due to ischemic heart disease in comparison to the general population rate.

In an update of the study [Ex. 7–75], the ischemic heart disease rate in the exposed population was compared to that in the surrounding York County, S.C. population instead of a reference plant. No difference in ischemic heart disease rates was detected between exposed workers and controls, although this approach would not control for the healthy worker effect. The SMR was 0.94 (32 observed, 34.2 expected).

NIOSH disagreed with the conclusion of the authors of this study, and indicated that the studies summarized above would be cause for concern regarding the cardiac effects of MC. NIOSH suggested that the raw data from the epidemiological studies of cellulose acetate film production workers and the studies of workers in cellulose acetate fiber manufacture be reviewed for cardiac mortality occurring during the period of occupational exposure for the workers. OSHA is concerned about the potential CO effects from metabolism of MC and will continue to monitor the scientific literature on this topic. However, the Agency is setting the exposure limits based on cancer and CNS effects and has not reached final conclusions on this issue.

3. Hepatic Toxicity

Chlorinated hydrocarbons as a class, such as carbon tetrachloride and chloroform, are toxic to the liver. In general, chlorinated hydrocarbons cause cytotoxicity (cell death) in rodent livers. Therefore, there was suspicion that the liver would also be a target organ for MC (a chlorinated hydrocarbon) toxicity. OSHA evaluated the available literature on the hepatic effects of MC in animal and human studies.

a. Animal studies. Studies of the effects of MC exposure on the rodent liver have not demonstrated significant acute liver toxicity, even at lethal or near-lethal doses. As summarized in the NPRM, Kutob et al. [Ex. 7–27] and Klaassen et al. [Ex. 7–28] conducted experiments on halogenated methanes and hepatotoxicity. MC was determined to be the least hepatotoxic of the halogenated methanes examined. The only injury described was a mild inflammatory response associated with lethal MC concentrations. These studies demonstrated that liver was not the primary target organ for the acute toxicity of MC.

Weinstein et al. [Ex. 7–181] examined the hepatic effects of MC on female mice who were continuously exposed for up to 7 days to MC concentrations of up to 5000 ppm. Mild, nonlethal injury to the livers was noted, characterized by balloon degeneration of the rough endoplasmic reticulum (RER), transient severe triglyceride accumulation (fatty liver), partial inhibition of protein synthesis and breakdown of polysomes into individual ribosomes. The injury is similar to a mild form of carbon tetrachloride toxicity (a structural analog of MC) and suggests that although the toxicity due to MC is not as severe as that produced by carbon tetrachloride, the mechanism of toxicity may be similar.

In subchronic experiments more severe effects were observed in the liver after continuous exposure. MacEwen et al. [Ex. 7–14] studied the effects of continuous exposure of mice, rats, dogs and rhesus monkeys to 1000 and 5000 ppm MC for up to 14 weeks. Fatty liver, icterus, elevated SGPT and ICDH were reported in dogs at both concentrations. These effects appeared at 6–7 weeks of exposure to 1000 ppm MC and at 3 weeks of exposure to 5000 ppm. Monkeys were less sensitive to hepatic injury, and showed no changes in liver enzymes and only mild to moderate liver changes at 5000 ppm MC. No liver alterations were detectable in monkeys exposed to 1000 ppm MC. Mice and rats developed liver toxicity at both exposure levels, characterized by increased hemosiderin pigment, cytoplasmic vacuolization, nuclear degeneration and changes in cellular organization.

Hepatic effects associated with chronic MC exposure were observed in lifetime cancer bioassays in three rodent species: rats, mice and hamsters. In studies conducted by the NTP and Dow Chemical Co., rats were exposed to inhalation concentrations of MC from 50 ppm to 4000 ppm 6 hours per day, 5 days per week [Exs. 7–8, 7–151, 7–173]. Hepatic effects were observed after exposure to MC concentrations as low as 500 ppm. These effects were characterized by increased fatty liver, cytoplasmic vacuolization and an increased number of multinucleated hepatocytes. At higher doses (greater than 1500 ppm), increased numbers of altered foci and hepatocellular necrosis became apparent.

Serota et al. [Ex. 7–180] administered 5 to 250 mg MC/kg body weight to rats in drinking water. Hepatic toxicity similar to that observed in the inhalation studies was reported at doses from 50 to 250 mg/kg.

In mice, the chronic hepatic effects of MC were investigated in two bioassays: NTP [Ex. 7–8] and Serota et al. [Ex. 7–179]. In the NTP study, mice were exposed by inhalation to 2000 or 4000 ppm MC. Cytologic degeneration was observed in both male and female mice and increased incidences of hepatocellular adenomas and carcinomas were found at both concentrations. The carcinogenic effects of MC are described in greater detail above, in the discussion of MC carcinogenicity.

In a drinking water study, Serota et al. found that mice exposed to 50 to 250 mg/kg/d MC had dose-related increases in the fat content of the liver (a sign of liver toxicity). Although some proliferative hepatocellular lesions were identified in this study, they were distributed across all exposure groups. Hepatocellular tumor incidences were not elevated above historical control incidences.

In the hamster, Burek et al. [Ex. 7–151] found minimal treatment-related changes in the livers of the MC-exposed animals after exposure to 500, 1500 or 3500 ppm MC. A dose-related increase in hemosiderin was found in male hamsters at 6 months and at 3500 ppm at 12 months. No other changes in liver physiology were reported.

OSHA believes that these studies demonstrate that the rodent liver is not sensitive to acute affects of MC, but that chronic exposure to MC caused toxic effects in rat and mouse liver and cancer in mouse liver. These studies appear to have been well conducted and the differences in toxicity observed across studies were likely due to differences in dose or route of exposure. The hamsters appeared to be insensitive to liver toxicity. OSHA believes that this is most likely due to inherent species differences in response to toxicants.

b. Human studies. OSHA evaluated epidemiological studies and case reports to determine the extent of hepatic effects detected after exposure of humans to MC. Liver toxicity was measured as alterations in the blood levels of any of several normal liver enzymes in these studies.

i. Epidemiological studies. In a cross-sectional analysis of the health of workers in an acetate fiber production plant in which workers were exposed to 140 to 475 ppm MC, Ott et al. [Ex. 4–33c] reported statistically significant increases in serum bilirubin and alanine aminotransferase (ALT) (also known as serum glutamic pyruvic transaminase (SGPT)) when compared with a reference group of industrial workers. The elevation in bilirubin levels showed a dose-response relationship, but the ALT levels were not associated with MC exposure. The authors felt that the increase in ALT in MC-exposed workers could not be attributed to MC because a dose-response relationship was not demonstrated and, therefore, the increase in ALT between the exposed and reference populations could be disregarded as a sign of liver toxicity. The authors concluded that although bilirubin elevation may be interpreted as a sign of liver toxicity, this interpretation was not supported by alterations in other liver parameters. OSHA feels that ALT cannot be disregarded as unrelated to MC exposure based on the lack of dose response within the exposure group. The high variability of this parameter and the low numbers of individuals within certain exposure subgroups (e.g., 10 men exposed at 280 ppm), make a dose-response relationship more difficult to demonstrate. Any mistake made in the characterization in an exposure group would result in obscuring the dose-response relationship. Although the evidence is not unequivocal, OSHA believes that the elevated bilirubin coupled with the elevated ALT values indicate suggestive evidence of a hepatotoxic response to MC exposure in this worker population.

In an update to the study described above, Cohen et al. [Ex. 7–75] found 4 cases of liver/biliary duct cancer in workers with more than 10 years of exposure to MC and after 20 years from first hire. Further description of this study can be found in the discussion of MC carcinogenicity, above.

In an English translation of a 1968 Czechoslovakian study, Kuzelova et al. [Ex. 7–26] found no liver enzyme abnormalities in workers exposed to MC concentrations from 29 ppm to 4899 ppm for up to two years. In contrast, in an English translation of a German study which focussed on neurological changes due to MC exposure, Hanke et al. [Ex. 7–195] observed pathological liver function tests and hepatomegaly (enlarged liver) in 4 of 14 floor tile setters examined. These workers were chronically exposed to MC at concentrations as high as 400 to 5300 ppm. The average tenure of employment of these workers was 7.7 years. The authors of the Hanke study noted that although MC with its impurities could be responsible for the liver damage, the evidence was not conclusive. OSHA has determined that there is insufficient evidence from the Kuzelova and Hanke studies to conclude that MC causes chronic human hepatotoxic effects.

ii. Case reports. In addition to the cross-sectional analyses of worker morbidity described above [Exs. 4–33c and 7–26], the relationship of MC exposure and hepatotoxicity has been studied by analysis of case reports. Welch [Ex. 7–73] collected 144 case reports of clinical disease reported subsequent to occupational MC exposure. Quantitative exposure estimates for individuals were unreliable, but the presence of MC in the work environment was ascertained for each employee. The most prevalent findings in these case reports were CNS symptoms, upper respiratory syndrome and alterations in liver enzymes. The patterns of alteration in liver enzymes were not consistent among individuals, but may be suggestive of a MC-associated hepatotoxic effect. One case of hepatitis of unknown etiology was identified. The case physician believed

that the hepatitis was secondary to solvent exposure. The solvents to which this employee was exposed included xylene and methylethyl ketone as well as MC. OSHA believes that the confounding solvent exposures in the hepatitis case and the unknown exposure histories of the individuals with altered liver enzymes limit the interpretation of these studies. OSHA has determined that these case reports provide insufficient evidence to conclude that MC was the causative agent in these cases.

Analysis of cases of fatal and near-fatal human exposures [Exs. 7–18, 7–19] indicated no apparent acute alterations of liver function. Acute concentrations of MC which caused narcosis and even death were not associated with changes in liver enzymes.

OSHA concludes that limited evidence supports the hypothesis that MC causes human hepatotoxicity, based on the data in the Ott study. The remaining studies and case reports do not provide clear evidence of a causative role of MC in hepatotoxicity. The Agency has set the exposure limits based on cancer and CNS effects and has not reached final conclusions on this issue.

4. Reproductive Toxicity

There are only limited data available regarding the potential adverse teratogenic or reproductive effects due to MC exposure. Teratogenicity studies have been conducted in rats and mice and limited epidemiology and case reports have been described for humans.

a. Animal studies. A study [Ex. 4–5] using chicken embryos indicated that MC disrupts embryogenesis in a dose-related manner. Since the application of MC to the air space of chicken embryos is not comparable to MC administration to animals with a placenta, the exposure effect seen in the chick embryos can only be considered as suggestive evidence that an effect may also occur in mammalian systems.

The teratogenicity of inhaled MC has also been studied in rats and mice [Exs. 7–20, 7–21, 7–22]. In 1975, Schwetz et al. [Ex. 7–21] conducted a study on Swiss Webster mice. Mice were exposed to 1250 ppm MC for 7 hours/day, on days 6–15 of gestation. On day 18 of gestation, Caesarian sectioning of dams was performed. A statistically significant increase in mean maternal body weight (11–15%) was observed in dams exposed to 1250 ppm MC; however, food consumption was not measured. The only effect on fetal development associated with MC exposure was a statistically significant increase in the number of fetuses which contained a single extra center of ossification in the sternum. The incidence of gross anomalies observed in the MC-exposed fetuses was not significantly different from that in the control litters. Maternal COHb level during exposure reached 12.6%; however, 24 hours after the last exposure, COHb had returned to control levels.

In the same study by Schwetz et al. [Ex. 7–21], Sprague-Dawley rats were exposed to 1250 ppm MC via inhalation for 7 hours daily on days 6–15 of gestation. No MC-associated effects were observed in food consumption or maternal body weight. Among litters from MC-exposed dams, the incidence of lumbar ribs or spurs was significantly decreased when compared to controls, while the incidence of delayed ossification of sternebrae was significantly increased compared to controls. No increased incidence of gross anomalies were observed in the fetuses from exposed rats compared to fetuses from control litters. No MC-associated effects were observed on the average number of implantation sites per litter, litter size, the incidence of fetal resorptions, fetal sex ratios or fetal body measurements, in the 19 litters that were evaluated. As observed in the MC-exposed mice, there was significant elevation of the COHb level in the dams, but the level returned to control values within 24 hours of cessation of exposure.

In 1980, Hardin and Manson [Ex. 7–22] evaluated the effect of MC exposure in Long-Evans rats after inhalation of 4500 ppm for 6 hours/day, 7 days/week prior to and during gestation. Four exposure groups were described. The first group was exposed to MC for 12 to 14 days prior to gestation and during the first 17 days of pregnancy. The second group was exposed to MC only during the 12 to 14 days prior to gestation. The third group was exposed to MC only during the first 17 days of pregnancy. The fourth group (control group) was exposed only to filtered air. The purpose of this study was to test whether MC exposure prior to and/or during gestation was more detrimental to reproductive outcome in female rats than exposure during gestation alone.

In rats exposed to MC during gestation, there were signs of maternal toxicity, characterized by a statistically significant increase in maternal liver weights. The only fetal MC effects observed were statistically significant decreases in mean fetal body weights. No significantly increased incidence of skeletal or soft tissue anomalies was observed in the offspring.

In 1980, Bornschein et al. [Ex. 7–224] tested some of the offspring of the Long-Evans rats from Hardin and Manson's study described above. All four treatment groups were used to assess the postnatal toxicity of MC exposure at 4500 ppm. The general activity measurements of groups of 5-day old pups showed no exposure-related effects. At 10-days of age, however, significant MC-associated effects were observed in both sexes in the general activity test. These effects were still apparent in male rats at 150-days of age. This study showed that maternal exposure to MC prior to and/or during pregnancy altered the manner in which the offspring react and adapt to novel test environments at up to 150-days of age. These effects suggest that MC exposure prior to, or during pregnancy may influence the processes of orientation, reactivity, and/or behavioral habituation. No changes in growth rate, long-term food and water consumption, wheel running activity or avoidance learning were reported.

OSHA concluded from the animal studies that maternal exposure to high concentrations of MC during pregnancy may have some adverse effects on the offspring, in particular with regard to behavioral effects. The Agency has set the exposure limits based on cancer and CNS effects and has not reached final conclusions on this issue.

b. Human studies. Limited data have been collected on the reproductive effects of MC in male workers. In a study reported in the Occupational Safety and Health Reporter [Ex. 7–43], a greater risk of male sterility was found in male workers exposed to MC. In 1988, Kelly [Ex. 7–165] reported 4 cases of oligospermia in MC-exposed workers. This study was described in detail in the NPRM. Although the study provided some evidence of an effect of MC on male fertility, the observations were based on a small number of cases and OSHA believes that more research is necessary before causative conclusions can be drawn about the human male reproductive toxicity of MC.

The reproductive and developmental effects due to MC exposure in female workers have also been studied. According to information reported in an English translation of an abstract of a Russian article by Vozovaya et al. [Ex. 7–16], detectable levels of MC were found in the blood, milk, embryonal, fetal and placental tissues of nursing women exposed to MC in a rubber product plant. No other information was provided in the abstract. In a study by Taskinen et al. [Ex. 7–199], increased rates of spontaneous abortions were observed in female pharmaceutical

workers exposed to MC. Exposure data were not reported in this study and it is unclear what confounding factors or other chemical exposures were present. OSHA believes that more research is necessary in order to evaluate the potential effect of MC on pregnancy outcomes, and so has not reached a conclusion on this issue.

Carbon monoxide has well known adverse reproductive effects in humans. Since MC is metabolized to CO, OSHA was concerned about the adverse reproductive effects of CO as a metabolite of MC. The EPA has reviewed the literature on the effects of maternal CO exposure on the development of the fetus in the Air Quality Criteria for Carbon Monoxide [Ex. 7–201]. Very high maternal CO exposures have resulted in fetal or infant death or severe neurological impairment of the offspring. CO reduces the amount of oxygen available to the tissues. The developing fetus is very sensitive to these effects. According to Fechter et al. [Ex. 7–200], low levels of CO exposure in animals have been shown to adversely affect the fetus, producing CNS damage or reduced fetal growth. These effects suggest that the fetus may be especially sensitive to the toxic effects of MC through its metabolism to CO.

As described above, OSHA is sufficiently concerned about the potential for reproductive health effects of carbon monoxide as a result of MC metabolism that it has decided to continue to gather information and revisit this issue, if warranted.

F. Conclusion

OSHA's determination that MC is a potential occupational carcinogen was based primarily on the positive findings of chronic inhalation bioassays in rodents. MC is carcinogenic to mice of both sexes, producing lung and liver neoplasms. In rats, MC produced dose-related increases in mammary tumors and increases in the number of tumors per tumor-bearing rat. The evidence in rodents is supported by epidemiologic findings from cellulose triacetate fiber production workers and a case-control study of individuals with astrocytic brain cancer. The study of fiber production workers suggests an association between liver and biliary cancer and long term (greater than 10 years) exposure to MC. The case-control study indicates an association between risk of astrocytic brain cancer and occupational exposure to MC. This evidence is further supported by the findings of genotoxic activity of MC in bacterial and mammalian cell systems. OSHA has set the 8-hour TWA PEL of 25 ppm primarily to protect employees from the risk of cancer due to MC exposure in the workplace.

CNS depression has been demonstrated in humans and animals at relatively low inhalation concentrations of MC. The CNS depression observed in those studies was relatively mild, although the effects occurred at concentrations in the range of the STEL of 125 ppm. OSHA believes that the STEL will be protective against CNS depression for most employees exposed to MC most of the time, but the Agency is sufficiently concerned about the potential for CNS health effects at concentrations below the STEL and have decided to continue to gather information and revisit this issue, if warranted.

VI. Quantitative Risk Assessment

Summary

After examining all the available data, both animal and human, and both quantitative and qualitative, OSHA has concluded that MC is a multi-species, multi-site carcinogen in various rodent species, and is likely to be so in humans, and that it most probably acts via one or more genotoxic metabolite(s). The evidence for this conclusion is quite strong: there exist several positive bioassays with low background incidence and dose-related increases; there is an unusually large amount of mechanistic information; and there are several positive epidemiological studies and no negative epidemioiogical studies of sufficient power to rule out the animal-based potency estimates.

Furthermore, OSHA has conducted a quantitative risk assessment based on the highest-quality animal tumor data, constructing a state-of-the-art physiologically-based pharmacokinetic (PBPK) model incorporating rodent and human metabolic information. That analysis shows a final estimate of risk of 3.62 deaths per 1000 workers occupationally exposed to 25 ppm MC for a working lifetime. [An alternative analysis, which incorporated all of the data used in the main analysis plus the assumption that human enzymes are even less active to MC (as compared to mice) than that predicted by the main analysis, gave a risk estimate of 1.23 deaths per 1000]. Both estimates are clearly well above any plausible upper boundary of the "significant risk" range defined by the Supreme Court, used by OSHA in its prior rulemakings, and reported in the scientific/economic literature on risk. The estimated risk at the current PEL of 500 ppm is 126 excess cancers per 1000 workers; clearly, the 25 ppm standard will effect a substantial reduction in a very high risk. The Final Economic Analysis shows that the average risk at current exposure levels is approximately 7.6 deaths per 1000 and ranges up to 126 per 1000; at post-regulatory exposure levels (which account for the fact that the action level will encourage some employers, where feasible, to lower exposures below 25 ppm), average risk is estimated to be 1.7 deaths per 1000 (and nowhere higher than 3.62 per 1000 risk at the new PEL of 25 ppm)—also a substantial reduction of a highly significant risk.

Prior to the October 1995 record reopening, there was strong evidence to support the determination that MC is a human carcinogen, using well-established risk assessment models based on substantial biologically-based evidence and theories: there were two multi-site positive bioassays with dose-response trends and low background, and suggestive epidemiology with no clearly conflicting epidemiology. The only question was whether to use an administered-dose scaling or a PBPK model.

Data submitted in the reopening of the record in late 1995 shed light both on the hazard identification and the quantitative risk assessment. Studies of isoenzyme activity and intracellular distribution across species were interpreted by the Halogenated Solvents Industry Alliance (HSIA) to suggest that MC is not a human carcinogen. OSHA has concluded that the HSIA interpretation of the studies is not supported by the evidence. There are numerous methodological problems with the studies: for example, in the experiment in which Graves et al. examined MC-induced mutations [Ex. 123], OSHA agrees with Dr. Douglas Bell [Ex. 126–26] that insufficient numbers of doses and mutants were examined to reach any conclusions whatsoever regarding differences in mutation spectra between chemicals.

More importantly, OSHA and most commenters agreed that the data showed a quantitative—and quantifiable—difference between mice and humans, not an infinite, qualitative one. In other words, there is substantial evidence that humans and mice metabolize MC similarly, only at different rates. HSIA's qualitative argument rests on two questionable assumptions, both of which are contradicted by other data: first, that the DNA single strand break assay is infinitely sensitive—but the investigators do not even know if it is sensitive enough to show the 7-fold difference in enzyme activity between mice and humans that OSHA's main

PBPK analysis uses; and second, that the human isoenzyme most active against MC, although clearly present in human cells, is located in a different part of the cell. This interpretation: 1) contradicts some basic beliefs of comparative physiology (Why would the cell structures of humans and mice be so fundamentally different?); 2) would require OSHA to do a "subcellular PBPK analysis" to predict risk—no one has ever developed, let alone parameterized and validated, such a model; and 3) contradicts other data on activation by mouse cytosolic preparations—MC has been shown to have enhanced mutagenicity in bacterial and mammalian cell preparations when mouse cytosolic preparations were used to metabolize the MC. This requires metabolism by cytoplasmic (not nuclear) GST and for the metabolites to be stable enough to cross membranes and interact with DNA.

Therefore, the new studies do not cast doubt on the MC hazard identification—in fact, they should probably increase the level of concern because it is now more clear that MC is likely to act by a genotoxic mechanism [animal tests are most relevant to humans when clear genotoxic agents are involved] and that that pathway exists in humans, and may be concentrated in cells of concern in human cancers, such as the bile duct epithelium. OSHA notes that an epidemiologic study of cellulose triacetate fiber workers has shown a statistically significant increase in biliary duct tumors [Ex. 7–260].

On the other hand, the new data did reinforce OSHA's decision to proceed with a PBPK-based risk assessment and helped OSHA to incorporate the best available scientific data into a PBPK model. Here OSHA presents two PBPK-based risk analyses, both of which represent substantial refinements over the applied-dose risk assessment and over previous PBPK analyses. OSHA's final risk assessment incorporates all reliable data—OSHA's alternative analysis, in addition to the data in the final risk assessment, also incorporates some suggestive/sparse data found in new studies. As stated above, both analyses estimate risks at 25 ppm well in excess of any possible boundary line between significant and insignificant risk.

Both of OSHA's PBPK analyses made two major advances: 1) the use of non-independent Monte Carlo simulation—Monte Carlo simulation is a well-developed computational technique that allows the modeler to take estimates of uncertainty in each of the many variables in a complex model and generate a quantitative estimate of the total uncertainty in the result. Others have used Monte Carlo simulation in PBPK modeling, but OSHA added information on the covariance structure of all the parameters, so that the uncertainty estimate would not be biased (exaggerated, probably) by incorrectly assuming that all the variables could simultaneously be at their lowest or highest values; and 2) the use of Bayesian analysis—this allows uncertainty distributions to be better estimated (narrowed) by cross-checking them against other independently-collected data from laboratory experiments, rather than simply guessing how big the uncertainties are and not refining the estimates as the model runs.

Both these advances enabled OSHA to strike a balance between two unsatisfactory extremes—a) the extreme overconfidence of using estimates for each variable that did not allow for any uncertainty—or b) the extreme "underconfidence" of assuming that all uncertainties are independent of each other and of other laboratory data. The result is an analysis that tells what science knows and does not know about the relationship between ambient concentrations and the putative relevant dose measure (concentration of GST metabolites in the target organ) in mice and humans.

Again, OSHA's final risk assessment regards the very limited human data base on GST–0 activity [a total of 39 liver samples and 5 lung samples] as useful, but insufficient to discard the traditional "allometric" assumption (the well-validated assumption that, as a general rule, metabolic parameters scale proportional to a function of the animal's body weight). OSHA's alternative analysis accepts the limited human data at face value to extrapolate without using allometry. OSHA has concluded that the main analysis is better supported by available evidence than is the alternative analysis, but both yield significant risks. An important caveat is that both models are strictly applicable to humans who are physiologically similar to the six subjects analyzed by Dow (see the discussion later in this document for a fuller explanation). Since the population of 200,000 workers will be much more heterogeneous than those six subjects, we regard these estimates as "overconfident"—some workers exposed at 25 ppm will have higher risks than 3.6 per 1000 (although some may have lower risks as well).

Introduction

OSHA performs quantitative risk assessment, when information permits, to help determine the Permissible Exposure Limit (PEL) for toxic substances (contingent on the feasibility determination). The first step of assessing risks to human health is hazard identification. This step results in the determination that an exposure to a toxic substance causes, is likely to cause, or is unlikely or unable to cause, one or more specific adverse health effect(s) in workers. This identification also shows which studies have data that would allow a quantitative estimation of risk.

If studies are available that contain information regarding the amount of exposure and disease, mathematical modeling allows extrapolation of the information in the study to conditions of concern in the workplace. OSHA uses these risk estimates to determine whether exposure results in significant risk, and whether the standards considered by OSHA substantially reduce the risk.

This section describes the record evidence received during the public rulemaking concerning OSHA's quantitative risk assessment and the reasons OSHA has maintained or modified its opinion from the proposal. In the following sections, the evidence supporting and casting doubt on the hypothesis that MC is a probable carcinogen (the "Hazard Identification" issues) is discussed first. Then the results of OSHA's quantitative risk assessments, conducted to estimate the carcinogenic potency of MC, are discussed.

A. Methylene Chloride Hazard Identification

Animal and human evidence, summarized in the health effects section, indicates that MC can cause cancer, cardiac effects, central nervous system damage and other health effects. As described in the NPRM, OSHA's preliminary quantitative risk assessment was based on cancer and relied on rodent bioassay data for quantitation of risks. In 1986, the National Toxicology Program (NTP) concluded that the mouse bioassay data provided "clear evidence" of carcinogenesis in male and female mice, based on the liver and lung tumors. The NTP also determined that the rat mammary tumors observed in the bioassay provided clear evidence of carcinogenesis in female rats and some evidence of carcinogenesis in male rats. This evidence of cancer in multiple species and in both sexes underlies the concern for MC as a potential human carcinogen. On the basis of these studies, IARC has classified MC as a 2B carcinogen, the EPA has classified MC as a B2 carcinogen and NIOSH has

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classified MC as a potential occupational carcinogen. OSHA concurred with these assessments.

Animal bioassays are a critical tool in determining the potential hazard of a substance for humans. Virtually all of the toxic substances that have been demonstrated to be carcinogenic in humans are also carcinogenic in laboratory animals. Although it is possible that a substance may be carcinogenic in a laboratory species, but not in humans, it is reasonable to suspect that substances that cause cancer in multiple animal species and at multiple target organ sites would be carcinogenic in humans. Therefore, in the absence of sufficiently powerful negative epidemiological studies or mechanistic studies demonstrating that the purported carcinogenic mechanism of action of the substance is irrelevant to humans, OSHA and other federal agencies rely on well-conducted, high-quality bioassays as the primary basis for their hazard identification and risk assessment. This is the case with MC.

During this rulemaking, some commenters have supported and others have questioned the hazard identification of MC as a potential human carcinogen. Most recently, some commenters contested the relevance of the mouse bioassay data for extrapolating to human cancer risks. Although these issues were raised by some rulemaking participants earlier in the rulemaking process, they were most thoroughly explored in connection with the information received by the Agency in late 1995. On October 24, 1995, OSHA reopened the MC record to receive comments on several studies submitted to the Agency by the Halogenated Solvents Industry Alliance (HSIA) pertaining to the mechanism of action of MC carcinogenesis in mice, and the implications of these studies for estimating human risks. The record closed on November 29, 1995, but was reopened in order to give the public additional opportunity to comment on the submitted studies. The record then closed on December 29, 1995. Thirty-seven comments were received on this topic and reviewed as part of this rulemaking.

The papers submitted by the HSIA consisted of a cover letter [Ex. 117], an overview of the sponsored research [Ex. 118] and seven research papers on the mechanism of MC carcinogenesis [Ex. 119–124A]. The hypothesis under investigation in these seven studies was that the pathways of MC metabolism and the mechanism of carcinogenesis in the mouse represented a unique situation that would not take place in humans, making the mouse unsuitable as the basis for extrapolating risks of cancer to humans. The specific studies are described briefly here and the comments received during the reopening of the rulemaking record are discussed in detail below.

1. Summary of Studies Submitted by HSIA

Exhibit 119 "Methylene Chloride: an inhalation study to investigate toxicity in the mouse lung using morphological, biochemical and Clara cell culture techniques," J.R. Foster, T. Green, L.L. Smith, S. Tittensor, and I. Wyatt, Toxicology 91 (1994) 221–234.

This study investigated the potential role of MC as a mouse lung carcinogen via non-genotoxic mechanisms and the Clara cell as the cell of origin in mouse lung cancer. The hypothesis was that MC acts specifically to produce toxicity (vacuolation) in Clara cells which leads to cell proliferation and production of mouse lung tumors. The authors investigated the toxicity of MC in bronchiolar Clara cells by measuring the production of vacuoles after exposure to MC. The investigators also measured DNA synthesis in Clara cells isolated from mice exposed to MC as a measure of cell proliferation.

The authors observed a transient vacuolation of bronchiolar Clara cells in mice exposed to 2000 and 4000 ppm MC, but not in mice exposed to 0, 125, 250, 500 or 1000 ppm MC. When the mixed function oxidase (MFO) pathway was inhibited, the bronchiolar cell vacuolation observed after exposure to 2000 and 4000 ppm MC was reduced. Inhibition of the glutathione S-transferase pathway (GST) had no effect on Clara cell vacuolation. The researchers also found that exposure of mice to 1000 ppm MC or greater for 6 hours induced an increase in DNA synthesis in Clara cells cultured *in vitro* from exposed animals.

Clara cells are present in mice, rats and humans, but appear to be more abundant in mice than other species. Clara cells contain enzymes for both the MFO and glutathione S-transferase (GST) pathways of MC metabolism. According to the authors, the results of this study suggest that metabolism of MC via the MFO pathway induces a transient toxicity in Clara cells and a transient increase in DNA synthesis.

Exhibit 120 "Methylene chloride-induced DNA damage: an interspecies comparison," R.J. Graves, C. Coutts and T. Green, Carcinogenesis, vol. 16 no. 8 pp. 1919–1926, 1995.

This study investigated the role of MC as a mouse carcinogen via a genotoxic mechanism of action. The hypothesis under investigation was that MC is metabolized to a genotoxic carcinogen via the GST pathway to different extents in different species and that expression of this genotoxicity correlates with risk of developing cancer across species. The authors used production of single strand (ss) DNA breaks as a measure of genotoxicity. The researchers measured DNA ss breaks in lung and liver cells from mouse, rat, hamster and humans. They observed increased DNA ss breaks in mouse liver cells, after *in vivo* exposure to 4000–8000 ppm MC for 6 hr and in mouse lung cells after exposure to 2000–6000 ppm MC. Depletion of glutathione in the liver (after administration of buthionine sulfoximine) reduced the amount of ss breaks observed. No increase in ss breaks was observed in Clara cells isolated from mice exposed to MC *in vivo*. However, in experiments on isolated mouse Clara cells, the authors observed increased DNA ss breaks in cells exposed to concentrations of MC of 5 mM and above.

No increases in ss breaks above control levels were detected in rat livers after exposure to 4000 ppm for 6 hr or in rat lungs after exposure to 4000 ppm for 3 hr. Increases in ss breaks were also not detected in hamster and human liver cells after exposure to MC *in vitro* at concentrations up to 90 and 120 mM.

In Chinese hamster ovary (CHO) cells, MC plus mouse liver cytosol (which contains the GST enzymes) also induced ss breaks, while incubation of CHO cells with MC in the presence of mouse liver microsomes (which contain the MFO enzymes) did not increase ss breaks.

The results suggest that mouse liver and lung cells are more susceptible to MC-induced ss breaks than cells from rats, hamsters or humans. Assuming that ss breaks are a relevant surrogate for carcinogenicity, the authors infer from this study that humans, rats and hamsters are insensitive to MC-induced liver cancer, because those species lack the high level of GST metabolic activity to MC found in the mouse liver cell and lung Clara cell.

Exhibit 121 "Isolation of two mouse theta glutathione S-transferases active with methylene chloride," G.W. Mainwaring, J. Nash and T. Green, Zeneca Central Toxicology Laboratory, 1995.

This study was conducted in order to characterize the mouse GST isozyme(s) responsible for MC metabolism. The results of this work could be used to explore the hypothesis that a particular GST isozyme was responsible for metabolizing MC to the carcinogenic metabolite and that there may be different concentrations of this enzyme across species.

The researchers used a variety of chromatography methods to isolate two mouse glutathione S-transferases (MT–1 and MT–2, also known as T1–1* and T2–2*, respectively) which metabolize MC, comparing the observed enzyme activity with that described in rats. Rats were found previously to have two GST isomers in the theta class (GST 5–5 and GST 12–12) which metabolized MC. The mouse MT–1 and MT–2 enzymes were found to be closely related to rat GST 5–5 and 12–12, respectively, and the specific activity of mouse MT–1 was found to be similar to rat GST 5–5. GST 12–12 and MT–2 were found to be extremely labile during purification, and so the specific activities of those isozymes have not been measured.

The results of this study suggest that the mouse and rat contain GST theta enzymes similar in amino acid sequence and in specific activity (GST 5–5 and MT–1). The authors postulate that the greater conjugating activity seen in mice in other studies is "probably due to a difference in expression of the enzyme or to a significant contribution from MT–2" [Ex. 121].

Exhibit 122 "Mouse Liver glutathione S-Transferase Mediated Metabolism of Methylene Chloride to a Mutagen in the CHO/HPRT Assay," R.J. Graves and T. Green, Zeneca Central Toxicology Laboratory, 1995.

This study investigated the mutagenicity of MC as a potential carcinogenic mechanism of action. The purposes of this study were to clarify the ability of MC to act as a mutagen, because studies in mammalian systems have yielded mixed results regarding the mutagenicity of MC, and to more fully characterize the metabolite purportedly responsible for MC mutagenicity by comparing the results to formaldehyde (one metabolite of MC by the GST pathway). Mutagenicity was measured by assaying CHO cells *in vitro* for mutations at the HPRT locus of DNA. Ss DNA breaks were also monitored. Cells were exposed in culture to MC mouse liver cytosol metabolites (which include metabolic enzymes for the GST but not the MFO pathway), formaldehyde (one of the MC GST metabolites) or 1,2-dibromoethane (1,2-DBE) (a reference genotoxin).

Using standard techniques, MC GST metabolites were shown to be weakly mutagenic using the CHO/HPRT assay. Formaldehyde was also determined to be weakly mutagenic in this assay, but the effect was not as great as with MC GST metabolites. 1,2-DBE, as expected, showed a potent mutagenic response. The mutagenicity of MC GST metabolites and formaldehyde was increased when cell density was increased, cells were exposed in suspension rather than as attached cultures and cytosol concentration was optimized.

MC mouse liver cytosol metabolites were observed to increase ss DNA breaks in CHO cells exposed in suspension, but caused only marginal increases in DNA-protein cross-links. In contrast, the researchers found that formaldehyde induced both DNA ss breaks and DNA-protein cross-links. Slight increases in ss DNA breaks were also seen with exposure to either MC alone or the cytosol fraction alone.

Based on a comparison of the mutagenic effects of the three compounds, particularly on the lack of MC-induced DNA-protein cross-linking in this experimental system, the authors concluded that formaldehyde does not play a major role in MC mutagenicity. Accordingly, the researchers viewed the results of this study as supporting the hypothesis that the DNA ss breaks induced by MC, and the resultant DNA mutations, are caused by interaction of S-chloromethyl-glutathione (formed by the GST pathway) with DNA.

Exhibit 123 "DNA Sequence Analysis of Methylene Chloride-Induced HPRT Mutations in CHO Cells: Comparison with the Mutation Spectrum Obtained for 1,2-Dibromethane and Formaldehyde," R.J. Graves, P. Trueman, S. Jones and T. Green, Zeneca Central Toxicology Laboratory, 1995.

The purpose of this study was to describe the types of mutations induced by MC in order to further characterize the GST metabolite likely to cause MC mutations and therefore perhaps be responsible for the carcinogenicity of MC in the mouse. The spectrum of mutations in the HPRT locus of CHO DNA induced by MC plus mouse liver cytosol was compared to mutations induced by formaldehyde (a GST metabolite of MC) or 1,2-dibromoethane (1,2–DBE, a reference genotoxin).

The results were expressed as a sequence analysis of 11 MC-induced mutations, 6 formaldehyde-induced mutations and 13 1,2–DBE-induced mutations. In comparing the distribution of types of mutations, the results suggested to the researchers that formaldehyde-induced DNA damage can contribute to MC mutagenicity, but that the majority of the mutations were derived from other types of DNA damage, probably via an interaction of S-chloromethylglutathione with DNA. The researchers noted that a glutathione conjugate also plays a role in the mutagenicity of 1,2–DBE. The increases above background mutation frequency detected through this study were 24.7-fold for 1,2–DBE, 4.7-fold for formaldehyde, and 8-fold for MC.

Exhibit 124 "The distribution of glutathione S-transferase 5–5 in the lungs and livers of mice, rats and humans" [Preliminary communication, T. Green, 1995].

Exhibit 124A "The distribution of theta class glutathione S-transferases in the liver and lung of mouse, rat and human." G.W. Mainwaring, S.M. Williams, J.R. Foster and T. Green,1995.

The preliminary communication [Ex. 124] and the unpublished report which followed [Ex. 124A] summarized the results of a study comparing the inter- and intra-cellular distribution of the messenger RNA (mRNA) for a glutathione S-transferase (GST) isoenzyme which metabolizes MC in the lungs and livers of mice, rats and humans. The purpose of the experiments summarized in these reports was to describe the distribution of the mRNA for the GST theta isozyme believed to be responsible for metabolism of MC to a carcinogenic metabolite in different species. The researchers believed that differences in distribution of the mRNA for this isozyme would correlate with differences in distribution (and activity) of the isozyme itself, and might explain differences in sensitivities of the species to the carcinogenicity of MC.

The distribution of GST theta mRNA was visualized using DNA oligonucleotide anti-sense probes complementary to the nucleotide sequences for the GST theta isozymes. This technique is used to visualize the mRNA coding for a specific protein (such as the GST theta isozymes) within cells in tissues. The mRNA is a nucleotide sequence transcribed from the DNA containing the gene for the specific protein. After transcription, mRNA is transported to the cytoplasm, where it is translated into the amino acid sequence which becomes the specific protein (in this case, the GST theta isozyme). The finished protein then migrates to its final site of activity within the cell. Localization of the mRNA does not necessarily correspond to localization of the specific protein.

The results of the study showed that the GST-specific mRNA could be found in lungs and livers of all three species. Mouse liver cells (particularly the nuclei) and mouse lung cells appeared (from the photomicrographs shown in the article) to stain more heavily for the GST mRNA than the lung or liver cells from rats or humans. Although the amount of GST-specific mRNA was not quantified in this study, the authors interpreted the photographs to suggest that, "* * * mouse tissues are stained

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much more heavily than sections from either rat or human." Based on the intracellular and intercellular distribution of the GST mRNA, the authors stated,

> The most significant findings are the presence of very high concentrations of GST 5–5 mRNA in specific cells and nuclei of mouse liver and lung. Metabolism of methylene chloride at high rates and within nuclei to a reactive but highly unstable glutathione conjugate is believed to facilitate alkylation of DNA by this metabolite. The lack of high or nuclear GST 5–5 concentrations in rat and human tissue, provides an explanation for the lack of genotoxicity in these species. [Ex. 124]

In the letter submitting the studies summarized above to OSHA, HSIA characterized the studies as follows:

> This research, which is now complete, shows that B6C3F1 mice * * * are uniquely sensitive at high exposure levels to methylene chloride-induced lung and liver cancer, and that other species, including humans, are not at similar risk. [Ex. 117]

They went on to conclude:

> As a result of this research program, it appears that there are no foreseeable conditions of human exposure in which the carcinogenic effects seen in mice would be expected to occur in man. * * * The risk assessment that is the basis for the methylene chloride standard, which is in turn based on the increased liver and lung tumor incidence observed in the mouse bioassay, must be discarded in favor of scientific data that are relevant to human risk.

In response to the request by HSIA, OSHA has reviewed the cancer hazard identification of MC based on all of the evidence in the MC record, with particular emphasis on the validity of the conclusion stated immediately above. This review is presented below.

2. Carcinogenesis of Methylene Chloride

a. Animal evidence. Several long-term MC bioassays have been conducted and are summarized in the Health Effects section. These included studies in which the route of exposure was inhalation [Burek et al., Ex. 4–25, Nitschke et al., Ex. 7–29, and NTP, Ex. 4–35] and two studies in which the route of exposure was drinking water [National Coffee Association, Exs. 7–30, 7–31]. In order to ensure full consideration of the data, OSHA analyzed in its preliminary assessment all data sets which showed an elevated incidence of tumors in a MC-exposed group, compared to controls, whether or not the elevation of tumor response was statistically significant. This analysis and the individual datasets used were described in detail in the NPRM.

In the NTP bioassay [Ex. 4–35], groups of 50 nine-week old B6C3F$_1$ mice of each sex were exposed by inhalation to 0, 2000 or 4000 ppm MC. Groups of 50 eight-week old F344/N rats of each sex were exposed to MC at concentrations of 0, 1000, 2000, or 4000 ppm. The inhalation exposures were administered 6 hours a day, 5 days a week for 102 weeks. Food was provided to the animals ad libitum except during the exposure periods, while water was available at all times via an automatic watering system. All animals were observed twice a day for mortality and moribund animals were sacrificed. Clinical examinations were performed once a week for 3.5 months, then twice a month for 4.5 months, and once a month thereafter. Each animal was also weighed weekly for 12 weeks, then monthly until the conclusion of the study at 102 weeks. All animals were necropsied and histologically examined. Three different neoplastic lesions were observed to have significantly increased incidence over the controls: adenomas and carcinomas of the lung in male and female mice, adenomas and carcinomas of the liver in male and female mice, and mammary gland fibroadenomas and fibromas in male and female rats.

HSIA and others argued that benign tumors, especially the mammary tumors in the rats, should not be counted as a carcinogenic response. The NTP has addressed that issue in its Technical Report [Ex. 4–35] and has concluded that the benign mammary tumors observed in the F344 female rats are "clear evidence" of carcinogenicity and noted that such tumors may proceed to malignancy. OSHA agrees with this determination and has considered the rat mammary tumors as part of its cancer hazard identification for MC. However, OSHA's quantitative risk assessment does not consider rat mammary tumor responses.

OSHA believes that the NTP studies provide the strongest evidence of carcinogenicity of MC in animals. Many commenters and hearing participants [Exs. 19–46, 7–128, 7–126, 25–E, 126–11,126–12, 126–16 and others] supported the use of the NTP mouse study as the basis for quantitative risk assessment. There are several reasons for this described in the proposal and earlier in this document. In brief, the NTP study used well established standard operating procedures that are generally considered a predictor of a potential carcinogenic response in humans. This study was also replicated by a second partial bioassay, conducted by NTP, in which groups of female mice were exposed to 2000 ppm MC for 2 years. Statistically significant increases in alveolar/bronchiolar and hepatocellular tumors were observed [Ex. 27].

Before the 1995 record reopening, some commenters had raised specific arguments why a mouse study might not predict human carcinogenic response to MC. Mr. Krenson of Besway Systems [Tr. 397, 9/17/92] objected to OSHA using the NTP mouse study as the basis for setting the PELs for MC. He believed that the mouse was irrelevant to human risk because the doses used were "extremely high" and that he believed that tests conducted on rats, hamsters and human epidemiological investigations showed "no conclusive proof of cancer in human beings." OSHA disagrees with Mr. Krenson's conclusion. In general, high doses in rodent bioassay studies are appropriate to elicit a response due to the practical limitations on the number of animals that can be used in a study. In MC, there was no observed acute toxicity at the levels used in the study, which is an indication that the doses were not too high. Use of high doses in bioassay studies is common and its practical necessity has been affirmed by numerous expert bodies, including several committees of the National Academy of Sciences. In addition, for every known human carcinogen, positive results were obtained at high rodent doses. Also, quantitative comparisons, as conducted by Allen and Crump in 1988, demonstrate that, in general, observations of cancer potency from epidemiology studies agree with estimates of potency derived from rodent bioassay data. In the case of MC, statistically significant excess tumors were observed in mice after exposure to only 2000 ppm, or only four times the former PEL of 500 ppm (8-hour TWA), and excess tumors were seen in rats at 4000 ppm. This level is within the range of human exposures experienced in occupational settings. Certainly the lower exposure showing substantial effect was not "extremely high" in relation to the exposure limit, as Mr. Krenson claimed.

The HSIA and several others [Exs. 117, 126–1, 126–3, 126–5,126–6,126–8,126–10, 126–13,126–20, 126–21, 126–29] also objected to using the mouse data as the basis of human risk assessment, based on the mechanism of action studies submitted to the Agency by HSIA on December 6, 1995. OSHA's analysis of the individual studies follows, but overall, the Agency has determined that the mouse cancer data are appropriate for assessment of the cancer risks to humans (although, as discussed later in this section, OSHA has made extensive use of the submitted data to modify the quantitative

estimates of risk derived from the mouse model).

b. Evidence pertaining to the mechanism of action of methylene chloride. Several lines of evidence relate to the mechanism of carcinogenesis of MC. The issues discussed in the papers submitted by the HSIA and subsequent comments can be divided into those pertaining to genotoxicity, those discussing potential non-genotoxic modes of action, and those related to the enzymatic metabolism of MC. Although some comments overlap these divisions, this organization is used in this discussion to simplify consideration of the issues.

(1) Genotoxicity. It has not been conclusively demonstrated that MC or its metabolites act by a genotoxic mechanism in mice and rats. Substance-specific DNA adducts, which are among the strongest evidence of direct genotoxicity, have not been identified from MC exposure. However, evidence has been accumulating that MC is likely to be carcinogenic through a genotoxic mechanism of action. For example, DNA-protein cross-links have been demonstrated in mouse liver [Ex. 21–16], increases in unscheduled DNA synthesis have been demonstrated in mouse lung [Ex. 126–25] and other evidence of MC metabolite interaction with mammalian DNA (such as increases in ss DNA breaks) has been observed. It is not necessary for a substance to bind covalently with DNA in order to act via a genotoxic mechanism, although evidence of covalent binding is a strong indication of genotoxicity. In the case of MC, although the reactive metabolites are presumed to exert a genotoxic effect by binding to DNA, no MC metabolite-DNA adducts have yet been identified. However, RNA adducts have been identified after MC exposure, which supports the hypothesis that MC acts by a genotoxic mechanism. Substance-specific DNA adducts have also not been identified for some other carcinogens which are presumed to act via a genotoxic mechanism.

In addition, as discussed in the Health Effects section, MC has been found to be mutagenic in bacterial, yeast, Drosophila and mammalian systems; associated with chromosomal aberrations in CHO cells; and associated with sister chromatid exchanges in mammalian cell culture systems, such as CHO and V79 cells.

Investigations of the role of metabolites of the GST pathway in the bacterial mutagenicity of MC found that in glutathione-deficient strains of *Salmonella typhimurium* MC-induced mutations were reduced [Ex. L107]. Mutation rates returned to normal when bacteria were supplemented with exogenous glutathione. This study supports the hypothesis that MC may act as a genotoxic carcinogen via its GST metabolites, although a study of similar design by Dillon et al. [Ex. 21–89] did not replicate these results.

(i) MC induced mutuations. Studies on the MC mechanism of carcinogenesis included two studies on the mutations induced by MC in the CHO/hypoxanthine phosphoribosyl transferase (HPRT) assay. In the 1995 study by Graves et al. [Ex. 122], the investigators compared mutations induced by MC with those induced by formaldehyde and 1,2-dibromoethane. The authors characterized the results of the studies as follows:

> Using the CHO/HPRT assay we have shown that MC is metabolized to a mutagen by mouse liver cytosol in a reaction which is dependent upon GST and GSH. Mutagenicity was enhanced by exposing the cells at high density in suspension rather than as attached cultures, which is consistent with the critical metabolites being extremely short-lived.

The authors also observed that the MC-induced mutations were associated with an increase in DNA ss breaks. They remarked, "The results suggest that MC-induced DNA ss breaks seen in other cell types are associated with DNA damage which can lead to mutation."

In a follow-on to the CHO/HPRT study, Graves et al. [Ex. 123] conducted a sequence analysis of HPRT mutations in CHO cells, comparing the spectrum of MC-induced mutations with those induced by 1,2-dibromoethane or formaldehyde. The investigators analyzed 28 HPRT mutations: 13 from 1,2-dibromoethane experiments, 6 from formaldehyde experiments, and 11 from MC experiments. The authors characterized their results as follows,

> All three compounds induced primarily point mutations, with a small number of insertions and deletions. * * * The mutation sequence results for MC suggest that formaldehyde may also play a role in MC mutagenesis, although the majority of mutations arise from other types of DNA damage, probably DNA adducts formed by reaction of S-chloromethyl glutathione with DNA.

Dr. Douglas A. Bell of NIEHS [Ex. 126–26] had specific comments regarding the study on the mutation spectra [Ex. 123]. He stated,

> This experiment is extremely weak scientifically and not of publication quality. It is unlikely that such a naive experiment could detect differences in spectra between the different chemicals tested. To test the hypothesis that there are chemical specific mutation spectra requires analysis of hundreds of mutants at several different doses. This exhibit contains no useful information for risk assessment.

OSHA agrees with Dr. Bell that there are serious methodological problems with the paper. The Agency also agrees with Dr. Bell that the important information in these two studies is that MC increases the mutation frequency, showing a clear genotoxic effect.

(ii) Single strand DNA breaks. In a 1995 study, Graves et al. [Ex. 120] investigated the role of MC exposure in development of single strand (ss) DNA breaks in the lung and liver of mice and rats and in hamsters and human cell cultures. The authors observed a transient, dose-related increase in DNA ss breaks in mouse hepatocytes after inhalation exposure to MC. No increased amount of ss breaks was observed in rat liver cells exposed to MC as compared to control cells. The authors also reported a decrease in the amount of ss DNA breaks in liver and lung when a glutathione depletor was administered to mice immediately before MC exposure.

In mouse and rat hepatocytes incubated with MC, the authors found increases in ss breaks, but no increases in ss breaks in hamster or human hepatocytes exposed in vitro were observed. No increase in DNA damage was observed in CHO cells exposed to MC plus mouse liver microsomes, while MC plus mouse liver cytosol induced detectable ss DNA breaks.

The authors characterized their findings in the lung as follows:

> Here we show that Clara cells are also sensitive to MC-induced DNA ss breaks and that the DNA-damaging metabolites are derived from the GST pathway. * * * Overall, these findings support the proposal that Clara cells are the cell of origin of MC-induced mouse lung tumors.

For liver cancer, the investigators concluded:

> These studies suggest that humans (and rats and hamsters) are insensitive to MC-induced liver cancer.

Commenters raised issues about the relevance and utility of ss DNA breaks in assessing the genotoxicity of MC. Dr. Karl T. Kelsey [Ex. 126–34] and Dr. Miriam Poirier [Ex. 126–37] raised concerns about the sensitivity of the DNA ss break assay for detecting genotoxic effects.

Specifically, Dr. Kelsey stated,

> Reviewing the literature, considerable weight seems to fall upon the measure of DNA single strand breaks. I have serious concerns about this assay. It is well known that the assay is extraordinarily difficult to standardize and is sensitive only to very high doses of genotoxic compounds. This data,

therefore, is certainly not compelling; persuading any competent independent scientist of its relevance to humans would be difficult.

Dr. Poirier was concerned with the sensitivity of the DNA single strand break assay and the relevance of DNA ss breaks to carcinogenesis. She remarked that ss DNA breaks and mutagenicity are secondary indicators of DNA damage. She indicated that a better measure of genotoxicity would be formation of DNA adducts. Dr. Errol Zeiger [Ex. 126–28] of NIEHS agreed, stating,

> If the mechanism of carcinogenicity is through an alkylating S-chloromethyl GSH complex, there should be evidence of DNA adducts *in vitro* and *in vivo*.

OSHA agrees that DNA adducts are strong evidence of genotoxicity and that ss DNA breaks and mutagenicity are not as specific or relevant as indications of a genotoxic mechanism of action. However, the Agency has determined that, even in the absence of identified MC-specific DNA adducts, the accumulated evidence suggests that MC interacts with DNA via a genotoxic mechanism of action and that the GST pathway is a plausible carcinogenic pathway.

Dr. Melnick [Ex. 126–33] stated, "* * * it has not been demonstrated that the carcinogenicity of MC in mice is dependent solely on the induction of DNA single strand breaks." Dr. Andrew G. Salmon concurred with this analysis and also raised a serious concern about the ability of the assay even to detect increases in ss breaks, regardless of their relevance:

> Green's account states that "mouse hepatocytes were * * * 20-fold * * * more sensitive to the effects of methylene chloride [i.e., DNA strand breaks] than rat hepatocytes * * *" and no breaks were detected in hamster or human liver cells. This is translated in the discussion to an assertion that not only humans and hamsters but also rats are completely immune to the carcinogenic effect of methylene chloride. However, the data simply do not support the assertion of a categorical difference as proposed by the HSIA. This particular work also raises a number of other issues, such as whether the liver is an appropriate model tissue, and whether single-strand breaks are an appropriate indicator of the type of genetic damage produced by the putative genotoxic metabolites of methylene chloride.

OSHA agrees that the ss DNA break assay is not as sensitive as other methodologies for assessing the genotoxic potential of MC in different systems and therefore data from the ss DNA break study must be interpreted in a quantitative, not qualitative context, with allowance for uncertainty in assay sensitivity. It is also unclear whether ss DNA breaks are the appropriate surrogate measure for carcinogenic potential. In light of the issues raised by commenters, the Agency believes that the ss DNA break data should be interpreted with caution.

(iii) DNA-protein cross-linking. Casanova and Heck [Ex. 21–16] observed DNA-protein crosslinks in mouse liver, but not mouse lung, after exposure to 500, 1500 and 4000 ppm. This study indicated that metabolites of MC have the ability to interact with DNA. However, the quantity of DNA-protein crosslinks did not show a strong correlation with tumor incidence, and so the DNA-protein crosslinks were not used as a dose-surrogate for MC exposure in OSHA's risk assessment.

The Chemical Industry Institute of Toxicology (CIIT) [Ex. 126–25] submitted further evidence that MC exposure causes DNA-protein cross-links in mouse liver but not mouse lung, hamster liver or hamster lung. These investigators also observed RNA adducts in mouse, rat and human cells after incubation with MC, but DNA-protein cross links were only observed in the mice. In addition, they submitted a pharmacokinetic model which modeled the DNA-protein cross-links as the dose surrogate for MC exposure. Finally, they made extensive comparisons of their model with the PBPK model submitted by Clewell [Ex. 96] and EPA's risk assessment for MC. Dr. Roger McClellan summarized the conclusions they reached as follows,

> The pharmacokinetic results suggest that at very low concentrations of DCM [methylene chloride], the yield of DPX [DNA-protein cross-links] is almost linearly proportional to DCM concentration * * *
>
> DPX cannot be used directly as a surrogate for the internal dose in humans, however, because human hepatocytes, unlike mouse hepatocytes, do not appear to form DPX in measurable amounts in vitro. * * * These results suggest that the mouse may not be an appropriate animal model for human risk assessment due to its unusual susceptibility to DPX formation and to the fact that cell proliferation is a uniquely high-dose phenomenon that may occur only in this species.

OSHA believes that this work provides more evidence for the formation of genotoxic metabolites in mouse liver after MC exposure. However, OSHA is not convinced that the DNA-protein cross-linking is the appropriate dose-surrogate for pharmacokinetic modeling. One of the strengths of Reitz's and subsequent PBPK models was that the dose surrogate used in the modeling was linearly related to tumor incidence. That is one reason that many investigators have focused on the GST pathway, instead of the MFO pathway of metabolism as the carcinogenic pathway. As explained by Dr. Lorenz Rhomberg [Ex. 126–16],

> * * * if this proportionality in the case of GST is broken by a deeper analysis, the rationale for focusing only on GST must be reevaluated.

Dr. Rhomberg was referring to results presented by HSIA on the distribution of GST theta isozymes within and among cells, but the same sentiment applies here; if OSHA were to abandon PBPK modeling using GST metabolites, all of the HSIA and other studies would have to be re-evaluated and considerable more research might need to be done. Finally, in the CIIT study, RNA adducts, a more direct measure of genotoxicity than DNA ss breaks, were observed in human hepatocytes after incubation with MC. The amount of RNA adducts in human cells was only about 3-fold lower than the amount in mouse hepatocytes. It is therefore clear that human hepatocytes in this system are forming genotoxic metabolites after exposure to MC.

OSHA notes that, in mouse lung, the DNA-protein cross-links were not observed, even though a clear dose-response relationship for tumors has been established at this site. OSHA is not convinced that the explanation for carcinogenesis in mice is DNA-protein cross-links in liver. Overall, it is unclear whether the interspecies difference in DNA-protein cross-linking is related in any way to the carcinogenic mechanism of action.

OSHA concludes that there continue to be strong reasons for using the mouse data as the basis for its quantitative risk assessment because there is a clear dose-response relationship in the mouse liver and lung tumor incidence data; the mouse metabolizes MC by the same pathways as humans; PBPK models have been developed which account for inter-species differences in MC metabolism; statistical techniques have been developed to quantify the uncertainty and variability in the parameters used in the PBPK models; and there are no data that demonstrate that the mouse is an inappropriate model for assessing human cancer risks. In fact, OSHA finds further evidence in the studies described above which suggest that MC acts via a genotoxic mechanism in human cells as well as in mice and rats, which further supports OSHA's use of the mouse tumor incidence as the basis for quantitative risk.

(iv) Interpreting the genotoxicity studies. Several other issues were raised regarding interpretation of the results of

these studies on the genotoxic mechanism of action of MC. NIOSH and others [Exs. 126–30, 126–11, 126–32] commented that, in general, the data presented by HSIA supported the hypothesis that the carcinogenic metabolite(s) of MC were derived from the GST pathway. They agreed with HSIA's interpretation of the data that the studies presented here helped to confirm that the mechanism of MC carcinogenesis is through one or more genotoxic metabolites of the GST pathway.

Interpretation of short-term effects in explaining chronic mechanisms of action.

Concerns were raised about the generalizability of the results of short-term genotoxicity assays to tumor incidence, especially when the observed effect is transient, as in the vacuolation of Clara cells, the appearance of ss DNA breaks in mouse liver and lung cells, etc. Dr. Mirer of the UAW [Ex. 126–31] commented,

> 1. The evidence cited concerns acute effects which appear after a few hours of high level exposure of the animal to methylene chloride vapor, or the glassware (in vitro) mixing of homogenized animal or human tissue with the solvent. In a number of studies the effect in the whole animal is transient.
>
> 2. There is no evidence to connect the acute toxic effect, or single strand breaks of DNA after acute exposure, to the chronic effect of lung or liver injury, or cancer. * * *

Dr. Maronpot [Ex. 126–22] was concerned that the vacuolation observed in Clara cells was not reproduced in the NIEHS mechanistic studies. HSIA responded to this concern by remarking that the vacuolation could only be found after single exposures to MC, and that the vacuolation of Clara cells was also associated with increased DNA synthesis in these cells. The fact that this response was only observed after single exposures to MC again raises the issue of the transience of this response and its relevance to MC carcinogenesis.

Increased cell turnover.

In these studies on genotoxicity, the authors remarked that increased cell turnover was observed in the lung (transient increase in DNA synthesis after single exposures to MC). Dr. Daniel Byrd [Ex. 126–32] also commented on the DNA synthesis issue. Citing an HSIA study, he contended that there appeared to be a common mechanism of action between the lung and the liver since increased DNA synthesis was observed in both tissues. Dr. Maronpot of the NIEHS [Ex. 126–22] disagreed, stating,

> The purported "liver growth" in methylene chloride-exposed mice is actually an increase in liver weight attributable to accumulation of glycogen within hepatocytes. There is no evidence of replicative DNA synthesis (cell proliferation) in the liver of methylene chloride-treated mice, and, hence, actual increases in the numbers of hepatocytes did not occur. * * * It is noteworthy that recovery to normal liver weight occurs within two weeks after cessation of exposure to methylene chloride.

OSHA agrees with Dr. Maronpot that no data in the rulemaking record show increases in liver cell proliferation as the result of MC exposure, although increased DNA synthesis was actively searched for in the NIEHS mechanistic and other studies. The increased DNA synthesis observed in mouse Clara cells is a transient phenomenon that has not been clearly linked to carcinogenesis in the mouse. In any event, cell proliferation is not necessarily related in any way to carcinogenesis and is often uncorrelated with the doses used in bioassays and the tumor rates themselves. Many substances that cause prolonged cell proliferation do not cause tumor formation and vice versa [Ex. 126–22], and many experts believe that transient increases in cell proliferation, such as seen with MC, cannot account for the carcinogenic effect. Further discussion of cell turnover as a mechanism of carcinogenicity is discussed below under "Non-genotoxic mechanisms."

Clara cell as the mouse lung tumor cell of origin.

Another issue raised by commenters concerned the cell of origin of the mouse lung tumors. The mouse lung has a higher proportion of Clara cells than the human lung. The investigators hypothesized that if the Clara cell were the mouse lung tumor cell of origin, the risk estimated from the mouse lung tumor data may overstate human risk because humans have fewer Clara cells, and therefore fewer potential target cells.

Green et al. have focused much of their research efforts into determining the mechanism of action of MC in mouse lung and liver. In lung tissue, as described above, they concentrated on experiments addressing the hypothesis that the mouse Clara cell is the cell of origin of the mouse lung tumors observed in the NTP bioassay. Dr. Daniel Byrd [Ex. 126–32] indicated that he believed that the data presented supported this conclusion. He stated, "Mouse lung tumors most likely arise from damaged Clara cells, although a few pathologists continue to speculate that mouse lung tumors arise from other lung cells, such as Type II pneumocytes."

In contrast, Dr. Maronpot of the NIEHS [Ex. 126–22] disagreed with that statement, indicating that "* * * current belief among researchers is that mouse lung tumors arise from Type II pneumocytes rather than Clara cells." Dr. Melnick [Ex. 126–33] suggested that the HSIA data are not consistent with the hypothesis that the Clara cell is the tumor cell of origin. He stated,

> DNA damage was detected in lungs of mice exposed to 2000 ppm methylene chloride; however, no significant increase in DNA single strand breaks was observed in Clara cells isolated from mice exposed to 4000 ppm methylene chloride. This observation does not support the conclusion that Clara cells were the cells of origin of methylene chloride-induced mouse lung tumors.

In their paper, Graves et al. [Ex. 120] explain their results as follows,

> Attempts to measure DNA damage in Clara cells isolated from mice which had been exposed to MC in vivo were unsuccessful. * * * [i]t is possible that cells extensively damaged by MC do not survive the isolation procedure. The observation that the in vivo vacuolation of Clara cells observed after MC treatment is not seen in vitro when the cells are isolated from the damaged lungs supports this proposal.

This means that the authors could induce ss breaks in the DNA of Clara cells *in vitro*, but in mice exposed to MC *in vivo*, it is not clear that the DNA ss breaks observed in lung tissue were concentrated in the Clara cells. In fact, the authors state,

> Since Clara cells represent only 5% of the total lung cell population, the DNA ss breaks observed in vivo may not exclusively result from damage to this cell population.

OSHA believes that these issues raise serious doubts as to whether current evidence supports the determination that the Clara cell is the cell of origin of the mouse lung tumors. Although the absence of increased ss breaks is not necessarily an indication of lack of genotoxicity, the presence of ss breaks in lung tissue (and apparently not concentrated in Clara cells) reveals an inconsistency in HSIA's argument: either the ss breaks are irrelevant or Clara cells are not the cells of origin, or both. Further discussion of the issues surrounding identification of the Clara cell as cell of origin for mouse lung tumors is contained below under "Non-genotoxic mechanisms of carcinogenesis."

Ability of MC reactive metabolites to cross membranes.

Although no data were presented by the HSIA to address this issue directly, several of the HSIA papers and the accompanying letters postulate that the

reactive metabolites of the GST pathway are too short-lived to cross membranes. This argument is used in combination with the claim of high concentrations of the mRNA for the GST T1–1* in the nuclei of mouse cells (but not those of rats and humans) to support the contention that humans are not at risk of developing cancer after exposure to MC. The reasoning is as follows: (1) Mice are the only species to have high concentrations of GST T1–1* in the nucleus of lung and liver cells. (2) The reactive metabolites of the GST pathway are too short-lived to cross the nuclear membrane. (3) In order to produce a carcinogenic effect, reactive metabolites must be produced inside the nucleus in proximity to the DNA. (4) Because the mouse has high concentrations of these enzymes in the nucleus (and rats and humans do not), the mouse is uniquely susceptible to lung and liver cancer after exposure to MC. (5) Therefore, there is no risk of humans developing cancer after exposure to MC.

Some commenters [Exs. 126–12, 126–30, 126–33] maintained that HSIA's submitted studies do not support this argument. As discussed subsequently, the probe used in these experiments measured GST T1–1* mRNA, not the isozyme itself. There is not necessarily a correlation between the intracellular concentration of mRNA and the concentration of enzyme at a specific locus. In addition, one would expect there to be higher mRNA outside the nucleus (since that is where the enzyme is transcribed from the mRNA), even if the enzyme were subsequently concentrated inside the nucleus. Additionally, as discussed previously, some of the evidence presented by HSIA suggests that the metabolites can be generated outside the cell (not simply outside the nuclear membrane) and interact with the DNA. Specifically, Dr. Dale Hattis [Ex. 126–12] has remarked that,

> * * * as long as these reaction and detoxification processes are not infinitely fast (and in principle they cannot be infinitely fast), a finite fraction of the activated metabolite molecules must reach the DNA and react. Even though this chain of events is required by our basic understanding of the relevant kinetic processes, in this case we also have direct empirical evidence that active metabolites need not be generated in a cell's nucleus in order to reach DNA and do damage. The DNA sequence mutations of Graves and Green [Ex. 122] and Graves et al. [Ex. 123], and the DNA single strand breaks reported by Graves et al. [Ex. 120] for CHO cells were all produced by exposing mammalian cells to a tissue culture medium that had been supplemented with mouse metabolizing enzymes and methylene chloride. The active metabolites in those cases were necessarily generated *from outside of the cells*, not just in the cytoplasm of the cells that manifested the DNA damage. Therefore, the claim that the active glutathione transferase metabolite(s) must be generated in the nucleus and would be ineffective if generated in the cytoplasm is flatly contradicted by HSIA's own evidence.

HSIA [Ex. 126–29] strongly disagreed that their results should be interpreted in this way and countered as follows:

> The investigators had to use a suspension assay to maximize the concentration ratio of methylene chloride to cells to about 10^{14}, and to optimize the GST activity from mouse liver preparation. Only under these extreme nonphysiological conditions with a transformed cell line could any increase in mutation frequency be observed. There is absolutely no justification for assuming similar conditions in humans, where GST activity is absent or at very low levels in the cytoplasm and absent in the nucleus.

OSHA disagrees with HSIA, however, and finds Dr. Hattis' and the other commenters' reasoning more sound. The results of these experiments indicate that the metabolites of MC are stable enough to cross the cellular and the nuclear membrane to interact with DNA. The Agency recognizes that these are not physiological conditions, but the conditions of the experiment do support the common-sense assumption that enzymatic metabolism takes place in the cytoplasm of mouse cells and show that some fraction of the GST metabolite(s) is stable enough to cross membranes in the cell. Thus, the Agency believes that the observed tumorigenesis in the mouse is not the exclusive result of nuclear MC metabolism.

Other issues pertaining to genotoxicity.

The remaining comments on these studies focused on more general issues such as the genotoxicity of MC and other factors related to the GST metabolic pathway and MC-induced carcinogenesis. Dr. Melnick [Ex. 126–33] remarked:

> Some fundamental questions related to this mechanism and its uniqueness to mouse liver and mouse lung carcinogenesis are also not addressed by the present research. For example, why do tumors not develop in other organs in mice that also have high levels of GST theta (e.g., kidney)?

OSHA believes this is an important question that reduces the strength of HSIA's contention that the mouse responds in a unique way to MC. The investigators have attempted to explain differences in potency of MC with respect to liver and lung carcinogenesis by invoking differences in DNA repair rates and GST metabolism within the nuclei of critical cells. However, there are other tissues which, based on the HSIA hypothesis, ought to be prime candidates for carcinogenesis. The kidney, besides having high levels of GST theta, also has a slower rate of DNA repair than the liver. It would appear to be a logical site of carcinogenesis if HSIA's hypothesis is correct. OSHA believes that the lack of tumor response in this organ (and perhaps other logical sites) indicates that the hypothesis proposed by HSIA fails to account for all relevant observations.

(2) Non-genotoxic mechanisms of carcinogenesis. Non-genotoxic mechanisms of action have also been hypothesized for MC. Increased cell turnover, due to cell death caused by MC toxicity, could theoretically increase the available number of sites for mutation and subsequent tumor formation. However, there is only limited evidence of increased cell turnover after MC exposure. Casanova and Heck [Ex. 21–16] observed increased DNA synthesis in lung tissue of mice exposed to MC. Green et al. [Ex. 105] observed Clara cell vacuolation, and both studies measured increased DNA synthesis on the first day of exposure to MC, but not on subsequent days of exposure. Clara cells may be targets of MC-induced toxicity because they contain higher levels of MC-metabolizing enzymes and are therefore more likely to generate toxic MC metabolites (for example, carbon monoxide is known to poison MFO enzymes). Green et al. suggested that the Clara cell was the cell of origin of the lung tumors observed in the NTP mouse study, because of the metabolic properties of these cells and the increased cell turnover observed within a day of MC exposure (in addition to the DNA damage described above under the section entitled, "Genotoxic mechanisms of carcinogenesis").

Green et al. further suggested that if the cell of origin of the mouse lung tumors was the Clara cell, humans would be at substantially less risk of lung cancer, because humans have proportionally fewer Clara cells than mice do. However, OSHA believes that there is no clear evidence confirming that Clara cells were the cell of origin of the mouse lung tumors (see discussion above). Other cell types in the lung, such as the Type II lung cell, also have relatively high metabolic activity and could be the site of origin of lung tumors. These cells have not been studied separately. Further studies are needed to clarify the role of the Clara cell and other lung cell types and cells in other tissues in MC carcinogenesis.

(i) Increased cell division. In 1994, Foster et al. [Ex. 119] investigated increased cell division as the

mechanism of action of MC in mouse lung cells. Specifically, they examined the mechanism of MC action on the transient vacuolation of bronchiolar cells observed following single exposures to MC. In mice exposed to 2000 and 4000 ppm MC, they observed increased numbers of vacuolated cells in the bronchiolar epithelium. Pretreatment of mice with a cytochrome P450 inhibitor decreased the number of vacuolated cells, while pretreatment with a glutathione depletor did not. In a replication of the observation made by Green et al. and described above, the authors found increased cell division (measured as incorporation of [3H]-thymidine) in Clara cells isolated from mice exposed to 4000 ppm MC. They concluded:

> We believe that these results strongly support the supposition that the vacuolation of the Clara cells is due to a toxic metabolite produced by the CYP [cytochrome P–450] pathway of metabolism. Furthermore the most likely candidate for inducing the change is thought to be formyl chloride.

OSHA agrees that these observations indicate that increased cell turnover occurs in Clara cells of mice. This may possibly be a partial explanation of the mechanism, but only a partial one. In cases where cytotoxicity has been considered to be an explanation for risk occurring only at "high" doses, this argument is confined to chemicals believed to act non-genotoxically. MC is likely to be a genotoxic carcinogen, so even if cell proliferation is a factor, the genotoxic mechanism would be the primary mechanism of concern. Genotoxic carcinogens are not generally believed to have a threshold and the dose-response function is believed to be approximately linear at low doses. In addition, the study focused on one type of cell, which may not be the cell of origin for lung tumors. Carcinogenicity in humans (as well as in mice and rats) seems to originate from various cell types in various tissues.

(3) *Metabolism of MC.* As described above, the mechanism of carcinogenesis for MC is not known. Numerous studies over many years have explored numerous possible mechanisms and have provided substantial information regarding the metabolism and the probable metabolite responsible for the carcinogenic effect. As discussed in the Health Effects section, MC is metabolized by two pathways: the mixed function oxidase pathway (MFO) and the glutathione S-transferase (GST) pathway. Both pathways produce reactive intermediates which potentially could contribute to a genotoxic mechanism of carcinogenicity. During development of the PBPK model for MC, Reitz et al. found that tumor incidence correlated with the estimated amount of GST metabolite, as well as with the amount of parent compound administered, but not with the amount of MFO metabolite [Ex. 7–225]. The parent MC is not likely to act as a genotoxic carcinogen because it is a fairly non-reactive compound. In addition, MC blood levels in mice were lower than in rats, so if MC was the carcinogenic moiety, one would expect the risk of cancer in rats to be higher than mice, whereas the opposite was observed. Consideration of these factors has led many investigators to conclude that the GST pathway is responsible for carcinogenesis and that it is likely to produce a genotoxic carcinogenic moiety. OSHA has reviewed the data available on mechanism of action and has concluded that the most plausible assumption is that the GST pathway is responsible for the carcinogenic action of MC and that this should be taken into account in the quantitative risk assessment. This represents a case-specific departure from the default assumption that the administered dose of the parent compound is the relevant metric for exposure.

(i) Specific GST isozyme(s) responsible for MC metabolism to the carcinogenic metabolite. Recent work sponsored by the HSIA was directed at further characterization of the metabolism of MC by the GST pathway [Exs. 121, 124, 124A]. Specifically, the HSIA work on MC metabolism has focused on the isolation and description of isozymes in the GST theta class of enzymes, which HSIA believes are responsible for the metabolism of MC to the carcinogenic metabolite in mice. Mainwaring et al. have shown that the GST isomer with the greatest specific activity for MC is a member of the theta class of GST. [Ex. 121] In rats, three members of the theta class have been identified, GST 5–5, GST 12–12 and GST 13–13. In humans, two theta class enzymes have been identified, GST T1–1 and GST T2–2 and in mice, two theta enzymes have been described, GST T1–1* and GST T2–2* (also known as GST MT–1 and GST MT–2). According to Mainwaring et al. [Ex. 121], rat GST 5–5 and mouse GST T1–1* have similar specific activity toward MC and sequencing studies have shown "* * *that rat 5–5, mouse T1–1* and human T1–1 are orthologous proteins as are rat 12–12 and mouse T2–2* and human T2–2" [Ex. 124A].

The hypothesis under investigation in this work was that the enzyme similar to rat GST 5–5 (mouse T1–1* and human T1–1) was the critical enzyme responsible for metabolism of MC to the carcinogenic metabolite, and that differences in the interspecies intra- and inter-cellular distributions of this isozyme and differences in genotoxicity would be important for characterizing the risk of carcinogenesis after exposure to MC.

In order to examine the distribution of the GST isozymes of interest, the investigators used DNA oligonucleotide anti-sense probes complementary to three regions of the protein nucleotide sequences of rat GST 5–5, mouse GST T1–1* and human GST T1–1 to localize specific mRNA sequences in mouse, rat and human liver and lung tissue. They also used an antibody raised against rat GST 12–12 to localize the protein itself [Exs. 124, 124A]. In the full paper describing these experiments [Ex. 124A], Mainwaring characterized the results of this study, as follows:

> The mouse enzymes [T1–1* and T2–2*] were present in significantly higher concentrations in both liver and lung than the equivalent enzymes in rat and human tissues. In mouse liver, both enzymes were localized in limiting plate hepatocytes surrounding the central vein, in bile duct epithelial cells and in the nuclei of hepatocytes. In rat liver the distribution of GST 12–12 was comparable to that seen for T2–2* in the mouse. GST 5–5 was not localized in limiting plate hepatocytes or in nuclei of rat liver. The levels of human transferase T1–1 in the liver were very low, with an even distribution throughout the lobule. The GST 12–12 antibody did reveal high concentrations of this enzyme in human bile ducts. The relative amounts of the theta enzymes in the lungs of the three species followed the pattern seen in the liver, with very high concentrations in Clara cells and ciliated cells of the mouse lung and much lower levels in the Clara cells only of rat lung. Low levels of human transferase T1–1 were detected in Clara cells and ciliated cells found at the alveolar/bronchiolar junction of one human lung sample. The enzyme was entirely absent from the large bronchioles.

Mainwaring et al. concluded that:

> This study has demonstrated a highly specific distribution of the theta class GSTs 5–5 and 12–12 in liver and lung tissue from mice, rats and humans. * * *it was apparent from these studies that both the distribution and concentration of theses enzymes differed markedly between the three species. Whilst neither mRNA levels nor protein concentrations necessarily correspond to active enzyme, the distribution shown by the mRNA for GST 12–12 was quantitatively reflected by the antibody to the protein of this enzyme, suggesting that these techniques do, in this case, reflect the distribution of active enzyme. Although an antibody to GST 5–5 is not available, it is reasonable to assume that mRNA levels for this enzyme are similarly representative of the distribution of active enzyme.

An understanding of the cellular and sub-cellular distribution of GST 5–5 has provided

an explanation for the species specificity of the mouse lung and liver carcinogen methylene chloride, and has provided reassurance that humans are not at risk from exposure to this chemical.

(ii) Issues raised pertaining to metabolic studies. Many commenters commended the HSIA for providing new information on the mechanism of action of MC and for confirming previous quantitative studies of the interspecies differences in MC metabolism. However, commenters also raised several specific issues regarding the conduct and interpretation of these experiments.

Correlation of mRNA concentrations with enzyme concentrations.

Mainwaring et al. [Ex. 124A] correlated the inter- and intra-cellular distribution of the mRNA for GST 12–12 in the rat with the distribution of the antibody for GST 12–12. They stated that it is reasonable to assume that since the protein and mRNA for the 12–12 isomer have similar distributions, the protein for the 5–5 isomer would distribute in the same manner as the mRNA for the 5–5 isomer. In support of their assumption, they noted that there is 80% homology between the 5–5 and 12–12 isomer. Some commenters believed that this was not a reasonable assumption and that there was no reason to believe that the distribution of the GST 5–5 isomer protein would correlate with the distribution of the GST 5–5 mRNA simply because there seemed to be a correlation in the 12–12 isomer protein and mRNA distributions [Exs. 126–7, 126–16]. OSHA concurs with these commenters, and until there is actual measurement of the GST 5–5 protein, OSHA does not believe that the question of the actual distribution of GST 5–5 isozyme will have been settled.

More importantly, several commenters stressed that it was mRNA that was actually observed in these studies, and mRNA levels do not necessarily correspond to either protein levels or protein activity within a cell [Exs. 126–7, 126–16, 126–28, 126–30, 126–32]. Although Mainwaring et al. acknowledge this fact [Ex. 124A], the conclusions reached by the authors still suggest that measurement of mRNA is equivalent to measurement of enzyme activity. Referring to the conclusions drawn by Mainwaring et al., Dr. Lorenz Rhomberg [Ex. 126–16] commented:

> This interpretation of mRNA distribution is profoundly in error and contradicts some of the most well established and fundamental principles of molecular biology.* * * Finding mRNA in the nucleus is unsurprising and uninformative about the eventual location of the protein products. Detecting mRNA only reveals that the cell may be presumed to be manufacturing the corresponding protein.

Dr. Rhomberg was also concerned that the concentration of GST T1–1* in the nucleus of mice may be an artifact of the experimental conditions, resulting, perhaps, from a burst of mRNA synthesis. The concern that the apparent nuclear concentration of GST may be an artifact was echoed by Dr. Douglas A. Bell of the National Institute for Environmental Health Sciences [Ex. 126–26]. He stated:

> Why the [intracellular] distribution should be different among species is unclear and unusual. Differences in processing of the nuclear RNA transcript from full length pre-mRNA may be the underlying cause of this phenomenon (or perhaps there is a transcribed pseudogene that is complicating the process).

Because of the specific cellular mechanisms that would be required to concentrate a protein in the nucleus, Dr. Rhomberg [Ex. 126–16] indicated that translocation of the GST 5–5 protein to the nucleus only in mice seemed unlikely. He stated:

> It seems implausible * * * that for a series of orthologous proteins, such localization would be found in a particular species and not in other species.

OSHA agrees with the comments made by Dr. Rhomberg and Dr. Bell on this issue, and concludes that the concentration of mRNA at a particular cellular site does not necessarily correlate with concentration of the enzyme itself. OSHA believes that caution should be used when interpreting the results of these experiments.

Attribution of GST metabolizing activity to a single GST isozyme.

Concern was also raised about the validity of attributing all of the glutathione S-transferase metabolism of MC to one isomer of the theta class [Exs. 126–7, 126–12]. In particular, Dr. Dale Hattis noted that there was less enzyme activity eluting coincident with the peak identified as the 5–5 form than that eluting at pH 8, which was not believed to correspond to the 5–5 form. Dr. Ronald Brown described results from a paper by Blocki (1994) [Ex. 127–22] which showed that "expression of the [5–5] isozyme contributes 50% of the total GST activity toward this substrate." This leaves the question open as to whether isozymes which may have lower specific activity for MC but which may be expressed in much greater abundance (particularly μ 4–4), could contribute as much as the remaining 50% of the total GST metabolism (see Table VI–1, reproduced below from Dr. Brown's comment [Ex. 126–7], original source Blocki et al. (1994) [Ex. 127–22]).

TABLE VI–1.—RELATIVE CONTRIBUTION OF DIFFERENT RAT LIVER GLUTATHIONE S-TRANSFERASES IN DICHLOROMETHANE METABOLISM TO FORMALDEHYDE

				Glutathione S-transferases		
				α Class	μ Class	θ Class
Comparative parameter (units)	1–1+1–2+2–2	3–3	3–4	4–4	[b] 5–5	[b] 13*k*
Specific activity (nmol/min/mg of protein)	<0.1	7	11	23	11,000	9
% Cytosolic protein (% of total in liver)	6.4	0.7	0.3	0.6	0.002	0.005
Total activity (nmol/min/g of liver protein)	<10	49	33	138	22	0.45
% Total activity[c]	<1.5	11	7	32	50	0.1

[a] Data from Meyers et al., 1991.
[b] Data for 13,000 molecular weight glutathione transferase from Blocki et al., 1992.
[c] Assuming Vmax conditions for each.

In addition, Mainwaring et al. [Ex. 124A] noted that the "substrate specificity of GST 12–12 is currently poorly characterized," although the purified enzyme has no activity toward MC. As described above, these enzymes appear to be very labile upon purification. Therefore, it is unclear how much the 12–12 isomer itself may contribute to MC metabolism. As Dr. Kenneth T. Bogen stated, "* * * while the substrate specificity of GST 12–12 may currently be poorly characterized, current data do not appear to rule out GST 12–12 specificity toward MC."

Limited human samples and human polymorphism in the GST theta genes.

Several commenters expressed concern for the limited number of human samples (one pooled lung sample and less than 40 human liver samples have been assayed) and the potential effect of a known human polymorphism for the glutathione S-transferase theta class genes on risk estimations [Exs. 126–7, 126–16, 126–26, 126–35]. Specifically, commenters raised concerns that there may be a large subpopulation of GST conjugators who may be at increased risk from MC exposure that has not been adequately characterized in the limited number of human samples (especially lung samples) that have been tested. HSIA objected to these comments, stating,

> The human tissue data base for the metabolism of methylene chloride by the GST pathway is one of the largest, if not the largest, available for this type of risk assessment. To discount it based on arguments concerning hypothetical polymorphisms, as these commenters urge OSHA to do, would be contrary to the message consistently put forward by the National Academy of Sciences and regulatory authorities for the past decade. * * *"

In fact, the National Academy of Sciences report cited by HSIA, "Science and Judgement in Risk Assessment" does encourage agencies to make use of biologically-based models, but cautions that using them without adequately considering human variability would be a step backwards:

> EPA has not sufficiently accounted for interindividual variability in biologic characteristics when it has used various physiologic or biologically based risk-assessment models. The validity of many of these models and assumptions depends crucially on the accuracy and precision of the human biological characteristics that drive them. In a wide variety of cases, interindividual variation can swamp the simple measurement uncertainty or the uncertainty in modeling that is inherent in deriving estimates for the "average" person.

The Academy goes on to recommend specifically that making "reasonable inferences" about interindividual variation is *required*, rather than assuming that no such variation exists:

> Even when the alternative to the default model hinges on a qualitative, rather than a quantitative, distinction, such as the possible irrelevance to humans of the alpha-2u-globulin mechanism involved in the initiation of some male rat kidney tumors, the new model must be checked against the possibility that some humans are qualitatively different from the norm. Any alternative assumption might be flawed, if it turns out to be biologically inappropriate for some fraction of the human population.
>
> When EPA proposes to adopt an alternative risk-assessment assumption * * * it should consider human interindividual variability in estimating the model parameters or verifying the assumption of "irrelevance." If the data are not available that would enable EPA to take account of human variability, EPA should be free to make any reasonable inferences about its extent and impact (rather than having to collect or await such data), but should encourage interested parties to collect and provide the necessary data.

OSHA believes HSIA has misinterpreted the NAS recommendations, and further disagrees with HSIA that the polymorphism is "hypothetical." Investigators have demonstrated this polymorphism in human GST and have shown how the polymorphism varies across races [Exs. 127–7, 127–9, 127–17, 127–21, 127–23, 127–24, 127–25]. OSHA agrees with the commenters that a human polymorphism in the GST theta genes may increase concern for individuals that may be at higher risk from exposure to MC due to their genetic make-up. The Agency has considered sensitive subpopulations in the development of health standards, including this rulemaking. For example, the subpopulation of workers with silent or symptomatic heart disease was considered in assessing the cardiac risks of MC (due to its metabolism to carbon monoxide). The variation in enzyme activity raises additional uncertainty in the use of human data to support the hypothesis that mice are uniquely sensitive to MC carcinogenicity. However, for purposes of quantitative analysis, the Agency has not attempted to systematically adjust the risk estimates based on a "high GST metabolizing" individual because the frequency and impact of such polymorphisms have not been clearly worked out.

Target site of MC carcinogenesis in mice versus humans.

Drs. Brown and Melnick [Exs. 126–7, 126–33] also raised the possibility that the target site for MC carcinogenesis may be different in humans than in mice or rats. Specifically, research on the occurrence of theta isomers of GST in human blood was described. The characterization of GST metabolism in human erythrocytes [Exs. 127–11, 127–12] suggests the possibility of the bone marrow as a potential target of MC carcinogenesis and also the potential for metabolism in the blood and translocation of the metabolites to a variety of potential targets. The HSIA discounted human blood metabolism of MC, stating,

> The 'very high capacity to conjugate methylene chloride' mentioned by Brown is in fact very low, approximately 40-fold lower than the highest activity detected in human liver.

OSHA believes that although the specific activity in the blood may be lower than the human liver activity, the total activity of the GST enzymes in blood and marrow may be significant when one also considers the volume of these compartments. OSHA also notes that interspecies tumor site concordance is not necessarily expected, and it is prudent to consider any human tissues which have the potential to metabolize MC to the putative carcinogen.

Concentration of protein complementary to rat GST 12–12 in human bile ducts.

Dr. Bogen [Ex. 126–15] commented specifically on the human liver protein complementary to the antibody to rat GST 12–12 protein. In particular he was concerned that high concentrations of this enzyme were reported in bile ducts of the human liver. He noted,

> With regard to potential human carcinogenicity of MC relative to its known carcinogenic potential in mice, it seems to me that these particular data ought not to reduce regulatory concern, but rather ought to increase regulatory concern, in view of the fact that bile duct epithelium cells are the most likely stem cells for hepatocytes. * * * Thus hepatocellular bile-duct epithelial cells are likely to play an important role in liver carcinogenesis in both mice and humans.

OSHA agrees with Dr. Bogen's concerns and also notes that in the cohort study of textile workers conducted by Hoescht-Celanese [Ex. 7–260], an excess of biliary cancers was observed in those workers exposed to the highest concentrations of MC and those with the longest latency period between exposure and disease. If the HSIA theory is correct (i.e., a single isozyme is the culprit), then finding high levels of this isozyme in human bile duct is strong evidence implicating MC in human carcinogenesis.

Interpretation of data as qualitative versus quantitative differences.

Perhaps most importantly for the purposes of MC risk assessment, several commenters remarked that OSHA should use caution when interpreting the data from the HSIA submissions, because any interspecies differences are rightly considered first as quantitative rather than qualitative ones. In part, the commenters cautioned that one should pay special attention to the threshold of detection in all assays. As Dr. Andrew Salmon stated,

> Green and co-workers have consistently confused their inability to measure a result or parameter value due to its magnitude or frequency of occurrence being below their threshold for practical detection, with a true

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zero value for the parameter or zero risk of an occurrence [Ex. 126–36].

OSHA agrees that caution should be used when attempting to characterize a difference between species as an absolute qualitative difference. A much higher burden of proof is required to support a claim of zero risk than of diminished risk. (This higher burden is due to the need to consider assay sensitivity and other factors; the fact that the consequences of incorrectly concluding that humans are at zero risk are particularly dire only adds to the already high threshold of scientific evidence needed to successfully make such a claim). In the case of MC, humans clearly have the ability to metabolize MC via the GST pathway [Exs. 21–53, 127–16]. Even if the enzyme concentration of GST T1–1* itself actually occurs only in the nuclei of mouse lung or liver (as opposed to the concentration of mRNA, which may or may not be localized differently within mouse cells), it is still unclear what impact (if any) this fact would have on the characterization of human cancer risks for MC. OSHA believes that the statement that there are absolute species differences in the activity and intracellular distribution of GST 5–5 is highly speculative and is not supported by the data presented to date, because the data presented refers to the distribution of mRNA for GST 5–5, not the enzyme concentrations or activity levels of the enzyme; there is no quantification of the intracellular levels of the mRNA or enzyme levels, only photographic representations; and there is no evidence that any potential difference in enzyme activity (when those experiments are completed) would be greater than the difference already predicted from allometric scaling considerations.

Conclusions reached by the HSIA.

HSIA concluded from these studies that because of a qualitative inter-species difference in the distribution of the GST theta enzyme responsible for MC carcinogenesis, humans would not be at risk of developing cancer under "foreseeable conditions of exposure." Although some commenters agreed with the conclusions reached by the HSIA [e.g., Exs. 126–10, 126–13, 126–20], many commenters strongly disagreed with this interpretation of these data pertaining to the risk assessment for MC. These commenters [e.g., Exs. 126–7, 126–11, 126–12, 126–15, 126–16, 126–22, 126–26, 126–30, 126–36] were concerned that the question was in reality an issue of quantitation of enzyme, not a qualitative difference in metabolism. Dr. Lorenz Rhomberg commented:

> The question is, is there any basis for believing that the species difference in activity suggested by the mRNA data is greater than has been previously supposed?
>
> It should be emphasized that some degree of species difference in metabolic activity is expected even under the default cross-species extrapolation methods. That is, in keeping with the general pattern of scaling of physiological processes across species, general metabolic rates are presumed to be lower on a per unit of tissue basis in larger animals. As a default, this pattern can be presumed to apply to individual metabolic pathways as well, although data on species-species activities can be used in place of such defaults if available.
>
> If species-species activities are discovered by experiment to be less in humans than in mice to the degree already anticipated by allometry, then the experiments are simply confirming the default and no change in the human risk estimates is warranted. If humans have a metabolic activity different than the allometric prediction, the incorporation of such estimates into PBPK models can show different human risks from those predicted under the default. The allometric prediction is that, on a per unit of tissue basis, humans should have about 7-fold lower activity than mice and about 4-fold lower activity than rats.
>
> Given the limit of detection of the assay methods, human metabolic activity (or mRNA levels) only a bit less than the allometric expectation of 7-fold less than mice are often difficult to distinguish from zero. That is, claims that humans have no activity (or no mRNA production) in certain tissues must be judged in the light of the fact that only a small change from the already acknowledged allometric difference can often make the human activity undetectable. A 20-fold mouse-human difference, for example, really only represents a 3-fold exaggeration of the 7-fold allometric pattern, yet many assays may fail to reliably characterize a 20-fold difference as a quantitative difference rather than a qualitative difference.
>
> For the above reasons, claims that human metabolic activity in activating methylene chloride are so low as to be essentially qualitatively different than mice should be interpreted with great caution. In fact, existing assays have great difficulty in detecting species differences in metabolic activity great enough to markedly challenge existing risk assessments.

Another commenter discussed the fact that cellular levels of the GST 5–5 isoenzyme would be expected to be distributed unevenly across cells, putting some cells at greater or lesser risk. This would tend to average out over a tissue and would be best described by tissue metabolism data. Other commenters remarked that there was no need to adjust the risk estimates based on these studies because current pharmacokinetic models already account for interspecies differences in metabolism. Although OSHA has incorporated data from these studies, especially in its "alternative analysis," OSHA agrees with Dr. Rhomberg and the other commenters who have taken exception to the HSIA conclusions.

The Agency does not accept the HSIA characterization of the results of the summarized studies. OSHA has determined that no evidence has yet been presented that demonstrates that humans are not at risk of developing cancer after exposure to MC. At most, the presented studies suggest a quantitative inter-species difference in MC metabolism, which was established in previous scientific reports and is already accounted for by PBPK modeling. As discussed extensively in this document, OSHA has concluded that HSIA has undervalued certain strong evidence and has overemphasized some more speculative hypotheses. However, as is clear from this discussion OSHA has carefully considered all of the evidence. Substantial evidence in the record clearly supports OSHA's conclusions. Consequently, OSHA's approach of relying on the NTP mouse tumor data as the basis of its quantitative risk assessment continues to be the best approach to risk estimation.

c. Conclusions regarding the carcinogenesis of MC. The HSIA submitted these documents to OSHA with a request that the Agency consider the mouse tumor data in light of these additional studies and reject use of the mouse tumor response data as the basis of the Agency's quantitative risk assessment. OSHA believes it has given proper weight to all the evidence, giving greater weight to that which is of the highest scientific quality. However, in light of HSIA's request, the Agency reopened the rulemaking record and reviewed all the new data. After submitting these documents for review, the HSIA [Ex. 126–29] remarked on comments submitted to the docket by other scientists,

> In general, the comments submitted by R. Maronpot, R. Brown, L. Rhomberg, K. Bogen and D. Hattis exhibit a reluctance to use the large body of mechanistic data now available in assessing the potential carcinogenic risk posed by methylene chloride, even though most other commenters agree that the pathway responsible for its observed carcinogenicity in mouse liver and lung, as well as species variations in activity of this critical pathway, have now been identified. Much of the comment addressed here appears to be motivated by a desire to maintain the "status quo" for assessing carcinogenic risk based on default principles that were developed twenty years ago.

The HSIA goes on to say,

Many of the conclusions reached by the commenters * * * are based, often erroneously, on single aspects of one or the other of these publications, rather than on the entire data base, as a "weight of evidence" approach would demand and as is necessary to understand the results.

OSHA finds it difficult to understand why HSIA believes that the scientists they listed are primarily interested in preserving the "status quo." Dr. Maronpot conducted the mechanistic studies on MC at NIEHS, which have generated mechanistic information useful to the risk assessment process. Dr. Rhomberg was instrumental in developing the pharmacokinetic approach used by the Environmental Protection Agency in its risk assessment of MC (an approach never used by the Agency previously). Dr. Hattis, Dr. Bogen and Dr. Brown are all experts in the application of pharmacokinetic modeling to risk assessment and have repeatedly called for incorporating more mechanistic and physiological data into pharmacokinetic models. These highly respected scientists, among others, reviewed the HSIA submissions critically and independently and reached conclusions different from those of the HSIA, conclusions which themselves depart significantly from the "status quo." This does not suggest to OSHA that they are trying to preserve some status quo in risk assessment, and OSHA finds nothing in the comments of these experts to suggest that this is the case.

In order to respond to HSIA's desire to have OSHA further review all of the data, the Agency has reviewed each submitted study carefully and critically on its own merits to determine how each piece of data fits into the overall picture of the mechanism of action for MC. OSHA believes that in this process the critical issues raised by the HSIA have received a full airing and the hazard identification and the risk assessment for MC have been improved because of it. OSHA believes, however, that looking *only* at the new studies submitted by HSIA, and examining them uncritically, would contradict every principle of scientific analysis.

In summary, in order to accept the HSIA's supposition that MC is not carcinogenic in humans, one must believe the following:

1. GST 5–5 is the only isozyme which can metabolize MC to the carcinogenic metabolite.

2. DNA single strand breaks are relevant and a sufficient measure of the tumorigenicity of a compound.

3. The absence of detectable increases in DNA ss breaks in a single experiment means that there are in fact no additional ss breaks.

4. The limited number of human samples (one sample of pooled lung tissues being the absolute extreme of "limited" data) used to determine metabolic parameters are truly representative of the range of human variability.

5. An apparent correlation in the distribution of the GST 12–12 protein and GST 12–12 mRNA means that the distribution of GST 5–5 protein will correlate similarly with the distribution of GST 5–5 mRNA.

6. Visual interpretation of photomicrographs staining for GST mRNA gives a true and accurate measure of GST activity in the cell.

And one must also ignore the following contradictory observations and conclusions about the mechanism of action (in addition to ignoring the suggestive epidemiologic evidence):

1. Metabolites of GST can cross cell and nuclear membranes and interact with DNA to induce DNA ss breaks and mutations.

2. GST mRNA and protein stain heavily in human bile duct cells (believed to be precursors of hepatocytes).

3. Human lung tissue has been shown to stain for GST mRNA.

4. Only 50% of the GST metabolism of MC can be accounted for by the GST 5–5 isozyme.

5. The metabolic capacity of GST 12–12 for MC has not been characterized.

OSHA concludes that these studies, even putting aside all technical objections to the methodology and interpretation of individual studies, do not change the conclusion that substantial evidence supports the carcinogenicity of MC. The bioassay results in mice are still qualitatively and quantitatively relevant to humans. Once the HSIA studies have been replicated and key components quantified (like the intracellular enzyme activity (instead of mRNA levels) of GST towards MC), the HSIA data may be useful in characterizing quantitative interspecies differences in MC GST metabolism. In particular, it would be useful to determine whether all of the evidence that HSIA submitted is consistent with an allometric difference (a difference expected based on the size of the animal) in sensitivity to MC or with a greater interspecies difference in sensitivity. (The specific activity of GST toward MC in mice is estimated to be about 7-fold that of humans, based on allometric considerations.) OSHA believes that its final risk assessment, which relies on an analysis of all available PBPK data, addresses both possible interpretations.

B. Selection of Database for Quantitative Risk Assessment

1. Animal Bioassays

The first step in performing a quantitative assessment of carcinogenic risk based on animal data is to choose a data set or sets from which to define the dose-response relationship. In its NPRM, OSHA had chosen the NTP female mouse lung and liver tumors to determine its estimates of risk. OSHA chose these responses because they provided clear dose-response relationships, had low background tumor rates and were more sensitive measures of dose-response than corresponding male mouse tumor sites.

The EPA, the CPSC and the FDA chose to use the combined incidence of adenomas and carcinomas of the lung and liver as the basis for their risk assessments. Specifically, the EPA [Exs. 25–D, 28] placed emphasis on the experimental species and sex group showing the highest risk: the number of female mice showing either adenoma or carcinoma in either lung or liver (or both). The CPSC [Ex. 25–I] pooled benign and malignant tumors of either the mammary gland, lung or liver and averaged male and female estimates to derive an overall risk estimate. The FDA [Ex. 6–1] used benign and malignant responses of female mice. The Crump report [Ex. 12] noted that it may be reasonable to combine lung and liver responses to give an indication of the potency of MC, due to the fact that metabolism of MC occurs by the same pathway in both lung and liver and thus results in the same ultimate metabolites. However, the report added that since both tissues have different background responses, combining responses may tend to complicate the interpretation of risk estimates.

In OSHA's final rule, the NTP study (rat and mouse, inhalation) was chosen for quantitative risk assessment because it provided the best toxicological and statistical information on the carcinogenicity of MC [Exs. 12, 7–127] and because the study was of the highest data quality. In the NTP study, MC induced significant increases both in the incidence and multiplicity of alveolar/bronchiolar and hepatocellular neoplasms in male and female mice. In rats, dose-related, statistically significant increases in mammary tumors were also observed. OSHA chose the female mouse tumor response as the basis of its quantitative risk assessment, because of the high quality of data, the clear dose response of liver and lung

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tumors and the low background tumor incidence. Although the female rat mammary tumor response was also dose-related, the data of high quality and amenable to quantitative risk assessment, the mouse data set had a clearer dose-response in both liver and lung tumors than the rat mammary tumor response and the mouse background tumor incidence was lower than in the rat. Therefore the mouse data set was chosen for quantitative analysis.

OSHA included the lung adenomas in the quantitative analysis. The evidence suggests that the presence of benign tumors with the potential to progress to malignancies should be interpreted as representing a potentially carcinogenic response. This belief is supported by the OSTP's views on chemical carcinogenesis (50 FR 10371). OSTP stated that at certain tissue sites, such as the lung, most tumors diagnosed as benign really represent a stage in the progression to malignancy. Additionally, NIOSH, the EPA, the CPSC and the FDA have also included benign responses in their assessments. Therefore, it is appropriate and sometimes necessary to combine certain benign tumors with malignant ones occurring in the same tissue and the same organ site. In particular, OSTP also stated that "the judgement of the pathologist as to whether the lesion is an adenoma or an adenocarcinoma is so subjective that it is essential they be combined for statistical purposes." (50 FR 10371).

OSHA chose female mouse lung tumors as the specific tumor site for its final quantitative risk assessment. There is no *a priori* reason to prefer the mouse lung tumor response over the liver tumor response, because both data sets were of high quality, showed a clear dose-response relationship and had low background tumor incidence. In fact, in the NPRM, the Agency reported estimates of risk generated using both sites. However, to reduce the complexity of the final PBPK analysis, which required highly intensive computations, OSHA chose one site (the female mouse lung tumor response) for its final risk estimates. The risks calculated using the female mouse liver response would likely be slightly lower than those calculated using the lung tumor response. On the other hand, pooling the total number of tumor-bearing animals having either a lung or liver tumor (or both) (which is the procedure EPA advocates [see its 1986 Guidelines for Cancer Risk Assessment]) would have yielded risk estimates higher than OSHA's final values.

The NTP study has been described in the Health Effects section and, above, in the discussion regarding hazard identification.

2. Epidemiologic Data

The epidemiology data are not as useful for quantitative risk assessment as the animal data because the animal data provide a clear dose-response, with fairly precise indices of exposure, which cannot be derived from the epidemiology data. All other things being equal, risk assessors would prefer to use epidemiologic data to assess cancer risk in humans over data from animal studies whenever good data on human risk exist. However, the uncertainty inherent in epidemiologic studies must be accounted for; in particular, "positive" studies often have lower confidence limits that do not rule out the no-effect hypothesis, while ostensibly "negative" studies often have UCLs that would support a substantial positive effect. OSHA believes (see discussion below) that the latter circumstance applies to some of the MC studies. Other factors, such as duration and intensity of a chemical exposure (which can rarely be controlled and accurately measured in an epidemiological study), difficulty in accurately defining the exposed population, and other confounding factors diffuse a study's predictive power of true risks.

Frequently, animal studies indicate a positive response to a particular chemical when epidemiologic studies of exposures to the same chemical fail to exhibit a statistically significant increase in risk. When animal studies show a substance to be a carcinogen but epidemiologic studies are non-positive, the minimum risk which could be detected by the human study should be estimated to assess the strength of the epidemiologic study and justify its importance in the risk assessment process. Similarly, the animal-based potency estimate can be used to predict the number of human deaths investigators would likely have seen in an epidemiologic study if the animal-based estimate was correct; if the observed number of human deaths is markedly inconsistent with this predicted number, the relevance of the animal-based estimate might well be called into question. If the human data are equivocal, or the epidemiologic study is not sufficiently sensitive to identify an increased risk predicted by a well-conducted animal bioassay, it is necessary to consider the animal data to protect workers from significant risk. OSHA concludes that the MC epidemiology studies do not have adequate information upon which to base a quantitative risk assessment. OSHA has, however, used the analyzed epidemiological data to determine whether the results are consistent with those estimated using the rodent models. This is discussed later in the document.

3. Conclusions

After reviewing the animal data and the quantifiable epidemiology data, OSHA has determined that the NTP female mouse lung tumor response is the appropriate data set on which to base its quantitative risk assessment, and has determined that the most scientifically-appropriate way to use these data involves constructing a PBPK model to extrapolate from animals to humans. OSHA believes that the non-positive epidemiology data, in particular those from Kodak, are of in sufficient power to rule out the risk estimates derived from the animal data.

C. Choice of Dose-Response Model

Several approaches have been used to estimate cancer risk from exposure to toxic agents. A standard approach uses mathematical models to describe the relationship between dose (airborne concentration or target tissue dose surrogate) and response (cancer). Generally, mathematical functions are fit to the data points observed at different exposure levels and these functions are used to estimate the risk that would occur at exposure levels below those observed. The shapes of these curves vary, ranging from linear extrapolations from the observed points through the origin (zero exposure and zero risk) to curves which may deviate far from linearity at the very highest or lowest doses. The use of a particular model or curve can be justified in part by statistical measures of "goodness-of-fit" to observed data points. That is, there are various statistical tests which measure how closely a predicted dose-response curve fits the observed data.

The most commonly used model for low-dose extrapolation is the multistage model of carcinogenesis. This model, derived from a theory proposed by Armitage and Doll in 1961, is based on the biological assumption that cancer is induced by carcinogens through a series of independent stages. The Agency believes that this model conforms most closely to what we know about the etiology of cancer. There is no evidence that the multistage model is biologically inappropriate, especially for genotoxic carcinogens, which MC most likely is. The most recent data submitted by the HSIA [Exs. 117–124A] clearly add substantial support to the previous body

of evidence indicating that one or more metabolites of MC is a genotoxic carcinogen. The low-dose linearity feature of this model is scientifically required for any exposure that confers additional risk upon a pre-existing background level of risk produced by a similar or equivalent mechanism. Given the underlying connection between DNA mutations and cancer and the obvious background incidence of cancer in the human population, the overwhelming scientific consensus is that genotoxins follow low-dose linear functions.

The multistage model is generally considered to be a conservative model because it is approximately linear at low doses and because it assumes no threshold for carcinogenesis, although there are other plausible models of carcinogenesis which are more conservative at low doses. "No threshold" means that any incremental amount of exposure to a carcinogen is associated with some amount of increased risk. "Approximately linear at low doses" means that one unit of change in dose will result in one unit of change in risk at low doses.

The most common approach for setting the parameters in the multistage model is to assume that the dose-response curve is described by a polynomial of k-1 degrees, where k is the number of dose groups tested. The multistage model thus takes the form

$P(\text{Cancer}) = 1 - \exp(-f(\text{dose}))$,

with f(dose) given by:

$f(\text{dose}) = a + b_1(\text{dose}) + b_2(\text{dose})^2 + \ldots + b_{k-1}(\text{dose})^{k-1}$.

The number of stages is specified by k-1, and the parameters a (the background risk) and b_i are estimated from the observed data.

Alternatives to the multistage model include the tolerance distribution models such as the probit model, the logit model and the Weibull model. The tolerance distribution models generally predict dose-response relationships which are sigmoid in shape. Thus, these models will approach zero more rapidly than a linear multistage model. This means that at low doses, these models will predict lower risks than will a linear multistage model.

In the MC rulemaking, most of the risk assessments submitted to the Agency used the linearized multistage model to predict risk. The differences in risk estimates were not generally due to the dose-response model used, but to whether the risk assessor used pharmacokinetic modeling to estimate target tissue doses, and what assumptions were used in the pharmacokinetic modeling.

D. Selection of Dose Measure

1. Estimation of Occupational Dose

The purpose of low dose extrapolation is to estimate risk of cancer at a variety of occupational exposures. This requires that the doses be converted into units comparable to those in which the experimental dose is measured.

In its NPRM, OSHA first converted the experimental dose, measured in ppm, to an inhaled dose, measured in mg/kg/day. The female mouse body weight used in these calculations was 0.0308 kg. The breathing rate for mice was 0.05 m^3/day. The Agency then assumed that equivalent doses in mg/kg/day would lead to equivalent risk. Once the experimental dose (in mice) had been converted to mg/kg/day, it was then converted to ppm using the human breathing rate of 9.6 m^3/workday and human body weight of 70 kg in order to estimate risks at various potential exposure levels. To determine the dose to humans corresponding to the risk estimated from the mouse data, OSHA used the following equations:

$$\text{Dose}_M(\text{mg/m}^3) = \frac{\text{Dose}_M(\text{ppm})(84.9\text{g/mol})\ (1000\text{ mg})(1000\text{ L})}{24.45\text{ L/mol}\qquad\qquad (\text{g})(\text{m}^3)}$$

$$\text{Dose}_M(\text{mg/kg/d}) = \frac{\text{Dose}_M(\text{mg/m}^3)(0.05\text{m}^3/\text{d})\ (6\text{hr}/24\text{hr})(5\text{d}/7\text{d})}{(0.0308\text{ kg BW})}$$

OSHA assumed that risk estimates derived for mice at a given mg/kg/d would be equivalent to risks experienced by humans at that mg/kg/d. Doses in mg/kg/d in humans were converted to ppm to determine risk at various potential workplace exposures using the following equations:

$$\text{Dose}_H(\text{mg/m}^3) = \frac{\text{Dose}_H(\text{mg/kg/d})\ (70\text{kg})}{(9.6\text{m}^3/\text{workday})(5\text{d}/7\text{d})(45\text{yr}/70\text{yr})}$$

$$\text{Dose}_H(\text{ppm}) = \text{Dose}_H(\text{mg/m}^3)(24.45\text{L/mol})/(84.9\text{ g/mol})$$

This process was used by K.S. Crump et al. in their risk assessment submitted to OSHA [Ex. 12]. Use of mg/kg/d as a measure of dose has been criticized by Mr. Harvey Clewell, representing the U.S. Navy [Ex. 19–59]. He stated,

> Strictly speaking, the concept of a mg/kg/day dose applies only to exposures for which the term "administered dose" is well defined, which does not include inhalation exposure to a volatile, lipophilic chemical such as MC....If a non-pharmacokinetic dose surrogate is desired, the choice should be time-weighted average concentration (ppm) as used by the FDA.

Mr. Clewell preferred use of dose surrogates calculated in the PBPK models to estimate human risk. OSHA has given careful consideration to the issues raised by Mr. Clewell and, in the risk assessment presented here, considered dose surrogates estimated in PBPK models and time-weighted average concentration in addition to the mg/kg/d dose presented in the NPRM.

For all dose measures used to estimate human risk, the assumptions used by OSHA for body weights and exposure times and rates were those described above. In OSHA's final risk assessment, a Bayesian analysis was used and the prior distribution for breathing rate was centered on OSHA's preferred value of 9.6 m^3/d.

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2. mg/kg/d Versus Other Measures of Exposure

Quantitative risk assessments based on animal data are conducted under the assumption that animals and humans have equal risks from lifetime exposures to a chemical when exposure is measured in the same unit for both species. Opinions vary, however, on what is the correct measure of exposure. For site-of-contact tumors, a ppm-to-ppm conversion is a generally accepted measure of dose. For systemic tumors, commonly used dose conversions include mg/kg/day (as used by OSHA in its MC NPRM), mg/surface area/day (with surface area approximated by $BW^{2/3}$), mg/$BW^{3/4}$/day, and mg/kg/lifetime. When adequate and appropriate pharmacokinetic or metabolic data are available, these data are sometimes used to estimate internal dose. In the case of MC, metabolic data have been gathered and pharmacokinetic models have been used by various investigators to estimate target tissue doses for MC.

Some commenters [Exs. 19–28, 19–57] had expressed concern that OSHA used a surface area correction factor in its risk assessment in the NPRM. In fact, in the NPRM, OSHA extrapolated from mice to humans based on body weight rather than surface area. However, the Agency requested comment on which species conversion factor would be appropriate to use in OSHA's final risk assessment and whether incorporation of pharmacokinetic information should influence the choice of the conversion factor. Two commenters [Exs. 19–83, 23–21] referred to the interagency document on interspecies scaling which ultimately recommends $BW^{3/4}$ as the appropriate extrapolation factor in the absence of appropriate pharmacokinetic information, although the document also indicates that extrapolation factors based on BW or $BW^{2/3}$ would also be consistent with the available data (EPA Draft Report: "A cross-species scaling factor for carcinogen risk assessment based on equivalence of mg/$kg^{3/4}$/day." 57 FR 24152, June 5, 1992).

There was also considerable discussion as to whether it was appropriate to apply an extrapolation factor such as $BW^{3/4}$ or $BW^{2/3}$ in addition to PBPK modeling of dose, to account for pharmacodynamic differences between species (such as differences in DNA repair rates and other non-metabolic differences in interspecies susceptibility to an agent). The EPA applied the $BW^{2/3}$ extrapolation factor after incorporation of the PBPK data for MC in their 1987 draft update of the MC risk assessment. In their previous risk assessment, which did not incorporate PBPK data, EPA also used $BW^{2/3}$ as the extrapolation factor. Since OSHA has preferred the BW extrapolation in other chemical-specific risk assessments and has used BW as the extrapolation factor in its best estimate of risk in the NPRM for MC, OSHA agrees with Dr. Lorenz Rhomberg's assessment [Ex. 28] that OSHA should continue to use body weight as its extrapolation factor in its final MC risk assessment. Thus, OSHA's risk estimate does not make any allowance for possible pharmacodynamic differences between rodents and humans, or within the diverse human population.

3. Pharmacokinetic Modeling of Dose

OSHA discussed issues relating to the use of pharmacokinetic data in its NPRM. These issues were further explored during the hearings and in pre-hearing and post-hearing comments. In response to the ANPR [51 FR 42257], Dow Chemical submitted documentation of a physiologically-based pharmacokinetic model (PBPK) [Exs. 8–14d and 10–6a], developed for MC by Reitz and Anderson, which described the rates of metabolism of the MFO and GST pathways and the levels of MC and its metabolites in various tissues of rats, mice, hamsters and humans. This model was presented as a basis for converting an applied (external) dose of MC to an internal dose of active metabolite in the lung and liver in various species under various MC exposure scenarios. Since publication of the NPRM, several parties have submitted pharmacokinetic models or comments on modeling to the rulemaking record. These are discussed in detail below.

a. General issues in PBPK modeling. Physiologically-based pharmacokinetic modeling can be a useful tool for describing the distribution, metabolism and elimination of a compound of interest under conditions of actual exposure and, if data are adequate, can allow extrapolation across dose levels, across routes of exposure and across species. One limitation of using PBPK modeling is a widespread lack of adequate and appropriate physiological and metabolic data to define the model. In particular, difficulties arise in attempting to define a model for which the mechanism of carcinogenesis has not been established, when it is unclear whether there would be tumor site concordance across species, and when the metabolic pathway(s) responsible for carcinogenesis has not been determined.

The concentration of a chemical in air or the total inhaled dose (mg/kg/d) may not be the most biologically relevant dose to use in comparing toxicity across doses or across species. The dose measure that would be most useful in risk assessment is the dose to the target tissue of the chemical or metabolite that is known to directly cause the toxic effect. Generally, this quantity is unknown in almost every case because the proximate carcinogenic moiety is usually highly reactive, and therefore very difficult to measure in biological systems. Since the proximate toxic agent is unlikely to be a quantity readily measured in the laboratory, it is sometimes desirable to use dose surrogate concentrations, calculated by methods such as PBPK modeling, to obtain a more direct estimate of a dose-response relationship. Examples of dose surrogates that may be relevant to the toxic mechanism of action of a chemical are peak concentrations of a particular metabolite at a target tissue site, area under the concentration-time curve of a metabolite at a target site, and blood concentration of the parent chemical or a relevant metabolite.

If the dose surrogate chosen is directly relevant to the mechanism of action of a chemical, there is greater confidence in the risk estimates generated using the dose surrogate than those generated using total inhaled concentration. If the mechanism of action of a chemical is uncertain, and therefore the relevance of the dose surrogate to carcinogenicity is in question, there is proportionally less confidence in the predicted risks estimated using that dose surrogate. Risk estimates from PBPK modeling can also be limited by the quality and quantity of available metabolic data. Since risk estimates are directly dependent upon the dose or dose surrogate chosen, reliable measures of all relevant physiological parameters and all relevant metabolic pathways in all target tissues from all species under investigation are critical. In addition, measures of the uncertainty and inter-individual variability of these parameters must be generated.

In its NPRM, OSHA solicited information on the appropriateness of physiologically- based pharmacokinetic modeling for the MC risk assessment. Specifically, OSHA asked the following questions:

(a) How can pharmacokinetics be best applied to the risk assessment of MC and what are the current limitations of this approach in the quantitation of health risks? What weight should OSHA give to pharmacokinetic data in its risk assessments and why?

(b) Given that five separate risk assessments have utilized the pharmacokinetic models for MC in five

different ways (resulting in from 0 to 170 fold reduction in the final risk when compared with assessments not utilizing pharmacokinetic data), how can OSHA best utilize the existing pharmacokinetic data and still be certain of protecting worker health?

(c) Which parameters in the pharmacokinetic models are most sensitive to errors in measurement or estimation? Can an increased database reduce the uncertainties in these parameters?

(d) How much confidence can be placed in the human *in vitro* MC metabolism data, especially that for lung tissue? How will human variability in these parameters affect the extrapolation of risk from rodent species?

(e) Are there any studies in progress which attempt to verify the predictive ability of the model *in vivo*, (e.g., by giving doses in a lifetime bioassay which will produce cancer in a species other than the B6C3F1 mouse and the F344 and Sprague-Dawley rats)?

(f) OSHA recognizes the large areas of uncertainty which exist in applied dose risk assessment procedures. If pharmacokinetic modeling reduces these uncertainties, can the reduction in uncertainty be quantified? Are additional uncertainties introduced into the risk assessment process by the use of pharmacokinetic models?

(g) By using the pharmacokinetic models in the risk assessment process, one is making an assumption about the carcinogenic mechanism of action of methylene chloride. Are there any new studies on the carcinogenic mechanism of action of MC which would support or refute this assumption?

(h) If the carcinogenic process is, in fact, not the result of the metabolite(s) from the GST pathway alone, but is due to a combination of metabolites or a combination of the parent compound plus the metabolites, how would the pharmacokinetic model and the subsequent risk assessments be affected? Can these effects be quantified?

(i) One of the assumptions made in the pharmacokinetic model is that the target tissues for MC are liver and lung. Can this model predict cancer incidences at other sites? If not, is there a way to factor in consideration of possible MC-induced human cancers at other sites than liver and lung?

(j) OSHA solicits information supporting or refuting interspecies allometric scaling based on body weight or body surface area.

OSHA reviewed comments and testimony on these issues from an expert witness [Ex. 25–E]; representatives of other U.S. government agencies, including NIOSH [Exs. 19–46, 41], EPA [Exs. 25–D, 28], CPSC [Ex. 25–I] and U.S. Navy [Exs. 19–59, 96]; the State of California [Ex. 19–17]; the Halogenated Solvents Industry Alliance (HSIA) [Exs. 19–45, 19–83, 105]; and the UAW [Exs. 19–22, 23–13, 61]. Comments and testimony from the expert witness, the other government agencies and the Halogenated Solvents Industry Alliance generally reflected the opinion that the pharmacokinetic information was sufficiently developed in the case of MC to justify its use in estimating human cancer risks. The predominant view among these commenters and hearing participants was that the data collected for MC and the pharmacokinetic model developed by Reitz and Andersen adequately represented the metabolism of MC in mice. Many commenters also believed that it was reasonable to conclude that the lung and liver tumor incidence in the B6C3F1 mice was the result of the GST metabolite. As described in further detail below, OSHA generally agrees that the PBPK approach is reasonable to assess cancer risks of MC. In fact, the Agency has evaluated the submitted PBPK models, determined that there were several deficiences in each of those models, and improved upon those in its final quantification of risks.

One rulemaking participant was strongly opposed to using pharmacokinetic data in the MC risk assessment. Dr. Franklin Mirer [Ex. 61], representing the UAW, stated:

> The pharmacokinetic model advanced for methylene chloride carcinogenesis is incorrect and should not be used for quantitative risk assessment.

Dr. Mirer was particularly concerned that the PBPK model ignored the rat cancer bioassay data and that the model was based on a "mechanistic hypothesis."

Dr. Mirer reiterated his concerns in response to the October 24, 1995 reopening of the rulemaking record [Ex. 126–31], stating,

> The simple message is that OSHA should give no additional weight to the pharmacokinetic argument. For OSHA to give the argument any additional weight would mean that OSHA was ignoring a substantial body of evidence regarding carcinogenicity of methylene chloride in additional animal species.

Dr. Mirer continued,

> The pharmacokinetic hypothesis is unconvincing even as an explanation of the differences in lung and liver tumors in mice and rats.

OSHA shares Dr. Mirer's concerns that the mechanism of carcinogenicity for MC has not been clearly established and that using pharmacokinetic modeling may lead to risk estimates which ignore the rat tumor data. The Agency notes that it has used the NTP rat data in its hazard identification for MC. OSHA has also determined, however, that the mouse data represent the strongest data set on which to base a quantitative risk assessment, and notes that risk estimates based on the rat data (without PBPK-based adjustment of dose) are similar to OSHA's final risk estimates using mouse data and a PBPK analysis.

The determination that the mouse data set was the strongest on which to base a quantitative risk assessment was made without regard to the availability of information on pharmacokinetics. Incorporating pharmacokinetic modeling into the risk assessment for MC is a logical extension of OSHA's risk assessment decisionmaking process and reflects the Agency's review of the totality of data on tumor incidence, metabolism and mechanism of action. The extensive data base on MC metabolism and mechanism of action, although by no means complete, was the determining factor in the decision to incorporate pharmacokinetics into its final risk assessment. The Agency is aware of very few chemicals of regulatory interest for which the available data could match this body of information. The specific criteria utilized by the Agency in making this determination are enumerated below.

Comments on the specific issues enumerated above are discussed under the appropriate topics in the sections that follow.

b. Criteria for using PBPK in quantitative risk assessment. OSHA evaluated several criteria before deciding to use PBPK analysis in its final quantitative risk assessment for MC. In future rulemakings in which the use of pharmacokinetic information in risk assessment is at issue, it will be necessary to evaluate at least the criteria described below before reaching conclusions, in order to avoid adopting an alternative hypothesis that is less (rather than more) reflective of the true situation than the more generic applied-dose assumption. Further, it may be appropriate to evaluate additional criteria in some cases, depending on the metabolism and mechanism of action of the chemical. The criteria which OSHA considered before incorporation of PBPK in the final risk estimate for MC were:

(1) The predominant and all relevant minor metabolic pathways must be well described in several species, including humans. (Two metabolic pathways are responsible for the metabolism of MC in humans, mice, rats and hamsters).

(2) The metabolism must be adequately modeled (Only two pathways are responsible for the metabolism of MC as compared to several potential routes of metabolism for other compounds, such as benzene and the dioxins. This simplified the resulting PBPK models).

(3) There must be strong empirical support for the putative mechanism of carcinogenesis (e.g., genotoxicity) and the proposed mechanism must be plausible.

(4) The kinetics for the putative carcinogenic metabolic pathway must have been measured in test animals *in vivo* and *in vitro* and in corresponding human tissues (lung and liver) at least *in vitro*, although *in vivo* human data would be the most definitive.

(5) The putative carcinogenic metabolic pathway must contain metabolites which are plausible proximate carcinogens (for example, reactive compounds such as formaldehyde or S-chloromethylglutathione).

(6) The contribution to carcinogenesis via other pathways must be adequately modeled or ruled out as a factor. For example, there must be a reasonable analysis of why reactive metabolites formed in a second pathway would not contribute to carcinogenesis (e.g., formyl chloride produced via the MFO pathway is likely to be too short-lived to be important in MC carcinogenesis).

(7) The dose surrogate in target tissues (lung and liver in the case of MC) used in PBPK modeling must correlate with tumor responses experienced by test animals (mice, rats and hamsters).

(8) All biochemical parameters specific to the compound, such as blood:air partition coefficients, must have been experimentally and reproducibly measured. This must be true especially for those parameters to which the PBPK model is most sensitive.

(9) The model must adequately describe experimentally measured physiological and biochemical phenomena.

(10) The PBPK models must have been validated with data (including human data) which were not used to construct the models.

(11) There must be sufficient data, especially data from a broadly representative sample of humans, to assess uncertainty and variability in the PBPK modeling.

In the case of MC, to a large extent these criteria were met. This made evaluation of existing PBPK models and further development of the modeling strategy a viable option. Therefore, the Agency evaluated existing PBPK models and then contracted with Drs. Andrew Smith, Frederic Bois, and Dale Hattis to help OSHA improve on the MC PBPK model in the record, which would extend the application of modeling techniques beyond those models which had been submitted to the Agency and incorporate all of the data available and appropriate for quantitative analysis in the record. OSHA's evaluation of existing PBPK models, the development of a modified MC PBPK analysis, and OSHA's final risk assessment are described later in this document.

c. Choice of GST metabolic pathway as dose surrogate. The choice of "dose surrogate" for the MC PBPK model is a critical factor in estimating PBPK-based risks. The dose or "dose surrogate" used in a risk assessment should be a biologically-important quantity, should have a plausible mechanism of action at the target tissue and should correlate with the response of interest. The simplest choice of dose is the applied dose or ambient concentration of the contaminant measured as ppm or as the inhaled quantity in mg/kg/day (as used in the Preliminary Quantitative Risk Assessment in the NPRM). Such quantities have the advantage of being easily and directly measurable during the bioassay. Other meaningful dose surrogates could include the concentration of parent compound in the target organ, the concentration of specific metabolites in the target organ, the area under the time-concentration curve (integrated dose) of each metabolite and the parent compound, or peak blood or target organ levels of each metabolite and parent compound. These quantities are not as easily measured. Often only indirect measurements or computer modeling of these dose surrogates are available.

In the PBPK model developed by Reitz et al. [Ex. 7–225], the dose surrogates that correlated with the tumor response were the parent compound (MC) concentration and the amount of GST metabolites formed in the lung and liver. Reitz et al. discounted the parent compound as the dose surrogate because MC is not a chemically reactive compound and direct-acting carcinogens (and metabolites of carcinogenic compounds) are generally hypothesized to be reactive (usually, electrophilic). They also discounted the parent compound as a relevant dose surrogate because parent MC concentration was higher in the rat blood than in the mouse for any dose of MC, while the cancer response of the mouse was greater than the rat. If parent MC were the critical compound for MC carcinogenesis, one would expect the cancer response across species to correlate with blood levels of the compound.

(1) Metabolism via GST versus MFO pathway. Human metabolism of MC has been well studied. One clear finding from the human metabolic studies is that humans metabolize MC by both the MFO and GST pathways, as do mice, rats, and hamsters. Although human metabolism via the MFO pathway has been measured *in vivo* as well as *in vitro*, human MC metabolism via the GST pathway has been measured only *in vitro*. Metabolic data on the human GST pathway have been collected from several liver samples and one pooled lung sample (combined samples from four human subjects). However, it has not been possible to measure human GST metabolism of MC *in vivo*.

Reitz et al. measured the metabolic constants (K_m and V_{max}) *in vitro* for the GST and the MFO metabolic pathways. Enzyme activities were determined by measuring the conversion of ^{36}Cl-labeled MC to water-soluble products. Metabolic constants were then compared across species (mouse, rat, hamster and human). In the liver, the MFO activity was highest in the hamster, followed by the mouse, human and rat. Human values were much more variable than those of the rodent species. Human V_{max} for the liver MFO pathway ranged approximately an order of magnitude and human K_m varied approximately three-fold. GST activity in the liver was determined for mouse and human tissues only. Mouse liver had approximately 18-fold greater activity (V_{max}) than human liver, but the human tissue had about a three-fold greater affinity constant (K_m) for MC than the mouse.

In the lung, the activity of the MFO and GST enzymes was determined for a single substrate concentration. For the MFO pathway, mouse tissue had the highest activity, followed by hamster and rat. No MFO activity specific for MC was detected in the human lung tissue, although other MFO isozymes were demonstrated to be active in the tissue. For the GST pathway in lung, mouse tissue was the most active, followed by rat and human. No GST activity was detected in the hamster lung.

In humans, the MFO pathway has been measured *in vivo* as well as *in vitro* [Ex. 7–225]. Human *in vivo* experimentation was conducted by several investigators. Metabolism via the MFO pathway is relatively easy to measure because the end product is carbon monoxide [Ex. 7–24]. The metabolic rates measured *in vitro* were not similar to those measured *in vivo* after exposure to known concentrations

of MC, which means that *in vitro* measurements in human tissue (in particular for the GST pathway for which there are no human *in vivo* data) could not be used directly as a measure of metabolism. Human *in vivo* and *in vitro* MFO metabolism data were important in developing the pharmacokinetic models because they provided human data for MC-specific metabolism which could be used to help validate the models. Unfortunately, the modeling of the putative critical pathway for carcinogenesis (the GST pathway) could not be validated for humans. This is a weakness in the PBPK modeling for MC shared by all of the models, including OSHA's final PBPK analysis.

In the PBPK models submitted to OSHA, the human rate of metabolism of MC, particularly via the GST pathway, was based on data gathered from four liver samples and one pooled lung sample. Although the liver metabolic data were of the same magnitude as those collected by Green et al., Green's data were not considered in Reitz's model and the variability of those data was not assessed. Therefore, the estimates of the dose surrogates in Reitz's model were based on the average of four liver samples. Four liver samples are not nearly enough data to confidently estimate and account for human variability. Considerations of the variability and uncertainty of these data are discussed in more detail later in this document.

The human lung data were even more limited. Four human lung samples were pooled to provide a single data point. This lack of lung tissue data is particularly critical in PBPK modeling when calculating the ratios of A1 and A2 (the distribution of metabolism between liver and lung tissue in humans). Errors in calculating these ratios will significantly affect the final risk estimates, as discussed by Mr. Harvey Clewell for the U.S. Navy [Ex. 96].

HSIA submitted additional data on the human metabolism of MC in the form of a study of GST metabolism in human liver samples conducted by Bogaards et al. [Ex. 127–16]. The human GST liver metabolism data collected in this study were not directly comparable to the data collected by Reitz or Green, becausethe Bogaards data were measured using a colorimetric method which was not as sensitive as the ^{36}Cl method. Under contract to OSHA, Dr. Andrew Smith and Dr. Frederic Bois compared the data from different laboratories and collected under different methodologies and developed a correction factor across methodologies so that they could use all of the human metabolic data available in OSHA's final PBPK model [Ex. 128]. There are now over 30 data points for human liver *in vitro* metabolism by the GST pathway and 5 human lung data points (the additional lung data points were reported in Green et al., Ex. 124A). OSHA determined that it was important to use as much of the available human data in its PBPK model for MC as scientifically justifiable. These data were used to estimate the variability and uncertainty surrounding the measures of human GST metabolism. Although the methodologies differed across studies, OSHA has adjusted and incorporated all of the available human data in its PBPK model.

(2) Parallelogram approach. When the metabolic rates for the MFO pathway measured *in vivo* and *in vitro* within each species were compared, it was determined that those rates were not equivalent. This meant that, unlike the case for some other chemical compounds, the *in vitro* GST data could not substitute directly for an *in vivo* measurement of metabolism. Reitz and Andersen [Ex. 7–225] suggested a "parallelogram" approach to the problem of non-comparability of *in vitro* and *in vivo* rates. This approach makes the assumption that the ratio of *in vivo* to *in vitro* measurements is roughly comparable across species (including humans). They measured metabolic rates of both pathways *in vitro* and *in vivo* in rodents and then used the average ratio of the *in vitro* to *in vivo* metabolic rate in three rodent species to extrapolate from *in vitro* rates in humans [Ex. 7–225] to an estimated *in vivo* value.

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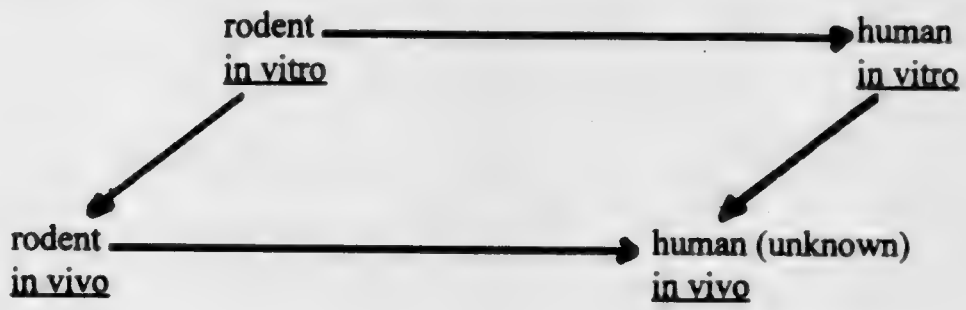

Figure VI-1: Schematic diagram of the parallelogram approach.

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$$\text{Assumption: } \frac{\text{rodent (in vitro)}}{\text{rodent (in vivo)}} = \frac{\text{human (in vitro)}}{\text{human (in vivo)}}$$

$$\text{or, human (in vivo)} = \frac{\text{rodent (in vivo)} \times \text{human (in vitro)}}{\text{rodent (in vitro)}}$$

Ron Brown [Ex. 25–E], an expert witness for OSHA, was concerned that "...the methodology used to extrapolate the *in vitro* data to the *in vivo* state is problematic and the accuracy of the human *in vitro* measurement of GST activity toward MC is uncertain." This may be due to the small sample size, variability in the laboratory analysis or inadequacy of the *in vitro* model. OSHA believes that this is a critical point of uncertainty in using the PBPK model for risk assessment. The Agency also notes that in the risk assessments using PBPK models submitted during the MC rulemaking, none used the parallelogram approach as the basis of determining human *in vivo* metabolic rates. Instead, allometric scaling was used to estimate human values. OSHA has conducted risk assessments using both the allometric approach (OSHA's final risk estimates) and the parallelogram approach (OSHA's alternative analysis). The Agency did this in order to determine what the risk estimates would be if all possible quantitative data were used to the fullest extent, regardless of the uncertainties in the data.

OSHA agrees that evidence presented in the record generally supports the GST pathway as a plausible carcinogenic mechanism of action of MC. The Agency remains concerned, however, that sole reliance on the GST pathway may show insufficient consideration for potential contributions of the parent compound and/or metabolites of the MFO pathway to the carcinogenesis of MC. It is clear that ambient MC concentration is dose-related to tumor response. It has not been shown with any certainty that MC GST metabolites are related to tumor response across species. Thus, there is greater confidence that the lifetime bioassays predict MC carcinogenicity in humans than there is that cancer occurred through a specific mechanism, and even less confidence that the metabolic rates measured in vitro accurately measure differences in species that correlate to tumor development. This is particularly true for lung metabolism where only one pooled and five individual human samples were analyzed. Notwithstanding the uncertainties described above, the Agency believes that the hypothesis that GST is the carcinogenic pathway presents a plausible mechanism of action for MC and is sufficiently well-developed to warrant the use of PBPK modeling of the GST pathway as the dose surrogate of choice in the quantitative risk assessment for MC.

d. Structure of the MC PBPK model. The PBPK models described below are based on the model originally submitted by Dr. Reitz on behalf of HSIA in 1992 [Ex. 7–225]. Over the years since the first submission of a MC PBPK model to OSHA, significant improvements have been made in model structure and in the data collected for PBPK modeling, especially in how the uncertainty and variability in the data are treated. The general structure of the models submitted to OSHA are described below, followed by a description of the parameters used in the various models. Next follows a description of how the variability, uncertainty, and sensitivity of the models to uncertainty have been assessed, noting the improvements that have been made in developing methods to handle these issues. This is followed by a comparison of the risk estimates generated by these models. Finally, OSHA's final risk assessment is described. This risk assessment incorporates lessons learned from previous models and uses all of the available, appropriate, quantifiable data in a Bayesian approach to modeling the dose metric for MC.

In the PBPK model submitted by Dr. Reitz of HSIA [Ex. 7–225], a series of differential equations was used to model the mass balance of MC and its metabolites in five physiologically-defined compartments, including the lung, liver, richly perfused tissue, slowly perfused tissue, and fat. Metabolism via the MFO pathway was described by saturable Michaelis-Menten kinetic equations and GST metabolism was modeled using first-order nonsaturable kinetics. With the exception of the PBPK model sumitted by ICI [Ex. 14A], all of the PBPK models submitted to the Agency followed these assumptions regarding the metabolism of MC. The rate constants for the metabolic equations were estimated based on measurements of the partition coefficients, allometric approximations of the physiological constants (e.g., lung weight), and estimations (i.e., allometric scaling of rodent data, estimations made using the parallelogram approach, etc.) of the biochemical constants (e.g., Michaelis-Menten constants).

NIOSH presented a PBPK model in 1993 [Ex. 94], also structurally based on the Reitz-Andersen model, but with modifications to the human breathing rate and cardiac output to account for uptake of MC in physically active workers, rather than at-rest humans or humans involved in light activity, and including an analysis of the variability of the human metabolic parameters. Specifically, NIOSH compared estimates derived from the arithmetic average of the human GST metabolism data with the individual human liver data points to estimate the uncertainty in an individual's risk of cancer from occupational MC exposure. This approach began to incorporate some necessary features, such as a special focus on physically active workers and the variability of human metabolic parameters, but did not attempt to quantify the uncertainty and variability of the individual parameters and their contribution to the uncertainty associated with the PBPK model.

Mr. Harvey Clewell, representing the U.S. Navy, also submitted several PBPK models to OSHA. In his initial submission (1992), Mr. Clewell modified an existing PBPK model [Ex. 7–125] to include more recent data on the mouse blood/air partition coefficient [Ex. 19–59]. In a second PBPK model, he "started from scratch" to construct a model based on data derived from sources independent of the previous work of Reitz and Andersen [Ex. 23–14], which was described in Mr. Clewell's testimony [Tr. 2361,10/15/92]. This model was structurally similar to the model presented by HSIA with the following exceptions: it featured three lumped compartments (slowly perfused, moderately perfused and rapidly perfused) based on tissue kinetic constants rather than the earlier two lumped compartment models based on tissue blood volumes; and the mouse blood/air partition coefficient was corrected to 19.4 instead of the earlier 8.29 on the basis of more recent data. A third model submitted by Mr. Clewell was identical in structure to the Reitz/Andersen model, but incorporated the more recent experimental data on the partition coefficients and the more recent mouse metabolism data [Ex. 96]. OSHA used Mr. Clewell's third model in its comparison of PBPK-derived risk estimates because of its similarity in structure to the original Reitz model and its incorporation of the most recent experimental data.

In his third model, Clewell either derived probability distributions for each parameter from the literature or estimated distributions for those parameters for which data were not available, and conducted Monte Carlo simulations to derive output distributions for the dose surrogates. These distributions of dose surrogates were then used to derive four risk estimates: the doses input into the multistage dose-response analysis of the tumor bioassay were derived either from the mean or from the 95th percentile of the output distribution of PBPK parameters, and these in turn were coupled with the either the MLE or the UCL of the distribution of possible values of the multistage model

parameters. This analysis was an advance over that of previous models because it took into account some of the uncertainty and variability known to be associated with the data used in the PBPK model.

After evaluating these submitted models, OSHA determined that Clewell's model provided the best prototype on which to base its final PBPK modeling approach for MC. Therefore, the Agency worked with Drs. Smith and Bois to review Clewell's model and with the assistance of Dr. Hattis, to develop a refined PBPK modeling approach with a more sophisticated analysis of variability and uncertainty (and other refinements as described below). In this way the Agency developed an approach which would incorporate what was learned in the development of earlier PBPK models and make use of as much of the available physiological and metabolic data in the record as possible. Clewell's model was chosen for comparison, because this was the only model to provide a systematic analysis of the uncertainty, variability and sensitivity of the model using Monte Carlo techniques. OSHA's final risk assessment approach is described in greater detail below.

e. Choice of parameters for PBPK modeling. The definitions of the parameters used in the models described above are contained in Table VI–2. Note that not all parameters were used in each model and slightly different variable names were used by different investigators. For example, OSHA's final analysis contains a bone marrow compartment, while Clewell's model did not. OSHA refers to the blood flow for poorly (or slowly) perfused tissues as "QppC," while Clewell used "QSC."

TABLE VI–2.—DEFINITIONS OF PHARMACOKINETIC PARAMETERS

Parameter (units)	Definition
BW (kg)	Body weight in kg. Human body weights were assumed to be 70-kg (Reference Man). Mouse body weights were the average weight of mice in the NTP bioassay.
QPC unscaled (1/hr, 1 kg BW)	Breathing rate. QPC = QP(1/hr)/$BW^{.75}$ where QP = alveolar ventilation rate. Human QP was based on rate of 9.6 m^3/8-hr (converted 1/hr and adjusted to alveolar ventilation (= 0.70 total ventilation) except in NIOSH and OSHA-modified models. Mouse QP = (24.3 1/hr)(0.70 alveolar/total).
QCC unscaled (1/hr, 1 kg BW)	Cardiac output. QCC = QC(1/hr)/$BW^{.75}$ where QC = cardiac output in 1/hr. Reitz set QC = QP. Clewell and NIOSH based human QC on Astrand et al. [Ex. 7–120] data on cardiac output and breathing rate vs. workload.
VPR (ratio, unitless)	Alveolar ventilation/perfusion ratio.
Blood flows to tissues	
QGC or QgiC (fraction of cardiac output)	Blood flow to gastrointestinal tract as a fraction of cardiac output. QGC = QG/QC.
QLC or QliC (fraction of cardiac output)	Blood flow to liver as a fraction of cardiac output. QLC = QL/QC.
QFC or QfatC (fraction of cardiac output)	Blood flow to fat as a fraction of cardiac output. QFC = QF/QC.
QSC or QppC (fraction of cardiac output)	Blood flow to slowly (or poorly) perfused tissues as a fraction of cardiac output. QSC = QS/QC.
QRC or QwpC (fraction of cardiac output)	Blood flow to rapidly (or well) perfused tissues as a fraction of cardiac output. QRC = QR/QC.
QmarC (fraction of cardiac output)	Blood flow to bone marrow as a fraction of cardiac output.
Tissue volumes	
VGC or VgiC (fraction of body weight)	Volume of GI tract as a fraction of body weight. VGC = VG/BW.
VLC or VliC (fraction of body weight)	Volume of liver as a fraction of body weight. VLC = VL/BW.
VFC or VfatC (fraction of body weight)	Volume of fat as a fraction of body weight. VFC = VF/BW.
VSC or VppC (fraction of body weight)	Volume of slowly (or poorly) perfused tissues as a fraction of body weight. VSC = VS/BW.
VRC or VwpP (fraction of body weight)	Volume of rapidly (or well) perfused tissues as a fraction of body weight. VRC = VR/BW.
VluC (fraction of body weight)	Volume of lung as a fraction of body weight.
VmarC (fraction of body weight)	Volume of bone marrow as a fraction of body weight.
Partition coefficients	
PB or Pblo	Blood/air partition coefficient.
PG or Pgi	GI tract/blood partition coefficient (GI tract/air divided by PB).
PL or Pli	Liver/blood partition coefficient (Liver/air divided by PB).
PF or Pfat	Fat/blood partition coefficient (Fat/air divided by PB).
PS or Ppp	Slowly (or poorly) perfused tissue/blood partition coefficient (Slowly perfused tissue/air divided by PB).
PR or Pwp	Rapidly (or well) perfused tissue/blood partition coefficient (Rapidly perfused tissue/air divided by PB).
PLU or Plu	Lung/blood partition coefficient (Lung/air divided by PB).
Pmar	Bone marrow:air partition coefficient.
Metabolic parameters	
VMAXC unscaled (mg/hr, 1 kg animal)	MFO pathway Michaelis-Menten maximum velocity for MC metabolism. VMAXC = VMAX (mg/hr)/$BW^{.75}$.
KM (mg/l)	MFO pathway Michaelis-Menten affinity constant for MC metabolism.

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TABLE VI–2.—DEFINITIONS OF PHARMACOKINETIC PARAMETERS—Continued

Parameter (units)	Definition
KFC, unscaled, (/hr, 1 kg animal)	GST pathway 1st order kinetic rate constant for MC metabolism. KFC = KF (/hr)(BW$^{.25}$).
A1 (ratio)	Ratio of distribution of MFO pathway MC metabolism between lung and liver. A1 = VMAXC(lung)/VMAXC(liver).
A2 (ratio)	Ratio of distribution of GST pathway MC metabolism between lung and liver. A2 = KFC(lung)/KFC(liver).
B1 (ratio)	Ratio of lung and liver tissue content of microsomal protein.
B2 (ratio)	Ratio of lung and liver tissue content of cytosolic protein.
Sp—Kf	Allometric scaling power for body weight scaling of KFC from mice to humans.

The MC physiologically-based pharmacokinetic (PBPK) models discussed here contain the following types of parameters as defined above: body weight, breathing rate, cardiac output, blood flows to tissue compartments (as a fraction of the cardiac output), volumes of tissue compartments (as a fraction of body weight), partition coefficients, the metabolic parameters (the Michaelis-Menten parameters, Vmax and Km, for the MFO pathway and the 1st-order rate constant, Kf, for the GST pathway) and the ratio of the pathway-specific metabolic capacity between the major metabolic sites (lung and liver). Differences in model structure (such as choice of lumped tissue compartments) and differences in sources of data for individual parameters lead to differences in the parameter values used in different models.

The parameter values (point estimates) used in the PBPK models reviewed by OSHA are presented in Table VI–3. The parameter distributions used by OSHA in its analysis are presented later.

As far as OSHA could determine, the parameters chosen by HSIA were those presented in Reitz's 1989 paper [Ex. 21–53] except that OSHA's preferred values for breathing rates (based on 9.6 m^3/workday) and 8-hour human exposures were used. The model submitted by NIOSH used the parameters and computer code from the Reitz model, except for the human breathing rate, human cardiac output and human metabolic parameters. The parameters used by Clewell were summarized in his post-hearing submission [Ex. 96], which included more recent experimental data for the partition coefficients and mouse metabolic parameters and a different scaling for human cardiac output.

TABLE VI–3.—PARAMETERS USED IN PBPK MODELS REVIEWED BY OSHA

Model	Clewell [Ex. 96]		NIOSH [Ex. 23–18]		HSIA [Ex. 19–45]	
Parameter	Mouse	Human	Mouse	Human	Mouse	Human
BW (kg)	0.0345	70	0.0345	70	0.0345	70
QPC, unscaled alveolar ventilation (1/hr, 1 kg animal)	29.0	35	29.0	43.1	29.0	35.0
QCC, unscaled cardiac output (1/hr, 1 kg animal)	16.5	18	29.0	20.9	29.0	35.0
QGC[a], flow to GI tract (fraction of cardiac output)	0.165	0.195	0.0	0.0	0.0	0.0
QLC[a], flow to liver (fraction of cardiac output)	0.035	0.07	0.24	0.2093	0.24	0.24
QFC[a], flow to fat (fraction of cardiac output)	0.03	0.05	0.05	0.040	0.05	0.05
QSC[a], flow to slowly perfused tissues (fraction of cardiac output)	0.25	0.24	0.19	0.4319	0.19	0.19
QRC[a], flow to rapidly perfused tissues (fraction of cardiac output)	0.52	0.445	0.52	0.3188	0.52	0.52
VGC, GI volume (fraction of BW)	0.031	0.045	0.0	0.0	0.0	0.0
VLC, liver volume (fraction of BW)	0.046	0.023	0.04	0.0314	0.04	0.0314
VFC, fat volume (fraction of BW)	0.100	0.16	0.07	0.231	0.07	0.231
VSC, slowly perfused tissue volume (fraction of BW)	0.513	0.48	0.75	0.621	0.75	0.621
VRC, rapidly perfused tissue volume (fraction of BW)	0.041	0.033	0.05	0.0371	0.05	0.0371
VLUC, lung volume (fraction of BW)	0.008	0.006	0.012	0.011	0.012	0.011
PB, blood/air part. coeff	23.0	12.9	8.29	9.7	8.29	9.7
PG, GI tract/air part. coeff	0.52	0.93	NA	NA	NA	NA
PL, liver/blood part. coeff	1.6	2.9	1.71	1.46	1.71	1.46
PF, fat/blood part. coeff	5.1	9.1	14.5	12.4	14.5	12.4
PS, slowly perf./blood part. coeff	0.44	0.78	0.96	0.82	0.96	0.82
PR, rapidly perf./blood part. coeff	0.52	0.93	1.71	1.46	1.71	1.46
PLU, lung/blood part. coeff	0.46	0.82	1.71	1.46	1.71	1.46
VMAXC mg/hr, 1 kg animal (unscaled)	13.4	5.0	13.2	3.98 1.15 9.81 4.71	13.2	4.9
KM (mg/L)	1.35	0.4	0.396	0.72 0.55 0.26 0.79	0.396	0.580

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TABLE VI–3.—PARAMETERS USED IN PBPK MODELS REVIEWED BY OSHA—Continued

Model	Clewell [Ex. 96]		NIOSH [Ex. 23–18]		HSIA [Ex. 19–45]	
Parameter	Mouse	Human	Mouse	Human	Mouse	Human
KFC /hr, 1 kg animal (unscaled)	1.5	1.5	1.73	1.56 0.00 1.62 1.79	1.73	1.24
A1 (Vmaxc(lung)/Vmaxc(liver))	0.41	0.015	0.416	0.00143	0.416	0.00143
A2 (KFC(lung)/KFC(liver))	0.28	0.18	0.137	0.18	0.137	0.18

*QGC + QLC + QFC + QSC + QRC *MUST* = 1.00.

f. Assessment of the sensitivity and uncertainty of the PBPK model. In the NPRM, OSHA expressed concern that, if PBPK models were used to adjust risk assessments, the uncertainty in PBPK modeling should be adequately addressed. Specifically, OSHA was concerned that the uncertainty in the mechanism of action and the lack of human lung metabolism data were the greatest obstacles to incorporation of pharmacokinetic data into the MC final risk assessment. Many of the uncertainties in model parameters have been quantified by various hearing participants and are summarized below. The quantification of these uncertainties, however, did not address OSHA's primary concerns regarding the mechanism of action and the distribution of metabolism between lung and liver. OSHA's analyses of the uncertainty and variability of parameters in the PBPK model are presented with its risk assessment later in this document.

The concepts of uncertainty, variability and sensitivity in PBPK modeling were defined in comments submitted by the U.S. Navy [Ex. 19–59]:

> As it relates to the issue of using PBPK modeling in risk assessment, uncertainty can be defined as the possible error in estimating the "true" value of a parameter for a representative ("average") animal. Variability, on the other hand, should only be considered to represent true interindividual differences.
>
> The normalized sensitivity coefficient gives the percentage change in a model output due to a percentage change in the parameter value and represents the relative importance of the parameter to the model output under the conditions of the simulation.

Each of these quantities is of concern for risk assessment and PBPK modeling. For example, we know that there is variability or inter-individual heterogeneity in the body weights of humans (and mice), yet we estimate risks for an average member of the population (70 kg in humans, average bioassay weight in mice). For many parameters, the interindividual variability may not be known and must be estimated.

Uncertainty in estimation of the value of a parameter representing an average member of a population is primarily due to laboratory measurement and related errors. Measurement errors, in many cases, can be quantified or estimated so that the potential impact of this uncertainty on the outcome of the PBPK modeling can be assessed.

The sensitivity of the model to particular parameters is useful for determining which experiments should be conducted to confirm parameters and to determine the amount of confidence that PBPK model outputs merit. For example, when a sensitivity analysis is conducted and it is determined that the model outcomes are not very sensitive to changes in the definitions of the lumped tissue volumes, it suggests that there is little need to conduct experiments to describe those relationships more precisely. Similarly, even though the lumped tissue volume does not represent a "true" biological quantity, there is confidence that its precise definition is not critically important in PBPK model outcomes. Therefore, if the only large (quantifiable) uncertainty resides in this measurement, one would have greater confidence that the model predictions were reasonably accurate. Therefore, it is instructive to understand which parameters influence the model outcomes to the greatest degree. Conversely, if the PBPK model outputs are sensitive to a parameter which has not been precisely described (such as the distribution of GST metabolism between lung and liver), the confidence in model outputs is correspondingly reduced.

Various investigators have attempted to determine the sensitivity of the PBPK models to parameter values and to characterize the uncertainty and variability within parameters in the models. The first attempt to describe the sensitivity of the Reitz's original PBPK model was performed by the Consumer Product Safety Commission (CPSC).

The CPSC conducted a sensitivity analysis of the metabolic parameters, Km, Vmax and Kf, in the "Updated Risk Assessment for Methylene Chloride" [Ex. 7–126]. They analyzed the sensitivity of the model by selecting alternative point estimates for the metabolic parameters and determining what the resulting ratio of GST metabolite at 4000 ppm vs. 1 ppm would be. This analysis shows how this ratio would vary if the metabolic parameters used in the model were higher or lower than the measured values as selected by CPSC. The results showed that the ratio of the GST metabolite in the liver at 4000 ppm to the GST metabolite at 1 ppm (or the ratio of the GST metabolite in the lung at 4000 ppm to the GST metabolite at 1 ppm) was relatively insensitive to the value of Kf (when CPSC varied Kf from 0.01 to 5.3, while Km and Vmax were held constant at Reitz-Andersen values).

HSIA presented a sensitivity analysis of the PBPK parameters from the Reitz (HSIA) model in the testimony of Dr. Reitz [Ex. 23–21A]. Results were presented for mice at 4000 ppm, mice at 1 ppm, humans at 1000 ppm and humans at 1 ppm. In the first analysis (mice at 4000 ppm), the most sensitive parameters were determined to be PB (blood:air partition coefficient) and Kf (metabolic parameter for the GST pathway). The authors observed that at high MC exposure levels the model output was at least an order of magnitude less sensitive to changes in the other sixteen parameters investigated.

When mice were exposed to lower concentrations of MC (1 ppm) Vmax and Km for the MFO pathway were the most sensitive parameters (sensitivity coefficient was over 120% for each of these parameters). In addition, several other parameters were found to exert a significant influence on model outputs: QP, QL, PB, VLu, and KF.

In humans, at high concentrations (> 1000 ppm) the results were similar to those observed in mice: the model was most sensitive to PB and KF, with

sensitivity coefficients of 87% and 97%, respectively. In addition, the human model was also sensitive to the value chosen for the QP (sensitivity coefficient = 43%).

In humans, at 1 ppm MC, Km and Vmax for the MFO pathway were the most sensitive parameters out of the six parameters which had a significant effect upon model outputs: QP, QL, PB, Vmax, Km, and KF.

This type of sensitivity analysis improves on that conducted by the CPSC, because it looks at more of the parameters. It is still deficient, however, because it examines the effect of each parameter individually, and because it does not examine the effect of uncertainty in two key parameters, A1 and A2 (the ratios of distribution of the MFO and GST pathways between lung and liver), on the outcomes of the modeling.

Mr. Clewell [Ex. 19–59] also conducted a sensitivity analysis to determine the impact of uncertainty in PBPK parameters on the model outcomes. In contrast to the HSIA analysis, he examined the sensitivity of the outcomes to the ratios A1 and A2, and he chose a more realistic occupational exposure level (100 ppm). He found that for mice at 4000 ppm, the most sensitive parameters for estimation of lung tumors were KF, A2, and PB. In the liver, the most sensitive parameters were KF and PB, which agrees with the results of the HSIA analysis. For humans at 100 ppm, the most sensitive parameters for estimating lung tumors were KF and A2. Other parameters with significant effects on model outcomes were PB, QPC, BW, KM, QCC, and QLC. The most sensitive parameters for estimating liver tumors were VMAX, KF, QPC and BW, while PB, KM, QCC and QLC also produced significant effects on model outcomes.

In all of these analyses, the PBPK models were clearly sensitive to the values chosen for the metabolic parameters, especially the GST metabolic parameter (KF). Other parameters with consistently significant impact on the outcomes of the model included breathing rate (QP) and distribution of GST metabolism between lung and liver (A2). These analyses suggest that additional studies to quantify the metabolic parameters (KF, KM and VMAX), breathing rates (QP) and distribution of GST metabolism between lung and liver (A2) would increase confidence in the model outcomes. Characterization of the distribution of metabolism between lung and liver is particularly critical because estimates for human lung metabolism were initially based on one pooled sample of lung tissue, and the variability and uncertainty of the value of this parameter has not been quantified.

Some analysts [Ex. 21–52] have suggested that the uncertainty is increased in risk assessments based on PBPK as compared to applied-dose risk assessments, because some methods of quantifying the uncertainty result in rather broad distributions of uncertainties. OSHA, in contrast, agrees with most commenters that quantifying uncertainty in a PBPK model or risk assessment does not increase the uncertainty. The Agency stresses that the appearance of increasing uncertainty with the identification of sources of uncertainty almost certainly means that the original uncertainty was underestimated. (In fact, since many assessors have not attempted even to quantify the uncertainty in applied-dose risk assessments, the uncertainty has often been infinitely underestimated.) When conducting a risk assessment using PBPK that appears to increase the uncertainty over delivered-dose methodologies, the investigator should go back and recalibrate what the uncertainty in the original analysis likely was, in light of the sources of uncertainty identified using PBPK. This would tend to broaden the confidence limits of the traditional risk assessments, almost certainly beyond the limits generated in a thoughtful PBPK-based assessment. For example, many analyses using delivered dose assume that in the interspecies scaling factor, BW^x, x is known with perfect certainty (e.g., it is known to equal 2/3 or 1.0). An analysis that uses an empirically-derived probability distribution for x, which might reasonably extend from approximately 0.6 to approximately 1.0, would yield a rather broad distribution of uncertainty in the resulting estimate of risk.

The Agency also agrees that the primary uncertainties lie in the choice of the dose surrogate and assumptions regarding cross-species scaling. Clewell [Ex. 23–14] investigated the uncertainty of the PBPK parameters using Monte Carlo analyses of the assumed distributions of uncertainty of each parameter. The resulting estimates of dose surrogate values were characterized by a mean of the distribution and an upper 95th percentile estimate. Mr. Clewell stated [Ex. 19–59]:

> [T]he use of the 95th percentile of the distribution of estimates accounts for additional uncertainty concerning the true values of the PBPK parameters for the bioassay animals and humans.

Mr. Clewell recommended that OSHA use the upper 95th percentile of the Monte Carlo distribution of GST metabolites (from PBPK modeling) as an input to the multistage model to generate risk estimates, and then use of the MLE from the multistage model in those risk estimates, in accordance with previous OSHA risk assessments. He remarked that use of the upper 95th percentile of the PBPK output would be a reasonable mechanism to account for the uncertainty quantified in these analyses. Using the upper 95th percentile of the distribution of GST metabolites, Mr. Clewell's risk estimate for lifetime occupational exposure to 25 ppm MC was 0.9 deaths per 1000 using the MLE of the multistage model, and 1.1 per 1000 using the 95th percentile upper confidence limit (UCL) from the multistage model. Using the mean of the distribtution of GST metabolites, his MLE risk estimate was 0.28 deaths per 1000 at the same exposure level, with an UCL of 0.35/1000.

The HSIA disagreed with using the upper 95th percentile for estimating risks, and stated [Ex. 105]:

> [T]he analyses conducted by Clewell et al. indicate that consideration of model parameter variability does not contribute orders of magnitude to the uncertainty associated with PB–PK risk assessments. Further, the uncertainty associated with PB–PK risk assessments is significantly less than that associated with risk assessments that fail to consider pharmacokinetics. The uncertainty in PB–PK based procedures is simply more readily available for calculation.

OSHA disagrees with the HSIA that the uncertainty and variability associated with PBPK risk assessments is significantly less than that associated with risk assessments that fail to consider pharmacokinetics. Quantification of uncertainty does not equate with reducing uncertainty in an analysis. In fact, at a different level, the assumptions made regarding mechanism of action of MC and extrapolation of lung metabolic rates from one human *in vitro* sample may serve to underestimate the uncertainty inherent in the PBPK-based risk assessment if the underlying assumptions are wrong. Also, as stated above, identification of uncertainty may lead us to recalibrate the uncertainty associated with traditional risk assessment methods. In any event, the possibility that using PBPK significantly reduces uncertainty does not affect the need to account for whatever uncertainty remains.

In addition, OSHA agrees with Clewell that using the upper 95th percentile of the Monte Carlo distribution of GST metabolites as input

to the multistage model is a reasonable way to incorporate the quantifiable uncertainty and variability into a risk assessment. In its final risk estimates, OSHA has used the upper 95th percentile on the distribution of GST metabolites from the Bayesian analysis as the input to the multistage model, as described later in this document.

E. Other Risk Estimates Based on PBPK Models Prior to OSHA's Final Analysis.

A PBPK model can produce estimates of target tissue doses (or dose surrogates) for different hypotheses of action of a chemical. The appropriate choice of target tissue dose can greatly influence risk estimates based on that dose. For MC, the dose surrogate that has been used most frequently to estimate cancer risks is the amount of GST metabolite produced. The amount of GST metabolite can then be used to extrapolate from a high bioassay dose of MC to a low occupational (or environmental) dose of MC and from mouse MC metabolic rates to human metabolic rates.

In the NPRM, OSHA reviewed available risk assessments for MC that used PBPK modeling in a variety of ways. The Food and Drug Administration risk assessment [Ex. 6–1] was not adjusted to account for pharmacokinetic information. The Consumer Product Safety Commission, in its "Updated risk assessment for methylene chloride" [Ex. 7–126], used pharmacokinetic data to adjust for differences in metabolism in extrapolating from high dose (4000 ppm mouse bioassay) to low dose (1 ppm) exposures, but did not adjust for interspecies differences in the metabolism of MC. The resulting risk estimate was approximately 2-fold lower than a risk estimate using applied dose.

The U.S. EPA analyzed the MC pharmacokinetic data in its documents, "Technical analysis of new methods and data regarding dichloromethane hazard assessment" [Ex. 7–129] and "Update to the Health Assessment Document and Addendum for dichloromethane (methylene chloride): pharmacokinetics, mechanism of action, and epidemiology" [Ex. 7–128]. The EPA used the PBPK data to adjust its risk estimates in its Integrated Risk Information System (IRIS) database. Adjustments were made for high-to-low dose and cross-species extrapolation. EPA's risk estimates for low human exposures to MC were decreased by approximately a factor of 9 from its risk estimates made without consideration of PBPK data.

The HSIA [Ex. 105] and ECETOC [Ex. 14] also submitted risk assessments based on PBPK data. The primary difference between the HSIA and the EPA risk estimates was that the HSIA did not use a surface area correction to account for interspecies differences other than pharmacokinetics (e.g., pharmacodynamic differences) while the EPA did. Also, HSIA's risk estimates used OSHA's preferred breathing rates and an occupational exposure scenario. ECETOC based its risk estimates on different measures of human MC metabolism. In a pre-hearing submission, "Using PB–PK Models for Risk Assessment with Methylene Chloride (Comparison of U.S. and U.K. procedures)" [Ex. 19–83A], scientists from the U.S. and the U.K. compared methodologies for using PBPK data in the MC risk assessment and presented a consensus opinion that OSHA should use the methodology developed by Dr. Richard Reitz [Ex. 7–225] for the U.S. For this reason, OSHA evaluated Dr. Reitz's analysis, as presented by the HSIA, and did not separately consider the ECETOC risk assessment.

As described previously, Clewell [Ex. 96] and NIOSH [Ex. 94] have submitted analyses of the PBPK data and risk assessments based on those analyses. Both of these analyses used PBPK modeling of the amount of GST metabolites produced in their estimates of carcinogenic risks.

OSHA has evaluated the data in the rulemaking record and has concluded that, if PBPK modeling is used to adjust estimates of risk, the weight of evidence supports using the amount of GST metabolites as the preferred surrogate for target tissue dose. The amount of GST metabolites predicted by the PBPK model varies depending upon the values or distributions chosen for the parameters in the model.

Of the risk assessments described above, OSHA has chosen to compare risks estimated using PBPK models submitted by Reitz et al., Clewell et al. and NIOSH with applied dose methodology using either of two scaling assumptions: the inhaled dose in mg/kg/day (the estimates of risk presented in the NPRM) and ppm-to-ppm extrapolation. OSHA evaluated the methodologies used in developing these risk estimates before developing its final risk estimates, which are presented in the next section.

The risk estimates derived from using PBPK with the multistage dose-response model submitted to the Agency by Reitz et al., Clewell et al., and NIOSH, and the risk estimates derived from applied dose methodologies, are shown in Table VI–4.

TABLE VI–4.—LIFETIME EXCESS RISK ESTIMATES (PER 1000) FROM OCCUPATIONAL EXPOSURE BASED ON FEMALE MOUSE LUNG TUMOR DATA

Model	MLE (UCL)**		
	25 ppm	50 ppm	500 ppm
OSHA NPRM Risk Assessment (mg/kg/d, BW extrapolation) without PBPK Adjustment	2.32 (2.97)	4.64 (5.92)	45.5 (57.7)
PPM to PPM extrapolation without PBPK Adjustment	11.3 (14.4)	22.4 (28.5)	203 (251)
PBPK Reitz female mouse lung—Reitz human (HSIA assumptions)	0.43 (0.53)	0.93 (1.17)	14.3 (17.9)
PBPK Reitz female mouse lung—Dankovic average human (NIOSH assumptions)	0.81 (1.02)	1.69 (2.12)	15.0 (18.7)
PBPK Clewell female mouse lung—Clewell human (Navy assumptions)*	0.91 (1.14)	1.88 (2.36)	27.5 (34.2)
OSHA Final Risk Assessment (female mouse lung with PBPK)	3.62	7.47	125.8

* Upper 95th percentile of the GST metabolites distribution was used as input in the multistage model.
** Maximum likelihood estimates and 95th percentile upper confidence limit (in parentheses) of the multistage dose-response function.

Of those risk estimates considered by OSHA prior to its final risk assessment, the risk estimates for lifetime occupational exposure to the 8-hour TWA PEL of 25 ppm ranged from 0.43 per 1000 to 11.3 per 1000. The risk assessment presented in the NPRM was based on a body weight extrapolation from mice to humans of a mg/kg/day dose of MC. Mr. Harvey Clewell [Ex. 19–59] stated that this dose was not a useful dose for estimating risks from volatile solvents such as MC. He suggested that, if PBPK modeling was not used to estimate target tissue dose (his preferred

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method of estimating risk), then a ppm-to-ppm extrapolation would be more appropriate. The ppm-to-ppm extrapolation resulted in an estimated risk of 11.3 deaths per 1000 after lifetime occupational exposure to 25 ppm. However, the ppm-to-ppm extrapolation is generally preferred for site-of-contact tumors. Although it is possible that the MC lung tumors were the result of a site-of-contact mechanism of action, the data are more supportive of a systemic, genotoxic mechanism mediated through metabolites of MC. In addition, the liver tumors are clearly not the result of a site-of-contact carcinogen because the liver is not a site of contact during inhalation bioassays.

Several commenters [Exs. 19–26, 19–28, 19–29, 19–45, 19–48, 19–57, 19–59, 25–E, 25–I] suggested using PBPK modeling to estimate target tissue dose and to account for differences in metabolism at high and low doses and differences in metabolism of MC across species. OSHA compared three sets of parameters in the PBPK models submitted by interested parties to adjust the dose across species and across doses. The risk estimates for those models (using the MLE of the multistage model parameters) ranged from 0.43 to 0.91 deaths per 1000 after lifetime occupational exposure to 25 ppm. Mr. Clewell's risk estimate (0.91/1000 MLE), unlike the other PBPK analyses, represent the upper 95th percentile of the Monte Carlo distribution of GST metabolites as input into the multistage model. The Monte Carlo simulation takes into account the assumed distribution of values for each parameter, including the parameters used to estimate human metabolism of MC. The other PBPK models used point estimates instead of distributions for the PBPK parameters, and therefore it is not known whether these are central estimates or upper bounds. OSHA agrees that the distributional approach used by Clewell is a reasonable way to account for the uncertainty and variability inherent in PBPK modeling, and that uncertainty and variability must be considered in any useful risk assessment. The Agency has used the upper 95th percentile on the distribution of GST metabolites from the Bayesian modeling, coupled with the MLEs of the multistage model parameters, for its final estimates of MC risk.

OSHA has concluded that all the risk estimates presented above support an 8-hour TWA PEL of 25 ppm or lower. The risks estimated from the PBPK models were less than an order of magnitude different from estimates of risk based on applied dose methodology. Either with or without PBPK modeling , the estimates of risk at 25 ppm clearly indicate a significant risk.

The risks estimated from these PBPK models and ppm-to-ppm extrapolation offer a range of risks which might be expected after lifetime occupational exposure to MC. OSHA has assessed these models and has decided to modify and expand on the submitted PBPK and uncertainty analyses in its final estimates of cancer risk, in order to give full consideration to all of the available data. This analysis is presented in the next section.

F. OSHA's PBPK Analysis and Final Risk Estimates

In developing an approach to PBPK modeling for MC, OSHA wished to use all of the available, appropriate and quantifiable biochemical and physiological data in its PBPK modeling and in assessing the uncertainty and variability in model parameters. The Agency determined that this approach would provide the best characterization of the variability and uncertainty in the data and the model. In addition, incorporation of as much of the available data as possible should give the most realistic PBPK model, and in turn, the most realistic risk estimate. Before development of OSHA's PBPK model, Clewell's approach (described above) was the most comprehensive pharmacokinetic approach submitted to the Agency. It addressed many of the issues of concern to the Agency, and OSHA believes that Clewell's approach was a reasonable template for using PBPK in risk assessment. However, since Clewell's work was done, PBPK modeling has continued to advance. Therefore OSHA modified Clewell's model to accommodate these advances and to allow incorporation of additional biochemical and physiological data that had been added to the rulemaking record. The following is a summary of OSHA's final (revised) PBPK analysis. A more detailed discussion can be found in the reports submitted to the Agency, reflecting OSHA's analysis in which the Agency was assisted by contractors [Ex. 128].

1. Review of Clewell's PBPK Analysis

a. Clewell's analytical approach. Clewell et al. [Ex. 96] employed Monte Carlo techniques to investigate imprecision in estimates of human health risk from occupational exposure to MC, as a function of imprecision in parameter values of the PBPK and dose-response models. (As described below, OSHA and its contractors believe that Clewell et al. did not correctly parse out uncertainty and variability, so their analysis is described as accounting for "imprecision" rather than uncertainty or variability). In the Clewell et al. analysis, probability distributions were specified for each PBPK model parameter in an attempt to characterize imprecision. Computer-based techniques were used to obtain pseudo-random samples from these statistical distributions, generating multiple sets of model parameter values. These sets of parameter values were then used to obtain a corresponding distribution of PBPK model predictions of various measures of internal dose for a simulated animal bioassay (e.g., GST metabolism in lungs of mice exposed to 2000 ppm and 4000 ppm for 6 hrs/day, 5 days/wk). The mean of the mouse internal dose distribution was used as the dose input to obtain the MLE and UCL on the multistage model parameters, using the tumor incidence data from the NTP bioassay. The multistage model was run a second time using the upper 95th percentile of the mouse internal dose distribution as the dose input to obtain the MLE and UCL on the multistage model parameters. This yielded a total of four estimates of the parameters (q_o, q_1, and q_2) of the mouse dose-response function: 1) Mean of internal dose distribution/MLE of multistage model parameters; 2) Mean of internal dose distribution/UCL of multistage model parameters; 3) Upper 95th percentile of internal dose distribution/MLE of multistage model parameters; and 4) Upper 95th percentile of internal dose distribution/UCL of multistage model parameters.

Each set of dose-response parameters obtained from the analysis of the mouse data was then used to calculate human risk estimates. The upper 95th percentile of the human internal dose distribution was used to calculate the dose surrogate at 25 ppm, 8 hr/d exposure and then substituted into the MLE and UCL of the multistage parameters to obtain the MLE and UCL estimates of risk. Similarly the mean of the human internal dose distribution was used in conjunction with the MLE and UCL of the multistage model parameters. Therefore, four human risk estimates were generated, based on the distribution of human internal doses and the dose- response function derived from the multistage analysis of the NTP mouse bioassay. The four human risk estimates are: 1) upper 95th percentile of the human internal dose distribution/MLE of the multistage model parameters; 2) mean of human internal dose distribution/MLE of the multistage model parameters; 3) upper 95th percentile of the human internal dose

distribution/UCL of the multistage model parameters; and 4) mean of the human internal dose distribution/UCL of the multistage model parameters.

A major finding of that analysis was that the mean estimate of added cancer risk for occupational exposure at the proposed PEL of 25 ppm based on the PBPK-derived GST-lung dose surrogate (PBPK(mean) / potency(MLE) = 0.39 x 10^{-3}) was 6-fold lower than the corresponding OSHA estimate (MLE = 2.32 x 10^{-3}) based on administered dose scaled to body weight. The 95 percentile upper bound estimate of risk using the same PBPK distributions and the distribution of 95%UCLs on carcinogenic potency (PBPK(95%)/ potency(95%) = 1.56 x 10^{-3}), was nearly 2-fold less than OSHA's 95%UCL on risk (2.97 x 10^{-3}).

b. Clewell's PBPK model. The PBPK model used by Clewell et al. in performing their Monte Carlo analysis was slightly modified from the PBPK model developed by Andersen et al. and submitted to OSHA by HSIA [Ex. 328]. The primary modification was the addition of a separate compartment for the GI-tract. The general structure of this model has received considerable use by PBPK modelers. Nevertheless, there were several deficiencies in this model and in the subsequent statistical analysis that the Agency believed warranted major modification. These are described in the following section.

*c. Prior distributions for model parameters.*Truncated normals were used as the form for all probability distributions except for metabolic constants, which were described by truncated lognormals. All distributions were truncated to prevent sampling of nonsensical values (e.g., negative values). Truncation in some instances was 2 standard deviations (SDs) from mean values, in others more than 4 SDs.

A variety of sources of information were used as a basis for the probability distributions of the PBPK parameters in Clewell's model: literature summaries for most physiologic and anatomic parameters, direct laboratory measurement of partition coefficients based on vial equilibration studies, and statistical regression analyses of experimental data for fitted metabolic constants.

Clewell et al. stated that the focus of their analysis was on characterizing the effect of "uncertainty" in parameter values on uncertainty in PBPK model predictions, uncertainty being defined as the possible error in estimating the "true" value of a parameter for a representative "average" animal. To maintain consistency with a focus on investigating effects of parameter uncertainty, a logical choice would have been to center their probability distributions using estimates of mean values for all model parameters and to use the standard error of the mean (SEM) to characterize dispersion. It it unclear whether this was done for blood flows, tissue volumes, inhalation rates or cardiac output, since Clewell et al. appear to have relied extensively on an unpublished review of scientific literature performed by S. Lindstedt for the ILSI Risk Science Institute Physiological Parameter Working Group.

Based on Clewell's comments accompanying his PBPK model, it appears that standard errors were not used to characterize variability among individual replicates of measured equilibrium partition coefficients; instead, standard deviations were used. Nor does it appear that Clewell et al. consistently made use of standard errors in characterizing imprecision in their fitted metabolic constants. Inspection of the joint confidence region for their fitted estimates of mouse VmaxC and Km (for the MFO pathway), shown in Figure 6 of Ex. 399, suggest coefficients of variation (%CVs) for VmaxC of about 2%. Similarly, for KfC, the %CV in the fitted MLE appears to be about 3%. These %CVs are considerably smaller than the assumed values of 20% and 30%, respectively, used by Clewell et al. in their Monte Carlo analysis. On the other hand, their %CV for Km does coincide with that indicated by the joint confidence regions. One should also note the high degree of correlation among the fitted values for VmaxC and Km.

In assessing variability in the ratio of *in vitro* MFO and GST metabolism in lung versus liver tissue (i.e., the A1 and A2 parameters), Clewell et al. used the *in vitro* MC metabolism data of Reitz et al. (1989). Yet it appears that the %CV for these data is 24% when one uses SDs among replicates for MFO metabolism in lung and liver of mice. This is substantially less than the 50% assumed by Clewell. One obtains a %CV of 9% when using SEMs.

It appears then, that some of the probability distributions used by Clewell et al. reflect variability beyond that readily identifiable as uncertainty in estimates of sample means. It may be that Clewell made a subjective inflation of variances. Though ad hoc, inflating variances would not be unreasonable given the sparse data on certain model parameters. Another possibility is that the distributions reflect variability due to both uncertainty and intersubject heterogeneity—another reason to inflate variances, or alternately, use SDs rather than SEMs to describe the distributions of the parameters. If so, then it might be more appropriate to view the proportion of simulated estimates of risk that fall within a specified interval as the probability that the true risk for a randomly selected individual is in that interval. Yet strictly speaking this would require that the probability distributions reflect both the full range of uncertainty and heterogeneity in the population of interest, with the latter being unlikely based on inspection. If the analysis only considered imprecision due to uncertainty, as suggested in Clewell et al., then the resulting distribution should instead be viewed as describing the uncertainty in risk for a hypothetical "average" individual.

2. OSHA's Modifications to PBPK Analysis

a. Basis for modifying approach of Clewell et al. In addition to the likelihood that Clewell et al. used broader distributions than those necessary to model uncertainty in the PBPK analysis (as opposed to modeling some hybrid of uncertainty and variability), the analytical approach they used (1992 and 1993) also has two well-known methodological limitations. Their representation of imprecision in fitted parameters (e.g., VmaxC, Km, KfC) is problematic because they estimated the variability in these parameters by optimizing the model fit to *in vivo* data, while assuming nominal values for all other model parameters. However, the organ volumes, blood flows, and partition coefficients for the mice used in the gas uptake studies and the humans used in the open chamber studies are clearly not known with exact precision, and are not, therefore, accurately represented by nominal values. Consequently, the variances of the fitted parameters will be *underestimated* with this approach, since full acknowledgment of variability in other model parameters will have been ignored. Furthermore, it is quite likely that the joint parameter space for fitted PBPK model parameters will exhibit a considerable degree of correlation. Importantly, failure to account for such covariances when performing Monte Carlo sampling may *overstate* variance in some model predictions by assuming independence where it does not exist. The implications of these methodological limitations on predicted risk are unclear, since they would seem to exert countervailing effects on estimating uncertainty. Thus, OSHA decided that it was important to perform an analysis that addressed these limitations. The

use of a Bayesian statistical framework provided a means of overcoming the above limitations.

b. Bayesian Approach. A Bayesian analysis allows the logical combination of two forms of information: "prior knowledge" about parameter values drawn from the scientific literature, and data from experimental studies (e.g., the mouse gas uptake studies, or, for humans, the open chamber experiments performed by Dow Chemical company), all within the context of a PBPK model. Clearly, neither prior information about parameter values nor experimental data alone are capable of precisely determining all parameter values in the PBPK model. If prior information were sufficient, the additional experiments performed by Clewell et al. and Dow Chemical Co. would not have had to be done. But the available experimental data alone are insufficient to pin down all parameters of the model to reasonable values (which is why no attempt was made to simultaneously optimize all PBPK parameters to data). Fitting only two or three parameters while holding others constant so as to reduce dimensionality leads to the biases and underestimation of variance mentioned above.

A second feature of this Bayesian approach is that it yields distributions for all of the PBPK model parameters together with information about their entire joint covariance structure. Thus, the Bayesian analysis outputs distributions of parameter values that are consistent with both all the available data as well as the prior information. It is then possible to use samples from the joint posterior distribution of the parameters to simulate formation of GST metabolites in lung tissue from different species and cancer risk, therefore producing posterior distributions for these endpoints. It should be noted that if no data are available (or if the data are not informative as to the likely value of the parameter), the posterior distribution is equivalent to the prior distribution and this approach is then equivalent to the standard Monte Carlo sampling from the prior distribution, as in Clewell et al. Alternately, Bayesian updating with a uniform prior distribution (i.e., complete ignorance about plausible values) used in conjunction with data leads to a posterior distribution proportional to the distribution of the data. The most important applications of the Bayesian approach arise when informative (e.g., physiological, anatomical) prior distributions exist, in parallel with experimental metabolic data. This is now the case with PBPK modeling of MC. In this case, Bayesian modeling results in all the information content of both prior distributions of parameter values and metabolic data being incorporated in the posterior distribution of parameter values, which will have reduced variance compared to the prior distribution. Distributions of parameter values for both human and mouse PBPK models, and the multistage cancer model, were determined with this technique.

c. PBPK Model Modifications. OSHA's final risk estimates were based on the Bayesian analysis described here. The Clewell model formed the structural core of the analysis, although five additional structural modifications were made as described below. These modifications were necessary to make the PBPK model more physiologically realistic:

(1) Bone marrow was treated as a separate compartment. In the Clewell model (as in many PBPK models), bone marrow tissue was combined with other tissues into a (presumably) kinetically homologous compartment. Based on blood perfusion rates, a reasonable choice would be to place marrow in the well-perfused tissue compartment. However, if the physicochemical affinity of the compartment is considered, it makes more sense to place marrow in the adipose tissue compartment, since red marrow (at least in humans) has a fat content of about 40% and yellow marrow has a fat content of 80%. In comparison, liver, brain, kidney and heart all have fat contents (in humans) well under 20% . In addition, bone marrow accounts for a significant percentage of body weight and receives a substantial fraction of cardiac output. Therefore, a strong argument can be made for treating bone marrow as a separate compartment, as OSHA has done here.

(2) Partitioning MFO and GST metabolism between the lung and liver. Clewell made the MFO and GST metabolic constants for lung dependent on the fitted constants for the liver, so as to reduce the number of fitted parameters to be simultaneously estimated from rodent and human *in vivo* data. For example, A1 is defined as the ratio of lung to liver *in vitro* MFO enzymatic activity, normalized to microsomal protein,

$$A1 = \frac{\text{nmol DCM oxidized/min/mg lung microsomal protein}}{\text{nmol DCM oxidized/min/mg liver microsomal protein}}$$

Similarly, A2 is the ratio of lung to liver *in vitro* GST enzymatic activity, normalized to cytosolic protein,

$$A2 = \frac{\text{nmol DCM conjugated/min/mg lung cytosolic protein}}{\text{nmol DCM conjugated/min/mg liver cytosolic protein}}$$

This assumes that lung and liver have equivalent mg protein per mg tissue contents. Yet the data of Litterst et al. (1973) argue against such an assumption. Litterst et al. measured microsomal protein and soluble protein in lung and liver tissues of mice, rats, hamsters, guinea pigs and rabbits. These data indicated ratios of mg microsomal protein content of lung versus liver tissue of less than 0.3, and a similar ratio for soluble protein of about 0.7. Thus, some adjustment of the constants A1 and A2 are required.

The equations used to compute a lung Vmax for the MFO pathway and a lung Kf for the GST pathway from a liver Vmax and Kf were thus modified to include an additional proportionality factor to account for differences in microsomal and cytosolic protein content of lung and liver tissue. Specifically,

$$Vmax_{lung.MFO} = Vmax_{liver.MFO} \times [V_{lung} / V_{liver}] \times A1 \times B1$$

where B1 is the ratio of [mg microsomal protein per mg of lung tissue] to the same measure for liver tissue. A geometric mean and geometric standard deviation for B1 were derived from the data of Litterst et al. (1973) to use as input in the Bayesian prior distribution for this parameter. Notably, accounting for this difference in protein content leads to a proportionality factor approximately four-fold less than that used by the Clewell et al. (i.e., A1 x B1 = 0.41 × 0.27 = 0.11).

Similarly, for $Kf_{lung.GST}$,

$$Kf_{lung.GST} = Kf_{liver.GST} \times A2 \times B2$$

Here too, the data of Litterst et al. (1973) were used to compute a ratio of mg soluble protein per mg lung to the same measure for liver, yielding a mean value of 0.68 for B2. For a human B2, the average of the ratios computed for mice, rats, hamsters, guinea pigs, and rabbits as per Litterst et al. (1973) was used.

(3) Linkage of alveolar ventilation to cardiac output. In recognition of OSHA's interest in occupational exposures, Clewell used values of cardiac output and alveolar ventilation rates consistent with the performance of light work. However, they did not account for the altered distribution of regional blood flows known to occur in response to increases in work intensity [Exs. 7–115, 7–120, 21–81], as was done in subsequent MC PBPK work by Dankovic and Bailer [Ex. 23–18] (1994). In the latter analysis, alveolar ventilation (QP) was made dependent on cardiac output (QC) by making QP = QC × VPR, where VPR is the ventilation-perfusion ratio. VPR was treated as a random variable with an assigned prior probability distribution.

(4) Linkage of work intensity to changes in physiology. Cardiac output, ventilation perfusion ratio, and percent of cardiac output delivered to tissues were made dependent on work intensity. Using the data of Åstrand (1983) [Ex. 21–81]—and similar to what was done by Dankovic and Bailer (1994) [Ex. 23–18]—slope factors were derived to describe change in flows per change in work intensity as measured in watts. These slope factors were then used to modify resting flows for varying levels of work intensity. This approach was taken so that the influence of variability in work load (i.e, work load was treated as a random variable)—with concomitant adjustments to regional blood flows and ventilation rate—on delivered dose could be modeled.

(5) Maintaining mass balance in sampling of fractional blood flows and compartment volumes. Monte Carlo sampling of fractional quantities such as the proportion of cardiac output delivered to different compartments, or the proportion of body weight represented by a given compartment, requires the imposition of some type of constraint to prevent random sampling leading to summed proportions greater than the whole (and thus causing nonsensical departures from mass balance). The following constraint was imposed: VppC = 0.82—ΣViC 's (0.82 is a nominal value for the fraction of body weight absent bone, blood, and stomach and intestinal contents), QwpC = 1—ΣQiC 's (in the mouse model), and QppC = 1—ΣQiC 's (in the human model). The use of either QwpC or QppC as the quantity to be made dependent on the other fractional flows has biological appeal—one expects that higher fractional blood flow to the poorly-perfused compartment (i.e., muscle and skin) should be accompanied by a lower fractional flow to the well-perfused compartment, and vice versa. The choice of QwpC versus QppC as the one to be made dependent on others appeared to be unimportant in work with the mouse model. The choice was important in work with the human model. Here it was necessary to choose QppC, because of its large variance relative to QwpC (i.e., since QppC cannot be estimated precisely, it makes sense to let our greater knowledge of the other fractional flows inform us about plausible values of QppC).

The above approach modifies the approach taken by Clewell et al. [Ex. 96]. Their approach was to randomly draw from the distributions for cardiac output and all fractional flows, use the random draws to compute the absolute flows to the individual compartments, and then to sum the individual flows to make a new cardiac output value for use in the simulation. On the other hand, OSHA's final analysis avoided arbitrarily modifying the prior distribution for cardiac output (which happens to be one of the relatively well-known parameters). Furthermore, Clewell did not make the fractional flows dependent on one another.

d. Prior Probability Distributions. A skewed, lognormal-like distribution is generally observed for biological parameters. However, most, if not all, parameters are also positive and have physiological bounds. Thus, truncated lognormal distributions of the parameter values were used in this analysis. They do not differ appreciably from normal distributions for small values of the variance.

In specifying prior distributions an attempt was made to characterize the variability of the mean parameter values for small groups of rodents and humans. This focus was adopted to make the prior distribution congruent with the data sets available for Bayesian analysis. For example, the rodent gas uptake data represent the aggregate pharmacokinetic behavior of groups of 5 mice. Prior distributions were therefore constructed to reflect the degree of variability in mean physiological and anatomical PBPK parameters for small groups of mice. A similar approach was taken in defining prior distributions for human physiologic and anatomic parameters, since the available experimental data reflected the averaged pharmacokinetic behavior of 6 subjects. In practice, this meant amassing studies reporting mean values for certain PBPK parameters (e.g., tissue weights, blood flows, cardiac output, minute ventilation), and then using these means as data for computing a geometric mean (GM) and geometric standard deviation (GSD) with which to estimate the parameter values for the truncated lognormal distributions. Sampling of all lognormal distributions was truncated at 2 GSDs, with one exception. Truncation of the blood:air partition coefficient was extended to 3 GSDs based on results from preliminary runs.

Table VI–5 presents a summary of the prior probability distributions used in the Bayesian fitting of the mouse and human data sets. The prior distributions for metabolic constants to be estimated from *in vivo* data were made very broad (i.e., assigned a GSD of 10) to reflect our ignorance of these values before examining the data. Similarly, the prior distributions for parameters of the multistage cancer model were broad uniform distributions, constrained to be positive, as required by the standard model.

TABLE VI–5.—PRIOR DISTRIBUTIONS USED IN BAYESIAN ANALYSIS OF MOUSE AND HUMAN IN-VIVO DATA

	Parameter	Mouse priors		Human priors	
		GM	GSD	GM	GSD
Flows:					
QCC	Cardiac Output (l/hr/kg—BW)	a 34.8	1.14	4.2	1.10
VPR	Alveolar Ventilation Perfusion Rate	b 1.22	1.95	1.35	1.15
Tissue Blood Flows (fraction of cardiac output):					
QgiC	GI Tract	0.165	1.30	0.191	1.25
QliC	Liver	0.017	1.20	0.067	1.20
QfatC	Fat	0.047	1.60	0.057	1.45
QppC	Poorly Perfused Tissues	0.276	1.25	0.198 c	1.55
QwpC	Well Perfused Tissues	c 0.369	1.10	0.443	1.25
QmarC	Bone Marrow	0.089	1.60	0.044	1.70
Tissue Volumes (fraction of body weight):					
VgiC	GI Tract	0.035	1.30	0.017	1.10
VliC	Liver	0.045	1.20	0.026	1.10
VfatC	Fat	0.077	1.40	0.204	1.20
VppC	Poorly Perfused Tissues	c 0.556	1.10	0.470 c	1.15
VwpC	Well Perfused Tissues	0.065	1.15	0.044	1.10
VluC	Lung	0.008	1.30	0.008	1.15
VmarC	Bone Marrow	0.033	1.50	0.050	1.10
Equilibrium Partition Coefficients:					
Pblo	Blood:Air	13.7	1.80	8.4	1.30
Pgi	GI Tract:Air	10.5	1.20	8.1	1.60
Pli	Liver:Air	22.9	2.00	9.9	1.60
Pfat	Fat:Air	98.2	1.40	97.6	1.25
Ppp	Poorly Perfused Tissues:Air	9.5	1.30	6.8	1.60
Pwp	Well Perfused Tissues:Air	10.2	1.20	7.6	1.40
Plu	Lung:Air	10.0	1.30	7.6	1.50
Pmar	Bone Marrow:Air	62.0	1.60	48.8	1.60
Metabolic Parameters:					
VmaxC	Maximum metabolic velocity of MFO saturable pathway (mg/hr/kg—liver).	750	10.00	75	10.00
KM	Affinity of MFO saturable pathway (mg/l)	1.35	10.00	0.6	10.00
KFC	First order rate constant for GST pathway (l/hr/kg – 0.25).	1.5	10.00	Mouse post. d	Mouse post. d
A1	Ratio of lung to liver in-vitro MFO metabolic velocities (nmol/min/gm—lung—micros.Prot)/ (nmol/min/gm—liver—micros.Prot).	0.405	1.67	0.0045	4.50
A2	Ratio of lung to liver in-vitro GST metabolic velocities (nmol/min/gm—lung—cytos.Prot)/ (nmol/min/gm—liver—cytos.Prot).	0.282	1.67	0.122	3.60
B1	Ratio of lung and liver tissue content of microsomal protein.	0.271	1.25	0.297	1.10
B2	Ratio of lung and liver tissue content of cytosolic protein.	0.721	1.25	0.807	1.20
Sp—Kf	Allometric scaling power for body weight scaling of KFC from mice to humans.			– 0.272 e	0.08 e

Notes: (a) value computed for 0.025 kg mouse. 70 kg human; (b) unitless; (c) prior distribution not used, fractional flow made functionally dependent on others (see text); (d) human prior set equal to mouse posterior; (e) mean and standard deviation of a truncated normal distribution.

While it is desirable to separate variability into components reflecting pure uncertainty (e.g., measurement error) versus interindividual heterogeneity and to propagate them separately, it is necessary to build from the start an adequate statistical model. The problem here is complicated by the fact that both the rodent and human *in vivo* data used for estimating metabolic constants reflected either aggregated or averaged pharmacokinetic behavior. Thus the prior distributions and the statistical model used here aggregate variability due to both finite precision in measured values and heterogeneity among average values for small groups of rodents or humans; they do not, it must be emphasized, reflect heterogeneity among the individual humans in a large, representative population.

e. In Vivo Rodent and Human data. Bayesian updating of the distributions was performed using the same data sets used by Clewell et al. to obtain fitted estimates of mouse and human metabolic constants; namely, gas uptake studies with mice with or without pretreatment with a MFO inhibitor and the human open chamber inhalation studies. All mouse gas uptake studies were conducted with 5 female mice in

a single chamber. Thus, measured observations of decline in chamber concentration of MC represent the aggregate pharmacokinetic behavior of groups of 5 animals.

The human *in vivo* data were obtained from Tables 2 and 3 in Andersen et al. (1991) [Ex. 21–94]. Briefly, these data represent exhaled breath and venous blood concentrations of MC for 6 male human volunteers exposed to MC concentrations of 100 or 350 ppm for a period of 6 hours. These data have only been reported as means and standard deviations of the six subjects, which is unfortunate. Thus, the available data reflect the average pharmacokinetic behavior of the 6 subjects. When simulating the human data reported in Andersen et al. (1991), the work load was assumed to be zero watts (rest) and the averaged body weight of the 6 subjects was assumed to be known without error (86 kg).

f. Simulating the Rodent Bioassay and Human Occupational Exposure. Distributions for GST metabolism in the lungs of mice exposed to 2000 ppm or 4000 ppm exposures, for 6 hrs/day and 5 days/week, were obtained by simulating these two exposures (the ones used in the NTP bioassay) with 5000 realizations drawn from the joint posterior distribution of the mouse PBPK parameters.

The quantity of metabolites formed during the 4th week (dynamic equilibrium reached) was divided by 7 to give an average measure per day. For use as an input dose to the multistage model, these posterior distributions were approximated by truncated lognormals.

The same set of 5000 parameter vectors was used to simulate both 2000 and 4000 ppm MC exposures. The control dose was always assumed to be 0. Thus, a 5000-by-3 matrix of doses was generated, where the three column vectors represent different realizations of a particular dose group (0, 2000 and 4000 ppm MC) and the row vectors represent different realizations of bioassay doses.

This method of using the joint posterior distributions for the two doses in the mouse bioassay implies certain assumptions about the uncertainties. Most importantly, this approach (referred to in this document as the "dependence case") assumes that the posterior distributions primarily reflect uncertainty about a single average value equally applicable to all groups of approximately 50 mice (i.e., it assumes groups of 50 mice will have the same "average" physiological, anatomical, physicochemical and metabolic attributes, and that these average values are simply known to us with uncertainty). An alternative would be to model the "independence case" by using a different random draw from the vector of PBPK parameters for one dose group than for the other. This approach assumes that the posterior distributions primarily reflect heterogeneity in the average attributes of groups of 50 rodents. Under the dependence case, estimates of metabolized dose for the two exposures would tend to move in tandem for a given simulation (i.e., when one dose is estimated to be low relative to its average, so is the other; likewise, when one is high, so is the other), and in principle would therefore exhibit less variability in dose-response shape (e.g., linear, sublinear, supralinear).

It appears that the dependence case is more reasonable than the independence case, by appealing to biological theory and by examining the results of the sensitivity analysis conducted as part of this risk assessment. The sensitivity analysis showed that predicted mouse GST metabolism at 2000 ppm was most sensitive to variation in the model parameter A2. Variability in A2 was primarily a consequence of uncertainty in using an *in vitro* ratio of enzymatic activity to make inferences about an *in vivo* ratio. Therefore, uncertainty rather than heterogeneity seems to dominate the distribution of mouse GST metabolism estimates. Besides, laboratory rodents have a carefully controlled genetic makeup, primarily so that they will differ little from each other physiologically; thus, groups of 50 rodents should have extremely similar average characteristics (the variance of the mean of a characteristic within a group of 50 rodents will be approximately 50 times smaller than the (already small) inter-individual variance). OSHA has determined that this reasoning supports use of the dependence case in this analysis. (Note that the excess risk estimates using the dependence case are only about a factor of 1.5 higher than those using the independence case).

Five human occupational exposures were simulated: constant exposure to 10, 25, 50, 100 or 500 ppm MC for 8-hrs per day and 5 days per week. Simulations were made up to 4 weeks of work, at which a dynamic equilibrium was reached, and as with mice, were performed using 5000 parameter human vectors drawn from their joint posterior distribution, augmented by allowing for additional variability in human body weight and work intensity (the latter linked to changes in cardiac, ventilation-perfusion and regional blood flow as described above).

g. Sensitivity Analysis. The influence of variability in mouse and human PBPK model parameters on variability in predicted mouse and human GST lung metabolism was assessed by computing pairwise correlation coefficients using each parameter vector (i.e., the marginal posterior distribution) and the corresponding vector of model predictions. For mice, the sensitivity to predicted GST—lung metabolism in the simulated 2000 ppm bioassay dose group was evaluated. For humans, predicted GST—lung metabolism for an occupational exposure to 25 ppm was considered. Pairwise correlation coefficients were computed using 5000 parameter vectors drawn from the joint posterior distribution and the associated model output vector.

Table VI–6 presents the results from the sensitivity analysis. The strongest pairwise correlation between predicted lung GST metabolism and any input parameter, for either mouse or human simulations, was A2. For the mouse simulation of a 2000 ppm exposure, B2 gave the next strongest pairwise correlation. The mouse parameters QlivC, VlivC, VmaxC, Pfat and QppC all exhibited more moderate (though not negligible) correlations. For the human occupational simulation, the parameters KfC, VmaxC, Sp__Kf, and B2 all exhibited moderate pairwise correlations with human lung GST metabolism. For both mice and human sensitivity analyses, there were a half-dozen or more parameters exhibiting weak (r between 0.1 and 0.2) correlations. It is important to note that all parameters are further correlated via their posterior joint distribution function. This explains why the sum of the regression coefficients (i.e., squares of the correlation coefficients) is greater than 1. Thus considerable care should be exercised in quantitatively estimating the ability of variability in any input parameter to explain variability in predicted GST metabolism, especially among parameters with similar pairwise correlation coefficients.

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TABLE VI–6.—CORRELATION COEFFICIENTS FOR TOTAL GST LUNG METABOLISM FROM MONTE CARLO ANALYSIS USING MOUSE AND HUMAN POSTERIOR DISTRIBUTIONS

Mouse 2000 PPM		Human 25 PPM	
Parameter	Correlation coefficient (r)	Parameter	Correlation coefficient (r)
A2	0.860	A2	0.850
B2	0.530	KfC	0.315
QliC	0.335	VmaxC	−0.291
VliC	−0.248	Sp—Kf	0.232
VmaxC	−0.229	B2	0.221
Pfat	−0.203	Pmar	−0.183
QppC	−0.202	QfatC	0.180
VPR	0.193	B1	0.179
Pli	−0.173	VliC	0.161
A1	−0.149	VmarC	0.146
QgiC	−0.145	Work	0.142
Pmar	0.144	QwpC	0.141
VwpC	−0.121	VfatC	0.136
KfC	0.120	QmarC	0.136
Pwp	−0.106	Km	−0.095
VluC	−0.120	QC	−0.083
B1	−0.093	QliC	−0.083
QmarC	−0.083	A1	−0.071
Ppp	−0.076	QgiC	−0.065
VgiC	0.074	Pfat	−0.061
Pgi	0.054	Pwp	−0.058
QC	−0.049	VluC	−0.052
BW	−0.042	Pgi	−0.050
Plu	0.039	VwpC	0.041
Km	−0.035	Pblood	0.039
tVmaxC	0.024	dVPR/dW	0.039
QfatC	0.020	BW	−0.038
Pblood	0.019	dQli/dW	−0.033
VfatC	−0.013	Plu	0.023
Vmar	−0.007	Ppp	0.021
		dQfat/dW	0.016
		VgiC	−0.012
		Pli	−0.010
		dQgi/dW	−0.010
		dQmar/dW	−0.009
		VPR	0.006
		dQC/dW	−0.000
		dQwp/dW	−0.000

h. Posterior PBPK Parameter Distributions. Table VI–7 lists the posterior distributions for mouse PBPK parameters obtained by Bayesian updating of the prior distributions using the available gas uptake data. Comparison of the prior and posterior probability distributions reveals that the gas uptake data retain considerable influence on the distributions of many of the important PBPK model parameters. Medians of the posterior distributions for VPR, Qfat, Pblood, Pmar, Km, A1, and A2 were all appreciably different than the medians for their corresponding prior distributions. Percent CVs for nearly all posterior distributions were considerably smaller than those of their prior distributions. As expected, the marginal variances for the metabolic constants were considerably greater than what was obtained under nonlinear maximum likelihood regression analysis with all other model parameters fixed at nominal values.

TABLE VI–7. PRIOR AND POSTERIOR (FITTED) DISTRIBUTIONS OF THE MOUSE MODEL PARAMETERS

	Parameter	Central tendency		Maximum posterior	Variability	
		Prior median	Posterior median		Prior %CV	Posterior %CV
Flows:						
QCC	Cardiac Output (l/hr/kg^0.74BW)	34.8	34.4	37.6	18	9
VPR	Alveolar Ventilation Perfusion Ratio	1.22	1.59	1.49	75	14
Tissue Blood Flows (fraction of cardiac output):						
QgiC	GI Tract	0.165	0.140	0.175	26	16

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TABLE VI–7. PRIOR AND POSTERIOR (FITTED) DISTRIBUTIONS OF THE MOUSE MODEL PARAMETERS—Continued

	Parameter	Central tendency		Maximum posterior	Variability	
		Prior median	Posterior median		Prior %CV	Posterior %CV
QliC	Liver	0.017	0.020	0.017	19	16
QfatC	Fat	0.047	0.090	0.088	43	19
QppC	Poorly Perfused Tissues	0.276	0.290	0.243	22	18
QwpC	Well Perfused Tissues	0.369	a0.360	0.378		a
QmarC	Bone Marrow	0.089	0.100	0.090	51	27
Tissue Volumes (fraction of body weight):						
VgiC	GI Tract	0.035	0.040	0.038	26	22
VliC	Liver	0.045	0.050	0.050	18	12
VfatC	Fat	0.077	0.070	0.055	35	24
VppC	Poorly Perfused Tissues	0.556	b0.540	0.569		b
VwpC	Well Perfused Tissues	0.065	0.070	0.065	14	12
VluC	Lung	0.008	0.010	0.007	27	22
VmarC	Bone Marrow	0.033	0.040	0.037	42	29
Equilibrium Partition Coefficients:						
Pblo	Blood:Air	13.7	18.5	13.1	66	18
Pgi	GI Tract:Air	10.5	11.3	9.5	19	17
Pli	Liver:Air	22.9	28.2	23.9	79	32
Pfat	Fat:Air	98.2	100.5	106.7	35	21
Ppp	Poorly Perfused Tissues:Air	9.5	12.1	13.1	27	17
Pwp	Well Perfused Tissues:Air	10.2	10.4	10.3	19	16
Plu	Lung:Air	10.0	11.3	12.5	27	22
Pmar	Bone Marrow:Ait	62.0	70.4	89.2	50	25
Metabolic Parameters:						
VmaxC	Maximum metabolic velocity of MFO saturable pathway (mg/hr/kg__liver).	750	718	661	1413	12
tVmaxC	Maximum metabolic velocity of MFO saturable pathway in t-DCE pretreated mice.	8.4	7.2	11.3	58	50
Km	Affinity of MFO saturable pathway (mg/l)	1.35	0.04	0.03	1413	97
KfC	First order rate constant for GST pathway (l/hr/kg^0.25).	1.5	1.77	2.47	1413	24
A1	Ratio of lung to liver in-vitro MFO metabolic velocities (nmol/min/gm__lung__micros.Prot)/(nmol/min/gm__liver__micros.Prot).	0.405	0.28	0.30	54	31
A2	Ratio of lung to liver in-vitro GST metabolic velocities (nmol/min/gm__lung__cytos.Prot)/(nmol/min/gm__liver__cytos.Prot).	0.282	0.37	0.30	55	41
B1	Ratio of lung and liver tissue content of microsomal protein.	0.271	0.26	0.29	23	18
B2	Ratio of lung and liver tissue content of cytosolic protein.	0.721	0.70	0.84	22	17

Notes: (a) functionally defined as 1__sum (other fractional flows); (b) functionally defined as 0.82__sum (other fractional volumes).

Table VI–8 presents the corresponding set of results for human PBPK parameters. The human *in vivo* data also appeared to contain considerable information about many of the model parameters, as evidenced by shifts in medians and tightening of posterior distributions relative to priors. Fitted estimates of the metabolic constants were fairly precise, even for Km (Table VI–8); indeed, the fits were markedly superior to those shown in Andersen et al. [Ex. 21–94] and Clewell et al. [Ex. 96].

TABLE VI–8.—Prior and Posterior (Fitted) Distributions of the Human Model Parameters

	Parameter	Prior distribution			Posterior distribution			
		GM	GSD	%CV	Posteriors for Bayesian fit		Modified by exercise	
					Median	%CV	Median	%CV
Flows:								
QCC	Cardiac Ouput (1/hr/kg__BW).	4.2	1.10	10	4.0	6	6.2	17

TABLE VI–8.—Prior and Posterior (Fitted) Distributions of the Human Model Parameters—Continued

	Parameter	Prior distribution			Posterior distribution			
		GM	GSD	%CV	Posteriors for Bayesian fit		Modified by exercise	
					Median	%CV	Median	%CV
VPR	Alveolar Ventilation Perfusion Ratio.	1.35	1.15	15	1.03	1	1.37	9
Tissue Blood Flows (fraction of cardiac output):								
QgiC	GI Tract	0.191	1.25	23	0.149	12	0.122	14
QliC	Liver	0.067	1.20	19	0.063	15	0.041	24
QfatC	Fat	.057	1.45	38	0.045	10	0.052	11
QppC	Poorly Perfused Tissues.	0.198	1.55	a	0.378	a9	a0.453	10
Qwpc	Well Perfused Tissues.	0.443	1.25	23	0.294	3	0.258	7
QmarC	Bone Marrow	0.044	1.70	57	0.071	38	0.072	38
Tissue Volumes (fraction of body weight):								
VgiC	GI Tract	0.017	1.10	10	0.018	8	0.018	8
VliC	Liver	0.026	1.10	10	0.026	8	0.026	8
VfatC	Fat	0.204	1.20	18	0.183	11	0.183	11
VppC	Poorly Perfused Tissues.	0.470	1.15	b	0.489	b5	b0.489	5
VwpC	Well Perfused Tissues.	0.044	1.10	9	0.47	7	0.047	7
VluC	Lung	0.008	1.15	14	0.008	11	0.008	11
VmarC	Bone Marrow	0.050	1.10	10	0.049	8	0.049	8
Equilibrium Partition Coefficients:								
PC.blood	Blood:Air	8.4	1.30	26	16.5	2	16.5	2
PC.gi	GI Tract:Air	8.1	1.60	50	10.7	36	10.7	36
PC.li	Liver:Air	9.9	1.60	50	13.7	33	13.7	33
PC.fat	Fat:Air	97.6	1.25	22	84.4	12	84.4	12
PC.pp	Poorly Perfuse Tissue:Air.	6.8	1.60	48	13.3	13	13.3	13
PC.wp	Well Perfused Tissue:Air.	7.6	1.40	35	13.1	14	13.1	14
PC.lu	Lung:Air	7.6	1.50	43	9.4	33	9.4	33
PC.mar	Bone Marrow:Air	48.8	1.60	49	47.8	27	47.8	27
Metabolic Parameters:								
VmaxC	Maximum MFO metabolic rate (mg/mg/hr/kg_liver).	75.0	10.00	1413	97.2	11	97.2	11
Km	MFO Michaelis Menton constant (mg/1).	0.60	10.00	1413	0.52	39	0.52	39
Kf	1st order rate constant for GST pathway (1/hr).	0.12	2.07	81	0.23	63	0.23	63
A1	[V/S]_lung/[V/S_MFO_liver.	0.0045	4.50	226	0.024	77	0.024	77
A2	[V/S]_lung/[V/S]_GST_liver.	0.236	2.04	83	0.364	49	0.364	49
B1	[mg micr.Prot/gm lung]/[mg micr.Prot/gm liver].	0.297	1.10	10	0.300	8	0.300	8
B2	[mg cyt. Prot/gm lung]/[mg cyt.Prot/gm liver].	0.807	1.20	18	0.845	15	0.845	15

Notes (a) operationally defined as 1—sum (other fractional flows); (b) functionally defined as 0.82—sum (other fractional volumes).

Tables VI–9 and VI–10 compare the posterior distributions for mice and human PBPK parameters with the distributions used by Clewell. For mice, there were appreciable differences in the median values for QCC, VPR, QfatC, QwpC, VwpC, VmaxC, Km, KfC, and the apparent A1 (i.e., A1 × B1). With the exception of VliC, Pblood, Pliv, Ppp and Km, the posterior distributions for all other parameters were tighter than the distributions used by Clewell. The human posterior distributions in Table VI–10 are somewhat different than those in Table VI–8, in that they reflect the influence of modeling variable work intensity on QC, VPR, and all regional blood flows. In comparing these modified posterior distributions to the distributions used by Clewell, one finds appreciable differences in median values for VPR, many of the fractional blood flows (QgiC, QliC, QppC, QwpC), VgiC, PCblood, PCliv, PCfat, VmaxC, KfC, and the apparent A2 (i.e., A2 × B2). All human posterior distributions except for VliC, Pli, and Sp__Kf, had appreciably tighter distributions than those used by Clewell et al. [Ex. 96].

TABLE VI–9.—COMPARISON OF MOUSE PROBABILITY DISTRIBUTIONS USED BY CLEWELL ET AL. WITH OSHA'S POSTERIOR PROBABILITY DISTRIBUTIONS

	Parameter	Central tendency		Variability	
		Clewell et al. median	OSHA median	Clewell et al. %CV	OSHA %CV
Flows:					
QCC	Cardiac Output (l/hr/kg__BW)	[a]41.5	34.4	9	9
VPR	Alveolar Ventilation Perfusion Ratio	[b]1.76	1.59	58	14
Tissue Blood Flows (fraction of cardiac output):					
QgiC	GI Tract	0.165	0.14	25	16
QliC	Liver	0.035	0.02	96	16
QfatC	Fat	0.030	0.09	60	19
QppC	Poorly Perfused Tissues	0.250	0.29	40	18
QwpC	Well Perfused Tissues	0.520	[c]0.36	50	c
QmarC	Bone Marrow	NA	0.10	NA	27
Tissue Volumes (fraction of body weight):					
VgiC	GI Tract	0.031	0.04	30	22
VliC	Liver	0.046	0.05	6	12
VfatC	Fat	0.100	0.07	30	24
VppC	Poorly Perfused Tissues	0.513	[d]0.54	30	d
VwpC	Well Perfused Tissues	0.041	0.07	30	12
VluC	Lung	0.008	0.01	30	22
VmarC	Bone Marrow	NA	0.04	NA	29
Equilibrium Partition Coefficients:					
Pblo	Blood:Air	23.0	18.5	15	18
Pgi	GI Tract:Air	11.4	11.3	30	17
Pli	Liver:Air	38.7	28.2	20	32
Pfat	Fat:Air	107.0	100.5	30	21
Ppp	Poorly Perfused Tissues:Air	8.5	12.1	10	17
Pwp	Well Perfused Tissues:Air	11.4	10.4	20	16
Plu	Lung:Air	10.0	11.3	30	22
Pmar	Bone Marrow:Air	NA	70.4	NA	25
Metabolic Parameters:					
VmaxC	Maximum metabolic velocity of MFO saturable pathway (mg/hr/kg__liver).	970	718	20	12
Km	Affinity of MFO saturable pathway (mg/l)	1.35	0.04	30	97
KfC	First order rate constant for GST pathway (l/hr/kg__0.25)	1.5	1.77	30	24
A1	Ratio of lung to liver in-vitor MFO metabolic velocities (nmol/min/gm__lung__micros.Prot)/(nmol/min/gm__liver__micros.Prot).	0.405	0.28	50	31
A2	Ratio of lung to liver in-vitro GST metabolic velocities (nmol/min/gm__lung__cytos.Prot)/(nmol/min/gm__liver__cytos.Prot).	0.282	0.37	50	41
B1	Ratio of lung and liver tissue content of microsomal protein	1	0.25	0	18
B2	Ratio of lung and liver tissue content of cytosolic protein	1	0.69	0	17

Notes: (a) value computed for 0.025 kg mouse; (b) unitless; (c) functionally defined as 1—sum (other fractional flows); (d) functionally defined as 0.82—sum(other fractional volumes); (na) not applicable.

TABLE VI–10. COMPARISON OF HUMAN PROBABILITY DISTRIBUTIONS USED BY CLEWELL ET AL. WITH OSHA'S POSTERIOR PROBABILITY DISTRIBUTIONS

	Parameter	Central tendency		Variability	
		Clewell et al. median	OSHA median	Clewell et al. %CV	OSHA %CV
Flows:					

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TABLE VI–10. COMPARISON OF HUMAN PROBABILITY DISTRIBUTIONS USED BY CLEWELL ET AL. WITH OSHA'S POSTERIOR PROBABILITY DISTRIBUTIONS—Continued

	Parameter	Central tendency		Variability	
		Clewell et al. median	OSHA median	Clewell et al. %CV	OSHA %CV
QCC	Cardiac Output (l/hr/kg__BW)	[a]6.2	[c]6.3	9	[c]17
VPR	Alveolar Ventilation Perfusion Ratio	[b]1.95	[c]1.36	18	[c]9
Tissue Blood Flows (fraction of cardiac output):					
QgiC	GI Tract	0.195	[c]0.12	10	[c]13
QliC	Liver	0.070	[c]0.04	35	[c]23
QfatC	Fat	0.050	[c]0.05	30	[c]15
QppC	Poorly Perfused Tissues	0.240	[c]0.46	15	[c]10
QwpC	Well Perfused Tissues	0.445	[c,d]0.26	20	[c,d]7
QmarC	Bone Marrow	NA	[c]0.07	NA	[c]45
Tissue Volumes (fraction of body weight):					
VgiC	GI Tract	0.045	0.017	10	8
VliC	Liver	0.023	0.026	5	8
VfatC	Fat	0.160	0.187	30	12
VppC	Poorly Perfused Tissues	0.480	[e]0.483	30	[e]5
VwpC	Well Perfused Tissues	0.033	0.047	10	7
VluC	Lung	0.006	0.008	10	12
VmarC	Bone Marrow	NA	0.050	NA	8
Equilibrium Partition Coefficients:					
Pblo	Blood:Air	12.9	16.5	15	2
Pgi	GI Tract:Air	12.0	13.5	30	31
Pli	Liver:Air	37.4	13.6	20	34
Pfat	Fat:Air	117.0	81.2	30	13
Ppp	Poorly Perfused Tissues:Air	10.0	13.3	10	14
Pwp	Well Perfused Tissues:Air	12.0	13.0	20	14
Plu	Lung:Air	10.6	9.1	30	32
Pmar	Bone Marrow:Air	NA	51.2	NA	35
Metabolic Parameters:					
VmaxC	Maximum metabolic velocity of MFO saturable pathway (mg/hr/kg__liver).	75.2	94.2	30	12
Km	Affinity of MFO saturable pathway (mg/l)	0.4	0.49	50	35
KfC	First order rate constant for GST pathway (l/hr/kg − 0.25)	1.5	1.82	50	24
A1	Ratio of lung to liver in-vitro MFO metabolic velocities (nmol/min/gm__lung__micros. Prot)/(nmol/min/gm__liver__micros.Prot).	0.015	0.03	70	69
A2	Ratio of lung to liver in-vitro GST metabolic velocities (nmol/min/gm__lung__cytos.Prot)/ (nmol/min/gm__liver__cytos.Prot).	0.18	0.45	70	71
B1	Ratio of lung and liver tissue content of microsomal protein	1.0	0.31	0	8
B2	Ratio of lung and liver tissue content of cytosolic protein	1.0	0.84	0	14
Sp__Kf	Allometric scaling power for body weight scaling of KFC from mice to humans.	−0.25	−0.267	0	22

Notes: (a) value computed for 70 kg human; (b) unitless; (c) posterior distributions adjusted for effects of light activity; (d) functionally defined as 1—sum(other fractional flows); (d) functionally defined as 0.82—sum(other fractional volumes); (NA) not applicable.

i. Alternative analysis using the "parallelogram" approach. Andersen et al. [Ex. 21–94] estimated a human first order rate constant (Kf) for glutathione (GST) metabolism of MC in the liver by allometric scaling of a fitted estimate of an *in vivo* mouse rate constant (KfC_{mouse}). Specifically,

$$Kf_{human} = KfC_{mouse} \times BW^{spKf}$$

where spKf was the allometric scaling power with value −0.25. In their Monte Carlo analysis, Clewell et al. followed the approach of Andersen et al., treating KfC_{mouse} as a lognormally distributed random variable and spKf as a known constant. The Bayesian analysis summarized above also made use of the allometric scaling given by the equation above, but prior probability distributions were specified for both KfC_{mouse} and spKf.

Reitz et al. (1988, 1989) [Exs. 7–225 and 21–53] proposed an alternative approach for estimating an apparent *in vivo* human Kf. The approach, referred to as the "parallelogram method," assumes there is a constant proportionality across species between *in vitro* and apparent *in vivo* metabolic rates when normalized for substrate concentration ([S]). For example, the equation modeling the apparent *in vivo* rate of GSH conjugation (dM_{GST}/dt) is given by:

$$\frac{dM_{GST}}{dt} = Kf \times [S] \times Vol_{liver}$$

The constant proportionality between apparent *in vivo* rates of metabolism and *in vitro* rates implies

$$\frac{dM_{GST}/dt}{[S]} = k_p \times [V/S]_{GST} = Kf \times Vol_{liver}$$

where $[V/S]_{GST}$ denotes an *in vitro* enzymatic rate normalized to [S] and k_p the *in vivo—in vitro* proportionality constant. This approach assumes a common value of k_p across species, such that knowledge of a $[V/S]_{GST\text{-}rodent}$ and Kf_{rodent} (sufficient to estimate a value for k_p as the ratio of Kf_{rodent} to $[V/S]_{GST\text{-}rodent}$) and knowledge of $[V/S]_{GST\text{-}human}$ is sufficient to estimate the remaining corner of a parallelogram, namely Kf_{human}. Therefore, this approach assumes,

$$\frac{[V/S]_{GST_{human}}}{[V/S]_{GST_{rodent}}} = \frac{Kf_{human}}{Kf_{rodent}}$$

or:

$$Kf_{human} = [V/S]_{GST_{human}} \times \frac{Kf_{rodent}}{[V/S]_{GST_{rodent}}}$$

Reitz et al. [Ex. 21–53] obtained an estimate for Kf_{human} using the parallelogram method that was very similar to the estimate obtained by Andersen et al. [Ex. 21–94] using allometric scaling. However, Reitz and coworkers estimated a mean $[V/S]_{GST\text{-}human}$ based on liver samples from only four human subjects—three of which had appreciable enzymatic activity and one with no detectable activity. More recent publications (Bogaards et al., 1993 [Ex. 127–16]; Graves et al., 1995 [Ex. 122]) and unpublished data (Green et al., 1987 [Ex. 14]) provide measured values of $[V/S]_{GST}$ on another 35 human subjects. These additional data demonstrate considerable variation in rates of GST metabolism among human subjects, consistent with a known human polymorphism for GST, described earlier in this Quantitative Risk Assessment. Moreover, these data indicated that, putting aside questions of interlaboratory comparability of measurements, three of the four human samples used by Reitz et al. had GST metabolic rates among the highest reported to date. Consequently, the mean $[V/S]_{GST\text{-}human}$ used by Reitz and coworkers was *greater* than the mean estimable from the full complement of data on human GST activity.

Since OSHA was interested in assessing the effect of accounting for the full complement of data on human GST activity on estimates of cancer risk, this additional analysis was performed, despite the Agency's reservations concerning the appropriateness of using the parallelogram approach in the MC risk assessment. Although this approach allows the use of all of the available data, the uncertainties in the ratio of *in vitro* to *in vivo* metabolic constants raise serious questions for the utility of this analysis. OSHA is presenting this analysis for purposes of comparison and notes that HSIA and Clewell used allometric adjustments in their final PBPK models.

The use of a Kf_{human} derived by the parallelogram method required: (1) modification of the human PBPK model; (2) specification of a prior probability distribution for Kf_{human}; (3) replication of the Bayesian analysis of the human *in vivo* open chamber data using the new prior for Kf_{human}; (4) simulation of the occupational exposure scenario using the joint posterior distributions from the new Bayesian analysis to obtain a posterior distribution for human GST lung metabolism; and (5) re-estimation of the extra cancer risk.

(*1*) *PBPK Model Modifications.* The only structural modification to the PBPK models was to replace the parameter for allometric scaling of Kf_{mouse} with a direct insert of a model parameter Kf_{human}, having its own prior probability distribution.

(*2*) *Prior Probability Distributions.* Mouse prior probability distributions were unchanged. Prior probability distributions for human model parameters were also unchanged, with the exception of prior distributions for KfC, spKf and A2. Prior probability distributions for KfC and spKf were replaced with a prior probability distribution for Kf_{human}. The prior probability distribution for A2 was modified to account for additional data on human lung GST activity submitted to OSHA by HSIA [Ex. 122].

The prior probability distribution for Kf_{human} was derived using the equation:

$$Kf_{human} = Kf_{rodent} \times \frac{[V/S]_{GST_{human}}}{[V/S]_{GST_{rodent}}} \times err_{k_p}$$

where err_{kp} is an error term added to account for uncertainty in estimating the proportionality constant k_p, as k_{mouse}. Thus, to derive a prior probability distribution for Kf_{human}, it was necessary to derive prior distributions for Kf_{rodent}, $[V/S]_{GST\text{-}rodent}$, $[V/S]_{GST\text{-}human}$ and err_{kp}, which in turn were propagated using Monte Carlo techniques in accordance with the relationships specified by the equation above.

(*i*) *Prior distribution for rodent Kf.* The posterior probability distribution used in the main analysis for the apparent *in vivo* rodent KfC parameter was used as the basis for a prior probability distribution for Kf_{rodent}. The posterior distribution was well described by a truncated lognormal distribution with a mean and standard deviation of 1.8 and 0.43 l/hr/bw/$^{-0.25}$, and lower and upper truncations at 0.84 and 3.07 l/hr/bw/$^{-0.25}$, respectively. The posterior distribution was converted to units of (hour)$^{-1}$ by using Monte Carlo techniques to multiply the truncated lognormal by the scalar, (rodent body weight)$^{-0.25}$.

(*ii*) *Prior for rodent liver GST [V/S].* A prior probability distribution for a low dose mouse $[V/S]_{GST}$ was obtained as the ratio of the fitted estimates of *in vitro* V_{max} and K_m reported by Reitz et al. for liver glutathione conjugation of MC. The fitted estimates of V_{max} and K_m and their associated standard errors were used to set the parameters for normal distributions. Monte Carlo techniques were used to obtain the ratio of these two distributions (i.e., V_{max}/K_m), under the assumption that the joint sample space for V_{max} and K_m was correlated with a $\pi = 0.9$. Correlation was induced because a reanalysis of the mouse *in vitro* reported in Reitz et al. showed that the joint parameter space for these two fitted parameters was highly correlated.

(*iii*) *Prior distribution for human GST [V/S].* There were four data sets reporting measured values of *in vitro* GST activity in liver samples from 39 human subjects. These data reflect work from different laboratories using (in some cases) different assay methods and different substrate concentrations. In order to make use of all the data to estimate central tendencies and population variability, it was necessary that all measurements be placed on a common scale.

With respect to assay methods, two of the studies [Exs. 21–53 and 122] reported measured values of $[V/S]_{GST}$ based on detection of [36]Cl from labelled MC. The other two studies [Exs. 14 and 127–16] reported values of $[V/S]_{GST}$ based on detection of formaldehyde, a known decomposition product from GSH conjugation with MC. In a comparison of these two methods, Green et al. [Ex. 14] reported results indicating a systematic difference in measured values of $[V/S]_{GST}$, with the [36]Cl detection method appearing to give estimates approximately 1.7-fold higher than the formaldehyde detection method. In this analysis, the [36]Cl method was chosen as the common scale, since the mouse $[V/S]_{GST}$ data used above were based on this method. Thus, the formaldehyde assay results were multiplied by 1.7 to put them on the [36]Cl scale.

Adjustments for both substrate concentration and nonlinear metabolism were made by converting all the

reported *in vitro* velocity data, $[V]_{GST}$, to V_{max}/K_m ratios (i.e., low dose metabolic velocity), by the equation:

$$\frac{V_{max}}{K_m} = \frac{([V]_{GST} \times (K_m + [S]))/[S]}{K_m}$$

The above equation follows from assuming *in vitro* kinetics can be reasonably modeled as a single-substrate Michaelis-Menton process (i.e., $[V]_{GST} = \{V_{max} \times [S]\}/\{K_m + [S]\}$). In making adjustments, assay specific substrate concentrations were used (i.e., [S], which ranged from 35 to 94 mM) along with the average estimate of an *in vitro* Km reported by Reitz et al. [Ex. 21–53] in analysis of data from two human subjects (44 mM). It is noteworthy that none of the human *in vitro* $[V/S]_{gst}$ data reported in Reitz et al. were truly reflective of linear kinetics, whereas the mice data were.

After the two above adjustments were made, a lognormal distribution was fit to the transformed data yielding a GM of 0.031 l/min/mg protein, and a GSD of 2.72. This distribution models intersubject variability in in vitro metabolic activity. However, the prior probability distribution for $[V/S]_{gst\text{-}human}$ should reflect variation in means of six subjects, because the *in vivo* human data from Dow Chemical Company reflect the averaged pharmacokinetic behavior of tissue from six subjects. Thus, dispersion in the above distribution was adjusted to give the corresponding sampling distribution for means of n = 6.

(iv) Prior distribution for error term. The *in vivo* and *in vitro* metabolic data on the MFO metabolic pathway, reported by Reitz et al. [Ex. 21–53], were used to estimate the uncertainty in assuming a constant k_p across species. These were the only data for which both in vivo and *in vitro* information was available on several species and which was directly relevant to MC. To avoid artifacts due to the very imprecise fitted estimates of apparent *in vivo* Km's, *in vivo / in vitro* comparisons were constructed based on estimates of Vmax alone. These estimates were then normalized by the ratio obtained for mice, providing a measure of the error in using a mouse ratio to estimate ratios in three other species: rats (1.42), hamsters (0.64), and humans (0.41). The GM (0.72) and GSD (1.89) of these three values were used to set parameters for a lognormal distribution used as the prior probability distribution for err_{kp}. Note that the human value of 0.41 reflected an average of separate estimates on four human subjects, with ratios ranging from 0.1 to 1.0.

(v) Monte Carlo simulation to obtain a prior for human Kf. The above prior probability distributions for Kf_{mouse}, $[V/S]_{gst\text{-}mouse}$, $[V/S]_{GST}$ and err_{kp} were independently sampled by Monte Carlo techniques (n = 5000) and combined to give a prior distribution for Kf_{human} for use in Bayesian analysis of the human open chamber data.

(vi) Revised prior distribution for A2. A2 is the ratio of *in vitro* GST enzymatic activity in lung tissue to the same activity in liver tissue. In the main analysis, the prior probability distribution for A2 was derived according to the equation:

$$A2 = \frac{[V/S]_{GST_{lung}}}{[V/S]_{GST_{liver}}} \times err_{vivo/vitro}$$

where $err_{vivo/vitro}$ is an error term to account for uncertainty in using a ratio of *in vitro* activity to make inferences about in vivo activity, and the data of Reitz et al. [Ex. 21–53] were used to estimate prior distributions for $[V/S]_{GST\text{-}lung}$ and $[V/S]_{GST\text{-}liver}$. This prior distribution was revised to account for additional human $[V/S]_{GST\text{-}lung}$ and $[V/S]_{GST\text{-}liver}$ data.

(vii) Prior for human lung GST [V/S]. Previously, only a single measured value for $[V]_{GST\text{-}lung}$ from a pooled lung sample from two human subjects was available for estimating A2. Mainwaring et al. [Ex. 124] recently submitted additional $[V]_{GST\text{-}lung}$ data to OSHA, consisting of measured values on three additional human subjects (0.00, 0.06 and 0.21 nmol/min/mg protein). The value reported as 0.00 was assumed equal to one-half the detection limit for the assay. Since these new $[V]_{GST\text{-}lung}$ data were obtained using the formaldehyde detection assay, it was necessary to transform the values to the [36]Cl scale. Lacking direct information, it was assumed that the same HCOOH → [36]Cl correction factor derived for the liver data held for the lung data. A correction for substrate concentration was also made, under the assumption of equivalency in lung and liver *in vitro* Km's. The resulting transformed $[V]_{GST\text{-}lung}$ data were used to construct a prior probability distribution describing uncertainty in the mean of five [1] observations (GM = 0.00082, GSD = 1.61). Note that, in this case, an attempt was made to model pure uncertainty in a low dose $[V/S]_{GST\text{-}lung}$, without information indicating appreciable heterogeneity in the ratio of lung and liver enzymatic activity within an individual.

(viii) Prior probability distribution for uncertainty in human liver GST [V/S]. Because of the focus on uncertainty in A2, the prior probability distribution for $[V/S]_{GST\text{-}liver}$ derived above was modified to describe uncertainty about the mean, given a sample size of 39 subjects.

(ix) Uncertainty in using an in vitro ratio of lung and liver GST activity to make an inference about the corresponding ratio for apparent in vivo GST activity. A prior probability distribution for $err_{vivo/vitro}$ was derived using data on *in vivo* and *in vitro* ratios of liver MFO enzymatic activity for different species, as a surrogate for intra-species lung versus liver GST enzymatic activity. Thus, two key assumptions are made: (i) That relative enzymatic activity for liver tissue from two species is a reasonable surrogate for relative activities of lung versus liver tissue within a single species, and (ii) that the degree of consistency in ratios of *in vivo* versus *in vitro* enzymatic activity will be the same for either MFO or GST mediated processes.

If the apparent *in vivo* Vmax for the MFO pathway in the lung was modeled as:

$$V_{max_{MFO_{lung}}} = V_{max_{MFO_{liver}}} \times \frac{[V/S]_{MFO_{lung}}}{[V/S]_{MFO_{liver}}} \times \frac{Vol_{lung}}{Vol_{liver}}$$

it follows that,

$$\frac{V_{max}A_{MFO_{lung}}}{V_{max}A_{MFO_{liver}}} = \frac{[V/S]_{MFO_{lung}}}{[V/S]_{MFO_{liver}}}$$

where VmaxA denotes normalization of Vmax to unit tissue volume. Although there were insufficient data to

[1] Since the single observation of $[V]_{GST\text{-}lung}$ reported by Reitz et al. (1988) was from a pooled sample of lung tissue from two human subjects, the data point was treated as two observations with the same value.

allow for a direct evaluation of the above equation, the data tabulated by Reitz et al. [Ex. 7–225] for MFO enzymatic activity in mice, rats and hamsters did allow an evaluation of the equality,

$$\frac{V_{max} A_{MFO_{liver_{sp1}}}}{V_{max} A_{MFO_{liver_{sp2}}}} = \frac{[V/S]_{MFO_{liver_{sp1}}}}{[V/S]_{MFO_{liver_{sp2}}}}$$

where the subscripts sp1 and sp2 denote species 1 and 2 (e.g., mouse and rat). Using the apparent in vivo Vmax and *in vitro* [V/S] data reported in Reitz et al. [Exs. 7–225 and 21–53], it was possible to compute mouse:rat, hamster:mouse and rat:hamster ratios for in vivo Vmax and *in vitro* [V/S] as shown in table VI–11, below.

TABLE VI–11.—Interspecies Comparison of MFO Activity

Species ratio	Ratios of MFO enzymatic activity		
	in vivo Vmax	in vitro [V/S]	Fold-Difference *
Rat: mouse	0.49	0.36	1.36
Mouse: hamster	1.20	0.79	1.53
Hamster: rat	0.59	0.28	2.06

* Ratio of values in *in vivo* Vmax column to values in *in vitro* [V/S] column.

The assumption was made that the use of an *in vitro* ratio as a surrogate for an *in vivo* ratio is unbiased (i.e., $err_{vivo/vitro}$ should be centered on a value of 1). The mean of the three estimates of fold-difference (1.65) is our best estimate of a GSD for $err_{vivo/vitro}$. Thus, the prior probability distribution for $err_{vivo/vitro}$ was modeled as a lognormal variate with expected value 1.0 and GSD of 1.65.

(x) Monte Carlo simulation to obtain a prior probability distribution for A2. The above prior probability distributions for [V/S]GST-lung, [V/S]GST-liver and $err_{vivo/vitro}$ were independently sampled by Monte Carlo techniques (n = 5000) and combined to give a prior probability distribution for A2 for use in Bayesian analysis with the human open chamber data. The resulting distribution was well described as a lognormal variate with a GM of 0.236 and a GSD of 2.0.

(3) Human in vivo data and simulating occupational exposure. Bayesian updating was performed with the same human *in vivo* data used in the main analysis. These data consisted of time serial measurements of exhaled breath and venous blood concentrations of MC for 6 human volunteers exposed to 100 and 350 ppm MC for 6 hours. Unfortunately, the data have only been reported as averages of the 6 subject-specific observations at each time point. When simulating the human data, subjects were assumed to be at rest (i.e., work load set equal to 0), and the reported average body weight for the six subjects (86 kg) was assumed to be known without error.

A single human occupational exposure was simulated: constant exposure to 25 ppm MC for 8-hours per day and 5 days per week.

(4) Distribution of human metabolized dose and sensitivity analysis. The distribution for GST metabolism in the human lung resulting from simulated occupational exposure to 25 ppm MC had a median and mean of 0.139 and 0.192 mg/day/liter lung, about 3-fold less than values obtained using the allometrically scaled Kf.

From the sensitivity analysis, Kf and A2′ exhibited the strongest pairwise correlations with predicted lung GST metabolism, with all other parameters having considerably smaller correlation coefficients. Indeed, other than PC.mar (partition coefficient air:marrow), all other parameters were only weakly correlated with GST lung metabolism. These results differ somewhat from those obtained when using an allometrically scaled Kf, and reflect the effect of greater variability in a Kf based on the parallelogram method.

(5) Posterior distributions in the "parallelogram method" analysis. The posterior distributions for many model parameters were considerably tighter than their corresponding prior distributions, most notably for fractional blood flow and partition coefficient parameters. Similar results were obtained in the main analysis. In general, medians and %CVs of the posterior distributions were similar to those in the main analysis, with the exception of Kf, which was expected, given its revised prior distribution. However, differences among the posterior distributions for Kf were less than expected due to an appreciable shift toward larger values (and some tightening) in the posterior distribution for the parallelogram-based Kf relative to its prior distribution. Thus, it would appear that the data had some information about plausible values of Kf.

The results of the covariance analysis indicated that the covariance structure was fairly similar to the results from the main analysis, with moderate to high pairwise correlations among 15 pairs of parameters.

G. Results of OSHA's PBPK Risk Assessments; Discussion

Summary statistics for OSHA's main analysis modifying the other analysis and the alternative (parallelogram) analysis are reported in Table VI–12. From the main analysis, the MLE of excess cancer risk obtained using the upper 95th percentile of the human internal dose distribution was 3.62/1000, for an occupational lifetime exposure to 25 ppm MC. The MLE of cancer risk obtained using the mean of the human internal dose distribution was 1.24/1000. The alternative (parallelogram) analysis yielded slightly lower estimates of risk. In that analysis, the MLE of cancer risk using the upper 95th percentile of the human internal dose distribution was 1.23/1000. The MLE of cancer risk for the alternative analysis using the mean of the human internal dose distribution was 0.40/1000. After evaluating the methodologies and uncertainties in the two analyses, OSHA determined that the main analysis was most appropriate for the Agency's final risk assessment and the MLE of cancer risk using the upper 95th percentile of the human internal dose distribution was best supported as OSHA's final MC risk estimate. Therefore, OSHA's final risk estimate for occupational lifetime exposure to MC at 25 ppm is 3.62/1000.

TABLE VI–12.—Summary Statistics on Estimates of Extra Cancer Risk From Occupational Exposure to 25 ppm MC FOR 8 HRS/DAY, 5 DAYS/WK FOR 45 YEARS

Computational approach	Summary statistics for distributions of extra risk				
	95% **	Mean	%CV *	Skewness	Kurtosis
Maximum likelihood fitting: Dependence case.	3.62 *** per 1000	1.24 per 1000	103	2.2	10.2

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TABLE VI–12.—Summary Statistics on Estimates of Extra Cancer Risk From Occupational Exposure to 25 ppm MC FOR 8 HRS/DAY, 5 DAYS/WK FOR 45 YEARS—Continued

Computational approach	Summary statistics for distributions of extra risk				
	95% **	Mean	%CV *	Skewness	Kurtosis
Maximum likelihood fitting: Independence case..	2.43 per 1000	0.79 per 1000	113	2.3	11.3

* %CV denotes coefficient of variation ([standard deviation/mean] x 100).
** 95% denotes the 95th percentile value of the distribution of GST matabolites for extra cancer risk.
*** OSHA's final risk estimate.

Figure VI–1 shows the end result of the main PBPK analysis: the cumulative distribution function of excess lifetime cancer risk (log^{10} scale) from exposure to 25 ppm MC, 8 hours per day, 5 days per week for 45 years, when estimated using the MLE of the dose-response parameters, GST lung metabolism as the dose surrogate, and a human Kf based on allometric scaling and Bayesian prior information. As described in the main analysis, the "dependence case" was used. Several summary statistics can be discerned from this cumulative distribution function: (1) the 95th percentile of this hybrid distribution of uncertainty and heterogeneity gives a risk estimate of 3.62×10^{-3} (point "A" in the figure); (2) the mean value of the distribution (point "B" in the figure) gives a risk estimate of 1.24×10^{-3}.

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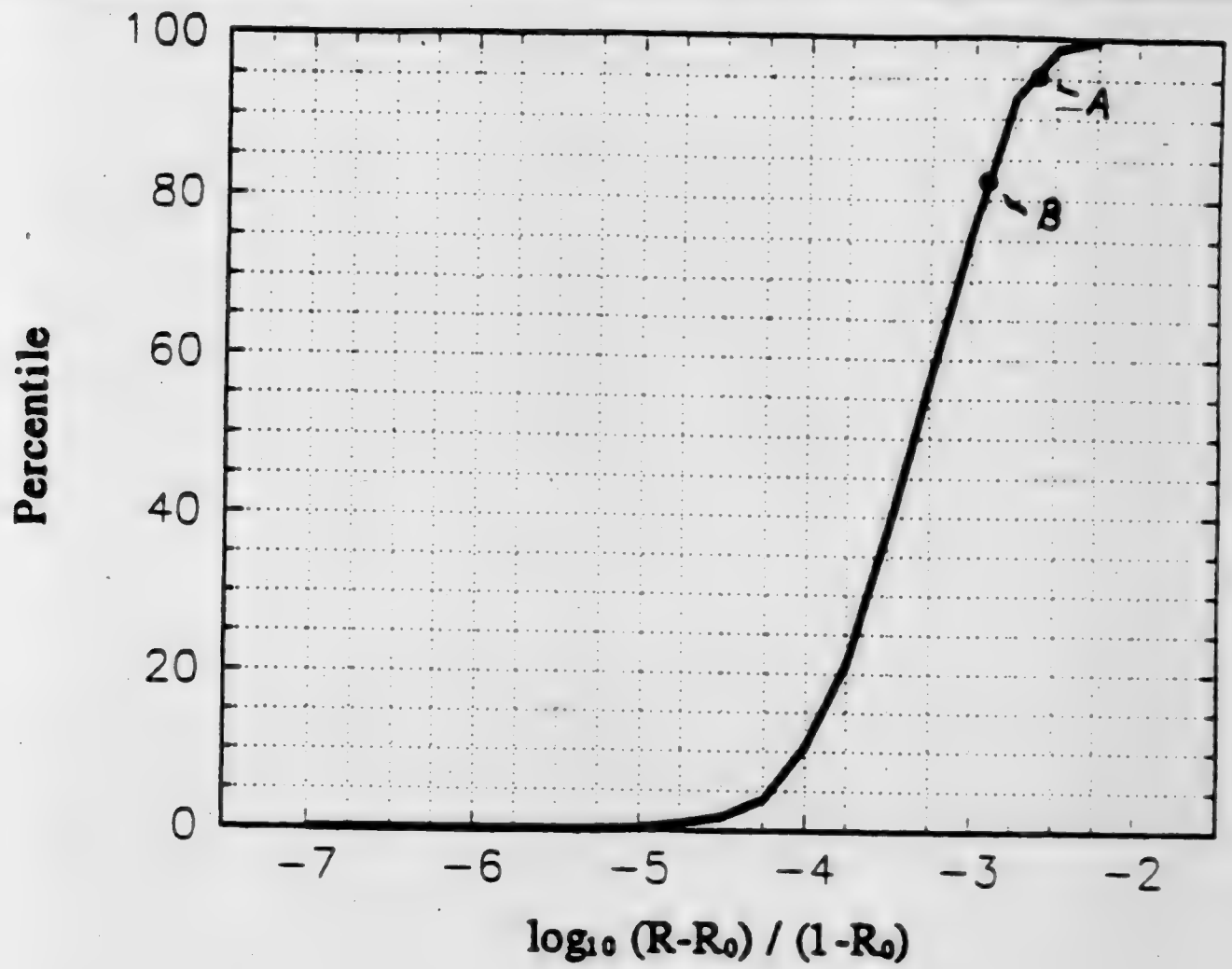

Figure VI-1 *Dependence case*; Estimated cumulative distribution of human cancer risk linked to a 45 year occupational exposure to methylene chloride, at 25 ppm in the air, 8 hours/day, 5 days per year. Generated using the results described in Figure 3.

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OSHA conducted the alternative analysis in order to determine the impact of basing the human GST metabolite distribution on allometry (human GST metabolic rates estimated based on the relative size of animals and humans) versus the parallelogram approach (human GST metabolic rates based on ratio of various rodent *in vitro*: *in vivo* metabolic rates applied to human *in vitro* rates) on risk estimates. As discussed in greater detail above, allometry predicts that one would expect that humans have approximately seven-fold less GST activity than mice. The parallelogram approach, on the other hand, predicts approximately 18-fold less GST activity in humans than in mice. After analyzing the available data, OSHA has determined that the allometric assumptions are best supported by the scientific literature, primarily because of the lack of human *in vivo* GST data and the lack of validation of the parallelogram approach. The Agency has therefore used that approach in its final (main) estimate of risk, but has also presented an alternative analysis using the parallelogram methodology.

During the rulemaking, studies were submitted to the Agency by HSIA challenging the relevance of the mouse data for estimating human cancer risks. However, as described in detail previously, if one examines the HSIA data critically, it is clear that the studies most likely could not detect differences in metabolic activity (and hence in risk) between mice and humans of the magnitude predicted by allometry. For example, the lack of detection of an increase in DNA ss breaks in human cells compared to mouse cells could be explained because the methodology used could not detect an increase in ss breaks 7-fold smaller than that observed in mice. Clearly, an 18-fold difference, as predicted by the parallelogram method, would be even harder to detect.

Moreover, if the human *in vitro* data are examined more closely, it becomes apparent that the *in vitro*: *in vivo* ratios calculated for the 35 individual humans who have been studied were as low as 4.6 (the median value in this series was 24). Therefore, the use of allometry (ratio = 7) or the parallelogram approach (ratio = 18) would lead to risk estimates that clearly underestimate the risks for some individuals. In addition, RNA adduct data [Ex. 126–25] indicate that exposure of human cells to MC results in only a 3-fold lower amount of RNA adducts than formed in mouse cells. This ratio may not be a close surrogate for the GST ratio, but it does heighten concern that both PBPK approaches may be underestimating cancer risks from occupational exposure to MC, because humans may be appreciably less sensitive than mice.

The distribution of risk presented in either the main or the alternative analysis most closely reflects uncertainty about risk for some randomly chosen worker (with respect to work intensity and body weight), chosen among the population of workers with physiologic, anatomic, and metabolic attributes similar to those of the average subject from the Dow human study group. The Dow pharmacokinetic data did not contain individual data on the 6 subjects, so the results obtained and the predictions made are conditioned by the use of averages. This means that the model is truly only applicable to people who physiologically and biochemically resemble the Dow group of six subjects. Although six subjects do not represent a large data base from which to draw a representative PBPK sample, this is much more human data than is usually available to base a risk assessment on. In fact, in OSHA's preliminary quantitative risk assessment, point estimates were used for body weight, breathing rates, etc. to represent the entire working population with a single "average" number. Therefore, this sample, although small, represents a significant improvement over the point estimates of human parameter values for PBPK modeling. Although these are the best data available, the small number of individuals upon which the human parameter values are based increases concern that the Agency may be underestimating risks for a significant portion of the working population by relying upon these values and using PBPK modeling to estimate human internal doses. OSHA considered making an ad hoc inflation of the variance of the distributions of human GST enzyme kinetics parameters in order to account for some of this unmeasured heterogeneity (as recommended by the NAS Committee report discussed above), but decided not to make this "conservative" choice but instead to rely on the unadjusted analyses.

OSHA has chosen for its final risk estimate to couple one measure of central tendency (the MLE of the dose-response parameters) with a somewhat "conservative" measure (the 95th percentile of the distribution of human GST metabolites (internal dose)). Congress and the courts have permitted—indeed, encouraged—OSHA to consider "conservative" responses to both uncertainty and human variability. The OSH Act addresses the latter when it refers, for example, to OSHA's responsibility to set standards such that "no employee shall suffer material impairment of health* * *;" a standard that only considered risk to the average employee clearly would not be responsive to the statute. Similarly, the 1980 "Benzene decision" affirmed that "the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over-protection rather than under-protection."

In past rulemakings, OSHA has frequently estimated carcinogenic potency via the MLE of the multistage model parameters. The Agency has recently received comments, particularly in a public meeting in February 1996 on risk assessment issues surrounding the first phase of its "PEL Update" process, critical of the MLE on the grounds that this estimator can be highly unstable with respect to small fluctuations in the observed bioassay response rates. Although OSHA may in the future move to a different estimator, such as the mean value of the likelihood function of the multistage model parameters, such a change would have neglible practical impact in the case of MC. The observed data in the NTP mouse bioassay follow a nearly precisely linear trend, so the MLE, mean and UCL estimates are all very nearly equivalent to each other.

However, OSHA needs to take particular care not to underestimate risk when it departs from a relatively simple methodology (in this case, the assumption that administered dose is the most relevant measure of exposure) in favor of a relatively more complex and computationally- intensive methodology (in this case, that the human lung GST metabolite, calculated via a PBPK model, is the most relevant measure of exposure). This is even more important in this particular PBPK analysis, because the variance of the output distributions represents an unknown hybrid of uncertainty in the various parameters and true heterogeneity among the humans exposed to MC. As Clewell stated with respect to his own PBPK analysis (see discussion above), the 95th percentile estimator provides a modicum of assurance that the risk to the average human—and hence the population risk—is not underestimated.

Moreover, it is critical to use an estimator other than the central tendency here so that it will not be inevitable that the risk to a human of above-average susceptibility (due to enzyme kinetics that produce relatively more reactive metabolite per unit of administered dose, or due to other attributes related to body weight, organ

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volumes, partition coefficients, etc.) is not underestimated, potentially by a substantial amount. Any "conservatism" introduced by using the 95th percentile of the PBPK output distribution is further attenuated by the unmeasured model uncertainty inherent in this more complex model structure. Several aspects of the model itself are known to be oversimplifications (e.g., assuming the lung is the only tissue at risk); therefore, the resulting risk distributions could be biased downward.

Finally, it is important to note that there is no risk of "cascading conservatism" with this 95th percentile estimator; the individual model parameters are permitted to vary over their entire ranges, and the selected percentile is only applied to the distribution resulting from the combined influence of all parameters. Furthermore, the newest refinements to the model ensure that the 95th percentile is not affected by any probability assigned to impossible combinations of parameters. The attention paid to issues of mass balance, covariance structure and truncation ensures that this percentile represents a fully plausible set of input parameters. In sum, the combination of the MLE of the multistage parameters and the 95th percentile of the PBPK output distribution represents a reasonable attempt to account for uncertainty and variability without unduly exacerbating the magnitude or the probability of underestimation of errors.

H. Comparison of Animal-Based Risk Estimates With "Non-Positive" Epidemiology Data

Direct comparisons between animal bioassays and human epidemiological studies are difficult to make because experimental protocols between animal and human studies differ substantially. Animals are generally exposed to a fixed dose of a chemical, for several hours per day, from approximately 6–8 weeks of age until study termination, which is usually at 2 years. This would be chronologically equivalent to a human exposure that starts when a human is approximately 4–5 years old and continuing until the human is approximately 74 years old (assuming a 74 year average life-span for humans) [Ex. 89]. This clearly differs from the typical pattern of occupational exposure encountered in epidemiological studies of worker populations. For example, in the Kodak cohort, the workers were never exposed to a constant level of MC; exposure to MC for these workers did not start until their adult life; and most of them were exposed to the chemical for less than one third of their life-span.

Exposure to MC has been found to induce lung and liver cancer in mice and mammary tumors in rats. As discussed above, there are positive epidemiology studies which suggest an association between MC exposure and cancer risk. Because exposure data are inadequate or unavailable, it is not possible to quantify the risks in these studies. OSHA acknowledges that there are also non-positive epidemiology studies.

In 1986, Crump analyzed the preliminary results from the 1964–70 Kodak cohort followed through 1984 and compared them to the rodent bioassay results. The results from the Kodak epidemiological study have also been used by Tollefson et al. [Ex. 7–249], Hearne [Ex. 91–D], and NIOSH to compare the predictions of excess cancer risk from the animal risk assessment models. In addition, Hearne used data from the cellulose triacetate fiber study in Cumberland, Maryland, and a different analytical approach, to validate the excess cancer risk predicted by the animal data [Ex. 91–D]. The details of these analyses can be found in the cited exhibits. OSHA has analyzed the different approaches to assessing the mouse bioassay in light of the epidemiology data and has determined that the approach taken by NIOSH (summarized below) represents the most comprehensive and clearest way to examine those data. OSHA also agrees with the conclusions reached by NIOSH, that the epidemiology results and the mouse bioassay data are not inconsistent with each other.

NIOSH compared the confidence intervals for the standardized mortality ratios (SMRs) from the Kodak study with the predicted confidence intervals derived from OSHA's risk assessment models from the NPRM [Ex. 89]. To estimate predicted SMRs using the multistage model, NIOSH used the following approach:

1. The expected excess number of deaths in each of the exposure groups was derived by multiplying the number of workers in each exposure group by the excess risk as determined by the multistage model (after correcting for dose equivalence between animals and humans, and differences in length of follow-up).

2. This number of expected deaths, derived from the animal data, was then added to the expected (denoted E_p) number of deaths which were derived from the Kodak study, after correcting for the HWE, (this can be viewed as the background risk) to estimate the number of "observed" deaths that would have been predicted by the multistage model assuming it was valid for humans (denoted O_p).

3. O_p was then divided by E_p to calculate predicted SMRs and 95% confidence intervals, where calculated.

NIOSH's results indicated that the non-positive findings from the Kodak study were not inconsistent with the predicted risk estimates in OSHA's risk assessment. The predicted confidence intervals from the animal multistage model were completely nested within the observed confidence intervals from the Kodak study. This is not to suggest that results from this non-positive epidemiology study are equivalent to the positive results from the animal inhalation study. Rather, based on these findings, one can conclude that the non-positive results from the Kodak epidemiologic study were not of sufficient power to contradict risk predictions of the multistage model developed from the animal bioassay data (when appropriate adjustments for differences in study protocol were taken into account).

Basically, the Kodak study examined approximately 1000 workers whose average MC exposure was 26 ppm. Therefore, the animal-based potency estimates would predict only about 3 excess cancer deaths in that cohort (the risk at 26 ppm is approximately 3 per 1000), even if they were followed for many decades after exposure ceased. This small predicted excess is clearly too small an increment to be observable with statistical confidence, considering the much larger background of cancer present in the human population. The differences between the NIOSH and Hearne analyses essentially represent different ways to estimate the "signal-to-noise" ratio for the Kodak study; OSHA believes that any reasonable method of estimating this ratio would conclude that the Kodak study has insufficient power to rule out a "signal" of significant human risk.

NIOSH's approach for adjusting for the healthy worker effect (HWE) was criticized in the comments to the record submitted by Hearne. Hearne stated that the HWE is unlikely to be present in long term cancer studies and therefore an adjustment for the HWE is not necessary [Ex. 91–D]. Hearne argued that since the HWE diminishes with time, the healthy worker effect would have been minimal in the 1946–70 Kodak cohort because the median follow-up period was 32 years and that only 20% of the cohort members were still actively employed [Tr. 10/15/92].

There is evidence in the literature showing that the HWE can be weaker for some types of cancer than for other causes of death; however, in this case NIOSH believed and OSHA agreed that the difference between control and

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exposed populations reflected an HWE for cancer. In addition, results from a similar analysis done by NIOSH without the HWE adjustment did not contradict the results including the HWE adjustment. NIOSH testified [Tr. 985–6, 9/21/92] that there would be a difference in the results obtained when adjusting for HWE and the unadjusted results. However, the conclusions reached would not be different. In other words, the analysis still supported the conclusion that the epidemiologic and mouse bioassay results were not inconsistent with each other. OSHA supports NIOSH's position on the use of an adjustment factor for HWE in this cohort. Other criticisms of NIOSH's approach can be found in the hearing transcripts and post-hearing comments. OSHA has evaluated these methodological criticisms and has determined that NIOSH used the best available methodology in analyzing this issue and that their conclusions are supported by those arrived at independently by Crump and by Tollefson et al.

Specifically, NIOSH predicted 23.25 deaths from cancers (at all sites) in the full cohort, after adjusting for the HWE. This value is closer to the observed number (22) than is the unadjusted expected number of deaths (29.61). Looking at lung cancer deaths separately, NIOSH predicted 22.36 deaths for the entire cohort (adjusted for HWE) compared with 22 observed and 28.67 expected by Hearne. Hearne observed no deaths from liver cancer in the entire cohort (1.14 deaths were expected). NIOSH predicted 0.88 deaths from liver cancer when they adjusted for the HWE.

OSHA believes that NIOSH's approach in comparing results from an animal bioassay to those of an epidemiological study is the most reasonable comparison between data sets because it is more accurate and better addresses computational and experimental issues inherent in the data sets. The Agency has evaluated the extent to which the cancer risk calculated using the human data is consistent with the cancer risk calculated using animal data. Based on its review of those studies, OSHA concluded that the human epidemiology results are not inconsistent with the animal bioassays and has determined that the bioassays are the appropriate basis for its quantitative risk assessment.

I. Conclusions

OSHA has determined that MC is a potential occupational carcinogen and has conducted a quantitative risk assessment in order to estimate human risks of cancer after occupational exposure to MC. The Agency reviewed all of the human and animal data on MC and determined that MC is carcinogenic in mice and in rats, causing tumors at multiple sites, in both species, and in both sexes of animals. Some epidemiologic data also indicate an association between MC exposure and excess cancer in exposed workers (statistically significant increases in biliary cancers in textile workers and astrocytic brain cancer in workers exposed to MC in solvent applications). Mechanistic data indicate that MC is likely to be metabolized to a genotoxic carcinogen. MC has been clearly shown to be metabolized by similar enzymatic pathways in rodents and humans, indicating that the metabolic processes which produce cancer in mice and rats are also present in humans. Finally, no data have been presented which demonstrate that the mouse is an inappropriate model for humans because of a physiological or biochemical component or process. Therefore, the Agency has determined that it is appropriate to assess the carcinogenic risks of MC using the NTP mouse bioassay dose-response.

The NTP mouse MC bioassays demonstrated a clear dose-tumor response relationship. OSHA determined that the NTP female mouse lung tumor response was the best data set on which to base a quantitative analysis because there was a clear dose-response, low background tumor incidence and it represented the most sensitive tumor site/sex combination.

After examining the PBPK models submitted to the Agency, OSHA concluded that PBPK modeling estimates of the amount of GST metabolites produced are reasonable dose surrogates for MC and are supported by substantial scientific evidence in the record. For that reason, OSHA has used PBPK modeling in its final risk assessment. OSHA reviewed methodologies used in PBPK models submitted to the Agency and decided to modify and expand an existing model. Specifically, a Bayesian analysis was conducted as described above. Use of the Bayesian model analysis was a logical next step in development and use of pharmacokinetic models for MC. It has great advantages in accounting for the covariance of the PBPK parameters and incorporating distributions of physiological parameters obtained from the scientific literature. OSHA's final estimates of risk use the PBPK analysis described above and are based on the MLE of the dose-response parameters using the upper 95th percentile of the human internal dose distribution. For an occupational lifetime exposure to 25 ppm MC, OSHA estimates an excess risk of 3.6 MC-induced cancer deaths per 1000 workers.

VII. Significance of Risk

A. Introduction.

In the 1980 Benzene decision, the Supreme Court, in its discussion of the level of risk that Congress authorized OSHA to regulate, indicated its view of the boundaries of acceptable and unacceptable risk. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2 percent benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (I.U.D. v. A.P.I., 448 U.S. 607, 655).

So a risk of 1/1000 (10^{-3}) is clearly significant. It represents the uppermost end of a million-fold range suggested by the Court, somewhere below which the boundary of acceptable versus unacceptable risk must fall.

The Court further stated that "while the Agency must support its findings . . . that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is significant will be based largely on policy considerations." The Court added that the significant risk determination required by the OSH Act is "not a mathematical straitjacket," and that "OSHA is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] . . . the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection" (448 U.S. at 655, 656).

Nonetheless, OSHA has taken various steps that make it fairly confident its risk assessment methodology is not "conservative" (in the sense of erring on the side of overprotection). For example, there are several options for extrapolating human risks from animal data via interspecies scaling factors. The plausible factors range from body weight extrapolation (risks equivalent at equivalent body weights) to (body

weight)$^{2/3}$ (risks equivalent at equivalent surface areas). Intermediate values have also been used, and the value of (body weight)$^{3/4}$, which is supported by physiological theory and empirical evidence, is generally considered to be the midpoint of the plausible values. (Body weight)$^{2/3}$ is the most conservative value in this series. Body weight extrapolation is the least conservative. OSHA has generally used body weight extrapolation in assessing risks from animal data, our approach which tends to be significantly less conservative than the other methodologies and most likely is less conservative even than the central tendency of the plausible values.

Other examples in OSHA's risk assessment methodology where the Agency does not use a conservative approach are selection of the maximum likelihood estimator to parameterize the dose-response function rather than the upper 95% confidence limit, and the use of site-specific tumor incidence rather than pooled tumor response in determining the dose-response function for a chemical agent.

OSHA's overall analytic approach to regulating occupational exposure to particular substances is a four-step process consistent with recent court interpretations of the OSH Act, such as the Benzene decision, and rational, objective policy formulation. In the first step, OSHA quantifies the pertinent health risks, to the extent possible, performing quantitative risk assessments. The Agency considers a number of factors to determine whether the substance to be regulated poses a significant risk to workers. These factors include the type of risk posed, the quality of the underlying data, the plausibility and precision of the risk assessment, the statistical significance of the findings and the magnitude of risk [48 FR 1864, January 14, 1983]. In the second step, OSHA considers which, if any, of the regulatory options being considered will substantially reduce the identified risks. In the third step, OSHA looks at the best available data to set permissible exposure limits that, to the extent possible, both protect employees from significant risks and are also technologically and economically feasible. In the fourth and final step, OSHA considers the most cost-effective way to fulfill its statutory mandate by crafting regulations that allow employers to reach the feasible PEL as efficiently as possible.

B. Review of Data Quality and Statistical Significance

The former OSHA standard for MC was designed to prevent irritation and injury to the neurological system of the employees exposed to MC. In 1985, the National Toxicology Program (NTP) released the results of their MC rodent lifetime bioassays. Those results indicated that MC is carcinogenic to rats and mice. As discussed in the Events Leading to the Final Standard section, based on the NTP findings, EPA now considers MC a probable human carcinogen, and NIOSH regards MC as a potential occupational carcinogen and recommends controlling the exposure to MC to the lowest feasible level. In 1988, ACGIH classified MC as an industrial substance suspected of carcinogenic potential for humans.

As discussed in the Health Effects section, OSHA has determined, based on the NTP data, that MC is a potential occupational carcinogen. This conclusion is supported by high-quality data in both rodent species. Having determined, as discussed in the Quantitative Risk Assessment section, that the NTP study provided suitable data for quantitative analysis, OSHA performed quantitative risk assessments to determine if MC exposure at the current PEL presents a significant risk.

As discussed in the Health Effects and Quantitative Risk Assessment sections, OSHA evaluated four MC rodent bioassays [Exs. 4–35, 4–25, 7–29, 7–30, 7–31] to select the most appropriate bioassay as the basis for a quantitative risk assessment. These bioassays were conducted in three rodent species (rat, mouse, and hamster) using two routes of administration (oral and inhalation). The NTP study (rat and mouse, inhalation) was chosen for a quantitative risk assessment because it provides the clearest toxicological and statistical evidence of the carcinogenicity of MC [Exs. 12, 7–127] and because the studies were of the highest data quality. In the NTP study, MC induced significant increases both in the incidence and multiplicity of alveolar/bronchiolar and hepatocellular neoplasms in male and female mice. In rats, dose-related, statistically significant increases in mammary tumors were also observed. OSHA chose the female mouse tumor response as the basis of its quantitative risk assessment, because of the high quality of data, the clear dose response of liver and lung tumors and the low background tumor incidence. OSHA chose female mouse lung tumors as the specific tumor site for its final quantitative risk assessment. There is no *a priori* reason to prefer the mouse lung tumor response over the liver tumor response because both data sets were of high quality, showed a clear dose-response relationship and had low background tumor incidence. In fact, in the NPRM, the Agency reported estimates of risk generated using both sites. However, to reduce the complexity of the final PBPK analysis, which required highly intensive computations, OSHA chose one site (the female mouse lung tumor response) for its final risk estimates. The risks calculated using the female mouse liver response would likely be only slightly lower than those calculated using the lung tumor response, On the other hand, pooling the total number of tumor-bearing animals having either a lung or liver tumor (or both) would have yielded risk estimates higher than OSHA's final values.

Once the alveolar/bronchiolar neoplasms in female mice were chosen as the most appropriate data set, the multistage model of carcinogenesis was used to predict a lifetime excess risk of cancer from occupational exposure to MC at several concentration levels. The multistage model is a mechanistic model based on the biological assumption that cancer is induced by carcinogens through a series of stages. The model may be conservative, in the sense that it risks error on the side of overprotection rather than underprotection, because it assumes no threshold for carcinogenesis and because it is approximately linear at low doses, although there are other plausible models of carcinogenesis which are more conservative. The Agency believes that this model conforms most closely to what we know of the etiology of cancer. There is no evidence that the multistage model is biologically incorrect, especially for genotoxic carcinogens, which MC most likely is. OSHA's preference is consistent with the position of the Office of Science and Technology Policy which recommends that "when data and information are limited, and when much uncertainty exists regarding the mechanisms of carcinogenic action, models or procedures that incorporate low-dose linearity are preferred when compatible with limited information" [Ex. 7–227].

In the NPRM, OSHA solicited comment and testimony on the application of physiologically-based pharmacokinetic (PBPK) modeling to refine the MC risk assessment. There was an intensive discussion of pharmacokinetic issues during the hearings and in comments and briefs submitted to OSHA. PBPK modeling is used to account for metabolic and pharmacokinetic differences between rodents and humans and when extrapolating from high experimental doses to lower occupational exposures. OSHA has evaluated several risk assessments produced using

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pharmacokinetic models. Discussion of the major issues surrounding the use of PBPK in risk assessment can be found in the Quantitative Risk Assessment section. Although serious questions remain concerning the application of these models in the MC risk assessment, the Agency has used the estimates generated via PBPK modeling as its final estimate of the carcinogenic risk of MC exposure.

In accepting PBPK analysis, the Agency wanted to be able to utilize all of the data available and appropriate for the analysis. OSHA was also concerned that the uncertainties and inter-individual variabilities in PBPK models were insufficiently quantified to allow analysis of the impact of those uncertainties on the risk. Several rulemaking participants have conducted sensitivity and uncertainty analyses, the most extensive of which was that submitted by Mr. Harvey Clewell on behalf of the U.S. Navy. These analyses show the impact of the variability and uncertainty of the parameters which are used in the PBPK model and suggest methods of quantifying the impact of that uncertainty on the risk estimates.

OSHA has determined that the PBPK data are of sufficient weight to warrant reliance on PBPK modeling to develop a risk estimate in the specific case of MC, a chemical with more extensive information on metabolism than exists for most other substances. To that end, OSHA adopted a Bayesian approach in which all of the physiological and MC-specific data could be used to generate a distribution of estimates of the carcinogenic risks of MC. OSHA used the mean and the upper 95th percentile estimator of the distribution of human PBPK parameters, coupled with the maximum likelihood estimator of cancer potency, to generate its final estimates of risks.

As discussed in more detail in the Health Effects Section above, human data concerning the carcinogenicity of MC were presented in several epidemiology studies. In a study of cellulose triacetate fiber production (MC used as solvent) workers, an increased incidence of liver/biliary cancer [Ex. 7–260] was noted. Although the case numbers were small and the exposure information limited, this epidemiological evidence is consistent with findings from animal studies and indicates that there may be an association between human cancer risk and MC exposure. A study of workers in photographic film production was non-positive [7–163]. However, the exposures experienced by these workers were likely to have been much less than those in the cellulose triacetate fiber plant and, as discussed in the quantitative risk assessment section, the study lacked the power to detect the magnitude of the increase in cancer deaths that would have been predicted given only the bioassay results. A case-control study conducted by the National Cancer Institute showed a statistically significant association between occupational MC exposure and development of astrocytic brain cancer. Exposure levels could not be determined in this study. The results of the epidemiological studies summarized here were not inconsistent with the results of the animal-based cancer potency estimate.

C. Material Impairment of Health

MC is a potential occupational carcinogen. Cancer is a material impairment of health. OSHA has set the 8-hour TWA PEL primarily to reduce the risk to employees of developing cancer.

The STEL of 125 ppm averaged over 15 minutes is primarily designed to protect against MC's non-cancer risks. As discussed in the Health Effects section, there are substantial risks of CNS effects and cardiac toxicity resulting from acute exposure to MC and its metabolites. CNS effects have been demonstrated in workers at concentrations as low as 175 ppm [Ex. 7–153] and a STEL of 125 ppm for 15 minutes would thus be protective against the CNS effects described. Metabolism of MC to CO increases the body burden of COHb in exposed workers. Levels of COHb above 3% COHb may exacerbate angina symptoms and reduce exercise tolerance in workers with silent or symptomatic heart disease. Smokers are at higher risk for these effects because of the already increased COHb associated with smoking (COHb ranges from 2 to 10% in most smokers). Limiting short term exposure to 125 ppm for 15 minutes will keep COHb levels due to MC exposure below the 3% level, protecting the sub-population of workers with silent or symptomatic heart disease and also limiting the additional COHb burden in smokers.

In addition to protecting against CNS and cardiac effects, there is evidence that reducing the GST metabolite production by reducing short term exposure to high concentrations of MC may also lower the cancer risk. This is because metabolism by the MFO pathway (not generally believed to be associated with carcinogenesis) appears to saturate beginning around 100 ppm. This means that exposure to higher concentrations of MC would lead to increased metabolism by the GST pathway (the putative carcinogenic pathway) and therefore, greater than proportionally increased risk.

All of the health effects averted by reducing MC exposure are potentially or likely to be fatal, and this clearly represents "material impairment of health" as defined by the OSH Act and case law.

D. Risk Estimates

OSHA's final estimate of excess cancer risks at the current PEL of 500 ppm (8-hour TWA) is 126 per 1000. The risk at the new PEL of 25 ppm is 3.62 per 1000. The risk at 25 ppm is similar to the risk estimated in OSHA's preliminary quantitative risk assessment based on applied dose of MC on a mg/kg/day basis (2.3 per 1000 workers) and clearly supports a PEL of 25 ppm. Risks greater than or equal to $10-^{3}$ are clearly significant and the Agency deems them unacceptably high. However, OSHA did not collect the data necessary to document the feasibility of a PEL below 25 ppm across all affected industry sectors, and so the Agency has set the PEL at 25 ppm in the final rule. OSHA intends in the future to gather more information pertaining to the feasibility of lower PELs.

E. "Significant Risk" Policy Issues

Further guidance for the Agency in evaluating significant risk and narrowing the million-fold range provided in the "Benzene decision" is provided by an examination of occupational risk rates, legislative intent, and the academic literature on "acceptable risk" issues. For example, in the high risk occupations of mining and quarrying, the average risk of death from an occupational injury or an acute occupationally-related illness over a lifetime of employment (45 years) is 15.1 per 1,000 workers. The typical occupational risk of deaths for all manufacturing industries is 1.98 per 1,000. Typical lifetime occupational risk of death in an occupation of relatively low risk, like retail trade, is 0.82 per 1,000. (These rates are averages derived from 1984–1986 Bureau of Labor Statistics data for employers with 11 or more employees, adjusted to 45 years of employment, for 50 weeks per year).

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. Congress therefore gave OSHA authority to reduce significant risks when it is feasible to do so. Within this context, OSHA's final estimate of risk from occupational exposure to MC at the current 8-hour TWA PEL (126 per 1000) is substantially higher than other risks

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that OSHA has concluded are significant, is substantially higher than the risk of fatality in some high-risk occupations, and is substantially higher than the example presented by the Supreme Court. Moreover, a risk of 3.62 per 1000 at 25 ppm is also clearly significant; therefore, the PEL must be set at least as low as the level of 25 ppm documented as feasible across all industries.

Further, applying the rationale of the Benzene decision, the other risk assessments presented by OSHA and the risk estimates presented by rulemaking participants, including the HSIA (see Table VII–1, below), all support OSHA's conclusion that the human cancer risk for employees exposed to MC above 25 ppm as an 8-hour TWA is significant.

TABLE VII–1.—LIFETIME EXCESS RISK ESTIMATES (PER 1000) FROM OCCUPATIONAL EXPOSURE BASED ON FEMALE MOUSE LUNG TUMOR DATA

Model	MLE (UCL)**		
	25 ppm	50 ppm	500 ppm
OSHA NPRM Risk Assessment (mg/kg/d, BW extrapolation) without PBPK Adjustment	2.32 (2.97)	4.64 (5.92)	45.5 (57.7)
PPM to PPM extrapolation without PBPK Adjustment	11.3 (14.4)	22.4 (28.5)	203 (251)
PBPK Reitz female mouse lung—Reitz human (HSIA assumptions)	0.43 (0.53)	0.93 (1.17)	14.3 (17.9)
PBPK Reitz female mouse lung—Dankovic average human (NIOSH assumptions)	0.81 (1.02)	1.69 (2.12)	15.0 (18.7)
PBPK Clewell female mouse lung—Clewell human (Navy assumptions)*	0.91 (1.14)	1.88 (2.36)	27.5 (34.2)
OSHA Final Risk Assessment (female mouse lung with PBPK)	3.62	7.47	125.8

*Upper 95th percentile of the GST metabolites distribution was used as input in the multistage model.
**Maximum likelihood estimates are 95th percentile upper confidence limit (in parentheses) of the multistage dose-response function.

In addition to being 100 to 1000 times higher than the risk levels generally regarded by other Federal Agencies as on the boundary between significant and insignificant risk (see, e.g., Travis et al., 1987), and 1000 times higher than the "acceptable risk" level Congress set in the 1990 Clean Air Act Amendments, the level of 10^{-3} is within the range where economic studies document a marked nonlinearity. In other words, individuals regard risks this high as qualitatively different from "smaller" risks. Although risks below 10^{-3} are not unambiguously significant, depending on the size of the affected population, the benefits associated with the risky activity, and other factors, this policy determination is not relevant to this regulation, since OSHA's final risk estimate is substantially greater than 1 per 1000. Risks at or above 10^{-3} are always significant by any empirical, legal or economic argument available.[2]

Because of the lack of documented feasibility data for potential PELs of less than 25 ppm, OSHA has concluded that there is not enough information available to support lowering the 8-hour TWA PEL or STEL further at this time. However, OSHA has integrated other protective provisions into the final standard to further reduce the risk of developing cancer among employees exposed to MC. Employees exposed to MC at the 8-hour TWA PEL limit without the supplementary provisions would remain at risk of developing adverse health effects, so that inclusion of other protective provisions, such as medical surveillance and employee training, is both necessary and appropriate. The action level will encourage those employers for whom it is feasible to do so to lower exposures below 12.5 ppm to further reduce significant risk. Consequently, the programs triggered by the action level will further decrease the incidence of disease beyond the predicted reductions attributable merely to a lower PEL. As a result, OSHA concludes that its 8-hour TWA PEL of 25 ppm and associated action level (12.5 ppm) and STEL (125 ppm) will reduce significant risk and that employers who comply with the provisions of the standard will be taking reasonable steps to protect their employees from the hazards of MC.

The Agency notes that even at the final PELs, the risks to workers remain clearly significant. OSHA will be gathering information on the risks of, and feasibility of compliance with, PELs less than 25 ppm, to determine whether future rulemaking is appropriate in order to further reduce the MC risks to employees.

[2] OSHA also conducted an alternative PBPK analysis that uses all of the available human data on MC metabolism, despite the very limited quantity of data available and the additional bias introduced by adopting the "parallelogram" assumptions for interspecies scaling (see Quantitative Risk Assessment for a discussion of this analysis and the uncertainties and biases therein). The risk estimate using this alternative method, 1.2 per 1000, is also unambiguously significant.

VIII. Summary of the Final Economic Analysis

In its Final Economic and Regulatory Flexibility Analysis document, OSHA addresses the significant issues related to technological and economic feasibility and small business impacts raised in the rulemaking process. The Final Economic Analysis is also OSHA's most comprehensive explanation of the standard's practical impact on the regulated community; in the Final Economic Analysis, OSHA explains in detail the Agency's findings and conclusions concerning pre-standard (baseline) conditions, such as exposure levels, in establishments in the regulated community, and discusses how and why the requirements of the standard are expected to eliminate significant risk to the extent feasible. This document also sets forth OSHA's Final Regulatory Flexibility Analysis and the analyses required by Executive Order 12866. This **Federal Register** preamble and the Final Economic Analysis are integrally related and together present the fullest statement of OSHA's reasoning concerning this standard. The Final Economic and Regulatory Flexibility Analysis, together with supporting appendix material, has been placed in the rulemaking docket for methylene chloride (Ex. 129).

The purpose of the Final Economic Analysis is to:

- Describe the need for a standard governing occupational exposure to methylene chloride;
- Identify the establishments and industries potentially affected by the standard;
- Evaluate the costs, benefits, economic impacts and small business impacts of the standard on affected firms;
- Assess the technological and economic feasibility of the standard for affected establishments, industries, and small businesses;
- Evaluate the availability of effective non-regulatory approaches to the problem of occupational exposure to methylene chloride; and
- Present changes designed to reduce the impact of the standard on small

firms while meeting the objectives of the OSH Act.

Need for the Standard

OSHA's final methylene chloride (MC) standard covers occupational exposures to this substance, one of the most widely used of all organic solvents, in general industry, construction, and shipyard employment. In all, about 237,000 employees are estimated to be exposed to MC. These workers are exposed to MC in many different ways, including the manufacturing, formulation, distribution, and use of MC-containing products. The most common uses of MC are in paint stripping, metal cleaning, and furniture stripping.

Workers exposed to MC are at significant risk of developing cancer, heart and liver effects, and central nervous system impairments, as well as eye, skin, and mucous membrane irritation. Animal bioassays have shown MC to be carcinogenic in mice and rats of both sexes, and epidemiologic studies in workers have produced suggestive evidence of its carcinogenicity in humans. Acute overexposure to the vapors of MC can lead to central nervous system depression, respiratory paralysis, and death: OSHA receives fatality reports every year involving workers who have died using MC to perform such tasks as stripping floors and removing paint. To protect all MC-exposed workers from these adverse health effects, the final standard lowers the airborne concentration of MC to which workers may be exposed from the current permissible exposure limit (PEL) of 500 ppm as an 8-hour time-weighted average (8-hour TWA) to 25 ppm, and from the Agency's current short-term limit of 1000 ppm as an acceptable ceiling, or 2000 ppm as an acceptable peak above the acceptable ceiling for 5 minutes in any 2-hour period, to a short-term exposure limit (STEL) of 125 ppm, averaged over 15 minutes. (For a detailed discussion of the risks posed to workers by exposure to MC, see the Quantitative Risk Assessment and Significance of Risk sections of the preamble, above.)

OSHA's final MC standard is similar in format and content to other health standards issued under Section (6)(b)(5) of the Act. In addition to setting PELs, the standard requires employers to monitor the exposures of workers; establish regulated areas when exposures may reasonably be expected to exceed one of these PELs; implement engineering and work practice controls to reduce employee exposures to MC; provide respiratory protection to supplement engineering controls where these are not feasible, are insufficient to meet the PELs, or in emergencies; provide other protective clothing and equipment as necessary for employee protection; make industrial hygiene facilities (such as eyewash and emergency showers) available in certain circumstances; provide medical surveillance; train workers about the hazards of MC (as required by OSHA's Hazard Communication Standard); and keep records relating to the standard. The contents of the standard are explained briefly in Chapter I of the Final Economic Analysis and in detail in the Summary and Explanation (Section X of the preamble, below).

Chapter II of the economic analysis describes the uses of methylene chloride and the industries in which such use occurs. Employee exposures to MC are analyzed on the basis of "application groups," i.e., groups of firms that use MC to perform a particular function, such as metal cleaning or industrial paint stripping, regardless of the particular industry in which the use takes place. The methodology used by OSHA in the analysis is appropriate when a ubiquitous chemical like MC is used to perform the same function in many kinds of firms in many industries, because the processes used, employee exposures generated, and controls in place or needed to achieve compliance are the same, whether the process takes place in a machine shop, on board ship, or on a construction site. For example, because the process of using MC to strip paint or coatings from an object is essentially the same whether the object being stripped is a spray paint booth, boat, church pew, or automobile, and the exposures generated during the process are similar in important respects, it is appropriate to analyze such activities as a group. However, OSHA's technological feasibility and cost analyses reflect the fact that job classifications and work processes may differ within a given application group. Table VIII–1 shows the application groups analyzed in the economic analysis, and the numbers of MC-using establishments, MC-exposed workers, and estimated volume of MC handled annually by establishments in each application group.

TABLE VIII–1.—METHYLENE CHLORIDE APPLICATION GROUPS

Application group	Estimated number of MC-using establishments *	Estimated total employment *	Estimated number of exposed workers *	Estimated MC handled (millions of lbs)
Methylene Chloride Manufacturing	4	1,664	84	469.20
Distribution/Formulation of Solvents	320	84,004	1,701	189.65
Metal Cleaning:				
Cold Degreasing and Other Cold Cleaning:	23,717	901,232	94,537	32.56
Open-Top Vapor Degreasing	278	27,105	608	14.87
Conveyorized Vapor Degreasing	45	2,920	75	1.13
Semiconductors	239	217,960	1,392	0.40
Printed Circuit Boards	141	77,795	298	13.98
Aerosol Packaging	52	4,142	520	25.21
Paint Remover Manufacturing	80	6,134	200	136.85
Paint Manufacturing	49	8,909	229	3.54
Paint Stripping:				
Aircraft Stripping	300	266,826	2,470	13.17
Furniture Stripping	6,152	23,592	7,872	23.26
Other Industrial Paint Stripping	35,041	2,312,721	46,605	59.36
Flexible Polyurethane Foam Manufacturing	100	9,800	600	50.32
Plastics and Adhesives Manufacturing and Use	3,487	1,186,040	10,481	41.90
Adhesive Production	165	56,254	497	.....
Adhesive Use	1,753	596,291	5,269	.....
Injection Molding	80	27,211	240	.....

TABLE VIII–1.—METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Estimated number of MC-using establishments *	Estimated total employment *	Estimated number of exposed workers *	Estimated MC handled (millions of lbs)
Lamination	1,323	450,031	4,070	.....
Mold Release	165	56,254	497	.....
Ink Use:				
Ink and Ink Solvent Manufacturing	15	2,010	58	3.68
Ink Solvent Use in Printing	11,869	197,619	39,481	3.68
Pesticide Manufacturing and Formulation	60	1,440	120	9.58
Pharmaceutical Manufacturing	108	70,223	1,431	39.53
Solvent Recovery	34	932	137	32.10
Film Base Manufacturing	1	45,000	500	8.90
Polycarbonate Manufacturing	4	1,898	67	6.70
Construction	9,504	63,115	24,896	2.44
Shipyards	25	85,212	3,040	0.47
Total, all application groups	91,624	5,598,293	237,496	**

* In most cases, the estimated number of establishments in each application group was based on the volume flow of MC in 1990 divided by the estimated MC use per facility. The estimated number of establishments was multiplied by the total number of employees per establishment and exposed employees per establishment as reported in CONSAD's survey.

** Netting out rehandling, estimated total consumption equals 469.2 million pounds manufactured, minus 129.1 million pounds exported, + 19.3 million pounds imported, + 32.10 million pounds recovered from used solvent. The column does not sum to 391.5 million pounds because non-consumptive uses such as production, distribution and formulation, and solvent recovery are included.

Sources: CONSAD, HSIA, PRMA, Office of Regulatory Analysis.

In all, OSHA analyzed 28 application groups. These application groups include, among others, methylene chloride manufacturing, paint manufacturing, metal cleaning, polyurethane foam manufacturing, plastics and adhesives manufacturing, ink use, pharmaceuticals, and construction and shipyards. A total of 91,624 establishments are estimated to be potentially affected by the standard. These establishments employ a total of 5.6 million employees, of whom 237,496 are estimated to be exposed to MC in the course of their work. The application groups with the largest numbers of directly exposed employees are the Metal Cleaning, All Other Industrial Paint Stripping, and Ink Solvent Use groups. In many facilities, MC is used only by a small number of employees; the average number of MC-exposed employees per establishment covered by the final rule is only 2.6 employees.

Chapter III of the analysis assesses the technological feasibility of the final standard's requirements, and particularly its PELs, for firms in the 28 application groups identified in the Industry Profile. OSHA finds, based on an analysis of exposure data taken on workers performing the MC-related tasks identified for each application group, that compliance with the standard is technologically feasible for establishments in every application group studied. With few exceptions, employers will be able to achieve compliance with both PELs through the use of engineering controls and work practices. The few exceptions are certain maintenance activities, such as vessel cleaning, which have traditionally involved the use of respiratory protection, and operations in two applications where the supplemental use of respirators may be necessary. These operations are centrifuge unloading and dryer loading at one bulk pharmaceutical manufacturing facility operated by Abbott Laboratories, and operations involving access to and entering of the roll coating machine used by the Eastman Kodak Company to make film base.

The exposure data relied on by OSHA in making its technological feasibility determinations have been compiled in a database that contains thousands of MC exposure results (see Appendix B of this analysis) taken by OSHA compliance officers, consultation program consultants, MC-using companies, and interested parties. These data show that many facilities in many of the affected application groups have already achieved the reductions in employee exposures required by the final rule. In addition, the exposures of many employees in many job categories in a number of the application groups have been reduced to levels that are close to those required by the standard. OSHA's analysis of technological feasibility analyzes employee exposures at the operation or task level to the extent that such data are available. In other words, the analysis identifies relevant exposure data on a job-category-by-job category basis to permit the Agency to pinpoint those MC-exposed workers and job operations that are not yet under good process control and will thus need additional controls (including improved housekeeping, maintenance procedures, and employee work practices) to achieve compliance. Costs are then developed (see Chapter V of the economic analysis) for the improved controls needed to reach the new levels.

The benefits that will accrue to MC-exposed employees and their employers are substantial and take a number of forms. Chapter IV of the analysis describes these benefits, both in quantitative and qualitative form. First, based on a physiologically-based pharmacokinetic (PBPK) model, OSHA estimated that, if all 237,000 employees were exposed at the existing 8-hour TWA exposure limit of 500 ppm for an occupational lifetime of 45 years, a total of 29,862 excess cancer deaths would occur, or 126 excess cancer deaths per 1,000 workers. If, however, the 237,000 employees were exposed to the final standard's PEL of 25 ppm for 45 years, 8533 excess cancer deaths would be expected (3.6 per thousand workers). However, few workers are currently being exposed to 500 ppm of MC as an 8-hour TWA. The actual exposure levels of most affected workers are considerably lower, and, when these exposure levels, rather than 500 ppm, are used as the baseline, the PBPK model estimates that 1405 cancer deaths will be averted over a 45-year period. By reducing the total number of MC-related cancer deaths from 1,804 deaths to 399 deaths over 45 years, the standard will

save an average of 31 cancer deaths per year. Table VIII–2 shows these risk estimates.

TABLE VIII–2.—LUNG CANCER RISK OVER 45 YEARS FOR WORKERS EXPOSED AT CURRENT EXPOSURE LEVELS AND AT THE LEVELS EXPECTED AFTER IMPLEMENTATION OF THE FINAL STANDARD

	0–12.5	12.5–25	25	25–50	50–100	100–200	200–350	350–500	500+***	Total
Lifetime Excess Cancer Risk (per thousand workers)* ...	0.91	2.71	3.60	5.53	11.98	28.45	61.75	104.44	125.78	.....
Baseline Number of Workers Exposed	141,323	26,464	162	22,839	23,903	14,803	3,281	1,297	3,422	237,495
Estimated Excess Deaths in Baseline (Existing PEL)**	129	72	1	126	286	421	203	135	430	1,804
Predicted Number of Workers Exposed at New PEL	159,825	28,441	49,229	0	0	0	0	0	0	237,495
Predicted Excess Deaths at New PEL**	146	77	176	0	0	0	0	0	0	399

*Based on OSHA's final estimate using the PBPK model, as presented in the Quantitative Risk Assessment section of the Preamble.
**Computed as level of lifetime risk times the number of exposed workers.
***For workers exposed to levels of greater than the current PEL of 500 ppm, the risk estimate is that associated with a lifetime exposure to 500 ppm.
Source: Office of Regulatory Analysis; OSHA; Department of Labor.

In addition to cancer deaths, the standard is estimated to prevent 3 deaths per year from MC's acute central nervous system and carboxyhemoglobinemic effects. (Carboxy-hemoglobinemia is the inability of the blood to carry sufficient oxygen to supply the heart muscle; because methylene chloride interferes with the blood's ability to carry oxygen, exposure to it places susceptible individuals, such as those with silent cardiovascular disease, pregnant women, and smokers, at greater risk.) OSHA receives reports every year of workers who have succumbed to MC's acute CNS toxicity while they were engaged in such tasks as floor stripping. For example, the Agency recently received a fatality report on two young workers who died after pouring 14 gallons of MC on a squash court they were refinishing. Both of these employees lost consciousness, collapsed, and subsequently died of respiratory failure. In addition, MC exposures above the level at which the final rule's STEL is set—125 ppm—are also associated with acute central nervous system effects, such as dizziness, staggered gait, and diminished alertness, all effects that can lead to workplace accidents. OSHA estimates that as many as 30,000 to 54,000 workers will be protected by the final rule's STEL from experiencing CNS effects and episodes of carboxyhemoglobinemia every year. Moreover, exposure to the liquid or vapor forms of MC can lead to eye, skin, and mucous membrane irritation, and these material impairments will also be averted by compliance with the final rule. Finally, contact of the skin with MC can lead to percutaneous absorption and systemic toxicity and thus lead to additional cases of cancer that have not been taken into account in the benefits assessment presented in Chapter IV of the Final Economic Analysis.

The costs employers in the affected application groups are estimated to incur to comply with the standard total $101 million in 1994 dollars. These costs, which are presented in Chapter V of the full economic analysis, are annualized over a 10-year horizon at a discount rate of 7 percent. Table VIII–3 shows annualized costs by provision of the standard; the most costly

provisions are those requiring engineering controls, protective clothing and eye protection, and medical surveillance for MC-exposed workers. These three provisions together account for approximately 75 percent of the standard's compliance costs.

TABLE VIII–3.—ANNUALIZED COSTS BY PROVISION

Provision	Annualized Costs
Engineering Controls	$38,773,642
Respirators	6,374,083
Monitoring	9,849,577
Protective Clothing and Eye Protection	29,578,340
Emergency Eyewash and Shower	3,183,486
Medical Surveillance	7,986,493
Leak and Spill Detection Program	3,703,286
Regulated Areas	150,884
Recordkeeping	652,121
Training	196,656
Understanding Regulation and Developing Training	777,132
Subtotal	101,225,701
Costs of Substitution	237,336
Total	101,463,037

Source: Office of Regulatory Analysis; OSHA; Department of Labor.

Table VIII–4 analyzes compliance costs by application group and shows that the Cold Cleaning application group, which is in the larger Metal Cleaning grouping, and the Furniture Stripping application group, which is in the larger Paint Stripping category, will incur the largest costs of compliance (though not necessarily the largest economic impacts). These costs reflect the high exposures and relative lack of control measures currently existing in many establishments in these two application groups. In other words, because MC exposures are poorly controlled in so many cold cleaning and furniture stripping facilities, employers in these industries will be required by the standard to implement control measures to protect their employees from the significant risk of MC exposure.

TABLE VIII–4.—ANNUALIZED COSTS BY METHYLENE CHLORIDE APPLICATION GROUPS

Application group	Annualized costs
Methylene Chloride Manufacturing	8,150
Distribution/Formulation of Solvents	794,099
Metal Cleaning:	
Cold Degreasing and Other Cold Cleaning	26,950,869
Open-Top Vapor Degreasing	371,096
Conveyorized Vapor Degreasing	97,253
Semiconductors	247,666
Printed Circuit Boards	217,479
Aerosol Packaging	297,999
Paint Remover Manufacturing	229,724
Paint Manufacturing	89,697
Paint Stripping:	
Aircraft Stripping	8,148,754
Furniture Stripping	10,689,840
All Other Industrial Paint Stripping	24,413,924
Flexible Polyurethane Foam Manufacturing	4,252,861
Plastics and Adhesives Manufacturing and use	5,417,950
Adhesive Production	
Adhesive Use	
Injection Molding	
Lamination	
Mold Release	
Ink and Ink Solvent Manufacturing	23,518

TABLE VIII–4.—ANNUALIZED COSTS BY METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs
Ink Solvent Use	3,360,723
Pesticide Manufacturing and Formulation	106,060
Pharmaceutical Manufacturing	311,708
Solvent Recovery	49,829
Film Base Manufacturing	47,454
Polycarbonate Manufacturing	4,651
Construction	14,922,000
Shipyards	518,544
Total, all application groups	101,463,037

Source: Office of Regulatory Analysis; OSHA; Department of Labor.

Chapter VI of the economic analysis analyzes the impacts of compliance costs on firms in affected application groups. The standard is clearly economically feasible: on average, annualized compliance costs amount only to 0.18 percent of estimated sales and 3.79 percent of profits. For all but three application groups—polyurethane foam blowing, furniture stripping, and construction—compliance costs are less than 3 percent of profits, and for all but one application group—furniture stripping—annualized compliance costs are less than 0.5 percent of the value of sales. Table VIII–5 shows average compliance cost impacts across the many Standard Industrial Classification (SIC) codes potentially involved in the application groups studied.

TABLE VIII–5.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACT OF THE FINAL MC STANDARD

Application group	Number of establishments complying	Annualized costs of compliance	
		As percent of sales	As percent of profit
Manufacture of MC	4	(*)	0.04
Distribution/Formulation of Solvents	320	0.04	0.55
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	23,717	0.01	0.18
Open-Top Vapor Degreasing	278	0.01	0.22
Conveyorized Vapor Degreasing	45	0.02	0.35
Semiconductors	239	(*)	0.05
Printed Circuit Boards	141	0.02	0.41
Aerosol Packaging	50	0.01	0.13
Paint Remover Manufacturing	80	0.02	0.06
Paint Manufacturing	49	0.01	0.04
Paint Remover Use (Paint Stripping):			
Aircraft Stripping (Large Firms)	75	0.07	1.34
Aircraft Stripping (Small Firms)	225	0.08	2.12
Furniture Stripping	6,152	2.04	**39.40

TABLE VIII–5.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACT OF THE FINAL MC STANDARD—Continued

Application group	Number of establishments complying	Annualized costs of compliance	
		As percent of sales	As percent of profit
All Other Industrial Paint Stripping	35,041	0.01	0.11
Flexible Polyurethane Foam Manufacturing	100	0.32	**9.23
Plastics and Adhesives Manufacturing and Use	3,487	0.03	0.52
Ink and Ink Solvent Manufacturing	15	(*)	0.03
Ink Solvent Use	11,869	0.03	0.05
Pesticide Manufacturing and Formulation	60	0.01	0.35
Pharmaceutical Manufacturing	108	(*)	0.03
Solvent Recovery	37	0.05	0.85
Film Base	1	(*)	0.01
Polycarbonates	4	(*)	(*)
Construction	9,504	0.35	**9.67
Shipyards	25	0.07	1.72
All Application groups	91,625	0.18	3.79

* = less than .005%.

** These relatively high impacts on profits assume that no price increase is possible. In all three cases, price increases of 2.1 percent or less would fully restore profits. In all of these application groups, most firms will be able to increase prices to offset their regulatory costs. In furniture stripping, a substantial portion of the market is for antique refinishing that involves MC use, a service which is relatively price insenstive. Soft flexible foam of the kind MC is used to make is an essential material in the construction of cushions of all types. In the construction sector, MC based paint stripping and foam blowing are essential operations of many of the jobs in which they are used.

SOURCES: CONSAD; Dun & Bradstreet; Office of Regulatory Analysis, OSHA, Department of Labor.

It is important to understand that OSHA's methodology tends to overestimate the economic impacts of the standard, for a number of reasons. For example, OSHA's cost methodology does not take into account the many simple and virtually cost-less improvements in employee work practices and housekeeping procedures that would enable many employers to achieve compliance with the final rule's PELs. In flexible polyurethane foam manufacturing, for example, OSHA's costs may be overestimated because it was assumed that no firms would substitute away from MC entirely, even though some firms have already done so (as described in Chapter III, Technological Feasibility). Despite the fact that OSHA's cost estimates are likely to be overestimates, OSHA decided to examine in greater detail the three application groups shown by the economic analysis to have the highest costs as a percentage of profits, i.e., furniture stripping, polyurethane foam manufacturing, and construction.

In the furniture refinishing application group, compliance costs are 2.0 percent of the value of revenues and 39 percent of the value of before-tax profits. Approximately half of all furniture refinishing sales derive from antique refinishing, a market niche that is unlikely to be sensitive to a 2.0 percent change in price. Even in the area of used furniture refinishing, which constitutes the remaining half of the furniture refinishing market, a 2.0 percent price increase would be unlikely to significantly alter the amount of furniture being refinished. In general, price increases of this magnitude would be expected to result only in a very small drop in the demand for furniture refinishing. If this were not the case, normal business fluctuations, such as drops in the relative cost of new furniture or a major increase in the price of methylene chloride (such as has occurred in recent years) would also have had major impacts on the industry.

In construction and polyurethane foam manufacturing, compliance costs for the average firm are 9.2 and 9.7 percent of profits, respectively. However, to offset these costs, construction firms would need only to increase their revenues by 0.35 percent and foam blowing operations would need only to increase the price of their products by 0.32 percent. In construction, such price increases are unlikely to present a problem, since the use of MC is essential on many larger construction projects. For example, it is difficult to believe that demand for remodeling or renovation projects would be seriously altered by a 0.35 percent increase in the cost of the paint stripping portion of the job. In flexible polyurethane foam manufacturing, either MC or an appropriate substitute is essential to the production of low density, or soft, foam, and foam, in turn, is essential to the production of many kinds of furniture. Demand for such products is unlikely to change as a result of an 0.32 percent increase in the price of flexible foam. OSHA therefore concludes that even marginal firms in these three sectors—furniture stripping, construction, and flexible foam blowing— are unlikely to close as a result of the compliance costs of this standard.

To ensure that the analysis of average impacts presented in the economic analysis did not obscure potentially significant economic impacts at the 4-digit SIC level, OSHA performed an in-depth analysis of the 4-digit SICs potentially involved in the Cold Cleaning and All Other Industrial Paint Stripping application groups. The results of this in-depth analysis are presented in Appendix D of the full economic analysis. In all, a total of 162 4-digit SICs potentially impacted by the standard in the Cold Cleaning group and more than 200 4-digit SICs in the Other Industrial Paint Stripping group were analyzed. Across all of the Cold Cleaning SICs, the average impact of the costs of compliance is 0.06 percent of revenues and 1.12 percent of profits. The largest impacts on profits occur in SIC 3412, Metal Barrels, Drums, and Pails, and SIC 3494, Valves and Pipe Fittings not elsewhere classified; in these cases, impacts on profits are 13.3 and 15.1 percent, respectively. In both of these cases, however, these impacts are explained by extremely low profit margins (less than .02 percent of sales, i.e., less than $2 per $10,000 in sales, in 1994). As a result, a price increase of less than one cent per $100 of revenue would leave profits unchanged. Such a price increase is feasible because an

increase of this magnitude is unlikely to lead to significant changes in the demand for metal barrels or valves and pipe fittings. In no other 4-digit Cold Cleaning SIC did impacts reach even 5 percent of profits.

Across all 200-plus Industrial Paint Stripping SICs, the average impact of the costs of compliance on revenues is 0.03 percent. The largest impact of costs on sales is 0.33 percent and occurs in SIC 7532, Auto Top, Body Repair, and Paint Shops (discussed further below). The average impacts of costs on profits across these SICs is 0.17 percent. The largest impacts on profits occur in SIC 3412, SIC 3494 (both discussed above), and in SIC 7532, Auto Tops, Body Repair and Paint Shops; in all three of these SICs, cost impacts are between 6 and 8 percent of profits. Again, the explanation for these impacts in SICs 3412 and 3494 is that their profit margin in 1994 was vanishingly low. The resulting price increases required to maintain profits are also extremely small, and OSHA concludes that such an increase is likely to take place in these cases. In SIC 7532, the other relatively high impact SIC, profit margins are relatively high (approximately 4.4 percent), and thus a small decline of this magnitude would have relatively little impact.

Summary of the Regulatory Flexibility Analysis

In its 1991 proposal, OSHA requested comments and information that would assist the Agency in identifying small-business users of MC and in structuring the final standard so that these users would be able to achieve the standard's worker protection goals in ways that would be technologically and economically feasible for them (56 FR 57041 to 57043). OSHA anticipated that, as stated in the proposal, the standard might have a significant economic impact on small entities in at least two application groups: firms with fewer than 20 employees that engage in stripping of paint from aircraft, and firms with fewer than 20 employees that engage in furniture stripping.[3] OSHA also requested comment concerning the standard's impact on small employers in light of the Regulatory Flexibility Act's mandate to consider and minimize impacts on small businesses, consistent with the purposes and criteria of the standard's enabling legislation (56 FR 57115 to 57121).

Many commenters identified additional application groups that include small establishments likely to have difficulty achieving all of the standard's protective goals if the requirements of the standard were structured in a one-size-fits-all manner. These commenters provided considerable data and identified many possible modifications and alternatives to the proposed standard that they believed would facilitate compliance and mitigate the standard's impact on MC-using establishments with fewer than 20 employees.

None of the comments concerning small employer issues, whether in the context of economic or technological feasibility or the Regulatory Flexibility Act, disagreed with OSHA's basic premise that the fewer-than-20-employee cut-off was appropriate to distinguish between large and small MC-using businesses, was a useful way of characterizing the compliance abilities and limitations of affected employers and is an appropriate definition for purposes of the Regulatory Flexibility Act. Use of this numerical cut-off point captures 61 percent of all establishments potentially affected by the final rule. MC-users with fewer than 20 workers tend to have the characteristics of "mom-and-pop" businesses, whereas establishments with 20 or more workers are generally more sophisticated in terms of the technology they use and their management resources. The 20-employee threshold has also proved to be an agreed-on and useful cut-off point in past OSHA rulemakings (see, for example, the permit-required confined spaces standard (58 FR 4547) and the process safety management standard (57 FR 6402)).

During Executive Order 12866 review, the Office of Advocacy of the Small Business Administration expressed its views concerning OSHA's small business definition. In a letter to OMB, the SBA's Chief Counsel for Advocacy stated in a letter dated August 16, 1996, that "[t]he regulatory alternatives developed, using OSHA's size standard of less than 20 employees, were somewhat beneficial to two of the three industries [furniture stripping, polyurethane foam blowing, and construction]. These industries, i.e., furniture stripping and construction, are predominantly micro businesses that fall into OSHA's definition of small" (Ex. 130). The Office of Advocacy was concerned, however, that the 20-employee cut-off did not adequately deal with the MC-using polyurethane foam manufacturing sector. (In this application group, the majority of establishments likely to experience significant economic impacts fall into the 20 to 99- employee size category.) "[T]he characteristics of the manufacturing sector indicate that the [20 employee] size standard was not appropriate in that industry for the purposes of regulatory flexibility." *Id.* The SBA concluded that OSHA should consider taking additional steps to address implementation burdens and the needs of the polyurethane foam manufacturing sector.

Working with OMB and the SBA's Office of Advocacy to resolve this concern, OSHA reexamined the potential impacts of the standard on polyurethane foam manufacturing establishments in the 20 to 99 employee size category in the context of economic impact issues. As explained more fully in the Final Economic and Regulatory Flexibility Analysis, OSHA concluded that, even though members of this group were not small employers, some accommodation would be necessary to assure that employees working in establishments of this size in this industry would not receive less protection than all other MC-exposed employees. Accordingly, OSHA extended the engineering control implementation date for this group of establishments by one year. This extended phase-in is designed to enable this group of employers to plan for and accumulate the capital to finance needed controls, install them, and ensure their effective and consistent operation before the compliance deadline.

OSHA's extensive feasibility studies and focus on small business issues resulted in a number of modifications that have made the standard more cost-effective for business while maintaining protection for workers. In addition, OSHA conducted an alternative screening analysis to measure the final rule's potential impacts on establishments in the regulated community using the SBA's size standards. For most application groups, this meant that OSHA examined the standard's economic impacts on firms at the 500 employee level. (Financial data are not available for cut-off points higher than 500 employees; thus, OSHA used that cut-off for all application groups.) In some cases, the SBA size standards are defined in terms of annual revenues, and for SICs so defined, OSHA translated these revenue figures into the appropriate employee size category. This SBA-based alternative screening analysis enabled the Agency to determine whether, by failing to look

[3] As a result of data and information received from commenters and other information in the record, the Final Economic Analysis does not identify significant impacts or technologic or economic feasibility problems for aircraft stripping operations of any size.

at potential impacts among firms in other size classes, significant impacts had been overlooked. The analysis conducted using the SBA size standards confirmed that any potentially significant economic impacts associated with the final rule occur among firms in the fewer-than-20-employee category, with one exception, i.e., firms in the 20–99 employee size category in the polyurethane foam manufacturing industry. (See the full Final Economic Analysis for additional detail.)

For the final rule, OSHA has analyzed the costs of compliance as a percentage of profits, and costs as a percentage of revenues, for firms with fewer than 20 employees in every application group. This analysis identified significant economic impacts on a substantial number of small entities, and the Agency has accordingly conducted a full Final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act, as amended in 1996. The three application groups for which such impacts were identified were Furniture Stripping, Polyurethane Foam Blowing, and Construction. Table VIII–6 shows the results of this analysis in detail.

The full regulatory flexibility analysis is presented in Chapter VI of the Final Economic and Regulatory Flexibility Analysis. The remainder of this section briefly summarizes that analysis.

This rule is needed to prevent cancer deaths and other illnesses, as discussed in greater detail in the Health Effects Section (Section V of this Preamble). Section III of this preamble, Events Leading to the Final Standard, summarizes OSHA's efforts to assure input to this rulemaking by affected small firms. Table VIII–6 identifies the affected small firms by sector. OSHA estimates that a total of 56,000 small firms will be affected by this standard.

TABLE VIII–6.—SCEENING ANALYSIS OF POTENTIAL ECONOMIC IMPACTS ON SMALL FIRMS

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	139	3.0%	0.2
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	9,223	0.9	0.0
Open-Top Vapor Degreasing	0	NA	NA
Conveyorized Vapor Degreasing	11	2.4	0.1
Semiconductors	0	NA	NA
Printed Circuit Boards	20	2.0	0.1
Aerosol Packaging	10	0.7	0.1
Paint Remover Manufacturing	34	0.3	0.1
Paint Manufacturing	7	0.1	0.0
Paint Remover Use (Paint Stripping):			
Aircraft Stripping (Large Firms)	0	NA	NA
Aircraft Stripping (Small Firms)	75	4.5	0.1
Furniture Stripping	5,901	41.5*	2.2
All Other Industrial Paint Stripping	25,441	0.8	0.0
Flexible Polyurethane Foam Manufacturing	8	60.3*	1.7
Plastics and Adhesives Manufacturing and Use	498	1.8	0.1
Ink and Ink Solvent Manufacturing	3	NA	NA
Ink Solvent Use	5,395	0.1	0.1
Pesticide Manufacturing and Formulation	40	6.6	0.2
Pharmaceutical Manufacturing	0	NA	NA
Solvent Recovery	17	2.7	0.1
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,085	19.9*	0.5
Shipyards	0	NA	NA
All Application groups	55,908	8.2	0.3

NA=No small firms in this application group.

*These relatively high impacts on profits assume that no price increase is possible. In all three cases, price increases of 2.1 percent or less would fully restore profits. In all of these application groups, most firms will be able to increase prices to offset their regulatory costs. In furniture stripping, a susbtantial portion of the market is for antique refinishing that involves MC use, a service which is relatively price insensitive. Soft flexible foam of the kind MC is used to make is an essential material in the construction of cushions of all types. In the construction sector, MC based paint stripping and foam blowing are essential operations of many of the jobs in which they are used.

Sources: CONSAD; Dun & Bradstreet; Office of Regulatory Analysis, OSHA, Department of Labor.

The Summary and Explanation section of this preamble provides a description of the compliance requirements associated with this rule, and a paperwork burden analysis of the record keeping requirements is provided in the Collection of Information Request for Comment section at the beginning of this preamble. Based on comments regarding anticipated effects on small businesses, OSHA has reduced the final rule's overall paperwork requirements from those proposed and has refined some paperwork requirements to simplify compliance for small entities.

OSHA considered numerous regulatory alternatives and modifications to the requirements of the proposed standard (ranging from higher PELs, to 40-hour rather than 8-hour time weighted average exposure limits, to delayed implementation dates) that commenters believed might minimize significant economic impacts on small businesses. OSHA rejected those alternatives that clearly decreased the safety of workers in small establishments, but the Agency also adopted many regulatory changes that will improve small employers' ability to provide their employees with the same level of protection as that afforded workers in larger establishments. As

explained more fully in the Final Economic Analysis and summarized in Table VIII–7, the final standard contains delayed implementation dates, reduced paperwork requirements, streamlined medical surveillance provisions and other accommodations that, in the Agency's judgment, will minimize any significant economic impacts of the standard on small employers to the extent necessary to enable them to meet the standard's protective goals.

TABLE VIII–7. CHANGES MADE SINCE THE PROPOSED REGULATION TO REDUCE THE FINAL STANDARD'S IMPACTS ON SMALL BUSINESSES

Change to proposed regulation	Impact on small businesses
Firms with fewer than 20 employees given 3 years (rather than 1) to achieve PEL using engineering controls.	More performance oriented and flexible, reduces costs to small businesses in first two years by 30 to 40 %, allows small businesses time to plan major expenditures.
Allows the use of licensed health care professionals in addition to physicians for medical surveillance.	Provides greater flexibility.
Laboratory tests are at the discretion of physician rather than automatically required.	Reduces costs of medical surveillance by more than 14 percent, more performance oriented.
Employees under 45 are required to have a physical every three years rather than annually.	Reduces costs of medical surveillance by 30 percent.
Respirators required in regulated areas only when PEL is likely to be exceeded.	Decreases respirator use and costs for small business.
If MC is used less than 30 days per year, monitoring may be conducted with direct reading instruments.	Significantly reduces costs of monitoring for establishments making limited use of MC; this provision will be especially helpful in construction.
Written compliance plans are no longer required	Reduces paperwork.
Hazard communication requirements do not go beyond what is already required by hazard communication standard.	Reduces paperwork and costs.
Employee re-training only as needed rather than annually	More performance oriented, reduces costs of training 80 percent.
Simplified recordkeeping for small businesses for exposure monitoring data.	Reduces paperwork.

IX. Environmental Impact

This section analyzes the impact on the environment of changing the standard for methylene chloride (MC) to an eight-hour time weighted average (TWA8) permissible exposure limit (PEL) of 25 parts per million (ppm), with a 125 ppm 15-minute short-term exposure limit (STEL) and ancillary requirements. It is based principally on information collected for OSHA by CONSAD Research Corporation and its subcontractor, PEI Associates Inc., and reported in *Economic Analysis of Draft Regulatory Standard for Methylene Chloride*, 1990, OSHA Docket, Ex. 15, and also draws upon other materials in the OSHA docket.

Current uses of methylene chloride involve releases to the air through venting of storage tanks or drums and through evaporation of MC during the performance of various activities such as paint stripping and cold cleaning indoors or outdoors. The volume of MC emitted as a percentage of MC used varies greatly among industries. Some processes, such as polyurethane foam manufacturing and paint stripping, typically release 100 percent of the MC to the atmosphere (Ex. 15). Other uses, such as solvent recovery and the manufacture of methylene chloride, involve less than 1 percent of the MC used being emitted to the atmosphere (Ex. 15). In addition, air, water, or solid waste pollution may occur as a result of the disposal of waste residues containing MC. Additional details by application group are presented in CONSAD's report [Ex. 15].

Future environmental releases of methylene chloride resulting from the final standard will largely be a function of how it affects the demand for methylene chloride and for its substitutes. The demand for methylene chloride has been declining (e.g., generally, it is no longer being used in formulating hairsprays). Any regulatory action by OSHA is expected to further reduce the demand for MC and thus the extent of its environmental releases.

Although it is technically possible to substitute chlorofluorocarbons (CFCs) for methylene chloride in electronics and foam blowing, OSHA does not expect the revision of the MC standard to have any such effect. CFC products are significantly more expensive than MC products and are themselves being phased out or banned because of their effects on the environment.

To the extent that firms might have to use greater quantities of substitute chemicals to get the same effects formerly obtained with MC, waste residues and disposal costs would increase. On the other hand, increases in MC leak prevention and recycling would improve the environment.

The Paint Remover Manufacturers Association (PRMA) has charged that the standard would cause "massive amounts" of methylene chloride to be emitted into the atmosphere (Ex. 19–11). In Chapter III, OSHA noted that it could find no convincing argument by PRMA as to why the total amount emitted after installation of exhaust ventilation would differ significantly from the amount now simply leaking into the atmosphere.

At informal public hearings, PRMA stated that "an exposure level of 25 PPM is so low that it brings into the issue the formation of vapor clouds with levels of greater than 25 PPM that could move in and around the neighborhood," allegedly through decomposition of the MC [Tr. 245, 9/17/92]. There is no evidence that this hypothetical situation has ever occurred. PRMA may have confused decomposition with diffusion [Tr. 940–941, 9/21/92]. At Eastman Kodak Company, which currently emits more methylene chloride into the atmosphere than any furniture stripper possibly could, the chemical has diffused so rapidly that no clouds of MC have been formed [Tr. 1237–1238, 9/22/92].

Generally, it is not expected that any significant environmental impact will result from revision of the methylene chloride standard.

X. Summary and Explanation of the Final Standard

Introduction

The final standard for occupational exposure to methylene chloride (MC) is different in several important respects from the proposed MC standard

published in the **Federal Register** in 1991 (56 FR 57036). For example, the standard has been written in plain language, is more performance-oriented than the proposal, and substantially reduces the amount of paperwork employers will have to complete. Employers will thus find compliance with the standard easier, their paperwork less extensive, and their obligations clearer and less burdensome. These changes are discussed in greater detail in the appropriate sections of this Summary and Explanation. OSHA seeks input from users of the standard on whether these changes are helpful and what other changes could be made to future standards to increase their user-friendliness. OSHA will also be conducting a number of compliance assistance and outreach projects in connection with this standard to assist employers and employees to comply.

As part of the Agency's new approach to standards writing, OSHA has included an introductory paragraph in the standard to provide readers with information on MC, its health effects and principal uses, and the reasons OSHA is regulating this toxic substance. This introductory language is non-mandatory and is intended only to provide information and enhance compliance.

This final rule is an occupational health standard that establishes requirements to control employee exposure to MC, a chemical compound found in many different types of industries. OSHA has determined that this standard is necessary because exposure to MC places employees at significant risk of developing exposure-related adverse health effects. These effects include cancer, effects on the heart and central nervous system, and skin and eye irritation. Employee exposure to MC can occur through inhalation or through skin absorption or contact with the skin. This substance is frequently used as a solvent in many different kinds of jobs, including furniture stripping, foam blowing, film manufacturing and metal degreasing.

Although the final rule covers many different types of workplaces where MC is used, the extent of coverage depends on the magnitude of employee exposure. Although all covered employers, i.e., those with MC in the workplace, must determine initially the extent to which their employees are exposed to MC, those with exposures at or below the action level will only have to document the results of this initial determination, provide employee information and training, and provide means of protecting employees from contact with liquid MC. The standard's other requirements, such as those for engineering controls, medical surveillance, etc. apply only to workplaces where employee exposures to MC exceed the action level.

Paragraph (a) Scope and application

This standard applies to all occupational exposures in workplaces covered by OSHA in general industry, construction and shipyards where MC is produced, released, stored, handled, or used.

As discussed in the Health Effects and Significance of Risk sections of this preamble, OSHA has determined that exposure to MC at the former PEL creates a significant risk that employees' health will be materially impaired. Possible adverse health effects include cancer, cardiac effects, central nervous system effects, and skin or eye irritation. Exposures to MC are found in various general industry, construction, and shipyard facilities, and OSHA has determined that there are feasible measures to control them in each of these types of employment.

In the proposal's Authority section, OSHA preliminarily determined, under Section 4(b)(2) of the OSH Act, that it would be appropriate for the MC standard to supersede any corresponding longshoring standards in § 1910.16 and 29 CFR part 1918. The Agency therefore proposed to add a new paragraph (m) to § 1910.19. In addition, in questions raised by the Agency in its Notice of Public Hearing, OSHA requested input regarding the use of MC in longshoring. However, OSHA has subsequently proposed (59 FR 28594, June 2, 1994) to revise its marine terminal (part 1917) and longshoring (part 1918) standards. Those proposed standards (proposed §§ 1910.16(b)(2), 1917.1(b)(2)(xiv), and 1918.1(b)(1)) would apply OSHA's toxic substance standards (part 1910, subpart Z) only when the packaging in which a substance is being transported in the maritime environment has broken open. This language, based on the existing marine terminal standard (§ 1910.16(b)(2)(ii)), reflects the view that hazardous substances, when properly packaged, do not pose significant exposure risks for the shipyard employees transporting them in closed packages.

Therefore, as revised, final rule §1910.19(m) states that §1910.1052 will address MC exposure in marine terminal and longshore employment only where leaking or broken packages allow MC exposure that is not addressed through compliance with 29 CFR parts 1917 and 1918. Given the promulgation of § 1910.19(m), the Agency has determined that it is unnecessary to mention marine terminals and longshoring in final rule § 1910.1052(a), *Scope and application.*

OSHA has not learned of any circumstances in which marine terminal or longshore employees have been exposed to MC because of damage to packaging. The Agency, accordingly, anticipates that the MC final rule will have little or no impact on the marine terminal and longshoring industries.

In developing this rule, OSHA has consulted with its Shipyard Employment Standards Advisory Committee (SESAC) to obtain information on MC use and exposure in shipyards and has taken the Committee's input into consideration in developing the standard. In particular, OSHA has relied on data provided by SESAC in assessing the technological feasibility and costs of compliance of the standard for shipyards covered by the rule.

Since the construction industry is also included in the scope of the final rule, OSHA is required to consult the Advisory Committee on Construction Safety and Health (ACCSH) in accordance with section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) (the Construction Safety Act) and 29 CFR 1911.10. On July 28, 1992, OSHA formally consulted with ACCSH regarding the construction-specific aspects of occupational exposure to MC. The Agency solicited comment and testimony regarding ACCSH's recommendations through a **Federal Register** notice (57 FR 36964, August 17, 1992). One of ACCSH's suggestions was that the rule specifically require originators of contract bids to stipulate a requirement for compliance with the MC standard in their bids. OSHA has not adopted this suggestion in the final rule because construction contracts already require compliance with all relevant Federal regulations. The specific suggestions made by ACCSH and OSHA's responses to ACCSH's input are discussed below in the relevant paragraphs of the Summary and Explanation.

In the proposal, the scope and application paragraph included an exemption for employers with workplaces where MC products were present but objective data were available to demonstrate that the product could not release MC above the action level or STEL under those foreseeable conditions of processing, use, and handling that would cause the greatest possible release. This concept remains in the final standard, although the provision has been moved to the

exposure monitoring section (paragraph (d)), because this provision constitutes, in effect, an exception to the standard's requirement for initial monitoring.

The Air Transport Association [Ex. 19–75] requested that airlines be excluded from the general industry standard, and that a separate standard covering MC use in the airline industry be developed. OSHA has specifically determined that the exposures, work operations, and means of compliance for aircraft-related MC uses are similar to those in many other establishments and thus that there is no substantive basis for the requested exemption. Consequently, OSHA has concluded that no industry-specific standard for airlines is warranted. MC uses in the airline industry are discussed in the section of the final economic analysis entitled "Aircraft Stripping."

Paragraph (b) Definitions

This paragraph includes definitions of a number of terms used in the regulatory text of the final standard. Although some of these terms are in common use, OSHA believes that these definitions will help to ensure that their meaning in the context of the standard is clear.

Action level means an airborne concentration of MC of 12.5 ppm, measured as an 8-hour time-weighted average. One purpose of the action level is to relieve the burden on employers by providing a cut-off point below which many of the compliance activities in the standard are not required. In addition, due to the variable nature of employee exposures to airborne concentrations of MC, compliance with an action level provides employers with greater assurance that their employees will not be exposed to MC concentrations above the permissible exposure limits.

The action level also increases the cost-effectiveness and performance orientation of the standard while improving employee protection. The standard will encourage employers who can, in a cost-effective manner, identify approaches or innovative methodologies to reduce their employees' exposures to levels below the action level, because this will eliminate the costs associated with exposure monitoring and medical surveillance, two provisions of the standard that are triggered by exposure exceeding the action level. At the same time, the employees of such employers will be protected because their MC exposures will be less than half of those permitted by the permissible exposure limit. Employees of those employers who are not able to lower exposures below the action level will have the additional protection provided by medical surveillance, exposure monitoring, and the other provisions of the standard that are triggered by the action level.

The statistical basis for using an "action level" has been discussed in connection with several other OSHA health standards [see, for example, acrylonitrile (29 CFR 1910.1045) and ethylene oxide (29 CFR 1910.1047)]. In brief, although all employee exposure measurements on a given day may fall below the permissible exposure limit, some probability exists that on unmeasured days the employee's actual exposure may exceed the permissible exposure limit. Where exposure measurements are above the action level, the employer cannot reasonably be confident that the employee may not be overexposed on a given day. Therefore, requiring periodic employee exposure measurements to begin at the action level provides the employer with a reasonable degree of confidence in the results of his or her exposure measurement program [Ex. 7–248]. OSHA's decision to set the action level at one-half the PEL is based on its successful experience using this fraction as the action level in many standards, such as arsenic, ethylene oxide, vinyl chloride and benzene.

OSHA received comments from a number of rulemaking participants [Exs. 19–16, 19–20, 19–22, 19–31, 19–47, 19–75] suggesting that the proposed PELs and, by association, the action level, be revised. For instance, Hukill Chemical Corporation [Ex. 19–47] argued that the action level should be set at 100 ppm because it believes that: 1) CNS effects from MC are not observed in humans until 300 ppm; and 2) there is no evidence of excess cancer mortality in humans up to a level of 475 ppm. As explained in the Health Effects and Quantitative Risk Assessment sections of this preamble, OSHA disagrees with this commenter because the Agency has determined that significant risks exist at levels substantially below those referred to by the commenter and therefore that the suggested levels would not be adequately protective.

The Pharmaceutical Manufacturers Association (PMA) [Ex. 19–25] commented that the action level of 12.5 ppm is appropriate, but requested an exemption from "various requirements of the standard" if exposure occurs on fewer than 30 days a year. In particular, PMA suggested that periodic monitoring be required only when there is exposure above the PEL or STEL for at least 10 days a year or at or above the action level for at least 30 days a year. OSHA has considered this issue, along with similar concerns raised by ACCSH, and agreed that in cases where exposure occurs only on a few days per year, it was appropriate to alter the exposure monitoring requirements. Specifically, paragraph (d)(2)(iii) would permit employers whose employees are exposed to MC on fewer than 30 days per year to forego the initial monitoring required by paragraph (d)(2), provided that the employer has taken measurements that give immediate results (such as those taken by detector tube) and that provide sufficient information about exposures to determine what (if any) control measures are necessary. In addition, the medical surveillance requirement (paragraph (j)), with the exceptions described in the final rule, applies only where employees are exposed above the action level on at least 30 days within a year or above the PELs on at least 10 days within a year.

Newport News Shipbuilding [Ex. 19–37] suggested that the action level be set at 15 ppm. However, adopting this suggestion would not be consistent with the statistical basis for establishing the action level at one-half the PEL, as described above. In addition, Markey Restoration Company [Tr. 2671–72, 10/16/92] recommended that the action level be eliminated based on the costs of medical surveillance triggered by that level. As noted above, an action level is based on the probability of exceeding the PEL and is designed to enhance both employee protection and the standard's cost-effectiveness, and OSHA does not believe it would serve either employers or employees to eliminate this concept from the final rule.

The UAW [Tr. 1885–86, 9/24/92] questioned the statistical arguments underpinning the action level that OSHA has used for some years. According to the UAW's calculations, the action level should actually be set at one-tenth the PEL to accomplish the purpose OSHA intended. Accordingly, the UAW argued that: "[I]f you leave it [the action level] at 1/2, [there is] almost the virtual certainty that workers are overexposed on that job." In response, OSHA notes that its experience with action levels set at one-half the 8-hour TWA PEL has been favorable and that employers and employees have benefitted from the use of the action level concept. In particular, it is OSHA's experience that, for most workplaces, variability is normally such that an action level set at one-half the TWA PEL is appropriate. The final standard thus continues this practice.

Emergency means any occurrence, such as but not limited to, equipment failure, rupture of containers, or failure of control equipment, which results, or is likely to result in an uncontrolled

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release of MC. The word "uncontrolled" was changed from "unexpected" in the proposal to be more descriptive and to be consistent with the Hazard Communication Standard (29 CFR 1910.1200) and the Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120). Incidental releases of MC—i.e., those where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by maintenance personnel or other employees working in the immediate release area—are not considered to be emergencies within the scope of this standard. Dow Chemical Company [Ex. 19–31] indicated that the examples of emergencies provided in the proposal (purging lines and cleaning sludge from tanks) should not be included in the final rule. Other commenters [Exs. 19–25, 19–28, 19–57] agreed with Dow that the examples provided with the definition in the proposal were inappropriate. In particular, Eli Lilly and Company [Ex. 19–28, p. 7] stated

> Lilly agrees with the concept that an emergency should be tied to unexpected releases. It is therefore curious and illogical that the examples given—purging of lines and cleaning tanks—are not unexpected events. To the contrary, in the pharmaceutical industry these are planned events which could even occur daily.

On the other hand, the Upjohn Company [Ex. 19–49] commented as follows:

> The language "unexpected significant release" is very vague and will not result in any consistent interpretation as to what type of a release meets this definition. We would recommend that the language be changed to "* * * which may lead to employee exposure at or above the eight hour, timed-weighted average (TWA) or at or above the short-term exposure limit (STEL)."

OSHA acknowledges that the language in question could be misunderstood and has deleted the parenthetical listing of some examples of emergency situations. Furthermore, the Agency recognizes that emergency situations, by their very nature, are difficult to anticipate and describe. Therefore, OSHA has not provided examples of emergency situations in the final rule. Instead, the final rule lists situations that OSHA does not consider emergencies, because these will help employers to identify situations in their workplaces that do constitute emergencies. OSHA recognizes that emergencies have certain aspects in common but that other aspects are specific to a given workplace. For example, employee exposure must be uncontrolled for an emergency to exist. Provisions of the standard that include requirements that employers must meet in case of an emergency include Methods of Compliance, Respiratory Protection, Medical Surveillance, and Employee Information and Training.

Employee exposure is defined as that exposure to airborne MC which occurs or which would occur if the employee were not using respiratory protective equipment. This definition is consistent with OSHA's previous use of the term "employee exposure" in other health standards.

Methylene chloride (MC), or dichloromethane, means an organic compound with the chemical formula, CH_2Cl_2. Its Chemical Abstracts Registry Number is 75–09–2. Its molecular weight is 84.9 g/mole. Other information regarding the characteristics of MC may be found in the appendices to the final standard. MC is a colorless, volatile, liquid with a chloroform-like odor and is not flammable by standard tests in air, but will burn under extreme conditions. It has a boiling point of 39.85 C (104 F) at standard atmospheric pressure, a lower explosive limit of 12% and an upper explosive limit of 19.5% in air. It is completely miscible with most organic solvents but is sparingly soluble in water (1.3% by weight at room temperature). It has an extensive oil and fat solubility. Decomposition products during combustion or fire include phosgene, hydrochloric acid and carbon monoxide.

Physician or other licensed health care professional is defined as a person whose legally permitted scope of practice allows him or her to independently provide or be delegated the responsibility to provide some or all of the health care services required by final rule paragraph (j), Medical Surveillance. Use of this phrase is designed to increase the flexibility of the standard; the proposal used the more restrictive term "physician." OSHA intends that employers should consider the opinion of the applicable state licensing board, which defines the scope of practice for licensed health care professionals, when they are determining the appropriate provider to supply some or all of the medical services required by the standard. The new terminology recognizes that there are many services that non-physicians can provide, that some non-physicians have particular expertise in diagnosing and treating occupationally related diseases, and that the use of these providers is often a cost-effective and protective approach to the provision of medical care.

Regulated area means an area, demarcated by the employer, where an employee's exposure to airborne concentrations of MC exceeds or can reasonably be expected to exceed either the eight (8)-hour time-weighted average limit or the short-term exposure limit. The wording of this definition has been changed slightly from that in the proposal for clarity. The requirements for regulated areas are discussed below in relation to paragraph (e).

OSHA has added a definition for *symptom* to the final rule to clarify what is meant by that term when it is referred to in the regulatory text. MC has a wide range of possible adverse health effects. This definition clarifies what portion of that range would be considered a symptom for purposes of the standard. The covered symptoms would include indications of central nervous system effects, such as headaches, disorientation, dizziness, fatigue, and decreased attention span; cardiac effects, such as chest pain and shortness of breath; and skin effects, such as chapping, erythema, or skin burns.

The definitions of "*Assistant Secretary*," "*Authorized Person*," "*Director*" and "*This section*" are consistent with OSHA's previous uses of these terms in other health standards.

The Boeing Company [Ex. 19–26] suggested that a definition be added for "*work area*" to preclude unnecessary monitoring in areas that do not contain MC. OSHA does not believe that this is necessary. If there is no MC present in an area, no monitoring needs to be performed for MC. In addition, the focus of this standard is employee exposure, as measured by personal monitoring, and not particular locations.

Paragraph (c) Permissible Exposure Limits

OSHA is promulgating an 8-hour time-weighted average (TWA) permissible exposure limit (PEL) of 25 ppm, and a short-term exposure limit (STEL) of 125 ppm averaged over 15 minutes, as proposed. OSHA has determined, based on evidence in the record, that occupational exposure to MC at the current 500 ppm 8-hour TWA PEL presents a significant risk of material health impairment, and particularly of cancer, to exposed employees and that compliance with the new standard will substantially reduce that risk. In combination with the STEL, the 8-hour TWA PEL and the other industrial hygiene provisions of the standard will also protect exposed employees from the other health effects caused by exposure to MC.

The basis for the 8-hour permissible exposure limit is discussed above in the sections on Health Effects and Significance of Risk, as well as in the economic analysis. OSHA believes that

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compliance with the new 25 ppm 8-hour TWA PEL is feasible and necessary to protect exposed employees from this significant risk of material health impairment.

OSHA received comments from a number of rulemaking participants suggesting that the proposed PELs and, by association, the action level be revised. The arguments for revising the proposed PELs were based on interpretations of the scientific support for given PELs and the feasibility of particular PELs in certain situations. Some commenters felt that the current level of 500 ppm does not provide adequate protection for employees and agreed that the PEL should be set at 25 ppm [Exs. 19–15, 19–49]. Specifically, Striptech International, Inc. [Ex. 19–15] stated:

> The OSHA proposed 25 ppm standard for MC does substantially eliminate significant risk and it is feasible and definitely appropriate. The technology exists to enable the industries using MC to comply or to use an alternate method.

However, a number of rulemaking participants [Exs. 19–22, 19–23, 19–36, 19–38, Tr. 530, 9/18/92, Tr. 1776, 9/24/92, Tr. 1869, 9/24/92] suggested that OSHA set the 8-hour TWA PEL below 25 ppm, because they believe that the proposed 25 ppm limit would not adequately protect workers. For example, the UAW stated that setting a PEL at 25 ppm "will permit too much exposure to methylene chloride, therefore placing workers at great risk, contrary to the requirements of the OSHA Act" [Tr. 1869, 9/24/92]. The UAW stated that the proposed limit "would permit 2 deaths per thousand workers," and therefore suggested setting a PEL of 10 ppm, which the union felt would be feasible through specified engineering and work practice controls [Ex. 19–22, Tr. 1869, 9/24/92]. Scott Schneider, representing the IUE, also suggested that "because of the evidence of health effects from low level exposures" to MC, the PEL should be lowered below 25 ppm [Ex. 19–38]. The IUE and the ACTWU both supported the UAW recommendation of 10 ppm [Tr. 530, 9/18/92, Tr. 1776, 9/24/92].

The Laborers' Safety and Health Fund of North America [Ex. 19–36] suggested that worker exposure should be controlled to the lowest feasible level, which is consistent with NIOSH's position. NIOSH recommended "that occupational exposure to methylene chloride, which is a potential occupational carcinogen and may induce ischemic heart disease, be reduced below the proposed PEL to the lowest feasible level" [Tr. 868, 9/21/94]. OSHA agrees with these commenters that a significant risk remains at 25 ppm, but believes that this level is the lowest level for which OSHA can currently document feasibility across the affected application groups and industries.

OSHA's primary justification for the new standard is the risk of cancer associated with exposure to MC. Some commenters stated that the carcinogenicity of MC has not been proven and therefore that carcinogenicity should not be the basis for setting the PEL [Exs. 19–18, 19–29, 19–31, 19–45]. In particular, Kodak [Ex. 19–18] stated that it "does not believe that the human or animal data demonstrate a need to establish methylene chloride exposure limits at the levels proposed by OSHA in order to adequately protect employee health." Mr. Bixenman, representing Benco Sales, testified [Tr. 2638, 10/16/92] "And surely with our current level of technology, if methylene chloride were a human carcinogen, it could be established without question with actual diagnosed cases." Also, the Air Transport Association stated [Ex. 19–75]:

> [T]he limited findings regarding cancer in mice at high MC dosage is weak justification for the proposed regulatory action. None of our members have found permanent health symptoms related to the use of MC, while usage at some facilities goes back at least 30 years. We have no data or experience connecting heart disease with MC use.

As discussed more extensively in the Quantitative Risk Assessment section, above, OSHA has based its assessment of MC cancer risk on the determination (supported by the NTP, EPA, and other agencies) that there is clear evidence of MC carcinogenicity in mice and rats. Although there are a few substances for which clear evidence of carcinogenicity in rodents has been deemed to be irrelevant to humans due to compelling evidence of mechanisms of action unique to the species tested, no such evidence exists for MC. In fact, as discussed in the Risk Assessment section, mechanistic evidence adds to the weight-of-the-evidence suggesting that MC is also carcinogenic in humans.

OSHA's final risk estimate indicates a risk of 7.5 deaths per 1000 workers exposed to MC at 50 ppm over a working lifetime and a risk of 3.6 deaths per thousand workers exposed to MC at 25 ppm over a working lifetime. OSHA has determined, using quantitative risk assessment, that the estimated risk of developing cancer warrants setting the 8-hour TWA PEL at 25 ppm and a 15-minute STEL at 125 ppm; in fact, at the 25 ppm PEL the residual risk still greatly exceeds any significant risk threshold, and only the lack of documentation of the feasibility of lower PELs across the affected industries has convinced the Agency not to reduce the PEL even further at this time.

OSHA disputes the contention of Mr. Bixenman that "actual diagnosed cases" are a precondition for establishing that a particular substance is carcinogenic to humans. Due to the natural background rate of all cancers, epidemiologic studies of groups are the only way to analyze human cause-effect relationships. As discussed in the Quantitative Risk Assessment section, OSHA has concluded that some of the available epidemiologic studies suggest a positive association between MC exposure and human cancer and that no epidemiologic studies of sufficient power exist to cast serious doubt on such conclusions.

Several commenters preferred a PEL of 50 ppm, which is the current ACGIH threshold limit value for MC, because they felt that a 25 ppm PEL would be either too costly to implement or the technology to achieve such a level of control was not available [Exs. 19–2, 19–3, 19–12, 19–14, 19–15, 19–29, 19–31, 19–35, 19–37, 19–39, 19–48, 19–50, 19–56, 19–57]. For example, Abbott Laboratories [Ex. 19–29] commented that specific processes in the pharmaceutical industry "cannot be controlled through existing conventional engineering controls." Also, AMETEK [Ex. 19–12] stated that "It will be hard for many industries to reach the 50 ppm level and extremely difficult, if not, impossible, for most to reach the 25 ppm level." Therefore, this commenter proposed "that OSHA set the PEL for methylene chloride at 50 ppm (8-hour TWA) with no AL [action level] and leave the STEL at 125 ppm (15-minute average) as originally written." AMETEK contended that this approach "combines aspects of both ACGIH guidelines and OSHA's proposed standard into a regulation which would be both protective of worker health and economically feasible for industry" [Ex 19–12].

Many other commenters argued for a PEL of at least 100 ppm [Exs. 19–1, 19–4, 19–10, 19–11, 19–16, 19–24, 19–47, 19–51, 19–52, 19–53, 19–54, 19–67, 19–75, 19–79, 98, 115–3, Tr. 397, 9/17/92, Tr. 2216, 10/14/92, Tr. 2627, 10/16/92, Tr. 2671, 10/16/92, Tr. 2702, 10/16/92]. For example, Besway Systems, Inc., testified [Tr. 397, 9/17/92]: "We would like to see a PEL for these companies of 200 ppm, which we've been able to show is safe and economically attainable in our real life experience. We

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believe that the absolute maximum PEL for our industry should be set at 100 ppm eight hour time weighted average. . . ." Also, Benco Sales [Tr. 2627, 10/16/92] stated "We feel the American workers would receive more benefit by implementation of an exposure level of 100 parts per million, which is achievable, and the subsequent enforcement of that level." ChemDesign Corporation [Ex. 19–24] believes that the "sharp reduction in the exposure limit is unjustified based on lack of credible data that this chemical has the potential to cause cancer in humans." This commenter therefore suggested that the PEL be "lowered by a factor of five to 100 parts per million" [Ex. 19–24].

Other commenters supported a variety of PEL values. One suggested that a lower PEL be phased in over time, with 75 ppm for two years, then 50 ppm for two years, and finally 30 ppm [Ex. 19–20]. The reasoning behind this suggestion was that, during this period, alternative options to best fit specific operations could be evaluated and implemented and sufficient time provided to gather the funds necessary to implement the entire system [Ex. 19–20]. OSHA holds, however, that the types of engineering controls required under this standard are relatively simple and that engineering to 75 ppm, then 50 ppm, then 30 ppm is likely to be more costly in time and money than engineering to or below 25 ppm initially. The suggested phase-in would also be administratively burdensome for employers, who would be subject to changing OSHA requirements over the years, with no clear advantage in reducing the costs of compliance. In addition, if OSHA allowed such a phase-in period, workers would be exposed to MC at higher levels than would occur if OSHA required no phase-in period. Therefore, the Agency sees no advantage to using the phased-in approach described. Moreover, the Agency notes that the time-frames for compliance with the provisions of the standard, including implementation of engineering controls, have been tailored to the size of the establishments, in order to give all employers a reasonable amount of time to gather resources and information necessary to comply with this regulation. See the discussion of start-up dates later in this document.

Smith Fiberglass Products, Inc. suggested that the PEL should remain at 500 ppm because there is no evidence of human harm at the present PEL and STEL, since "studies with rats and mice show that only a serious overdose far above the present STEL can cause carcinogenic effects" [Ex. 19–82]. Another commenter [Ex. 19–86] stated that "The present PEL of 500 parts per million (ppm) is not protective enough of employees based on toxicological data developed since the PEL was established." This commenter therefore suggested that the PEL should be lower than 500 ppm but higher than 25 ppm (no specific value identified). As discussed above, however, OSHA has determined that exposure to MC above 25 ppm poses significant cancer risks and that it is feasible to protect affected employees from those risks (see the Significance of Risk section of the preamble).

A number of commenters addressed the availability of suitable substitutes for MC in their concerns about feasibility [see, e.g., Exs. 19–6, 19–8, 19–37, 19–43, 19–55, 19–74, 19–79, 19–84, 115–3; Tr. 433, 9/17/92; Tr. 1591, 9/23/92; Tr. 1712–13, 9/24/92; Tr. 2636–38, 10/16/92]. Substitution is often a valid means of controlling exposures to a particular hazardous chemical when a less hazardous substitute is available that can be used to perform a similar function. In particular, some commenters stated that there are no viable substitutes for MC products used to perform particular tasks. These participants argued that companies would go out of business because they would be unable to comply with the final standard in a feasible way [Exs. 19–6 and 19–8]. In addition, one commenter [Ex. 19–8] expressed concern that substitute products would pose fire hazards. The National Tank Truck Carriers, Inc. testified [Tr. 1712, 9/24/92]:

> One company which discontinued the use of methylene chloride found it necessary to supplement the methylene chloride substitute with even more hazardous acetone and toluene in order to remove the residues from the trailers and containers and properly service the industry by providing clean trailers.

OSHA has determined that for all application groups, compliance with this regulation can generally be achieved through the use of engineering controls and work practices. The Agency's Final Economic Analysis estimated the cost of compliance assuming that almost all firms would continue using MC and that only a small fraction of firms would substitute away from MC. OSHA agrees that, in an individual establishment, the potential use of substitution as a means of control must be evaluated carefully to ensure that the magnitude of the hazard posed is not the same or increased as a result of the substitution. For some applications described in this regulation, many substitutes for MC are available for specific applications that do not pose increased health or safety hazards. In general, however, OSHA has based it findings of feasibility not on the ability of companies in the affected sectors to substitute away from MC but on their ability to implement conventional engineering and work practice controls.

In addition to the 8-hour TWA PEL, OSHA is promulgating a short-term exposure limit (STEL) of 125 ppm, measured over a 15-minute period, to protect employees from the acute toxicity of MC and its metabolites. The acute toxicity of MC is characterized primarily by CNS effects, such as decreased alertness and coordination, headaches, and dizziness, which may lead, in turn, to accidents on the job as well as material impairment of health. Absence of a STEL would mean that employees could be exposed to up to 800 ppm for 15 minutes. Such levels are clearly associated with central nervous system effects.

MC is also metabolized to carbon monoxide (CO). CO produced from MC exposure has the same toxic effects in the body as direct exposure to CO does. The primary toxic effect of CO is reduction of the ability of the blood to carry oxygen to the tissues of the body.

In the body, carbon monoxide is converted to carboxyhemoglobin. Background levels of carboxyhemoglobin in the non-smoking U.S. population vary from approximately 0.5% to 2.0%. Carboxyhemoglobin in smokers ranges from approximately 3% to 10%. Additional body burden of CO (carboxyhemoglobin) due to MC or direct CO exposure can have adverse health effects on affected individuals. For example, exposure to relatively low levels of carbon monoxide (for example, levels which increase carboxyhemoglobin by 2%) reduced time to angina in patients with pre-existing heart disease exposed to occupational levels of CO [Ex. 21–93]. Exposure of pregnant women to CO has been shown to produce adverse health effects on the developing fetus. Workers with anemia or other blood abnormalities may be at increased risk of material impairment to health because of an already decreased oxygen-carrying capacity.

The carbon monoxide-mediated cardiac effects of MC exposure are of particular concern in the occupational setting because a significant fraction of the U.S. working population (some investigators estimate 30% of the U.S. population) has silent or symptomatic heart disease. NIOSH has expressed concern that the STEL proposed by OSHA is not low enough to protect

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workers from the adverse central nervous system and cardiac effects of MC.

In addition to reducing risks of cardiac and CNS effects, the STEL will also enhance employee protection from MC-induced carcinogenesis by reducing total exposure to MC and by limiting the metabolism of MC by the GST pathway (the putative carcinogenic metabolic process). Metabolic evidence suggests that the GST pathway produces more than proportionately greater quantities of the putative carcinogenic metabolite when MC concentrations reach levels of about 100 ppm. For this reason, it is important to limit high concentration, short duration exposures to MC. Thus the STEL will reduce the exposure-related risks of acute CNS effects, episodes of carboxyhemoglobinemia, and cancer.

Another advantage in requiring a STEL is that it focuses attention on sources of MC exposure in the workplace. General industrial hygiene principles state that a well-controlled process should have peaks no higher than five times the 8-hour TWA. Measurement of STEL exposures can indicate point sources which have unacceptably high MC emissions and help the employer target those processes for abatement. This can be an efficient mechanism to concentrate industrial hygiene resources on those emission sources which, when controlled, will reduce total employee MC exposure.

In addition, it has been established that "[i]f in fact a STEL would further reduce a significant health risk and is feasible to implement, then the OSH Act [section 6(b)(5)] *compels* the agency to adopt it barring alternative avenues to the same result." (emphasis in the original) *Public Citizen Health Research Group* v. *Tyson*, 796 F.2d 1479, 1505 (D.C. Cir. 1986) (Ethylene oxide). See also *Building and Construction Trades Department, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1271 (D.C. Cir. 1988) (Asbestos).

In summary, many commenters questioned the need for a reduced PEL, for a PEL of 25 ppm, and for the particular 8-hour TWA PEL-STEL combination proposed by OSHA, citing concerns about the feasibility of these limits and the ability of companies to identify controls and/or substitutes to comply with them. However, as discussed in the final economic analysis, OSHA has determined that it is both technologically and economically feasible for facilities in all affected sectors to comply with the final rule. In almost every case, companies will be able to use conventional engineering controls and work practices to reduce their employees" exposures to these levels. In addition, many employers will find that substitution is a viable approach to eliminating the significant risk posed to workers by MC. As the economic analysis points out, many firms in many of the covered industries have already substituted away from MC, and have enjoyed considerable cost savings in the process. Finally, it is important not to lose sight of the reasons for regulating MC in the first place: this substance poses a significant risk of cancer, central nervous system and cardiac effects, and sensory irritation to the quarter of a million workers who manufacture, formulate, use, or transport this substance in the workplace.

As the Quantitative Risk Assessment and Significance of Risk sections of the preamble demonstrate, the cancer risk remaining at an 8-hour TWA PEL of 25 ppm is clearly of great concern, in that it exceeds the 1/1000 level indicated by the Supreme Court to be clearly significant. OSHA therefore encourages employers to further reduce the MC exposures of their employees wherever it is feasible to do so. Because the residual risk remaining at 25 ppm is great, the Agency intends to gather data and information on the feasibility of reducing the 8-hour TWA PEL to reduce remaining significant risk in a future rulemaking action. The priority assigned to any future rulemaking activity will depend in large measure on the prevailing exposure levels, feasibility, scientific advances and other information, at the time OSHA considers further proposals; to the extent prevailing levels are significantly below 25 ppm, the need for subsequent proposals will diminish.

Paragraph (d) Exposure Monitoring

Paragraph (d) addresses the employee exposure monitoring requirements for workplaces where employees are exposed to MC. As discussed in the preamble to the proposed rule (57 FR 57118–20), OSHA requires employee monitoring to facilitate compliance with the PELs. As a general matter, exposure monitoring of employee exposure to toxic substances is a well-recognized and accepted risk management tool. The monitoring provisions of this final MC standard are consistent with the monitoring provisions of other OSHA standards. Section 6(b)(7) of the OSH Act, which addresses rulemaking requirements for hazardous chemicals, requires health standards to include provisions for monitoring employee exposures. In the final rule, the exposure monitoring provisions have been reorganized and rewritten to improve their clarity and readability. The substance of the requirements is essentially the same, with the few exceptions noted below.

The provisions of proposed paragraph (d) elicited a considerable amount of comment and testimony. Several rulemaking participants [Ex. 19–57; Tr. 249, 9/17/92; Tr. 458, 9/17/92; Tr. 1711, 9/24/92] stated that the proposed requirements for exposure monitoring would impose excessive economic burdens on some employers (e.g., paint strippers, tank cleaners). However, in the final rule OSHA has structured the exposure monitoring requirements to minimize the burden for employers whose employees have lower exposures and for workplaces where groups of employees have similar exposures. In addition, the Agency has included some alternatives to the initial monitoring provisions that will reduce the amount of monitoring required for some workplaces. Ultimately, however, the Agency has determined that it is essential to the protection of exposed employees that exposure levels be quantified in order to select and implement the proper measures to reduce employee exposures to MC.

The overall rulemaking record supports the need for exposure monitoring to ascertain exposure levels for the purpose of designing appropriate protective measures for employees. In addition, evidence in the record indicates that the exposure monitoring requirements are economically and technologically feasible for firms in all of the affected industry sectors. (See the discussion in the Final Economic Analysis [Ex. 129].)

Paragraph (d)(1) sets forth the general requirements that apply to all monitoring provisions. Paragraph (d)(1)(i) states that employers must characterize the MC exposure of each employee. Employers may chose one of two ways to determine an employee's MC exposure level. First, the employer can take a personal air sample in the breathing zone of each affected employee. This approach is the most precise method of exposure monitoring because it allows each employee's exposure to be individually ascertained. However, OSHA recognizes that this approach may be burdensome for employers with many employees. Therefore, paragraph (d)(1)(ii) permits employers to establish a representative monitoring scheme.

Under this option, a personal breathing zone air sample may be considered representative of another employee's 8-hour TWA or STEL exposure if the following conditions are met. First, the sampled employee must

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be that employee who is likely to have the highest MC exposure among the employees included in the group that is to be represented by the sample. Second, if the employer wishes a sample taken on an employee in a given job on one work shift to represent the exposure of another employee in the same job classification on another shift, the employer must sample at least one employee in each job classification in each work area during every work shift. Paragraph (d)(1)(ii) also contains an exception under which a personal breathing zone sample taken on one employee in one job classification in a given work area and on a particular shift will be considered representative of the exposure of employees on other shifts, where the employer documents that the tasks performed and conditions in the workplace are similar for all employees whose exposures are represented.

The provision for representative sampling, which is very similar to the corresponding provision of the proposed rule, eliminates unnecessary monitoring and thus further improves the cost-effectiveness of the standard. In a change from the proposal, the final standard also allows employers to use representative monitoring to comply with the standard's requirement for initial monitoring. OSHA believes that representative initial monitoring is appropriate in those cases where the employer can accurately determine which employees are likely to have similar exposures.

The accuracy of the methods used to perform exposure monitoring is addressed under paragraph (d)(1)(iii). For monitoring of airborne concentrations above the 8-hour TWA PEL or the STEL, the results must be accurate within plus or minus 25 percent at a confidence level of 95 percent. Where concentrations are above the action level but at or below the PEL, the accuracy must be within plus or minus 35 percent at a confidence level of 95 percent.

Methods of measurement are presently available that can detect MC within these limits. One such method is OSHA method 80, which has a limit of detection of 0.201 ppm. Copies of this method are available from OSHA and can be downloaded from OSHA's World Wide Web site on the Internet at "http.www.osha.gov/." Sampling and analysis may also be performed by portable direct reading instruments, real-time continuous monitoring systems, passive dosimeters or other methods that meet the accuracy and precision requirements of the standard under the particular conditions which exist at the employer's worksite.

Paragraph (d)(2) requires employers to make an initial determination of affected employees' exposure to MC. OSHA anticipates that most employers will need to perform monitoring in order to characterize employee exposure and has framed the rule accordingly. The standard allows employers to characterize their employee exposures using other means, providing that they can meet the requirements for such other means presented in the standard. For example, as discussed above, some employers may have objective data that establishes that employees will not be exposed above the action level or the STEL under reasonably foreseeable circumstances. Some employers generate such data themselves, while others rely on information provided by the manufacturer or supplier. Accordingly, paragraph (d)(2)(i) provides that employers can rely on objective data in certain circumstances in lieu of performing initial monitoring. The objective data must represent the highest MC exposures likely to occur under reasonably foreseeable conditions of proccessing, use, or handling in the workplace, and the employer must document the objective data relied on (see paragraph (m)). This provision corresponds to proposed paragraph (a)(2), which was the subject of several comments [Exs. 19–14. 19–31, 19–57].

Occidental Chemical testtfied [Tr. 2010 and 2023, 10/14/92] that OSHA should expand the proposed objective data exemption so that mixtures with less than one percent MC would be excluded from the scope of the MC standard. The Hazard Communication Standard (HCS) addresses mixture composition for the purpose of identifying those constituents and concentrations that impart their hazardous characteristics to the mixture as a whole. According to the HCS, carcinogenic substances such as MC are considered to impart their carcinogenic characteristics to the mixture if they are present in concentrations of more than one-tenth of one percent or can be released in concentrations that exceed an existing PEL. This is a much more protective requirement than that suggested by Occidental, and the Agency believes it would be inappropriate to lessen the protections provided to employees under the HCS in this substance-specific MC standard. Therefore, OSHA has not made the suggested change.

In addition, OSHA recogn s that it would be unreasonable to re ire initial monitoring under this stand d where employers have already performed the monitoring needed to characterize employee exposure. Paragraph (d)(2)(ii) allows employers who have monitored their employees' exposures to MC within one year prior to April 10, 1997 and that monitoring complies with the accuracy and other requirements for monitoring contained in the final rule, to designate such monitoring results as sufficient in lieu of performing the initial monitoring.

Dow Chemical Co. [Ex. 19–31] commented that OSHA should allow monitoring data collected as much as two years prior to the effective date of the final rule to qualify as initial monitoring data. The Agency believes that data more than a year old would be unlikely to provide a reliable basis for characterizing employee exposure, because workplace conditions may well have changed since such data were collected. Accordingly, the Agency has not made the suggested change.

Addressing this point, Scott Schneider of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE) testified [Tr. 531, 9/18/92] as follows:

> While we support the requirements for exposure monitoring that were proposed, we have reservations about section (d)(2)(ii) regarding the use of "earlier monitoring results" to satisfy the initial monitoring requirements. OSHA must specify exactly which requirements the data must meet, in terms of both quality and quantity. Otherwise, it will be an enormous loophole for companies to avoid monitoring.

The International Brotherhood of Painters & Allied Trades (IBPAT) agreed with Mr. Schneider; the union stated that the use of "historical monitoring data to characterize exposures for similar processes * * * may lead to erroneous estimates of actual exposures" [Ex. 19–23]. OSHA believes that the concerns of these commenters have been addressed in the final rule because, to be acceptable under the standard, any previously gathered exposure data must meet the analytical, sampling, and other requirements specified for initial monitoring.

A number of commenters addressed the application of monitoring requirements in construction [Ex. 19–23; Tr. 544–45, 9/18/92; Tr. 814–17, 9/21/92; and Tr. 1377–80, 9/23/92]. OSHA agrees that conditions on construction sites often present special industrial hygiene and monitoring problems, particularly since the job may be completed before sampling results taken by conventional personal monitoring methods have been returned from the laboratory. For example, IBPAT [Ex. 19–23] pointed to the exposure variability that typifies construction sites, noting that weather, a highly transient workforce, and other factors often

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complicate accurate characterization of construction worker exposures. OSHA's Advisory Committee for Construction Safety and Health (ACCSH) and other participants suggested that OSHA allow the use of direct-reading instruments to address this problem [ACCSH Tr. 100–103, 7/28/92; Workgroup report, pp. 3–4; Tr. 814–818, 9/21/92; Tr. 1377–1382, 9/23/92].

In response to these comments, the final rule has been revised to allow the use of such instruments where employees are exposed to MC on fewer than 30 days within a given year. This means that construction employers who are involved in short-term construction projects will be able to use these instruments to characterize the MC exposures of their employees. Paragraph (d)(2)(iii), which addresses transient workplaces or work operations where employees are exposed on fewer than 30 days a year, permits employers to use direct reading instruments such as detector tubes to estimate exposure and determine what protective measures to provide to their MC-exposed employees. Although these simple measurement tools often do not meet the accuracy requirements that other types of monitoring methods do, they have the advantage of immediate results and thus allow employers to provide protection immediately. OSHA believes that this provision is responsive to the comments discussed above and represents an effective solution to a difficult worker protection problem.

Paragraph (d)(3) addresses periodic monitoring. Table X–1, below, which corresponds to Table 1 of paragraph (d)(3), displays the various monitoring scenarios possible under the final rule's periodic monitoring requirements. When the initial determination shows employee exposures to be at or above the action level or above the STEL, the employer is required to establish a periodic monitoring program. The 8-hour TWA monitoring is to be done every six months if exposures are at or above the action level but at or below the 8-hour TWA PEL and the STEL. The 8-hour TWA or STEL monitoring must be done every three months if the initial determination or subsequent monitoring shows results that are above the 8-hour TWA PEL or the STEL, respectively. If two consecutive subsequent monitoring results taken at least seven days apart show that exposures have decreased to or below the 8-hour TWA PEL, but above the action level, the frequency may be decreased to every six months. Eight-hour TWA monitoring may be terminated when two consecutive monitoring results taken at least seven days apart show that exposures are below the action level. STEL monitoring may be terminated when two consecutive monitoring results taken at least seven days apart show that exposures are at or below the STEL (See note to paragraph (d)(3)).

There are six possible initial determination exposure scenarios, or combinations of 8-hour TWA and short-term exposures, that determine the frequency of required monitoring. Table X–1 below lists these six exposure scenarios, along with their monitoring frequencies. As shown by Table X–1, the action level trigger largely determines whether employers must monitor employee exposure to MC. The only exception is the scenario in which 8-hour TWA exposures are below the action level and short-term exposures are above the STEL. In this case, exceeding the STEL obligates employers to monitor short-term exposures four times per year at those job locations where the STEL was exceeded, but employers are not required to monitor 8-hour TWA exposures at those job locations.

TABLE X–1.—SIX INITIAL DETERMINATION EXPOSURE SCENARIOS AND THEIR ASSOCIATED MONITORING FREQUENCIES

Exposure Scenario	Required Monitoring Activity
Below the action level and at or below the STEL	No 8-hour TWA or STEL monitoring required.
Below the action level and above the STEL	No 8-hour TWA monitoring required; monitor STEL exposures every three months.
At or above the action level, at or below the TWA, and at or below the STEL.	Monitor 8-hour TWA exposures every six months.
At or above the action level, at or below the TWA, and above the STEL	Monitor 8-hour TWA exposures every six months and monitor STEL exposures every three months.
Above the TWA and at or below the STEL	Monitor 8-hour TWA exposures every three months.
Above the TWA and above the STEL	Monitor 8-hour TWA exposures and STEL exposures every three months.

Several commenters stated that the proposal required unnecessarily frequent monitoring [Exs. 19–25, 19–26, 19–28, 19–30, 19–31, and 19–57]. Some commenters [Exs. 19–30, 19–31] said that the frequency of monitoring should be the same as that in the benzene standard (29 CFR 1910.1028 (e)(3)), since frequent monitoring does nothing to reduce or control exposures. The benzene standard requires monitoring at least every six months if employee exposure exceeds the 8-hour TWA, at least every year if exposure is at or above the action level but at or below the 8-hour TWA, and "as necessary" to evaluate short-term exposures. OSHA believes that MC exposure is highly variable due to the substance's volatility (vapor pressure = 350 mmHg at 20 C, compared with a vapor pressure for benzene of 75 mmHg at the same temperature) and the way that it is commonly used (e.g., in manual applications), and that reducing the frequency of exposure monitoring could therefore result in inadequate employee protection. The frequency of monitoring required by this MC standard is similar to that in other OSHA standards such as Ethylene Oxide (29 CFR 1910.1047), and is sufficient to characterize employee exposure and to evaluate the effectiveness of exposure control strategies.

The Advisory Committee on Construction Safety and Health suggested that OSHA trigger exposure monitoring by frequency of use as well as the exposure level. OSHA believes, however, that the magnitude of an employee's exposure is the appropriate determinant of monitoring frequency (and the selection of protective measures based on the results of that monitoring) because it is cumulative MC dose, not frequency of use, that determines the significance of the risk to which employees are exposed. Therefore, the Agency has not made the suggested change.

The Polyurethane Foam Association (PFA) [Ex. 19–39] questioned the necessity of requiring exposure monitoring at the action level. According to the PFA [Ex. 19–39], "An action level of 12.5 ppm would require

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that workers be monitored at a level that has only a remote health risk associated with it. The costs of such monitoring, however, would be significant." OSHA disagrees strongly with the PFA's analysis of the significance of the risk remaining at the action level. As discussed in the Significance of Risk and Economic Analysis sections of this preamble, only feasibility has constrained the Agency from reducing the 8-hour TWA PEL in the final rule to levels below the action level, because even at 10 ppm, the risk remaining is significant. That is, an employee exposed to an MC concentration of 10 ppm as an 8-hour TWA over a working lifetime would still be at significant risk of dying of MC-induced cancer.

Under paragraph (d)(4)(i), employers are required to perform additional monitoring when workplace conditions change or there is an indication that employee exposures may have increased. Paragraph (d)(4)(ii) requires that, where exposure monitoring is performed due to a spill, leak, rupture or equipment breakdown, the employer must clean up the MC and perform repairs and then monitor MC levels. The changes referred to in these provisions would include deliberate changes, such as a process or production change, or unexpected changes, such as a leak, rupture, or other breakdown. In the case of the latter, the employer is to perform the monitoring after taking whatever immediate action is required to clean-up or repair the equipment or source of exposure. OSHA recognizes that such occurrences can result in very high exposures. Several rulemaking participants [Exs. 19–31, 19–57, Tr. 2035, 10/14/92] stated that remonitoring is not necessary after a spill or leak since MC has a high vapor pressure, there would be no visible residual MC and no opportunity for significant exposure. However, OSHA believes that such remonitoring is an appropriate way to ascertain if proper corrective methods have been instituted and if the magnitude of an employee's exposure has changed significantly as a result of the leak or spill.

Employees are to be notified in writing of the results of exposure monitoring under paragraph (d)(5). This is to be done within 15 working days of the time the employer receives the monitoring results, and can be done either individually or by posting. When the results show that the 8-hour TWA PEL or the STEL has been exceeded, the employer must also notify employees of the corrective action being taken, and the schedule for completion of the action. This provision is effectively identical to the corresponding provision of the proposed rule.

One commenter [Ex. 19–49] argued that 15 working days is not enough time to develop corrective actions, especially where engineering controls are involved. OSHA believes that this comment misunderstands the requirement, which merely states that employers are required to "describe the corrective action being taken * * * and the schedule for completion of this action." The Agency believes that 15 working days is adequate time for the employer to make a preliminary assessment that includes the immediate steps being taken to reduce employee exposure, such as utilization of air-supplied respirators, and the employer's plan for implementing permanent controls and/or work practices. This requirement is necessary to assure employees that the employer is making efforts to furnish them with a safe and healthful work environment, in accordance with section 8(c)(3) of the Act. OSHA would expect employers to update the notification when plans for permanent controls are made.

Employees or their designated representatives are provided by paragraph (d)(6) with the opportunity to observe any required monitoring of employee exposure to MC. This provision is required by section 8(c)(3) of the Act (29 U.S.C. 657(c)(3)). It was relocated to paragraph (d)(6) of the final rule from proposed paragraph (l) to consolidate all of the exposure monitoring requirements in one place. The observer, whether an employee or a designated representative, must be provided (at no cost to the observer) with any personal protective clothing or equipment required to be worn by employees working in the area that is being monitored, and must additionally comply with all other applicable safety and health procedures. These provisions of the final rule are identical to those of the proposed rule.

As noted above, OSHA received a number of comments on the monitoring provisions proposed in the NPRM. For example, Occidental Chemical Corporation requested that OSHA consider using what they termed "exposure assessment" rather than monitoring, testifying [Tr. 2012–2013, 10/14/92] as follows:

> [I]nstead of just looking at monitoring, which is in the middle of the process, exposure assessment looks at a basic * * * characterization: What is the characterization of the work force? What is the characterization of the workplace? What is the characterization of the contaminants in the workplace? All of that is weighed together; it's a collection of information. The next step, then, is to interpret that information and determine what are the actual exposure levels, what category would they fit into * * *. If, at that point, and this is still just a paper exercise based on that information, you * * * conclude that exposures [are] unacceptable * * * you act. You may conclude that you have insufficient data and you'd like to monitor. Or you may conclude the data are acceptable; in this case, you would act and * * * change something and go through the process again. Or, in the case they [employee exposures] are acceptable, * * * you would document that it is acceptable and then reevaluate at some regular frequency, say annually or something like that.

In response to this comment, OSHA notes that nothing in the standard prevents employers from conducting exposure assessments. Indeed, the fact that the final standard allows employers to use objective data and recent (within the past year) exposure data are both examples of the kinds of evaluation made by industrial hygienists performing exposure assessments. An employer unable to avail himself or herself of the exclusions to initial monitoring offered by the standard would logically move to the next step in the exposure assessment process: the direct monitoring of employees' exposures to MC. Thus the final rule, far from interfering with exposure assessment, actually both reflects this process and encourages employers to engage in such assessments themselves.

Paragraph (e) Regulated Areas

Paragraph (e)(1) requires employers to establish a regulated area wherever an employee's exposure to airborne concentrations of MC exceeds or can be reasonably expected to exceed either the 8-hour TWA PEL or the STEL. This paragraph was changed slightly from the proposal to clarify that OSHA is concerned with employee exposures that can reasonably be anticipated to exceed one of the PELs, rather than excessive exposures that "may" occur. Regulated areas can be either temporary or permanent, depending on the characteristics of a given workplace. Such areas are required by the standard to reduce employee exposures and to alert employees to those areas in the workplace that present the greatest danger of MC overexposures.

Paragraph (e)(2) limits access to regulated areas to authorized persons (a term which is defined in the definitions paragraph (b)). This provision applies when either the TWA PEL or STEL is exceeded or can reasonably be expected to be exceeded. OSHA believes that the establishment of a regulated area will help to ensure that employees are aware of areas in the workplace where MC

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levels are above the 8-hour TWA PEL or STEL. OSHA believes that regulated areas are an effective means of limiting the risks of high exposures to substances suspected of being carcinogenic to humans to as few employees as possible.

Comments from Bristol-Myers Squibb [Ex. 19–14] suggested that OSHA delete the regulated area concept from the standard and replace it with a "regulated job classification" for jobs exceeding the PEL and a "regulated procedure" for procedures exceeding the STEL. This commenter's rationale was that since airborne concentrations are measured by personal monitoring and by job classification, it does not make sense to define an "area" of exposure. OSHA does not agree, for a number of reasons. First, in many workplaces, specific areas, such as quality control monitoring stations, mixing tanks, cutoff saw stations, spray booths, etc., are known to be associated with high levels of MC on a routine basis, and demarcating these areas protects employees by making them aware of the potential for these exposures in these locations. Second, it is standard industrial hygiene practice to use area monitoring to identify areas of exceptionally high exposures so that all non-authorized employees can be protected from overexposure. Finally, OSHA does not believe that the approach suggested by Bristol-Myers has the same potential to alert employees to the presence of high airborne concentrations that a demarcated area does, and therefore believes that the suggested change would not provide equivalent protection from overexposure.

The Laborers' Safety and Health Fund of North America [Tr. 1378–79, 9/23/92] testified that, in construction, a regulated area should be established wherever MC is used. Although there are many uses of MC on construction sites that may warrant establishing regulated areas, there are also engineering controls available (for example, portable ventilation) which may reduce employee exposures so that a regulated area would be unneccessary. OSHA believes that employers should not be required to establish regulated areas unless potential exposure levels warrant them. The Agency also believes that the employer is in the best position to determine whether the exposures from a particular MC application will warrant establishing regulated areas at a particular work site. The Advisory Committee on Construction Safety and Health also suggested that the establishment of regulated areas could replace some of the standard's monitoring requirements [Ex. 21–69]. As discussed previously, however, OSHA believes that both employers and employees benefit from knowing what exposures to MC are in a given workplace or on a specific job assignment. OSHA has therefore not revised the final rule's requirement for regulated areas in locations where exposures exceed or can reasonably be expected to exceed either or both of the PELs.

The proposal would have required that employers supply employees entering regulated areas with appropriate respiratory protection and ensure its use in such areas at all times. Several commenters [Exs. 19–25, 19–31 and 19–49] argued that respirator use in such areas should be required only if occupational exposures in such areas either exceeded the 8-hour TWA PEL or the STEL or could reasonably be expected to exceed one or both of these limits. OSHA agrees with these commenters and has revised the final rule accordingly. Paragraph (e)(3) states that employers must supply a respirator to each person who enters a regulated area, but shall require each affected employee to use that respirator only if MC exposures are likely to exceed the 8- hour TWA PEL or STEL. Thus, not all workers in regulated areas will be required to wear respirators in regulated areas at all times.

For example, under the final rule, an employer would be required to demarcate the area around a cutoff saw operator's work station in a foam blowing plant as a regulated area and to train the operator to recognize the area as regulated; however, the operator would only be required to wear a respirator in the area at times when the foam "bun" was coming out of the tunnel for cutting. The employer would demarcate the area because he or she recognizes, based on monitoring results for the cutoff saw operator, that this work station is one where the 8-hour TWA PEL is regularly exceeded during foam blowing operations. Because of the intermittent nature of many foam blowing operations, however, respirators would need to be worn by the operator (or other workers assisting the operator) only when foam was actually being blown. This example assumes that foam blowing operations are intermittent and that exposures at the cutoff saw would exceed the PELs only during foam blowing, although this may not be the case in all plants or at all times. In facilities where foam is blown continually and the saw operator is stationed at the end of the tunnel over the full shift, respiratory protection would likely be required to be worn in the regulated area at all times because exposures would routinely exceed the PEL in that area.

Under paragraph (e)(4), which has been added to the final rule, the employer shall ensure that, within a regulated area, employees do not engage in non-work activities which may increase dermal or oral MC exposure. This provision indicates that such non-work activities as eating, drinking, smoking, taking medication, applying lotions or cosmetics or storing such products in regulated areas are prohibited. Proposed paragraph (e)(4) has been promulgated as final rule paragraph (e)(6), as discussed below.

In addition, under paragraph (e)(5), which has been added to the final rule, the employer shall ensure that employees who are wearing respirators do not engage in activities (such as taking medication or chewing gum or tobacco) which interfere with respirator seal or performance. Proposed paragraph (e)(5) has been promulgated as final rule paragraph (e)(7), as discussed below.

Final rule paragraphs (e)(4) and (e)(5) are based on the response to NPRM Issue 41 (56 FR 57043) which indicated that OSHA was considering a provision to prohibit activities such as eating, drinking, smoking, etc. in regulated areas and asked for comments on this subject. This prohibition was supported by some rulemaking participants [Ex. 19–36, Tr. 1379, 9/23/92]. OSHA notes that it is standard industrial hygiene practice to limit such activities in regulated areas, both because employees should be aware at all times that they are working in a high- exposure area and because of health concerns. Among other things, since respirators are generally (although not always) required to be worn in regulated areas, engaging in the prohibited activities while wearing respirators might interfere with the respirator seal, placement or performance, thus reducing the effectiveness of the respirator. Furthermore, in the case of MC, smoking while being exposed to high MC concentrations (such as those prevailing in regulated areas) is particularly hazardous because MC is metabolized to CO in the body and leads to carboxyhemoglobinemia, a potentially life-threatening condition for some individuals, e.g., those with silent or symptomatic heart disease. Other OSHA health standards (e.g., asbestos, cadmium, ethylene oxide) have included similar prohibitions, and OSHA has concluded, based on the reasons discussed above and the Agency's experience with other standards, that including these

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provisions in the final MC standard is appropriate.

OSHA has broadened the language and separated it into two provisions (paragraphs (e)(4) and (e)(5)) to differentiate the types of activities which would generally not be allowed in a regulated area and those which would interfere with the effective use of respiratory protection. This is consistent with OSHA's intent in this rule to allow establishment of regulated areas, but require respirator use only when the 8-hour TWA PEL or STEL is likely to be exceeded.

Paragraph (e)(6), which is essentially unchanged from the proposed provision, requires employers to demarcate their regulated areas, but it does not specify how this is to be done as long as employees are aware of the location of the area and access to it is thus minimized. Factors that the Agency believes are appropriate for employers to consider in determining how to demarcate their areas include the configuration of the area, whether the regulated area is permanent, the airborne MC concentration present in the area, the number of employees in adjacent areas, and the period of time the area is expected to have exposure levels above the PEL or STEL. Permitting employers to choose how to identify and limit access to regulated areas is consistent with OSHA's belief that employers are in the best position to make such determinations, based on the specific conditions of their workplaces. This performance-oriented approach gives employers compliance flexibility without compromising employee health.

Paragraph (e)(7), proposed as paragraph (e)(5), requires employers at multi-employer worksites who establish a regulated area to communicate information to other potentially affected employers at the worksite about the location and access restrictions pertaining to the regulated area. OSHA believes that such communication will reduce the likelihood that unauthorized persons will enter the area or that workers not involved in MC-related operations will be exposed inadvertently. Those employers whose employees are exposed to MC at concentrations above either or both of the PELs must coordinate their operations with other employers whose employees could suffer excessive exposure because of their proximity to a regulated area where MC is being used. Compliance with this provision will ensure that only those employees at multi-employer worksites who are properly authorized, trained, and equipped enter regulated areas. This provision also recognizes OSHA's awareness that, although multi-employer worksites are common in construction, they are also increasingly found in other industry sectors.

Paragraph (f) Methods of Compliance

Paragraph (f) addresses the means by which employers are to reduce employee exposures to or below the 8-hour time-weighted average (TWA) PEL or the STEL. Under paragraph (f)(1), employers are required to institute and maintain the effectiveness of engineering controls and work practices to reduce employee exposure to or below the PEL and STEL, except to the extent the employer can demonstrate such controls are not feasible. Where these measures cannot reduce the concentration of airborne MC to or below the TWA PEL and STEL, the employer is nevertheless required to implement them to achieve the lowest feasible level. The employer is required to supplement these controls with respirators where necessary to ensure that employees are not exposed to MC at levels above either the 8-hour TWA PEL or the 15-minute STEL. Section 1910.134(a)(1) of the respiratory protection standard requires respirators to be used where effective engineering controls are not feasible.

One commenter [Ex. 19–57] indicated that it should be left to professional judgment to determine whether engineering controls or respirators are the best method for protecting employees. OSHA does not agree with this comment because it fails to acknowledge the industrial hygiene hierarchy of controls, which places engineering controls ahead of administrative or personal protective equipment as methods of protecting employees from hazardous exposures. The hierarchy of controls has been established industrial hygiene practice since the 1950s and is based on the fact that engineering controls are the most effective method of protecting employees because they remove the hazard from the workplace. In contrast, respirators merely prevent employees from breathing the contaminant—it remains in the workplace air. Effective respirator use also requires constant supervision, extensive employee training and fit testing, and regular (often daily) care and maintenance of the respirator. Consequently, respirators should only be used as a means of achieving the PELs where feasible engineering controls are not available (such as in some vessel cleaning and non-stationary maintenance operations) or are not sufficient to control exposures to required levels. All OSHA substance-specific health standards have recognized and required employers to observe the hierarchy of controls, and OSHA's enforcement experience with these standards has reinforced the importance of this concept to the protection of employee health.

In the Final Economic Analysis, OSHA has described feasible control technologies for each industry affected by the final MC standard. Many employers have already implemented such controls in their workplaces and are currently achieving the MC levels required by the final rule. Examples of such feasible control strategies include dilution and local exhaust ventilation, chilling coils, magnetic pumps and magnetic floating gauges, exhausted lances for drum filling, and inline quality control sampling equipment.

OSHA acknowledges that there may be a few operations where the use of engineering and work practice controls to control exposure to MC is infeasible because exposures are highly intermittent in nature and limited in duration. In particular, OSHA is aware that the use of engineering and work practice controls to comply with the PELs is infeasible for some maintenance and repair operations and during emergency situations. Where it is infeasible to reduce workplace MC levels below the PELs through engineering and work practice controls, the employer is required to protect employees from excess exposure by providing and requiring the proper use of personal protective equipment, in this case supplied-air respirators.

As discussed in the NPRM (56 FR 57120–21), OSHA asked for comments on whether employers should be allowed to place increased reliance on the use of respirators to protect employees exposed to MC. The International Brotherhood of Painters and Allied Trades [Ex. 19–23] commented that "[w]ith the exception of emergencies that require use of a SCBA respirator, engineering and work practice controls should be the sole method of compliance."

In addition, the IUE [Tr. 530, 9/18/92] testified as follows:

> [R]equirements to control those exposures using engineering controls are particularly important because of the lack of adequate chemical cartridge respirators for methylene chloride. For that reason, we reject the question posed by OSHA regarding the provisions to allow greater use of respirators which came from earlier proceedings on revisions to 1910.1000.

Also, NIOSH [Tr. 884, 9/21/92] testified as follows:

> NIOSH supports the existing OSHA policy on methods of compliance, that is the

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hierarchy of controls for controlling exposures to hazardous agents. Generally, this policy states that whenever feasible, engineering controls and work practices should be used to prevent exposures, and that personal protective equipment, including respiratory protection, should be used only when engineering controls are not feasible.

As discussed above, OSHA agrees with these comments. The Agency considers the use of respirators to be the least satisfactory approach to exposure control because respirators provide adequate protection only if employers ensure, on a constant basis, that they are properly fitted and worn. Also, unlike engineering and work practice controls, respirators protect only the employees who are wearing them from a hazard, rather than reducing or eliminating the hazard from the workplace as a whole. Moreover, respirators are uncomfortable to wear, cumbersome to use, and interfere with communication in the workplace, which can often be critical to maintaining safety and health. As mentioned above, OSHA has reached similar conclusions for other standards promulgated to protect employees from exposure to toxic substances. Paragraph (g) of the final standard discusses respiratory protection requirements.

The NPRM also proposed requirements for a written compliance program that would have required employers to detail their plans for implementing engineering and other controls. However, OSHA has decided to eliminate these provisions from the final rule for MC to reduce the amount of paperwork employers would be required to complete. The Paperwork Reduction Act of 1995 (PRA 95), (44 U.S.C. 3501 *et seq.*), requires agencies to minimize the paperwork burdens on the public. Preparation of written compliance plans would be classified as paperwork under the new Act. OSHA believes that the lack of a written compliance plan will not substantially reduce the effectiveness of the standard; the Agency solicits comment on this point. One of the primary benefits of a written plan is that it encourages employers to consider remedial actions soon after the standard is promulgated. For MC, however, this may not be an issue because the necessary control measures are not complex and, except for the very smallest employers, the period for compliance allowed by the standard is relatively short. Nevertheless, OSHA believes that many employers will voluntarily develop these plans because they make it easier for employers and employees to monitor progress toward compliance. OSHA will be considering including compliance plans in its standards on a case-by-case basis in future rulemakings when they are appropriate. The Agency believes that employers benefit from having a plan to meet the start-up dates, and has included examples of how this might be done in Appendix B. There were very few comments about the written compliance plan requirements, other than one stating that a written plan is reasonable but annual review and update of it is not [Ex. 19–26].

Paragraph (f)(2), proposed as paragraph (f)(1)(iv), precludes use of a schedule of employee rotation as a means of compliance with the PELs. Employee rotation reduces the extent of exposure to individual employees, but increases the number of employees exposed. OSHA is regulating MC as an occupational carcinogen, and the Agency therefore prohibits practices that would place more employees at risk. No threshold has been demonstrated for the carcinogenic action of MC, and it is therefore prudent public health policy to limit the number of workers exposed. In addition, since the dose-response relationship for MC is convex, exposure to higher concentrations for shorter periods of time is riskier than exposure to the equivalent ppm-hour concentration spread over 8 hours (when rotation is used as a method of employee exposure control, employees tend to be exposed to higher concentrations for shorter durations).

Paragraph (f)(3) requires employers to address leak and spill detection in the workplace. Employers must implement procedures to detect leaks and contain spills as well as follow appropriate methods to dispose of contaminated materials and clean-up or repair the spill or leak. These requirements were addressed in proposed paragraph (f)(1)(iii), but in the final rule have been separated out and clarified to emphasize their importance. Appendix A provides examples of procedures that would meet these requirements. Liquid MC has a high vapor pressure (350 mm Hg at 20 C). Accordingly, leaks and spills of MC-containing products could generate high airborne MC levels. The leak and spill detection program reduces the possibility of worker overexposure to MC.

Bristol-Myers Squibb (BMS) [Ex. 19–14] and Dow [Ex. 19–31] supported OSHA's performance-oriented requirement for a program to detect leaks and spills. For example, BMS stated:

> [T]here are many ways in which this can be done (e.g. monitoring of tank levels, walks through areas where leaks may occur). In some cases, continuous monitoring can be done to detect leaks, however, this is not always feasible. Monitoring equipment may be very difficult and expensive to maintain and may not provide the sensitivity needed for early detection. We recommend that OSHA leave this section as it is and not specify the system or the equipment which should be used for the detection program.

Proposed paragraph (h) required employers to develop emergency plans, implement those plans when necessary, equip employees correcting emergency situations with appropriate PPE, and alert and evacuate employees potentially affected by emergencies, as necessary. In reviewing the proposed rule, OSHA concluded that the proposed requirements duplicated provisions of the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard (Section 1910.120). The Agency has therefore deleted the separate MC requirement for an emergency plan, and has added a note to final rule paragraph (f)(3)(ii) which refers employers to the HAZWOPER standard for the applicable requirements.

Paragraph (g) Respiratory Protection

Paragraph (g) of the final rule addresses requirements for respiratory protection allowed to be used to comply with the MC standard. Paragraph (g)(1) requires that employers provide respirators at no cost to each affected employee, and to ensure that each affected employee uses a respirator under the following conditions:

(1) Whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the 8-hour TWA PEL or the STEL;

(2) During the time interval necessary to install or implement feasible engineering and work practice controls;

(3) In a few work operations, such as some maintenance operations and repair activities, for which the employer demonstrates that engineering and work practice controls are infeasible;

(4) Where feasible engineering and work practice controls are not sufficient to reduce exposures to or below the PELs; or

(5) In emergencies.

These limitations on the required use of respirators are consistent with OSHA's longstanding position on the hierarchy of controls in the workplace, as reflected in the respiratory protection requirements in other OSHA health standards (e.g., asbestos, §1910.1001; ethylene oxide, §1910.1047; benzene, §1910.1028; cadmium, §1910.1027) and with good industrial hygiene practice. They reflect OSHA's determination that respirators are inherently less reliable in providing protection to exposed

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employees than engineering and work practice controls.

However, to reflect the changes made to the final rule's regulated area provision (paragraph (e)(1)), the final rule's respiratory protection requirements differ somewhat from those in proposed paragraph (g). In the NPRM, OSHA proposed to require that employers provide respirators in the following circumstances: (1) During the time interval necessary to install or implement feasible engineering and work practice controls; (2) in work operations, such as maintenance and repair activities, vessel cleaning, or other activities for which engineering and work practice controls are demonstrated to be infeasible, and when exposures are intermittent in nature and limited in duration; (3) in work situations where feasible engineering controls are not yet sufficient to reduce exposure to or below the PELs; and (4) in emergencies. In the final rule, another situation where respirator use is appropriate is acknowledged: whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed either or both of the PELs.

The Building and Construction Trades Department, AFL–CIO, testified [Tr. 816–17, 9/21/92] that proposed paragraph (g)(1)(ii) could be interpreted by construction contractors "as an exemption from the requirement for adopting a control strategy that places engineering and work practice controls above that of the PPE." In response, OSHA has revised final rule paragraph (g)(1)(ii) to clarify OSHA's intent. OSHA recognizes that it may be infeasible to control MC exposure with engineering and work practice controls during certain maintenance and repair operations, although OSHA is also aware that portable local exhaust, "elephant trunks," and other means of providing ventilation to, and removing contaminated air from, process vessels and other difficult-to-reach work spaces are widely used in construction and elsewhere. The Agency also recognizes that there may be other MC-related activities where an employer could establish the infeasibility of controls, particularly where employee exposure is highly intermittent or of short duration. Accordingly, OSHA has revised proposed paragraph (g)(1)(ii) as described above. This change also addresses comments made by the Pharmaceutical Manufacturers Association (PMA) [Ex. 19–25; Tr. 1430, 9/23/92], which stated that it was infeasible for employers to protect employees during manual unloading of batch operated centrifuges and manual loading of dryers from MC exposure with engineering and work practice controls. The PMA suggested that OSHA revise proposed paragraph (g)(1)(ii) to include those loading and unloading activities in the list of operations allowed to protect affected employees through the use of air-supplied respirators. However, OSHA included examples in the proposal only to provide a general indication of the situations where the Agency would accept the use of air-supplied respirators in lieu of engineering and work practice controls. OSHA believes that the examples suggested by the PMA are too narrowly focused for inclusion in such a list. It would not be possible for OSHA to enumerate in the final rule all of the workplace-specific operations where engineering and work practice controls may be infeasible. Therefore, in accordance with longstanding OSHA practice, employers claiming that engineering and work practice controls are infeasible must establish infeasibility on an objective basis.

Other commenters were concerned about requiring respirators during emergency escape situations, noting the time involved in donning a respirator in an emergency. The Dow Chemical Company stated "Dow believes the respiratory protection requirements for emergency escape are excessive. For the short period of time it takes to escape a release of MC, considering the minor acute effects of the material, it is excessive to require, as a minimum, a gas mask with an organic vapor canister" [Ex. 19–86].

Similarly, comparing escaping right away or first finding a respirator and then escaping during an emergency situation, Occidental Chemical testified [Tr. 2041, 10/14/92]:

> Methylene chloride is not incapacitating so the goal should be to escape as fast as possible not trying to find a device—and it may be close, it may be further—and then put it on, which could take a minute or so, 30 seconds or a minute, and then decide about escape. That whole process becomes much longer. So I'm not advocating we don't have escape respirators, just that the process should be, escape should be the number one priority.

OSHA agrees that escape is the first priority for employees exposed to MC in an emergency situation. Furthermore, the Agency has determined, in general, that the ready availability of escape respirators is essential to ensure that employees are able to escape safely. To that end, emergency plans must provide for fast access to escape respirators where the potential for emergency exposure situations has been identified by the employer. In addition, employees must be trained to don those respirators properly and quickly and to recognize any foreseeable situations where taking the time to obtain and put on their respirators would significantly reduce their ability to escape or where they can safely escape an emergency situation without using respirators. OSHA recognizes that immediate escape is not always possible, so respirators are needed to protect those employees while they are still in the exposure area.

Paragraph (g)(2), proposed as paragraph (i)(1)(ii), requires employers to determine that any employee required by this standard to wear a supplied-air respirator in the negative pressure mode or a negative-pressure respirator for escape purposes is medically fit to use such a respirator. This provision has been changed from the proposal to recognize that medical fitness for respirator users under this standard is appropriate only for negative-pressure respirators or those operated in that mode. This change will assist employers to direct their medical surveillance resources effectively. In addition, in keeping with the greater flexibility provided by this standard to employers in selecting an appropriate health care professional, paragraph (g)(2) uses the final rule's language, "Physician or other licensed health care professional," in lieu of the proposal's exclusive use of "physician."

Paragraph (g)(3), proposed as paragraph (g)(2), requires employers to select appropriate atmosphere-supplying respirators from among those listed in Table 2 (Table 1 in the proposed rule), which sets forth the minimum requirements for respiratory protection and is unchanged from the proposal. Employers may use respirators approved for a higher level of protection in lower concentrations of MC. Employers are required to select atmosphere-supplying respirators that have been approved by NIOSH under the provisions of 42 CFR Part 84. Also, employers must select vapor canisters which have been approved by NIOSH when they provide gas masks with organic vapor canisters for use in emergency escape. The final rule differs from proposed paragraph (g)(2) in that it does not require employers to give employees who cannot wear negative pressure air-supplied respirators or who cannot wear a negative pressure (organic vapor canister) during an emergency escape the option of wearing a respirator with less breathing resistance. OSHA believes that the respirators required by the final rule will not strain an employee's respiratory system during such use.

Issue 30 (56 FR 57042) asked if the proposed respirator selection table

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(Table 1 in the proposal) appropriately regulated the choice of respirators. Several commenters suggested changes. For example, Abbott Laboratories [Ex. 19–29] suggested that OSHA allow the use of a continuous flow air-supplied hood or helmet for exposures up to 5,000 ppm instead of 625 ppm of MC. On the other hand, the Laborers' Health & Safety Fund of North America [Ex. 19–36] suggested that OSHA require employers to provide positive pressure SCBAs or airline positive- pressure full facepieces with auxiliary escape for all exposures over 25 ppm, instead of allowing any flexibility, in keeping with NIOSH recommendations for respiratory protection against carcinogens. The Advisory Committee on Construction Safety and Health [Ex. 21–69] recommended that respirators, when used, be pressure-demand, supplied air respirators with an auxiliary self-contained breathing apparatus, because of MC's fast cartridge/canister breakthrough and the lack of effective end-of-service-life indicators.

OSHA is currently in the process of developing a final standard to revise its general respiratory protection provisions in 29 CFR 1910.134. Until that rulemaking is completed the Agency will continue to rely on NIOSH's Assigned Protection Factors (APF) for determining the types of respirators required for protection to airborne concentrations of MC. The APF for continuous flow hoods/helmets is 25 in the NIOSH Respirator Decision Logic. The maximum specified use concentration for a respirator is generally determined by multiplying the exposure limit, in this case 25 ppm, by the protection factor, which is 25; therefore, these hood/helmets could be used only up to 625 ppm of MC. Using the same decision logic, OSHA believes that adequate protection can be provided by the respirators described in Table 2 when they are used under appropriate exposure conditions.

Some commenters questioned the reliability of atmosphere-supplying respirators. For example, in the furniture stripping industry commenters noted that MC could cause damage or potential damage to the hoses, the plastic lens, and the gasket of the facepiece of air line respirators or other kind of respirators, resulting in inadequate protection. [Ex. 19–11; Tr. 348–9, 9/17/92; Tr. 2146–7, 10/14/92; Tr. 2505–2506, 10/15/92]. In addition, the Occidental Chemical Corporation [Tr. 2115, 10/14/92] noted that none of the manufacturers contacted had hoses resistant to MC-induced corrosion. The Agency acknowledges that MC may damage respirator components, if the MC is left on them for extended periods of time. However, existing §1910.134 (f) already requires employers to inspect respirators frequently and to maintain respirators at their original effectiveness. In addition, MC does not damage rubber components which are available. Most importantly, if feasible engineering controls and work practices are not available, properly utilized air-supplied respirators are the only way to protect employee health from significant risk.

Issue 30 also requested information on the circumstances under which air-purifying respirators may be used. Dr. Morton Corn of Johns Hopkins University testified [Tr. 2352, 10/15/92] that "* * * with the current state of knowledge and the breakthroughs I indicated, [allowing gas masks with organic canisters for emergency escape only] is a prudent restriction at this time."

Several commenters disagreed with Dr. Corn and remarked that there are some situations where air-purifying respirators may be appropriate in addition to emergency situations, and recommended that OSHA expand the provision to allow the use of air-purifying (filter) respirators. For example, Occidental Chemical testified [Tr. 2113–4, 10/14/92] as follows:

> Transportation workers who make deliveries in trucks can have intermittent exposure to methylene chloride inside the truck and, if you set the PEL too low, and in that emergency situation * * * you can't have engineering controls on some types of trucks, especially if they are rented. You ought to allow the use of respirators in that case; it's a very short type exposure, goes in, takes the drum out, and then gets back in the truck. Now it may be possible to schedule operations in certain industries where the PEL is exceeded for short periods of time. Filter cartridge respirators could be used to protect the worker during the short periods of time without the use of cumbersome supplied-air respirators. Of course, you have to have changes in the regulated areas in the rules also if you're going to allow the use of respirators where you have intermittent exposures above the PEL.
>
> And a short breakthrough time does not mean a respirator is useless. If you use the NIOSH calculations, at 200 parts per million which might be typical of paint stripping, you ought to have about 118 minutes worth of time before you get breakthrough; and that may be enough in paint stripping operations.

Similarly, Bristol-Myers Squibb stated that air-purifying respirators may be appropriate in certain circumstances [Ex. 19–14]:

> Based upon the scientific information now in the record, BMS requested that OSHA consider allowing chemical cartridge air-purifying respirators for specific types of activities (lower MC concentrations, shorter durations).
>
> Organic vapor cartridges can be used for protecting employees against exposures to MC where using an air-supplied respirator would not be feasible due to costs or process (e.g. multiple working areas). Only air-supplied respirators should be used for operations involving the need for extended wear (e.g. greater than several hours).

The Eastman Kodak Company [Ex. 102] also requested that OSHA allow air-purifying respirators "in circumstances where their effectiveness can be adequately demonstrated, engineering controls are not feasible and supplied-air respirators are impractical or potentially unsafe. OSHA also should permit the use of half mask respirators" [Tr. 1196–7, 9/22/92]. In addition, Kodak described specific situations where it believed the use of air-purifying respirators was appropriate:

> The use of air-supplied respirators must be an essential component of the exposure-control strategies for both the Roll Coating Division and the Dope Department. Moreover, the evidence demonstrates that air-purifying canister or cartridge-type respirators may appropriately be used in some operations, such as certain dope maintenance tasks. The use of air-purifying respirators is appropriate where: (1) air-supplied respirators or other controls are impractical or potentially unsafe, (2) personal monitoring of employees is conducted regularly, (3) the extremes and conditions of the exposure potential are well characterized, and (4) used cartridges are tested after use to verify the absence of unacceptable breakthrough. It is essential that OSHA permit the use of air-purifying respirators under these circumstances so that Kodak can control employee exposure when engineering and work practice controls and air-supplied respirators are infeasible, ineffective or potentially unsafe.

OSHA considered including a provision in the final rule to allow exceptions for the use of air-purifying respirators in limited circumstances where very tight control of the respirator program is implemented. However, the Agency has rejected this alternative for several reasons. First, the record strongly supports the inadequacy of such respirators for employee protection. Consequently, the use of air-purifying respirators should only be considered when the use of air-supplied respirators presents major disadvantages. Second, a program to use air-purifying respirators would have to be very detailed and be tailored to a specific workplace. It would be difficult, if not impossible, to list all of the relevant factors and criteria for such a program in the regulatory text, which must necessarily be appropriate to apply to many workplaces. (Below, OSHA discusses the Agency's variance procedures, which employers wishing to use air-purifying respirators may use to apply for a variance.)

While there may be circumstances when the use of filter respirators may seem preferable to the use of atmosphere-supplied respirators, OSHA has concluded, as a general matter, that air- purifying respirators do not provide sufficient, consistent, and reliable protection to employees exposed to MC. In support of this conclusion, NIOSH testified as follows [Tr. 887–89, 9/21/92]:

> At the request of OSHA, NIOSH has completed an in-depth study of the breakthrough characteristics of MC for organic vapor respirator cartridges and canisters under a variety of test conditions. This work was undertaken to determine MC breakthrough time for commercially available, organic vapor respirator cartridges and canisters. Several MC challenge concentrations were studied, ranging from 50 ppm to 1,000 ppm. As received cartridges and canisters were tested at equivalent flow rates of 64 Lpm through the respirator and at both 50% and 80% relative humidities (RHs). Breakthrough times were determined for individual cartridges and canisters, as well as stacked cartridges. The results of this study show rapid breakthrough of MC for organic vapor cartridges even for low concentrations of MC (e.g., 5 ppm breakthrough at approximately 30 minutes for 50 ppm challenge concentration and 80% RH). Appendix D is a detailed report of this study. At 125 ppm challenge concentration, 5 ppm breakthrough, and 80% RH, one brand of cartridge showed breakthrough times of approximately 40 minutes. The same brand of chin-style canister, that contains approximately 2 and ½ to 3 times more sorbent than two cartridges (i.e., two cartridges per respirator) showed breakthrough times of approximately 100 minutes when tested at the same conditions. The same brand of front- or back-mounted canister, that contains approximately 10 times more sorbent than two cartridges, showed breakthrough times of approximately 600 minutes. Based on the results of this study, NIOSH supports the OSHA proposal to require the use of air-supplied respirators in lieu of air-purifying respirators. However, because of the potential carcinogenicity of MC, NIOSH continues to recommend only the most protective positive-pressure respirators as noted previously.

The NIOSH study indicated that MC quickly penetrates organic vapor cartridges (in a fraction of a typical work shift), contrary to the assertions of Occidental Chemical and the other commenters mentioned above. Larger canisters, which contain greater amounts of absorbent, last longer, but are still effective for less than a work shift (except for very large canisters). Another problem with organic vapor cartridges and canisters is that MC migrates through the absorbent even when the respirator is not being used. This further decreases the breakthrough time and raises the possibility that the employee will be exposed to significant concentrations of MC. Also, humidity decreases the amount of MC collected by the absorbent.

Another problem with air-purifying respirators in the case of MC is this substance's poor warning properties, which mean that workers will not be able to smell or sense the presence of MC when breakthrough occurs. OSHA believes that employees wearing air-purifying respirators could easily have a false sense of security and be lulled into believing that they were being protected against MC when it could already have broken through the absorbent. Accordingly, OSHA has concluded that it would be inappropriate to allow broad-scale use of air-purifying respirators because of MC's quick breakthrough time and its carcinogenic health effects.

Employers who believe that the use of filter respirators is appropriate for their operations may apply for a permanent variance from the requirements of paragraph (g)(3) of this section, pursuant to the authority granted by § 6(d) of the Occupational Safety and Health Act and the procedures set out in 29 CFR part 1905. In particular, an applicant would need to establish that the use of filter respirators in a specific workplace would provide employee protection equivalent to that which would be provided through compliance with final rule paragraph (g)(3). As discussed below, the respirator program, procedures, and data needed to support the use of such respirators under a variance are extensive.

A successful variance application for an exception that would allow air-purifying respirators would have to address a number of the characteristics that employers such as Eastman-Kodak [Ex. 102] indicate they have undertaken with regard to the use of such equipment. For example, extensive exposure monitoring would have to be done to accurately characterize employee MC exposure levels. Furthermore, the breakthrough time for MC when used in the airborne concentrations expected in the workplace would have to be known, and cartridges would have to be changed before employees are unacceptably exposed. The program would have to be carefully monitored by a trained and experienced individual such as a certified industrial hygienist or the equivalent. Finally, the respirators would have to be appropriately fit tested for each affected employee. For all of the reasons stated above, OSHA has determined that the interests of employee protection will be best served by requiring all employers, except those whose respiratory program, procedures, and exposure data can support a variance request, to provide their employees with the respirators shown in Table 2.

Paragraph (g)(4), which is identical to the proposed (g)(3), requires employers to implement a respiratory protection program in accordance with 29 CFR 1910.134 whenever respirator use is required by this standard. The respiratory protection program must include basic requirements for proper selection, fit, use, training of employees, cleaning, and maintenance of respirators. For employers to ensure that employees use respirators properly, OSHA has found that the employees need to understand the respirator's limits and the hazard against which it is providing protection in order to appreciate why specific requirements must be followed.

Paragraph (g)(5) (effectively identical to proposed paragraph (g)(4)) requires that employers allow employees wearing respirators to leave the regulated area to readjust the respirator facepiece to their faces for proper fit. In addition, employers must permit employees who wear respirators to leave the regulated area to wash their faces as necessary to prevent skin irritation associated with respirator use. These requirements encourage the proper use of respirators by authorizing employees to take specific actions that ensure the effective functioning of respirators and reduce the likelihood that employees will experience adverse side effects from wearing respirators.

Paragraph (g)(6), which is essentially the same as the corresponding proposed paragraph, addresses situations where employers provide gas masks with organic vapor cartridges for purposes of emergency escape. If gas masks are used, the canisters are to be replaced before the gas masks are returned to service. This requirement is necessary because actual MC exposures during emergencies are generally not known, so the expected service life of the canister cannot be determined. In addition, the migration of MC within the canister after emergency exposure further reduces the amount of useful life remaining, posing exposure risks for subsequent users.

Paragraph (g)(7) addresses respirator fit and is essentially identical to the corresponding provision of the proposal. It requires the employer to ensure that each respirator issued is properly fitted and has the least possible facepiece leakage.

Under paragraph (g)(7)(ii), the employer must perform qualitative or quantitative fit testing initially and at

least annually thereafter for each employee wearing a negative pressure respirator, including those employees for whom emergency escape respirators of this type are provided. A note has been added to this provision to indicate clearly that the only supplied-air respirators to which this provision would apply are SCBAs operated in the negative pressure mode and full facepiece supplied-air respirators operated in negative pressure mode. Quantitative fit testing relies on objective data generated by measurements of facepiece seal leakage, in contrast to qualitative fit testing, which is based on subjective observations made by the respirator wearer. Many commenters expressed a preference for quantitative fit testing over qualitative fit testing. For example, Newport News Shipbuilding (NNS) [Ex. 19–37, p. 2] stated: "Quantitative respirator fit testing is the method of choice. At NNS we use quantitative fit testing exclusively, as this method is more definitive than qualitative fit testing and provides a record of the fit test." The Shipbuilders Council of America [Ex. 19–56, p. 11] took the same view.

Several commenters noted the importance of proper selection and fit testing of respirators [Exs. 19–12, p. 3; 19–31, pp. 15–17; 19–71, p. 4]. Dr. David Newcombe of the Department of Environmental and Health Sciences at The Johns Hopkins University testified as follows:

> I think that's [quantitative fit testing] a very important parameter because, first of all, respiratory protection when it's required takes a reasonable amount of time to ensure that the individual is properly fitted so that the mask fits if that's the piece that's going to be used and is protective against the substance that you're protecting against and, in addition, I think it's important to note that some people may have deformities that cause a poor fit and, therefore, don't protect and so I would think that you have to have a careful assessment of the type of respiratory protection you're going to use, its fit in a single individual as well [Tr. 800, 9/18/92].

In most cases, OSHA has determined that positive pressure respirators are the respirators of choice for MC exposure, especially loose-fitting models such as hoods or helmets; for these respirators, fit testing is generally not needed. However, for those situations where negative pressure respirators are used, fit testing is needed. Qualitative or quantitative fit testing allows the employer to test various respirators on the employee until the appropriate fit is identified and selected for the employee.

Paragraph (h) Protective Work Clothing and Equipment

Paragraph (h) requires that, where needed, employers provide and ensure the use of the appropriate protective clothing and equipment. The requirements for protective work clothing and equipment were separated from proposed paragraph (g) (respiratory protection and personal protective equipment) and moved to paragraph (h) to facilitate compliance. Proposed paragraph (g)(6) was effectively identical to this paragraph.

Protective clothing used during exposure to MC, such as gloves or aprons, must be resistant to MC. The Building and Construction Trades Department, AFL–CIO [Tr. 832, 9/21/92] suggested that OSHA codify NIOSH's recommendations for protective clothing materials suitable for use with MC. MC is a constituent of so many different products that a codification of guidance regarding appropriate protective clothing would be unwieldy and unlikely to be complete. Further, the continual formulation and reformulation of MC products virtually ensures the early obsolescence of any protective clothing guidelines.

Therefore, OSHA believes that it is appropriate for paragraph (h) to set general criteria and for the Agency to adopt the NIOSH recommendations in a nonmandatory appendix so employers will have more detailed guidance and so OSHA can update that guidance, without rulemaking, as advances in PPE technology cause existing guidance to become outdated. As discussed above, this performance-oriented approach reflects OSHA's belief that employers are in the best position to select protective measures that are tailored specifically to the needs of their workplaces.

Paragraph (h) requires the employer to provide all necessary protective clothing and equipment at no cost to the employee and to launder, repair, replace and safely dispose of that clothing and equipment. The final rule is performance-oriented so the employer has the flexibility to provide only the protective clothing and equipment necessary to protect employees in each particular work operation from MC exposure. The generic requirements for PPE in the general industry, construction, and shipyard standards also apply to PPE for MC, except where a specific provision of the MC standard applies.

Paragraph (i) Hygiene Facilities

Paragraph (i) of the final rule establishes requirements for hygiene facilities in establishments where it is reasonably foreseeable that an employee's eyes or skin may contact solutions containing 0.1 percent or greater MC. Although such provisions were not part of the proposed rule, OSHA requested comment on the appropriateness of including such requirements in Issue 38 (56 FR 57122). Specifically, the Agency requested comment on the appropriateness of including requirements for quick-drench showers and eye-wash facilities in the final rule. OSHA described quick-drench showers as," * * * showers that could drench an employee with piped-in water applied with force," and eyewash facilities as devices "that could flush the eyes repeatedly with a great amount of water." In response to comments, described below, the Agency has decided that it is not necessary to specify in the final rule when showers and eyewash facilities are required to protect employees from skin or eye contact with MC, because employers are in the best position to determine whether the MC used in their establishments meets the 0.1 percent cutoff specified in this provision and whether contact of the eyes or skin with MC can reasonably be foreseen.

Paragraph (i)(1) requires employers to provide conveniently located washing facilities appropriate to removing MC if it is reasonably foreseeable that the employee's skin may contact a solution containing 0.1 percent or greater MC through splashes or spills. MC can be absorbed into the body through skin contact (percutaneous absorption), which would add to the dose employees receive via inhalation and thus increase the risk of cancer and other adverse health effects. However, MC is not a corrosive chemical, and, if left on the skin for short periods, is not likely to cause long-term or irreversible damage. Therefore, it is important that employers make provisions to remove MC from the skin of employees quickly, although immediate drenching is not usually required. This requirement has been stated in performance-oriented language in the final rule to allow employers to determine what type of washing facilities are needed and at what distance from affected employees. This provision thus recognizes that employers in some facilities, such as furniture stripping shops where a thick MC gel is used that may burn the skin on contact, employers need to position washing facilities in closer proximity to affected employees than is the case where less hazardous solutions of MC are used. OSHA believes that this requirement of the final rule strikes the

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right balance between employee protection and employer flexibility by ensuring that washing facilities for the skin will be available and appropriately placed in workplaces where such contact is likely.

MC splashed into the eyes will cause irritation if the MC is not promptly washed out, and immediate flushing is therefore required. Paragraph (i)(2) requires employers to provide appropriate eyewash facilities within the immediate work area for emergency use if it is reasonably foreseeable that an employee's eyes will contact solutions containing 0.1 percent or greater MC through splashes or spills.

Existing OSHA requirements at § 1910.141 and § 1926.51 establish generic provisions for hygiene facilities but do not focus on MC-specific situations. Existing § 1910.151(c) and § 1926.50 (g) require employers to provide suitable facilities for quick-drenching or flushing of body and eyes within the immediate work area for immediate emergency use, when the body or eyes may be exposed to injurious corrosive materials. However, because MC is not classified as a corrosive material, these existing requirements would not apply. Thus the final rule's performance-oriented requirements will provide guidance to employers about what facilities and access distances are appropriate for conditions in their workplaces. In addition, Appendix A provides examples of both washing facilities and eyewash facilities that would satisfy this requirement.

The response to Issue 38 emphasized the need for eyewash and shower facilities [Exs. 19–37, 19–56; Tr. 2644–2645, 10/16/92; Tr. 1942–1943, 9/24/92]. For example, PRMA testified [Tr. 348, 9/17/92] that MC splashes happen "almost every day" in furniture stripping workplaces.

Commenters also addressed the health effects associated with such accidental exposures. The Amalgamated Clothing and Textile Workers Union testified [Tr. 1825, 9/24/92]:

> I would advocate including it [the provisions for showers and eyewash facilities]. It [methylene chloride] has skin effects. Anyone who's ever stripped paint can tell you about what it's like to get it on their skin or their eyes. So it's very important to be able to irrigate an affected area promptly.

One means to provide protection from prolonged skin or eye exposure to MC from accidents is to specifically require quick-drench showers and eyewashes. The NPRM sought comments on whether or not the final rule should require employers to provide quick-drench showers and eyewash facilities. Many commenters recommended that the final rule contain such provisions [Exs. 19–15; 19–36; Tr. 532, 9/18/92; Tr. 1380, 9/23/92; Tr. 2352–53, 10/15/92]. For example, PRMA [Ex. 19–11] favored a requirement for eyewash/ quick drench facilities, stating as follows:

> An eyewash station is a safety device that should be required in any work environment where there is the possibility of splashing chemicals into ones eyes. Quick drench showers are also a safety device that should be standard equipment in every facility. MC paint removers are one of the few paint removers that are easily rinsed from one's eyes.

The Dow Chemical Company commented [Ex. 19–31]:

> Washing facilities are always a good idea when working with any material, however, it is not always necessary to have quick-drench showers, etc. Incidentally, quick-drench showers do not deliver water "applied with force." They work on a deluge system delivering a large amount of water to wash off the material, not force it off. Installing showers and eyewash fountains in all workplaces may not be economically feasible. There are other systems such as water hoses, portable eye-washes, etc. that work effectively for MC. MC is a material that, in some cases, may be painful if held against the skin for a period of time, but is not eye nor skin nor life threatening. Therefore, an immediate shower is not required.

OSHA agrees that quick drench and eyewash facilities are effective means for treating employees who have been accidentally exposed to MC by spills or splashes. However, the Agency agrees with Dow Chemical that quick drench showers are not the only means to ensure proper first aid treatment for MC exposure due to accidental splashes or spills and believes that other types of washing facilities can also provide effective treatment for accidental exposure.

In some cases, the availability of a hose attached to a potable water supply would enable employers to provide effective first aid treatment. This could be an especially effective means of protection at a construction worksite. Several commenters [Ex. 19–23, 19–38; Tr. 859, 9/21/92] agreed that construction employers should have potable water at the worksite in case of accidental exposure. For example, the Building and Construction Trades Department, AFL–CIO, testified [Tr. 817, 9/21/92]:

> The standard does not address the need for available hygiene facilities. Since methylene chloride can damage the skin and eyes and potable water is often in limited supply on construction sites, the requirement for potable washing areas must be clearly stated in the standard. Potable water supplies should be of sufficient volume to provide at least 15 minutes of continuous flushing.

The Occupational Health Foundation testified that the MC standard should require that hygiene facilities be provided within a reasonable distance at construction worksites [Tr. 858–859, 9/21/92]:

> Unlike in a lot of other work sites where at least there's a sink nearby, in construction you really need to specifically mandate that provision to be sure that there's going to be water anywhere remote, you know, within a reasonable distance to the work site.

Issue 38 also requested information on the extent to which MC-exposed employees are already provided with quick drench showers and eye wash facilities. Several commenters described workplaces that have emergency shower or eyewash facilities in place. The United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) testified [Tr. 1942–1943, 9/24/92] "[t]here are a lot of showers and eye washes in areas where you have open-top chemicals or use of chemicals." In addition, the Occidental Chemical Corporation testified [Tr. 2159, 10/14/92]:

> . . . we conducted a survey of our customers that were not CMA and not NACCD members recently and asked them questions like that. We have some information on that. It doesn't necessarily mean that we hit a large percentage of our methylene chloride customers, though.
>
> . . . we have safety shower[s] and eyewash[es] [in our plants], certainly. We have . . . recommendations on it and we certainly follow the ANSI standards on it.

Newport News Shipbuilding (NNS) and the Shipbuilders Council for America both commented [Exs. 19–37 and 19–56] that "[p]rocedures at NNS now require eyewash units. For the most part we use portable (5 gallon) units. Plumbed combination units would be better." The National Tank Truck Carriers, Inc. also indicated that their facilities are already equipped with emergency showers [Tr. 1750–51, 9/24/92].

With regard to the proximity of employees to emergency showers and eye washes, commenters and testimony indicated that, depending on the work operation, shower facilities have been installed as close as eight feet or as far away as 100 feet. For example, the J. M. Murray Center, testified [Tr. 1047–48, 9/21/92] that they have both eye washes and showers that are ten to twelve feet from the employees.

The Polyurethane Foam Association (PFA) testified [Tr. 1630, 9/23/92] that the proximity of shower facilities and eye washes depends on the plant and

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operation within the plant, stating as follows:

> We've got methylene chloride in bulk storage area and we also use it at the foam machine. The total range from those things that you might be would be anywhere from eight feet to may be 60 feet. And I'm guessing at the 60 feet. That, again, is specific for those plants that I am responsible for. There are 80-some-odd plants out there, and I can't speak for that particular physical setup in each one of those plants.

The PFA further stated in its post hearing comment:

> Eye wash and drench showers are available in the production areas. These are located within 10 to 15 feet of the work stations, such as near bulk storage tanks and the mixing head, where a higher risk of employee exposure exists. Hygiene facilities may be 50 to 75 feet away from other work areas [Ex. L–100A].

The Eastman Kodak Company testified [Tr. 1259, 9/22/92] that emergency eye-wash and quick-drench showers are available in their workplaces, and that such stations are between 50 and 100 feet from all work areas where exposure to chemicals may occur.

Striptech International, which advocated requirements for pressure showers and eyewash facilities where workers are exposed to MC [Ex. 19–15], also testified that hygiene facilities are not readily accessible in the aircraft paint stripping industry [Tr. 1834–35, 9/24/92]:

> I've heard people ask about deluge in eye wash. Does it exist in aircraft maintenance hangars? Yes, it surely does; but you also have to look at where they normally are. They're normally on the walls. When a man or a lady is on top of an aircraft, on the tail of an aircraft, they may be nine stories in the air. If they get methylene chloride in their eyes or really a bad shot of it, they've got to come down nine stories and may be cross a 400 to 600-foot-long hangar to get to it. Deluge showers, yes; all aircraft people have them. Are they readily accessible? No.

It is important for the employer to evaluate the potential hazard posed by the particular use of MC and to provide appropriate washing facilities within a reasonable distance and eyewash facilities within immediate reach. In addition, employers are required to provide employees who are at risk of skin and/or eye contact with MC with appropriate protective clothing and eye protection. Portable eyewash units, which would significantly reduce any delay in irrigating the eyes, are available and can be located within easy access distance of affected employees. As described above, access to washing facilities should be quick, but immediate showering is not generally necessary to address the MC skin hazard. Therefore, an employee stripping an airplane would likely have time to get to the showers located along the walls of the hangar to wash MC from the skin. (Note: Some paint stripping compounds do contain corrosives, and immediate access to quick-drench facilities is essential in such cases.) Based on a review of the rulemaking record, the Agency has determined that performance-oriented provisions for hygiene facilities are reasonably necessary to supplement the other requirements of the final rule and has promulgated paragraph (i) accordingly.

Paragraph (j) Medical Surveillance

Section 6(b)(7) of the OSH Act requires that, where appropriate, occupational health standards shall prescribe the type and frequency of medical exams or other tests to be made available, by the employer or at the employer's cost, to exposed employees in order to determine if the employee's health is being adversely affected by exposure to workplace hazards.

A medical surveillance program that complies with paragraph (j) enables the employer to:

(1) Determine if an employee has an underlying health condition that places the employee at increased risk from the effects of exposure to MC;

(2) detect, insofar as possible, early or mild clinical conditions arising as a result of MC exposure, so that appropriate preventive measures can be taken;

(3) identify any occupational diseases that occur as a result of MC exposure; and

(4) help to evaluate possible trends in the incidence of these diseases.

The most serious health effect that may result from MC exposure is cancer. Although a medical surveillance program cannot detect MC-induced cancer at a preneoplastic stage, OSHA anticipates that, as in the past, methods for early detection and treatments leading to increased survival rates will continue to evolve. Moreover, the cardiovascular disease, central nervous sytem and dermal irritation effects caused by MC exposure can already be detected at early or mild stages by medical surveillance provisions such as a medical history and a medical exam. MC has not been tested adequately for the full range of possible health effects that may result from exposure, so it is also not presently possible to identify all diseases that may be associated with exposure to MC. The specific level of protection afforded the worker by the final standard cannot be predicted with certainty, although the risk of exposure for those effects that have been identified are significant, and the record shows that reducing the exposure of employees will significantly reduce that risk. An important goal of the medical surveillance program is to provide information related to the adequacy of the PELs for MC by documenting the health condition of exposed employees, particularly in the area of carcinogenicity.

Several rulemaking participants [Exs. 19–31, 19–83, Tr. 1802–3, 9/24/92] stated that the proposed medical surveillance provision should be deleted from the final rule because it would not detect employee exposure to harmful levels of MC. In addition participants contended [Ex. 19–83, Tr. 458, 9/17/92] that the medical surveillance provision is too expensive and burdensome. OSHA has determined that the medical surveillance program required by the final rule is reasonably necessary for the protection of workers. In particular, medical surveillance will directly benefit workers with cardiovascular disease, central nervous system effects, and dermal irritation. These conditions can be detected by the medical surveillance program required by this paragraph of the final rule, and the detection of such conditions can, in turn, alert the employer to potential overexposures to MC in the workplace and to the need to limit MC exposures for certain employees with underlying heart disease or other conditions.

In addition, by increasing the performance orientation of the rule, OSHA has minimized the costs of medical surveillance while maintaining its effectiveness. For example, the final rule leaves the content of laboratory surveillance for individual employees to the discretion of the physician or other licensed health care professional. Also, the requirement for a physical examination has been tailored to the age of the employee, so that employees younger than 45 generally receive an exam only every three years, instead of annually. The medical surveillance program also will aid in the evaluation of cancer incidence in the workplace and temporal trends therein.

Paragraph (j)(1) specifies the circumstances under which employers must provide medical surveillance for employees who are or may be exposed to MC. Under paragraph (j)(1)(i), employers must make medical surveillance available to all employees who are exposed to MC at or above the action level for 30 days or more in any year or above either of the PELs for at least 10 days in any year. This provision is effectively identical to the corresponding provision of the

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proposed rule. Also, this requirement is consistent with the approach taken by OSHA in the benzene standard (29 CFR 1910.1028). OSHA recognizes that the health effects associated with MC exposure are, in general, the result of chronic exposures to MC. Accordingly, employees exposed only for a few days in any year will be at relatively low risk of developing MC-induced disease. The exposure duration thresholds in the final rule will thus enable employers to focus valuable medical resources on high-risk employees.

Some commenters were concerned about the use of the PELs and action level as triggers for medical surveillance. The Building and Construction Trades Department, AFL-CIO [Tr. 817, 9/21/92] was concerned that this provision would preclude medical surveillance for some employees with MC exposures that exceeded the PELs on fewer than 10 days in a given year but who might nonetheless be at risk of adverse health effects. OSHA has determined that employees who have been identified by a physician or other licensed health care professional as being at risk for cardiac disease or some other serious MC-related health condition and who are exposed to MC at levels that exceed the PELs on fewer than 10 days in any year should have the option of participating in a medical surveillance program. Accordingly, paragraph (j)(1)(ii) has been added to the final rule. This provision states that medical surveillance must be provided to any employee (1) who is exposed above the 8-hour TWA PEL or STEL for any time period, and (2) who has been identified by a physician or other licensed health care professional as being at risk from cardiac disease or from some other serious MC-related health condition, and (3) who requests inclusion in the medical surveillance program. As noted in the Health Effects section, above, OSHA is concerned that any MC exposure above either of the PELs could exacerbate cardiac problems. This paragraph enables such high-risk employees to participate in a medical surveillance program.

Under paragraph (j)(1)(iii), appropriate surveillance is required to be made available to employees exposed in an emergency regardless of the airborne concentrations of MC normally present in the workplace. Where very large amounts of materials are kept in a sealed system, routine exposure may be very low. However, rupture of the container might result in extremely high MC exposures. Thus, it is appropriate for employers who have identified operations where there is a potential for an emergency involving MC to plan ahead so that emergency medical surveillance would be available if needed. This provision is effectively identical to proposed paragraph (i)(1)(iii).

Proposed paragraph (i)(1)(ii) would have required that the employer have the examining physician or other licensed health care professional determine if affected employees are physically fit to wear respirators. OSHA has placed this requirement with the other respiratory protection provisions in paragraph (g) of this final rule.

Paragraph (j)(2) requires that employers offer examinations without cost to employees, at a reasonable time and place, and without loss of pay. OSHA believes that this provision is necessary to encourage employees to participate in the medical surveillance program. Final rule paragraph (j)(2), which is essentially identical to proposed paragraph (i)(2), is also consistent with other OSHA health standards and with provisions contained in the OSH Act.

Paragraph (j)(3) requires that all medical procedures be performed by or under the supervision of a physician or other licensed health care professional, defined as "an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide some or all of the health care services required by paragraph (j) of the standard." The proposal required that all medical procedures be performed only by or under the supervision of a physician. Only one commenter [Ex. 19–31] specifically supported this provision.

OSHA has long considered the issue of whether and how to identify the particular professionals who are to perform the medical surveillance required by its health standards. The Agency has determined that other professionals who are licensed under state laws to provide medical surveillance services would also be appropriate providers of such services for the purposes of the MC standard. The Agency recognizes that the personnel able to provide the required medical surveillance may vary from state to state, depending on state licensing laws. Under the final rule, an employer has the flexibility to retain the services of a range of qualified licensed health care professionals, thus potentially reducing costs, increasing flexibility, and allowing employers to identify those professionals, who may not necessarily be physicians, with the greatest expertise in diagnosing and treating occupational diseases. In future rulemakings, OSHA may attempt, with the cooperation of interested stakeholders, to specify which licensed health care professionals are the most appropriate to perform each of the diagnostic, therapeutic, medical management and other services required by the Agency's standards.

Paragraph (j)(4) of the final standard addresses when medical examinations and consultations are to be provided.

Initial surveillance. Under paragraph (j)(4)(i), initial medical surveillance must be provided before an employee's initial assignment to work in an area where they would be exposed to MC or by the start-up dates described in paragraph (n)(2)(iii) of the final MC standard, whichever is later. The employer need not repeat equivalent medical surveillance if it has already been provided within the past 12 months. OSHA's requirement for a preplacement examination is intended to determine if an individual is at increased risk of adverse effects from exposure to MC. It also establishes a general baseline for future reference. The provisions of final rule paragraph (j)(4) are effectively identical to those in proposed paragraph (i)(3), except that the proposed rule did not take into account medical surveillance provided prior to the effective date of this section. In the preamble to the NPRM (56 FR 57124), OSHA stated that it was considering a provision that would give employers credit for medical examinations provided within one year of the standard's effective date. The Agency requested comment on the usefulness of such a provision. Commenters [Exs. 19–31, 19–55b, 19–83] supported such a provision. In particular, Dow Chemical [Ex. 19–31] stated "[i]f this is not done this section will be unfair to those employers who have on-going health surveillance programs." OSHA agrees with these commenters and has promulgated the final rule accordingly.

Periodic surveillance. Paragraph (j)(4)(ii) addresses periodic medical surveillance. OSHA proposed to require annual medical surveillance for all affected employees. In the final rule, this has been changed so that the employer is required to update the medical and work history for each affected employee every year but must only provide physical examinations on a schedule that varies with the age of the employee. For affected employees 45 years of age or older, the physical examination must be conducted every year. For employees less than 45 years of age, the examination need only be done every three years.

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OSHA differentiated these groups of employees in an effort to target surveillance resources effectively. The probability of developing heart disease (which can be exacerbated by MC exposure) increases as employees age. Age 45 is a rough approximation of the point at which medical professionals would have heightened concern for cardiac effects. In other words, it is generally more likely that employees 45 years and older would experience the adverse cardiac effects of MC exposure. Three-year intervals between physical examinations for workers younger than 45 seemed the proper interval to balance the conservation of valuable medical resources and the provision of a medical surveillance program that is useful for detecting adverse MC health effects. The annual updates on medical and work history will enable the physician or other licensed health care professional to identify those individuals for whom more frequent examinations would be appropriate.

To a lesser extent, this would be true for the detection of MC-induced cancer as well. Although MC-induced cancer cannot currently be detected at the pre-neoplastic stage, early detection of cancer generally increases the survival rate, so it is important to include employees exposed to MC in a medical surveillance program that may detect tumors. Since any cancers caused by MC are more likely to be found in older employees and employees exposed to MC for longer durations, it is reasonable to concentrate medical surveillance resources on older employees.

The main goal of periodic medical surveillance for workers is to detect adverse health effects at an early, and potentially still reversible, stage. The intervals chosen based on the age of the employee are consistent with this purpose and with other OSHA health standards. The Agency believes that these periodic surveillance requirements strike a proper balance between the need to diagnose health effects, such as cancer, at an early stage, thus increasing the effectiveness of medical intervention, and the expectation that a limited number of cases will be identified through the surveillance program. This approach decreases the cost burden of surveillance by lengthening the period of time between examinations for younger employees who have fewer years of exposure and thus have a lower risk of adverse health effects.

Termination of employment or reassignment. Paragraph (j)(4)(iii) requires the employer to provide medical surveillance when an employee terminates employment or is reassigned to an area where exposure is consistently at or below the action level and the STEL. The termination examination need not be conducted if medical surveillance has been performed within the past six months. This requirement reduces the likelihood that an employee who terminates employment has an active, but undiagnosed, disease related to his or her MC exposure. In the NPRM, OSHA had proposed that the termination examination be performed unless medical surveillance had been conducted on that employee within the past three months. The Motor Vehicle Manufacturers Association [Ex. 19–42] requested that the exam should only be required if the employee has not had a medical exam within six months of termination or reassignment, instead of three months as had been proposed. The MVMA stated that "six months is adequate and consistent with other OSHA health standards (Cadmium, Sec. 1910.1027(l)(8)). We see no contribution to reducing employee risk from examining such employees at an earlier date, especially since the exposure to methylene chloride has been removed." Upon reconsideration of the issue, OSHA has adopted this suggestion in the final rule.

The Agency requested public comment on whether continued annual surveillance should be offered to employees who have left employment, retired, or transferred to other areas within the employer's operations. Such an approach would be consistent with the requirement in the Benzene standard (29 CFR 1910.1028), which makes medical surveillance available to certain employees who have been exposed to benzene during their employment with their current employer. Several commenters [Exs. 19–31, 19–38, 19–42, 19–48, 19–55b, 19–58] stated that there should be no medical surveillance after an employee leaves a job in an exposure area or for employees previously exposed to MC. In particular, Dow Chemical [Ex. 19–31] stated: "[W]e do not believe that the employer should be responsible for continued medical surveillance for employees who leave MC exposure areas * * *. [T]he continued surveillance does nothing more than divert occupational medical resources from more important work." Taking a different view, the IUE [Tr. 533, 9/18/92] testified that formerly exposed retirees should be included in the medical surveillance program. They also stated that retirees, presently employed workers formerly exposed to MC in previous jobs, and workers relocated to nonexposed areas should be included in the medical surveillance program. The ACTWU agreed, testifying [Tr. 1763–1764, 9/24/92] that employees who continue to work for the same employer after their exposure to MC is terminated should be entitled to participate in the medical surveillance program.

OSHA has decided that it would be inappropriate to include retirees and other formerly exposed employees in the medical surveillance program. A major value of medical surveillance is to detect the acute heart disease and CNS effects associated with MC exposure. Workers no longer exposed to MC, or retirees, would be at much less risk of experiencing these effects.

Additional surveillance. Paragraph (j)(4)(iv) requires employers to provide additional surveillance when the physician or other licensed health care professional recommends that it be provided. This may be warranted, for example, for an employee who is under 45 years of age but has a health condition that requires surveillance more frequently than every 3 years. Inclusion of this provision in the final rule will ensure that all employees receive the most appropriate level of surveillance for their particular health situation. The proposed provision was essentially identical.

Paragraph (j)(5) of the final rule, like paragraph (i)(4) of the proposal, establishes the requirements for the content of medical exams. This provision requires a comprehensive medical and work history, a physical examination, laboratory surveillance, and any additional information determined to be necessary by the physician or other licensed health care professional. The language in the proposed rule, which was similar, has been revised for clarity and to provide guidance about what constitutes adequate medical surveillance. For example, the final rule addresses medical and work history in greater detail than the proposal because, in some cases, three years may elapse before a subsequent physical examination is provided. On the other hand, the specific content of the physical examination and laboratory surveillance has been left largely to the discretion of the physician or other licensed health care professional.

Paragraph (j)(5)(i) requires that a comprehensive medical and work history be obtained from each participating employee. This paragraph requires a medical evaluation that includes a comprehensive medical and work history with special emphasis on neurological symptoms, skin conditions, history of hematologic or liver disease,

signs or symptoms suggestive of heart disease (angina, coronary artery disease), risk factors for heart disease, MC exposures, and the work practices and personal protective equipment used to control exposures. OSHA has included an example of a medical and work history format that would satisfy this requirement in non- mandatory Appendix B of the standard. The proposed provision required a comprehensive or interim medical and work history with emphasis on neurological symptoms, mental status, and cardiac health. Final rule paragraph (j)(5)(i) has been revised to indicate clearly what is required.

The medical and work history component of the initial medical evaluation will assist the physician or licensed health care professional in identifying pre-existing conditions that might place the employee at increased risk when exposed to MC. It also establishes a health baseline for future monitoring. The subsequent annual updates will identify changes in neurological symptoms, skin conditions or cardiac health, and, in combination with laboratory analyses and information on exposure history, may provide early warnings of MC toxicity. The information derived from a medical evaluation assists the physician or other licensed health care professional in distinguishing between MC-related effects and those effects that are unrelated to MC exposure. This information is particularly important because the health effects associated with MC exposure are not unique to such exposure. For example, the proposed requirement to assess mental health status has been eliminated from the final rule because no specific correlation has been demonstrated between mental health status and MC exposure.

Paragraph (j)(5)(ii) requires that the extent and nature of the required physical examinations be determined by the physician or licensed health care professional based on the health status of the employee and analysis of the medical and work history for that employee. The standard also requires that the examiner give particular attention to the lungs, cardiovascular system (including blood pressure and pulse), liver, nervous system and skin. Proposed paragraph (i)(4)(ii) specifically would have required that the examination address the lungs, liver, nervous system and breast. OSHA has determined that, in order to indicate clearly that the physician or licensed health care professional should assess the potential cardiac health impacts of MC, the medical exam should give attention to the cardiovascular system, blood pressure and pulse. In addition, the Agency has decided that, because of the skin irritation effects of MC, it is necessary to include evaluation of the skin in the medical exam.

Two hearing participants [Tr. 803, 9/18/92; Tr. 2434–35, 10/15/92] testified that men over 40 years old should be given electrocardiograms (ECGs), which should be repeated every 1 to 3 years. OSHA is not requiring ECGs because there is no evidence in the record that associates specific changes in ECGs with MC exposures. However, the physician or licensed health care professional has the discretion to order an ECG for any employee where it is deemed appropriate.

Proposed paragraph (i)(4)(iv) also required the physician to make a determination of any reproductive difficulties of the employee. Vulcan Chemicals [Ex. 19–48] and Organization Resources Counselors (ORC) [Ex. 19–51] commented that the evidence for a relationship between reproductive effects and MC exposure did not warrant inclusion of such a provision in the final rule. OSHA agrees with these commenters that the evidence associating MC exposure and specific reproductive health effects is sparse. Therefore, the Agency has not included reproductive effects in the list of effects the physician or other licensed health care professional should focus on. However, the Agency will continue to monitor the literature to determine if future evidence indicates that inclusion of this provision is warranted.

Two commenters [Exs. 19–28, 19–42] stated that the breast examination requirement should be eliminated from the final rule because breast exams would be highly unlikely to identify effects related to exposure to MC. In the proposal OSHA placed attention on the breast because of concern raised by the increased number of breast tumors in the rat bioassay. Upon further consideration, OSHA has dropped the requirement for breast exams. The Agency notes that rats are particularly sensitive to mammary tumors and it is unclear that humans have similar risks of developing breast cancer after exposure to MC. The Agency remains concerned about the potential for MC carcinogenicity evidenced by the rat mammary tumors, however, and has relied, in part, on mammary tumor data in identifying MC as a cancer hazard.

In final rule paragraph (j)(5)(iii), laboratory surveillance of employees is to be conducted as the examining physician or licensed health care professional determines to be necessary and appropriate, based on the employee's health status and the medical and work history. This is a more performance-oriented provision than the corresponding provision of the proposed rule. The proposal would have required several specific laboratory tests, while the final rule leaves laboratory test requirements to the discretion of the physician or other licensed health care professional. Non-mandatory Appendix B includes guidance regarding the types of tests that may be appropriate.

Some commenters [Exs. 19–28, 19–42, 19–48, 19–49] stated that COHb levels, which had been included among the tests in the NPRM, are not a good measure of toxic exposure to MC. In particular, the MVMA [Ex. 19–42] stated that it is difficult to determine the COHb level attributable to MC exposure for employees who are smokers or who may have other exposures to CO. Several other participants [Exs. 19–25, 19–57, 19–83 and Tr. 1438, 9/23/92] suggested that COHb testing should be done only after over-exposure to MC, such as after an emergency. The Laborers Health and Safety Fund [Tr. 1386, 9/23/92] testified,

> [W]e're not convinced that that's [COHb monitoring] an appropriate and accurate measure of exposures, given other sources of carbon monoxide on construction sites as well as the issue of smokers versus non-smokers.

However, the Department of the Army [Ex. 19–55b] suggested that COHb levels are a more cost-effective measurement of the oxygen-carrying capacity of blood than a complete blood count. Similarly, the California Department of Health Services [Ex. 19–17] requested that references to COHb testing be moved from the appendix to the regulatory text.

COHb levels greater than 3% can exacerbate angina symptoms, decrease exercise tolerance and increase risks for myocardial infarctions (heart attacks) in susceptible individuals. COHb concentrations can also be used as a rough estimate of worker exposure to MC (taking into consideration smoking behavior, time since exposure, and exposure to other CO sources) to calibrate personal MC monitoring measurements. Before- and after-shift COHb determinations can be useful in correlating recent MC exposures with COHb levels. The Agency is not requiring COHb testing, however, because confounding factors, such as smoking or exposure to a CO source, can reduce the usefulness of the results of the tests and, in addition, COHb does not measure a health effect per se but is instead a surrogate measure of MC exposure. However, COHb testing may

be clinically important in the evaluation of a symptomatic worker and therefore remains an option for the physician or other licensed health care professional to pursue. Exposure monitoring (see paragraph (d) of the final rule) must be performed to quantify an employee's exposure to MC.

In the comments received subsequent to publication of the ANPR for MC [Exs. 10–3, 10–10, 10–28], several industry commenters indicated that urine analysis, liver function tests and chest X-rays are commonly performed as part of the medical surveillance programs of these companies. OSHA believes that annual urine analysis or chest X-ray would not be relevant to detection of MC-related health effects. Liver function tests have also been evaluated for inclusion as a requirement in the medical surveillance provision. As discussed above in the Health Effects section, animal studies and human clinical studies show an association between chronic MC exposure and some changes in liver enzymes, particularly after high exposures or doses of MC for prolonged periods of time. The changes in liver enzyme levels after MC exposure are not consistent in the human clinical studies, however, and in general, changes in liver enzymes are not specific or unique to MC exposure. Therefore, the Agency believes that it should be left to the physician's or other licensed health care professional's discretion to determine if laboratory analysis of liver enzymes is warranted.

Several commenters [Exs. 19–11, 19–26, 19–42, 19–48, 19–55b] agreed that routine use of all of the tests included in the proposal would not be appropriate or necessary for the detection of MC-related health effects. The Agency also sought comments on the inclusion of other medical tests in the final MC rule. Two commenters [Exs. 19–31, 19–48] stated that a complete blood count was not necessary because the results of this test may not correlate with MC overexposure. In particular, the Dow Chemical Co. [Ex. 19–31] commented that a complete blood count is not necessary because blood cell volume and hemoglobin findings would suffice. OSHA has reevaluated the utility of the proposed tests and has decided that leaving laboratory surveillance to the discretion of the physician or licensed health care professional is more cost-effective than the approach taken in the proposal and will not negatively impact worker health.

In paragraph (j)(5)(iv), the final rule requires the medical surveillance program of the employer to include any other information or reports the physician or other licensed health care professional determines are necessary. This is to ensure that a complete medical profile is available to the physician or licensed health care professional to make decisions regarding the employee's health and exposure status. This provision is essentially identical to that proposed.

Paragraph (j)(6) of the final rule describes the required contents of emergency medical surveillance. The proposed rule did not specify what elements should be included in an emergency medical exam. The final rule clarifies that emergency medical surveillance should include any appropriate emergency treatment and decontamination of the exposed employee, a comprehensive physical exam, an updated medical and work history, and laboratory surveillance, if needed.

The Dow Chemical Company [Ex. 19–31] commented that employees exposed to MC during an emergency should not automatically be included in the regular medical surveillance program. Instead, this commenter argued that only those components of a medical examination that are appropriate in a given situation should be conducted. OSHA believes that it is important for an employer to provide medical examinations and appropriate follow-up to employees exposed to MC during an emergency. After considering the issue and comments raised during the rulemaking, the Agency agrees with Dow that employees exposed to MC during an emergency should not necessarily be enrolled in the continuing medical surveillance program provided to employees routinely exposed to MC. To that end, OSHA has added language to the final rule that clearly indicates what emergency medical surveillance is required. OSHA believes that final rule paragraph (j)(6) allows the employer appropriate flexibility, while at the same time ensuring that those employees exposed to MC during an emergency receive appropriate medical surveillance.

Paragraph (j)(7) requires the employer to provide medical surveillance services, in addition to those specified in final rule paragraphs (j)(5) and (j)(6), when the physician or other licensed health care professional determines that they are necessary. Compliance with this requirement will ensure that the information needed to evaluate the effects of MC exposure on employees is available. This provision is essentially the same as proposed paragraph (i)(5).

Paragraph (j)(8) requires that the employer provide the physician or other licensed health care professional with (1) a copy of the standard, including the relevant appendices; (2) a description of the affected employee's past, current, and anticipated future duties as they relate to the employee's MC exposure; (3) a description of former, current or anticipated exposure levels (including the frequency and exposure levels anticipated to be associated with emergencies), as applicable; (4) a description of any PPE that the employee must use or will use, such as respirators; and (5) information from any previous medical examinations that would not otherwise be available to the examining physician or other licensed health care professional. OSHA has determined that the physician or other licensed health care professional needs the above-listed background information in order to place the information derived from medical surveillance in the proper context. For example, a well-documented exposure history assists the physician or other licensed health care professional in determining whether an observed health condition may be related to MC exposure. It also helps this individual to determine if the results of medical surveillance indicate a need to limit an employee's occupational exposure to MC. This paragraph is essentially the same as proposed paragraph (i)(6).

Paragraph (j)(9) of the final rule requires employers to ensure that the examining physician or other licensed health care professional provides the employer and the affected employee with a written opinion that addresses (1) the physician's or other licensed health care professional's opinion as to whether the employee has any detected medical condition that would place the employee at increased risk of material health impairment as a result of exposure to MC; (2) any recommended limitations on the employee's exposure or use of personal protective clothing or equipment and respirators; (3) a statement that the employee has been informed of the potential carcinogenicity of MC, the risk factors for heart disease, and the potential for exacerbation of underlying heart disease associated with exposure to MC; and (4) a statement that the employee has been informed of the results of the medical examination and any medical conditions related to MC exposure that require further explanation or treatment.

The physician or other licensed health care professional must provide copies of the written medical opinion to the employee and the employer within 15 days after completion of the evaluation of medical and laboratory findings, but no later than 30 days after the medical examination. This

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requirement was included to ensure that the employee and the employer have been informed of the above-mentioned results of the medical examination in a timely manner. This requirement differs slightly from that in proposed paragraph (i)(7)(i). Instead of the physician providing a copy of the written medical opinion to the employer, who then provides a copy to the employee, the final rule requires the physician or other licensed health care professional to supply a copy of the written medical opinion directly to both the employer and the employee. In addition, the time allowed for providing the opinion has been changed to recognize that time may be needed to receive and evaluate laboratory or other medical findings. The Agency believes that notifying both the employer and affected employees of the MC-related results of the medical surveillance at the same time is an efficient approach to disseminating this information to the appropriate parties. Providing copies of the same written opinion both to the employer and the employee ensures that the employer is aware of any factors that may influence work assignments or choice of personal protective equipment.

OSHA has added a requirement to the final rule that the physician or other licensed health care professional inform the employee of the carcinogenic and cardiac effects of MC to reinforce the information on MC's serious health effects that was transmitted during training. The Agency believes that this reinforcement will help to ensure that employees are aware of the potential effects of MC and take appropriate precautions when using this toxic substance.

OSHA received several comments on different aspects of paragraph (j)(9). For example, the UAW [Tr. 1884, 9/24/92] testified that the written opinion transmitted to the employer by the physician or other licensed health care professional should only state the limitations on the employee's exposure or use of respiratory or other personal protective equipment recommended by the physician or other health care professional, and should not include the medical or other reasons behind the recommended limitations.

OSHA agrees with the UAW that it is important to protect the privacy of employees enrolled in medical surveillance programs. Consequently, OSHA health standards have traditionally included a statement to the effect that no findings or diagnoses should be included in the physician's written opinion that are unrelated to occupational exposure. This requirement is intended both to protect the employee's privacy and to encourage employees to participate in the employer's medical surveillance program. The restriction on what may be revealed in the written opinion appears in the final rule as paragraph (j)(9)(ii), and is intended to apply to all of the information provided in the physician's or other licensed health care professional's written opinion, including that related to recommended limitations.

The MVMA [Ex. 19–42] and ORC [Ex. 19–57] stated that the proposed 15-day requirement for providing the employer with a copy of the written opinion should be 15 days from the physician's or other licensed health care professional's receipt of the test results rather than 15 days from the date of the examination. The Agency agrees and, as described above, has changed the requirement so that the written opinion must be provided within 15 days of completion of evaluation of medical findings, but not more than 30 days after the examination. OSHA believes that this strikes the proper balance between allowing sufficient time for the physician or other licensed health care professional to evaluate any laboratory findings while still providing the information to the employer and the employee in a timely manner.

Newport News Shipbuilding [Ex. 19–37] and the Shipbuilders Council of America [Ex. 19–56] stated that the written opinion should require only that employees be notified of abnormal test results, not normal results. In response to these comments, OSHA notes that such a provision would actually require many physicians and other licensed health care professionals to change their current practice because it would require them specifically to delete normal results from printouts of laboratory and other findings. Such reports routinely display all results, both normal and abnormal, for a given individual. In addition, OSHA believes that employees benefit from knowing which of their blood parameters and other test results are normal and which are abnormal. OSHA does not believe that requiring medical personnel to increase the amount of paperwork they perform is a good use of medical resources, and has therefore not revised the final rule to respond to these comments.

Under paragraph (j)(9)(ii) of the final rule, the physician or other licensed health care professional must exclude findings or diagnoses that are unrelated to MC exposure from the written opinion provided to the employer. As discussed above, OSHA has included this provision in the final rule to reassure employees participating in medical surveillance that they will not be penalized or embarrassed by the employer's obtaining information about them that is not directly pertinent to MC exposure. The above provisions are identical to those in proposed paragraph (i)(7)(ii). A note has been added to the final rule that states that the written opinion developed to comply with the MC standard may also contain information related to other OSHA standards. For example, an employer whose employees are enrolled in medical surveillance due to their exposure to benzene, formaldehyde *and* MC could receive a single, consolidated written opinion that addressed findings related to all three substances. This performance-oriented provision could result in reduced paperwork burdens for employers.

NPRM Issue 3 solicited input regarding whether the Agency should add a provision for Medical Removal Protection (MRP). Medical removal protection encourages employee participation in (and therefore increases the effectiveness of) the medical surveillance program by ensuring that reporting symptoms or health conditions to the physician or licensed health care professional will not result in loss of job or pay. Several rulemaking participants expressed support for the inclusion of MRP in the final rule [Exs. 19–23, 19–38; Tr. 1787, 9/24/92; Tr. 1802, 9/24/92; Tr. 1869, 9/24/92; and Tr. 1883, 9/24/92]. For example, the Amalgamated Clothing and Textile Workers (ACTWU) [Tr. 1793, 9/24/92] testified that OSHA should require MRP based on clinical judgment, as OSHA allowed in the final rule for formaldehyde (29 CFR 1910.1048). They also stated that they believed it was critical to have a medical removal protection provision in the MC standard in order to ensure worker participation. Mr. Frumin of the ACTWU testified as follows [Tr. 1792–1793, 9/24/92]:

> As I say, the problems that employers, physicians and, for that matter, OSHA confront in trying to assure the integrity of medical surveillance programs are not limited to a particular substance. They deal with the general perception—these problems arise from the general perception of workers, which is widespread through industry, that if they submit to a medical examination and it's not confidential, and employers could get the results of the medical findings, that health problems may result in some negative action.
>
> You have a symptom-based medical surveillance program, at least for the non-cancer effects. And if workers are supposed to report the types of symptoms, for instance, that Dr. Soden was looking for, shortness of breath, things of that nature—and they're

concerned that reporting that might involve some negative action against them: either their job security or their pay. You know, they will be discouraged from participating in medical surveillance, and the whole structure of the program is undermined. So the fact that these health effects are symptom-based rather than, say, based on laboratory tests alone, makes it all the more important to include medical removal protection and multiple physician review in the final rule.

Two commenters [Exs. 19–23, 19–38] suggested that MRP should be based on COHb levels. However, Dr. Mirer of the UAW [Tr. 1940, 9/24/92] disagreed with this idea and concurred with Mr. Frumin's remarks that medical removal protection should be based on symptoms and professional discretion. He stated,

* * * the guidance for the physicians, once the physician decides this employee is at increased risk, if they continue in this exposure and I want to remove him or her from the job, that's the trigger. At this moment, I would leave it that way. Increased carboxyhemoglobin is more an index of exposure than an adverse clinical effect, so I don't have any particular guidance. If the doctor wants to pull that man or woman out of a job, that's where I am now.

He continued,

* * * the other benefit of protecting the disclosure of symptoms is that it's going to identify sources of exposure, because one of the ways of determining exposure is by the presentation of symptoms. So the benefit of having them disclose symptoms is it will lead to lower exposure.

I can't think of anything much else that you would need to get out of MRP than improved participation, although at least our experience in lead is that MRP has been the driving force to reduce exposures independent of that.

OSHA considered the issues raised during the MC rulemaking and in general agrees with these worker representatives that MRP increases employee participation in medical surveillance. OSHA remains concerned about several issues, however. The Agency recognizes that employees may hesitate to participate in medical surveillance if they have reason to expect that the results may adversely affect them economically. However, OSHA has determined that there is no substantive guidance that it could give a physician or other licensed health care professional to indicate when it might be appropriate to remove an employee temporarily from the workplace, or what an appropriate trigger for return to work might be. Accordingly, OSHA has decided to promulgate the final rule for MC without including MRP provisions. The Agency will continue to monitor compliance with the medical surveillance and PPE provisions of this standard and the experience in industries subject to standards with medical removal protection provisions to determine whether any further action is warranted.

Paragraph (k) Hazard Communication

The requirements for hazard communication have been changed from proposed paragraph (j) (Communication of MC hazards to employees) and promulgated in paragraph (k) of the final rule. The paragraph addressing hazard communication in the final MC rule is consistent with the requirements of OSHA's Hazard Communication Standard (HCS). The HCS requires all chemical manufacturers and importers to assess the hazards of the chemicals they produce or import. It also requires all employers to provide information concerning the hazards of such chemicals to their employees. The transmittal of hazard information to employees is to be accomplished by such means as container labeling and other forms of warning, material safety data sheets and employee training.

Since the HCS "is intended to address comprehensively the issue of evaluating the potential hazard of chemicals and communicating information concerning hazards and appropriate protective measures to employees" (52 FR 31877), OSHA is including paragraph (k) in the final rule only to reference the HCS requirements for labels and material safety data sheets, and to indicate specifically the MC health effects that are required to be addressed under that rule. This additional guidance to employers simply reiterates the requirements of the HCS to convey information to affected employees about all health hazards to which they are potentially exposed. The health effects addressed by the final MC rule are cancer, cardiac effects (including elevation of carboxyhemoglobin), central nervous system effects, and skin and eye irritation. There may also be other health hazards or physical hazards associated with MC that meet the definitions of coverage under the HCS. These should be addressed appropriately on the label and MSDS as well.

Employers who have already met their longstanding requirements to comply with the HCS will have no additional duties with regard to labels and MSDSs under the MC final rule. This is consistent with the suggestions of some commenters that no requirements should be mandated beyond those listed in the HCS [Exs. 19–25, 19–31, 19–42]. OSHA agrees that the HCS addresses the issue comprehensively, and additional requirements are not necessary to protect MC-exposed employees specifically. As a result, the Agency has deleted the proposed requirement for warning signs. Such signs are not required under the HCS, although they may be useful in some situations and employers may choose to use them. The Organization Resources Counselors [Ex. 19–57] commented that the required signs should say "warning" and not "danger" as proposed, and suggested consistency with the benzene and ethylene oxide standards. It should be noted that the terms "warning" and "danger" have specific meaning in the context of labels, and there are criteria for their application under voluntary consensus standards such as the ANSI Z129.1 standard for precautionary labeling. ORC's comment is otherwise moot at this point since the relevant requirement has been deleted.

Paragraph (l) Employee Information and Training

The requirements for employee information and training, which were part of proposed paragraph (j) (Communication of MC hazards to employees), have been separated from the hazard communication requirements for labels and data sheets described above, and promulgated as paragraph (l) in the final MC rule. Some of the training provisions that were proposed duplicated requirements of the HCS. These have been removed, and a reference to the information and training required under the HCS has been added to simply remind employers of their longstanding obligations under that rule to ensure that employees are apprised of the hazards of the chemicals in their workplaces, as well as appropriate protective measures. The information and training requirements in the final MC rule build upon those requirements with additional information specific to MC that will help employees understand the risks of exposure and the means to prevent adverse health effects from occurring in their particular workplaces.

It should be noted that the information and training requirements in the final rule have been separated from each other rather than being addressed together, because they deal with different ways of conveying information. "Information" transmittal is simply that—a passive process of making information available to employees should they choose to use it. In some cases, this may be done in writing or some other simple manner of information transfer. "Training," on the other hand, is not a passive process. The

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information provided to employees in training requires them to comprehend it and subsequently to use it in the performance of their duties in the workplace. There are many different ways to accomplish training effectively, but it cannot be a simple transfer of information such as handing someone a written document. OSHA's voluntary training guidelines, which are found in OSHA Publication No. 2252, are available to provide employers additional guidance in setting up and implementing an appropriate employee training program. An effective training program is a critical component of any safety and health program in the workplace. Workers who are fully informed and engaged in the protective measures established by the employer will play a significant role in the prevention of adverse health effects. Ineffective training will not serve the purpose of making workers full participants in the program, and the likelihood of a successful program for safety and health in the absence of an effectively trained workforce is remote.

Paragraph (l)(1) requires employers to provide all employees who are potentially exposed to MC with information and training on MC prior to or at the time of initial assignment to a job involving MC exposure. Thus employees will have the information they need to protect themselves before they are actually subject to exposure. The final rule further indicates in paragraph (l)(2) that employers shall ensure that the information and training is presented in a manner that is understandable to employees and that employees have received the information and training required under the HCS.

Paragraph (l)(3) addresses the information to be provided to affected employees. This includes the requirements of the final MC standard and information available in its appendices, as well as how the employee can access or obtain a copy of it in the workplace. This will ensure that MC-exposed employees are aware that specific requirements have been established to protect them from adverse health effects, and give them an opportunity to review those requirements themselves if they so desire. Wherever employee exposures exceed or can reasonably be expected to exceed the action level, the employer is required to inform employees about the location of MC in the workplace, what operations may be affected, particularly noting where in the workplace there may be exposures above the permissible exposure limits.

Paragraph (l)(4) requires each employer to train each affected employee as required under the Hazard Communication Standard (29 CFR 1910.1200, 29 CFR 1915.1200 or 29 CFR 1926.59, as appropiate). This provision simply reminds employers of their obligation to train employees regarding the hazards of MC under the Hazard Communication Standard.

The final rule does not provide a specific time period for updating the training, whereas the proposed standard included a requirement for annual retraining. Instead, the final rule indicates in paragraph (l)(5) that the employer shall re-train each affected employee as necessary to ensure that employees exposed above the action level or the STEL maintain a good understanding of the principles of safe use and handling of MC in the workplace. Employers can assess whether this understanding is generally present in exposed employees in various ways, such as by observing their actions in the workplace. For example, if an employee is not using appropriate protective equipment or following safe work practices routinely, this may be an indication that additional training is required. This provision of the final rule is a performance-oriented requirement that allows each employer to determine how much or how often training is needed.

Paragraph (l)(6) requires that the employer do additional training when the workplace is modified or changed in such a way that employees are subject to greater exposures and those exposures exceed or can reasonably be expected to exceed the action level and those employees need information and training to understand how to implement the modifications or training successfully. This provision was not in the proposal, but the Agency considers it necessary to further protect employees from the hazards of MC when significant changes in workplace conditions occur.

Paragraph (l)(7) requires the employer whose employees are exposed to MC at a multi-employer worksite to notify the other employers with work operations at that site regarding the use of MC-containing materials, the hazards associated with the use of those materials and the control measures implemented to protect affected employees from MC exposure, in accordance with the requirements of the Hazard Communication Standard (HCS). The HCS addresses sharing information at multi-employer worksites, and since this final rule covers construction where most of the sites are multi-employer, this provision was added to remind such employers of these requirements. OSHA is also aware that an increasing number of manufacturing worksites involve more than one employer.

In paragraph (l)(8) of the final rule, OSHA has indicated that the Assistant Secretary or the Director may access all materials relating to employee information and training in the workplace. This would be done in conjunction with an inspection to ascertain compliance with the rule, or in the event of a NIOSH health hazard evaluation. Review of the available materials regarding information and training will help assess whether the program has been properly conducted, as well as evaluate what could be improved if employees do not appear to be effectively trained.

The information and training provisions of this standard are performance-oriented, because employees are exposed to MC in a wide variety of circumstances and the best method of conveying the necessary data may vary from site-to-site. The standard lists the categories of information to be transmitted to employees but does not specify the ways in which it is to be transmitted.

Some commenters [Tr. 531–32, 9/18/92; Tr. 545–49, 9/18/92; Tr. 828–32, 9/21/92; Tr. 1380, 1384–85, 9/23/92] suggested that OSHA make the proposed training provisions more specific, such as by including requirements for length of training, qualifications of instructors, or requirements for interactive training. In addition, hearing participants and commenters suggested that OSHA require employers to monitor the effectiveness of training [Ex. 19–38, Tr. 531–32, 9/18/92]. These participants suggested that provisions be made, as well, for training of workers in languages other than English and for training of workers with limited literacy [Ex. 19–38, Tr. 531–32, 9/18/92; Tr. 831–32, 9/21/92].

The International Brotherhood of Painters and Allied Trades, AFL-CIO, testified [Tr. 830–831, 9/21/92]:

> We urge OSHA to promulgate a standard that requires that workers receive a minimum of 16 hours training. Such training would include at the minimum information on the hazards of methylene chloride and how it harms the body. Engineering controls that can be implemented in the field should be described and demonstrated. We will submit information on one such control to the record. Training should also include information on work practices associated with specific job assignments, methods by which workers can protect themselves, the limits of respirators use, appropriate procedures for work in confined spaces, employee rights under the standard, the

purpose of medical surveillance and other elements of training as enumerated in Section (j)(4).

OSHA does not agree that specifying a time frame for training ensures that it will be complete, appropriate, or effective. The amount of training required will depend to a large extent on the conditions of use in a given workplace. It will also be related to the extent of training on MC that has already been done by the employer under the HCS. Therefore, the final rule provisions remain performance-oriented with regard to the time needed to convey the information and training.

With regard to the issues of literacy and language, these remain a significant consideration in the proper design and implementation of any training program. Because working safely with MC is such a significant concern, the employer must make every effort to ensure that the training is presented in such a way that employees can understand and act on the information.

OSHA expects that employers will ensure that the information and training is effective. Any good training program should include an evaluation component to help ensure effectiveness. The voluntary training guidelines previously recommended can provide additional guidance in this respect.

OSHA received comments that indicated that the MC standard should simply refer to the HCS rather than having separate requirements [Exs. 19–25; 19–49]. While the Agency agrees with these comments in reference to the label and MSDS requirements, it does not appear that this is the appropriate approach to training. While the HCS addresses training about the hazards of a chemical and appropriate precautionary measures, there are other items of training that are specific to the MC standard requirements and the determinations made in this rulemaking regarding MC. As such, it is important to ensure that the already-required HCS training is supplemented with information and training specific to MC.

Paragraph (m) Recordkeeping

Paragraph (m) of the final rule addresses requirements for employers to create and maintain records of their compliance with some of the provisions of this section. Section 8(c)(1) of the OSH Act authorizes the Agency to promulgate regulations requiring employers to keep necessary and appropriate records regarding activities to permit the enforcement of the Act or to develop information regarding the causes and prevention of occupational accidents and illnesses. Section 8(c)(3) of the Act specifically addresses the promulgation of "regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6."

Paragraph (m)(1) requires that employers who rely on objective data to characterize potential exposures to MC, rather than conducting initial monitoring under paragraph (d) of this section, maintain records that show the information and methodology used in reaching their conclusion that exposures are at or below the action level and no additional monitoring is required. The record must include the MC-containing material evaluated; the source of the objective data; the testing protocol, and the results or analysis of the testing; a description of the operation(s) exempted from monitoring, and how the data support the exemption; and other relevant data.

Since the use of objective data exempts the employer from conducting monitoring, as well as establishing that most of the other provisions need not be complied with due to the low level of potential exposure, it is critical that this determination be carefully documented. Compliance with the requirement to maintain a record of objective data protects the employer at later dates from the contention that initial monitoring was improperly omitted. The record will also be available to employees so that they can examine the determination made by the employer. The employer is required to maintain the record for the duration of the employer's reliance upon objective data. This provision is effectively identical to proposed paragraph (k)(1).

Paragraph (m)(2) requires that employers establish and keep an accurate record of all measurements taken to monitor employee exposure to MC. For employers with 20 or more employees, the record must include at least: the date of measurement for each sample taken; the operation involving exposure to MC which is being monitored; sampling and analytical methods used and evidence of their accuracy; number, duration and results of samples taken; the type of personal protective equipment, such as respiratory protective devices worn (if any); and name, social security number, and job classification and exposure of all the employees deemed to be represented by such monitoring, indicating which employees were actually monitored. For employers with fewer than 20 employees, the record shall include, at a minimum: the date of measurement for each sample; the number, duration and results of samples taken; and name, social security number, job classification and exposure of all the employees deemed to be represented by such monitoring, indicating which employees were actually monitored. OSHA believes it is necessary to maintain these records so that employers, employees and OSHA can determine the extent to which MC exposure has been identified and subsequently controlled. Over time, the exposure records can help determine if additional measures are needed for employee protection. OSHA has reduced the amount of information required for small businesses in recognition of the more limited variety of operations and exposure levels there. This should ease these employers' recordkeeping burden without compromising employee safety and health in these types of facilities.

Two commenters [Exs. 19–25, 19–49] suggested that such documentation should only be required for each person actually monitored (paragraph (d)(1) provides for representative monitoring). However, OSHA believes that it is necessary for records to be kept for each employee represented by the exposure monitoring so that individual employees can access information that characterizes their own exposures to MC. If records were kept only for those actually monitored, it would be unreasonably difficult for an employee to identify the exposure measurement that is intended to represent his or her experience. Accordingly, OSHA has not made the suggested change.

Paragraph (m)(3) requires that the employer keep accurate medical records for each employee subject to medical surveillance. The information to be included in the record addresses identification of the employee; the physician's or other licensed health care professional's written opinions; and documentation of any employee medical conditions that are found to be related to MC exposure. Maintenance of employee medical records is necessary for the proper evaluation of the employee's health, as well as for appropriate followup.

Proposed paragraph (k)(3)(ii)(D) required that a copy of the information provided to the physician or other licensed health care professional be included in the employee record. The Dow Chemical Company [Ex. 19–31] requested that, because many larger companies have company medical facilities, some provision be made so that records do not have to be maintained in medical department records and duplicated in the personnel record of every employee potentially

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exposed to MC. The information required under paragraph (j)(8) of this section includes a copy of this section including its appendices, a description of duties involving MC exposure, exposure levels, personal protective equipment, and previous medical surveillance information. Since this information is available to the employee through other means, OSHA believes that the requirements under proposed paragraph (k)(3)(ii)(D) were unnecessarily burdensome, and OSHA has therefore deleted this paragraph from the final rule. OSHA has also deleted proposed requirements for maintaining records of employee fit testing as being unnecessarily burdensome. Dow also suggested that an employee identification number be permitted in lieu of social security number [Ex. 19–31]. OSHA does not agree with this suggestion. Social security numbers have much wider application, and are correlated to employee identity in other types of records. These numbers are a more useful differentiation among employees since each number is unique to an individual for a lifetime and does not change as an employee changes employers.

Paragraph (m)(4) of the final rule specifies that access to exposure and medical records by employees, employees" designated representatives, NIOSH and OSHA shall be provided in accordance with 29 CFR 1910.1020. OSHA promulgated 29 CFR 1910.1020 as the generic rule for access to employee exposure and medical records on May 23, 1980 (45 FR 35212). It applies to records created under specific OSHA standards and to records that are voluntarily created by employers. OSHA retains unrestricted access to medical and exposure records but its access to personally identifiable records is subject to the Agency's rules of practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10.

The time periods required for retention of exposure records and medical records is thirty years and the period of employment plus thirty years, respectively. These retention requirements are consistent with those in the OSHA records access standard and with pertinent sections of the Toxic Substances Control Act. It is necessary to keep records for extended periods of time because of the long latency periods commonly observed for the induction of cancer caused by exposures to carcinogens. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended record retention period is therefore needed for two purposes. First, possession of past and present exposure data and medical records furthers the diagnosis of workers' ailments. In addition, retaining records for extended periods makes possible a review at some future date of the effectiveness and adequacy of the standard.

Paragraph (m)(5) requires employers to comply with the requirements of 29 CFR 1910.1020(h). That provision requires the employer to notify the Director of NIOSH in writing at least 90 days prior to the disposal of records and to transfer those records to NIOSH unless told not to do so by NIOSH. The employer is required to comply with any other applicable requirements set forth in the records retention standard.

Paragraph (n) Dates

This paragraph establishes the effective date for the MC final rule, and the start-up dates for the various provisions of the standard. The start-up dates allow employers additional time to comply with some of the provisions of the standard that require more effort to accomplish. It is expected that such work will commence by the effective date, and be completed as soon as possible but in no case later than the compliance deadline established by the effective date. All other obligations imposed by the standard become effective on the effective date unless otherwise indicated.

Paragraph (n)(1) of the final rule provides that this standard will become effective on April 10, 1997. This date is 90 days from the date of publication in the **Federal Register**. Proposed paragraph (m)(1) had provided that the final rule would become effective 60 days after publication in the **Federal Register**. OSHA stated in the preamble to the proposed rule [56 FR 57128] that the proposed effective date, in conjunction with the proposed start-up dates, would allow sufficient time for employers to achieve compliance with the substantive requirements of the proposed rule.

Although no commenters directly addressed the 60-day period proposed in paragraph (m)(1), several commenters addressed the reasonableness of the start-up dates in proposed paragraph (m)(2). Those comments, discussed below, indicated that some employers would need more time to comply than the proposed rule would have allowed.

The Agency sets the effective date to allow sufficient time for employers to obtain the standard, read and understand its requirements, and undertake the necessary planning and preparation for compliance. Section 6(b)(4) of the OSHA Act provides that the effective date of an OSHA standard may be delayed for up to 90 days from the date of publication in the **Federal Register**. Given the concerns expressed by commenters, OSHA's interest in having employers implement effective compliance efforts, and the minimal effect of the additional 30 day delay, the Agency has decided that it is appropriate to set the effective date at 90 days from publication, rather than at 60 days.

Paragraph (n)(2) of the final rule establishes the start-up dates for compliance with the provisions of the MC standard. The start-up dates are based on information in the record about the state of the art with regard to the types of provisions employers are expected to implement, such as available control measures, their complexity, and the time that is reasonably necessary to complete their installation and implementation. In the case of MC, the types of provisions included in the rule, such as requirements that will require conventional controls, are identical to the elements included in all OSHA health standards.

Proposed paragraphs (m)(2)(i), (ii) and (iii) required that initial monitoring be completed by all employers within 120 days of the effective date of the MC standard, engineering controls within one year of the effective date and all other requirements within 180 days of the effective date. As described below, OSHA received numerous comments on the appropriateness of the start-up dates, especially for small businesses. Given the large number of small employers covered by the requirements, and the special problems of many of those employers in identifying and implementing appropriate control measures, OSHA has decided to phase-in compliance and to permit these employers a longer time period in which to comply with the requirements of the standard. The schedule for compliance with the provisions of the standard are described below.

OSHA received a number of comments on the proposed periods for compliance with the control requirements. In 1992, Kodak [Exs. 19–18 and 19–102] described circumstances at its film base production facility that would prevent compliance with the PELs through engineering controls before mid-1995. Kodak stated "[it] is essential that OSHA be responsive to these considerations in promulgating the final rule. OSHA should permit adequate time for Kodak to implement feasible engineering controls in an orderly and minimally disruptive schedule." Considering the effective

date and start-up dates in this regulation, OSHA has determined that affected parties will have sufficient time to comply with the standard.

Similar requests for longer time periods for compliance were also received from a variety of other commenters [Exs. 19–55, 19–57, 19–67, 19–72, 19–75, 115–3, 115–28, 115–33, 115–37, Tr. 1422, 1427–29, 9/23/92, Tr. 2103, 10/14/92, Tr. 2291–92, 2300, 10/15/92]. However, OSHA's Final Economic Analysis for this rulemaking indicates that readily available control measures can be used to control exposure in many of the operations where MC is present. In general, compliance will not require the development of new or novel control technology. Accordingly, OSHA believes that more extended time periods for compliance are not necessary for all affected industries. However, as discussed below, small businesses (for example, those with fewer than 20 employees and polyurethane foam manufacturers with 20 to 99 employees) have been granted additional time to comply.

As discussed above in Section VIII, several commenters [Exs. 19–14, 19–25, 19–28 and 19–29] stated that engineering controls to achieve compliance were not available. These commenters further stated that the development and implementation of the process changes and engineering controls needed to achieve compliance would take four years from the effective date, not the single year proposed. For example, the Pharmaceutical Manufacturers Association and Abbott Laboratories [Exs. 19–25 and 19–29] stated as follows:

> [I]f the agency should rule that the exposure level to MC be reduced to 25 ppm for an 8-hour TWA and a 125 ppm STEL, a minimum of 1 year from the effective date must be allowed for identification of the engineering controls. A minimum of 3 years from the effective date must be allowed for compliance with paragraph (f)(1) of the proposed rule.

Those commenters and the HSIA [Ex. 19–45] also indicated that FDA approval is needed in the pharmaceutical industry for any alteration of manufacturing processes, substitution for MC, or modification of work practices to achieve compliance with OSHA's MC standard, and requested that OSHA consider the FDA's regulatory requirements when establishing start-up dates. In particular, Abbott Laboratories described how it took three years to obtain FDA approval for the substitution of hydroalcoholic or aqueous solutions for MC in tablet coating operations, stating "[p]resently, completion of required testing and obtaining FDA approval for production of a single product can take 3 months to three years, depending upon the extent of the change."

Abbott also commented as follows [Ex. 19–29]:

> As stated previously, feasible engineering controls do not exist for the present bulk pharmaceutical centrifugal separation and drying equipment. Implementation of engineering controls would therefore require the use of a different process or a different production method. Changes of that degree require Abbott Laboratories to complete development work on an alternative process and/or identify new production equipment; erect a building to house the equipment; purchase, receive and install the equipment; train employees; and validate the process. This cannot be accomplished in one year.

OSHA is aware that pharmaceutical manufacturers must comply with other regulatory requirements, including those set by the FDA. The Agency has considered how affected employers, in general, need to coordinate their OSHA compliance efforts with their other regulatory compliance activities, that this regulation does not require implementation of particularly complicated or novel control technologies, and that the compliance time frames are in keeping with those in other OSHA standards. OSHA views the coordination of OSHA compliance with other regulatory compliance activities as an ongoing employer effort, not just an ad hoc response to a particular OSHA action (such as the revision of a PEL). For example, a pharmaceutical manufacturer would need to consider the implications for OSHA compliance of process changes undertaken due to FDA requirements or for other reasons, whether those changes were to be made during the MC standard's "start-up" period or subsequently.

Accordingly, the Agency has determined that the commenters have not established a need for the requested extension of the start-up dates. OSHA believes that the proposed one-year period in which to implement controls will, in general, be adequate and, therefore, has not made the suggested change. However, as discussed elsewhere, OSHA has tailored the compliance schedule to the size of the establishment and anticipated impact of the standard on those businesses.

Dow [Ex. 19–31] also expressed concern that many employers would be unable to meet the start-up dates, focusing on the time and resources that would be required to conduct initial monitoring. In addition, Dow stated as follows "OSHA should require that certain actions be completed within the stated time periods and that if the actions can not be completed, the employer should have a written plan and corresponding actions to show a good faith effort to meet the requirements." OSHA agrees that there may be circumstances where, despite good faith efforts, employers cannot achieve compliance within the time periods specified by paragraph (n)(2). OSHA further agrees that developing a written plan and taking other "good faith" actions towards compliance would be appropriate measures to mitigate any circumstances of non-compliance with the regulation. Indeed, the suggested procedure closely resembles the temporary variance process already established by OSHA.

Under section 6(b)(6) of the OSH Act, an employer can obtain a temporary variance from compliance with an OSHA standard if it shows that it cannot achieve compliance by the effective date; is taking all available steps to safeguard its employees from the pertinent hazard; and has an effective program for coming into compliance with the standard. The implementing regulations for the temporary variance process appear at 29 CFR part 1905. Employers who experience difficulties in meeting the start-up dates should contact OSHA and apply for a temporary variance.

The HSIA [Ex. 19–45] recommended that OSHA "provide a compliance schedule similar to that provided in the generic PEL update * * * [which] in some circumstances allows employers until December 31, 1993 to comply (a total of 4 years and 10 months)." In addition to mentioning the lengthy FDA approval process, the HSIA noted that "DCM users, particularly many of the smaller companies, will find compliance technologically and economically difficult at best."

As stated above, OSHA believes that the sort of extended compliance schedule set through the generic PEL update is unnecessary for the MC standard. Based on its review of the rulemaking record, the Agency has reached the general conclusion that employers will be able to achieve compliance within the time frames established in paragraph (n).

However, OSHA is concerned that some small facilities affected by this rulemaking, such as many of those in the furniture refinishing industry and the polyurethane foam manufacturing industry, may have difficulties determining the appropriate control measures to use and also may not be able to absorb the costs of compliance, particularly those associated with implementing the appropriate

engineering controls within the time frames initially proposed. The Agency has estimated (see Section VIII, Summary of the Final Economic Analysis) that allowing a variable schedule of compliance, based upon size of establishment, will enable firms in all impacted sectors to absorb many of the compliance costs without endangering their financial health.

Based on these considerations, OSHA has determined that the following implementation schedule is reasonable and appropriate for businesses of all sizes:

Establishment size	Initial monitoring provisions must be complied with within	Implementation of engineering controls must be completed within	All other provisions must be complied with within
Fewer than 20 employees	300 days of the effective date	3 years of the effective date	1 year of the effective date.
Polyurethane foam manufacturers with 20 to 99 employees.	210 days of the effective date	2 years of the effective date	270 days of the effective date.
All other employers	120 days of the effective date	1 year of the effective date	180 days of the effective date.

The Agency is promulgating paragraph (n) accordingly.

The schedule of intermediate start-up dates (210 d, 270 d and 2 years) for polyurethane foam manufacturers with 20 to 99 employees was limited to this application group because this group has the highest potential economic impacts except for the furniture stripping and construction groups. In both of the latter groups, most firms have fewer than 20 employees, and thus would already be allowed additional time to comply with the final rule's start-up dates. In contrast, in the flexible polyurethane foam manufacturing group, even firms with fewer than 100 employees will need to install several types of engineering controls and are likely to have unusually high capital expenditures in order to meet the requirements of the regulation. This extension of compliance deadlines will allow those firms that need extensive engineering controls time to adequately plan for and implement their system of controls. This modification will thus also help to ensure adequate protection for workers.

Paragraph (o) Appendices

The final paragraph of the standard simply states that the appendices which follow are not intended to create any additional obligations beyond those already specified in the standard. They are basically intended as non-mandatory guidance documents to supplement and complement the regulatory requirements in the standard, and to provide additional information about MC and its safe handling and use to exposed employees, employers, and health care professionals.

A few comments were received by OSHA regarding the text of the appendices as proposed. These addressed the need for additional information [Ex. 57, Tr. 832, 9/21/92, Tr. 1380 and 1384–85, 9/23/92], or whether information should appear in an appendix or in the regulatory text itself [see, e.g., Tr. 2435–36 and 2448–49, 10/15/92]. OSHA has reviewed and updated the text in the appendices to address these comments and ensure that they are consistent with the new regulatory text in the final standard.

Also, proposed Non-mandatory Appendix C, which addressed respirator fit testing, has not been included in the final rule, because OSHA has determined that very few of the respirators used to comply with this standard will require fit testing. In addition, OSHA's revision of the generic respirator standard (29 CFR 1910.134) will contain an up-to-date appendix that addresses fit testing for all respirators.

XI. Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); the Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911; 29 CFR parts 1910, 1915 and 1926 are amended as set forth below.

List of Subjects in 29 CFR Part 1910, 1915 and 1926

Chemicals, Cancer, Health risk-assessment, Methylene chloride, Occupational safety and health.

Signed at Washington, D.C., this 31st day of December 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

XII. Final Standard Regulatory Text

Parts 1910, 1915, and 1926 of Title 29 of the Code of Federal Regulations are amended as follows:

PART 1910—[AMENDED]

Subpart B—[Amended]

1. The authority citation for subpart B of part 1910 continues to read as follows:

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 29 U.S.C. 35 *et seq*; Service Contract Act of 1965, 41 U.S.C. 351 *et seq*; Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec 41 Longshore and Harbor Worker's Compensation Act, 33 U.S.C. 941; National Foundation on Arts and Humanities, 20 U.S.C. 951 *et seq*; Secretary of Labor's Order No, 12–71 (36 FR 8754); 8–76 (41 FR 25059); 9–83 (48 FR 35736); 1–90 (55 FR 9033); and 29 CFR part 1911.

2. By adding a new paragraph (m) to §1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(m) *Methylene Chloride (MC):* Section 1910.1052 shall apply to the exposure of every employee to MC in every employment and place of employment covered by §1910.16 in lieu of any different standard on exposure to MC which would otherwise be applicable by virtue of that section when it is not present in sealed, intact containers.

Subpart Z—[Amended]

3. The authority citation for subpart Z of 29 CFR part 1910 continues to read, in part, as follows:

Authority: Secs. 6 and 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

* * * * *

§ 1910.1000 [Amended]

4. By removing the entire entry for Methylene Chloride (Z37.23–1969) in Table Z-2 of § 1910.1000 and adding the

following entry in its place in the substance column: "Methylene chloride: see § 1910.1052".

5. By adding a new § 1910.1052 to read as follows:

§ 1910.1052 Methylene Chloride.

This occupational health standard establishes requirements for employers to control occupational exposure to methylene chloride (MC). Employees exposed to MC are at increased risk of developing cancer, adverse effects on the heart, central nervous system and liver, and skin or eye irritation. Exposure may occur through inhalation, by absorption through the skin, or through contact with the skin. MC is a solvent which is used in many different types of work activities, such as paint stripping, polyurethane foam manufacturing, and cleaning and degreasing. Under the requirements of paragraph (d) of this section, each covered employer must make an initial determination of each employee's exposure to MC. If the employer determines that employees are exposed below the action level, the only other provisions of this section that apply are that a record must be made of the determination, the employees must receive information and training under paragraph (l) of this section and, where appropriate, employees must be protected from contact with liquid MC under paragraph (h) of this section. The provisions of the MC standard are as follows:

(a) *Scope and application.* This section applies to all occupational exposures to methylene chloride (MC), Chemical Abstracts Service Registry Number 75–09–2, in general industry, construction and shipyard employment.

(b) *Definitions.* For the purposes of this section, the following definitions shall apply:

Action level means a concentration of airborne MC of 12.5 parts per million (ppm) calculated as an eight (8)-hour time-weighted average (TWA).

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer and required by work duties to be present in regulated areas, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (d) of this section, or any other person authorized by the OSH Act or regulations issued under the Act.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence, such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which results, or is likely to result in an uncontrolled release of MC. If an incidental release of MC can be controlled by employees such as maintenance personnel at the time of release and in accordance with the leak/spill provisions required by paragraph (f) of this section, it is not considered an emergency as defined by this standard.

Employee exposure means exposure to airborne MC which occurs or would occur if the employee were not using respiratory protection.

Methylene chloride (MC) means an organic compound with chemical formula, CH_2Cl_2. Its Chemical Abstracts Service Registry Number is 75–09–2. Its molecular weight is 84.9 g/mole.

Physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide some or all of the health care services required by paragraph (j) of this section.

Regulated area means an area, demarcated by the employer, where an employee's exposure to airborne concentrations of MC exceeds or can reasonably be expected to exceed either the 8-hour TWA PEL or the STEL.

Symptom means central nervous system effects such as headaches, disorientation, dizziness, fatigue, and decreased attention span; skin effects such as chapping, erythema, cracked skin, or skin burns; and cardiac effects such as chest pain or shortness of breath.

This section means this methylene chloride standard.

(c) *Permissible exposure limits (PELs).* (1) *Eight-hour time-weighted average (TWA) PEL.* The employer shall ensure that no employee is exposed to an airborne concentration of MC in excess of twenty-five parts of MC per million parts of air (25 ppm) as an 8-hour TWA.

(2) *Short-term exposure limit (STEL).* The employer shall ensure that no employee is exposed to an airborne concentration of MC in excess of one hundred and twenty-five parts of MC per million parts of air (125 ppm) as determined over a sampling period of fifteen minutes.

(d) *Exposure monitoring.* (1) *Characterization of employee exposure.* (i) Where MC is present in the workplace, the employer shall determine each employee's exposure by either:

(A) Taking a personal breathing zone air sample of each employee's exposure; or

(B) Taking personal breathing zone air samples that are representative of each employee's exposure.

(ii) *Representative samples.* The employer may consider personal breathing zone air samples to be representative of employee exposures when they are taken as follows:

(A) *8-hour TWA PEL.* The employer has taken one or more personal breathing zone air samples for at least one employee in each job classification in a work area during every work shift, and the employee sampled is expected to have the highest MC exposure.

(B) *Short-term exposure limits.* The employer has taken one or more personal breathing zone air samples which indicate the highest likely 15-minute exposures during such operations for at least one employee in each job classification in the work area during every work shift, and the employee sampled is expected to have the highest MC exposure.

(C) *Exception.* Personal breathing zone air samples taken during one work shift may be used to represent employee exposures on other work shifts where the employer can document that the tasks performed and conditions in the workplace are similar across shifts.

(iii) *Accuracy of monitoring.* The employer shall ensure that the methods used to perform exposure monitoring produce results that are accurate to a confidence level of 95 percent, and are:

(A) Within plus or minus 25 percent for airborne concentrations of MC above the 8-hour TWA PEL or the STEL; or

(B) Within plus or minus 35 percent for airborne concentrations of MC at or above the action level but at or below the 8-hour TWA PEL.

(2) *Initial determination.* Each employer whose employees are exposed to MC shall perform initial exposure monitoring to determine each affected employee's exposure, except under the following conditions:

(i) Where objective data demonstrate that MC cannot be released in the workplace in airborne concentrations at or above the action level or above the STEL. The objective data shall represent the highest MC exposures likely to occur under reasonably foreseeable conditions of processing, use, or handling. The employer shall document the objective data exemption as specified in paragraph (m) of this section;

(ii) Where the employer has performed exposure monitoring within 12 months prior to April 10, 1997 and that exposure monitoring meets all other requirements of this section, and was conducted under conditions substantially equivalent to existing conditions; or

(iii) Where employees are exposed to MC on fewer than 30 days per year (e.g., on a construction site), and the employer has measurements by direct-reading instruments which give immediate results (such as a detector tube) and which provide sufficient information regarding employee exposures to determine what control measures are necessary to reduce exposures to acceptable levels.

(3) *Periodic monitoring.* Where the initial determination shows employee exposures at or above the action level or above the STEL, the employer shall establish an exposure monitoring program for periodic monitoring of employee exposure to MC in accordance with Table 1:

Table 1.—Six Initial Determination Exposure Scenarios and Their Associated Monitoring Frequencies

Exposure scenario	Required monitoring activity
Below the action level and at or below the STEL	No 8-hour TWA or STEL monitoring required.
Below the action level and above the STEL	No 8-hour TWA monitoring required; monitor STEL exposures every three months.
At or above the action level, at or below the TWA, and at or below the STEL.	Monitor 8-hour TWA exposures every six months.
At or above the action level, at or below the TWA, and above the STEL	Monitor 8-hour TWA exposures every six months and monitor STEL exposures every three months.
Above the TWA and at or below the STEL	Monitor 8-hour TWA exposures every three months.
Above the TWA and above the STEL	Monitor 8-hour TWA exposures and STEL exposures every three months.

[**Note to paragraph (d)(3):** The employer may decrease the frequency of exposure monitoring to every six months when at least 2 consecutive measurements taken at least 7 days apart show exposures to be at or below the 8-hour TWA PEL. The employer may discontinue the periodic 8-hour TWA monitoring for employees where at least two consecutive measurements taken at least 7 days apart are below the action level. The employer may discontinue the periodic STEL monitoring for employees where at least two consecutive measurements taken at least 7 days apart are at or below the STEL.]

(4) *Additional monitoring.* (i) The employer shall perform exposure monitoring when a change in workplace conditions indicates that employee exposure may have increased. Examples of situations that may require additional monitoring include changes in production, process, control equipment, or work practices, or a leak, rupture, or other breakdown.

(ii) Where exposure monitoring is performed due to a spill, leak, rupture or equipment breakdown, the employer shall clean-up the MC and perform the appropriate repairs before monitoring.

(5) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results in writing, either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) Whenever monitoring results indicate that employee exposure is above the 8-hour TWA PEL or the STEL, the employer shall describe in the written notification the corrective action being taken to reduce employee exposure to or below the 8-hour TWA PEL or STEL and the schedule for completion of this action.

(6) *Observation of monitoring.* (i) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to MC conducted in accordance with this section.

(ii) *Observation procedures.* When observation of the monitoring of employee exposure to MC requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide, at no cost to the observer(s), and the observer(s) shall be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(e) *Regulated areas.* (1) The employer shall establish a regulated area wherever an employee's exposure to airborne concentrations of MC exceeds or can reasonably be expected to exceed either the 8-hour TWA PEL or the STEL.

(2) The employer shall limit access to regulated areas to authorized persons.

(3) The employer shall supply a respirator, selected in accordance with paragraph (h)(3) of this section, to each person who enters a regulated area and shall require each affected employee to use that respirator whenever MC exposures are likely to exceed the 8-hour TWA PEL or STEL.

[**Note to paragraph (e)(3):** An employer who has implemented all feasible engineering, work practice and administrative controls (as required in paragraph (f) of this section), and who has established a regulated area (as required by paragraph (e)(1) of this section) where MC exposure can be reliably predicted to exceed the 8-hour TWA PEL or the STEL only on certain days (for example, because of work or process schedule) would need to have affected employees use respirators in that regulated area only on those days.]

(4) The employer shall ensure that, within a regulated area, employees do not engage in non-work activities which may increase dermal or oral MC exposure.

(5) The employer shall ensure that while employees are wearing respirators, they do not engage in activities (such as taking medication or chewing gum or tobacco) which interfere with respirator seal or performance.

(6) The employer shall demarcate regulated areas from the rest of the workplace in any manner that adequately establishes and alerts employees to the boundaries of the area and minimizes the number of authorized employees exposed to MC within the regulated area.

(7) An employer at a multi-employer worksite who establishes a regulated area shall communicate the access restrictions and locations of these areas to all other employers with work operations at that worksite.

(f) *Methods of compliance.* (1) *Engineering and work practice controls.* The employer shall institute and

maintain the effectiveness of engineering controls and work practices to reduce employee exposure to or below the PELs except to the extent that the employer can demonstrate that such controls are not feasible. Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the 8–TWA PEL or STEL, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

(2) *Prohibition of rotation.* The employer shall not implement a schedule of employee rotation as a means of compliance with the PELs.

(3) *Leak and spill detection.* (i) The employer shall implement procedures to detect leaks of MC in the workplace. In work areas where spills may occur, the employer shall make provisions to contain any spills and to safely dispose of any MC-contaminated waste materials.

(ii) The employer shall ensure that all incidental leaks are repaired and that incidental spills are cleaned promptly by employees who use the appropriate personal protective equipment and are trained in proper methods of cleanup. [Note to paragraph (f)(3)(ii): See Appendix A of this section for examples of procedures that satisfy this requirement. Employers covered by this standard may also be subject to the hazardous waste and emergency response provisions contained in 29 CFR 1910.120 (q).]

(g) *Respiratory protection.* (1) *General requirements.* The employer shall provide a respirator which complies with the requirement of this paragraph, at no cost to each affected employee, and ensure that each affected employee uses such respirator where appropriate. Respirators shall be used in the following circumstances:

(i) Whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the 8-hour TWA PEL or the STEL (such as where an employee is using MC in a regulated area);

(ii) During the time interval necessary to install or implement feasible engineering and work practice controls;

(iii) In a few work operations, such as some maintenance operations and repair activities, for which the employer demonstrates that engineering and work practice controls are infeasible;

(iv) Where feasible engineering and work practice controls are not sufficient to reduce exposures to or below the PELs; or

(v) In emergencies.

(2) *Medical Evaluation.* Before having any employee use a supplied-air respirator in the negative pressure mode, or a gas mask with organic vapor canister for emergency escape, the employer shall have a physician or other licensed health care professional ascertain each affected employee's ability to use such respiratory protection. The physician or other licensed health care professional shall provide his or her findings to the affected employee and the employer in a written opinion.

(3) *Respirator selection.* The appropriate atmosphere-supplying respirators, as specified in Table 2, shall be selected from those approved by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 42 CFR Part 84, "Respiratory Protective Devices." When employers elect to provide gas masks with organic vapor canisters for use in emergency escape, the organic vapor canisters shall bear the approval of NIOSH.

TABLE 2.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION FOR AIRBORNE METHYLENE CHLORIDE

Methylene chloride airborne concentration (ppm) or condition of use	Minimum respirator required [1]
Up to 625 ppm (25 X PEL)	(1) Continuous flow supplied-air respirator, hood or helmet.
Up to 1250 ppm (50 X 8–TWA PEL)	(1) Full facepiece supplied-air respirator operated in negative pressure (demand) mode. (2) Full facepiece self-contained breathing apparatus (SCBA) operated in negative pressure (demand) mode.
Up to 5000 ppm (200 X 8–TWA PEL)	(1) Continuous flow supplied-air respirator, full facepiece. (2) Pressure demand supplied-air respirator, full facepiece. (3) Positive pressure full facepiece SCBA.
Unknown concentration, or above 5000 ppm (Greater than 200 X 8–TWA PEL).	(1) Positive pressure full facepiece SCBA. (2) Full facepiece pressure demand supplied-air respirator with an auxiliary self-contained air supply.
Fire fighting	Positive pressure full facepiece SCBA.
Emergency escape	(1) Any continuous flow or pressure demand SCBA. (2) Gas mask with organic vapor canister.

[1] Respirators assigned for higher airborne concentrations may be used at lower concentrations.

(4) *Respirator program.* Where respiratory protection is required by this section, the employer shall institute a respirator program in accordance with 29 CFR 1910.134.

(5) *Permission to leave area.* The employer shall permit employees who wear respirators to leave the regulated area to readjust the facepieces to their faces to achieve a proper fit, and to wash their faces and respirator facepieces as necessary in order to prevent skin irritation associated with respirator use.

(6) *Filter respirators.* Employers who provide gas masks with organic vapor canisters for the purpose of emergency escape shall replace those canisters after any emergency use before those gas masks are returned to service.

(7) *Respirator fit testing.* (i) The employer shall ensure that each respirator issued to the employee is properly fitted and exhibits the least possible facepiece leakage from among the facepieces tested.

(ii) The employer shall perform qualitative or quantitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator, including those employees for whom emergency escape respirators are provided.

[**Note to paragraph (g)(7)(ii):** The only supplied-air respirators to which this provision would apply are SCBA in negative pressure mode and full facepiece supplied-air respirators operated in negative pressure mode. The small business compliance guides will contain examples of protocols for qualitative and quantitative fit testing.]

(h) *Protective Work Clothing and Equipment.* (1) Where needed to prevent

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MC-induced skin or eye irritation, the employer shall provide clean protective clothing and equipment which is resistant to MC, at no cost to the employee, and shall ensure that each affected employee uses it. Eye and face protection shall meet the requirements of 29 CFR 1910.133 or 29 CFR 1915.153, as applicable.

(2) The employer shall clean, launder, repair and replace all protective clothing and equipment required by this paragraph as needed to maintain their effectiveness.

(3) The employer shall be responsible for the safe disposal of such clothing and equipment. [**Note to paragraph (h)(4):** See Appendix A for examples of disposal procedures that will satisfy this requirement.]

(i) *Hygiene facilities.* (1) If it is reasonably foreseeable that employees' skin may contact solutions containing 0.1 percent or greater MC (for example, through splashes, spills or improper work practices), the employer shall provide conveniently located washing facilities capable of removing the MC, and shall ensure that affected employees use these facilities as needed.

(2) If it is reasonably foreseeable that an employee's eyes may contact solutions containing 0.1 percent or greater MC (for example through splashes, spills or improper work practices), the employer shall provide appropriate eyewash facilities within the immediate work area for emergency use, and shall ensure that affected employees use those facilities when necessary.

(j) *Medical surveillance.* (1) *Affected employees.* The employer shall make medical surveillance available for employees who are or may be exposed to MC as follows:

(i) At or above the action level on 30 or more days per year, or above the 8-hour TWA PEL or the STEL on 10 or more days per year;

(ii) Above the 8–TWA PEL or STEL for any time period where an employee has been identified by a physician or other licensed health care professional as being at risk from cardiac disease or from some other serious MC-related health condition and such employee requests inclusion in the medical surveillance program;

(iii) During an emergency.

(2) *Costs.* The employer shall provide all required medical surveillance at no cost to affected employees, without loss of pay and at a reasonable time and place.

(3) *Medical personnel.* The employer shall ensure that all medical surveillance procedures are performed by a physician or other licensed health care professional, as defined in paragraph (b) of this section.

(4) *Frequency of medical surveillance.* The employer shall make medical surveillance available to each affected employee as follows:

(i) *Initial surveillance.* The employer shall provide initial medical surveillance under the schedule provided by paragraph (n)(2)(iii) of this section, or before the time of initial assignment of the employee, whichever is later. The employer need not provide the initial surveillance if medical records show that an affected employee has been provided with medical surveillance that complies with this section within 12 months before April 10, 1997.

(ii) *Periodic medical surveillance.* The employer shall update the medical and work history for each affected employee annually. The employer shall provide periodic physical examinations, including appropriate laboratory surveillance, as follows:

(A) For employees 45 years of age or older, within 12 months of the initial surveillance or any subsequent medical surveillance; and

(B) For employees younger than 45 years of age, within 36 months of the initial surveillance or any subsequent medical surveillance.

(iii) *Termination of employment or reassignment.* When an employee leaves the employer's workplace, or is reassigned to an area where exposure to MC is consistently at or below the action level and STEL, medical surveillance shall be made available if six months or more have elapsed since the last medical surveillance.

(iv) *Additional surveillance.* The employer shall provide additional medical surveillance at frequencies other than those listed above when recommended in the written medical opinion. (For example, the physician or other licensed health care professional may determine an examination is warranted in less than 36 months for employees younger than 45 years of age based upon evaluation of the results of the annual medical and work history.)

(5) *Content of medical surveillance.* (i) *Medical and work history.* The comprehensive medical and work history shall emphasize neurological symptoms, skin conditions, history of hematologic or liver disease, signs or symptoms suggestive of heart disease (angina, coronary artery disease), risk factors for cardiac disease, MC exposures, and work practices and personal protective equipment used during such exposures. [**Note to paragraph (j)(5)(i):** See Appendix B of this section for an example of a medical and work history format that would satisfy this requirement.]

(ii) *Physical examination.* Where physical examinations are provided as required above, the physician or other licensed health care professional shall accord particular attention to the lungs, cardiovascular system (including blood pressure and pulse), liver, nervous system, and skin. The physician or other licensed health care professional shall determine the extent and nature of the physical examination based on the health status of the employee and analysis of the medical and work history.

(iii) *Laboratory surveillance.* The physician or other licensed health care professional shall determine the extent of any required laboratory surveillance based on the employee's observed health status and the medical and work history. [**Note to paragraph (j)(5)(iii):** See Appendix B of this section for information regarding medical tests. Laboratory surveillance may include before- and after-shift carboxyhemoglobin determinations, resting ECG, hematocrit, liver function tests and cholesterol levels.]

(iv) *Other information or reports.* The medical surveillance shall also include any other information or reports the physician or other licensed health care professional determines are necessary to assess the employee's health in relation to MC exposure.

(6) *Content of emergency medical surveillance.* The employer shall ensure that medical surveillance made available when an employee has been exposed to MC in emergency situations includes, at a minimum:

(i) Appropriate emergency treatment and decontamination of the exposed employee;

(ii) Comprehensive physical examination with special emphasis on the nervous system, cardiovascular system, lungs, liver and skin, including blood pressure and pulse;

(iii) Updated medical and work history, as appropriate for the medical condition of the employee; and

(iv) Laboratory surveillance, as indicated by the employee's health status. [**Note to paragraph (j)(6)(iv):** See Appendix B for examples of tests which may be appropriate.]

(7) *Additional examinations and referrals.* Where the physician or other licensed health care professional determines it is necessary, the scope of the medical examination shall be expanded and the appropriate additional medical surveillance, such as referrals for consultation or examination, shall be provided.

(8) *Information provided to the physician or other licensed health care professional.* The employer shall provide the following information to a physician or other licensed health care professional who is involved in the diagnosis of MC-induced health effects:

(i) A copy of this section including its applicable appendices;

(ii) A description of the affected employee's past, current and anticipated future duties as they relate to the employee's MC exposure;

(iii) The employee's former or current exposure levels or, for employees not yet occupationally exposed to MC, the employee's anticipated exposure levels and the frequency and exposure levels anticipated to be associated with emergencies;

(iv) A description of any personal protective equipment, such as respirators, used or to be used; and

(v) Information from previous employment-related medical surveillance of the affected employee which is not otherwise available to the physician or other licensed health care professional.

(9) *Written medical opinions.* (i) For each physical examination required by this section, the employer shall ensure that the physician or other licensed health care professional provides to the employer and to the affected employee a written opinion regarding the results of that examination within 15 days of completion of the evaluation of medical and laboratory findings, but not more than 30 days after the examination. The written medical opinion shall be limited to the following information:

(A) The physician's or other licensed health care professional's opinion concerning whether the employee has any detected medical condition(s) which would place the employee's health at increased risk of material impairment from exposure to MC;

(B) Any recommended limitations upon the employee's exposure to MC or upon the employee's use of protective clothing or equipment and respirators;

(C) A statement that the employee has been informed by the physician or other licensed health care professional that MC is a potential occupational carcinogen, of risk factors for heart disease, and the potential for exacerbation of underlying heart disease by exposure to MC through its metabolism to carbon monoxide; and

(D) A statement that the employee has been informed by the physician or other licensed health care professional of the results of the medical examination and any medical conditions resulting from MC exposure which require further explanation or treatment.

(ii) The employer shall instruct the physician or other licensed health care professional not to reveal to the employer, orally or in the written opinion, any specific records, findings, and diagnoses that have no bearing on occupational exposure to MC. [**Note to paragraph (j)(9)(ii):** The written medical opinion may also include information and opinions generated to comply with other OSHA health standards.]

(k) *Hazard communication.* The employer shall communicate the following hazards associated with MC on labels and in material safety data sheets in accordance with the requirements of the Hazard Communication Standard, 29 CFR 1910.1200, 29 CFR 1915.1200, or 29 CFR 1926.59, as appropiate: cancer, cardiac effects (including elevation of carboxyhemoglobin), central nervous system effects, liver effects, and skin and eye irritation.

(l) *Employee information and training.* (1) The employer shall provide information and training for each affected employee prior to or at the time of initial assignment to a job involving potential exposure to MC.

(2) The employer shall ensure that information and training is presented in a manner that is understandable to the employees.

(3) In addition to the information required under the Hazard Communication Standard at 29 CFR 1910.1200, 29 CFR 1915.1200, or 29 CFR 1926.59, as appropiate:

(i) The employer shall inform each affected employee of the requirements of this section and information available in its appendices, as well as how to access or obtain a copy of it in the workplace;

(ii) Wherever an employee's exposure to airborne concentrations of MC exceeds or can reasonably be expected to exceed the action level, the employer shall inform each affected employee of the quantity, location, manner of use, release, and storage of MC and the specific operations in the workplace that could result in exposure to MC, particularly noting where exposures may be above the 8-hour TWA PEL or STEL;

(4) The employer shall train each affected employee as required under the Hazard Communication standard at 29 CFR 1910.1200, 29 CFR 1915.1200, or 29 CFR 1926.59, as appropiate.

(5) The employer shall re-train each affected employee as necessary to ensure that each employee exposed above the action level or the STEL maintains the requisite understanding of the principles of safe use and handling of MC in the workplace.

(6) Whenever there are workplace changes, such as modifications of tasks or procedures or the institution of new tasks or procedures, which increase employee exposure, and where those exposures exceed or can reasonably be expected to exceed the action level, the employer shall update the training as necessary to ensure that each affected employee has the requisite proficiency.

(7) An employer whose employees are exposed to MC at a multi-employer worksite shall notify the other employers with work operations at that site in accordance with the requirements of the Hazard Communication Standard, 29 CFR 1910.1200, 29 CFR 1915.1200, or 29 CFR 1926.59, as appropiate.

(8) The employer shall provide to the Assistant Secretary or the Director, upon request, all available materials relating to employee information and training.

(m) *Recordkeeping.* (1) *Objective data.* (i) Where an employer seeks to demonstrate that initial monitoring is unnecessary through reasonable reliance on objective data showing that any materials in the workplace containing MC will not release MC at levels which exceed the action level or the STEL under foreseeable conditions of exposure, the employer shall establish and maintain an accurate record of the objective data relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The MC-containing material in question;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MC;

(D) A description of the operation exempted under paragraph (d)(2)(i) of this section and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure measurements.* (i) The employer shall establish and keep an accurate record of all measurements taken to monitor employee exposure to MC as prescribed in paragraph (d) of this section.

(ii) Where the employer has 20 or more employees, this record shall include at least the following information:

(A) The date of measurement for each sample taken;

(B) The operation involving exposure to MC which is being monitored;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of personal protective equipment, such as respiratory protective devices, worn, if any; and

(F) Name, social security number, job classification and exposure of all of the employees represented by monitoring, indicating which employees were actually monitored.

(iii) Where the employer has fewer than 20 employees, the record shall include at least the following information:

(A) The date of measurement for each sample taken;

(B) Number, duration, and results of samples taken; and

(C) Name, social security number, job classification and exposure of all of the employees represented by monitoring, indicating which employees were actually monitored.

(iv) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1910.1020.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance under paragraph (j) of this section.

(ii) The record shall include at least the following information:

(A) The name, social security number and description of the duties of the employee;

(B) Written medical opinions; and

(C) Any employee medical conditions related to exposure to MC.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1910.1020.

(4) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying in accordance with 29 CFR 1910.1020. [**Note to paragraph (m)(4)(i):** All records required to be maintained by this section may be kept in the most administratively convenient form (for example, electronic or computer records would satisfy this requirement).]

(ii) The employer, upon request, shall make any employee exposure and objective data records required by this section available for examination and copying by affected employees, former employees, and designated representatives in accordance with 29 CFR 1910.1020.

(iii) The employer, upon request, shall make employee medical records required to be kept by this section available for examination and copying by the subject employee and by anyone having the specific written consent of the subject employee in accordance with 29 CFR 1910.1020.

(5) *Transfer of records.* The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.1020(h).

(n) *Dates.* (1) *Effective date.* This section shall become effective April 10, 1997.

(2) *Start-up dates.*

(i) Initial monitoring required by paragraph (d)(2) of this section shall be completed according to the following schedule:

(A) For employers with fewer than 20 employees, within 300 days after the effective date of this section.

(B) For polyurethane foam manufacturers with 20 to 99 employees, within 210 days after the effective date of this section.

(C) For all other employers, within 120 days after the effective date of this section.

(ii) Engineering controls required under paragraph (f)(1) of this section shall be implemented according to the following schedule:

(A) For employers with fewer than 20 employees, within three (3) years after the effective date of this section.

(B) For polyurethane foam manufacturers with 20 to 99 employees, within two (2) years after the effective date of this section.

(C) For all other employers, within one (1) year after the effective date of this section.

(iii) All other requirements of this section shall be complied with according to the following schedule:

(A) For employers with fewer than 20 employees, within one (1) year after the effective date of this section.

(B) For polyurethane foam manufacturers with 20 to 99 employees, within 270 days after the effective date of this section.

(C) For all other employers, within 180 days after the effective date of this section.

(3) *Transitional dates.* The exposure limits for MC specified in 29 CFR 1910.1000 (1996), Table Z-2, shall remain in effect until the start-up dates for the exposure limits specified in paragraph (n) of this section, or if the exposure limits in this section are stayed or vacated.

(o) *Appendices.* The information contained in the appendices does not, by itself, create any additional obligations not otherwise imposed or detract from any existing obligation.

Appendix A to Section 1910.1052: Substance Safety Data Sheet and Technical Guidelines for Methylene Chloride

I. Substance Identification

A. Substance: Methylene chloride (CH_2Cl_2).

B. Synonyms: MC, Dichloromethane (DCM); Methylene dichloride; Methylene bichloride; Methane dichloride; CAS: 75–09–2; NCI–C50102.

C. Physical data:

1. Molecular weight: 84.9.

2. Boiling point (760 mm Hg): 39.8°C (104°F).

3. Specific gravity (water=1): 1.3.

4. Vapor density (air=1 at boiling point): 2.9.

5. Vapor pressure at 20° C (68° F): 350 mm Hg.

6. Solubility in water, g/100 g water at 20° C (68° F)=1.32.

7. Appearance and odor: colorless liquid with a chloroform-like odor.

D. Uses:

MC is used as a solvent, especially where high volatility is required. It is a good solvent for oils, fats, waxes, resins, bitumen, rubber and cellulose acetate and is a useful paint stripper and degreaser. It is used in paint removers, in propellant mixtures for aerosol containers, as a solvent for plastics, as a degreasing agent, as an extracting agent in the pharmaceutical industry and as a blowing agent in polyurethane foams. Its solvent property is sometimes increased by mixing with methanol, petroleum naphtha or tetrachloroethylene.

E. Appearance and odor:

MC is a clear colorless liquid with a chloroform-like odor. It is slightly soluble in water and completely miscible with most organic solvents.

F. Permissible exposure:

Exposure may not exceed 25 parts MC per million parts of air (25 ppm) as an eight-hour time-weighted average (8-hour TWA PEL) or 125 parts of MC per million parts of air (125 ppm) averaged over a 15-minute period (STEL).

II. Health Hazard Data

A. MC can affect the body if it is inhaled or if the liquid comes in contact with the eyes or skin. It can also affect the body if it is swallowed.

B. Effects of overexposure:

1. Short-term Exposure:

MC is an anesthetic. Inhaling the vapor may cause mental confusion, light-headedness, nausea, vomiting, and headache. Continued exposure may cause increased light-headedness, staggering, unconsciousness, and even death. High vapor concentrations may also cause irritation of the eyes and respiratory tract. Exposure to MC may make the symptoms of angina (chest pains) worse. Skin exposure to liquid MC may cause irritation. If liquid MC remains on the skin, it may cause skin burns. Splashes of the liquid into the eyes may cause irritation.

2. Long-term (chronic) exposure:

The best evidence that MC causes cancer is from laboratory studies in which rats, mice and hamsters inhaled MC 6 hours per day,

5 days per week for 2 years. MC exposure produced lung and liver tumors in mice and mammary tumors in rats. No carcinogenic effects of MC were found in hamsters.

There are also some human epidemiological studies which show an association between occupational exposure to MC and increases in biliary (bile duct) cancer and a type of brain cancer. Other epidemiological studies have not observed a relationship between MC exposure and cancer. OSHA interprets these results to mean that there is suggestive (but not absolute) evidence that MC is a human carcinogen.

C. Reporting signs and symptoms:

You should inform your employer if you develop any signs or symptoms and suspect that they are caused by exposure to MC.

D. Warning Properties:

1. Odor Threshold:

Different authors have reported varying odor thresholds for MC. Kirk-Othmer and Sax both reported 25 to 50 ppm; Summer and May both reported 150 ppm; Spector reports 320 ppm. Patty, however, states that since one can become adapted to the odor, MC should not be considered to have adequate warning properties.

2. Eye Irritation Level:

Kirk-Othmer reports that "MC vapor is seriously damaging to the eyes." Sax agrees with Kirk-Othmer's statement. The ACGIH Documentation of TLVs states that irritation of the eyes has been observed in workers exposed to concentrations up to 5000 ppm.

3. Evaluation of Warning Properties:

Since a wide range of MC odor thresholds are reported (25–320 ppm), and human adaptation to the odor occurs, MC is considered to be a material with poor warning properties.

III. Emergency First Aid Procedures

In the event of emergency, institute first aid procedures and send for first aid or medical assistance.

A. Eye and Skin Exposures:

If there is a potential for liquid MC to come in contact with eye or skin, face shields and skin protective equipment must be provided and used. If liquid MC comes in contact with the eye, get medical attention. Contact lenses should not be worn when working with this chemical.

B. Breathing:

If a person breathes in large amounts of MC, move the exposed person to fresh air at once. If breathing has stopped, perform cardiopulmorary resuscitation. Keep the affected person warm and at rest. Get medical attention as soon as possible.

C. Rescue:

Move the affected person from the hazardous exposure immediately. If the exposed person has been overcome, notify someone else and put into effect the established emergency rescue procedures. Understand the facility's emergency rescue procedures and know the locations of rescue equipment before the need arises. Do not become a casualty yourself.

IV. Respirators, Protective Clothing, and Eye Protection

A. Respirators:

Good industrial hygiene practices recommend that engineering controls be used to reduce environmental concentrations to the permissible exposure level. However, there are some exceptions where respirators may be used to control exposure. Respirators may be used when engineering and work practice controls are not feasible, when such controls are in the process of being installed, or when these controls fail and need to be supplemented. Respirators may also be used for operations which require entry into tanks or closed vessels, and in emergency situations.

If the use of respirators is necessary, the only respirators permitted are those that have been approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH). Supplied-air respirators are *required* because air-purifying respirators do not provide adequate respiratory protection against MC.

In addition to respirator selection, a complete written respiratory protection program should be instituted which includes regular training, maintenance, inspection, cleaning, and evaluation. If you can smell MC while wearing a respirator, proceed immediately to fresh air. If you experience difficulty in breathing while wearing a respirator, tell your employer.

B. Protective Clothing:

Employees must be provided with and required to use impervious clothing, gloves, face shields (eight-inch minimum), and other appropriate protective clothing necessary to prevent repeated or prolonged skin contact with liquid MC or contact with vessels containing liquid MC. Any clothing which becomes wet with liquid MC should be removed immediately and not reworn until the employer has ensured that the protective clothing is fit for reuse. Contaminated protective clothing should be placed in a regulated area designated by the employer for removal of MC before the clothing is laundered or disposed of. Clothing and equipment should remain in the regulated area until all of the MC contamination has evaporated; clothing and equipment should then be laundered or disposed of as appropriate.

C. Eye Protection:

Employees should be provided with and required to use splash-proof safety goggles where liquid MC may contact the eyes.

V. Housekeeping and Hygiene Facilities

For purposes of complying with 29 CFR 1910.141, the following items should be emphasized:

A. The workplace should be kept clean, orderly, and in a sanitary condition. The employer should institute a leak and spill detection program for operations involving liquid MC in order to detect sources of fugitive MC emissions.

B. Emergency drench showers and eyewash facilities are recommended. These should be maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of MC from the skin.

C. Because of the hazardous nature of MC, contaminated protective clothing should be placed in a regulated area designated by the employer for removal of MC before the clothing is laundered or disposed of.

VI. Precautions for Safe Use, Handling, and Storage

A. Fire and Explosion Hazards:

MC has no flash point in a conventional closed tester, but it forms flammable vapor-air mixtures at approximately 100°C (212°F), or higher. It has a lower explosion limit of 12%, and an upper explosion limit of 19% in air. It has an autoignition temperature of 556.1°C (1033°F), and a boiling point of 39.8°C (104°F). It is heavier than water with a specific gravity of 1.3. It is slightly soluble in water.

B. Reactivity Hazards:

Conditions contributing to the instability of MC are heat and moisture. Contact with strong oxidizers, caustics, and chemically active metals such as aluminum or magnesium powder, sodium and potassium may cause fires and explosions.

Special precautions: Liquid MC will attack some forms of plastics, rubber, and coatings.

C. Toxicity:

Liquid MC is painful and irritating if splashed in the eyes or if confined on the skin by gloves, clothing, or shoes. Vapors in high concentrations may cause narcosis and death. Prolonged exposure to vapors may cause cancer or exacerbate cardiac disease.

D. Storage:

Protect against physical damage. Because of its corrosive properties, and its high vapor pressure, MC should be stored in plain, galvanized or lead lined, mild steel containers in a cool, dry, well ventilated area away from direct sunlight, heat source and acute fire hazards.

E. Piping Material:

All piping and valves at the loading or unloading station should be of material that is resistant to MC and should be carefully inspected prior to connection to the transport vehicle and periodically during the operation.

F. Usual Shipping Containers:

Glass bottles, 5- and 55-gallon steel drums, tank cars, and tank trucks.

Note: This section addresses MC exposure in marine terminal and longshore employment only where leaking or broken packages allow MC exposure that is not addressed through compliance with 29 CFR parts 1917 and 1918, respectively.

G. Electrical Equipment:

Electrical installations in Class I hazardous locations as defined in Article 500 of the National Electrical Code, should be installed according to Article 501 of the code; and electrical equipment should be suitable for use in atmospheres containing MC vapors. See Flammable and Combustible Liquids Code (NFPA No. 325M), Chemical Safety Data Sheet SD–86 (Manufacturing Chemists' Association, Inc.).

H. Fire Fighting:

When involved in fire, MC emits highly toxic and irritating fumes such as phosgene, hydrogen chloride and carbon monoxide. Wear breathing apparatus and use water spray to keep fire-exposed containers cool. Water spray may be used to flush spills away from exposures. Extinguishing media are dry

chemical, carbon dioxide, foam. For purposes of compliance with 29 CFR 1910.307, locations classified as hazardous due to the presence of MC shall be Class I.

I. Spills and Leaks:

Persons not wearing protective equipment and clothing should be restricted from areas of spills or leaks until cleanup has been completed. If MC has spilled or leaked, the following steps should be taken:

1. Remove all ignition sources.
2. Ventilate area of spill or leak.
3. Collect for reclamation or absorb in vermiculite, dry sand, earth, or a similar material.

J. Methods of Waste Disposal:

Small spills should be absorbed onto sand and taken to a safe area for atmospheric evaporation. Incineration is the preferred method for disposal of large quantities by mixing with a combustible solvent and spraying into an incinerator equipped with acid scrubbers to remove hydrogen chloride gases formed. Complete combustion will convert carbon monoxide to carbon dioxide. Care should be taken for the presence of phosgene.

K. You should not keep food, beverage, or smoking materials, or eat or smoke in regulated areas where MC concentrations are above the permissible exposure limits.

L. Portable heating units should not be used in confined areas where MC is used.

M. Ask your supervisor where MC is used in your work area and for any additional plant safety and health rules.

VII. Medical Requirements

Your employer is required to offer you the opportunity to participate in a medical surveillance program if you are exposed to MC at concentrations at or above the action level (12.5 ppm 8-hour TWA) for more than 30 days a year or at concentrations exceeding the PELs (25 ppm 8-hour TWA or 125 ppm 15-minute STEL) for more than 10 days a year. If you are exposed to MC at concentrations over either of the PELs, your employer will also be required to have a physician or other licensed health care professional ensure that you are able to wear the respirator that you are assigned. Your employer must provide all medical examinations relating to your MC exposure at a reasonable time and place and at no cost to you.

VIII. Monitoring and Measurement Procedures

A. Exposure above the Permissible Exposure Limit:

1. Eight-hour exposure evaluation: Measurements taken for the purpose of determining employee exposure under this section are best taken with consecutive samples covering the full shift. Air samples must be taken in the employee's breathing zone.

2. Monitoring techniques: The sampling and analysis under this section may be performed by collection of the MC vapor on two charcoal adsorption tubes in series or other composition adsorption tubes, with subsequent chemical analysis. Sampling and analysis may also be performed by instruments such as real-time continuous monitoring systems, portable direct reading instruments, or passive dosimeters as long as measurements taken using these methods accurately evaluate the concentration of MC in employees" breathing zones.

OSHA method 80 is an example of a validated method of sampling and analysis of MC. Copies of this method are available from OSHA or can be downloaded from the Internet at http://www.osha.gov. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his or her unique field conditions. The standard requires that the method of monitoring must be accurate, to a 95 percent confidence level, to plus or minus 25 percent for concentrations of MC at or above 25 ppm, and to plus or minus 35 percent for concentrations at or below 25 ppm. In addition to OSHA method 80, there are numerous other methods available for monitoring for MC in the workplace.

B. Since many of the duties relating to employee exposure are dependent on the results of measurement procedures, employers must assure that the evaluation of employee exposure is performed by a technically qualified person.

IX. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to MC and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear, protective clothing and equipment.

X. Access To Information

A. Your employer is required to inform you of the information contained in this Appendix. In addition, your employer must instruct you in the proper work practices for using MC, emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to MC. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being over exposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits.

C. Your employer is required to keep records of your exposures and medical examinations. These records must be kept by the employer for at least thirty (30) years.

D. Your employer is required to release your exposure and medical records to you or your representative upon your request.

E. Your employee is required to provide labels and material safety data sheets (MSDS) for all materials, mixtures or solutions composed of greater than 0.1 percent MC. An example of a label that would satisfy these requirements would be:

Danger Contains Methylene Chloride Potential Cancer Hazard

May worsen heart disease because methylene chloride is converted to carbon monoxide in the body.

May cause dizziness, headache, irritation of the throat and lungs, loss of consciousness and death at high concentrations (for example, if used in a poorly ventilated room).

Avoid Skin Contact. Contact with liquid causes skin and eye irritation.

XI. Common Operations and Controls

The following list includes some common operations in which exposure to MC may occur and control methods which may be effective in each case:

Operations	Controls
Use as solvent in paint and varnish removers; manufacture of aerosols; cold cleaning and ultrasonic cleaning; and as a solvent in furniture stripping.	General dilution ventilation; local exhaust ventilation; personal protective equipment; substitution.
Use as solvent in vapor degreasing.	Process enclosure; local exhaust ventilation; chilling coils; substitution.
Use as a secondary refrigerant in air conditioning and scientific testing.	General dilution ventilation; local exhaust ventilation; personal protective equipment.

Appendix B to Section 1910.1052: Medical Surveillance for Methylene Chloride

I. Primary Route of Entry

Inhalation.

II. Toxicology

Methylene Chloride (MC) is primarily an inhalation hazard. The principal acute hazardous effects are the depressant action on the central nervous system, possible cardiac toxicity and possible liver toxicity. The range of CNS effects are from decreased eye/hand coordination and decreased performance in vigilance tasks to narcosis and even death of individuals exposed at very high doses. Cardiac toxicity is due to the metabolism of MC to carbon monoxide, and the effects of carbon monoxide on heart tissue. Carbon monoxide displaces oxygen in the blood, decreases the oxygen available to heart tissue, increasing the risk of damage to the heart, which may result in heart attacks in susceptible individuals. Susceptible individuals include persons with heart disease and those with risk factors for heart disease.

Elevated liver enzymes and irritation to the respiratory passages and eyes have also been reported for both humans and experimental animals exposed to MC vapors.

MC is metabolized to carbon monoxide and carbon dioxide via two separate pathways. Through the first pathway, MC is metabolized to carbon monoxide as an end-product via the P–450 mixed function oxidase pathway located in the microsomal

fraction of the cell. This biotransformation of MC to carbon monoxide occurs through the process of microsomal oxidative dechlorination which takes place primarily in the liver. The amount of conversion to carbon monoxide is significant as measured by the concentration of carboxyhemoglobin, up to 12% measured in the blood following occupational exposure of up to 610 ppm. Through the second pathway, MC is metabolized to carbon dioxide as an end product (with formaldehyde and formic acid as metabolic intermediates) via the glutathione dependent enzyme found in the cytosolic fraction of the liver cell. Metabolites along this pathway are believed to be associated with the carcinogenic activity of MC.

MC has been tested for carcinogenicity in several laboratory rodents. These rodent studies indicate that there is clear evidence that MC is carcinogenic to male and female mice and female rats. Based on epidemiologic studies, OSHA has concluded that there is suggestive evidence of increased cancer risk in MC-related worker populations. The epidemiological evidence is consistent with the finding of excess cancer in the experimental animal studies. NIOSH regards MC as a potential occupational carcinogen and the International Agency for Research Cancer (IARC) classifies MC as an animal carcinogen. OSHA considers MC as a suspected human carcinogen.

III. Medical Signs and Symptoms of Acute Exposure

Skin exposure to liquid MC may cause irritation or skin burns. Liquid MC can also be irritating to the eyes. MC is also absorbed through the skin and may contribute to the MC exposure by inhalation.

At high concentrations in air, MC may cause nausea, vomiting, light-headedness, numbness of the extremities, changes in blood enzyme levels, and breathing problems, leading to bronchitis and pulmonary edema, unconsciousness and even death.

At lower concentrations in air, MC may cause irritation to the skin, eye, and respiratory tract and occasionally headache and nausea. Perhaps the greatest problem from exposure to low concentrations of MC is the CNS effects on coordination and alertness that may cause unsafe operations of machinery and equipment, leading to self-injury or accidents.

Low levels and short duration exposures do not seem to produce permanent disability, but chronic exposures to MC have been demonstrated to produce liver toxicity in animals, and therefore, the evidence is suggestive for liver toxicity in humans after chronic exposure.

Chronic exposure to MC may also cause cancer.

IV. Surveillance and Preventive Considerations

As discussed above, MC is classified as a suspect or potential human carcinogen. It is a central nervous system (CNS) depressant and a skin, eye and respiratory tract irritant. At extremely high concentrations, MC has caused liver damage in animals.

MC principally affects the CNS, where it acts as a narcotic. The observation of the symptoms characteristic of CNS depression, along with a physical examination, provides the best detection of early neurological disorders. Since exposure to MC also increases the carboxyhemoglobin level in the blood, ambient carbon monoxide levels would have an additive effect on that carboxyhemoglobin level. Based on such information, a periodic post-shift carboxyhemoglobin test as an index of the presence of carbon monoxide in the blood is recommended, but not required, for medical surveillance.

Based on the animal evidence and three epidemiologic studies previously mentioned, OSHA concludes that MC is a suspect human carcinogen. The medical surveillance program is designed to observe exposed workers on a regular basis. While the medical surveillance program cannot detect MC-induced cancer at a preneoplastic stage, OSHA anticipates that, as in the past, early detection and treatments of cancers leading to enhanced survival rates will continue to evolve.

A. Medical and Occupational History:

The medical and occupational work history plays an important role in the initial evaluation of workers exposed to MC. It is therefore extremely important for the examining physician or other licensed health care professional to evaluate the MC-exposed worker carefully and completely and to focus the examination on MC's potentially associated health hazards. The medical evaluation must include an annual detailed work and medical history with special emphasis on cardiac history and neurological symptoms.

An important goal of the medical history is to elicit information from the worker regarding potential signs or symptoms associated with increased levels of carboxyhemoglobin due to the presence of carbon monoxide in the blood. Physicians or other licensed health care professionals should ensure that the smoking history of all MC exposed employees is known. Exposure to MC may cause a significant increase in carboxyhemoglobin level in all exposed persons. However, smokers as well as workers with anemia or heart disease and those concurrently exposed to carbon monoxide are at especially high risk of toxic effects because of an already reduced oxygen carrying capacity of the blood.

A comprehensive or interim medical and work history should also include occurrence of headache, dizziness, fatigue, chest pain, shortness of breath, pain in the limbs, and irritation of the skin and eyes.

In addition, it is important for the physician or other licensed health care professional to become familiar with the operating conditions in which exposure to MC is likely to occur. The physician or other licensed health care professional also must become familiar with the signs and symptoms that may indicate that a worker is receiving otherwise unrecognized and exceptionally high exposure levels of MC.

An example of a medical and work history that would satisfy the requirement for a comprehensive or interim work history is represented by the following:

The following is a list of recommended questions and issues for the self-administered questionnaire for methylene chloride exposure.

Questionnaire For Methylene Chloride Exposure

I. Demographic Information

1. Name
2. Social Security Number
3. Date
4. Date of Birth
5. Age
6. Present occupation
7. Sex
8. Race

II. Occupational History

1. Have you ever worked with methylene chloride, dichloromethane, methylene dichloride, or CH_2Cl_2 (all are different names for the same chemical)? Please list which on the occupational history form if you have not already.

2. If you have worked in any of the following industries and have not listed them on the occupational history form, please do so.

Furniture stripping
Polyurethane foam manufacturing
Chemical manufacturing or formulation
Pharmaceutical manufacturing
Any industry in which you used solvents to clean and degrease equipment or parts
Construction, especially painting and refinishing
Aerosol manufacturing
Any industry in which you used aerosol adhesives

3. If you have not listed hobbies or household projects on the occupational history form, especially furniture refinishing, spray painting, or paint stripping, please do so.

III. Medical History

A. General

1. Do you consider yourself to be in good health? If no, state reason(s).
2. Do you or have you ever had:
a. Persistent thirst
b. Frequent urination (three times or more at night)
c. Dermatitis or irritated skin
d. Non-healing wounds
3. What prescription or non-prescription medications do you take, and for what reasons?
4. Are you allergic to any medications, and what type of reaction do you have?

B. Respiratory

1. Do you have or have you ever had any chest illnesses or diseases? Explain.
2. Do you have or have you ever had any of the following:
a. Asthma
b. Wheezing
c. Shortness of breath
3. Have you ever had an abnormal chest X-ray? If so, when, where, and what were the findings?
4. Have you ever had difficulty using a respirator or breathing apparatus? Explain.
5. Do any chest or lung diseases run in your family? Explain.

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6. Have you ever smoked cigarettes, cigars, or a pipe? Age started:

7. Do you now smoke?

8. If you have stopped smoking completely, how old were you when you stopped?

9. On the average of the entire time you smoked, how many packs of cigarettes, cigars, or bowls of tobacco did you smoke per day?

C. Cardiovascular

1. Have you ever been diagnosed with any of the following: Which of the following apply to you now or did apply to you at some time in the past, even if the problem is controlled by medication? Please explain any yes answers (i.e., when problem was diagnosed, length of time on medication).

a. High cholesterol or triglyceride level
b. Hypertension (high blood pressure)
c. Diabetes
d. Family history of heart attack, stroke, or blocked arteries

2. Have you ever had chest pain? If so, answer the next five questions.

a. What was the quality of the pain (i.e., crushing, stabbing, squeezing)?
b. Did the pain go anywhere (i.e., into jaw, left arm)?
c. What brought the pain out?
d. How long did it last?
e. What made the pain go away?

3. Have you ever had heart disease, a heart attack, stroke, aneurysm, or blocked arteries anywhere in you body? Explain (when, treatment).

4. Have you ever had bypass surgery for blocked arteries in your heart or anywhere else? Explain.

5. Have you ever had any other procedures done to open up a blocked artery (balloon angioplasty, carotid endarterectomy, clot-dissolving drug)?

6. Do you have or have you ever had (explain each):

a. Heart murmur
b. Irregular heartbeat
c. Shortness of breath while lying flat
d. Congestive heart failure
e. Ankle swelling
f. Recurrent pain anywhere below the waist while walking

7. Have you ever had an electrocardiogram (EKG)? When?

8. Have you ever had an abnormal EKG? If so, when, where, and what were the findings?

9. Do any heart diseases, high blood pressure, diabetes, high cholesterol, or high triglycerides run in your family? Explain.

D. Hepatobiliary and Pancreas

1. Do you now or have you ever drunk alcoholic beverages? Age started: _____ Age stopped: _____.

2. Average numbers per week:

a. Beers: _____, ounces in usual container:
b. Glasses of wine: _____, ounces per glass:
c. Drinks: _____, ounces in usual container:

3. Do you have or have you ever had (explain each):

a. Hepatitis (infectious, autoimmune, drug-induced, or chemical)
b. Jaundice
c. Elevated liver enzymes or elevated bilirubin
d. Liver disease or cancer

E. Central Nervous System

1. Do you or have you ever had (explain each):

a. Headache
b. Dizziness
c. Fainting
d. Loss of consciousness
e. Garbled speech
f. Lack of balance
g. Mental/psychiatric illness
h. Forgetfulness

F. Hematologic

1. Do you have, or have you ever had (explain each):

a. Anemia
b. Sickle cell disease or trait
c. Glucose-6-phosphate dehydrogenase deficiency
d. Bleeding tendency disorder

2. If not already mentioned previously, have you ever had a reaction to sulfa drugs or to drugs used to prevent or treat malaria? What was the drug? Describe the reaction.

B. Physical Examination

The complete physical examination, when coupled with the medical and occupational history, assists the physician or other licensed health care professional in detecting pre-existing conditions that might place the employee at increased risk, and establishes a baseline for future health monitoring. These examinations should include:

1. Clinical impressions of the nervous system, cardiovascular function and pulmonary function, with additional tests conducted where indicated or determined by the examining physician or other licensed health care professional to be necessary.

2. An evaluation of the advisability of the worker using a respirator, because the use of certain respirators places an additional burden on the cardiopulmonary system. It is necessary for the attending physician or other licensed health care professional to evaluate the cardiopulmonary function of these workers, in order to inform the employer in a written medical opinion of the worker's ability or fitness to work in an area requiring the use of certain types of respiratory protective equipment. The presence of facial hair or scars that might interfere with the worker's ability to wear certain types of respirators should also be noted during the examination and in the written medical opinion.

Because of the importance of lung function to workers required to wear certain types of respirators to protect themselves from MC exposure, these workers must receive an assessment of pulmonary function before they begin to wear a negative pressure respirator and at least annually thereafter. The recommended pulmonary function tests include measurement of the employee's forced vital capacity (FVC), forced expiratory volume at one second (FEV1), as well as calculation of the ratios of FEV1 to FVC, and the ratios of measured FVC and measured FEV1 to expected respective values corrected for variation due to age, sex, race, and height. Pulmonary function evaluation must be conducted by a physician or other licensed health care professional experienced in pulmonary function tests.

The following is a summary of the elements of a physical exam which would fulfill the requirements under the MC standard:

Physical Exam

I. Skin and appendages

1. Irritated or broken skin
2. Jaundice
3. Clubbing cyanosis, edema
4. Capillary refill time
5. Pallor

II. Head

1. Facial deformities
2. Scars
3. Hair growth

III. Eyes

1. Scleral icterus
2. Corneal arcus
3. Pupillary size and response
4. Fundoscopic exam

IV. Chest

1. Standard exam

V. Heart

1. Standard exam
2. Jugular vein distension
3. Peripheral pulses

VI. Abdomen

1. Liver span

VII. Nervous System

1. Complete standard neurologic exam

VIII. Laboratory

1. Hemoglobin and hematocrit
2. Alanine aminotransferase (ALT, SGPT)
3. Post-shift carboxyhemoglobin

IX. Studies

1. Pulmonary function testing
2. Electrocardiogram

An evaluation of the oxygen carrying capacity of the blood of employees (for example by measured red blood cell volume) is considered useful, especially for workers acutely exposed to MC.

It is also recommended, but not required, that end of shift carboxyhemoglobin levels be determined periodically, and any level above 3% for non-smokers and above 10% for smokers should prompt an investigation of the worker and his workplace. This test is recommended because MC is metabolized to CO, which combines strongly with hemoglobin, resulting in a reduced capacity of the blood to transport oxygen in the body. This is of particular concern for cigarette smokers because they already have a diminished hemoglobin capacity due to the presence of CO in cigarette smoke.

C. Additional Examinations and Referrals

1. Examination by a Specialist

When a worker examination reveals unexplained symptoms or signs (i.e. in the physical examination or in the laboratory tests), follow-up medical examinations are necessary to assure that MC exposure is not

adversely affecting the worker's health. When the examining physician or other licensed health care professional finds it necessary, additional tests should be included to determine the nature of the medical problem and the underlying cause. Where relevant, the worker should be sent to a specialist for further testing and treatment as deemed necessary.

The final rule requires additional investigations to be covered and it also permits physicians or other licensed health care professionals to add appropriate or necessary tests to improve the diagnosis of disease should such tests become available in the future.

2. Emergencies

The examination of workers exposed to MC in an emergency should be directed at the organ systems most likely to be affected. If the worker has received a severe acute exposure, hospitalization may be required to assure proper medical intervention. It is not possible to precisely define "severe," but the physician or other licensed health care professional's judgement should not merely rest on hospitalization. If the worker has suffered significant conjunctival, oral, or nasal irritation, respiratory distress, or discomfort, the physician or other licensed health care professional should instigate appropriate follow-up procedures. These include attention to the eyes, lungs and the neurological system. The frequency of follow-up examinations should be determined by the attending physician or other licensed health care professional. This testing permits the early identification essential to proper medical management of such workers.

D. Employer Obligations

The employer is required to provide the responsible physician or other licensed health care professional and any specialists involved in a diagnosis with the following information: a copy of the MC standard including relevant appendices, a description of the affected employee's duties as they relate to his or her exposure to MC; an estimate of the employee's exposure including duration (e.g., 15hr/wk, three 8-hour shifts/wk, full time); a description of any personal protective equipment used by the employee, including respirators; and the results of any previous medical determinations for the affected employee related to MC exposure to the extent that this information is within the employer's control.

E. Physicians' or Other Licensed Health Care Professionals' Obligations

The standard requires the employer to ensure that the physician or other licensed health care professional provides a written statement to the employee and the employer. This statement should contain the physician's or licensed health care professional's opinion as to whether the employee has any medical condition placing him or her at increased risk of impaired health from exposure to MC or use of respirators, as appropriate. The physician or other licensed health care professional should also state his or her opinion regarding any restrictions that should be placed on the employee's exposure to MC or upon the use of protective clothing or equipment such as respirators. If the employee wears a respirator as a result of his or her exposure to MC, the physician or other licensed health care professional's opinion should also contain a statement regarding the suitability of the employee to wear the type of respirator assigned. Furthermore, the employee should be informed by the physician or other licensed health care professional about the cancer risk of MC and about risk factors for heart disease, and the potential for exacerbation of underlying heart disease by exposure to MC through its metabolism to carbon monoxide. Finally, the physician or other licensed health care professional should inform the employer that the employee has been told the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion must not contain any information on specific findings or diagnosis unrelated to employee's occupational exposures.

The purpose in requiring the examining physician or other licensed health care professional to supply the employer with a written opinion is to provide the employer with a medical basis to assist the employer in placing employees initially, in assuring that their health is not being impaired by exposure to MC, and to assess the employee's ability to use any required protective equipment.

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Appendix C to Section 1910.1052: Questions and Answers--Methylene Chloride Control in Furniture Stripping--

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CENTERS FOR DISEASE CONTROL AND PREVENTION

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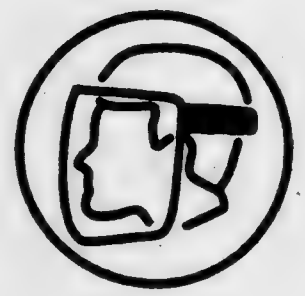

—Questions and Answers— Methylene Chloride Control in Furniture Stripping

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

September 1993

Q's & A's

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DHHS (NIOSH) Publication No. 93-133

Introduction

This Pamphlet answers commonly asked questions about the hazards from exposure to methylene chloride. It also describes approaches to controlling methylene chloride exposure during the most common furniture stripping processes. Although these approaches were developed and field tested by NIOSH, each setting requires custom installation because of the different air flow interferences at each site.

What is the Stripping Solution Base?

The most common active ingredient in paint removers is a chemical called methylene chloride. Methylene chloride is present in the paint remover to penetrate, blister, and finally lift the old finish. Other chemicals in paint removers work to accelerate the stripping process, to retard evaporation, and to act as thickening agents. These other ingredients may include: methanol, toluene, acetone, or paraffin.[1]

Is Methylene Chloride Bad for Me?

Exposure to methylene chloride may cause short-term health effects or long-term health effects.

Short-Term (acute) Health Effects

Exposure to high levels of paint removers over short periods of time can cause irritation to the skin, eyes, mucous membranes, and respiratory tract. Other symptoms of high exposure are dizziness headache, and lack of coordination. The occurrence of any of these symptoms indicates that you are being exposed to high levels of the methylene chloride. At the onset of any of these symptoms, you should leave the work area, get some fresh air, and determine why the levels were high.

A portion of inhaled methylene chloride is converted by the body to carbon monoxide, which can lower the blood's ability to carry oxygen. When the solvent is used properly, however, the levels of carbon monoxide should not be hazardous. Individuals with cardiovascular or pulmonary health problems should check with their physician before using the paint stripper. Individuals experiencing severe symptoms such as shortness of breath or chest pains should obtain proper medical care immediately.[2]

Long-term (Chronic) Health Effects

Methylene chloride has been shown to cause cancer in certain laboratory animal tests. The available human studies do not provide the necessary information to determine whether methylene chloride causes cancer in humans. However, as a result of the animal studies, methylene chloride is

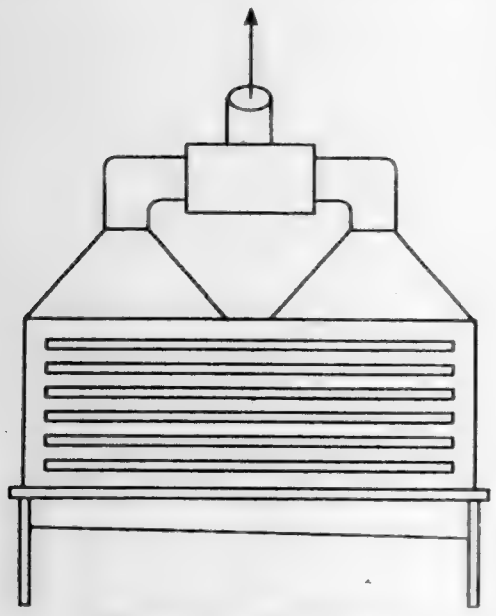

Figure 1 — Slot Hood

Q's & A's

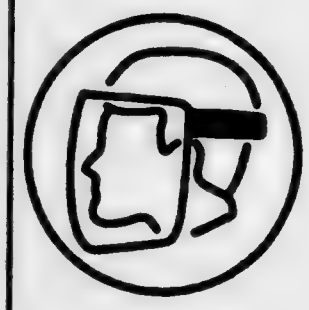

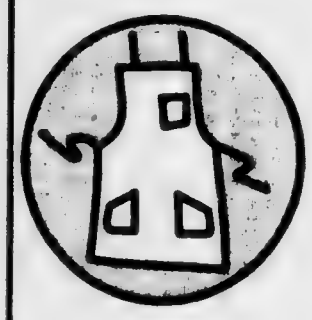

Q's & A's

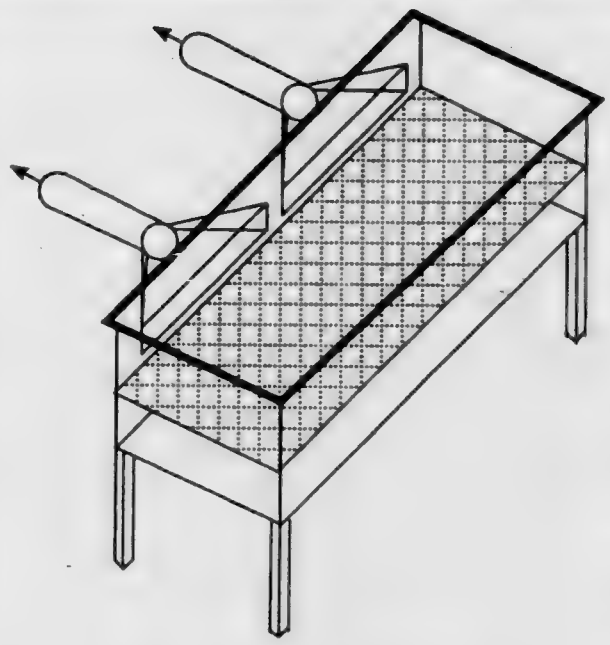

Figure 2 — Downdraft Hood

considered a potential occupational carcinogen. There is also considerable indirect evidence to suggest that workers exposed to methylene chloride may be at increased risk of developing ischemic heart disease. Therefore, it is prudent to minimize exposures to solvent vapors.[3]

What Do Federal Agencies Say About Methylene Chloride?

In 1991, the Occupational Safety and Health Administration published a Notice of Proposed Rulemaking for methylene chloride. The proposed standard would establish an eight-hour time-weighted average exposure limit of 25 parts per million (ppm), as well as a short-term exposure limit of 125 ppm determined from a 15 minute sampling period. That is a sharp reduction from the current limit of 500 ppm. The proposed standard would also set a 12.5 ppm action level (a level that would trigger periodic exposure monitoring and medical surveillance provisions.[4]

The National Institute for Occupational Safety and Health recommends that methylene chloride be regarded as a "potential occupational carcinogen." NIOSH further recommends that occupational exposure to methylene chloride be controlled to the lowest feasible limit. This recommendation was based on the observation of cancers and tumors in both rats and mice exposed to methylene chloride in air.[5]

How Can I Be Exposed to Methylene Chloride while Stripping Furniture?

Methylene chloride can be inhaled when vapors are in the air. Inhalation of the methylene chloride vapors is generally the most important source of exposure. Methylene chloride evaporates quicker than most chemicals. The odor threshold of methylene chloride is 300 ppm.[6] Therefore, once you smell methylene chloride, you are being over-exposed. Pouring, moving, or stirring the chemical will increase the rate of evaporation.

Methylene chloride can be absorbed through the skin either by directly touching the chemical or through your gloves. Methylene chloride can be swallowed if it gets on your hands, clothes, or beard, or if food or drinks become contaminated.

How Can Breathing Exposures be Reduced?

Install a Local Exhaust Ventilation System

Local exhaust ventilation can be used to control exposures. Local exhaust ventilation systems

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capture contaminated air from the source before it spreads into the workers' breathing zone.[7] If engineering controls are not effective, only a self-contained breathing apparatus equipped with a full facepiece and operated in a positive-pressure mode or a supplied-air respirator affords the necessary level of protection. Air-purifying respirators such as organic vapor cartridges can only be used for escape situations.[8]

A local exhaust system consists of the following: a hood, a fan, ductwork, and a replacement air system.[9,10,11] Two processes are commonly used in furniture stripping: flow-over and dip tanks. For flow-over systems there are two common local exhaust controls for methylene chloride — a slot hood and a downdraft hood. A slot hood of different design is most often used for dip tanks. (See Figures 1, 2, and 3)

The hood is made of sheet metal and connected to the tank. All designs require a centrifugal fan to exhaust the fumes, ductwork connecting the hood and the fan, and a replacement air system to bring conditioned air into the building to replace the air exhausted.

In constructing or designing a slot or downdraft hood, use the following data:

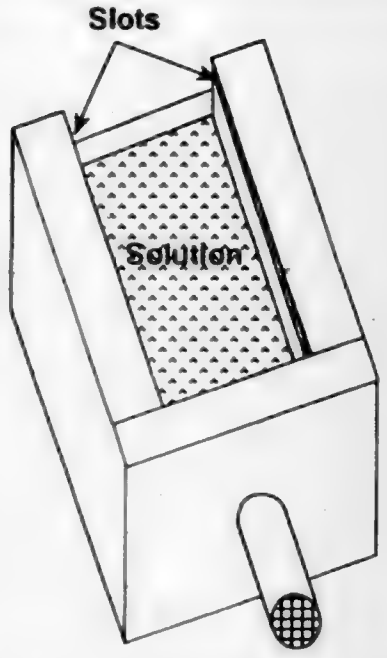

Figure 3 — Slot Hood for Dip Tank

Slot hood (Figure 1)

- At least 2200 cfm per 8' X 4' tank
- 1 - 2 inch slots
- Slot velocity - 1000 fpm
- 3 - 5 slots
- Plenum at least 1 foot deep

Downdraft hood (Figure 2)

- At least 1600 cfm per 8' X 4' tank
- Plenum at least 9" deep

Slot hood for Dip Tank (Figure 3)

- At least 2900 cfm per 8' X 4' tank
- 3/4" slot that runs the length of the front and back of the tank
- Slot velocity — 3200 fpm
- Plenum on the sides of the tank should be 6" deep by 36" long
- 12" duct leads from the center of the front plenum to the fan

Safe work practices

Workers can lower exposures by decreasing their access to the methylene chloride.[12]

1) Turn on dip tank control system several minutes before entering the stripping area.

2) Avoid unnecessary transferring or moving of stripping solution.

3) Keep face out of the air stream between the solution-covered furniture and the exhaust system.

4) Keep face out of vapor zone above the stripping solution and dip tank.

5) Retrieve dropped items with a long handled tool.

6) Keep the solution-recycling system off when not in use. Cover reservoir for recycling system.

7) Cover dip tank when not in use.

8) Provide adequate ventilation for rinse area.

Q's & A's

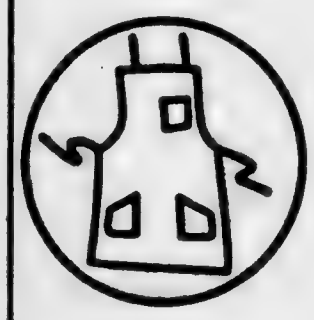

Q's & A's

How Can Skin Exposures be Reduced?

Skin exposures can be reduced by wearing gloves whenever you are in contact with the stripping solution.[13]

1) Two gloves should be worn. The inner glove should be made from polyethylene/ethylene vinyl alcohol (e.g. Silver Shield®, or 4H®). This material, however, does not provide good physical resistance against tears, so an outer glove made from nitrile or neoprene should be worn.

2) Shoulder-length gloves will be more protective.

3) Change gloves before the break-through time occurs. Rotate several pairs of gloves throughout the day. Let the gloves dry in a warm well ventilated area at least over night before reuse.

4) Keep gloves clean by rinsing often. Keep gloves in good condition. Inspect the gloves before use for pin-holes, cracks, thin spots, and stiffer than normal or sticky surfaces.

5) Wear a face shield or goggles to protect face and eyes.

What Other Problems Occur?

Stripping Solution Temperature

Most manufacturers of stripping solution recommend controlling the solution to a temperature of 70°F. This temperature is required for the wax in the solution to form a vapor barrier on top of the solution to keep the solution from evaporating too quickly. If the temperature is too high, the wax will not form the vapor barrier. If it is too cold, the wax will solidify and separate from the solvent causing increased evaporation. Use a belt heater to heat the solution to the correct temperature. Call your solution manufacturer for the correct temperature for your solution.[14]

Make-Up Air

Air will enter a building in an amount to equal the amount of air exhausted whether or not provision is made for this replacement. If a local exhaust system is added a make-up or replacement air system must be added to replace the air removed. Without a replacement air system, air will enter the building through cracks causing uncontrollable eddy currents. If the building perimeter is tightly sealed, it will prevent the air from entering and severely decrease the amount exhausted from the ventilation system. This will cause the building to be under negative pressure and decrease the performance of the exhaust system.[15]

Dilution Ventilation

With general or dilution ventilation, uncontaminated air is moved through the workroom by means of fans or open windows, which dilutes the pollutants in the air. Dilution ventilation does not provide effective protection to other workers and does not confine the methylene chloride vapors to one area.[16]

Phosgene Poisoning from Use of Kerosene Heaters

Do not use kerosene heaters or other open flame heaters while stripping furniture. Use of kerosene heaters in connection with methylene chloride can create lethal or dangerous concentrations of phosgene. Methylene chloride vapor is mixed with the air used for the combustion of kerosene in kerosene stoves. The vapor thus passes through the flames, coming into close contact with carbon monoxide at high temperatures. Any chlorine formed by decomposition may, under these conditions, react with carbon monoxide and form phosgene.[17]

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Q's & A's

Where Should I go for More Information?

The NIOSH 800- number is a toll-free technical information service that provides convenient public access to NIOSH and its information resources. Callers may request information about any aspect of occupational safety and health.

1-800-35-NIOSH
(1-800-356-4674)

★ U.S. GOVERNMENT PRINTING OFFICE: 1993: 550-147/80026

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PART 1915—[AMENDED]

6. The authority citation for 29 CFR part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

7. In Table Z of section 1915.1000, *Air Contaminants*, the entire entry for methylene chloride is removed and replaced with the following entry added in the substance column: "Methylene chloride: see § 1910.1052".

8. Subpart Z of part 1915 is amended by adding § 1915.1052, as follows:

§ 1915.1052 Methylene chloride.

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at 29 CFR 1910.1052.

PART 1926—[AMENDED]

Subpart D—[Amended]

9. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333), secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

10. In Appendix A of section 1926.55, *Gases, vapors, fumes, dusts and mists*, the entire entry for methylene chloride is removed and replaced by the following entry added in the substance column: "Methylene chloride: see § 1910.1052".

Subpart Z—[Amended]

11. The authority citation for subpart Z of part 1926 continues to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); section 41, Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

12. Subpart Z of part 1926 is amended by adding § 1926.1152, as follows:

§ 1926.1152 Methylene chloride.

Note: The requirements applicable to construction employment under this section are identical to those set forth at 29 CFR 1910.1052.

[FR Doc. 97–198 Filed 1–9–97; 8:45 am]

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January 10, 1997

Part III

Department of Transportation

Coast Guard

33 CFR Part 157

Structural Measure to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls; Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 91–045c]

RIN 2115–AF27

Structural Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule represents the last phase in the Coast Guard's three-phased effort to establish economically and technologically feasible structural and operational measures to reduce the threat of oil spills from tank vessels without double hulls, as required by the Oil Pollution Act of 1990. No structural measures are contained in this final rule because the Coast Guard has determined that there are no interim structural measures that are both technologically and economically feasible for existing tank vessels without double hulls.

DATES: This final rule is effective February 10, 1997.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Project Development Division, at (202) 267–6490.

SUPPLEMENTARY INFORMATION:

Regulatory History

Section 4115(b) of the Oil Pollution Act of 1990 (OPA 90) directs the Coast Guard to develop structural or operational requirements for tank vessels of 5,000 gross tons (GT) or more without double hulls that will serve as regulations until the year 2015. After 2015, all tank vessels operating in U.S. waters will be required to have double hulls under section 4115(a) of OPA 90 (46 U.S.C. 3703a). Regulations issued under the authority of section 4115(b) must provide as substantial protection to the environment as is economically and technologically feasible. A detailed review of structural measure issues, as they pertain to the Congressional mandates of OPA 90, appears in the supplemental notice in proposed rulemaking (SNPRM) entitled "Structural Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls" published on December 28, 1995 (60 FR 67226).

This final rule represents the final phase of the Coast Guard's three-phased effort to reduce oil pollution from certain existing tank vessels. The first phase was completed on August 5, 1994, by issuing a final rule entitled "Emergency Lightering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls" (59 FR 40186), which requires the carriage of emergency lightering equipment and the inclusion of the vessel's International Maritime Organization number in the advance notice of arrival report. The second phase was completed on July 30, 1996, by issuing a separate final rule entitled "Operational Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls" (61 FR 39769). That rule, which focused on reducing the risk of groundings, collisions, or fires, requires existing tank vessels without double hulls to comply with certain operational measures until the year 2015.

To complete the third phase, the Coast Guard evaluated several different structural measures to determine their economical and technological feasibility. Such measures included retrofitting double bottoms or sides, implementing hydrostatic balance loading (HBL) for all vessel configurations, and restricting certain existing tanks from carrying cargo or retrofitting spaces so that they are located protectively around tanks carrying oil as cargo. As a result of further economic cost-benefit analysis and the comments on the SNPRM, the Coast Guard is not requiring structural measures. The Coast Guard has determined that structural measures are not economically feasible and that the measures required under phase one and two of this rulemaking meet the Congressional mandate of OPA 90 section 4115(b).

Discussion of Comments

Background information on proposed structural measures for existing vessels without double hulls is provided in the preambles to the advanced notice of proposed rulemaking (56 FR 56284; November 1, 1991), the notice of proposed rulemaking (58 FR 54870; October 22, 1993), and the SNPRM (60 FR 67226; December 28, 1995). The Coast Guard received a total of 29 letters on the SNPRM. These letters addressed several issues and presented more than 180 comments. Twelve comments supported operational measures and two comments supported emergency lightering measures as finalized. The remaining comments discussed issues related to reducing oil outflow after an accident occurs on an existing tank vessel and are addressed in the following sections. All comments received on this rulemaking are available for inspection in docket [CGD 91–045c] at the address listed under **ADDRESSES**. For the purposes of this preamble discussion, the term "single-hull" means an existing tank vessel without a double hull. Pre-MARPOL vessels are defined as vessels that are not required to meet the pollution prevention requirements of the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL 73). MARPOL 73/78 vessels are defined as vessels that meet the requirements of the MARPOL 73 convention and vessels that meet the MARPOL 73 convention as amended by the 1978 Protocol (MARPOL 78). The term "Regulation 13G" refers to Regulation 13G of Annex I of MARPOL 73 as amended by the 1978 Protocol.

I. Applicability

Twenty-three comments pertained to the application of structural measures. Nine comments made general remarks on the applicability of structural measures and the OPA 90 mandated phase-out schedule's relationship to the implementation of structural measures. The remaining comments suggested that the Coast Guard exempt various types of vessels from the application of structural measures.

Two comments shared the opinion that the current OPA 90 phase-out schedule effectively creates an orderly transition to a future double-hull fleet, thus making additional measures unnecessary. One of these comments specifically noted that tank barges, in particular, would accrue no benefit from structural measures due to impending OPA 90 phase-outs. A separate comment agreed that the Coast Guard should maintain OPA 90 phase-out dates, but did not request that vessels be excluded from the application of structural measures or that structural measures not be required.

Five comments recommended that the Coast Guard require structural measures for all existing tank vessels, including non-petroleum oil carriers and tank barges. The comments stated that non-petroleum carriers may periodically transport petroleum and that non-petroleum oil spills pose an equal or greater risk to the environment as petroleum oil spills. In addition, the comments claimed that standards

should be uniform throughout industry to encourage equal competition and an even distribution of costs.

Two comments suggested alternatives to the broad application of structural measures. One comment encouraged the use of company historical performance as a basis for requiring implementation of structural measures. For example, the comment claimed that companies with a history of minimal oil spillage should not be required to implement structural measures to the same degree as frequent offenders. The second comment recommended that the Coast Guard establish an enforceable performance standard, as opposed to a one-size-fits-all approach, for the implementation of specific measures to ensure a high degree of spill prevention.

During this rulemaking, the Coast Guard extensively researched the cost and benefit of requiring a multitude of measures on single-hull tankships and tank barges prior to their phase-out dates. No tank barge or tankship company commented that their sole cargo carriage consisted on non-petroleum products. Consequently, all tank vessels, including those with the ability to transport non-petroleum products for one charter and change to carrying petroleum products for the next, were considered for this rulemaking.

The anticipated cost to single-hull tank vessels until 2015, or their phase-out dates, was strictly taken into account for this final rule assessment. The OPA 90 phase-out dates and current differences between U.S. and international fleet pollution prevention requirements were also considered in the cost and benefit analysis. Because this rulemaking addresses out-flow prevention measures typically requiring architectural or loading changes, and not human performance factors that are usually the reason for a company's lower spill record, the Coast Guard did not consider equivalencies or exemptions based on individual company performance.

Several comments claimed vessels trading at deepwater ports or offshore lightering zones should be exempt from the application of structural measures because most already operate with protection adequate for trading in these low risk areas and would experience no benefit from the use of structural measures. Other comments requested exemptions for vessels carrying non-petroleum oil or product cargo because most are already equipped with double bottoms and pose an insignificant risk to the environment. Comments also recommended excluding all tank vessels equipped with double bottoms from the implementation of structural measures since these already have the ability to reduce oil outflow due to grounding incidents. Comments suggested that spill response tank barges, which transport oil for a limited purpose only, be held to lower standards than structural measures for routine oil carriers. In addition, several comments requested that clean product tankers less than 30,000 deadweight tons (dwt) be exempt from structural measures because spillage from these vessels has historically proven to be less damaging and less difficult to contain than spills from other vessels. Finally, some comments claimed that vessels which meet the requirements of MARPOL 78, should be exempt from these requirements because they already meet the highest international standards.

Vessels that are solely engaged in oil spill response are already exempt from the structural measures required by 33 CFR 157.08. Vessels operating at deepwater ports, offshore lightering zones, and those vessels fitted with double bottoms were considered in this rulemaking because, although groundings are less frequent, collisions and structural failures remain potential hazards. Non-petroleum carrying vessels were included in this rulemaking because the Coast Guard has determined that bulk spills of animal fat, vegetable oil, and other non-petroleum oil can be damaging to the environment. The cost and benefit of applying structural measures to single-hull tank vessels were separately identified by deadweight tonnage categories in this final rule regulatory assessment to determine if tank vessels, such as those product carriers operating at 30,000 dwt or less, were disproportionately affected. MARPOL 73/78 vessels were also considered separately in the regulatory analysis for this final rule to ensure anticipated benefits from any structural measures accurately reflected their currently pollution prevention construction.

Several comments requested exemption of specific vessels from implementation of HBL because it is not technically feasible for their operation. Specific vessels included: Type 2 Bulk Chemical/Integrated Cargo parcel tankers, which encounter difficulties in implementing HBL when dealing with heterogeneous cargoes; and vessels engaged in multi-port voyages, due to problems resulting from the implementation of HBL multiple times during a single voyage.

The Coast Guard agrees that the difficulty of implementing HBL directly correlates with cargo variety and discharge schedules. The technical feasibility analysis for the structural measures SNPRM assumed tank vessels were carrying homogeneous cargoes and had limited off-loads. Small tankships, such as parcel tankers and vessels making multiple port discharges, have valid concerns about the practical application of HBL to their operations, and would most likely incur voyage delays or higher cargo shutout rates than originally assumed in the SNPRM for HBL. The regulatory assessment for this final rule analyzed the effect that HBL, assuming a higher cargo shutout cost and expense of delayed operations for a product or parcel tankship, would have on the cost-benefit ratio.

2. Consistency With International Standards

The Coast Guard received 12 comments expressing support for the development or adoption of regulations that are equivalent to international standards such as Regulation 13G and International Maritime Organization (IMO) standards. Arguments in favor of harmonization included concerns that country-specific legislation would be difficult for industry to implement, and would introduce technical risks and disproportionate costs. Another comment specifically noted that the combination of protectively located void spaces (PL/Spaces) and HBL analyzed in the SNPRM would be too expensive and complex to implement. Consequently, the comment recommended adoption of Regulation 13G because it permits use of HBL or PL/Spaces on an individual basis. Another comment stated that a requirement to fit PL/Spaces would be onerous to the international fleet because it affects a vessel's ability to trade, unlike HBL, even when not trading in U.S. waters.

Other comments encouraged the Coast Guard to work in cooperation with the IMO to ensure high standards of environmental performance for all newly-built tank vessels. One comment also encouraged the Coast Guard to consider enforcement issues when preparing a structural measures regulation, stressing the importance of maintaining competition on an equal level.

In contrast, only one comment disagreed that uniformity would be achieved by drafting measures commensurate with international standards. This comment reasoned that, theoretically, Regulation 13G and OPA 90 express somewhat opposing objectives, since Regulation 13G works to extend the operating life of single-hull vessels, while OPA 90 limits the operating life of single-hull vessels by setting a maximum retirement date.

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Consequently, it was suggested that other options be considered, including an alternative PL/Space configuration that splits the protected area between the side and bottom of the vessel.

The Coast Guard's goal is to implement its statutory mandates in regulations that are consistent with international standards wherever doing so is lawful, appropriate, and practical. Based on comments from the SNPRM, the Coast Guard considered adoption of international regulations including Regulation 13G, as well as other requirements not presently required by IMO. However, based on the revised cost and benefit analysis of these structural measures for existing tank vessels, the Coast Guard has determined that no measures, international or otherwise, are economically feasible.

3. Congressional Intent

Four comments argued that Congress directed the Coast Guard to consider implementation of both structural and operational measures for existing tank vessels without double hulls, but did not require the adoption of both types of measures. Three of the four comments also stated that no structural measures are required to be implemented unless they are both economically and technologically feasible. Another comment stated that Congress mandated strict standards to protect our nation's waters, obligating the Coast Guard to develop measures that closely approximate the protective effect of double hulls on single-hull tank vessels.

The Coast Guard has done extensive research on the requirements of section 4115(b) of OPA 90, including an analysis of the Congressional guidance offered for its implementation. The three final rules promulgated under CGD 91–045 make up a comprehensive evaluation of section 4115(b) that implements those measures the Coast Guard deems are both economically and technologically feasible as required by law.

4. Alternative Measures and Economic Incentives

The Coast Guard received five comments that encouraged the adoption of alternative systems to reduce oil outflow. One comment recommended that intermediate oil tight decks (IOTD) be required or offered as an equivalent measure for compliance with structural measures. The comment challenged the Coast Guard's refusal to consider IOTD on the basis of its alleged failure to meet the benchmark equivalency for alternative compliance found in Regulation 13G. The comment argued that the Coast Guard's interpretation of the Regulation 13G standards was misleading and incorrect as it pertained to IOTD. According to the comment, the estimated installation costs for IOTD, $2 million per vessel, would be approximately identical to fitting PL/Spaces. However, the comment asserted that cargo shutout amounts would vary from 2 percent for an IOTD equipped tanker to 19 percent for a tankship fitted with PL/Spaces. The comment also contended that the IOTD concept should be considered equivalent to a double hull.

The basis of the Coast Guard's determination of appropriate alternative measures for single-hull tank vessels in this final rule remains as stated in the SNPRM: the alternative must be approved by IMO's Marine Environment Protection Committee (MEPC) as an alternative structural arrangement meeting the requirements of Regulation 13G. Although IMO has accepted the concept of IOTD as a method for complying with the HBL alternative to Regulation 13G, this acceptance was not the only factor considered for this rulemaking. This final rule's regulatory assessment found that PL/Spaces, a combination of PL/Spaces and HBL, and HBL alone are all economically infeasible for pre-MARPOL tank vessels. A separate analysis using the IOTD shutout estimate of 2 percent and the refit costs of fitting PL/Spaces over 30 percent of the cargo tank area revealed that even with the reduced cargo shutout of IOTD, the cost-benefit of such a measure is not economically feasible. Calculations from this analysis estimated that the cost-benefit of implementing IOTD for vessels operating on U.S. coastal voyages ranged from $62,200 to $211,000, and from $32,200 to $159,300 per barrel of unspilled oil on those vessels operating on international voyages. The Coast Guard estimates that these ranges are a conservative representation of the IOTD's cost-benefit because the cost of fitting IOTD for the entire cargo area would be substantially higher than the cost of fitting bulkheads or double bottoms over 30 percent of the cargo area. The determination of equivalency between IOTD and a double hull is outside the scope of this rulemaking.

Another comment suggested that the Coast Guard adopt the American Underpressure System. This comment claimed that this inert gas controlled system dynamically controls the underpressure in the tank ullage space and would prevent oil spills above the line of rupture. This comment reasoned that since the Coast Guard has endorsed HBL and PL/Spaces it should also accept alternative concepts, such as the American Underpressure System, that are similarly effective and result in comparable levels of risk regardless of IMO approval. According to the comment, the American Underpressure System is comparable in performance to the double hull, is significantly more effective than either HBL or PL/Spaces, and introduces no unmanageable risks. The comment estimated that the cost of implementing the American Underpressure System would be between 1 and 1.5 percent of the construction cost required to build a new single-hull tanker, while the cost to install a double hull would be between 30 to 40 percent of the construction cost required to build a new single-hull tanker. In addition, the comment claimed that the out-of-service time to retrofit the American Underpressure System was 1 to 3 weeks, compared to the 6 to 12 months typically required to install a double hull. Considering the loss of cargo capacity that would result from the installation of the double hull, as well as the comparison between the refit cost and out-of-service time required for the implementation of both measures, this comment concluded that no quantitative support exists to exclude the American Underpressure System as a viable alternative measure.

While underpressure systems could be less costly than PL/Spaces or HBL, they were not included in the regulatory assessment for this final rule because they have not been approved by IMO as an alternative to comply with Regulation 13G. Underpressure systems were specifically examined and discussed by IMO. These systems were expressly rejected by IMO due to various safety concerns.

Two comments recommended that the Coast Guard require emergency transfer systems (ETS). Another comment suggested that the Coast Guard develop industry-wide economic incentives that encourage companies to employ spill-reduction measures such as effective combinations of PL/Spaces and HBL prior to the regulatory phase-in dates and to engage in further development of promising new measures such as Underpressure Systems and ETS.

While ETS could be less costly than PL/Spaces or HBL, they were not included in the regulatory assessment for this final rule because they have not been approved by IMO as an alternative to comply with Regulation 13G and there are indications that, in some instances, they may be unsafe. The Coast Guard is using IMO approval of Regulation 13G alternatives as a benchmark because it provides international consistency as well as

general operational and safety requirements. Alternative measures creating conditions such as exposure of the tankship to stress, creation of fire or explosion hazards, stability considerations, and loading requirements are not approved by IMO. The Coast Guard's 1995 report to Congress entitled, "The Feasibility of Using Segregated Ballast Tanks (SBT) for Emergency Transfer of Cargo and Storage of Recovered Oil," concludes that when a vessel casualty occurs, fundamental changes in the vessel's stability often result. These stability changes make it potentially unsafe and inadvisable to use SBT for the emergency transfer of cargo. The Coast Guard did not consider an economic incentive program because it is beyond the scope of this rulemaking and Section 4115(b) does not provide the authority for incentives.

5. Phase-In Alternatives

The Coast Guard received 15 comments on phase-in alternatives. Four comments claimed they could meet the 3-year phase-in period in the SNPRM, but would rather have one of the following options: (1) A phase-in period commencing no earlier than the date of a tank vessel's first scheduled dry docking following issuance of the final rule; (2) a requirement for industry to begin compliance in 1997 at a vessel's next scheduled dry dock, but no later than the year 2000; (3) a phase-in period no earlier than 1999 to 2001 for PL/Spaces to avoid substantial economic hardships on U.S. coastwise crude trading resulting from reduced cargo-carrying capacity; or (4) a phase-in for PL/Spaces at the vessel's next scheduled or emergency dry docking period, or at the next Certificate of Inspection renewal following issuance of the final rule, if dry docking is not required. Another comment urged the Coast Guard to delay the implementation of structural measures until at least 2000, which is the time when pre-MARPOL tank vessels reaching 25 years of age are required to comply with international standards. This comment explained that if the implementation dates were delayed, it would be easier for industry to meet the requirements, and, in addition, the Coast Guard would not have to account for the cost of implementing structural measures on these vessels in its final rule regulatory assessment. Another comment did not express support for structural measures, but suggested a standardized implementation period for domestic and foreign fleets.

In contrast, five comments strongly urged the Coast Guard to implement structural measures immediately. Two of these comments limited their request to the implementation of HBL only, while another recognized the potential for delays in implementing structural measures on the pre-MARPOL fleet. One comment claimed that companies presently operating double-hull tank vessels are already providing higher levels of environmental protection, and consequently, are suffering economic penalties because single-hull tank vessels are still operating. Another comment alleged that the Coast Guard has failed to provide substantial protection to the environment by neglecting to promulgate a rulemaking within the deadlines established by OPA 90 and has harmed the public.

The Coast Guard has taken action to implement interim measures for existing tank vessels by issuing regulations for emergency lightering equipment and advanced notice of arrival requirements (59 FR 40186; August 5, 1994), and operational measures (61 FR 39769; July 30, 1996). These efforts reduce the risk of oil discharges from existing single-hull tank vessels. In order to ensure the equal consideration of economic burden on each facet of the industry, this final rule did not consider a staggered implementation schedule across the single-hull fleet. The regulatory assessment for this final rule analyzes the costs and benefits of implementing HBL on MARPOL as well as pre-MARPOL vessels starting in 1997. The assessment also considers implementation of PL/Spaces with ballast on pre-MARPOL vessels starting in 1997, assuming completion by 2000. The Coast Guard notes the comment pertaining to the OPA 90 deadline.

6. Increased Potential for Environmental Harm

The Coast Guard received a total of 17 comments suggesting that the implementation of structural measures would lead to a greater risk of oil outflow, resulting in an increased risk of environmental harm. Eight comments attributed the greater environmental risk to the reduction in cargo capacity. Reduced cargo capacity would lead to more vessels or voyages necessary to transport cargo, thus increasing tank vessel traffic. Increased tank vessel traffic would create a greater potential for accidents, in opposition to the objectives of OPA 90.

Six comments claimed that complications resulting from physical structural modifications would increase the risk of vessel damage and instability, eventually leading to a greater probability of structural failure. The three remaining comments suggested that the implementation of structural measures would pose an increase in safety hazards for vessel personnel.

Estimated cargo shutout from measures similar to Regulation 13G revealed that the resultant increase in the tank vessel traffic would be about 12 percent. This represents an approximate 2 percent increase in the total U.S. port deep draft traffic volume. The Coast Guard assumes that this small increase in traffic volume would be offset by the accident reduction measures implemented through operational measures. The Coast Guard agrees that some measures studied would modify the distribution of hull girder stresses and shear forces. In some instances, vessel owners may have to conduct additional structural analyses to determine how these stresses change the vessel's structural integrity. In those cases where the stresses would not be within allowable tolerances, additional structural safeguards such as swash bulkheads may be required. In the cost analysis for this final rule, refitting expense was considered for all measures, including HBL on MARPOL tankships. The Coast Guard recognizes that material stresses on a vessel's hull can develop due to hot work, specifically from the marriage of large areas of new metal to existing plate or framing. In some cases, this type of material stress has contributed to structural failure. If however, proper shipyard procedures are followed and there is thorough oversight of vessel construction or refits by the Coast Guard inspectors or classification societies, material stresses can be prevented. Corrosion damage due to converting cargo tanks to ballast tanks is valid and the cost to coat tanks has been considered in the regulatory assessment for this final rule. The Coast Guard disagrees with the claim that structural measures would pose a safety hazard for vessel personnel. Oil outflow reduction measures are incorporated directly into the vessel's design or provide passive protection with little human interface.

7. State Regulation

The Coast Guard received four comments regarding Federalism issues. Two comments urged the Coast Guard to unambiguously declare that regulations promulgated for structural measures preempt State laws to avoid confusion arising from many independent laws. In contrast, two remaining comments strongly recommended that the Coast Guard declare that Federal law does not preempt State law on structural measures. The Coast Guard believes the clear and manifest purpose of Congress

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is to confer upon the Federal government, through the Coast Guard, the exclusive authority to set structural standards for vessels to protect the environment from harm. The Coast Guard has determined that no additional structural measures are required for single-hull tank vessels. Nevertheless, the Coast Guard believes that States are precluded from imposing structural measures on tank vessels operating in interstate or foreign commerce.

8. Technical Feasibility of PL/Spaces and HBL

Seven comments addressed implications of required implementation of PL/Spaces. One comment suggested that the Coast Guard consider alternative PL/Space configurations such as splitting the protected area between the vessel's side and bottom as an option. Another between the vessel's side and bottom as an option. Another comment encouraged the Coast Guard to conduct further studies on potential PL/Space configurations prior to mandating MARPOL requirements for the sake of uniformity. In addition, another comment recommended that the Coast Guard designate the location of PL/Spaces to ensure all vessels have the same built-in protection. One comment specifically urged the Coast Guard not to require PL/Spaces as this modification would lead to a greater demand on the ship-building industry, resulting in the production of inferior vessels. In contrast, one comment asserted that PL/Spaces are technologically feasible and recommended that PL/Spaces be required on all single-hull vessels.

For most tank vessel designs, the most technologically feasible place to install PL/Spaces is in the tankship's midbody. However, due to unique design considerations and the need to vary a vessel's draft or cargo-carrying capacity, the Coast Guard researched and analyzed the cost and benefit of allowing the owner to designate the location of PL/Spaces on their vessels. The Coast Guard assumes that by mandating the location of PL/Spaces for all tank vessels, the installation costs and benefits realized would be similar to those realized in the event that vessel owners were able to choose the PL/Space locations. While the Coast Guard has determined that PL/Spaces are technologically feasible, fitting them on pre-MARPOL tankships is economically infeasible.

A total of 15 comments were received pertaining to HBL. Eight opposed HBL for reasons including the following: (1) The implementation of HBL would place pre-MARPOL vessels at a competitive disadvantage with MARPOL vessels, because they are already required to contain PL/Spaces under Regulation 13G; (2) HBL would be practically impossible to use because, depending on the type of cargo carried, problems may arise due to variances in density, tank coating compatibility, heating and cooling requirements, and permissible last cargoes; (3) HBL would necessitate revisions to vessel manuals and equipment; and (4) HBL would represent a significant regulatory challenge requiring strong, effective operational enforcement through Coast Guard oversight of industry compliance. Additionally, two comments suggested that HBL would provide only minimal oil outflow protection during groundings. One of these comments specifically explained that based on the static model used by the Coast Guard to test HBL's effectiveness, HBL may indicate a theoretical reduction in oil outflow for some grounding scenarios. However, after an accident, HBL may have limited effectiveness due to highly dynamic situations, such as weather-related impacts, tide ranges, and changes in ship trim and heel. Another two comments contended that HBL is not a structural measure requiring physical modifications, but an operational measure requiring a skilled knowledge of certain operating procedures.

In contrast to the opposing comments, the Coast Guard received seven comments supporting implementation of HBL. One comment noted that compliance with HBL requirements could be easily verified by tank gauging report examinations and draft mark inspections. Another comment recommended implementation of HBL on all single-hull vessels. An additional two comments suggested employment of HBL in all vessel cargo tanks, as opposed to only those tanks that are probabilistically located. One comment based this recommendation on two assumptions: (1) HBL would be easy to implement immediately as structural refits would be unnecessary; and (2) HBL would effectively reduce oil outflow in grounding incidents.

The Coast Guard has determined that HBL, in general, is technically feasible for single-hull tankships. Multi-port voyages and complex cargo carriage operations make HBL more time-consuming and difficult to meet. Also, some vessels would have costs attributable to HBL that are beyond the cargo shutout costs assumed in the SNPRM regulatory assessment. The regulatory assessment for this final rule accounts for some costs associated with HBL measures on smaller tankships since these vessels are most likely to have difficulty implementing HBL. The effectiveness estimates associated with HBL in reducing the outflow of oil in a grounding were not changed for this final rule assessment because the Coast Guard deems the estimates to be representative of static, as well as limited dynamic conditions. The Coast Guard recognizes that enforcement of HBL would require its direct oversight to ensure compliance by all single-hull vessel owners or operators and that tank gauging reports could be used as tools. Since no structural measures are economically feasible, the Coast Guard will be using its resources to ensure operational measures are met. The Coast Guard did not analyze the cost-benefit of requiring tank vessel owners or operators to use HBL in all cargo tanks. However, if the cost to benefit ratio of applying HBL to those cargo tanks that are located in areas of higher damage risk is prohibitive, then the cost to benefit ratio for applying HBL to all cargo tanks is also infeasible.

Four comments suggested that the Coast Guard require a combination of PL/Spaces and HBL. One comment suggested a combination of PL/Spaces covering 30 percent of the vessel's side or bottom with HBL for the remaining tanks to the extent necessary for compliance with Regulation 13G. Another comment recommended employment of PL/Spaces covering 100 percent of center tank bottoms, if HBL is used in wing tanks.

The Coast Guard has analyzed the cost and the resultant oil outflow benefits attributable to a combination of fitting PL/Spaces and applying HBL measures to pre-MARPOL tankships in accordance with Regulation 13G. The cost for this measure when compared to its benefits make this measure economically infeasible. If the combination of PL/Spaces and HBL is not cost-effective, then employing the more onerous requirement of 100 percent PL/Spaces would also be infeasible.

Amendments to 33 CFR 157

This final rule amends the subpart G, H, and I heading to reflect that no structural measures are required as interim measures for existing tank vessels without double hulls to meet the requirements of Section 4115(b) of the Oil Pollution Act of 1990. The measures required under subparts G, H, and I are all measures the Coast Guard has determined are economically and technologically feasible for enhancing

the oil pollution prevention efforts of existing single-hull tank vessels.

Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that Order. It required an assessment of potential costs and benefits under section 6(a)(3) of that Order, and is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Assessment is summarized in the following discussion.

This rulemaking applies to all existing vessels of 5,000 gross tons (GT) or more that do not have double hulls and that carry oil, animal fat, vegetable oil, and other non-petroleum oil in bulk as cargo. An estimated 995 existing tankships (51 U.S. tankships, 944 foreign tankships) that will be operating on U.S. navigable waters in 1997 were considered to be affected by this rulemaking.

This final rule assessment revises the benefits assumptions and calculations of the regulatory assessment conducted for the supplemental notice of proposed rulemaking (SNPRM). Cost estimates were appropriately reduced to account for implementation of Regulation 13G of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (Regulation 13G) within the international fleet. Costs were also revised where comments indicated that costs were underestimated or omitted in the SNPRM analysis. The vessel population not required to meet the pollution prevention requirements of the 1973 International Convention for the Prevention of Pollution from Ships (pre-MARPOL) was also reassessed and reduced based on port call data and certificate of financial responsibility applications. The cost and benefits for vessels meeting the requirements of the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL 73) and vessels meeting the MARPOL 73 convention as amended by the 1978 Protocol (MARPOL 78), were combined in this final assessment. MARPOL 73/78 refers to vessels meeting MARPOL 73 and vessels meeting MARPOL 78 requirements.

General Comments on the SNPRM Regulatory Assessment

The Coast Guard received 36 comments addressing general regulatory assessment issues. Most of the comment criticized the Coast Guard's use of oil spill data from accidents occurring prior to the promulgation of the Oil Pollution Act of 1990 (OPA 90), because using this data resulted in the underestimation of costs and overestimation of benefits. The majority of these comments were based on a general impression that little benefit would result from the implementation of proposed structural measures in relation to the extensive costs involved. One comment specifically noted that studies performed by the International Maritime Organization (IMO), the Coast Guard, and Herbert Engineering Corporation failed to indicate that these measures were cost-effective.

The Coast Guard has revised its regulatory assessment for this final rule. The major difference between its assessment for the SNPRM and this final rule is the recalculation of anticipated oil outflow benefits based on the accident data for single-hull tankships from 1990 through 1994. This five-year period indicates a reduction of single-hull tankship accidents and reflects many of the improvements industry has made to reduce oil spills since OPA 90.

Another comment contended that a cost-benefit analysis was not authorized by OPA 90. The comment asserted that OPA 90 requires the Coast Guard to adopt measures providing the maximum protection to the environment that are economically feasible, not the ones that are least costly. Two other comments argued that economic feasibility should not be determined solely by a limited cost-benefit analysis. One of these comments maintained that economic feasibility should be based on whether the costs are wholly disproportionate to the benefits on an industry-wide scale, with the fate of one isolated firm or facility immaterial to the outcome of the rule. The other comment contended that economic feasibility should be based on the industry's ability to pass on or absorb costs without threatening the competitive structure of the industry.

Several requirements to conduct a cost-benefit analysis exist in law. One law requiring such analysis, which is specifically applicable to this rulemaking, is the Small Business Regulatory Enforcement Fairness Act of 1996. For this final rule, an evaluation of cost and its relationship to the anticipated benefits was performed with respect to structural measures. The evaluation included a review of the potential impact of such measures on small entities, as well as a comparison of the impact on domestic versus international fleet vessels. The disproportionate cost to U.S. tankship companies operating on coastal routes, considering the little anticipated benefit in oil outflow reduction, was key in the Coast Guard's determination of economic infeasibility for structural measures.

Industry Costs

This final rule reassessed the cost of implementing structural measures in order to estimate the cost-benefit of requiring pre-MARPOL tankships to meet the requirements of Regulation 13G earlier than the 25 year age limit it imposes. In addition, costs were also reassessed to reflect the range of cargo shutout amounts realized by vessels depending on the type of cargo carried, i.e., crude or product. Finally, to ensure that a thorough examination of the cost to benefit ratio was conducted, costs were broken down by deadweight tonnage.

Cost Comments on the SNPRM Regulatory Assessment

(a) *General:* The Coast Guard received over 40 comments regarding various cost issues. Only two of the comments believed that the proposed structural measures would be economically feasible. One of these comments specifically disagreed with the hydrostatic balance loading (HBL) cost estimates attributed to vessels complying with the Ports and Waterways Safety Act or otherwise equipped with segregated ballast tanks (SBT). The comment argued that HBL would not result in a loss of cargo capacity for either vessel type.

The majority of the comments claimed that structural measures would not be economically feasible due to the excessive cost resulting from the reduction in cargo capacity. Most comments predicted a cargo capacity reduction of between 8 and 25 percent, but a few indicated that cargo capacity would be reduced by as much as 30 to 50 percent. If measures were applied to all vessels, one comment contended that a level economic playing field could be achieved throughout the industry and the high costs of cargo shutout could be adequately offset by an indirect distribution of costs to the public. Other comments stated that the cost estimates for structural measures did not adequately address opportunity costs (such as lost transportation time), time charter rates, dry dock fees, depreciation losses, and transportation, delivery, crew, fuel, financing, and insurance

costs. In addition, four comments claimed that some vessels would be unable to continue operations to U.S. ports if structural measures were implemented. Five more comments stated that the proposed measures would not be economically feasible for their fleet because their vessels would be phased-out of service shortly after incurring the cost of any structural measures. One of these comments suggested that rather than depleting limited financial resources to implement structural measures, vessel owners and operators should use the finances to support their fleet's transition to double hulls, which will become effective in 2015.

Another comment claimed that HBL-related cargo shutout amounts for the pre-MARPOL fleet were overestimated by the Coast Guard, and would amount to only 8 percent or less, as opposed to the 19 percent estimated in the SNPRM regulatory assessment. Consequently, this comment believed that HBL would be economically feasible, and that structural measures would cause a relatively insignificant 1.5 percent increase in tonnage demand on the international, import-trading fleet. In contrast, four other comments strongly stated that when costs are reviewed with respect to freight rates and worldwide tonnage capacity, the implementation of structural measures would not be economically feasible. Two comments stated that the SNPRM cost analysis substantially underestimated costs by not recognizing the cost of replacing lost oil-carrying capacity, and by not accounting for an increase in charter rates (and oil prices) caused by the consequent loss of capacity in the world fleets. The comments further explained that while there is some slack cargo carriage capacity remaining in the world's very large crude carrier (VLCC) tankship fleet, it is disappearing rapidly as older ships continue to retire, and any requirement reducing cargo capacity would inevitably exert substantial upward pressure on charter rates and transportation costs worldwide. The comments also calculated that the world scale spot charter market rate would increase as much as four times the cost attributed by the SNPRM to a VLCC tankship owner implementing HBL. Another comment estimated that the significant increase in daily time charter rates (from 27 to 78 percent to recover the costs of implementing protectively-located spaces (PL/Spaces) to its pre-MARPOL fleet, and from 6 to 32 percent to recover the costs of fitting double sides to its MARPOL 73/78 fleet) on their tankships of less than 30,000 dwt would severely impact their ability to recover their capital investment. Consequently, the comment stated this would reduce its current fleet of 42 tankships trading in U.S. waters to 6 tankships. The fourth comment calculated that the total tonnage available for the U.S. trades in the 25,000 to 30,000 dwt product carrier category would be reduced 45 percent because of increased charter rates and reduced cargo-carrying capacity. The comment went on to state that due to the costs associated with the implementation of structural measures, 8 clean product tankers currently providing 64 percent of the clean product to the U.S. Gulf and East Coast would be forced from U.S. trade.

The Coast Guard has revised the cost and benefit calculations for this final rule in consideration of the comments submitted to the docket. This final rule assessment is extensive and uses factors such as cargo loss, or lack thereof for vessel's fitted with SBT, opportunity costs, and a wide range of costs a company might incur from refitting a vessel. Financing, insurance costs, vessel depreciation, the replacement of lost tonnage (resulting in time charter rate increases), and a vessel's limited remaining life under the OPA 90 phase-out schedule were used, in general, to evaluate the cost-effectiveness of replacing single-hull vessels with double hull vessels earlier than their OPA 90 mandated dates. Concerns such as the loss of a substantial portion of a company's fleet due to structural measures, as well as the possibility of disproportionate indirect costs to consumers in geographic areas dependent on a single oil source were key in the Coast Guard's determination of economic infeasibility.

(b) *Pre-MARPOL Tank Vessels:* Two comments supplied specific data for their international pre-MARPOL vessels between 5,000 to 29,000 dwt. One of these comments estimated a cargo shutout of 25 to 27 percent and refit costs of $225,000 per vessel to implement structural measures on these smaller product tankers. The second comment indicated that each of their parcel tankers would be subjected to a cargo shutout of 35 percent with an average refit cost of $10.3 million. Another comment supplied only cargo shutout information for international pre-MARPOL product tankers of 5,000 to 50,000 dwt. This comment calculated a cargo shutout of 20 to 25 percent for PL/Spaces, with HBL increasing the shutout to 28 to 35 percent. One comment estimated that the implementation of HBL would result in a cost of $2 million per vessel for the pre-MARPOL fleet. Another comment contended that the cost to pre-MARPOL tankships operating as very large crude carriers (VLCC) was overestimated in the SNPRM regulatory assessment, and that the pre-MARPOL VLCC tanker model used in the SNPRM regulatory assessment was not representative of a typical tanker of that size. As a result, according to this comment, the Coast Guard's assumption that all VLCC pre-MARPOL tankships will have to refit PL/Spaces to meet the requirements of Regulation 13G is false. This comment indicated that five vessels researched would be able to meet the requirements of Regulation 13G by using the HBL criteria approved as an IMO alternative. In a similar vein, another comment disagreed with the Coast Guard's assumption that pre-MARPOL tankers reaching the age of 25 before 2002 would have to implement PL/Spaces to meet Regulation 13G. This comment explained that these tankers can implement HBL to meet the international requirement of 13G and continue to trade; thus, if PL/Spaces are mandated without allowing for the HBL alternative, the cost to fit such spaces on pre-MARPOL tankers reaching 25 years old before 2002 should be included in the regulatory analysis.

For this final rule, the Coast Guard reassessed the costs and benefits of implementing different structural measures on the international pre-MARPOL tankship fleet. Measures studied for this reassessment included the combination of PL/Spaces and HBL, the use of HBL only in order to meet the requirements of Regulation 13G, and the implementation of HBL requirements on the identical timeline required by Regulation 13G. The per vessel, per voyage cost for implementing HBL in the final assessment varied depending on deadweight tonnage and ranged from $121,000 to $2.4 million. The Coast Guard recognizes that the assessment for the SNPRM only reflected cargo shutout cost for crude carriers. In the assessment for the final rule, costs were broken down by deadweight tonnage. A separate analysis was done to estimate the effect higher cargo shutout amounts realized by small product tankers may have on the cost-effectiveness of each of the structural measures researched. The Coast Guard did not increase the refit cost assumed in the SNPRM for small tankships because it deems the original onetime refit cost estimate of $328,000 to be reasonable.

(c) *MARPOL 73/78 Tank Vessels:* Three comments supplied information on U.S. coastal fleet, MARPOL 73/78 vessels. For product tankers in the 5,000

to 49,000 dwt category, one comment submitted cargo shutout amounts approximating 207,515 long tons (LT) per year (yr), and opportunity costs (which include structural refit costs needed to meet the HBL requirement) of $1 to $3 million per vessel. Another comment supplied shutout percentages for product vessels carrying heavy (bunker C), medium (diesel oil), and light (gasoline) cargoes, using three different variations of structural measures. According to their calculations, shutout using HBL only would equal 5.5 percent for heavy cargo, 19.5 percent for medium weight cargo, and 38 percent for light cargo. Clean ballast tanks (CBT) with HBL would impose cargo shutouts of 29 percent, 41.6 percent, and 50 percent, respectively. Ballasted empty wing tanks with HBL would result in shutouts amounting to 53.6 percent, 59.2 percent, and 64.5 percent, respectively.

A comment estimated that crude-carrying U.S. MARPOL 73/78 vessels ranging from 5,000 to 49,000 dwt would experience shutouts of 113,077 LT/yr, and refit costs of $1 to $3 million per vessel following the implementation of structural measures. For crude-carrying tankers of the 50,000 to 89,000 dwt category, shutouts were approximated at 326,195 LT/yr, with refit costs again ranging from $1 to $3 million per vessel. Crude-carrying vessels operating in the 90,000 to 199,000 dwt range were estimated to potentially experience shutout amounts of 724,655 LT/yr and refit costs of $1 to $3 million per vessel following implementation of structural measures. For those crude-carrying vessels comprising 200,000 dwt or greater, a comment indicated that shutout would amount to 861,785 LT/yr plus $1 to $3 million in refit costs per vessel.

Two comments supplied information relating to the international MARPOL 73/78 fleet. For product-carrying vessels of 30,000 to 49,000 dwt, a cargo shutout cost was calculated to be $300,000 per year (or $1.5 million for the remainder of the ship's life). For parcel tankers operating in the 5,000 to 29,000 dwt category, cargo shutout was estimated at 34 percent for the implementation of HBL, plus 10 percent for the implementation of PL/Spaces when required, while refit costs amounted to an average $7.4 million per vessel. Calculations submitted for parcel tankers operating in the 30,000 to 49,000 dwt category, showed 34 percent shutout using HBL, plus an additional 10 percent for PL/Spaces where required, with refit costs averaging $11.9 million per vessel.

For this final rule, the Coast Guard reassessed the costs and benefits of implementing HBL on the MARPOL 73/78 tankship fleet. A range of cargo shutout amounts was used to demonstrate the variance between the cost of implementing HBL on crude-carrying and product-carrying vessels. Per vessel, per voyage cargo shutout estimates for implementing HBL in this final assessment also varied depending on a vessel's deadweight tonnage, and ranged from $151,000 to $2.4 million. The Coast Guard recognizes that the assessment for the SNPRM did not include a refit cost for MARPOL 73/78 vessels. Onetime refit costs to MARPOL 73/78 vessels for swash bulkheads or other associated structural changes were added to the cost estimates for this final assessment. This onetime refit cost was assumed for MARPOL 73/78 vessels between 5,000 and 50,000 dwt in order to account for the practical application of HBL to these smaller tankships, which would necessarily have to fit some proportion of PL/Spaces to account for the high shutout consequences of HBL. Refit costs were not included for larger MARPOL 73/78 vessels because it was assumed that these vessels have sufficient CBT or PL/Spaces to practically apply HBL, assuming the cargo shutout amounts estimated in this final rule's regulatory assessment.

(d) *Tank Barges:* One comment estimated that for tank barges, the installation of PL/Spaces would impose average costs of $3 million per tank barge, while the implementation of HBL would reduce cargo capacity by 33 to 50 percent, and in some cases, 100 percent per barge. This comment went on to explain that such costs are not readily absorbed, and are even exacerbated by the limited service life remaining for some of these barges, the enormous capital expenditure necessitated by the OPA-mandated transition to double hulls, and the diminution in value of the existing barge fleet brought on by the OPA-mandated replacement schedule. Another comment surmised that is was not technologically feasible for barges to meet the requirements of PL/Spaces or HBL without eliminating cargo tanks or performing major modifications at a significant cost. This comment estimated that PL/Spaces would reduce cargo capacity by 25 percent on barges with three longitudinal bulkheads, while HBL would impose a cargo shutout of 50 percent for barges with one longitudinal bulkhead. In addition, the costs of installing longitudinal bulkheads were estimated at $800,000 to $1.2 million per barge, ballast systems and tank coatings at $400,000 to $500,000 per barge, and opportunity costs at $600,000 to $800,000 per barge.

The Coast Guard reviewed and reassessed the cost for U.S. tank barge owners to comply with PL/Spacing requirements using either added bulkheads or existing tanks, and HBL requirements. The costs analyzed for the PL/Space options were similar to those used in the SNPRM assessment, but the costs studied for HBL measures were estimated by using figures provided in the comments. The phase-out dates for these barges were also factored into this cost analysis, along with costs similar to those incurred by the pre-MARPOL fleet. Through this final rule, the Coast Guard verifies that because of the high cost of implementing structural measures on tank barges, such measures are not economically feasible.

Final Rule Cost Assessment

The cost assessment for this final rule, as presented in Table 1, provides an estimate of costs for each tank vessel category (pre-MARPOL or MARPOL 73/78) and deadweight tonnage range. In general, these costs were calculated using a methodology similar to that done for the SNPRM assessment. However, additional analyses were used to calculate the projected costs of several variations of measures researched for the SNPRM including: (1) Implementation of Regulation 13G on the pre-MARPOL fleet in 1997, 1998, or 1999; (2) implementation of Regulation 13G on the pre-MARPOL fleet using the same timeline mandated by that regulation; (3) implementation of the HBL alternative allowed under Regulation 13G on the pre-MARPOL fleet; and (4) implementation of HBL on tank barges. An estimated range of costs was also developed to represent the difference in cargo shutout amounts attributable to vessels carrying crude oils (low number) and vessels carrying lighter products (high number). As a summary, the present-value cost of implementing certain structural measures in 1997 is presented in Table 1.

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Table 1: Cost Due to Certain Structural Measures

Estimated Present Value Cost in Millions for Single-Hull Fleet (1997 through 2015)*

Cost Range Represents Variation in Cargo Shutout to Reflect Crude or Product Cargos

Deadweight Tonnage (x1,000)	Pre-MARPOL			
	P/L Spaces with Ballast		HBL to meet 13G(7)	
	International	U.S. Coastal	International	U.S. Coastal
5 - 29	$262.7. - $338.4	$26.3 - $34.1	$50.5 - $378.4	$5.3 - $39.4
30 - 49	$125.1 - $141.6	$13.7 - $15.7	$22.1 - $166.0	$2.8 - $20.7
50 - 89	$63.2 - $71.0	$7.2 - $8.2	$10.2 - $77.2	$1.4 - $10.8
90 - 199	-----	$21.3 - $23.1	-----	$4.2 - $10.5
90 - 144	$91.6 - $99.7	-----	$16.3 - $40.8	-----
145 -199	$6.7 - $7.2	-----	$1.6 - $3.2	-----
200+	$159.1 - $171.6	$11.5 - $12.5	$17.9 - $35.7	$2.1 - $5.2
Total	$708.4 - $829.5	$80.0 - $93.6	$118.6 - $701.3	$15.8 - $86.6

Deadweight Tonnage (x1,000)	MARPOL 73/78	
	HBL to meet 13G(7)	
	International	U.S. Coastal
5 - 49	$186.9 - $314.6	$22.5 - $93.1
50 - 89	$270.4 - $339.9	$10.6 - $16.2
90 - 199	-----	$30.4 - $39.7
90 - 144	$261.7 - $319.8	-----
145 -199	$49.6 - $60.6	-----
200+	$116.3 - $142.2	$10.6 - $13.0
Total	$884.9 - $1,177.1	$74.1 - $162.0

Deadweight Tonnage (x1,000)	U.S. Tank Barges		
	PL/Spaces Refit	PL/Spaces using Cargo Tanks	HBL
5 - 29	$148.4 - $160.4	$48.9 - $216.6	$14.0 - $140.5
30+	$54.0 - $66.6	$58.8 - $142.5	$19.0 - $126.5
Total	$202.4 - $227.0	$107.7 - $359.1	$33.0 - $267.0

* In accordance with Office of Management and Budget guidance costs and benefits have been discounted by 7% back to 1990.

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Benefits

The benefit analysis for this final assessment, in general, uses a methodology similar to that used in the SNPRM for evaluating the incremental reduction in volume of oil spilled as a result of structural measures. Although effectiveness ratios for international pre-MARPOL vessels were reevaluated based on the implementation of Regulation 13G, other effectiveness ratios remained the same as those reported in the SNPRM assessment. However, the volume of oil spilled due to accidents was estimated based on revised historical oil spill data reflecting: (1) The accident history of single-hull tankships since the enactment of OPA 90; (2) the anticipated reduction in oil spills due to the effect of the operational measures final rule on the frequency and severity of future accidents; and (3) the elimination of operational discharge benefits from the calculation, since operational discharge is not allowed in U.S. navigable waters.

Benefit Comments on the SNPRM Regulatory Assessment

Six comments included remarks regarding the potential environmental benefits that may result from the implementation of structural measures. Three comments urged the Coast Guard to provide equal or greater consideration to the environmental benefits derived from the use of structural measures. Yet another comment contended that the SNPRM regulatory assessment failed to properly assess the benefits of the measures considered, citing the Coast Guard's failure to state the value of avoiding spills in comparable terms such as cleanup costs, natural resource damages, restoration costs, and commercial and recreational losses. Another comment urged the Coast Guard to include the potential reduction of both environmental and economic damages from oil not spilled in its regulatory analysis.

Although the Coast Guard recognizes the value of assessing benefits in terms of the cost of third-party cleanup and damage to natural resources, the Coast Guard, for all OPA 90 rulemakings, has reviewed benefits from the perspective of the amount of oil not spilled, rather than a dollar value figure. Details on the extensive work that NOAA has done on this subject can be found in its final rule entitled, "Natural Resource Damage Assessments" published in the **Federal Register** on January 5, 1996 (61 FR 440). When calculating benefits using NOAA natural resource guidance, a wide range of benefits can be estimated depending on the sensitivity of the habitat, restoration costs, compensable value, and damage assessment costs. However, the inclusion of these factors would not significantly increase the benefits resulting from the implementation of structural measures to make them cost-effective.

The remaining comments minimized the potential benefits that may arise from the use of structural measures, and essentially concluded that structural measures would contribute little to the reduction of oil spill volume in U.S. waters. One comment noted that the environmental benefits resulting from the implementation of PL/Spaces would likely be minimal because the most cost-effective location for such spaces, the vessel's mid-body, would not provide adequate protection to the fore and aft sections of the vessel, which are the areas most likely to sustain damage in collisions. Another comment contended that the Coast Guard overestimated operational discharge benefit amounts by wrongly assuming that foreign tankers are not operating to the same operational discharge criteria as U.S. tankers, explaining that discharge criteria established by the 1973 International Convention for the Prevention of Pollution from Ships was brought into force in the late 1970s and applies to over 90 percent of the world's tanker tonnage. Two comments argued that the Coast Guard overestimated benefits for pre-MARPOL vessels by using the MARPOL 73 maximum allowable discharge amounts and underestimated the operational discharge benefits from MARPOL 73/78 vessels, which were incorrectly assumed to have no discharges. One of these comments questioned the Coast Guard's incorporation of operational discharges into the regulatory assessment for the SNPRM in the first place, because all operational discharge is forbidden in U.S. waters. Therefore, the comment asserted that the quantities of unspilled oil occurring from operational discharge were significantly overestimated in the SNPRM regulatory assessment and should be removed from the benefit calculations. The other comment calculated that the quantity of oil not spilled from operational discharges from pre-MARPOL vessels when converting to SBT/CBT was overestimated by the Coast Guard by a factor of 10 to 20.

A total of nine comments challenged the Coast Guard's use of pre-OPA 90 oil spill data in the regulatory assessment for the SNPRM, primarily on the grounds that it did not reflect the significant gains achieved in oil spill reduction within recent years. In addition, several comments recommended that the Coast Guard consider the following when reviewing post-OPA 90 data: oil released from accidents, instead of oil released from operational discharges; and, accident data involving groundings or structural failures. In contrast, other comments stated that the Coast Guard should specifically exclude the following data from the economic assessment for structural measures: spill data in international waters; lightering zone data; and barge and tanker spill data unrelated to groundings, collisions, and structural failures.

The Coast Guard has extensively reassessed the anticipated benefits for structural measures in this final rule. This reassessment was done because the Coast Guard recognized the substantial decrease in oil spill volume from the tank vessel industry since 1990. The Cost Guard agrees that oil spill amounts attributed to operational discharges should not be included as a benefit for structural measures. The Coast Guard deems this final rule benefit assessment a reasonable estimate of oil outflow reduction amounts achieved through the implementation of structural measures.

Final Rule Benefit Assessment

Oil spill amounts attributed to single-hull tankships and tank barges during the 5-year period of 1990 through 1994 were taken from the regulatory assessment for the operational measures final rule if the spills were caused by groundings, collisions, or structural failures. Based on this accident data, an average annual oil spill amount from single-hull tankships was estimated at 11.52 barrels per vessel. The average annual oil spill amount from single-hull tank barges over 5,000 GT was estimated to be 72.4 barrels per barge. Using a combination of the phase-out schedule and the build dates of the affected vessel population, as calculated in the SNPRM assessment, an estimated present value of oil spilled due to groundings, collisions, or structural failures was calculated to be 52,369 barrels for single-hull tankships and 21,487 barrels for barges. Based on anticipated oil spill prevention resulting from the implementation of operational measures, this present value oil spill amount was reduced appropriately and estimated to be between 16,768 and 32,520 barrels spilled between 1997 and 2015 for tankships and between 18,055 and 19,865 barrels spilled for tank barges. The average of this present value oil spill amount was then proportioned out between the four tankship categories based on vessel population as follows: (1) International pre-MARPOL (11,735

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barrels); (2) U.S. pre-MARPOL (558 barrels); (3) International MARPOL 73/78 (11,742 barrels); and (4) U.S. MARPOL 73/78 (608 barrels). For U.S. and international tank barges, the average present value of 18,960 barrels spilled was used in this analysis. As done in the SNPRM, the U.S. fleet consists of vessels that only operate in U.S. coastwise trade. If a U.S. flagged vessel also trades between international ports, it was accounted for in the international population.

To estimate benefits in terms of oil unspilled, each structural measure's ability to reduce oil outflow in a grounding, collision, or structural failure accident was calculated and translated into an effectiveness ratio similar to those developed for the SNPRM assessment. This effectiveness ratio was then multiplied by the anticipated annual oil spill amount for each of the three accident types to calculate the anticipated benefits of the implementation of structural measures.

Because comments received on the SNPRM stated that the cost to benefit ratio was disproportionate for smaller tankship operations, anticipated oil spill benefits were further broken down by deadweight tonnage. Benefits were also calculated for pre-MARPOL fleets where HBL was instituted to meet the requirements of Regulation 13G. The Coast Guard recognizes that PL/Spaces must be ballasted down in order to provide oil outflow benefits, despite the fact that Regulation 13G does not articulate this requirements. Consequently, for this final rule assessment, benefits for the measure combining PL/Spaces and HBL were calculated based on the assumption that the spaces were ballasted down. The benefits estimated for this final rule are significantly less than those estimates used in the SNPRM, because the recalculation of benefits did not include consideration of operational discharge benefits for pre-MARPOL vessels, and because the spill history used for all tankships reflects post-OPA 90 accident data. Table 2 is a summary of the present-value benefits estimated for this final rule with respect to vessel type and deadweight tonnage based on an implementation date of 1997.

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Table 2: Benefits Due to Certain Structural Measures

Average Present Value Barrels Unspilled (1997 through 2015)*

Deadweight Tonnage (x1,000)	Pre-MARPOL			
	P/L Spaces with Ballast		HBL to meet 13G(7)	
	International	U.S. Coastal	International	U.S. Coastal
5 - 29	1,525.5	61.8	572.7	23.6
30 - 49	576.7	24.3	292	12.6
50 - 89	304.7	16.9	154.2	5.1
90 - 199	------	26.0	-----	10.7
90 - 144	260.3	-----	115.6	-----
145 -199	8.1	-----	3.5	-----
200+	414.2	12.3	137.2	4.1
Total	3,089.5	141.3	1,275.2	56.1

Deadweight Tonnage (x1,000)	MARPOL 73/78	
	HBL to meet 13G(7)	
	International	U.S. Coastal
5 - 49	513.0	27.3
50 - 89	583.9	11.0
90 - 199	-----	36.9
90 - 144	391.7	-----
145 -199	57.5	-----
200+	159.3	7.3
Total	1,705.4	82.5

Deadweight Tonnage (x1,000)	U.S. Tank Barges		
	PL/Spaces Refit	PL/Spaces using Cargo Tanks	HBL
5 - 29	3,925.0	3,925.0	1,473.4
30+	1,442.7	1,442.7	1,125.0
Total	5,367.70	5,367.70	2,598.40

* In accordance with current Office of Management and Budget guidance program costs and benefits are discounted at 7% back to 1990.

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Cost-Benefit

Cost-benefit calculations were completed using the revised cost and benefit estimates calculated for each structural measure. Based on the cost-benefit analysis performed for this final rule, structural measures, in particular, pose the greatest economic challenge to the U.S. coastal fleets. Post OPA–90 benefits combined with the high cost to U.S. coastal vessels to refit PL/Spaces or to implement HBL requirements that meet Regulation 13G requirements make the cost-effectiveness of implementing structural measures on these vessels questionable. In addition, given the disproportionate cost impact of structural measures on that portion of the fleet operating as small product tankers crucial to certain ports, economically feasible structural measures for these vessels cannot be attained.

Cost-Benefit Comments on the SNPRM Regulatory Assessment

The Coast Guard received six comments on the cost-effectiveness of implementing structural measures. One comment estimated that a refinement of the SNPM regulatory assessment using post-OPA 90 data, excluding operational discharges in whole or in part (since such discharges occur far from U.S. waters in amounts substantially less than assumed in the SNPRM regulatory assessment), and including the cost of fitting PL/Spaces to pre-MARPOL tankers (since many vessels can satisfy the requirements of Regulation 13G using light-loading only), would result in costs in excess of $50,000 per barrel of oil not spilled, as opposed to actual spill costs of $2,000 to $10,000 per barrel spilled. Another company evaluated the true cost-benefit of implementing structural measures to their corporation in light of the company's historical non-spill performance. Based upon their calculations, a 3-year phase-in period would result in cargo shutout and onetime modification costs totaling $17.7 million for their fleet of product and crude-carrying vessels, while the net present value cost per barrel of spilled oil avoided would be $1 million per barrel. Consequently, this comment estimated the potential cost to this particular corporation as being 28 to 84 times greater than that indicated in the SNPM regulatory assessment. Another comment provided extensive documention and analysis on the cost-effectiveness of the proposed measures by using oil spill data from 1991 through 1994, estimating the operational discharge benefits based on actual vessel discharge records, and including an estimate of clean-up and retribution costs. Using National Oceanic and Atmospheric Administration (NOAA) damage assessment and restoration settlement data and oil spill data from spills recorded within U.S. waters in the Oil Spill Intelligence Report, this comment estimated that the average damage amount per barrel should be $18,580, and explained that in order for a requirement to be cost-effective, its cost-benefit should be less than this amount. According to this comments analysis, no structural requirement is cost-effective.

The Coast Guard agrees with the comments and has calculated the benefits for this final rule using post-OPA 90 accident data and excluding the benefits gained from eliminating operational discharges. The recalculated benefits for this final rule do not include estimates in terms of the amount of money saved by eliminating oil spill clean-up costs. To remain consistent with all other OPA 90 assessments, the Coast Guard has considered benefits in terms of oil unspilled. Because the cost-benefit ratios presented in this final rule are much higher than $2,000 or $18,580 per barrel as referenced in the comments, the Coast Guard deems that even if clean-up cost savings were included in this cost-benefit analysis, the cost-benefit ratios would not fall below these thresholds.

Three more comments specifically discouraged the Coast Guard from implementing the least costly structural measure. Two of these comments noted that the Coast Guard proposed PL/Spaces in light of its low cost, despite findings that another alternative requiring HBL would prevent the spillage of significantly more oil. Specifically, the comment estimated that the HBL alternative would present spillage of 164,000 barrels of oil which is nearly 8 times the 21,000 barrels of spillage prevented by PL/Spaces. One of the comments also conceded that the HBL alternative would cost approximately $3 billion to implement from 1998 to 2015, which amounts to nearly 5 times the estimated cost of implementing PL/Spaces, $579 million, but explained that as compared to the cost of cleanup under California law, $18,900 per barrel, the feasibility of HBL in terms of avoided costs is economically favorable.

The Coast Guard has reassessed the cost to benefit ratio for various structural measures. The costs for this final assessment closely correlate the costs used in the SNPRM assessment; however, the benefits have been significantly reduced, and no longer correlate. If the cost to benefit ratio of $18,900 per barrel of unspilled oil is compared to this final rule assessment, none of the measures can be deemed cost-effective. However, the Coast Guard determination of economic infeasibility is not based solely on the dollar per barrel unspilled ratio. While the numbers certainly support a determination of economic infeasibility, the impact on small entities and geographic areas dependent on a single oil source also weighted in favor of this decision.

Final Rule Cost-Benefits

The Coast Guard has extensively researched both the cost and the resultant benefits of implementing structural measures on single-hull tank vessels. In accordance with current Office of Management and Budget guidance, program costs and benefits are discounted at 7 percent back to 1990. A summary of the cost-benefit ratios, which were computed by dividing the cost of each structural measure by its associated benefit, it presented in Table 3, and reflects a 1997 implementation date. These ratios are categorized by international and U.S. coastal fleets.

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Table 3: Cost - Benefit Due to Certain Structural Measures

Estimated Present Value Cost-Benefit in Dollars per Barrel Unspilled (in Thousands)

Single-Hull Fleet with an Implementation date of 1997*

Deadweight Tonnage (x1,000)	Pre-MARPOL			
	P/L Spaces with Ballast		HBL to meet 13G(7)	
	International	U.S. Coastal	International	U.S. Coastal
5 - 29	$172.2 - $221.8	$425.6 - $551.8	$88.2 - $660.7	$224.6 - $1,669.5
30 - 49	$216.9 - $245.5	$563.8 - $646.1	$75.7 - $568.5	$222.2 - $1,642.9
50 - 89	$207.4 - $233.0	$426.0 - $485.2	$66.1 - $500.6	$274.5 - $2,117.6
90 - 199	-----	$819.2 - $888.5	-----	$392.5 - $981.3
90 - 144	$351.9 - $383.0	-----	$141.0 - $352.9	-----
145 -199	$827.2 - $888.9	-----	$457.1 - $914.3	-----
200+	$384.1 - $414.3	$935.0 - $1,016.3	$130.5 - $260.2	$512.2 - $1,268.3
Averaged Total	$248.9	$614.3	$321.5	$912.7

Deadweight Tonnage (x1,000)	MARPOL 73/78	
	HBL to meet 13G(7)	
	International	U.S. Coastal
5 - 49	$364.3 - $613.3	$824.2 - $3410.3
50 - 89	$463.1 - $582.1	$963.6 - $1,472.7
90 - 199	-----	$823.8 - $1,075.9
90 - 144	$668.1 - $816.4	-----
145 -199	$862.6 - $1,053.9	-----
200+	$730.1 - $892.7	$1,452.1 - $1,780.8
Averaged Total	$604.6	$1,430.9

Deadweight Tonnage (x1,000)	U.S. Tank Barges		
	PL/Spaces Refit	PL/Spaces using Cargo Tanks	HBL
5 - 29	$37.8 - $40.9	$12.5 - $55.2	$9.5 - $95.3
30+	$37.4 - $46.2	$40.8 - $98.8	$16.9 - $112.4
Averaged Total	$40.0	$43.5	$57.70

* In accordance with Office of Management and Budget guidance costs and benefits have been discounted by 7% back to 1990.

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An analysis of the cost to benefit ratio for requiring implementation of Regulation 13G on pre-MARPOL tankships on the same timeline as required by Regulation 13G (25 years after the vessel's build date) was also completed for this final rule regulatory assessment. Because those pre-MARPOL vessels on international routes were assumed to comply with this requirement, no cost or benefit was assigned to these vessels for implementing this requirement. The cost for implementing Regulation 13G on pre-MARPOL tankships was estimated to be $13.5 million and would be placed solely on those tankships operating on U.S. coastal routes until 2015. The benefit from this requirement was not specifically calculated. The Coast Guard estimated a benefit lower than the attained by the HBL requirement on U.S. coastal pre-MARPOL tankships because the implementation date would be later than 1997 (the date assumed for the HBL calculations). Therefore, the cost-benefit to the U.S. coastal fleet would be higher than $240,642 per barrel of unspilled oil. Because the financial burden of this measure reduces the ability of U.S. ships to compete with foreign shipping interests and the cost-benefit ratio is extremely high, the Coast Guard deems this measure to be economically infeasible.

Similar cost-benefit calculations were also conducted for varying implementation years ranging from 1998 to 2001. These calculations show that the cost-benefit ratio becomes higher with each implementation year proposed due to the short benefit time-frame resulting from the aggressive vessel phase-out schedule created by OPA 90. The inability to recoup financial losses, as well as the effectiveness of operational measures for existing tank vessels for reducing oil spills, supports a determination that the costs of structural measures outweigh the benefits.

The total present value cost of structural measures over the 18-year period of this final rule would range from $896 million to $1.1 billion. Total present value of the benefits for structural measures over the 18-year period of this final rule would range from 5,718 to 10,386 barrels of unspilled oil. As a benchmark for this analysis, the Coast Guard used cost-benefit of $24,000 per barrel of unspilled oil, which was the estimated cost-benefit of the double hull requirements mandated by OPA 90 in Section 4115(a) to which these interim requirements are linked. Because the cost-benefit estimates for the measures are well over $24,000 per barrel of unspilled oil, and the measures would impose substantial costs to the industry over the estimated 18-year period, no measures are required. Some regulatory text is contained in this final rule to clearly indicate that the Coast Guard considers the operational measures and lightering equipment requirements to be the only feasible interim requirements for existing tank vessels without double hulls, and that these requirements, as promulgated, satisfy section 4115(b) of OPA 90.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities because no structural measures are being imposed in this rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandate

Under the Unfunded Mandates Reform Act (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule.

After extensive review of several alternatives, all with varying cost and effectiveness ratings, the Coast Guard has determined that no structural measures are cost-effective, and is therefore not requiring any in this rule. Consequently, this rule will not result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and, because of the long-standing and judicially recognized need for uniform rules regulating the design and construction of vessels engaged in interstate and international commerce, has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that preparation of an Environmental Impact Statement was not necessary. As discussed in the Environmental Assessment, the final rule's Regulatory Assessment, and the Operational Measures final rule Regulatory Assessment provide sufficient evidence and analysis for determining that structural measures are not economically feasible; and therefore, should not be promulgated under Section 4115(b) of OPA 90. Because no structural measures are required, an Environmental Impact Statement is not required under the National Environmental Policy Act. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

For the reason set out in the preamble, the Coast Guard amends 33 CFR part 157 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

2. The subpart heading of subpart G is revised to read as follows:

Subpart G—Interim Measures For Certain Tank Vessels Without Double Hulls Carrying Petroleum Oils

3. The subpart heading of subpart H is revised to read as follows:

Subpart H—Interim Measures For Certain Tank Vessels Without Double Hulls Carrying Animal Fat or Vegetable Oil

4. The subpart heading of subpart I is revised to read as follows:

Subpart I—Interim Measures For Certain Tank Vessels Without Double Hulls Carrying Other Non-Petroleum Oil

Dated: January 3, 1997.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 97–471 Filed 1–9–97; 8:45 am]

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January 10, 1997

Part IV

Federal Emergency Management Agency

Hotel and Motel Fire Safety Act; National Master List; Notice

federal register

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act; National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations that meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Friday, June 21, 1996, 61 FR 32036—32256.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. The Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at: http://www.usfa/fema.gov/hotel/index.htm.

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices. Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

Dated: January 6, 1997.

H. Crane Miller,

Legislative and Regulatory Counsel.

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 12/19/96 UPDATE

Index and Property Name		PO box/Rt. No. and street address	City, State/Zip	Phone
Additions				
AK:				
AK0051	WEST COAST INTERNATIONAL INN	3333 W. INTERNATIONAL AIRPORT R.	ANCHORAGE, AK 99502	(907) 243–2233
CA:				
CA1484	IONE HOTEL	25 W. MAIN ST.	IONE, CA 95640	(209) 274–6082
CA1483	REGENCY PLAZA HOTEL	6161 W. CENTURY BLVD	LOS ANGELES, CA 90045	(310) 649–1400
DC:				
DC0059	CLUB QUARTERS	839 17TH STREET, N.W	WASHINGTON, DC 20006	(202) 463–6400
DC0060	GEORGE WASHINGTON UNIVERSITY INN	824 NEW HAMPSHIRE AVE., N.W.	WASHINGTON, DC 20037	(202) 337–6620
DC0058	ONE WASHINGTON CIRCLE HOTEL	ONE WASHINGTON CIRCLE, N.W.	WASHINGTON, DC 20037	(202) 872–1680
IA:				
IA0168	JUMER'S CASTLE LODGE	900 SPRUCE HILLS DRIVE	BETTENDORF, IA 52722	(800) 285–8637
IA0169	HOLIDAY INN	1050 6TH AVENUE	DES MOINES, IA 50314	(515) 283–0151
MS:				
MS0113	STUDIO PLUS AT JACKSON	800 RIDGEWOOD ROAD	RIDGELAND, MS 39157	(601) 956–0884
NC:				
NC0373	STUDIO PLUS AT CARY	600 WESTON PARKWAY	CARY, NC 27513	(919) 677–9910
NC0371	STUDIO PLUS AT TYVOLA	5830 WESTPARK DRIVE	CHARLOTTE, NC 28217	(704) 527–1960
NC0370	STUDIO PLUS AT UNIVERSITY PLACE	723 EAST MCCULLOUGH DRIVE.	CHARLOTTE, NC 28262	(704) 510–0108
NC0375	STUDIO PLUS AT DURHAM	2504 NC HIGHWAY 54	DURHAM, NC 27713	(919) 361–1853
NC0369	HOLIDAY INN FOUR SEASONS	3121 HIGH POINT ROAD	GREENSBORO, NC 27407	(910) 292–9161
NC0372	STUDIO PLUS AT WENDOVER	1705 STANLEY ROAD	GREENSBORO, NC 27407	(704) 547–0405

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 12/19/96 UPDATE—Continued

Index and Property Name	PO box/Rt. No. and street address	City, State/Zip	Phone
NC0374 STUDIO PLUS AT RALEIGH	921 WAKE TOWNE DRIVE	RALEIGH, NC 27609	(919) 546–0879
ND:			
ND0091 SLEEP INN	1921 11 STREET SW	FARGO, ND 58103.	(701) 281–8240
NY:			
NY0636 ROARING BROOK RANCH & TENNIS COURT.	RT. 9N	LAKE GEORGE, NY 12845	(518) 668–5767
TX:			
TX0708 HAMPTON INN COLLEGE STATION	320 SOUTH TEXAS AVE	COLLEGE STATION, TX 77840.	(800) 426–7866
TX0706 MISS MOLLY'S HOTEL	109½ WEST EXCHANGE AVE.	FORT WORTH, TX 76106	(800) 996–6559
TX0707 HAMPTON INN I–10 WEST	11333 KATY FRWY	HOUSTON, TX 77079	(713) 935–0022
TX0712 LA POSADA HOTEL/SUITES	1000 ZARAGOSA STREET	LAREDO, TX 78040.	(210) 722–1701
TX0709 CAMBERLEY GUNTER HOTEL	205 EAST HOUSTON STREET.	SAN ANTONIO, TX 78205	(210) 227–3241
TX0711 CLUB HOTEL BY DOUBLETREE-SAN ANTONIO AIRPORT.	1111 N.E. LOOP 410	SAN ANTONIO, TX 78209	(210) 828–9031
VA:			
VA0660 COOL HARBOR MOTEL	141 WEST 15TH STREET	FRONT ROYAL, VA 22630	(540) 635–2191
VA0659 DAYS INN MARINA	1631 BAYVILLE STREET	NORFOLK, VA 23503	(757) 583–4521
VT:			
VT0263 RADISSON HOTEL	2 BURLINGTON SQUARE	BURLINGTON, VT 05401	(802) 658–6500
VT0266 RADISSON HOTEL	60 BATTERY ST	BURLINGTON, VT	
VT0264 INN AT WEATHERSFIELD	ROUTE 106	PERKINSVILLE, VT.	(802) 263–9217
VT0267 HOWARD JOHNSON	410 SHELBURNE RD	S. BURLINGTON, VT	
VT0265 ECONO LODGE (SPRUCE BUILDING)	1961 SHELBURNE RD	SHELBURNE, VT	(802) 985–3377
WV:			
WV0245 DAYS INN, INC.—MAIN—2 BLDGS	5196 RT. 60	HUNTINGTON, WV 25705	(304) 733–4477
WV0246 MOTEL INN	3441 RT. 60 E.	HUNTINGTON, WV 25504	(304) 736–9772
CORRECTIONS/CHANGES			
CA:			
CA0482 RENAISSANCE LOS ANGELES HOTEL	9620 AIRPORT BLVD	LOS ANGELES, CA 90045	(310) 337–2800
IA:			
IA0031 WYNDHAM FIVE SEASONS MOTEL	350 1ST AVE. NE	CEDAR RAPIDS, IA 52401	(319) 363–8161
NC:			
NC0056 BEST WESTERN HOTEL CROWN PARK	4620 S. MIAMI BLVD	DURHAM, NC 27703	(919) 941–6066
NY:			
NY0616 HOLIDAY INN EXPRESS—TURF ON WESTERN AVENUE.	1442 WESTERN AVENUE	ALBANY, NY 12203.	(518) 438–0001
TX:			
TX0080 DOUBLE HOTEL AT CAMPBELL CENTER	8250 N.CENTRAL EXWY	DALLAS, TX 75206	(210) 740–0199
TX0306 RADISSON HOTEL DALLAS	1893 W. MOCKINGBIRD LN	DALLAS, TX 75235.	(214) 634–8850
TX0703 WYNDHAM ANATOILE	2201 STEMMONS FRWY	DALLAS, TX 75207.	(214) 748–1200
TX0554 WYNDHAM DALLAS MARKET CENTER	2015 MARKET CENTER BLVD.	DALLAS, TX 75027.	(214) 742–8686
VA:			
VA0294 DOUBLETREE—TYSONS CORNER	7801 LEESBURG PIKE	FALLS CHURCH, VA 22043	(703) 893–1340
VT:			
VT0004 HO JO INN	573 N. MAIN ST.	BARRE CITY, VT 05678	
VT0005 KNOLL MOTEL MAIN BUILDING	1015 N. MAIN ST.	BARRE CITY, VT 05678	
VT0008 SOUTHSHIRE INN	124 ELM ST.	BENNINGTON, VT 05201	(802) 447–3839
VT0013 ECONO LODGE	243 CANAL ST.	BRATTLEBORO, VT 05301	
VT0246 MOUNTAIN SPORT INN	KILLINGTON RD.	KILLINGTON, VT 05751	
VT0053 COLONIAL MOTEL ANNEX #1	93 MAIN ST.	LUDLOW, VT 05149.	
VT0063 SWIFT HOUSE INN	25 STEWART LN	MIDDLEBURY, VT 05753	
VT0077 COUNTRY GARDEN INN	37 MAIN ST.	QUECHEE, VT 05059	(802) 296–6978
VT0083 COMFORT INN	19 ALLEN ST.	RUTLAND CITY, VT 05201	
VT0084 HOGGE PENNY MOTOR INN	RT. 4	RUTLAND CITY, VT 05701	
VT0085 HOLIDAY INN	RT. 7 S.	RUTLAND CITY, VT 05701	
VT0089 ECONOMY INNS	2040 WILLISTON RD	SOUTH BURLINGTON, VT 05403.	(802) 658–5660
VT0211 RODEWAY INN	1860 SHELBURNE RD	SOUTH BURLINGTON, VT 05403.	
VT0221 ANDIRONS MOTOR LODGE	RT. 100	WEST DOVER, VT 05356	
VT0175 CANTERBURY HOUSE B & B	21 PLEASANT ST.	WOODSTOCK, VT 05091	(802) 457–3843
WV0122 HOLIDAY INN GATEWAY	6007 RT. 60	HUNTINGTON, WV 25504	(304) 736–8974
Deletions			
NC:			
NC0286 DOUBLETREE CLUB HOTEL	895 WEST TRADE STREET	CHARLOTTE, NC 28202	(704) 347–0070
NC0211 FAIRFIELD INN CHARLOTTE NE	5415 N. I–85 SERVICE RD	CHARLOTTE, NC 28213	(704) 596–2999

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THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 12/19/96 UPDATE—Continued

Index and Property Name	PO box/Rt. No. and street address	City, State/Zip	Phone
NC0268 HOLIDAY INN LAURINBURG	15401 BY PASS	LAURINBURG, NC 28352	(919) 276–6555
NC0269 HOLIDAY INN SALISBURY	PO BOX 1925, 530 JAKE ALEXANDER BLVD. S.	SALISBURY, NC 28144	(704) 638–0311
TX:			
TX0320 MISS MOLLY'S HOTEL	109½ W. EXCHANGE AVE	FORT WORTH, TX 76106	(800) 996–6559
TX0283 HOUSTON MARRIOTT WESTSIDE	13210 KATY FRWY	HOUSTON, TX 77079	(713) 558–8338
VT:			
VT0256 HOLIDAY INN BURLINGTON	1068 WILLISTON RD	BURLINGTON, VT 05403	(802) 863–6363
VT0261 SUPER 8 MOTEL	MAIN ST.	DERBY, VT 05829	
VT0262 COMFORT INN	117 STRONGS AVE	RUTLAND, VT 05201	
VT0140 INN AT SUNDERLAND	RT. 7A	SUNDERLAND, VT 05250	(802) 362–4213
VT0155 INN AT WEATHERSFIELD	PO BOX 165, RT. 106	WEATHERSFIELD, VT 05151.	

[FR Doc. 97–611 Filed 1–9–97; 8:45 am]
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federal register

Friday
January 10, 1997

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Rules

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD48

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Cordia Bellonis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines *Cordia bellonis* (no common name) to be endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. This species is a shrub endemic to the island of Puerto Rico and it is restricted to three public forests—Maricao, Susua, and Rio Abajo. The species is threatened by habitat loss, some forest management practices, and restricted distribution. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Cordia bellonis*.

DATES: Effective February 10, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Boquerón Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Cordia bellonis was described by Urban in 1899 from specimens collected by Paul Sintenis at "Monte Alegrillo" in the municipality of Maricao, Puerto Rico (Urban 1899). The name of "Monte Alegrillo" has disappeared from use, but according to Proctor (1991), N.L. Britton referred to "Monte Alegrillo" as the peak at the extreme head of the Rio Maricao, with an elevation of 900 meters. This type location was developed for the installation of telecommunication towers. Paul Sintenis collected *Cordia bellonis* in the area known as Indiera Fría. The species was also collected by Britton and Brown in 1915 from Monte Cerrote near Adjuntas (Proctor 1991). Britton and Wilson (1925) described the species as *Varronia bellonis* and identified its distribution as mountain-sides in the vicinity of Maricao. Liogier and Martorell (1982) stated that the species distribution was the mountain slopes and serpentine hills in northwestern districts of Puerto Rico. Proctor (1991) reported only 4 individuals of *Cordia bellonis* from Caín Alto Ward in the Maricao Commonwealth Forest. Breckon and Kolterman (1993) reported 87 individuals at 17 localities in three areas in Maricao. Half of the localities consist of isolated individuals.

The species was reported for the first time in Susúa in 1992, where a small population of 5 individuals was found (Breckon and Kolterman 1993). *Cordia bellonis* was also unknown from the Río Abajo Commonwealth Forest until it was found in 1994 (Federal Highway Administration and Puerto Rico Highway and Transportation Authority 1994). Approximately 118 individuals were found in 12 localities. Ninety-five (82 percent) of these individuals were removed for possible future reintroduction because of the construction of the road PR 10 (PR Highway and Transportation Authority 1995).

Cordia bellonis has been found in serpentine soils at Maricao and Susúa at road edges, river margins, and on steep slopes (Breckon and Kolterman 1993). In the Río Abajo Forest, the species was found either on sunny banks along dirt roads growing in thickets of vegetation or in open saddles between limestone hills (Federal Highway Administration and Puerto Rico Highway and Transportation Authority 1994).

Cordia bellonis is an arching to erect shrub of about 1 to 2 meters (3.3 to 6.6 feet) high with very slender twigs with short hairs. The leaves are alternate, oblong to oblong-lanceolate, 2 to 6 centimeters (0.79 to 2.36 inches) long, usually 2.5 to 3 times longer than wide. The corolla is white with 4 subcylindric lobes. The fruit is a pointed drupe, 5 millimeters (0.20 inches) in length (Proctor 1991). The white axillary flowers are unisexual and the plants are either male or female (dioecious) (Breckon and Kolterman 1993).

The species is threatened by habitat destruction and modification, forest management practices, and restricted distribution. Eighty-two percent of the individuals known from the Río Abajo Commonwealth Forest were removed from the forest for the construction of a highway. Breckon and Kolterman (1994) reported that 14 individuals from Maricao appeared to have been eliminated due to clearing along the roadside of the forest. In 1995, twenty additional individuals were apparently destroyed by the clearing which occurred for the reconstruction of Road 362 in the Camp Santana area. Restricted distribution coupled with the requirement for adequate numbers of both male and female plants in a viable population are limiting factors for the species. In a large number of the localities where the species is found, the shrub occurs as isolated individuals. Because of forest destruction, less than half of the individuals previously known remain in these three forests.

Previous Federal Action

Cordia bellonis was designated a candidate species in the **Federal Register** notice of review for plant taxa dated September 30, 1993 (58 FR 51144). The species was recommended for listing by Proctor (1991) in a Status Report prepared for the species. In further studies conducted for the species, Breckon and Kolterman (1993) also recommended the species for listing. *Cordia bellonis* is considered to be a critical plant by the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources. A proposed rule to list *Cordia bellonis* as endangered was published on September 28, 1995 (60 FR 50176).

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through the passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time, there are no pending Tier 1 actions. In the development of this final rule, the Service has conducted an internal review of all available information. Based on this review, the Service has determined that there is no new information that would substantively affect this listing decision and that additional public comment is not warranted.

Summary of Comments and Recommendations

In the September 28, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information

that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and interested parties were requested to comment. Newspaper notices inviting general public comment were published in "The San Juan Star" on October 14, 1995, and in "El Nuevo Día" on October 16, 1995. Two comment letters were received and are discussed as follows. Dr. G.J. Breckon and Dr. D.A. Kolterman, both from the University of Puerto Rico, Mayaguez Campus, supported the proposal to list *Cordia bellonis* as an endangered species. The U.S. Department of the Army, Jacksonville District Corps of Engineers, Antilles Office, provided comments, but did not indicate support or objection to listing the species. Comments supplying supplemental data have been incorporated into the Background section of this rule, as appropriate. A public hearing was neither requested nor held.

The Service also solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to distribution, abundance, status, and biological and ecological information for *Cordia bellonis*. Two responses from the specialists were received; they supported the listing of the species as an endangered species, and supplemental data was incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and considertion of all information available, the Service has determined that *Cordia bellonis* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cordia bellonis*, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Destruction and modification of the habitat is considered one of the most significant factors affecting the numbers and distribution of *Cordia bellonis*. This species is only known from three areas in Puerto Rico; Maricao, Susúa, and Río Abajo.

In Maricao, the species is found at 17 localities in three areas, for a total of 87 individuals. Thirty-four of these individuals have been eliminated due to clearing along the roadside and the reconstruction of Road 362. Half of the localities consist of isolated individuals. The dioecious condition of the species is a factor limiting reproduction by these individuals. Because the majority of these individuals occur along both sides of two public roads, maintenance of road sides, as well as fires and vandalism, may result in the loss of these individuals. In Susúa, a small population of only 5 individuals was found in 1992. The species was previously unknown from this area. This small population may be affected by forest management practices. *Cordia bellonis* was also unknown from the Río Abajo forest until it was found in 1994. Approximately 118 individuals were found in 12 localities. Ninety-five individuals were located along the construction route for a highway (which is now completed) and were removed for possible future transplantation. Of the remaining 23 individuals, 13 have been found in an area designated for compensation (mitigation) for the highway and 10 are found in highway rights-of-way. The species is also known from a private landholding where extraction of fill material for the construction of the road will likely result in the loss of these plants. The rareness and restricted distribution make this species vulnerable to habitat destruction and modification.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection to certain Commonwealth listed species. However, *Cordia bellonis* is not yet on the Commonwealth list. Federal listing will provide immediate protection to the species, and by virtue of an existing section 6 Conservation Agreement with the Commonwealth, listing will also assure the addition of this species to the Commonwealth list and enhance its possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* Two significant factors affecting this species are its limited distribution and dioecious condition. The limited distribution of this species makes it particularly vulnerable to extinction from naturally occurring events such as fire and local management practices. As a dioecious plant, *Cordia bellonis* requires outcrossing to successfully reproduce. Being dioecious creates a limiting factor affecting the continued existence of this rare plant since most remaining individuals are widely separated from each other and, therefore, unlikely to reproduce.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cordia bellonis* as endangered. The rarity of this plant makes the species vulnerable to the loss of any individual. Only 81 individuals of *Cordia bellonis* are known to occur in the wild. Habitat modification may dramatically affect this endemic plant. Therefore, endangered, rather than threatened, status is considered an accurate assessment of the species' condition. The reasons for not designating critical habitat for this species are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cordia bellonis*. Service regulations (50 CFR 424.12 (a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the

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species, or (2) such designation of critical habitat would not be beneficial to the species.

Populations of *Cordia bellonis* are small and accessible. Vandalism and cutting could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. The precarious status of *Cordia bellonis* necessitates identical threshholds for determining adverse modification of critical habitat and jeopardizing the continued existence of the species. Therefore, no additional protection from designating critical habitat would occur for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The majority of the individuals of *Cordia bellonis* known from Maricao are found along both sides of roads PR #120 and PR #362. Any widening of these roads, installation of water and sewer pipelines, and the installation of powerlines along these roads may adversely affect the species. These types of activities could be funded by Federal agencies (for example, the Federal Highway Administration, U.S. Housing and Urban Development, and Rural Development). *Cordia bellonis* was seriously affected by the construction of a highway in the Río Abajo Commonwealth Forest. This road was funded by the Federal Highway Administration and 82 percent of the individuals of *Cordia bellonis* were removed from the Forest for possible future transplantation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Few trade permits for this plant will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (50 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The only known populations of *Cordia bellonis* are restricted to three Commonwealth forests—Maricao, Susúa and Río Abajo. Since there is no Federal ownership, and the species is not currently in trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of a Commonwealth law or regulation, including Commonwealth criminal trespass law. Section 15.01(b) of the Commonwealth "Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico" states: "It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico." The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activites will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Boquerón Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to U.S. Fish and Wildlife Service, Ecological Services (TE), 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7313).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 CFR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

Breckon, G.J. and D.A. Kolterman. 1993. *Cordia bellonis* Urban [Boraginaceae]. Final report under cooperative agreement No. 14–16–0004–92–970 between U.S. Fish and Wildlife Service and the University of Puerto Rico, Mayaguez Campus. 14 pp.

Breckon, G.J. and D.A. Kolterman. 1994. *Cordia bellonis* Urban [Boraginaceae]. Final report under cooperative agreement No. 14–16–0004–93–973 between U.S. Fish and Wildlife Service and the University of Puerto Rico, Mayaguez Campus. 4 pp.

Britton, N.L. and P. Wilson. 1925. Scientific survey of Porto Rico and the Virgin Islands. Volume VI–Part 1. Botany of Porto Rico and the Virgin Islands. Descriptive flora-Spermatohyta (continued). New York Academy of Sciences, New York. 158 pp.

Federal Highway Administration and the Puerto Rico Highway and Transportation Authority. 1994. Biological Assessment Relocation of PR–10 Utuado, Puerto Rico. Unpublished Report.

Liogier, H.A. and L.F. Martorell. 1982. Flora of Puerto Rico and adjecent islands: a systematic synopsis. Editorial de la Universidad de Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Proctor, G. 1991. Puerto Rican plant species of concern: Status and recommendations. Miscellaneous Scientific Publication No. 2. Department of Natural and Environmental Resources, San Juan, Puerto Rico. Pp. 59–61.

Puerto Rico Highway and Transportation Authority. 1995. Report to U.S. Fish and Wildlife Service on plant species, Puerto Rican boa and monitoring program of the broad-winged hawk PR–10 Highway, Arecibo-Utuado. Unpublished report.

Urban. 1899. Symb. Antill. 1:393.

Author

The primary author of this final rule is Ms. Marelisa Rivera, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	
Cordia bellonis	None	U.S.A. (PR)	Boraginaceae	E	601	NA	NA
•	•	•	•	•	•	•	

Dated: December 6, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–564 Filed 1–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC64

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Cumberland Elktoe, Oyster Mussel, Cumberlandian Combshell, Purple Bean, and Rough Rabbitsfoot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for five freshwater mussels—Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*)—under the Endangered Species Act of 1973, as amended (Act). All five species have undergone significant reductions in range and numbers. They now exist as relatively small, isolated populations. The Cumberland elktoe exists in very localized portions of the Cumberland River system in Kentucky and Tennessee. The oyster mussel and Cumberlandian combshell persist at extremely low numbers in portions of the Cumberland and Tennessee river basins in Kentucky, Tennessee, and Virginia. The purple bean and rough rabbitsfoot currently survive in a few river reaches in the upper Tennessee River system in Tennessee and Virginia. These species were eliminated from much of their historic range by impoundments. Presently, these species and their habitats are being impacted by deteriorated water quality, primarily resulting from poor land-use practices. Because the species have such restricted ranges, they are vulnerable to toxic chemical spills.

DATES: Effective February 10, 1997.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address, or telephone 704/258–3939, Ext. 228.

SUPPLEMENTARY INFORMATION:

Background

Cumberland elktoe (*Alasmidonta atropurpurea*)

The Cumberland elktoe, described by Rafinesque (1831), has a thin but not fragile shell. The shell's surface is smooth, somewhat shiny, and covered with greenish rays. Young specimens have a yellowish brown shell, and the shells of adults are generally black. The inside of the shell is shiny with a white, bluish white, or sometimes peach or salmon color (see Clarke (1981) for a

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more complete description of the species).

The Cumberland elktoe is endemic to the Cumberland River system in Tennessee and Kentucky and is considered endangered in the State of Kentucky (Kentucky State Nature Preserves Commission (KSNPC) 1991). Historic records exist from the Cumberland River and from its tributaries entering from the south between the Big South Fork Cumberland River upstream to Cumberland Falls. Specimens have also been taken from Marsh Creek above Cumberland Falls. Old records of a related species, *Alasmidonta marginata*, exist from other creeks above Cumberland Falls; and there is speculation that these specimens were probably the Cumberland elktoe (Gordon 1991). Because the area above the falls has been severely impacted by coal mining, any populations of *A. atropurpurea* that might have existed there were likely lost (Gordon 1991). A record of one fresh dead specimen exists from the Collins River, Grundy County, Tennessee. However, extensive searches of the collection site and other sites in the Collins River and adjacent rivers have failed to find another specimen. If the species did exist in the Collins River, it has likely been extirpated.

Presently, three populations of the Cumberland elktoe are known to persist. The species survives in the middle sections of Rock Creek, McCreary County, Kentucky; the upper portions of the Big South Fork Cumberland River basin in McCreary County, Kentucky; and Scott, Fentress, and Morgan counties, Tennessee; and in Marsh Creek, McCreary County, Kentucky (Gordon 1991). Marsh Creek likely contains the best surviving elktoe population (Robert McCance, KSNPC, *in litt.*, 1994).

Any Cumberland elktoe populations that may have existed in the main stem of the Cumberland River were likely lost when Wolf Creek Dam was completed. Other tributary populations were likely lost due to the impacts of coal mining, pollution, and spills from oil wells. The upper Big South Fork basin population is threatened by coal mining runoff and could also be threatened by impoundments. The Marsh Creek population has been adversely affected and is still threatened by potential spills from oil wells. The Rock Creek population could be threatened by logging. All three populations, especially Rock Creek and Marsh Creek, are restricted to such short stream reaches that they could be eliminated by naturally occurring events such as toxic chemical spills.

Oyster mussel (*Epioblasma capsaeformis*)

The oyster mussel (Lea 1834) has a dull to sub-shiny yellowish- to green-colored shell with numerous narrow dark green rays. The shells of females are slightly inflated and quite thin towards the shell's posterior margin. The inside of the shell is whitish to bluish white in color (see Johnson (1978) for a more complete description of the species). The species is considered endangered in the States of Kentucky (KSNPC 1991) and Virginia (Neves 1991; Sue Bruenderman, Virginia Department of Game and Inland Fisheries (VDGIF), *in litt.*, 1992).

This species historically occurred throughout much of the Cumberlandian region of the Tennessee and Cumberland river drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991), and Ortmann (1918) considered the species to be very abundant in the upper Tennessee River drainage.

Currently, within the Cumberland River, the oyster mussel survives as a very rare component of the benthic community in Buck Creek, Pulaski County, Kentucky; and it still survives in a few miles of the Big South Fork Cumberland River, McCreary County, Kentucky, and Scott County, Tennessee (Bakaletz 1991; McCance, *in litt.*, 1994). Within the Tennessee River system, only small populations survive at a few sites in the Powell River, Lee County, Virginia; and Hancock and Claiborne counties, Tennessee; in the Clinch River system, Scott County, Virginia, and Hancock County, Tennessee; Copper Creek (a Clinch River tributary), Scott County, Virginia; and Duck River, Marshall County, Tennessee. Although not seen in recent years, the species may still persist at extremely low numbers in the lower Nolichucky river, Cocke and Hamblem counties, Tennessee, and in the Little Pigeon River, Sevier County, Tennessee (Gordon 1991).

Much of the oyster mussel's historic range has been impounded by the Tennessee Valley Authority (TVA) and the U.S. Army Corps of Engineers (Corps). Other populations were lost due to various forms of pollution and siltation. The present populations are threatened by the adverse impacts of coal mining, poor land-use practices, and pollution, primarily from nonpoint sources. The Duck River population could be lost if the proposed Columbia Dam on the Duck River at Columbia, Tennessee, is completed as presently proposed. All the known populations are small and could be decimated by naturally occurring events such as toxic chemical spills.

Cumberlandian combshell (*Epioblasma brevidens*)

The Cumberlandian combshell (Lea 1831) has a thick, solid shell with a smooth to cloth-like outer surface. It is yellow to tawny brown in color with narrow green broken rays. The inside of the shell is white. The shells of females are inflated with serrated teeth-like structures along a portion of the shell margin (see Johnson (1978) for a more complete description of the species). The species is considered endangered in the States of Kentucky (KSNPC 1991) and Virginia (Neves 1991; Bruenderman, *in litt.*, 1992) and a species of special concern in Tennessee (Bogan and Parmalee 1983).

The Cumberlandian combshell historically existed throughout much of the Cumberlandian portion of the Tennessee and Cumberland river systems in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Presently, it survives in the Cumberland River basin, as a very rare component of the benthic community in Buck Creek, Pulaski County, Kentucky, and in a few miles of the Big South Fork Cumberland River, McCreary County, Kentucky, and Scott County, Tennessee (Bakaletz 1991; Gordon 1991; McCance, *in litt.*, 1994). A few old, non-reproducing individuals may also survive in Old Hickory Reservoir on the Cumberland River, Smith County, Tennessee (Gordon 1991).

Within the Tennessee River basin, the species still survives in very low numbers in the Powell and Clinch rivers, Lee and Scott counties, Virginia; and Claiborne and Hancock counties, Tennessee. The Clinch and Powell river populations are very small and in decline (Neves 1991; Richard Neves, Virginia Cooperative Fish and Wildlife Research Unit, personal communication, 1991).

Many of the Cumberlandian combshell's historic populations were lost when impoundments were constructed on the Tennessee and Cumberland rivers by TVA and the Corps. Other populations were lost due to various forms of pollution and siltation. The present populations are threatened by the adverse impacts of coal mining, poor land-use practices, and pollution, primarily from nonpoint sources. All the known populations are small and could be decimated by naturally occurring events such as toxic chemical spills.

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Purple bean (*Villosa perpurpurea*)

The purple bean mussel (Lea 1861) has a small- to medium-sized shell. The shell's outer surface is usually dark brown to black with numerous closely spaced fine green rays. The inside of the shell is purple, but the purple may fade to white in dead specimens (see Bogan and Parmalee (1983) for a more complete description of the species). The species is considered endangered in Tennessee (Bogan and Parmalee 1983) and Virginia (Neves 1991; and Bruenderman, *in litt.*, 1992).

The purple bean historically occupied the upper Tennessee River basin in Tennessee and Virginia upstream of the confluence of the Clinch River (Gordon 1991). Ortmann (1918) considered the species "not rare" in Virginia. Presently, it survives in limited numbers at a few locations in the upper Clinch River basin, Scott, Tazewell, and Russell counties, Virginia; Copper Creek (a Clinch River tributary), Scott County, Virginia; Indian Creek (a Clinch River tributary), Tazewell County, Virginia (the Indian Creek location information was received from the Service's Abingdon Field Office, Abingdon, Virginia, after the close of the comment period. However, the purple bean was known to occur in the Clinch River, Tazewell County, Virginia, near the mouth of Indian Creek during the open comment period, and another federally listed mussel (tan riffleshell) was also found in the same reach of Indian Creek. The Service has determined that, because this new information did not substantially affect the listing decision, extending the public comment period was not warranted); Obed River, Cumberland and Morgan counties, Tennessee; Emory River just below its confluence with the Obed River, Morgan County, Tennessee; and Beech Creek, Hawkins County, Tennessee (Gordon 1991).

The purple bean populations in the lower Clinch, Powell, and Holston rivers were extirpated by reservoirs. The decline of the species throughout the rest of its range was likely due to the adverse impacts of coal mining, poor land-use practices, and pollution; primarily from nonpoint sources. The population centers that remain are so limited that they are very vulnerable to naturally occurring events such as toxic chemical spills.

Rough rabbitsfoot (*Quadrula cylindrica strigillata*)

The rough rabbitsfoot (Wright 1898) has an elongated heavy, rough textured, yellow- to greenish-colored shell. The shell's surface is covered with green rays, blotches, and chevron patterns. The inside of the shell is silvery to white with an iridescence in the posterior area of the shell (see Bogan and Parmalee (1983) for a more complete species description). The species is considered threatened in Virginia (Neves 1991; Bruenderman, *in litt.*, 1992) and a species of special concern in Tennessee (Bogan and Parmalee 1983).

Historically, this mussel was restricted to the upper Tennessee River basin in the Clinch, Powell, and Holston river systems (Gordon 1991). It still survives in all three of these systems, but only in limited areas and at low population levels. Populations persist in the Powell River, Lee County, Virginia; and Claiborne and Hancock counties, Tennessee; Clinch River, Scott County, Virginia; and Hancock County, Tennessee; Copper Creek (a Clinch River tributary), Scott County, Virginia; and North Fork Holston River, Washington County, Virginia (Gordon 1991).

The rough rabbitsfoot populations in the lower Clinch, Powell, and Holston river systems were extirpated by reservoirs. The decline of the species throughout the rest of its range was likely due to the adverse impacts of coal mining, poor land-use practices, and pollution, primarily from nonpoint sources. The population centers that remain are so limited that they are vulnerable to extirpation from naturally occurring events such as toxic chemical spills.

Previous Federal Action

In the Service's notice of review for animal candidates, published in the **Federal Register** of November 21, 1991 (56 FR 58804), the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot were included as Category 2 species. At that time, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife. Designation of Category 2 species was discontinued in the February 28, 1996, **Federal Register** notice (61 FR 7596). These mussels were approved for elevation to candidate status by the Service on August 30, 1993. A candidate species is a species for which the Service has sufficient information to propose it for protection under the Act. On August 25, 1992, the Service notified by mail (129 letters), potentially affected Federal and State agencies and local governments within the species' present range, and interested individuals that a status review of the above mentioned five mussels and the slabside pearlymussel (*Lexingtonia dolabelloides*) was being conducted. (The slabside pearlymussel has not been included in this final rule. Additional populations of this species were discovered and further evaluation is needed before a decision can be made regarding the species' need for Federal protection.)

Seven agencies responded to the August 25, 1992, notification. The U.S. Natural Resources Conservation Service (formerly the U.S. Soil Conservation Service) stated: "It is not anticipated that any planned or current activities will adversely affect these species or their habitat." The KSNPC, the Kentucky Department of Environmental Protection, Tennessee Wildlife Resources Agency (TWRA), Virginia Department of Conservation and Recreation (VDCR), and VDGIF provided information on the decline and status of the species in their States.

The Duck River Agency (DRA) provided comments on the status of the oyster mussel in the Duck River. It stated that, as the Duck River population of the oyster mussel is extremely small, it is believed highly unlikely that the stream supports a viable population of *E. capsaeformis*. In contrast to DRA's statement, Don Hubbs (TWRA, *in litt.*, 1992) stated that fresh dead oyster mussel individuals (from young and older cohorts) were not uncommon in muskrat middens on the Duck River in Marshall County, Tennessee. The Service, however, currently has insufficient information to judge the species' long-term viability either in the Duck River or on a rangewide basis.

The DRA took issue with the Service's statement in the notification that the proposed Columbia Dam on the Duck River could eliminate the oyster mussel from the Duck River. It stated that current project alternatives under consideration by the DRA and TVA could result in a project that would flood less than one third of the area and would enhance the future viability of the population segment above the pool. The Service agrees that a smaller Columbia Dam pool would reduce the amount of the oyster mussel population lost to the direct effects of the dam. However, the details of these Columbia Dam alternatives have not been provided to the Service.

The DRA commented that statements in the mussel species accounts (Gordon 1991) used as an information source to prepare the August 25, 1992, notification contained language that appeared to indicate that the Service had already made a decision to list the species prior to receiving any comments

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from the notification. The Service agrees that the species accounts, which were prepared by a non-Service biologist under contract to the Service, contain language regarding the need to reverse the species' decline as a means to preserve and recover the mussels. However, these statements, made by a Service contractor, do not represent a predecisional statement by the Service. Statements in the species accounts were considered along with all presently available information on these species, as well as information obtained through the notification and the proposed rule, when making the final decision regarding the status of the species.

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through the passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time, there are no pending Tier 1 actions.

In the development of this final rule, the Service has conducted an internal review of a draft of this rule and other Service-generated information. Based on this review, the Service has determined that there is no new information that would substantively affect this listing decision and that additional public comment is not warranted.

Summary of Comments and Recommendations

On July 14, 1994, a proposed rule was published in the **Federal Register** (59 FR 35901) stating that the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot were being considered for endangered species status under the Act. In the proposed rule, in legal notices (published in the *Kingsport Daily News*, Kingsport, Tennessee, on August 2, 1994; *Crossville Chronicle*, Crossville, Tennessee, and *Bristol Herald Courier*, Bristol, Virginia, on August 3, 1994; *Knoxville Journal*, Knoxville, Tennessee, on August 8, 1994; *Columbia Herald*, Columbia, Tennessee, on August 10, 1994; and *Nashville Banner*, Nashville, Tennessee, on August 17, 1994) and in letters dated July 26, 1994, the Service requested Federal and State agencies, local governments, scientific organizations, and interested parties to comment and submit factual reports and information that might contribute to development of a final determination for these five mussels, and provided notification that a public hearing on the proposal could be held, if requested.

In response to the above notifications, the Service received several public hearing requests from within the following counties—Fentress, Cumberland, and Marshall counties, Tennessee; and McCreary County, Kentucky. The Service held two public hearings (December 13, 1994, at the York Institute, Jamestown, Tennessee; and December 15, 1994, at the Marshall County Courthouse, Lewisburg, Tennessee), and reopened the comment period from November 23, 1994, to December 30, 1994. Notices of these hearings and the reopening of the comment period were published in the **Federal Register** on November 18, 1994, (59 FR 59200) and in the following newspapers—*Daily Herald*, Columbia, Tennessee, and *Bristol Herald Courier*, Bristol, Virginia, on November 20, 1994; *Knoxville News Sentinel*, Knoxville, Tennessee, and *Commonwealth Journal*, Somerset, Kentucky, on November 21, 1994; and *Nashville Banner*, Nashville, Tennessee, *Daily News of Kingsport*, Kingsport, Tennessee, and *Crossville Chronicle*, Crossville, Tennessee, on November 22, 1994. Additionally, the Service, by letters dated November 21, 1994, notified Federal and state agencies, local governments, scientific organizations, and interested parties of the public hearings and the reopening of the comment period.

The Service received nineteen written comments and eight oral comments on the proposal to list the five mussels. Numerous questions on the proposal and related issues were asked at the public hearings. Comments in support of the proposed rule were received from the Environmental Protection Agency (EPA); National Park Service, Big South Fork National River and Recreation Area; KSNPC; Kentucky Department of Fish and Wildlife Resources (KDFWR); Department of Fisheries and Wildlife Sciences, Virginia Polytechnic Institute and State University; Tennessee Department of Environment and Conservation (TDEC); VDCR; VDGIF; and two private individuals. The listing of one or more of these species was opposed by the DRA; Fentress County Utility District, Jamestown, Tennessee; and one individual. The remainder of the respondents expressed concerns over what impact these listings would have on various activities. The following is a summary of the comments, concerns, and questions (referred to as "Issues" for the purposes of this summary) regarding the proposed rule that were expressed in writing or presented orally at the public hearings. Comments of similar content have been grouped together.

Issue 1: One respondent expressed concern that listing the purple bean could significantly impact efforts to build a water supply reservoir on Clear Creek, an Obed River tributary, in Morgan County, Tennessee, and asked specific questions regarding how this reservoir project would impact the species.

Response: The purple bean is the only one of these five species that occurs in the Obed River system. However, based on available information, this species does not exist at the proposed reservoir site or in the area downstream of the site that would be significantly affected by the project. Therefore, because the Service does not anticipate that the project will have a significant impact on the purple bean, the listing will not significantly impact the reservoir project. Specific questions on how a reservoir, which will likely have only minimal, if any, impact to the species, might negatively or possibly positively affect the species cannot be fully evaluated until detailed project plans are available for review. These issues, however, would be addressed in any biological opinion that may be developed for this proposed project.

Issue 2: Several respondents expressed concern that listing these five mussels could have a significant impact on private landowners.

Response: Currently, there are 24 federally listed mussels in the Tennessee and Cumberland river systems. These species, many of which have been listed for over 10 years, have not had a significant impact on private lands activities (e.g., logging, agriculture, land development, and home construction). Therefore, based on this historic perspective, the Service does not anticipate that listing these additional species will have a significant impact on private landowners. In fact most individuals that own or farm lands along streams that are inhabited by listed aquatic species are unaware of the species' existence because their presence has never affected their activities.

Issue 3: One respondent requested information on the impact of this listing on mining activities.

Response: If a mining activity comes under the jurisdiction of a state or Federal agency and one of these five mussels or any other listed species may be in the project area, the project's impacts to the species must be considered. However, it has been the Service's experience, after dealing with hundreds of mining projects, that in nearly all cases where there is a conflict between endangered species and a mining project, the project is permitted with only minor modifications.

Issue 4: Several respondents expressed concern that the listing of the Cumberland elktoe could adversely impact the completion of a proposed water supply reservoir on Crooked Creek, a tributary of the Big South Fork of the Cumberland River, Fentress County, Tennessee.

Response: The Service does not believe the listing of the Cumberland elktoe will stop completion of the proposed Crooked Creek Reservoir. The Service is consulting with the Farm Services Agency on this project. A segment of the Cumberland elktoe population does exist at the site of the proposed reservoir. However, this population segment is small and likely is not essential to the species' survival and recovery. Therefore, based on available information, the Service does not anticipate that a jeopardy biological opinion will result from this consultation. The Service's biological opinion will outline measures to minimize incidental take of the elktoe and suggest conservation recommendations, but the project will not be blocked by the Federal listing of the elktoe.

Issue 5: Listing the Duck River population of the oyster mussel was questioned because it was felt that this population was not viable.

Response: The Duck River oyster mussel population may be currently below the number of individuals necessary to maintain long-term viability. However, that does not disqualify this population from protection under the Act. If the population is below the threshold number needed for long-term viability, the population could be augmented with juveniles produced through artificial propagation or with adults from another population.

Issue 6: In the proposed rule, the Service made reference to oyster mussels collected from a muskrat midden. One respondent questioned the Service's use of this information in its assessment of the Duck River's oyster mussel population.

Response: It is a common practice of the Service, other Federal and state agencies, and mussel researchers to utilize information from muskrat middens. Mussels deposited in middens by muskrats can not provide a quantitative assessment of mussel density, but observations of the numbers of specimens in a midden can provide insight into a species' status in the adjacent river reach.

Issue 7: Requests were made that the Service identify—(1) those activities that will not be considered likely to result in a violation of section 9 of the Act and (2) those activities that will be considered likely to result in violation of section 9 of the Act.

Response: This issue is addressed in the "Available Conservation Measures" section of this rule.

Issue 8: One respondent wanted to know what impact these listings would have on the placement of docks and piers into rivers inhabited by these mussels.

Response: There should be minimal impact on dock and pier construction as a result of this listing. The construction of piers and docks involves work in navigable waters of the United States and includes the discharge of dredge material back into the waterway. Thus, dock and pier construction comes under the Corps' permit authority pursuant to section 10 of the Rivers and Harbors Act (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Thus, a permit must be received from the Corps prior to the construction of a dock or pier. If a federally listed species may be adversely impacted by this activity, the Corps must consult with the Service to determine if the project is likely to jeopardize the species' continued existence.

It is possible that construction of a few piers or docks could be delayed due to the presence of one of these species. However, it is unlikely that any projects would be stopped. Most piers and docks are constructed in pool habitat, and these mussels primarily inhabit relatively shallow riffles. Most piers and docks constructed on the rivers and streams inhabited by these mussels would be relatively small and have only minimal impact on the mussels. Additionally, from an historical perspective, the 24 mussel species that are already listed in the Tennessee and Cumberland river systems have had little impact on the issuance of permits for these structures.

Issue 9: One respondent asked what impact these listings would have on dredging and in-stream gravel mining projects.

Response: In-stream dredging and gravel mining involves work in navigable waters of the United States and can result in the discharge of dredge material back into the water. Thus, in-stream dredging and gravel mining comes under the Corps' permit authority pursuant to section 10 of the RHA (33 U.S.C. 403) and section 404 of the CWA (33 U.S.C. 1344). If a federally listed species may be adversely impacted by this activity, the Corps must consult with the Service to determine if the project is likely to jeopardize the species' continued existence.

It is possible that a few in-stream dredging and gravel mining projects could be impacted due to the presence of one of these species. However, it has been the experience of the Service that most of these projects can be designed in such a way (i.e., removing the gravel only from above the water line) that the project objectives and the needs of the species can be met. Additionally, as some of these newly listed species exist in areas that are already inhabited by listed mussels, the listing of these species that coexist with currently listed mussels will not add any additional permit restrictions to these areas.

Issue 10: Several respondents were concerned with the potential impacts these listings could have on water withdrawal projects.

Response: As water withdrawal projects often require construction of a structure in the water, these projects typically require a permit from the Corps under section 10 of the RHA (33 U.S.C. 403) and section 404 of the CWA (33 U.S.C. 1344). If a federally listed species may be adversely impacted by this activity, the Corps must consult with the Service to determine if the project is likely to jeopardize the species' continued existence. It is possible that a few water withdrawal projects that propose to extract a significant portion of a river's flow could be affected due to the presence of one of these species. However, if the water withdrawal project meets state water quality standards, it has generally been the Service's experience that endangered species will be protected without further significant restrictions.

Issue 11: Several respondents were concerned with the potential impacts these listings could have on waste water discharge projects.

Response: The potential exists for point discharges to impact these species, and there is an increasing demand for discharge permits in the Tennessee and Cumberland river systems. However, the States of

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Kentucky, Tennessee, and Virginia, with assistance from and oversight by the EPA, set water quality standards that are presumably protective of aquatic life, including the 24 mussel species that are already listed in the Tennessee and Cumberland river systems. Thus, there should be no significant increase in regulatory burden regarding waste water discharge permits as a result of listing these five species in areas where these species coexist with one or more of the mussels that are currently listed. If new information indicates that current water quality criteria are insufficient to prevent the likelihood of jeopardy to these freshwater mussels, new standards may be needed. If revised standards are implemented, some discharge permits could be further regulated if these species are present. However, in areas where listed mussels already exist, the listing of these five mussels will not add any significant additional burden.

Issue 12: Several respondents were concerned with the degree of impact these listings might have on landowners who have erosion problems on their land.

Response: Siltation can negatively impact the aquatic environment. However, based on a historical perspective, the Act has not impacted individual landowners with erosion problems that might affect the 24 mussel species that are currently listed in the Tennessee and Cumberland river systems. Thus, the Service does not anticipate that the listing of these species will burden private landowners regarding this issue.

The Service, through a proactive and coordinated effort with other agencies, conservation groups, and local governmental bodies, is assisting willing private landowners in the restoration of riparian habitat to control siltation. This program ("Partners for Wildlife") is currently funding projects on the Clinch River (a Tennessee River tributary in eastern Tennessee and southwestern Virginia) and the Little Tennessee River (a Tennessee River tributary in western North Carolina). Both rivers have endangered fish and mussel fauna and this program has developed cooperative agreements with willing landowners to improve stream side habitat for the benefit of all aquatic species.

Issue 13: One respondent wanted to know what impact these listings would have on the use of pesticides.

Response: The EPA, during its pesticide registration process, consults with the Service to determine if a pesticide will likely jeopardize the continued existence of any federally listed species. If it is determined that the application of the chemical is likely to jeopardize a species, the Service provides reasonable and prudent chemical application alternatives that would avoid the likelihood of jeopardy. These recommendations generally suggest some type of application restriction (i.e., prohibit pesticide application within a prescribed distance from an inhabited stream reach) that would protect the species.

Although there may be some added restrictions to pesticide use as a result of these listings, the Service believes that the resulting impacts to pesticide users should be minimal. Many of the stream reaches inhabited by these five mussels are populated with previously listed mussels that have already been assessed for pesticide restrictions; many pesticides reviewed for registration are not believed to be harmful to mussels and no restrictions are applied to their use; and if a pesticide is found to be harmful to a species, there are often unrestricted, alternative chemicals that can be used to control the same pest.

Issue 14: One respondent wanted to know if the information that these rules are based on had been peer reviewed.

Response: The information utilized in determining to propose these species has been peer reviewed. On August 25, 1992, the Service mailed a summary of the available status information on the five species to 47 agencies, organizations, and individuals familiar with the status of freshwater mussels and solicited their comments on the need to propose these species. Prior and subsequent to the August 25, 1992, notification, a copy of the status report used to make the determination to propose these five species was sent to biologists and agencies familiar with the plight of these species. With the exception of the DRA, none of the respondents questioned the need to propose these species for Federal protection. (See the last paragraph under the "Summary of Comments and Recommendations" section for further information.)

Issue 15: One respondent was concerned that these listings could restrict the farming communities' use of fords (stream crossings).

Response: There are numerous active fords in the Tennessee and Cumberland river systems used by the farming community, and many of these fords are in streams inhabited by federally protected mussels. The Act has not restricted the use of these fords, and the listing of these five mussels will not alter this situation.

Issue 16: One respondent wanted to know if the Service planned to designate critical habitat for these five mussels.

Response: The Service is not and has no plans to designate critical habitat for these species (see the "Critical Habitat" section of this rule).

Issue 17: Several respondents were concerned that these listings would affect current farming methods in the watershed.

Response: The Service will encourage the use of buffer strips along water courses, reduction of pesticide and herbicide applications, and soil conservation practices that help control soil loss and siltation.

Issue 18: One respondent questioned the statement in the proposed rule that implicated poor land-use practices as a threat to these mussels, and the individual was concerned that the farming community might have been the primary target of this statement.

Response: Siltation from soil erosion is not just or primarily an agricultural problem. Any activity that removes natural vegetated ground cover (e.g., logging, bridge and road construction, mining, and land clearing for industrial and residential construction) can cause significant stream siltation if adequate control measures are not taken. Silt can have a devastating impact on aquatic ecosystems, especially those species that evolved in a relatively silt free environment. Mussels are filter feeders and they can live in one location for most of their lives. High silt loads disrupt their ability to feed and reproduce, and at extreme silt levels, they can be smothered under deep layers of silt.

As mentioned in response to Issue 12, the Service, through its "Partners for Wildlife" program, is working with willing landowners to assist in restoration of stream side habit to control siltation. The Service also encourages the use of "Best Management Practices" to control erosion and minimize the impacts of silt to aquatic resources.

Issue 19: One respondent wanted to know how the listing of the oyster mussel would affect the completion of Columbia Dam.

Response: The Service stated in a 1979 Biological Opinion that completion of a proposed reservoir project (Columbia Dam) on the Duck River in Maury and Marshall counties, Tennessee, would likely jeopardize the continued existence of two federally listed mussels. Although our Biological Opinion included reasonable and prudent alternatives that would have allowed the project to go forward, TVA has not implemented those measures and has been reevaluating the project and considered other alternatives to meet the project objectives. (A third

mussel listed prior to the issuance of the Biological Opinion is now known from the proposed flood pool.) Although the presence of a fourth endangered mussel (oyster mussel) may somewhat complicate this issue, any measures needed to avoid a jeopardy situation for the currently listed mussels would not be expected to change significantly with the addition of a fourth listed species.

Issue 20: One respondent noted that since species go extinct because of natural causes why should these species receive special protection.

Response: It is true that natural and catastrophic events over geological time have resulted in the extinction of millions of species. However, the rate of extinctions in the past couple of centuries has accelerated dramatically as a direct result of human activities. The Act specifically states that species of fish, wildlife, and plant are of value to this nation, and the Act requires the Department of the Interior to maintain a list of endangered and threatened species. The Service believes that these five mussels meet the criteria for the Act's protection (see the "Summary of Factors Affecting the Species" section of these rules).

Issue 21: One respondent suggested that the Service should postpone the decision to list the five species until Congress reauthorizes the Act.

Response: The Act as currently written requires the Department of the Interior to maintain a list of endangered and threatened species and the Act provides five criteria to consider when determining to list a species (see the "Summary of Factors Affecting the Species" section of these rules). Based on the best available information, these five species meet these criteria and qualify for the Act's protection. The Service believes that delaying these listings to await Congressional reauthorization would be a violation of existing Federal law.

Issue 22: One respondent wanted to know if a biological survey was required when a Federal permit was needed in areas inhabited by listed species and if a survey was needed, who would conduct the survey.

Response: Often the Service or other agencies have sufficient status information on the species in a project area, and no addtional site specific surveys are needed to determine project impacts to the species. However, if site-specific species information is unavailable or insufficient, a survey of the project impact area may be needed to fully assess the project's impacts. If a survey is needed, it is generally not conducted by the Service. Survey responsibility falls onto the permitting agency. However, the permitting agency usually requires the permit applicant to obtain the needed status information as part of the application process.

Issue 23: One respondent commented that the Service should initiate a massive education effort with the farm community to help build trust and encourage community involvement regarding the protection and recovery of aquatic species.

Response: The Service agrees that local community support is essential to fully protect and recover listed species. The Service has increased its efforts in this area through "Partners for Wildlife" and other programs that work with community leaders and willing landowners to build the necessary partnerships.

Issue 24: The VDCR stated that the rough rabbitsfoot was listed as threatened by the VDGIF. Thus, they felt it might be more appropriate to list this species as threatened rather than endangered.

Response: The rough rabbitsfoot is listed as a threatened species by the VDGIF. However, this list was developed in the late 1980's and published in 1991 (Neves 1991). Since the publication of the state list, the rough rabbitsfoot has declined significantly in the Clinch River and may no longer survive in Copper Creek (Neves, personal communication, 1995). Neves (personal communication, 1995), was a primary consultant used by the VDGIF in determining state status for the rough rabbitsfoot, and he plans to recommend State endangered status for this species when the state list is revised. Additionally, he recommended Federal endangered status for this species in response to the proposed rule (Neves, *in litt.*, 1994). Based on this information and the information presented in the "Background" and the "Summary of Factors Affecting the Species" sections of these rules, the Service believes that endangered status is appropriate for the rough rabbitsfoot.

Issue 25: The EPA requested that the Service clarify what it meant by the following statement that appeared in the July 14, 1994, proposed rule:

> Existing authorities available to protect aquatic systems, such as the Clean Water Act, administered by the Environmental Protection Agency (EPA) and the Army Corps of Engineers, have not been fully utilized and may have led to the degradation of aquatic environments in the Southeast Region, thus resulting in a decline of aquatic species.

Response: Through EPA's implementation of the CWA, water quality has been improved and mussel populations have benefited. However, in spite of general water quality improvements, numerous freshwater mussel populations in the southeastern United States are continuing to decline even in areas that appear to have suitable physical habitat. The Service believes that it is likely that some insidious environmental factor(s), possibly contaminants, may be adversely affecting the growth, reproduction, or survival of these populations. Of all the potential impacts to mussels, less is known about the potential effects of contaminants on these species. The Service believes that EPA could, through the CWA, play a more active role in identifying potential contaminant impacts to mussels.

Issue 26: The EPA also requested that the Service identify in any final rule specific deficiencies and/or inadequacies in the following areas related to their implementation of the CWA in the States of Tennessee and Kentucky—state adopted narrative and numeric water quality criteria; state water use classifications by streams occupied by the five mussels; aquatic life criteria guidance values; and National Pollutant Discharge Elimination System (NPDES) permit procedures.

Response: As mentioned in response to Issue 25, little is known about the potential impacts of contaminants on freshwater mussels. Research is needed to address the lethal and sublethal effects of acute and chronic exposure of toxins to all life stages of freshwater mussels. This research will entail identifying appropriate surrogate species, devising test protocols, and conducting studies to evaluate the protectiveness of these criteria. Additionally, the Service is currently working with EPA to develop a memorandum of agreement (MOA) that will address how EPA and the Service will interact relative to CWA water quality criteria, standards, and NPDES permits within the Service's Southeast Region. Until the MOA is developed and data are available to fully evaluate the effectiveness of current national water quality criteria and standards and the need for site-specific criteria, the Service believes it is premature to attempt, in this final rule, to address any specific deficiencies and/or inadequacies that may exist in EPA's implementation of the CWA regarding the protection of water quality.

The Service also solicited the expert opinions of ten appropriate and independent mussel specialists regarding the pertinent scientific or commercial data and assumptions relating to taxonomy, population status, and biological and ecological information on these five mussels. One

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response from a specialist was received, and those comments were incorporated into this final rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Mussel populations throughout the Central and Eastern United States have been declining since modern civilization began to significantly alter aquatic habitats. The Ohio River drainage, which includes the Tennessee and Cumberland rivers, was a center for freshwater mussel evolution and historically contained about 127 distinct mussel species and subspecies. Of this once rich mussel fauna, 11 mussels are extinct, and 33 mussels (including the 5 species covered in this final rule) are classified as Federal endangered species. In less than 100 years, 35 percent of the Ohio River system's mussel fauna has either become extinct or federally endangered. No other wide-ranging faunal group in the continental United States has experienced this degree of loss within the last 100 years.

The mussel fauna in most streams of the Ohio River basin has been directly impacted by impoundments, siltation, channelization, and water pollution. Reservoir construction is the most obvious cause of the loss of mussel diversity in the basin's larger rivers. Most of the main stem of both the Tennessee and Cumberland rivers and many of their tributaries are impounded. For example, over 2,300 river miles or about 20 percent of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (TVA 1971). In addition to the loss of riverine habitat within impoundments, most impoundments also seriously alter downstream aquatic habitat; and mussel populations upstream of reservoirs may be adversely affected by changes in the fish fauna essential to a mussel's reproductive cycle.

Coal mining-related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced mussel and fish kills from toxic chemical spills, and poor land-use practices have fouled many waters with silt. Runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the overall aquatic faunal diversity in many of the basins' rivers has declined significantly. As a result of this destruction of riverine habitat, 8 fishes and 24 mussels in the Tennessee and Cumberland river basins have already required the Act's protection, and numerous other aquatic species in these two basins are currently considered species of concern and could warrant listing in the future.

The mussel fauna in the Tennessee and Cumberland rivers has been extensively sampled, and much is known about the historic and present distribution of this rich fauna. Gordon (1991) provided an extensive review of the literature regarding the past and present ranges of the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot. Based on Gordon's (1991) review and personal communications with numerous Federal, State, and independent biologists, it is clear that these five mussel species have undergone significant reductions in range and that they now exist as only remnant isolated populations. (See "Background" section for a discussion of current and historic distribution and threats to the remaining populations.)

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These five mussels are not commercially valuable; but as they are extremely rare, they could be sought by collectors. The specific areas inhabited by these species are presently unknown to the general public. As a result, their overutilization has not been a problem to date. Most stream reaches inhabited by these mussels are extremely small. Thus, populations of the species could be easily eliminated or significantly reduced using readily available toxic chemicals. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if left unregulated. Federal protection of these species will help to minimize illegal and inappropriate take.

C. *Disease and predation.* Disease occurrence in freshwater mussels is virtually unknown. However, since 1982, biologists and commercial mussel fishermen have reported extensive mussel die-offs in rivers and lakes throughout the United States. The cause(s) of many of these die-offs is unknown, but disease has been suggested as a possible factor.

Shells of all five species are often found in muskrat middens. The species are also presumably consumed by other mammals, such as raccoons and mink. While predation is not thought to be a significant threat to a healthy mussel population, Neves and Odum (1989) suggest it could limit the recovery of endangered mussel species or contribute to the local extirpation of already depleted mussel populations. Predation would be of particular concern to oyster mussel, Cumberlandian combshell, and purple bean, which exist only as extremely small, remnant populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky, Alabama, Tennessee, and Virginia prohibit the taking of fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, enforcement of this permit requirement is difficult. Also, State regulations do not generally protect these mussels from other threats.

Existing authorities available to protect aquatic systems, such as the CWA, administered by the EPA and the Corps, may not have been fully utilized. This may have contributed to the degradation of aquatic environments and the decline of aquatic species in the Southeast (see response to Issue 25 in the "Summary of Comments and Recommendations" of this final rule). As these mussels (Cumberland elktoe, Cumberlandian combshell, oyster mussel, purple bean, and rough rabbitsfoot) coexist with other federally listed species throughout most or all of their range, some of the habitats of these species are indirectly provided some Federal protection from Federal actions and activities through section 7 of the Act. However, Federal listing will provide additional protection for all five species throughout their range by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when activities they fund, authorize, or carry out may specifically adversely affect these species.

E. *Other natural or manmade factors affecting its continued existence.* The populations of these species (Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot) are small and geographically isolated. This isolation prohibits the natural interchange of genetic material between populations,

and the small population sizes reduce the reservoir of genetic variability within the populations. It is likely that some of the populations of the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot may be below the level required to maintain long-term genetic viability. Also, because most of the extant populations of these mussels are restricted to short river reaches, they are very vulnerable to extirpation from a single catastrophic event, such as a toxic chemical spill or a major stream channel modification. Because the populations of each species are isolated from one another because of impoundments, natural repopulation of any extirpated population is impossible without human intervention.

The invasion of the exotic zebra mussel (*Dreissena polymorpha*) into the Great Lakes poses a potential threat to the Ohio River's mussel fauna. The zebra mussel has recently been reported from the Tennessee and Cumberland rivers, but the extent of its impact on the basin's freshwater mussels is unknown. Zebra mussels in the Great Lakes have been found attached in large numbers to the shells of live and freshly dead native mussels, and zebra mussels have been implicated in the loss of entire mussel beds.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these mussels in determining to make this rule final. Based on these evaluations, the preferred action is to list the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*) as endangered species. The Cumberland elktoe, purple bean, and rough rabbitsfoot are known from three populations each, and the Cumberlandian combshell and oyster mussel are known from five populations each. These five species and their habitat have been and continue to be impacted by habitat destruction and range reduction. Their limited distribution also makes them very vulnerable to possible extinction from toxic chemical spills. Because of their restricted distributions and their vulnerability to extinction, endangered status appears to be the most appropriate classification for these species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could pose a further threat to them through publication of their site-specific localities.

Section 7(a)(2) and regulations codified at 50 CFR Part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of section 7.) As part of the development of this final rule, Federal and state agencies were notified of the mussels' general distributions, and they were requested to provide data on proposed Federal actions that might adversely affect the species. Should any future projects be proposed in areas inhabited by these mussels, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by its action; and if needed, more specific distributional information would be provided.

Each of these mussels occupies very restricted stream reaches. Thus, because any significant adverse modification or destruction of these species' habitat would likely jeopardize their continued existence, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing these species. Therefore, habitat protection for these species would be accomplished through the section 7 jeopardy standard and section 9 prohibitions against take.

In addition, these mussels are rare, and taking for scientific purposes and private collection could pose a threat if specific site information were released. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism, especially during the often controversial critical habitat designation process. The locations of populations of these species have consequently been described only in general terms in this rule. Any existing precise locality data would be available to appropriate Federal, state, and local governmental agencies from the following offices—the Service office described in the **ADDRESSES** section of these rules; the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501; the Service's White Marsh Field Office, P.O. Box 480, Mid-County Center, U.S. Route 17, White Marsh, Virginia 23183; the Service's Southeastern Virginia Field Office, P.O. Box 2345, 332 Cummings Street, Abingdon, Virginia 24212; KDFWR; KSNPC; TWRA; TDEC; VDGIF; and VDCR.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of

proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs which could affect these species. One major Federal project, a proposed TVA impoundment on the Duck River, Columbia, Tennessee, could have a significant impact on the oyster mussel. Construction of Columbia Dam was suspended in the late 1970's after the Service issued a Biological Opinion stating that the dam's completion would likely jeopardize the continued existence of two federally listed mussels. Although our Biological Opinion included reasonable and prudent alternatives that would have allowed the project to go forward, TVA has not implemented those measures and has been reevaluating the project and considered other alternatives to meet the project objectives. (A third mussel listed prior to the issuance of the Biological Opinion is now known from the proposed flood pool.) Although the presence of a fourth endangered mussel (oyster mussel) may somewhat complicate this issue, any measures needed to avoid a jeopardy situation for the currently listed mussels would not be expected to change significantly with the addition of a fourth listed species (see response to Issue 19 in the "Summary of Comments and Recommendations" section of these rules).

A water supply reservoir is under consideration on Crooked Creek in the upper Big South Fork of the Cumberland River watershed, Fentress County, Tennessee. This project would inundate and adversely impact a portion of the Cumberland elktoe population that exists in the upper Big South Fork basin. This water supply project, proposed by the Fentress County Utility District, is one of a series of water supply alternatives currently under review for a permit pursuant to section 404 of the CWA. However, the Service does not believe the listing of the Cumberland elktoe will stop completion of the Crooked Creek Reservoir (see response to Issue 4 in the "Summary of Comments and Recommendations" of these rules).

Another water supply reservoir is under consideration by the Catoosa Utility District for Clear Creek, an Obed River tributary, Morgan County, Tennessee. The purple bean occurs in the Obed River system. However, based on available information, this species does not exist at the proposed reservoir site or in the area downstream of the site that would be significantly affected by the project. Therefore, as the Service does not anticipate that the project will have a significant impact on the purple bean, the listing will not have any significant impact on this reservoir project (see response to Issue 1 in the "Summary of Comments and Recommendations" of this rule).

Since the close of the comment period on this rule, the Southeastern Virginia Field Office has become involved in an informal section 7 consultation regarding a proposed Federal prison in Lee County, Virginia, and its potential impacts to eight federally listed mussels that live in the Powell River. The Cumberlandian combshell, oyster mussel, and purple bean are also known from the Powell River and will now need to be considered in this consultation. However, since the eight listed mussels are already being considered with regard to this project, the outcome of the consultation should not be affected by the addition of these three more listed mussels. Based on this review, the Service has determined that there is no information that would substantively affect these listing decisions and that additional public comment is not warranted.

No other specific proposed Federal actions were identified that would likely affect any of the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, waste water facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. However, it has been the experience of the Service that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service published in the **Federal Register** on July 1, 1994,(59 FR 34272) to identify at the time of listing, to the maximum extent practicable, those activities that would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of these listings on proposed and ongoing activities within a species' range. During the public comment periods, comments were received questioning the effect these listings would have on private landowners (see response to Issue 2 and 12 in the "Summary of Comments and Recommendations" section of this rule), pesticide application (see response to Issue 13), use of existing river fords by the farming community (see response to Issue 15), and traditional farming practices (see response to Issue 17). The Service believes, based on the best available information as outlined in the "Summary of Comments and Recommendations" section of this rule, that the aforementioned actions will not result in a violation of section 9 provided the activities are carried out in accordance with any existing regulations and permit requirements. In addition, the Service also believes that certain other activities will not result in a section 9 violation. They include use of the river by boaters, anglers, and other existing recreational uses.

Activities that the Service believes could potentially result in "take" of these mussels, include, but are not limited to, the unauthorized collection or capture of the species; unauthorized destruction or alteration of the species' habitat (e.g., in-stream dredging, channelization, discharge of fill material); violation of any discharge or water withdrawal permit; and illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the species.

Other activities not identified in the above two paragraphs will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may

be likely to result from such activity. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services (TE), 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7096).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

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Author

The primary author of this final rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801 (704/258–3939, Ext. 228).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "CLAMS," to the List of Endangered and Threatened Wildlife to read as follows:

§17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	
CLAMS:							
*	*	*	*	*	*	*	
Bean, purple	*Villosa perpurpurea*	U.S.A. (TN and VA)	NA	E	602	NA	NA
*	*	*	*	*	*	*	
Combshell, Cumberland.	*Epioblasma brevidens*	U.S.A. (AL, KY, TN, and VA).	NA	E	602	NA	NA
*	*	*	*	*	*	*	
Elktoe, Cumberland	*Alasmidonta atropurpurea*	U.S.A. (KY and TN)	NA	E	602	NA	NA
*	*	*	*	*	*	*	
Mussel, oyster	*Epioblasma capsaeformis*	U.S.A. (AL, KY, TN, and VA).	NA	E	602	NA	NA

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SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * *	* * *	* * *	*	*	*	*	*
Rabbitsfoot, rough	*Quadrula cylindrica strigillata.*	U.S.A. (TN and VA)	NA	E	602	NA	NA
* * *	* * *	* * *	*	*	*	*	*

Dated: December 6, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–565 Filed 1–9–97; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 62, No. 8
Monday, January 13, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–96–008]

Cotton Research and Promotion Program: Determination of Sign-Up Eligibility, and Procedure for the Conduct of a Sign-Up Period for Determination of Whether To Conduct a Referendum Regarding the 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for the conduct of a sign-up period during which eligible cotton producers and importers will be offered the opportunity to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order). Producers will be provided the opportunity to sign up to request a referendum in person at the Farm Services Agency (FSA) office that serves the county where their farm is located. All known and eligible importers will be mailed information about the sign-up period, along with a written request form that those persons who favor the conduct of a continuance referendum may complete and return to USDA.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Chief, Cotton Research and Promotion Staff, telephone number (202) 720–2259, facsimile (202) 690–1718.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Executive Orders 12866 and 12988; the Regulatory Flexibility Act and the Paperwork Reduction Act

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with laws, and requesting a modification of the order or an exemption therefrom. Such persons are given the opportunity for a hearing after which the Secretary shall issue a ruling on the petition. The Act provides that the District Court of the United States in any district where the petitioner resides, or where the petitioner's principal place of business is located, has jurisdiction to review the Secretary's ruling, provided that the petitioner files a complaint for that purpose within 20 days from the date of the issuance of the Secretary's ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The majority of producers and importers subject to the Order are small businesses under the criteria established by the Small Business Administration.

Only those eligible persons who are in favor of conducting a referendum will participate in the sign-up period. Of the 46,220 valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This rule will provide to those persons who are against the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements set forth in this rule are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum.

These sign-up procedures will not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility.

In compliance with OMB regulations [5 CFR Part 1320], which implement the Paperwork Reduction Act (PRA) [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in 7 CFR 1205 have been previously approved by OMB and were assigned OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–001.

Background

Following the July 1991 referendum, AMS implemented amendments to the Order. These amendments provided for: (1) importer representation on the Cotton Board by an appropriate number of persons, to be determined by the Secretary, who import cotton or cotton products into the U.S., and whom the Secretary selects from nominations submitted by importer organizations certified by the Secretary; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On October 8, 1996, in accordance with the Act, USDA issued a determination, (61 FR 52772) based on a review report of the Cotton Research and Promotion Program, not to conduct a referendum regarding the 1991 amendments to the Order. Because the review report noted that certain program participants were in favor of conducting

a referendum, USDA is providing an opportunity for all eligible persons to request the conduct of a continuance referendum on the 1991 amendments by making such a request during a sign-up period.

The sign-up period will be provided for all eligible producers and importers in accordance with section 8(c)2 of the Act. Cotton producers will be provided the opportunity to sign- up to request a continuance referendum in person at the FSA office that serves the county where their farm is located.

USDA will mail sign-up information, including a written request form, to all known, eligible, cotton importers. Importers who favor the conduct of a continuance referendum should return their signed request forms to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, Box 2415, Room 3096–s, 1400 Independence Ave. S.W., Washington, D.C., 20250–0539.

Importers who do not receive a request form in the mail by February 1, 1997, and who meet the eligibility requirements to participate in the sign-up, may submit a written, signed, request for a continuance referendum. Such request must be accompanied by a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 1995. Requests and supporting documentation should be mailed to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, Box 2415, Room 3096–s, 1400 Independence Ave. S.W., Washington, D.C., 20250–0539.

The sign-up period is from January 15, 1997, through April 14, 1997. The October 8, 1996, **Federal Register** notice (61 FR 52772) stated that the sign-up period would be from November 25, 1996, through February 22, 1997. USDA has changed the sign-up to January 15, 1997, through April 14, 1997, to allow USDA to better prepare for the sign-up period.

Section 8(c)2 of the Act requires that if the Secretary determines, based on the results of the sign-up, that at least 10 percent (4,622) or more of the number of cotton producers and importers that voted in the 1991 referendum request a continuance referendum on the 1991 amendments, such a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton.

For example, when counting the requests, AMS Cotton Division will determine the total number of valid requests from all cotton-producing states and from importers. No more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent or 4,622 total signatures required to call for a referendum.

If the Secretary determines that fewer than 10 percent of the number of producers and importers who voted in the most recent referendum do not favor a continuance referendum, no referendum will be held.

A proposed rule with a request for comments was published in the **Federal Register** (61 FR 64640) on December 6, 1996. One response, on behalf of an organization that represents importers, was received by USDA.

The respondent favored the proposed procedures for the conduct of the sign-up period, specifically the proposal to mail to all eligible importers of cotton products necessary information and a form by which they may indicate their interest in a referendum.

This rule adds a new subpart to establish procedures for use during the sign-up period, and these procedures will be in effect only for the duration of the sign-up period. Accordingly, this rule is adopted without change.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, chapter XI of the Code of Federal Regulations is amended to read as follows:

1. In Part 1205, a new subpart is added to read as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

Subpart—Procedures for Conduct of Sign-up Period

Definitions

Sec.

1205.10 Act.
1205.11 Administrator.
1205.12 Cotton.
1205.13 Upland cotton.
1205.14 Department.
1205.15 Farm Service Agency.
1205.16 Order.
1205.17 Person.
1205.18 Producer.
1205.19 Importer.
1205.20 Representative period.
1205.21 Secretary.
1205.22 State.
1205.23 United States.

Procedures.

1205.24 General.
1205.25 Supervision of sign-up period.
1205.26 Eligibility.
1205.27 Participation in the sign-up period.
1205.28 Counting.
1205.29 Reporting results.
1205.30 Instructions and forms.

Authority: 7 U.S.C. 2101–2118.

Definitions

§ 1205.10 Act.

The term Act means the Cotton Research and Promotion Act, as amended [7 U.S.C 2101–2118; Public Law 89–502, 80 Stat 279, as amended].

§ 1205.11 Administrator.

The term *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof. The term *cotton* does not include imported cotton for which the assessment is less than the *de minimis* assessment established by regulations.

§ 1205.13 Upland cotton.

The term *Upland cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

§ 1205.14 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1205.15 Farm Service Agency.

The term *Farm Service Agency*—formerly Agricultural Stabilization and Conservation Service (ASCS)—also referred to as "FSA," means the Farm Service Agency of the Department.

§ 1205.16 Order.

The term *Order* means the Cotton Research and Promotion Order.

§ 1205.17 Person.

The term *person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

§ 1205.18 Producer.

The term *producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

§ 1205.19 Importer.

The term *importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term import means any such entry.

§ 1205.20 Representative period.

The term *representative period* means the 1995 calendar year.

§ 1205.21 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated to act in the Secretary's stead.

§ 1205.22 State.

The term *State* means each of the 50 states.

§ 1205.23 United States.

The term *United States* means the 50 states of the United States of America.

Procedures

§ 1205.24 General.

A sign-up period will be conducted to determine whether eligible producers and importers favor the conduct of a referendum on the continuance of the 1991 amendments to the Order.

(a) If the Secretary determines, based on the results of the sign-up period, that at least 10 percent (4,622) or more of the number of cotton producers and importers who voted in the 1991 referendum request the conduct of a continuance referendum on the 1991 Order amendments, a referendum will be held within 12 months after the end of the sign-up period. Not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers from any one state or from importers of cotton.

(b) If the Secretary determines that fewer than 10 percent (4,622) of the number of producers and importers who voted in the 1991 referendum do not favor a continuance referendum, no referendum will be held.

§ 1205.25 Supervision of sign-up period.

The Administrator shall be responsible for conducting the sign-up period in accordance with this subpart.

§1205.26 Eligibility.

Only persons who meet the eligibility requirements in this subpart may participate in the sign-up period. No person is entitled to sign up more than once.

(a) Except as set forth in paragraphs (b) and (c) of this section, the following persons are eligible to request the conduct of a continuance referendum:

(1) any person who was engaged in the production of Upland cotton during calendar year 1995; and

(2) any person who was an importer of Upland cotton and imported Upland cotton in excess of the *de minimis* assessment value of $2.00 per line item entry during calendar year 1995.

(b) A general partnership is not eligible to request a continuance referendum, however, the individual partners of an eligible general partnership are each entitled to submit a request.

(c) Where a group of individuals is engaged in the production of Upland cotton under the same lease or cropping agreement, only the individual or individuals who signed or entered into the lease or cropping agreement are eligible to participate in the sign-up period. Individuals who are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, are each entitled to submit a request if they share in the proceeds of the required crop as owners, cash tenants, share tenants, sharecroppers or landlords of a fixed rent, standing rent or share tenant.

(d) An officer or authorized representative of a qualified corporation or association may submit a request on behalf of that corporation or association.

(e) A guardian, administrator, executor, or trustee of any qualified estate or trust may submit a request on behalf of that estate or trust.

(f) An individual may not submit a request on behalf of another individual.

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from January 15, 1997, through April 14, 1997. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by April 14, 1997.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers at each county office serving counties where cotton is produced, and shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, USDA shall mail a request form to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by February 1, 1997, may participate in the sign-up period by submitting a signed, written, request for a continuance referendum, along with a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 1995. Importers must submit their requests and supporting documents to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, P.O. Box 2415, Room 3096-s, 1400 Independence Ave. S.W., Washington, D.C., 20250–0539. All requests and supporting documents must be received by the appropriate FSA office by April 14, 1997.

(c) Producers must request a continuance referendum by signing up in person at the county FSA office that serves the county where the producer's farm is located. A producer who wishes to request a referendum and whose name does not appear on the cotton producer list at the appropriate county FSA office may participate in the sign-up period by submitting a signed, written, request for a continuance referendum, along with a copy of a sales receipt for cotton produced during 1995. All requests and supporting documentation must be received by the appropriate FSA office by April 14, 1997.

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Program Delivery and Field Operations (DAPDFO), shall begin counting requests no later than April 15, 1997. FSA shall determine the number of eligible persons who favor the conduct of a continuance referendum.

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by April 23, 1997, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAPDFO shall prepare, by April 23, 1997, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by April 30, 1997, forward all county reports, and DAPDFO shall, by April 30, 1997, forward its report of importer requests, to the Director, Cotton Division, AMS, STOP 0224, 1400 Independence Avenue, SW, Washington, D.C., 20250–0224.

(d) The Chief of the Research and Promotion Staff, Cotton Division, shall prepare a report of the requests received, including the number of eligible persons who requested the conduct of a referendum, and the number of ineligible persons who made requests, to the Director of the Cotton Division, and shall maintain one copy of the report where it will be available for public inspection for a period of 5 years following the end of the sign-up period.

(e) The Director of the Cotton Division shall prepare and submit to the Secretary a report of the results of the sign-up period. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent (July 1991) referendum, but not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers in any one state or from importers of cotton. The Secretary shall announce the results of the sign-up period in a separate notice in the **Federal Register**.

§ 1205.30 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms consistent with the provisions of this subpart to govern conduct of the sign-up period.

Dated: January 7, 1997.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 97–766 Filed 1–10–97; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150 and 170

RIN 3150–AF49

Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify that Agreement State licensees can seek reciprocal recognition of their license from the NRC when they are working within areas of exclusive Federal jurisdiction in Agreement States. The amendment also clarifies NRC regulatory requirements for reciprocity and the appropriate fees and filing procedures applicable to Agreement State licensees operating under reciprocity.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1623, e-mail HHN@nrc.gov or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1996 (61 FR 30839), the NRC published a proposed rule in the **Federal Register** that would clarify that Agreement State licensees could seek reciprocal recognition of their license from the NRC when they are working within areas of exclusive Federal jurisdiction in Agreement States. Current regulations, subject to certain restrictions, allow any person who holds a specific license from an Agreement State to conduct activities permitted by that license in non-Agreement States and offshore waters using an NRC general license. The general license is granted under the authority contained in 10 CFR 150.20, "Recognition of Agreement State Licenses." To meet the requirements of §150.20, a licensee must submit an NRC Form 241 at least 3 days before engaging in the activities (subject to some exceptions as noted in §150.20). If an Agreement State licensee does not qualify for a general license under §150.20, the licensee must apply for and obtain a specific license to work in areas of NRC jurisdiction.

Need for Regulatory Action

The NRC believes that there are several problems with the current regulations in §150.20 that necessitated this rulemaking action. First, the current regulation does not include provisions to allow Agreement State licensees to qualify for an NRC general license when operating in areas of exclusive Federal jurisdiction within Agreement States. Second, there has been some confusion regarding the NRC regulations applicable to Agreement State licensees operating in areas of NRC jurisdiction pursuant to §150.20. Third, §150.20 does not reference the appropriate fee requirements applicable to Agreement State licensees who file an NRC Form 241, "Report of Proposed Activities in Non-Agreement States." Finally, there has been some confusion regarding the filing procedures for this form.

Comments on the Proposed Rule

The Commission received one letter commenting on the proposed rule. A copy of the letter is available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Comment. The commenter indicated that NRC's overall system of reciprocity is flawed because state regulatory agencies do not have meaningful investigatory or enforcement powers to regulate licensees operating under reciprocity. In addition, the commenter believes that the current reciprocity system reduces the participation of citizens in the regulatory process because the regulatory agency in this commenter's state does not, in the commenter's view, exert adequate regulatory authority over licensees operating under reciprocity.

The commenter also had several specific objections to the proposed rule. The commenter indicated that this rulemaking will reduce recordkeeping requirements because of certain language changes proposed regarding recordkeeping at the licensee's Agreement State office. In addition, the commenter believes that the rule will remove a variety of requirements including existing fee requirements, the existing 3-day advance deadline for filing with the Commission, and existing reporting and compliance requirements applicable to radiographers. Finally, the commenter believes that the rulemaking inappropriately broadens the authority of NRC Regional Administrators to grant, by telephone, a waiver of the 3-day filing requirement before starting work under the general license.

Response. The NRC has full enforcement and inspection authority to regulate the activities of Agreement State licensees operating under reciprocity in areas of NRC jurisdiction. Agreement State licensees operating under reciprocity must comply with all of NRC's regulatory requirements. As such, the Commission believes that an appropriate avenue for citizen access in addressing issues of reciprocity is the NRC itself. If an individual has safety concerns about the conduct of a licensee operating under reciprocity, that individual should contact NRC and their concerns will be addressed through NRC's allegation review process.

Contrary to the commenter's claims that this rulemaking involves more than a clarification, it is noted that the proposed rule either codifies current NRC regulatory practice (with respect to reciprocity in areas of exclusive Federal jurisdiction) or clarifies existing requirements applicable to licensees operating under reciprocity in areas of NRC jurisdiction. While this rulemaking may facilitate increased use of this general license provision, the Commission does not view this as a concern given the full regulatory power that NRC has over these licensees with respect to activities conducted under reciprocity.

As to the commenter's specific concerns, the Commission notes that this rulemaking will not effect the reporting requirements in §150.20. Language in §150.20(a) has been clarified to indicate that, in order to qualify for the general license, a person must have a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity and for retaining radiation safety records. These editorial changes clarify, but do not alter any existing recordkeeping requirements. The addition of language in this rulemaking related to fees simply serves to provide additional notice to licensees that certain fee requirements in 10 CFR Part 170 apply to Agreement State licensees operating under reciprocity. This rulemaking does not remove or alter existing fee requirements.

Similarly, this rulemaking does not involve any change to the current time requirements for reciprocity filings. In most cases, licensees must file the NRC Form 241 at least 3 days before engaging in activities under reciprocity. However, as the proposed rule explained in more detail, the Regional Administrator may waive the 3-day requirement, because of an emergency or other reasons, provided the licensee receives authorization and files the appropriate information within 3 days. In addition, this rule does not broaden the authority for telephone waivers of the 3-day filing requirement. While this rulemaking does add language to indicate that a waiver may be given "because of an emergency or other reasons," this addition simply provides an example of an instance when a waiver may be appropriate. As such, this rulemaking does not expand or otherwise change the Regional Administrators' current discretion to grant waivers to the 3-day filing requirement.

Finally, contrary to the commenter's assertions, this rulemaking does not eliminate any existing requirements applicable to radiographers operating under reciprocity in areas of NRC jurisdiction. However, the reference to a Part 71 requirement applicable to radiographers in the proposed rule has been eliminated in the final rule because it is not necessary. The present rule does not alter the requirements applicable to radiographers operating under reciprocity.

No changes in the rule have been made in response to this comment. Minor editorial changes have been made to the rule (e.g., in §150.20(b) the word "valid" in the proposed rule has been changed to "applicable" and other changes have been made in this section for clarification or grammatical purposes).

Regulatory Action

Exclusive Federal Jurisdiction

The current wording of §150.20 has created confusion for Agreement State licensees operating in areas of exclusive Federal jurisdiction within Agreement States. An area of exclusive Federal jurisdiction is an area over which the Federal Government exercises legal control without interference from the jurisdiction and administration of State law. Areas of exclusive Federal jurisdiction exist in both Agreement and non-Agreement States. Because the Federal Government has sole authority over areas of exclusive Federal jurisdiction in Agreement States, the NRC has jurisdiction over Atomic Energy Act activities conducted in those areas. Section 150.20 contains the notification procedures (use of an NRC Form 241) regarding general licenses for Agreement State licensees seeking to operate in areas of NRC jurisdiction (e.g., non-Agreement States and offshore waters).

However, §150.20 does not indicate that the NRC may grant reciprocity to Agreement State licensees to conduct activities in areas of exclusive Federal jurisdiction within an Agreement State. The current regulation only authorizes a general license for activities conducted in non-Agreement States, whether or not in an area of exclusive Federal jurisdiction within that non-Agreement State, and offshore waters. Despite the omission in the regulation, the NRC staff, under current practice, permits an Agreement State licensee to operate in an area of exclusive Federal jurisdiction within the Agreement State if the licensee submits an acceptable NRC Form 241.

The lack of a specific reference to areas of exclusive Federal jurisdiction has caused confusion for licensees, Agreement States, and, occasionally, the NRC staff in interpreting the coverage of the reciprocity provisions in §150.20. This rulemaking amends §150.20 to provide a specific reference to areas of exclusive Federal jurisdiction.

Regulatory Requirements Applicable to §150.20 Licensees

The specific references to other NRC regulatory requirements in §150.20 has also been a source of confusion. According to §150.20(b), persons operating under the general license must comply with a variety of specific NRC regulatory requirements. However, §150.20 does not specifically reference all NRC regulations that are applicable to materials licensees. The revised §150.20 clearly indicates that licensees operating pursuant to the rule's provisions must comply with all NRC regulations applicable to materials licensees.

This amendment is consistent with the original intent of the rule. When originally issued in 1962 (27 FR 1351; February 14, 1962), §150.20 required Agreement State licensees to comply with "the appropriate provisions of 10 CFR Parts 20, 30, 31, 40, and 70" of the Commission's regulations. The rule required compliance with all NRC regulations applicable to NRC materials licensees at that time. In 1965, many of the requirements in 10 CFR Part 30 were relocated to newly created regulatory provisions in 10 CFR Parts 32, 33, 34, 35, and 36 (30 FR 8185; June 26, 1965). A conforming amendment to §150.20 was not made in response to this change. Since 1965, specific requirements have been added to §150.20 that may have created the impression that certain NRC requirements otherwise applicable to materials licensees are not applicable to general licensees under §150.20. This is not the case. It is NRC's position that Agreement State licensees operating in areas of NRC jurisdiction pursuant to §150.20 must comply with those regulations applicable to NRC licensees. This amendment will clarify the applicable requirements.

Fees Imposed on Agreement State Licensees Operating Under Reciprocity

The amendment adds appropriate references to §150.20 regarding the relevant fee requirements in 10 CFR Part 170. The fee schedule in 10 CFR Part 170 is being updated to indicate that there will be a charge for licensee revisions to an NRC Form 241 in addition to the initial filing fee. A clarification to an NRC Form 241 does not require a fee. The NRC Form 241 is being revised to include, in the instructions on the form, information concerning revisions and clarifications.

In addition, this amendment involves a minor conforming change to the schedule for materials fees in §170.31, "Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses," to clarify that the fee requirement applies to activities conducted under reciprocity pursuant to §150.20 regardless of the location of the activities.

Filing Procedures

The amendment also clarifies the procedures for filing an NRC Form 241 for reciprocity described in §150.20(b).

The clarifications include identifying what needs to be submitted, specifying the procedure to use when an emergency filing is necessary, and making revisions to the initial filing. These clarifications do not impose any additional requirements on the Agreement State licensee.

Enforcement

If an Agreement State licensee fails to notify the NRC before conducting work in an area of exclusive Federal jurisdiction, the NRC is denied an opportunity to inspect the activity to determine that it is being conducted safely and in accordance with NRC requirements. The current NRC Enforcement Policy ("General Statement of Policy and Procedures for NRC Enforcement Actions", NUREG 1600) contains an example in Supplement VI.C.9 of failure to submit an NRC Form 241 in accordance with 10 CFR 150.20. Under the Enforcement Policy, this violation is categorized at Severity Level III, which constitutes escalated enforcement action. However, absent extraordinary circumstances, the NRC will not take enforcement action against an Agreement State licensee for such a violation if the licensee has evidence that it received a determination, before beginning work, from a Federal Agency that the area of work is not under exclusive Federal jurisdiction. This evidence may be a written statement from the Federal Agency that provided the determination and the date that it was provided, or a written record made by the licensee with the name and title of the person at the Federal Agency who provided the determination and the date that it was provided.

Compatibility of Agreement State Regulations

The provisions in §150.20 will continue to be a Division 1 item of compatibility. The Commission recognizes that portions of the rule apply to matters under NRC's jurisdiction (e.g., offshore waters and areas of exclusive Federal jurisdiction). The Agreement States should fashion their own rules implementing this provision in a manner consistent with their authority. The Commission is currently developing implementing procedures for a new Adequacy and Compatibility Policy that was approved by the Commission on June 29, 1995. The Commission will continue to apply the current compatibility designation to §150.20 until it gives its final approval to the implementing procedures for the new Policy.

Environmental Impact: Categorical Exclusion

The Commission has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0032.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

This final rule does not impose any new requirements or additional costs to licensees because the rulemaking codifies current practice that allows Agreement State licensees to work under an NRC general license. Because the rulemaking improves the clarity and consistency of the NRC's regulations, it will benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

This rule will result in a minor reduction in NRC resources (estimated to be one-sixth of a staff year per year) currently being expended to explain our fee schedule and to clarify for licensees and Agreement States the conditions under which an Agreement State licensee can operate within an area of exclusive Federal jurisdiction. NRC resources to amend §150.20 are estimated to be about one-half of a staff year, which is a cost effective, one-time use of resources. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

The final rule does not impose any new requirements or additional costs to licensees because the rule codifies current practice that allows Agreement State licensees to work under an NRC general license. Because this rule improves the clarity and consistency of NRC's regulations, it will benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 150 and 170.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

1. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under

sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

2. Section 150.20 is amended by revising paragraphs (a), the introductory text of (b), (b)(1), and the introductory text of (c), redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), revising redesignated paragraphs (b)(3) and (b)(4), and adding a new paragraph (b)(2) to read as follows:

§150.20 Recognition of Agreement State licenses.

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity in—

(i) Non-Agreement States;

(ii) Areas of exclusive Federal jurisdiction within Agreement States; and

(iii) Offshore waters.

(2) The provisions of paragraph (a)(1) of this section do not apply if the specific Agreement State license limits the authorized activity to a specific installation or location.

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§30.7 (a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; §§40.7 (a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of Part 40 of this chapter; §§70.7 (a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR Parts 19, 20, and 71 and subpart B of Part 34, §§39.15 and 39.31 through 39.77, inclusive, of Part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

(1) Except as specified in paragraph (c) of this section, shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," 4 copies of its Agreement State specific license, and the appropriate fee as prescribed in §170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in Appendix D of Part 20 of this chapter for the Region in which the Agreement State that issued the license is located. If a submittal cannot be filed 3 days before engaging in activities under reciprocity, because of an emergency or other reason, the Regional Administrator may waive the 3-day time requirement provided the licensee:

(i) Informs the Region by telephone, facsimile, an NRC Form 241, or a letter of initial activities or revisions to the information submitted on the initial NRC Form 241;

(ii) Receives oral or written authorization for the activity from the Region; and

(iii) Within 3 days after the notification, files an NRC Form 241, 4 copies of the Agreement State license, and the fee payment.

(2) Shall file an amended NRC Form 241 or letter and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

(3) Shall not, in any non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters, transfer or dispose of radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is —

(i) Specifically licensed by the Commission to receive this material; or

(ii) Exempt from the requirements for a license for material under § 30.14 of this chapter.

(4) Shall not, under the general license concerning activities in non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States, possess or use radioactive materials, or engage in the activities authorized in paragraph (a) of this section, for more than 180 days in any calendar year, except that the general license in paragraph (a) of this section concerning activities in offshore waters authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time.

* * * * *

(c) A person engaging in activities in offshore waters under the general license provided for that purpose in paragraph (a) of this section need not file an NRC Form 241 with the Commission under paragraph (b)(1) of this section provided that:

* * * * *

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

3. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec 205, Pub L. 101–576, 104 Stat 2842, (31 U.S.C. 902).

§ 170.31 [Amended]

4. Section 170.31 is amended by removing the phrase "in a non-Agreement State" from Category 16 of the Schedule of Materials Fees.

Dated at Rockville, Maryland, this 30th day of December, 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 97–718 Filed 1–10–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 960918263–6345–02]

RIN 0691–AA27

International Services Surveys: BE–20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the BE–20. Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–20 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is taken once every five years. The last survey was conducted for 1991, and the next survey will be

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conducted for 1996. The BE–20 is a benchmark survey that is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, universe estimates of these transactions are derived from reported sample data by extrapolating forward the universe data collected in the BE–20 survey. The data are needed to support U.S. trade policy initiatives on international services and to compile the U.S. balance of payments and the national income and product accounts.

The major change to the BE–20 benchmark survey contained in these rules is to expand its coverage to obtain data on additional types of services, to fill gaps in Government statistics on transactions in new, growing, and volatile international services categories. Transactions in the following types of services will be covered on the BE–20 for the first time: Merchanting services (sales only), financial services by firms that are not financial services providers (purchases only), operational leasing services, selling agent services, and "other" private services. "Other" private services consists of transactions in satellite photography, security, actuarial, salvage, oil spill and toxic waste cleanup, language translation, and account collection services. In addition, to reduce burden, BEA is eliminating several questions in the respondent identification section of the survey.

DATES: These rules will be effective February 12, 1997.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Assistant Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Depart of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the October 17, 1996, **Federal Register**, volume 61, No. 202, 61 FR 54109, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons. No comments on the proposed rules were received. As a result, the final rules are the same as the proposed rules.

These final rules amend 15 CFR Part 801 by revising Section 801.10. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472. 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a), of the act provides that "The President shall, to the extent he deems necessary and feasible—* * * (4) conduct * * * benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons * * *" In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–20 benchmark survey is conducted once every five years. The next survey will cover 1996; the last survey was conducted for 1991. The survey is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, universe estimates of these transactions are derived from reported sample data by extrapolating forward the universe data collected in the BE–20 benchmark survey. The data are needed to support U.S. trade policy initiatives on international services; compile the U.S. balance of payments and national income and product accounts; develop U.S. international price indexes for services; assess U.S. competitiveness in, and promote, international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities for services trade.

The major change to the BE–20 benchmark survey contained in these final rules is to expand coverage to obtain data on additional types of services. The expanded coverage will fill several of the remaining major gaps in Government statistics on international services transactions in new, growing, and volatile services categories. Transactions in the following types of services will be covered on the BE–20 for the first time: Merchanting services (sales only), financial services by firms that are not financial services providers (purchases only), operational leasing services, selling agent services, and "other" private services. "Other" private services consist of transactions in satellite photography, security, actuarial, salvage, oil spill and toxic waste cleanup, language translation, and account collection services.

Reporting in the BE–20 benchmark survey is required from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $500,000 in any of the services covered during the reporting year. Those meeting this criterion must supply data on the amount of their total sales or total purchases of each type of service in which their transactions exceeded this threshold amount. Except for sales of merchanting services, the data also must be disaggregated by country; for sales of merchanting services, data are required to be reported only for all foreign countries combined. U.S. persons with purchases or sales during the reporting year of $500,000 or less in a given type of covered service are asked to provide, on a voluntary basis, estimates only of their total purchases or total sales, as appropriate, of the given type of service.

To reduce respondent burden, BEA is eliminating several questions in the U.S. reporter identification section of the survey. Specifically, a requirement to disaggregate sales or gross operating revenues by individual detailed (3-digit) industry has been eliminated, and only a single industry for the consolidated enterprise is to be reported. In addition, a question on the respondent's total number of full-time and part-time U.S. employees at the end of its fiscal year has been eliminated.

Executive Order 12612

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These final rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information requirement in these final rules has been approved by OMB.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0058) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 4 to 500 hours, with an overall average burden of 12 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0058, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions with unaffiliated foreign persons in a covered type of service exceed $500,000 during the year. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of service; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Balance of payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: January 3, 1997.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 86) as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.10 is revised to read as follows:

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 1996 fiscal year and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given in this section. More detailed instructions and descriptions of the individual types of services covered are given on the report form itself.

(a) The BE–20 survey consists of two parts and eight schedules. Part I requests information needed to determine whether a report is required and which schedules apply. Part II requests information about the reporting entity. Each of the eight schedules covers one or more types of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who must report*—(1) *Mandatory reporting.* A BE–20 report is required from each U.S. person who had transactions (either sales or purchases) in excess of $500,000 with unaffiliated foreign persons in any of the services listed in paragraph (c) of this section during its fiscal year covered by the survey.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search. Because the $500,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(ii) Reporters who file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–20 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 1 of the schedule. In addition, except for sales of merchanting services, these amounts must be distributed below line 1 to the country(ies) involved in the transaction(s). For sales of merchanting services, the data by individual foreign country are not required to be reported, although these data may be reported voluntarily.

(iii) Application of the $500,000 exemption level to each covered service is indicated on the schedule for that particular service. It should be noted that an item other than sales or purchases may be used as the measure of a given service for purposes of determining whether the threshold for mandatory reporting of the service is exceeded.

(2) *Voluntary reporting.* If, during the fiscal year covered, the U.S. person's total transactions (either sales or purchases) in any of the types of services listed in paragraph (c) of this section are $500,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search. Because the $500,000 threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(ii) The amounts of transactions reportable on a particular schedule are to be entered in the appropriate column(s) in the voluntary reporting section of the schedule; they are not required to be disaggregated by country. Reporters filing voluntary information only should also complete Parts I and II of the form.

(3) Any U.S. person that receives the BE–20 survey form from BEA, but is not reporting data in either the mandatory or voluntary section of the form, must nevertheless complete and return the Exemption Claim included with the form to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *Covered types of services.* Only the services listed in this paragraph are covered by the BE–20 survey. Other services, such as transportation and reinsurance, are not covered. Covered services are: Agricultural services; research, development, and testing services; management, consulting, and public relations services; management of health care facilities; accounting, auditing, and bookkeeping services; legal services; educational and training services; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; industrial engineering services; industrial-type maintenance, installation, alteration, and training services; performing arts, sports, and other live performances, presentations, and events; sale or purchase of rights to natural resources, and lease bonus payments; use or lease of rights to natural resources, excluding lease bonus payments; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows

(purchases only); premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; construction, engineering, architectural, and mining services (purchases only); merchanting services (sales only); financial services (purchases only, by companies or parts of companies that are not financial services providers); advertising services; computer and data processing services; data base and other information services; telecommunications services; operational leasing services; and "other" private services. "Other" private services covers transactions in the following types of services: Satellite photography services, security services, actuarial services, salvage services, oil spill and toxic waste cleanup services, language translation services, and account collection services.

[FR Doc. 97–743 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–EA–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules of Agency Organization

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) issues a final rule which deletes all references in its rules and regulations to the "deputy" chief judge in San Francisco, California, and substitutes therefor, where appropriate, references to the "associate" chief judge in San Francisco, California, the correct title of the position.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Phone: (202) 273–1940.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This rule merely conforms current regulations to properly reflect the Agency's current organizational structure, relates solely to agency organization, procedure and practice, and will not have a significant impact on a substantial number of small businesses or impose any information collection requirements. Accordingly, the Agency finds that prior notice and comment is not required for these rules and that good cause exists for waiving the general requirement of delaying the effective date under the Administrative Procedure Act (5 U.S.C. 553), and that the rules are not subject to the Regulatory Flexibility Act (5 U.S.C. 601), Small Business Regulatory Enforcement Act (5 U.S.C. 801), Paperwork Reduction Act (44 U.S.C. 3501), or Executive Order 12866.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR part 102 is amended as follows:

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

§ 102.24 [Amended]

2. Section 102.24, paragraph (a) is amended by substituting "associate" for "deputy" in the third and fifth sentences.

§ 102.25 [Amended]

3. Sec. 102.25 is amended by substituting "associate" for "deputy" in the first sentence.

§ 102.30 [Amended]

4. Sec. 102.30, paragraph (c) is amended by substituting "associate" for "deputy" in the last sentence.

§ 102.34 [Amended]

5. Sec. 102.34 is amended by substituting "associate" for "deputy" in the first sentence.

6. Sec. 102.35, paragraph (b) is amended by:

A. revising the first sentence of the introductory text to read as set forth below:

B. deleting "deputy chief" in the second sentence of the introductory text, and "deputy," in (b) (1), (3) and (5).

§ 102.35 Duties and powers of administrative law judges; assignment and powers of settlement judges.

* * * * *

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, California, the associate chief judge in Atlanta, Georgia, or the associate chief judge in New York, New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. * * *

§ 102.36 [Amended]

7. Sec. 102.36 is amended by substituting "associate" for "deputy".

§ 102.42 [Amended]

8. Sec. 102.42 is amended by substituting "associate" for "deputy" in the third sentence.

9. Section 102.149, paragraph (b) is amended by revising the first sentence to read as follows:

§ 102.149 Filing of documents; service of documents; motions for extension of time.

* * * * *

(b) Motions for extensions of time to file motions, documents, or pleadings permitted by section 102.150 or by section 102.152 shall be filed with the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be, not later than 3 days before the due date of the document. * * *

Dated, Washington, D.C., January 7, 1997.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 97–768 Filed 1–10–97; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–204; Amendment Number 54]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions pertaining to twenty-two sections of the Ohio Revised Code (ORC) to clarify those sections of State law, to conform those sections to current State practices, and to make those sections equivalent to corresponding Federal laws. The revisions concern confidential information on incidental coal

extraction, the Reclamation Supplemental Forfeiture Fund, use of the Reclamation Supplemental Forfeiture Fund and for non-coal reclamation, the Coal Mining Performance Bond Fund, limitations on the awards of costs and expenses, reclamation contracts with surface mine operators, reclamation of interim forfeiture and insolvent surety sites, use of police powers, AML reclamation liens, the Acid Mine Drainage Abatement and Treatment Fund, lands eligible for remining, average wage rates, deletion of obsolete language on interim continuance of underground coal mining operations, activities eligible for Small Operator Assistance, required staff training, and informal review of issues as a form of alternative dispute resolution.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated February 7, 1992 (Administrative Record No. OH–1645), as modified by letter dated February 27, 1992 (Administrative Record No. OH–1657), Ohio submitted proposed Program Amendment Number 54 (PA54). In PA 54, Ohio proposed to revise 13 sections of the ORC concerning a number of regulatory and AML issues. OSM announced receipt of PA 54 in the April 13, 1992, **Federal Register** (57 FR 12779), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 13, 1992.

By letter dated June 15, 1992 (Administrative Record No. OH–1714), OSM provided Ohio with its questions and comments about the February 7, 1992, submission of PA 54. On July 20, 1992, OSM and Ohio staff met to discuss and resolve OSM's questions and comments (Administrative Record No. OH–1746). On July 28, 1992, OSM and Ohio staff further resolved some of those issues in a telephone conversation (Administrative Record No. OH–1754).

In response to OSM's June 15, 1992, letter, Ohio submitted Revised Program Amendment Number 54 (PA 54R) by letter dated September 2, 1992 (Administrative Record No. OH–1769). PA 54R contained further revisions to seven sections of the ORC. OSM announced receipt of PA 54R in the October 28, 1992, **Federal Register** (57 FR 48765), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 27, 1992.

On December 16, 1992 (Administrative Record No. OH–1800), OSM and Ohio staff conducted a telephone discussion of the September 2, 1992, resubmission of PA 54R. On April 30, 1993, OSM and Ohio staff met informally to discuss the status of the amendment with respect to the State's legislative process.

In the June 11, 1993, **Federal Register** (58 FR 32611), the Director of OSM announced his decision to defer Ohio PA 54R with the exception of the Director's approval of one proposed change at ORC section 1513.02(F)(3) which the Ohio General Assembly was likely to pass in its current form. The Director made this decision because the Ohio Legislative Service Commission had not yet drafted the final statutory language on which PA 54R would ultimately be based and because that language would not be available for review by OSM within the foreseeable future.

By letter dated March 31, 1995 (Administrative Record No. OH–2107), Ohio submitted the final version of PA 54 (PA542R2). This final version contains the statutory changes approved by the Ohio General Assembly in Senate Bill 180 and in House Bill 414. The two bills were signed by the Ohio Governor on December 23, 1992, and December 27, 1994, respectively. The revised statutes went into effect on March 24, 1993, and March 27, 1995, respectively.

Ohio's March 31, 1995, final submission of PA 54R reiterated many of the statute changes previously proposed in PA 54 and PA 54R, and withdrew its proposal to amend ORC Sections 1513.10 and 1513.07 pertaining to Refunds of Permit Fees as well as Interfund Transfers. Portions of other sections were likewise withdrawn as discussed in their respective sections below. The March 31, 1995 submission also proposed new changes to ten sections of the ORC. OSM discussed all proposed changes in the April 13, 1992, October 28, 1992, and April 17, 1995 **Federal Register** documents concerning the submissions of PA 54, PA 54R and PA 54R2, respectively. An issue letter was sent to Ohio on August 2, 1995 and a conference call was held on August 29, 1995. Further discussions were held during 1996. Statute changes which solely concern Ohio's non-coal regulatory program are outside the jurisdiction of OSM and are not discussed below. Also, changes to paragraph notations and nonsubstantive wording changes are not discussed.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments.

1. Confidential Information Regarding Exemption Requests for Incidental Coal Extraction

ORC 1513.07 paragraph (D)(2): Ohio is revising this paragraph to specify that, for exemption requests for incidental coal extraction, confidential information includes and is limited to information concerning trade secrets or privileged commercial or financial information relating to the competitive rights of the persons intending to conduct the extraction of minerals. The corresponding Federal rule at 30 CFR 702.13 requires that the person request, in writing, that the information be kept confidential. While Ohio's proposed statute change does not include this requirement, Ohio's Administrative Code Section 1501:13–4–16(J)(2) corresponds with the Federal rule at 30 CFR 702.13(b). Therefore, the proposed change to the statute in conjunction with Ohio's existing Administrative Code Section is no less effective than the corresponding Federal Regulations at 30 CFR 702.13(b).

2. Reclamation Supplemental Forfeiture Fund

Ohio is revising ORC 1513.08 paragraph (A) and proposing a new paragraph ORC 1513.18(D) to move the current language creating the Reclamation Supplemental Forfeiture

Fund from that portion of the Ohio law dealing with performance bonds to that portion of the law dealing with reclamation by the Division. Ohio also proposed adding a new provision which would allow the Division to use funds from the Reclamation Supplemental Forfeiture Fund to reclaim areas which were affected by non-coal mining under surface mining permits issued under ORC Chapter 1514, but which the operator did not adequately reclaim. In its March 31, 1995, final version of PA 54R, Ohio is withdrawing the portion of the proposed language referring to ORC Chapter 1514 from new paragraph (D). Ohio is also removing the fund name from the heading of the section.

ORC 1514.06 paragraph (G): Ohio is proposing to revise this paragraph in lieu of the previously proposed revision discussed above which Ohio is withdrawing from ORC section 1513.18 paragraph (D). The revision to ORC section 1514.06 paragraph (G) would provide that Ohio may expend money from the Reclamation Supplemental Forfeiture Fund or from the Surface Mining Administration Fund to complete reclamation on land affected by non-coal surface mining operations on which an operator has defaulted.

Ohio is also revising ORC Section 1513.18(E) to be consistent with the move of the aforementioned language to ORC Section 1513.18(D).

ORC section 1513.18 paragraph (D): Ohio is adding a statement in this paragraph concerning the State's priority for management of the Reclamation Supplemental Forfeiture Fund, including the selection of projects and the transfer or moneys. That priority shall be to ensure that sufficient moneys are available for reclamation of areas that an operator has affected under a coal mining and reclamation permit issued after September 1, 1981, and which the operator has failed to reclaim. This statement was added in response to the director's concerns that Reclamation Supplemental Forfeiture Fund expenditures on non-coal mining sites could compromise the Fund's solvency as an alternative bonding system to be used for the reclamation of surface coal mining sites. The Director is now satisfied that Ohio will continue to use Fund moneys to reclaim all existing coal mining sites for which bonds have been forfeited, prior to using any such moneys to reclaim non-coal mining sites.

The proposed changes are found to be consistent with the corresponding Federal Regulations at 30 CFR 800.11(e), pertaining to alternative bonding systems.

3. Coal Mining Performance Bond Fund

ORC 1513.081: Ohio is repealing this existing section which created the Coal Mining Performance Bond Fund. Language in this section also authorized the issuance of reclamation performance bonds by the Chief using money from the fund, determined premiums and fees for participation in the fund, and provided for the release and forfeiture of reclamation performance bonds supported by the fund.

Ohio proposed to add ORC section 1513.081 to the Ohio program as part of the November 16, 1987 submission of proposed Ohio Program Amendment Number 32 (Ohio Administrative Record No. OH–0994). This part of Ohio Program Amendment Number 32 was not approved by OSM.

ORC 1513.08 paragraph (B): Ohio is revising this paragraph to delete a reference to performance bonds issued under ORC Section 1513.081 which is to be repealed.

Because the proposed changes were never approved by the Director and therefore never became part of Ohio's approved program, their deletion from the ORC does not render the Ohio program inconsistent with the requirements of SMCRA or the Federal Regulations.

4. Alternative Dispute Resolution

ORC 1513.13 paragraph (A)(3): Ohio is adding this new paragraph to provide an alternative mechanism for resolving disputes over notices, orders, or other decisions issued by the Chief. Any person who, under ORC 1513.13, may appeal such a notice, order, or decision to the Ohio Reclamation Board of Review (RBR) may elect to request an informal review by the Chief of that notice, order, or decision to the RBR. The time spent on such an informal review would not count against the time available to the person to appeal the notice, order, or decision to the RBR. Further, such a review would not stay the order, notice, or decision. Finally, such a review would itself be appealable to the RBR.

Since Ohio already has an informal review process in its regulations for Civil Penalty Assessments, citizen complaints, and bond releases, the proposed change is not inconsistent with the requirements of SMCRA and the Federal regulations insofar as it does not interfere with or duplicate the informal review process already contained in the Ohio program. Therefore, the Director is approving ORC 1513.13(A)(3) to the extent that it does not apply to create additional opportunities for informal review of Civil Penalty assessments, citizen complaints, and bond releases, beyond those already contained in the Ohio program.

5. Limitations on Awards of Costs and Expenses

ORC 1513.13 paragraph (E)(1): Ohio is revising this paragraph to provide that, at the request of a prevailing party in the appeal of an enforcement order or permit decision, the Ohio RBR and/or the Chief may award necessary and reasonably incurred costs and expenses, including attorney fees, for that party's participation in the enforcement proceedings before the Ohio RBR. Ohio later revised this section so that it also applies to awards of costs and expenses incurred in connection with proceedings before the RBR, before the court under ORC section 1513.15 (pertaining to citizen suits), or before the Chief under ORC section 1513.39 (pertaining to employee discrimination). Ohio is also adding that fees awarded under this section may not exceed the prevailing market rates at the time the services were rendered. Costs and expenses may also be awarded for the preparation, defense and appeal of a petition for costs and expenses, provided those costs and expenses are proportionate to those otherwise allowed under ORC 1513.13(E).

ORC 1513.13 paragraph (E)(1)(a): Ohio is revising this paragraph to specify that an award may be made to a party other than the permittee or the Ohio Division of Reclamation (DOR) when the Chief determines that a party both prevailed in whole or in part and made a substantial contribution to the determination of issues. This contribution must be separate and distinct from the contribution made by any other party.

ORC 1513.13 paragraph (E)(1)(b): Ohio is revising this paragraph to clarify that permittees may file petitions for award of costs and expenses with the chief against parties who initiated or participated in an appeal under this section in bad faith for the purpose of harassing or embarrassing the permittee. The Chief may assess those costs and expenses against the party who initiated the appeal.

ORC 1513.13 paragraph (E)(1)(c): Ohio is revising this paragraph to clarify that the DOR may file a request with the RBR for an award of costs and expenses incurred by the DOR in connection with an appeal initiated under this section. The RBR may assess those costs and expenses against those parties who initiated the appeal in bad faith and for the purpose of harassing or embarrassing the DOR.

ORC 1513.13 paragraph (E)(2): Ohio is revising this paragraph to authorize the court to award necessary and reasonably incurred costs and expenses for parties participating in the judicial review of any order issued order this section or as a result of any administrative proceeding under this chapter.

ORC 1513.15 paragraph (F): Ohio is revising this paragraph to authorize the Chief to award necessary and reasonably incurred costs of litigation, including attorney and expert witness fees, in connection with civil actions against the Division. Ohio is also revising this paragraph to delete previously proposed revision and is reinstating the court's authority to award, to any party, costs and fees that the court determines to have been necessary and reasonably incurred, in any proceeding under ORC 1513.15 (B) (citizen suits) in accordance with ORC section 1513.13.

ORC 1513.39 paragraph (C): Ohio is revising this paragraph to incorporate by reference the proposed limit on necessary and reasonably incurred costs and expenses specified in revised ORC section 1513.13 paragraph (E)(1) and (E)(2) as also applying to cases of alleged discrimination against employees.

Except as noted below, the proposed changes are found to be consistent with the requirements of Section 525(e) of SMCRA, 30 CFR 840.15, and 43 CFR 4.1290 and 4.1294.

a. Ohio is required to amend ORC 1513.13 (E)(1)(a) to make it clear that such awards may be made in connection with any administrative review proceedings concerning an enforcement action; permit issuance decision or employee discrimination complaint, not just those concerning enforcement actions.

b. Ohio is required to amend ORC 1513.13(E)(1)(b) and (c) to make it clear that such costs may also be assessed against persons who participate in bad faith appeals, not just those persons who initiate such bad faith appeals.

6. Reclamation Contracts With Surface Mine Operators

ORC 1513.18 paragraph (C): Under the current version of this paragraph, the Chief is authorized to enter into contracts with mine operators mining under a current, valid permit to complete reclamation on defaulted areas. Ohio is revising this paragraph to extend the Chief's authorization to include contracts with surface mine operators mining under permits issued under ORC Chapter 1514, pertaining to minerals other than coal.

While there is no Federal counterpart, the Director finds the proposed change is not inconsistent with SMCRA or the Federal regulations.

7. Reclamation of Forfeited Areas Affected Under Mining Permits Issued After April 10, 1972 But Before September 1, 1981

ORC 1513.18 paragraph (I): Ohio is adding this new paragraph to authorize the Chief to use any unspent funds in the defaulted areas fund to complete reclamation of other interim forfeited areas affected under coal mining and reclamation permits issued after April 10, 1972 but before September 1, 1981.

While there are no Federal counterparts, the Director finds that this propose revision is not inconsistent with SMCRA or the Federal regulations, and is consistent with SMCRA's general intent that all lands disturbed by surface coal mining operations be reclaimed.

8. Chief's Use of Police Powers on State-Funded AML Sites

ORC 1513.27 third paragraph: Ohio is adding this new paragraph to authorize the Chief to enter onto property where the owners are not known, are not readily available, or are not willing to give permission in order for the Division to use State funds to abate adverse effects of past coal mining practices on abandoned mined land (AML). Such entry onto properties shall be construed as an exercise of police power for the protection of the public health and safety and shall not be construed as an act of condemnation nor trespass.

The proposed change is found to be substantively identical to the requirements of section 407 of SMCRA, except that ORC 1513.27 does not grant a right of entry to "any other property" in order to have access to the property affected by past coal mining practices. However, because Ohio's program does provide for right of entry upon "any other property" for Federally-funded AML projects at ORC 1513.37 (F)(1), the proposed change at ORC 1513.27 does not render the state's program less stringent than section 407 of SMCRA. Therefore, the revision at ORC 1513.27 is approved.

9. AML Liens on Property of Community Improvement Corporations or Nonprofit Organizations

ORC 1513.33 third paragraph: Ohio is revising this paragraph to provide that AML liens filed by the Division against property owned by community improvement corporations or nonprofit organizations shall have priority as a lien second only to the lien of real property taxes imposed upon the land.

This proposed change is substantively identical to language contained in SMCRA at section 408(c).

ORC 1513.33 fourth paragraph: Ohio is revising this paragraph to clarify the procedure to be used by county recorders in recording and indexing AML liens.

ORC 1513.33 fifth paragraph: Ohio is revising this paragraph to provide that AML liens shall continue in force so long as any portion of the lien remains unpaid.

ORC 1513.33 sixth paragraph: Ohio is revising this paragraph to delete the provision that AML liens shall be foreclosed in the same manner as State tax liens foreclosed under ORC Chapter 5721.

While there are no direct Federal counterparts to these proposed changes, they are found not to be inconsistent with the requirements of SMCRA at section 408.

10. Expansion of Sites Eligible for Federally Funded AML Projects

ORC 1513.37 paragraph (C)(1): Ohio is revising this paragraph to expand the eligibility requirements for the sites of Federally funded AML reclamation projects. Ohio is adding new paragraph (C)(1)(b) to make eligible mining operations which occurred during the period beginning August 4, 1977 and ending on or before August 16, 1982 and for which sufficient reclamation funds are not available. Ohio is adding new paragraph (C)(1)(c) to make eligible mining operations which occurred during the period beginning August 4, 1977 and ending on or before November 5, 1990, for which sureties became insolvent, and for which sufficient reclamation funds are not available.

ORC 1513.37 paragraph (C)(2): Ohio is adding this new paragraph to provide that the Chief shall follow the priorities set forth at ORC 1513.37(B)(1) and (B)(2) in determining which sites to reclaim using the new authority granted under ORC 1513.37(C)(1)(b) and (c). The Chief shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon the local community.

The proposed changes are found to be substantively identical to the requirements of SMCRA at section 402(g)(4)(B) and (C).

11. Creation of the State Acid Mine Drainage Abatement and Treatment Fund

ORC 1513.37 paragraph (E): Ohio is adding this new paragraph to create in the State treasury the Acid Mine Drainage Abatement and Treatment

Fund. The fund shall be administered by the Chief and shall consist of grants from OSM to be used in consultation with the U.S. Department of Agriculture, Natural Resources Conservation Service to abate and treat acid mine drainage. Proposed ORC 1513.37 paragraphs (E)(1) through (7) would specify activities eligible for financial support from the fund, including the identification of affected hydrologic units, the sources of acid mine drainage, and the effects of the drainage; the identification of corrective measures to ablate or treat the drainage; calculation of costs; and analysis of benefits.

The proposed changes are found to be substantively identical to section 402(g)(7) of SMCRA.

12. AML Liens on Certain Properties Involved in Federally Funded AML Reclamation Projects

ORC 1513.37 paragraph (G): Ohio is revising this paragraph to provide that the Chief may file in the office of the county recorder a statement of reclamation costs spent on certain properties affected by Federally funded AML reclamation projects. Such statements would constitute a lien upon the land as of the date of the State's reclamation expenditures and would have a priority as a lien second only to the lien of real property taxes imposed upon the land. This revision is substantively identical to language contained in section 408(c) of SMCRA.

ORC 1513.37 paragraph (G)(3): Ohio is revising this paragraph to clarify the procedure to be used by county recorders in recording and indexing AML liens relating to Federally funded reclamation.

ORC 1513.37 paragraph (G)(4): Ohio is adding this new paragraph to provide that AML liens relating to Federally funded reclamation shall continue in force so long as any portion of the lien remains unpaid. Conveyance of the land subject to an AML lien may be set aside if the lien remains unpaid at the time of conveyance.

ORC 1513.37 paragraph (G)(5): Ohio is adding this new paragraph to provide that AML liens relating to Federally funded reclamation shall be foreclosed upon the substantial failure of a landowner to pay any portion of the amount of the lien. Before proceeding with foreclosure, the Chief shall make a written demand upon the landowner for payment and shall give the landowner sixty days to pay the amount.

Although there are no direct Federal counterparts to the proposed changes, the Director finds that they are not inconsistent with the requirements of SMCRA at section 408(c).

13. Lands Eligible for Remining

ORC section 1513.01 paragraph (F): Ohio is adding this paragraph to define the term "lands eligible for remining" to mean those lands that otherwise would be eligible for expenditure of AML reclamation funds under paragraph (C)(1) of ORC section 1513.37.

ORC section 1513.07 paragraph (E)(3)(b): Ohio is adding this new paragraph to provide that, until October 1, 2004, any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining shall not prevent issuance of a coal mining permit to the person holding the remining permit. An unanticipated event or condition is one that was not contemplated by the applicable permit.

ORC section 1513.16 paragraph (A)(19)(b): Ohio is adding this new paragraph to provide that coal mining permits on lands eligible for remining shall require the operator to assume the responsibility for successful revegetation of the remined area for two full years after the last augmented seeding, fertilizing, or irrigation.

ORC section 1513.37 paragraph (C)(3): Ohio is adding this new paragraph to provide that surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for AML reclamation funding under this section of the ORC after the release of the mining operation's performance bond. If the performance bond for the remining operation is forfeited and is not sufficient for adequate reclamation of the site, Ohio may use AML reclamation funding under this section to augment the bond.

The proposed changes are found to be substantively identical to SMCRA at sections 701(33) and (34), 515(b)(20)(B), and 404 to the extent that 1513.07(E)(3)(b) applies up to, but not including 10/1/2004.

14. Average Wage Rates

ORC section 1513.02 paragraph (J): Ohio is revising this paragraph to provide that the State will use information from non-coal as well as coal mining and reclamation operations in calculating average wage rates. The newly calculated average wage rates shall apply to reclamation performed for Ohio on both coal and non-coal mining sites. While there are no Federal counterparts to this revision, the Director finds that is not inconsistent with SMCRA or its corresponding Federal regulations.

15. Deletion of Obsolete Language

ORC section 1513.07 paragraph (A)(1): Ohio is deleting obsolete language from this paragraph concerning payment of permit fees for areas covered by a permit in effect on August 16, 1982, as well as language concerning interim continuance of underground coal mine operations which were in effect prior to September 1, 1981.

The director finds that deletion of this obsolete language does not render the Ohio program less stringent than SMCRA or less effective than the corresponding federal regulations.

16. Activities Eligible for the Small Operator's Assistance Program (SOAP)

ORC section 1513.07 paragraph (B)(4)(a) and (b): Ohio is revising these paragraphs to expand the types of activities related to permit applications which qualified laboratories can perform for permit applicants under contracts funded by Ohio's SOAP. Qualifying activities include determination of probable hydrologic consequences, development of cross-section maps and plans, geologic drilling and reporting, collection and reporting of archaeological information, performing pre-blast surveys, and collection of information on protection of fish and wildlife habitats. The coal mine operator shall reimburse the State for the costs of SOAP-assisted services if the operator's actual and attributed coal production for all locations exceeds 300,000 tons during the 12 months immediately following the date of issuance of the mining permit.

The proposed changes are found to be substantively identical to, and therefore no less stringent than, sections 507(C)(1) and (h) of SMCRA, except Ohio is required to amend ORC 1513.07(B)(4)(a)(i) or otherwise clarify that probable hydrologic consequences determinations include the engineering analyses and designs necessary for those determinations.

17. Required Staff Training

ORC section 1513.34: Ohio is revising this section to delete the requirements for minimum hourly amounts of initial and annual follow-up training for certain staff positions. In lieu of a minimum of 80 hours of training, Ohio shall provide adequate training and education, during their probationary periods, for all persons appointed as inspection officers. In lieu of a minimum of 40 hours of annual training, Ohio shall provide, on a regular basis as funding allows, continuing education and training as necessary for all inspection officers,

district supervisors, and enforcement personnel. While there are no direct Federal counterparts to these Ohio training requirements, the proposed changes are found to be not inconsistent with the requirements of SMCRA at 503(a)(3), which requires that state regulatory authorities employ sufficient administrative and technical personnel to enable the State to regulate surface coal mining and reclamation operations in accordance with SMCRA.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. Comments were received from the Ohio Historic Preservation Office on March 19, 1992 (Administrative Record No. OH–1671) pertaining to the expansion of sites eligible for Federally funded AML projects. The comment stated that ongoing coordination with the Ohio Historical Society is necessary to address preservation concerns, and requested notification of projects prior to initiation. The Director notes that all abandoned mine lands projects are reviewed by the State Historic Protection Officer (SHPO). Further, a statement of concurrence that no significant cultural or historic properties will be adversely affected, signed by the SHPO, is included with the National Environmental Policy Act documents submitted prior to construction.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. MSHA responded that it had no comments in its letter dated April 20, 1995. (Administrative Record No. 2113)

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 **et seq.**). EPA concurred with the amendment in its letter to OSM dated June 2, 1995. (Administrative Record No. OH–2129)

V. Director's Decision

Based on the above finding(s), the Director approves, with certain additional requirements, the proposed amendment as submitted by Ohio on February 7, 1992, as modified on February 27, 1992, September 2, 1992, and March 31, 1995.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1996.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding paragraph (dddd) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(dddd) With the exceptions noted below, the amendments submitted to OSM on February 7, 1992, and revised on February 27, 1992, April 18, 1992 and March 31, 1995, are approved effective January 13, 1997.

ORC 1513.07(D)(2)	Confidential Information.
ORC 1513.08 & ORC 1513.18 (D) & (E), and ORC 1514.06(G)	Reclamation Supplemental Forfeiture Fund.
ORC 1513.13 (E)(1), (E)(2), (C)	Limitation on Awards.
ORC 1513.15(F), ORC 1513.39(C)	
ORC 1513.13(A)(3)	Alternative Dispute Resolution to the extent that it does not duplicate the current informal review process.
ORC 1513.18(C)	Reclamation Contracts.
ORC 1513.18(I)	Reclamation of Forfeited Areas.
ORC 1513.27	Police Powers.
ORC 1513.33	AML Liens.
ORC 1513.37 (C), (C)(1), (C)(1)(b), (C)(1)(c) & (C)(2)	Sites Eligible for AML.
ORC 1513.37(E)	Acid Mine Fund.
ORC 1513.37(G)	Liens on Federally-Funded AML Projects.
ORC 1513.07 (B), (B)(4), (B)(4)(a)(b)	SOAP.
ORC 1513.34	Staff Training.
ORC 1513.01(F), 1513.07(E)(3)(b), 1513.16(A)(19)(b), & 1513.37(C)(3)	Remining to the extent that 1513.07(E)(3)(b) applies up to, but does not include 10/1/2004.
ORC 1513.01(H)(2)	Public Roadways.
ORC 1513.02(J)	Average Wage Rates.
ORC 1513.07(A)(1)	Delete interim continuance of mining in effect prior to 9–1–91.
ORC 1513.081 (Repealed and ORC 1513.08(B)	Coal Mining Performance Bond Fund.

3. Section 935.16 is revised to read as follows:

§ 935.16 Required regulatory program amendments.

(a) By June 27, 1997, Ohio shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to address the following:

(1) Amend the Ohio program at ORC 1513.13(E)(1)(a) to make it clear that such awards may be made in connection with any administrative review proceedings concerning an enforcement action, permit issuance decision or employee discrimination complaint, not just those concerning enforcement actions.

(2) Amend ORC 1513.13(E)(1) (b) and (c) to make it clear that such costs may also be assessed against persons who participate in bad faith appeals, not just those persons who initiate such bad faith appeals.

(3) Amend ORC 1513.07(B)(4)(a)(i) or otherwise clarify that probable hydrologic consequences determinations include the engineering analyses and designs necessary for those determinations.

(b) [Reserved]

[FR Doc. 97–709 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 20

Interim Rule for Global Package Link (GPL) to Canada

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: The Postal Service is amending the rule on Global Package Link to Canada. New pricing is being announced, effective January 13, 1997. The new pricing is a reduction in the rates previously established. The Postal Service is also announcing a new Ground Gateway Global Package Link service to Canada. In order to support this new GPL service, Buffalo has been added as a GPL processing center for ground service only. The Buffalo GPL center will open for service on January 21, 1997. The new ground service will be available to any customer within a 500 mile radius of the two Ground Gateway centers, Seattle, Washington and Buffalo, New York and any other customer that can utilize a direct, existing Postal Service surface transportation to one of the two Ground Gateways. In addition, a merchandise return service is being announced, along with prices, for any customer utilizing the GPL to Canada service.

DATES: The interim regulations take effect as of 12:01 a.m. on January 13, 1997, except for the new Ground Gateway service from Buffalo which will take effect at 12:01 a.m. on January 21, 1997. Comments must be received on or before February 12, 1997.

ADDRESSES: Written comments should be mailed or delivered to International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza SW, 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Opiela, (202) 314–7134.

SUPPLEMENTARY INFORMATION:

I. Introduction

Global Package Link is a service that assists mail order companies and other customers that send merchandise to Japan, Canada, and the U.K. Presently, the Postal Service has Global Package Link processing facilities in New York City, Dallas, Miami, Chicago, San Francisco, and Seattle.

II. GPL to Canada

Description

GPL to Canada currently offers an Air Courier and a Ground Courier service. These services are offered through one of the six aforementioned processing facilities. In most cases these facilities airlift the GPL packages to Canada. A new Ground Gateway service will become effective immediately via Seattle and on January 21, 1997 via Buffalo. This service will provide surface transportation from the mailer's fulfillment center to one of the two Ground Gateways; Seattle or Buffalo. Those mailers within 500 miles of Buffalo will have their packages processed for ground entry into Canada via the Buffalo center, while those mailers within 500 miles of Seattle will have their packages processed for surface entry into Canada via Seattle, which is also an air exchange office for all other GPL destination countries. Buffalo will only be a GPL ground gateway.

Packages will be transported from the Ground Gateways via Postal Service ground transportation to Toronto (from Buffalo) and to Vancouver (from Seattle). From this point the GPL delivery agent will provide expeditious courier handling to the destination address.

The Ground Gateway Service to Canada will include all of the value-added services currently available with the Ground Courier service, including the recently added $100 (Canadian) insurance indemnity per shipment (Air Courier continues to be covered by $500

EMS insurance). The service standard is anticipated to be three to eight business days after dispatch from a customer's plant, depending upon the location of final destination. (For addresses in the Maritimes and extreme northern territories where distance and poor roads affect transportation, delivery times could be as long as ten days.) Customers shipping from outside the 500 mile radius of a Ground Gateway may expect longer delivery times.

Package Specific Information

Package specific information, package size and weight limits, and customs clearance for Ground Gateway service will be the same as for Air and Ground Courier service.

Preparation Requirements

The preparation requirements for the Ground Gateway service are the same as for the Ground Courier service.

III. Rates

Rates for Air Courier service and Ground Courier service are being reduced by between 8 and 10 percent. Volume discounts are being changed to a single 3 percent discount for packages in excess of 100,000 during a twelve month period. The Postal Service is also instituting a return service for packages sent to Canada via GPL.

Global Package Link

Canada

Weight not over	Price per item (pounds)			
	Air courier	Ground courier	Ground gateway	Returns
1	$9.15	$7.75	$7.50	$6.49
2	10.01	8.49	7.75	7.16
3	11.53	9.89	8.00	7.82
4	13.04	10.79	8.25	8.49
5	14.56	11.72	8.50	9.16
6	15.96	12.65	9.00	9.83
7	17.46	13.49	9.50	10.49
8	18.97	14.33	10.00	11.16
9	20.47	15.18	10.50	11.83
10	21.98	16.01	11.00	12.50
11	23.32	16.75	11.50	13.16
12	24.81	17.60	12.00	13.83
13	26.32	18.47	12.50	14.50
14	27.81	19.32	13.00	15.17
15	29.31	20.19	13.50	15.83
16	30.80	21.53	14.00	16.50
17	32.31	22.41	14.50	17.17
18	33.80	23.29	15.00	17.84
19	35.29	24.35	15.50	18.50
20	36.79	25.23	16.00	19.17
21	38.02	25.93	16.50	19.84
22	39.50	26.80	17.00	20.50
23	40.99	27.68	17.50	21.17
24	42.47	28.56	18.00	21.84
25	43.97	29.44	18.50	22.51
26	45.45	30.31	19.00	23.17
27	46.59	31.20	19.50	23.84
28	48.42	32.07	20.00	24.51
29	49.91	32.95	20.50	25.18
30	51.40	33.83	21.00	25.84
31	52.50	34.45	21.50	26.51
32	53.97	35.31	22.00	27.18
33	55.46	36.19	22.50	27.85
34	56.93	37.06	23.00	28.51
35	58.40	37.93	23.50	29.18
36	59.87	38.80	24.00	29.85
37	61.36	39.68	24.50	30.52
38	62.83	40.85	25.00	31.18
39	64.31	41.90	25.50	31.85
40	65.78	42.93	26.00	32.52
41	66.78	43.49	26.50	33.19
42	68.24	44.37	27.00	33.85
43	69.70	45.25	27.50	34.52
44	71.16	46.48	28.00	35.19
45	72.64	47.37	28.50	35.86
46	73.56	47.88	29.00	36.52
47	75.01	49.51	29.50	37.19
48	76.46	51.15	30.00	37.86
49	77.81	52.83	30.50	38.52
50	79.37	54.92	31.00	39.19
51	80.83	56.26	31.50	39.86
52	82.29	57.63	32.00	40.53
53	83.74	59.03	32.50	41.19
54	85.20	60.43	33.00	41.86
55	86.66	61.84	33.50	42.53
56	87.47	62.41	34.00	43.20

Weight not over	Price per item (pounds)			
	Air courier	Ground courier	Ground gateway	Returns
57	88.91	63.40	34.50	43.86
58	90.36	64.39	35.00	44.53
59	91.80	65.38	35.50	45.20
60	93.26	66.82	36.00	45.87
61	94.70	67.83	36.50	46.53
62	96.15	68.82	37.00	47.20
63	96.88	69.79	37.50	47.87
64	98.31	70.76	38.00	48.54
65	99.75	71.79	38.50	49.20
66	101.18	72.83	39.00	49.87

Discounts

Postage is reduced by the following discount once the applicable volume thresholds are reached during a 12 month period:

100,000 or less.....base rate
over 100,000 annually.....3 per cent discount

No discounts are available for returns.

The above prices are effective January 13, 1997 for the Air Courier and Ground Courier service. Prices for the new Ground Gateway Service become effective immediately for those eligible to use the Seattle center and on January 21, 1997, for those eligible to use the Buffalo center.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

The Postal Service adopts the following interim amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The Individual Country Listing for Canada in the International Mail Manual is amended by adding the interim regulations concerning Global Package Link processing facilities, rate chart for GPL- Canada and new Ground Gateway centers.

Global Package Link (620)

Delivery Options

[**Note:** Add the following information as the third delivery option:]

Ground Gateway Service

Ground Gateway Service will offer ground service to Canada from the designated Ground Gateway facilities and ground transportation to final destination in Canada. It will receive the same expeditious customs clearance as the Ground Courier Service and normal delivery times for 95 percent of all Canadian addresses will be three to eight days after dispatch from the customer's plant, depending on the location of the final destination. (For addresses in the Maritimes and extreme northern territories where distance and poor roads affect transportation, delivery times could be as long as ten days.)

Processing Facilities

[**Note:** Add the information below about Ground Gateway Centers:]

Ground Gateway Centers

Ground Gateway Service will be processed at one of two designated Ground Gateway centers; Seattle and Buffalo.

Processing and Acceptance

[**Note:** Add acceptance procedures for Ground Gateway service:]

Within 500 Miles of a Global Package Link Ground Gateway Facility

If the plant at which the customer's Global Package Link packages originate is located within 500 miles of a Global Package Link Ground Gateway, the Postal Service will verify and accept the packages at the customer's plant and transport them to the Global Package Link Ground Gateway according to a schedule agreed upon by the Postal Service and the customer.

More Than 500 Miles From a Global Package Link Ground Gateway Facility

Customers located outside of a 500 mile radius of these two Ground Gateway centers for Ground Gateway GPL service to Canada may still use the service provided they are located in a city having direct, existing Postal Service surface transpiration to one of the two Ground Gateway centers. If no such existing surface transportation exists in their origin city, the mailer may drop ship, at their own expense, packages to one of the Ground Gateway centers.

Insurance and Indemnity

[Add the information below on Ground Gateway insurance:]

Ground Gateway Service

Packages sent through Ground Gateway Service include up to $100 (Canadian) insurance at no additional cost.

Base Rates

[**Note:** Replace the current discount table with the one below:]

Number of packages	Percent discount
Up to 100,000	Base Rate.
100,001 and over	3% off base rates.
No discount for parcel returns..	

Preparation Requirements

[**Note:** Add the information below about preparation requirements for third service:]

Ground Gateway Service

There are no Canada-specific preparation requirements for packages sent through Ground Gateway Service. Packages weighing 1 pound or less must bear the "SMALL PACKET" marking (see 264.21).

Return Service

A return merchandise service will be available to GPL—Canada customers. The mailer/or the Canadian recipient, will be responsible for payment of shipment costs back to the designated Canadian return center. The return center will open and inspect the contents of each box and process for return back to the U.S., including applying for a refund of duties and taxes to Revenue Canada. Upon arrival in the U.S., the parcels will be sent back to the mailer via the domestic parcel network. The return prices, per parcel, are detailed in the rate chart.

[Replacing current rate table with the one below]

Global Package Link

Canada

Weight not over (pounds)	Price per item			Returns
	Air courier	Ground courier	Ground gateway	
1	$9.15	$7.75	$7.50	$6.49
2	10.01	8.49	7.75	7.16
3	11.53	9.89	8.00	7.82
4	13.04	10.79	8.25	8.49
5	14.56	11.72	8.50	9.16
6	15.96	12.65	9.00	9.83
7	17.46	13.49	9.50	10.49
8	18.97	14.33	10.00	11.16
9	20.47	15.18	10.50	11.83
10	21.98	16.01	11.00	12.50
11	23.32	16.75	11.50	13.16
12	24.81	17.60	12.00	13.83
13	26.32	18.47	12.50	14.50
14	27.81	19.32	13.00	15.17
15	29.31	20.19	13.50	15.83
16	30.80	21.53	14.00	16.50
17	32.31	22.41	14.50	17.17
18	33.80	23.29	15.00	17.84
19	35.29	24.35	15.50	18.50
20	36.79	25.23	16.00	19.17
21	38.02	25.93	16.50	19.84
22	39.50	26.80	17.00	20.50
23	40.99	27.68	17.50	21.17
24	42.47	28.56	18.00	21.84
25	43.97	29.44	18.50	22.51
26	45.45	30.31	19.00	23.17
27	46.59	31.20	19.50	23.84
28	48.42	32.07	20.00	24.51
29	49.91	32.95	20.50	25.18
30	51.40	33.83	21.00	25.84
31	52.50	34.45	21.50	26.51
32	53.97	35.31	22.00	27.18
33	55.46	36.19	22.50	27.85
34	56.93	37.06	23.00	28.51
35	58.40	37.93	23.50	29.18
36	59.87	38.80	24.00	29.85
37	61.36	39.68	24.50	30.52
38	62.83	40.85	25.00	31.18
39	64.31	41.90	25.50	31.85
40	65.78	42.93	26.00	32.52
41	66.78	43.49	26.50	33.19
42	68.24	44.37	27.00	33.85
43	69.70	45.25	27.50	34.52
44	71.16	46.48	28.00	35.19
45	72.64	47.37	28.50	35.86
46	73.56	47.88	29.00	36.52
47	75.01	49.51	29.50	37.19
48	76.46	51.15	30.00	37.86
49	77.81	52.83	30.50	38.52
50	79.37	54.92	31.00	39.19
51	80.83	56.26	31.50	39.86
52	82.29	57.63	32.00	40.53
53	83.74	59.03	32.50	41.19
54	85.20	60.43	33.00	41.86
55	86.66	61.84	33.50	42.53
56	87.47	62.41	34.00	43.20
57	88.91	63.40	34.50	43.86
58	90.36	64.39	35.00	44.53
59	91.80	65.38	35.50	45.20
60	93.26	66.82	36.00	45.87
61	94.70	67.83	36.50	46.53
62	96.15	68.82	37.00	47.20
63	96.88	69.79	37.50	47.87
64	98.31	70.76	38.00	48.54
65	99.75	71.79	38.50	49.20
66	101.18	72.83	39.00	49.87

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 97–490 Filed 1–10–97; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL–5673–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule amendment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending 40 CFR Part 261, Appendix IX to reflect changes in ownership and name for Envirite Corporation (Petitioner) in Canton, Ohio; Harvey, Illinois and York, Pennsylvania. Today's final rule amendment documents these changes.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at 1–800–424–9346.

For technical information on this action as it applies to the Canton, Ohio and Harvey, Illinois facilities, contact Ms. Judy Kleiman, Waste Management Branch, Waste Pesticides and Toxics Division, U.S. Environmental Protection Agency Region 5, 77 W. Jackson Blvd; Chicago, IL 60604, 312–886–1482. For technical information on this action as it applies to the York, Pennsylvania facility, contact Mr. David M. Friedman, Technical and Program Support Branch, Hazardous Waste Management Division, U.S. Environmental Protection Agency Region 3, 841 Chestnut Street, Philadelphia, PA 19107, 215–566–3395.

SUPPLEMENTARY INFORMATION: In this document EPA is amending Appendix IX to Part 261 to reflect changes in the ownership and name for certain facilities. The petition process under §§260.20 and 260.22 allows facilities to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste specific information provided by the Petitioner, EPA granted a final exclusion to Envirite Corporation for its facilities in Canton, Ohio; Harvey, Illinois and York, Pennsylvania on November 14, 1986 (51 FR 41324). On December 9, 1996, Envirite Corp. notified Regions 3 and 5 that on December 31, 1996, ownership of the Envirite Corporation facility in Canton, Ohio will be transferred to Envirite of Ohio, Inc., ownership of the Envirite Corporation facility in Harvey, Illinois will be transferred to Envirite of Illinois, Inc., and ownership of the Envirite Corporation facility in York, Pennsylvania will be transferred to Envirite of Pennsylvania, Inc.

Envirite Corporation further noted that no changes would be made in the management of EPA Hazardous Wastes F006–F009, F011, F012, F019, K002–K008 and K062 for which EPA granted exclusions pursuant to 40 CFR 260.20 and 260.22, and that all conditions of the exclusions would continue to be met at each of the Petitioner's affected facilities. Today's notice documents the transfer of ownership and name change by updating Appendix IX to incorporate the change in owner's name for each facility affected by such exclusions.

This change to 40 CFR Part 261, Appendix IX shall be effective December 31, 1996. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. As described above, the change in ownership will not affect the facilities' operations. Therefore, a six month delay in the effective date is not necessary in this case. This provides a basis for making these amendments effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 5531(d).

List of Subjects in 40 CFR Part 261

Environmental Protection Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: December 24, 1996.

Valdas Adamkus,
Regional Administrator, Region 5.

For reasons set out in this preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. 40 CFR Part 261, Appendix IX, Tables 1 and 2 are amended by removing the entries for Envirite Corporation and by adding, in alphabetical order, the entries for Envirite of Illinois, Envirite of Ohio and Envirite of Pennsylvania to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Envirite of Illinois (formerly Envirite Corporation).	Harvey, Illinois	See waste description under Envirite of Pennsylvania.
Envirite of Ohio (formerly Envirite Corporation).	Canton, Ohio	See waste description under Envirite of Pennsylvania.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	Dewatered wastewater sludges (EPA Hazardous Waste No .F006) generated from electroplating operations; spent cyanide plating solutions (EPA Hazardous Waste No. F007) generated from electroplating operations; plating bath residues from the bottom of plating baths (EPA Hazardous Waste No. F008) generated from electroplating operations where cyanides are used in the process; spent stripping and cleaning bath solutions (EPA Hazardous Waste No. F009) generated from electroplating operations where cyanides are used in the process; spent cyanide solutions from salt bath pot cleaning (EPA Hazardous Waste No. F011) generated from metal heat treating operations; quenching wastewater treatment sludges (EPA Hazardous Waste No. F012) generated from metal heat treating where cyanides are used in the process; wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned waste. This testing program must meet the following conditions for the exclusions to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm; the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed in #3, above, as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) (5) The data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail semi-annually. The Agency will review this information and if needed will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4, above, are not required until six months from the date of promulgation. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at these facilities applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Envirite of Illinois (formerly Envirite Corporation).	Harvey, Illinois	See waste description under Envirite of Pennsylvania.
Envirite of Ohio (formerly Envirite Corporation).	Canton, Ohio	See waste description under Envirite of Pennsylvania.

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	Spent pickle liquor (EPA Hazardous Waste No. K062) generated from steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); wastewater treatment sludge (EPA Hazardous Waste No. K002) generated from the production of chrome yellow and orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K003) generated from the production of molybdate orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K004) generated from the production of zinc yellow pigments; wastewater treatment sludge (EPA Hazardous Waste K005) generated from the production of chrome green pigments; wastewater treatment sludge (EPA Hazardous Waste No. K006) generated from the production of chrome oxide green pigments (anhydrous and hydrated); wastewater treatment sludge (EPA Hazardous Waste No. K007) generated from the production of iron blue pigments; oven residues (EPA Hazardous Waste No. K008) generated from the production of chrome oxide green pigments after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR 270. (3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1.2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed in #3, above, as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants:) (5) The data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail semi-annually. The Agency will review this information and if needed will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4, above, is not required until six months from the date of promulgation. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at these facilities applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery, including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange.

[FR Doc. 97–436 Filed 1–10–97; 8:45 am]
BILLING CODE 6560–60–P

40 CFR Part 435

[FRL–5673–8]

RIN 2040–AB72

Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting minor errors in the preamble and effluent limitations guidelines and standards for the coastal subcategory of the oil and gas extraction point source category, which appeared in the **Federal Register** on December 16, 1996 (61 FR 66086).

EFFECTIVE DATE: these corrections shall become effective January 15, 1997, except for § 435.45 (NSPS), which becomes effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Charles E. White, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (202) 260–5411, White.Chuck@EPAMail.EPA.Gov.

SUPPLEMENTARY INFORMATION: In a final rule published December 16, 1996 (61 FR 66086), EPA established final effluent limitations guidelines and standards for the control of wastewater pollutants. The final rule contained some minor errors that are discussed briefly below and are corrected by this document. The effective dates and date of issuance for purposes of judicial review are stated in the December 16, 1996 final rule.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issuess as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 435

Environmental protection, Incorporation by reference, Oil and gas extraction, Pollution prevention, Waste treatment and disposal, Water pollution control.

Dated: December 27, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

The following corrections are made in FRL–5648–4, Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, which was published in the **Federal Register** on December 16, 1996 (61 FR 66086).

1. On page 66111, columns two, line 24, the reference to "Table 10 is corrected to read "Table 11".

2. and 3. On page 66111, column two and three, the second Table 10 is correctly designated as Table 11.

4. On page 66111, column three, line 4 of Paragraph B, the reference to "Table 11" is corrected to read "Table 12".

5. On page 66112, column one, the Table 11 is correctly designated as Table 12.

6. On page 66113, the Table is correctly designated as Table 13.

7. On page 66113, column three, line 13, the reference to "Table 12" is corrected to read "Table 13".

§ 435.41 [Amended]

8. § 435.41 on page 66127, column one, line 24, the second paragraph (y) is correctly designated (z).

9. § 435.41 on page 66127, paragraph (z) is correctly designated (aa).

10. § 435.41 on page 66127, paragraph (aa) is correctly designated (bb).

11. § 435.41 on page 66127, paragraph (bb) is correctly designated (cc).

12. § 435.41 on page 66127, paragraph (cc) is correctly designated (dd).

13. § 435.41 on page 66127, paragraph (dd) is correctly designated (ee).

14. § 435.41 on page 66127, paragraph (ee) is correctly designated (ff).

15. and 16. On page 66128, § 435.43 includes a table of BAT effluent limitations. The table is corrected to read as follows:

§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BAT effluent limitations
Produced Water:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Drilling Fluids, Drill Cuttings, and Dewatering Effluent: [1]		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Free Oil [2]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume.[4]
Well Treatment, Workover and Completion Fluids:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.

BAT EFFLUENT LIMITATIONS—Continued

Stream	Pollutant parameter	BAT effluent limitations
Produced Sand		No discharge.
Deck Drainage	Free Oil[3]	No discharge.
Domestic Waste	Foam	No discharge.

[1] BAT limitations for dewatering effluent are applicable prospectively, BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.
[2] As determined by the static sheen test (see appendix 1 to 40 CFR Part 435, subpart A).
[3] As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).
[4] As determined by the toxicity test (see appendix 2 of 40 CFR Part 435, subpart A).

§ 435.44 [Amended]

17. On page 66128, § 435.44 includes a table of BCT effluent limitations. Footnote 4 on that table should be removed.

18., 19., 20., 21., 22., 23., 24. and 25. On page 66129, § 435.45 includes a table of NSPS effluent limitations. The table is corrected to read as follows:

§ 435.45 Standards of performance for new sources (NSPS).

* * * * *

NSPS EFFLUENT LIMITATIONS

Stream	Pollutant parameter	NSPS effluent limitations
Produced Water:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Drilling Fluids, Drill Cuttings, and Dewatering Effluent:[1]		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Free Oil[2]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume.[4]
Well Treatment, Workover and Completion Fluids:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Produced Sand		No discharge.
Deck Drainage	Free Oil[3]	No discharge.
Sanitary Waste		
Sanitary M10	Residual Chlorine	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M9IM	Floating Solids	No discharge.
Domestic Waste	Floating Solids, Garbage and Foam.	No discharge of floating solids or garbage or foam.

[1] NSPS limitations for dewatering effluent are applicable prospectively. NSPS limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.
[2] As determined by the static sheen test (see appendix 1 to 40 CFR Part 435, subpart A).
[3] As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).
[4] As determined by the toxicity test (see appendix 2 of 40 CFR Part 435, subpart A).

§ 435.10 [Corrected]

26. On page 66129, the section under subpart G currently reads § 435.10. The section number is corrected to read "§ 435.70".

[FR Doc. 97–413 Filed 1–10–97; 8:45 am]
BILLING CODE 9560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[MB–105–FC]

Medicaid Program; Redeterminations of Medicaid Eligibility Due to Welfare Reform

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Contract with America Advancement Act of 1996 created changes in Federal law affecting the eligibility of large numbers of Medicaid recipients. These changes include revisions to the definition of disability for children and to the eligibility requirements of non-U.S. citizens and individuals receiving disability cash assistance based on a finding of alcoholism and drug addiction.

This final rule with comment period protects Federal financial participation

(FFP) in State Medicaid expenditures for States with unusual volumes of eligibility redeterminations caused by these recent changes in the law. We are making changes to the regulations to provide for additional time for States to process these redeterminations and provide services pending the redeterminations.

DATES: Effective date. These regulations are effective on January 13, 1997.

Comments. Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 14, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–105–FC, P.O. Box 7517, Baltimore, Maryland 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Office of Information and Regulatory Affairs.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–105–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Bob Tomlinson, (410) 786–4463.

SUPPLEMENTARY INFORMATION:

I. Background

Two recent laws have brought about major changes in the cash assistance programs under title IV–A (Aid to Families with Dependent Children (AFDC)) and title XVI (Supplemental Security Income (SSI)) of the Social Security Act, with substantial implications for Medicaid eligibility. These two laws are: the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193), enacted on August 22, 1996, and the Contract with America Advancement Act of 1996 (Public Law 104–121), enacted on March 29, 1996. These laws have affected the eligibility of individuals receiving cash payments by replacing the Aid to Families with Dependent Children (AFDC) program with a block grant to States for Temporary Assistance for Needy Families (TANF) and eliminated the automatic linkage between cash assistance to families and children and Medicaid. It replaced the automatic link with special Medicaid eligibility rules primarily based on whether the individuals would have received AFDC benefits under the program in effect on July 16, 1996. These laws also affected the eligibility of children who are receiving disability benefits under SSI, individuals receiving SSI disability benefits based on a finding of alcoholism and drug addiction, and non-U.S. citizens.

In most States, individuals who are eligible for AFDC or SSI are (or were) also automatically eligible for Medicaid. These legislative changes will result in a large number of individuals losing cash assistance eligibility and therefore Medicaid. Under existing regulations at 42 CFR 435.916 and 435.1003, States are required to perform a redetermination of Medicaid eligibility in any case in which an individual loses eligibility based on receipt of cash assistance and that termination affects the individual's eligibility for Medicaid.

The legislative changes have created a substantial new workload for States in the administration of their programs. We estimate that States will have to perform redeterminations on approximately 1.6 million individuals, most of which must occur by July 1, 1997. Considering this volume of redeterminations, we believe that our existing regulations do not allow sufficient time for States to comply with the requirements without risking loss of FFP in their administrative expenditures. Our existing regulations at § 435.916 require that States must "redetermine the eligibility of Medicaid recipients, with respect to circumstances that may change, at least every 12 months * * *." The regulations also require the State to promptly redetermine eligibility when the State agency receives information about changes in a recipient's circumstances that may affect the recipient's eligibility; and, at the appropriate time, when the agency has information about anticipated changed in a recipient's circumstances, such as the loss of SSI payments because the individual has been found ineligible for SSI. This requirement also applies when changes in Federal or State law occur affecting the Medicaid eligibility of individuals or groups. Regulations at § 435.1003 provide that, with respect to individuals who had been eligible for SSI, FFP is available until the end of the month if the SSI termination notice is received from SSA by the 10th of the month; and until the end of the following month if the SSA notice is received after the 10th of the month. Both regulations require that States determine or redetermine eligibility promptly.

States are required to redetermine the Medicaid eligibility of any recipient who loses eligibility based on receipt of cash assistance. The redetermination must examine whether or not the individual would be Medicaid eligible on any other available basis under the State's approved plan. For example, a person who loses SSI may still be eligible for Medicaid as medically needy, optional categorically needy, or even based on receipt of cash assistance under title IV–A. This policy derives in part from the court decisions in *Stenson* v. *Blum*, 476 F.Supp., 1331 (S.D.N.Y. 1979) aff'd without opinion, 628 F.2d 1345 (2d Cir. 1980) and *Massachusetts Association of Older Americans* v. *Sharp* (700 F.2d 749 (1st Cir. 1983). In these cases, the courts ruled that before a State may terminate an individual's Medicaid eligibility, it must redetermine the individual's Medicaid eligibility on any other available basis under the State's approved plan.

Section 435.1003 allows States a limited period of time to perform redeterminations of individuals who have been determined ineligible for SSI in order to be eligible for FFP. The time allowed varies between 20 and 45 days based on the date of receipt of information from SSA about the individual's SSI eligibility.

States have expressed concerns regarding the time required to perform these redeterminations, and thus the implications for potential loss of FFP, given the current regulatory constraints and the complexity of Medicaid eligibility determination and redetermination processes. In situations such as those created by these recent laws, in which States have large redetermination workloads and short timeframes for adjusting the eligibility of affected beneficiaries, they believe that more time is needed. States and HCFA are concerned that retaining the existing time constraints would not allow sufficient time to process such a volume adequately, and would result in sharply increased appeals workloads, and the concomitant delays and expense attendant on such appeals. In some cases, it possibly may result in the

inappropriate loss of Medicaid eligibility and potential harm to the health of recipients. We believe that this approach may also shift the burden of finding a basis for eligibility to the recipient, who may be the least knowledgeable in this area.

II. Provisions of the Final Rule With Comment Period

Under current rules, when changes in Federal law cause a significant change in eligibility for Medicaid and a consequent increase in the eligibility determination/redetermination workload, two equally undesirable results may occur. In an effort to comply with the regulations, States may make inadequate or cursory redeterminations that, in some cases, may result in inappropriate termination of Medicaid eligibility. The affected recipients may be denied medical care or become impoverished attempting to pay for care they do receive. In the alternative, the State may take longer than permitted to make the redetermination and thus risk denial of FFP. In either case, the State risks loss of FFP or incurs increased administrative costs coping with appeals or increased application workloads, while the individual is unnecessarily deprived of the means to pay for needed medical care with attendant adverse consequences.

To promote the proper and efficient administration of the Medicaid program, we believe that when there is a change in Federal law that significantly affects Medicaid eligibility, the Secretary should be able to grant States additional time to redetermine eligibility without risk of loss of FFP and to assure that redeterminations are not performed hastily. We believe the Secretary is best able to determine when additional time and FFP should be granted, because the granting of additional time is intended to be used only when Federal law makes significant changes in Medicaid eligibility requiring voluminous redeterminations of eligibility.

Therefore, we have determined that when changes in Federal law cause sharp increases in State eligibility redetermination workloads, the Secretary should have the flexibility to authorize additional time during which FFP would be available. Such flexibility assures that FFP will be available to meet the redetermination workload while assuring that the time and FFP available are directly proportional to the expected volume of redeterminations arising from the particular legislation.

A grant of additional time would be made only in exceptional circumstances, such as the passage of recent Public Laws 104–193 and 104–121. This legislation requires a significant volume of redeterminations, estimated at upwards of 1.6 million, most of which must be performed within the next 9 months. It is for this reason that we are providing in this notice that States may take up to 120 days to process all redeterminations of Medicaid eligibility governed by 42 CFR § 435.1003 through the end of calendar year 1997 unless the Secretary further extends the waiver.

The issue of whether more time should be routinely available to States for completing redeterminations will likely be dealt with in a separate regulation at a future date. We are not addressing that issue in this regulation because we do not believe it is an appropriate subject for an emergency regulation.

We considered providing a fixed but longer period of time than that currently provided in § 435.1003. However, such a fixed period would not address the type of extraordinary circumstance, such as welfare reform, which necessitates the changes we are making in this final rule with comment period.

An alternative approach to providing more time, consistent with the theme that a uniform time for redeterminations be used, would be to provide 60 days to redetermine Medicaid eligibility for anyone losing SSI or cash assistance under title IV–A, or in cases where there is a change in circumstances of the recipient. This alternative would include an escape clause similar to one already in existence in § 435.911, which permits States to take longer to make eligibility determinations than the generally specified time period, when extraordinary circumstances prevent adherence to the time standards. Such an escape clause would permit States to take longer when a change in Federal law necessitates large numbers of redeterminations without risking loss of FFP. We did not adopt this option because of concerns that such an open-ended redetermination period would require substantially more monitoring by the Federal Government and recordkeeping by States to ensure that when a State uses the escape clause, the use is justified and the period of time for which it is used is reasonable.

We are adding a new paragraph (c) to §435.1003 to provide that when a change in Federal law affects the eligibility of large numbers of Medicaid recipients, the Secretary may waive the otherwise applicable FFP requirements and redetermination time limits. This is done to make FFP available for a reasonable period of time, designated by the Secretary, while States redetermine the eligibility of Medicaid recipients. These recipients may otherwise lose Medicaid eligibility, possibly due to loss of SSI eligibility, because of a change in Federal law. In such situations, the States are given a reasonable period of time, designated by the Secretary, to do the redetermination.

III. Waiver of Proposed Rule and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** for a substantive rule to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. In addition we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date.

We are adopting this regulation as a final with comment period without publication of a notice of proposed rule making because of the urgent need to provide the States with FFP in their Medicaid expenditures for additional time for completing the massive number of redeterminations caused by the recent statutory changes. This need is critical because States must begin redetermining eligibility for large numbers of individuals who may lose Medicaid or SSI beginning January 1, 1997. Publication of a proposed rule with a 60-day comment period prior to publication of a final rule would cost valuable time in processing the mandated redeterminations, and would leave large numbers of beneficiaries without Medicaid or SSI beginning January 1, 1997. Thus, we believe that it is contrary to the public interest to delay implementation of the statutory provisions until the process of publishing both proposed and final rules can be completed. Therefore, we find good cause to waive proposed rulemaking and to issue these regulations as final.

Also, because States must begin such redeterminations as of January 1, 1997, we are not making the effective date of the regulation the usual 30 days after publication. Instead, we will make the regulation effective on the date of publication. For the reasons discussed above, we find good cause to waive the usual 30-day delay so that the provisions may take effect upon publication of this final rule with comment period.

Although we are publishing this as a final rule, we are providing a 60-day period for public comment. Because of the large number of items of

correspondence we normally receive concerning regulations, we are not able to acknowledge or respond to the comments individually. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule.

IV. Regulatory Impact Statement

For final rules with comment period, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, individuals and States are not considered to be small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We estimate that the costs of performing the redeterminations arising from recent Federal laws will be substantial. We expect that nearly 1,600,000 individuals will have their eligibility redetermined. Of this number, most are SSI-eligible individuals, and of these, 500,000 involve redetermination of disability. We estimate that the cost to the Medicaid program, emanating from Public Laws 104–193 and 104–121, of allowing a longer period of time to make eligibility redeterminations on those individuals who may lose benefits to be approximately $50 million (Federal share) in FY 1998. This is estimated on the basis of the redeterminations occurring within one year of implementation of this rule and requiring an approximate extra 75 days to complete.

Because these final regulations affect only States and individuals, which are not defined as small entities, we have determined, and we certify, that this rule will not have a significant economic impact under the threshold criteria of the RFA. Further, we certify, for the same reasons, that this final rule does not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

This rule does not impose any new information collection or recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) The existing collection requirements under § 435.1003 are currently approved under OMB approval number 0938–0247 through May 31, 1997.

Redetermination of eligibility is currently required for all individuals whose eligibility is affected either by change in law or change in individual circumstances. The passage of Public Laws 104–193 and 104–121 requires that SSA redetermine the SSI eligibility of large numbers of recipients. Once SSA issues redetermination notices to the affected individuals, States must redetermine Medicaid eligibility of these individuals. Regulations at § 435.1003 require that such redeterminations be performed promptly. These new rules will not change the redetermination requirement and the associated paperwork needed to perform a redetermination. However, because of the change in Federal law, there will be a substantial increase in the volume of redeterminations States will have to make. These regulations are designed to relieve the States of the pressures and costs of these redeterminations by providing both more time and FFP to conduct the redeterminations and to provide FFP in Medicaid expenditures while the redeterminations are pending.

We estimate that each redetermination will involve approximately 18 hours.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.1003, the title is revised, and a new paragraph (c) is added to read as follows:

§ 435.1003 FFP for redeterminations.

* * * * *

(c) When a change in Federal law affects the eligibility of substantial numbers of Medicaid recipients, the Secretary may waive the otherwise applicable FFP requirements and redetermination time limits of this section, in order to provide a reasonable time to complete such redeterminations. The Secretary will designate an additional amount of time beyond that allowed under paragraphs (a) and (b) of this section, within which FFP will be available, to perform large numbers of redeterminations arising from a change in Federal law.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 10, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 20, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 97–673 Filed 1–10–97; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7655]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of §64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Michigan: Burnside, township of, Lapeer County	260960	November 6, 1996	
Texas: Onalaska, city of, Polk County	480974	.....do	November 26, 1976.
Kentucky: McCreary County, unincorporated areas	210343	November 19, 1996	November 25, 1977.
Virginia: Charlotte County, unincorporated areas	510333	November 26, 1996	June 7, 1978.
New Eligibles—Regular Program			
Puerto Rico: Bayamón,[1] Municipality of, Bayamón County	720100	November 19, 1996	September 20, 1996.
Texas: Anna, city of, Collin County	480132	November 29, 1996	January 19, 1996.
Reinstatements			
New Jersey: Fairview, borough of, Bergen County	340043	July 16, 1975, Emerg.; August 2, 1982, Reg.; September 20, 1995, Susp.; November 15, 1996, Rein.	September 20, 1995.
New York: Lake George, village of, Warren County	360877	April 23, 1975, Emerg.; June 22, 1984, Reg.; September 29, 1996, Susp.; November 19, 1996, Rein.	September 29, 1996.
Pennsylvania:			
Nicholson, township of, Fayette County	422420	July 29, 1975, Emerg.; September 4, 1991, Reg.; September 6, 1995, Susp.; November 19, 1996, Rein.	September 6, 1995.
East Pikeland, township of, Chester County	421483	September 6, 1974, Emerg.; March 16, 1981, Reg.; March 16, 1981, Susp.; April 27, 1981, Rein; November 20, 1996, Susp.; November 29, 1996, Rein.	November 20, 1996.

State/location	Community No.	Effective date of eligibility	Current effective map date
West Bradford, township of, Chester County	421495	February 10, 1975, Emerg.; July 16, 1981, Reg.; November 20, 1996, Susp.; November 29, 1996, Rein.	Do.
Regular Program Conversions			
Region I			
Massachusetts: Nantucket, town of, Nantucket County	250230	November 6, 1996, Suspension Withdrawn	November 6, 1996.
Region III			
Pennsylvania:			
Auburn, borough of, Schuylkill County	420766	.....do	Do.
Schuylkill Haven, borough of, Schuylkill County	420787	.....do	Do.
South Manheim, township of, Schuylkill County	422022	.....do	Do.
Region V			
Michigan: Muir, village of, Ionia County	260916	.....do	Do.
Wisconsin: New Berlin, City of, Waukesha County	550487	.....do	Do.
Region VI			
Texas:			
Baytown, city of, Harris County	485456	.....do	Do.
Bellaire, city of, Harris County	480289	.....do	Do.
Chelford City M.U.D., Harris County	481568	.....do	Do.
Deer Park, city of, Harris County	480291	.....do	Do.
El Lago, city of, Harris County	485466	.....do	Do.
Fort Bend County M.U.D. No. 2, Harris County	481272	.....do	Do.
Galena Park, city of, Harris County	480293	.....do	Do.
Harris County, unincorporated areas	480287	.....do	Do.
Hilshire Village, city of, Harris County	480295	.....do	Do.
Houston, city of, Harris County	480296	.....do	Do.
Hunters Creek Village, city of, Harris County	480298	.....do	Do.
Jacinto City, city of, Harris County	480299	.....do	Do.
Jersey Village, city of, Harris County	480300	.....do	Do.
La Porte, city of, Harris County	485487	.....do	Do.
Mission Bend M.U.D. No. 1, Harris County	481578	.....do	Do.
Missouri City, city of, Harris County	480304	.....do	Do.
Morgans Point, city of, Harris County	480305	.....do	Do.
Nassau Bay, city of, Harris County	485491	.....do	Do.
Pasadena, city of, Harris County	480307	.....do	Do.
Pearland, city of, Harris County	480077	.....do	Do.
Piney Point Village, city of, Harris County	480308	.....do	Do.
Seabrook, city of, Harris County	485507	.....do	Do.
Shoreacres, city of, Harris County	485510	.....do	Do.
South Houston, city of, Harris County	480311	.....do	Do.
Southside Place, city of, Harris County	480312	.....do	Do.
Spring Valley, city of, Harris County	480313	.....do	Do.
Tomball, city of, Harris County	480315	.....do	Do.
Webster, city of, Harris County	485516	.....do	Do.
Willow Fork Drainage District, Harris County	481603	.....do	Do.
Region X			
Washington: Thurston County, unincorporated areas	530188	.....do	Do.
Region III			
Pennsylvania:			
Avondale, borough of, Chester County	421473	November 20, 1996, Suspension Withdrawn.	November 20, 1996.
Birmingham, township of, Chester County	421474	.....do	Do.
Caln, township of, Chester County	422247	.....do	Do.
Charlestown, township of, Chester County	421475	.....do	Do.
Coatesville, city of, Chester County	420274	.....do	Do.
Downingtown, borough of, Chester County	420275	.....do	Do.
East Bradford, township of, Chester County	420276	.....do	Do.
East Brandywine, township of, Chester County	421476	.....do	Do.
East Caln, township of, Chester County	421477	.....do	Do.
East Coventry, township of, Chester County	421478	.....do	Do.
East Fallowfield, township of, Chester County	421479	.....do	Do.
East Goshen, township of, Chester County	420277	.....do	Do.
East Marlborough, township of, Chester County	421480	.....do	Do.
East Nantmeal, township of, Chester County	421481	.....do	Do.
East Nottingham, township of, Chester County	421482	.....do	Do.
East Vincent, township of, Chester County	420278	.....do	Do.
East Whiteland, township of, Chester County	420279	.....do	Do.
Easttown, township of, Chester County	422600	.....do	Do.
Franklin, township of, Chester County	422288	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Kennett, township of, Chester County	422586	.....do	Do.
Kennett Square, borough of, Chester County	420280	.....do	Do.
London Britain, township of, Chester County	422273	.....do	Do.
Londonderry, township of, Chester County	421484	.....do	Do.
Lower Oxford, township of, Chester County	421485	.....do	Do.
New London, township of, Chester County	422276	.....do	Do.
North Coventry, township of, Chester County	420283	.....do	Do.
Oxford, borough of, Chester County	420284	.....do	Do.
Pennsbury, township of, Chester County	420285	.....do	Do.
Phoenixville, borough of, Chester County	420287	.....do	Do.
Pocopson, township of, Chester County	420286	.....do	Do.
Sadsbury, township of, Chester County	421488	.....do	Do.
Schuylkill, township of, Chester County	421489	.....do	Do.
South Coatesville, borough, Chester County	420288	.....do	Do.
South Coventry, township of, Chester County	421490	.....do	Do.
Thornbury, township of, Chester County	420290	.....do	Do.
Upper Oxford, township of, Chester County	422278	.....do	Do.
Upper Uwchlan, township of, Chester County	421491	.....do	Do.
Uwchlan, township of, Chester County	421492	.....do	Do.
Valley, township of, Chester County	421206	.....do	Do.
Wallace, township of, Chester County	421493	.....do	Do.
West Caln, township of, Chester County	421497	.....do	Do.
West Chester, borough of, Chester County	420292	.....do	Do.
West Fallowfield, township of, Chester County	422602	.....do	Do.
West Goshen, township of, Chester County	420293	.....do	Do.
West Nantmeal, township of, Chester County	421498	.....do	Do.
West Marlborough, township of, Chester County	422279	.....do	Do.
West Nottingham, township of, Chester County	422280	.....do	Do.
West Whiteland, township of, Chester County	420295	.....do	Do.
Westtown, township of, Chester County	420294	.....do	Do.
Willistown, township of, Chester County	422282	.....do	Do.
Region V			
Illinois:			
Aroma Park, village of, Kankakee County	170740	.....do	Do.
Momence, city of, Kankakee County	170340	.....do	Do.
Michigan: Bruce, township of, Macomb County	260884	.....do	Do.

[1] The Municipality of Bayamón is a new community (as a separate entity) that formerly participated under the Commonwealth of Puerto Rico's application. The Municipality of Bayamón has adopted by reference the Commonwealth of Puerto Rico's FIRM (latest FIRMs are dated February 18, 1992 and September 20, 1996) for floodplain management and insurance purposes. (Panels No. 0047D, 048B, 0049, 0053C, 0108C, 0110C)
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: January 6, 1997.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 97–741 Filed 1–10–97; 8:45 am]

BILLING CODE 6718–05–P

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44 CFR Part 64

[Docket No. FEMA–7656]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is

published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Executive Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of §64.6 are amended as follows:

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Clinton, town of, Middlesex County.	090061	Mar. 2, 1973, Emerg; Sept. 30, 1980, Reg; Jan. 17, 1997, Susp.	Jan. 17, 1997	Jan. 17, 1997.
Vermont: Weston, town of, Windsor County	500157	July 25, 1974, Emerg; Apr. 1, 1992, Reg; Jan. 17, 1997, Susp.	.....do	Do.
Region II				
New York: Owego, town of, Tioga County	360839	Dec. 29, 1972, Emerg; June 15, 1977, Reg; Jan. 17, 1997, Susp.	.....do	Do
Region III				
Pennsylvania: Flemington, borough of, Clinton County.	420326	Mar. 9, 1973, Emerg; Nov. 2, 1977, Reg; Jan. 17, 1997, Susp.	.....do	Do
Region IV				
Tennessee:				
Sevierville, city of, Sevier County	475444	Oct. 23, 1970, Emerg; Mar. 27, 1971, Reg; Jan. 17, 1997, Susp.	.....do	Do
Shelbyville, city of, Bedford County	470008	Feb. 8, 1974, Emerg; Feb. 17, 1988, Reg; Jan. 17, 1997, Susp.	.....do	Do
Region V				
Michigan: Torch Lake, township of, Antrim County.	260414	Apr. 1, 1975, Emerg; June 16, 1992, Reg; Jan. 17, 1997, Susp.	.....do	Do

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VII				
Missouri: Greene County, unincorporated areas.	290782	Apr. 15, 1975, Emerg; June 15, 1983, Reg; Jan. 17, 1997, Susp.	.....do	Do

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: January 6, 1997.

Craig S. Wingo,

Deputy Associate Director Mitigation Directorate.

[FR Doc. 97–742 Filed 1–10–97; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 96–17; Notice 02]

RIN 2127–AG34

Final Listing of High-Theft Lines for 1997 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final listing of high-theft lines for the 1997 Model Year (MY), that was published on April 8, 1996 (61 FR 15390) by incorporating information that manufacturers brought to the agency's attention subsequent to the final listing. In the amended list in this document, three footnote errors are corrected, errors in the names of three Honda lines, the Acura CLX, the Acura Legend, and the Acura Vigor are corrected; and two Chrysler lines, the Dodge Ramcharger (MPV) and the Dodge Ram Wagon/Van B–150, three General Motors' lines, the Buick Century, the GMC Sierra 1500 Pickup and the C–1500 Pickup are removed; a Chrysler line, the Jeep Grand Cherokee (MPV), a Ford line, the Lincoln Town Car, a General Motors' line, the Geo Prizm, and a Mercedes-Benz model, the 560 SL are added to Appendix A; a Honda line, the Acura TL is removed from Appendix A and added to Appendix A–I, the Acura SLX is added to Appendix A–I; a General Motors' line, the Buick Regal is removed from Appendix A–I and the Buick Regal/Century line is added; and, the Buick Park Avenue is removed from Appendix A–II and added to Appendix A–I.

EFFECTIVE DATE: The amendment made by this final rule is effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Motor Vehicle Theft Group, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA is correcting errors in the final list of high-theft vehicle lines for Model Year (MY) 1997, that appeared in the **Federal Register** on April 8, 1996 (61 FR 15390). This correction document incorporates updated information brought to NHTSA's attention subsequent to the publication of the final list for MY 1997. The following are corrections to Appendix A of 49 CFR Part 541, the Theft Prevention Standard:

The second footnote "1" erroneously listed in Appendix A is correctly redesignated as footnote "2". Additionally, the Suzuki "X–90" erroneously listed in Appendix A with a footnote reference of "1" is corrected to indicate a footnote reference of "2", and the Toyota "MR2" erroneously listed with a footnote reference of "2" is correctly redesignated by removing the footnote reference.

The Honda lines, erroneously listed as "Acura CLX", Acura Legend", and "Acura Vigor" have been identified respectively, "Acura CL", "Acura RL" and "Acura TL". The General Motors' line, erroneously listed as "Buick Regal" has been identified respectively, "Buick Regal/Century".

Comments were received from American Honda Motor Co., Inc., requesting that the "Acura TL" line which was erroneously listed in Appendix A, be deleted from the listing because it has received a full exemption from the parts-marking requirements based on the installation of a qualified antitheft device as standard equipment on the entire line. The Honda "Acura TL" which replaced the "Acura Vigor" will be deleted from Appendix A.

Comments were received from the Chrysler Corporation, Automobiles Peugeot, and Jaguar Cars, each requesting that one vehicle line be deleted from the list because it is no longer being produced. Those lines are the Chrysler "Dodge Ramcharger (MPV)", the "Peugeot 405", and the "Jaguar XJ40". The Chrysler "Dodge Ramcharger (MPV)" will be deleted from Appendix A, since it was not covered prior to MY 1997 and has not been manufactured for sale in the United States since MY 1995. Additionally, the General Motors' "Buick Century" is removed from Appendix A because it was not covered by the Theft Prevention Standard prior to MY 1997 and will not be produced after the 1996 model year.

The agency understands Peugeot's and Jaguar's reasons for requesting deletion of the "405" and "XJ40" from the list of vehicles subject to the parts-marking requirements of the Theft Prevention Standard. However, NHTSA cannot delete the "Peugeot 405" from the list because it has been covered by the Theft Prevention Standard since MY 1989, and the "Jaguar XJ40" has been covered since the 1987 model year. Pursuant to 49 U.S.C. § 33104(d), a vehicle line on the list of lines subject to parts marking cannot be removed from that list unless the manufacturer has obtained an exemption from the parts-marking requirement based on the installation of a qualified antitheft device as standard equipment on the entire line.

The Chrysler "Dodge Ram Wagon/Van B–150", the General Motors' "GMC Sierra 1500 Pickup" and the "Chevrolet C–1500 Pickup" are removed from Appendix A, as they are rated at more than 6,000 pounds gross vehicle weight.

The "Jeep Grand Cherokee (MPV)" is added to the Chrysler listing in Appendix A; and Ford's line, the "Lincoln Town Car", the General Motors' line, the "Geo Prizm", and the Mercedes-Benz model, "560 SL" were inadvertently left out in the final list for

MY 1997, and are added in this document.

In addition, the Honda line, the "Acura SLX", which is certified by Isuzu, is added to the Appendix A–I listing, the General Motors" line, the "Buick Park Avenue" is removed from the Appendix A–II listing and added to the listing in Appendix A–I because each of these lines have been granted full exemptions from the parts-marking requirements beginning with the 1997 model year. Additionally, the "Buick Regal" is removed from the Appendix A-I listing and the "Buick Regal/Century" line is added because the parts-marking exemption granted for the "Buick Regal" has been extended by the agency to include the new "Buick Century" model added to the "Buick Regal" line beginning with the 1997 model year.

Since the corrections made by this document only inform the public of previous agency actions, and do not impose any additional obligations on any party, NHTSA finds for good cause that the revisions made by this notice should be effective as soon as it is published in the **Federal Register**.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

Appendix A—[Amended]

2. Appendix A is amended as follows:

a. In the entry for "Chrysler", "Dodge Ramcharger (MPV) [2]" and "Dodge Ram Wagon/Van B–150 [2]" are removed; "Jeep Grand Cherokee (MPV) [2]" is added after "Jeep Cherokee (MPV) [2]".

b. In the entry for "Ford", "Lincoln Town Car" is added after "Lincoln Mark".

c. In the entry for "General Motors", "Buick Century [2]", "GMC Sierra 1500 Pickup [2]", and "Chevrolet C–1500 Pickup [2]" is removed; "Geo Prizm" is added after "Geo Tracker (MPV) [2]".

d. In the entry for "Honda", "TL" is removed.

e. In the entry for "Mercedes-Benz" "560 SL" is added after "560 SEC".

f. In the entry for "Suzuki", "X–90 [1]" is revised to read "Suzuki" "X–90 [2]".

g. In the entry for "Toyota", "MR [2]" is revised to read "Toyota" "MR2".

h. In the table in Appendix A, the second footnote "1" at the end of the table is correctly redesignated as footnote "2".

Appendix A–I—[Amended]

3. Appendix A–I is amended as follows:

a. In the entry for "General Motors", "Buick Park Avenue [2]" is added before "Buick Regal".

b. In the entry for "General Motors", "Buick Regal" is removed.

c. In the entry for "General Motors", "Buick Regal/Century [2]" is added before "Buick Riviera".

d. In the entry for "Honda", "Acura CLX [2]" is revised to read "Acura CL [2]".

e. In the entry for "Honda", "Acura RL" is added after "Acura NS–X".

f. In the entry for "Honda", "Acura TL" is added before "Acura Vigor".

g. In the entry for "Honda", "Acura SLX" is added after newly added "Acura RL".

Appendix A–II—[Amended]

4. Appendix A–II is amended as follows:

In the entry for "General Motors", "Buick Park Avenue" is removed.

Issued on: December 18, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–757 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD47

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Juglans jamaicensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines *Juglans jamaicensis* (nogal or West Indian walnut) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). Nogal is known from the islands of Hispaniola, Cuba, and Puerto Rico.

In Puerto Rico, this large tree is known from only 14 individuals at one locality in Adjuntas. The area is located near the Monte Guilarte Commonwealth Forest but is in private ownership and threatened by land-clearing for agriculture and rural development. This final rule provides *Juglans jamaicensis* with the Federal protection and recovery provisions afforded by the Act for listed species.

EFFECTIVE DATE: February 12, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Botanist, at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Juglans jamaicensis (nogal or West Indian walnut) was first described as *J. jamaicensis* by DeCandolle from a description and illustration of leaves, staminate catkin and fruit by Descourtilz which had been published under the name of *Juglans fraxinifolia*. DeCandolle mistakenly believed that the tree Descourtilz had illustrated originated in Jamaica, when in reality no walnut tree has ever been located in Jamaica. Synonyms which have been applied to the species include *Juglans fraxinifolia* Descourtilz, J. *cinerea* of Bello, *J. insularis* Griseb., *J. portoricensis* Dode, and *J. domingensis* (Proctor 1992).

Juglans jamaicensis is known from Cuba, Hispaniola and Puerto Rico but little information is currently available on its status in the first two countries (Liogier and Martorell 1982). It has been described by the Center for Plant Conservation (1992) as "not common" and by Proctor (1992) as becoming increasingly rare on these two islands.

Nogal was first collected from Puerto Rico by Augustin Stahl around 1865. This collection was from an area between Peñuelas and Adjuntas at an elevation of approximately 700 meters (2,297 feet). The species was subsequently collected by the German botanist Paul Sintenis in 1886 from somewhere near Adjuntas (Saltillo) and again in 1887 near Utuado (Santa Rosa). An additional collection was made by Bartolomé Barcela in 1915 from an area near Adjuntas (Little *et al.* 1974, Proctor 1992). Little *et al.* (1974) stated that the species might possibly be extinct.

It was not reported again until 1974 when it was rediscovered by Roy O. Woodbury from the upper north slopes (an elevation of 1070 meters (3,510 feet)) of Cerro La Silla de Calderón, an area located near the southwest corner of the municipality of Adjuntas. A survey of these trees was made in 1992 by Salvador Alemañy of the U.S. Forest Service. A total of 14 individuals were documented, the largest of which was more than 20 meters (66 feet) in height. The species has been reported from montane forests at elevations between

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700 and 1,000 meters (2,297 and 3,281 feet) (Proctor 1992).

Juglans jamaicensis is a large tree which may reach up to 25 meters (82 feet) in height. Twigs, buds, and leaf-axes have minute rusty hairs. The leaves are alternate and compound and consist of from 16 to 20 mostly paired, nearly stalkless leaflets. Leaflets are from 5.5 to 9 centimeters (5.5 to 9 inches) long and 2.2 to 4 centimeters (0.9 to 1.6 inches) wide, thin and nearly hairless except on the veins beneath. Leaflets are lanceolate, finely toothed, long-pointed and rounded, and unequal at the base. Nogal is monoecious; male and female flowers are borne in different clusters or catkins on the same tree. Staminate or male flowers are numerous and in drooping catkins, 8.8 to 11 centimeters (3.5 to 4.3 inches) long, borne on the twigs of the previous year. Pistillate or female flowers are several along an axis 4.4 to 8.8 centimeters (1.7 to 3.5 inches) long, borne at the ends of the shoots of the season. Individual male flowers are composed of a 6-lobed calyx and many stamens. Female flowers are about 0.5 centimeters (0.2 inches) long, composed of a 4-toothed scale opening at one side and 4 sepals. The fruit, a drupe, is a walnut which is composed of a blackish husk, a brown rough-ridged hard shell from 1.6 to 2.75 centimeters (0.6 to 1.1 inches) wide and one large, oily, edible seed (Little *et al.* 1974, Proctor 1992).

Juglans jamaicensis may have been more widespread in Puerto Rico in the past, but much of the forested areas in the central mountain region were cut for the planting of coffee. The species, possibly never a common one, may also have been cut for the use of its valuable wood (Little *et al.* 1974). Today it is known from only one locality on privately-owned land where it is threatened by rural development and agricultural activity.

Previous Federal Action

Juglans jamaicensis was included among the plants being considered as a Candidate for listing by the Service, as published in the **Federal Register** notice of review dated February 21, 1990 (55 FR 6184) and September 31, 1993 (58 FR 51144). *Juglans jamaicensis* is considered a "critical" plant species by the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources. The Center for Plant Conservation (1992) has assigned the species a Priority Status of A (a species which could possibly go extinct in the wild in the next 5 years). A proposed rule to list *Juglans jamaicensis*, published on September 29, 1995 (60 FR 50173), constituted the final 1-year finding for the species in accordance with section 4(b)(3)(B)(ii) of the Act.

The processing of this final rule conforms with the Service final listing priority guidance publishe in the **Federal Register** on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through the passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time, there are no pending Tier 1 actions. In the development of this final rule, the Service has conducted an internal review of all available information. Based on this review, the Service has determined that there is no new information that would substantatively affect this listing decision and that additional public comment is not warranted.

Summary of Comments and Recommendations

In the September 29, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the San Juan Star on October 27, 1995, and in El Nuevo Día on October 25, 1995. Two letters of comment were received, neither of which opposed the listing. The Puerto Rico Planning Board did not have comments on the listing but stated that they would utilize the information in the evaluation of projects which might affect the species. The U.S. Forest Service, Institute of Tropical Forestry (Institute), supported the listing of nogal, stating that the trees had not reproduced successfully recently but had, in the past, served as a source for seed. This seed source had been used to propagate seedlings in nurseries of the Puerto Rico Department of Natural and Environmental Resources, the Puerto Rico Conservation Trust, and the Institute. Concern was expressed that this successful propagation effort not be jeopardized. A public hearing was neither requested nor held.

The Service also solicited the expert opinions of four appropriate and independent specialists regarding the pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and biological and ecological information for this species. One response was received and those comments on biology and propagation have been incorporated into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Juglans jamaicensis* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Juglans jamaicensis* (nogal or West Indian walnut) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Juglans jamaicensis is known only from Cuba, Hispaniola, and Puerto Rico. Available information indicates that it is rare on the first two islands (CPC 1992, Proctor 1992). In Puerto Rico, it is known from only one population consisting of 14 individuals on privately-owned land. Surrounding areas are currently planted in coffee. The expansion of the coffee plantation threatens these trees, particulary because the tendency to plant "sun coffee" is increasing and in such plantations all shade trees are eliminated. Located in a rural area, development for housing may threaten the species as well.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The wood of the species is reported to be good quality and highly prized, and indeed, it is reported to have been cut in the past for such purposes (Little *et al.* 1974).

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species.

However, *Juglans jamaicensis* is not yet on the Commonwealth list. Federal listing would provide immediate protection under the Act, and by virtue of an existing section 6 Cooperative Agreement with the Commonwealth, listing will also assure the addition of this species to the Commonwealth list and enhance possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Catastrophic natural events, such as the passing of Hurricane Hugo in 1989, may dramatically affect forest species composition and structure, felling large trees and creating numerous canopy gaps.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Juglans jamaicensis* as endangered. The species is known from only one locality in Puerto Rico. Deforestation for rural and agricultural development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Juglans jamaicensis*. Service regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The number of individuals of *Juglans jamaicensis* is sufficiently small and vandalism and collection could seriously affect the survival of the species. The wood of the species has been described as "highly prized" and cutting for timber has been identified as a factor affecting the species in the past. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. The precarious status of *Juglans jamaicensis* necessitates identical thresholds for determining adverse modification of critical habitat and jeopardizing the continued existence of the species. Therefore, no additional protection from designating critical habitat would occur for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for this species, as discussed above. Federal involvement may be through the use of Federal funding for rural housing and development (for example, the Rural Economic and Community Development or Housing and Urban Development) or Federal activities or authorizations (for example, U.S. Forest Service for forest management practices on private lands).

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is

anticipated that few trade permits for this species will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The only known population of *Juglans jamaicensis* is located on privately-owned land. Since there is no Federal ownership, and the species is not currently in trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of Commonwealth law, or in knowing violation of Commonwealth criminal trespass law. Section 15.01(b) of the Commonwealth "Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico" states: "It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico." The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services (TE), 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7313).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Little, E.L. Jr, R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, Volume II. Agriculture Handbook No. 449. U.S. Department of Agriculture, Forest Service. Washington, D.C. 1024 pp.

Liogier, H.L. and L.F. Martorell. 1982. Flora of Puerto Rico and Adjacent Islands: a systematic synopsis. Editorial de la Universidad de Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Proctor, G. R. 1992. Status report on *Juglans jamaicensis* C. DC. Unpublished report submitted to the U.S. Fish and Wildlife Service. 7 pp.

Author: The primary author of this final rule is Ms. Susan Silander, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (787/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Juglans jamaicensis	Nogal or West Indian walnut.	U.S.A. (PR), Cuba, Hispaniola.	Juglandaceae	E	603	NA	NA
•	•	•	•	•	•	•	•

Dated: November 26, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–770 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 8
Monday, January 13, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 338

RIN 3206–AG21

Summer Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing to eliminate regulations that refer to "summer employment" as a separate program. The proposed change is part of OPM efforts to eliminate unnecessary appointing authorities. Agencies would use temporary limited appointments or student temporary appointments, as appropriate, to appoint individuals during the "summer months."

DATES: Comments must be received on or before February 12, 1997.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Karen Jacobs on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: As recommended by the National Performance Review (NPR), OPM abolished the Federal Personnel Manual which contained detailed hiring guidance for the summer employment program. The NPR also recommended OPM reduce the number of Federal hiring authorities and decentralize many personnel decisions. As a result, OPM revised the regulations on temporary employment and streamlined the student employment programs to give more flexibility in the hiring process. Under the proposed elimination of the summer employment program, agencies would fill time-limited appointments that occur during the summer months by using either the temporary appointing authority in parts 316 and 333 or the student temporary appointment in parts 213 and 302, as appropriate. The proposal would remove the restrictions on the time period during which "summer" appointments can be made.

Individuals appointed, including those appointed during the summer months, under § 316.402 of this chapter may be reappointed under the conditions set forth in § 316.402(b)(3)—noncompetitive temporary limited appointments and § 316.401(d)—exceptions to the general time limits on making temporary appointments. However, students appointed under the student temporary employment program (5 CFR 213.3202) are not subject to the time limits in parts 316 or 213, or the reappointment procedures in part 316. Agencies may reappoint these students at any time, as appropriate.

Eliminating the separate summer program would remove the specific restrictions on the employment of sons and daughters. However, rules prohibiting nepotism in part 310 continue in full force.

Also, the proposal would require applicants to pass any written test required by the competitive service qualification standards. However, students hired under excepted appointments would not be required to pass a written examination.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

List of Subjects in 5 CFR Parts 213 and 338

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 213 and 338 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; and 38 U.S.C. 4301 *et seq.*

§ 213.3101 [Amended]

2. In § 213.3101, paragraphs (b) [Reserved] through (f) are removed and the paragraph designation in paragraph (a) is removed.

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

3. The authority citation for part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218.

Subpart B—[Reserved]

4. In part 338, subpart B consisting of § 338.202, is removed and reserved.

[FR Doc. 97–699 Filed 1–10–97; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. This proposal would require repetitive checks and testing of certain equipment that regulates the flow of fuel from wing tank 2A to the number 2 engine. This proposal also would require replacement of this equipment with equipment that has been designed to prevent incorrect installation; this replacement would be terminating action for the repetitive equipment checks and tests. This proposal is prompted by reports indicating that the incorrect installation of this equipment has caused the flight crew to shut off,

rather than open, certain valves that regulate the flow of fuel from between this tank and engine. The actions specified by the proposed AD are intended to detect and rectify incorrect installations, which could result in the flight crew inadvertently shutting off the flow of fuel to the engine, and consequent engine failure during flight.

DATES: Comments must be received by February 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–101–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l' Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus A300 series airplanes. The DGAC advises that it has received reports indicating that the number 2 engine on some airplanes had failed because fuel from wing tank 2A was not reaching this engine. Subsequent investigation detected the presence of a loose control knob for the isolation valve switch that controls the flow of fuel between this wing tank and engine, and it was determined that the knob had been incorrectly installed. Consequently, when the control knob was turned to the "open" position, it was, in fact, closed, thereby cutting off the fuel supply to the engine. This condition, if not corrected, could result in the flight crew inadvertently shutting off the supply of fuel to this engine, and consequent failure of this engine during flight.

Explanation of Relevant Service Information

Airbus has issued A300 All Operator Telex (AOT) 28–03, dated June 6, 1991, which describes procedures for conducting a physical check of the control knobs for the isolation valve and crossfeed valve control unit 5QB, which is located on fuel panel 52 VU in the cockpit; and procedures for testing this control unit to determine if the control knob settings are correct.

The DGAC classified this AOT as mandatory and issued airworthiness directive (C/N) 91–173–126(B) R1, dated February 19, 1992, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A300–28–055, Revision 3, dated December 19, 1991, as amended by Service Bulletin Change Notice 3.A., dated March 16, 1992. This service bulletin describes procedures for replacing the isolation valve and crossfeed valve control unit 5QB with a modified control unit. This replacement is intended to make it impossible to incorrectly install this control unit.

Airbus also has issued Service Bulletin A300–28–0061, Revision 1, dated March 14, 1992, which describes procedures for replacing the control knobs on the isolation valve and crossfeed valve control unit 5QB with new knobs. The replacement knobs are designed so that they can only be installed the correct way.

Note: The Airbus service bulletins reference the following service bulletins, issued by L'équipment et La Construction Electrique (ECE), as additional sources of procedural service information for performing these actions:

ECE Service Bulletin Number	Date
28–191	July 26, 1982.
28–195	August 31, 1983.
28–196	August 31, 1983.
28–228	November 1, 1991.

The DGAC classified the Airbus service bulletins as optional; accomplishment of the procedures described in these service bulletins, however, would terminate the repetitive equipment checks and tests, required by French CN 91–173–126(B) R1.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive checks of the control knobs on isolation valve and crossfeed valve control unit 5QB; and repetitive tests of this control unit. As terminating action for these repetitive checks and tests, operators would be required to replace these knobs and this control unit with knobs and a control unit that have been modified. These modified items prevent the knobs and control unit from being

installed incorrectly. The actions would be required to be accomplished in accordance with the service documents described previously.

Differences Between the Proposed Rule and the French CN

Operators should note that, while the proposed AD would require the replacement of the control knobs on the isolation valve and crossfeed valve control unit with modified units, the French DGAC, as iterated in its CN 91–173–126(B) R1, has provided for this replacement only as an optional action. Both the FAA and the DGAC agree, however, that accomplishment of the replacement would terminate the requirements for repetitive checks and tests of this equipment.

In proposing to mandate these replacement actions, the FAA considers that, unless the equipment is replaced with the modified equipment, the possibility of incorrect installation will always exist whenever normal maintenance is performed. The FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive checks or tests. Long-term checks or tests may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive checks and tests, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed replacement requirement is in consonance with these considerations.

Cost Impact

The FAA estimates that 13 Airbus Model A300 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish each proposed check and test cycle, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $780, or $60 per airplane, per check/test cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed replacement of the control knobs and control unit, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,043 per airplane. Based on these figures, the cost impact of the proposed replacement action on U.S. operators is estimated to be $14,339, or $1,103 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–101–AD.

Applicability: Model A300 series airplanes, as listed in the Airbus service documents referenced in paragraphs (a), (b), and (c) of this AD; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from inadvertently shutting off the flow of fuel from wing tank 2A to the number 2 engine, due to the incorrect installation of the isolation valve and crossfeed valve control unit 5QB, and the consequent failure of the engine, accomplish the following:

(a) *For airplanes listed in Airbus A300 All Operator Telex (AOT) 28–03, dated June 6, 1991:* Within 30 days after the effective date of this AD, perform a check and functional test of the control knob configurations for the isolation valve and crossfeed valve control unit 5QB, in accordance with Airbus AOT 28–03, dated June 6, 1991.

(1) Repeat the check and test thereafter at intervals not to exceed 500 hours time-in-service, and prior to further flight after any maintenance action is performed on the control unit.

(2) Any unit that does not successfully pass the check/functional test, must be repaired or otherwise rectified prior to further flight, in accordance with the AOT.

(b) *For airplanes listed in Airbus Service Bulletin A300–28–055, Revision 3, dated December 19, 1991, as amended by Service Bulletin Change Notice 3.A., dated March 16, 1992:* Within 2 years after the effective date of this AD, replace the crossfeed and isolation valve control unit 5QB with a modified unit, in accordance Airbus Service Bulletin A300–28–055, Revision 3, dated December 19, 1991, as amended by Service Bulletin Change Notice 3.A.

Note 2: Airbus Service Bulletin A300–28–055, Revision 3, references L'équipment et La Construction Electrique (ECE) Service Bulletins 28–195 and 28–196, both dated August 31, 1983, as additional sources of procedural information for replacement of the control unit.

(c) *For airplanes listed in Airbus Service Bulletin A300–28–0061, Revision 1, dated March 14, 1992:* Within 2 years after the effective date of this AD, replace the control knobs on the crossfeed and isolation valve control unit 5QB with new knobs, in accordance with Airbus Service Bulletin A300–28–0061, Revision 1, dated March 14, 1992.

Note 3: Airbus Service Bulletin A300–28–0061, Revision 1, references ECE Service Bulletins 28–191, dated July 26, 1982, and 28–228, dated November 1, 1991, as additional sources of procedural information for replacement of the control knobs.

(d) Accomplishment of both of the replacements specified in paragraphs (b) and

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(c) of this AD constitutes terminating action for the repetitive checks and tests required by paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 6, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–682 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–ASO–40]

Proposed Amendment to Class D and E2 Airspace; Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D and E2 surface area airspace at Orlando, FL. A GPS RWY 7 and a GPS RWY 25 Standard Instrument Approach Procedures (SIAP's) have been developed for the Orlando Executive Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 16, 1997.

ADDRESSES: Send comments on the proposed in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–40, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT:

Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written date, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D and E2 surface area airspace at Orlando, FL. to accommodate a GPS RWY 7 and a GPS RWY 25 SIAP's for the Orlando Executive Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAP's and for IFR operations at the airport. Class D airspace designations and Class E airspace designations for airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which are incorporated by reference in 14 CFR 71.1 The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Orlando, FL [Revised]

Orlando Executive Airport, FL
(lat. 28°32'44" N, long. 81°19'58" W)
Orlando VORTAC
(lat. 28°32'34", N long. 81°20'06" W)

That airspace extending upward from the surface to but not including 1,500 feet MSL within a 4.2-mile radius of Orlando Executive Airport and within 3.6 miles each side of Orlando VORTAC 254° radial extending from 4.2-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL, Class B airspace area. This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Orlando, FL [Revised]

Orlando Executive Airport, FL
(lat. 28°32'44" N, long. 81°19'58" W)
Orlando VORTAC
(lat. 28°32'34", N long. 81°20'06" W)

Within a 4.2-mile radius of Orlando Executive Airport and within 3.6 miles each side of Orlando VORTAC 254° radial extending from 4.2-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL, Class B airspace area. This Class E airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–786 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–39]

Proposed Amendment to Class D and E2 Airspace; Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D, E2 and E4 surface area airspace at Gainesville, FL. A GPS RWY 6 and a GPS RWY 24 Standard Instrument Approach Procedures (SIAPs) have been developed for the Gainesville Regional Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 16, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–39, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined by the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operation Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate in the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O.Box 20636, Atlanta Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D, E2 and E4 surface area airspace at Gainesville, FL. to accommodate a GPA RWY 6 and a GPS RWY 24 SIAP's for the Gainesville Regional Airport. Additional controlled airspace extending upward from the surface is needed to accommodate these SIAP's and for IFR operations at the airport. Class D airspace designations, Class E airspace designations for airspace areas designated as a surface area for an airport and Class E airspace areas designated as an extension to Class D surface area are published in Paragraphs 5000, 6002 and 6004, respectively, of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which are incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(lat. 29°41′24″ N, long. 82°16′18″ W)
Gainesville VORTAC
(lat. 29°34′20″, N long 82°21′45″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.3-mile radius of Gainesville Regional Airport. This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO E2 FL Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(lat. 29°41′24″ N, long. 82°16′18″ W)
Gainesville VORTAC
(lat. 29°34′20″, N long. 82°21′45″ W)

Within a 4.3-mile radius of Gainesville Regional Airport. This Class E airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ASO FL E4 Gainesville, FL [Revised]

Gainesville Regional Airport, FL
(lat. 29°41′24″ N, long. 82°16′18″ W)
Gainesville VORTAC
(lat. 29°34′20″, N long. 82°21′45″ W)

That airspace extending upward from the surface within 1.5 miles each side of the Gainesville VORTAC 034° radial, extending from the 4.3-mile radius of Gainesville Regional Airport to 2.5 miles northeast of the VORTAC. This Class E airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 23, 1996.

Lacy E. Wright,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–785 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208288–90]

RIN 1545–AP36

Filing Requirements for Returns Claiming the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the substantiation requirements for taxpayers claiming foreign tax credits. The proposed regulation is necessary to provide guidance to U.S. taxpayers who claim foreign tax credits.

DATES: Written comments and requests for a public hearing must be received by April 14, 1997.

ADDRESSES: Send Submissions to: CC:DOM:CORP:R (REG–208288–90), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208288–90), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at HTTP://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Joan Thomsen, (202) 622–3840 (not a toll-free call); concerning submissions, Evangelista Lee, (202) 622–7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1988, the Internal Revenue Service issued a Notice (Notice 88–65, 1988–1 C.B. 552) which stated that regulations would be issued suspending portions of §1.905–2 of the Treasury Regulations. Section 1.905–2 requires taxpayers who claim foreign tax credits to attach documents to their returns substantiating the credits. The Notice was issued in response to problems taxpayers were experiencing because they could not timely obtain and prepare the necessary documentation in a form suitable for submission with their tax returns. The intent of the Notice was to advise taxpayers that Treasury and the IRS would issue a new regulation that would suspend, beginning on January 1, 1988, the existing regulation requiring the submission of this documentation with a tax return. This new regulation has not been issued. Instead of suspending the relevant portions of the existing regulation, Treasury and the IRS now have decided to permanently eliminate the requirement that documentation be submitted with the tax return, effective January 1, 1988.

Explanation of Provisions

§ 1.905–2(a)(1), 1.905–2(b) (1) and (2), and 1.905–2(c)

Sections 1.905–2(a)(1), 1.905–2(b) (1) and (2), and 1.905–2(c) are unchanged from the final regulations.

§ 1.905–2(a)(2)

Under § 1.905–2(a)(2), taxpayers generally are required to attach to their income tax returns either (1) the receipt for the foreign tax payment, or (2) a foreign tax return for accrued foreign taxes. Proposed § 1.905–2(a)(2) removes the requirement that the documentation must be attached to the income tax return.

The proposed regulation now provides that such evidence of foreign taxes must be presented to the district director upon request.

§ 1.905–2(b)(3)

Section 1.905–2(b)(3) addresses issues for taxes withheld at the source. The section allows the district director to accept secondary evidence of such withholding. The proposed regulation clarifies that evidence of a tax withheld at the source and the amount withheld is only sufficient for an interim credit.

Upon request of the district director, taxpayers must provide evidence, as provided in § 1.905–2(a)(2), that the tax withheld was actually paid to the foreign country. Although this regulation will be effective on the date that is 30 days after the date the final regulation is published in the **Federal Register**, it reflects an IRS requirement upheld as a reasonable interpretation of current law by the Tax Court and the Court of Appeals for the Seventh Circuit in *Continental Illinois Corp.* v. *Commissioner*, T.C. Memo. 1991–66, 61 T.C.M. (CCH) 1916, 1939–42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516–17 (7th Cir. 1993).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS.

However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.905–2 is amended by:

1. Revising the second through fourth sentences in paragraph (a)(2).

2. Adding two sentences to the end of paragraph (b)(3).

The revision and addition read as follows:

§ 1.905–2 Conditions of allowance of credit.

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or withheld, or the return on which each such accrued tax was based if credit is sought for taxes accrued. This receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are effective for returns whose original due date falls on or after January 1, 1988. * * *

(b) * * *

(3) * * * Any foreign tax credit claimed for taxes withheld at the source is an interim credit and the taxpayer must prove that any taxes withheld at the source were paid to the foreign country, as required in paragraph (a) of this section. The preceding sentence is effective the date that is 30 days after the date this regulation is published in the **Federal Register** as a final regulation, however, for periods prior to the date that is 30 days after the date this regulation is published in the **Federal Register** as a final regulation, see *Continental Illinois Corp.* v. *Commissioner*, T.C. Memo. 1991–66, 61 T.C.M. (CCH) 1916, 1939–42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516–17 (7th Cir. 1993), wherein the court upheld this rule as a reasonable interpretation of section 905(b) of the Internal Revenue Code.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–527 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[REG–209729–94]

RIN 1545–AS94

Self-Employment Tax Treatment of Members of Certain Limited Liability Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the self-employment tax treatment of members of certain limited liability companies that was published in the **Federal Register** on Thursday, December 29, 1994. The proposed regulations sought to provide guidance concerning the applicability of certain self-employment tax rules to certain members of limited liability companies. The IRS and Treasury have issued new proposed regulations that will provide guidance on this issue.

FOR FURTHER INFORMATION CONTACT: Robert Honigman, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On Thursday, December 29, 1994, the IRS issued proposed regulations (EE–45–94) relating to the self-employment tax treatment of members of certain limited liability companies (59 FR 67253). Upon consideration of the written comments received and the oral comments made at the public hearing held on June 23,1995, the IRS has decided to withdraw those proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on Thursday, December 29, 1994, at 59 FR 67253, is withdrawn.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–700 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[REG–209824–96]

RIN 1545–AU24

Definition of Limited Partner for Self-Employment Tax Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to the self-employment income tax imposed under section 1402 of the Internal Revenue Code of 1986. These regulations permit individuals to determine whether they are limited partners for purposes of section 1402(a)(13), eliminating the uncertainty in calculating an individual's net earnings from self-employment under existing law. This document also contains a notice of public hearing on the proposed regulations.

DATES: Written comments must be received by April 14, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 21, 1997, at 10 a.m. must be received by April 30, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209824–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209824–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Service building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Robert Honigman, (202) 622–3050; concerning submissions and the hearing, Christina Vasquez, (202) 622–6808 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1402 of the Internal Revenue Code and replaces the notice of proposed rulemaking published in the **Federal Register** on December 29, 1994, at 59 FR 67253, that treated certain members of a limited liability company (LLC) as limited partners for self-employment tax purposes. Written comments responding to the proposed regulations were received, and a public hearing was held on June 23, 1995.

Under the 1994 proposed regulations, an individual owning an interest in an LLC was treated as a limited partner if (1) the individual lacked the authority to make management decisions necessary to conduct the LLC's business (the management test), and (2) the LLC could have been formed as a limited partnership rather than an LLC in the same jurisdiction, and the member could have qualified as a limited partner in the limited partnership under applicable law (the limited partner equivalence test). The intent of the 1994 proposed regulations was to treat owners of an LLC interest in the same manner as similarly situated partners in a state law partnership.

Public comments on the 1994 proposed regulations were mixed. While some commentators were pleased with the proposed regulations for attempting to conform the treatment of LLCs with state law partnerships, others criticized the 1994 proposed regulations based on a variety of arguments.

A number of commentators discussed administrative and compliance problems with the 1994 proposed regulations. For example, it was noted that both the management test and the limited partner equivalence test depend upon legal or factual determinations that may be difficult for taxpayers or the IRS to make with certainty.

Another commentator pointed out that basing the self-employment tax treatment of LLC members on state law limited partnership rules would lead to disparate treatment between members of different LLCs with identical rights based solely on differences in the limited partnership statutes of the states in which the members form their LLC. For example, State A's limited partnership act may allow a limited partner to participate in a partnership's business while State B's limited partnership act may not. Thus, an LLC member, who is not a manager, that participates in the LLC's business would be a limited partner under the proposed regulations if the LLC is formed in State A, but not if the LLC is formed in State B. Commentators asserted that this disparate treatment is inherently unfair for federal tax purposes.

Some commentators argued for a "material participation" test to determine whether an LLC member's distributive share is included in the individual's net earnings from self-employment. The proposed regulations did not contain a participation test. Commentators advocating a participation test stressed that such a test would eliminate uncertainty concerning many LLC members' limited partner status and would better implement the self-employment tax goal of taxing compensation for services.

Other commentators argued for a more uniform approach, stating that a single test should govern all business entities i.e., partnerships, LLCs, LLPs, sole proprietorships, et al.) whose members may be subject to self-employment tax. These commentators generally recognized, however, that a change in the treatment of a sole proprietorship or an entity that is not characterized as a partnership for federal tax purposes would be beyond the scope of regulations to be issued under section 1402(a)(13).

Finally, some commentators focused on whether the Service would respect the ownership of more than one class of partnership interest for self-employment tax purposes (bifurcation of interests). The proposed regulations treated an LLC member as a limited partner with respect to his or her entire interest (if the member was not a manager and satisfied the limited partner equivalence test), or not at all (if either the management test or limited partner equivalence test was not satisfied). Commentators, however, pointed to the legislative history of section 1402(a)(13) to support their argument that Congress only intended to tax a partner's distributive share attributable to a general partner interest. Under this argument, a partner that holds both a general partner interest and a limited partner interest is only subject to self-employment tax on the distributive share attributable to the partner's general partner interest. This intent also may be inferred from the statutory language of section 1402(a)(13) that the self-employment tax does not apply to "* * * the distributive share of any item of income or loss of a limited partner, as such * * *." Based on this evidence, these commentators requested that the proposed regulations be revised to allow the bifurcation of interests for self-employment tax purposes.

After considering the comments received, the IRS and Treasury have decided to withdraw the 1994 notice of proposed rulemaking and to re-propose amendments to the Income Tax

Regulations (26 CFR part 1) under section 1402 of the Code.

Explanation of Provisions

The proposed regulations contained in this document define which partners of a federal tax partnership are considered limited partners for section 1402(a)(13) purposes. These proposed regulations apply to all entities classified as a partnership for federal tax purposes, regardless of the state law characterization of the entity. Thus, the same standards apply when determining the status of an individual owning an interest in a state law limited partnership or the status of an individual owning an interest in an LLC. In order to achieve this conformity, the proposed regulations adopt an approach which depends on the relationship between the partner, the partnership, and the partnership's business. State law characterizations of an individual as a "limited partner" or otherwise are not determinative.

Generally, an individual will be treated as a limited partner under the proposed regulations unless the individual (1) has personal liability (as defined in § 301.7701–3(b)(2)(ii) of the Procedure and Administration Regulations) for the debts of or claims against the partnership by reason of being a partner; (2) has authority to contract on behalf of the partnership under the statute or law pursuant to which the partnership is organized; or, (3) participates in the partnership's trade or business for more than 500 hours during the taxable year. If, however, substantially all of the activities of a partnership involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting, any individual who provides services as part of that trade or business will not be considered a limited partner.

By adopting these functional tests, the proposed regulations ensure that similarly situated individuals owning interests in entities formed under different statutes or in different jurisdictions will be treated similarly. The need for a functional approach results not only from the proliferation of new business entities such as LLCs, but also from the evolution of state limited partnership statutes. When Congress enacted the limited partner exclusion found in section 1402(a)(13), state laws generally did not allow limited partners to participate in the partnership's trade or business to the extent that state laws allow limited partners to participate today. Thus, even in the case of a state law limited partnership, a functional approach is necessary to ensure that the self-employment tax consequences to similarly situated taxpayers do not differ depending upon where the partnership organized.

The proposed regulations allow an individual who is not a limited partner for section 1402(a)(13) purposes to nonetheless exclude from net earnings from self-employment a portion of that individual's distributive share if the individual holds more than one class of interest in the partnership. Similarly, the proposed regulations permit an individual that participates in the trade or business of the partnership to bifurcate his or her distributive share by disregarding guaranteed payments for services. In each case, however, such bifurcation of interests is permitted only to the extent the individual's distributive share is identical to the distributive share of partners who qualify as limited partners under the proposed regulation (without regard to the bifurcation rules) and who own a substantial interest in the partnership. Together, these rules exclude from an individual's net earnings from self-employment amounts that are demonstrably returns on capital invested in the partnership.

Proposed Effective Date

These regulations are proposed to be effective beginning with the individual's first taxable year beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, May 21, 1997, at 10 a.m. in the Auditorium, Internal Revenue Service building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 14, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 30, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Robert Honigman of the Office of Assistant Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1402(a)–2 is amended by:

1. Revising the first sentence of paragraph (d).
2. Removing the reference "section 702(a)(9)" in the first sentence of paragraph (e) and adding "section 702(a)(8)" in its place.
3. Revising the last sentence of paragraph (f).
4. Revising paragraphs (g) and (h).
5. Adding new paragraphs (i) and (j).

The revisions and additions read as follows:

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§ 1.1402(a)–2 Computation of net earnings from self-employment.

* * * * *

(d) * * * Except as otherwise provided in section 1402(a) and paragraph (g) of this section, an individual's net earnings from self-employment include the individual's distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by each partnership of which the individual is a partner.

* * *

* * * * *

(f) * * * For rules governing the classification of an organization as a partnership or otherwise, see §§ 301.7701–1, 301.7701–2, and 301.7701–3 of this chapter.

(g) *Distributive share of limited partner.* An individual's net earnings from self-employment do not include the individual's distributive share of income or loss as a limited partner described in paragraph (h) of this section. However, guaranteed payments described in section 707(c) made to the individual for services actually rendered to or on behalf of the partnership engaged in a trade or business are included in the individual's net earnings from self-employment.

(h) *Definition of limited partner*—(1) *In general.* Solely for purposes of section 1402(a)(13) and paragraph (g) of this section, an individual is considered to be a limited partner to the extent provided in paragraphs (h)(2), (h)(3), (h)(4), and (h)(5) of this section.

(2) *Limited partner.* An individual is treated as a limited partner under this paragraph (h)(2) unless the individual—

(i) Has personal liability (as defined in § 301.7701–3(b)(2)(ii) of this chapter) for the debts of or claims against the partnership by reason of being a partner;

(ii) Has authority (under the law of the jurisdiction in which the partnership is formed) to contract on behalf of the partnership; or

(iii) Participates in the partnership's trade or business for more than 500 hours during the partnership's taxable year.

(3) *Exception for holders of more than one class of interest.* An individual holding more than one class of interest in the partnership who is not treated as a limited partner under paragraph (h)(2) of this section is treated as a limited partner under this paragraph (h)(3) with respect to a specific class of partnership interest held by such individual if, immediately after the individual acquires that class of interest—

(i) Limited partners within the meaning of paragraph (h)(2) of this section own a substantial, continuing interest in that specific class of partnership interest; and,

(ii) The individual's rights and obligations with respect to that specific class of interest are identical to the rights and obligations of that specific class of partnership interest held by the limited partners described in paragraph (h)(3)(i) of this section.

(4) *Exception for holders of only one class of interest.* An individual who is not treated as a limited partner under paragraph (h)(2) of this section solely because that individual participates in the partnership's trade or business for more than 500 hours during the partnership's taxable year is treated as a limited partner under this paragraph (h)(4) with respect to the individual's partnership interest if, immediately after the individual acquires that interest—

(i) Limited partners within the meaning of paragraph (h)(2) of this section own a substantial, continuing interest in that specific class of partnership interest; and

(ii) The individual's rights and obligations with respect to the specific class of interest are identical to the rights and obligations of the specific class of partnership interest held by the limited partners described in paragraph (h)(4)(i) of this section.

(5) *Exception for service partners in service partnerships.* An individual who is a service partner in a service partnership may not be a limited partner under paragraphs (h)(2), (h)(3), or (h)(4) of this section.

(6) *Additional definitions.* Solely for purposes of this paragraph (h)—

(i) A *class of interest* is an interest that grants the holder specific rights and obligations. If a holder's rights and obligations from an interest are different from another holder's rights and obligations, each holder's interest belongs to a separate class of interest. An individual may hold more than one class of interest in the same partnership provided that each class grants the individual different rights or obligations. The existence of a guaranteed payment described in section 707(c) made to an individual for services rendered to or on behalf of a partnership, however, is not a factor in determining the rights and obligations of a class of interest.

(ii) *A service partner* is a partner who provides services to or on behalf of the service partnership's trade or business. A partner is not considered to be a service partner if that partner only provides a de minimis amount of services to or on behalf of the partnership.

(iii) A *service partnership* is a partnership substantially all the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting.

(iv) A *substantial interest in a class of interest* is determined based on all of the relevant facts and circumstances.

In all cases, however, ownership of 20 percent or more of a specific class of interest is considered substantial.

(i) *Example.* The following example illustrates the principles of paragraphs (g) and (h) of this section:

Example. (i) A, B, and C form LLC, a limited liability company, under the laws of State to engage in a business that is not a service partnership described in paragraph (h)(6)(iii) of this section. LLC, classified as a partnership for federal tax purposes, allocates all items of income, deduction, and credit of LLC to A, B, and C in proportion to their ownership of LLC. A and C each contribute $1x for one LLC unit. B contributes $2x for two LLC units. Each LLC unit entitles its holder to receive 25 percent of LLC's tax items, including profits. A does not perform services for LLC; however, each year B receives a guaranteed payment of $6x for 600 hours of services rendered to LLC and C receives a guaranteed payment of $10x for 1,000 hours of services rendered to LLC. C also is elected LLC's manager. Under State's law, C has the authority to contract on behalf of LLC.

(ii) *Application of general rule of paragraph (h)(2) of this section.* A is treated as a limited partner in LLC under paragraph (h)(2) of this section because A is not liable personally for debts of or claims against LLC, A does not have authority to contract for LLC under State's law, and A does not participate in LLC's trade or business for more than 500 hours during the taxable year. Therefore, A's distributive share attributable to A's LLC unit is excluded from A's net earnings from self-employment under section 1402(a)(13).

(iii) *Distributive share not included in net earnings from self-employment under paragraph (h)(4) of this section.* B's guaranteed payment of $6x is included in B's net earnings from self-employment under section 1402(a)(13). B is not treated as a limited partner under paragraph (h)(2) of this section because, although B is not liable for debts of or claims against LLC and B does not have authority to contract for LLC under State's law, B does participates in LLC's trade or business for more than 500 hours during the taxable year. Further, B is not treated as a limited partner under paragraph (h)(3) of this section because B does not hold more than one class of interest in LLC. However, B is treated as a limited partner under paragraph (h)(4) of this section because B is not treated as a limited partner under paragraph (h)(2) of this section solely because B 1705participated in LLC's business for more

than 500 hours and because A is a limited partner under paragraph (h)(2) of this section who owns a substantial interest with rights and obligations that are identical to B's rights and obligations. In this example, B's distributive share is deemed to be a return on B's investment in LLC and not remuneration for B's service to LLC. Thus, B's distributive share attributable to B's two LLC units is not net earnings from self-employment under section 1402(a)(13).

(iv) *Distributive share included in net earnings from self-employment.* C's guaranteed payment of $10x is included in C's net earnings from self-employment under section 1402(a). In addition, C's distributive share attributable to C's LLC unit also is net earnings from self-employment under section 1402(a) because C is not a limited partner under paragraphs (h)(2), (h)(3), or (h)(4) of this section. C is not treated as a limited partner under paragraph (h)(2) of this section because C has the authority under State's law to enter into a binding contract on behalf of LLC and because C participates in LLC's trade or business for more than 500 hours during the taxable year. Further, C is not treated as a limited partner under paragraph (h)(3) of this section because C does not hold more than one class of interest in LLC. Finally, C is not treated as a limited partner under paragraph (h)(4) of this section because C has the power to bind LLC. Thus, C's guaranteed payment and distributive share both are included in C's net earnings from self-employment under section 1402(a).

(j) *Effective date.* Paragraphs (d), (e), (f), (g), (h), and (i) are applicable beginning with the individual's first taxable year beginning on or after the date this section is published as a final regulation in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–701 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–310–3110–02 1A]

Royalty Rate Reduction for Stripper Oil Properties

AGENCY: Bureau of Land Management, Interior.

ACTION: Review of regulations; reopening of comment period.

SUMMARY: On November 4, 1996, the Bureau of Land Management (BLM) published a document in the **Federal Register** announcing a review of the royalty rate reducing reduction available to producers of Federal stripper well properties (61 FR 56651). The document requested comments from the public on the effectiveness of this program during a 60-day period that ended on January 3, 1997. BLM has received numerous requests from the public for additional time to research this issue and is reopening the comment period for an additional 60 days.

DATES: Comments must be submitted on or before March 14, 1997.

ADDRESSES: If you wish to comment you may: (a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; (b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240; or (c) Transmit comments electronically via the Internet to WOComment@wo.blm.gov. Please include Attn: "Stripper Wells" and your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

You will be able to review comments at BLM's Regulatory Affairs office, Room 401, 1620 L St., NW., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Melton, Roswell (NM) District Office, (505) 627–0254.

Dated: January 8, 1997.

Frank Bruno,

Regulatory Affairs Group.

[FR Doc. 97–738 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630 and 678

[I.D. 010297A]

Atlantic Swordfish Fishery; Atlantic Shark Fishery; Public Hearings on Draft Amendment 1 to the Fishery Management Plan for Sharks of the Atlantic Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Highly Migratory Species Management Division (HMS Division) will convene 11 public hearings on Draft Amendment 1 to the Fishery Management Plan for Sharks of the Atlantic Ocean (Shark FMP) and a proposed limited access system for the Atlantic swordfish fishery. Draft Amendment 1 will address a limited access system for the Atlantic shark fishery. Draft Amendment 1 to Fishery Management Plan for Atlantic Swordfish (Swordfish FMP), which will address a limited access system for that fishery, will be published in early January.

DATES: Written comments on Draft Amendment 1 to the Shark FMP will be accepted until February 28, 1997. Public hearings will be held in January and February. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: Written comments should be sent to William T. Hogarth, Acting Chief, HMS Division, Office of Sustainable Fisheries F/SF1, 1315 East-West Highway, Silver Spring, MD 20910 (FAX: 301–713–1917). Clearly mark the outside of the envelope "Limited Access Comments." Copies of the proposed rule and draft amendment 1 to the Shark FMP, which includes an environmental assessment and regulatory impact review, are available from Margo Schulze at the same address. Public hearings will be held in Maine, Massachusetts, Rhode Island, New York, New Jersey, North Carolina, Florida, and Louisiana. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, Fishery Biologist, or James Chambers, Fishery Management Specialist, HMS Division, 301–713–2347.

SUPPLEMENTARY INFORMATION: Issues that will be addressed in Draft Amendment 1 to the Shark FMP include: Proposed implementation of a two-tiered permit system consisting of directed and incidental permits for the commercial fishery, eligibility criteria for these permits based on historical participation, transferability provisions, the permitting process, upgrading restrictions, ownerships limits, and an incidental permit catch limit. Draft Amendment 1 to the Swordfish FMP will be published in early January and will address similar issues to those in Draft Amendment 1 to the Shark FMP.

A complete description of the measures, including the purpose and need for the proposed action, is contained in the proposed rule published December 27, 1996 (61 FR 68202), and is not repeated here. Copies of the proposed rule and Draft

Amendment 1 to the Shark FMP may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**).

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

The public hearings are scheduled as follows:

1. Thursday, January 30, 1997—North Carolina Aquarium (Auditorium), Airport Road, Manteo, NC 27954, (919) 473–3494, 7:00 p.m.–10:00 p.m.

2. Monday, February 3, 1997—Barnegat Light Firehouse, 10th and Boulevard Streets, Long Beach Island, Barnegat Light, NJ 08006, (609) 494–1280, 7:00 p.m.–10:00 p.m.

3. Wednesday, February 5, 1997—Holiday Inn (Highland Room), 81 Riverside Street (exit 8 off Maine Turnpike), Portland, ME 04103, (207) 774–5601, 7:00 p.m.–10:00 p.m.

4. Thursday, February 6, 1997—City Hall (Commission Chambers, 1st floor), 100 North Andrews Avenue, Ft. Lauderdale, FL 33301, (954) 761–5002, 3:00 p.m.–6:00 p.m.

5. Thursday, February 6, 1997—Holiday Inn at the Crossings (Ballroom), (near T.F. Green Airport), 801 Greenwich Avenue (exit 12A off I–95), Warwick, RI 02886, (401) 732–6000, 7:00 p.m.- 10:00 p.m.

6. Friday, February 7, 1997—Monroe County Public Library (Auditorium), 700 Fleming Street, Key West, FL 33040, (305) 292–3595, 3:00 p.m.–6:00 p.m.

7. Friday, February 7, 1997—Fire Hall, 12 Flamingo Avenue, Montauk, NY 11954, (516) 668–5695, 7:00 p.m.–10:00 p.m.

8. Thursday, February 13, 1997—Madeira Beach City Hall (Auditorium), 300 Municipal Drive, Madeira Beach, FL 33708, (813) 391–9951, 7:00 p.m.–10:00 p.m.

9. Friday, February 14, 1997—City Hall (Commission Meeting Rm, 2nd floor), 9 Harrison Avenue (Route 231), Panama City, FL 32401, (904) 872–3010, 2:00 p.m.–5:00 p.m.

10. Saturday, February 15, 1997—Quality Inn Midtown (Napoleon Room), 3900 Tulane Avenue, New Orleans, LA 70119, (504) 486–5541, 3:00 p.m.–6:00 p.m.

11. Wednesday, February 19, 1997—NOAA, First Floor Conference Room (1W611), Silver Spring Metro Center Building 4, 1305 East-West Highway, Silver Spring, MD 20910, (301) 713–2227, 10:00 a.m.–12:00 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze (see **ADDRESSES**) at least 15 days before the hearing date.

Dated: January 7, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–698 Filed 1–7–97; 4:59 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 8

Monday, January 13, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Capital Construction Fund—Deposit/Withdrawal Report.

Agency Form Number: NOAA 34–82.

OMB Number: 0648–0041.

Type of Review: Renewal of an existing collection.

Burden: 1,650 hours.

Number of Respondents: 4,000 respondents (5,000 responses).

Avg. Hours Per Response: 20 minutes.

Needs and Uses: Created by the Merchant Marine Act, the Capital Construction Fund program enables fishermen to construct, reconstruct, or under limited circumstances to acquire fishing vessels with before-tax, rather than after-tax dollars. Fishermen holding Capital Construction Fund Agreements are required to submit annual information on their deposits and withdrawals from their accounts. The information is used to check compliance with NOAA and IRS requirements.

Affected Public: Businesses or other for-profit organizations—commercial fishermen, partnerships and corporations with agreements.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: January 7, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–685 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–22–P

Bureau of Export Administration

Notification of Delivery Verification Requirement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th & Constitution Ave., NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to increase the effectiveness of export controls on international trade in strategic commodities, certain countries participate in the Import Certificate/Delivery Verification (IV/DV) procedure. Its purpose is to make sure that strategic items are not diverted. The clearance request is for the form used to notify U.S. exporters that they must obtain from their foreign consignee an "Import Certificate." This certificate, which is issued by the foreign government, certifies that the commodities exported were actually delivered to the foreign consignee. When the certification has been received, the U.S. exporter must complete the BXA form and return it along with the Import Certificate to BXA.

II. Method of Collection

Submission of completed form and Import Certificate.

III. Data

OMB Number: 0694–0008.

Form Number: ITA 648–P.

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost: $25 annually.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 7, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–683 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DBT–P

Reports of Sample Shipments of Chemical Weapon Precursors

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Ave., NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the Export Administration Regulations that permit limited exports of sample shipments without a validated export license. The reports will be reviewed by the Bureau of Export Administration to monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

II. Method of Collection

Quarterly written report.

III. Data

OMB Number: 0694–0086.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 75.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 225.
Estimated Total Annual Cost: $3,825—no cost to the public other than providing the report.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 7, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–684 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DEBT–P

International Trade Administration

[A–570–844]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Katherine Johnson, or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136, (202) 482–4929, or (202) 482–4194, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act ("URAA").

Final Determination

We determine that melamine institutional dinnerware products ("MIDPs") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the PRC* (61 FR 43337, August 22, 1996)), the following events have occurred:

On August 22, 1996, Chen Hao Xiamen alleged that the Department made a ministerial error in its preliminary determination. The Department found that there was an error made in the preliminary determination; however, this error did not result in a change of at least five absolute percentage points in, but no less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination. Accordingly, no revision to the preliminary determination was made. (*See* Memorandum from the MIDP/PRC Team to Louis Apple dated September 16, 1996.)

In September through November 1996, we verified the questionnaire responses of the following participating respondents and, where applicable, their affiliates: Chen Hao (Xiamen) Plastic Industrial Co. Ltd. ("Chen Hao Xiamen"), Dongguan Wan Chao Melamine Products Co., Ltd., ("Dongguan"), Gin Harvest Melamine (Heyuan) Enterprises Co. Ltd. ("Gin Harvest"), Sam Choan Plastic Co. Ltd. ("Sam Choan"), and Tar-Hong Melamine Xiamen Co. Ltd. ("Tar Hong").

Additional published information (PI) on surrogate values was submitted by petitioner and respondents on November 21, 1996. On November 22, 1996, the Department requested that Chen Hao Xiamen, Dongguan, Sam Choan, and Tar Hong submit new computer tapes to include data corrections identified through verification. This information was submitted on December 3 through 6, 1996.

Petitioner, the American Melamine Institutional Tableware Association ("AMITA"), and the respondents submitted case briefs on November 26, 1996, and rebuttal briefs on December 4, 1996. The Department held a public hearing for this investigation on December 6, 1996.

Scope of the Investigation

This investigation covers all items of dinnerware (*e.g.*, plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Excluded from the scope of investigation are flatware products (*e.g.*, knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) for all participating companies is January 1, 1995, through December 31, 1995.

Separate Rates

Of the five responding exporters in this investigation, three—Gin Harvest, Tar Hong Xiamen, and Chen Hao Xiamen (1) are wholly foreign-owned and (2) make all sales to the United States of merchandise produced by their company through Taiwan parent companies. Thus, we consider the Taiwan-based parent to be the respondent exporter in the proceeding. No separate rates analysis is required for these exporters. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361, May 5, 1995)).

Sam Choan is wholly foreign owned but its sales to the United States are made from its facilities in the PRC. For this respondent, a separate rates analysis is necessary to determine whether it is independent from PRC government control over its export activities.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Respondents have submitted for the record the 1994 Foreign Trade Law of the PRC, enacted by the State Council of the central government of the PRC, which demonstrates absence of *de jure* control over the import and export of goods from the PRC by "foreign trade operators." The term "foreign trade operators" refers to legal persons and other organizations engaged in foreign trade activities in accordance with the provisions of the 1994 law. The companies also reported that MIDPs are not included on any list of products that may be subject to central government export constraints.

In prior cases, the Department has analyzed the provisions of the law that the respondents have submitted in this case and found that they establish an absence of *de jure* control (*see Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (*Bicycles*)). We have no new information in this proceeding which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide* and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China (60 FR 22544, May 8, 1995) (*Furfuryl Alcohol*)). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each company asserted, and we verified, the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses on the record indicate that pricing was company-specific during the POI, which does not suggest coordination among or common control of exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of governmental control of export functions. Consequently, we have determined that Dongguan and Sam Choan have met the criteria for the application of separate rates.

PRC-Wide Rate

Because some companies did not respond to the questionnaire, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC (except the five participating exporters) based on our presumption that those companies are under common control by the PRC government. *See, e.g., Bicycles.*

Facts Available

Pursuant to sections 776 (a) and (b) of the Act, we have based the PRC-wide rate on facts available, using adverse inferences, because the non-responding companies have failed to cooperate to the best of their ability. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i)—the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its

ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Section 776(c) of the Act provides that where the Department relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA, accompanying the URAA, clarifies that the petition is "secondary information." *See*, SAA at 870. The SAA also clarifies that "corroborate" means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

The exporters that did not respond in any form to the Department's questionnaire have not cooperated at all. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total facts available the margin alleged in the petition, as adjusted by the Department. We considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

The petitioner based its allegation of U.S. price on catalog prices of one of the respondents. The factors used in the petition are based on petitioner's own production experience. The factors in the petition consistent with the factors reported by responding companies on the record of this investigation. The surrogate values used by petitioner are based on publicly available information. Therefore, we detemine that further corroboration of the facts available margin is unnecessary.

We also applied adverse facts available to Dongguan based on the fact that we were unable to verify its response. *See* Comment 20 in the "Interested Party Comments" section of this notice, below.

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at less than fair value, we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i), we compared weighted-average EPs for the POI to the factors of production.

Export Price and Constructed Export Price

For Chen Hao Xiamen, Gin Harvest, Sam Choan, and Tar Hong, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and when constructed export price ("CEP") methodology was not otherwise indicated, we calculated the price of the subject merchandise in the United States in accordance with section 772(a) of the Act. In addition, for Tar Hong, where sales to the first unaffiliated purchaser took place after importation into the United States, we based the price in the United States on CEP, in accordance with section 772(b) of the Act.

We excluded from our analysis all sales of products with a minimum thickness of less than 0.08 inch to the extent mistakenly or erroneously reported by the exporter in its sales listing. For Tar Hong, we also excluded all sales of three-piece sets where the combined thickness of the three items was less than 0.24 inch because we were unable to determine piece-specific prices and characteristics for such sets. *See* Comment 10, below.

We corrected respondents' data for errors and omissions found at verification. In addition, we made company-specific adjustments as follows:

1. Chen Hao Xiamen

The calculation of EP for purposes of the final determination did not differ from our preliminary calculations.

2. Dongguan

We based Dongguan's final dumping margin on adverse facts available. *See* Comment 20.

3. Gin Harvest

We calculated EP in accordance with our preliminary calculations, except for the following changes based on verification findings: (1) we excluded sales of one product which we found to be outside the scope of investigation; (2) we corrected the reported movement expenses for one sale; and (3) we corrected for all sales the reported distance from the factory to the port for calculating the surrogate value for foreign inland freight.

4. Sam Choan

We calculated EP in accordance with our preliminary calculations, except that we corrected the reported market-economy brokerage expense for sales to one customer based on verification findings.

5. Tar Hong Xiamen

We calculated EP and CEP in accordance with our preliminary calculations, except as follows, based on information derived at verification.

We recalculated discounts by applying the reported discount percentage to the gross unit price of the sale. We also recalculated marine insurance by applying a percentage based on value, rather than based on volume as reported, since this expense was incurred on a value basis.

For CEP sales, we reallocated movement expenses and added an amount for unreported U.S. brokerage expenses. We reallocated and corrected indirect selling expenses, all freight expenses not reported elsewhere (*see* Comment 15), and other expenses not reported elsewhere (*see* Comment 18). In this reallocation, we recalculated by dividing the combined POI expenses of Tar Hong's two U.S. affiliates, by the sum of the POI sales values from these entities. We also recalculated reported credit based on corrections to reported payment dates.

Normal Value

A. Factors of Production

In accordance with section 773(c) of the Act, we compared the NV calculated according to the factors of production methodology, except as noted below for Chen Hao Xiamen. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance our practice. *See Lasko Metal Products* v. *United States*, 437 F. 3d 1442, 1443 (Fed. Cir.1994) ("*Lasko*"). For all producers, we recalculated the values for materials purchased from market economies, based on our verification findings. We excluded Taiwan VAT assessed on Taiwan material purchases (*see* Comment 3).

Furthermore, for Tar Hong, we added PRC brokerage for market-economy inputs. For Gin Harvest and Sam Choan, the equivalent charges are included in the reported movement expenses as Hong Kong brokerage. In addition, for Tar Hong and Gin Harvest we added freight from the port to the factory for inputs purchased from market economies.

In instances where inputs were sourced domestically, we valued the factors using published publicly available information from Indonesia. Reported unit factor quantities were multiplied by Indonesian values. From the available Indonesian surrogate values we selected the surrogate values based on the quality and contemporaneity of data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of surrogate values, *see* the Valuation Memorandum: Preliminary Antidumping Duty Determination of Melamine Institutional Dinnerware Product from the People's Republic of China (PRC) dated August 14, 1996 (Preliminary Valuation Memorandum), and the Valuation Memorandum: Final Antidumping Duty Determination of Melamine Institutional Dinnerware Products (MIDP) from the People's Republic of China (PRC) dated December 20, 1996 (Final Valuation Memorandum).

We added amounts for overhead, general expenses, interest and profit, based on the experience of P.T. Multi Raya Indah Abadi (Multiraya), an MIDP producer in Indonesia (*see*, also, Comment 2), as well as for packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States. We have recalculated the percentages for overhead, selling, general and administrative (SG&A), and interest expenses using the detailed public version of Multiraya's financial statement placed on the record of this investigation by the respondents. In our recalculations, as detailed in the December 20, 1996 Final Valuation Memorandum, we have eliminated the source of possible double counting for electricity alleged by respondents in their case brief. For Tar Hong, we calculated a value for the cost of transporting material purchases from the PRC port to the factory using the surrogate value for truck freight. Based on verification results, we revised calculations for Gin Harvest, as follows. We revised the value of freight for certain material inputs to correct the reported distance from the supplier to the factory. We also revised reported electricity consumption and reported packing material consumption for certain products. For Sam Choan, because freight data for diesel fuel was not reported, we applied facts available based on the furthest distance to a supplier cited in the response.

B. Multinational Corporation Provision

For Chen Hao Xiamen, petitioner alleged that section 773(d)(3) of the Act, the special rule for multinational corporations, should be applied to Chen Hao Xiamen's NV. We have determined that the record evidence for Chen Hao Xiamen supports a finding that the first two criteria of the MNC provision have been met. In order to determine if the third criterion was satisified, we calculated NV for Taiwan-produced merchandise (affiliated party NV) in addition to calculating NV using the factors of production methodology, described above, to determine whether affiliated party NV exceeded PRC NV.

We note that there are several ways in which the third criterion may be applied in this case. In the preliminary determination, we found that the affiliated party NV (price or COP, as appropriate) exceeded the PRC NV for a substantial majority (by quantity) of the U.S. sales. An alternative approach is to match each Taiwan transaction with its most comparable PRC NV. For each Taiwan transaction, the PRC NV and the Taiwan price are compared to each other; if the Taiwan price exceeds the PRC NV for a preponderance of Taiwan sales (by quantity), all comparisons of EP to NV are made using Taiwan sales as NV. Yet another approach is to determine the number of models where the Taiwan NV is higher than the NV based on the factors of production. Whichever approach to apply the third criterion of the MNC provision is used, however, the result in each case would be to use the Taiwan NV. In any event, whether or not the MNC provision applies, the result would be the same—a *de minimis* or zero margin for Chen Hao Xiamen.

In applying Taiwan NV, we compared Taiwan sales to Chen Hao Xiamen's U.S. sales in the same manner as discussed in our preliminary determination, except that we adjusted COP in the following manner: a) we revised the financial expense to exclude foreign exchange gains, and to include the interest expense associated with loans from affiliated parties; and b) we adjusted factory overhead expenses to include an amount for pension expenses. These changes are discussed in detail in the final determination notice in the companion Taiwan investigation.

With regard to the calculation of Chen Hao Xiamen's factors of production, at verification, we found that Chen Hao Xiamen did not account for a rebate in its reported cost of melamine powder purchased from a Taiwan supplier. We do not have sufficient information on the record to accurately allocate this rebate to Chen Hao Xiamen's costs, since neither Chen Hao Xiamen nor Chen Hao Taiwan identified the total amount of purchases from this supplier that were eligible for this rebate, and transferred to Chen Hao Xiamen, as discussed in the Department's verification report of Chen Hao Taiwan. Consequently, we have not adjusted Chen Hao Xiamen's melamine powder costs for the rebate.

In addition, we added PRC brokerage and freight from the port to the factory for market-economy inputs. We also calculated a value for the cost of transporting material purchases from the PRC port to the factory using the surrogage value for truck freight. Finally, we revised the reported consumption of packing materials for certain products, based on our findings at verification.

For comparisons of Chen Hao Xiamen's EP to NV based on Taiwan prices, we made circumstance of sale adjustments for differences in imputed credit, bank charges incurred on U.S. sales, and royalty expenses incurred in Taiwan on Taiwan sales. As Chen Hao Xiamen did not report credit expenses and bank charges in its sales response, we calculated these expenses using payment information obtained during verification. Chen Hao Taiwan, the parent company, reported in its public questionnaire response that it did not borrow in U.S. dollars and thus used the average short-term interest in the United States during the POI of 8.83 percent, as reported in *International Financial Statistics*, published by the International Monetary Fund, to calculate imputed credit for its U.S. sales. We applied this same rate to calculate credit expenses for Chen Hao Xiamen's U.S. sales.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

General Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of investigation should be revised to exclude melamine dinnerware that exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by

appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents" scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer. Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position. We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [p]etitioners' scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine "institutional" dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Calculation of Profit, Overhead, SG&A, and Interest

Petitioner proposes that the Department use a surrogate profit figure based on sales made in the ordinary course of trade by Indonesian producer, Multiraya, the respondent in the concurrent *MIDP from Indonesia* investigation. Petitioner characterizes the profit figure used at the preliminary determination (*i.e.*, as derived from Multiraya's 1995 financial statement) as inappropriate because it covers non-subject merchandise, below-cost sales, and dumped export sales—all of which petitioner contends should not be included in the profit calculation.

Petitioner argues that the current law is very clear in that, when available, profit for a constructed value (CV) calculation is home market profit. Petitioner asserts that the Department's consistent practice has been to use either the former statutory minimum of eight percent or else a domestic, rather than an export, profit value.

Respondents argue that the Department should use the public summaries of Multiraya's 1995 financial statement to calculate surrogate overhead, SG&A, interest expense, and profit. According to respondents, Multiraya exports merchandise that is virtually identical to that exported from the PRC; therefore, Multiraya's company-wide profit rate is pertinent to the valuation of PRC merchandise. To the extent that the Department uses Multiraya's company-wide costs to calculate constructed value in the Indonesian proceeding, respondents contend that it should also base surrogate profit on company-wide Multiraya data.

In addition, respondents argue that petitioner's profit calculation is contrary to the Department's practice of basing NV in NME cases on export data. Respondents contend that the Department's practice is meant to ensure that product disparities like those reflected in petitioner's profit calculation do not undermine the accuracy of the CV. Moreover, respondents claim that there is a disparity between the products sold by Multiraya in the home market and the products exported by the PRC companies; the vast majority of products exported by the PRC respondents were decorated and glazed, unlike Multiraya's home market sales, which were virtually all undecorated and unglazed. Therefore, the respondents argue that the Department should use the company-wide profit from Multiraya's public version financial statement to calculate the applicable surrogate profit percentage.

DOC Position. We agree with petitioner and have used as surrogate profit a percentage derived from Multiraya's public version questionnaire response. In this investigation, we are faced with the unusual situation of having on the record both a public financial statement from the surrogate country as well as the public version questionnaire responses of the Indonesian respondent in the concurrent investigation. The Department's preference is to use the most product-specific information possible from the surrogate market to calculate surrogate profit. Insofar as publicly ranged data may be imprecise, it would be speculative to rely on such data as an accurate measure of whether sales are below cost and outside the ordinary course of trade. Accordingly, for the purpose of deriving a surrogate profit percentage, we have used all sales in the public version, rather than excluding allegedly below cost sales.

Comment 3: Tax Paid on Melamine Purchased From Taiwan

Petitioner argues that the Department should affirm its practice in the preliminary determination and include the tax paid by the PRC respondents on purchases of melamine powder from Taiwan in the valuation of material costs. Petitioner asserts that the respondents pay the Taiwan value added tax (VAT) to unaffiliated suppliers either directly or through affiliated companies in Taiwan, and that the tax imposes a net cost because the PRC companies are not collecting the VAT from their customers. Consequently, petitioner contends that the tax should be included in the material cost calculation. Petitioner claims that even if the Taiwan government rebates to the respondent's affiliate any such tax collected, it does not mean that the purchaser benefits from the rebate.

Respondents argue that the Department should exclude from the market-economy prices of material inputs the Taiwan VAT that was paid upon purchase, but rebated or credited upon export from Taiwan to the PRC. Respondents assert that the Department verified that Taiwan VAT paid on materials purchased from Taiwan suppliers is credited to the purchasers" VAT liability account. As a result, respondents claim that they receive a benefit equal to the amount of VAT paid. Thus, VAT is effectively not paid on these exports.

DOC Position. We agree with respondents. At verification, we confirmed that Taiwan VAT on melamine powder paid by the Taiwan companies is offset by the VAT owed by the PRC purchaser (respondent). This offset is equivalent to a rebate since the PRC purchaser receives a credit against the VAT owed and does not have to pay a VAT amount (as VAT owed is equal to the amount of VAT paid). The net effect is that the respondent incurs a cost for melamine powder exclusive of VAT. Accordingly, we have not added VAT from the market economy to the value of these inputs.

Comment 4: Use of Taiwan Prices for Melamine Powder Purchased from PRC Suppliers

Petitioner argues that the Department should not use Taiwan prices for all melamine powder purchased by PRC producers if the producer has obtained

some of its melamine powder from the PRC. Petitioner claims that it is not enough to provide that the market-economy price may be disregarded "where the amount purchased from a market economy supplier is insignificant" (Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking, 61 FR 7,309, 7,345 (February 27, 1996)). According to petitioner, it should be the other way around—only if the amount purchased within the non-market economy is insignificant will it be appropriate to use the price actually paid to market economy suppliers of the input to represent the overall cost of that factor of production. Or, at a minimum, petitioner argues, the overall value of the factor in question should be a weighted average of the surrogate value and the market-economy price.

Respondents argue that petitioner offers no reasonable justification as to why the Department should not use prices paid to market economy suppliers to value melamine powder purchased from a PRC supplier. Respondents state the Department's practice is to use the price paid to a market economy supplier (*See e.g. Bicycles*) and that this practice has been upheld by the Federal Circuit. *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 11442 (Fed. Cir. 1994).

DOC Position. We agree with respondents. When melamine powder was purchased from a market economy, we used the prices paid to market economy suppliers to value this input, even though the producer did not purchase 100 percent of the melamine powder from a market economy. We believe that the market economy price is the most appropriate basis for determining the value of melamine powder purchased from PRC suppliers.

Comment 5: Labor Rate Calculation

Petitioner argues that the Department's labor rate calculation should reflect at most 50 weeks of work time, as opposed to the 52-week work year that was used in the preliminary determination, because Attachment 4 of the August 14, 1996, Preliminary Valuation Memorandum notes that employers in Indonesia are required to provide paid annual leave of at least two weeks per annum.

Respondents argue that just because Indonesian employers are required to give two weeks paid leave per year does not mean that workers actually take two weeks leave, but simply reflects the fact that Indonesian workers have the option of taking this time while receiving full pay. Respondents therefore argue that no adjustment is necessary to the labor rate because the Department cannot assume that the amount of leave allowed by employers is actually taken by workers.

DOC Position. We agree with respondents that our labor rate calculation is correct. We used monthly labor rates from the 1995 issue of *Indonesia: A Brief Guide for Investors*, which already include paid leave and other benefits, as detailed in the Preliminary Valuation Memorandum. We subsequently derived an hourly rate from the monthly rates, which already includes some benefits. Accordingly, we believe that it would be speculative to adjust the rate as reported for any potentially used vacation days.

Comment 6: Inflation of Costs Denominated in U.S. Dollars

Petitioner argues that the Department made an error in its preliminary determination by not inflating costs denominated in U.S. dollars, particularly those for cardboard and containerization. Petitioner contends that the costs in question are internal Indonesian costs which which would have been incurred in rupiahs, even if they happened to have been expressed in 1993 U.S. dollars. Petitioner claims that the changes in the rupiah/dollar exchange rate have not reflected the considerable inflation in Indonesia in recent years, so it is not appropriate to leave these adjustments at their original dollar amounts.

Respondents argue that, contrary to petitioner's suggestion, no adjustment or conversion of figures denominated in U.S. dollars is necessary. Respondents argue that the Department has rejected similar requests in other NME cases. In this case, according to respondents, the value and prices denominated in U.S. dollars are subject to the risks and opportunity costs associated with the U.S. dollars, and are not affected by Indonesian inflation. Respondents contend that petitioner's exchange rate inflation adjustments and exchange rate conversions would bring in numerous factors that would distort the factor value.

DOC Position. With regard to the figures for cardboard and containerization, we agree with respondents that no adjustment or conversion of figures denominated in U.S. dollars is necessary. In accordance with Department practice with regard to NMEs, surrogate values reported in U.S. dollars are not adjusted for inflation. *See Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the Republic of Hungary* (56 FR 41819, August 23, 1991) and *Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation* (60 FR 27957, 27963, May 26, 1995). *See* Valuation Memorandum: Preliminary Antidumping Duty Determination of Ferrovanadium from Russia dated December 27, 1994.

Comment 7: Duty on Melamine Powder

Petitioner believes that the Department should increase the cost of melamine powder imported into the PRC by the PRC duty rate applicable to such imports. Petitioner argues that import duties are as much a feature of non-market economies as they are of market economies, and that the proper rate in this case is the PRC duty rate. Petitioner argues that inclusion of the PRC duty rate is necessary to reflect the producer's actual cost for the imported input.

Respondents argue that the Department normally disregards such rates since it deems all NME costs to be unreliable. Respondents further argue that the Department cannot accept the valuation of PRC import duties yet disregard all other PRC values and expenses.

DOC Position. We agree with respondents that we normally disregard such a duty because it is a PRC cost denominated in RMB. *See Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991). Accordingly, we have not increased the cost of melamine imported into the PRC by this duty rate.

Comment 8: Consumption and Yield Information

Petitioner argues that verification revealed Tar Hong's reported consumption of both melamine powder and LG powder to be grossly unreliable. Petitioner states that if the Department does not reject the factor consumption data entirely, then an appropriate adjustment would be to increase the melamine powder consumption for all Tar Hong products by the largest percentage amount which the Department found to be understated. Petitioner argues that this adjustment is conservative, given that four of the five samples described in the verification report were understated.

Similarly, petitioner claims that verification establishes that Gin Harvest maintains product specific yield information, yet it reported an overall yield figure which it applied to all of its products. Petitioner further argues that, because Gin Harvest produces and sells very different products to the United

States, these products necessarily have dramatically different product-specific yields. This sharply differing yield result is fully consistent with the yield information provided by the domestic industry in this investigation, according to petitioner. Petitioner argues that the Department should not accept the overall yield data supplied by Gin Harvest because the issue of product-specific yields has been raised numerous times in this investigation, yet Gin Harvest ignored its more accurate data and submitted less accurate data in order to obtain a lower margin. Finally, petitioner claims that if the Department accepts Gin Harvest's yield data, it should apply the overall yield to each heat treatment step used to produce each transaction listed in the U.S. sales database.

Tar Hong asserts that the Department verified its melamine powder and LG powder consumption allocation methodology and found no discrepancies. Tar Hong further claims that petitioner attacks the reliability of its melamine powder and LG powder allocations because of the production sampling performed at the verification in Xiamen. Although the Department's product sampling showed that per-unit, product-specific consumption was greater than that reported in some instances, according to Tar Hong, many variables (such as air temperature and moisture content on the day of production and the varying amounts of powder actually put into the mold by the individual workers) affect this production process so that the per-unit consumption figure will not be exactly the same for each production run. Accordingly, Tar Hong argues that the Department should ignore petitioner's request to increase the melamine powder consumption for all products and instead use the figures reported by Tar Hong.

Gin Harvest argues that it and other respondents are unable to report material consumption on a product-specific basis. Gin Harvest claims that although the Department noted that Gin Harvest has some production process records that would permit a calculation of product-specific material consumption, it also noted that such records are not maintained for any extended period of time by respondents in the normal course of business. Gin Harvest argues that it should not be punished for failing to provide data that it does not have.

DOC Position. The Department's preference is to use product-specific data. Where such information does not exist, the Department will use the most specific and reasonable information available (*See, Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia* (59 FR 4023, 4027, January 28, 1994). With regard to consumption, petitioner's argument relies on a selective reading of the Tar Hong verification report. Although our initial sampling, based solely on material withdrawn from inventory, indicated potential under-reporting, a second, more comprehensive sampling, which also accounted for materials returned to inventory, showed no consistent pattern of under-or over-reporting (*See* Tar Hong verification report at pages 24–25.) Although the documents used in our sampling could be used to calculate product-specific yields, the only documents we reviewed were contemporaneous with verification, not the POI. Verification revealed no indication that Tar Hong retained records at this level of detail (records showing materials withdrawn and returned to inventory) for more than a week. Therefore, while our sampling showed some variations between products, there is no information on the record to indicate that Tar Hong's overall production factor methodology is distortive. In the absence of any other, more specific allocation methodology available to Tar Hong, we have accepted its consumption factor reporting.

With regard to Gin Harvest's yield data, it reported an overall yield figure because it claimed that its records do not permit it to calculate product-specific yield data. Our verification revealed nothing to contradict the claim that Gin Harvest does not maintain product-specific yield data in its normal course of business.

Further, petitioner's proposed adjustment methodology of applying the yield percentage at every production stage encountered is inconsistent with the Department's verification findings regarding the manner in which the PRC respondents, including Gin Harvest, calculate yield. Petitioner's methodology incorrectly assumes that, at each step (*i.e.*, heat treatment, decoration, and glazing), the producer inspects the product and discards semi-finished products which do not meet specifications. However, as described in the respondents' questionnaire responses, it is not until all production steps have been completed that the respondents discard off-specification merchandise. That is, the overall yield figure is calculated based on production results after all production steps are completed. There is no information on the record to identify the actual yields at each step of production based on the POI production records maintained by Gin Harvest. Applying this overall yield to each production step would effectively double-or triple-count the rejection rate and thus unduly increase Gin Harvest's consumption factors. Gin Harvest's allocation was reasonable based on the records available to it. Accordingly, we have made no adjustment to its reported material consumption factors.

Company-Specific Comments

Tar Hong

Comment 9: Reporting of CEP and EP Sales

Petitioner believes that Tar Hong incorrectly reported certain CEP sales as EP sales. Petitioner argues that the burden of proof is on respondent to satisfy the Department's four-prong test regarding the classification of U.S. sales as cited in the Department of Commerce, Antidumping Manual, Chapter 7 at page 3 (revised 8/91). Petitioner contends that in this case, Tar Hong has not even addressed two of the Department's four criteria. Petitioner argues that at verification, the Department found that the U.S. entities play a central role in these sales, which resemble reported CEP sales in all aspects, except that they are not introduced into U.S. inventory. According to petitioner, Tar Hong's U.S. affiliates have the authority to set the price and the quantity of the potentially dumped merchandise. Petitioner also disagrees with Tar Hong's contention that the role of the U.S. affiliates is less than that of the U.S. affiliates in the first administrative review of *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551 (April 26, 1996) (*Carbon Steel*). Petitioner argues that the Korean firms in *Carbon Steel* had full control of the U.S. sales, and the U.S. affiliates were merely paper processors, as evidenced by the information placed on the record by the Korean firms indicating that the U.S. affiliates had no power to negotiate or approve sales. Consequently, petitioner argues that the Tar Hong sales in question should be treated as CEP transactions.

Tar Hong argues that it properly classified certain sales as EP sales in accordance with the Department's three-factor test, as stated in *Carbon Steel*. First, Tar Hong claims that it has demonstrated that the sales transaction occurs prior to importation into the United States. Secondly, Tar Hong states that direct shipment from Tar Hong Xiamen to the unrelated U.S. customers is a normal commercial distribution

channel used for these U.S. customers. Lastly, Tar Hong asserts that the U.S. affiliates perform limited liaison functions serving primarily as processors of sales-related documentation and communication links with the unrelated buyers. Accordingly, Tar Hong claims that the functions performed by its U.S. affiliates are consistent with selling functions that the Department has determined in other cases to be of a kind that would normally be undertaken by the exporter (*see Carbon Steel*).

DOC Position. We agree with respondents that these sales are properly treated as EP sales. Based on the record evidence, Tar Hong's U.S. affiliates are merely processors of sales-related documentation and a communication link with the unrelated customers. Although these entities play an important role in Tar Hong's sales and distribution process, that role is limited to sales documentation processing and communication links. We find no compelling evidence in Tar Hong's responses or in our verification findings to treat these sales as CEP sales. Consistent with our approach in such cases as *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland* (56 FR 56363, November 4, 1991), we have treated these sales as EP sales.

Comment 10: Transactions Involving Dinnerware Sets

Petitioner states that Tar Hong improperly included non-subject merchandise in its reported sales when it added the thicknesses of the individual pieces of a set (plate, bowl, and cup) together to determine whether the dinnerware set was subject merchandise. Similarly, petitioner argues, pricing for dinnerware sets as well as the factors of production was reported on a combined basis using the plate in the dinnerware set as the identified product. Petitioner argues that this grouping of data for sets was contrary to the instructions in the questionnaire and prevents an item-by-item fair value comparison. Petitioner asserts that if the Department uses this data, it should apply the highest margin for any other transaction to all transactions involving sets as facts available.

Tar Hong contends that the Department has data necessary to calculate piece-specific margins for Tar Hong's set sales and factors because the Department verified that Tar Hong reported the data for sales of products sold in sets on the same basis it reported the data for the factors of production for these products.

DOC Position. We agree with Tar Hong and have appropriately adjusted our calculations to ensure a proper comparison. We excluded all sales of sets where the combined thickness is less than 0.24 inch. We have considered all pieces of a set to be subject merchandise when measurements are equal or greater than 0.24 inch.

Comment 11: Unit Price Reporting

Petitioner contends that, in addition to the errors identified by the Department concerning Tar Hong's reporting of U.S. unit prices on a per-piece, rather than on a per-dozen, basis for many sales, there is reason to believe that there are additional errors of this type which were not individually identified by the Department. Accordingly, petitioner asserts that the Department should compare the margin in the final determination for Tar Hong's sales of pieces with the margin calculated on the sale of dozens or cases, and if the margins for the piece sales are lower than the margins for dozens and cases, then, as facts available, the piece calculations should be disregarded and the sales of dozens or cases should be relied upon for the final determination.

Tar Hong argues that the errors found in its unit reporting do not merit application of facts available. Tar Hong contends that the Department verified that no other sales reported contained such errors.

DOC Position. We examined this issue at verification and are satisfied that the record is complete and accurate with respect to the reported quantities and per-unit prices of U.S. sales. Accordingly, we used the corrected information in our calculations for the final determination.

Comment 12: Production Quantity Data

Petitioner claims that the production quantity data submitted by Tar Hong on two prior occasions is grossly inaccurate, and that Tar Hong's shifting stance regarding the amount of merchandise produced during 1995 confirms that its most recent submission on October 23, 1996, is not reliable. Petitioner argues that the total production quantity is a figure that is fundamental to the integrity of the submission, and that Tar Hong's repeated corrections leave no reasonable basis to believe that its latest number is accurate. Accordingly, petitioner argues, the figure should be rejected.

Tar Hong claims that the Department verified its production quantities and confirmed the accuracy of its data.

DOC Position. We agree with Tar Hong. We have accepted Tar Hong's explanation for the discrepancies and have verified its response in this regard. Section 782(e) of the Act states that the Department shall not decline to consider information that does not meet all of its requirements if:

(1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

Tar Hong's information meets all of these requirements. Accordingly, we have no basis to conclude that the earlier responses distorted the Department's analysis or otherwise impeded this proceeding.

Comment 13: Total Sales Value

Petitioner states that Tar Hong has dramatically overstated the unit price on a number of U.S. sales transactions. Petitioner contends that if the Department concludes that the application of general facts available for Tar Hong is inappropriate (*see* Comment 19 below), it must adjust for this exaggeration of submitted prices by assuming that affected sales are of products with margins, and deducting the amount that the CEP and EP sales values were overstated from total U.S. price.

Tar Hong claims that any discrepancy in its U.S. sales value reconciliation is due to petitioner's miscalculation of Tar Hong's sales values. Tar Hong adds that petitioner offers no explanation of its calculation, and suggests that petitioner's calculation failed to properly account for sales sold in units of cases or dozens.

DOC Position. We agree with Tar Hong. Petitioner misinterpreted the information in a verification exhibit. The document does not include the EP sales booked in Taiwan; it applies only to the sales booked in the United States. Moreover, the exhibit cited by petitioner is not the only document the Department used to confirm Tar Hong's sales reporting, as discussed in the verification report. Based on the sum of our verification findings, we found no discrepancies in the total volume and value of sales reported.

Comment 14: Ocean Freight

Petitioner argues that Tar Hong incorrectly assumed that all ocean

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freight shipments were made in full container loads and that, the reported volumes of the master pack cartons, which are the basis for the movement charge allocations, are wrong. Petitioner claims that although Tar Hong provided revised information for the master pack cartons at verification, this information was not verified and therefore cannot be used. Petitioner argues that for purposes of the final determination, the container load error must be corrected and that, for the master carton error, either the Department should use general facts available or the highest unit freight reported for each freight adjustment affected by the errors.

Tar Hong contends that the Department should accept its revised allocation because the Department found that Tar Hong's volume-based methodology to recalculate international freight was supported by its records.

DOC Position. With regard to Tar Hong's ocean freight shipments, we found that the majority were in fact made in full container loads. Per our instructions, Tar Hong has reallocated EP ocean freight to account for our verification findings. We have also reallocated CEP ocean freight expenses based on our verification findings. In both situations, we consider the allocations to be proper.

Furthermore, although we did not specifically verify the revised information submitted at verification with regard to the volumes of the master pack cartons, the remainder of Tar Hong's response was verified, and the revised information is consistent with Tar Hong's verified information. Accordingly, we have accepted Tar Hong's information for the purpose of recalculating CEP movement expenses.

Comment 15: U.S. Warehouse to Customer Freight

Petitioner contends that Tar Hong's statements that it does not incur freight charges from the U.S. warehouse to the customer are unsupported. Petitioner claims that the verification report notes that Tar Hong's invoices report terms of CEP sales as "delivered". Petitioner therefore asserts that all freight expenses from Tar Hong's financial statements should be allocated to CEP sales.

Tar Hong claims that the Department verified that, notwithstanding the printed "Delivered" term on Tar Hong's invoice, Tar Hong's CEP customers either come to Tar Hong's warehouse and pick up their purchased products, or make their own freight arrangements. Tar Hong asserts that the Department verified that, for the few deliveries that it made using its own vehicles, its allocation methodology was reasonable.

DOC Position. We have accepted Tar Hong's explanation, but have recalculated and reclassified freight expenses based on our verification findings. Tar Hong's methodology allocated freight expenses to all CEP sales as a movement expense. That is, Tar Hong made no attempt to identify which particular sales may have actually incurred warehouse to customer freight. Since Tar Hong did not, and could not, allocate this expense only to those sales which incurred the expense, we determine that it is appropriate to treat all movement expenses not otherwise accounted for (*i.e.*, warehouse to customer expenses) as indirect selling expenses. In our recalculation of indirect selling expenses, we have also included an amount for freight expenses identified in the financial statements, but not included in Tar Hong's calculation. (*See* Comment 18 below.) In this manner, we have included all expenses related to freight.

Comment 16: Packing Weights

Petitioner argues that it is clear from the verification report that Tar Hong's packing weights are unreliable. Petitioner contends that the Department should increase the packing costs by the largest percentage of under reporting found at verification or, at the least, increase these weights by an average of the under reporting of the five samples.

Tar Hong argues that packing costs are reliable and require no further adjustment because the measured weights of the packing materials were within acceptable tolerances.

DOC Position. We agree with Tar Hong. We verified that the packing weights were within acceptable tolerances.

Comment 17: Unreported Returns and Claims

Petitioner states that where verification exhibits show evidence of returns and claims for Tar Hong that were not reported as U.S. warranty expenses or allowances, at a minimum, the Department should apply information from the verification and adjust total U.S. price accordingly.

Tar Hong claims that petitioner's discovery of alleged unreported returns and claims relate to nonsubject merchandise. Accordingly, no adjustment by the Department is necessary.

DOC Position. We agree with Tar Hong. We found no evidence at verification of warranty claims for the subject merchandise. Tar Hong's explanation is consistent with our findings.

Comment 18: Unreported Movement Charges

According to petitioner, the financial statements of Tar Hong's U.S. affiliates indicate that there are certain expenses that were incurred by respondent, but not reported as selling expenses or movement charges. Petitioner contends that the Department should account for these expenses by applying the total of these amounts directly against the margins.

Tar Hong states that the Department verified that the allegedly unreported charges were not direct selling expenses or movement charges, as petitioner claims. Accordingly, no adjustment to the margin calculation is warranted.

DOC Position. We agree with petitioner that these expenses should be accounted for. However, we disagree with petitioner's contention that the amount of the expenses should be applied directly against the margins. Petitioner offers no basis to consider this approach and there is no precedent for applying it here. Instead, we have included these expenses as part of our recalculation of indirect selling expenses. As discussed above at Comment 15, we have treated Tar Hong's unreported warehouse-to-customer expenses as indirect selling expenses. The additional expenses identified by petitioner appear properly classified in this instance as indirect selling expenses as well.

Comment 19: Use of Facts Available for Tar Hong

Petitioner argues that Tar Hong's EP and CEP prices are grossly overstated through a series of reporting errors or misstatements, including those addressed above. Accordingly, petitioner contends, the Department cannot reasonably conclude that the U.S. sales data base is reliable. Further, petitioner contends that Tar Hong's NV data is also unreliable because, despite numerous changes, Tar Hong's total production figure is inaccurate, its treatment of sets makes a proper factors analysis impossible, and the weights of the reported products as well as the packing materials are systematically understated. Moreover, petitioner claims that the corrections submitted at verification should be rejected because an entirely new factors database was submitted and petitioner did not have a meaningful opportunity to comment on the new data. Petitioner concludes that the Department should use facts available because Tar Hong's data is unreliable and no acceptable means of correction exists.

Tar Hong argues that the Department was able to verify all corrections to source documents and the reason for the corrections. Furthermore, according to Tar Hong, there is no evidence that Tar Hong failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information. Tar Hong believes that in those situations where there are discrepancies, the Department should weigh the record evidence to determine what type of change, if any, would be the most probative of the issue under consideration.

DOC Position. We do not agree with petitioner's assertion that Tar Hong's data is unreliable and no acceptable means of correction exists. Moreover, we do not agree with petitioner that Tar Hong's revised factors database contains entirely new data. As discussed in our responses above, we have rejected many of petitioner's claims with regard to Tar Hong's data. The remaining errors are minimal and do not undermine the integrity of the response. Thus, consistent with our approach in such cases as *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996), the use of facts available is not warranted in this instance.

Dongguan

Comment 20: Facts Available

Petitioner argues that the seriousness of the defects in Dongguan's response is evident in that the Department was unable to verify its U.S. sales. Petitioner claims that the verification report records the Department's efforts on this critical issue, and confirms the suspect nature of the data. For example, petitioner cites the Department's finding in the verification report that no confirmation of sales of the subject merchandise to the corporate tax statement was possible. Furthermore, petitioner argues that the Department was unable to complete a sales quantity document trace and that Dongguan's sales records contained duplicate invoices. Petitioner further contends that a failed verification is basically the same as a failure to respond at all and facts available must be used.

Dongguan argues that, although the Department was unable to tie the sales beyond the general ledger, it also noted that it did not observe any apparent inconsistencies in the sales reporting, as revised through verification. Dongguan claims that all other aspects of the accounting system were verified as accurate and reliable. Dongguan also claims that, although the Department was unable to tie sales to the corporate income tax statement, it was able to verify the general integrity and reliability of the sales reporting data from the invoices to the response and to its accounting system. Dongguan asserts that the Department was also able to verify that non-melamine sales income reported in the accounting system was posted accurately and reliably in the corporate tax system. Accordingly, Dongguan believes that the Department need not apply facts available, given the overall reliability of the accounting system.

*DOC Position.*We agree with petitioner. Dongguan's failure to reconcile its sales response beyond the general ledger, coupled with the absence of reliable alternative support documentation, such as verifiable sequential invoice records, leaves no basis to accept the integrity of the sales response and constitutes a verification failure under Section 776(a)(2)(D) of the Act. A complete verification failure also renders a response unusable under section 782(e) of the statute. A verification failure of this magnitude demonstrates Dongguan's "failure to cooperate by not acting to the best of its ability to comply with our requests for information." Accordingly, for the above-mentioned reasons, and consistent with *Pasta from Turkey*, 61 FR 30309, 30312 (June 14, 1996), we based Dongguan's final dumping margin on adverse facts available. In addition, because this margin is based on facts available, all other issues raised by the parties concerning Dongguan are moot.

Sam Choan

Comment 21: Reporting Errors

Petitioner states that the verification report identifies a large number of sales transactions of nonsubject merchandise that were included in the preliminary determination. Petitioner further contends that the difficulties experienced by the Department in verifying Sam Choan's product weights undermine the reliability of the response and that Sam Choan's response should be rejected because none of these transactions were accurately reported. If the Department decides to use Sam Choan's data, petitioner asserts that the weights for certain product codes must be increased, consistent with the verification findings.

Sam Choan argues that its revised sales listing reflects the weights and thicknesses verified by the Department. Sam Choan further states that the Department should exclude any merchandise that does not fall within the scope of investigation.

DOC Position. We have used the weights, as corrected per our verification, in our final determination. We find no basis to conclude that errors in the weight reporting affect the overall integrity of the response. As described in *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (November 22, 1996), these errors are not substantial and thus do not affect the integrity of the response.

With regard to the reporting of out-of-scope merchandise, we have excluded this merchandise for purposes of the final determination.

Chen Hao Xiamen

Comment 22: Application of the Multinational Corporation Provision

Chen Hao Xiamen argues that the Department's application of the MNC rule in this case is not supported by the statute because the Department has failed to demonstrate that the special and unique circumstances required for application of the MNC rule are present in this investigation. Furthermore, according to Chen Hao Xiamen, its reported factors of production have been verified and accurate surrogate country information exists to value the factors of production. In addition, Chen Hao Xiamen argues that the Department's application of the MNC provision arbitrarily assumes that a "proper comparison" based on the factors of production and surrogate valuation is impossible for Chen Hao Xiamen, but is possible for all other respondents. Accordingly, for purposes of the final determination, Chen Hao Xiamen believes that the Department should not apply the MNC rule to Chen Hao Xiamen and instead should apply the surrogate country data to value its factors of production.

Petitioner objects to respondents' claim that the MNC provision does not apply to the Chen Hao respondents. Petitioner argues that respondents misstate the law when they claim that the MNC provision applies only when a comparison based on the factors of production and surrogate valuation is not possible. According to petitioner, there is no requirement that it be impossible to determine NV in the exporting country. Moreover, petitioner argues that the very close cooperation between the Chen Hao companies, confirmed at verification, makes a compelling case for application of the MNC to prevent the use of the the PRC company as an export platform. Finally, petitioner believes that given the very substantial changes it believes should be made to the factors analysis, the NV for

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the PRC may exceed that of Taiwan. However, if the NV for Taiwan remains higher, as was the case in the preliminary determination, the petitioner urges that the Department once again apply the MNC provision.

DOC Position. The MNC rule applies when the criteria of section 773(d) of the Act are met, regardless of whether a comparison based on factors is otherwise possible. For Chen Hao Xiamen, we have determined that the record evidence supports a finding that the first criterion of the MNC provision (ownership of the production facilities in the exporting country by an entity with production facilities located in another country) has been met. The second criterion of the MNC provision (concerning viability of the PRC market) has been met, *per se*, because Chen Hao Xiamen, the PRC exporter, did not make any sales at all in the PRC market during the POI.

The third criterion was also met because Taiwan NV exceeded NV based on the factors of production. See "B. Multinational Corporation Provision" section of this notice.

Comment 23: Melamine Consumption

Petitioner states that the verification confirmed that Chen Hao Xiamen used a methodology that leads to an understatement of melamine powder consumption. Petitioner argues that Chen Hao Xiamen's methodology is in contrast to the other PRC respondents and should be restated to include all POI consumption.

Petitioner further argues that the verification report makes clear that Chen Hao Xiamen could have provided yields on a product-specific basis but instead reported an average that hides the peaks and valleys in yields. Petitioner claims that if the Department accepts Chen Hao Xiamen's yield data, it should apply the overall yield to each heat treatment step indicated for each transaction in the U.S. sales database.

Chen Hao Xiamen argues that it accurately reported its melamine powder consumption and petitioner has provided no reasonable basis as to why restating melamine powder consumption from a batch-by-batch basis to a total POI basis would be any more accurate than its current reporting. Accordingly, Chen Hao Xiamen believes that the Department should ignore petitioner's suggestion.

Chen Hao Xiamen further argues that it could not have provided product-specific yields. It provided yields on a production batch basis, which it claims is the most specific data available related to material consumption. Chen Hao Xiamen further argues that it should not be punished for failing to provide data that it does not have.

DOC Position. With regard to consumption, we agree with Chen Hao Xiamen. Our verification results confirm the reliability of Chen Hao Xiamen's data. Accordingly, we have used Chen Hao Xiamen's reported consumption figures, as corrected through verification, in our analysis.

Moreover, although the Department prefers product-specific yield information, where such information does not exist, the Department will use the most specific information available. In this instance, Chen Hao Xiamen reported yields on a batch specific basis. Further, we have no evidence on the record that the Chen Hao Xiamen's methodology is distortive of its experience during the POI. Accordingly, we have rejected petitioner's arguments and accepted Chen Hao Xiamen's reported yield data, as verified by the Department.

Comment 24: Selling Expense Adjustment

Petitioner contends that, for comparisons of EP to NV based on Taiwan sales or Taiwan CV, EP and NV must be adjusted for selling expenses. Petitioner argues that the Department erred in not adjusting for U.S. selling expenses when the basis for NV was Chen Hao Taiwan's price or CV in comparing EP to NV for Chen Hao Xiamen. Although Chen Hao Xiamen did not provide U.S. selling expense information, according to petitioner, credit expense can be calculated from the verification exhibits.

Chen Hao argues that the Department should not adjust Chen Hao Xiamen's EP when the basis for NV is Chen Hao Taiwan's price or CV. Chen Hao further argues that imputing selling expenses where the Department never provided respondents with an opportunity to present that information would be arbitrary and unfair.

DOC Position. We agree with petitioner that for comparisons of EP to NV based on Taiwan sales or Taiwan CV, EP and NV must be adjusted for selling expenses. See "B. Multinational Corporation Provision" section of this notice.

Comment 25: Product Weights

Petitioner asserts that because verification showed that for six products sampled, the weight verified was greater than the weight reported, Chen Hao Xiamen thus systematically under-reported its product weights. Petitioner contends that to correct the data, the Department should increase the reported product weights by two percent, which is the degree of under reporting identified for one of the products examined at verification.

Chen Hao Xiamen claims that it did not systematically under report its product weights, as claimed by petitioner. Chen Hao Xiamen argues that, given that products produced from the same production batch may have different weights due to varying amounts of melamine input powder, this degree of discrepancy between the reported and verified weights is well within an acceptable tolerance of reliability.

DOC Position. We agree with Chen Hao Xiamen. We note that the weighing of the subject merchandise is inherently somewhat imprecise, and that the verified weights were within acceptable limits.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency*

Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Continuation of Suspension of Liquidation

For Chen Hao Xiamen, Gin Harvest, and Sam Choan, we calculated a zero or *de minimis* margin. Consistent with *Pencils*, merchandise that is sold by these producers but manufactured by other producers will be subject to the order, if issued. Entries of such merchandise will be subject to the "PRC-wide" rate.

In accordance with section 733(d)(1) of the Act and 735(c)(1), we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPS from the PRC, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**, except for entries of merchandise manufactured by those producers receiving a zero or *de minimis* margin. The Customs Service to require a cash deposit or posting of a bond equal to the estimated amount by which the NV exceeds the EP as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Chen Hao Xiamen	0.97 (de minimis).
Gin Harvest	0.47 (de minimis).
Sam Choan	0.04 (de minimis).
Tar Hong Xiamen	2.74.
PRC-Wide Rate	7.06.

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–752 Filed 1–10–97; 8:45 am]

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[A–560–801]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–4136, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act ("URAA").

Final Determination

We determine that melamine institutional dinnerware products ("MIDPs") from Indonesia are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia* (61 FR 43333, August 22, 1996), the following events have occurred:

In September 1996, we verified the questionnaire responses of P. T. Multi Raya Indah Abadi (Multiraya). On November 22, 1996, the Department requested Multiraya to submit new computer tapes to include data corrections identified through verification. This information was submitted on December 5, 1996.

Petitioner, the American Melamine Institutional Tableware Association ("AMITA"), and Multiraya submitted case briefs on November 26, 1996, and rebuttal briefs on December 3, 1996. The Department held a public hearing for this investigation on December 5, 1996.

Scope of Investigation

This investigation covers all items of dinnerware (*e.g.*, plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Excluded from the scope of investigation are flatware products (*e.g.*, knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1995, through December 31, 1995.

Fair Value Comparisons

A. P.T. Mayer Crocodile

We did not receive a response to our questionnaire from P.T. Mayer Crocodile, an exporter of the subject merchandise during the POI. Because P.T. Mayer Crocodile failed to submit information that the Department specifically requested, we must base our determination for that company on the facts available in accordance with section 776 of the Act. Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because P.T. Mayer Crocodile has failed to respond, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. *See* The

Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess at 870 (1994) ("SAA").

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for this uncooperative respondent. In accordance with section 776(c) of the Act, we attempted to corroborate the data contained in the petition. Specifically, the petitioner based both the export price and normal value in the petition on Multiraya's ex-factory prices for nine-inch plates obtained from a market research report. We compared the petitioner's submitted price data to actual prices reported in Multiraya's questionnaire response for products of the same size and shape. We found the Multiraya normal value data from the market research report appears to be consistent with the normal value data reported in Multiraya's questionnaire response. Thus, we consider the normal value data in the petition to have been corroborated and will therefore utilize such data in our margin calculation for P.T. Mayer Crocodile.

We did not, however, consider the export price from the petition to be corroborated because the Multiraya export price data in the market research report was substantially different from the data reported by Multiraya in its questionnaire response which was confirmed through verification. Therefore, we have not used the export price in the petition. In selecting from among the facts otherwise available with regard to export price, we have used the lowest ex-factory export price reported by Multiraya for a nine-inch plate. We found this information to be sufficiently adverse to effectuate the purpose of the statute, and we also note that the number of EP sales to select from was small. We compared that export price to the ex-factory normal value used in the petition in order to calculate a margin for P. T. Mayer Crocodile.

B. Multiraya

To determine whether Multiraya's sales of the subject merchandise to the United States were made at less than fair value, we compared the Export Price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. As set forth in section 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with section 777A(d)(1)(A)(i), we compared the weighted-average EP to the weighted-average NV during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "*Scope of Investigation*" section of this notice, produced in Indonesia by Multiraya and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): shape type (*i.e.*, flat, *e.g.*, plates, trays, saucers, etc.; or container, *e.g.*, bowls, cups, etc.), specific shape, diameter (where applicable), length (where applicable), capacity (where applicable), thickness, design (*i.e.*, whether or not a design is stamped into the piece), and glazing (*i.e.*, where a design is present, whether or not it is also glazed).

(ii) Level of Trade

Multiraya did not claim a difference in level of trade. Our findings at verification confirmed that Multiraya performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we find that no level of trade differences exists between any sales in either the home market or U.S. market. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is unwarranted.

Export Price

In accordance with subsections 772(a) and (c) of the Act, we calculated EP for Multiraya where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and use of constructed export price ("CEP") was not otherwise warranted based on the facts of record (*See* Comment 17).

Normal Value

Cost of Production Analysis

As discussed in the preliminary determination, based on the petitioner's allegations, the Department found reasonable grounds to believe or suspect that Multiraya made sales in the home market at prices below the cost of producing the subject merchandise. As a result, the Department initiated an investigation to determine whether Multiraya made home market sales during the POI at prices below the cost of production (COP) within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Multiraya's reported cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A") and packing costs in accordance with section 773(b)(3) of the Act.

We adjusted Multiraya's raw material costs to include the change in the work-in-process inventory (*see* Comment 4).

B. Test of Home Market Prices

We used Multiraya's adjusted weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time, in substantial quantities, and not at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. As in our preliminary determination, we did not deduct indirect selling expenses from the home market price because these expenses were included in the G&A portion of COP. We recalculated the total material costs by including work-in-process (*see* Comment 4).

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model during the POI are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POI,

were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section

773(b)(2)(D) of the Act. The results of our cost test for Multiraya indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for Multiraya also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Calculation of Constructed Value (CV)

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Multiraya's cost of materials, fabrication, selling, general, and administrative expenses ("SG&A"), and profit, plus U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We calculated Multiraya's CV based on the methodology described above for the calculation of COP.

Price to Price Comparisons

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (where appropriate) in accordance with section 773(a)(8) of the Act. We calculated price-based normal value using the same methodology used in the preliminary determination, with the following exceptions: (1) We disallowed Multiraya's warranty claim as a circumstance of sale warranty claim adjustment (*see*, Comment 8) and 2) We recalculated home market credit to reflect verification findings (*see* Comment 7).

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks, *see Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Indonesian rupiah did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Multiraya for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of this investigation should be revised to exclude melamine dinnerware that exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents" scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer. Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position

We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [p]etitioners" scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine "institutional" dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Alleged Underreporting of U.S. Sales

Petitioner states that information on Multiraya's U.S. invoices reviewed at verification demonstrates that Multiraya seriously underreported its U.S. sales because the data taken from the invoices establishes that the product weight reported by Multiraya is less than that found on the actual invoices. Further, petitioner claims Multiraya compounded its underreporting of U.S sales by not providing the Department with an explanation during the verification to validate the weight discrepancy. Therefore, petitioner asserts the Department should rely on adverse facts available for the final margin calculation for Multiraya. However, if the Department were to determine that facts available should not be applied to Multiraya, petitioner suggests that at a minimum, the Department should apply partial facts available and treat the unreported quantities as "free merchandise."

Multiraya argues that it did not underreport any U.S. sales, and that petitioner's arguments claiming Multiraya has underreported its U.S. sales is based on petitioner's misunderstanding of the information on the record. Multiraya adds that the

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Department verified that it did not ship anything to the U.S. other than the subject merchandise in the quantities listed. Therefore, Multiraya argues that petitioner's claim that it has "ghost" or "free" merchandise is false. Finally, Multiraya argues that the differences in weight do not constitute underreporting of its sales to the United States.

DOC Position

We verified that Multiraya sold subject merchandise by the number of pieces and not by weight, and that Multiraya keeps track of its sales by the number of pieces sold. Multiraya's sales reporting was based on the quantity sold, not on the weight of the merchandise. For purposes of responding to the Department's questionnaire, Multiraya reported actual weights, which we verified. Thus, the discrepancies in the weight actually reported to the Department and the "standard" weights which were listed on the U.S. invoices for purposes of duty drawback payments to the Indonesian government are not evidence of any misrepresentation on Multiraya's part. Therefore, we disagree with petitioner's allegation that, since the standard weight and the actual weight differed, Multiraya actually shipped additional "free merchandise" to the U.S. Accordingly, we have used Multiraya's response for our final determination.

Comment 3: Product Characteristics

Petitioner states that, based on the Department's verification of Multiraya's sales data, Multiraya's reporting of product characteristics (*i.e.*, shape, capacity, weight and thickness) is replete with errors. As a result, petitioner argues that the errors make it impossible for the Department to accurately use home market sales data to identify the proper comparisons to U.S. sales. Therefore, petitioner claims that the Department should rely on the facts available for Multiraya's final margin calculation.

Multiraya argues that, although certain product characteristics were misreported for some products (*i.e.*, capacity and thickness), the Department did not find any discrepancies in more determinative characteristics such as length, width, and diameter. Multiraya argues that such misreporting will have an insignificant effect on model matching.

DOC Position

We agree with petitioner's allegation that Multiraya misreported certain product characteristics such as the weight and thickness of the product. However, we have concluded that these errors are minor with regard to both the product matching criteria and the extent of the incorrect reporting. We have corrected those errors accordingly. We determined that Multiraya misreported the thickness of some of its products because of the point of measurement used for reporting to the Department. We did not specify in the Department's questionnaire where the appropriate point of measurement would be, hence there were differences between the Department's measurement at verification and Multiraya's measurement. We have also determined that the more determinative product characteristics were, in fact, reported correctly (*see* Memorandum from MIDP Team to Louis Apple, Acting Office Director, August 12, 1996). Therefore, we have rejected petitioner's argument that facts available are required as a result of the differences in Multiraya product matching characteristics.

Comment 4: Work-in-Process Inventory (WIP)

Petitioner claims that Multiraya underreported its material costs by excluding the costs of WIP inventory and points to Multiraya's own submission indicating that WIP decreased from the beginning of the year to year-end. Petitioner states that Multiraya reported only those inputs withdrawn from raw material inventory during the POI, but that the change in Multiraya's WIP inventory should also have been included as part of the material costs. Since opening WIP is much greater than closing WIP, petitioner claims that Multiraya's exclusion of the change in WIP significantly distorted the costs. As a result of Multiraya's deficient response, and the inability of the Department to verify the data completely, petitioner claims that the Department should apply total facts available for Multiraya's final margin calculation.

Multiraya argues that the Department performed numerous tests on its production costs at verification and found no information to indicate that Multiraya had under-reported its costs due to changes in WIP or any other factor. Moreover, Multiraya argues that WIP is irrelevant unless raw material costs fluctuate during the year, and the Department verified that Multiraya's cost of raw materials did not fluctuate during that time period.

DOC Position

We agree with petitioner that Multiraya's reported production costs are understated; however, we disagree with petitioner's suggestion that the remedy for this error is to apply total facts available. Multiraya reported its per-unit costs based on the cost incurred during the period (without considering the WIP balances), allocated over the total amount of finished goods produced. Because Multiraya failed to include the change in WIP (which represents the costs of semi-finished goods that were completed during the period) the reported costs are understated. We have corrected for this understatement by allocating the net change in WIP balances to all of the goods produced. This allocation was accomplished by determining the percentage relationship between the change in WIP and the reported material cost.

Further, we disagree with Multiraya's assertion that the change in WIP is only significant when the price of raw materials is fluctuating, because the change in WIP represents costs incurred to produce the units recorded as finished goods in this period, thus the amount can be significant.

Comment 5: Transaction and Product-Specific Yields

Petitioner contends that verification revealed that Multiraya could have calculated product-specific yields for home market sales based on stock cards and sales invoices. By Multiraya maintaining its claim that it could not calculate more specific yields and thus using an average yield, it has in effect minimized its dumping margin. Consequently, petitioner argues that this is another reason for the Department should apply total facts available.

Multiraya states that it did not maintain production records in its normal course of business that would have enabled it to calculate product-specific yields. Multiraya contends that petitioner has misunderstood Multiraya's accounting system. Multiraya explains that, because it tracks its consumption of imported melamine powder for purposes of supporting duty drawback claims with the Indonesian government, it can link the purchase of imported melamine powder specifically to the production of melamine dinnerware sold for export. In so far as, Multiraya does not receive a duty drawback refund for domestic melamine, it had no reason to track yields for products that use domestic melamine powder. Thus, Multiraya states that it cannot link the purchase of domestic melamine powder to specific production and sale of melamine dinnerware products. As a result, Multiraya asserts that would be unable to calculate product-specific or batch-specific production yields for products

manufactured from domestic melamine powder. Accordingly, Multiraya contends that it is unfair for the Department to apply facts available for failure to provide information on product-specific yields that cannot be derived from its records.

DOC Position

The Department's preference is to use product-specific cost data, which includes product specific yield results, for calculating COP and CV. The Department uses the most specific and reasonable allocation methodology possible given the available data (*see Final Determination at Sales Less Than Fair Value: Welded Stainless Steel Pipe From Malaysia*, 59 FR 4023, 4027, January 28, 1994). In this instance, Multiraya reported its costs based on overall yield information because it claimed that its records do not permit it to calculate cost data on a more specific basis. Our verification revealed nothing to contradict Multiraya's claim that it does not maintain product-specific yield data in its normal course of business. The accounting records petitioner identified could arguably be used to calculate an average yield for each specific order. Nevertheless, compiling and aggregating this data would not provide product-specific yield information as petitioner claims. Instead, this calculation would result in average yield data, which would be no more specific than the information provided by Multiraya. Accordingly, we have accepted Multiraya's average yield rate calculation which we tested at verification.

Comment 6: Land Rental

Petitioner claims that Multiraya failed to disclose until verification that it leased land from an affiliated party for use in its dinnerware business, and that Multiraya was unable to demonstrate the arm's length pricing of the land rent. Citing Indonesian financial statistics for support its contention that the rent expense is too low, petitioner argues that this lease amount must be adjusted to reflect the true cost of Multiraya's lease and cites

Multiraya argues that rental payments as affiliated party transactions are merely another form of capital contribution by shareholders and the Department's practice is to ignore such intracompany transfers, regardless of whether they relate to sales or production. Multiraya explains that the land was owned by a company official or "shareholder" who contributed the land to Multiraya for a fixed payment. Thus, according to Multiraya, the rent the shareholder receives is equivalent to a dividend or profit sharing amount.

DOC Position

We verified that Multiraya reported the land rental expense that was reflected in its financial statements. We analyzed the amount of the recorded expense in relation to the total costs and the overhead expense and noted that the reported amount is immaterial. Further the effect of adjusting the recorded amount by the inflation rate experienced from 1991 until the POI, as requested by the petitioner, is also immaterial as petitioner has not shown any substantial link between inflation in Indonesia and the land rental costs. Accordingly, we have accepted the land rental amount as the figure recorded in the financial statement.

Comment 7: Home Market Credit Expenses

Petitioner states that Multiraya overstated its home market credit expenses for most reported transactions. Petitioner argues that the Department should either recalculate or disallow entirely the claimed credit expense.

Multiraya argues that the overstatement of home market credit expense is directly related to a computer programming error and should not warrant applying facts available. Multiraya requests that the Department use verified information for its final margin calculation.

DOC Position

We agree with petitioner that Multiraya's home market credit expenses were overstated, and we also agree that it is appropriate to recalculate these expenses to correct the error. At verification, the Department found that, aside from a computer error, the reported credit expenses were accurate. This computer error does not warrant the application of facts available. In response to the Department's request, Multiraya has resubmitted corrected payment dates. Hence, we have recalculated the home market credit expense using the corrected information submitted by Multiraya.

Comment 8: Home Market Warranty Expense

Petitioner claims that Multiraya improperly allocated home market warranty expenses over all sales, instead of on a more specific basis. According to petitioner, verification demonstrated that Multiraya could have calculated this expense on a customer-specific basis. Accordingly, petitioner contends the Department should treat the claimed warranty amount as an indirect selling expense rather than a direct selling expense.

Multiraya argues that the Department's practice with respect to warranty expenses does not require a respondent to report a sale-by-sale breakdown of direct warranty expenses. Contrary to petitioner's claim, Multiraya argues that verification proved its warranty expenses are directly related to the subject merchandise because the expenses were incurred for melamine institutional dinnerware products. In addition, Multiraya argues that given its accounting records, an overall allocation methodology was the only feasible method available for it to calculate its warranty expense. Multiraya argues that a customer-specific methodology would not provide any greater accuracy than an overall warranty expense methodology.

DOC Position

It is the burden of the respondent to demonstrate it is entitled to an adjustment under the Act. At verification, Multiraya was unable to provide any documentation to support its claim for warranty expenses. Rather, the claimed warranty expenses had been derived from Multiraya's best estimate and not based on actual results. Because Multiraya was unable to meet its burden, we are calculating normal value without adjustment for home market warranty expenses.

Comment 9: Home Market Inland Freight

Petitioner claims that Multiraya's reported home market freight expense claim could not be verified and contained many discrepancies. Specifically that Multiraya's reported freight expenses was deficient because it did not reflect: (1) Use of diesel fuel, rather than gasoline as reported, (2) lack of documentation to support an allocation methodology of how it determined the freight per transaction, and (3) inclusion of non subject-merchandise.

Multiraya argues that its reported home market freight expenses were verified. As such, Multiraya states that it has reported its home market inland freight expense to the best of its ability, and recommends that the Department not apply facts available to its final margin calculation.

DOC Position

The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis, rather than an overall basis (*see, e.g., Final Results of Antidumping Duty Administrative Review: Replacement*

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Parts for Self-Propelled Bituminous Paving Equipment from Canada 56 FR 47451, 47455, September 19, 1991). If a respondent does not maintain its records to enable freight expense reporting at this level, then our preference is to apply an allocation methodology at the most specific level permitted by a respondent's records, unless a respondent can demonstrate that doing so is overly burdensome or that its alternative methodology is representative and non-distortive of transaction-specific sales. Multiraya allocated all home market freight by weight over all home market sales inclusive of subject and non-subject merchandise. Verification did not contradict Multiraya's claim that it is unable to report freight expenses on a transaction-specific basis. The non-subject merchandise included in the freight allocation is all melamine products not covered by the scope of this investigation. In so far as we find that expense allocation of melamine product weight, it is a reasonable approach to account for the inclusion of non-subject merchandise in the reported freight expenses. We have accepted a Multiraya's methodology as representative and non-distortive of transaction-specific sales information (*see Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561, June 28, 1995).

Comment 10: Understating of U.S. Credit Expenses

Petitioner claims that Multiraya improperly calculated reported credit on U.S. sales by reporting shipment date as the date of ocean shipment, rather than as the date of factory shipment. To correct this error, petitioner argues that the Department should recalculate credit using invoice date as shipment date.

Multiraya responds that it correctly reported the shipment date for this expense based on the date from the bill of lading because it is on that date that the merchandise left the factory.

DOC Position

We have accepted Multiraya's reported credit expense, because at verification we found no evidence to indicate any differences between the date of factory shipment and the bill of lading date, *i.e.*, shipment date.

Comment 11: U.S. Dollar Interest Rate vs Rupiah Interest Rate

Petitioner states that, although Multiraya invoices its U.S. customer in U.S. dollars, it ultimately receives payment in Indonesian rupiahs because the bank converts the customer's payment. As a result, petitioner claims that Multiraya's opportunity cost is incurred in rupiah, not dollars. Therefore, petitioner argues that the Department should apply a rupiah interest rate to calculate U.S. credit expenses.

Multiraya argues that the Department properly applied a U.S. dollar rate to the calculation of U.S. credit expenses. Multiraya states that the fact that it ultimately receives payment for its dollar-denominated sales in rupiahs is not determinative. However, Multiraya states that it invoices its customers in U.S. dollars, and its customers pay in U.S. dollars via letter of credit. Therefore, its opportunity costs are properly associated with U.S. dollars.

DOC Position

We agree with Multiraya's claim that based on the facts in this investigation the opportunity cost experienced by Multiraya was in U.S. dollars. The Department's policy is to calculate imputed credit costs using a weighted average short term borrowing which reflects the currency in which the sale was invoiced. Consistent with the Department's practice we have determined no credit cost adjustments are warranted. (*See, e.g., Final Determination at Sales Less Than Fair Value: Pasta from Turkey*, 61 FR 30309, 30324 (June 14, 1996)).

Comment 12: Duty Drawback Claim

Petitioner claims that Multiraya improperly included as an offset to costs, drawbacks on duties paid prior to the POI. Petitioner argues that the Department should deny Multiraya's duty drawback claim entirely. Petitioner argues that Multiraya's duty amount should be lowered because: (1) Multiraya did not include duties associated with opening WIP, (2) Multiraya recorded material costs inclusive of duties, and (3) Multiraya's WIP that was incorporated in materials was not included in reported material costs. Finally, petitioner states that Multiraya did not demonstrate a tie between the quantity of imported melamine powder on which the duty was paid and the quantity of exports of imported melamine upon which the drawback was received. For the above-mentioned reasons, petitioner argues that the Department should reject Multiraya's claim for a duty drawback in its final margin calculation.

Multiraya argues that it imported its duty drawback refund base on duties paid before the POI in an export to reflect actual refunds received during the POI. Further, Multiraya argues that petitioner's claim with regard to unreported duty on the change in WIP is irrelevant to the reported duty drawback amount because the Department requires a respondent to report duty drawback claims on the same basis as it receives duty drawback refunds. Multiraya states that the absence of WIP costs and quantities from its calculation of reported costs is not beneficial to its final margin calculation. Multiraya states that, at verification, the Department confirmed that all imported melamine was indeed used in exported melamine production during the POI.

DOC Position

As discussed in Comment 4, we believe that the change in WIP should be included in the total material costs, and we have adjusted the total cost of melamine production to take this into account. However, we do not agree with petitioner that Multiraya has not demonstrated that it is entitled to a duty drawback. We verified Multiraya's duty drawback process, its method of tracking total duties paid and weights and quantities of production and determined it was appropriate. Accordingly, there is no basis to deny Multiraya's duty drawback claim (*See* Verification Report at page 11 and Cost Verification Exhibit 109).

Comment 13: Exclusion of Excise Tax From Material Costs

Petitioner argues that Multiraya's claim of an income tax credit for excise taxes paid on exported melamine products is incorrect and should not have been reported as duty drawback because said excise tax is not supported by a link between imports and exports. In addition, petitioner states that Cost Verification Exhibit 111 indicates that the income tax is allocated over a large number of products, including domestic products. Petitioner claims that there is no information on the record to suggest that this tax credit is directly linked to export or export quantities exclusively. Since the burden of proof to support its claim is with Multiraya, petitioner argues the Department must deny Multiraya's duty drawback claim for an income tax credit for paid excise taxes.

Multiraya argues that Cost Verification Exhibit 109 clearly details that import duties and value added tax paid on imported melamine powder were eventually recovered via a tax credit on exported melamine dinnerware products. Thus, Multiraya argues, the Department should accept the duty drawback claim.

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DOC Position

We agree with Multiraya. We verified that Multiraya's excise tax was imposed on imported melamine powder (which was used to produce MIDP for export) and was credited through the income tax return upon export of the finished product. Accordingly, the claimed drawback amount was properly classified (*see* Cost Verification Exhibit 111).

Comment 14: Foreign Inland Freight

Petitioner claims that Multiraya improperly reported a U.S. sale without including the foreign inland freight expense incurred on that sale based on the Department's verification information. Because of this exclusion petitioner contends that the Department should apply facts available and assign the highest amount of foreign inland freight to this sale in the calculation of Multiraya's final margin.

Multiraya argues that it properly reported foreign inland freight for all its U.S. sales. Multiraya contends that foreign inland freight should not have been applied to the U.S. sale at issue because it in fact was not shipped via ground transportation.

DOC Position

We agree with Multiraya. We verified that foreign inland freight was properly applied to U.S. sales and, for the sale in question, we find that foreign inland freight expenses were not incurred (*see* Verification Exhibit 13 and 19).

Comment 15: U.S. Warranty Expenses

Petitioner contends that Multiraya failed to report warranty expenses incurred on U.S. sales. Petitioner states that the Department's verification of sales documents and customer files revealed that although Multiraya did not have a formal warranty policy, it allowed customers to return unsatisfactory merchandise, which is the equivalent of a warranty expense. Consequently, petitioner contends that the Department should apply facts available to Multiraya's final margin calculation.

Multiraya responds that it did not incur any warranty expenses on U.S. sales. Multiraya states that the Department verified that it did not grant any warranty-related claims during the POI. In addition, Multiraya contends that the Department's reconciliation of U.S. sales to Multiraya's financial statements at verification proved that its U.S. customer did not receive any credits toward its payment to Multiraya.

DOC Position

Although the Department's verification report indicates that Multiraya's customers are able to return unsatisfactory merchandise, at verification we did not find any evidence to suggest that Multiraya is contractually obligated to provide credit or any other redress for unsatisfactory merchandise. Therefore we do not consider this informal return policy to constitute a warranty obligation associated with Multiraya's sales. Accordingly we determined that Multiraya does not incur warranty expenses and application of facts available is not warranted.

Comment 16: U.S. Containerization Costs

Petitioner states that Multiraya failed to report containerization expenses on U.S. sales. Therefore, petitioner contends that the Department should estimate the expense to be equal to labor costs for packing or use the public record figure for Indonesian containerization and include this amount in the final determination margin calculations.

Multiraya argues that the costs of containerization are included in Multiraya's reported expenses.

DOC Position

We agree with Multiraya. We verified that costs associated with containerization are included in Multiraya's packing expenses. (*See* Verification Exhibit 17).

Comment 17: U.S. Sales Treated as Affiliated Party Sales

Petitioner claims that information on the record indicates a close supplier relationship between Multiraya and its sole U.S. customer. Consequently, petitioner states Multiraya's failure to provide all the information to the Department relevant to its affiliation is equivalent to Multiraya submitting a seriously deficient response. Further, petitioner states that the Department verified all U.S. sales are made to one customer and would fall within the definition of affiliated party set forth in Section 771(33) of the Tariff Act. In addition, petitioner argues that there is clearly an exclusive seller/purchaser relationship with respect to shipments of the subject merchandise from Indonesia to the United States. As a result of Multiraya's failure to provide the Department with the information required to calculate CEP for its U.S. sales, petitioner suggests that the Department apply facts available, as set forth in the petition, to the final margin calculation for Multiraya.

Multiraya states there is not an affiliation with its sole U.S. customer, as neither has the authority or is in the position to exercise restraint or discretion over the other. Multiraya states that Multiraya and its customer do not have an exclusive business relationship, as Multiraya is not the only supplier of the subject merchandise for the U.S. customer. Multiraya states that the Department reviewed supporting documentation that demonstrated that Multiraya, in fact, has sought new business and other customers. In addition, Multiraya states that there is no corporate relationship between it and its U.S. customer. Multiraya states that the Department reviewed its corporate documentation and did not find any reference to the U.S. customer's owners, directors, or managers.

DOC Position

We disagree that Multiraya's U.S. sales should be classified as CEP sales because we do not find that the evidence establishes that the sole U.S. importer and Multiraya are affiliated parties. Section 771(33)(G) of the Act provides, *inter alia*, that parties will be considered affiliated when one controls the other. A person controls another person if the person is "legally or operationally in a position to exercise restraint or direction over another person." SAA at 838. The SAA further states that a company may be in a position to exercise restraint or direction through, among other things, "close supplier relationships in which the supplier or buyer becomes reliant upon the other." *Id.*

Pursuant to section 771(33) of the Act, we reviewed Multiraya's relationship with its U.S. importer. The evidence indicates that there is no corporate or family relationship between the two companies. The Department requested Multiraya to provide evidence to support its assertion that it was not under the control of its sole U.S. customer and it freely negotiated its U.S. prices for the subject merchandise. Multiraya submitted written documentation between Multiraya and this U.S. customer which demonstrated that negotiations occurred between Multiraya and its sole U.S. customer regarding melamine product prices, and that Multiraya was not controlled by the customer in setting the price of the subject merchandise (*See* Multiraya's June 7, 1996, Supplemental Questionnaire Response at Exhibit 1 and 2). We verified that the negotiated prices reflected the prices reported in Multiraya U.S. sales listing. The evidence on the record also

demonstrates that Multiraya does not have an exclusive supplier relationship with its U.S. customer as it attempted to solicit business from other U.S. companies (*See* Multiraya's July 15, 1996, Supplemental Questionnaire Response at Exhibit 3). Therefore, we have determined that the evidence on the record supports the claim that Multiraya is not affiliated with its U.S. customer.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPs that are entered, or withdrawn from warehouse, for consumption on or after August 22, 1996, the date of publication of our preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
P. T. Mayer Crocodile	12.90
P. T. Multi Raya Indah Abah	8.10
All Others	8.10

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero, *de minimis* weighted-average dumping margins, and margins determined entirely under section 776 of the Act, in the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–753 Filed 1–10–97; 8:45 am]

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[A–583–825]

Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4194, or (202) 482–4136, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA").

Final Determination

We determine that melamine institutional dinnerware products ("MIDPs") from Taiwan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Taiwan* (61 FR 43341, August 22, 1996)), the following events have occurred:

In September and October 1996, we verified the questionnaire responses of respondents Yu Cheer Industrial Co., Ltd. (Yu Cheer) and Chen Hao Plastic Industrial Co., Ltd. (Chen Hao Taiwan). On November 23, 1996, the Department requested Chen Hao Taiwan to submit new computer tapes to include data corrections identified through verification. This information was submitted on December 5, 1996.

Petitioner, the American Melamine Institutional Tableware Association ("AMITA"), and respondents submitted case briefs on November 27, 1996, and rebuttal briefs on December 3, 1996. The Department held a public hearing for this investigation on December 5, 1996.

Scope of Investigation

This investigation covers all items of dinnerware (*e.g.*, plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. This merchandise is classifiable under subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Excluded from the scope of investigation are flatware products (*e.g.*, knives, forks, and spoons).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is January 1, 1995, through December 31, 1995.

Facts Available

IKEA and Gallant

We did not receive a response to our questionnaire from either IKEA Trading Far East Ltd. (IKEA) or Gallant Chemical Corporation (Gallant). Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner and in the form requested, significantly impedes a proceeding, or provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. Because IKEA and Gallant failed to submit the information that the Department specifically requested, we must base our determinations for those companies on the facts available.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. IKEA's and Gallant's failure to respond to our questionnaire demonstrates that IKEA and Gallant have failed to cooperate to the best of their abilities in this investigation. Accordingly, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

Section 776(c) of the Act provides that where the Department selects from

among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA"), states that the petition is "secondary information" and that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

The petitioner based its allegation of both normal value and export price in the petition on a market research report which utilized price quotations from a manufacturer/exporter of MIDPs in Taiwan. The petitioner also submitted a published price list of comparable merchandise sold during the POI in Taiwan. The Department has determined that the price list corroborates normal value used in the petition.

The export price in the petition is consistent with export prices reported by responding companies on the record of this investigation. Therefore, we determine that further corroboration of the facts available margin is unnecessary.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Chen Hao Taiwan and Yu Cheer to the United States were made at less than fair value, we compared the Export Price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. As set forth in section 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with section 777A(d)(1)(A)(i), we compared POI-wide weighted-average EPs to weighted-average NVs. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the *Scope of Investigation* section, above, produced in Taiwan and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): shape type (*i.e.*, flat—*e.g.*, plates, trays, saucers etc.; or container—*e.g.*, bowls, cups. etc.), specific shape, diameter (where applicable), length (where applicable), capacity (where applicable), thickness, design (*i.e.*, whether or not a design is stamped into the piece), and glazing (*i.e.*, where a design is present, whether or not it is also glazed).

(ii) Level of Trade

In the preliminary determination, the Department determined that no difference in level of trade existed between home market and U.S. sales for either Chen Hao Taiwan and Yu Cheer. Our findings at verification confirmed that Chen Hao Taiwan and Yu Cheer performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we determine that all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is unwarranted.

Export Price

We calculated EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and where CEP was not otherwise warranted based on the facts of record.

We calculated EP for each respondent based on the same methodology used in the preliminary determination, with the following exceptions:

Chen Hao Taiwan

We added an amount to U.S. sales denominated in U.S. dollars to account for bank and currency conversion charges not included in Chen Hao Taiwan's reporting, based on information developed at verification (*see* Comment 13).

Yu Cheer

We made the following corrections, based on our verification findings:

(a) Revised payment dates for certain U.S. sales, for purposes of calculating imputed credit; (b) Corrected foreign inland freight; (c) revised packing labor expense; and (d) corrected certain packing material expenses.

In order to reflect the corrected payment dates for certain U.S. sales, we recalculated credit for all U.S. sales, using verified shipment and payment dates and Yu Cheer's reported interest rate. Yu Cheer did not provide information to weight-average the different packing material purchase prices observed at verification. Accordingly, we applied the highest price observed at verification for these materials as facts available. This approach was also consistent with Yu Cheer's reporting methodology for some of the packing material expenses.

Normal Value

Cost of Production Analysis

In the preliminary determination, based on the petitioner's allegation, the Department found reasonable grounds to believe or suspect that Chen Hao Taiwan sales in the home market were made at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether Chen Hao Taiwan made home market sales during the POI at prices below their respective cost of production within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the cost of production (COP) analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Chen Hao Taiwan's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act.

We adjusted financial expenses to exclude foreign exchange gains (*see* Comment 10), and to include the interest expense associated with loans from affiliated parties (*see* Comment 9). We also adjusted factory overhead to include an amount for pension expenses (*see* Comment 11).

B. Test of Home Market Prices

We used Chen Hao Taiwan's adjusted weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and were not at prices which

permit recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. We did not deduct indirect selling expenses from the home market price because these expenses were included in the G&A portion of COP.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model during the POI are at prices less than COP, we disregard the below-cost sales because they are (1) made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POI, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. The results of our cost test for Chen Hao Taiwan indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for Chen Hao Taiwan also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

In this case, we found that some models had no above-cost sales available for matching purposes. Accordingly, export prices that would have been compared to home market prices for these models were instead compared to constructed value (CV).

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, selling, general, and administrative expenses ("SG&A"), profit and U.S. packing costs as reported in the U.S. sales databases. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Chen Hao Taiwan in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. Where appropriate, we calculated Chen Hao Taiwan's CV based on the methodology described in the calculation of COP above. We made the same adjustments to Chen Hao Taiwan's reported CV as we described above for COP.

Price to Price Comparisons

Adjustments to Normal Value

We based normal value on the same methodology used in the preliminary determination, with the following exceptions:

Chen Hao Taiwan

For one of several packing materials used by Chen Hao Taiwan, we found a slight discrepancy between the reported consumption and costs, and the verified consumption and costs. This discrepancy, however, affects only a small part of the overall packing material cost and would have an *ad valorem* effect of less than .33 percent. Consistent with 19 CFR 353.59(a), which permits the Department to disregard insignificant adjustments, we have not adjusted the reported packing materials cost in our fair value comparisons for Chen Hao Taiwan.

Yu Cheer

We revised packing labor and certain packing material expenses, based on verification findings. Yu Cheer did not provide information to weight-average the different packing material purchase prices observed at verification. Accordingly, we applied the highest price observed at verification for these materials as facts available. This approach was also consistent with Yu Cheer's reporting methodology for some of the packing material expenses.

Price to CV Comparisons

Where we compared Chen Hao Taiwan's CV to Chen Hao Taiwan's export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (where appropriate) in accordance with section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks, *see Change in Policy Regarding Currency Conversions* 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Scope of Investigation

Respondents argue that the scope of investigation should be revised to exclude melamine dinnerware that

exceeds a thickness of 0.08 inch and is intended for retail markets when such products are accompanied by appropriate certifications presented upon importation to the United States.

Petitioner objects to respondents' scope revision proposal because, it believes, it has no legal or factual basis and would result in an order that would be very difficult to administer. Petitioner further contends that antidumping orders based on importer certifications of use, such as the proposal advocated by respondents, are difficult to administer and should be avoided where possible. Petitioner argues that if respondents want to produce merchandise for the retail market that presents no scope issue, respondents can produce merchandise of a thinner wall thickness that falls outside of the scope.

DOC Position. We agree with petitioner. Petitioner has specifically identified which merchandise is to be covered by this proceeding, and the scope reflects petitioner's definition. As we stated in *Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994), [p]etitioners' scope definition is afforded great weight because petitioners can best determine from what products they require relief. The Department generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems. These circumstances are not present here.

The petitioner has used a thickness of more than 0.08 inch, not end use, to define melamine "institutional" dinnerware. The physical description in the petition is clear, administrable and not overly broad. Thus, we agree with petitioner that there is no basis for redefining the scope based on intended channel of distribution or end use, as respondents propose.

Comment 2: Acceptance of Chen Hao Taiwan Questionnaire Responses

Petitioner argues that the Department should reject Chen Hao Taiwan's questionnaire responses because the extensive, fundamental changes to the responses submitted during the course of the investigation render its data unreliable. In particular, petitioner objects to Chen Hao Taiwan's submission of allegedly "minor corrections" at the beginning of verification and submitted for the record on October 8, 1996. Petitioner claims that this information is untimely under 19 CFR 353.31 as it contains new information, which may not be accepted at verification, and should therefore be (wholly or, at a minimum, partially) rejected for use in the final determination following the precedent in *Final Results of Administrative Review: Titanium Sponge from the Russian Federation* (61 FR 58525, November 15, 1996) (*Titanium Sponge*). Further, petitioner claims it was deprived of its ability to comment on this data prior to verification.

Chen Hao Taiwan responds that, by focusing on the absolute number of corrections made, petitioner ignores the fact that the changes were made to ensure that the most complete and accurate responses were submitted for the record and properly verified. According to Chen Hao Taiwan, its revisions corrected typographical and data entry errors; the corrections related to misreported items, rather than unreported items. Chen Hao Taiwan adds that this situation is different from *Titanium Sponge*, where the rejected submission related to previously unreported items of which the Department was not alerted, while in this proceeding, Chen Hao Taiwan properly advised the Department of its corrections. Chen Hao Taiwan states that it responded to the best of its ability in this proceeding and, thus, there is no basis to apply facts available.

DOC Position. We disagree with petitioner's description of Chen Hao Taiwan's October 8 submission as an extensive and entirely new cost submission. Chen Hao Taiwan corrected elements of its labor and factory overhead data, which resulted in revised figures for these components of its COP and CV calculations. Although the labor and overhead expenses for some specific products changed substantially, the effect on the total COP and CV was relatively insignificant. Chen Hao Taiwan did not revise its methodology for calculating these expenses. The corrections submitted by Chen Hao Taiwan prior to verification did not include new methodologies or expense claims; there was no new area of the response in which the petitioner did not have the opportunity to comment. In short, the corrections submitted by Chen Hao Taiwan were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

We agree with Chen Hao Taiwan that the submission of these corrections is not comparable with the *Titanium Sponge* example, where the Department, rather than the respondent, identified the information in the course of verification, and the information discovered was a new issue, not previously discussed in the proceeding. Chen Hao Taiwan fully apprised the Department of all revisions at the commencement of verification. Its revisions corrected data already on the record and did not introduce new issues not previously reported on the record.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. The Department's use of facts available is subject to section 782(d) of the Act. Under section 782(d), the Department may disregard all or part of a respondent's questionnaire responses when the response is not satisfactory or it is not submitted in a timely manner. The Department has determined that neither of these conditions apply. The Department was able to verify the response, thus rendering it satisfactory, and the types of revisions submitted by Chen Hao Taiwan met the deadline for such changes. Under section 782(e), the Department shall not decline to consider information that is 1) timely, 2) verifiable, 3) sufficiently complete that it serves as a reliable basis for a determination, 4) demonstrated to be provided based on the best of the respondent's ability, and 5) can be used without undue difficulties. In general, Chen Hao Taiwan has met these conditions.

Accordingly, we find no basis to reject Chen Hao Taiwan's response, and thus, no basis to rely on the facts otherwise available for our final determination.

Comment 3: Yield Rate

Petitioner claims that Chen Hao Taiwan improperly reported overall yield information for its COP and CV data when it had more accurate, product-specific data available. Petitioner alleges that the verification exhibits establish that Chen Hao Taiwan maintains product-specific yield information and, therefore, could have reported its costs on this basis, rather than an overall yield figure applied to all of its products. Petitioner claims that by reporting overall yield figures, Chen Hao Taiwan may be attempting to mask dumping margins generated by sharply different yields among products, which is the experience of the U.S. industry. Since Chen Hao Taiwan allegedly chose instead to report less accurate production data, petitioner contends that the Department should reject Chen Hao Taiwan's data as submitted and adjust the yield rate by applying the reported yield factor to each additional production step that each product undergoes.

Chen Hao Taiwan disputes petitioner's analysis of its production records and states that the Department verified that Chen Hao Taiwan does not

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maintain records in its normal course of business that would permit it to report product-specific yield. Chen Hao Taiwan maintains that the verification exhibit cited by petitioner does not support petitioner's contention that Chen Hao Taiwan was able to report product-specific yield data. Chen Hao Taiwan argues that while petitioner may maintain product-specific yield information, it does not mean that the Department must also assume that respondent must also maintain the same information. Chen Hao Taiwan asserts that the Department cannot penalize a respondent with facts available for failure to provide information which does not exist.

DOC Position. We agree with Chen Hao Taiwan. The Department's preference is to use product specific cost data, including product-specific yield results, for calculating COP and CV. The Department uses the most specific and reasonable allocation methods available, given a respondent's normal record keeping system (*see Final Determination of Sales at Less than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 FR 4023, 4027, January 28, 1994). In this instance, Chen Hao Taiwan reported its costs based on overall yield information because it claimed that its records do not permit it to calculate cost data on a more specific basis. Our verification revealed nothing to contradict Chen Hao Taiwan's claim that it does not maintain product-specific yield data in its normal course of business. We also verified that Chen Hao Taiwan was not able to calculate yields for the POI on a more specific basis than the yield rate which was reported. The accounting records identified by petitioner could arguably be used to calculate an average yield for each specific order; however, Chen Hao Taiwan does not retain production batch records in its normal course of business beyond a short period of time. The examples from the verification are from the time of verification, October 1996—well beyond the POI. Moreover, Chen Hao Taiwan's financial accounting documents, including inventory and production ledgers, do not track production information on a product-specific basis. For these reasons, we have accepted Chen Hao Taiwan's reported average yield rate calculation, which was adequately analyzed at verification.

Comment 4: Home Market Freight Expenses

Petitioner claims that Chen Hao Taiwan improperly allocated home market freight expenses across all products and all customers during the POI. Petitioner states that, based on information contained in the verification report, Chen Hao Taiwan should be able to report freight expenses on a customer-specific basis. Petitioner asserts that Chen Hao Taiwan's allocation methodology masks differences in freight expenses that may result in a larger freight expense deduction for subject merchandise sales than if freight expenses had been reported on a more specific basis. Therefore, petitioner contends that the Department should deny Chen Hao Taiwan's claimed freight adjustment.

Chen Hao Taiwan argues that verification indicated that Chen Hao Taiwan's freight expense records did not permit reporting on a more specific basis.

DOC Position. The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis rather than an overall basis (*see, e.g., Final Results of Antidumping Duty Administrative Review: Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 56 FR 47451, 47455, September 19, 1991). If a respondent does not maintain its records to enable freight expense reporting at this level, then our preference is to apply an allocation methodology at the most specific level permitted by a respondent's records. Chen Hao Taiwan allocated all home market freight expenses incurred on subject merchandise by weight over all home market sales, as demonstrated in the sample calculation submitted in the July 19, 1996, supplemental questionnaire response. However, as we noted in our verification report, "we observed that Chen Hao may be able to total the amount charged to each customer during the POI, and divide that amount by the total shipments to that customer." This method is preferable to the method used by Chen Hao Taiwan.

Nevertheless, we note that Chen Hao Taiwan allocated home market freight expenses between subject and non-subject merchandise using a weight-based methodology, in compliance with the Department's supplemental questionnaire request. The Department did not specifically request Chen Hao Taiwan to provide a customer-specific allocation. Although Chen Hao Taiwan had the means to allocate home market freight expenses on a more specific basis, its failure to do so does not mandate the application of adverse facts available in this case because Chen Hao Taiwan has been responsive to the Department's requests. The principal advantage of a customer-specific freight allocation would be to take into account the freight distance to the customer, since distance is a component of the expense incurred by Chen Hao Taiwan. Given the distribution of Chen Hao Taiwan's home market customers, as identified in the verification report, and the location of Chen Hao Taiwan's principal home market MIDP customer, we find that Chen Hao Taiwan's reported home market freight methodology is sufficient. In similar circumstances, we have accepted a respondent's methodology if it is representative and non-distortive of transaction-specific sales information (*see Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561, June 28, 1995). Chen Hao Taiwan's methodology meets these criteria. Consequently, we have accepted Chen Hao Taiwan's reported home market freight expenses.

Comment 5: Allocation of Melamine Powder Rebate

Petitioner argues that Chen Hao Taiwan improperly allocated melamine powder rebates between its internal consumption and the material transferred to Chen Hao Xiamen. Petitioner claims that by assigning the entire amount of the rebate to melamine powder used for Taiwan consumption, Chen Hao Taiwan undervalued its raw material costs. Petitioner contends that Chen Hao Taiwan's melamine powder costs for COP and CV calculations should be recalculated to remove the amount of the rebate attributable to Chen Hao Xiamen transfers.

Chen Hao Taiwan responds that petitioner is incorrect and that, in fact, the Department verified that the melamine powder rebates were allocated equally over all melamine powder purchases.

DOC Position. We agree with Chen Hao Taiwan. We verified that Chen Hao Taiwan properly allocated the melamine powder rebate over all its purchases during the POI and thus the per-unit melamine powder cost for Chen Hao Taiwan's COP and CV calculations properly accounts for the rebate. However, as we stated in the Chen Hao Taiwan verification report, "[t]he values reported for Chen Hao *Xiamen's* melamine powder consumption do *not* include an adjustment for the rebate." (Emphasis added.) Chen Hao Taiwan's melamine powder costs are not in question.

Comment 6: Import Duties on Melamine Powder Costs

Petitioner contends that evidence on the record demonstrates that Chen Hao

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Taiwan incurred duties on some imported raw materials, but did not report these duty amounts in its cost response. Petitioner thus argues that the Department should assume that all raw materials are imported and increase the costs of materials to include import duties and related costs.

Chen Hao Taiwan states that the Department verified that Chen Hao Taiwan correctly accounted for duties in reporting the unit prices of melamine powder purchased during the POI and that petitioner's allegation is incorrect. Chen Hao Taiwan further states that the verification exhibits confirm that the reported costs include the import duties paid on melamine powder purchased outside of Taiwan.

DOC Position. We agree with Chen Hao Taiwan. We verified that the reported costs for these inputs included all applicable expenses, including import duties. Support documentation for Chen Hao Taiwan's melamine powder costs, such as the operating statement and journal entries included in the verification exhibits, demonstrates that import duties, when incurred, are part of the total cost reported to the Department, and are included in the cost of materials used in our COP and CV calculations.

Comment 7: Unreconciled Cost Differences

Petitioner claims that Chen Hao Taiwan's cost of manufacturing data shows an unreconciled difference between the components of operating costs and the total operating costs. Because Chen Hao Taiwan has not provided an explanation for this discrepancy, petitioner argues that the cost of manufacturing should be increased to reflect this unreconciled cost difference.

Chen Hao Taiwan states that petitioner is incorrect because it misread a portion of a verification exhibit and thus erroneously arrived at its total. Accordingly, Chen Hao Taiwan states that its operating costs reconcile and no adjustment is needed.

DOC Position. We agree with Chen Hao Taiwan. We verified that Chen Hao Taiwan's operating costs reconciled, as indicated in the operating statement and trial balance included in the verification exhibits, and no adjustment is required. As Chen Hao Taiwan has noted, petitioner has misread the verification exhibit in question and arrived at an incorrect operating costs total.

Comment 8: Sales of Finished Goods in Cost of Materials Calculation

Based on its analysis of verification exhibits, petitioner claims that Chen Hao Taiwan included purchases of finished goods that it re-sold without further processing in its finished goods inventory, thus including these items in calculating its yield rate. Petitioner asserts that the yield rate used in COP and CV calculations must be adjusted to remove the accounting for these finished goods.

Chen Hao Taiwan contends that petitioner misread the relevant verification exhibit and that these items were not included in its cost of manufacturing calculation. Accordingly, Chen Hao Taiwan maintains that no adjustment is necessary.

DOC Position. We agree with Chen Hao Taiwan. We verified that the resold items were properly excluded from the cost of manufacturing calculation, as indicated in the cost of operations statement included in the verification exhibits, and that no adjustment is required.

Comment 9: Arm's-Length Pricing of Loans

Petitioner claims that Chen Hao Taiwan failed to demonstrate that interest free loans from affiliated parties are made at arm's length. Accordingly, petitioner argues that Chen Hao Taiwan's financial interest expense ratio for COP and CV calculations should be adjusted by adding an estimated market value for these loans based on the highest interest rate experienced by Chen Hao Taiwan.

Chen Hao Taiwan contends that these loans from related parties served as capital infusion. According to Chen Hao Taiwan, the transactions in question were additional investments from the owners of Chen Hao Taiwan of their own money into the company, with these funds labeled as "loans" for purposes of the financial statement. Chen Hao Taiwan argues that the Department's practice is to disregard such intracompany transfers, thus any resulting loan interest expense should be disregarded in the final determination.

DOC Position. Although Chen Hao Taiwan may consider the transactions in question to serve as equity capital infusions, its audited financial statement classifies them as long-term loans. Other than Chen Hao Taiwan's assertions,[1], we have no basis on the record to reclassify these amounts as equity. In such circumstances, the Department considers the amounts to be long-term loans, consistent with treatment in the respondent's financial statement (*see, Final Results of Administrative Review: Shop Towels from Bangladesh*, 60 FR 48966, 48967, September 21, 1995, and *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7039, February 6, 1995). Accordingly, we have recalculated Chen Hao Taiwan's interest expenses to include an interest expense based on the long-term interest rate experienced by Chen Hao Taiwan during the POI, as identified in the financial statement.

Comment 10: Exchange Gains in Financial Expenses

Petitioner contends that the financial expenses for Chen Hao Taiwan's COP and CV calculations include foreign exchange gains on export sales, which should be disallowed. Therefore, petitioner states that the financial expenses should be increased accordingly.

Chen Hao Taiwan does not object to this adjustment but states that the revised percentage identified in the verification report is incorrect; thus a corrected adjustment should be used.

DOC Position. We agree with petitioner and have adjusted financial expenses to exclude foreign exchange gains on export sales. We also agree with Chen Hao Taiwan that the adjustment percentage identified in the verification report contains a typographical error; we applied the correct percentage in our recalculation.

Comment 11: Pension Allowance

Petitioner states that verification revealed that Chen Hao improperly excluded a pension allowance in its costs.

Chen Hao Taiwan argues that, as the Department verified that no actual accrual for the pension allowance was made during the POI, costs should not be adjusted for a theoretically intended amount.

DOC Position. We agree with petitioner. We verified that Chen Hao Taiwan contributed to its employee retirement fund in the two years prior to the POI. It did not make the contribution during the POI and could not provide any satisfactory explanation for this omission. However, Chen Hao Taiwan reported that it made payments from the retirement fund during the POI. Based on these facts, we consider that Chen Hao Taiwan incurred an obligation for its pension plan during the POI. Accordingly, we have included the pension expense in our COP and CV calculations.

[1] Chen Hao Taiwan has cited *Final Results of Administrative Review: Fresh Cut Flowers from Colombia* (61 FR 42833, August 19, 1996) in support of its position; however this case is not on point. In that instance, the item in question was interest income, whereas here, the item is interest expense.

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Comment 12: Certain Credit Expense Adjustments

Petitioner claims that Chen Hao Taiwan reported certain adjustments to its credit expenses for some U.S. sales. Petitioner asserts that the Department does not permit these adjustments and thus the credit expense for these sales should be disallowed.

Chen Hao Taiwan argues that it properly made these credit adjustments.

DOC Position. We agree with Chen Hao Taiwan. In such instances as those identified by parties in the proprietary versions of their submissions, the Department has added the imputed benefit to the price. (*See, e.g., Final Results of Antidumping Administrative Review: Mechanical Transfer Presses from Japan* (61 FR 52910, October 9, 1996), where, at Comment 5, we stated that "[b]ecause payment was made prior to shipment, [respondent] should receive an imputed benefit for credit.")

Comment 13: Unreported U.S. Dollar Charges

Petitioner contends that, as identified in verification documents, Chen Hao Taiwan did not report charges such as currency brokerage and bank fees for U.S. sales denominated in U.S. dollars. Accordingly, petitioner argues that a percentage based on the observed charges should be added to all U.S. dollar sales.

Chen Hao Taiwan states that it has accounted for all charges and fees. Citing the verification report, Chen Hao Taiwan asserts that the Department verified that the sales value for all U.S. sales was correctly reported, and no discrepancies apart from those identified in the verification report were found.

DOC Position. We agree with petitioner that Chen Hao Taiwan did not include certain bank fees incurred on U.S. dollar denominated sales in its sales reporting. Based on the verification documents, we have calculated a percentage for these charges and included the result as a circumstance of sales adjustment.

Comment 14: Payment Period on U.S. Sales

Petitioner contends that, based on its analysis of a set of verification exhibits, Chen Hao Taiwan incorrectly reported the payment date on U.S. sales by reporting the date that it closed the account receivable entry in its records, rather than the date the payment was actually made. Accordingly, petitioner argues that the payment date for all U.S. sales should be adjusted to reflect the actual payment period, based on information obtained at verification.

Chen Hao Taiwan responds that petitioner misread the documents in the sales verification exhibit, and that the payment situation described by petitioner referred to Chen Hao Taiwan's payment to its freight company, not payment from the U.S. customer. Accordingly, Chen Hao Taiwan states that it has correctly reported its payment dates and no adjustments are required.

DOC Position. We agree with Chen Hao Taiwan. The payment, accounts receivable, and accounts payable documents included in the verification exhibit for this transaction confirm that the payment identified by petitioner does not apply to customer payment, but rather to the freight expense paid to Chen Hao Taiwan's freight company.

Comment 15: Allocation of Home Market Royalty Expenses

Petitioner alleges that Chen Hao Taiwan misreported royalty expenses incurred on certain home market sales because it had not properly accounted for advances paid on royalty expenses owed. Petitioner contends that the royalty advance payments should be treated as indirect selling expenses for purposes of the COP test because these expenses were fixed costs and were incurred regardless of the quantity sold.

Chen Hao Taiwan states that the Department verified the actual royalty amount paid and the actual amount of sales subject to royalty during the POI. In addition, Chen Hao Taiwan states that the Department verified that royalties applied only to certain products. Accordingly, Chen Hao Taiwan contends that the Department should continue to treat royalties as a direct expense and use the verified amount for royalty amounts to calculate the actual per-unit royalty expense paid during the POI.

DOC Position. The Department has normally treated royalty expenses as direct expenses when a respondent incurs this expense upon the sale of a product covered under a royalty agreement (*see, e.g., Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan*, 58 FR 30018, May 25, 1993). Consistent with the royalty agreement on the record, Chen Hao Taiwan incurred a royalty expense liability for home market sales of the specific type of merchandise covered under the agreement, as discussed in the verification report. Chen Hao Taiwan entered into the royalty agreement at the beginning of the POI. Under the terms of the agreement, which are on the record, certain advance payments were required during the POI. In order to comply with the terms of the agreement, Chen Hao Taiwan paid these amounts even though its sales of the covered products were not at the level at which it would pay the same amount based on royalty percentages in the agreement. However, the agreement states that future royalty expenses incurred may be offset against this advance. Although we verified that Chen Hao Taiwan does not account for these potential future offsets, we verified that Chen Hao was in full compliance with the terms of the agreement. It is clear that the royalty agreement only applies to certain home market sales and that, after this initial "startup" period, its actual royalty expenses will tie directly to the covered sales. Therefore, this expense is properly classified as a direct expense.

Allocating POI expenses over POI sales is not appropriate because, in effect, a portion of the POI expenses is attributable to future sales. The most appropriate allocation of the expenses is to apply the royalty percentage in the agreement, which is how Chen Hao Taiwan reported the expenses, because it reflects the amount of the expense incurred by a particular sale, after taking into account the eventual offset of all advances. In this instance, we are allocating expenses based on the expected eventual royalty expense liability.

Comment 16: Value Added Tax (VAT) on CV Material Costs

Petitioner argues that Chen Hao Taiwan failed to include a 5 percent VAT on its Taiwan material purchases, thus understating the constructed value of each product. Therefore, petitioner contends that CV materials costs should be increased to reflect the VAT.

Chen Hao Taiwan states that it followed the Department's questionnaire instructions and properly reported its material costs exclusive of VAT. Therefore, Chen Hao Taiwan maintains that CV materials costs should not be increased by the VAT amount.

DOC Position. In accordance with section 773(e) the Department's policy is to include in its calculation of CV internal taxes paid on materials unless such taxes are remitted or refunded upon exportation of the finished product into which the material is incorporated (*see e.g. Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552, February 27, 1995). In this case, we observed that Taiwan MIDP companies are able to credit VAT paid

on inputs (whether used for domestically sold or exported MIDPs) against what they owe to the Taiwan government as a result of VAT collected on domestic sales. More importantly, however, where VAT owed was less than VAT paid because exports out paced domestic sales, the companies received from the government a refund of VAT paid on materials incorporated into exported finished products. As discussed in the Chen Hao Xiamen verification report in the concurrent *MIDPs from PRC* investigation:

> Chen Hao [Taiwan] paid VAT on its Taiwan purchases, which included such items as melamine powder from the principal supplier. Chen Hao also incurred a VAT liability on sales made in Taiwan. Export sales were excluded from this liability, which included the re-sale of the melamine powder to [an affiliated party]. . . . Chen Hao [Taiwan] paid the difference of VAT collected from its Taiwan sales and VAT paid on Taiwan purchases. (November 18, 1996, verification report at pages 8–9, and included on this record in a December 20, 1996, Memorandum to the File.)

Thus, VAT paid on materials incorporated into exported products is refunded by reason of export and therefore is not appropriately included in CV. Accordingly, we have not added VAT to the CV calculation.

Comment 17: Matching of Certain Products

Petitioner claims that Chen Hao Taiwan assigned certain identical products different control numbers used for model matching. In turn, petitioner contends, the Department's model matching program improperly treated these identical products as different products. Petitioner thus argues that the Department should either revise its computer program to ignore Chen Hao Taiwan's control numbers or re-code these products with identical control numbers.

Chen Hao Taiwan responds that the control numbers in question relate to physically different products because some differ in color from the others. Thus, Chen Hao Taiwan contends that the Department should continue to treat the products as different products with unique control numbers.

DOC Position. Petitioner is incorrect with regard to its description of the Department's model matching program. The program does, in fact, ignore control numbers to determine identical or most similar products. Color is not a matching criterion in this investigation; thus, it is appropriate to treat these products, if otherwise identical, as identical products for purposes of model matching. In one instance cited by petitioner, we note that the Department properly compared home market sales of both products in question to the U.S. sales of this product. In the other instance cited by petitioner, we did not match the U.S. sales to the second model identified by petitioner because the difference in merchandise adjustment for that comparison exceeded the Department's 20 percent threshold.

Comment 18: Yu Cheer Credit Expenses

Petitioner contends that Yu Cheer incorrectly reported payment dates on U.S. sales because, until verification, it did not indicate that it had received payment for at least some sales on multiple dates. Petitioner states that the record contains no explanation of the multiple payment date procedure and no information on how often Yu Cheer's customers use this payment approach. In addition, petitioner alleges that Yu Cheer has also misreported shipment dates, used to calculate credit expenses, because Yu Cheer stated at verification that it sometimes revises shipping documents after shipment, thus calling into question the reliability of its reported information. Therefore, petitioner argues that the home market credit adjustment should be rejected and the U.S. credit expense should be based on the longest credit period for any reported sale as facts available.

Yu Cheer states that its payment and shipment dates were correctly reported, as noted in the verification report. Further, Yu Cheer states that the verification report indicates that the shipment revisions did not affect Yu Cheer's reported shipment dates. Therefore, Yu Cheer contends that the discrepancies cited by petitioner fail to provide any reasonable basis for rejecting Yu Cheer's claimed credit expenses.

DOC Position. We agree with Yu Cheer. Yu Cheer properly reported the elements of its imputed credit expenses and thus we have accepted its claimed imputed credit expenses. As we stated in the verification report, Yu Cheer's shipment revisions do not affect the reported shipment dates. Where appropriate, we have recalculated the credit expense using the corrected payment information obtained at verification.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of MIDPs—with the exception of those manufactured/exported by Yu Cheer—that are entered, or withdrawn from warehouse, for consumption on or after August 22, 1996, the date of publication of our preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Chen Hao Taiwan	3.25
Yu Cheer	0.00
IKEA	53.13
Gallant	53.13
All Others	3.25

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero, *de minimis* weighted-average dumping margins, or margins determined entirely under section 776 of the Act, in the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–754 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review.

SUMMARY: On February 1, 1996, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC) covering the period of December 21, 1994 through November 30, 1995. The Department is now rescinding this review in part with respect to respondents who had no shipments of the subject merchandise during the period of review, including Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong), and China First Pencil Company, Ltd. (China First). We are basing the preliminary results on "facts available" for those companies that did not respond to our questionnaire.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of Antidumping Countervailing Duty Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–4474/3814.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Departments regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this review are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this review are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-case crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

On November 8, 1994 the Department issued its final determination of sales at less-than-fair value (LTFV) on certain cased pencils from the PRC (59 FR 55625). In it, we calculated zero margins for certain producer/exporter combinations: China First/Company A and Guangdong/Company B. China First/Any other manufacturer received a rate of 44.66 percent (formerly called the all others rate, now the PRC rate) and Guangdong/Any other manufacturer also received a rate of 44.66 percent. We stated that, consistent with *Jia Farn Manufacturing Co., Ltd.* v. *United States, 817 F.Supp. 969 (CIT 1993) ("Jia Farn")*, we would exclude from the application of the order any imports of "subject merchandise sold by the exporter and manufactured by that specific producer. Merchandise that is sold by the exporter but manufactured by other producers will be subject to the order * * *" (59 FR at 55631). These exclusions based on exporter/producer combinations are consistent with 19 CFR 353.21(c).

On December 28, 1994, we published an antidumping duty order (59 FR 66909) that stated that imports of the two producer/exporter combinations identified in the LTFV investigation had margins of zero. We stated in the antidumping duty order that we would exclude from the order imports of subject merchandise that are sold by "either China First or Guangdong and manufactured by the producers whose factors formed the basis for the zero margin" (59 FR at 66910). In the final determination, we referred to the corresponding producers as Company A and Company B. Those producer/exporter combinations were subsequently identified in the order as China First/China First and Guangdong/Three Star Stationery.

In response to our notice of opportunity to request administrative review, for this first administrative review, the petitioner (the Writing Instrument Manufacturers Association) requested by letter dated January 11, 1996 that the Department conduct an administrative review of China First and Guangdong "to determine whether merchandise purportedly produced and exported by the excluded combinations was, in fact, produced or exported by a combination of companies that are subject to the order." On February 1, 1996, the Department published a notice of initiation of an administrative review of China First, Guangdong and 94 other potential producers/exporters named by the petitioner in its review request covering the period of review (POR) December 21, 1994, through November 30, 1995.

On February 23, 1996, we sent a questionnaire to the companies for which the petitioner requested a review, including China First and Guangdong. In it, we specifically stated that pencils produced and exported by the excluded company combinations are not subject merchandise.

Rescission

Pursuant to 19 CFR 351.213(d)(3) of the Department's proposed regulations (61 FR 7308, 7365; February 27, 1996), we have determined that during the POR, China First did not export pencils to the United States that were manufactured by producers other than China First, and Guangdong did not export pencils to the United States that were manufactured by producers other than Three Star Stationery. We conducted on-site verification of this information in Shanghai and Guangzhou, China, from December 11, 1996, through December 13, 1996. We found no evidence of shipments of subject merchandise manufactured by producers other than China First or Three Star Stationery made by the exporters China First and Guangdong, respectively, to the United States during the POR. Therefore, we rescind this review with respect to China First and Guangdong. Furthermore, this review is also rescinded with respect to those respondents in this review, in addition to China First and Three Star Stationery, which reported that they made no shipments of subject merchandise during this POR, namely: (1) Tru Blue Products Ltd., (2) Onan Shipping Ltd., (3) Anhui Provincial Import & Export Corporation, (4) Aempac System Ltd., (5) The Merton Company Limited, (6) King Sun Company, (7) Shanghai Machinery & Equipment Import and Export Corporation, (8) China North Industries Tianjin Corporation, and (9) Panalpina, Inc.

Facts Available

Shanghai Lansheng (Shanghai), an exporter and a named respondent in this review, and a respondent in the LTFV investigation, did not respond to the questionnaire issued in this review. Because of Shanghai's failure to provide a questionnaire response, the administrative record in this proceeding lacks information necessary to make an informed determination regarding Shanghai's separate rate status, and we preliminarily determine that Shanghai is no longer entitled to a separate rate. Further, because Shanghai and other named respondents did not respond to our questionnaire in this review, as adverse facts available, imports of subject merchandise from Shanghai and all other producers/exporters who have not qualified for a separate rate will be subject to the PRC rate of 44.66 percent, the highest rate established in the LTFV investigation.

Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use the facts available where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In this case, Shanghai and other named respondents failed to respond to the Department's questionnaire. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 870) provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.

The SAA, at page 870, clarifies that the petition is "secondary information," and that "corroborate" means to determine that the information has probative value. Id. During our analysis of the petition in the LTFV investigation, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. US purchase price (now export price) was based on multiple price quotes. The factors values for calculation of the foreign market value (now normal value) were based on public data, where available. However, as a result of our analysis, we recalculated the petition rates due to errors made by the petitioner in the calculation of paint costs, profit, and depreciation expenses. (*See* concurrence memorandum to file dated November 29, 1993.) We also rejected petitioner's methodology of using the cost of a finished core in our factors analysis, as this would have resulted in double counting of certain expenses included in the cost of a finished core. (*See* initiation notice, (58 FR 64548, December 8, 1993).) Thus, because we reviewed the petitioners assumptions and calculations from which the petition rates were derived, and made appropriate corrections, we determine that the petition rates, as corrected, have probative value.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted Average Margin Percentage
PRC Rate	44.66

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. See § 353.38 of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters, will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of its supplier, *i.e.*, the PRC rate. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under § 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 353.22 of the Department's regulations.

Dated: January 2, 1997.

Robert S. La Russa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–750 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amendment of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: On November 14, 1996, the Department of Commerce (the Department) published the final results of its administrative review of and notice of revocation in part of the antidumping duty order on

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polyethylene terephthalate (PET) film, sheet, and strip from the Republic of Korea. The review covered three manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995. Based on the correction of a ministerial error made in those final results for one manufacturer/exporter, we are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or Linda Ludwig, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 3833, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 1, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1996 (61 FR 58374), the Department published the final results of review and notice of revocation in part of the antidumping duty order on PET film from the Republic of Korea (56 FR 25669, June 5, 1991). On November 20, 1996, we received a timely allegation from STC Corporation (STC) that the Department made a ministerial error in its final results.

STC contended that in its margin calculations the Department incorrectly matched U.S. sales to constructed value rather than to identical sales within the contemporaneous 90/60 day period. We agree with STC that we made this ministerial error, and have corrected that ministerial error in these amended results.

Amended Final Results of Review

As a result of our correction of a ministerial error, we have determined the margin to be:

Company	Margin (Percent)
STC	1.68

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. Price and Normal Value may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for STC will be the rate indicated above, (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.82 percent, the all-others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: January 7, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–749 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DS–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection #3038–0035—rules relating to the offer and sale of foreign futures and foreign options.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0035, Rules Relating to the Offer and Sale of foreign Futures and Foreign Options which is due to expire on April 30, 1997. The information collected pursuant to this rule is intended to detect fraud in the offer and sale of foreign futures and foreign options to people located in the United States. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before March 14, 1997.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

Title: Rules Relating to the Offer and Sale of Foreign Futures and Foreign Options.

Control Number: 3038–0035.
Action: Extension.
Respondents: FCMs, IBs, CPOs, CTAs and APs.
Estimated Annual Burden: 2816 hours.

Respondents	Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Est. avg. hours per response
FCMs, IBs, CPOs, CTAs, APs	30.4	560	560	1.00
	30.5	136	136	1.00
	30.6	440	440	.50
	30.7	120	120	.50
	30.8	120	1,440	1.00
	30.10	120	120	4.00

Issued in Washington, DC on January 7, 1997.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–666 Filed 1–10–97; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (the Corporation).

DATE AND TIME: Friday, January 17, 1997, from 10:30 a.m. to 3:00 p.m.

PLACE: The Corporation for National and Community Service, 1201 New York Avenue NW, 8th Floor Conference Room, Washington, DC 20525.

STATUS: The meeting will be open to the public up to the seating capacity of the room.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation will meet to review (1) reports from committees of the Board of Directors on Corporation activities, (2) a report from the Chief Executive Officer, and (3) the status of Corporation initiatives.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the Corporation by January 15, 1997.

FOR FURTHER INFORMATION: Contact Rhonda Taylor, Associate Director of Special Projects and Initiatives, the Corporation for National and Community Service. Telephone (202) 606–5000 ext. 282. TTD Number (202) 565–2700. This notice may be requested in an alternative format for the visually impaired.

Dated: January 9, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–895 Filed 1–9–97; 3:30 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 92–054B]

Submission for OMB Review Entitled Environmentally Preferable Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Environmentally Preferable Products (FAR Case 92–054B). This request is pursuant to the emergency processing provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13).

DATES: *Comment Due Date:* March 14, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 92–054B, Environmentally Preferable Products, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield, Office of Federal Acquisition Policy, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

E.O. 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements," requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The E.O. requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents *2,550*; responses per respondent, *7.6*; total annual responses, *19,500*; preparation hours per response, *.75*; and total response burden hours, *14,500*.

OBTAINING COPIES OF JUSTIFICATIONS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite FAR case 92–054B, Environmentally Preferable Products, in all correspondence.

Dated: January 7, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–691 Filed 1–10–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Fourth Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: Department of Defense, National Security Education Program (NSEP).

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its Fourth Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: Grants Solicitations (applications) will be available beginning Monday, February 10, 1997. Preliminary proposals are due Friday, April 18, 1997. Electronic submissions will *not* be accepted.

ADDRESS: Request copies of the solicitations (applications) from NSEP, Institutional Grants, Rosslyn P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248, by FAX to (703) 696–5667, or via INTERNET: nsepo@nsep.policy.osd.mil Also, after February 10, 1996 the NSEP Institutional Grant Solicitation will be available on the NSEP homepage: http://www.dtic.mil/defenselink/pubs/nsep

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, Virginia 22209–2248; (703) 696–1991 Electronic mail address: collier@nsep.policy.osd.mil.

Dated: January 7, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–704 Filed 1–10–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Underground Facilities

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Underground Facilities will meet in closed session on January 22–23, 1997 at Strategic Analysis, Inc., Fairfax, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: January 7, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–705 Filed 1–10–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Grant of Exclusive License

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective exclusive licenses of U.S. Patent No. 5,441,362, entitled "Concrete Armor Unit for Protecting Coastal and Hydraulic Structures and Shorelines," and U.S. Patent Application No. 08/290,721, entitled "Concrete Armor Unit to Protect Coastal and Hydraulic Structures and Shorelines."

DATES: Written objections must be filed not later than March 14, 1997.

ADDRESSES: U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, ATTN: CEWES–OC.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Stewart (601) 634–4113.

SUPPLEMENTARY INFORMATION: The Concrete Armor Units were invented by Jeffrey A. Melby and George F. Turk (Application No. 128,426; U.S. Patent No. 5,441,362, Filed September 30, 1993, Issued August 15, 1995; Application No. 290,721, Filed November 15, 1995). Rights to the United States patent and the patent application have been assigned to the United States of America as represented by the Secretary of the Army. The United States of America as represented by the Secretary of the Army intends to grant an exclusive license for all fields of use, in the manufacture, use, and sale in the territories and possessions, including territorial waters of, the United States of America, Canada, and the United States of Mexico to Concrete Technology Corporation, P.O. Box 1159, Tacoma, WA 98401.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–707 Filed 1–10–97; 8:45 am]

BILLING CODE 3710–92–M

Corps of Engineers

Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 C.F.R. Part 404.

Patent No.	Title	Issue date
5,472,215	Rotating High Vacuum Mercury Seal	12/05/95
5,474,837	Laminated Paper Glass Camouflage	12/12/95
5,483,836	Device for Measuring Lateral Deformation in Material Test Specimens	1/16/96
5,483,862	Apparatus and Method for Homogenizing Plastic	1/16/96
5,487,311	Air Velocity Averaging Rotor	1/30/96
5,517,465	Multiple Sensor Fish Surrogate for Acoustic and Hydraulic Data Collection	5/14/96

Patent No.	Title	Issue date
5,528,142	Resonant Eddy Analysis—A Contactless, Inductive Method for Deriving Quantative Information About the Conductivity and Permeability of a Test Sample.	6/18/96
5,528,935	Stress and Velocity Gauge	6/25/96
5,531,824	Method of Increasing Density and Strength of Highly Siliceous Cement-Based Materials	7/2/96
5,548,115	Probe Device for Detecting Contaminants in Subsurface Media	8/20/96

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672 or Alease J. Berry, (703) 428–8160.

SUPPLEMENTARY INFORMATION: USP 5,472,215 is a seal which allows the transmission of high vacuum from a vacuum pump to rotating machinery such as a centrifuge. The seal can accommodate unlimited rotation with minimal frictional resistance.

USP 5,474,837 is a method and means of producing low cost camouflage materials whose physical and spectral characteristics can be adapted to the camouflage environment. Also, the invention provides for construction materials for shelters and decoys with camouflaging features incorporated therein.

USP 5,483,836 is a device which is capable of accurately measuring the lateral response of material specimens subjected to a wide range of stresses and strains, and which is capable of surviving uncontrolled specimen failures.

USP 5,483,864 is a hand operated machine which transforms blocks of explosive material into a soft, homogeneous sheets which can then be easily compacted into a molded charge.

USP 5,487,311 is an improved device for measuring the average air flow velocity within a conduit and providing that data in digital format.

USP 5,517,465 is a device which emulates the sensory organs of a fish and is used to record the environment of areas that are consistently avoided by fish to establish acoustic parameters for diverting fish away from areas of danger.

USP 5,528,142 provides a method for quantifying the conductivity or permeability of a test sample throughout a range of AC frequencies of between several Kilo Hertz to around 100 Mega Hertz.

USP 5,528,935 combines a stress gauge and velocity gauge in a single package. The invention can measure both normal stress and material velocity at the same location in a material which assists in understanding material behavior and the wave state in the material, in identifying the presence, location, and type of material boundaries near the measurement, and in quantifying the energy in the material at the point of the measurement.

USP 5,531,824 is a method of increasing the hardness and compressive strength of concrete and other cement-based products, and also decreasing their permeability to water which would be useful in such applications as chemical-resistant floors and hazardous waste storage.

USP 5,548,115 is a device for in-situ detection of contaminants such as petroleum products in a subsurface media such as soil. Among other things, the invention utilizes source and receiver filtering to improve sensitivity, and provides for an active or passive calibration source, separate from the excitation source and interior, to provide accurate calibration of analysis equipment.

Applications for an exclusive or partially exclusive license should contain the information set forth in 37 C.F.R. 404.8. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing capability; (3) Time required to bring technology to market and production rate; (4) Royalties; (5) Technical capabilities; and, (6) Small Business status.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–708 Filed 1–10–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Extension of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year 1997 for the Strengthening Institutions, Hispanic-Serving Institutions (HSIs), and Endowment Challenge Grant Programs

On November 27, 1996, a notice was published in the **Federal Register** (61 FR 60264–60265) that established closing dates for transmittal of applications for the FY 1997 designation of eligible institutions for the Strengthening Institutions, HSI, and Endowment Challenge grant programs. The purpose of this notice is to extend the closing dates for transmittal of applications. This action is taken as a result of the unavailability of applications until January 24, 1997.

The closing date for early applications is extended from February 13, 1997 to February 24, 1997. For applications submitted by February 24, 1997, the Department will notify the applicant of its eligibility status by March 31, 1997. Any of these applicants that believes it failed to be designated as an eligible institution because of errors in its application or insufficient information in its waiver request may submit an amended application to the Department no later than April 30, 1997.

The final closing date for all initial applications is extended from March 13, 1997 to March 26, 1997.

FOR APPLICATIONS OR INFORMATION CONTACT: Program Development Service Team I, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Suite CY–80, Portals Building), Washington, D.C. 20202–5335. Telephone: (202) 708–8857 or 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–

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9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: January 7, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–735 Filed 1–10–97; 8:45 am]

BILLING CODE 4000–01–P

Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), or Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 1997–98 award year (July 1, 1997 through June 30, 1998) because the institution returned more than 10 percent of its allocation for that program for the 1995–96 award year (July 1, 1995 through June 30, 1996).

DATE: *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1995–96 award year to be considered for a waiver of the allocation reduction for its 1997–98 award year allocation, it must mail or hand-deliver its waiver request and any supporting information or documents on or before February 14, 1997. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Institutional Financial Management Division at one of the addresses indicated in the following section.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail:* The waiver request and any supporting information or documents delivered by mail must be addressed to Ms. Sandra Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) A dated shipping label, invoice, or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. An institution that submits a waiver request and any supporting information or documents after the closing date will not be considered for a waiver of the allocation reduction being applied to its allocation under any of the campus-based programs for award year 1997–98.

Waiver Requests and any Supporting Information or Documents Delivered by Hand: A waiver request and any supporting information or documents delivered by hand must be taken to Ms. Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A waiver request for the 1997–98 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under sections 413D(e)(2), 442(e)(2), and 462(j)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the second succeeding award year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program. The institution must provide a written waiver request and any supporting information or documents by the established February 14, 1997 closing date. The waiver request must be signed by an appropriate institutional official and above the signature the official must include the statement: "I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education." If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

Applicable Regulations: The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Program, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Ms. Sandra Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday.

Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

Dated: January 7, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–734 Filed 1–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–168–000, CP97–169–000, CP97–177–000, and CP97–178–000]

Alliance Pipeline L.P.; Notice of Applications

January 8, 1997.

Take notice that on December 24, 1996, Alliance Pipeline L.P. (Alliance), 190 S. LaSalle Street, Suite 3174, Chicago, Illinois 60603–3441, filed in Docket Nos. CP97–168–000, CP97–169–000, CP97–177–000, and CP97–178–000 applications pursuant to section 7(c) and section 3 of the Natural Gas Act (NGA) and parts 284 and 157 of the Commission's regulations for: a certificate of public convenience and necessity pursuant to the Commission's optional certificate procedures to construct, own, operate, and maintain natural gas pipeline facilities; authorization pursuant to section 3 of the NGA and a Presidential Permit for the siting, construction, operation, and maintenance of certain facilities for the importation of natural gas; a blanket certificate authorizing open-access firm and interruptible transportation; and blanket certificate authorization to engage in certain routine activities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

As part of a coordinated pipeline project designed to transport 1.325 Bcf per day of natural gas from Alberta/British Columbia production areas in Canada to the midwestern United States, Alliance proposes to construct the United States portion of the pipeline facilities. Upon acceptance of the requested certification, Alliance will be a natural gas company subject to the Commission's jurisdiction.

In Docket No. CP97–168–000, Alliance requests authorization to construct, own, operate, and maintain 886.6 miles of 36-inch diameter pipeline originating at a point of interconnection with the Canadian portion of the coordinated project at the North Dakota/Saskatchewan border near Sherwood, Renville County, North Dakota. The proposed pipeline facilities would extend through North Dakota, Minnesota, and Iowa to a terminus in Will County, Illinois. Alliance also proposes to construct seven compressor stations located in: McHenry and Barnes Counties, North Dakota; Richland, Renville, and Freeborn Counties, Minnesota; Delaware County, Iowa, and Whiteside County, Illinois. The project cost is estimated to be about $1.3 billion. Alliance further requests pregranted abandonment of the proposed facilities, consistent with section 157.103(f) of the Commission's regulations.

In addition, Alliance states that a related gas processing plant is proposed to be constructed and operated by a non-jurisdictional affiliate, Aux Sable Liquid Products LP, in Grundy County, Illinois.

Alliance requests a Preliminary Determination on non-environmental issues by May 1, 1997, and a final order granting certificate authority on or before March 1, 1998, so that the proposed facilities can be placed in service by late 1999.

In Docket No. CP97–169–000, Alliance submitted an application pursuant to section 3 of the NGA, part 153 of the Commission's regulations, and Executive Order 10485, as amended by Executive Order 12038, and the Secretary of Energy's Delegation Order No. 0204–112, for section 3 authorization and a Presidential Permit to construct, operate, and maintain certain facilities for the importation of natural gas to be located at the international border between the United States of America and Canada near Sherwood, Renville County, North Dakota.

In Docket No. CP97–177–000, Alliance requests a blanket certificate under Part 284, Subpart G of the Commission's regulations. Alliance filed a *pro forma* tariff that offers firm and interruptible transportation with flexible delivery points. Alliance offers two rate options for firm transportation, negotiated or recourse rates. Shippers who choose negotiated rates would agree not to contest certain elements of the cost of service, and Alliance would agree not to change those elements for the length of the primary term and any extension under firm service agreements. Shippers who choose recourse rates would pay the rates ultimately approved by the Commission.

The Docket No. CP97–178–000, Alliance requests a blanket certificate authorizing construction operation, and abandonment of certain facilities under Part 157, Subpart F of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Alliance to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–759 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 137–002–CA]

Pacific Gas and Electric Company; Notice Granting Extension of Time

January 8, 1997.

On December 26, 1996, the Notice of Availability of Draft Environmental Assessment (NDEA) for the Mokelumne River Project No. 137 was issued in the **Federal Register** (Vol. 61 No. 249 FR 68033). The NDEA requested that any comments should be filed within 30 days from the date of this notice. The

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Commission issued the NDEA on December 19, 1996, comments are due by January 21, 1997.

In a letter dated January 2, 1997, Friends of the River, American Whitewater Affiliation, California Outdoors, and Foothill Conservancy (Intervenors) requested an extension of time to comment on the DEA until March 19, 1997. Intervenors state that they received copies of the DEA between December 31, 1996 and January 2, 1997, providing just over two weeks to file comments.

Further, Intervenors state that additional time is needed to review the DEA because: (1) many complex issues were raised in its comments on the Notice Ready for Environmental Analysis; (2) the proceeding began 24 years ago and the pertinent record is voluminous; and (3) recent developments regarding the operations of other facilities on the Mokelumne River, which may not be fully considered in the DEA, but which need to be integrated into the cumulative impact analysis.

Because the pertinent record is voluminous, and because the DEA wasn't received until the end of December 1996 or the beginning of January 1997, the date to file comments is extended until February 21, 1997. If you have any questions about this matter, please call Tom Dean at (202) 219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–762 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–174–000]

PanEnergy Field Services, Inc.; Notice of Petition for Declaratory Order

January 8, 1997.

Take notice that on December 30, 1996, PanEnergy Field Services, Inc. (Field Services),[1] 370 Seventeenth Street, Suite 900, Denver, Colorado 80202, filed in Docket No. CP97–174–000 a petition pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for the declaratory order disclaiming Commission jurisdiction over certain facilities located upstream of its LaGloria Processing Plant in Hildago, Brooks, and Jim Wells Counties, Texas (South Texas Facilities) to be acquired from Trunkline Gas Company (Trunkline),[2] an affiliate, and the services provided through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Field Services seeks a declaratory order from the Commission finding that:

(1) Upon transfer from Trunkline to Field Services, the South Texas Facilities described in Section VI and Attachment B to its petition, are facilities used for the gathering of natural gas and therefore exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA;

(2) Field Services would not be a "natural-gas company" pursuant to Section 2(6) of the NGA by virtue of its proposed acquisition, ownership, and operation of the facilities;

(3) The gathering services that Field Services seeks to perform as described in Section VI and Attachment B to its petition would be exempt from the Commissions jurisdiction under Section 1(b) of the NGA; and

(4) Field Services' rates and charges for gathering services would not be subject to the Commission's jurisdiction pursuant to Sections 4 and 5 of the NGA.

Field Services states that upon transfer of the facilities from Trunkline to Field Services, Field Services would provide gathering services on an open access, non-discriminatory basis and would not become an "affiliated marketer" as defined by the Commission in its rules. Field Services also states that the South Texas Facilities would be transferred at their net book value.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 29, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–761 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–224–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 1997.

Take notice that on January 3, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the pro forma revised tariff sheets set forth on Appendix A to the filing in compliance with the Commission's Order No. 587 to become effective June 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order (18 CFR 284.10(b)). The standards govern certain aspects of the following practices of natural gas pipelines: nominations, allocations, balancing, measurement, invoicing, and capacity release. The revisions shown on the Tariff Sheets filed herewith reflect Sea Robin's compliance filing to conform with the GISB standards. The order required Sea Robin to submit its compliance filing for implementation of the approved standards by June 1, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR Sections 385.211 and 385.214). All such motions and protests must be filed on or before January 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

[1] Field Services is a wholly-owned subsidiary of PanEnergy Corp. and owns gathering and processing assets in the states of Alabama, Arkansas, Colorado, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas and Utah.

[2] Trunkline has filed a related abandonment application in Docket No. CP97–173–000.

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–765 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–172–000]

Shell Gas Pipeline Company; Notice of Application for a Blanket Certificate

January 7, 1997.

Take notice that on December 30, 1996, Shell Gas Pipeline Company (SGPC), 200 North Dairy Ashford, Houston, Texas 77079, filed in Docket No. CP97–172–000 for a Blanket Certificate of Public Convenience and Necessity under Subpart F Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SGPC requests a 157 blanket certificate to construct or acquire and operate certain natural gas facilities that are necessary to provide transportation under Section 284.213 of the commission's Regulations. SGPC also states that it was granted a blanket transportation certificate by order issued in Docket No. CP96–156–002, and had rates accepted by the Commission in the same Order. SGPC further states that it has no budget-type certificates and that it will comply with the terms, conditions and procedures specified in Subpart F of Part 157 of the Regulations.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 14, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–693 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–159–005]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 1997.

Take notice that on December 19, 1996, Shell Gas Pipeline Company (Shell), 200 North Dairy Ashford, Houston, Texas 77079, tendered for filing in Docket No. CP96–159–005 as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets set forth in the Appendix [1] to the filing to become effective October 17, 1996.

Shell states that the purpose of its filing is to comply with the Commission order in Docket No. CP96–159–003 issued November 29, 1996. The Commission stated that in the event Shell adds new receipt and/or delivery points to its system, Shell must file tariff sheets to be consistent with Commission policy. Shell currently offers service to two delivery points: Venice Gas Plant and Texas Eastern Transmission Corp.; with service as approved to Columbia Gulf Transmission Company commencing in the near future. Although no service has been requested at any other delivery point than the Venice Gas Plant, Shell states that it anticipates such service will be made in the future. Specifically, Shell tenders for filing the revised tariff sheets which contain the revisions to Section 11.2 of the General Terms and Conditions and are listed in the Appendix to the filing, to be made effective October 17, 1996, concurrent with the effective date of the remainder of Shell's tariff sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions and protests must be on or before January 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to be proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

[1] Shell's Appendix lists Substitute Original Sheet No. 81, Substitute Original Sheet No. 82, Substitute Original Sheet No. 83, and Original Sheet No. 83A.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–758 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–2–000]

Transok, Inc.; Notice of Informal Settlement Conference

January 8, 1997.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Monday, January 13, 1997, at 10:00 a.m., by telephone. The telephone conference call will be placed in Conference Room No. 82–12, at the office of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

Participation will be limited to the parties and staff. Interested parties who wish to participate should inform Patricia Fludd at (202) 208–0020 or Kerry Noone at (202) 208–0285 by Friday, January 10, 1997, before 2:00 p.m., EST.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–763 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–751–005]

Transwestern Pipeline Company; Notice of Amendment to Application

January 7, 1997.

Take notice that on December 24, 1996, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188 filed an amendment (Amendment) to its original application in Docket No. CP94–751–000, as amended, which was filed pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain facilities. Transwestern states that the Amendment requests that the Commission modify the abandonment authorization granted for certain of the facilities in Docket No. CP94–751–000 by the Commission's July 27, 1995 Order Approving Contested Settlement, 72 FERC ¶ 61,085, to allow such facilities to be transferred to non-jurisdictional third parties, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transwestern states that its original application in Docket No. CP94–751–000, requested authorization to abandon certain compressors, treater plants, meters, dehydration units and

associated facilities. According to Transwestern, it amended its application to set forth certain corrections and to reflect the sale to third parties of certain of the facilities, the determination that certain of the facilities already had been abandoned, and the determination that gas was flowing through certain wellhead facilities.

Transwestern proposed to abandon the facilities in the original application through removal or abandonment in place because such facilities were no longer used to useful in its operations, or were uneconomical or otherwise unnecessary for continued operation of its pipeline. It is stated that the order authorized abandonment of such facilities subject to Transwestern's compliance with certain environmental conditions set forth in Appendix D to the order.

Transwestern states that, currently, certain non-jurisdictional third parties seek to acquire some of those facilities for their operations. Accordingly, Transwestern requests that the Commission modify its order to provide that such facilities for which abandonment was granted may be transferred to third parties, and, in such case, Transwestern is not required to comply with the environmental conditions of Appendix D, which would apply if Transwestern abandoned in place or removed such facilities. Transwestern contends that such third parties are the same entities identified in the order as acquiring related facilities for which abandonment authorization was granted in Docket No. CP95–70–000: Continental Natural Gas Inc. and GPM Gas Corporation.

According to Transwestern, it would be economically wasteful for Transwestern to undertake the burden and expense of disposing of such facilities only to have third parties undertake the burden and expense of replacing them. Transwestern contends that the purpose of Appendix D is to protect the environment. However, in the case of the facilities the third parties wish to acquire, Transwestern argues that it would be much more disruptive to the environment to comply with Appendix D and remove such facilities, only to have the third parties reinstall them, than to simply convey the facilities to the third parties in the first place.

Given that abandonment already has been authorized for such facilities, Transwestern states that no other change to the order is required or proposed, in order to allow the transfer of such facilities rather than removal or abandonment in place under Appendix D. Transwestern states that it would receive no additional payment as the result of its transfer of such facilities and proposes that there would be no additional change in the accounting treatment for such facilities approved in the July 27, order.[1] Further, it is stated that such facilities would be subject to the default gathering contract applicable to the other related facilities transferred to third parties for which abandonment was authorized in Docket No. CP95–70–000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 28, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–696 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–2–M

[1] Transwestern states that, inasmuch as the accounting treatment for the abandoned assets is an integral part of the Settlement rates and revenues as approved in Docket No. RP95–271–000 and to the extent deemed necessary by the Commission, Transwestern requests waiver of the Commission's regulations in order to obtain the authorization requested herein with no change in the accounting treatment approved in the order.

[Docket No. CP97–173–000]

Truckline Gas Company; Notice of Application

January 8, 1997.

Take notice that on December 30, 1996, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–173–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by transfer to PanEnergy Field Services, Inc. (Field Services), a wholly-owned subsidiary of PanEnergy Corp, under a transfer agreement dated December 20, 1996, certain pipeline and measuring facilities with appurtenances, located in Hidalgo, Brooks and Jim Wells Counties, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

By this application, Trunkline is seeking abandonment of approximately 105 miles of various diameter pipeline (ranging from 4 inches to 20 inches), measurement facilities and appurtenances, referred to as the South Texas Facilities, locate din Hidalgo, Brooks, and Jim Wells Counties, Texas. The South Texas Facilities are located upstream of Field Services' LaGloria Processing Plant in Jim Wells County, Texas, situated approximately 80 miles south of Trunkline's Beeville Compressor Station in Bee County, Texas.

Trunkline states that the utilization of its facilities is changing as a result of Order No. 636 and the required unbundling of its transportation and gathering rates together with its customers' elections to cease purchasing natural gas from Trunkline. Trunkline states that it is proposing to transfer the facilities to Field Services for operation on an open access, non-jurisdictional basis. Trunkline states that Field Services will assume all future investment, operational and economic responsibilities for these facilities.

Trunkline states that coincident with this application for abandonment authority, Field Services is filing a Petition for Declaratory Order [1] seeking an affirmative declaration that the

[1] Field Services has filed a related petition for declaratory order in Docket No. CP97–174–000.

facilities behind the LaGloria Processing Plant and their subsequent ownership and operation by Field Services are gathering and thus exempt from NGA jurisdiction under Section 1(b) of the NGA.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. if a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–760 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–000]

Trunkline Gas Company; Notice of Informal Settlement Conference

January 8, 1997.

Take notice that an informal settlement conference will be convened in these proceedings on January 15, 1997 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Lorna J. Hadlock (202) 208–0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–764 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3092–000]

United American Energy Corp.; Notice of Issuance of Order

January 7, 1997.

United American Energy Corp. (United Energy) submitted for filing a rate schedule under which United Energy will engage in wholesale electric power and energy transactions as a marketer. United Energy also requested waiver of various Commission regulations. In particular, United Energy requested that the Commission grant blanket approval under 18 CFR Part 24 of all future issuances of securities and assumptions of liability by United Energy.

On January 3, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by United Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, United Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of United Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 3, 1997.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, DC 20426.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 97–694 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–445–000]

Washington Water Power Company; Notice of Filing

January 7, 1997.

Take notice that on December 10, 1996, Washington Water Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–695 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–24–000, et al.]

Petroelectrica de Panama LDC, et al.; Electric Rate and Corporate Regulation Filings

January 7, 1997.

Take notice that the following filings have been made with the Commission:

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1. Petroelectrica de Panama LDC

[Docket No. EG97–24–000]

On December 27, 1996, Petroelectrica de Panama LDC ("PEP"), with its address c/o ERI Services, Inc. International, 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

PEP is a Cayman Island company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in Panama. The eligible facilities will consist of an approximately 53 MW diesel-fired electric generation project and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Quezon Power (Philippines), Limited Co.

[Docket No. EG97–25–000]

On December 27, 1996, Quezon Power (Philippines), Limited Co. ("Quezon") filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Quezon states that its sole business purpose is to own a generation facility and associated transmission facilities ("the Facility") to be located in the Quezon Province in the Republic of the Philippines. Quezon states that the Facility is an "eligible facility" under PUHCA and that Quezon will be engaged directly and exclusively in the business of owning an eligible facility and selling electric energy at wholesale. Quezon therefore concludes that it qualifies as an EWG.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ogden Philippines Operating, Inc.

[Docket No. EG97–26–000]

On December 27, 1996, Ogden Philippines Operating, Inc. ("Ogden POI") filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Ogden POI states that its sole business purpose is to operate a generation facility and associated transmission facilities ("the Facility") to be located in the Quezon Province in the Republic of the Philippines. Ogden POI states that the Facility is an "eligible facility" under PUHCA and that Ogden POI will be engaged directly and exclusively in the business of operating an eligible facility and, through the agency relationship imputed for purposes of EWG status from Ogden POI's Operation and Maintenance Agreement with the owner of the Facility, in selling electric energy at wholesale. Ogden POI therefore concludes that it qualifies as an EWG.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. National Gas & Electric L.P., Heartland Energy Services Inc., PanEnergy Power Services, Inc., and Industrial Gas & Electric Services

[Docket No. ER90–168–029, Docket No. ER94–108–010, Docket No. ER95–7–012, and Docket No. ER95–257–008 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 9, 1996, National Gas & Electric L.P. filed certain information as required by the Commission's order dated March 20, 1990, in Docket No. ER90–168–000.

On December 13, 1996, Heartland Energy Services Inc. filed certain information as required by the Commission's order dated August 9, 1994, in Docket No. ER94–108–000.

On December 4, 1996, PanEnergy Power Services, Inc. filed certain information as required by the Commission's order dated December 16, 1994, in Docket No. ER95–7–000.

On December 17, 1996, Industrial Gas & Electric Services, Inc. filed certain information as required by the Commission's order dated February 1, 1995, in Docket No. ER95–257–000.

5. American Energy Service Corp.

[Docket No. ER96–3091–000]

Take notice that on December 13, 1996, American Energy Service Corp. tendered for filing a Notice of Withdrawal of Application for Power Marketing Status.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Washington Water Power Company

[Docket No. ER96–3152–000]

Take notice that on December 18, 1996, Washington Water Power Company tendered for an amendment in the above-referenced docket.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER97–902–000]

Take notice that on December 23, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Non-Firm Transmission Service Agreement between itself and Coral Power, L.L.C. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Coral power, L.L.C. to receive non-firm transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Coral Power, L.L.C., the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Great Bay Power Corporation

[Docket No. ER97–903–000]

Take notice that on December 23, 1996, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between CNG Power Services Corporation and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The revised form of service agreement is proposed to be effective December 17, 1996.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER97–905–000]

Take notice that on December 23, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing, both for itself and on behalf of Southern California Edison (SCE) and San Diego Gas & Electric Company (SDG&E) a request for termination of the California

Power Pool Agreement between PG&E, SDG&E and SCE, originally dated July 20, 1964 (Pool Agreement). The Pool Agreement was initially accepted by the Commission by letter dated August 16, 1965 and designated as PG&E Rate Schedule FPC No. 27, SDG&E Rate Schedule FPC No. 13 and SCE Rate Schedule FPC No. 24.

The Pool Agreement provides for coordination and interchange arrangements for power pooling transactions including the sale and exchange of electric capacity and energy between the parties.

Copies of this filing have been served upon and SCE, SDG&E and the California Public Utilities Commission.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER97–906–000]

Take notice that on December 23, 1996, American Electric Service Corporation (AEPSC), submitted for filing with the Commission, an Amendment to the AEP Companies' Power Sales Tariff, proposing minor corrections and clarifications, some of which are made at the request of the Commission's Staff. The Power Sales Tariff has previously been accepted and designated as AEP Companies' FERC Electric Tariff First Revised Volume No. 2.

A copy of the filing was served upon all customers and affected State Utility Regulatory Commissions.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER97–907–000]

Take notice that on December 23, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and, has been designated AEP Companies FERC Electric Tariff First Revised Volume No. 2.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER97–908–000]

Take notice that on December 23, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreements with Central Vermont Public Service Corporation, Power Supply and Baltimore Gas & Electric Company in the above-mentioned dockets. The tariff provides for the sale by Central Vermont of transmission services pursuant to the Company's FERC Transmission Tariff No. 6.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective according to its terms. In support of its requests Central Vermont states that allowing the Service Agreement to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

[Docket No. ER97–909–000]

Take notice that on December 23, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing the above-captioned docket an amendment to its Market Rate Sales Tariff, FERC Electric Tariff, Original Volume No. 14. Delmarva seeks waiver of notice to permit this amendment to take effect as of December 31, 1996.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER97–910–000]

Take notice that on December 24, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to Duke/Louis Dreyfus pursuant to Delmarva's open access transmission tariff.

Delmarva states that a copy of the filing was provided to Duke/Louis Dreyfus.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER97–911–000]

Take notice that on December 24, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for firm point-to-point transmission service to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Delmarva Power & Light Company

[Docket No. ER97–912–000]

Take notice that on December 24, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing its Standard of Conduct Procedures for Open Access Transmission service as required by Commission Order No. 889.

Delmarva states that these procedures will be fully implemented on or before January 3, 1997.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Connecticut Yankee Atomic Power Company

[Docket No. ER97–913–000]

Take notice that on December 24, 1996, Connecticut Yankee Atomic Power Company (Connecticut Yankee), tendered for filing, pursuant to § 205 of the Federal Power Act and 35.13 of the Commission's Regulations, an amendment to the power contracts for the sale of electricity for resale to ten New England utilities. Connecticut Yankee states that the amendment is designed to clarify the obligations of the purchasing utilities following the decision to cease power production at Connecticut Yankee's nuclear generating plant. Connecticut Yankee's filing also includes adjustments to amounts being amortized for unburned nuclear fuel, materials and supplies and a revised schedule of decommissioning charges, based on a new study of decommissioning costs.

Connecticut Yankee states that, although the decommissioning charges would increase by approximately $10.9 million annually, the overall rate change proposed would result in a decrease of approximately $54.7 million for 1997, measured against the results of calendar 1995 which is Period I.

Connecticut Yankee states that copies of its filing have been provided to its wholesale customers and to state regulatory commissions in Connecticut, Vermont, New Hampshire, Massachusetts, Maine and Rhode Island.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER97–914–000]

Take notice that on December 24, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Electric Clearinghouse, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to Electric Clearinghouse, Inc.

NUSCO requests that the Service Agreement become effective January 3, 1997.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power Corporation

[Docket No. ER97–915–000]

Take notice that on December 24, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point service to Central Power & Lime, Inc., pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on December 24, 1996.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–916–000]

Take notice that on December 24, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Virginia Electric and Power Company (VEPCO). This Service Agreement specifies that VEPCO has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and VEPCO to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–917–000]

Take notice that on December 24, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Illinova Power Marketing, Inc. (IPM), dated December 20, 1996. This Service Agreement specifies that IPM has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and IPM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 20, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER97–918–000]

Take notice that on December 24, 1996, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed one (1) service agreement-between SCS, as agent for Southern Companies, and Southern Wholesale Energy, a department of SCS, as agent for Southern Companies for non-firm point-to-point transmission service under Part II of the Open Access transmission Tariff of Southern Companies.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. The Toledo Edison Company

[Docket No. ER97–919–000]

Take notice that on December 24, 1996, The Toledo Edison Company (TE), tendered for filing with the Federal Energy Regulatory Commission agreements between TE and Baltimore Gas & Electric Co.; Northern Indiana Public Service Co.; Niagara Mohawk Power Corp.; WPS Energy Services, Inc.; Rainbow Energy Marketing Corp.; Midcon Power Services Corp.; and AYP Energy, Inc.

TE requests that the agreements be allowed to become effective on December 30, 1996.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. The Cleveland Electric Illuminating Company

[Docket No. ER97–920–000]

Take notice that on December 24, 1996, The Cleveland Electric Illuminating Company (CEI), tendered for filing with the Federal Energy Regulatory Commission agreements between CEI and Baltimore Gas & Electric Co.; Northern Indiana Public Service Co.; Niagara Mohawk Power Corp.; WPS Energy Services, Inc.; Rainbow Energy Marketing Corp.; Midcon Power Services Corp.; and AYP Energy, Inc.

CEI requests that the agreements be allowed to become effective on December 30, 1996.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Western Resources, Inc.

[Docket No. ER97–921–000]

Take notice that on December 24, 1996, Western Resources, Inc., tendered for filing, a notice of cancellation of Service Schedule C—Economy Energy Service, to Western Sources' Rate Schedule FPC No. 6, Electric Interconnection Contract between The Kansas Gas and Electric Company (KGE), and Western Resources, Inc. (formerly The Kansas Power and Light

Company). Western Resources requests that Service Schedule C be canceled as of March 1, 1997.

Notice of the proposed cancellation has been served upon KGE and the Kansas Corporation Commission.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. The Dayton Power and Light Company

[Docket No. ER97–922–000]

Take notice that on December 24, 1996, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Wisconsin Electric Power, LG&E Power Marketing, Inc., Louisville Gas & Electric Co., The Baltimore Gas & Electric Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Wisconsin Electric Power, LG&E Power Marketing, Inc., Louisville Gas & Electric Co., The Baltimore Gas & Electric Company and the Public Utilities Commission of Ohio.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Western Resources, Inc.

[Docket No. ER97–923–000]

Take notice that on December 24, 1996, Western Resources, Inc., on behalf of its wholly owned subsidiary Kansas Gas and Electric Company (KGE), is a notice of cancellation of Service Schedule C—Economy Energy Service and Service Schedule RE—Replacement Energy Service, designated by the Commission as Supplement Nos. 3 and 10 respectively to KGE's Rate Schedule FPC No. 97.

Notice of the proposed cancellation has been served upon Public Service Company of Oklahoma, the Oklahoma Corporation Commission, and the Kansas Corporation Commission.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–924–000]

Take notice that on December 26, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Coral Power, L.L.C. (Coral).

Con Edison states that a copy of this filing has been served by mail upon Coral.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Delmarva Power & Light Company

[Docket No. ER97–925–000]

Take notice that on December 24, 1996, Delmarva Power & Light Company, tendered for filing a service agreement to provide firm energy to Old Dominion Electric Cooperative for a period of one year beginning January 1, 1997.

Delmarva Power seeks authorization to provide service under this service agreement and pursuant to its FERC Electric Tariff Volume No. 14 market-based rate authorization allowed in Docket No. ER96–2571–000 and the Commission's direction therein that a 205 filing be made prior to commencing market-based rate sales service to customers located on the Delmarva peninsula.

Copies of the filing were served upon the customer, the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Richard B. Priory

[Docket No. ID–2983–000]

Take notice that on December 20, 1996, Richard B. Priory filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, President and Chief Operating Officer, Duke Power Company
Director, NationsBank Corporation

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–697 Filed 1–10–97; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meetings

JANUARY 8, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION

DATE AND TIME: JANUARY 15, 1997 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN

MATTERS TO BE CONSIDERED: AGENDA

*** Note**—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208–0400. FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 665TH MEETING—JANUARY 15, 1997, REGULAR MEETING (10:00 A.M.)

CAH–1.
  DOCKET# P–2315, 005, SOUTH CAROLINA ELECTRIC & GAS COMPANY
CAH–2.
  DOCKET# P–2381, 037, PACIFICORP
CAH–3.
  DOCKET# P–2583, 005, ROCHESTER GAS AND ELECTRIC CORPORATION
CAH–4.
  OMITTED
CAH–5.
  DOCKET# P–9222, 005, NIAGARA MOHAWK POWER CORPORATION
  OTHER#S P–9222, 007, NIAGARA MOHAWK POWER CORPORATION
CAH–6.
  DOCKET# P–10813, 026, CITY OF SUMMERSVILLE, WEST VIRGINIA
CAH–7.
  DOCKET# N–2, 000, SECOND REPORT TO CONGRESS ON APPROPRIATE-

NESS OF GOVERNMENT DAM ANNUAL CHARGES, ET AL.
CAH–8.
DOCKET# P–2149, 059, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER96–3113, 000, COMMONWEALTH EDISON COMPANY
CAE–2.
DOCKET# ER97–606, 000, FLORIDA POWER CORPORATION
OTHER#S ER97–515, 000, FLORIDA POWER CORPORATION
ER97–516, 000, FLORIDA POWER CORPORATION
CAE–3.
DOCKET# ER97–556, 000, BRITISH COLUMBIA POWER EXCHANGE CORPORATION
OTHER#S EL95–62, 000, BRITISH COLUMBIA POWER EXCHANGE CORPORATION
CAE–4.
OMITTED
CAE–5.
DOCKET# EC96–13, 000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.
OTHER#S ER96–1236, 000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.
ER96–2560, 000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.
OA96–133, 000, INTERSTATE ENERGY CORPORATION

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# PR97–2, 000, TECO PIPELINE COMPANY
CAG–2.
DOCKET# RP96–333, 001, NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER#S RP96–333, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–3.
DOCKET# RP96–366, 002, FLORIDA GAS TRANSMISSION COMPANY
CAG–4.
OMITTED
CAG–5.
OMITTED
CAG–6.
DOCKET# RP96–337, 001, PACIFIC GAS TRANSMISSION COMPANY
CAG–7.
DOCKET# RP97–195, 000, VIKING GAS TRANSMISSION COMPANY
CAG–8.
OMITTED
CAG–9.
DOCKET# RP91–143, 037, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–10.
DOCKET# RP96–81 ET AL., 001, CARNEGIE INTERSTATE PIPELINE COMPANY
CAG–11.
DOCKET# RP97–14, 001, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–12.
DOCKET# RP97–61, 000, NORAM GAS TRANSMISSION COMPANY
CAG–13.
DOCKET# RP97–62, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–14.
DOCKET# RP97–63, 000, COLORADO INTERSTATE GAS COMPANY
CAG–15.
DOCKET# RP97–73, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–16.
DOCKET# PR96–14, 000, BRIDGELINE GAS DISTRIBUTION LLC
CAG–17.
DOCKET# RP97–42, 002, TRUNKLINE GAS COMPANY
CAG–18.
OMITTED
CAG–19.
OMITTED
CAG–20.
DOCKET# RP97–32, 002, EASTERN SHORE NATURAL GAS COMPANY
OTHER#S CP96–128, 002, EASTERN SHORE NATURAL GAS COMPANY
CAG–21.
DOCKET# RP92–149, 007, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–22.
DOCKET# OR97–2, 000, ULTRAMAR INC. V. SFPP, L.P.
CAG–23.
DOCKET# RP97–36, 000, ENERGY MANAGEMENT CORPORATION V. PEOPLES GAS SYSTEM, INC.
CAG–24.
OMITTED
CAG–25.
OMITTED
CAG–26.
DOCKET# CP96–213, 000, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S CP90–644, 003, COLUMBIA GAS TRANSMISSION CORPORATION
CP96–213, 001, COLUMBIA GAS TRANSMISSION CORPORATION
CP96–559, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–27.
DOCKET# CP96–339, 000, TOTAL PEAKING SERVICES, L.L.C.
CAG–28.
DOCKET# CP96–770, 000, COASTAL STATES GAS TRANSMISSION COMPANY
CAG–29.
DOCKET# CP96–779, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–30.
DOCKET# CP96–495, 000, GPM GAS CORPORATION V. CONTINENTAL NATURAL GAS, INC.
CAG–31.
DOCKET# CP96–577, 000, PLANT OWNERS V. CONTINENTAL NATURAL GAS, INC.
CAG–32.
OMITTED
CAG–33.
DOCKET# OR97–1, 000, RIO GRANDE PIPELINE COMPANY
CAG–34.
DOCKET# RM96–14, 003, SECONDARY MARKET TRANSACTIONS ON INTERSTATE NATURAL GAS PIPELINES
OTHER#S RP96–352, 002, TRANSWESTERN PIPELINE COMPANY, PACIFIC GAS AND ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY
RP96–353, 001, NATIONAL FUEL GAS DISTRIBUTION CORPORATION
RP96–355, 001, COLUMBIA GULF TRANSMISSION CORPORATION
RP96–356, 001, COLUMBIA GAS TRANSMISSION COMPANY
RP96–360, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP96–368, 001, WASHINGTON GAS LIGHT COMPANY
RP96–369, 001, BROOKLYN UNION GAS COMPANY
RP96–370, 001, KERN RIVER GAS TRANSMISSION COMPANY
RP96–371, 001, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
RP96–372, 001, MOUNTAINEER GAS COMPANY
RP96–373, 001, BOSTON GAS COMPANY
RP96–379, 001, ARIZONA PUBLIC SERVICE COMPANY
RP96–382, 001, ORANGE AND ROCKLAND UTILITIES, INC.

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
RESERVED

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–842 Filed 1–9–97; 11:56 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5675–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Requirements Under EPA's Voluntary WasteWi$e Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting Requirements Under EPA's WasteWi$e Program (OMB Control No. 2050–0139; EPA ICR No. 1698). This is a request for extension of a currently approved information collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 14, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–WWIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–WWIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: Lynda Wynn at 401 M St., SW, (5306W), Washington DC 20460, or at 703–308–7273, FAX 703–308–8686, wynn.lynda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under EPA's Voluntary WasteWi$e Program (OMB No. 2050–0139. EPA ICR No. 1698). Expiring May 31, 1997.

Affected entities: Entities potentially affected by this action are those businesses, institutions, and government agencies that sign up to participate in EPA's WasteWi$e program.

Abstract: EPA's voluntary WasteWi$e program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled products. WasteWi$e participants include partners, which commit to implementing waste reduction activities of their choice, and endorsers which promote the WasteWi$e program and waste reduction to their members. Endorsers, which are typically trade associations or other membership-based associations, submit only a one-page form, the Endorser Registration Form. This form identifies the organization, the principal contact, and the activities to which the Endorser commits. Partners fill out three forms as follows. The Partner Registration Form identifies the organization and the facilities that will participate in WasteWi$e, and requires the signature of a senior official that can commit the organization to the program. Each partner develops its own waste reduction goals and submits a one-page Goals Identification Form to EPA each year. Partners also report annually on the progress made toward achieving these goals in the Annual Reporting Form, estimating amounts of waste prevented and recyclables collected, and describing buy-recycled activities.

The EPA WasteWi$e program uses the submitted information to (1) identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile aggregate results that indicate overall accomplishments of WasteWi$e partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Burden Statement: The respondent burden for this collection is estimated to average 24 hours per response for the Endorser Registration Form; 10 hours per response for the Partner Registration Form; 40 hours per response for the first year's Goals Identification Form; 20 hours per response for each subsequent year's Goals Identification Form; and 55.5 hours per response for the Annual Reporting Form. This results in an estimated one-time respondent burden of 24 hours for Endorsers, and an annual Partner respondent burden of 105.5 hours in the first year and 75.5 hours each subsequent year. The estimated number of respondents is 200 in year 1; 300 in year 2; and 400 in year 3. Estimated total annual burden on respondents is 28,500 hours in year 1; 29,850 hours in year 2; and 37,650 hours in year 3.

Burden estimates include the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with

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any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 27, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 97–746 Filed 1–10–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5676–1]

Notice of Public Meeting on the National Performance Measures Strategy for Enforcement and Compliance Assurance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting to solicit suggestions for innovative, supplemental measures of enforcement and compliance assurance program performance; develop a common understanding with partners and stakeholders about a set of national measures and the steps necessary to implement them (based on the state of national compliance); and discuss how to carry out an implementation plan to put the new set of measures into practice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public meeting on Monday, February 3, 1997, in Washington, D.C., which will be devoted to the National Performance Measures Strategy for Enforcement and Compliance Assurance. The focus of the meeting will be to hear presentations and statements from a cross-section of stakeholders about innovative approaches to measuring enforcement and compliance assurance program performance.

DATES: The meeting date will take place on Monday, February 3, 1997, from 8:30 a.m to 5:00 p.m.

ADDRESSES: The public meeting will take place on Monday, February 3, 1997, at the Holiday Inn Historic District Alexandria, 625 First Street, Alexandria, Virginia, 22314 (703–548–6300).

FOR FURTHER INFORMATION CONTACT: James McDonald, U.S. Environmental Protection Agency, Office of Compliance, 401 M Street, S.W. (2201A), Washington, D.C., 20460; telephone (202) 564–4043, fax (202) 501–0701.

SUPPLEMENTARY INFORMATION:

I. Background

For many years, EPA has counted annual enforcement outputs (e.g., inspections conducted, number of civil and criminal cases, penalties assessed) as the predominant measure of performance for the enforcement and compliance assurance program. While these outputs will continue to be used as an important measure of environmental enforcement, EPA seeks additional measures to assess the status and trends of regulatory compliance, as well as environmental improvements resulting from enforcement and compliance assurance activities. This need was recognized during the enforcement reorganization in 1993, and a commitment was made during that process to develop additional measures. In addition, the requirements of the Government Performance and Results Act (GPRA) offer an opportunity to review and improve performance measures.

For almost three years, the Office of Enforcement and Compliance Assurance (OECA) has been taking steps to improve its performance measures for enforcement and compliance assurance activities. During that time, OECA: (1) convened a Measures of Success Work Group comprised of EPA and Regional officials, (2) developed and implemented a Case Conclusion Data Sheet (CCDS) to gather new types of information about completed cases, (3) developed and implemented a reporting measure for compliance assistance activities, and (4) realigned single-media data bases to enable reporting of enforcement data by industry sector.

Through these steps, OECA has made progress in developing an enhanced set of performance measures. Specifically, OECA is now able to supplement traditional enforcement output measures with other measures, including: (1) actions taken by violators to return to compliance, (2) quantitative environmental impact and qualitative environmental benefit of those actions, (3) types, amounts, and impact of compliance assistance activities, and (4) industry-specific compliance rates. These elements were fully operational together for the first time in FY 96, and the results of these efforts are being compiled in a national accomplishments report. However, OECA recognizes further improvements can, and should, be made with regard to reporting the state of national compliance and trends of environmental enforcement and compliance.

The purpose of this notice is to reach out for new ideas from EPA's regulatory partners (i.e., State, Tribal, and Local governments) and interested stakeholders. As described below, EPA plans to initiate this effort with a national meeting.

II. The National Performance Measures Strategy

The purpose of the National Performance Measures Strategy is to develop and implement an enhanced set of performance measures for the enforcement and compliance assurance program. The Strategy includes: (1) soliciting new ideas from regulatory partners and stakeholders for more meaningful and sophisticated measures of program performance, (2) developing a common understanding with regulatory partners and stakeholders about a set of national measures and the short- and long-term steps necessary to implement them, and (3) carrying out an implementation plan to put the new set of measures into practice.

The Strategy includes the following elements:

1. Conduct dialogue with regulatory partners, including senior EPA Headquarters and Regional managers, State officials, and a Department of Justice representative, to assist with implementation of the Strategy
2. Hold initial public meetings to present objectives of the Strategy and key measurement issues and hear presentations and statements from a cross-section of stakeholders (by March 1, 1997)
3. Meet with sets of stakeholders during FY 97 to discuss ideas and proposals for improved measures and/or conduct meetings of mixed stakeholders in various locations (between March and June 1997)
4. Meet with other Federal regulatory and law enforcement agencies to learn about new performance measurement approaches being used in enforcement and compliance programs (between March and June 1997)
5. Hold a "capstone" conference with a cross-section of stakeholders at the end of the outreach process to identify common understandings, areas of agreement, and unresolved issues (by mid-September 1997)
6. Develop a report of findings and an implementation plan with a schedule (by October 1, 1997)
7. Implement new ideas and approaches in accordance with the schedule.

III. Agenda/Focus Topics for Public Meeting

EPA is interested in hearing and considering ideas from regulatory partners and a wide range of

stakeholders regarding the state of compliance and additional ways to measure the performance of EPA's enforcement and compliance assurance program. EPA accepts the idea that its current approach of counting annual enforcement outputs needs to be supplemented by other approaches that measure improvements in environmental quality and the state of compliance. As such, the Agency wants to focus the outreach effort on identifying and implementing new approaches rather than on the limitations of its current approach.

Stakeholders and regulatory partners are asked to focus on the following issues of special interest to EPA:

1. What innovative approaches are being used (or could be used) by other environmental agencies, other regulatory agencies, and law enforcement agencies to measure the effects of their enforcement and compliance assurance programs?

2. What innovative approaches are being used by regulated facilities, companies, or trade groups and associations to measure the effect of their efforts to achieve and maintain compliance and protect the environment?

3. What can EPA use to measure the impact of its enforcement and compliance assurance program in low-income/ minority population communities?

4. How can EPA measure industry performance in complying with environmental laws and regulations?

5. How can EPA measure the deterrent effect of its enforcement-related activities, including conducting inspections, taking enforcement actions, and publicizing those actions?

6. How can EPA measure the impact of compliance assistance activities and compliance incentives, such as its audit and self-disclosure policy?

IV. Information for Participants

Stakeholders and Tribal, State, and Local entities are encouraged to offer ideas and proposals through submission of written comments, participation in the public meeting organized by EPA, or both. Persons interested in speaking, presenting information, or otherwise expressing comments at this meeting should send or fax their name, affiliation, phone number, topic, and a brief statement describing their presentation to Michelle Angelich, Science Applications International Corporation, 1710 Goodridge Drive, MS 1–11–8, McLean, Virginia, 22102; telephone 703–821–4432, fax 703–903–1373 by January 24, 1997. Persons wishing to submit pre-filed testimony may also send or fax such material to Ms. Angelich. Speakers will be notified of their time slots or panel assignments once the final format is determined. This meeting will be open to the public as space permits, and a transcript of the proceedings will be prepared.

Dated: January 7, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–745 Filed 1–10–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5675–6]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Human Exposure and Health Subcommittee (HEHS) of the Science Advisory Board's (SAB) Integrated Risk Project will hold a public teleconference on Wednesday, January 29, 1997, from 3:00 p.m. to 5:00 p.m. (Eastern Standard Time). The teleconference will be hosted in the SAB Conference Room 2103 of the Mail, U.S. Environmental Protection Agency Headquarters Building at 401 M Street SW, Washington, DC 20460. For easy access, members of the public should use the EPA entrance next to the Safeway.

Purpose of the Meeting—The main purpose of the meeting is plan future directions and activities for the Subcommittee, particularly on the topic of the feasibility of producing a ranking of human health risks. The Subcommittee's activities are part of an SAB project to update the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection.

A limited number of telephone lines will be available for use by members of the public.

For Further Information—Members of the public desiring additional information concerning the teleconference or who wish to submit comments should contact Mr. Samuel Rondberg, Designated Federal Officer for the HEHS, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202)260–2559; by fax at (202) 260–7118 or via the INTERNET at: rondberg.sam@epamail.epa.gov. After January 16, 1996, copies of the draft meeting agenda will be available from Ms. Mary Winston at (202) 260–8414, by fax at (202) 260–7118, and by INTERNET at: winston.mary@epamail.epa.gov.

Information regarding how to access the teleconference is available by contacting Ms. Winston at the above numbers.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Rondberg in writing by letter, by fax, or by INTERNET (at INTERNET address above) no later than 12 noon (Eastern Standard Time) Thursday, January 23, 1997, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral comments will be limited to five minutes per person.

Dated: January 13, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–747 Filed 1–10–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5674–5]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the MRM Superfund Site, located in Sikeston, Missouri, was executed by the Agency on November 26, 1996, and concurred upon by the United States Department of Justice on November 18, 1996. This agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1996 ("CERCLA"), against North Ridge Homes, Inc., the prospective purchaser ("the purchaser").

The settlement would require the purchaser to pay the EPA the sum of $20,000, within thirty days after the date upon which Settling Respondent acquires title to the Property. The purchaser must record a deed restriction prohibiting use of the Property for residential purposes or for any purpose that could reasonably be expected to attract children, including, but not

limited to, schools, child care centers, playgrounds, parks, and picnic areas. In addition, the purchaser agrees to provide access to the EPA, its authorized officers, employees, representatives, and all other persons performing response actions at the Site under federal law.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before February 12, 1997.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Jeffrey Weatherford, Remedial Project Manager, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Comments should refer to the "Agreement and Covenant Not to Sue Re: MRM Superfund Site" and should be forwarded to Jeffrey Weatherford, Remedial Project Manager, at the above address.

FOR FURTHER INFORMATION CONTACT: David Cozad, Senior Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7587.

Dated: December 30, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–644 Filed 1–10–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

January 3, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 14, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0580.

Title: 47 CFR 76.504 Limits on carriage of vertically integrated programming.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,500.

Estimated Time Per Response: 15 hours.

Total Annual Burden: 22,500 hours.

Cost to Respondents: $7,500. ($5 per respondent for photocopying and administrative expenses associated with recordkeeping.)

Needs and Uses: 47 CFR 76.504 requires cable operators to maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. These records must be maintained in operators' public files for a period of 3 years. The records are to be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

In 1993, the Commission's initial estimate of the burden of complying with this information collection requirement incorrectly based the number of respondents on the number of community units in the country, instead of the number of cable operators. The number of respondents was thus estimated to be 31,000. Recent publicly available information on hand in the Commission indicates that there are currently 1,468 existing cable operators. To adjust for prospective new market entries, we therefore have used the number 1,500 in our estimate of the number of respondents impacted by this collection.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–669 Filed 1–10–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

January 3, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before March 14, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0582.

Title: 47 CFR 76.1302 Adjudicatory proceedings.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 36. We estimate there is 12 complaint proceedings initiated per year. Each complaint proceeding has two respondents; a petitioning party and an opposing party. In addition to these respondents, there are also an estimated 12 respondents that underwent the notification requirement and then were able to resolve their dispute without initiating a complaint proceeding. 12 complaints proceedings × 2 respondents each + 12 respondents that only undergo the notification requirement = 36 respondents.

Estimated Time Per Response: 1–20 hours. We estimate the average burden for completing the notification requirement to be 4 hours. We estimate the total burden for each party in undergoing all aspects of the complaint proceeding to be 20 hours. We estimate that 50% of entities will choose to use outside counsel for the complaint proceeding and will undergo a burden of 4 hours to coordinate information with outside counsel.

Total Annual Burden: 384 hours. 24 respondents will undergo the notification requirement × 4 hours = 96 hours. This will result in 12 complaint proceedings, each with 2 respondents. 12 (50%) of the respondents will undergo a burden of 20 hours for all aspects of the complaint proceeding. 12 × 20 hours = 240 hours. The remaining 12 (50%) respondents will use outside counsel for the complaint proceeding × 4 hours = 48 hours. 96 + 240 + 48 = 384.

Cost to Respondents: For the complaint proceeding, 12 respondents will use outside counsel at $150 per hour. 12 × 20 hours × $150 = $36,000.

Needs and Uses: 47 CFR 76.1302 provides that any aggrieved video programming vendor intending to file a carriage agreement complaint must first notify the potential defendant multichannel video programming distributor that it intends to file such a complaint with the Commission. If the parties cannot resolve the dispute, the complainant may file a complaint with the Commission. The data will be used by Commission staff to resolve disputes alleging a violation of the Commission's carriage agreement regulations. These regulations will prevent multichannel programming distributors from entering into carriage agreements with video programming vendors that are conditioned on concessions of various rights, including financial interests or exclusivity.

OMB Approval Number: 3060–0339.

Title: 47 CFR 78.11 Permissible service.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,200.

Estimated Time Per Response: We estimate that the 2,200 current CARS licensees will undergo an average recordkeeping burden of .5 hours complying with the requirements contained in 47 CFR 78.11(d)(2). 2,200 × .5 = 1,100 hours. We estimate that 100 CARS licensees will make notifications with an average burden of .5 hours in complying with the requirements contained in 47 CFR 78.11(e).
100 × .5 = 50 hours.

Total Annual Burden: 1,150 hours. (1,100 + 50).

Cost to Respondents: $4,500. ($2 per respondent for photocopying and administrative expenses associated with recordkeeping. 2,200 × $2 = $4,400. $1 per respondent for postage and/or telephone charges associated with the notification requirements. 100 × $1 = $100.)

Needs and Uses: 47 CFR 78.11(d)(2) requires Cable Television Relay Service (CARS) licensees supplying program material to cable television systems, other eligible systems (i.e., multipoint distribution service and multichannel multipoint distribution service) or television translator stations to keep records showing its non-profit, cost-sharing nature. 47 CFR 78.11(e) requires that a CARS pickup station providing temporary CARS studio-to-headend links or CARS circuits must obtain prior Commission authority, at least one day prior, if the transmitting antenna to be installed will increase the height of any natural formation or manmade structure more than 20 feet and will be in existence for a period of more than two consecutive days and provided further that if transmitting equipment is to be operated for more than 1 day outside of the area to which a CARS station has been licensed, the Commission, the engineer in charge of the district in which the station is licensed to operate, and the engineer in charge of the district in which the equipment will be temporarily operated shall be notified at least 1 day prior to such operation. If the decision to continue operation for more than 1 day is not made until the operation has begun, notice shall be given to the Commission and the relevant engineers in charge within 1 day after such decision. In all instances, the Commission and the relevant engineers in charge shall be notified when the transmitting equipment has been returned to its licensed area.

The records are used by FCC staff in field investigations to ensure that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis. The notifications will be used by FCC staff to provide information regarding alleged interference.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–671 Filed 1–10–97; 8:45 am]

BILLING CODE 6712–01–P

[Report No. 2171]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 7, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by January 28, 1997. See Section 1.4(b)(1) of the

Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Brownsville and Beaver Dam, KY) (RM–8819).

Number of Petition Filed: 1.

Subject: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended. (CC Docket No. 96–61).

Number of Petition Filed: 11.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–670 Filed 1–10–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Technical Mapping Advisory Council.

DATES OF MEETING: January 23 and 24, 1997.

PLACES: The meeting will be held at the National Oceanic and Atmospheric Administration headquarters, 1315 East-West Highway, 4th floor conference room (on Thursday January 23) and 1325 East-West Highway, Room 2358 (on Friday January 24), both in Silver Spring, Maryland.

TIMES: 9:00 a.m. to 6 p.m. on Thursday and 8:00 a.m. to 2:30 p.m. Friday.

PROPOSED AGENDA: Topics to be discussed include finalizing the Council's annual report due to the Director of FEMA, formalizing a plan of action, and reviewing the Council's goals. Presentations on mapping technology will also be given.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax as noted above.

Dated: January 7, 1997.

Frederick H. Sharrocks, Jr.

Chief, Hazard Identification Branch Mitigation Directorate.

[FR Doc. 97–740 Filed 1–10–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL HOUSING FINANCE BOARD

[No. 96–N–8]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Housing Finance Board) promulgated Community Support regulations (12 CFR Part 936). Under the review process established in the regulations, the Housing Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. 2901 *et seq.*, (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the fourth quarter review (1996–97 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Fourth Quarter Review:* February 27, 1997.

Due Date For Public Comments on Members Selected in Fourth Quarter Review: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mitchell Berns, Director, Office of Supervision, (202) 408–2562, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Housing Finance Board currently reviews all FHLBank System members that are subject to CRA approximately once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Housing Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Housing Finance Board follows the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Housing Finance Board will postpone review of new members until they have been System members for one year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Fourth Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, P.O. Box 9106, Boston, Massachusetts 02205–9106		
Eagle Federal Savings Bank	Bristol	CT
Nutmeg Federal Savings and Loan Association	Danbury	CT
Union Savings Bank	Danbury	CT
Advest Bank	Hartford	CT
Jewett City Savings Bank	Jewett City	CT
MidConn Bank	Kensington	CT
Naugatuck Valley S&LA, Inc	Naugatuck	CT
The People's Savings Bank of New Britain	New Britain	CT

Member	City	State
New Haven Savings Bank	New Haven	CT
Newtown Savings Bank	Newtown	CT
Norwalk Savings Society	Norwalk	CT
Eastern Savings and Loan Association	Norwich	CT
Ridgefield Bank	Ridgefield	CT
First County Bank	Stamford	CT
Dime Savings Bank of Wallingford	Wallingford	CT
South Adams Savings Bank	Adams	MA
Andover Bank	Andover	MA
Barre Savings Bank	Barre	MA
United States Trust Company	Boston	MA
Brookline Savings Bank	Brookline	MA
Boston Federal Savings Bank	Burlington	MA
Cambridgeport Bank	Cambridge	MA
North Cambridge Co-operative Bank	Cambridge	MA
Canton Co-operative Bank	Canton	MA
Edgartown National Bank	Edgartown	MA
First Federal Savings Bank of America	Fall River	MA
Fidelity Co-operative Bank	Fitchburg	MA
Fitchburg Savings Bank, FSB	Fitchburg	MA
Haverhill Co-operative Bank	Haverhill	MA
Hyde Park Cooperative Bank	Hyde Park	MA
First National Bank of the Berkshires	Lee	MA
Lowell Co-operative Bank	Lowell	MA
Medford Savings Bank	Medford	MA
Milford National Bank	Milford	MA
Natick Federal Savings Bank	Natick	MA
Revere Federal Savings & Loan Association	Revere	MA
Heritage Co-operative Bank	Salem	MA
Salem Five Cents Savings Bank	Salem	MA
Sandwich Co-operative Bank	Sandwich	MA
Shirley Co-operative Bank	Shirley	MA
People's Savings Bank of Brockton	South Easton	MA
Stoneham Savings Bank	Stoneham	MA
Country Bank for Savings	Ware	MA
Wellesley Co-operative Bank	Wellesley	MA
South Shore Cooperative Bank	Weymouth	MA
Winchester Co-operative Bank	Winchester	MA
Bay State Savings Bank	Worcester	MA
Cape Cod Co-operative Bank	Yarmouth Port	MA
Bangor Savings Bank	Bangor	ME
Bar Harbor Savings and Loan Association	Bar Harbor	ME
Northeast Bank, F.S.B	Bethel	ME
First Citizens Bank	Presque Isle	ME
Waldoboro Bank, F.S.B	Waldoboro	ME
Concord Savings Bank	Concord	NH
CFX Bank	Keene	NH
Granite Bank	Keene	NH
Lancaster National Bank	Lancaster	NH
Profile Bank, FSB	Rochester	NH
Bank of Newport	Newport	RI
Citizens Savings Bank	Providence	RI
Westerly Savings Bank	Westerly	RI
Brattleboro Savings and Loan Association, FA	Brattleboro	VT

Federal Home Loan Bank of New York—District 2, Seven World Trade Center, 22nd Floor, New York, New York 10048–1185

First Community Bank	Annandale	NJ
Bank of Mid-Jersey	Bordentown	NJ
West Essex Savings Bank, S.L.A	Caldwell	NJ
Cape Savings Bank	Cape May Court House	NJ
United Roosevelt Savings & Loan Association	Carteret	NJ
Commerce Bank, N.A	Cherry Hill	NJ
First Constitution Bank	Cranbury	NJ
Delanco Federal Savings Bank	Delanco	NJ
Columbia Savings Bank, S.L.A	Fair Lawn	NJ
Spencer Savings Bank, SLA	Garfield	NJ
Haven Savings Bank	Hoboken	NJ
Manasquan Savings Bank	Manasquan	NJ
First Home Savings Bank, F.S.B	Pennsville	NJ
First S&LA of Sea Isle City	Sea Isle City	NJ
Wawel Savings Bank, SLA	Wallington	NJ
First DeWitt Savings Bank, FSB	West Caldwell	NJ

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Member	City	State
Crest Savings Bank, SLA	Wildwood Crest	NJ
Amsterdam Savings Bank, FSB	Amsterdam	NY
Bridgehampton National Bank	Bridgehampton	NY
Atlas Savings & Loan Association	Brooklyn	NY
Reliance Federal Savings Bank	Garden City	NY
Goshen Savings Bank	Goshen	NY
Tompkins County Trust Company	Ithaca	NY
Jamaica Savings Bank, FSB	Lynbrook	NY
Bankers Federal Savings FSB	New York	NY
National Bank & Trust Company of Norwich	Norwich	NY
Adirondack Bank	Saranac Lake	NY
Bank of	Smithtown Smithtown	NY
Walden Federal Savings and Loan Association	Walden	NY
Fourth Federal Savings Bank	White Plains	NY
City & Suburban Federal Savings Bank	Yonkers	NY
Westernbank Puerto Rico	Mayaguez	PR
PonceBank	Ponce	PR
Federal Home Loan Bank of Pittsburgh—District 3, 601 Grant Street, Pittsburgh, Pennsylvania 15219–4455		
First USA Bank	Wilmington	DE
Sovereign Bank, FSB	Toms River	NJ
ADP Savings Association	Allentown	PA
Iron Workers Savings Bank	Aston	PA
Madison Bank	Blue Bell	PA
National Penn Bank	Boyertown	PA
Union Building and Loan Savings Bank	Bridgewater	PA
Clearfield Bank and Trust Company	Clearfield	PA
Dauphin National Bank	Dauphin	PA
First Financial Savings Bank	Downingtown	PA
People's State Bank	East Berlin	PA
Elverson National Bank	Elverson	PA
Community Bank and Trust Company	Forest City	PA
Dime Bank	Honesdale	PA
Indiana First Savings Bank	Indiana	PA
Manor National Bank	Manor	PA
Standard Bank	Monroeville	PA
First Commercial Bank of Philadelphia	Philadelphia	PA
Roxborough-Manayunk Federal Savings Bank	Philadelphia	PA
Brentwood Savings Bank	Pittsburgh	PA
Mt. Troy Savings Bank, FSB	P burgh	PA
PNC Bank, N.A.	Pi burgh	PA
Pennsylvania Capital Bank	P burgh	PA
Schuylkill Savings & Loan Association	Schuylkill Haven	PA
Somerset Trust Company	Somerset	PA
Omega Bank	State College	PA
Mechanics Savings and Loan FSB	Steelton	PA
Commonwealth Savings Bank	Valley Forge	PA
Compass Federal Savings Bank	Wilmerding	PA
Beckley Federal Savings Bank	Beckley	WV
One Valley Bank, N.A.	Charleston	WV
Hancock County Savings Bank, FSB	Chester	WV
Citizens National Bank	Elkins	WV
National Bank of West Virginia	Morgantown	WV
Traders Bank	Spencer	WV
Progressive Bank	Wheeling	WV
Federal Home Loan Bank of Atlanta—District 4, P.O. Box 105565, Atlanta, Georgia 30348		
First Federal Savings Bank	Bessemer	AL
Citizens Federal Savings Bank	Birmingham	AL
SouthTrust Bank of Alabama, N.A.	Birmingham	AL
BankFirst, a Federal Savings Bank	Decatur	AL
First Federal Bank	Fort Payne	AL
Home Bank	Guntersville	AL
Pinnacle Bank	Jasper	AL
First Montgomery Bank	Montgomery	AL
Farmers National Bank	Opelika	AL
Jacobs Bank	Scottsboro	AL
First Federal Bank, FSB	Tuscaloosa	AL
American National Bank	Union Springs	AL
Independence Federal Savings Bank	Washington	DC
Community National Bank of Bartow	Bartow	FL

Member	City	State
Comerica Bank and Trust, FSB	Boca Raton	FL
First Southern Bank	Boca Raton	FL
Crown Bank, A FSB	Casselberry	FL
AmSouth Bank of Florida	Clearwater	FL
Harbor Federal Savings Bank	Fort Pierce	FL
First South Bank	Holiday	FL
Homosassa Springs Bank	Homosassa Springs	FL
First Federal Savings and Loan Association	Kissimmee	FL
First Federal Savings Bank of Lake County	Leesburg	FL
City National Bank of Florida	Miami	FL
Interamerican Bank, FSB	Miami	FL
Pacific National Bank	Miami	FL
First National Bank of Naples	Naples	FL
Oceanmark Bank, FSB	N. Miami Beach	FL
Lochaven FS&LA	Orlando	FL
Preferred Bank, A FSB	Palmetto	FL
Union Bank of Florida	Plantation	FL
Bayside Federal Savings and Loan Association	Port Charlotte	FL
SouthTrust Bank of Florida, N.A.	St. Petersburg	FL
Seaboard Savings Bank, F.S.B.	Stuart	FL
Valrico State Bank	Valrico	FL
PNC Bank, FSB	Vero Beach	FL
Fidelity Federal Savings Bank of Florida	West Palm Beach	FL
First Bank of Florida	West Palm Beach	FL
Bainbridge National Bank	Bainbridge	GA
First Port City Bank	Bainbridge	GA
Baxley Federal Savings Bank	Baxley	GA
Peoples State Bank & Trust	Baxley	GA
First Federal Savings Bank of Brunswick	Brunswick	GA
Bank of North Georgia	Canton	GA
Security State Bank	Canton	GA
West Georgia National Bank	Carrollton	GA
Main Street Savings Bank, F.S.B.	Conyers	GA
First State Bank and Trust Company	Cordele	GA
Coffee County Bank	Douglas	GA
Commercial Banking Company	Hahira	GA
First Federal Savings Bank of LaGrange	LaGrange	GA
First Liberty Bank	Macon	GA
Security National Bank	Macon	GA
Quitman Federal Savings and Loan Association	Quitman	GA
Citizens Bank of Washington County	Sandersville	GA
First National Bank of Effingham	Springfield	GA
Eagle Bank and Trust	Statesboro	GA
Thomas County FS&LA	Thomasville	GA
Stephens Federal Savings & Loan Association	Toccoa	GA
Mountain National Bank	Tucker	GA
Darby Bank and Trust Company	Vidalia	GA
Vidalia Federal Savings and Loan Association	Vidalia	GA
Bank of Dooly	Vienna	GA
Peoples Bank of Willacoochee	Willacoochee	GA
Peoples Bank	Winder	GA
Talbot State Bank	Woodland	GA
Arundel Federal Savings Bank	Baltimore	MD
Chesapeake FS&LA	Baltimore	MD
Fairmount Federal Savings Bank	Baltimore	MD
Golden Prague FS&LA	Baltimore	MD
Hopkins Federal Savings Bank	Baltimore	MD
Madison Square Federal Savings Bank	Baltimore	MD
Parkville Federal Savings Bank	Baltimore	MD
Rosedale FS&LA	Baltimore	MD
Westview FS&LA	Baltimore	MD
Chevy Chase Savings Bank, FSB	Chevy Chase	MD
Bank of Delmar	Delmar	MD
Patapsco Bank	Dundalk	MD
Elkridge Bank	Elkridge	MD
Commercial and Farmers Bank	Ellicott City	MD
Farmers and Mechanics National Bank	Frederick	MD
Citizens Savings Bank, F.S.B	Gaithersburg	MD
OBA Federal Savings and Loan Association	Gaithersburg	MD
Columbian Bank, F.S.B	Havre de Grace	MD
Suburban Federal Savings Bank	Landover Hills	MD
Heritage Savings Bank, F.S.B	Lutherville	MD
Senator Savings Bank, FSB	Towson	MD
Tri-County Federal Savings Bank of Waldorf	Waldorf	MD

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Member	City	State
Washington Savings Bank, FSB	Waldorf	MD
Woodsboro Savings Bank	Woodsboro	MD
Asheville Savings Bank, S.S.B	Asheville	NC
Blue Ridge Savings Bank, Inc	Asheville	NC
Hometown Bank	Asheville	NC
Community Savings Bank, SSB	Burlington	NC
First State Savings Bank, SSB	Burlington	NC
Cherryville FS&LA	Cherryville	NC
First Charter National Bank	Concord	NC
SouthTrust Bank of Central Carolina	Concord	NC
First Federal Savings Bank	Dunn	NC
Mutual Community Savings Bank, SSB	Durham	NC
Home Federal Savings and Loan Association	Fayetteville	NC
Hillsborough Savings Bank, SSB	Hillsborough	NC
First Federal Savings and Loan Association	Lincolnton	NC
Progressive Savings and Loan, Ltd	Lumberton	NC
Mooresville Savings Bank, SSB	Mooresville	NC
Richmond Savings Bank, SSB	Rockingham	NC
Roxboro Savings Bank, SSB	Roxboro	NC
Citizens Savings Bank of Salisbury, SSB	Salisbury	NC
Home Savings, SSB	Thomasville	NC
Home Savings Bank, SSB	Washington	NC
Abbeville Savings and Loan Association	Abbeville	SC
Bank of Abbeville	Abbeville	SC
Palmetto Federal Savings Bank	Aiken	SC
First Federal Savings and Loan Association	Anderson	SC
FirstBank, N.A	Beaufort	SC
First Federal Savings and Loan of Cheraw	Cheraw	SC
First Savers Bank	Greenville	SC
Citizens Building and Loan Association	Greer	SC
Mutual Savings and Loan Association, F.A	Hartsville	SC
Atlantic Savings Bank, FSB	Hilton Head Island	SC
Pee Dee Federal Savings Bank	Marion	SC
Coastal Federal Savings Bank	Myrtle Beach	SC
Oconee Federal Savings and Loan Association	Seneca	SC
First FS&LA of Spartanburg	Spartanburg	SC
First Carolina Bank, FSB	Walterboro	SC
Community FS&LA	Winnsboro	SC
First Commonwealth Savings Bank, FSB	Alexandria	VA
First Security Federal Savings Bank, Inc	Annandale	VA
Citizens Bank and Trust Company	Blackstone	VA
Caroline Savings Bank	Bowling Green	VA
Acacia Federal Savings Bank	Falls Church	VA
First Virginia Bank	Falls Church	VA
First Community Bank	Forest	VA
Virginia Savings Bank, FSB	Front Royal	VA
One Valley Bank—Central Virginia	Lynchburg	VA
First FS&LA of Martinsville	Martinsville	VA
Piedmont Trust Bank	Martinsville	VA
Cenit Bank, FSB	Norfolk	VA
Life Savings Bank, FSB	Norfolk	VA
Virginia First Savings Bank, F.S.B	Petersburg	VA
Fidelity Federal Savings Bank	Richmond	VA
Bank of Tazewell County	Tazewell	VA
Essex Savings Bank, F.S.B. (North Carolina)	Virginia Beach	VA
First Coastal Bank	Virginia Beach	VA

Federal Home Loan Bank of Cincinnati—District 5, P.O. Box 598, Cincinnati, Ohio 45201

Ashland Federal Savings Bank	Ashland	KY
Home Federal Savings and Loan Association	Ashland	KY
First American National Bank of Kentucky	Bowling Green	KY
Bank of Buffalo	Buffalo	KY
Citizens Deposit Bank	Calhoun	KY
Calvert Bank	Calvert City	KY
First National Bank	Columbia	KY
First National Bank & Trust Company	Corbin	KY
Kentucky FS&LA	Covington	KY
Greensburg Deposit Bank & Trust Company	Greensburg	KY
Citizens State Bank	Hazard	KY
Garrard Bank and Trust	Lancaster	KY
Casey County Bank, Inc	Liberty	KY
Farmers and Merchants Bank	Livermore	KY

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Member	City	State
Madisonville Building and Loan Association	Madisonville	KY
Bank of Maysville	Maysville	KY
Hart County Bank and Trust Company	Munfordville	KY
Farmers Bank	Nicholasville	KY
Owensboro National Bank	Owensboro	KY
Farmers Bank	Owingsville	KY
Pikeville National Bank and Trust Company	Pikeville	KY
Independence Bank	Providence	KY
Cumberland Security Bank	Somerset	KY
Lincoln Federal Savings Bank	Stanford	KY
Commercial Bank	West Liberty	KY
Antwerp Exchange Bank Company	Antwerp	OH
FirstMerit Peoples Bank	Ashtabula	OH
Hocking Valley Bank	Athens	OH
Citizens Federal Savings and Loan	Bellefontaine	OH
Citizens National Bank	Canton	OH
Castalia Banking Company	Castalia	OH
Mercer Savings Bank	Celina	OH
First County Bank	Chardon	OH
Cheviot Building and Loan Company	Cheviot	OH
Bramble FS & LA of Cincinnati	Cincinnati	OH
Cincinnati Federal Savings & Loan Association	Cincinnati	OH
North Side Bank and Trust Company	Cincinnati	OH
People's Savings Association	Cincinnati	OH
Seven Hills Savings Association	Cincinnati	OH
Cuyahoga Savings Association	Cleveland	OH
National City Bank, Cleveland	Cleveland	OH
Ohio Savings Bank	Cleveland	OH
Home Loan and Savings Company	Coshocton	OH
Covington Savings and Loan Association	Covington	OH
Citizens Federal Bank	Dayton	OH
Deer Park Federal Savings & Loan Association	Deer Park	OH
Delaware County Bank and Trust Company	Delaware	OH
Northern Savings and Loan Company	Elyria	OH
Genoa Savings and Loan Company	Genoa	OH
Indian Village FS&LA	Gnadenhutten	OH
Hicksville Bank	Hicksville	OH
American Community Bank, N.A.	Lima	OH
Enterprise Federal Savings Bank	Lockland	OH
Home Builders Association	Lynchburg	OH
Citizens Savings Bank	Martins Ferry	OH
Peoples Building Loan and Savings Company	Mason	OH
Clermont Savings Bank	Milford	OH
Commercial and Savings Bank	Millersburg	OH
Peoples National Bank	New Lexington	OH
First National Bank of Pandora	Pandora	OH
Century Federal Savings Bank	Parma	OH
Farmers Bank and Savings Company	Pomeroy	OH
Ravenna Savings Bank	Ravenna	OH
Capital Bank, N.A.	Sylvania	OH
Commercial Savings Bank	Upper Sandusky	OH
Versailles Savings and Loan Company	Versailles	OH
First FS&LA of Wooster	Wooster	OH
Wayne Savings and Loan Company	Wooster	OH
Home Savings and Loan Company	Youngstown	OH
Athens Federal Savings and Loan Association	Athens	TN
First National Bank and Trust Company	Athens	TN
Bells Banking Company	Bells	TN
Benton Banking Company	Benton	TN
Peoples Bank and Trust Company	Byrdstown	TN
AmSouth Bank of Tennessee	Chattanooga	TN
Pioneer Bank	Chattanooga	TN
Rhea County National Bank	Dayton	TN
Greenfield Banking Company	Greenfield	TN
First Peoples Bank of Jefferson County	Jefferson City	TN
NBC Knoxville Bank	Knoxville	TN
Lawrenceburg FS&LA	Lawrenceburg	TN
SouthTrust Bank of Middle Tennessee	Nashville	TN
First Trust and Savings Bank, Oneida	Oneida	TN
Citizens Bank and Trust Company	Rutledge	TN
Bank of Waynesboro	Waynesboro	TN

Member	City	State
Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, Indiana 46205–0060		
Workingmens ONB Bank	Bloomington	IN
Heritage Bank and Trust Company	Darlington	IN
Elberfield State Bank	Elberfield	IN
Mutual Savings Bank	Franklin	IN
Calumet National Bank	Hammond	IN
First FS&LA of Hammond	Hammond	IN
Citizens First State Bank	Hartford City	IN
First Indiana Bank, a FSB	Indianapolis	IN
Farmers State Bank	LaGrange	IN
Perpetual FS&LA	Lawrenceburg	IN
Citizens National Bank of Madison	Madison	IN
Mishawaka Federal Savings	Mishawaka	IN
American National Bank and Trust Company	Muncie	IN
West End Savings Bank	Richmond	IN
Scott County State Bank	Scottsburg	IN
Indiana Federal Bank for Savings	Valparaiso	IN
Security Bank and Trust Company	Vincennes	IN
Mutual Savings Bank, FSB	Bay City	MI
First Federal of Michigan	Detroit	MI
Citizens Commercial and Savings Bank	Flint	MI
Old Kent Bank	Grand Rapids	MI
FMB-Commercial Bank	Greenville	MI
D&N Bank, FSB	Hancock	MI
Mainstreet Savings Bank, FSB	Hastings	MI
First National Bank of Iron Mountain	Iron Mountain	MI
Community First Bank	Lansing	MI
Wolverine Federal Savings and Loan Assoc	Midland	MI
Central Savings Bank	Sault Ste. Marie	MI
Sturgis Federal Savings Bank	Sturgis	MI
First Savings Bank	Three Rivers	MI
Standard Federal Savings Bank	Troy	MI
Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 700, Chicago, Illinois 60601		
Citizens National Bank of Albion	Albion	IL
Arcola Homestead and Loan Association	Arcola	IL
Douglas Savings Bank	Arlington Heights	IL
Bartelso Savings Bank	Bartelso	IL
Heritage Bank	Blue Island	IL
Midland Federal Savings and Loan Association	Bridgeview	IL
Burlington Bank	Burlington	IL
Byron Bank	Byron	IL
First State Bank of Campbell Hill	Campbell Hill	IL
Carrollton Bank and Trust Company	Carrollton	IL
Avondale Federal Savings Bank	Chicago	IL
Chesterfield FS&LA of Chicago	Chicago	IL
Hoyne Savings & Loan Association	Chicago	IL
Loomis Federal Savings and Loan Association	Chicago	IL
North Side FS&LA of Chicago	Chicago	IL
Royal Savings Bank	Chicago	IL
Second FS&LA of Chicago	Chicago	IL
Security Federal S & L Association of Chicago	Chicago	IL
South Chicago Bank	Chicago	IL
Southwest FS&LA of Chicago	Chicago	IL
Standard Federal Bank for Savings	Chicago	IL
Central Federal Savings and Loan Association	Cicero	IL
De Witt Savings Bank	Clinton	IL
First Federal Bank, F.S.B	Colchester	IL
First United Bank	Crete	IL
First National Bank of DeKalb	DeKalb	IL
Soy Capital Bank and Trust Company	Decatur	IL
Durand State Bank	Durand	IL
Howard Savings Bank	Glenview	IL
Security State Bank of Hamilton	Hamilton	IL
Harvard Federal Savings and Loan Association	Harvard	IL
Suburban Federal Savings	Harvey	IL
First National Bank of LaGrange	LaGrange	IL
Exchange State Bank	Lanark	IL
Bank and Trust Company	Litchfield	IL
Maywood-Proviso State Bank	Maywood	IL
A.J. Smith Federal Savings Bank	Midlothian	IL

Member	City	State
Security Savings Bank	Monmouth	IL
Farmers State Bank Chadwick and Mt. Carroll	Mount Carroll	IL
Ayars State Bank	Moweaqua	IL
MidAmerica Federal Savings Bank	Naperville	IL
Warren-Boynton State Bank	New Berlin	IL
Oakland National Bank	Oakland	IL
Ottawa Federal Savings & Loan Association	Ottawa	IL
State Bank of Paw Paw	Paw Paw	IL
Heights Bank	Peoria Heights	IL
Pleasant Plains State Bank	Pleasant Plains	IL
Rantoul First Bank, s.b	Rantoul	IL
First Ridge Farm State Bank	Ridge Farm	IL
Community State Bank of Rock Falls	Rock Falls	IL
Rushville State Bank	Rushville	IL
First Bank of Schaumburg	Schaumburg	IL
Bank of Warrensburg	Warrensburg	IL
State Bank of Winslow	Winslow	IL
Portage County Bank	Almond	WI
Pioneer Bank	Auburndale	WI
Baraboo Federal Bank, FSB	Baraboo	WI
First National Bank & Trust Company	Baraboo	WI
Black River Country Bank	Black River Falls	WI
Bonduel State Bank	Bonduel	WI
Cumberland Federal Bank, FSB	Cumberland	WI
East Wisconsin Savings and Loan Association	Kaukauna	WI
Bank Wisconsin	Kewaskum	WI
Associated Bank Madison	Madison	WI
First Bank and Trust	Menomonie	WI
Bank of Milton	Milton	WI
Columbia Savings and Loan Association	Milwaukee	WI
Milwaukee Western Bank	Milwaukee	WI
Reliance Savings Bank	Milwaukee	WI
St. Francis Bank, F.S.B	Milwaukee	WI
Universal Savings Bank, F.A	Milwaukee	WI
State Bank of Mt. Horeb	Mount Horeb	WI
Mound City Bank	Platteville	WI
Community Bank of Sheboygan	Sheboygan	WI
First Federal Savings Bank of Wisconsin	Waukesha	WI
Marquette Savings Bank, S.A	West Allis	WI
KeySavings Bank	Wisconsin Rapids	WI
Wood County National Bank	Wisconsin Rapids	WI

Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309

First Trust and Savings Bank	Cedar Rapids	IA
Farmers Savings Bank	Colesburg	IA
Iowa Savings Bank	Coon Rapids	IA
Citizens Bank	Corydon	IA
AmerUS	Des Moines	IA
Valley State Bank	Eldridge	IA
Liberty Bank and Trust Company	Lake Mills	IA
First State Bank of Mapleton	Mapleton	IA
New Vienna Savings Bank	New Vienna	IA
First State Bank	Nora Springs	IA
American State Bank	Osceola	IA
Farmers Savings Bank	Packwood	IA
Perry State Bank	Perry	IA
Readlyn Savings Bank	Readlyn	IA
Sac City State Bank	Sac City	IA
Union Bank and Trust Company	Strawberry Point	IA
State Bank of Toledo	Toledo	IA
Iowa State Bank	Wapello	IA
Washington Federal Savings Bank	Washington	IA
First State Bank	Webster City	IA
Union State Bank	Winterset	IA
First State Bank of Bayport	Bayport	MN
First Federal, FSB	Hutchinson	MN
Prinsburg State Bank	Prinsburg	MN
Randall State Bank	Randall	MN
Home Federal Savings Bank	Spring Valley	MN
St. Anthony Park State Bank	St. Paul	MN
Northwestern State Bank of Ulen	Ulen	MN
Wells Federal Bank, A FSB	Wells	MN

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Member	City	State
Worthington FS&LA	Worthington	MN
First Missouri National Bank	Brookfield	MO
Investors Federal Bank & Savings Association	Chillicothe	MO
Boone National S&LA, FA	Columbia	MO
Ozarks Federal Savings and Loan Association	Farmington	MO
Bank Northwest	Hamilton	MO
Hardin Federal Savings Bank	Hardin	MO
Macon Building and Loan Association	Macon	MO
Dent County Bank	Salem	MO
Quarry City Savings and Loan Association	Warrensburg	MO
First Bank, F.S.B.	Fargo	ND
Norwest Bank North Dakota, N.A.	Fargo	ND
First American Bank	Lisbon	ND
Farmers and Merchants Bank	Huron	SD
BankFirst, N.A.	Sioux Falls	SD
Home Federal Savings Bank	Sioux Falls	SD
F&M Bank	Watertown	SD
Federal Home Loan Bank of Dallas—District 9, P.O. Box 619026, Dallas/Fort Worth, Texas 75261–9026		
First Financial Bank, FSB	El Dorado	AR
Fordyce Bank and Trust Company	Fordyce	AR
Forrest City Bank, FSB	Forrest City	AR
City National Bank of Fort Smith	Fort Smith	AR
Pine Bluff National Bank	Pine Bluff	AR
Federal Savings Bank of Rogers	Rogers	AR
First National Bank and Trust Company	Rogers	AR
First Western Bank and Trust R	Rogers	AR
First National Bank of Siloam Springs	Siloam Springs	AR
Bank of Coushatta	Coushatta	LA
St. Tammany Homestead Association	Covington	LA
Teche Federal Savings Bank	Franklin	LA
Florida Parishes Homestead Association	Hammond	LA
LBA Savings Bank	Lafayette	LA
Mutual Savings and Loan Association	Metairie	LA
First Bank of Natchitoches and Trust Company	Natchitoches	LA
Guaranty Savings and Homestead Association	New Orleans	LA
Hibernia Homestead and Savings Association	New Orleans	LA
Ponchatoula Homestead Association	Ponchatoula	LA
Bank of West Baton Rouge	Port Allen	LA
Ruston Building and Loan Association	Ruston	LA
Bank of St. Francisville	St. Francisville	LA
Bank of Commerce	White Castle	LA
Amory Federal Savings & Loan Association	Amory	MS
Delta Bank and Trust	Drew	MS
Britton & Koontz First National Bank	Natchez	MS
Bank of New Mexico	Albuquerque	NM
International State Bank	Raton	NM
First National Bank of Tucumcari	Tucumcari	NM
Security State Bank	Abilene	TX
First National Bank of Athens	Athens	TX
First National Bank of Bridgeport	Bridgeport	TX
Citizens State Bank	Cross Plains	TX
Beal Bank, SSB	Dallas	TX
Security Bank, N.A.	Garland	TX
Hebbronville State Bank	Hebbronville	TX
Liberty Savings Association	Houston	TX
MetroBank, N.A.	Houston	TX
Texas State Bank	Joaquin	TX
First Nichols National Bank	Kenedy	TX
First National Bank of Lake Jackson	Lake Jackson	TX
First Federal Savings and Loan Association	Littlefield	TX
Bank of Livingston	Livingston	TX
Plains National Bank of West Texas	Lubbock	TX
Bank of East Texas	Lufkin	TX
Inter National Bank	McAllen	TX
Mineola Federal Savings and Loan Association	Mineola	TX
Commercial Bank of Texas, N.A.	Nacogdoches	TX
Western National Bank	Odessa	TX
Orange Savings Bank, SSB	Orange	TX
Fort Bend FS&LA	Rosenberg	TX
Kelly Field National Bank	San Antonio	TX
Smithville Savings and Loan Association	Smithville	TX

Member	City	State
Town and Country Bank	Stephenville	TX
Loan and Building State Savings Bank	Sulphur Springs	TX
First National Bank in Valley Mills	Valley Mills	TX
South Texas Bank, FSB	Victoria	TX
Winnsboro Bank and Trust	Winnsboro	TX
Federal Home Loan Bank of Topeka—District 10, P.O. Box 176, Topeka, Kansas 66601		
Commerce Bank of Aurora	Aurora	CO
Del Norte Federal Savings & Loan Association	Del Norte	CO
Centennial Savings Bank, a FSB	Durango	CO
Park National Bank	Estes Park	CO
La Junta State Bank	La Junta	CO
First National Bank of Lake City	Lake City	CO
Bank of Commerce	Chanute	KS
Home Savings Bank	Chanute	KS
Landmark Federal Savings Bank	Dodge City	KS
Citizens Bank and Trust Company	Ellsworth	KS
Gardner National Bank	Gardner	KS
Farmers State Bank of Oakley	Oakley	KS
First Kansas Federal Savings Association	Osawatomie	KS
Chisholm Trail State Bank	Wichita	KS
The State Bank	Winfield	KS
Bank of Bennington	Bennington	NE
Custer Federal Savings and Loan Association	Broken Bow	NE
Citizens State Bank	Carleton	NE
First State Bank	Enders	NE
American National Bank of Fremont	Fremont	NE
First State Bank	Fremont	NE
Havelock Bank	Lincoln	NE
First National Bank of West Point	West Point	NE
First National Bank & Trust Company	Broken Arrow	OK
Bank of Chelsea	Chelsea	OK
First Bank Claremore, F.S.B	Claremore	OK
American Bank and Trust	Edmond	OK
InterBank, N.A	Elk City	OK
Liberty Federal Savings Bank	Enid	OK
Fairview Savings and Loan Association	Fairview	OK
First Southwest Bank	Frederick	OK
City National Bank and Trust Company	Guymon	OK
Citizens Bank	Lawton	OK
First National Bank and Trust	Muskogee	OK
NBC Bank	Pawhuska	OK
Osage Federal Savings & Loan Association	Pawhuska	OK
Sooner State Bank	Tuttle	OK
First State Bank	Watonga	OK
Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666		
Placer Savings Bank	Auburn	CA
Great Western Bank	Chatsworth	CA
California State Bank	Covina	CA
Mt. Diablo National Bank	Danville	CA
Hawthorne Savings Bank, F.S.B	El Segundo	CA
Sierra Thrift	Fresno	CA
Glendale Federal Bank, FSB	Glendale	CA
Highland Federal Bank, F.S.B	Los Angeles	CA
Downey Savings & Loan Association	Newport Beach	CA
National Bank of Southern California	Newport Beach	CA
Universal Bank, F.S.B	Orange	CA
Butte Community Bank	Paradise	CA
CenFed Bank	Pasadena	CA
Provident Savings Bank, FSB	Riverside	CA
River City Bank	Sacramento	CA
Pan American Savings Bank	San Mateo	CA
San Rafael Thrift and Loan Company	San Rafael	CA
Los Padres Savings Bank, FSB	Solvang	CA
Sonoma Valley Bank	Sonoma	CA
Eldorado Bank	Tustin	CA
Continental Pacific Bank	Vacaville	CA
Surety Federal Savings Bank	Vallejo	CA
Rancho Vista National Bank	Vista	CA

Member	City	State
Quaker City Federal Savings and Loan	Whittier	CA
Federal Home Loan Bank of Seattle—District 12, 1501 Fourth Avenue, Seattle, Washington 98101–1693		
Citizens Security Bank (Guam), Inc	Agana	GU
First Federal Bank of Idaho, F.S.B	Lewiston	ID
First FS&LA of Montana	Hamilton	MT
Empire Federal Savings and Loan Association	Livingston	MT
First Security Bank Missoula	Missoula	MT
Ronan State Bank	Ronan	MT
Linn-Benton Bank	Albany	OR
Bank of Eastern Oregon	Arlington	OR
Pioneer Bank, F.S.B	Baker City	OR
Evergreen FS&LA	Grants Pass	OR
Klamath First FS&LA	Klamath Falls	OR
Washington Mutual Bank FSB	Lake Oswego	OR
Orchard Bank, F.S.B	Ontario	OR
Bank of America, F.S.B	Portland	OR
American Marine Bank	Bainbridge Island	WA
Riverview Savings Bank, F.S.B	Camas	WA
Whidbey Island Bank	Coupeville	WA
Heritage Savings Bank	Olympia	WA
Olympia Federal Savings & Loan Association	Olympia	WA
Farmers and Merchants Bank of Rockford	Opportunity	WA
First FS&LA of Port Angeles	Port Angeles	WA
Washington Mutual Bank	Seattle	WA
Yakima Federal Savings and Loan Association	Yakima	WA
American National Bank of Rock Springs	Rock Springs	WY
Rock Springs National Bank	Rock Springs	WY
Tri-County Savings Bank	Torrington	WY

C. Due dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than February 27, 1997.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than February 27, 1997.

D. Notice to members selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Housing Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

Dated: December 23, 1996.

[FR Doc. 97–00126 Filed 1–10–97; 8:45 am]

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FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–002758–014.

Title: Port of Oakland/American President Line Terminal Agreement.

Parties: City of Oakland and American President Lines, Ltd. ("APL").

Synopis: The proposed amendment allows the Philippines, Micronesia & Orient Line, as a secondary user of the assigned premises, a 20 percent reduction in the wharfage rate on certain overland common point tropical fruit cargo. The amendment also modifies the agreement with respect to the definitions of primary and secondary use, in order to facilitate the operations of the global alliance APL has entered with other carriers. Finally, the amendment provides for changes applicable to the secondary use of the assigned premises by Orient Overseas Container Line.

Dated: January 7, 1997.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–703 Filed 1–10–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Bancorp of Louisiana, Inc., Raceland, Louisiana; to merge with American Security Bancshares, Inc., Welsh, Louisiana, and thereby indirectly acquire American Bank, Welsh, Louisiana.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Damen Financial Corporation, Schaumburg, Illinois; to become a bank holding by acquiring 100 percent of the voting shares of Damen National Bank, Schaumburg, Illinois (in organization).

Board of Governors of the Federal Reserve System, January 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–692 Filed 1–10–97; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Information Security Oversight Office; Cancellation of Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the following Optional Form is cancelled: OF 95, Opened/Locked Sign for Restricted Files.

DATES: Effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: December 23, 1996.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 97–713 Filed 1–10–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0300]

Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software." The guidance document applies to blood establishment software products intended for use in the manufacture of blood and blood components or for the maintenance of data that blood establishment personnel use in making decisions regarding the suitability of donors and the release of blood or blood components for transfusion or further manufacture. The guidance presents an overview of the type of information, including methods and procedures, that FDA's reviewers should expect to be included in 510(k) submissions for such devices and describes the approach FDA's reviewers should take in reviewing premarket submissions for blood establishment computer software.

DATES: Written comments may be submitted at any time, however, to ensure comments are considered for the next revision they should be submitted by April 14, 1997.

ADDRESSES: Submit written comments and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of the guidance entitled "Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests.

The document may also be obtained by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or FAX at 1–800–CBER–FAX, or 301–827–3844.

Persons with access to the INTERNET may obtain the document using the World Wide Web (WWW), or bounce-back e-mail. For WWW access, connect to CBER at "http.fda.gov/cber/cberftp.html". To receive the document by bounce-back e-mail, send a message to "SWREVIEW@al.cber.fda.gov".

FOR FURTHER INFORMATION CONTACT: Nancy J. Jensen, Office of Blood Research and Review/Division of Blood Applications, Center for Biologics Evaluation and Research (HFM–385), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3524.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a

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"Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software." A premarket notification (510(k)) is an application submitted to FDA under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), to demonstrate that the medical device to be marketed is substantially equivalent to a legally marketed device that was or is currently on the U.S. market.

In a March 31, 1994, letter sent to manufacturers of blood establishment computer software, FDA stated that software products used in the manufacture or maintenance of data for blood and blood components are devices under section 201(h) of the act (21 U.S.C. 321(h)) because these products aid in the prevention of disease by identifying unsuitable donors and by preventing the release of unsuitable blood and blood components for transfusion or for further manufacturing use. The original date for submissions was March 31, 1995, but after careful evaluation of the needs expressed by the software manufacturers and the impact of the initiative on blood establishments, FDA concluded that a 1-year extension to March 31, 1996, was warranted. FDA notified known manufacturers of blood establishment computer software of the extension, by letter, the text of which was published in the **Federal Register** of October 3, 1995 (60 FR 51802). The reviewer guidance was presented and discussed at the Blood Products Advisory Committee meeting held on June 20, 1996.

The content and format required for a 510(k) submission may be found in 21 CFR part 807. FDA intends that the guidance document will be used as a supplement to the "Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review," issued by the Center for Devices and Radiological Health on August 29, 1991. The reviewer guidance announced in this notice contains a description of the content and format that a reviewer should expect in a 510(k) submission for blood establishment computer software.

As with other guidance documents, FDA does not intend this document to be all-inclusive. Moreover, not all information may be applicable to all situations. The reviewer guidance document is intended to provide information and does not set forth requirements. Although this guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public, it does represent the agency's current thinking on the review of premarket notification submissions for blood establishment computer software.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the reviewer guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA anticipates revising the reviewer guidance document periodically, in response to comments received or to reflect advancements in blood establishment computer software.

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–715 Filed 1–10–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–882–N]

Notification Procedures for States Implementing "Alternative Mechanisms" in the Individual Health Insurance Market

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice generally describes the statutory provisions under section 111 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that guarantee availability of individual health insurance coverage to certain individuals with prior group coverage. It also provides procedural guidance for States that intend to implement an alternative mechanism under section 111 of HIPAA. Finally, this notice describes the statutory provisions that will apply in a State that does not implement an acceptable alternative mechanism.

This notice does not establish new policy or requirements.

FOR FURTHER INFORMATION CONTACT: Gertrude Saunders of the Insurance Reform Implementation Task Force (IRITF), (410) 786–5888 or e-mail (iritf@hcfa.gov).

ADDRESSES: All correspondence regarding this notice should be submitted to the following address: HCFA, Bureau of Policy Development, Office of Chronic Care and Insurance Policy, Insurance Reform Implementation Task Force, S–LL–17, Attention: Marc Thomas, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Background—Summary of Recent Legislation

The Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191) was enacted on August 21, 1996. HIPAA amended the Public Health Service (PHS) Act to provide for, among other things, improved access, portability, and renewability of health insurance in both the group and individual health insurance markets. Group health plans are regulated, in part, by the Federal government under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code and, to the extent they purchase insurance, in part, by the States under State insurance law. Policies sold in the individual health insurance market are regulated by the States. This notice pertains to only the individual market changes made by section 111 of HIPAA.

Section 2741 of the PHS Act, as added by section 111 of HIPAA, essentially gives a State two options to ensure that "eligible individuals" have access to the individual health insurance market. Under the first option, assuming there is appropriate authority in State law, the State may simply enforce the Federal statutory provisions that require all issuers who offer coverage in the individual market to make all their individual policies available to all eligible individuals on a guaranteed basis, without preexisting condition exclusions. (These provisions are commonly referred to as the "Federal default" provisions.) If the State chooses this option, individual issuers may elect to impose certain limitations on the policies that they are required to offer under the Federal default provisions. (For additional information on these limitations see section VIII of this notice.)

Under the second option, States may choose to implement an "alternative mechanism" to ensure that eligible individuals have access to the individual health insurance market or comparable coverage. States that choose this option must submit to us a timely notice with sufficient documentation to enable us to determine whether it is an acceptable alternative mechanism. (This process is discussed in more detail under section VI of this notice, which includes the address for written submissions.)

II. Preemption

Section 2762 of the PHS Act specifies that the Federal statutory provisions pertaining to health insurance issuers in the individual market generally do not preempt State regulation of individual insurance. Nevertheless, if the State standards and requirements prevent the application of a Federal requirement, the statute preempts the State standards and requirements and the Federal requirements prevail.

Accordingly, the State standards and requirements must ensure at a minimum that every eligible individual in the State is provided access to coverage that comports with Federal requirements. The State standards may not depart from the Federal requirements in a way that diminishes this minimum coverage. The State, however, is permitted to adopt standards that expand the number of individuals who are protected. For example, as discussed below, an eligible individual must have an aggregate of at least 18 months of "creditable coverage," with no breaks in coverage that exceed 62 days. The same concept of creditable coverage is used in section 2701 of the PHS Act, which limits the use of preexisting condition exclusions in the group market. Under section 2723(b)(2)(iii) of the PHS Act, States may permit breaks in coverage that exceed 62 days. If the State adopts this provision in the group market, it would not be precluded from applying the same rule in the individual market, since it would potentially extend coverage to people whose breaks in coverage would otherwise exclude them from the definition of an eligible individual.

Section 2762 of the PHS Act also specifies that nothing in the individual market provisions of HIPAA shall be construed to affect or modify the provisions of section 514 of ERISA, which preempts State regulation of employee welfare benefit plans, including group health plans, except through the regulation of insurance.

III. Federal Definitions

The individual market rules of HIPAA provide health insurance protection to an "eligible individual." This term is defined in section 2741(b) of the PHS Act. It includes an individual who meets all of the following criteria:

- The individual has aggregate periods of "creditable coverage" (as defined in section 2701(c) of the PHS Act) totaling 18 or more months at the time the individual seeks individual market coverage. In general, under section 2701(c) of the PHS Act, multiple periods of coverage are aggregated only if there has been no more than a 62-day break between periods of creditable coverage.
- The individual's most recent creditable coverage must have been provided under a group health plan (including a governmental plan or church plan), as defined under section 2791 of the PHS Act, or health insurance offered in connection with that plan.
- The individual is not eligible for coverage under a group health plan, is not eligible for Medicare or Medicaid coverage, and does not have other health insurance coverage.
- The termination of the individual's most recent health plan coverage is not related to nonpayment of premiums or fraud, as described in sections 2712(b)(1) or (b)(2) of the PHS Act..
- The individual must have elected any continuation coverage offered by an employer plan under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, Pub. L. 99–272) or under a similar State requirement, and must have exhausted that coverage. (Federal COBRA provisions only apply to plans of an employer that normally employed at least 20 employees on a typical business day in the preceding calendar year. In some cases, there are State requirements similar to COBRA that require continuation coverage for insurance policies not subject to the Federal COBRA provisions.)

"Group health plan" is defined in section 2791(a)(1) of the PHS Act to mean an employee welfare benefit plan (as defined in section 3(1) of ERISA) to the extent that the plan provides medical care (as defined below), including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health insurance coverage" is defined in section 2791(b)(1) of the PHS Act to mean benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital, or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

"Health insurance issuer" is defined in section 2791(b)(2) of the PHS Act as an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in section 2791(b)(3) of the PHS Act) which is licensed to engage in the business of insurance in the State and which is subject to State laws that regulate insurance. The term "health insurance issuer" does not include a group health plan.

"Individual health insurance coverage" is defined in section 2791(b)(5) of the PHS Act to mean health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

Section 2791(a)(2) of the PHS Act defines "medical care" as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body; including transportation primarily for and essential to the medical care and insurance covering the medical care.

IV. Alternative Mechanisms; Minimum Requirements

Although the law recognizes diversity among the States by allowing for alternative mechanisms, there are minimum requirements for alternative mechanisms. Under section 2744(a)(1) of the PHS Act, an alternative mechanism must meet the following requirements:

- Provide a choice of health insurance coverage to all eligible individuals.
- Not impose any preexisting condition exclusions on eligible individuals.
- Include at least one policy form of coverage that is comparable to either one of the following:

+ Comprehensive health insurance coverage offered in the individual market in the State.
+ A standard option of coverage available under the group or individual health insurance laws in the State.

- Implement one of the following:

+ The National Association of Insurance Commissioners (NAIC) Small Employer and Individual Health Insurance Availability Model Act, as it applies to individual health insurance coverage, *or* the Individual Health Insurance Portability Model Act, as adopted on June 3, 1996.
+ A qualified high-risk pool that provides for the following:

—Health insurance coverage (or comparable coverage) to all eligible individuals that does not impose any preexisting condition exclusion with respect to this coverage for all eligible individuals.
—Premium rates and covered benefits for that coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable

Individuals Act in effect on August 21, 1996.

+ Another mechanism—

—That provides for risk adjustment, risk spreading, or a risk-spreading mechanism (among issuers or policies of issuers) or otherwise provides for some financial subsidization for eligible individuals, including through assistance to participating issuers, or

—Under which each eligible individual is provided a choice of all individual health insurance coverage otherwise available.

If a State adopts into law or regulation any provisions from the NAIC Model Acts cited in section 2744 of the PHS Act, it must verify that none of the Model Acts would prevent the application of a requirement of the PHS Act, and therefore be preempted. Since those Model Acts predate the enactment of HIPAA, they do not fully conform with HIPAA requirements that apply to eligible individuals. The NAIC is currently analyzing these Model Acts to provide guidance to States in identifying revisions that would conform with the provisions of the PHS Act. (See later discussion in section VI.C.3. of this notice.)

State options for ensuring that eligible individuals have access to the individual health insurance market are illustrated in the chart below.

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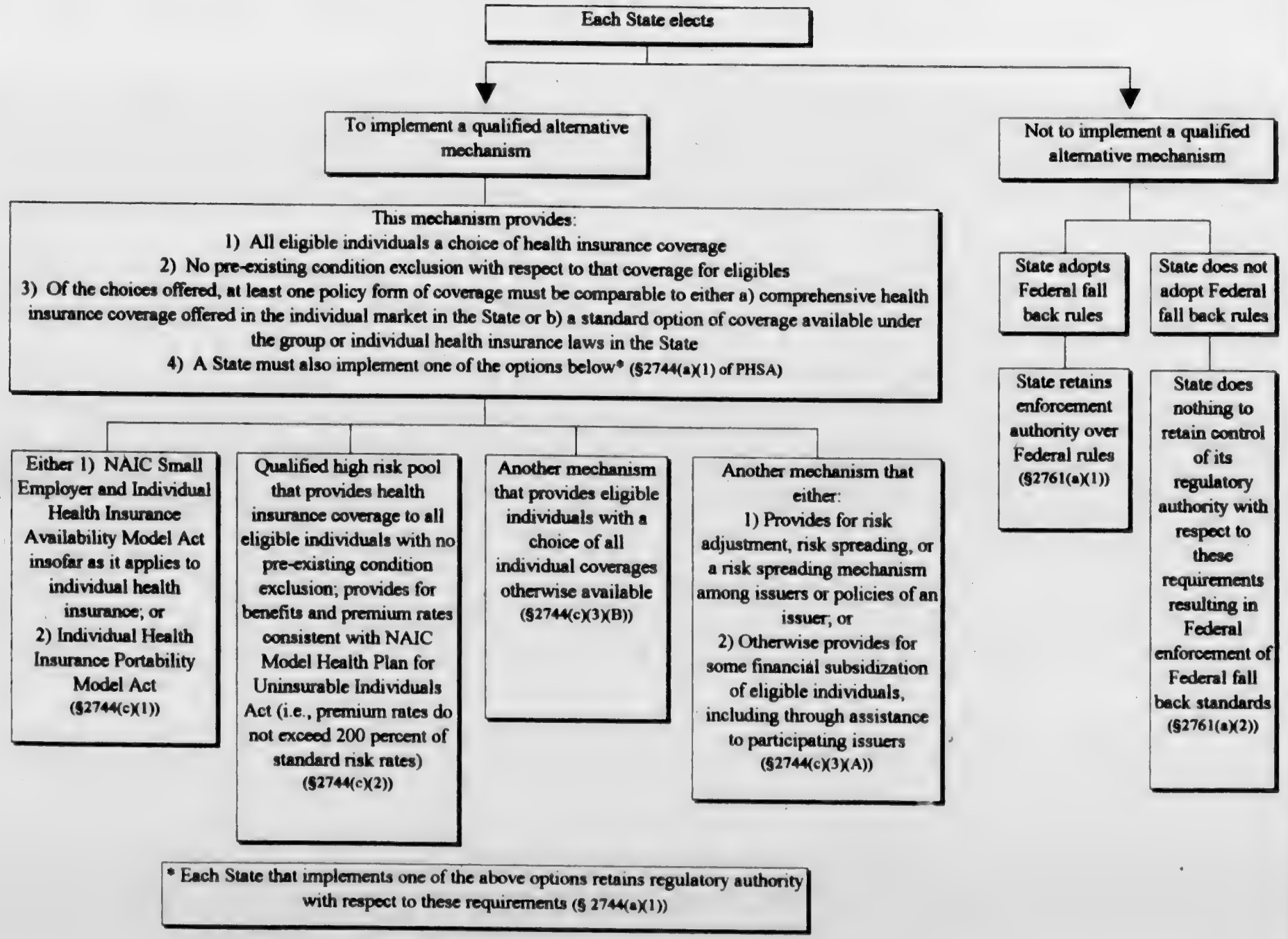

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V. Presumption of an Acceptable Alternative Mechanism

An acceptable alternative mechanism includes a private or public individual health insurance mechanism that is designed to provide access to health benefits for individuals in the individual market in the State in accordance with section 2744 of the PHS Act. Examples of an acceptable alternative mechanism may include a health insurance coverage pool or program, a mandatory group conversion policy, guaranteed issue of one or more plans of individual health insurance coverage, open enrollment by one or more health insurance issuers, or a combination of these mechanisms that meet at least the minimum standards under section 2744.

A. State Submission by April 1, 1997

A State is presumed to be implementing an acceptable alternative mechanism as of July 1, 1997, if, by not later than April 1, 1997, the Chief Executive Officer (generally the Governor) of the State notifies us that the State has enacted or intends to enact any necessary legislation as of January 1, 1998, and provides us with the information necessary to review the mechanism and its implementation (or proposed implementation), and, if, within 90 days after receiving the State's submission, we do not disapprove it as described in section VII.B. of this notice. (If we notify the State of our need for additional information or further discussions on its submission, we will suspend the review period until the State provides the necessary information or participates in the necessary discussions. If the State chooses not to provide the necessary information or our discussions with the State cannot be concluded satisfactorily, we may disapprove the State's submission.) The State must provide information necessary for us to review the mechanism's implementation every 3 years to continue to be presumed to have an acceptable alternative mechanism.

B. State Submission After April 1, 1997

A State may presume that we have accepted its proposed alternative mechanism if—

- After April 1, 1997, the State submits notice and sufficient documentation (see section VI of this notice) for either an initial proposed alternative mechanism or revisions to an already submitted proposed alternative mechanism, and
- We make no determination disapproving the mechanism within 90 days (or a longer period if we suspended the 90-day review period awaiting additional information or to conduct further discussion with the State).

After an additional 90 days, the State may presume its alternative mechanism to be an acceptable alternative mechanism. (For further information on future adoptions and revisions see section VI.D.5. of this notice.)

VI. Notification, Documentation, and Review

A. Notification

Under section 2744(b) of the PHS Act, except as described below in section VII.B., a State is presumed to be implementing an acceptable alternative mechanism as of July 1, 1997, if, by not later than April 1, 1997, the Chief Executive Officer (generally the Governor) of the State takes the following two actions:

- Notifies us that the State has enacted, or intends to enact, by January 1, 1998 (or July 1, 1998 if the State legislature cannot meet before August 21, 1997) any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism as of January 1, 1998 (or July 1, 1998 if the State legislature cannot meet before August 21, 1997).
- Provides us with the information necessary for us to review the mechanism and its implementation (or its proposed implementation).

B. Documentation

Since the law gives States substantial flexibility in devising alternative mechanisms, we do not intend that this notice set forth a checklist of criteria. If a State chooses to submit a proposed alternative mechanism, the State must determine what to submit. We must, however, be able to determine whether the mechanism will be both designed and enforced in a way that will ensure that eligible individuals are given the required access to insurance coverage. Our review will focus on results for eligible individuals. Our main concern is that the State submission show the analysis and the reasoning behind the design of the proposed alternative mechanism, and a reasonable assessment of the likelihood that the mechanism will achieve the legislative objectives.

Since time will be of the essence in reviewing a large volume of submissions and responding to the States timely, we recommend that a State provide summaries and full text of any critical supporting information (such as the text (or proposed text) of legislation or regulations) in its initial State submission. If we notify the State of our need for additional information or further discussions on its submission, we will suspend the review period until the State provides the necessary information or participates in the necessary discussions. If the State chooses not to provide the necessary information or our discussions with the State cannot be concluded satisfactorily, we may disapprove the State's submission. We discuss disapproval and the consequences of disapproval in sections VII.B. and C. of this notice.

The submission must include sufficient information to provide us with a reasonable basis for concluding that the proposed alternative mechanism meets the requirements described in section VI.C. of this notice. Along with a detailed description of the alternative mechanism and how it will be implemented and function, we recommend the State include the following information:

- *Contact Person*—The name, position title, address, and telephone number of the person to whom we should address all questions and contacts concerning the proposed alternative mechanism.
- *State Legislative Calendar*—Clear and prominent identification of needed State legislative action and the State legislature's sessions. We need to know of any legislative issues affecting a State's ability to implement an alternative mechanism so that we can determine priorities for reviewing State submissions. Also, the State should submit a description of the authority and procedures it follows for calling a special or emergency legislative session, if these exist.
- *State Laws and Regulations*—A summary and copies of the full text of existing State laws and regulations pertaining to the individual health insurance market. Laws and regulations that could be critical to an adequate analysis include the following:

+ Medical underwriting and rating restrictions.
+ Restrictions on preexisting condition exclusions.
+ Guaranteed issue requirements.
+ Solvency requirements.

If a State chooses to implement an "other mechanism" described in section 2744(c)(3) of the Act, we recommend that the State submit a more detailed description of the mechanism than it would if it planned to implement a mechanism that relies on one of the three NAIC Model Acts referenced in section 2744 of the PHS Act. In particular, unless the State chooses to

provide a choice to eligible individuals of all individual policies sold in the State, the State should describe in detail how the risk associated with serving all anticipated eligible individuals would be spread under the mechanism and how the additional cost associated with serving this new population would be subsidized.

The following examples illustrate the differences in documentation that a State may submit, based on differences in the State's legislation and proposed alternative mechanism.

• *Example 1*—State A has already adopted a comprehensive reform for its individual health insurance market. The State now prohibits preexisting condition limitations on coverage, provides for guaranteed issue and guaranteed renewability, and has taken active steps to ensure the participation of insurers in the State individual health insurance market. State A submits, in addition to its recent law (which was adopted before August 21, 1996, the enactment date of HIPAA), two analyses: the first identifies technical amendments to make its recent law consistent with HIPAA; the second shows that any eligible individual under HIPAA also would be eligible for the individual market under the State law. The State's submission also shows that the State's residency requirements would not prevent any HIPAA-eligible individual from entering the individual market without causing a break in coverage.

• *Example 2*—State B has a State high-risk pool, but that pool has a significant waiting list or appears to be entering a "premium death spiral." State B offers an improved risk pool legislative and funding package. Because the financial stability of the existing risk pool is known to be in question, State B includes, in considerable detail, analyses of the projected revenue, subsidies, and financial condition of the pool under the proposed law. State B also specifies how HIPAA-eligible individuals will be able to enter the risk pool without causing a break in coverage.

A State may wish to submit other information, depending on the extent of the changes the State is planning and its relevance to the State's proposed alternative mechanism. Some examples follow:

• *Characteristics of the Existing Individual Market*—Analysis of information relating to the existing availability and sale of individual health insurance to the current population of the State. Examples of this information might be a description of the policy forms currently available in the individual market in the State; numbers of policies held under each form; current population of the State; estimated percentage of that population currently covered under group plans or coverage other than individual coverage; and estimated uninsured population.

• *Projected Market Impact of the Alternative Mechanism*—The State's best estimate of the number of eligible individuals who will need to be served under the proposed alternative mechanism, including a description of the factors the State considered in determining the size of the affected population, how the mechanism will serve the needs of the affected population, how much the mechanism serving this population will cost, and how those costs will be borne. In describing its population of eligible individuals or potentially eligible individuals in the individual health insurance market, the State may want to consider the relative prevalence of certain groups of individuals in the State and how the alternative mechanism will affect the likely number of individuals eligible for coverage under the mechanism. For a mechanism that will rely on State-supported operations such as risk pools and other risk-spreading mechanisms, the State should show the level and source of funding needed to provide for the needs of the eligible or potentially-eligible individuals.

Groups whose relative size may be large enough to have substantial impact on the number of eligible, as well as ineligible, individuals include the following:

+ Individuals eligible for Medicaid (especially if the State has a waiver under section 1115 of the Social Security Act that expands eligibility for Medicaid and would thus make these people ineligible under HIPAA for transition to the individual market).
+ Individuals eligible for Medicare.
+ Individuals who are receiving medical coverage under special programs such as the Indian Health Service. These individuals may meet the definition of an "eligible individual," but their eligibility for coverage under the Indian Health Service program may make it unlikely that they would purchase private health insurance.
+ Individuals who elect and exhaust their continued group health plan coverage under COBRA or coverage under a similar State requirement.
+ Individuals who do not have the COBRA protection (or similar protection under a State requirement) and will be entering the alternative mechanism directly as an eligible individual. For example, an individual whose employer stops offering health insurance coverage may be eligible for coverage under the alternative mechanism without waiting for the COBRA continuation period to end.

C. Standard of Review

1. General

We will base our review on certain principles set forth in the statute and legislative history. The statute clearly requires us to make a substantive determination whether a mechanism is an "acceptable alternative mechanism" that meets all of the requirements set forth in the statute. However, while, as noted in section II of this notice, no State requirement can prevent the application of a requirement of HIPAA, the Conference Report that accompanied that legislation states that the conferees intended the narrowest preemption. This notice describes how we intend to apply these principles.

2. Statutory Requirements

We will review each State's submission to determine whether it addresses *each* of the following requirements:

• Is the mechanism reasonably designed to provide all eligible individuals with a choice of health insurance coverage?

• Does the choice offered to eligible individuals include at least one policy form that meets the following requirements?

+ Is comparable to comprehensive health insurance coverage offered in the individual market in the State.
+ Is comparable to a standard option of coverage available under the group or individual health insurance laws of the State.

• Does the mechanism provide access to coverage for all eligible individuals within Federal time frames?

• Does the mechanism prohibit preexisting condition exclusions for all eligible individuals?

• Is the State implementing one of the following?

+ The NAIC Small Employer and Individual Health Insurance Availability Model Act (Availability Model), adopted on June 3, 1996.
+ The Individual Health Insurance Portability Model Act (Portability Model), adopted on June 3, 1996.
+ A qualified high-risk pool that provides eligible individuals health insurance or comparable coverage without a preexisting condition

exclusion, and with premiums and benefits consistent with the NAIC Model Health Plan for Uninsurable Individuals Act (as in effect August 21, 1996).

+ A mechanism that provides for risk spreading or provides eligible individuals with a choice of all available individual health insurance coverage.

• Has the State enacted all legislation necessary for implementing the alternative mechanism?

+ If not, will the necessary legislation be enacted by January 1, 1998?

+ If not, is the State legislature meeting during the 12-month period beginning August 21, 1996 and ending August 20, 1997?

3. Concern About Using NAIC Models

As discussed previously, while the statute recommends the use of certain NAIC Model Acts and references them by specific adoption dates, these Model Acts contain certain provisions that are inconsistent with HIPAA requirements. If inconsistencies exist, a State must alter these provisions as they apply to eligible individuals under HIPAA so that its mechanism conforms with the Federal requirements. For example, if a State uses the Portability Model (which permits the use of preexisting condition exclusions and affiliation periods), it must distinguish between Federally-eligible individuals and all others served under the State's rules. As long as it exempts all Federally-eligible individuals from any preexisting condition exclusions or affiliation periods, the State may still use (with respect to non-Federally-eligible individuals in the individual market) the preexisting condition and affiliation rules of the Portability Model.

Although the following is not an all-inclusive list, we note the following additional discrepancies between the NAIC Model Acts and HIPAA requirements:

• The Portability Model permits only a 31-day break in coverage for individuals rather than the 62-day break permitted by section 2701(c)(2) of the PHS Act. Federally-eligible individuals must be given at least the 62-day break required under section 2701(c)(2).

• The Availability Model contains a definition of "qualifying coverage" that excludes coverage under a group health plan that is regulated under ERISA. Under HIPAA, however, the definition of "creditable coverage" clearly includes coverage under a "group health plan," which is defined to include self-insured plans regulated under ERISA.

• Certain key concepts (for example, "eligible person," "preexisting condition," and "qualifying coverage") are defined in both the Availability and Portability Models somewhat differently than in HIPAA. To the extent that State law incorporates or plans to incorporate portions of the Models that use those terms, the State must ensure that use of these terms does not prevent the application of HIPAA protections to eligible individuals. This may be done simply by applying special provisions to those eligible individuals.

• The Availability and Portability Models also contain residency requirements that cannot be applied to HIPAA-eligible individuals.

• If a State uses the NAIC Model Health Plan for Uninsurable Individuals Act, certain otherwise acceptable high-risk pool practices such as "wait-listing" individuals or applying preexisting condition exclusions are not permitted with respect to HIPAA-eligible individuals.

4. Interim Response to Frequently Asked Questions

We recognize that States would like to have answers now to questions such as whether a difference in deductibles constitutes enough choice or how comprehensive a policy must be to be an acceptable offering. However, this document is a procedural notice and not a regulation. Until we issue regulations dealing with these and other issues, States must make a good faith effort to interpret the statute as best they can when proposing an alternative mechanism before April 1, 1997. Should any discrepancies later emerge between a State's interpretation of the statute and our interpretation, as expressed in the interim final rule that we expect to publish by April 1, 1997, we plan that the Federal rules will apply prospectively and will afford a transition period that will give a State an adequate opportunity to amend its mechanism to conform with any new regulation requirements. We will include rules on the transition period in the interim final rule.

D. Notification Procedure

1. Advance Notification Requested

We request that a State notify us in writing or by e-mail (iritf@hcfa.gov) of its intent to submit or not to submit an alternative mechanism. If we do not hear from a State by February 14, 1997, we will contact the State to find out its intention regarding the submission of an alternative State mechanism. The law does not create a requirement that States notify us of their intentions, but notification will help us plan our work to meet the statutory deadlines.

If a State does not plan to offer an alternative mechanism, we request that the State advise us of its plans to implement the Federal requirements.

If a State does not plan to offer either an alternative mechanism, or to implement the Federal requirements, we request that the State advise us as soon as possible so that we may begin action to implement Federal enforcement of the Federal requirements in the State.

2. Contents of Notification Package

We request that a State's submission be submitted in duplicate and be accompanied by a cover letter, signed by the Chief Executive Officer (generally the Governor) of the State. In addition, States should include a brief summary of their legislative calendars and note any deadlines that are significant to this review process. We are requesting that States submit two copies of their proposed alternative mechanisms to assist us in timely review of their submissions. Our regional offices may assist us in reviewing the States' submissions and we wish to avoid any delays that may occur in reproducing these submissions.

3. Deadline

We must receive all submissions from the States no later than April 1, 1997 in order for the State to qualify for the presumption that it is implementing an acceptable alternative mechanism as of July 1, 1997. For official confirmation of our receipt date, we suggest that States use the postal certification services of the United States Post Office.

No later than 90 days after we receive a State's proposed alternative mechanism, we will take at least one of the following actions:

• Notify the State that we have accepted its proposed alternative mechanism. (This notification may be before the 90-day review period ends.)

• Make no determination concerning the State's alternative mechanism; therefore, the State may presume we have accepted its alternative mechanism.

• Forward to the State a request for additional information or a notification that we need to discuss further with the CEO (or his or her designee) the proposed alternative mechanism. We expect to make requests for additional information or initiate discussions as soon as possible after receiving the State's proposed alternative mechanism. If we notify the State of our need for additional information or further discussions on its submission, we will suspend the review period until the State provides the necessary information or participates in the

necessary discussions. If the State chooses not to provide the necessary information or our discussions with the State cannot be concluded satisfactorily, we may disapprove the State's submission. We discuss disapproval and the consequences of disapproval in sections VII.B. and C. of this notice. The State may contact us for information on implementing the Federal default requirements.

4. Where To Submit a Package

We request each State submit its proposed alternative mechanism, in duplicate, to the following address: HCFA, Bureau of Policy Development, Office of Chronic Care and Insurance Policy, Insurance Reform Implementation Task Force, S–LL–17, Attention: Marc Thomas, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

5. Future Adoptions and Revisions

A State with an approved alternative mechanism may request approval of revisions to its alternative mechanism. Similarly, a State operating under the Federal default provisions may, at any time, submit a proposed alternative mechanism. The State should mail its submission to the above address. We request that future revisions to already approved mechanisms be submitted no earlier than July 1, 1997.

E. Continued Presumption for States Entitled to Statutory Delay

In accordance with section 2744(b) of the PHS Act, States whose legislatures do not meet within the 12-month period beginning August 21, 1996 and ending August 20, 1997, and that need legislative authority in order to enact an acceptable alternative mechanism may qualify for extended deadlines for implementing an acceptable alternative mechanism. To qualify for an extension, the State must comply with the following deadlines:

• In order for the State to be entitled to the presumption that it has an acceptable alternative mechanism in effect as of July 1, 1997, the Chief Executive Officer (generally the Governor) must notify us by April 1, 1997 about the following:

+ The State legislature has not and will not meet during the 12-month period beginning August 21, 1996 and ending August 20, 1997.
+ The State intends to implement an alternative mechanism by July 1, 1998.

• In order for the presumption to continue on and after July 1, 1998, the State must—

+ Notify us by April 1, 1998 that the State has enacted any necessary legislation to provide for implementation of an acceptable alternative mechanism as of July 1, 1998, and
+ Provide us with the information described in this section to enable us to review the mechanism and its implementation.

VII. Notification to the State

A. Time Frames

For State submissions received by April 1, 1997, we will do a preliminary review to determine whether the package appears to be complete enough for us to make a determination. If not, we will notify the State by telephone and in writing, and provide the State the opportunity to submit supplemental information. We will issue a written response to each State's request as soon as possible, and no later than 90 days after receipt of the State's submission.

B. Disapproval

In accordance with section 2744(b)(2) of the PHS Act, we will review the information submitted and make a preliminary determination whether the State has or has not submitted an acceptable alternative mechanism.

If our preliminary determination is that the mechanism is not acceptable, we will consult with the Chief Executive Officer (generally the Governor) of the State, or his or her designee, and the State Insurance Commissioner or the Chief Insurance Regulatory Official of the State. If after these consultations, we still conclude that the State's alternative mechanism is not acceptable, we will—

• Notify the State of that determination; and

• Inform the State that if the State fails to implement an acceptable alternative mechanism, the Federal default provisions will take effect.

If we disapprove a State's proposed alternative mechanism, we will give the State a reasonable opportunity to modify the mechanism (or to adopt another mechanism).

C. Consequences of Disapproval and Enforcement Action

If we make a final determination that (1) the design of a State's alternative mechanism is not acceptable or (2) the State is not substantially enforcing an otherwise acceptable alternative mechanism, we will notify the State in writing of our determination. We will provide the State with notice that the requirements of section 2741 of the PHS Act apply to health insurance coverage offered in the individual market in the State, effective as of a date specified in our notice.

VIII. Alternative Coverage Where There Is No State Mechanism

In accordance with section 2741(c) of the PHS Act, if a State is not implementing an acceptable alternative mechanism, a health insurance issuer may elect to limit coverage offered through the individual market within prescribed parameters. The issuer may limit the individual market coverage offered as long as there are two different policy forms of coverage offered. Both policy forms must be designed for, made generally available to, actively marketed to, and enroll both eligible and other individuals, and meet one of two requirements regarding policy forms described in section 2741(c)(2) or (c)(3) of the PHS Act.

Under section 2741(c)(2), the health insurance issuer must offer the policy forms for individual health insurance coverage with the largest, and next to largest, premium volume of all similar policy forms offered by the issuer in the State or applicable marketing or service area by the issuer in the individual market for the period involved. Under section 2741(c)(3), the health insurance issuer must offer a lower-level coverage policy form that meets the requirements of section 2741(c)(3)(B) and a higher-level coverage policy form that meets the requirements of section 2741(c)(3)(C). Each of these policy forms must include benefits substantially similar to other individual health insurance coverage offered by the issuer in the State and each must be covered under a method described in section 2744(c)(3)(A) pertaining to risk adjustment, risk spreading, or financial subsidization.

IX. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This notice contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

collecting and reviewing the collection of information.

We are, however, requesting an emergency review of this notice. In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the OMB the following information collection for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. So that a State does not have to incur the burden of temporarily implementing the Federal default requirements or live under Federal enforcement of those requirements, HIPAA requires a State to submit to us its proposed alternative mechanisms by April 1, 1997. A State may voluntarily submit the suggested information collection referenced in this notice when it submits its proposed alternative mechanisms. The description of the information collection will assist a State in submitting sufficient information for our review of its proposed alternative mechanisms.

We are requesting that OMB provide a 2-day public comment period with a 2-day OMB review period and a 180-day approval. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Notification Procedures for States Implementing "Alternative Mechanisms" in the Individual Health Insurance Market and Supporting Notice (BPD–882–N).

Form Number: HCFA–R–202.

Use: To outline the documentation for States to obtain Federal approval of a State's alternative mechanism under section 111 of HIPAA.

Frequency: On occasion.

Affected Public: States.

Number of Respondents: 55.

Total Annual Responses: 55.

Total Annual Hours Requested: 66,000.

In summary, the information collection referenced in section VI. "Notification, Documentation, and Review" provides that each State electing to implement an alternative mechanism notify us that the State has enacted, or intends to enact, any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism and provides us with the information to review the mechanism and its implementation (or proposed implementation).

If a State chooses to submit a proposed alternative mechanism, the State must submit sufficient information to provide us with a reasonable basis for concluding that the proposed alternative mechanism meets the criteria described in section VI.C.2. of this notice. Along with a detailed description of the alternative mechanism and how it will function, we recommend the State include the name of a contact person, State Legislative Calendar, and text of existing State laws and regulations pertaining to the individual health insurance market.

If a State chooses to implement an "other mechanism" described in section 2744(c)(3) of the Act, we recommend that the State submit a more detailed description of the mechanism than it would if it planned to implement a mechanism that relies on one of the three NAIC Model Acts referenced in section 2744 of the PHS Act.

To request copies of the proposed information collections referenced above, call the Reports Clearance Office on (410) 786–1325.

The information collections of this notice are not effective until they have been approved by the OMB. We have submitted a copy of this notice to the OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained. Interested persons are invited to send comments regarding this burden or any other aspect of these collections of information, including any of the following subjects: (1) The necessity and utility of the information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Comments on these information collections may be faxed to Allison Herron Eydt at 202–395–6974 or mailed directly to the following address: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer. A copy of the comments may be mailed to the following address: Health Care Financing Administration, Office of Financial and Human Resources, Management Analysis and Planning Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

X. Waiver of Solicitation of Comments

This notice announces the options a State has under section 111 of HIPAA to ensure that eligible individuals have access to the individual health insurance market. As has been our custom, we use general notices, rather than formal notice and comment rulemaking procedures, to make these announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure or practice are excepted from the requirements of notice and comment rulemaking.

This notice does not establish new policy or requirements beyond those found in the statute. We are publishing this notice to assist a State that chooses to submit a proposed alternative mechanism under section 111 of HIPAA. We intend that the information we have identified in this notice provide guidance to a State and assist it in submitting sufficient information to enable us to approve the State's proposed alternative mechanism. We intend that this information assist a State to implement timely HIPAA provisions under its own State requirements. This would prevent the need for a State to comply with Federal requirements and subsequently transition to the State's requirements after we approve a State's proposed alternative mechanism. We wish to avoid an unnecessary burden on the State.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 2741 of the Public Health Service Act.

Dated: December 17, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: December 20, 1996.

Donna E. Shalala,

Secretary, Health and Human Services.

[FR Doc. 97–672 Filed 1–10–97; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National

Advisory body scheduled to meet during the month of February 1997.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 6–9, 1997.

Place: Radisson Hotel, La Jolla, 3299 Holiday Court, La Jolla, California 92037.

The meeting is open to the public.

Agenda: Agenda items include updates on the National Health Service Corps program, meetings with current and former NHSC providers; presentations on managed care, academic-community educational linkages, and the future role of the Corps; and meetings of NHSC workgroups on new environment strategies, health system linkages, and mission coalition building.

The opening meeting will be held on Thursday, February 6 from 6:00 p.m. to 9:00 p.m. and will include an orientation session for new Council members. On friday and Saturday, meetings will begin at 9:00 a.m. and conclude around 7:00 p.m. Sunday's meeting will begin at 9:00 a.m. and adjourn around noon.

The meeting is open to the public. Anyone requiring information regarding the subject Council should contact Ms. Jewel Davis, National Advisory Council on the National Health Service Corps, Health Resources and Services Administration, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4144.

Agenda Items are subject to change as priorities dictate.

Dated: January 7, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination, HRSA.

[FR Doc. 97–724 Filed 1–10–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Reopening of Comment Period on Draft Recovery Plan for the Wetland and Aquatic Species of the Owens Basin, Inyo and Mono Counties, California and Related Public Information Workshops

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period and related public information workshops.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the reopening of the comment period for a draft recovery plan for endangered, proposed, and species of concern found in the wetland and aquatic habitats of the Owens Basin in Inyo and Mono Counties, California, and related public information workshops. The recovery plan targets recovery of 11 species found throughout the Owens River drainage on Federal, State and private lands. Also available for review is the draft Owens Basin Management Guidelines Plan for rare species. The Service solicits review and comment from the public on these draft plans. Three public information workshops will be held in conjunction with the reopening of the comment period.

DATES: Comments on the draft recovery plan and/or Management Guidelines Plan must be received on or before April 14, 1997 to ensure consideration by the Service.

Public information workshops will be held:

Tuesday, February 11, from 6 to 8 p.m. in the Mammoth High School, Multipurpose Room, 365 Sierra Park Road, Town of Mammoth Lakes;

Wednesday, February 12, from 6 to 8 p.m. in the Eastern Sierra Tri-County Fairgrounds, Home Economics Building, Sierra Street and Fairgrounds Drive, Bishop; and

Thursday, February 13, from 6 to 8 p.m. in Statham Hall, corner of Jackson and Bush, Lone Pine, California.

ADDRESSES: The draft recovery plan and/or Management Guidelines Plan are available for public inspection, by appointment, during regular business hours (7:30 a.m. to 4:30 p.m. Monday through Friday) at the Service's Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California, 93003, phone 805–644–1766. Copies of the draft plans may also be obtained by written or phone request to the Ventura Field Office. (Note: Copies of the draft Management Guidelines Plan will automatically be mailed to all parties who received the draft recovery plan during its previous release.) Comments and materials regarding the plan should be addressed to the Field Supervisor at the Ventura Field Office. Comments and materials received will be available for public inspection upon request, by appointment, at the Ventura Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Benz, Assistant Field Supervisor, Division of Listing and Recovery, in the Ventura Field Office (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1996, the Service published a notice of availability for public review of a draft recovery plan for endangered, proposed, and species of concern found in the wetland and aquatic habitats of the Owens Basin in Inyo and Mono Counties, California. The original comment period closed on October 25, 1996. The draft Management Guidelines Plan was not completed at that time and therefore not available for public review.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide recovery efforts, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of listed species, establish criteria for the recovery levels for reclassification from endangered to threatened or removal from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The draft recovery plan for the Owens Basin wetland and aquatic species addresses conservation of the following species: Owens tui chub, Owens pupfish, Fish Slough milk-vetch, Owens speckled dace, Long Valley Speckled dace, Inyo County mariposa lily, Owens Valley checkerbloom, Fish Slough springsnail, Owens Valley springsnail, Aardhal's springsnail, and Owens Valley vole. Owens tui chub and Owens pupfish are federally listed as endangered, and the Fish Slough milk-vetch has been proposed for listing as endangered. All of these species are threatened by loss and degradation of wetland and aquatic habitats.

The draft recovery plan was developed in accordance with the Service's recent policy emphasizing an ecosystem approach to conservation of endangered species. The goal of the recovery plan is to restore the target species to secure status within their natural habitats. Protecting the ecosystem of endangered species in the Owens Basin will also protect other locally rare species, and, it is hoped, avert future declines in plant and wildlife populations that could lead to future listings.

The draft recovery plan was developed with the participation of

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State and Federal land management agencies, local agencies and property owners, including the California Department of Fish and Game, U.S. Bureau of Land Management, Inyo National Forest, and the Los Angeles Department of Water and Power. The plan calls for restoration of wetland and aquatic habitats throughout the Owens River drainage. The plan describes tasks that, when accomplished, should ensure the survival of target species, and thereby justify their removal from the endangered and threatened species list.

The draft Management Guidelines Plan for rare species was completed to provide management guidance to the Department of Fish and Game. The Management Guidance Plan is supplemental to, but independent from, the draft recovery plan. In essence, they are separate documents.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan and Management Guidelines Plan described herein. All comments received by the date specified above will be considered prior to approval of the plan or completion of a final Management Guidelines Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 3, 1997.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 97–721 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–55–P

Notice

Notice of Scoping Meeting on Intent to Prepare Environmental Impact Statement in Anticipation of Receiving a Permit Application to Incidentally Take Listed Species From the Endangered San Marcos and Comal Springs Ecosystems Under Section 10(a) of the Endangered Species Act, by the Bexar Metropolitan Water District and Possibly Others, Comal, Bexar, and Hays Counties, Texas

ACTION: Notice of Intent to prepare an environmental impact statement and announcement of scoping meeting.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare an Environmental Impact Statement (EIS) for an anticipated incidental take permit application, including a required Habitat Conservation Plan, from the Bexar Metropolitan Water District (District) and possibly others. The species proposed to be taken from the San Marcos and Comal Springs Ecosystems (Edwards Aquifer), include the federally-listed San Marcos gambusia (*Gambusia georgei*), fountain darter (*Etheostoma fonticola*), and Texas wild-rice (*Zizania texana*).

This notice is provided as required by the Endangered Species Act (Act) of 1973, as amended (16 U.S.C.1531 *et seq.*), (50 CFR 17.22) and National Environmental Policy Act (40 CFR 1501.7) regulations.

The Service is soliciting information and comments on the scope of issues to be addressed in the EIS. The National Environmental Policy Act (NEPA) process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the human environment. NEPA scoping procedures are intended to insure that information on the proposed action, alternatives and impacts are solicited from the public, and that all information is available to public officials and citizens before planning decisions are made. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. NEPA documents concentrate on the issues that are significant to the action in question. The Service invites the public to submit information and comments either at a meeting on 13 February 1997, or in writing. The Service requests that comments be as specific as possible.

Major environmental and species concerns in this scoping process include the direct, indirect, and cumulative impacts that implementation of the proposal could have on endangered and threatened species, critical habitat, and other environmental resources, and the quality of the human environment. Other relevant issues include effects of aquifer and water withdrawal levels on Comal and San Marcos spring flows, effects of various aquifer water use management options and alternative water supply options on the environments affected by those options, and effects on the downstream environment.

DATES: Written comments should be received on or before 1 May 1997. A public hearing for receipt of comments will be held in San Antonio, Bexar County, Texas, Thursday, 13 February 1997.

ADDRESSES: Comments should be addressed to Steve Helfert, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 10711 Burnet Road, Suite 200, Austin, Texas 78758–4460. The public hearing will be held from 7 to 10 pm, at Dwight Middle School, 2454 W. Southcross, San Antonio, Texas 78211. For further information on the scoping meeting location contact Janie Valenzuela at Bexar Metropolitan Water District, 2047 West Malone, San Antonio, Bexar County, Texas 78225, (210) 345–6500.

FOR FURTHER INFORMATION CONTACT: Alisa M. Shull, U.S. Fish and Wildlife Service, at the above address, telephone (512) 490–0057, facsimile (512) 490–0974.

SUPPLEMENTARY INFORMATION: The Service proposes to prepare an EIS to evaluate the impacts of alternatives associated with issuing an incidental take permit under section 10(a)1(B) of the ESA. Several parties, including the Bexar Metropolitan Water District, have indicated an interest in pursuing incidental take authorization.

Section 9 of the ESA prohibits the taking of federally listed animal species, unless authorized under the provisions of section 7 or 10 of the ESA. The term "take" under the ESA includes actions that may directly kill or injure listed species, actions that significantly disrupt normal behavioral patterns such as feeding and breeding, and actions that detrimentally modify habitat to the extent that it harms individuals of the species.

Section 10(a)(1)(B) allows the Fish and Wildlife Service to permit taking of listed species provided that taking is incidental to an otherwise legal activity and that it will not jeopardize a listed species. A Habitat Conservation Plan (HCP) must be submitted as part of the incidental take permit application by the applicant.

The San Marcos and Comal Springs Ecosystems are dependent upon adequate springflow from the San Antonio Segment of the Edwards Aquifer to support endangered species and critical habitat, as well as several species proposed for federal listing. The Edwards Aquifer is the sole source of drinking water for over 1.5 million people in the San Antonio Metropolitan Region. Given the growing water use, anticipated for the San Antonio Region, an overall management plan seems necessary to assure the sustained springflow in the two systems.

Decline of springflow in the two systems will result in "take" of listed species and in an appreciable reduction of the value of critical habitat, and an appreciable reduction in the likelihood of survival and recovery of listed species. The Service has estimated minimum springflow for the two

systems necessary to avoid any of these conditions.

All parties who either directly withdraw Edwards Aquifer water or who reduce recharge to the aquifer, contribute to diminished springflows. Between late May and August 1996, minimum necessary flows were not sustained in either system, owing to widespread drought conditions and the level of a regional pumpage, particularly during emergency conditions. In August 1996, a Federal Court found that an emergency exists and ordered implementation of emergency measures in accord with the 1996 Emergency Withdrawal Reduction Plan, prepared by the court appointed Monitor.

Bexar Metropolitan Water District (District) is the second largest water purveyor in Bexar County, Texas and largely dependent upon withdrawals from the Edwards Aquifer.

The District proposes to adopt a Habitat Conservation Plan consistent with objectives of the approved San Marcos and Comal Springs and Associated Aquatic Ecosystems (Revised) Recovery Plan for the spring associated ecosystems, with the Federal Court ruling, and with Sections 9 and 10 of the Endangered Species Act. The District proposes to reduce its pumpage from the Edwards Aquifer on a pro rata basis to achieve compliance with the Withdrawal Reduction Plan. The District proposes to accomplish this purpose by implementing one or more measures, including but not limited to: development of alternative water resources (ground-water resources, surface water resources, reuse of treated effluents, etc.), landscape management practices (Xeriscape™, zoned irrigation, designated watering days, etc.); employment of water efficient devices; adoption of policies encouraging conservation; public education; deployment of alternative technologies in intensive water-using industries; other appropriate and effective measures; etc.

The District also proposes to include a mechanism in its Habitat Conservation Plan, for inclusion of other pumpers (municipal, industrial, commercial, or military) which, acting in concert with the District, meet certain criteria (for example, a target reduction rate in Edwards Aquifer withdrawals) that would be developed and included in the Habitat Conservation Plan and incidental take permit conditions.

In addition to considering impacts on listed species and their habitat, the EIS must include information on impacts from the proposal and alternatives to the proposal on other components of the human environment. These other components include such things as air and water quality, cultural resources, other fish and wildlife species, social resources, and economic resources.

The Fish and Wildlife Service is gathering information necessary for the preparation of an EIS. Information such as the following topics that would assist the Service in assessing the impacts of the issuance of an incidental take permit under the provisions of an HCP is being sought: the hydrogeology of the Edwards Aquifer and the effects of aquifer levels on springflows at Comal and San Marcos Springs as they relate to the habitat needs of federally listed species; potential water conservation measures and strategies to reduce the withdrawal demands on the Edwards Aquifer and their effects on springflows; alternate water supplies and their potential effect on reducing Edwards Aquifer water withdrawals and maintaining springflows; effects of aquifer level management and springflow changes on the quality of the human environment; and, any other issues or suggestions that would be relevant toward the Fish and Wildlife Service's review and development of alternatives.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–722 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[(CA–067–7122–6606); CACA–35511]

Imperial Project, CA; Draft Environmental Impact Statement; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment.

SUMMARY: In the **Federal Register** of November 1, 1996 (Vol. 61, p. 56567), a notice was published (FR Doc. 96–27519). This amends that notice. Because of expressed interest, the comment period is extended an additional 31 days until January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Keith Shone (619) 337–4412, or Thomas Zale (619) 337–4420.

Dated: December 31, 1996.

Patricia A. Weller,

Acting Area Manager.

[FR Doc. 97–649 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–40–P

[OR–130–1020–00; GP7–0058]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of the Eastern Washington Resource Advisory Council; February 14, 1997, in Spokane, Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on February 14, 1997. The meeting will convene at 9:00 a.m., at the Red Lion Inn, N. 322 Spokane Falls Ct., Spokane, Washington, 99201. The meeting will adjourn at approximately 4:00 p.m. or upon completion of business. At an appropriate time, the meeting will recess for approximately one hour for lunch. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. The purposes of the meeting are to discuss the status of the Interior Columbia Basin Ecosystem Management Project and the status of Standards for Rangeland Health and Livestock Grazing Guidelines.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212–1275; or call 509–536–1200.

Dated: January 7, 1997.

Joseph K. Buesing,

District Manager.

[FR Doc. 97–723 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–33–P

[CA–350–1610–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Susanville Resource Advisory Council, Susanville, California.

ACTION: Notice of Meeting.

SUMMARY: The Bureau of Land Management's Susanville Resource Advisory Council will hold a business meeting Friday, February 14, 1997, at the Bureau of Land Management's Eagle Lake Resource Area office, 2950 Riverside Drive, Susanville, California. The meeting begins at 10 a.m. and ends at 4 p.m. Public comments will be take at 1 p.m. Depending on the number of persons wishing to speak, a time limit may be imposed. Items on the agenda include an update on development of

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Standards for Healthy Rangelands and Guidelines for Livestock Grazing, review of a subcommittee recommendation for transitional grazing guidelines, discussion about recreation user fees, an update on land tenure adjustments in the Alturas Resource Area, and activity updates from the Alturas, Eagle Lake and Surprise resource areas. The council will also elect new officers. Summary minutes of the meeting will be maintained in the BLM's Eagle Lake Resource Area Office, 2950 Riverside Drive, Susanville, CA, and will be available for public inspection and reproduction within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Jeff Fontana (916) 257–5381.

Linda D. Hansen,

Eagle Lake Resource Area Manager.

[FR Doc. 97–464 Filed 1–10–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Research Institute Through-Casing Resistivity Logging Research Consortium

Notice is hereby given that, on December 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Gas Research Institute Through-Casing Resistivity Logging Research Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Gas Research Institute, Chicago, IL; Conoco, Inc., Ponca City, OK; Texaco, Inc., Bellaire, TX; Phillips Petroleum Company, Bartlesville, OK; Mobil E&P U.S., Midland, TX; Chevron Petroleum Technology Company, La Habra, CA; BP Exploration Operating Company Limited, Middlesex TW167LN, United Kingdom; Shell E&P Technology Company, Houston, TX; and ARCO Exploration & Production, Plano, TX.

The purpose of the Consortium is to fund a research project to develop interpretation techniqu4es for Through-Casing Resistivity Logging by testing the current research device, sponsoring laboratory or theoretical research or any other activity associated with Through-Casing Resistivity.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–675 Filed 1–10–97; 8:45 am]

BILLING CODE 4410–11–M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; State Juvenile Corrections Organization Survey.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until February 12, 1997. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: New collection.

(2) The title of the form/collection: State Juvenile Corrections Organization Survey.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Untied States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State juvenile corrections agencies. Other: None. This collection will gather specific information on the various State statutes and policies that affect the juvenile custody rates and juvenile custody populations of each state. This information will aid in the analysis of juvenile corrections data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 51 respondents at an average 6 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 306 burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: January 8, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–737 Filed 1–10–97; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Justice Statistics

Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested

ACTION: Notice of information collection under review; National Corrections Reporting Program.

This information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 14, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the extension of this currently approved collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies' estimate of the burden of the collection of information, including the validity of the methodology and assumption used;

(3) enhance the quality, utility and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of this information collection instrument with instructions, or have comments regarding the estimated public burden and associated response time please contact the United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), Corrections Unit, Attention, Doris James Wilson, 633 Indiana Ave, NW., Washington, DC 20531. Additionally, comments may be subjected to BJS via facsimile to 202–307–0128.

Additionally, comments may also be submitted to the U.S. Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC. Additionally, comments may be submitted to DOJ via facsimile at 202–514–1590.

Overview of this information collection is listed below:

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. National Corrections Reporting Program.

(3) The agency form number and the applicable component of the Department sponsoring the collection. Form: NCRP–1A, Prison Admission Report; NCRP–1B, Prison Release Report; and NCRP–1C, Parole Exit Report. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond as well as a brief abstract. Primary: State Departments of Corrections and the Federal Bureau of Prisons. The National Corrections Reporting Program (NCRP) is the only national level data collection, furnishing information on sentencing, time served in state prisons, and time served on parole. The NCRP also contains other individual-level data on prisoners, including offense, admission/release type, and demographies. The Bureau of Justice Statistics, the U.S. Congress, researchers, practitioners, and others in the criminal justice community use these data to enumerate and describe annual movements of adult offenders through State correctional systems. Providers of the data are personnel in the Department of Corrections and Parole in the states and the District of Columbia.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 41 respondents, with an average time of 2 hours per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,648 hours annual burden (including initial time of data collection with respondent, consolidation/automation of data, and reporting from 41 agencies/respondents.

Public comment on this information collection is strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite 850, 1001 G Street, NW., Washington, DC 20530.

Dated: January 8, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–748 Filed 1–10–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel (Creation & Presentation Section) to the National Council on the Arts will be held on February 3–7, 1997. The meeting will be held from 9:00 a.m. to 7:30 p.m. on February 3 & 4; from 9:00 a.m. to 8:30 p.m. on February 5; from 9:00 a.m. to 7:30 p.m. on February 6; and from 9:00 a.m. to 5:00 p.m. on February 7. This meeting will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting, from 2:30 p.m. to 5:00 p.m. on February 7, will be open to the public for a discussion of guidelines and policy related issues. The remaining portions of this meeting, from 9:00 a.m. to 7:30 p.m. on February 3 and 4, from 9:00 a.m. to 8:30 p.m. on February 5; from 9:00 a.m. to 7:30 p.m. on February 6; and from 9:00 a.m. to 2:30 p.m. on February 7, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: January 8, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–731 Filed 1–10–97; 8:45 am]

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NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME & DATE: 2:30 p.m., Thursday, January 23, 1997.
PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.
STATUS: Open/Closed.
CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/ Secretary, 202/376–2441.
AGENDA:
I. Call to Order
II. Approval of Minutes:
October 17, 1996, Regular Meeting
III. Audit Committee Report:
January 17, 1997 Meeting
a. Financial Statements and Independent Auditor's Report, September 30, 1996 & 1995
b. OMB Circular A–133 Report for FY 1996
c. Update Internal Audit Director Search (Oral Report)
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Personnel Committee Meeting:
November 21, 1996, Closed Meeting
VII. Adjourn

Jeffrey T. Bryson,
General Counsel Secretary.
[FR Doc. 97–834 Filed 1–9–97; 10:55 am]
BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

U.S. Department of Energy; Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing

The Nuclear Regulatory Commission is considering an application dated October 31, 1996, for a materials license, under the provisions of 10 CFR Part 72, from the U.S. Department of Energy (the applicant or DOE) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Butte County, Idaho, within the Idaho National Engineering Laboratory (INEL) complex. If granted, the license will authorize the applicant to store spent fuel from the Three Mile Island Unit 2 reactor in a dry storage cask system at the ISFSI which the applicant proposes to construct and operate at the Idaho Chemical Processing Plant site within INEL. Pursuant to the provisions of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years.

Prior to issuance of the requested license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The issuance of the materials license will not be approved until the NRC has reviewed the application and has concluded that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to public health and safety. The NRC, in accordance with 10 CFR 51.20(b)(9), will complete an environmental impact statement. This action will be the subject of a subsequent notice in the **Federal Register**. Pursuant to 10 CFR 2.105, by February 12, 1997, the applicant may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon satisfactory completion of all required evaluations, issue the materials license without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board, up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the NRC by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Charles J. Haughney, Acting Director, Spent Fuel Project Office, Office of

Nuclear Material Safety and Safeguards; petitioner's name and telephone number; date petition was mailed; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, as well as the applicant's legal counsel, Robin A. Henderson, U.S. Department of Energy, 1000 Independence Avenue, SW., GC–52, Washington, DC 20585; and Simon S. Martin, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS–1209, Idaho Falls, ID 83401.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated October 31, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555. The Commission's license and safety evaluation report, when issued, may be inspected at this location. If the Commission decides to establish a local public document room in a community near the proposed facility, an option currently under consideration, the license and safety evaluation report will also be available at this location.

Dated at Rockville, Maryland, this 6th day of January 1997.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–719 Filed 1–10–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–255, 50–266, 50–301, 50–313, 50–368, 72–5, 72–7, 72–13, 72–1007]

All Users of VSC–24 Dry Storage Systems; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a Petition filed pursuant to 10 CFR 2.206, on October 18, 1996, Eleanor Roemer, Esq., for Lake Michigan Federation, and Dr. Mary P. Sinclair, for Don't Waste Michigan, requested that the U.S. Nuclear Regulatory Commission order all users of Ventilated Storage Casks (VSC–24s) to refrain from loading any casks until the certificate of compliance (COC), safety analysis report (SAR), and safety evaluation report (SER) are amended to include operating controls and limits to prevent hazardous conditions. Such conditions include the generation of explosive gases, caused by the interaction between the VSC materials and the environments, encountered during loading, storage, and unloading.

Further, Petitioners claim the VSC–24s should not be used until: (i) An independent third-party review team has examined the safety issues they raise; (ii) the potential impacts of all material aspects of the casks have been fully assessed; (iii) there is experimental verification of temperature calculations and heat transfer assessments and other design assumptions; (iv) the safety of the material coatings on components and structures has been justified; and (v) the SAR, SER, and COC are amended to include the necessary operating control and limits to direct safe use of the VSC–24.

The Petition has been referred to the Office of Nuclear Material Safety and Safeguards. As provided by 10 CFR 2.206, appropriate action will be taken within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 10th day of December 1996.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–717 Filed 1–10–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22441; 812–10300]

The OFFITBANK Investment Fund, Inc., et al.; Notice of Application

January 6, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The OFFITBANK Investment Fund, Inc. ("OFFITBANK Fund"), on behalf of OFFITBANK Total Return Fund ("TRF"), and on behalf of OFFITBANK High Yield Fund, OFFITBANK Emerging Markets Fund, OFFITBANK Latin America Total Return Fund, OFFITBANK Investment Grade Global Debt Fund, OFFITBANK Global Convertible Fund, OFFITBANK California Municipal Fund, OFFITBANK New York Municipal Fund, and OFFITBANK National Municipal Fund, and any future series; The OFFITBANK Variable Insurance Fund, Inc. ("OFFITBANK VIF"), on behalf of OFFITBANK VIF–Total Return Fund ("VTRF" and, together with TRF, the "Parent Funds") and OFFITBANK VIF–High Yield Fund, OFFITBANK VIF–Emerging Markets Fund, OFFITBANK VIF–U.S. Government Securities Fund, OFFITBANK VIF–Investment Grade Global Debt Fund, OFFITBANK VIF–High Grade Fixed-Income Fund, and OFFITBANK VIF–Global Convertible Fund, and any future series; each open-end management investment company or series thereof to be organized in the future and which is advised by OFFITBANK (each such company or series, other than TRF and VTRF, an "Underlying Fund," and collectively, the "Underlying Funds"); and OFFITBANK ("OFFITBANK").

RELEVANT ACT SECTIONS: Order requested under section 12(d)(1)(J) of the Act exempting applicants from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit each Parent Fund to invest all or a portion of its assets in the Underlying Funds in excess of the percentage limitations of section 12(d)(1).

FILING DATES: The application was filed on August 16, 1996, and amended on December 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 31, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: OFFITBANK Fund and OFFITBANK VIF, 125 W. 55th Street,

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New York, N.Y. 10019; OFFITBANK, 520 Madison Avenue, New York, N.Y. 10022.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. OFFITBANK Fund and OFFITBANK VIF are each Maryland corporations that are registered under the Act as open-end management investment companies. OFFITBANK Fund intends to establish TRF as a new series. VTRF is an existing series of OFFITBANK–VIF which has not yet commenced investment operations. OFFITBANK Fund is available to institutional and retail investors, while OFFITBANK–VIF is designed to serve as a funding vehicle for variable annuity contracts and variable life insurance policies offered by certain participating insurance companies.

2. OFFITBANK is a New York State chartered trust company that currently provides investment advisory services to the Underlying Funds, and will serve as investment adviser to the Parent Funds.[1] OFFITBANK's principal business is rendering discretionary investment management services to high net worth individuals and family groups, foundations, endowments, and corporations.

3. The Parent Funds are designed to provide investors with one or more diversified investment programs to meet particular investment goals and risk tolerances. The Parent Funds are intended for persons who are able to identify their long-term goals and risk tolerances, but prefer to allow OFFITBANK to decide which specific funds to choose at any particular time to seek to achieve these goals.

4. Each Parent Fund proposes to invest all or a portion of its assets in shares of the Underlying Funds, and, therefore, to operate as a fund of funds. Any assets that are not invested in the Underlying Funds will be invested directly in stocks, bonds, and other instruments, including money market instruments.[2] Allocations of a Parent Fund's assets among Underlying Funds will be made consistent with its investment objective as described in the applicable prospectus. The Underlying Funds in which a Parent Fund may invest also will be described in the Parent Fund's prospectus. To the extent the identity of the Underlying Funds in which a Parent Fund may invest changes over time (such as through the inclusion of new Underlying Funds), shareholders and investors will receive disclosure of such changes.

5. OFFITBANK anticipates charging an advisory fee to each Parent Fund with respect to that portion of the Parent Fund's assets invested directly in stocks, bonds, and other instruments. With respect to the portion of a Parent Fund's assets invested in the Underlying Funds, OFFITBANK will not charge any advisory fee to the Parent Fund unless such fee is found to be based upon services under an investment advisory contract that are additional to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Shareholder servicing costs, which include transfer agency functions, and mailing and printing of prospectuses, shareholder reports and proxies to existing shareholders, also will be borne by investors at the Parent Fund level.

6. The Underlying Funds currently are sold without front-end or contingent deferred sales charges. Certain of the Underlying Funds are subject to rule 12b–1 fees and shareholder servicing fees. While it is currently anticipated that the Parent Funds will be sold without any front-end or contingent deferred sales charges, and will not be subject to any rule 12b–1 or shareholder servicing fees, applicants serve the right to impose sales charges and service fees in the future with respect to any entities subject to the requested order, as permitted in condition 4 below, and any other provisions or limitations of applicable law.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act would prevent, in substance, each Parent Fund from purchasing or acquiring shares of any Underlying Fund if immediately after such purchase or acquisition it would own in the aggregate: (a) more than 3% of the total outstanding voting stock of the acquired company; (b) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company; or (c) securities issued by the acquired company and all other investment companies having an aggregate value in excess of 10% of the value of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act would prevent, in substance, each Underlying Fund from selling its shares to its respective Parent Fund if, immediately after such sale, more than 3% of the total outstanding voting stock of the Underlying Fund is owned by the Parent Fund, or more than 10% of the total outstanding voting stock of the Underlying Fund is owned by the Parent Fund and other investment companies.

2. In October 1996, the National Securities Markets Improvement Act of 1996 (the "1996 Act") was adopted.[3] Among other things, the 1996 Act amended the Act by adding section 12(d)(1)(G), which exempts from the limitations of section 12(d)(1) certain "fund of funds" structures that comply with the conditions prescribed in section 12(d)(1)(G). Applicants state that, but for the fact that applicants propose that the Parent Funds have the flexibility to invest directly in stocks, bonds, and other instruments, in addition to investing in the Underlying Funds, applicants would be able to rely on the exemption now provided in the Act.[4]

3. The 1996 Act also added section 12(d)(1)(J), which provides, in relevant part, that the SEC may by order conditionally or unconditionally exempt any person, security, or transaction from the limitations of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1) to permit each Parent Fund to invest in any Underlying Fund in excess of the percentage limitations of that section.

4. Applicants state that section 12(d)(1) is intended to prevent unregulated pyramiding of investment companies, and the abuses which are perceived to arise from such pyramiding. Applicants note that, prior to the enactment of section 12(d)(1), there was concern that unregulated pyramiding of investment companies would provide, for those in control at the top of the pyramid, an element of power and domination over funds

[1] Applicants state that OFFITBANK is a "bank," as defined in section 202(a)(2) of the Investment Advisers Act of 1940, and therefore is not required to be, and is not, registered as an investment adviser.

[2] Each Parent Fund that will make investments in reliance on the proposed order will invest in other investment companies only to the extent contemplated by the requested relief.

[3] Pub. L. No. 104–290 (1996).

[4] Section 12(d)(1)(G) limits direct investing outside of affiliated funds to certain government securities and short-term instruments.

further down in the pyramid. For example, applicants note that a Parent Fund might be able to influence, without proper authority, the activities of the persons operating an Underlying Fund or the activities of the Fund itself. Applicants state that, arguably, this control could arise via a threat of large-scale redemptions or the fact that an acquired fund, faced with substantial investment in its shares by an acquiring fund, might feel constrained to manage its assets in a manner different from the fund's normal practice in order to be able to satisfy unexpected, disruptive, large redemption requests.

5. Applicants believe that none of the dangers that were of concern to Congress in drafting section 12(d)(1) are present in the proposed Parent Fund arrangement. Unlike the fund of funds operations that prompted enactment of section 12(d)(1), the Parent Funds and the Underlying Funds will all be part of the same group of investment companies. Further, applicants state that OFFITBANK, which will be the adviser to the Underlying Funds as well as to the Parent Funds, is governed by its obligations to the Parent Funds and the Underlying Funds and their shareholders and any allocation or reallocation by OFFITBANK of a Parent Fund's assets among Underlying Funds would be required to be made in accordance with those obligations. Applicants also believe that OFFIBANK's own self-interest will prompt it to maximize benefits to all shareholders, and not disrupt the operations of any of the Parent Funds or the Underlying Funds. Finally, applicants reiterate that, but for the fact that the Parent Funds may invest directly in stocks, bonds, and other instruments, applicants' proposal is consistent with fund of funds structures now explicitly permitted under section 12(d)(1)(G) of the Act.

6. As noted above, OFFITBANK anticipates charging an advisory fee to the Parent Fund to the extent that the Fund's assets are invested directly in stocks, bonds, or other instruments, rather than shares of the Underlying Funds. With respect to the portion of a Parent Fund's assets invested in the Underlying Funds, applicants represent that, before approving any advisory contract under section 15 of the Act, the directors of each Parent Fund, including a majority of the directors of each Parent Fund who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), shall find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract.

7. While investment in the Parent Funds will involve additional expenses due to the costs of establishing and maintaining the Parent Funds as separate series, applicants believe that those additional expenses will not be substantial and that such expenses will be offset by the benefits which are presumed to be generated for the Underlying Funds and inure indirectly to the Parent Funds. Applicants believe that: (a) the addition of assets from each Parent Fund to the Underlying Fund may reduce the expense ratio for each Underlying Fund; (b) to the extent that shareholders of the Parent Funds otherwise would directly open accounts with each of the Underlying Funds, the number of accounts and related expenses at the Underlying Fund level may be reduced; and (c) by investing in the Underlying Funds, the Parent Funds may more efficiently achieve a level of diversification through various asset classes than if investments were made directly in portfolio securities, and without incurrence of transaction costs associated with direct investing. Moreover, applicants will provide to the Chief Financial Analyst of the SEC's Division of Investment Management annual expense ratios for each Parent Fund and each Underlying Fund, as specified in condition 5 below. Applicants believe that this will enable the SEC to monitor the expenses relating to each Parent Fund. Based on the foregoing, applicants believe that the proposed transactions satisfy the requirements of section 12(d)(1)(J).

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. Under the proposed structure, the Parent Funds and the Underlying Funds may be deemed to be affiliates of one another. Purchases by the Parent Funds of the shares of the Underlying Funds and the sale by the Underlying Funds of their shares to the Parent funds could thus be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. The consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net asset value of the Underlying Funds, subject to applicable sales charges. In addition, applicants assert that the proposed transactions will be consistent with the policies of each Parent Fund. The investment of assets of the Parent Funds in shares of the Underlying Funds and the issuance of shares of the Underlying Funds to the Parent Funds will be effected in accordance with the investment restrictions of each Parent Fund and will be consistent with the policies of (as set forth in the registration statement applicable to) each Parent Fund. Applicants also state that, for the reasons discussed above, the proposed transactions are consistent with the general purposes of the Act. Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).[5]

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Parent Fund and each Underlying Fund will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act.

2. No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Before approving any advisory contract under section 15 of the Act, the directors of each Parent Fund, including a majority of the Independent Directors, shall find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Such finding,

[5] Section 17(b) applies to specific proposed transactions, rather than an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c) frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

and the basis upon which the finding was made, will be recorded fully in the minute books of the Parent Fund.

4. Any sales charges or service fees charged with respect to shares of each Parent Fund, when aggregated with any sales charges or service fees paid by the Parent Fund with respect to shares of any Underlying Fund, shall not exceed the limits set forth in Rule 2830 of the Rules of Conduct of the National Association of Securities Dealers, Inc.

5. Applicants will provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Parent Fund and each of its Underlying Funds; monthly purchases and redemptions (other than by exchange) for each Parent Fund and each of its Underlying Funds; monthly exchanges into and out of each Parent Fund and each of its Underlying Funds; month-end allocations of each Parent Fund's assets among its Underlying Funds; annual expense ratios for each Parent Fund and each of its Underlying Funds; and a description of any vote taken by the shareholders of any Underlying Fund, including a statement of the percentage of votes cast for and against the proposal by its Parent Fund and by the other shareholders of the Underlying Funds. Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Parent Funds (unless the Chief Financial Analyst shall notify the Parent Funds or OFFITBANK in writing that such information need no longer be submitted).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–686 Filed 1–10–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22442; 811–1341]

Special Portfolios, Inc.; Notice of Application

January 6, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Special Portfolios, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 31, 1996 and amended on December 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 10, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company and is organized as a corporation under the laws of Minnesota. Applicant registered under the Act and filed a registration statement on Form S–5 on March 16, 1996. At that time, applicant's name was "Josten Growth Fund, Inc." On July 19, 1966, the registration statement was declared effective and applicant commenced its initial public offering.

2. Due to the relatively small size and uneconomical nature of applicant, applicant's board of directors concurred with the recommendation of applicant's investment adviser that shareholders be invited to redeem their shares so that applicant could be liquidated. Accordingly, a letter was sent to applicant's shareholders. In response, during the period from March 1, 1996 through April 8, 1996, all remaining shareholders, including the Fortis, Inc. Profit Sharing Plan, chose to redeem their shares of applicant.[1] All redemptions were made at net asset value as of the date of redemption.

3. No expenses were incurred in connection with the redemption of shares, other than normal shareholder servicing expenses. Applicant's investment adviser has undertaken to pay the expenses of winding up applicant. In connection with the redemption of shares, applicant sold its remaining portfolio securities in normal market transactions. No sales or brokerage commissions were paid in connection with such sales.

4. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. After the requested order is granted, applicant intends to file a notice of dissolution with the State of Minnesota, followed by articles of dissolution. Applicant anticipates that the filing of the notice of dissolution will be authorized by applicant's board of directors in accordance with Minnesota corporation law.

For the SEC by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–687 Filed 1–10–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The profit sharing plan owned approximately 97% of applicant's shares subsequent to March 1, 1996.

[Release No. 34–38123; File No. SR–Amex–96–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to the Closing Time for Equity Options and Narrow-Based Index Options

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 22, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the self-regulatory organization. On December 16, 1996, the Exchange filed Amendment No. 1 to its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 1, 903C, 918 and 980C to provide for the closing of equity option and narrow-based index option trading at 4:02 p.m.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

1. Purpose

Since 1978, equity options have traded until 4:10 p.m., ten minutes beyond the close of trading of the underlying securities, to allow investors to trade options based upon the final closing prices of those underlying securities. In 1978, frequent delays between the time of the execution of the closing transaction and the appearance of the trade on the Consolidated Tape Association's Tape A gave rise to time lags that, in some instances, were as long as seven minutes after the close of trading at 4:00 p.m. Today, due to improvements in trading and reporting systems, the dissemination of closing prices is delayed at most one or two minutes, and only in unusual market conditions are any significant time lags encountered. Another reason for extending equity option trading until 4:10 p.m., cited in 1978, was to give options participants additional time to digest the impact of news announcements by companies and government agencies who oftentimes released such news at 4:00 p.m. or shortly thereafter.

While the Exchange expressed reservations regarding the move to 4:10 p.m., it ultimately acceded to the industry's consensus that such a close was appropriate. Although the Exchange has made efforts to encourage companies and others to withhold significant news announcements until after the close of option trading, occasionally such announcements are released between 4:00 and 4:10 p.m., and dramatically impact the trading of equity and narrow-based index options[4] during that time period. The Exchange has not requested a change in the trading close for broad-based index options as it does not believe that a significant news announcement by the issuer of one component stock in a broad-based index would have a corresponding effect on the price of that broad-based index.[5]

When instances of significant news releases occur prior to the close of option trading, the Exchange has observed that public customers are unable to react as quickly as professional traders, and accordingly lack the ability to give their brokers instructions or take action with regard to orders that may have been previously placed on the limit order book. Further, because the principal market for the underlying stock is closed, option specialists and market makers have oftentimes experienced extreme difficulty making orderly options markets given their inability to hedge or otherwise offset market risk with transactions in the underlying stock.

Therefore, the Exchange now proposes that at 4:02 p.m., all trading in equity options and narrow-based index options will cease. No orders may be entered, modified or canceled in any equity or narrow-based index option series after 4:02 p.m.

The Exchange believes a 4:02 p.m. closing time for equity options and narrow-based index options is necessary and appropriate given the improvements in dissemination of closing prices, and the limited ability of public customers to react to news announcements and changing markets in the last ten minutes of trading under the current rule. However, the Exchange also believes that the additional two minutes of options trading after the close of trading in the underlying stock will allow market participants to react, if necessary, to any delayed dissemination of closing prices.

2. Statutory Basis

The proposed rule change furthers the objectives of Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is designed to prevent unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[3] The proposed rule change submitted by the Exchange would change the trading close for equity options to 4:02 p.m. Amendment No. 1 would also change to 4:02 p.m. the trading close for narrow-based index options. *See* Letter from Claire P. McGrath, Amex, to Janice Mitnick, Division of Market Regulation, SEC, dated December 16, 1996 ("Amendment No. 1").

[4] A significant new announcement on one component of a narrow-based index could have a decisive effect on that index. *See* Amendment No. 1.

[5] *Id.*

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-96–45 and should be submitted by February 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.[6]

[FR Doc. 97–688 Filed 1–10–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38119; File No. SR–CHX–96–16]

Self-Regulatory Organizations; the Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Trading of Nasdaq/NM Securities on the CHX

January 3, 1997.

I. Introduction

On June 14, 1996, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37 and Article XX, Rule 43 relating to the trading of Nasdaq National Market ("Nasdaq/NM") securities (previously known as NASDAQ/NMS securities) on the Exchange.[3]

The proposed rule change was published for comment in the **Federal Register** on July 2, 1996.[4] No comments were received on the proposal.

II. Background

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[5] Among other things, these rules made the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System ("MAX system").[6]

1. BEST Rule[7]

Currently, under the BEST Rule, Exchange specialists are required to guarantee executions of all agency[8] market and limit orders for Dual Trading System issues[9] and all agency market orders for Nasdaq/NM securities, from 100 up to and including 2099 shares. Subject to the requirements of the short sale rule,[10] the specialist must fill all agency market orders at a price equal to or greater than the national best bid or best offer ("NBBO"). For all agency limit orders in Dual Trading System issues, the specialist must fill the order if: (1) the NBBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring a fill.

2. MAX System

The Exchange's MAX system provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule (*i.e.*, agency market orders in securities listed on the NYSE or AMEX and Nasdaq/NM securities, as discussed above), and certain other orders.[11]

The MAX system has two size parameters which must be designated by the specialist on a stock-by-stock basis. Currently, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through the MAX system that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the specialist, the order is designated as an open order.[12] If the order-entry firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. If the order-entry firm sends an order through MAX that is less than or equal to the auto-execution threshold, the order is executed automatically.

The MAX system currently provides for a fifteen second delay between the time an agency market order is entered into the MAX system and the time it is automatically executed at the NBBO in

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On Dec. 19, 1996, the CHX filed Amendment No. 1 to its proposal. Letter from J. Craig Long, Attorney, Foley & Lardner, to Howard L. Kramer, Associate Director, Division of Market Regulation, SEC, dated Dec. 19, 1996. In Amendment No. 1, the CHX requested that the Commission approve the proposal on a pilot basis for a one year period.

[4] See Securities Exchange Act Release No. 37369 (June 25, 1996), 61 FR 34462 (July 2, 1996) (notice of File No. SR–CHX–96–16) ("Notice").

[5] Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2). *See* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500).

[6] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX, Art. XX, Rule 37(b).

[7] *See* CHX Manual, Art. XX, Rule 37(a).

[8] The term "agency order" means an order for the account of a customer, but shall not include professional orders as defined in CHX, Article XXX, Rule 2, interpretation and policy .04. The Rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *Id.*

[9] According to the Exchange, Dual Trading System issues are issues that are traded on the CHX, pursuant to unlisted trading privileges, and listed on either the New York Stock Exchange or American Stock Exchange. Telephone conversation on June 5, 1996 between David T. Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

[10] While the Commission and the NASD have rules that prohibit short sales, under certain conditions, or securities registered on, or admitted to unlisted trading privileges on, a national securities exchange and short sales of securities traded on Nasdaq, there is no rule governing short sales in Nasdaq/NM securities traded on the CHX. *See* 17 CFR § 240.10a–1 and NASD Rule 3350.

[11] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX system. If the order is outside the BEST parameters, the BEST Rules do not apply, but MAX system handling rules do apply.

[12] If an oversized market or limit order is received by the specialist, he will either reject the order immediately or display it. If the order is displayed, the specialist will check with the order entry broker to determine the validity of the oversized order. During the three minute period, the specialist can cancel the order and return it to the order entry firm, but until it is cancelled the displayed order is eligible for execution. Although these procedures currently exist under CHX rules, the Commission has concerns as to whether the three minute period is necessary and urges the CHX to reduce the time period or otherwise address the necessity of the specialists' discretion during the three minute period. Moreover, the handling of orders by CHX specialists must still comply with the Commission's recently adopted Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)) and any subsequently issued interpretations of the Order Execution Rules.

order to provide the specialist with an opportunity to provide price improvement to the order. If, however, the spread between the NBBO in a stock eligible for automatic execution in the MAX system is ⅛ point at the time an order is entered into the MAX system, that order is executed immediately without the fifteen second delay. Non-marketable agency limit orders, subject to the BEST Rule, are automatically filled at the limit price when there is a price penetration of the limit price in the primary market.[13]

III. Description of Proposal

The Exchange proposes to end its requirement that CHX specialists automatically execute orders in Nasdaq/NM securities when the specialist is not quoting at the NBBO.

Under the proposed revisions to the BEST Rule, specialists must continue to accept agency market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 shares limit previously in place.[14] Specialists must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists would be required to automatically execute Nasdaq/NM orders only when they were quoting to the NBBO when the order was received.

The proposal requires the specialist to set the auto-executive threshold at 1000 shares or greater for Nasdaq/NM securities. Orders for a number of shares less than or equal to the auto-execution threshold set by the specialist will be automatically executed if the CHX specialist is quoting at the NBBO for the lesser of the size of the order or the specialist's quote. The orders are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer will automatically be decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at ⅛ point away from the NBBO for 1000 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay.[15]

Under the proposal, if the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange.[16] If the specialist decides to act as agent for the order, the proposed rule requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within three minutes of being entered into MAX or designated as an open order.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[17] In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 11A(1)(D) and 11A(1)(C) of the Act.

The CHX's proposal to not require automatic execution for Nasdaq/NM securities when the specialist is not quoting at the NBBO, and to allow the specialist to execute the order as agent, is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide an execution reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

The Commission does not believe that the Act necessarily requires the CHX to provide automatic execution of orders. Nonetheless, if the CHX chooses to make available an order-routing system to its members, to be consistent with the Act, this system must not be designed in a manner that will result in customer orders receiving executions at prices worse than those reasonably available in the market, which generally would be the NBBO. Otherwise, members could violate their best execution duty to their customers if they used the system. The CHX's proposed modification of its MAX system seeks to ensure that customer orders receive the best prices by requiring specialists, if they do not execute orders automatically at the NBBO or better, at a minimum to represent the orders as agent off the Exchange.

Under these circumstances, CHX Rule 43 requires a specialist to use order-routing systems where appropriate. At present, however, CHX specialists have available only limited order-routing systems. A CHX specialist currently can route orders to Nasdaq market makers only via the telephone or, if the CHX specialist is an NASD member, through Selectnet and SOES.[18] Clearly, a more efficient linkage between the CHX and Nasdaq would better enable CHX specialists to access OTC market makers quickly on a consistent basis.

While operation of the proposed system is not necessarily inconsistent with the duty of CHX specialists to provide best execution of customer orders, the Commission believes that the arrangement in place for specialists to access OTC market makers is not an ideal linkage between two markets on a permanent basis. Consequently, the CHX has represented that it intends to

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[13] If, however, the difference between the trade-through price and the last sale price is greater than ¼ point or 1% of the value of the trade-through price, whichever is less, a second print at a trade-through price, which is less than ¼ point or 1% away from the previous trade-through price is necessary before that MAX system will automatically execute the agency limit order.

[14] The 100 to 2099 share auto-acceptance threshold previously in place will only continue to apply to Dually Listed securities.

[15] The CHX has clarified that the twenty second delay is designed, in part, to provide an opportunity for the order to receive price improvement from the specialist's displayed quote. *Id.*

[16] Letter dated Aug. 1, 1996 from David Rusoff, Attorney, Foley & Lardner, to George A. Villasana, Attorney, Securities & Exchange Commission.

[17] 15 U.S.C. 78f(b).

[18] The CHX has represented that a CHX specialist in Nasdaq/NM securities, if not an NASD member, currently may use a CHX member that is also an NASD member to route orders via SelectNet and SOES to Nasdaq/NM market makers. The CHX has explained further that this access currently is provided by the NASD member to an existing CHX specialist in Nasdaq/NM securities, but the arrangement may not necessarily apply to any future CHX specialists in Nasdaq/NM securities. Thus, the CHX has indicated that it will not allocate any Nasdaq/NM securities to any additional CHX specialists until an order-routing linkage is completed between the CHX and the Nasdaq. Telephone conversation on October 29, 1996 between Craig Long, Esq., Foley & Lardner, and Betsy Prout Lefler, Esq., Division of Market Regulation, SEC.

work towards quickly establishing a linkage between the CHX systems and Nasdaq systems in order to permit market makers in each market to route orders to the other market center.[19] Consequently, the Commission is approving the CHX proposal for only one year, during which time the Commission expects the CHX and Nasdaq to effectuate a linkage. The Commission also expects the CHX to monitor closely the executions provided to CHX market and marketable limit orders for Nasdaq/NM securities that are not automatically executed at the NBBO (or better) at the time the order is received. The Commission further requests that the Exchange submit to the Commission a report, based on six months of trading data, on or before 240 days following the issuance of this order, that describes the executions provided these orders.

The Commission is approving the CHX proposal on a pilot basis for a one-year period beginning in January 1997 and extending through December 1997. The Commission's approval is based, in part, on CHX's expressed commitment to work in good faith with the Nasdaq, during the one-year pilot period, to set up an order routing system between the Nasdaq and the CHX.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CHX–96–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–690 Filed 1–10–97; 8:45 am]

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[19] *See* Amendment No. 1, *supra* note 3.

[20] *Id.*

[21] 15 U.S.C. 78s(b)(2)

[22] 17 CFR 200.30–3(a)(12).

[Release no. 34-38120; File No. SR–Philadep–96–22]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Establish Family of Account Processing Procedures

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 17, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") that proposed rule change (File No. SR–Philadep–96–22) as described in Items I and II below, which items have been prepared primarily by Philadep. On December 31, 1996, Philadep filed an amendment to the proposed rule change to make certain technical corrections.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish an automated family of accounts risk review for omnibus settlement accounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the propose rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish an automated family of accounts risk review for settlement activity in omnibus accounts. Philadep currently monitors individual subaccount activity underlying omnibus settling accounts and applies its risk management controls (*i.e.*, collateral monitor and net debit caps) to such subaccounts in a manual fashion.[4] Philadep proposes to automate its risk management procedures in this area by incorporating an automated family of accounts risk monitoring system. In accordance with this proposal, Philadep will apply this family of accounts system to its only omnibus account (Canadian Depository for Securities) and to any future omnibus accounts.

The family of accounts risk monitoring system will group together the activity of subaccounts which underlie a participant's omnibus settlement account. The delivery and receive activity of individual subaccounts will be reviewed in connection with the omnibus account's aggregate net debit cap and collateral monitor. For each receive or delivery transaction, the system will update the omnibus account's settlement balance and will automatically calculate the net debit impact and the collateral monitor impact that the receive and/or delivery have on a group basis. In this regard, it a subaccount's receive or delivery, adjusted for the appropriate haircut and added or subtracted to or from the omnibus account's collateral monitor, results in the omnibus account's collateral monitor being less than the omnibus account's accumulated net debit amount, the receive or delivery will pend. As the settlement balance changes as a result of other activity, the system will continuously determine whether pending items may be processed. Receives and deliveries that are still pending by the settlement cutoff time will be dropped from the system.

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding securities and funds which are in the custody or control of Philadep or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. Philadep will notify the Commission of any written comments received by Philadep.

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep (December 31, 1996).

[3] The Commission has modified the text of the summaries submitted by Philadep.

[4] For a description of Philadep's risk management controls for its same-day funds settlement ("SDFS") system, refer to Securities Exchange Act Release no. 36876 (February 22, 1996), 61 FR 7841 [SR-Philadep-95-08] (order granting partial temporary approval and partial permanent approval of a proposed rule change to convert the settlement system to a same-day funds settlement systems).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b) (3) (F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that Philadep's proposal relating to its family of accounts risk monitoring proceduros are consistent with Philadep's obligations under Section 17A(b) (3) (F) because the proposed rule change will establish an automated risk review system to ensure that risk management controls are properly applied to transactions in omnibus accounts. Additionally, the Commission believes the proposal is consistent with Philadep's obligations under Section 17A(b) (3) (F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposed rule change will automate a risk review procedure which is currently performed manually, therefore, improving the efficiency of Philadep's SDFS system.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposed rule change will allow Philadep to immediately implement the family of account risk monitoring procedures. The Commission believes that the automation of Philadep's manual risk review procedures for omnibus accounts will reduce the risk of human error and will increase the efficiency of Philadep's SDFS system with respect to omnibus accounts.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–22 and should be submitted by February 3, 1997.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change (File No. SR–Philadep–96–22) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–689 Filed 1–10–97; 8:45 am]

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[5] 15 U.S.C. 78q-1(b) (3) (F).

[6] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (January 3, 1997).

[7] 17 CFR 200.30–3(a) (12).

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 97-2(9)]

Gamble v. Chater; Amputation of a Lower Extremity—When the Inability to Afford the Cost of a Prosthesis Meets the Requirements of Section 1.10C of the Listing of Impairments—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 97-2(9).

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after January 13, 1997. If we made a determination or decision on your application for benefits between October 12, 1995, the date of the Court of Appeals decision, and January 13, 1997, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: October 15, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 97-2(9)

Gamble v. *Chater*, 68 F.3d 319 (9th Cir. 1995)—Amputation of a Lower Extremity—When the Inability to Afford the Cost of a Prosthesis Meets the Requirements of Section 1.10C of the Listing of Impairments—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant for disability insurance benefits or for Supplemental Security Income benefits based on disability who has an amputation of a lower extremity (at or

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above the tarsal region) and cannot afford the cost of a prosthesis has an impairment that meets the requirements of Regulations 20 CFR Part 404, Subpart P, Appendix 1, section 1.10C.

Statute/Regulation/Ruling Citation: Sections 223(d)(1) and 1614(a)(3) of the Social Security Act (42 U.S.C. 423(d)(1) and 1382c(a)(3)); 20 CFR 404.1530, 416.930; 20 CFR Part 404, Subpart P, Appendix 1, section 1.10C; Social Security Ruling (SSR) 82-59.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington).

Gamble v. *Chater*, 68 F.3d 319 (9th Cir. 1995).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: The plaintiff, David Gamble, had his right leg amputated below the knee in July 1988. Although he was able to use a prosthesis, physicians expected that shrinkage of the stump over the next two years might require changes in the prosthesis. In late 1989, the skin on the stump began to break down. By October 1991, the prosthesis did not fit properly and could not be satisfactorily adjusted. Because Mr. Gamble did not have and could not obtain $3,477.80, the cost of a replacement prosthesis, his treating physician concluded that nothing more could be done and limited him to walking with a crutch.

Mr. Gamble applied for Supplemental Security Income benefits based on disability in April 1991 and Social Security disability insurance benefits in May 1991. Following denial of his claims at both the initial and reconsideration levels of the administrative review process, the plaintiff requested and received a hearing before an ALJ. In the hearing decision, the ALJ noted that Mr. Gamble could not afford a new prosthesis and found that his condition did not meet or equal Listing 1.10C in the Listing of Impairments contained in 20 CFR Part 404, Subpart P, Appendix 1. The district court upheld SSA's decision. Mr. Gamble appealed this decision to the United States Court of Appeals for the Ninth Circuit.

Holding: The Ninth Circuit reversed the decision of the district court. The Court of Appeals noted that the proper interpretation of Listing 1.10C was an issue of first impression in the Ninth Circuit. After reviewing the principle upheld by other Circuits that "[d]isability benefits may not be denied because of the claimant's failure to obtain treatment he cannot obtain for lack of funds," the Court of Appeals held that the requirement in Listing 1.10C that a claimant be unable to use a prosthesis effectively "means the inability to use a prosthesis that is reasonably available to the claimant." Accordingly, the court also held that "a person whose leg was amputated at or above the tarsal region satisfies Listing § 1.10 if he is unable to use any prosthesis that is reasonably available to him."

The court found that an amputee who is unable to reasonably obtain a prosthesis should not be treated differently from any other disabled person who cannot obtain the treatment, therapy or medical device needed to restore the ability to work. In addition, the court found that claimants who could obtain prostheses but who simply choose not to purchase them do not meet the requirements of Listing 1.10C and could be found "not disabled" under 20 CFR 404.1530 and 416.930 for failing to follow prescribed treatment without good reason. Accordingly, the court reversed and remanded the case with instructions for an award of benefits because Mr. Gamble could not realistically obtain the prosthesis he needed.

Statement As To How Gamble Differs From Social Security Policy

At issue in *Gamble* is the meaning of the term "[i]nability to use a prosthesis effectively" in Listing 1.10C. What constitutes an "inability to use a prosthesis effectively" is not defined in SSA's regulations. In Listing 1.10C, "inability" means a medical inability, i.e., a claimant cannot effectively use a prosthesis because of medical complications. The intent is to measure medical severity. The availability of prosthetic devices and a claimant's inability to afford a prosthesis are not considered for the purpose of determining disability under the Listing of Impairments.

The *Gamble* court held that a claimant "whose leg was amputated at or above the tarsal region satisfies Listing § 1.10 if he is unable to use any prosthesis that is reasonably available to him." As a practical matter, the court concluded that a claimant who cannot afford a prosthesis, even if he could use one, does not have a prosthesis reasonably available to him and thus, is unable to use a prosthesis.

Explanation of How SSA Will Apply The Gamble Decision Within The Circuit

This Ruling applies only where the claimant resides in Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

A claimant whose lower extremity is amputated at or above the tarsal region and is unable to use any prosthesis that is reasonably available to him will be considered to have satisfied the requirements of Listing 1.10C. When determining the reasonable availability of prosthetic devices, adjudicators must consider evidence of an inability to afford the cost of the prosthesis. Adjudicators must evaluate all such evidence and consider the claimant's economic circumstances in determining whether the claimant can or cannot afford the prosthesis.

[FR Doc. 97–668 Filed 1-10-97; 8:45 am]
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[Social Security Acquiescence Ruling 97-1(1)]

Parisi By Cooney v. Chater; Reduction of Benefits Under the Family Maximum In Cases Involving Dual Entitlement—Title II of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 97-1(1).

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek

further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the First Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after January 13, 1997. If we made a determination or decision on your application for benefits between November 8, 1995, the date of the Court of Appeals decision, and January 13, 1997, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance.)

Dated: September 19, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 97-1(1)

Parisi By Cooney v. *Chater*, 69 F.3d 614 (1st Cir. 1995)—Reduction of Benefits Under the Family Maximum In Cases Involving Dual Entitlement—Title II of the Social Security Act.

Issue: Whether, in determining the amount of benefit reduction under the maximum family benefits provision in section 203(a) of the Social Security Act (the Act) in cases where a beneficiary is entitled to benefits on more than one earnings record, only those monthly benefits payable on the worker's earnings record after application of the simultaneous benefit provisions are included in calculating the total monthly benefits payable on that record.

Statute/Regulation/Ruling Citation: Sections 202(k)(3)(A), 202(r) and 203(a) of the Social Security Act (42 U.S.C. 402(k)(3)(A), 402(r) and 403(a)); 20 CFR 404.304(d), 404.403, 404.404, 404.407(a), 404.623; Social Security Ruling 62-7.

Circuit: First (Maine, New Hampshire, Massachusetts, Rhode Island, Puerto Rico).

Parisi By Cooney v. *Chater*, 69 F.3d 614 (1st Cir. 1995).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing or Appeals Council).

Description of Case: Anthony Parisi, the worker, became disabled in February 1988. He and Anthony Parisi II, his dependent child and the plaintiff in this case, began receiving Social Security benefits on Anthony Parisi's earnings record. In 1991, Adriana Parisi, the worker's spouse, became entitled to retirement benefits (old-age benefits) based on her own earnings record. Under section 202(r) of the Act, Adriana was deemed also to have applied for and become entitled to wife's benefits based on the worker's earnings record. The Social Security Administration (SSA) determined under section 202(k)(3)(A) of the Act that because the monthly retirement benefits that Adriana was entitled to receive on her own record exceeded the amount of her monthly wife's benefits on Anthony Parisi's earnings record, she could only receive payment for the retirement benefits payable on her own earnings record.

SSA counted the wife's benefits to which Adriana was entitled, but which were not actually paid to her, toward the monthly maximum amount of benefits payable on Anthony Parisi's earnings record under section 203(a) of the Act (the family maximum). Because the total monthly amount of Anthony's disability benefits, the plaintiff's child's benefits, and Adriana's wife's benefits exceeded the monthly family maximum limit, SSA reduced the amount of the plaintiff's and the wife's monthly benefits.

The plaintiff's request for reconsideration of the benefit reduction was denied, and he requested a hearing before an ALJ. The ALJ found that Adriana's wife's benefits should not be counted toward the family maximum. However, the Appeals Council reversed the ALJ's decision and the plaintiff appealed to the district court. The district court found that the family maximum limit on monthly benefits was meant to include only "effective entitlements" that result in actual payment of benefits. Because Adriana's entitlement to wife's benefits was only "conditional" upon her not being entitled to a greater amount of monthly benefits on her own earnings record, the district court concluded that Adriana's wife's benefits should not be counted toward the family maximum. SSA appealed and the United States Court of Appeals for the First Circuit, while offering somewhat different reasoning, found that the district court correctly reversed the Appeals Council's decision.

Holding: After reviewing the statutory language in sections 203(a) and 202(k)(3)(A) of the Act, the legislative history, SSA's regulations and policy considerations, the Court of Appeals held that "Adriana's non-payable spousal benefits d[id] not count toward the section [2]03(a) 'family maximum' . . . [because] section [2]03(a) operates to limit the total amount of benefits actually *payable* on a single worker's record, not the amount of entitlements theoretically available." The court further held that because Adriana's deemed entitlement to wife's benefits resulted in "*zero payable* benefits" under section 202(k)(3)(A) of the Act, none of her benefits should be included in the family maximum computation required under section 203(a).

Without reviewing SSA's definition of "entitlement," the court reasoned that, if SSA was correct in arguing that section 203(a) of the Act places a limit on entitlements, it would be contradictory and impossible to enforce compliance with the family maximum cap by reducing payable benefits. The court held that section 203(a) of the Act requires SSA to consider the actual amount of benefits payable under the relevant benefits provisions (read as a whole), not purely theoretical entitlements, in calculating the total monthly benefits payable on the worker's earnings record. The court noted that its conclusion did not undermine SSA's definition of "entitlement" and that Adriana had entitlement, in an abstract way, to wife's benefits under section 202(b)(1) of the Act.[1]

The court also held that the statutory language requires that monthly benefits be reduced under the family maximum only as much "*as necessary*" to enforce compliance and that, because the reduction in Parisi's case depended on the calculation of Adriana's wife's benefits, which amounted to zero due to her simultaneous entitlement to a higher benefit on her own earnings record, a reduction was not necessary. Accordingly, the court concluded that

[1] The First Circuit's reasoning differed from the district court's analysis that distinguished between "effective" and "conditional" entitlements. The court held that this distinction had "no roots in the statutory language."

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the total amount of benefits payable on the worker's record did not exceed the family maximum and that Anthony's child's benefits should not be reduced.

Statement As To How Parisi Differs From Social Security Policy

Section 203(a) of the Act establishes a limit, derived from the worker's primary insurance amount, on the total monthly benefits to which dependents or survivors may be entitled on the basis of one worker's earnings record (the family maximum). Under SSA's regulations implementing section 203(a) of the Act (20 CFR 404.403 and 404.404), the benefits of each claimant entitled on a worker's earnings record are reduced proportionately so that the total benefits of those entitled on the record in one month do not exceed the family maximum. In calculating total monthly benefits, SSA includes all benefits of the claimants who are entitled on the worker's record without considering whether the benefits are actually due or payable.

The *Parisi* court held that, when computing a reduction under the family maximum pursuant to section 203(a) of the Act, SSA should not include the monthly benefit that would otherwise be payable to the spouse if payment of that spouse's benefit is precluded by section 202(k)(3)(A) of the Act due to the spouse's simultaneous entitlement to a higher benefit on the spouse's own earnings record.

Explanation of How SSA Will Apply The Parisi Decision Within The Circuit

This Ruling applies only to cases involving claimants whose benefits are reduced because of the family maximum and who reside in Maine, New Hampshire, Massachusetts, Rhode Island or Puerto Rico at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

When the total benefits due or payable for any month on the earnings record of a worker exceed the maximum amount under section 203(a) of the Act (the family maximum applies) and a person entitled on the worker's earnings record is simultaneously entitled to benefits on another earnings record, SSA will consider only the amount of monthly dependent's or survivor's benefits actually due or payable to the simultaneously-entitled person when determining the amount of the benefit reduction because of the family maximum. Adjudicators will continue to apply SSA's other policies for applying and calculating the family maximum reduction.

[FR Doc. 97–667 Filed 1-10-97; 8:45 am]
BILLING CODE 4190-29-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Washington National Airport, Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Metropolitan Washington Airport Authority (MWAA) for the Washington National Airport (DCA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for DCA under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before July 3, 1997.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 3, 1997. The public comment period ends March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Building, JFK International Airport, Jamaica, NY 11430; (718) 553–3325. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for DCA are in compliance with applicable requirements of Part 150, effective January 3, 1997. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 3, 1997. This notice also announces the availability of this program for public review and comment.

Under Section 103 to Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The MWAA submitted to the FAA on October 9, 1990, noise exposure maps, description and other documentation which were produced during an airport noise compatibility planning study from 1985 to 1990. The original document was dated August 1990. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. FAA's preliminary review of the Study in accordance with 14 CFR Part 150.31 required changes to the Study.

On March 30, 1994, MWAA submitted its revised Part 150 Noise Compatibility Program (NCP), dated December 1993, to the FAA. The FAA's preliminary review of the revised NCP raised concerns about the use of the 1989 Noise Exposure Map (NEM) as the base case NEM and use of the "1994 Noise Exposure Map: Improved Fleet Mix and Enhanced Compliance," shown in the revised document as Figure V–3, as the "five-year" NEM. FAA and Authority staff have discussed this matter and recommend the use of this 1994 NEM as the base case NEM, and the use of the "All Stage 3 Operations" NEM, shown in Attachment 1 of the document as Figure 8, for the five-year forecast NEM. These uses of the 1994 NEM and the "All Stage 3 Operations" NEM are consistent with the guidelines set forth in 14 CFR Part 150.21 (a) and (a)(1). MWAA has presented an Addendum, dated November 22, 1996,

to the revised December 1993, part 150 Noise Compatibility Program for Washington National Airport. The Addendum includes reasonable justification for the use of the above stated NEM's as the official Maps.

The FAA has completed its review of the Addendum and the NEM's and related descriptions submitted by the MWAA. The specific maps as identified in the Addendum are the "1994 Noise Exposure Map: Improved Fleet Mix and Enhanced Compliance as the base case/current NEM shown in the revised NCP as Figure V–3, and the "All Stage 3 Operations" NEM shown in Attachment 1 of the NEM as Figure 8 as the five-year forecast NEM. The FAA has determined that these maps for DCA are in compliance with applicable requirements. This determination is effective January 3, 1997. FAA's determination on an airport operator's NEM is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150.

Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a NCP or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a NEM submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act.

The FAA has relied on the certification by the airport operator under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for DCA, also effective on January 3, 1997. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 3, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. The public comment period ends March 3, 1997. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

FAA—National Headquarters, 800 Independence Ave., SW, APP–600, Washington, DC 20591

FAA—Eastern Region, Fitzgerald Federal Bldg., JFK Int'l Airport, Airports Division, AEA–600, Jamaica, NY 11430

Airport Manager's Office, Rm. 260, Washington National Airport, Washington, DC 20001

Neil Phillips, Manager, Noise Abatement, Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, VA 22314.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, New York on January 3, 1997.

William DeGraaff,

Manager, Airports Division.

[FR Doc. 97–791 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Federal Aviation Administration (FAA) has made a finding of no significant impact (FONSI) based on an Environmental Assessment (EA) for Special Flight Rules in the vicinity of the Rocky Mountain National Park (RMNP).

FOR FURTHER INFORMATION CONTACT: Mr. William J. Marx, Federal Aviation Administration, Office of Air Traffic Airspace Management, Environmental Programs Division, ATA–300, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

Proposed Action

On April 22, 1996, President Clinton issued a Memorandum for Heads of Executive Departments and Agencies, in which he announced his Earth Day initiative, *Parks for Tomorrow*. Included in that initiative was the directive to the Secretary of Transportation, in consultation with appropriate officials, to consider a rulemaking to address the potential adverse impacts on RMNP and its visitors of overflights by sightseeing aircraft. The President's announcement also directed that the value of the natural quiet and the natural experience of the park be factors in any rulemaking action, along with protection of public health and safety. The Presidential Memorandum also required the FAA to issue a notice of proposed rulemaking (NPRM) establishing national standards for air tour operations over national parks.

The proposed rule for RMNP was to be issued within 90 days. On May 15, 1996 (61 FR 24382), the FAA published a NPRM that proposed several methods of preserving the natural park experience of RMNP by restricting aircraft-based sightseeing flights: (1) A total ban (2) limits on operations, and (3) voluntary agreements. The NPRM indicated that the FAA would select a viable alternative based on comments received and other pertinent information, identify a proposed alternative for final rulemaking, and if rulemaking was selected, issue an EA for public comment. The NPRM indicated that the EA would evaluate the alternatives identified for detailed study and assess the current condition and the preferred alternative.

To enhance opportunities for public participation, the FAA reopened the comment period on the NPRM to allow comment on a Draft EA that addressed

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the alternatives in the NPRM. In preparing the final EA, the FAA considered the public comments on environmental issues. Those comments were limited in number, and mainly addressed the NPRM itself. The majority of comments on the Draft EA were favorable to the implementation of the NPRM as it applies to a total of air tour operations in RMNP, e.g., citing excessive noise, reduced safety, and loss of quality wilderness experience if tour operations were allowed. A minority of commenters, virtually all representing aviation interests, voiced opposition to any regulation of overflights at RMNP, e.g., citing unreasonable interference with interstate and intrastate commerce, FAA's lack of statutory authority to implement the NPRM, and that air tourism creates less pollution than ground visitors. In response to comments, the FAA has decided to take temporary action here, complete a review of the temporary ban within twenty-four months, and proceed to consider a national rule that will supersede any temporary ban that remains in effect.

The FAA by issuance of the proposed Final Rule would temporarily ban operators from conducting commercial air tour operations within the RMNP Special Flight Rules Area (SFRA). The ban on commercial air tour operations is the preferred alternative for a temporary period because it appears to be the most efficient and viable method of preserving the natural enjoyment of the visitors to RMNP. In application and result it would assure that the environment relative to air tour operators will not be degraded while the benefits of a temporary ban are evaluated or relevant national standards are developed. Within twenty-four months of the effective date of this temporary ban, the FAA, in conjunction with the National Park Service (NPS), will complete a review of the temporary ban and publish its findings in the **Federal Register**. The FAA will determine whether the ban continues to be necessary to meet the objectives of the FAA and NPS. If the Proposed Final Rule is not repealed by a separate rulemaking, it will expire as soon as a general rule on national standards is adopted.

Purpose

National parks are unique resources that have been provided special protection by law. The FAA and the NPS recognize that commercial aviation sightseeing tours, once initiated in national parks, tend to increase to levels that potentially adversely affect visitor enjoyment and park values.

The special flight rules in the vicinity of the RMNP seek to preserve the natural environment of RMNP from potential future overflights by commercial sightseeing aviation tour operators. Several operators have recently explored the possibility of conducting tour flights over RMNP and the park has identified potential impacts from such activities. The NPS has also determined that such impacts would not be acceptable given the particular circumstances at the park, and has identified a need to take preventive action.

Experience demonstrates a trend of increased commercial air tour overflight at other national parks. In addition, the Governor of Colorado, members of the Colorado congressional delegation, and other officials have requested regulatory action to place a preemptive ban on air tour operations to preserve visitor enjoyment.

The RMNP rule is being adopted to respond to the very unique circumstances surrounding this park, as explained in detail in the proposed Final Rule and Final EA. Among the unique circumstances is that it has a high percentage of elevations above 10,000 feet above ground level (AGL) and has roads that afford numerous opportunities for viewing its vistas. Park officials estimate that fifty percent of the park can be seen from 149 miles of its roads. it features Trail Ridge Road, the highest continuous paved road in the country, which offers spectacular vistas that encompass approximately 415 squire miles of parkland. Further, there is strong local support for a ban on air tour overflights.

Environmental Impacts

The FAA has prepared the EA for the proposed Final Rule consistent with FAA Order 1050.1D, Para. 35. The major categories of concern are noise, wildlife, historic and cultural resources, and air quality. Since there are no tours at present, modified Alternative 1, the temporary ban, would maintain the existing environment relative to such operations. Based upon consultation with the US Fish and Wildlife Service, there are no concerns about potential impacts on threatened or endangered species. Based upon consultation with the Colorado State Historic Preservation Society, in its capacity as the State Historic Preservation Office for Colorado, there are no potentially significant effects on historic or cultural properties. The requirement to determine conformity with the State Air Quality Implementation Plan pursuant to Section 176(c) of the Clean Air Act as amended in 1990, does not apply because the area is designated attainment for all criteria pollutants. Modified Alternative 1, the temporary ban, should have a beneficial impact by reducing potential emissions. Implementation of the other alternatives and the No Action Alternative should not appreciably affect air quality. Regarding Section 4(f) of the Department of Transportation Act, Section 4(g) is not triggered because the proposed Final Rule does not involve construction activity so as to cause actual, physical use of RMNP. Further, the proposed Final Rule potentially reduces rather than increase noise levels, and accordingly does not substantially interfere with the use and value of RMNP, resulting in a constructive use. The EA has not disclosed potentially significant direct or indirect impacts affecting the quality of the human environment. Based on this EA, it has been determined that no additional environmental analysis is required and that all aspects of the proposed Federal action are consistent with a Finding of No Significant Impact.

Alternatives

The FAA completed an analysis of various alternatives identified in the Proposed Final Rule, including an explanation for the selection of a modified Alternative 1 as the Preferred Alternative. Modified Alternative 1 is a temporary ban, which is to expire upon adoption of a national rule on air tour standards as explained above. In developing alternatives for study in this EA, the FAA was guided by the purposes and need for this rulemaking and its statutory mission and objectives, as well as those of the NPS. Alternatives other than the temporary ban that were considered were a limit on commercial aviation sightseeing tour below 2,000 feet AGL in RMNP, and voluntary agreements. The "no action" alternative, the continued possibility of air tour operators to conduct tour flights over RMNP, was also considered. It was found to have no significant environmental impacts. However, it does not meet the FAA's and NPS objective to initiate preventive action to preserve the natural enjoyment of visitors to the RMNP.

Conclusion

After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of the National Environmental Policy Act of 1969, as amended (NEPA) and that it will not

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significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA.

Dated: January 6, 1997.

Nancy B. Kalinowski,

Manager, Planning and Analysis Division, ATA–200, Air Traffic Airspace Management, FAA Headquarters.

[FR Doc. 97–664 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–1]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 30, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 7, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28679.
Petitioner: King County Department of Public Safety.
Sections of the FAR Affected: 14 CFR 135 and 49 CFR § 41102.
Description of Relief Sought: To permit King County Department of Public Service to be reimbursed for the use of its military surplus Bell UH–1H and OH–58C helicopters for law enforcement operations in support of other political subdivisions that are not of a common treasury with King County.

Dispositions of Petitions

Docket No.: 10633
Petitioner: FAA Technical Center
Sections of the FAR Affected: 14 CFR 91.117(a), 91.119(c), 91.159(a), and 91.303(e)
Description of Relief Sought/Disposition: To permit the FAA Technical Center to conduct flight operations in support of its research and development projects without meeting certain FAA regulations governing: 1) aircraft speed, 2) minimum safe altitudes, 3) cruising altitudes for flights conducted under visual flight rules, and 4) aerobatic flight. *GRANT, November 22, 1996, Exemption No. 1200B.*

Docket No.: 23495.
Petitioner: U.S. Army Aeronautical Service Agency.
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b).
Description of Relief Sought/Disposition: To continue to permit the Army to conduct certain military training operations at night without lighted aircraft position lights. *GRANT, November 22, 1996, Exemption No. 3946E.*

Docket No.: 26695.
Petitioner: Comair Aviation Academy.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/Disposition: To allow Comair Aviation academy to recommend graduates of its approved flight instructor-airplane certification course for flight instructor certificates without those graduates taking the FAA flight test. *GRANT, November 14, 1996, Exemption No. 5523C.*

Docket No.: 28445.
Petitioner: Aircraft Braking Systems Corporation.
Sections of the FAR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).
Description of Relief Sought/Disposition: To allow the petitioner to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements. *GRANT, October 31, 1996, Exemption No. 6542.*

Docket No.: 28563.
Petitioner: Mercer County Community College.
Sections of the FAR Affected: 14 CFR 141.91.
Description of Relief Sought/Disposition: To permit the petitioner to provide ground school courses over interactive television simultaneously to three institutions while notifying only one Flight Standards District Office (FSDO), instead of notifying each FSDO having jurisdiction over the individual satellite base. *DENIAL, November 12, 1996, Exemption No. 6543.*

Docket No.: 28628.
Petitioner: William W. Webb.
Sections of the FAR Affected: 14 CFR 91.109(a).
Description of Relief Sought/Disposition: To allow the petitioner to conduct certain flight instruction in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functional dual controls. *GRANT, November 21, 1996, Exemption No. 6544.*

[FR Doc. 97–662 Filed 1–10–97; 8:45 am]

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[Summary Notice No. PE–97–2]

Petitions for Exemptions; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I),

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dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 30, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 7, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28619.
Petitioner: Hal R. Horton.
Sections of the FAR Affected: 14 CFR 135.267(b)(2) and (c) and 135.269(b)(2), (3) and (4).
Description of Relief Sought: To permit F.S. Air Service, Inc. to assign its flight crewmembers and allow its flight crewmembers to accept a flight assignment of up to 16 hours of flight time during a 20-hour duty period for the purpose of conducting international emergency evacuation operations.

Docket No.: 28621.
Petitioner: Robert P. Silverberg.
Sections of the FAR Affected: 14 CFR 121.689(b) and 121.697.
Description of Relief Sought: To permit Kitty Hawk Aircargo, Inc. to implement a computerized flight following system for transmitting flight release reports to flight crewmembers.

Docket No.: 28724.
Petitioner: Northwest Airlines, Inc..
Sections of the FAR Affected: 14 CFR 119.67(a)(1).
Description of Relief Sought: To allow the petitioner to appoint an individual who does not hold an Airline Transport Pilot certificate to serve in the capacity of Director of Operations.

Docket No.: 28759.
Petitioner: Associated Air Center.
Sections of the FAR Affected: 14 CFR 25.2(b).
Description of Relief Sought: To allow the removal of emergency exist door R3 on a Boeing 757 airplane configured with a 46-passenger VIP interior, which would violate the requirements of § 25.807(c)(7) in effect on July 25, 1989, relative to the maximum 60 ft. distance allowed between exits.

Docket No.: 28761.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought: To permit the petitioner to demonstrate compliance with § 25.1435(b)(1) for the Boeing Model 757–300 by a range-of-motion test of the tail skid system at just below the system relief pressure in lieu of a static test.

[FR Doc. 97–663 Filed 1–10–97; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on January 28, 1997, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–800), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8452; FAX: (202) 267–5094.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on January 28, 1997, at 9:30 a.m., at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

The agenda for this meeting will include status reports from the part 103 (Ultralight Vehicles) Working Group and the IFR Fuel Requirements/ Destination and Alternate Weather Minimums Working Group. In addition, a new Assistant Chair will be introduced and meeting dates for the remainder of 1997 will be confirmed.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on January 3, 1997.

Michael Henry,

Acting Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–665 Filed 1–10–97; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting on the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting will be held on January 30, 1997 at 9:00 a.m. Arrange for oral presentations by January 15, 1997.

ADDRESSES: The meeting will be held at McDonnell Douglas, 3855 North Lakewood Boulevard, Building 800, Long Beach, CA 90808.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, ARM–209, FAA, 800 Independence

Avenue, SW, Washington, DC 20591, Telephone (202) 267–9682, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on January 30, 1997 at McDonnell Douglas, 3855 North Lakewood Boulevard, Long Beach, CA 90808.

The agenda will include:

- Opening Remarks.
- Review of Action Items.
- Report on Performance Standards Working Group Activities.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by January 30, 1997 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 7, 1997.

Ava L. Mims,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–787 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues, current rulemaking actions, and future activities and plans.

DATES: The meeting will be held on February 5, 1997, 11 a.m. or later, PST, to begin immediately following the Public Meeting on Advisory Circulars 27–1 and 29–2, Arrange for oral presentations by January 24, 1997.

ADDRESSES: The meeting will be held at the Anaheim Hilton and Towers, Huntingon Theater Room, 777 Convention Way, Anaheim, California 92802.

FOR FURTHER INFORMATION CONTACT: David Higginbotham, Office of Rulemaking, Aircraft & Airport Rules Division, ARM–200, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). The agenda will include status reports on each of the following:

1. Harmonization of Miscellaneous Rotorcraft Regulations.
2. Rotorcraft External Load Combination Safety Requirements.
3. Normal Category Gross Weight and Passenger Issues.
4. Performance and Handling Qualities Requirements.
5. Critical Parts.

Attendance is open to the public but will be limited to the space available. The public must make arrangements by January 24, 1997, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, on January 6, 1997.

Mark R. Schilling,

Assistant Executive Director for Rotorcraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–790 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), noticed is hereby given for the RTCA Technical Management Committee meeting to be held January 27, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve: a. Proposed Final Draft, Assessment of Radio Frequency Interference Relevant to the GNSS; b. Proposed Final Draft, Change 1, Minimum Operational Performance Standards for ATC Two-way Data Link Communications; c. Proposed Final Draft, Minimum Operational Performance Standards for Traffic Information Service Data Link Communications; d. Proposed Final Draft, Human Engineering Guidance for Data Link Systems; e. Proposed Final Draft, Minimum Aviation System Performance Standards: Required Navigation Performance for Area Navigation; f. Proposed Final Draft, Aeronautical Spectrum Planning for 1997–2010; g. Proposed Final Draft, Change 1, Minimum Operational Standards for Mode S Airborne Data Link Processor; h. Proposed Final Draft, Change 2, Minimum Operational Performance Standards for the Air Traffic Control Radar Beacon System/ Mode Select Airborne Equipment; (4) Discuss/Take Position on: a. FAA Request for a Special Committee on National Airspace System Restructuring; b. National Oceanic and Atmospheric Administration Request to Modify RTCA Document DO–204, Minimum Operational Performance Standards for 406 MHz ELT's; (5) Other Business (e.g., FAA Letter Concerning Receiver Front-end Performance in the HIRF Environment); (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on January 7, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–789 Filed 1–10–97; 8:45 am]

BILLING CODE 4810–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1996, there were eight applications approved. Additionally, two approved amendments to previously approved applications are listed.

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SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Johnstown-Cambria County Airport Authority, Johnstown, Pennsylvania.

Application Number: 96–02–C–00–JST.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue in This Decision: $14,250.

Charge Effective Date: November 1, 1993.

Charge Expiration Date: December 1, 1996.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Snow removal equipment, Terminal apron seal coat, Terminal building renovation study, Update the airport layout plan (ALP).

Decision Date: December 3, 1996.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 96–03–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $1,591,600.

Estimated Charge Effective Date: April 1, 2000.

Estimated Charge Expiration Date: September 1, 2000.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Construct taxiway N.

Decision Date: December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 286–5525.

Public Agency: Tri-State Airport Authority, Huntington, West Virginia.

Application Number: 96–02–C–00–HTS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $366,600.

Estimated Charge Effective Date: March 1, 1998.

Estimated Charge Expiration Date: February 1, 1999.

Classes of Air Carriers not Required to Collect PFC's: (1) Unscheduled Part 135 charter operators for hire to the general public; (2) unscheduled Part 121 charter operators for hire to the general public.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Tri-State Airport.

Brief Description of Projects Approved for Collection and Use: Prepare PFC application number 2, Repair slide runway 30 safety area.

Decision Date: December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6216.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Number: 96–03–C–00–BLI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $734,136.

Estimated Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: January 1, 1998.

Classes of Air Carriers not Required to Collect PFC's: (1) Scheduled air carriers operating aircraft with less than 10 seats; (2) non-scheduled air carriers and charter flights using aircraft with less than 10 seats.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Bellingham International Airport.

Brief Description of Projects Approved for Collection and Use: Part 150 land acquisition program.

Brief Description of Projects Approved for Collection: Alpha taxiway pull-out on north.

Decision Date: December 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Public Agency: City of Minot, North Dakota.

Application Number: 96–02–C–00–MOT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Decision: $280,477.

Estimated Charge Effective Date: March 1, 1999.

Estimated Charge Expiration Date: August 1, 2000.

Classes of Air Carriers not Required to Collect PFC's: All air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Minot International Airport.

Brief Description of Projects Approved for Collection and Use: Acquire additional land adjacent to runway 13/31 and install security fencing, PFC amendment and use of application, Rehabilitate taxiways A and C, Perimeter fencing north and north-east sides, Environmental assessment for runway 8/26.

Brief Description of Projects Approved for Use: Acquire land adjacent to runway 13/31, Perimeter fencing east and south sides.

Decision Date: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Bismarck Airports District Office, (701) 250–4385.

Public Agency: Indianapolis Airport Authority, Indianapolis, Indiana.

Application Number: 96–02–C–00–IND.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Approval Net PFC Revenue In This Decision: $36,622,175.

Estimated Charge Effective Date: November 1, 2001.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required to Collect PFC'S: Air Taxi/commercial operators exclusively filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Indianapolis International Airport.

Brief Description of Projects Approved for Collection and Use: Airfield de-icing materials storage facility, NPDES storm water permit, Storm water control basins, Taxiway access stubs, Update airport master plan and revise ALP, Update Part 150 noise plan, Construction of taxiway B, Extent taxiway R, Rehabilitation and extension of tug roads, Pavement removal, Construct taxiway N, Construct taxiway N connector, Update environmental assessment, Construct hush house, Purchase operational equipment, Construct international arrivals gate, Perimeter road connection.

Decision Data: December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (847) 294–7335.

Public Agency: County of Dane, Madison, Wisconsin.

Application Number: 96–02–U–00–MSN.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved for Use in This Decision: $6,896,000.

Charge Effective Date: September 1, 1993.

Estimated Charge Expiration Date: May 1, 2000.

Class of Air Carriers not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Construct runway 3/21.

Decision Date: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: City of Laredo, Texas.

Application Number: 96–02–U–00–LRD.

Application Type: Use of PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved for Use in this Decision: $6,303,846.

Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: July 1, 2010.

Class of Air Carriers not Required To Collect PFC'S: No charge from previous decision.

Brief Description of Projects Approved For use: PFC reimbursable projects, Construct new passenger terminal building and related improvements, Reconstruct runway 17L/35R, Construct a parallel taxiway to runway 17L/35R, Airfield signage improvements, Airfield electrical improvements.

Decision Date: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amendment estimated charge expiration date
93–01–C–01–IND Indianapolis, IN.	12/05/96	$117,344,750	$78,322,575	07/01/05	11/01/01
93–01–C–01–TOL Toledo, OH.	12/23/96	2,750,896	2,246,374	09/01/96	09/01/96

Issued in Washington, D.C. on January 7, 1997.

Joseph M. Hebert,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 97–788 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Allegheny and Washington Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed transportation improvements between I–79 and the Mon/Fayette Toll Expressway, known locally as a Southern Beltway Transportation Project, in Washington County, Pennsylvania. This notice supersedes the Notice of Intent published in the **Federal Register**, Volume 58, Number 154, Page 43005, on August 12, 1993, for the Southern Beltway.

FOR FURTHER INFORMATION CONTACT: David W. Cough, District Engineer, Federal Highway Administration, 228 Walnut Street, Room 558, Harrisburg, Pennsylvania 17101–1720, Telephone: (717) 782–3411; Daryl L. Kerns, Turnpike Liaison Engineer, Pennsylvania Department of Transportation, 113 Transportation & Safety Building, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–0185; or Paul A. Edmunds, Acting Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, Pennsylvania 17106–7676, Telephone: (717) 939–9551.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission will prepare an Environmental Impact Statement (EIS) on a proposal for a limited access toll highway in Washington County, south of Pittsburgh, Pennsylvania. The proposed highway would extend from the Interstate south of the Allegheny County and Washington County line, easterly to the Mon/Fayette Expressway, about 21 kilometers (13 miles) south of Pittsburgh. The study corridor is about 19 kilometers (12 miles) long and about 2.5 kilometers (1.5 miles) wide.

The proposed highway is considered necessary to improve the movement of people and goods from the Mon Valley to Interstate 79 in the area south of Pittsburgh. Preliminary studies and public and agency input have indicated that the project needs cannot be met by Transportation System Management (TSM) activities, upgrading existing roadways or mass transit improvements. Alternatives now under consideration are various alignments for a new tolled expressway and taking no action.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and Local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area during the development of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting was held on August 18 and 19, 1993, in Washington, Pennsylvania. Federal, state, regional, county, and municipal agencies attended and participated.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interest parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal

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programs and activities apply to this program)

J. Stephen Guhin,

Assistant Division Administrator, Pennsylvania Division, FHWA.

[FR Doc. 97–678 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Allegheny and Washington Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed transportation improvements between State Route 60 and US Route 22, known locally as a Southern Beltway Transportation Project and the Findlay Connector, in Allegheny and Washington Counties, Pennsylvania. This notice supersedes the Notice of Intent published in the **Federal Register**, Volume 58, No. 154, Page 43005, on August 12, 1993, for the Southern Beltway, and the Notice of Intent published in the **Federal Register**, Volume 56, No. 209, Pages 55707 and 55708 on October 29, 1991, for the Findlay Connector.

FOR FURTHER INFORMATION CONTACT: David W. Cough, District Engineer, Federal Highway Administration, 228 Walnut Street, Room 558, Harrisburg, PA 17101–1720, Telephone: (717) 782–3411; Daryl L. Kerns, Turnpike Liaison Engineer, Pennsylvania Department of Transportation, 1113 Transportation & Safety Building, Harrisburg, PA 17120, Telephone: (717) 787–0185; or Paul A. Edmunds, Acting Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, PA 17106–7676, Telephone: (717) 939–9551.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission will prepare an Environmental Impact Statement (EIS) on a proposal for a limited access toll highway in Allegheny and Washington Counties, west of Pittsburgh, PA. The proposed improvement would extend from an interchange on State Route 60 west of the Pittsburgh International Airport (24 kilometers [15 miles] west of Pittsburgh), southwesterly to U.S. Route 22. The improvement corridor is about 10 kilometers (6.2 miles) long and about 2 kilometers (1¼ miles) wide. The proposed improvement is considered necessary to provide direct access from the south and west to the Pittsburgh International Airport area, and to provide improved access to planned development in the Airport area. Preliminary studies and public and agency input for the Southern Beltway Transportation Project and for the Findlay Connector have concluded that the project needs for both projects can be met with a single transportation project in the corridor between State Route 60 and U.S. Route 22. These studies also indicated that the project needs cannot be met by Transportation System Management activities, upgrading existing roadways or mass transit improvements. Alternatives now under consideration are various alignments for a new tolled expressway and taking no action.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area during the development of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting was held on August 18 and 19, 1993, in Washington, PA. Federal, state, regional, county, and municipal agencies attended and participated.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

J. Stephen Guhin,

Assistant Division Administrator, Pennsylvania Division, FHWA.

[FR Doc. 97–680 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Allegheny and Washington Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed transportation improvements between US Route 22 and I–79, known locally as a Southern Beltway Transportation Project, in Allegheny and Washington Counties, Pennsylvania. This notice supersedes the Notice of Intent published in the **Federal Register** Volume 58, Number 154, Page 43005, on August 12, 1993, for the Southern Beltway.

FOR FURTHER INFORMATION CONTACT: David W. Cough, District Engineer, Federal Highway Administration, 228 Walnut Street, Room 558, Harrisburg, Pennsylvania 17101–1720, Telephone: (717) 782–3411; Daryl L. Kerns, Turnpike Liaison engineer, Pennsylvania Department of Transportation, 1113 Transportation & Safety Building, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–0185; or Paul A. Edmunds, Acting Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, Pennsylvania 17106–7676, Telephone: (717) 939–9551.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission will prepare an Environmental Impact Statement (EIS) on a proposal for a limited access toll highway in Allegheny and Washington Counties, southwest of Pittsburgh, Pennsylvania. The proposed highway would extend from US Route 22, west of Pittsburgh, south easterly to Interstate 79, south of the Allegheny County-Washington County line, 24 kilometers (15 miles) southwest of Pittsburgh. The study corridor is about 19 kilometers (12 miles) long and up to 5.6 kilometers (3.5 miles) wide.

The proposed highway is considered necessary to improve the movement of people and goods in a rapidly growing area southwest of Pittsburgh. Preliminary studies and public and agency input have indicated that the project needs cannot be met by Transportation System Management (TSM) activities, upgrading existing roadways or mass transit improvements. Alternatives now under consideration are various alignments for a new tolled expressway and taking no action.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area

during the development of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting was held on August 18 and 19, 1993, in Washington, Pennsylvania. Federal, state, regional, county, and municipal agencies attended and participated.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

J. Stephen Guhin,

Assistant Division Administrator, Pennsylvania Division, FHWA.

[FR Doc. 97–681 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Elk County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA).

ACTION: Withdrawal of Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will not be prepared for a proposed highway project in Elk County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, District Engineer, Federal Highway Administration, 228 Walnut Street, Room 558, Harrisburg, Pennsylvania 17101-1720, Telephone: (717) 782-3461 or James R. Bathurst, P.E., Design Services Engineer, Pennsylvania Department of Transportation, 1924-30 Daisy Street, Clearfield, Pennsylvania 16830, Telephone (814) 765-0437.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will now prepare an Environmental Assessment and Engineering Basis Reports for a section of U.S. Route 219 in Elk County, Pennsylvania. Located in Johnsonburg, Pennsylvania, this two-mile project will improve the safety and relieve traffic congestion on this section of U.S. Route 219. The northern terminus and study area limits will be the existing two lanes of U.S. Route 219 just north of the Johnsonburg. The southern terminus and study area limits will be approximately one-half mile south of Pennsylvania Route 255.

Five alternatives are being evaluated during the course of the study. Based on existing and projected traffic volumes, all build alternatives will require a two-lane facility to accommodate the traffic volumes. The alternatives under consideration are upgrading the existing facility, transportation system management, two alternatives on new location west of existing U.S. Route 219, and the "NO BUILD" alternate. Mass transmit and multi-modal design will not be considered on this project.

An active public participation program has been implemented on this project. A Citizens Advisory Committee has been actively involved throughout the design and environmental process. Public meetings have been held to ensure public input and participation.

The alternatives developed for this project have caused no public controversy on environmental grounds. Based upon the studies performed and consultation with both Federal and State Environmental Resource Agencies, an Environmental Assessment Evaluation will be performed to determine whether the subject project will have any significant impacts on the environment.

(Catalog of Federal Domestic Assistance Program Name 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-government consultation on Federal Programs and activities apply to this program)

Manuel A. Marks,

Division Administrator, Federal Highway Administration.

[FR Doc. 97–676 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket Nos. 96–102; Notice 2, 96–105; Notice 2, 96–107; Notice 2, 96–111; Notice 2, 96–112; Notice 2]

Decision that Certain Nonconforming Motor Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the

petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 8, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible For Importation

1. Docket No. 96–102
   Nonconforming Vehicles: 1990–1993 Mercedes-Benz 300E 4Matic Passenger Cars
   Substantially similar U.S.-certified vehicles: 1990–1993 Mercedes-Benz 300E 4Matic Passenger Cars
   Notice of Petition published at: 61 FR 52992 (October 9, 1996)
   Vehicle Eligibility Number: VSP–192
2. Docket No. 96–105
   Nonconforming Vehicle: 1989 Honda Prelude
   Substantially similar U.S.-certified vehicle: 1989 Honda Prelude
   Notice of Petition published at: 61 FR 52993 (October 9, 1996)
   Vehicle Eligibility Number: VSP–191
3. Docket No. 96–107
   Nonconforming Vehicle: 1992 Mercedes-Benz 300TE Passenger Car
   Substantially similar U.S.-certified vehicle: 1992 Mercedes-Benz 300TE
   Notice of Petition published at: 61 FR 54252 (October 17, 1996)
   Vehicle Eligibility Number: VSP–193
4. Docket No. 96–111
   Nonconforming Vehicles: 1994, 1995, and 1996 Jaguar XJS Passenger Cars
   Substantially similar U.S.-certified vehicles: 1994, 1995, and 1996 Jaguar XJS
   Notice of Petition published at: 61 FR 56998 (November 5, 1996)
   Vehicle Eligibility Number: VSP–195
5. Docket No. 96–112
   Nonconforming Vehicles: 1990–1995 BMW 5 Series Passenger Cars
   Substantially similar U.S.-certified vehicles: 1990–1995 BMW 5 Series
   Notice of Petition published at: 61 FR 56997 (November 5, 1996)
   Vehicle Eligibility Number: VSP–194

[FR Doc. 97–767 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–127; Notice 1]

Notice of Tentative Decision That Nonconforming 1986 Daimler Limousines Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on tentative decision that nonconforming 1986 Daimler Limousines are eligible for importation.

SUMMARY: This notice requests comments on a tentative decision by the National Highway Traffic Safety Administration (NHTSA) that a 1986 Daimler Limousine that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on this tentative decision is February 12, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

On May 9, 1996, NHTSA received from Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer No. 90–009) a petition to decide whether a 1987 Daimler Limousine that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States. Champagne contended that this vehicle is eligible for importation under 49 U.S.C. 30141(a)(1)(A), on the basis that it is substantially similar to a 1985 Daimler Limousine that NHTSA determined to be eligible for importation through a notice published on July 20, 1992 at 57 FR 32051.

After reviewing the petition, NHTSA informed Champagne that the petition could not receive further consideration because the "substantially similar" vehicle it identified was not originally manufactured for import into and sale in the United States, as required under 49 U.S.C. 30141(a)(1)(A)(i), and was not of the same model year as the vehicle that was sought to be imported, as required under 49 U.S.C. 30141(a)(1)(A)(iii). In light of these circumstances, NHTSA advised Champagne to modify its petition to request that the vehicle be determined eligible for importation under 49 U.S.C. 30141(a)(1)(B), on the basis that its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Although Champagne did not formally modify the petition, it did submit to NHTSA a copy of a letter from Jaguar Cars (Jaguar), the United States representative of Jaguar Cars, Ltd., the vehicle's manufacturer. This letter identified the vehicle that Champagne seeks to import as, in actuality, a 1986 Daimler Limousine, and enumerated the Federal motor vehicle safety standards that the vehicle does not meet. Those are Standard Nos. 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 108 *Lamps, Reflective Devices, and Associated Equipment*, 110 *Tire Selection and Rims*, 114 *Theft Protection*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 205

Glazing Materials, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, *and* 301 *Fuel System Integrity*. Additionally, Jaguar stated that the vehicle does not meet the vehicle identification number requirements of 49 CFR part 565, or the Bumper Standard, found at 49 CFR part 581.

Champagne submitted to NHTSA an additional letter, from the Jaguar Daimler Heritage Trust of Coventry, England, stating that the vehicle it seeks to import was hand built, and of a type produced by Jaguar Cars Ltd. until 1992. This letter also stated that although there were "small external cosmetic changes" from vehicle to vehicle, "the external shape, style, engine, gearbox, and chassis of the car all remained the same throughout its production build." Moreover, the letter provided confirmation that a Daimler Limousine built in 1986 "would be no different than a similar car which was built in 1985 apart from any optional extras which may have been ordered * * *."

Based on the information from the Jaguar Daimler Heritage Trust indicating that Daimler Limousines are in all essential respects identical from model year to model year, and NHTSA's prior determination that a 1985 Daimler Limousine is eligible for importation, NHTSA has tentatively decided that the 1986 Daimler Limousine that is the subject of Champagne's petition is eligible for importation.

Tentative Decisions

NHTSA hereby tentatively decides that a 1986 Daimler Limousine that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, those standards.

Vehicle Eligibility Number

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. If this tentative decision is made final, all vehicles admissible under that decision will be assigned vehicle eligibility no. VCA–1.

Comments

Section 30141(b) of Title 49, U.S. Code requires NHTSA to provide a minimum period for public notice and comment on decisions made on its own initiative consistent with ensuring expeditious, but full consideration and avoiding delay by any person. NHTSA believes that a minimum comment period of 30 days is appropriate for this purpose. Interested persons are invited to submit comments on the tentative decision described above. It is requested, but not required, that five copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of NHTSA's final decision will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: January 8, 1997.

Ricardo Martinez, M.D.,

Administrator.

[FR Doc. 97–793 Filed 1–10–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Docket No. AB–319 (Sub-No. 3X)]

Florida Central Railroad Company, Inc.; Abandonment Exemption in Seminole County, FL

Florida Central Railroad Company, Inc. (FCEN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.2 miles of railroad between milepost F–1.1 and the end of the track at milepost F–0.9 in Forest City, Seminole County, FL.

FCEN has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 12, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 23, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 3, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

FCEN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 17, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1997.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–733 Filed 1–10–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 26, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0916.

Regulation Project Number: E.E.–63–84 TEMP and E.E.–96–85 NPRM.

Type of Review: Extension.

Title: Effective Dates and Other Issues Arising Under the employee Benefit Provisions of the Tax Reform Act of 1984.

Description: These temporary regulations provide rules relating to effective dates and other issues arising under sections 91, 223 and 511–561 of the Tax Reform Act of 1984.

Respondents: Individuals or households.

Estimated Number of Respondents: 12,800.

Estimated Burden Hours Per Respondent: 31 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1545–1290.

Regulation Project Number: FI–81–86 Final.

Type of Review: Extension.

Title: Bad Debt Reserves of Banks.

Description: Sections 585(c) of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. The information required by section 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with section 585(c).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 625 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–727 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

December 27, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1545–0043.

Form Number: FMS–133 and FMS–135.

Type of Review: Reinstatement.

Title: Notice of Reclamation Electronic Funds Transfer, Federal Recurring Payments Request for Debit, Electronic Funds transfer, Federal Recurring Payments.

Description: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FMS Form 133 is used by Treasury to notify the financial organization (FO) of the FO's accountability concerning the funds. When the FO's do not respond to the FMS 133, Treasury then prepares FMS Form 135 an sends it to the Federal Reserve Bank which services the FO to request the FRB to debit the account of the FO.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 55,000.

Estimated Burden Hours Per Respondents: 12 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 50,930 hours.

OMB Number: 1510–0045.

Form Number: SF 150.

Type of Review: Reinstatement.

Title: Trace Request for EFT Payment.

Description: Purpose is to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The form is designed to help the financial organization locate any problem and to keep the customer (beneficiary) informed of any action taken.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 80,775.

Estimated Burden Hours Per Response: 8 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 10,770 hours.

Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–728 Filed 1–10–97; 8:45 am]

BILLING CODE 4810–35–P

Submission for OMB Review; Comment Request

January 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0001.

Form Number: None.

Type of Review: Extension.

Title: Air Cargo Manifest.

Description: Customs Form 7509 is the source of information that provides

for the accountability, integrity, and security of goods in air commerce that are imported into the United States.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 34 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 99,116 hours.

OMB Number: 1515–0032.

Form Number: CF 5125.

Type of Review: Extension.

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use.

Description: The Customs Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels and foreign or domestic vessels involved in international trade. The form also certifies the use: total consumption with secure storage for use on next voyage.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 42 hours.

OMB Number: 1515–0041.

Form Number: CF 6059B.

Type of Review: Extension.

Title: U.S. Customs Declaration.

Description: The U.S. Customs Declaration, Customs Form 6059B, facilitates the clearance of persons and their goods arriving in the territory on the U.S. by requiring basic information necessary to determine Customs exception status and if any duties of taxes are due. The form is also used for the enforcement of Customs and other agencies laws and regulations.

Respondents: Individuals or households.

Estimated Number of Respondents: 42,000,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,100,000 hours.

OMB Number: 1515–0050.

Form Number: CF 3347 and CF 3347A.

Type of Review: Extension.

Title: Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry if Made by an Agent.

Description: Customs Form 3347 and 3347A allows an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permits a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 5,700.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 570 hours.

OMB Number: 1515–0108.

Form Number: None.

Type of Review: Extension.

Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the United States.

Description: The declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration; and, it is used to insure Customs control over duty-free merchandise.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 250 hours.

OMB Number: 1515–0140.

Form Number: None.

Type of Review: Extension.

Title: Textile and Textile Products.

Description: Information is needed for Customs to be able to identify the Country of Origin of Textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or United States importer to be filed with the entry.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 45,810.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 133,582 hours.

OMB Number: 1515–0142.

Form Number: None.

Type of Review: Reinstatement.

Title: Transfer of Cargo to a Container Station.

Description: The container station operator may file an application for transfer of a container intact to a container station which is moved from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 360.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,495 hours.

OMB Number: 1515–0203.

Form Number: None.

Type of Review: Extension.

Title: Reporting Requirements for Vessels, Vehicles and Individuals.

Description: These regulations pertain to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals and informs the public regarding applicable penalty, seizure, and forfeiture provisions for violating these requirements.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Burden Hours Per Respondent: 45 seconds.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–729 Filed 1–10–97; 8:45 am]

BILLING CODE 4820–02–P

Submission to OMB for Review; Comment Request

January 7, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by

calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0666.
Form Number: IRS Form 673.
Type of Review: Extension.
Title: Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code.
Description: Form 673 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.
Respondents: Individuals or households.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25,000 hours.

OMB Number: 1545–1029.
Form Number: IRS Form 8693.
Type of Review: Extension.
Title: Low-Income Housing Credit Disposition Bond.
Description: Low-income Housing Credit Disposition Bond, is needed per Internal Revenue code (IRC) section 42(j)(6) to post bond and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate forms as determined by the Internal Revenue Service.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 minutes
Learning about the law or the form—14 minutes
Preparing, copying, assembling and sending the form to the IRS—40 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 1,120 hours.

OMB Number: 1545–1041.
Regulation Project Number: PS–102–86 Final.
Type of Review: Extension.
Title: Cooperative Housing Corporations.
Description: This regulation provides an elective alternative to the proportionate share rule for allocating interest and taxes to the tenant-stockholders of cooperative housing corporations.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Other (one-time election).
Estimated Total Reporting Burden: 625 hours.

OMB Number: 1545–1353.
Regulation Project Number: FI–189–84 Final.
Type of Review: Extension.
Title: Debt Instruments with Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.
Description: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.
Respondents: Business or other for-profit, Individuals or households, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 525,000.
Estimated Burden Hours Per Respondent: 21 minutes.
Frequency of Response: Other (per issuance of debt instrument with original issue discount).
Estimated Total Reporting Burden: 185,500 hours.

OMB Number: 1545–1369.
Form Number: IRS Form 9514.
Type of Review: Extension.
Title: Supervisor Assessment—SES Candidate Development Program.
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 300.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,500 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–730 Filed 1–10–97; 8:45 am]
BILLING CODE 4830–01–P

Fiscal Service

Judgment Fund

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Financial Management Service (FMS) is announcing the transfer of the Judgment Fund function from the General Accounting Office to the FMS and the address to request certifications for payments from Judgment Fund accounts.

FOR FURTHER INFORMATION CONTACT: For additional information, contact the Judgment Fund Branch, room 6D33, 3700 East-West Hwy., Hyattsville, MD 20782; (202) 874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to section 211 of Pub. L. 104–53, the Legislative Branch Appropriations Act of 1996 (109 Stat. 535), certain claims-related functions of the Comptroller General, including the Judgment Fund, were transferred to the Executive Branch. Effective June 30, 1996, the Secretary of the Treasury has been delegated responsibility for performing the Judgment Fund function.

Consequently, all requests for certifications for payments from the Judgment Fund accounts should be sent to the Judgment Fund Branch, room 6D33, 3700 East-West Hwy., Hyattsville, MD 20782. Sending such a request to the General Accounting Office may result in delay of payment, or lack of payment. Additional procedures for obtaining certifications for payments from Judgment Fund accounts may be found in I TFM 6–3100, obtainable from the address above.

Dated: January 7, 1997.

Diane E. Clark,
Assistant Commissioner, Financial Information.
[FR Doc. 97–732 Filed 1–10–97; 8:45 am]
BILLING CODE 4810–35–M

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–6

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–6, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE Plan).

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, Room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Savings Incentive Match Plan for Employees of Small Employers (SIMPLE Plan).

OMB Number: 1545–1502.

Notice Number: Notice 97–6.

Abstract: This notice provides guidance for employers and trustees regarding how they can comply with the requirements of Internal Revenue Code section 408(p) in establishing and maintaining a SIMPLE Plan, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 2 hours, 34 minutes.

Estimated Total Annual Burden Hours: 769,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–772 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

[INTL–656–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–656–87 (TD 8701), Treatment of Shareholders of Certain Passive Foreign Investment Companies (§§ 1.1291–9(d) and 1.1291–10(d)).

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, Room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545–1507.

Regulation Project Number: INTL–656–87.

Abstract: The reporting requirements affect United States persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The requirements enable the Internal Revenue Service to identify PFICs, United States shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions, and deferred tax amounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 131,250.

Estimated Time Per Respondent: 46 minutes.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–773 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Confirmation Letter

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a Confirmation Letter.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Confirmation Letter.

OMB Number: 1545–1521.

Abstract: It is necessary that the confirmation letter be issued during the testing phase of the program for contracting out collection activities so any problems associated with the contracting out process can be quickly identified. In addition, this information will be used to determine the accuracy of Internal Revenue Service and private vendors' records with regard to taxes due and payments submitted.

Current Actions: There are no changes being made to the confirmation letter at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 225.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 56.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–774 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Notice 97–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–12, Electing Small Business Trusts.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electing Small Business Trusts.

OMB Number: 1545–1523.

Notice Number: Notice 97–12.

Abstract: This notice provides the time and manner for making the Electing Small Business Trust election to be a shareholder of an S corporation pursuant to Internal Revenue Code section 1361(e)(3).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–775 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Revenue Procedure 96–60

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–60, Procedure for filing Forms W–2 in certain acquisitions.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedure for filing Forms W–2 in certain acquisitions.

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 96–60.

Abstract: The information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Internal Revenue Code sections 6051 and 6011 for Forms W–2 and 941.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 553,500.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 110,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–776 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 4255

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4255, Recapture of Investment Credit.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue 1NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Recapture of Investment Credit

OMB Number: 1545–0166

Form Number: Form 4255

Abstract: Internal Revenue Code section 50(a) requires that a taxpayer's income tax be increased by the investment credit recapture tax if the taxpayer disposes of investment credit property before the close of the recapture period used in figuring the original investment credit. Form 4255 provides for the computation of the recapture tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 12 hr., 53 min.

Estimated Total Annual Burden Hours: 1,031,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 1996

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–778 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 1120X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120X, Amended U.S. Corporation Income Tax Return.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622 3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amended U.S. Corporation Income Tax Return.

OMB Number: 1545 0132.

Form Number: 1120X.

Abstract: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120 A. The data is used to determine if the correct tax liability has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 67,302.

Estimated Time Per Respondent: 17 hr., 7 min.

Estimated Total Annual Burden Hours: 1,151,537.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–779 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 706–CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–CE, Certificate of Payment of Foreign Death Tax.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,250.

Estimated Time Per Respondent: 1 hr., 43 min.

Estimated Total Annual Burden Hours: 3,848.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–780 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 4029

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

OMB Number: 1545–0064.

Form Number: Form 4029.

Abstract: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,754.

Estimated Time Per Respondent: 1 hr., 3 min.

Estimated Total Annual Burden Hours: 3,942.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–781 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8709

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8709, Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.

OMB Number: 1545–1053.

Form Number: Form 8709.

Abstract: This form is used by foreign governments and international organizations, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Internal Revenue Code section 892. The withholding agent uses the information to determine the appropriate withholding, if any.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30,000

Estimated Time Per Respondent: 1 hr., 25 min.

Estimated Total Annual Burden Hours: 42,300

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–782 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 5310–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5310–A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business

OMB Number: 1545–1225.

Form Number: 5310–A.

Abstract: Internal Revenue Code section 6058(b) requires plan administrators to notify IRS of any plan mergers, consolidations, spinoffs, or transfers of plan assets or liabilities to another plan. Code section 414(r) requires employers to notify IRS of separate lines of business for their deferred compensation plans. Form 5310–A is used to make these notifications.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 9 hrs., 5 min.

Estimated Total Annual Burden Hours: 136,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–783 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Forms 5310 and 6088

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5310, Application for Determination Upon Termination, and Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

DATES: Written comments should be received on or before March 14, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 5310, Application for Determination Upon Termination, and Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

OMB Number: 1545–0202.

Form Number: Forms 5310 and 6088.

Abstract: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. Form 5310 is used to request an IRS determination letter about the plan's qualification status (qualified or non-qualified) under Internal Revenue Code section 401(a). Form 6088 is used to show the amounts of distributable benefits to participants in the plan.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 34 hr., 35 min.

Estimated Total Annual Burden Hours: 1,037,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–784 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

[Project no. TIRNO–97–R–00018]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) intends to sponsor a Federally Funded Research and Development Center (FFRDC) to provide system engineering and technical assistance along with strategic advice and guidance. Also required will be technical management capabilities to facilitate the operation and modernization of Tax Systems. The FFRDC will be established under the authority of 48 CFR Subpart 35.017. The FFRDC shall provide technical advice and assistance to the IRS and/or its contractors in the areas of program and project management. This will consist of expert advice/guidance focused on increasing the effectiveness and efficiency of strategic information management and technical activities. The FFRDC will be available for IRS's Chief Information Officer (CIO) or the CIO's designees or Department of the Treasury executive support. Examples of this support may include, but are not limited to the following:—Information Systems (IS) input to business case development—Business Process Analysis—IS management and oversight of IRS contractors—Evaluation of IRS contractors' performance and development of performance measures—Development of recommendations regarding a prime integration contractor—Evaluation of IRS effectiveness—Ad hoc technical advice—Acquisition Support as neccessary. This procurement will not involve a request for proposals. However, expressions of interest and qualification or capability statements should be submitted by interested entities who are capable of fulfilling this requirement. The qualification or capability statements received will be used to select potentially qualified entities, which may at a later date be requested to submit additional information and/or provide an oral presentation as part of a final selection. Please submit comments on this action no later than January 28, 1997. This is the first of three announcements issued under the authority of 48 CAR 5.205 (b).

DATES: The IRS will appreciate receiving qualification or capability statements at your earliest convenience, however, this information must be received within 15 days after the third (3rd) publication of this announcement to be considered.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End Users Systems Branch, 6009 Oxon Hill Road, Oxon Hill, MD 20745 7th floor/ Constellation Building M:P:I:E

SUPPLEMENTARY INFORMATION: Upon request, a copy of a scope of work for the intended FFRDC will be mailed to any interested party or interested parties can download the information from the IRS Procurement Bulletin Board System (PBBS). Please follow these instructions to access the PBBS, dial the following number (202) 799–0943. Your system must be set at the following defaults: Baud Rate of 9600, No Parity, 8 Data Bits, 1 Stop Bit. The system will prompt you for your name, business name and address, the kind of system you are

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using, user ID and a password of your choice. At the Main System Menu the following will appear "Make your selection (T,F,E, etc....):" Type "L" and press the <ENTER> Key. Type "S" to select a library and press the <ENTER> Key. Type *"RFP"* and press the <ENTER> Key. Type "F" and press the <Enter> Key to list files. Press the <ENTER> Key to view the list of files. Type "C" to view the file list. Download the file *"FFRDC.DOC"*. The system operates 24 hours a day 7 days a week. Send a written request, for a copy of the statement of work, to the contracting officer at the address specified above. No oral communication will be accepted. Qualification or Capability Statement, should be submitted in written form to the Contracting Officer at the address specified above. Responses to this notice should make reference to Project no. TIRNO–97–R–00018.

James A. Williams,

Acting, Assistant Commissioner (Procurement).

[FR Doc. 97–777 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 62, No. 8

Monday, January 13, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 160 and 161

[Docket No. 96–075–1]

Accredited Veterinarians; Optional Digital Signature

Correction

Proposed rule document 97–177 beginning on page 597 was inadvertently published in the Rules and Regulations section of the issue of Monday, January 6, 1997. It should have appeared in the Proposed Rules section.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 96-D327]

Defense Federal Acquisition Regulation Supplement; MILCON-Environmental Restoration

Correction

In rule document 97–381 appearing on page 1058 in the issue of Wednesday, January 8, 1997 make the following correction:

§216.306 [Corrected]

In the third column, in §216.306(c)(ii)(B)(*2*), in the second line "that" should be inserted after "contracts".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26140; Amendment No. 25–88]

RIN 2120–AC43

Type and Number of Passenger Emergency Exits Required in Transport Category Airplanes

Correction

In rule document 96–28650, beginning on page 57946, in the issue of Friday, November 8, 1996, make the following corrections:

§ 25.807 [Corrected]

1. On page 57957, in the second column, in § 25.807(f)(2), in the second line, "the airplane do not" should read "the airplane does not".

2. On the same page, in the same column, in § 25.807(f)(3), in the second line, "airplanes" should read "airplane".

3. On the same page, in the third column, in § 25.807(g)(7), in the fifth line, "in" should read "is".

4. On the same page, in the third column, in § 25.807(g)(9), in the first line, "of" should read "or".

§ 25.810 [Corrected]

5. On page 57958, in the second column, in § 25.810(d)(3), in the fourth line, "tow" should read "two".

BILLING CODE 1505–01–D

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federal register

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Part II

Department of the Interior

Office of the Secretary

43 CFR Part 10
Native American Graves Protection and Repatriation Act; Interim Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024–AC48

Native American Graves Protection and Repatriation Act Regulations—Civil Penalties

AGENCY: Department of the Interior.

ACTION: Interim rule.

SUMMARY: This interim rule relates to one section of regulations implementing the Native American Graves Protection and Repatriation Act of 1990 ("the Act"). This section outlines procedures for assessing civil penalties upon museums that fail to comply with applicable provisions of the Act. Comments on this rule are requested.

DATES: Effective Date: This interim rule becomes effective on February 12, 1997. This interim rule will remain in effect until final regulations are adopted through general notice and comment rulemaking. However, written comments on this interim rule are solicited from Indian tribes, Native Hawaiian organizations, museums, Federal agencies and members of the public. Comments will be taken into account in developing a final rule. The Departmental Consulting Archeologist will accept written comments until April 14, 1997.

ADDRESSES: Comments (2 copies) should be addressed to: Departmental Consulting Archeologist, Archeology and Ethnography Program, National Park Service, Docket No. 1024–AC48, Box 37127, Washington, D.C. 20013–7127, or hand deliver comments to room 210, 800 North Capital Street, Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeology and Ethnography Program, National Park Service, Box 37127, Washington, DC 20013–7127. Telephone: 202–343–4101. Fax: 202–523–1547.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President George Bush signed the Act into law. The Act addresses the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to promulgate regulations to carry out provisions of the Act. Final regulations implementing the Act were published in the **Federal Register** on December 4, 1995 (60 FR 62158). The final regulations had five sections reserved for later publication. This interim rule includes one section that was reserved in the final regulations. Section 10.12 develops procedures for assessing civil penalties upon museums that fail to comply with provisions of the Act. This section does not apply to Federal agencies. However, Federal agencies are subject to enforcement actions by aggrieved parties under section 15 of the Act.

Section-by-Section Analysis

Section 10.12

Section 9 of the Act authorizes the Secretary of the Interior to assess a civil penalty against any museum that fails to comply with the requirements of this Act. This section defines procedures for assessing those civil penalties.

A "museum" is defined at 43 CFR 10.2 (a)(3) as any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and possesses or has control over Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in 43 CFR 10.2 (d). The phrase "receives Federal funds" is defined at 43 CFR 10.2 (a)(3)(iii) to mean the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract (other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum assistance in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is part of a state or local government or private university, and the state or local government or private university received Federal funds for any purpose, the museum is considered to receive Federal funds for purpose of these regulations. Although Federal agencies are not considered "museums" for purposes of civil penalties under this section, civil actions may be taken against Federal agencies to compel compliance with the Act in the United States District Courts under section 15 of the Act.

Section 9(b) of the Act identifies some of the criteria to be used by the Secretary in determining the amount of the civil penalty to be assessed. The Secretary has consulted the Native American Graves Protection and Repatriation Review Committee which has recommended that the Secretary use a two stage approach to implementing these criteria. They recommend an initial assessment based upon the sum of three factors: (1) an amount equal to .25% of the museum's annual budget, or $5,000, whichever is less; (2) damages suffered by any aggrieved party or parties, including, but not limited to, the costs of attorney and expert witness fees, investigations, and administrative expenses incurred by the aggrieved parties to compel compliance with the Act; and (3) the importance of the human remains, funerary objects, sacred object, or object of cultural patrimony to performing traditional practices by the aggrieved party or parties. The review committee recognizes that this initial assessment, and in particular that portion based upon the museum's annual budget, might be considered overly modest by some, but emphasizes that civil penalties should be used to ensure compliance instead of simply imposing large penalty amounts. The review committee considers .25% of the museum's annual budget, or $5,000, whichever is less, an amount sufficient to compel compliance without inflicting undue damage, particularly on small institutions. We believe that a monetary standard is useful as it will lessen the need to make more difficult assessment determinations based on archeological, historical, and commercial value. As the law allows for establishment of civil penalties based on other factors as the Secretary considers appropriate, this formula will further the goals of the legislation. We have therefore adopted it. The review committee also recommended assessment of a subsequent penalty amount of $100 per day after the date of the final administrative decision that the museum continues not to comply with the Act. We have also adopted this recommendation. In addition to the above factors, the commercial value of any human remains, funerary object, sacred object, or object of cultural patrimony may be assessed on any museum that, after November 16, 1990, sells or otherwise transfers such object in violation of the Act. The review committee also recommends that the Secretary double the penalty amount for subsequent failures to comply. We have included the number of violations that have occurred as a criterion in determining the penalty amount. The Secretary gave the review committee's recommendations careful consideration in developing the procedures outlined in this interim rule.

The administrative procedures for providing notice, holding a hearing, appealing an administrative decision, and issuing a final administrative decision are patterned after the procedures currently used in assessing civil penalties under the Archaeological Resources Protection Act. As a matter of general policy, the Secretary does not intend to institute civil penalty actions under this section for violations which occurred before the effective date of these regulations if the museum in question made a good faith effort to comply with the basic requirements of the Act.

Administrative Procedures Act

The Secretary of the Interior has determined under 5 U.S.C. 553 (b)(B) and 318 DM 6.4 (B)(1) that it is not in the public interest to delay the effective date of this regulation to accommodate notice and comment procedures. There are three reasons for this decision:

(a) The requirements that the Act places upon museums as outlined in section 10.12 (b)(1) of these regulations are generally known and were established by statute in 1990 or by regulation in 1995;

(b) Section 9 of the Act clearly outlines the limits of the Secretary's discretion in enforcing provisions of the Act; and

(c) The administrative procedures for appealing the levy of a penalty as outlined in section 10.12 (e) through (l) closely imitate those already used under the Archaeological Resources Protection Act.

The civil penalty provisions of the Act are intended to assist in the protection and appropriate repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that are of extreme importance to lineal descendants, Indian tribes and Native Hawaiian organizations. Loss of such items causes irreparable injury to the lineal descendants, Indian tribes, and Native Hawaiian organizations entitled to their repatriation under the terms of the Act. Delaying implementation of the enforcement procedures of this section to accommodate notice and comment procedures will likely result in further losses or in an inability to remedy, to the extent feasible, losses which have already occurred.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this interim rule to the address noted at the beginning of this rulemaking. The National Park Service will review comments and consider making changes to the rule based upon an analysis of the comments.

If you wish the National Park Service to acknowledge receipt of your comments you must submit with those comments, a self-addressed, stamped postcard that includes the following statement: "Comments to Docket No 1024–AC48." The Departmental Consulting Archeologist will date stamp the postcard and return it to you. The Departmental Consulting Archeologist will consider comments received on or before April 14, 1997 before taking action on a final rule and may change the interim rule contained in this notice in light of the comments received.

Drafting Information

This interim rule was prepared by Dr. Francis P. McManamon (Departmental Consulting Archeologist, National Park Service), Dr. C. Timothy McKeown (NAGPRA Team Leader, National Park Service), and Lars Hanslin (Senior Attorney, Office of the Solicitor), in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

Paperwork Reduction Act

This interim rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The civil penalties are expected to be assessed on only a very small number of museums that have failed to comply with the Act. Civil penalty amounts will be calculated to ensure compliance and not as retribution.

The National Park Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The National Park Service has determined that this interim rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this interim rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—Claims, Museums, Reporting and record keeping requirements.

In consideration of the forgoing, 43 CFR Subpart A is amended as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

1. The authority citation for Part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

2. Part 10 is amended by adding § 10.12 to read as follows:

§ 10.12 Civil Penalties.

(a) *The Secretary's authority to assess civil penalties.* The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum that fails to comply with the requirements of the Act. As used in this section, "failure to comply with requirements of the Act" also means failure to comply with applicable portions of the regulations set forth in this part. As used in this section "you" refers to the museum or the museum official designated responsible for matters related to implementation of the Act.

(b) *Definition of "failure to comply".* (1) Your museum has failed to comply with the requirements of the Act if it:

(i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony in violation of the Act, including, but not limited to, an unlawful sale or transfer

to any individual or institution that is not required to comply with the Act; or

(ii) After November 16, 1993, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or the date specified in an extension issued by the Secretary, whichever is later, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or six months after completion of an inventory under an extension issued by the Secretary, whichever is later, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or

(v) Refuses to repatriate human remains, funerary object, sacred object, or object of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization pursuant to the requirements of the Act; or

(vi) Repatriates human remains, funerary object, sacred object, or object of cultural patrimony before publishing a notice in the **Federal Register** as required by the Act.

(2) Each violation will constitute a separate offense.

(c) *How to notify the Secretary of a failure to comply.* (1) Any person may bring an allegation of failure to comply to the attention of the Secretary.

(2) The Secretary may take the following steps upon receiving such an allegation:

(i) Review the alleged failure to comply;

(ii) Identify the specific provisions of the Act which allegedly have not been complied with;

(iii) Determine if the institution of a civil penalty action is in the public interest in the circumstances; and

(iv) If appropriate, estimate the proposed penalty.

(d) *How the Secretary determines the penalty amount.* (1) The penalty amount will be .25% of your museum's annual budget, or $5000, whichever is less, and, such additional sum as the Secretary may determine is appropriate after taking into account:

(i) The archeological, historical, or commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony involved including, but not limited to, consideration of their importance to performing traditional practices; and

(ii) The damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, the costs of attorney and expert witness fees, investigations, and administrative expenses related to efforts to compel compliance with the Act; and

(iii) The number of violations that have occurred.

(2) An additional penalty of $100 per day after the date the final administrative decision takes effect if your museum continues to violate the Act.

(3) The Secretary may reduce the penalty amount if there is:

(i) A determination that you did not willfully fail to comply; or

(ii) An agreement by you to mitigate the violation, including, but not limited to, payment of restitution to the aggrieved party or parties; or

(iii) A demonstration of hardship or inability to pay, provided that this factor will only apply when you have not been previously found to have failed to comply with the regulations in this part; or

(iv) A determination that the proposed penalty would constitute excessive punishment under the circumstances.

(e) *How the Secretary notifies you of a failure to comply.* (1) If the allegations are verified, the Secretary serves you with a notice of failure to comply either by personal delivery or by registered or certified mail (return receipt requested). The notice includes:

(i) A concise statement of the facts believed to show a failure to comply;

(ii) A specific reference to the provisions of the Act and/or the regulations in this part that you have allegedly not complied with;

(iii) The amount of the proposed penalty, including any initial proposal to mitigate or remit where appropriate, or a statement that the Secretary will serve notice of a proposed penalty amount after ascertaining the damages associated with the alleged failure to comply; and

(iv) Notification of the right to file a petition for relief as provided in this section below, or to await the Secretary's notice of assessment and to request a hearing. The notice will also inform you of your right to seek judicial review of any final administrative decision assessing a civil penalty.

(2) The Secretary also sends a copy of the notice of failure to comply to:

(i) Any lineal descendant of a known Native American individual whose human remains or cultural items are in question; and

(ii) Any Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains or cultural items in question.

(f) *Actions you may take upon receipt of a notice.* If you are served with a notice of failure to comply, you may: (1) Seek informal discussions with the Secretary;

(2) File a petition for relief. You may file a petition for relief with the Secretary within 45 calendar days of receiving the notice of failure to comply (or of a proposed penalty amount, if later). Your petition for relief may request the Secretary to assess no penalty or to reduce the amount. Your petition must be in writing and signed by an official authorized to sign such documents. Your petition must set forth in full the legal or factual basis for the requested relief.

(3) Take no action and await the Secretary's notice of assessment; or

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. If you accept the proposed penalty or mitigation or remission, you waive the notice of assessment and the right to request a hearing.

(g) *How the Secretary assesses the penalty.* (1) The Secretary assesses the civil penalty when the period for filing a petition for relief expires, or upon completing the review of any petition filed, or upon completing informal discussions, whichever is later.

(2) The Secretary considers all available information, including information provided during the process of assessing civil penalties or furnished upon further request by the Secretary.

(3) If the facts warrant a conclusion that you have not failed to comply, the Secretary notifies you that you will have no penalty assessed.

(4) If the facts warrant a conclusion that you have failed to comply, the Secretary may determine a penalty according to the standards in paragraph (d) of this section.

(5) The Secretary notifies you of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The notice of assessment includes:

(i) The facts and conclusions from which the Secretary determined that you have failed to comply;

(ii) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(iii) Notification of the right to request a hearing, including the procedures to follow, and to seek judicial review of any final administrative decision assessing a civil penalty.

(h) *How you request a hearing.* (1) You may file a written, dated request for a hearing on a notice of assessment with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard,

Arlington, Virginia 22203–1923. You must enclose a copy of the notice of failure to comply and a copy of the notice of assessment. Your request must state the relief sought, the basis for challenging the facts used as the basis for determining the failure to comply and fixing the assessment, and your preference as to the place and date for a hearing. You must serve a copy of the request upon the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice of assessment. Hearings will take place following procedures set forth in 43 CFR part 4, subparts A and B.

(2) Your failure to file a written request for a hearing within 45 days of the date of service of a notice of assessment waives your right to a hearing.

(i) *Hearing appearance and practice.* (1) Upon receiving a request for a hearing, the Hearings Division assigns an administrative law judge to the case, gives notice of assignment promptly to the parties, and files all pleadings, papers, and other documents in the proceeding directly with the administrative law judge, with copies served on the opposing party.

(2) Subject to the provisions of 43 CFR 1.3, you may appear by representative, or by counsel, and may participate fully in those proceedings. If you fail to appear and the administrative law judge determines this failure is without good cause, the administrative law judge may, in his/her discretion, determine that this failure waives your right to a hearing and consent to the making of a decision on the record.

(3) Departmental counsel, designated by the Solicitor of the Department, represents the Secretary in the proceedings. Upon notice to the Secretary of the assignment of an administrative law judge to the case, this counsel must enter his/her appearance on behalf of the Secretary and files all petitions and correspondence exchanges by the Secretary and the respondent which become part of the hearing record. Thereafter, you must serve all documents for the Secretary to his/her counsel.

(4) Hearing administration. (i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554–557.

(ii) The transcript of testimony, the exhibits, and all papers, documents and requests filed in the proceedings constitute the record for decision. The administrative law judge renders a written decision upon the record, which sets forth his/her findings of fact and conclusions of law, and the reasons and basis for them, and an assessment of a penalty, if any.

(iii) Unless you file a notice of appeal described in the regulations in this part, the administrative law judge's decision constitutes the final administrative determination of the Secretary in the matter and takes effect 30 calendar days from this decision.

(iv) In this hearing, the amount of civil penalty assessed will be determined in accordance with paragraph (d) of this section, and will not be limited by the amount assessed by the Secretary or any offer of mitigation or remission made by the Secretary.

(j) *How you appeal a decision.* (1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a "Notice of Appeal" with the Director, Office of Hearings and Appeals, U.S. Department of Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203–1923, within 30 calendar days of the date of the administrative law judge's decision. This notice must be accompanied by proof of service on the administrative law judge and the opposing party.

(2) Upon receiving this notice, the Director, Office of Hearings and Appeals, appoints an ad hoc appeals board to hear and decide an appeal. To the extent they are not inconsistent with the regulations in this part the provision of the Department of Hearings and Appeals Procedures in 43 CFR part 4, subparts A, B, and G apply to such appeal proceedings. The appeal board's decision on the appeal must be in writing and takes effect as the final administrative determination of the Secretary on the date it is rendered, unless otherwise specified in the decision.

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203–1923. Fees for this service are established by the Director of that Office.

(k) *The final administrative decision.* (1) When you have been served with a notice of a failure to comply and have accepted the penalty as provided in the regulations in this part, the notice constitutes the final administrative decision;

(2) When you have been served with a notice of assessment and have not filed a timely request for a hearing as provided in the regulations in this part, the notice of assessment constitutes the final administrative decision.

(3) When you have been served with a notice of assessment and have filed a timely request for a hearing as provided in these regulations in this part, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(l) *How you pay the penalty.* (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.

(2) If you fail to pay the penalty, the Secretary may request the Attorney General to institute a civil action to collect the penalty in the U.S. District Court for the district in which your museum is located. Where the Secretary is not represented by the Attorney General, the Secretary may start civil action directly. In these actions, the validity and amount of the penalty will not be subject to review by the court.

(3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies.

Dated: November 5, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–653 Filed 1–10–97; 8:45 am]

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Part III

Department of Eduction

Postsecondary Education; State Student Incentive Grant Program; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for fiscal year 1997.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1997 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that desires to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the Secretary has approved, a different State agency.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau. Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c–1070c–4.)

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: An application for fiscal year 1997 SSIG funds must be mailed or hand-delivered by March 31, 1997.

APPLICATION FORM: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to: Mr. Fred Sellers, Chief, Grants Branch, Room 3045, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 600 Independence Avenue, S.W., Washington, D.C. 20202–5447.

The Secretary will accept the following proof of mailing: (1) a legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1997 funding.

APPLICATIONS DELIVERED BY HAND: An application that is hand-delivered must be taken to Mr. Fred Sellers, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, S.W., Room 3045, General Service Administration Regional Office Building #3, Washington, D.C. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: Section 415C(a) of the HEA requires that an annual application be submitted for a State to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1996, 49 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

APPLICABLE REGULATIONS: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR Part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR Part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR Part 668.

FOR FURTHER INFORMATION CONTACT: For further information contact Mrs. Jackie Butler, Pell and State Grant Section, U.S. Department of Education, Student Financial Assistance Programs, Washington, D.C. 20202–5447; telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–730–8913 between 9 a.m. and 8 p.m., Eastern time, Monday through Friday.

(20 U.S.C. 1070c–1070c–4.)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program.)

Dated: January 7, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–736 Filed 1–10–97; 8:45 am]

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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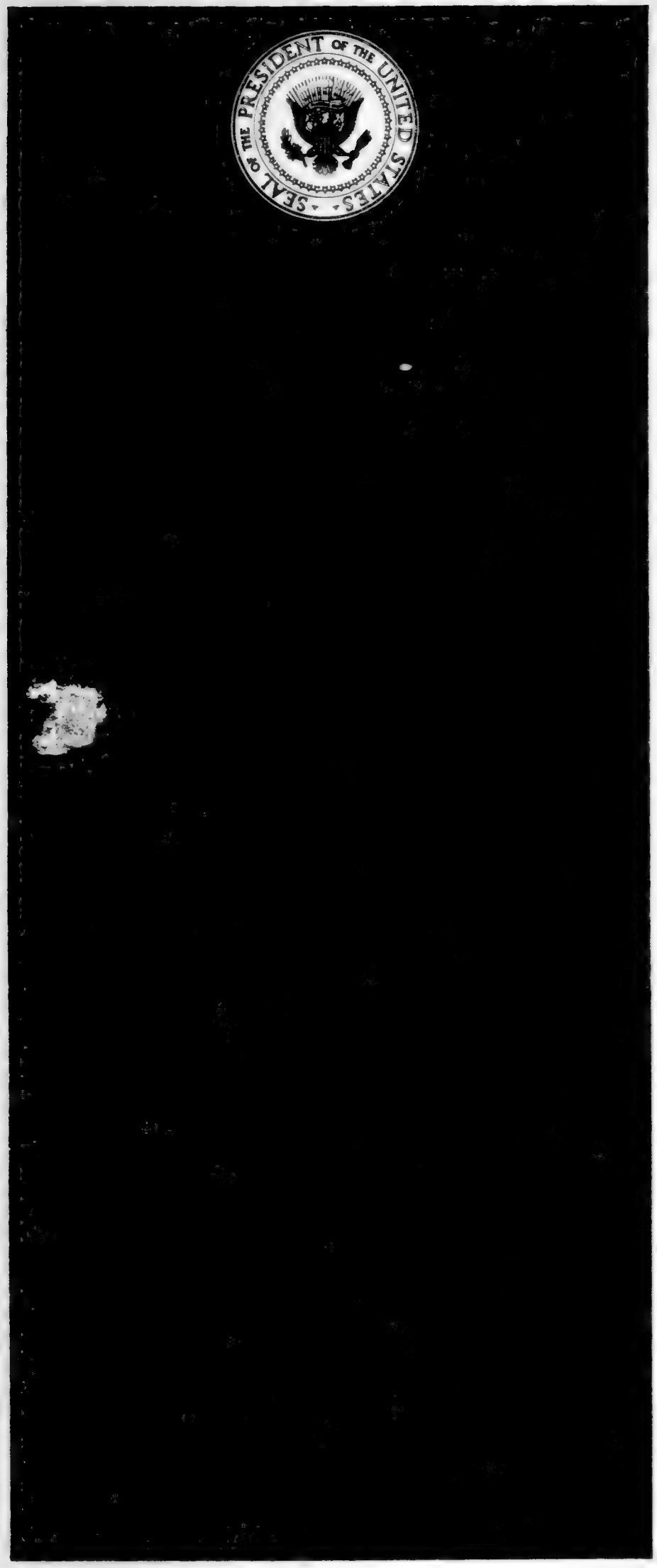

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 62, No. 9
Tuesday, January 14, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ACE–11]

Amendment to Class E Airspace, Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This section corrects an inadvertent typographical error in the effective date of a final rule, correction that was published in the **Federal Register** on November 29, 1996 (61 FR 60526) Airspace Docket No. 96–ACE–11.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

The FAA published a direct final rule correction in the **Federal Register** on November 29, 1996 (61 FR 60526). In order to meet the publication date of the Omaha Sectional Aeronautical Chart, the effective date has been corrected to January 30, 1997.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date for the Class E Airspace area at Sioux City, IA as published in the **Federal Register** on November 29, 1996, (61 FR 60526) (**Federal Register** Document 96–30520; page 60526, column 3) is corrected as follows:

§71.71 [Corrected]

* * * * *

ACE IA E5 Sioux City, IA [Corrected]

By Removing "Effective Date: 0901 UTC, January 31, 1997," and substituting "Effective Date: 0901 UTC, January 30, 1997".

* * * * *

Issued in Kansas City, MO, on December 6, 1996.

H.J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–845 Filed 1–13–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Docket No. 96–ACE–24]

Amendment to Class E Airspace, Sidney, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Sidney Municipal Airport, Sidney, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS). The effect of this rule is to provide additional controlled airspace for aircraft departing the Sidney Municipal Airport.

DATES: Effective date: May 22, 1997.

Comment date: Comments must be received on or before February 21, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–24, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Sidney Municipal Airport, Sidney, NE. The amendment to Class E airspace at Sidney, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comments is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and

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a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ACE–24." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—AMENDED

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Sidney, NE [Revised]

Sidney Municipal Airport, NE
(lat. 41°06'05" N., long. 102°59'07" W.)
Sidney VORTAC
(lat. 41°05'48" N., long. 102°58'59" W.)

That airspace extending upward form 700 feet above the surface within a 6.6-mile radius of the Sidney Municipal Airport and within 4 miles southwest and 6 miles northeast of the 126° radial of the Sidney VORTAC extending from the 6.6-mile radius to 10.5 miles southeast of the VORTAC and within 4 miles northeast and 6 miles southwest of the 323° radial of the Sidney VORTAC extending from 6.6-miles radius to 10.5 miles northwest of the VORTAC; that airspace in the state of Colorado extending upward from 1,200 feet above the surface within 4 miles southwest and 6 mile northeast of the 126° radial of the Sidney VORTAC 10.5 miles southeast of the VORTAC

* * * * *

Issued in Kansas City, MO, on December 17, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–846 Filed 1–13–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–22]

Amendment to Class E Airspace, Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Alliance Municipal Airport, Alliance, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS). The effect of this rule is to provide additional controlled airspace for aircraft departing the Alliance Municipal Airport.

DATES: Effective date: May 22, 1997.

Comment date: Comments must be received on or before February 21, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–22, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Alliance Municipal Airport, Alliance, NE. The amendment to Class E airspace at Alliance, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on

appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ACE–22." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—AMENDED

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Alliance, NE [Revised]

Alliance Municipal Airport, NE
(lat. 42°03'12" N., long. 102°48'13" W.)
Alliance VOR/DME
(lat. 42°03'20" N., long. 102°48'16" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Alliance Municipal Airport and within 3 miles each side of the 145° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 10.5 miles southeast of the VOR/DME and within 3 miles each side of the 302° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 8.7 miles northwest of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on December 17, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–847 Filed 1–13–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 960910252–6329–02; I.D. 082296B]

RIN 0648–AI77

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

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SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). The final rule closes a 9 mi² (23.31 km²) site to transiting and fishing with other than hand gear for an 18-month period to allow for the conduct of a NMFS-sponsored sea scallop aquaculture research project, provides for exemptions from the closure for vessels using certain gear types and for vessels participating in the project, and provides for temporary exemptions for vessels participating in the project from certain fishing regulations that might inhibit or prevent their performing any activity necessary for project operations. The intended effect of this action is to support the aquaculture research project and prevent conflicts between fishing gear and project equipment for the limited duration of the project.

EFFECTIVE DATE: February 13, 1997 through July 15, 1998.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR), the initial regulatory flexibility analysis contained within the RIR, and the environmental assessment are available from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: Amendment 5 to the FMP was prepared by the New England Fishery Management Council (Council). A notice of availability for the amendment when it was proposed, was published on August 29, 1996 (61 FR 45395), and a proposed rule to implement it was published on September 20, 1996 (61 FR 49428). Details of this action were described in the preamble to the proposed rule and are not repeated here.

Approved Management Measures

This final rule establishes a 9 mi² (23.31 km²) area closure approximately 12 mi (22.22 km) southwest of the island of Martha's Vineyard, MA (hereinafter called the Sea Scallop Experimental Area), to transiting and fishing with other than handgear for an 18-month period to allow for the conduct of a NMFS-sponsored (Saltonstall-Kennedy (NOAA Award NA 66FD0027)) sea scallop aquaculture research project and provides for exemptions from the closure for vessels using certain gear types and for vessels participating in the project.

Additionally, this final rule provides the Regional Administrator (RA) with authority to temporarily exempt a vessel participating in the project from any specific Federal fishing regulation which inhibits or prevents the vessel from performing any activity necessary for project operations, such as regulations prohibiting the use of nonconforming fishing gear or the possession of scallops when not fishing under a DAS allocation.

This action prohibits fishing other than with handgear within the Sea Scallop Experimental Area for 18 months. However, fishing with gear other than gillnet and mobile, i.e., trawls and dredges such as lobster pots, longline, and any other gear determined by the RA as not likely to interfere with the research project, will be allowed in the area pursuant to an Allowable Gear Permit (AGP) issued by the RA. This permit requirement will enable the RA to inform vessel operators of the location of the research equipment and avoid potential conflicts between fishery and project activities. Fishers authorized to fish in the Sea Scallop Experimental Area under an AGP may also be required periodically to remove their gear or may be required to set their gear a certain minimum distance from research project activities. At least 2 weeks notice will be provided to vessel operators of any requirement to relocate fishing gear.

All vessels will be allowed to transit the area at any time, provided their fishing gear is properly stowed.

Vessels participating in the project will be allowed to fish within and transit the Sea Scallop Experimental Area pursuant to an EFP issued by the RA. Such EFP may exempt such vessel from specific Federal fishing regulations which may inhibit or prevent that vessel from performing any activity necessary for project operations such as regulations prohibiting the use of non-conforming fishing gear or the possession of scallops when not fishing under a DAS allocation. Vessels issued an EFP are exempt from DAS requirements for any trip transiting to and from, and conducted exclusively within, the Sea Scallop Experimental Area, and for the portion of any trip used to transport sea scallops from the fishing grounds to the area. The EFP also may allocate and authorize the use of up to 2 additional DAS for the collection of sea scallops from the fishing grounds for transportation to the Sea Scallop Experimental Area. Vessels issued an EFP must comply with all conditions and restrictions specified in the permit.

Comments and Responses

Written comments were received from one individual.

Comment: The commenter expressed concern about lobster gear that is typically fished in a portion of the Sea Scallop Experimental Area for about 6 months per year, and whether the project managers will be able to work around lobster gear during the research project period.

Response: The Regional Administrator will issue AGPs to lobster pot vessels interested in fishing within the Sea Scallop Experimental Area. Lobster fishers may be required to remove their gear periodically or may be required to set fishing gear a certain minimum distance from research project activities. The AGP program provides a means by which to communicate the dates and specific locations of project equipment and activities to those who are fishing in the area. At least 2 weeks notice will be provided prior to activities that would require removal of fishing gear. A minimum of 4 weeks notice will be provided in the event that more than 25 percent of the closed area is involved. NMFS will continue to stress to the principal NOAA grant investigators for the project that communication between fishers and project managers be maintained for the duration of the project to prevent conflicts.

Changes From the Proposed Rule

Changes were made to § 648.56(a) to clarify which permits are required for vessels participating in the sea scallop aquaculture research project or fishing within the Sea Scallop Experimental Area, but not participating in the project. Editorial simplifications and clarifications were made throughout the rule.

Classification

The Regional Administrator determined that this final rule is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Act Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law.

This final rule has been determined to be significant for the purposes of E.O. 12866. The action raises a novel legal or policy issue arising out of a legal mandate under the Magnuson-Stevens Act, in that it may be viewed as setting a precedent for establishing other aquaculture efforts in the exclusive economic zone.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The comment received and the changes made to the rule do not change the basis for that certification. Accordingly, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains one new collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB, and the OMB control number and public reporting burden are listed as follows: Sea Scallop Experimental Area authorization request, (0.5 hours/response) under OMB Control Number 0648–0321.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of the collection-of-information to NMFS and OMB (see **ADDRESSES**).

NMFS reinitiated consultation on the Atlantic Sea Scallop FMP on October 7, 1996. This consultation will consider new information concerning the status of the northern right whale. The Regional Administrator has determined that the implementation of Amendment 5, pending completion of that consultation, will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

List of Subjects

15 CFR Part 909

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 8, 1997.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in paragraph (b), the table is amended by adding, in numerical order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
648.56	–0321
. . . . .	

50 CFR CHAPTER VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.14, paragraph (a)(96) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(96) Fish within or transit, with other than handgear, the Scallop Experimental Area defined in § 648.56(a)(1), except as provided for in § 648.56 (a)(2) and (a)(3).

* * * * *

5. Section 648.56 is added to subpart D to read as follows:

§ 648.56 Scallop research project.

(a)(1) *Scallop experimental area.* From February 13, 1997 through July 15, 1998, no fishing vessel or person on a fishing vessel may fish within or transit, with other than handgear, the area known as the Sea Scallop Experimental Area, as defined by straight lines connecting the following points in the order stated, except as provided for in paragraphs (a)(2) and (a)(3) of this section:

Point	Latitude	Longitude
1	41°11.8′ N.	70°50′ W.
2	41°11.8′ N.	70°46′ W.
3	41°08.8′ N.	70°46′ W.
4	41°08.8′ N.	70°50′ W.

(2) *Exemptions.* A fishing vessel and persons on a fishing vessel may fish within or transit the Sea Scallop Experimental Area:

(i) With pot gear and traps, longline gear, or any other gear, provided such pot gear and traps, longline gear, or other gear is determined by the Regional Director as not likely to interfere with the sea scallop aquaculture research project in the Sea Scallop Experimental Area, and provided such vessel has been issued an allowed gear permit (AGP) under paragraph (a)(4)(i) of this section; or

(ii) If such vessel has been issued an experimental fishing permit (EFP) under paragraph (a)(4)(i) of this section to participate in the sea scallop aquaculture research project in the Sea Scallop Experimental Area.

(3) *Transiting.* Vessels that are not exempted from the prohibition against fishing within or transiting the Sea Scallop Experimental Area under paragraph (a)(2) of this section may transit such area provided their gear is stowed in accordance with the provisions of § 648.81(e).

(4) *Allowed gear and experimental fishing permits*—(i) *Allowed gear permits.* The Regional Director may issue an AGP to any vessel to fish within and transit the Sea Scallop Experimental Area with the gear specified in paragraphs (a)(2)(i) of this section. Vessels issued an AGP may be required to move their gear within, or remove their gear from, the area upon notification by the Regional Director and must comply with any additional conditions and restrictions specified in the permit.

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(ii) *Experimental fishing permits.* The Regional Director may issue an EFP under the provisions of § 648.12, if consistent with the provisions of paragraph (a)(4)(iv) of this section, to any vessel participating in the sea scallop aquaculture research project to fish within and transit the Sea Scallop Experimental Area. Such an EFP may exempt such vessel from specific Federal fishing regulations which may inhibit or prevent that vessel from performing any activity necessary for project operations such as regulations prohibiting the use of non-conforming fishing gear or the possession of scallops when not fishing under a DAS allocation. Vessels issued an EFP shall be exempted from DAS requirements as specified in the FMP for any trip in which the vessel engages exclusively in project activities such as bottom surveying, biological sampling, or use of non-regulated hand gear outside the Sea Scallop Experimental Area. The EFP also may allocate and authorize the use of up to 2 additional DAS for project activities relating to scallop seeding. Vessels issued an EFP must comply with all conditions and restrictions specified in the permit.

(iii) A vessel with an AGP or EFP must carry the permit on board the vessel while fishing in the Sea Scallop Experimental Area or participating in the scallop aquaculture project.

(iv) The Regional Director may not issue an AGP or EFP unless he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(A) Have a detrimental effect on the sea scallop resource and fishery;

(B) Create significant enforcement problems; or

(C) Have a detrimental effect on the scallop project.

(5) *Application.* An application for an AGP or EFP must be in writing to the Regional Director and be submitted at least 30 days before the desired effective date of the permit. The application must include, but is not limited to, the following information:

(i) The date of application.

(ii) The applicant's name, current address, telephone number and fax number if applicable.

(iii) The current vessel name, owner address, and telephone number.

(iv) The vessel's Federal permit number.

(v) The USCG documentation number.

(vi) The species (target and incidental) expected to be harvested.

(vii) The gear type, size, buoy colors, trap identification markings and amount of gear that will be used; and exact time(s) fishing will take place in the Sea Scallop Experimental Area.

(viii) The signature of the applicant.

(b) [Reserved]

[FR Doc. 97–872 Filed 1–13–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice; extension of time to report.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is extending to May 30, 1997, the deadline for submission of quarterly reports pursuant to § 560.603 of the Iranian Transactions Regulations for the quarters ending December 31, 1996, and March 31, 1997.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Divison (tel.: 202/622–2440), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/515–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem, dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Notice

On November 15, 1996, the Office of Foreign Assets Control ("OFAC") published an amendment to § 560.603 of the Iranian Transactions Regulations, 31 CFR Part 560 (the "Regulations"), which imposes reporting requirements on United States persons with foreign affiliates (See 61 FR 58480). Any report required to be submitted to OFAC pursuant to § 560.603 of the Iranian Transactions Regulations for the quarter ending December 31, 1996, or for the quarter ending March 31, 1997, may be filed up to but no later than May 30, 1997.

Issued: January 7, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 7, 1997.

James E. Johnson,

Assistant Secretary (Enforcement)

[FR Doc. 97–974 Filed 1–10–97; 12:08 pm]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 2, 21, 22, 60, 61, 62, 147, 262, 272, 707, 763

[FRL–5674–2]

Technical Amendments to Revise Addresses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The EPA is revising the address for its Region 5 office, and those of the environmental agencies of the States of Illinois, Michigan and Ohio in 40 CFR Parts, 1, 2, 21, 60, 61, 62, 147, 272, 707, and the appendices to 40 CFR Parts 22, 262, and 763 because of changes in office locations. This document does not change the substantive requirements of the standards.

EFFECTIVE DATE: This action becomes effective January 14, 1997.

FOR FURTHER INFORMATION CONTACT: John Gaitskill, United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604–3590, (312) 886–6795.

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SUPPLEMENTARY INFORMATION: This rule makes editorial changes to various environmental regulations in title 40 to replace obsolete addresses and organization names with appropriate new ones.

List of Subjects

40 CFR Part 1

Environmental protection, Organization and functions (Government agencies).

40 CFR Part 2

Freedom of information.

40 CFR Part 21

Small businesses.

40 CFR Part 22

Administrative practice and procedure.

40 CFR Part 60

Administrative practice and procedure, Reporting and recordkeeping requirements.

40 CFR Part 61

Reporting and recordkeeping requirements.

40 CFR Part 62

Administrative practice and procedure.

40 CFR Part 147

Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 262

Reporting and recordkeeping requirements.

40 CFR Part 272

Intergovernmental relations.

40 CFR Part 707

Reporting and recordkeeping requirements.

40 CFR Part 763

Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 30, 1996.

Valdas V. Adamkus,

Regional Administrator.

Therefore, Title 40 of the Code of Federal Regulations is amended as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 1.7 [Amended]

2. Section 1.7, paragraph (b)(5) is amended by replacing "230 South Dearborn Street" with "77 West Jackson Boulevard".

PART 2—PUBLIC INFORMATION

3. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j-4, 300j-9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

§ 2.106 [Amended]

4. Section 2.106, paragraph (b)(5) is amended by replacing "230 Dearborn Street" with "77 West Jackson Boulevard".

PART 21—SMALL BUSINESS

5. The authority citation for part 21 continues to read as follows:

Authority: 15 U.S.C. 636, as amended by Pub. L. 92–500.

§ 21.3 [Amended]

6. Section 21.3, paragraph (a) table is amended replacing "230 South Dearborn St." with "77 West Jackson Boulevard".

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

7. The authority citation for part 22 continues to read as follows:

Authority: 15 U.S.C. 2615; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 7 U.S.C. 136(l) and (m); 33 U.S.C. 1319, 1415 and 1418; 42 U.S.C. 6912, 6928 and 6991(e); 42 U.S.C. 9609; 42 U.S.C. 11045.

Appendix to Part 22 [Amended]

8. The appendix to Part 22 is amended by replacing "230 South Dearborn St." with "77 West Jackson Boulevard".

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

9. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

10. Section 60.4 is amended by revising the Region V address in paragraph (a); and by revising paragraphs (b)(O), (b)(P), (b)(X), (b)(KK)(ii), (b)(KK)(iii), (b)(KK)(iv), (b)(KK)(vi), (b)(KK)(ix), (b)(KK)(xii), and (b)(KK)(xiii) to read as follows:

§ 60.4 Address.

* * * * *

(a) * * *

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590.

* * * * *

(b) * * *

(O) State of Illinois, Bureau of Air, Division of Air Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, IL 62794–9276.

(P) State of Indiana, Indiana Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

* * * * *

(X) State of Michigan, Air Quality Division, Michigan Department of Environmental Quality, P.O. Box 30260, Lansing, Michigan 48909.

* * * * *

(KK) * * *

(ii) Stark County: Air Pollution Control Division, 420 Market Avenue North, Canton, Ohio 44702–3335.

(iii) Butler, Clermont, Hamilton, and Warren Counties: Air Program Manager, Hamilton County Department of Environmental Services, 1632 Central Parkway, Cincinnati, Ohio 45210.

(iv) Cuyahoga County: Commissioner, Department of Public Health & Welfare, Division of Air Pollution Control, 1925 Saint Clair, Cleveland, Ohio 44114.

* * * * *

(vi) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties: Director, Regional Air Pollution Control Agency (RAPCA) 451 West Third Street, Dayton, Ohio 45402.

* * * * *

(ix) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except

City of Rossford), and Wyandot Counties: Ohio Environmental Protection Agency, Northwest District Office, Air Pollution Control, 347 Dunbridge Rd., Bowling Green, Ohio 43402.

* * * * *

(xii) Champaign, Clinton, Highland, Logan, and Shelby Counties: Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, 401 East Fifth Street, Dayton, Ohio 45402–2911.

(xiii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties: Ohio Environmental Protection Agency, Central District Office, Air Pollution Control, 3232 Alum Creek Drive, Columbus, Ohio, 43207–3417.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

11. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

12. Section 61.04 is amended by revising the Region V address in paragraph (a); and by revising paragraphs (b)(O), (b)(P), (b)(X), (b)(KK)(ii), (b)(KK)(iii), (b)(KK)(iv), (b)(KK)(vi), (b)(KK)(ix), (b)(KK)(xii) and (b)(KK)(xiii) to read as follows:

§ 61.04 Address.

* * * * *

(a) * * *

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590.

* * * * *

(b) * * *

(O) State of Illinois, Bureau of Air, Division of Air Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, IL 62794–9276.

(P) State of Indiana, Indiana Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

* * * * *

(X) State of Michigan, Air Quality Division, Michigan Department of Environmental Quality, P.O. Box 30260, Lansing, Michigan 48909.

* * * * *

(KK) * * *

(ii) Stark County: Air Pollution Control Division, 420 Market Avenue North, Canton, Ohio 44702–3335.

(iii) Butler, Clermont, Hamilton, and Warren Counties: Air Program Manager, Hamilton County Department of Environmental Services, 1632 Central Parkway, Cincinnati, Ohio 45210.

(iv) Cuyahoga County: Commissioner, Department of Public Health & Welfare, Division of Air Pollution Control, 1925 Saint Clair, Cleveland, Ohio 44114.

* * * * *

(vi) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties: Director, Regional Air Pollution Control Agency (RAPCA), 451 West Third Street, Dayton, Ohio 45402.

* * * * *

(ix) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except City of Rossford), and Wyandot Counties: Ohio Environmental Protection Agency, Northwest District Office, Air Pollution Control, 347 Dunbridge Rd., Bowling Green, Ohio 43402.

* * * * *

(xii) Champaign, Clinton, Highland, Logan, and Shelby Counties: Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, 401 East Fifth Street, Dayton, Ohio 45402–2911.

(xiii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties: Ohio Environmental Protection Agency, Central District Office, Air Pollution Control, 3232 Alum Creek Drive, Columbus, Ohio, 43207–3417.

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

13. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

§ 62.10 [Amended]

14. Section 62.10 table is amended by replacing "Federal Building, 230 South Dearborn St., Chicago, Ill, 60606" with "Mail Code A–17J, 77 West Jackson Blvd, Chicago, IL 60604–3590".

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

15. The authority citation for Part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

§ 147.750 [Amended]

16. Section 147.750(a) introductory text is amended by replacing "230 South Dearborn Street" with "77 West Jackson Boulevard".

§ 147.2500 [Amended]

17. Section 147.2500(a) introductory text is amended by replacing "230 South Dearborn Street" with "77 West Jackson Boulevard".

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

18. The authority citation for Part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6925, 6937 and 6938.

Appendix to Part 262 [Amended]

19. Item 19 in the appendix to Part 262 is amended by replacing "230 South Dearborn St" with "77 West Jackson Blvd".

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

20. The authority citation for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

§ 272.1151 [Amended]

21. In 272.1151 paragraph (a)(1)(ii) is amended by replacing the address "U.S. EPA Region V, Office of RCRA, Regulation Development Section, 230 S. Dearborn St., 13th Floor, Chicago IL. Phone: Ms. Judy Greenberg, (312) 886–4179;" with "U.S. EPA, Region V, Waste, Pesticides and Toxics Division, Program Management Branch, 7th floor, 77 West Jackson Boulevard, Chicago, IL. Phone: Ms. Judy Feigler, (312) 886–4179;"

PART 707—CHEMICAL IMPORTS AND EXPORTS

22. The authority citation for Part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

§ 707.20 [Amended]

23. Section 707.20(c)(2)(ii) is amended by revising "230 South Dearborn Street" to read "77 West Jackson Blvd".

PART 763—ASBESTOS

24. The authority citation for Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

Appendix D to Subpart E of Part 763 [Amended]

25. Appendix D to subpart E of Part 763 is amended under the Region V heading by replacing "230 S. Dearborn Street" with "77 West Jackson Boulevard".

[FR Doc. 97–874 Filed 1–13–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–5676–6]

RIN 2060–AD–56 and RIN 2060–AE–37

National Emission Standards for Hazardous Air Pollutants Emissions: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 5, 1996, the EPA issued the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins (61 FR 46906), and on September 12, 1996, the EPA issued the Group IV Polymers and Resins NESHAP (61 FR 48208). This action corrects an error in the final Group I Polymers and Resins NESHAP, by extending the compliance date for heat exchange systems. In addition, this action extends the compliance date for equipment leaks for both the Group I and Group IV Polymers and Resins NESHAP, to allow time necessary for affected sources to respond to the amendments to the hazardous organic NESHAP (HON) equipment leak provisions promulgated on December 26, 1996, which are directly referenced in both subparts U and JJJ.

DATES: The direct final rule will be effective March 5, 1997. However, if significant adverse comments on any amendment to these rules are received by February 13, 1997, then the effective date of that amendment will be delayed, the EPA will publish a timely withdrawal of that amendment, and all public comments received will be addressed in a subsequent final rule. For additional information concerning comments, see the parallel proposal notice found in the Proposed Rules Section of this **Federal Register**.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–44 (Group I Polymers and Resins) and/or Docket Number A–92–45 (Group IV Polymers and Resins), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Comments may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: This document is available in Docket No. A–92–44 and Docket No. A–92–45, or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: http://ttnwww.rtpnc.epa.gov.

Regulated entities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers of elastomers and thermoplastics.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the amendments discussed in this direct final rule. If you have questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. Background
II. Summary of and Rationale for Proposed Revisions
III. Impacts
IV. Administrative
A. Paperwork Reduction Act
B. Executive Order 12866
C. Regulatory Flexibility Act
D. Unfunded Mandates
E. Submission to Congress and the General Accounting Office

I. Background

The HON, which was promulgated on April 22, 1994 (59 FR 19402), regulates emissions of certain organic hazardous air pollutants (HAP) from synthetic organic chemical manufacturing industry (SOCMI) production processes. On September 5, 1996 (61 FR 46906), and September 12, 1996 (61 FR 48208), the EPA published the Group I Polymers and Resins NESHAP and the Group IV Polymers and Resins NESHAP, respectively. These regulations were promulgated as subparts U and JJJ in 40 CFR part 63. Due to the similarities in HAP emissions and emission controls at SOCMI facilities and elastomer (Group I Polymers and Resins) and thermoplastic (Group IV Polymers and Resins) production facilities, the HON provisions were used in the development of regulations for elastomer and thermoplastic production facilities. In fact, both the Polymers and Resins I and IV NESHAP directly reference sections of the HON. These sections include the HON equipment leak provisions (40 CFR 63, subpart H) and heat exchange provisions (§ 63.104).

The HON equipment leak provisions are referenced in §63.502 of subpart U and §63.1331 of subpart JJJ. Since the HON heat exchange provisions require the monitoring of cooling water to detect leaks in heat exchange equipment, these provisions were also referenced in the equipment leaks section, § 63.502, of subpart U. Subpart JJJ contains § 63.1328, which specifically addresses heat exchange systems and references the HON (§ 63.104).

The final rules require existing sources to comply with the equipment leaks provisions by March 5, 1997 for Group I Polymers and Resins, and by March 12, 1997 for Group IV Polymers and Resins. These dates represent six months from the promulgation of the final rules. Both regulations also allow longer periods (up to 3 years from the respective promulgation dates) for compliance with the surge control vessel, bottom receiver, and compressor provisions under certain circumstances.

The final rule for Group I Polymers and Resins also requires the owner or operator to comply with the heat exchange system requirements by March 5, 1997. The Group IV Polymers and Resins rule requires compliance with the heat exchange system requirements by September 12, 1999, which is three years from the promulgation date of subpart JJJ.

The final HON rule provided that existing sources must be in compliance with the provisions of subparts F and G by April 22, 1997, which represents a date three years from the promulgation date. Subpart F contains the heat exchange system requirements referenced by subpart U, meaning that the HON allowed 3 years for SOCMI facilities to comply with these provisions. The HON contained a tiered compliance schedule for subpart H (equipment leaks), and the first group of sources were required to be in compliance by October 24, 1993 (six months after the promulgation date).

On December 26, 1996, in conformance with a settlement

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agreement reached with the Chemical Manufacturers Association (CMA) and the Dow Chemical Company, the EPA promulgated amendments to the HON rule. This action promulgated significant changes to § 63.104 (heat exchange systems) and some amendments to subpart H (equipment leaks), as well as substantial revisions to other provisions. For those HON provisions directly referenced in subparts U and JJJ, the promulgated amendments apply to affected Polymers and Resins I and IV sources.

On November 25, 1996 the EPA published an Advanced Notice of Proposed Rulemaking (ANPR) (61 FR 59849) informing the public of the intent to propose amendments to the recently promulgated Group I Polymers and Resins NESHAP and Group IV Polymers and Resins NESHAP that are necessary due to the HON amendments. However, it is anticipated that proposal of these subpart U and JJJ amendments will occur in mid-1997, which will be after the compliance dates for the equipment leaks provisions for both Polymers and Resins NESHAP and the heat exchange system provisions for the Polymers and Resins I NESHAP.

II. Summary of and Rationale for Proposed Revisions

A. Summary of Revisions

The NESHAP for Group I Polymers and Resins provided that existing sources must be in compliance with the requirements of § 63.502, which references the HON equipment leaks provisions and the HON heat exchange system provisions, no later than March 5, 1997, unless a compliance extension was granted. Similarly, the Group IV Polymers and Resins NESHAP provided that existing sources must be in compliance with the requirements of § 63.1331, which references the HON equipment leak provisions, no later than March 12, 1997, unless a compliance extension was granted.

This direct final rule changes the subpart U and subpart JJJ compliance date provisions in two significant respects. For Polymer and Resins I (subpart U), the compliance date for heat exchange systems is being extended from March 5, 1997, to September 5, 1999. This change is contained in § 63.481(d)(6) of this direct final rule.

In addition, this direct final rule extends the compliance date for Group I Polymers and Resins equipment leaks until July 31, 1997, and extends the compliance date for Group IV Polymers and Resins equipment leaks until July 31, 1997. These changes are included in § 63.481(d) and in § 63.1311(d) of this direct final rule.

B. Rationale

1. Heat Exchange Systems

The EPA never intended that owners and operators of affected subpart U sources would have to be in compliance with the heat exchange system provisions by 6 months after promulgation of the rule. As discussed above, the equipment leak section of subpart U (§ 63.502) references both the HON equipment leaks section (subpart H) and the HON heat exchange system (§ 63.104) provisions. Section 63.481 of subpart U, specifies that affected existing sources must be in compliance with the provisions of § 63.502 by March 5, 1997 (i.e., 6 months after promulgation). This compliance date was selected to be consistent with the HON compliance date for the first tier of sources. However, this compliance date also applies to heat exchange systems, since § 63.502(f) contains the reference to the HON heat exchange provisions. This was not intended by the EPA. The intention was to make the compliance date for heat exchange systems consistent with the HON (i.e., 3 years from the promulgation date). The EPA's intention is evident in the Polymers and Resins IV regulation (subpart JJJ). Section 63.1311 of subpart JJJ requires compliance with the heat exchange system provisions of § 63.1328 no later than September 12, 1999 (3 years after the promulgation date for that rule). While this was also the EPA's intention in subpart U, the structure of subpart U caused the inadvertent establishment of a 6-month heat exchange system compliance date. In the HON and in subpart JJJ, the 3 year compliance deadline was selected because the EPA considered that amount of time to be necessary for owners and operators of affected sources to complete the planning, design, and engineering needed to develop the technology to comply with the requirements, as well as to perform the installation and start-up of new equipment. Therefore, the rationale for the revision to the heat exchange system compliance date in subpart U is that the compliance date in the promulgated rule was never intended to be March 5, 1997. Rather, the EPA meant to be consistent with the HON compliance date for the same provisions.

2. Equipment Leaks

In this direct final rule, the EPA is extending the compliance date for equipment leaks (subparts U and JJJ) due to the fact that the amendments to the HON (on which the equipment leaks provisions are based) were promulgated on December 26, 1996. This may cause confusion for owners and operators of affected sources, regarding which HON equipment leak provisions (subpart H) they must be in compliance with by March 5 and March 12, 1997. For this reason, the EPA is extending the compliance date for equipment leaks until 6 months after the publication of the equipment leak provision amendments to subpart H. Since the subpart H amendments were signed by the Administrator on December 26, 1996 and will be published in January 1997, this rule extends the compliance dates in both § 63.1311(d) of subpart JJJ and § 63.481(d) of subpart U to July 31, 1997.

Section 112(i)(3) of the Act provides that existing sources are to be in compliance with applicable emission standards "as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard." The September 5, 1996 and September 12, 1996 final rules specified a compliance date applicable to equipment leaks that was six months from the issuance of those rules. This direct final rule extends those compliance dates to approximately 6 months after finalization of the amendments to the equipment leak provisions in subpart H. The EPA believes this compliance date is reasonable due to the fact that no changes to the equipment leak provisions in subparts U and JJJ are anticipated, except for the addition of a paragraph parallel to the proposed amendment to § 63.100(e)(3) of subpart F, which provides greater flexibility by allowing specific items of equipment that are managed by different administrative organizations to be aggregated with any process unit within the affected source.

The EPA believes that the revised compliance dates will provide sufficient time for all sources to come into compliance with the equipment leak provisions as amended in the HON on December 26, 1996. However, should any source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, such source may request an extension of up to one year in accordance with section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6) of subpart H.

III. Impacts

The extension on the compliance dates for heat exchange systems at subpart U affected source and for equipment leaks at either subpart U or

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subpart JJJ affected sources will not affect the estimated emissions reduction or the control cost for the rule.

IV. Administrative

A. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, [44 U.S.C. 3501 et seq.]. The OMB approved the information collection requirements for the Group IV Polymers and Resins NESHAP and assigned those standards the OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

An Information Collection Request (ICR) document for the Group I Polymers and Resins I NESHAP was prepared by the EPA (ICR No. 1746.01) but has not yet been approved by the OMB. A copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 260–2740.

The amendments to the NESHAP contained in this direct final rule should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

B. Executive Order 12866

Under Executive Order (E.O.) 12866, the EPA must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB notified the EPA that it considered both the Group I Polymers and Resins NESHAP and the Group IV Polymers and Resins NESHAP "significant regulatory actions" within the meaning of the Executive Order. The EPA submitted those actions to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

These amendments to those NESHAP provide affected sources more time in which to comply with the equipment leaks provisions of those rules, and provide Group I Polymers and Resins more time in which to comply with the heat exchange systems provisions. The amendments contained in this direct final rule do not add any additional control requirements. Therefore, this direct final rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. See the September 5, 1996 **Federal Register** (61 FR 46906) and the September 12, 1996 **Federal Register** (61 FR 48208) for the basis for this determination. The compliance date changes to the two rules do not impose any economic burden for any regulated entity.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this direct final rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 9, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

2. Section 63.481 is amended by revising paragraphs (d) introductory text, (d)(2) introductory text and (d)(2)(iv); and by adding paragraph (d)(6) to read as follows:

§ 63.481 Compliance schedule and relationship to existing applicable rules.

* * * * *

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.502 no later than July 31, 1997, unless an extension has been granted pursuant to section

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112(i)(3)(B) of the Act, as discussed in paragraph § 63.182(a)(6) of subpart H.

* * * * *

(2) Compliance with the compressor provisions of § 63.164 of subpart H shall occur no later than March 5, 1998, for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section.

* * * * *

(iv) The owner or operator submits the request for a compliance extension to the U.S. Environmental Protection Agency (EPA) Regional Office at the addresses listed in § 63.13 of subpart A no later than June 16, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D) of subpart A. Unless the EPA Regional Office objects to the request for a compliance extension within 30 calendar days after receipt of the request, the request shall be deemed approved.

* * * * *

(6. Compliance with the heat exchange system provisions of § 63.104 of subpart F, as required in § 63.502(f), shall occur no later than September 5, 1999.

* * * * *

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

3. Section 63.1311 is amended by revising paragraphs (d) introductory text, (d)(2) introductory text, and (d)(2)(ii) to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(d) Except as provided for in paragraphs (d)(1) through (d)(5) of this section, existing affected sources shall be in compliance with § 63.1331 no later than July 31, 1997, unless an extension has been granted pursuant to section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6).

* * * * *

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than March 12, 1998, for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(ii) of this section.

* * * * *

(ii) The owner or operator submits the request for a compliance extension to the U.S. Environmental Protection Agency (EPA) Regional Office at the addresses listed in § 63.13 no later than June 16, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 calendar days after receipt of the request, the request shall be deemed approved.

* * * * *

[FR Doc. 97–988 Filed 1–13–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC02

Visitor Service Authorizations on Alaska National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) adopts regulations to implement Section 1307 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This action is necessary to establish the procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide visitor services other than hunting and fishing guiding on National Wildlife Refuge System lands in Alaska. This rulemaking provides guidance in the solicitation, award and renewal of competitively offered visitor service authorizations on National Wildlife Refuges in Alaska.

DATES: This rule is effective February 13, 1997.

ADDRESSES: Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: David G. Patterson, Regional Public Use Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3389.

SUPPLEMENTARY INFORMATION:

Background

The ANILCA (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980. Its broad purpose is to provide for the disposition and use of a variety of federally owned lands in Alaska. Section 1307 of ANILCA (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to providing "visitor services" in certain lands under the administration of the Secretary of the Interior, in this context, units of the National Wildlife Refuge System. The term "visitor service" is defined in section 1307 as "* * * any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours, and guides excepting the guiding of sport hunting and fishing."

Subsection (a) of Section 1307 states as follows: Notwithstanding any other provision of law, the Secretary [of the Interior], under such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service [as defined in subsection (c)] within any area established as or added to a conservation system unit to continue providing such type of service and similar types of visitor services within such area if such service or services are consistent with the purposes for which such unit is established or expanded (16 U.S.C. 3197).

Subsection (b) of Section 1307 states as follows: Notwithstanding provisions of law other than those contained in subsection (a), in selecting persons to provide (and in the contracting of) any type of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary [of the Interior]—

(1) shall give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act; and

(2) shall give preference to persons whom he determines, by rule, are local residents * * * (16 U.S.C. 3197).

Subsection (b) also provides to Cook Inlet Region, Incorporated (CIRI), in cooperation with Village Corporations within the Cook Inlet Region when appropriate, the right of first refusal to provide new visitor services within the Kenai National Moose Range, (Kenai National Wildlife Refuge), within the Cook Inlet Region.

The Alaska National Wildlife Refuge System is managed by the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), Refuge Recreation Act (16 U.S.C. 460k–4), and the Alaska National Interest Lands Conservation Act (ANILCA) (84 Stat. 2371 et seq.; codified as amended in scattered sections of 16 U.S.C., 43 U.S.C., 48 U.S.C.).

The Secretary of the Interior is authorized under the National Wildlife Refuge System Administration Act to provide for visitor services within the refuge system which he determines are compatible with the purposes for which the area was established as a refuge (16 U.S.C. 668dd(b)(1)). In accordance with that authority, provision is made in the Fish and Wildlife Service refuge regulations for operation of public use facilities and services on national wildlife refuges by concessionaires or cooperators under appropriate contracts or legal agreements (50 CFR 25.61). This rule provides the procedures for selecting the providers of services and facilities, excluding sport fishing and hunting guiding activities, to the public on national wildlife refuges in Alaska under section 1307 of ANILCA. These procedures apply only when a visitor services permit must be issued competitively.

Summary of Public Involvement

For the convenience of the public and to enhance the public involvement process, the National Park Service and the U.S. Fish and Wildlife Service agreed to publish simultaneously the draft regulations implementing section 1307 of ANILCA and to undertake a joint public involvement effort. The public comment period was open from April 25 to June 26, 1995, and then, in response to numerous requests, reopened from July 13 to September 11, 1995. The Fish and Wildlife Service conducted public meetings jointly with the National Park Service in Anchorage and Fairbanks. The meetings were mostly informational with one official statement presented by a Native Corporation. National Wildlife Refuge field offices made individual contacts, conducted informational public meetings, and held open houses.

The Fish and Wildlife Service received written comments from 28 different groups or individuals. Eight of those commenters addressed Fish and Wildlife Service issues specifically, while 20 of the commenters addressed issues of both agencies. The National Park Service received an additional 28 written comments from groups or individuals addressing specific park issues. All written comments received by one agency were shared with the other agency in the event a response addressed both agencies. Of the 28 written comments received by the Fish and Wildlife Service, 11 were from Alaska Native organizations, eight from visitor service providers, three from individuals, two from non-tourism related businesses, two from special interest groups, one from federal government, and one from state government. The following analysis applies only to those 28 comments affecting national wildlife refuges. The comments are discussed on a section by section basis.

Analysis of Public Comments

Comments touched on a wide range of topics. A significant number of comments addressed the statute (ANILCA) rather than the regulations, or offered opinions reflecting personal choices rather than identifying problems or potential improvements, or example, "preferences are not fair" or "are not appropriate." Also significant was the number of commenters stating that the regulations discriminate against Natives or Native entities. On the other hand a significant number of commenters stated that the regulations give Natives an unfair advantage in providing visitor services. The view was raised by several persons that giving preferences does not always allow the selection of the best qualified provider or the safest service, and that preferences discourage non-preferred providers from submitting bids.

One commenter requested that subsistence use of refuges be specifically protected. Title 8 of ANILCA provides that protection does not need to be addressed in these regulations. The same commenter stated that the local Native Corporation should be given a right of first refusal for any visitor service provided in that refuge. Section 1307 of ANILCA does not provide for that right. Paragraph (b) does require the Secretary of the Interior to "(1) * * * give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act)."

In the draft regulations the terms "new visitor services" and "future visitor services" were used interchangeably. Regulations implementing section 1307 of ANILCA apply to all new visitor services, except hunting and fishing guiding, offered by a competitive bidding process on all national wildlife refuges in Alaska. The term "new visitor services" is used consistently throughout the final regulations.

Section 36.37(b) Definitions

The definition of "adequate services" was subjective and lacked standards, according to some commenters. The term was not used in the text of the draft regulations as published in the **Federal Register**; it has been deleted from the list of definitions.

Numerous commenters felt that the definitions for "controlling interest" and "historical operator" should include family members and partners in those situations where a refuge permit holder providing a visitor service is no longer able to provide the service because of death or illness. The policy of the Service in Alaska is that refuge permits will carry a right-of-survivorship during the term of the permit. If an individual permittee dies or becomes physically or mentally incapacitated, the permit will automatically pass to a qualified spouse, immediate family member, or prior existing business partner. This policy is not limited to permits issued pursuant to these regulations.

A diversity of commenters were concerned about the definition of "local area" and identified two predominant issues: (1) the size of a community should have no bearing on whether it is local; and (2) because of the relationship of the people to the land, a distance of 35 miles from the refuge boundary could exclude communities from visitor service areas which impact them directly, while at the same time include communities that have no socio-economic ties to the location where a visitor service would be offered. Regarding the first issue, the Service agrees that "local" should be determined by proximity, not size. The requirement that a community have a population of 5,000 or fewer persons in order to be considered local has been deleted from the final regulation. Regarding the second issue, different suggestions were offered. The large size of many of the refuges causes the external boundary to be an inadequate reference point when determining "local area." In response to the numerous comments the Service reevaluated the issue and concluded that "local area" should be defined using the location of the visitor service as the reference point. The final regulation defines "local area" as follows: "Local area means that area in Alaska within 100 miles of the location within a refuge where any of the visitor service is authorized."

Likewise a significant portion of the comments addressed the definition of "local resident," both for individuals and for corporations. Numerous opinions were offered, the most common being that any resident of the State of Alaska should be considered local. More of the comments related to corporations than to individuals. A sample of the comments include: "corporations should be treated the same as an individual;" "Native Corporations should be allowed to form

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joint ventures with non-preferred providers;" "a Native Corporation should be considered local within its regional corporation boundary;" "a corporation should be considered local if the majority of the shareholders are local;" "if the majority of stockholders of a corporation are local, there should be no requirement for the corporation to be headquartered locally;" and, "a corporation should not be considered as having changed because of a change in the stockholder roster."

The purpose of paragraphs (b)(1) and (b)(2) of section 1307 of ANILCA was to provide assurance that the designation of the wildlife refuges would not negate economic opportunity for the persons and businesses located within the vicinity of those refuges, and who have direct socio-economic ties to the resources within the refuges. ANILCA acknowledges the probability that some Native Corporations having direct socio-economic ties to a refuge may not be considered local by definition. Identification of the "most directly affected Native Corporation" was to protect the economic interests of those Native Corporations in existence at the time of the passage of ANILCA, and that had social or economic ties to a particular refuge. Designation of "most directly affected Native Corporation" provides a preference to those Native Corporations. A local preference and a most directly affected Native Corporation preference are equal in value and are not additive. A Native Corporation that is eligible for a local preference receives no additional preference by requesting designation as most directly affected Native Corporation.

After reviewing the draft regulations in light of the comments received, the Service agreed that the treatment of corporations in the definition of local resident was not equitable to the treatment received by individuals. The definition for local resident has been rewritten so that location of the headquarters is not a factor in determining "local corporation." Paragraph 36.37(b)(4)(ii) now reads as follows: "For corporations. A corporation in which the controlling interest is held by an individual or individuals who qualify as 'local resident(s)' within the meaning of this section. For non-profit corporations a majority of the board members and a majority of the officers must qualify as 'local residents.'"

Some commenters expressed concern that non-local persons could move to a community immediately prior to submitting an offer to provide a visitor service and thereby receive a local preference. Other commenters expressed concern that a business located outside the local area could arrange to have a local resident submit an offer on its behalf and thereby receive a local preference. Both these scenarios appeared to be contrary to the spirit of ANILCA. Responding to those concerns the Service has further altered the definition of "local resident" to include a requirement that individuals "* * * have maintained a primary, permanent residence and business within the local area for the past twelve consecutive months * * *."

Although not in response to a specific comment, the Service added a definition for "a responsive offer" to help clarify the process used to identify preferred operators.

Section 36.37(c) Visitor Services Existing On or Before January 1, 1979, "historical operators"

Several comments reflected confusion regarding the ability of a historical operator to increase the scope and level of visitor services pursuant to section 1307. Paragraph (c)(1) states that a historical operator may be permitted by the Refuge Manager to increase the scope or level of visitor services provided prior to January 1, 1979, but under separate authority. No historical operating rights shall be obtained in such increase. Paragraph (c)(2) states that a historical operator may apply for a permit or amended permit to provide similar visitor services pursuant to section 1307. For clarification the following sentence has been relocated within the paragraph: "Granting the request will not result in an increase in the scope or level of service in excess of those provided by the requesting historical operator as of January 1, 1979."

Concerns were expressed by several commenters that the time allowed for non-delivery of visitor services in paragraph (c)(4) of the draft regulations was not adequate to provide for certain legitimate circumstances. After reviewing the comments the Service agreed that eleven (11) months was not an appropriate time period to allow for non-delivery of services. The time frame has been increased to twenty-four (24) months and is reflected in paragraph (c)(5) of the final regulations. Twenty-four (24) months accommodates a situation in which a visitor service provider may only have a one month season. If that provider is unable to offer the service the following season for reasons beyond his control, he would then be twenty-three (23) months without providing the visitor service.

Section 36.37(d) Visitor Services Initially Authorized After January 1, 1979, "preferred operators"

Many of the comments reflected confusion regarding the relationship between local preference and preference for most directly affected Native Corporation. The following sentence has been added to paragraph (d)(1) for clarity: "Preferences for most directly affected Native Corporation(s) and local residents are equal and are not additive."

Numerous commenters, especially those attending the public meetings in Anchorage and Fairbanks, demonstrated concern and confusion regarding the use of the terms "best offer" and "meeting the terms of the best offer." To many people the term "best offer" implies a monetary bid. When the Service issues a prospectus, bidders are required to describe in detail the service they would be providing. As an example, this description might include types of equipment, means of transportation, personnel qualifications, safety measures, methods of communication, length of time required, and other aspects of service delivery specified in the prospectus. The bid, or response to the prospectus, constitutes an "offer" and is evaluated by a panel. After reviewing the comments, the Service recognizes that "meeting the terms of the best offer" would be difficult to evaluate and could lead to unfair comparisons. The term in the final regulations has been changed as suggested from "meeting the terms of the best offer" to "substantially equal to the terms of the best offer." Also a definition of "best offer" has been added to §36.37(b).

Several commenters expressed concern that Native Corporations were not treated equitably by paragraph (d)(4) of the draft regulations which required a Native Corporation to document total ownership of the business entity making an offer in order to qualify for a preference. A local corporation, however, only needed to document a controlling interest in the business entity making an offer in order to qualify for a preference. The paragraph has been changed so that both Native Corporations and local corporations are required to document a controlling interest in the entity making the offer. In the case of a joint venture, corporations with a preference must document a controlling interest in the joint venture.

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Section 36.37(e) Preference to Cook Inlet Region, Incorporated (CIRI)

In response to a request by CIRI the comma was deleted before "when appropriate" in the first sentence of paragraph (e)(1) in order to be consistent with the statutory language. The second sentence of paragraph (e)(2) was more appropriately placed in subsection (b) Definitions. Also in paragraph (e)(2) the draft regulations required an offer to document total ownership by CIRI and/or the village corporation in the entity making the offer. This wording has been changed to require documentation of a controlling interest by CIRI rather than a total ownership.

Section 36.37(f) Most Directly Affected Native Corporation Determination

Many of the comments directed to this paragraph were addressed in the comment section for paragraph 36.37(b) Definitions.

A few comments stated that "most affected Native Corporation" status should be determined by historical use. Section 1307 of ANILCA provided a preference to help offset potential economic impacts caused by the establishment of the refuges. Other sections of ANILCA provide for continued subsistence and other traditional uses. Socio-economic impacts are among the criteria identified in the regulations and are to be used in the determination of "most directly affected Native Corporation." Historical use would be considered as it relates to socio-economic impacts. Wording has been added to paragraph (f)(1)(iii) to accommodate historical and traditional use.

One comment suggested that the criteria for determination of "most directly affected Native Corporation" should include land ownership in the vicinity of the refuge and not merely within or adjacent to the refuge.

The Service has decided to maintain the wording as it appears in the draft regulations. As stated earlier in the comment analysis, section 1307 of ANILCA was intended to help offset potential economic impacts caused by the establishment of the refuges. Providing a preference to all individuals or corporations experiencing consequences would defeat the intent of mitigating the impacts to those most directly affected. In the case of Native Corporations, although more than one may be determined most directly affected, the intent is to provide a preference to those that are affected "most directly." Native Corporations owning land within or adjoining a refuge boundary certainly have greater potential to be impacted. The Service does not believe it is appropriate to diminish the opportunity for preference afforded those Native Corporations by expanding the criteria to include additional Native Corporations. Neither does the Service believe it to be appropriate to automatically provide a "most directly affected" preference to a Native Corporation based solely on its proximity to the refuge boundary.

Although one Native Corporation comment requested automatic preference for the Regional Corporation within whose boundary a visitor service was being proposed, the Service believes that all Native Corporation requests for preference should be reviewed equitably.

Paragraph (f)(3) of the draft regulations contained a sentence allowing joint ventures between preferred operators. Several commenters stated the concern that the wording was too limiting and that preferred operators should be permitted to enter into joint ventures with non-preferred businesses. Other commenters expressed concern that non-Native, non-local businesses would use a preferenced corporation or individual as a front to respond to a visitor service solicitation, thereby receiving the preference. In evaluating these two perspectives the Service concluded that the spirit of section 1307 of ANILCA could easily be violated by providing for joint ventures between preferenced and non-preferenced providers unless limits were placed on the manner in which the joint venture could be structured. Forbidding joint ventures between preferenced and non-preferenced providers, however, may exceed appropriate limits. In order to accommodate the expressed need for expanded opportunities to form joint ventures, the sentence in paragraph (f)(3) limiting joint ventures has been deleted.

The subject of joint ventures has been addressed by rewriting paragraph (d)(4) to read "An offer from a Native Corporation or a local corporation under this section must document its controlling interest in the entity or, in the case of a joint venture, all partners making the offer." Preferenced providers wishing to access the experience and/or resources of non-preferenced providers are encouraged to enter into alternative arrangements with those providers. Such arrangements must result in the preferenced provider making the offer and being responsible for the delivery of the visitor service, as well as being accountable for the performance of the permit terms and conditions. Contracting the services of the non-preferenced provider would be an example of such an arrangement.

The draft regulations did not clearly state the intent to provide multiple opportunities to apply for "most directly affected Native Corporation." This has been clarified by adding paragraph (f)(5) to the regulations.

Section 36.37(g) Appeal Procedures

To maintain consistency of appeal procedures related to permits on national wildlife refuges in Alaska, this section of the draft regulations has been rewritten and adopts the procedures set forth in 50 CFR 36.41 Permits.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service has had an authorization number 1018–0014, from the Office of Management and Budget (OMB) that has expired. The Service has received an emergency extension through June 30, 1997, and is likewise working on a long-term (three year), authorization request which will be submitted before the emergency authorization expires.

This collection of information will be achieved through the use of a USFWS Application Form, which will be modified pursuant to 50 CFR 13.12(b), to address the specific requirements of this final rule. The information collection requirements needed for the proper use and management of all Alaska National Wildlife Refuges is contained in 50 CFR 36.3. The information is being collected to assist the Service in administering these recreation programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits.

This collection of information will establish whether the applicant is fully qualified to receive the benefits of a refuge permit. The information such as name, address, phone number, depth of experience, qualifications, time in residence, knowledge of function, and affiliations, requested in the application form is required to obtain a benefit.

The likely respondents to this collection of information will be individual Alaska citizens and local and native corporations who wish to be considered to receive a refuge permit. This information will be needed by the USFWS to determine whether a given individual or corporation qualifies. A refuge permit will be approved for five (5) years. Permits shall be noncompetively renewed by the refuge manager for a period of five additional years upon showing permitee compliance with all applicable permit terms and conditions, and a satisfactory

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record of performance. The annual burden of reporting and record keeping should be less than 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated number of likely respondents is less than ten (10), yielding a total annual reporting and record keeping burden of four hundred (400) hours or less.

Direct comments regarding the burden estimate or any other aspect of the form to the Service Information Collection Clearance Officer, Fish and Wildlife Service, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, and to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (1018–0014), Washington, D.C. 20503.

Economic Analysis

Service review has revealed that this rulemaking will establish the procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide visitor services other than hunting and fishing guiding on National Wildlife Refuge System lands in Alaska. This rule provides guidance in the solicitation, award, and renewal of competitively offered visitor service authorizations on refuges in Alaska. ANILCA provides assurance that designation of the wildlife refuges would not negate economic opportunity for the persons and businesses located within the vicinity of those refuges, and who have direct socio-economic ties to the resources within the refuges.

It is estimated that the need for new visitor services will result in less than five (5) special use permits per year statewide. There is a high probability that local visitor service providers, exercising their right under section 1307(b) of ANILCA, would be awarded more permits than companies without the preference. This preference will have a positive impact on the local areas by increasing the economic base of these communities. This impact, while important in relation to the total economic level of the local area, is very small in actual dollar value. It is anticipated that each of the projected new permits issued annually will generate between $50,000 and $200,000 in revenue, depending on the service provided. Therefore, this rule would have no "significant" economic impact on the local communities or local governmental entities.

This rulemaking has been reviewed by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Environmental Considerations

In accordance with 516 DM 2, Appendix 1, the Service claims a categorical exclusion to this rulemaking as this is pursuant to "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature," and as this rulemaking establishes procedures to allow new and continuing services on Alaska refuge units.

Primary Author

The primary author of this rule is David G. Patterson, Regional Public Use Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and record keeping requirements, and Wildlife refuges.

The U.S. Fish and Wildlife Service amends Part 36 of Chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460k et seq., 668dd et seq., 742(a) et seq., 3101 et seq., 44 U.S.C. 3501 et seq.

2. A new Section 36.37 is added to subpart D of part 36 to read as follows:

§ 36.37 Revenue producing visitor services.

(a) Applicability.

(1) Except as otherwise provided for in this paragraph, the regulations contained in this section apply to new visitor services provided within all National Wildlife Refuge areas in Alaska.

(2) The rights granted by this section to historical operators, preferred operators, and Cook Inlet Region, Incorporated, are not exclusive. The Refuge Manager may authorize other persons to provide visitor services on refuge lands. Nothing in this section shall require the Refuge Manager to issue a visitor services permit if not otherwise mandated by statute to do so. Nothing in this section shall authorize the Refuge Manager to issue a visitor services permit to a person who is not capable of carrying out its terms and conditions in a satisfactory manner.

(3) This section does not apply to the guiding of sport hunting or sport fishing.

(b) Definitions. The following definitions shall apply to this section:

(1) *Best Offer* means a responsive offer that best meets, as determined by the Refuge Manager, the selection criteria contained in a competitive solicitation for a visitor services permit.

(2) *Controlling interest, in the case of a corporation* means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business, so as to permit exercise of final managerial authority over the actions and operations of the corporation, or election of a majority of the Board of Directors of the corporation.

(3) *Controlling interest in the case of a partnership, limited partnership, joint venture or individual entrepreneurship* means a beneficial ownership of or interest in the entity so as to permit the exercise of final managerial authority over the actions and operations of the entity.

(4) *Controlling interest in other circumstances* means any arrangement under which a third party has the ability to exercise general management authority over the actions or operations of the business.

(5) *Historical operator* means any person who:

(i) On or before January 1, 1979, was lawfully engaged in adequately providing any type of visitor service in a refuge within the scope of paragraph (c) of this section;

(ii) Has continued to lawfully provide that visitor service; and

(iii) Is otherwise determined by the Refuge Manager to have a right to continue to provide such services or similar services pursuant to paragraph (c) of this section.

(6) *Local area* means that area in Alaska within 100 miles of the location

within a refuge where any of the visitor service is authorized.

(7) *Local resident* means:

(i) For *individuals.* Those individuals that have maintained their primary, permanent residence and business within the local area for the past twelve (12) consecutive months and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registrations.

(ii) For *corporations.* A corporation in which the controlling interest is held by an individual or individuals who qualify as "local resident(s)" within the meaning of this section. For non-profit corporations a majority of the board members and a majority of the officers must qualify as "local residents."

(8) *Native Corporation* means the same as defined in section 102(6) of ANILCA.

(9) *Preferred operator* means a local resident or Native Corporation which is entitled to a preference under this section in the award of a permit, and as otherwise provided under section 1307(b) of ANILCA.

(10) A *responsive offer* means one which is timely made and meets the terms and conditions of the solicitation document.

(11) *Similar visitor service* means that visitor service authorized by the Refuge Manager to be provided on a refuge and determined by the Refuge Manager, on a case by case basis, to be similar to an established service being provided by a historical operator.

(12) *Visitor service* means any service or activity made available for a fee, commission, brokerage, or other compensation to persons who visit a refuge, including such services as providing food, accommodations, transportation, tours, and guides excepting the guiding of sport hunting and fishing. This also includes any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip.

(13) *Right of first refusal* means, as it relates to section 1307(a) of ANILCA, a reasonable opportunity for a historical operator to review a description of the new similar service and the terms and conditions upon which it is to be provided to determine if the historical visitor service operator wishes to provide the service. As it relates to section 1307(c) of ANILCA, it refers to the opportunity for Cook Inlet Region, Incorporated to have the first opportunity to provide new visitor services on the Kenai National Wildlife Refuge in the Cook Inlet Region.

(c) Visitor services existing on or before January 1, 1979, "historical operators".

(1) A historical operator shall have a right to continue to provide visitor services or similar services within such area, under appropriate terms and conditions, so long as such services are determined by the Refuge Manager to be consistent with the purposes for which the refuge was established. A historical operator must obtain a permit from the refuge manager to conduct the visitor services. The permit shall be for a fixed term and specified area, and shall contain such terms and conditions as are in the public interest. Failure to comply with the terms and conditions of the permit may result in cancellation of the authorization and consequent loss of historical operator rights under this section. Nothing in this section shall prohibit the Refuge Manager from permitting persons, in addition to historical operators, to provide visitor services in the refuge at the Refuge Manager's discretion so long as historical operators are permitted to conduct a scope or level of visitor services equal to or greater than those provided prior to January 1, 1979, under terms and conditions consistent with this section. A historical operator may be permitted by the Refuge Manager, under separate authority, to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights shall be obtained in such increase.

(2) A historical operator may also apply to the Refuge Manager for a permit or amended permit to provide similar types of visitor services. Granting the request will not result in an increase in the scope or level of service in excess of those provided as of January 1, 1979, by the requesting historical operator. The Refuge Manager shall grant the request if such visitor services are determined by the Refuge Manager to be:

(i) Consistent with the management of refuge resources and the purposes for which the refuge area was established;

(ii) Similar to the visitor services provided by the historical operator prior to January 1, 1979; and

(iii) Consistent with the legal rights of any other person.

(3) When a historical operator permit has expired, and if the visitor services permitted by it were adequately provided and consistent with the purposes of the refuge as determined by the Refuge Manager, the Refuge Manager shall renew the permit for a fixed term consistent with such new terms and conditions as are in the public interest. Should a historical operator decline to accept an offer of renewal, its rights as a historical operator shall be considered as terminated.

(4) If the Refuge Manager determines that permitted visitor services must be curtailed or reduced in scope or season to protect refuge resources, or for other purposes, the Refuge Manager shall require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Refuge Manager shall establish a proportionate reduction of visitor services among all such historical operators, taking into account historical operating levels and other appropriate factors, so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Refuge Manager shall select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(5) The rights of a historical operator shall terminate if the historical operator fails to provide the visitor services under the terms and conditions of a permit issued by the Refuge Manager or fails to provide the visitor services for a period of more than twenty four (24) consecutive months.

(6) The rights of a historical operator under this section shall terminate upon a change, after January 1, 1979, in the controlling interest of the historical operator through sale, assignment, devise, transfer or otherwise.

(7) The Refuge Manager may authorize other persons to provide visitor services in a refuge in addition to historical operators, as long as such other persons conduct the services in a manner compatible with the purposes of the refuge.

(d) Visitor services initially authorized after January 1, 1979, "preferred operators".

(1) In selecting persons to provide, and in permitting any type of visitor service, excepting guided hunting or fishing, the Refuge Manager will give a preference to preferred operators determined qualified to provide such visitor services. Preferences for most directly affected Native Corporation(s) and local residents are equal and are not additive.

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(2) In selecting persons to provide any type of visitor service for refuges subject to a preferred operator preference under this section, the Refuge Manager will publicly solicit competitive offers for persons to apply for a permit, or the renewal of a permit, to provide such visitor service pursuant to Service procedures. Preferred operators must submit a responsive offer to such solicitation in order to effect their preference. If, as a result of the solicitation, an offer from a person other than a preferred operator is determined to be the best offer and that offeror is determined to be capable of carrying out the terms of the permit, the preferred operator which submitted the most responsive offer shall be given an opportunity to substantially equal the best offer received by amending its offer. If the amended offer of the preferred operator is considered by the Refuge Manager as being substantially equal to the terms of the best offer, the preferred operator, if determined to be capable of carrying out the terms of the permit, shall be awarded the visitor service permit. If the preferred operator fails to meet these requirements, the Refuge Manager shall award the permit to the person who submitted the best offer in response to the solicitation. The Native Corporation(s) determined to be "most directly affected" under this section and local residents have equal preference.

(3) Nothing in this section shall prohibit the Refuge Manager from authorizing persons other than preferred operators to provide visitor services in refuge areas so long as the procedures described in this section have been followed with respect to preferred operators. Preferred operators are not entitled by this section to provide all visitor services in a qualified refuge.

(4) An offer from a Native Corporation or a local corporation under this section must document its controlling interest in the entity or in the case of a joint venture, all partners, making the offer.

(5) The preferences described in this section may not be sold, assigned, transferred, or devised, directly or indirectly.

(e) Preference to Cook Inlet Region, Incorporated (CIRI).

(1) Cook Inlet Region, Incorporated, in cooperation with village corporations within Cook Inlet Region when appropriate, shall have a right of first refusal to provide new visitor services within that portion of the Kenai National Moose Range (Kenai National Wildlife Refuge) within the boundaries of Cook Inlet Region. The CIRI shall have ninety (90) days from receipt of a prospectus in which to exercise its right.

(2) In order to exercise this right of first refusal, CIRI must submit an offer responsive to the terms of a visitor services solicitation. If CIRI makes such an offer and is determined by the Refuge Manager to be capable of carrying out the terms of the special use permit, it shall be awarded the permit. If it does not, the permit may be awarded to another person pursuant to a showing that such other person can carry out the conditions of the special use permit in a manner compatible with the purposes of the refuge. An offer being made by CIRI under this section must document controlling interest by CIRI when made in cooperation with village corporations within the Cook Inlet Region. The CIRI right of first refusal shall have precedence over the rights of preferred operators.

(3) The right of first refusal described in this section may not be sold, transferred, devised, or assigned, directly or indirectly.

(f) Most directly affected Native Corporation determination.

(1) Prior to the issuance of a solicitation document for any new visitor service in a refuge, the Refuge Manager shall provide an opportunity for any Native Corporation interested in providing visitor services within that refuge to submit an application to the Refuge Manager to be determined "most directly affected" Native Corporation. The application shall include but not be limited to, the following information:

(i) The name, address, and telephone number of the Native Corporation, the date of incorporation, its articles of incorporation and structure, and the name of the applicable refuge area;

(ii) The location of the corporation's population center or centers;

(iii) An assessment of the socioeconomic impacts, including historical and traditional use, and their effects on the Native Corporation as a result of the expansion or establishment of the refuge; and

(iv) Any other information the Native Corporation believes is relevant.

(2) Upon receipt of all applications from interested Native Corporations, the Refuge Manager will determine the "most directly affected" Native Corporation based on, but not limited to, the following criteria:

(i) The number of acres of surface land within and adjoining the refuge that the Native Corporation owns, or which has been selected under the Alaska Native Claims Settlement Act, unless such selection is determined to be invalid or is relinquished;

(ii) The distance and accessibility from the Native Corporation's population center and/or business address to the applicable refuge; and

(iii) The socio-economic impacts, including historic and traditional use, and their effects as a result of the expansion or establishment of the refuge.

(3) In the event that more than one Native Corporation is determined to be equally affected, each such Native Corporation shall be considered as a preferred operator under this section.

(4) The Refuge Manager's "most directly affected" Native Corporation determination or when requested, the Regional Director's appeal decision for a refuge is applicable for all new visitor services in that refuge.

(5) Any Native Corporation that has not applied for a most directly affected Native Corporation determination may apply for a determination upon issuance of a future solicitation for a new visitor service. A corporation determined to be most directly affected for a refuge will maintain that status for all future visitor service solicitations.

(g) Appeal procedures.

Any person(s) who believe that they have been improperly denied rights with respect to providing visitor services under this section may appeal the denial to the Regional Director. Such an appeal must be submitted in writing within forty-five (45) days of receipt of the denial from which an appeal is sought. The appeals process as defined in 50 CFR Subpart F, 36.41 (b) will apply with exception of the period of time allowed to file an appeal.

Dated: September 10, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–884 Filed 1–13–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62 No. 9
Tuesday, January 14, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 200

Filing of a Petition for Rulemaking: Packer Livestock Procurement Practices

AGENCY: GIPSA, Agriculture.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) has received a petition for rulemaking from the Western Organization of Resource Councils (WORC). The petition requests the Secretary to initiate rulemaking under the Packers and Stockyards Act to restrict certain livestock procurement practices by meat packers. USDA is soliciting public comment on the petition and will utilize these comments in assessing the need for the requested rulemaking. This notice provides all interested parties an opportunity to participate in that process.

DATES: Comments concerning this petition are invited and must be received on or before April 14, 1997.

ADDRESSES: Send an original and two copies of comments to the Acting Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Room 3039–S, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Tommy Morris, Director, Packer and Poultry Division, (202) 720–7063.

SUPPLEMENTARY INFORMATION:

Background

In early 1995, prices for cattle dropped sharply and steadily declined. Various groups in the industry, mainly cattle producers, urged Congress and USDA to take action to improve conditions. USDA has undertaken several initiatives to respond to the concerns of the industry.

On February 14, 1996, USDA released a congressionally-mandated study on concentration in the red meat industry.[1] The study included projects on the beef sector that included examining cattle procurement markets, price determination, captive supplies, and the effects of concentration on cattle prices. Although the study confirmed the existence of concentration in the red meat industry, it provided no definitive evidence that concentration had an appreciable effect on cattle prices.

Following release of the study, the Advisory Committee on Agricultural Concentration was appointed by the Secretary to review the study and a number of other issues involving concentration in agriculture. The Advisory Committee submitted its recommendations and findings on June 6, 1996.[2] The recommendations of the majority report included increased monitoring and enforcement of antitrust and regulatory policy, limiting packer activities regarding price differentiation, improving collection and reporting of market data, and value-based pricing. The Advisory Committee also submitted three minority reports. The recommendations of the minority reports included taking additional action to address the concerns of producers relating to the adverse effect of concentration on the cattle industry, increased reporting of export data, and educating producers about the current market environment.

On July 31, 1996, the Secretary announced the first in a series of actions by USDA to improve competition in the livestock industry. These actions address two of the major areas of recommendations made by the Advisory Committee. These first actions, taken to immediately address the concerns of many livestock producers, include price reporting initiatives that will broaden the coverage of market transactions reported and improve the timeliness and availability of information on the growing international trade in livestock and meat products.

[1] Concentration in the Red Meat Packing Industry, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, USDA, February 1996.

[2] Concentration in Agriculture: A Report of the USDA Advisory Committee on Agricultural Concentration, Agricultural Marketing Service, USDA, June 1996.

The Petition

Independent of USDA's activities, the Secretary received a petition for rulemaking submitted by the Western Organization of Resource Councils (Petitioner) on October 12, 1996. The Petitioner requests that USDA issue rules under the authority of the Packers and Stockyards Act that would prohibit packers from procuring cattle for slaughter through the use of a forward contract unless certain specified conditions are met and that would prohibit packers from owning and feeding cattle, unless the cattle are sold for slaughter in an open, public market.

The Petitioner

The Petitioner represents that it is a federation of grassroots organizations located in Colorado, Idaho, Montana, North Dakota, South Dakota, and Wyoming that was formed in 1979. The various organizations are composed of affiliated citizen groups in 42 communities across the region. The 6,000 members of these groups are farmers, ranchers, small business owners, and working people who seek to protect natural resources, family farms, and rural communities. They include both cattle ranchers and beef consumers.

Need for the Suggested Rules

The Petitioner has submitted this petition for rulemaking because it believes that packers' direct ownership and feeding of cattle for slaughter and their procurement of slaughter supplies through formula or basis-priced forward contracts have decreased prices paid to cattle producers. The Petitioner also believes that because cattle sold through formula or basis-priced forward contracts are not traded publicly and packer-fed cattle are not sold publicly, these practices unjustly discriminate against some producers and provide unreasonable preferences to others. According to the Petitioner, these practices are in violation of Section 202 of the Packers and Stockyards Act and should be restricted through rules.

Request for Comments

USDA is seeking public comment on the petition from academia, all segments of the industry (including, for example, producers, marketing firms, meat packing firms) and other interested parties, including small entities that

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may be affected by implementation of the Petitioner's proposal. Small entities are defined as firms that meet the following standards: (1) beef cattle producers, except feedlots, with annual receipts of $500,000 or less for beef cattle sales; (2) beef cattle feedlots with annual receipts of $1.5 million or less for beef cattle sales; and (3) meat packing plants with 500 employees or less.

Comments received on the petition will provide the Secretary of Agriculture with additional information to consider in determining whether or not the rulemaking requested by the Petitioner should be undertaken. The submission of comments that address the following questions would be particularly helpful. These questions are suggested merely as the framework for your comments.

1. What competitive or other economic effects would implementing the rules that WORC is asking USDA to propose (hereinafter "proposed rules") have on individual businesses and the cattle and beef industry as a whole?

2. What are the competitive effects of formula or basis-priced forward contracting and packer feeding on cattle producers, feedlots, meat packers, meat wholesalers and retailers, and consumers?

3. What would be the effects of implementing the proposed rules on the structure, conduct, and competitive performance of the cattle producing, cattle feeding, meat packing, wholesaling and retailing industries? What would be the effect on the structure, conduct and competitive performance of livestock and meat markets? In answering these questions, what do you consider to be the relevant markets and how do you define them?

4. How do formula or basis-priced forward contracting and packer feeding affect cattle prices? Do formula or basis-priced forward contracting and packer feeding have adverse competitive effects or other adverse economic effects? Are there competitive benefits or other economic benefits associated with use of formula or basis-priced forward contracting and packer feeding that would not support implementing the proposed rules?

5. Do the research studies cited by the Petitioner support its position that the formula or basis-priced forward contracting and packer feeding practices outlined in the petition result in competitive harm or other economic harm to cattle producers and that the practices harm competition in beef packing? Are there other studies that USDA should consider?

6. Does sufficient evidence exist to find that the formula or basis-priced forward contracting and packer feeding practices outlined in the petition violate Section 202 of the Packers and Stockyards Act? If so, what is that evidence?

7. Is regulatory action needed?

8. Are the proposed rules too broad or too restrictive?

9. Do the proposed rules adequately address the concerns raised by the Petitioner?

10. Are there alternatives to rulemaking that would address the concerns raised by the Petitioner?

Please include any data, analyses, or other empirical evidence that supports your position. USDA is also particularly interested in receiving comments from the academic community on this petition, including available theory, research and other information.

USDA has sought extensive public comment from all members of the agriculture sector while addressing concentration in agriculture and strongly encourages participation in this important process.

Done at Washington, D.C. this 8th day of January 1997.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

Petition Received

On October 12, 1996, USDA received the following petition asking USDA to issue rules to restrict certain livestock procurement practices. The appendices forwarded with this petition are available for review at USDA, GIPSA, Packers and Stockyards Programs, 1400 Independence Avenue, SW, Room 3039–S, Washington, D.C. 20250. Copies may be obtained by writing or calling that office at (202) 720–7063 or 720–7051. The petition is hereby published in order that USDA may obtain public comment on this requested regulatory action.

Petition for Rule-Making on Captive Supply Procurement Practices Under the Packers and Stockyards Act

Submitted by The Western Organization of Resource Councils

October 8, 1996.

Introduction

The Western Organization of Resource Councils (WORC) petitions Secretary of Agriculture, Dan Glickman, to exercise his authority under the Packers and Stockyards Act to issue rules restricting packers' use of certain procurement practices to acquire captive supplies of slaughter cattle. WORC requests that the Secretary issue rules that:

1. Prohibit packers from procuring cattle for slaughter through the use of a forward contract, unless the contract contains a firm base price that can be equated to a fixed dollar amount on the day the contract is signed and the forward contract is offered or bid in an open, public manner.

2. Prohibit packers from owning and feeding cattle, unless the cattle are sold for slaughter in an open, public market.

Packers' direct ownership and feeding of cattle for slaughter and their procurement of slaughter supplies through forward contracts have decreased prices paid to cattle producers. In addition, because forward contracts are not traded publicly and packer-fed cattle are not sold publicly, these practices unjustly discriminate against some producers and provide unreasonable preferences to others. Thus, these practices are in violation of Section 202 of the Packers and Stockyards Act (7 U.S.C. § 192) and should be restricted through rules.

The Western Organization of Resource Councils (WORC) is a federation of grassroots organizations: the Western Colorado Congress (Colorado), the Idaho Rural Council (Idaho), the Dakota Resource Council (North Dakota), Dakota Rural Action (South Dakota), the Northern Plains Resource Council (Montana) and the Powder River Basin Resource Council (Wyoming). WORC was formed in 1979.

These six organizations are composed of affiliated citizens' groups in 42 communities across the region. The 6000 members of these groups are farmers, ranchers and small business and working people who seek to protect natural resources, family farms and rural communities. They include both cattle ranchers and beef consumers.

Language of Rules

This petition for rule-making is submitted pursuant to the Administrative Procedures Act, 5 U.S.C. § 553(e) and USDA regulation 7 CFR § 1.28. The statute provides that "each agency shall give an interested person the right to petition for the issuance, amendments, or repeal of a rule." [1] In addition, the USDA regulations provide that interested persons can petition USDA officials to issue, amend or repeal a rule.[2] WORC asks that the Secretary publish the following proposed rule in the **Federal Register** and invite public comment both in writing and at USDA-sponsored informal public hearings:

[1] 5 U.S.C. § 553(e).
[2] 7 CFR § 1.28.

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Restrictions on the Use of Captive Supply Procurement Practices

1. Restrictions on Use of Forward Contracts

No packer shall procure cattle for slaughter through the use of a formula or basis price forward contract. All forward contracts used by packers for purchase of cattle slaughter supplies shall contain a firm base price that can be equated to a specified dollar amount at the time the contract is entered into and be offered or bid in an open, public manner.

(a) The term "forward contract" means any contract, whether oral or written, for purchase of cattle that provides for their delivery to a packer at a date more than seven days after the date the contract is entered into, without regard to whether the contract is for a specified lot of cattle or for a specified number of cattle during a certain period such as a week, month or year.

(b) The term "formula or basis price" means any price term that establishes a base from which the purchase price is calculated by reference to a price that will not be reported until a date after the day the forward contract is entered into. For example: (1) "formula price contract" would include a contract in which the base is the average reported cash price for some day or week in the future, and (2) "basis price contract" would include a contract in which the base is determined with reference to a futures market price that will not be determined until some future date.

(c) This section permits the use of forward contracts under which producers will be paid more or less than the firm base price, when the adjustments to the base are for quality, grade or other value factors that are readily verifiable market factors and are outside the control of the packer/buyer.

(d) The phrase "offered or bid in an open, public manner" means that the offer or bid is made in a forum (1) to which both potential buyers and sellers in general have access, (2) designed to solicit more than one blind bid, and (3) that allows sellers and buyers to witness bids made and accepted. For example, a forward contract could be traded in an electronic market to which both cattle sellers and buyers in general have access.

2. Restrictions on Packer Ownership of Cattle

No packer shall own and feed cattle unless those cattle are sold for slaughter in an open, public market.

(a) This provision does not apply to cattle owned by a packer for fewer than seven days before slaughter.

(b) This provision applies to cattle owned by a packer without regard to whether they are fed at a packer owned facility or on contract at a facility owned by another.

(c) The term "public market" means a forum (1) to which both potential cattle buyers and sellers in general have access, (2) which is designed to solicit more than one blind bid, and (3) which allows sellers and buyers to witness bids made and accepted. The term "public market" includes, but is not limited to, live auction markets, video auction markets and electronic markets.

Explanation of the Rule

A. Forward Contracts

The forward contract provision of this rule prohibits packers from using "formula or basis price" forward contracts. This does not mean that packers can no longer use forward contracts to procure slaughter supplies. In fact, packers and producers could still enter into contracts in which the price is set through a formula if there is a firm base price which can be equated with a specific dollar amount when the contract is entered into. The difference is that the base price could not be the average reported cash price at some future date or a reference to a futures price that will not be determined until some future date. This part of the proposed rule attempts to eliminate the problem identified by the minority report of the USDA Advisory Committee on Agricultural Concentration:

> The problem with formula pricing, as it is currently used, is not a problem of value pricing. Rather, the problem lies in the base from which the carcass value is calculated. In all the methods currently used, the packer has the power to artificially lower the base price from which premiums and discounts are calculated.
>
> When the futures market is used to establish a base, the packers are heavy players on both sides. Their futures market activities, whatever the motivation and whether the packers are long or short in the market, affect the price they pay for formula cattle and, ultimately, for negotiated sales.
>
> . . .
>
> When the formula is based upon the average spot price for the preceding period, that base has three weaknesses which can be used to artificially lower the price received by the producer. First, formula producers and packers claim that the best cattle are sold on a formula basis. That means that the pool of cattle sold on a spot basis is below average in quality. Thus, the "average" market price upon which the formula cattle are sold is, in reality, a below-average price. Second, the base price is again determined in large part by the packers' own market activities. They determine what price is bid for non-contract cattle. If they bid low for non-formula cattle, their price for formula cattle will likewise be lower. Regardless of whether packers act consciously in this manner, it is in their best interest to do so. . . . Finally . . . the use of captive supply thins the market.[3]

As a result of this finding the minority report recommended that "formula contracts as they are presently constituted should be banned" and "value-based pricing must be based upon readily verifiable market factors outside the control of the packer/buyer."[4]

The proposed rule on forward contracts also requires that all forward contracts for procurement of slaughter supplies must be "offered or bid in an open, public manner." Under the proposed rule, in addition to containing a firm base price, all forward contracts must be offered or bid publicly to producers in general. This addresses another recommendation of the Advisory Committee on Agricultural Concentration minority report—that value-based pricing "must be made uniformly available within the limits of the packers' purchasing needs."

Requiring firm-base price, publicly bid forward contracts for slaughter supplies is a constructive reform. It meets the packers' need for orderly procurement and provides them assurance that their competition is not "stealing" cattle (assurance that only public bidding can provide). By allowing forward contracts with firm base prices to continue, it meets the needs of the cattle producers' lenders' for security and solid cash flow projections for their loans. Further, it meets the entire industry's need for timely, accurate, value-based, competitive price discovery.

A system of firm-base price, publicly bid forward contracts for slaughter supplies is friendly to smaller feeders, who are at the greatest disadvantage in direct "negotiation" and most easily pressured into exploitative, captive supply contract arrangements. It is friendly to custom feeders who have a hard time attracting investors in today's manipulated market. And it is friendly to the basic cow/calf and feeder cattle markets, because it would work against the current severe discounting of feeder prices in response to the volatility of the fat cattle market. Finally, it would make retained ownership by the cow/calf or feeder operator throughout the fed cattle stage a viable option. Currently, retained

[3] Concentration in Agriculture: A report of the USDA Advisory Committee in Agricultural Concentration, Agricultural Marketing Service, USDA, June 1996, p. 31.

[4] *Id.* at 31.

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ownership involves an intolerable and unnecessary degree of price risk.

Under this proposal feeders will not lose the ability to enter into forward contracts. With the use of hedges and options, up-to-date price reports from USDA and a public open-bid market for slaughter supplies, feeders could forward contract at any point in the feeding process.

To make this system work, there needs to be a formally organized market in firm-base price bid forward contracts—a bit like a NASDAQ exchange for livestock. The able, ambitious people in the marketing sector of the livestock industry certainly can provide this vital market service. Several examples exist today of functioning electronic markets for agricultural commodities. The most applicable of these is BeefEx, or the Beef Exchange, an electronic exchange set up by the operators of the cotton exchange in Lubbock, Texas. There is also an electronic market for fed cattle in Canada (TEAM).

B. Packer Ownership of Cattle

Under the proposed rule setting restrictions on packer ownership and feeding of cattle, packers could still feed their own cattle but they would be required to offer them for sale publicly. This could be done through a livestock auction yard, an electronic market or some other equivalent method of soliciting blind, open bids. Presumably, in most cases, a packer would outbid the other packers for its own animals. By requiring the public sale of those cattle, their value and impact on overall cattle prices would be properly reflected in the market. The physical movement of cattle and the packers ability to coordinate production and plan slaughter would be the same as now. The only difference would be that market demand for cattle would be publicly expressed and the true price discovered in the market.

As with forward contracts, packer-fed cattle can be publicly offered through electronic exchanges or some other equivalent method. There is widespread recognition that electronic markets could improve competition and provide better price discovery if all parties would participate. Historically, however, packers have been reluctant to do so, especially when they have benefited from less than perfect price discovery under the status quo.

C. Public Market

The requirements that packer-fed cattle and firm-base price forward contracts be traded publicly means that they are traded in a market forum in which both buyers and sellers have general access. It does not mean that more than one bid must be made before the sale is completed. Rather, it means that the bid is made in a forum designed to solicit more than one bid and which allows other sellers and buyers to witness the bids made and accepted. The proposed rule does not limit any producer's ability to accept a bid, as long as it is a firm-base price bid and the offer and acceptance are made openly and in such a way that anyone can offer and anyone can buy.

Standards for Issuance of Informal Rules

Final agency rules are accorded and assumption of procedural and substantive regularity.[5] This deferential standard of review of an agency's final rule decision "presumes the validity of agency action and prohibits the reviewing court from substituting its judgment for that of the agency."[6]

Courts will defer to the agency's interpretation of statutory language that it has been charged with implementing when: (1) the action is within the agency's scope of authority, (2) the action is not arbitrary and capricious, and (3) the agency has followed required procedures.[7]

The arbitrary and capricious standard of review is a narrow one.[8] Under this narrow review standard, USDA's action to issue a rule need merely be rationally based on an administrative record: the agency's action can be set aside as arbitrary and capricious "only where it is not supportable on any rational basis."[9] An agency decision which demonstrates that the agency examined relevant data and articulated "a rational connection between the facts found and the choice made" will not be reversed under this standard.[10]

[5] Colorado Health Care Ass'n v. Colorado Dept. of Social Services, 842 F.2d 1158 (10th Cir. 1988); McLeod v. I.N.S., 802 F.2d 89 (3rd Cir. 1986); Diaz-Soto v. I.N.S., 797 F.2d 262 (5th Cir. 1986); Organized Fisherman of Florida V. Hodel, 775 F.2d 1544 (11th Cir. 1985); Air Pollution Control District of Jefferson County, Kentucky v. U.S. EPA, 739 F.2d 1071 (6th Cir. 1984); and National Small Shipments Traffic Conference, Inc. v. ICC, 725 F.2d 1442 (D.C. Cir. 1984).

[6] Manasota-88, Inc. V. Thomas, 799 F.2d 687, 691 (11th Cir. 1986).

[7] Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, (1971); and Ethyl Corp. v. E.P.A., 541 F.2d 1 (D.C. Cir. 1976).

[8] Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

[9] United States v. Means, 858 F.2d 404, 409 (8th cir. 1988), *cert. denied*, 492 U.S. 910 (1989) (quoting Brotherhood of Railway and Airline Clerks v. Burlington Northern Inc., 722 F.2d 380, 380 (8th Cir. 1983)).

[10] *See*, Motor Vehicles Mfrs. Ass'n v. State Farm Insurance Agency, 463 U.S. 29, 43 (1983).

The following extensive discussion of economic studies, the Packers and Stockyards Act's legislative history, the statutory language and case law provides all of the necessary factual and legal bases for issuance of this proposed rule. The numerous cited economic studies present a substantial factual basis for the rules. The legislative history and case law demonstrate that there is a rational connection between the facts established in the studies and the decision to issue the proposed rules pursuant to section 202 of the Packers and Stockyards Act, 7 U.S.C. § 192.

Economic Evidence Supporting the Proposed Rule

A. Impact of Concentration on Prices

Fifteen years ago the top four firms in steer and heifer slaughter controlled about 35% of the market, five years ago the four-firm concentration ratio for steer and heifer slaughter was about 70 percent, today it is over 80 percent.[11] These figures are measured on a national basis. However, when concentration is measured in smaller geographic market areas it is often even higher than when measured on such a broad basis. Two studies from Oklahoma State University demonstrate this point, as the author of those studies reports:

> The four largest buyers of fed cattle in the Southern Plains (Southwest Kansas, Oklahoma Panhandle, and Texas Panhandle) bought 81 percent of fed cattle purchases in a study using 1979 data and 96 percent of fed cattle purchases in a similar study ten years later. Both percentages are considerably higher than the four-firm concentration ratio of U.S. steer and heifer slaughter for the same years, 34.5 percent in 1979 and 70.4 percent in 1989.[12]

When just four packing firms have such a large share of the steer and heifer slaughter market, their individual buying decisions may have an effect on prices paid to cattle producers. Such effects may occur whether or not the packers deliberately take actions to manipulate prices. As Dr. John Helmuth has stated: "Economic studies show that

[11] Helmuth, John W., Buyer concentration in Livestock Markets: Trends, Impacts, and Implications, Iowa State University, Address to Dakota Rural Action, July 10–12, 1995, at 1.

[12] Ward, Clement E., Meatpacking Industry Changes: Causes and Consequences, Department of Agricultural Economics, Division of Agricultural Sciences and Natural Resources, Oklahoma State University, A.E. Paper 92137, December 1992, at 4, citing Ward, Clement E. Relationship Between Fed Cattle Market Shares and Prices Paid by Beefpackers in Localized Markets, Western Journal of Agricultural Economics 7(1982): 79–86: and Ward, Clement E. Inter-firm Differences Between Fed Cattle Prices in the Southern Plains, American Journal of Agricultural Economics, 74(1992): 2 480–85.

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when the four-firm concentration ratio gets over 40% firms start to have enough market power to have some control over price. By the time it gets to 80% they have as much power as a monopoly would have." [13]

The Center for Rural Affairs reports on a series of economic studies examining concentration's effect on prices:

> There is a large body of economic research establishing a high positive relationship between the level of concentration among sellers and prices buyers must pay. About three-fourths of the more than 70 studies undertaken in this field in general conclude that concentration is related to prices (Weiss 1988). Although this research relates to situations in which the concentration level is high among sellers (called oligopoly) rather than among buyers (called oligopsonies), the basic theory is the same on both sides of the market. Higher levels of concentration should result in price levels that favor the more concentrated side of the market—higher prices for concentrated sellers (oligopolies), lower prices for concentrated buyers (oligopsonies).[14]

There is now also a considerable amount of research on the relationship of packer concentration and prices paid to livestock producers. This research strongly suggests that significantly depressed market prices have accompanied increases in concentration in regional markets. The Center for Rural Affairs reported on several of these studies that used data from periods when the meatpacking industry was much less concentrated than it is today:

> One study (Quail 1986) analyzed the impact of market concentration on fed cattle prices in 13 regional markets between 1971 and 1980. Among the study's conclusions:
>
> For every 10 percentage point increase in market share held by the top four firms in a market, fed cattle prices dropped $.14 per cwt.;
>
> In the four major regional markets, the four leading packers controlled from 67% to 97% of the market in 1980 and in each case there was a statistically significant negative correlation between concentration and market prices;
>
> The increase in packer concentration between 1971 and 1980 is estimated to have cost cattle feeders $.19 per cwt., or $45.2 million in 1980 alone;
>
> The price-depressing effect of buyer concentration averaged about 1.7% over the period 1976–1980;
>
> If the four leading packers in the four leading regions had had only 40% of the market between 1976 and 1980, instead of the 55% to 85% they actually averaged, average cattle prices would have been $.47 higher and cattle feeders would have had $82 million more income.
>
> Another study (Menkhaus et al 1981) analyzed the impact of concentration on fed cattle prices in twelve major cattle feeding states in 1972 and 15 states in 1977. It found that in both years more concentrated markets yielded lower fed cattle prices. In 1972, for each 10 percentage point increase in the share of the market procured by the top four packers, the price of choice steers fell $.145 per cwt., and in 1977, $.22 per cwt. This amounts to a price depressing effect of about 1.2% in 1972 and 1.6% in 1977.
>
> Ward (1981) considered the relationship between number of buyers and prices paid for fed cattle in 31 feedlots or marketing agencies in six regional markets in July, 1979. He found such a relationship in one of the four markets. In that market, each additional bidder raised prices $.22 to $.28 per cwt.
>
> Not all studies reach such clear conclusions. Using the same data from July, 1979, Ward (1982) analyzed the relationship between market shares held by packers in local markets and prices paid for fed cattle in those markets. He concluded that larger packers were not depressing prices in local markets and found no evidence of lower prices in more concentrated markets.
>
> But Ward (1983) did find that when there was a sudden change in the local hog market structure caused by the closing of Oklahoma's only pork plant, prices at the Oklahoma City terminal market in the year following the plant closing averaged $.63 to $1.05 lower per cwt. than in Kansas City and Omaha terminals and direct trade markets in interior Iowa-Southern Minnesota in the year following the plant closing.[15]

Two more recent studies, one published in December 1990 by Bruce W. Marion, Frederick E. Geithman and Gwen Quail, and one published by John R. Schroeter and Azzeddine Azzam in 1991, on the relationship between regional fed cattle prices and meatpacking concentration, also demonstrate that higher levels of concentration were associated with lower prices paid for fed cattle.[16]

In addition, in April, 1994, Bruce Marion of the University of Wisconsin released an update of his earlier study which found that as concentration increases prices paid to farmers decrease. This study is worth quoting:

> The results of this article support the hypothesis that packer monopsony power had a significant negative effect on cattle prices during the 1971–86 period * * * the presence of monopsony power is evident in regional live cattle markets throughout the period and is slightly stronger in the latter half than in the first half of the period.
>
> For several regions on which most of our analysis was done, cattle prices were estimated to be about 3 percent less in the most concentrated region/year compared to the least concentrated region/year.[17]

As John Helmuth has pointed out in reference to this study, such a "three percent difference is more than $20 per head on $70/cwt cattle.[18]

A study conducted by Clement E. Ward after a series of mergers and acquisitions in 1987 found that the Big Three packers paid significantly lower prices for fed cattle in the Southern Plains and in subregions of the Southern Plains (Southwest Kansas, North Texas and Oklahoma Panhandle, and South Texas Panhandle) than did their competitors as a group. However, there were differences among the Big Three in how much they paid for fed cattle. Each firm did not pay lower prices than competing firms.[19]

Additional recent studies have found that packers do exercise monopsony powers to distort prices paid to livestock producers. These studies are described in a November 1995 report issued by the Center for Rural Affairs:

> Azzam and Pagoulatos (1990) found that packers exercise market power to both raise the prices they receive for meat and to lower the price they pay for livestock, but that the

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[13] Helmuth, John W. (1995), *supra* note 9 at 1.

[14] Strange, Marty, Nancy L. Thompson, Competition and the Livestock Market: Report of a Task Force Commissioned by the Center For Rural Affairs, Center For Rural Affairs, Walthill, Nebraska, April 1990, at 10.

[15] From Competition and the Livestock Market: Report of a Task Force Commissioned by the Center for Rural Affairs, Walthill, Nebraska, Wes Sandall et al., Center for Rural Affairs, Walthill, Nebraska, April, 1990, at 10, 11, citing (1) Quail, Gwen, Bruce Marion, Frederick Geithman, and Jeffrey Marquardt, 1986, The Impact of Packer Buyer Concentration on Live Cattle Prices, Working Paper 89, NC–117, University of Wisconsin-Madison; (2) Menkhaus, Dale J., and James S. St. Clair, and Zahedi Ahmaddaud, 1981, The Effects of Industry Structure on Price: A Case in the Beef Industry, Western Journal of Agricultural Economics, 6(1981): 147–53; (3) Ward, Clement E. 1981, Short-Period Pricing Models for Fed Cattle and Impacts of Wholesale Carcass Beef and Live Cattle Futures Market Prices, Southern Journal of Agricultural Economics, 13(1981): 125–32; (4) Ward, Clement, E. 1982, Relationship Between Fed Cattle Market Shares and Prices Paid by Beefpackers in Localized Markets, Western Journal of Agricultural Economics, 7(1982): 79–86; and (5) Ward, Clement E. 1983, Price Impacts of a Structural Change in Pork Processing: A Case Study in Oklahoma, Oklahoma State University, Current Farm Economics, 56(1983): 3–9.

[16] Ward, Clement E. (1992) *supra* note 12 at 7, citing Marion, Bruce W., Frederick E. Geithman, and Gwen Quail, Monopsony Power in an Industry in Disequilibrium: Beef Packing, 1971–1986, University of Wisconsin, WP–96, December 1990: Azzam, Azzeddine M. and John R. Schroeter, Implications of Increased Regional Concentration and Oligopsonistic Coordination in the Beef Packing Industry, Western Journal of Agricultural Economics, 16(1991): 374–81.

[17] Marion, Bruce W. and Frederick E. Geithman, Concentration-Price Relations in Regional Fed Cattle Markets, Food Marketing Policy Center, Research Report No. 25, April 1994, University of Connecticut, Department of Agriculture and Resource Economics, pp. 19–21.

[18] Helmuth, John W. (1995) *supra* note 11 at 4.

[19] Ward, Clement E., (December, 1992) at 7 citing Ward, Clement E., Timm J. Bliss, Forward Contracting of Fed Cattle: Extent, Benefits, Impacts, and Solutions, Blacksburg, VA: Research Institute on Livestock Pricing, Research Bulletin 4–89, November 1989).

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degree of market power they had was significantly higher in the livestock procurement side of the market than in the wholesale meat market.* * *

Azzam and Schroeter (1991) next considered regional procurement markets for beef. They found that packers used market power to depress prices an estimated one percent, considerably less than other studies in this field. But they noted that even a half percent decline in cattle prices would increase packer profits about 35 percent and reduce cattle feeder profits about $4.40/head, or nearly 9 percent. Using a different methodology for data over the same time period 1988–91, Azzam (1992) also found that beef packers have market power to lower cattle prices, but not to raise meat prices in the wholesale market.

Stieger, Azzam, and Brorsen (1993) found that packers typically price cattle on the difference between the wholesale price they receive for boxed beef or carcasses and their average processing cost. That difference is called the marketing margin. As anticipated supply of cattle decreases, making it more difficult for packers to keep their plants fully operating and therefore raising their average processing costs, they "markdown" cattle bids—that is, they increase their marketing margin in order to cover their increased cost. They may be paying more for cattle in an absolute sense, but not as much more as they are worth in the short supply situation. In effect, they are pricing the cattle below their marginal value. The statistical analysis indicated that between 1972 and 1986, fed cattle were priced significantly below their marginal value during 31 of 59 quarters. On average, this markdown was 1.31 percent, or 17 percent of the marketing margin, and amounted to $1.54 per hundredweight of retail meat. The authors estimate that was worth about $62 million to the packers.[20]

These studies provide a sufficient basis for USDA to find that monopsony power of the packers is likely to have the effect of manipulating prices by depressing the prices paid to cattle producers.

B. Impact of Packer Feeding on Prices

Other studies have examined whether particular slaughter cattle procurement practices effect prices paid to producers. One Packers and Stockyards Division study that examined the price impacts from packer-feeding in the mid-1960s explains how an oligopsonistic packer that feeds its own cattle can adversely affect prices paid to other producers for slaughter supplies:[21]

It is the oligopsonistic packer that is able to utilize its packer feeding operations to influence the price of fed cattle in a local market. Only the oligopsonistic packer can do that, and the possible effects of packer feeding on the price of cattle are confined largely to the markets where oligopsony exists.* * * [W]hen a degree of oligopsony exists, a packer's own supply of fed cattle can be used to restrict market purchases and exploit the market by paying lower prices than otherwise would have been paid. The amount of the price effect will depend on the extent of the packer's oligopsony influence as well as on how readily suppliers and local feeders can divert their marketings to other markets.

An oligopsonistic packer that has a supply of cattle in its feedlots can use those cattle as a bargaining tool. Its fed cattle serve as a standby reserve in its price negotiations. Livestock sellers know that such a packer can fulfill his slaughtering needs at a particular time by transferring his own cattle to his plant, instead of buying cattle on the market. And since such a packer is—by definition—large enough to exert an influence on the local market, its management of its fed cattle during the price negotiations has an effect on the local market price. Stated simply, in the short run, packer feeding can confer an extra degree of market power on an oligopsonistic packer.[22]

This study found that packer-fed cattle caused a significant decline in the local market price when the packer had some oligopsonistic power:

Packer-fed cattle transferred to the plant of the sample packer had a persistent depressing effect on the local price for Choice steers compared with prices at other markets. During the first five or six months of the year, the local price was consistently below the average for other markets, about in proportion to the number of packer-fed shipments to plant. As Packer-fed shipments to plant declined from a level of about 1,100 head a week early in the year to about 100 head in the 15th week, the local price approached the level of prices at other markets. From mid-year until the 38th-42nd weeks, packer-fed shipments generally declined to a low level (zero in the 40th week) and prices at the local market improved to the point that they exceeded the seven-market average by about $.50 per cwt in the 40th week. Then, as packer-fed shipments to plant increased during the last 10 or 12 weeks of the year, the price situation at the market deteriorated in comparison to other markets.[23]

* * * * *

Regression analysis of the data * * * confirmed the conclusion that packer-fed shipments to plant depressed the local price relative to prices at other markets. A 100-head increase in packer-fed shipments to plant, on average, lowered the local average price for Choice steers relative to other markets for the entire week by about $.06 cwt. Or, a 100 head decrease in packer-fed shipments to plant allowed the local price to improve by about $.06 per cwt. compared to the other markets. Since packer-fed shipments varied from zero to over 1,000 head per week, packer feeding affected the local weekly price by as much as $.50 per cwt.[24]

This study went on to find that in a competitive market "feeding done by an individual packer can have no appreciable effect on the price of cattle."[25]

This study provides sufficient basis for USDA to find that packer ownership and feeding of its own slaughter supplies is likely to have the effect of manipulating prices by depressing the prices paid to cattle producers.

C. Forward Contract Impact on Price

Other recent studies have found that forward contracting for fed cattle supplies has a depressing effect on prices. A study that estimated the short-run price impacts of forward contracting in the southwest Kansas marketing region during six months of 1990 found:

Over the six months, for the level of contracted cattle, contract deliveries were associated with $0.15/cwt to $0.31/cwt reduced transaction prices. When forward contract shipment levels were relatively high, changes in forward contract shipments had a larger impact on transaction prices than during periods when shipments were low.[26]

The authors of this study point out that these results may be related to the market condition during the data collection period of May through November 1990, during which time cattle supplies were very low. They suggested that "the relatively small supplies of cattle when compared to existing slaughter capacity are providing a safety net against any market power levied by the larger packing firms."[27]

A recent report issued by the Grain Inspection and Packers and Stockyards Administration show that from April 5, 1992 to April 3, 1993, the packers' use of forward contracts and marketing agreements to procure slaughter cattle

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[20] From From the Carcass to the Kitchen: Competition and the Wholesale Meat Market, Strange, Marty and Higby, Annette, Center for Rural Affairs, Walthill, Nebraska, November 1995, citing (1) Azzam, Azzeddine, and Emilio Pagoulatos, 1990, Testing Oligopolistic and Oligopsonistic Behavior: An Application to the U.S. Meat-Packing Industry, Journal of Agricultural Economics 41(3): 362–370; (2) Azzam, Azzeddine, and John Schroeter, 1991, Implications of Increased Regional Concentration and Oligopsonistic Coordination in the Beef Packing Industry, Western Journal of Agricultural Economics 16(2): 374–381; (3) Azzam, Azzeddine, 1992, Testing the Competitiveness of Food Price Spreads, Journal of Agricultural Economics 43(2): 248–256; and (4) Stieger, Kyle W., and Azzeddine Azzam and B. Wade Brorsen, 1993, Markdown Pricing and Cattle Supply in the Beef Packing Industry, American Journal of Agricultural Economics 75:549–558.

[21] Aspelin, Arnold and Gerald Engelman, Packer Feeding of Cattle; its volume and significance, Packers and Stockyards Division, Consumer and Marketing Service, USDA, Marketing Research Report No. 776, Nov. 1966.

[22] *Id.* at 10.

[23] *Id.* at 13.

[24] *Id.* at 16.

[25] *Id.* at 22.

[26] Schroeder, Ted C., Rodney Jones, James Minert and Andrew P. Barkley; "The Impact of Forward Contracting on Fed Cattle Transaction Prices", Review of Agricultural Economics, Vol. 15, No. 2, May 1993, pp. 326–337, at page 335.

[27] *Id.* at 335.

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had a depressing effect on prices to producers.[28] The report states:

Increased deliveries of forward-contracted cattle were associated with reduced prices in the cash market while increasing inventories of forward-contracted cattle were associated with increased cash-market prices.

Daily increases in the rate of deliveries of forward-contracted and marketing agreement cattle had a slightly negative effect on daily cash-market prices. . . .

Prices paid for cattle delivered under forward contracts on a given day were about $3.00 per cwt lower (dressed-weight basis) than prices for similar cattle on the cash market.

Increases in cash market price were found to lead to increases in the monthly quantities of the volume of forward-contracted, and marketing agreement cattle used by large plants. Cash-market price variability is positively associated with the volume of forward-contracted and marketing agreement cattle used by large plants.

This report demonstrates that when cash-market prices increased, packers increased their inventories of forward-contracted cattle. When deliveries of that forward-contract inventory increased, the cash-market price for cattle declined.

These statistics provided sufficient basis for the USDA to make a finding that the current use of forward contracts is likely to have the effect of manipulating prices by depressing the cash-market prices paid to cattle producers.

D. Use of Formula-Priced Forward Contracts

Forward contracts generally are not traded publicly. In practice they are often offered only to certain producers providing those producers with preferential treatment over other producers. The recent GIPSA report, Concentration in the Red Meat Packing Industry, does not directly address whether forward contracts and marketing agreements (marketing agreements as defined by the report are included in the definition of forward contract in the proposed rule) are offered by packers on a preferential basis to certain cattle producers. However, it does provide some insight into who actually enters into forward contracts.[29] The report states:

Small firms use spot markets almost exclusively, whereas the Big Three packers are more likely to use alternative procurement methods. Con Agra, Excel, and IBP account for 73 percent of spot market transactions, but [for] 88 percent of marketing agreements and 95 percent of forward contracts. * * *

The largest feedlots are also more likely than small feedlots to use alternative procurement strategies. Feedlots handling more than 32,000 cattle per year accounted for 26 percent of spot marketing transactions, but [for] 39 percent of forward contracts, 64 percent of marketing agreements. * * * Most forward contracts (73 percent) were priced on the basis of carcass weight, while formula pricing was used for most marketing agreements. * * * The Big Three firms handled 93 percent of the formula-priced lots and 83 percent of the carcass-weight arrangements.[30]

The report clearly demonstrates that the Big Three packing firms and the largest feedlots account for the vast majority of the formula-priced agreements. This is particularly important given the study's finding that "market agreement cattle brought prices about 54 cents above spot market prices."[31]

This data suggests that in practice the largest feedlots have preferential access to marketing agreements—and therefore to an assured market for their cattle. And that this preferential status does not only ensure market access in the long term but also provides a price advantage not available to producers not offered the marketing agreements.

This study provides sufficient basis to find that current use of the marketing-agreement types of forward contracts is likely to result in an undue and unreasonable advantage for certain large-scale producers, providing them over the long term with preferential access and a higher price than are afforded other producers.

E. Captive Supply Decisions and Impact on Price

The Concentration in the Red Meat Packing Industry report issued by the Grain Inspection and Packers and Stockyards Administration in February 1996, despite its many flaws, does demonstrate that the use of captive supply procurement methods in the cattle industry causes a decline in the cash-market price for cattle. It shows that packers increase their captive supply inventories when cash-market prices increase. The report also demonstrates that as packers increase the deliveries of captive supplies, the cash-market prices decline. The report states:

The overall effect of captive supplies on prices paid for cattle in the cash market was negative but small * * *.

Increases in cash market price were found to lead to increases in the monthly quantities of packer-fed, forward-contracted, and marketing agreement cattle used by large plants. Cash-market price variability is positively associated with the volume of forward-contracted and marketing agreement cattle used by large plants * * *.

The findings indicate that expected higher prices increase the volume of packer feeding and other captive supply used, whereas expectations of falling prices lead to decreases * * *.

The overall effect of increased use of captive supply on shortrun prices paid for cattle in the cash market appears to be negative but small.[32]

This study provides sufficient basis for USDA to find that current practices with regard to captive supply use by packers, including formula-priced forward contracts and packer ownership and feeding of its own slaughter supplies are likely to have the effect of manipulating prices by depressing cash-market prices paid to cattle producers.

F. Impact of Number of Buyers on Price

Clement E. Ward has also recently summarized another line of relevant research designed to determine the effects which number of buyers had on livestock prices. He states:

A number of studies of the experimental electronic livestock markets have given us additional insight into the relationship between concentrated market structure and prices for livestock. Holder (1979) found that slaughter lamb prices were $.70 per cwt. higher after introduction of a telemarket. Ward (1984) studied the relationship between the number of bidders in an Oklahoma teleauction and prices paid for slaughter lambs between 1979 and 1982, and found that each additional bidder added $1.10 per cwt. to prices paid and widened the price difference between the teleauction and live auction at San Angelo, Texas, by $.60 per cwt. Finally, Rhodus et al. (1985) analyzed the impact of an electronic market on hog prices in Ohio compared with direct trade markets in Indiana, the market in Peoria, Illinois, and a major order-buying company operating in Ohio. They concluded that average prices paid through the electronic market were $.94 higher than order-buyer prices at Peoria and $.99 higher than Indiana direct trades by order-buyers.[33]

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[28] Concentration in the Red Meat Packing Industry, Grain Inspection and Packers and Stockyards Administration, USDA, February 1996, pp. 25–31.

[29] Concentration in the Red Meat Packing Industry, Grain Inspection and Packers and Stockyards Administration, USDA, February 1996, pp. 15–23.

[30] *Id.* at 16–17 [emphasis added].

[31] *Id.* at 22.

[32] Concentration in the Red Meat Packing Industry, Grain Inspection and Packers and Stockyards Administration, USDA, February 1996, pp. 30–31.

[33] From Competition and the Livestock Market: Report of a Task Force Commissioned by the Center for Rural Affairs, Walthill, Nebraska, Wes Sandall et al., Center for Rural Affairs, Walthill, Nebraska, April 1990, citing (1) Holder, David L., Benefits of a Sheep and Lamb Teleauction in Virginia and West Virginia, U.S. Department of Agriculture, Economics, Statistics, and Cooperatives Service, selected paper for the Southern Agricultural Economics Association meetings, February, 1979; (2) Ward, Clement E., An Empirical Study of Price

Continued

The Center for Rural Affairs also has reported on studies designed to determine the effects which number of buyers had on livestock prices:

> Generally, fewer buyers mean less demand for slaughter livestock and less buyer competition, both of which lead to lower livestock prices * * *. Three independent studies (Love and Shuffett; Ward 1983; Hayenga, et al.) found that when hog slaughtering plants were closed in Kentucky, Oklahoma, and Iowa, slaughter hog prices in markets adjacent to the plants declined either absolutely or relative to other markets. In some cases, markets adjusted after a period of weeks to price levels close to those existing prior to plant closing.
>
> Conversely, more buyers generally mean more demand for slaughter livestock and more buyer competition, both of which lead to higher prices * * *. Hayenga, et al. found that slaughter hog prices increased for a time when new hog slaughtering plants opened in Iowa. The adoption of electronic markets, giving more buyers better access to livestock offered for sale, has typically resulted in higher livestock prices. Such studies include electronic markets for slaughter lambs in Virginia and Oklahoma (Holder; Ward 1984), hogs in Ohio (Rhodus, et al.) and feeder cattle in Texas (Sporleder and Colling). Number of buyers bidding on fed cattle was found to have a positive effect on fed cattle transaction prices in three separate studies (Ward 1981, 1992; Schroeder, et al.).[34]

These studies regarding the impact of the number of buyers on livestock prices provide sufficient basis for a finding that use of a public market, where buyers and sellers in general have access for trading of forward contracts and packer-fed cattle, will improve prices paid to cattle producers.

G. Conclusion From Economic Studies

The economic studies discussed above provide substantial evidence supporting findings that the current use of forward contracts and packer-owned cattle to procure captive slaughter supplies are likely to have the effect of manipulating prices by depressing those prices paid to cattle producers. These studies also support a finding that the trading of forward contracts and packer-owned cattle in a public market designed to encourage more bidders on cattle is likely to improve prices paid to producers.

The following discussion of the legislative history, statutory language and case law interpretation of the Packers and Stockyards Act establishes that this evidence is sufficient basis for issuing the proposed rules restricting packer feeding of its own slaughter supplies and use of forward contracts.

Legal Authority To Issue Proposed Rule

Under the Packers and Stockyards Act, the Secretary of Agriculture clearly has the authority to issue rules regulating packer captive supply livestock procurement methods to ensure compliance with Section 202 of the Act (7 U.S.C. § 192). In fact, the legislative history of the Act demonstrates that he has the *obligation* to issue rules necessary to ensure that packers continue to comply with Section 202 as the industry structure and procurement practices change.

A. Legislative History of the Packers and Stockyards Act

1. Context of the Packing Industry at the Time the Act was Passed

Legislative history shows that the concentration levels in the beef packing industry at the time the Packers and Stockyards Act was enacted 75 years ago were *lower* than the concentration level today. Representative Voight, in the debate on the House bill, cited the concentration figures from the Federal Trade Commission report:

> It appears from the report of the Federal Trade Commission that in 1916 the Big Five's percentage of interstate slaughter was as follows: cattle 82.2, calves 76.6, hogs 61.2, sheep and lamb 86.4. * * * In view of the steady growth of the business of the Big Five it is reasonable to assume that at this date these figures should be raised from 5 to 10 percent. I conclude, therefore, that at the present time the Big Five's percentage of interstate slaughter is between 75 and 80 per cent * * * the monopoly of the Big five becomes very apparent.[35]

In contrast, today, four firms, rather than five, control well over 80 percent of the steer and heifer slaughter.[36]

At the time the Act was passed Congress was also very concerned about the fact that the packers were continuing to charge wholesalers increasingly higher prices even while prices paid to producers were low. Representative McLaughlin and Senator Kendrick introduced figures in their respective houses that demonstrated that despite the fact that the packers were paying producers the same price for cattle in April 1921, as they had paid in February, 1916, they were charging the wholesalers 52.6 percent higher prices in 1921 than in 1916.[37] Similarly, over the last twenty-five years we have seen a steady climb in the percentage of the retail meat dollar that goes to packers. The annual average percent of the retail dollar going to packers in 1970 was 12.7. This figure fluctuated over the following twenty-five years, with a general trend upward, until in 1995 the packers share of the retail dollar was 25.5 percent. During this same period producers' share of the retail dollar dropped from 64 percent in 1970 to 49 percent in 1995.[38]

Seventy-five years ago when Congress recognized trends in the packing industry that virtually mirror those we see today it acted to pass the most comprehensive anti-trust legislation ever enacted in this country. The powers granted under that Act should be vigorously administered today to prevent the kind of harm to producers that the Act was written to address.

Discovery and Competition for Slaughter Lambs, Western Journal of Agricultural Economics, 9 (1984): 135–44; and (3) Rhodus, W. Timothy, E. Dean Baldwin, and Dennis R. Henderson, Pricing Accuracy and Efficiency in a Pilot Electronic Hog Market, American Journal of Agricultural Economics, 71 (1989): 874–82.

[34] From Meatpacking Industry Changes: Causes and Consequences, December 1992, Agricultural Economics A.E. Paper 92137, Department of Agricultural Economics, Division of Agricultural Sciences and Natural Resources, Oklahoma State University, citing (1) Love, Harold G. and D. Milton Shuffett, Short-Run Price Effects of a Structural Change in a Terminal Market for Hogs, Journal of Farm Economics, 47(1965): 803–812; (2) Ward, Clement E., Price Impacts of a Structural Change in Pork Processing—A Case Study in Oklahoma, Oklahoma Agricultural Experiment Station, Current Farm Economics, 56 (1983): 3–9; (3) Hayenga, Marvin L., Ronald E. Deiter, and Christobal Montoya, Price Impacts Associated with the Closing of Hog Slaughtering Plants, North Central Journal of Agricultural Economics, 8 (1986: 237–42; (4) Holder, David L., Benefits of a Sheep and Lamb Teleauction in Virginia and West Virginia, U.S. Department of Agriculture, Economics Statistics, and Cooperative Service, selected paper for the Southern Economics Association meetings, February 1979; (5) Ward, Clement E., An Empirical Study of Price Discovery and Competition for Slaughter Lambs, Western Journal of Agricultural Economics, 9 (1984): 135–44; (6) Rhodus, W. Timothy, E. Dean Baldwin, and Dennis R. Henderson, Pricing Accuracy and Efficiency in a Pilot Electronic Hog Market, American Journal of Agricultural Economics, 71 (1989): 874–82; (7) Sporleder, Thomas L. and Phil L. Colling, Competition and Price Relationships for an Electronic Market, Texas A&M University, Department of Agricultural Economics, selected paper for the American Agricultural Economics Association meetings, August 1986; (8) Ward, Clement E., Short-Period Pricing Models for Fed Cattle and Impacts of wholesale Carcass Beef and Live Cattle Futures Market Prices, Southern Journal of Agricultural Economics, 13 (1981): 125–32; (9) Ward, Clement E., Inter-firm Differences Between Fed Cattle Prices in the Southern Plains, American Journal of Agricultural Economics, 74 (1992): 2 480–85; and (10) Schroeder, Ted, Rodney James, James Mintert, and Andrew Barkley, Short-Run Price Impacts of Packer-Controlled Cattle Supplies, Manhattan, KS: Invited Paper, Western Agricultural Economics Association meetings, July 1990.

[35] 61 Cong. Rec. 1863 (1921).

[36] Helmuth, John W., (1995), *supra* note 10 at 1.

[37] 61 Cong. Rec. 1877–1878, and 2618–2619 (1921).

[38] "Beef Price Spread Data" Table 10—Estimated Historical Series for Beef, Choice Yield Grade 3: Retail, Wholesale and Farm Values, Price Spreads, and Farmers' Share. USDA, Economic Research Service, Stock No. 90006.

2. Extraordinarily Broad Rule-making Power

Upon thorough review of the legislative history of the Packers and Stockyards Act there can be no doubt that Congress meant to grant the Secretary the broadest possible rule-making authority over the livestock procurement practices of the packers.

The extraordinarily broad scope of the regulatory authority granted to the Secretary under the 1921 Act was expressed in the House report as follows:

> A careful study of the bill, will, I am sure, convince one that it and existing laws, given the Secretary of Agriculture complete inquisitorial, visitorial, supervisory, and regulatory power over the packers, stockyards and all activities connected therewith; that it is a most comprehensive measure and extends farther than any previous law in the regulation of private business, in time of peace, except possibly the interstate commerce act.[39]

The Congressional intention to give the Secretary of Agriculture complete regulatory powers over the packers and all their activities was emphasized throughout the debate on the bill.[40] Similarly, the intention to pass the "most far-reaching measure and extend further than any previous law into the regulation of privates business" was also an often repeated point in the debate.[41]

The conference report on the bill emphasized, in the strongest terms possible, the Congressional intent to grant the Secretary extraordinary regulatory powers—"Congress intends to exercise in the bill, the fullest control of packers and stockyards which the Constitution permits".[42]

3. Authority to Regulate to Prevent and Compel

The legislative history also makes it clear that Congress intended that the Secretary use his regulatory powers aggressively to *prevent* packer practices made illegal by the Act. Repeatedly the bill was described as giving the Secretary the authority "to *prevent* packers * * * from engaging in an unfair, unjustly discriminatory, or deceptive practice or device."[43] Representative Voight of Wisconsin, who strongly favored the bill, stated that it could be used to *prevent* unlawful practices by the packers and to *compel* them to employ lawful business practices:

> The bill is sufficiently broad so that, if vigorously administered, the Secretary can prevent combination among packer and can *compel* them and all others connected with the industry to do business in a lawful and proper way. * * * the Secretary under this bill is given the *power to make rules* that will make them [packers] do business on the level.[44]

The legislative history makes clear that Congress intended the Secretary to exercise his extraordinarily broad regulatory powers to prevent conditions under which packers could gain control of the livestock market, and, thereby, induce healthy competition. The report on the Hearings on several of the bills debated states that the Act seeks "to prohibit the particular conditions under which monopoly is built up, and to prevent a monopoly in the first place and to induce healthy competition."[45]

4. Authority to Issue Substantive Rules

There was extensive debate in the Senate over whether the regulatory body should be allowed to issue rules or regulations for which the packers could be held civilly and criminally liable. This debate was ultimately resolved when the Senate amended the House bill by adding a *second* provision granting the Secretary authority to issue rules and regulations necessary to carry out the provisions of the Act. The conference report on the bill explains how the two houses dealt with this double grant of authority to issue rules and regulations:

> On Amendment No. 17: This amendment adds to the House bill a provision empowering the Secretary of Agriculture to 'make such rules, regulations, and orders as may be necessary to carry out the provisions of this act.'. The House bill did not contain this specific provision, but did make applicable to the jurisdiction and powers of the Secretary of Agriculture in enforcing the act the powers given to the Federal Trade Commission by section 6 of the Federal Trade Commission Act, one of the provisions of which authorized that commission to make rules and regulations for the enforcement of the act, the two being substantially the same; and the House recedes.[46]

Representative Haugen, the chief author of the bill that eventually was enacted, also similarly references this amendment in his comments on the conference report.[47]

Maybe as significant as the double grant of authority to issue rules, for purposes of determining Congressional intent with regard to the type of rules proposed in this petition, is the fact that the Senate defeated an amendment that would have limited the Secretary's authority to issue rules only "as to procedures."[48] During the debate on this proposed amendment Senator Walsh from Montana clearly stated that the intent of the bill without this amendment was to allow the Secretary to issue substantive type rules that are consistent with the act's provisions. He also emphasized that courts would have the full authority to review such rules through a review of any order issued by the Secretary requiring a packer to comply with the rule.

> I may say that a further examination of the general statutes does not reveal any statute making criminal the act which is denounced as unlawful. Accordingly the only procedure which can be instituted on charges of having violated an order, rule, or regulation is the procedure recited in the proposed act. If the Secretary * * * believes that the rule, regulation or order comes under the act, of course he will make the order; but that will be ineffective until it is passed upon by the court, and the court will pass upon the question as to whether the rule, regulation, or order falls under the provisions of this act so as to make disobedience of its contempt.[49]

Senator Walsh's reference to procedures for bringing charges for violations of the Act is to the provision of the bill that is now codified at 7 U.S.C. § 193. This is the statutory provision the Secretary uses to bring charges against packers for violating the unfair and deceptive trade practices section of the Act, 7 U.S.C. § 192. Senator Walsh's statement, thus, indicates that Congress intended that the Secretary would issue substantive rules defining what packers must do to comply with this provision of the Act, and that packers would be adequately protected from arbitrary rule-making by having access to review of the rule by the courts. Senator Walsh's statements demonstrate that Congress clearly envisioned that the Secretary would be issuing precisely the type of substantive rule that is proposed in this petition.

5. Purpose to Protect Producers Interest

A primary purpose for passage of the Packers and Stockyards Act was to protect the interest of the producer. This intention is clearly expressed in the

[39] House Report No. 77, 67th Cong., 1st Sess. 2 (1921) (emphasis added).

[40] See also 61 Cong. Rec. 1799, 1801, 4738, 8310 (1921).

[41] See also 61 Cong. Rec. 1801, 1805–1806, 1887–1888 (1921).

[42] Conference Report, H.R. Rep. No. 324, 67 cong. 1st Sess., at 3 and 5–6. Statement of the Managers on the Part of the House; 61 Cong. Rec. 4778, 4779 (1921).

[43] H.R. Rep. No. 77, 67th Cong. 1st Sess. 2 (1921); 61 Cong. Rec. 1799 (1921).

[44] 61 Cong. Rec. 1868 (1921) (emphasis added).

[45] Hearings on H.R. 14, H.R. 232, H.R. 5032, and H.R. 5692 Before the House Committee on Agriculture, 67th Cong. 1st Sess., ser. D, 26 (1921).

[46] 61 Cong. Rec. 4780 (1921).

[47] 61 Cong. Rec. 4782 (1921).

[48] See 61 Cong. Rec. 2674–2675 (1921).

[49] 61 Cong. Rec. 2675 (1921).

legislative history. Representative Tincher stated:

> It is my judgment that the passage of this bill, that its proper administration, will permit the meat producer to exist; that it will reduce the amount paid out between the producer and the consumer to such an extent that it will make the business for the producer more profitable, and not be injurious to the consumer.[50]

Similarly, Representative Voight of Wisconsin expressed the sincere belief that this bill would benefit producer and consumer alike:

> I think if this monopoly of the Big Five is done away with, and the laws of trade are given a chance to function, it is going to benefit producer and consumer alike; genuine competition will benefit both.[51]

In an early case interpreting the Act the U.S. Supreme Court recognized that one of its primary purposes was to protect producers' from the packers' control over prices paid for livestock:

> The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper, who sells, and unduly and arbitrarily to increase the price to the consumer, who buys.[52]

The Eighth Circuit Court of Appeals has more recently stated

> One of the purposes of the Packers and Stockyards Act is to safeguard farmers and ranchers against receiving less than the true market value of their livestock.[53]

Courts have held that the Act should be liberally enforced in order to accomplish its purpose of protecting producers interests:

> The Act is remedial legislation and is to be construed liberally in accord with its purpose to prevent economic harm to producers and consumers at the expense of the middleman.[54]

6. Authority to Regulate to Ensure Open, Competitive Markets

Congress recognized that to protect producers' interests the Secretary must be granted the authority to regulate packer practices to ensure open, competitive markets for livestock. When the Act was passed in 1921 virtually the sole source of supply for slaughter cattle was through the stockyards. So Congress not only emphasized regulation of the packers but also of the stockyards as the public market of that day.

Congress, however, did make clear its intention was to ensure open, competitive markets for buying and selling livestock no matter where those markets occurred. Rep. Haugen of Iowa, whose bill was ultimately enacted with only minor modification, introduced the conference report to the House on August 9, 1921. In his discussion of the rejected Senate amendments he indicated that buying or selling "in commerce live stock at the stockyard" was equivalent to being a buyer or seller of "live stock in commerce".

Representative Jones from Texas, a strong supporter of the Act, most clearly stated the importance of open, competitive markets for the producer:

> The producer must always sell in a market that he does not control. He buys at the other man's price. His only hope of securing a fair price lies in an open, competitive market.[55]

Congress knew well that the only way open, competitive markets for livestock and meat could be maintained was if the Secretary was given the authority to regulate practices of one sector of the industry that could adversely affect other sectors. Congress recognized that one of the most significant aspects of this legislation was that it authorized regulation of unfair practices as between the packer and the producer and between the packer and the consumer. In response to a question as to how this Act strengthened the authorities under the Federal Trade Commission Act, Representative Anderson stated:

> As to the intent of "unfair competition" [in the FTC Act] it only includes acts which constitute a violation of the rights of the competitor, and it must be a method which is used by a competitor on the same plane. * * * For instance, the method of competition used by a manufacturer which we might think was a violation of the moral rights of the wholesaler would not be a violation of the Federal Trade Commission Act, because the interpretation of that is that it must be unfair as between competitors who stand on the same plane. This goes further than that, as it affects the public interest to a large extent, and the unfair competition or unfair competition or unfair practice as between the packer and the general public, the packer and the producer, or the packer and any other agency connected with the marketing of livestock.[56]

Congressional commitment to maintaining open and competitive markets for livestock was reemphasized throughout the amendments to the Act in later years. In 1924 the Act was amended to increase the authority of the Secretary to sanction violators. The House Report notes that the Secretary personally appeared to the committee and urged strengthening the law to enable him to confront "conditions that are detrimental to the open, competitive marketing of livestock."[57]

When enacting the 1958 amendments Congress noted significant changes in the meatpacking industry and the environment in which it operates. The House report stated "[e]qually significant (as the development of 1400 to 1500 country auctions and markets) is the growth which has taken place in country buying—buying by packers or livestock dealers direct from the producer * * * today a common practice in almost every part of the country and more than 40 percent of all livestock sold moves in this manner."[58] This report also makes clear that Congress intended the 1958 Act amendments to ensure that the Secretary had jurisdiction over "all livestock marketing involved in interstate commerce including country buying of livestock."[59]

In 1976, Congress again strengthened the Act to give the Secretary greater powers in regulating the packers. Further changes in the pattern of livestock marketing between 1958 and 1976 led to these amendments. Following the 1958 amendment, "packers continued to push to acquire slaughter livestock at its source," and by 1976 it was estimated that "well over 80% of all slaughter livestock is purchased by the packers directly from producers and custom feedlots."[60]

In 1978, when Congress amended the Act with regard to rates and charges at auction markets, it again expressed the importance of securing competitive livestock markets for producers. "The continued availability of competitive, reasonably priced, and conveniently located livestock marketing channels is essential, particularly for small producers."[61]

The legislative history clearly establishes that Congress intended to grant the Secretary the authority to regulate packer practices necessary to ensure open, competitive markets for livestock. When marketing conditions changed over time, Congress amended the Act to ensure the Secretary would continue to be able to address packer practices even in the context of country

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[50] 61 Cong. Rec. 1809 (1921).

[51] 61 Cong. Rec. 1868 (1921).

[52] Stafford v. Wallace, 258 U.S. 495, 515–516, 42 S. Ct. 397, 401 (1922).

[53] Bosma v. USDA, 754 F.2d 804, 808 (8th Circuit 1984), citing H. Rep. No. 1048, 85th Cong. 2d Session, reprinted in 1958 U.S. Code Cong. and Admin. News, 5212, 5213.

[54] Swift & Co. v. United States, 393 F.2d 247, 253 (7th Cir. 1968); citing Stafford v. Wallace, 258 U.S. at 521; and Safeway Stores, Inc. v. Freeman, 369 F.2d 952, 956 (1966); see also, Farrow v USDA, 760 F.2d 211, 214 (8th Circuit 1984).

[55] 61 Cong. Rec. 1861 (9121).

[56] 61 Cong. Rec. 1805 (1921).

[57] H.R. Rep. 77 on Packer Act Amendment of 1924 at 3.

[58] H.R. Rep No 1048, 85th Cong., 1st Sess 3 (1957).

[59] *Id.* at 5.

[60] Sen. Rep. No. 94–932, 94th Cong, 2d Sess. 4 (1976).

[61] 1978 USCAAN 2204, Senate Report.

buying direct from feedlots or producers.

7. Obligation to Adjust Rules to Changes in Industry Structure

While in 1921 the stockyards were the public market which Congress wanted to ensure would be made open and competitive, Congress had the foresight to recognize that in the long-term industry marketing practices might change. It structured the Act to grant the Secretary authority to take action that would ensure open, competitive markets as the industry changed over time. In doing so Congress intentionally placed the obligation on the Secretary of Agriculture to monitor the packing industry and adjust regulatory controls to ensure compliance with the purposes of the Act as industry structure changed. Congress recognized that enacting a statutory list of specific prohibited packer practices would not further one of its primary goals—to structure an act that would keep pace with the changing structure of the livestock industry. Congressman Anderson of Minnesota, a member of the House Committee on Agriculture and a sponsor of one of the bills that led to the Act, stated during the debates in the House that:

> Industry is progressive. The methods of industry and the manufacture and distribution change from day to day, and no positive iron-clad rule of law can be written upon the statute books which will keep pace with the progress of industry. So we have not sought to write into this bill arbitrary and iron-clad rules of law. We have rather chosen to lay down certain more or less definite rules, rules which are sufficiently flexible to enable the administrative authority to keep pace with the changes of methods in distribution and manufacture and in industry in the country.[62]

Congressman Anderson later noted that "the provisions of this legislation as to the packers must be more or less elastic in order that they may keep pace with the state and development of the industry."[63]

8. Legislative History Conclusion

The legislative history establishes that Congress intended that the Secretary use his authority under the Act to protect the interests of livestock producers through regulation of packer practices that threaten an open, competitive markets for livestock. It also shows that Congress intended that the Secretary do this in part through issuance of substantive rules that will *prevent* packer practices prohibited by the Act and *compel* lawful action by packers. Congress expected the Secretary to vigorously enforce the Act according to these principles, adjusting the rules and enforcement policies to keep pace with the state and development of the industry even as numbers of cattle purchased directly from feedlots and producers increased. The legislative history demonstrates that Congress clearly intended the Secretary to issue substantive rules of the nature proposed in this petition.

B. Statutory Authority for Rule Making

The statutory language granting the Secretary of Agriculture these extraordinarily comprehensive regulatory powers, including the authority to issue substantive regulations regarding packer practices, is found at 7 U.S.C. §§ 228(a) and 222. Section 228 states:

> *The Secretary may make such rules, regulations and orders as may be necessary to carry out the provision of the Act * * *.*[64]

Section 222 grants the Secretary of Agriculture all of the enforcement powers held by the Federal Trade Commission under Title 15 Section 46, 48, and 50.[65] Section 46(a) authorizes the Secretary "to make rules and regulations for the purpose of carrying out the provisions" of the Act.

When issuing regulations in 1974, the Packers and Stockyards Administration acknowledged that these two statutory sections granted it the authority to issue *substantive* rules:

> The position of the Administration is that the general rule-making authority contained in section 407 of the Packers and Stockyards Act (7 U.S.C. § 228) and section 6(g) of the Federal Trade Commission Act (15 U.S.C. § 46) authorizes the Secretary to issue substantive as well as procedural and advisory regulations necessary to carry out the provisions of the Act.[66]

Courts have also recognized that the Secretary has the authority to issue legislative rules under the Packers and Stockyards Act. These legislative rules have the force and effect of law. See, e.g., *United States* v. *Marshall Durbin & Co.*, No. CV 84–PT–1920–S (ND Ala Sept. 11, 1985), where the court recognized that the Secretary has the authority to issue legislative rules having the force and effect of law, but held that a poultry weighing regulation should be regarded as an interpretive rule, since the Secretary did not comply with the notice and comment procedures of the Administrative Procedure Act.

One court has specifically addressed the Secretary's rule-making authority under Section 202 of the Act. In *Central Coast Meats* v. *USDA*, 541 F.2d 1325 (1976), the court held that USDA did not have the authority under § 202(a) to enforce a rule that made it a *per se* violation for a packer to own a dealer or vice-versa. The court based this holding on its understanding that 202 (c) and (d) specifically addressed the evils of packers' acting as dealers and it clearly contemplated that packers could act as dealers in certain circumstances.[67] This decision would not prohibit the issuance of the rules proposed in this petition. The rules proposed here do not create the type of *per se* prohibition the court was concerned with in the *Central Coast Meats* decision. These proposed rules do not make packers' use of forward contracts a *per se* violation. Nor do they make packer feeding a *per se* violation. Rather, these rules identify the circumstances under which forward contracts and packer feeding result in violations of the Act.

Forward contracts that are formula-priced fail to establish the value paid for an animal on the day it is committed. This allows an opportunity for the manipulation of the price between the day the livestock is committed and the date it is delivered. Forward contracts which are not traded publicly create preferences for those producers offered those contracts over those not offered such contracts. Such preference of one producer over others is likely to injure the competitive position of those not receiving the offer and this violates Section 202(b) of the Act.

The proposed rule's requirement that all forward contracts contain a firm-base price and be traded in an open, public manner eliminates the circumstances under which forward contract use violates § 202 of the Act. Similarly, packer feeding of its own slaughter supplies can have the effect of reducing prices paid to producers on the cash market. Such practice also provides a preference to the persons owning the packer as well as owning the cattle. Thus a packer's feeding of its own slaughter supplies is likely to affect a manipulation of price and also likely to injure the other cattle producers' ability to compete with the packer. The proposed rule that packer owned and fed cattle be sold in public markets eliminates the circumstance in which packer feeding results in violations of the Act. Rather than establishing a *per se* violation of the Act, the proposed rules are explicitly designed to address the specific circumstances under which forward contracts and producer

[62] 61 Cong. Rec. 1887 (1921).
[63] 61 Cong. Rec. 1888(1921).
[64] 7 U.S.C. § 228(a) (emphasis added).
[65] 7 U.S.C. § 222.
[66] 39 Fed. Reg. 17529, 17537 (May 17, 1974) (emphasis added.)
[67] *Id.* at 1327.

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ownership and feeding of cattle result in violations of the Act.

Both the legislative history and the statutory language of the Packers and Stockyards Act make it clear that the Secretary has extraordinarily broad authority to issue substantive rules regulating packer practices.

C. Statutory Authority for Captive Supply Rules

The types of packer practices that are to be regulated through the Secretary's rulemaking authority were set out in Section 202 of the Act, 7 U.S.C. § 192. This section establishes that:

> It shall be unlawful with respect to livestock * * * for any packer * * * to:
> (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
> (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or * * *
> (e) Engage in any course of business or do any act for purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce.

D. Assertion That Secretary Lacks Rule-making Authority Is Wrong

Despite the Congressional grant of extraordinarily broad rule-making authority and its intent that the Secretary amend its rules as necessary to ensure packer compliance with the Act as industry structure changes, the Secretary has asserted that he has no authority to issue rules prohibiting packer captive supply procurement practices. In Secretary Glickman's letter dated October 3, 1995, to Representative Pat Williams, he asserts that the Grain Inspection and Packers and Stockyards Administration's policy is "to promote fair and open competition among packers and not to dictate or regulate the specific methods and terms of sale to be utilized." The Secretary cites Swift & Co. v. Wallace, 105 F.2d 848 (7th Cir. 1939), to support this policy. He states that the court in that case noted that Section 202 "does not purport to confer upon the Secretary of Agriculture any authority directly to regulate prices, or discounts, or sales methods; and clearly does not contemplate the exercise of any authority to establish uniformity of practice with respect thereto."

This was the Secretary's response to a request from several congressmen to fully consider the Western Organization of Resource Council's request that rules of the nature proposed in this petition be issued.

The Secretary's reliance on the Swift case as justification for not issuing rules prohibiting these practices is misplaced. The Swift decision does not support his assertion that he has no authority to regulate these packer practices. In fact, the court in Swift explicitly states that the Secretary has the authority to restrict packer practices that violate Section 202 of the Packers and Stockyards Act.[68] This decision makes clear that the only limitation on the Secretary's authority to regulate packer practices is that restricted practices must be in violation of the Act.

1. Swift Case Analysis

a. Holdings in Swift Decision

In the Swift case, Swift had been granting longer credit terms and better discounts to the institutional trade (hotels, restaurants, clubs, steamship lines, and public institutions) than it offered to purveyors (those businesses which buy meat products from packers and then resell them to the institutional trade). USDA issued a cease and desist order that required Swift to:

> [C]ease and desist from engaging in the unfair, unjustly discriminatory and deceptive practice and device of denying to any buyer of packer products the same terms of credit that are extended to any other buyer, of substantially the same credit rating purchasing packer products of like kind, quantity and quality, under substantially the same circumstances.[69]

The Court of Appeals found a problem with the form of the cease and desist order issued by USDA. It held that USDA acted outside its authority under the Packers and Stockyards Act in issuing an order that required Swift to grant uniform terms of credit and discounts to all customers.[70]

2. Legal Analysis

a. Swift Decision is Not Controlling Law in Most of the Country

The Swift decision cited by the Secretary is controlling law only in the Seventh Circuit, which includes Wisconsin, Illinois, and Indiana. While other courts may consider the Swift decision when deciding similar issues, it is not controlling law in other federal circuits. Other federal courts may decide the issue differently.

Since the Swift decision was issued by 1939, it has been cited only once by the Seventh Circuit for the proposition the Secretary uses it for.[71] However, the Armour decision does not give any more insight into what the Swift court meant by the quote Secretary Glickman now cites. No other courts have cited the case for this specific proposition. However, the case is cited often to support other principles regarding the Packers and Stockyards Act.

b. In Context, the Quote Does Not Support the Secretary's Position

When the quote cited by the Secretary is read in its proper context in the Swift decision, it is clear that it does not support the Secretary's general refusal to prohibit the packer practices as requested. Two important principles expressed by the court shed light on the intent of the quoted language. First, the court of appeals recognized the Secretary's authority to prohibit and restrict practices that are found to violate Section 202 of the Packers and Stockyards Act. Second, the reference to the lack of authority to establish uniformity of practice is to the court's finding that the form of the cease and desist order in that case was improper because the Act does not authorize the Secretary to change an unjustly discriminatory or unreasonable preferential practice into a fair practice through an affirmative mandate that the practice be applied uniformly to all affected.

(1) USDA Has the Authority to Restrict Unlawful Packer Practices

The quote cited by the Secretary is as follows:

> The foregoing language does not purport to confer upon the Secretary of Agriculture any authority directly to regulate prices, or discounts, or sales methods; and clearly does not contemplate the exercise of any authority to establish uniformity of practice in respect thereto.[72]

The sentence immediately following this quote recognizes that the Secretary does have the authority to regulate practices if "in fact" they constitute unfair, unjustly discriminatory, or deceptive practices, or if they provide undue or unreasonable preference or advantage as between persons or localities. The court states:

> Differences of variations in prices, or in the terms of credit, or amounts of discount, or in practices do not come within the ban of the act unless they in fact constitute engaging in or using an unfair or unjustly discriminatory or deceptive practice or device in commerce or unless they constitute a making or giving, in commerce, of an undue or unreasonable

[68] Swift & Co. V. Wallace, 105 F.2d 848, at 853 and 863.

[69] Swift & Co. v. Wallace, 105 F.2d 848, at 862 (7th Cir. 1939).

[70] *Id.* at 863.

[71] See Armour & Co. v. United States, 402 F.2d 712 (7th Cir. 1968).

[72] Swift & Co. v. Wallace, 105 F.2d 848, at 853 (7th Cir. 1939).

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preference or advantage, or result in undue or unreasonable prejudice or disadvantage as between persons or localities.[73]

Later in the decision, the court makes clear that the Secretary has the authority to restrict packer practices that violate Section 202. The court states:

> If a practice in respect to the giving of discount or terms of credit in fact constitutes an undue and unreasonable preference or advantage, or subjects some person or locality to undue and unreasonable prejudice or disadvantage, then clearly the Secretary of Agriculture has the power to restrict the practice to the point where it is fair and reasonable * * *[74]

Clearly, the court recognized that once USDA finds that a particular packer practice violates Section 202, it has the authority to restrict that practice until it is fair and reasonable. The economic studies discussed above demonstrate that current use of formula-priced forward contracts and packer ownership and feeding of its own slaughter supplies likely affect a manipulation of prices paid to producers and provide certain producers competitive advantages and preferences that are in violation of § 202 of the Act. The proposed rule restricts these practices only to the extent necessary to make them fair and reasonable and to prevent violation of the Act.

(2) Regulating Uniform Packer Practices

The court in the Swift case also held that the cease and desist order issued by the Secretary went beyond his authority because it was in effect an affirmative command to require "uniformity" of discount terms, terms of credit, and trade practices.[75] The court interpreted the cease and desist order issued by USDA to affirmatively require Swift to give discounts and particular terms of credit to any customer as a condition to being permitted to continue giving terms of credit or discounts that were found unreasonable and prejudicial. The court held that once a discount, term of credit, or practice was found to be undue or unreasonable preference, or unjustly discriminatory, the Secretary did not have the authority to change the practice into a proper practice by requiring it to be extended to all others who may be affected thereby. It held that the Secretary does have the power to restrict a practice to the point where it is fair and reasonable but does not have the power to change the unreasonable preference into a fair practice by affirmatively mandating that it be applied uniformly to all affected.[76] The court states:

> If a practice in respect to the giving of discount or terms of credit in fact constitutes an undue and unreasonable preference or advantage, or subjects some person or locality to undue and unreasonable prejudice or disadvantage, then clearly the Secretary of Agriculture has the power to restrict the practice to the point where it is fair and reasonable; but we do not believe that the Secretary has the power to change a practice, which is assumed to be unreasonable and to create an unreasonable preference, into a proper practice by requiring it to be extended to all others who may be affected.[77]

The reference to the lack of authority to establish uniform practices in the quote used by Secretary Glickman is explained by this statement. All that the Swift court meant was that the Secretary does not have the authority to affirmatively mandate that for an unlawful practice to become lawful, it must be applied uniformly.

The Secretary's assertion that the Swift case supports his decision not to issue rules prohibiting the packer practices requested by the Western Organization of Resource Councils is wrong. The proposed rule restricts packer captive supply procurement methods only to the extent necessary to stop violation of the Act. The proposed rule does not mandate terms of sale through forward contracts or packer-owned cattle. Unlike the cease and desist order in the Swift case which required offering the same terms of credit to all buyers, the proposed rule does not require packers to buy all cattle on the same price terms. Forward contracts must be traded publicly, but the firm-base price does not have to be the same for all cattle. Similarly, packer-owned and fed cattle must be sold in a public market, but the cattle do not all have to be sold on the same terms.

E. Incipiency Theory of Enforcement

The legislative history of the Packers and Stockyards Act indicates that the Act seeks "to prohibit the particular conditions under which monopoly is built up, and to prevent a monopoly in the first place and to induce healthy competition."[78]

Such legislative history has been interpreted by courts to mean that one of the purposes of the Packers and Stockyards Act is to prevent "potential injury by stopping unlawful practices in their incipiency" and that "proof of a particular injury is not required" to permit regulation of packer practices.[79]

Several courts have affirmed the principle that the Secretary has the authority to prevent unlawful practices in their incipiency but require that before doing so he must find either some non-competive intent or some likelihood of competitive injury.[80] These cases do not require the Secretary to find actual injury. He is only required to demonstrate a likelihood that injury of the sort the Act is designed to prevent will occur. As the Court of Appeals for the Ninth Circuit has stated:

> Unfair practices under Section 202 are not confined to those where competitive injury has already resulted, but include those where there is a reasonable likelihood that the purpose will be achieved and that the result will be an undue restraint of trade.[81]

In *Bosma* v. *USDA*, the Ninth Circuit Court of Appeals quoted its Central Coast Meats, Inc. holding that the department must show that the challenged conduct "is likely to produce the sort of injury the Act is designed to prevent."[82] The court found that actual harm resulted when an auction operator purchased livestock from consignments for speculation.[83] However, the court also held that the failure of the auction operator to inform consignors that he was the actual purchaser of the livestock was "inherently unfair" and "it may be considered an 'unfair' or 'deceptive' practice absent a more specific showing of actual harm."[84]

Similarly, in a case involving an agreement by two competitors not to compete for certain cows at an auction market, the Eight Circuit Court of Appeals held that "actual injury" need not be proven because the "purpose of the Act is to halt unfair trade practices in their incipiency, before the harm is suffered."[85] The court stated that "the Secretary need only establish the likelihood that an arrangement will

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[73] *Id.* at 853.

[74] *Id.* at 863.

[75] *Id.* at 862–63.

[76] *Id.*.

[77] *Id.* at 863.

[78] Hearing on H.R. 14, H.R. 232, H.R. 5032, and H.R. 5692 Before the House Committee on Agriculture, 67th Cong, 1st Sess., ser. D, 26 (1921).

[79] Daniels v. United States, 242 F.2d 39, 42 (7th Cir. 1957), *cert. denied*, 354 U.S. 939, *reh'g denied*, 355 U.S. 852 (1957); Bowman v. USDA, 363 F.2d 81, 185 (5th Cir. 1966), quoting *Daniels*.

[80] See Armour & Company v. United States, 402 F.2d 712, 717 (7th Cir. 1968), which describes how several previous Seventh Circuit opinions incorporated this concept, including Swift & Co. v. Wallace, 105 F.2d 848 (7th Cir. 1939); *Wilson & Co.* v. *Benson*, 286 F.2d 891 (7th Cir. 1961); Swift & Co. v. United States, 408 F.2d 849 (7th Cir. 1962); see also Corona Livestock v. USDA, 607 F.2d 811, 815 (9th Cir. 1979).

[81] De Jong Packing Co. v. USDA, 618 F.2d 1329, 1336–37 (9th Cir. 1980) (emphasis added).

[82] Bosma v. USDA, 754 F.2d 804, 808 (9th Cir. 1984), (emphasis added).

[83] *Id.* at 808–809.

[84] *Id.*

[85] Farrow v. USDA, 760 F.2d 211, 215 (8th Cir. 1985).

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result in competitive injury to establish a violation.[86] The court agreed with the judicial officer that "a practice which is likely to reduce competition and prices paid to farmers for cattle can be found an unfair practice under the Act."[87] The court concluded that "this is so even in the absence of evidence that the participants made their agreement for the purpose of reducing prices to farmers or that it has that result."[88]

These cases firmly establish that the Secretary may take action to prevent unlawful packer practices in their incipiency if he finds that these practices are reasonably likely to produce the sort of injury the Act is intended to prevent. The economic studies discussed above provide a sufficient factual basis for finding that the packers current use of forward contracts and packers' feeding of their own slaughter supplies in today's concentrated markets are likely to cause reductions in prices paid to producers and result in undue preferences for certain producers over others.

The incipiency theory of enforcement of the Packers and Stockyards Act can be applied in the rule-making process as well as in an administrative complaint proceeding. In the rulemaking process the Secretary makes the necessary findings with regard to the packer practices in general, whereas in an administrative complaint proceeding the necessary finding would be made as to a particular situation. The captive supply procurement practices addressed by the proposed rule are so widespread that restrictions on USDA's resources will not permit them to be addressed effectively through individual administrative complaints. These practices can only be addressed effectively through issuance of a rule.

F. The Relevance of Competition in an Undue Preference Case

The Seventh Circuit Court of Appeals has held that when considering whether a packer practice provides an undue and unreasonable preference or is unjustly discriminatory, the effect on competition as between the party alleged to have obtained the preferential treatment and the party alleged to have been discriminated against is of primary importance. Even good faith competition between packers will not prevent a finding of discrimination or unreasonable preference if the parties preferred or discriminated against are not other packers.[89]

In this Seventh Circuit case, Swift had been granting longer credit terms and better discounts to the institutional trade (hotels, restaurants, clubs, steamship lines, and public institutions) than it offered to purveyors (those businesses which buy meat products from packers and then resell them to the institutional trade). The Seventh Circuit Court of Appeals set aside USDA's ruling that the discounts and terms of credit at issue were in violation of Section 202 of the Packers and Stockyards Act.[90] The court found that USDA had not properly taken into account the issue of competition when making its decision.[91] Under the court's analysis, the purveyors that claimed they were being discriminated against were competitors of the packer, not competitors of the institutional trade. Both the packers and the purveyors sold meat to the institutional trade. The preferential credit terms and discounts, however, were given to the institutional trade. The court found that an important aspect of "competition" to be concerned about in an unjustly discriminatory or unreasonable preference case would be that between the party preferred and the party claiming prejudice. The court stated:

> Normally the lack of competition between the parties preferred and the parties claiming to be subjected to discrimination would be a fact of substantial significance for the determination of the existence of "any undue and unreasonable preference or advantage."[92]

Because the purveyors were not competing with the institutional trade, the court found no discrimination between competitors. Thus, it found that USDA had not provided an adequate factual basis for holding the practices to be violations of the Act.

When considering whether the packers' captive supply procurement methods result in undue and unreasonable preferences or unjust discrimination, their effect on the competition between livestock producers must be considered. Because captive supply agreements are offered selectively to livestock producers and provide preferential access to slaughter plants for those who enter into them, they injure the ability to compete of those producers who are not offered such agreements for the sale of their livestock. The proposed rule is designed to restrict use of forward contracts and packer owned and fed cattle only to the extent necessary to prevent unjust discrimination or undue preferences between competing producers. It does so by requiring forward contracts and producer owned and fed cattle to be traded in a public market.

G. Secretary Has the Authority to Issue the Proposed Captive Supply Rules

The legislative history discussed above demonstrates that a primary purpose of the Packers and Stockyards Act was to ensure that producers received full value for their livestock. The Secretary was granted the authority to regulate packers to ensure open, competitive livestock markets and, thereby prevent arbitrary depression of prices through the oligopsonistic powers of the packers. See pp. 25–29. This history and the language of the Act also demonstrates that the Secretary has the authority to issue substantive rules to prevent packers from taking any actions prohibited by Section 202 of the Act. See pp. 23–25. The courts have held that Congress intended to give the Secretary the authority to regulate packers' activities so as to stop practices that are likely to cause the type of harm to producers that the Act is designed to address in their incipiency—before the harm is suffered. See pp. 37–39 above.

The above described economic evidence provides a substantial factual basis for finding that the current use of formula-priced forward contracts and direct packer feeding of cattle for slaughter in today's highly concentrated markets is *likely* to cause the type of harm to producers that Congress intended to prohibit under Section 202 of the Act.

Section 202(e) expressly prohibits packers from engaging in "any course of business" or doing "any act" with "the effect of manipulating or controlling prices."[93] Numerous economic studies cited above indicate that, in general, when packer concentration levels increase producers prices decrease. See pp. 8–13 above. Recent studies support a finding that packers' oligopsonistic power does have a negative impact on producers' prices, costing producers millions of dollars a year. See pp. 8–13 above. For example, one important study found, through statistical analysis that, between 1972 and 1986, fed cattle prices were significantly below their marginal value during 39 of 51 quarters. On average the mark-down was 1.31 percent, or 17 percent of the marketing margin, amounting to $1.54 per hundredweight of retail meat. The authors estimate that this was worth

[86] *Id.*
[87] *Id.* at 214.
[88] *Id.*
[89] See, e.g., Swift & Co. v. Wallace, 105 F.2d 848, at 855–857 (7th Cir. 1939).
[90] *Id.* at 857.
[91] *Id.* at 854–57.
[92] *Id.* at 857.
[93] 7 U.S.C. § 192(e).

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about $62 million dollars to the packers. See p. 13 above. While these studies do not identify any specific practices that cause the reduction in prices, they do demonstrate that oligopsonistic packer buying practices, in general, have the effect of manipulating prices paid to producers. These studies establish a substantial factual basis for finding a strong likelihood that general buying practices of oligopsonistic packers will result in producers receiving less than the full value of their livestock. They provide substantial evidence for finding that oligopsonistic packers' buying practices should be restricted under Section 202 of the Act.

Economic studies have also attempted to isolate specific livestock procurement practices to determine their effect on producer prices. One study found that packers' feeding of their own cattle for slaughter has a depressing effects on prices other producers are paid for their livestock. See, pp. 13–15 above. Other studies have shown that packers' use of forward contracts also has depressing effect on prices paid to producers for their livestock. See pp. 15–19 above. Concentration in the Red Meat Packing Industry, issued by the Grain Inspection and the Packers and Stockyards Administration in February, 1996, demonstrates that the use of captive supply procurement methods in the cattle industry is associated with a decline in cash-market price for cattle. It shows that packers increase their captive supply inventories when cash-market prices increase, and as they increase captive supply deliveries from these inventories, cash-market prices decline. See p. 18 above. These studies provide sufficient evidentiary support for a finding that packer feeding of their own slaughter supplies and their use of forward contracts are likely to have the effect of manipulating prices paid to producers in violation of Section 202(e) of the Act. Such practices should, thus, be restricted by regulation.

Section 202(a) of the Act prohibits packers from engaging in any "unjustly discriminatory" practice or device.[94] Section 202(b) prohibits packers from giving any person an "undue or unreasonable preference or advantage" "in any respect whatsoever."[95]

When considering whether packers' feeding of their own slaughter supplies and use of forward contracts constitute undue preferences or unjust discrimination in violation of Section 202 (a) and (b) of the Act, the effect of these practices on competition between livestock producers must be considered. See pp. 39–40 above. Packer feeding of their own slaughter supplies and use of forward contracts are very likely to injure competition between livestock producers. By definition, packers that own and feed cattle for their slaughtering plants provide preferential treatment for their stockholders over other livestock producers. Packer-owned cattle enjoy preferential access to the slaughtering facility; thus the packer-owned cattle are guaranteed a market. This type of activity does injure competition between, the packers and their shareholders on the one hand, and other livestock producers on the other. Similarly, forward contracts which are not traded publicly but offered to certain livestock producers selectively also provide preferential access to slaughter plants for those who enter into them. Livestock producers who are not offered the forward contracts are at a significant competitive disadvantage. That these practices may make the packers more competitive with each other does not control the determination of whether they violate the "undue and unreasonable preference" or "unjustly discriminatory" language of the Act. Packer feeding of its own cattle for slaughter and forward contracts as they are used today are likely to result in undue preferences and unjust discrimination in violation of Sections 202 (a) and (b) of the Act. Their use should thus be restricted through regulation.

This discussion demonstrates that there is substantial factual and legal basis for issuing rules under Section 202 of the Act restricting the use of forward contracts and packer feeding of its own slaughter supplies. The rules proposed in this petition offer the least intrusive form of restriction on these practices that will ensure compliance with the purposes of the Act. These proposed rules do not prohibit the use of forward contracts, but merely require that the contracts contain a firm-base price and be traded in an open public market. The proposed rules also do not prohibit packers from owning and feeding cattle. The proposed rule only requires that packer-owned cattle be traded in a public market.

These restrictions are designed to protect producers' interests by encouraging open, competitive markets for livestock. They are designed to take advantage of what economic studies suggest encourage competitive markets for livestock—that more bidders for livestock mean higher prices to producers and that electronic or telemarkets markets also increase prices paid for livestock. See pp. 18–20 above. They are designed to provide equitable access to markets for all livestock producers preventing unjust discrimination between livestock producers by packers.

For these reasons WORC requests that Secretary Glickman issue the rule set out above at pp. 2–4.

Attorneys for Western Organization of Resource Councils.

Lynn A. Hayes,

Attorney at Law. Farmers' Legal Action Group, Inc., 1301 Minnesota Building, 46 East Fourth Street, Saint Paul, Minnesota 55101–1109, (612) 223–5400, (612) 223–5335 (fax).

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[94] 7 U.S.C. § 192(a).

[95] 7 U.S.C. § 192(b).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–60–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes. This proposal would require repetitive inspections to detect discrepancies or damage of the steady bearing assemblies of the flap transmission system, and replacement of any discrepant or damaged assembly with a new, like assembly. This proposal also would require eventual replacement of all the steady bearing assemblies with new, improved assemblies, which would terminate the repetitive inspection requirement. This proposal is prompted by reports of cracking of the hardened steel inner race, and broken or missing inner races of the steady bearing assemblies. The actions specified by the proposed AD are intended to prevent such discrepancies and damage of the shafts of the steady bearing assemblies, which could cause the shafts to fail; failure of the steady bearing shafts during a subsequent asymmetric stop could result in an uncommanded asymmetric retraction of the flap, and subsequent reduced controllability of the airplane.

DATES: Comments must be received by February 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

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Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1503; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes. The DGAC advises that it has received reports indicating that some steady bearings of the flap transmission system on these airplanes have been found with cracking of the hardened steel inner race, or a broken or missing inner race. The DGAC also advises that it has received reports indicating that the spherical part of a steady bearing assembly was found to be detached from its mounting flange. The cause of these discrepancies is believed to be a design deficiency in the bearing seal that, in certain circumstances, may result in the loss of grease from the bearings.

Such discrepancies and damage of the steady bearing assemblies could weaken the shaft and lead to failure of the shaft in the event of a subsequent asymmetric flap drive failure. Failure of a steady bearing in that situation could result in an uncommanded asymmetric retraction of the flap, and subsequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995, which describes procedures for repetitive visual inspections to detect damage or discrepancies of the steady bearing assemblies of the flap transmission system. The service bulletin also provides instructions for replacement of damaged assemblies with new, like assemblies. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95–073–178(B), dated April 26, 1995, in order to assure the continued airworthiness of these airplanes in France.

Airbus also issued Service Bulletin A310–27–2074, dated November 18, 1994, which describes procedures for replacement of the steady bearing assemblies with new, improved assemblies. The improved assembly is equipped with integral sealing for both the ball bearing and the spherical bearing, which will improve the service life of the bearing assemblies. The service bulletin also describes procedures to install special spherical spacers for steady bearing assembly positions FIN 5486 and FIN 5529 in order to keep the seal lips within the flange. (This Airbus service bulletin references Lucas Liebherr Service Bulletin 551A–27–M551–03, Revision 1, dated February 13, 1995, as an additional source of service information.) The DGAC has approved the technical content of this service bulletin.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections to detect any discrepancy or damage to the steady bearing assemblies of the flap transmission system, and replacement of any damaged or discrepant assembly with a new, like assembly. The proposed AD also would require eventual replacement of all steady bearing assemblies with the new, improved assemblies, which would terminate the repetitive inspection requirement. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between the Proposal and the Related French CN

Operators should note that, this proposal would differ from the parallel French CN, referenced previously, in that this proposed rule would require the accomplishment of a terminating action (replacement of the steady bearing assemblies with new, like assemblies) for the repetitive inspections. The French CN provides for that action only as optional.

Mandating the terminating action is based on the FAA's determination that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be

providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed requirement to accomplish the terminating action is in consonance with these considerations.

Cost Impact

The FAA estimates that 26 Airbus Model A310 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $23,400, or $900 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $16,872 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $451,152, or $17,352 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–60–AD.

Applicability: Model A310 series airplanes, on which Airbus Modification 10962 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flap transmission shaft due to damaged steady bearing assemblies, which could cause an uncommanded asymmetric retraction of the flap, and result in reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 2,000 total landings or within 500 flight hours after the effective date of this AD, whichever occurs later: Perform a visual inspection to detect damage or any discrepancy of the steady bearing assemblies of the flap transmission system, in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995.

(1) If no damage or discrepancy is detected: Repeat the inspection thereafter at intervals not to exceed 2,000 landings, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any damage or discrepancy is detected and the groove depth of the shaft is less than 1 mm (.04 inch): Prior to the accumulation of 50 landings after detection of this discrepancy, replace the steady bearing assembly with a new, like assembly in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995.

(3) If any damage or discrepancy is detected and the groove depth on the shaft is 1 mm or more: Prior to further flight, replace the steady bearing assembly with a new, like assembly, in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995.

(b) Within 5 years after the effective date of this AD, replace all steady bearing assemblies of the flap transmission system with new, improved assemblies, in accordance with Airbus A310–27–2074, dated November 18, 1994. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Note 2: Airbus Service Bulletin A310–27–2074 references Lucas Liebherr Service Bulletin 551A–27–M551–03 as an additional source of service information for replacement of the steady bearing assemblies with the new, improved assemblies.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–813 Filed 1–13–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–92–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect cracking and delamination of the containers in which the left and right off-wing emergency evacuation slides are stored, and repair, if necessary. If cracking and delamination in excess of certain limits are found, the proposed AD also would require replacement of the slide with a modified slide; and replacement of the discrepant container with a serviceable container. Replacement of the slide with a modified slide would terminate the requirement for repetitive inspections. This proposal is prompted by a report indicating that a slide deployed during flight, which resulted in the loss of the slide and the container door. The actions specified by the proposed AD are intended to prevent the loss of the escape slides during flight, which could make the emergency exits located over each wing unusable and result in damage to the fuselage.

DATES: Comments must be received by February 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–92–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de la Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report indicating that the left off-wing emergency evacuation slide on one airplane inadvertently deployed during flight. A subsequent inspection revealed that both the left off-wing slide and the door to the container in which the slide was stored were missing. Based on the findings of the inspection, it was concluded that the loss of the slide and the container door were the result of the packed slide pressing against (and thereby exerting excessive internal pressure on) the container. This contact and resultant excessive pressure also contributed to delamination of the container door.

A slide is mounted on each side of the airplane in the wing-to-body fairing. Should the slide begin to deploy during flight, air moving over the wing can separate the slide from the airplane. This loss of the slide during flight could make the two emergency exits located over each wing unusable and result in damage to the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–25–1161, dated June 21, 1995, which describes procedures for conducting repetitive detailed visual inspections to detect cracking and delamination of the left and right slide containers and container doors, and repair, if necessary. When cracking and delamination of the container or container door exceed certain limits, this service bulletin also describes procedures for replacing a discrepant container with a serviceable container; and for replacing the slide with a modified slide. Accomplishment of the slide replacement would eliminate the need for repetitive inspections of that container and door.

Airbus also has issued Service Bulletin A320–25–1156, dated June 21, 1995, which describes procedures for the replacement of the slide with a modified slide. When the modified slide is packed into its container, there is a 5 mm clearance between the slide and the container door. This modification is intended to keep the packed slide from pressing against the container door, thus alleviating pressure on the door; the modification also would eliminate a cause of delamination of the container door.

The DGAC classified the Airbus service bulletins as mandatory and issued French airworthiness directive (C/N) 95–186–071(B) R1, dated February 14, 1996, in order to assure the continued airworthiness of these airplanes in France.

Note: The Airbus service bulletins reference the following service documents as additional sources of procedural service information:

—Airbus All Operator Telex 25–09, dated January 2, 1995;
—Airbus All Operator Telex 25–09, Revision 1, dated January 2, 1995;
—Air Cruisers Service Bulletin 004–25–37; and
—Air Cruisers Service Bulletin 004–25–38.

(Air Cruisers is the manufacturer of the slide system.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD

action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections to detect cracking and delamination of the container and container door for the left and right escape slides, and repair, if necessary. If damage to the container door exceeds certain limits, the proposed AD would require replacement of the escape slide with a modified slide, and replacement of the discrepant container with a serviceable container. Accomplishment of the slide replacement would constitute terminating action for the repetitive inspections of the container and container door. The actions would be required to be accomplished in accordance with the Airbus service bulletins described previously.

Cost Impact

The FAA estimates that 115 Airbus Model 320 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $34,500, or $300 per airplane, per inspection.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–92–AD.

Applicability: Model A320 series airplanes listed in Airbus Service Bulletin A320–25–1156, dated June 21, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the off-wing emergency evacuation slides ("escape slides") during flight, which could make the two emergency exits located over each wing unusable and result in damage to the airplane, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, perform a detailed visual inspection to detect cracking and delamination of each off-wing container, including the container door, in which an escape slide is stored, in accordance with Airbus Service Bulletin A320–25–1161, dated June 21, 1995.

Note 2: Accomplishment of inspections prior to the effective date of this AD in accordance with Airbus All Operator Telex 25–09, dated January 2, 1995, or Revision 1, dated January 2, 1995; or Air Cruisers Service Bulletin 004–25–38; is considered acceptable for compliance with this paragraph.

(1) If no crack or delamination is found, repeat the detailed visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months or 4,000 landings, whichever occurs earlier.

(2) If any crack or delamination is found which does not exceed the limits specified in the service bulletin, prior to further flight, repair the crack or delamination in accordance with this service bulletin.

(3) If any crack or delamination is found which exceeds the limits specified in the, prior to further flight, replace the discrepant container with a serviceable container in accordance with Airbus Service Bulletin A320–25–1161, dated June 21, 1995; and replace the escape slide with a slide modified in accordance with Airbus Service Bulletin A320–25–1156, dated June 21, 1995. Replacement of the slide constitutes terminating action for the repetitive inspections of that container required by paragraph (a)(1) of this AD.

Note 3: Accomplishment of the slide modification prior to the effective date of this AD in accordance with Airbus All Operator Telex 25–09, dated January 2, 1995, or Revision 1, dated January 2, 1995; or Air Cruisers Service Bulletin 004–25–37; is considered acceptable for compliance with this paragraph.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–812 Filed 1–13–97; 8:45 am]

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14 CFR Part 39

[Docket No. 94–SW–26–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B, 214B–1, and 214ST helicopters, that currently establishes a mandatory retirement life of 60,000 high-power events for the main transmission upper planetary carrier (carrier). This action would require changing the method of calculating retirement life for the carrier from high-power events to a maximum accumulated Retirement Index Number (RIN) of 120,000. This proposal is prompted by fatigue analyses and tests that show certain carriers fail sooner than originally anticipated because of the unanticipated high number of lifts or takeoffs (torque events) performed with those carriers in addition to the time-in-service (TIS) accrued under other operating conditions. The actions specified by the proposed AD are intended to prevent fatigue failure of the carrier, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 6, 1994, the FAA issued AD 94–02–05, Amendment 39–8803, (59 FR 32325, June 23, 1994), to require changing the method of calculating the retirement life for the carrier, part number (P/N) 214–040–077–007 and –101, from flight hours to high-power events calculated using the number of takeoffs and external load lifts, removing the 2,500 hours TIS magnetic particle inspection for the carrier, and making the requirements applicable to the Model 214ST as well as the Model 214B and 214B–1 helicopters. That action was prompted by fatigue analyses and tests that show certain carriers fail sooner than originally anticipated because of the unanticipated high number of lifts and takeoffs (torque events) performed with those carriers in addition to the TIS accrued under other operating conditions. The requirements of that AD are intended to prevent fatigue failure of the carrier, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

Since the issuance of that AD, BHTI has issued BHTI Information Letter GEN–94–54, dated April 15, 1994, Subject: Retirement Index Number (RIN) For Cycle Lifed Components, which introduces a different method of accounting for fatigue damage on components that have shortened service lives as a result of frequent torque events. Additionally, BHTI has issued BHTI Alert Service Bulletin (ASB) 214–94–52, which is applicable to Model 214B helicopters, and ASB 214ST–94–66, which is applicable to Model 214ST helicopters, both of which are dated November 7, 1994, and describe procedures for converting flight hours and total number of torque events into a RIN for the carrier, P/N214–040–077–007 and –101. Although ASB 214–94–52 does not state that it applies to Model 214B–1 helicopters, this was an oversight by the manufacturer. That ASB was intended to apply to both Model 214B and 214B–1 helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 214B, 214B–1, and 214ST helicopters of the same type design, the proposed AD would supersede AD 94–02–05 to require creation of a component history card using the RIN system and a system for tracking increases to the accumulated RIN, and establish a maximum accumulated RIN for the carrier of 120,000 at which it must be retired.

The FAA estimates that 11 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately (1) 48 work hours per helicopter to replace the affected part due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); and (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts would cost approximately $29,516 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $61,813 for the first year and $60,713 for each subsequent year. These costs assume replacement of the spider in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8803 (59 FR 32325, June 23, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 94–SW–26–AD. Supersedes AD 94–02–05, Amendment 39–8803.

Applicability: Model 214B, 214B–1, and 214ST helicopters with main transmission upper planetary carrier (carrier), part number (P/N) 214–040–077–007 or –101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered; or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the carrier, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or equivalent record for the upper planetary carrier (carrier), P/N 214–040–077–007 or –101.

(b) Determine and record the accumulated Retirement Index Number (RIN) to date on the carrier as follows (if the multiplication results in a fraction, round the results up to the next whole number):

(1) For Model 214B or B–1 helicopters:

(i) Multiply the high-power event total to date by 2, or

(ii) If the actual operating hours are *known*, and:

(A) If the type of operation is internal load lift operations only, multiply each operating hour by 7;

(B) If the type of operation involves any external load lift operations and the number of external load lift operations is known, use the table below and multiply the appropriate factor for the average number of external load lift operations by the number of actual operating hours:

Average number of external load lift operations per hour	Factor*
0–2.00	7
2.01–5.00	7
5.01–16.00	14
16.01–27.00	21
Above 27.00	28

*RIN = Factor × Actual Operating Hours.

(C) If the type of operation involves any external load lift operations and the number of external load lift operations is unknown, multiply each actual operating hour by 21; or

(D) If the type of operation is unknown, multiply each actual operating hour by 21.

(iii) If the actual operating hours are *unknown*, assume 900 operating hours per calendar year. Prorate the assumed operating hours for partial years.

(A) If the type of operation is internal only, multiply the assumed operating hours by 7.

(B) If the type of operation involves any external load lift operations and the number of external load lift operations is known, use the table in paragraph (ii)(B) above and multiply the appropriate factor for the average number of external load lift operations by the number of assumed operating hours;

(C) If the type of operation involves any external load lift operations and the number of external load lift operations is unknown, multiply each assumed operating hour by 21.

(D) If the type of operation is unknown, multiply each assumed operating hour by 21.

(2) For Model 214ST helicopters:

(i) Multiply the high-power event total to-date by 2, or

(ii) Multiply the factored flight hour total to-date by 12.

Note 2: BHTI Alert Service Bulletin (ASB) 214–94–52, which is applicable to Model 214B helicopters, and ASB 214ST–94–66, which is applicable to Model 214ST helicopters, both of which are dated November 7, 1994, pertain to this subject.

(c) After compliance with paragraphs (a) and (b) of this AD, and during each operation thereafter, maintain a count of each lift or takeoff performed and at the end of each day's operations, increase the accumulated RIN on the component history card or equivalent record as follows:

(1) For Model 214B and 214B–1 helicopters,

(i) Increase the RIN by 1 for each takeoff.

(ii) Increase the RIN by 1 for each external load lift operation; or, increase the RIN by 2 for each external load lift operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in the elevation between the pick up point and the release point is 200 feet or greater.

(2) For Model 214ST helicopters,

(i) Increase the RIN by 2 for each takeoff.

(ii) Increase the RIN by 2 for each external load lift operation; or, increase the RIN by 4 for each external load lift in which the load is picked up at a higher elevation and released at a lower elevation and the difference in elevation between the pick up point and the release point is 200 feet or greater.

(d) Remove the carrier, P/N's 214–040–077–007 or –101, from service on or before attaining an accumulated RIN of 120,000. The carrier is no longer retired based upon flight hours. This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the carrier of 120,000 RIN.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

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Issued in Fort Worth, Texas, on January 7, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–879 Filed 1–13–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require repetitive inspections of certain flanges and finger strips at rib 5.0 of the vertical stabilizer to detect fatigue cracking, and repairs, if necessary. It also would require modifications that would strengthen the torsion box at rib 5.0 and prevent fatigue cracking; one of these modifications would be terminating action for the repetitive inspections. This proposal is prompted by reports indicating that, during full-scale fatigue testing, cracking has been found on the vertical stabilizer of the test article. The actions specified by the proposed AD are intended to detect and prevent fatigue cracking in the subject area, which, if not corrected, could reduce the structural integrity of the vertical stabilizer.

DATES: Comments must be received by February 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–185–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received reports indicating that cracks have been found on the vertical stabilizer during the manufacturer's full-scale fatigue tests on the Fokker Model F28 Mark 0100 test article. These fatigue cracks were detected at the bolt holes of the right-hand flange of the torsion box, and in the finger strip on the left-hand flange at rib 5.0 of the vertical stabilizer.

The RLD also advises that it has received reports indicating that subsequent full-scale fatigue tests have detected additional cracks in rib 5.0 of the vertical stabilizer after a stiffener had been added to the torsion box in accordance with Fokker Service Bulletin SBF100–55–018. Although this modification was performed to strengthen this area against fatigue cracking, investigation has shown that the stiffener produces a too-rapid change in the structural strength of the torsion box, which may lead to fatigue cracking in an adjacent area.

Fatigue cracking in the subject area, if not prevented, could reduce structural integrity of the vertical stabilizer.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–55–019, Revision 1, dated May 19, 1993, which describes procedures for conducting repetitive eddy current inspections of the flanges and finger strips at rib 5.0 of the vertical stabilizers to detect fatigue cracking, and repair, if necessary.

Fokker also has issued Service Bulletin SBF100–55–018, Revision 1, dated December 27, 1993, which describes procedures for modifying the torsion box at rib 5.0 of the vertical stabilizer by installing stiffening to the rib web and flanges for added strength. This service bulletin also describes procedures for a pre-modification eddy current inspection of the vertical stabilizer to detect cracking, and repair, if necessary, in accordance with Fokker Service Bulletin SBF100–55–019. Accomplishment of this modification eliminates the need for repetitive inspections to detect fatigue cracking.

Additionally, Fokker has issued Service Bulletin SBF100–55–023, dated January 3, 1995, which describes procedures for another modification to strengthen rib 5.0 of the vertical stabilizer. This modification, which entails the cold expansion of holes in the torsion box at rib 5.0, is intended to prevent additional fatigue cracking that could be caused by the earlier installation of the torsion box stiffener.

The RLD classified these service bulletins as mandatory and issued Netherlands airworthiness directives (BLA) 93–069 (A), dated June 1, 1993, and BLA 1995–017 (A), dated February 28, 1995, in order to assure the continued airworthiness of these airplanes in the Netherlands.

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FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current inspections to detect fatigue cracking of the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, and repair, if necessary.

The proposed AD also would require modification of rib 5.0 by the installation of a stiffener to the torsion box; this modification would be preceded by an eddy current inspection to detect fatigue cracking, and repair, if necessary. Accomplishment of this modification would terminate the requirement for repetitive eddy current inspections.

In addition, the proposed AD would require another modification of rib 5.0 by cold-expanding certain bolt holes on the torsion box.

These actions would be required to be accomplished in accordance with the applicable service bulletins described previously.

Differences Between the Proposed Rule and the Service Bulletins

If any cracking is detected during an eddy current inspection of the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, the proposed rule would require that the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate approve the method of repair. The applicable Fokker service bulletins do not provide instructions for repair, but recommend that Fokker be contacted prior to repairing fatigue cracks at rib 5.0.

Other Related Rulemaking Actions

The FAA has issued AD 91–18–15, amendment 39–8018 (56 FR 43548, September 3, 1991), which requires reinforcement of the left-hand and right-hand flanges of rib 5.0 of the vertical stabilizer by the installation of reinforcing finger clips, in accordance with Fokker Service Bulletin F100–55–014, dated November 29, 1990. That AD was prompted by reports of cracking in the flange of the torsion box at the junction of rib 5.0 and intermediate spar I; it is applicable to Fokker Model F28 Mark 0100 series airplanes having serial numbers 11244 through 11335.

The reinforcement required by AD 91–18–15 is to be installed prior to the accumulation of 6,000 total landings on the airplane, or within 100 days after October 8, 1991 (the effective date of that AD), whichever is later. Under the proposed AD, however, this modification would not have to be installed if the addition of steel reinforcement to the torsion box [as specified in proposed paragraph (b)(2)] is accomplished before an airplane has accumulated 6,000 total landings.

Cost Impact

The FAA estimates that 122 Fokker Model F28 Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD.

Approximately 77 airplanes would be required to conduct repetitive inspections of the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer. It would take approximately 10 work hours per airplane to accomplish each proposed inspection. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection requirement on U.S. operators of these airplanes is estimated to be $46,200, or $600 per airplane, per inspection.

Approximately 77 airplanes also would be required to accomplish the proposed installation of steel reinforcement in the torsion box at rib 5.0 of the vertical stabilizer. It would take approximately 170 work hours per airplane to accomplish this modification (including a pre-modification inspection). The average labor rate is $60 per work hour. Required parts would cost approximately $27,000. Based on these figures, the cost impact of this proposed action on U.S. operators of these airplanes is estimated to be $2,864,400, or $37,200 per airplane.

Approximately 122 airplanes would be required to accomplish the proposed cold expansion of holes in the torsion box at rib 5.0 of the vertical stabilizer. It would take approximately 17 work hours per airplane to accomplish this modification, or approximately 8 work hours per airplane if this proposed action is done at the same time as the proposed installation of steel reinforcement. The average labor rate is $60 per work hour. Required parts would cost approximately $206. Based on these figures, the cost impact of this proposed action on U.S. operators of these airplanes is estimated to be between $83,692 and $149,572, or between $686 and $1,226 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 96–NM–185–AD.

Applicability: Model F28 Mark 0100 series airplanes having the serial numbers specified in Table 1 of this AD; certificated in any category.

TABLE 1.—SERIAL NUMBERS OF AIRPLANES SUBJECT TO THIS AD

11244 through 11460, inclusive
11463 through 11469, inclusive
11471
11474 through 11483, inclusive
11489 through 11491, inclusive
11497 through 11499, inclusive
11501
11502
11504
11506
11507
11512 through 11515, inclusive
11517
11520

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and prevent fatigue cracking in the vertical stabilizer, which consequently could reduce its structural integrity, accomplish the following:

(a) For airplanes having serial numbers 11244 through 11419, inclusive, and 11421: Except as provided by paragraph (c) of this AD, prior to the accumulation of 8,500 total landings or within 30 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect fatigue cracking in the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, in accordance with Fokker Service Bulletin SBF100–55–019, Revision 1, dated May 19, 1993.

(1) If no cracking is detected, repeat this inspection thereafter at intervals not to exceed 2,000 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) For airplanes with serial numbers 11244 through 11419, inclusive, and 11421, accomplish the requirements of both paragraphs (b)(1) and (b)(2) of this AD:

(1) Except as provided by paragraph (c) of this AD, prior to the accumulation of 13,500 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect fatigue cracking in the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–55–018, Revision 1, dated December 27, 1993.

(i) If no cracking is detected, prior to further flight, accomplish the requirements of paragraph (b)(2) of this AD.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, and accomplish the requirements of paragraph (b)(2) of this AD.

(2) After accomplishing the requirements of paragraph (b)(1) of this AD, modify rib 5.0 of the vertical stabilizer by installing new stiffening, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–55–018, Revision 1, dated December 27, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) The following exceptions apply with regard to the requirements of paragraphs (a) and (b) of this AD:

(1) Accomplishment of the inspection specified in paragraph (a) and (b)(1) of this AD is not required if the modification specified in paragraph (b)(2) is accomplished prior to the accumulation of 7,300 total landings on the airplane.

(2) Compliance with AD 91–18–15, amendment 39–8018, is not required if the requirements of paragraph (b)(2) of this AD are accomplished prior to the accumulation of 6,000 total landings on the airplane.

(d) For all airplanes: At the applicable times specified in paragraph (d)(1) or (d)(2), modify the Hi-lok bolt holes at rib 5.0 of the vertical stabilizer by cold expansion, in accordance with Fokker Service Bulletin SBF100–55–023, dated January 3, 1995.

(1) For airplanes that have been modified in accordance with the requirements of paragraph (b) of this AD prior to the effective date of this AD: Modify prior to the accumulation of either 10,000 landings after in-service modification, or 10,000 landings after delivery with factory modification, as applicable; or within 30 days after the effective date of this AD, whichever occurs later.

(2) For all other airplanes: Modify concurrent with accomplishing the requirements of paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–883 Filed 1–13–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5676–3]

New Source Performance Standards and Emissions Guidelines: Sewage Sludge Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Additional Information (NAI).

SUMMARY: This action announces the EPA's intention to issue regulations and guidelines under Section 129 of the Clean Air Act for Sewage Sludge Incinerators (SSI) that combust sludge from Publicly Owned Treatment Works and to remove Sewage Sludge Incinerators from the list of Major Source Categories previously scheduled for rule development under Section 112 of the Clean Air Act.

DATES: Comments must be received on or before March 17, 1997.

ADDRESSES: *Comments*. Comments on this notice should be submitted in duplicate, if possible, to: The Air and Radiation Docket and Information Center (6102), ATTN: Docket No..A–96–42, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Docket. Dockets are available for public inspections and copying between 8:00 a.m and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, S.W., Room M1500, Washington, D.C. 20460. The center's telephone number is (202) 260–7548 and the fax number is (202) 260–4400. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Crumpler at (919) 541–0881, Emissions Standards Division (MD–13),

U.S. EPA, Research Triangle Park, N.C. 27711.

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

1. Background

The Clean Air Act as amended November 1990, requires under the revisions to Section 112, that the Agency list and promulgate National Emissions Standards for Hazardous Air Pollutants (NESHAP) in order to control, reduce, or otherwise limit the emissions of HAP for categories of major and area sources. Pursuant to the various specific listing requirements in Section 112(c), the Agency published on July 16, 1992 (57 FR 31576) an initial list of 174 categories of major and area sources that would be henceforth subject to emissions standards. Sewage Sludge Incineration (SSI) was one of the 174 categories listed for development of a NESHAP.

Following this initial listing, and pursuant to requirements in Section 122(e), on December 3, 1993 (58 FR 63941), the Agency published a schedule for the promulgation of emission standards for each of the 174 listed source categories. The SSI were listed for promulgation of a NESHAP no later than November 15, 2000. The reader is directed to those two notices for information relating to development of the initial list and schedule.

The Agency published a Notice of Listing of Categories and Regulatory Schedule for Air Emissions From Other Solid Waste Incineration (OSWI) on November 2, 1993 (58 F.R. 58498). The New Source Performance Standards (NSPS) and Emissions Guidelines (EG) for OSWI's are to be developed under section 129 of the Clean Air Act. That notice listed seven categories of OSWIs. The notice established a promulgation date for rulemaking for the seven categories of OSWI's of no later than November 15, 2000. Incineration of sludge from publicly owned waste water treatment works (POTW's) was not listed.

The Agency published an Advanced Notice of Proposed Rulemaking (ANPRM) for NSPS and EG applicable to Industrial and Commercial Waste Incinerators (ICWI) and Other Solid Waste Incinerators (OSWI) on December 28, 1994 (59 FR 66850). That notice announced the EPA's intent to develop NSPS and EG under Section 129 of the Act for the seven OSWI categories and ICWIs. Not included among the listed categories were incinerators used to combust sewage sludge produced at POTWs.

Today's Notice of Additional Information is announcing EPA's oversight in not listing SSI's in the November 2, 1993 listing of OSWI. The Agency, on closer reading of Section 129 of the Act, has now determined that SSI should properly be regulated under Section 129 rather that Section 112. Section 129 requires the EPA to establish NSPS for new and EG for existing facilities, for each category of solid waste incineration units. Section 129 defines a solid waste incineration unit as "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels)." Sludge generated by POTWs is a solid waste from the general public, commercial and industrial establishments.

Regulation of SSI under Section 129 provides for regulation of four criteria pollutants that are not listed as Hazardous Air Pollutants in Section 112. Also Section 129 provides for regulation of both new and existing units and does not have the major source quantity cutoff of Section 112(a)(1). Development of guidelines for operator training and certification of SSI operators is also a requirement of Section 129. These provisions will give the EPA more flexibility in setting rules for different sizes of SSI and will assure the public that the SSI are being operated in a manner that will protect the public health. The promulgation date for an NSPS and EG applicable to SSI remains no later than November 15, 2000.

The Agency also notes that this action announces the EPA's intent to delist SSI from the Section 112(c) source category list and the 112(e) schedule and to add SSI to the list of categories of Other Solid Waste Incinerators. At the time of proposal of the NSPS and EG under Section 129, the SSI will be delisted from the Section 112(c) list and the 112(e) schedule and added to the list of categories and regulatory schedule for Other Solid Waste Incinerators.

Dated: January 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–873 Filed 1–13–97; 8:45 am]

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40 CFR Part 63

[AD–FRL–5677–2]

RIN 2060–AD–56 and RIN 2060–AE–37

National Emission Standards for Hazardous Air Pollutants Emissions: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 5, 1996, the EPA promulgated 40 CFR part 63, Subpart U—National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins (61 FR 46906), and on September 12, 1996, the EPA promulgated 40 CFR part 63, Subpart JJJ—Group IV Polymers and Resins NESHAP (61 FR 48208). This action proposes to correct an error in the final Group I Polymers and Resins NESHAP, by extending the compliance date for heat exchange systems. In addition, this action proposes to extend the initial compliance date for equipment leaks for both the Group I and Group IV Polymers and Resins NESHAP, to allow time necessary for affected sources to respond to amendments to the hazardous organic NESHAP (HON) equipment leak provisions promulgated on December 26, 1996, which are directly referenced in both subparts U and JJJ.

Because these amendments are merely extending the compliance date for equipment leaks and heat exchange systems, the EPA does not anticipate receiving adverse comments. Consequently, the proposed revisions to the promulgated rule are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are received by the due date for comments (see DATES section below), no further action will be taken with respect to this proposal, and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before February 13, 1997, unless a hearing is requested by January 24, 1997. If a hearing is requested, written comments must be received by February 28, 1997.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than January 24, 1997. If a hearing is held, it will take place on January 29, 1997, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102),

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Attention Docket Numbers A–92–44 and A–92–45 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Marguerite Thweatt, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5607.

Docket. Docket Nos. A–92–44 and A–92–45, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: The Group I Polymers and Resins NESHAP directly reference the heat exchange system provisions (§63.104) of the HON. The EPA intended the subpart U compliance schedule to mirror the compliance schedule in the HON. However, subpart U inadvertently only allows six months for compliance with the heat exchange system provisions (March 5, 1997), while the HON allows three years from its effective date. Therefore, this action proposes to change the subpart U compliance date for heat exchange systems to September 5, 1999, to correct the inadvertent error in the final rule.

In addition, both subparts U and JJJ directly reference the equipment leak provisions of the HON (40 CFR 63, subpart H). Both subparts require that affected sources comply with the equipment leak provisions by 6 months after promulgation—March 5, 1997 for subpart U and March 12, 1997 for subpart JJJ. However, in accordance with a settlement agreement, the EPA promulgated a final rule amending the HON on December 26, 1996. The final amendments to the HON include revisions to the HON equipment leak provisions, which are also applicable, by direct reference, to sources subject to subparts U and JJJ.

This document is available in Docket Nos. A–92–44 and A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see ADDRESSES), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: http://ttnwww.rtpnc.epa.gov.

Regulated entities

Regulated categories and entities include:

Category	Examples of regulated entities.
Industry	Elastomers and Thermoplastics.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed amendments discussed in this notice. If you have questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Submission of Comments

Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–92–44 or A–92–45. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Administrative

A. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* [44 U.S.C. 3501 et seq.]. The OMB approved the information collection requirements for the Group IV Polymers and Resins NESHAP and assigned those standards the OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

An Information Collection Request (ICR) document for the Group I Polymers and Resins I NESHAP was prepared by the EPA (ICR No. 1746.01) but has not yet been approved by the OMB. A copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 260–2740.

The amendments to the NESHAP contained in the direct final rule should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

B. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is "significant" and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB notified the EPA that it considered both the Group I Polymers and Resins NESHAP and the Group IV

Polymers and Resins NESHAP "significant regulatory actions" within the meaning of the Executive Order. The EPA submitted those actions to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

These proposed amendments to those NESHAP provide affected sources more time in which to comply with the equipment leaks provisions of those rules. These proposed revisions do not add any additional control requirements. Therefore, these amendments were classified "non-significant" under Executive Order 12866 and were not required to be reviewed by OMB.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. The EPA has also determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. See the September 5, 1996 **Federal Register** (61 FR 46906) and the September 12, 1996 **Federal Register** (61 FR 48208) for the basis for this determination. The compliance date changes to the two rules do not impose any economic burden for any regulated entity.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that these proposed amendments do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. §801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this proposed rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this proposed rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. §804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 9, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–987 Filed 1–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; DA 97–23]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission is extending the time for filing reply comments relating to the *Sixth Further Notice of Proposed Rule Making* in this proceeding until January 24, 1997. This action will allow the development of a complete record on the matter of channel allotments for operation of digital TV service.

DATES: Reply comments are due on or before January 24, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: 1. On July 25, 1996, the Commission adopted a *Sixth Further Notice of Proposed Rule Making (Sixth FNPRM)* in MM Docket No. 87–268, 61 FR 43209, August 21, 1996, that proposed policies for developing the initial channel allotments for digital TV (DTV) service, proposed procedures for assigning DTV allotments, and plans for spectrum recovery. The *Sixth FNPRM* also contains a draft DTV Table of Allotments. Comments responding to the *Sixth FNPRM* initially were due November 22, 1996. On November 20, 1996, we issued an *Order*, 61 FR 63811, December 2, 1996, extending the date for filing reply comments in response to the *Sixth FNPRM* to January 10, 1997.

2. On January 2, 1997, Sinclair Broadcast Group and Sullivan Broadcasting Company, Inc. (Group Owners) requested that we extend the date for filing reply comments in response to the *Sixth FNPRM* an additional 60 days. The Group Owners submit that this additional time is needed for themselves and other UHF station licensees to finalize and present to the Commission a technically and commercially reasonable solution that creates better coverage parity between UHF and VHF stations and also ameliorates certain seriously adverse effects on UHF television stations inherent in the primary allotment plans now under consideration by the Commission. They argue that any delay in adopting the DTV Table of Allotments that is occasioned by the requested extension would be outweighed by the need for the Commission to have a full record on the effects that its actions in this proceeding have on UHF broadcasters.

3. The Association for Maximum Service Television (MSTV) opposes the Group Owners' request for an extension of the time for filing reply comments. MSTV states that while it is sympathetic with the concerns expressed in the Group Owners request, it believes that those concerns may be addressed without further delaying the DTV allotment proceeding. It argues that it is critical that the Commission conclude this proceeding as promptly as possible so that the transition to DTV may begin. MSTV argues that an across-the-board 60-day extension would delay our rule making action, and that the submission of any proposal could require still another round of comments that would cause further delay. MSTV therefore urges that we deny the Group Owners extension request. As an alternative, it suggests that we state that we will accept late-filed reply comments for four weeks after the current January 10, 1997, due date for reply comments to afford broadcasters the opportunity to evaluate and respond to questions concerning this issue.

4. In comments responding to the Group Owners' request, Motorola

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submits that we have already provided interested parties sufficient time to prepare responses to the comments on the *Sixth FNPRM* and that an additional 60 days would constitute an unwarranted delay. It states that expedited decision making on the initial DTV Table of Allotments will facilitate the introduction of DTV services to the public and clarify the status of the broadcast television spectrum and its availability for reallocation. Motorola also submits that while it can appreciate the Group Owners' concerns regarding the permissible transmitting powers provided for their DTV stations, the ramifications of "service replication" have been apparent since the release of the Sixth FNPRM in mid-August. It therefore argues that a further delay of two months to address DTV planning factors is unnecessary. Motorola further states that it would not, however, be adverse to a more modest extension of perhaps 15 days, given the intervening holiday season and the large number of comments received in this proceeding.

5. On January 7, 1997, the Association of Federal Communications Consulting Engineers (AFCCE) requested that we extend the date for filing reply comments for at least six weeks. The AFCCE expressed a similar request for extension of time in its comments responding to the *Sixth FNPRM*. The AFCCE states that its objective is not to unduly delay this proceeding, but to request that sufficient time be allotted to the study of major technical issues prior to the adoption of technical standards for the allotment of DTV channels by the Commission. It also submits that it is reviewing the filings of other entities and plans to respond to technical comments where it deems appropriate.

6. In its comments responding to the *Sixth FNPRM*, the engineering consulting firm of du Treil, Lundin and Rackley (DLR) also expresses concerns regarding the significantly higher power that would be authorized for the DTV operations of existing VHF stations that would operate in the UHF band. DLR submits that it is not practical to try to replicate superior VHF propagation characteristics with brute force UHF power. To address this concern, it submits an alternative transition plan that would provide existing stations with DTV facilities that would replicate their existing Grade A contours and would return stations to their existing channels for permanent DTV operation after the transition. DLR requests that we consider a further extension of the date for filing reply comments of not less than 45 days in view of the complexity of these issues and the intervening holiday season. It further states that, due to the extraordinary nature of this proceeding, we should designate a formal period in which to file comments responding to reply comments.

7. We agree with MSTV and Motorola that it is in the public interest to complete this proceeding and license DTV stations without unnecessary delay. At the same time, we believe that it is desirable to provide some additional time for the Group Owners, the AFCCE, DLR, and other interested parties to address in more detail the issues they have raised. We do not believe the approach suggested by MSTV that we accept late-filed comments for up to four weeks beyond the current date for filing reply comments is advisable. Rather, we believe that a two-week additional extension of the date for filing reply comments would provide an adequate period of time for broadcasters to submit additional information addressing the issues discussed in the Group Owners' and AFCCE's extension requests and DLR's comments without delaying our decision in this matter. This two week period will allow the development of a complete record on the matter of channel allotments for operation of digital TV service. We therefore are extending the date for filing reply comments to January 24, 1997. We also agree with MSTV that providing an additional period for parties to respond to reply comments would create unnecessary delay and therefore will not provide for acceptance of replies to reply comments, as requested by DLR.

8. Accordingly, it is ordered that the requests for extension of the time for filing reply comments submitted by the Group Owners, the AFCCE, and DLR ARE GRANTED to the extent indicated herein and that the date for filing reply comments relating to the *Sixth FNPRM* IS EXTENDED to January 24, 1997. This action is taken pursuant to authority provided in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 303(r), and Sections 0.31, 0.241 and 1.46 of the Commission's rules, 47 CFR §§ 0.31, 0.241 and 1.46.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–832 Filed 1–13–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 010697B]

Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; extension of comment period.

SUMMARY: NMFS will hold public hearings to receive comments from fishery participants and other members of the public on a proposed rule that was published in the **Federal Register** on December 20, 1996. NMFS is also extending the comment period for the proposed rule.

DATES: Written comments must be received on or before January 24, 1997. All hearings will begin at 7 p.m., as follows:

1. January 22, 1997, in Tampa, FL.
2. January 22, 1997, in Fort Lauderdale, FL.
3. January 23, 1997, in Manteo, NC.
4. January 23, 1997, in Key West, FL.

ADDRESSES: Written comments and requests for special accommodation should be sent to William T. Hogarth, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Tampa—Radisson Bay Harbor Inn (Chart Room), 7700 Courtenay Campbell Causeway, Tampa, FL 33607.
2. Fort Lauderdale—Holiday Inn Beach Galleria (Coral Ballroom), 999 North Atlantic Blvd., Fort Lauderdale, FL 33304.
3. Manteo—North Carolina Aquarium (Auditorium), Airport Road, Manteo, NC 27954.
4. Key West—Holiday Inn La Concha (The Top Room), 430 Duval Street, Key West, FL 33040.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey or John Kelly, 301-713-2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: NMFS has determined that it is necessary to conduct public hearings and that commenters have additional time to submit their comments on the proposed rule (61 FR 67295, December 20, 1996). Therefore, NMFS is extending the

comment period on Atlantic sharks from January 21, 1997 to January 24, 1997. The proposed rule, as published, would reduce commercial quotas and recreational bag limits; establish a quota for small coastal sharks; prohibit the directed commercial fishing for, and landing or sale of, five species of sharks; establish a recreational tag-and-release only fishery for white sharks; prohibit filleting of sharks at sea; and restate the requirement for species-specific identification by all owners or operators, dealers, and tournament operators of all sharks landed.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to William T. Hogarth (see **ADDRESSES**) at least 4 days prior to the hearing date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 8, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–827 Filed 1–9–97; 10:29 am]

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Notices

Federal Register
Vol. 62, No. 9
Tuesday, January 14, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

African Development Foundation; Board of Directors Meeting

TIME: 11:00 a.m.–1:30 p.m.
PLACE: ADF Headquarters.
DATE: Thursday, 16 January 1997.
STATUS: Open.

Agenda

Thursday, January 16, 1997.

11:00 a.m.—Board Luncheon (Board and Staff Only)
11:30 p.m.—Chairman's Report
12:00 noon—President's Report
1:30 p.m.—Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,
President.

[FR Doc. 97–904 Filed 1–9–97; 4:21 pm]
BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request in accordance with §§ 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of January 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Proceedings:	
Brazil: Brass Sheet & Strip, A–351–603	1/1/96–12/31/96
Brazil: Stainless Steel Wire Rods, A–351–819	1/1/96–12/31/96
Canada: Brass Sheet & Strip, A–122–601	1/1/96–12/31/96
Canada: Color Picture Tubes, A–122–605	1/1/96–12/31/96
France: Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/96–12/31/96
France: Stainless Steel Wire Rods, A–427–811	1/1/96–12/31/96
Japan: Color Picture Tubes, A–588–609	1/1/96–12/31/96
Singapore: Color Picture Tubes, A–559–601	1/1/96–12/31/96
South Africa: Brazing Copper Wire & Rod, A–791–502	1/1/96–12/31/96
South Korea: Brass Sheet & Strip, A–580–603	1/1/96–12/31/96
South Korea: Color Picture Tubes, A–580–605	1/1/96–12/31/96
South Korea: Stainless Steel Cooking Ware, A–580–601	1/1/96–12/31/96
Spain: Potassium Permanganate, A–469–007	1/1/96–12/31/96
Taiwan: Stainless Steel Cooking Ware, A–583–603	1/1/96–12/31/96
The People's Republic of China: Potassium Permanganate, A–570–001	1/1/96–12/31/96
Countervailing Proceedings:	
Brazil: Brass Sheet and Strip, C–351–604	1/1/96–12/31/96
Spain: Stainless Steel Wire Rod, C–469–004	1/1/96–12/31/96
South Korea: Stainless Steel Cookware, C–580–601	1/1/96–12/31/96
Taiwan: Stainless Steel Cookware, C–583–604	1/1/96–12/31/96
Suspension Agreements:	
Canada: Potassium Chloride, A–122–701	1/1/96–12/31/96

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 CFR 355.22(a) of the regulations, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise

by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.s. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 353.3l(g) or 355.3l(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation," for requests received by the last day of January 1997. If the Department does not receive, by the last day of January 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: January 9, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–996 Filed 1–13–97; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 010697A]

Marine Mammals; Scientific Research Permit No. 1024 (P772#69)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038 [Principal Investigators: Dr. Rennie S. Holt, or his designee(s)] has been issued a permit to take Antarctic pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: On November 18, 1996, notice was published in the **Federal Register** (61 FR 58677) that a request for a scientific research permit to take Antarctic pinnipeds had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: December 30, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–871 Filed 1–13–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Restraint Period and Amendment of Import Limits Under Bilateral Agreements Governing Importation of Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products and Silk Apparel Produced or Manufactured in the People's Republic of China

January 10, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a restraint period and amending limits.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a memorandum dated December 21, 1996, the Governments of the United States and the People's Republic of China agreed to extend the current bilateral agreements for one month, through January 31, 1997.

If no agreement is reached in further negotiations between the Governments of the United States and the People's Republic of China on new bilateral agreements, the U.S. Government would have the authority to implement unilateral limits at reduced levels and permanently deny shipments in excess of those limits.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to extend the applicable restraint period through January 31, 1997, at levels adjusted to reflect the extension.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995; and 61 FR 66263, published on December 17, 1996). Also see 60 FR 62413, published on December 6, 1995; and 65292, published on December 19, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 10, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to count imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products and silk apparel, produced or manufactured in China

and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997. Effective on January 15, 1997 the counting period is amended to February 1, 1997 through December 31, 1997.

This directive amends, but does not cancel, the directives issued to you on November 30, 1995 and December 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain textiles and textile products and silk apparel, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1996 and extended through December 31, 1996.

Effective on January 15, 1997, you are directed to extend the 1996 restraint period through January 31, 1997 at the following adjusted levels, pursuant to a memorandum dated December 21, 1996 between the Governments of the United States and the People's Republic of China:

Category	Thirteen-month limit
Group I 200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–362, 359–C[1], 359–V[2], 360–363, 369–D[3], 369–H[4], 369–L[5], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C[6], 659–H[7], 659–S[8], 666, 669–P[9], 670–L[10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,579,551,907 square meters equivalent.
Sublevels in Group I	
200	743,161 kilograms.
218	12,328,790 square meters.
219	2,488,221 square meters.
226	11,810,342 square meters.
237	1,996,379 dozen.
239	3,131,132 kilograms.
300/301	4,083,400 kilograms.
313	47,536,883 square meters.
314	53,883,456 square meters.
315	173,220,089 square meters.
317/326	22,770,718 square meters of which not more than 4,356,486 square meters shall be in Category 326.
331	5,510,177 dozen pairs.
333	100,092 dozen.
334	346,187 dozen.
335	432,538 dozen.
336	174,814 dozen.
338/339	2,686,449 dozen of which not more than 2,039,309 dozen shall be in Categories 338–S/339–S[11].
340	941,774 dozen of which not more than 470,89[illegible] dozen shall be in Category 340–Z[12].
341	739,608 dozen of which not more than 443,765 dozen shall be in Category 341–Y[13].
342	290,385 dozen.
345	147,926 dozen.
347/348	2,725,271 dozen.
350	178,025 dozen.
351	569,421 dozen.
352	2,041,319 dozen.
359–C	634,295 kilograms.
359–V	923,838 kilograms.
360	8,276,611 numbers of which not more than 5,547,550 numbers shall be in Category 360–P[14].
361	4,603,222 numbers.
362	7,936,779 numbers.
363	34,574,410 numbers.
369–D	5,167,972 kilograms.
369–H	5,126,070 kilograms.
369–L	3,522,474 kilograms.
410	2,259,061 square meters of which not more than 1,810,882 square meters shall be in Category 410–A[15] and not more than 1,810,882 square meters shall be in Category 410–B[16].
433	26,322 dozen.
434	14,998 dozen.
435	27,547 dozen.
436	17,141 dozen.
438	29,749 dozen.
440	42,852 dozen of which not more than 24,487 dozen shall be in Category 440–M[17].
442	47,749 dozen.
443	151,588 numbers.
444	227,609 numbers.
445/446	322,252 dozen.
447	87,605 dozen.
448	25,061 dozen.
607	3,352,501 kilograms.
611	5,886,189 square meters.
613	8,221,654 square meters.
614	12,919,741 square meters.
615	26,896,554 square meters.
617	18,792,350 square meters.
631	1,342,338 dozen pairs.
633	61,361 dozen.
634	659,600 dozen.
635	701,167 dozen.
636	595,853 dozen.
638/639	2,680,531 dozen.
640	1,629,587 dozen.
641	1,466,511 dozen.
642	341,221 dozen.
643	549,873 numbers.
644/844	4,007,023 numbers.
645/646	929,501 dozen.
647	1,710,790 dozen.
648	1,222,349 dozen.
649	993,274 dozen.
650	123,665 dozen.
651	849,347 dozen of which not more than 149,533 dozen shall be in Category 651–B[18].
652	2,868,368 dozen.
659–C	449,653 kilograms.
659–H	3,041,248 kilograms.
659–S	669,269 kilograms.
666	3,826,769 kilograms.
669–P	2,184,509 kilograms.
670–L	17,084,850 kilograms.
831	570,501 dozen pairs.
833	30,375 dozen.
835	137,317 dozen.
836	304,511 dozen.
840	524,905 dozen.
842	295,003 dozen.
845	2,670,712 dozen.
846	190,947 dozen.
847	1,385,630 dozen.
Group II 330, 332, 349, 353, 354, 359–O[19], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O[20], as a group.	131,226,397 square meters equivalent.
Group III 201, 220, 222, 223, 224–V[21], 224–O[22], 225, 227, 229, 369–O[23], 400, 414, 464, 465, 469, 600, 603, 604–O[24], 606, 618–622, 624–629, 665, 669–O[25] and 670–O[26], as a group.	277,114,624 square meters equivalent.
Sublevel in Group III	
224–V	3,743,666 square meters.
Group IV 832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,949,795 square meters equivalent.
Levels not in a Group	
369–S[27]	673,208 kilograms.
863–S[28]	9,414,728 numbers.
870	35,502,103 kilograms.

Category	Thirteen-month limit
Silk Apparel Group [29] 733, 734, 735, 736, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 750, 751, 752, 758 and 759, as a group.	374,946,681 square meters equivalent.
Specific limit within Group.	
740 (Men's and boys' shirts, not knit).	3,578,922 dozen.
741 (Women's and girls' shirts/ blouses, not knit).	8,930,853 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070, and 6211.42.0070 (Category 359–V).

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[23] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S)

[24] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[25] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000. (Category 669–P).

[26] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[27] Category 369–S: only HTS number 6307.10.2005.

[28] Category 863–S: only HTS number 6307.10.2015.

[29] Silk handkerchiefs, gloves, hosiery, brassieres and other body supporting garments, scarves, and babies' garments are not included in this agreement.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–975 Filed 1–10–97; 12:08 pm]

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [insert FR citation].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., January 13, 1997.

CHANGES IN MEETING: The meeting concerning Multi-Purpose Lighter Petition CP 96–1 has been canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 8, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–1012 Filed 1–10–97; 1.56 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing And Extension Of Public Comment Period For The Draft Environmental Impact Statement For Disposal And Reuse Of The Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania

SUMMARY: Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508), implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed on December 20, 1996 with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the disposal and subsequent reuse of the Naval Air Warfare Center, Aircraft Division (NAWCAD), Warminster, Pennsylvania. The DEIS addresses the environmental consequences of the proposed Community Reuse Plan for the NAWCAD as prepared by the Bucks County Economic Adjustment Committee and Base Reuse Subcommittee (now known as the Federal Lands Reuse Authority of Bucks County) in March of 1995.

ADDRESSES: The Department of the Navy will hold a public hearing to inform the public of the DEIS findings and to solicit comments. The hearing will be held on Tuesday, January 28, 1997, beginning at 7:30 p.m., at the Warminster Township Building, Henry and Gibson Avenues, Warminster, Pennsylvania. Please call the point of contact below or the Township Building in the case of inclement weather.

Federal, state and local agencies and interested parties are invited and urged to attend or be represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this action and will be given equal consideration.

Additional copies of the DEIS have been placed in the Warminster Library, 1076 Emma Lane, Warminster, Pennsylvania and the Bucks County Library, 150 South Pine Street, Doylestown, Pennsylvania.

The previously published comment period has been extended to close on February 24, 1997. Written comments on the DEIS should be mailed to the address noted below and must be postmarked not later than February 24, 1997 to be part of the official record. This public hearing and comment period shall also serve as an opportunity for members of the public to express their views on the effect of the proposed Reuse Plan on the property.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice may be obtained by contacting Mr. Kurt Frederick (Code 202) Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester PA 19113, telephone (610) 595–0728, facsimile (610) 595–0778.

Dated: January 9, 1997.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–849 Filed 1–13–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, February 5, 1997: 5:30 p.m.–9:00 p.m.

ADDRESS: Community College of Southern Nevada (Cheyenne Avenue Campus), High Desert Conference and Training Center, Room 1422, 3200 East Cheyenne Avenue, North Las Vegas, Nevada 89030–4296, 702–651–4294.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

February Agenda:

5:30 pm—Call to Order
5:40 pm—Presentations
7:00 pm—Public Comment/Questions
7:30 pm—Break
7:45 pm—Review Action Items
8:00 pm—Approve Meeting Minutes
8:10 pm—Committee Reports
8:45 pm—Public Comment
9:00 pm—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on January 7, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–835 Filed 1–13–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, Texas

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, January 28, 1997: 1:00 p.m.—5:00 p.m.

ADDRESS: Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:00 p.m.—Welcome—Agenda Review—Approval of Minutes
1:15 p.m.—Nominations Subcommittee Report; Approval of Continuing Members
1:30 p.m.—Transition, Funding Mechanism Change Discussion, & Recommendation
5:00 p.m.—Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on January 8, 1997.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–836 Filed 1–13–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–715]

Agency Information Collection Under Review by the Office of Management and Budget

January 8, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of request submitted for review to the Office of Management and Budget.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission received public comments from a single entity in response to an earlier **Federal Register** notice of September 9, 1996 (61 FR 47506) and has replied to these comments in its submission to OMB.

DATES: Comments must be filed on or before February 13, 1997.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 726 Jackson Place, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202) 208–1415 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form No. 715, "Annual Transmission Planning and Evaluation Report".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0171. The Commission is now requesting that OMB approve a three year extension of these mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of the Federal Power Act (FPA). The information reported on FERC Form No. 715 is used to adequately inform potential transmission customers, State Regulatory authorities, and the public of potentially available transmission capacity and transmission constraints on electric transmission systems.

Potential electrical transmission system customers will use the information to determine transmission availability to potential wholesale electric power purchasers. Transmission dependent utilities will use the information to determine transmission availability from alternative wholesale suppliers. The information is consistent with and supports the Commission's policy of encouraging information sharing and dispute resolution between all stakeholders within Regional Transmission Groups. The data reported on Form No. 715 will facilitate analysis and resolution of transmission disputes brought before the Commission.

5. *Respondent Description:* The respondent universe currently comprises approximately 200 public utilities.

6. *Estimated Burden:* 20,000 total burden hours, 200 respondents, 200 responses annually, 100.0 hours per response (average).

Statutory Authority: Sections 202, 203, 205, 206(d), 207, 210, 211, 212, 304(a) and

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311 of the Federal Power Act, as amended (49 Stat. 838; 16 U.S.C. 791a–825r).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–825 Filed 1–13–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–178–000, CP96–178–002, CP96–248–000, CP96–248–003, CP96–249–000, and CP96–249–003]

Maritimes & Northeast Pipeline, L.L.C. and Portland Natural Gas Transmission System; Notice of Meeting

January 9, 1997.

On January 17, 1997, the Commission staff will meet with Maritimes & Northeast Pipeline, L.L.C. (Maritimes) and Portland Natural Gas Transmission System (PNGTS). The meeting is in response to Maritimes' and PNGTS's Joint Request, filed January 3, 1997, for a pre-filing conference to discuss a joint application proposed to be filed by January 27, 1997. The proposed filing concerns a 30-inch diameter pipeline from Westbrook, Maine to Dracut, Massachusetts that will be jointly owned by Maritimes and PNGTS. In addition, other environmental and scheduling issues will be discussed. The meeting will occur at 9:30 AM, in a room to be designated at the Commission's headquarters, 888 First Street NE, Washington, DC.

Subsequent to the filing of the joint application, the Commission staff will issue a notice to convene a technical conference to be held at a location near the proposed joint project area. The exact time and location will be provided in that notice.

For additional information of a procedural nature, contact Jeff Wright at (202) 208–2239.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–841 Filed 1–13–97; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. ER97–399–000 and Docket No. ER97–449–000

MP Energy, Inc. and Montana Power Company; Notice of Issuance of Order

January 8, 1997.

On November 7, 1996, MP Energy, Inc. (MP Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, MP Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by MP Energy. On January 6, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's January 7, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by MP Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1996).

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, MP Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the MP Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of MP Energy's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 5, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–826 Filed 1–13–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR97–3–000]

Olympic Pipeline Company; Notice of Petition for Rate Approval

January 10, 1997.

Take notice that on December 12, 1996, Olympic Pipeline Company (Olympic), filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a firm transportation reservation charge of $3.22 per MMBtu and a 100 percent load factor interruptible transportation charge of $0.1060 per MMBtu for transportation services performed by Olympic through its West Chalkley System under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Olympic states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. Olympic proposes an effective date of December 12, 1996.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 31, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–934 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–23–000, et al.]

Jamaica Energy Operators, Ltd., et al.; Electric Rate and Corporate Regulation Filings

January 6, 1997.

Take notice that the following filings have been made with the Commission:

1. Jamaica Energy Operators, Ltd.

[Docket No. EG97–23–000]

On December 19, 1996, Jamaica Energy Operators, Ltd. ("Applicant"), c/o Wartsila Power Development, Inc., 116 Defense Highway, Suite 502, Annapolis, Maryland 21401, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Jamaican limited liability company formed to operate an electric generating facility located in Old Harbour Bay, Jamaica.

Comment date: January 13, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Louisville Gas and Electric Company

[Docket No. ER97–880–000]

Take notice that on December 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER97–882–000]

Take notice that on December 23, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Service Agreements with Minnesota Power & Light Company, Montana Power Company and Washington Water Power Company under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board system through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no party, 1 stop bit).

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER97–883–000]

Take notice that on December 23, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 147.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Interstate Power Company

[Docket No. ER97–884–000]

Take notice that on December 23, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Rate Schedule FERC Nos. 144 and 148.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Company

[Docket No. ER97–885–000]

Take notice that on December 20, 1996, The United Illuminating Company (UI), tendered for filing proposed changes to its Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2 (Tariff). In these changes, UI proposes to revise Article 5 of the Tariff to address the functional unbundling and open access requirements in the Commission's Order No. 888, Docket No. RM95–8–000, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stat. and Regs. ¶ 31,036 (1996), *reh'g pending*. UI also proposes to revise Articles 4 and 8 of the Tariff and to remove Appendix B from the Tariff.

UI requests an effective date of December 31, 1996, and has therefore requested that the Commission waive its 60-day prior notice requirement. Copies of the filing were served upon all persons that have executed purchase agreements with UI under its Tariff and upon Robert J. Murphy, Executive Secretary, Connecticut Department of Public Utility Control.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. ER97–886–000]

Take notice that on December 23, 1996, Brooklyn Navy Yard Cogeneration Partners, L.P., tendered for filing three initial rate schedules for sales of energy and capacity.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER97–887–000]

Take notice that on December 23, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after November 20, 1996.

A copy of the filing was served upon the parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER97–888–000]

Take notice that on December 23, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing an amendment to conform its FERC Original Tariff No. 5 to the Commission's Order 888.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective according to its terms. In support of its requests Central Vermont states that allowing the Service Agreement to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER97–889–000]

Take notice that on December 23, 1996, New England Power Company, filed a Service Agreements and Certificates of Concurrence with Equitable Power Services Company under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas & Electric Corporation

[Docket No. ER97–890–000]

Take notice that on December 23, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to §35.12 of the Federal

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Energy Regulatory Commission's Regulation 18 CFR, as an Initial Rate Schedule, a power Sales Tariff whereby Central Hudson may sell capacity and/or energy to electric utilities, as the parties may mutually agree from time to time. The proposed Tariff requires interested purchasers to enter into a Service Agreement with Central Hudson before transactions may commence under this Tariff. Service under this agreement is requested to commence on January 1, 1997.

Central Hudson requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. CHG&E has served a copy of the filing upon the New York State Public Service Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER97–891–000]

Take notice that on December 23, 1996, New England Power Company, filed a Service Agreements and Certificates of Concurrence with Northeast Utilities Service Company under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER97–892–000]

Take notice that on December 23, 1996, New England Power Company, filed a Service Agreements and Certificates of Concurrence with The Power Company of America, L.P. under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER97–893–000]

Take notice that on December 23, 1996, New England Power Company, filed a Service Agreements and Certificates of Concurrence with LG&E Power Marketing, Inc. under NEP's FERC Electric tariffs, Original Volume Nos. 5 and 6.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER97–894–000]

Take notice that on December 23, 1996, New England Power Company, filed a Service Agreements and Certificates of Concurrence with CPS Utilities under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER97–895–000]

Take notice that on December 23, 1996, New England Power Company filed a Service Agreements and Certificates of Concurrence with Mansfield Municipal Electric Department under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Indiana Gas and Electric Company

[Docket No. ER97–897–000]

Take notice that on December 23, 1996, Southern Indiana Gas and Electric Company (SIGECO), submitted for filing modifications to the following interconnection agreements:

PSI Energy, Inc., Rate Schedule No. 21
Louisville Gas and Electric Company, Rate Schedule No. 24
Indianapolis Power & Light Company, Rate Schedule No. 25
Hoosier Energy Rural Electric Cooperative, Inc./PSI, Rate Schedule No. 27
Energy, Inc. Big Rivers Electric Corporation, Rate Schedule No. 33
Hoosier Energy Rural Electric Cooperative, Inc./PSI, Rate Schedule No. 43
Energy, Inc., Wabash Valley Power Association, Inc., Rate Schedule No. 45

The proposed modifications are intended to terminate SIGECO's right to make economy sales under each of the agreements.

Copies of this filing have been served upon each of the parties to the interconnection agreements.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER97–898–000]

Take notice that on December 23, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revision No. 22 to Exhibit A and B, Contract No. 14–06–2437, Contract for Interconnection and Transmission Service, between PacifiCorp and Western Area power Administration (Western), PacifiCorp Rate Schedule FERC No. 45.

Exhibit A specifies the projected maximum integrated demand in kilowatts which PacifiCorp desires to have transmitted to its respective points of delivery by Western. Exhibit B specifies the projected maximum integrated demand in kilowatts which Western desires to have transmitted to its respective points of delivery by PacifiCorp.

PacifiCorp requests an effective date of January 1, 1997 be assigned to Revision No. 22 to Exhibit A and B, this date being consistent with the effective date of the revisions.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. MidAmerican Energy Company

[Docket No. ER97–899–000]

Take notice that on December 23, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing proposed changes to its Rate Schedule FERC Nos. 64 and 83. The changes consist of the annual adjustment of the transmission service fee for 1996 pursuant to the Transmission Service and Facilities Agreement dated October 2, 1979, as amended, between MidAmerican and Cedar Falls Municipal Electric Utility (Cedar Falls), and the Transmission Service Agreement dated August 26, 1985, as amended, between MidAmerican and Cedar Falls.

MidAmerican proposes an effective date of January 1, 1997 for the rate schedule change and states that good cause exists for this waiver pursuant to the Commission's decision in *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106 (1992).

Copies of the filing were served upon representatives of Cedar Falls, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Company

[Docket No. ER97–900–000]

Take notice that on December 23, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Southern Energy Marketing, Inc. and Virginia Power under the Open

Access transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to Southern Energy Marketing, Inc. as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. PECO Energy Company

[Docket No. ER97–901–000]

Take notice that on December 23, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 11, 1996 with Equitable Power Services Company (EPSC) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds EPSC as a customer under the Tariff.

PECO requests an effective date of December 11, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to EPSC and to the Pennsylvania Public Utility Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–824 Filed 1–13–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–734–003, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

January 8, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER94–734–003]

Take notice that on December 2, 1996, Southern California Edison Company tendered for filing its report of hourly costs data pursuant to the Commission September 16, 1996, order in Docket No. ER94–734–000.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER96–2789–003]

Take notice that on December 19, 1996, Colockum Transmission Company, Inc. tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Union Electric Company

[Docket No. ER96–2790–000]

Take notice that on November 29, 1996, Union Electric Company (UE) submitted a request to withdraw its filing dated August 23, 1996 of a First Amendment to the Wholesale Electric Service Agreement and a First Amendment to the Substitute Power Agreement between the City of Perry, Missouri and UE.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Wisconsin)

[Docket No. ER97–1–000]

Take notice that on December 18, 1996, Northern States Power Company (Wisconsin) tendered for filing an amendment in the above-referenced docket.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER97–208–000]

Take notice that on December 10, 1996, Maine Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER97–209–000]

Take notice that on December 10, 1996, Maine Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Gas & Electric Company

[Docket No. ER97–669–000]

Take notice that on December 26, 1996, South Carolina Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Toledo Edison Company

[Docket No. ER97–738–000]

Take notice that on December 10, 1996, The Toledo Edison Company (TE) tendered for filing with the Federal Energy Regulatory Commission agreements TE and TransCanada Power Corp.; International Utility Consultants, Inc.; AES Power, Inc.; Federal Energy Sales, Inc.; Tennessee Power Company, and Citizens Lehman Power Sales.

TE requests that the agreements be allowed to become effective on December 10, 1996.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corp. on behalf of Monongahela Power, The Potomac Edison Company, and West Penn Power Company (Allegheny Power

[Docket No. ER97–871–000]

Take notice that on December 20, 1996, Allegheny Power Service on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Notices of Termination to terminate economy arrangements in coordination agreements. The arrangements are terminated upon mutual consent of all affected parties. Allegheny Power requests an effective date of December 30, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

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Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corp.

[Docket No. ER97–896–000]

Take notice that on December 23, 1996, Allegheny Power Service Corp. (Allegheny) tendered for filing copies of service agreements executed by and between Allegheny and each of the operating subsidiaries of Allegheny (Monongahela Power Company, Potomac Edison Company and West Penn Power Company).

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. El Paso Electric Company

[Docket No. ES97–20–000]

Take notice that on January 3, 1997, El Paso Electric Company (El Paso) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue not more than 313,000 shares of its Series A Preferred Stock, at quarterly intervals during the period from February 1, 1997 through February 1, 1999. Not more than 40,000 shares would be issued each quarter. The Preferred Stock would be issued for the purpose of making payments in kind in lieu of cash dividends on its outstanding Preferred Stock, consistent with the terms of the Preferred Stock issued pursuant to El Paso's Fourth Amended Stand Alone Plan of Reorganization.

Comment date: January 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. OA97–107–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and The City of Logansport, Indiana.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Logansport Municipal Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. OA97–108–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between PSI and Baltimore Gas & Electric.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Baltimore Gas & Electric Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. OA97–109–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Kentucky Utilities Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Kentucky Utilities Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. OA97–110–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Southern Indiana Gas and Electric Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Southern Indiana Gas and Electric Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. OA97–111–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Power Coordination Agreement between PSI and Indiana Municipal Power Agency.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Indiana Municipal Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. OA97–112–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Hoosier Energy Rural Electric Cooperative, Inc. and Southern Indiana Gas and Electric Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. OA97–113–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between PSI and Illinois Municipal Electric Agency.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Illinois Municipal Electric Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. OA97–114–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 19, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI and Louisville Gas and Electric Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Louisville Gas and Electric Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Black Hills Corporation

[Docket No. OA97–115–000]

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills) on December 19, 1996, tendered for filing changes to its Economy Power Sales tariff. The changes are required by Commission Order No. 888 and unbundle Black Hills' power supply and transmission services.

Black Hills has requested that further notice requirement be waived and the tariff be allowed to become effective January 1, 1997.

Copies of the filing were provided to, Tri-State Generation and Transmission Association, Inc., PacifiCorp, Montana Power Company, Public Service Company of Colorado, Basin Electric Power Cooperative, Platte River Power Authority, Illinova Power Marketing, Inc., LG&E Power Marketing, Inc., Enron Power Marketing, Inc., KN Marketing, Inc., Rainbow Energy Marketing Corporation, and the regulatory commission of each of the states of South Dakota, Wyoming, and Montana.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. OA97–116–000]

Take notice that on December 19, 1996, Central Vermont Public Service Corporation tendered for filing an application for limited waiver of Order No. 889.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Power Service Corp.

[Docket No. OA97–117–000]

Take notice that on December 19, 1996, Allegheny Power Service Corp. (Allegheny) tendered for filing Allegheny's Standards of Conduct.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Allegheny Power Service Corp. on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. OA97–118–000]

Take notice that on December 19, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company and West Penn Power Company (Allegheny Power), and Pennsylvania Power Company and Ohio Edison Company filed a compliance filing, as required by Order No. 888, to unbundle generation and transmission services for transaction after December 31, 1996, offered under an existing coordination agreement.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Central Power and Light Company West Texas Utilities Company

[Docket No. OA97–119–000]

Take notice that on December 20, 1996, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) sought limited waiver of the Commission's Order No 889 requirements. CPL/WTU explain that they are members of the Electric Reliability Council of Texas and that the ERCOT OASIS will not be fully operational on January 3, 1997. CPL/WTU propose to adhere to interim procedures that enable eligible customers to obtain transmission service under the CPL/WTU open access transmission service tariff in a manner consistent with Order No. 889.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Illinois Power Company

[Docket No. OA97–120–000]

Take notice that on December 20, 1996, Illinois Power Company (IP) tendered for filing an Attachment to its coordination agreements. IP states that the purpose of the Attachment is to unbundle transmission and ancillary service costs from economy energy coordination agreement sales as required by Order 888.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Orange and Rockland Utilities, Inc.

[Docket No. OA97–121–000]

Take notice that on December 20, 1996, Orange and Rockland Utilities, Inc. tendered for filing its Standards of Conduct for the separation of transmission operation functions and generation marketing functions.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

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27. Allegheny Power Service Corp. on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. OA97–122–000]

Take notice that on December 20, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed a request for an extension of time to meet compliance requirements for unbundling future economy transactions under an existing coordination agreement with the PJM Group. Allegheny Power requests an extension until January 31, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: January 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc.

[Docket No. OA97–123–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 20, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between PSI and Blue Ridge Power Agency.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. OA97–124–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 20, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interconnection Agreement between PSI Hoosier Energy Rural Electric Cooperative, Inc. and Southern Indiana Gas and Electric Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Hoosier Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Central Hudson Gas & Electric Corporation

[Docket No. OA97–125–000]

Take notice that on December 20, 1996, Central Hudson Gas & Electric Corporation (Central Hudson) filed, pursuant to Section 37.4(c) of the Commission's Regulations, Central Hudson's procedures for compliance with the Commission's Standards of Conduct for public utilities as set forth in the Commission's OASIS Rule. *Open Access Same Time Information System and Standards of Conduct*, Order 889, FERC Stats. & Regs. (Regulations Preambles 1991–1996) ¶ 31,036 (1996). Central Hudson has proposed that its procedures take effect on January 3, 1997.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Illinois Power Company

[Docket No. OA97–126–000]

Take notice that on December 20, 1996, Illinois Power Company (IP) filed, pursuant to Section 37.4(c) of the Commission's Regulations, IP's procedures for compliance with the Commission's Standards of Conduct for public utilities as set forth in the Commission's OASIS Rule. *Open Access Same Time Information System and Standards of Conduct*, Order 889, FERC Stats. & Regs. (Regulations Preambles 1991–1996) ¶ 31,036 (1996). IP has proposed that its procedures take effect on January 3, 1997.

Comment date: January 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Company

[Docket No. OA97–127–000]

Take notice that on December 23, 1996, New England Power Company on behalf of the NEES companies submitted its Standards of Conduct filing pursuant to the requirements of Order No. 889.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Madison Gas and Electric Company

[Docket No. OA97–128–000]

Take notice that on December 23, 1996, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission the following sheets from its Original Volume No. 2 (Power Sales Tariff).

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 3
First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 9
First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 16
First Revised Sheet No. 17
First Revised Sheet No. 18

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin and all customers taking service under the Power Sales Tariff.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Grays Ferry Cogeneration Partnership

[Docket No. QF94–147–002]

On December 23, 1996, Grays Ferry Cogeneration Partnership of 2600 Christian Street, Philadelphia, Pennsylvania 19146, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility located in Philadelphia, Pennsylvania, will consist of a combustion turbine generator, a steam turbine generator, a heat recovery steam generator, and an auxiliary steam generator. The primary energy source will be natural gas or, in the alternative, No. 2 fuel oil. The thermal output of the facility will be sold to Trigen-Philadelphia which will be used in its steam distribution system to provide its various customers with steam for heating, cooling, hot water, sterilization, food preparation, humidification and other process applications. The maximum net electric power production capacity of the

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facility will be 178 MW. Electric power produced by the facility will be sold to PECO Energy Company. Construction of the facility commenced on March 8, 1996. The facility is expected to commence commercial operation by December 8, 1997.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–843 Filed 1–13–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5676–2]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Dynamac, Osage Iron and Metals Superfund Site, Kansas City, Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, Dynamac of Rockville, Maryland, cost recovery support documentation for the Osage Iron and Metals Superfund Site, Kansas City, Kansas. This disclosure includes Confidential Business Information (CBI) which has been submitted to EPA Region 7, Superfund Division. Dynamac's principal office is 2275 Research Boulevard, Suite 500, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jeffrey G. Weatherford, P.E., Superfund Division, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7695.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended (commonly known as "Superfund"), requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records. EPA has entered into ESS Contract No. 68–W4–0039 for management of those records. EPA Region 7 has determined that disclosure of CBI to Dynamac is necessary in order that the contractor may carry out the work requested under the above contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 7 will require that each Dynamac employee working on cost recovery work sign a written agreement that he or she:

(1) Shall use the information only for the purpose of carrying out the work required by the contract;

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA regional office; and

(3) Shall return to EPA all copies of the information and any contracts or extracts therefrom (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by Dynamac for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region 7 Project Officer for Dynamac. Dynamac employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten (10) working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to: Jeffrey G. Weatherford, P.E., Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Dated: December 23, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–875 Filed 1–13–97; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. pap. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

American Freight Liners, Inc., One World Trade Center, Suite #4667, New York, NY 10048, Officers: Denzil C. Fernando, President, Sasanka D. Ariyawansa, Vice President

S.L.M.L. Export Inc. d/b/a Scully & Co. Inc., 12777 Jones Road, Suite 310, Houston, TX 77070–4621, Officers: Sharon Lerner, President, Linda Givens, Vice President

Noral Cargo International, Inc., 4745 NW 72nd Avenue, Miami, FL 33166, Officers: Norma E. Garcia, President, Carlos Garcia, Vice President

SR International Logistics, LLC, 12373 West 60th Place, Arvada, CO 80004, Officer: Russell E. Steele, Manager

Neal Brothers, Inc., 9871 Highway 78, Ladson, SC 29456, Officers: David Kenneth Neal, President, Christopher Brindley Warburton, Vice President

Panamerican All Trading Services, Corp., 5461 N.W. 72nd Avenue, Miami, FL 33166, Officers: Jorge Murillo, President, Adriana P. Orozco, Secretary

Trans World Shipping Co. Import/Export, 300 W. Glenoaks Blvd., Glendale, CA 91202 Vartan Nazerian Edward Melkonian Partnership

Dated: January 9, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–830 Filed 1–13–97; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 97–01]

Alex Parsinia D/B/A Pacific International Shipping and Cargo Express; Order of Investigation

Alex Parsinia ("Parsinia") is an individual who appears to be doing business under the names Pacific International Shipping ("PIS") and Cargo Express ("CE"). It appears that from at least September 17, 1995 to the present, Parsinia has provided ocean transportation services to the public for

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shipments from the United States to foreign countries. PIS and CE appear to dispatch shipments via ocean common carriers, arrange for the transportation of shipments on behalf of shippers, prepare documentation consisting of bills of lading and export documents. Shippers appear to look to PIS and CE for the delivery of shipments,[1] and PIS and CE appear to hold themselves out to perform transportation to the public and accept responsibility for the transportation of shipments. The shipments consist mostly of personal effects or household goods. Shipments are contracted with ocean common carriers under the names of actual shippers as well as under the names PIS and CE.

Section 19(a) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1718(a), provides that no person may act as an ocean freight forwarder unless that person has obtained a license from the Federal Maritime Commission. Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as a person in the United States that dispatches shipments from the United States to a foreign country via common carriers, books or otherwise arranges space for such shipments on behalf of shippers, and processes the documentation or performs related activities incident to those shipments. In order to obtain an ocean freight forwarder license, a forwarder must furnish to the Commission a bond to insure the financial responsibility of the forwarder, and the Commission must determine that the forwarder is qualified by experience and character to render forwarding services. According to a review of records maintained by the Commission's Bureau of Tariffs, Certification and Licensing, no ocean freight forwarder license has been issued in the name of Alex Parsinia. Therefore, it would appear that Parsinia, by dispatching shipments, by booking or otherwise arranging space for the shipments, and by processing documentation incident to ocean shipments made on behalf of others from the United States, has acted as an ocean freight forwarder without a license issued by the Commission in violation of section 19(a) of the 1984 Act.

Section 8(a) of the 1984 Act, 46 U.S.C. app. 1707(a), provides that each common carrier must file a tariff with the Commission showing all of its rates, charges, classifications, rules, and practices. Section 3(6) of the 1984 Act, 46 U.S.C. 1702(6), in pertinent part, defines a common carrier as a person holding hold out to the public to provide transportation by water between the United States and a foreign country, that assumes responsibility for performing the transportation, and utilizes a vessel operating on the high seas for providing the transportation. Section 3(17) of the 1984 Act, 46 U.S.C. 1702(17), defines a non-vessel-operating common carrier ("NVOCC") as a common carrier that does not operate the vessels used in providing the ocean transportation and acts as the shipper in relation with the ocean common carrier. Section 23(a) of the 1984 Act, 46 U.S.C. app. 1721(a), further provides that each NVOCC must furnish to the Commission a bond, proof of insurance or other surety, *inter alia*, to insure the financial responsibility of the carrier to pay any judgment for damages arising from its transportation-related activities. According to the records maintained by the Commission's Bureau of Tariffs, Certification and Licensing, no tariff or bond has been filed with the Commission in the name of Alex Parsinia, PIS or CE. Therefore, it would appear that Parsinia, by providing ocean transportation of cargo to the public for shipments between the United States and foreign countries and by contracting as a shipper for the carriage of the cargo, has acted as a NVOCC without a tariff or bond on file with the Commission, in violation of sections 8(a) and 23(a) of the 1984 Act.

Section 11(c) of the 1984 Act, 46 U.S.C. app. 1710(c), sets forth the Commission's authority to investigate violations of the 1984 Act. In the event violations are found, section 13(a) of the 1984 Act, 46 U.S.C. app. 1712(a), provides that the Commission may assess civil penalties. Section 14(a) of the 1984 Act, 46 U.S.C. app. 1713(a), empowers the Commission to issue orders relating to violations of the 1984 Act.

Now therefore it is ordered, That pursuant to sections 8(a), 11(c), 13(a), 14(a), 19(a) and 23(a) of the 1984 Act, an investigation is hereby instituted to determine:

1. Whether Parsinia violated section 19(a) of the 1984 Act by acting as an ocean freight forwarder without a license issued by the Commission;

2. Whether Parsinia violated sections 8(a) and 23(a) of the 1984 Act by acting as a NVOCC without tariff and bond on file with the Commission;

3. Whether, in the event Parsinia violated the 1984 Act, civil penalties should be assessed against Parsinia and, if so, the amount of such penalties; and

4. Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for public hearing before an Administrative Law Judge ("Presiding Officer") of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The Hearing shall include oral testimony and cross-examination at the discretion of the Presiding Officer only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute resolution, and upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Alex Parsinia d/b/a Pacific International Shipping and Cargo Express is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register** and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, and comply with Subpart H of the Commission's Rules of Practice and Procedure, 46 CFR 502.111–119, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by January 8, 1998,

[1] The Commission's Office of Informal Inquiries and Complaints has received eleven complaints from shippers in regard to difficulties the shippers have encountered in obtaining the delivery of shipments turned over to Parsinia.

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and the final decision of the Commission shall be issued by May 8, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–829 Filed 1–13–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Canadian Imperial Bank of Commerce, Toronto, Canada; to engage *de novo*, through its wholly owned subsidiary, CIBC Investment Corporation, New York, New York ("Company"), in trading for its own account, for purposes other than hedging, in futures, options, and options on futures contracts based on certain securities indices and money market instruments. Canadian Imperial proposes that Company would conduct these activities throughout the world. *See Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995).

Board of Governors of the Federal Reserve System, January 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–828 Filed 1–13–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0512]

Hoechst Marion Roussel, Inc., and Baker Norton Pharmaceuticals, Inc.; Terfenadine; Proposal To Withdraw Approval of Two New Drug Applications and One Abbreviated New Drug Application; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of two new drug applications (NDA's) and one abbreviated new drug application (ANDA) for drug products containing terfenadine. NDA 18–949 (Seldane) and NDA 19–664 (Seldane-D) are held by Hoechst Marion Roussel (HMR), Inc., P.O. Box 9627, Kansas City, MO 64134–0627. ANDA 74-475 is held by Baker Norton Pharmaceuticals, Inc., 4400 Biscayne Blvd., Miami, FL 33137. On July 25, 1996, FDA approved HMR's NDA 20–625 for fexofenadine hydrochloride (Allegra). Fexofenadine is the active metabolite of terfenadine that is responsible for the desired beneficial properties of terfenadine. When patients take terfenadine, parent terfenadine is ordinarily present in their blood at very low concentrations, because the terfenadine molecule is metabolized to form fexofenadine. Fexofenadine is responsible for providing patients with essentially all the clinical benefits of taking terfenadine. If terfenadine's metabolism is inhibited, either by another drug or by intrinsic liver disease, the level of parent terfenadine can rise to levels that can cause serious side effects in people as a result of the effect of parent terfenadine on cardiac potassium channels. Inhibition of these channels causes delayed cardiac repolarization (prolonged electrocardiographic QT interval) and increases the risk of a characteristic kind of ventricular tachycardia called torsades de pointes and possibly the risk of other rhythm abnormalities. Fexofenadine hydrochloride, however, has not been shown to affect cardiac potassium channels and has been shown not to cause prolongation of the electrocardiographic QT interval, even at larger-than-recommended doses. Based on all data to date, fexofenadine hydrochloride appears to lack parent terfenadine's risk of serious cardiovascular adverse events. The basis for the proposed withdrawal of the applications is a finding that the availability of fexofenadine hydrochloride provides patients with an alternative that can provide essentially all the benefits of terfenadine, because it is identical in molecular structure to the metabolized (active) form of terfenadine, without the serious and potentially fatal risks associated with terfenadine when terfenadine's metabolism is inhibited either by another drug or by intrinsic liver disease. Because of the availability of fexofenadine hydrochloride, terfenadine is not shown to be safe for use under the conditions of use that formed the basis upon which the applications were approved.

DATES: A hearing request is due on February 13, 1997; data and information in support of the hearing request are due on March 17, 1997.

ADDRESSES: A request for hearing, supporting data, and other comments are to be identified with docket no. 96N–0512 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For information on medical/scientific issues: John K. Jenkins, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–

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For general information concerning this notice: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Terfenadine is an antihistamine, indicated for the relief of symptoms associated with seasonal allergic rhinitis such as sneezing, rhinorrhea, pruritus, and lacrimation. Terfenadine was the first antihistamine approved in the United States that was not associated with more somnolence than placebo in clinical trials. The absence of an increased risk of somnolence over placebo is an important safety advantage to many people who use antihistamines. NDA 18–949 for Seldane tablets (terfenadine 60 milligrams (mg)) was approved by FDA on May 8, 1985. NDA 19–664 for Seldane-D tablets (terfenadine 60 mg and the decongestant pseudoephedrine hydrochloride 120 mg) was approved by FDA on August 19, 1991.

Other antihistamines now available in the United States that were not associated with more somnolence than placebo in clinical trials are astemizole (Hismanal) and loratadine (Claritin), approved on December 29, 1988, and April 12, 1993, respectively. Most significant to this proceeding, on July 25, 1996, FDA approved HMR's NDA 20–625 for fexofenadine hydrochloride 60 mg capsules (Allegra). Fexofenadine is the metabolite of terfenadine responsible for its desired antihistaminic efficacy. Fexofenadine hydrochloride was also not associated with more somnolence than placebo in clinical trials.

After the approval of terfenadine in 1985, there began to be reports of certain serious cardiac adverse events associated with terfenadine use in patients taking certain antimicrobials or with significant liver dysfunction. Very little parent terfenadine normally circulates in the plasma because orally administered terfenadine undergoes extensive first pass metabolism by a specific cytochrome P–450 isoenzyme (CYP3A4). This metabolic pathway may be impaired in patients with liver dysfunction (e.g., alcoholic cirrhosis) or who are taking drugs such as ketoconazole, itraconazole, or macrolide antimicrobials (e.g., clarithromycin, erythromycin, or troleandomycin). These drugs are all inhibitors of the cytochrome P–450 isoenzyme.

Interference with the normal metabolism of terfenadine can lead to elevated plasma terfenadine levels. At these elevated levels, terfenadine can delay cardiac repolarization (prolong the electrocardiographic QT interval) because of its effects on cardiac potassium channels. The delayed cardiac repolarization increases the risk of serious ventricular tachyarrhythmias, most characteristically a kind of ventricular tachycardia called torsades de pointes. This arrhythmia can cause dizziness and syncope when it is short-lived, but it may persist and degenerate into unstable ventricular tachycardia or ventricular fibrillation. Ventricular fibrillation is fatal if not promptly reversed. These serious and possibly fatal events can occur at the recommended dose of terfenadine if it is taken along with other medications that interfere with its metabolism or if it is administered to someone with significant hepatic dysfunction.

In an effort to inform the medical and patient communities about the serious and potentially fatal cardiac adverse effects associated with inappropriate use of terfenadine, the labeling for Seldane and Seldane-D have been revised many times. In 1992, terfenadine labeling was revised to include a prominent boxed warning cautioning against its use in certain settings, particularly with the drugs that inhibit its metabolism. In addition, "Dear Health Care Professional" letters warning health care practitioners of the serious risk of inappropriate use of terfenadine were issued by the sponsor in 1990, 1992, and 1996.

Although the revised labeling and "Dear Health Care Professional" letters have significantly reduced the inappropriate prescribing of terfenadine together with the drugs that block its metabolism, such prescribing and dispensing has not been eliminated and almost certainly cannot be. Three recently published studies indicate that coprescription and codispensing of medications contraindicated with terfenadine continues to occur (Refs. 1, 2, and 3). The Cavuto study also demonstrates that the computerized drug-interaction screening programs used by many pharmacists, who are the last line of defense against prescribing errors, do not completely prevent prescribing and filling of prescriptions for potentially dangerous combinations of terfenadine and contraindicated drugs.

Terfenadine is an antihistamine that is intended to be used when symptoms of seasonal allergic rhinitis occur. Patients often do not consume all of the pills they receive in a prescription of terfenadine for a single episode of seasonal allergic rhinitis, and may keep the remaining pills for later use when needed, as patients often do with over-the-counter antihistamines. Because of the nature of seasonal allergies, a long period of time (e.g., from early fall to spring) can elapse between the time the drug and any associated warning from a health care practitioner or pharmacist is received and the time terfenadine is used. Such intermittent dosing of terfenadine increases the probability that some patients may be taking one of the contraindicated medications, such as one of the frequently prescribed antimicrobials listed above, at the same time the patient self-diagnoses his or her seasonal allergy symptoms and takes the remaining terfenadine from the pill container in the medicine chest.

This problem of concomitant use is further compounded by the growing list of medications known to inhibit the metabolism of terfenadine, many of which are taken for chronic medical conditions and may be prescribed by health care practitioners other than the practitioner who prescribed the terfenadine. Labeling changes and even perfect performance by prescribers and close attention by pharmacists, therefore, cannot completely eliminate the risks of serious cardiac adverse events associated with the inappropriate use of terfenadine.

Very low to undetectable blood levels of parent terfenadine are found in patients taking the recommended dose of terfenadine. For this reason, parent terfenadine appears to have very little, if any, impact on the therapeutic efficacy that is associated with terfenadine use.

The discovery of terfenadine's ability to delay cardiac repolarization and its associations with serious and sometimes fatal cardiac adverse events when used inappropriately led to evaluation of its principal active metabolite as a potentially safer alternative antihistamine. It was discovered that the metabolite that is responsible for the desired therapeutic effect of terfenadine, fexofenadine, does not affect cardiac potassium channels. The agency, therefore, encouraged HMR to initiate the development of a drug product with only the active metabolite fexofenadine as the active antihistamine. Even at doses considerably in excess of those recommended for use, fexofenadine hydrochloride has not been shown to prolong the QT interval. It therefore should not have, and has not been shown to have, the serious cardiovascular adverse events potentially associated with unmetabolized terfenadine. No new

adverse reaction, not already associated with terfenadine, would be expected because the many people who have taken terfenadine have been, in fact, exposed primarily to fexofenadine manufactured by their body.

An NDA for fexofenadine hydrochloride was approved by FDA on July 25, 1996. Nearly 5 months of marketing of this product in the United States have not resulted in any reports of serious cardiac arrhythmias.

Prior to the approval of fexofenadine hydrochloride, the agency considered terfenadine to be safe (i.e., its benefits outweighed its risks) despite terfenadine's known serious adverse effects when its metabolism was blocked and despite the availability of alternative antihistamines that, like terfenadine, were not associated with greater somnolence than placebo in clinical trials. This is because the agency recognizes that responses to drugs are not uniform among individuals and, for reasons that are often unclear and difficult to discover, some patients may respond better, with respect to therapeutic effectiveness or tolerance, to one drug than to another. Terfenadine certainly provided a unique therapeutic benefit when it was the only available antihistamine that was not associated with more somnolence than placebo in clinical trials, and it continued to provide a benefit and choice to patients even after the approval of astemizole and loratadine (e.g., some patients may have found that terfenadine provided some advantage over either of the other two products or may have been unable to tolerate the alternative medications for a variety of medical reasons, including drug allergy). So long as terfenadine represented a unique molecule, the agency concluded that terfenadine's risks, which had been greatly reduced by labeling changes and public awareness, were acceptable in light of its benefits. It is only now, when there is an alternative that is identical to the molecule that provides the therapeutic benefits of terfenadine, that terfenadine's benefits do not outweigh its risks. This is because essentially all of its benefits can be obtained with fexofenadine hydrochloride without the cardiovascular risk caused by QT prolongation.

Currently, there is no combination of fexofenadine hydrochloride and pseudoephedrine approved for marketing in the United States. Although the absence of a fexofenadine hydrochloride/pseudoephedrine combination product may be inconvenient for patients currently taking Seldane-D, there are available over-the-counter extended-release pseudoephedrine 120 mg products that could be taken with fexofenadine hydrochloride to provide symptomatic relief comparable to that provided by Seldane-D for the treatment of seasonal allergic rhinitis. The minor inconvenience to patients of having to take separate fexofenadine hydrochloride and extended-release pseudoephedrine doses is more than offset by the cardiac safety advantage of fexofenadine hydrochloride over terfenadine.

Accordingly, the Director of the Center for Drug Evaluation and Research concludes with respect to NDA 18–949 (terfenadine 60 mg) that: (1) Prior to the approval of fexofenadine hydrochloride, terfenadine provided a unique therapeutic alternative for which the risks associated with the use of terfenadine were acceptable; (2) terfenadine provides no therapeutic benefit to any patient population that is not also provided by fexofenadine hydrochloride, because fexofenadine hydrochloride is identical in molecular structure to terfenadine's therapeutically active metabolite; (3) current data demonstrate that fexofenadine hydrochloride lacks the serious cardiovascular risks associated with misuse of terfenadine, and approximately 5 months of marketing experience with fexofenadine hydrochloride in the United States has not resulted in any reports of serious cardiac arrythmias; (4) despite the many interventions undertaken by the agency and by HMR (three "Dear Health Care Professional" letters, multiple labeling changes, and extensive education campaigns), residual coprescribing, codispensing, and concomitant use of terfenadine with a growing list of medications that inhibit its metabolism continues and cannot be expected to be completely eliminated; and (5) terfenadine, therefore, is no longer shown to be safe for use under the conditions that formed the basis upon which the application was initially approved. The Director also finds that ANDA 74–475 refers to NDA 18–949 (Seldane, 60 mg terfenadine oral tablets) as the listed drug. The Director further finds that the conclusions set out above for NDA 18–949 apply with respect to NDA 19–664 (terfenadine 60 mg and pseudoephedrine 120 mg), and that the inconvenience to patients of taking separate doses of fexofenadine hydrochloride and extended-release pseudoephedrine is more than offset by the cardiac safety advantage of fexofenadine hydrochloride over terfenadine. The Director is proposing to withdraw approval of NDA 18–949 and NDA 19–664 in accordance with section 505(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)(2)). The Director is proposing to withdraw approval of ANDA 74–475 in accordance with section 505(j)(5) of the act.

II. Notice of Opportunity for a Hearing

The Director has evaluated the information discussed above and, on the grounds stated, is proposing to withdraw approval of NDA 18–949, NDA 19–664, and ANDA 74–475. Therefore, notice is given to HMR and Baker Norton Pharmaceuticals, Inc. that the Director proposes to issue an order under section 505(e)(2) of the act, withdrawing approval of NDA 18–949 and NDA 19–664, and all amendments and supplements thereto, and under section 505(j)(5) of the act, withdrawing approval of ANDA 74–475, and all amendments and supplements thereto. The Director finds that new evidence of clinical experience, not contained in NDA 18–949 and NDA 19–664 or not available to the Director until after the applications were approved, evaluated together with the evidence available to the Director when the applications were approved, shows that terfenadine is not shown to be safe for use under the conditions which formed the basis upon which the applications were approved. The Director also finds that ANDA 74–475 refers to the drug that is the subject of NDA 18–949.

In accordance with section 505 of the act and part 314 (21 CFR part 314), HMR and Baker Norton Pharmaceuticals, Inc. are hereby given an opportunity for a hearing to show why approval of the NDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) On or before February 13, 1997, a written notice of appearance and request for hearing, and (2) on or before March 17, 1997, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing, as specified in § 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in §§ 314.151 and 314.200, and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of appearance and request for hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a

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hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Thompson, D., and G. Oster, "Use of Terfenadine and Contraindicated Drugs," *Journal of the American Medical Association*, 275(17):1339–1341, 1996.

2. Cavuto, N. J., R. L. Woosley, and M. Sale, "Pharmacies and Prevention of Potentially Fatal Drug Interactions" (letter), *Journal of the American Medical Association*, 275(14):1086–1087, 1996.

3. Carlson, A. M., and L. S. Morris, "Coprescription of Terfenadine and Erythromycin and Ketoconazole: An Assessment of Potential Harm," *Journal of the American Pharmaceutical Association*, NS36(4):263–269, 1996.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: January 7, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–714 Filed 1–10–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Consensus Development Conference on Breast Cancer Screening For Women Ages 40–49

Notice is hereby given of the NIH Consensus Development Conference on "Breast Cancer Screening For Women Ages 40–49," which will be held January 21–23, 1997, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on January 21, at 8 a.m. on January 22, and at 9 a.m. on January 23.

A number of randomized clinical trials have shown clearly that early detection of breast cancer by mammography, with and without clinical breast examination at regular intervals ranging from 1 year to 33 months, reduces breast cancer mortality in women ages 50–69 by about a third. However, the picture is not as clear for women 40–49 years of age, and worldwide experts continue to examine the data regarding the use of mammography in this age group. Follow-up data from the Swedish, Canadian, Edinburgh (U.K.), and health Insurance Plan of New York clinical trials will be presented at the conference in an attempt to help clarify these issues.

This conference will bring together the investigators who have conducted the randomized clinical trials, epidemiologists, statisticians, radiologists, oncologists, and other experts, as well as representatives of the public, to present and discuss the latest data and data analyses.

After 1½ days of presentations and audience discussion, an independent, no-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

—Is there a reduction in mortality from breast cancer due to screening women ages 40 to 49 with mammography, with or without physical examination? If so, how large is the benefit? How does it change with age?

—What are the risks associated with screening women ages 40–49 with mammography and with physical examination?

Are there other benefits? If so, what are they? How do they change with age?

—What is known about how the benefits and risks of breast cancer screening differ based on known risk factors for breast cancer?

—What are the directions for future research?

The primary sponsors of this conference are the National Cancer Institute and the NIH Office of Medical Applications Research. The conference is cosponsored by the National Institute on Aging, the NIH Office of Research on Women's Health, and the Centers for Disease Control and Prevention.

Advance information on the conference program and conference registration materials may be obtained from Hope Levy Cott, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, or by sending e-mail to confdept@tech-res.com.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning January 23, 1997, from the NIH Consensus Program Information Center, P.O. Box 2577, Kensington, Maryland 20891, phone 1–888–NIH–CONSENSUS (1–888–644–2667), and from the NIH Consensus Development Program site on the World Wide Web at http://consensus.nih.gov.

Dated: January 7, 1997.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–850 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92–463, as amended, notice is hereby given of the thirty-fifth meeting of the Fogarty International Center (FIC) Advisory Board, February 4, 1997, in the Lawton Chiles International House (Building 16) at the National Institute of Health.

The meeting will be open to the public from 8:30 a.m. to 12:00 p.m.

The agenda will include a report by the Director, FIC; a report on the Recommendations of the External Advisory Panel to Review NIH/FIC International Programs followed by a discussion of the recommendations led by the Director, NIH; a report on the December Meeting of the Advisory Committee to the Director, NIH; a presentation on the recommendations of a review panel on the FIC AIDS International Training and Research Program; and a report on the International Conference on Malaria that

took place in Dakar, Senegal, January 6–9.

In accordance with the provisions of section 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, as amended, the meeting will be closed to the public from 1:00 p.m. to adjournment for the review of applications for awards under the Senior International Fellowship Program and the International Research Fellowship Program; and the Fogarty International Research Collaboration Awards and HIC, AIDS and Related Illnesses Collaboration Awards.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Dr, MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program)

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–852 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel. This meeting will be closed in accordance with the provisions of section 552b(c)(9)(B), Title 5 U.S.C., for discussion and preparation of the Annual Report of the Chair to the President for 1996. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Cynthia Morgan, Committee Management Specialist, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405 (301/496–5708) will provide a copy of the roster of committee members upon request. Other information pertaining to the meeting may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Date: February 4, 1997.

Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Closed: 9:30 a.m. to 4:00 p.m.

Agenda: Discusson and preparation of the Annual Report of the Chair to the President.

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, Building 31, Room 4A48, Bethesda, MD 20892, Telephone: (301) 496–1148.

Dated: January 7, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–851 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Metabolic Imaging of Cancer and Its Response to Therapy.

Date: January 26–28, 1997.

Time: January 26–7 p.m., January 26–28—8 a.m.

Place: The Madison A Renaissance Hotel, 515 Madison Street, Seattle, Washington 98104.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–3428.

Purpose/Agenda: To review, discuss and evaluate individual grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Colorectal Cancer Screening: A Cancer Control Opportunity.

Date: February 3–5, 1997.

Time: February 3–7 p.m., February 4–5—8 a.m.

Place: The Double Tree Hotel, 10760 Wilshire Boulevard, Los Angeles, California 90034.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–3428.

Purpose/Agenda: To review, discuss and evaluate individual grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 8, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–857 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Maintenance of a Biological Specimen Repository.

Date: February 4, 1997.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Diane M. Reid, M.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate contract proposals.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Comprehensive Sickle Cell Center.

Date: May 12–14, 1997.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Deborah P. Beebe, Ph.D., Two Rockledge Center, Room 7178, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could

reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–853 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) on February 4, 1997, in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public February 4 from 8:30 a.m. to 12:00 p.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 4 from 1:00 p.m. to adjournment in accordance with provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal property.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Steven Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Natcher Building, Room 5AS–13, Bethesda, Maryland 20892 (301) 594–2463.

A summary of the meeting and roster of the members may be obtained from the Extramural Programs Office, NIAMS, Natcher Building, Room 5AS–13, National Institutes of Health, Bethesda, Maryland 20892 (301) 594–2463.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: January 8, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–854 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, Thursday, January 30, and Friday, January 31, 1997, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, January 30, from 8:30 a.m. to 2:30 p.m. for comments from public interest groups, the Director's Status Report, a presentation from the NIA Public Information Office, and a report of the NIA Intramural Program.

The meeting will be open again on Friday, January 31, from 8:00 a.m. until adjournment for a report on the future of Peer Review in the Division of Research Grants, a discussion on training, a report on the Geriatrics Program Review, a report on the Working Group on Program, and a report on the Advisory Committee to Director and the Committee of Council Representatives. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on Thursday, January 30, from 2:30 p.m. to recess for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: January 8, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–855 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R13 Grant (97–19).

Dates: January 28, 1997.

Time: 12:15 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of P01 Grant (97–16).

Dates: February 05, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive,

Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of P01 Grants (97–17).

Dates: February 26–28, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Hotel, Dulles, 2300 Dulles Corner Boulevard, Herndon, Virginia 20171.

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: to evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: January 8, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–856 Filed 1–13–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–03]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Susan Hoyer, Telephone number (202) 708–2700 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended.

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for HUD/FHA Insured Mortgage.

OMB Control Number: 2502–0059.

Description of the need for the information and the proposed use: The Addendum to the Uniform Residential Loan Application and related documents are needed to determine the eligibility of the borrower and proposed request for FHA mortgage insurance.

Agency form numbers: HUD–92900–A, 92544, 92900–WS and 92561.

Members of affected public: Lending Industry and Borrowers.

An estimation of the total numbers of hours needed to prepare the information collection is 215,025, number of respondents is 1,000,000, frequency response is on occasion, and the hours of response is 1 hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 27, 1996.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–869 Filed 1–13–97; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4200–N–02]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below, regarding the competitive components of the Housing Opportunities for Persons with AIDS (HOPWA) program, will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due March 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing and Urban Development, 451 7th Street SW., Room 7230, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The HOPWA program is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901) as amended by the

Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). The program is governed by the HOPWA Final Rule, 24 CFR Part 574, as amended, and the Consolidated Submissions for Community Planning and Development Programs, Final Rule, 24 CFR Part 91, as amended. This paper work submission extends the current collection of information that is used by the Department in conducting an annual competition to award program funds and in reviewing grant performance reported in annual progress reports. The information collected is essential in order to implement statutory requirements.

The Housing Opportunities for Persons with AIDS (HOPWA) program provides housing assistance and supportive services for low-income persons with HIV/AIDS and their families. Ten percent of the appropriated funds are awarded by competition as grants under two categories of assistance as: (1) Special Projects of National Significance (SPNS) which, due to their innovation nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; Applications for this category can be submitted by States, local governments and non-profit organizations; and (2) Projects which are part of Long-term Comprehensive Strategies for providing housing and services for eligible persons in non-formula areas. Applications for this category can be submitted by States and local governments to undertake activities in areas that did not qualify for formula allocations during the fiscal year. Funds may be used over a three year operating period. Grantees report to the Department on an annual basis on program accomplishments in annual progress reports.

This Notice also lists the following information:

Title of Proposal: Housing Opportunities for Persons with AIDS (HOPWA) program.

OMB Control Number, if applicable: 2506–0133.

Description of the need for the information and proposed use: The information to be collected is provided in applications for competitively-awarded funds and in annual progress reports for grantees who receive these awards.

Agency form numbers, if applicable: HUD–40110–B and HUD–40110–C.

Members of affected public: States, units of general local government, and non-profit organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response	Hours of response
Application	150	1	44
Annual Progress Reports	75	1	65

The total annual estimated burden hours for these optional activities are 11,826 hours, including 351 hours that are estimated for miscellaneous activities such as grant signing, amendments, environmental, and relocation activities.

Status of the proposed information collection: Public comment requested by HUD.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

FOR FURTHER INFORMATION CONTACT: Fred Karnas, Jr., Director, Office of HIV/AIDS Housing, Room 7154, U.S. Department of Housing and Urban Development, 451 Seventh Street, N.W., Washington, DC 20410, and telephone number (202) 708–1934 (this is not a toll-free number) and TTY 1–800–877–8339 for copies of the proposed forms and other available documents.

Dated: January 8, 1997.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 97–870 Filed 1–13–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4200–N–04]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 3, 1997.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Housing Owner's Certification and Application for Tenant Assistance Payments, Schedule of Tenant Assistant Payments Due, Schedule of Section 8 Special Claims, and Special Claims Worksheet.

Office: Housing.

OMB Approval Number: 2502–0182.

Description of the Need for the Information and its Proposed Use: These forms are used by owners to request monthly housing assistance payments for eligible families, to limit the number of Section 8 units to those families whose incomes are less than 50 percent of the area median, and to restrict admission of ineligible tenants.

Form Number: HUD–52670, HUD–52670A, and HUD–52671A thru D.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	352,045		1		452		159,124

Total Estimated Burden Hours: 159,124.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–868 Filed 1–13–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary, Water and Science, Central Utah Project Completion Act

AGENCIES: The Department of the Interior (Department) and the Central Utah Water Conservancy District (District).

ACTION: Notice of availability of the Draft Environmental Impact Statement and extension of comment period: DES 96–51.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, and the District have issued a joint Draft Environmental Impact Statement (Draft EIS) on the Upalco Unit Replacement Project (Upalco). The Draft EIS was filed with the Environmental Protection Agency on December 27, 1996. However, the distribution of the Draft EIS to Agencies/persons was not made simultaneously with the filing. Therefore, the date for submittal of written comments is being extended and the dates of the public hearings are being changed. The distribution to Agencies/persons was made on January 8, 1997.

DATES: Written comments on the Draft EIS must be submitted or postmarked no later than March 17, 1997. Comments on the Draft EIS may also be presented verbally or submitted in writing at the public hearings to be held at the following times and locations:

- Tuesday, February 25, 1997, 1:00 p.m., Ute Tribal Auditorium, Ute Tribal Headquarters, Fort Duchesne, Utah
- Tuesday, February 25, 1997, 6:00 p.m., Altamont High School Auditorium, Highway 87 (North Side), Altamont, Utah
- Wednesday, February 26, 1997, 6:00 p.m., Salt Lake, Salt Lake County Commission Chambers, Room N1100, Salt Lake City, Utah.

The public hearings are being held to address the Draft EIS for the proposed Upalco Unit Replacement Project. In order to be included as part of the hearing record, written testimony must be submitted at the time of the hearing. Verbal testimony will be limited to 5 minutes. Those wishing to give testimony at a hearing should submit a registration form, included at the end of the Draft EIS, to the address listed below by February 18, 1997.

ADDRESSES: Comments on the Draft EIS should be addressed to: Terry Holzworth, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

FOR FURTHER INFORMATION: Additional copies of the Draft EIS, copies of the resources technical reports, or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW., Washington, DC 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Bureau of Indian Affairs, Uintah and Ouray Agency, 988 South 7500 East, Fort Duchesne, Utah 84026.

Dated: January 8, 1997.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 97–838 Filed 1–13–97; 8:45 am]

BILLING CODE 4310–RK–P

[MT–960–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held March 3–4, 1997, at the Northern Hills Ramada Inn, Spearfish, South Dakota. The sessions will convene at 8:00 a.m. on both days. Agenda items include updates on the North Dakota Mineral Exchange, North and South Dakota Land Exchanges, and the District minerals program. The council will also review public comments on the *Standards and Guidelines Draft Environmental Impact Statement.*

The meeting is open to the public and a public comment period is set for 8:00 a.m. on the 4th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and

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management issues associated with public land management.

FOR FURTHER INFORMATION CONTACT: Jon Pinner, Administrative Officer, Dakotas District Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: January 8, 1997.

Douglas J. Burger,

District Manager.

[FR Doc. 97–837 Filed 1–13–97; 8:45 am]

BILLING CODE 4310–DN–P

National Park Service

Notice of Availability of the Final Development Concept Plan/ Abbreviated Final Environmental Impact Statement for the Entrance Area and Road Corridor, Denali National Park and Preserve, Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of Availability of the Final Development Concept Plan/ Abbreviated Final Environmental Impact Statement for the entrance area and road corridor, Denali National Park and Preserve, Alaska.

SUMMARY: The National Park Service announces the availability of a Final Development Concept Plan/Abbreviated Final Environmental Impact Statement (DCP/EIS) for the Entrance Area and Road Corridor (Front Country) of Denali National Park and Preserve. The document describes and analyzes the environmental impacts of a proposed action and three other action alternatives for visitor facilities and services. A no action alternative also is evaluated.

DATES: A Record of Decision will be made no sooner than 30 days after the date of this notice.

ADDRESSES: Copies of the statement are available on request from: Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755.

Public reading copies of the final DCP and abbreviated final EIS will be available for review in the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street, Room 3424, Washington, DC 20240, telephone: (202) 208–6843.

Alaska System Support Office, National Park Service, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503–2892, telephone: (907) 257–2647.

FOR FURTHER INFORMATION CONTACT: Mike Tranel, Denali National Park and Preserve. Telephone: (907) 683–9552 FAX: (907) 683–9612.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, has prepared a final DCP and abbreviated final EIS for proposed visitor facilities and services in the front country of Denali National Park and Preserve in Alaska. The final DCP/EIS includes five alternatives for providing for visitor use and resource protection and related facility development in the front country of Denali National Park and Preserve. The front country includes all non-wilderness areas along the Parks Highway, the Riley Creek/ headquarters area, and the park road corridor to the Kantishna airstrip. The five alternatives include a no action alternative and four action alternatives. The proposed action as revised in the final is based on the recommendations of the Denali Task Force, a committee formed at the request of the Secretary of the Interior in 1994, on proposals received during public scoping, on previous plans, on planning team work and impact analysis, and on public comments on the draft plan.

Facilities and services considered in the proposed action and in each alternative include visitor accommodations, campgrounds, camper conveniences, interpretive facilities, transportation, parking, bus tours, bicycle use, rest and picnic areas, concessions, road maintenance, trails, employee housing, administrative and support facilities, airstrips, and utility systems. The alternatives differ in construction costs, extent and location of visitor facilities, and corresponding environmental, social, and economic impacts.

The Proposed Action (Alternative D) would provide visitor facilities and services in the front country to meet a wide range of visitor needs and interests. Front country developments would be limited to actions in which the NPS has traditionally specialized, such as interpretive centers, environmental education opportunities, trails, and campgrounds. The park hotel would be closed, and the NPS would encourage the private sector to develop visitor service facilities (accommodations, food service, and other commercial services) outside the park. The existing Visitor Access Center would be remodeled and expanded to serve as an interpretive and discovery center, and a new visitor services building and parking would be constructed nearby. Camper convenience services would be provided in this same area and the existing store and temporary shower building would be removed. Some buildings in the former hotel area would be adaptively used to provide an environmental education and science facility. New permanent rest areas would be constructed at Savage and Toklat. Additional trails would be constructed primarily in the Nenana River and Savage River areas. New campsites would be developed in the entrance area, the Nenana River corridor, and in the Kantishna area. Road maintenance and repair would be upgraded to address safety concerns and major structural failures along the park road. These actions would be phased in over the 15 to 20-year life of the plan.

Alternative A (No Action—Continue Current Management Direction) represents no change from current management direction. With the exception of development concepts not yet implemented, it continues the present course of action set forth in existing management plans and guidance documents including the Statement for Management (1995) and the General Management Plan/Land Protection Plan/Wilderness Suitability Review (1986). This alternative represents the existing situation in the park, so existing facilities and services would remain. For example, the temporary park hotel would be rehabilitated as funds allow, adaptive use of historic structures and overcrowding of administrative space would continue, campgrounds would not be expanded, and no new trail construction or additional trail maintenance would be done.

Alternative B (Implement Development Concepts from Previous Plans) would fully implement previous planning decisions and development concepts contained in approved plans such as the 1986 General Management Plan and the 1992 Amendment to the 1983 Development Concept Plan/ Environmental Assessment for the park road corridor and 1987 addendum (1992 Riley Creek Amendment). These documents not only propose additional facilities throughout the park to support NPS operations; they also propose increased visitor services and facilities within the park entrance area. Examples of new facilities proposed include a new hotel and camper convenience center to replace existing temporary facilities, a hostel in the entrance area, a new interpretive center with additional administrative space, a 50-site expansion to Riley Creek campground, and upgraded trail maintenance in the entrance area.

Alternative C (Reduce Facilities and Services Inside Park) would reduce the level of development and visitor services inside the park and encourage the private sector to provide necessary new facilities such as overnight accommodations, campgrounds, and camper conveniences outside the park boundary. Major new park facilities such as an interpretive center and an environmental education center would be constructed outside the park as well. The park entrance area would function primarily as a staging area for trips farther into the park rather than as a destination in itself. This alternative allows for minimizing resource impacts and therefore maximizing resource protection inside the park.

Alternative E (Emphasize Visitor Services and Recreational Opportunities Within the Park) would significantly enhance the visitor experience by concentrating new development inside the park and providing a diversity of visitor facilities and services in the front country to meet a wide range of visitor needs and interests. The NPS would take the leading role in providing new visitor services. A new hotel would replace the existing temporary building, and a hostel or similar low-cost accommodations would be constructed at a separate location. A new interpretive center, a camper conveniences center, and an environmental education facility would be constructed just north of Riley Creek Campground. Additional campsites would be developed throughout the front country. New permanent rest areas would be constructed at Toklat and Savage, and trails would be upgraded and expanded at several locations. Road maintenance and repair along the park road would be upgraded to address documented structural problems as well as safety concerns and actual structural failures.

The responsible official for a Record of Decision on the proposed action is the NPS field director in Alaska.

Dated: December 24, 1996.

Paul R. Anderson,

Field Director, Alaska Field Office.

[FR Doc. 97–802 Filed 1–13–97; 8:45 am]

BILLING CODE 4310–70–P

National Park Service, National Capital Region

Mary McLeod Bethune Council House National Historic Site Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mary McLeod Bethune Council House National Historic Site Advisory Commission will be held on January 24 and 25, 1997, at the Madison Hotel at 10:00 a.m., the hotel is located at 15th and M Street, N.W., Washington, D.C.

The Commission was authorized on December 11, 1991, by Public Law 102–211, for the purpose of advising the Secretary of the Interior in the development of a General Management Plan for the Mary McLeod Bethune Council House National Historic Site.

The members of the commission are as follow: Dr. Dorothy I. Height; Ms. Barbara Van Blake; Ms. Brenda Girton-Mitchell; Dr. Savanna C. Jones; Dr. Bettye J. Gardner, Bettye Collier-Thomas; Mr. Eugene Morris; Dr. Rosalyn Terborg-Penn; Mrs. Bertha S. Waters; Dr. Frederick Stielow; Dr. Sheila Flemming; Dr. Ramona Edelin; Mrs. Romaine B. Thomas; Ms. Brandi L. Creighton; and Dr. Janette Hoston Harris.

The purpose of this meeting will be to discuss and develop a general management plan for the Mary McLeod Bethune Council House National Historic Site. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish further information concerning this meeting or wish to file a written statement or testify at the meeting may contact Ms. Marta C. Kelly, the Federal Liaison Officer for the Commission, at (202) 332–1233. Minutes of these meetings will be available for public inspection 4 weeks after the meeting at the Mary McLeod Bethune Council House National Historic Site, located at 1318 Vermont Avenue, N.W., Washington, D.C. 20005.

Dated: January 17, 1997.

Richard Powers,

Acting Field Director, National Capital Area.

[FR Doc. 97–803 Filed 1–13–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Office of Attorney Personnel Management, Justice Management Division Agency Information Collection Activities: Proposed Collection: Reinstatement, Without Change of a Previously Approved Collection for Which Approval Has Expired; Comments Requested

ACTION: Application Booklets—Attorney General's Honor Program, Summer Law Intern Program, Law Student Program.

The Department of Justice, Justice Management Division, Office of Attorney Personnel Management, has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. Additionally, this notice will also serve as the 60 day public notification for comments as required by the Paperwork Reduction Act of 1995. Pursuant to 28 CFR 0.15(b)(2), the Deputy Attorney General of the United States Department of Justice has the responsibility of administering the "Attorney General's recruitment program for honor law graduates and judicial law clerks." This includes the hiring of third-year law students and judicial law clerks for full-time employment following graduation or completion of a clerkship, and primarily second-year law students for summer and/or part-time employment. This program has been in existence for 43 years, and is considered the Federal Government's premier legal recruitment program. The Department of Justice currently hires approximately 130–150 third-year law students/judicial law clerks and 130 second-year law students each year under these programs. The Department of Justice is the largest legal employer in the country. Approximately 5,700 applications are received for these positions annually. The responsibility for running these programs has been delegated by the Deputy Attorney General to the Director, Office of Attorney Personnel Management (OAPM) pursuant to 28 CFR 0.15(c). OAPM together with other Department of Justice representatives who make the ultimate hiring determinations have developed these application booklets to distribute information on the programs and in turn collect the information they consider essential to make an informed hiring decision on legal applicants. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by January 20, 1997. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, D.C. 20530. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

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(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Attorney Personnel Management, U.S. Department of Justice, Attn: P. Vickers, Room 6150, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001 (202–514–8902). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Paula Vickers, 202–514–8902, Office of Attorney Personnel Management, U.S. Department of Justice, Room 6150, 950 Pennsylvania Avenue, NW., Washington, DC, 20530–0001.

Overview of This Information Collection

(1) Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Application Booklets—Attorney General's Honor Program, Summer Law Intern Program, Law Student Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: None. Office of Attorney Personnel Management, Justice Management Division, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: None. This data collection is the only vehicle for the Department of Justice (DOJ) to hire graduating law students. This application form is submitted voluntarily, submitted only once a year by students/judicial law clerks who will be in this applicant pool only once; and the information sought only relates to the hiring criteria established as an internal matter by DOJ personnel.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,700 respondents at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 5,700 annual hours.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 8, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–794 Filed 1–13–97; 8:45 am]

BILLING CODE 4410–26–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 C.F.R. § 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Alpert Iron & Metal Corp. et al.*, Civil Action No. CV–97–AR–0001–S was lodged on January 2, 1997, with the United States District Court for the Northern District of Alabama, Southern Division. This agreement resolves a judicial enforcement action brought by the United States, pursuant to Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607, against a group of potentially responsible parties ("Settlors") who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Interstate Lead Company Superfund Site ("Site" or "ILCO Site") in Leeds, Jefferson County, Alabama. The Consent Decree also provides a covenant not to sue under Section 7003(d) of the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6973.

The Site is comprised of a former battery recycling and smelter facility ("the ILCO facility"), and several Satellite Sites where furnace slag was taken. Furnace slag is a byproduct of the Site smelting operations. The Satellite Sites included the adjacent parking lot, the City of Leeds landfill, and properties owned by a gas station, a church, a resident, a restaurant, and a local business.

Under the consent decree, the Settlors have agreed to pay $1,823,644 of the government's past response costs, and all future response costs of the government in excess of $300,000. The Settlors have also agreed to implement the Site remedy as set forth in Records of Decision ("RODs") dated September 30, 1991, October 13, 1994, September 25, 1995, and August 27, 1996. The selected remedy provides for the excavation of contaminated soils and sediment, treatment by soil solidification/stabilization, and disposal in an appropriate, permitted landfill. Contaminated groundwater at the ILCO facility and the City of Leeds landfill will be pumped and treated. Groundwater monitoring will be conducted at the other Satellite Sites, with annual sediment and biota monitoring along a nearby creek and tributary thereto.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Alpert Iron & Metal Corp. et al.*, DOJ Ref #90–11–2–108D. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the office of the United States Attorney, 200 Federal Building, 1800 Fifth Avenue North, Birmingham, AL 35203; the Region 4 office of the Environmental Protection Agency, 100 Alabama Street, S.W., Atlanta, Georgia, 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you want a copy of the Consent Decree without attachments, which attachments include the RODs, Statement of Work, and list of Settlors, then the amount of the check should be $29.25 (117 pages at 25 cents per page). If you want a copy of the Consent Decree with the above stated

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attachments, then the amount of the check should be $106.75 (427 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–796 Filed 1–13–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Amendment to Modified Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on December 31, 1996, a proposed Amendment to the Modified Consent Decree in *United States of America* v. *Lynn Water and Sewer Commission, et al.*, Civil Action No. 76–2184–G, was lodged with the United States District Court for the District of Massachusetts. The United States' complaint sought compliance with the Clean Water Act. The Modified Consent Decree, as amended in 1995, requires the construction of various projects to reduce combined sewer overflows from Lynn Water and Sewer Commission outfalls in accordance with a specified schedule. The Amendment to the Modified Consent Decree extends the deadline for completion of one of those projects—the Eastern Avenue Sewer Separation Project, Phase II—from September 1, 1997 to December 31, 1998.

The Department of Justice will receive comments relating to the proposed Amendment to Modified Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lynn Water and Sewer Commission, et al.*, D.J. Ref. 90–5–1–1–545B.

The proposed Amendment to Modified Consent Decree may be examined at the office of the United States Attorney, 1003 John M. McCormack P.O. & Courthouse, Boston, Massachusetts 02109 and at the New England Region office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203. The proposed Amendment to Modified Consent Decree may also be examined at the Consent Decree Library, 1120 G. St., N.W., 4th Floor, Washington, D.C. 20005, 202–624-0892. A copy of the proposed Amendment to Modified Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. St., N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $1.25 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 97–798 Filed 1–13–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Janet Schusheim, et al.*, Civil Action No. 97–0019, was lodged on January 2, 1997 with the United States District Court for the Eastern District of New York. Defendant Janet Schusheim was the former owner of the property comprising the SMS Instruments, Inc. Superfund Site ("Site") in Deer Park, New York at the time wastes containing hazardous substances were disposed of at the Site. Defendant 120 Realty Corp. is the current owner of the Site property.

Under the terms of the proposed decree, defendants will pay the United States $290,000 for certain past response costs incurred by the United States for remedial action work involving air and steam stripping of contaminated soil and groundwater extraction, treatment, and reinjection. The proposed decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9601 *et seq.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposes consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Janet Schusheim, et al.* D.J. reference #90–11–2–1123A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn; New York, the Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W. 4th floor, Washington, D.C. 2005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy please enclose a check in the amount of $7.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–797 Filed 1–13–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Western Crude Reserves, Inc. et al*, Civil Action No. 95–52, was lodged on October, 1994 with the United States District Court for Eastern District of Kentucky, Lexington division. Under the consent decree the United States is settling claims against two defendants, Western Crude Reserves, Inc. and Reserve Energy, Ltd., based on claims for civil penalties and injunctive relief relating to alleged violations of the Safe Drinking Water Act ("SDWA") and the implementing Underground Injection Control ("UIC") regulations, 40 C.F.R. § 144.28 *et seq.* The United States alleged that Reserve Energy, Ltd. and Western Crude Reserves, Inc. once owned and operated, respectively, 113 underground injection wells in the Irvine, Garrett and South Fork units in the Irvine-Furnace field in Powell and Estill Counties, Kentucky. Reserve Energy, Ltd. is a limited partnership. Western Crude Reserves, Inc. is the corporate general partner of Reserve Energy. In 1993, Reserve Energy transferred the wells to defendant Kish Resources PLC. Under the proposed settlement, Western Crude Reserves, Inc. and Reserve Energy, Ltd. will provide $75,000 in financial assurance for plugging abandoned injection wells, and the field will be transferred to a nonparty, Trinity Group, LLC. ("Trinity"), for the purpose of bringing the wells into regulatory compliance pursuant to a schedule set forth in an Administrative Order on Consent ("AOC") entered between Trinity and EPA. Under the AOC, Trinity will provide $50,000 in financial assurance and will plug or case and cement the injection wells over the course of three years. Under this settlement, EPA will obtain the injunctive relief it seeks to bring the field into compliance, plus a

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total of $125,000 in financial assurance, in case Trinity does not fulfill its obligations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Western Crude Reserves, Inc. et al.*, DOJ Ref. #90–112–859.

The proposed consent decree may be examined at the office of the United States Attorney, 1441 Main Street, Suite 500 Columbia, South Carolina (803) 929–3000; the Region IV Office of the Environmental Protection Agency, 100 Alabama Street, SW, Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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BILLING CODE 4410–15–M

Federal Bureau of Investigation

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Second Notice and request for comments.

SUMMARY: The FBI is providing a second notification of the requirements for actual and maximum capacity of communication interceptions, pen register and trap and trace device-based interceptions that telecommunications carriers may be required to conduct to support law enforcement's electronic surveillance needs, as mandated in section 104 of the Communications Assistance for Law Enforcement Act (CALEA). On October 16, 1995, the FBI published an Initial Notice for comment (60FR53643); and on November 9, 1995, the comment period was extended until January 16, 1996. After reviewing the comments received, the FBI is issuing this Second Notice for comment.

DATES: Written comments must be received on or before February 13, 1997.

ADDRESSES: Comments should be submitted in triplicate to the Telecommunications Industry Liaison Unit (TILU), Federal Bureau of Investigation, P.O. Box 220450, Chantilly, VA 20153–0450.

FOR FURTHER INFORMATION CONTACT: Contact TILU at (800) 551–0336. Please refer to your question as a capacity notice question. Because the appendices referred to in this Notice are voluminous, they are not contained herein but are available in public reading room located at Federal Bureau of Investigation Headquarters, 935 Pennsylvania Ave. N.W., Washington, D.C. 20535. To review the appendices, interested parties should contact Ms. Eloise Lee at FBI Headquarters, telephone number (202) 324–3476, to schedule an appointment (48 hours in advance).

I. Background

A. Purpose of CALEA

On October 25, 1994, President Clinton signed into law the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103–414, 47 U.S.C. 1001–1010). Its objective is to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes. (For purposes of this notice, the word "interception" refers to the interception of both call-content and call-identifying information.) CALEA was enacted to preserve law enforcement's ability, pursuant to court order or other lawful authorization, to access call-content and call-identifying (pen registers and trap and trace) information in an ever-changing telecommunications environment.

In 1968 when Congress statutorily authorized court-ordered electronic surveillance, there were no technological limitations on the number of interceptions that could be conducted. However, the onset of new and advanced technologies has begun to erode the ability of the telecommunications industry to support law enforcement's interception needs. To preserve communications interception as a vital investigative tool, the Congress determined that technological solutions must be employed necessitating greater levels of assistance from telecommunications carriers.

The intent of CALEA is to define and clarify the level of technical assistance required from telecommunications carriers. CALEA does not alter or expand law enforcement's fundamental statutory authority to conduct interceptions. It simply seeks to ensure that after law enforcement obtains legal authority, telecommunications carriers will have the necessary technical ability to fulfill their statutory obligation to accommodate requests for assistance.

B. Capacity Notice Mandate

Because many future interceptions will be fulfilled through equipment controlled by telecommunications carriers, CALEA obligates the Attorney General to provide carriers with information they will need (a) to be capable of accommodating the actual number of simultaneous interceptions law enforcement might conduct as of October 25, 1998, and (b) to size and design their networks to accommodate the maximum number of simultaneous interceptions that law enforcement might conduct after October 25, 1998. (Although actual and maximum capacity determinations represent estimates for October 25, 1998, and thereafter, telecommunications carrier compliance with capacity requirements is, by terms of CALEA, required by 3 years after issuance of the Final Notice.) These two information elements are referred to in CALEA as "actual" and "maximum" capacity requirements. In accordance with section 104 of CALEA, the FBI, which has been delegated CALEA implementation responsibilities from the Attorney General, must provide notice of law enforcement's future actual and maximum capacity requirements. The statute defines these requirements as follows:

For actual capacity: The actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity, that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of CALEA.

For maximum capacity: The maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of CALEA.

Although CALEA requires the Attorney General to estimate the actual number of communication

interceptions, pen registers and trap and trace devices that may be required simultaneously as of October 25, 1998 and thereafter, the estimates are not a reflection of the number of interceptions expected to occur. Indeed, law enforcement has no estimate or expectations about how many interceptions will occur. The number of interceptions that actually occur will be determined by authorized law enforcement investigations at the time.

Under CALEA, telecommunications carriers are required to have an actual capacity available for immediate use 3 years after issuance of a Final Notice. Maximum capacity, on the other hand, is a capacity level that telecommunications carriers must be able to accommodate "expeditiously" if law enforcement's needs increase in the future. The time frame for "expeditious" expansion to maximum capacity was not specified in CALEA. However, law enforcement typically maintains ongoing liaison with telecommunications carriers serving their areas. Such liaison facilitates the needed technical capability and capacity to be prearranged, thereby ensuring that the interception can begin as soon as the legal authorization is received. Such liaison is critical because electronic surveillance interceptions are by their very nature time sensitive. Law enforcement considers five business days from receipt of a court order by a telecommunications carrier to be a reasonable period of time to allow for incremental expansion up to the maximum capacity on an as-needed basis. This time frame is based on the time typically involved under existing procedures used by law enforcement and telecommunications carriers to make technical arrangements.

The term "expeditious," as used herein, applies to section 104 capacity requirements regarding incremental expansion up to the maximum capacity. It should not be confused with "expeditious access" to call-content and call-identifying information as used in section 103 of CALEA, which pertains to the assistance capability requirements.

Law enforcement has interpreted the maximum capacity chiefly as a requirement that telecommunications carriers will follow to size a capacity ceiling. This ceiling is intended to provide telecommunications carriers with a stable framework for cost-effectively designing future capacity into their networks. It also would provide room for accommodating future interception-related "worst-case scenarios." Establishing the maximum capacity will allow telecommunications carriers to assist law enforcement during serious, unpredictable emergencies requiring unusual levels of interception.

Consistent with CALEA, this Second Notice identifies the number of simultaneous interceptions that a telecommunications carrier should be able to accommodate in a given geographic area as of the date that is three years after the date of the Final Notice of Capacity and thereafter. An interception relates to accessing and delivering all communications (call-content) and/or call-identifying information associated with the telecommunications service of the subject specified in a court order or lawful authorization. The telecommunications service targeted for interception includes all of the services and features associated with the subject's wireline/wireless telephone number, or as otherwise specified in the court order or lawful authorization.

For a call content-based interception, a carrier is responsible for accessing and delivering all communications and call-identifying information supported by the subject's telecommunications service, regardless of the advanced services or features to which the subject subscribes (e.g., a redirected call through call forwarding); and notwithstanding that the subject may be engaged in more than one communication (e.g., a subject is engaged in a voice telephone call and simultaneously sends a fax or data transmission; a subject is engaged with several (different) parties in a conference call and simultaneously communicates with a non-conferenced party).

For an interception of call-identifying information, a carrier is responsible for accessing and delivering all call-identifying information related to the communications caused to be generated or received by the subject, regardless of the advanced services or features to which the subject subscribes and notwithstanding that the subject may be engaged in more than one simultaneous communication. The fact that a subject utilizes advanced services and features as part of his/her telecommunications service or is capable of sending or receiving more than one communication simultaneous does not mean that carrier access and delivery of each constitutes a separate interception. Consequently, telecommunications carriers need to ensure that, regardless of their solutions (which may be varied), the solution permits access and delivery of all the communications and call-identifying information for each interception. Because of this circumstance, and because CALEA forbids the government from dictating solutions, law enforcement will be available to consult with carriers as they develop solutions and apply the capacity requirements to their particular solutions.

In some instances a telecommunications carrier may be able to meet the assistance capability requirements without modifying its equipment, facilities, or services. As a practical matter, conventional methods of effectuating interceptions of call-content and call-identifying information, such as loop extender technologies, may meet the requirements of CALEA for some subjects of court-ordered interceptions, depending on the types of services and features, etc., to which the subject subscribes. Telecommunications carriers that presently meet these requirements under the circumstances described above will be in compliance until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification. Furthermore, telecommunications carriers that cannot meet the assistance capability requirements may still be considered to be in compliance if the Government does not provide cost recovery for modifications to equipment, facilities, and services installed or deployed on or before January 1, 1995. Such carriers will also be in compliance with CALEA until such time as they significantly upgrade or replace or otherwise undergo major modification to equipment, facilities, or services.

C. Initial Notice of Capacity

On October 16, 1995, law enforcement's proposed future actual and maximum capacity requirements were presented in an Initial Notice published in the **Federal Register** as mandated by section 104 of CALEA. Comments on the Initial Notice were accepted through January 16, 1996. The Initial Notice and the comments on it are summarized in section V of this notice.

D. Second Notice of Capacity

Since the release of the Initial Notice, law enforcement has consulted with telecommunications industry representatives, privacy advocates, and other interested parties to receive feedback on the method used to express future actual and maximum capacity requirements. This consultative process has helped law enforcement understand the challenges facing the industry and others in appling the capacity requirements. After deliberation, law enforcement concluded that it should

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issue a Second Notice for comment in order to refine its original approach.

After the instant comment period closes, a complete record will be delineated and a Final Notice will be issued that fulfills the obligations of the Attorney General under section 104(a)(1) of CALEA.

Telecommunications carriers will have 180 days after publication of the Final Notice in the **Federal Register** to submit a Carrier Statement as mandated by section 104(d) to the Government identifying any of its systems or services that do not have the capacity to accommodate law enforcement's requirements (see section IV infra).

CALEA applies to all telecommunications carriers as defined in section 102(8). Notices will eventually be issued covering all telecommunications carriers. However, this Second Notice and its associated Final Notice should be viewed as a first phase applicable to telecommunications carriers offering services that are of most immediate concern to law enforcement—that is, those telecommunications carriers offering local exchange services and certain commercial mobile radio services, specifically cellular service and personal communications service (PCS). (For the purpose of this notice, PCS is considered a service operating in the licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHZ to 1990 MHZ. Telecommunications carriers offering local exchange services are referred to hereafter in this notice as "wireline" carriers, and telecommunications carriers offering cellular and PCS services are referred to as "wireless" carriers.

The exclusion from this notice of certain other telecommunications carriers that have services deployed currently or anticipate deploying services in the near term does not exempt them from any obligations under CALEA. Law enforcement will consult with these other telecommunications carriers before subsequent Notices are issued and applicable capacity requirements are established. Law enforcement also looks forward to consulting with these other telecommunications carriers to develop a reasonable method for characterizing capacity requirements.

II. Methodology for Projecting Capacity Requirements

A. Overview

The CALEA mandate set forth in section 104 obligates the Attorney General to estimate future interception capacity requirements and marks the first time that (a) information has been required to be provided to telecommunications carriers in order for them to design future networks with reference to the amount of potential future interception activity that may occur, and (b) the entire law enforcement community has been required to project its collective future potential needs for interception. This new circumstance has generated legitimate concern in the law enforcement community, because telephone technology historically placed no constraints on the number of court-ordered interceptions that could be effected. If not implemented carefully, an under-scoping of capacity requirements under CALEA could have the unintended effect of restricting the technical ability to conduct interceptions authorized in court orders. If future interception needs are understated, law enforcement's investigative abilities will be hampered and, more important, public safety will be jeopardized.

Capacity provisions were included in CALEA to ensure that law enforcement's future interception needs can be met in a way that will not be unduly burdensome for telecommunications carriers. These provisions also present a means for telecommunications carriers to better understand the nature and extent of their existing statutory obligations to accommodate law enforcement's interception needs. (Since law enforcement requirements for all types of interceptions are a function of authorized investigations, the estimated number that may be conducted cannot be zero since that would imply that there is a county or market service area where an interception could not be conducted. See section G "Establishing Threshold Capacity Requirements" for further discussion on how minimum capacities are estimated.) To derive capacity requirements that would meet law enforcement's future interception needs without being unduly burdensome, law enforcement used a rigorous methodology. The objective was to ensure that law enforcement's future capacity requirements would (a) be based on historical interception activity, (b) ensure that public safety is not compromised, (c) provide telecommunications carriers with a degree of certainty regarding law enforcement's needs over a reasonable period of time, (d) be based on the geographic areas affected, and (e) not dictate a solution to the industry.

The methodology consisted of these steps:

- Collecting information on historical interception activity.
- Determining geographic areas for identifying capacity requirements.
- Deriving a basis for determining capacity requirements for wireline carriers.
- Deriving a basis for determining capacity requirements for wireless carriers.
- Deriving growth factors for projecting future capacity requirements from historical information.
- Establishing threshold capacity requirements.

B. Collecting Information on Historical Interception Activity

To comply with CALEA's mandate to project future capacity needs, law enforcement believed it was essential to first establish a historical baseline of interception activity from which future interception needs could be projected. This effort entailed a detailed review and analysis of the available information on recent federal, state, and local law enforcement interceptions throughout the United States. Such information had never before been collected in a single repository. Amassing this detailed and extremely sensitive information required an unprecedented and time-consuming effort. It involved identifying sources from which accurate information could be retrieved efficiently. The information required included the numbers of all types of interceptions (communications, pen register, and trap and trace) performed by federal, state, and local law enforcement agencies, in terms of the actual number of telephone lines intercepted at each locality. (For purposes of this notice, the work "line" refers to the transmission path from a subscriber's terminal to the network via a wireline or wireless medium.)

The Wiretap Report, published annually by the Administrative Office of the United States Courts, was a valuable source of historical information on criminal Title III (call-content) court orders; however, it did not identify the actual number of interception lines associated with each court order or, more important, the vastly greater number of lines associated with call-identifying interceptions (pen register and trap and trace) that have been performed by all law enforcement agencies. Even though law enforcement used information on the number of court orders reported in the Wiretap Report for forecasting purposes as described subsequently in this section, the report does not contain the necessary line-related information needed to identify the level of past

interceptions for establishing a historical baseline of activity.

To obtain line-related information regarding past simultaneous interceptions, records of interception activity were acquired from telecommunications carriers, law enforcement officials, and what was most important, from the federal and state Clerks of Court offices (the official repositories for all interception court orders) through a survey.

The objective of the survey effort was to determine the numbers of all types of interceptions (communications, pen register, and trap and trace) conducted between January 1, 1993, and March 1, 1995, for all geographic areas. Highly sensitive information pertaining to each interception was collected, including interception start/end dates and area code and exchange. The time period of January 1, 1993 to March 1, 1995 was chosen to obtain recent interception information that was reasonably retrievable given the time constraint imposed by CALEA with regard to publishing a Notice of Capacity.

Approximately 1,500 telecommunications carriers, representing nearly all wireline and cellular telephone companies (as of March 1995), were requested to provide information that would identify where and how many interceptions had occurred within their networks during the period surveyed. Records were submitted by approximately 66 percent of the telecommunications carriers surveyed. To ensure receipt of information from a comprehensive representation of the telecommunications industry, law enforcement worked closely with telecommunications carriers serving large markets or unique geographic areas. Such carriers included the Regional Bell Operating Companies (RBOCs), GTE, and the largest providers of cellular service.

Sensitive interception records maintained under seal within the Clerks of Court offices were acquired through two separate efforts. Federal court order information was collected under special court orders directing the unsealing of this information for the limited purpose of issuing capacity notices required under section 104 of CALEA. State and local law enforcement records were collected with the assistance of the offices of the State Attorney Generals and District Attorneys or state wide prosecutors. This effort resulted in the collection of information on all federal law enforcement interception activity for the period surveyed and information on interceptions by state and local law enforcement from most states. (Some states' laws do not authorize the conduct of all types of interceptions, e.g., call-conduct interceptions, and other states do not maintain retrievable records of all historical interception activity.)

C. Determining Geographic Areas for Identifying Capacity Requirements

Section 104(a)(2)(B) of CALEA requires law enforcement to identify, to the maximum extent practicable, the capacity needed at "specific geographic locations." In addressing this mandate, law enforcement decided that using point-specific sites, such as switch locations, city blocks, or neighborhoods, would not be appropriate because it would not properly take into account movement in criminal activity and could lead to the compromise of sensitive investigations. Also, law enforcement believed that any geographic designation used should not be subject to frequent change, should relate to discernible and officially recognized geographic territorial boundaries, and should be commonly understood by the affected parties.

It was also considered essential that the geographic designations be ones that (a) historically have not been affected by regulatory changes in the telecommunications marketplace, (b) would allow flexibility for telecommunications carriers in developing solutions, and (c) would not be affected by changes in the configurations of telecommunications networks.

Law enforcement concluded that, for wireline carriers, county boundaries or their equivalent best met the criteria above and should be used to define the geographic locations for projecting future capacity requirements. (For purposes of this notice, the term "county" includes boroughs and parishes, as well as the District of Columbia and a few independent cities in Missouri, Maryland, Nevada, and Virginia that are not part of any county. U.S. territories such as American Samoa, Guam, the Mariana Islands, Puerto Rico, and the U.S. Virgin Islands are treated similarly.) Further, using the geographic designation of a county in this way was deemed appropriate because it is used by both telecommunications carriers and law enforcement. Telecommunications carriers pay county taxes and fees and are affected by county regulations. Likewise, law enforcement's legal territorial jurisdictions frequently are drawn based on county boundaries, and resources for law enforcement are often allocated on a county basis.

For wireless carriers, individual county boundaries were not considered to be a feasible geographic designation for identifying capacity requirements. Instead, law enforcement determined that wireless market service areas—Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs), Major Trading Areas (MTAs), and Basic Trading Areas (BTAs)—would be the most appropriate geographic designations. Although wireless market service areas comprise sets of counties, the use of such market service areas best takes into account the greater inherent mobility of wireless subscribers. Furthermore, what is most important is that historical information on wireless interceptions could only be associated with market service areas.

The approach selected—using counties for wireline carriers and market service areas for wireless carriers—was also responsive to comments on the Initial Notice urging that the two types of telecommunications carriers be treated separately; thus, different geographic designations should appropriately apply.

D. Deriving a Basis for Determining Capacity Requirements for Wireline Carriers

Having established the county as the appropriate geographic area for identifying capacity requirements for wireline carriers, law enforcement had to decide on a basis for determining capacity requirements for each county. Section 104(a)(2)(A) of CALEA stated that the capacity requirements could be based on type of equipment, type of service, number of subscribers, type or size of carrier, or nature of service area, but allowed the use of "any other measure." Law enforcement chose to use the historical interception activity associated with telecommunications equipment located within a county as the most logical basis for making determinations about projected capacity requirements in a county.

Each wireline interception reported during the historical period surveyed (January 1, 1993, to March 1, 1995) was associated with a telecommunications switch, based on its area code and exchange (frequently referred to as its "NPA/NXX code") as found in the April 1995 version of the Local Exchange Routing Guide (LERG) published by Bellcore. The LERG contains information on the switching systems and exchanges of wireline carriers and is considered to be an authoritative source in the telecommunications industry. Thereafter, telecommunications switches were

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associated to counties by using the vertical and horizontal coordinates marking the switch's physical location.

CALEA also required that capacity requirements be expressed in terms of "simultaneous" interceptions. Law enforcement chose to consider interceptions occurring on the same day, rather than at exactly the same moment, as being simultaneous. This time frame was logical from a law enforcement perspective, because interception court orders are authorized for a certain number of days as opposed to some other unit of time Additionally, the time frame of 1 day was compatible with the historical data that was recorded only by days.

The daily interception activity of each switch in a county was examined, and the single day with the most interceptions during the period surveyed was used to identify the switch's highest number of simultaneous interceptions. Thereafter, the highest number of simultaneous interceptions identified for each switch in the country was totaled to produce a historical baseline for the county. Law enforcement believed that this approach provided a reasonable representation of past interception needs for the geographic area during the period surveyed. This approach also avoided the problems that would be inherent in trying to specify capacity requirements for interceptions on a site-specific or equipment-specific basis because of the fluid nature of interceptions conducted over time and because of changes in equipment and the services that they support. After determining the county's historical baseline, law enforcement sought to establish an appropriate means of utilizing that activity as a basis for projecting future capacity requirements. In the Initial Notice, capacity requirements were expressed as a percentage of the engineered capacity of equipment, facilities, and services. It was thought that in so doing, some flexibility would be beneficial to carriers in addressing the capacity requirements. Comments on the Initial Notice, however, questioned the meaning of engineered capacity and recommended that capacity requirements be expressed as fixed numbers rather than as percentages. In response, law enforcement re-examined this issue and found that using fixed numbers for each county would be a clear way to express capacity requirements without tying them to the constantly changing components of the telecommunications network.

E. Deriving a Basis for Determining Capacity Requirements for Wireless Carriers

Having established the market service area as the appropriate geographic area for identifying future capacity requirements for wireless carriers, law enforcement had to decide on a basis for determining capacity requirements for each market. Each cellular interception reported during the period surveyed (January 1, 1993 to March 1, 1995) was associated with a cellular market service area using the August 1995 version of the Cibernet database, which contains information on roaming and billing arrangements for cellular networks and is considered to be an authoritative source in the telecommunications industry. Thereafter, the single day with the most interceptions during the period surveyed was identified and used to establish the historical baseline for the market service area.

Due to the similarities between cellular and PCS, law enforcement used the historical interception activity of cellular carriers to develop projections of future capacity requirements for PCS carriers. Cellular markets are defined by MSAs and RSAs, and PCS markets are defined by MTAs and BTAs. Historical cellular interception activity was mapped to a PCS market service area. Again, the single day with the most interceptions during the period surveyed was identified and used to ascribe to it a historical baseline for the market service area.

To be responsive to comments on the Initial Notice objecting to the use of percentages of engineered capacity, law enforcement found that using numbers rather than percentages was also an appropriate means by which to express capacity requirements for wireless carriers.

F. Deriving Growth Factors for Projecting Future Capacity Requirements From Historical Information

Section 104 of CALEA requires the Attorney General to project future requirements for actual and maximum capacity. As discussed previously in this notice, law enforcement derived a baseline for these estimates from the historical interception activity in geographic areas defined as counties for wireline carriers and market service areas for wireless carriers during the period surveyed. To project future capacity requirements, growth factors were developed and applied to the historical information.

As noted, comments on the Initial Notice recommended that capacity requirements be stated separately for wireline and wireless carriers. In response, law enforcement created new formulas based on a revised set of growth factors that took account of this distinction.

1. Formulas

As discussed below, four growth factors are used in this Second Notice in formulating future capacity requirements: $A_{wireline}$, $A_{wireless}$, $M_{wireline}$, and $M_{wireless}$. The "A" factors were applied to historical interception activity to estimate future actual capacity requirements as of October 1998, the "M" factors were used to estimate future maximum capacity requirements.

The formulas are as follows:

Wireline: Future Actual Capacity Requirement in a County Equals The Historical Interception Activity in the County Multiplied by $A_{wireline}$.

Future Maximum Capacity Requirement in a County Equals The Future Actual Capacity Requirement in the County Multiplied by $M_{wireline}$.

Wireless: Future Actual Capacity Requirement in a Market Service Area Equals The Historical Interception Activity in the Market Service Area Multiplied by $A_{wireless}$.

Future Maximum Capacity Requirement in a Market Service Area Equals The Future Actual Capacity Requirement in the Market Service Area Multiplied by $M_{wireless}$.

All the resulting requirements for future actual and maximum capacity were rounded up to the next whole number.

2. Growth Factors

The growth factors used herein were derived solely from analysis related to the historical interception information. Three sources of historical information were deemed to provide relevant information to be considered as growth factors: (a) the number of court orders for call-content interceptions which was obtained from the *Wiretap Reports* published by the Administrative Office of United States Courts for the time period 1980 through 1995; (b) the number of court orders for call-identifying information from pen register and trap and trace devices, which was obtained from reports published by the Department of Justice documenting pen register and trap and trace usage by DOJ agencies for the time period 1987 through 1995; and (c) the historical baseline number of call-content interceptions and interceptions of call-identifying information, which was obtained from the survey of law enforcement and industry for the time

period January 1, 1993 through March 1, 1995.

To project the future numerical level of court orders, statistical and analytical methods were applied to the historical interception information. It should be understood that the projections for the number of potential future court orders do not mean that they are the numbers of orders that law enforcement will in fact perform in these years or intends to perform. Rather, they are part of a statistical method used to derive growth factors that would be useful ultimately in calculating future actual and maximum capacity requirements.

A commonly-used analytical tool for projections, known as Best-Fit-Line analysis, was used to track the number of court orders over time and then to project the number into the future. As discussed below, projections were made for call-content court orders for wireline and wireless for the year 1998 and the year 2004. The projections were also made for the vastly greater number of pen register and trap and trace court orders for wireline and wireless for the year 1998 and the year 2004. Composite growth figures for wireline and wireless interceptions were then calculated by weighting the court order projections by the relative number of call-content interceptions and interceptions of call-identifying information during the period survey. The resulting $A_{wireline}$ and $A_{wireless}$ growth factors were based on the 1998 projections. The $M_{wireline}$ and $M_{wireless}$ growth factors were based on the 2004 projections. The year 1998 was selected to comply with the statutory language of CALEA requiring law enforcement to estimate actual capacity requirements by that time. The year 2004 was selected because it provided a 10 year period after the passage of CALEA, a period that was considered reasonable for projecting maximum capacity requirements. It was also considered to be a rational period for constituting a stable capacity ceiling and a design guide.

The value derived for $A_{wireline}$ is 1.259; the value derived for $A_{wireless}$ is 1.707; the value derived for $M_{wireline}$ is 1.303; and the value derived for $M_{wireless}$ is 1.621. These growth factors can also be translated into, and understood in terms of, annual growth rates for capacity requirements. For wireline, if computed annually, growth rates are 5.92 percent for the period from 1994 through 1998, and 4.55 percent for the period from 1998 through 2004. For wireless, if computed annually, growth rates are 14.30 percent and 8.38 percent respectively, for the same time periods. Of relevance in determining the differences in growth rates are the expectations of overall business growth for wireline and wireless telephone services. Market projections for wireline show a steady rate of 3.5 percent annual increase, while wireless annual growth is projected to be 12.0 percent during each of the next 10 years.

(For more information on how the growth factors were derived, refer to Appendix E which is available in the FBI's reading room.)

G. Establishing Threshold Capacity Requirements

In its review of historical interception activity, law enforcement recognized that numerous counties and market service areas had no interception activity during the time period surveyed. Under the methodology described above, these counties and market service areas would have future actual and maximum capacity requirements equal to zero. However, the establishment of future capacity requirements of zero would not provide even a minimal growth flexibility and would largely undermine the intent of CALEA, which is to preserve law enforcement's ability to conduct some level of interceptions. Additionally, it is possible that law enforcement may have conducted interceptions in some of these areas before or after the period surveyed, and it may well have to do so again. History has shown that criminal activity or exigent circumstances can occur anywhere. Therefore, law enforcement must be capable of conducting a number of interceptions in all areas. Consequently, threshold future capacity requirements were developed for counties and market service areas that otherwise would have had a capacity requirement of zero under the above methodology.

For wireline telephone service offered in counties, law enforcement examined the distribution of historical interception activity and found that many counties had no interceptions, and many others had only one interception. To avoid having counties with no future capacity requirement, law enforcement decided to treat counties with zero historical interceptions as if they had one interception. Hence, when the growth factors were applied, it produced a future actual capacity requirement of two simultaneous interceptions and a future maximum capacity requirement of three simultaneous interceptions.

For the wireless market service areas, law enforcement took a similar approach. Here, too, it found that many market service areas had no interceptions during the time period surveyed. Law enforcement chose to treat these market service areas as if they had one interception. Hence, when the growth factors for wireless carriers were applied to these market service areas, the result was a future actual capacity requirement of two simultaneous interceptions and a future maximum capacity requirement of four simultaneous interceptions.

III. Statement of Capacity Requirements

A. Capacity Requirements for Wireline Carriers

Law enforcement is providing notice for the estimated number of communication interceptions, pen register and trap and trace device-based interceptions that may be conducted simultaneously in a given geographic area and has selected counties as the appropriate geographic basis for expressing capacity requirements for telecommunications carriers offering local exchange service (ie., wireline carriers). Appendix A lists all actual and maximum estimates by county. (Appendix A is available in the FBI's reading room for review.) These estimates represent the number of simultaneous call-content interceptions and interceptions of call-identifying information for each county in the United States and its territories. Wireline carriers may ascertain the actual and maximum estimates that will affect them by looking up in Appendix A the county (or counties) for which they offer local exchange service. Capacity requirements based on final estimates will remain in effect for all telecommunications carriers providing wireline service to these areas until such time as the Attorney General publishes a notice of any necessary increase in maximum capacity pursuant to section 104(c) of CALEA.

County capacity requirements represent the estimated number of all types of interceptions that may be conducted simultaneously anywhere within the county. When effective, the county capacity requirements apply to all existing and any future wireline carriers offering local exchange service in each county, regardless of the type of equipment used or the customer base. Law enforcement recognizes that some carriers may seek further clarification on applying the county capacity requirements based on the configurations of their networks and their recommended solutions. Section 103(b) of CALEA forbids law enforcement from requiring any specific design of equipment, facilities, services, features or systems. Because individual carriers configure their networks differently, and may pursue different

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solutions, the Telecommunications Industry Liaison Unit of the FBI will be available to discuss the application of these capacity requirements to a specific telecommunications carrier's network upon request.

B. Capacity Requirements for Wireless Carriers

Law enforcement is providing notice for the estimated number of communication interceptions, pen register and trap and trace device-based interceptions that may be conducted simultaneously in a given geographic area and has selected market service areas— MSAs, RSAs, MTAs, and BTAs—as the appropriate geographic basis for expressing actual and maximum capacity requirements for telecommunications carriers offering wireless services, specifically those providing cellular and PCS service (i.e., wireless carriers). Appendix B lists all actual and maximum estimates for MSAs and RSAs; Appendix C lists all actual and maximum estimates for MTAs; and Appendix D lists all the actual and maximum estimates BTAs. (Appendices B, C, D are available in the FBI's reading room for review.) These estimates represent the number of simultaneous call-content interceptions and interceptions of call-identifying information for each market service area. Capacity requirements based on final estimates will remain in effect for all wireless carriers providing service to these areas until such time as the Attorney General publishes a notice of any necessary increases in maximum capacity pursuant to section 104(c) of CALEA.

In all cases, the statement of interception capacity for a wireless market service area reflects law enforcement's estimated number of interceptions that may be conducted simultaneously anywhere in the service area. Law enforcement must be capable of conducting interceptions at any time, regardless of the location of a subject's mobile telephone device within the service area. When effective, the market service area capacity requirements apply to all existing and any future telecommunications carrier offering wireless service in each market. Law enforcement recognizes that some carriers may seek further clarification about how to apply the market service area requirements based on the configurations of their networks. Section 103(b) of CALEA forbids law enforcement from requiring any specific design of equipment, facilities, services, features or systems. Because individual carriers configure their networks differently, and may pursue different solutions, the Telecommunications Industry Liaison Unit of the FBI will be available to discuss the application of these capacity requirements to a specific telecommunications carrier's network upon request.

IV. Related Issues

A. Carrier Statement

Section 104(d) of CALEA requires that within 180 days after the publication of a Final Notice pursuant to subsections 104(a) or 104(c), a telecommunications carrier shall submit a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of call-content interceptions and interceptions of call-identifying information set forth in the notice. The information in the Carrier Statement will be used, in conjunction with law enforcement priorities and other factors, to determine the telecommunications carrier that may be eligible for cost reimbursement according to section 104.

A Telecommunications Carrier Statement Template has been developed with the assistance of the telecommunications industry to facilitate submission of the Carrier Statement. The template is not mandatory, but law enforcement encourages industry to use the template when identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of call-content interceptions and interceptions of call-identifying information set forth in the Final Notice. A diskette containing the template will be provided by TILU on request by telecommunications carriers.

The information to be solicited will include the following: Common Language Location Identifier (CLLI) code or equivalent identifier, switch model or other system or service type, and the city and state where the system or service is located. Unique information required for wireline systems and services will include the host CLLI code if the system or service is a remote, and the county or counties served by the system or service. Unique information required for wireless systems and services will include the MSA or RSA market service area number(s), or the MTA or BTA market trading area number(s) served by the system or service.

The confidentiality of the data received from the telecommunications carriers will be protected by the appropriate statute, regulation, or nondisclosure agreements.

After reviewing the Carrier Statements, the Attorney General may, subject to the availability of appropriations, agree to reimburse a carrier for costs directly associated with modifications to attain capacity requirements in accordance with the final rules on cost recovery. Decisions to enter into cost reimbursement agreements will be based on law enforcement prioritization factors.

On April 10, 1996, the Carrier Statement Notice was published in the **Federal Register** for comment under the Paperwork Reduction Act (PRA). A sixty day comment period ensued ending on June 10, 1996. The Carrier Statement Notice is subject to the approval of the Office of Management and Budget (OMB) under the auspices of the PRA. A Second Carrier Statement Notice for comment is currently being prepared for publication in the **Federal Register**. This comment period will consist of thirty days. At the conclusion of the comment period, OMB will issue a clearance number which will be published in the Final Notice of Capacity.

B. Cost Recovery Rules

CALEA authorizes the appropriation of $500 million for FY 1995 through FY 1998 for reimbursing telecommunications carriers for certain reasonable costs directly associated with achieving CALEA compliance. Section 109(e) directs the Attorney General to establish regulations, after notice and comment, for determining such reasonable costs and establishing the procedures whereby telecommunications carriers may seek reimbursement. In accordance with the section 109(e) mandate, the proposed rule was published in the **Federal Register**, 61 FR 21396, on May 10, 1996.

As authorized by section 109, and on execution of a cooperative agreement, it was proposed that a telecommunications carrier be reimbursed for the following: (1) All reasonable plant costs directly associated with the modifications performed by the carrier in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, in order to comply with section 103; (2) additional reasonable plant costs directly associated with making the requirements in section 103 reasonably achievable with respect to equipment, facilities, or services installed or deployed after January 1, 1995; and (3) reasonable plant costs directly associated with modifications of any telecommunications carriers' systems or services, as identified in the Carrier Statement, that do not have the capacity to accommodate simultaneously the number of call-

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content interceptions and interceptions of call-identifying information set forth in the Final Notice(s).

V. The Initial Notice of Capacity

A. Statement of Capacity Requirements in the Initial Notice

The capacity requirements presented in the Initial Notice were expressed as percentages of engineered capacity and were reported by category of historical interception activity levels, with each geographic area being assigned to one of three categories: I, II, and III.

Category I included the few densely populated areas that historically have had high levels of interception activity. Category II included other densely populated areas and some suburban areas where interception activity had been moderate. Category III covered all other geographic areas. All telecommunications carriers would have been required to meet the minimum requirements established for Category III. In addition, they were to be notified of those geographic areas within the areas they serve that fall in Categories I or II.

The percentages of engineered capacity applied to the equipment, facilities, and services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. The purpose of using percentages was to account for the dynamic nature and diversity of the telecommunications industry.

This approach yielded the following projections of actual and maximum capacity requirements: for Category I, 0.5 percent for actual, 1 percent for maximum; for Category II, 0.25 percent for actual, 0.5 percent for maximum; for Category III, 0.05 percent for actual, 0.25 percent for maximum.

B. Discussion of Comments on the Initial Notice of Capacity

On October 16, 1995, law enforcement's proposed future actual and maximum capacity requirements were presented in an Initial Notice published in the **Federal Register** as mandated by section 104 of CALEA. Comments on the Initial Notice were accepted through January 16, 1996. Fifty-one parties consisting of individuals, companies, and industry associations submitted comments. The following issues were identified from the comments received in response to the Initial Notice of Capacity.

1. The Use of Percentages in Lieu of Fixed Numbers

In the Initial Notice, capacity requirements were expressed as percentages of engineered capacity. Twenty-one comments were received on the use of percentages in lieu of fixed numbers. Eighteen of the comments indicated that law enforcement should use specific numbers instead of percentages for expressing its actual and maximum capacity needs and the percentages should be translated into specific numbers for each area, or for each switch before a Final Notice is issued. Two of the comments noted that supplying actual capacity figures would not require disclosure of sensitive information to the public. One comment stated that percentages would unnecessarily complicate the implementation and enforcement of CALEA. One comment stated that percentages do not meet the intent of CALEA.

After consideration of the aforementioned comments, law enforcement has concluded that capacity requirements for wireline and wirless carriers will be expressed as fixed numbers rather than as percentages.

2. Engineered Capacity

Twenty comments were received on law enforcement's expression of actual and maximum capacity requirements as a percentage of the "engineered capacity" of the equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications. Ten of the comments stated that the definition of engineered capacity was too vague and needed to be clarified. Six of the comments stated that engineered capacity applied to land line facilities only and needed to be clarified for wireless carriers. Two of the comments supported the use of "installed lines" as the measure of capacity. One comment preferred the use of voice channels as a measurement of engineered capacity for wireless systems. One comment stated that the definition of engineered capacity must be tailored to each industry segment.

In response to the aforementioned comments and from comments on the issue of percentages, law enforcement chose to use fixed numbers as the expression of its capacity needs and thus, the use of terms such as "engineered capacity" no longer have any relevance.

3. Geographic Categories

In the Initial Notice, capacity requirements were stated by category of historical interception levels with each geographic area being assigned to one of three categories: I, II, or III. Nineteen comments were received on enforcement's use of geographic categorization to state its capacity requirements. Nine of the comments stated that the notice did not indicate which geographic areas fell into a particular category and that further clarification was needed on the basis for determining categories. One of the comments noted that geographic designations were irrelevant in a wireless environment. Four of the comments remarked that counties did not necessarily correspond to a particular switch service area. One comment stated that geographic areas should be clearly defined and reasonably small. One comment requested clarification on determining capacity when geographic areas overlapped categories. Three comments stated that rural and remote areas should be classified as having Category III (lowest level) requirements.

Law enforcement considered the comments and has concluded that it will no longer use categories for stating capacity requirements. Instead, specific geographic locations to include counties for wireline carriers and market service areas for wireless carriers will be used for stating capacity requirements.

4. The Issuance of Separate Capacity Requirements to the Wireless Industry

Four comments were received on the application of the capacity requirements to the wireless industry. Two of the comments recommended that the wireline and wireless industry segments be treated separately for the purpose of issuing capacity requirements. For example, it was suggested that the geographic divisions proposed in the Initial Notice were based on a wireline central office architecture, which was inappropriate given the network structures for wireless carriers. Furthermore, two of the comments requested clarification as to how wireless carriers were expected to calculate capacity for their systems.

After consideration of the comments, law enforcement has concluded that separate capacity requirements will be established for wireless carriers.

5. Capacity Requirements in Areas With No Interception History

Three comments were received requesting that the notice address areas that lacked interception history. One comment stated that if there was no prior interception history, the capacity number should be zero while another comment suggested that a fourth category should be created for areas with sparse populations. One comment requested that law enforcement clarify whether areas with no interception

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history should be required to provide capability without specific capacity.

In its review of historical interception activity, law enforcement recognized that numerous geographic areas had not conducted interceptions during the time period surveyed, January 1, 1993 to March 1, 1995. However, law enforcement also recognized that interceptions may have occurred in these geographic areas before or after the time period surveyed and may well occur again in the future. Because history has shown that criminal activity and exigent circumstances can occur anywhere at any time, it is essential that the ability to conduct some level of interception exists in all geographic areas. Therefore, minimum capacity requirements were established for those areas that did not exhibit interception activity during the period surveyed.

6. Application of Capacity Requirements to Other Technologies

Nine comments were received on the application of the capacity requirements to other services, such as mobile satellite, Cellular Digital Packet Data (CDPD), Electronic Messaging, and Special Mobile Radio (SMR) systems. Four of the comments noted that the Initial Notice of Capacity lacked any discussion of data services and advanced services, such as CDPD, and that further clarification was needed on how to calculate capacity requirements for such services. One comment stated that the Initial Notice was too general to measure the potential impact on mobile satellite services. Four of the comments requested clarification as to how the capacity requirements would apply to SMR carriers in the manner specified.

In response to the aforementioned comments, law enforcement is issuing a Notice of Capacity applicable to carriers that offer services of the most immediate concern; those carriers offering local exchange services and certain commercial mobile radio services, specifically cellular and PCS services. Before issuing Notices applicable to carriers other than these, law enforcement will consult with such carriers in order to assess whether the expression of capacity requirements herein has any applicability to the way their services are offered.

7. Interface Recommendations

Seven comments were received on law enforcement's interface recommendations. Two of the comments requested that interface recommendations be defined. Two comments stated that telecommunications carriers needed another opportunity to comment once the interface recommendations were made available because the interface recommendations document was considered to be a prerequisite to compliance. One comment noted that capacity requirements should include delivery channels. One comment stated that the Initial Notice did not define the capability to which the capacity requirements applied.

Law enforcement is mandated by section 104 of CALEA to issue notices of actual and maximum capacity requirements. The Notice pertains solely to the fulfillment of this CALEA statutory mandate. Although law enforcement recognizes the importance of the comments regarding the interface and the capability requirements, such issues are not within the purview of the Capacity Notice.

8. Definition of Expeditious

One comment was received on the definition of expeditious as used in section 104 of CALEA regarding the expeditious expansion to maximum capacity. The comment requested that the term "expeditiously increase" be explained. The comment also requested clarification to determine the level of effort expected from telecommunications carriers and what times of day would be required to effectuate interceptions.

In response to the comment to define "expeditious expansion to maximum capacity," law enforcement considers five business days from receipt of a court order by a telecommunications carrier from a duly authorized law enforcement official, to be a reasonable amount of time to allow for incremental expansion up to the maximum capacity. The level of effort (and the time of day) required from telecommunications carriers to effectuate interceptions will be dependent on CALEA solutions and times specified in electronic surveillance court orders.

9. Definition of Simultaneous

One comment was received on the definition of simultaneous interception. The comment stated that the Initial Notice did not adequately define the term "simultaneous surveillance" so that switch capacity could be calculated.

As described in the methodology section of the instant notice, law enforcement considers interceptions occurring on the same day to be simultaneous.

10. How Surveillances Were Calculated

Two comments were received requesting clarification on how surveillances were calculated. One comment stated that law enforcement should clarify if multiple wiretap orders on the same target from different law enforcement agencies each accounted for one unit of capacity. One comment asked for clarification as to whether interception of a conference call with many multiple parties could be counted as multiple interceptions.

In calculating surveillance numbers, law enforcement considered every line specified in an electronic surveillance-related court as one unit of capacity. This unit of capacity does not include the services and features (such as a conference call with multiple parties) an investigative subject may activate.

11. Separate Requirements for Communications (Call-Content), Pen Registers, and Trap and Traces and Inclusion of National Security Interceptions

Four comments were received on the issue of releasing separate requirements for communications, pen register, and trap and trace interceptions. Two comments stated that clarification was needed to ensure that all lawful interception requirements were covered and that the requirements were the aggregate of communications, pen register, and trap and trace interceptions. One comment stated that the notice should include all surveillance types, both criminal and national security. One comment supported the notion that capacity requirements should be separated by communications, pen register, and trap and trace interceptions.

Law enforcement chose not to issue capacity requirements by surveillance type due to the unpredictable nature of the types of surveillances that may be needed for a particular investigation. Additionally, law enforcement will not issue capacity requirements for interceptions associated with national security surveillances in an unclassified document.

12. Relationship Between Notices of Capacity and the Carrier Statement

The comment received on the Carrier Statement requested clarification to assess the relationship between the Notice and the Carrier Statement.

In response to the aforementioned comment, Carrier Statement issues have been reviewed in section IV.A of this Second Notice.

13. Historical Baseline of Interception Activity

Eleven comments were received on the historical baseline of interception activity that law enforcement used to calculate its capacity requirements. Six

of the comments requested that the underlying data be made available. One comment noted that the capacity requirements must be consistent with historical information provided to law enforcement. Two comments requested that law enforcement compare law enforcement data to carrier data and that the two data sources be reconciled. One of the comments urged that the capacity requirements be established for actual numbers of simultaneous interceptions for the central office and that those numbers be based on data and information supplied by the carriers. Another comment stated that the capacity requirements should be based on historical activity.

As stated in the methodology section of this notice, law enforcement has based the capacity requirements on the historical baseline of interception activity for specific geographic areas, and included reasonable growth factors to establish capacity levels for the future. Historical baselines are provided in the appendices of the Second Notice.

14. Methodology

Eight comments were received questioning the methodology used for determining capacity requirements. Specifically, the comments asked law enforcement to explain its methodology and justify how actual and maximum capacity requirements were determined.

In response to these comments, a methodology section included as part of the Second Notice describes that means by which capacity requirements were determined.

15. Funding and Cost Impact

Fifteen comments were received on the issues of funding and cost impact. Three of the comments requested clarification on the cost impact of complying with CALEA if Congress did not appropriate funding. Two comments requested that law enforcement provide an equitable distribution plan for fund disbursement, while another suggested that law enforcement provide a reasonable assessment of the level of funding that was available for upgrades. Ten of the comments addressed the costs associated with compliance.

Issues pertaining to cost recovery and funding are not the subject or intent of this Notice. Detailed information on funding and cost recovery issues is provided in the proposed cost recovery rules that were published in the **Federal Register**, 61 FR 21396, on May 10, 1996. A summary of these rules is included in section IV.B of the Second Notice.

16. Impact on Small Carriers

Three comments were received on the effect that CALEA may have on small telephone companies. In particular, the comments indicated that high implementation costs might make compliance difficult to achieve. In addition, the comments stated that unnecessarily high capacity requirements might stifle the advancement of new and emerging telecommunications technologies in rural markets.

Law enforcement recognizes that many small carriers provide service to geographic areas that historically have had minimal or no electronic surveillance activity. The capacity requirements stated in this notice are based on the historical interception activity for a given area. In order for law enforcement to effectively respond to future incidents of unusual and unexpected criminality, minimum capacity requirements have been established for areas with no history of interceptions.

In response to the comment regarding the effect of capacity requirements on new and emerging technologies, law enforcement also recognizes that CALEA prohibits law enforcement from specifying the design of equipment, facilities, features, or systems, or adoption of any equipment, facility, service or feature by a telecommunications carrier.

17. Manufacturers' Concern

Three comments were received expressing manufacturers' concerns with the capacity requirements. One of the comments noted that the Initial Notice might require capacity expansion beyond current manufacturers' capabilities. One comment stated that SMR manufacturers might not have the products required for SMR carriers to comply with the capacity requirements. One comment stated that equipment should be designed only from the perspective of the worst case scenario.

Law enforcement has provided capacity estimates in this Second Notice that can be used by manufacturers in designing and developing CALEA-compliant solutions for wireline and wireless (cellular and PCS) technologies. Other technologies, such as SMR, will be addressed in subsequent Notices of Capacity.

18. Definitions of Installed or Deployed and Significant Upgrade

One comment requested clarification on the terms "installed" or "deployed", inquiring as to whether equipment ordered before January 1, 1995, but not delivered until after January 1, 1995, would be considered installed or deployed. Another comment stated the term significant upgrade must be clearly defined.

The terms installed or deployed and significant upgrade pertain to the assistance capability requirements and, therefore, are not within the purview of the Notices on Capacity. (It should be noted that the definition of installed or deployed was included in the proposed cost recovery rules published in the **Federal Register**, 61 FR 21396, on May 10, 1996.)

Louis J. Freeh,

Director, FBI.

[FR Doc. 97–318 Filed 1–13–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Unemployment Insurance Program Letter (UIPL) No. 9–97]

Unemployment Compensation for Federal Employees (UCFE)—Coverage Ruling for Human Subjects for Research Studies Conducted by U.S. Department of Agriculture, Agricultural Research Service

Pursuant to Employment and Training Order No. 2–92, the Director, Unemployment Insurance Service, has determined that human subjects who participate in nutritional research studies conducted by the U.S. Department of Agriculture, Agricultural Research Service, do not perform "Federal Service" within the meaning of 5 U.S.C. 8501(1) for UCFE program purposes. The UCFE Coverage Ruling No. 97–1 is published below.

Dated: January 6, 1997.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 09–97.

To: All State Employment Security Agencies.

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service.

Subject: Unemployment Compensation for Federal Employees (UCFE) Program Coverage Ruling No. 97–1, Human Subjects for Research Studies Conducted by the U.S. Department of Agriculture, Agricultural Research Service (ARS).

1. *Purpose.* To provide State Employment Security Agencies (SESAs) with a copy of the above UCFE program coverage ruling.

2. *Background.* For a complete discussion of the background of the UCFE Program Coverage Ruling No. 97–1, please refer to the *Discussion/Analysis* section of the attachment to this directive.

On August 15, 1996, the Administrator of the ARS requested that the Secretary of Labor issue a UCFE program coverage ruling on whether human subjects participating in nutritional research studies conducted by the ARS perform "Federal Service" within the meaning of 5 U.S.C. 8501(1) for UCFE program coverage purposes. The attached Coverage Ruling held that these subjects did not perform Federal service.

3. *Action Required.* SESAs should:

a. Provide copies of this directive, plus attachment, to all appropriate staff, including the Unemployment Insurance Tax and Appeals Units.

b. Follow the guidance contained in the attachment when determining the UCFE program eligibility of individuals who participated as human subjects in ARS nutritional research studies.

4. *Inquiries.* Direct inquiries to the appropriate Regional Office.

5. *Attachment.* UCFE Program Coverage Ruling No. 97–1.

UCFE Program Coverage Ruling No. 97–1

Human Subjects for Research Studies Conducted by U.S. Department of Agriculture, Agricultural Research Service

Ruling: Human subjects who participate in nutritional research studies conducted by U.S. Department of Agriculture (USDA), Agricultural Research Service (ARS), do not perform "Federal Service" within the meaning of 5 U.S.C. 8501(1).

Statement of Facts: In holding that human subjects participating in ARS nutritional studies do not perform "Federal service," I have considered the following factors:

1. Title XIV of the Food and Agriculture Act of 1977 (Public Law 95–113) provides that USDA is the lead Federal agency for agricultural research in the field of human nutrition and on the nutritive value of foods. Since 1953, the ARS is the USDA agency in charge of conducting nutritional studies.

2. Individuals who participate as "human subjects" in these nutritional studies are covered by the Common Rule for the Protection of Human Subjects (45 CFR Part 46, 7 CFR Part 1c, and ARS Directive 605.1).

3. Human subjects do not earn annual leave, sick leave, nor are they covered under any Federal employee retirement system.

4. On August 2, 1990, the Internal Revenue Service (IRS) ruled in a non-precedential decision that human test subjects in medical tests conducted by the Food and Drug Administration are not employees and do not receive "wages" for income tax withholding or Federal employment tax purposes. Priv. Ltr. Rul. 91–06–004 (Aug. 2, 1990).

5. On January 24, 1994, in a Federal Employment Tax Determination letter mailed to the Bionetics Corporation, the IRS ruled that an individual's participation as a human test subject in USDA-sponsored research was as an independent contractor and not an employee of the firm conducting the research. This letter was obtained from the ARS on August 16, 1996.

Discussion/Analysis: The purpose of the ARS nutritional research is to carry out the policy of the United States as stated in Section 1421(b) of the Food and Agricultural Act of 1977: "It is hereby declared to be the policy of the United States that the Department of Agriculture conduct research in the fields of human nutrition and on nutritive value of foods and conduct human nutrition education activities. . . ."

The individuals who agree to be human subjects for this research are treated according to the principles contained in the Common Rule for the Protection of Human Subjects, and in accord with the Nuremburg Code, the Declaration of Helsinki, and the Public Health Service Guidelines. These guiding principles are designed to ensure that human subjects are fully informed of the purpose and planned procedures to be utilized in the research, and that the individual's decision to participate is voluntary without coercion or undue influence. The human subjects receive a $35 per day stipend for as long as they participate in the study. The ARS considers the $35 per day stipend to be too small to influence or coerce an individual's decision to volunteer to be a human subject in its nutritional research studies.

The human subjects participating in these ARS nutritional studies enter into a consent agreement with the ARS nutritional studies enter into a consent agreement with the ARS. The consent agreement stipulates that the human subjects participating in the study must observe the regimen prescribed by the ARS. The human subjects agree to provide blood and other bodily samples for analyses by the research study staff. The human subjects may elect to end their participation in the study at any time prior to its completion, and failure of the human subject to comply with the experimental protocol and/or established rules will result in the human subject being asked by the ARS to leave the study.

Prior to October 1995, the ARS utilized contractors (e.g., the Bionetics Corporation) for assistance in conducting the metabolic research studies including the payment of the human subjects' stipends. In 1995, the California Employment Development Department (CEDD) informed the contractor at the ARS' Western Human Nutrition Research Center (WHNRC) that human subjects participating in nutritional studies at the WHNRC were employees of the contractor. Under California State law, the contractor became liable for State unemployment taxes based on the payment of the $35 per day stipend. In October 1995, the WHNRC assumed the responsibility for the payment of the human subjects' stipends, and the issue arose whether these subjects perform "Federal Service." All stipends provided to human subjects are now paid by the ARS.

The Unemployment Compensation for Federal Employees (UCFE) program provides unemployment compensation coverage for Federal civilian employees. In order to be eligible to receive unemployment compensation under the UCFE program, an individual must perform "Federal Service" as defined at 5 U.S.C. 8501(1). The term "Federal Service," in part, is defined to be "service performed after 1952 in the *employ* of the United States or an instrumentality of the United States which is wholly or partially owned by the United States. * * *" (Emphasis added.) Therefore, for UCFE program coverage purposes, an individual must be a civilian employee of the United States Federal Government and not an independent contractor.

In reviewing this matter I have examined the relevant statutes, regulations, and consent agreements in addition to the decisions and determinations of the CEED and the IRS in determining whether human subjects participating in nutritional research with the ARS perform service as employees or are independent contractors.

The question of whether an individual is an independent contractor or an employee is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Individuals are employees for Federal employment tax purposes if they have the status of employees under the usual common law rules applicable in determining the relationship. Guidance for making the determination is found in three substantially similar sections of the IRS Employment Tax Regulations: 26 CFR 31.3121(d)–1; 31.3306(i)–1; and 31.3401(c)–1, which relate to the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and Federal Income Tax withholding respectively, as well as IRS Revenue Ruling 87–41, 1987–1 C.B. 296. Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished but also as to the details and means by which that result is obtained. In this connection, it is not necessary that the firm actually direct or control the manner in which the services are performed; it is sufficient that the right to do so be present.

Other factors characteristic of employment are the right of the employer to discharge and the furnishing of tools or a work place. An individual who is not by statute an employee and is not an employee under the common law rules is an independent contractor. Independent contractors are subject to another's control and direction only with respect to the result to be accomplished and not the means and methods to be used.

Consideration must also be given to such factors as the continuity of the relationship and whether the individual's services are an integral part of the business of the employer as distinguished from an independent trade or business of individual in which the individual assumes the risk of realizing a profit or suffering a loss.

The pertinent facts submitted for any consideration indicate:

1. The ARS nutritional research studies are conducted in accord with the Common Rule for the Protection of Human Subjects (45 CFR Part 46, 7 CFR Part 1c, and ARS Directive 605.1), and in accord with the Nuremburg Code and the Declaration of Helsinki. These require that human subjects' participation in research must be voluntary and uncoerced. Since ARS nutritional research studies follow the above regulations and international agreements, it suggests that the human subjects are volunteers, not employees, who are subject to control and direction. Further,

I agree with the ARS that the stipend paid to the human subjects for each day they participate in the research ($35 per day) is an amount so small that it does not have an undue influence on the decision of the individual to participate in the research.

2. Human subjects who voluntarily participate in the ARS nutritional research studies enter into a consent agreement under which they agree to follow research protocols established by the ARS during the duration of the research study. A continuing relationship between the ARS and the human subjects is not established.

3. The human subjects do not produce a product or provide a service to the ARS during these research studies. Providing samples of blood and normal bodily functions is not an activity pursued as a livelihood by the human subjects.

4. The human subjects control the means and methods used to accomplish the task, i.e., the provision of samples of bodily functions. While the ARS controls the research protocols to be followed, including the schedule of sample collection, the human subjects control their own bodily functions.

5. The ARS provides no tools, supplies, or equipment to the human subjects. The ARS does use instruments during the nutritional research to collect and analyze bodily samples provided by the human subjects, however these instruments are not used by the human subjects.

6. Human subjects are not entitled to sick leave or annual leave and are not covered under any Federal Employee Retirement System.

The reasons stated above indicate that an employment relationship does not exist and support the conclusion stated in the first paragraph of this ruling that, for UCFE program purposes, human subjects who participate in nutritional research studies conducted by the USDA, ARS, do not perform "Federal Service" within the meaning of 5 U.S.C. 8501(1).

This coverage ruling is issued pursuant to redelegation of authority from the Assistant Secretary, in Employment and Training Order No. 2–92, dated April 10, 1992, (published at 57 *Fed. Reg.* 13760), which is authorized by Section 6 of Secretary's Order No. 4–75 (40 *Fed. Reg.* 18515) (as amended by Secretary's Order No. 14–75).

Dated: November 26, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 97–839 Filed 1–13–97; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–10172, et al.]

Proposed Exemptions; The Chicago Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Chicago Corporation (TCC) Located in Chicago, IL

[Application No. D–10172]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed sale, for cash or other consideration, by the Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in which employee benefit plans (the Plans) invest, of certain securities (the Securities) that are held in the BF IV Group Trust Portfolio, to a party in interest with respect to a participating Plan, where the party in interest proposes to acquire or merge with a bank company (the Bank Company) or a financial services company (the Financial Services Company) that issued such securities.

In addition, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) by Plans investing in the BF IV Group Trust to TCC.

[1] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

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This proposed exemption is subect to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the BF IV Group Trust, a Plan fiduciary which is independent of TCC and its affiliates (the Independent Fiduciary) approves such investment on behalf of the Plan.

(b) Each Plan investing in the BF IV Group Trust has total assets that are in excess of $50 million.

(c) No Plan invests more than 10 percent of its assets in beneficial interests (the Beneficial Interests) in the BF IV Group Trust and such Beneficial Interests held by the Plan may not exceed 25 percent of the Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds or separate accounts) managed or sponsored by TCC and/or its affiliates.

(e) Prior to investing in the BF IV Group Trust,

(1) Each Independent Fiduciary receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the BF IV Group Trust.

(2) An Independent Fiduciary who expresses further interest in the BF IV Group Trust receives—

(A) A copy of the Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF IV Group Trust, the manner in which Beneficial Interests may be redeemed, the duties of the parties retained to administer the BF IV Group Trust and the manner in which BF IV Group Trust assets will be valued;

(B) A copy of the Investment Management Agreement describing the duties and responsibilities of TCC, as investment manager of the BF IV Group Trust, the rate of compensation that it will be paid and conditions under which TCC may be terminated; and

(C) Copies of the proposed exemption and grant notice covering the exemptive relief provided herein.

(3) If accepted as an investor in the Group Trust, the Independent Fiduciary is—

(A) Furnished with the names and addresses of all other participating Plans;

(B) Required to acknowledge, in writing, prior to purchasing a Beneficial Interest in the BF IV Group Trust that such Independent Fiduciary has received copies of such documents; and

(C) Required to acknowledge, in writing, to TCC that such fiduciary is independent of TCC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

(f) Each Plan, including the trustee (the Trustee) of the BF IV Group Trust, receives the following written disclosures from TCC with respect to its ongoing participation in the BF IV Group Trust:

(1) Within 120 days after the end of each fiscal year of the BF IV Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF IV Group Trust as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the fees paid or accrued to TCC.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF IV Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the BF IV Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the fees that are actually paid to or accrued to TCC.

(3) Such other information as may be reasonably requested by the Plans or the Trustee (e.g., certain trading activity and portfolio status reports provided to the Trustee as required by Prohibited Transaction Exemption (PTE) 86–128 (51 FR 41686, November 16, 1986) in order to comply with the reporting requirements of the Act and the Code.

(g) At least annually, TCC holds a meeting of the participating Plans at which time the Independent Fiduciaries of investing Plans are given the opportunity to decide on whether the BF IV Group Trust, the Trustee or TCC should be terminated as well as to discuss any aspect of the BF IV Group Trust and the agreements promulgated thereunder with TCC.

(h) During each year of the BF IV Group Trust's existence, TCC representatives are available to confer by telephone or in person with Independent Fiduciaries on matters concerning such Group Trust.

(i) The terms of all transactions that are entered into on behalf of the BF IV Group Trust by TCC remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the BF IV Group Trust that is done in connection with the payment of Performance Fees is based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser (the Independent Appraiser).

(j) In the case of the sale by the BF IV Group Trust of Securities to a party in interest with respect to a participating Plan, the party in interest is not TCC, any employer of a participating Plan, or any affiliated thereof, and the BF IV Group Trust receives the same terms as is offered to other shareholders of a Bank Company or a Financial Services Company.

(k) As to each Plan, the total fees paid to TCC and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(l) TCC's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard,

(1) The Performance Fee is not to be paid before December 31, 2001, which represents the completion of the projected acquisition phase (the Acquisition Phase) of the BF IV Group Trust, and not until all participating Plans have received distributions equal to 100 percent of their capital contributions made to the BF IV Group Trust.

(2) Prior to the termination of the BF IV Group Trust, no more than 75 percent of the Performance Fee credited to TCC is withdrawn from such Group Trust.

(3) The Performance Fee account established for TCC is credited with realized gains and losses and charged for net unrealized losses and fee payments.

(4) No portion of the Performance Fee is withdrawn if the Performance Fee Account is in a deficit position.

(5) TCC repays all deficits in its Performance Fee account and it maintains a 25 percent cushion in such account before receiving any further fee payment.

(m) Either TCC or the Trustee, on behalf of Plans participating in the BF IV Group Trust, may terminate the Investment Management Agreement at any time pursuant to the provisions in such agreement.

(n) TCC maintains, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than TCC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of TCC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) the term "TCC" means The Chicago Corporation and any affiliate of TCC as defined in paragraph (b) of Section III.

(b) An "affiliate" of TCC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TCC.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An "Independent Fiduciary" is a Plan fiduciary who is independent of TCC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of Beneficial Interests in the BF IV Group Trust or an investment manager.

Preamble

On September 22, 1993, the Department granted PTE 93–63 (58 FR 49322), a temporary exemption which is effective for a period of eight years from the date of the grant. PTE 93–63 permits a series of transactions relating to the (a) sale by the Bank Fund III Group Trust (the BF III Group Trust) in which Plans invest, of certain Securities which have been issued by Bank Companies and are held in the BF III Group Trust's portfolio, to a party in interest with respect to a Plan, where the party in interest proposes to acquire or merge with the Bank Company that issued such securities. In addition, PTE 93–63 permits the BF III Group Trust to purchase Bank Company Securities from the Midwest Bank Fund I Limited Partnership (MBF I LP) and the Midwest Bank Fund II, Limited Partnership (MBF II LP), two entities organized by TCC. Further, PTE 93–63, allows Plans investing in the BF III Group Trust to pay a Performance Fee to TCC.

The pooled investment fund that is described herein (i.e., the BF IV Group Trust) is virtually identical to the pooled investment fund that is described in PTE 93–63 as well as other funds organized by TCC. The transactions described herein are generally patterned after the exemptive relief described in PTE 93–63. However, no cross-trading transactions under this exemption will be permitted. Also, permanent exemptive relief is being provided.

Summary of Facts and Representations

1. TCC is an investment services firm founded in 1965 in Chicago, Illinois to serve the needs of financial institutions, corporations, governments, individual investors, fiduciaries and securities and commodities dealers. TCC is a registered investment adviser under the Investment Advisers Act of 1940, as amended. It is also registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member in good standing with various national and regional securities exchanges. By virtue of its exchange memberships, TCC is an exchange specialist for many securities as well as an over-the-counter market maker in other securities. As of March 31, 1995, TCC had total assets of $507 million.

TCC has four principal lines of business. First TCC provides institutional investors with investment research and trade execution services for listed and unlisted equity and fixed income securities, options and futures. Second, TCC's investment banking group provides corporations with assistance in capital planning and in facilitating and arranging for corporate mergers and acquisitions as well as underwriting. Third, TCC's asset management group provides investment management services to a broad range of clients, including Plans, through separate accounts. In this regard, TCC currently manages $3.545 billion in client Plan assets in 259 separate accounts. Fourth, TCC provides securities firms, futures commission merchants and professional investors with exchange floor execution and clearing services.

TCC's relevant specialty is provided by its banking group which, in addition to the services described above, provides management, investment and capital formation services to collective investment vehicles which invest in commercial banks and other financial institutions. The banking group possesses detailed knowledge of the banking industry and other financial institutions such as consumer finance companies and stock insurance companies. It researches financial institutions, underwrites the securities of these institutions and acts as consultants or organizers of merger and acquisition projects.

During 1997, it is anticipated that TCC's parent will be acquired by ABN AMRO North America, Inc., a subsidiary of ABN AMRO Bank N.V., a global bank headquartered in the Netherlands. The acquisition will not involve the purchase of the assets of TCC's parent and TCC will retain its separate corporate identity.

2. In 1989, TCC organized the MBF II LP as a limited partnership with the investors acting as the limited partners. The general partners of MBF II LP are partnerships (MidBanc I and MidBanc II), whose general partners are corporate affiliates of TCC and whose limited partners are the members of TCC staff who are responsible for managing the MBF II LP. Less than 25 percent of the funds invested in the MBF II LP have been provided by Plans. According to the applicant, the portfolios of these funds do not constitute "plan assets" within the meaning of 29 CFR 2510.3–101 and TCC has not assumed the role of a fiduciary with respect to these investing Plans.[2]

[2] TCC also organized the MBF I LP in 1986. This limited partnership shared the same general partners and types of investments as MBF II LP.

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In 1993, TCC completed the organization of the BF III Group Trust and the Bank Fund III Limited Partnership (the BF III LP) [3] whose objectives were somewhat identical to those formulated for the MBF II LP. Taxable investors acquired an interest in the BF III LP, the general partner of which is MidBanc III, L.P., a limited partnership of which Chicorp Management III, Inc. is the general partner.[4]

3. The MBF II LP and the BF III invest in subregional banks that are located in the United States.[5] In this regard, these entities acquire minority investments in Bank Companies that may be potential candidates for acquisition by other entities or at public offerings. Interests in Bank Companies can be acquired in freely-traded public securities, on either exchanges or in the over-the-counter markets, or in private transactions.

4. The MBF II LP and BF III have pre-defined terms of existence and defined activity periods within those terms. For example, the MBF II LP has an eight year term between organization and liquidation. The first five years represent the acquisition phase (the Acquisition phase). Once those five years elapse, no further acquisitions of Bank Company Securities can be made except under limited circumstances. The last three years of the term of the MFB II LP will be used to liquidate the portfolio.

5. TCC proposes to organize Banc Fund IV (BF IV) as two separate and distinct entities sharing the same investment philosophy and strategy, similar (if not identical) portfolios and operational methods as those formulated for the MBF II LP and the BF III. Taxable investors will acquire an interest in the Banc Fund IV Limited Partnership (the BF IV LP). The general partner of the BF IV LP will be MidBanc IV, L.P., a limited partnership of which Chicorp Management IV, Inc., a wholly owned subsidiary of TCC's parent corporation, is the general partner.

In addition to the BF IV LP, approximately 5–10 Plans will acquire Beneficial Interests in the BF IV Group Trust which will be a tax-exempt entity pursuant to Revenue Ruling 81–100, 1981–1 C.B. 326.[6] The BF IV Group Trust and the BF IV LP will not be organized unless $50 million in capital contribution commitments are subscribed for by investors in both entities. Unless extended, the BF IV Group Trust and the BF IV LP will terminate on December 31, 2003.

Investments by both the BF IV Group Trust and the BF IV LP may be made in the equities and debt instruments of Bank Companies such as commercial banks and other depository institutions. BF IV may also acquire interests in Financial Services Companies such as consumer finance companies and demutualizing insurance companies. All of these entities will be located in the United States.

6. It is anticipated that Citibank will act as the trustee of the BF IV Group Trust. In this capacity, the Trustee will be responsible for retaining TCC or such other investment manager for the BF IV Group Trust. The Trustee will also be responsible for monitoring TCC's compliance with the established investment philosophy of the BF IV Group Trust and for policing TCC's adherence to the provisions of the Investment Management Agreement.

For services rendered, the Trustee is entitled to receive the following annualized fees that will be paid quarterly and in arrears: (a) a base fee of $1,500; (b) a proportionate fee based upon the combined market value of the BF IV Group Trust and the BF IV LP at the beginning of the quarter representing (i) 0.02 percent of the first $100 million and (ii) 0.01 percent of any amount over $100 million; and a transaction fee of $12 per purchase or sale and a disbursement fee of $8 per payment of funds from the BF IV Group Trust. In accordance with the provisions of the Group Trust Agreement, the Trustee may be removed by a vote of Plans holding a majority of the Beneficial Interests in the BF IV Group Trust, provided such Plans give the Trustee 30 days' advance written notice of their intent to terminate the Trustee.

Although TCC may have and may have had business relationships with the Trustee, there will be no control relationship or ownership-based affiliation between TCC and the Trustee. Further, no Plan sponsored by TCC will be permitted to invest in the BF IV Group Trust.[7]

7. Interests in the BF IV Group Trust are referred to as "Beneficial Interests." [8] All investors that are beneficiaries of the BF IV Group Trust must evidence the following characteristics in order to acquire Beneficial Interests: (a) Each must commit to making at least $1 million in initial capital contributions; (b) each investor must be a Plan; (c) each Plan mut have at least $50 million in assets; (d) each Plan must agree to incorporate the terms of the Group Trust Agreement into its own trust agreement; (e) no Plan may invest more than 10 percent of its assets in Beneficial Interests in the BF IV Group Trust and such Beneficial Interests held by a Plan may not exceed 25 percent of such Group Trust; and (f) no Plan may subscribe for Beneficial Interests which, when aggregated with all other Plan assets that are subject to investment funds or separate accounts managed by TCC and/or its affiliates, is valued in excess of 25 percent of such Plan's net assets.

8. The Group Trust Agreement provides that each Plan's commitment to contribute will be divided into 20 equal segments. TCC, as investment manager, may call any amount of these installments, upon 14 days' advance written notice, when cash is needed to fund the acquisition of the Securities.[9] However, there are two limitations upon TCC's power to call contributions. First,

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Moreover, less than 25 percent of its assets were provided by Plans. On January 1, 1995, MBF I LP reached the end of its term and final liquidations were made.

[3] The BF III Group Trust and the BF III LP are collectively referred to herein as BF III.

[4] The limited partners of the MidBanc III, L.P. are the individuals who are responsible for the management of BF III. Chicorp Management III, Inc. is a wholly owned subsidiary of Chicorp, Inc., which is the holding company of TCC.

[5] In the case of MBF II LP, these banks are located in the Midwestern United States. In the case of BF III and proposed BF IV Group Trust, there are no geographic restrictions.

[6] TCC believes it is appropriate to organize the BF IV Group Trust separate from the BF IV LP in order that the assets of the Group Trust may be regarded as "plan assets" and the requirements of the Act may otherwise be complied with in a separate entity.

[7] Although TCC and the Trustee will not be affiliated with, or under the control of or controlling any participating Plan, the applicant represents that it is likely that certain participating Plans may have a pre-existing relationship with TCC in the form of investment in the MBF II LP or the BF III. The applicant believes it is possible that a Plan participating in the BF IV Group Trust may utilize the services of the Trustee with respect to certain of its other assets that are not invested in such Group Trust. In this regard, the applicant is not requesting, nor is the Department providing, exemptive relief with respect therefor.

[8] The Department is not proposing, nor in the applicant requesting herein, exemptive relief for the purchase and sale of Beneficial Interests in the BF IV Group Trust between the Trustee and the investing Plans beyond that provided under section 408(b)(8) of the Act.

[9] If an investing Plan cannot or does not meet a capital call, the Trust Agreement provides that ten days after the investor receives notice of default on a capital call, TCC may (a) permit the investor's continued participation in the BF IV Group Trust with a commensurate reduction in both the investor's proportionate interest in such Group Trust and aggregate size of the Group Trust; (b) declare the investor's entire capital commitment due and pursue collection of the same; or (c) expel, at fair market value, the defaulting investor and offer its interest in the BF IV Group Trust first to the non-defaulting investors and then to non-investors who are qualified to invest in such Group Trust. In making the choice between these alternatives, it is represented that TCC will be guided by then-current investment strategies and the best interest of the non-defaulting investors.

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no more than 50 percent of the contribution commitment may be called in any twelve month period. Second, TCC cannot call any contributions after the sixth anniversary date of the inception of the BF IV Group Trust (the period running from the date on which initial capital contributions are made to such sixth anniversary being referred to as "the Acquisition Period").

9. The terms of the BF IV Group Trust prescribe the content of the Investment Management Agreement. For example, TCC, at its own expense, will provide the BF IV Group Trust with personnel who are able to perform the administrative functions of the Group Trust. In addition, TCC, at its own expense, will provide the BF IV Group Trust with office space, telephones, copying machines, postage and all other necessary items of office services. Further, TCC will control proxy voting on all portfolio securities.[10]

The Investment Management Agreement permits TCC to provide brokerage services in an agency capacity. To the extent that TCC utilizes its own services in connection with brokerage services provided to the BF IV Group Trust, it will comply fully with state and federal securities laws as well as with PTE 86–128.[11]

The Investment Management Agreement may be terminated by either the Trustee, on behalf of the Plans, or by TCC at any time, subject to the following provisions. If the termination is a "Justified Termination," [12] the Investment Management Agreement can be terminated by the Trustee unilaterally. However, if the termination is a "Non-Justified Termination," it cannot be terminated unilaterally by the Trustee. In such case, the Trustee must first obtain the approval of Plans holding at least two-thirds of the Beneficial Interests in the BF IV Group Trust. Further, as a precondition to a "Non-Justified Termination," the terminating party must provide the other party with 60 days' advance written notice of its intent to terminate.

10. In general, Beneficial Interests in the BF IV Group Trust will not be assignable, and no Plan may assign or otherwise transfer, pledge or otherwise encumber any or all of its interest in the Group Trust except for the purpose of redemption. Redemptions are limited to situations where (a) a replacement Plan is available from either current Plans investing in BF IV or there are new, qualified investors; (b) a Plan submits to TCC and the Trustee, a written opinion of counsel to the effect that the Plan's continued participation in the BF IV Group Trust would violate the Act and that relief from the violation cannot be obtained; (c) the Plan loses its tax-exempt status and that loss threatens the tax-exempt status of the BF IV Group Trust; and (d) the BF IV Group Trust loses its tax-exempt status or fails to obtain the exemptive relief proposed herein for the necessary operation of such Group Trust. This information will be disclosed to investors.

11. The decision to participate in the BF IV Group Trust will be made by a plan fiduciary who is independent of TCC and the Trustee. In each instance, the Plan fiduciary who makes the investment decision will agree not to rely on either the advice of TCC or the Trustee as the primary basis for a Plan's investment and the Independent Fiduciary will be specifically required to do so in every instance.[13] TCC represents that the decision of a Plan to invest in the BF IV Group Trust will be made by an unrelated Plan fiduciary acting on the basis of his or her own investigation into the advisability of investing in the Group Trust.[14]

12. An Independent Fiduciary of each Plan proposing to invest in the BF IV Group Trust will be provided with a copy of the Private Placement Memorandum by TCC. The Private Placement Memorandum will describe all material facts concerning the purpose, structure and operation of the BF IV Group Trust. If the Independent Fiduciary expresses further interest in participating in the BF IV Group Trust, such Independent Fiduciary will be provided with copies of the Group Trust Agreement outlining the organization principles, investment objectives and administration of the BF IV Group Trust, the procedure for the redemption of Beneficial Interests, the duties of the parties retained to administer the BF IV Group Trust and the manner in which Group Trust assets will be valued. The Independent Fiduciary will also be provided with a copy of the Investment Management Agreement which describes the duties and responsibilities of TCC, as investment manager of the BF IV Group Trust, the fees that will be paid to TCC, the conditions under which TCC may be terminated and the functions of the Independent Appraiser which may be retained under certain circumstances. Once the Independent Fiduciary has made a decision to invest in the BF IV Group Trust, TCC will provide such Independent Fiduciary with the names and addresses of all other participating Plans. The Independent Fiduciary will be required to acknowledge, in writing, prior to purchasing a Beneficial Interest in the BF IV Group Trust that such fiduciary has received copies of such documents.

The Independent Fiduciary will also be required to acknowledge, in writing, to TCC that such fiduciary is independent of TCC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

13. TCC will prepare, or cause to be prepared on behalf of the BF IV Group Trust, the following reports with respect to the ongoing operations of the Group Trust: (a) Trading Activity and Portfolio Status Reports, for the Trustees, as required by PTE 86–128; (b) annual audited financial statements for the Trustee and the Plans; and (c) quarterly unaudited financial statements for the Trustee and Plan investors. The annual financial statements will contain a balance sheet for the BF IV Group Trust as of the end of the applicable fiscal year and a statement describing changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual financial report

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[10] The Department is not providing exemptive relief herein for any prohibited transactions that may arise as a result of proxy voting on the part of TCC. The Department also notes that the general standards of fiduciary conduct promulgated under the Act would apply to such voting practices.

[11] The Department expresses no opinion on whether the effecting of securities transactions by TCC will comply with the terms and conditions of PTE 86–128.

[12] A Justified Termination will occur if it is caused by: (a) a material breach of the Investment Management Agreement by the party that is not seeking to terminate such Agreement; (b) a material violation of the Act that has already occurred or will occur absent termination of the Investment Management Agreement; or (c) the disassociation of key personnel (i.e., those upon whom the Plans relied in making their investment) from TCC without being replaced by individuals who are approved by a majority of the Plans.

[13] The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the BF IV Group Trust by an Independent Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Fiduciary must act prudently with respect to the decision to invest in the BF IV Group Trust. The Department expects that an Independent Fiduciary, prior to investing in the BF IV Group Trust, to fully understand all aspects of such investment following disclosure by TCC of all relevant information. (For a further discussion of these disclosures, see Representation 12 above.)

[14] The Department is not expressing an opinion on whether TCC or the Trustee would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act with respect to a Plan's investment in the BF IV Group Trust. The Department is also not proposing relief for the rendering of investment advice in connection with the acquisition of Beneficial Interests in the BF IV Group Trust.

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will also specify the fees that are payable or accruable to TCC. TCC will make the annual financial report available to the Trustee and each Plan within 120 days after the end of each fiscal year of the BF IV Group Trust. Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF IV Group Trust, TCC will prepare and distribute an unaudited quarterly financial report to the Trustee and each Plan investor. The report will consist of at least a balance sheet for the BF IV Group Trust as of the end of fiscal year quarter and a profit and loss statement for such quarter. The quarterly financial report will also disclose the fees that are payable or accruable to TCC.

In addition to the foregoing reports, TCC will prepare and distribute to the BF IV Group Trust and each Plan such other information as may be reasonably requested by the Plans, including such information as a Plan may request in order to comply with the reporting requirements of the Act or Code.

14. A meeting of the participating Plans and TCC will be held at least annually. The meeting will afford Independent Fiduciaries an opportunity to decide on whether the BF IV Group Trust should be terminated, whether the Trustee should be removed or whether the Investment Management Agreement should be terminated, if the situation warrants. However, before any termination can take place, the advance notification requirements for termination discussed above must be complied with. Also at the annual meeting, TCC representatives will be available to discuss any aspect of the BF IV Group Trust and the agreements promulgated thereunder with Independent Fiduciaries. Such meetings will be conducted in either TCC's offices or in the offices of the Independent Fiduciaries.

15. During the Acquisition Phase for the BF IV Group Trust, any net gains realized on portfolio sales will be distributed to Plan investors but the original cost of the Security that is sold will be reinvested.[15] From the seventh year of the Group Trust through its termination, the net proceeds from sales of portfolio Securities will be distributed unless the proceeds are needed to honor pre-seventh year investment commitments or to protect pre-seventh year investments.[16]

16. Under the Investment Management Agreement, two types of fees will be payable to TCC by the BF IV Group Trust. These fees are the Management Fee and the Performance Fee, the components of which are described below. TCC's Management Fee, which is independent of the Performance Fee, is intended to cover the day-to-day operating expenses of the BF IV Group Trust. TCC represents that the Management Fee is covered by the statutory exemptive relief available under section 408(b)(2) of the Act.[17] With respect to the Performance Fee, TCC is requesting administrative exemptive relief from the Department.

(a) The annualized *Management Fee* will be payable to TCC monthly in arrears during each fiscal year the BF IV Group Trust is in existence. The Management Fee will be based upon a percentage of the aggregate capital contributions committed to both the BF IV Group Trust and the BF IV LP (the Management Fee Base). It will be equal to (1) the sum of 5 percent of the first $35 million of the Management Fee Base plus (2) 0.84 percent of the Management Fee Base in excess of $35 million, multiplied by (3) a fraction (the Trust Share), the numerator of which is the amount of capital contributions committed to the BF IV Group Trust and the denominator of which is the aggregate of the capital contributions made to the BF IV Group Trust and the BF IV LP.[18] The Management Fee will not exceed 2 percent of committed capital when all capital is contributed, even if BF IV is capitalized at less than $125 million.

After the end of the Acquisition Phase, the Management Fee will be subject to certain adjustments, particularly as distributions are made to Plan investors.[19] If, as a result of distributions to Plan investors, capital contributions made by Plans are reduced to 50 percent or less of the original aggregate capital contributions to the BF IV Group Trust, the Trust Share of the Management Fee will be reduced to 70 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said payment was completed, and upon the payment to the Plans of an amount sufficient to reduce to 25 percent or less of their total capital contributions to the BF IV Group Trust, the Trust Share of the Management Fee will be reduced to 50 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said payment was completed.

(b) *The Performance Fee* that will be accruable to TCC for each fiscal year of the Group Trust, will be equal to 20 percent of ((1) the excess, if any of (a) the cumulative total of realized capital gains from the inception of the BF IV Group Trust through the end of such fiscal year over (b) the cumulative total of realized capital losses during the term, less (2) any unrealized losses in the BF IV Group Trust portfolio at the end of such period in excess of unrealized appreciation in the Portfolio) and, the amount of such fee previously accrued. The amount of the annual Performance Fee that is accruable to TCC will be determined after the annual audit of the BF IV Group Trust as described in Representation 13. The calculation of the Performance Fee will be made within 60 days of the BF IV Group Trust's fiscal year end. Specifically, Securities will be valued as of the close of business on the last day of the Group Trust's fiscal year.

The Performance Fee will be further subject to the following terms and conditions:

(1) *Fee Base.* As stated above, the amount credited to TCC as the Performance Fee will be equal to a percentage of realized gains minus realized and net unrealized losses. Such

[15] According to the applicant, cash dividends that are received by the BF IV Group Trust from investments in Securities will be distributed to investors on an annual basis. Stock dividends will be retained by the BF IV Group Trust until the original portfolio investment is sold.

[16] The applicant explains that these exceptions to the general distribution rules are disclosed to investors in the Group Trust Agreement. With respect to the commitment exception, the applicant states that it is meant to cover situations where the BF IV Group Trust enters into an installment-type purchase agreement or some other contingency contract prior to the seventh year of its existence. In this connection, the applicant explains that TCC may have determined that the BF IV Group Trust should own a certain percentage of the Securities of a Bank Company or a Financial Services Company, but the requisite number of shares might not be available at that time. Under these circumstances, the applicant states that the BF IV Group Trust might enter into an agreement to purchase such Securities as they become available, even if the availability does not occur until after the sixth year.

[17] The Department expresses no opinion herein on whether TCC's receipt of the Management Fee will satisfy the terms and conditions of section 408(b)(2) of the Act.

[18] By aggregating capital contributions that are made by the BF IV Group Trust with those made to the BF IV LP and by allocating the dollar amount between both entities in proportion to their respective size, TCC represents that all investors will be charged a lower Management Fee. TCC believes that by computing the Management Fee in this manner more appropriately reflects the unified investment management of the BF IV Group Trust and the BF IV LP. The Department, however, expresses no opinion as to whether this arrangement for computing the Management Fee satisfies the "reasonable compensation" requirements of section 408(b)(2) of the Act and the applicable regulations.

[19] All distributions, with the exception of interest income and cash dividends, count as returns of capital.

amount will be credited to TCC annually.

(2) *Limited Deferral/Return of Capital.* The Performance Fee will be paid after December 31, 2001 which is the completion of the Acquisition Phase for the BF IV Group Trust and it cannot be paid until all participating Plans have received distributions equal to 100 percent of their capital contributions made to the BF IV Group Trust.[20]

(3) *Reduced Availability.* Prior to the termination of the Group Trust, only 75 percent of what is credited to TCC as the Performance Fee may be withdrawn from the BF IV Group Trust after the Acquisition Phase.

(4) *Charges.* The Performance Fee account will be charged for realized losses, net unrealized losses and fee payments. Thus, the fee cannot be drawn when the Performance Fee account is in a deficit position.

(5) *Fee Repayment/25 Percent Cushion.* TCC must repay any deficit in the Performance Fee account and it must also maintain a 25 percent cushion in such account.

The following examples illustrate the calculation of TCC's Performance Fee. Although the Performance Fee is paid annually and there are only two years of the BF IV Group Trust's expected term during which this fee can be drawn upon (i.e., 2002 and 2003), for purposes of illustration, four draw years have been assumed.

EXAMPLE #1

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or refund
1	$800	$160	$120	$120
2	200	40	30	(90)
3	1,000	200	150	120
4	700	140	105	(45)

Year 1 Assume that when the Performance Fee first becomes payable in 2002, the BF IV Group Trust's Cumulative Net Position is $800. TCC's Performance Fee is 20% of $200 or $160. TCC may draw 75% of the $160 or $120.[21]

Year 2 The BF IV Group Trust's Cumulative Net Position at the end of the Year 2 is $200. The Performance Fee is 20% of $200 or $40. TCC is entitled to draw $30, but since it has previously drawn $120, it must refund $90.

Year 3 The BF IV Group Trust now has a Cumulative Net Position of $1,000. The Performance Fee is $200 with a permitted draw of $150. Because TCC has previously draw a net amount of $30 at the end of Year 2 (i.e., $120–$90), it may now draw an additional $120.

Year 4 The BF IV Group Trust's Cumulative Net Position falls to $700 and the Performance Fee falls to $140. The 75% draw equals $105, but TCC has previously drawn a total of $150 (i.e., $120–$90+$120). Therefore, TCC must make a refund to the BF IV Group Trust of $45.

EXAMPLE #2

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or refund
1	$2,000	$400	$300	$300
2	1,000	200	150	(150)
3	500	100	75	(75)
4	900	180	135	60

Year 1 Assume that when the Performance Fee first becomes payable in 2002, the Cumulative Net Position for the BF IV Group Trust is $2,000. TCC's Performance Fee is 20% of $2,000 or $400. TCC may draw 75% of the $400 fee or $300. $100 or 25% of the draw amount must be left in the BF IV Group Trust as a cushion.[22]

Year 2 The Cumulative Net Position for the BF IV Group Trust at the end of Year 2 has fallen to $1,000. The Performance Fee is 20% of $1,000 or $200. TCC is entitled to draw $150, but since it has previously drawn $300, it must refund $150.

Year 3 The Cumulative Net Position for the BF IV Group Trust has fallen to $500. The Performance Fee now falls to $100 (i.e., 20% of $500) with a permitted draw of $75 and a cushion of $25. Because TCC has previously drawn $150 ($300–$150), it must make a refund to the BF IV Group Trust of $75.

Year 4 The Cumulative Net Position for the BF IV Group Trust is $900 at the end of Year 4. TCC's Performance Fee is 20% of $900 of $180. The 75% draw on the Performance Fee equals $135. However, since TCC has previously drawn a total of $75 ($300–$150–$75), it may now draw a Performance Fee of $60.

17. In the event of a premature termination of the Investment Management Agreement, special fee arrangements will be effective as follows:

(a) If the termination occurs prior to the third full fiscal year of the Investment Management Agreement's existence (i.e., before January 1, 1999) and it is either a Justified Termination by TCC or a non-Justified Termination by the Trustee, TCC will be entitled to receive a fee equal to the sum of (1) 20 percent of net realized gains to the date the agreement was terminated plus (2) 20 percent of the aggregate of unrealized gains net of unrealized losses

[20] For purposes of calculating the Performance Fee, cash dividends and interest are not included in the computation of the return of capital to Plan investors. As such, cash dividends do not affect the calculation of the amount of the Performance Fee or the time such fee can be first paid, even if the return of capital occurs before December 31, 2001.

[21] The assumption is, for purposes of this example, that all Plans investing in the BF IV Group Trust have received a 100 percent return of their capital contributions.

[22] The assumption is again, for purposes of this example, that all Plans investing in the BF IV Group Trust have received a 100 percent return of their capital contributions.

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determined on the date the agreement was terminated. (For purposes of determining net unrealized gains or net unrealized losses, TCC will utilize an independent appraiser to value Securities for which there are no independent market quotations.) Payment of this fee will be deferred until the termination of the BF IV Group Trust. In addition, TCC will not be required to make payments to the BF IV Group Trust in the event a loss to such Group Trust occurs.

(b) If the termination of the Investment Management Agreement occurs after the third full fiscal year of the BF IV Group Trust and is either a Non-Justified Termination by the Trustee or a Justified Termination by TCC, TCC will be entitled to its regular Performance Fee. However, payment will be deferred to the termination of the Group Trust.

(c) If TCC declares a Non-Justified Termination at any time, it has no enforceable right to receive a Performance Fee under the terms of the Investment Management Agreement.

(d) If the Trustee, on behalf of the BF IV Group Trust, declares a Justified Termination at any time, TCC has no enforceable right to receive a Performance Fee under the terms of the Investment Management Agreement. However, if the Justified Termination involves a violation of the Act and such violation has not been caused by TCC's gross misconduct (e.g., the law changes in a manner that would prohibit prospectively an important part of TCC's management of the BF IV Group Trust), TCC will be entitled to the Performance Fee it would have earned through the date of the termination of the Investment Management Agreement. Payment will again be deferred until the termination of the BF IV Group Trust.[23]

18. The BF IV Group Trust will terminate upon the earliest to occur of (a) the complete distribution of its assets, (b) a vote in favor of termination by two-thirds of the Plans holding Beneficial Interests or (c) December 31, 2003. The Group Trust may be extended by a two-thirds affirmative vote of those Plans holding Beneficial Interests therein. (For termination of the Trustee under the Group Trust Agreement and the termination of TCC under the Investment Management Agreement, see Representations 6, 9 and 17 of this proposed exemption.)

[23] If an early termination of the Investment Management Agreement occurs, the applicant states that the Trustee, on behalf of the BF IV Group Trust, and TCC will initially attempt to agree on whether the termination is Justified or Non-Justified. If the parties are unable to agree, judicial proceedings will be instituted as a final means of resolution.

Upon termination of the BF IV Group Trust, all portfolio positions will be liquidated, Group Trust expenses (including TCC's Performance Fee) will be paid and distributions will be made. If all assets cannot be converted into cash or if it would be disadvantageous to liquidate every asset, remaining assets may be distributed in-kind. TCC will then receive a fractional portion of its fee in-kind.

TCC has exclusive authority over the sale of portfolio securities so it will make liquidation decisions. The Trustee will pay all expenses of the BF IV Group Trust at the direction of TCC. Although TCC will be responsible for directing the Trustee to make distributions, TCC's discretion will not be unlimited. Rather, as amounts are available for distribution, TCC will be required to make distributions in accordance with the provisions of the Group Trust Agreement.

The following example illustrates the manner in which in-kind distributions will be made by TCC:

Assume that all Plans investing in the BF IV Group Trust have received a 100% return of capital. Assume also that there are only two Plans investing in the BF IV Group Trust. Plan A has a Beneficial Interest worth $60 and Plan B has a Beneficial Interest worth $40.

The BF IV Group Trust holds 100 shares of Securities in Bank X which it acquired for $5 per share. Upon termination of the Group Trust, Bank X Securities is worth $7 per share.

The total unrealized gain attributable to Bank X Securities is ($7 − $5)×100=$200.

TCC's Performance Fee is equal to $200×20%=$40. TCC receives $40÷$7=5.7 shares of Bank X Securities.

Plan A receives 60%×94.3=56.6 shares of Bank X Securities.

Plan B receives 40%×94.3=37.7 shares of Bank X Securities.

19. Valuations of (and for) the BF IV Group Trust will be needed for redemptions, acquisitions by the BF IV Group Trust, in connection with in-kind distributions and to pay TCC's Performance Fee. The valuations will be made by TCC for Securities for which independent market quotations are readily available. In situations where no independent market quotations are readily available, an Independent Appraiser will be appointed as described below.

(a) *National Exchange—Regular Trades.* Any Security which is listed on a national securities exchange will be valued based on its last sales price on the national securities exchange on which the security is principally traded on the valuation date.[24] If the valuation date is not a date on which the exchange was open for trading, the value will be determined in the same manner as if the valuation date was the last prior date on which the exchange was open for trading.

(b) *National Exchange—No Trades.* If no sale of a Security listed on a national securities exchange occurred on either of the dates described in clause (a) above, the security will be valued based on the last bid price on the exchange on which the security was publicly-traded.[25]

(c) *No Independent Market or No Listing—Use of the Independent Appraiser.* In the event that there is no independent market for a Security or the Security is not listed on a national securities exchange (e.g., a small bank with 5 shareholders), the Independent Appraiser will be required to value such securities. TCC will utilize the Independent Appraiser to value Securities in connection with the in-kind distributions by the BF IV Group Trust, the redemption of Beneficial Interests in the BF IV Group Trust or to determine TCC's Performance Fee.

Although TCC will nominate the Independent Appraiser, Plans will be given the option of either approving or disapproving of the nominee. The Independent Appraiser will not be appointed absent the affirmative written approval of a majority of the Plans investing in the BF IV Group Trust. However, the Plans will have no veto power over TCC's decision that an Independent Appraiser is required.

Each member of the Independent Appraiser (currently, the same advisory committee serving in this capacity for the MBF II LP and the BF III) must be experienced in the valuation of subregional banks as well as in the business of performing valuations. In addition, each member of the Independent Appraiser must not be

[24] The applicant explains that the phrase "principally traded" means that if a Security is traded on more than one exchange and if the trade prices differ between exchanges, the value will be taken from the exchange on which the largest volume of that security has traded.

[25] The applicant explains that the most recent trade price is not used to value a Security in this instance because it may be too dated to provide an accurate estimate of value. Instead, the applicant considers the bid price to be indicative of the current value at which someone would be willing to acquire a Security on the valuation date. The applicant further notes that the use of the bid price rather than the previous trading or closing price in valuing a Security provides a conservative valuation approach which will result, in most instances, in a lower Performance Fee payable to TCC.

The Department assumes that the bid price described herein represents active bids and is a true indicator of market prices.

controlled by (or control) TCC and must not receive more than 5 percent of their lowest annual income from TCC or the Trustee, either during the term of BF IV or in the three years preceding its creation. Individual members of the Independent Appraiser or the entire committee may be removed by Plans holding 50 percent or more of the Beneficial Interests in the Group Trust. A majority of the Plans and TCC must approve a replacement Independent Appraiser. If the Plans and TCC cannot agree, upon such replacement, the firm of Peat Marwick Main & Co. will be appointed.

The Independent Appraiser will use the principles set forth in Revenue Ruling 59–60 and the Department's proposed "Adequate Consideration" regulations (53 FR 17632, May 17, 1988) to determine fair market value. The valuations made by the Independent Appraiser will be binding upon TCC. In addition, the Independent Appraiser will issue reports to TCC, the Trustee and the Plans participating in the BF IV Group Trust which set forth the Independent Appraiser's pricing methodology and rationale for Securities it has been asked to value. Such reports will be issued after each required valuation and they will comply with the aforementioned regulations.

20. With respect to transactions which may arise during the existence of the BF IV Group Trust and which involve parties in interest to participating Plans, TCC requests exemptive relief from the Department from the provisions of section 406(a) of the Act. Specifically, TCC requests exemptive relief where the BF IV Group Trust sells Securities held in its portfolio for cash or other securities to a party in interest with respect to a participating Plan in the context of an acquisition or a merger by the party in interest, provided the party in interest is not an affiliate of TCC. TCC represents that the BF IV Group Trust will receive the same offer that other shareholders of the Bank Company or Financial Services Company will receive. Because the BF IV Group Trust will always be a minority shareholder in such situation, TCC states that the BF IV Group Trust will be in the position of a beneficiary of the acquisition offer and it will not be in the position of an active player in the merger or acquisition transactions.

21. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The participation of Plans in the BF IV Group Trust will be approved by an Independent Fiduciary.

(b) Each Plan investing in the BF IV Group Trust will have assets that are in excess of $50 million.

(c) No Plan will invest more than 10 percent of its assets in Beneficial Interests in the BF IV Group Trust and such Beneficial Interests held by the Plan will not exceed 25 percent of such Group Trust.

(d) No Plan will invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds and separate accounts) managed or sponsored by TCC and/or its affiliates.

(e) Prior to making an investment in the BF IV Group Trust, each Independent Fiduciary contemplating investing therein will receive offering materials which disclose all material facts concerning the purpose, structure and operation of the Group Trust and the fees paid to TCC.

(f) Each Plan investing in the BF IV Group Trust will be required to acknowledge, in writing, prior to purchasing Beneficial Interests that such fiduciary has received copies of such documents and to acknowledge, in writing, to TCC that such fiduciary is (1) independent of TCC and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

(g) TCC will make quarterly and annual written disclosures to participating Plans with respect to the financial condition of the BF IV Group Trust and the total fees that it will receive for services rendered to the BF IV Group Trust.

(h) TCC will hold annual meetings and conduct periodic discussions with Independent Fiduciaries of Plans participating in the BF IV Group Trust to address any matters pertaining to such Group Trust.

(i) The terms of all transactions that are entered into on behalf of the BF IV Group Trust by TCC shall remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets of the BF IV Group Trust will be based upon independent market quotations or determinations made by an Independent Appraiser.

(j) Either TCC or the Trustee, on behalf of the Plans participating in the BF IV Group Trust, may terminate the Investment Management Agreement at any time.

(k) As to each Plan, the total fees paid to TCC and its affiliates will constitute no more than reasonable compensation.

(l) TCC's Performance Fee will be based upon a percentage of net realized gains minus net unrealized losses. In this regard,

(1) The Performance Fee will be paid after December 31, 2001, which is the completion of the Acquisition Phase for the BF IV Group Trust, and it cannot be paid until all participating Plans have received distributions equal to 100 percent of their capital contributions to the BF IV Group Trust.

(2) Prior to the termination of the BF IV Group Trust, only 75 percent of what is credited to TCC as the Performance Fee may be withdrawn by such Group Trust.

(3) TCC will repay all deficits in its Performance Fee account.

Notice to Interested Persons

Notice of the proposed exemption will be given to Plans participating in the BF IV Group Trust within 5 days as of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearings requests with respect to the proposed exemption are due 35 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hughes Non-Bargaining Retirement Plan, Hughes Bargaining Retirement Plan, Hughes Subsidiary Retirement Plan (Collectively, the Plans)

[Applications No. D–10295, D–10296 and D–10297] Located in New York, N.Y.

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR, part 2570, Subpart B (55 FR 32847, August 10, 1990). Effective October 6, 1995, if the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

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through (E) of the Code shall not apply to the leasing by the Plans of 10,106 square feet of office space (Suite 300) in a commercial office building which is owned by the Plans (the Building) to Sarofim Realty Advisors (SRA), a party in interest with respect to the Plans, for a period ending February 28, 2000 pursuant to the terms of a lease amendment (the Lease) provided the following conditions are satisfied: (1) An independent third party determines that the terms of the Lease represent not less than fair rental value as of the date of the Lease; (2) the terms of the Lease are reviewed and approved by a qualified independent fiduciary of the Plans who determines that the terms of the transaction are at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties and that SRA's improvements to Suite 300 are acceptable; (3) the qualified independent fiduciary concludes that the transaction is in the best interests of the Plans and the Plans' participants and beneficiaries; (4) on behalf of the Plans, the qualified independent fiduciary continues to monitor SRA's performance under the Lease; and (5) within sixty (60) days of the publication in the Federal Register of a notice granting this proposed exemption, SRA will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning March 1, 1995 and ending on the effective date of this exemption.

EFFECTIVE DATE: The effective date of this exemption is October 6, 1995.

Summary of Facts and Representations

1. The Plans involved in the transaction, the Hughes Non-Bargaining Retirement Plan, the Hughes Bargaining Retirement Plan and the Hughes Subsidiary Retirement Plan, are covered by the Hughes Master Retirement Trust (the Trust). The Plans are defined benefit plans. The Plans' sponsor is Hughes Electronic Corporation (Hughes). Prior to March 29, 1995, the Plans' sponsor was Hughes Aircraft Company. As of November 30, 1995, the Plans had a total of 91,006 participants and beneficiaries. As of November 30, 1995, the approximate aggregate fair market value of the total assets of the Plans was $6.376 billion. The Building is a commercial office building known as Preston Sherry Plaza with 147,008 square feet of rentable space and located in Dallas, Texas. As of November 30, 1995, the value of the Building was .34 percent of the fair market value of the total assets of the Plans.

2. SRA states that it is a fiduciary, within the meaning of section 3(21) of the Act, to the Plans and a party in interest under section 3(14)(A) of the Act with respect to the Plans by virtue of its appointment by the Plans as an investment manager for certain of the Plans' real estate investments. SRA is headquartered in Dallas, Texas. As of December 31, 1995, SRA employed 18 full-time employees and had approximately $772 million in aggregate market value of employee benefit plan assets under management. SRA oversees the acquisition, development, leasing, management, financing and sale of select property types in select regions and major cities throughout the country for the Plans and eight other pension plans and endowment funds. SRA provides recommendation to the Plans as to the types of properties to be purchased, the number and location of the properties, the structure of the transactions and the amount of third-party financing, if any, that is appropriate. In addition, SRA is responsible for ensuring that the Plans' properties are managed in accordance with the Plans' investment objectives.

3. From October 1, 1991 to February 28, 1995, SRA leased 6,018 square feet of space on the fourth floor of the Building from the Plans. SRA represents that its lease of the fourth floor space complied with the requirements of Part III of PTE 84–14 which permits a qualified professional asset manager (QPAM) to lease not in excess of the greater of 7500 square feet or 1 percent of the rentable space of the office building in which the investment fund managed by the QPAM has the investment.[26] In order to accommodate another Building tenant and to facilitate a cost effective reconfiguration of space within the Building to the benefit of the Plans, SRA relocated to the third floor of the Building on March 1, 1995. SRA occupied this space pursuant to the terms of the Lease entered into on March 1, 1995.

4. The Lease relates to 10,106 square feet of office space and is for a term of five years ending February 28, 2000, at a base rent of $16,000 per square foot. The annual base rent adjusts at a rate of $.25 per square foot per year to $17.00 per square foot in the year 2000. The Lease also provides for a one-time-only tenant improvement or construction allowance of $18.25 per square foot. The allowance enabled SRA to build additional walls, replace the carpet and repaint the walls of the third floor. Under the terms of the Lease, SRA is responsible for its proportionate share of common area maintenance, insurance and property taxes over the 1994 base year amount. The applicant states that the Lease terms are comparable to the terms of the leases of other similar tenants in the Building, as well as the terms of leases in similar buildings in the area.

5. The applicant states that the Lease between SRA and the Plans is not eligible for relief from the prohibited transaction provisions of the Act pursuant to PTE 84-14 because the Lease is for an amount of space in excess of the greater of 7,500 square feet or one percent of the rentable space in the Building.

6. The applicant represents that on or about March 8, 1995, SRA contacted Price Waterhouse LLP (Price) and requested that Price serve as the independent fiduciary with respect to the Lease. The applicant states that Price agreed to the engagement and SRA asked Price to begin work immediately to determine whether the terms and conditions of the Lease represented an arm's length lease of office space between unrelated parties and to prepare a report summarizing Price's conclusions (Price Report). During the period March 14 to March 31, 1995, Price performed a market review of the Lease. Price reviewed the Lease and the leases of five comparable tenants. Price inspected and evaluated the Building and interviewed the Building's management. Price performed a present value analysis on the comparable leases in order to evaluate the economic terms of the leases. Based on Price's research and analysis, the March 31, 1995 Price Report determined that the Lease was under terms which are not less than fair market value.

7. According to the Amendment, the applicant states that SRA circulated several drafts of an independent fiduciary agreement to Price and to the Plans. On March 30, 1995, the Plans requested that SRA revise the independent fiduciary agreement to substitute "independent advisor" for "independent fiduciary." SRA objected to the change and advised the Plans that the agreement should refer to Price as an "indendent fiduciary." On April 4, 1995, the Plans advised SRA that Price could not serve as an independent fiduciary to the Plans because Price was not a registered investment adviser under the Investment Advisers Act of 1940 and the Plans documents required all fiduciaries appointed by the Plans to be registered investment advisers.

[26] SRA represents that it is a QPAM as that term is defined in PTE 84–14.

Subsequently, SRA and the Plans discussed several alternatives with respect to the appointment of an independent fiduciary. On October 6, 1995, the Plans and RREEF America L.L.C. (RREEF) entered into an agreement for RREEF to act on behalf of the Plans as an independent fiduciary to review the Price Report, review and approve the Lease terms and monitor SRA's performance under the Lease (the Agreement). This Agreement was essentially an extension of RREEF's duties as a qualified professional asset manager to the Plans pursuant to the agreement dated March 3, 1992 between the Plans and RREEF America Partners L.P., now known as RREEF (the Investment Management Agreement).

8. The applicant states that RREEF is a qualified independent fiduciary who actively manages commercial real estate in Dallas, Texas. Further, neither RREEF nor its affiliates has any ownership interest in SRA or its affiliates and neither SRA nor its affiliates has any ownership interest in RREEF or its affiliates. The Applicant represents that the Plans will pay RREEF's fee for serving as an independent fiduciary. In view of RREEF's other unrelated business relationships with the Plans, RREEF has agreed to perform these additional services for the Plans for the sum of $1.00 per annum in lieu of any additional fee which otherwise would be due under the Investment Management Agreement.

9. According to the Statement of Independent Fiduciary dated September 12, 1996, RREEF states that it is an investment adviser registered under the Investment Advisers Act of 1940 and oversees the acquisition, development, leasing, management, financing and sale of commercial real estate throughout the country including real estate located in Dallas, Texas. RREEF serves as an investment advisor and fiduciary for approximately 150 employee benefit plans including the Plans. RREEF represents that it understands its ERISA duties and responsibilities in acting as a fiduciary with respect to the Plans. RREEF states that as of December 31, 1995, it had approximately $6 billion in aggregate market value of employee benefit plan assets under management and that, as of December 31, 1995, RREEF and its affiliates received less than 1 percent of their annual income from SRA or its affiliates.

10. The applicant represents that under the Investment Management Agreement, RREEF may be removed with or without cause at any time by the Plans (acting through fiduciaries of the Plans that are unrelated to SRA or RREEF) upon written notice of such termination. Further, RREEF's appointment is subject to annual confirmation by the fiduciaries of the Plans. The applicant states that RREEF may not be removed by SRA and the appointment of RREEF as independent fiduciary shall remain in effect until 60 days after receipt by the Plans of a notice of resignation from RREEF, or 60 days after RREEF receives a notice of removal from the Plans.

11. The applicant states that upon the termination of RREEF's appointment, a successor independent fiduciary (Successor) will be designated by the Plans. The Successor will be subject to annual confirmation by fiduciaries of the Plans. In addition, any Successor must be an individual, group of individuals, or a business entity which has substantial experience and expertise in the commercial real estate field. Neither the Successor nor any affiliate of the Successor may have any ownership interest in SRA or any of its affiliates, nor may SRA or any of its affiliates have any ownership interest in the Successor or its affiliates. Moreover, neither the Successor itself, nor the Successor and its affiliates in the aggregate, may receive more than 1 percent of their total annual gross revenues, determined as of the end of their last fiscal year, from business transactions with SRA or its affiliates. Furthermore, any Successor would be removable with or without cause at any time by the Plans acting through a fiduciary or fiduciaries unrelated to SRA or the Successor. Any Successor would not be removable by SRA for any reason.

12. RREEF states that on the Plan's behalf, RREEF has reviewed and approved the terms of the Lease. RREEF states that is has reviewed: the Lease; SRA's proposed improvements to the property; the Price Report concerning the proposed transaction, including all accompanying data and analyses; physically inspected the property; and compared the Lease with other leases for space in the Building and leases for space at comparable properties. RREEF also interviewed four local brokers active in the Building's submarket to identify comparable market rent terms. Based on RREEF's review and analysis, RREEF concluded that the terms of the Lease are in the best interest of the Plans and the Plans' participants and beneficiaries, the terms of the Lease are at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties, and that SRA's proposed improvements to the office space are acceptable and will not cause the premises to be untenantable.

13. Under the Agreement, RREEF is also obligated to monitor SRA's performance under the Lease. RREEF agreed to review any matter which requires the approval of the landlord under the terms of the Lease and determine on behalf of the Plans whether or not to grant approval and take any other action with regard to the Lease which the landlord would have the authority and/or obligation to take, on behalf of the Plans.

14. The applicant represents that the Lease allows the Plans to accommodate existing tenants, to retain SRA as a stable and reliable tenant, and to realize income that might not otherwise be received. The Plans derive a benefit by virtue of SRA's occupancy of space in the Building and its ability to better evaluate the day-to-day performance of the other tenants, the property manager and the physical upkeep of the asset. If the Lease is not granted an exemption, the applicant represents that the Plans would be subjected to the risks of downtime and additional refit costs for the current SRA space.

15. The applicant represents that within sixty (60) days of the publication in the **Federal Register** of a notice granting this proposed exemption, SRA will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning the date the Lease was entered into, March 1, 1995, and ending on October 6, 1995, the effective date of this exemption, the date of the appointment of an independent fiduciary with respect to the Lease.

16. In summary, the applicant represents that the proposed exemption meets the criteria of section 408(a) of the Act because: (1) Price, an independent third party, has determined that the terms of the Lease represent not less than fair rental value as of the date of the Lease; (2) the terms of the Lease were reviewed and approved by RREEF, a qualified independent fiduciary who determined that the terms of the transaction were at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties and that SRA's improvement to Suite 300 were acceptable; (3) RREEF, a qualified independent fiduciary, concluded that the Lease is in the best interests of the Plans and the Plans' participants and beneficiaries; (4) RREEF, on behalf of the Plans, continues to monitor SRA's performance under the Lease; and (5) within sixty (60) days of the publication in the **Federal Register** of a notice granting this proposed exemption, SRA

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will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning March 1, 1995 and ending on the effective date of this exemption.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons by either mail or hand delivery within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed replacement exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced applications at the address set forth above.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

APA, Inc. 401(k) Profit Sharing Plan (the Plan) Located in Pleasant Hill, California

[Application No. D–10375]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed loan (the Loan) of $30,000 to Mr. Gary Petsuch (Mr. Petsuch), a party in interest with respect to the Plan, from Mr. Petsuch's segregated account (the Account) in the Plan, and (2) the personal guarantee of the Loan by Mr. Petsuch, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Account; (c) the Loan is secured by a pledge of Mr. Petsuch's interest in an investment account which has been currently valued by an independent party as having a fair market value approximately 280% of the principal amount of the Loan; (d) the account collateralizing the Loan will be maintained at a collateral-to-Loan ratio of not less than 200% throughout the duration of the Loan; (e) Mr. Petsuch has also personally guaranteed the Loan; and (f) Mr. Petsuch is the only Plan participant to be affected by the Loan.

Summary of Facts and Representations

1. Action Personnel Agency, Inc. d.b.a. United Staffing Services (APA), a California Subchapter S Corporation, is the sponsor of the Plan. Mr. Petsuch is the 100% owner of APA and, as such, is a party in interest with respect to the Plan.

2. Mr. Petsuch, as the owner of a Subchapter S Corporation, is unable to participate in the Plan's participant loan program. Mr. Petsuch has a segregated rollover Account in the Plan which had a value of $124,875 as of August 23, 1996. This Account is composed of publicly traded stock.

3. Mr. Petsuch has requested an exemption that would permit him to borrow $30,000 from his Account in the Plan. Since the Loan is to come from his Account, Mr. Petsuch is the only Plan participant who will be affected by this proposed transaction. The Loan amount would represent less than 25% of the value of the Account. The term of the Loan will be for a period of five years at an interest rate of Prime plus two, based on the published Prime Rate in the Western Edition of the Wall Street Journal, which currently would be 10.75%. The interest rate will be adjusted during the term of the Loan whenever there is a change in the Prime Rate of Interest. The new interest rate will be effective immediately and will remain in effect until the next time the Prime Rate changes. The Loan will be repaid in equal monthly installments of principal and interest. Ms. Jeanne Marx, Vice President of The Bank of San Ramon Valley (the Bank) in San Ramon, California, has represented that the Bank would require identical terms to make a five year loan to Mr. Petsuch.

4. In addition to giving his personal guarantee for the Loan, Mr. Petsuch will pledge as security for the Loan his interest in a Charles Schwab & Co., Inc. (Schwab) investment account. The account consists of publicly traded securities, which according to Schwab had a fair market value of $84,855 as of August 26, 1996. Thus, the pledged security has a fair market value approximately 2.8 times greater than the principal amount of the proposed Loan. The applicant represents that the collateral-to-Loan ratio will always remain at least 200%. If the collateral-to-Loan ratio ever falls below this level, Mr. Petsuch represents that he will add additional collateral to the Schwab account.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Code because: (a) The Loan represents less than 25% of the assets of the Account; (b) the terms of the Loan will be identical to those required by a third party lender, the Bank, if it were to make a similar loan; (c) the Loan will be secured by Mr. Petsuch's personal guarantee and his interest in an investment account which has been currently valued by an independent party as having a fair market value approximately 280% of the principal amount of the Loan; (d) the collateral-to-Loan ration will remain not less than 200% throughout the duration of the Loan; and (e) Mr. Petsuch is the only Plan participant to be affected by the Loan, and he desires that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Since Mr. Petsuch is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction

provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of January, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–865 Filed 1–13–97; 8:45 am]

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[Prohibited Transaction Exemption 97–01; Exemption Application No. D–10143, et al.]

Grant of Individual Exemptions; Univar Corporation UniSaver Tax

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Univar Corporation UniSaver Tax Savings Investment Plan (the Plan) Located In Kirkland, Washington

[Prohibited Transaction Exemption 97–01; Exemption Application No. D–10143]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the extension of credit in the form of guarantees and loans of funds (the Loans), not to exceed $1,466,785.38, to the Plan by Univar Corporation (the Employer), the sponsor of the Plan, or it successors, with respect to Guaranteed Investment Contract No. 62127 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the repayment of the Loans by the Plan to the Employer, or its successors, provided the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those the Plan could receive in arm's length transactions with unrelated parties; (b) No interest payments or other expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Loans will be made from proceeds realized from the GIC (the GIC Proceeds) as paid to the Plan by Confederation, its successors, or any other third party, and made only if the repayments do not interfere with the liquidity needs of the Plan for payment of benefits, transfers of investments, hardship withdrawals, or loans as determined by BZW Barclays Global Investors, N.A., the Plan trustee; (d) Repayment of the Loans will be waived by the Employer and its successors to the extent the Loans exceed the GIC Proceeds; and (e) All unpaid principal and interest that was due under the GIC on August 12, 1994, minus any Loans from the Employer and its successors, and/or payments received under the GIC after August 12, 1994, will be completely paid by January 1, 2000, by a Loan to the Plan from the Employer or its successors.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 1996, at 61 FR 57467.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Prohibited Transaction Exemption 97–02; Exemption Application Nos. D–10262, D–10263, and D–10264]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the

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sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loans totalling $530,000 by the Plans to S & D Associates (S & D), provided that the following conditions are satisfied:

(a) The terms and conditions of the loans are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties;

(b) At all times, the loans are secured by a first mortgage on certain real property (the Property), which is duly recorded under New Jersey State law;

(c) At all times, the fair market value of the Property, as established by a qualified, independent appraiser, equals at least 150% of the total outstanding balances of the loans;

(d) At all times, no more than 25% of the assets of each lending Plan are invested in the loans;

(e) A qualified, independent fiduciary has determined that the loans are in the best interests of the Plans; and

(f) At all times, the independent fiduciary enforces compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

EFFECTIVE DATE: The exemption is effective as of January 1, 1997.

In response to a comment from the applicants, the Department has agreed to modify the Summary of Facts and Representations (the Summary) in the notice of proposed exemption to reflect a modification to the terms of the loans. Accordingly, on page 55323 of such notice, the first subparagraph in Paragraph 4 of the Summary should be corrected to read as follows:

The loans, as evidenced by promissory notes, will each provide for a term of 15 years and a fixed interest rate of 11 percent per annum for the first 10 years. Thereafter, the interest rate will become adjustable annually, based upon the greater of: (a) 11 percent, or (b) three percent above the five-year Treasury note yield as published in The Wall Street Journal, determined as of the 10th anniversary of the loans and each subsequent anniversary thereof. The promissory notes will require S & D Associates to make monthly payments of principal and interest on the loans, to be fully amortized over the 15-year term. The Plans will pay no fees nor other expenses relating to the loans.

A "Supplemental Statement" describing the modified loan terms was provided to interested persons, along with a copy of the notice of proposed exemption as published in the **Federal Register**. Due to a delay in providing notice to interested persons, the comment period was extended until December 26, 1996.

In addition, the applicants wished to note that the last sentence in the first subparagraph of Paragraph of 1 of the Summary should be corrected to read as follows:

The trustees of the Wayne Plan are the four owners, above [i.e., revised to include Steven Domnitz].

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 25, 1996 at 61 FR 55322.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

National Baptist Publishing Board Pension Plan (the Plan) Located in Nashville, TN

[Prohibited Transaction Exemption 97–03; Exemption Application No. D–10283]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) of common stock of Citizens Savings Bank and Trust Company (the Stock) located in Nashville, Tennessee, by the Plan to AmeriStar Investments and Trust, a division of First American National Bank, Trustee of the Plan and party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale the greater of the following amounts: (a) the fair market value of the Stock as of the date of the Sale plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or (b) the total cost of the investment, $100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 25, 1996 at 61 FR 55324.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Summit Sheet Metal, Inc. Defined Benefit Pension Plan (the Plan) Located In Anaheim, California

[Prohibited Transaction Exemption 97–04; Exemption Application No. D–10330]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain real property (the Property) to Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing, parties in interest with respect to the Plan; provided that the following conditions are satisfied: (a) The Sale is a one-time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (c) the Plan will incur no commissions or any other expenses from the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 25, 1996, at 61 FR 59914.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

SouthTrust Securities, Inc. (ST) Located in Birmingham, Alabama

[Prohibited Transaction Exemption 97–05; Exemption Application No. D–10376]

Exemption

I. Transactions

A. Effective October 25, 1996, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective October 25, 1996, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective October 25, 1996, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective October 25, 1996, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch Investors Service, L.P. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which ST or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either—

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);[4]

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) ST;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ST; or

(3) any member of an underwriting syndicate or selling group of which ST or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

[4] It is the Department's view that the definition of "trust" contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

(2) each insurer;
(3) the sponsor;
(4) the trustee;
(5) each servicer;
(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or
(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:
(1) such person is not an affiliate of that other person; and
(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:
(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;
(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and
(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:
(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);
(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:
(1) which is secured by equipment which is leased;
(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and
(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:
(1) the trust holds a security interest in the lease;
(2) the trust holds a security interest in the leased motor vehicle; and
(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "ST" means SouthTrust Securities, Inc. and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 3, 1996 at 61 FR 64164.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Skana Enterprises, Inc. Defined Benefit Pension Plan (the Plan) Located in Kodiak, Alaska

[Prohibited Transaction Exemption 97–06; Exemption Application No. D–10342]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the loan (the Loan) of $157,500 by the Plan to Skana Enterprises, Inc. (Skana), the Plan's sponsor and a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Mr. Ralph Bolton (Mr. Bolton), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Plan; (c) the Loan is secured by a first deed of trust on real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of the Loan; (d) the fair market value of the Property remains at least equal to 150% of the outstanding balance of the Loan throughout the duration of the Loan; (e) the Plan's independent fiduciary has determined that the Loan is appropriate for, in the best interest of, and protective of the Plan; and (f) the Plan's independent fiduciary will monitor compliance with the terms of the Loan and conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.[5]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 25, 1996 at 61 FR 59915.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department,

[5] Since Mr. Bolton is the sole owner of Skana and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

telephone (202) 219–8881. (This is not a toll-free number.)

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Prohibited Transaction Exemption 97–07; Exemption Application Nos. D–10262, D–10263, and D–10264]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loans totalling $530,000 by the Plans to S & D Associates (S & D), provided that the following conditions are satisfied:

(a) The terms and conditions of the loans are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties;

(b) At all times, the loans are secured by a first mortgage on certain real property (the Property), which is duly recorded under New Jersey State law;

(c) At all times, the fair market value of the Property, as established by a qualified, independent appraiser, equals at least 150% of the total outstanding balances of the loans;

(d) At all times, no more than 25% of the assets of each lending Plan are invested in the loans;

(e) A qualified, independent fiduciary has determined that the loans are in the best interests of the Plans; and

(f) At all times, the independent fiduciary enforces compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

EFFECTIVE DATE: The exemption is effective as of January 1, 1997.

In response to a comment from the applicants, the Department has agreed to modify the Summary of Facts and Representations (the Summary) in the notice of proposed exemption to reflect a modification to the terms of the loans. Accordingly, on page 55323 of such notice, the first subparagraph in Paragraph 4 of the Summary should be corrected to read as follows:

The loans, as evidenced by promissory notes, will each provide for a term of 15 years and a fixed interest rate of 11 percent per annum for the first 10 years. Thereafter, the interest rate will become adjustable annually, based upon the greater of: (a) 11 percent, or (b) three percent above the five-year Treasury note yield as published in The Wall Street Journal, determined as of the 10th anniversary of the loans and each subsequent anniversary thereof. The promissory notes will require S & D Associates to make monthly payments of principal and interest on the loans, to be fully amortized over the 15-year term. The Plans will pay no fees nor other expenses relating to the loans.

A "Supplemental Statement" describing the modified loan terms was provided to interested persons, along with a copy of the notice of proposed exemption as published in the **Federal Register**. Due to a delay in providing notice to interested persons, the comment period was extended until December 26, 1996.

In addition, the applicants wished to note that the last sentence in the first subparagraph of Paragraph of 1 of the Summary should be corrected to read as follows:

The trustees of the Wayne Plan are the four owners, above [i.e., revised to include Steven Domnitz].

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 25, 1996 at 61 FR 55322.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 9th day of January, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–864 Filed 1–13–97; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 13, 20, 27 and February 3, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 13

Monday, January 13

10:00 a.m.
Briefing on NRC Strategic Assessment (Public Meeting)
Contact: John Craig, 301–415–3812

11:30 a.m.
Affirmation Session (Public Meeting)
a. Direct Final Rulemaking: Privatization Act Conforming Changes and Revision to the NRC Enforcement Policy (NUREG–1600) (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of January 20—Tentative

Wednesday, January 22

10:00 a.m.
Briefing on Codes and Standards (Public Meeting)
(Contact: Gil Millman, 301–415–5843)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of January 27—Tentative

Monday, January 27

2:30 p.m.
Briefing by DOE on Plutonium Disposition (Public Meeting)
(Contact: Vanice Perin, 301–415–8143)

Wednesday, January 29

10:00 a.m.
Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Thursday, January 30

10:00 a.m.
Briefing on Millstone by Northeast Utilities and NRC (Public Meeting)
(Contact: Bill Travers, 301–415–8500)

Friday, January 31

10:00 a.m.
Briefing on Integrated Materials Performance Evaluation Program (Public Meeting)
(Contact: Don Cool, 301–415–7197)

Week of February 3—Tentative

Tuesday, February 4

9:30 a.m.
Briefing by Maine Yankee, NRR and Region I (Public Meeting)
(Contact: Daniel Dorman, 301–415–1429)

Wednesday, February 5

NOON
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

THe NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY.smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301)–415–1661.

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 10, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–1013 Filed 1–10–97; 1:56 pm]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are Invited on

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application and Claim for Unemployment Benefits and Employment Service, OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days). Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325.

RRB Form UI–1, Application for Unemployment Benefits, and Employment Service, is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 also registers an unemployment claimant for the RRB's employment service. No changes are being proposed to Form UI–1.

The RRB also utilizes Form UI–3, Claim for Unemployment Benefits, for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days. The RRB proposes to revise Form UI–3 to incorporate changes required by the Railroad Unemployment Insurance Amendments Act of 1996. The changes include the addition of a new item to provide the RRB with information regarding a claimant's gross wages or other pay for days during the 14-day registration period. Effective with the 1996 amendments, an earnings test applies to each 14-day claim period and information about the claimant's gross wages or other pay is needed to determine the claimant's eligibility for benefits. The explanation of the waiting period printed on the claim has also been revised because the 1996 amendments changed the waiting period requirement from 14 days to 7 days.

Completion of Forms UI–1 and UI–3 is required to obtain or retain benefits. The number of responses required to each claimant varies, depending on their period of unemployment. The RRB estimates that approximately 29,000 Form UI–1's are filed annually. Completion time is estimated at 10 minutes. The RRB estimates that approximately 265,000 Form UI–3's are filed annually. Completion time is estimated at 6 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–795 Filed 1–13–97; 8:45 am]

BILLING CODE 7905–01–M

Sunshine Act Meeting; Notice of Public Meeting

Notice was previously published at FR 1139 on January 8, 1997, that the Railroad Retirement Board would hold a meeting on January 15, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. This meeting has been rescheduled to January 22, 1997, at 9:00 a.m. The agenda remains the same.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: January 9, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–968 Filed 1–10–97; 11:40 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Extension:
Rule 17a–7, SEC File No. 270–238, OMB Control No. 3235–0214
Rule 17e–1, SEC File No. 270–224, OMB Control No. 3235–0217
Rule 19a–1, SEC File No. 270–240, OMB Control No. 3235–0216
Rule 31a–1, SEC File No. 270–173, OMB Control No. 3235–0178

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information:

Rule 17a–7 [17 CFR 270.17a–7] under the Act requires registered investment companies to keep various records in connection with certain purchase or sale transactions between investment companies and certain of their affiliates. The annual burden of meeting this requirement is estimated to be about one hour for each of an estimated 500 recordkeepers that enter into subject transactions each year, for a total annual burden of 500 hours.

Rule 17e–1 [17 CFR 270.17e–1] under the Act governs the remuneration a broker affiliated with an investment company may receive in connection with securities transactions by the investment company. The rule requires an investment company's board of directors to establish, and review, as necessary, procedures reasonably designed to provide that the remuneration to an affiliated broker is a fair amount compared to that received by other brokers in connection with transactions in similar securities during a comparable period of time. Each quarter, the board must determine that all transactions effected pursuant to the rule during the preceding quarter complied with the established procedures. Rule 17e–1(c) also requires the investment company to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years a written record of each transaction subject to the rule setting forth the amount and source of the commission, fee or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board.

The Commission estimates that approximately 1,462 funds rely upon Rule 17e–1 each year. The total average annual burden for Rule 17e–1 per respondent is estimated to be 10 hours, for a total annual burden of 14,620 hours.

Rule 19a–1 [17 CFR 270.19a–1] under the Act sets forth specific requirements for the information which must be included in statements made pursuant to Section 19(a) by registered management investment companies (funds). The rule requires that the statement indicate what portions of the payment are made from net income, net profits and paid-in capital. When any part of the payment is made from net profits, Rule 19a–1 requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to Section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

It is estimated that approximately 3,000 funds are subject to the rule each year. It is estimated that compliance with the rule's requirements imposes a total annual burden per fund of approximately 30 minutes. The total annual burden for all funds is estimated at 1,500 hours.

Rule 31a–1 [17 CFR 270.31a–1] under the Act requires registered investment companies, and every underwriter, broker, dealer or investment adviser which is a majority-owned subsidiary of a registered investment company, to maintain and keep current accounts, books and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to Section 30 [15 U.S.C. 80a–29] of the Act and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by registered investment companies. The rule also requires certain underwriters, brokers, dealers, depositors and investment advisers to maintain such records as they are required to maintain under federal securities laws.

It is estimated that Rule 31a–1 imposes an average burden of approximately 5,260 hours annually per investment company. It is further estimated that approximately 5,000 investment companies are subject to the rule each year, so that the total annual burden for all investment companies would be 26,300,000 hours. Most of the records required to be maintained by the rule are the type that generally would be maintained as a matter of good business practice and to prepare the investment company's financial statements.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: December 30, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–863 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22444; 811–8302]

Master Investment Trust, Series II; Notice of Application

January 7, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Master Investment Trust, Series II.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

FILING DATE: The application was filed on September 23, 1996 and amended on December 19, 1996.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on February 3, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 3435 Stelzer Road, Columbus, Ohio 43219.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Delaware business trust. Applicant is comprised of a single series, the National Municipal Bond Fund.

2. On January 21, 1994, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) under the Act and a registration statement on Form N–1A pursuant to section 8(b) of the Act. No registration statement was filed under the Securities Act of 1933.

3. On April 23–24, 1996, at the regular Board of Trustees meeting, the Board of Trustees approved, effective upon the withdrawal of the investment of the Feeder Fund from the applicant, the termination of the applicant's investment advisory and other service agreements. The board also authorized the taking of all actions necessary to effect the deregistration of applicant.

4. Prior to July 1, 1996, the National Municipal Bond Fund of Pacific Horizon Funds, Inc. (the "Feeder Fund") invested all of its investable assets in applicant's National Municipal Bond Fund. The Feeder Fund was the sole interest holder of applicant's National Municipal Bond Fund. On July 1, 1996, applicant's sole interest holder gave notice that it wanted to redeem its entire holdings, and on the same day complete redemption distributions were paid to the interest holder based on net asset value. Such distributions effectively liquidated applicant.

5. Bank of America National Trust and Savings Association, applicant's investment adviser, has undertaken to pay applicant's expenses in connection with the liquidation.

6. Applicant has no security holders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. Applicant intends to file the necessary documentation with the State of Delaware to effect its dissolution as a Delaware business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–805 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22443; 812–10452]

United Financial Group, Inc.; Notice of Application

January 7, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc. (the "Company").

RELEVANT ACT SECTION: Order requested under sections 6(c) and 6(e) of the Act granting an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt it from all provisions of the Act until December 30, 1997. The requested relief would extend an exemption originally granted until December 30, 1990, and extended by subsequent orders until December 30, 1991, December 30, 1992, December 30, 1993, December 30, 1994, December 30, 1995, and December 30, 1996.

FILING DATE: The application was filed on December 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 5847 San Felipe, Suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial tax loss. In light of this tax loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Deposit Insurance Corporation (the "FDIC") and the Office of Thrift Supervision (the "OTS"). The FDIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). In addition, the FDIC has asserted the existence of possible other claims (the "Indemnified Claims") against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors.[1] The FDIC

[1] Prior to 1996, the Company advanced certain expenses incurred by the former officers and

Continued

has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. The OTS has asserted certain claims not included within the scope of the FDIC's jurisdiction. The OTS is investigating the possibility of certain regulatory violations (the "OTS Claims") by the Company and its current and former officers and directors. The Company has been in negotiations with the OTS since September, 1994 concerning possible settlement of the OTS Claims. These claims constitute a substantial contingent liability against the Company's assets.

4. During 1989 and 1990, the Company was in continuous negotiations with the FDIC in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement. In December 1990, however, the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991, the Company again contacted the FDIC to determine whether a settlement could be reached. Beginning in July 1991, the Company and the FDIC's representatives met to determine if a possible solution could be reached. In December 1991, the FDIC requested, and the Company provided, an agreement to toll the statute of limitations. This tolling agreement was subsequently extended numerous times, and, as described below, the statute of limitations has been tolled until the terms of an Agreement and Release entered into among the Company, the FDIC, and others are effected or the Agreement and Release is terminated.

5. The Company and certain of its officers and directors also entered into tolling agreements with the OTS pursuant to which the OTS would have until the end of the tolling period to allege certain regulatory violations and seek regulatory enforcement. In connection with a Stipulation and Consent entered into among the Company, the OTS, and others, the statute of limitations has been tolled until the terms of the Stipulation are effected or the Consent cancelled. However, in 1996, the OTS brought enforcement action against certain officers and directors of the Company. Such action is still in its preliminary stage.

6. Effective December 1995, the Company entered into a Stipulation and Consent to Issuance of Consent Cease and Desist Order for Affirmative Relief with the OTS and a Settlement Agreement and Release with the FDIC, First Trust of California, National Association, and Nu-West Florida, Inc. ("Nu-West"). Under these agreements, the Company neither admits nor denies liability under claims by the OTS. The FDIC settlement is conditioned upon the Company obtaining a final order of the Delaware Bankruptcy Court, and requires a minimum payment of $9,450,000 to the FDIC, a minimum payment of $1,360,000 to the trustee for the 9% Secured Sinking Debentures (the "Debenture Trustee"), and a minimum payment of $190,000 to Nu-West be made from the Company's assets. The Company is required to proceed with a plan of reorganization or liquidation in the Delaware Bankruptcy Court, and payments would be made after the Delaware Bankruptcy Court confirms a final plan. Any assets of the Company remaining after the payments and expenditures described above, and pursuant to the confirmed final plan of bankruptcy, must be paid to the FDIC, the Debenture Trustee, and Nu-West in proportion to the minimum settlement payments. The FDIC settlement also provides that the Company may not, except in limited circumstances, utilize the benefits of tax losses carried forward from 1988 and the prior years.

7. On June 30, 1996, the Company held assets of approximately $11.859 million, comprised of approximately $1.840 million in cash and cash equivalents, $9.788 million in short-term investments, $.083 million in other investments, and $.148 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

8. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990, the Company was granted conditional relief from all provisions of the Act until December 30, 1990. The SEC extended this exemptive relief by six subsequent orders, most recently until December 30, 1996.[2]

9. As described in detail in the applications for the Prior Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under Chapter 11 of the Bankruptcy Code. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or 17(d) with respect to transactions approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owning investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items). The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. The Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1997. The requested order would extend the exemption granted by the Prior Orders.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as: (a) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its

directors, subject to a refund obligation if it was determined they were not entitled to such advances. In 1996, at the insistence of the FDIC and OTS, the Company ceased making these advances.

[2] Investment Company Act Release Nos. 17941 (Jan. 9, 1991) (notice) and 17989 (Feb. 7, 1991) (order); Investment Company Act Release Nos. 18430 (Dec. 5, 1991) (notice) and 18466 (Dec. 31, 1991) (order); Investment Company Act Release Nos. 19128 (Nov. 25, 1992) (notice) and 19175 (Dec. 22, 1992) (order); Investment Company Act Release Nos. 19839 (Nov. 5, 1993) (notice) and 19916 (Dec. 1, 1993) (order); Investment Company Act Release Nos. 20545 (Sept. 12, 1994) (notice) and 20608 (Oct. 7, 1994) (order); and Investment Company Act Release Nos. 21416 (Oct. 12, 1995) (notice) and 21480 (Nov. 7, 1995) (order) (the "Prior Orders").

control; (b) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (c) whether the company invested in securities solely to preserve the value of its assets. The Company believes that it meets these criteria.

4. The Company believes that its failure to become primarily engaged in a non-investment business by December 30, 1996 is a result of factors beyond its control. The existence of the FDIC Claims and the OTS Claims has precluded the Company from investing its assets in a non-investment company business. The magnitude of the FDIC Claims and OTS Claims and the potential threat that the FDIC and the OTS would seek to enjoin any utilization of the Company's assets have prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims and the OTS Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company believes that it primarily invests in securities solely to preserve the value of its assets.

6. The Company believes that the issuance of an order exempting it from all provisions of the Act, subject to certain exceptions, until December 10, 1997 would be in the public interest and consistent with the protection of investors and the purposes of the Act. The Company believes that it would be unfair to its stockholders to require it to register as an investment company and that such registration is not necessary for the protection of its stockholders.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a–7(a)(10) under the Act.

2. The Company will continue to comply with sections 9, 17(e), and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d), subject to the following exceptions:

(a) If the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with sections 17(a) or 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) The Company would not be required to comply with sections 17(a) or 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions, and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's debentures.

4. The Company will continue to comply with sections 17(f) of the Act as provided in rule 17f–2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–804 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38124; File No. SR–Amex–96–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to a Fee Change

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on December 16, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed fee change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed fee change from interested persons.

[1] 15 U.S.C. § 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is issuing a one-time credit against the Exchange's monthly Floor Facility Fee for those members who were charged such fee for the months of August through December, 1996 (amounting to $583.35 per member for such period).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the fee change and discussed any comments it received on the proposed fee change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As the Exchange has had a rewarding year from a financial perspective, it has decided to issue a one-time credit against its monthly Floor Facility Fee for those members who were charged such fee for the months of August through December, 1996 (amounting to $583.35 per member for such period).

2. Statutory Basis

The proposed fee change is consistent with Section 6(b) of the Act[2] in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the fee change.

[2] 15 U.S.C. § 78f(b).

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act [3] and subparagraph (e) of Rule 19b–4 [4] thereunder. At any time within 60 days of the filing of such proposed fee change, the Commission may summarily abrogate such fee change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the fee change that are filed with the Commission, and all written communications relating to the fee change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–48 and should be submitted by January 27, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–807 Filed 1–13–97; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. § 78s(b)(3)(A).

[4] 17 CFR 19b–4(e).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38128; File No. SR–AMEX–96–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amending Rule 170 to Permit Options Specialist Organizations and Their Approved Persons to Engage in Market Making Activities on Other Options Exchanges in the Options in Which They Are Registered on the AMEX

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 27, 1996, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 950(n) to permit options specialist organizations and their approved persons to engage in market making activities on other options exchanges in the options in which they are registered on the AMEX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 950(n) currently prohibits AMEX options specialists and their "approved persons" [1] from effecting transactions in specialty options except insofar as reasonably necessary to satisfy their specialist obligations on the Exchange. Thus, among its several consequences, Rule 950(n) prohibits an AMEX specialist organization and its approved persons from acting as a market maker in a specialty option on the floor of another options market.[2] The other options exchanges have rules that are similar to AMEX Rule 950(n) with respect to persons that perform functions similar, or identical, to those of a specialist.[3] However, it is the Exchange's understanding that not all those markets interpret their rules in the same manner as the AMEX. Thus, the Exchange has observed Registered Options Traders ("ROTs") on its Floor trading as market makers in options in which affiliates of such ROTs perform a specialist function on another exchange.

The restrictions on the trading activities of options specialists and their approved persons have their origin in the Exchange's and the New York Stock Exchange's equity trading rules. The AMEX extended these restrictions to listed options at the outset of the Exchange's option program in the mid-1970s in order to expeditiously commence trading options using a combination specialist/competitive market maker system. While these restrictions reflect historical regulatory concerns, the federal securities laws do not require that trading by specialists and their approved persons in specialty securities should be limited to that necessary to the specialist function on any one market. In many respects, moreover, the policy reasons behind the trading restrictions on equity specialists are not compelling in the context of options due to the derivative pricing of these securities. In addition, the limitations contained in Rule 950(n) on principal trading by the affiliates of options specialists predate multiple trading of listed options. When you add to these factors the extraordinary level of self-regulatory organization surveillance of specialists and market makers, the Exchange believes that the

[1] An "approved person" is a person or entity that controls a member or member organization or that is engaged in a securities or kindred business and is controlled by or under common control with a member or member organization. *See* Article I, Section 3(g) of the Exchange Constitution.

[2] The approved persons of Exchange specialists may obtain relief from the restrictions of Rule 950(n) by establishing an Exchange approved information barrier pursuant to Rule 193. In practice, however, it has generally proven impractical for all but the largest broker-dealers to establish information barriers that would satisfy the requirements of Rule 193.

[3] Chicago Board Option Exchange Rule 8.81(a), Pacific Stock Exchange Rule 6.83(a), Philadelphia Stock Exchange Rule 1020(e).

prophylactic restrictions on trading represented by Rule 950(n) are not essential to ensure compliance with standards of fair dealing.

For the foregoing reasons, the Exchange believes that it is appropriate to permit Exchange specialist organizations and their affiliates to engage in market making in specialty options on the floor of other options exchanges. This measure will eliminate a regulatory disparity between the rules of the Exchange and other markets. To ensure that specialist organizations and their affiliates do not intentionally trade ahead of, or otherwise disadvantage, orders on the AMEX limit order book, the Exchange will require any AMEX member organization that seeks to act as a market maker on the floor of another options exchange in an option in which they are a specialist on the AMEX to implement policies and procedures designed to prevent the misuse of information regarding limit orders on the AMEX limit order book.[4] These policies and procedures will not have to conform to the specific requirements of Rule 193. Instead, the Exchange proposes to adopt the approach used by Congress in enacting Sections 15(f) and 21A of the Act, and by the Commission in adopting Rule 14(e)(3) under the Act, which require firms to adopt information barriers, but do not legislate the design of these internal controls.[5] The Exchange believes that specialist firms and their affiliates should have the ability (subject to Exchange oversight) to structure information barriers that are appropriate to the structure of their firms.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

[4] As proposed, these policies and procedures will not be subject to pre-approval by the Exchange. Telephone conversation between Bill Floyd-Jones, Assistant General Counsel, AMEX, and Heather Seidel, Attorney, Division of Market Regulation, Commission, on January 2, 1997.

[5] *See* Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information, Securities and Exchange Commission Division of Market Regulation, March 1990.

[6] 15 U.S.C. 78f(b)(5)

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities sand Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–96–46 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[7] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–862 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38125; File No. SR–CHX–96–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Fee Waiver by the Chicago Stock Exchange, Incorporated

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on December 17, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive certain member charges in its Membership Dues and Fees Schedule. Specifically, the Exchange proposes to waive all membership dues for the month of December. The Exchange also proposes to waive all floor telephone booth and post space charges for the fourth quarter of 1996 (i.e., October, November and December).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to waive membership dues for the month of December, 1996, and waive floor telephone booth and post space charges for the fourth quarter of 1996 because the Exchange has already adequately covered its costs associated with these services for the year.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act [2] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act [3] and subparagraph (e) of Rule 19b–4 [4] thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and coping at the Exchange. All submissions should refer to File No. SR–CHX–96–32 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–808 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38130; File No. SR–CHX–96–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Circuit Breaker Pilot Program

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend Article IX, Rule 10A "Trading Halt Due to Extraordinary Market Volatility" ("circuit breakers") [1] to increase the levels at which such circuit breakers are triggered. The Exchange seeks to effect these changes on a one-year pilot basis.

The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article IX, Rule 10A (Trading Halts Due to Extraordinary Market Volatility) is the Exchange's codification of the several recommendations for circuit breakers which were made in the wake of the market break of 1987. The current rule, which is due to expire on October 31, 1997, provides that if the Dow Jones Industrial Average [2] ("DJIA") falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange shall halt for one-half hour. The Rule further provides for a one hour trading halt if the decline in the DJIA is 400 or more points. Although the Rule was amended in July 1996 to shorten the time periods for marketwide trading halts, the levels of the circuit breakers themselves have not been adjusted since the Rule was first adopted. The Exchange believes that it is appropriate to amend Article IX, Rule 10A to raise the circuit breakers from 250 points to 350 points and from 400 points to 550 points.

Article IX, Rule 10A was approved by the Commission in October 1988 as a one-year pilot[3] and has been extended on a pilot basis since then. At that time, the DJIA was at a level of about 2100 points. A 250 point drop would have represented at 12% decline in the average. A 400 point drop would have

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[2] 15 U.S.C. § 78f(b)(4).

[3] 15 U.S.C. § 78s(b)(3)(A).

[4] 17 CFR 19b–4(e).

[5] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release Nos. 26218 (October 26, 1988), 53 FR 44137 (November 1, 1988); 27370 (October 23, 1989), 54 FR 43881 (October 27, 1989); 28580 (October 25, 1990), 55 FR 45895 (October 31, 1990); 29868 (October 28, 1991), 56 FR 56535 (November 5, 1991); 33120 (October 29, 1993), 58 FR 59503 (November 9, 1993); 36414 (October 25, 1995), 60 FR 55630 (November 1, 1995); and 37459 (July 19, 1996), 61 FR 39172 (July 26, 1996).

[2] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

[3] *See* Securities Exchange Act Release No. 26218 (October 26, 1988), 53 FR 44137 (November 1, 1988).

represented a 19% decline in the average. Article IX, Rule 10A has never been invoked, as the DJIA has not declined by 250 points or more since the rule was adopted. The largest decline occurred on March 8, 1996, when the DJIA fell intra-day 217 points below its previous day's closing value. Today, with the DJIA at about 6500 points, a 250 or 400 point drop would represent a much smaller percentage decline in the average (3.8% and 6.2%, respectively).

The proposed circuit breakers of 350 and 550 points would represent, respectively, a 5.4% and 8.5% decline in the DJIA, which are significant market declines and thus represent appropriate levels at which to halt trading. The proposed trigger values take into account the rise in market values since the Rule was first adopted, while also recognizing the fact that the original trigger values have never been reached. The Exchange believes that the new trigger values in Article IX, Rule 10A should be stated in absolute numbers, rather than in terms of percentages of the DJIA, in order to facilitate understanding by all market participants as to exactly when the circuit breakers will be utilized.

The Exchange seeks to effect these changes on a one-year pilot basis. The adoption of amendments to Article IX, Rule 10A would be contingent upon the adoption of amended rules or procedures substantively identical to this rule by:

(1) All United States stock exchanges and the National Association of Securities Dealers, Inc. with respect to the trading of stocks, stock options and stock index options; and,

(2) All United States futures exchanges with respect to the trading of stock index futures and options on such futures.

The exchange believes that an all-market trading halt requirement at appropriate levels will promote stability and investor confidence during periods of significant stress by providing market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating in an orderly manner the maintenance of an equilibrium between buying and selling interest.

2. Basis

The exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade. The Exchange believes that amending Article IX, Rule 10A on a pilot basis is consistent with these objectives in that the revised trading halt triggers during a period of significant stress can be expected to provide market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating, in an orderly manner, the maintenance of an equilibrium between buying and selling interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–96–33 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–809 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38126; File No. SR–NASD–96–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Increase in Minimum Gross Income Assessment

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 24, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation, Inc. ("NASD Regulation") is proposing a rule change to amend Section 1 to Schedule A of the By-Laws to increase the minimum gross income assessment from $850.00 to $1,200.00. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1—Assessments

Each member shall pay an annual assessment composed of:

(a) An amount equal to the greater of *$1,200.00*[850.00] or the total of:

(i) 0.125% of the annual gross revenue from state and municipal securities transactions,

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

(ii) 0.125% of annual gross revenue from other over-the-counter securities transactions,

(iii) 0.125% of the annual gross revenue from U.S. Government securities transactions, and

(iv) With respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

Each member is to report annual gross revenue as defined in Section 5 of this Schedule, for the preceding calendar year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VI of the By-Laws authorizes the NASD Board of Governors to levy fees, dues and assessments to be paid by members to defray reasonable expenses incurred in the administration of the work of the NASD. Currently, each member of the NASD is required to pay an annual gross income assessment of the greater of (i) $850.00 or (ii) the total of 0.125% of the annual gross revenue from state and municipal securities transactions, 0.125% of annual gross revenue from other over-the-counter securities transactions, 0.125% of the annual gross revenue from U.S. Government securities transactions, and, with respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

The minimum gross income assessment of $850.00 has not been changed since 1989. Due to inflationary pressures and increased regulatory costs, the NASD is proposing to raise the minimum gross income assessment from $850.00 to $1,200.00. The 1997 expenses of NASD Regulation are expected to grow by $43 million or 24% as the result of various factors, including, among other things, initiatives designed to respond to the findings by the SEC in its recent report concerning the NASD,[2] completion of a regulatory transition plan for the examination program, development of the new Central Registration Depository system, further implementation of the Arbitration Policy Task Force recommendations and continued development of an Order Audit Trail System. The proposed increase in the minimum gross income assessment, along with anticipated revenue growth in other areas, is expected to help defray the significant increase in regulatory costs anticipated to be incurred by NASD Regulation.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[3] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule reasonably provides for an increase in the minimum gross income assessment to help defray the significant increase in regulatory costs anticipated to be incurred by NASD Regulation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b–4[5] thereunder in that it constitutes a due, fee or other charge imposed by the Association. However, the NASD has determined to implement the rule change on January 1, 1997.

At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principle office of the NASD. All submissions should refer to File No. SR–NASD–96–56 and should be submitted by January 27, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–860 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38133; File No. SR–NASD–96–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SEC Transaction Fees

January 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II,and III below, which Items have been prepared by the NASD.[1] The NASD has designated this proposal as one constituting a change to a due, fee, or

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[2] See, Report Pursuant To Section 21(a) Of The Securities Exchange Act Of 1934 Regarding the NASD And the Nasdaq Stock Market, U.S. Securities and Exchange Commission (August 8, 1996).

[3] 15 U.S.C. § 78o–3(b)(5).

[4] 15 U.S.C. § 78s(b)(3)(A).

[5] 17 CFR 19b–4(e).

[6] 17 CFR 200.30–3(a)(12).

[1] The Commission notes that the NASD filed a technical amendment to the proposal (Amendment No. 1) on January 3, 1997.

other charge under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Schedule A, Section 8 of the By-Laws of the NASD to authorize the NASD to recoup from its members SEC transaction fees assessed against the NASD pursuant to the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 and Section 31 of the Act, as amended by the National Securities Markets Improvement Act of 1996. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

Schedule A

Secton 8 [Fee on Cleared Transactions] *Transaction Fees*

(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.

(b) SEC transaction fee. Each member shall be assessed a transaction fee of 1/300 of one percent of the aggregate dollar value of sales of covered securities transacted by or through such member. For purposes of this section, covered securities shall mean:

(i) all securities traded otherwise than on a national securities exchange (other than bonds, debentures, other evidences of indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the Securities Exchange Act of 1934, and securities described in subparagraph (ii)) that are subject to prompt last sale reporting and

(ii) effective October 1, 1997, securities registered on a national securities exchange pursuant to Section 12(b) of the Securities Exchange Act of 1934 (other than bonds, debentures, other evidences of indebtedness, and any sale or any class of sales of securities which the Securities and Exchange commission may exempt from the fee imposed by Section 31 of the Securities Exchange Act of 1934) traded otherwise than on such exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Congress recently enacted the National Securities Markets Improvement Act of 1996 ("Improvement Act") and the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 ("Appropriations Act"), which together require the NASD to pay SEC transaction fees for two classes of securities generally.

Effective January 1, 1997, pursuant to the Appropriations Act, the NASD is required to pay to the Commission a fee equal to 1/300 of one percent of the aggregate amount of sales transacted by or through any NASD member otherwise than on a national securities exchange of securities (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting. This applies to securities listed on The Nasdaq Stock Market, as well as many non-Nasdaq securities traded over the counter that also are subject to NASD rules requiring the reporting of transactions within 90 seconds of execution.[2] On September 1, 1997, the fees are required pursuant to Section 31 of the Exchange Act, as amended by the Improvement Act, and Exchange Act Rule 31–1 thereunder.[3]

Effective October 1, 1997, Section 31 of the Exchange Act, as amended by the Improvement Act, will require the NASD to pay to the Commission the existing transaction fee that applies to off-exchange trades of exchange-registered securities (so-called "third market" transactions). Currently, broker-dealers pay this fee, which is equal to 1/300 of one percent of the aggregate value of off-exchange transactions in exchange-registered securities, directly to the Commission.

The SEC fees will remain at 1/300 of one percent through fiscal year 2006 pursuant to the Improvement Act. In fiscal year 2007, the fees decline to 1/800 of one percent.

The proposed amendment to Schedule A, Section 8 of the NASD By-Laws authorizes the NASD to recoup from its members the transaction fees that NASD will be required to pay to the Commission pursuant to the new legislation. As such, the proposed amendment will parallel existing practices with respect to the transaction fees that Section 31 currently imposes on national securities exchanges. It is contemplated that NASD members will be free to pass the proposed fee through to those customers whose transactions were subject to the fee, as is generally done with respect to the existing Section 31 fee on national securities exchanges.

The fees will be collected by the NASD through clearing firms that are NASD members, based on trade report information submitted into the Automated Confirmation Transaction system ("ACT") by these firms and their correspondent firms. Because the fee is assessed on each transaction, all transactions that are submitted into ACT for reporting purposes will be subject to an SEC fee, regardless of whether the transaction is a "cleared" transaction. Thus, the fee will be imposed based on reported trades rather than cleared trades. The fee is based on the reported price, exclusive of any markup or markdown.

Payment of the accumulated transaction fees to the NASD is the responsibility of NASD member clearing firms. The NASD will calculate the fees based on each transaction attributed on a monthly basis. Each clearing firm's transactions will be consolidated with all reported trades of its correspondents, and the NASD will debit each clearing firm's account at the National Securities Clearing Corporation or the Stock Clearing Corporation of Philadelphia each month. An NASD-generated invoice will be forwarded to each clearing member as confirmation of the deduction. Self-clearing firms will be billed directly and will be expected to remit payment directly to the NASD.

As noted, the fee applies to all non-debt securities subject to prompt last-sale reporting, *i.e.*, the NASD's "90 second rule."[4] Thus, the fee applies to all securities listed on The Nasdaq Stock

[2] *See* NASD Rules 4632, 4642, and 6620. Further, as discussed herein, the fee will apply to certain transactions which currently are not required to be reported within 90 seconds of execution. *See* note 8 and accompanying text, *infra*.

[3] *See* Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590 (December 30, 1996).

[4] NASD Rules 4632, 4642, and 6620.

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Market, with the exception of listed convertible debt. Therefore, the types of Nasdaq securities subject to the fees include: common, preferred, ADRs, foreign, Canadian foreign, warrants, rights, and units.

Because NASD rules also require such prompt last sale reporting for transactions involving all domestic, Canadian, and ADRs that are non-Nasdaq OTC Equity Securities,[5] the transaction fee applies to these securities as well. This includes many securities quoted in the OTC Bulletin Board or in the National Quotation Bureau's "Pink Sheets." Conversely, foreign securities (other than Canadian securities and ADRs) that are non-Nasdaq OTC Equity Securities are not subject to the SEC fee, because NASD rules currently permit members to report transactions in these securities on the day after trade date (T+1).[6]

The fee also applies to transactions in covered securities executed outside normal hours. These transactions are reported into ACT pursuant to NASD Rules 4632(a)(4), 4642(a)(4), 6420(a), and 6620(a)(3).[7]

The NASD also will be collecting the SEC fee for odd-lot transactions and transactions effected pursuant to the exercise of an option on a covered security. The NASD notes that although these types of transactions generally are not reported into ACT, they are nonetheless subject to the SEC fee.[8] With respect to transactions that result from the exercise of a listed option cleared through Options Clearing Corp ("OCC") where the underlying security is subject to the fee (*e.g.*, because it is a Nasdaq security or is otherwise subject to prompt last sale reporting), the fee will be collected by OCC on behalf of the NASD. With respect to odd-lot transactions and transactions pursuant to the exercise of a conventional or "OTC" option where the underlying security is subject to the fee, there currently is no automated means to calculate and assess the fee. Therefore, for these types of transactions only, the NASD will require NASD clearing firms to account and submit payment for such activity by them and their respective correspondents on a monthly basis. Self-clearing firms also will be required to account and submit payment for such activity on a monthly basis.[9]

Each NASD member firm will be responsible for determining whether the securities they trade are subject to prompt last sale reporting requirements, and thus subject to the transaction fee. Nonetheless, the NASD recognizes that member firms may experience difficulty in modifying their systems by January 1, 1997 to distinguish between Canadian and other foreign non-Nasdaq OTC equity securities. To assist members in determining which foreign non-Nasdaq OTC Equity Securities are subject to the transaction fee, the NASD will initially make available a list of non-Nasdaq Canadian securities on which it intends to assess the transaction fee.

The transaction fee applies to all transactions in covered securities by or through any member otherwise than on a national securities exchange, regardless of the capacity in which the member is trading. For transactions between two NASD members, the NASD generally will assess the fee on the member on the sell side. For transactions between an NASD member and a customer, the NASD will assess the fee on the NASD member.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[10] which requires, *inter alia*, that the NASD's rules provide for the equitable allocation of reasonable fees among members. The proposed fees are consistent with the appropriations Act and the Improvement Act, and are similar to the transaction fees that have applied to exchange transactions for many years.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the ACt and Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–96–57 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 97–861 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

[5] NASD Rule 6610.

[6] NASD Rule 6620(a).

[7] *See* letter from Anne H. Wright, Associate General Counsel, NASD, to James T. McHale, Esq., Office of Market Supervision, Division of Market Regulation, Commission, dated January 6, 1997 ("Clarification Letter").

[8] *See* Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590 (December 30, 1996), at footnote 27.

[9] *See* Clarification Letter, *supra* note 7.

[10] 15 U.S.C. 78o–3.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38149; File No. SR–NASD–97–01]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to SelectNet Orders

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary,

The Nasdaq Stock Market, Inc., filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Nasdaq requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Order Execution Rules become effective January 20, 1997. The rule change proposed in this filing is essential to ensure the successful implementation and operation of Nasdaq's system designed to facilitate the ECN Display Alternative envisioned by the Order Execution Rules. Accordingly, Nasdaq requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, the NASD is submitting this rule filing to adopt certain rules regarding The Nasdaq Stock Market's ("Nasdaq") SelectNet Service to clarify members' obligations regarding the use of the service as it will operate under the Commission's new limit order display rule, Rule 11Ac1–4 ("Display Rule") and amendments to Rule 11Ac1–1(c)(5) ("ECN Amendment").[1] (New Text is italicized.)

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Conduct Rules

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3300. TRADING

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3380. *SELECTNET SERVICE*

(a) Cancellation of a SelectNet Order

No member shall cancel or attempt to cancel an order, whether preferenced to a specific market maker or electronic communications network, or broadcast to all available members, until a minimum time period of ten seconds has expired after the order to be canceled was entered. Such ten second time period shall be measured by the Nasdaq processing system processing the SelectNet order.

(b) Prohibition Regarding The Entry of Conditional Orders

No member shall enter an order into SelectNet that is preferenced to an electronic communications network covered by Rule 4623 that has any conditions regarding responses to the order, e.g., preferenced SelectNet orders sent to electronic communications networks shall not be all or none, or subject to minimum execution size above a normal unit of trading, or deemed non-negotiable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 18, 1996, the NASD and Nasdaq proposed several changes to their rules and systems to address changes to the Nasdaq Stock Market stemming from the Commission's adoption of the Order Execution Rules.[2] The Display Rule requires the display in a market maker's quote of certain customer limit orders and the ECN Amendment requires a market maker to display in its quote any better priced order the market maker places into an electronic communication network ("ECN"). Alternatively, the ECN Amendment provides an exception to the market maker's display obligation that depends upon the ECN itself displaying its best-priced orders in Nasdaq and allowing brokers and dealers to access such orders ("ECN Display Alternative").

Among the changes to Nasdaq's rules and systems to accommodate trading in the new environment the Order Execution Rules create, Nasdaq has proposed a mechanism to allow ECNs to take advantage of the ECN Display Alternative by providing a linkage to Nasdaq. A critical portion of Nasdaq's mechanism involves an existing Nasdaq system, SelectNet, which will be the means by which NASD members that are not subscribers to a particular ECN may access the ECN's orders that are being displayed in Nasdaq's quote montage pursuant to the ECN Display Alternative. To access those orders, NASD members will be permitted to enter SelectNet preferenced orders, *i.e.*, orders that are directed to a particular ECN at its displayed price. Under the terms of agreements Nasdaq will enter into with each ECN choosing to utilize this SelectNet linkage ("ECN agreements"), the ECN will be required to respond as soon as possible within seconds to the preferenced order.

In the course of working with ECNs on this access linkage via SelectNet, Nasdaq and the ECNs have discovered that problems occur when members entering orders into SelectNet, whether preferenced orders or broadcast, immediately cancel such orders. In addition, there are problems when members impose conditions, restrictions or limitations on the orders entered. For example, an ECN operating an automated response system develops response difficulties when it receives an all or none preferenced order. Nasdaq proposes, through this proposed rule change, to prohibit members from entering conditional orders into SelectNet when they are preferenced to an ECN. Nasdaq plans to develop system changes that will prevent the entry of such conditional orders as soon as possible.

Additionally, the immediate cancellation of an order entered in SelectNet causes significant problems for the ECN that had received such order and was attempting to accept that order. All ECNs will be required, pursuant to performance standards that will be in the ECN agreements, to operate an automated system for accepting orders via SelectNet. The ECN automated system must be able to accept the SelectNet preferenced order and send a message to Nasdaq and to the ECN's own customer indicating that an execution has occurred. However, because an execution does not occur until the Nasdaq system processor receives the ECN acknowledgement that it has in fact accepted the order, a member's cancellation message may arrive at the Nasdaq processor first. Consequently, by the time the acceptance message arrives at Nasdaq's processor for its acknowledgement, the Nasdaq processor may have already accepted the cancellation. This will result in Nasdaq rejecting the execution acknowledgement from the ECN and hence harm the customer of the ECN

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Execution Rules Adopting Release") adopting Rule 11Ac1–4 and amendments to Rule 11Ac1–1 ("Quote Rule") (collectively "Order Execution Rules").

[2] *See* Securities Exchange Act Release No. 38008 (December 2, 1996), 61 FR 64550 (December 5, 1996) notice of NASD filing of proposed rule change, file number 96–43.

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who believed an execution had occurred. Nasdaq believes it is appropriate, therefore, to require a member that has entered any order into SelectNet, a preferenced order or broadcast, to wait at least ten seconds before cancelling that same order. In this manner, the ECN or market maker operating a rapidly responding system will not be adversely disadvantaged.

Nasdaq notes that the establishment of a minimum life of an order at ten seconds is its initial response to a significant concern that it has had with the use of SelectNet and the rapid cancellation of orders. The entry of large numbers of preferenced and broadcast orders into SelectNet that are cancelled within a very short time span creates serious market quality concerns. Two particular problems occur: (1) the rapid entry and almost immediate cancellation of SelectNet orders causes a misleading appearance of activity that is virtually impossible to access (i.e. "flickering" orders); and (2) because of the system design of SelectNet, the large number of order sent to the SelectNet window on Nasdaq Workstation II ("NWII") rapidly scroll off the screen before a market maker can see the order and react to it (the "scroll-off" problem).

Two issues arise because of the many SelectNet orders that are cancelled almost as soon as they have been entered. First, the market may be misled by an appearance of significant activity in a particular issue, when, in fact, very few orders actually are accessible or carry any real price discovery information. The appearance of massive numbers of buy or sell orders first showing up on the screen could cause market makers and other members to believe that significant news on an issue is causing the order flow, leading market makers to adjust their quotations and order entry firms to incorrectly make order entry decisions based on their observation of the heavy influx of orders. The entry of these particular SelectNet orders is essentially a distracting and potentially harmful "noise" that disrupts the efficient price discovery process. Indeed, because these orders are so rapidly cancelled, it appears that many of these orders were not entered with the intention of being executed.

Additionally, assuming that each order is entered with the intention that it is to be executed, the almost immediate cancellation often prevents other market participants from reacting effectively to the display of customer order interest. Nasdaq believes that the flurry of SelectNet orders being entered with almost immediate cancellations is the functional equivalent of the "flickering quote" problem.[3]

Nasdaq believes that the immediate cancellation of orders entered into SelectNet poses problems similar to those caused by flickering quotations. Essentially, if orders entered through SelectNet are immediately cancelled they are thus virtually inaccessible and therefore misleading. If orders entered into SelectNet are to have any meaning, particularly when they are broadcast to the entire market, it seems that such orders should have a reasonable minimum period of life that permits other market participants to access them.

In addition to the problems caused by the basic inaccessibility of such orders, the unique design by which SelectNet orders are displayed is adversely effected by the heavy influx of such orders and subsequent cancellations. The NWII displays SelectNet orders on a four-line window at the bottom. Each SelectNet order occupies one line of the four-line window. Thus, when more than four orders are sent to a market maker through SelectNet, the oldest order scrolls off the display to be replaced by the newest order. When many SelectNet orders are sent through the system it causes the SelectNet window to scroll orders up and off the four-line window. Consequently, it is virtually impossible for the market maker to effectively interact with the orders. Even if a market maker were to observe an order that it wanted to interact with, it is likely that, due to the high rate of SelectNet cancellations, the order may be cancelled before the market maker is able to act on it. The scrolling, coupled with the almost immediate cancellation of orders, leads some market participants to regard SelectNet as a less viable trading mechanism.

The large influx of orders and cancellations exacts a heavy toll on the capacity of Nasdaq's host processors and the Enterprise-Wide Network II ("EWN"). All of the components have had to be upgraded significantly in the last year, an upgrade driven in significant part by the amount of traffic caused by the SelectNet Broadcast feature and the requirement to process the messages generated in entry and cancellation of SelectNet orders.

Nasdaq believes that the immediate cancellation of SelectNet orders causes a myriad of problems, any of which warrants the imposition of a minimum period for the life of a priced order entered into SelectNet. At this juncture, to prevent harmful market quality effects, Nasdaq believes that orders entered into SelectNet should be accessible for at least a 10 second minimum period of time before such order should be permitted to be cancelled.

Nasdaq has reviewed other possible time periods for examples of minimum time periods that permit reasonable access. One such example is drawn from the Commission's proposed price improvement rule which included a proposed safe harbor.[4] The proposed safe harbor provided that to obtain price improvement for a customer's market order when the spread in the best bid and offer was greater than the smallest quote increment (e.g., larger than 1/8th), the market maker should change its quote for 30 seconds to a price better than the current bid or offer to see if it could obtain a more favorable execution. Another example of a minimum time period is in the Intermarket Trading System ("ITS") Plan where the exchanges and the NASD have agreed to minimum time periods for orders sent from one market center to another via ITS. ITS rules specifically provide that orders sent by a specialist or market maker in one market center to a specialist or market maker in another market are "irrevocable" for either one or two

[3] The NASD believes that the Commission has expressed concern over the value of 'ephemeral' quotes, noting that while certain non-specialists in the trading crowd may make bids or offers that temporarily change the market's quote for "an instant in time," they do not really become part of the market quote because they are withdrawn immediately if not accepted. Such price information, if broadcast to the world via a consolidated quotation system, is essentially inaccessible, confusing to the market, and ultimately, potentially misleading. *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342, 4345 (February 1, 1978) release adopting the Quote Rule. *See also* Securities Exchange Act Release No. 15771 (April 26, 1979), 44 FR 26067 (May 4, 1979) and Securities Exchange Act Release No. 18482 (February 11, 1982), 47 FR 7399 (February 19, 1982) adopting amendments to the Quote Rule.

The NASD also maintains that, in determining not to adopt its price improvement rule, proposed Rule 11Ac1–5, the Commission stated that the inaccessibility of quotes created pursuant to this proposal weighed against its adoption at this time. *See* Order Execution Rules Adopting Release. Lastly, the NASD notes that in recent news report that SEC Commissioner Wallman had concerns with flickering quotes and caused the Commission to rethink its proposed Rule 11Ac1–5 regarding price improvement and a proposed safe harbor mechanism that would have required members to change their quotes for 30 seconds in an effort to obtain price improvement for market orders when spreads are wider than a minimum increment. *See* Bloomberg, "SEC Commissioner Voices Concern About Nasdaq Access Rule Plan," August 14, 1996.

[4] *See* Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) release proposing Order Execution Rules which included a proposed price improvement rule.

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minutes, depending on the time period that the sending market establishes.

Nasdaq notes that once the Order Execution Rules become effective, experience may determine that the ten second time period is too brief to effectively address the market quality concerns that present problems to market markers and investors alike that are seeking to trade at published prices that are withdrawn before they can be accessed. Nasdaq will continue to review SelectNet cancellation patterns to determine whether a longer minimum period is necessary. If it determines that market quality is being harmed by cancellations that indicate such orders are ephemeral, not executable or perhaps fictitious or manipulative Nasdaq will propose additional means to eliminate the harm. Accordingly, Nasdaq may revisit its initial determination to establish 10 seconds as the minimum life of a SelectNet order.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act and Rule 11Ac–1. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, by imposing limits on SelectNet orders as proposed herein, Nasdaq believes the proposal will promote fair and orderly markets and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for doing so or (ii) to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–986 Filed 1–10–97; 12:29 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38127; File No. SR–PSE–96–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to A.M.-Settlement

January 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its rules to codify certain existing procedures relating to a.m.-settled index options. The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new Rule 7.8(e), entitled "A.M.-Settled Index Options." This rule provides that the last day of trading for A.M.-settled index option shall be the business day preceding that last day of trading in the underlying securities prior to expiration. It states that the current index value at the expiration of an A.M.-settled option shall be determined on the last day of trading in the underlying securities prior to expiration. It states that the current index value at the expiration of an A.M.-settled option shall be determined on the last day of trading in the underlying securities prior to expiration. It further provides that the current index value shall be determined by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day. In addition, in any case where the security

[5] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

does not open for trading on that day, the last reported sale price of such security shall be used unless the exercise settlement amount is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation.

Subsection (1)(B) of the proposed rule states that in any case where an exercise settlement amount is fixed for any series of index options pursuant to the Rules and By-Laws of The Options Clearing Corporation, the amount so fixed shall be the amount required to be paid upon exercise of options of that series notwithstanding any difference between the current index value used by The Options Clearing Corporation in fixing that amount and the index value determined pursuant to Exchange Rules or practices.

The rule change further states that the following A.M.-settled index options are approved for trading on the Exchange: the PSE Technology Index; the Wilshire Small Cap Index; and the Dow Jones & Co. Taiwan Index.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–48 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–806 Filed 1–13–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Philadelphia Ventures Liberty Fund, L.P. (License No. 03/73–0208); Notice of Issuance of a Small Business Investment Company License

On July 29, 1994, a "Track 2" application was filed by Philadelphia Ventures Liberty Fund, L.P. located at 200 Broad Street, the Bellevue, Philadelphia, Pennsylvania 19102, with the Small Business Administration (SBA) pursuant to Section 107.102 of the then prevailing Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company. On June 6, 1996, the application was moved to a "Track 1" status upon notification of the applicant's first closing.

[3] 17 CFR 200.30–3(a)(12).

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after considering the revised application and all other pertinent information, SBA issued License No. 03/73–0208 on December 22, 1996, to Philadelphia Ventures Liberty Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–817 Filed 1–13–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2912]

California; Declaration of Disaster Loan Area

San Diego County and the contiguous counties of Imperial, Orange, and Riverside in the State of California constitute a disaster area as a result of damages caused by firestorms which occurred October 21 through October 23, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 3, 1997 and for economic injury until the close of business on October 2, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 291205 and for economic injury the number is 924900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 2, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97–821 Filed 1–13–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2914]

New York; Declaration of Disaster Loan Area (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency, dated December 31, 1996, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to January 31, 1997.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is August 19, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 2, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–818 Filed 1–13–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2918]

New York; Declaration of Disaster Loan Area, (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency, dated December 31, 1996, the above-numbered Declaration is hereby amended to include Chemung and Delaware Counties in the State of New York as a disaster area due to damages caused by severe thunderstorms, high winds, rain and flooding which occurred November 8–15, 1996.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Broome, Chenango, Greene, Sullivan, Tioga, and Ulster Counties in New York, and Bradford and Wayne Counties in Pennsylvania.

All other information remains the same, i.e., the termination date for filing applications for physical damage is February 7, 1997, and for loans for economic injury the deadline is September 9, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 2, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–819 Filed 1–13–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2920]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 23, 1996, I find that Tioga County in the State of Pennsylvania constitutes a disaster area due to damages caused by severe thunderstorms, high winds, rain, and flooding which occurred November 8–15, 1996. Applications for loans for physical damages may be filed until the close of business on February 20, 1997, and for loans for economic injury until the close of business on Sepember 23, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bradford, Lycoming, and Potter Counties in Pennsylvania, and Chemung and Steuben Counties in New York.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 292006. For economic injury the numbers are 932600 for Pennsylvania and 932700 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 2, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–820 Filed 1–13–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Notice of Proposed Change in Magnetic Media Reporting Specifications, for Submitters Who File Wage Reports Using Magnetic Media or Electronic Filing

SUMMARY: Notice is hereby given that SSA has developed proposed new Magnetic Media Reporting and Electronic Filing Specifications (MMREF–1) for submitters who file wage reports with SSA using Magnetic tape, diskette, cartridge or electronic filing. MMREF–1 will replace existing Technical Information Bulletins (TIB) 4, 5, 6 and 7. The MMREF–1 consists of a single record format to be used to report domestic or territorial reports using magnetic media and electronic filing. A pilot will be conducted for tax year 1998 reporting using selected submitters. Beginning with tax year 1999 and over a several year period, submitters will be required to transition to the MMREF–1 format.

We would like to receive any comments the public may offer on the MMREF–1. An educational seminar on the MMREF–1 is scheduled to be held at the SSA headquarters in Baltimore, Maryland, January 16, 1997, 9 a.m. to 12 p.m. To receive a draft copy of the MMREF–1 and/or to attend the educational seminar contact the addressee below.

DATES: Comments on the MMREF–1 must be received on or before February 28, 1997.

Reservations for the seminar would be appreciated but are not necessary by January 10, 1997.

ADDRESSES: To receive a draft and/or to make a reservation for the seminar, contact Ed Bulson, Social Security Administration, Room 3–B–15 Operations Building, Baltimore, Maryland 21235 or fax at (410) 966–4159.

FOR FURTHER INFORMATION CONTACT: Richard Harron, Chief, Earnings Records and Reporting Branch, Office of Program Benefits Policy, Social Security Administration, 3–F–26 Operations Building, Baltimore, Maryland 21235, telephone (410) 966–3856, fax (410) 966–9214.

Dated: January 8, 1997.

Richard Harron,

Tax Forms Coordinator.

[FR Doc. 97–858 Filed 1–13–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2497]

United States—Egypt Science and Technology Joint Board; Public Announcement of a New Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

January 15, 1997.

AGENCY: U.S. Department of State.

ACTION: Notice.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Catherine Bourgeois, Program Specialist, Office of Cooperative Science Programs, Bureau of Oceans and International Environmental and Scientific Affairs (OES/SCP), U.S. Department of State, 202–647–4662.

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin January 15, 1997. This program will provide small grants for successfully competitive proposals for collaborative projects and other activities submitted by United States and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals considered for funding in Fiscal Year 1997 must be received by March 1, 1997 by the Program Administrators. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of biotechnology, standards and metrology, environmental technologies, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained upon request.

Anne K. Solomon,

Deputy Assistant Secretary, Science, Technology, and Health, and Chair, United States—Egypt S&T Joint Board.

[FR Doc. 97–751 Filed 1–13–97; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice No. 2500]

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector (ITAC–T), Study Group A and ITAC–T; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) National Study Group and Study Group A has scheduled the following sessions to develop United States positions and contributions for upcoming ITU–T meetings dealing with standardization activities of the International Telecommunications Union.

The U.S. National group, ITAC–T, will discuss and prepare for the March 3–7, 1997, Telecommunications Standardization Advisory Group (TSAG) meeting, while U.S. Study Group A will discuss and prepare positions and contributions for (1) ITU–T Study Group 3's (Tariff and Accounting Principles including related telecommunications economic and policy) meeting now scheduled for May 22–30, 1997 and (2) the ITU–T Study Group 2 meeting scheduled for Geneva, May 20–30, 1997. A more extensive agenda will be developed and distributed by fax or electronic mail to members prior to the announced meeting including the announcements of two ad hoc group meetings, one for numbering and routing and one for accounting rates and call back applications.

ITAC–T Preparations for TSAG

February 6, 1997 at AT&T, 20th & L Streets, Washington, DC, 9:00 a.m. to 1:00 p.m.

March 20, 1997 at the Department of State, room 1207, 9:00 a.m. to 1:00 p.m.

ITAC–T Study Group A Preparations for ITU SG2 and SG3

March 19, 1997 at the Department of State, room 1207, 9:30 a.m. to 4:00 p.m.

April 30, 1997 at the Department of State, room 1207, 9:30 a.m. to 4:00 p.m.

Ad Hoc Group for Numbering/Routing Issues (SG2)

March 13, 1997 at Bellcore, 2101 L Street, NW, Washington, DC, 9:00 a.m. to 5:00 p.m.

March 14, 1997 at Bellcore, 2101 L Street, NW, Washington, DC, 9:00 a.m. to 12:00 noon

April 8, 1997, at Bellcore, 2101 L Street, NW, Washington, DC, 9:00 a.m. to 5:00 p.m.

April 9, 1997, at Bellcore, 2101 L Street, NW, Washington, DC, 9:00 a.m. to 5:00 p.m.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Questions regarding the meeting may be addressed to Mr. Earl Barbely at 202–647–0197. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: December 31, 1996.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 97–800 Filed 1–13–97; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2503]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Thursday, February 6, 1997, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the ninth session of the International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) jointly sponsored intergovernmental group of experts (JIGE), which met in Geneva from December 2–6, 1996, to consider revisions to the 1952 Arrest Convention. This SHC meeting will also prepare for the 75th session of the IMO Legal Committee, which will be held April

21–25, 1997, in London, regarding financial responsibility or compulsory liability and compensation insurance for seagoing vessels, compensation for pollution from ships' bunkers, a draft convention on wreck removal, and other matters. Finally, this meeting will be another opportunity for interested members of the public to express their views on whether the United States should ratify the Hazardous and Noxious Substances Convention, adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, for copies of conference documents, or to submit views concerning the subjects of discussion, contact either Captain Malcolm J. Williams, Jr., or Lieutenant Bruce P. Dalcher, U.S. Coast Guard (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: January 6, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–801 Filed 1–13–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Airport Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss airport certification issues.

DATES: The meeting will be held on January 29, 1997, at 9:00 a.m. Arrange for oral presentations by January 17, 1997.

ADDRESSES: The meeting will be held at FAA Headquarters, Conference Rooms 5B and 5C, 5th Floor, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Marisa Mullen, Federal Aviation Administration, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW.., Washington, DC 20591, telephone (202) 267–7653, fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on January 29, 1997, at FAA Headquarters, Conference Rooms 5B and 5C, 5th Floor, 800 Independence Avenue, SW, Washington, DC 20591. The agenda will include:

- Committee administration.
- Status report from Friction Measurement and Signing Working Group.
- General discussion of working group report.
- Recommendations and Findings Report from Commuter Airport Certification Working Group. To include presentation of any minority view points.
- General discussion of working group report.
- Make any additions or clarifications to working group report.
- Transit completed report to FAA; completing working group task.
- A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 17, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sigh and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 8, 1997.

Robert E. David,

Assistant Executive Director for Airport Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–844 Filed 1–13–97; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[STB Finance Docket No. 33321]

Western Fuels Service Corporation, Acquisition and Operation Exemption, Burlington Northern Railroad Company

Western Fuels Service Corporation (WFSC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150, Subpart D to acquire and operate a rail line owned by Burlington Northern Railroad Company (BN). The line, located in Wyoming, extends from West Caballo Junction (milepost 14.9) to the following mines in the Powder River Basin: (1) Buckskin (milepost 9.5; 25 route miles); (2) Fort Union (milepost 6.0; 21 route miles); (3) Clovis Point (milepost 3.0; 18 route miles); Rawhide (milepost 9.5; 25 route miles); Eagle Butte (milepost 9.5; 25 route miles); and Dry Fork (milepost 7.9; 23 route miles).

WFSC states that it has not reached an agreement with BN to operate over BN's tracks between West Caballo Junction and the Powder River Basin mines, but that it is seeking such rights and authority in its pending complaint in *Western Fuels Service Corporation* v. *Burlington Northern Railroad Company*, STB Docket No. 41987, to obtain access to terminal facilities under 49 U.S.C. 11102.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.[1] The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33321, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Fredrick D. Palmer, Western Fuels Service Corporation, Suite 805, 4301 Wilson Blvd., Arlington, VA 22203–1860; and Peter Glaser, Doherty, Rumble, and Butler, PA, 1401 New York Ave., N.W., Washington, DC 20005.

Decided: January 7, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–859 Filed 1–13–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Public Law 92–463, that a meeting will be held at the Federal Reserve Bank of New York at 3:00 p.m. on January 16, 1997, of the following debt management advisory committee:

Public Securities Association

[1] On December 13, 1996, BN filed a petition to reject the notice of exemption or, in the alternative, for a declaration that the notice is void *ab initio*. WFSC filed a reply on December 31, 1996. The merits of the petition will be decided by the entire Board in a separate decision.

Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting calls for a discussion by the members of their individual views on the appropriate size of the inflation-indexed security auction on January 29. The Committee is not being asked to make a group recommendation as to the appropriate size of the auction. Detailed minutes will be made available on January 21. The short period of time between the announcement of the date for the first auction and the date of the formal offering announcement of the details of the first auction, and the need for the Treasury to hear the views of Committee members before proceeding with its offering announcement, require that this meeting be held without providing the full fifteen days notice.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(9)(A) of title 5 of the United States Code, and that the public interest requires that such meeting be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92–463.

The nature and content of the discussion and individual members' recommendations are such that their premature disclosure would likely lead to significant speculation in the securities market. Thus, the meeting falls within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Office of the Under Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: January 9, 1997.

John D. Hawke, Jr.,

Under Secretary Domestic Finance.

[FR Doc. 97–867 Filed 1–13–97; 8:45 am]

BILLING CODE 4810–25–M

Office of the Comptroller of the Currency

[Docket No. 97–01]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for the OCC's determination of whether certain provisions of legislation entitled "Financial Institution Insurance Sales Act," recently enacted by the State of Rhode Island, are preempted by Federal law. The purpose of this notice and request for comment is to provide interested persons with an opportunity to submit comments prior to the OCC's issuance of a final determination responding to the request.

DATES: Comments should be submitted on or before February 13, 1997.

ADDRESSES: Comments should be sent to the Communications Division, 250 E Street, SW, Third Floor, Washington, DC 20219. Attention Docket No. 97–01. Comments will be available for inspection and photocopying at the same location. Appointments for inspection of comments can be made by calling (202) 874–4700.

FOR FURTHER INFORMATION CONTACT: Suzette H. Greco, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION:

Background

The OCC has received a request from a trade association that represents financial institutions and insurance companies (Requester) for a determination that certain provisions of legislation entitled "Financial Institution Insurance Sales Act," R.I. Gen. Laws §27–58–1 *et seq.*, (the Rhode Island law), recently enacted by the State of Rhode Island, are preempted by provisions of the National Bank Act.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (section 114), Pub. L. 103–328 (12 U.S.C. 43), generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption determinations. Under section 114, the OCC must publish notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law in four designated areas: community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches. Pursuant to section 114, interested persons have at least 30 days to submit written comments.

The Requester has offered reasons why the request should not be subject to section 114. Whether or not section 114 applies to the request, the OCC has determined that it is appropriate to use notice and comment procedures in this case, given the broad interest in the issues presented in the request and the benefit the OCC will derive by receiving comments from all parties with an interest in these issues. The OCC will publish in the **Federal Register** any final opinion letter or interpretive rule that concludes that Federal law preempts State law.

Specific Request for OCC Preemption Determination

The OCC has been asked to determine whether certain provisions of the Rhode Island law are preempted by section 92 of the National Bank Act (12 U.S.C. 92) and other specific Federal laws noted later in this notice and request for comment.

Section 92 authorizes a national bank "located and doing business in a place where the population is less than five thousand to act as an agent for any fire, life, or other insurance company," to "solicit and sell insurance," to "collec[t] premiums," and to "receive for services so rendered . . . fees or commissions," subject to regulations issued by the Comptroller of the Currency. 12 U.S.C. 92. State laws that apply generally to regulated insurance agents and agencies will apply to national banks provided the law does not effectively prevent national banks from conducting activities authorized under Federal law, and provided that, if the law interferes with those authorized activities, the interference is not significant. *See Barnett Bank of Marion County, N.A.* v. *Nelson*, 116 S.Ct. 1103 (1996).

The Rhode Island law imposes a number of requirements upon financial institutions engaged in the solicitation and sale of insurance that differ from the requirements that apply to other insurance agents and agencies. The Requester contends these special requirements prevent or significantly interfere with the ability of a national

bank to exercise its authority under section 92. The special requirements include a provision prohibiting banks from requiring or implying that the purchase of insurance products from a bank is related to receiving another banking product or service, a provision restricting where a bank's licensed agent can solicit the sale of insurance, a provision prohibiting certain bank employees from soliciting and selling insurance, a provision requiring separate applications for loans and insurance, and a provision limiting the ability of a bank to use its customer information to solicit and sell insurance.

Specifically, section 6 of the Rhode Island law provides that:

(a) No financial institution may offer a banking product or service, or fix or vary the conditions of such offer, on a condition or requirement that the customer obtain insurance from the financial institution, or any particular insurance producer.

(b) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of, or is any way related to, the lending of money or extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a checking or savings account or other deposit account, or the provision of services related to any such activities.

R.I. Gen. Laws §27–58–6. The Requester contends that this provision would prohibit a bank employee from even mentioning to a customer that insurance products are available from the bank. As a result, the Requester believes that the provision discriminates against national banks and significantly interferes with the ability of a national bank to solicit or sell insurance under section 92.

Moreover, the Requester contends that the provision conflicts with the anti-tying provisions of the Bank Holding Company Act, 12 U.S.C. 1972, and Federal regulations enacted pursuant to that section. Under the Federal anti-tying laws and regulations, banks are permitted to inform a customer that insurance is required in order to obtain a loan or that loan approval is contingent on the customer obtaining acceptable insurance. In such circumstances, the bank may indicate that insurance is available from the bank. Thus, the Requester contends that under traditional preemption standards the Rhode Island law is preempted by Federal law. The Requester further contends that the Rhode Island law was enacted for the purpose of regulating lenders rather than regulating the business of insurance and thus, is not protected from preemption by the McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.*

In addition, section 12 of the Rhode Island law permits financial institutions to solicit and sell insurance only from an office physically separated from the banking activities of the institution. Specifically, section 12 provides that:

The place of solicitation or sale of insurance by any financial institution shall be from an office physically separated from the banking activities of the institution. Physical separation shall not be defined as a separate building. The commissioner shall have the authority to promulgate rules to implement this section pursuant to § 27–58–4.

R.I. Gen. Laws §27–58–12. The Requester contends this provision will effectively prohibit insurance activities at small bank or branch offices. As a result, the Requester believes that the provision significantly interferes with a national bank's ability to solicit and sell insurance under section 92.

In addition, section 8 of the Rhode Island law prohibits bank employees with lending or deposit taking responsibilities from soliciting and selling insurance. Specifically, section 8 provides that:

Solicitation for the purchase and sale of insurance by a financial institution shall be conducted only by persons whose responsibilities do not include loan transactions or other transactions involving the extension of credit, or the taking of deposits.

R.I. Gen. Laws § 27–58–8. The Requester contends that this provision would prohibit the use of qualified "platform" employees to solicit and sell insurance, as is permitted for national banks. Moreover, the Requester believes that the provision could effectively bar insurance activities in small banks or branches where different employees may not be available to offer insurance and banking products and services. For these reasons, the Requester believes the provision discriminates against national banks and prevents or significantly interferes with their authority to solicit and sell insurance under section 92.

Section 11 of the Rhode Island law requires that loan and insurance applications be completed independently and through separate documents. Section 11 provides that:

(a) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

(b) A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

R.I. Gen. Laws § 27–58–11. The Requester contends that this provision, particularly when coupled with other requirements of the Rhode Island law, including the provision requiring the physical separation of insurance and banking activities and the provision prohibiting certain bank employees from soliciting and selling insurance, will impose an undue burden upon the bank and its customers by necessitating that the customer make multiple visits with different bank employees to multiple locations in order to purchase bank and insurance products.

Section 10 of the Rhode Island law prohibits financial institutions from using or disclosing certain customer information for the purpose of selling or soliciting insurance. Specifically, section 10 provides that:

(1)(b) "Nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution, including information concerning the terms and conditions of insurance coverage, insurance expirations, insurance claims, or insurance history of an individual. "Nonpublic customer information" does not include customer names, addresses or telephone numbers.

(2) No financial institution shall use any nonpublic customer information for the purpose of selling or soliciting the purchase of insurance or provide the nonpublic customer information to a third party for the purpose of another's sale or solicitation of the purchase of insurance.

R.I. Gen. Laws § 27–58–10. The Requester contends that this provision will cripple a bank's ability to use customer information to meet customer needs. The Requester believes that the limitation on use and disclosure of customer information would even prohibit the marketing of insurance products to bank customers who had requested such information. Moreover, like the other provisions cited by the Requester, the Requester contends that this provision discriminates against financial institutions because a collateral limitation has not been placed on other insurance agents and agencies in Rhode Island.

Request for Comments

The OCC requests comments on whether Federal law preempts the provisions of the Rhode Island law cited above.

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Dated: December 16, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–674 Filed 1–13–97; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Spring Unsolicited Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces a Change in Deadline for the Spring Unsolicited Grant Competition.

Previous Deadline: April 1
New Deadline: March 1

DATES: Application Material Available Upon Request. Receipt Date for Return of Applications: March 1, 1997. Notification of Awards: June, 1997.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program, 1550 M Street, NW, Suite 700, Washington, DC 20005–1708, (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: grant__program@usip.org.

FOR FURTHER INFORMATION CONTACT:

The Grant Program, Phone (202)–429–3842.

Dated: January 8, 1997.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 97–822 Filed 1–13–97; 8:45 am]

BILLING CODE BAC–3155–01–M

federal register

Tuesday
January 14, 1997

Part II

Department of Commerce

International Trade Administration

Antidumping; Silicon Metal From Brazil; Notices

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On September 5, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. This review covers the period July 1, 1993, through June 30, 1994, and five manufacturers/exporters of the subject merchandise to the United States. The review indicates the existence of margins for four firms.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and new information submitted at the Department's request, we have changed our results from those presented in our preliminary results, as described below in the comments section of this notice.

EFFECTIVE DATE: January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Alain Letort, or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2924, –4243, or –0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1996, the Department of Commerce published in the **Federal Register** (61 FR 46776) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil (July 31, 1991, 56 FR 36135). On September 27, October 2, and November 13, 1996 the Department requested additional information from Minasligas, Eletrosilex, and CCM, respectively. We received responses from these firms on October 15, October 16, and November 20, 1996, respectively. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The period of review (POR) is July 1, 1993, through June 30, 1994. This review involves five manufacturers/exporters of Brazilian silicon metal: Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Eletrosilex Belo Horizonte (Eletrosilex), Rima Eletrometalurgia S.A. (RIMA), and Camargo Corrêa Metais (CCM).

Consumption Tax

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F.2d 1573, 1582 (1993), and which was suggested by the court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F.Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 157) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

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Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by Minasligas, CBCC, RIMA, and CCM by using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Best Information Available (BIA)

In our preliminary results of this administrative review, we determined that RIMA was a non-shipper. *See Silicon Metal from Brazil; Preliminary Results of Antidumping Duty Administrative Review, Intent to Revoke in Part, and Intent Not to Revoke in Part*, 61 FR 46776 (September 5, 1996) (preliminary results). Since publication of the preliminary results, we have determined that RIMA did have shipments during the POR. *See* the Department's response to comment 2 below. Therefore, we have included in these final results of review all of RIMA's sales during the POR made to an importer who had at least one importation during the POR. *See* the Department's response to comment 1 below.

Because RIMA failed to produce information requested at verification to substantiate significant portions of its response, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate. For these final results we applied the following two-tier BIA analysis in choosing what to use as BIA:

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, it assigns that company first-tier BIA, which is the higher of:

(a) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value investigation (LTFV) or prior administrative review; or

(b) The highest rate found in the present administrative review for any firm for the same class or kind of merchandise from the same country of origin.

2. When a company substantially cooperates with our requests for information including, in some cases, verification, but fails to provide the information requested in a timely manner or in the form required, it assigns to that company second-tier BIA, which is the higher of:

(a) The firm's highest rate (including the "all others" rate) of the same class or kind of merchandise from a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or

(b) The highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

See Allied-Signal Aerospace Co. v. *United States*, 28 F.3d 1188, 1189, 1190 n.2 (CAFC 1994).

RIMA cooperated by responding to the Department's questionnaires. However, we determined at verification that this company could not substantiate significant portions of its responses. Therefore, we have determined to apply second-tier BIA to RIMA's third-review sales. (*See* Use of BIA memorandum to Joseph Spetrini, Deputy Assistant Secretary, Enforcement Group Three.) The second-tier BIA rate we have assigned to RIMA is 91.06 percent. This rate represents the highest rate ever applicable to RIMA for the subject merchandise.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Minasligas, Eletrosilex, CCM, CBCC, and a group of five domestic producers of silicon metal (collectively, the petitioners). Those five domestic producers are American Alloys, Inc., Elkem Metals Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals and Alloys, Inc. We received a request for a hearing from CBCC, Minasligas, Eletrosilex, CCM, and the petitioners. We held a public hearing on November 25, 1996.

Comment 1

Petitioners argue that the Department erred in determining which U.S. sales to review by using the methodology employed in the final results of the second administrative review of this order. In the second review final results, we explained our methodology as follows:

1. Where a respondent sold merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR.

2. Where a respondent sold subject merchandise to an importer who had no entries during the POR, we did not review the sales of subject merchandise to that importer in this administrative review. Instead, we will review those sales in our administrative review of the next period in which there is an entry by that importer.

We also said in the notice that after completion of the review, we would instruct Customs to assess dumping duties against importer-specific entries during the period. *See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review*, 61 FR 46763, 46765 (September 5, 1996) (*Silicon Metal from Brazil; Second Review Final Results*).

Petitioners argue that the methodology described above and used in the preliminary results of this review is inconsistent with the Tariff Act, because section 751(a)(2) of the Tariff Act requires that margins be based on sales associated with entries during the POR. Petitioners also cite to *Torrington Co.* v. *United States*, 818 F. Supp. 1563, 1573 (CIT 1993) (*Torrington*) to demonstrate that the Court of International Trade (CIT) has held that the word "entry" as used in the statute refers to the "formal entry of merchandise into the U.S. Customs territory." They argue that this date of formal entry is the date on which the entry summary is filed in proper form. Furthermore, petitioners argue that the Department itself has stated that the use of the term "entry" in the antidumping law refers unambiguously to the release of merchandise into the customs territory of the United States. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991). Petitioners also argue that the legislative history of section 751 demonstrates that margin calculations in administrative reviews are to be based on sales of merchandise that entered during the POR.

In addition to the above arguments based on their interpretation of the statute and case law, petitioners argue that the questionnaire issued by the Department to the respondents in this review shows that, prior to the 1992–93 administrative review of this order, the Department's established practice was to base reviews on sales of merchandise that entered U.S. Customs territory during the POR, and that it was the Department's expressed intention to conduct this review in the same way. Furthermore, petitioners argue that the failure to calculate dumping margins based on sales associated with entries during the POR would result in improper assessment of duties, because the duties assessed on entries during the POR would have no relation to the margin of dumping on those sales. Thus, by assessing duties on entries at rates unrelated to the margin of dumping on the associated sales, petitioners argue, the Department would violate 19 U.S.C. 1673(2)(B), which requires that "there shall be imposed upon such merchandise an antidumping duty * * * in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise."

Eletrosilex argues that section 751 of the Tariff Act does not provide the specificity that petitioners assert, and must be read in light of the other provisions of the statute. In a rule-making proceeding several years ago, Eletrosilex alleges that the Department did just that. There the Department said:

> Notwithstanding the reference to review and assessment of "entries" pursuant to section 751, Congress also provided that the Department should analyze "sales" transactions pursuant to sections 772 and 773 of the statute in the course of conducting its administrative review. The statute provides for the review of both "entries" and "sales" without recognizing that the two terms are not synonymous or providing a mechanism for linking them.

See Advance Notice of Proposed Rulemaking, 56 FR 63696 (December 5, 1991). Eletrosilex argues that in that proceeding the Department concluded that Congress could not have intended that it base all reviews on entries of merchandise rather than sales, and that such a conclusion "would hinder the achievement of other statutory goals governing review and assessments." *Id.*, at 63697.

Furthermore, Eletrosilex argues that, contrary to the petitioners' statements, the Department has consistently adhered to this policy. Petitioners' citations in support of their argument, Eletrosilex argues, are *dicta*, and have no controlling precedent. More importantly, Eletrosilex argues, the Department has recently repudiated exactly the same argument made by the very same petitioners. As support for this statement, Eletrosilex cites the final results of the first and second administrative reviews of this proceeding. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42806, 42813 (August 19, 1994) (*Silicon Metal From Brazil; First Review Final Results*) and *Silicon Metal from Brazil; Second Review Final Results*.

Department's Position

We disagree with petitioners. We most recently addressed this issue in the final results of the second review of this order. There we stated:

> We do not agree with petitioners that section 751(a)(2) requires that we review only sales that entered U.S. customs territory during the POR. Section 751(a)(2) mandates that the dumping duties determined be assessed on entries during the POR. It does not limit administrative reviews to sales associated with entries during the POR. Furthermore, to review only sales associated with entries during the POR would require that we tie sales to entries. In many cases we are unable to do this. Moreover, the methodology the Department should use to calculate antidumping duty assessment rates is not explicitly addressed in the statute, but rather has been left to the Department's expertise based on the facts of each review. "* * * the statute merely requires that PUDD (*i.e.*, potentially uncollected dumping duties) * * * serve as the basis for both assessed duties and cash deposits of estimated duties." *See The Torrington Company v. United States*, 44 F.3d 1572, 1578 (CAFC 1995).

See Silicon Metal from Brazil; Second Review Final Results at 46765. Our analysis of this issue and interpretation of the statute remain unchanged from those announced in the final results of the second review. Furthermore, by applying a consistent methodology in each segment of the proceeding we ensure that we review all sales made during the entire proceeding. Changing the methodology could result in our failure to review some sales. Hence, in these final results of review we have employed the methodology we announced in the final results of the second review, and which petitioners cite above.

Comment 2

Petitioners argue that the Department should assign a margin to RIMA based on BIA. In the preliminary results of review the Department determined that RIMA had no shipments during the POR, and therefore assigned RIMA its calculated rate from the final results of the previous review. Petitioners argue that the Department was in error in its determination that RIMA had no shipments during the POR, and that because at verification RIMA was unable to substantiate significant portions of its response, the Department should assign RIMA a margin based on BIA.

Department's Position

On October 21, 1996 the importer of the merchandise in question submitted information regarding its imports. We have carefully reviewed the importer's Customs documentation, and have determined that the Department was in error in its preliminary determination that the sales did not involve an entry during the third administrative review period. Furthermore, RIMA was unable at verification to substantiate significant portions of its response in regard to this entry (*see* the preliminary review results for the fourth review (*Preliminary Results of Antidumping Administrative Review; Intent Not to Revoke in Part*, 61 FR 46779, September 5, 1996), the October 25, 1995 verification report, and the September 13, 1996 "Use of Facts Available" memorandum from Fred Baker to Richard Weible). Therefore, we have determined to use BIA for these sales. We have assigned to this sale, as BIA, 91.06 percent (*see Use of Best Information Available (BIA)* above). This rate represents the highest rate ever applicable to RIMA for the subject merchandise.

Comment 3

Petitioners argue that the Department erred in its preliminary results of review by announcing an intent to revoke the order with respect to Minasligas. They argue that Minasligas does not qualify for revocation for two reasons. First, Minasligas has sold at less than fair value (LTFV) in this and every prior segment of this proceeding, and therefore has not met the regulatory requirement of having not sold at less than fair value for at least three years. *See* 19 CFR §353.25(a)(2)(i). The three years in question are the first (91–92), second (92–93), and third (93–94) reviews. For the first and second reviews, the Department calculated a margin of zero percent in its final results of review. For the third review the Department calculated a margin of zero percent for its preliminary results. Petitioners argue, with respect to the first review (which is in litigation before the CIT), that after the Department corrects the errors for which it has already conceded error, Minasligas will have a margin. They argue, with respect to the second review, that after the Department corrects the ministerial errors they allege it made in its final results, Minasligas will again have a margin. They argue, with respect to the third review, that after the Department corrects the calculation and methodological errors which they allege it made, Minasligas will again have a margin.

Second, petitioners argue that the Department cannot correctly determine that Minasligas is not likely to resume selling at less than fair value in the future, and without this determination the Department cannot revoke the order. (*See* 19 CFR 353.25(a)(2)(ii).) Petitioners base this argument on the following factors:

(1) Minasligas had a margin greater than *de minimis* in the preliminary results of the fourth administrative review of this order. *See Silicon Metal from Brazil, Preliminary Results of Review and Intent Not to Revoke in Part*, 61 FR 46779, 46781 (September 5, 1996).

(2) Minasligas has submitted no evidence that it is unlikely to sell at less than fair value in the future.

(3) The Department has not verified any information that Minasligas is unlikely to dump in the future. Citing 19 U.S.C. §1677e(b)(2)(B) and 19 CFR

353.25(c)(2)(ii), petitioners argue that the statute and regulations require that the basis for the "likelihood" determination be verified, and that because the Department did not verify any such basis, Minasligas does not qualify for revocation.

Furthermore, petitioners argue that analysis based on the criteria used by the Department in its review of the antidumping duty order on brass sheet and strip from Germany show that Minasligas is likely to resume dumping. (*See Brass Sheet and Strip from Germany, Final Results of Administrative Review*, 61 FR 49727, 49730 (September 23, 1996) (*German Brass*).) These criteria include a dramatic decline in shipments after publication of the antidumping duty order and the low level of shipments by the respondent. Both of these factors, petitioners allege, are present here with respect to Minasligas.

Minasligas argues, first, that in two consecutive administrative reviews prior to the issuance of the preliminary results of the third review, the Department found Minasligas not to have sold at less than fair value, and that, therefore, if, in the final results of this review the Department finds no sales at less than fair value, it will have met the requirement of 19 CFR 353.25(a)(2)(i). Secondly, Minasligas argues that 19 CFR 353.25(a)(2)(ii) requires a finding that dumping is not likely to occur in the future, but, contrary to petitioner's suggestion, does not require Minasligas to provide, or the record to contain, evidence that Minasligas is unlikely to resume dumping in the future. Furthermore, Minasligas argues that there is evidence on the record that Minasligas will not dump in the future. That evidence consists of Minasligas' written agreement to reinstatement of the antidumping duty order if it is found to be selling at less than fair value in the future.

Department's Position

To qualify for revocation in part under 19 CFR 353.25(a)(2)(i), a respondent must have sold the subject merchandise at not less than foreign market value for at least three consecutive years. Our analysis in these final results of review indicates that Minasligas had no margin for this period. Therefore, because Minasligas has met the requirement under 353.25(a)(2)(i), we determine that Minasligas has met the regulatory requirement of having sold the subject merchandise at not less than foreign market value for at least three consecutive years.

However, in order to revoke an order in part the Department must also be satisfied that the firm is not likely to resume dumping in the future. The Department has determined that Minasligas has a dumping margin of greater than *de minimis* in the fourth administrative review (being issued concurrently). Accordingly, the issue of likelihood of dumping in the future is moot because Minasligas has in fact resumed dumping. Therefore, we are not revoking the order in part for Minasligas.

Comment 4

Petitioners argue that the Department erred in its calculation of the COP/CV for Minasligas, Eletrosilex, and CCM by using the monthly amounts of depreciation that they reported. Petitioners argue with respect to Minasligas and Eletrosilex that their calculation of depreciation does not reflect the useful life of the assets, but rather reflects an accelerated life. Petitioners argue that the Department's practice is to reject accelerated depreciation of assets where such accelerated depreciation fails to allocate the cost of the asset on a consistent basis over the life of the asset, which, petitioners allege, is the case here. Furthermore, with respect to Eletrosilex, petitioners argue that evidence on the record indicates that Eletrosilex did not report depreciation in accordance with Brazilian GAAP. With respect to Minasligas and CCM, petitioners argue that their depreciation calculation does not restate the value of the assets to account for hyperinflation. Petitioners argue that when an economy is hyperinflationary, basing depreciation on historical asset values results in severe understatement of actual costs; for this reason the Department's practice is to use depreciation that is based on revalued assets in hyperinflationary economy cases. Finally, petitioners argue that CCM's submitted calculation is inadequate because it does not include depreciation of idle equipment. It is the Department's practice, petitioners argue, to include depreciation for idle equipment when calculating COP and CV. Moreover, petitioners allege that there is contradictory information on the record as to whether CCM had expenses for idle equipment. Petitioners argue that because CCM failed to provide the information that would allow the Department to calculate monthly depreciation based on revalued assets and to include depreciation for idle assets, and because CCM misled the Department about whether it had depreciated its idle equipment, the Department should determine depreciation for CCM based on BIA. In the alternative, the Department should obtain from CCM the information necessary to determine monthly depreciation in accordance with Department practice.

Minasligas argues that petitioners' argument is fallacious. Minasligas points to documentation it submitted on October 15, 1996, showing that (1) Minasligas did not depreciate its assets over the shortened period that petitioners suggest; (2) the depreciation reported in its COP/CV tables for purposes of this proceeding is fully supported by Minasligas' accounting records; (3) the value of the assets subject to depreciation is restated in current currency to account for hyperinflation through the use of special indices known as the BTN/UFIR indices. Furthermore, Minasligas argues that the Department fully verified this information. Moreover, Minasligas argues that the petitioner's argument is based on a misunderstanding of some of the columns in the verification exhibit upon which they base their argument. Finally, Minasligas argues that to recalculate depreciation, using the longer useful lives of Minasligas' assets that petitioners suggest, would be unfair because the Department has already completed two administrative reviews in which it calculated Minasligas' depreciation using the shorter useful lives that are the basis for the depreciation calculation that Minasligas records in its books and reported to the Department. Therefore, Minasligas argues that, if the Department does decide to recalculate its depreciation using longer useful lives for the firm's assets, it should adopt a methodology that takes into account the depreciation expenses that Minasligas reported in the previous administrative reviews.

Eletrosilex argues that the petitioners have presented no basis for rejecting Eletrosilex's longstanding use of aggressive accelerated depreciation. It argues that after having taken depreciation of 10 percent per year through 1991 on its furnaces, as permitted under Brazilian generally accepted accounting principles (GAAP), Eletrosilex necessarily had to interrupt depreciation on an item that had a 20-year useful life. It states it resumed a 5 percent depreciation on its furnaces in January 1995. Furthermore, it argues that it has provided the Department with a clear statement of its depreciation schedule and its application to all depreciable assets. Thus, Eletrosilex concludes that it has demonstrated to the Department a sound and legitimate basis for the

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depreciation schedules used in the POR, and the Department should use those schedules again in the final results of this review.

CCM argues that petitioners' argument with respect to restatement of asset values is invalid because CCM does not base its depreciation on historical costs. CCM's financial statement, CCM argues, makes clear that the value of CCM's property, plant, and equipment is recorded at the cost of acquisition plus monetary adjustment. CCM states that this is a common accounting mechanism used by Brazilian companies to restate the historical costs of their assets at their current cost during hyperinflation. With regard to its statement (cited by petitioners) that CCM did not revalue its assets, CCM argues that the statement meant only that there was no special asset re-valuation during the POR; CCM did follow the accepted accounting practice of restating the historical cost through the application of monetary correction. Thus, CCM argues, there is no basis for petitioners' statements that CCM's reported depreciation is grossly understated because it is based on historical costs.

With respect to petitioners' argument that CCM did not report depreciation of idle equipment, CCM admits that it did not include idle equipment in its submitted costs, but argues that doing otherwise would have distorted the Department's hyperinflationary cost calculations. The fundamental premise of the Department's replacement cost methodology, CCM argues, is that costs actually incurred by the respondent in the production of subject merchandise must be restated on a replacement basis in order to eliminate the distortive effects of hyperinflation on costs incurred at various times in the POR. In order to calculate an accurate monthly replacement cost, CCM argues, the Department must apply this approach only to the value of inputs actually consumed in the production process. Because of this, it would be incorrect to include the replacement cost of an idled asset, because by definition the asset was not used or consumed in the specific month. Thus, CCM argues that the Department's replacement cost rules work only if applied to those costs actually (and not hypothetically) incurred in production, as petitioners advocate. Therefore, CCM argues, the Department should not include depreciation on idled equipment in CCM's COP/CV.

Department's Position

We agree with petitioners in part. With respect to Minasligas, we disagree with petitioners' argument that Minasligas' depreciation calculation is unacceptable because it is based on accelerated depreciation. The CIT has upheld the Department's calculation of depreciation based on a respondent's financial records where their financial records are consistent with foreign GAAP principles and where those records do not distort actual costs. *See Laclede Steel Co.* v. *United States*, 18 CIT 965, 975 (1994). Here, Minasligas has historically used accelerated depreciation, and these methods are consistent with Brazilian GAAP. Moreover, we note that we have in the past used accelerated depreciation where the respondent has historically used it in its financial statements. *See Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom; Final Determination of Sales at Less Than Fair Value;* 61 51411, 51418 (October 2, 1996). Furthermore, we agree with Minasligas that to recalculate depreciation using a longer useful life for Minasligas' assets after having used a shorter life in two prior reviews would allocate costs to this review that have already been accounted for in prior reviews, and would therefore be inequitable. Finally, we agree with Minasligas that its use of the BTN/UFIR indices accurately restates the value of its assets. Therefore, in these final results of review, as in the preliminary results of review, we have used Minasligas' reported depreciation in calculating COP.

With respect to Eletrosilex, we agree with petitioners that evidence on the record indicates that Eletrosilex did not report depreciation in accordance with Brazilian GAAP. *See* note 5(b)(iv) of Eletrosilex's 1994 financial statement in Eletrosilex's February 26, 1996 submission. Therefore, for these final results of review, we have used the auditor's estimate of Eletrosilex's depreciation for the COP calculation because it is the most accurate reflection of Eletrosilex's depreciation that is on the record and because it is in accordance with Brazilian GAAP.

With respect to CCM, we agree with CCM that evidence on the record indicates that it makes a monetary adjustment in recording the value of its property, plant, and equipment. Therefore, no additional restatement is necessary.

Concerning idle assets, we agree with the petitioners that the Department includes in fully absorbed factory overhead the depreciation of equipment not in use or temporarily idle, notwithstanding home market accounting standards which may allow companies to refrain from doing so. *See*, for example:*Silicon Metal From Argentina* (58 FR 65336, 65338, December 14, 1993); *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom* (58 FR 39729, 39756, July 26, 1993); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 64720, 64727–28, July 26, 1993); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (57 FR 4960, 4973, February 11, 1992); *Shop Towels from Bangladesh* (57 FR 3996, 3999, February 3, 1992); *Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990); *Titanium Sponge from Japan* (49 FR 38687, 38689, October 1, 1984). *See also NTN Bearing Corp. of America, et al., plaintiffs,* v. *United States, Slip Op. 93–129* (August 4, 1993) (upholding the Department's inclusion of depreciation expenses for idle equipment).

We disagree with CCM's argument that a hyperinflationary environment necessitates disregarding the Department's long-standing policy. Depreciation is a cost that is incurred without regard to whether the assets being depreciated are used in production during a particular period. Thus, depreciation of idle assets must be included in COP in order for COP to reflect the full costs incurred during the POR regardless of whether an economy experienced hyperinflation during the POR.

Similarly, we disagree with CCM's related argument that depreciation expense for idled assets involves only hypothetical expenses; depreciation expenses reflect not only wear and tear from usage but also aging and obsolescence, which affect idle assets as much as, and sometimes more than, active assets.

Therefore, in these final results of review we have added the depreciation for idle assets to CCM's reported depreciation.

Comment 5

Petitioners argue that the Department should disregard Minasligas' inventory holding gain/loss calculation because Minasligas failed to "layer" or value its inventory properly. They argue the Department should require Minasligas to provide the information necessary to

perform a proper inventory holding gain/loss calculation in accordance with Department practice.

Minasligas argues that the petitioner's point is moot because the Department used Minasligas' home market selling prices for foreign market value (FMV), not CV. It also argues that the Department verified the accuracy of Minasligas' calculations, and found no discrepancies.

Department's Position

While we verified that the amounts Minasligas used in its calculation were derived from accounting records, Minasligas did not substantiate its method of layering its inventory. As petitioners note in their brief, Minasligas' calculations show only one layer of prior inventory for inputs and finished product even though inventory stemmed from more than one previous month. By failing to include in its calculations the goods placed in inventory during prior months, Minasligas failed to value the inventory properly based on the inflation-adjusted costs in the prior months. See Minasligas' March 17, 1995 submission, exhibit 11. Thus, consistent with our practice when a respondent fails to report inventory properly, we have denied Minasligas an adjustment for inventory holding gains/losses in these final results of review.

Comment 6

Petitioners argue that the Department erred by not including Minasligas' and Eletrosilex's claimed duty drawback in CV. This drawback consists of taxes and import duties that the government of Brazil suspended on Minasligas' and Eletrosilex's purchases of imported electrodes used in the production of silicon metal destined for export. Petitioners argue that because the Department added the duty drawback to U.S. price, and because the taxes represented by the drawback were not elsewhere represented in CV, the Department should add the drawback to CV in order to make an "apples-to-apples" comparison of U.S. price to CV. In addition, they argue, with respect to Eletrosilex, that the Department must include the duty paid on purchases of electrodes in COP for purposes of the sales-below-cost analysis.

Minasligas argues that in the preliminary results of review the Department correctly added duty drawback to U.S. price for comparison with a sales-based FMV. However, if the Department uses CV in the final results, and includes indirect taxes in CV, it must still add duty drawback to U.S. price to make an "apples-to-apples" comparison.

Eletrosilex argues that the methodology the Department announced in its second review final results with respect to taxes does not achieve the stated aim of tax neutrality. Therefore, it urges the Department to adopt the approach mandated by the Uruguay Round Agreements Act, and eliminate consumption taxes from all calculations. It states that this is the only way truly to achieve tax neutrality. Furthermore, it argues that this approach has the additional virtue of simplifying these proceedings.

Department's Position

We agree with petitioners. The Brazilian duty drawback law applicable to Minasligas and Eletrosilex suspends the payment of ICMS and IPI taxes and import duties that would ordinarily be due upon importation of electrodes if they are consumed in producing silicon metal for export. Therefore, because the ICMS and IPI taxes and import duties are suspended, we cannot conclude that they are already included in the COM or reported tax payments that Minasligas and Eletrosilex have reported. Thus, in order to make a valid comparison between USP and CV, we need to add to CV the full amount of the claimed duty drawback that we added to USP in accordance with section 772(d)(1)(B) of the Tariff Act. We have done so in these final results of review. This methodology is identical with the methodology announced in the final results of the prior review of this case. *See Silicon Metal from Brazil; Second Review Final Results*, at 46770.

Because the import duties are not suspended for electrodes consumed in the home market, we agree with petitioners that Eletrosilex's import duties on carbon electrodes should be added to COP for purposes of the cost test. In these final results of review we have calculated the import duties by multiplying the cost of carbon electrodes that we allocated to the domestic market by the import duty rate of ten percent.

Comment 7

Petitioners argue that the Department erred in its computation of Minasligas' monthly COP by not including the cost of tubes and rods that Minasligas consumed during each month. The Department included these costs only in the months in which Minasligas made purchases of tubes and rods, and not in the months in which Minasligas consumed them. Petitioners argue that in the final results the Department should determine the proper costs for tubes and rods based on the number of units of each input used in the production of silicon metal in each month and the monthly replacement cost for each input.

Minasligas states that it reported its costs for tubes and rods in the month of purchase because this is how they are reported in Minasligas' accounting records. It also states that if the Department wishes to recalculate these costs for each month of consumption, it is willing to cooperate fully with the Department in providing all necessary information.

Department's Position

Because Brazil's economy was hyperinflationary during the POR, in these final results of review, we have calculated each respondent's COM using an "annual average" methodology. *See* the Final Results Analysis Memorandum. In this methodology we first calculated an annual weighted-average COM indexed to end-of-year values, and then restated the annual average COM to compute a monthly COM. We used the wholesale price index to restate the annual COM to the specific month of production. Thus, because we calculated monthly costs based on annualized figures, petitioners' point regarding Minasligas' tubes and rods is moot.

Comment 8

Petitioners argue that the Department made numerous errors with respect to Brazilian taxes in performing the cost test. With respect to Minasligas, petitioners allege that the Department erred by comparing COP to home market prices that included a disproportionately high amount of ICMS tax. By so doing, petitioners allege, the Department failed to follow its practice of either including the same absolute amount of value-added taxes (VAT) in both home market price and COP, or of excluding VAT from both COP and home market price. Thus, petitioners argue, the Department did not make a fair and equal comparison in the preliminary results of review. They argue that in the final results of review the Department should exclude ICMS taxes from both the home market prices and the COPs used in the sales-below-cost analysis.

With respect to Eletrosilex, petitioners argue that the Department erred by failing to deduct the ICMS, PIS, and COFINS taxes from Eletrosilex's home market prices before performing the cost test. Petitioners argue that the failure to deduct the ICMS tax was in error because information on the record shows that Eletrosilex's reported cost of

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manufacture (COM) did not include the ICMS tax. With respect to PIS and COFINS taxes, petitioners argue that the Department correctly included in COP the PIS and COFINS taxes that Eletrosilex paid on its purchases of inputs (and which Eletrosilex included in its reported price of materials), but erred in how it treated the PIS and COFINS taxes Eletrosilex collected on sales of silicon metal. In the preliminary results, the Department, petitioners allege, added to COP a variable Eletrosilex reported that represents its home market direct selling expenses, consisting of inland freight and PIS and COFINS taxes collect on sales. Petitioners argue that rather than adding this selling expense variable to COP to account for collections of PIS and COFINS taxes on home market sales, the Department should instead subtract from the net home market prices the sales-specific amount of PIS and COFINS taxes in its computation of NPRICOP (the price which we compare to COP in the cost test).

With respect to CCM, petitioners argue that the Department erred in the cost test by comparing home market prices that included ICMS taxes with COPs that included a disproportionately larger amount of ICMS taxes. They argue that it is established Department practice when performing the cost test to either include the same absolute amount of VAT in both home market price and COP or to exclude VAT from both.

Minasligas argues that the Department should not include the same amount of VAT in the sales price and COP because different amounts of taxes were collected and paid on the sales price and production costs, respectively.

Eletrosilex argues that the Department should eliminate consumption taxes from all calculations. This approach, it argues, is the only way to achieve true tax neutrality.

CCM argues that the Department correctly accounted for its VAT in the preliminary results of review. In support of its argument, it cites *Silicomanganese from Venezuela*, 57 FR 55436 (November 7, 1994) (*Silicomanganese from Venezuela*), in which the Department agreed with a respondent's argument that "if the Department includes the value-added taxes paid on inputs in the cost of production, it must also include the VAT received from its customers in the price for purposes of the sales below cost test."

Department's Position

We agree with petitioners that in performing the cost test our policy is to either include the same absolute amount of VAT in both home market price and COP, or to exclude VAT from both COP and home market price. In *Silicomanganese from Venezuela*, though we agreed with the statement that CCM cites, we also said, "The amount of VAT included in the home market COP should be the same as the amount that is included in the home market sales prices." *See Silicomanganese from Venezuela* at 55441. In performing the cost test for these final results of review, we have calculated both COP and the price we compare to COP exclusive of the ICMS tax. This is the methodology recently used in *Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59410 (November 22, 1996) (*Ferrosilicon from Brazil; First Review Final Results*). However, unlike *Ferrosilicon from Brazil; First Review Final Results*, we have not deducted IPI tax from COP because IPI tax is not assessed on sales of silicon metal as it is for ferrosilicon.

With respect to PIS and COFINS, we have not deducted these taxes from the home market price to which we compare COP because they are gross revenue taxes, and not taxes imposed directly on the merchandise or components thereof on a transaction-by-transaction basis. *See* the Department's Position in response to comment 28 (below). For Eletrosilex we have eliminated the addition to COP of the selling expense variable it reported in its COP response, and have instead added to COP the sales-specific amount of direct selling expenses, which does not include PIS and COFINS taxes. We have also calculated COP for all respondents so that it represents the full purchase price of all inputs, and is not exclusive of a hypothetical amount of PIS and COFINS taxes.

Comment 9

Petitioners argue that the Department erred in its treatment of inland freight in the COP test for CCM, Minasligas, and Eletrosilex. With respect to CCM, petitioners argue that the Department erred by comparing COPs that did not include freight costs to home market selling prices that did include freight costs. They argue that to make a fair comparison in the final results the Department should exclude freight expenses from the home market prices used in the sales-below-cost analysis.

CCM states that it included freight costs in the direct selling expense field of its COP/CV database. Therefore, CCM argues, the COPs that the Department used in the cost test did in fact include freight costs.

With respect to Minasligas, petitioners argue that the Department erred by comparing COPs inclusive of freight charges to home market prices inclusive of disproportionately high freight charges. This difference in freight occurred, petitioners argue, because Minasligas calculated the per-unit freight cost for home market sales by dividing the freight charges incurred on each home market sale by the quantity of each sale, while it calculated the per-unit freight included in COP by dividing the monthly sum of those same freight charges by the monthly volume of its silicon metal production. This methodology, petitioners allege, resulted in Minasligas including a lower per-unit amount of freight in COP than in the home market prices. By using this methodology, petitioners argue, the Department failed to compare home market prices to COP on an "apples-to-apples" basis. Petitioners also allege this methodology violates *Import Administration Policy Bulletin No. 94.6*, which states that the Department determines both COP and the home market prices on an ex-factory basis (*i.e.*, net of movement charges, which, by definition, include freight expenses). They argue, therefore, that in the final results of review the Department should exclude freight expenses from both the COP and the home market prices.

Minasligas argues that the petitioners' proposed method is distortive, and in fact is contrary to *Import Administration Policy Bulletin 94.6*. According to this bulletin, Minasligas argues, COP is calculated net of selling expenses. Because its reported selling expenses included inland freight, Minasligas argues that if the Department removes freight from home market price, it should also remove selling expenses from COP.

With respect to Eletrosilex, petitioners argue that the Department erred by not deducting inland freight from Eletrosilex's home market prices before performing the cost test. In the preliminary results, rather than subtracting inland freight from Eletrosilex's home market prices before performing the cost test, the Department added to the cost build-up a variable that Eletrosilex reported that included inland freight (as well as PIS and COFINS taxes). Petitioners argue that this approach was an error because not all of Eletrosilex's home market sales included freight expenses. Thus, petitioners argue, the Department improperly compared the home market sales prices that include freight to a COP that includes an amount of freight that is artificially lowered by Eletrosilex's improper division of the total freight

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incurred on a portion of home market sales by the volume of all home market sales. At the same time, petitioners argue, the Department improperly compared a COP that includes freight to home market sales prices for which Eletrosilex reported no freight.

Department Position

Petitioners and Minasligas are correct that *Import Administration Policy Bulletin 94.6* states that the cost test will be performed on an ex-factory basis, and thus net of freight expenses. Therefore, in these final results of review we have deducted inland freight from the price which we compare to COP in the cost test. In order to ensure we make a proper comparison for those respondents (*i.e.*, Minasligas and CCM) who included freight in their reported direct selling expenses for COP, we have not used the direct selling expenses the respondents reported in their cost questionnaire response. Instead, in these final results of review, we have added to COP the sales-specific direct selling expenses included in each home market sales price.

Comment 10

Petitioners argue that the Department erred by calculating Minasligas', CCM's, and CBCC's home market imputed credit expenses based on prices that include VAT. The Department's established practice, petitioners argue, is to exclude VAT collected on home market sales from the prices used in calculating imputed credit expenses. Thus, petitioners argue, in the final results of review the Department should exclude ICMS taxes from the prices used to calculate home market imputed credit.

Minasligas argues, based on the tax policies of the government of Brazil, that ICMS taxes should be included in the imputed credit calculation. It argues that imputed credit expenses represent the opportunity cost of financing accounts receivable, and that this opportunity cost does not apply solely to a portion of the sale, but to the entire revenue that is generated by the sale. During the period that payment from the customers is outstanding, not only must Minasligas finance its production operations, it must also pay any ICMS amounts it owes to the Brazilian government. To the extent that it pays such taxes before it receives them from its customers, they become part of the cost of financing receivables. Therefore, Minasligas argues, ICMS taxes should be included in the imputed credit calculation.

CCM argues that petitioners are incorrect in saying that it is the Department's policy not to include ICMS tax in the computation of imputed credit. It argues that the Department has previously calculated CCM's home market imputed credit expenses based on ICMS tax-inclusive home market prices. In support of this statement, it cites the final determination of the LTFV investigation of this case, in which the Department said:

> The ICMS incident to a home market sale is outstanding until that time that the customer pays for its merchandise. Until the customer pays, CCM cannot use the ICMS collected on that sale to offset ICMS it has paid on purchases of materials used in the production of the subject merchandise. Accordingly, there is an inherent cost in maintaining an outstanding amount of ICMS due to CCM's receivables. Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses.

See Silicon Metal from Brazil; Final Determination of Sales at Less Than Fair Value, 56 FR 26977, 26982 (June 12, 1991). Furthermore, CCM points out that no party appealed this issue to the CIT, reflecting all parties' agreement concerning the legitimacy of this approach.

Department's Position

We agree with petitioners. While CCM is correct that we have calculated imputed credit inclusive of ICMS tax in earlier segments of this proceeding, our more recent practice is to calculate imputed credit exclusive of ICMS tax. We addressed this issue in *Silicomanganese from Venezuela*. There we said:

> The Department's practice is to calculate credit expenses exclusive of VAT. (See the discussion of our VAT methodology in the preliminary determination (59 FR 31204, 31205, June 17, 1994.) Theoretically, there is an opportunity cost associated with any post-service payment. Accordingly, to calculate the VAT adjustment argued by Hevensa would require the Department to calculate the opportunity costs involved with freight charges, rebates, and selling expenses for each reported sale. It would be an impossible task for the Department to attempt to determine the opportunity cost of every such charge and expense.

See Silicomanganese from Venezuela, 59 FR 55436, 55438 (November 7, 1994). Similarly, in this case to calculate the ICMS adjustment argued by CCM would require the Department to calculate the opportunity costs involved with freight charges, selling expenses, and packing for each reported sale. It would be an impossible task for the Department to determine the opportunity cost of every such charge and expense. In these final results of review we have followed our more recent practice. *See* also *Ferrosilicon from Brazil; First Review Final Results* at 59410.

Comment 11

Petitioners argue that the Department made two currency conversion errors in its margin calculation for CBCC and Minasligas. With respect to CBCC, petitioners argue that the Department used the wrong exchange rate for converting CBCC's brokerage, warehousing, and foreign inland freight from Brazilian currency into U.S. dollars. This error occurred, petitioners allege, because the Department incorrectly believed that these expenses were denominated in cruzeiros, rather than in cruzeiros reais.

CBCC argues that there is no evidence on the record that any of the charges it reported are in a currency other than cruzeiros.

With respect to Minasligas, petitioners argue that the Department erred by converting the cruzeiro value of Minasligas' U.S. sales into dollars, rather than using the actual value of the U.S. sales in the currency in which they were originally denominated. They argue that the needless recalculation of U.S. price had the effect of increasing the U.S. price.

Minasligas argues that it reported its U.S. sales in cruzeiros (as recorded in its books), and that the Department correctly converted it into dollars using the average exchange rate of the month of shipment. This methodology, Minasligas argues, is in accordance with the Department's practice of comparing the U.S. price to the CV or FMV in the month of shipment.

Department's Position

We agree with petitioners. With respect to CBCC, we note that in exhibit 6 of CBCC's March 17, 1994 supplemental questionnaire response (SQR) CBCC demonstrated the currency conversion. That demonstration indicates that the expenses were in fact denominated in cruzeiros reais, and not cruzeiros. We have corrected this error in these final results of review. With respect to Minasligas, our practice is to use the actual U.S. price in the currency in which it was originally denominated. We also seek to avoid any unnecessary currency conversions. Therefore, in these final results of review we have used the actual sales prices in the currency in which they were originally denominated.

Comment 12

Petitioners argue the Department erred in the margin calculation for Minasligas and CCM by using the wrong shipment date. With respect to

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Minasligas this alleged error occurred where the Department performed the currency conversion for the movement expenses on U.S. sales by using the exchange rate on the date of shipment from the port in Brazil, rather than the exchange rate on the date of shipment from Minasligas' plant. Doing so, petitioners allege, was a violation of the Department's practice in which the date of shipment is the date the merchandise was shipped from the producer's factory. Therefore, petitioners argue, the Department should use the exchange rate of the date of sale in converting U.S. movement expenses, just as it used the date of sale (rather than the reported date of shipment) in the calculation of imputed credit.

Minasligas argues that because the record does not contain the date on which Minasligas paid the movement expenses, the Department was correct in using the exchange rate of the date of shipment from the port because it was the closest date on record to the date in which the expenses were actually incurred.

With respect to CCM, petitioners argue that the Department used the wrong shipment date in its calculation of U.S. imputed credit. The shipment date that CCM reported and that the Department used in its computation, petitioners allege, was the shipment date from the port in Brazil, rather than the shipment date from CCM's plant. Petitioners argue that the Department should use the date of sale as the date of shipment as it did in calculating Minasligas' imputed credit. Furthermore, petitioners argue that for the same reason the Department should base CV on the month of the U.S. sale, rather than on CCM's reported month of shipment.

With respect to petitioners' argument that the Department should have calculated imputed credit using the date of the U.S. sale, CCM argues, first, that the Department should use the credit calculation it submitted in its questionnaire response as the actual credit expense. This calculation, CCM states, reflects the actual interest charged on the export credit line obtained for that shipment, and therefore is the most accurate, transaction-specific measure of CCM's interest expense in connection with its U.S. sale. Second, CCM argues that if the Department decides to use an imputed figure, it need not resort to the date of sale as the date of shipment because the date of shipment from CCM's factory is on the record as verification exhibit 11.

With regard to petitioners' argument that the Department should use the CV in the month of sale to establish fair value, CCM argues that it is the Department's practice in hyperinflationary economy cases to use the bill-of-lading date as the shipment date, and thus the date upon which CV should be based. In support of this assertion it cites *Tubeless Steel Disc Wheels from Brazil; Amended Final Determination of Sales at Less than Fair Value and Amended Antidumping Duty Order*, 53 FR 34566 (September 7, 1988) (*Tubeless Steel Disc Wheels from Brazil*). There the Department stated that it corrected a clerical error whereby "invoice dates were used rather than bill-of-lading dates to represent the date of shipment for the calculation of antidumping duty margins." CCM also argues that if the Department decides to use the invoice date, rather than the bill-of-lading date, as the date of shipment, it need not resort to using the date of sale (as petitioners urge) because, as previously mentioned, the invoice date is on the record in verification exhibit 11.

Department's Position

With respect to the petitioners' argument regarding Minasligas, we agree with Minasligas. Where the record does not contain the actual dates of payment for its export sale movement expenses and where the Department did not specifically solicit this information, it is reasonable to use the date of shipment from the port in the imputed credit calculation because it is the closest date on record to the date on which the expenses were actually incurred. With respect to the petitioners' argument regarding CCM, we agree with CCM that when using CV in hyperinflationary economy cases it is the Department's practice to perform the margin calculation using the CV of the month of shipment from the port, rather than (as petitioners argue) the CV of the month of shipment from the plant. *See Tubeless Steel Disc Wheels from Brazil* at 34567.

We disagree with CCM that we should use its reported "actual expense" for U.S. credit. The Department requires that the credit expenses reflect the opportunity cost of the entire period between shipment from the plant and payment by the customer. That is not the case for CCM's reported "actual expense." The actual expense covers only a portion of the imputed credit expense period. Therefore, in these final results of review we have calculated imputed credit using the shipment date from CCM's plant, as given in verification exhibit 11.

Comment 13

Petitioners argue that the Department erred in its computation of Minasligas' COP/CV by using the 1993 G&A expenses that Minasligas reported. They argue that Minasligas' 1993 audited financial statements show that Minasligas' G&A expenses are greater than what it reported to the Department. Therefore, petitioners argue, the Department should require Minasligas to report monthly G&A expenses for 1993 whose sum reconciles to the total 1993 G&A expenses shown on its financial statement.

Minasligas argues that petitioners' argument fails to consider that Minasligas deducted from its G&A some expenses associated with forest maintenance, depletion, and exhaustion that it included in its cost of charcoal as part of direct material expenses. To have not made this deduction, Minasligas argues, would have resulted in these costs being double-counted.

Department's Position

We agree with petitioners that the G&A figures Minasligas reported in its October 15, 1996 submission do not reconcile to its 1993 financial statement. Though Minasligas claims that the difference is due to its exclusion from G&A of some costs that had been included in its cost of charcoal as part of direct material costs, we note that neither Minasligas' G&A chart of accounts nor its cost of charcoal list includes the categories of forest maintenance, depletion, or exhaustion. *See* verification exhibits 23 and 33. Thus, since there is no evidence on the record to substantiate Minasligas' explanation or the G&A figures in its October 15, 1996 submission, for these final results of review we have relied upon the G&A expenses reported in Minasligas' 1993 financial statement.

Furthermore, in these final results of review, unlike the preliminary results of review, we have calculated Minasligas' G&A by multiplying a ratio (consisting of indexed monthly historical G&A divided by indexed monthly historical cost of goods sold) by monthly replacement cost COM. As explained below in response to comment 22, this is our current method of calculating G&A in a hyperinflationary economy. To perform this calculation, we increased the reported G&A costs for each month in 1993 by the percentage difference between the reported annual G&A costs and the financial statement G&A costs.

Comment 14

Petitioners argue that the Department erred in its calculation of interest

expense for Eletrosilex, CCM, and CBCC by offsetting interest expenses with interest income. Petitioners argue with respect to all three of these respondents that the interest income for which the Department allowed an offset is not interest income derived from short-term investments of working capital (*i.e.*, from business operations). Petitioners argue that allowing an offset for this income was a violation of the Department's requirements for granting an interest income offset. Those requirements are, petitioners state, that the respondent demonstrate (1) that the interest income stemmed from short-term investments and (2) that short-term interest income was derived from business operations. Petitioners argue with respect to CBCC that some of the interest income for which the Department allowed an offset does not meet these two criteria. Therefore, petitioners argue, in the final results the Department should allow an offset only for those interest income items which CBCC has demonstrated to be from short-term investments.

With respect to Eletrosilex, petitioners focus on one transaction recorded on Eletrosilex's 1994 financial statement for which, they allege, there is no evidence that it was revenue from a short-term investment. They also allege it does not consist of interest income from investments, and therefore does not qualify to be an offset to Eletrosilex's financial expenses. Furthermore, petitioners argue, Eletrosilex did not even make a claim for an offset to its financial expenses, and for this reason alone the Department should not have made one.

With respect to CCM, petitioners also argue that CCM did not submit the financial statement of its direct parent, or a consolidated financial statement for the CCM group of related companies. By not submitting such statements, petitioners argue, CCM thwarted application of the Department's established practice of determining interest expenses on a consolidated basis. Furthermore, petitioners argue that because CCM did not cooperate with the Department by answering the Department's questions regarding its interest income, the Department should base interest expense for CCM on BIA, or, in the alternative, it should obtain the information necessary to calculate interest expenses for CCM properly in accordance with Department practice.

CBCC argues that the Department verified the financial income and expenses of CBCC and its parents Solvay do Brasil and Solvay & Cie at verification, and the Department's report did not indicate that the financial gains were not derived from short-term investments, nor that they were not related to the companies' business operations. Furthermore, because the Department verified CBCC's financial gains, CBCC argues that it is no longer CBCC's burden to prove that the financial gains are short-term or related to its business operations; it is, rather, the petitioners' burden to prove that the Department's methodology was incorrect. Because petitioners are unable to do this, CBCC argues, the Department should reject their argument.

Eletrosilex argues, with regard to petitioners' second argument, that its submitted financial statement (at page 79) shows that the entire transaction occurred between July 28, 1994 and December 27, 1994, and therefore qualifies as short-term under any analysis. Eletrosilex also argues that the financial statement shows that the transaction was a credit cession operation made with several financial institutions. A credit cession operation, Eletrosilex argues, is by its nature a transaction that provides interest income on the investment.

CCM argues, with regard to petitioners' first argument, that in a February 21, 1995, submission (in which it submitted its balance sheet) it demonstrated that all of its interest income was derived from short-term investments. With regard to petitioners' second argument, CCM argues that in the same February 21, 1995, submission, it submitted financial statements for each of CCM's corporate layers. It argues that these financial statements demonstrate that each of its corporate layers had a net interest expense of zero, and that for each corporate layer the interest expenses were offset by interest revenue from short-term investments. As for the company that petitioners call CCM's "direct parent," CCM states that this company is a related entity which does not have audited financial statements, and therefore CCM did not submit one. CCM also says that this entity's net income was captured in the financial statement of another related entity, and that CCM submitted this financial statement.

Department's Position

We agree with petitioners in part. With respect to CBCC, we agree with petitioners that CBCC's reported interest income includes two line items which do not constitute interest income. We are unable to identify these line items in this notice because CBCC has requested that the identity of these line items be treated as business proprietary information subject to release only under administrative protective order (APO). The fact that the verification report does not discuss these items does not imply the Department's agreement with CBCC's characterization of these two line items as interest income. CBCC unduly attempts to shift the burden of proof to the petitioners, disregarding the fact that it is up to a respondent to substantiate and document any adjustment or claim to the Department. As the Department stated in *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* (60 FR 43761, 43767, August 23, 1995), "[w]hen a respondent makes a claim for an adjustment, it is the respondent's responsibility to provide a detailed explanation of the adjustment as well as supporting documentation." Therefore, because CBCC did not substantiate through an explanation or supporting documentation that the claimed offsets were from short-term investments, we have reduced CBCC's interest income by the total amount of those two line items. *See* Final Results Analysis Memorandum for our calculations.

With respect to Eletrosilex, we agree with petitioners that Eletrosilex is not entitled to an adjustment. The transaction in question consisted of an investment in Brazilian bonds denominated in reais and financed by borrowing on dollar-denominated export notes. Eletrosilex later sold the real-denominated bonds after they had accrued *pro rata* interest for Eletrosilex. Such a transaction would result in interest income and capital gains; only the former would qualify as an offset to interest expenses. However, we have no information on the record to enable us to break out the interest income from the capital gains. Furthermore, we are unable to evaluate any of Eletrosilex's other claimed short-term interest income because, in response to a request that it itemize its offsets, Eletrosilex stated that it is not claiming any offsets. *See* Eletrosilex's March 17, 1995, SQR, at 32. Therefore, in these final results of review, we have denied Eletrosilex an offset to its interest expenses.

We agree with CCM that the evidence on the record supports its contentions that (1) all of CCM's interest income was derived from short-term investments (*see* CCM's audited balance sheet); (2) CCM's interest income outweighed interest expenses (*see* CCM's audited profit/loss statement); and (3) each of CCM's parent companies also experienced short-term interest income in excess of short-term interest expenses (*see* the financial statements for each corporate layer of the group of which CCM is a member). The fact that CCM did not submit consolidated financial

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statements—which do not exist—cannot be held against CCM since the individual company statements demonstrate that short-term income exceeded short-term interest. For all of these reasons, we have continued to exclude interest expenses from CCM's COP.

Comment 15

Petitioners argue that the Department erred in its computation of Eletrosilex's COP by allocating Eletrosilex's production costs equally between silicon metal and products which petitioners allege are by-products of silicon metal production. They argue that in the final results of review the Department, as it did in the preliminary results of the fourth administrative review of this order, should allocate silicon metal production costs only to commercial-grade silicon metal, and should offset COM with estimated revenue from by-product sales.

Eletrosilex argues that if the Department allocates all production costs only to commercial-grade silicon metal, then it should make an offset to the COP for the revenue generated from the sale of by-products, and should apply the offset to the volume of by-products produced, rather than the volume of by-products sold. Furthermore, Eletrosilex argues that the Department should consider as by-products only ladle sculls, off-grades, and fines, but not slag or silicon metal of ingot bottom. Eletrosilex states that it does not consider slag or silicon metal of ingot bottom production items, and does not include them in its production volume records.

Department's Position

We agree with petitioners that Eletrosilex's production costs should be allocated to only commercial-grade silicon metal, and that an offset should be made to Eletrosilex's costs for the revenue it collects from its sale of by-products. By using this approach we succeed in calculating the actual costs of the merchandise subject to review, without distorting that calculation by allocating some costs to merchandise not subject to review. We have done so in these final results of review.

We do not agree with Eletrosilex that the by-product offset should be calculated based on the volume of by-products produced. Our policy is to allow an offset only for actual revenue. To offset costs with revenue not earned would result in an inaccurate calculation of actual costs, and thus an inaccurate calculation of COP/CV. In these final results of review we have offset production costs with all revenue that Eletrosilex reported from its sale of by-products. Based on Eletrosilex's statement that it does not record slag or silicon metal of ingot bottom as production items in its books, in these final results of review we have counted as by-products only ladle sculls, off-grades, and fines.

Comment 16

Petitioners argue that the Department erred in its calculation of the indirect selling expenses used in Eletrosilex's COP. For the preliminary results of review, the Department divided Eletrosilex's indirect selling expenses by its volume of production. This methodology was incorrect, petitioners argue, for two reasons. First, the selling expense total used in the calculation does not include the selling expenses of Eletrosilex's related affiliates. Second, it is not the Department's practice, petitioners state, to calculate selling expenses based on production volume. Therefore, petitioners argue, in the final results the Department should calculate per-unit indirect selling expenses for COP and CV by dividing Eletrosilex's reported indirect selling expenses by its reported volume of home market and U.S. sales.

Eletrosilex argues that it makes no sense to calculate per-unit indirect selling expenses solely on U.S. and home market sales quantities. It argues that its indirect selling expenses (consisting primarily of salaries and related employee costs) apply to all facets of Eletrosilex's sales functions without regard to the particular market. Citing statements in its questionnaire response, Eletrosilex argues that sales in both the United States and in Brazil are made solely by Eletrosilex personnel, with no assistance from affiliated companies. The Eletrosilex employees involved in all aspects of these sales, Eletrosilex argues, have functions that are relevant to all sales in all markets, and the fact that some affiliated companies may assist in some way with respect to some of the sales in the much larger markets of Europe, Asia, and the Middle East is not relevant to the determination of per-unit indirect selling expenses in the U.S. and home markets.

Department's Position

We agree with petitioners that indirect selling expenses should be calculated based on sales volumes, and not production volumes because, by their nature, indirect *selling* expenses are attributable to *sales*, not production, of merchandise. We do not agree with petitioners that the computation needs to include the indirect selling expenses of all of Eletrósilex's affiliates because COP includes only the indirect selling expenses included in each home market sale. Because the related affiliates did not contribute toward Eletrosilex's home market sales, there is no reason to include their indirect selling expenses in COP. In these final results of review, we have calculated Eletrosilex's monthly indirect selling expenses by dividing its monthly indirect selling expenses allocated to the home market by its monthly home market sales volumes.

Comment 17

Petitioners argue that the Department erred in its computation of Eletrosilex's COP by using the fixed factory overhead costs that Eletrosilex reported on its tape file. Petitioners argue that doing so was improper because evidence on the record suggests that the fixed overhead costs in Eletrosilex's tape file were not replacement cost figures. Specifically, petitioners point out that the fixed factory overhead costs on Eletrosilex's tape file are inconsistent with the replacement cost fixed overhead costs in exhibit 14 of Eletrosilex's March 22, 1995 SQR and with the historical cost fixed overhead costs in exhibit 23 of Eletrosilex's March 22, 1995 SQR. Furthermore, they argue that a worksheet that Eletrosilex submitted (exhibit 17 of its March 22, 1995 SQR) in response to the Department's request does not reconcile to either exhibit 14 or 23 of the SQR, though it does reconcile to the figures on its tape file. Petitioners argue that though exhibit 17 does reconcile to the tape file, it is not truly responsive to the Department's question because the Department had asked Eletrosilex to support the fixed factory overhead costs in its worksheet. In light of these discrepancies, and in the absence of any explanation from Eletrosilex for them, petitioners argue that the Department should use Eletrosilex's reported "historical" fixed factory overhead cost figures as Eletrosilex reported them in exhibit 23 of its SQR. These figures are the most disadvantageous to Eletrosilex.

Eletrosilex argues that the figures reported in exhibit 23 of its SQR, which petitioners cite as evidence that the numbers in the tape file are not replacement cost figures, were only preliminary figures on a table which was inadvertently submitted with the SQR. Therefore, they are not the correct historical fixed factory overhead figures. It further argues that data contained in exhibit 17 of its SQR provide the correct historical cost figures for fixed overhead, and that these numbers are identical to those in the tape file.

Department's Position

In its rebuttal brief Eletrosilex explained the discrepancy regarding its reported historical costs, and has indicated that the fixed factory overhead figures it reported on its tape file were historical cost figures. However, in hyperinflationary economies the Department uses replacement cost figures, and not historical cost figures. Therefore we agree with petitioners that the Department should not have used the figures on Eletrosilex's tape file. For this same reason we cannot use the figures Eletrosilex reported in exhibits 17 or 23 of its SQR. In these final results of review we have used the figures that Eletrosilex reported in exhibit 14 of its SQR because these are replacement cost figures.

Comment 18

Petitioners argue that the Department must include in CV all of the taxes that Eletrosilex and CBCC paid on purchases of inputs. They base this argument on the fact that the statute requires that CV include taxes paid on inputs unless the taxes are "remitted or refunded upon the exportation of the article in the production of which such materials are used." *See* 19 U.S.C. §1677b(e)(1)(A). Petitioners argue, with respect to Eletrosilex, that because Eletrosilex did not even claim that home market taxes paid on material inputs were remitted or refunded upon exportation of the merchandise, all of Eletrosilex's taxes must be included in CV.

Eletrosilex argues that the Department should eliminate consumption taxes from all calculations. This approach, it argues, is the only way to achieve true tax neutrality.

CBCC argues the Department erred in its calculation of CV (for those sales for which it used CV, as opposed to BIA, in the preliminary results) by including VAT in the cost build-up. CBCC argues, first, that including VAT in CV violates the tax-neutrality principle that the Department regularly applies in the calculation of margins. If the Department seeks to apply the tax-neutrality policy in its calculation of CV that it applies in its calculation of margins, CBCC argues, VAT should not be included in CV because it has the effect of creating dumping even where none exists. Secondly, CBCC argues that evidence on the record demonstrates that CBCC was able to offset its VAT liability with taxes collected on domestic sales. Thus, CBCC argues, with respect to CBCC in this review, the ICMS tax does not remain a cost of the material input, and should not be included in CV.

Petitioners argue that Eletrosilex's and CBCC's arguments ignore the fact that the statute applicable to this review (19 U.S.C. §1677b(e)(1)(A)(1994)) and the statute as amended by the URAA (19 U.S.C. §1677b(e)(1)) require that CV includes taxes on purchases of inputs unless those taxes are remitted or refunded upon exportation. Section 773(e)(1)(A) of the Tariff Act states that the constructed value of imported merchandise shall be the sum of:

> the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) * * *

Furthermore, petitioners argue that CBCC's claim that it was able to offset its VAT liability with taxes collected on domestic sales is contradicted by other information on the record. Moreover, petitioners point out that the Department directly addressed this issue in the final results of the second administrative review of this order, and agreed that section 773(e)(1)(A) of the Tariff Act required that VAT be included in CV. *Silicon Metal from Brazil; Second Review Final Results*, at 46769. The Department took this same position, petitioners state, in *Ferrosilicon from Brazil*, Final Redetermination of Remand at 9–10, *AIMCOR* v. *United States*, Ct. No. 94–03–00182 (January 16, 1996). Therefore, petitioners conclude, CBCC's claim that ICMS and IPI taxes paid on inputs used to produce exported silicon metal are not a "cost of materials" has no basis and has already been rejected by the Department.

Department's Position

We agree with petitioners. In the final results of the second review of this order, the Department stated:

> because section 773(e)(1)(A) of the Tariff Act does not account for offsets of taxes paid due to home market sales, we did not account for the reimbursement to the respondents of ICMS and IPI taxes due to home market sales of silicon metal. The experience with regard to home market sales is irrelevant to the tax burden borne by the silicon metal exported to the U.S.

See Silicon Metal from Brazil; Second Review Final Results, at 46769. Our interpretation of the statute and our analysis of the issue have not changed since publication of the second review final results. Thus, in keeping with our prior determination on this issue, we have included in CV all taxes paid on purchases of material inputs except where an ICMS tax was assessed on the respondent's U.S. sales. For our treatment of the ICMS tax in such a situation, see comment 19 below.

Comment 19

Petitioners argue that the Department must add to Eletrosilex's CV the ICMS tax that Eletrosilex collects from its exports of silicon metal, and that is included in the reported U.S. selling price. They argue that to do otherwise would result in a dumping margin distorted by the use of an artificially high selling price as the basis for U.S. price (USP). Petitioners argue that, in the alternative, the Department should reduce USP by the amount of the ICMS taxes included in the reported USP. This approach, they argue, is pursuant to section 772(d)(2)(A) of the Tariff Act, which requires that USP be reduced by "any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States."

Eletrosilex argues that the Department should eliminate consumption taxes from all calculations. This approach, it argues, is the only way to achieve true tax neutrality. Furthermore, Eletrosilex argues that the Department erred in subtracting the ICMS tax from USP. It argues that this subtraction was a violation of a policy the Department stated in the final results of the second administrative review of this order. There the Department stated:

> We disagree with petitioners that the ICMS tax is an export tax or other charge imposed on the exportation of the merchandise to the United States as defined in section 772(d)(2) of the Act. The ICMS tax is imposed upon all sales of this product, regardless of the market to which it is destined. Since the tax is not levied solely upon exported merchandise, it does not constitute an export tax and cannot be subtracted from the USP of the merchandise under section 772(d)(2).

Petitioners argue that Eletrosilex is in error in stating that the Department subtracted the ICMS tax from USP. It states that while the Department said in its analysis memorandum that it made such a subtraction, in fact it did not do so in its margin calculations. Moreover, petitioners state, the argument Eletrosilex has advanced is irrelevant because it applies only to margin calculations based on price-to-price comparisons. After the Department makes the necessary corrections in its calculations for Eletrosilex that the petitioners have identified, Eletrosilex, petitioners allege, will have its margin calculated on the basis of CV.

CCM argues that the Department erred by leaving imbedded in the USP the ICMS tax that its U.S. customers pay,

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and comparing that USP to a home market price that includes the ICMS tax that its home market customers pay. This was an error, CCM argues, because the ICMS tax rates in the U.S. and home markets are significantly different. Thus, CCM argues, in its methodology the Department did not achieve tax neutrality.

Department's Position

We agree with Eletrosilex that because the ICMS tax assessed on its U.S. sale is not an export tax, it should not be deducted from the U.S. prices. *See Silicon Metal from Brazil; Second Review Final Results* at 46770. However, where the ICMS tax is included in the U.S. price, a proper comparison requires that CV not include both the ICMS tax paid on the purchases of material inputs and the ICMS tax assessed on the U.S. sale. Thus, for the calculation of CV in this situation, we ensured that the amount of the ICMS tax included in CV was the higher of either the ICMS tax on purchases of material inputs or the ICMS tax included in the U.S. price.

We agree with CCM that in the preliminary results of review our methodology failed to achieve tax neutrality. In these final results of review, where we based the margin calculation on a price-to-price comparison (as opposed to a price-to-CV comparison) we have added to the U.S. price the difference between the ICMS tax assessed on the U.S. sale and the ICMS tax assessed on FMV.

Comment 20

Petitioners argue that the Department erred in the calculation of Eletrosilex's U.S. selling prices by calculating the unit prices on the net weight of contained silicon, rather than the gross weight of the silicon metal. They argue that in a CV-based margin calculation the Department should use the gross weight of the silicon metal to calculate the per-unit USP because CV is reported on a gross-weight basis.

Department's Position

We disagree with petitioners. We find no evidence on the record to support petitioners' contention that the weights Eletrosilex reported for its U.S. sales reflect only the weight of the silicon, rather than the weight of the silicon metal. Furthermore, there is no record evidence to support petitioners' assertion that CV was calculated on a gross-weight basis. Therefore, there is no basis to change the per-unit calculations from those in the preliminary results of review.

Comment 21

Petitioners argue that the Department erred in its treatment of packing costs in the cost test for Eletrosilex and CCM. They argue, with respect to Eletrosilex, that the Department erred by including in the calculation of Eletrosilex's COP the packing expense amounts as Eletrosilex reported them on its COP computer file. Petitioners argue that Eletrosilex's computation of packing on its computer file is not appropriate for the cost test because not all of Eletrosilex's home market sales incurred packing costs. They argue that the Department should compare net home market sales prices to a COP that includes the reported amount of packing for each sale.

With respect to CCM, petitioners argue that the Department erred in its cost test by comparing monthly COPs that include per-unit packing costs to home market prices that include much larger per-unit packing costs. They argue that by so doing the Department failed to make an "apples-to-apples" comparison. For the final results, they argue, the Department should include the same absolute per-unit packing costs in the home market prices and COPs used in the sales-below-cost analysis.

CCM argues that the Department correctly calculated packing costs for the COP analysis. It argues that differences in per-unit packing costs are to be expected because in hyperinflationary economy cases the Department compares home market prices to costs incurred during the month of payment of the comparison home market sale. Furthermore, it cites *Import Administration Policy Bulletin 94.6* (at 1) which states that in the sales-below-cost test, the Department uses "COM, actual interest cost, and home market packing * * * based on information in the section D COP/CV questionnaire response." Thus, CCM concludes, the Department's policy in a COP analysis is to use the packing costs from the cost section of the questionnaire response.

Department's Position

We agree with petitioners in part. We agree that where home market sales were sold in bulk (*i.e.*, not packed), COP should not include packing because *Import Administration Policy Bulletin 94.6* states (at 1), "Both the net COP and the net home-market prices should be on the same basis, *e.g.*, packed, ex-factory, net of selling expenses; otherwise, the comparison would be distorted." We have done this for Eletrosilex and all other respondents in this review.

We disagree with CCM that we should use the packing costs reported in the section D response. Our present policy is to use the packing costs identified on the home market sales tape, which are transaction-specific. Since the section D packing computation is based on monthly averages, using it would reflect less accurate costs than using transaction-specific packing costs.

Finally, we disagree with petitioners that CCM reported much higher packing costs on its home market sales listing than it reported on its COP worksheet. Comparison of exhibits A (home market sales listing) and B (COP worksheet) of CCM's March 17, 1995 submission reveals that the packing costs are identical.

Comment 22

Petitioners argue the Department erred by using CCM's reported general and administrative (G&A) expenses in its calculation of CCM's COP, because CCM calculated an annual G&A ratio that it applied to its monthly historical COM. Petitioners allege that this methodology is not the Department's practice in hyperinflationary economy cases. They argue that the Department should determine monthly G&A expenses for CCM by multiplying the reported ratio by the monthly replacement COM which CCM reported.

CCM argues the methodology that CCM submitted and that the Department used in the preliminary results is the one that the Department used for CCM in response to the CIT's remand instruction to the Department in the LTFV investigation to ensure that "its allocation of GS&A expenses does not lead to a systematic overstatement of those expenses due to the restatement of monthly costs as replacement costs." *See Camargo Corrêa Metais, S.A.* v. *United States*, Ct. No. 91–09–00641, Slip Op. 93–163 (August 12, 1993) at 15. As a result of these instructions, CCM states, the Department developed and used this method in the preliminary remand results and final remand results which are now awaiting the CIT's approval. *See Preliminary Results on Remand* at 4–5 (Nov. 17, 1993) and *Final Results of Redetermination Pursuant to Court Remand* at 6–7 (Dec. 13, 1993). CCM argues the Department is under obligation to comply with the CIT's remand order until and if it is determined by the Federal Circuit in the LTFV appeal that the CIT's remand instructions, and the Department's resulting methodology for calculating CCM'S G&A, were incorrect. Furthermore, CCM argues that the methodology the petitioners say we should use is one that was developed

for other respondents, and not the one the Department developed for CCM.

Department's Position

We agree with petitioners. Contrary to CCM's argument, the Department is not obligated to employ the calculation methodology it used in its remand determination in the LTFV investigation. Since issuing the remand determination the Department has refined its methodology, and now employs a formula in which it multiplies a ratio (consisting of indexed monthly historical G&A divided by indexed monthly historical cost of goods sold) by monthly replacement cost COM. As explained in the final results of the second administrative review of this order, the purpose of indexing is to obtain values at a uniform price level because the simple addition of monthly nominal values during a period of high inflation would yield a meaningless result. *See Silicon Metal from Brazil; Second Review Final Results* at 46773. This is the formula we used in these final results of review.

Comment 23

Petitioners argue that the Department should include in CV the ICMS tax that CCM paid on its purchases of electricity. They allege that CCM did not report this tax in the electricity costs or ICMS tax it previously reported.

CCM argues that it already reported the ICMS tax it paid on electricity, and that these amounts are included in its computer database under the field for taxes.

Department's Position

We agree with CCM. Evidence on the record indicates that CCM did report the ICMS tax it pays on electricity. *See* July 3, 1996 submission by CCM, p. 8. We have included this tax in CV.

Comment 24

Petitioners argue that the Department should not include in CV the amounts that CCM reported on its CV worksheet under the name "inventory holding." They argue that if these amounts are inventory carrying costs, then they should be excluded from CV because it is the Department's established practice to exclude inventory carrying costs from CV when the margin calculations are based on purchase price (PP) sales. Furthermore, they argue that if the amounts that CCM reported in its CV worksheet under the name "inventory holding" are actually inventory holding gains/losses (*i.e.*, the difference between replacement costs and the inflation-adjusted cost of inventory), they should be excluded from the calculation because CCM did not calculate them correctly. They base this argument on the fact that CCM's calculation allegedly includes only gains or losses on finished product inventory (and not inventoried inputs) and were calculated without proper layering of the inventory.

CCM argues that it reported inventory carrying costs as requested by the Department in its questionnaire, and that petitioners' argument is irrelevant because in the preliminary results of review the Department based the margin calculation on a price-to-price comparison, and not CV. It also notes that it is appropriate to include inventory carrying costs in the sales-below-cost test where such costs are compared to the home market sales which were made out of inventory. CCM also argues (presumably with respect to inventory holding gains and losses), that it followed the inventory layering method that the Department used in the LTFV investigation and noted in the questionnaire, and that these costs should be included in the monthly COM for CV purposes, should the Department rely on CV for FMV in the final results of review.

Department's Position

Consistent with our practice we did not include inventory carrying costs in our calculation of CV. Also consistent with Department practice, for purposes of the cost test we did not adjust prices for inventory carrying costs because we do not include any imputed costs in the calculation of COP. *See Silicon Metal from Brazil; Second Review Final Results*, at 46775.

Concerning the adjustment CCM reported on its CV worksheet under the name "inventory holding," we have not made this adjustment because CCM failed to substantiate its entitlement to this adjustment. The record of this review contains no narrative description of or request for the adjustment, nor any worksheet demonstrating its calculations. In light of these deficiencies we have denied this adjustment.

Comment 25

Petitioners argue that the Department erred in its calculation of CBCC's interest expense ratio for 1992 by treating as interest income a value that was actually interest expense.

CBCC argues that petitioners' point is moot because the Department did not use the 1992 ratio in the margin calculation.

Department's Position

We agree with CBCC that this point is moot because we did not use the 1992 ratio in the margin calculation.

Comment 26

Petitioners argue that the Department used an incorrect methodology in calculating profit for CBCC. The Department calculated profit by subtracting a COP that includes interest expenses (which by definition include the cost of financing receivables) from home market prices from which the Department subtracted home market imputed credit expenses. By comparing a COP that includes the cost of financing receivables to home market prices from which the (imputed) cost of financing receivables had been subtracted, the Department, petitioners allege, made an improper comparison. Thus they argue that the Department should remove the subtraction of home market imputed credit from the calculation of the price to which the Department compares COP in the cost test.

Department's Position

We agree with petitioners. For purposes of calculating profit, we have continued to include interest expenses in the calculation of COP, but did not deduct imputed credit expenses from home market prices.

Comment 27

Petitioners argue that the Department erred in its margin calculation for CBCC by failing to deduct from U.S. price an unspecified charge that CBCC reported as "other expenses." Petitioners argue that these "other expenses" should be deducted from U.S. price in accordance with section 772(d)(2)(A) of the Tariff Act.

CBCC argues that if the Department decides to deduct the "other expenses" (which, it states, are movement expenses) from U.S. price, it should note that CBCC mislabeled the currency as U.S. dollars. In fact, CBCC states, it reported them in cruzeiros, and they must be converted into U.S. dollars for the margin calculation.

Department's Position

We agree that we failed to deduct "other expenses" in the calculation of U.S. price used in the preliminary results. We have converted them into dollars because the amount of these expenses relative to other reported expenses indicates that they were incurred in cruzeiros. *See* CBCC's March 17, 1994 submission, exhibit 3.

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Comment 28

Minasligas comments that the Department correctly applied its tax-neutral policy in the preliminary results of this review. Minasligas summarizes that application as follows:

(1) Home market prices included PIS and COFINS taxes;

(2) In calculating U.S. price, the Department subtracted the ICMS tax that Minasligas' customers pay on their purchases of silicon metal;

(3) The Department then added to the U.S. price the equivalent amount of ICMS, IPI, PIS, and COFINS taxes due on Minasligas' home market sales.

This methodology, Minasligas states, is consistent with the Department's guiding principle of tax neutrality, and should be affirmed in the final results of this review.

Eletrosilex argues that the Department erred in failing to add to USP the PIS, COFINS, and consumption taxes charged on its home market comparison sales. It argues, with respect to the PIS and COFINS taxes, that this failure was a violation of the Department's policy of calculating tax-neutral dumping assessments. It argues, with respect to the consumption taxes, that this failure was a violation of the change in the treatment of consumption taxes that the Department announced in the final results of the second review of this case. There the Department stated:

> Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market.

Eletrosilex argues that the Department's failure to add to USP the absolute amount of consumption taxes charged on its home market sales was a violation of the Department's announced policy because there is evidence on the record that the relevant consumption tax, the ICMS tax, is exempt from payment upon exportation.

CCM also argues that the Department erred by not adding to USP the PIS and COFINS taxes that its home market customers pay on their purchases of silicon metal. It argues that these taxes are imposed only on home market sales, and not on export sales. Thus, by failing to add them to USP, CCM argues, the Department failed to achieve tax neutrality. Moreover, CCM argues, in numerous antidumping investigations and reviews involving imports from Brazil, the Department has made an adjustment to USP for the PIS and COFINS taxes.

Petitioners argue that the Department was correct in not adding the equivalent amount of PIS and COFINS taxes to USP. They base this argument on 772(d)(1)(C) of the Tariff Act which states that USP may be adjusted only for taxes imposed directly upon the "merchandise or components thereof." They argue that the Department has concluded that taxes on gross revenue exclusive of export revenue were not taxes imposed directly upon the merchandise or components thereof, and thus did not qualify for an adjustment to USP. *See Silicon Metal from Argentina*, 56 FR 37891, 37893 (August 9, 1991) (*Silicon Metal from Argentina*). Petitioners argue that Brazil's PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue, and that therefore the Department should not add them to USP.

Department's Position

We disagree with Eletrosilex that there is evidence on the record that the ICMS tax is not assessed upon exportation. In fact, there is evidence to the contrary. *See* Eletrosilex's March 22, 1995, submission, pp. 21–22. To achieve tax neutrality in these final results of review, where we calculated the margin on U.S. and Brazilian price-to-price comparisons, we added to Eletrosilex's USP the difference between the absolute amounts of ICMS tax assessed on its U.S. sales and its FMV. *See* comment 19 (above).

We agree with petitioners that information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. Thus, in accordance with our determination in *Silicon Metal from Argentina*, we determine that these taxes are not imposed "directly upon the merchandise or components thereof." Therefore, in these final results of review we have not added PIS and COFINS taxes to USP.

Comment 29

Eletrosilex argues that the Department erred in its calculation of home market imputed credit by dividi an allegedly annual interest rate by 30 ather than by 365.

Petitioners argue that the interest rate the Department used in its calculation was a monthly rate, and that the Department was therefore correct in using 30 in the denominator.

Department's Position

We agree with petitioners that the rate is a monthly rate. This rate is the average of the monthly rates that appear in Exhibit VI–3 of Minasligas' November 10, 1994, submission. Those rates are the monthly rates of the state bank of Minas Gerais.

Comment 30

CCM argues that in order for its cash deposit rate for future entries to reflect the appropriate dumping margin, the Department should issue the third review final results prior to, or concurrently with, issuance of the fourth review final results. If the Department issues the fourth review final results prior to the third review final results, CCM argues, CCM will continue to face the 93.2 percent cash deposit rate established in the LTFV investigation. In the alternative, if the Department does issue the third review final results after the fourth review, CCM argues that the Department should make clear in its cash deposit instructions that CCM's third review cash deposit rate should apply to all future entries because CCM was a non-shipper in the fourth review.

Department's Position

CCM's point is moot because the Department is issuing the results of both reviews concurrently.

Comment 31

CBCC argues that the Department erred in using total BIA for its U.S. sales verified at the third review verification. (The Department assigned a margin to these sales based on total BIA after it determined that CBCC was unable to substantiate significant portions of its response with respect to these sales.) CBCC argues that the Department was not justified in using BIA for these sales because:

1. Throughout the proceeding CBCC cooperated fully with the Department;

2. At the verification the verifiers collected the information needed to correct the mistakes uncovered at the verification;

3. Even if the Department did not have the resources to recalculate CBCC's data, the Department could have requested CBCC to perform the recalculations.

CBCC also notes that there was ample time to perform any necessary recalculations during the 14 months between the verification and issuance of the Department's BIA memorandum.

Furthermore, CBCC argues that, if the Department believes it does not have all necessary information totally to correct the mistakes found at verification, it should calculate CBCC's dumping margin using partial BIA for those discrete areas where it does not have the necessary information. CBCC argues that this use of partial BIA would be warranted in this case because there were no mistakes uncovered at verification regarding U.S. sales; most of

the mistakes, CBCC argues, were connected with home market sales. CBCC argues that as an alternative, the Department should base FMV on CV, for which, CBCC alleges, the Department has all necessary information.

Petitioners argue the Department properly determined the margin for the sales at issue based on total BIA. They argue that the number and magnitude of the deficiencies in CBCC's reported data, the law, and the Department's practice require the Department to assign a margin to the sales at issue based on total BIA. With respect to CBCC's argument that it could have rectified the problems found at the verification if the Department had requested that it do so, petitioners argue that this suggestion ignores the responsibility of respondents to provide accurate and complete information in antidumping proceedings prior to verification. Moreover, petitioners argue, this suggestion is tantamount to asking the Department to condone the submission of false and incomplete information in response to the Department's questionnaire until, at verification, the Department positively determines the submitted information to be false. Doing so would allow respondents to abuse and manipulate the administrative review process.

With regard to CBCC's argument that the Department use partial BIA, petitioners argue that the deficiencies the Department found at verification are so fundamental and numerous that they require the use of total BIA. Moreover, with regard to CBCC's argument that the Department should use CV as the FMV, petitioners argue that using CV would be contrary to the purpose of using BIA. The purpose of using BIA is to induce the respondent to provide accurate and complete information. To achieve this purpose, petitioners argue, a margin based on BIA must be adverse, *i.e.*, it must be higher than the margin that would have been calculated had the respondent provided accurate and complete information. Here, because of the deficiencies in the submitted information, the Department cannot even begin to determine whether a price-based margin calculation would result in a higher margin than the CV-based margin calculation that CBCC suggests.

Department's Position

We agree with the petitioners. As we stated in our September 13, 1996 memorandum on this subject:

> It is the obligation of the respondents to provide an accurate and complete response prior to verification so that the Department may have opportunity to analyze fully the information and other parties are able to review and comment on it. Verification is intended to establish the accuracy and completeness of a response rather than to supplement and reconstruct the information to fit the requirements of the Department.

Nor is it the Department's practice or policy to reconstruct a response with the large number of errors which we found in CBCC's response. *See Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy* (53 FR 27187, 27190, July 19, 1988). *See also Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (54 FR 18992, 19037, May 3, 1989). Among the problems we encountered were:

- CBCC underreported all per-unit COP and CV values by using unrefined weights, rather than refined weights;
- CBCC underreported its direct materials costs by failing to report late fees it had to pay;
- CBCC was unable to substantiate some of its parent company's interest rates;
- CBCC's method of calculating depreciation understated depreciation for all months;
- CBCC could not substantiate its reported home market sales value;
- CBCC's reported consignment sales listing reported adjustments to sales prices, rather than actual sale prices;
- CBCC underreported ICMS taxes for all its consignment sales.

Because of these and other problems more fully discussed in the September 13, 1996 memorandum, we deem CBCC's submissions to be unusable. Accordingly, in these final results of review we have applied total BIA to CBCC's third review sales.

Comment 32

CBCC argues that the Department erred in its application of its two-tier BIA methodology. This methodology, CBCC argues, states explicitly that the Department has discretion to use two alternative types of BIA when a respondent is deemed to be cooperative. The Department can (1) use the firm's highest rate from a prior administrative review or, if the firm has never been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review.

CBCC argues that in this case the Department erred because it used CBCC's rate from the LTFV investigation. Under the two-tier BIA methodology, the Department should have used CBCC's rate from a prior review because CBCC has been included in two completed reviews since the LTFV investigation.

Petitioners argue that CBCC's erroneous argument is based on the Department's inadvertent misstatement of its second-tier BIA policy in the preliminary results of this review. It argues that the Department has expressed its two-tier BIA methodology on many occasions, and on one of those recent occasions it expressed it as follows:

> When a company substantially cooperates with our request for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review of any firm for the same class or kind of merchandise from the same country.

See Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review and Termination In Part, 60 FR 64416, 64417 (December 15, 1995) (*Silicon Metal from Argentina II*). Petitioners argue that the Department properly applied this methodology when as BIA it assigned to CBCC its rate from the LTFV investigation.

Department's Position

We agree with the petitioners. As cooperative BIA, we use the higher of either (1) the highest rate ever applicable to the firm in the investigation or in any previous review, or (2) the highest calculated margin for any respondent in the same review. *See Silicon Metal from Argentina II* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews* (61 FR 65527, December 13, 1996). Accordingly, for these final results, where necessary, we have applied to CBCC 87.79 percent, which is the highest rate ever applicable to CBCC. This use of BIA applies to only those sales where we determined that the use of BIA is appropriate. *See* September 10, 1996 preliminary results analysis memorandum from Fred Baker to the file and September 13, 1996 "Use of Best Information Available" memorandum from Fred Baker to Richard Weible.

Comment 33

Parties allege the following clerical errors:

- Petitioners argue that the Department erred by failing to make a

circumstance-of-sale adjustment to Minasligas' FMV for bank charges related to loans taken out to finance its U.S. sales.

• Petitioners argue that the Department erred by using an incorrect amount of foreign inland insurance on CCM's U.S. sale.

• CCM argues that the Department erred by failing to deduct post-sale inland freight expenses from its home market price.

Department's Position

We agree, and have corrected these errors in these final results of review. We have also corrected one additional error we noted in our review of the preliminary results. There, for U.S. sales, we used Minasligas' dates of sale as the date of shipment from its plant because we believed the dates of shipment not to be on the record. However, we have determined that the invoice dates are on the record in verification exhibit 12. Therefore, in these final results of review we have used the invoice dates as the dates of shipment.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period July 1, 1993, through June 30, 1994:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	64.39
CCM	5.97
Eletrosilex	39.72
Minasligas	0
RIMA	91.06

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. §1675(a)(1)) and 19 CFR §353.22.

Dated: January 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–816 Filed 1–13–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On September 5, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. This review covers the period July 1, 1994, through June 30, 1995, and five manufacturers/exporters of the subject merchandise to the United States. The review indicates the existence of margins for four firms.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and new information submitted at the Department's request, we have changed our results from those presented in our preliminary results as described below in the comments section of this notice.

EFFECTIVE DATE: January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Alain Letort, or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2924, –4243, or –0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 46779) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil (July 31, 1991, 56 FR 36135). We solicited additional information from Minasligas on October 1, 1996, from Eletrosilex on October 2, 1996, from CBCC on October 10, 1996, and from RIMA on November 14, 1996. We received responses on October 15, October 16, October 24, and November 20, 1996, respectively. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil

containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The period of review (POR) is July 1, 1994, through June 30, 1995. This review involves five manufacturers/exporters of Brazilian silicon metal: Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Eletrosilex Belo Horizonte (Eletrosilex), Rima Eletrometalurgia S.A. (RIMA), and Camargo Corrêa Metais (CCM).

Verification

As provided in section 782(i) of the Act, we verified information provided by CBCC and RIMA by using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Minasligas, Eletrosilex, CCM, CBCC, RIMA, and a group of five domestic producers of silicon metal (collectively, the petitioners). Those five domestic producers are American Alloys, Inc., Elkem Metals Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals and Alloys, Inc. We received a request for a hearing from CBCC, Minasligas, Eletrosilex, RIMA, and the petitioners. We conducted a public hearing on November 25, 1996.

Comment 1

Petitioners argue that the Department erred by using the methodology used in the final results of the second administrative review of this order in determining which U.S. sales to review. In the second review final results, we explained our methodology as follows:

1. Where a respondent sold merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR.
2. Where a respondent sold subject merchandise to an importer who had no entries during the POR, we did not review the sales of subject merchandise to that importer in this administrative review. Instead, we will review those sales in our administrative review of the next period in which there is an entry by that importer.

We also said in the preliminary results notice that after completion of the review we would issue liquidation instructions to Customs which would instruct them to assess dumping duties against importer-specific entries during the period. *See Silicon Metal From Brazil, Final Results of Antidumping Duty Administrative Review*, 61 FR 46763, 46765 (September 5, 1996) (Silicon Metal From Brazil; Second Review Final Results.)

Petitioners argue that the methodology described above and used in the preliminary results of this review is inconsistent with the Act because section 751(a)(2) of the Act requires that margins be based on sales associated with entries during the POR. Petitioners also cite to *Torrington Co.* v. *United States*, 818 F. Supp. 1563, 1573 (CIT 1993) (*Torrington*) to demonstrate that the CIT has held that the word "entry" as used in the statute refers to the "formal entry of merchandise into the U.S. Customs territory." Furthermore, petitioners argue that the Department itself has stated that the use of the term "entry" in the antidumping law refers unambiguously to the release of merchandise into the customs territory of the United States. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991). Petitioners also argue that the legislative history of section 751 demonstrates that margin calculations in administrative reviews are to be based on sales of merchandise that entered during the POR.

In addition to the above arguments based on their interpretation of the statute and case law, petitioners argue that prior to issuance of the final results of the second review of this order, the Department's practice was to review only those sales that entered U.S. customs territory during the POR. In support of this statement, they cite the questionnaire that the Department issued to the respondents in the 1993–94 review. It states that "purchase price sales that have a sales date during the period of review, but which entered after the period of review, will be covered in subsequent administrative reviews." In further support, they cite to the questionnaire issued to the respondents in this administrative review which requests that each respondent report only U.S. sales of merchandise that entered for consumption during the POR with the exception of constructed export price sales made after importation and export price sales of merchandise for which the entry date is not known.

Furthermore, petitioners argue that the failure to calculate dumping margins based on sales associated with entries during the POR would result in improper assessment of duties because the duties assessed on entries during the POR would have no relation to the margin of dumping on those sales. Thus, by assessing duties on entries at rates unrelated to the margin of dumping on the associated sales, petitioners argue, the Department would violate 19 U.S.C. § 1673(2)(B), which requires that "there shall be imposed upon such merchandise an antidumping duty . . . in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise."

Eletrosilex argues that the Department rejected petitioners' argument with respect to section 751 of the Act as long ago as 1991 in a rule-making proceeding. There it asserted that section 751 does not require consideration solely of entries made in the POR, and that the statute as a whole requires a balanced consideration of "entries" and "sales" in the review process. *See Advance Notice of Proposed Rulemaking* (56 FR 63696, 63697, December 5, 1991). Furthermore, in the final results of both the first and second administrative review of this proceeding the Department specifically rejected petitioners' arguments that the statute requires consideration only of entries made during the POR. *See Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42806, 42813 (August 19, 1994) (*Silicon Metal From Brazil; First Review Final Results*) and *Silicon Metal From Brazil; Second Review Final Results*. Eletrosilex concludes that the Department has acted within its discretion in reviewing Eletrosilex's sale made during this POR in this segment of the proceeding.

Department's Position

We disagree with petitioners. The Department most recently addressed this issue in the final results of the second review of this order. There we stated:

> We do not agree with petitioners that section 751(a)(2) requires that we review only sales that entered U.S. customs territory during the POR. Section 751(a)(2) mandates that the dumping duties determined be assessed on entries during the POR. It does not limit administrative reviews to sales associated with entries during the POR. Furthermore, to review only sales associated with entries during the POR would require that we tie sales to entries. In many cases we are unable to do this. Moreover, the methodology the Department should use to calculate antidumping duty assessment rates is not explicitly addressed in the statute, but rather has been left to the Department's expertise based on the facts of each review. "* * * the statute merely requires that PUDD (*i.e.*, potentially uncollected dumping duties) . . . serve as the basis for both assessed duties and cash deposits of estimated duties." *See The Torrington Company* v. *United States*, 44 F.3d 1572, 1578 (CAFC 1995).

Our analysis of this issue and interpretation of the statute remain unchanged from those announced in the final results of the second review. Furthermore, by applying a consistent methodology in each segment of the proceeding we ensure that we review all sales made during the entire proceeding. Changing the methodology could result in our failure to review some sales. Hence, in these final results of review we have employed the methodology we announced in the final results of the second review.

Comment 2

Petitioners argue that evidence on the record indicates that Minasligas' and Eletrosilex's costs and prices have been severely distorted by hyperinflation that occurred prior to the start of the period covered by this review, and that, therefore, the Department should adopt a methodology that eliminates the effects of those distortions. These distortions occurred, petitioners argue, because the inventories that these companies had on July 1, 1994 (the first day of this POR) were purchased prior to July 1, 1994, during the period when Brazil experienced hyperinflation.

Minasligas argues that there is no evidence that its costs or prices were affected by hyperinflation that occurred prior to the POR. It makes the following points:

- During the three months prior to July 1994 (the first month in recent history during which there was no hyperinflation in Brazil and also the first month covered by this administrative review) the effects of hyperinflation had already been greatly attenuated in the negotiations of material prices in Brazil because of the use of the URV (unit of real value) as a unit of exchange. (Minasligas stated that the URV was a unit reference value pegged to the U.S. dollar which the Brazilian government introduced into the Brazilian economy in March 1994.)
- Minasligas' accounts were subject to a one-time restatement into URVs at the end of June 1994.
- Petitioners have pointed to no support in the record for their claim that Minasligas had significant inventories of material inputs for silicon metal production in the first half of 1994.
- Petitioners have pointed to no support in the record for their claim that the value of such inventories was affected by hyperinflation during the first half of 1994.
- Petitioners have pointed to no support in the record for their claim that these inventories were carried over into the POR.
- The end-of-year inventories that Minasligas records in its financial statements include materials used in the production of merchandise which is not subject to this proceeding.
- The petitioners' request that the Department adopt a methodology that eliminates the effects of alleged distortions is limited to only two respondents. One would think, Minasligas argues, that if a country is hyperinflationary during a certain period, it would equally affect all companies doing business in that country.

Eletrosilex argues that the introduction of the URV in March 1994 resulted in a substantial reduction in inflation during the period March through June 1994, and that it was during the latter two months of this period that it bought all of the stock it had in inventory on July 1, 1994. Moreover, it argues that on July 1, 1994 (the date of the introduction of the real plan) it converted all of its inventory from cruzeiros reais to reais based upon the URV value at that date. This conversion, Eletrosilex argues, refutes the petitioners' allegation of any impact on the value of its inventory on July 1, 1994. Finally, Eletrosilex argues that the U.S. sale upon which the Department based its margin calculation for Eletrosilex in this review was sold long after Eletrosilex used up its entire stock in inventory on July 1, 1994. Therefore, Eletrosilex concludes, there is no possible effect on Eletrosilex's costs from any high inflation that may have existed at some time before the POR.

Department's Position

We agree with petitioners. Evidence on the record shows that Eletrosilex's and Minasligas' cost of materials for the first several months of the POR reflect significant fluctuations. "See" petitioners' July 17, 1996 and July 18, 1996 submissions. These fluctuations occurred because these respondents consumed inventory which they had purchased during a period of hyperinflation. Moreover, these respondents reported their POR costs based on their normal books and records which reflect historic costs. Therefore, we requested, and Minasligas and Eletrosilex provided, information regarding the purchase dates, quantities, and amounts recorded in their July 1, 1994 beginning inventory. Because the reported costs of materials included the cost of the beginning inventory based on historic costs, these amounts were understated by the rates of inflation that occurred from the date of purchase until June 30, 1994. Therefore, we revalued the beginning inventory of July 1, 1994 by applying the UFIR index to the value of the inventory from the date of purchase until July 1, 1994.

Comment 3

Petitioners argue that for two reasons Minasligas does not qualify for revocation. (In the preliminary results of this review we stated that we did not intend to revoke the order on Minasligas at the completion of this administrative review because we intended to revoke the order on Minasligas upon completion of the third administrative review.) First, petitioners allege Minasligas has dumped in this and every prior segment of this proceeding, and therefore has not met the regulatory requirement of having not sold at less than fair value for at least three years. *See* 19 CFR § 353.25(a)(2)(i). The three years in question are the first (91–92), second (92–93), and third (93–94) reviews. For the first and second reviews, the Department calculated a margin of zero percent in its final results of review. For the third review the Department calculated a margin of zero percent for its preliminary results. With respect to the first review (which is in litigation before the CIT), petitioners argue that after the Department corrects the errors for which it has already conceded error, Minasligas will have a margin. They argue, with respect to the second review, that after the Department corrects the ministerial errors they allege it made in its final results, Minasligas will again have a margin. They argue, with respect to the third review, that after the Department

corrects the calculation and methodological errors which they allege it made, Minasligas will again have a margin.

Second, petitioners argue that the Department cannot correctly determine that Minasligas is not likely to resume dumping in the future, and without this determination the Department cannot revoke the order. "See" 19 CFR § 353.25(a)(2)(ii). Petitioners base this argument on the following factors:

(1) Minasligas had a margin of greater than *de minimis* in the preliminary results of this administrative review. *See Silicon Metal from Brazil, Preliminary Results of Review and Intent Not to Revoke in Part*, 61 FR 46779, 46781 (September 5, 1996) (preliminary results).

(2) Minasligas has submitted no evidence that it is unlikely that it will dump in the future.

(3) The Department has not verified any information that Minasligas is unlikely to dump in the future. Citing 19 U.S.C. § 1677e(b)(2)(B) and 19 CFR § 353.25(c)(2)(ii), petitioners argue that the statute and regulations require that the basis for the "likelihood" determination be verified, and that because the Department did not verify any such basis, Minasligas does not qualify for revocation.

Furthermore, petitioners argue that analysis based on the criteria that the Department used in *Brass Sheet and Strip from Germany* show that Minasligas is likely to resume dumping. *See Brass Sheet and Strip from Germany, Final Results of Administrative Review*, 61 FR 49727, 49730 (September 23, 1996) (*Brass Sheet and Strip from Germany*). These criteria include a dramatic decline in shipments after publication of the antidumping duty order and the low level of shipments by the respondent. Both of these factors, petitioners allege, are present here with respect to Minasligas.

Minasligas argues, first, that in two consecutive administrative reviews prior to the issuance of the preliminary results the Department found Minasligas not to have dumped, and that, therefore, if the Department issues a final determination of no dumping in the final results of the third review, it will have met the requirement of 19 CFR 353.25(a)(2)(i). Secondly, Minasligas argues that 19 CFR 353.25(a)(2)(ii) requires a finding of no likelihood of dumping in the future, but does not, contrary to petitioners' suggestion, require Minasligas to provide, or the record to contain, evidence that Minasligas is not likely to resume dumping in the future. Furthermore, Minasligas argues that there is evidence on the record that Minasligas will not dump in the future. That evidence consists of Minasligas' written agreement to reinstatement of the antidumping duty order if it is found to be selling at less than fair value in the future.

Department's Position

To qualify for revocation in part under 19 CFR 353.25(a)(2)(i), a respondent must have sold the subject merchandise at not less than foreign market value for at least three consecutive years. Our final results of review of the first three reviews of this order indicate that Minasligas had no margins. However, in order to revoke an order in part the Department must also be satisfied that the firm is not likely to resume dumping in the future. In this administrative review the Department has found that Minasligas had a dumping margin of greater than *de minimis*. Accordingly, the issue of likelihood of dumping in the future is moot because Minasligas has in fact resumed dumping. Therefore, we are not revoking the order in part for Minasligas.

Comment 4

Petitioners argue that the Department erred in its calculation of Minasligas' cost of production and constructed value (COP/CV) by using the depreciation values that Minasligas reported. Petitioners find two flaws in this calculation. First, Minasligas' calculation of depreciation, petitioners allege, does not reflect the useful life of the assets, but rather reflects an extremely accelerated useful life. Petitioners argue that the Department's practice is to reject accelerated depreciation of an asset where such accelerated depreciation fails to allocate the cost of the asset on a consistent basis over the life of the asset, which, petitioners allege, is the case here. Second, Minasligas' depreciation calculation, petitioners allege, does not restate the value of the assets to account for hyperinflation. The Department's practice, petitioners argue, requires such restatement.

Therefore, because they find Minasligas' calculation deficient, petitioners submitted a recalculation of depreciation for some assets based on what they believe to be the actual useful life of those assets, and argue that the Department should use this recalculation in its final results of review. The Department, petitioners argue, should also solicit information from Minasligas to determine the proper depreciation for all assets related to the production of silicon metal that were not included in its recalculation.

Minasligas argues that petitioners' argument is flawed. Minasligas points to documentation submitted on October 15, 1996, at the Department's request, which demonstrates (1) that Minasligas did not depreciate its assets over the shortened period that petitioners suggest (though it is not the lengthened useful life that petitioners argue should be used), (2) that the depreciation reported in its COP/CV tables for purposes of this proceeding is fully supported by Minasligas' accounting records; (3) that the value of the assets subject to depreciation are restated in current currency to account for hyperinflation through the use of special indices known as the BTN/UFIR indices. Furthermore, Minasligas argues that the Department fully verified this information. Moreover, Minasligas argues that the petitioners' argument is based on a misunderstanding of some of the columns in the verification exhibit upon which they base their argument. Finally, Minasligas argues that to recalculate depreciation, using the longer useful lives that petitioners suggest, would be unfair because the Department has already completed two administrative reviews in which Minasligas calculated depreciation using the shorter useful lives. Minasligas contends that their useful lives are the basis for the depreciation calculation that Minasligas records in its books and which it reported to the Department. Therefore, Minasligas argues that, in the alternative, if the Department does decide to recalculate its depreciation using a longer depreciation period, it should adopt a methodology that takes into account the depreciation expenses that the firm reported in the previous administrative reviews.

Department's Position

We agree with Minasligas, except that we did not verify the firm for this period. The CIT has upheld the Department's calculation of depreciation based on a respondent's financial records where their financial records are consistent with foreign GAAP principles and where those records do not distort actual costs. *See Laclede Steel Co.* v. *United States*, 18 CIT 965, 975 (1994). Here, Minasligas has historically used accelerated depreciation, consistent with Brazilian GAAP. Moreover, we note that we have in the past used accelerated depreciation where the respondent has historically used it in its financial statements. *See Foam Extruded PVC and Polystyrene Framing Stock from the*

United Kingdom; Final Determination of Sales at Less Than Fair Value; 61 51411, 51418 (October 2, 1996). Furthermore, we agree with Minasligas that to recalculate depreciation using a longer useful life for Minasligas' assets after having used a shorter life in prior reviews would allocate costs to this review that have already been accounted for in prior reviews, and would therefore be inequitable. Finally, we agree with Minasligas that its use of the BTN/UFIR indices accurately restates the value of its assets. Therefore, in these final results of review, as in the preliminary results of review, we have used Minasligas' reported depreciation in calculating COP and CV.

Comment 5

Petitioners argue that the Department erred in its calculation of interest expense for Minasligas, Eletrosilex, CBCC, and RIMA by allowing an offset to interest expenses for claimed interest income. Petitioners base their argument on two factors: (1) that these companies did not substantiate that the reported interest income was from short-term investments, and (2) many of the categories these companies listed in their enumeration of short-term interest income are, on their face, not interest income derived from short-term investments of working capital.

As for the latter argument, petitioners point out that RIMA's claimed income consists of revenue from late payment charges paid by home market customers and discounts that suppliers grant on payment of an invoice. These categories are not, petitioners assert, interest income derived from short-term investments. As for Eletrosilex, petitioners focus on one transaction recorded on Eletrosilex's 1994 financial statement which, they allege, consists of capital gains, rather than interest income derived from short-term investments of working capital. For CBCC petitioners allege that there is evidence on the record (verification exhibit 29) that some of the interest income claimed by CBCC's Brazilian parent company, Solvay do Brasil (whose interest expenses, petitioners argue in comment 25 below, should be consolidated with those of CBCC), are not derived from short-term investments. Petitioners also argue that CBCC's itemization of its interest income (verification exhibit 17) indicates that much of CBCC's interest income is also not derived from short-term investments. Therefore, petitioners argue, in the final results the Department should make no offset to interest expenses for any of CBCC's or Solvay do Brasil's claimed interest offset.

Minasligas argues that it had no long-term financial investments, and that all of its interest income was related to production operations. Moreover, it states, it fully replied to all of the Department's inquiries about its interest expenses and income. Thus, it argues, there is no basis to reject Minasligas' claim for an offset to its interest expense.

RIMA argues that, if the Department uses its financial statement to calculate its interest expenses, it should also use its financial statement to calculate its interest revenue. Furthermore, the firm stands by the claim in its supplemental questionnaire response (SQR) of April 30, 1996 (at 33–34) that its financial income is short-term.

Eletrosilex argues that its financial statement shows that the sole transaction on which petitioners focus occurred between July 28, 1994 and December 27, 1994, and, therefore, qualifies as short-term under any analysis. The transaction involved an investment by Eletrosilex in reais-denominated bonds, purchased from funds obtained by borrowing on dollar-denominated export notes, and later selling the bonds after accrual of *pro rata* interest. The transaction, Eletrosilex argues, was simply a short-term investment which produced interest income from the investment. The investment return was heightened by the substantial over-valuation of the real at the time and the use of dollar-denominated export notes to finance the purchase of the bonds. This transaction, Eletrosilex argues, clearly qualifies as financial revenue permissible under long-settled Department precedent.

CBCC argues that the Department fully verified the interest income of CBCC and Solvay do Brasil, and found it to be short-term. *See* July 22, 1996 verification report, pp. 27–28. It also argues that the petitioners' argument with respect to the interest revenue of CBCC and Solvay do Brasil is irrelevant in light of the Department's practice to use consolidated financial statements. Because of this practice, CBCC argues, the relevant financial statement is that of its ultimate parent, Solvay and Cie, and not that of either CBCC or Solvay do Brasil.

Additionally, petitioners argue that the Department erred by reducing Eletrosilex's cost of manufacture (COM), rather than its interest expenses, by its reported interest revenue.

Department's Position

We agree with petitioners that almost all of Minasligas' reported "interest income" consists of items that are totally unrelated to interest income. The financial statements for Minasligas and its parent, Delp Engenharia Mecânica S.A. (Delp), demonstrate that over 95 percent of both companies' reported "interest income" consists of "monetary variation," "monetary correction," and "income from short-terms applications." The Department's verification report for Minasligas in the immediately preceding review clarifies that "financial applications" (which would include "income from short-term applications") refers to compensation for inflation. At no point has Minasligas demonstrated for the record that the amounts reported for these categories of income constitute interest income derived from short-term investments of working capital. Nor has Minasligas demonstrated that the claimed interest income was derived from short-term investments of working capital merely by stating in its rebuttal brief that its net interest income exceeded its net interest expense.

Similarly, the financial statements submitted by Minasligas show that the category "interest received" included, *inter alia,* (1) charges paid by customers for Delp's granting of delayed payment terms, which are really sales revenue; (2) discounts obtained from suppliers; (3) dividends received; and (4) exchange gains or losses. *See* Minasligas' April 30, 1996 SQR at 37 and exhibit 19. These items clearly do not represent interest income from short-term investments.

For the above reasons, we have reduced Minasligas' interest income by the total amount of the items incorrectly included therein by Minasligas (*see* Final Analysis Memorandum from Fred Baker to the File).

With respect to RIMA, we agree with petitioners that the interest income categories RIMA reported (*i.e.*, revenue from late payment charges paid by home market customers and discounts that suppliers grant on payment of an invoice) by definition do not constitute interest income from short-term investments. *See* RIMA's April 30, 1996 supplemental questionnaire response (SQR) at 35. Therefore, in these final results of review we have not allowed an offset to RIMA's financial expenses for the claimed interest income.

With respect to Eletrosilex, we agree with petitioners that Eletrosilex is not entitled to an adjustment. The transaction in question consisted of an investment in Brazilian bonds denominated in reais and financed by borrowing on dollar-denominated export notes. Eletrosilex later sold the real-denominated bonds after they had accrued pro rata interest for Eletrosilex.

Such a transaction would result in interest income and capital gains; only the former would qualify as an offset to interest expenses. Therefore, in these final results of review, we have not made an adjustment to Eletrosilex's interest expenses for this transaction. Moreover, in these final results of review, unlike the preliminary results of review, we have calculated Eletrosilex's financial expenses by multiplying its annual COM by the ratio between the financial expenses and cost of sales reported in its 1994 financial statement.

With respect to CBCC, we agree with CBCC in part. As explained in our response to comment 25 below, we agree with CBCC that its financial expenses should be calculated based on the consolidated financial statement of Solvay & Cie, and not that of Solvay do Brasil. However, we do not agree that we should make an adjustment for short-term income because, though we did examine CBCC's financial income at verification and found that CBCC did have some short-term financial revenues, not only did CBCC not make an offset claim in this review for any short-term financial income until submitting its rebuttal brief, but CBCC did not provide for the record any supporting documentation. *See* CBCC's April 30, 1996 SQR at 28 and exhibit 16. Therefore, in these final results of review, as in the preliminary results of review, we have not offset CBCC's financial expenses for any short-term interest income.

Comment 6

Petitioners argue that the Department erred in calculating Minasligas' COP by using Minasligas' submitted computation of direct labor and variable overhead. This computation, petitioners argue, was flawed because Minasligas allocated these costs based on the number of furnaces used to produce ferrosilicon and silicon metal. Furthermore, petitioners argue, Minasligas used this same method to calculate its general and administrative (G&A) expenses in the first administrative review of this order, and the Department rejected it there because G&A expenses are period expenses that relate to the operation of the company as a whole, and are not related to a particular product or process. *See Silicon Metal from Brazil; First Review Final Results*, at 42811. Petitioners argue that using this same method to allocate direct labor and variable overhead is equally wrong. Because these costs relate to production, petitioners argue, the Department should allocate these costs based on the actual production volume for each product.

Minasligas argues that it allocated its direct labor and overhead equally to each direct cost center pursuant to its normal accounting practices. Because the same furnaces are dedicated to the production of the same product, Minasligas allocated these costs on the basis of the furnace ratio. This methodology does not cause distortions, Minasligas argues, because the same number of personnel operates each furnace regardless of the product produced, and the factory overhead expenses are equally shared by all the furnaces.

Department's Position

We agree with petitioner. Direct labor and variable overhead are a function of production, and not the number of furnaces dedicated to the production of each product. Therefore, for these final results of review we have recalculated Minasligas' direct labor and variable overhead. In this recalculation we have allocated direct labor and variable overhead based on the production volume of silicon metal relative to total production.

Comment 7

Petitioners argue that the Department must add to Minasligas' and Eletrosilex's CV the ICMS tax that they collect from their exports of silicon metal because it is included in the reported U.S. selling prices. They argue that to do otherwise would result in a dumping margin distorted by the use of an artificially high selling price as the basis for U.S. price (USP). Petitioners argue that, in the alternative, the Department should reduce USP by the amount of the ICMS taxes included in the reported USP pursuant to section 772(d)(2)(A) (sic) of the Act, which requires that USP be reduced by "any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States."

Minasligas argues that the alternatives the petitioners suggest will not result in a tax-neutral comparison. It argues that if the CV already includes ICMS taxes paid to suppliers, then adding to the CV the ICMS tax which is included in the U.S. price will overstate taxes in CV and distort the dumping results. Similarly, Minasligas states, if the CV includes the value-added taxes (VAT) (*i.e.*, ICMS and IPI taxes) paid to suppliers, then deducting ICMS taxes from the U.S. price will result in an apples-to-oranges comparison.

Eletrosilex argues that to be consistent with the URAA, the Department should remove consumption taxes from all consideration in U.S. and home market price determinations.

Department's Position

We disagree with petitioners' contention that the ICMS assessed on the U.S. sale should be deducted from the U.S. price. We addressed this issue with respect to Eletrosilex in the final results of the second administrative review of this order. There we stated that because the ICMS tax assessed on the U.S. sale is not an export tax, it should not be deducted from the U.S. price. *See Silicon Metal from Brazil; Second Review Final Results*, at 46770. However, where the ICMS tax is included in the U.S. price, CV should not include both the ICMS tax paid on the purchases of material inputs and the ICMS tax assessed on the U.S. sale, as this would double-count taxes. Thus, for the calculation of CV in this situation, we ensured that the amount of ICMS tax included in CV was the higher of either the ICMS tax on purchases of material inputs or the ICMS tax included in the U.S. price.

Comment 8

Petitioners argue that the Department erred in its treatment of taxes in the cost test in two ways. First, they argue that the Department erred by not including PIS and COFINS taxes in Minasligas' COM for COP. The preliminary results analysis memorandum, petitioners state, indicates that the Department intended to include PIS and COFINS in COM, but its COP calculation worksheet indicates that, in fact, it did not do so. Second, petitioners argue that the Department erred in its computation of Eletrosilex's and CBCC's COP by not including in the COM the IPI taxes that these companies pay on their purchases of inputs. Petitioners argue that because Eletrosilex and CBCC pay IPI taxes on their inputs, but IPI taxes are not assessed on sales of silicon metal, the Department should include all IPI taxes in the COM.

Eletrosilex argues that to be consistent with the URAA, the Department should remove consumption taxes from all consideration in U.S. and home market price determinations. Furthermore, Eletrosilex argues that IPI taxes are subject to refund from the Brazilian government.

CBCC argues that it can offset the IPI taxes it pays on the purchase of material inputs with the IPI tax it collects on the sale of the finished product from domestic customers. Because CBCC is able to offset the IPI taxes paid on

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material inputs by the IPI taxes it collects from the sale of ferrosilicon to domestic customers, CBCC argues, IPI taxes are not a cost of producing silicon metal for CBCC. CBCC also states that in this review the only material input for which CBCC paid IPI taxes is electrode paste, and it included these IPI taxes in the reported cost of this product, even though they do not appear in a separate line item on the COP worksheet that CBCC submitted to the Department.

RIMA argues that the Department should make no further addition to its COP for PIS and COFINS taxes because these taxes are already included in its reported direct materials costs.

Department's Position

As explained more fully in our response to comment 26 (below), we have determined that PIS and COFINS taxes are gross revenue taxes, and therefore are not taxes that a buyer pays directly when purchasing materials. For this reason, in order for COP to reflect the complete cost of materials, the costs the Department uses in its calculation of COP must not be net of any hypothetical tax amounts that are presumably imbedded within the purchase price of the materials. Here, Minasligas reported its material costs net of a value that it calculated, at the Department's request, that represented the PIS and COFINS embedded within its cost of materials. Thus, in order for the COP to reflect the full purchase price of the materials, we must add to its reported material costs the hypothetical values that Minasligas reported as PIS and COFINS taxes on its material inputs. We have done so in these final results of review. Moreover, because we have determined that the PIS and COFINS taxes are gross revenue taxes, and are not imposed on a transaction-by-transaction basis, we have not deducted any reported PIS and COFINS taxes from the price to which we compare COP in the cost test.

We agree with petitioners that the IPI tax (a Brazilian Federal value-added tax) should be included in COM because it is not a tax which the respondents can recover from sales of silicon metal. Therefore, in these final results of review we have included the IPI tax in the COM for Eletrosilex and CBCC. However, we have not made a separate addition for this tax to RIMA's COM because evidence on the record indicates that RIMA already included the IPI tax in the reported COM. We have made a separate addition to CBCC's COM for the IPI tax because evidence on the record of this review indicates that CBCC included only a portion of the IPI taxes in its material costs.

Comment 9

Petitioners argue that, with respect to Minasligas, Eletrosilex, CBCC, and RIMA, in accordance with 19 U.S.C. § 1677b(e)(1)(A) of the Act, the Department must include in CV all taxes on purchases of inputs.

Minasligas argues that the Department should calculate a CV that excludes VAT taxes paid to the suppliers of the material inputs. The basis for this argument is that when Minasligas collects ICMS taxes from U.S. customers, it can offset such ICMS taxes against the tax it pays to its suppliers. Accordingly, the ICMS taxes paid on the material inputs are, in Minasligas' view, "refunded or remitted" upon exportation of the merchandise to the United States. *See* 777(3)(1)(A) of the Act. Furthermore, Minasligas argues, in order to make a fair comparison, the U.S. price should also not include ICMS taxes. In the alternative, Minasligas argues that if the CV does not include ICMS taxes paid on the material inputs, the same absolute amount of ICMS taxes as that included in the U.S. price could be added to the CV in order to achieve a tax-neutral result.

RIMA argues that the ICMS and IPI taxes should not be included in the cost of materials because, under the Brazilian VAT system, taxes paid on materials can be recovered from taxes collected on the sales of the merchandise produced from such materials. The CIT, RIMA argues, has disagreed with petitioners' interpretation of 19 U.S.C. § 1677b(e)(1)(A), the predecessor provision to 19 U.S.C. § 1677b(e)(3), and held that the statute does not provide "refund or remission" as the only instance in which taxes upon inputs will not constitute cost of materials. The CIT noted that "in a tax scheme such as Brazil's a respondent may be able to show that a value-added tax on inputs did not in fact constitute a "cost of materials" for the exported product." *See AIMCOR* v. *United States*, Ct. No. 94–03–00182, Slip Op. 95–130 (July 20, 1995) (*AIMCOR*) at 21.

Department's Position

We agree with petitioners. In the final results of the second review of this order, the Department stated:

> because section 773(e)(1)(A) of the Tariff Act does not account for offsets of taxes paid due to home market sales, we did not account for the reimbursement to the respondents of ICMS and IPI taxes due to home market sales of silicon metal. The experience with regard to home market sales is irrelevant to the tax burden borne by the silicon metal exported to the U.S.

See Silicon Metal from Brazil; Second Review Final Results, at 46769. Our analysis of the issue and interpretation of the statute have not changed since publication of the second review final results. Thus, in keeping with our prior determination on this issue, we have included in CV all taxes paid on purchases of material inputs, except in those instances where the ICMS tax included in the export price exceeded the amount of the taxes on the material inputs. In those situations, we included in CV the higher of the two amounts. *See* our position on comment 7.

Comment 10

Petitioners argue that the Department erred by not including Minasligas' claimed duty drawback in CV. This drawback consists of taxes and import duties that the government of Brazil suspended on Minasligas' purchases of imported electrodes used in the production of silicon metal destined for export. Petitioners argue that because the Department added the duty drawback to U.S. price, and because the taxes represented by the drawback were not elsewhere represented in CV, the Department should add the drawback to CV in order to make a fair comparison of U.S. price to CV.

Minasligas argues that in the preliminary results the Department correctly added duty drawback to U.S. price for comparison with a sales-based normal value (NV). However, if the Department uses CV in the final results, and includes indirect taxes in CV, it must still add duty drawback to U.S. price to make a fair comparison.

Department's Position

We agree with petitioners. The Brazilian duty drawback law applicable to Minasligas suspends the payment of ICMS and IPI taxes that would ordinarily be due upon importation of electrodes. Therefore, because the ICMS and IPI taxes are suspended, we cannot conclude that they are already included in the COM or reported tax payments that Minasligas reported. Thus, we need to add to CV the full amount of the duty drawback that we added to USP in accordance with section 772(c)(1)(B) of the Act. We have done so in these final results of review. This methodology is identical to the methodology announced in the final results of the prior review of this case. *See Silicon Metal from Brazil; Second Review Final Results*, at 46770.

Comment 11

Petitioners argue that the Department erred by calculating RIMA's, CBCC's, and Minasligas' home market imputed

credit based on prices that include VAT. The Department's practice, petitioners argue, is to exclude VAT collected on home market sales from the prices used in calculating imputed credit expenses. Thus, petitioners argue, in the final results of review the Department should exclude ICMS taxes from the prices used to calculate home market imputed credit.

Minasligas and RIMA argue, based on the tax policies of the government of Brazil, that ICMS taxes should be included in the imputed credit calculation. They argue that imputed credit expenses represent the opportunity cost of financing accounts receivable, and that this opportunity cost does not apply solely to a portion of the sale, but to the entire revenue that is generated by the sale. During the period in which the customer's payment is outstanding, not only must Minasligas and RIMA finance their production operations, they must also pay any ICMS amounts they owe to the Brazilian government. The payment of any such amounts before they received payment from their customers becomes part of the cost of financing receivables. Therefore, Minasligas and RIMA argue, ICMS taxes should be included in the imputed credit calculation.

Department's Position

We agree with petitioners. We addressed this issue in *Silicomanganese from Venezuela*. There we responded to the argument now set forth by Minasligas and RIMA. We said:

> The Department's practice is to calculate credit expenses exclusive of VAT. (See the discussion of our VAT methodology in the preliminary determination (59 FR 31204, 31205, June 17, 1994.) Theoretically, there is an opportunity cost associated with any post-service payment. Accordingly, to calculate the VAT adjustment argued by Hevensa would require the Department to calculate the opportunity costs involved with freight charges, rebates, and selling expenses for each reported sale. It would be an impossible task for the Department to attempt to determine the opportunity cost of every such charge and expense.

See Silicomanganese from Venezuela, 59 FR 55436, 55438 (November 7, 1994) (*Silicomanganese from Venezuela*). In these final results of review we have followed our practice outlined in *Silicomanganese from Venezuela*. *See* also *Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59410 (November 22, 1996) (*Ferrosilicon from Brazil; First Review Final Results*).

Comment 12

Petitioners argue that the Department erred in its margin calculation for Minasligas by converting the cruzeiro value of its U.S. sales into dollars, rather than using the actual U.S. value of the U.S. sales since they were originally denominated in U.S. dollars. They argue that the needless recalculation of U.S. price had the effect of increasing the U.S. price.

Minasligas argues that it reported its U.S. sales in cruzeiros (as recorded in its books), and that the Department correctly converted them into dollars using the average exchange rate of the month of shipment. This methodology, Minasligas argues, is in accordance with the Department's practice of comparing the U.S. price to the CV or NV in the month of shipment.

Department's Position

We agree with petitioners. Our practice is to use the actual U.S. price in the currency in which it was originally denominated on the date of sale, and to avoid any unnecessary currency conversions. Evidence on the record indicates that Minasligas' U.S. sales were originally denominated in U.S. dollars. *See* Minasligas' April 30, 1996 SQR, pp. 16–17. Therefore, in these final results of review we have used the actual dollar value of the U.S. sale in the margin calculation.

Comment 13

Petitioners argue that the Department erred by calculating negative imputed U.S. credit expenses for Minasligas and CBCC. This occurred, petitioners state, because the Department used as the payment date the date that these companies received payment from their banks under the terms of their advance exchange contracts (ACC). Under the terms of an ACC, a Brazilian bank pays Minasligas and CBCC the value of their U.S. sales, and the U.S. customer pays the bank. This arrangement sometimes results in Minasligas and CBCC receiving payment for their sales prior to shipment, and thus incurring negative credit expenses. However, petitioners argue that though the CIT has allowed negative U.S. credit expenses under some circumstances, those circumstances are not present here. Specifically, in *AIMCOR* (at 14–15) the CIT permitted such an adjustment for credit revenue partly because the ACCs were tied to specific sales. Evidence on the record of this review, petitioners suggest, demonstrates that Minasligas' and CBCC's ACCs were not tied to specific sales.

With respect to Minasligas, petitioners point out that Minasligas entered into multiple ACCs for each sale, and that review of the record shows that there is no correspondence between the dates of the ACC contracts and Minasligas' reported dates of sale for the sales covered in this review. Furthermore, petitioners argue, review of the two ACC contracts (which pertained to the same sale) on the record of this review reveals that the contracts do not contain an invoice number, customer name, or country of exportation, and are not specific to the merchandise subject to review. Moreover, petitioners argue, the dollar amount of the ACCs does not tie to any specific U.S. sale reviewed in this proceeding. From this evidence petitioners conclude that the ACCs were not specific to U.S. sales, and that, therefore, the Department should use in its imputed credit calculation the date of payment by the U.S. customer.

With respect to CBCC, petitioners point out that CBCC financed its U.S. sales using ACCs that covered sales during an extended period. In addition, they allege that evidence on the record of *Ferrosilicon from Brazil* demonstrates that CBCC's ACCs are not tied to specific sales. *See Ferrosilicon from Brazil, Final Determination of Sales at Less than Fair Value*, 54 FR 732 (Jan. 6, 1994) (*Ferrosilicon from Brazil; Final Determination*).

Minasligas argues that petitioners' argument is unfounded. First, Minasligas argues, in *Ferrosilicon from Brazil; Final Determination* it had entered into multiple contracts for individual sales too, and there was also no correspondence between the dates of sale and the contract dates, but still the CIT upheld in *AIMCOR* the Department's calculation of negative U.S. credit expenses. *See Ferrosilicon from Brazil, Final Determination*, and also *AIMCOR*. Second, Minasligas argues that the petitioners are factually incorrect in saying that the dollar value of the ACC does not tie to any specific sale. It states that the sum of the two ACC amounts in local currency equals the amount in reais that Minasligas reported in its U.S. sales listing. Third, the respondent argues that the fact that one of the two ACCs indicates that the exported product was not silicon metal was a mistake by the bank, and that Minasligas was not aware of this mistake at the time it provided this information to the Department. Problems of this nature, Minasligas argues, are verification problems, and the Department opted not to verify Minasligas in this review. Nevertheless, Minasligas states, it is prepared to

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provide the Department additional information that clearly shows that this ACC relates to the sale of silicon metal.

CBCC argues that its ACCs are tied to specific sales. The Department, CBCC argues, verified the ACC documentation and tied each ACC to a particular export transaction. *See* July 22, 1996 verification report, pp. 14–15. Additionally, CBCC argues that the date on which the ACC is contracted is irrelevant to the Department's analysis as long as the ACC contract is tied to a particular export transaction.

Department's Position

We agree with CBCC and Minasligas. We have carefully reviewed the record of this review, and are persuaded that CBCC's and Minasligas' ACCs are directly tied to their U.S. sales. With respect to CBCC, we find that the Department's verifiers were able to tie each ACC to a specific U.S. sale. *See* July 22, 1996 verification report, pp. 14–15. With respect to Minasligas, we note that Minasligas is correct that, contrary to petitioners' argument, the value of the ACC which Minasligas put on the record does in fact equal the value of the U.S. sale; therefore, we find that the ACC is tied to the U.S. sale. Furthermore, in prior verifications (where negative U.S. imputed credit was not an issue) the Department was able to tie Minasligas' ACCs to individual U.S. sales. *See* July 22, 1996 verification report, p. 9. Therefore, in the U.S. imputed credit calculation in these final results of review we have used as the payment date the date on which the bank credits the accounts of Minasligas and CBCC with funds under the terms of their ACCs.

Comment 14

Petitioners argue that the Department erred by failing to deduct from RIMA's USP the ICMS tax that RIMA paid on its foreign inland freight for U.S. sales.

RIMA argues that the freight amount that it reported for each export sale includes ICMS taxes.

Department's Position

We agree with petitioners. Evidence on the record indicates that RIMA reported the ICMS tax on foreign inland freight separately from the freight costs. *See* October 3, 1996 verification report, at 6. In these final results of review we have deducted from USP the ICMS tax due on freight.

Comment 15

Petitioners argue that the Department erred in the calculation of Minasligas' and RIMA's COP by granting an offset to production costs for the sale of by-products. With respect to Minasligas, they argue that the documentation Minasligas submitted to demonstrate that it had sold the slag during the POR did not substantiate its claim.

Minasligas argues that its documentation demonstrates that it concluded the sale in June 1995, and thus during the period covered by this proceeding. It argues that only if the Department decides to rely on the date of shipment rather than the date of sale should the adjustment apply to the fifth review.

With respect to RIMA, petitioners argue that RIMA failed to provide a requested worksheet demonstrating its computation of the claimed offset. Furthermore, petitioners claim that the volume of the offset that RIMA claimed is inconsistent with other information on the record.

RIMA argues that it did not calculate or claim a by-product offset for its COP/CV.

Department's Position

We agree with petitioners. With respect to Minasligas, we agree that the documentation Minasligas submitted does not demonstrate that the date of sale for its claimed offset was during the POR. *See* Minasligas' October 15, 1996 submission, exhibit 5. Therefore, in these final results of review we have not allowed an offset to Minasligas' production costs for its sale of slag. With respect to RIMA, we find that the record indicates that RIMA did offset its production costs with revenue earned from the sales of by-products, and that RIMA did not substantiate its claim for that offset. *See* RIMA's April 30, 1996 SQR, at 33. Therefore, in these final results of review we have not allowed an offset to RIMA's production costs for its sales of by-products.

Comment 16

Petitioners argue that the Department erred in its calculation of the by-product offset that it applied to Eletrosilex's COM. It argues that the ICMS tax should be deducted from the selling price in the calculation of revenue earned from the sale of the by-product.

Department's Position

We agree with petitioners. The ICMS tax represents a reduction in Eletrosilex's revenue earned from the sale, and should be deducted from the selling price in calculating total revenue. We have done so in these final results of review.

Comment 17

Petitioners argue that the Department erred in its calculation of Eletrosilex's COP by using Eletrosilex's calculation of indirect selling expenses. That calculation was flawed, petitioners argue, because in it Eletrosilex divided its indirect selling expenses by its volume of production. This methodology was incorrect, petitioners argue, for two reasons. First, the selling expense total used in the calculation does not include the selling expenses of Eletrosilex's related affiliates. Thus, petitioners argue, Eletrosilex allocated to all of its silicon metal production volume only part of the indirect selling expenses that it and its related companies incurred for selling the silicon metal. Second, it is not the Department's practice, petitioners state, to calculate selling expenses based on production volume. Eletrosilex bore the burden, petitioners argue, of reporting properly calculated per-unit indirect selling expenses, and failed to do so. Therefore, petitioners conclude, in the final results the Department should use the facts available, and should calculate Eletrosilex's per-unit indirect selling expenses for COP and CV by dividing Eletrosilex's reported indirect selling expenses by its reported volume of home market and U.S. sales.

Eletrosilex argues that it makes no sense to calculate per-unit indirect selling expenses based solely on U.S. and home market sales volumes. It argues that the indirect selling expenses that Eletrosilex incurs (consisting primarily of salaries and related employee costs) are applicable to all sales, not just to the local and U.S. markets. These employees, Eletrosilex states, perform functions relevant to all sales, and it would be unfair and illogical to apply the expenses of these employees solely to home market and U.S. sales. Citing statements in its questionnaire response as support, it argues that sales both in the United States and in Brazil are made solely by Eletrosilex personnel, with no assistance from affiliated companies. Furthermore, Eletrosilex argues, while affiliated companies assist Eletrosilex in some third-country markets, Eletrosilex personnel are deeply involved in all aspects of these sales. That there is some external assistance on these sales in third-country markets, Eletrosilex argues, is not relevant to the determination of per-unit indirect selling expenses in the home market.

Department's Position

We agree with petitioners that indirect selling expenses should be calculated based on sales volumes, and not production volumes. This is our policy because by their nature indirect selling expenses are attributable to sales

of merchandise, and not to production of merchandise. We do not agree with petitioners that the computation needs to include the indirect selling expenses of all of Eletrosilex's affiliates because COP includes only the indirect selling expenses attributable to home market sales. Because the related affiliates were not associated with Eletrosilex's home market sales, there is no reason to include their indirect selling expenses in COP. In these final results of review, we have calculated Eletrosilex's indirect selling expenses by dividing its home market indirect selling expenses by its home market sales volumes.

Comment 18

Petitioners argue that the Department erred in the calculation of Eletrosilex's and RIMA's U.S. selling prices by calculating the unit price based on the net weight of contained silicon rather than the gross weight of the silicon metal. They argue that in a CV-based margin calculation the Department should use the gross weight of the silicon metal to calculate the per-unit USP because CV is reported on a gross-weight basis. Use of the contained-weight quantities would, they allege, distort the comparison of export price (EP) and NV. Similarly, petitioners argue that the Department erred in its sales-below-cost analysis for RIMA by calculating its home market selling prices on the basis of the contained weight of silicon, rather than the gross weight of the silicon metal. They argue that to make a fair comparison, the Department should convert the per-unit home market selling prices to a gross-weight basis before comparing them to COP.

RIMA argues, with respect to petitioners' argument concerning the comparison of USP and NV, that petitioners' argument is tantamount to a request that the Department determine a USP for its sales on a different basis than that at which the merchandise was sold to the U.S. market. Doing so, RIMA argues, would be contrary to the plain language of the statute, which requires that the Department base EP on "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise. . . ." (*See* 19 U.S.C. § 1677a(a).) The petitioners' approach, RIMA argues, would result in using a unit price different from that reflected on the invoice, and, therefore, would be contrary to the statute.

Department's Position

We disagree with petitioners. We find no evidence on the record to support petitioners' contention that the weights Eletrosilex and RIMA reported for their U.S. and home market sales reflect only the weight of the silicon, rather than the weight of the silicon metal. Furthermore, there is no record evidence to support petitioners' assertion that CV was calculated on a gross-weight basis. Therefore, there is no reason to change the per-unit calculations from those in the preliminary results of review.

Comment 19

Petitioners argue that Eletrosilex failed to provide a reconciliation of its COM to its inventory cost records. Eletrosilex attempted to provide a reconciliation in its questionnaire response (Q/R), but in an SQR acknowledged that the previously submitted reconciliation contained an error. Therefore, in the SQR Eletrosilex submitted a revised reconciliation. This second reconciliation contained beginning and ending inventory values that were different from those contained in the Q/R. Thus, in a second supplemental questionnaire, the Department requested that Eletrosilex explain why it reported two different inventory balances based on the same inventory records. Eletrosilex answered that "because inventory unit costs are calculated by the weighted average methodology rather than purely by quantities, the inventory balance necessarily changes when there is a change in values." This statement, petitioners argue, shows that Eletrosilex did not reconcile its reported COM to its inventory records maintained in the normal course of business, but instead simply compared its reported monthly COMs to inventory values that it created from its monthly COMs prepared for this review. Thus, petitioners argue, Eletrosilex failed to provide a critical reconciliation needed to validate its reported COM.

Department's Position

We disagree with petitioners. In its SQR, Eletrosilex provided information which substantiated that the reported per-unit costs could be reconciled to the financial statement costs. Eletrosilex provided the financial statement average inventory values for each month of the POR, as well as financial statements. We reviewed and analyzed the cost information, the monthly inventory information, and the financial statements which Eletrosilex submitted. Since Eletrosilex produces only subject merchandise, we multiplied the submitted costs by the production quantities and compared the total costs to the financial statement total costs. We determined that the reported per-unit COP and CV data were consistent with the per-unit costs used in the financial statements.

Comment 20

Petitioners argue the Department erred in its computation of CBCC's COP by using the depreciation expenses that CBCC reported. They find three errors in CBCC's reported depreciation. First, CBCC calculated its reported depreciation by aggregating its depreciation for all assets and allocating the aggregate amount to the three products it produces based on the relative production quantities of these products. Petitioners state that the Department's normal practice (which, petitioners allege, was CBCC's normal methodology prior to the 93–94 administrative review) requires that depreciation of assets used to produce subject merchandise be directly attributed to the cost of the subject merchandise. Petitioners object to CBCC's new allocation because it is not, they allege, how CBCC has historically recorded depreciation in its books or reported to the Department in earlier reviews of this order. Petitioners argue that the Department's practice is clear that a respondent may not depart from its normal, historical cost allocation methods during an antidumping proceeding unless the respondent establishes that its normal method is distortive. *See Canned Pineapple Fruit from Thailand, Final Determination of Sales at Less than Fair Value*, 60 FR 29553, 29559 (June 5, 1995). Here, petitioners argue, CBCC has not even claimed that its prior method was distortive.

The effect of CBCC's new calculation methodology, petitioners argue, is to shift CBCC's depreciation away from silicon metal and toward other products. To accept such a calculation, petitioners argue, would violate the Statement of Administrative Action (SAA) which states that "if Commerce determines that costs ... have been shifted away from production of the subject merchandise, or the foreign like product, it will adjust costs appropriately, to ensure they are not artificially reduced." *See SAA*, 1994 U.S.C.A.A.N. at 4172.

For the above reasons, petitioners argue that the Department should:

- Include in COM the depreciation for assets used to make silicon metal, consistent with CBCC's historical depreciation method;
- Allocate depreciation for equipment common to production of multiple products based on the percentage of

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CBCC's total furnace capacity dedicated to production of each product;

• Allocate depreciation for equipment common to production of multiple products for a particular plant only among the products made at that facility;

• Calculate the proper amount of straight-line depreciation for the furnaces that produce silicon metal based on the monthly acquisition values for those furnaces.

The second alleged error petitioners find in CBCC's calculation of depreciation is that it did not include depreciation for all idle equipment.

The third alleged error petitioners find in CBCC's calculation of depreciation is that CBCC used accelerated depreciation for some assets. Petitioners state that the Department consistently rejects accelerated depreciation, which by definition is not based on the average useful life of the fixed assets. Therefore, petitioners argue, the Department should recalculate CBCC's depreciation eliminating any prior accelerated depreciation. It should also, petitioners argue, restate the value of the assets to account for hyperinflation.

CBCC argues, with respect to the first alleged error, that though its methodology represents a change from the first and second reviews of this order, it is the same methodology it used in the third (93–94) review.. Moreover, CBCC argues, it used this depreciation allocation method also with respect to production equipment common to all production in *Ferrosilicon from Brazil; Final Determination*, and the Department accepted it. Therefore, CBCC states, its current methodology has been historically used, and the Department has accepted it in one prior instance. Furthermore, CBCC argues, the methodology is proper because CBCC can produce any of its products in each furnace, with only minor modifications. Therefore, allocating depreciation to each product based on relative production capacity is not improper.

CBCC argues, with respect to the second alleged error, that it was pursuant to Brazilian law that it did not report depreciation of idle assets. Under Brazilian law, it states, the depreciation of idle assets is illegal. Under such circumstances, it argues, depreciation is suspended and resumes only when the assets are operational again.

CBCC argues, with respect to the third alleged error, that the Department verified at the fourth review verification that there was no accelerated depreciation of furnaces. Furthermore, had accelerated depreciation occurred in any prior review, CBCC argues, the Department verifiers would have noted it. Therefore, CBCC concludes, there is no evidence on the record to support petitioners' theories. With regard to petitioners' argument that the Department should restate the value of the assets to account for hyperinflation, CBCC argues that it calculated depreciation on asset values that were re-actualized to take account of inflation.

Department's Position

We agree with petitioners in part. We have determined that CBCC's new method of calculating depreciation distorts the cost of depreciation incurred to produce silicon metal because it shifts depreciation costs incurred in the production of silicon metal away from that product and toward other products. For this reason, accepting this method would be contrary to the guidance set forth in the SAA. Since publication of the preliminary results of this review, we have requested and obtained information from CBCC that enables us to identify the depreciation expense associated with assets used to produce silicon metal and to include that expense as part of the COP/CV for silicon metal.

Concerning depreciation expenses for idle assets, we agree with petitioners that it is our clearly stated practice and policy to include these in COP/CV. Accordingly, for these final results, we have included this category of expense in the calculation of depreciation.

Petitioners' allegation that CBCC improperly used accelerated depreciation expenses is moot for these final results because, as stated above, we have performed a recalculation of depreciation. In this recalculation we have not accelerated the useful lives of the assets. For the furnaces we have used a useful life of ten years, which is the useful life we used in prior reviews of this order. By using the same useful life in successive reviews, we avoid accounting for the same costs more than once. *See* our position on comment 4 above.

Comment 21

Petitioners argue that the Department erred in its calculation of CBCC's COP by using CBCC's reported direct labor costs. They argue that the figures CBCC reported reflect a methodology which distorts costs. As a result of this methodology, petitioners argue, CBCC reported disproportionate direct labor costs for products with comparable direct labor requirements. CBCC also, petitioners argue, allocated direct labor costs to furnaces that were not even operating, and thus required no direct labor. Therefore, petitioners argue that the Department should recalculate direct labor correctly, or use facts available for CBCC's direct labor.

CBCC argues that its direct labor costs for this review were taken directly from its books and accounting records, which the Department verified. CBCC believes that its allocation and accounting methodology are justified based on how its labor is in fact employed and how it records the cost of labor in its books. CBCC explains that it assigns a set number of workers to each furnace, no matter what the output of the furnace may be. When a furnace is inoperative or idle, the workers and employees continue to be paid and are generally not reassigned to other furnaces because the cost of laying off employees for temporary periods of time would be prohibitive. Furthermore, all furnaces operate 24 hours a day, and therefore it would be impracticable and unnecessary to add employees in addition to those already assigned to other furnaces. As a result, CBCC allocated these labor costs to the product which the idle furnace produced before becoming non-operational. Under these circumstances, CBCC argues, the evidence on the record, which the Department verified, shows that the workers assigned to idle furnaces continued to be paid, and that CBCC continued to account for this labor in its accounting records based on the volume of silicon metal produced by each furnace while it was active.

Department's Position

We agree with petitioners that CBCC's reported labor costs distort the actual labor costs incurred to produce silicon metal because the company allocates a disproportionate share of labor costs to products that have comparable labor requirements and because it allocates labor costs associated with idle furnaces to specific products that are not in production at the time the labor costs were incurred. Although CBCC used this method in its normal accounting system, we cannot use it in our antidumping analysis. The SAA indicates that costs will be calculated based on records kept by a firm if they are kept in accordance with GAAP and if they reasonably reflect the costs associated with the production and sale of the merchandise.

This is not the case with respect to CBCC's accounting for the labor costs associated with idle furnaces. Under CBCC's accounting, the company charges these costs to the last product produced in the furnace. We believe

that it is more appropriate to allocate these costs to all products produced by CBCC since, during the idle time, the labor costs incurred are not directly related to any specific product.

Comment 22

Petitioners argue that the Department erred in its calculation of CBCC's COP by using the forest exhaustion costs that CBCC reported. CBCC's reported forest exhaustion costs were deficient, petitioners argue, because in them CBCC revalued the formation and pre-harvest maintenance costs of each forest project only up to the date that harvesting began for that project. Petitioners argue that in *Ferrosilicon from Brazil; Final Determination* the Department found that CBCC had used the same methodology, and determined that because of it CBCC "had substantially understated its cost of producing charcoal by inaccurately recording the costs associated with their wood forests." (*See Ferrosilicon from Brazil; Final Determination*, at 738.) Petitioners argue that in this review the Department should require CBCC to recalculate its self-produced charcoal costs using forest exhaustion based on forest formation and pre-harvest maintenance costs that have been revalued to account for inflation during the harvest period. In the alternative, petitioners argue, the Department should determine CBCC's charcoal costs based on the facts available.

CBCC argues that it explained its reporting of exhaustion to Department officials at the verification, and that the verifiers fully verified this question. It notes too that the exhaustion costs are re-stated in UFIR to account for hyperinflation, and that they include all taxes and expenses attributable to exhaustion.

Department's Position

We agree with petitioners that because CBCC did not revalue the cost of its forests after harvesting began, the charcoal costs it submitted are inadequate. Therefore, in these final results of review we have valued CBCC's self-produced charcoal at the price paid to outside suppliers. Under these circumstances we resorted to this same cost methodology in the first and second administrative reviews of this order. *See Silicon Metal from Brazil; First Revie. Final Results* at 42809 and page 1 of the attachment to the March 14, 1995 analysis memorandum from Fred Baker to the file (public version).

Comment 23

Petitioners argue that the Department erred by allocating CBCC's indirect selling expenses according to the relative sales volume of each of CBCC's three products. Petitioners argue that this is not a proper allocation because silicon metal has a significantly higher value than CBCC's other two products. Furthermore, petitioners argue that the Department should use adverse facts available for CBCC's indirect selling expenses because at the verification the Department requested information on CBCC's sales values for each of its products in order to allocate indirect selling expenses to silicon metal based on sales values rather than sales volumes, but CBCC refused to provide that information. The verification report states that the basis for the refusal was that the Department had not requested the information prior to the verification. Petitioners argue that this reason is inadequate because CBCC did not state that the information was unavailable.

CBCC states that at the verification the Department officials suggested that CBCC recalculate the indirect selling expenses on the spot using a different methodology than that it requested in the supplemental questionnaire. CBCC states that at the verification it did not have the time or resources to provide an entirely new set of indirect selling expenses. It also notes that the Department's officials did not suggest providing this information to the Department at a later date. Accordingly, CBCC argues, the Department should not penalize CBCC for the Department's failure to request information other than the information requested in its questionnaires. *See Toyota Motor Sales U.S.A.* v. *United States*, Slip Op. 96–95, June 14, 1996; *Micron Technology, Inc.* v. *United States*, Slip Op. 95–107, June 12, 1995.

Department's Position

We disagree with petitioners. Petitioners have given us no reason to believe that an allocation based on sales volume is unreasonable or distortive in this case. That silicon metal may have a higher sales value than other products CBCC produces is an insufficient basis to conclude, absent any supporting information on the record of this review regarding the specific nature of the indirect selling expenses incurred by CBCC, that an allocation based on sales value would produce more accurate results than an allocation based on sales volume. Therefore, in these final results of review, as in the preliminary results of review, we have allocated CBCC's indirect selling expenses to silicon metal based on relative sales volume.

Comment 24

Petitioners argue the Department erred in its calculation of CBCC's G&A expenses by not allocating to CBCC a portion of the G&A expenses of CBCC's direct Brazilian parent, Solvay do Brasil, but instead it allocated to CBCC a portion of the G&A expenses of only its Belgian parent, Solvay & Cie. Petitioners argue that in the less-than-fair-value (LTFV) investigation of this case CBCC acknowledged that Solvay do Brasil performed some services on CBCC's behalf, and that in this review CBCC has not stated that Solvay do Brasil did not do the same. Therefore, petitioners argue, the Department should calculate the portion of Solvay do Brasil's G&A expenses that is attributable to CBCC, and include those expenses in CBCC's COP and CV.

CBCC argues that the consolidated financial statements of Solvay & Cie include the financial results of Solvay do Brasil as well as CBCC and some two dozen other affiliated companies in the Solvay Group. Thus, by calculating G&A expenses on the basis of the consolidated statements of the Solvay Group, CBCC argues, not only did the Department allocate G&A expenses incurred by Solvay do Brasil on behalf of CBCC, but also those of a number of companies throughout the world that did not perform any administrative services whatsoever for CBCC.

Department's Position

We agree with the respondent that the allocation of its overall parent company's G&A expenses was correct and that to also add the G&A expenses of Solvay do Brazil would double-count the G&A expenses of Solvay do Brazil, which are included in the consolidated financial statements. Accordingly, for these final results we have continued to apply the consolidated G&A expenses reported by CBCC.

Comment 25

Petitioners argue that the Department erred in its calculation of CBCC's interest expense by calculating it on the basis of the interest expense of CBCC's ultimate Belgian parent, Solvay & Cie. They argue that the Department should instead calculate it on the basis of the combined interest expense of CBCC and its Brazilian parent, Solvay do Brasil. In support of their argument, they point out that there is evidence on the record that there are loans between Solvay do Brasil and CBCC, whereas there is no evidence on the record that there are any intercompany transactions or borrowing between CBCC and Solvay & Cie. Furthermore, they argue that the

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Brazilian firms normally would borrow in Brazilian credit markets or from Brazilian banks. Moreover, in the final results of the first administrative review of this order, and in *Ferrosilicon from Brazil; Final Determination*, the Department used the financial statements of Solvay do Brasil to calculate CBCC's interest expenses.

CBCC argues that the Department's well-established practice is to calculate financial expenses based on the consolidated statements at the parent company level. *See Ferrosilicon from Brazil; Final Determination* at 736. In prior segments of this proceeding the Department consolidated the financial expenses of CBCC and Solvay do Brasil because CBCC had not submitted the consolidated financial statements of its Belgian parent, Solvay & Cie. In this review CBCC provided such consolidated financial statements. They show, CBCC states, that the financial results of both CBCC and Solvay do Brasil are consolidated with those of the Solvay Group. Therefore, CBCC argues, it is proper for the Department to use these consolidated financial statements pursuant to its "well-established practice of deriving net financial costs based on the borrowing experience of the consolidated group of companies." *See New Minivans from Japan*, 57 FR 21937, 21946 (May 26, 1992).

Department's Position

We agree with CBCC. Both parties urge the Department to use interest expenses reflecting the consolidated financial results of the parent and its subsidiaries. However, the petitioners would have us refer only to the financial results of CBCC and its immediate Brazilian parent, while CBCC would have us use the global corporate interest expense. The petitioners' recommendation is internally inconsistent because, while they state that Department policy is to use fully consolidated results, they urge us to rely on only partially consolidated results (those of CBCC and Solvay do Brasil).

Our policy is to base interest expenses and income on consolidated financial statements. We explained our basis for this position in *Silicon Metal from Brazil; First Review Final Results* as follows:

> Since the cost of capital is fungible, we believe that calculating interest expense based on consolidated statements is the most appropriate methodology. (*see, e.g., Final Determination of Sales at Less Than Fair Value, Small Business Telephones from Korea*, 54 FR 53141, 53149 (December 27, 1989), *Final Results of Antidumping Duty Administrative Review, Brass Sheet and Strip from Canada*, 55 FR 31414, 31418–13418–13419 (August 2, 1990), and *Final Determination of Sales at Less Than Fair Value, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al.*, 54 FR 18992, 19074 (May 3, 1989)).

See Silicon Metal from Brazil; First Review Final Results at 42807. Also see *Ferrosilicon from Brazil; First Review Final Results* at 59412.

While we did use the consolidated financial statement of CBCC and Solvay do Brasil in prior reviews of this order and in *Ferrosilicon from Brazil; Final Determination*, in those segments of the proceeding we did not have the consolidated statement of Solvay & Cie on the record. Accordingly, for these final results of review, we have used the consolidated financial statement of Solvay & Cie for the interest expense.

Comment 26

Petitioners argue that the Department erred in its calculation of CBCC's and RIMA's USP by adding to it the weighted-average amount of ICMS, PIS, and COFINS taxes reported for home market sales. They argue that this addition was improper because under the recent amendments to the antidumping law, the Department is to make no addition to USP for home market taxes. Rather, they argue, when based on home market prices, the Department should reduce NV by:

> [t]he amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product. . . .

See 19 U.S.C. § 1677b(a)(6)(B)(iii). Furthermore, petitioners argue that under this provision, the Department may not reduce NV by the amount of PIS and COFINS taxes reported for home market sales because they are gross revenue taxes. Thus, they are not "imposed directly upon the foreign like product," as required under the statute in order to deduct them from NV.

CBCC argues that the recent amendments to the U.S. antidumping laws require the Department to use tax-neutral methodologies for its dumping calculations. Accordingly, CBCC argues, it is proper for the Department to add to USP the weighted-average amount of ICMS, PIS, and COFINS taxes imposed on domestic sales because, by adding the same amount of taxes to the USP as that collected on the home market sales, the Department makes "apples-to-apples" comparisons.

CBCC also argues that, even though the PIS and COFINS taxes are gross revenue taxes, this does not mean "they are not imposed directly upon the foreign like product," as petitioners allege. Whether or not they are shown as a separate line item on the invoice is immaterial, CBCC argues, as long as they are embedded or included in the price of the sale. Furthermore, CBCC argues, the CIT has upheld the Department's practice of making an adjustment for taxes embedded in sales prices. *See Daewoo Electronics Co., Ltd. v. International Union of Electronic, Electrical, Technical, Salaried and Mach. Workers, AFL–CIO*, 6 F.3d. 1511, 1516–17 (Fed. Cir. 1993). Moreover, CBCC argues that the PIS and COFINS taxes meet the two requirements of 19 U.S.C. § 1677b(a)(6)(B)(iii) (quoted above). First, PIS and COFINS taxes are imposed on gross home market sales revenue of silicon metal, but are not "collected" on export sales. Second, although PIS and COFINS taxes are not shown as a separate line item on the invoice, they are "included" in that price because they are embedded in such price.

RIMA argues that the Department should be guided by the principle of tax neutrality that it re-stated in the final results of *Silicon Metal from Brazil; Second Review Final Results*. Accordingly, RIMA argues, the Department should add to the USP the absolute amount of ICMS taxes as well as the absolute amounts of PIS/COFINS taxes collected on home market sales, pursuant to 19 U.S.C. § 1677a(c)(2)(B), 19 U.S.C. § 1677b(a)(6)(B)(iii), and 19 U.S.C. § 1677b(a)(6)(C)(iii). To add ICMS and PIS/COFINS taxes to NV without a corresponding adjustment to the USP, RIMA argues, would create dumping margins due solely to indirect taxes where none would otherwise exist.

Minasligas argues that the Department erred by failing to deduct from NV the PIS, COFINS, and ICMS taxes due on Minasligas' home market sales. Minasligas argues that this failure was a violation of 19 U.S.C. 1677b(6)(B)(iii), cited above. Minasligas argues, with respect to the PIS and COFINS taxes, that because these taxes are not collected on export sales, they must be deducted from NV prior to the comparison to USP. As for the ICMS tax, Minasligas argues that under the statute the Department must deduct from NV the amount by which the home market ICMS tax due exceeds the amount of ICMS tax due on U.S. sales. This deduction is necessary, Minasligas argues, to account for the difference in ICMS tax which has been rebated or not collected upon exportation, as directed in 16 U.S.C. 1677b(6)(B)(iii).

Minasligas also argues that, in the alternative, if the Department does not

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deduct the PIS, COFINS, and the correct amount of ICMS taxes from NV, then, in the alternative, it must add the absolute amount of these taxes to USP in order to achieve tax neutrality. As another alternative, Minasligas argues that the Department should make a circumstance-of-sale (COS) adjustment for the tax differential by deducting from the NV the absolute amount of the tax difference between USP and NV.

Petitioners argue that the Department was correct in adding the PIS and COFINS taxes to Minasligas' home market sales prices because it had reported its home market prices net of these taxes, and thus understated the gross unit prices. Therefore, petitioners argue, the Department must add the PIS and COFINS taxes to Minasligas' home market prices in order to determine the actual prices that Minasligas charged, which are the proper starting point for the calculation of NV. Furthermore, petitioners argue, under section 773(a)(6)(B)(iii) of the Act, NV may be reduced only by taxes imposed directly upon the "foreign like product or components thereof." Petitioners argue that because the PIS and COFINS taxes are calculated based on gross receipts (excluding receipts from export sales), they are not imposed "directly upon the foreign like product," and therefore may not be deducted from NV.

Moreover, petitioners argue that in similar situations in the past the Department has not made an adjustment for gross revenue taxes. In support of this argument they first note that the language of 19 U.S.C. 1677b(6)(B)(iii) is virtually identical to the language of 772(d)(1)(C), which was, they state, the parallel provision in effect prior to the enactment of the URAA, and which provided for an upward adjustment to USP. They then note that in *Silicon Metal from Argentina* the Department determined that two Argentine taxes (which petitioners allege are almost identical to Brazil's PIS and COFINS taxes) did not qualify for an adjustment to USP because they were gross revenue taxes. *See Silicon Metal from Argentina, Final Determination of Sales at Less Than Fair Value,* 56 FR 37891, 37893 (August 9, 1991).

Petitioners also argue that the PIS and COFINS taxes do not qualify for a COS adjustment pursuant to 19 U.S.C. § 773(a)(6)(C)(iii) for the same reason that they do not qualify for an adjustment to NV pursuant to 19 U.S.C. § 773(a)(6)(B)(iii) of the Act. The Department's regulations specify that the Department will limit allowances for differences in the circumstances of sales "to those circumstances which bear a direct relationship to the sales compared." *See* 19 CFR § 353.56(a)(1). Petitioners argue that because PIS and COFINS taxes are not imposed on silicon metal transactions, but instead are assessed on gross receipts from operations, they are not directly related to specific sales and therefore do not qualify for a COS adjustment.

Department's Position

We agree with petitioners that recent changes to the antidumping law make no allowance for additions to USP for home market taxes. Thus, to achieve tax neutrality in these final results of review, we have deducted relevant taxes from NV, and have not added them to USP. This approach in is accordance with 19 U.S.C. § 1677b(a)(6)(B)(iii). However, we agree with Minasligas that in order to achieve tax neutrality with respect to the ICMS tax we should deduct from NV only the amount of the difference between ICMS tax due on home market sales and ICMS tax due on U.S. sales. We have done so in these final results of review.

We also agree with petitioners that information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. Thus, in accordance with our determination in *Silicon Metal from Argentina,* we determine that these taxes are not imposed "directly upon the merchandise or components thereof." Thus, we have no statutory basis to deduct them from NV. We also agree with petitioners that because the PIS and COFINS taxes are gross revenue taxes, they do not bear a direct relationship to the sales, and therefore do not qualify for a COS adjustment. Therefore, in these final results of review we have not made an adjustment for PIS and COFINS taxes in the margin calculation.

Comment 27

Petitioners argue with respect to all respondents that the Department should include profit in CV, and that the foreign like product that should be excluded from the profit calculation as outside the ordinary course of trade includes sales disregarded as below cost, sales of off-quality merchandise, and sales to related parties at prices that are not at arm's length.

Department's Position

We agree that the calculation of CV should include profit. Where we used CV in the margin calculation in these final results of review and the respondent had above-cost sales, we have calculated profit based on above-cost home market sales of commercial-grade silicon metal sold at arm's length prices. Where a respondent had no above-cost sales, but its financial statement indicates that it had profits, we based the profit calculation on the respondent's financial statement. Where a respondent had no above-cost sales and its financial statement indicated the company experienced losses rather than profits during the calendar year, we have calculated profit based on the weighted-average profit ratios of other respondents who reported profits on their financial statements.

Comment 28

Petitioners argue that the Department erred in its calculation of RIMA's COP by using incorrect figures for depreciation. The figures the Department used were depreciation expenses that RIMA submitted to the Department at verification. (Subsequent to publication of the preliminary results the Department solicited additional information from RIMA regarding its depreciation. Petitioners submitted separate comments regarding that information, as described below.) Petitioners argue regarding RIMA's original depreciation figures that the reported depreciation is massively understated. As support for this assertion, they cite the independent auditor's report accompanying RIMA's 1994 and 1995 financial statements. These reports give the independent auditor's opinion as to what RIMA's depreciation and amortization would be if RIMA recognized them on their financial statements. Comparing the independent auditor's estimate of depreciation with those submitted by RIMA for this review, petitioners argued, shows that the numbers given by the independent auditors are much higher than those given by RIMA in this review.

Furthermore, petitioners argued that RIMA's depreciation calculation is flawed in numerous ways. Among them:

1. Its calculation of the purported company-wide depreciation for all its products included only depreciation for machinery and equipment at its Varzea da Palma (VZP) plant, and thus excluded the depreciation for the machinery and equipment at the other plants;

2. It is based on an accelerated depreciation rate. Petitioners argue that it is the Department's practice to reject accelerated depreciation of assets where such accelerated depreciation fails to allocate the cost of the asset on a consistent basis over the life of the asset.

3. RIMA's 1995 audited financial statements reported fixed asset values for buildings, vehicles, furniture, and implements, while RIMA's depreciation

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worksheets prepared for this review do not reflect depreciation for these assets.

4. RIMA's depreciation worksheets do not appear to contain line items for amortization of its deferred expenses, which were incurred to set up, expand, and modernize RIMA's production facilities and to develop new plants.

Moreover, petitioners argue that RIMA improperly changed its depreciation calculation method since the preceding review. The 93–94 verification report says:

> Since each piece of equipment was dedicated to the production of certain products, RIMA reported the depreciation expense from the cost center for silicon metal. RIMA allocated the remaining overhead expenses [including depreciation] based on the relative number of hours worked on silicon metal production versus total hours worked on all products.

See Verification Report, October 25, 1995, p. 19 (public version). In the 94–95 review, petitioners allege, RIMA departed from this methodology by calculating company-wide depreciation and allocating it to products based on the relative cost of sales of the products. Department practice requires that respondents show that their historically-used method is distortive before they can use a new method. RIMA, petitioners allege, made no such showing.

Finally, petitioners argue that RIMA performed an improper allocation of its depreciation which resulted in depreciation for some equipment used exclusively for silicon metal being allocated to other products. Moreover, they argues that where allocation of depreciation is appropriate, RIMA's allocation, which was based on cost of sales, is improper because cost of sales does not reflect the extent to which assets were used to produce individual products during a period. This is because cost of sales excludes the cost of inventory production and includes the cost of products sold out of inventory.

For the above reasons, petitioners argue that the Department should obtain the necessary information to calculate RIMA's depreciation properly, or, in the alternative, it should calculate RIMA's depreciation based on the facts available.

In response to petitioners' comments regarding its original calculation of depreciation, RIMA argues that petitioners base their comments on incorrect assumptions or on a fundamental misunderstanding of RIMA's depreciation calculations. RIMA argues that while it is true that the independent auditor's estimate of depreciation is different from RIMA's, the difference is accounted for by the fact that the independent auditor's estimate is a cumulative figure representing depreciation that has occurred since RIMA stopped recording depreciation on its financial statement (which has been at least five years), whereas the depreciation RIMA reported to the Department is the depreciation only for the POR. RIMA also state that petitioners were mistaken regarding the number of RIMA's plants that produce silicon metal, and thus are mistaken in their own estimate of what RIMA's allocated silicon metal depreciation should be.

Furthermore, RIMA states that petitioners have made several other errors in their analysis. First, RIMA argues that because petitioners have misread the verification exhibit showing the calculation of depreciation, they are in error in stating that the reported depreciation takes account only of the VZP plant's equipment. In fact, RIMA states, it included eight items in its depreciation worksheet, including deferred expenses and categories of equipment other than equipment at the VZP plant. Second, RIMA states that the depreciation of the assets takes into account the effect of hyperinflation because the acquisition values of such assets are stated in UFIR, which are then converted into local currency for the months concerned. Third, petitioners were incorrect, RIMA argues, in saying that its depreciation methodology is a change from prior reviews. In fact, RIMA argues, it is the same calculation methodology used in *Silicon Metal from Brazil; Second Review Final Results*, which the Department accepted.

Finally, RIMA argues that the Department verifiers noted nothing unusual or incorrect in RIMA's depreciation calculations. Therefore, RIMA concludes, the Department should rely on these findings.

On November 14, 1996 the Department solicited additional information from RIMA. We requested that RIMA submit depreciation expenses that tied to the auditor's statements, and which should consist of the sum of the depreciation expenses for assets only associated with the production of silicon metal and an allocated portion of the depreciation expenses for other, common assets. In its response, in addition to providing information, RIMA reiterated that the auditor's stated depreciation amounts should not be used as a basis for the analysis because the auditors did not consider whether RIMA's assets had been fully depreciated when they calculated the estimated depreciation expenses for the years reported in the financial statement. RIMA argued that this methodology overstates depreciation significantly because during the normal course of business, every year, assets become fully depreciated and, therefore, cannot be used as a basis for determining depreciation expenses.

In commenting on RIMA's response to the Department's November 14, 1996 supplemental questionnaire, petitioners stated that RIMA's new response was deficient. Petitioners state that RIMA did not respond to the Department's request for information on the replacement cost for silicon metal assets or for depreciation expenses for silicon metal assets. Because RIMA allegedly failed to respond to the Department's request for information, petitioners argue that the Department should use facts available for RIMA's depreciation.

Department's Position

We agree with petitioners that both RIMA's initial depreciation calculation and the depreciation calculation submitted in response to the Department's November 14, 1996 supplemental questionnaire were deficient. As petitioners point out, RIMA's original calculation did not include all assets, and therefore is understated. Furthermore, RIMA's response to the Department's November 14, 1996 submission did not respond to all the Department's requests for information. Rather than providing requested information, RIMA calculated depreciation in a way not in conformity with the Department's instructions. Without the requested information the Department cannot properly determine RIMA's depreciation expenses during the POR.

Where a respondent has not responded to a request for information, the Department may resort to facts available. As facts available the Department has chosen to use one-half of the audited total RIMA depreciation expenses for each fiscal year as RIMA's total POR depreciation expenses, and to allocate to silicon metal production a share of that total based on the highest monthly percentage of cost of goods sold accounted for by silicon metal, as appearing in verification exhibit OH1. We allocated one-twelfth of this total, in turn, to each month of the POR.

Comment 29

Petitioners argue that the Department erred in its calculation of RIMA's COP by using RIMA's reported cost for its self-produced charcoal. RIMA reported the price of charcoal from unrelated suppliers, and said it was reflective of the fair market value for charcoal.

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Petitioners argue that this claim would be relevant if RIMA had acquired charcoal from related suppliers, but this is not the case; RIMA produced the charcoal itself. Thus, petitioners argue, prior to the final results the Department must obtain RIMA's full cost of producing charcoal (including all operating and materials costs and depreciation and amortization) or use facts available.

In addition, petitioners argue that at the verification in this review RIMA revealed for the first time that one of its plants produced quartz, a major input for the production of silicon metal. Petitioners argue that for the same reasons as given above with respect to charcoal, the Department must either obtain RIMA's full cost of producing quartz or use facts available.

RIMA argues the related entities from which it purchases charcoal are not departments or subdivisions of RIMA Industrial S/A, and that, therefore, the charcoal it purchases from them is not "internally produced." Moreover, it argues that its use of the prices from third-party suppliers was justified in light of statutory provisions. Because the prices from its related suppliers were, it admits, not at arms-length, they could not be used in the cost calculation because 19 U.S.C. § 1677b(f)(2) says that prices between related companies can be considered in determining the cost of materials in CV only when such prices "fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." Furthermore, because the Department could not use the prices from its related companies, RIMA argues that it was justified in using the prices of third-party suppliers as a surrogate for the prices from its related entities, because the statute provides that when "a transaction is disregarded * * * and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons that were not related." *See* 16 U.S.C. § 1677b(f)(2). Under this provision of the statute, RIMA argues, there is no basis for the petitioners' suggestion that the Department require RIMA to calculate the fabrication costs of charcoal for its related suppliers. Moreover, RIMA argues, the Department has used this methodology in other cases, such as in *Ferrosilicon from Brazil; Final Determination* at 738.

With respect to petitioners' argument that RIMA purchased quartz from related suppliers, RIMA argues that petitioners' argument is unfounded. It states that there is no evidence in the record that RIMA purchased quartz from any related suppliers.

Department's Position

At the Department's request, RIMA submitted information relating to the COP of charcoal incurred by RIMA's affiliates during each month of the POR. However, we noted that RIMA did not report reforestation, depreciation, depletion, and exhaustion costs. Therefore, because we cannot rely on RIMA's reported costs for self-produced charcoal, we have used the prices RIMA paid for charcoal to unrelated suppliers to value RIMA's charcoal costs.

With respect to quartz, we agree with respondent that there is no information on the record indicating that RIMA purchased quartz from affiliated suppliers during this POR. Therefore, we have has not adjusted RIMA's reported direct material costs for any supposedly self-produced quartz.

Comment 30

Petitioners argue that the Department erred in its calculation of RIMA's COP by using RIMA's reported G&A expenses. They argue that the Department should reject RIMA's reported G&A expenses because RIMA did not calculate them using the Department's standard methodology for calculating G&A expenses, which is to multiply the COM by the ratio between the G&A expenses and the cost of sales reported in the respondent's audited financial statements. Moreover, petitioners allege that the method RIMA used was flawed for two reasons. First, it was based on monthly G&A expenses. The Department expressly rejected use of monthly G&A expenses in the 1991–92 review in this proceeding. *See Silicon Metal from Brazil; First Review Final Results*. Second, RIMA's calculation used 1994 data to derive monthly G&A expenses for 1995.

In addition, petitioners argue that in its computation of G&A expenses used in the CV calculation RIMA made one additional mistake. That mistake was to include an offset for "other operational income" in the monthly G&A calculations. Petitioners argue that this "other operational income" consisted of an alleged inventory holding gain due to hyperinflation. The Department should deny this offset, petitioners argue, because its practice is to allow an offset to G&A only for income related to the production of the subject merchandise. The "other operational income" here, petitioners argue, is an accounting adjustment that does not constitute income. Moreover, petitioners argue that some of this income is unrelated to silicon metal, but is instead related to RIMA's other products. Therefore, petitioners conclude, the Department should deny this adjustment.

RIMA argues that it reported its G&A costs based on its accounting records kept in the normal course of business. Thus, RIMA argues, the Department should use those reported costs pursuant to 19 U.S.C. § 1677b(f)(1)(A), which states that "costs shall be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country * * * and reasonably reflect the costs associated with the production and sale of the merchandise." Furthermore, RIMA argues, RIMA allocated its G&A costs to silicon metal based on the ratio of the cost of goods sold, which is the normal allocation method the Department uses. *See e.g., Ferrosilicon from Brazil; Final Determination* at 734.

Furthermore, RIMA argues that the Department properly adjusted the G&A costs used in CV to account for a one-time reevaluation of the company's inventory. In support of this argument, RIMA points to the verification report, which says, "due to hyperinflation in Brazil in 1994, Rima reassessed the value of the company's inventory, resulting in a 15,000,000,000 reais increase in inventory value * * * Rima provided the inventory re-evaluation report indicating the methodology and amount associated with the re-evaluation, as well as an independent auditor's report approving the inventory re-evaluation." *See* October 3, 1996 verification report, at 15.

Department's Position

We agree with petitioners that our standard methodology in calculating G&A expenses is to multiply the COM by the ratio between the G&A expenses and the cost of sales reported in the respondent's audited financial statements. *See Silicon Metal from Brazil; First Review Final Results*, at 42809. We have used this method in our final results of this review.

Furthermore, the Department has determined that the adjustment made by RIMA to its inventory balance should not be allowed as a reduction to the company's G&A expense. RIMA chose to restate the historical value of its inventory balances by recognizing a one-time increase to reflect the current value of these assets. The accounting entries for this restatement included a credit to the net equity of the company that was recognized through RIMA's income statement. Here, the record does

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not indicate that this credit, or offset, can be characterized as income that reduces RIMA's production cost for silicon metal. Consequently, we have made an adjustment to G&A expense to exclude this offset.

Comment 31

Petitioners argue that the Department erred in its computation of RIMA's COP by using the financial expenses as RIMA reported them. Petitioners argue that RIMA's method of calculating its financial expenses was flawed because RIMA did not perform its computation using the Department's standard formula. That formula is, according to petitioners, to multiply COM by the ratio between the financial expenses and cost of sales reported in the respondent's audited financial expenses. Instead, RIMA calculated financial expenses for silicon metal for the months of the POR during 1994 based on its company-wide financial expenses in each month multiplied by the percentage of its cost of sales in that month accounted for by sales of silicon metal. Additionally, RIMA derived monthly financial expenses for the months of the POR in 1995 using its 1994 data.

RIMA argues that the Department should accept RIMA's calculation of financial expenses because it reported these costs as they are recorded in its accounting records in the normal course of business. Thus, accepting them is in accordance with 19 U.S.C. § 1677b(f)(1)(A), which states that:

> [c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country . . . and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer.

Department's Position

In order to ensure uniformity in our treatment of different companies and consistency in our calculation methodology from one review to the next, we have found it necessary to adopt standard formulas for the calculation of certain expenses. We agree with petitioners that our method of calculating financial expenses is to multiply COM by the ratio between the financial expenses and cost of sales reported in the respondent's audited financial expenses. We have used this methodology in these final results of review for all companies. This methodology is not inconsistent with RIMA's accounting records because it is based on information contained in RIMA's financial statement.

Comment 32

Petitioners argue that the Department erred in its calculation of RIMA's and Minasligas' U.S. credit expenses by using the shipment date that these companies reported in their sales listings. With respect to RIMA, petitioners argue that using RIMA's reported shipment date results in an understatement of U.S. credit expenses because RIMA reported as the shipment date the date on which it shipped the last lot of each sale from its plant to the Brazilian port, rather than the date on which it shipped the first lot of each sale from its plant to the Brazilian port. Therefore, petitioners argue, the Department should determine the credit expenses for each sale based on the simple average of the number of days between the date of payment and the date of shipment from the plant to the port for each partial shipment from the plant.

With respect to Minasligas, petitioners argue that the shipment date Minasligas reported was the bill of lading date, and not the date of shipment from Minasligas' plant. In a similar situation in the preliminary results of the third review of this order, the Department used the date of sale as the date of shipment; petitioners argue that the Department should do the same here.

RIMA argues that the Department properly used the reported shipment dates because it ships its U.S. sales from its plant to the Brazilian port in lots, and a lot is not completed until all shipments from the plant have been made. Therefore, RIMA argues, it is proper for the Department to consider the date of the last shipment from the plant as the date on which the lot was shipped from the plant.

Department's Position

We agree with petitioners in part. With respect to RIMA, we agree that where a U.S. sale is shipped from the plant to the port in lots, a computation of credit based on the average credit period would better reflect the credit expenses borne by the respondent than would a computation based on the shipment date of either the first or last lot. In these final results of review we have calculated credit using an average credit period based on information RIMA provided in exhibit 13 of its April 30, 1996 SQR.

We disagree with petitioners with respect to Minasligas. While Minasligas did report the bill of lading date as the shipment date for its U.S. sales, it also reported the invoice date for each sale. This invoice date is the date of shipment from the plant. *See* Minasligas' October 25, 1995 questionnaire response, exhibit C–1. Thus, there is no need to use the date of sale as the date of shipment as petitioners suggest. In these final results of review we have calculated credit using the invoice date as the start of the credit period for those sales for which the date of invoice was prior to the date of receipt of payment.

Comment 33

Eletrosilex argues that the Department erred in failing to add to USP the PIS, COFINS, and consumption taxes charged on its home market comparison sales. It argues, with respect to the PIS and COFINS taxes, that this failure was a violation of the Department's policy of calculating tax-neutral dumping assessments. It argues, with respect to the consumption taxes, that this failure was a violation of the change in the treatment of consumption taxes that the Department announced in the final results of the second review of this case. There the Department stated:

> Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market.

See Silicon Metal from Brazil; Second Review Final Results, at 46764. Eletrosilex argues that because the ICMS tax was not included in the USP calculations, the Department's failure to add to USP the absolute amount of consumption taxes charged on its home market sales was a violation of the Department's announced policy of adding to the USP "the absolute amount of such taxes charged on the comparison sales in the home market."

Petitioners argue that, with respect to the PIS and COFINS taxes, that the antidumping law, as amended by the URAA, does not provide for an upward adjustment to EP for home market taxes imposed directly upon "the merchandise or components thereof" which have not been rebated or collected on the exported merchandise. Instead, under the new law, NV may be reduced by those taxes. Furthermore, petitioners argue that for the reasons given above under comment 26, the PIS and COFINS taxes do not qualify for a reduction to NV.

Petitioners argue, with respect to the ICMS tax (*i.e.*, consumption tax), that

evidence on the record indicates that, contrary to Eletrosilex's statement, Eletrosilex's reported U.S. prices did in fact include the ICMS tax due on its U.S. sales. Furthermore, petitioners argue, Eletrosilex's argument is relevant only when the Department bases its margin calculations on price-to-price comparisons, and after the Department makes the necessary corrections in its calculations for Eletrosilex that the petitioners have identified in their case brief, the Department will base its margin calculations for Eletrosilex on CV.

Department's Position

We agree with petitioners that evidence on the record indicates that ICMS taxes are assessed on Eletrosilex's U.S. sales. In these final results of review, in order to calculate the dumping margin on a tax-neutral basis for price-to-price comparisons, we have deducted from NV the amount of ICMS tax on the home market sale that exceeds the amount of ICMS tax collected on the U.S. sale in accordance with § 773(a)(6)(B)(iii). For our position with respect to the PIS and COFINS taxes, see comment 26 (above). For our treatment of the ICMS tax due on U.S. sales when NV is based on CV, see the Department's position in response to comment 7.

Comment 34

Eletrosilex argues that the Department erred in its calculation of home market imputed credit by dividing an allegedly annual interest rate by 30, rather than by 365.

Petitioners argue that the interest rate the Department used in its calculation was a monthly rate, and that the Department was therefore correct in using 30 in the denominator.

Department's Position

We agree with petitioners. For the credit calculation we used the monthly rates from the state bank of Minas Gerais, which Minasligas reported in exhibit B–2 of its October 25, 1995 questionnaire response. This exhibit states that these rates are monthly rates. Therefore, because these are monthly rates, 30 is the appropriate denominator.

Comment 35

Eletrosilex argues the Department erred in its calculation of the foreign unit price in dollars (FUPDOL) by converting three values into U.S. dollars using the exchange rate of the date of sale, rather than the date of shipment.

Petitioners argue that the Department used the correct exchange rates because the statute says that the Department "shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise * * *" *See* 773A(a) of the Act.

Department's Position

We agree with petitioners. Because the date we use in making currency conversions is governed by the statute, in these final results we have used the exchange rate of the date of the U.S. sale in making currency conversions.

Comment 36

Eletrosilex argues the Department erred in its computation of COP by doubling the amount of its reported depreciation. (Eletrosilex reported depreciation for only the six months of the POR in 1995, and no depreciation for the six months of the POR in 1994.) It argues that its recording of no depreciation for 1994 was fully consistent with Brazil's generally accepted accounting principles (GAAP). Its earlier application of accelerated depreciation, Eletrosilex argues, required it to interrupt the application of depreciation for the first part of the POR. It is an error, it argues, for the Department to charge depreciation beyond that legitimately accounted for under the law.

Petitioners argue that the Department was correct in including an amount for 1994 depreciation in Eletrosilex's COP. They argue that the auditor's report which accompanied Eletrosilex's 1994 financial statement shows that Eletrosilex is incorrect in stating that its recording of no depreciation for 1994 was in accordance with Brazilian GAAP. That auditor's report says that "the company did not recognize * * * amounts corresponding to the depreciation of the fixed assets, as required by the accounting principles foreseen in the CORPORATE'S LEGISLATION and by the main accounting principles." *See* Eletrosilex's October 20, 1995 questionnaire response, at exhibit 8. Furthermore, petitioners argue, under established Department practice, it is distortive to use a lower depreciation rate (including a zero depreciation rate) in a review period to compensate for prior accelerated depreciation. *See Ferrosilicon from Brazil; Final Determination* at 738.

Department's Position

We agree with petitioner that evidence from Eletrosilex's financial statement indicates that Eletrosilex's accounting of depreciation was not in accord with Brazilian GAAP. For these final results of review, we have used the depreciation expenses as estimated by Eletrosilex's independent auditor, which were in accordance with Brazilian GAAP. *See* Eletrosilex's October 16, 1996 submission at exhibit 7.

Comment 37

Eletrosilex argues that the Department erred in its computation of its COP by incorrectly calculating the by-product revenue offset that it applied to Eletrosilex's COM. The firm argues that the Department was in error in calculating the offset based on the volume of the by-products sold, rather than the volume produced. Because much of the by-product production is not sold, it is only proper, Eletrosilex argues, that an allocation in terms of cost of production should be made to the product produced, rather than that portion of the product produced that is sold. In addition, Eletrosilex argues the Department should consider as by-products only ladle sculls, off-grades, and fines, and not slag or silicon metal of ingot bottom. Eletrosilex states that it does not consider slag or silicon metal of ingot bottom to be a production item, and does not inolude it in its production volume records.

Petitioners argue that the Department's practice does not support calculating an offset to COM based on the volume of by-products produced, but only on the volume sold.

Department's Position

We do not agree with Eletrosilex that the by-product offset should be applied to the volume of by-products produced. Our policy is to allow an offset only for actual revenue. In these final results of review we have offset production costs with all revenue that Eletrosilex reported from its sale of by-products. We have counted as by-products only ladle sculls, off-grades, and fines. See also comment 15 of the third review final results of review this order, being issued concurrently.

Comment 38

Eletrosilex argues that the Department should make an adjustment to its USP for duty drawback. It explains that in its questionnaire response it inadvertently failed to request an adjustment for duty drawback, but that it is entitled to one. Therefore, Eletrosilex argues that the Department should use the information it submitted in its case brief to calculate the adjustment. It argues that the duty drawback adjustment is essential to the Department's responsibility to make duty assessments based on full and accurate data.

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Petitioners argue that Eletrosilex did not inadvertently fail to request an adjustment for duty drawback. In its questionnaire response, Eletrosilex specifically stated that "it is not seeking a duty drawback for the period of review." *See* Eletrosilex's October 20, 1995, questionnaire response, p. 55. Moreover, petitioners argue that the Department should not consider Eletrosilex's request or the information about this newly-claimed adjustment that Eletrosilex submitted in its case brief because it is untimely under the Department's regulations. *See* 19 CFR 353.31(a)(1)(ii).

Department's Position

We agree with petitioners. It is ■ respondent's responsibility to make a timely claim for any requested adjustment. Under 19 CFR 353.31(a)(3) the Department may not consider unsolicited information submitted after the applicable time limit. That time limit in this review is 180 days after the date of publication of the initiation notice. *See* 19 CFR 353.31(a)(1)(ii). Because Eletrosilex submitted its duty drawback claim after that deadline, the information was untimely, and we did not make an adjustment for it in these final results of review.

Comment 39

CCM argues that in order for its cash deposit rate for future entries to reflect the appropriate dumping margin, the Department should issue the third review final results prior to, or concurrently with, issuance of the fourth review final results. If the Department issues the fourth review final results prior to the third review final results, CCM argues, CCM will continue to face the 93.2 percent cash deposit rate established in the LTFV investigation. In the alternative, if the Department does issue the third review final results after the fourth review, CCM argues that the Department should make clear in it cash deposit instructions that CCM's third review cash deposit rate should apply to all future entries because CCM was a no-shipper in the fourth review.

Department's Position

CCM's concern is resolved because the Department is issuing the results of both reviews concurrently.

Comment 40

CBCC argues that the Department erred in its computation of home market imputed credit by using an interest rate other than that which CBCC submitted. CBCC states that in its submission it calculated its imputed credit using a published short-term borrowing rate from a commercial lender because it had no short-term borrowings during the POR. Doing so, CBCC states, was in accordance with the Department's instructions as given in the supplemental questionnaire. Thus, CBCC argues, the Department should not have applied a different rate in its calculation of imputed credit.

Petitioners argue that the Department is under no obligation to use the interest rate data that CBCC provided, and that CBCC provided no basis for the Department to use CBCC's data instead of those used for the preliminary results of this review. Accordingly, petitioners argue, the Department should not use CBCC's data for the final results.

Department's Position

We agree with petitioners. In these final results of review, as in the preliminary results of review, we have calculated credit using the borrowing rates offered by the state bank of Minas Gerais. These rates are publicly available, and we have used them without exception for all respondents who reported no short-term borrowings of their own during the POR.

Comment 41

CBCC argues that the Department erred in its calculation of the variable NPRICOP (*i.e.*, the price we compare to COP in the cost test) by double-deducting part of the ICMS tax. It argues the Department made this mistake by deducting a variable representing the ICMS tax on the sale and also a variable, INLFTC2H, that represents the inland freight and the ICMS tax on the inland freight. CBCC argues that the former variable includes all ICMS tax on the sale, including that included in the variable INLFTC2H. Therefore, CBCC argues, the Department should not deduct INLFTC2H, but INLFTC1H, a variable that represents the inland freight net of the ICMS tax.

Petitioners argue that CBCC's argument is wrong because the ICMS tax that CBCC's customers pay on their purchases of silicon metal is not the same ICMS tax that CBCC paid for inland freight services. Because the two different ICMS tax amounts both reduce CBCC's net proceeds from home market sales, petitioners argue that the Department properly deducted both from CBCC's home market sales prices in the sales-below-cost analysis.

Department's Position

We agree with petitioners. Our review of the values CBCC reported under the variable representing the ICMS tax indicates that it reflects only the ICMS tax on the home market sale. Thus, the ICMS tax due on the inland freight must be deducted separately.

Comment 42

CBCC argues that the Department erred in its calculation of its COP by reducing its reported quantity of silicon metal production by the quantity of a by-product, ferrosilicon 95, without having made a corresponding offset to its COP for revenue gained from its sales of ferrosilicon 95. CBCC argues that this failure to grant an offset was a violation of the Department's practice regarding by-products.

Petitioners argue that the Department should limit any reduction in COP for revenue obtained from CBCC's sales of ferrosilicon 95 to net revenue (*i.e.*, revenue net of all selling expenses associated with the sales) from sales during the POR.

Department's Position

The Department first learned of these sales at the verification in June 1996. None of our exhibits contain information regarding the value of these sales or the selling expenses associated with them. Because CBCC did not claim this offset until it submitted its case brief, and because it is a respondent's responsibility to substantiate its claims for offsets, which CBCC has not done, in these final results of review we have not made an offset.

Comment 43

CBCC argues the Department erred in its margin computation by failing to convert the variable for bank charges from aggregate figures to per-unit figures.

Petitioners argue that the Department did in fact convert the bank charges into per-unit figures in its calculations.

Department's Position

We agree with petitioners. *See* the July 22, 1996 verification report at 15, and the SAS program at 824–847.

Comment 44

RIMA argues that the Department erred by including in its margin calculation a sale that entered U.S. customs territory during the previous POR. It argues that the date on which the Department relied in making its determination of this sale's date of entry was not the actual date of entry, and that therefore the Department should request additional information from the U.S. Customs Service regarding the entry date of this sale.

Petitioners argue that the correct date of entry into U.S. customs territory is the date the entry summary was filed in

proper form. However, they argue that the date on which the Department relied regarding the particular sale which RIMA references was not in fact the date the entry summary was filed. They are in agreement with RIMA, however, that the sale at issue entered U.S. customs territory during the prior POR.

Department's Position

On October 21, 1996, the importer of the shipment in question submitted information on its imports. We have carefully reviewed the importer's submitted Customs documentation, and have determined that the Department was in error in its preliminary determination that the sale in question involved an entry during the POR. We have excluded this transaction from our analysis for the fourth administrative review, and have included it in our analysis of the third administrative review. However, we disagree with petitioners that the date of entry is necessarily the date on which the entry summary is filed in proper form. 19 CFR 141.68 allows for the possibility that formal entry may in some circumstances be dates other than the date the entry summary is filed.

Comment 45

Parties allege the following clerical errors:

- CBCC and petitioner argue the Department erred in its margin computation by failing to convert the variable for interest revenue from aggregate figures to per-unit figures.
- CBCC argues that the Department incorrectly calculated the credit period as the shipment date minus the payment date, rather than the payment date minus the shipment date.
- Petitioners argue that the Department erred by failing to deduct "port charges" from Eletrosilex's USP.
- Petitioners argue that the Department erred in its calculation of Minasligas' USP by adding inland freight charges to USP, rather than subtracting them.
- Petitioners argue that the Department neglected to take into account an expense that Minasligas reported under the variable name "PORT CLER. EXP. DIRSELU."

Department's Position

We agree, and have corrected these errors in these final results of review. Additionally, in these final results of review, unlike the preliminary results of review, we have made an adjustment to NV for Eletrosilex's U.S. post-sale warehousing expenses. We also changed the credit period used in the calculation of Minasligas' home market credit so that it is the payment date minus the shipment date, rather than the shipment date minus the payment date.

Comment 46

CBCC argues that the Department erred in its calculation of U.S. imputed credit by dividing an annual interest rate by 30, rather than by 365.

Department's Position

We disagree. The interest rate we used in the calculation of CBCC's U.S. imputed credit expenses was the average of the monthly rates for each of the twelve months of the POR, and not an annual rate. Therefore, 30 is the correct denominator. *See* September 4, 1996 CBCC preliminary results analysis memorandum, p. 4.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period July 1, 1994, through June 30, 1995:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	0.29
CCM	[1] 5.97
Eletrosilex	17.22
Minasligas	57.54
RIMA	76.96

[1] No shipments during the POR; margin taken from the last completed segment in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above except for CBCC which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and 19 CFR 353.22.

Dated: January 3, 1997.

Robert S. LaRussa

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–755 Filed 1–13–97; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 268
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA # 530–Z–96–PH3F–FFFFF; FRL–5676–4]

Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Land Disposal Restrictions (LDR) program of the Resource Conservation and Recovery Act (RCRA), EPA is extending the current national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) for six (6) months. Thus, K088 wastes do not have to be treated to meet LDR treatment standards until July 8, 1997, six months from the current treatment standard effective date of January 8, 1997. EPA is extending the national capacity variance due to unanticipated performance problems by the treatment technology which provides most of the available treatment capacity for these wastes. As a result, the Agency does not believe that sufficient treatment capacity which minimizes short and long-term threats to human health and the environment posed by land disposal of the potliners is presently available. The length of the extension of the national capacity variance is based on EPA's best current estimate of the time it will take to modify, evaluate, and correct the current deficiencies in treatment performance.

EFFECTIVE DATE: January 8, 1997.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F–96–PH3F–FFFFF. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at mo cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific information, contact the Waste Treatment Branch (5302W), Office of Solid Waste (OSW), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460; phone (703) 308–8434. For information on the capacity analyses, call Pan Lee or Bill Kline at (703) 308–8440. For information on the regulatory impact analyses, contact Paul Borst at (703) 308–0481. For other questions, call John Austin at (703) 308–0436 or Mary Cunningham at (703) 308–8453.

SUPPLEMENTARY INFORMATION: Today's final rule as well as the K088 Fact Sheet and the Index to the Record of materials in the docket are available on the Internet. Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http:///www.epa.gov
Dial-up: 919 558–0335

This report can be accessed off the main EPA Gopher menu, in the directory EPA Offices and Regions/ Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)

FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address

Files are located in /pub/gopher/ OSWRCRA.

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I. Background

A. The Existing Treatment Standard and National Capacity

Variance for Spent Potliners

On April 8, 1996, EPA promulgated a prohibition on land disposing spent potliners from primary aluminum production (Hazardous Waste K088) unless the waste satisfied the treatment standards for K088 established by EPA as part of the same rulemaking. (61 FR 15566, April 8, 1996.) Spent potliners are a highly toxic hazardous waste, whose hazardous constituents include cyanide (present in concentrations between 0.1 and 1 percent, which are quite high for such a toxic constituent), toxic metals, and polycyclic aromatic hydrocarbons (PAHs). See the Final BDAT Background Document for Spent Potliners from Primary Aluminum Reduction—K088, February 29, 1995. These wastes also contain high concentrations of fluoride. See generally *id.* at 15584–585. Previous improper management of spent potliners has resulted in widespread groundwater contamination with cyanide and fluoride, and was an important factor in EPA's decision to list these materials as hazardous wastes. See 53 FR 35412, September 13, 1988. The treatment standards for K088 wastes require substantial reductions in the total concentration of organic hazardous constituents and cyanide, and substantial reductions in the leachability of toxic metals and fluoride. See 61 FR 15626, April 8, 1996. The reduction in leachability is measured by application of the Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311. Id.

These treatment standards are based upon performance of combustion technology plus stabilization treatment of combustion residues. Id. at 15584. The treatment standard for fluoride is based upon the performance demonstrated by the treatment process developed by Reynolds Metals Company during studies conducted as part of their application for delisting [1] treated K088 from hazardous waste regulation. See 61 FR 15585, April 8, 1996. Although treatment standards were based upon these technologies, any treatment technology (other than impermissible dilution) may be used to achieve these established numerical standards. Data in the administrative record indicate that these treatment standards are achievable by a number of different technologies, including combustion followed by stabilization of the residue. See the Final BDAT Background Document for Spent Potliners from Primary Aluminum

[1] EPA granted a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.32 —i.e., a delisting— for certain solid wastes derived from the treatment of K088 at Reynolds Metals Company, Gum Springs, Arkansas (56 FR 67197, December 30, 1991). The delisting is based on treating the same parameters covered by the LDR treatment standard, and compliance is also measured by TCLP analyses for toxic metals, PAHs, cyanide, and fluoride. The status of this delisting is discussed further in section V.A. of this Notice.

Reduction—K088, February 29, 1995, available in the docket.

Notwithstanding that a number of different treatment technologies can achieve the treatment standard, in fact, virtually all existing treatment capacity is provided by a single operation, the Reynolds treatment facility located in Gum Springs, Arkansas. See 61 FR 15589, April 8, 1996; Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–4 to 4–11). The Reynolds process entails the crushing and sizing of spent potliner materials, the addition of roughly equal portions of limestone and a particular type of brown sand as flux, and the feeding of the combined mixture to a rotary kiln for thermal destruction of cyanide and PAHs. The process also is intended to reduce the mobility of soluble fluoride through the formation of insoluble calcium fluoride. Spent potliners (SPL) are generated in large volumes ranging from 100,000 to 125,000 tons annually.[2] Of the approximate 140,000 tons of treatment capacity EPA estimated was available, 120,000 tons are provided by Reynolds.[3] Because of this potential bottleneck, EPA was concerned enough about the possibility for administrative delays in obtaining access to Reynolds' process that the Agency delayed the prohibition effective date by granting a nine-month national capacity extension, pursuant to RCRA section 3004(h)(2), to assure that logistical difficulties were resolved before the prohibition on land disposal became effective. 61 FR 15589, April 8, 1996; Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–4 to 4–11).[4] The prohibition (and applicable treatment standards) consequently is scheduled to take effect on January 8, 1997.

[2] Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–5 to 4–8). Because SPL are not generated continuously, and because the rate of generation fluctuates according to the amount of aluminum produced, it is not possible to estimate this figure with more accuracy. Theoretically, an average of approximately 110,000 tons annually may be used for purpose of assessing available treatment capacity. There are generation data submitted after LDR Phase III was published and please see the docket files: 4/10/96 letter attached to July 9, 1996 petition from aluminum smelters and Reynolds' 11/25/96 submission in the Attachment of November 25, 1996 notes.

[3] Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–9 to 4–10).

[4] Reynolds challenged EPA's decision in the D.C. Circuit and attempted to obtain expedited review of its petition, but the D.C. Circuit denied Reynolds' motion.

II. Subsequent Events

Reynolds presently uses its process to treat its own spent potliner K088 wastes and those from other sources, and disposes most of the residue in a dedicated landfill (i.e. a monofill receiving only these treatment residues) located at the treatment site. The company is also using these residues as fill material in unlined pits at a Hurricane Creek, Arkansas mining site, and as a test all-weather road surface at the mining site. (Trip Report, EPA, October 30, 1996). The treatment process appears to be destroying PAHs as predicted, and to be reducing total cyanide concentrations from initial concentrations ranging from 975 mg/kg to 6350 mg/kg to residual levels of 50 mg/kg to 150 mg/kg.[5] For over two years, however, notwithstanding that the wastes as tested by the TCLP would have complied with the land disposal restriction treatment standards for the non-wastewater forms of K088, *actual* sampling data shows potentially high concentrations of hazardous constituents in the leachate from the dedicated monofill. As measured in September 1996, total cyanide concentrations in the leachate are 46.5 mg/L (the treatment standards for K088 wastewaters specify a concentration of 1.2 mg/L); arsenic concentrations are at 6.55 mg/L (treatment standard 1.2 mg/L); and fluoride concentrations are at 2228 mg/L (treatment standard 35 mg/L). (Gum Springs Leachate Analytical Results, Reynolds Metals Company, September 26, 1996).[6] Analysis of surface water run-off from treated SPL used as test roadbeds at the Hurricane Creek Mine found total cyanide concentrations in the leachate of 2.0 mg/L (the treatment standards for K088 wastewaters specify a concentration of 1.2 mg/L); arsenic concentrations are at 1.24 mg/L (treatment standard 1.2 mg/L); and fluoride concentrations are at 229 mg/L (treatment standard 35 mg/L). (Arkansas Department of Pollution Control & Ecology, November 12, 1996). The Gum Springs monofill leachate also has a pH of 12.75 to 13.5, exceeding levels identifying a waste as hazardous due to the characteristic of corrosivity.[7]

The Reynolds process thus appears to be performing significantly less well than anticipated. Indeed, it does not appear to be reducing mobility of hazardous constituents significantly more than occurs in disposal of *untreated* spent potliners. Landfill leachate data obtained from two hazardous waste landfill cells receiving approximately 40 percent untreated SPL shows cyanide concentrations of 11 and 14 mg/L, arsenic concentrations of 0.56 and 0.11 mg/L, and fluoride concentrations of 2.3 and 0.001 mg/L respectively. (Staff Communication; November 20, 1996, fax of analytical data reports for landfill cells L12 and L13, Chemical Waste Management of the Northwest, Inc., Arlington, Oregon). Toxic constituents in the untreated Oregon Landfill data are significantly lower than observed in the leachate from the treated waste in the Gum Springs landfill. The Agency notes that some dilution and neutralization probably occurs from leachate produced by other wastes in the Oregon landfill, so that a direct comparison of the two different leachate results is only partially appropriate. However, the Agency believes the comparison is still relevant in that K088 is presently being disposed in the Oregon landfill, and this same K088 stream would be diverted to the Reynolds facility if the Agency did not take action today. The data available indicate that a more concentrated and toxic leachate would result from the Reynolds facility.

The Agency believes that the increased mobility of cyanide, fluoride, and arsenic are due to the highly alkaline conditions that exist at Reynolds' Gum Springs monofill. In the case of cyanide, for example, alkali-metallic cyanide complexes are soluble,[9] and even insoluble iron cyanides can be solubilized under highly alkaline conditions.[10] While the total cyanide concentration in the treated waste has been greatly reduced by Reynolds' treatment process, cyanide remaining in the residue would be environmentally mobile and in fact does appear in high concentrations in the alkaline leachate from the Gum Springs landfill. As a result, almost all remaining cyanide is detected in the Gum Springs leachate, where at a more neutral pH, only soluble free cyanide

[5] See Table 2, 56 FR 33004, July 18, 1991 and attachments to December 9, 1996 letter from Pat Grover to Mike Shapiro.

[6] EPA was not aware of these data until recently, and, in particular was not aware of these data during the rulemaking which established the K088 treatment standard. EPA notes further that the leachate from the landfill is being intercepted and collected by Reynolds, and so is not contaminating the environment at the treatment site. However, EPA also notes that there is no interception of leachate or runoff at the Hurricane Creek Mine Site.

[7] As it happens, this elevated pH could provide a clue to why the treatment process is operating less well than predicted, and could be rectifiable.

[9] Standard Methods for the Examination of Water and Wastewater, 16th Edition, APHA, AWWA, & WPCF, 1985, page 327.

[10] Id., page 330.

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would be measured. In the case of the Oregon landfill, the leachate is of more neutral pH (i.e., pH 6.5 to pH 7.5) and only a small fraction of the constituents of concern are soluble even though the total concentration of toxics in the potliner being disposed is much higher. The Agency does not have information detailing the sources or properties of other hazardous wastes being co-disposed at the Oregon site, but again notes that their presence did not result in a more toxic leachate. EPA surmises that the co-disposed wastes provided some neutralization of the alkaline spent potliner. The extreme alkaline pH conditions that exist in the Gum Springs monofill were not anticipated by the Agency, and are not analogous to the test conditions (i.e. the TCLP) used to verify treatability and compliance with the delisting provisions.

III. EPA's Decision with Respect to Extending the National Capacity Variance

The root requirement of the land disposal restriction program is that treatment of hazardous wastes is to "substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." RCRA section 3004(m)(1). To date, in the absence of a reliable means of quantifying when threats are minimized, EPA has implemented this requirement by requiring treatment to reflect the performance of Best Demonstrated Available Treatment technologies, in order to assure substantial reductions of a waste's toxicity and mobility before land disposal. See, e.g., 56 FR 6641 (Feb. 26, 1990).

There are certainly legitimate questions as to the degree of risk reduction through treatment needed to satisfy this minimize threat standard, and EPA has stated repeatedly that the statute does not require elimination of all threats or optimized treatment of each hazardous constituent in order to satisfy the requirement. See, e.g., *id.* at n. 1; 56 FR 12355, March 25, 1991. However, under the circumstances present here, EPA finds that the effectiveness of the Reynolds process, as operated, to minimize short-term or long-term threats sufficiently to satisfy the core statutory requirement must be seriously questioned. For instance, the levels of cyanide and arsenic (and also the less-toxic fluoride) in the leachate from the treated potliners is not significantly superior to that found when untreated potliners are landfilled, as explained above.

The statute further provides in section 3004(h)(2) that EPA shall establish the effective date of a land disposal prohibition on the earliest date on which "adequate alternative treatment, recovery or disposal capacity *which protects human health and the environment* will be available". (Emphasis added.) See also sections 3004 (d)(1), (e)(1) and (g)(5), which require that land disposal of hazardous wastes ultimately be protective if land disposal is not to be prohibited. See 60 FR at 14473 (March 2, 1995); 56 FR at 41168 (Aug. 19, 1991); *Natural Resources Defense Council* v. *EPA*, 907 F.2d 1146, 1171–72 (D.C. Cir. 1990) (dissenting opinion). EPA cannot but take notice of two facts relevant here to whether Reynolds" process, as operated, provides treatment capacity which is protective of human health and the environment. First, because EPA has delisted the residues (see n.1 above and section V.A. below), Reynolds now disposes much of the treatment residue in a subtitle D unit. Although this unit appears to have adequate leachate collection and monitoring to prevent any immediate harm at the site, the monofill still lacks the safeguards subtitle C landfills have—such as double liners, financial responsibility, and more extensive monitoring and leachate collection. Second, Reynolds is placing some of the treatment residues as fill material in an unmonitored, unsupervised setting and no regulatory Agency has directly evaluated the potential for harm this type of disposal could be posing. While this use or disposal practice is presently legal under federal law, since the material is delisted, the Agency cannot say with any certainty (see RCRA sections (d)(1), (e)(1) and (g)(5)) that this practice protects human health and the environment. RCRA section 3004 (h)(2).[11]

[11] As described in the text above, leachate and runoff levels of hazardous constituents from the fill area are presently significantly lower than from the landfill, although the levels are still of potential environmental concern (particularly given the unsecured disposal setting) and are higher than the K088 wastewater treatment standards. The lower levels undoubtedly result from the buffering effect of the acid mining material at the site. However, this buffering may not be permanent. In addition, it is important to evaluate total concentrations of hazardous constituents in the fill material because of the different types of exposure pathways (for example, air-borne particulate) that can result when wastes are placed in this type of uncontrolled setting. See generally 60 FR at 11732 (March 2, 1995) (proposal to prohibit use of hazardous waste as fill material). Reevaluation of this use will be one of the first matters EPA focuses on as it reexamines the decision to delist the K088 treatment residue. See section V.A. in the text.

EPA believes that treatment normally is adequate to be considered to be both minimizing threats to human health and the environment and to be protective of human health and the environment where there is substantial destruction of environmentally available toxics and/or substantial reduction of the mobility of toxic residuals. See 125 Cong. Rec. at S 9178 (statement of Sen. Chaffee introducing the provision which became RCRA section 3004(m) indicating that the land disposal restriction treatment standards are not to be technology forcing.) In almost all cases, simply meeting the treatment standards for the waste achieves this result. But where treatment is not operating so as to reduce environmental availability of key hazardous constituents appreciably more than disposal of untreated spent potliners, and where total and leachable arsenic may actually be increased by the treatment process, the Agency must question the adequacy of the treatment. Further, where disposal in subtitle C units may be safer than disposal of the residues in subtitle D landfills or in uncontrolled units, the Agency must seriously question the environmental consequences of expanded treatment operations at Gum Spring should the national capacity variance not be extended. The corrosivity and mobility of toxic constituents in the Gum Springs leachate, and the concentration of hazardous constituents in the leachate and runoff from the fill area, compels the Agency to find that the treatment process, as it is presently performing and as it includes disposal in non-subtitle C units, is not satisfying the requirement that threats posed by land disposal of the wastes be minimized and that the available treatment capacity be protective of human health and the environment.

In making this finding, EPA stresses that it is specific to this set of facts. The Agency does not mean to revisit the question of whether LDR standards should be technology-based or risk-based.[12] Nor should this action be read as automatically invoking risk-based levels to supplant technology-based treatment standards, or to vitiate a treatment standard whenever treatment performance turns out in practice to be less than predicted by analytic protocols such as the TCLP. Nor is land disposal

[12] As EPA has stated many times, the Agency's ultimate preference is to develop risk-based levels that reflect levels at which threats to human health and the environment are minimized, with the reasonable degree of certainty noted by the statute (RCRA section 3004(d)(1)). See, e.g. 56 Fed. Reg. at 6641; See also 60 FR 66344, December 21, 1995, the so-called "HWIR" proposal. The risk-based levels would then cap technology-based standards.

typically to be taken into account in establishing an LDR treatment standard. *American Petroleum Inst.* v. *EPA*, 906 F. 2d 729, 734–37 (D.C. Cir. 1990). In fact, technology-based standards remain the best presently-available means of reducing threats posed by land disposal of hazardous wastes. Our finding here is a narrow response to particular facts: there has been on-going, consistent failure (in certain key aspects) of a treatment technology, and the failure is of a magnitude that, under the circumstances, disposal of untreated wastes in Subtitle C landfills is preferable to treatment of the wastes by this process followed by land disposal in non-subtitle C disposal units. Under these unusual circumstances, threats have not been adequately minimized and ultimate protectiveness has not yet been achieved.

A consequence of this finding is that the capacity for treatment that is protective is inadequate for spent potliners at this time. Since the Reynolds process provides virtually all available capacity, and EPA is finding that the process as it is presently performing does not protect human health and the environment (see RCRA section 3004 (h) (2)), the remaining treatment capacity is far below that needed to accommodate the volume of potliners being generated. Therefore, an extension of the existing national capacity variance is required.

IV. For How Long Should the National Capacity Variance Be Extended?

EPA continues to believe that Reynolds' process is inherently sound, and should be able to treat potliners in a manner that minimizes the threats their land disposal can pose. The process has been demonstrated to effectively destroy significant portions of the cyanide and PAHs present, and the stabilization technology has generally been effective in reducing soluble fluorides.[13] In fact, the high degree of leaching presently occurring may be due to the high pH of each of the materials being combined in the treatment process (i.e., spent potliner, limestone, and brown sand). Spent potliner alone has been found to raise the pH of deionized water to 11.2 to 12.0.[14] Brown sand is an alkaline mud produced from the extraction of alumina from bauxite ore with sodium hydroxide, and contains significant concentrations of highly caustic sodium hydroxide residuals. The high alkalinity of brown sand together with SPL and limestone provides no neutralization of the inherent alkalinity; in confirmation, the pH of deionized water leach solutions of the Reynolds' treatment residue has been found to range from 11.9 to 12.2.[15] This is a problem that may be rectified soon by using a different type of sand and keeping the pH of the treated solids within a particular range.

EPA is also aware of Reynolds' substantial investment of capital and expertise into developing this treatment process. The company also has complied with all applicable regulations in developing, implementing, and operating its process, seeking and obtaining RCRA permits for its process, and obtaining a delisting for the treatment residue. The company has also been complying with the terms of the delisting, which only require evaluation of newly-generated treatment residues for leachable cyanide, fluoride, PAHs, and TCLP metals. The Agency does not intend to take precipitous action that irrevocably undermines use of this still-promising treatment technology, or that discourages needed development of and investment in other treatment technologies (for potliners or for other hazardous wastes).

It is EPA's present judgment that the immediate problems with Reynolds' process could be resolved relatively quickly, possibly (as noted above) by substitution of different sand and other means of pH control. Brown sand functions only as a flux in the process to avoid the formation of lava like blockages in the kiln. Other high silica materials should perform equivalently as a flux, but should not contain or result in a highly alkaline treatment residue that promotes the mobility of hazardous constituents of concern. Process modifications and test trials of a sand substitute by Reynolds are planned or are underway. The Agency projects that six months may be required to complete these tests and data evaluation, and is, therefore extending the period of the national capacity variance until July 8, 1997. In the event that replacing the brown sand does not lower the pH, or that the lower pH does not eliminate the problems of the generation of a corrosive leachate high in hazardous constituents, EPA will evaluate other technical options to provide for treatment of K088 that adequately minimizes threats posed by land disposal and proves ultimately to be protective. The Agency may extend the capacity variance for up to an additional nine (9) months, should process modifications be determined to have not resulted in adequate treatment. The Agency will make available to the public for comment any data or additional information it receives in response to this capacity extension.

V. Other Issues

A. Delisting

As noted above, EPA has delisted the residues from Reynolds' treatment process, relying in significant part on use of the TCLP as a predictor of actual environmental performance. (56 FR 67197, December 30, 1991.) These predictions have proven incorrect, at least in the short-term. EPA also did not anticipate, or directly evaluate the use of the treatment residue as fill or road construction material when it granted the delisting.

Authority to evaluate delistings is presently delegated to EPA Regional offices and to authorized States. EPA's Region 6 is presently evaluating the terms of the existing delisting and plans regulatory action regarding the delisting during the spring of 1997.

EPA notes that a determination that the Reynolds process (or any other treatment process) is treating sufficiently to be considered to minimize threats to human health and the environment does not necessarily mean that the residues from the treatment process would have to remain delisted. See, e.g. the text of RCRA section 3004(m)(2) which speaks directly of treatment residues which have been treated to minimize threats then being disposed in subtitle C disposal units. Thus, should EPA find that the Reynolds process is performing sufficiently well to satisfy land disposal restriction requirements, i.e. that the potliners have been treated sufficiently to allow their land disposal, the finding would not necessarily require retention of the current delisting. Conversely, and for the same reasons, a potential finding that the treatment residues should be relisted as hazardous wastes would not preclude a finding that the treatment is nevertheless sufficient to satisfy the requirement that substantial reductions in toxicity and mobility sufficient to minimize threats occur so that land disposal of the treatment residue is permissible.

[13] EPA notes, however, that it may have to ultimately revise the treatment standard for fluoride, which is based on the performance of Reynolds' process. EPA will be seeking more information to more fully characterize the performance of the treatment process for fluoride during the extended national capacity variance period.

[14] Attachments to December 9, 1996 letter from Pat Grover of Reynolds Metal Company to Michael Shapiro, Director, Office of Solid Waste. Results cited are from the analysis of 100 grams of solid material leached with 2–Liters of deionized water (a 1:20 ratio).

[15] Id.

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B. Competing Treatment Technologies as BDAT

As discussed above, treatment technologies other than Reynolds' exist which could satisfy the existing treatment standards. Other technologies are being developed, and some of these recover resources from the potliner (as well as destroying hazardous constituents). See "Final BDAT Background Document for Spent Potliners from Primary Aluminum Reduction—K088", dated February 1995.

EPA is presently being urged to designate these recovery technologies as exclusive BDAT. See Supplemental Submission in Support of Amendment of Land Disposal Restrictions Phase III—Spent Potliners. Although EPA is still studying these submissions, the Agency notes that it does not regard its proper role as picking winners and losers among different treatment technologies, so long as the treatment technologies are achieving substantial reductions in toxicity and mobility of hazardous constituents sufficient to find that threats are being adequately minimized. (See, for example, 57 FR 37198 (August 18, 1992), where EPA chose to base treatment standards on performance of a technology which substantially reduces concentrations of hazardous constituents but does not perform as well as certain other available treatment technologies). Further, the Agency has established the Universal Treatment Standards (268.40) and has indicated a preference to use numerical limits whenever possible, to allow any legitimate treatment process to meet the standards.

EPA notes, in addition, that the Reynolds process is presently the only treatment process offering any appreciable treatment capacity for K088. Reynolds also took the initiative and developed and marketed this technology in advance of the land disposal prohibition for spent potliners. Given these facts, plus the technology's ability to achieve substantial reductions in the waste's toxicity through destruction of hazardous constituents, EPA does not initially believe it should disallow the process as a valid treatment technology (assuming the present operational problems are resolved). EPA notes moreover that as a legal matter, the LDR treatment standards are *not* intended to be technology-forcing (see 125 Cong. Rec. S 9178 (July 25, 1984) (statement of Sen. Chaffee)), but *are* intended to force utilization of existing treatment capacity where that capacity can significantly reduce wastes' toxicity and mobility. S. Rep. No. 284, 98th Cong. 1st sess. at 19. Thus, as a matter of both policy and law, the Agency is disposed to retaining treatment standards for spent potliners that are achievable by a number of treatment technologies, and to try and hasten the use of currently existing technologies provided their performance and operation adequately minimize threats posed by land disposal of the potliners.[16]

Thus, the Agency's initial inclination is not to amend the current treatment standard for spent potliners to establish any particular technology as BDAT.

VI. Disposal of Potliners During National Capacity Variance Period

Section 3004(h)(4) states that during periods of national capacity variances (and case-by-case extensions), hazardous wastes subject to those extensions that are disposed in landfills (and surface impoundments) may only be so disposed if the landfill (or impoundment) is in compliance with the minimum technology requirements of section 3004(o). EPA has interpreted this language as requiring the individual unit receiving the waste to be in compliance with those so-called minimum technology standards, an interpretation sustained in *Mobil Oil* v. *EPA*, 871 F.2d 149 (D.C. Cir. 1989). In addition, EPA has indicated that this requirement only applies to wastes that are still hazardous when disposed. 55 Fed. Reg. at 22659–60 (June 1, 1990).

Putting this together, this means that during the extended period of the national capacity extension, generators other than Reynolds will dispose of K088 wastes in landfill units that satisfy the minimum technology requirements of section 3004(o). Reynolds' treatment residue is not subject to these requirements because it has been delisted, and so is not a hazardous waste. Should there be action reclassifying that treatment residue as a hazardous waste and should the national capacity extension still be in effect, then such residues would also be required to be disposed in landfill units satisfying minimum technology requirements (assuming that landfill disposal is utilized).

VII. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that "is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency and OMB consider today's final rule to be nonsignificant as defined by the Executive Order and therefore not subject to the requirement that a regulatory impact analysis has to be prepared. Today's rule delays for six months the imposition of treatment standards for spent aluminum potliners that were estimated previously by EPA to cost between $11.9 million and $47.3 million (61 FR 15566 and 15591, April 8, 1996). Thus, today's rule results in net savings over this period of time and prevents any potential hardship that would otherwise result from the lack of available thermal treatment capacity for spent aluminum potliner.

B. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with the statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has presented an analysis of the costs of implementing the prior LDR Phase III rule (61 FR 15566, April 8, 1996) and has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. As stated above, the private sector is not expected to incur costs exceeding $100

[16] The Senate Report also states that "[i]t is not intended, that a generating industry, for example, could be allowed to continue to have its wastes disposed of in an otherwise prohibited manner solely by binding itself to using a facility which has not been constructed." S. Rep. No. 284, 98th Cong. 2d sess. at 19.

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million per year due to the delayed implementation of the land disposal restrictions for K088 wastes. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VIII. Immediate Effective Date

EPA has determined to make today's action effective immediately. The Agency believes that there is good cause to do so, within the meaning of 5 U.S.C. section 553(b)(B). The current regulatory prohibition is scheduled to take effect on January 8, 1997. Should the Agency fail to act before that time, EPA believes that actions will occur which are both contrary to the objectives of the Land Disposal Restriction statutory provisions, and also environmentally worse than disposal of untreated hazardous waste in subtitle C units. Specifically, if the prohibition takes effect, virtually the entire national volume of potliners will be sent for treatment and disposal to the Reynolds facility. This is because, as set out in this Notice, the Reynolds process is presently operating poorly and because the treatment residues from that process are disposed in units other than subtitle C units. The result is treatment that does not minimize threats and disposal which could be less protective than disposal of untreated wastes in subtitle C units.

Good cause to forego notice-and-comment procedures exists where use of those procedures is contrary to the public interest. 5 U.S.C. section 553(b)(B). EPA believes it would be contrary to the public interest to force treatment of many thousands of tons of hazardous waste which could result in net environmental detriment, as set out in the preceding paragraph. For essentially the same reasons, EPA finds that use of notice-and-comment procedures would be impractical (again within the meaning of 5 U.S.C. section 553(b)(B)).

Finally, EPA notes that it has endeavored to provide actual notice and opportunity for comment on this action. EPA has held a number of meetings with both Reynolds and affected primary aluminum generators (noted in the record for this action), solicited and accepted written submissions from these entities (again part of the administrative record), and made each sides' submissions available to the other for response. The Agency has also had contacts (albeit more limited) with representatives of the hazardous waste treatment industry and the environmental community. Notice and opportunity for comment of course satisfies all procedural requirements of the Administrative Procedure Act (as to parties receiving such notice). 5 U.S.C. section 553(b).

For all of these reasons, EPA finds that this rule may be made effective immediately. In addition, because there is good cause to forego notice-and-comment procedures, the rule may take effect upon promulgation without prior submission of the rule to the Congress. 5 U.S.C. section 808. EPA will thereafter submit the rule to Congress, as required by 5 U.S.C. section 801(a).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 8, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.39 is amended by revising paragraph (c) to read as follows:

§ 268.39 Waste specific prohibitions—spent aluminum potliners; reactive; and carbamate wastes.

* * * * *

(c) On July 8, 1997, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal on July 8, 1997.

* * * * *

[FR Doc. 97–878 Filed 1–10–97; 9:32 am]

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Part IV

Department of Housing and Urban Development

24 CFR Part 100

Implementation of the Housing for Older Persons Act of 1995; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–4094–P–01]

RIN 2529–AA80

Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Housing for Older Persons Act of 1995 (HOPA). HOPA amended the requirements for qualification under the "housing for older persons" exemption established by the Fair Housing Act. In addition, HOPA established a good faith defense against civil money damages for persons who reasonably relied in good faith on the application of the "housing for older persons" exemption even when, in fact, the housing provider did not qualify for the exemption. This rule proposes to update HUD's regulations to reflect the changes made by HOPA.

DATES: Comments on this proposed rule and the information collection requirements must be received on or before March 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. For additional information concerning the information collection requirements contained in this rule, please see the "Findings and Certifications" section of this preamble. A copy of any comment regarding the information collection requirements must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, telephone (202) 708–0836. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Housing for Older Persons Act of 1995

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the "housing for older persons" exemption at 24 CFR part 100, subpart E.

The Housing for Older Persons Act of 1995 (Pub. L. 104–76, approved December 28, 1995) (HOPA) replaced the original parameters of the 55-or-older exemption. Section 2 of HOPA redefined 55-or-older housing as housing:

> (C) intended and operated for occupancy by persons 55 years of age or older, and—
> (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
> (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
> (iii) the housing facility or community complies with rules issued by the Secretary [of HUD] for verification of occupancy, which shall——
> (I) provide for verification by reliable surveys and affidavits; and
> (II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

The most substantial change made by HOPA was the elimination of the "significant facilities and services" requirement. Section 807(b)(2)(C) of the Act originally required that 55-or-older housing provide "significant facilities and services specifically designed to meet the physical or social needs of older persons." HOPA also adds the new requirement that the housing facility or community comply with any HUD regulations on verification and occupancy.

In other respects, however, the new requirements are equivalent to the former provisions. HOPA requires that a housing facility or community seeking to claim the 55-or-older exemption show three factors. Similar to original section 807(b)(2)(C) of the Act, HOPA requires: (1) that the housing be intended and operated for persons 55 years of age or older; (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older; and (3) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the 55-or-older exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.

In addition, section 3 of HOPA added a new section 807(b)(5) to the Act. This new section established a good faith defense against civil money damages for persons who reasonably relied in good faith on the application of the 55-or-older exemption, even when, in fact, the housing facility or community did not qualify for the exemption. New section 807(b)(5) provides:

> (5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.
> (B) For purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—
> (i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
> (ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

B. This Proposed Rule

On April 1, 1996 (61 FR 14378), HUD published a final rule streamlining its regulations implementing the Act.[1] The April 1, 1996 final rule, which was part of HUD's efforts to implement the President's regulatory reform initiative, removed the obsolete provisions describing the "significant facilities and services" requirement. The rule also made several other streamlining changes to HUD's regulations at subpart E of 24 CFR part 100. However, because the April 1, 1996 rule was published for effect without prior public comment, HUD postponed making the more substantial changes necessary to complete its implementation of HOPA. This rule proposes to make these regulatory amendments.

[1] A subsequent technical correction was published on April 25, 1996 (61 FR 18248).

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This rule proposes to revise § 100.304, which presents an overview of the 55-or-older exemption, to more closely track the HOPA requirements. The rule also proposes to create a new § 100.305, which would update the 80 percent occupancy requirements. A new § 100.306 would describe how a facility or community may establish its intent to operate as 55-or-older housing. New § 100.307 would set forth the necessary procedures for verification of the 80 percent occupancy requirements. Finally, a new § 100.308 would implement the good faith defense against civil money damages.

Section 2 of HOPA requires that any implementing HUD regulations "include examples of the types of policies and procedures relevant to a determination of compliance with" the statute's intent requirement. Accordingly, paragraph (a) of proposed § 100.306 would list several factors which HUD considers relevant in determining whether the housing facility or community intends to operate as housing for older persons. However, 24 CFR 100.306(b) would state that the use of phrases such as "adult living", "adult community", "40 and over community", or similar statements in any written advertisement or prospectus do not create a presumption that the housing community satisfies HOPA's intent requirement. The use of such phrases does not show that the facility or community truly intends to operate as housing for older persons and are inconsistent with that intent. HUD, in order to make a valid assessment of intent, will consider the other measures taken by the facility or community to demonstrate the intent required by HOPA. Moreover, the housing facility or community may not evict families with children in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

HUD also proposes to provide guidance to assist housing facilities and communities in applying the requirements of this proposed rule. These examples are contained in an appendix to this proposed rule. The appendix would not be codified in title 24 of the CFR. HUD may update or revise the appendix as necessary.

II. Findings and Certifications

Public Reporting Burden

(a) The information collection requirements contained in §§ 100.306 and 100.307 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(b) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) *Title of the information collection proposal*: Proposed Rule—Implementation of the Housing for Older Persons Act of 1995.

(2) *Summary of the collection of information*: (i) Section 100.306 of this proposed rule would require that a housing facility or community seeking to qualify as 55-or-older housing publish and adhere to policies demonstrating that intent.

(ii) Section 100.307 of this proposed rule would establish two information collection requirements. First, § 100.307 would require that an occupant of 55-or-older housing provide reliable documentation regarding the occupancy of its unit, including the identification of whether at least one occupant of the unit is 55 years of age or older. Occupants would be further required to regularly update this information. Secondly, § 100.307 would require a housing facility or community to maintain records of these occupancy surveys. The housing facility or community would be required to produce the records upon: (1) the filing of a discrimination complaint; and (2) the request of any person.

(3) *Description of the need for the information and its proposed use*: To appropriately determine whether a housing facility or community qualifies for the housing for older persons exemption, certain information is required. HUD must determine whether the housing facility or community: (1) has published and adhered to policies demonstrating its intent to operate as 55-or-older housing; and (2) can demonstrate, through reliable surveys and affidavits, that at least 80 percent of its occupied units are occupied by at least one person 55 years of age or older.

(4) *Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information*: Respondents will be: (1) occupants of 55-or-older housing; and (2) providers of 55-or-older housing, such as manufactured home parks, home owners associations, and property managers. (Please see paragraph (5) below for the number of likely respondents and the proposed frequency of the response to the collection of information.)

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:*

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. avg. response time (hrs.)	Annual burden hrs.
Publication of policies demonstrating intent to operate as 55-or-older housing.	24 CFR 100.306	1,000	1	2 hrs.	2,000
Data on the age of occupants in 55-or-older housing.	24 CFR 100.307	10,000	1	.1 hrs.	1,000
Recordkeeping	24 CFR 100.307	1,000	One time every other year.	5 hrs.	2,500,
Total Burden					5,500

(c) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(d) OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not effect the deadline for the public to comment on the proposed rule. Comments on the paperwork collection requirements contained in this rule must be submitted to those persons indicated in the **ADDRESSES** section of this preamble.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the Department's regulations, published in a final rule on September 27, 1996 (61 FR 50914), the policy set forth in this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule proposes to implement the requirements of HOPA by revising the parameters for "55-or-older" housing found at 24 CFR part 100, subpart E. It effects no changes in the current relationships among the Federal government, the States and their political subdivisions in connection with HUD programs.

Executive Order 12606, The Family.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule would not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. This proposed rule would update HUD's regulations governing "housing for older persons" to reflect the changes made by HOPA. No significant change in existing HUD policies or programs would result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule proposes to update HUD's regulations implementing the "housing for older persons" exemption to the Fair Housing Act. Specifically, the rule would implement the statutory amendments made by HOPA. These revisions would provide housing facilities and communities with a better understanding of what housing qualifies for the "55-or-older" exemption to the Fair Housing Act's prohibitions against discrimination on the basis of familial status. The proposed rule would not have any meaningful impact on small entities.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 is proposed to be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Subpart E is amended by revising § 100.304; and by adding § § 100.305, 100.306, 100.307, and 100.308, to read as follows:

Subpart E—Housing for Older Persons

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Sections 807(b)(2)(C) and 807(b)(5)(A) and (B) of the Fair Housing Act; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership; and

(6) A mobile home park.

(c) For purposes of this subpart, *older person* means a person 55 years of age or older.

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as 55-or-older housing, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, *occupied unit* means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption for 55-or-older housing is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, *occupied by at least one person 55 years of age or older* means that on the date the exemption for 55-or-older housing is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989

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need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes facilities or communities that have been unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204.

(5) There are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307.

(f) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(g) Each housing facility or community may determine the age restriction for units that are not occupied by at least one person 55 years of age or older.

§ 100.306 Intent to operate as 55 or over housing.

(a) In order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) The use of phrases such as "adult living", "adult community", "40 and over community", or similar statements in any written advertisement or prospectus do not create a presumption that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there are substantial legal impediments to removing language from deed or other restrictions that may be inconsistent with the intent to provide 55-or-older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section.

(d) The fact that a unit is occupied by a family with a child under eighteen years of age, and not by a person 55 years of age or older, shall not be considered in determining whether the housing facility or community intends to operate as 55-or-older housing.

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of a rule finalizing the policies and procedures described in this proposed rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) The following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificates;

(3) Passports;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older.

(e) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(f) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge.

(g) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(h) Occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified as 55-or-older housing.

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(b)(1) A person claiming the good faith defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies as 55-or-older housing. The person claiming the good faith defense must demonstrate this actual knowledge through reliable evidence.

(2) For purposes of this section, an *authorized representative* of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(c) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as 55-or-older housing. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

Dated: October 11, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

Note: This Appendix will not be codified in Title 24 of the CFR.

Appendix—Examples of Applications of HUD's Regulations Governing the 55-or-older Exemption to the Fair Housing Act

Sections

1. Purpose
2. 80 percent occupancy.
3. Intent to operate as 55-or-older housing.
4. Verification of occupancy.
5. Future revisions to this appendix.

1. Purpose.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the "housing for older persons" exemption at 24 CFR part 100, subpart E. Specifically, §§ 100.304, 100.305, 100.306, and 100.307 set forth the requirements for housing seeking to qualify for the 55-or-older exemption. The purpose of this appendix is to provide guidance to housing facilities or communities in applying these HUD requirements.

2. 80 Percent Occupancy

Section 100.305 provides that in order for a housing facility or community to qualify as 55-or-older housing, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older. This occupancy requirement must be met at the time of any alleged violation of the Act. Paragraph (f) of § 100.305 states that where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

Example: A community or facility contains 63 occupied units. Eighty percent of 63 units equals 50.4. Under § 100.305(d), 51 units would require occupancy by at least one person 55 years of age or older.

Section 100.305 also sets forth the other requirements a housing facility or community must follow in calculating occupancy. The following examples illustrate these requirements:

Example 1

Buena Vista is a condominium association of 120 units. On September 13, 1988, twenty (20) of the occupied units are not occupied by at least one person 55 years of age or older.

On April 1, 1996, Buena Vista declares itself to be 55-or-older housing. On that date:

(1) The twenty (20) persons described above are still residing at Buena Vista;

(2) Ten (10) units of the total 120 units are unoccupied;

(3) One (1) of the units is occupied by the association's maintenance supervisor; and

(4) Two (2) units are occupied by live-in health aides who provide reasonable accommodations to residents with disabilities.

How many of the occupied units must be occupied by at least one person 55 years of age or older in order for Buena Vista to qualify as 55-or-older housing?

Under § 100.305(e), Buena Vista would calculate its compliance with the 80 percent occupancy requirement by subtracting the following units from the total 120 units:

(1) The 20 units not occupied by at least one person 55 years of age or older on September 13, 1988 (See § 100.305(e)(1));

(2) The ten (10) unoccupied units (See § 100.305(e)(2));

(3) The one (1) unit occupied by the maintenance person (See § 100.305(e)(3)); and

(4) The two (2) units occupied by the health aides (See § 100.305(e)(4)).

Subtracting these 33 units from the total of 120 units leaves 87 units. At least 80 percent of these 87 units must be occupied by at least one person 55 years of age or older. Eighty percent of 87 equals 69.6. Due to § 100.305(d), 70 units must be occupied by at least one person 55 years of age or older.

Example 2

Topaz House is a cooperative of 100 units. On January 20, 1996, Topaz House announces its intent to be 55-or-older housing and publishes policies and procedures sufficient to satisfy § 100.306. On that date, of the 100 total units:

(1) Sixty (60) of the occupied units are occupied by at least one person 55 years of age or older;

(2) Thirty (30) of the occupied units do not have occupants 55 years of age or older; and

(3) Ten (10) units are unoccupied.

Since 60 out of the 90 occupied units are occupied by at least one person 55 years of age or older, the Topaz House only has 67 percent of its occupied units occupied by at least one person 55 years of age or older. Under § 100.305(e)(5), Topaz House may still qualify for the 55-or-older exemption if it:

(1) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(2) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307.

There is no requirement that Topaz House take any action concerning the residents under 55 years of age who are occupying units on the date the building declares its intent to be 55-or-older housing.

Example 3

Snowbird City is a mobile home community in Texas with 100 units. Snowbird City complies with all other requirements of 55-or-older housing, but is uncertain of its compliance with the 80 percent occupancy rule.

Fifty out of the 100 units are occupied year round. Of these fifty units, 12 units are not occupied by at least one person 55 years of age or older. Of the remaining 50 units, 5 are unoccupied and offered for sale, and the remaining 45 are occupied by at least one person 55 years of age or older each winter on a routine and reoccurring basis.

If a complaint of familial status discrimination is filed in December, the community meets the 80 percent occupancy requirement because 83 out of the 95 occupied units (87 percent), are occupied by at least one person 55 years of age or older. If the complaint is filed in July, Snowbird City still meets the requirement. Under § 100.305(b), a temporarily vacant unit is considered occupied by a person 55 years of age or older if:

(1) The primary occupant has resided in the unit during the past year; and

(2) The occupant intends to return on a periodic basis.

Example 4

The King Philip Senior Community is a newly renovated building originally built in 1952. It has been vacant for over one year while extensive renovations were completed. The building contains 200 units. The King Philip Senior Community is intended to be operated as a 55-or-older community.

Under § 100.305(d), newly constructed housing need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied. For purposes of § 100.305(d), newly constructed housing includes housing that has been unoccupied for at least 90 days due to renovation or

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rehabilitation. Accordingly, the King Philip Senior Community need not comply with the 80 percent occupancy requirement until 50 out of its 200 units (25 percent) are occupied. Subsequent to occupancy of the 50th unit, however, the building will have to satisfy the 80 percent occupancy rule in order to qualify as 55-or-older housing.

3. Intent To Operate as 55-or-Older Housing

Section 100.306 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. Section 100.306 also details the factors HUD will utilize to determine whether a housing facility or community has met this intent requirement. The following are examples of housing facilities and communities which satisfy the intent requirement described in § 100.306:

Example 1

A mobile home park which takes the following actions satisfies the intent requirement:

(1) Posts a sign indicating that the park is 55-or-older housing;

(2) Includes lease provisions stating that the park intends to operate as 55-or-older housing; and

(3) Has provided local realtors with copies of the lease provisions.

Example 2

An area zoned by a unit of local government as "senior housing" satisfies the intent requirement if:

(1) Zoning maps containing the "senior housing" designation are available to the public;

(2) Literature distributed by the area describes it as "senior housing";

(3) The "senior housing" designation is recorded in accordance with local property recording statutes; and

(4) Zoning requirements include the 55-or-older requirement or a similar provision.

Example 3

A condominium association satisfies the intent requirement if it has:

(1) Adopted, through its rules and regulations, restrictions on the occupancy of units consistent with HUD's regulations governing 55-or-older housing at 24 CFR part 100, subpart E;

(2) Has distributed copies of the rules to all occupants; and

(3) Has notified local realtors of the restrictions.

The following is an example of a housing facility which has failed to satisfy the intent requirement described in § 100.306:

Example 4

A homeowners association has failed to meet the intent requirement if it has Covenants, Conditions and Restrictions which refer to an "adult community," has posted a sign stating "A 40 and over community" and has restricted visiting children to a maximum of two weeks, but contains no similar restriction for visiting adults.

4. Verification of Occupancy

Section 100.307 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint alleging a violation of the Act, verification of compliance with § 100.305 through reliable surveys and affidavits. Paragraph (d)(7) of § 100.307 includes self-certifications in a list of documents considered reliable documentation of the age of occupants. The self-certification may be included in a lease or other document, and must be signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older. The following examples provide acceptable self-certification provisions:

Example 1

All new leases, new purchase agreements, or new applications contain a provision directly above the signatory line for lessees, asserting that at least one occupant of the dwelling will be 55 years of age or older. In addition, the community surveys all current residents for their occupancy status in compliance with the 55-or-older requirements.

Example 2. Sample certification

I, (name), am over the age of 18 and a member of the household that resides at (housing facility or community), (unit number or designation). I hereby certify that I have personal knowledge of the ages of the occupants of this household and that at least one occupant is 55 years of age or older.

Paragraph (e) of § 100.307 requires that the housing facility or community establish appropriate policies to require that all occupants comply with the age verification procedures. The following examples illustrate acceptable policies:

Example 1

A condominium association establishes a rule that the board of directors must approve all new occupants. One criteria for approval is that new occupants of each unit inform the condominium association whether at least one person occupying the unit is 55 years of age or older.

Example 2

A homeowners association amends its Covenants, Conditions and Restrictions, and records them at the appropriate government recording office. The amendments require applicants to state whether at least one occupant is 55 years of age or older.

Example 3

The owner of a mobile home park where the residents own the coach but rent the land requires a statement of whether at least one occupant is 55 years of age or older before any sublease or new rental.

5. Future Revisions to This Appendix

HUD may update or revise this appendix as necessary.

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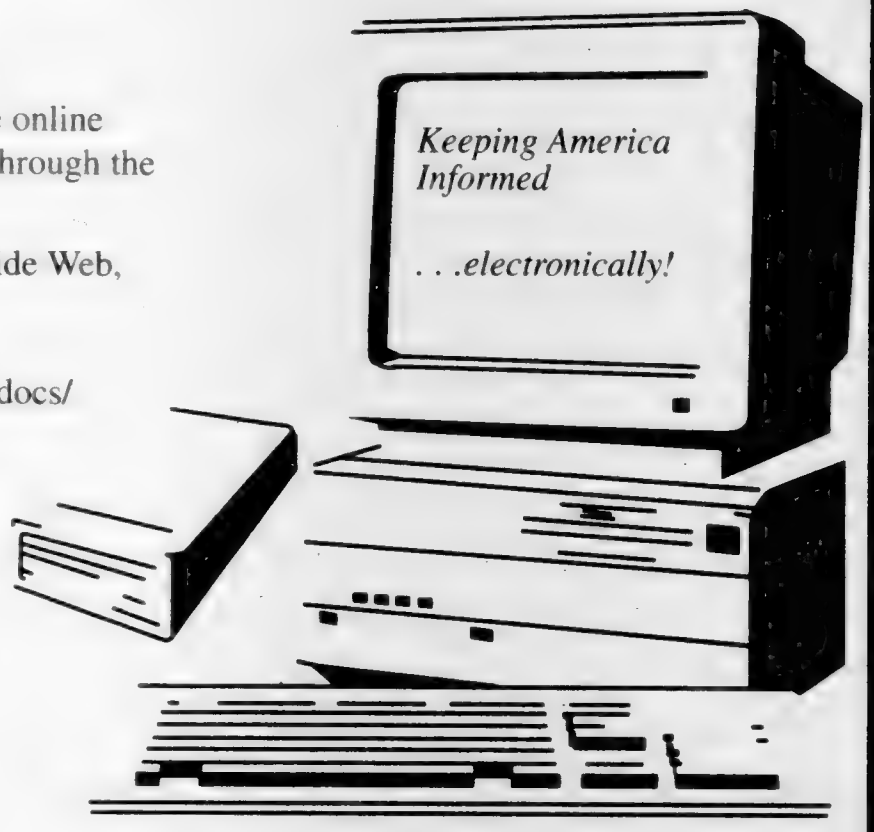

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB03

Common Crop Insurance Regulations; Pear Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published Thursday, November 7, 1996 (61 FR 57578–57583). The regulation pertains to the insurance of Pear.

EFFECTIVE DATE: January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and to combine the Pear Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need for Correction

As published, the final regulations contained an error which may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication on November 7, 1996, of the final regulation at 61 FR 57578–57583 is corrected as follows:

PART 457—[CORRECTED]

§457.111 [Corrected]

On page 57583, in the second column, in §457.111, section 13 paragraph (b)(i)(ii) should be 1 and 2.

Signed in Washington, DC, on January 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1017 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–145–AD; Amendment 39–9881; AD 97–01–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that requires replacing the aileron (lateral) control transfer mechanism with a new modified mechanism, or reworking the existing mechanism. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent unexpected, significant control wheel forces and reduced travel of a control wheel due to mechanical interference within the lateral control system transfer mechanism during a jam override condition.

DATES: Effective February 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, SeattleAircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2798; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100 and –200 series airplanes was published in the **Federal Register** on August 28, 1996 (61 FR 44230). That action proposed to require replacing the aileron (lateral) control transfer mechanism with a new modified mechanism, or reworking the existing mechanism.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request for Risk Benefit Analysis

One commenter believes that the FAA should perform a risk benefit analysis before proceeding with the proposed AD. This commenter does not disagree with the requirements of the proposal; however, the commenter suggests that the proposed compliance time of 18 months could overburden competent machine facilities and lead to undesirable workmanship, which would subject the airlines and the flying public to unnecessary risk.

The FAA does not concur with the commenter's request. The commenter did not submit analyses or data to substantiate its claim that competent machine facilities would be overburdened by the requirements of this AD. The FAA has considered the costs of complying with this AD, and does not consider those costs to be

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excessive to correct the unsafe condition.

Request To Revise Statement of Findings of Critical Design Review Team

One commenter requests the second paragraph of the Discussion section that appeared in the preamble to the proposed rule be revised to accurately reflect the findings of the Critical Design Review (CDR) team. The commenter asks that the FAA delete the one sentence in that paragraph, which read: "The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as correction of certain design deficiencies." The commenter suggests that the following sentences should be added: "The team did not find any design issues that could lead to a definite cause of the accidents that gave rise to this effort. The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as incorporation of certain design improvements in order to enhance its already acceptable level of safety."

The FAA does not find that a revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of a proposed rule does not reappear in a final rule. The FAA acknowledges that the CDR team did not find any design issue that could lead to a definite cause of the accidents that gave rise to this effort. However, as a result of having conducted the CDR of the flight control systems on Boeing Model 737 series airplanes, the team indicated that there are a number of recommendations that should be addressed by the FAA as may be appropriate to any particular (or all) model(s) of the Model 737.

Request To Revise Service Bulletin Citation

One commenter requests that the FAA change the service bulletin citation from "Boeing Service Bulletin 27–1033" to "Boeing Service Bulletin 737–27–1033." The commenter considers this to be clearer.

The FAA acknowledges that some clarification is necessary. The title that actually appears on the service bulletin document itself is "Boeing Service Bulletin 27–1033;" therefore, the FAA disagrees with the commenter's specific suggestion. However, to avoid any confusion on the part of operators, the FAA has revised the final rule to refer to the service bulletin as "Boeing 737 Service Bulletin 27–1033."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 236 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 157 airplanes of U.S. registry will be affected by this AD.

For operators that elect to accomplish the replacement, it will take approximately 20 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $15,343 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $16,543 per airplane.

For operators that elect to accomplish the rework by using new components, it will take approximately 40 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $6,500. Based on these figures, the cost impact of the rework (by using new components) on U.S. operators is estimated to be $8,900 per airplane.

For operators that elect to accomplish the rework by machine shop rework of the components, it will take approximately 70 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,450. Based on these figures, the cost impact of the rework (by machine shop rework of the components) on U.S. operators is estimated to be $5,650 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–10 Boeing: Amendment 39–9881. Docket 96–NM–145–AD.

Applicability: Model 737–100 and –200 series airplanes; as listed in Boeing 737 Service Bulletin 27–1033, dated February 13, 1970; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an unexpected, significant control upset due to mechanical interference

within the lateral control system transfer mechanism, which could result in reduced travel of a control wheel and above normal control wheel forces during a jam override, accomplish the following:

(a) Within 18 months after the effective date of this AD: Accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing 737 Service Bulletin 27–1033, dated February 13, 1970.

(1) Replace the aileron control transfer mechanism, part number (P/N)

65–54200–4 or –5, with a new modified mechanism in accordance with Procedure II of the Accomplishment Instructions of the service bulletin.

(b) As of the effective date of this AD, no person shall install an aileron control transfer mechanism having P/N 65–54200–4 or –5 unless it has been reworked in accordance with the requirements of paragraph (a)(2) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement and rework shall be done in accordance with Boeing 737 Service Bulletin 27–1033, dated February 13, 1970. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

1(f) This amendment becomes effective on February 19, 1997.

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–537 Filed 1–14–97; 8:45 am]

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14 CFR Part 39

[Docket No. 96–NM–166–AD; Amendment 39–9880; AD 97–01–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A321 series airplanes. This action requires repetitive inspections to detect cracking and delamination of the doors that contain the left and right emergency evacuation slides located at certain emergency exits; and repair or replacement, if necessary. This action also requires the accomplishment of a modification that serves as terminating action for the repetitive inspections. This amendment is prompted by a report indicating that a slide aboard an airplane deployed during flight and consequently separated from the airplane. The actions specified in this AD are intended to prevent the loss of these slides during flight, which could make certain exits unusable in the event of an emergency, and also damage the empennage.

DATES: Effective January 30, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.96–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A321 series airplanes. The DGAC advises that one operator of Model A321 series airplanes reported the loss of an emergency slide during flight. The airplane was climbing through flight level (FL) 200 when a loud noise was heard; it was caused by an escape slide, located at the right Number 2 emergency exit, unfolding and floating in the airstream. After approximately five minutes, the slide was torn off the airplane and lost on ground.

Visual inspection of the slide inflation system's bottle valve gauge revealed that the bottle had not discharged, thereby confirming that the slide inflation system had not been activated inadvertently. Further investigation revealed that the slide enclosure door (referred to commonly as the "blow out door") had been forced open, evidenced by the retained floating pin receptacles of the pneumatic ball locks (which are installed as a back-up device in the event that the pneumatic release fails).

A subsequent inspection of other Model A321 series airplanes in the affected operator's fleet revealed:

1. a blow out door that was damaged on the inside;

2. snap buttons on slide packs that were open; and

3. lacing cord on slide pack covers that was loosened.

These findings established that the loss of the slide during flight was the result of either excessive internal pressure on the blow out door, or excessive pressure to the outside of this door due to an incorrectly adjusted boarding ramp or gangway. (The exit had been used to board passengers.)

Deployment and separation of an emergency evacuation slides at emergency exits Number 2 or 3 during flight could make these exits unusable in the event of an emergency, and also could cause damage to the empennage.

Explanation of Relevant Service Information

Airbus has issued All Operator Telex (AOT) 25–11, dated January 4, 1996, and Revision 01, dated January 8, 1996. These documents describe procedures for conducting repetitive detailed visual and coin tap inspections to detect cracking and delamination of the left and right blow out doors at emergency exits Number 2 and 3.They also describe procedures for necessary repairs if

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either of these discrepancies are detected during an inspection. If cracking or delamination exceeds certain limits, the AOT's recommend replacement of the affected slide container with a serviceable container prior to further flight.

The DGAC classified the AOT's as mandatory and issued French airworthiness directive (C/N) 96–054–078(B), dated March 13, 1996, in order to assure the continued airworthiness of these airplanes in France.

Additionally, Airbus has issued Service Bulletin A320–25–1167, dated June 24, 1996, which describes a modification of the evacuation system at doors 2 and 3. (This service bulletin references Air Cruisers Service Bulletin S.B. 005–25–04, dated May 24, 1996, for additional procedural information.) Among other things, the modification entails:

1. a revised packing procedure;
2. relocating snaps on the lacing cover;
3. installing longer lanyard straps; and
4. replacing the frangible washers in the blow-out door with solid ring retainers.

This modification will preclude the types of problems associated with the slide system that were previously experienced. The DGAC has classified this service bulletin as "recommended."

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the FederalAviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of an evacuation slide during flight. This AD requires repetitive visual and coin tap inspections to detect cracking and delamination of the blow out doors at emergency exits Number 2 and 3; and repair or replacement, as necessary. These actions are required to be accomplished in accordance with either of the Airbus AOT's described previously.

This AD also requires the accomplishment of the modification of the escape slide system in accordance with Airbus Service Bulletin A320–25–1167. This modification constitutes terminating action for the required repetitive inspections.

Differences Between the FAA's Action and the DGAC's Action

Operators should note that this AD requires the modification of the escape slide system as terminating action for the inspections; whereas, the parallel French CN 96–054–078(B) does not require it. The adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, the FAA has decided to require, whenever practicable, modifications necessary to remove the source of the problem addressed. The modification requirement of this AD is in consonance with that decision.

Cost Impact

None of the Airbus Model A321 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required inspections, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of the inspection requirements of this AD would be $120 per airplane per inspection.

Accomplishment of the required terminating modification would take approximately 5 work hours, at an average labor charge of $60 per work hour. Required parts cost would be provided at no charge to operators by the manufacturer of the slide system (Air Cruisers Company). Based on these figures, the cost impact of the modification requirements of this AD would be $300 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**.

All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

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it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–09 Airbus: Amendment 39–9880. Docket 96–NM–166–AD.

Applicability: Model A321 series airplanes; as listed in Airbus Industrie All Operator Telex (AOT) 25–11, Revision 01, dated January 8, 1996, and Airbus Service Bulletin A320–25–1167, dated June 24, 1996; on which Airbus Modification 25369 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the left and right emergency evacuation slides at emergency exits Number 2 and 3 during flight, which could make these exits unusable in the event of an emergency and also could cause damage to the empennage, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, conduct a detailed visual inspection to detect cracking, and a coin tap inspection to detect delamination, of the left and right enclosure doors of the containers in which the emergency evacuation slides are packed ("the blow out doors") at emergency exits Number 2 and 3, in accordance with Airbus Industrie All Operator Telex (AOT) 25–11, dated January 4, 1996; or Revision 01, dated January 8, 1996.

(1) If no crack or delamination is detected, or if any crack or delamination is detected and it does not exceed 3 inches (75 mm) in length: Repeat the inspections thereafter at intervals not to exceed 18 months.

(2) If any crack or delamination is detected, and it is greater than 3 inches (75 mm) in length, but not greater than 10 inches (250 mm) in length: Prior to further flight, repair the door in accordance with the AOT.

(3) If any crack or delamination is detected, and it is greater than 10 inches (250 mm) in length: Prior to further flight, replace the door in accordance with the AOT.

(b) Within 36 months after the effective date of this AD, modify the escape slide system in accordance with Airbus Service Bulletin A320–25–1167, dated June 24, 1996. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Airbus Service Bulletin A320–25–1167 references Air Cruisers Service Bulletin S.B. 005–25–04, dated May 24, 1996, for additional procedural information.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and repair shall be done in accordance with Airbus Industrie All Operator Telex 25–11, dated January 4, 1996; or Airbus Industrie All Operator Telex 25–11, Revision 01, dated January 8, 1996. The modification shall be done in accordance with Airbus Service Bulletin A320–25–1167, dated June 24, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 30, 1997.

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–538 Filed 1–14–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 178

[Docket No. 91F–0356]

Indirect Food Additives: Adhesives and Components of Coatings; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite as an antioxidant in adhesives and in the preparation of polymers intended for contact with food. This action responds to a petition filed by Ethyl Corp.

DATES: Effective January 15, 1997; written objections and requests for a hearing by February 14, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3084.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 30, 1991 (56 FR 49484), FDA announced that a food additive petition (FAP 1B4281) had been filed on behalf

of Ethyl Corp., c/o 1150 17th St. NW., Washington, DC 20036. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) and § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite as an antioxidant in adhesives and in the preparation of polymers intended for contact with food.

Subsequent to the filing of the petition, Ethyl Corp. was reorganized to form Albemarle Corp., an independent corporation. As a result of this reorganization, FDA was informed that Albemarle Corp. (c/o Lowell Harmison, Gallery House, 2022 R St. NW., Washington, DC 20009) is now the petitioner of record for this food additive petition.

In FDA's evaluation of the safety of 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite (CAS Reg. No. 118337–09–0), the agency reviewed the safety of the additive, including impurities that might be present in the additive. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of methylene chloride, which is a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as methylene chloride, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called "general safety clause" of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned uses of the additive, 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite will result in exposure to the additive of no greater than 0.70 parts per million in the daily diet (3 kilograms) which corresponds to an estimated daily intake of no greater than 2.1 milligrams per person per day (mg/person/day) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological studies. Based on its review of these studies and the low level of exposure to the additive, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by the carcinogenic chemical, methylene chloride, that may be present as an impurity in the additive. The risk evaluation of methylene chloride has two aspects: (1) Assessment of the worst-case exposure to this impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the condition of worst-case exposure to humans.

A. Methylene Chloride

FDA has estimated the hypothetical worst-case exposure to methylene chloride from the petitioned uses of the additive to be no greater than 0.9 microgram (μg)/person/day (Ref. 3). The agency used data from the National Toxicology Program report (Ref. 4) of an inhalation bioassay on methylene chloride to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the petitioned additive. The results of the bioassay demonstrated that methylene chloride was carcinogenic for mice under the conditions of the study. The test material induced benign and malignant neoplasms in both the liver and lung of both sexes.

The agency also evaluated data from a second study in mice of the same strain as used in the inhalation study. In this study, in which methylene chloride was administered in the drinking water of the mice (Ref. 5), there was no significant increase in the incidence of neoplasms at any site examined. However, assuming that methylene chloride would induce neoplasia at a dose just above the highest level tested in the drinking water study, a maximum potency can be estimated. This estimate is approximately the same as the potency calculated from the data of the inhalation study, providing confidence that using the inhalation study for upper-bound risk assessment is not likely to underestimate any potential risk due to ingested methylene chloride (Ref. 6).

Based on the estimated worst-case exposure of 0.9 μg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the uses of this additive is 6.6×10^{-9}, or 6.6 in 1 billion (Ref. 7). Because of numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to methylene chloride is likely to be substantially less than the worse-case exposure, and therefore even the upper-bound limit of lifetime human risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to methylene chloride would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of methylene chloride present as an impurity in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which methylene chloride may be expected to remain as an impurity, the agency would not expect this impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to methylene chloride, even under worst-case assumptions, is very low (less than 7 in 1 billion).

III. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as an antioxidant used in adhesives and in the preparation of polymers intended for contact with food is safe, and that the additive will achieve its intended technical effect.

Therefore, the agency concludes that the regulations in §§ 175.105 and 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 14, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from R. M. Jenkins, Chemistry Review Branch, to D. Harrison, Indirect Additives Branch, dated July 23, 1992.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Hombuger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum from R. M. Jenkins, Chemistry Review Branch, to D. Harrison, Indirect Additives Branch, dated March 22, 1993.

4. "Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) (CAS Reg. No. 75–09–2) in F344/N Rats and B6C3F1 Mice (Inhalation Studies)," NTP Technical Report 306, National Institutes of Health, Publication No. 86–2562, 1986.

5. Memorandum from C. S. Lin, Food Additives Evaluation Branch, to R. Lorentzen, Executive Secretary, Cancer Assessment Committee, dated August 21, 1985.

6. Memorandum from the Quantitative Risk Assessment Committee to W. G. Hamm, Director, Office of Toxicology, dated November 15, 1985.

7. Memorandum from D. N. Harrison, Indirect Additives Branch, to S. H. Henry, Quantitative Risk Assessment Committee, dated November 8, 1993.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 175 and 178 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * *	* * *
2,2′-Ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite (CAS Reg. No. 118337–09–0).	For use as an antioxidant and/or stabilizer only.
* * * *	* * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

4. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

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Substances	Limitations
• • •	• • • •
2,2′-Ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite (CAS Reg. No. 118337–09–0).	For use only: 1. As provided in § 175.105 of this chapter. 2. In all polymers used in contact with food of types I, II, IV–B, VI–A, VI–B, VII–B, and VIII, under conditions of use B through H described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.25 percent by weight of polymers. 3. In polypropylene complying with § 177.1520(c) of this chapter, item 1.1, in contact with food of types III, IV–A, V, VII–A, and IX, under: (a) Conditions of use B through H described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.25 percent by weight of the polymer; or (b) Condition of use A, limited to levels not to exceed 0.1 percent by weight of the polymer; provided that the food-contact surface has an average thickness not exceeding 375 micrometers (0.015 inch). 4. In olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1a or 3.2a, and containing not less than 85 percent by weight of polymer units derived from propylene, in contact with food of types III, IV–A, V, VII–A, and IX, and under: (a) Conditions of use C through G, described in Tables 1 and 2 of § 176.170(c) of this chapter, limited to levels no greater than 0.2 percent by weight of the copolymers; or (b) Conditions of use A, B, and H, limited to levels no greater than 0.1 percent by weight of the olefin copolymers; provided that the food-contact surface has an average thickness not exceeding 375 micrometers (0.015 inch). 5. In olefin polymers complying with § 177.1520(c) of this chapter, items 1.2 or 1.3 in contact with food of types III, IV–A, V, VII–A, and IX, under conditions of use A through H, described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.1 percent by weight of the polymers; provided that the food-contact surface has an average thickness not exceeding 375 micrometers (0.015 inch). 6. In polyethylene complying with § 177.1520(c) of this chapter, items 2.1 or 2.2, having a density of not less than 0.94, in contact with food of types III, IV–A, V, VII–A, and IX, and under: (a) Conditions of use B through H, described in Tables 1 and 2 of § 176.170(c) of this chapter limited to levels not to exceed 0.2 percent by weight of the polymers; or (b) Condition of use A, described in Tables 1 and 2 of § 176.170(c) of this chapter, limited to levels not to exceed 0.1 percent by weight of the polymer; provided that the food-contact surface has an average thickness not exceeding 125 micrometers (0.005 inch). 7. In olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.2a, or 3.2b, containing not less than 85 percent by weight of polymer units derived from ethylene and having a density of not less than 0.94, in contact with food of types III, IV–A, V, VII–A, and IX, and under: (a) Conditions of use C through G, described in Tables 1 and 2 of § 176.170(c) of this chapter limited to levels not to exceed 0.2 percent by weight of the copolymers; or (b) Conditions of use A, B, and H, limited to levels not to exceed 0.1 percent by weight of the copolymers; provided that the food-contact surface has an average thickness not exceeding 125 micrometers (0.005 inch). 8. In olefin polymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.2a, or 3.2b containing not less than 85 percent by weight of polymer units derived from ethylene, in contact with food of types III, IV–A, V, VII–A, and IX, under conditions of use A through H, as described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.1 percent by weight of the copolymer; provided that the food-contact surface has an average thickness not exceeding 75 micrometers (0.003 inch). 9. In polyethylene phthalate polymers complying with § 177.1630 of this chapter in contact with food of types III, IV–A, V, VI–C, VII–A, and IX, and under: (a) Conditions of use B through H, described in Tables 1 and 2 of § 176.170(c) of this chapter, limited to levels not to exceed 0.3 percent by weight of the polymers; or (b) Condition of use A with food of types III, IV–A, V, VII–A, and IX, and limited to levels not to exceed 0.1 percent by weight of the polymers; provided that the film thickness does not exceed 875 micrometers (0.035 inch).
• • •	• • • •

Dated: January 6, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1021 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 93F–0309]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an

antioxidant/stabilizer for olefin polymers and for rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by Sandoz AG (currently, Clariant Huningue S.A.).

DATES: Effective January15, 1997; written objections and requests for a hearing by February 14, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 7, 1993 (58 FR 52315), FDA announced that a food additive petition (FAP 3B4395) had been filed by Sandoz AG (currently, Clariant Huningue S.A.), c/o Registration and Consulting Co., Ltd., CH–4452 Itingen/Basel, Switzerland. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant/stabilizer for olefin polymers and for rubber articles intended for repeated use in contact with food.

Based on more precise analytical data on the isomeric composition of the antioxidant, the petitioner has obtained a new CAS Reg. No. for the subject additive. This final rule, therefore, uses the new, corrected, CAS Reg. No., 119345–01–6.

FDA has evaluated data in the petition and other relevant material. The agency concludes that: (1) The proposed use of the additive is safe, (2) the food additive will have the intended technical effect, and (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before February 14, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "Di-*tert*-butylphenyl phosphonite condensation product with biphenyl * * *" under the heading "Substances" and by revising entries "1." and "4." and adding a new entry "5." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

Substances	Limitations
Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 119345–01–6) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 mg KOH/gm, and a melting range of 85 °C to 110 °C (185 °F to 230 °F).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 1.3, 3.2b, 3.3a, 3.3b, 3.4, 3.5, and 3.1a (where the density is not less than 0.85 gram per cubic centimeter and not more than 0.91 gram per cubic centimeter); and 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, and 3.6 (where the density is not less than 0.94 gram per cubic centimeter) and 5. * * * * * 4. At levels not to exceed 0.15 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, and 3.6 (where the polyethylene component has a density less than 0.94 gram per cubic centimeter). 5. At levels not to exceed 0.1 percent by weight of repeated use rubber articles complying with § 177.2600 of this chapter.

Dated: December 19, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–946 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in February 1997.

EFFECTIVE DATE: February 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during February 1997.

For annuity benefits, the interest assumptions will be 5.90 percent for the first 25 years following the valuation date and 5.00 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The above annuity interest assumptions represent an increase (from those in effect for January 1997) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for January 1997) of .25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during February 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 40 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*	*	
February 1997	.0590	1–25	.0500	>25	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y—n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y—n_1—n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*	*		
40	02–1–97	03–1–97	4.75	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of January 1997.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–1062 Filed 1–14–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 150

Courts of Criminal Appeals Rules of Practice and Procedure

AGENCY: Defense.

ACTION: Final rule.

SUMMARY: This rule of practice and procedure is issued pursuant to Article 66(f), Uniform Code of Military Justice (10 U.S.C. 866(f) (1994)). It is a uniform rule of practice and procedure for all military Courts of Criminal Appeals.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Colonel Charles B. Heimburg—(202) 767–1550, 172 Luke Avenue, Bolling Air Force Base, Washington, D.C. 20332.

SUPPLEMENTARY INFORMATION: The anticipated citation of the rules will be 32 CFR Part 150. The notification of opportunity to review and comment on these rules was published in the **Federal Register** on December 13, 1995 at 60 FR 64031–02. Comments were received and considered.

These rules are not subject to Executive Order 12866, "Regulatory Planning and Review," Public Law 96–354, "Regulatory Flexibility Act;" or Public Law 96–511, "Paperwork Reduction Act."

List of Subjects in 32 CFR Part 150

Administrative practice and procedure, Courts, Military law.

Accordingly, 32 CFR part 150 is revised to read as follows:

PART 150—COURTS OF CRIMINAL APPEALS RULES OF PRACTICE AND PROCEDURE

Sec.

150.1 Name and seal.
150.2 Jurisdiction.
150.3 Scope of review.
150.4 Quorum.
150.5 Place for filing papers.
150.6 Signing of papers.
150.7 Computation of time.
150.8 Qualification of counsel.
150.9 Conduct of counsel.
150.10 Request for appellate defense counsel.
150.11 Assignment of counsel.
150.12 Retention of civilian counsel.
150.13 Notice of appearance of counsel.
150.14 Waiver or withdrawal of appellate review.
150.15 Assignments of error and briefs.
150.16 Oral arguments.
150.17 En banc proceedings.
150.18 Orders and decisions of the Court.
150.19 Reconsideration.
150.20 Petitions for extraordinary relief, answer, and reply.
150.21 Appeals by the United States.
150.22 Petitions for new trial.
150.23 Motions.
150.24 Continuances and interlocutory matters.
150.25 Suspension of rules.
150.26 Internal rules.
150.27 Recording, photographing, broadcasting, or telecasting of hearings.
150.28 Amendments.

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Appendix A to Part 150—Format for Direction for Review in a Court of Criminal Appeals

Appendix B to Part 150—Format for Assignment of Errors and Brief on Behalf of Accused (§ 150.15)

Authority: Article 66(f), Uniform Code of Military Justice (10 U.S.C. § 866(f) (1994)).

§ 150.1 Name and seal.

(a) The titles of the Courts of Criminal Appeals of the respective services are:

(1) "United States Army Court of Criminal Appeals."

(2) "United States Navy-Marine Corps Court of Criminal Appeals."

(3) "United States Air Force Court of Criminal Appeals."

(4) "United States Coast Guard Court of Criminal Appeals."

(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.

§ 150.2 Jurisdiction.

(a) The jurisdiction of the Court is as follows:

(1) *Review under Article 66.* All cases of trial by court-martial in which the sentence as approved extends to:

(i) Death; or

(ii) Dismissal of a commissioned officer, cadet or midshipman, dishonorable or bad-conduct discharge, or confinement for 1 year or longer; and in which the accused has not waived or withdrawn appellate review.

(2) *Review upon direction of the Judge Advocate General under Article 69.* All cases of trial by court-martial in which there has been a finding of guilty and a sentence:

(i) For which Article 66 does not otherwise provide appellate review, and

(ii) Which the Judge Advocate General forwards to the Court for review pursuant to Article 69(d), and

(iii) In which the accused has not waived or withdrawn appellate review.

(3) *Review under Article 62.* All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings, or directs the disclosure of classified information, imposes sanctions for nondisclosure of classified information, or refuses to issue or enforce a protective order sought by the United States to prevent the disclosure of classified information.

(4) *Review under Article 73.* All petitions for a new trial in cases of trial by court-martial which are referred to the Court by the Judge Advocate General.

(b) *Extraordinary writs.* The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis.

(c) *Effect of rules on jurisdiction.* Nothing in this part shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals as established by law.

§ 150.3 Scope of review.

In cases referred to it for review pursuant to Article 66, the Court may act only with respect to the findings and sentence as approved by the convening authority. In reviewing a case or action under Article 69(d) or in determining an appeal under Article 62, the Court may act only with respect to matters of law. The Court may, in addition, review such other matters and take such other action as it determines to be proper under substantive law.e

§ 150.4 Quorum.

(a) *In panel.* When sitting in panel, a majority of the judges assigned to that panel constitutes a quorum for the purpose of hearing or determining any matter referred to the panel. The determination of any matter referred to the panel shall be according to the opinion of a majority of the judges participating in the decision. However, any judge present for duty may issue all necessary orders concerning any proceedings pending on panel and any judge present for duty, or a clerk of court or commissioner to whom the Court has delegated authority, may act on uncontested motions, provided such action does not finally dispose of a petition, appeal, or case before the Court.

(b) *En banc.* When sitting as a whole, a majority of the judges of the Court constitutes a quorum for the purpose of hearing and determining any matter before the Court. The determination of any matter before the Court shall be according to the opinion of a majority of the judge participating in the decision. In the absence of a quorum, any judge present for duty may issue all necessary orders concerning any proceedings pending in the Court preparatory to hearing or decision thereof.

§ 150.5 Place for filing papers.

When the filing of a notice of appearance, brief, or other paper in the office of a Judge Advocate General is required by this part, such papers shall be filed in the office of the Judge Advocate General of the appropriate armed force or in such other place as the Judge Advocate General or rule promulgated pursuant to § 150.26 may designate. If transmitted by mail or other means, they are not filed until received in such office.

§ 150.6 Signing of papers.

All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

§ 150.7 Computation of time.

In computing any period of time prescribed or allowed by this part, by order of the Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper in court, a day on which the office of the Clerk of the Court is closed due to weather or other conditions or by order of the Chief Judge, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

§ 150.8 Qualification of counsel.

(a) *All counsel.* Counsel in any case before the Court shall be a member in good standing of the bar of a Federal Court, the highest court of a State or another recognized bar.

(b) *Military counsel.* Assigned appellate defense and appellate government counsel shall, in addition, be qualified in accordance with Articles 27(b)(1) and 70(a), Uniform Code of Military Justice.

(c) *Admission.* Each Court may license counsel to appear before it. Otherwise, upon entering an appearance, counsel shall be deemed admitted pro hac vice, subject to filing a certificate setting forth required qualifications if directed by the Court.

(d) *Suspension.* No counsel may appear in any proceeding before the Court while suspended from practice by the Judge Advocate General of the service concerned.

§ 150.9 Conduct of counsel.

The conduct of counsel appearing before the Court shall be in accordance

with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge Advocate General of the service concerned. However, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case. Conduct deemed by the Court to warrant consideration of suspension from practice or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

§ 150.10 Request for appellate defense counsel.

An accused may be represented before the Court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening authority's action under Rule for Courts-Martial 1107(h), forward to the convening authority or the Judge Advocate General:

(a) A request for representation by military appellate defense counsel, or

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name and address of civilian counsel), or

(c) Both a request for representation by military appellate defense counsel under paragraph (a) for this section and notice regarding civilian counsel under paragraph (b) of this section, or

(d) A waiver of representation by counsel.

§ 150.11 Assignment of counsel.

(a) When a record of trial is referred to the court—

(1) If the accused has requested representation by appellate defense counsel, pursuant to Article 70(c)(1), counsel detailed pursuant to Article 70(a) will be assigned to represented the accused; or

(2) If the accused gives notice that he or she has retained or has taken action to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel. Assigned defense counsel will continue to assist after appearance by civilian counsel unless excused by the accused; or

(3) If the accused has neither requested appellate counsel nor given notice of action to retain civilian counsel, but has not waived representation by counsel, appellate defense counsel will be assigned to represent the accused, subject to excusal by the accused or by direction of the Court.

(b) In any case—

(1) The Court may request counsel when counsel have not been assigned.

(2) Pursuant to Article 70(c)(2), and subject to paragraph (a)(2) of this section, appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

§ 150.12 Retention of civilian counsel.

When civilian counsel represents an accused before the Court, the Court will notify counsel when the record of trial is received. If both civilian and assigned appellate defense counsel represent the accused, the Court will regard civilian counsel as primary counsel unless notified otherwise. Ordinarily, civilian counsel will use the accused's copy of the record. Civilian counsel may reproduce, at no expense to the government, appellate defense counsel's copy of the record.

§ 150.13 Notice of appearance of counsel.

Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

§ 150.14 Waiver or withdrawal of appellate review.

Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by the Rule for Courts-Martial 1110(f)(1), will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

§ 150.15 Assignments of error and briefs.

(a) *General provisions.* Appellate counsel for the accused may file an assignment of error if any are to be alleged, setting forth separately each error asserted. The assignment of errors should be included in a brief for the accused in the format set forth in Appendix B to this part. An original of all assignments of error and briefs, and as many additional copies as shall be prescribed by the Court, shall be submitted. Briefs and assignments of errors shall be typed or printed, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the accused.

(b) *Time for filing and number of briefs.* Any brief for an accused shall be filed within 60 days after appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate government counsel to represent the United States, such counsel shall file an answer on behalf of the government within 30 days after any brief and assignment of errors has been filed on behalf of an accused. Appellate counsel for an accused may file a reply brief no later than 7 days after the filing of a response brief on behalf of the government. If no brief is filed on behalf of an accused, a brief on behalf of the government may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

(c) *Appendix.* The brief of either party may include an appendix. If an unpublished opinion is cited in the brief, a copy shall be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations. A motion must be filed under § 150.23, *infra*, to attach any other matter.

§ 150.16 Oral arguments.

Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made no later than 7 days after the filing of an answer to an appellant's brief. Such motion shall identify the issue(s) upon which counsel seek argument. The Court may, on its own motion, identify the issue(s) upon which it wishes argument.

§ 150.17 En banc proceedings.

(a)(1) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. Such consideration or reconsideration ordinarily will not be ordered except:

(i) When consideration by the full Court is necessary to secure or maintain uniformity of decision, or

(ii) When the proceedings involve a question of exceptional importance, or

(iii) When a sentence being reviewed pursuant to Article 66 extends to death.

(2) In cases being reviewed pursuant to Article 66, a party's suggestion that a matter be considered initially by the Court as a whole must be filed with the

Court within 7 days after the government files its answer to the assignment of errors, or the appellant files a reply under § 150.15(b). In other proceedings, the suggestion must be filed with the party's initial petition or other initial pleading, or within 7 days after the response thereto is filed. A suggestion for reconsideration by the Court as a whole must be made within the time prescribed by § 150.19 for filing a motion for reconsideration. No response to a suggestion for consideration or reconsideration by the Court as a whole may be filed unless the Court shall so order.

(b) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole on such a suggestion made by a party unless a judge requests a vote.

(c) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered by the Court sitting as a whole. However, en banc reconsideration of an en banc decision will not be held unless at least one member of the original majority concurs in a vote for reconsideration.

(d) This rule does not affect the power of the Court *sua sponte* to consider or reconsider any case sitting as a whole.

§ 150.18 Orders and decisions of the Court.

The Court shall give notice of its orders and decisions by immediately serving them, when rendered, on appellate defense counsel, including civilian counsel, if any, government counsel and the Judge Advocate General, or designee, as appropriate.

§ 150.19 Reconsideration.

(a) The Court may, in its discretion and on its own motion, enter an order announcing its intent to reconsider its decision or order in any case not later than 30 days after service of such decision or order on appellate defense counsel or on the appellant, if the appellant is not represented by counsel, provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) has not been received by that Court. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) or writ appeal has not been received by the United States Court of Appeals for the Armed Forces, the Court may, in its discretion, reconsider its decision or order in any case upon motion filed either:

(1) By appellate defense counsel within 30 days after receipt by counsel, or by the appellant if the appellant is not represented by counsel, of a decision or order, or

(2) By appellate government counsel within 30 days after the decision or order is received by counsel.

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 7 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this part shall not be extended under the authority of §§ 150.24 or 150.25 beyond the expiration of the time for filing a petition for review or writ appeal with the United States Court of Appeals for the Armed Forces, except that the time for filing briefs by either party may be extended for good cause.

§ 150.20 Petitions for extraordinary relief, answer, and reply.

(a) *Petition for extraordinary relief.* A petition for extraordinary relief in the number of copies required by the Court shall be accompanied by proof of service on each party respondent and will contain:

(1) A previous history of the case including whether prior actions have been filed or are pending for the same relief in this or any other court and the disposition or status of such actions;

(2) A concise and objective statement of all facts relevant to the issue presented and of any pertinent opinion, order or ruling;

(3) A copy of any pertinent parts of the record and all exhibits related to the petition if reasonably available and transmittable at or near the time the petition is filed;

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

(7) The jurisdictional basis for relief sought and the reasons why the relief sought cannot be obtained during the ordinary course of appellate review;

(8) If desired, a request for appointment of appellate counsel.

(b) *Format.* The title of the petition shall include the name, military grade and service number of each named party and, where appropriate, the official military or civilian title of any named party acting in an official capacity as an officer or agent of the United States. When an accused has not been named as a party, the accused shall be identified by name, military grade and service number by the petitioner and shall be designated as the real party in interest.

(c) *Electronic petitions.* The Court will docket petitions for extraordinary relief submitted by electronic means. A petition submitted by electronic means will conclude with the full name and address of petitioner's counsel, if any, and will state when the written petition and brief, when required, were forwarded to the Court and to all named respondents, and by what means they were forwarded.

(d) *Notice to the Judge Advocate General.* Immediately upon receipt of any petition, the clerk shall forward a copy of the petition to the appropriate Judge Advocate General or designee.

(e) *Briefs.* Each petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed in propria persona. The Court may issue a show cause order in which event the respondent shall file an answer within 10 days of the receipt of the show cause order. The petitioner may file a reply to the answer within 7 days of receipt of the answer.

(f) *Initial action by the Court.* The Court may dismiss or deny the petition, order the respondent to show cause and file an answer within the time specified, or take whatever other action it deems appropriate.

(g) *Oral argument and final action.* The Court may set the matter for oral argument. However, on the basis of the pleading alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate; to take evidence; and to make such recommendations as the Court deems appropriate.

§ 150.21 Appeals by the United States.

(a) *Restricted filing.* Only a representative of the government designated by the Judge Advocate General of the respective service may file an appeal by the United States under Article 62.

(b) *Counsel.* Counsel must be qualified and appointed, and give notice

of appearance in accordance with this part and those of the Judge Advocate General concerned.

(c) *Form of appeal.* The appeal must include those documents specified by Rule for Courts-Martial 908 and by applicable regulations of the Secretary concerned. A certificate of the Notice of Appeal described in Rule for Courts-Martial 908(b)(3) must be included. The certificate of service must reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service upon the military judge.

(d) *Time for filing.* All procedural Rules of the Court shall apply except as noted in this paragraph:

(1) The representative of the government designated by the Judge Advocate General shall decide whether to file the appeal with the Court. The trial counsel shall have 20 days from the date written notice to appeal is filed with the trial court to forward the appeal, including an original and two copies of the record of trial, to the representative of the government designated by the Judge Advocate General. The person designated by the Judge Advocate General shall promptly file the original record with the Clerk of the Court and forward one copy to opposing counsel. Appellate government counsel shall have 20 days (or more upon a showing of good cause made by motion for enlargement within the 20 days) from the date the record is filed with the Court to file the appeal with supporting brief with the Court. Should the government decide to withdraw the appeal after the record is received by the Court, appellate government counsel shall notify the Court in writing. Appellate brief(s) shall be prepared in the manner prescribed by § 150.15.

(2) Appellee shall prepare an answer in the manner prescribed by § 150.15 and shall file such answer within 20 days after any filing of the government brief.

(e) The government shall diligently prosecute all appeals by the United States and the Court will give such appeals priority over all other proceedings where practicable.

§ 150.22 Petitions for new trial.

(a) Whether submitted to the Judge Advocate General by the accused in propria persona or by counsel for the accused, a petition for new trial submitted while the accused's case is undergoing review by a Court of Criminal Appeals shall be filed with an original and two copies and shall comply with the requirements of Rule for Courts-Martial 1210(c).

(b) Upon receipt of a petition for new trial submitted by other than appellate defense counsel, the Court will notify all counsel of record of such fact.

(c) A brief in support of a petition for new trial, unless expressly incorporated in or filed with the petition, will be filed substantially in the format specified by § 150.15 no later than 30 days after the filing of the petition or receipt of the notice required by paragraph (b) of this section, whichever is later. An appellate's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed no later than 10 days after the filing of the appellee's answer.

§ 150.23 Motions.

(a) *Content.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor. Motions, pleading, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example "MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)"; or "ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD".

(b) *Motions to attach documents.* If a party desires to attach a statement of a person to the record for consideration by the Court on any matter, such statement shall be made either as an affidavit or as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. 1746. All documents containing language other than English shall have, attached, a certified English translation.

(c) *Opposition.* Any opposition to a motion shall be filed within 7 days after receipt by the opposing party of service of the motion.

(d) *Leave to file.* Any pleading not authorized or required by this part, shall be accompanied by a motion for leave to file such pleading.

(e) *Oral argument.* Oral argument shall not normally be permitted on motions.

§ 150.24 Continuances and interlocutory matters.

Except as otherwise provided in § 150.19(d), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by this part, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See § 150.4.

§ 150.25 Suspension of rules.

For good cause shown, the Court acting as a whole or in panel may suspend the requirements or provisions of any of this part in a particular case on petition of a party or on its own motion and may order proceedings in accordance with its direction.

§ 150.26 Internal rules.

The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

§ 150.27 Recording, photographing, broadcasting, or telecasting of hearings.

The recording, photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited unless specifically authorized by the Court.

§ 150.28 Amendments.

Proposed amendments to this part may be submitted to the Chief Judge of any Court named in § 150.1 or to a Judge Advocate General. Before acting on any proposed amendments not received from the Chief Judges, the Judge Advocates General shall refer them to the Chief Judges of the Courts for comment. The Chief Judges shall confer on any proposed changes, and shall report to the Judge Advocates General as to the suitability of proposed changes and their impact on the operation of the Courts and on appellate justice.

Appendix A to Part 150—Format for Direction for Review in a Court of Criminal Appeals

In the United States _____[1] Court of Criminal Appeals

United States v. _____
(Full typed name, rank, service, & service number of accused)
Direction for Review Case No. _____

Tried at (location), on (date(s)) before a (type in court-martial) appointed by (convening authority)

To the Honorable, the Judges of the United States _____ Court of Criminal Appeals

1. Pursuant to Article 69 of the Uniform Code of Military Justice, 10 U.S.C. § 869 (1994) and the Rules of Practice and Procedure for Courts of Criminal Appeals, Rule 2(b), the record of trial in the above-entitled case is forwarded for review.

2. The accused was found guilty by a (type of court-martial) of a violation of Article(s) _____ of the Uniform Code of Military Justice, and was sentenced to (include entire adjudged sentence) on (insert trial date). The convening authority (approved the sentence as adjudged) (approved the following findings and sentence: _____). The officer exercising general court-martial

[1] Use "Army," "Navy-Marine Corps," "Air Force," or "Coast Guard," as applicable.

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jurisdiction (where applicable) took the following action: _____. The case was received for review pursuant to Article 69 on (date).

3. In review, pursuant to Uniform Code of Military Justice, Article 66, it is requested that action be taken with respect to the following issues:

[set out issues here]

_____

The Judge Advocate General

Received a copy of the foregoing Direction for Review this _____ (date).

_____

Appellate Government Counsel

_____

Address and telephone number

_____

Appellate Defense Counsel

_____

Address and telephone number

Appendix B to Part 150—Format for Assignment of Errors and Brief on Behalf of Accused (§ 150.15)

In the United States _____[2] Court of Criminal Appeals

United States v. _____
(Full typed name, rank, service, & service number of accused), Appellant
Assignment of Errors and Brief on Behalf of Accused Case No. _____

Tried at (location), on (date(s)) before a (type of court-martial) appointed by (convening authority)

To the Honorable, the Judges of the United States _____ Court of Criminal Appeals

Statement of the Case

[Set forth a concise summary of the chronology of the case, including the general nature of the charges, the pleas of the accused, the findings and sentence at trial, the action by the convening authority, and any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth those facts necessary to a disposition of the assigned errors, including specific page references and exhibit numbers. Answers may adopt appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Errors and Argument

[Set forth each error alleged in upper case letters, followed by separate arguments for each error. Arguments shall discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument shall include a statement of the applicable standard of review, and shall be followed by a specific prayer for the relief requested.]

[2] Use "Army," "Navy-Marine Corps," "Air Force," or "Coast Guard," as applicable.

Appendix

[The brief of either party may include an appendix containing copies of unpublished opinions cited in the brief, and extracts of statutes, rules or regulations pertinent to the assigned errors.]

_____

(Signature of counsel)

_____

Name (and rank) of counsel, address and telephone number

Certificate of Filing and Service

I certify that a copy of the foregoing was mailed or delivered to the Court and opposing counsel on (date).

_____

Name (rank) (and signature)

_____

Address and telephone number

_____ (Date)

Dated: January 9, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–890 Filed 1–14–97; 8:45 am]

BILLING CODE 5000–04–M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. H–29]

RIN 3090–AF95

Criteria for Reporting Excess Personal Property

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation establishes revised criteria for reporting excess personal property to GSA, substantially reduces utilization screening time, raises the dollar threshold for direct transfers, and updates addresses associated with reporting excess personal property. The regulation is intended to relieve Federal agencies of certain reporting requirements and reduce the time required by agencies to hold property for utilization and donation screening.

DATES: Effective date: January 15, 1997.
Expiration date: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Personal Property Management Policy Division (202–501–3828).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

REGULATORY FLEXIBILITY ACT: This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

In 41 CFR Chapter 101, an appendix, containing temporary regulation H–29, is added at the end of Subchapter H to read as follows:

Appendix to Subchapter H—Temporary Regulations

Federal Property Management Regulations Temporary Regulation H–29

TO: Heads of Federal agencies
SUBJECT: Criteria for reporting excess personal property

1. *Purpose.* This regulation establishes revised criteria for reporting excess personal property to GSA, reduces utilization screening time, raises the dollar threshold for direct transfers, and updates addresses associated with reporting excess personal property.

2. *Effective date.* This regulation is effective January 15, 1997.

3. *Expiration date.* This regulation expires January 15, 1998.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.*

a. Certain excess property is reportable to GSA by executive agencies for the purpose of maximizing opportunities for utilization. Property which is reported to GSA is afforded regional and nationwide visibility by inclusion in GSA's automated property disposal system—the Federal Disposal System (FEDS). Once an item is in the FEDS nationwide inventory of excess and surplus property, agencies can determine the availability of property by phoning the supporting GSA regional office, obtaining a copy of the FEDS inventory listing, or by accessing an electronic bulletin board within FEDS containing the nationwide inventory—Screen by Computer and Request Excess by Electronic Notification (SCREEN)

b. GSA's major personal property management customers have requested relief from reporting requirements by reducing the number of items of excess property to be reported. GSA is granting these requests provided such reductions do not result in an appreciable decline in overall transfer volumes of excess personal property. GSA conducted a study to assess the potential impact of reduced reporting requirements. The analysis showed that over 70 percent of the dollar value of property transferred represented Federal supply classification (FSC) groups which would continue to be reported to GSA as excess under the new reporting requirements.

c. Changes to the reporting criteria will be reexamined after an implementation period of 1 year to determine their net effect on overall business volumes. A significant decline in the utilization rate (dollar value of property transfers divided by dollar value of property generations) would be sufficient justification for modifying or rescinding the regulation.

d. GSA provided approval to the Department of Defense on July 20, 1994, to implement throughout its nationwide network of Defense Reutilization and Marketing Offices (DRMO's) a streamlined disposal concept known as single cycle processing. Under this concept, utilization screening time of excess property reported to GSA is reduced from 60 to 21 calendar days. Federal respondents to a follow-up customer survey indicated that 21 calendar days is sufficient time for screening Department of Defense excess property. A study group consisting of GSA and Federal and State representatives recommended that reduced screening time also be applied to civilian agency excess property.

6. *Definitions.* For purposes of this regulation, the following definitions apply:

a. "Reportable property" means personal property that is required to be reported to GSA in accordance with FPMR 101–43.304 prior to disposal.

b. "Nonreportable property" means any personal property that does not meet the reporting criteria set forth in FPMR 101–43.304, and therefore is not required to be reported formally to GSA, but which is available locally for Federal transfer or donation.

7. *Explanation of changes.*

a. Section 101–42.205 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows:

§ 101–42.205 Exceptions to reporting.

(a) * * *

(b) When EPA, under its authorities, transfers accountability for hazardous materials to Federal, State, and local agencies, to research institutions, or to commercial businesses to conduct research or to perform the actual cleanup of a contaminated site, the item shall not be reported.

b. Section 101–42.402 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 101–42.402 Reporting hazardous materials for sale.

* * * * *

(a) *Reportable property.* Personal property which is reportable property and is identified as hazardous must be reported to a GSA regional office for utilization screening in accordance with § 101–42.204. If, after reporting to GSA, the hazardous materials are not transferred or donated, in accordance with Subparts 101–42.2 through 101–42.3 and 101–42.11, the hazardous materials will be programmed for sale by GSA, unless advised otherwise by the holding agency in accordance with Part 101–45, without further documentation from the holding agency.

(b) *Nonreportable property.* Under § 101–42.202, holding agencies are required to identify and label hazardous materials. Listings of personal property which is nonreportable property and is identified as hazardous must be made available to GSA area utilization officers for local utilization and donation screening in accordance with § 101–42.204 and § 101–42.205. If property has not been reported and is to be sold by GSA, it must be reported to GSA for sale on Standard Form 126, Report of Personal Property for Sale, or by automated means which GSA is capable of accepting.

(c) *Certification and Description.* The SF 126 shall contain a certification, executed by a duly authorized agency official, in block 16c or as an addendum, that the item has been clearly labeled and packaged as required in § 101–42.202(e) and 101–42.204. The SF 126 shall also contain or be accompanied by a full description of the actual or potential hazard associated with handling, storage, or use of the item. Such description shall be furnished by providing:

(1) An MSDS or copy thereof; or

(2) A printed copy of the record, corresponding to the hazardous material being reported, from the automated HMIS; or

(3) A written narrative, included in either block 16c or as an addendum, which complies with the requirements of 29 CFR 1910.1200.

(d) Property not subject to GSA screening. Hazardous material which may not be reported to GSA in accordance with § 101–42.204 and § 101–42.205 shall not be reported to GSA for sale unless GSA agrees to conduct such sale.

c. Section 101–43.001–30 is revised to read as follows:

§ 101–43.001–30 Screening period.

Screening period means:

(a) For reportable personal property of a civilian agency, the screening period is normally a period of 21 calendar days from the day following receipt of the automated report in FEDS or receipt of the manually completed report in the appropriate GSA office to and including the day specified as the surplus release date. For reportable property that is reported by a military activity during a period of property accumulation prior to a period of formal utilization screening, the screening period normally extends from the date of reporting to a period of 21 calendar days from the day following the date of the end of the accumulation.

(b) For civilian nonreportable property, the screening period is normally a period of 21 calendar days from the day the property is made available by the holding agency for screening as excess. For military nonreportable property that undergoes a period of accumulation prior to a period of utilization screening, the screening period is normally the same as for reportable property.

d. Section 101–43.001–34 is added to read as follows:

§ 101–43.001–34 Unit cost.

Unit cost means the original acquisition cost of a single item of property.

e. Section 101–43.302 is amended by revising paragraph (c) to read as follows:

§ 101–43.302 Agency responsibility.

* * * * *

(c) GSA will assist agencies in meeting their requirements for nonreportable property. Federal agencies requiring such property should contact the appropriate GSA regional office indicated in § 101–43.4802. GSA area utilization officers, stationed at key excess generating points throughout the United States, screen and offer nonreportable property as it becomes available for transfer.

* * * * *

f. Section 101–43.304–1 is amended by revising paragraph (a) to read as follows:

§ 101–43.304–1 Reporting.

(a) Reportable property enumerated by the Federal supply classification (FSC) groups and classes, acquisition cost, and condition codes in § 101–43.4801 shall be reported promptly to GSA with descriptions in sufficient detail to permit transfer or sale without further reference to the holding agency. In the absence of these descriptions, adequate commercial descriptions shall be substituted. Exceptions to these reporting requirements are covered in § 101–43.305. Whenever possible, the national stock number (NSN) shall be provided as part of the description. It is essential that the excess personal property report reflect the true condition of the property as of the date it is reported excess through assignment of the appropriate disposal condition code designation as defined in § 101–43.4801(e). Each Department of Defense excess personal property report must also contain the appropriate supply condition code as defined in § 101–43.4801(f), including reports of contractor inventory so far as practicable. When available from property records, civilian agencies shall also include the appropriate supply condition code in excess personal property reports. To expedite processing, reports may be submitted up to 60 calendar days prior to the actual date of property availability, provided that the report clearly indicates this pending status and reflects the date on which the property will be determined excess.

* * * * *

g. Section 101–43.304–2 is amended by revising paragraph (b) to read as follows:

§ 101–43.304–2 Form and distribution of reports.

* * * * *

(b) The SF 120 and SF 120A shall be submitted in an original and three copies. Reporting by ADP media shall be as specified and approved by GSA. Reports shall be directed to the GSA regional office for the region in which the property is located (see § 101–43.4802). However, reports of fixed-wing and rotary-wing aircraft shall be submitted to the General Services Administration (9FB), San Francisco, CA 94102.

h. Section 101–43.304–4 is revised to read as follows:

§ 101–43.304–4 Property at installations due to be discontinued.

Executive agencies that have installations which are due to be discontinued, closed, or abandoned and at which there will be excess personal property shall, unless inadvisable in the interest of national security, give advance notice of such situations as early as possible by letter to the appropriate GSA regional office. In such cases, agencies shall identify the installations to be discontinued, provide the scheduled date for the removal of personnel from the location, and specify the

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last date when the personal property will be needed. As soon as possible after filing the advance notice, the excess personal property shall be reported in accordance with § 101–43.304–1 to provide time for screening for Federal utilization and donation purposes, within forty-two calendar days when possible.

i. Section 101–43.305 is revised to read as follows:

§ 101–43.305 Nonreportable property and property not subject to GSA screening.

(a) Nonreportable property must be locally screened only, and it need not be reported to GSA for nationwide utilization screening. Such property is a valuable source of supply for Federal agencies; therefore, GSA regional offices and GSA area utilization officers are responsible for local screening of such property, for making it available to Federal agencies, and for its expeditious transfer. Holding agencies shall cooperate with GSA representatives in making information available and in providing access to nonreportable property. Federal agency employees shall be permitted access to holding installations for screening purposes upon presentation of a valid Federal agency employee's identification card.

(b) A listing of nonreportable property, providing the extended value in acquisition cost dollars of each line item and the total number of line items on the listing, must be made available to GSA area utilization officers for local utilization and donation screening. Agencies that have computer records of their excess/surplus personal property are encouraged to report nonreportable property electronically, in lieu of submitting hardcopy listings. Agencies that are not able to report nonreportable property electronically, and have nonreportable property which is to be sold by GSA if it survives utilization and donation screening, are encouraged to report that property on a Standard Form (SF) 120, in lieu of an excess listing, to eliminate the need to submit SF 126, Report of Personal Property for Sale, after the completion of donation screening.

(c) In accordance with paragraph (d) of this section, certain kinds of property are not covered by the GSA utilization screening process. Such property is neither reportable property nor nonreportable property. It is the responsibility of the owning agency to screen such property and make reasonable efforts to obtain utilization among other Federal agencies. Although not required to do so, GSA may assist in the screening and transfer of such property when requested to do so by the owning agency or when otherwise directed by GSA.

(d) Unless otherwise directed by GSA, the following general categories of excess personal property are excepted from the GSA utilization screening process and shall not be reported to GSA for nationwide circularization nor made available to GSA area utilization officers for local screening:

(1) Perishables, defined for the purposes of this section as any foodstuffs which are subject to spoilage or decay;

(2) Property dangerous to public health and safety;

(3) Scrap, except aircraft in scrap condition, provided the property strictly conforms to the definitions for scrap found at § 101–43.001–29;

(4) Property determined by competent authority to be classified or otherwise sensitive for reasons of national security;

(5) Controlled substances in which case solicitation shall be limited to those agencies authorized for transfer under § 101–42.1102–3 provisions;

(6) Reportable property which, prior to reporting as required in § 101–43.304, is transferred directly between Federal agencies as provided in § 101–43.309–5(a) or by prearrangement with GSA to fill a known need;

(7) Trading stamps and bonus goods (see § 101–25.103–4);

(8) Nonappropriated fund property;

(9) Nuclear Regulatory Commission-controlled materials (see § 101–42.1102–4 and 10 CFR Parts 30 through 35, 40, and 70.); and

(10) Hazardous waste and items determined by the holding agency to be extremely hazardous (see § 101–42.402).

§ 101–43.307–7 [Amended]

j. Section 101–43.307–7 is amended by removing paragraph (a) and redesignating paragraph (b) as new paragraph (a) and paragraph (c) as new paragraph (b).

k. Section 101–43.307–12 is amended by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 101–43.307–12 Shelf-life items.

* * * * *

(c) Reportable shelf-life items which have a remaining useful life of 6 weeks or more before reaching the expiration date shall be reported as excess in accordance with § 101–43.304. Agencies may, at their option, also report shelf-life items which are nonreportable property. The report shall identify the items in the description as shelf-life items by carrying the designation symbol "SL" and by showing the expiration date. If the item has an extendable-type expiration date, there shall also be furnished an indication as to whether the expiration date is the original or an extended date.

(d) Normally, items reported in accordance with paragraph (c) of this section, including medical shelf-life items held for national emergency purposes, will be given a surplus release date effective 21 calendar days from the date following the day the property was reported. This date may be shortened or extended according to utilization objectives and the remaining useful shelf life. However, GSA offices will screen shelf life items for both reportable property and nonreportable property to permit their use before the shelf life expires and the items are unfit for human use.

(e) Nonreportable shelf-life items which have a remaining useful life of 6 weeks or more before reaching the expiration date shall be made available for use by other Federal agencies as provided in § 101–43.305. Agency documents listing such items shall show the expiration date and, in the case of items with an extendable expiration date, shall indicate whether the expiration date is the original or an extended date. When such items are determined excess, a surplus release date shall be established by the holding agency providing a minimum of 21 calendar days for utilization screening, unless determined otherwise by GSA. With the approval of GSA, the surplus release date may be extended by the holding agency when the items are selected by an authorized screener for transfer or are set aside by a GSA representative for potential or actual transfer. For controlled substances (as defined in § 101–42.001), each executive agency shall comply with § 101–42.1102–3.

(f) Shelf-life items which have a remaining useful life of less than 6 weeks, regardless of classification as reportable property or nonreportable property, shall be made available for utilization by other Federal agencies in the manner provided in paragraph (e) of this section.

* * * * *

l. Section 101–43.307–13 is revised to read as follows:

§ 101–43.307–13 Medical shelf-life items held for national emergency purposes.

(a) Whenever the head of an executive agency determines that the remaining storage or shelf-life of medical materials or supplies held for national emergency purposes is of too short duration to justify their continued retention for such purposes and that their transfer or disposal would be in the best interest of the United States, those materials or supplies shall be considered to be nonreportable property unless otherwise directed by GSA. To the greatest extent practicable, the above determination shall be made at such time as to ensure that such medical materials or supplies can be transferred or otherwise disposed of in sufficient time to permit their use before their shelf-life expires and the items are unfit for human use.

(b) Excess medical shelf-life items regardless of the remaining useful life shall be made available for use by other Federal agencies as provided in § 101–43.305. Each agency may also report excess medical shelf-life items to enhance the possibility of utilization through increased circularization. The excess report shall identify items as medical shelf-life items held for national emergency purposes by carrying the designating symbol "MSL" in the description of the report and by showing the shelf-life expiration date. Information shall also be furnished regarding whether the expiration date is the original or the extended date. Further, whenever medical shelf-life items held for national emergency purposes are reported as excess, any specialized storage requirements pertaining to the items listed thereon shall be noted on the report.

(c) When such items are determined excess, a surplus release date shall be established by the holding agency in accordance with § 101–43.311–2. For controlled substances (as defined in § 101–42.001), each executive agency shall comply with § 101–42.1102–3.

(d) Transfers among Federal agencies of medical materials and supplies held for national emergency purposes and determined to be excess shall be accomplished in accordance with § 101–43.309, except that such transfers shall be made upon such terms

and prices as shall be agreed to by the Federal agencies concerned. Proceeds from such transfers may be credited to the current applicable appropriation or fund of the transferring agency and shall be available only for the purchase of medical materials or supplies for national emergency purposes.

m. Section 101–43.309–2 is amended by revising paragraphs (b) and (d) to read as follows:

§ 101–43.309–2 Information on availability.

* * * * *

(b) Review of an electronic bulletin board called FEDS/SCREEN (Federal Disposal System/Screen by Computer and Request Excess by Electronic Notification) which contains information on GSA's nationwide inventory of excess and surplus property;

* * * * *

(d) Submission of current and future requirements for excess personal property to the appropriate GSA regional office using GSA Form 1539, Request for Excess Personal Property, illustrated at § 101–43.4902–1539. Instructions for submission of requirements may be obtained from any GSA regional office. Wherever possible, the NSN should be included for each item requested. GSA will assist agencies in obtaining NSN's to the extent practicable. If substitute items are acceptable, these should also be identified by NSN. Requirements for NSN items may be submitted electronically. If not currently available as excess, property requirements identified by NSN's will be retained for approximately 180 calendar days. Property reported excess during this time, if matched with recorded requirements, will be offered for immediate transfer. Agencies should update their lists of items at the end of each 180-calendar-day period to retain visibility in the requirements bank.

n. Section 101–43.309–5 is amended by revising paragraph (a) to read as follows:

§ 101–43.309–5 Procedure for effecting transfers.

(a) All transfers of excess personal property between Federal agencies shall be by SF 122, Transfer Order Excess Personal Property (see § 101–43.4901–122), or any other transfer order form approved by GSA. Automated requests on approved forms and automated requests generated by FEDS/SCREEN may be used for excess personal property transfers. However, Federal agencies using automated requests shall ensure that document numbers are controlled and records maintained indicating the official authorized to approve property transfers. Except for automated transfer orders generated by FEDS/SCREEN, each transferee agency shall forward the original and three copies of the transfer order to the appropriate GSA regional office (see § 101–43.4802) for approval. A SF 120 is not required in addition to SF 122 for direct transfers. Prior approval by GSA is not required when the appropriate GSA regional office is furnished an information copy of each direct transfer order by the transferor agency within 10 workdays from receipt of the order, and the property involved in the given transaction is:

(1) Reportable property under § 101–43.304 but has not yet been reported to GSA, the total acquisition cost of the transfer order does not exceed $10,000, and the owning agency's regulations relative to internal distribution have been satisfied; or

(2) Nonreportable property under § 101–43.305 and has not been reserved at the holding location for special screening by the appropriate GSA regional office, and the total acquisition cost of the transfer order does not exceed $50,000.

* * * * *

o. Section 101–43.311–1 is revised to read as follows:

§ 101–43.311–1 Reportable property.

(a) Excess personal property, which is reported to GSA in accordance with § 101–43.304 and not transferred to other Federal agencies shall become surplus at the close of business on the surplus release date, which is indicated on the report of excess personal property to GSA. With the exception of aircraft and vessels, the surplus release date will normally be 21 calendar days from the day after GSA receives the report of the excess personal property. The surplus release date for aircraft, and for vessels 1,500 gross tons and under in FSC Group 19, will be 60 calendar days from the day after GSA receives the report of excess in the appropriate GSA regional office.

(b) GSA may expedite screening by shortening the period of utilization screening for items individually or by FSC class which have a history of little demand. GSA may extend the screening period to adequately screen large generations or specialized items. The appropriate GSA regional office will coordinate surplus release date changes with the reporting activity to minimize impact on the utilization and disposal process. Agencies may not shorten or lengthen screening periods on their own.

p. Section 101–43.311–2 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

§ 101–43.311–2 Nonreportable property.

(a) Nonreportable property shall become surplus when it has been made available by the holding agency for Federal use for a minimum of 21 calendar days from the date made available for screening to Federal agencies, unless determined otherwise by GSA, and has not been selected for transfer by another Federal agency. Holding agencies shall annotate property records with the date of the agency excess determination. Authorized Federal agency representatives may request and, with the approval of GSA, holding agencies will grant additional screening time not to exceed 30 calendar days, unless otherwise agreed upon by the holding agency and the GSA regional office concerned. GSA may shorten or lengthen the screening time.

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q. Section 101–43.314 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 101–43.314 Use of excess personal property on grants.

* * * * *

(b) * * *

(2) * * *

(iv) Excess scientific equipment transferred pursuant to section 11(e) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will consider items of personal property as scientific equipment for transfer without reimbursement to the National Science Foundation (NSF) for use by a project grantee when the property requested is within FSC groups 12 (Fire Control Equipment), 14 (Guided Missiles), 43 (Pumps and Compressors), 48 (Valves), 58 (Communication, Detection, and Coherent Radiation Equipment), 59 (Electrical and Electronic Equipment Components), 65 (Medical, Dental, and Veterinary Equipment and Supplies), 66 (Instruments and Laboratory Equipment), 67 (Photographic Equipment), 68 (Chemicals and Chemical Products), or 70 (General Purpose Information Processing Equipment (Including Firmware), Software, Supplies, and Support Equipment). GSA will give consideration to transfer without reimbursement of items of excess property in other FSC groups when NSF certifies the item requested is a component of or related to a piece of scientific equipment or is an otherwise difficult-to-acquire item needed for scientific research. Items of property determined by GSA to be common use or general purpose property, regardless of classification, shall not be transferred to NSF for use by a project grantee without reimbursement.

* * * * *

r. Section 101–43.4801 is amended by revising paragraphs (a) through (d) to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal Supply Classification (FSC) groups and classes comprising reportable property. Property in these groups and classes must be reported to GSA when the following condition code and dollar threshold criteria are met:

(1) With the exception of aircraft, the condition code as defined in paragraph (e) of this section is salvage or better. Fixed-wing and rotary-wing aircraft, airframe structural components, and aircraft engines, as specified in paragraph (b) of this section, are reportable regardless of condition in accordance with § 101–43.304–2.

(2) The unit cost, measured in acquisition dollars, is $5,000 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) As indicated in the table in paragraph (d) of this section, line items in FSC classes 1510, 1520, 1560, 2810, 2840, or any class in FSC group 16 shall be reported. In agencies other than the Department of Defense, all line items in these classes shall be reported regardless of condition code when dollar criteria are met. For the Department of Defense, aircraft in FSC class 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC class 1520, and line items in other classes which are components of these aircraft shall be reported regardless of condition code when dollar criteria are met.

(2) Items in FSC classes 1510 and 1520 held by the Department of Defense or other agencies shall be reported to the General Services Administration (9FB), San Francisco, California 94102.

(c) All excess Government-owned information technology (IT) equipment and software, as defined in Subpart 101–43.6, shall be disposed of in accordance with the provisions of that Subpart.

(d) The following table shows FSC groups and classes which comprise reportable property: o

FSC group	FSC class	Noun name
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe, structural components.
16	All	Aircraft components and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels over 1500 gross tons).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline, reciprocating engines, except aircraft.
	2810	Gasoline, reciprocating engines, aircraft.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery.
35	All	Service and trade equipment.
36	All	Special industry machinery (all but 3690 Specialized ammunition and ordinance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.
	4920	Aircraft maintenance and repair shop specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance, and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire and power and distribution equipment.
66	All	Instruments and laboratory equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

* * * * *

s. Section 101–43.4802 is revised to read as follows:

§ 101–43.4802 Regional office addresses and assigned areas.

Region and office address	Regional areas
National Capital Region, 470 L'Enfant Plaza East, SW., Suite 8100, Washington, DC 20407.	District of Columbia, Maryland (Prince Georges and Montgomery Counties only). Virginia (Prince William, Loudoun, Fairfax and Arlington Counties, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park only).
1—General Services Administration, O'Neill Federal Office Building, Massachusetts, 10 Causeway Street, Boston, MA 02222.	Connecticut, Maine, New Hampshire, Rhode Island, Vermont.
2—General Services Administration, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Commonwealth of Puerto Rico, Virgin Islands.
3—General Services Administration, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107.	Delaware, Maryland, Pennsylvania, Virginia, West Virginia.
4—General Services Administration, 410 West Peachtree Street, Atlanta, GA 30365.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
5—General Services Administration, 230 South Dearborn Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
6—General Services Administration, 4400 College Blvd., Suite 175, Overland Park, KS 66211.	Iowa, Kansas, Missouri, Nebraska.
7—General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
8—General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
9—General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94102.	Arizona, California, Hawaii, Nevada, Pacific Ocean Areas.
10—General Services Administration, 400 15th Street, SW., Auburn, WA 98001.	Alaska, Idaho, Oregon, Washington.

t. Section 101–44.109 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–44.109 Donation screening period.

(a) Unless otherwise directed by GSA, a period of 21 calendar days following the surplus release date (see § 101–43.001–32) shall be provided to set aside surplus reportable and nonreportable property determined to be usable and necessary for donation purposes in accordance with the provisions of Subparts 101–44.2, 101–44.4, and 101–44.5. Reportable surplus property will be set aside for donation when a Standard Form 123, with an informational copy to the holding activity, is submitted to a GSA regional office for approval within the donation screening period. Nonreportable property will be set aside for donation upon notification to a holding activity within the donation screening period by a responsible Federal official, a State agency representative, or an authorized donee representative that the property is usable and necessary for donation purposes.

(b) During the prescribed 21-day donation screening period, Standard Forms 123 will be processed by GSA regional offices in the following sequence:

(1) Department of Defense personal property which is reportable surplus will be reserved for public airport donation during the first 5 calendar days of the donation screening period and for service educational activities (SEA's) during the next 5 calendar days. During the remaining portion of the donation screening period, the property will be available on an equal basis to all applicants.

(2) Executive agency personal property, other than personal property of the Department of Defense, which is reportable surplus will be reserved for public airport donation during the first 5 calendar days of the donation screening period. During the remaining portion of the donation screening period, the property will be available on an equal basis to all applicants. This property is not available for donation to SEA's.

(3) All executive agency personal property which is nonreportable surplus will be made available for donation on an equal basis to all applicants. SEAs are not eligible for donation of nonreportable surplus of executive agencies other than the Department of Defense.

* * * * *

u. Section 101–45.303 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–45.303 Reporting property for sale.

* * * * *

(a) Reportable surplus. Reportable surplus, if not donated, will be programmed for sale by the GSA regional office unless the holding agency indicates on their reports of excess personal property that they elect to sell their own property.

(b) Nonreportable surplus. Nonreportable surplus, if not donated, shall be reported to the appropriate GSA regional office on Standard Form 126, Report of Personal Property for Sale (illustrated at § 101–45.4901–126) if GSA is to sell the property. Standard Form 126A, Report of Personal Property for Sale (Continuation Sheet), shall be added if additional pages are required. Standard Forms 126 and 126A are stocked as five-part carbon interleaved forms and may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

8. *Effect on other directives.* This regulation modifies portions of regulations appearing at Parts 101–42 through 101–45 that pertains to the reporting and screening process for property determined to be excess to an agency's needs.

Dated: September 5, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 97–574 Filed 1–14–97; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket Nos. 92–235 and 92–257; FCC 96–492]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has adopted a *Memorandum Opinion and Order (MO&O)* which addresses issues and concerns raised in twenty-four petitions, five oppositions, and three replies, requesting that we reconsider or clarify various decisions and technical rules adopted in the *Report and Order (R&O)* in PR Docket No. 92–235. This *MO&O* also addresses a petition for reconsideration filed in PR Docket No. 92–257 regarding the shared use of industrial/land transportation and maritime public correspondence frequencies. Consistent with our objective of increasing the efficiency of the PLMR frequency bands this *MO&O* clarifies our decisions in the *R&O*, and where necessary, makes appropriate modifications to the rules. This *MO&O* maintains the channel plan adopted in the *R&O*, but also permits frequency coordinators to recommend frequencies for any technology with lesser bandwidth, provided that interference is not caused to other systems. Additionally, the Commission extends the first transition date for the type acceptance of narrowband equipment from August 1, 1996, to February 14, 1997, and retains the second transition date of January 1, 2005. Further, the Commission clarifies the rules regarding type acceptance to provide greater flexibility for manufacturers to support existing equipment and, where appropriate, to provide alternatives to our efficiency standards. Finally, the Commission clarifies a variety of technical rules including, but not limited to, those pertaining to new power/antenna height limits, the emission mask, and frequency stability requirements.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0680 or via E-Mail at mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, FCC 96–492, adopted December 23, 1996, and released December 30, 1996. The full text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Order

1. The *R&O* (60 FR 37152, July 19, 1995) provided the private land mobile radio (PLMR) community with a regulatory framework that promotes efficient use of spectrum, increases technical flexibility, enhances the deployment of new technologies, and promotes a competitive and robust marketplace for product development. In this action, the Commission clarifies its decisions in the *R&O* and where necessary, makes appropriate modifications to the rules.

2. In the *R&O*, the Commission adopted a channel plan based on 7.5 kHz channel spacing in the 150–174 MHz VHF band and 6.25 kHz channel spacing in the 421–430 MHz, 450–470 MHz, and 470–512 MHz UHF bands. Flexibility is provided to licensees by permitting them to aggregate up to four narrowband channels to employ spectrum efficient wideband technology. Additionally, licensees are provided with a simple migration path because they will be able to remain on their currently assigned center frequencies and can continue to use existing equipment while they upgrade to new equipment.

3. Several petitioners ask the Commission to reconsider the new channel plan and instead adopt a channel plan based on 5 kHz channel spacing claiming that the Commission's

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decision to space channels at 7.5 kHz creates inefficient "white spaces" in the VHF band. Additionally, they assert that the ability to use wideband equivalent technologies by aggregating narrowband channels is not taken into account in our rationale for rejecting 5 kHz spacing. We disagree with these petitioners. In a 5 kHz channel plan, a user would need to identify three contiguous channels to obtain a 12.5 kHz channel, but only two are required in the adopted plan. Thus, the adopted plan eases the transition for current users who desire to implement a two-step transition to narrowband through 12.5 kHz equipment. Petitioners also assert that inefficient white spaces are created by our adopted channel plan, since 12.5 kHz VHF equipment would actually use 15 kHz of spectrum by aggregating two 7.5 kHz VHF channels. However, to use 12.5 kHz equipment in a plan based on 5 kHz channels would also require licensees to use 15 kHz of spectrum because they would have to aggregate three 5 kHz channels. In the UHF band, 12.5 kHz equipment also would use 15 kHz of spectrum in a 5 kHz channel plan, but only 12.5 kHz of spectrum in the adopted plan. Furthermore, a 5 kHz channel plan would require users who choose to implement 6.25 kHz equipment to acquire the same 15 kHz of spectrum needed for 12.5 kHz equipment. Thus, a 5 kHz channel plan would create as much or more white space than the adopted channel plan.

4. Consequently, we conclude that our adopted 7.5/6.25 kHz channel plan is more flexible than a 5 kHz plan because it will accommodate users of 25, 12.5, 6.25, and 5 kHz equipment while accomplishing our goal of increasing spectrum efficiency. Further, this channel plan creates a flexible migration path, which is considered a critical factor by current users. For these reasons, we decline to modify the channel plan as adopted in the *R&O*. However, we are mindful of the fact that some users may want to implement 5 kHz technology within their existing 25 kHz bandwidth. Such a channelization, however, would require the licensee to deviate from the adopted band plan. Therefore, we will permit frequency coordinators to recommend frequencies inconsistent with the adopted band plan, for any technology, including 5 kHz, provided that such a system will not cause harmful interference to any existing system.

5. In the *R&O*, we decided to manage the transition to narrowband channels through the type acceptance process. This decision requires that new equipment type accepted after August 1, 1996, and January 1, 2005, meet specified efficiency guidelines. We note, however, that this approach does not impose a strict transition timetable upon individual users.

6. Petitioners argue that the conversion timetable for the type acceptance of narrowband equipment is too short and fails to account for normal product development cycles. They recommend that the first transition date be extended to August 1, 1998, and that the second transition date be extended to January 1, 2014. Other petitioners oppose this request stating that such action is not necessary because the *R&O* does not mandate the production or use of any particular type of technology according to a fixed timetable.

7. As noted, the transition dates established in the *R&O* do not require manufacturers to take any specific action. Consequently, we believe it is unnecessary to make extensive changes to the adopted transition dates and, thus, deny the request to do so. Additionally, we note that a number of manufacturers have already type accepted equipment that is compliant with the new rules. However, in consideration of the time elapsed between the *R&O* and adoption of this *MO&O*, and because this *MO&O* modifies rules which affect the type acceptance of equipment, we are extending the first transition date from August 1, 1996, to February 14, 1997. Additionally, to remove the uncertainty in trying to anticipate the amount of time necessary to attain a type acceptance grant, we are amending 47 CFR 90.203 to clarify that the transition dates refer to type acceptance application filing deadlines, rather than type acceptance grants.

8. The Association of Public-Safety Communications Officials-International, Inc. asks that we reconsider our decision not to adopt specific transition deadlines for public safety users. We decline to adopt such dates. The imposition of a mandate on any user, particularly public safety entities, to replace existing equipment and systems, is contrary to one of our basic goals in this proceeding of providing maximum flexibility to individual users. Also, since public safety entities are funded by local tax dollars, and are often constrained by limited financial resources, subjecting these entities to such a mandate could be unduly burdensome. Further, in light of the work of the Public Safety Wireless Advisory Committee and the Commission's overall evaluation and assessment of public safety wireless communications in WT Docket No. 96–86 (61 FR 25185, May 20, 1996), it would be premature at this time to make decisions regarding transition dates for public safety users.

9. In the *R&O*, we adopted spectrum efficiency standards that require at least one voice channel per 12.5 kHz of channel bandwidth for equipment type accepted after August 1, 1996, and at least one voice channel per 6.25 kHz of channel bandwidth for equipment type accepted after January 1, 2005. Additionally, after August 1, 1996, equipment designed for data operation must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of bandwidth.

10. Several petitioners request that the type acceptance rules be amended to allow alternative showings of spectrum efficiency for low power frequency reuse systems. We agree with the petitioners that there is a place within the PLMR environment for spectrum efficient low-power, frequency reuse systems. However, we will not alter the efficiency standard. instead, we will exempt all transmitters that operate with less than 500 mW output power from the bit rate requirement for type acceptance. Additionally, we will provide manufacturers with additional flexibility to design spectrally efficient transmitters. The Commission's Equipment Authorization Division may, on a case by case basis, grant type acceptance to equipment with slower bit rates than specified in 47 CFR 90.203(j)(3) and 47 CFR 90.203(j)(5), provided that an acceptable technical analysis is submitted with the application which demonstrates that the slower data rate will provide more spectral efficiency than the standard data rate.

11. Some petitioners asked that we clarify the distinction between digital voice and data. In this connection, we refer to the definitions in 47 CFR part 2. Radios type accepted for telephony must meet the voice channel standard, and those type accepted for telegraphy or telemetry must meet the data rate standard. Further radios that are type accepted for both telephony and telegraphy or telemetry must meet both standards. Additionally, because 47 CFR 90.207(b) allows stations authorized for telephony to use emissions for telecommand, the telecommand function of such radios will not be subject to the data rate standard Also, because transmissions made via modem through the external microphone port of an analog radio are limited to audio, the data rate standard will not be applied to such uses. Finally, we clarify that the spectrum efficiency requirements imposed by the *R&O* do not apply to paging systems.

12. In the *R&O*, we adopted new power and antenna height limitations based on "safe harbor" tables submitted by the Land Mobile Communications Council (LMCC). These new limits allow various combinations of effective radiated power (ERP) and antenna height above average terrain (HAAT) based upon the size of an applicant's desired service area and the applicant's operating frequency. In general, the rules allow for a maximum ERP of 500 watts and maximum service area radii of 40 km in the VHF band and 32 km in the UHF band. The rules state that larger areas, up to 80 km, will be authorized provided that the applicant demonstrates that the requested station parameters will not produce coverage in excess of that which is required. However, areas larger than 80 km will be authorized on a secondary basis. Finally, these new rules only apply to new stations, which were defined as stations not functionally integrated with an earlier-installed system.

13. Several petitioners argue that special separation criteria should be developed for systems that operate in the 150–174 MHz and 421–512 MHz bands under conditions of extreme terrain, that a streamlined process for deviating from the power/antenna height tables be considered for applicants that operate in areas of non-uniform terrain, that applicants be permitted to use any commonly accepted propagation model to demonstrate radio system coverage, and that a formal waiver not be required for such requests.

14. We agree that special consideration should be given to the power/antenna heights in areas of extreme terrain. We recognize that in these areas, average terrain calculations may not provide accurate depictions of the actual terrain over which a system will operate and therefore our tables may not provide an appropriate antenna height/power combination for a desired service area size. We are modifying 47 CFR 90.205(d)(2) and 47 CFR 90.205(g)(2) to reflect that applicants may deviate from the tables when operating in areas of non-uniform terrain. Additionally, the rules allow the use of generally accepted engineering practices and standards, including models that are widely accepted by the engineering community, as producing outputs representative of real world results. Applicants who demonstrate special circumstances (*e.g.* extreme terrain conditions or need for a larger service area) will not be required to submit a waiver request to the Commission. Rather, the required engineering analysis should be submitted to the frequency coordinator and as an attachment to the license application, FCC Form 600. Additionally, a waiver request will be unnecessary for applicants who request service areas greater than 40 km in the VHF band and 32 km in the UHF band. These applications, however, pursuant to footnote 4 in Tables 1 and 2 of 47 CFR 90.205, must be accompanied by a justification for the larger service area and include a technical analysis demonstrating that the signal strength at the edge of the service area is within the specified guidelines. Additionally, we will allow applicants to exceed the reference antenna height limits if they correspondingly lower their power.

15. Petitioners seek clarification of the rules that would classify all base stations with service areas greater than 80 km as secondary arguing that certain geographic areas, particularly in western regions, warrant special consideration because the terrain in those areas provide few suitable transmitter sites.

16. We note that licensees who need to communicate over large distances generally employ systems that make extensive use of mobile relay stations, which are afforded the protection of primary status under our rules. Because mobile relay stations would typically be within 80 km of another base station, primary status would be conferred on the entire area that a licensee needs to cover. We believe that coverage areas up to 80 km around a single base station will serve the vast majority of licensees and are modifying 47 CFR 90.205(d)(3) and 47 CFR 90.205(g)(3) to confer primary status for communications within 80 km from a base station. We also recognize that some licensees' operations may require primary status within a region larger than 80 km. Because we anticipate that a limited number of licensees will have such needs, we will entertain waiver requests for those instances where a licensee requests coverage by one base station for an area greater that 80 km.

17. Many petitioners seek clarification on what constitutes a new station. As a general matter, we elected to exempt existing stations from complying with the power/antenna height tables adopted in the *R&O* in order to afford licensees flexibility to modify, expand, or upgrade their facilities without adversely affecting their current operations. 47 CFR 90.135 provides examples of permissible modifications to authorized stations. Stations that modify their existing authorization in accordance with one of the listed modifications will not be subject to the new power/antenna height rules. We decline to grant a request to characterize the addition of base and mobile relay facilities that operate on different frequencies from an existing system as an existing system.

18. Because 47 CFR 90.135(a) allows licensees to modify their authorizations due to a change in emissions, the new power/antenna height limits will not apply to systems that are modified by converting to equipment designed for narrower channel bandwidths. Furthermore, if the only modification that a licensee makes to a system is a narrowing of its emission, a formal application for modification need not be filed with the Commission. However, the licensee will be required to notify the Commission of this change immediately, either by filing FCC Form 405–A or submitting a letter in accordance with 47 CFR 90.135(d).

19. Several organizations seek reconsideration of the power/antenna height tables as they relate to private carrier paging channels. We believe that our rules should reflect the differences between paging systems and the majority of two-way mobile systems in the PLMR bands. In this connection, we will allow new one-way paging operations to operate at the same power levels that applied prior to the adoption of the *R&O*, *i.e.*, for most stations, 350 watts output power with no limit on ERP, on the frequencies specifically reserved for one-way paging.

20. Regarding the decision regarding the ability of manufacturers to continue producing and supporting 25 kHz equipment through upgrades and permissive changes, some petitioners argue that it is unnecessary to prohibit manufacturers from making minor design changes to existing 25 kHz equipment because our rules already ensure a transition to more narrowband equipment. This request is opposed by Securicor Radiocoms Limited because it is inconsistent with the primary goal in this proceeding since it would excuse compliance with the multi-mode requirement. Our intent is to allow only those modifications which would provide a multi-mode capability or a narrowband mode to existing equipment. In these instances, manufacturers must obtain a new FCC Identifier for their equipment. Modifications which entail the redesign of existing equipment will not be allowed.

21. When compared to wideband channels, *i.e.*, 25 kHz channels, the rules adopted in the *R&O* allow emissions on narrowband channels to occupy a larger percentage of the channel. This combination of increased channel occupancy and narrower channel spacing increases the

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importance of frequency stability to reduce adjacent channel interference. Therefore, the Commission adopted stringent frequency stability requirements as recommended by the Telecommunications Industry Association (TIA).

22. SEA, Inc. contends that the frequency stability limits for mobile radios designed to operate with channel bandwidths of 6.25 kHz are too restrictive and recommends alternative limits. These recommendations are supported by Motorola. We agree that, in the VHF band, a less stringent requirement can be tolerated because of the presence of a small guard band. Further, we believe that the frequency coordination process can compensate for less stringent requirements in the UHF band. Therefore, we are modifying 47 CFR 90.213 in accordance with the suggestions of SEA.

23. In order to accommodate our new channel plan, we adopted new guidelines for authorized bandwidth. For equipment designed to operate on 7.5 kHz or 6.25 kHz channels, the authorized bandwidth is 6 kHz and for equipment designed to operate on 12.5 kHz channels the authorized bandwidth is 11.25 kHz. SEA requests that the authorized bandwidth for 6.25 kHz channels in the UHF and VHF bands be reduced to 5 kHz in order to allow same area operation on the narrowband channels.

24. We decline to reduce the authorized bandwidth from 6 kHz to 5 kHz. The 6 kHz authorized bandwidth was chosen to provide manufacturers with flexibility to implement a wide range of modulation techniques. We note, however, that the emission mask only serves as an upper limit and thus, manufacturers can employ any emission they desire as long as they do not exceed the specified limits. Therefore, if a manufacturer determines that same-area operations cannot be achieved on adjacent narrowband channels, it can design its equipment with narrower emissions.

25. When determining the shape of a frequency mask, it is essential that instrumentation requirements and measurement procedures are defined. In general, transmitter emissions are measured using established industry standards. In this connection, EIA/TIA Standard 603 instructs radio manufacturers to use a resolution bandwidth of 300 Hz or less. Consistent with this standard, in the *R&O*, we determined that emissions of equipment designed to operate in the Refarming bands should be measured using a resolution bandwidth of 100 Hz with the measuring instrument in a peak hold mode.

26. Motorola contends that using a resolution bandwidth of 100 Hz, rather than the 300 Hz recommended by TIA, adds 5 dB of energy to the adjacent channel and will result in reduced spectrum efficiency. SEA agrees with Motorola, but recommends that the resolution bandwidth be left at 100 Hz, and that the attenuation of the emission masks be adjusted 5 dB.

27. We decline to adjust the measurement technique adopted in the *R&O*. The current industry trend for measuring digital emissions just outside the channel, *i.e.*, the adjacent channel, is to use measuring instrumentation having a resolution capability of 1% of the bandwidth of the carrier emission. This is evidenced by measurement procedures and interpretations that have been developed in our rules for the licensed Personal Communications Services (PCS) and unlicensed PCS devices. A resolution bandwidth of 1% of the carrier emission bandwidth provides a reasonable compromise where the emission's interference potential can be measured and the instrumentation will not detrimentally affect the measurement. Using a 100 Hz resolution bandwidth for equipment in the Refarming bands approximates the 1% standard that has been accepted by the affected industries in other rule makings. Finally, we believe the claim of a 5 dB increase in energy to the adjacent channel to be overstated because it assumes a uniform level of energy across the measurement window without taking into account the roll-off of energy at the band edges that results from the emission mask. Therefore, we conclude that any effects on the adjacent channel will be less than 5 dB.

28. In order to promote flexibility for manufacturers to introduce new and innovative modulation techniques in the PLMR bands below 512 MHz, we revised 47 CFR 90.211 to eliminate those requirements that were primarily applicable to radios that use frequency modulation (FM). TIA supports our objective, but disagrees with our decision to remove specified deviation limits for FM and recommends that the modulation limits be reinserted into the rules with their respective filter characteristics. We disagree. Our rationale for removing the filter specifications from 47 CFR 90.211 and the FM deviation limits from 47 CFR 90.209 was to provide manufacturers flexibility in designing and implementing radio specifications. In this connection, we believe that setting specifications for FM would be inconsistent with such rationale.

29. With the adoption of a new channel plan, many frequency allocations and assignments were altered, particularly those of the former low power offset channels. One result of the new channel plan is that channels formally available as low power offset channels under Section 47 CFR 90.267 are now available as regularly assignable channels for high power operations. Additionally, the new channel plan resulted in a reallocation of some of these channels from one radio service to another by allocating channels that were between allocations for two different radio services to the radio service or services where the lower of the channels was allocated. Many Petitioners request that we reexamine permissible uses for several former offset channels. Upon reexamination, we are making several modifications to the frequency tables in 47 CFR part 90.

30. The *R&O* provided several operational alternatives for licensees authorized on the former low power offset channels. One option is to remain on their current channels and achieve primary status by providing sufficient justification to raise power. A second option is to migrate to designated low power channels and achieve primary status on those channels. A third option is to remain on their current channel at low power and continue to have secondary status.

31. The Alarm Industry Communications Committee (AICC) contends that licensees should be able to attain primary status without raising power. Additionally, they ask whether stations wishing to increase power need to file a letter notification or an application to provide coordinates. Finally, AICC suggests that the Commission continue to allow the current practice for alarm transmitters of providing coordinates for the center of an operating area and the radius around these coordinates in which transmitters will operate rather than requiring each fixed transmitter to be individually licensed.

32. As an initial matter, recognizing that any decision regarding changes in power requirements on former low power offset channels will be affected by our resolution of the exclusivity issues raised in the *Further Notice of Proposed Rule Making* (60 FR 37148, July 18, 1995) in this proceeding, we defer decisions on this matter to a future *Order*. Regarding the requirement to furnish coordinates, we note that situations exist where it is neither feasible nor desirable for a licensee to furnish coordinates of all transmitters in their system. Therefore, we will allow licensees to supply only coordinates of

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the center of an operating area and a radius when all stations are fixed, low power, *i.e.*, not to exceed 2 watts, stations.

33. When we eliminated the low power offset channels in the *R&O*, we established new low power offset channels 3.125 kHz removed from regularly assignable channels and authorized them on a secondary, non-interference basis. The creation of these channels was opposed by the Personal Communications Industry Association which contends that low power users will be accommodated through coordinator designated exclusive low power channels and the color dot channels and that these new low power offset channels will recreate difficulties which existed with the former low power offset channels Finally, they state that these new low power offset channels may have the unintended effect of preventing the use of primary channels by wideband, spectrally efficient systems. We agree that these low power offset channels could potentially have a detrimental effect on the operations on primary channels and will therefore remove the new low power offset channels from 47 CFR 90.267(b). However, in light of technological advances and usage patterns in these bands, we reserve the right to revisit this issue in the future.

34. When we established the Emergency Medical Radio Service (EMRS), we assigned the 453 MHz and 458 MHz frequencies used for medical paging systems in the Special Emergency Radio Service (SERS) to the EMRS. SERS users were permitted to continue operating on these channels as primary users for a period of five years. In the *R&O*, the SERS frequencies reassigned to the EMRS were rechannelized at the new narrowband spacings. Several petitioners request removal of the new channels that arose from splitting the 453 MHz and 458 MHz channels from the SERS. We agree and will remove the 453 MHz narrowband channels from the SERS frequency table in 47 CFR 90.53(a).

35. In the EMRS, MED channels are used for emergency medical communications. Prior to adoption of the *R&O*, there were 10 MED channels, designated as MED–1 through MED–10. The new channel plan created 3 new MED channels higher in frequency than each existing MED channel. These new channels, designated as MED-A through MED-X, were assigned as follows: MED-A, MED-B, and MED-C were assigned between MED–1 and MED–2, MED-D, MED-E, and MED-F were assigned between MED–2 and MED–3. The new MED channels higher in frequency than MED–9 and MED–10 were not labeled. Several Petitioners propose changing the MED channel labeling scheme to one that is entirely numeric.

36. We agree that a different labeling approach is needed for the new MED channels because any confusion regarding their designation could potentially interfere with the communication of messages necessary to ensure public safety. Therefore, we will use a trailing 1, 2, or 3 to designate the position of the new MED channels in relation to the existing MED channels. For example, the channel 6.25 kHz above MED–3 will be designated as MED–31, the channel 12.5 kHz above MED–3 as MED–32, and the channel 18.25 kHz above MED–3 as MED–33. We will adopt this labeling approach for designating the channel positions accorded to each of the 10 MED channels.

37. Currently, 47 CFR 90.217 exempts transmitters used in the Business Radio Service that have an output power not exceeding 120 milliwatts from the technical requirements imposed by our rules, provided that they meet minimum emission limitations. Many petitioners request that this exemption be expanded to include all PLMR services. We agree and are expanding the current exemption to include all private land mobile radio services.

38. In order to assure that transient frequencies do not cause excessive interference to land mobile licensees and television receivers in adjacent bands, the Commission adopted standards for transient frequency behavior. These standards are based on EIA/TIA standard 603, which sets allowable transient response for radios that operate in three frequency bands: 30–300 MHz, 300–500 MHz, and 500–1000 MHz.

39. Several petitioners request that we clarify the new rules by declaring that they are only applicable to equipment type accepted after a specific date. Motorola recommends that the three frequency band columns listed in 47 CFR 90.214 be replaced by two frequency band columns, one for 150–174 MHz and one for 421–512 MHz. We decline to modify the implementation date of § 90.214 of our rules. Since the new rules took effect on August 18, 1995, the Commission's Equipment Authorization Division has been granting type acceptance based on transmitters meeting all of the new technical requirements. Therefore, because there have been no objections to the transient frequency requirements of 47 CFR 90.214, we see no reason to grant type acceptance to transmitters that do not meet the new requirements. Additionally, granting type acceptance to radios that do not meet the new requirements would be administratively burdensome because it would create two categories of transmitters which would be difficult to track and identify in the future. We are, however adopting Motorola's recommendation to apply the standards for radios that operate in the 421–500 MHz band to radios that operate in the 500–512 MHz band.

40. In the *R&O*, we eliminated 47 CFR 90.271 which provided for 5 kHz narrowband channels that were offset either 2.5 kHz or 7.5 kHz from regularly assignable channels in the 150–170 MHz band. Additionally, the *R&O* permits licensees on these channels to remain on their currently authorized frequency until August 1, 2001 if interference is not experienced. Securicor asserts that users of these 5 kHz channels, who operate the most spectrally-efficient equipment in the PLMR bands, are being treated unfairly because they must modify their systems to comply with the new channel plan even if they do not experience or cause interference.

41. We share Securicor's concern about unnecessarily causing disruption to existing operations. Therefore, to accommodate the needs of our licensees and to prevent the premature obsolescence of narrowband systems that are already operating in the 150–174 MHz band, we will extend by two years, until August 1, 2003, the date by which these licensees must migrate to one of the new VHF channels. Additionally, licensees may remain on their currently assigned channels after August 1, 2003, on a secondary, non-interference basis.

42. We recently adopted rules in PR Docket No. 92–257 (60 FR 35507, July 10, 1995) to allow industrial and land transportation entities to use nine VHF maritime public correspondence channel pairs for standard two-way base/mobile operations. 47 CFR 90.283 imposes power/antenna height restrictions on these frequencies and requires minimum separation distances from protected entities.

43. LMCC requests that the 25 kHz wide channels listed in 47 CFR 90.283 of our rules be integrated into the new 6.25 kHz narrowband channel plan. We note that new 25 kHz Part 90 radios will no longer be type accepted in the 150–174 MHz band after the effective date of the rule amendments of this *MO&O*; thus, we find it unreasonable to require their use. Additionally, we believe that the current restrictions are sufficient to ensure that PLMR licensees operating on narrowband channels will not cause harmful interference to the protected

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entities. Therefore, we modify 47 CFR 90.283 to provide narrowband channel spacings for PLMR users on the shared maritime public correspondence frequencies.

44. The Industrial Telecommunications Association requests that we adopt changes in the power/antenna height tables of 47 CFR 90.283(c) and 47 CFR 90.283(d) to accommodate users that need to exceed the imposed limits due to circumstances such as terrain effects or coverage requirements. We are not modifying the rules, rather, we will require a request for waiver of the power/antenna height limits of 47 CFR 90.283.

45. With the adoption of this *Memorandum Opinion and Order*, we finalize the new channel plan and incorporate certain modifications to our regulatory and technical framework for the PLMR services in 47 CFR part 90. These new rules will provide greater technical flexibility for PLMR licensees and equipment manufacturers, promote the highly effective and efficient use of the PLMR spectrum, and create an environment which will provide users the opportunity to introduce advanced technologies into the private land mobile radio services.

46. The rules are set forth at the end of this document.

47. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

48. This *Memorandum Opinion and Order* and the rule amendments are issued under the authority of 47 U.S.C. 154(i), 303(r), and 405.

Final Regulatory Flexibility Analysis

49. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (56 FR 31097, July 9, 1991) in PR Docket 92–235. The Commission sought written public comments on the proposals in the Refarming Notice, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Memorandum Opinion and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[1]

[1] Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

A. Need For and Objective of the Proposed Rule

50. Our objective is to increase spectrum efficiency and facilitate the introduction of advanced technologies into the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz PLMR bands. The *Report and Order* in this proceeding modified the Commission's rules to resolve many of the technical issues which inhibited the use of spectrally efficient technologies in these frequency bands. This *MO&O* address petitions for reconsideration and clarification received in response to the Report and Order.

51. We find that the potential benefits to the PLMR community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by modifying our rules to increase the spectral efficiency of the PLMR bands.

B. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

52. No comments were submitted in direct response to the IRFA. We have, however, reviewed general comments that may impact small businesses.

C. Description and Estimate of the Number of Small Entities Subject to Which the Rules Apply

53. The rules adopted in this *Memorandum Opinion and Order* will apply to small business that choose to use, manufacture, or design radios that operate in the PLMR bands below 512 MHz. The are no Commission imposed requirements, however, for any entity to use or produce these products.

Estimates for PLMR Manufacturers

54. The Commission has not developed a definition of small entities specifically applicable to PLMR manufacturers. Therefore, for the purposes of this analysis, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio and television broadcasting and communications equipment manufacturers. The SBA defines a small entity in this category as one in which less than 750 persons are employed.[2]

55. Because the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that manufacture PLMR equipment and is unable at this time to determine the number of manufacturers which are small businesses. However, the 1992 Census of Manufacturers, conducted by the Bureau of Census, which is the most comprehensive and recent information available, shows that approximately 925 out of the 948 entities manufacturing radio and television transmitting equipment in 1992 employed less than 750 persons.[3] We are unable to discern from the Census data precisely how many of these manufacturers produce private land mobile radios. Further, any entity may choose to manufacture such radio equipment. Therefore, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, we estimate that there are at least 925 manufacturers and potential manufacturers of PLMR equipment which are small businesses, as that term is defined by the SBA.

[2] See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

Estimates for PLMR Licensees

56. Private land mobile radio system serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

57. Because the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that are private land mobile radio licensees. Therefore, the Commission is unable at this time to determine the number of small businesses which could be impacted by the rules. However, the Commission's fiscal year 1994 annual report indicates that at the end of fiscal year 1994 there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR

[3] See 1992 Census of Manufacturers, Industry Series, Communication Equipment, Including Radio and Television, Industries 3651, 3652, 3661, 3663, and 3669, Issued March 1995, Table 4. This table shows a total of 23 manufacturers with an average of 1,000 employees or more and 908 with an average of 499 employees or less. It lists a total of 17 manufacturers with an average of 500–999 employees. Because we could not determine the number of manufacturers in 500–999 category with an average of 750 employees or less, we assume all 17 are small businesses for the purpose of this evaluation.

bands below 512 MHz.[4] Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules

58. There are no general reporting or recordkeeping requirements. However, for certain requests we have substituted a new, less burdensome reporting requirement in place of a requirement for applicants to file applications for waiver or modification.

(1) In order to obtain a type acceptance grant, PLMR radios that transmit data must meet a specified spectrum efficiency standard—measured in bits per second per Hertz. For radios that transmit bit rates slower than the specified standard, our rules permit manufacturers an alternative to requesting a waiver of the technical rules. Type acceptance grants may be obtained, provided that the applicant submits a technical analysis which demonstrates that the slower data rate will provide more spectral efficiency than the standard data rate.

(2) Our rules provide allowable combinations of antenna height and effective radiated power (ERP) based on the size of the area an applicant intends to serve and a certain signal strength at the edge of this service area. Rather than filing a waiver request, we are allowing applicants to exceed the reference antenna height, provided they correspondingly lower their ERP and demonstrate that the signal strength of their system at the edges of their service area meets the general limits.

(3) Licensees, when making changes to their radio systems, are normally required to file an application for modification. However, in instances where the only modification to a radio system is a narrowing of its operating bandwidth, we will not require an application for modification. Instead, we are only requiring that licensees notify the Commission of the change.

E. Steps Taken by Agency To Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

59. The Commission, in this *MO&O*, has considered petitions to reconsider the rules adopted in the *Report and Order* in this proceeding. In doing so, the Commission has adopted several alternatives which minimize burdens placed on small entities. First, the Commission reaffirms its decision to implement the transition to narrowband equipment through the type acceptance process. Users are not required to replace their existing systems, rather they are provided flexibility to choose a transition schedule that best fulfills their needs while balancing technical capabilities and financial considerations. Second, private paging systems, many of which are operated by small entities, will not be subject to many of the new rules. This approach, by not imposing new requirements on private paging licensees, will lower the cost of expanding such systems. Third, we provide applicants the ability to deviate from the new power/antenna height restrictions, which only apply to new stations, without applying for a waiver. This approach eliminates the need for small entities to remit waiver fees of $125 per rule section per station. Additionally, it eliminates the need for small entities to expend clerical support to prepare these waiver requests. Fourth, we allow manufacturers to make permissive changes to previously type accepted equipment. This will allow small entities to continue supporting their existing equipment and customer base in advance of changing their production facilities to manufacture radios compliant with the new spectrum efficiency rules. Fifth, we ease the frequency stability requirements for narrowband radios and extend the exemption from technical standards for low power transmitters to all radio services. These changes will lower development and production costs for small entities. Sixth, we will not require licensees operating on 5 kHz channels under former § 90.271 of our rules to comply with the new channel plan by August 1, 2001. Instead, these licensees can continue operating on their current frequency as long as they do not cause interference to other users. This approach will lower costs to small entities by not requiring those who operate such systems to modify them sooner than necessary or at all.

F. Commission's Outreach Efforts To Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. 609

60. The Commission has, in this proceeding, taken several steps to learn and respond to the views of small entities. In response to the Refarming Notice, we held two public forums. On November 14, 1991, the Private Radio Bureau, in cooperation with the Annenberg Washington Program, Communications Policy Studies of Northwestern University, sponsored a conference on Refarming and on May 16, 1993, the Private Radio Bureau held a Refarming technology Roundtable. Additionally, throughout the course of this proceeding the representatives of the Private Wireless Division (PWD) of the Wireless Telecommunications Bureau have had numerous ex parte discussions with small entities or their representatives. For example, the PWD has met with many of the frequency coordinators for the nineteen PLMR services.[5]

G. Report to Congress

61. The Commission shall send a copy of this final Regulatory Flexibility analysis, along with the Memorandum Opinion and Order, in a report to Congress pursuant to the SBREFA.[6] A copy of this FRFA will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission
William F. Caton,
Acting Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

2. Section 90.17 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(31) to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
•	•	•
Megahertz:		
•	•	•
150 to 170	Base or Mobile	29, 31

* * * * *

(c) * * *

(31) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz

[4] See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

[5] Many of the frequency coordinators are trade associations and represent their members, many of which are small entities, views on telecommunications matters.

[6] See 5. U.S.C. 801(a)(1)(A).

removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

3. Section 90.19 is amended by revising the entries for 150 to 170 MHz, and 460.0125 MHz in the frequency table in paragraph (d) and adding paragraphs (e)(35) and (e)(36) to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(d) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	33, 35
.	.	.
460.0125	.....do	26, 36

* * * * *

(e) * * *

(35) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

(36) Use of this frequency is on a secondary basis and subject to the provisions of § 90.267(a)(3), (a)(4), (a)(5), and (a)(7)

* * * * *

4. Section 90.21 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(23) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	21, 23

* * * * *

(c) * * *

(23) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

5. Section 90.23 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(24) to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	21, 24

* * * * *

(c) * * *

(24) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

6. Section 90.25 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(28) to read as follows:

§ 90.25 Forestry-Conservation Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	25, 28

* * * * *

(c) * * *

(28) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

7. Section 90.27 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b), by revising the tables in paragraphs (c)(11) and (c)(13)(i), and by adding paragraph (c)(29) to read as follows:

§ 90.27 Emergency Medical Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	28, 29

* * * * *

(c) * * *

(11) * * *

Frequencies base and mobile (MHz)	Mobile only (MHz)	Channel name
462.950	467.950	MED–9
462.95625	467.95625	MED–91
462.9625	467.9625	MED–92
462.96875	467.96875	MED–93
462.975	467.975	MED–10
462.98125	467.98125	MED–101
462.9875	467.9875	MED–102
462.99375	467.99375	MED–103

* * * * *

(13) * * *

(i) * * *

Frequencies base and mobile (MHz)	Mobile only (MHz)	Channel name
463.000	468.000	MED–1
463.00625	468.00625	MED–11
463.0125	468.0125	MED–12
463.01875	468.01875	MED–13
463.025	468.025	MED–2
463.03125	468.03125	MED–21
463.0375	468.0375	MED–22
463.04375	468.04375	MED–23
463.050	468.050	MED–3
463.05625	468.05625	MED–31
463.0625	468.0625	MED–32
463.06875	468.06875	MED–33
46.075	46.075	MED–4
463.08125	468.08125	MED–41
463.0875	468.0875	MED–42
463.09375	468.09375	MED–43
463.100	468.100	MED–5
463.10625	468.10625	MED–51
463.1125	468.1125	MED–52
463.11875	468.11875	MED–53
463.125	468.125	MED–6
463.13125	468.13125	MED–61
463.1375	468.1375	MED–62
463.14375	468.14375	MED–63
463.150	468.150	MED–7
463.15625	468.15625	MED–71
463.1625	468.1625	MED–72
463.16875	468.16875	MED–73
463.175	468.175	MED–8
463.18125	468.18125	MED–81
463.1875	468.1875	MED–82
463.19375	468.19375	MED–83

* * * * *

(29) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

8. Section 90.53 is amended by revising the entries for 150 to 170 MHz and 458.0375 MHz, removing the entries for 453.03125 MHz, 453.03750 MHz, 453.04375 MHz, 453.08125 MHz, 453.08750 MHz, 453.09375 MHz, 453.13125 MHz, 453.13750 MHz, 453.14375 MHz, 453.18125 MHz, 453.18750 MHz, 453.19375 MHz, 462.0125 MHz, 462.0375 MHz, 462.0625 MHz, 462.0875 MHz, 462.1125 MHz, 462.1375 MHz, 462.1625 MHz, 462.1775 MHz, 467.0125 MHz, 467.0375 MHz, 467.0625 MHz, 467.0875 MHz, 467.1125 MHz, 467.1375 MHz, 467.1625 MHz, 467.1875 MHz, and adding entries for 458.0125 MHz, 463.0125 MHz, 463.0375 MHz, 463.0625 MHz, 463.0875 MHz, 463.1125 MHz, 463.1375 MHz, 463.1625 MHz, 463.1875 MHz, 468.0125 MHz, 468.0375 MHz, 468.0625 MHz, 468.0875 MHz, 468.1125 MHz, 468.1375 MHz, 468.1625 MHz, and 468.1875 MHz in the frequency table in paragraph (a), and adding paragraph (b)(39) to read as follows:

§90.53 Frequencies available.

(a) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	36, 39
.	.	.
458.0125	Mobile	38
458.0375	.....do	38
.	.	.
463.0125	.....do	38
463.0375	.....do	38
463.0625	.....do	38
463.0875	.....do	38
463.1125	.....do	38
463.1375	.....do	38
463.1625	.....do	38
463.1875	.....do	38
.	.	.
468.0125	.....do	38
468.0375	.....do	38
468.0625	.....do	38
468.0875	.....do	38
468.1125	.....do	38
468.1375	.....do	38
468.1625	.....do	38
468.1875	.....do	38

* * * * *

(39) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

9. Section 90.63 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(31) to read as follows:

§90.63 Power Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	29, 31

* * * * *

(d) * * *

(31) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

10. Section 90.65 is amended by revising the entry for 150 to 170 MHz, removing the second entry for 456.525 MHz, and adding entries for 456.7375 MHz and 462.5125 MHz in the frequency table in paragraph (b) and adding paragraph (c)(48) to read as follows:

§90.65 Petroleum Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	45, 48
.	.	.
456.7375	.....do	46
.	.	.
462.5125	Mobile	46

* * * * *

(c) * * *

(48) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

11. Section 90.67 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(43) to read as follows:

§90.67 Forest Products Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	39, 43

(c) * * *

(43) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

12. Section 90.69 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(16) to read as follows:

§90.69 Film and Video Production Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
.	.	.
Megahertz:		
.	.	.
150 to 170	Base or Mobile	15, 16

* * * * *

(c) * * *

(16) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

13. Section 90.73 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c)

and adding paragraph (d)(42) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	39, 42

* * * * *

(d) * * *

(42) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

14. Section 90.75 is amended by revising the entries for 150 to 170 MHz, 150.830 MHz, 150.920 MHz, 151.070 MHz, 151.190 MHz, 151.310 MHz, 152.480 MHz, 157.740 MHz, 460.66250 MHz, 460.68750 MHz, 460.71250 MHz, 460.73750 MHz, 460.76250 MHz, 460.78750 MHz, 460.81250 MHz, 460.83750 MHz, 460.86250 MHz, 460.88750 MHz, 462.750 MHz, 462.775 MHz, 462.800 MHz, 462.825 MHz, 462.850 MHz, 462.875 MHz, 462.900 MHz, 462.925 MHz, 462.93750 MHz, 462.94375 MHz, 463.200 MHz, 464.4875 MHz, 464.5125 MHz, 464.5375 MHz, 464.5625 MHz, 464.98750 MHz, 465.01250 MHz, 465.650 MHz, 465.66250 MHz, 465.68750 MHz, 465.71250 MHz, 465.73750 MHz, 465.76250 MHz, 465.78750 MHz, 465.81250 MHz, 465.83750 MHz, 465.86250 MHz, 465.88750 MHz, 469.4875 MHz, 469.5125 MHz, 469.5375 MHz, and 469.5625 MHz, adding entries for 154.585 MHz and 467.9375 MHz in the table in paragraph (b) and adding paragraphs (c)(53), (c)(54), and (c)(55) to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
Megahertz:		
*	*	*
150 to 170	Base or Mobile	48, 54
*	*	*
150.830	Base	8, 10, 12, 49, 55
*	*	*
150.920	Base	8, 10, 12, 49, 55
*	*	*
151.070	Base	8, 10, 12, 49, 55
*	*	*
151.190	Base	8, 10, 12, 49, 55
*	*	*
151.310	Base	8, 10, 12, 49, 55
*	*	*
152.480	Base	10, 11, 12, 49, 55
*	*	*
154.585	.....do	4, 13, 22, 38, 24
*	*	*
157.740	Base	10, 11, 12, 49, 55
*	*	*
460.6625	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.6875	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.7125	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.7375	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.7625	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.7875	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.8125	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.8375	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.8625	.....do	2, 15, 24, 25, 26, 53
*	*	*
460.8875	.....do	2, 15, 24, 25, 26, 53
*	*	*
462.750	Base	10, 49, 55
*	*	*
462.775	Base	10, 49, 55
*	*	*
462.800	Base	10, 49, 55
*	*	*
462.825	Base	10, 49, 55
*	*	*
462.850	Base	10, 49, 55
*	*	*
462.875	Base	10, 49, 55
*	*	*
462.900	Base	10, 49, 55
*	*	*
462.925	Base	10, 49, 55
462.9375	Mobile	52
462.94375	Base or mobile	46
463.200	.....do	1, 2, 26
*	*	*
464.4875	.....do	1, 2, 24, 26, 29
*	*	*
464.5125	.....do	1, 2, 24, 26, 29
*	*	*
464.5375	.....do	1, 2, 24, 26, 29
*	*	*
464.5625	.....do	1, 2, 24, 26, 29
*	*	*
464.9875	Mobile	52
*	*	*
465.0125	Mobile	52
*	*	*
465.650	.....do	2, 4, 25, 26, 31
*	*	*
465.6875	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.7125	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.7375	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.7625	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.7875	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.8125	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.8375	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.8625	.....do	2, 15, 24, 25, 26, 53
*	*	*
465.8875	.....do	2, 15, 24, 25, 26, 53
*	*	*
466.0125	.....do	2, 15, 24, 25, 26, 53
*	*	*
467.9375	.....do	2, 15, 24, 25, 26, 53
*	*	*
469.4875	.....do	2, 15, 24, 25, 26, 53
*	*	*
469.5125	.....do	2, 15, 24, 25, 26, 53
*	*	*
469.5375	.....do	2, 15, 24, 25, 26, 53
*	*	*
469.5625	.....do	2, 15, 24, 25, 26, 53
*	*	*

Frequency or band	Class of station(s)	Limitations
*	* * *	*
465.6875	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7125	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7375	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7625	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7875	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8125	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8375	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8625	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8875	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
466.0125	.....do	1, 2, 24, 28, 39, 53
*	* * *	*
467.9375	.....do	24, 52
*	* * *	*
469.4875	.....do	1, 2, 24, 26
*	* * *	*
469.5125	.....do	1, 2, 24, 26
*	* * *	*
469.5375	.....do	1, 2, 24, 26
*	* * *	*
469.5625	.....do	1, 2, 24, 26

* * * * *

(c) * * *

(53) This frequency may be used on a secondary, non-interference basis by a hospital or health care institution holding a license to operate a radio station under this part to operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission.

(54) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

(55) One-way paging transmitters on this frequency may operate with an output power of 350 watts.

* * * * *

15. Section 90.79 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(32) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	30, 32

* * * * *

(d) * * *

(32) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

16. Section 90.81 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(19) to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	17, 19

* * * * *

(d) * * *

(19) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

17. Section 90.89 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(27) to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	24, 27

* * * * *

(c) * * *

(27) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

18. Section 90.91 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(25) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	23, 25

* * * * *

(c) * * *

(25) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

19. Section 90.93 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(20) to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	18, 20

* * * * *

(c) * * *

(20) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

20. Section 90.95 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(24) to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	21, 24

* * * * *

(d) * * *

(24) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

21. Section 90.135 is amended by revising paragraph (a)(2), redesignating paragraph (b)(5) as paragraph (b)(6), adding a new paragraph (b)(5), revising the first and last sentences in paragraph (d) and revising the first sentence in paragraph (e) to read as follows:

§ 90.135 Modification of license.

(a) * * *

(2) Change in the type of emission, except under the conditions specified in paragraph (b)(5) of this section.

* * * * *

(b) * * *

(5) Change in the type of emission when:

(i) Operation is in the 150–174 MHz or 421–512 MHz bands; and

(ii) The modification will be for a narrower emission than specified in the current authorization.

* * * * *

(d) In case of a change listed in paragraphs (b)(1), (b)(2), or (b)(5) of this section, the licensee must notify the Commission immediately. * * * Licensees whose licenses are due for renewal and who have received the renewal Form 574–R in the mail from the Commission must use the appropriate boxes on that form to notify the Commission of a change listed in paragraphs (b)(1), (b)(2), or (b)(5) of this section.

(e) In the case of a change listed in paragraphs (b)(3), (b)(4), and (b)(6) of this section, the licensee must notify the Commission within 30 days of the change. * * *

* * * * *

22. Section 90.173 is amended by revising paragraph (a) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

(a) The frequencies which ordinarily may be assigned to stations in the services governed by this part are listed in subparts B, C, D, E, and F of this part. Frequencies other than those listed in subparts B, C, D, and E may be assigned in the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz bands, provided such applications are accompanied by a showing of frequency coordination in accordance with the requirements of Section 90.175. Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

* * * * *

23. Section 90.203 is amended by revising paragraph (j) to read as follows:

§90.203 Type acceptance required.

* * * * *

(j) Except where otherwise specifically provided for, transmitters operating on frequencies in the 150–174 MHz and 421–512 MHz bands must comply with the following.

(1) Applications for type acceptance received prior to February 14, 1997, will be granted for equipment with channel bandwidths up to 25 kHz.

(2) Applications for type acceptance received on or after February 14, 1997 will only be granted for equipment with the following channel bandwidths:

(i) 12.5 kHz or less for single bandwidth mode equipment or multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz;

(ii) 25 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 25 kHz if it is capable of operating on channels of 12.5 kHz or less; and

(iii) 25 kHz if the equipment meets the efficiency standard of paragraph (j)(3) of this section.

(3) Applications for Part 90 type acceptance of transmitters designed to operate on frequencies in the 150–174 MHz and /or 421–512 MHz bands, received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of 6.25 kHz or more, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(4) Applications for type acceptance received on or after January 1, 2005, except for hand-held transmitters with an output power of two watts or less, type acceptance will only be granted for equipment with the following channel bandwidths:

(i) 6.25 kHz or less for single bandwidth mode equipment;

(ii) 12.5 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz if it is capable of operating on channels of 6.25 kHz or less;

(iii) 25 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 25 kHz if it is capable of operating on channels of 6.25 kHz or less; and

(iv) Up to 25 kHz if the equipment meets the efficiency standard of paragraph (j)(5) of this section.

(5) Applications for Part 90 type acceptance of transmitters designed to operate on frequencies in the 150–174

MHz and/or 421–512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of 6.25 kHz or more, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(6) Modification and permissive changes to type acceptance grants.

(i) The Commission's Equipment Authorization Division will not allow adding a multi-mode or narrowband operation capability to single bandwidth mode transmitters, except under the following conditions:

(A) Transmitters that have the inherent capability for multi-mode or narrowband operation allowed in paragraphs (j)(2) and (j)(4) of this section, may have their grant of Type Acceptance modified (reissued) upon demonstrating that the original unit complies with the technical requirements for operation; and

(B) New FCC Identifiers will be required to identify equipment that needs to be modified to comply with the requirements of paragraphs (j)(2) and (j)(4) of this section.

(ii) All other applications for modification or permissive changes will be subject to the Rules of part 2 of this chapter.

(7) Transmitters designed for one-way paging operations will be type accepted with a 25 kHz channel bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

(8) The Commission's Equipment Authorization Division may, on a case by case basis, grant type acceptance to equipment with slower data rates than specified in paragraphs (j)(3) and (j)(5) of this section, provided that a technical analysis is submitted with the application which describes why the slower data rate will provide more spectral efficiency than the standard data rate.

(9) Transmitters used for stolen vehicle recovery on 173.075 MHz must comply with the requirements of Section 90.19(f)(7).

24. Section 90.205 is amended by revising paragraph (d)(2), the last sentence of paragraph (d)(3), paragraph (g)(2), the last sentence of paragraph (g)(3), and adding a new paragraph (n) to read as follows:

§90.205 Power and antenna height limits.

* * * * *

(d) * * *

(2) Applications for stations where special circumstances exist that make it necessary to deviate from the ERP and antenna heights in Table 1 will be submitted to the frequency coordinator accompanied by a technical analysis, based upon generally accepted engineering practices and standards, that demonstrates that the requested station parameters will not produce a signal strength in excess of 37 dBu at any point along the edge of the requested service area. The coordinator may then recommend any ERP appropriate to meet this condition.

(3) * * * For base stations with service areas greater than 80 km, all operations 80 km or less from the base station will be on a primary basis and all operations outside of 80 km from the base station will be on a secondary basis and will be entitled to no protection from primary operations.

* * * * *

(g) * * *

(2) Applications for stations where special circumstances exist that make it necessary to deviate from the ERP and antenna heights in Table 2 will be submitted to the frequency coordinator accompanied by a technical analysis, based upon generally accepted engineering practices and standards, that demonstrates that the requested station parameters will not produce a signal strength in excess of 39 dBu at any point along the edge of the requested service area. The coordinator may then recommend any ERP appropriate to meet this condition.

(3) * * * For base stations with service areas greater than 80 km, all operations 80 km or less from the base station will be on a primary basis and all operations outside of 80 km from the base station will be on a secondary basis and will be entitled to no protection from primary operations.

* * * * *

(n) The output power shall not exceed by more than 20 percent either the output power shown in the Radio Equipment List [available in accordance with §90.203(a)(1)] for transmitters included in this list or when not so listed, the manufacturer's rated output power for the particular transmitter specifically listed on the authorization.

25. Section 90.207 is amended by revising the introductory text of paragraph (a) and adding the symbol W to paragraphs (a)(1) and (a)(3) to read as follows:

§ 90.207 Types of emissions.

* * * * *

(a) *Most common emission symbols.* For a complete listing of emission symbols allowable under this part, see §2.201 of this chapter.

(1) * * *

W—Cases not covered above, in which an emission consists of the main carrier modulated, either simultaneously or in a pre-established sequence, in a combination of two or more of the following modes: amplitude, angle, pulse.

* * * * *

(3) * * *

W—Combination of the above.

* * * * *

26. Section 90.211 is amended by revising paragraph (a) to read as follows:

§ 90.211 Modulation requirements.

* * * * *

(a) Transmitters utilizing analog emissions that are equipped with an audio low-pass filter must meet the emission limitations specified in §90.210. Testing must be in accordance with the rules specified in part 2 of this chapter.

* * * * *

27. Section 90.213 is amended by revising the entries for 150–174 MHz, 421–512 MHz, 806–821 MHz, 821–824 MHz, and 896–901 MHz, revising footnotes 6, 7, and 8, and adding footnote 14 to the table in paragraph (a) to read as follows:

§ 90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
* * * * * * *			
150–174	[5] [11] 5	[6] 5	[4] [6] 50
* * * * * * *			
421–512	[7] [11] [14] 2.5	[8] 5	[8] 5
806–821	[14] 1.5	2.5	2.5
821–824	[14] 1.0	1.5	1.5
* * * * * * *			
896–901	[14] 0.1	1.5	1.5
* * * * * * *			

[4] Stations operating in the 154.45 to 154.49 MHz or the 173.2 to 173.4 MHz bands must have a frequency stability of 5 ppm.

[5] In the 150–174 MHz band, fixed and base stations with a 12.5 kHz channel bandwidth must have a frequency stability of 2.5 ppm. Fixed and base stations with a 6.25 kHz channel bandwidth must have a frequency stability of 1.0 ppm.

[6] In the 150–174 MHz band, mobile stations designed to operate with a 12.5 kHz channel bandwidth or designed to operate on a frequency specifically designated for itinerant use or designed for low-power operation of two watts or less, must have a frequency stability of 5.0 ppm. Mobile stations designed to operate with a 6.25 kHz channel bandwidth must have a frequency stability of 2.0 ppm.

[7] In the 421–512 MHz band, fixed and base stations with a 12.5 kHz channel bandwidth must have a frequency stability of 1.5 ppm. Fixed and base stations with a 6.25 kHz channel bandwidth must have a frequency stability of 0.5 ppm.

[8] In the 421–512 MHz band, mobile stations designed to operate with a 12.5 kHz channel bandwidth must have a frequency stability of 2.5 ppm. Mobile stations designed to operate with a 6.25 kHz channel bandwidth must have a frequency stability of 1.0 ppm.

* * * * * * * * *

[11] Paging transmitters operating on paging-only frequencies must operate with frequency stability of 5 ppm in the 150–174 MHz band and 2.5 ppm in the 421–512 MHz band.

* * * * * * *

[14] Control stations may operate with the frequency tolerance specified for associated mobile frequencies.

* * * * *

28. Section 90.214 is revised to read as follows:

§ 90.214 Transient frequency behavior.

Transmitters designed to operate in the 150–174 MHz and 421–512 MHz frequency bands must maintain transient frequencies within the maximum frequency difference limits during the time intervals indicated:

Time intervals [1, 2]	Maximum frequency difference [3]	All equipment	
		150 to 174 MHz	421 to 512 MHz
Transient Frequency Behavior for Equipment Designed to Operate on 25 kHz Channels			
t_1 [4]	± 25.0 kHz	5.0 ms	10.0 ms
t_2	± 12.5 kHz	20.0 ms	25.0 ms
t_3 [4]	± 25.0 kHz	5.0 ms	10.0 ms
Transient Frequency Behavior for Equipment Designed to Operate on 12.5 kHz Channels			
t_1 [4]	± 12.5 kHz	5.0 ms	10.0 ms
t_2	± 6.25 kHz	20.0 ms	25.0 ms
t_3 [4]	± 12.5 kHz	5.0 ms	10.0 ms
Transient Frequency Behavior for Equipment Designed to Operate on 6.25 kHz Channels			
t_1 [4]	± 6.25 kHz	5.0 ms	10.0 ms
t_2	± 3.125 kHz	20.0 ms	25.0 ms
t_3 [4]	± 6.25 kHz	5.0 ms	10.0 ms

[1] t_{on} is the instant when a 1 kHz test signal is completely suppressed, inciuding any capture time due to phasing.
t_1 is the time period immediately following t_{on}.
t_2 is the time period immediately following t_1.
t_3 is the time period from the instant when the transmitter is turned off until t_{off}.
t_{off} is the instant when the 1 kHz test signal starts to rise.

[2] During the time from the end of t_2 to the beginning of t_3, the frequency difference must not exceed the limits specified in § 90.213.

[3] Difference between the actual transmitter frequency and the assigned transmitter frequency.

[4] If the transmitter carrier output power rating is 6 watts or less, the frequency difference during this time period may exceed the maximum frequency difference for this time period.

29. Section 90.217 is amended by revising the introductory text and the first sentence in paragraph (a) to read as follows:

§ 90.217 Exemption from technical standards.

Except as noted herein, transmitters used at stations licensed in the Business Radio Service and at stations licensed in the 150–174 MHz and 421–512 MHz bands in any Radio Service listed in Subparts B, C, D, and E of this Part which have an output power not exceeding 120 milliwatts are exempt from the technical requirements set out in this subpart, but must instead comply with the following:

(a) For equipment designed to operate with a 25 kHz channel bandwidth, * * *

* * * * *

§ 90.267 [Amended]

30. Section 90.267 is amended by removing and reserving paragraph (b).

31. Section 90.283 is amended by revising the table in paragraph (a), revising paragraph (c) and adding paragraph (g) to read as follows:

§ 90.283 Inter-service sharing of maritime frequencies in the 156–162 MHz band.

(a) * * *

FREQUENCY (MHz)

Mobile station transmit	Mobile station transmit
157.200	161.800
157.20625 [1]	[1] 161.80625
157.2125 [2]	[2] 161.8125
157.21875 [1]	[1] 161.81875
157.225	161.825
157.23125 [1]	[1] 161.83125
157.2375 [2]	[2] 161.8375
157.24375 [1]	[1] 161.84375
157.250	161.850
157.25625 [1]	[1] 161.85625
157.2625 [2]	[2] 161.8625
157.26875 [1]	[1] 161.86875
157.275	161.875
157.28125 [1]	[1] 161.88125
157.2875 [2]	[2] 161.8875
157.29375 [1]	[1] 161.89375
157.300	161.900
157.30625 [1]	[1] 161.90625
157.3125 [2]	[2] 161.9125
157.31875 [1]	[1] 161.91875
157.325	161.925
157.33125 [1]	[1] 161.93125
157.3375 [2]	[2] 161.9375
157.34375 [1]	[1] 161.94375
157.350	161.950
157.35625 [1]	[1] 161.95625
157.3625 [2]	[2] 161.9625
157.36875 [1]	[1] 161.96875
157.375	161.975
157.38125 [1]	[1] 161.98125
157.3875 [2]	[2] 161.9875
157.39375 [1]	[1] 161.99375

FREQUENCY (MHz)—Continued

Mobile station transmit	Mobile station transmit
157.400	162.000

[1] This frequency will be assigned with an authorized bandwidth not to exceed 6 kHz.

[2] This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz.

* * * * *

(c) Station power, as measured at the output terminals of the transmitter, must not exceed 50 watts for base stations and 20 watts for mobile stations, except in accordance with the provisions of paragraph (g) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g) of this section. Such base and mobile stations must not be operated on board aircraft in flight.

* * * * *

(g) Applicants seeking to be licensed for stations exceeding the power/antenna height limits of the table in paragraph (d) of this section are required to secure a waiver and must submit with the application, an interference analysis, based upon any of the generally-accepted terrain-based propagation models, that shows that co-channel protected entities, described in paragraph (d) of this section, would receive the same or greater interference protection than provided in the table.

32. Section 90.311 is amended by revising the introductory text of paragraph (b) to read as follows.

§90.311 Frequencies.

* * * * *

(b) Miami, FL, Dallas, TX, and Houston, TX urbanized areas. Only the first and last assignable frequencies are shown. Assignable frequencies will occur in increments of 6.25 kHz. Frequencies listed in paragraph (a)(3) of this section will only be assigned with a maximum authorized bandwidth of 6 kHz.

* * * * *

[FR Doc. 97–831 Filed 1–14–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1185

[STB Ex Parte No. 543]

Revision of Regulations for Interlocking Rail Officers

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) abolished the Interstate Commerce Commission (ICC) and transferred certain rail regulatory functions to the Surface Transportation Board (Board). The ICCTA revised the statute concerning restrictions on officers and directors. Under new 49 U.S.C. 11328, individuals seeking to hold the position of officer or director only of Class III railroads are no longer required to seek Board authorization. This publication contains our final rules implementing the statute.

EFFECTIVE DATE: The rules are effective on February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking served May 10, 1996, and published in the **Federal Register** on May 13, 1996 (61 FR 22014), we proposed to revise 49 CFR part 1185 to reflect this statutory change (Pub. L. 104–88, 109 Stat. 803 (1995)) and to propose other changes to our rules. Comments were filed by Joseph C. Szabo, for and on behalf of the United Transportation Union, Illinois Legislative Board (UTU), and by the Association of American Railroads (AAR).

The Board is adopting final rules in this decision. This decision is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289–4357.

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. In response to the statutory change, this rule will reduce regulation and it imposes no new reporting requirements on small entities. Requirements for the form of the application have been slightly modified to conform to the Board's rules of practice.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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List of Subjects in 49 CFR Part 1185

Administrative practice and procedure, Railroads.

Decided: December 31, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X, part 1185 of the Code of Federal Regulations is revised to read as follows:

PART 1185—INTERLOCKING OFFICERS

Sec.

1185.1 Definitions and scope of regulations.
1185.2 Contents of application.
1185.3 Procedures.
1185.4 General authority.
1185.5 Common control.
1185.6 Jointly used terminal properties.

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 721, 10502, and 11328.

§1185.1 Definitions and scope of regulations.

(a) This part addresses the requirement of 49 U.S.C. 11328 authorization of the Surface Transportation Board (STB) needed for a person to hold the position of officer or director of more than one rail carrier, except where only Class III carriers are involved. STB authorization is not needed for individuals seeking to hold the positions of officers or directors only of Class III railroads. 49 U.S.C. 11328(b).

(b) When a person is an officer of a Class I railroad and seeks to become an officer of another Class I railroad, an application under 49 U.S.C. 11328(a) (or petition for individual exemption under 49 U.S.C. 10502) must be filed. All other "interlocking directorates" have been exempted as a class from the prior approval requirements of 49 U.S.C. 11328(a), pursuant to 49 U.S.C. 10502 and former 49 U.S.C. 10505. For such interlocking directorates exempted as a class, no filing with the STB is necessary to invoke the exemption.

(c) An *interlocking directorate* exists whenever an individual holds the position of officer or director of one rail carrier and assumes the position of officer or director of another rail carrier. This provision applies to any person who performs duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent or chief purchasing agent.

(d) For purposes of this part, a *rail carrier* means a person providing common carrier railroad transportation for compensation (except a street, suburban, or interurban electric railway not operating as part of the general system of rail transportation), and a corporation organized to provide such transportation.

§1185.2 Contents of application.

(a) Each application shall state the following:

(1) The full name, occupation, business address, place of residence, and post office address of the applicant.

(2) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of, and accurate description of, such securities of each carrier for which the applicant seeks authority to act. (Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by the applicant, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.)

(3) Each and every position with any carrier:

(i) Which is held by the applicant at the time of the application; and

(ii) Which the applicant seeks authority to hold, together with the date and manner of his or her election or appointment thereto and, if the applicant has entered upon the performance of his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize that person to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(4) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in rail transportation. (If any such carrier neither operates nor owns any railroad providing transportation that is subject to 49 U.S.C. 10501, the application shall include a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date or, if already filed with the former Interstate Commerce Commission (ICC) or with the STB, a reference thereto, with any intervening amendments.)

(5) A full statement of pertinent facts relative to any carrier involved which does not make annual reports to the STB.

(6) Full information as to the relationship—operating, financial, competitive, or otherwise—existing between the carriers covered by the requested authorization.

(7) Every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(8) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(9) Whether or not any other application for authority has been made in behalf of the applicant and, if so, the date and docket number thereof, by whom made, and the action thereon, if any.

(b) When application has been made on behalf of any person, a subsequent application by that person need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

§ 1185.3 Procedures.

The original application or petition shall be signed by the individual applicant or petitioner and shall be verified under oath. Petitions and applications should comply with the STB's general rules of practice set forth at 49 CFR part 1104. Applications or petitions may be made by persons on their own behalf.

§ 1185.4 General authority.

Any person who holds or seeks specific authority to hold positions with a carrier may also request general authority to act as an interlocking officer for all affiliated or subsidiary companies or properties used or operated by that carrier, either separately or jointly, with other carriers. A carrier may apply for general authority on behalf of an individual who has already received authority to act as an interlocking officer. However, a carrier may not apply for general authority for an individual who holds a position with another railroad which is not an affiliate or subsidiary of the carrier or whose properties are not used or operated by the carrier, either separately or jointly with other carriers.

§ 1185.5 Common control.

It shall not be necessary for any person to secure authorization to hold the position of officer or director of two or more carriers if such carriers are operated under common control or management either:

(a) Pursuant to approval and authority of the ICC granted under former 49 U.S.C. 11343–44 or by the STB granted under 49 U.S.C. 11323–24; or

(b) Pursuant to an exemption authorized by the ICC under former 49 U.S.C. 10505 or by the STB under 49 U.S.C. 10502; or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

§ 1185.6 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is relieved from the provisions of this part to the extent that he or she may also hold a directorship and any other position to which that person may be elected or appointed with a terminal railroad the properties of which are operated or used by the carrier jointly with other carriers.

[FR Doc. 97–953 Filed 1–14–97; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 010997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Registration Area E

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment to prevent overfishing; request for comments.

SUMMARY: NMFS has determined that the currently specified total allowable catch (TAC) amount for scallops in Registration Area E is incorrect. Therefore, NMFS is reducing the TAC and apportioning it between parts of Registration Area E that are east and west of 146° W. long. NMFS also is apportioning the current *C. bairdi* crab bycatch limit (CBL) specified for Registration Area E between the area east and west of 146° W. long. These actions are necessary to avoid localized overfishing of the scallop resource and achieve the optimum yield from the scallop fishery. They are intended to promote the goals and objectives of the Fishery Management Plan for the Scallop Fishery off Alaska (FMP).

DATES: 1200 hrs, Alaska local time (A.l.t.), January 10, 1997, until 2400 hrs, A.l.t., June 30, 1997. Comments must be received at the following address no later than 1630 hrs, A.l.t., January 27, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska in the exclusive economic zone is managed by NMFS according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 679. General regulations that pertain to the U.S. fisheries appear at 50 CFR part 600.

The 1996–1997 TAC for scallops and the *C. bairdi* CBL in Registration Area E are established by the 1996–1997 Harvest Specifications (61 FR 38099, July 23, 1996) as 50,000 lbs (22,686 kg) of shucked scallop meat and 630 *C. bairdi* crab.

The Alaska Department of Fish and Game (ADF&G) conducted a survey that assessed the scallop abundance and age structure of the scallop population within Registration Area E after the 1996–1997 Harvest Specifications were published. This information indicated that recruitment to the area was very low and that a harvest of the 50,000 lbs (22,686 kg) of shucked scallop meat would risk localized overfishing of the scallop stock in Registration Area E.

The Administrator, Alaska Region, NMFS (formerly Regional Director), has determined, in accordance with §§ 679.25(a)(2)(i)(A) and 679.63(a), that recent resource survey data collected by the ADF&G warrants an adjustment of the scallop TAC and *C. bairdi* CBL specified for Registration Area E to prevent overfishing of scallops.

NMFS, therefore, is reducing the TAC specified for Registration Area E from 50,000 lbs (22,686 kg) to 22,300 lbs (10,115 kg) of shucked scallop meat. Furthermore, consistent with resource distribution determined by the ADF&G survey, NMFS is subdividing Registration Area E into parts east and west of 146° W. long. and is apportioning the reduced TAC for Registration Area E as follows: In the part of Registration Area E east of 146° W. long., 17,300 lbs (7,847 kg) of shucked scallop meat is authorized for harvest; in the area of Registration Area E west of 146° W. long., 5,000 lbs (2,268 kg) of shucked scallop meat is authorized for harvest. Consistent with this action, the CBL of *C. bairdi* crab is apportioned as follows: 500 *C. bairdi* crab in the area of Registration Area E east of 146° W. long.; 130 *C. bairdi* crab in the area of Registration Area E west of 146° W. long. The apportionment of TAC and CBL between waters east and west of 146° W. long. is necessary to prevent localized overfishing in either of these subareas within Registration Area E.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing scallops in Registration Area E. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 27, 1997.

Classification

This action is taken under § 679.63 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 9, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–941 Filed 1–10–97; 12:29 pm]
BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 950727194–6365–04; I.D. 111296B]
RIN 0648–AG54

Fisheries of the Exclusive Economic Zone Off Alaska; Technical Amendment; Correction and Clarification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is correcting several sections of regulations that contain

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minor errors. These errors resulted from NMFS' consolidation of six parts in title 50 of the CFR, related to the Alaska regulations, into one CFR part in response to the President's Regulatory Reform Initiative, and from an earlier consolidation and reorganization of management measures for use in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). NMFS is also revising terms that have changed resulting from recent changes in legislation and a reorganization within NMFS.

EFFECTIVE DATE: February 14, 1997.

ADDRESSES: Comments on the collection-of-information requirements may be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) (0648–0213), Washington, D.C. 20503, and to Patsy A. Bearden, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages groundfish fisheries in the exclusive economic zone (EEZ) off Alaska under authority of the following fishery management plans (FMPs): The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

On February 13, 1996, NMFS published a final rule in the **Federal Register** (61 FR 5608) implementing new and consolidated recordkeeping and reporting regulations for the GOA and BSAI groundfish fisheries that: Removed and consolidated several sections of regulations in 50 CFR parts 672 and 675; simplified and streamlined the remaining regulations, including the recordkeeping and reporting requirements; consolidated area descriptions and coordinates into maps and tables; consolidated codes, values, and descriptions into tables; corrected errors; and clarified vague text. Some errors were inadvertently added to the regulatory text of the final rule, including the addition of the word "estimated" in recordkeeping and reporting requirements of discards and donations, and the omission of a sentence in the definition of "fishing trip" with respect to the groundfish directed fishing standards.

As part of the President's Regulatory Reform Initiative, NMFS issued a final rule (61 FR 31228, June 19, 1996) removing parts 671, 672, 673, 675, 676, and 677 of title 50 CFR, and consolidating the regulations contained therein into one new part (50 CFR part 679). No substantive changes were made to the regulations by the consolidation of the six parts. However, due to the complexity of the reorganization, some errors were introduced into the regulatory text.

This action makes no substantive changes and corrects: (1) Check-in/check-out requirements for land-based buying stations, Western Alaska Community Development Quota fisheries, and catcher/processors; (2) reporting requirements by stipulating that landings, products, and discards on weekly production reports and daily production reports be recorded in metric tons only; (3) closure requirements for groundfish as prohibited species by adding text related to total allowable catch levels for gear types, because the regulations contain closure requirements for groundfish as prohibited species; the text was inadvertently omitted during prior regulatory consolidations; (4) requirements for recording discards by removing the word "estimated," which was inadvertently added during consolidation of regulations; (5) catcher vessel logbook exemption language by requiring all catcher vessels to submit a U.S. vessel activity report; (6) Table 2 by adding black rockfish to the category, "pelagic shelf rockfish" and the definition of "fishing trip" with respect to directed fishing standards; (7) prohibitions related to the careful release of halibut caught with hook-and-line gear as applicable to both the GOA and the BSAI rather than just limited to the GOA; and (8) the definition for the Bering Sea and Aleutian Islands Area as it relates to the king and Tanner crab fishery. This action also adds several cross references and clarifies the CDQ sablefish fishing season and the definition of "Buying station."

On April 13, 1995, NMFS announced that the NMFS Reorganization Plan had been approved by NOAA leadership and that, within each of the five regions of the country, the Regional Director would assume the role of Regional Administrator and have direct responsibility for all science and management programs, personnel, and financial resources. Therefore, this final rule replaces references to the Regional Director contained in part 679 with Regional Administrator.

On October 11, 1996, the President signed into law the Sustainable Fisheries Act. This law amended the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act was retitled the "Magnuson-Stevens Fishery Conservation and Management Act." Therefore, all references in part 679 to the Magnuson Act have been revised to refer to the retitled Magnuson-Stevens Act.

Classification

Because this technical amendment makes only minor, non-substantive corrections to an existing rule, prior notice and opportunity for public comment would serve no purpose. Accordingly, the Assistant Administrator for Fisheries, under 5 U.S.C. 553(b)(B), for good cause finds that prior notice and opportunity for public comment are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collections have been approved by OMB under control number 0648–0213.

The estimated response times for these requirements are: 0.25 hours for a Daily Fishing Logbook, 0.42 hours for a Daily Cumulative Logbook, 0.45 hours for a Daily Cumulative Production Logbook, 0.17 hours for a Daily Production Report, and 0.13 hours for check-in and check-out reports. The estimated response times include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection-of-information.

Send comments regarding this burden estimate or any other aspect of this collection-of-information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

This rule makes minor technical changes to a rule that has been

determined to be not significant under E.O. 12866. No changes in the regulatory impact previously reviewed and analyzed will result from implementation of this technical amendment.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: January 9, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.1, paragraphs (c) and (g) are revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(c) *Moratorium on entry (applicable through December 31, 1998).* Regulations in this part govern a moratorium on the entry of new vessels in the commercial fisheries for groundfish in the GOA and BSAI and in the commercial fisheries for king and Tanner crabs in the Bering Sea and Aleutian Islands Area (see subparts A and D of this part).

* * * * *

(g) *Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area EEZ that are determined to be inconsistent with the FMP (see subparts A, B, and E of this part).

* * * * *

3. In § 679.2, the definition of "Bering Sea and Aleutian Islands Area" is added and the definitions of "Bering Sea and Aleutian Islands Management Area (BSAI)", "Buying station", paragraph (1) of the definition of "Fishing trip", "Moratorium crab species", and "Superexclusive registration area" are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial King and Tanner crab fisheries, means those waters of the EEZ off the west coast of Alaska lying south of Point Hope (68°21′ N. lat), and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164°44′36″ W. long).

Bering Sea and Aleutian Islands Management Area (BSAI), for purposes of regulations governing the groundfish fisheries, means the Bering Sea and Aleutian Islands subareas (see Figure 1 of this part).

* * * * *

Buying station means a person or tender vessel that receives unprocessed groundfish from a vessel for delivery to a shoreside processor or mothership and that does not process those fish.

* * * * *

Fishing trip means:

(1) With respect to groundfish directed fishing standards, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed after the effective date of the notification prohibiting directed fishing in a management area under § 679.20(d), § 679.21(d) or § 679.21(e) until:

(i) The offload or transfer of all fish or fish product from that vessel;

(ii) The vessel enters or leaves an area to which a directed fishing prohibition applies;

(iii) The end of a weekly reporting period, whichever comes first.

* * * * *

Moratorium crab species (applicable through December 31, 1998) means species of king or Tanner crabs harvested in the Bering Sea and Aleutian Islands Area, the commercial fishing for which is governed by this part.

* * * * *

Superexclusive registration area means any State of Alaska designated registration area within the Bering Sea and Aleutian Islands Area where, if a vessel is registered to fish for crab, that vessel is prohibited from fishing for crab in any other registration area during that registration year.

* * * * *

4. In § 679.3, paragraph (d) is revised to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(d) *King and Tanner crab.* Additional regulations governing conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands Area are contained in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

* * * * *

5. In § 679.4, paragraphs (c)(3)(iii) and (c)(4)(iii)(A) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(c) * * *

(3) * * *

(iii) Catcher vessels or catcher/processor vessels less than or equal to 32 ft (9.8 m) LOA that catch and retain moratorium crab species in the Bering Sea and Aleutian Islands Area or that conduct directed fishing for moratorium groundfish species in the BSAI.

* * * * *

(4) * * *

(iii) * * *

(A) Fishing gear requirements for the Bering Sea and Aleutian Islands Area crab fisheries are set forth in the Alaska Administrative Code at title 5, chapters 34 and 35.

* * * * *

6. In § 679.5, paragraphs (a)(1)(iii), (a)(7)(v)(E), (a)(10)(i)(A) and (B), (h)(2)(ii)(A), (h)(2)(ii)(D), (h)(3)(i)(E), (i)(3)(ii) through (v), (j)(2), and (j)(4)(ii) through (iv) are revised, and paragraphs (h)(2)(i)(C) and (h)(2)(ii)(F) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(1) * * *

(iii) A catcher vessel less than 60 ft (18.3 m) LOA, is not required to comply with recordkeeping and reporting requirements contained in § 679.5(a) through (j).

* * * * *

(7) * * *

(v) * * *

(E) Whether harvest is under a CDQ program; if yes, the CDQ number. If fishing under more than one CDQ number, use a separate page for each.

* * * * *

(10) * * *

(i) * * *

(A) The operator or manager must record the daily total, balance brought forward, and cumulative total round fish weight in the DFL, DCL, or DCPL each day on the day discards and donations occur for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in pounds, or to at least the nearest 0.01 mt.

(B) The operator or manager must record the daily total balance brought forward, and cumulative total numbers in the DFL, DCL, or DCPL each day on the day discards or donations occur for

each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(C) *Directed fishing under a CDQ allocation.* The operator must submit by fax a check-in report to the Regional Director prior to directed fishing for each CDQ allocation.

(ii) * * *

(A) *Catcher/processor.* If a catcher/processor departs a reporting area or moves between Alaska State and Federal waters in a reporting area, and gear retrieval is complete from that area, the operator must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area or leaving either the Alaska State or Federal part of a reporting area or either the Alaska State or Federal part of a reporting area.

* * * * *

(D) *Buying station delivering to a shoreside processor.*

(*1*) If a land-based buying station delivering to a shoreside processor, the manager must submit by fax a check-out report to the Regional Director within 24 hours after delivery of groundfish ceases for the fishing year or for a period greater than one weekly reporting period.

(*2*) If a buying station vessel delivering to a shoreside processor, the operator must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area.

* * * * *

(F) *Directed fishing under a CDQ allocation.* The operator must submit by fax a check-out report to the Regional Director within 24 hours after directed fishing for each species under each CDQ allocation has ceased.

(3) * * *

(i) * * *

(E) Whether harvest is under a CDQ program; if yes, the CDQ number. If fishing under more than one CDQ number, use a separate report for each.

* * * * *

(i) * * *

(3) * * *

(ii) *Landings information.* The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section, except that each groundfish landing must be reported only in metric tons to at least the nearest 0.01 mt.

(iii) *Discarded/donated species information (Part ID).* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must report discarded/donated species information as described in paragraph (a)(10) of this section, except that each groundfish or herring discard/donation must be reported only in metric tons to at least the nearest 0.01 mt.

(iv) *Product information.* The operator of a catcher/processor or mothership, or the manager of a shoreside processor must report product information as described in paragraph (a)(9) of this section, except that each groundfish product must be reported only in metric tons to at least the nearest 0.01 mt.

(v) *Catcher vessel delivery information.* If ADF&G fish tickets are issued, the operator of the mothership or manager of the shoreside processor must list the fish ticket numbers issued to catcher vessels for the weekly reporting period, including the fish ticket numbers issued by an associated buying station.

(j) * * *

(2) *Applicability.* (i) If a catcher/processor or mothership is checked in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator must submit a DPR.

(ii) If a shoreside processor is receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the manager must submit a DPR.

(iii) The operator of a catcher/processor or mothership or the manager of a shoreside processor must use a separate DPR for each gear type, processor type, and CDQ number.

* * * * *

(4) * * *

(ii) *Landings information.* The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section, except that each groundfish landing must be reported only in metric tons to at least the nearest 0.01 mt.

(iii) *Product information.* The operator of a mothership or catcher/processor must report product information as described in paragraph (a)(9) of this section, except that each groundfish product must be reported only in metric tons to at least the nearest 0.01 mt.

(iv) *Discarded/donated species information.* The operator of a mothership or catcher/processor or the manager of a shoreside processor must report discarded/donated species information as described in paragraph (a)(10) of this section, except that each groundfish or herring discard/donation must be reported only in metric tons to at least the nearest 0.01 mt.

* * * * *

7. In § 679.7, paragraph (b)(1) is removed. Paragraph (b)(2) is redesignated as paragraph (a)(13) and the paragraph designation for (b)(3) is removed.

8. In § 679.20, paragraph (d)(2) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(2) *Groundfish as prohibited species closure.* When the Regional Director determines that the TAC of any target species or the "other species" category specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species or the "other species" be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * * * *

9. In § 679.22, paragraph (g) is added to read as follows:

§ 679.22 Closures

* * * * *

(g) *Scallop closures and closed areas.* See § 679.62(c) and § 679.62(d).

10. In § 679.23, paragraphs (e)(2)(ii)(B) and (e)(3)(ii) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Directed fishing for pollock by the offshore component, or vessels delivering pollock to the offshore component is prohibited through 1200 hours, A.l.t., February 5, for those vessels that are used to fish prior to 1200 hours, A.l.t., January 26, for groundfish in the BSAI, groundfish in the GOA, as defined at § 679.2, or king or Tanner crab in the Bering Sea and Aleutian Islands Area, as defined at § 679.2.

* * * * *

(3) * * *

(ii) *CDQ sablefish.* Fishing for CDQ sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that it may occur only during the

IFQ fishing season specified in paragraph (g)(1) of this section.

* * * * *

11. In Table 2 under Group Codes, the entry for Code 169 is amended by adding the term "black", in alphabetical order, to the terms in parentheses.

Nomenclature Changes

12. In part 679, remove the term "Regional Director" wherever it occurs and add in its place the term "Regional Administrator".

13. In part 679, remove the term "Regional Director's" wherever it occurs and add in its place the term "Regional Administrator's".

14. In part 679, remove the term "Director, Alaska Region, NMFS," wherever it occurs and add in its place the term "Administrator, Alaska Region, NMFS,".

15. In part 679, remove the term "Magnuson Act" wherever it occurs and add in its place the term "Magnuson-Stevens Act".

[FR Doc. 97-1005 Filed 1-14-97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 10
Wednesday, January 15, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is proposing to amend the regulation governing confidential financial disclosure for executive branch employees, to: update the standardized confidential disclosure report form designation by adding reference to the new OGE Form 450, which is replacing the old SF 450; and authorize all executive branch agencies to use a standardized certificate of no new interests (OGE Optional Form 450–A) as an alternative procedure in lieu of OGE Form 450, for regular employee annual confidential disclosure filers who can make the required certifications.

DATES: Comments are invited and must be received on or before March 17, 1997.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: G. Sid Smith. Copies of the draft proposed OGE Optional Form 450–A are available by contacting Mr. Smith or Mr. Gressman at OGE, telephone: 202–208–8000.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD:202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Proposed Certificate of No New Interests Regulation).

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 1992, the Office of Government Ethics (OGE) published a new financial disclosure regulation for the executive branch, as codified at 5 CFR part 2634, which implemented provisions of the Ethics Reform Act of 1989 and Executive Order 12674 (as modified by E.O. 12731), to reauthorize both a public and a confidential financial disclosure system for certain executive branch employees. See 57 FR 11800–11830, as corrected at 57 FR 21854–21855 and 62605. Among other subsequent revisions, OGE amended § 2634.601 of that regulation on July 21, 1993, to supply the then-current designation, Standard Form (SF) 450, for the form used by confidential disclosure filers throughout the executive branch. See 58 FR 38911–38913. On November 30, 1993, OGE also amended § 2634.907 of that regulation, to exempt from the confidential reporting requirement certain deposit accounts, money market funds and accounts, and U.S. Government obligations and securities. See 58 FR 63023–63024.

Those exemptions, along with several clarifying and simplifying features, were incorporated into a new OGE Form 450, after appropriate **Federal Register** paperwork notices on September 1 and December 6, 1995, and clearance through the Office of Management and Budget. See 60 FR 45722–45723 and 62469–62471. A camera-ready copy of the new OGE Form 450 was distributed by OGE on February 27, 1996, to all designated agency ethics officials, for local copying and immediate use as a replacement for the SF 450.

The proposed regulatory amendment that is being published herein would update 5 CFR 2634.601, to reflect the new form's designation as OGE Form 450. Supplies of the old SF 450 that are held by agencies or obtained from the Federal Supply Service may continue to be used first, if agencies prefer, until the old SF 450's clearance under the Paperwork Reduction Act expires on August 31, 1997. The form designation in the regulation is proposed to be amended, to reflect the phaseout of the SF 450 and its ongoing replacement with OGE Form 450, which has already become the primary format in general use.

The second purpose of this proposed regulatory amendment would be to authorize all executive branch agencies to use a standardized certificate of no new interests as an alternative procedure in lieu of OGE Form 450, for regular employee annual confidential disclosure filers who can make the required certifications. The current regulation provides at 5 CFR 2634.905 that agencies may exclude certain employees from confidential financial disclosure reporting, even though their positions have been designated for filing. To exclude such employees, an agency must determine that, because of the nature of their duties, either (a) the possibility of a conflict is remote, or (b) their duties involve a low level of responsibility, or (c) the use of an alternative procedure, approved in writing by OGE, is adequate to prevent conflicts. The proposed regulatory amendment being published herein concerns alternative procedures, and would authorize all executive branch agencies to use a new optional alternative certificate for certain regular employees.

Under authority of 5 CFR 2634.905(c), approximately 20 individual departments and agencies have already received written approval from OGE for alternative procedures which were found to be adequate in preventing conflicts, either as supplements to or in lieu of the SF/OGE Form 450. Some of these alternatives require affirmative disclosure of certain financial interests, and some have taken the form of a certificate of no conflict between the employee s official duties and outside financial interests (the latter being used primarily for special Government employees who serve for a short period of time). All of these previously approved agency-specific alternatives would remain valid and unaffected by the proposed additional alternative certificate that this regulatory amendment would authorize as an option for all executive branch agencies.

In response to a Cabinet-level department s request in 1995, OGE approved on an experimental basis the use of a certificate of no new interests in lieu of filing an annual SF/OGE Form 450, by that department s regular employees who would otherwise have to file confidential financial disclosure reports. That proposal offered a unique opportunity to test a new alternative not

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previously authorized for any agency—a statement certifying that filers (and their spouse and dependent children) have acquired no new interests since filing their most recent SF/OGE Form 450, and that neither the filer nor spouse has changed jobs or job responsibilities since filing that report.

The department which tested this alternative reported to OGE in April 1996 that the experiment was an overwhelming success during the 1995 filing cycle, from the standpoint of easing the administrative burden on filers and agency ethics officials, while continuing to guard against conflicts of interest. Over half (718) of that department s 1277 regular employees who would otherwise have had to file an annual SF/OGE Form 450 utilized the alternative certificate. The department recommended that this alternative certificate be continued, and that it be expanded for use by other departments and agencies.

Prior to proposing expanded use of this alternative certificate, OGE wanted to obtain suggestions from the various executive branch agencies. Consequently, OGE conducted a survey of agency ethics officials in June 1996, to which 79 agencies responded, and a focus group of approximately 100 ethics officials in attendance at the September 1996 OGE Ethics Conference in Philadelphia, Pennsylvania, to discuss the issue. The survey revealed that all respondents were in favor of expanding the option of using this certificate to their agencies. A significant number of participants at the focus group also expressed their support for its use.

Based on input from both the survey and the focus group, OGE has now determined that it would be appropriate to propose to authorize throughout the executive branch the optional use of an OGE-developed certificate of no new interests in lieu of an OGE Form 450, for regular employee annual confidential financial disclosure filers who can make the required certifications. (If a filer could not make the proposed required certifications because there had been changes, then a new OGE Form 450 would have to be filed.) The proposed regulatory amendment being published herein would accomplish that authorization, and would prescribe a uniform format and methodology.

Note that this proposed certificate of no new interests would be a confidential document, and would have to be accorded the same privacy protections as the OGE Form 450. Thus, no member of the public could have access to a completed certificate of no new interests, except as authorized by law. See 5 CFR 2634.604(b) and 2634.901(d). The draft OGE Optional Form 450–A includes a Privacy Act statement to that effect.

While this proposed regulatory amendment concerns regular employees only, a similar standardized certificate for special Government employees (SGE) who serve on advisory committees for more than one year remains under consideration. Agencies and members of the public are encouraged to provide comments to OGE during this rulemaking if they believe that use of such a certificate for SGEs would also be appropriate.

II. Analysis of Amendments to the Regulation

The following sections of 5 CFR part 2634 are proposed to be amended to accomplish the two changes outlined above. The first change proposed, adding the new form designation, would be purely administrative. The second proposed change would exercise existing OGE authority in § 2634.905(c) of the regulation to approve alternative procedures in writing, and would do so by means of a general regulatory amendment (new proposed paragraph (d) of § 2634.905), rather than on an agency-by-agency basis. Furthermore, use of this alternative certificate would be entirely optional with each agency, and even if the agency did decide it would be beneficial to adopt, each affected employee would retain the option of either using the certificate (if applicable) or filing a new OGE Form 450. Thus, this proposed regulatory amendment would not mandate any new requirements for agencies or their employees. It would simply respond to a need for additional flexibility that OGE and a number of agencies and employees have identified.

Section 2634.601

In addition to the proposed addition of a reference to the new OGE Form 450 designation, the amendments to this section of the regulation would add reference to a new OGE Optional Form 450–A (Confidential Certificate of No New Interests), as proposed, which would be authorized by new § 2634.905(d). The proposed amendments would also describe how both forms may be obtained and stocked. Specifically, OGE has previously provided a camera-ready version of the OGE Form 450 to each designated agency ethics official (DAEO), who then has supplies reproduced locally. Likewise, OGE intends to distribute a camera-ready version of the proposed OGE Optional Form 450–A, once a final version of it is adopted at the time this rulemaking is finalized, for local reproduction of supplies by DAEOs. The OGE Form 450 is also available from OGE in electronic format, from which paper copies may be printed. The electronic format may be obtained from OGE on computer disk, or through OGE s electronic bulletin board TEBBS ("The Ethics Bulletin Board System") at 202–208–8030, or via OGE's World Wide Web Site at http://www.access.gpo.gov/usoge. The Office of Government Ethics will make the proposed OGE Optional Form 450–A, once finally adopted as referenced in the regulation, so available in electronic format. For now, the proposed form is available for review by contacting OGE directly.

Section 2634.905(d)

The format and methodology for the proposed certificate of no new interests which would be authorized for certain confidential filers by the amendments as proposed to this section of the regulation have been formulated to accommodate the general consensus of opinions expressed in OGE s recent survey and focus group, as follows:

(a) The proposed format would retain its essential character as a certificate of no new interests, as proposed and tested at a Cabinet-level department last year and favored by 84% of the respondents to OGE s survey, rather than a certificate of no change (no new interests and no divestitures), or a statement affirmatively detailing new interests and divestitures. A certificate of no new interests would permit the greatest number of filers to use this alternative to OGE Form 450, while avoiding ambiguity and confusion in a filer's disclosure history.

(b) Only regular employee annual filers (not new entrants or special Government employees) would be eligible to use the proposed certificate of no new interests, as its use would presuppose that an initial OGE Form 450 had been filed for the position, that could serve as a point of reference. Its due date would be the same as specified in the regulation for the annual OGE Form 450 that would otherwise be due.

(c) Filers could use the proposed certificate for a maximum of three consecutive years before being required to file a new OGE Form 450 every fourth year. Over half (58%) of the respondents to OGE s survey recommended this time frame. Alternatively, the proposed amendments would authorize agencies to choose, under this section of the regulation, to allow use of the certificate for only one year (or two years), and to require a new OGE Form 450 every second (or third) year.

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(d) In each year divisible by four, beginning in 2000 (or divisible by two or three, beginning in 1998, if agencies were to choose one of the more frequent options), all regular employee annual confidential disclosure filers would have to file a new OGE Form 450, regardless of how recently they might have filed that form (either as a new entrant or as an annual filer in years when they could not qualify to use, or chose not to use, the optional certificate). Although this proposed requirement might be time-consuming for filers and ethics officials periodically, it is necessary in order to eliminate the significant administrative difficulties inherent in a proposed system that would otherwise permit tracking on an individual basis the number of years each filer had used the alternative certificate. Furthermore, it was preferred by 63% of the respondents to OGE s survey.

(e) As indicated on OGE Optional Form 450–A, eligible filers would have the option of using either OGE Optional Form 450–A (if applicable) or OGE Form 450, whichever they prefer. Agencies would, therefore, normally provide them with a blank OGE Form 450 and its accompanying three pages of instructions at the same time that the future blank OGE Optional Form 450–A were distributed. This proposed suggestion is the result of OGE's test of the certificate last year, as well as its survey and focus group. First, the instructions to OGE Form 450 would be necessary as guidance to certificate users on what is meant by reportable interests. Second, it is anticipated that, even once the new proposed certificate system is finally adopted, approximately half of annual confidential disclosure filers will still file the OGE Form 450 rather than the optional certificate, either because they will have new reportable interests or they will otherwise choose to file a new OGE Form 450. That was the case at the department where OGE tested this procedure last year. If agencies preferred not to attach a blank OGE Form 450 and its accompanying instructions, then they could develop separate written guidance to advise certificate users of what is meant by reportable interests, or they might refer users to the guidance contained in any agency-approved electronic software for the OGE Form 450 and its accompanying instructions, if readily available.

(f) Since the proposed certificate would be a partial update of a previous OGE Form 450 that had already been reviewed and kept on file by the agency, certificate users would generally not be required by the amendments to the regulation as proposed to attach their previous OGE Form 450. However, they would have to certify as part of the alternative format that they had reexamined their most recent previous filing. In this regard, filers ought to be encouraged to retain copies of the most recent OGE Form 450 which they have filed, so that an agency's ethics office would not become overburdened with providing them copies. Not requiring certificate users to attach their previous OGE Form 450 would promote the purposes for using a certificate as proposed: to reduce paperwork and to simplify procedures for both filers and ethics officials. However, under these proposed amendments, an agency could require its employees to attach a copy of their previous OGE Form 450, if it determined that the previous form should be reexamined by supervisors or that its attachment were otherwise necessary.

While not all agencies will agree with these specific requirements as proposed, they are necessary in OGE's view in order to preserve general uniformity and to maintain adequate checks on potential employee conflicts of interest in the least confusing or burdensome manner. The proposed requirements outlined above offer considerable flexibility, within the prescribed framework, such that a variety of agencies should find this alternative procedure workable once finally adopted. Of course, agencies would not be required to use a certificate of no new interests at all; this proposed regulatory amendment would merely establish a pre-approved option for their consideration. However, if agencies chose to use the option as proposed, they would have to follow the prescribed methodology and format. Under these proposed amendments, if an agency wished to deviate from the prescribed methodology and format, it would have to seek separate OGE approval in writing. In this regard, OGE has already determined, through consultation with the Office of Management and Budget, that the particular certificate format proposed to be authorized herein is in conformity with the Paperwork Reduction Act, and would require no further clearance. This is because its use would be strictly optional for employees, it would be used exclusively by current Government employees, and it would not require affirmative disclosure of substantive information.

As noted above, the proposed general executive-branchwide regulatory authorization for a certificate of no new interests would not eliminate any other alternative procedures that have been approved by OGE in writing, on an agency-specific basis.

Before using the alternative certificate to be authorized by this proposed amendment, agencies would have to make the determination required by new § 2634.905(d) of the regulation, as proposed, that the certificate would be adequate to prevent conflicts of interest. Once that determination had been made, an agency could use the proposed alternative certificate for all or specified groups of its eligible filers, provided they were given the option of either filing the certificate (if applicable) or a new OGE Form 450, whichever the employee preferred.

In deciding whether to adopt this proposed optional alternative certificate at a particular agency, once the new procedure is finally adopted by OGE for the executive-branchwide use at each agency's option, the agency should give consideration to its unique circumstances. For some, a certificate of no new interests might not be suitable because the potential for conflict might change from year to year, even though an employee's actual job description or official responsibilities remained unchanged and the employee did not acquire any new financial interests. Agencies with relatively few confidential filers or a high percentage of filers with new interests each year might decide that authorizing a certificate in lieu of an annual OGE Form 450 might not significantly reduce their administrative burden. Agencies with large numbers of filers might be concerned that any administrative time saved could be outweighed by the potential for confusing filers, or that use of the certificate might burden filers with the need to maintain copies of previously filed OGE Form 450s for examination prior to certifying that they had not acquired any new interests, or that the agency itself might be inundated with requests for copies of previously filed reports. Some agencies might decide that the certificate proposed would not meet their needs because it would not account for divestitures. Other agencies might be concerned that filers would lose the proper focus on conflict prevention, if filing requirements were relaxed.

While these concerns should not present insurmountable problems for most agencies, they were raised by some respondents during OGE s recent survey and focus group. Therefore, comments are welcome thereon and such concerns should be carefully considered by agencies prior to deciding whether to adopt the proposed alternative certificate, when and if it is finally adopted by OGE for executive-

branchwide use. Some agencies might find it appropriate to test the alternative for one year, to gauge its effectiveness before deciding to adopt it on a long-term basis. This could easily be accomplished, under the regulatory amendments as proposed, by initially selecting the proposed option described above of permitting use of the certificate for one year only, with a new OGE Form 450 being required in the second year.

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating these proposed rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a substantial number of small entities, because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because these proposed amendments do not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: January 2, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart F—Procedure

2. Section 2634.601 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 2634.601 Report forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration (GSA), a standard form, the SF 278 (Public Financial Disclosure Report), for reporting the information described in subpart B of this part on executive branch public disclosure. The Office of Government Ethics also provides two uniform formats relating to confidential financial disclosure: OGE Form 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure; and OGE Optional Form 450–A (Confidential Certificate of No New Interests) for voluntary use by certain employees in lieu of filing an annual OGE Form 450, if authorized by their agency, in accordance with § 2634.905(d) of subpart I. Supplies of the two confidential forms are to be reproduced locally by each agency, from a camera-ready copy or an electronic format made available by the Office of Government Ethics. (Until August 31, 1997, the old SF 450 remains usable, rather than the new OGE Form 450, and is available from GSA's Federal Supply Service.)

* * * * *

(d) The information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3209–0001 for the SF 278, and control number 3209–0006 for OGE Form 450/SF 450. OGE Optional Form 450–A has been determined not to require an OMB paperwork control number, as its use is strictly optional for employees, it is used exclusively by current Government employees, and it does not require affirmative disclosure of substantive information.

Subpart I—Confidential Financial Disclosure Reports

3. Section 2634.905 is amended by revising the introductory text and by adding a paragraph (d) before the examples, to read as follows:

§ 2634.905 Exclusions from filing requirements.

Any individual or class of individuals described in § 2634.904 of this subpart, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

* * * * *

(d) The use of OGE Optional Form 450–A (Confidential Certificate of No New Interests) is adequate to prevent possible conflicts of interest. This form may be used by eligible filers, as described in this paragraph, who can certify, after reexamining their most recent previous OGE Form 450, that they (and their spouse and dependent children) have acquired no new interests, and that neither the filer nor spouse has changed jobs or job responsibilities since filing that previous report. OGE Optional Form 450–A will be used under the following conditions:

(1) OGE Optional Form 450–A will only be made available for use by current employees who are not special Government employees.

(2) OGE Optional Form 450–A will only be used by incumbent filers, as described in § 2634.903(a) of this subpart, in lieu of filing an annual OGE Form 450, who have a previous OGE Form 450 on file with their agency for the position they currently hold. Its due date is as specified in § 2634.903(a), unless extended under § 2634.903(d).

(3) As indicated on the OGE Optional Form 450–A, eligible filers may use OGE Optional Form 450–A, if applicable, or they may file a new OGE Form 450, at their option. Therefore, a blank OGE Form 450 and its accompanying written instructions should ordinarily be distributed to them, along with the blank OGE Optional Form 450–A. The instructions to OGE Form 450 will also provide guidance on what is meant by "reportable" interests on OGE Optional Form 450–A. In lieu of attaching a blank OGE Form 450 and its instructions, agencies may choose to develop separate written guidance on what is meant by "reportable" interests, or they may refer certificate users to the guidance contained in any agency-approved electronic software for the OGE Form 450 and its accompanying instructions, if readily available. Filers would then also need to be advised of where to obtain a blank OGE Form 450, if needed.

(4) OGE Optional Form 450–A may be used by eligible filers for a maximum of

three consecutive years before they are required to complete a new OGE Form 450, every fourth year. Agencies may, however, elect to permit use of the OGE Optional Form 450–A for only one year (or two years), and to require a new OGE Form 450 every second (or third) year.

(5) In each year divisible by four, beginning in 2000 (or divisible by two or three, beginning in 1998, for agencies that choose one of the more frequent options described in the second sentence of paragraph (d)(4) of this section), all incumbent filers, as described in § 2634.903(a) of this subpart, must file a new OGE Form 450 rather than OGE Optional Form 450–A, regardless of how recently they may have filed an OGE Form 450 (either as a new entrant or as an annual filer who was not eligible to use, or chose not to use, the optional certificate).

(6) When using OGE Optional Form 450–A, filers are not required to attach their previous OGE Form 450, unless their agency determines that it is necessary.

* * * * *

[FR Doc. 97–961 Filed 1–14–97; 8:45 am]
BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB26

General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (FCIA) (7 U.S.C. 1501 *et seq.*). The intended effect of this revision is to comply with the statutory mandate that requires the collection of Social Security Number (SSN) and Employer Identification Number (EIN) information of participating agents, loss adjusters, and policyholders and to establish the procedures to be used by the Federal Crop Insurance Corporation (FCIC) and insurance providers in the collection, use, and storage of documents containing SSN or EIN information.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 17, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 17, 1997.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to the Director, Product Development Division, Risk Management Agency (RMA), United States Department of Agriculture (USDA), 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC., 8:15 a.m.—4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For further information, contact Bill Smith, Supervisory Insurance Management Specialist, Research and Development, Product Development Division, RMA, at the Kansas City, MO address listed above, telephone (816) 926–7743.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This action has been reviewed under USDA procedures established by Executive Order 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

This rule has been determined to be not significant for the purposes of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations have been submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995. This proposed rule will amend the information collection requirements under OMB number 0563–0047, through November 30, 1999. The FCIC will be amending the information collection to adjust the estimated reporting hours and seek a valid approval for 3 years under section 3507(d) of the Act.

Revised reporting estimates and requirements for usage of OMB control number 0563–0047 will be submitted to OMB for approval under the provisions of 44 U.S.C. chapter 35. Public comments are due by March 17, 1997.

The title of this information collection is "Social Security Number (SSN) and Employer Identification Number (EIN) Reporting Form." Collection of the SSN and the EIN is required by section 506 of the FCIA (7 U.S.C. 1506). The FCIA requires the collection of SSN and EIN information of policyholders, participating agents, and loss adjusters and sets forth the procedures to be used by FCIC and insurance providers in the collection, use, and storage of documents containing SSN and EIN information. The primary use of the SSN and EIN under this proposed rule will be to correctly identify the participant, and any other person with an interest in the policyholder's operation of at least 10%, as a policyholder within the systems maintained by FCIC.

The information requested is necessary to for the insurance providers and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Failure to furnish this number will result in rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be 15 minutes per response.

Respondents: Policyholders and those with a substantial beneficial interest in the policyholder or any person having any interest in the policyholder and receiving separate benefits under another USDA program as a direct result of such interest.

Estimated Number of Respondents: 2,032,800.

Estimated Number of Responses per Respondent: 1 per year.

Estimated Total Burden Hours: 508,200.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer of Agriculture, Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB), Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The action does not increase the paperwork burden on the insured producer or the reinsured company. The program is strictly voluntary. This regulation requires only that the participant provide the SSN or EIN. This regulation does not require or impose any requirement on the delivery agent or company that is not already required by the Privacy Act of 1974 (5 U.S.C. 552a). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Federal crop insurance program is delivered to producers through local FSA offices and reinsured companies (insurance providers). Section 506 of the FCIA requires producers, agents, and loss adjusters to provide SSNs or EINs as a condition of eligibility to participate in the Federal crop insurance program and for identifying producers, agents, and loss adjusters who are high risk for actuarial purposes. However, current regulations only require SSNs or EINs of applicants, policyholders, and persons with a substantial beneficial interest (SBI) in the policyholder. All relevant sections have been revised to include agents and loss adjusters.

Further, this amendment revises for clarification the definitions of "applicant," "authorized person," "disposition of records," "FCIC," "past officers and employees," "policyholder," "retrieval of records," "safeguards," "storage," "substantial beneficial interest," and "system of records," and adds definitions for "Act," "FSA," "insurance provider," and "person." The definitions of "access," "agency sales and service contractor," "ASCS," "collection," "FCI Act," "government contract employees," "private insurance company," and "restricted access" have been deleted.

This statute also requires that any person with an SBI in a policyholder, or who has any interest in the policyholder and will receive separate benefits under another USDA program, to provide their SSN or EIN and clarifies that any person using an EIN for an individual policy must also provide that person's SSN as an SBI on that policy.

The amendment revises § 400.403, Required System of Records, to remove the 30 day implementation requirement, and revises section 400.406 to remove redundancies.

List of Subjects in 7 CFR Part 400

Crop insurance; General Administrative Regulations.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR part 400, subpart Q as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart Q—Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

1. The authority citation for 7 CFR part 400, subpart Q, is revised to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. Sections 400.401 (a), (b)(1), (2), (3) and (4) are revised to read as follows:

§400.401 Basis, purpose, and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Act to prescribe procedures for the collection, use, and confidentiality of Social Security Numbers (SSN) and Employer Identification Numbers (EIN) and related records.

(b) * * *

(1) All holders of crop insurance policies issued by FCIC under the Act and sold and serviced by local FSA offices.

(2) All holders of crop insurance policies sold by insurance providers and

all insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

(3) Any agent, general agent, or company, or any past or present officer, employee, contractor or subcontractor of such agent, general agent, or company under contract to FCIC or an insurance provider for loss adjustment or any other purpose related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, elected officials, contractors, and subcontractors of FCIC and FSA.

3. Section 400.402, is amended to remove all paragraph designations; remove the definitions of "access," "agency sales and service contractor," "ASCS," "collection," "FCI Act," "government contract employees," "private insurance company," and "restricted access;" revise the definitions of "applicant," "authorized person," "disposition of records," "FCIC," "past officers and employees," "policyholder," "retrieval of records," "safeguards," "storage," "substantial beneficial interest," and "system of records;" and add the definitions of "Act," "FSA," "insurance provider," and "person" to read as follows:

§400.402 Definitions.

Act—The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*).

Applicant—A person who has submitted an application for crop insurance coverage under the Act.

Authorized person—Any current or past officer, employee, elected official, general agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to administer the Act.

Disposition of records—The act of removing and disposing of records containing a participant's SSN or EIN by FCIC, or the insurance provider.

FCIC—The Federal Crop Insurance Corporation of the United States Department of Agriculture or any successor agency.

FSA—The Farm Service Agency of the United States Department of Agriculture or any successor agency.

Insurance provider—A private insurance company approved by FCIC, or a local FSA office providing crop insurance coverage to producers participating in any program administered under the Act.

Past officers and employees—Any officer or employee of FCIC or the insurance provider who leaves the employ of FCIC or the insurance provider subsequent to the effective date of this rule.

Person—An individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a state, political subdivision, or an agency of a state.

Policyholder—An applicant whose application for insurance under the crop insurance program has been accepted by FCIC or the insurance provider.

Retrieval of records—Retrieval of a person's records by that person's SSN or EIN, or name.

Safeguards—Methods of security to be employed by FCIC or the insurance provider to protect a participant's SSN or EIN from unlawful disclosure and access.

* * * * *

Storage—The secured storing of records kept by FCIC or the insurance provider on computer disks or drives, computer printouts, magnetic tape, index cards, microfiche, microfilm, etc.

Substantial beneficial interest—Any person having an interest of at least 10 percent in the applicant or policyholder.

System of records—Records established and maintained by FCIC or the insurance provider containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to multiple peril crop insurance policies as required by FCIC, from which information is retrieved by a personal identifier including, but not limited to the SSN, EIN, or name.

4. Section 400.403 is revised to read as follows:

§ 400.403 Required system of records.

Insurance providers are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data before they accept or receive any applications for insurance. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by FCIC or the insurance provider.

5. Section 400.404 is revised to read as follows:

§ 400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to FCIC or the insurance provider to be eligible for insurance. The SSN or EIN will be used by FCIC and the insurance provider in:

(1) Determining the correct parties to the agreement or contract;

(2) Collecting premiums or other amounts due FCIC or the insurance provider;

(3) Determining the amount of indemnities;

(4) Establishing actuarial data on an individual policyholder basis; and

(5) Determining eligibility for crop insurance program participation or other United States Department of Agriculture benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application and other forms where such SSN or EIN is required, FCIC or the reinsured company shall reject the application.

(c) The policyholder or applicant is required to provide to FCIC or the insurance provider, the name and SSN or EIN of any individual or other entity:

(1) holding or acquiring a substantial beneficial interest in such policyholder or applicant; or

(2) having any interest in the policyholder or applicant and receiving separate benefits under another United States Department of Agriculture program as a direct result of such interest.

(d) If a policyholder or applicant is using an EIN for a policy in an individual person's name, the SSN of the policyholder or applicant must also be provided.

§ 400.405 through 400.412 [Redesignated as §§ 400.406 through 400.413]

6. Sections 400.405 through 400.412 are redesignated as sections §§ 400.406 through 400.413, respectively. The redesignations are as follows:

Old section	New section
400.405	400.406
400.406	400.407
400.407	400.408
400.408	400.409
400.409	400.410
400.410	400.411
400.411	400.412
400.412	400.413

7. Section 400.405 is added to read as follows:

§ 400.405 Agent and loss adjuster responsibilities

(a) The agent or loss adjuster shall provide his or her correct SSN to FCIC or the insurance provider, whichever is applicable, to be eligible to participate in the crop insurance program. The SSN will be used by FCIC and the insurance provider in establishing a database for the purposes of:

(1) Identifying agents and loss adjusters on an individual basis;

(2) Evaluating agents and loss adjusters to determine level of performance;

(3) Determining eligibility for program participation; and

(4) Collection of any amount which may be owed by the agent and loss adjuster to the United States.

(b) If the loss adjuster contracting with FCIC to participate in the crop insurance program does not provide the correct SSN on forms or contracts where such SSN is required, the loss adjuster's contract will be cancelled effective on the date of refusal and the loss adjuster will be subject to suspension and debarment in accordance with the suspension and debarment regulations of the United States Department of Agriculture.

(c) If the agent or loss adjuster contracting with an insurance provider, who is also a private insurance company, to participate in the crop insurance program does not provide the correct SSN on forms or contracts where such SSN is required, the premium subsidy payable under the Standard Reinsurance Agreement, or any other reinsurance agreement, will not be paid on those policies lacking the correct SSN.

8. Redesignated § 400.406 is revised to read as follows:

§ 400.406 Insurance provider responsibilities.

The insurance provider is required to collect and record the SSN or EIN on each application or on any other form required by FCIC.

9. Redesignated § 400.407 is revised to read as follows:

400.407 Restricted access.

The Manager, other officer, or employee of FCIC or an authorized person may have access to the SSNs and EINs obtained pursuant to this subpart, only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Act.

10. Redesignated § 400.408 is revised to read as follows:

§ 400.408 Safeguards and storage.

Records must be maintained in secured storage with proper safeguards sufficient to enforce the restricted access provisions of this subpart.

11. Redesignated § 400.411 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 400.411 Obtaining personal records.

Policyholders, agents, and loss adjusters in the crop insurance program will be able to review and correct their records as provided by the Privacy Act. Records may be requested by:

(a) Mailing a signed written request to the headquarters office of FCIC; the FCIC Regional Service Office, or the insurance provider; or

* * * * *

12. Redesignated 400.412 is revised to read as follows:

§ 400.412 Record retention.

(a) FCIC or the insurance provider will retain all records of policyholders for a period of not less than 3 years from the date of final action on a policy for the crop year, unless further maintenance of specific records is requested by FCIC. Final actions on insurance policies include conclusion of insurance events, such as the latest of termination of the policy, completion of loss adjustment, or satisfaction of claim.

(b) The statute of limitations for FCIC contract claims may permit litigation to be instituted after the period of record retention. Destruction of records prior to the expiration of the statute of limitations will not provide a defense to any action by FCIC against any private insurance company.

13. Redesignated § 400.413 is revised to read as follow:

§ 400.413 OMB control numbers.

The collecting of information requirements in this subpart has been approved by the Office of Management and Budget and assigned OMB control number 0563–0047.

Signed in Washington, DC., January 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1016 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–FA–P

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7 CFR Parts 414 and 457

Forage Seeding Crop Insurance Regulations and Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of forage seeding. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, to include the current forage seeding crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current forage seeding crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business February 14, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The amendments set forth in this information collections that require clearance by OMB is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions." The information to be collected includes: A crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of forage seeding that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection

of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.151, Forage Seeding Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring forage seeding found at 7 CFR part 414 (Forage Seeding Crop Insurance Regulations), for the 1998 and succeeding crop years. FCIC also proposes to amend 7 CFR part 414 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 414.

This rule makes minor editorial and format changes to improve the Forage Seeding Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring forage seeding as follows:

1. The current premium adjustment table contained in the Forage Seeding Crop Insurance Policy has been omitted from the proposed Forage Seeding Crop Provisions. Information regarding good experience discounts is now contained in the Special Provisions. The adverse experience premium adjustment has been removed. These changes provide consistency with all other crops containing premium experience discounts.

2. Section 1—Add definitions for the terms "days," "FSA," "fall planted," "final planting date," "forage," "good farming practices," "interplanted," "irrigated practice," "late harvest," "normal stand," "nurse crop," "planted acreage," "practical to replant," "spring planted," and "written agreement" for clarification purposes. Revise the definition for the term "harvest" to specify that acreage that is grazed will not be considered harvested because it is impossible to determine the production for grazed acreage so insurance coverage is not provided for acreage that is grown for the purpose of grazing. The term "reseed" has been changed to "replant" and made consistent with other annual crop provisions. Current regulations allow an insured to reseed at not less than 50 percent (50%) of the original seeding rate. The revised definition specifies

that replacing new seed into an existing damaged stand, which results in a reduced seeding rate from the original seeding rate, will not be considered replanting. This change provides consistency with the replanting provisions of other annual crop provisions.

3. Section 2—Provides guidelines for optional unit division of forage seeding basic units that are consistent with other annual crop provisions.

4. Section 3(a)—Clarify that an insured may select only one coverage level and the corresponding amount of insurance designated in the actuarial table for the applicable type and practice for all the forage seeding planted in the county that is insured under the policy. The amounts of insurance the insured chooses for each type and practice must have the same percentage relationship to the maximum amount of insurance offered by FCIC for each type and practice.

5. Section 4—The contract change date has been changed to November 30 for all counties that currently have April 15 cancellation and termination dates. This change is made to maintain an adequate time period between this date and the revised cancellation dates to permit the insured to make informed insurance decisions.

6. Section 5—The cancellation and termination dates have been changed to March 15 in states and counties that currently have April 15 dates. These changes are made to standardize the cancellation and termination dates with the sales closing dates. The sales closing dates were amended to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring seeded crop sales closing dates be 30 days earlier than previously. Also added Nevada to the forage seeding crop provisions for both spring and fall planted forage.

7. Section 6(c)—Clarify that any forage seeding crop that is grown with the intent to be grazed, or grazed at any time during the insurance period, will not be insured.

8. Section 6(d)—Add provisions to allow coverage for forage seeding that is interplanted with another crop if allowed by the Special Provisions or by written agreement. The provisions provide coverage for more acreage and may reduce the need for protection under the non-insured disaster assistance program.

9. Section 7—Clarify that any acreage damaged prior to the final planting date, to the extent that such acreage has less than a normal stand, must be replanted unless the insurer agrees that it is not practical to replant.

10. Section 8—State that harvest is one event that ends the insurance period, unless the Special Provisions contain a late harvest date, or if harvest occurs after the late harvest date, shown in the Special Provisions. Also the date grazing commences and abandonment of the insured crop were added as events that end the insurance period.

11. Section 9(h)—Add failure of the irrigation water supply as an insurable cause of loss, if such failure was caused by an insured peril that occurs during the insurance period. This change standardizes these crop provisions with other crop provisions.

12. Section 12—Modify claim for indemnity calculations to recognize separate amounts of insurance for each type and practice within the same unit.

13. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

List of Subjects in 7 CFR Parts 414 and 457

Crop insurance, Forage seeding regulations, Forage seeding.

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 414 and 457, effective for the 1998 and succeeding crop years, as follows:

PART 414—FORAGE SEEDING CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1981 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 414 is revised to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. The subpart heading preceeding § 414.1 is revised to read as follows:

Subpart—Regulations for the 1981 through 1997 Crop Year

3. Section 414.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 414.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Forage Seeding Insurance Policy for the 1984 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1501(l) and 1506(p).

5. 7 CFR part 457 is amended by adding a new § 457.151 to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Forage Seeding Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. *Definitions*

Crop year—The period within which the planting is or normally would become established and shall be designated by the calendar year in which the planting is made for spring planted acreage and the next succeeding calendar year for fall planted acreage.

Days—Calendar days.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or any successor agency.

Fall planted—A forage crop seeded after June 30.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full amount of insurance.

Forage—Seeded perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, as shown in the actuarial table.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce a normal stand, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Severance of the forage plant from the land with the intention of using it as livestock feed. Grazing will not be considered harvested.

Interplanted—Acreage on which two or more crops are planted in a manner that does

not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated acreage planted to the insured crop.

Late harvest—Harvest that occurs after the date listed in the Special Provisions.

Normal stand—A population of live plants per square foot that meets the minimum required number of plants as shown in the Special Provisions.

Nurse crop (companion crop)—A crop seeded into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date, unless replanting is generally occurring in the area.

Replanting—Performing the cultural practices necessary to replace the forage seed and then replacing the forage seed in the insured acreage with the expectation of producing a normal stand. Replacing new seed into an existing damaged stand, which results in a reduced seeding rate from the original seeding rate, will not be considered replanting.

Spring planted—A forage crop seeded before July 1.

Written agreement—A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a (basic unit), will be divided for spring and fall planted acreage.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(2) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigated system can deliver the quantity of water needed to produce a normal stand.

3. Amounts of Insurance

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may only select one coverage level and the corresponding amount of insurance designated in the actuarial table for the applicable type and practice for all the forage seeding in the county that is insured under this policy. The amount of insurance you choose for each type and practice must have the same percentage relationship to the maximum amount of insurance offered by us for each type and practice. For example, if you choose 100 percent (100%) of the maximum amount of insurance for a specific type and practice, you must also choose 100 percent (100%) of the maximum amount of insurance for all other types and practices.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to forage seeding.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and April 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
New Hampshire, New York, Pennsylvania, Vermont, Nevada.	July 31
All other states	March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the forage seeding in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted, or replanted the calendar year following planting to establish a stand of forage intended for harvest as livestock feed;

(c) That is not grown with the intent to be grazed, or not grazed at any time during the insurance period; and

(d) That is not interplanted with another crop, except nurse crops, unless allowed by the Special Provisions or by written agreement.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than a normal stand, must be replanted unless we agree that it is not practical to replant.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8) regarding when insurance ends, forage seeding insurance will end at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit, unless a late harvest date is listed in the Special Provisions, or late harvest on the unit if a late harvest date is listed in the Special Provisions;

(c) Final adjustment of a loss on a unit;
(d) Abandonment of the insured crop;
(e) The date grazing commences on the insured crop; or
(f) May 21 of the calendar year following seeding for spring-planted forage; or October 15 of the calendar year following seeding for fall-planted forage.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes that result in loss of, or failure to establish, a stand of forage that occur during the insurance period:
(a) Adverse weather conditions;
(b) Fire;
(c) Insects, but not damage due to insufficient or improper application of pest control measures;
(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption; or
(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

10. Replanting Payment

In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8):
(a) A replanting payment is allowed only in counties for which the Special Provisions designate both fall and spring final planting dates if:
(1) The insured fall-planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent (75%) of a normal stand remains;
(2) It is practical to replant;
(3) We give written consent to replant; and
(4) Such acreage is replanted the following spring by the spring final planting date.
(b) The amount of the replanting payment will be equal to 50 percent (50%) of the amount of indemnity determined in accordance with section 12(a).
(c) No replanting payment will be made on acreage for which one replanting payment has already been allowed for the crop year.
(d) If the information reported by you on the acreage report results in a lower premium than the actual premium determined to be due based on the acreage, share, practice, or type determined actually to have existed, the replanting payment will be reduced proportionately.

11. Duties In The Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after tilling of the balance of the unit is completed.
(b) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us written notice if, during the period before destroying the crop on any fall planted acreage that is damaged, you decide to replant the acreage by the spring final planting date.

12. Settlement of Claim

(a) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:
(1) Multiplying the insured acreage of each type and practice by the amount of insurance for the applicable type and practice;
(2) Totaling the results of section 12(a)(1);
(3) Multiplying the total of the acres with an established stand plus 10 percent (10%) of the planted acres for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;
(4) Totaling the results of section 12(a)(3);
(5) Subtracting the result of section 12(a)(4) from the result of section 12(a)(2); and
(6) Multiplying the result of section 12(a)(5) by your share.
(b) The acres with an established stand will include:
(1) Acreage that has at least 75 percent (75%) of a normal stand;
(2) Acreage abandoned or put to another use without our prior written consent;
(3) Acreage damaged solely by an uninsured cause; or
(4) Acreage that is harvested and not reseeded.
(c) The amount of indemnity on any spring-planted acreage determined in accordance with section 12(a) will be reduced 50 percent (50%) if the stand is less than 75 percent (75%) but more than 55 percent (55%) of a normal stand.

13. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:
(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);
(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;
(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, practice, premium rate, and amount of insurance;
(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and
(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on January 10, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1014 Filed 1–14–97; 8:45 am]
BILLING CODE 3410–FA–P

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7 CFR Parts 441 and 457

Common Crop Insurance Regulations; Table Grape Crop Insurance Provisions, and Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of table grapes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Table Grape crop insurance regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Table Grape crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 17, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 is through March 17, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John Meyer, Insurance Management Specialist, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

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SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Section 8 of the 1998 Table Grape Crop Provisions adds interplanting as an insurable farming practice provided it does not adversely affect the crop. This practice was not insurable under the previous Table Grape crop insurance regulations. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 0.5 percent of the 341 insureds who interplant their table grape crop. Standard interplanting language has been added to most perennial crops. This is a benefit to agriculture because insurance is now available for more perennial crop producers and, as a result, less acreage will need to be placed into the noninsured crop disaster assistance program (NAP).

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Table Grape Crop Insurance Provisions." The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of table grapes that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC requests comments for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, all producers are required to complete an application and acreage report. If the crop is damaged or destroyed, all insureds are required to give notice of loss and provide the necessary information to complete a claim for indemnity.

All insureds must also certify to the number of acres and production on an annual basis or receive a transitional yield. The producer must maintain the records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.149, Table Grape Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring table grapes found at 7 CFR part 441 and restrict the application of that part to the 1997 and prior crop years. By separate rule, FCIC will later remove that part.

This rule makes minor editorial and format changes to improve the Table Grape crop insurance regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring table grapes as follows:

1. Section 1—Add definitions for the terms "days," "direct marketing," "FSA," "good farming practices," "graft," "interplanted," "irrigated practice," "lug," "non-contiguous land," "production guarantee, per acre," "set out," and "written agreement," for clarification, and change the lug (box weight) from 22 pounds to 20 pounds in the Coachella Valley, California district, and from 23 pounds to 21 pounds in all other California districts. Provisions are also added indicating a box weight of 22 pounds for Arizona. These changes were made by the California Table Grape Commission.

2. Section 2—Change provisions to allow basic units by table grape variety to be consistent with other policies which allow insurance for crop varieties.

3. Section 3(b)—Specify that the insured must report damage, removal of bearing vines, and change in practices that may reduce yields. For the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the insured must also report the age and variety, if applicable, of any interplanted crop, its planting pattern, and any other information needed to establish the approved yield. If the insured fails to notify the insurer of factors that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of damage, removal of vines, or change in practices. This allows the insurance provider to limit liability if necessary, before insurance attaches.

4. Section 7(a)—Clarify that the insured crop will be any insured variety of grapes in the county. Previous provisions required that all insurable table grape acreage in the county be insured. This change is commensurate with previous changes made in the regulations for insuring grapes.

5. Section 7(b)—Specify that at least 150 lugs per acre must have been produced in at least one of the most recent three years of a producer's actual production history base period. Previous provisions required a minimum of 150 lugs per acre, but did not specify an applicable time period.

6. Section 8—Allow insurance for table grapes interplanted with another perennial crop in order to make insurance available for more acreage and reduce reliance on the noninsured crop disaster assistance program (NAP) for protection against crop losses. Standard interplanting language has been added to most perennial crops. Interplanting is an insurable practice as long as it does not adversely affect the insured crop.

7. Section 9—Clarifies that for the year of application, if an application is received after January 22 but prior to February 1, insurance will attach on the 10th day after the properly completed application is received in the insurance provider's local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. Provisions were also added to clarify insurability when an insurable share is acquired or relinquished on or before the acreage reporting date.

8. Section 10(b)—Clarify that disease and insect infestation are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective control mechanism is available. Add a provision that states that damage caused by phylloxera is not covered regardless of cause.

9. Section 11(b)—Require the producer to give notice at least 15 days prior to harvest so a preharvest inspection can be made if the insured intends to engage in direct marketing to consumers in order to permit an accurate appraisal of production to count since it is difficult to verify direct marketed production. Also removed provisions regarding harvest prior to full maturity. Table grapes are not harvested before the production reaches maturity.

10. Section 11(c)—Add provisions that the insured must give notice prior to harvest so that any damaged production may be inspected. Failure to do so may result in all such production being considered undamaged and included as production to count.

11. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

List of Subjects in 7 CFR Parts 441 and 457

Crop insurance, Table grape.

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 441 and 457, effective for the 1998 and succeeding crop years, as follows:

PART 441—TABLE GRAPE CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 441 is amended to read as follows:

Authority: 7 U.S.C. 1506(l),1506(p).

2. The subpart heading preceeding § 441.1 is revised to read as follows:

Subpart-Regulations for the 1987 through 1997 Crop Years.

3. Section 441.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 441.7 The application and policy.

* * * * *

(d) The application for the 1987 through 1997 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Table Grape Insurance Policy for the 1987 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. A new § 457.149 is added to read as follows:

§ 457.149 Table Grape Crop Insurance Provisions.

The Table Grape Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

For FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

For reinsured policies: (Insurance provider's name or other appropriate heading).

For both FCIC and reinsured policies:

Table Grape Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Cluster thinning and removal—Removing parts of an immature cluster or the entire cluster of grapes.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Graft—To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

Harvest—Severing the clusters of mature grapes from the vine.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Lug—Twenty pounds of table grapes in the Coachella Valley, California district; 21 pounds in all other California districts; and 22 pounds in Arizona.

Non-contiguous—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre)—The number of lugs of grapes determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Set out—Physically planting the desired variety of grape plant in the ground in a desired planting pattern.

Table grapes—Grapes that are grown for commercial sale for human consumption as fresh fruit on acreage where the cultural practices to produce fresh marketable grapes were carried out.

Written agreement—A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each table grape variety you insure.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units that you elect must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election and coverage level for each table grape variety in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by variety if applicable:

(1) Any damage, removal of bearing vines, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing vines on insurable and uninsurable acreage;

(3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting the perennial crop, removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are January 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the acreage of table grapes in the county by variety.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be any insurable variety of grapes in the county that you elect and for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are grown for harvest as table grapes;

(3) That are adapted to the area; and

(4) That are grown in a vineyard that, if inspected, is considered acceptable by us.

(b) In addition to table grapes not insurable under section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any grapes grown on vines:

(1) That, after being set out or grafted, have not reached the number of growing seasons designated by the Special Provisions; or

(2) That have not produced an average of at least 150 lugs of table grapes per acre in at least one of the most recent three crop years in your actual production history base period. However, we may inspect and agree in writing to insure acreage that has not produced this amount.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions

(§ 457.8) that prohibit insurance attaching to a crop planted with another crop, table grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the vineyard.

(2) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested, as follows:

	Variety	Date
Arizona:		
All counties	Perlette	June 15.
	Flame Seedless	July 15.
	All others	July 31.
California:		
Fresno, Kern, Kings, Madera, and Tulare counties	Perlette	August 15.
	Cardinal	August 15.
	Exotic	August 31.
	Flame Seedless	September 15.
	Superior Seedless	August 31.
	Red Malaga	September 15.
	Queen	September 15.
	Thompson Seedless	September 15.
	Black Rose	September 30.
	Italia	September 30.
	White Malaga	October 15.
	Ribier	October 15.
	Ruby Seedless	October 15.
	All others	October 31.
Merced, Stanislaus, and San Joaquin counties	Flame Seedless	September 15.
	Thompson Seedless	September 30.
	Ribier	October 15.
	Flame Tokay	October 15.
	All others	October 31.
Imperial, Riverside, and San Bernardino counties	Beauty Seedless	July 15.
	Perlette	July 15.
	All others	July 31.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of table grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due or indemnity paid for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the vineyard;

(3) Wildlife;

(4) Earthquake;

(5) Volanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Phylloxera, regardless of cause; or

(3) Inability to market the table grapes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties In The Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8) so that we may inspect any damaged production. If you fail to notify us, we may

consider all such production to be undamaged and include it as production to count.

12. Settlement Of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying the result in section 12(b)(1) by the respective price election for the variety;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of the variety (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result of section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in lugs) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements in section 11(b);

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that meets, or would meet if properly handled, the California Department of Food and Agriculture minimum standards for table grapes; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from insurable acreage regardless of condition or disposition.

(d) The quantity of production to count for table grape production damaged by insurable causes within the insurance period and that is marketed for any use other than table grapes will be determined by multiplying the greater of (1) the value of the table grapes per ton or (2) $50, by the number of tons and dividing that result by the highest price election available for the insured unit. This result will be the number of lugs to count.

13. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on January 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1015 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

[DEA–143C]

RIN 1117–AA36

Establishment of Freight Forwarding Facilities for DEA Distributor Registrants; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to Notice of Proposed Rulemaking.

SUMMARY: This document contains a correction to the proposed rule (DEA–143P) which was published Wednesday, December 18, 1996 (61 FR 66637). The proposed rule related to new regulations to allow the establishment of freight forwarding facilities by DEA distributor registrants.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are subject to this correction, make amendments to Parts 1301 and 1304 of Title 21 of the Code of Federal Regulations to allow the establishment of freight forwarding facilities by DEA distributor registrants.

Need for Correction

As published, the proposed rule contained an omission in the **DATES** section which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on December 18, 1996 of the proposed rule (DEA–143P), which was the subject of FR Doc. 96–32077, is corrected as follows:

On Page 66637, in the first column, in the **DATES** section, the entry "February 18, 1996" is corrected to read "Written comments or objections must be received on or before February 28, 1997".

* * * * *

Dated: January 9, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–969 Filed 1–14–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209121–96]

RIN 1545–AN21

Certain Asset Transfers to a Tax-Exempt Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations. The proposed regulations effectuate provisions of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a

tax-exempt entity, and generally require the taxable corporation to recognize gain or loss in such a transaction.

DATES: Written comments must be received by April 15, 1997. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for May 6, 1997, at 10:00 a.m. must be submitted by April 15, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209121–89), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209121–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Stephen R. Cleary (202) 622–7530; concerning submissions and the hearing, Evangelista Lee, (202) 622–7180, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the repeal of the *General Utilities* doctrine in the Tax Reform Act of 1986. Under the *General Utilities* doctrine, which took its name from *General Utilities & Operating Co.* v. *Helvering*, 296 U.S. 200 (1935), corporations were not required to recognize gain or loss when they distributed appreciated or depreciated property to their shareholders. The *General Utilities* doctrine applied to distributions of property in complete liquidation, certain sales of property that were in connection with a complete liquidation, and nonliquidating distributions of property. It was codified in former sections 311, 336, and 337 of the Internal Revenue Code of 1954.

The *General Utilities* doctrine was an exception to the general rule that income earned by a corporation is taxed twice, once to the corporation when the income is earned and a second time to the corporation's shareholders when the earnings are distributed. The *General Utilities* doctrine generally permitted the permanent elimination of corporate-level tax on the disposition of appreciated assets because the transferee received a fair market value basis in the assets and the corporation generally did not recognize any gain. Thus, the appreciated assets left corporate solution without any corporate-level tax having been paid.

Beginning in 1969, the scope of the *General Utilities* doctrine was restricted by a series of amendments (initially relating to nonliquidating distributions governed by section 311), until ultimately the *General Utilities* doctrine was repealed, with limited exceptions, in the Tax Reform Act of 1986. Sections 336 and 337 were amended to generally require corporations to recognize gain or loss when appreciated or depreciated property is distributed in complete liquidation or sold in connection with a complete liquidation.

Section 337(a) provides one of the limited exceptions from the repeal of the *General Utilities* doctrine by allowing a subsidiary to liquidate into its 80-percent distributee (a corporation meeting the stock ownership requirements of section 332(b) in the liquidating corporation) without recognizing gain or loss. The 80-percent distributee takes a carryover basis in the distributed property. However, under section 337(b)(2), this nonrecognition exception generally does not apply if the 80-percent distributee is a tax-exempt entity.

The Tax Reform Act of 1986 added section 337(d), directing the Secretary to prescribe regulations as may be necessary to carry out the purposes of the repeal of the *General Utilities* doctrine. The legislative history of the Tax Reform Act of 1986 indicates that the *General Utilities* doctrine was repealed because it tended to undermine the corporate income tax by allowing appreciated property to leave corporate solution without imposition of a corporate level tax. H.R. Rep. No. 99–426, 99th Cong., 1st Sess. 282 (1985). The Technical and Miscellaneous Revenue Act of 1988 amended section 337(d) to specify that the section authorizes regulations to "ensure that these purposes shall not be circumvented * * * through the use of a * * * tax-exempt entity." The legislative history concerning the 1988 amendment to section 337(d) explains:

> The bill also clarifies in connection with the built-in gain provisions of the Act that the Treasury Department shall prescribe such regulations as may be necessary or appropriate to carry out those provisions * * *. For example, this includes rules to require the recognition of gain if appreciated property of a C corporation is transferred to a * * * tax-exempt entity [footnote 32] in a carryover basis transaction that would otherwise eliminate corporate level tax on the built-in appreciation.
>
> [footnote 32] The Act generally requires recognition of gain if a C corporation transfers appreciated assets to a tax exempt entity in a section 332 liquidation. See Code section 337(b)(2).

S. Rep. No. 145, 100th Cong., 2d Sess. 66 (1988).

Explanation of Provision

An acquisition by a tax-exempt entity of all or substantially all of the assets of a taxable corporation or a change in status of a taxable corporation to a tax-exempt entity, like a liquidation into an 80-percent tax-exempt distributee that is taxable under section 337(b)(2), could eliminate the corporate level tax on the appreciation in the taxable corporation's assets. Accordingly, the proposed regulations apply rules similar to section 337(b)(2) to these transactions. The proposed regulations generally do not affect the tax treatment of the taxable corporation's shareholders or the availability of any charitable contribution deduction.

The proposed regulations provide that a taxable corporation that transfers all or substantially all of its assets to one or more tax-exempt entities is required to recognize gain or loss as if the assets transferred were sold at their fair market values. Like section 337(b)(2), the proposed regulations provide that no gain or loss will be recognized on any of the assets transferred that are used by the tax-exempt entity in an activity the income from which is subject to the unrelated business tax under section 511(a). However, gain on such assets will later be recognized as unrelated business taxable income if the tax-exempt entity disposes of the assets or ceases to use the assets in an unrelated trade or business activity.

The proposed regulations generally treat a taxable corporation that changes its status to a tax-exempt entity as having transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective, irrespective of whether an actual transfer of the assets has occurred. For this purpose, if a state, a political subdivision thereof, or an entity any portion of whose income is excluded from gross income under section 115, acquires the stock of a taxable corporation and thereafter any of the taxable corporation's income is excluded from gross income under section 115, the taxable corporation will be treated as if it transferred all of its assets to a tax-exempt entity

immediately before the stock acquisition.

Certain exceptions are provided to the change in status rule for organizations that are tax-exempt or are seeking tax-exempt status under section 501(a). These exceptions provide relief for corporations needing a brief start-up period to establish their tax-exempt status and for those that temporarily lose their tax-exempt status. Under the proposed regulations, the change in status rule does not apply to a corporation that is tax-exempt within three taxable years of the taxable year of its formation, or to a corporation that regains its tax-exempt status within three years after either a final adverse adjudication on its tax-exempt status or filing a tax return as a taxable corporation. The change in status rule also does not apply to an organization that before publication of these proposed regulations was exempt or unsuccessfully applied for exemption, if the organization is tax-exempt within three years after the date of publication of final regulations. An organization that files for recognition of its exempt status during one of the three-year periods will be deemed to have or regain tax-exempt status if the application ultimately results in recognition as of a date during the three-year period. An anti-abuse rule makes all these exceptions unavailable to a taxable corporation that acquires all or substantially all of the assets of another taxable corporation and then changes its status with a principal purpose of avoiding the gain or loss recognition rule made applicable by these regulations.

The proposed regulations disallow the recognition of loss if assets are acquired by the taxable corporation in a section 351 transaction or a contribution to capital, or if assets are distributed by the taxable corporation to a shareholder, with a principal purpose to recognize loss by the taxable corporation on the transfer of its assets to a tax-exempt entity (loss limitation rule). For example, the loss limitation rule may apply if (a) a loss asset is contributed to a taxable corporation and then is transferred with substantially all of the taxable corporation's assets to a tax-exempt entity; (b) loss assets not constituting substantially all of a taxable corporation's assets are contributed to a new subsidiary and then the new subsidiary transfers the loss assets which are its only assets to a tax-exempt entity, or (c) assets are distributed by a taxable corporation to its parent and then the taxable corporation transfers loss assets now constituting substantially all of its assets to a tax-exempt entity. For purposes of the loss limitation rule, the principles of section 336(d)(2) apply.

Under the proposed regulations, a "taxable corporation" is any corporation that is not a tax-exempt entity as defined in the proposed regulations. Thus, taxable corporations include all S corporations whether or not subject to tax on built-in gain under section 1374. After the repeal of the *General Utilities* doctrine, an S corporation like a C corporation is required to recognize gain or loss when it liquidates. This gain or loss passes through to the S corporation's shareholders under section 1366. The proposed regulations parallel this treatment.

Under the proposed regulations, a "tax-exempt entity" includes organizations exempt from tax under section 501, section 527, section 528, or section 529; Federal, state, and local governments; Indian tribal governments and federally chartered Indian tribal corporations; foreign governments and international organizations; and entities any portion of whose income is excluded from gross income under section 115. The term does not, however, include a cooperative described in section 521, paralleling the exception to section 337(b)(2).

A transaction conveying all or substantially all of the assets of a taxable corporation to an Indian tribal government or a corporation organized under section 17 of the Indian Reorganization Act (IRA) or section 3 of the Oklahoma Welfare Act (OWA) will be covered by these regulations. Rev. Rul. 94–16, 1994–1 C.B. 19, held that an unincorporated Indian tribe or a corporation organized under section 17 of the IRA is not subject to federal income tax, but a corporation wholly owned by an Indian tribe and organized under state law is subject to federal income tax. Rev. Rul. 94–65, 1994–2 C.B. 14, held that a corporation organized under section 3 of the OWA also was not subject to federal income tax. In that ruling, the Service announced that an Indian tribe seeking to dissolve a corporation organized under state law and organized into a federally chartered corporation (corporation organized under either section 17 of the IRA or section 3 of the OWA) will be granted relief under section 7805(b) of the Code upon application for such relief provided it demonstrates to the Service that it has acted reasonably and in good faith to achieve the dissolution and organization. The relief described in that ruling applied to taxes on income earned after September 30, 1994, by a corporation organized by an Indian tribe under state law from income earned within the boundaries of the reservation (including gain or loss properly allocable to such activities from the sale or exchange of assets). The Service intends to provide similar relief from tax resulting from any gain or loss recognized under the rules provided in these regulations. The relief will be available to state law corporations wholly owned by Indian tribes that have acted reasonably and in good faith to dissolve and reorganize as federally chartered corporations.

Proposed Effective Date

These regulations are proposed to be applicable for transfers of assets as described in the regulations occurring after [date that is 30 days after publication in the **Federal Register** of these regulations as final regulations], unless the transfer is pursuant to a written agreement which is (subject to customary conditions) binding on or before [date that is 30 days after publication in the **Federal Register** of these regulations as final regulations].

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, May 6, 1997, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 15, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 15, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Stephen R. Cleary of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR Part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.337(d)–4 also issued under 26 U.S.C. 337 * * *.

Par. 2. Section 1.337(d)–4 is added to read as follows:

§1.337(d)–4 Taxable to tax-exempt.

(a) *Gain or loss recognition*—(1) *General rule.* If a taxable corporation transfers all or substantially all of its assets to one or more tax-exempt entities, the taxable corporation must recognize gain or loss immediately before the transfer as if the assets transferred were sold at their fair market values. But see section 267 and paragraph (d) of this section concerning limitations on the recognition of loss.

(2) *Change in corporation's tax status treated as asset transfer.* Except as provided in paragraph (a)(3) of this section, a taxable corporation's change in status to a tax-exempt entity will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective in a transaction to which paragraph (a)(1) of this section applies. For purposes of this paragraph (a), if a state, a political subdivision thereof, or an entity any portion of whose income is excluded from gross income under section 115, acquires the stock of a taxable corporation and thereafter any of the taxable corporation's income is excluded from gross income under section 115, the taxable corporation will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the stock acquisition.

(3) *Exceptions for certain changes in status*—(i) *To whom available.* Paragraph (a)(2) of this section does not apply to the following corporations—

(A) A corporation previously exempt under section 501(a) which regains its tax-exempt status under section 501(a) within three years from the later of a final adverse adjudication on the corporation's tax exempt status, or the filing by the corporation, or by the Secretary or his delegate under section 6020(b), of a federal income tax return of the type filed by a taxable corporation;

(B) A newly-formed corporation that is tax-exempt under section 501(a) within three taxable years from the end of the taxable year in which it was formed;

(C) A corporation previously exempt under section 501(a) or that applied for but did not receive recognition of exemption under section 501(a), before January 15, 1997, if such corporation is tax-exempt under section 501(a) within three years from [date of publication of these regulations in the **Federal Register** as final regulations].

(ii) *Application for recognition.* An organization is deemed to have or regain tax-exempt status within one of the three-year periods described in paragraph (a)(3)(i) of this section if it files an application for recognition of exemption with the Commissioner within the three-year period and the application either results in a determination by the Commissioner or a final adjudication that the organization is tax-exempt under section 501(a) during any part of the three-year period. The preceding sentence does not require the filing of an application for recognition of exemption by any organization not otherwise required, such as by § 1.501(a)–1, § 1.505(c)–1T, and § 1.508–1(a), to apply for recognition of exemption.

(iii) *Anti-abuse rule.* This paragraph (a)(3) does not apply to a corporation that, with a principal purpose of avoiding the application of paragraphs (a)(1) and (a)(2) of this section, acquires all or substantially all of the assets of another taxable corporation and then changes its status to that of a tax-exempt entity.

(4) *Related transactions.* This section applies to any series of related transactions having an effect similar to any of the transactions to which this section applies.

(b) *Exceptions.* Paragraph (a) of this section does not apply to—

(1) Any assets transferred to a tax-exempt entity if the assets are used in an activity the income from which is subject to tax under section 511(a). However, if assets on which no gain or loss was recognized by reason of the preceding sentence are disposed of by the tax-exempt entity, then, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of the preceding sentence) shall be included in the tax-exempt entity's unrelated business taxable income. If the tax-exempt entity ceases to use the assets in an activity the income from which is subject to tax under section 511(a), the entity will be treated for purposes of this subparagraph as having disposed of the assets on the date of the cessation;

(2) Any transfer of assets to the extent gain or loss otherwise is recognized by the taxable corporation on the transfer. See, for example, sections 336, 337(b)(2), 367, and 1001;

(3) Any forfeiture of a taxable corporation's assets in a criminal or civil action to the United States, the government of a possession of the United States, a state, the District of Columbia, the government of a foreign country, or a political subdivision of any of the foregoing; or any expropriation of a taxable corporation's assets by the government of a foreign country; and

(4) Any transfer of assets to a cooperative described in section 521.

(c) *Definitions.* For purposes of this section—

(1) *Taxable corporation.* A *taxable corporation* is any corporation that is not a tax-exempt entity as defined in paragraph (c)(2) of this section.

(2) *Tax-exempt entity.* A *tax-exempt entity* is—

(i) Any entity that is exempt from tax under section 501(a), section 527, section 528, or section 529;

(ii) A charitable remainder annuity trust or charitable remainder unitrust as defined in section 664(d);

(iii) The United States, the government of a possession of the United States, a state, the District of Columbia, the government of a foreign country, or a political subdivision of any of the foregoing;

(iv) An Indian Tribal Government as defined in section 7701(a)(40), a subdivision of an Indian tribal government determined in accordance with section 7871(d), or an agency or

instrumentality of an Indian tribal government or subdivision thereof;

(v) An Indian Tribal Corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 477, or section 3 of the Oklahoma Welfare Act, 25 U.S.C. 503;

(vi) An international organization as defined in section 7701(a)(18);

(vii) An entity any portion of whose income is excluded under section 115; or

(viii) An entity that would not be taxable under the Internal Revenue Code for reasons substantially similar to those applicable to any entity listed in this paragraph (c)(2) unless otherwise explicitly made exempt from the application of this section by statute or by action of the Commissioner.

(3) *Substantially all.* The term *substantially all* has the same meaning as under section 368(a)(1)(C).

(d) *Loss limitation rule.* For purposes of determining the amount of loss recognized by a taxable corporation on the transfer of its assets to a tax-exempt entity under paragraph (a) of this section, if assets are acquired by the taxable corporation in a transaction to which section 351 applied or as a contribution to capital, or assets are distributed from the taxable corporation to a shareholder or another member of the taxable corporation's affiliated group, and in either case as part of a plan a principal purpose of which is to recognize loss by the taxable corporation on the transfer of its assets to the tax-exempt entity, the losses recognized by the taxable corporation on the assets transferred to the tax-exempt entity will be disallowed. For purposes of the preceding sentence, the principles of section 336(d)(2) apply.

(e) *Effective date.* This section is applicable for transfers of assets as described in paragraph (a) of this section occurring after [*date that is 30 days after publication in the* **Federal Register** *of these regulations as final regulations*], unless the transfer is pursuant to a written agreement which is (subject to customary conditions) binding on or before [*date that is 30 days after publication in the* **Federal Register** *of these regulations as final regulations*].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–771 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 301

[REG–209803–95]

RIN 1545–AU18

Magnetic Media Filing Requirements for Information Returns; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code.

DATES: The public hearing is being held on Wednesday, February 5, 1997, beginning at 10:00 a.m.

ADDRESSES: The public hearing originally scheduled in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. is changed to room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, October 10, 1996 (61 FR 53161), announced that a public hearing relating to proposed regulations under sections 6011(e) and 6045 of the Internal Revenue Code will be held Wednesday, February 5, 1997, beginning at 10:00 a.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC and that requests to speak and outlines of oral comments should be received by Wednesday, January 15, 1997.

The location of the public hearing has changed. The hearing is being held in room 2615 on Wednesday, February 5, 1997, beginning at 10:00 a.m. The requests to speak and outlines of oral comments should be received by Wednesday, January 15, 1997. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–894 Filed 1–14–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 53 and 58

[AD–FRL–5675–9]

RIN 2060–AH09

Proposed Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: correction.

SUMMARY: The EPA is correcting production errors in the printing of the proposed revisions to 40 CFR parts 53 and 58 (61 FR 65780) for particulate matter monitoring published on December 13, 1996.

FOR FURTHER INFORMATION CONTACT: Neil H. Frank at (919) 541–5560.

SUPPLEMENTARY INFORMATION: The EPA proposed revisions to 40 CFR parts 53 and 58 (61 FR 65780) on December 13, 1996 to establish requirements for designation of reference and equivalent methods of $PM_{2.5}$ and to establish ambient air quality monitoring requirements for particulate matter. A review of the notice resulted in the identification of a missing figure from § 58.13 of part 58, text that was omitted, and two difficult to read figures from Appendix D to part 58. In addition, some minor errors were identified elsewhere. This notice presents the missing figure and text, reprints several hard to read figures, and makes the other corrections.

Dated: January 7, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made to FRL–5659–2, "Proposed Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter" published on December 13, 1996 (61 FR 65780).

1. On page 65800, column 1, §53.9, revise "Designation of a candidate method as a reference method or equivalent method shall be conditioned

on the applicant's * * *" to read "Designation of a candidate method as a reference method or equivalent method shall be conditional to the applicant's * * *"

2. On page 65847, column 1, after paragraph (3), insert the following figure:

BILLING CODE 6560-50-P

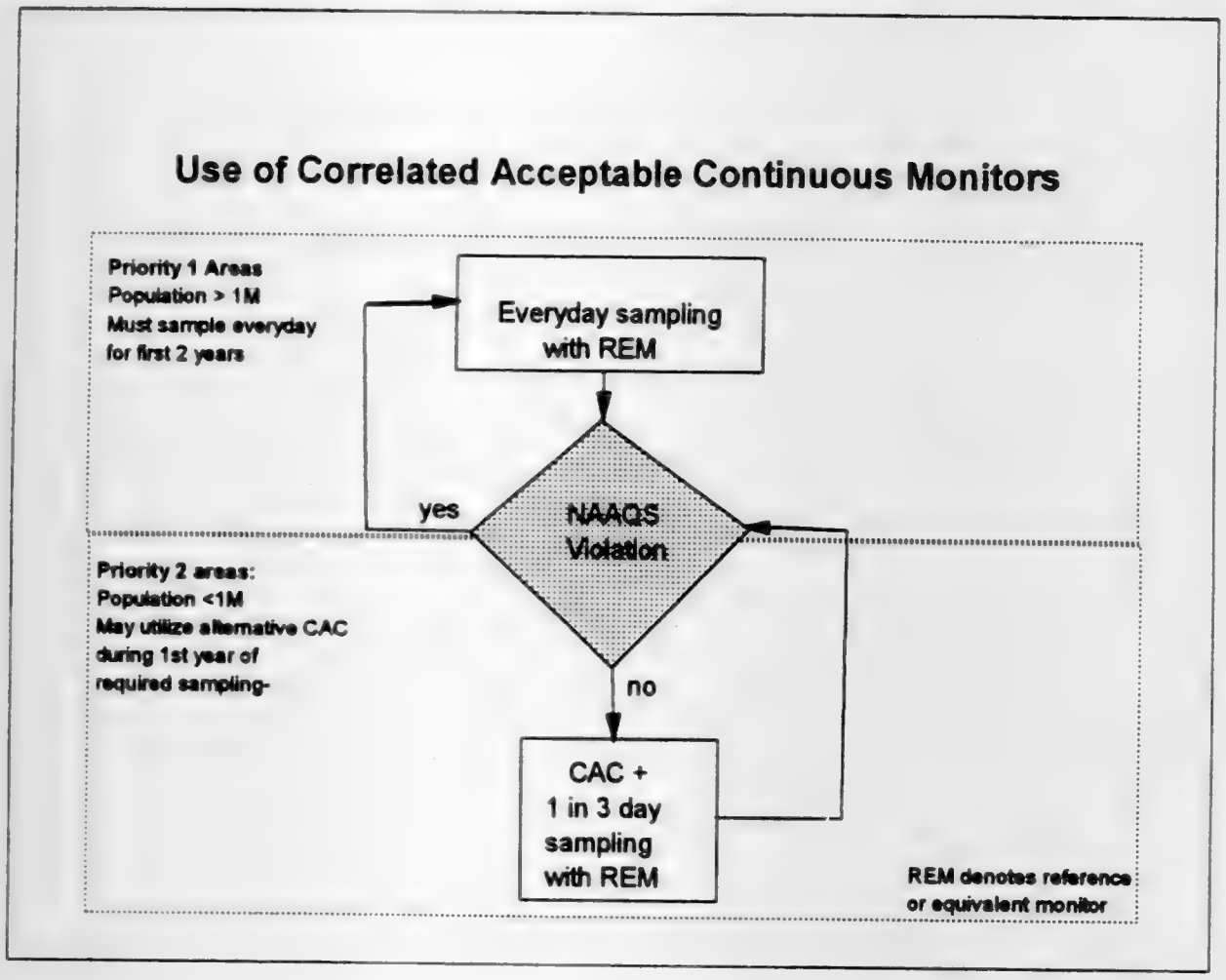
Use of Correlated Acceptable Continuous Monitors
Priority 1 Areas
Population > 1M
Must sample everyday
for first 2 years
Everyday sampling
with REM
yes
NAAQS
Violation
Priority 2 areas:
Population <1M
May utilize alternative CAC
during 1st year of
required sampling-
no
CAC +
1 in 3 day
sampling
with REM
REM denotes reference
or equivalent monitor

3. On page 65862, replace Figure 1 with new Figure 1 which has easier to read shading as follows:

Figure 1. *Sites in a Spatial Averaging Zone Eligible for Comparison to PM-2.5 NAAQS (Conceptual Venn Diagram)*

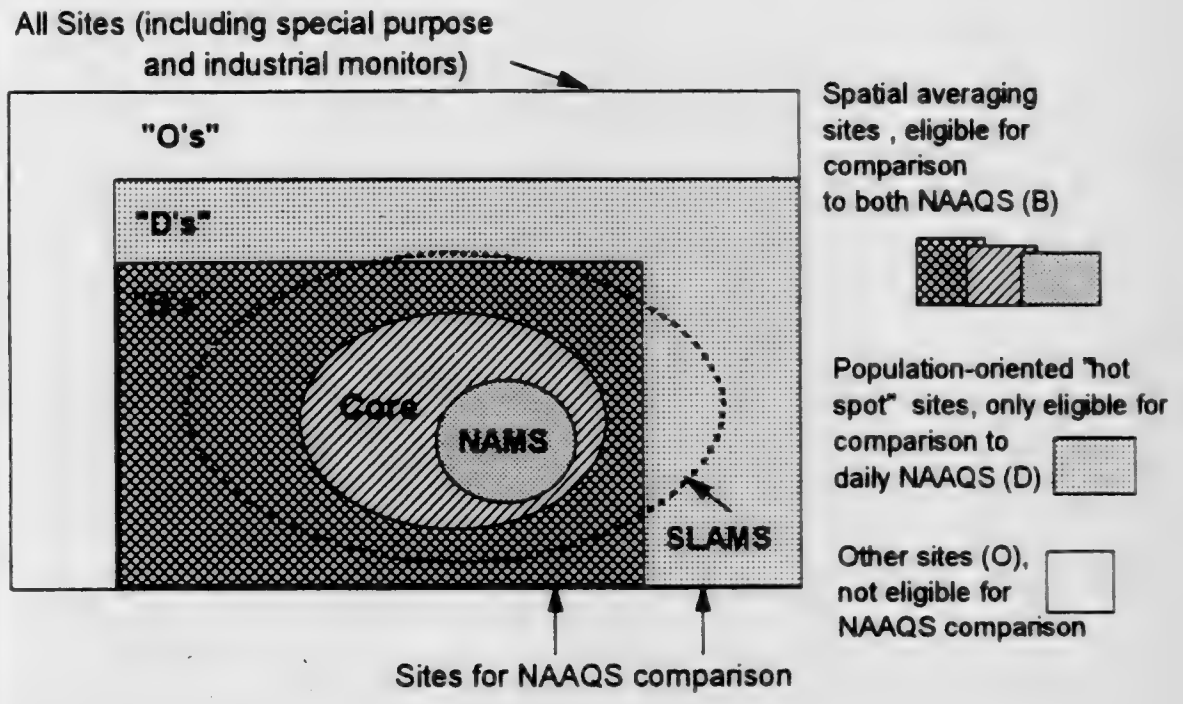

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4. On page 65862, column 1, the paragraph immediately following "2.8.2.1 Core Monitoring Stations for PM2.5" should be identified as "2.8.2.1.1."

5. On page 65862, column 1, paragraph 2.8.2.1.2 change "including at least one station in a population oriented area of expected maximum concentration; (b) At least one station in an area of poor air quality" to "including at least one station in a population oriented area of expected maximum concentration, and at least one station in an area of poor air quality" and change "(c) at least one additional core monitor" to "(b) at least one additional core monitor."

6. On page 65862, column 2, change paragraph "2.8.1.1.4" to "2.8.2.1.4.)

7. On page 65869, replace Figure 5 with new Figure 5 which has easier to read shading as follows:

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Figure 5. Hypothetical Monitoring Planning Area

Potential Spatial Averaging Zones in Western MPA

B =Population oriented sites eligible for comparison to both annual and 24-hr NAAQS
D = Population-oriented sites only eligible for comparison to 24-hr (daily) NAAQS
△ = Other special study sites

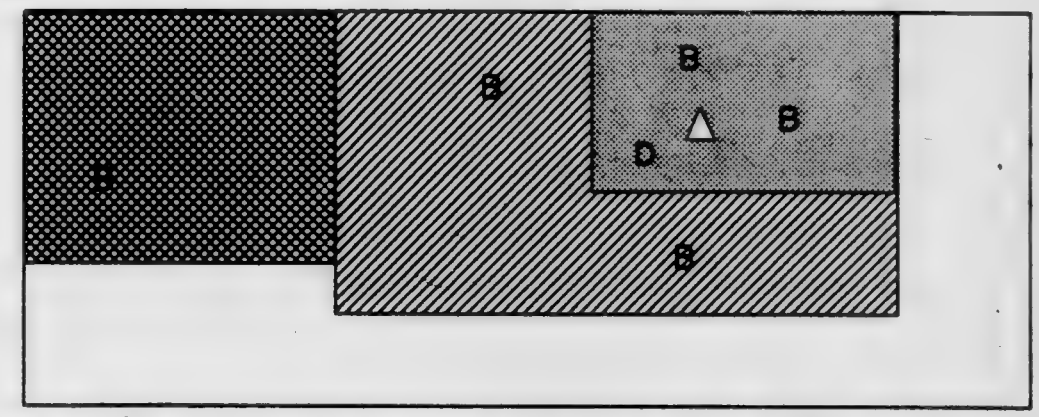

Wood Smoke Impact Residential Area

Area Source Impact ResidentialArea

Industrial Zone

Area not covered by monitoring and not included in a Spatial Averaging Zone

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8. Following page 65869, insert "2.8.3.6 In Figure 6, areas of the State included within MPA's are shown within heavy solid lines. Two MPA's are illustrated. Areas in the State outside the MPA's will also include monitors, but this monitoring coverage may be limited. This portion of the State will also be represented by SAZ's (shown by areas enclosed within dotted lines). Monitors eligible for comparison to the NAAQS are indicated by "X." The appropriate monitors within an SAZ would be averaged for comparison to the annual NAAQS and examined individually for comparison to the daily NAAQS. Other monitors are only eligible for comparison to the daily NAAQS. Both within the MPA's and in the remainder of the State, some special study monitors might not satisfy applicable Part 58 requirements or will not be included in the State Monitoring Plan and will not be eligible for comparison to the NAAQS. The latter may include SLAMS monitors designated to study regional transport or to support secondary NAAQS in unpopulated areas."

[FR Doc. 97–893 Filed 1–14–97; 8:45 am]
BILLING CODE 6560–50–C

40 CFR Part 63

[FRL–5676–9]

Request for Approval of Section 112(l) Delegated Authority; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval and delegation.

SUMMARY: EPA invites public comment on today's proposal to approve the Oregon Department of Environmental Quality (ODEQ) and the Lane Regional Air Pollution Authority (LRAPA) (collectively referred to as "Oregon") request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained in 40 CFR Parts 61 and 63 as these regulations apply to sources required to obtain a federal operating permit under Title V of the Clean Air Act (CAA). EPA as well invites public comment on its proposal to approve specific state rules in order to recognize conditions and limitations established pursuant to these rules, or the rules themselves, as federally enforceable.

DATES: All comments on the Oregon submittal must be received by the close of business on February 14, 1997.

ADDRESSES: Copies of the Oregon submittal are available during normal business hours at the following addresses for inspection and copying: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101–9797, and the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon, 97204–1390. Written comments should be addressed sent to: Chris Hall, U.S. EPA Region 10, 1200 Sixth Avenue (OAQ–107), Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Chris Hall, U.S. EPA Region 10, at (206) 553–1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the amended Clean Air Act of 1990 ("the Act" or "CAA") established new, more stringent requirements upon a State or Local agency that wishes to implement and enforce an air toxics program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to a State or Local agency could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and Local toxics rules and programs under section 112 through formal notice and comment rulemaking. Now State and Local air agencies that wish to implement and enforce a federally-approved air toxics program must make a showing to EPA that they have adequate authorities and resources. Approval is granted by the EPA through the authority contained in section 112(l), and implemented through the Federal rule found in 40 Code of Federal Regulations (CFR) Part 63, subpart E (58 FR 62262, November 26, 1993), if the Agency finds that: (1) The State or Local program or rule is "no less stringent" than the corresponding Federal rule or program, (2) adequate authority and resources exist to implement the State or Local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or Local program or rule is otherwise in compliance with Federal guidance.

II. Discussion of the Oregon 112(l) Submittal

On November 15, 1993, Oregon submitted to EPA an application requesting the delegation of authority to implement and enforce the state-adopted rules for "Hazardous Air Pollutants" found in Oregon Administrative Regulations (OAR) Chapter 340, Division 32 in lieu of the Federal NESHAP regulations contained within 40 CFR Part 61. In the submittal, Oregon also requested that comparable delegation be provided to LRAPA to enforce the state regulations in Lane County.

On August 3, 1994, Oregon supplemented its initial application by providing additional documentation to support its initial request and seeking approval of its 112(g) rules and its rules for creating synthetic minor sources. On March 29, 1996, Oregon further supplemented its application by limiting its initial request for delegation to apply to Part 70 sources only; requested delegation for Part 70 sources only the authority to implement and enforce certain 40 CFR Part 63 NESHAP standards; and requested approval for Part 70 sources only to substitute the State asbestos regulations for the asbestos NESHAP. In the March 1996 supplement, Oregon also requested deferral of delegated federal authority to implement sections 112(g) of the federal CAA until the conclusion of federal rulemaking on this program element. By letter dated December 11, 1996, Oregon rescinded its request to substitute its state asbestos rule for the asbestos NESHAP, therefore EPA will take no action in this regard at this time.

Oregon's section 112(l) application contains the following documents: (1) A written finding by the State Attorney General and the independent legal counsel for LRAPA stating that Oregon has the legal authority to implement and enforce state-adopted regulations as well as assure compliance by all sources within their jurisdiction; (2) a copy of OAR Chapter 340, Division 32 [1] (hereafter referred to as "OAR 340–032"), which contains the fully adopted State NESHAP regulations which would be substituted for the Federal NESHAP regulations upon approval; (3) a copy of OAR Chapter 340, Division 28 [2] (hereafter referred to as "OAR 340–28"), which contains the permitting requirements for each source subject to OAR–340–032, including the State synthetic minor rules, the State Air

[1] As in effect October 6, 1995.
[2] As in effect on July 1, 1995.

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Contaminant Discharge Permit (ACDP) program rules, and the State federal operating permit (FOP) program rules; and (4) a complete program description. The full program submittal is available for review for more detailed information.

A. Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR 63.91, Oregon is requesting delegation of authority to implement and enforce the federal NESHAP regulations contained in 40 CFR Part 61, subparts A through F, J, L, N through P, V, and Y through FF, as adopted by reference in OAR 340–032–05520 through –5580, as these rules apply to Part 70 sources. Oregon is also seeking delegation of authority to implement and enforce 40 CFR Part 63, subparts A, F through I, N, O, Q, R, T, and EE, as adopted into OAR 340–032–0510, as these rules apply to Part 70 sources.

Also, EPA proposes to approve a mechanism for Oregon to receive delegation of future NESHAP regulations that are adopted by reference into state law unchanged. The details of this mechanism are outlined in section IV.C.

B. Voluntary Limits on Emissions

Oregon requests section 112(l) approval of state-adopted regulations which would allow Oregon permitting authorities to establish federally-enforceable emission limitations by permit limiting a source's potential to emit hazardous air pollutants (HAP) below major source thresholds.

Oregon's voluntary emission limitation rules are contained in OAR 340–028–110(114); –1050; –1740; and –2110. The provisions of these sections are applicable as a matter of state law to any air contaminant and not just applicable to the criteria pollutants regulated under the EPA-approved Oregon state implementation plan (SIP).

Oregon's ACDP program regulations (OAR 340–28–1700 through 1790) provide the mechanism for the owner or operator of a source to apply for and obtain enforceable permit conditions that limit the source's potential to emit. Such limitations would be inserted into an ACDP issued by Oregon, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with these limitations. If approved by EPA, limits established pursuant to these regulations would be considered federally enforceable. Therefore, Oregon would have the ability to set limits which would be sufficient to exempt a source from the requirement to obtain a FOP and/or comply with Federal, State or Local hazardous air pollutant regulations. Approval of federally enforceable permit limits under section 112(l) is necessary because the Oregon SIP approved ACDP program only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOCs or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b)[3], however, section 112 of the Act provides the underlying authority for controlling all HAP emissions. EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR Part 63, the regulations promulgated to implement section 112(l) of the Act. In this respect, EPA is proposing to approve OAR 340–028–1740, Oregon's synthetic area source permit program, under the authority of section 112(l) of the Act. Furthermore, EPA proposes that, after final approval of this section, synthetic area source permits issued pursuant to these EPA-approved regulations including terms and conditions for HAP contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such permits were issued prior to EPA approval of this section. However, such permits would have to have been issued after the effective date of OAR 340–028–1740 (i.e., after November 4, 1993) in accordance with all of the provisions set forth in that section. It is EPA's position that further actions approving OAR 340–028–1740 will not be necessary even though 40 CFR part 63, subpart E potential to emit language revisions may not be finalized by the time this proposed action is finalized.

III. Authority and Commitments for Section 112 Implementation

Under 40 CFR Part 63, subpart E, the minimum documentation needed as part of this 40 CFR 63.91 delegation request is: A written finding by the State attorney general (and the independent counsel for LRAPA) confirming that Oregon has adequate legal authorities to implement and enforce State rule(s) or program(s); copies of the State statutes, regulations and other documents which contain the appropriate provisions for which Oregon is requesting delegation; a demonstration of adequate resources to implement and enforce all aspects of the delegated rules or program; a schedule demonstrating expeditious implementation of the delegated rules or program; a plan that assures expeditious compliance by all sources; and a demonstration of adequate legal authority to implement and enforce all delegated rules or program and to assure compliance by all sources upon approval.

A. Written Findings by Legal Counsel

40 CFR 63.91(b)(1) requires that, at a minimum, the State have the following authorities: (1) Enforcement authorities that meet the requirements of 40 CFR 70.11 of this chapter; (2) authority to request information from regulated sources regarding their compliance status; (3) authority to inspect sources and any records required to determine a source's compliance status; and (4) if ODEQ delegates authorities to a Local agency, ODEQ must retain enforcement authority unless the Local agency's authorities meet the requirements of 40 CFR 70.11. Oregon has provided to EPA legal opinions from the State Attorney General and the independent legal counsel for LRAPA which clearly outline Oregon's enforcement authorities as they pertain to the requirements of 40 CFR 63.91(b)(1).[4]

B. Copies of State Statutes and Regulations

Complete copies of the Oregon regulations, OAR 340–032 (1995) and OAR 340–28 (1995), and Oregon Revised Statutes (ORS) 468 and 468A (1993) have been provided to EPA as required by 40 CFR 63.91(b)(2). OAR 340–032 "Hazardous Air Pollutants" establishes Oregon's procedures for regulating sources subject to 40 CFR Part 61 and Part 63. OAR 340–032–0130 "List of Hazardous Air Pollutants" incorporates into state law all of the HAP listed in section 112(b) of the Act. OAR 340–032–0240 "Permit to Operate" requires all new, existing and modified major sources of HAPs to obtain a FOP.

OAR 340–032–0500 "Emission Limitations for New Major Sources" requires new major sources of hazardous air pollutants to obtain a permit prior to construction or reconstruction, as well as requires such

[3] See the Kathie A. Stein guidance memo of January 25, 1995, titled "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits" which addresses the technical aspects of how criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

[4] Since the original submission of this delegation application, EPA has fully approved Oregon's Part 70 operation permit program after determining that Oregon's enforcement authorities meet the requirements of 40 CFR Part 70.11. 60 FR 50106 (November 27, 1995).

new sources to utilize maximum achievable control technology (MACT). OAR 340–032–0510 through –0620 adopts by reference 40 CFR Part 63, subparts A, F through I, M through O, Q, R, T, and EE as they apply to new major sources. OAR 340–032–2500 "Emission Limitations for Existing Major Sources" requires existing major sources of HAP to comply with applicable federal MACT standards and if such standards are not timely promulgated, then comply with state-adopted MACT regulations and to obtain a state-issued FOP permit. OAR 340–032–2600 through –3010 adopt by reference 40 CFR Part 63, subparts A, F through I, M through O, Q, R, T, and EE as they apply to existing major sources. OAR 340–032–4500 "Requirements for Modifications of Existing Major Sources" requires existing major sources of HAP to apply MACT whenever that source is modified and the modification results in an increase in HAP emissions above de minimis levels.

OAR 340–032–5500 "Applicability" indicates which sections of OAR 340–032 with which a stationary source identified in OAR 340–032–5530 through 5650 must comply with. OAR 340–032–5510 "General Requirements" requires all new sources subject to the state HAP regulations to notify Oregon prior to and after start-up. OAR 340–032–5520 "Federal Regulations Adopted by Reference" adopt by reference 40 CFR 61, subparts A through F, I, J, L, N through P, V, and Y through FF as in effect on July 1, 1993. OAR 340–032–5530 through OAR 340–032–5580 contain brief descriptions for each of the Federal NESHAP standards adopted by reference under OAR 340–032–5520 which helps a source determine whether it is potentially subject to the state-adopted standard without having to refer to the Code of Federal Regulations. OAR 3440–032–5590 through OAR 340–032–5650 contains the state asbestos rule language. Finally, OAR 340–32–5520 provides that if a discrepancy exists between 40 CFR Part 61 and OAR 340–32–5530 through 340–32–5650, then the applicable section of 40 CFR Part 61 shall apply.

C. Demonstration of Adequate Resources

40 CFR 63.91(b)(3) requires Oregon to provide for adequate resources to implement and enforce all aspects of the program or rule. Specifically, 40 CFR 63.91(b)(3) requires Oregon to provide: 1) a description in narrative form of the scope, structure, coverage, and processes of the State program; 2) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and 3) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

EPA believes Oregon has taken the necessary steps to provide for adequate resources to support implementation and enforcement of its air toxics program which are at least as stringent as the federal program. OAR 340–032 and OAR 340–28 provide the regulatory framework for administering Oregon's HAP program. OAR 340–32–0105 now provides that the provisions of OAR 340–032 apply "to any new, modified, or existing source that emits or has the potential to emit any HAP" which is defined in OAR 340–32–0120(23) as "an air pollutant listed by the EPA pursuant to § 112(b) of the Federal CAA." Oregon has defined "HAP" such that their program at a minimum covers the same list of HAPs found in the CAA.

Oregon has adopted by reference into state law all of the 40 CFR Part 61 and Part 63 subparts for which they are requesting delegation under the authority of 40 CFR 63.91. Therefore, Oregon's air toxics programs covers the same sources and the same pollutants which are presently being covered under the Federal NESHAP regulations.

ODEQ will be implementing and enforcing OAR 340–032 and OAR 340–28 throughout the State of Oregon (with the exception of Lane County) under the authority of ORS 468 and ORS 468A. Implementation and enforcement of OAR 340–032 and 340–028 or similar local regulations will be administered by LRAPA in Lane County. OAR 340–032–0110 and ORS 468A.135 gives LRAPA authority to implement and enforce OAR regulations or adopt their own more stringent regulations.

Resources to fund implementation and enforcement of the Oregon air toxics program for sources subject to the Federal NESHAP regulations but which are not subject to FOP requirements are covered by a three-part fee system comprised of a filing fee, a processing fee, and a compliance determination fee administered through its ACDP program. Oregon has been operating this fee program since 1972. Program costs for major sources subject concurrently to NESHAP regulations and FOP requirements are covered through a separate three-part fee system composed of an emission fee, a base fee and user fees administered through its FOP program. EPA believes that Oregon assess fees which are adequate to cover the costs of implementing and enforcing the terms of each permit issued under these programs.[5]

Oregon was granted full approval of its FOP program on November 27, 1995. See 60 FR 50106. As part of this approval, EPA found that Oregon possessed adequate legal authorities and resources to implement and enforce its statewide FOP program as it applies to Part 70 sources.[6] Since Oregon has met the requirements of Part 70 for an approved Title V operating permit program, EPA considers this finding of adequate resources and authorities to be sufficient for section 112(l) purposes as well as it applies to Part 70 sources.[7]

D. Demonstration of Expeditious Implementation

Oregon has the broad legal authority to implement and enforce all Federal NESHAP regulations adopted into State law or included in a State-issued permit pursuant to OAR 340–28. EPA believes that Oregon's statutory and regulatory authorities are adequate to expeditiously implement those 40 CFR Parts 61 and 63 regulations adopted by reference in OAR 340–032 for which they are requesting delegation.

Oregon will adopt all new and amended NESHAP regulations into OAR 340–032. Oregon will implement and enforce these regulations for Part 70 sources through its FOP program. All existing major sources of HAP will be required to obtain a FOP. See OAR 340–032–0220(1) and OAR 340–28–2110(1). New major sources of HAP must obtain an ACDP construction permit prior to commencing construction. See OAR 340–032–0230(1).

E. Demonstration of Expeditious Compliance

The EPA believes that Oregon's FOP program provides for an expeditious schedule for assuring compliance with NESHAP requirements as required by 63.91(b)(5). The FOP program regulations contain adequate authority

[5] For further discussion of ODEQ's FOP fee system, see the September 14, 1994 **Federal Register** (59 FR 47105) rulemaking granting interim approval to the state of Oregon of its FOP program, including its three part fee system.

[6] For further discussion regarding Oregon's authorities and resources for implementing its FOP program please refer to the language contained in the September 14, 1994, **Federal Register** (59 FR 47105) notice proposing interim approval of the Oregon FOP program and the December 2, 1994, **Federal Register** (59 FR 61820) notice granting interim approval of the Oregon FOP program, and the September 28, 1995 **Federal Register** proposal (60 FR 50166) and direct final **Federal Register** (60 FR 50106) which granted full approval of ODEQ's FOP program.

[7] See the December 10, 1993, EPA policy memo from John Seitz of OAQPS titled "Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V."

to provide for an expeditious schedule for assuring compliance with all NESHAP requirements. Nothing in OAR 340–032 or OAR 340–028 would allow a source to avoid or delay compliance with any CAA requirement beyond the compliance date required by the Federal NESHAP regulations.

EPA also believes that the Oregon synthetic area source program meets the requirements of 40 CFR 63.91(b)(5) since this program does not allow for the waiver of any NESHAP requirement. To be more specific, sources that become minor through a permit issued pursuant to this program will still be required to meet all NESHAP requirements applicable to non-major sources.

F. Demonstration of Adequate Legal Authority

40 CFR 63.91(b)(6) requires Oregon to demonstrate that it has adequate legal authority to assure compliance as well as assure minimum enforcement authority which includes: (1) enforcement authorities that meet the requirements of 40 CFR 70.11; and (2) ability to retain enforcement authority in jurisdictions where this program has been re-delegated by the State to a local authority, unless the local authority has enforcement authorities that meet the requirements of 40 CFR 70.11. As previously indicated, ODEQ and LRAPA have enforcement authorities that meet the requirements of 40 CFR 70.11.

IV. Programs for Proposed Approval

A. Adoptions by Reference

It is EPA's belief that the Oregon submittal substantially meets the requirements of 40 CFR 63.91. Therefore, with this notice EPA proposes to grant full approval to Oregon's request for delegated authority to implement and enforce 40 CFR Part 61, subparts A through F, J, L, N through P, V, and Y through FF; and 40 CFR Part 63, subparts A, F through I, N, O, Q, R, T, and EE, as adopted into OAR 340–032. This delegation of authority to implement and enforce these rules applies only as these rules apply to 40 CFR part 70 sources. EPA will continue to administer and enforce these regulations as they apply to non-Part 70.

B. Voluntary Limits on HAP Emissions

EPA is proposing to grant approval of OAR 340–028 sections –110(114), –1050, –1740, and –2110 under the authority of section 112(l) of the Act to recognize the Oregon ACDP program as federally enforceable for the purpose of establishing potential to emit limitations. Approval of these regulations will allow Oregon to create federally enforceable emission limitations by permit for sources who have the potential to emit HAP above major threshold levels but have actual HAP emissions which are below major source levels.[8]

C. Mechanism for Delegation of Future NESHAP Standards

In addition, EPA proposes to approve a mechanism for future delegation of those Federal NESHAP regulations that Oregon adopts by reference into state law.[9] Under this streamlined approach, upon adoption of a NESHAP regulation Oregon would only need to send a letter to EPA requesting delegation for that regulation. EPA would in turn respond to this request by sending a letter back to Oregon delegating the NESHAP regulation as requested. No further formal response from Oregon would be necessary at this point, and if a negative response from Oregon is not received within 10 days of this letter of delegation from EPA, the delegation would then become final.

V. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposed approval. Copies of the Oregon submittal and other information relied upon for this action are contained in a docket maintained at the EPA Regional Office. The docket is a file of information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by February 14, 1997.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

NESHAP rule or program delegation approvals under section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that the State of Oregon is already imposing. Therefore, because the section 112 delegation approvals do not impose any new requirements, the Agency has determined that it would not have a significant impact on any small entities affected.

D. Unfunded Mandates Reform Act

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VI. Summary of Action

EPA is soliciting public comment on its proposed delegation and approval of implementation and enforcement authority to Oregon pursuant to the authority of section 112(l) of the Act. EPA is also proposing to approve a mechanism for Oregon to receive future delegation of section 112 standards that are unchanged from the federal standards, but only as these standards apply to Part 70 sources. At the request of Oregon, EPA is proposing to take no action at this time in regard to their 40 CFR 63.93 rule substitution request for the state asbestos regulations contained in OAR 340–32–5590 through 340–32–5650. Interested parties are invited to comment on all aspects of this proposed rule. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by February 14, 1997 will be considered in the final rulemaking action taken by EPA. Issues raised by those comments will be carefully reviewed and considered in the decision to approve or disapprove the submittal. The EPA expects to make a final decision on whether or not to approve the Oregon submittal by July 14, 1997 and will give notice of the decision in the **Federal Register**. The notice will include a summary of the reasons for

[8] The source would thereby become a "synthetic area source" or a "synthetic minor source."

[9] See section 5.1.2.b of the document "Interim Enabling Guidance for the Implementation of 40 CFR part 63, subpart E" (EPA–453/R–93–040, November 1993).

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the final determination and a response to all major comments.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 6, 1997.

Chuck Clark,

Regional Administrator.

[FR Doc. 97–977 Filed 1–14–97; 8:45 am]

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Notices

Federal Register

Vol. 62, No. 10

Wednesday, January 15, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Katka Peak Environmental Impact Statement Supplement, Idaho Panhandle National Forests, Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplement to the Katka Peak environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare a supplement to Katka Peak Final Environmental Impact Statement (EIS). The notice of intent for the EIS was published in volume 57, number 137 of the **Federal Register**, pages 31491 through 31493 on July 16, 1992. This supplement will disclose environmental effects of a timber salvage and ecosystem rehabilitation project in the Katka Peak analysis area. A portion of the proposed activities are within the Katka Peak Roadless Area number 1–157.

The project area is approximately 7 air miles southeast of the community of Bonners Ferry. It is in the northwest portion of the Cabinet Mountains, Idaho Panhandle National Forests, Bonners Ferry Ranger District, Boundary County, Idaho. There are approximately 28,827 acres of National Forest lands within the analysis area. It includes portions of Township 61 North, Ranges 1, 2 and 3 East, and Township 60 North, Range 2 East, Boise Meridian, Boundary County, Idaho.

The decision to be made is to the extent, if anything, of activities to be accomplished for salvage, thinning, prescribed burning, watershed and fisheries habitat improvement and road reconditioning within the project area. Decisions concerning road closures for grizzly bear security habitat would affect only roads within the Boulder Bear Management Unit.

The purpose of the project is four-fold. It is to: salvage dead and dying timber; to trend productive and stagnating poletimber, sawtimber and plantation stands towards historical stocking levels and species composition; reduce the stocking of small diameter Douglas-fir, larch and other species that are invading historical dry site ponderosa pine habitat types; and, remove seed trees in previous harvest units which are now certified as regenerated.

The items covered by the 1994 Katka Peak record of decision to implement Alternative 7c are outside the scope of this analysis. This supplement will not result in any changes to the existing timber sales and related activities as analyzed and disclosed in the Katka Peak Final EIS and ROD.

This supplement to the EIS is necessary under 40 CFR 1502.9(c) due to significant new circumstances and information obtained since the Katka Peak Final EIS was completed. One significant new circumstance is the expanding market for commercial utilization of trees ranging in size from 4 to 7 inches in diameter at breast height. These small trees are increasingly in demand for pulp, posts and poles. Also, dead timber is being utilized in larger quantities for houselogs. These growing markets now make it feasible to use commercial forest product sales to treat timber stands that were designated for "deferred treatment" in the Katka Peak Final EIS and Record of Decision.

The scientific assessment for the Interior Columbia Basin Ecosystem Management Project (ICBEMP) has provided significant new information relevant to the project area. This area lies within the Northern Glaciated Mountains Region described in the ICBEMP assessment area. Specific recommendations for this region indicate a need to rehabilitate overstocked stands and to enhance dry site ponderosa pine habitat types by such techniques as mechanical stocking control (thinning) and prescribed fire.

DATES: Written comments and suggestions on the proposed management activities or requests to be placed on the public involvement list should be submitted on or before February 14, 1997.

ADDRESSES: Send written comments, suggestions or requests to District Ranger, ATTN: Katka Peak Supplemental EIS (Kit Katkee Salvage Project), Bonners Ferry Ranger District, Route 4 Box 4860, Bonners Ferry, Idaho 83805–9764.

FOR FURTHER INFORMATION CONTACT: Barry Wynsma, Project Leader, phone (208) 267–5561.

SUPPLEMENTARY INFORMATION: The Katka Peak Supplemental EIS (Kit Katkee Salvage Project) was initiated in October of 1995 pursuant to procedures in Section 2001 of Public Law 104–19 (Pub.L. 104–19). New direction issued by Forest Service Chief Jack Ward Thomas and Department of Agriculture Secretary Dan Glickman on July 2, 1996 resulted in this project being subject to standard NEPA procedures for supplements to environmental impact statements. This project is no longer subject to Pub.L. 104–19 procedures because the estimated total volume of live timber proposed for removal in stocking reduction treatments is expected to exceed 25 percent, which is the upper limit for a salvage sale under Pub.L. 104–19.

This project-level EIS supplement incorporates the Katka Peak Final EIS and Record of Decision (July 12, 1994) and tiers to the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987). The Forest Plan provides overall guidance of all land management activities on the Idaho Panhandle National Forests.

Use of prescribed fire, timber harvest, road closures, road reconstruction and obliteration, water quality improvement and instream fish habitat structures, and access management are all being considered to achieve or trend toward the desired condition.

Proposed salvage and ecosystem rehabilitation management activities would take place in timber stands with the highest treatment needs and with low potential for producing and delivering sediment to streams. Thinning treatments would remove trees between 4 and 9 inches in diameter at breast height (dbh). Activities would include: Approximately 1,800 acres of roundwood thinning (trees less than 7 inches dbh), approximately 3,800 acres of understory removal treatments, including salvage of dead/down timber; approximately 135 acres of final removal of seed trees in certified

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regenerated harvest units (keeping reserve trees for wildlife); approximately 730 acres of plantations scheduled for precommercial thinning; approximately 340 acres of dry site ponderosa pine habitat enhancement treatments, using both mechanical methods and prescribed fire; approximately 11 water quality/fisheries improvement projects, mostly road stabilization on existing roads; and, access management to meet security habitat for threatened and endangered wildlife species.

The proposal includes precommercial thinning and prescribed fire treatments in the Katka Peak Roadless Area (1–157). Approximately 329 acres of dry-site ponderosa pine habitat would be underburned and 217 acres of overstocked pole-sized timber stands would be precommercially thinned. There would not be any use of heavy equipment, no road construction, and no removal of forest products within the roadless area.

These proposed actions are being considered together because they represent either connected, similar, or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The Idaho Panhandle National Forests Forest Plan provides the guidance for management of activities through goals, objectives, standards and guidelines, and management area directions. The proposed salvage and ecosystem rehabilitation management activities are within Forest Plan designated management Areas 2 and 19. These areas can be described briefly as follows:

Management Area 2—Manage identified grizzly bear habitat to support a recovered grizzly bear population while providing for long-term growth and production of commercially valuable wood products.

Management Area 19—Manage for a semi-primitive recreation setting while providing low levels of timber harvest with minimum standard roads.

The Forest Service will consider two alternatives to the proposed action. One alternative will be "No Action" in which none of the proposed activities would be implemented. Another alternative will consider the effects of treating all stands that have a component of dead timber, that are overstocked, that are in ponderosa pine habitat that currently do not exhibit the historical species and stocking levels of this habitat type, or have final removal needs.

The supplement to the Katka Peak Final EIS will analyze the direct, indirect, and cumulative environmental effects of the proposed action and alternatives. Past, present, and reasonably foreseeable activities on both private and National Forest lands will be considered. Analysis of site-specific mitigation measures and their effectiveness will be disclosed.

Public participation is an important part of the analysis and decisionmaking process. Scoping began with publication of the proposed project in the October 1995 IPNF NEPA Quarterly Schedule of Proposed Actions and through newspaper articles and letters to interested persons. The public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision.

The following preliminary issues have been identified at this time:

1. How will access management and project timing affect habitat and security needs for Threatened, Endangered, Sensitive and Management Indicator species?

2. How will the fisheries and water quality in the project area be protected, maintained, or improved?

3. What timber stands have stocking levels and species compositions that are above and outside of their historic range of variability? Also, what stands are experiencing or at risk of unacceptably high levels of insect and disease activity? In relation to stands experiencing high levels of tree mortality, what are the fuel loading concerns and are the stands in need of fuels reduction?

4. How will the project contribute to maintaining the customary flow of goods and services to communities?

5. How will the project affect the Katka Peak Roadless Area?

6. How will the visual resource be affected by the project?

7. How will the project protect sensitive plant species?

8. How will the project protect cultural resources?

This list may be expanded, verified or modified based on continuing public participation in this project.

The Draft Supplement to the Katka Peak Final EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February of 1997. At that time, EPA will publish a Notice of Availability (NOA) of the Draft Supplemental EIS in the **Federal Register**. The comment period on the Draft Supplemental EIS will end 45 days from the date the NOA appears in the **Federal Register**. It is very important that those interested in the management of the Katka Peak area participate at that time. To be most helpful, comments on the Draft Supplemental EIS should be as site- and project-specific as possible and relate only to proposals made in the EIS supplement. The Final Supplemental EIS is anticipated to be completed by April, 1997.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. versus NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon versus Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. versus Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the Katka Peak Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplement to the Final EIS should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the draft supplement or the merits of the alternatives formulated and discussed in the supplement.

I am the responsible official for this supplement to the environmental impact statement.

Dated: December 26, 1996.

Elaine J. Zieroth,

District Ranger, Bonners Ferry Ranger District.

[FR Doc. 97–887 Filed 1–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On July 8, 1996, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Andrea Chu (Intertechnique, SNFA, SNR), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde, Rollix Defontaine), Matthew Rosenbaum (SKF), or Kris Campbell.

Germany

Thomas Barlow (Torrington Nadellager), Davina Hashmi (INA), Chip Hayes (NTN Kugellagerfabrik), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde and Rollix Defontaine), Matthew Rosenbaum (SKF), Thomas Schauer (FAG), Kris Campbell, or Richard Rimlinger.

Italy

Matthew Rosenbaum (SKF), Mark Ross (FAG), Kris Campbell or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Chip Hayes (NTN), Michael Panfeld (NPBS), Mark Ross (Asahi Seiko), Thomas Schauer (NSK Ltd.), or Richard Rimlinger.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Andrea Chu (Hoffman U.K.), Hermes Pinilla (NSK-RHP), Matthew Rosenbaum (Rose Bearing Co., Ltd.), Thomas Barlow (Timken-UK), or Kris Campbell.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On July 8, 1996, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore, and the United Kingdom (61 FR 35713). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995. We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held public hearings as follows: General Issues, August 16, 1996, Germany, August 20, 1996, and Japan, August 19, 1996. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes of kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix," which is appended to this notice of final results.

Use of Facts Available

In accordance with section 776 of the Tariff Act, we have determined that the use of the facts available is appropriate for a number of firms. For a discussion of our application of facts available, see the "Facts Available" section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
France	SKF	BBs
	SNR	BBs
Germany	FAG	BBs, CRBs, SPBs
	INA	BBs, CRBs
	SKF	BBs, CRBs, SPBs
Italy	FAG	BBs
Japan	Asahi Seiko	BBs
	Koyo	BBs, CRBs
	Nachi	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
Singapore	NMB/Pelmec	BBs
United Kingdom	NSK-RHP	BBs, CRBs

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to this notice of final results.

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Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1994, through April 30, 1995:

Company	BBs	CRBs	SPBs
France			
Franke GmbH	[1] 66.42	[3]	[3]
Hoesch Rothe Erde	[2]	[3]	[3]
Intertechnique	1.55	[2]	[2]
Rollix Defontaine	[2]	[3]	[3]
SKF	17.23	[2]	42.79
SNFA	66.42	18.37	[3]
SNR	2.37	2.50	[2]
Germany			
FAG	30.68	23.17	12.11
Franke GmbH	[1] 132.25	[3]	[3]
Hoesch Rothe Erde	[2]	[3]	[3]
INA	20.57	19.12	[2]
NTN	18.38	[2]	[2]
Rollix & Defontaine	[2]	[3]	[3]
SKF	2.92	10.22	7.84
Torrington Nadellager	[2]	76.27	[3]
Italy			
FAG	5.15	[2]	[3]
SKF	2.97	[3]	[3]
Japan			
Asahi Seiko	2.65	[3]	[3]
Koyo Seiko	18.90	3.88	[1] 0.00
NPB	45.83	[2]	[2]
NSK Ltd.	12.81	22.42	[2]
NTN	4.01	3.76	1.06
Singapore			
NMB Singapore/Pelmec Ind	2.44	[3]	[3]
United Kingdom			
NSK–RHP	20.25	25.01	[3]
Hoffman U.K.	61.14	48.29	[3]
Rose Bearings	61.14	48.29	[3]
Timken Bearings	[2]	[2]	[3]

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net value for that exporter's sales for each relevant class or kind to the United States during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the export price and constructive export price (CEP) deposit rates (using the export price and CEP respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both export price and CEP sales by the combined total value for both export price and CEP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an

unaffiliated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996). These rates are the "All Others" rates from the relevant LTFV investigations.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of AFBs.

1. Export Price Sales

With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and export price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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B. Scope Determinations

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. Ball Bearings and Parts Thereof

These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule

(HTS) subheadings: 4016.93.10, 4016.93.50, 6909.19.5010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.70.6060, 8708.93.6000, 8708.99.06, 8708.99.3100, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.58, 8708.99.8015, 8708.99.8080.

2. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 4016.93.10, 4016.93.50, 6909.19.5010, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080.

3. Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof

These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 6909.19.5010, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made.

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV)*, 54 FR 19006, 19019 (May 3, 1989):

Products Covered

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination (*see International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 54 FR 21488, (May 18, 1989))
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990 (*see Scope Rulings*, 55 FR 42750 (October 23, 1990)):

Products Excluded

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990 (*see Scope Rulings*, 55 FR 43020 (October 25, 1990)):

Products Covered

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings completed between April 1, 1991, and June 30, 1991 (*see Notice of Scope Rulings*, 56 FR 36774 (August 1, 1991)):

Products Excluded

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I)*, 56 FR 31692, 31696 (July 11, 1991):

Products Covered

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between July 1, 1991, and September 30, 1991 (*see Scope Rulings*, 56 FR 57320 (November 8, 1991)):

Products Covered

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products Excluded

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991 (*see Notice of Scope Rulings*, 57 FR 4597 (February 6, 1992)):

Products Covered

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992 (*see Scope Rulings*, 57 FR 19602 (May 7, 1992)):

Products Covered

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products Excluded

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992 (*see Scope Rulings*, 57 FR 32973 (July 24, 1992)):

Products Excluded

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992 (*see Scope Rulings*, 57 FR 57420 (December 4, 1992)):

Products Covered

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992 (*see Scope Rulings*, 58 FR 11209 (February 24, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products Excluded

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993 (*see Scope Rulings*, 58 FR 27542 (May 10, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993 (*see Scope Rulings*, 58 FR 47124 (September 7, 1993)):

Products Covered

- Certain series of INA bearings

Products Excluded

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993 (*see Scope Rulings*, 59 FR 8910 (February 24, 1994)):

Products Excluded

- Certain textile machinery components

Scope rulings completed after March 31, 1994:

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1994 and December 31, 1994 (*see Scope Rulings*, 60 FR 12196 (March 6, 1995)):

Products Excluded

- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope rulings completed between April 1, 1995 and June 30, 1995 (*see Scope Rulings*, 60 FR 36782 (July 18, 1995)):

Products Covered

- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope rulings completed between January 1, 1996 and March 31, 1996 (*see Scope Rulings*, 61 FR 18381 (April 25, 1996)):

Products Covered

- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope rulings completed between April 1, 1996 and June 30, 1996 (*see Scope Rulings*, 61 FR 40194 (August 1, 1996)):

Products Excluded

- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.

Issues Appendix

Company Abbreviations

Asahi—Asahi Seiko
FAG Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
Hoesch—Hoesch Rothe Erde AG
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
Koyo—Koyo Seiko Co. Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPB—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
Rollix—Rollix Defontaine, S.A.
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR France—SNR Nouvelle Roulements
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NV—Normal Value
HM—Home Market
HMP—Home Market Price
ICC(s)—Inventory Carrying Costs
ISE(s)—Indirect Selling Expenses
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
URAA—Uruguay Round Agreements Act

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AFB Administrative Determinations

AFBs LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).

AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).

AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs III—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs IV—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFBs V—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

CIT AFB Decisions

FAG v. United States, Slip Op. 95–158 (CIT 1995) *(FAG I)*.

FAG Kugelfischer Georg Schaefer KGAa v. United States, 932 F. Supp 315 (CIT 1996) *(FAG II)*.

FAG UK Ltd. v. United States, Slip Op. 96–177 (CIT 1996) *(FAG III)*.

Federal Mogul Corp. v. United States, 813 F. Supp 856 (CIT 1993) *(Federal Mogul I)*.

Federal Mogul Corp. v. United States, 839 F. Supp 881 (CIT 1993), vacated, 907 F. Supp 432 (1995) *(Federal Mogul II)*.

Federal Mogul Corp. v. United States, 884 F. Supp 1391 (CIT 1993) (Federal Mogul III).

Federal Mogul Corp. v. United States, 17 CIT 1015 (CIT 1993) *(Federal Mogul IV)*.

Federal Mogul Corp. v. United States, 924 F. Supp 210 (CIT 1996) *(Federal Mogul V)*.

Koyo Seiko Co., Ltd. v. United States, 796 F. Supp 1526 (CIT 1992) *(Koyo)*.

NPBS v. United States, 903 F. Supp 89 (CIT 1995) *(NPB)*.

NSK Ltd. v. United States, 910 F.Supp 663 (CIT 1995) *(NSK I)*.

NSK Ltd. v. United States, 896 F.Supp 1263 (CIT 1995) *(NSK II)*.

NSK Ltd. v. United States, 919 F.Supp 442 (CIT 1996) *(NSK III)*.

NTN Bearing Corporation of America v. United States, 903 F. Supp 62 (CIT 1995) *(NTN I)*.

NTN Bearing Corporation of America v. United States, 905 F.Supp.1083 (CIT 1995) *(NTN II)*.

SKF USA Inc. v. United States, 876 F. Supp 275 (CIT 1995) *(SKF)*.

The Torrington Company v. United States, 818 F.Supp 1563 (CIT 1993) *(Torrington I)*.

The Torrington Company v. United States, 832 F.Supp. 379 (CIT 1993) *(Torrington II)*.

The Torrington Company v. United States, 881 F.Supp 622 (CIT 1995) *(Torrington III)*.

The Torrington Company v. United States, 926 F. Supp 1151 (CIT 1996) *(Torrington IV)*.

CAFC AFB Decisions

NTN Bearing Corp. v. United States, 74 F.3d 1204 (CAFC 1995) *(NTN III)*.

The Torrington Company v. United States, 44 F. 3d 1572 (CAFC 1994) *(Torrington V)*.

The Torrington Company v. United States, 82 F.3d 1039 (CAFC 1996) *(Torrington VI)*.

1. Assessment

Comment: NMB/Pelmec argues that, in calculating the assessment rate in this review, the Department should use the statute and regulations in effect as of December 31, 1994, rather than the antidumping statute effective as of January 1, 1995. It notes that the Statement of Administrative Action (H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. (1994)) (SAA) states that "there are two express exceptions to the general transition rule in Article 18.3. In the case of refund procedures under Article 9.3, national authorities will use the rules in effect at the time of the most recent determination or review applicable to the calculation of dumping margins," citing the SAA at 819. NMB/Pelmec argues that this exception must be interpreted to mean that the assessment rate should be calculated using the same rules which were used to calculate the original deposit rate for entries subject to the review or refund procedure. It contends that, because the most recent cash-deposit determination which applied to the entries during the 1994/95 administrative review was *AFBs IV*, the assessment rate for the 1994/95 entries should also be determined using the statute and regulations in effect as of December 31, 1994. Therefore, NMB/Pelmec asserts, the Department should calculate the assessment rate under the prior law by making an exporter's-sales-price-offset adjustment, by including any below-cost sales in the calculation of profit for CV, and by not making a CEP-profit adjustment to U.S. sales.

Torrington maintains that the U.S. practice is not inconsistent with Article 18.3.1 and that the Department should apply the new law to calculate assessment rates for this review period. It notes that, because refund instructions will not be provided to Customs until after this review is completed, the final results for this review will be the "most recent determination or review" as referred to by Article 18.3.1.

Department's Position: We agree with Torrington. In this case, the "most recent review" for purposes of refund procedures is the final results for 1994/95 review. Therefore, the rules applicable to the calculation of dumping margins for the 1994/95 review are the provisions of the statute effective January 1, 1995 and the regulations, as amended by the interim regulations effective May 11, 1995 (*see* SAA at 819 and 895).

2. Facts Available

We determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for SNFA, Hoffman U.K., and Rose Bearings, all with respect to BBs and CRBs, for Torrington Nadellager with respect to CRBs only, and for SKF France with respect to SPBs only, because these firms did not respond to our antidumping questionnaire. We find that these firms have withheld "information that has been requested by the administering authority." Furthermore, we determine that, pursuant to section 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire. For the weighted-average dumping margins of these firms, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. Such data is considered secondary information within the meaning of section 776(c) of the Tariff Act.

Section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from

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independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, for SKF France, SNFA, Torrington Nadellager, Hoffman U.K. and Rose Bearings, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. These rates are the highest available rates and no evidence exists in the record that indicates that the selected margins are not appropriate as adverse facts available.

We also determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for NPB because, despite the Department's attempts to verify necessary information provided by NPB, the Department could not verify the information as required under section 782(i) of the Tariff Act. Furthermore, section 782(e) of the Tariff Act authorizes the Department to decline to consider information that is submitted by an interested party that is necessary to the determination under certain circumstances, such as when such information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or when such information cannot be verified.

Generally, and in the process of verification, the Department's analysis of the completeness of a respondent's U.S. sales database is essential because the database is used to calculate the dumping duties. Where we have allowed for reduced reporting but determine that U.S. sales are missing from the database, we are especially concerned about the reliability and accuracy of any margin we might calculate. An incomplete U.S. and HM sales database is normally sufficient to render a respondent's response inadequate for the purpose of calculating a dumping margin. See, *e.g.*, *Persico Pizzamiglio, S.A.* v. *United States*, Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

It is our practice to examine at verification only a selected subset of the reported U.S. sales, a practice that the CIT has upheld. See *Bomont Industries* v. *United States*, 733 F.Supp. 1507, 1508 (CIT 1990) ("verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe"); see *also Monsanto Co.* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988) ("verification is a spot check and is not intended to be an exhaustive examination of the respondent's business"). Generally, we assume that the selected subset of U.S. sales is representative of the entire universe of U.S. sales.

Where we find discrepancies in this subset, we judge the effect on the unexamined portion of the response. Where we determine that U.S. sales are misreported (in critical areas, such as model number and further-manufacturing status) in a selected subset, we are particularly concerned about the reliability and accuracy of any margin or duties we might calculate from the database.

In addition, the Department's identification of further-manufactured sales is essential in order for the Department to conduct two critical portions of its analysis. First, in the course of the Department's model matching analysis, the unique model number associated with a particular model determines the appropriate home market model to match to the U.S. sale. Second, in determining the adjustments to CEP, we are dependent on the data a respondent provides in order for us to identify whether to deduct such costs of further manufacturing. In fact, section 772(d)(2) of the Tariff Act requires us to reduce the price we use to establish CEP by "the cost of any further manufacture or assembly." Thus, our questionnaire requires that respondents identify further-manufactured sales and provide a unique code to identify the bearing model as entered on a sale-by-sale basis. The questionnaire also requires that the cost of further manufacturing be reported on a model-specific basis.

Despite our efforts at verification, we were unable to verify information which is necessary and must be verified in order for us to make a determination under section 751 of the Tariff Act. Specifically, we were unable to verify the data NPB provided concerning its U.S. and HM sales. Most significantly, we found that NPB's U.S. and HM databases were incomplete. In this case, we examined at verification the sales reported for three of the six sample weeks and found missing U.S. sales in all three weeks. As we have indicated above, incompleteness of these databases, particularly the incompleteness of the U.S. sales database, was crucial and was a factor which, by itself, was an adequate basis for our determination to use facts available.

We also found that NPB's U.S. database was inaccurate. In a supplemental response, NPB reported that only 12 models entered the United States as housed models during the POR. Yet at verification, during which we selected, at random, a limited number of entry documents, we discovered an additional five models that entered as housed models during the POR. NPB's U.S. sales listing contained sales of these five models. However, NPB reported that these sales entered as unhoused bearings that were further-manufactured in the United States. The contradiction between NPB's entry documents and its response prompted us to elicit support for its further-manufacturing claim. While records NPB provided do demonstrate that some assembly did take place during the POR, these same records document assembly that occurred six months *after* the last of the five U.S. sales. NPB could not support its claim that further manufacturing occurred *prior* to the selected sales, nor did NPB provide evidence of entries of unhoused bearings prior to the dates of sale. Therefore, NPB could not support the designation of these sales as being

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further-manufactured merchandise. See United States Sales Verification Report, dated June 13, 1996. Because we reviewed a limited number of randomly-selected entry documents and U.S. sales, we must conclude that, had we examined all possible documentation, we would have found additional models and sales that were incorrectly reported as further-manufactured merchandise. Because we found NPB's reporting of this information to be inaccurate, we cannot calculate CEP properly as directed by section 772(d) of the Tariff Act nor can we match approximately two-thirds of NPB's sales to the correct HM model.

Thus we have determined that although NPB provided information we requested which was necessary in order for the us to perform our analysis, the information could not be verified as required by section 782(i) of the Tariff Act. Thus, in accordance with section 782(e)(2) of the Tariff Act, we have declined to consider information submitted by NPB because it could not be verified. Because we were unable to verify necessary information, in addition to the fact that NPB failed to support its designation of certain sales as being further-manufactured merchandise, we were unable to employ our normal antidumping analysis. Under section 776(a) of the Tariff Act, we are required, in reaching our determination, to use facts available because we could not verify NPB's data. Thus, for NPB, we have determined that it is appropriate to select from the facts otherwise available to the Department.

In selecting from among the facts otherwise available, the Department is authorized, under section 776(b) of the Tariff Act, to use an inference that is adverse to the interests of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with (the Department's) request for information. We examined whether NPB had acted to the best of its ability in responding to our requests for information, such as U.S. sales data. We took into consideration the fact that, as an experienced respondent in reviews of the AFBs orders, its ability to comply with our requests for information could be distinguished from, for example, the ability of a less experienced company. Thus, NPB can reasonably be expected to know which types of essential data we request in each review under this order, and to be conversant with the form and manner in which we require submission of the data. We note that NPB committed, in this review, some of the same errors and discrepancies regarding the completeness and accuracy of its sales databases that it made in previous reviews of the instant order.

In addition to taking into account the experience of a respondent, the Department may find it appropriate to examine whether the respondent has control of the data which the Department is unable to verify or rely upon. The record reflects that NPB was in control of the data which was vital to our dumping calculations and which we were unable to verify or rely upon. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

An additional factor we have considered, is the extent to which NPB might have benefitted from its own lack of cooperation. The SAA states that "[w]here a party has not cooperated, [the Department] may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* at 870. In accordance with our policy, we considered the overall effect of NPB's errors. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for NPB. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

In light of NPB's familiarity with the annual review process under the order on AFBs from Japan, its control of the necessary data, and the potential benefits it may have received, we have determined that NPB failed to act to the best of its ability in providing the data we requested. Therefore, in accordance with section 776(b) of the Tariff Act, we have, on the basis of the record in this case, determined that it is appropriate for us to make the adverse inference authorized under that subsection of the statute. Accordingly, for these final results, we continue to base NPB's margin on adverse facts available.

In selecting a margin which would appropriately reflect our decision to use adverse facts available for NPB, we examined the rates applicable to ball bearings from Japan throughout the course of the proceeding. As adverse facts available, we have selected a rate of 45.83 percent, which reflects the all-others rate from the Less Than Fair Value (LTFV) investigation and is a rate which we have applied to NPB in previous proceedings under the old law concerning AFBs from Japan. Given NPB's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding.

As indicated above, section 776(c) of the Tariff Act requires the Department to corroborate secondary information used as facts available to the extent practicable. "Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." SAA at 870. Because the facts available applied to NPB for this review is secondary information within the meaning of section 776(c) of the Tariff Act, we have, in accordance with section 776(c), corroborated this information with independent sources.

As noted above in our discussion of corroboration with regard to other respondents, the SAA provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). After reviewing the record, we are satisfied that this information has probative value because it includes the average of calculated margins from the LTFV investigation of this order. Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this review. See SAA at 869. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (See, *e.g.*, Fresh Cut Flowers.)

Comment: NPB contends that the Department erred in assigning it a margin based on adverse facts available. NPB contends the following: (1) It classified all U.S. housed, unhoused, and further-manufactured models properly; (2) it reported its U.S. sales properly; (3) errors in its reporting of certain U.S. sales and adjustments are limited and correctable; and (4) it reported nearly all of its home market sales properly. NPB argues that, although it did make some errors in its response, the errors are small in number and are determinable in extent. NPB requests that the Department use that portion of its response which is free of errors and, if it still finds NPB's reporting of further-manufactured items in error, limit its application of facts available to the U.S. sales of five particular models the Department identified as improperly reported in its verification report. Moreover, NPB contends that application of adverse facts available is not appropriate because NPB acted to the best of its ability.

NPB notes that the dominant issue in the Department's analysis memorandum

of June 27, 1996, regards NPB's reporting of housed, unhoused, and further-manufactured models. NPB contends that all of its U.S. sales are CEP sales, and, as such, the questionnaire required NPB to report its sales to the first unaffiliated customer during the POR and not its entries of the merchandise during the POR. NPB states that approximately one-third of NPB's U.S. sales are of unhoused bearings and are imported as such, and that it sells the vast majority of the remaining sales as housed bearings which are further-manufactured from unhoused bearings. NPB contends that it reported both of these categories of U.S. sales properly. NPB asserts that only five models (which the Department discovered at verification had entered the United States as housed models) are in dispute. NPB contends that its reporting of sales of the five models is appropriate. NPB argues that, because a bearing imported as a housed unit and a bearing that is imported as an unhoused unit and further-manufactured into a housed unit are physically indistinguishable, it is impossible to determine whether the particular merchandise withdrawn from inventory for sale was imported as a housed bearing or was further manufactured into a housed bearing without tracing the particular merchandise to a particular U.S. Customs entry. NPB argues that it cannot make such a link and contends that the Department has recognized that, generally, it cannot tie sales to entries, citing *AFBs III* at 28360.

Because the five models, which NPB contends were imported as both housed and unhoused models, contain "bearings exported to the United States prior to any further processing in the United States," and because each model which underwent a further-manufacturing process contains "bearings exported to the United States prior to any further processing in the United States," NPB asserts that it identified each of these five models properly as further-manufactured models. NPB states that the Department's analysis memorandum, dated June 27, 1996, failed to cite any statute, regulation, or questionnaire instruction that required NPB to report otherwise. Moreover, NPB contends that it provided "assembly audit lists" that demonstrate that there was some further manufacturing of these models during the POR. Therefore, NPB contends that it responded properly to the questionnaire.

Torrington argues that the Department is statutorily required to use facts available in cases where it is unable to verify the accuracy of the information respondent submits and may apply an adverse assumption if it determines that the firm has not complied to the best of its ability. Torrington asserts that, as a whole, the number and significance of NPB's errors and omissions constitute a failed verification, noting that the most serious of NPB's deficiencies was the Department's inability to verify the completeness of the HM and U.S. sales databases. Torrington asserts that the complete and accurate reporting of sales databases goes to the heart of the antidumping proceeding, citing *Federal-Mogul IV* at 1020. Further, Torrington states that in *AFBs II*, the Department applied best information available to NPB because NPB failed to report a substantial number of its HM sales. Torrington contends that both the significance and number of omissions and errors with NPB's response in this review call for a similar result, citing *NPB* at 93–95.

Moreover, Torrington argues that, because NPB had control of the data requested in the Department's questionnaire and, given that NPB has participated in many previous reviews and is knowledgeable of the correct data to report, NPB did not act to the best of its ability. Torrington requests that the Department apply a margin based on adverse facts available for the final results.

Department's Position: We agree with Torrington. In this case, we are required to use facts available because we were unable to verify NPB's response. Furthermore, in using facts available, we are authorized to employ an inference adverse to the interests of NPB because we have determined that NPB has failed to act to the best of its ability in responding to our requests for necessary information. Thus, for these final results, as adverse facts available, we have selected a rate of 45.83 percent, which reflects the all-others rate from the LTFV investigation and is a rate which we have applied to NPB in previous proceedings under the old law concerning AFBs from Japan. As stated above, in light of NPB's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding.

We disagree with NPB's view that it reported its U.S. sales correctly, that errors in its reporting of certain U.S. sales and adjustments are limited and correctable, and that it reported nearly all of its home market sales properly. As we have stated above, it is our practice to examine at verification only a selected subset of the reported U.S. sales, a practice that the CIT has upheld. See *Bomont Industries* v. *United States*, 733 F.Supp. 1507, 1508 (CIT 1990); see also *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988). As discussed above, we assume that the randomly selected subset of U.S. sales is representative of the entire universe of U.S. sales. In this case, we found discrepancies and omissions in this subset. Thus, in accordance with our normal practice, we judged the effect on the unexamined portion of NPB's response. Because we determined that U.S. sales had been omitted, we are concerned about the reliability and accuracy of any margin or duties we might calculate from NPB's database. We reiterate that an incomplete U.S. and HM sales database is normally sufficient to render a respondent's response inadequate for the purpose of calculating a dumping margin. See, *e.g.*, *Persico Pizzamiglio, S.A.* v. *United States*, Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

We also disagree with NPB's assertion that it classified all housed, unhoused, and further-manufactured models properly. NPB was unable to support its designation of certain U.S. sales as further-manufactured sales. *See* U.S. Sales Verification Report, dated June 13, 1996 at 9. We also disagree with NPB that it was required to report its further-manufactured sales in a sales-specific manner.

As explained above, identification of further-manufactured sales is essential in order for the Department to conduct two critical portions of its analysis. First, the unique model number determines the appropriate home market model to match to the U.S. sale. (In this case, NPB reported HM sales of models that matched both the "housed" bearings and the "unhoused" bearings.) Second, in determining the price adjustments to calculate CEP, we are dependent on the data NPB provides to identify whether to deduct such costs of further manufacturing. Section 772(d)(2) of the Tariff Act requires us to reduce the price we use to establish CEP by "the cost of any further manufacture or assembly * * *." Our questionnaire requires that respondents identify further-manufactured sales and provide a unique code to identify the bearing model as entered on a sale-by-sale basis. The questionnaire also requires that the cost of further manufacturing be reported on a model-specific basis. Thus, contrary to NPB's assertion, we have determined that NPB had an

obligation to identify and report this data on a sales-specific basis.

NPB suggests that its misreportings are limited to the five particular models that we discovered at verification. However, as we have indicated above, because we reviewed a limited number of randomly-selected entry documents, we must conclude that, had we examined all possible documentation, we would have found additional models and sales that were incorrectly reported as further-manufactured merchandise. Moreover, because NPB did not identify the unique model number on a sale-specific basis correctly, we are unable to match approximately two-thirds of NPB's U.S. sales of housed models to an appropriate NV or calculate CEP properly.

As we have indicated above, in this case, inaccuracy of NPB's databases, particularly the inaccuracy of its U.S. sales database, was crucial and was a factor which, by itself, was an adequate basis for our determination to use facts available. However, our attempted verifications yielded additional flaws in NPB's response, providing further bases for our decision to employ facts available. For example, we found that NPB did not report a particular type of price adjustment for sales to its largest HM customer, and that NPB understated entered values and thus under-reported all adjustments to CEP that were allocated by entered value. (For a complete listing of all flaws, see the analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996. For a more detailed discussion of NPB's post-preliminary arguments and our position on these flaws, see analysis memorandum dated January 3, 1997.)

Because of the gravity and the magnitude of the flaws in NPB's response, we have determined that NPB's information is unverifiable, and that there is no record evidence demonstrating that errors in NPB's reporting of certain of its U.S. sales are limited and correctable. Accordingly, we disagree with NPB's view on this issue. Thus, as explained above, we must use facts available in determining a margin for NPB, as required under section 776(a) of the Tariff Act.

We also disagree with NPB that an adverse inference is not warranted in determining a margin for NPB because, as required under section 776(b), we find that NPB has not acted to the best of its ability in responding to our requests for information. As noted above, NPB has participated in numerous reviews and verifications in this proceeding and is aware of the type of information we require. However, NPB has failed to provide two fundamental elements of a response: a complete sales listing and correct identification of further-manufactured sales and models. The identification of further-manufactured sales and their unique model numbers (as entered) is not a new requirement of the URAA. Contrary to NPB's assertions, the fact that NPB could not support its reporting of this critical information cannot be attributed to one of the "subtle changes" in the antidumping law which, as NPB suggests, prevented it from knowing which data to report. Nor was the questionnaire vague in this regard. Likewise, the complete reporting of U.S. and HM sales is not a new concept under the URAA. Furthermore, we note that NPB made numerous other errors in its response that worked in its favor. See the analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

As we have indicated above, in accordance with our policy, we considered the overall effect of the errors to ensure that NPB does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Thus, an additional factor we have considered is the extent to which NPB might have benefited from failing to cooperate fully if we had not made our determination on the basis of facts available. See SAA at 870. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for NPB. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996. Furthermore, no comments have dissuaded us from our view that NPB has failed to act to the best of its ability in responding to our requests for necessary information. Thus, in disagreement with NPB's view, for these final results, we have applied adverse facts available to NPB in accordance with section 776(c) of the Tariff Act.

3. Discounts, Rebates, and Post-Sale Price Adjustments (PSPAs)

We have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. We did not treat such adjustments as direct (or indirect) selling expenses, but rather as direct adjustments necessary to identify the correct starting price. While we prefer that respondents report these adjustments on a transaction-specific basis (or, where a single adjustment was granted for a group of sales, as a fixed and constant percentage of the value of those sales), we recognize that this is not always feasible, particularly given the extremely large volume of transactions involved in these AFBs reviews. It is inappropriate to reject allocations that are not unreasonably distortive in favor of facts otherwise available where a fully cooperating respondent is unable to report the information in a more specific manner. See section 776 of the Tariff Act; see also *Facts Available*, above. Accordingly, we have accepted these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.

In applying this standard, we have not rejected an allocation method solely because the allocation includes adjustments granted on merchandise that is not subject to these reviews (out-of-scope merchandise). However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it is sold. Significant differences in such areas may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of in-scope and out-of-scope merchandise. While we carefully scrutinize any such differences between in-scope and out-of-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would not be reasonable to require that respondents submit sale-specific adjustment data on out-of-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by respondents that have cooperated to the best of their ability.

Where we have found that a company has not acted to the best of its ability in reporting the adjustment in the most specific and non-distortive manner feasible, we have made an adverse inference in using the facts available with respect to this adjustment, pursuant to section 776(b) of the Tariff Act. With respect to HM adjustments, in accordance with the CAFC's decision in

Torrington VI (at 1047–51), we have not treated improperly allocated HM price adjustments as if they were indirect selling expenses (ISEs), but we have instead disallowed downward adjustments in their entirety. However, we have included positive (upward) HM price adjustments (*e.g.*, positive billing adjustments that increase the final sales price) in our analysis of such companies. The treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to NV, respondents would have no incentive to report these adjustments in the most specific and non-distortive manner feasible. See *AFBs V* at 66498.

Comment 1: Torrington asserts that some respondents reported home-market discounts, rebates, and PSPAs by allocating amounts across all sales, or across all sales to a given customer, even when some sales were not entitled to the adjustment. Torrington contends that the CAFC, in *Torrington VI* at 1047–51, ruled that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment to foreign market value (now normal value), and that the Department may not make an indirect-selling-expense adjustment for improperly allocated direct expenses. Torrington contends that the new statute does not change the CAFC's rulings and, therefore, the Department should deny all rebates, discounts, and PSPAs that respondents did not report on a transaction-specific basis or which they did not allocate in such a manner as to be tantamount to reporting on a transaction-specific basis.

Koyo, NSK, NSK/RHP, SKF Germany, SKF France, and SKF Italy argue that the Department should make adjustments to NV so long as the allocation methodology is reasonable. Koyo, SKF Germany, SKF France, and SKF Italy argue further that the SAA at 823–24 indicates that the Department will accept allocations of certain direct expenses when transaction-specific reporting is not feasible. SKF Germany, SKF France, and SKF Italy also contend that denial of such adjustments, when the party acted to the best of its ability and the data can be used without undue difficulties, would be the unlawful use of adverse inferences in applying facts available, while Koyo argues that the denial of such adjustments would be unjustly punitive. Koyo also argues that the Department should not disallow an improperly allocated downward adjustment while allowing the same adjustment if it increases NV and contends that the CIT rejected such an approach in *Torrington IV* at 1151.

FAG Germany, FAG Italy, INA, NTN Japan, and NTN Germany contend that they reported such adjustments on a transaction-specific basis.

Department's Position: We agree with Koyo, NSK, NSK/RHP, SKF Germany, SKF France, and SKF Italy in part. As discussed in the introductory remarks to this section, our practice is to accept these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions. We agree with Torrington, however, that when we find that a respondent has allocated a HM discount, rebate, or PSPA in a distortive manner or if we determine that a respondent has not acted to the best of its ability, then we should deny such adjustments rather than treat them as an indirect expense.

In our view, *Torrington VI* is of limited relevance to this issue because the CAFC did not address the propriety of the allocation methods respondents used in reporting the price adjustments in question. Although the CAFC appeared to question whether price adjustments constituted expenses at all (see *Torrington VI* at n.15), it merely held that, assuming the adjustments were expenses, they had to be treated as direct selling expenses rather than indirect selling expenses. The CAFC did not address appropriate allocation methodologies.

However, we disagree with Koyo that we should not treat positive HM billing adjustments as direct adjustments. As discussed in our introductory remarks above, the treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to minimize margins.

Comment 2: NSK and Torrington submitted comments regarding the treatment of NSK's HM lump-sum rebates (REBATE2H). NSK argues that the Department's treatment of this rebate as an indirect expense in the preliminary results was incorrect and requests that the Department treat this adjustment as a direct expense. NSK asserts that the CIT has determined, pursuant to the CAFC's decision in *Torrington VI*, that this expense is a direct expense (citing *The Timken Co.* v. *United States*, Slip Op. 96–86 at 38 (CIT 1996)).

NSK argues that it did not grant this adjustment on a product-specific or transaction-specific basis and that the rebate does not relate to specific sales to a customer. NSK notes that it allocated this adjustment by summing all such POR rebates by customer and dividing this amount by total POR sales to the customer. NSK contends that its allocation methodology accurately apportions the adjustment between subject and non-subject merchandise because, although NSK used a customer-specific factor, the ratio of subject to non-subject merchandise purchased by its customers was relatively constant throughout the POR. NSK notes that it submitted evidence to support its contention that this ratio was relatively constant during the POR in its response to the Department's supplemental questionnaire. NSK argues that the Department accepted this approach in principle in the 1992/93 review but did not allow the adjustment due to the small number of customers for which NSK provided information regarding sales of subject versus non-subject merchandise. NSK contends that, in the current review, it submitted such information for a substantially larger number of customers.

NSK suggests that its situation should not be confused with that of another respondent, Koyo, which granted PSPAs on a product-specific basis but reported them on an aggregate basis. NSK argues that its reporting methodology is customer-specific by necessity, not because of imprecise record-keeping, and, for the reasons described above, is not distortive. Finally, NSK argues that, at a minimum, the Department should treat PSPAs respondents granted to certain customers that only purchased subject merchandise during the POR as direct expenses.

Torrington responds to NSK's arguments, claiming that NSK's description of the allocation methodology for this expense demonstrates that NSK's reporting is not consistent with a "fixed and constant" allocation, which the Department and the CIT have held is necessary for an allocation of such expenses to be accepted (citing *AFBs IV* at 10929 and *Torrington I* at 1578–79). Torrington also contends that the Department should reject NSK's argument that the Department should, at a minimum, allow a direct adjustment for those customers who purchased only subject merchandise during the POR for the same reasons. Torrington argues that, even if certain customers purchased

only subject merchandise during the POR, NSK's allocation fails to target those specific sales related to the PSPAs or to report the specific PSPA amounts actually incurred by those sales and is, therefore, distortive.

In its affirmative brief, Torrington argues that, because NSK failed to report lump-sum rebates on a transaction-specific basis or as a fixed and constant percentage of the sales on which the rebates were granted, the Department should disallow the adjustment entirely. Torrington suggests three reasons for rejecting NSK's lump-sum rebates as an adjustment to NV. First, citing *Torrington VI* at 1050, Torrington argues that the CAFC has stated that expenses that are directly related to particular sales cannot be treated as ISEs. Therefore, Torrington contends, because NSK did not report PSPAs on the basis on which they were incurred, the Department cannot deduct them as direct adjustments to NV and, because expenses that are direct in nature cannot be treated as indirect expenses, the Department has no choice but to make no adjustment to NV for this item.

Second, Torrington argues that NSK failed to demonstrate that it paid all reported PSPAs on sales of subject merchandise. Torrington argues that the Department has previously rejected NSK's argument that an analysis of certain customers' sales sufficiently indicates that all customers receiving PSPAs had stable purchasing patterns and states that the Department should reject NSK's assertion that "relatively constant" purchasing patterns constitute the basis for a reasonable allocation. Torrington asserts that the CIT has held repeatedly that the Department may not "use a methodology which allows for the inclusion of [PSPAs] and rebates on out-of-scope merchandise in calculating adjustments to FMV" (citing *Torrington I* at 1578–79).

Third, Torrington argues that NSK did not demonstrate that all PSPAs were contemplated at the time of sale. Torrington argues that NSK itself stated that, in certain instances, lump-sum amounts were paid retroactively and that, therefore, NSK has not shown that the terms of these rebates were known at the time of sale. Torrington argues that the Department's policy is to allow rebates only when the terms of sale are predetermined (citing *AFBs IV* at 10932).

NSK responds that the Department verified NSK's lump-sum rebates and that the Department found no discrepancies in the data which it examined. Second, NSK argues that it has fully explained the circumstances under which it grants lump-sum PSPAs and that Torrington's argument that NSK did not show that the rebates were contemplated at the time of sale is not supported by the record and has been previously rejected by the Department.

Department's Position: We agree with NSK that we should treat its lump-sum rebates as a direct adjustment to NV. Although NSK allocates these rebates on a customer-specific basis, we determine that NSK acted to the best of its ability in reporting this information using customer-specific allocations. Our review of the information NSK submitted and our findings at verification indicate that, given the lump-sum nature of this adjustment, the fact that NSK's records do not readily identify a discrete group of sales to which each rebate pertains, and the extremely large number of POR sales NSK made, it is not feasible for NSK to report this adjustment on a more specific basis.

We also do not find that the customer-specific POR-allocation methodology NSK used shifts expenses incurred on sales of out-of-scope merchandise to sales of in-scope merchandise or that it is otherwise unreasonably distortive. NSK submitted evidence to support its contention that the ratio of subject to non-subject merchandise purchased by its customers was relatively constant throughout the POR. We examined this evidence and found that it adequately supported NSK's contention.

Further, our analysis of the record evidence and our findings at verification give us no reason to believe that NSK is more likely to grant these rebates on sales of non-subject merchandise than it is on sales of subject merchandise. In this regard, we note that, as with other respondents in these reviews, NSK is primarily in the business of selling bearings, some of which are within the scope of the AFB antidumping orders and others of which are non-subject merchandise. In addition, we have not found that the subject and non-subject merchandise NSK sold varies significantly in terms of value, physical characteristics, and the manner in which it is sold and, therefore, we find that it is likely that NSK granted this adjustment in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise.

Regarding the relevance of the holding of the CAFC in *Torrington VI*, *see* our response to comment 1, above.

Comment 3: Torrington argues that the Department improperly allowed a direct adjustment to NV for NSK's return rebates (REBATE1H). Torrington contends that NSK grants return rebates on individual transactions and that NSK did not report return rebates on a transaction-specific basis or as a fixed and constant percentage of sales. Torrington argues that, because NSK failed to tie actual rebate amounts to the particular transactions to which they relate, the Department should not make any adjustment to NV for return rebates (citing *Torrington VI* at 1050).

NSK responds that the Department properly deducted return rebates as a direct adjustment to NV. NSK notes that its methodology allocates return rebates on a part-number and customer-specific basis and that the Department fully verified its methodology. NSK also argues that Torrington raised this issue prior to the preliminary results and the Department rejected its argument at that time. NSK states that Torrington has offered no new arguments in its case brief.

Department's Position: We disagree with Torrington. Initially, we note that we consider NSK's return rebates to be a promotional expense, as opposed to a price adjustment, because NSK grants these rebates to promote sales made by distributors. As such, NSK incurred this expense on behalf of NSK's customers. Because NSK has shown that this expense relates directly to the products under review, we consider it to be a direct selling expense. Further, the company has demonstrated that it has reported this expense on a model-specific and customer-specific basis, which satisfies our standard for treatment of promotional expenses as direct selling expenses. See our response to comment 2 of section 4.B (Commissions), below, and *AFBs V* at 66503. Therefore, we have made a direct adjustment to NV for NSK's return rebates for the final results. With regard to the relevance of *Torrington VI*, *see* our response to comment 1, above.

Comment 4: Torrington argues that the Department should use actual 1995 rebates instead of the estimated 1995 U.S. rebates reported by NSK, FAG Germany, and FAG Italy. Torrington notes that, at verification, NSK submitted, and the Department verified, actual rebate percentages. Torrington also contends that improving economic activity in the United States may result in higher U.S. rebates granted than estimated. Torrington argues that the Department should use, therefore, the actual rebate information it gathered from NSK at verification and should request FAG to provide updated U.S. rebate information for use in the final results.

NSK argues that the Department examined the actual rebate percentages at verification in order to determine whether NSK's estimated rebates were reasonable. NSK notes that it was

unable to report actual 1995 rebates in its original response because its response was due prior to the end of 1995. NSK argues that its estimated rebates were reasonably calculated and that the Department should use them for the final results.

FAG argues that, because the response had to be filed before the end of 1995, rebates ultimately paid on 1995 sales had to be estimated. FAG argues that its methodology conforms to the Department's practice and was fully verified by the Department.

Department's Position: We disagree with Torrington. The purpose of examining the actual rebates at verification was to determine the accuracy of the responses. Verification is not normally an appropriate venue for the submission of new factual information, and we generally collect and use information gleaned at verification only when minor discrepancies are found or when we believe a respondent's methodology may not have been reasonable. In this case, verification was an opportunity to determine whether the companies' estimates represented a reasonable approximation of their experience in granting rebates. Our conclusion was that there was no reason to believe that the actual data would differ significantly from the estimates. For instance, as a result of verifying NSK's response, we determined that while the rebate percentages were overestimated for some customers and underestimated for others, on balance NSK's estimates were a reasonable reflection of its actual experience and that any distortion caused by such estimates would be insignificant. Torrington's proposal would convert verification, which is an opportunity to check the accuracy of information previously submitted, into a data-gathering exercise.

In fact, the actual information concerning rebates granted in 1995 is not generally available until approximately the end of the first quarter of 1996, after the end-of-year 1995 rebates are granted and recorded in the companies' records. A requirement that respondents calculate actual per-unit rebate amounts for 1995 sales using this data would be unreasonable, given the stage in the proceeding at which the actual 1995 data becomes available.

Furthermore, in NSK's case, although we have the data to replace the estimated rebates with actual rebates, the change to our calculations, given the advanced stage of the review, would impose an unreasonable burden upon both us and respondents with no significant increase in accuracy in light of the results of our verification. Therefore, we have relied on NSK's estimated rebates.

Moreover, while we have the discretion to solicit new information at any time during an administrative review, we generally do so only when we learn of information not on the record that has the potential of having a substantial impact on the margin. See Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42837 (August 19, 1996).

Therefore, for the reasons stated above, we have used these companies' estimated rebates on 1995 sales for the final results, as we have with respondents generally in these reviews.

Comment 5: Torrington argues that the Department should disallow the following HM PSPAs reported by SKF Germany: early-payment discounts (EARLYPYH), support rebates (REBATE2H), and downward home-market billing adjustments (BILLAD2H). Torrington makes the following general comments regarding these adjustments: (1) section 782(e) of the Tariff Act, previously cited by SKF Germany, provides the rules governing when the Department may reject a response due to systematic difficulties, which is not the case here; (2) the language in the proposed regulations concerning when the Department may allow allocations does not govern this situation because the items at issue are price adjustments, not direct selling expenses; and (3) even assuming such proposed regulatory language did apply, SKF Germany's allocations are sufficiently distortive as not to meet the standard for allowing such allocations.

With respect to early-payment discounts, Torrington states that, because SKF Germany's reporting method fails to identify early payment discounts actually taken on subject merchandise, the Department should deny these adjustments to NV. Torrington argues that disproportionately greater amounts may be paid on out-of-scope merchandise than on in-scope, resulting in the mis-allocation of out-of-scope discounts to subject merchandise. The Department, according to Torrington, should continue to reject this claim, as it did in *AFBs IV*.

With respect to support rebates, Torrington states that SKF Germany reported them on a customer-specific basis only because these rebates are earned on sales by SKF Germany's customer rather than by SKF Germany and cannot be associated with specific SKF Germany transactions. Torrington claims that there is no evidence that distributors were allowed these rebates as a result of poor sales results on subject merchandise as distinct from products not covered by the antidumping order, and suggests that this evidence is clearly necessary under what Torrington refers to as the "*Torrington VI* rule." Torrington argues that SKF Germany cannot claim that any poor sales results which may be experienced by distributors on resales of SKF Germany products necessarily justify rebates allocated to given classes or kinds. According to Torrington, the Department rejected the same claim by SKF Germany in the 1992/93 review (citing *AFBs IV* and *Torrington VI*).

With respect to billing adjustment 2, Torrington argues that SKF Germany's claim for an adjustment cannot be allowed because its reporting is inconsistent with the so-called *Torrington VI* rule. Torrington argues further that, because this is the sixth administrative review, SKF Germany has had ample time to modify its record-keeping system to permit the reporting of accurate amounts. Torrington adds that the Department rejected the same basic claim in *AFBs IV*. Torrington contends that, to avoid a benefit to respondent, the Department should only reject the downward adjustments to NV for billing adjustment 2. Torrington also asserts that the Department should reject SKF Germany's argument, in which it cites the Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19, in *The Torrington Company* v. *United States*, Ct. No. 92–07–00483, that the Department must either accept SKF Germany's reporting as is or reject all reported adjustments. Torrington claims that this ruling is not applicable because the Court's remand instructions that SKF Germany develop a methodology to remove billing adjustments would not be possible here.

Torrington argues that the Department should also reject SKF Germany's argument, in its May 24, 1996 submission, that selective rejection of the reported billing adjustment 2 is an unlawful use of an adverse inference. Torrington contends that, because this provision is limited to the selection of facts among facts otherwise available it does not detract from the Department's authority to reject certain information provided by the respondent while retaining other information, also provided by the respondent.

SKF Germany responds that, in the preliminary results, the Department treated SKF Germany's reported early-payments discounts, support rebates and billing adjustment 2 correctly as direct adjustments to price. According to SKF Germany, Torrington is mistaken

in relying on *Torrington VI*. SKF Germany claims that the CAFC did not hold that the Department must reject allocations of direct expenses. Moreover, SKF Germany argues, the *Torrington VI* decision is not relevant under the new law, because the SAA indicates that the Department will accept allocations of certain direct expenses when transaction-specific reporting is not feasible, citing the SAA at 823–24. In addition, according to SKF Germany, the Department indicated in its explanation to the proposed regulations, 61 FR 7329, that it will balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting on an allocated basis. SKF Germany argues that, if the Department rejects the adjustments, it would be acting contrary to section 782(e) of the statute that information not meeting all of the Department's requirements must still be accepted if timely, verifiable, reliable, the party acted to the best of its ability, and the data can be used without undue difficulties. SKF Germany states that Torrington's position that allocations involving upward adjustments to comparison-market prices must be included in the NV calculation would contravene this section of the statute. SKF Germany adds that the Department rejected a similar suggestion by Torrington in a remand determination in the appeal of the 1990/91 administrative review of AFBS, citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States*, Ct. No. 92–07–00483. SKF Germany states that allocations may be necessary and appropriate and that rejection of such reporting would mean that actual expenses incurred on the subject merchandise or foreign like product would not be captured in the antidumping calculation. SKF Germany argues that, even if the *Torrington VI* decision still applies under the new law, the Department should treat all PSPAs as direct adjustments if reasonably reported.

SKF Germany argues further that, with respect to early payment discounts, the Department has found that transaction-by-transaction reporting is simply not possible because of the manner in which customers take those discounts. SKF Germany states that the Department has verified SKF Germany's reporting of this adjustment, and respondent claims that it could not have reported the discounts on a more specific basis.

SKF Germany argues that, with respect to its allocated rebates, the Department has found that transaction-by-transaction reporting is simply not possible due to their very nature. SKF Germany argues further that, with respect to its allocated billing adjustments, the Department has found that transaction-by-transaction reporting is simply not possible because the involved adjustments related to multiple transactions and, therefore, it could not have reported the adjustments more specifically. SKF Germany adds that the Department verified its reporting of these adjustments.

SKF Germany argues, citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States*, Ct. No. 92–07–00483, that the lesson of the court's remand order and the Department's response thereto is that when an adjustment is denied it is denied; it is not allowed in part. In addition, SKF Germany asserts that the Department rejected Torrington's argument that SKF Germany would receive a "windfall benefit" if the Department denied all of SKF Germany's billing adjustments 2 as opposed to denying only the downward price adjustments, in that same remand.

Department's Position: We agree with SKF Germany regarding early payment discounts, support rebates, and billing adjustment 2. SKF Germany reported these adjustments to the best of its ability. SKF Germany did not report these adjustments on a transaction-specific basis due to their very nature and we find that SKF Germany's methodology is not unreasonably distortive. Further, there is no information on the record that would lead us to believe that these adjustments were not granted in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. Torrington's argument that SKF's allocations is distortive is purely speculative.

SKF Germany calculated customer-specific averages of its early-payment discounts for the periods January 1994 through December 1994 and January 1995 through April 1995. *See* SKF Germany's September 26, 1995 questionnaire response at pages 28–29. Our examination of its records and our findings at verification indicate that it is not feasible for SKF Germany to allocate this adjustment more specifically, given the large volume of transactions involved, the level of detail contained in SKF's normal accounting records, and the time constraints imposed by the statutory deadlines under which all parties must operate. We are satisfied that this reporting methodology reflects the nature in which SKF Germany does business and that SKF Germany reported early-payment discounts to the best of its ability, and that its methodology is not unreasonably distortive. Regarding the relevance of the holding of the CAFC in *Torrington VI*, see our response to comment 1, above.

Due to the nature of support rebates, transaction-specific reporting is not feasible. While Torrington argues that there is no evidence that distributors were allowed these rebates as a result of poor sales results on subject merchandise, as distinct from products not covered by orders, we do not believe SKF Germany's allocation to be distortive, as we believe that such adjustments were granted in proportionate amounts with respect to sales of out-of-scope merchandise. SKF Germany grants these rebates to distributors/dealers to ensure that they obtain a minimum profit level on sales to select customers. Hence, because SKF Germany does not issue these rebates based on specific sales to the distributor/dealers, SKF Germany cannot report transaction-specific rebate amounts. Therefore, we find that SKF Germany's reporting methodology is not unreasonably distortive and that SKF Germany responded to the best of its ability.

With respect to billing adjustment 2, SKF Germany reported billing adjustments not associated with a specific transaction. These adjustments included credit or debit notes that SKF Germany issued relating to multiple invoice lines. SKF Germany could not tie these adjustments to a specific transaction because the billing adjustments reported in this field were part of credit or debit notes, issued to the customer, that related to multiple invoices, products, or multiple invoice lines. In these cases, the most feasible reporting methodology that SKF Germany could use was a customer-specific allocation, given the large volume of transactions involved in these AFBs reviews and the time constraints imposed by the statutory deadlines. For these reasons, we find that this methodology is not unreasonably distortive.

As mentioned in the introductory remarks at the beginning of this section, we agree with Torrington that, when we reject a respondent's allocation, we should only reject the downward adjustments to NV. However, since we are accepting the reporting of SKF Germany's billing adjustments, Torrington's argument is not applicable.

Comment 6: Torrington argues that the Department should apply a five-percent upward adjustment to all of SKF

France's HM sales because SKF France did not report billing adjustments of less than five percent of gross unit price (BILLAD2H). Torrington notes that billing adjustments are invoice-specific and can either decrease or increase price. Torrington states that it was not appropriate for SKF France to decide what amounts are insignificant for purposes of 19 CFR 353.59(a). Further, according to Torrington, the fact that reporting is inconvenient is not an excuse for failing to report all amounts on a sale-by-sale basis. Torrington states that adverse inferences are appropriate because SKF France refused to supply the information. In response to SKF France's argument made in a submission during these reviews that its failure to report was detrimental to SKF France as the total net value of billing adjustments would have decreased NV, Torrington answers that the total net value of the adjustment is irrelevant.

Torrington asserts that the statutory changes introduced by the URAA do not diminish or invalidate the standard articulated by *Torrington VI*. Torrington contends that the statutory provision upon which SKF France relies in its pre-preliminary comments, section 782(e), addresses the situation where systemic difficulties exist with a response, and does not apply here. In this case, Torrington asserts, the Department may reject the response in favor of facts available. The amended statute, according to Torrington, makes clear that the Department should accept a response only if the response was timely, verifiable, and reliably complete, if the respondent acted to the best of its ability, and if the information can be used without undue difficulties. Torrington asserts that these requirements are not met in this case.

Torrington argues that the above-discussed grounds for rejection also apply to Steyr sales, to which SKF France allocated billing adjustments on the basis of customer numbers. Torrington requests that the Department draw adverse inferences and adjust all Steyr prices upward by five percent as facts available.

SKF France asserts that the Department, in the preliminary results, correctly rejected Torrington's argument regarding adverse facts available for SKF France's and Steyr's billing adjustment 2. SKF France claims that there is no basis for the Department to reject SKF France's reporting methodology, and notes that it has reported this adjustment in the same manner in prior reviews and the Department verified and accepted this approach in the 1992/93 review.

Regarding Steyr, SKF France argues that although the Department, pursuant to the CIT's decisions, has disallowed similar billing adjustments in the 1992/93 review of AFBs, the URAA and the SAA require a different result in this review. Under the new statute, SKF France contends, the Department is required to accept information that may not meet all of the Department's requirements, provided certain conditions are met. SKF France claims that Steyr reported billing adjustments using the most specific reporting method feasible, given the manner in which the adjustment are incurred and recorded in the normal course of business. SKF further claims that it acted to the best of its ability in reporting these adjustments and that the use of these adjustments would cause no undue difficulty to the Department. In addition, according to SKF France, the SAA indicates that the Department will accept allocations of certain expenses when transaction-specific reporting is not feasible and requires the Department to balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting on an allocated basis. SKF France argues that, in light of the recent decision by the CAFC in *The Torrington Co.* v. *United States*, Ct. Nos. 95–1210–1211 (CAFC 1996), and the SAA's directive to consider allocated expenses, it is imperative that the Department retain the discretion to consider how respondents report a price adjustment, given that respondent's ordinary business practices and the nature of the specific adjustment rather than simply reject all allocated expenses.

SKF France states that it would be inappropriate for the Department to increase Steyr's prices by five percent as facts available, and notes that the Department rejected a similar suggestion by Torrington to apply an adverse inference and selectively accept certain billing adjustments in a remand determination in the appeal of the 1990/91 administrative review of AFBs (citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States*, Ct. No. 92–07–00483). Further, according to SKF France, even if the Department determines not to accept Steyr's reporting of billing adjustments, a five-percent across-the-board upward price adjustment would amount to an unlawful use of an adverse inference. SKF France states that, according to the URAA, an adverse inference is only permitted when a party has failed to cooperate by not acting to the best of its ability (citing 782(e) of the statute). SKF France claims that it cooperated fully with the Department and has acted to the best of its ability with respect to its reporting of billing adjustment 2.

Department's Position: We agree with SKF France regarding billing adjustment 2 for SKF France and Steyr. According to SKF France's February 16, 1996 supplemental questionnaire response at pages 36–37, it generally uses the field for billing adjustment 2 for SKF France to include those billing adjustments that were less than five percent of the gross unit price and less than 1,000 French Francs. However, in this case SKF France reported zero values in this field, as it has for previous reviews, because it found the total value of these adjustment to be insignificant. There is nothing on the record to suggest that SKF's information is inaccurate. This policy of disregarding insignificant adjustments is consistent with our policy in prior reviews.

Regarding Steyr's billing adjustments as reported in billing adjustment 2, it was not feasible for SKF France to allocate these adjustments other than on a customer-specific basis because they relate to multiple invoices or multiple invoice lines. Due to the non-transaction-specific nature of the expense, the volume of HM transactions reported by SKF, and the time constraints imposed by the statutory deadlines, we believe that SKF France reported billing adjustments for Steyr to the best of its ability. Further, even though SKF France included out-of-scope merchandise in the allocation of the adjustment, we have no reason to believe that such adjustments were not granted in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. Hence, we believe that the customer-specific allocation that SKF France used for Steyr's adjustments is not unreasonably distortive.

Comment 7: Torrington contends that the Department should disallow all of INA's claimed downward billing adjustments in calculating NV because INA provided only a brief description of its home market billing adjustments which did not indicate whether the adjustments were limited to in-scope merchandise. Torrington argues that the CAFC held that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment in calculating NV (citing *Torrington VI* at 1047–1051).

INA responds that it reported product- and invoice-specific billing adjustments in accordance with the instructions in the Department's original questionnaire. INA contends that the

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Department verified that it reported home market billing adjustments properly and cites to the verification report. INA states that there is no basis to disregard downward home market billing adjustments in calculating NV.

Department Position: We disagree with Torrington. INA reported this adjustment on an invoice-specific basis. Where INA had more than one transaction on an invoice, INA used the same fixed and constant percentage for all transactions on the invoice. Therefore, we determine that this is the equivalent of reporting the adjustments on a transaction-specific basis. Furthermore, we verified INA's HM billing adjustment and found no discrepancies (Memo from Analyst to File, Verification of HM Sales Information Submitted by INA Walzlager Schaeffler KG, at 4, Exhibit 9, June 28, 1996). We have allowed, therefore, both INA's reported upward and downward home market billing adjustments.

Comment 8: Torrington argues that Koyo reported its home market rebates on a customer-specific basis, even though they were incurred on an invoice-specific basis. Torrington maintains that the Department's policy states clearly that it only accepts rebates, discounts, and price adjustments as direct adjustments if respondents report actual amounts for each transaction.

In rebuttal, Koyo argues that it reported its rebate expenses in this review in the same manner as it has in past reviews and that the Department has repeatedly verified and accepted the claimed expense (citing Home Market Verification Report of Koyo Seiko dated April 16, 1996).

Department's Position: We agree with Koyo. During the verification of Koyo's rebates, we noted that, once a distributor participating in the rebate program had purchased a pre-established amount of sales, Koyo applied a pre-established percentage rebate to all sales to that distributor. Therefore, reporting the percentage is the equivalent of reporting its rebates on a transaction-specific basis because the rebate was granted as a fixed and constant percentage of all affected sales. We also note that, even under the old law, we would have found Koyo's methodology to be permissible. See *AFBs V* at 66498. Therefore, we determine that Koyo acted to the best of its ability and that its response methodology is not unreasonably distortive.

Comment 9: Torrington argues that, although the Department accepted Koyo's billing adjustment (BILLADJ1H) in the preliminary results, it should deny Koyo's downward or negative billing adjustments. Torrington states that post-sale price adjustments must be reported on a sale- or model-specific basis, if incurred on those bases. Torrington contends that Koyo failed the standard set forth in *Torrington VI*. Torrington recommends that the Department deny negative HM billing adjustments and include positive billing adjustments in the antidumping analysis. Torrington further suggests that, since Koyo did not report positive billing adjustments on a transaction-specific basis, the Department should not use the reported positive billing amounts but should apply, as partial facts available, Koyo's highest reported positive billing adjustment to all sales involving positive adjustments.

Koyo acknowledges that it reported billing adjustments using customer-specific allocations. Koyo maintains, however, that in *Torrington VI* the CAFC held that an expense incurred as a direct expense must be reported as a direct expense, even if allocated. Koyo maintains further that this holding conforms with the decision in *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1580 (CAFC 1983), in which the CAFC, when looking at customer-specific rebates, held that an allocation methodology did not deprive the rebates of their direct relationship to the sales under consideration.

Department's Position: We agree with Koyo that we should treat its billing adjustment as a direct adjustment to NV. We determined at the home market verification that in preparing its response to the Department Koyo summed, on a customer-specific basis, the amount of this adjustment, which was only granted on in-scope merchandise, and then allocated the customer-specific total expense over in-scope merchandise on a customer-specific basis. Koyo acted to the best of its ability in reporting this information using customer-specific allocations. Information in Koyo's responses and our findings at the home market verification indicate that, although Koyo does not maintain this information on an invoice-specific basis, the customer-specific allocation methodology it used to report this expense to the Department was not unreasonably distortive. With regard to Torrington's discussion of the CAFC's decision in *Torrington VI*, see our response to Comment 1.

Comment 10: Torrington contends that the Department should disregard the U.S. early payment discounts that NMB/Pelmec reported, and instead use the highest discount rate for all transactions or the highest rate any other respondent reported in these proceedings. Torrington argues that the Department should only accept the reporting of U.S. discounts if NMB/Pelmec reported actual transaction-specific amounts. Torrington states that NMB/Pelmec reported U.S. early payment discounts on a customer-specific basis.

NMB/Pelmec argues that its methodology accurately reflects the early payment discounts it granted. It claims that its records show that it granted the discount rates to each customer on all or virtually all sales. NMB/Pelmec also claims that its records show that customers always took the discount because the amount of discounts it actually granted to each customer relative to total sales to each customer comports with the discount rate it offered. NMB/Pelmec notes that it used this method, as verified by the Department, in two prior reviews. NMB/Pelmec notes that, because it reported a discount on all sales to eligible customers at the customer's rate, any distortion caused by this allocation would be to NMB/Pelmec's detriment .

Department's Position: We agree with NMB/Pelmec. We have found that NMB/Pelmec's reporting methodology for early-payment discounts is not unreasonably distortive. NMB/Pelmec granted discounts at a fixed and constant percentage of the value of all sales to each eligible customer. Therefore, reporting the percentage is the equivalent of reporting its rebates on a transaction-specific basis. Therefore, we determine that NMB/Pelmec acted to the best of its ability and that its response methodology is not unreasonably distortive. We also note that, even under the pre-URAA law, we would have found NMB/Pelmec's methodology to be permissible. See AFBs V at 66498.

Comment 11: Torrington states that the Department's verification report indicates that, as a result of a new contract INA entered into with two of its U.S. customers, there were several retroactive price changes to certain prices INA reported. Torrington contends, however, that the verification exhibit reveals that the record is incomplete with respect to this issue. Torrington requests that the Department correct the reported sales information to reflect the change in price. Torrington also states that the Department should require INA to develop the record to include a full explanation of the nature of the contracts into which it entered, and to reflect the corrections in the database, including quantities, price, transaction dates and part numbers. Torrington states that it is necessary to

further develop the record because changes to price as a result of retroactive price adjustments call into question the reliability of all reported U.S. sales.

INA responds that the Department verified all information concerning the revisions to some prices for U.S. customers. In addition, INA states that, as the Department noted in its verification report, the sales affected by the retroactive price adjustments were limited to the sales transactions that INA presented to the verification team at the outset of verification.

Department Position: We agree with respondent and are satisfied that, given our thorough examination at verification, the record is complete with respect to this issue. We included the corrected retroactive price adjustments we received from respondent at verification in our preliminary analysis because, in our verification of these adjustments, we found that there were no price adjustments on other transactions (verification report, at 1). Therefore, we do not question the reliability of INA's reported U.S. sales and for these final results, we have adjusted the U.S. database to reflect these price changes.

Comment 12: Torrington asserts that the Department should disallow NTN's HM billing adjustments to NV. Petitioner cites the CAFC's decision in *Torrington VI* that adjustments of this sort are, by their nature, indirect and may not be allocated across all sales. Torrington claims that NTN's description of billing adjustments in its questionnaire response is unclear as to whether the adjustment is product-and invoice-specific. Petitioner contends that NTN has not met its burden of proof of establishing entitlement to the adjustment.

NTN counters that it did not allocate the adjustment broadly across all sales and that the Department verified the accuracy of the adjustment and the methodology NTN used to report it. NTN maintains the Department was correct in accepting the adjustment in the preliminary results and should do so for the final results.

Department's Position: We disagree with Torrington. NTN's reporting methodology was consistently customer-and product-specific for billing adjustments. As a result of our verification of NTN's HM sales, we found that NTN reported the great majority of billing adjustments on a transaction-specific basis. As stated in our introductory remarks to this section, we prefer transaction-specific amounts for these kinds of adjustment claims. Because NTN acted to the best of its ability in reporting the adjustment and its allocations are not unreasonably distortive, we have accepted the reported adjustments for the final results.

Comment 13: Torrington contends that NTN Germany's HM discounts and rebates should be rejected in the calculation of NV. Petitioner maintains that these adjustments are direct adjustments that respondent has improperly reported on a customer-specific basis. Torrington claims that respondent has reported its discount adjustment incorrectly based on information in the public version of the home market verification report for the 1992–93 administrative review. Because the adjustments are not reported on a transaction-specific basis, petitioner argues that the Department must reject them.

NTN Germany counters that it has reported its discounts and rebates in a consistent and accurate manner in each administrative review and that the Department should accept them as reported in this review.

Department's Position: We disagree with Torrington. NTN Germany explained in its response that the adjustments were based on agreements with customers for eligible products. Resulting total amounts for each customer were allocated to sales to the customer. Based on NTN Germany's response and information on the record from verifications of previous reviews, we believe respondent has acted to the best of its ability in reporting the adjustments and its allocations are not unreasonably distortive.

4. Circumstance-of-Sale Adjustments

4.A. Technical Services and Warranty Expenses. Comment 1: Torrington argues that the Department should reject NSK's claim for an adjustment to NV for technical service expenses. Torrington asserts that NSK's description of these expenses indicates a direct relationship to specific transactions, despite NSK's claim that it could not isolate technical services for specific sales. Citing *Torrington VI* at 1050, Torrington argues that NSK cannot claim direct expenses as an indirect adjustment merely because it is inconvenient for NSK to report them on the same basis on which they were incurred. Torrington also argues that NSK's reported technical service expense does not distinguish between that paid on subject merchandise and that paid on non-subject merchandise.

NSK contends that, while it provides technical service with respect to specific customers or even to specific part numbers, it does not incur expenses on that basis. NSK argues that the expenses referred to by Torrington are expenses such as salaries, benefits, rent, utilities, and depreciation and can be characterized as fixed expenses. NSK also argues that, because such expenses are ISEs, NSK is under no burden to remove such expenses as might theoretically relate to sales of non-subject merchandise because such expenses are incurred to support NSK's sales generally.

Department's Position: We disagree with Torrington. We have examined the information on the record and have concluded that, based on NSK's description, its home market technical service expense (such as the salaries and benefits of technical service employees) is a fixed expense and does not vary with sales volumes. Therefore, we conclude that they are of an indirect nature. We further agree with NSK that, due to the nature of ISEs, NSK need not segregate such expenses between those paid on subject and non-subject merchandise.

Comment 2: Torrington argues that the Department should treat NSK's U.S. technical service expense as a direct expense instead of an indirect expense. Torrington asserts that NSK admitted that it did incur direct technical service expenses in the United States but claimed that allocation of direct technical service expense resulted in a *de minimis* factor, instead aggregating them with its indirect technical service expense. Citing *AFBs IV* at 10911, Torrington contends that, when a respondent fails to report U.S. technical service expenses in direct and indirect portions, it is the Department's practice to treat the expenses as a direct adjustment to CEP.

NSK argues that it attempted to identify which portion of its technical service expenses is direct and which is indirect, and it found that it had no direct technical service expenses which it could identify. NSK asserts that its technical service expenses are salaries, repairs, maintenance, and the like, which NSK asserts the Department has routinely recognized as indirect expenses. Finally, NSK contends that the Department has always treated its technical service expenses as an indirect expenses and Torrington has offered no reason for the Department to reverse itself.

Department's Position: We agree with NSK. In its response to our questionnaire, NSK identified certain technical service expenses which NSK said could be considered direct in nature. After examining these expenses, which are separately identified in NSK's Proprietary Exhibit C–12, we concluded that reclassifying these expenses as direct would have no material impact

on the margin calculation. *See* NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. Therefore, we have treated all of NSK's U.S. technical service expenses as indirect expenses for the final results.

Comment 3: Torrington argues that the Department should reject FAG Germany's reported HM direct warranty expense because the expense was allocated over all sales, regardless of model, class or kind, or customer. Citing *Federal-Mogul V* at 220, Torrington contends that the CIT has affirmed the Department's practice of rejecting direct deductions to foreign market value (now NV) for warranty and technical service expense because, although they were not incurred as a fixed percentage of sales value, they were allocated over all sales.

FAG argues that it allocated variable warranty costs over subject merchandise only, that it explained its allocation in its response, and that the Department verified its direct warranty expense. FAG argues that the court case Torrington cites is inapposite because in that case the allocations were made over both subject and non-subject merchandise.

Department's Position: We agree with FAG Germany. Similar to discounts and rebates (see item 3, above), we have accepted claims for home market direct selling expenses as direct adjustments to price if we determined that the respondent reported the expense: (1) on a transaction-specific basis; (2) as a fixed and constant percentage of the value of sales on which it was incurred; or (3) on an allocated basis, provided that it was not feasible for the respondent to report the expense on a more specific basis and the allocation does not cause unreasonable inaccuracies or distortions (*e.g.*, if granted proportionately on sales of out-of-scope versus in-scope merchandise). We have disallowed any allocated HM direct selling expense which did not meet this standard pursuant to *Torrington V*.

We find that FAG Germany has reported its HM variable warranty expenses in the most feasible manner possible. The Department has long recognized that it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses can be incurred on pre-POR sales. Likewise, FAG may not incur warranty expenses on POR sales until a future time period. Therefore, warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary. FAG Germany allocated its warranty expenses related to sales of scope merchandise and its methodology is not unreasonably distortive. Accordingly, we have treated FAG's reported HM direct warranty adjustment as a direct adjustment to NV.

Comment 4: Torrington argues that the Department should disallow Koyo's HM ISE-offset claim because the company failed to report direct warranty expenses separately in the manner in which it incurred them. Torrington, citing *Torrington VI* at 1047–1051, maintains that direct expenses, if not reported in the manner in which they are incurred, must be denied altogether.

Koyo responds that its methodology for reporting its warranty expenses in this review is the same as that it used in a number of previous reviews of the orders on AFBs and tapered roller bearings. Koyo further states that the Department has verified and accepted Koyo's methodology in previous reviews and has never raised any complaints regarding Koyo's treatment of warranties.

Department's Position: We disagree with Torrington. In general, it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses are incurred on pre-POR sales. Further, Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, as in *AFBs III* (at 39743), in *AFBs IV* (at 10910), and in *AFBs V* (at 66485), where Koyo used the same allocation methodology. In these reviews, we also find that Koyo's allocation of warranty expenses is not unreasonably distortive, and we have accepted them for these final results.

Comment 5: Torrington requests that the Department deny an adjustment to NV for FAG Italy's reported HM technical service expense, arguing that the company failed to report the adjustment in the manner the Department requested. Torrington contends that FAG Italy averaged total HM direct technical service expenses over all POR sales instead of on a customer-specific basis as requested by the Department. Moreover, Torrington claims that the Department should not treat the claimed HM technical service expense as an indirect expense because the expense is direct in nature, citing *Torrington VI* at 1050–1051 in support of its argument that the Department may not treat direct expenses as indirect.

FAG Italy argues that it properly calculated and reported its HM technical service expenses and that the Department lawfully permitted the adjustment to NV as it has in all prior reviews of these AFB orders. In support of the Department's treatment of the HM technical service expenses as direct, FAG Italy states that the expenses are variable and that they are dependent only upon sales of the merchandise under review. In conclusion, FAG Italy contends that Torrington's reference to *Torrington VI* is inappropriate because the adjustments at issue in that case were indirect expenses allocated over all sales (scope and non-scope) whereas FAG Italy's HM technical service expenses are direct and are only allocated over scope merchandise.

Department's Position: We agree with FAG Italy. In our questionnaire, we instructed FAG Italy to report the technical service expenses directly related to sales of the foreign like product, less any reimbursement received from the customer. In its questionnaire response, FAG Italy stated that it first subtracted the fees that it received from its customers from the pool of technical service expenses and allocated the remainder by dividing by the "applicable home market sales." This reporting methodology is consistent with FAG Italy's accounting and record-keeping systems and is an accurate representation of the company's technical service expenses. Since FAG Italy's reporting of this information is the most specific that is feasible and is not unreasonably distortive, we have accepted the company's HM variable technical service expenses as a direct adjustment to NV.

Comment 6: Torrington states that SNR's response indicates that it allocated HM warranty expenses over both scope and non-scope merchandise, despite the Department's verification report indicating that the expenses were allocated over sales of scope merchandise only. Torrington urges the Department to ensure for the final results that HM warranty expenses were properly allocated and have not been overstated.

SNR asserts that the Department verified its direct warranty expenses, which it limited to returns of scope products and allocated over sales of only scope products. Therefore, SNR concludes, the Department found its HM warranty expenses to be properly allocated and not overstated.

Department Position: We agree with SNR that it allocated only HM warranty expenses related to scope products over scope products. As we indicated in the verification report, we verified those warranty expenses and did not find any discrepancies.

4.B. Commissions. Comment 1: Torrington argues that the Department should reject NSK's claimed adjustment to NV for commissions paid for delivery on behalf of NSK. Torrington notes that NSK summed all commissions paid to a

commissionaire for deliveries and allocated that amount over total NSK sales to the commissionaire. Torrington contends that it is not evident that NSK actually incurred commissions on all sales to the commissionaire. Torrington also argues that the total commissions and the total sales to the customer include commissions paid on sales of non-subject merchandise, which is contrary to law, citing *Torrington I* at 1579. Finally, Torrington argues that, even if the Department permits an adjustment for such commissions, the Department should disregard those commissions NSK paid to affiliated commissionaires because NSK failed to demonstrate that they were made at arm's length.

NSK argues that the Department correctly deducted commissions for delivery on behalf of NSK as a direct expense. NSK argues that the proposed regulations for implementing the URAA allow respondents to allocate expenses if transaction-specific reporting is not feasible, as long as the allocation is not distortive (citing Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7330, 7381 (February 27, 1996) (proposed §351.401(g) and commentary)). NSK contends that its records are not maintained on a transaction-specific basis and, therefore, it cannot report HM commission expenses on a transaction-specific basis. NSK claims that its allocation methodology is non-distortive.

Department's Position: We disagree with Torrington. We conclude that, although NSK may not have allocated these commissions on the same basis that they were incurred, the allocation methodology is sufficiently accurate that whatever distortion may exist will have no material impact on NSK's margin. As we noted in the home market verification report, NSK calculated customer-specific factors by dividing the total commission paid to a commissionaire by the sum of the sales that generated the commission. See Home Market Verification Report dated April 26, 1996, at page five. As the allocation is customer-specific, there is no possibility of shifting expenses from one customer to another. Moreover, because NSK allocated these commissions over only those sales that actually incurred such commissions, there is no possibility that NSK reported commissions for sales which did not incur them. Finally, for business proprietary reasons discussed in the analysis memorandum, we conclude that there is no possibility that NSK included in its reporting any commissions paid on non-subject merchandise. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. For these reasons we disagree with Torrington, and we conclude that NSK's allocation methodology is not unreasonably distortive and that NSK acted to the best of its ability in reporting these commissions. Therefore, we determine that a direct adjustment to NV for commissions for delivery on behalf of NSK is appropriate.

We agree with Torrington that we should disregard commissions that NSK paid to affiliated commissionaires for delivery on behalf of NSK. As discussed in the final results analysis memorandum, we conclude that the commissions NSK paid to affiliated commissionaires were not made at arm's-length. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

Comment 2: Torrington argues that the Department should reject NSK's claim for an adjustment to NV for distributor-incentive commissions. Torrington notes that the Department treated this as a direct adjustment to NV for the preliminary results even though NSK requested that these commissions be treated as ISEs. Torrington argues that NSK failed to demonstrate that these commissions do not include payments it made on non-subject merchandise or that it, in fact, paid any commissions on subject merchandise. Torrington also claims that NSK's allocation methodology is distortive, because the possibility exists that it claimed an adjustment on sales for which it paid no commission. Torrington asserts that the Department disallowed this expense in *AFBs IV*, as well as in Tapered Roller Bearings from Japan, 56 FR 64720, 64723 (1993), and was affirmed by the CIT in *NSK III*. Finally, Torrington argues that, even if the Department permits an adjustment for such commissions for the final results, the Department should disregard commissions NSK paid to affiliated commissionaires.

NSK argues that the Department should continue to treat distributor-incentive commissions as a direct expense. NSK contends that, while the Department rejected its distributor-incentive commissions in *AFBs IV*, it later treated such commissions as a direct expense and this practice was affirmed in *Torrington IV*.

Department's Position: We agree with Torrington that we should not treat distributor-incentive commissions as a direct adjustment to NV. Our treatment of these commissions as a direct adjustment for the preliminary results was an inadvertent error on our part. As NSK explained in its supplemental response, "this expense is earned on the basis of the distributor's resale, rather than on NSK's sale to the distributor." See NSK's response to our supplemental questionnaire, dated December 7, 1995. We later verified this information. See NSK home market verification report, dated April 26, 1996. We conclude that NSK did not incur this expense directly on its sales to its customers. Based on the nature of this expense, we conclude that it is not really a commission. Rather, we agree with NSK's characterization in its supplemental response that distributor-incentive commissions are an indirect promotional expense as opposed to a price adjustment because NSK grants these "commissions" to promote sales made by distributors.

We disagree with Torrington that we should disregard distributor-incentive commissions NSK paid to affiliated commissionaires. As discussed in the final results analysis memorandum, we conclude that the commissions NSK paid to affiliated commissionaires were made at arm's length. Therefore, we have adjusted NV for these commissions. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

4.C. Credit. Comment 1: Torrington argues that the Department should adjust NSK's HM credit expense calculations by excluding discounted notes. Torrington argues that discounted notes are not part of an unpaid balance but rather represent paid amounts, albeit at a discount, during the month. Torrington argues that the burden is on NSK to demonstrate that it did not include notes that had been paid, and contends that NSK did not demonstrate this on the record. Therefore, Torrington argues, the Department should either exclude discounted notes from NSK's credit-expense calculation or use the lowest credit expense NSK reported for all HM sales during the POR.

NSK argues that the Department verified that, while NSK included unpaid notes receivable in its credit calculation, it did not count notes receivable that had been paid. NSK also argues that it used the term "discounted" to differentiate one specific type of notes receivable from other types.

Department's Position: We disagree with Torrington. While discounted notes do not technically represent an unpaid balance, NSK does not obtain the use of the entire balance owed by the customer for the note. When a company discounts a note through a bank, the bank typically assesses a charge or fee for discounting the note. Therefore, when discounting a note

through a bank, the company incurs a cost for obtaining a smaller amount of money than that to which it would be entitled had it held onto the note until maturity. NSK calculated the interest rate for its discounted notes in a manner similar to that which it did for other loans. At verification, we found that NSK does incur discounted-note expenses, and we determined in our analysis of NSK's reported HM credit expense that respondent accounted for discounted notes properly in its methodology.

Comment 2: Torrington comments that FAG Germany improperly added one credit day in calculating credit expense for HM sales, by claiming that, under operating procedures common to the German banking system, there is a lag in the availability of funds in Germany which does not exist in the United States. Torrington contends that, even if the alleged banking delay was supported by the record, it would apply to all payments in Germany, whether completed upon delivery or after the expiration of an agreed-upon term. Thus, Torrington argues, the one-day period allegedly required by the bank to process the payment is no more relevant to the imputed credit expense calculation than, for example, a respondent's own administrative delays. Torrington argues that the Department should recalculate FAG Germany's reported home market credit expense by reducing the time between sale and payment by one day.

FAG Germany argues that, in accordance with specific procedures which the Department verified, it does not technically receive payment from its customers until the day after its banks actually received the customer's check or transfer. FAG Germany contends that, in accordance with Departmental reporting requirements, it reports all expenses on the same basis in which they are incurred, and that, where funds are not available in FAG's accounts until one day after deposit by German law and practice, it has legitimately incurred an extra day of credit costs.

Department's Position: We agree with FAG. As we noted in the HM verification report, we analyzed several credit notes, promissory notes, and short-term loan agreements to determine the accuracy of FAG's submission and found no discrepancies. Therefore, we found that FAG reported its dates of payment in its response accurately. Had FAG not justified the extra day reported in the home market at verification, we would have noted it and adjusted FAG's HM credit expenses accordingly. As this was not the case, we have accepted FAG's HM credit expenses as reported.

Comment 3: Torrington contends that the Department should not accept FAG Italy's HM credit expense data that the company provided after verification unless the Department is fully satisfied that the amounts are accurate. Torrington notes that, at verification, the Department discovered FAG Italy had failed to report credit amounts for certain HM customer codes. Torrington's concern is that when FAG Italy submitted the credit expense information on the record after verification it may have overstated its customers" actual credit expenses. Torrington requests that the Department compare the average credit expenses FAG Italy reported after verification to the average credit expenses it reported originally to ensure that the new credit expense figures typify FAG Italy's experience.

FAG Italy contends that it reported accurately the missing credit expenses discovered at verification. FAG Italy notes that its inadvertent reporting error affected very few transactions and argues that Torrington's concern about the credit expenses being over-reported is unfounded since the Department successfully verified the calculation of the missing HM credit expenses and the data used therein.

Department's Position: We agree with FAG Italy that it reported accurately the missing HM credit expenses we discovered at verification. To test whether FAG Italy reported these expenses accurately in its revised database, we compared the average credit expenses the company reported after verification to the average credit expenses it reported originally. We found that the new credit expenses typify FAG Italy's experience and we made the adjustment to NV for the final results.

Comment 4: Torrington argues that the Department should ensure that it deducts NSK–RHP's credit expense on all relevant U.S. sales. Torrington claims that NSK–RHP did not report a U.S. credit expense for those sales for which it was unable to determine the appropriate date of payment. Torrington states further that, in response to Torrington's pre-preliminary comments, NSK–RHP asserted that the Department should calculate the credit expense based on the due date of respondent's supplemental response, January 11, 1996, which was the last time NSK–RHP submitted data. Torrington claims that NSK–RHP left the credit expense for certain U.S. sales blank even though the information was subsequently available. Torrington proposes that an appropriate amount for credit expense for such sales should be based on the number of days from shipment to the date of the preliminary results.

Torrington states that, with respect to those U.S. sales for which INA did not report a payment date, the Department should estimate a payment period, for the purpose of calculating credit expenses, based on the difference between the date of sale and the date of the final results of review.

NSK–RHP argues that the Department instructed NSK–RHP to leave the date of payment variable blank for all transactions for which NSK–RHP or its affiliated companies could not determine the date of payment. NSK–RHP contends that it followed the Department's instructions and has cooperated fully with the Department's requests for information and, thus, use of adverse facts available is inappropriate in this case. NSK–RHP concludes by stating that the Department calculated its credit expense correctly for the preliminary results.

INA agrees with Torrington that the Department should estimate a credit period for U.S. sales without a payment date but disagrees with Torrington's proposed methodology. INA contends that the period Torrington proposes is arbitrary and an application of adverse facts available, for which there is no basis. Instead, INA argues, the Department should apply the methodology it employed in other cases, where the Department calculated a surrogate credit period based on the average number of days between the date of sale and the date of payment for all U.S. sales.

Department's Position: We agree with Torrington that NSK–RHP did not provide date of payment information for those U.S. sales for which it contends that it could not determine the date of payment. However, the record illustrates that, as is the case with INA, NSK–RHP completed this field for as many transactions as possible and left it blank for only those transactions in which it could not determine the date of payment as instructed in our original questionnaire at page C–11, field 12.0.

Under section 776(a)(1), the Department shall use the facts otherwise available in reaching its final determination when the necessary information is not on the record. Because the final date of payment is not known for certain transactions for these respondents, we must resort to facts otherwise available in determining a reasonable period of time for calculating credit expenses. We agree with Torrington that we should estimate a payment period for those sales for which NSK–RHP and INA did not

provide the date of payment. However, we disagree with Torrington's recommendation that we use the number of days from shipment to the date of the preliminary results as a surrogate. This treatment would constitute an adverse inference and is not warranted by the facts of this case. Therefore, for these final results, we used the average credit period for all transactions with reported shipment and payment dates as a surrogate for the actual credit period in calculating credit expenses for those sales without a known date of payment. See Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30332 (June 14, 1996).

Comment 5: Torrington argues that the Department should ensure that SKF France has reported appropriate payment dates for HM sales. Torrington contends that SKF France identified the payment date as the date the payment is deposited in SKF's bank and that this date may be several days after the date which the customer actually paid SKF. Torrington asserts that, if the Department cannot determine that SKF France reported the actual payment date, it should apply a facts-available approach, such as an estimate of the number of days between receipt of check and deposit in the bank, and adjust the credit expense accordingly.

SKF France argues that the Department has verified and accepted SKF France's credit expense calculation, as well as its record-keeping and accounting payment on invoices. SKF France adds that it linked the invoice number to the dates of payment electronically such that, in all but a very few instances, it reported the actual payment date.

Department's Position: We agree with SKF. We have no reason to believe that SKF France reported payment dates for HM sales inappropriately. Torrington does not offer any evidence that SKF France's reported payment date is not the actual date SKF France received payment. Further, as SKF France stated in its September 26, 1995 response, only in a few cases did it not report the actual payment date. Where SKF France could not identify the actual payment date it used an average customer-specific or company-specific accounts-receivable days-outstanding date. See SKF France's questionnaire response at 48. Hence, we are satisfied that SKF France's reporting of its HM payment date is not unreasonably distortive.

Comment 6: Torrington contends that, based on information in NTN's financial statements, respondent has under-reported the days outstanding for the calculation of U.S. credit expenses. Petitioner provides analysis of the financial statements as applied to sampled sales and suggests that the Department recompute the expense.

Department's Position: We disagree with Torrington. We examined credit expenses at our verification of the U.S. response. NTN reported customer-specific days outstanding on payments rather than transaction-specific days outstanding. Although there were instances of slight variation from the customer-specific days outstanding to the transaction-specific days outstanding, the reported outstanding periods were largely accurate and reasonably reflect the days outstanding basis for the calculation.

4.D. Indirect Selling Expenses.

Comment 1: Torrington contends that INA's method of calculating its U.S. ISE ratio (selling expenses incurred on sales of imported merchandise to total sales of imported merchandise) is distortive. Torrington asserts that INA's records do not allow for a distinction to be made between selling expenses on imported merchandise and selling expenses on U.S.-produced merchandise. Torrington states that some of the cost centers, for which INA applied ratios to total expenses accumulated in each cost center to obtain an estimated amount for expenses attributable to import sales, were associated with U.S.-produced merchandise. Torrington also states that, for many cost centers, INA was unable to calculate a specific ratio. Torrington concludes that the Department should reject INA's reported U.S. ISE rate and recalculate it based on total expenses and sales.

INA agrees with Torrington's proposal that the Department recalculate the U.S. ISE rate based on total expenses and sales of produced and imported merchandise. INA provides proposed revised rates which it states are based on corrected data it submitted to the Department in its supplemental questionnaire response.

Department Position: We disagree with Torrington's assertion that INA's U.S. ISE ratio is distortive. We verified the calculation of this expense thoroughly and were satisfied with INA's methodology. As we indicated in the verification report, INA applied a specific ratio for those cost centers for which INA maintains separate records in its monthly sales detail. For those cost centers for which it was unable to calculate a more specific ratio, INA applied general ratios to total expenses associated with U.S.-produced merchandise. We believe that INA's method of allocating its U.S. ISEs is not unreasonably distortive and have relied on it for the final results.

Our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise and are in accordance with the GAAP of its home country. See, *e.g.*, Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value (Canned Pineapple from Thailand), 60 FR 29553, 29559 (June 5, 1995); Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value, 57 FR 53693, 53705 (November 12, 1992). See also Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value, 60 FR 22550, 22556 (May 8, 1995) ("(t)he Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting records do not reasonably reflect the COP of the merchandise"). The CIT has upheld the Department's use of expenses recorded in a company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See, *e.g.*, *Laclede Steel Co.* v. *United States*, Slip Op. 94–160 at 22 (CIT 1994). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it determines that a company's normal accounting practices result in a unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. See, *e.g.*, New Minivans from Japan; Final Determination of Sales at Less Than Fair Value, 57 FR 21937, 21952 (May 26, 1992). In this case, we are satisfied that INA's calculations reasonably reflect its ISEs. The fact that INA calculated a general ratio for only some of its cost centers does not prevent us from reasonably using the data provided to us by INA concerning its ISEs. Thus, the application of facts available is not warranted; we have not recalculated INA's reported U.S. ISEs.

Comment 2: Torrington contends that the Department should modify its calculation of INA's U.S. ISEs incurred in the country of exportation in order to reflect the addition of certain cost centers INA reported in its supplemental questionnaire response.

INA asserts that the Department included the revised U.S. ISE rate in the preliminary results and that this rate is

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actually higher than the U.S. ISE rate that would result under Torrington's proposed methodology.

Department Position: We disagree with Torrington. As stated in response to Comment 1, we disagree with the view that we should adopt Torrington's methodology for recalculating U.S. ISEs (*see* Comment 1 of this section). Moreover, INA is correct in its assertion that we included the revised U.S. ISEs in the preliminary results calculations. Because no party has adequately supported an alternative methodology, we have no basis for determining that our preliminary results calculations were not reasonable. Accordingly, we have maintained this revision of INA's U.S. ISEs for the final results of review.

Comment 3: Torrington contends that the Department's verification report indicates that INA did not allocate its domestic ISE ratio on the same basis as its export ISE ratio. Torrington argues that, as a result, INA has overstated its domestic ISEs because, while the denominator for the export ISE ratio includes all export sales, the denominator for the HM ISE ratio does not include all domestic sales. In addition, Torrington cites to the Department's verification report as support for its argument that the numerator of the domestic ISE ratio includes costs that are not selling expenses. Torrington asserts that, by including such expenses, INA has overstated the numerator of this ratio. Torrington contends that, if it is feasible, the Department should recalculate the domestic ISE ratio; otherwise, Torrington argues, the Department should reject the reported HM ISEs.

INA responds that it reported home market indirect selling expenses properly. INA takes issue with Torrington's assertion that the Department's verification report stated that INA's allocation of its domestic indirect selling expenses is inconsistent with its allocation of export selling expenses. INA explains that it determined the sales and expenses of the enterprise that produces the subject merchandise in the home market on a consolidated basis, eliminating transactions between the HM entities which comprise the HM manufacturing entity. INA states that the consolidated entities do not include those outside the home market because such entities are not associated with the enterprise that manufactures subject merchandise; rather, they are customers of the enterprise. INA also takes issue with Torrington's assertion that the numerator of the ratio INA used to allocate domestic ISEs includes costs which are not selling expenses. INA contends that, in calculating the numerator amount, it excluded those categories that it reported under other classifications (in accordance with the Department's instructions in the questionnaire), and those which were not applicable to HM sales. INA states that it classified the remaining cost centers as domestic selling expenses as directed by the questionnaire.

Department Position: We disagree with Torrington. As we indicated in response to comment 1, in determining whether to adhere to an individual firm's recording of costs, an important factor is whether we are satisfied that its reporting reasonably reflect the expenses being examined. In this case, we find that INA's methodology is not distortive. Indeed, we examined INA's reporting methodology for ISEs thoroughly at verification. Based on our examination, we are satisfied that INA's allocation of its domestic ISEs is consistent with its allocation of its export selling expenses.

Comment 4: Torrington argues that the Department should adjust NSK's claimed HM ISEs to disallow a certain expense included in the pool of ISEs. Torrington argues that, although NSK did not report how it calculated this expense, NSK claimed this expense as a direct adjustment to foreign market value (FMV) in prior reviews. Torrington contends that NSK incurred this expense on specific transactions and that, pursuant to *Torrington VI* at 1050, the Department cannot treat it as an indirect expense. Torrington also argues that NSK's allocation is distortive because it is not reported on the basis on which it is incurred and that NSK's allocation does not distinguish between subject and non-subject merchandise.

NSK argues that the Department has determined in prior reviews that the expense is not incurred directly on sales NSK made. NSK contends that it reported this expense in a manner consistent with the Department's prior rulings on this expense.

Department's Position: We disagree with Torrington and, for these final results, have treated all of NSK's claimed HM ISEs as indirect expenses. In determining whether to treat these and other expenses at direct or indirect expenses, we examined whether they vary with the quantity of subject merchandise sold (see *Zenith Electronics Corp.* v. *United States*, 77 F.3d 426, 431 (CAFC 1996)), or were related to a particular sale (see *Torrington Co.* v. *United States*, 68 F.3d 1347, 1353 (CAFC 1995). This analysis did not lead us to conclude that, as argued by Torrington, NSK incurred the ISEs on specific transactions. Thus, although the proprietary nature of this expense makes it impossible to give a full discussion of this issue in this notice, we note that it is evident from the record that NSK did not incur this expense directly on sales to its customers. This issue is discussed further in NSK's analysis memorandum. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. Therefore, we conclude that the expense is not related directly to any sales NSK reported in its HM sales database and it is proper to treat it as an indirect expense.

Comment 5: Torrington argues that the Department should treat NSK's U.S. advertising expense as a direct expense instead of as an indirect expense. Torrington contends that NSK did not adequately prove that its advertising expenses were indirect, stating that NSK did not provide examples of U.S. advertising and that the Department did not examine examples of NSK's U.S. advertising in the course of verification.

NSK argues that the Department has rejected similar arguments made by Torrington in prior reviews and argues that its catalogs and show exhibits are not aimed at the customer's customer and, therefore, are indirect in nature.

Department's Position: We agree with NSK. For advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer. *See AFBs I* at 31725. The examples of U.S. advertising submitted by NSK are not specific to bearings but instead are general in nature, as NSK suggests. NSK's supplemental response dated December 7, 1995, at page 56, described the advertising expenses that NSK incurs. We examined these expenses and determined that they are not aimed at the customer's customer. Therefore, we are satisfied that NSK's U.S. advertising expenses are indirect. With regard to the catalogs, it is apparent that they are not aimed at any particular customers or group of customers. While NSK's customers' customers may have used some catalogs, it is not evident that only the customers' customers used them or that the catalogs were targeted for the customers' customer. With regard to the show exhibit expense, it is clear from information on the record that this expense was aimed at NSK's customers and not to the customers' customer. Finally, other NSK advertising expenses, such as hats and shirts that carry NSK's logo, are "image" advertising and not aimed at any customer or group of customers. The

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record in this review reflects that NSK's U.S. advertising expenses are indirect in nature. Therefore, we conclude that none of these advertising expenses are direct in nature and have treated them as ISEs for these final results.

Comment 6: Torrington contends that FAG Germany never explained its HM ISE-allocation methodology in any of its responses and that the Department recognized this failure in its verification report. Torrington contends that, although the Department included an explanation of the allocation methodology in its verification report, the explanation applies to only one of the legal entities that comprise FAG KGS. Torrington claims that, although FAG Germany indicated that it used the same methodology for the other entities, the Department's verification report appears to refute FAG Germany's claim.

Torrington argues that FAG Germany's failure to provide an explanation deprives the domestic interested party of an adequate opportunity to comment on the claimed expenses and distorts the investigative process. Torrington contends that there are a number of unexplained inconsistencies in FAG Germany's allocation methodology. Torrington argues that the Department should reject FAG Germany's reported ISEs and apply, as facts available, a single expense rate based on the lowest of the several expense rates FAG Germany reported.

FAG Germany argues that it did explain its allocation methodology in both its original response and its supplemental response and that the Department verified its methodology completely without finding any discrepancies. FAG Germany contends that it used the same methodology for all entities comprising FAG KGS and notes that the Department's verification report states that "because FAG used the same allocation methodology for each entity, [its] discussion below details the Department's trace only through that documentation provided for [FAG Automobiltechnik AG]," citing FAG Germany Home Market Verification Report at 7. FAG Germany also argues that Torrington was afforded adequate opportunity to comment on the claimed expenses. Finally, in response to Torrington's argument that there are unexplained inconsistencies in FAG Germany's methodology, respondent notes that the Department found no discrepancies at verification.

Department's Position: We agree with FAG Germany. While it is true that respondent did not explain the allocation methodology fully in its original response, we examined FAG Germany's methodology in detail at verification and described the methodology in the verification report. In addition, we took exhibits supporting our findings at verification. Based upon the record, inclusive of the verification report and exhibits, we determined that FAG Germany's allocation of ISEs was not unreasonably distortive.

In response to Torrington's assertions that (1) although the Department included an explanation of the allocation methodology in its verification report, the explanation applies only to one of the legal entities that comprise FAG KGS, and (2) although FAG Germany indicated that it used the same methodology for the other entities, the Department's verification report appears to refute FAG Germany's claim, we point out that the Department's verification report states that "because FAG Germany used the same allocation methodology for each entity, our discussion below details the Department's trace only through that documentation provided for (one of the legal entities)." In other words, we used the same verification process for each entity we examined, but set out the steps in detail for only one of the entities.

With regard to Torrington's contention that it was deprived of an adequate opportunity to comment on the claimed expenses, we note that we gave Torrington the same opportunity to comment on any facet of our preliminary results that all interested parties receive. Moreover, Torrington's counsel received proprietary versions of the verification report and exhibits under administrative protective order. Therefore, Torrington was not deprived of an adequate opportunity to comment on this aspect of the review.

Comment 7: Torrington contends that FAG Germany's and FAG Italy's reporting methodology for U.S. ISEs does not accurately reflect selling expenses on the reviewed U.S. sales because the allocation methodology includes expenses on sales of FAG Canada to U.S. customers. Torrington requests that the Department reject FAG Germany's and FAG Italy's reported U.S. ISEs and recalculate the adjustment based on U.S. sales and U.S. selling expenses only.

FAG Germany and FAG Italy contend that their U.S. ISE calculation methodology properly includes certain expense and sales data relating to FAG U.S.'s facilitation of sales by FAG Canada to the U.S. market. They contend that it is not possible for FAG U.S. to isolate expenses it incurred in providing the sales support to FAG Canada. FAG Germany and FAG Italy note that the Department verified their data and allocation methodology for U.S. ISEs with no discrepancies noted and that the Department accepted the same methodology in previous reviews.

Department's Position: We disagree with Torrington. After reviewing the allocation methodology FAG Germany and FAG Italy used, we have determined that it reasonably reflects the companies' U.S. ISEs. FAG Germany and FAG Italy reported that it was impossible to segregate the ISEs which FAG U.S. incurred on its own sales from those it incurred in support of FAG Canada's sales to the United States. We found nothing in the response or at verification to contradict this statement.

This being the case, were we to recalculate respondents' U.S. ISE factors by excluding FAG Canada's sales and expenses, we would effectively overstate the ISE factors by not allocating the expenses over all of the sales on which they were incurred. Therefore, we must inciude FAG Canada's sales in the calculation. In order to avoid distortions, we have also included a portion of FAG Canada's ISEs applicable to its U.S. sales. To not include these expenses would effectively dilute the ISE factor because, while all sales incurring the expense would be included, not all of the expenses FAG U.S. incurred would be included in the calculation. Therefore, given FAG Germany's and FAG Italy's factual situation, the ISE allocation methodology they employed is appropriate.

Comment 8: Torrington argues that the Department incorrectly accepted certain of Koyo's claimed HM ISEs, stating that Koyo did not provide a full explanation as to why these expenses are considered ISEs rather than general administrative expenses. Torrington identifies these expenses as follows: benefits and directors fees, tax and rate, maintenance, environment and safety control, cleaning, quality control, fuel and maintenance of forklifts, intellectual property, enterprise tax, and a miscellaneous category.

Koyo maintains that it reported its HM ISEs as it has in previous reviews and that the Department has verified its ISEs on various occasions and accepted the reported expenses, with the exception of the bad-debt allowance, in all past reviews.

Department's Position: We agree with Koyo. As reported in our verification report, Koyo's methodology of calculating allocation factors reflected the nature of the expenses involved. See Verification Report of February 23, 1995 at 10. During verification, Koyo's management provided an explanation of

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these ISE items. When we verified these various ISE items, we not only tied all selected expenses to source documents but we also examined the nature of these items and found that they were related to the sales of subject merchandise. Based on the discussions and the findings at verification, we conclude that Koyo properly included these expenses as ISEs.

Comment 9: Torrington claims that the Department should disallow downward adjustments to U.S. ISEs for interest incurred by respondents when borrowing to finance deposits for estimated antidumping duties. Torrington relies on the Department's decision in *AFBs IV* (at 10918) to support its position.

Koyo counters that the issue is directly comparable to the Department's policy of not deducting antidumping duty deposits from CEP, given that these do not bear a relationship to the actual dumping duties owed. Koyo argues that it is likewise inappropriate for the Department to deduct expenses incurred for the purpose of making those deposits, such as the interest incurred to finance the deposits.

Department's Position: We disagree with Torrington that we should disallow this downward adjustment for interest expenses respondents incurred when borrowing to finance cash deposits of estimated antidumping duties, and we consider it proper to allow the downward adjustment to U.S. ISEs. The Department considers these expenses to be comparable to expenses for legal fees related to antidumping proceedings. The expenses were incurred only because of the existence of the antidumping duty orders and respondents' involvement therein. Therefore, the expenses cannot be categorized as selling expenses. It is the Department's longstanding practice not to treat expenses related to the dumping proceedings as selling expenses. For example, in Color Television Receivers From the Republic of Korea, 58 FR 50336, the Department stated that such expenses "are not expenses incurred in selling merchandise in the United States." The CIT recognized this line of reasoning in *Daewoo Electronics Co.* v *United States*, 712 F. Supp. 931 (CIT 1989) (*Daewoo*), when it concluded that the classification of such expenses as selling expenses subject to deduction from price "would create artificial dumping margins and might encourage frivolous claims * * * which would result in increased margins." Respondents incurred these expenses as part of the process attendant to the antidumping duty orders; had the antidumping duty orders not existed, respondents would not have incurred these expenses. By their nature, such expenses are not a selling expense, and we should not deduct them from CEP.

We clarified our position on this issue in our Results of Redetermination Pursuant to Court Remand, Slip Op. 96–37, which we submitted to the CIT on September 20, 1996. In that remand the Department was ordered to explain its acceptance of the downward adjustment to NTN's ISEs in *AFBs III*. In the redetermination we determined that the interest expenses to finance cash deposits were not borne, directly or indirectly by NTN's U.S. subsidiary firm, to sell the subject merchandise in the United States. The interest expenses at issue, like legal fees, are an expenditure which respondents actually incurred, but clearly did not incur in *selling* AFBs to the United States. Consequently, these expenses were not eligible to be deducted from CEP under section 772(e) of the Tariff Act. We also stated that we believed that we erred in not allowing the offset to U.S. ISEs in *AFBs IV*. For these reasons we consider it reasonable to accept this offset to U.S. ISEs for these final results.

We believe that the adjustment should be allowed, whether a respondent limits its calculation to only those interest expenses incurred on cash deposits during the period under review or calculates a cumulative adjustment which reflects not only the interest expenses incurred on cash deposits made during the period being reviewed but the interest expenses incurred during the POR on cash deposits made in previous review periods as well. When a respondent finances cash deposits it incurs a financing expense which reflects the opportunity costs which arise when funds are used to pay cash deposits rather than in other interest-yielding financial arrangements. Because the monies used to fund cash deposits for a given POR are unavailable until final antidumping duties are assessed for that POR, this opportunity cost will accrue until liquidation. For example, if a respondent pays cash deposits for entries during a particular POR but antidumping duties are not assessed on entries for several years, the financing costs of funding the cash deposits will not only be incurred in the POR but will be incurred until actual duties are assessed at the time of liquidation. As a result, an interest expense associated with the cash deposits made in the POR will be incurred during subsequent review periods. While a cumulative adjustment amount does affect a respondent's margin, dumping cannot be distorted or obscured when an adjustment is made for an expense attributable to an antidumping duty order. In fact, if we fail to allow the adjustment, we risk calculating margins which are overstated due to our failure to take into account an expense attributable solely to an order.

In addition, the Department considers the acceptance of a cumulative adjustment amount to be consistent with the statute. We do not regard cash deposits as actual antidumping duties paid at the time of importation for which subsequent adjustments for over- and under-payment are coupled with interest payments to approximate as closely as possible the payment of actual duties at time of import. We have long maintained the position that "duty deposits are not actual antidumping duties but estimates of future dumping liability" (see AFBs IV at 10900). We have expressed the identical position in another antidumping proceeding, stating that "the cash deposit requirements are estimates of antidumping duties. The actual dumping margins applicable * * * will be reflected in final assessment" (see Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof From Japan, 55 FR 38720 (September 20, 1990)). The CIT and CAFC have consistently recognized that a distinction exists between cash deposits and actual antidumping duties and that cash deposits are only estimates of final antidumping duties. For example, when ruling on the issue of whether the Department must calculate the cash deposit and antidumping duty rates using an identical methodology, the CAFC stated in *The Torrington Company and Federal-Mogul Corp.* v. *United States*, Court Number 94–1117 (January 13, 1995), that "(s)ection 1675(a)(2) does not require the same methodology of calculation for assessment rates and cash deposits rates * * * Moreover, Title 19 bases the cash deposits rate on *estimated* antidumping duties on future entries * * * Thus, Title 19 requires only *cash deposit estimates*, not absolute accuracy. This estimate need only be reasonably correct pending the submission of complete information for an *actual* and accurate assessment * * * No evidence compels this court to find that deriving cash deposit rates from entered values leads to a more accurate *estimation of future duties* * * *" (emphasis added). Therefore, cash deposits are clearly not payments of actual antidumping duties and, by allowing a cumulative adjustment, the Department is treating the interest expenses respondents

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incurred on cash deposits as expenses attributable solely to the antidumping duty orders.

Comment 10: Torrington claims that NTN's adjustments to selling expenses for expenses of affiliated firms have distorted the allocation of expenses to scope and non-scope merchandise. Petitioner believes NTN's method of initially allocating the affiliates'' expenses was flawed and understates NTN's ISEs for AFBs. Torrington asserts that the Department should add the affiliates'' expenses back into the pool of expenses before allocation to NTN's U.S. sales.

Department's Position: We disagree with Torrington. We examined NTN's allocation methodologies and expenses associated with affiliated firms at the verification of the U.S. response. We found these to be accurately compiled and NTN's allocation is not unreasonably distortive. Therefore, we have accepted NTN's allocation for these final results.

Comment 11: Torrington contends that the Department should reject NTN's allocation of certain U.S. ISEs based on level of trade. Petitioner notes that the Department rejected this methodology in *AFBs IV* as bearing no relationship to the way in which NTN incurred expenses.

NTN responds that the Department has verified its methodology at several verifications and found it to be reasonable. Therefore, NTN believes that the Department should accept the methodology.

Department's Position: We agree with Torrington. In *AFBs III* (and subsequently in *AFBs IV* at 10940 and *AFBs V* at 66489) we determined that the methods NTN used for allocating its ISEs did not bear any relationship to the manner in which it incurred the expenses in question, thereby leading to distorted allocations. The CIT upheld this decision in *NTN Bearing Corp.* v. *United States*, 905 F. Supp. 1083, 1094–95 (1995). Further, we found that the allocations NTN calculated according to levels of trade were misplaced and that it could not conclusively demonstrate that its ISEs vary across levels of trade. In the course of this review respondent did not provide sufficient evidence demonstrating that its selling expenses are attributable to levels of trade. Therefore, we have recalculated NTN's expenses to represent selling expenses for all U.S. sales for the final results.

Comment 12: Torrington states that the Department found that SNR had allocated depreciation expenses to all sales but, in fact, the respondent did not include them in the ISEs it reported for U.S. sales. Accordingly, Torrington contends, the Department should ensure that SNR has reported all U.S. ISEs and should reallocate a portion of the depreciation expenses SNR incurred in the home market to its U.S. sales.

SNR contends that, although the company failed to allocate a portion of its depreciation expenses to U.S. sales, the error was harmless. SNR states that these expenses, incurred in France, are indirect and the Department has not deducted such expenses in calculating CEP. SNR proposes that, if the Department decides to deduct such indirect selling expenses as part of U.S. ISEs incurred in the home market, the Department can derive a per-unit amount by the formula SNR provided in its rebuttal brief. SNR further notes that the depreciation expenses are de minimis and can be disregarded under 19 CFR 353.59(a).

Department Position: We agree with Torrington that SNR's depreciation expenses allocated to its U.S. sales should be part of ISEs we deduct from CEP. We verified SNR's response and, based on our findings at verification, we have made this deduction for our final results.

4.E. Other Selling Expenses.

Comment 1: NSK/RHP argues that the Department should deduct other HM direct selling expenses from NV. NSK/RHP notes that, in a supplement to its questionnaire response, it provided an explanation for direct selling expenses which separate cost centers incurred in selling to OEM-Automotive, OEM-Industrial, and AM customers. NSK/RHP explains further that the reported expenses are for selling activities for specific customers. NSK/RHP asserts that, since the Department never questioned whether these expenses are direct selling expenses, the Department should deduct them from NV for the final results.

Torrington contends that the Department should not deduct NSK/RHP's other HM direct selling expenses from NV, claiming that the record contains inconsistent information. Torrington maintains that NSK/RHP must prove that the expenses are direct. However, Torrington contends that, due to contradictions in the submitted data, the record fails to support NSK/RHP's claim for an adjustment. In support of its argument for not making the adjustment, Torrington also notes that NSK/RHP's HM sales data was not subject to verification.

Department's Position: We agree with NSK/RHP. Although we chose not to verify NSK/RHP's HM sales data, Torrington has not provided, nor is there evidence on the record to support Torrington's claim that NSK/RHP's information on other HM direct selling expenses is not accurate and complete. Therefore, we have deducted NSK/RHP's other HM direct selling from NV for these final results.

5. Level of Trade

As set forth in section 773(a)(7) of the Tariff Act and in the SAA at 829–831, to the extent practicable, we have determined NV based on sales at the same level of trade as the export price or CEP. When we were unable to find comparison sales at the same level of trade as the export price or CEP, we compared the sales in the United States to sales at a different level of trade in the comparison market. We determined the level of trade of export price sales on the basis of the starting prices of sales to the United States. We based the level of trade of CEP sales on the price in the United States after making the CEP deductions under section 772(d) but before making the deductions under section 772(c). Where HM prices served as the basis for NV, we determined the NV level of trade based on starting prices in the NV market. Where NV was based on CV, we determined the NV level of trade based on the level of trade of the sales from which we derived SG&A and profit for CV.

In order to determine whether sales in the comparison market are at a different level of trade than the export price or CEP, we examined whether the comparison sales were at different stages in the marketing process than the export price or CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Similarly, as further discussed in our response to Comment 2, below, while customer categories such as "distributor" and "wholesaler" may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 51891, 51896 (October 4, 1996).

While we conducted a similar analysis in the preliminary results, we limited our inquiry to the selling functions incurred by respondents at

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each level of trade. See Preliminary Results at 35718–35723. As noted, for these final results we have included in our analysis the class of customer and the level of selling expenses at each marketing stage in addition to selling functions. However, the inclusion of these additional factors in our analysis has not changed our identification of the levels of trade involved in sales in the U.S. and comparison markets, nor has it resulted in a change in our findings concerning which levels, for each respondent, are at a more advanced stage in the distribution process. Our discussion of the specific selling functions that we examined, as well as our company-specific findings in this regard, are contained in the preliminary results.

As in the preliminary results, where we established that the comparison sales are at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the difference in level of trade affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant levels of trade in the comparison market.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving export price sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the home market but we could only match the U.S. sale to HM sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted NV as the level-of-trade adjustment.

We were unable to quantify such price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP did not exist in the home market for any respondent. We also did not find the same level of trade in the home market for some export price sales. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondent's HM sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that "if information on the same product and company is not available, the [level-of-trade] adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling expenses of other producers in the foreign market for the same product or other products." *SAA* at 830. Accordingly, where necessary, we examined the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us to apply these alternative methods.

In those situations where we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, and in which the U.S. sales were export price sales, the statute requires no further adjustments in regard to level of trade. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the comparison sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Tariff Act.

Comment 1: Torrington argues that the Department improperly analyzed U.S. levels of trade for purposes of level-of-trade adjustments and CEP offsets by reference to what are in effect ex-factory export transactions instead of CEP resale transactions. Torrington argues that the statute makes resale transactions to unaffiliated purchasers the relevant sales for identifying the U.S. levels of trade, not ex-factory sales to the U.S. affiliate. In this regard, Torrington first notes that the statute requires a finding of differences in levels of trade between the "constructed export price" and NV before making a level-of-trade adjustment or a CEP offset (citing section 773(a)(7)(A) of the Tariff Act). Torrington claims that, in turn, the focus of the statutory definition of "constructed export price," which defines CEP as "the price at which the subject merchandise is first sold * * * in the United States * * * to a purchaser not affiliated with the producer or exporter, as adjusted * * *," is on resale transactions in the United States, not on the transaction between the home market parent and the U.S. subsidiary (citing section 772(b) of the Tariff Act).

Torrington suggests that, in the preliminary results, the Department implicitly recognized the incorrectness of its level-of-trade/CEP offset approach by comparing, for matching purposes, HM sales to U.S. sales based on the distribution channel (customer category) of the unaffiliated U.S. purchaser in all instances, including CEP comparisons. (In Comment 2, below, Torrington requests that the Department explain the legal basis for matching sales in this manner.)

FAG Germany, FAG Italy, INA, NSK, SKF France, SKF Germany, SKF Italy, SNR, Koyo, and NMB/Pelmec respond that the statutory definition of CEP does not support Torrington's argument that the appropriate U.S. level of trade is that of the U.S. affiliate to the unaffiliated customer. While respondents agree with Torrington that the Department must compare the level of trade of the "CEP" with that of sales made in the home market in the level-of-trade analysis, they disagree that the statutory definition of "CEP" focuses on the resale to the unaffiliated customer. Rather, they suggest that a complete reading of the definition in section 772(b) reveals that the CEP is the resale price as adjusted for U.S. selling expenses and profit. Respondents contend, therefore, that the Department correctly excluded selling functions related to such U.S. expenses in its analysis of the level of trade of the CEP for the preliminary results.

Koyo takes issue with Torrington's argument that, by matching sales using the customer category of the unaffiliated U.S. customer, the Department is implicitly acknowledging that its level-of-trade analysis was in error. Koyo instead contends that the statute does not preclude matching U.S. and home market sales, to the extent possible, based on parallel channels of distribution. Koyo argues that this practice achieves the statutory mandate of making "fair comparisons" and that it is well within the Department's authority to adopt such a methodology.

NTN Japan and NTN Germany agree with Torrington that the transaction to the first unaffiliated party in the United States should determine the level of trade.

Department's Position: We disagree with Torrington, NTN Japan, and NTN Germany. The statutory definition of "constructed export price" contained at section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. See SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a "constructed" export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act ("Additional Adjustments for Constructed Export Price"), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section.

Contrary to Torrington's assertions, this approach does not result in a reliance on what is in effect an ex-factory transfer price to the U.S. affiliate in our level-of-trade analysis. First, we note for clarity that transfer prices do not enter into our analysis because the CEP is a calculated price derived from the resale price. More importantly, Torrington's argument suggests inaccurately that the deductions we make under section 772(d) involve all direct and indirect selling expenses. As noted above, these deductions remove only expenses associated with economic activities in the United States. Thus, CEP is not a price exclusive of all selling expenses because it contains the same type of selling expenses as a directly observed export price.

Comment 2: Torrington argues that the Department erred by identifying levels of trade by reference to selling activities performed by the seller rather than functions performed by buyers. Torrington contends that the statute assigns independent meaning to the expression "level of trade" which is separate from the expression "selling activities." Torrington then claims that the SAA does not require a different interpretation, despite a statement suggesting that a "difference in the level of trade" is equivalent to "a difference between the actual functions performed by the sellers at the different levels of trade" (citing SAA at 829). Torrington suggests that this statement contrasts starkly with other relevant SAA statements that indicate that "level of trade" has a meaning separate and apart from "selling activities." Specifically, Torrington notes that the SAA speaks in terms of selling merchandise "to" different levels of trade, and suggests that it is meaningless to speak of different activities involved in selling "to" different activities. Finally, Torrington argues that the Department's focus on selling activities is susceptible to manipulation by respondents.

Torrington proposes that the Department should determine levels of trade by conducting its analysis along traditional lines; that is, the Department should focus on the functions of unaffiliated buyers in the market under consideration. In order to establish a basis for any level-of-trade adjustment, Torrington asserts, respondents should be required to demonstrate that different levels of trade exist, that different selling activities are involved at the levels, and that the differences are reflected in differences in price patterns. Torrington suggests that, if the Department retains the methodology it employed for the preliminary results, it should at least clarify the legal underpinning of that methodology; specifically, it should explain why it compared sales on the basis of the U.S. resale level of trade instead of the CEP level of trade. Torrington does not disagree with this approach but argues, as it did in Comment 1, above, that it appears to be an attempt to avoid distortive results inherent in the Department's methodology.

FAG Germany, FAG Italy, INA, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that nothing in the statute or SAA refers to functions performed by buyers in identifying levels of trade and that the Department's interpretation of the statute and SAA are proper. Koyo argues that the Department did not in fact equate level of trade with selling activities, but that the Department considered existing channels of distribution and determined, based on selling functions, that some channels constituted a different level of trade than other channels. Koyo suggests that this methodology is consistent with Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30335 (June 14, 1996).

Department's Position: We agree, in part, with Torrington. Torrington is correct that levels of trade are not defined solely in terms of selling functions. However, we disagree with Torrington that we should determine levels of trade by focusing primarily on buyer functions. We also disagree that, for CEP sales, the relevant "buyer" in the level-of-trade analysis is the unaffiliated U.S. customer.

While neither the statute nor the SAA defines level of trade, we agree with Torrington that the structure of the relevant provision in the statute (section 773(a)(7)(A)) uses the term "level of trade" as a concept distinct from selling activities. Specifically, this sub-section allows for a level-of-trade adjustment where there is a difference in levels of trade and that difference "involves" the performance of different selling activities. The SAA (at 829) also ascribes a meaning to level of trade that suggests that an analysis of selling activities alone is insufficient to establish the level of trade by suggesting that the Department could reasonably find that two sales with some common selling activities were nonetheless made at different levels of trade.

However, although the identity of the customer is an important indicator in identifying differences in levels of trade, the existence of different classes of customers, as well as different functions performed by such customers, is not sufficient to establish a difference in the levels of trade. Accordingly, we consider the class of customer as one factor, along with selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.*, the level of trade associated with the sales in question.

Although we consider customer identity in determining levels of trade, we disagree with Torrington that, for CEP sales, the relevant customer in our level-of-trade analysis is the unaffiliated U.S. customer. Rather, it is the customer at the level of the CEP (*i.e.*, the U.S. affiliate for all companies with CEP sales in these reviews) for the reasons provided in our response to Comment 1, above.

Although we have not considered the customer category of unaffiliated U.S. purchasers in determining the level of trade of the CEP, we have considered the customer category of unaffiliated U.S. purchasers in matching CEP sales to HM sales (none of which are at the same level of trade as the level of the CEP), *i.e.*, in determining the CEP offset. *See* our response to Comment 7 for an explanation of the basis of this aspect of our methodology.

Comment 3: Torrington argues that the Department should require respondents to make a sale-by-sale demonstration of their level-of-trade claims. Torrington argues that CEP and NV are prices in specific sales transactions and that, even to a given customer, each sale does not necessarily involve the same activities. Torrington contends that, because no respondent attempted to identify selling activities on a sale-by-sale basis, the Department should reject all claimed level-of-trade adjustments and CEP offsets.

FAG Germany, FAG Italy, INA, Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR contend that Torrington's suggested standard of a sale-by-sale demonstration would be impossible given the number of transactions that respondents make and is required neither by the statute nor the SAA.

Department's Position: We disagree with Torrington that levels of trade must be demonstrated on a sale-by-sale basis. Given the complexity of this case, combined with the many thousands of transactions that respondents report, it would be impossible to make such a demonstration within statutory deadlines. This would effectively neutralize the level-of-trade aspect of the statute. Further, there is nothing in the statute or SAA indicating that determining levels of trade on the basis of identifiable groups of sales is inappropriate.

Comment 4: Torrington argues that the statute requires that level-of-trade adjustments may only be granted where it is established that there is a difference in prices "due to" the different functions performed by sellers involved. Torrington contends that no respondent demonstrated that differences in prices were due to differences in selling functions and, citing the response of one respondent, suggests that factors other than selling functions (such as competition) drive prices more than do selling functions. Torrington argues that the burden is on respondents to demonstrate that differences in prices are due to differences in selling functions and that, because no respondent has made such a showing, the Department should reject all claimed level-of-trade adjustments and CEP offsets.

Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that there is no "due to" standard for a level-of-trade adjustment as Torrington suggests. Respondents argue that a level-of-trade adjustment should be made when two facts are proven: (1) that different selling functions exist at each claimed level of trade, and (2) that there are price differences between claimed home market levels of trade.

Department's Position: We disagree with Torrington. The adoption of Torrington's proposed "due to" standard would impose an independent causation requirement upon both the level-of-trade-adjustment and CEP-offset provisions. Such a requirement is neither required by the statute nor administratively feasible.

Although Torrington is correct that the level-of-trade adjustment provision of the statute (section 773(a)(7) of the Tariff Act) requires a finding of price differences between the export price or CEP and NV "due to" differences in the levels of trade, Torrington's analysis ignores the fact that this provision provides a specific means of establishing this price effect: namely, based on a pattern of consistent price differences between sales at different levels of trade in the home market (or third country). As noted by respondents, in order to grant a level-of-trade adjustment, we must find that the export price or CEP sale (as appropriate) was made at a different level than that of the NV sale and that this difference involved (1) different selling activities, and (2) affected price comparability based on a pattern of consistent price differences between sales at different levels of trade in the home market (or third country). See section 773(a)(7)(A) of the Tariff Act. There is no causation requirement independent of the "effect on price comparability" requirement noted above. We note further that the statute merely requires that the price differences be "wholly or partly due" to differences in levels of trade; it does not require a determination of the exact price effect caused by level-of-trade differences and it would not be possible to do so, given the variety of market forces that affect the sales price of each transaction we review.

Comment 5: Torrington asserts that the SAA (at 830) instructs the Department to ensure that expenses previously deducted from NV are not deducted a second time through a level-of-trade adjustment, stating that "Commerce will ensure that a percentage difference in price is not more appropriately attributable to differences in the quantities purchased in individual sales." Torrington notes that a number of respondents admitted that quantities affect price. Torrington argues, therefore, that because quantities may affect price as much as selling functions, a level-of-trade adjustment should not be granted.

Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR respond that the SAA language Torrington cites serves simply as a reminder not to double-count adjustments.

Department's Position: We agree with Torrington that we must not "double-count" expenses we deduct from NV. This is why we calculate level-of-trade adjustments and CEP offsets after making other adjustments to NV, so that we do not, in effect, deduct expenses such as rebates or warranty expenses twice. As far as quantity adjustments are concerned, we made no quantity adjustments for any respondents in this review. Therefore, no possibility of double-counting quantity adjustments exists.

Comment 6: Torrington argues that the selling function charts respondents prepared are inadequately supported by factual evidence. While Torrington acknowledges that the Department attempted to verify respondents' claims, Torrington argues that the evidence the Department collected does not support all of the assertions respondents made. Torrington also claims that some of the assertions respondents made, such as the paucity of reported selling functions between a respondent and its U.S. affiliate, defy common sense.

FAG Germany, FAG Italy, Koyo, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that the Department conducted extensive verification of the information they provided in the charts to which Torrington refers, and NSK adds that it is less important whether the Department verified any individual assertion than that all assertions were subject to verification.

Department's Position: We disagree with Torrington. We have established an adequate factual base upon which to make determinations with regard to the levels of trade involved in the sales under review. As respondents note, we collected voluminous information prior to our verifications and, at verification, we examined the information respondents provided in detail. While we did not examine every piece of information that respondents submitted, it is not our practice, nor is it possible or required that we do so. See *Bomont Industries* v. *United States*, 733 F.Supp. 1507 (CIT 1990). As NSK suggests, the fact that the information is subject to verification is a strong incentive for accurate reporting. In these reviews, we have invested considerable time and effort at each verification to ensure the accuracy of respondents' level-of-trade claims and have found no discrepancies with regard to respondents' reported selling activities.

Comment 7: NSK and NSK/RHP argue that the Department should match CEP sales to home market OEM sales because home market OEM sales are the closest home market level of trade to the level of the CEP sales. NSK and NSK/RHP contend that, because the Department deducts all U.S. expenses from the sales price to arrive at CEP and because they reported similar selling activities associated with all sales to the affiliated reseller in the United States, all CEP

sales belong to the same level of trade. NSK and NSK/RHP state further that the CEP level of trade is a different and less-advanced level of trade than that involved in all home market sales. NSK and NSK/RHP contend that the statute and SAA direct the Department to identify and use the HM level of trade that is closest to that involved in the U.S. sale, since more remote HM levels are associated with higher prices. NSK and NSK/RHP contend that they and other respondents have demonstrated that prices to distributors for the aftermarket are higher than prices to OEM customers in the home market. NSK and NSK/RHP argue that it follows that the aftermarket level of trade is more remote than the OEM level of trade, and that the Department must compare CEP sales to home market OEM sales, excepting only those CEP sales for which no home market OEM matches exist.

NMB/Pelmec argues that the Department must base NV upon the most comparable level of trade as the U.S. sale and that HM distributor sales are the closest level of trade in the home market to CEP sales. NMB/Pelmec contends that the Department found that HM OEM sales were at a more advanced level of trade than HM distributor sales and that CEP sales were less advanced that either HM level of trade. NMB/Pelmec asserts that the Department's refusal to compare all CEP sales to its HM distributor level of trade is contrary to law.

Torrington responds to NSK by stating that, because U.S. resale transactions should be the relevant transactions for identifying level of trade, CEP sales do not necessarily represent a single level of trade. Torrington contends further that, even if CEP sales could be considered a single level of trade, all home market sales must still be considered and the Department must identify home market groups that correlate to U.S. transactions to ensure "apples-to-apples" comparisons. Finally, Torrington argues that price levels do not define levels of trade in either the statute or SAA.

Torrington responds to NMB/Pelmec by stating that the Department did not find that HM OEM sales were more advanced than HM distributor sales for NMB/Pelmec.

Department's Position: We disagree with NSK and NSK/RHP that we should prefer HM OEM sales in our matching methodology. We also disagree with NMB/Pelmec that we should prefer its HM distributor sales. We have determined that there is a single level of trade of the CEP for NSK, NSK/RHP, and NMB/Pelmec. For these respondents, and for respondents with CEP sales generally in these reviews, we usually had two possible home market levels of trade from which to choose when comparing CEP sales to home market sales. We concluded from the evidence on the record that CEP sales are all made at a less-advanced level of trade than any home market level of trade. See Preliminary Results at 35718–35723. We then determined which home market sales to compare with CEP sales.

Where there are no home market sales at the same level of trade as the U.S. sale, the statute does not require that we match the U.S. sale to home market sales at the closest level of trade. Under the circumstances of these reviews, in order to calculate the CEP offset as accurately as possible, we matched sales in each market likely to include similar categories of selling expenses—OEM sales in the United States to OEM sales in the home market and aftermarket sales in the United States to aftermarket sales in the home market. Thus, we determined the CEP-offset "cap" for home market sales to OEMs on the basis of the indirect selling expenses for sales in the United States to OEMs and we determined the CEP-offset cap for aftermarket sales in the home market on the basis of the indirect selling expenses for aftermarket sales in the United States.

NSK and NSK/RHP have asserted that we should have compared their CEP sales to their home market OEM level of trade because it is closer to the level of the CEP than their aftermarket level of trade; conversely, NMB/Pelmec contends that we should compare its CEP sales to its home market distributor sales because such sales are made at a level of trade that is closer to the level of the CEP. As described above, under the circumstances presented in these reviews, it is more appropriate to match CEP sales to HM sales based on the category of the unaffiliated U.S. customer. Furthermore, these respondents' assertions are not sufficiently supported by factual evidence. We did not find that one HM level of trade for either company, or for any respondent in these reviews, has conclusively more selling functions than another HM level. Rather, the HM levels of trade each involve different degrees of various selling functions.

For instance, we found that selling functions at the OEM level typically emphasize technical services, sales calls to end users, and price negotiation with the customer, among other services, while selling functions at the distributor/aftermarket level typically emphasize advertising, inventory maintenance, and packing. This shows that the HM levels of trade are different, but it does not demonstrate that one level is necessarily more advanced than the other. Indeed, the fact that NSK and NSK/RHP argue that the OEM level is less advanced than the distributor/aftermarket level, while NMB/Pelmec argues the reverse, demonstrates the difficulty in ranking these HM levels.

We have concluded therefore that we can make no determination from the evidence on the record that any home market level of trade is more or less advanced than any other home market level of trade. The conclusion we draw from the evidence on the record is, as a general matter, that levels of trade defined as "OEM" are different from, but not necessarily more or less advanced than, those defined as "distributor/aftermarket." As Koyo points out correctly with regard to another comment (see Comment 1, above), there is no prohibition or denigration of such a practice in either the statute or SAA. However, this still leaves us with an uneven match because the level of trade of the CEP is less advanced than either home market level of trade. Therefore, in such cases, because we have no basis upon which to calculate a level-of-trade adjustment and because the level of trade of the CEP is less advanced than either home market level of trade, we have granted a CEP offset.

We also disagree with NSK's and NSK/RHP's assertion that, because OEM prices are lower than distributor/aftermarket prices, the OEM level of trade is less advanced than the distributor/aftermarket level of trade. As described above, we concluded that the OEM level of trade and the distributor/aftermarket level of trade are different from each other but neither is more or less advanced than the other. The fact that OEM prices were higher for some respondents and lower for other respondents than distributor/aftermarket prices in spite of the relatively constant selling functions among respondents suggests to us that our conclusions about the home market levels of trade are correct.

In any event, differences in prices do not determine the existence of levels of trade. As noted above, we only make level-of-trade adjustments when there is a difference in prices shown to be wholly or partly due to differences in levels of trade. The differences in prices, however, have nothing to do with our determination of whether different levels of trade exist. We determine whether one level of trade is more advanced than another on the basis of the selling functions performed by a

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respondent with respect to the two levels of trade. OEM and distributor/aftermarket sales are more advanced than the level of trade of the CEP because comparatively fewer selling functions are associated with the CEP than are performed for sales to either of the other levels of trade. This, and not any likelihood that sales to the level of trade of the CEP may be made at a lower price than sales to the other two levels of trade, is the basis for our granting a CEP offset.

Comment 8: NTN Japan and NTN Germany argue that it is inconsistent for the Department to deny NTN a price-based level-of-trade adjustment merely because there is no home market equivalent to CEP. NTN argues further that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level-of-trade adjustment and that this would be consistent with the Department's matching methodology. NTN argues that the Department's approach effectively precludes a level-of-trade adjustment for CEP sales and contends that there is nothing in the SAA or the legislative history that specifies that a level-of-trade adjustment can only apply to export price transactions.

Torrington argues that NTN should not be granted a level-of-trade adjustment for the reasons given in Torrington's affirmative case brief. See Comments 1 through 6 of this section, above.

Department's Position: We disagree with NTN Japan and NTN Germany. As we noted in response to Comment 1, above, the level of trade is determined for the transaction between the exporter and its affiliated importer. As with other respondents in these reviews, after we have deducted the importer's expenses from resale prices pursuant to section 772(d), the level of trade of the CEP was not equivalent to the levels reported for any HM sales. Because NTN Japan's and NTN Germany's level of trade of the CEP sales was less advanced than any of their HM levels, we made a CEP offset to NV for all of NTN Japan's and NTN Germany's CEP sales.

Comment 9: Koyo argues that it qualified for a level-of-trade adjustment for CEP sales but that the Department erroneously granted only a CEP offset. Koyo contends that the Department calculated the level of trade for CEP sales correctly on the basis of the sale to the unaffiliated party as adjusted for selling, movement, and other expenses pursuant to the statute. Koyo argues that it established that it had different levels of trade in both the United States and the home market and that it demonstrated that these differences affected price comparability. Koyo argues that the fact that there is no HM level of trade analogous to the level of trade of the CEP should not prevent the Department from making a level-of-trade adjustment. Rather, the Department should use Koyo's suggested methodology of constructing a home market level of trade analogous to the adjusted CEP. Koyo argues that this provides the Department with the data and means necessary to provide a price-based level-of-trade adjustment for CEP comparisons. Koyo contends that its suggested methodology implements the relevant instructions of the URAA properly. Finally, Koyo argues that the Department's denial of a level-of-trade adjustment for CEP sales effectively eviscerates the statutory level-of-trade provision, since there will never be a HM level equivalent to the level of trade of the CEP.

Torrington argues that Koyo's suggested use of constructed NV is an attempt to circumvent the statute and should be rejected. Torrington contends that nowhere does the statute suggest that a level-of-trade adjustment can be based on constructed HM prices and that, if the data available do not allow the demonstration required by the statute, then no level-of-trade adjustment is permitted.

Department's Position: We agree with Torrington. We may not base level-of-trade determinations or adjustments upon "constructed," or artificial, HM levels. Koyo's claimed constructed NV levels of trade are not levels at which Koyo actually sold AFBs in the home market during the POR. As stated above, we use starting prices in determining whether different levels of trade exist. There is no statutory basis for us to "construct" levels in the home market or elsewhere. Because Koyo was unable to show a pattern of consistent price differences between its level of trade of the CEP and its HM levels, we did not make a level of trade adjustment for Koyo's CEP sales. However, because the level of Koyo's CEP was less advanced than any of its HM levels, we made a CEP offset to NV for all of our comparisons of Koyo's CEP sales.

Comment 10: SNR argues that the Department should have granted it a level-of-trade adjustment, rather than a CEP offset, for comparisons of CEP sales to HM distributor sales. SNR notes that the Department determined correctly that there were two HM levels of trade, which were both more advanced than CEP. SNR argues, however, that, although the HM OEM level is more advanced than the level of the CEP, the HM OEM and CEP are similar, and that the Department should make a level-of-trade adjustment when comparing CEP sales to HM distributor sales, which SNR contends are made at a more advanced level of trade. SNR asserts that, because the OEM level of trade is more advanced than the level of trade of the CEP, its claim of the price difference between the distributor level of trade and OEM level of trade is less than it would be were a HM level of trade equivalent to the level of trade of the CEP. SNR also argues that it should continue to receive the CEP offset when the Department compares CEP sales to HM OEM sales.

Torrington argues that SNR is not entitled to its claimed level-of-trade adjustment because it did not provide supporting evidence for its contention that the level of trade of the CEP and OEM sales were similar. Moreover, Torrington contends, the Department did not indicate that it found the levels of the CEP and OEM sales to be similar.

Department's Position: We disagree with SNR. We found SNR's CEP level of trade and its home market OEM level of trade to be separate, distinct levels of trade. There is no HM level of trade analogous to that of CEP sales. Therefore, there is no basis upon which to calculate a level-of-trade adjustment. Concerning SNR's suggestion that we grant a level-of-trade adjustment equal to the difference between HM OEM and HM distributor sales because OEM sales are allegedly similar to CEP sales and are, in any event, closer to CEP sales than distributor sales, we note that SNR demonstrated neither that HM OEM sales are similar to CEP sales nor that OEM sales are less advanced than distributor sales. SNR demonstrated only that it had two distinct HM levels of trade, both of which were more advanced than the level of trade of the CEP. Therefore, we conclude that a CEP offset is appropriate for all of SNR's CEP sales.

Comment 11: NTN contends that the Department should make a CEP offset to NV based on CV in instances where it matches U.S. sales to CV. NTN claims that NV based on CV is not comparable to the level of trade of the CEP. Therefore, NTN asserts, those sales are eligible for a CEP offset. NTN requests that the Department make such an adjustment for the final results.

Department's Position: We agree with NTN. As noted in the introductory remarks to this section, where NV was based on CV, we determined the NV level of trade based on the level of trade of the sales from which we derived SG&A and profit for CV. Therefore, because we derived SG&A and profit for CV from home market sales, we

determined that the NV levels of trade for CV are equivalent to levels of trade in the home market. Furthermore, we note that the statute, at section 773(a)(8), permits us to make the same adjustments to NV when it is based upon CV as we make to NV based upon prices. Thus, for NTN's CEP sales, we determine that a CEP offset is appropriate when NV is based upon CV. See our introductory remarks for this section, above, for a discussion of why we determine that a CEP offset is appropriate for CEP sales in this case. Finally, we note that we made CEP offsets to CEP sales we compared to CV in the preliminary results, and we have not changed this practice for the final results.

6. Cost of Production and Constructed Value

A. Cost-Test Methodology. Comment 1: Torrington argues that the statute requires the Department to apply two tests to determine whether sales are below the cost of production and to disregard sales if either test is met. Torrington contends that below-cost sales must be disregarded if either: (1) The volume of such sales represents 20 percent or more of the volume of sales during the period of review, or (2) the weighted-average per-unit price of the sales under consideration is less than the weighted-average per-unit cost of production. Torrington contends that the Department only applied the first test in the preliminary results and argues that the Department should apply both tests for the final results.

FAG Germany argues that the Department correctly and reasonably declined to invoke the second substantial-quantities test in its cost investigation. Respondent contends that the statute does not specifically direct the Department to use both tests and argues further that the SAA, at 832, indicates that the second test was meant to be used in cases involving highly perishable products.

Department's Position: We disagree with Torrington. We first note that both of the above tests concern only one aspect of the determination whether to disregard below-cost sales from our analysis, namely whether sales made at prices below the cost of production were made in substantial quantities. Neither the statute at section 773(b)(2)(C) nor the SAA require that both tests be performed in any given proceeding; the SAA in fact indicates that the second test is the measurement of substantial quantities in cases involving highly perishable agricultural products (as was the case under the pre-URAA statute). Not only does this indicate that only one substantial-quantities test is to be performed, but it also clarifies the circumstances under which use of the second test is appropriate.

Comment 2: Torrington claims that the Department should default to NV based on a family match when sales of an identical match are disregarded as below cost, rather than default to NV based on CV. Petitioner argues that, because family matches are sales of the foreign like product, section 773(b)(1) requires the Department to use these "remaining sales of the foreign like product in the ordinary course of trade" in its comparisons to U.S. sales when sales of identical matches have been disregarded as below cost. Torrington believes that defaulting to family matches conforms to the Department's long-standing preference for using sales rather than costs. INA, FAG-Italy, and FAG-Germany agree with Torrington.

SKF responds that Torrington misconstrues the selection process for sales comparisons. Respondent points out that the selection of the foreign like product is conducted prior to, and independently of, the cost test. SKF explains that section 771(16) of the Tariff Act authorizes the selection of the foreign like product based on a comparison of physical characteristics to those of the U.S. merchandise whereby once a match is determined, that specific home market merchandise is the single foreign like product. SKF comments that there is no devolution to a "second-best" foreign like product. Therefore, SKF contends, in AFBs, when there are sales of identical merchandise, that merchandise is the foreign like product and there is no authority to then default to a family match, even when the identical match is disregarded as below cost.

SNR notes that the changes in the language of section 773(b) of the Tariff Act were made to implement the new twenty-percent cost test in place of the Department's previous 10–90–10 test. In SNR's view, Congress did not intend that this change alter the selection of foreign like product. SNR mirrors SKF's contention that section 771(16) of the Tariff Act does not sanction a cascade search for foreign like product. SNR contends that section 771(16) of the Tariff Act identifies merchandise in the first applicable category as the foreign like product, not any applicable category of merchandise.

Department's Position: We disagree with Torrington, INA, FAG-Italy, and FAG-Germany. While our cost-test methodology has changed in accordance with the new law, our methodology for selecting the foreign like product has not. Section 771(16) of the Tariff Act directs us to select the foreign like product "in the first" of several categories: identical in physical characteristics, similar in physical characteristics and commercial value, or of the same general class or kind that can be reasonably compared. The Department interprets the reference in section 773(b)(1)(B) of the Tariff Act to basing NV "on the remaining sales of the foreign like product in the ordinary course of trade" to mean the selected foreign like product, not a succession of foreign like products.

We clarified our methodology in *AFBs V* at 66490–91 when we stated that, in pre-URAA instances where between ten and ninety percent of sales of a model are below cost, we disregarded the individual below-cost sales in calculating foreign market value and we used the remaining contemporaneous above-cost sales of such models in our analysis, matching such sales in the same manner that we matched all HM sales. Where we did not have remaining contemporaneous above-cost sales of the most physically comparable model, we relied on CV as the basis for foreign market value. Otherwise, we would have made successive model matches and allowed the effects of the cost test to play a role in determining the comparability of merchandise, a criterion not found in the definition of such or similar merchandise at section 771(15) of the pre-URAA law.

Similarly, the definition of foreign like product at section 771(15) of the Tariff Act does not include the results of the cost test as a criterion for comparability. Therefore, when section 773(b) of the Tariff Act, as amended by the URAA, directs us to rely on CV when "no sales made in the ordinary course of trade remain," we search our 90/60-day contemporaneity window to determine whether sales of the best model for comparison survive the cost test. We have a longstanding practice of considering sales within 90 days before and 60 days after the month of the U.S. sale to be acceptable as potential comparators (see Certain Small Business Telephone Systems and Subassemblies Thereof form Korea: Final Results of Antidumping Administrative Review, 57 FR 8300 (March 9, 1993); Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review, 61 FR 1332 (January 19, 1996); *AFBs III* at 39735). Consistent with this practice and section 773(b) of the Tariff Act, we have resorted directly to CV where we have disregarded all contemporaneous identical HM sales as below cost instead of determining whether

contemporaneous sales of a less-similar model would survive the cost test and remain available as comparators.

Comment 3: NSK–RHP argues that the Department should either adjust COP to exclude credit expenses or not deduct these expenses from home market prices it uses in the below-cost test. NSK–RHP asserts that, since the Department deducted credit expense from home market price, it must make the same deduction from the interest expense it added as part of the SG&A expenses to NSK–RHP's COP to avoid comparing a home market price net of credit expenses to a COP that includes this expense.

Torrington argues that the Department should neither adjust COP to exclude credit expense nor deduct these expenses from the home market prices it uses in the below-cost test. Torrington suggests that it is not proper to deduct imputed credit expenses from COP unless the COP included an amount for imputed credit expenses. Torrington claims that NSK–RHP fails to demonstrate that the Department included these expenses in its COP calculations. Also, Torrington contends, the record does not indicate that the COP that NSK-RHP reported included an amount for the imputed credit expenses. Torrington states that the Department should therefore not adjust its methodology.

Department's Position: We agree with NSK-RHP that we should not deduct credit expenses from home market prices we used in the below-cost test. We do not adjust for imputed expenses in the COP analysis. For the final results, we have corrected our calculations and have not adjusted the HM prices for credit expenses before applying the below-cost test. In accordance with section 773(b)(3)(B) of the Tariff Act, which requires that we base COP on actual costs, we have not included imputed costs, such as the imputed credit expense at issue, in calculating NSK-RHP's COP. We have included an interest expense in deriving COP based on actual expenses. Because we include actual interest expenses in deriving the COP, it is inappropriate to reduce home market prices that we compare to COP in the below-cost test by the amount of any imputed expenses.

B. Research and Development.

Comment 1: Torrington asserts that the Department must apply facts available to SNR's R&D costs due to the lack of more precise information from the respondent. Torrington alleges that SNR reported R&D as "general expenses" in its response and did not assign R&D on a model-specific basis although SNR's Annual Report suggests that it incurred product-specific and/or product-line R&D. Torrington contends that because SNR did not provide R&D on a model-specific basis, the Department should apply, as facts available, the highest R&D costs by any other respondent, which will ensure that none of SNR's bearing models has understated R&D.

SNR responds that Torrington provides no support for its suggestion that the Department use facts available to restate R&D costs. SNR argues that it treated R&D as a general expense because the expenses are of a general nature and the company's records do not segregate these expenses by product or product line. SNR contends that the general references in its Annual Report do not suggest that SNR segregates R&D expenses by product or product line. Moreover, SNR contends that Torrington did not provide any specific facts to illustrate that SNR has records to separate R&D expenses on a product-line basis.

Department's Position: We disagree with Torrington that SNR's Annual Report's references to certain products indicates that the company keeps track of R&D expenses on a product-specific basis. Neither the record nor our verification has provided us with any basis for concluding that SNR's R&D expenses are recorded on a product-specific basis. Furthermore, at verification, we did not find that SNR's R&D allocation methodology was unreasonable, given SNR's record-keeping practices. Accordingly, for the final results, we have accepted SNR's reported R&D costs as general expenses.

Comment 2: Torrington suggests that the Department should ensure that SKF Germany has allocated the R&D expenses of ERC (the SKF group's basic R&D operation) properly to German merchandise. Torrington argues that it is not clear that SKF Germany's allocation is a rational allocation, *i.e.*, that SKF Germany's ownership share is proportional to the R&D benefit it receives. Torrington notes that the parent company, AB SKF, holds an ownership interest in ERC, which Torrington contends could dilute the proportion of expenses attributed to the producing entities such as SKF Germany. In addition, Torrington claims that the allocation does not account for differences among several classes or kinds of products. Torrington suggests that, as facts available, the Department should allocate the total R&D expense of ERC to each SKF company, thus ensuring that R&D is not understated for any given country.

SKF Germany responds that, because the R&D expenses are allocated based on ownership of the producing companies, no disproportionate amount could have been allocated to the producing company not under review, SKF Sverige AB, as Torrington suggests.

Department's Position: We agree with SKF Germany. The CIT has upheld our use of expenses recorded in a company's financial statements when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See *Laclede Steel Co.* v. *United States*, Slip Op. 94–160 at 22 (CIT 1994). In this review, we are satisfied that SKF Germany allocated ERC expenses properly and Torrington provides no evidence to the contrary, so we have accepted SKF Germany's methodology, as we have in prior reviews. As SKF Germany indicated in its May 24, 1996 pre-preliminary comments, it did not allocate any ERC expenses to the parent company, AB SKF, but only to the producing companies based on their proportionate ownership shares in ERC. We have no reason to believe that this allocation methodology is unreasonable.

C. Profit for Constructed Value.

Comment 1: Torrington contends that the Department improperly included home market sales that failed the below-cost test, as set forth in section 773(b) of the Tariff Act, in the calculation of profit for CV. Torrington states that the Department calculated CV profit pursuant to the "preferred" methodology as provided at section 773(e)(2)(A) of the Tariff Act, which requires that the sales used to calculate profit must be made in the ordinary course of trade. Torrington claims that sales that fail the below-cost test are outside the ordinary course of trade, as defined in section 771(15) of the Tariff Act and, therefore, must be excluded from the CV-profit calculation.

Torrington states that applying the statute in this manner is the only way to implement the compromise made in the URAA legislation, whereby the statutory minima for profit and SG&A were eliminated subject to the understanding that the Department would generally not include below-cost sales in the CV-profit calculation. Torrington contends further that this failure to disregard sales that failed the below-cost test runs contrary to sections 2.2.1 (ordinary course of trade) and 2.2.2 (profit for CV) of the Uruguay Round Antidumping Agreement.

SKF, NSK, SNR, FAG, and NTN respond that the Department properly included sales that failed the below-cost test in the CV-profit calculation because this calculation was not made under the authority of section 773(e)(2)(A), but was instead made pursuant to the

"alternative" profit methodologies provided at section 773(e)(2)(B). These latter methodologies do not require that CV profit be based on sales made in the ordinary course of trade (alternatives (B)(i) and (B)(iii)).

SKF and NSK state that section 773(e)(2)(A) is inappropriate in this case because this section bases the CV profit calculation on sales of the "foreign like product," which do not exist when NV is based on CV. SKF argues that, where CV is used because there are no appropriate identical or family matches, there would be no sales of "a foreign like product" to calculate a profit amount, and notes that the URAA's specific use of "a foreign like product" and the SAA's use of the words "particular merchandise" make clear that the first method for the calculation of CV profit requires reliance on a narrow universe of products. SKF and NSK state that the most appropriate methodology is that established in section 773(e)(2)(B)(i), which requires the use of company-specific data regarding the same general category of merchandise. SKF adds that this provision does not require that such sales be made in the ordinary course of trade.

SNR and FAG state that section 773(e)(2)(A) is inappropriate because this provision requires that CV profit be based on the "actual amounts" of home market profits realized by respondents, which is not possible in this case due to sampled home market databases. SNR and FAG assert that sampled sales do not provide complete actual profits and cannot be guaranteed as representative of actual profits. SNR and FAG contend that sections 773(e)(2)(B) (i) and (ii) are inappropriate for the same reason and recommend the calculation of profit under section 773(e)(2)(B)(iii) (any other reasonable method), which does not require that CV profit be based on sales made in the ordinary course of trade. NTN agrees with these respondents that profit amounts in this case could reasonably be based on the "alternative" profit methodologies established at section 773(e)(2)(B) of the Tariff Act.

INA, FAG, NTN, and NMB/Pelmec contend further that, even if the Department calculates CV profit pursuant to a provision that requires the use of sales made in the ordinary course of trade (*e.g.*, section 773(e)(2)(A)), sales that fail the below-cost test are not necessarily outside the ordinary course of trade. INA and FAG note that the section 771(15) definition of "ordinary course of trade" states that the Department shall consider such sales to be outside the ordinary course of trade, not that the Department shall conclude that such sales are in fact outside the ordinary course of trade. FAG and INA note further that the SAA (at 839) provides that the Department *may* disregard such sales in calculating CV profit using the section 773(e)(2)(A) methodology, not that it *shall* disregard such sales. INA suggests that the sales of AFBs that fail the below-cost test are not outside the ordinary course of trade, as the Department has consistently found that producers regularly sell AFBs below cost as well as above cost in their home markets. INA notes further that it is rational for firms to sell at prices below fully allocated costs, provided that they are above marginal costs. INA contends that including sales at one end of the spectrum while excluding sales at the other end of the spectrum (*i.e.*, sales transactions with abnormally high profits) would result in irrational and unrepresentative profit figures, which would be contrary to the objective set forth in the SAA.

SKF and NTN argue that, if the Department disregards sales that failed the below-cost test in the calculation of profit for CV, it should make certain adjustments to the calculation in order to derive a non-distortive profit rate. SKF requests that the Department include such sales in the denominator of the calculation and assign a profit rate of zero to such sales in the numerator. SKF argues that, by doing so, the Department would ensure that it is using a methodology that results in a numerator that reflects the "actual amounts [of profit] * * * realized" by foreign producers on sales "in the ordinary course of trade." In other words, SKF suggests that the Department set profit for disregarded sales to zero while retaining the full costs of those sales in the calculation. NTN requests that the Department exclude sales that earned abnormally high profits from the calculation, asserting that these sales are also outside the ordinary course of trade.

Department's Position: We agree with Torrington that we should not include sales that failed the below-cost test in the calculation of profit for CV, because these sales fall outside the ordinary course of trade. As we stated in the preliminary results of review, we have calculated CV profit using the profit methodology as stated in section 773(e)(2)(A) of the Tariff Act. This provision requires that profit be based on sales made in the ordinary course of trade which, in turn, do not include sales that we disregarded as a result of the below-cost test. *See* section 771(15) of the Tariff Act. The fact that our preliminary margin calculations did not reflect our decision to disregard such sales in the CV-profit calculation was a ministerial error on our part.

We disagree with SKF and NSK that we do not have any "foreign like products" for use in calculating CV profit, and that we should therefore calculate profit using one of the alternative profit calculations contained at section 773(e)(2)(B). Respondents' definition of the term "foreign like product" is overly narrow with respect to its use in the CV-profit provisions. In applying the "preferred" method for calculating profit (as well as SG&A) under section 773(e)(2)(A), the use of aggregate data that encompasses all foreign like products under consideration for NV represents a reasonable interpretation of the statute and results in a practical measure of profit that we can apply consistently in each case. By contrast, an interpretation of section 773(e)(2)(A) that would result in a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping proceedings without generating more accurate results. It would also make the statutorily preferred CV-profit methodology inapplicable to most cases involving CV.

We also disagree with SNR and FAG that we must base our CV profit calculation on "any other reasonable method," as provided in section 773(e)(2)(B)(iii), due to a lack of "actual data" regarding profit amounts realized by respondents. Although the home market sales and cost data that we use in calculating CV profit was provided on a sampled basis, this does not render such data inappropriate or "not actual" for purposes of this calculation. Pursuant to the statutory authority provided at section 777A of the Tariff Act, we routinely use data in our analysis that has been reported on a sampled basis, due to the large number of reviews that we must conduct as well as the large number of individual transactions involved therein, particularly in these AFBs reviews. Sampled data is, nonetheless, actual data regarding the sales, costs, and profits involved in sales made during the POR. In fact, we are permitted to use sampled data only when such samples are statistically valid. Further, an interpretation that sampled data is not actual data could render alternative CV-profit methodologies, including the preferred methodology provided at section 773(e)(2)(A), inappropriate in any case involving sampled home market reporting. As the statute does not

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explicitly provide for such an automatic elimination of these profit methodologies in such cases, it is not reasonable to read such an interpretation into it.

We disagree with INA, FAG, NTN, and NMB/Pelmec that, in calculating CV profit pursuant to the preferred methodology, we should nonetheless consider that sales that failed the below-cost test are not outside the ordinary course of trade in this case. Contrary to respondents' assertions, the statutory definition of "ordinary course of trade" explicitly provides that sales that are disregarded under section 773(b)(1) of the Tariff Act are automatically considered to be outside the ordinary course of trade. See section 771(15) of the Tariff Act. Respondents are ascribing a discretionary meaning to the term "consider" that does not exist in the context of this provision.

Finally, we disagree with SKF that, in using section 773(e)(2)(A), we should retain the full costs of disregarded sales while setting those sales' profits to zero. Because these sales are not in the ordinary course of trade, the use of partial information from the sales would distort the profit rate for sales in the ordinary course of trade. We disagree with NTN that we should consider sales that earned allegedly abnormally high profits as outside the ordinary course of trade for the reasons provided in the *Samples, Prototypes, and Ordinary Course of Trade* section of these final results.

Comment 2: Torrington argues that the Department should presume that individual below-cost sales of models for which below-cost sales comprised between zero and twenty percent of total sales are outside the ordinary course of trade, and should exclude them from its CV-profit calculations. Torrington submits that these below-cost sales are outside the ordinary course of trade unless respondents make a definitive showing to the contrary, such as for obsolete or end-of-year merchandise, and states that no such demonstrations were made in this review.

Respondents disagree with Torrington's suggestion that individual below-cost sales of models that passed the below-cost test, but for which certain transactions were identified as below cost, should be eliminated from the CV-profit calculation. Respondents contend that section 771(15) identifies only below-cost sales that have been disregarded under section 773(b)(1) as outside the ordinary course of trade. Respondents assert that the Department cannot presume that all below-cost sales are outside ordinary course of trade.

Department's Position: We disagree with Torrington that individual below-cost sales of models that passed the cost test, but for which certain transactions were identified as below cost, should be excluded from the calculation of CV profit. We agree with SKF that these sales do not meet the criteria of section 771(15) as being outside the ordinary course of trade.

In calculating CV profit, the automatic exclusion of all below-cost sales would be contrary to the statute. Although we have included only sales made in the ordinary course of trade for the reasons stated in our response to Comment 1, above, the definition of ordinary course of trade provides that only those below-cost sales that are "disregarded under section 773(b)(1)" of the Tariff Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales of the foreign like product are below cost does not automatically trigger their exclusion. Instead, such sales must have been disregarded under the cost test before we will exclude these sales from the calculation of CV profit.

Comment 3: FAG Italy and FAG Germany assert that the Department's methodology for calculating CV profit in the preliminary results was incorrect for three reasons. The FAG companies first contend that the Department must calculate CV profit based on home market sales of merchandise having equivalent commercial value to matching U.S. sales. FAG claims that reported home market bearings that are equivalent in commercial value to comparable U.S. bearings are those having an equivalent actual profit, and any home market sales with rates of profitability greater than the weighted-average rate of profitability of reported U.S. sales should be disregarded as outside the ordinary course of trade. FAG also contends that, in accordance with section 771(16), CV profit must be manufacturer-specific, claiming that this requires separate CV-profit calculations for each bearing type manufactured by respondents or purchased by respondents from an unrelated supplier. Finally, FAG argues that the Department must calculate CV profit based on the entire selling experiences and pricing patterns of the company throughout the review period rather than on only those sales reported in the home market database (citing *AFBs IV* at 10959).

Torrington responds that the Department should not revise its methodology for calculating CV profit as FAG suggests. Torrington argues that none of the statutory provisions respondents cite provide that the Department must base CV profit on home market sales of merchandise having equivalent commercial value to matching U.S. sales. Torrington contends further that FAG has failed to demonstrate that home market sales with rates of profitability greater than the weighted-average rate of profitability of reported U.S. sales are outside the ordinary course of trade. Torrington asserts that neither the statute nor the SAA impose such a "profitability cap." Torrington also disagrees with FAG's contention that the Department must calculate CV profit for each bearing type manufactured by respondents or purchased by respondents from unrelated suppliers, arguing that the statute respondents cite does not support the companies" position. Regarding FAG's final argument that the Department should calculate CV profit based on the entire selling experiences and pricing patterns of the company throughout the review period, Torrington contends that the Department's approach of using a sample of the entire selling experience and pricing patterns (*i.e.*, the home market sales database) is appropriate and in accordance with the statutory authority to use sampling techniques.

Department's Position: We agree with Torrington. First, there is no statutory provision or SAA reference requiring a determination of equivalent commercial value in the calculation of profit for CV. To the contrary, the imposition of a CV-profit "cap" based on profits realized on U.S. sales is at odds with the statutory requirement that we calculate CV using home market SG&A and profit figures for comparison with U.S. sales. Second, we disagree with FAG that we are required to calculated manufacturer-specific CV-profit rates as it suggests. Pursuant to section 773(3)(2)(A) of the Tariff Act, we calculated profit for the specific exporter, *i.e.*, FAG, being examined. Therefore, we have computed profit based on all sales of the foreign like product occurring in the ordinary course of trade. With respect to FAG's argument that we should base CV profit on the company's entire POR selling experience, and not on sampled home market sales of the foreign like product, as noted in our response to Comment 1, we calculated CV profit using the HM database because the applicable CV-profit provision (section 773(e)(2)(A)) requires that we calculate profit based on the actual profit amounts realized on sales of the foreign like product in the ordinary course of trade.

Comment 4: Asahi contends that the Department's calculation of profit for CV is incorrect. Asahi states that, if the Department had applied the arm's-

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length test with an adjustment to prices for differences in level of trade, the Department would not have eliminated certain sales to affiliated parties from the profit calculation. Asahi contends that, to calculate profit correctly, the Department must use all sales Asahi reported that are at arm's length as determined by an arm's-length test that includes an adjustment for differences in levels of trade.

Department's Position: We disagree with Asahi. For the reasons specified in our response to the comment in section 9, we are not revising the arm's-length test as suggested by Asahi and, therefore, the universe of sales used in the calculation of profit for CV remains the same.

D. Affiliated-Party Inputs. Comment 1: NSK argues that the Department should use the transfer price paid by NSK to affiliated suppliers for parts instead of the affiliated suppliers' COP data. NSK argues that the Department has no authority to request COP data from affiliated suppliers for any inputs. NSK contends that the finding of below-cost sales in prior reviews does not provide a reasonable basis to infer that NSK's suppliers are transferring inputs to NSK at prices below the cost of production. NSK asserts that there is a burden on the petitioner to come forward with some evidence that input dumping is occurring before the Department can collect, or use, supplier's cost information, and NSK comments that the petitioner has never alleged and the Department has not substantiated that there were reasonable grounds to believe or suspect that the prices at which NSK purchased major inputs from affiliated suppliers were less than their costs of production before the Department requested the cost data. NSK also argues that the fact that the Department found below-cost sales in prior reviews suggests that NSK is paying prices at or above market prices for inputs and, accordingly, has higher costs.

Torrington responds that the Department's request for, and use of, COP data for parts purchased from affiliated suppliers was proper and in accordance with law. Torrington asserts that the statute does not impose the burden upon petitioner to submit evidence that transfer prices for parts purchased from affiliated suppliers were made at prices less than their COP. Torrington contends that, because affiliated-party transfers are a suspect category under the law and because the foreign manufacturers and their subsidiaries have access to the best information for purposes of analyzing transfer prices, it has been the Department's practice to require respondents to submit evidence concerning affiliated-party inputs since enactment of section 773(e)(3) (now section 773(f)(3)). Torrington also contends that the Department has rejected this argument in prior reviews and that the CAFC has upheld the Department in this practice, citing *NSK III* at 6.

Department's Position: We disagree with NSK. Section 773(f)(2) of the Tariff Act, which refers to both minor and major inputs, states that, with regard to calculating COP and CV:

> "[a] transaction * * * between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated."

We do not interpret this language to impose any prohibitions or limitation to the Department's authority to request COP data on inputs from affiliated suppliers. Further, the CIT, in *NSK I*, held that "section 1677b(e)(3) [which corresponds to section 773(f)(3) in the current law] does not limit Commerce's authority to request COP data pursuant to section 1677b(e)(2) [which corresponds to section 773(f)(2) in the current law]" (*NSK I* at 669).

We generally use the transfer price of inputs purchased from an affiliated supplier in determining COP and CV, provided that the transaction occurred at an arm's-length price. In determining whether a transaction occurred at an arm's-length price, we generally compare the transfer price between the affiliated parties to the price of similar merchandise between two unaffiliated parties. If transactions of similar merchandise between two unaffiliated parties are not available, we may use the affiliated supplier's cost of production for that input as the information available as to what the amount would have been if the transaction had occurred between unaffiliated parties.

In the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.

We cannot assume that, because we found below-cost sales in prior reviews, NSK is paying prices at or above market prices for inputs, as NSK asserts. Further, the statute does not impose any burden on either the petitioner or the Department to demonstrate that major inputs were purchased at below-cost transfer prices, so long as we have other reasonable grounds to believe or suspect that a respondent purchased major inputs at below-cost transfer prices. Such grounds exist when we also have reasonable grounds to believe or suspect that a respondent's sales of subject merchandise in the home market are or may be occurring at below-cost prices.

With regard to NSK's situation, we note that we made an error in our preliminary results. NSK submitted market prices as well as transfer prices for those inputs which it also purchased from unaffiliated suppliers. On the basis of our review of this evidence, we have concluded that the transfer prices were generally not made at arm's length. Therefore, for the final results, we used the market price reported for all inputs, unless the market price was below the transfer price. For major inputs, if both the market price and transfer price were below cost, we used the cost of production of the input. For minor inputs, we used the cost of production as a surrogate for market price only where market prices did not exist. Where NSK reported market prices from more than one unaffiliated supplier, we used the weighted-average price of the unaffiliated suppliers' prices as the market price.

Comment 2: NSK argues that, in the case of a certain affiliated supplier, the Department should determine that transfer prices of parts NSK purchased from this supplier fairly reflect market value and use those prices instead of the COP of those parts, even if it does not make such a determination with regard to other affiliated suppliers. NSK argues that affiliation *per se* does not require the rejection of transaction prices between affiliated parties and that, even if the Department cannot be sure whether the amount reflected in the transfer price fairly reflects market value, it retains the discretion to accept the transfer price and, further, that the statute does not prescribe nor prohibit the use of specific methods to determine whether a transaction price fairly reflects market value. NSK contends that the situation of the affiliated supplier in question is unique and requests that the Department recognize that the nature of the affiliation does not provide a basis for price manipulation or for the affiliated supplier to favor NSK in any way.

Torrington argues that the Department's reliance on price and cost

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for analyzing arm's-length transactions was proper. Torrington argues that, if it were true that there was no possibility for price manipulation between the affiliated supplier and NSK, then NSK's purchase price for inputs from the supplier would always be above cost and NSK would have no basis for objecting to the use of those costs. Torrington also argues that there is nothing in the statute which requires the Department to consider factors other than price or cost in determining whether affiliated-supplier inputs reflect fair market value. Torrington claims that the Department has rejected a similar argument made by NSK in a prior review and that evidence on the record supports the Department's determination of arm's-length transactions between affiliated parties on the basis of price and cost.

Department's Position: We disagree with NSK. Whether the possibility of price manipulation theoretically exists has no bearing on our determining whether a sale is made at an arm's-length price. Although NSK submitted certain evidence, in addition to the price information we requested, in support of its contention that the prices were arm's length, we have determined that the prices were not made at arm's length solely on the basis of the price information NSK submitted.

Comment 3: NSK contends that certain parts for which the Department required NSK to submit affiliated suppliers' COP instead of the transfer price are not major inputs. NSK argues that the statute provides for the Department to obtain and use COP information only for major inputs purchased from affiliated suppliers and that major inputs are defined in the questionnaire as "an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs incurred to produce one unit of the merchandise under review." NSK argues that the parts in question do not account for a significant percentage of the cost of the bearings in which they are used, and that the Department therefore has no statutory authority to request or use the COP data for those parts.

Torrington notes that the parts to which NSK refers are major inputs because they represent significant percentages of the cost of the bearings in which they are used. Torrington also notes that the Department has specifically identified one of the parts as a major input in prior reviews.

Department's Position: We disagree with NSK that one of the part types to which NSK refers is not a major input, but we agree that the other part type is a minor input. However, because of the proprietary nature of the issue, we have discussed our rationale on our treatment of these parts in the analysis memorandum for these final results of review. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

We disagree with NSK's contention that the statute restricts our use of COP information to major inputs. As noted above, section 773(f)(2) places no limitation on the data we may collect to determine the fair price of major or minor inputs.

Comment 4: Torrington argues that the Department should use NSK-RHP's transfer prices if those prices are higher than the COP of the input in question. Torrington recommends that the Department examine each input and determine whether instances exist where transfer prices are below cost and, if they are, apply the higher value. Torrington states that, in response to its pre-preliminary comments, NSK-RHP asserted that Exhibit S–11 to its supplemental questionnaire response demonstrates that the transfer prices for the major inputs exceed the cost of producing the relevant inputs in almost every case. Torrington requests, therefore, that the Department use the higher of transfer prices or production costs for the value of affiliated-party major inputs.

NSK-RHP asserts that, although the Department failed to establish a reasonable basis under section 773(f)(3) of the Tariff Act by which to request data about the cost of major inputs respondent purchased from affiliated parties, NSK-RHP placed this data on the record. NSK-RHP contends that, if the Department examines this data, it will see that transfer prices for the major inputs exceed the costs for producing the relevant inputs in almost every case. Further, for those limited cases in which transfer prices do not exceed costs, NSK-RHP asserts that the Department found correctly that it was unnecessary to substitute the cost data for the transfer prices. NSK-RHP concludes that, if the Department decides to ignore the restrictions on its authority to request cost data set by section 773(f)(3) of the Tariff Act, it will find evidence on record nevertheless that fully supports NSK-RHP's decision to use, where relevant, the transfer prices for major inputs it purchased from affiliated parties.

Department's Position: We disagree with NSK-RHP's contention that we did not establish, under section 773(f)(3) of the Tariff Act, a reasonable basis to request cost data from affiliated suppliers. As explained in our response to comment 1 of this sub-section, if we have reason to believe or suspect that the price paid to an affiliated party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the affiliated supplier's COP for that input, we may use the actual COP as the value for that input. In this case, because we have reasonable grounds to believe or suspect that NSK's HM sales may be occurring at below-cost prices, we have reasonable grounds to believe or suspect that it purchased major inputs at below-cost transfer prices. Therefore, for these final results, we have used the higher of transfer prices or COP for the value of affiliated-party major inputs.

Comment 5: Torrington contends that INA refused to provide COP and transfer price information regarding major affiliated inputs as the Department requested in its supplemental questionnaire. Torrington asserts that, instead, INA calculated COP and CV on the basis of actual cost without regard to internal transfer prices. Torrington argues that INA's calculation inhibits the Department from applying INA's situation to section 773(f)(3) of the Tariff Act, which requires the Department to use the highest value among transfer price, cost of production or, in certain situations, alternative information. Torrington states that the Department should restate all reported values of affiliated-party major inputs in accordance with the manner in which INA calculated internal transfers of finished parts and goods, as indicated in its supplemental COP/CV response. Torrington also states that, if the Department is unable to identify the major inputs, it should, in accordance with *Federal-Mogul V* at 219, restate all material costs, which would ensure that no material costs are understated.

INA rebuts Torrington's view that the methodology for reporting all inputs produced by the home market manufacturing entity, INA-FRG, and used in the calculation of COP is improper. INA states that INA-FRG, as a whole, provides the necessary functions for the development, manufacture, and sale of the subject merchandise. INA states that it reported the activities of INA-FRG on a consolidated basis which the Department has approved in all prior reviews of these orders. Further, INA contends that, since INA-FRG is the producer of subject merchandise,

internal transfers between the entities which comprise INA-FRG are irrelevant. In addition, INA argues that the Department has not requested any changes in the reporting methodology of INA-FRG and such a change would not make sense because the INA-FRG entities are intertwined and entirely interdependent in the production and selling of subject merchandise.

INA also contends that the manner in which it reported its cost-accounting system is fully consistent with the Department's questionnaire instructions. Further, INA states that its reported cost-accounting system is organized for the complete business, INA-FRG, and not for the individual entities which comprise INA-FRG. Thus, INA states, the inter-entity transfers are consolidated. INA also states that in computing COP and CV, the methodology INA-FRG used is both current and reflects actual cost accurately. Further, INA argues, it does not have a cost-accounting system that eliminates inter-entity transfers, particularly for the voluminous number of articles reported. INA states that INA-FRG has no system in place to re-establish the data on transfers or otherwise trace the requested data for the thousands of models involved and also states that it would not be practicable to complete such a massive task in the time constraints of an administrative review. Thus, INA states that it was not unwilling to provide the information the Department requested, rather, it was not able to provide such requested information.

Department Position: We agree with Torrington that INA-FRG failed to provide us with internal transfer prices of major inputs from within the affiliated entities that comprise INA-FRG. Although INA-FRG responded to our questionnaire on a consolidated basis, INA-FRG is comprised of several separate, corporate entities that engage in activities related to the production and sale of subject merchandise (*see* Memo from Analyst to File: Verification of Home Market Sales Information Submitted by INA Walzlager Schaeffler KG, at 1 and 2, June 28, 1996). Each of the entities has its own accounting system and, thus, its own method by which it accounts for purchases of inputs from suppliers and, in particular, affiliated parties. Further, each of the entities is affiliated in accordance with section 771(33)(F) of the Tariff Act. Therefore, in accordance with section 773(f)(3), we requested that INA-FRG submit the per-unit transfer price it charged for the major input by the affiliated party so that we could determine the value of the input compared with its COP. While INA-FRG maintains that it has reported cost information on a consolidated basis in this and in all previous reviews, we maintain that our request for transfer-price information is in accordance with the section 773(f) requirement that we analyze such information to determine the appropriate value for major inputs.

We requested that INA-FRG provide this transfer-price information in both our original and supplemental questionnaires. In its response to our requests for such information, INA-FRG stated that it calculated COP and CV in this review on the basis of actual cost without regard to transfer prices. However, given the separateness of the entities and the fact that each of the entities has its own accounting system, we maintain our position that, in accordance with the statute and INA-FRG's own accounting systems, INA-FRG should have provided us with the transfer prices at issue. Given INA-FRG's failure to provide us with this requested information, we are restating the material costs of INA-FRG's cost of manufacturing as facts available, in accordance with section 776(a)(2)(A) of the Tariff Act.

In its response, INA-FRG stated that it added fifteen percent to its standard manufacturing costs in order to value internal transfers of finished parts and finished goods. For each entity of which INA-FRG is comprised, we calculated the percentage of SG&A plus net interest to cost of goods sold. For the entity with the lowest percentage of SG&A plus net interest to cost of goods sold, we calculated the difference between the fifteen percent and the resulting percentage of SG&A plus net interest to cost of goods sold. As facts available, we increased INA-FRG's reported cost of materials by this percentage difference. Based on INA-FRG's response, we are unable to distinguish between transactions that represent sales of finished parts and goods from those which are unfinished parts and goods. We have, therefore, applied this calculation to all reported material costs.

E. Inventory Write-downs and Write-offs. Comment 1: Torrington argues that the Department should adjust NSK's reported COP and CV so as to include both inventory write-offs and write-downs. Torrington, citing *AFBs III* at 39756, contends that it is the Department's practice to consider write-offs and write-downs as constituent parts of the cost of production.

NSK argues that it reported inventory write-offs and write-downs in accordance with Japanese GAAP and that it reported write-offs and write-downs in the same manner as in prior reviews of these orders. NSK also argues that, even if the Department agrees with Torrington, it should still decline to adjust NSK's reported G&A factor because the amount of the write-offs is *de minimis* under 19 CFR 353.59(a).

Department's Position: We agree with Torrington. We regard NSK's inventory write-offs and write-downs as part of the fully-absorbed cost of goods sold which should be included in the calculation of cost of production. See *AFBs III* at 39756. Therefore, we have included both inventory write-offs and write-downs in NSK's reported COP.

Comment 2: Torrington argues that the Department should adjust FAG Italy's and FAG Germany's reported costs to include inventory write-downs. Citing Canned Pineapple Fruit from Thailand, 60 FR 29553, 29571 (June 5, 1995), Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 57 FR 4960, 4973 (February 11, 1992), and Mechanical Transfer Presses from Japan, 55 FR 335, 347 (January 4, 1990), Torrington contends that the write-downs are costs for antidumping purposes.

FAG Italy and FAG Germany suggest that Torrington has confused inventory write-downs with inventory write-offs. The respondents explain that they included inventory write-offs in the reported G&A expenses, but that they excluded write-downs on the basis that they are contingent reserves provided for at the end of the accounting year to account for the possibility that they may not eventually sell some merchandise for full value. FAG Italy and FAG Germany argue that their write-downs are not actual costs and only become actual reportable events for antidumping purposes when they sell the bearing for less than its inventory value. Respondents state that the realized loss on the resale is a revenue issue and not a cost issue. FAG Italy and FAG Germany contend that to increase their costs by the contingent reserve for write-downs and also use the lower resale value as part of their per-unit price would constitute double-counting and that the Department has recognized this in all prior reviews of these orders. FAG Italy and FAG Germany contend that the cases cited by Torrington are not dispositive, given the facts in this case. FAG Italy and FAG Germany note that there is no indication whether the write-downs referred to were contingent or realized and contend that it is possible that the cases involved write-offs as opposed to write-downs.

Department's Position: We agree with FAG Italy and FAG Germany that the cases Torrington cites are inapposite,

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given the facts of this case. We reviewed the record and determined that the inventory write-downs these respondents reported are not actual costs but are a provisional reduction-in-inventory value in anticipation of a lower resale value. FAG Italy's and FAG Germany's inventory write-downs are, as it appears from the record, not a cost but a potential loss of revenue that is ultimately reflected in the sales price. FAG Italy's and FAG Germany's write-downs, then, are not realized expenses but simply a contingent reduction in how much revenue the companies expect to make from the sale of the merchandise. Since these particular inventory write-downs are not a realized expense, and are not reflected in their accounting of costs of goods in inventory, we have not included them in the calculation of COP and CV for FAG Italy and FAG Germany.

F. Interest Expense Offset. Comment: Torrington argues that the Department should adjust NSK's reported financial expenses for COP and CV by disallowing NSK's interest income offset. Torrington contends that the Department requires respondents to demonstrate that interest income is related to the production of subject merchandise before allowing an offset to interest expense. Torrington cites Erasable Programmable Read Only Memories (EPROMS) from Japan, 51 FR 39684 (1986), *AFBs IV* at 10925–26, Tapered Roller Bearings from Japan, 59 FR 56035, 56045 (1994), and Tapered Roller Bearings from Japan, 58 FR 64720, 64728 (1994), in support of this contention. Torrington argues that NSK did not substantiate that its reported interest income is related to the production of subject merchandise and that the Department adjusted NSK's financing expense in *AFBs IV* because NSK failed to make such a demonstration in that review.

NSK argues that the Department's standards for allowing an offset for interest income have changed since the issuance of the cases Torrington cites. Citing Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 61 FR 13815, 13819 (March 28, 1996), NSK contends that the Department has expanded its view of what constitutes an appropriate offset to interest expense, including interest earned on short-term deposits, advance payments to suppliers and late payments. NSK claims that its interest-income offset consists of these types of income and, therefore, the Department should not make any adjustment to its reported interest expense.

Department's Position: We disagree with Torrington. We are satisfied from information on the record that NSK's business records do not report separately the short-and long-term nature of the interest income earned by the company and its subsidiaries. NSK's alternative calculation of its income offset reasonably reflects the short-term interest income related to production activities and the investment of working capital. Therefore, we have allowed NSK's offset to interest expense for interest income.

G. Other Issues. Comment 1: Torrington contends that INA failed to provide relevant cost information in its supplemental questionnaire response, such as the reconciliation of standard and actual cost factors, as well as an itemization of the reported variable and fixed overhead costs reported for subject merchandise. Torrington argues that, in light of INA's failure to provide this information, the Department should explain why it remains satisfied with INA's cost-reporting methodology. Otherwise, Torrington contends, the Department should adjust INA's reported data by appropriate facts available.

Department's Position: We disagree with Torrington. INA-FRG provided detailed responses to our supplemental cost questionnaire concerning INA's standard and actual cost-accounting system and its standard cost-revision practice. We are satisfied by INA's explanation and, therefore, we believe that INA-FRG has provided the necessary cost information for us to use in our final results.

Comment 2: Torrington argues that the Department should revise NSK's reported COP and CV by adding an amount for idle-asset depreciation. Torrington asserts that NSK did not report the depreciation of idle assets in its COM. Although Japanese GAAP does not require companies to calculate such depreciation, Torrington contends that it is the Department's practice to adjust respondents' cost data if depreciation expense of idle assets is not reported as an element of production cost. Moreover, Torrington asserts, the CAFC upheld this practice in *NTN III*. Torrington argues that, as facts available, the Department should add the highest amount of depreciation of idle assets reported by any other respondent to NSK's COP and CV.

NSK contends that it did include in its COM all costs associated with the depreciation of idle assets and cites its questionnaire response in support of this contention.

Department's Position: We agree with NSK. It is evident from NSK's response to our cost questionnaire that it included an amount for idle-asset depreciation in its COM. Therefore, we do not need to modify NSK's response with regard to idle-asset depreciation.

Comment 3: Torrington argues that the Department should revise NSK's reported COP and CV by including losses and gains on the disposal of fixed assets. Torrington asserts that the Department considers such losses as a normal cost of production. Torrington suggests that, because NSK did not specifically identify the amount of expense associated with the disposal of fixed assets in its non-operating expenses, the Department should assign a reasonable portion of NSK's "miscellaneous loss" to expenses incurred in disposal of fixed assets as facts available.

NSK argues that its gains and losses as a result of the disposal of fixed assets are not related to production but are non-operating expenses and extraordinary gain. NSK argues that such gains and losses should not be included in its COP data.

Department's Position: We regard gains and losses as a result of the disposal of fixed assets as a normal cost of production. See *AFBs III* at 39756. We reviewed NSK's response and concluded that such gains or losses, in NSK's case, are related to its production operations. Since we have no reason to believe that these gains or losses on the sales of fixed assets do not relate to the general production activity of NSK as a whole, we included the net amount as a general expense. We have not done as Torrington suggests, however, because NSK did specifically report the total amount of gains and losses associated with the disposal of fixed assets in its non-operating expenses in its response to our cost questionnaire.

Comment 4: Torrington contends that FAG Germany did not provide variance rates it actually applied to the 1995 standard costs for all models produced in 1994 and 1995 and did not provide explanations where variances differ substantially between 1994 and 1995 production, even though the Department specifically requested this information. Torrington notes that FAG Germany alleged that it would be impractical to provide variances on a model-specific basis and that the relationship of particular models and variances was more appropriately reviewed in the context of verification. Torrington contends that model-specific variance rates are important to test the reasonableness of FAG Germany's standard costs, and that allowing FAG Germany to selectively disregard requests for information adversely

affects the credibility of the Department's investigative process. Torrington argues that, in light of this failure, the Department should apply adverse facts available by selecting the highest reported variance and recalculate reported costs accordingly.

FAG Germany argues that it does not calculate variances in its cost-accounting system on a model-specific basis but on a cost-center area-specific basis. FAG Germany contends that all bearings and components whose sales and costs were reported were produced in one of the cost-center areas listed in the supplemental response and that it calculates variance ratios for each cost-center area once per year at year-end. FAG Germany contends that it provided the precise formulae it used in the variance calculation and a sample calculation in order to clarify its methodology. Finally, FAG Germany states that the Department has verified FAG Germany's standard costs and cost-submission methodology in prior reviews and the Department has always accepted the information.

Department's Position: We agree with FAG Germany. Although we requested model-specific information, FAG Germany does not maintain variance records on a model-specific basis but rather on a cost center-specific basis. We reviewed FAG Germany's response and conclude that reporting such information, in FAG Germany's case, on a cost-center basis is reasonable because: (1) That is the basis on which it maintain its records, and (2) the variance ratios do not change for specific models within a cost-center area in FAG Germany's cost-accounting system. We reviewed FAG Germany's original response in light of its supplemental response and found no evidence that FAG Germany had misrepresented the actual costs of subject merchandise in its response.

Comment 5: Torrington argues that the Department should satisfy itself that FAG Germany's supplemental explanations of how it determined and distributed variances is reasonable, and that, if the Department finds the evidence submitted by FAG Germany to be inadequate, the Department should reject it.

Department's Position: We have examined FAG Germany's original response and its supplemental response, and we have concluded that FAG Germany's reporting methodology reasonably captured the actual costs incurred in the production of subject merchandise in its response.

Comment 6: Torrington contends that FAG Germany did not adequately describe how it determined the COP and CV costs for DKFL, the subsidiary that entered bankruptcy proceedings in July 1993. Torrington comments that, in its supplemental response, FAG Germany claimed that it had based its reported costs for the models involved on an average of 1993 DKFL costs and POR FAG Germany costs and that, because there is no current DKFL production, FAG Germany had weighted the average based on the relative sales quantities. Torrington claims that, in a later submission, FAG Germany asserted that it did not weight-average costs. Torrington argues that, in light of this contradictory record, the Department should resort to facts available for all models, not just sales, which involved DKFL production.

FAG Germany contends that it fully explained its cost-calculation methodologies in its response and its supplemental response. FAG Germany claims that it weight-averaged COM data for identical products made by both DKFL and FAG Germany in all preceding review periods when DKFL was operating. FAG Germany also states that, in those instances where DKFL and FAG Germany made identical merchandise in different periods (that is, when FAG Germany actually produced the identical merchandise in a POR after DKFL's bankruptcy), it was impossible for FAG Germany to calculate a weighted-average cost of manufacture for DKFL and FAG Germany bearings. FAG Germany contends that any attempt to calculate a weighted-average production cost for DKFL would have resulted in a distorted cost of manufacture based on different production periods.

Department's Position: We agree with FAG Germany. We reviewed the record and found no inconsistencies in FAG Germany's reporting of the cost of bearings produced by DKFL. Although FAG Germany used two different methodologies for calculating DKFL costs, one of the methodologies was an alternate to the other methodology that was only used when the original methodology (*i.e.*, weight-averaging) was inappropriate because the bearings were produced during different periods. We find, therefore, that FAG Germany's reporting methodology for DKFL costs is appropriate in the context of this review.

Comment 7: NSK and INA argue that the Department should deduct imputed credit expenses from CV-derived home market prices, as it has in previous practice. NSK contends that failure to deduct the imputed expense distorts margins based on CV comparisons and argues further that the statute and regulations call for an adjustment for differences in circumstances of sale, which include imputed credit expenses. Respondent notes that the Department made an adjustment for imputed credit expenses for CEP in all instances and NV when based on home market price. According to NSK and INA, the failure to make such an adjustment when NV is based on CV results in an unfair comparison between CEP and NV when the Department calculates NV using CV. NSK contends that the Department's apparent intention to interpret section 773(e)(2)(A) of the Tariff Act as allowing only a respondent's actual SG&A expenses in the calculation of CV, citing Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38187 (July 23, 1996), misconstrues the law. NSK contends that, while the Department did not explain its rationale in the preliminary results, it appears that it did not make the deductions on the basis of the language of the URAA, which states that CV is now to be calculated using respondent's actual SG&A expenses. NSK argues that this provision was meant to overrule the prior statutory authority to use a minimum SG&A expense, but notes that, under prior law, if a respondent's actual SG&A expenses exceeded the minimum, the Department always used respondent's actual expenses and still deducted imputed expenses. NSK notes that the Department's proposed regulations (61 FR 7346) state that "the Department's practice with respect to adjustments for direct selling expenses and assumptions of expenses remains unchanged."

Torrington argues that the Department should deduct imputed credit expenses from NV based on CV only when it is apparent that such an expense is included in the SG&A expenses reported by a respondent. Absent such a showing, the imputed expense is not an element of the actual amounts required by section 773(e) of the Tariff Act. Without the inclusion of the imputed expense in the build-up of SG&A, Torrington contends there is no basis for making a deduction, since doing so would understate CV.

Department's Position: We agree with NSK and INA. Under the URAA, for both COP and CV, the statute provides that SG&A be based on actual amounts incurred by the exporter for production and sale of the foreign like product (*see* sections 773(b) and (e) of the Tariff Act). After calculating CV in accordance with the statute, we have, in essence, a NV. Consistent with section 773(a)(8) of the Tariff Act, adjustments to NV are appropriate when CV is the basis for NV. The Department uses imputed

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credit expenses to measure the effect of specific respondent selling practices in the United States and the comparison market. Therefore, for these final results, we have deducted imputed credit expenses as a COS adjustment from CV in the calculation of NV.

7. Further Manufacturing

Comment: Torrington comments that the Department excused many respondents from reporting U.S. further-processing information and that the Department determined dumping margins for the affected sales on the basis of the weighted-average dumping margins found on sales of identical or other subject merchandise sold to unaffiliated customers. Torrington argues that, under the statute, this method is proper only if (i) there is a sufficient quantity of non-value-added sales to provide a reasonable basis for comparison, and (ii) use of such sales is appropriate. Torrington argues further that the Department failed to articulate standards for determining whether quantities were sufficient or how the method was appropriate based on the facts of this record. Torrington asserts that the Department should either articulate and justify its standards for excusing reporting of such information or re-open the record and require full further-manufacturing reporting. Torrington proposes the following standards: (i) that no more than 10 percent of all U.S. sales, by quantity of the particular model in question, involve U.S. value added, and (ii) that there be adequate facts supporting a finding that no reason exists for the Department to believe that the value-added sales somehow involve larger dumping margins than the proxy transactions. Torrington concludes that it would not be appropriate for the Department to use any methodology that would dilute dumping margins.

FAG, NMB/Pelmec, and SNR contend that requiring a respondent to report further-manufacturing cost data pursuant to the Department's questionnaire after that respondent has demonstrated that the amount of value added in the United States exceeds substantially the cost of the imported merchandise defeats the clear purpose and design of the statutory waiver in section 772(e) of the Tariff Act. Citing the SAA, FAG argues that section 772(e) of the Tariff Act was intended to reduce reporting burdens on respondents and to reduce analysis and processing burdens on the Department.

The NTN companies argue that, in demanding the reopening of the further-processing reporting, Torrington is trying to invalidate the statute's special rule for further-manufactured merchandise by grafting extra statutory requirements to a provision meant to simplify, not complicate, the review process.

Koyo argues that Torrington can point to no error in the Department's excusing many of the respondents from full reporting of further-processing data and that the Department applied its discretion precisely as anticipated by Congress. Koyo also contends that the Department articulated its standard in the proposed regulations and that the intent of section 772(e) of the Tariff Act is to reduce the burden on both respondents and the Department. Koyo argues further that Torrington's proposed methodology ignores the rationale underlying the statutory amendment that the simplified reporting methodologies were to be used in cases in which the value added substantially exceeds the value of the imported merchandise, and adds that the number of sales involved does not affect whether the value added in those transactions is or is not "substantial." Koyo also contends that Torrington's suggestion that the calculation should be model-specific defeats the purpose of section 772(e) of the Tariff Act.

SKF argues that, even if the Department agrees with Torrington that its selection of proxy transactions was somehow flawed, the next logical and statutorily mandated step is not a full response to the cost-of-further-manufacturing section of the questionnaire, but rather to select another method to derive surrogate information. SKF also argues that, in SKF's case, it is clear that there is a sufficient quantity of non-further-manufactured sales to provide a reasonable basis for comparison. Finally, SKF contends that Torrington has presented no evidence or argument that the Department's practice was inappropriate and that doing as Torrington suggests would defeat the purpose of section 772(e) of the Tariff Act.

Finally, the FAG companies assert that requiring the Department to gather and analyze complete further-processing information after respondents have satisfied the requirement that value added exceeds substantially the value of the imported subject merchandise completely defeats the clear purpose and design of the statutory waiver subsection.

Department's Position: Section 772(e) of the statute allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is identified in the Tariff Act as the "special rule"). The statute further provides that, where there is a sufficient quantity of sales of identical subject merchandise or other subject merchandise sold to unaffiliated persons and the use of such sales is appropriate, the Department shall use the prices of such sales to determine the CEP of the further-processed subject merchandise. If there is not a sufficient quantity of sales of identical or other subject merchandise, or if the use of such sales is inappropriate, the Department may determine the CEP of the further-processed subject merchandise on any other reasonable basis.

We disagree with Torrington's argument that the test to determine whether the U.S. value added exceeds substantially the value of the imported merchandise should be done on a model-by-model basis. The statute does not require application of the "special rule" on a model-specific basis. Moreover, application on a model-specific basis would be inconsistent with the purpose of the "special rule" as discussed in the SAA:

> * * * for purposes of estimating whether the value added in the United States is likely to substantially exceed the value of the imported product, it is the Administration's intent that Commerce not be required to perform a precise calculation of the value added. Requiring such a precise calculation would defeat the purpose of the new rule of saving Commerce the considerable effort of measuring precisely the U.S. value added.

SAA at 826.

A model-by-model analysis and determination to apply the special rule would substantially undermine the intent of the provision, which is to relieve the Department of the burden of a further-manufacturing analysis. Therefore, for these reviews, we estimated the ratio of value added to the final sales price on an aggregate class-or-kind basis; that is, we calculated the value added to imported subject merchandise in relationship to the sales price to the first unaffiliated customer for that imported subject merchandise.

We disagree that we should be required, at this time, to articulate a standard for determining whether quantities of identical or other subject merchandise are sufficient to provide a reasonable basis for comparison. We have had limited opportunity to apply the "special rule" and we are reluctant to articulate a standard which might have applicability beyond these reviews without the benefit of further experience. For purposes of these

reviews, however, the Department has found that each of the respondents to which the "special rule" was applied had a sufficient quantity of non-further-processed sales to provide a reasonable basis of comparison. In particular, the non-further-processed sales constituted at least 21 percent of the respondent's total quantity of sales of subject merchandise and a simple average of 55 percent of all excused respondents" total quantity of sales of subject merchandise. In the context of these reviews, we determine that these percentages provide a sufficient basis for comparison, particularly because the above percentages understate the amount of non-further-processed merchandise. Specifically, the above calculations equate bearing parts, rolling elements, cages, rings, etc. (which are usually further manufactured in the United States by the respondents excused from providing further-processing data) with complete bearings (which are not usually further manufactured in the United States by the same respondents). Based on the entered value of entries, we find that non-further-processed merchandise constituted at least 71 percent of the respondent's total sales of all subject merchandise and a simple average of 89 percent of all excused respondents" sales of subject merchandise. This further confirms that we had an adequate quantity of non-further-processed sales for our comparison.

In order to provide an appropriate basis for comparison, the Department need not find that the non-further-processed sales were dumped at the same rate as the further-processed sales. To impose such a requirement would necessitate the Department calculating the actual dumping margins on the further-processed merchandise, defeating the purpose of the "special rule." Moreover, Torrington has pointed to no information on the record which suggests that dumping margins on the further-processed merchandise differ significantly from the weighted-average margins of the non-further-processed merchandise. Therefore, we conclude that excusing certain respondents from providing further-manufacturing data was consistent with the intent of the special rule and our calculations are not distorted by our decision not to conduct a further-manufacturing analysis.

8. Packing and Movement Expenses

Comment 1: FAG Italy contends that the Department unlawfully reduced CEP for expenses incident to transporting merchandise from the country of origin (Italy) to Germany for ultimate distribution to the United States. FAG Italy notes that, pursuant to section 772(c)(2)(A) of the Tariff Act, the Department has the authority to reduce CEP by any additional costs, charges or expenses incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. FAG Italy contends that, in accordance with this statutory provision, Germany is the "exporting country" of the reviewed sales and, therefore, the Department does not have the authority to adjust CEP for costs incident to bringing the merchandise from the factory in Italy to the warehouse in Germany.

Torrington contends that the Department properly reduced CEP by all costs incident to bringing the merchandise from the country of origin to Germany. Torrington contends that, with respect to the FAG Italy-produced bearings, Italy remained the exporting country regardless of whether the bearings were physically in Italy, Germany, or the United States. Torrington asks that the Department disregard the alleged differences, suggested by FAG Italy, between the statutory terms "exporting country" and the "country of origin."

Department Position: We disagree with FAG Italy that Germany is the "exporting country" of the reviewed sales, and for the final results we have adjusted CEP for costs incident to bringing merchandise from its factory in Italy to the warehouse in Germany. For calculating CEP in our review of FAG Italy's subject merchandise, Germany is the intermediary country and not the exporting country. Since FAG Italy is the producer and exporter of subject merchandise, Italy is both the "country of origin" and the "exporting country."

Section 771(28) of the Tariff Act defines "exporter or producer" to include both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of the merchandise. Since FAG Italy is both the exporter of the subject merchandise and the producer of the same subject merchandise, we have deducted from CEP all costs incident to transporting the merchandise from FAG Italy's factory in Italy to the company's warehouse in the United States.

Comment 2: Torrington argues that the Department has allowed Koyo to report aggregated air- and ocean-freight expenses. Torrington contends that the Department should require Koyo to report air-freight expenses on a model- or customer-specific basis or apply expense data obtained at verification as facts available.

Koyo responds that the Department has repeatedly rejected Torrington's arguments on this issue in previous reviews. According to Koyo, the Department's verification report for this review supports its contention that, although it tracks its costs of air freight, Koyo is unable to tie individual air shipments to particular sales to unrelated customers in the United States.

Department's Position: We agree with Koyo. The manner in which Koyo records these expenses in its accounting system, and the reporting of these expenses, has not changed from the 1993/94 review. As in the 1993/94 review, we determine that Koyo is not able to provide air-freight on a transaction-specific basis. At the U.S. sales verification we verified Koyo's air- and ocean-freight expense data successfully and found that the use of aggregated expense data in the allocations was not unreasonably distortive. Therefore, we have accepted Koyo's reporting of these movement expenses for the final results.

Comment 3: Torrington asserts that the Department must be satisfied that SKF France reported HM packing costs properly before using these expenses to adjust NV in the final results. Torrington notes that SKF France based its reporting on standard costs from its cost and financial accounting system. Torrington claims that it is not clear whether SKF France's standard-cost system yields sufficiently precise results for direct reporting of packing expense on a model-by-model basis. Thus, Torrington maintains the reporting of these expenses might not be acceptable in accordance with *Torrington VI* (at 1050–1051), in which the CAFC ruled that companies must report direct expenses accurately and not allocate them broadly across sales. Torrington suggests that, if the Department is not satisfied with SKF France's reporting of HM packing expenses, it should use as facts available the packing expenses of another producer.

SKF France contends that Torrington's concern about the expenses being broadly allocated is without basis and notes that the Department has accepted the same reporting methodology in all prior AFB reviews. In addition, SKF France claims that Torrington is misreading *Torrington VI*. SKF France contends that the CAFC did not prohibit companies from allocating direct expenses broadly across sales, but instead held that, when companies allocate direct expenses, the expenses

must not lose their direct nature, *i.e.*, the Department should not treat them as indirect selling expenses.

Department's Position: We agree with SKF France. In our supplemental questionnaire we requested SKF France to provide a worksheet listing, for all packing materials, the average cost of each material and how much of each material it used. In response, SKF France explained that it could not provide the information in the manner requested since it is not available in its accounting records. SKF France explained that its packing-expense methodology relies on costs recorded in the company's cost-accounting and financial-accounting systems and that it allocates this information to the reported bearings. SKF France reported packing costs in a manner consistent with how it records the expenses in its accounting system. Moreover, we have no reason to believe that the reporting methodology is distortive of SKF France's actual experience, and we note that Torrington has not provided evidence indicating otherwise. This is the same methodology that SKF France used in each prior completed review, and we see no reason to reject it now; this reporting methodology is consistent with SKF France's accounting and record-keeping systems and leads to an accurate representation of the company's packing cost. Therefore, for the final results we used the company's HM packing costs to adjust NV.

Comment 4: Torrington claims that the Department should reject NTN's HM pre-sale and post-sale transportation expenses because NTN did not adequately describe the adjustments in its response. Torrington maintains that respondents are obligated to support all claims for adjustments in great detail and that, since NTN has not done this, the Department should deny the adjustments. NTN disagrees with Torrington and requests that the Department accept its movement expenses for the final results.

Department's Position: We disagree with Torrington. We examined NTN's movement expenses at the HM verification and, during this process, the respondent provided us with a complete description of the data and allocation methodology it used to report the adjustments and we found no discrepancies. See the August 14, 1996, HM verification report for NTN. Furthermore, we determined that the reporting of the adjustments is accurate, given NTN's financial records, and is not unreasonably distortive. Therefore, we have accepted NTN's HM movement expenses for the final results.

9. Affiliated Parties

Comment: Asahi contends that the Department incorrectly performed the arm's-length test as it did not take into account differences in levels of trade. Asahi points out that it provided information on price differences between levels of trade in its questionnaire response and that the Department verified this data.

Department's Position: We disagree with Asahi. The arm's-length test compares, at the same level of trade, the price of foreign like products sold to affiliated parties to the price of the same products sold to unaffiliated parties. See Certain Flat-Rolled Carbon Steel Products from Canada, 58 FR 37099 (July 9, 1993), and Certain Corrosion-Resistant Carbon Steel Flat Products from Germany, 60 FR 65264 (December 19, 1995). We did not use Asahi's sales to a certain affiliated party in the calculation of NV because there were no unaffiliated party sales at the same level of trade for making such comparisons and, therefore, we were unable to analyze whether prices to this affiliated party were at arm's length.

A level-of-trade adjustment is based on differences in prices at two home market levels of trade. Even if we were to consider a level-of-trade adjustment as part of the arm's-length test, basing the adjustment on price differences where one side of the analysis is based solely on untested affiliated-party sales would defeat the purpose of the arm's-length test. In such a case, the level-of-trade adjustment would include not only differences in prices associated with the sales at different levels of trade, but would also include the amount of any difference in prices associated with the party's affiliated status. Therefore, we have not made a level-of-trade adjustment in order to conduct an arm's-length test on the affiliated-party sales.

10. Samples, Prototypes, and Ordinary Course of Trade

We do not exclude HM or U.S. sales from our review solely on the basis of their designation as "samples" or "prototypes," but we do exclude such transactions if they meet certain criteria. With respect to HM sales, we may exclude sales designated as samples or prototypes from our analysis pursuant to section 773(a)(1) of the Tariff Act where we determine that those sales were not made in the ordinary course of trade, as defined by section 771(15). With respect to U.S. sales, there is no parallel "ordinary course of trade" provision allowing for the exclusion of sample or prototype sales from the U.S. database. See *Floral Trade Council of Davis, Cal.* v. *United States*, 775 F. Supp. 1492, 1503 n.18 (CIT 1991). Except in the case of sampling, we will only exclude U.S. sales from our review in unusual situations, *i.e.*, where those sales are unrepresentative and extremely distortive. See, *e.g.*, *Chang Tieh Indus. Co.* v. *United States*, 840 F. Supp. 141, 145–46 (CIT 1993) (exclusion of sales may be necessary to prevent fraud on the Department's proceedings). See also *AFBs II* at 28395 and *AFBs III* at 39744, 39775.

We acknowledge that we may exclude small quantities of U.S. sales in investigations; however, we do not follow the same policy in reviews. This is because, under the statute, the Department is required in an administrative review to calculate an amount of duties to be assessed on all entries of subject merchandise and not merely to establish a cash deposit rate.

The CIT recently upheld our treatment of samples and prototypes in *FAG III*. In that case, the court recognized the limitations on our authority to exclude U.S. sales in an administrative review. The CIT upheld our procedural requirements for establishing whether a sale is a true sample, which requires the respondents to establish that: (1) Ownership of the merchandise has not changed hands, or (2) the sample was returned to the respondent or destroyed in the testing process. *Id.* at 11, citing Granular Polytetrafluoroethylene Resin from Japan, 58 FR 50343, 50345 (September 27, 1993). Therefore, the fact that merchandise is sold at a very low price or even priced at zero is not sufficient to establish that the sale is a sample. We require additional evidence that sales are true samples before we will exclude them from the home market or U.S. sales database.

Comment 1: SKF Germany and SKF Italy argue that the Department has the discretion to exclude sample sales from both the U.S. and HM databases and should do so for the final results. These SKF companies assert that they have demonstrated that their reported sample sales in both the U.S. market and the HM are samples and, therefore, they should be excluded.

Torrington argues that the Department should deny SKF Germany's and SKF Italy's requests to exclude their sample and prototype sales from the U.S. or HM databases. Torrington notes that the Department properly did not exclude such sales in its preliminary results of review.

Department's Position: We agree with Torrington. As we noted above, merely designating a sale as a "sample" does not entitle a respondent to exclusion of that sale from the database. The respondent must provide evidence to

prove its claim that the designated sales are actually sample sales. Further, the sales must meet the criteria discussed above in order to merit exclusion as U.S. sample sales, and must demonstrate that HM "sample" sales are outside the ordinary course of trade. In this instance, SKF Germany and SKF Italy failed to provide any evidence to support their sample-sale claims. Therefore, we have continued to review and calculate margins on the basis of SKF Germany's and SKF Italy's sample sales.

Comment 2: NSK and NSK-RHP argue that the Department should exclude from the U.S. sales database free samples given away in the United States. Respondents contend that the Department must apply the ordinary meaning of "sale" to the antidumping law, which involves not only the transfer of ownership, but also the payment, or promise, of consideration. Respondents claim that they provided extensive documentation to support their claim that samples provided at no charge did not constitute sales.

Respondents also contend that the act of providing free samples with the expectation that respondents might eventually become one of the customer's suppliers is not sufficient to constitute legal consideration. Finally, respondents argue that excluding free samples does not create a loophole in the antidumping law. Citing *Torrington IV* at 1039, respondents argue that the Department asserted that, for purposes of calculating antidumping duties, the Department reviews sales, not entries. Respondents contend that the Department violates its duty to determine dumping margins as accurately as possible when it fails to recognize the normal business practice of giving away free samples as a promotional expense and instead calculates dumping margins as if the free samples constituted sales.

Torrington responds that the Department properly included respondent's free samples, or zero-priced sales, in the U.S. sales database and should continue to do so for the final results. Torrington argues that the statute directs the Department to review each entry of the subject merchandise, citing section 751(a) of the Tariff Act. Torrington asserts that to exclude free samples given away in the United States would create a loophole whereby respondents could eliminate dumping margins by raising prices on their merchandise and then providing free samples or gifts in consideration for the sales. Torrington states that the Department has previously rejected respondents' arguments and that this rejection has been upheld by the CIT, citing *NSK III* at 6–7.

Department's Position: We disagree with respondents. Respondents failed to demonstrate either that ownership of the merchandise has not changed hands or that the sample was returned to the respondents or destroyed in a testing process (*see* discussion at the beginning of this section). Therefore, we have continued to review and calculate margins on the basis of respondents' claimed samples. With regard to respondents' argument that the "samples" are not true "sales," we note that we cannot accept a sample-sales claim simply on the basis of designation. Unless respondent demonstrates that a transaction meets our criteria for consideration of a sample, we treat claimed sample transactions with no price as zero-priced sales. Furthermore, as noted above, were we to accept respondents' argument that the alleged samples are not actually sales *per se*, we would be allowing a loophole that respondents could use to mask dumping.

Comment 3: FAG Italy requests that the Department exclude sample/prototype transactions from the U.S. sales database when calculating the antidumping margin. FAG Italy argues that the Department has consistently held that where merchandise is not sold within the meaning of section 772 of the Tariff Act, the transaction is not a sale for antidumping purposes. FAG Italy notes that section 772 defines CEP sales as the price at which merchandise is sold or agreed to be sold in the United States and claims that, since all sample transactions were zero-priced, these transactions cannot be considered CEP sales, despite the Department's treatment of them as such in the preliminary results. In conclusion, FAG Italy refers to the Department's description of sales outside the ordinary course of trade in the SAA and contends that, under the new law, the Department has the discretion to treat zero-priced sample transactions as outside the ordinary course of trade.

Torrington contends that the Department should treat FAG Italy's alleged U.S. sample sales as sales for the margin analysis. Torrington notes that the Department has determined in the past that there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review, citing *AFBs I* at 31713, *AFBs II* at 28394–95, *AFBs III* at 39776, and *AFBs IV* at 10947.

Torrington also notes that, in past reviews, the Department only excluded sample transactions where there was no transfer of ownership between the exporter and the U.S. purchaser. FAG Italy, Torrington contends, neither demonstrated nor claimed that it retained ownership of any sample bearings.

Department's Position: We agree with Torrington that we should include FAG Italy's U.S. sample transactions in our analysis. Except under the limited circumstances discussed at the beginning of this section, there is no statutory basis for excluding U.S. sales from review. Since FAG Italy failed to demonstrate either of the two criteria required for the exclusion of sample transactions from the U.S. sales database, we included these transactions in the U.S. sales database we used to calculate margins for the final results. Moreover, as discussed above, although we have the discretion to set aside home market sales that are outside the ordinary course of trade, this statutory criterion does not apply to U.S. sales.

Comment 4: NTN claims that the Department should exclude home market sales outside the ordinary course of trade, which it defines as sample sales and sales with abnormally high profits. NTN argues further that the SAA lists sales made at aberrational prices as a category of sales not in the ordinary course of trade. NTN contends that both the SAA and the proposed regulations classify these sales as sales outside the ordinary course of trade which the Department should disregard for the purposes of calculating NV in order to avoid unrepresentative results.

Torrington argues that NTN has failed to meet its burden of demonstrating that the sales in question were outside the ordinary course of trade. Furthermore, Torrington states that, given the lack of evidence on the record, NTN's argument that the Department should have excluded sales with "abnormally high profits" from the home market database is irrelevant. In conclusion,Torrington asserts that, given the evidence of record, NTN did not meet its burden of demonstrating that such sales were outside the ordinary course of trade.

Department's Position: We disagree with NTN. We have determined that NTN's characterization of its reported data is not substantiated by the administrative record. NTN's sales information merely identifies certain sales as home market sample sales and other sales with "abnormally high profits" as not in the ordinary course of trade. NTN examined only quantity and frequency of sales in determining which sales to report as outside the ordinary course of trade. NTN's supplemental questionnaire response provided no additional information; it simply identified the sales as having been made

outside the ordinary course of trade. As stated above, the fact that a respondent identifies sales as sample and prototype sales does not necessarily render such sales outside the ordinary course of trade. Verification of the designation of certain sales as samples merely proves that respondent identified sales recorded as samples in its own records. Such evidence does not indicate that such sales were made outside the ordinary course of trade for purposes of calculating NV in these reviews. In addition, the Department noted at the home market verification of NTN's data that the firm was unable to substantiate that all sales coded as samples were sample sales. Accordingly, we have included NTN's sample sales in the calculation of NV.

Comment 5: Koyo argues that the Department matched U.S. sales of one model to a home market model which it sold outside the normal course of trade and which also does not meet the criteria of a foreign like product as defined by the antidumping statute. Koyo first states that the HM model is produced to unusual product specifications. Second, Koyo argues, the HM bearing was sold aberrational prices. Furthermore, Koyo argues that the HM model is not a foreign like product because it is not identical in physical characteristics and is not like the U.S. model being compared to it because of a different end-use.

Torrington argues that Koyo did not provide data to support its claim and that the Department should reject Koyo's claim.

Department's Position: We disagree with Koyo. In spite of Koyo's arguments, this model and the respective bearing family meet the matching criteria as outlined in the Department's questionnaire. Also, the difference-of-merchandise adjustment for the family to which we matched the U.S. model does not exceed plus or minus 20 percent of the U.S. model's COM. The Department has long held that U.S. and home market models are similar where the difference between the U.S. and home market models' variable COMs is less than 20 percent of the U.S. model's COM. *See* Policy Bulletin 93/1, September 1, 1993. Koyo has not demonstrated how the model's costs can meet our 20-percent test yet be so dissimilar. Moreover, sales of models at high prices is insufficient to establish a sale outside the ordinary course of trade. See Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64720 (December 9, 1993).

11. Export Price and Constructed Export Price Methodology

Comment 1: Torrington states that, in a radical departure from old-law practice, the Department failed to make deductions when calculating CEP for export selling expenses which respondents incurred in the home market in selling subject merchandise to the United States. Torrington states that the Department also did not consistently deduct inventory carrying costs respondents incurred in the home market on U.S. sales when calculating CEP. Torrington notes that, under the pre-URAA statute, the Department deducted all selling expenses incurred in exporting to the United States. Torrington argues that the new law is not intended to change the Department's practice with respect to the calculation of export price or constructed export price and that the SAA at 824 and 828 and the Senate Report (S. Rep. No. 103–412, 103d Cong., 2d Sess. 65 (1994)) provide for the deduction of selling expenses which are assumed by the seller on behalf of the buyer.

The FAG companies, INA, Koyo, NMB/Pelmec, NSK, NSK/RHP, NTN, the SKF companies, and SNR all argue that the Department was correct in not deducting the export selling expenses in question from CEP. A number of respondents cite the SAA at 823 which indicates that the Department will deduct only those expenses associated with economic activities occurring in the United States. The FAG companies, INA, the SKF companies, and SNR note that the assumed-expense language in the Senate Report and the SAA that Torrington cites is limited to selling expenses assumed by the seller on behalf of the buyer, not the selling expenses in question which the foreign manufacturer incurred in selling to its affiliated U.S. importer.

Department's Position: We agree with respondents. It is clear from the SAA that under the new statute we should deduct only expenses associated with economic activities in the United States from CEP. The SAA also indicates that "constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers." See SAA at 823. Therefore, we have only deducted expenses associated with commercial activities in the United States. Our proposed regulations reflect this logic at 351.402(b) ("(t)he Secretary will make adjustments to constructed export price under 772(d) for expenses associated with commercial activities in the United States, no matter where incurred').

Torrington's citation of statements in the SAA to support the proposition that the new law is not intended to change our practice in this regard is misplaced. Torrington cites various provisions of the SAA which state that our practice with respect to "assumptions" would not change. The SAA explains that "assumptions" are selling expenses of the purchaser for which the seller in the home market agrees to pay. *See* SAA at 824. Thus, if the home market producer agrees to pay for the affiliated importer's cost of advertising in the U.S. market, the Department would deduct such an expense as an "assumption." The issue of assumptions is unrelated to the issue of selling expenses incurred in the home market in selling to the affiliated importer. Such expenses are not incurred "on behalf of the buyer" (i.e., the affiliated importer); rather, the exporter incurs such expenses on its own behalf, and for its own benefit, in order to complete the sale to the affiliated importer.

Therefore, because the selling expenses Torrington cites were not specifically related to commercial activity in the United States, we did not deduct them from CEP.

Comment 2: NSK and Koyo argue that the Department deducted the cost of carrying inventory in the HM from CEP incorrectly for the preliminary results of these reviews. Both firms argue that HM inventory carrying costs reflect costs associated with economic activity occurring in the home market, not in the United States. NSK also argues that the CEP calculation is intended to construct an export price and that inventory carrying costs are not deducted in export price calculations.

Torrington contends that the Department's deduction of HM inventory carrying costs from CEP was proper. Torrington argues that carrying inventory is a selling activity involved in selling to the affiliated U.S. importer and is one of the expenses the Department must deduct in arriving at an appropriate ex-factory price.

Department's Position: We agree with Koyo and NSK. We regard the inventory carrying costs the respondents incurred in the home market, which are incurred prior to the sale, transfer, or shipment of the merchandise to the U.S. affiliate, as an expense incurred on behalf of the sale to the U.S. affiliate. As described in response to Comment 1 above, we do not consider this to reflect a commercial activity in the United States. Therefore, we have not deducted domestic inventory carrying costs from CEP for the final results.

Comment 3: SKF France and SKF Germany claim that, because their imputed inventory carrying costs, which they incurred in the country of exportation or which were associated with the transit time between Europe and the United States, relate to periods before the subject merchandise arrived in the United States, the Department cannot consider them to represent selling, distribution, and further-manufacturing activities in the United States, as required by 772(d)(3) of the Tariff Act. SKF France and Germany also cite the SAA at 824 to support their position that the Department must derive the profit it deducts in determining CEP from selling, distribution, and further-manufacturing activities in the United States. In addition, SKF France and SKF Germany claim that these imputed expenses are not deductible under sections 772(d) (1) and (2) of the Tariff Act since these imputed expenses are not incurred in the United States.

Torrington contends that SKF France's and SKF Germany's position is in conflict with the statute (section 772(d)(3)) and the SAA at 154. Torrington argues that the Tariff Act makes clear that all expenses are properly part of the CEP-profit allocation and that the SAA provides that 772(d)(3) of the Tariff Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling, distribution, and further-manufacturing activities in the United States. Torrington claims that the SAA does not limit the CEP-profit adjustment to expenses incurred in the United States.

Department's Position: We agree with SKF France and SKF Germany in part. For the reasons indicated in our response to comment 1 above, we have deducted from CEP only expenses associated with economic activities in the United States. The inventory carrying costs at issue are not associated with such activities. We disagree, however, that the geographical location is necessarily determinative. Thus, as discussed in our proposed regulations at 7331, we will deduct an expense associated with economic activities in the United States no matter where it is paid.

Comment 4: Torrington contends that the Department should make a deduction to CEP for certain selling expenses that FAG Italy incurred in selling merchandise to the United States. Torrington identifies costs which FAG OEM und Handel AG (FAG OH), a subsidiary of FAG Italy's parent company, incurred in Germany to support the sale of bearings to the United States. Torrington asserts that the deduction of these costs is appropriate because these costs consist of expenses for maintaining an electronic data interface with the U.S. affiliate, expediting and handling functions in connection with the U.S. affiliate's orders, and printing costs associated with the publication of catalogs and technical data material in English.

FAG Italy contends that the Department properly excluded HM export selling expenses and HM inventory carrying costs from the pool of CEP deductions in accordance with Section 772(d) of the Tariff Act.

Department's Position: We disagree with Torrington in part. Based on the record, we determined that the expenses in question are not deductible from CEP under section 772(d) of the Tariff Act. However, the record suggests that one of the three expenses Torrington identifies, *i.e.*, printing costs associated with the publication of catalogs and technical materials in English, is a direct advertising cost that FAG OH assumed on behalf of FAG Italy's U.S. affiliate for sales to its unaffiliated customers in the United States. The SAA, at 828, requires that the Department make a COS adjustment (rather than a CEP adjustment) for "assumptions of expenses incurred in the foreign country on sales to the affiliated importer." Thus, we have determined that it is proper to add this expense to NV as a COS adjustment under section 773(a)(6)(C)(iii) of the Tariff Act (*see* 7331 of our proposed regulations).

Regarding the other two expenses Torrington identifies, we have determined from the description on the record that they are not associated with economic activity in the United States nor are they direct selling expenses within the meaning of section 773(a)(6)(C)(iii) of the Tariff Act. However, FAG Italy did not provide sufficient information to permit us to isolate them from the sum of all three expenses. Therefore, as facts available, we included the total amount FAG Italy reported for these three expenses in our COS adjustment.

Comment 5: NTN disagrees with the Department's calculation of a profit deduction from CEP based on each class or kind of merchandise without regard to level of trade. NTN argues that, since selling expenses differed by level of trade and had an effect on prices, this difference does not entirely account for the different prices at the different levels of trade. NTN asserts that the statute expresses a preference for the profit calculation to be done as specifically as possible with respect to sales in the appropriate markets of the subject merchandise or the narrowest category of merchandise which includes the subject merchandise. Therefore, NTN argues the Department should calculate CEP profit on a level-of-trade basis which would result in more accurate margins since it would better account for price differences at the various levels of trade.

Torrington argues that the statute specifies that the Department is to calculate CEP profit on all sales of subject merchandise without regard to level of trade.

Department's Position: Neither the statute nor the SAA require us to calculate CEP profit on bases more specific than the subject merchandise as a whole. Indeed, while we cannot at this time rule out the possibility that the facts of a particular case may require division of CEP profit, the statute and SAA, by referring to "the" profit, "total actual profit," and "total expenses" imply that we should prefer calculating a single profit figure. NTN's suggested approach would also add a layer of complexity to an already complicated exercise with no guarantee that the result will provide any increase in accuracy. We need not undertake such a calculation (see *Daewoo Electronics* v. *International Union*, 6 F.3d 1511, 1518–19 (CAFC 1993)). Finally, subdivision of the CEP-profit calculation would be more susceptible to manipulation. Congress has specifically warned us to be wary of such manipulation of the profit allocation (see S. Rep. 103–412, 103d Cong., 2d Sess at 66–67).

Comment 6: Torrington argues that the Department should deduct from CEP any credit provided by the foreign seller to its U.S. subsidiary. Torrington asserts that credit is always a direct expense and that this is an expense that the seller pays on behalf of the buyer in CEP transactions.

NSK and NSK/RHP assert that imputed costs for home market activities cannot lawfully be deducted from CEP. Koyo argues that deducting expenses it incurred not in selling to the unaffiliated customer in the United States, but rather in its transactions with its U.S. affiliate, is contrary to the statute. Koyo argues further that to accept Torrington's argument would be to double-count the inventory carrying cost of the merchandise. The FAG companies argue that there is no statutory authority to deduct export credit expenses incurred in the home market from CEP. The SKF companies note that such a credit expense, if calculated, could never constitute a direct selling expense, as it is totally

unrelated to the sale to the first unrelated customer.

Department's Position: We do not consider credit expenses incurred between a foreign producer and its U.S. affiliate to be expenses associated with economic activities in the United States (see our responses to Comments 1 and 2). Therefore, we have not deducted them from CEP.

Comment 7: Torrington asserts that CEP profit is understated where the Department excused particular respondents from answering the further-manufacturing section of the questionnaire, because the Department did not deduct profits on U.S. value-added operations when calculating CEP. While Torrington acknowledges that section 772(e) of the Tariff Act allows the Department to consider non-U.S.-value-added sales in determining CEPs for value-added sales, Torrington argues that the statute merely provides that the Department may use other transactions if it determines such use is appropriate. Torrington asserts that this does not authorize the Department to disregard the value-added profit. Torrington argues further that the specific language of 772(d)(3) of the Tariff Act does not yield to the general methodology allowed in section 772(e). When one reads the provisions, in *pari materia*, Torrington claims that it is clear that sales used as proxies must be adjusted for value-added profit in order to implement the intention of the statute. Torrington concludes that the Department must calculate appropriate profit amounts on the basis of ratios of U.S. value added to total cost of production of the bearing in question and deduct that amount in its final calculations. If the appropriate data are not on the record, then Torrington concludes that the Department must apply adverse facts available.

Koyo argues that the Department is not disregarding profit on further-processed merchandise but is actually assuming that the profit percentage earned (like the expenses incurred) on further-processed merchandise was consistent with that earned (or incurred) on non-further-processed merchandise. Moreover, Koyo asserts, there is no evidence in the record to suggest that this is an unreasonable assumption, and there is no question that the Department has ample authority under section 772(e) to support its decision to apply the margins calculated on non-further-processed sales to further-processed sales.

The SKF companies argue that Torrington is attempting to have the Department eviscerate 772(e) by suggesting a CEP-profit deduction that would "back-door" the Department into requiring respondents to report full cost data pertaining to all sales of further-manufactured merchandise. The SKF companies also argue that Torrington's interpretation of the law is incorrect and that nothing in section 772(d)(3) requires profit to be deducted for sales subject to the simplified reporting provisions of 772(e). SKF asserts that the opposite is true in that 772(d)(3), by referencing (d)(2), plainly exempts sales eligible for simplified reporting from the CEP profit deduction. The SKF companies explain that the statute requires that CEP be reduced by, *inter alia*, "the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) [(the special rule for simplified reporting)] * * *" (citing section 772(d)(2) of the Tariff Act).

The FAG companies argue that to adopt Torrington's in *pari materia* reading of the statute would render 772 (e) completely meaningless. The FAG companies assert that waiving full further-processing reporting of sales and costs while, at the same time, requiring full further-processing reporting so that a value-added profit could be calculated would render the waiver subsection entirely meaningless and re-encumber the Department with burdens Congress explicitly intended to alleviate.

NSK and NSK/RHP argue that further-processing information is irrelevant to CEP-profit calculations in that the Department is not establishing NV and CEP for further-processed merchandise which has had substantial value added in the United States.

Department's Position: Section 772(e) of the statute allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is also referred to in the statute as the "special rule"). In implementing this special rule for certain respondents, we determined that it was appropriate to use an alternative method to calculate CEP for the transactions involving substantial value-added in the United States (in such situations we determined dumping margins for the sales in question on the basis of weighted-average dumping margins found on sales of identical or other subject merchandise sold to unaffiliated customers). Our waiving of the full reporting requirements of the further-processing section of our questionnaire was, in effect, a decision not to base CEP on any data relating to these transactions, including expense and profit data. By using the sales of other subject merchandise sold in the United States as a proxy or surrogate for the further-processed transactions, we were making an assumption that the expense and profit percentages incurred on the non-further-processed transactions were representative of the expense and profit percentages incurred on further-processed transactions. In other words, while a greater absolute amount of expenses may be incurred in further processing, and a commensurately greater profit earned, there is no reason to believe that when the expenses and profits are deducted, there is any difference between the value of further-processed and non-further-processed merchandise. There is no evidence that the value of imported merchandise varies depending on whether it will be further-processed or not. Therefore, there is no record evidence suggesting that our assumption was erroneous and that profits for the transactions in question were understated.

Furthermore, we disagree with Torrington's interpretation of the statute. The SAA in discussing the special rule at 826 indicates that the purpose of the new rule is to save the Department the considerable effort of measuring the U.S. value added precisely. Requiring the Department to gather and analyze this data for the purpose of a profit calculation for these transactions would defeat the purpose of this provision.

Comment 8: FAG Italy and FAG Germany argue that the CEP selling expense total to which the Department applied the CEP-profit ratio improperly includes credit expense. Respondents maintain that the Department's calculation excludes credit expenses from the numerator and denominator of the CEP-profit ratio, but that the U.S. selling expense to which the Department applied this ratio includes credit expenses. Respondents contend that this improperly skews the calculation of total CEP profit. FAG Germany suggests that the Department correct this error by excluding credit from the U.S. selling expenses or by including credit expenses in the denominator of the CEP-profit ratio.

Torrington agrees in part with respondents. Torrington requests that the Department include credit expenses in the denominator of the CEP-profit ratio rather than exclude them from the U.S. selling expense.

Department's Position: We disagree with respondents and Torrington. Sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit

amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the "total actual profit" calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1).

When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines "total United States Expense" as the total expenses described under section 772(d)(1) and (2). Such expenses include both imputed credit and inventory carrying costs. See Certain Stainless Wire Rods from France, 61 FR 47874, 47882 (September 11, 1996).

12. Programming

FAG Germany, FAG Italy, INA, Koyo, NSK, NSK/RHP, NTN Japan, NTN Germany, SKF Italy, SKF Germany, SKF France, SNR France, and Torrington commented on alleged errors in the Department's computer programs. Where all parties and the Department agreed with a programming-error allegation, we made the necessary changes to correct the error. Our final results analysis memoranda describe the programming errors and any changes we made to correct the problems. The following comments address allegations of programming-errors that are in dispute.

Comment 1: FAG Italy and FAG Germany claim that, in calculating the net unit price it used as NV, the Department neglected to deduct HM credit expenses. FAG Italy requests that in the calculation of net unit price for the final results the Department include credit expenses in the pool of direct selling expenses that it deducts from the HM unit price and, ultimately, from NV.

Torrington agrees that the Department should adjust FAG Germany's and FAG Italy's NV for credit expenses. However, Torrington contends that the Department should not treat FAG Italy's credit expenses as direct because the credit periods the company used to calculate the adjustment were not transaction-specific. Torrington maintains that, if the Department makes the adjustments FAG Germany and FAG Italy request, it must exclude credit expenses from the calculation of ISEs to avoid double-counting.

Department's Position: We calculate net unit price in two sections of our analysis. For the preliminary results, we neglected to deduct HM credit expenses from the net unit prices we used to determine whether respondents" sales to related parties were at arm's-length prices. This was a clerical error, and we have made this deduction for the final results. However, when we calculated net unit price for NV purposes in the preliminary results we did deduct credit expenses; therefore, changing the NV as respondents request is not necessary.

We disagree with Torrington that we should not treat FAG Italy's HM credit expenses as a direct expense. FAG Italy's calculation of a customer-specific average credit period instead of a transaction-specific credit period is reasonable given that, as confirmed by the Department at verification, the latter information is not available in FAG Italy's accounting records. Through verification we found that FAG Italy's credit-period calculation methodology is not unreasonably distortive. Regarding Torrington's suggestion that we exclude credit expenses from FAG Germany's and FAG Italy's calculations of ISEs to avoid double-counting, we checked our calculations to ensure that we did not include credit expenses in the calculation of ISEs.

Comment 2: FAG Italy, FAG Germany, and NSK maintain that the Department made a clerical error by not including manufacturer codes when sorting and defining the U.S. and HM sales and cost databases. Respondents contend that the Department must include the manufacturer codes in order to calculate NV in accordance with the statutory definition of foreign like product. In support, respondents cite section 773(a)(1)(B)(i) of the Tariff Act, the reference for NV, and section 771(16) of the Tariff Act, the statutory definition of foreign like product.

Regarding FAG Italy, Torrington claims that the Department's analysis is in accordance with the statute and, therefore, there is no clerical error. In support of this argument, Torrington notes that FAG Italy reported that it has a single manufacturing plant. Torrington claims that FAG Italy has neither argued nor demonstrated that unaffiliated manufacturers produced the subject merchandise, a situation that would require the consideration of manufacturer codes in the calculations. Torrington states that it cannot determine from FAG Germany's response whether it reported products manufactured by other producers.

Department's Position: We agree with respondents and have considered manufacturer codes when establishing U.S. and HM sales and cost databases for use in our analysis. Not using manufacturer codes in the preliminary analysis was an inadvertent error. Thus, for the final results we have calculated NV in accordance with section 773(a)(1)(B)(i) of the Tariff Act and the statutory definition of foreign like product (see section 771(16) of the Tariff Act).

We disagree with Torrington's contention that we should not change the analysis for FAG Italy because the company reported having a single manufacturing plant. While FAG Italy reported having a single manufacturing plant, the company also reported that it purchased some bearings from unaffiliated manufacturers which it sold to the United States. Therefore, we included the manufacturer codes in our analysis.

Comment 3: FAG Germany argues that the Department's decision to rely on CV when the model the Department selected as most comparable fails the cost test leads to inaccurate and distorted results. FAG Germany argues that the Department should correct this clerical error for the final results so that NV is based on a family match when sales of an identical match are disregarded as below cost rather than CV.

Torrington supports FAG Germany's suggested revision.

Department's Position: We disagree with the revision FAG Germany and Torrington suggest. For the reasons described in response to comment 2 of section 6.A. above, our reliance on CV when the model we selected as most comparable fails the cost test is a methodological decision and not a clerical error. Still, the parties are correct in suggesting that the mechanics of our concordance did not function properly. This was the result of an error in how we defined the U.S. and HM periods, and we have corrected it for the final results.

Comment 4: Koyo argues that the Department incorrectly used the COM of bearings produced in-house instead of the weighted-average COM based on both the quantities produced in-house and purchased in calculating COP and CV. Koyo explains that this results in no COM or CV values for purchased bearings in the COM calculations.

Torrington agrees with Koyo that the Department should not use the COM of bearings produced in-house for those particular models that Koyo only purchased and did not produce. However, Torrington argues that the use of a weighted-average COM, as Koyo suggests, is only appropriate where Koyo has purchased the bearing from an unaffiliated party. Torrington contends that, for purchases from affiliated suppliers, the Department should use the highest of either the reported transfer price or the COP of the affiliated supplier.

Department's Position: We agree with Koyo and have corrected this clerical error for these final results. Koyo explained in its cost questionnaire response that it has taken into consideration the difference between transfer price and COP of the affiliated-party inputs in the calculation of the weighted-average variable COM for COP purposes and weighted-average total COM for CV.

Comment 5: NTN Germany contends that the Department made a clerical error in the model-match portion of its preliminary analysis. NTN Germany asserts that this error resulted in the Department not matching sales at the same or closest level of trade.

Department's Position: We disagree with NTN Germany. The model-match portion of our analysis does not use level of trade as part of the criteria for selecting the best foreign like product because level of trade is not a criterion under section 771(16) of the Tariff Act. After selecting the most comparable product match according to the statute, we attempt to find contemporaneous sales of that product at the same level of trade, if possible. For a detailed explanation of our level-of-trade analysis, see the introduction to Section 5 above.

Comment 6: SNR contends that the Department's analysis double-counts HM quantity adjustments. Torrington concurs with SNR regarding this error.

Department Position: We disagree with SNR and Torrington. While we make an adjustment to HM quantities in two parts of our analysis, *i.e.*, once in connection with the arm's-length test and a second time in calculating NV, this does not result in double-counting because these portions of our analysis are independent of one another.

13. Duty Absorption and Reimbursement of Dumping Duties

Comment 1: Torrington argues that the Department should deduct dumping duties from CEP as part of "all charges and expenses incident to bringing subject merchandise from the place of shipment in the exporting country to the place of delivery in the U.S.," citing section 772(c)(2)(A) of the Tariff Act. Petitioner asserts that, if the Department does not deduct these duties, the law does not have its remedial effect. Torrington maintains that dumping duties are "special duties" that are included in the definition of "import duties" in the contemplation of U.S. Customs law. Torrington believes that deducting dumping duties from CEP double-counts those duties only in situations where the importer does not absorb the duties on behalf of the unaffiliated buyer. Petitioner cites to regulations for adjustment to price in European Community law, which permit the deduction of dumping duties paid to an importer by any party associated with that importer. Petitioner also contends that deducting dumping duties is not prohibited by the CIT's decision in *Federal Mogul I* (at 856), since that decision dealt with the deduction of cash deposits, which are a reflection of past behavior rather than current behavior. Petitioner suggests that calculating a margin without regard to dumping duties and, if there is a positive margin, then making an additional deduction for the duties is consistent with the CIT's decision and section 772(c) of the Tariff Act.

Koyo and SNR argue that the Department lacks statutory authority to treat antidumping duties as a cost. Koyo refers to the SAA to underscore that the law regarding duty absorption "is not intended to provide for the treatment of duties as a cost," citing the SAA at 885. Respondent contends that Torrington's method for treating duties as an expense would incumber respondents with an expense that bears no relation to their pricing policies during the POR as respondents would be unable to anticipate the rate at which entries would finally be liquidated. In addition, Koyo states that Torrington's suggestion is contrary to the remedial purpose of the law.

NTN and SKF point out that nothing in the URAA indicates a statutory change in the treatment of antidumping duties. SKF notes that section 772(c)(2)(A) refers to duties "incident to bringing subject merchandise * * * to the place of delivery in the U.S." and opines that dumping duties do not fall under this definition since liability for the dumping duties arises from sales of the merchandise in the United States. INA counters that U.S. Customs practice is not germane to interpretation of the antidumping duty statute, citing *American NTN Bearing Mfg. Corp.* v. *United States*, 739 F. Supp. 1555, 1565 (CIT 1990). All five respondents refer to the Department's consistent practice in *AFBs I*, *AFBs II*, and *AFBS III* of not treating antidumping duties as a cost and note that the CIT has upheld the Department's policy, citing *Federal Mogul*.

Department's Position: We disagree with Torrington. The wording of section 772(c)(2)(A) did not change under the URAA. The Department has consistently interpreted the provision to mean that antidumping duties are not eligible for deduction from the price of the imported product in that they would result in double-counting (*AFBs IV* at 10900, 10907; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 61 FR 18547; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 60 FR 44009, 44010). Likewise, section 751(a)(4) does not require that duties "absorbed" by an importer be deducted from CEP, only that they be considered in a review of the likelihood of continuation of dumping. We maintain our position stated in *AFBs V*, at 66519, that we do not consider antidumping duties to be themselves a selling expense, similar to ordinary customs duties, movement expenses, or credit terms, which we should deduct from CEP as a selling cost.

Comment 2: Torrington believes that, if the Department declines to deduct dumping duties from CEP, it should apply the reimbursement regulation to merchandise with transfer prices below the COP whenever it finds dumping margins on that merchandise. Petitioner contends that below-cost transfer prices constitute an indirect transfer of funds relieving importers from having to raise resale prices to finance assessment of antidumping duties. Petitioner believes that the Department's decision in Color Television Receivers for Korea, 61 FR 4408, 4411 (February 6, 1996), that the reimbursement regulation applies in exporter's-sales price situations, sanctions the adoption of such a policy for CEP transactions under the new law. Petitioner also argues that, when Congress enacted the URAA, it approved the reimbursement regulation and expressed its wish that the concept be extended to reimbursements of countervailing duties.

Koyo counters that the Department's authority to deduct reimbursed duties is the same as the authority to deduct rebates or discounts, in that it applies to a sale to the first unaffiliated purchaser in the United States, not to the transfer from the exporter to the affiliated importer. Thus, Koyo interprets the reimbursement regulation as applying only to sales described in section 772 of the Tariff Act.

INA, SKF, and SNR contend that URAA did not change the substance or intent of the reimbursement regulation. Respondents believe that the Department's reliance on explicit and specific factual evidence that an affiliated importer has been directly reimbursed for dumping duties should be maintained. SNR states that Torrington's allegations of below-cost transfer prices do not establish a specific and direct link between transfer pricing and reimbursement.

Department's Position: We disagree with Torrington. Although we agree that reimbursement may be applicable in CEP situations, we also hold that there must be evidence that the parent has reimbursed its subsidiary for estimated deposits or assessed duties. See Color Television Receivers from the Republic of Korea, 61 FR 4408, 4410–11 (February 6, 1996), Brass Sheet and Strip from the Netherlands, 57 FR 9534, 9537 (March 19, 1992), Brass Sheet and Strip from Sweden, 57 FR 2706, 2708 (January 23, 1992), and Brass Sheet and Strip from Korea, 54 FR 33257, 33258 (August 14, 1989). In this case, Torrington has presented no evidence of reimbursement. The presence of both below-cost transfer prices and actual dumping margins do not, in and of themselves, constitute evidence that reimbursement is taking place. See *AFBs III* (39736), *AFBs IV* (10906–07), and *AFBs V* (66519).

14. Miscellaneous Issues

A. U.S. Sales Completeness. Comment: Torrington asserts that the Department should include all repair merchandise bearings SNR imported into the United States in the U.S. database. Torrington cites sections 751 and 753 of the Tariff Act, which state that all merchandise covered by an antidumping duty order must be appraised for antidumping duties, and asserts that there is no exception for repair merchandise. As support, Torrington cites to a scope ruling the Department issued in response to a request by Wafios Machinery Corporation, July 22, 1991. Torrington suggests that, if SNR cannot assign a price to those bearings, the Department should treat them as zero-priced sales and assess duties accordingly.

SNR states that the Department calculated margins for imported parts used in repair jobs properly. SNR asserts that it reported all U.S. sales of scope product as requested by the questionnaire. SNR does not disagree with the scope ruling Torrington cites, but contends that the ruling relates to the issue of whether bearings imported for use as spare-parts replacement bearings are subject to the antidumping order. SNR comments further that it did not sell the parts which were used to repair bearings sold by other manufacturers. Instead, SNR explains, it charged an inspection-and-repair fee. SNR states the Department could apply antidumping duties to these parts using SNR's weighted-average margin. However, SNR contends that it is not possible to calculate individual margins for these parts. SNR cites section 772(e) of the Tariff Act, which allows the Department to calculate margins using the weighted-average dumping margin on sales of complete bearings to assess dumping duties on importations such as repair parts.

Department's Position: We agree that, although these bearings are subject to the antidumping orders on AFBs, it is not possible to calculate export price or CEP because SNR does not sell the bearings themselves. Rather, SNR uses the bearings in the context of performing a service for which SNR charges a fee. It is not possible to discern, from this fee, an amount which would be appropriate to attribute to the sale of the bearings. Therefore, we will liquidate the entries of this merchandise at the weighted-average rate we have calculated for SNR's other sales.

B. Pre-Final Reviews. Comment: Asahi requests that, if the Department makes any methodological changes from the preliminary results other than those commented on in respondent's brief, the Department provide the company with an opportunity to comment on any such changes before issuance of the final results of review. In addition, Asahi requests disclosure of the Department's calculations before issuance of the final results so that it can review the Department's calculations for changes and comment on any clerical or ministerial errors.

Department's Position: As noted in previous reviews (see *AFBs III* (at 39786), *AFBs IV* (at 10957) and *AFBs V* at 66520), in the interest of issuing the final results in a timely manner, the Department cannot implement the steps Asahi requests. Since the current reviews are governed by statutory deadlines, Asahi's requests are now even less feasible than previously. Moreover, the regulations provide a procedure for correcting ministerial errors in the final results of review. *See* 19 CFR 353.28.

C. Certification of Conformance To Past Practice. Comment: Torrington argues that the Department should require respondents to affirm that their responses conform to prior Departmental determinations for reviews of these orders. Torrington states that the Department or domestic interests should not be responsible for detecting a respondent's unilateral departure from the Department's rulings in prior reviews. Torrington suggests, at a minimum, that respondents identify where they have continued to use any methodology that the Department rejected in a prior review, accompanied by a statement justifying the departure from established practice. Torrington proposes that, in such cases, the Department require respondents to supply data both in the format established by past practice and the manner that respondents hope will be acceptable to the Department despite the prior practice. Torrington suggests that, without such identification, the emergence of a consistent Departmental practice is dependent on the continued vigilance of the Department in analyzing responses and in the availability of funding for repeated verification. Torrington cites examples of respondents' unidentified use of reporting methodologies that do not conform to Department practice and which the Department has previously rejected.

INA argues that the Department should reject Torrington's proposal that respondents be required to state that their questionnaire responses conform to prior rulings. INA asserts that Torrington's proposal merely imposes an additional make-work burden upon respondents. INA states that respondents respond to the Department's questionnaire in accordance with the antidumping law, the Department's regulations, and the questionnaire instructions. INA also states that the statute and regulations do not contemplate anything else.

NSK says that it reports the information requested by the Department, and it is the Department, as the administering authority, which determines what to do with the reported information. NSK contends that Torrington's request that respondents certify compliance with past Department rulings must be rejected as needless information and an unwarranted intrusion by the petitioner into the administration of the antidumping law.

FAG Germany and FAG Italy contend that they have completely conformed to all prior applicable Departmental rulings and have never been accused or found to be deviating from applicable Departmental policy or precedent. FAG Germany and FAG Italy also assert that Torrington has not cited any examples underlying Torrington's allegations. FAG Germany and FAG Italy argue further that the Department has long

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adhered to the proposition that each administrative review is a separate and distinct proceeding and that, while Department practice is helpful and instructive in succeeding reviews, it is not binding. Finally, FAG Germany and FAG Italy contend that Torrington's request would place a burden on respondents by making them recite the history of each adjustment permitted or rejected over all previous reviews. FAG Italy and FAG Germany state that such a burden would be overwhelming and unnecessary.

Department's Position: We disagree with Torrington that we should require that all respondents conform their submissions, their allocations, and their methodology to our most recent prior determinations and rulings. We also disagree with Torrington that respondents should identify where they have continued to use any methodology that we rejected in a prior review and justify the departure from established practice. Each administrative review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews, and parties are entitled, at the risk of the Department's determining otherwise, to argue against a prior Department determination. As a practical matter, methodologies the Department accepts in one review are generally used by respondents in subsequent reviews and methodologies the Department rejects are not perpetuated in later reviews. The Department, however, may reconsider its position on an issue during the course of the proceeding in light of facts and arguments presented by the parties.

D. Country of Origin. Comment 1: Torrington claims that SKF Germany did not disclose its methodology for determining country of origin after the Department asked it in its supplemental questionnaire to do so. Torrington claims that SKF Germany asserted in its supplemental questionnaire response that its methodology had not changed over the past reviews, but that it did not indicate the product's essential characteristics for purposes of determining country of origin. In addition, Torrington contends that SKF Germany did not indicate what manufacturing steps convey origin, and SKF Germany did not indicate the methodology which it has consistently applied. Torrington argues further that SKF Germany does not describe how it arrived at its origin determination. Torrington asserts that if the company cannot clear up these questions the Department should conclude that it is unable to determine whether SKF Germany has reported all sales of German bearings in its HM and U.S. sales listings and apply facts available. Torrington suggests that an appropriate facts available solution would be to apply the highest margin found for any SKF company in this review.

SKF Germany contends that, as it stated in its questionnaire and supplemental questionnaire responses, it considers the complexity and extent of the manufacturing processes involved and the origin of each bearing's major components when identifying country of origin for its bearings. SKF Germany claims that the accurate determination of origin is important to the proper reporting of its sales in an administrative review and in order to comply with European and United States marking and other requirements. SKF Germany contends further that in multiple prior verifications the Department has confirmed the accuracy and completeness of SKF Germany's sales reporting. In addition, SKF Germany claims that, in this review, the Department also affirmed the accuracy of its sales reporting, including a description of the specific steps taken at verification to confirm SKF's origin determinations. SKF Germany contends that, as the Department verified, it reported sales of all German origin bearings.

Department's Position: We agree with SKF Germany. We are satisfied that SKF Germany reported all of its German-origin bearings and did not report sales of non-German origin bearings in this review. We verified, in this review, SKF Germany's methodology and were able to trace the procedure that SKF Germany uses in determining the country of origin for its bearings. We did not find any discrepancies in SKF Germany's reporting methodology in our examination of invoices, inventory records, and sales registers.

Comment 2: Torrington argues that the Department should confirm that NSK–RHP has determined the country of origin properly for all reported bearings. Torrington asserts that NSK–RHP did not answer fully a question that the Department asked in its supplemental questionnaire on the country of origin of bearings NSK–RHP sold in or to the U.S. market. Torrington contends that NSK–RHP did not clarify how it determines whether a bearing is a U.K.-produced (versus a Japanese-produced) bearing in its supplemental response. For these reasons, Torrington requests that Department consider applying facts available for these final results. Torrington also suggests that an appropriate facts-available solution would be to apply the highest margin found for any NSK–related company for this review period.

NSK–RHP argues that it only sold RHP-brand bearings in, or to, the United States during the POR. Further, NSK–RHP asserts that almost all of these bearings were produced at factories owned and controlled by RHP Bearings, Ltd. NSK–RHP maintains that the few remaining RHP-brand bearings manufactured by NSK Bearings Europe were sold in the United States during the sample weeks. NSK–RHP argues that NSK-brand bearings manufactured by NSK Bearings Europe were not sold in, or to, the United States during the review period. Moreover, NSK–RHP argues that it has already reported the degree to which affiliated companies provided raw materials or components either to RHP Bearings, NSK Bearings Europe, or both, during the POR. Therefore, NSK–RHP asserts, an examination of this material demonstrates that bearings manufactured in Japan were not reported as U.K. merchandise.

Department's Position: We disagree with Torrington. We addressed the question in our supplemental questionnaire in relation to NSK–RHP's further-manufactured sales. NSK–RHP reported these sales as being of U.K. origin. There is nothing on the record that suggests these sales are not of U.K. origin and Torrington has not provided any evidence to suggest otherwise. Furthermore, we have examined NSK–RHP's methodology for reporting its bearings and are satisfied that NSK–RHP properly determined the country of origin of all reported bearings.

[FR Doc. 97–923 Filed 1–14–97; 8:45 am]
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[A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany: Amended Final Results of Antidumping Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 6, 1997, the Department of Commerce (The Department) issued the final results of administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan,

Singapore, and the United Kingdom, which has not yet been published in the **Federal Register**.

The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 27 manufacturers/exporters. The review period is May 1, 1994 through April 30, 1995. We are correcting a margin-rate error with respect to ball bearings from Germany manufactured/exported by FAG KGS.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1997, the Department of Commerce (The Department) issued the notice of final results of administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, which has not yet been published in the **Federal Register**. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 27 manufacturers/exporters. The review period is May 1, 1994 through April 30, 1995.

After issuance of our final results, we realized that we did not publish the correct margin we calculated for the final results with respect to ball bearings from Germany manufactured and exported by FAG.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (as amended) by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Amended Final Results of Review

We have determined the following weighted-average margin to exist for the period May 1, 1994 through April 30, 1995:

Country	Company	Class or kind	Rate
Germany	FAG	Ball Bearings	13.48%

A cash deposit of estimated antidumping duties based on the above margin shall be effective upon publication of this notice of amended final results of administrative review for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930 (as amended). This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 10, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–994 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 1996, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (61 FR 56515). This review covers Saha Thai Steel Pipe Company, SAF Steel Pipe Export Company, and Pacific Pipe Company.[1] The period of review (POR) is March 1, 1994 through February 28, 1995.

On October 31, 1996, counsel for the petitioning companies Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe ("petitioners") filed timely allegations, pursuant to 19 CFR 353.28, of ministerial and clerical errors with regard to the final results in the 1994–95 administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. Petitioners" allegations were limited to alleged errors in calculating the dumping margin for subject merchandise manufactured by Saha Thai. On November 20, 1996, Saha Thai also submitted timely allegations of clerical errors. Saha Thai did not comment on the allegations submitted by petitioners.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–4037, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated,

[1] The Department has determined that Pacific Pipe Company had no U.S. sales during the period of review.

all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this administrative review are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Ministerial and Clerical Errors in the Final Results of Review

Petitioners alleged that the Department made four ministerial errors in the final results. First, petitioners contend that the Department inadvertently added indirect selling expenses to the calculation of export price. Second, petitioners contend that the Department failed to include a difference in merchandise adjustment in its calculation of FUPDOL. Third, petitioners argued that the Department failed to include direct selling expenses in the calculation of normal value for constructed value. For these three allegations, the Department agrees that these are ministerial errors, and we have amended our final results to correct these errors. Fourth, petitioners alleged that the Department failed to include straightening labor and overhead expenses for black pipe produced by Saha. The Department disagrees with petitioners" assertion that this represents a ministerial error. As stated in the verification report, the straightening costs identified by petitioners relate to the straightening which is required following the deformation that occurs during the galvanization process. In the final results of administrative review, the Department calculated COP and CV for black pipe exclusive of these straightening costs because they are not incurred in the production of black pipe.

Respondents did not object to petitioners' ministerial allegations, but on November 20, 1996, alleged that a clerical error occurs in the Department's calculation of COP. Saha Thai alleges that the Department double counted its inventory carrying costs in calculating COP. The Department agrees that this is a clerical error, and in accordance with 19 CFR 353.28, we have amended the final results to correct this error.

Saha Thai also contends that the Department's model match program departed from prior practice in that the program searched only for what the Department considered best match rather than for subsequent next-best matches before resorting to CV. We disagree with respondents that this is a ministerial error. The issue of the model match program used in this review is a methodological issue. Consequently, it is inappropriate to change the model match program because of an alleged ministerial error. See 19 CFR 353.28(d). (For further information, see the Decision Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Acting Assistant Secretary for Import Administration, dated December 20, 1996, which is on file in the Central Records Unit, room B–099 of the main Commerce building.)

Amended Final Results of Review

Upon correction of the ministerial errors, we have determined that the following margin exists for the period indicated:

Manufacturer/ exporter	Time period	Margin (percent)
Saha Thai/ SAF	3/1/94–2/28/95	7.27

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain circular welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent for circular welded carbon steel pipes and tubes, the all others rate established in the LTFV investigations. See Final Determination and Antidumping Duty Order: Certain Welded Carbon Steel Pipes and Tubes from Thailand, (51 FR 8341, March 11, 1986).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: January 7, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–995 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

The College of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211,

U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–113. Applicant: The College of New Jersey, Trenton, NJ 08650. Instrument: Electron Microscope, Model H–7000–S. Manufacturer: Hitachi Instruments, Japan. Intended Use: See notice at 61 FR 59417, November 22, 1996. Order date: October 9, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–925 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–125. Applicant: Smithsonian Institution, National Zoological Park, 3800 Connecticut Avenue NW, Washington, DC 20005. Instrument: Biological Cryostage, Model BCS 196. Manufacturer: Linkam Scientific Instruments Ltd., United Kingdom. Intended Use: The instrument will be used to develop optimal sperm cryopreservation protocols in endangered species. It will be compatible with an existing videomicroscope, permitting both direct observation and video documentation of sperm visibility during the freeze-thaw process. Application accepted by Commissioner of Customs: November 26, 1996.

Docket Number: 96–126. Applicant: Cornell University, Purchasing Department, 55 Judd Falls Road, Ithaca, NY 14850. Instrument: IR Mass Spectrometer, Model Delta^{plus}. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for the high precision determination of stable isotopes of carbon, hydrogen, oxygen, nitrogen, and sulfur during studies of (1) water and CO^2 flux in environmental systems, (2) plant-water-atmosphere relationships and (3) artificially enriched carbon, trace gases, and isotopes in carbonates. Application accepted by Commissioner of Customs: November 26, 1996.

Docket Number: 96–127. Applicant: U. S. Geological Survey, Box 25046, MS 963, Denver Federal Center, Denver, CO 80225. Instrument: SIR Mass Spectrometer with Automated Sample Peripherals, Model Optima. Manufacturer: Micromass, United Kingdom. Intended Use: The instrument will be used during investigations to determine the stable isotope composition of the appropriate geological waters, rocks and minerals to further the understanding of the history of the earth's climate and wide range of geological and environmental processes. An additional use of the instrument will be to develop the capability of analyzing extremely small samples for stable isotope compositions using domestic manufactured lasers for microsampling. Application accepted by Commissioner of Customs: December 2, 1996.

Docket Number: 96–128. Applicant: Montana State University, Microbiology Department, 109 Lewis Hall, P.O. Box 17352, Bozeman, MT 59717–0352. Instrument: Real-time Microbial Analysis System, Model ChemScan. Manufacturer: Chemunex SA, France. Intended Use: The instrument will be used to count the numbers of bacteria in samples of water, wastewater, soil, sediment, food, beverage and other similar materials. In addition, the instrument will be used for graduate and undergraduate student research and training. Application accepted by Commissioner of Customs: December 2, 1996.

Docket Number: 96–130. Applicant: State University of New York, Research Foundation, Stony Brook, NY 11794. Instrument: Mass Spectrometer, Model Delta^{plus}. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for studies concerning the relative abundances of the isotopes carbon-12 to carbon-13, oxygen-18 to oxygen-16, hydrogen-1 to hydrogen-2, nitrogen-14 to nitrogen-15, and sulfur-34 to sulfur-36 in gas phase compounds, including atmospheric carbon monoxide, atmospheric methane, sulfur hexafluoride, molecular nitrogen, and molecular oxygen. In addition, the instrument will be used for hands on instruction of mass spectrometry and will be available to graduate students pursuing advanced degrees in the earth sciences. Application accepted by Commissioner of Customs: December 4, 1996.

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 97–924 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Southern California; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–061R. Applicant: University of Southern California, Los Angeles, CA 90033. Instrument: 3–Dimensional Motion Analyser, Model Vicon System 370. Manufacturer: Oxford Metrics, Ltd., United Kingdom. Intended Use: See notice at 60 FR 40823, August 10, 1995.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) exact synchronization of position and force data used in inverse dynamic analysis and (2) a unique software suite permitting instant visualization of both normal and pathological states of motion. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–927 Filed 1–14–97; 8:45 am]

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Yale University;Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–102. Applicant: Yale University, New Haven, CT 06520. Instrument: SIMS IVS Console. Manufacturer: Surrey Medical Imaging Systems Ltd., United Kingdom. Intended Use: See notice at 61 FR 55972, October 30, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated October 21, 1996, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–926 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 970109004–7004–01]

RIN 0625–ZA04

Amend Cooperative Program to Establish and Operate "American Business Centers" in the Newly Independent State of the Former Soviet Union

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Reference 58 FR 36941, July 9, 1993, the International Trade Administration (ITA) announces that it will accept competitive proposals from organizations currently managing one, or more, American Business Center(s) to continue operations at their respective site(s). Each organization currently working with ITA under a cooperative agreement may submit competitive proposals for up to $150,000 in additional Federal support to continue operations for up to an additional twelve months. Successful Applicants will be funded by amending existing cooperative agreements. The total amount of award funds available is $650,000.

DATES: Applications must be received no later than 4:30 pm, E.S.T., February 14, 1997. Applications received after that time will not be reviewed by ITA. Applications will not be accepted via e-mail or facsimile machine transmission.

ADDRESSES: Applications must be mailed or hand delivered to, and Application Kits may be obtained from, the U.S. Department of Commerce, Room 1235, HCHB, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Vivian Spathopoulos, Deputy Director, Russia/NIS Program Office, U.S. & Foreign Commercial Service, U.S. Department of Commerce, telephone: (202) 482–2902.

SUPPLEMENTARY INFORMATION: Proposals will be reviewed competitively against the following seven criteria: Quality of Work Plan, 30%; U.S. Trade and Investment Opportunities, 30%; Plan for Self-Sustainability, 10%; Success to Date, 15%; U.S. Small Business Utility, 5%; Qualifications of Applicant, 5%; and, Reasonableness of Cost, 5%. The application selection process will be the same as those published in the July 9, 1993 **Federal Register** notice referenced above. ITA reserves the right to reject any or all of the proposals.

This announcement extends the period of time during which an American Business Center (ABC) operator may receive Federal assistance from three (03) to four (04) years and postpones the end date of the program from September 30, 1997 to September 30, 1998. All other terms and conditions listed in the above referenced **Federal Register** notice remain in effect. All eligible Applicants will be sent an Application Kit via overnight mail or other priority mail.

Notwithstanding any other provision of law, no person is required to nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This action involves collections of information subject to the PRA and have been approved under control numbers 0348–0040, 0348–0043, 0348–0044, 0348–0046 and 0605–0001.

ITA will accept only those applications submitted by institutions currently administering one, or more, ABC(s) under the terms of this program. Incumbent operators may only apply to secure additional funding to continue operations at the site(s) where the Applicant already operates an ABC. Applicants must submit separate applications for each site.

Dated: January 7, 1997.

Lauri J. Fitz-Pegado,

Assistant Secretary and Director General, The Commercial Service.

[FR Doc. 97–1011 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–FP–P

National Institute of Standards and Technology

Notice of Public Meeting on the Fastener Quality Act

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of open meeting.

SUMMARY: NIST will hold an open meeting on February 4, 1997, to solicit industry views on the use of the statistical process control (SPC) in the manufacture of fasteners under the Fastener Quality Act (Public Law 101–592, as amended by Public Law 104–113) (The Act). The purposes of the meeting are to determine what impact, if any, the inspection, testing, and certification requirements of the Act and regulations may have on fastener manufacturers who use statistical process control and to identify ways in which the requirements of the Act and regulations might be met by SPC. Fastener manufacturers, Major End Users of fasteners (Automobile, Aerospace, Heavy Machinery, and others), representatives of Consensus Standards Bodies and Laboratory Accreditation Organizations, and academics with appropriate engineering expertise are invited to make presentations not exceeding 15 minutes each during the meeting.

DATES: The meeting will be held on February 4, 1997, from 9:00 a.m. until 5:00 p.m. Individuals and organizations wishing to present information orally during the meeting must contact NIST not later than January 24, 1997, to request time, not to exceed 15 minutes, on the program.

ADDRESSES: The meeting will take place in the Green Auditorium, Administration Building (Bldg. 101), at NIST in Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Individuals and organizations wishing to present information orally during the meeting should contact Mr. David

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Edgerly, Deputy Director, Technology Services, NIST, telephone 301–975–4510, telefax 301–975–2183. All other questions should be directed to Dr. Subhas Malghan, Program Manager, Fastener Quality Act, Building 820, Room 306, National Institute of Standards and Technology, Gaithersburg, Maryland 20899; telephone 301–975–6101, telefax 301–975–2183.

SUPPLEMENTARY INFORMATION:

The agenda for the meeting is:

1. Welcome and opening remarks.
2. NIST overview of SPC issues raised by industry.
3. Statements by members of the public on the issues.
4. Discussion of potential solutions.
5. Next Steps (NIST).

Various industries, including automobiles, aerospace, and heavy machinery industries have established quality assurance programs as a means of assuring quality parts and materials from large networks of suppliers, and have invested considerable energy and expense in developing such systems. Companies supplying fasteners under quality assurance systems (such as QS9000), have also invested considerable energy and expense in putting quality systems in place and in getting registered to them as a condition of supplying fasteners to major end users. NIST has heard from some representatives of industry that the Fasteners Quality Act's reliance on lot control and final inspection of fasteners may be inconsistent with and may not meet the standards of modern mass production using statistical process control.

The proposed meeting is for the purpose of addressing these issues and to provide a forum for discussion of possible solutions under the Act and regulations. NIST would like to hear from a variety of sources including the aerospace, automobile and heavy machinery industries, fastener manufacturers who supply such industries on the use of statistical process control under quality assurance plans similar to QS9000, and interested academics. Also, because reliance upon existing consensus standards and specifications is a cornerstone of the Fastener Quality Act, representatives of consensus standards organizations are invited to discuss efforts underway to recognize statistical process control in fastener standards and specifications. Similarly, some fastener manufacturers rely on in-process measurements of critical fastener parameters by manufacturing personnel rather than upon final testing of such parameters by an accredited laboratory. Because SPC may implicate laboratory accreditations under the Act and regulations, laboratory accreditation bodies are also invited to present their views.

Dated: January 8, 1997.

Elaine Bunten-Mines,

Acting Associate Director.

[FR Doc. 97–942 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

NOAA Coastal Ocean Data Workshop

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of workshop.

SUMMARY: The National Oceanographic Data Center (NODC) of the National Environmental Satellite, Data, and Information Service (NESDIS) and the Coastal Services Center (CSC) of the National Ocean Service (NOS) in the National Oceanic and Atmospheric Administration (NOAA), and the University of Rhode Island Graduate School of Oceanography (GSO) are co-sponsoring a NOAA Coastal Ocean Data Workshop on March 11–13, 1997. The purpose of the workshop is to enhance NOAA's ability to meet the requirements of its customers in the coastal ocean community regarding data and information management; and to encourage formation of additional partnerships and joint ventures.

DATES: The workshop will take place on March 11–13, 1997. It will begin at 8:30 a.m. on the 11th, and end at 12 noon on the 13th.

ADDRESSES: The workshop will be held at J. Seward Johnson Marine Education and Conference Center at the Harbor Branch Oceanographic Institution in Fort Pierce, FL. Parties interested in participating in the workshop should contact Roz Cohen (NODC) at 301–713–3267 x146 by close of business on January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Roz Cohen (NODC) at 301–713–3267 x146.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to enhance NOAA's ability to meet the requirements of its customers in the coastal ocean community by:

—Providing a forum for individuals in the coastal ocean community to present their requirements regarding data and information management, product development, and synthesis;
—Increasing knowledge and awareness of NOAA's activities within the coastal ocean community in the areas of data and information management, synthesis, and product development;
—Providing additional opportunities for NOAA to form partnerships and joint ventures with its partners in the coastal ocean community; and
—Being responsive to the new Ocean Partnership Program.

The workshop will include about 80 participants from Federal, state, and local government agencies, academia, the private sector, and the general public. It will consist of a series of plenary and smaller working group sessions. The major areas addressed will be (1) identification of data required to address major regional and national coastal ocean issues and scientific research priorities; (2) identification of specific data management requirements: data types, levels of precision, national and international standards, levels of quality control metadata and documentation, formats, accessibility, timeliness, synthesis products, etc.; and (3) potential partnerships, joint ventures, and networking to implement the recommendations.

The National Oceanographic Data Center is one of several environmental data centers managed by the National Oceanic and Atmospheric Administration. The headquarters office of NODC is located in Silver Spring, MD. There are five field offices collocated with major government or private oceanographic laboratories in Woods Hole, MA; Miami, FL; La Jolla, CA; Seattle, WA, and Honolulu, Hawaii. NODC houses the world's largest collection of publicly available oceanographic data, including coastal ocean holdings. The primary mission of NODC is to ensure that oceanographic data collected at great cost are maintained in a permanent archive that is easily accessible to the world science community and to other users. NODC does not conduct any data collection programs of its own; it serves solely as a repository and dissemination facility for data collected by others. In this capacity, NODC acquires, processes, archives, analyzes, and disseminates global oceanographic data; and develops analytical and descriptive products to meet user requirements. NODC also operates World Data Center–A for Oceanography and the NOAA Library.

Each year the NODC responds to thousands of requests for oceanographic data and information from national and international customers in Federal, state, and local government agencies, the private sector, non-profit

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organizations, academia, and the general public.

The National Oceanic and Atmospheric Administration Coastal Services Coastal Services Center is a coastal resource advisory center that draws on the expertise of NOAA and its partners to address critical coastal resource issues. Established in 1994, in Charlestown, South Carolina, the Center's mission is to identify, develop, and facilitate the use of technologies and information that support sustainable use and management of coastal resources. The Coastal Services Center bridges the gap between coastal scientists and resource managers by bringing Center staff, technologies, and outside partner expertise to bear on national problems related to coastal ecosystems and economies. The Center focuses primarily on issues of resource management, land use impacts, and habitat loss as well as coastal hazards and cumulative secondary impacts of coastal development. Clients of the Coastal Services Center include coastal resource managers, policy makers, scientists, environmental organizations, coastal and marine science educators, and private business people. The Center delivers information to the coastal resource community through advisory services, Internet World Wide Web service, information bases, summary reports, training workshops, short courses, conferences, seminars, fact sheets and publications.

The Graduate School of Oceanography of the University of Rhode Island is one of the largest and most widely known graduate schools of oceanography in the United States. It has joined with NOAA as a partner in establishing a national coastal data network because it has particular strengths in coastal oceanography and in distributed ocean data systems, has one of the largest marine science libraries in the world, and is the location of the Sea Grant Depository. The University has been a national Sea Grant College since 1971, and in 1989 it was designated a NOAA Center of Excellence in coastal marine science.

Dated: January 9, 1997.

Ronald L. Fauquet,

Deputy Director, National Oceanographic Data Center.

[FR Doc. 97–891 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 010797C]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Halibut Subsistence Committee will hold a meeting in Anchorage, AK.

DATES: The meeting will be held on January 22, 1997, beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the University of Alaska, Observer Training Center, 707 A Street, Room 205, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Halibut Subsistence Committee was appointed by the Council to review existing halibut regulations as they pertain to subsistence users and provide the Council with advice and direction on regulation of halibut subsistence fisheries. This first meeting will include discussions of:

1. Eligible users;
2. Eligible communities;
3. Qualifying gear; and
4. Minimum size of halibut.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1008 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010797B]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Joint Committee of the Alaska Board of Fisheries and North Pacific Fishery Management Council (Council) will hold a meeting in Anchorage, AK.

DATES: The meeting will be held on January 19, 1997, beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the University of Alaska, Observer Training Center, 707 A Street, Room 205, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Joint Committee of the Alaska Board of Fisheries and the Council was appointed to develop a protocol for future groundfish management off Alaska. This meeting will include discussions of:

1. October 1996 Board action to develop a state water Pacific cod fishery in the Gulf of Alaska;
2. December 1996 Council discussion of Board action;
3. Other groundfish fisheries under joint management; and
4. Development of recommendations to the Board and Council for a protocol for joint review of future groundfish management proposals.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1009 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010797E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team will hold a public meeting.

DATES: The meeting will begin at 10:00 a.m. on January 21, 1997, and will continue from approximately 8:00 a.m. to 5:00 p.m. each day through January 24, 1997.

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ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The meeting is a work session of the Salmon Technical Team to draft the 1997 stock status report, "Preseason I: Stock abundance Analysis for 1996 Ocean Salmon Fisheries." The final report will be distributed to the public and reviewed by the Council at its March meeting in Portland, OR.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1006 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010797D]

South Atlantic Fishery Management Council; Teleconference

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Scientific and Statistical Committee (Committee) and the ad hoc Bycatch Reduction Device (BRD) Advisory Panel (AP) via conference call. The Committee and AP will provide additional technical recommendations on the development of a BRD testing protocol. This protocol will specify minimum data requirements, outline a basic experimental design, and recommend a statistical technique for testing and analyzing new or modified BRDs.

DATES: The meeting will be held on January 27, 1997, at 2:00 p.m.

ADDRESSES: The following two listening locations will be provided to allow the public to hear the Committee and Advisory Panels' deliberations on the BRD testing protocol:

1. Charleston, SC—South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

2. St. Petersburg, FL—NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: (813) 570–4301.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan_buchanan@safmc.nmfs.gov

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 20, 1997.

Dated: January 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1007 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

Final Certification for the Consolidation of 70 Weather Service Offices (WSOs)

ACTION: Notice.

SUMMARY: On January 2, 1997 the Under Secretary of Commerce for Oceans and Atmosphere approved and transmitted 70 consolidation certifications to Congress.

EFFECTIVE DATE: January 15, 1997.

ADDRESSES: Requests for copies of the final consolidation certification packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: The 70 consolidation certifications were comprised of three groups as described and listed below. The first group, consisting of 42 consolidations, were proposed and the 60-day public comment period commenced upon publication of three **Federal Register** notices between December 1995 and February 1996. There were no public comments received. The Modernization Transition Committee (MTC) considered and endorsed these 42 consolidation certifications at its April 24, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) Akron, OH
(2) Atlantic City, NJ
(3) Apalachicola, FL
(4) Baltimore, MD
(5) Bristol, TN
(6) Cape Hatteras, NC
(7) Columbus, OH
(8) Concord, NH
(9) Colorado Springs, CO
(10) Concordia, KS
(11) Dayton, OH
(12) Daytona Beach, FL
(13) Del Rio, TX
(14) Detroit, MI
(15) Grand Island, NE
(16) Harrisburg, PA
(17) Hartford, CT
(18) Havre, MT
(19) Helena, MT
(20) Kansas City, MO
(21) Knoxville, TN
(22) Lynchburg, VA
(23) Mansfield, OH
(24) Moline, IL
(25) New York City, NY
(26) Norfolk, VA
(27) Pensacola, FL
(28) Port Arthur, TX
(29) Portland, ME
(30) Providence, RI
(31) Raleigh, NC
(32) Richmond, VA
(33) Roanoke, VA
(34) Rockford, IL
(35) Toledo, OH
(36) Tupelo, MS
(37) Waco, TX
(38) West Palm Beach, FL
(39) Williamsport, PA
(40) Wilmington, DE
(41) Worcester, MA
(42) Youngstown, OH

The second group, consisting of 18 consolidations, were proposed and the 60-day public comment period commenced upon publication of two **Federal Register** notices in between March and April 1996. Two public comments were received; one with regard to WSO Bakersfield, CA and one with regard to WSO Indianapolis, IN. These comments and responses are set forth here for reference.

Comment: A comment from Sean Boyd, KSEE 24 Television, Fresno, California questioned the WSR–88D precipitation algorithm. He stated, "Initially, I have concerns, which were unfounded, about the potential health hazards for those in close proximity to the WSR–88D. Those concerns have long been put to rest now. There is no question that the WSR–88D is the finest tool to date for the detection of severe weather, and for precipitation estimates. Regarding the former: severe weather in central California is rare; however the rules for such episodes are different

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here than areas east of the Rockies, and the algorithms for the site in Hanford could probably use a little "tweaking." Please don't ask me to be specific; I am not a mathematician. But from what I have learned about the device, having taken Les Lemon's short course, there are certain parameters that are, to an extent, adjustable. Regarding the latter: it seems precipitation estimates are very good, and we get excellent ground truth from our weather spotters, members of the Association of Central California Weather Observers, whose numbers are in the hundreds. Correct me if I'm wrong, but I have heard that there is occasional trouble at the Hanford site with the 88D not clicking into the precipitation mode, when there is precipitation reaching the ground here."

Response: The precipitation algorithm has three modes of execution; Category 0—no precipitation within 124nm of the RDA; Category 1—significant precipitation within 124nm of the RDA; and Category 2—insignificant precipitation within 124nm of the RDA.

These modes are selected automatically by the software, but the selection can be adjusted through parameters. The criteria to determine which level is active at any given time is: (1) The real coverage of the echoes, and (2) the intensity of the echoes. Category 1 and 2 generate precipitation products; category 0 does not. San Joaquin Valley NWSO (Hanford WSR–88D site) had one occurrence, where through a combination of clutter suppression and precipitation category settings, precipitation products were not generated. This occurred as a light precipitation event moved into the area. San Joaquin Valley NWSO forecasters quickly diagnosed the problem, and it has not occurred again.

Comment: One comment was received from Jerry Salerno, Terre Haute Automated Flight Service Station (AFSS). His comment included the following comments received from four Specialists:

"*Specialist 1.* Has observed little change in the elimination of AP. Has noticed that, at times, the sensitivity of the WSR–88D seems to increase, thus showing strong precipitation echoes when only clouds or virga are present.

Specialist 2. Has noted improvement. Before the "clean up", echoes would be shown beyond an area of thunderstorms when SA's reported no precipitation in that area. Also noted at night and morning, frequent large circles of "echoes" around many radar sites simultaneously.

Specialist 3. On 5/15/96, prior to 1200Z through approximately 1300Z, large area of AP was observed in extreme southern Illinois and western Kentucky—more than 100 miles from the nearest precipitation.

Specialist 4. On 5/17/96 at 1800Z, ground clutter/AP was noted around LOT, IND, MPX, OHX, and MRX radar sites."

Response: On June 10, Dave Tucek, WCM NWSFO Indianapolis, called the Terre Haute AFSS to discuss their radar concerns. Dave spoke with Cynthia Cole, Assistant Manager of Programs, Mark Carver, Training Specialist, and Jerry Salerno. Their position has not changed since original discussions during the Confirmation of Services process. They know that AP and ground clutter, which were not encoded in the ROB before the WSR–88D, are now encoded by the AUTOROB program and a potential source of erroneous interpretation by briefers. They are satisfied the NWS is working toward a solution, but want to see this non-precipitation data eliminated or reduced to a point it does not cause confusion for the briefers. The AFSS briefers were trained to recognize non-precipitation patterns through time-lapse monitoring, and by comparison of radar echoes to satellite data, lightning data and ground truth data. The AFSS briefers prefer not to use the AUTOROB anymore for verification because of the AP and ground clutter encoding. They are concerned they may mis-interpret ground clutter as a thunderstorm, or worse, a thunderstorm as ground clutter. Despite the improved filtering the NWS has incorporated this April through the use of Hourly Digital Precipitation, ground clutter still exists as shown by the AFSS example cases in May. Dave also spoke to Mike Edwards of Kavouris (which supplies the AFSS radar data) about their filtering methods on ground clutter. Kavouris does not filter single site radar data but does employ extensive filtering techniques in their Composite Radar Image. But still, despite filtering techniques employed by the NWS and by Kavouris, ground clutter still occurs and is a concern. And this is an issue for all radar sites, not just Indianapolis. The Terre Haute Flight Service did not feel a need for additional training from the Indianapolis NWSFO staff. They appreciated our offers for help but felt further solutions would require decisions and actions at national NWS and FAA levels. They again appreciate NWS' efforts but would still like ground clutter suppression improved further. Regarding the events in question that were listed in the **Federal Register**, NWS Indianapolis had no archive data available. Other NWS office's clutter suppression techniques and Kavouris' filter techniques and data display are not well known either. Despite these limitations, Dave was familiar with the problems the briefers experienced and provided the following comments to those cases. Specialist 1 had observed little change to the elimination of AP. At Indianapolis, we invoke different Clutter Suppression Regions based on the degree of AP occurring. This filtering reduces the amount of AP but typically does not eliminate it. Specialist 1 also commented on apparent sensitivity changes leading to strong precipitation echoes where only clouds or virga were present. This likely resulted from a radar site switching from Precipitation Mode to Clear Air Mode. Clouds and virga are often detected in Clear Air Mode but not in Precipitation Mode due to longer sampling times and greater sampling density. On a Kavouris composite, clouds and virga appear as weak echoes. On a Kavouris single site display, clouds and virga may be interpreted as strong precipitation echoes because the color scheme for weak echoes is similar to the composites colors for strong echoes. The briefers must recognize that a particular color may represent different intensities on composite data and single site data. Specialist 2 noted improvement because of the lack of echoes occurring behind an area of thunderstorms. This was likely coincidence that AP was not occurring behind the thunderstorms. Specialist 2 also noted frequent large circles of echoes around many radar sites during the night and morning. This is typical AP many radar sites display at these times of day. Moisture and temperature stratifications overnight yield atmospheric density discontinuities which lead to animalous beam refraction or AP. Unless clutter suppressions are invoked at each individual site, this AP signature will not disappear until atmospheric conditions change, which is usually late morning. Specialist 3 noted on 5/15/96 a large area of AP over southern Illinois and western Kentucky more than 100 miles from any rain. These locations are beyond our radars display range but are the typical AP patterns that occur at many sites for reasons mentioned in the above paragraph. Specialist 4 noted on 5/17/96 at 1800Z ground clutter/AP patterns occurring at LOT, IND, MPX, OHX, and MRX radar sites. I cannot attest to weather conditions at sites other than IND. This was a rather uncommon event. Anomalous Propagation does not normally occur in the early afternoon because layer stratification has been destroyed by convective mixing. In this case, Indianapolis' ground was very wet due to nearly one inch of rain on 5/15 and

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nearly 5 inches of rain since May 1. A strong temperature inversion over Indiana at midday on the 17th likely resulted in strong moisture gradients leading to the AP experienced. In conclusion, the Terre Haute AFSS is satisfied with NWS efforts to improve radar data but still wants to see further improvement. In our opinion, the AFSS specialists can recognize AP and correctly distinguish precipitation and non-precipitation targets for pilots. We conclude the Indianapolis WSR–88D is meeting the needs of our customers.

The MTC considered these 18 consolidation certifications and the public comments received, and endorsed them at its June 27, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) WSO Allentown, PA
(2) WSO Atlanta, GA
(3) WSO Bakersfield, CA
(4) WSO Beckley, WV
(5) WSO Bridgeport, CT
(6) WSO Charleston, WV
(7) WSO Columbus, GA
(8) WSO Dubuque, IA
(9) WSO Elkins, WV
(10) WSO Huntington, WV
(11) WSO Indianapolis, IN
(12) WSO Las Vegas, NV
(13) WSO Lubbock, TX
(14) WSO Macon, GA
(15) WSO Minneapolis, MN
(16) WSO Portland, OR
(17) WSO Salem, OR
(18) WSO Wilkes-Barre, PA

The third group, consisting of 10 consolidations, were proposed and the 60-day public comment period commenced upon publication of a **Federal Register** notice in July 1996. There were no public comments received. The MTC considered and endorsed these 10 consolidation certifications at its September 19, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) WSO Baton Rouge, LA
(2) WSO Columbia, MO
(3) WSO Des Moines, IA
(4) WSO Lansing, MI
(5) WSO Lexington, KY
(6) WSO Lincoln, NE
(7) WSO Louisville, KY
(8) WSO Montgomery, AL
(9) WSO Siox City, IA
(10) WSO St. Louis, MO

After considering any public comments received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved all 70 consolidation certifications and transmitted them to Congress on January 2, 1997. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements by publishing the final consolidation certifications in the **Federal Register**.

Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97–892 Filed 1–14–97; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Semiconductor Technology Council will hold its sixth meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster precompetitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c)(3) and (4), Title 5, U.S.C. There will be an open session from 1:30 p.m. to 2:00 p.m.

DATES: January 27, 1997.

ADDRESSES: Washington Room, Key Bridge Marriott, 1401 Lee Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Kaigham J. Gabriel, Director, DARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2252.

Dated: January 9, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 97–889 Filed 1–14–97; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Notification of Location and Hours of Operation for Armed Forces Discharge Review/Correction Board Reading Room

AGENCY: Army Review Board Agency.

ACTION: Notice.

SUMMARY: In compliance with DoD Directive 1332.28D1f, the Secretary of the Army hereby gives notice of the location, hours of operation and similar types of information regarding the Reading Room. The Reading Room is located in the Pentagon, Room 2E123. Effective February 15, 1997, the hours of operation are Thursday from 7:30 am to 4:00 pm.

FOR FURTHER INFORMATION CONTACT: CPT Bronté I. Flood, Army Review Board Agency, 1941 Jefferson Davis Highway, Crystal Mall #4, Room 204, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Discharge Review Board (DRB) documents made available for public inspection and copying are located in the Reading Room. The documents are indexed in a usable and concise form so as to enable the public, and those who represent applicants, to isolate from all decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for which the DRB or the Secretary concerned granted or denied relief.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 97–916 Filed 1–14–97; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers

Regulatory Guidance Letter 96–2

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public of the issuance of the U.S. Army Corps of Engineers (Corps) Regulatory Guidance Letter (RGL) regarding the joint U.S. Environmental Protection Agency (EPA) and Corps memorandum to the field clarifying the applicability of exemptions under Section 404(f) of the Clean Water Act to "deep-ripping" activities in wetlands.

DATES: Effective date December 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Cole, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0201 or Mr. Michael Boots, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency at (202) 260–2315.

SUPPLEMENTARY INFORMATION: Regulatory Guidance Letter 96–2 was issued on December 12, 1996. The memorandum

attached with RGL 96–2 was developed jointly between the Corps and EPA to provide written guidance for our field offices. EPA is responsible for determining and/or interpreting which activities are exempt under Section 404(f) of the Clean Water Act. Questions have been raised involving "deep-ripping" and related activities in wetlands, including whether discharges associated with these actions fall within the exemption found at Section 404(f)(1)(A). Furthermore, the question has been raised whether such activities falling under that exemption would be recaptured under Section 404(f)(2). The memorandum enclosed with RGL 96–2 clarifies this issue.

Dated: December 12, 1996.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

RGL 96–2, Date: 12 Dec. 1996, Expires: 31 December 2001

Subject: Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands.

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when "deep-ripping" activities within wetlands require Department of the Army authorization.

2. This guidance expires 31 December 2001, unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

12 Dec 1996.

Memorandum to the Field

Subject: Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands.

Purpose: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with "deep-ripping" and related activities in wetlands.[1]

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 404(f)(2).

2. Section 404(f)(1) does not provide a total, automatic exemption for all activities related to agricultural, silvicultural, or ranching practices. Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and "other activities of essentially the same character as named" [44 FR 34264]. For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from "normal farming, silvicultural, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices."

3. Section 404(f)(1)(A) is limited to activities that are part of an "established (i.e., ongoing) farming, silviculture, or ranching operation." This "established" requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 404 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations [40 CFR 230 and 33 CFR 320] and preamble define in some detail the specific "normal" activities listed in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words "such as" have been consistently interpreted as restricting the section "to the activities named in the statute and other activities of essentially the same character as named," and "preclude the extension of the exemption * * * to activities that are unlike those named." [44 FR 34264].

b. Plowing is specifically defined in the regulations not to include the redistribution of surface material in a manner which converts wetlands areas to uplands [See 40 CFR 233.35(a)(1)(iii)(D)].

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a "change in use" within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a change in use of the site [See 40 CFR 233.35(c)].

5. The statute includes a provision at Section 404(f)(2) that "recaptures" or reestablishes the permit requirement for those otherwise exempt discharges which:

a. convert an area of the waters of the U.S. to a new use, *and*

b. impair the flow or circulation of waters of the U.S. *or* reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provisions (a) and (b) above. Thus, at a minimum, any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)92) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be "incidental to" or "part of" an activity which is intended to or will forseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue

1. Questions have been raised involving "deep-ripping" and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. "Deep-ripping" is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (e.g., impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such, it requires the use of

[1] As this guidance addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations [40 CFR 230 and 33 CFR 320] as "all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops" [40 CFR 232.3(d)(4)]. As a general matter, normal plowing activities involve the annual, or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel, or series of blades, chisels, or discs, usually 8–10 inches in length, pulled behind a farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. it is conducted as part of an ongoing, established agricultural, silvicultural, or ranching operation; and

b. the activity is consistent with the definition of plowing in EPA and Corps regulations [40 CFR 230 and 33 CFR 320]; and

c. the plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (e.g., discing, harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of specialized equipment, including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades, shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a "natural" system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressional wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established on-going farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the soil surface. It may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an established, ongoing agricultural, silvicultural, or ranching operation, to break up compacted soil layers and where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are not part of a normal, ongoing activity, and therefore not exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural, silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the "recapture" provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas and similar depressional wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works U.S. Army Corps of Engineers.

[FR Doc. 97–915 Filed 1–14–97; 8:45 am]

BILLING CODE 3710-92-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below.

TIME AND DATE: 9:00 a.m., February 5, 1997.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will review, with Department of Energy staff, the status of DOE's Implementation Plan for Board Recommendation 95–2.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: January 13, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–1109 Filed 1–13–97; 2:37 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 17, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 9, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: List of Hearing Officers—Recordkeeping.

Frequency: On occasion.

Affected Public: State, local or Tribal Gov't SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,600.

Burden Hours: 1,600.

Abstract: Under Part B of the Individuals with Disabilities Education Act, each local educational agency receiving Part B funds must keep a list of persons who serve as hearing officers along with their qualifications. The list serves to provide interested parties of the background of hearing officers.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Applications for Competitive Review to Provide Financial Assistance to Increase Educatibnal Opportunities for Alaska Natives.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 81.

Burden Hours: 1,620.

Abstract: The information is needed to determine the quality of proposed services to increase educational opportunities and address the academic needs of Alaska Natives. The Department will use the information to make grant awards.

[FR Doc. 97–905 Filed 1–14–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Informaton Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 14, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600

Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer of the Office of the Chief Information Officer publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 9, 1997.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Jacob K. Javits Fellowship Program.
Frequency: Annually.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 2,000.
Burden Hours: 10,000.
Abstract: These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Directory of Designated Low-Income Schools for Teacher Loan Cancellation Benefits.
Frequency: Annually.
Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 570.
Abstract: Under the Federal Perkins and National Direct Student Loan Program, a borrower may have a portion of his/her loan canceled if they teach at a school that has been determined to have a high concentration of student from low-income families.

[FR Doc. 97–906 Filed 1–14–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Basic Energy Sciences Advisory Committee; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a two-year period beginning in January 1997. The Committee will provide advice to the Director of Energy Research on the basic energy sciences program.

The Secretary has determined that the renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory committee can be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, D.C. on January 8, 1997.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–937 Filed 1–14–97; 8:45 am]
BILLING CODE 6450–01–P

High Energy Physics Advisory Panel

Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101-6.l0l5(a)(l), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two-year period beginning in January 1997. The Panel will continue to provide advice to the Director of Energy Research on long-range planning and priorities in the national high energy physics program.

The Secretary of Energy has determined that renewal of the Panel is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Marsha Marsden at (301) 903–4140.

Issued in Washington, D.C. on January 8, 1997.

JoAnne Whitman

Deputy Advisory Committee Management Officer

[FR Doc. 97–936 Filed 1–14–97; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–184–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 9, 1997.

Take notice that on January 7, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–184–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new point of delivery to Columbia Gas of Ohio, Inc. (COH) in Muskingum County, Ohio and to reassign a portion of the Maximum Daily Delivery

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Obligation (MDDOs) from an existing point of delivery to COH to the proposed point of delivery under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery for firm transportation service of 120 Dth/day for COH under Columbia's Rate Schedule SST. Columbia states that the quantities of natural gas to be provided through the new delivery point will be within Columbia's authorized level of services.

Columbia estimates the cost to construct the new point of delivery as $7,500 and states that COH will reimburse it 100% of the total actual cost of the proposed construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 15.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–913 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–176–000]

Columbia Gas Transmission Corporation; Notice of Application

January 10, 1997.

Take notice that on December 31, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–176–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon pipeline facilities in the Terra Alta Storage Field located in Preston County, West Virginia, and to construct and operate replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon 2.9 miles of various diameter segments of storage pipeline and appurtenances and to replace them with 2.6 miles of various diameter segments of pipeline and appurtenances. Columbia estimates the cost of the replacement at $2,394,700, with a net debit to accumulated provisions for depreciation for the abandoned facilities of $462,816. It is stated that the proposal is part of Columbia's ongoing program of upgrading its storage fields to ensure reliable operation of its pipeline system. It is asserted that the proposal will not affect the reservoir performance of the storage field or deliveries and that Columbia is not requesting authorization for any new or additional service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–930 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1663–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company Notice of Technical Conference and Potential Broadcast of Technical Conference

Issued January 8, 1997.

As previously announced in the Commission's order issued on December 18, 1996, *Pacific Gas and Electric Company, et al.*, 77 FERC ¶61,265 (1996), the Commission will convene a technical conference in the above captioned proceeding to be held on Friday, January 17, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The technical conference will commence at 9:30 a.m. and will be open to all interested persons. The Commissioners and Staff will participate in the technical conference, which will address options for mitigating the market power of Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company, who have jointly filed an application for authorization to sell power at market-based rates through a power exchange.

The Conference will consist of three panels, as outlined on the Attachment to this notice. In addition, all interested persons are invited to submit written comments addressing topics discussed at the technical conference. (There is no need to reiterate comments that already have been made in pleadings filed in these dockets.) Comments must be received on or before January 27, 1997. The comments should not be longer than 25 pages in length, double-spaced, on 8½" x 11" paper, with standard margins. Parties submitting comments must submit fourteen (14) written copies of their comments and also must submit two copies of the file on a computer diskette, one in Wordperfect 5.1 format, and one in a DOS file in the ASCII format (with 1" margins and 10 characters per inch.). The two computer files should be labeled (—.WP and —.ASC) to avoid confusion. Comments must include a one-page executive summary and must be filed with the Office of the Secretary, Federal Energy

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Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and reference Docket No. ER96–1663–000. All written comments will be placed in the Commission's Public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. The Commission also will make all comments available to the public on its electronic bulletin board (EBB).

Broadcast of Technical Conference

If there is sufficient interest, the Capitol Connection will broadcast the technical conference on January 17, 1997, to interested persons. Persons interested in receiving the broadcast for a fee should contact Julia Morelli at the Capitol Connection (703–993–3100) no later than January 14, 1997.

In addition, National Narrowcast Network's Hearings-On-the Line service covers all Commission meetings live by telephone so that anyone can listen without special equipment. Call 202–966–2211 for details. Billing is based on time on-line.

FOR FURTHER INFORMATION CONTACT: David E. Mead, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1024.

Linwood A. Watson, Jr.,
Acting Secretary.

Attachment—Panels, WEPEX Market Power Conference, January 17, 1997

Panel 1: Structural Mitigation Options

A number of options have been proposed which alter the market structure or create incentives to reduce market power. Issues associated with these options include:

- Divestiture: are the current divestiture proposals adequate to mitigate market power so that the Commission can approve market-based rates?
- Consumer access: how much do retail competition and real-time pricing mitigate horizontal market power?
- Existing entry barriers (generation and transmission): what are they and how can they be remedied? Who has the authority to remove any such barriers?
- Call contracts: how do call contracts mitigate market power for energy, capacity and ancillary services? What are the details that should be included in the contracts? How should the call contract prices be determined? Which units should be subject to call contracts?
- Transmission constraints: how do transmission constraints affect market power? How do transmission rights mitigate market power?
- Bidding trusts: what is needed to mitigate market power? Should bidding trusts be made a permanent mitigation measure?

Panelists

Paul Joskow, Elizabeth and James Killian Professor of Economics and Management; Head, Department of Economics, Massachusetts Institute of Technology
Representative, Sacramento Municipal Utility District
Jan Smutney-Jones, Executive Director, Independent Energy Producers Association
Jim Macias, Vice President and General Manager, Transmission Business Pacific Gas & Electric Company
Representative, California Public Utilities Commission
Jeffrey D. Watkiss, Coalition for a Competitive Electric Market

Panel 2: Mitigation—Institutional

When structural options are unavailable or inappropriate, a number of other options are available which remove the incentive or ability of entities to exercise market power. These options could be applied to all market participants and serve to ensure that market power is mitigated or applied to individual entities if the exercise of market power is detected.

- Bidding rules: what are appropriate bidding rules? In competitive markets, generators would be expected to bid their running costs.
- Bidding incentives: what is the effect of the CTC (e.g., as a revenue cap for the California IOUs)?
- Ancillary services: how may ancillary services interact with other services to encourage market power? How should ancillary services be procured to create competition and mitigate market power?

Panelists

William Hieronymous, Putnam Hayes and Bartlett, on behalf of San Diego Gas and Electric Company
W. Kent Palmerton, Manager of Industry Restructuring Programs, Northern California Power Agency
John Jurewitz, Manager of Regulatory Policy, Southern California Edison Company
Barbara Barkovitch, California Large Energy Consumers Association, or Keith McRae, Attorney for California Manufacturers Association
Eric Woychik, Utility Consumers Action Network and Toward Utility Rate Normalization

Panel 3: Monitoring for Market Power

- Information: what is the effect of widely available information on the ability to detect market power? What information should be collected and how will market power be identified?
- How do the physical properties of the network change market power analysis?
- How should capacity availability and withholding be identified and examined?
- Who should be responsible for monitoring? What are the appropriate roles for the ISO and the PX? What should the Commission do to monitor market power?

Panelists

Larry Ruff, Managing Director, Putnam, Hayes and Bartlett (invited)
Michael Florio, Toward Utility Rate Normalization
Representative, California Energy Commission
Joe D. Pace, Pacific Gas & Electric Company
Representative, Electricity Consumers Resource Counsel

[FR Doc. 97–914 Filed 1–14–97; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP97–179–000]

Questar Pipeline Company; Notice of Application

January 9, 1997.

Take notice that on January 2, 1997 Questar Pipeline Company (Questar) 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–179–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by removal, the above ground Drunkard's Wash No. 1 Measuring and Regulating Station located in Carbon County, Utah that serves as a jurisdictional receipt point on Questar's interstate transmission system, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the Drunkard's Wash No. 1 measuring and regulating station consist of a 4-inch Daniel senior meter run, a 3-inch Rockwell valve, telemetry and appurtenances housed in a 4-foot by 6-foot skid mounted meter building. Questar explains that the Drunkard's Wash No. 1 station was established as a temporary facility to receive natural gas volumes produced solely by River Gas Corporation (River Gas) into Questar's interstate transmission

system. Questar states that the Drunkard's Wash No. 1 station is no longer utilized as a receipt point, declaring that instead the natural gas produced by River Gas is now delivered at an alternate, larger capacity receipt point, known as the Drunkard's Wash No. 2 station, which is located approximately one mile south of the facility proposed to be abandoned.

Questar is not proposing to abandon any service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–911 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–180–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

January 9, 1997.

Take notice that on January 2, 1997, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–180–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon an inactive delivery point historically used to provided service to Geokinetics under Questar Pipeline's blanket certificate issued in Docket No. CP82–491–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar Pipeline states that the delivery point is located in Uintah County, Utah and that the as-constructed Geokinetics delivery point consisted of skid-mounted measuring and regulating facilities, a heater/separator and associated piping. These facilities were temporarily moved to Questar Pipeline's Vernal, Utah storage yard for safe keeping when Geokinetics went out of business. Questar Pipeline believes that the inactive delivery point should be formally abandoned since Geokinetics has been out of business for more than 10 years. Questar Pipeline states that Geokinetics was the only customer served at this location.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as a application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–912 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–175–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 9, 1997.

Take notice that on December 30, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Bismark, North Dakota 58501 filed in Docket No. CP97–175–000 a request pursuant to Sections 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval and permission to abandon a farm tap located in Dawson County, Montana, under the blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin asserts that Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, has extended its distribution system to serve the load previously served through the tap which Williston now proposes to abandon. Williston Basin also asserts that removal of the tap will eliminate the possibility of ice damage to the tap's riser from the flooding of a nearby river.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–910 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2926–000]

Wisconsin Power & Light Company; Notice of Filing

January 10, 1997.

Take notice that on November 22, 1996, Wisconsin Power & Light

Company amended its previous filing in this docket by submitting unbundled rate information.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–939 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5276–041]

Niagara Mohawk Power Corporation and Northern Electric Power Company, LP; Notice of Availability of Environmental Assessment

January 10, 1997.

An environmental assessment (EA) is available for public review. The EA was prepared for an application to amend the license for the Hudson Falls Hydroelectric Project. The application would allow the Niagara Mohawk Power Corporation and Northern Electric Power Company, LP (licensees) to install temporary 2-foot-high wooden flashboards on the Hudson Falls Dam. The New York State Department of Environmental Conservation (NYDEC) requests the flashboards to facilitate an ongoing PCB investigation and remediation program at the General Electric Company's Hudson Falls manufacturing facility located on the opposite side of the river from the project. The NYDEC indicated the temporary flashboards would help to prevent high river flows from entering the work area below the dam and increase the safety of working conditions in the river channel during the PCB remediation program. The duration of the PCB remediation program may be long-term, requiring up to 10 years to complete.

Flashboards are currently installed on a portion of the dam to divert water during construction of the hydroelectric facility. The prosed action would allow for the completion of flashboards across the entire length of the dam from May 1 through November 30, as necessary, to protect workers and equipment during conduct of the PCB investigation and remediation program.

The EA, written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission, concludes the approval of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–931 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Surrender of Exemption

January 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Surrender of Exemption

b. Project No.: 5572–006

c. Date Filed: December 12, 1996

d. Applicant: Joseph Hydro Company, Inc.

e. Name of Project: Canal Creek Hydroelectric Project

f. Location: On Big Sheep Creek, within Wallowa-Whitman National Forest near Joseph in Wallowa County, Oregon, Little Sheet Creek, and Wallowa Valley Improvement District Canal.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791 (a)–825 (r).

h. Contact: Mr. Norman E. Kamp, 111 Broadway, Suite 133, Box 205, Boise, Idaho 83702 (208) 338–5173

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671

j. Comment Date: January 31, 1997

k. Description of the Proposed Action: The exemptee requests to surrender its exemption for the existing project.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–907 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Surrender of Exemption

January 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Surrender of Exemption.

b. *Project No*: 5573–006.

c. *Date Filed*: December 12, 1996.

d. *Applicant*: Joseph Hydro Company, Inc.

e. *Name of Project*: Upper Little Sheep Creek, Hydroelectric Project.

f. *Location*: On Big Sheep and Little Creeks, within Wallowa-Whitman National Forest near Joseph in Wallowa County, Oregon.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

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h. *Contact*: Mr. Norman E. Kamp, 111 Broadway, Suite 133, Box 205, Boise, Idaho 83702, (208) 338–5173.

i. *FERC Contact*: Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date*: January 31, 1997.

k. *Description of the Proposed Action*: The exemptee requests to surrender its exemption for the existing project.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–908 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Surrender of Exemption

January 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 6621–006.

c. *Date Filed:* December 12, 1996.

d. *Applicant:* Joseph Hydro Company, Inc.

e. *Name of Project:* Ferguson Ridge, Hydroelectric Project.

f. *Location:* On Big Sheep Creek near Joseph in Wallowa County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Contact:* Mr. Norman E. Kamp, 111 Broadway, Suite 133, Box 205, Boise, Idaho 83702, (208) 338–5173.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* January 31, 1997.

k. *Description of the Proposed Action:* The exemptee requests to surrender its exemption for the existing project.

1. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–909 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11494–001, Kentucky]

Hydro Matrix Partnership Ltd.; Notice of Surrender of Preliminary Permit

January 10, 1997.

Take notice that the Hydro Matrix Partnership Ltd., permittee for the Newburgh Project No. 11494, located on the Ohio River in Henderson County, Kentucky, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 13, 1994, and would have expired on November 30, 1997. The permittee states that the project would be economically infeasible.

The permittee filed the request on December 30, 1996, and the preliminary permit for Project No. 11494 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–932 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11540–001, South Carolina]

Joyner Enterprises Association; Notice of Surrender of Preliminary Permit

January 10, 1997.

Take notice that the Joyner Enterprises Association, permittee for the Berry Shoals Project No. 11540, located on the South Tyger River in Spartanburg County, South Carolina, has requested that its preliminary permit be terminated. The preliminary permit was issued on February 7, 1996, and would have expired on January 31, 1999. The permittee states that the project would be economically infeasible.

The permittee filed the request on December 17, 1996, and the preliminary permit for Project No. 11540 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–933 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5576–5]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer Confidential Business Information (CBI) to its contractor, Industrial Economics, Inc. and its subcontractors: DPRA, Inc.; ICF, Inc.; Northbridge Environmental Management Consultants; Research Triangle Institute; Tetra Tech, Inc.; Booz, Allen & Hamilton, Inc.; Eastern Research Group; Energy and Environmental Research Corporation; Kerr & Associates, Inc.; Ross & Associates Environmental Consulting, Ltd.; SocioTechnical Research Application, Inc.; Tellus Institute and Versar, Inc. that has been or will be submitted to EPA under Section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than January 27, 1997.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W6–0061, Industrial Economics, Inc., and its subcontractors, will assist the Office of Solid Waste, Economics, Methods, and Risk Assessment Division, by providing technical support for: Methodology Development/Cross-Cutting Scoping Studies; Innovative Benefits Assessment; Economic Impacts; Industry Profiles; Screening and Prioritization; Environmental Indicators and Goals. EPA has determined that Industrial Economics, Inc., and its subcontractors, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Specifically, Industrial Economics, Inc. and its subcontractors, need access to the CBI that EPA collects, under the authority of Section 3007 of RCRA, in Industry Studies Surveys and other studies of industries involved with waste management.

In accordance with 40 CFR 2.305(h), EPA has determined that Industrial Economics, Inc., and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing their review of materials submitted, Industrial Economics, Inc., and its subcontractors, will return all CBI to EPA.

EPA will authorize Industrial Economics, Inc., and its subcontractors, for access to CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." Prior to transferring CBI to Industrial Economics, Inc., and its subcontractors, EPA will review and approve their security plans and Industrial Economics, Inc., and its subcontractors, will sign non-disclosure agreements.

Dated: December 17, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–979 Filed 1–14–97; 8:45 am]

BILLING CODE 6560–50–P

[PF–686; FRL–5580–3]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of pesticide petitions proposing to increase and decrease tolerances for ethephon in or on cottonseed, meat and milk, and proposes establishing new tolerances for cotton gin trash and poultry. The summary was prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket number [PF–686], must be received on or before, February 14, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2. 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–686]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip V. Errico, Acting Product Manager (PM 22), Rm., 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., 703–305–5540, e-mail: errico.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) 1H5603 (originally published in the **Federal Register** of April 3, 1991, (56 FR 13641)), and 6F4743 from Rhone-Poulenc AG Company, P.O. Box 12014, Research Triangle Park, NC 27709 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by increasing the established tolerances for residues of the plant growth regulator, ethephon, (2-chloroethyl phosphonic acid, in or on the raw agricultural commodities (RACs) cottonseed from 4.0 parts per million (ppm) to 6.0 ppm; meat by-products (except kidney) of cattle, goats, hogs, horses, and sheep from 0.1 to 0.2 ppm; by decreasing established tolerances for ethephon in or on RACs milk from 0.1 ppm to 0.01 ppm, fat of cattle, goats, hogs, horses, and sheep from 0.1 ppm to 0.02 ppm; and by establishing tolerances for ethephon in or on cotton gin byproducts to 180 ppm; kidney of cattle, goats, hogs, horses, and sheep at 1.0 ppm; eggs at 0.002 ppm; poultry meat at 0.01 ppm; poultry liver at 0.05 ppm; poultry fat at 0.02 ppm; and poultry meat byproducts (except liver at 0.01 ppm. The proposed analytical method is analysis for ethylene release.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as recently amended by the Food Quality Protection Act, Rhone-Poulenc AG Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Rhone-Poulenc AG Company and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood based on tomato, cantaloupe, apple, fig, pineapple, tobacco, grape, walnut, filbert, cherry, tangerine and lemon metabolism data. Ethephon degrades to ethylene phosphate and chloride. Data indicate that proximal and distal translocation of ethephon to fruits may occur following application to leaves. The residue of concern in plants is ethephon.

2. *Analytical method.* Adequate methods for purposes of enforcement of ethephon tolerances in plant commodities, ruminant tissues, and milk are available. The Amchem-Plant Method (PAM, Vol. II, Method I) is the recommended method for enforcement purposes for plant commodities and processed products other than wheat and barley straw. The Amchem-Cereal Method (forwarded to FDA for inclusion in the PAM, Vol. II, Method I) is the recommended method for enforcement purposes for wheat and barley straw. The Union Carbide-Animal Method (forwarded to FDA for inclusion in the PAM, Vol. II, Method III) is the recommended method for enforcement purposes for milk and animal tissues. These methods employ diazomethane as a methylating agent. A new plant and animal method has been submitted for enforcement purposes that does not employ diazomethane. The method principally involves the decomposition of ethephon to ethylene to determine the residues of ethephon. An independent lab validation of this method is in review at EPA.

3. *Magnitude of residues.* Residue studies have been conducted to support ethephon registrations on: cotton, apples, cherries, tomatoes, wheat, barley, peppers, grapes, tobacco, walnuts, almonds, blackberries, cantaloupe, pineapple, sugarcane and macadamia nuts. In addition, IR–4 is conducting work to support new uses on blueberries, coffee, cranberries, figs and guavas. All residue data requirements cited in the ethephon RED have been submitted to EPA. As a result of this work, increased tolerances have been proposed for cottonseed (6 ppm, PP 6F4743) and cotton gin by-products (180 ppm, amendment to PP 1H5603). As part of the reregistration process, the following tolerances will be revoked: cucumbers, filberts, lemons, pineapple forage and fodder, pumpkins, tangerines, tangerine hybrids and sugarcane molasses. The tolerances for residues of ethephon in or on food and feed commodities are currently based in terms of ethephon *per se*. Processing studies have been conducted on apples, barley, cottonseeds, grapes, pineapples, tomatoes, and wheat and are deemed adequate to determine the extent to which residues of ethephon concentrate in food/feed items upon processing of the raw agricultural commodity. Data indicate that ethephon residues concentrate in apple juice, dried apple pomace, barley hulls, cottonseed meal, grape juice, raisins, raisin waste, dried grape pomace, pineapple bran and pulp, dried tomato pomace, wheat bran, wheat shorts and germ and red dog. Available apple processing data indicate that residues of ethephon do not concentrate in wet apple pomace. Therefore, a feed additive tolerance on apple pomace is not required. Available tomato processing data indicate that residues of ethephon do not concentrate in tomato paste and, therefore, no tolerance is needed. Pineapple processing data indicate that residues of ethephon concentrate in dried pineapple bran (5.3X; no longer a processed commodity) and wet pulp (1.2X), but do not concentrate in juice, syrup, and slices. No feed additive tolerance for residues of ethephon in processed pineapple is required. As a result of a recent cow feeding study, new animal tolerances have been proposed. The following tolerances have been proposed for cattle, goat, horses, and sheep: meat - 0.02 ppm; meat byproducts (except kidney) - 0.20 ppm; kidney - 1.0 ppm; fat 0.02 ppm, and milk (cow and goat) - 0.01 ppm. Following a hen feeding study, new tolerances were proposed for poultry: poultry meat - 0.01 ppm; poultry meat byproducts (except liver) - 0.01 ppm; poultry fat - 0.02 ppm; poultry liver - 0.05 ppm; and eggs - 0.002 ppm.

B. Toxicology Profile

1. *Acute toxicity--Ethephon technical.* A complete battery of acute toxicity studies for ethephon technical was completed. The acute oral toxicity study resulted in a LD_{50} of 1,600 mg/kg for both sexes. The acute dermal toxicity in rabbits resulted in an LD_{50} in either sex of greater than 5000 mg/kg. The acute inhalation study in rats resulted in a LC_{50} of 4.52 mg/l. Ethephon was corrosive to the skin of rabbits in the primary dermal irritation study. Therefore, the primary eye irritation study in rabbits was not required. The dermal sensitization study in guinea pigs indicated that ethephon is not a sensitizer. Based on the results of the dermal irritation study, and the anticipated results in an eye irritation study, ethephon technical is placed in toxicity Category I.

Conclusion: Based on the acute toxicity data cited above it is concluded that ethephon technical does not pose any acute dietary risks.

2. *Genotoxicity--Ethephon technical.* The potential for genetic toxicity of ethephon was evaluated in several assays. The compound was found to be mutagenic in strain TA–1535 with and without S9 activation in the Ames assay. In the *in vitro* chromosomal aberrations study with Chinese hamster ovary cells, ethephon was negative. Ethephon was tested for unscheduled DNA synthesis in the rat hepatocyte system and was found to be negative. The weight of evidence suggests that this material is non-genotoxic.

Conclusions: Based on the data cited above, the weight of evidence indicates that ethephon technical does not pose a risk of mutagenicity or genotoxicity.

3. *Reproductive and developmental toxicity.* Ethephon has been tested for reproductive toxicity in rats and developmental toxicity in both rats and rabbits (two studies in each species). The results of these studies are summarized below:

a. In a two generation reproduction study, 28 Sprague-Dawley rats per sex per dose were administered 0, 300, 3,000, or 30,000 ppm (0,15, 150, or 1,500 mg/kg/day) of ethephon in the diet. For the offspring, a NOEL of 15 mg/kg/day and a LOEL of 150 mg/kg/day was established based on decreased body weight gain in the females at 150 mg/kg/day and in both sexes at 1,500 mg/kg/day. No effects were observed on fertility, gestation, mating, organ weights, or histopathology in any generation.

b. In rats, ethephon was administered by gavage at doses of 0, 20, 600, or 1,800 mg/kg for gestation days 6 through 15. At 1,800 mg/kg/day, 14 of the 24 treated female rats died. No toxic effects were observed at lower doses. The NOEL for maternal and developmental toxicity was 600 mg/kg/day. In a second study, rats were dosed by gavage at 0, 125, 250, or 500 mg/kg/day on days 6 through 15 of gestation. No toxic effects were observed at any dose. The NOEL for maternal and developmental toxicity was 500 mg/kg/day.

c. In rabbits, ethephon was administered by gavage at doses of 0, 50, 100, and 250 mg/kg for gestation days 6 through 19. The number of does with live fetuses were 10, 12, 8, and 5, respectively. Resorptions were increased at 100 mg/kg/day and statistically significantly increased at 250 mg/kg/day. At 250 mg/kg/day, does were depressed, ataxic, showed an increase of clinical observations and gross pathology in the gut. The NOEL for maternal toxicity was 50 mg/kg/day and the NOEL for developmental toxicity was 50 mg/kg/day. In a second study, rabbits were dosed by gavage at 0, 62.5, 125, or 250 mg/kg/day on days 6 through 19 of gestation. Maternal morbidity, mortality, and clinical signs of toxicity were observed at 250 mg/kg/day. Fetal toxicity, consisting of decreased number of live fetuses per doe, increased early resorptions and post implantation loss was observed at 250 mg/kg/day. A NOEL for maternal and developmental toxicity of 125 mg/kg/day was observed.

Conclusions: Based on the two-generation reproduction study in rats, ethephon is not considered a reproductive toxicant and shows no evidence of endocrine effects. The data from the developmental toxicity studies on ethephon show no evidence of a potential for developmental effects (malformations or variations) at doses that are not maternally toxic. The NOEL for both maternal and developmental toxicity in rats was 500 mg/kg/day and for rabbits the NOEL for both maternal and developmental toxicity was 50 mg/kg/day, respectively.

4. *Subchronic toxicity.* The subchronic toxicity of ethephon has been studied in three human studies and a 21–day dermal study in rabbits. These studies are summarized below:

a. Male and female subjects received ethephon at doses of 0.17 and 0.33 mg/kg/day for 22 days. The daily doses were divided into 3 gelatin capsules. No adverse effects were noted in clinical observations, hematology, serum chemistry (including RBC ChE) and urinalysis. There was a significant decrease in plasma ChE for both treatment groups, although the effect at 0.17 mg/kg/day appeared to be very close to the threshold for significance.

b. Male and female subjects received ethephon at a dosage of 0.5 mg/kg/day for 16 days. The daily dose was divided into 3 gelatin capsules. No adverse effects were noted in clinical observations, hematology, serum chemistry (including RBC ChE) and urinalysis. There was a significant decrease in plasma cholinesterase.

c. Ethephon was administered to male and female subjects at a daily dose of 124 mg/day (1.8 mg/kg/day average for both sexes) divided up into 3 gelatin capsules for 28 days. Clinical signs of toxicity were observed and included diarrhea, urgency of bowel movements, urinary urgency and stomach cramps. No effects were noted with regard to hematology, urinalysis or serum chemistry including cholinesterase evaluations.

d. In a 21–day dermal study, 10 rabbits per sex per group were dosed dermally at 0, 25, 75, and 150 mg/kg/day, five days per week for three weeks. Skin effects were observed at all doses. Effects ranged from erythema and desquamation at the lowest dose to acanthosis and chronic inflammation at 150 mg/kg/day. No systemic treatment-related effects were observed on body weight, food consumption, organ weight or histopathology. The systemic NOEL was greater than 150 mg/kg/day.

Conclusions: Based on the results of the 3 studies in humans, a LOEL of 1.8 mg/kg/day was established in the 28–day study. In the 22–day study, 0.17 mg/kg/day appeared to be very close to the threshold for significance. The systemic NOEL in the 21–day dermal study in rabbits was greater than 150 mg/kg/day.

5. *Chronic effects.* A 2 year chronic toxicity/oncogenicity study in rats, an 18 month mouse oncogenicity study, a 1–year study in dogs, and a 2–year chronic study in dogs were performed on ethephon technical. These studies are summarized below:

a. A combined chronic/oncogenicity study was performed on ethephon in Sprague-Dawley rats. Doses administered in the feed were 0, 300, 3,000, 10,000 or 30,000 ppm for 95 weeks to the males and 103 weeks for the females. The doses administered relative to body weight were 0, 13, 131, 446, or 1,416 mg/kg/day for males and 0, 16, 161, 543 or 1,794 mg/kg/day for females. Plasma and erythrocyte cholinesterase was inhibited at all doses (NOEL<300 ppm). Brain cholinesterase inhibition was not observed. A decrease in male body weight was observed at 10,000 ppm. At 30,000 ppm a body weight decrease was observed in both sexes. Additional effects at 30,000 ppm were thyroglossal duct cysts, kidney glomerulo-sclerosis and nephritis and biliary hyperplasia cholangiofibrosis. No carcinogenic effects were observed.

b. Male and female CD–1 mice were administered ethephon in the diet at 0, 100, 1,000, or 10,000 ppm (0, 15.5, 156, or 1,630 mg/kg/day) for 78 weeks. An additional dose level of 50,000 ppm was terminated at 12 weeks because of excessive morbidity and mortality. No evidence of treatment related tumors was observed. A NOEL of 15.5 mg/kg/day was determined for plasma cholinesterase inhibition. At 1,630 mg/kg/day male body weights were increased and female body weights decreased compared to controls.

c. Ethephon technical was administered in the feed at 0, 30, 300, and 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day) to male and female beagle dogs

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for 2 years. Due to toxicity/morbidity, the high dose was reduced as follows: 75 mg/kg/day weeks 0–3; 50 mg/kg/day weeks 4–5; 25 mg/kg/day weeks 6–24; 37.5 mg/kg/day weeks 25–104. Plasma cholinesterase was inhibited at all doses (NOEL<0.75 mg/kg/day). A NOEL for erythrocyte cholinesterase inhibition of 0.75 mg/kg/day with a LOEL of 7.5 mg/kg/day was observed. Histopathology showed smooth muscle atrophy in the gut at 7.5 mg/kg/day with a NOEL of 0.75 mg/kg/day.

d. Ethephon was administered in the feed at doses of 0, 100, 300, 1,000 or 2,000 ppm (0, 2.7, 8.2, 28.5, or 52.1 mg/kg/day) to male and female beagle dogs for 52 weeks. A systemic NOEL of 1,000 ppm (28.5 mg/kg/day) was observed for decreased spleen weight, body weight, hemoglobin and hematocrit in males. The females showed a decreased spleen/body weight ratio for the same NOEL. Cholinesterase inhibition was not determined.

Conclusions: The NOEL in the chronic rat study was 131 mg/kg/day based on the decreased body weight gains in males. The NOEL in the most recent one-year dog study was determined to be 28.5 mg/kg/day based on body weight, organ weight effects and hematology effects. Ethephon has been tested in both rats and mice for oncogenic activity. No oncogenic effects were observed.

6. *Animal metabolism.*

Rat metabolism--Ethephon technical. The rat metabolism study consisted of a single intravenous dose group at 50 mg/kg, and single and multiple oral high dose groups at 50 and 1,000 mg/kg. The oral Cmax (maximum concentrations were reached at 1.3 and 1 hours for the 50 mg/kg dose and 1.9 and 2.5 hours for the 1,000 mg/kg dose in males and females, respectively. The t1/2 of the rapid excretion phase (A-phase) at the 50 mg/kg dose was 7 hours for both sexes and 4 and 9 hours at 1,000 mg/kg for the males and females, respectively. Oral and intravenous doses were rapidly excreted in the urine accounted for 48 to 71 percent of the administered radioactivity. Approximately 7 percent was excreted in the feces. Exhaled ethylene was 10–20 percent and CO_2 was less than 1 percent of the administered dose. The highest tissue concentrations were found in the blood, bone, liver, kidney and spleen with no significant differences between single and multiple dosing. No significant differences were observed in the excretion pattern with either sex or multiple dosing.

Goat metabolism--Ethephon technical. In a goat metabolism study, ethephon was incorporated into natural products (glutathione conjugates, protein, glycogen, and triglycerides) and expired as CO_2 and ethylene.

Hen metabolism--Ethephon technical. In a hen metabolism study, ethephon metabolism involved an initial removal of chlorine to form 2-hydroxyethanephosphonic acid followed by further metabolism which results in the release of ethylene and carbon dioxide as well as intermediates which can enter into fundamental biochemical pathways leading to the biosynthesis of proteins and lipids.

Conclusions: Ethephon technical is not metabolized to breakdown products that can be reasonably expected to present any chronic dietary risk.

7. *Metabolite toxicology.* Ethephon degrades to ethylene phosphate and chloride. Therefore, no significant toxicity is anticipated from these breakdown/metabolites.

8. *Neurotoxicity.* The acute neurotoxicity of ethephon has been studied. The study is summarized below:

Groups of 12 male and 12 female Sprague Dawley rats were treated once by gavage with ethephon at dose levels of 0, 500, 1,000, or 2,000 mg/kg in order to assess its potential acute neurotoxicity. The time for assessing peak behavioral effects was previously determined in another study to be approximately 6 hours post dosing. At 2,000 mg/kg, mortality (females only) and transitory effects including pupillary constriction, increased urination (males only), reduced food consumption and body weight, decreased body temperature (females only), and reduced motor activity. Mortality and reduced food consumption was also observed for the 1,000 mg/kg females, motor activity was decreased for the 1,000 mg/kg males and constricted pupils were noted for some animals in all the lower dosage groups. No neuropathological lesions were seen that were attributed to treatment with ethephon. The nature of the findings suggests that they were generally isolated pharmacological effects and not of neurotoxicological significance given their transitory nature and the lack of treatment related structural lesions in the nervous system.

Conclusions: The acute neurotoxicity study demonstrated transient findings that suggested isolated pharmacological effects and no NOEL was established based on the observation of transient constricts. Ethephon does not appear to pose any significant acute neurotoxicity.

C. Aggregate Exposure

1. *Dietary exposure.* a. *Food* - Ethephon is registered for use on the following food crops: cotton, apples, cherries, tomatoes, wheat, barley, peppers, grapes, tobacco, walnuts, almonds, blackberries, cantaloupe, pineapple, sugarcane and macadamia nuts. In addition, IR-4 is conducting work to support new uses on blueberries, coffee, cranberries, figs and guavas. Ethephon has several ornamental/non-food applications as well. All residue requirements cited in the ethephon RED have been submitted to EPA. As a result of this work, increased tolerances have been proposed for cottonseed (6 ppm, PP 6F4743) and cotton gin by-products (180 ppm, amendment to PP 1H5603). As part of the reregistration process, the following tolerances will be revoked: cucumbers, filberts, lemons, pineapple forage and fodder, pumpkins, tangerines, tangerine hybrids and sugarcane molasses. The tolerances for residues of ethephon in or on food and feed commodities are currently based in terms of ethephon per se. An enforcement method was submitted to EPA for determination of residues of ethephon in/on plant commodities and in milk, ruminant and poultry tissues. The ethephon RED lists the number of treated acres by crop for all major ethephon uses in the U.S.

b. *Drinking water* - Based on the available studies and the use pattern, Rhone-Poulenc does not anticipate residues of ethephon in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for ethephon under the Safe Drinking Water Act.

2. *Non-dietary.* The potential for non-occupational exposure to the general public is also insignificant since only approximately 800 lbs of ethephon technical is sold in the U.S. home and garden market annually. The residential lawn or garden uses anticipated for these products where the general population may be exposed via inhalation or dermal routes are negligible. The home and garden formulation that is sold in the U.S. contains only 3.9 percent ethephon which would further limit exposure.

D. Cumulative Effects

While ethephon is an inhibitor of ChE of the plasma and RBC, it has not demonstrated any ability to inhibit brain ChE in rats, mice, or dogs under condition of a chronic dietary dosing regimen. Furthermore, unlike classic organophosphate ChE inhibitors, ethephon did not induce symptoms of ChE inhibition, such as constriction of the pupils, salivation, lacrimation, diarrhea, urination, tremors, and convulsions under chronic feeding of

doses up to 30,000, 10,000, and 2,000 ppm in the rat, mouse, and dog, respectively. In the rat study, the plasma and RBC ChE were inhibited approximately 55 percent and 85 percent, respectively. In the mouse study, both peripheral ChEs were inhibited by approximately 70 percent. Although cholinesterase determinations were not performed in the 1 year dog study, in a 2 year dog study, plasma and RBC ChE were inhibited 60 percent and 70 percent, respectively. Despite these high degrees of inhibition of peripheral ChE, no clinical signs or symptoms consistent with ChE inhibition occurred in these studies. It is generally only under very extreme conditions such as high doses administered via oral gavage or under occlusive dermal dressing in rabbits in which signs that are consistent with ChE inhibition are observed. These clinical signs generally occur at doses that produce acute lethality. However, these signs may in fact be unrelated to CNS ChE inhibition and could be a non-specific reaction to the acidic and therefore highly irritant nature of ethephon.

Ethephon should not be regarded as a classical inhibitor of ChE such as the carbamates and organophosphates since it does not produce the typical nervous system effects of those compounds. The recently updated chronic data base adequately proves that very high dietary doses of ethephon do not inhibit brain ChE, that it does not produce the classical clinical signs of ChE inhibition, and that it does not produce life-shortening effects, despite moderate to severe lifetime inhibition of both plasma and RBC ChE. The inhibition of ChE by ethephon is only an indicator of exposure and is not a measure of its potential for inducing ChE-mediated toxicity.

In summary, Rhone-Poulenc concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no significant toxicity observed for ethephon. Even at high doses, ethephon does not act as a classical inhibitor of cholinesterase. Exposure, even at high doses, does not lead to brain cholinesterase inhibition. There is no reliable data to indicate that the effects noted would be cumulative with those of organophosphate or carbamate-type compounds. Therefore, Rhone-Poulenc has considered only the potential risks of ethephon in its exposure assessment.

E. Safety Determination

The EPA OPP/HED RfD Peer Review Committee determined that the reference dose (RfD) should be based on the 28–day study in humans. Using the LOEL of 1.8 mg/kg/day in this study and an uncertainty factor (UF) of 100 to account for intraspecies variability and the lack of a NOEL, an RfD of 0.018 mg/kg/day was established as the chronic dietary endpoint.

1. *U.S. population--General.* A chronic dietary risk assessment which included all proposed changes in ethephon tolerances was conducted on ethephon using two approaches: (1) a Tier 1 approach using tolerance-level residues for all foods included in the analysis, and (2) Monte Carlo simulations using tolerance-level residues for all foods adjusted for percent crop treated (Tier 3). Using the Tier 1 approach, MOEs at the 95th and 99th percentiles of exposure for the overall U.S. population were 25 and 9, respectively. Using Tier 3 procedures in which residues were adjusted for the percent of the crop treated, MOEs were 114 and 42, respectively. Acute exposure was also estimated for infants and children 1 to 6 years of age. In the Tier 1 analysis, the most highly exposed subgroup was infants. For this population, MOEs at the 95th and 99th percentiles of exposure were 7 and 4, respectively. Using the Tier 3 method MOEs were 56 and 12, respectively. Even under the conservative assumptions presented here, the more realistic estimates of dietary exposure (Tier 3 analyses) clearly demonstrate adequate MOEs up to the 99th percentile of exposure for all population groups analyzed.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of ethephon, the available developmental toxicity and reproductive toxicity studies and the potential for endocrine modulation by ethephon were considered. Developmental toxicity studies in two species indicate that ethephon is not a teratogen. The 2 generation reproduction study in rats demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development. Maternal and developmental NOELs and LOELS were comparable, indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore concluded that ethephon poses no additional risk for infants and children and no additional uncertainty factor is warranted. FFDCA section 408 provides that an additional safety factor for infants and children may be applied in the case of threshold effects. Since, as discussed in the previous section, the toxicology studies do not indicate that young animals are any more susceptible than adult animals and the fact that the proposed RfD calculated from the LOEL from the 28 day human study already incorporates an additional uncertainty factor, Rhone-Poulenc believes that an adequate margin of safety is therefore provided by the RfD established by EPA. Additionally, this LOEL is also 8X lower than the next lowest NOEL (2 generation reproduction study, NOEL=15 mg/kg/day) in the ethephon toxicology data base. Ethephon has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies.

Conclusion: A dietary Risk assessment was submitted to EPA in September, 1996 (MRID #44100203). An RfD of 0.018 mg/kg/day has been established by EPA based on the LOEL in the 28–day human study. Adequate MOEs exist for all populations including infants and children. No additional uncertainty factor for infants and children is warranted based on the completeness and reliability of the database, the demonstrated lack of increased risk to developing organisms, and the lack of endocrine-modulating effects.

F. International Tolerances

The Codex MRL for grapes is 10 mg/kg verses 2 ppm for U.S. tolerance. The tomato Codex MRL is 3 mg/kg verses 2 ppm for the U.S. tolerance. All other U.S. tolerances are identical to corresponding Codex MRLs.

II. Administrative Matters

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the document control number, [PF–686]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–686] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis highway, Arlington, VA.

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Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 1997.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–983 Filed 1–14–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–687; FRL–5580–4]

W. Neudorff GmbH KG; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for an exemption from the requirement for a tolerance for residues of copper octanoate when used in accordance with good agricultural practice as an active ingredient in pesticide formulations applied to growing crops. This notice includes a summary of the petition that was prepared by the petitioner, W. Neudorff GmbH KG ("Neudorff").

DATES: Comments, identified by the docket number [PF–687], must be received on or before February 14, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2. 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–687]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip V. Errico, Acting Product Manager (22), Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, 703–305–5540, e-mail: errico.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4734) from W. Neudorff GmbH KG ("Neudorff"), c/o Walter G. Talarek, 1008 Riva Ridge Drive, Great Falls, VA 22066, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR Part 180 by establishing an exemption from the requirement for a tolerance for residues of the fungicide copper octanoate when used in accordance with good agricultural as an active ingredient in pesticide formulations applied to growing crops.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Neudorff included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Neudorff. EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

1. *Magnitude of the residue anticipated at the time of harvest and method used to determine the residue.* No residues are expected at the time of harvest on crops treated with copper octanoate, because rainwater readily washes copper octanoate off plants, and this chemical is biodegraded by water hydrolysis into its copper ion and fatty acid components, and then the fatty acids are further degraded by two carbon units at a time until they eventually degrade to water and CO2. In addition, the physio-chemical properties of soils naturally modify copper ion availability, and when soils are adjusted/limed to the pH required for normal crop production, the effect is to reduce copper availability to the crop. Furthermore, toxic copper levels in plants induce an imbalance with iron which causes plant dwarfing, stunted roots and decreased growth and yields, which effects appear before significant copper buildup occurs, and consequently acts as a warning which prevents excess application of copper compounds to food/feed crops. Last, even if residues were to remain on plants, the copper ion is a trace element, or micronutrient, essential for the growth and well being of higher plants and animals, including man. Therefore, the amount of this chemical proposed for application to plants is highly unlikely to cause harm to plants or animals or to leave excess residues on the plants.

2. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Neudorff has not proposed a new analytical method, because copper levels harmful to plants and animals are highly unlikely to occur when its copper octanoate product is applied according to label instructions. However, should EPA require such a method, because copper octanoate is a copper salt of a fatty acid, Neudorff would propose the use of the same analytical method submitted by registrants of products containing other copper salts of fatty acids.

B. Toxicological Profile

1. *Acute toxicity.* Result of studies conducted on a concentrate product containing copper octanoate and for which Neudorff has applied for registration indicate that this chemical has low acute toxicities.

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity.* There is adequate information available from literature sources to characterize the toxicity of the copper ion. The available literature shows that copper is ubiquitous in nature and is a necessary nutritional element for both animals and plants. It is one of 26 elements found essential to life. The copper ion is present in the adult human body at levels of 80–150 mg. Oral ingestion of excessive amounts of the copper ion from pesticidal uses is unlikely; copper compounds are irritating to the gastric mucosa and emesis usually occurs promptly, thereby reducing the amount of copper ion available for absorption into the human body. Moreover, copper is a trace element essential for the growth and well being of man. However, man is protected from excess copper ion in the body by an effective homeostatic mechanism which integrates absorption, retention and excretion to stabilize the copper ion burden in the body. Only a small percentage of copper ingested is absorbed, and most of the absorbed copper is excreted. In view of the facts that the copper ion occurs naturally in most foods and the metabolism of copper is well understood, there is no reason to expect that long-term exposure to copper ion in the diet is likely to pose the risks of chronic or sub-chronic adverse effects.

C. Aggregate Exposure

1. *Dietary exposure.* a. *Food.* There is no known evidence of sub-chronic or chronic adverse health effects from dietary exposure to the copper ion, except in the case of massive intake disrupting the natural homeostatic mechanism controlling body level of copper.

b. *Drinking water.* As a copper salt of a fatty acid, copper octanoate can be washed off growing plants by rain and during processing of crops by water. However, as stated previously, copper octanoate is biodegraded first by water hydrolysis into the copper ion and fatty acid components, and then the fatty acids are further degraded by two carbon units at a time until they eventually degrade to water and CO_2. But, even if the chemical were to wash off plants and the copper ion were to get into a public drinking water source, EPA has promulgated Safe Drinking Water Act standards for copper which would be protective of pubic health.

2. *Non-dietary exposure.* The only non-dietary exposure expected is that to applicators. However, the protective measures prescribed by the product's label are expected to be adequate to minimize exposure and protect applicators of the chemical.

D. Cumulative Effects

No cumulative adverse effects are expected from long-term exposure to this chemical.

E. Safety Determination

1. *U.S. population.* The metabolism of copper in man and growing plants is well understood and documented in the available literature. The use of copper octanoate as a pesticide would have essentially the same results in terms of contribution of copper ion to growing crops as the use of copper sulfate and the Group II copper compounds that have already been granted exemptions from tolerance by EPA. Further, there is adequate information to show that there is no toxicological concern raised by the contribution of the copper ion to growing crops which is likely to result from application of pesticides containing copper, and consequently no tolerances should be required for the use of copper octanoate.

2. *Infants and children.* Because the fetus and newborn have elevated copper levels (Sternlieb, 1980), and since homeostatic mechanisms are not fully developed at birth (Underwood, 1977), the newborn represents a risk group that may not be able to cope with excess copper exposure. However, the fetus does not have a "abnormal burden" of copper; it needs a store of copper from which it will start fulfilling its requirements as a newborn (USEPA, 1987). Data show that in small children ingestion of approximately 10 mg Cμ/10 kg child/day from contaminated milk can cause severe liver disorders (Tanner et al, 1983). EPA theorizes that "given that 1 mg/kg bw is an upper limit of exposure, it is conceivable that, for instance, 20 percent of this level (2 mg/child/day) could result in less severe, though still significant, liver damage. This intake is well within the normal adult recommended nutritional level, indicting that children may be more susceptible systematically to copper than adults. The main action my be the intestinal mucosa, especially in infants with preexisting GI tract disturbances." (USEPA, 1987).

F. Existing Tolerances

1. *Existing tolerances or tolerance exemptions.* EPA has not established a tolerance or an exemption from the requirement for a tolerance for this chemical. However, EPA has promulgated a tolerance exemption for a group of similar copper-based chemicals, *i. e.*, Bordeaux mixture, copper acetate, basic copper carbonate (malachite), copper hydroxide, copper-lime mixtures, copper linoleate, copper oleate copper oxychloride, copper sulfate basic, copper sulfate monohydrate, copper sulfate pentahydrate, copper-zinc chromate, cupric oxide, and cuprous oxide (two of these chemicals are copper salts of fatty acids), when they are applied to growing crops in accordance with good agricultural practice. See 40 CFR 180.1001(b)(1). In addition, EPA has promulgated a tolerance exemption for copper residues in meat, milk, poultry, eggs, fish, and irrigated crops when they result from the use of certain copper compounds, *i. e.*, copper sulfate, basic copper carbonate, copper triethanolamine, copper monoethanolamine, and cuprous oxide, at certain sites. See 40 CFR 180.1021. The common basis for EPA's tolerance exemptions for the compounds in these two classes of copper compounds appears to be the fact that the copper ion is the entity responsible for their fungicidal action, and there is adequate data on the copper ion upon which EPA can make judgments about its potential for causing unreasonable adverse effects on the environment.

2. *International tolerances.* No maximum residue level has been established for this substance by the Codex Alimentarius Commission.

II. Administrative Matters

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the document control number, [PF–687]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–687] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The public record is located in Rm. 1132 of the Public Response and Program resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–985 Filed 1–14–97; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5677–3]

CERCLA 104 (c)(9) Capacity Assurance Planning: National Capacity Assessment Report

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires States to assure that adequate capacity exists to manage hazardous wastes generated in their State for 20 years before EPA can provide any Superfund Remedial Action Trust funds to the State. Under a program the Agency has implemented to help States fulfill this statutory mandate, States submit Capacity Assurance Plans (CAPs) as the basis for their assurance. On May 1, 1994, States submitted CAPs to EPA pursuant to the May 1993 *Guidance for Capacity Assurance Planning,* OSWER Directive 9010.02. On November 3, 1994, the Agency made available for comment a draft of the *National Capacity Assessment Report,* in which the Agency made a proposed determination that there existed adequate national capacity, and which presented the Agency's analysis of State data. Based on the information contained in the CAPs, internal Agency studies, and comments received on the draft *Assessment Report,* the Agency is today finalizing the determination that there exists adequate national capacity in all CAP management categories. Therefore, as with the proposed determination, all States continue to be eligible to receive Superfund Trust funds.

The Agency will continue to collect and evaluate additional data to ensure that the requirements of CERCLA 104 (c)(9) are satisfied. At this time, the Agency does not anticipate the need to conduct another CAP for the next few years. The *National Capacity Assessment Report,* which describes the entire CAP process, is available for public review in the RCRA Docket. The information collection activities that occurred for the Capacity Assurance Planning process were approved by the Office of Management and Budget (OMB) under OMB Control Number 2050–0099.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. Docket number F–94–CAGA–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

For information on specific aspects of the Report, contact Robert Burchard, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8450.

SUPPLEMENTARY INFORMATION: For a paper copy of the *National Capacity Assessment Report,* please contact the National Technical Information Service (NTIS) at 1–703–487–4650. The document number is PB95–209672 (EPA530–R–95–016). The *Report* is also available in electronic format on the Internet. Follow these instructions to access the report: WWW: http://www.epa.gov/epaoswer; Gopher: gopher.epa.gov; Dial-up: (919) 558–0335.

If you are using the gopher or direct dialup method, once you are connected to the EPA Public Access Server, look for this report in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Subtitle C—Hazardous Waste/Treatment, Storage, and Disposal Facilities (TSDFs).

FTP: ftp.epa.gov.
Login: anonymous.
Password: Your Internet address.
Files are located in /pub/gopher/OSWRCRA.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 97–976 Filed 1–14–97; 8:45 am]
BILLING CODE 6560–50–P

[OPPT–59357A; FRL–5582–9]

Certain Chemical; Test Marketing Exemption Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a document publsished in the **Federal Register** of December 26, 1996, which contained an incorrect e-mail address for written comments and an incorrect FRL number for test marketing exemption (TME)–97–3. As a result of the incorrect e-mail address, EPA is extending the comment period.

DATES: This notice became effective on December 19, 1996. Written comments will now be received until January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, DC 20460, (202) 260–2279; jones.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 26, 1996, (61 FR 68039), in FR Doc. 96–32794, on page 68039, in the first column, make the following corrections:

1. In the heading, correct FRL–5581–7 to read FRL–5581–5.

2. Under the caption "ADDRESSES", in the second paragraph, correct the e-mail address in line 4 to read oppt.ncic@epamail.epa.gov.

Dated: January 3, 1997.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 97–984 Filed 1–14–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

January 7, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before March 17, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0602.

Title: Section 76.917 Notification of certification withdrawals.

Type of Review: Extension of existing collection.

Respondents: State, local or tribal governments.

Number of Respondents: 25.

Estimated Time Per Response: .5 hours.

Total Annual Burden: 13 hours.

Cost to Respondents: Postage and stationery costs are estimated at an average of $1 per notification. 25 notifications x $1 = $25.

Needs and Uses: Section 76.917 of the Commission's rules requires a local franchising authority ("LFA") that has been certified to regulate basic service tier ("BST") cable rates to notify the Commission if it no longer intends to regulate BST cable rates. This notification shall include the LFA's determination that rate regulation no longer serves the best interests of local cable subscribers and that the LFA has received no consideration for its withdrawal of certification. The notifications are used by the Commission to readily determine the extent of basic service tier BST rate regulation of cable systems and to be aware of circumstances where certified LFAs no longer intend to regulate BST cable rates.

Federal Communications Commission.

William F. Caton,

Acting Secretary,

[FR Doc. 97–928 Filed 1–14–97; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

January 7, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 17, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0593.

Title: FCC Form 1215 A la Carte Channel Offerings.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,400. (3,600 filings + 1,800 LFA reviews).

Estimated Time Per Response: .5 hours - 1 hour.

Total Annual Burden: 4,500 hours. We estimate that 3,600 FCC Form 1215s

are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete the FCC Form 1215 is estimated to be 1 hour. 3,600 x 1 hour = 3,600 hours. LFAs will review approximately 1,800 FCC Form 1215 filings per year at an average burden of .5 hours per filing. 1,800 x .5 hours per filing = 900 hours.

Cost to Respondents: $2,000. We estimate photocopying and stationery costs to respondents to be approximately 3,600 filings x 50 cents per filing = $1,800 and then rounded up to $2,000. There are no postage expenses specifically attributed to this collection because the FCC Form 1215 is not a unique mailing, but rather is submitted as part of a package with other rate regulation forms such as FCC Form 1200, FCC Form 1210 or FCC Form 1240.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1215 is filed by cable operators in conjunction with the filing of other rate regulation forms. A la carte channel offerings are not regulated by the Commission; however, the submission of a la carte data is a necessary component to the Commission's system of rate regulation so that the Commission and local franchising authorities ("LFAs") can examine the entire scope of programming offered by respective cable systems. The requirement to file FCC Form 1215 with the Commission's other rate regulation forms ensures that the Commission's system of rate regulation is not being circumvented. The data are used by Commission staff and LFAs to determine which channels a cable operator is offering on an individual, unregulated basis.

OMB Approval Number: 3060–0594.

Title: FCC 1220 Cost of Service Filing for Regulated Cable Services.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 30. (20 cable operators + 10 LFAs).

Estimated Time Per Response: 4 hours - 80 hours.

Total Annual Burden: 1,640 hours. We estimate that no more than 20 FCC Form 1220s are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete FCC Form 1220 is estimated to be 80 hours. Cable operators will use in-house staff to complete approximately 50% of the filings. Cable operators will use outside assistance to complete approximately 50% of the filings, undergoing a burden of 4 hours per filing to coordinate information with the outside assistance. 10 (50% of 20) filings completed with in-house staff x 80 hours per filing = 800 hours. 10 (50% of 20) filings coordinated with outside assistance x 4 hours per filing = 40 hours. LFAs will review approximately 10 FCC Form 1220 filings per year at an average burden of 80 hours per filing. 10 x 80 hours per filing = 800 hours. Total burden = 800 + 40 + 800 = 1,640 hours.

Cost to Respondents: $120,000. Cable operators will use outside assistance paid at $150 per hour to complete approximately 10 FCC Form 1220 filings. 10 filings x 80 hours per filing x $150 per hour = $120,000. Diskettes, postage and stationery costs are estimated at an average of $5 per filing. 20 filings x $5 = $100. Total costs = $120,000 + $100 = $120,100.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1220 is used by cable operators to demonstrate their costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. Cable operators submit this form to local franchising authorities ("LFAs") or the Commission (in situations where the Commission has assumed jurisdiction) only when justifying rates based on cost of service. It may also be filed with the Commission as part of the operator's response to a complaint filed with the Commission about cable programming service rates and associated equipment when justifying rates based on cost of service. The data are used by Commission staff and LFAs to determine whether cable rates for basic service, cable programming service and associated equipment are reasonable under Commission regulations.

OMB Approval Number: 3060–0596.

Title: FCC 1225 Computation of Cable Services Revenue Requirements and Charges, Cost of Service for Small Systems.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 15. (10 cable operators + 5 LFAs).

Estimated Time Per Response: 4 hours - 60 hours.

Total Annual Burden: 620 hours. We estimate that no more than 10 FCC Form 1225s are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete FCC Form 1225 is estimated to be 60 hours. Cable operators will use in-house staff to complete approximately 50% of the filings. Cable operators will use outside assistance to complete approximately 50% of the filings, undergoing a burden of 4 hours per filing to coordinate information with the outside assistance. (50% of 10) filings completed with in-house staff x 60 hours per filing = 300 hours. (50% of 10) filings coordinated with outside assistance x 4 hours per filing = 20 hours.LFAs will review approximately 5 FCC Form 1225 filings per year at an average burden of 60 hours per filing. 5 x 60 hours per filing = 300 hours. Total burden = 300 + 20 + 300 = 620 hours.

Cost to Respondents: $45,100. Cable operators will use outside assistance paid at $150 per hour to complete approximately 5 FCC Form 1225 filings. 5 filings x 60 hours per filing x $150 per hour = $45,000. Total annual costs for purchase of diskettes, postage and stationery are estimated to be $100.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1225 may be used by a small cable systems to demonstrate their costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. For purposes of using FCC Form 1225, a small system means one with no more than 1,000 subscribers. A small system generally qualifies to use this form if it is either (a) an independent system, or (b) it is owned by an multiple system operator ("MSO") that has 250,000 subscribers or less, no system with more than 10,000 subscribers, an average system size of 1,000 or fewer subscribers. Cable operators submit this form to local franchising authorities ("LFAs") or the Commission (in situations where the Commission has assumed jurisdiction) only when justifying rates based on cost of service. It may also be filed with the Commission as part of the operator's response to a complaint filed with the Commission about cable programming

service rates and associated equipment when justifying rates based on cost of service. The data are used by Commission staff and LFAs to determine whether cable rates for basic service, cable programming service and associated equipment are reasonable under Commission regulations.

OMB Approval Number: 3060–0601.

Title: FCC Form 1200 Setting Maximum Initial Permitted Rates for Regulated Cable Services.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 150. (100 cable operators + 50 LFAs).

Estimated Time Per Response: 2–10 hours.

Total Annual Burden: 1,100 hours. We estimate that 100 FCC Form 1200s are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete FCC Form 1200 is estimated to be 10 hours. Cable operators will use in-house staff to complete approximately 50% of the filings. Cable operators will use outside assistance to complete approximately 50% of the filings, undergoing a burden of 2 hours per filing to coordinate information with the outside assistance. 50 (50% of 100) filings completed with in-house staff x 10 hours per filing = 500 hours. 50 (50% of 100) filings coordinated with outside assistance x 2 hours per filing = 100 hours. LFAs will review approximately 50 FCC Form 1200 filings per year at an average burden of 10 hours per filing. 50 x 10 hours per filing = 500 hours.

Cost to Respondents: $75,500. Cable operators will use outside assistance paid at $150 per hour to complete approximately 50 FCC Form 1200 filings. 50 filings x 10 hours per filing x $150 per hour = $75,000. Diskettes, postage and stationery costs are estimated at an average of $5 per filing. 100 filings x $5 = $500.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1200 is used by cable operators to justify the reasonableness of rates in effect on or after May 15, 1994. Cable operators submit this form to local franchising authorities ("LFAs") or the Commission (in situations where the Commission has assumed jurisdiction). It is also filed with the Commission when responding to a complaint filed with the Commission about cable programming service rates and associated equipment. The data are used by Commission staff and LFAs to evaluate cable rates the first time they are reviewed on or after May 15, 1994 so that the maximum permitted rates for regulated cable services can be determined.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–929 Filed 1–14–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–011560

Title: The TransAtlantic Bridge Agreement

Parties:

The COSCO/KL TransAtlantic Vessel Sharing Agreement (FMC Agreement No. 232–011561)

The KL/YM TransAtlantic Vessel Sharing Agreement (FMC Agreement No. 232–011562)

Synopsis: The proposed Agreement would permit the parties and their individual signatories to consult and agree on all matters within the scope of the two vessel sharing agreements, including, but not limited to: coordination of sailings, reciprocal space chartering, sub-chartering, vessel particulars, efficient use of equipment, terminals, stevedores, ports and suppliers, documentation, and systems in the trade between United States Ports in the Eastport, Maine/Brownsville, Texas, range, and inland U.S. points via such ports, and ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia, and inland points in Europe via those ports.

Agreement No.: 232–011561

Title: The COSCO/KL TransAtlantic Vessel Sharing Agreement

Parties:

China Ocean Shipping (Group) Company ("COSCO")

Kawasaki Kisen Kaisha, Ltd. ("KL")

Synopsis: The proposed Agreement would permit the parties to coordinate their container liner vessel operations and to charter space to one another in the trade between United States Ports in the Eastport, Maine/Brownsville, Texas, range, and inland U.S. points via such ports, and ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia, and inland points in Europe via those ports. Subchartering of space to Yangming Marine Transport Corporation by KL of slots aboard COSCO vessels is also authorized.

Agreement No.: 232–011562

Title: The KL/YM TransAtlantic Vessel Sharing Agreement

Parties:

Yangming Transportation Corporation ("YM")

Kawasaki Kisen Kaisha, Ltd. ("KL")

Synopsis: The proposed Agreement would permit the parties to coordinate their container liner vessel operations and to charter space to one another in the trade between United States Ports in the Eastport, Maine/Brownsville, Texas, range, and inland U.S. points via such ports, and ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia, and inland points in Europe via those ports. Subchartering of space to China Ocean Shipping (Group) Company by KL of slots aboard YM vessels is also authorized.

Agreement No.: 217–011563

Title: The NOL/HMM Space Charter Agreement

Parties:

Neptume Orient Lines, Ltd.

Hyundai Merchant Marine Co., Ltd.

Synopsis: The subject agreement authorizes Hyundai to charter vessel space to NOL in the trade between all ports in the Far East and South East Asia, on the one hand, and all ports on the U.S. Pacific Coast, including Alaska, on the other, and all inland and coastal points served via those ports.

Agreement No.: 224–003038–004

Title : Supplemental Agreement Between Port of Oakland and American President Lines, Ltd.

Parties:

Port of Oakland

American President Lines, Ltd.

Synopsis: The subject modification amends the wharfage charges for a secondary user at the Port's Middle Harbor Terminal Area assigned to APL and clarifies the definition of primary and secondary users under the terms of the agreement

Dated: January 9, 1997.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–920 Filed 1–14–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Park National Corporation, Newark, Ohio; to merge with First Knox Banc Corp., Mount Vernon, Ohio, and thereby indirectly acquire The First Knox National Bank of Mt. Vernon, Mount Vernon, Ohio, and The Farmers & Savings Bank, Loudonville, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCFT, Inc., Princeton, West Virginia; to acquire 100 percent of the voting shares of Blue Ridge Bank, Sparta, North Carolina.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Zions Bancorporation, Salt Lake City, Utah; merge with Aspen Bancshares, Inc., Aspen, Colorado, and thereby indirectly acquire Pitkin County Bank and Trust Company, Aspen, Colorado, and Valley National Bank of Cortez, Cortez, Colorado. Applicant has also applied to acquire 19.9 percent of the voting shares of Aspen.

In connection with this application, Applicant has also applied to acquire Centennial Savings Bank, F.S.B., Durango, Colorado, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–991 Filed 1–14–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Deutsche Bank AG, Frankfurt (Main), Federal Republic of Germany; to engage *de novo* through its subsidiary, German American Capital, Corp., New York, New York, and thereby indirectly acquire TransAtlantic Capital Company, L.L.C., New York, New York, in commercial real estate mortgage loan origination activities, pursuant to §§ 225.25(b)(1)(ii) and (b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–990 Filed 1–14–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, January 21, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

Matters to be Considered

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1069 Filed 1–13–97; 10:51 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3069]

Abbott Laboratories; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Abbott Park, Illinois-based marketer of nutritional beverages from making any claim about the extent to which doctors or other professionals recommend any food or dietary or nutritional supplement, or about any other recommendation, approval, or endorsement of such products, unless it possesses competent and reliable scientific evidence to substantiate the claim. The agreement settles allegations that Abbott made false and unsubstantiated claims in an extensive national advertising campaign that promotes the company's Ensure nutritional beverages for healthy, active adults.

DATES: Comments must be received on or before March 17, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michelle K. Rusk, Federal Trade Commission, S–466, 6th and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3148. Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34) notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 2, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 FR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Abbott Laboratories. This matter concerns advertising for Ensure nutritional products.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Ensure is a canned beverage which contains carbohydrates, protein, fat, vitamins and minerals and is formulated so that the very elderly and others who have difficulty obtaining sufficient nutrition from regular food can subsist on it, for example through tube feeding. The Ensure product line includes not only Ensure, but also Ensure High Protein, Ensure Plus, Ensure With Fiber, Ensure Pudding, and Ensure Light.

According to the Commission's complaint, Abbott advertisements made the unsubstantiated representation that many doctors recommend Ensure as a meal supplement and replacement for healthy adults, including those in their thirties and forties. The complaint explains that, among other reasons, this claim is unsubstantiated because a survey of doctors relied upon by Abbott was not designed to elicit whether many doctors actually recommend Ensure as a meal supplement or replacement for healthy adults—as opposed to adults who are ill or elderly and may have nutritional deficiencies. According to the complaint, the survey merely asked doctors to assume that they would recommend a supplement for adults who were not ill, and then to select the brand they would most recommend.

The complaint also alleges that Abbott misrepresented that one serving of Ensure provides vitamins in an amount comparable to typical multivitamin supplements. According to the complaint, while the typical multivitamin supplement provides at least 100% of the recommended daily intake (RDI) of vitamins, at the time the advertisements challenged in the complaint were first disseminated, one serving of Ensure provided 62% of the RDI of Vitamin C and between 12% and 26% of the RDIs of the other vitamins for which RDIs have been established. The complaint states that, although Ensure has been reformulated, one serving still provides only 50% of the RDI of Vitamin C and 25% of the RDIs of the other vitamins.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Abbott from engaging in similar acts and practices in the future.

Part I of the order requires Abbott not to make any claim about the extent to which doctors or other professionals recommend any food or dietary or nutritional supplement for healthy adults, or about the recommendation, approval, or endorsement of such products by anyone, unless it possesses

competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claim.

Part II prohibits Abott from misrepresenting that one serving of any Ensure product, or any other product advertised, marketed or sold as a meal replacement or supplement for healthy adults, provides vitamins in an amount comparable to typical vitamin supplements. It also prohibits Abbott from misrepresenting the absolute or comparative amount of any vitamin or any other nutrient or ingredient provided by such products. Part II also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration ("FDA") must comply with the qualifying amount set forth in that regulation.

Part III provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

The proposed order also requires Abbott to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain current and future officers and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against Abbott alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary,

[FR Doc. 97–922 Filed 1–14–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 961–0101]

General Mills, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Minneapolis-based producer of ready-to-eat cereals to permit New Ralcorp Holdings, Inc. to transfer to any successor party, without any authorization or approval from General Mills, the right to manufacture and sell cereals identical to the Chex brand products. The order also bars General Mills from delaying production of the private label Chex rivals. The agreement settles allegations that General Mills' acquisition of Ralcorp's branded cold cereal business, including the Chex line of cereals, would boost General Mills' share of the U.S. ready-to-eat cereals market to 31 percent and that it would have restricted the entry of new private label cereal products to compete with the General Mills brands. The Commission had alleged that the acquisition could have resulted in higher prices for Chex brand cereals.

DATES: Comments must be received on or before March 17, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2932.

George S. Cary, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3741.

Phillip L. Broyles, Federal Trade Commission, S–2105, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 26, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from General Mills, Inc. ("General Mills"), an agreement containing a consent order. The Commission designed the agreement to remedy any anticompetitive effects stemming from General Mills's acquisition of the branded ready-to-eat ("RTE") cereal business from Ralcorp Holdings, Inc. ("Ralcorp").

This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received. The Commission will then decide whether it should withdraw from the agreement or make final the order contained in the agreement.

The Commission's Complaint charges that on or about August 13, 1996, General Mills agreed to acquire the branded RTE cereal and snack-mix businesses owned by Ralcorp. Among the cereals that General Mills agreed to acquire are Corn CHEX, Rice CHEX, and Wheat CHEX. The Commission has reason to believe that the acquisition and the agreement to acquire Ralcorp may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's Complaint, General Mills is the second largest producer of RTE cereals and Ralcorp is the fifth largest producer of branded RTE cereals. Ralcorp is also the largest producer of private label RTE cereals. In 1994, the Ralston Purina Company created Ralcorp by distributing shares of Ralcorp to Ralston's Purina's shareholders. General Mills will not acquire Ralcorp's private label RTE cereal business. Ralcorp will form a new entity, New Ralcorp Holdings, Inc. ("New Ralcorp"), which will continue producing RTE cereals.

The Commission's investigation of this matter found potential anticompetitive problems arising from

this acquisition. The Complaint alleges that concentration is high in the RTE cereal market and entry is difficult and unlikely. Although this transaction does not reduce the number of established substantial firms in the RTE cereals market, it does increase General Mills' market share by approximately 3 percent and thus increases overall concentration in the market. Of particular concern is that the acquisition agreement restricts New Ralcorp's freedom to produce and sell private label CHEX products as well as its ability to transfer the rights to manufacture and sell private label CHEX products to a third party without permission from General Mills.

Under the terms of the proposed order, General Mills must, before consummating the merger, include in its agreements with Ralcorp and New Ralcorp provisions that will permit the transfer to any successor party of the right to manufacture and sell private label CHEX in the United States. These provisions will permit the successor party to sell these private label cereals without further authorization or approval from General Mills or Ralston Purina Company. The proposed order also prohibits General Mills from taking any action to prevent or delay New Ralcorp's sale of private label CHEX products in the United States. Finally, the proposed order prohibits General Mills from enforcing any agreement that would prevent the transfer to a successor party of the right to manufacture and sell private label CHEX in the United States.

Presently, neither Ralcorp nor any other person produces private label CHEX products. The proposed order will increase the likelihood that someone will produce and sell private label CHEX in competition with General Mills' branded CHEX products.

To reduce the possibility of competitive harm before the Commission's entry of a final order, the interim agreement binds General Mills to the terms of the order, as if it were final. The interim agreement became effective on the date General Mills signed the consent agreement.

The purpose of this analysis is to invite public comment concerning the consent order. The Commission does not intend this analysis to be an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,
Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in General Mills, Inc., File No. 961–0101

The Commission today issues for public comment a consent order based on a complaint alleging that the acquisition by General Mills, Inc., of the branded ready-to-eat cereal business of Ralcorp Holdings, Inc., violates Section 7 of the Clayton Act. The order is narrow, but I would narrow it even further. In particular, I would delete Paragraph II(B) of the proposed order, which requires elimination of a noncompete clause that would have prevented Ralcorp for a period of eighteen months from introducing a new private label cereal identical or similar to the CHEX-brand cereals being sold to General Mills.

Paragraph 14 of the complaint alleges that the noncompete clause described in paragraph 8 would have the anticompetitive effect of "restricting the entry of new private label cereal products into competition with General Mills." That effect, of course, is precisely the purpose of this (and every other) noncompete clause.[1] Although the complaint might be read as alleging that noncompete clauses are *per se* anticompetitive, that interpretation would be inconsistent with the Commission's decision a few days ago to accept for public comment an order that in paragraph VI imposed an affirmative prohibition on competition for six years between the merged firm and the acquirer of certain animal health assets to be divested under the order. "Ciba Geigy Limited," (File No. 961–0055, December 17, 1996). The Ciba Geigy decision recognizes the efficiency potential of noncompete clauses, which, among other benefits, may facilitate an orderly transfer of ownership and provide a brief transition period for new owners to establish themselves in the business.

Although the appropriate duration of a noncompete clause may vary depending on the circumstances of the industry and the acquisition, using a noncompete clause for a short period to smooth a transition may be procompetitive. I do not find reason to believe that this short-term noncompete clause is anticompetitive, and I dissent from the order requirement to eliminate it.

Statement of Commissioner Roscoe B. Starek, III, Dissenting in General Mills, Inc., File No. 961–0101

I respectfully dissent from the decision of the majority to accept for public comment a consent agreement with General Mills, Inc. relating to the proposed acquisition of the branded ready-to-eat ("RAE") cereal and snack food businesses of Ralcorp Holdings, Inc. ("Ralcorp"). My dissent rests on two grounds.

As noted in the Commission's proposed complaint, General Mills will not acquire the private label RTE cereal or snack food businesses of Ralcorp. Ralcorp instead will form a new entity, New Ralcorp Holdings, Inc. ("New Ralcorp"), to hold the private label cereal and snack food businesses that General Mills will not acquire. Under the acquisition agreement, New Ralcorp has the right to manufacture and sell a private label version of the Chex RTE cereal products, but is restricted from transferring this right to a third party without permission from General Mills. The acquisition agreement further provides that New Ralcorp may not produce private label Chex products for a period of eighteen months following consummation of the acquisition.

My first reason for voting against acceptance of the proposed consent order is that the Commission lacks sufficient evidence to support the unilateral effects theory alleged in the complaint. Second, it is completely unnecessary—and in fact creates inefficiency—to bar enforcement of the parties' non-compete agreement. Whatever minimal competitive risks this transaction may raise are adequately addressed by eliminating the restrictions on Ralcorp's ability to transfer manufacturing and sales rights for private label Chex to a third party.

General Mills' share of the RTE cereal market will increase by approximately three percent as a result of the proposed acquisition. The number of competitors in the RTE cereal industry will remain the same, and General Mills will remain the second largest RTE cereal producer in the United States.[1] New Ralcorp will

[1] The noncompete clause described in paragraph 8 of the complaint prohibits Ralcorp from entering the market with a private label, CHEX-type cereal product for eighteen months. As indicated in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (April 2, 1992), a merger is unlikely to create or enhance market power if entry is "timely, likely and sufficient," and entry is deemed "timely" if it can be achieved within two years. Under this standard, the noncompete clause is unlikely to create or enhance market power.

[1] General Mills' share of branded cereals will of course increase as a result of the transaction, but the complaint does not allege a relevant market

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immediately assume Ralcorp's position as the largest private label cereal producer in the United States. Moreover, General Mills' post-merger share of the RTE cereal market will be between 25 and 31 percent (depending on whether share is measured in pounds or sales dollars), well below levels suggested by the Horizontal Merger Guidelines as the minimum threshold at which the Commission might reasonably presume market power.[2] It is hard to understand under these simple facts how the majority determined that the proposed acquisition will enable General Mills unilaterally to exercise market power.

Unable to presume market power, the Commission instead relies upon a "close substitutes" theory of unilateral harm, notwithstanding a paucity of empirical evidence demonstrating that Ralcorp's branded Chex products are the closest substitutes to the branded cereals of General Mills. Although Chex products clearly compete with the branded General Mills RTE cereal products, consumers have a preference for variety when they choose RTE cereals and frequently choose among the many branded and private label cereals produced by RTE cereal manufacturers in the United States. Not surprisingly, Judge Wood reached this conclusion in her opinion explaining why she refused to block the acquisition of the Nabisco RTE cereal assets by Kraft General Foods in early 1993.[3] In *Kraft General Foods*, an empirical analysis of cereal purchasing patterns suggested—as it does in the present matter—that consumers have many attractive alternatives from which to choose in the event that one RTE cereal producer tries to raise prices above competitive levels. Overall, the empirical evidence does not support the Commission's claim, under either a "close substitutes" or a dominant firm theory, that General Mills would be able unilaterally to raise the prices of its branded RTE cereals after the acquisition.

Even if I agreed with the majority that this consent agreement rests upon an empirically sound theory of competitive harm, the proposed order would bar General Mills from enforcing an arguably procompetitive non-compete agreement that is properly limited in scope and duration. Covenants not to compete are often included in contracts for the sale of a business, and generally are enforceable when ancillary to an enforceable agreement and reasonable in geographic coverage, scope of activity, and duration. *Lektro-Vend Corp.* v. *Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981) ("The recognized benefits of reasonably enforced non-competition covenants are now beyond question."), *cert. denied*, 455 U.S. 921 (1982); *United States* v. *Addyston Pipe & Steel Co.*, 85 F. 271, 281–82 (6th Cir. 1898), *aff'd as modified*, 175 U.S. 211 (1899).[4] Judicial inquiry into non-compete provisions generally focuses on whether the restriction is reasonably necessary to protect the legitimate business interests of the party seeking to enforce the provision. *United States* v. *Empire Gas Corp.*, 537 F.2d 296, 307 (8th Cir. 1976), *cert. denied*, 429 U.S. 1122 (1977); *Sound Ship Bldg. Corp.* v. *Bethlehem Steel Corp.*, 387 F. Supp. 252, 255 (D.N.J. 1975), *aff'd*, 533 F.2d 96 (3d Cir.), *cert. denied*, 429 U.S. 680 (1976).

The Commission has often recognized that competitive benefits can flow from a non-compete clause in the context of the sale of a business. The Commission's recent acceptance for public comment of a consent agreement in *Ciba-Geigy, Ltd., et al.*, File No. 961 0055 (consent agreement accepted for public comment, Dec. 16, 1996), is illustrative. In *Ciba-Geigy*, the Commission imposed an affirmative obligation on the newly merged entity, Novartis AG, not to compete in the United States and Canada for six years in the sale of animal flea control products.[5] As the *Ciba-Geigy* order indicates, the Commission clearly recognizes that non-compete clauses—even when long in duration and broad in scope—can serve legitimate procompetitive purposes in some circumstances by allowing an acquiring entity a brief period to re-deploy the acquired assets in a manner that increases competition in the marketplace. I am therefore puzzled why the Commission so hastily condemns a non-compete provision here that is only eighteen months in duration, limited to the manufacture and sale of private label Chex products, and arguably necessary to protect the legitimate interests of the contracting parties.[6]

Because I find that the facts do not support the Commission's theory of unilateral competitive harm in this instance, and because in any event I disagree with the Commission's decision to bar enforcement of the non-compete provision contained in the parties' acquisition agreement, I have voted to reject the consent agreement.

[FR Doc. 97–921 Filed 1–14–97; 8:45 am]
BILLING CODE 6750–01–M

consisting of "branded RTE cereal." Indeed, the provisions of the proposed order (which affect the disposition of assets used in the production of nonbranded cereals) make sense only in the context of an "all RTE cereal" product market.

[2] *See* U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 2.211, 4 Trade Reg. Rep. (CCH) ¶ 13,104, at 20573–9.

[3] *State of New York* v. *Kraft General Foods, Inc.*, 1995–1 Trade Cas. (CCH) ¶ 70,911, at 74,039, 74,066 (S.D.N.Y. 1995).

[4] *See also Business Elecs. Corp.* v. *Sharp Elecs. Corp.*, 485 U.S. 717, 729 n.3 ("The classic 'ancillary' restraint is an agreement by the seller of a business not to compete within the market.").

[5] *See* Paragraph VI of the proposed order in *Ciba-Geigy*.

[6] Barring enforcement of the non-compete agreement might undermine adherence by the parties to the supply agreement, an element of the acquisition agreement found acceptable by the majority.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NIOSH Meeting; The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: "Correlation of Seven Quantitative Fit Test Methods to an Actual Measurement of Exposure Using Negative-Pressure Full Facepiece Respirators," and "Development and Correlation of a New Quantitative Fit Test Method for Health-Care Industry Respirators" study protocol peer review.

Time and Date: 9 a.m.–3 p.m., February 4, 1997.

Place: NIOSH, CDC, Room L–1047A, 1095 Willowdale Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 20 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the protocols for two NIOSH studies. The first study is entitled "Correlation of Seven Quantitative Fit Test Methods to an Actual Measurement of Exposure Using Negative-Pressure Full Facepiece Respirators." The second study is entitled "Development and Correlation of a New Quantitative Fit Test Method for Health-Care Industry Respirators." Peer review panelists will review the study protocols and provide individual advice on the conduct of the studies. Individual viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

Contact Person for Additional Information: Christopher C. Coffey, M/S 1138, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5958, fax (304) 285–6047.

Dated: January 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers of Disease Control and Prevention (CDC).

[FR Doc. 97–965 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–19–P

NIOSH Meeting; The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: "Postural Stability and Motor Response Times During Scaffold End Frame Handling" study protocol peer review.

Time and Date: 1–4 P.M., February 13, 1997.

Location: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the NIOSH protocol "Postural Stability and Motor Response Times During Scaffold End Frame Handling." Peer review panelists will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

For Further Information Contact: Brian E. Moyer, M/S 119, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5969.

Dated: January 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–964 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–19–P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Care Quarterly Unit Report

OMB No.: New collection

Description: This legislatively-mandated report collects program and participants data on children and families receiving direct CCDF services. Disaggregate data will be collected and will be used to determine the participants and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress. Form ACF 801 represents the data elements to be collected and reported to ACF.

Respondents (States and Territories) will be asked to sample the population of families receiving benefits on a monthly basis and submit the three most current monthly samples to ACF quarterly. Each monthly sample is drawn independent of the other samples and retained for submission within a quarterly report. ACF is not issuing specifications on how respondents compile overall database(s) from which samples are drawn. ACF will provide to the respondents a sampling plan which will specify minimum sample size. It is expected to be a monthly sample of approximately 150 cases for large States with smaller samples based on population size adjustments for smaller respondents.

Respondents: States, D.C., Guam, Virgin Islands and Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	54	4	20	4,320

Estimated Total Annual Burden Hours: 4,320.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 9, 1997.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 97–940 Filed 1–14–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0488]

Use of Clorsulon Drench in Goats; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data, human food safety data, and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for use of a suspension containing 8.5 percent clorsulon as a drench in goats for the treatment of adult liver fluke infestation. The data, contained in Public Master File (PMF) 5440, were compiled under National Research Support Project No. 7 (NRSP–7), a national agricultural program for obtaining clearances for use of new drugs in minor animal species or in any animal species for the control of diseases that occur infrequently or in limited geographical areas.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: The use of clorsulon suspension in goats is a new animal drug use under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, clorsulon suspension is subject to section 512 of the act (21 U.S.C. 360b), which requires that its use in goats be the subject of an approved NADA or supplemental NADA. Goats are a minor specie under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, Southern Region, University of Florida, Gainesville, FL 32610, has filed data and information that demonstrate safety and effectiveness to goats orally drenched with a suspension containing 8.5 percent of clorsulon for the treatment of adult liver fluke (*Fasciola hepatica*) infestation. NRSP–7 has also filed human food safety data and an environmental assessment that adequately addresses the potential impacts due to use of the drug product.

The data and information are contained in PMF 5440. Sponsors of NADA's or supplemental NADA's may, without further authorization, refer to the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other data needed for approval, such as manufacturing methods, facilities, and controls, and information addressing the potential environmental impacts (including occupational) of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Naba K. Das (address above).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of target animal safety, effectiveness, and human safety data and information provided in this PMF to support approval of an application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 6, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–1022 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0478]

Cancer-Related Advisory Committees; Proposed Process for Selection of Patient Representatives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments from interested parties on the proposed process for the selection of patient representatives to serve on cancer-related advisory committees. As part of the "FDA Initiative on Reinventing the Regulation of Cancer Drugs," the Cancer Liaison Staff in the Office of AIDS and Special Health Issues has been charged with developing a process for recruitment, assessment, and selection of patient representatives to serve as members of cancer-related advisory committees in the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Center for Devices and Radiological Health (CDRH). This initiative is intended to provide representation for cancer patients and to ensure that the selection process will provide for broad representation in the nominee pool, and to develop criteria for the selection of the patient representatives. The criteria for both the nomination and selection process will help ensure that the patient representative will provide the perspective of the patients with the disease for which a therapeutic product is being considered by the advisory committee.

DATES: Written comments on the proposed process by March 17, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Minor, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460 or E-mail: JMinor@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 29, 1996, President Clinton announced the "FDA Initiative on Reinventing the Regulation of Cancer Drugs" that will result in more rapid approval of cancer therapies and expanded access to investigational cancer therapies. This program of cancer initiatives also includes the participation of patient representatives on FDA advisory committees that review and consider cancer-related therapies. Advisory committees provide independent, outside expert scientific advice to the agency; they evaluate data concerning the safety and efficacy of products and make recommendations to the agency concerning their approval and appropriate use.

Patient representatives can provide a unique perspective during the deliberations of advisory committees. The patient representatives bring to the committee the views on the drug or product under review from individuals and families directly affected by the disease. The agency recognizes the valuable contributions that patient representatives provide. During the past several years, the Antiviral Drugs Advisory Committee and the Blood Products Advisory Committee have included patient representatives at their meetings when products for the treatment or diagnosis of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) and blood safety were under discussion. More recently, the Oncologic Drugs Advisory Committee, the Biological Response Modifiers Advisory Committee, and the Medical Imaging Drugs Advisory Committee have begun including such representatives.

Patients, patient advocacy groups, and others have endorsed the agency in its commitment to include patient representation on advisory committees. In the past, the medical review division and the advisory committee's Executive Secretary, acting upon recommendations by the Office of AIDS and Special Health Issues, selected patient representatives through an informal process. The agency believes that it would be useful to have a uniform system to recruit, select, and refer patient representatives to serve on FDA advisory committees. The following is a proposed process to formalize the recruitment and selection of patient representatives to serve on committees reviewing cancer-related therapies.

II. The Proposed Process

The agency is developing a process for the recruitment, assessment, selection, and training of patient representatives. As part of this process, the agency believes that a mechanism for soliciting nominations of qualified patient representatives to ensure broad representation in the nominee pool is critical. To that end, the agency proposes to develop: (1) A listing of qualifications to be considered in

selecting patient representatives, and (2) a plan for soliciting nominations.

A. Qualifications for Patient Representatives

The agency has decided that patient representatives on FDA advisory committees that review and consider cancer therapies will be voting members. Patient representatives will be subject to the same conflict of interest requirements as other committee members as set out in § 14.80 (21 CFR 14.80) and must serve as special Government employees. Section 14.80 defines the qualifications for voting members of advisory committees. FDA recognizes that in some cases the composition of an advisory committee is mandated by statute or regulation. The agency will make a determination to add a voting patient representative on a case-by-case basis when: (1) Meetings are planned; (2) FDA determines it is allowable within the statutes and regulations; and (3) it is feasible and beneficial to a committee's deliberation.

The primary role of the patient representative would be to provide to the advisory committee the perspective of the patients with the disease for which the therapeutic agent is being considered. Currently, many of the FDA advisory committees, including those that provide advice on cancer-related issues, include a representative who is broadly identified with consumer interests and who has been nominated and recommended by a consumer-oriented organization. However, because there are so many different cancers, the number of appropriate perspectives is larger than a single consumer can represent. To more specifically represent the interests of the patients, the FDA believes that a patient representative who understands issues specific to the cancer for which a drug, device, or biologic approval is being sought would bring valuable insights to the FDA advisory committee process. Multiple factors are important to determine the ability of a person to be an effective patient representative. In addition to the qualifications described under § 14.80, the following qualifications are under consideration for selecting patient representatives: (1) Personal experience with an illness, condition, or treatment; (2) experience as a patient advocate; (3) formal affiliation with a patient advocacy organization; (4) ability to articulate the perspective of the patient; (5) ability to identify issues through communications with patient constituencies; (6) ability to access mechanisms to disseminate information from an advisory committee meeting to the affected community; and (7) experience in technical issues before the committee.

B. Soliciting Nominations

The agency believes that a mechanism for soliciting nominations of qualified patient representatives to ensure broad representation in the nominee pool is critical. After the qualifications for voting patient representatives are defined, the agency proposes to solicit nominations by the following methods: (1) **Federal Register** announcement as set out in 21 CFR 14.82; and possibly through Internet announcements; (2) direct mailings of announcements and personalized letters to patient advocacy groups, community organizations, and other public interest organizations; (3) patient newsletter announcements; or (4) display announcements at conferences, advisory committee meetings, workshops, etc. that FDA staff members attend, and at other conferences, meetings, and workshops.

Nominations may be submitted by individuals, patient advocacy groups and organizations. Self nominations will also be acceptable.

III. Comments

FDA is seeking the views of the public with regard to the proposed qualifications that should be considered in selecting a patient representative and comments on the adequacy of the methods proposed to obtain nominations. The agency will review and consider written comments on the approach set forth in this notice. Any comments received will be considered in determining whether amendments to, or revisions of, the approach are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments received are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 30, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–945 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97N–0002]

Policy on Period of Marketing Exclusivity for Newly Approved Drug Products With Enantiomer Active Ingredients; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is reevaluating its policy on the appropriate period of marketing exclusivity for newly approved drug products whose active ingredient is a single enantiomer of a previously approved racemate. This action is being taken to assess incentives for the development of new enantiomer drug products that may represent significant pharmaceutic advances. The agency is requesting comments on this issue and intends to publish a notice in **Federal Register** at a later date announcing its policy.

DATES: Written comments by March 17, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: FDA is requesting comments on the agency's policy on marketing exclusivity for drug products whose active ingredient is a single enantiomer of a previously approved racemate.

I. Enantiomers and Racemates

Stereoisomers are molecules that have the same constitution (i.e., molecular formula and chemical connectivity), but differ in the spatial orientation of the atoms. When two stereoisomers are mirror images, but are not superimposable upon each other (like left and right hands), they are referred to as enantiomers. Enantiomeric molecules are identical in all physical and chemical properties, except in an environment which is also chiral (characterized by handedness). Polarized light is such an environment, and pairs of enantiomers rotate the plane of polarization by equal amounts in opposite directions. Enantiomers may be either right-handed (dextro-rotary) S(+)-isomers or left-handed (levo-rotary) R(-)-isomers. Racemates are equimolar mixtures of enantiomers of the same molecule.

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Frequently, both enantiomers found in a racemate will have similar desirable pharmacological activity. In other cases, one member of a pair of enantiomers is pharmacologically active and the other inactive or nearly inactive, as in baclofen where the R(-)-isomer is a muscle relaxant and antispastic, and the S(+)-isomer is essentially inactive. In other racemates, the enantiomers show significantly different pharmacological activity. For example, both isomers of sotalol have similar antiarrhythmic effects, but only the R(-)-isomer has significant beta-blocking activity. There are also instances where only one member of a pair of enantiomers has shown significant toxicity; an example of this may be found with thalidomide, where it is generally believed that most, if not all, of the teratogenicity associated with the drug is attributable to the R(-)-isomer.

In the past, the usual practice in the pharmaceutical industry has been to develop either a racemate or an enantiomer without fully characterizing or studying its respective properties. When separation of enantiomers was difficult, the question of which stereoisomeric form should be developed was largely an academic question. However, in many cases, current technology permits production of pure enantiomers on a commercial scale. Improved pharmacologic study of enantiomers has been permitted by developments in analytical technology that frequently enable detection of one enantiomer in the presence of the other at concentrations found in biological fluids.

The increased feasibility of such efforts led the agency to issue on May 1, 1992, "FDA's Policy Statement on the Development of New Stereoisomeric Drugs" (Stereoisomeric Drug Policy). (See the **Federal Register** of May 27, 1992 (57 FR 22249).) The Stereoisomeric Drug Policy provides general recommendations for conducting and reviewing studies of the safety and effectiveness of drug products whose active ingredient is an enantiomer, a racemate, or a nonracemic mixture of enantiomers. Although the Stereoisomeric Drug Policy does not address issues of marketing exclusivity, it does contain the agency's thinking on the approval of stereoisomeric drug products. As such, it may be of interest to anyone commenting on marketing exclusivity for drug products whose active ingredient is a single enantiomer of an approved racemate.

II. Marketing Exclusivity

A. The 1984 Amendments

The 1984 amendments amended the Federal Food, Drug, and Cosmetic Act (the act) to establish two new types of marketing applications: Abbreviated new drug applications (ANDA's), established under section 505(j) of the act (21 U.S.C. 355(j)); and 505(b)(2) applications, established under section 505(b)(2) of the act. The 1984 amendments also provide for the granting of nonpatent marketing exclusivity to certain drug products. Marketing exclusivity gives qualified drug products periods free of competition from drugs approved under ANDA's and 505(b)(2) applications.

Marketing exclusivity is provided for in section 505(c)(3)(D) of the act, which limits approval of competing 505(b)(2) applications, and section 505(j)(4)(D) of the act, which limits approval of competing ANDA's.

Section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act provides that if an NDA is approved for a drug, no active ingredient of which has been approved in a previous NDA, no 505(b)(2) application or ANDA for a drug product with the same active ingredient as the previously approved NDA drug product may be submitted until 5 years after the date of approval of the first drug product.

Section 505(c)(3)(D)(iii) and (j)(4)(D)(iii) of the act provides 3 years of exclusivity to a drug product that includes a previously approved active ingredient, where the NDA for the drug product contains reports of new clinical investigations (other than bioavailability studies), conducted or sponsored by the applicant, that are essential to the approval of the NDA. (Section 505(c)(3)(D) and (j)(4)(D) of the act has other marketing exclusivity provisions which are not relevant to this notice.)

The text of the amendments and the legislative history accompanying the amendments do not directly address how these provisions of the 1984 amendments regarding marketing exclusivity should be applied to enantiomers.

B. Regulations

FDA's regulations implementing the marketing exclusivity provisions of the 1984 amendments are found in § 314.108 (21 CFR 314.108). Section 314.108(b)(2) states that if a drug product that contains a "new chemical entity" was approved in an NDA, "no person may submit a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act for a drug product that contains the same active moiety as in the new chemical entity for a period of 5 years from the date of approval of the first approved new drug application." Section 314.108(b)(4) states that if an NDA is for a drug product that contains an active moiety that has been previously approved in another NDA, and includes reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the NDA, that drug product will be entitled to 3 years of marketing exclusivity.

"New chemical entity" is defined in § 314.108(a) as "a drug that contains no active moiety that has been approved by FDA in any other application submitted under section 505(b) of the act." "Active moiety" is defined in the same section as follows:

> [T]he molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

The issue of marketing exclusivity for enantiomers is not addressed in the body of the regulation.

In the **Federal Register** of July 10, 1989 (54 FR 28872), FDA proposed regulations implementing the 1984 amendments. In the preamble to the proposed rule (54 FR 28872 at 28898), FDA briefly examined the issue of whether a single enantiomer of a previously approved racemate is entitled to 5 years of exclusivity under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act, or 3 years of exclusivity under section 505(c)(3)(D)(iii) and (j)(4)(D)(iii) of the act. The agency stated that:

> FDA will consider whether a drug contains a previously approved active moiety on a case-by-case basis. FDA notes that a single enantiomer of a previously approved racemate contains a previously approved active moiety and is therefore not considered a new chemical entity.

FDA received one comment disagreeing with the stated policy. This comment was received nearly 4 years after the comment period closed, and the agency responded to it in the preamble to the final rule with a reiteration of the statement from the proposal. (See the **Federal Register** of October 3, 1994 (59 FR 50338 at 50359).)

III. Request for Comments

In light of the complexity of the scientific and regulatory issues involved, FDA believes it is appropriate to reexamine the question of exclusivity for enantiomers of previously approved

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racemates. The agency believes that this issue would benefit from a more focused consideration than it was subject to in the rulemaking process for the regulations implementing the 1984 amendments, where there were many complicated and contentious regulatory matters under consideration, and where this issue was raised by one comment submitted very late in the rulemaking process. Accordingly, FDA is requesting comments on the appropriate period of marketing exclusivity for drug products whose active ingredient is a single enantiomer of a racemate that is an active ingredient of a previously approved drug product. Among the issues that the agency is interested in receiving comment on are as follows:

(1) What period of marketing exclusivity would best effectuate the 1984 amendments' dual policy goals of increasing drug price competition and providing incentives for the development of innovative drug products?

(2) Would granting a 5-year period of exclusivity to enantiomers of previously approved racemates encourage medically significant pharmaceutical innovation?

(3) If the pharmacological action of each enantiomer is described in the approved NDA for the racemate, should a subsequently submitted application for an enantiomer of the racemate receive different treatment for exclusivity purposes than if the pharmacological action of each enantiomer is not described in the approved NDA for the racemate drug product?

(4) If the agency were to assess requests for exclusivity for enantiomers of previously approved racemates on a case-by-case basis, what criteria should the agency apply?

(5) Compared with other drug products, what are the costs of and technical barriers to obtaining safety and efficacy data for a drug product whose active ingredient is a single enantiomer of a previously approved racemate?

(6) How many drug products (whether approved, the subject of pending NDA's, or in development) are likely to be affected by this policy?

After considering comments received in response to this notice, FDA will publish a **Federal Register** notice setting forth its policy on exclusivity for a drug product whose active ingredient is an enantiomer of a previously approved racemate.

Interested persons may, on or before March 17, 1997, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Copies of the comment on exclusivity for enantiomers submitted to the docket for the July 10, 1989, proposed rule; FDA's Stereoisomeric Drug Policy; and other correspondence and documents relating to the subject matter of this notice have been placed in the docket for this notice. Received comments and other material placed in the docket may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Persons considering submitting a 505(b)(2) application or an ANDA for a drug product that may be affected by any change in FDA's policy on marketing exclusivity for enantiomer drug products should contact the Center for Drug Evaluation and Research's (CDER's) Office of Generic Drugs or the appropriate review division within CDER before submitting the application.

Dated: January 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–944 Filed 1–10–97; 12:29 pm]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement for Grant Programs Administered by the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions for Fiscal Year 1997

Correction

In notice document 96–28112 appearing on page 56550 on the issue of Friday, November 1, 1996 make the following correction:

On page 56550, in the table on the fourth line titled "Public Health Special Projects" in the fourth column under the column heading "Available for competing awards", the amount should read "$2,500,000".

Dated: January 7, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–943 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Monoclonal Antibodies to a Tumor-Specific Growth Factor for the Diagnosis and Prognosis of Premalignant Lesion and Cancer

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a pharmaceutical or biotechnology company that can effectively pursue the scientific and commercial generation and development of a panel of monoclonal antibodies against an epidermal growth factor (EGF)-related peptide, cripto-1 (CR–1) and its novel receptor. The project is of scientific importance because CR–1 is a protein that exhibits structural homology to the EGF / transforming growth factor α (TGFα) gene family of peptides. As such, CR–1 might function as a growth or survival factor. Therefore, CR–1 may be important as an autocrine or paracrine modulator in such processes a tumor cell growth, wound repair, neovascularization, inflammation, and apoptosis.

NCI has successfully isolated and cloned the gene that encodes CR–1, an EGF-related peptide growth factor that does not bind to the EGF receptor or other type 1 receptor tyrosine kinases. The NCI has also obtained a rabbit anti-peptide polyclonal antibody that can detect the expression of CR–1 in formalin-fixed, paraffin-embedded human tissue sections. CR–1 has been shown to be preferentially and differentially expressed in several different human premalignant lesions and cancers. The selected sponsor will purify a recombinant CR–1 protein and use this material as an immunogen to generate anti-CR–1 monoclonal antibodies for use in the diagnosis and prognosis of human cancers.

ADDRESSES: Inquiries and proposals regarding this opportunity should be sent to Richard I. Kohn, J.D., M.S., Office of Technology Development, National Cancer Institute, as follows: (a) *by U.S. Mail to:* Executive Plaza South, Room 450, 6120 Executive Blvd., MSC 7182, Bethesda MD 20892–7182; (b) *By messengers and express delivery to:* 6120 Executive Blvd, Suite 450, Rockville, MD 20852; (c) *by telephone at* (301) 496–0477; (d) *by fax at* (301) 402–2117.

DATES: Written proposals must be received at the above address by 5:00 p.m. on March 17, 1996.

SUPPLEMENTARY INFORMATION: The NCI is seeking a pharmaceutical or biotechnology company which, after obtaining a license in accordance with the requirements of the regulations governing the transfer of Government-developed rights, (37 CFR part 404), can purify a recombinant CR–1 protein (for which patents are pending or have been issued) and utilize this purified recombinant CR–1 protein as an immunogen to generate a panel of mouse monoclonal antibodies. The immunoreactive CR–1 protein has been detected by immunoperoxidase staining using a rabbit anti-peptide polyclonal CR–1 antibody in a majority of human colon cancers, breast cancers, gastric cancers, and pancreatic cancers. Little or no staining was detected in surrounding, noninvolved colon, breast or gastric epithelial cells. In addition, a majority of premalignant colonic adenomas, breast ductal carcinomas *in situ* and gastric intestinal metaplasia express immunoreactive CR–1.

A recombinant CR–1 protein has been generated using a baculovirus expression vector in Sf-9 insect cells and a partially purified protein obtained. This protein as well as synthetic, refolded peptides that correspond to the EGF-like domain in CR–1 are mitogenic for human breast cancer cells and can modulate milk protein expression, yet fail to bind to the EGF receptor or other type I receptor tyrosine kinases. Expression of CR–1 antisense mRNA using a recombinant, replication defective retroviral expression vector in colon cancer cells that expresses CR–1 inhibits the growth of these cells *in vivo* in nude mice. In order to utilize diagnostic and therapeutic potentials of CR–1, it will be necessary to purify a significant amount of the recombinant CR–1 protein to more fully define its biological properties and to identify the receptor through which it functions. In addition, mouse monoclonal antibodies against the purified CR–1 recombinant protein will expedite screening studies for CR–1 expression in other human premalignant lesions and cancers and should exhibit more specificity and sensitivity for the detection of CR–1 in tissues by immunocytochemistry (ICC) or in tissue extracts or serum samples by ELISA.

The United States Public Health Service owns the following issued patents which may be relevant to the subject technology:

1. United States Patent No. 5,264,557, issued November 23, 1993, "Human CRIPTO-Related Gene."
2. United States Patent No. 5,256,643, issued October 26, 1993, "Cloned Human CRIPTO Gene and Applications Thereof."

Questions regarding licensing should be directed to Joseph Hemby, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, #325, Rockville, MD 20852–3804, telephone (301) 496–7056.

The role of the National Cancer Institute, Division of Basic Sciences, includes:

1. NCI will provide vectors that encode CR–1 and can be used to produce CR–1 in *E. coli* and in Sf-9 insect cells.
2. NCI will provide a rabbit polyclonal anti-CR–1 antibody for monitoring CR–1 recovery during the purification from the yeast conditioned medium.
3. NCI will assay the purified recombinant CR–1 protein for bioactivity.
4. NCI will screen anti-CR–1 monoclonal antibodies for reactivity by Western blot analysis against native CR–1 protein from CR–1 positive human embryonal carcinoma or colon carcinoma cells.

The role of the successful collaborator will include:

1. Purify to homogeneity 30–50 milligrams of CR–1 from *E. coli* or Sf-9 insect cell conditioned medium.
2. Provide the purified recombinant CR–1 protein.
3. Utilize the purified recombinant CR–1 protein to generate mouse anti-CR–1 monoclonal antibodies.
4. Screen anti-CR–1 monoclonal antibodies for specificity, reactivity, and sensitivity towards the recombinant CR–1 protein.
5. Ascertain whether monoclonal anti-CR–1 antibodies can detect nature CR–1 protein in CR–1 positive human colorectal or embryonal carcinoma cells by radioimmunoprecipitation analysis and by ELISA.
6. Determine whether anti-CR–1 antibodies can be used for ICC on formalin-fixed, paraffin embedded tissues known for CR–1 expression.
7. Provide funds to support a postdoctoral fellow and associated expenses.

Criteria for choosing the collaborator will include:

1. Experience in producing and purifying recombinant proteins, particularly growth factors or cytokines.
2. Experience in generating and screening monoclonal antibodies.
3. Willingness to cooperate with the NCI in the collection and evaluation of data.
4. Willingness to cost share in laboratory expenses.
5. And agreement to be bound by the DHHS rules involving the use of human and animal subjects and human tissues.
6. Provisions for equitable distribution of patent rights to any inventions. Generally, the rights of ownership are retained by the organization(s) which is/are the employer(s) of the inventor. For inventions made solely by the collaborator's employees, there shall be a grant to the Government of a nonexclusive, nontransferable, irrevocable, paid up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government for research or other Government purposes. For inventions not made solely by the collaborator's employees, there shall be a grant to the collaborator of an option to elect an exclusive or nonexclusive commercialization license.

Dated: December 9, 1996.

Thomas Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 97–1004 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Human Development Research Subcommittee.

Date: February 11–12, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Neuropharmacology Research Subcommittee.

Date: February 11–12, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Syed Husain, Ph.D, Scientific Review, Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Basic Behavioral Science Research Subcommittee.
Date: February 11–13, 1997.
Time: 8:30 a.m.
Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut, N.W., Washington, DC 20008.
Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Epidemiology and Prevention Research Subcommittee.
Date: February 11–13, 1997.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Molecular, Cellular and Chemical Neurobiology Research Subcommittee.
Date: February 12–14, 1997.
Time: 8:30 a.m.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel.
Date: February 13, 1997.
Time: 2:00 p.m.
Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut, N.W., Washington, DC 20008.
Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

Name of Committee: Neurophysiology and Neuroanatomy Research Subcommittee.
Date: February 18–20, 1997.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: January 10, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–997 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on February 4–5, 1997, at the National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD 20892.

On February 4, from 9 a.m. to 4 p.m., the meeting will be held in Conference Rooms 9 and 10. In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On February 5, from 9 a.m. to 5 p.m., the meeting will be held in Conference Room 6. This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443/2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Eleanor C. Friedenberg in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: January 10, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–998 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public law 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on February 3–5, 1997, at the Belmont, 6555 Belmont Woods Road, Elkridge, Maryland.

The meeting will be open to the public from 8:30 to 9:30 a.m. on February 3, to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on February 3, from 9:30 a.m. until recess on February 4, and from 9:30 a.m. until adjournment on February 5. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

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contact Ms. Goad in advance of the meeting.

Dr. Keven M. Callahan, Scientific Review Administrator, Allergy, Immunology, and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1000 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: February 14, 1997.

Time: 2:00 p.m.

Place: 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate one grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1002 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: February 4, 1997.

Time: 10:00 a.m.

Place: 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person. Dr. Lillian Pubols, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate one SBIR Phase I Contract Proposal.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1003 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 13–14, 1997, convening at 9 a.m. on February 13 and at 8:30 a.m. on February 14 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 13 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. Public Law 92–463, the meeting will be closed on February 13 from 10:30 a.m. to approximately 5 p.m. and on February 14 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–999 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: January 29, 1997.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4134, Telephone Conference.

Contact Person: Dr. Clark Lum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4134, Bethesda, Maryland 20892, (301) 435–1195.

Name of SEP: Biological and Physiological Sciences.

Date: February 7, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6168, Telephone Conference.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Name of SEP: Clinical Sciences.

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Date: February 25–26, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: March 4–5, 1997.
Time: Holiday Inn, Gaithersburg, Maryland.
Place: Holiday Inn, Gaithersburg, Maryland..
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.982, 93.893, National Institutes of Health, HHS)

Date: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1001 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–05]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451–7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Rebecca Wiley, Office of Special Needs Assistance, Room 7258, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–1226. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Ms. Wiley at (202) 708–3617. (Except for the "800" number, these telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Application

OMB Control Number, if applicable: 2506–0112

Description of the need for the information and proposed use: This request is for revision of a currently approved information collection for use in HUD's competitive homeless assistance programs authorized by the Stewart B. McKinney Act, as amended. The application form is needed to assist in the selection of proposals submitted to HUD (by State and local governments, public housing authorities, Indian tribes, and nonprofit organizations) for the awarded funds under the Supportive Housing, Shelter Plus Care, and Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals programs.

Agency form numbers, if applicable: HUD–40076, SF–424

Members of affected public: States, units of local government, tribal government, not–for–profit institutions

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The numbers below represent HUD's estimate of the additional hours it will take Continuum of Care Homeless Assistance applicants to prepare the required information.

	Number of respondents	Frequency of responses	Hours per response	Total hours
Application Preparation	2,700	1	42	113,400

Status of the proposed information collection: Revision of a currently approved collection is pending.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 9, 1997.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 97–950 Filed 1–14–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–3095–N–04]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 14, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 8, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: HUD Systems for Approval of Single Family Housing in New Subdivisions (FR–3095).

Office: Housing.

OMB Approval Number: 2502–0496.

Description of the Need for the Information and Its Proposed Use: HUD requires the builder to complete a certification (HUD–92541) that notes any adverse site/location factors on the property. HUD needs this information so that they will not insure a mortgage on a property where site/location conditions will pose a health or safety risk to the occupant or will adversely affect the continued marketability of the property.

Form Number: HUD–92541.

Respondents: Business or Other-For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Information Collection	800		82		.25		16,400

Total Estimated Burden Hours: 16,400.

Status: Reinstatement, without changes.

Contact: Ken Crandall, HUD, (202) 708–2121; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 8, 1997.

[FR Doc. 97–949 Filed 1–14–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Natomas Basin Habitat Conservation Plan, Sacramento and Sutter Counties, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the City of Sacramento has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–823773. The proposed permit would authorize the incidental take of the federally threatened giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and vernal pool fairy shrimp (*Branchinecta lynchi*); the federally endangered peregrine falcon (Falco peregrinus anatum), conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), and palmate bird's beak (*Cordylanthus palmatus*); the proposed threatened slender orcutt grass (*Orcuttia tenuis*) and hairy orcutt grass (*Orcuttia pilosa*); and the proposed endangered Sacramento orcutt grass (*Orcuttia viscida*). The proposed taking of these species would be incidental to development for urban uses within the 55,000-acre Natomas Basin in Sacramento and Sutter Counties. The proposed permit also would authorize future incidental take of the currently unlisted California tiger salamander (*Ambystoma tigrinum californiense*), Swainson's hawk (*Buteo swainsoni*), greater sandhill crane (*Grus canadensis tubida*), bank swallow (*Riparia riparia*), Boggs Lake hedge-hyssop (*Gratiaola heterosepala*) and Ahart's dwarf flax (*Juncus leiospermus var ahartii*), should any of these species become listed under the Endangered Species Act in the future. The permit would be in effect for 50 years.

The U.S. Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application, which includes the proposed Habitat Conservation Plan fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before March 3, 1997.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to, U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–823773 when submitting comments. Individuals wishing copies of the application, Environmental Assessment or Implementing Agreement for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton, Sacramento Field Office, 916–979–2725.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the "taking" of a species listed as threatened or endangered. However, the U.S. Fish and Wildlife Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The Natomas Basin Habitat Conservation Plan addresses development within the 55,000-acre Natomas Basin in Sutter and Sacramento Counties. The Natomas Basin is subject to several approved or proposed land use plans that will convert portions of the Basin to urban uses. Based on these plans, approximately 17,500 acres of undeveloped land is expected to be urbanized during the 50-year term of the proposed permit. Development activities may result in take of covered species and permanent disturbance to their habitats. In addition, the proposed permit would cover incidental take that occurs during implementation of rice farming activities within the permit area. Rice farming may result in take of the giant garter snake because rice fields are used as habitat by this species.

The Natomas Basin Habitat Conservation Plan establishes a mitigation program for urban development, water system operation, and agriculture. The focus of the program is a system of mitigation lands which would be managed as wetland and upland habitat for the giant garter snake, the Swainson's hawk and other covered species. One-half acre of mitigation land would be established for every acre of land developed within the Natomas Basin Habitat Conservation Plan Area. The mitigation land would be acquired and managed by the Natomas Basin Conservancy, a non-profit conservation organization that would be established at the time the Natomas Basin Habitat Conservation Plan is implemented. Currently, the City of Sacramento is the only entity seeking a section 10(a)(1)(B) permit to cover land use approvals and public works activities; however, entities such as the County of Sacramento and the County of Sutter, among others, could apply to be added to this permit or apply for separate permits in the future.

Habitat acquisition and management would be funded by one-time assessments ("base fees") on development. The base fee is projected to be $2,240.00 (in 1995 dollars, to be adjusted using the Consumer Price Index to reflect current dollars at the time of permit issuance) per acre of development. All lands developed within the area of the proposed permit would be subject to the base fee; no distinction would be made between areas with approved land use plans and areas currently zoned for agriculture. The base fee also would be adjusted as necessary throughout the term of the permit to provide for inflation. In addition, the base fee could be adjusted to cover increasing costs of mitigation. This adjustment would be limited to increases of no more than 10 percent per year (not including adjustments made for inflation), with a maximum cumulative base fee increase of 50 percent above the base fee at the time of permit issuance.

Initially, a minimum of 80 percent of the mitigation lands acquired to mitigate for the loss of giant garter snake habitat would be located within the Natomas Basin; up to 20 percent of the giant garter snake mitigation lands could be located in specified areas outside of the Natomas Basin. After completion of the yet-to-be-developed Giant Garter Snake Recovery Plan, location of the mitigation lands could be shifted to a minimum of 50 percent within the Basin and up to 50 percent outside of the Basin, as directed by the Giant Garter Snake Recovery Plan and approved by the U.S. Fish and Wildlife Service. Mitigation lands would be managed as a combination of rice farms and marsh habitat, with at least 25 percent of the mitigation lands in marsh habitat and 25 percent in rice-farm habitat. The remaining 50 percent of the giant garter snake mitigation lands would be either marsh or rice, as determined by the Giant Garter Snake Recovery Plan.

The Environmental Assessment considers the environmental consequences of four alternatives. Alternative 1, the proposed action, consists of the issuance of an incidental take permit to the City of Sacramento and implementation of the Habitat Conservation Plan and its Implementing Agreement. This alternative is preferred because it satisfies the purpose and needs of the U.S. Fish and Wildlife Service and the City of Sacramento, and the impacts of urbanization are minimized and mitigated by the establishment of habitat preserves. The specifications of the habitat preserves under this alternative ensure that long-term wetland and upland habitat values are maintained for the giant garter snake, Swainson's hawk, and other species covered by the Natomas Basin Habitat Conservation Plan. Alternative 2 proposes a variable mitigation ratio in which landowners with documented occurrences of covered species or "high quality" habitat would be required to compensate at a higher ratio than landowners with no documented occurrences of covered species or "poor quality" habitat. Under this alternative, each parcel of land proposed for development would need to be inspected and a mitigation ratio assessed based on existing habitat quality and/or species utilization. This alternative would place a greater emphasis on proving presence or absence of covered species, primarily giant garter snake. Because survey procedures used to locate giant garter snakes and/or determine suitability of habitat are not fully reliable, it is likely that this method would not adequately reflect the ecology of the giant garter snake and would not effectively address the indirect and cumulative impacts of urbanization on the species.

Alternative 3 is similar to the proposed action except that the minimum percentage of mitigation lands to be maintained as managed marsh habitat (as opposed to rice-farm habitat) would increase from 25 to 50 percent. This alternative would likely provide greater habitat values than the proposed action because a greater proportion of the habitat preserves would be enhanced and managed as marsh. This alternative, however, contains a greater risk that the smaller proportion of revenue-generating rice lands could result in economic instability and consequently have an

adverse impact on the maintenance and management of the preserve system. Under Alternative 4, the no action alternative, the U.S. Fish and Wildlife Service would not issue an incidental take permit. Under this alternative, development within the Natomas Basin Habitat Conservation Plan area would occur with individual development projects mitigating for their impacts independently in an unstructured manner. The current process of individual consultation on each development project has resulted in mitigation which is fragmented over the landscape and is likely to be of limited long-term value in providing for the conservation of species such as the giant garter snake.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The U.S. Fish and Wildlife Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 45 days from the date of this notice.

Dated: January 7, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–967 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interior Columbia Basin Ecosystem Management Project

AGENCIES: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Revised notice of intent to prepare environmental impact statements.

SUMMARY: Interior Columbia Basin Ecosystem Management Project (ICBEMP). The purpose for this revised notice of intent is to provide public notice of the changed completion schedule for the ICBEMP's environmental impact statements (EIS).

This **Federal Register** notice revises the schedule published in the September 11, 1996 **Federal Register** (61 FR 47859) for the completion of the EISs. The Executive Steering Committee (ESC), at its meeting from December 2–4, 1996, took the important step of approving the alternatives for inclusion in the draft EISs. The ESC also directed changes to the draft EISs to improve them and address specific concerns raised in its earlier internal review of the draft documents. The directed changes focus on clarification of the objectives and standards for the alternatives. Based on the amount of time to implement these changes and then to prepare and print the document, the draft EISs are now planned to go to the printer in April, with a scheduled release for public comment in June 1997. Release of the final EISs and Records of Decision is anticipated approximately one year later.

FOR FURTHER INFORMATION CONTACT: Linda S. Colville, Project Management Team, Interior Columbia Basin Ecosystem Management Project; 304 North 8th Street, Room 246, Boise, Idaho 83702, phone 208–334–1770.

Dated: January 6, 1997.

Robert W. Williams,

Regional Forester.

Dated: January 6, 1997.

Elaine Y. Zielinski,

State Director.

[FR Doc. 97–963 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–11–M; 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–07–1060–00]

Notice of Public Hearing

AGENCY: Bureau of Land Management, Interior.

SUMMARY: A public hearing on the use of helicopters in wild horse roundup activities will be held at the White Mountain Library, Grace Gasson Room.

DATE: February 19, 1997, 7 p.m. until 9 p.m.

ADDRESSES: White Mountain Library, 2935 Sweetwater Drive, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Michelle Chávez, District Manager, Rock Springs District Office, 280 Highway 191 North, Rock Springs, Wyoming, (307–352–0200).

SUPPLEMENTARY INFORMATION: The agenda will be limited to:

1. Introduction and opening remarks.
2. Review of the Wild Horse Management Plan.
3. Use of helicopters in the Plan.
4. Film presentation of roundup activity.
5. Public comment period.

The meeting is open to the public and interested persons may make statements on the subject.

All statements will be recorded.

Michelle Chávez,

District Manager.

[FR Doc. 97–585 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–22–P

[ID–990–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Idaho.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater District Resource Advisory Council (RAC) on Friday, January 31, 1997. The meeting will be held via telephone conference.

The purpose of the meeting is for the RAC members to discuss and make recommendations to the District Manager, State Director and Secretary of the Interior concerning the procedures and implementation schedule for the proposed rangeland standards and guidelines. Other administrative issues may be discussed as time permits. The RAC will meet from 9:00 a.m. to 11:00 a.m. (PST). The public may address the Council during the public comment period starting at 10:00 a.m. at BLM's Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, Idaho.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing long-range planning and establishing resource management priorities; and assisting the BLM to identify state standards for rangeland health and guidelines for grazing.

For further information contact: Ted Graf (208) 769–5004.

Dated: January 9, 1997.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 97–966 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–GG–M

[MT–924–1430–01; MTM 40735]

Public Land Order No. 7235; Partial Revocation of Secretarial Order Dated August 18, 1902; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 80 acres of public land withdrawn for the Bureau of Reclamation's Milk River Reclamation Project. The land is no longer needed for this purpose and the revocation is needed to permit disposal of the land through direct sale. This action will open the land to surface entry subject to temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated August 18, 1902, which withdrew public lands for the Bureau of Land Reclamation's Milk River Reclamation Project, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 30 N., R. 29 E.,
Sec. 11, S½SE¼

The area described contains 80 acres in Phillips County.

2. At 9 a.m. on February 14, 1997, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 14, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–919 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–DN–P

[NM–070–1430–01; NMNM 92843]

Public Land Order No. 7234; Withdrawal of Public Lands for the Lee Acres Landfill; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 134.68 acres of public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect public health and welfare, and the environment from hazardous materials existing in soils and groundwater of the Lee Acres Landfill. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, BLM Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401, 505–599–6332.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect public health and welfare, and the environment from hazardous materials existing in soils and groundwater of the Lee Acres Landfill:

New Mexico Principal Meridian

T. 29 N., R. 12 W.,
Sec. 21, lots 6 and 7 (everything southeast of County Road No. 5569);
Sec. 22, lot 5 (everything southeast of County Road No. 5569), lot 6 W½, lot 11 W½, and lot 12;
Sec. 28, lot 2.

The areas described aggregate 134.68 acres in San Juan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–918 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–FB–P

[ES–030–07–1430–01; WIES–048261]

Notice of Realty Action: Sale of Public Land in Bayfield County, Wisconsin

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following land has been found suitable for disposal by direct sale under the authority of Sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. This land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian,

T.43N., R.7W.
Sec. 17, Lot #9.
Containing 21.43 acres.

The land described is being offered as a direct sale to the trustee for the owners of the improvements on the land at the appraised value. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interest may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

DATES: Interested parties may submit comments until March 7, 1997. Any adverse comments will be evaluated by the District Manager. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Milwaukee District, P.O. Box 631, Milwaukee, WI 53201–0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Milwaukee District, (414) 297–4413.

SUPPLEMENTARY INFORMATION: The proposed sale will resolve an occupancy trespass resulting from a correction of an erroneous survey of the meander line of Perry Lake. The land has not been used for and is not required for any

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Federal purpose. The public interest will be served by the sale of this parcel to protect the private landowner's equities.

Publication of this notice in the **Federal Register** will segregate the public land described above from settlement, location, or entry under the public land laws, including the mining laws, as provided in 43 CFR 2711.102, but not from sale pursuant to Sec. 203 of the Federal Land Policy and Management Act of 1976.

Dated: January 9, 1997.

Chris Hanson,

Acting District Manager.

[FR Doc. 97–962 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–GJ–P

National Park Service

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, March 5, 1997, 6:30 p.m. to 9:30 p.m.; Community Room, Anoka City Hall, 2015 First Avenue, Anoka, Minnesota. An agenda for the meeting will be available by February 26, 1997. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be accepted at this time.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

Dated: January 3, 1997.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 97–973 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–70–P

Eastern Greene Township Rural Historic District; Determination of Eligibility for the National Register of Historic Places

ACTION: Request for comments.

On February 24, 1995, the Eastern Greene Township Rural Historic District, Franklin County, Pennsylvania was determined eligible for the National Register of Historic Places for its historic and architectural importance, following a request from the Federal Highway Administration. The district consists of a landscape farmed continuously since the eighteenth century and reflects the agricultural patterns of the rich Cumberland Valley. Important features found in the district include intact farmsteads, with their significant collection of barns, farmhouses and outbuildings, the field patterns, fencerows, family cemeteries, and the network of the historic farm roads. The finding of eligibility was based upon review of documentation submitted by the Federal Highway Administration, the Pennsylvania Historical and Museum Commission, and Greene Township. All agreed that the historic district is eligible for the National Register of Historic Places.

Since the determination of eligibility was issued, the National Park Service has received a request that the boundary of the district be redrawn to exclude lands located within the Borough of Chambersburg, based upon a claimed loss of historic integrity of the area. Documentation relative to the historic integrity of this portion of the district was submitted to the National Register. Copies of this documentation are available from the National Register at the address below. In order to accommodate those who wish to provide new information concerning the boundary of the Eastern Greene Township Rural Historic District, the National Park Service is providing a 60 day comment period. A written statement on the determination of eligibility will be issued by the National Park Service within 30 days of the close of the comment period.

The determination of eligibility remains in effect pending review of responses submitted during the comment period. In order to revise the boundary the National Park Service must receive authoritative information, which evaluated in conjunction with documentation already on file, results in a finding that the determined eligible boundary does not accurately delineate the historic district in accordance with established National Register standards.

Comments should be addressed to the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 97–972 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 4, 1997. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 30, 1997.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Dillingham Borough-Census Area

Aniakchak Bay Historic Landscape District, Surrounding the Aniakchak River from Aniakchak Crater to Aniakchak Bay, Aniakchak National Preserve, Chignik vicinity, 97000016

COLORADO

Denver County

Bluebird Theater, 3315—3317 E. Colfax Ave., Denver, 97000018

Morgan County

Knearl School, 314 S. Clayton St., Brush, 97000017

IOWA

Pottawattamie County,

Turner, Francis A. And Rose M., House, 1004 Cherry St., Avoca, 96001583

MINNESOTA

St. Louis County

Virginia Commercial Historic District, Chestnut St. between 1st and 6th Aves., Virginia, 97000020

Steele County

Owatonna City and Firemen's Hall, 107 W. Main St., Owatonna, 97000019

NORTH CAROLINA

Craven County

New Bern National Cemetery (Civil War National Cemeteries MPS), 1711 National Ave., New Bern, 97000023

New Hanover County

Wilmington National Cemetery (Civil War Era National Cemeteries MPS), 2011 Market St., Wilmington, 97000021

Wake County

Raleigh National Cemetery (Civil War Era National Cemeteries MPS) 501 Rock Quarry Rd., Raleigh, 97000022

VERMONT

Grand Isle County

South Stone School House (Educational Resources of Vermont MPS) VT 129, jct. with Quarry Rd., Isle LaMotte, 97000025

Rutland County

Kidder, Asahel, House, VT 22A, S of jct. with Bolger Rd., Fair Haven, 97000024

Windsor County

King Farm, The (Agricultural Resources of Vermont MPS) King Farm Rd., .5 mi. N of jct with US 4, Woodstock, 97000026

WASHINGTON

Pend Oreille County

United States Border Station, Roughly bounded by WA 31 and the U.S.-Canadian border, Colville National Forest, Metaline Falls vicinity, 96001634

[FR Doc. 97–971 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Change in meeting dates.

SUMMARY: The Bureau of Reclamation published a notice of scheduled meetings for the Conservation Advisory Group, Yakima River Basin Water Enhancement Project in the **Federal Register** (61 FR 54214, Oct. 17, 1996). The meeting dates have been changed to January 15–16.

FOR FURTHER INFORMATION CONTACT: Walt Fite, Program Manager, Yakima River Water Enhancement Project, PO Box 1749, Yakima, Washington 98907; (509) 575–5848 ext. 267.

SUPPLEMENTARY INFORMATION: The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved stream flows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: November 26, 1996.

James V. Cole,

Manager, Upper Columbia Area Office.

[FR Doc. 97–886 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–04–M

INTERNATIONAL TRADE COMMISSION

Certain Agricultural Tractors Under 50 Power; Take-off Horsepower; Notice of Commission Determination to Review in Part an Initial Determination; Schedule for the Filing of Written Submissions on the Issue Under Review, and on Remedy, the Public Interest, and Bonding

Investigation No. 337–TA–380

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission had determined to review in part the initial determination (ID) issued by the presiding administrative law judge (ALJ) on November 22, 1996, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission on February 14, 1996, based on a complaint filed by Kubota Tractor Corporation ("KTC'), Kubota Manufacturing of America ("KMA'), and Kubota Corporation ("KBT") (collectively "complainants'). Complainants alleged unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, and/or the sale within the United States after importation of certain agricultural tractors under 50 power take-off horsepower, by reason of infringement of complainants' four registered trademarks, U.S. Reg. Nos. 922,330 ("KUBOTA" in block letters), 1,775,620 ("KUBOTA" stylized), 1,028,221 (Gear Design), and 1,874,414 (stylized "K'). The Commission's notice of investigation named Eisho World Ltd., Nitto Trading Corporation, Nitto Trading Co. Ltd., Sanko Industries Co., Ltd., Sonica Trading, Inc., Suma Sangyo, Toyo Service Co., Ltd., Bay Implement Company, Casteel Farm Implement Co. of Monticello, Arkansas, Casteel Farm Implement Co. of Pine Bluff, Arkansas, Casteel World Group, Inc., Gamut Trading Co., Gamut Imports, Lost Creek Tractor Sales, MGA, Inc. Auctioneers, Tom Yarbrough Equipment Rental and Sales, Inc., The Tractor Shop, Tractor Company, Wallace International Trading Co. and Wallace Import Marketing Co. Inc. as respondents. 61 Fed. Reg. 6802 (Feb. 22, 1996).

On June 19, 1996, the notice of investigation was amended to add Fujisawa Trading Company as a respondent. On May 29, 1996, the Commission determined not to review an ID (Order No. 13) finding respondents Tractor Company, Sonica Trading, and Toyo Service in default pursuant to Commission rule 210.16, and ruling that they had waived their respective rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. On September 25, 1996, the Commission issued a consent order terminating the investigation as to respondent Nitto Trading Corporation. On September 30, 1996, the Commission issued a consent order terminating the investigation as to respondent Yarbrough Equipment Rental and Sales Inc.

On August 21, 1996, the Commission determined not to review an ID (Order No. 40), granting complainants' motion for summary determination that complainants' four trademarks are valid and that the "KUBOTA" (block letters) and Gear Design marks are incontestable. On September 6, 1996, the Commission determined not to review an ID (Order No. 47), granting complainants' motion for summary determination that a domestic industry exists with respect to the "KUBOTA" (block letters) and "KUBOTA" (stylized) trademarks.

The ALJ held an evidentiary hearing on the merits between August 29 and September 7, 1996, and heard closing arguments on October 24, 1996. The ALJ issued his final ID finding a violation of section 337 on November 22, 1996. He found that there had been imports of the accused products; that 24 specific models of the accused tractors infringed the "KUBOTA" (block letters) trademark (U.S. Reg. No. 922,330); that one model of the accused tractors, the KBT L200, did not infringe the "KUBOTA" (block letters) trademark; that the accused products did not infringe the "KUBOTA" (stylized) trademark (U.S. Reg. No. 1,775,620); and that complainants were no longer asserting violations of section 337 based on infringement of the stylized "K" and "Gear Design" trademarks.

Both complainants and respondents filed petitions for review of the final ID, and complainants and the Commission investigative attorney filed responses to the petitions. On December 19, 1996, complainants filed a motion for leave to file a reply to the investigative attorney's response. There is no provision in the Commission's rules for such a reply. See 19 C.F.R. 210.43(c). Moreover, complainants' reply fails to raise any arguments that could not have been raised before the ALJ or in their petition for review. Accordingly, the Commission has determined to deny complainants' motion for leave to file a reply.

Having examined the record in this investigation, including the ID, the Commission has determined to review (1) the finding of no infringement with respect to the KBT model L200 tractor; and (2) the decision to limit infringement analysis to 25 models of accused tractors rather than all models of KBT tractors as to which there is evidence of importation and sale in the United States. The Commission has determined not to review the ID in all other respects. On review, the Commission will consider the following issues:

(1) whether the fact that gray market KBT L200 tractors are imported and sold bearing Japanese-language labels constitutes a "material difference" from the authorized KTC L200 model tractors sufficient to establish a likelihood of confusion;

(2) whether evidence on the record in this investigation demonstrates that specific KBT models other than the 25 identified on SX–1 have been imported and sold in the United States; and, if so,

(3) whether evidence on the record in this investigation demonstrates that any specific KBT model identified in number (2) above was imported and sold in the United States bearing Japanese-language labels or is otherwise materially different than the closest corresponding KTC model with respect to any of the differences found to be "material" in the ID.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion in *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the November 22, 1996, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 23, 1997. Reply submissions must be filed no later than the close of business on January 30, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.45-.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.45-.51).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: January 9, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–969 Filed 1–14–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–740 (Final)]

Sodium Azide From Japan

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: On January 7, 1997, the Department of Commerce published notice of the suspension of its antidumping investigation on sodium azide from Japan (62 FR 973). The basis for the suspension is an agreement between the Department of Commerce and producers/exporters which account

for substantially all imports of this product from Japan, wherein each signatory producer/exporter agreed either to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value or to cease exports of this merchandise to the United States. Accordingly, the United States International Trade Commission gives notice of the suspension of its antidumping investigation involving imports from Japan of sodium azide, provided for in subheading 2850.00.50 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority: This investigation is being suspended under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: January 9, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–970 Filed 1–14–97; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Billing Instructions for NRC Cost Type Contracts.

3. The form number if applicable: N/A.

4. How often the collection is required: Monthly.

5. Who will be required or asked to report: NRC Contractors.

6. An estimate of the number of responses: 4308.

7. The estimated number of annual respondents: 106.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 2,000 hours (Billing Instructions—1384 + 616 License Fee Recovery Cost Summary).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A.

10. Abstract: The NRC Division of Contracts in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting cost data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs in accordance with the contract terms and conditions.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by February 14, 1997. Edward Michlovich, Office of Information and Regulatory Affairs (3150–0109), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 7th day of January, 1997.

For the Nuclear Regulatory Commission

Gerald F. Cranford,

Designated Senior Official for Information Resources Managememt.

[FR Doc. 97–981 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–32908, License No. 29–28784–01, EAs 96–152 and 96–301]

Shashi K. Agarwal, M.D., Orange, New Jersey; Settlement Order Terminating License and Prohibiting Involvement in Licensed Activities

I

Shashi K. Agarwal, M.D. (Dr. Agarwal or licensee) is the holder of Byproduct Materials License No. 29–28784–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992, and is due to expire on December 31, 1997.

II

On September 12, 1996, an Order Suspending License (Effective Immediately) and Demand for Information (Order and Demand) was issued to the licensee based on the licensee's: (1) Failure to comply with numerous NRC requirements, as identified during an NRC inspection conducted at the licensee's facility April 18 and 30, 1996; (2) providing apparent inaccurate information to the NRC; and (3) failure to cooperate with the NRC or appear for a predecisional enforcement conference. The Order and Demand required that the licensee provide responses in writing by October 2, 1996, and contained instructions for providing the responses. To date, the licensee has not provided the required written responses.

III

On October 7, 1996, Dr. Agarwal, through his attorney, contacted the NRC and indicated that he desired to terminate his license and resolve all matters pending between himself and the NRC. As the parties desire to resolve all matters pending between them, the

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licensee has entered into a Settlement Agreement with the NRC executed on January 3, 1997. Under the terms of the Settlement Agreement, Dr. Agarwal agrees to the termination of his NRC license and that he will not apply for an NRC license or engage in NRC-licensed activities for a period of five years from the date of the execution of the Settlement Agreement; and the NRC agrees that it will take no further enforcement action for the matters set forth in the Order and Demand.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.204, and 10 CFR Parts 30 and 35, It is hereby ordered that:

A. By February 7, 1997, Dr. Agarwal shall transfer all NRC-licensed material to an authorized recipient.

B. Within seven days following the completion of the transfer, Dr. Agarwal shall provide to the Regional Administrator, Region I:

1. a completed NRC Form 314 to certify that the licensed material has been transferred, and

2. the results of a radiation survey, conducted and prepared in accordance with 10 CFR 30.36(j)(2), of the premises where licensed activities were carried out.

C. Upon written approval by NRC Region I of the information submitted under Section IV.B., NRC Byproduct Materials License No. 29–28784–01 is hereby terminated.

D. For a period of five years from November 22, 1996, neither Dr. Agarwal nor a successor entity shall be involved in or exercise any control over licensed activities within the jurisdiction of the NRC, including, but not limited to, involvement as owner, authorized user, controlling shareholder, or radiation safety officer.

Dated at Rockville, Maryland this 6th day of January 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–980 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–P

Docket No. 50–286

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–64 issued to the Power Authority of the State of New York for operation of the Indian Point Nuclear Generating Station Unit No. 3 (IP3) located in Westchester County, New York.

The proposed amendment would revise the IP3 Technical Specifications (TS) to allow the storage of fuel assemblies with nominal enrichments up to 5.0 weight percent (w/o) Uranium-235 (U–235).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. This statement is based on an evaluation of relevant hypothetical accident scenarios, the NRC's evaluation of Westinghouse extended burnup fuel, and the criticality analysis of the Indian Point 3 fresh and spent fuel pits.

Evaluation of Relevant Hypothetical Accident Scenarios

Increasing the enrichment of fuel stored in the spent fuel pit will not increase the probability of occurrence of the following hypothetical accident scenarios:

1. misload of a fuel assembly;
2. spent fuel assembly drop in the spent fuel pit;
3. spent fuel cask drop;
4. loss of spent fuel pit cooling system flow; or
5. seismic event.

1. Misload of a Fuel Assembly

Detailed instructions and administrative controls govern refueling operations, precluding the misload of an assembly. The proposed storage of extended burnup fuel will not result in these administrative controls being relaxed in any manner. The probability of inserting an assembly into the wrong location is not impacted by the enrichment and burnup of the fuel. Consequently, the proposed changes will not increase the probability of misloading a fuel assembly.

2. Spent Fuel Assembly Drop in the Spent Fuel Pit

The probability of a spent fuel assembly drop in the spent fuel pit is a function of the structural integrity of the fuel storage building overhead crane and the integrity of the crane-assembly coupling. The probability of such a drop is not affected by the enrichment or burnup of the fuel. Therefore, the use and storage of extended burnup fuel will not increase the probability of a fuel assembly drop.

3. Spent Fuel Cask Drop

The probability of a spent fuel cask drop will not be affected by the increased enrichment of the fuel. The probability of such an event occurring is a function of the overhead crane's integrity, which will not be affected by this amendment. In addition, administrative controls are in place to preclude the occurrence of such an event.

4. Loss of Spent Fuel Pit Cooling System Flow

A reevaluation of the Indian Point Unit 3 decay heat removal analysis to address the storage of extended burnup fuel concluded that the existing spent fuel pit cooling system is adequate to handle the heat load associated with extended burnup fuel since any incremental increase in decay heat for extended burnup fuel is more than compensated for by the greater time interval between refueling outages. In the unlikely event the cooling system should experience a failure, adequate time is available to provide an alternate cooling system, which is not affected by the fuel's enrichment. In addition, an existing off normal operating procedure (ONOP) is available to compensate for any postulated loss of spent fuel pit cooling. Consequently, the storage of extended burnup fuel in the spent fuel pit will not involve a significant increase in the probability or consequences of a loss of cooling system flow event.

5. Seismic Event

The enrichment of the fuel has no effect on the probability of a seismic event occurring. In support of Amendment 90 to Indian Point 3's Operating License, a seismic analysis of the spent fuel storage racks was performed. This analysis, which was summarized in

Reference 3 [See application dated November 22, 1996] is still applicable.

NRC Evaluation of Westinghouse Extended Burnup Fuel

Westinghouse's analysis of the use of extended burnup fuel is documented in WCAP–10125 (Proprietary), "Extended Burnup Evaluation of Westinghouse Fuel". On October 11, 1985, the NRC issued a Safety Evaluation Report (SER) on this WCAP (Reference 2), which concluded that: 1) fuel damage is not expected to occur as a result of normal operation and anticipated operational occurrences (Condition I and II events); 2) fuel damage during postulated accidents (Condition III and IV events) would not be severe enough to prevent control rod insertion when it is required; and 3) core coolability will always be maintained, even after postulated accidents (Condition III and IV events). These conclusions support the determination that the use of extended burnup fuel will not increase the probability or consequences of any accident previously evaluated.

The consequences from accidents involving extended burnup fuel, both during operations and fuel handling, are evaluated in Reference 6 [See application]. This report, which was the basis for the NRC's determination of no environmental impact, documents the amount of radioactivity released from extended burnup fuel during an accident may be greater than that released from lower burnup fuel. However, the projected offsite dose incurred during accidents with extended burnup fuel is still within 10 CFR 100 criteria. Reference 6 [See application] concludes that since there is an order of magnitude uncertainty in the risk estimates for accidents, any increased risk from the increased fission products in extended burnup fuel is small compared to the uncertainties associated with risk estimates. Consequently, the proposed changes do not significantly increase the consequences of any accident previously evaluated.

Criticality Analysis of the Indian Point 3 Fresh and Spent Fuel Pits

Westinghouse performed a criticality analysis of the Indian Point 3 fresh and spent fuel storage racks to determine whether the storage of Westinghouse 15x15 fuel assembly designs with nominal enrichments up to 5.0 w/o U–235 would result in the effective neutron multiplication factor, K_{eff}, exceeding design and licensing basis criticality limits. The analysis demonstrated that these criteria would be met during design basis conditions using the fuel storage configurations proposed in this submittal.

Although the analysis identified three scenarios which would exceed the criticality limits, each of these scenarios are outside the design and licensing basis, since they entail the occurrence of two, independent, concurrent events. Specifically, the analysis assumes the occurrence of the initiating accident event and the loss of all soluble boron in the spent fuel pit water. However, the analysis also documents that 700 ppm of soluble boron in the spent fuel pit water will maintain K_{eff} within acceptable limits. The Indian Point Unit 3 spent fuel pit boron concentration is maintained at a minimum of 1000 ppm during fuel handling operations, which is more than adequate to offset the potential reactivity increases incurred from even the most limiting criticality accident scenarios. If credit for integral burnable neutron absorbers is taken, the boron concentration to maintain K_{eff} less than or equal to 0.95 is considerably reduced.

Consequently, as supported by the NRC's issuance of similar license amendments to other plants whose criticality analyses have identified similar issues, the proposed amendment does not significantly increase the probability or consequences of any accident previously evaluated.

The administrative changes proposed by this amendment request do not involve a significant increase in the probability or consequences of any accident previously evaluated as they do not involve any plant hardware changes, nor do they change the way the plant systems function.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. This determination is based on the NRC's SER regarding Westinghouse extended burnup fuel, Indian Point 3 decay heat removal analysis, and spent fuel pit criticality analysis.

The only aspect of the plant that will be physically changed by the proposed amendment will be the enrichment and burnup of the fuel, which will not introduce any new fuel failure mechanisms. While some characteristics of fuel performance change with extended burnup, these considerations have been factored into the design of the fuel. The NRC issued a Safety Evaluation Report (SER) regarding the Westinghouse extended burnup fuel design on October 11, 1985 (Reference 2). In addition, Reference 6 [See application] documents that each fuel vendor has adequately considered the performance of extended burnup fuel to preclude the introduction of a new or different type of fuel failure mechanism.

Two site specific evaluations demonstrate the storage of spent and/or fresh extended burnup fuel will not introduce any new fuel storage accidents at Indian Point Unit 3. First, the Authority has verified the existing spent fuel pit cooling system can adequately handle the heat load associated with extended burnup fuel. Second, the criticality analysis performed by Westinghouse demonstrates the criticality limits will continue to be satisfied during design basis conditions. While three scenarios outside of the design basis have been identified as potentially resulting in an increase in spent fuel pit criticality, spent fuel pit soluble boron concentrations are maintained sufficiently high to preclude even the most limiting criticality scenarios from occurring. Consequently, the proposed amendment will not create a new or different kind of accident from any previously evaluated.

The administrative changes proposed by this amendment request do not create the possibility of a new or different kind of accident from any previously evaluated as the changes do not affect current plant configuration or how the plant operates.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. This determination is based on the fact that the spent fuel pit racks are not being physically altered, the results of the Indian Point 3 spent fuel pit criticality analysis, the spent fuel pit decay heat analysis, and the NRC issuance of similar amendments to other licensees.

The main safety function of the fresh and spent fuel racks is to maintain the fuel assemblies in a safe configuration through all normal and abnormal conditions. The proposed changes will not result in any changes to the fresh and spent fuel racks or the manner in which they perform. Thus, the margin of safety associated with the fresh and spent fuel racks" ability to physically maintain the fuel in a safe configuration is not significantly reduced by the proposed changes.

A criticality analysis was performed regarding the Indian Point 3 fresh and spent fuel storage racks' ability to store extended burnup fuel within design and licensing basis criticality limits. The analysis concludes during design basis conditions these limits would not be violated. However, it identified three events outside the design and licensing basis which would violate these limits. Nevertheless, if credit is taken for the soluble boron in the spent fuel pit water, criticality is adequately controlled even during these three events. Consequently, as supported by the NRC issuance of similar license amendments to other plants whose criticality analyses have identified similar issues, the proposed amendment does not involve a significant reduction in the margin of safety associated with the control of criticality.

An evaluation was performed to address the spent fuel pit heat load associated with the storage of extended burnup fuel. The analysis concluded the existing spent fuel cooling system will adequately dissipate the heat. Thus, there is no significant reduction in the margin of safety with regards to spent fuel cooling.

The administrative changes proposed by this amendment request do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 22, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 9th day of January 1997.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate 1-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97-982 Filed 1-14-97; 8:45 am]

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Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 20, 1996, through January 3, 1997. The last biweekly notice was published on January 2, 1997 (62 FR 121).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

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Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 4, 1996, as supplemented on December 4, 1996.

Description of amendment request: The proposed amendment would permit Byron, Unit 1, and Braidwood, Unit 1, to remove sheathing filler grease in the tendon sheathing for up to 35 tendons in advance of the steam generator replacement outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The prestressing tendons are passive components that form part of the containment structure. As passive components, there are no tendon failure modes that could act as accident initiators or precursors.

Consequently, the proposed change to remove a portion of the tendon sheathing filler grease will not increase the probability of an accident previously evaluated.

The tendons, in their passive role, function to limit the consequences of accidents previously evaluated, and their continued integrity is important to the ability of the containment to mitigate design basis accidents. Structural degradation of the containment is a predictable process that can be monitored by a comprehensive containment tendon monitoring program as required by Technical Specification Surveillance Requirement 4.6.1.6. The monitoring program is based on proposed Revision 3 of Regulatory Guide 1.35, "Inservice Surveillance of Ungrouted Tendons in Prestressed Concrete Containment Structures," April 1979.

The tendon surveillances conducted at both Byron and Braidwood have consistently shown that structural integrity of the tendon system has been maintained, including adequate corrosion protection for the tendon wires and end anchorage components, and there has been no evidence of grease leakage from the tendon sheathings. While a number of below-grade hoop tendons have shown signs of water intrusion, the tendons that will have grease removed are above-grade and are not expected to experience water intrusion.

A review of domestic nuclear facility experience found cases where large grease voids existed for periods longer than requested under the proposed change without resultant corrosion in those tendon systems. A case where tendon wires removed from a decommissioned plant were exposed to an environment more severe than expected in a sealed tendon sheath did not show signs of corrosion. These experiences demonstrate the effectiveness of the initial corrosion protection systems applied to the tendons and the effectiveness of partial grease protection in the tendon sheathing.

Based on the above cases, it can be concluded that the removal of the filler grease (grease voids greater than 5 percent) from the tendon sheathing in up to thirty-five tendons for a limited period will not adversely affect the integrity of the tendons or the capability of the tendon system to fulfill its design basis function.

The removal process will only remove the grease not directly adhering to the tendons. The grease remaining will be adequate to protect the tendons during the relatively short period of partial grease removal. Therefore, no changes in the tendon properties would be expected, and the consequences of design basis accidents previously evaluated will not be affected by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only affects the tendon sheathing filler grease void limits of TSSR 4.6.1.6. No new equipment is being installed and no existing equipment is being modified. Operation with a grease void in excess of current requirements does not alter system configurations such that any new or different accidents can be initiated. Therefore, no new or different accident initiators or precursors are being introduced, and the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety applicable to the proposed change is defined by the difference between the design pressure of the containment and the point at which the containment would actually fail. The design pressure of the containment is 50 psi. As a result of conservatism inherent in the design techniques and in the material selections made for the Byron and Braidwood containments, a substantial margin to failure exists in the containment. This margin is discussed in Subsection 3.8.1.8 of the Updated Final Safety Analysis Report. It is noted therein that the ultimate capacity of the concrete shell is 125 psi, corresponding to the initiation of yield in the hoop post-tensioning tendons in conjunction with yielding of the reinforcement near the mid-height of the containment wall.

It is also noted in Subsection 3.8.1.8 that the ultimate capacity of a containment electrical penetration is 108 psi. While this value is substantially greater than the 50 psi required of the design, it is lower than the 125 psi at which failure of the containment wall section would be predicted. Therefore, tendon strength is not the limiting factor in the margin of safety inherent in the containment.

As previously discussed, no degradation of the tendons is expected to occur as a result of the proposed TS change. Further, the tendon strength is not the limiting factor in the containment ultimate capacity, which is substantially greater than the requirement placed on the containment design by the plant design basis. Therefore, the proposed change will not reduce the margin of safety designed into Byron and Braidwood.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: December 6, 1996

Description of amendment request: The proposed amendment would allow a single control rod to be moved when the plant is in HOT SHUTDOWN and COLD SHUTDOWN condition provided the one-rod-out interlock is OPERABLE and the reactor mode switch is in the refuel position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

This revision would allow a single control rod to be withdrawn under control of the reactor mode switch position one-rod-out interlock in OPERATIONAL MODES 3 or 4. This interlock is explicitly assumed in the safety analysis for control rod removal error during refueling. A prompt reactivity excursion could potentially result in fuel failure. The one-rod-out interlock, together with the requirements for adequate SHUTDOWN MARGIN (SDM), provides protection against prompt reactivity excursions by preventing withdrawal of more than one control rod and ensuring the core remains subcritical with any one control rod withdrawn. The addition of surveillance requirements for the one-rod-out interlock will assure the interlock is OPERABLE prior to withdrawal of a control rod in OPERATIONAL MODES 3 and 4. Although this change will increase the frequency of single control rod withdrawals in OPERATIONAL MODES 3 and 4, the probability of previously analyzed accidents, including control rod withdrawal error, is not affected because the same actions are required, although they are now conducted in different OPERATIONAL MODES.

The consequences of previously analyzed accidents in OPERATIONAL MODES 3 and 4 are not affected by this proposed change. The SDM requirements of TS 3.3.A assure the reactor is maintained subcritical when all control rods are fully inserted, without crediting the single control rod having the highest reactivity worth which is assumed to be fully withdrawn. The one-rod-out interlock of the reactor mode switch Refuel position permits only a single control rod to be withdrawn. The proposed change will not affect the potential for attaining criticality in OPERATIONAL MODES 3 and 4 or effect the initial conditions assumed in any design basis accident analysis.

Based on this, the probability or consequences of any accident previously evaluated is not increased by the proposed changes.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Single control rods can be withdrawn to permit control rod recoupling in OPERATIONAL MODES 3 and 4 under existing TS. The proposed change will merely expand this allowance to other control rod maintenance and testing activities performed in OPERATIONAL MODES 3 and 4. The revision to Specification 3/4.10.A provides additional assurance that the one-rod-out interlock is OPERABLE in OPERATIONAL MODES 3 and 4.

The additional control rod maintenance and testing activities which could be performed in OPERATIONAL MODES 3 and 4 are permitted by the existing TS in OPERATIONAL MODES 1, 2 and 5. Examples of activities which could be performed include venting of control rods following a reactor scram or control rod drive system outage, normal control rod insertion/withdrawal timing and adjustment, control rod scram time testing and control rod friction testing.

Based on this, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

Specification 3/4.10.A is revised to ensure the one-rod-out interlock is OPERABLE, enhancing the assurance that the plant will prevent the withdrawal of more than one control rod in the manner currently assumed. Expanding the applicability of this existing requirement to OPERATIONAL MODES 3 and 4 similarly does not create the possibility of a new or different kind of accident from those previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The TS currently permit single control rod withdrawal for the purpose of control rod recoupling when in OPERATIONAL MODES 3 or 4 if the one-rod-out interlock is OPERABLE. This change merely allows additional activities for which a single control rod may be withdrawn in OPERATIONAL MODES 3 or 4, with the same restriction that the one-rod-out interlock is OPERABLE.

While the TS currently allow limited control rod withdrawal in OPERATIONAL MODES 3 and 4 provided the one-rod-out interlock is OPERABLE, no explicit surveillance requirements for the one-rod-out interlock exist while in OPERATIONAL MODES 3 or 4. The proposed changes to the Applicability statement in TS 3/4.10.A will result in applicability of the Surveillance Requirements for the one-rod-out interlock whenever control rod withdrawal is performed in OPERATIONAL MODES 3 and 4.

Together, the OPERABILITY requirements for the one-rod-out interlock and the SDM requirements of TS 3.3.A will continue to ensure that the reactor will be maintained subcritical during single control rod withdrawals. Therefore, this change will not involve a significant reduction in the margin of safety.

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As described, the proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems required to mitigate accident conditions. Neither are new or significantly different modes of operation proposed. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: October 2, 1996

Description of amendment request: Relocation of Radiological Effluent Technical Specifications for Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the probability or Consequences of an Accident Previously Evaluated.

The proposed changes are considered administrative in nature. These changes alter only the location of programmatic controls and procedural details relative to radioactive effluents, radiological environmental monitoring, solid radioactive wastes, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions and assumptions in any of the Safety Analysis Report (SAR) accident analyses. Since the SAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not involve any changes to the configuration or method of operation any plant equipment. The proposed changes are considered administrative in nature. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure have been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any radioactive effluents released offsite.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in Margin of Safety.

The proposed changes do not involve nay actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes are considered administrative in nature and provide for the relocation of procedural details outside the Technical Specifications. This change adds appropriate administrative controls in the Technical Specifications to provide continued assurance of compliance with applicable regulatory requirements.

Therefore, this change does not involve a significant reduction in the margin of safety. I21Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: October 2, 1996

Description of amendment request: Relocation of Selected Technical Specifications Instrumentation Requirements Allowed by Generic Letter 95-10

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the probability or Consequences of an Accident Previously Evaluated.

The [Nuclear Regulatory Commission] NRC issued Generic Letter (GL) 95-10 to allow licensees to relocate certain instrumentation requirements to licensee controlled documents or programs. The staff has concluded that the specifications listed in the GL were not required to be included in the technical specifications as required by 10 CFR 50.36. The staff concluded that the instrumentation addressed in these specifications are not related to dominant contributors to plant risk.

The specifications included in this amendment request are being relocated to the Technical Requirements Manual (TRM). Once in the TRM, future changes to these requirements will be controlled under 10 CFR 50.59. By controlling future changes under 10 CFR 50.59, NRC review and approval will be requested for changes exceeding the regulatory threshold of an unreviewed safety question.

This amendment request does not remove or modify any of the instrumentation requirements for either unit. This amendment request does not affect any of the accident initiators, conditions or assumptions for any of the accidents previously evaluated. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated.

This amendment request is administrative in nature and does not affect any system or component functional requirements. This change does not affect the operation of the plant or affect any component that is used to mitigate the consequences of any accident. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The relocation of existing requirements from the technical specifications to other licensee controlled documents is considered administrative in nature. This change does not modify or remove any plant instrumentation requirements. This proposed change will not affect any plant system or structure, nor will it affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of this change. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in Margin of Safety.

The proposed amendment request represents a relocation of a portion of the information previously located in each unit's technical specification instrumentation section to other licensee controlled documents that ate controlled under 10 CFR 50.59. The proposed change is administrative in nature because the instrumentation requirements for the facility remain the same.

The proposed change does not represent a change in the configuration or operation of the plant. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 2, 1996

Description of amendment request: The proposed Technical Specification (TS) Change Request will permit the use of 10 CFR Part 50 Appendix J, Option B, Performance-Based Containment Leakage Testing for Type A, B and C leak rate testing. TSs 3/4.6.1.1, 3/4.6.1.2, 3/4.6.1.3, 4.6.1.6 and 4.6.1.7 are revised and Section 6.15 is added establishing the Containment Leakage Rate Testing Program. The Bases are revised to reflect this change. Minor editorial changes are included in this request. Waterford Steam Electric Station is planning to have a Containment Leakage Rate Testing Program in place prior to the next scheduled refueling outage. This program will be in accordance with the guidelines contained in Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," dated September 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed changes will result in increased intervals between containment leakage tests determined through a performance based approach. The intervals between such tests are not related to conditions which cause accidents. The proposed changes do not involve a change to the plant design or operation. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated.

NUREG-1493, "Performance-Based Containment Leak-Test Program," contributed to the technical bases for Option B of 10 CFR 50 Appendix J. NUREG-1493 contains a detailed evaluation of the expected leakage from containment and the associated consequences. The increased risk due to lengthening of the intervals between containment leakage tests was also evaluated and found acceptable. Using a statistical approach, NUREG-1493 determined the increase in the expected dose to the public from extending the testing frequency is extremely small. It also concluded that a small increase is justifiable due to the benefits which accrue from the interval extension. The primary benefit is in the reduction in occupational exposure. The reduction in the occupational exposure is a real reduction, while the small increase to the public is statistically derived using conservative assumptions. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. The reduced testing frequency will not affect the testing methodology. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not change the performance methodology of the containment leakage rate testing program. However, the proposed change does affect the frequency of containment leakage rate testing. With an increased frequency between tests, the proposed change does increase the probability that a increase in leakage could go undetected for a longer period of time. Operational experience has demonstrated the leak tightness of the containment buildings has been significantly below the allowable leakage limit.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rates. The limitation on containment leakage rate is designed to ensure the total leakage volume will not exceed the value assumed in our accident analysis. The margin of safety for the offsite dose consequences of postulated accidents directly related to containment leakage is maintained by meeting the 1.0 La acceptance criteria. The proposed change maintains the 1.0 La acceptance criteria. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant Unit 1, St. Lucie County, Florida

Dates of amendment request: December 9, 1996

Description of amendment request: The licensee proposed to modify specifications for selected cycle-specific reactor physics parameters to refer to the St. Lucie Unit 1 Core Operating Limits Report (COLR) for limiting values. Minor administrative changes are also included. The proposed Technical Specification (TS) changes utilized the guidance provided in Generic Letter 88-16 and are intended to be consistent with the Standard Technical Specifications for Combustion Engineering Plants (NUREG-1432, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment relocates the calculated values of selected cycle-specific reactor physics parameter limits from the TS to the COLR, and includes minor editorial changes which do not alter the intent of stated requirements. The amendment is administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Parameter limits specified in the COLR for this amendment are not changed from the values presently required by Technical Specifications. Future changes to the calculated values of such limits may only be made using NRC approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 process. Assumptions used for accident initiators and/or safety analysis acceptance criteria are not changed by this amendment. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed

amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment relocates the calculated values of cycle specific reactor physics limiting parameters to the COLR and will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design configuration of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed

amendment would not involve a significant reduction in a margin of safety.

The cycle specific parameter limits being relocated to the COLR by this amendment have not been changed from the values presently required by the TS, and a requirement to operate the plant within the bounds of the limits specified in the COLR is retained in the individual specifications. Future changes to the calculated values of these limits by the licensee may only be developed using NRC-approved methodologies, must remain consistent with all plant safety analysis limits addressed in the Final Safety Analysis Report (FSAR), and are further controlled by the 10 CFR 50.59 process. As discussed in Generic Letter 88-16, the administrative controls established for the values of cycle specific parameters using the guidance of that letter assure conformance with 10 CFR 50.36. Safety analysis acceptance criteria are not being altered by this amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: M. S. Ross, Attorney, Florida Power & Light, 11770 US Highway 1, North Palm Beach, Florida 33408

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, Docket No. 50-335 St. Lucie Plant Unit 1, St Lucie County, Florida

Date of amendment request: December 20, 1996

Description of amendment request: The licensee proposed to delete a footnote associated with TS 2.1.1, "Reactor Core Safety Limits," which requires reactor thermal power to be limited to 90% of 2700 Megawatts thermal for Cycle 14 operation beyond 7000 Effective Full Power Hours [EFPH]. The thermal power limit was required pending completion of a Small Break Loss of Coolant Accident (SBLOCA) reanalysis that demonstrated acceptable results using input assumptions corresponding to an increased number of steam generator tubes being plugged. The SBLOCA reanalysis was completed and included with the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow full Cycle 14 operation at 100% of rated power (2700 MWth), by deleting the requirement to

derate to 90% of rated power prior to exceeding 7000 EFPH. This restriction was imposed in the NRC transmittal letter for License Amendment 145 for SBLOCA considerations when considering the increased SGTP [steam generator tube plugging]

level of 30% plus or minus 7%. All Final Safety Analysis Report (FSAR) events, other than SBLOCA were evaluated at 100% of rated thermal power and showed no significant increases in the probability or consequences of accidents previously evaluated.

The SBLOCA was reanalyzed to demonstrate continued compliance with 10 CFR 50.46 criteria. There is no impact of the proposed change on any FSAR accident initiator. The plant configuration and systems remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment removes the requirement in the Technical Specifications to derate to 90% of 2700 MWth for Cycle 14 operation beyond 7000 EFPH. There will be no change to the modes of operation of the plant. The plant configuration and the design functions of all the safety systems remain unchanged.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The impact of the proposed change on available margin to the acceptance criteria for Specified Acceptable Fuel Design Limits (SAFDL), primary and secondary over-pressurization, peak containment pressure, potential radioactive releases, 10 CFR 50.46 requirements for the large break LOCA, and existing limiting conditions for operation has been evaluated and addressed in the reduced RCS [reactor coolant system] flow operating license Amendment No. 145. A requirement to derate to 90% of 2700 MWth was imposed based on the SBLOCA analysis. The small break LOCA analysis with 30% plus or minus 7% SGTP

supported operation up to 7000 EFPH at 100% of rated thermal power. A reanalysis of SBLOCA with the limiting end-of-cycle conditions at 100% of rated power, demonstrates continued compliance with 10 CFR 50.46 criteria.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: M. S. Ross, Attorney, Florida Power & Light, 11770 US Highway 1, North Palm Beach, Florida 33408

NRC Project Director: Frederick J. Hebdon

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island, Unit 1, Dauphine County, Pennsylvania

Date of amendment request: December 3, 1996

Description of amendment request: This amendment will incorporate certain improvements from the Standard Technical Specifications for B&W Plants (NUREG-1430).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

GPU Nuclear has determined that this Technical Specification Change Request involves no significant hazards consideration as defined in 10 CFR 50.92 because:

1. Operation of the facility in accordance with the proposed amendment would not

involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment deletes limiting condition for operation (LCOs) from the TMI-1 Technical Specifications that are no longer required to be addressed in Technical Specifications per 10 CFR 50.36(c)(2)(ii). The proposed amendment also deletes a Surveillance requirement from the TMI-1 Technical Specifications. This surveillance requirement has no corresponding LCO and is formatted in the typical LCO format. These items are addressed in licensee controlled documents. This proposed amendment incorporates relaxation of selected timeclocks and surveillances frequencies consistent with NUREG 1430 and adds a timeclock to a unique LCO. The proposed changes do not modify the operation, limits or controls of systems, structures or components relied upon to prevent or mitigate the consequences [of] accidents previously evaluated. Also, the reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, this change does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure modes are created by the proposed changes.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment does not change any operating limits for reactor operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: October 25, 1996

Description of amendment requests: The proposed amendments would incorporate the requirements of 10 CFR Part 50, Appendix J, Option B for containment leakage tests. In addition, the amendments would add a new section to Technical Specifications, which establishes the requirements of the containment leakage rate testing program, consistent with the Improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide a mechanism within the TS for implementing a performance-based leakage rate test program which was promulgated by the revision to 10 CFR Part 50 to incorporate Option B to Appendix J. The proposed changes do not involve any physical or operational changes to structures, systems or components. The current safety analyses and safety design basis for the accident mitigation functions of the containment, the airlocks, and the containment isolation valves are maintained. Since the allowable containment leakage is still maintained within the analyzed limit assumed in the accident analysis, there is no adverse effect on either onsite or offsite dose consequences. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve any physical or operational changes to structures, systems or components. No new failure mechanisms beyond those already considered in the current plant safety analyses are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Extending containment leakage rate test intervals from those currently provided in the Technical Specifications to those provided for in 10 CFR (Part) 50 Appendix J, Option B may slightly increase the risk due to an increased likelihood of containment leakage corresponding to the increased testing intervals. However, this is somewhat compensated by the corresponding risk reduction benefits received from the reduction in component cycling, stress, and wear associated with the increased intervals. When considering the total integrated risk, which includes all analyzed accident sequences, the possible additional risk associated with increasing test intervals is negligible.

The NRC letter to NEI (Nuclear Energy Institute) dated November 2, 1995, recognizes that changes similar to the proposed changes at PINGP (Prairie Island Nuclear Generating Plant) are required to implement Option B of 10 CFR (Part) 50, Appendix J. In NUREG-1493, "Performance-Based Containment Leak-Test Program", dated September 1995, which forms the basis for the Appendix J revision, the NRC concludes that adoption of performance-based testing will not significantly reduce the margin of safety. The containment leak rate data and component performance history at PINGP are consistent with the conclusions reached in NUREG-1493 and NEI 94-01. Thus, the proposed license amendments do not involve a significant reduction in a margin of safety and will continue to support the regulatory goal of ensuring an essentially leak-tight containment boundary.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the USAR or the Technical Specification Bases.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 18, 1996

Description of amendment request: The amendments would amend the Technical Specifications for Susquehanna Steam Electric Station (SSES), Units 1 and 2 by increasing the maximum isolation times for the reactor core isolation cooling inboard warm-up line isolation valves (HV129F088 and HV249F088) from 3 seconds to 12 seconds, the high pressure core

injection inboard warm-up line isolation valves (HV-155F100 and HV-255F100) from 3 seconds to 6 seconds and the reactor recirculation process sample line (RRPSL) isolation valves (HV143F019 and HV243F019) from 2 seconds to 9 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Chapters 6,9, and 15 of the FSAR [final safety analysis report], current operating cycles Reload Summary Reports for Units 1 and 2, Design Basis Document DBD046 (Seismic and Hydrodynamic Loads), and NUREG-0776 (Safety Evaluation Report for SSES), were reviewed to determine if the proposed action has an effect on the spectrum of analyzed anticipated operational transients or postulated design basis accidents.

The proposed modifications involve replacing the pilot solenoid valves on the Reactor Recirculation Loop "B" Process Sample Line Isolation Valve (HV1/243F019) and the inboard RCIC [reactor core isolation cooling] and HPCI [high pressure core injection] Steam Warm-Up Line Isolation Valves (HV-1/249F088 and HV-1/255F100). They do not alter any system operation or control logic other than to increase the time it takes for the associated containment isolation valve to close. As discussed above, the effects of the increased isolation times for RCIC and HPCI impacted lines are bounded by the larger parallel lines with isolation times much greater than the new isolation times for the smaller lines. In the case of the Reactor Recirculation Loop "B" Process Sample Line, the worst case scenario for a line of that size is addressed in FSAR Section 15.6.2 and the results have been found acceptable. In fact, the line breakage event analyzed in the FSAR section postulates a break outside containment that is not isolable and that does not require operator action for up to 10 minutes.

The modifications enhance isolation valve performance by ensuring proper operation in the event of a degraded air system.

Failures within the Process Sampling, RCIC or HPCI systems or their components are not postulated as causes of accident scenarios nor is increasing the stroke time of the subject containment isolation valves [HV-1/243F019]. These systems provide safety features utilized to mitigate the consequences of the accidents. However, the failure mode of the replacement solenoid valve is similar in each case to that of the solenoid valve being replaced in that it closes upon loss of power or loss of air supply. The current ability of the plant design to meet the single failure criterion is unchanged by this modification.

Based on the above discussion, the proposed action does not involve a significant increase in the probability or consequences of an accident as previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Chapters 6, 9, and 15 of the FSAR were reviewed to determine if the proposed action [valve replacement with increased isolation times for associated HPCI, RCIC, RRPSL valves] has the potential of creating a postulated initiating event which is different than the analyzed anticipated operational transients or postulated design basis accident addressed. The review did not identify a postulated initiating event which would create the possibility for an accident of a different type due to replacing the pilot solenoid valves of the affected Reactor Recirculation LOOP "B" Process Sample Line or RCIC or HPCI Steam Warm-Up Line isolation valves.

Also, the Reactor Recirculation Process Sample Line, as part of the Process Sampling System described in FSAR section 9.3.2.3, does not perform any safety functions. It is simply an alternate means for in line reactor water chemistry monitoring upon the loss of the RWCU system, and its loss does not create any possibility for unevaluated accidents or malfunctions.

Thus, replacing the pilot solenoid valves on the affected Reactor Recirculation Process Sample Line, RCIC Steam Warm-Up Line, and HPCI Steam Warm-Up Line isolation valves as well as relocating the Process Sample Line solenoid valve for EQ [equipment qualification] purposes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed action involves replacing existing pilot solenoid valves on containment isolation valves for the Process Sampling, RCIC, and HPCI Systems, as listed above, with direct acting solenoid valves to ensure proper valve operation in the event of a degraded air or gas system as well as relocating the Process Sampling pilot solenoid valve for EQ purposes.

a. Reactor Recirculation Loop "B" Process Sample Line

The limiting condition for the operation of the Reactor Recirculation Loop "B" Process Sample Line Inboard Isolation Valve (HV-1/243F019) is governed by Technical Specification Section 3/4.6.3 and its Bases which presently requires this valve to close within 2 seconds as defined in Technical Specification Table 3.6.3-1. The proposed modifications involve replacing the pilot solenoid valve of the normally open isolation valve (HV-1/243F019) with a direct acting pilot solenoid valve as well as relocating the pilot solenoid valve to assure an EQ life which supports a 24 month operating cycle. The combined effects of a lower flow coefficient and relocating the solenoid valve will require an increase in the Technical Specification Table 3.6.3-1 isolation time from 2 seconds to 9 seconds.

This increase in isolation time does not reduce the margin of safety as defined in the Technical Specification Section Basis, because breakage of lines of this size is addressed in the Susquehanna SES [steam electric station] FSAR Section 15.6.2 and the results found acceptable. In fact, the line breakage event analyzed postulates a break outside containment that is not isolable and that does not require operator action for up to 10 minutes. Also, it is noted that the outboard isolation valve, HV-1/243F020, also closes on the same containment isolation signal, and its Technical Specification isolation time limit remains 2 seconds.

The failure mode of the affected Reactor Recirculation Loop "B" Process Sample Line Inboard isolation valve is to close on loss of power or air supply, therefore, the proposed modifications do not affect the operability of the isolation valve or reduce the margin of safety.

b. RCIC

The limiting condition for operation of the RCIC system is governed by Technical Specification Section 3/4.7.3 and its Bases which requires RCIC to be operable as the primary non-ECCS source of emergency core cooling. The proposed modifications involve replacing the pilot solenoid valve of the normally closed Steam Warm-Up Line Isolation Valve (HV-1/249F088). This valve can be manually opened in the absence of an isolation signal to permit steam from the reactor to pressurize and warm the steam supply line downstream of the HV-1/249F007 valve.

Installation of the direct acting solenoid valve will require an increase in the Technical Specification Section 3/4.6.3 isolation time for the RCIC Steam Warm-Up Line Isolation Valve (HV-1/249F088) from 3 seconds to 12 seconds but does not reduce the margin of safety as defined in the Technical Specification Section Basis. The increase in closure time for the HV-1/249F088 isolation valve does not compromise the overall line isolation due to the fact that the impact of these 1" warm up line valves is enveloped by the impact of the much larger 4" RCIC inboard and outboard isolation valves (HV-1/249F007 and HV-1/249F008), which remain open an additional 8 seconds before isolating. The 4" valves are the limiting components for providing containment isolation for this line.

The failure mode of the affected RCIC Steam Warm-Up Line Isolation Valve is to close, if open, on loss of power or air supply, therefore, the proposed modifications do not affect the operability of the isolation valve or reduce the margin of safety.

c. HPCI

The limiting condition for operation of the HPCI system is governed by Technical Specification Section 3/4.5.1 and its Bases which requires HPCI to be operable for proper Emergency Core Cooling System operation. Operability includes the HPCI pump and a flow path capable of taking suction from the suppression pool and delivering the water to the reactor vessel. The proposed modifications involve replacing the pilot solenoid valve of the normally closed Steam Warm-Up Line Isolation Valve (HV-1/255F100). This valve can be manually opened in the absence of an isolation signal, to permit steam from the reactor to pressurize

and warm the steam supply line downstream of the HV-1/255F002 valve.

Installation of the direct acting solenoid valve will require an increase in the Technical Specification Section 3/4.6.3 isolation time for the HPCI Steam Warm-Up Line Isolation Valve (HV-1/255F100) from 3 seconds to 6 seconds but does not reduce the margin of safety as defined in the Technical Specification Section Basis. The increase in closure time for the HV-1/255F100 isolation valve does not compromise the overall line isolation due to the fact that the impact of these 1" warm up line valves is enveloped by the impact of the much larger 10" HPCI inboard and outboard isolation valves (HV-1/255F002 and HV-1/255F003) which remain open an additional 44 seconds before isolating. The 10" valves are the limiting components for providing containment isolation for this line.

The failure mode of the affected HPCI Steam Warm-Up Line Isolation Valve is to close, if open, on loss of power or air supply, therefore, the proposed modifications do not affect the operability of the isolation valve or reduce the margin of safety.

Thus, based on a review of the Technical Specification, their Bases, the FSAR and NUREG 0776 (Safety Evaluation Report for SSES), the replacement of the pilot solenoid valves does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: December 18, 1996

Description of amendment request: The amendment would change the Susquehanna Steam Electric Station Unit 2 Technical Specifications to reflect the use of a 24-month operating cycle and the use of the ATRIUM-10 fuel design. The amendment includes changes to two definitions in Section 1, inclusion of new minimum critical power ratio safety limits in Sections 2.1.2 and 3.4.1.1.2, changes in Section 5.3.1 to reflect the new fuel design, and the listing of Siemens Power Corporation topical reports in Section 6.9.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The applicable sections of the FSAR [Final Safety Analysis Report] are Chapters 5,6.3,9, and 15 of the FSAR. Chapter 5 discusses the results of the ASME overpressure analyses for the reactor pressure boundary. Chapter 6.3 discusses the LOCA [loss-of-coolant accident]. Chapter 9 discusses fuel storage and handling. Chapter 15 describes the transient and accident analyses, a majority of which have been generically dispositioned to be non-limiting. A discussion of the impact of the Technical Specification changes is provided below.

The change to Definitions 1.2 and 1.3 makes the definitions applicable to ATRIUM-10. There are no effects on safety functions from this change.

A cycle specific MCPR [minimum critical power ratio] Safety Limit analysis was performed for PP&L [Pennsylvania Power & Light Company] by SPC [Siemens Power Corporation]. This analysis used NRC approved methods described in Technical Specification Reference 13 (ANF-524(P)(A), Revision 2 and Supplement 1 Revision 2.). The SAFETY LIMIT MCPR calculation statistically combines uncertainties on feedwater flow, feedwater temperature, core flow, core pressure, core power distribution, and the uncertainty in the Critical Power Correlation. The SPC analysis used cycle specific power distributions and calculated MCPR values such that at least 99.9% of the fuel rods are expected to avoid boiling transition during normal operation or anticipated operational occurrences. The resulting two-loop and single-loop values (Technical Specification sections 2.1.2 and 3.4.1.1.2) are included in the proposed change. Thus, the cladding integrity and its ability to contain fission products is not adversely affected.

The change to the Design Features (Section 5.3) increases the allowable enrichment. Analyses have demonstrated that the ATRIUM-10 fuel will remain subcritical (k-effective<0.95) in both the spent fuel pool and the new fuel vault. Thus, the change to allowable enrichment has no impact on safety functions. The description of a fuel assembly (Section 5.3) is also revised to reflect the ATRIUM-10 central water channel, and reference to an active fuel length of 150 inches was deleted. This change reflects the physical characteristics of the ATRIUM-10 fuel and has no impact on the probability or consequences of an event.

Included in the revised Technical Specifications via reference (Section 6.9.3.2) are additional NRC approved methodology reports. The NRC approved topical reports contain methodology which is used to assure safe operation of Unit 2 with ATRIUM-10 fuel. These methodologies assure that the core meets appropriate margins of safety for all expected plant operational conditions ranging from refueling and cold shutdown of the reactor through power operation. Thus, the results obtained from the analyses will provide assurance that the reactor will perform its design safety function during normal operation and design basis events.

The BASES changes for Section 2.1.1 (THERMAL POWER,Low Pressure or Low Flow) reflect that the Safety Limit is valid for both 9x9-2 and ATRIUM-10.

Therefore, the proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the Unit 2 Technical Specifications (Definitions, MCPR safety limits, Design Features, and inclusion of methodology references) to allow use of ATRIUM-10 fuel do not require any physical plant modifications, physically affect any plant components, or entail significant changes in plant operation. Thus, the proposed change does not create the possibility of a previously unevaluated operator error or a new single failure. The referenced methodology added to Section 6.9.3.2 contains NRC approved acceptance criteria. The consequences of transients and accidents will remain within the criteria approved by the NRC. Therefore, the proposed change does not create the possibility or a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The applicable Technical Specification Sections include 1.0, 2.0, 3/4.4, 5.3, and 6.9.3.2.

The changes to the Unit 2 Technical Specifications discussed in Item 1 above (Definitions, MCPR Safety Limits, Design Features, and inclusion of methodology references) to allow use of ATRIUM-10 fuel do not require any physical plant modifications, physically affect any plant components, or entail significant changes in plant operation. Therefore, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The NRC approved methods detailed in the references added to Section 6.9.3.2 maintain an equivalent margin of safety as currently defined in the bases of the applicable Technical Specification sections.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library,

Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, BrownsFerry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: December 11, 1996 (TS 386)

Description of amendment request: The proposed amendment changes the as-found tolerance for the main steam system safety/relief valves (S/RV) from plus or minus 1% to plus or minus 3%. The licensee states that the proposed change is consistent with methodology submitted by the Boiling Water Reactor Owners Group (BWROG) and approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA [the Tennessee Valley Authority, the licensee] is proposing a change to the "as-found" tolerances for the S/RV set points. This proposed TS [technical specification] amendment does not alter the frequency of verifying the S/RV lift set points, or the number of S/RVs required to be operable. The amendment does not involve physical changes or modifications to the S/RVs, or change the operating mode or safety function of the S/RVs. The safety lift set points will still be required to be set within a tolerance of plus or minus 1% following testing.

S/RV actuation is not a precursor to any design basis accident analyzed in the BFN [Browns Ferry Nuclear Plant] UFSAR [Updated Final Safety Analysis Report]. Therefore, this change does not increase the probability of any previously evaluated accident.

Generic considerations related to the set point tolerances were addressed in NEDC-31753P [BWROG In-Service Pressure Relief Valve Technical Specification Licensing Topical Report] and previously reviewed by NRC. In accordance with the NRC SER [Safety Evaluation Report, see letter from A. C. Thadani, NRC to C. L. Tully, BWROG, dated March 8, 1993] on utilizing the NEDC results, certain plant specific evaluations were performed to support the proposed change. Specifically, the current Unit 2 reload licensing report includes the transient analyses for the anticipated operational occurrences and the limiting overpressurization transient utilizing the plus or minus

3% S/RV set point tolerance and were performed in accordance with NRC approved methods. The alternate operating modes were also included in the reload licensing report. These analyses concluded there is adequate margin to design core thermal limits and pressure limits for the reactor vessel. The corresponding Unit 3 core reload licensing report for the next operating cycle (starts in March 1997) is in progress and will also use the plus or minus 3% S/RV set point tolerance. Prior to the return of Unit 1 to service, the same reload analysis will be performed. Similar results to those for Unit 2 are expected.

The operation of high pressure injection systems have been determined not to be adversely affected by the proposed change. LOCA [loss of coolant accident] response, containment hydrodynamic loads, pump and valve performance, and instrumentation performance were likewise satisfactorily evaluated. Therefore, this proposed change does not significantly increase the consequences of any previously evaluated accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a modification to plant equipment. No new failure modes are introduced. Plant systems will continue to function and no new system interactions are introduced by this proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change has been analyzed in accordance with NRC approved methodology and the margins of safety for the design basis accidents and transients analyzed in Chapter 14 of the BFN UFSAR have not been significantly reduced. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: December 11, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 1.0, "Definitions," TS Table 1.2, "Frequency Notation," TS Section 3/4.3, "Instrumentation," and TS Section 3/4.5, "Emergency Core Cooling Systems." Surveillance requirements would be modified to account for the increase in the fuel cycle, consistent with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle," dated April 2, 1991. Administrative changes consistent with the fuel cycle change are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 to 24 months for the subject Technical Specifications (TS) 3.4.3.1.1, Reactor Protection System Instrumentation; TS 3/4.3.2.1, Safety Features Actuation System Instrumentation; TS 3/4.3.2.2, Steam and Feedwater Rupture Control System Instrumentation; TS 3/4.3.3.1, Radiation Monitoring Instrumentation; TS 3/4.3.3.5.2, Remote Shutdown Instrumentation; TS 3/4.3.3.6, Post-Accident Monitoring Instrumentation, TS 3/4.5.1, Emergency Core Cooling Systems (ECCS), Core Flooding Tanks; and TS 3/4.5.2, Emergency Core Cooling Systems, ECCS Subsystems - T_{avg} greater than or equal to 280°F. Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

Review results of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because little, if any, potential for an increase in a failure rate of a system or component was identified during these reviews.

These proposed revisions are consistent with NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," dated April 2, 1991.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an

"R" frequency notation to an "E" frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not affect previously evaluated accidents.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an "R" frequency notation to an "E" frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not affect previously evaluated accidents.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

Review results of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because little, if any, potential for an increase in a failure rate of a system or component was identified during these reviews. No changes are being proposed to the type of testing being performed, only to the length of the surveillance test interval.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an "R" frequency notation to an "E" frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not affect the manner in which systems and components are being operated or tested.

3. Not involve a significant reduction in a margin of safety because the review results of the historical 18 month surveillance data and maintenance records identified little, if any, potential for an increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy is not being changed by these proposed changes.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an "R" frequency notation to an "E" frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not reduce the margin of safety.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences, therefore there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Notice of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 1, 1996, as supplementedNovember 26, 1996.

Brief description of amendment: The proposed amendment will modify Table 3.1.1, "Reactor Protection System (SCRAM) Instrumentation Requirement," Table 3.2.C.1, "Instrumentation That Initiates Rod Blacks," and Technical Specification 3/4.4, "Standby Liquid Control."

Date of issuance: December 27, 1996

Effective date: December 27, 1996

Amendment No.: 169

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (61 FR 28606) The November 26, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: July 26, 1996, as supplemented on September 3, 1996, September 18, 1996, two submittals dated October 14, 1996, October 22, 1996, two submittals dated November 8, 1996, and December 17, 1996.

Brief description of amendments: The amendments allow Commonwealth Edison Company to control the reactor coolant system pressure and temperature limits for heatup, cooldown, low temperature operation and hydrostatic testing. They also revise the reactor vessel material surveillance program specimen withdrawal schedule

such that the Unit 2 removal of capsule X is delayed until 19 Effective Full Power Years.

Date of issuance: December 20, 1996

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 177 and 164

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1996 (61 FR 50341). The September 3, 1996, September 18, 1996, two submittals dated October 14, 1996, October 22, 1996, two November 8, 1996, and December 17, 1996, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 25, 1996 (NRC-96-0003)

Brief description of amendment: The amendment revises the testing requirements used to determine the operability of the charcoal in the engineered safety feature systems.

Date of issuance: December 23, 1996

Effective date: December 23, 1996, with full implementation within 45 days

Amendment No.: 110

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1996 (61 FR 40014) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: December 11, 1996, as supplemented December 17, 19, and 26, 1996

Brief description of amendments: The amendments approve changes to the Updated Final Analysis Report (UFSAR), and require that the changes be submitted with the next update of the UFSAR pursuant to 10 CFR 50.71(e). The associated Safety Evaluation delineates the staff's review and findings regarding the one-time emergency power engineered safeguards functional test.

Date of issuance: January 2, 1997

Effective date: January 2, 1997

Amendment Nos.: 220, 220, 217

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Updated Final Safety Analysis Report. Public comments requested as to proposed no significant hazards consideration: Yes. (61 FR 66699 December 18, 1996) The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 2, 1997, as corrected to read January 17, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The December 17, 19, and 26, 1996, letters provided additional information that did not change the scope of the December 11, 1996, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated January 2, 1997.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 31, 1996

Brief description of amendment: The amendment revises the technical specifications to increase the amount of trisodium phosphate (TSP) dodecahydrate located in the containment sump storage baskets.

Date of issuance: December 30, 1996

Effective date: December 30, 1996

Amendment No.: 179

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1996 (61 FR 40025) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: August 1, 1996

Brief description of amendment: This amendment revised the Technical Specifications Section 3/4.4.6 (i.e., Figure 3.4.6.1-1) to reflect the addition of two hydrotest curves, effective for 6.5 and 8.5 Effective Full Power Years (EFPY), to the existing Pressure-Temperature Operating Limit (PTOL) curves for LGS Unit 2.

Date of issuance: December 30, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 80

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1996 (61 FR 57490) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Notice Of Issuance Of Amendment To Facility Operating License And FinalNo Significant Hazards Consideration Determination

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the

amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: December 6, 1996

Brief description of amendment request: The amendment would revise Technical Specification (TS) Section 2.1 and its associated TS Basis to reflect the change in the Minimum Critical Power Ratio Safety Limit due to the use of GE13 fuel product line and the cycle-specific analysis performed by General Electric Company (GE), for Limerick Generating Station, Unit 2, Cycle 5.

Date of publication of individual notice in **Federal Register:** December 23, 1996 (61 FR 67582)

Expiration date of individual notice: January 22, 1997

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Dated at Rockville, Maryland, this 8th day of January 1997.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 97–848 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–F

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of Information Collection, OPM Form 805 Series

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that OPM will submit a request to the Office of Management and Budget for reclearance of the OPM Form 805 Series that collects information from the public. OPM Form 805, Application to be Listed Under the Voting Rights Act of 1965, is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. The requirements for voter eligibility vary from State to State; therefore, OPM Form 805 is a blanket number covering a number of forms which conform to the individual State's requirements. For a number of years, there have been forms for 10 States: Alabama, Arizona, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas (English and Spanish language versions), and Utah. Because OPM has never been asked to list voters in Arizona, New Mexico, North Carolina, and Utah, the approval of these four forms is being permitted to lapse at the request of the Voting Rights Section in the Civil Rights Division of the Department of Justice. The form requires 20 minutes to complete. Approximately 10 individuals complete the form annually for a total public burden of 4 hours. For copies of this proposal call James M. Farron on (202) 418–3208 or e-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before March 17, 1997.

ADDRESSES: Send or deliver comments to—Steven R. Cohen, Assistant Director for Merit Systems Oversight, Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: P. Kaziah Clayton on (202) 606–2531 or e-mail to pkclayto@opm.gov.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–993 Filed 1–14–97; 8:45 am]

BILLING CODE 6325–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Sunshine Act Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, January 23, 1997, and Friday, January 24, 1997, at the Washington Marriott, 1221 22nd Street NW., Washington, DC, in the DuPont Salon. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. In preparation for its March 31 report, the Commission expects to discuss such issues as vulnerable populations, academic health centers, quality of care, and federal premium contributions. It will also review draft chapters on PSOs, access in Medicare managed care, Medicare PPOs, risk adjustment, secondary insurance for Medicare beneficiaries, consumer protections in managed care, and Medicare Fee Schedule issues. Final agendas will be mailed on January 17, 1997 and will be available on the Commission's web site (WWW.PPRC.GOV) at that time.

ADDRESS: 2120 L Street NW., Suite 200, Washington, DC 20037. The telephone number is 202–653–7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, at 202–653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202–653–7220 after January 16, 1997.

Lauren LeRoy, Ph.D.,

Executive Director.

[FR Doc. 97–1129 Filed 1–13–97; 3:08 pm]

BILLING CODE 6820–SE–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: January 6, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENTS: 61 FR 65092, December 10, 1996; and 61 FR 68081, December 26, 1996.

CHANGE: At its meeting on January 6, 1997, the Board of Governors the United States Postal Service voted unanimously to add two items to the agenda of its closed meeting held on that date:

4. Consideration of Personnel and Compensation Issues.

5. Changes to the FY 1997 Advertising Budget.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

Certified to be a true copy of the original document.

Neva R. Watson,

Alternate Certifying Officer.

[FR Doc. 97–1057 Filed 1–10–97; 4:41 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Existing collection in use without an OMB Number:

Rule 15c2–1
SEC File No. 270–418
OMB Control No. 3235-new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 15c2–1 (17 CFR 240.15c2–1) prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. See Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer account in contravention of the rule, issue and retain copies of notices of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 258 respondents per year (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 4,805 hours to comply with the rule. Each of these approximately 258 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 11,610 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,805 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondents of $116,100 (5,805 hours @ $20 per hour).

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: January 6, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–903 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No 22455; 811–6513]

The BFM Institutional Trust Inc.; Notice of Application

Janaury 8, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The BFM Institutional Trust Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on September 27, 1996, and amended on December 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 2, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Staff Attorney, at (202) 942–0552, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, organized as a Maryland corporation, is an open-end management investment company. Applicant consists of three separate portfolios: the Short Duration Portfolio, the Core Fixed Income Portfolio, and the Multi-Sector Mortgage Securities Portfolio III ("Mortgage Portfolio") (collectively, "BIT Portfolios"). Applicant registered under the Act and filed a registration statement on Form N–1A on December 20, 1991. The registration statement was declared effective on July 2, 1992, upon which applicant commenced its initial public offering.

2. On September 28 1995, applicant's board of directors ("Board") approved entry into an Asset Purchase Agreement ("Reorganization Agreement") between applicant and The PNC Fund, which subsequently changed its name to Compass Capital Funds ("Acquiring Fund"). The Reorganization Agreement provided for the transfer of all of the assets and liabilities of applicant to the Acquiring Fund solely in exchange for "Institutional" class shares ("Institutional Shares") of corresponding portfolios of the Acquiring Fund ("Acquiring Fund Portfolios"). The Board determined that the interests of applicant's securityholders would best be served by the reorganization because of (i) the broader array of investment options available to its securityholders; (ii) the maintenance of all then existing investor features; and (iii) potential economies of scale in portfolio management resulting from a larger asset size.

3. Pursuant to rule 17a–8 under the Act,[1] the Board, including a majority of the directors who are not "interested persons" of applicant, found that the transaction was in the best interests of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of the shares held at that time by applicant's shareholders.

4. At the time of the reorganization, the Acquiring Fund offered several classes of shares at the time of the reorganization, including Institutional Shares, Service Shares, Investor A Shares and Investor B Shares. Applicant's shareholders were offered

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common director, and/or common officers.

Institutional Shares because (a) applicant's shareholders were institutions and/or investors meeting the minimum investment requirements for this class and (b) the expense ratios of the Institutional Shares for each Acquiring Fund Portfolio most nearly matched the expense ratios of the corresponding BIT Portfolio.

5. On October 11, 1995, preliminary proxy materials were filed with the SEC. On November 9, 1995, definitive proxy materials were filed with the SEC and distributed to applicant's shareholders on or about that date. At a special meeting of applicant's shareholders on December 20, 1995, applicant's shareholders approved the Reorganization Agreement.

6. On January 13, 1996, the Core bond Portfolio and the Short Government Portfolio of the Acquiring Fund acquired all of the assets and liabilities of the Core Fixed Income Portfolio and the Short Duration Portfolio, respectively, in exchange for Institutional Shares of the corresponding Acquiring Fund Portfolio. On April 26, 1996, the Multi-Sector Mortgage Securities Portfolio III of the Acquiring Fund ("Acquiring Mortgage Portfolio") acquired all of the assets and liabilities of the Mortgage Portfolio in exchange for Institutional Shares of the Acquiring Mortgage Portfolio. Shareholders of each BIT Portfolio received Institutional Shares having a net asset value equal to that of the shares held by them as of the time of that portfolio's reorganization, in liquidation of such BIT Portfolio.

7. Expenses incurred in connection with the sale of assets of applicant, totalling $75,000, were assumed by the Acquiring Fund. These expenses consisted of proxy/prospectus preparation, filing, printing and mailing costs, audit and legal fees and expenses, and miscellaneous expenses. No brokerage commissions were incurred in connection with the reorganization.

8. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant will file articles of dissolution with the Maryland State Department of Assessments and Taxation to effect its dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–900 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Ducommun Incorporated, Common Stock, $.01 Par Value) File No. 1–8174

January 9, 1997.

Ducommun Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex") and Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security began trading on the New York Stock Exchange, Inc. ("NYSE") on November 15, 1996. In order to avoid direct and indirect costs and the division of the market resulting from dual listing on Amex, PSE and NYSE, the Company's Board of Directors directed that the Security be delisted from the Amex and PSE.

Any interested person may, on or before January 31, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–898 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Epitope, Inc., Common Stock, No Par Value) File No. 1–10492

January 9, 1997.

Epitope, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") for listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on October 14, 1996 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Tier of the Nasdaq Stock Market ("Nasdaq/NMS").

The decision of the Board followed a presentation made by the Company's investment advisor, Vector Securities International, Inc. and the Board's discussion and consideration of the matter. The Board's decision was based on the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's shareholders than the present listing on the Amex because:

(a) The Nasdaq/NMS system of competing market makers should result in greater visibility and sponsorship for the Security of the Company than is currently the case under the single specialist system on the Amex;

(b) Greater liquidity and less volatility in prices per share when trading volume is light might be expected as a result of listing on the Nasdaq/NMS than is presently the case on the Amex;

(c) Listing on the Nasdaq/NMS system might be expected to result in there being a greater number of market makers in the Security of the Company and expanded capital base available for trading in such stock; and

(d) Because it might be expected that a larger number of firms will make a market in the Security, it might also be expected that there will be a greater interest in information and research reports respecting the Company and as a result there may be an increase in the number of institutional research and advisory reports reaching the investment community with respect to the Company.

Any interested person may, on or before January 31, 1997 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street,

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N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–899 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (North Star Universal, Inc., Common Stock, $.25 Par Value) File No. 1–10134

January 9, 1997.

North Star Universal, Inc. ("NSU" or "Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company approved resolutions on November 25, 1996, to withdraw the Company's Security from listing on the PSE. The delisting is a condition to consummation of a merger between the Company and Michael Foods, Inc. ("Michael") pursuant to an Agreement and Plan of Reorganization, dated December 21, 1995, between NSU and Michael, as amended as of September 27, 1996, whereby: (i) Michael will be merged into a wholly owned subsidiary of NSU; (ii) NSU will change its name to Michael Foods, Inc. and will continue the business previously conducted by Michael; and (iii) the outstanding common stock of another wholly owned subsidiary of NSU, ENStar Inc., will be distributed pro rata to the shareholders of NSU.

Any interested person may, on or before January 31, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–897 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38140; File No. SR–Amex–96–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to Independent Contractors

January 8, 1997.

I. Introduction

On September 27, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal adopts Exchange Rule 341B, "Independent Contractors," which provides that the Amex will not object to the assertion of independent contractor status by a natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.[3]

Notice of the proposed rule change and Amendment Nos. 1, 2, and 3 to the proposed rule change were published for comment in the **Federal Register** on November 5, 1996.[4] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

According to the Amex, several member organizations recently have begun to utilize independent contractors to perform duties traditionally performed by registered employees. To date, the Exchange has required member organizations who utilize independent contractors to provide a written acknowledgement that the member organization will supervise and otherwise be responsible for the independent contractor in the same manner as if he were an employee. In order to clarify the Exchange's requirements and to ensure that independent contractors are appropriately subject to the Exchange's jurisdiction, the Amex proposes to adopt new Exchange Rule 341B.

Proposed Amex Rule 341B provides that the Amex will not object to the assertion of independent contractor status by a natural person who is a (i) registered representatives, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex. Under the proposal, the natural person asserting independent contractor status and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and, if required by Amex Rule 330, "Fidelity Bonds," is covered by its fidelity bond. Once a member organization approves a registered person's independent contractor status, the following conditions must be satisfied:

- The member organization provides written assurances to the Exchange that it will supervise and control all activities of the independent contractor effected on its behalf, to the same degree

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–(4) (1996).

[3] On October 2, 1996, the Amex amended its proposal to submit the proposal pursuant to Section 19(b)(2) under Act. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 2, 1996 ("Amendment No. 1"). On October 23, 1996, the Amex amended its proposal to eliminate inconsistencies between Amex Rule 341(a) and Amex Rule 341, Commentary .01. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Katherine England, Assistant Director, Division, Commission, dated October 23, 1996 ("Amendment No. 2"). Specifically, Amendment No. 2 deletes language indicating that only officers of a member must be approved and provides that registered representatives, securities lending representatives, securities traders, and direct supervisors of those persons must be registered and approved. Amendment No. 2 also includes a technical change which clarifies proposed Amex Rule 341B, "Independent Contractors." On October 24, 1996, the Exchange replaced an incorrect reference to Amex Rule 342 with a reference to Amex Rule 320. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Yvonne Fraticelli, Attorney, Division, Commission, dated October 24, 1996 ("Amendment No. 3").

[4] Securities Exchange Act Release No. 37884 (October 29, 1996), 61 FR 56981.

and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320, "Offices—Approval, Supervision, and Control;"[5]

• The member organization submits to the Exchange a copy of a written agreement between the independent contractor and the member organization which provides that the independent contractor will engage in securities related activities solely on behalf of the member organization (except as otherwise explicitly may be permitted by the member organization in writing), that such securities related activities will be subject to the direct detailed supervision, control and discipline of the member organization, that such person is not subject to a statutory disqualification as defined in Section 3(a)(39) of the Act, and that nothing therein will negate any of the foregoing;

• The independent contractor agrees in writing to be subject to the Exchange's jurisdiction; and

• The member organization provides the Exchange with assurances that, if required by Amex Rule 330, the independent contractor is covered by the organization's fidelity insurance and is in compliance with applicable state Blue Sky provisions.[6]

Written notice of the cessation of independent contractor status must be given to the Amex. Proposed Rule 341B does not apply to persons delegated supervisory functions (*e.g.*, branch office manager, registered representative-in-charge), nor does it permit the incorporation of a registered persons. The Amex notes that the New York Stock Exchange ("NYSE") has comparable requirements for independent contractors.[7]

The Amex also proposes to amend Definition six, "Registered Employee," to provide a definition for "Registered Person." Under Definition six, as amended, a registered person will mean not only a branch office manager or a registered representative, but also a securities lending representative, a securities trader, and a direct supervisor of a securities lending representative or a securities trader.

In addition, the Amex proposes a amend Amex Rule 340, Commentary .03, to require that a securities lending representative and his or her direct supervisor must pass any applicable qualification examination.[8]

The Amex proposes to amend Exchange Rule 341 to require that securities traders and securities lending representatives[9] (and their direct supervisors), as well as registered representatives, must be registered with and approved by the Exchange and, as applicable, must pass a qualification examination acceptable to the Exchange. Amex Rule 341, Commentary .01, as amended, will provide that a natural person who is an independent contractor and who performs the duties of a registered representative, securities lending representatives, or securities trader is subject to Amex Rule 341.

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(6), in particular, in that it is consistent with the Exchange's regulatory responsibilities and will promote just and equitable principles of trade and protect investors and the public interest.

III. Findings and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[10] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[11] Specifically, proposed Amex Rule 341B will help to provide for adequate supervision of persons asserting independent contractor status by requiring members to provide direct, detailed supervision, control and discipline of independent contractions.[12] In addition, the proposed amendments to Amex Rules 340 and 341 will help the Amex to monitor securities traders and securities lending representatives, as well as direct supervisors of registered representatives, securities traders, and securities lending representatives, by requiring such persons to register with and be qualified and approved by the Amex.

According to the Amex, several member organizations recently have begun to utilize independent contractors to perform duties traditionally performed by registered employees. To date, the Exchange has required member organizations who utilize independent contractors to provide a written acknowledgment that the member organization will supervise and otherwise be responsible for the independent contractor, in the same manner as if he were an employee. This position is consistent with the 1982 Letter. The Commission believes that the proposal will protect investors and the public interest by codifying the Amex's policies governing supervision of independent contractors in new Amex Rule 341B. In addition, the Commission believes that Amex Rule 341B will facilitate compliance with the Exchange's rules and the federal securities laws by providing a clear statement of the Amex's policy regarding supervision of independent contractors and by requiring members to provide direct, detailed supervision, control and discipline of independent contractors.

Amex Rule 341B provides that the Amex will not object to the assertion of independent contractor status by a

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[5] See Amendment No. 3, *supra* note 3.

[6] The Amex notes that these requirements do not apply to the traditional practice of a firm using an independent floor broker to execute a transaction on the floor of the Amex.

[7] See NYSE Interpretations and Guidance Handbook, 345(a)/02.

[8] Currently, there is no qualification exam for securities lending representatives.

[9] Exchange Rule 341, as amended, defines a securities lending representatives as a person who has the discretion to commit a member or member organization with which he is associated to any contract or agreement involving securities lending or borrowing activities with any other person. Amex Rule 341, as amended, defines a securities trader as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated and who does not transact any business with the public. The Amex proposes amend definition six, "Registered Employee," to provide that a "registered person" will include a securities lending representative, a securities trader, and a direct supervisor of a securities lending representative or a securities trader, in addition to a branch officer manager or a registered representative.

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] In approving this rule, the Commission has considered the proposed rule's impact an efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] In 1982, the Division issued a letter restating the Division's policy toward independent contractors. See Letter from Douglas Scarff, Director, Division, Commission, to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 ("1982 Letter"). In its 1982 Letter, the Division noted that the Act requires that a person selling securities be registered with the Commission as a broker-dealer under Section 15(a) unless he is an associated person as defined in Section 3(a)(18) of the Act. With regard to securities salespersons designated as independent contractors, the Division stated that unless an independent contractors's activities are subject to control by the broker-dealer within the scope of Section 3(a)(18) of the Act, the salesperson must be registered individually as a broker-dealer. The Division noted that an independent contractor salesperson whose activities are subject to control by a broker-dealer must be registered with a self-regulatory organization and should be covered by the employer broker-dealer's fidelity bond. Finally, the Division stated that a firm a responsible for ensuring either that an independent contractor is registered as a broker-dealer or assuming the supervisory responsibilities attendant to a relationship with an associated person. The Commission believes that the Amex's proposal is consistent with the 1982 Letter.

natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.[13] The independent contractor and the member must agree that the independent contractor is subject to the member's direct, detailed supervision, control and discipline. In addition, Amex Rule 341B requires a member to assure the Exchange in writing that it will supervise and control all activities of the independent contractor effected on the member's behalf to the same degree and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320.

Amex Rule 341B further provides for supervision of independent contractors by requiring the member to submit to the Amex a copy of a written agreement between the member and the independent contractor which provides that: (1) The independent contractor will engage in securities related activities solely on the member's behalf (except as otherwise permitted by the member); (2) the independent contractor's securities related activities will be subject to the direct, detailed supervision, control and discipline of the member; and (3) the independent contractor is not subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act. In addition, the proposal requires a member to assure the Exchange that, if required by Amex Rule 330, the individual is covered by the organization's fidelity insurance and has complied with applicable state Blue Sky provisions. Amex Rule 341B also requires an independent contractor to subject himself to the Amex's jurisdiction.[14]

The Commission believes that these requirements should help to ensure that members employ qualified persons as independent contractors and provide adequate supervision of their securities related activities, as required by the Act. In addition, Amex Rule 341B will make clear to independent contractors that they are subject to the Amex's jurisdiction and, accordingly, are subject to disciplinary proceedings by the Amex for violations of the Exchange's rules. The Commission also believes that the provision requiring an independent contractor to be covered by the member's fidelity insurance, if required under Amex Rule 330, will help to protect the member against losses resulting from dishonesty by an independent contractor and is consistent with the proposal's general requirement that independent contractors be treated as employees for purposes of the Exchange's Constitution and rules. The Commission notes that the provisions of Amex Rule 341B are similar to the NYSE's requirements for independent contractors.[15]

The Commission finds that the proposed amendments to Amex Rules 340 and 341 are appropriate and consistent with the Act. Specifically, the Commission believes that the proposed amendments to Amex Rule 341 requiring securities lending representatives and securities traders, as well as direct supervisors of registered representatives, securities lending representatives, or securities traders, to register with and be qualified and approved by the Amex will protect investors and the public interest by allowing the Amex to evaluate persons who seek to perform these functions.[16]

The Commission believes, as it has concluded previously, that it is consistent with the Amex's regulatory responsibility to monitor the activities of securities traders and securities lending representatives.[17] In addition, the Commission continues to believe that requiring securities lenders and securities traders to register with the Amex and assuring that they have adequate qualifications ultimately will protect investors and the public interest. The Commission believes that the proposal also protects investors by applying Amex Rule 341 to an independent contractor who performs the duties normally performed by a registered representative, securities lending representative, or a securities trader.

Finally, the Commission believes that the examination requirements contained in Amex Rule 340, Commentary .03, will help to ensure that only a person with an understanding of the applicable rules acts as a securities trader, securities lending representative, or as a direct supervisor of a securities trader or securities lending representative.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–96–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–902 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38138; File No. SR–BSE–96–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapter 11, Section 34A ("Trading Halts Due to Extraordinary Market Volatility")

January 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 1996, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange submitted to the Commission Amendment No. 1 to its proposal on January 7, 1997,[3] The Commission is

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[13] As noted above, only a natural person who is a registered representative, securities trader or securities lending representative may assert independent contractor status. Telephone conversation between Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996. Persons with supervisory functions may not assert independent contractor status. In addition, Amex Rule 341B does not permit the incorporation of registered persons.

[14] Registered persons submit to the authority of the organizations to which they apply for registration on the Uniform Application for Securities Industry Registration or Transfer ("Form U–4"). Accordingly, the independent contractors discussed in the proposal become subject to the Amex's jurisdiction when they apply for registration with the Exchange.

[15] See note 7, *supra*.

[16] Registered representatives, securities traders, and securities lending representatives apply for registration with the Exchange through the Form U–4. To approve a registered representative, securities trader, securities lending representative, or his or her direct supervisor, the Amex reviews the Form U–4, which contains a registered person's disciplinary history and information concerning whether he or she is subject to a statutory disqualification as defined in Section 3(a)(39) of the Act. The Amex also reviews the Form U–4 to determine whether another exchange has approved or rejected the registered person's application to register with that exchange. Telephone conversation between Robert Klein, Managing Director, Membership Services, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996.

[17] See Securities Exchange Act Release No. 25312 (February 4, 1988), 53 FR 4089 (February 11, 1988) (order approving File No. SR–NYSE–86–22).

[18] As noted above, there currently is no qualification examination for securities lending representatives. The provision relating to securities lending representatives will apply if a qualification examination for securities lending representatives is developed.

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Karen A. Aluise, Assistant Vice President, BSE, to Holly Smith, Associate Director,

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule—Chapter 11, Section 34A (Trading Halts Due to Extraordinary Market Volatility "circuit breakers")—to increase the trigger levels for its circuit breakers. The existing circuit breakers would be triggered if the Dow Jones Industrial Average ("DJIA")[4] declines by 250 and 400 points, respectively, from its previous day's close. The Exchange proposes establishing new thresholds of 350 and 550 points decline in the DJIA before the respective one-half hour and one hour circuit breakers are triggered.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries of the most significant aspects of such statements set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise the circuit breaker levels from 250 points to 350 points and from 400 points to 550 points to account for the overall rise in market values since the rules were first adopted on a pilot basis. These levels have not been changed since the inception of the pilot program in 1988. At that time, a 250 point drop in the Dow Jones Industrial Average ("DJIA")[6] represented approximately a 12% decline, and a 400 point drop represented a decline of about 19%. Today, these values represent roughly a 3.8% and 6.2% decline respectively. The proposed 350 and 550 points trigger levels would respectively represent around a 5.4% and 8.5% decline in the DJIA.

Chapter II, Section 34A currently provide that if the DJIA falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one-half hour. It further provides that, if on the same day the DJIA drops 400 or more points from its previous trading day's close, trading on the Exchange will halt for one hour. The Exchange seeks to amend this section to provide that if the DJIA falls 350 points or more below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one-half hour; and, if on that same day, the DJIA drops 550 points or more from its previous trading day's close, trading on the Exchange will halt for one hour.

The circuit breaker rules are a coordinated effort by the equities and futures markets to halt trading in all stocks, stock options, stock index options, stock futures, and options on stock futures when the DJIA reaches certain established trigger values. As such, these changes are intended to mirror the rules of the New York Stock Exchange ("NYSE") that would become applicable during periods of extraordinary market conditions.

The Exchanges's circuit breaker rules were originally approved by the Commission for a one-year pilot on December 14, 1988,[7] and were extended for a two year pilot on October 23, 1989,[8] October 28, 1991,[9] October 29, 1993,[10] and October 25, 1995.[11] The 1995 pilot program is due to expire on October 31, 1997, and the Exchange seeks to adopt these amendments to coincide with the current pilot program.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Chapter II, Section 34A are consistent with these objectives in that the proposed trading halt requirement during periods of significant market stress can be expected to provide market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating in an orderly manner the maintenance of an equilibrium between buying and selling interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Division of Market Regulation, SEC, dated January 7, 1997 ("Amendment No. 1"). For a description of Amendment No. 1, *see infra* note 5 and accompanying text.

[4] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

[5] In Amendment No. 1, the BSE corrected a typographical error which would have left the existing second circuit breaker level at 400 points. Amendment No. 1 clarifies the BSE's proposal that, if the DJIA declines by 550 or more points from its previous trading day's closing value, trading on the Exchange will halt for one hour.

[6] "Dow Jones Industrial Average" is a service mark of Dow Jones and Company, Inc.

[7] *See* Securities Exchange Act Release No. 26357 (December 14, 1988), 53 FR 51182.

[8] *See* Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881.

[9] *See* Securities Exchange Act Release No. 29868 (October 28, 1991), 56 FR 56535.

[10] *See* Securities Exchange Act Release No. 33120 (October 29, 1993), 58 FR 59503.

[11] *See* Securities Exchange Act Release No. 36414 (October 25, 1995), 60 FR 55630.

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Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–12 and the submitted by February 5, 1997.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–901 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38132; File No. SR–NASD–96–06]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 1 to the Proposed Rule Change Relating to Quotation and Reporting Requirements of Direct Participation Programs

January 7, 1997.

I. Introduction

On March 12, 1996, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the quotation of Direct Participation Programs ("DPPs") on the OTC Bulletin Board Service ("OTCBB" or "OTC Bulletin Board") and require all transactions in DPPs to be reported through the Automated Confirmation Transaction Service ("ACT").

The proposed rule change was published for comment in the **Federal Register** on April 25, 1996.[3] The Commission received seven comment letters concerning this proposal.[4] The NASD initially responded to these comments in a letter dated October 16, 1996.[5] On November 26, the NASD submitted Amendment No. 1 to the proposed rule change.[6] After careful consideration of all of the comments, the Commission has decided to approve the proposal, including Amendment No. 1 on an accelerated basis.

II. Background

In response to findings by the NASD's Direct Participation Programs Committee ("DPP Committee" or "Committee") and recently issued Internal Revenue Service ("IRS") regulations, the NASD submitted a proposed rule change to permit the quotation of DPPs[7] on the OTCBB by NASD members and, subject to a few exceptions, require that all transactions in DPPs be reported through ACT.

A. NASD Study of DPPs

The NASD has contemplated the implementation of a system that facilitates the dissemination of information concerning DPPs for quite some time. In fact, the NASD began examining this issue as early as 1980 when it solicited its members' opinions on this topic in the form of a voluntary questionnaire mailed to all of its members.[8] The positive reaction to the questionnaire prompted the NASD to design the "Electronic Bulletin Board" system, draft the necessary rules, and solicit comments from its members regarding these rules and "the overall concept of such a system."[9] The NASD received eighteen comment letters, most of which supported the concept.[10] After considering these comments, the NASD filed a proposed rule change with the Commission on January 20, 1983.[11] After notice of this proposed rule change was published by the Commission, additional comment letters were received.[12] Subsequently, the NASD decided to further analyze the issues raised in the comment letters and withdrew the proposal on August 21, 1985.[13]

The NASD revisited this issue in 1990. At the direction of the DPP Committee, NASD staff undertook a study of the nature and operation of the secondary market for limited partnership securities.[14] This study indicated that approximately $90 billion was invested in public DPPs in the 1970s and 1980s by more than ten million investors. The programs were organized to invest in a variety of

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37131 (Apr. 19, 1996), 61 FR 18452.

[4] See letter from James Frith, Jr., President, Chicago Partnership Board, Inc. ("CPB"), to Jonathan G. Katz, Secretary, SEC, dated May 14, 1996 ("CPB Letter No. 1"); letter from James F. Fotenos, Attorney, Fotenos & Suttle, P.C., to Jonathan G. Katz, Secretary, SEC, dated May 22, 1996 ("Fotenos & Suttle Letter"); letter from James Frith, Jr., President, CPB, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 ("CPB Letter No. 2) (concentrating primarily on the Qualified Matching Service Safe Harbor); letter from James Frith, Jr., President, CPB, to Jonathan G. Katz, Secretary, SEC, also dated June 10, 1996 ("CPB Letter No. 3) (focusing on the NASD's standardized Distribution Allocation Agreement form); letter from George E. Hamilton, President, NAPEX, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 ("NAPEX Letter"); letter from Gregory S. Paul, President, American Partnership Services ("APS"), to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 ("APS Letter"); letter from Laura J. Lacey, President, Nationwide Partnership Marketplace Inc. ("NPM"), to Jonathan G. Katz, Secretary, SEC, dated June 26, 1996 ("NPM Letter").

[5] See letter from Joan Conley, Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 16, 1996 ("NASD Response").

[6] See letter from Joan Conley, Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 26, 1996 ("Amendment No. 1"). Amendment No. 1 explained when a DPP trade needs to be reported, made technical corrections to the proposal so that it now conforms with the NASD Manual's new format, clarified the implementation schedule for these new rules, and extended the time period for Commission action.

[7] The NASD defines a DPP as a program that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agriculture programs, condominium securities, Subchapter S corporate offerings and all other programs similar in nature, regardless of the industry represented by the program, or any combination thereof. Excluded from the definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that code, tax sheltered annuities pursuant to Section 403(b) of the Internal Revenue Code, and any company including separate accounts, registered pursuant to the Investment Company Act of 1940. Proposed NASD Rule 6910(a); NASD Rule 2810(a)(4).

[8] Dennis C. Hensley, A Study of the NASD "Electronic Bulletin Board" for Limited Partnerships in American Bar Association, Section of Corporation, Banking and Business Law, Committee on Partnerships and Unincorporated Business Organizations, Publicly Traded Limited Partnerships IV–25 (Aug. 2, 1983). Nearly 20% of the NASD membership responded. *Id.* of those members, 68% favored the development of such a system. *Id.* Among those members who dealt in DPPs, the percentage of those in favor of the idea rose to be over 80%. *Id.*

[9] NASD Notice to Members 82–13.

[10] Although most of the concerns raised by the commenters were specific to that proposal, some of the comments focused on issues that are pertinent to the current rule proposal (*e.g.*, potential tax law implications, appropriate level of general partner involvement, and costs). See File No. SR–NASD–83–1 (comment letters attached as Exhibit 2 to the Form 19b–4).

[11] File No. SR–NASD–83–1.

[12] Securities Exchange Act Release No. 19675A (May. 9, 1983), 48 FR 21693 (publishing notice of File No. SR–NASD–83–1).

[13] Letter from Frank J. Wilson, then-Executive Vice President, Legal and Compliance, NASD, to Stuart J. Kaswell, then-Branch Chief, Over-the-Counter Regulation, SEC, dated August 20, 1985.

[14] See NASD Notice to Members 91–69 ("NTM–91–69") (publishing the Committee's findings and noting that the primary concern of the study was to determine how the market currently operates, whether it functions efficiently, and whether NASD members are in compliance with the applicable securities laws and rules).

industries including, but not limited to, real estate, oil and gas, cable television, commodities, and equipment leasing. Although these securities were not intended to be liquid and tradeable, the study found that a secondary market in DPP securities nevertheless had developed.[15]

In addition, the Committee found that some market participants were miscalculating markups, markdowns, spreads, and expenses in the DPP market; were making little effort to determine an investor's suitability to purchase DPP securities; had no knowledge as to the applicability of transaction reporting requirements; and were violating NASD rules concerning predatory pricing practices, best execution, and due diligence on behalf of customers.[16] The Committee also found that some members were not complying with the requirement to file sales literature with the NASD and were improperly doing business with nonmember broker-dealers. In addition, some members were not properly disclosing expenses being charged in connection with the purchase or sale of a DPP, conflicts of interest the broker-dealer may have with a customer, and the basis on which the member was recommending the price at which the securities were being bought or sold.

B. Tax Status of DPPs

In formulating a response to the Committee's findings, the NASD was aware that facilitation of a more centralized means for the quotation of DPPs could cause these securities to be deemed "publicly traded partnerships" under the Internal Revenue Code ("IRC" or "Code").[17] This would lead to the unintended result of DPPs being treated as corporations for federal tax purposes.[18] To assist partnerships wishing to avoid this result, the IRS issued regulations in December 1995 that clarified the circumstances under which interests in partnerships may be quoted without negatively affecting their tax status.[19]

For tax purposes, a publicly traded partnership is defined as a partnership whose interests are traded on an established securities market, a secondary securities market, or the substantial equivalent of a secondary market.[20] An established securities market includes: national securities exchanges registered pursuant to Section 6 of the Act; national securities exchanges exempt from registration because of the limited volume of transactions conducted thereon; foreign securities exchanges; and interdealer quotation systems that regularly disseminate firm quotations by identified brokers or dealers by electronic means or otherwise.[21] A secondary market or the substantial equivalent thereof is an entity or arrangement that, based on all of the facts and circumstances, readily permits partners to buy, sell, or exchange their partnership interests in a manner that is economically comparable to trading on an established securities market.[22]

The broad reach of this expansive definition is tempered by five nonexclusive safe harbor provisions.[23] These safe harbors include transfers not involving trading (private transfers);[24] redemption or repurchase agreements meeting certain requirements;[25] transfers through a qualified matching service ("QMS");[26] certain private placement transactions;[27] and a 2% *de minimus* rule.[28] Transfers that qualify for one of the safe harbors are disregarded when determining whether interests in a partnership are readily tradable on a secondary market or substantial equivalent thereof.

III. Description of the Proposal

The NASD believes the majority of DPP resale transactions are necessitated by events that force the sale of the partnership unit upon the limited partner. Such events include estate sales by trustees due to the death of a limited partner, liquidation of IRA accounts, divorce, and unexpected or extraordinary expenses such as major medical procedures or a post-secondary education. From this, the NASD concludes that the inefficiencies of the fragmented secondary market for DPPs tend to disproportionately affect investors who need liquidity, rather than investors who are merely seeking liquidity.

According to the NASD, the proposed changes to its rules concerning ACT and the OTCBB address this concern and the concerns raised in the DPP Committee's report. Moreover, the NASD believes the changes reflect the requirements contained in the IRS regulations so that the quotation of DPPs on the OTC Bulletin Board would not, by itself, have negative tax status consequences for the issuers or the holders of these securities.

A. Quotes on the OTC Bulletin Board

Generally, the treatment of DPPs quoted on the OTC Bulletin Board will be similar to that of foreign securities and ADRs currently—no firm prices will be displayed. NASD members will be permitted to insert only nonfirm prices or unpriced indications of interest ("bid wanted" or "offer wanted" and "name only" entries). These nonfirm prices or indications of interest will provide the

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[15] The NASD estimated at the time that approximately two dozen participants acted as principal or agent for customers in a fragmented secondary market that, in the aggregate, transferred ownership of an estimated $250 to $300 million worth of limited partnership securities annually. *Id.*

[16] See also William Power, Market for Limited Partnerships Is Rife with "Predatory Pricing," NASD Finds, Wall St. J., Nov. 18, 1991, at C1 (discussing the DPP Committee's findings).

[17] 15 U.S.C. 1–9602.

[18] I.R.C. Section 7704(a) providing that a publicly traded partnership is treated as a corporation for federal tax purposes unless the partnership meets the 90% qualifying income test of Section 7704(c) or qualifies as an "existing partnership" as defined in Treas. Reg. § 1.7704–2).

[19] See 60 FR 62026 (Dec. 4, 1995) (adopting Treas. Reg. § 1.7704–1 and discussing the definition of a publicly traded partnership under Section 7704(b) of the Code).

[20] I.R.C. Section 7704(b); Treas. Reg. § 1.7704–1(a)(1).

[21] Treas. Reg. § 1.7704–1(b).

[22] *Id.* Section 1.7704–(c)(1). For example, a partnership interest is readily tradable if it is regularly quoted by persons such as brokers or dealers who are making a market in the partnership interests; the holder of the partnership interest has a readily available and ongoing opportunity to sell or exchange the partnership interest through a public means of obtaining or providing information of offers to buy, sell, or exchange the partnership interest; or prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange the partnership interest in a time frame and with the requisite regularity and continuity described above. *Id.* Section 1.7704–1(c)(2).

[23] *Id.* Section 1.7704–1(c)(3).

[24] *Id.* Section 17704–1(e) (listing transfers not involving trading). Among the types of transfers included on this list are transfers at death, including transfers from an estate or testamentary trust; transfers between members of a family; and transfers involving distributions from a qualified retirement plan or an individual retirement account.

[25] *Id.* Section 1.7704–1(f) (listing the necessary qualifications for a redemption or repurchase agreement).

[26] *Id.* Section 1.7704–1(g) (detailing the requirements that a QMS must abide by).

[27] *Id.* Section 1.7704–1(h) (exempting partnership interests issued pursuant to certain private placement transactions).

[28] *Id.* Section 1.7704–1(j). Under this safe harbor provision, there is no actual trading in a partnership's interests if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership does not exceed 2% of the total interests in partnership capital or profits. Private transfers, transfers pursuant to redemption and repurchase agreements meeting the specified requirements, and transfers pursuant to a QMS are disregarded for purposes of applying the 2% rule.

For partnerships that were actively engaged in an activity before December 4, 1995, this rule applies for taxable years beginning after December 31, 2005. Until then, these partnerships may continue to rely on Notice 88–75, 1988–2 C.B. 386, including its 2%–5% safe harbor. This transitional relief expires, however, if the partnership adds a substantial new line of business within the meaning of Treas. Reg. § 1.7704–2. *Id.* § 1.7704–1(*1*)(2).

basis for the negotiations that will take place in order to complete a transaction in a DPP security. The OTCBB display screen will reflect the inside market, last sale, previous close, volume and, if available, distribution information.

In addition, only NASD members will be permitted to apply to place unpriced entries or indicative quotes on the OTC Bulletin Board. The requirements of Rule 15c2–11 will apply and, thus, firms generally will be required to submit Form 211 prior to initiating a quotation of a DPP on the OTC Bulletin Board, unless an exemption applies.[29] Finally, there is no provision for any automatic executions of DPPs on the OTCBB.

B. ACT Trade Reporting

Subject to certain limited exceptions,[30] all secondary market transactions in DPPs will be required to be reported to the NASD, without regard to whether the DPP was the subject of a quotation on the OTCBB.[31] Firms will report the transaction on "T+1," [32] designate it "as of" the previous day, and include the time of execution. Member firms that have the operational capability to report transactions within ninety seconds of execution, however, may do so. The NASD has prepared a symbol directory to facilitate transaction reporting in DPPs.

The transactions will be reported through ACT for reporting purposes only.[33] Thus, ACT will not be used to facilitate clearance and settlement of these securities notwithstanding the possibility that a particular DPP eligible for inclusion on the OTCBB also may be eligible for clearing with a clearing agency. Moreover, the OTCBB will not assist parties in completing the transfer documents and other forms necessary to clear and settle a transaction in a DPP security.

The NASD recognizes that some member firms who participate in this market may not have the capability to report transactions through ACT. Members without direct access to ACT may report such transactions through the ACT Service Desk if the member averaged a limited number of transactions per day during the previous calendar quarter.[34] Alternatively, such members may consider obtaining a computer-to-computer interface ("CTCI") or a Nasdaq Workstation.

IV. Summary of Comments

The Commission received seven comment letters concerning this proposal. Although the commenters discussed a number of different topics, their comments generally addressed one of two categories: tax issues and clearing issues. The NASD responded to these comments in letters dated October 16, 1996 and November 26, 1996.

A. Tax Issues

1. IRS Private Letter Ruling

Several commenters noted that the NASD did not obtain a ruling from the IRS assuring the NASD that the proposal would not run afoul of Section 7704 of the IRC and the regulations promulgated thereunder.[35] The commenters stated that this is particularly important in light of the fact that the NASD sought such a ruling from the IRS on a prior occasion concerning a similar five percent safe harbor as set forth in IRS Notice 88-75, 1988-2 C.B. 386. Without such a ruling, they claimed that the liquidity and efficiency of the market would be reduced.[36] Therefore, the commenters maintained that, due to the importance of the proposal to the secondary market, its approval should be conditioned upon the NASD obtaining a favorable ruling from the IRS.

In response, the NASD asserted that the IRS regulations were clear and unambiguous in that the inclusion of quotations on the OTCBB would not constitute an established securities market, a secondary securities market, or the substantial equivalent thereof and, therefore, a ruling from the IRS was not necessary to approve the proposal. Nevertheless, the NASD obtained a private letter ruling from the IRS to gain absolute certainty regarding the impact of this proposal on the tax status of DPPs. Specifically, the IRS ruled that: (1) the OTCBB is not an established securities market for purposes of Section 7704(b) of the IRC and Section 1.7704–1(b) of the Income Tax Regulations; (2) a partnership whose interests are displayed on the OTCBB will not be considered to be publicly traded solely by reason of being displayed on the OTCBB because the OTCBB undertakes to display partnership interests in compliance with Example 2 of Treasury Regulation 1.7704–1(j)(2); (3) such partnerships may rely on this ruling provided it is not revoked and the OTCBB continues to operate in a manner consistent with the facts represented; (4) calculations relating to qualification for any applicable safe harbor in Treasury Regulation 1.7704–1 or in IRS Notice 88–75 remain the responsibility of the partnerships whose interests are traded and are not the responsibility of the NASD, The Nasdaq Stock Market Inc., NASD Regulation, Inc., or the OTCCBB; and (5) notwithstanding that the OTCBB does not meet the requirements to be a QMS under Treasury Regulation 1.7704–1(g), matching services eligible for participation in the OTCBB may utilize the OTCBB to display nonfirm prices and unpriced indications of interest without disqualifying themselves as a QMS, provided that they otherwise meet all of the requirements for a QMS under Treasury Regulation 1.7704–1(g).[37] Compliance with the requirements for a QMS will be the sole responsibility of the matching service, not the NASD, The Nasdaq Stock Market, Inc., NASD Regulation, Inc., or the OTCBB.

2. Procedural Safeguards

One commenter requested that the NASD provide additional information concerning the procedures the NASD would employ to reasonably assure general partners that the DPP securities of the partnerships they manage would not afoul of the safe harbors in Treasury

[29] See 17 CFR 240.15c2–11 (governing the initiation or resumption of quotations by a broker-dealer for over-the-counter securities in a non-Nasdaq interdealer quotation medium).

[30] The proposed reporting requirements do not apply to (1) transactions made in reliance on Section 4(2) of the Securities Act of 1933, (2) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the DPP (*e.g.* gifts), or (3) transactions executed on a registered national securities exchange or through Nasdaq. See proposed NASD Rule 6920(g).

[31] Certain minor changes have been made to the definition of the term "ACT eligible security" to clarify that transactions in Nasdaq SmallCap and certain other OTC securities must be reported through ACT as well.

[32] The date of the trade plus one.

[33] The NASD's understanding is that members who effect transactions in DPPs predominately act in the capacity of agent. For reporting purposes, the concepts of agency and principal have the same meaning as those terms are commonly used or understood, unless otherwise noted in proposed NASD Rule 6900.

[34] As proposed, NASD Rule 6920 provides that a member may use the ACT Service Desk if it averaged five fewer trades per day during the previous calendar quarter. In calculating the average number of trades per day, transactions in any security must be included, not just transactions in DPPs.

[35] See Fotenos & Suttle Letter, *supra* note 4; CPB Letter No. 2, *supra* note 4; APS Letter, *supra* note 4.

[36] See CPB Letter No. 2, *supra* note 4 (asserting that an IRS ruling is required to allow QMSs to participate in the OTCBB without affecting their status as a QMS); APS Letter, *supra* note 4 (claiming that certain general partners will use the absence of such a ruling as an excuse to restrict the trading of their DPPs).

[37] See letter from William P. O'Shea, Chief, Branch 3, Office of the Assistant Chief Counsel, IRS, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated October 7, 1996 and attached as Exhibit 3 to the NASD Response ("IRS Ruling").

Regulation 1.7704–01.[38] The NASD addressed this comment by noting that virtually all partnership agreements require that general partners first approve all transfers of partnership interests and grant the general partner the authority to reject transfers that may jeopardize the tax status of the partnership. The NASD explained that the proposal would not affect the fiduciary responsibility currently born by general partners of ensuring the tax status of their DPPs. Thus, the monitoring of the safe harbor threshold levels would continue to be the responsibility of the general partners.[39]

3. Qualified Matching Services

One comment letter discussed the potential impact the proposal might have on the QMS safe harbor.[40] The commenter alleged that a shadow of uncertainty would be cast on the status of QMSs that also wished to publish quotes on the OTCBB because the OTCBB was not a QMS. The commenter claimed that such dual participation would jeopardize the QMS status of those members. In order to protect their QMS safe harbor status, the commenter predicted that QMSs would not publish quotes on the OTCBB and thereby lead to further fragmentation of the DPP market. In addition, the commenter asserted that this uncertainty would disadvantage those firms that made the investment in becoming qualified as a QMS because some general partners will simply suspend all trading at the 2% level, regardless of who is involved in the trades. To avoid these problems, the commenter suggested that the NASD modify the rules of the OTCBB to accommodate different turnover levels and obtain a private letter ruling from the IRS that specified that publishing nonfirm quotes on the OTC Bulletin Board would not disqualify a system as a QMS.

The NASD responded by noting that the proposal would have no effect whatsoever on the application of the QMS safe harbor because a QMS could maintain its status by simply complying with that safe harbor's requirements while utilizing the OTCBB.[41] Moreover, the NASD asserted that QMSs may actually enjoy some advantages over non-QMS participants utilizing the OTCBB because QMSs could continue to utilize the OCTBB until the 10% QMS safe harbor level was reached, while other OCTBB participants will be effectively capped by the IRS regulations at the 2% *de minimis* level.

B. Clearing Issues

1. Timing of Trade Reports

The commenters requested further guidance concerning the timing of DPP trade reporting.[42] The commenters explained that transfers in the DPP secondary market differ significantly from transfers in other secondary securities markets in that these contracts are subject to a number of unique contingencies.[43] These contingencies often cause significant delays in the transfer process. As a result, many "trades" fail. Therefore, the commenters requested that the NASD reconsider when a trade takes place for ACT reporting purposes.

The NASD explained that an obligation to report a transaction in a DPP security is triggered on the day following the "date of execution."[44] Once an agreement to trade has been reached, the NASD expects the appropriate member to report the transaction. The NASD believes delaying the transaction report until a later date when the transfer actually occurs could mislead market participants and regulators who need to access the current value of a DPP.

In addition, the NASD does not believe it is necessary for the reporting member to submit a correction or fail to notice if a transfer does not take place after a transaction is reported. The NASD maintained that the subsequent events that may impair the process of transferring a DPP do not negate the circumstances surrounding the events that initially gave rise to the intent to trade the security.

2. OTC Bulletin Board Symbols

The commenters questioned the ability of the NASD's current six digit symbol format to sufficiently service all of the DPPs in existence, inquired whether it would be necessary to report a DPP transaction through ACT if a NASD symbol did not exist, and requestd that the NASD provide a symbol directory at least sixty days prior to the final implementation of this proposal so that NASD members would have ample time to input this information into their computer systems.[45]

In response to these comments, the NASD assured the Commission that it will announce the effective date of the proposed rule change in a Notice to Members no later than forty-five days following commission approval of the proposed rule change and, in no event, will that effective date be sooner than forty-five days after Commission approval of the proposal.[46]

3. Associated Costs

One commenter asserted that the proposal would increase its costs and reduce its allowable compensation.[47] The commenter attributed the increase in costs to the proposal's reporting requirement, the need for additional equipment, and reduced spreads.

4. Standardized Transfer Forms

Several commenters contended that the NASD's standardized transfer forms, including the standardized distribution allocation agreement, contain flaws that render them useless.[48] The commenters maintained that distribution terms are extremely material to the quoted price and, therefore, quotations on the OTC Bulletin Board should not be allowed until this matter is resolved.

In response, the NASD emphasized the importance of the standardized forms, but also acknowledged the difficulty of bringing total uniformity to every transfer in this market.[49] As a result, the NASD has filed a proposed amendment to NASD Rule 11580 that would permit members to modify the forms after receiving authorization from NASD Regulation staff.[50]

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[38] See Fotenos & Suttle Letter, *supra* note 4.

[39] See Amendment No. 1 *supra* note 6; IRS Ruling, *supra* note 37. To assist the general partners with such compliance, the NASD will make transaction reporting information available for a nominal fee.

[40] See CPB Letter No. 2, *supra* note 4.

[41] See Amendment No. 1 *supra* note 6. *See also* IRS Ruling *supra* note 37.

[42] See Fotenos & Suttle Letter, *supra* note 4; NAPEX Letter, *supra* note 4.

[43] For example, transfers in the DPP secondary market are subject to the approval of the general partner(s), which often impose informational requirements. In addition, the prior consent of a state regulator may be required under certain circumstances. See Dudley Muth et al., *Transferring Limited Partnership Interests, Real Est. Sec. J.* Winter 1981, at 51 (detailing the transfer process of a DPP).

[44] See Amendment No. 1, *supra* note 6. Proposed NASD Rule 6910(e) defines the "date of execution" as "the date when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of units to be traded."

[45] See CPB Letter No. 1, *supra* note 4; NAPEX Letter, *supra* note 4.

[46] See Amendment No. 1, *supra* note 6. The NASD also indicated that the effective date will be no later than 90 days following the publication of that Notice to Members. should this schedule need to be revised, the NASD stated that it will immediately notify the Commission.

[47] See NAPEX Letter, *supra* note 4.

[48] See CPB Letter No. 3, *supra* note 4; NAPEX Letter, *supra* note 4; APS Letter, *supra* note 4. For example, one commenter asserted that it is often necessary to prepare two sets of transfer documents to effect transactions because many general partners refuse to honor the NASD's forms. NAPEX Letter, *supra* note 4.

[49] NASD Response, *supra* note 5.

[50] See Securities Exchange Act Release No. 38042 (Dec. 11, 1996), 61 FR 66339 (publishing notice of

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V. Discussion

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposed rule change is consistent with Section 15A(b)(6)[51] because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In making this finding, the Commission notes that the proposal should promote more efficient regulation of the DPP market, as well as enhance transparency, liquidity, and competition in that market.[52] The Commission also believes the proposed rule change is consistent with Section 15A(b)(2)[53] because it improves the NASD's ability to regulate the DPP market by increasing its surveillance capabilities.[54]

During the 1980s, over $150 billion of public limited partnership interests were sold to approximately eleven million U.S. investors, most of whom were retail investors with an average investment of ten thousand dollars.[55] Investors usually purchased these securities with the understanding that they were long-term, illiquid investments to be held until the holding period expired and the partnership was liquidated.[56] The holding period of many of these securities, however, had to be extended beyond the originally anticipated five to ten year holding period due to weakness in the underlying value of many partnership assets. This extended holding period has contributed to the development of a viable secondary market for DPP securities.[57] Given the size and nature of this market, it is important that it operate efficiently and fairly. In this regard, the proposal represents a positive, evolutionary change in the DDP market.[58] It increases transparency without adversely affecting the tax status of the quoted securities or inhibiting the clearance and settlement process.

A. Benefits of the Proposal

By increasing transparency, the proposed rule change should enhance investor protection and increase the actual and perceived fairness of the DPP market. The proposal should benefit investors by improving their ability to secure better prices in DPP transactions and by making it easier for them to monitor the quality of executions they receive from their intermediaries. Moreover, the increased transparency should assist regulators by expanding their market oversight capabilities and their ability to monitor member handling of DPP transactions and markups. Finally, the increased transparency should assist NASD members to fulfill their regulatory responsibilities and help prevent overreaching by certain members of other, previously less informed members.

In addition, the proposal should promote liquidity in the DPP market by encouraging greater investor participation.[59] For example, a more transparent market can reduce trading costs by decreasing spreads and, as noted previously, facilitate the investors' ability to monitor the quality of executions they receive. This should foster investor confidence in the DPP market and, as a result, investors should be more willing to participate.[60] This increased participation should elevate the level of liquidity in the DPP market.[61]

File No. SR–NASD–96–42). Currently, NASD Rule 11580 does not allow NASD members to modify the NASD's standardized forms concerning limited partnership interests.

[51] 15 U.S.C. 78O–3(b)(6).

[52] 15 U.S.C. 78c(f) (as added by the "National Securities Markets Improvement Act of 1996").

[53] 15 U.S.C. 78O–3(b)(2).

[54] The Commission notes that the proposal also promotes many of the same policy considerations Congress found appropriate for the development of the National Market System. For example, the proposal should improve the efficiency of DPP market operations, broaden the distribution of market information, enhance the NASD's market oversight capabilities, and foster competition among market participants through the use of new data processing and communications techniques. See 15 U.S.C. 78k–1(a)(1).

[55] *Senate Comm. on Banking, Housing, and Urban Affairs, Limited Partnership Rollup Reform Act of 1993, S. Rep. No.* 121, 103d Cong., 1st Sess., 4 (1993). *See also* Deborah A. DeMott, *Rollups of Limited Partnerships: Questions of Regulation and Fairness*, 70 *Wash. U. L.Q.* 617 (1992) *in Limited Partnerships: Hearings on H.R. 617 Before the Subcomm. on Telecommunications and Finance of the House Committee on Energy and Commerce*, 103d Cong., 1st Sess., 114–15 (1993) (classifying the limited partnership interests sold by broker-dealers as an overwhelmingly "retail" product because 8 million of the 11 million purchasers of these securities were individual investors).

[56] *House Comm. on Energy and Commerce, Limited Partnership Rollup Reform Act of 1993, H.R. Rep. No.* 21, 103 Cong., 1st Sess., 7 (1993); Securities Exchange Act Release No. 29883 (Oct. 30, 1991), 56 FR 57237 (adopting rules intended to enhance the quality of information provided to investors in connection with transactions involving rollups of limited partnerships). *See also C. David Chase, Mugged on Wall Street* 195 (1987) (espousing the author's personal opinion that it is easier to divorce one's spouse than to separate from a partnership).

[57] The longer the holding period, the more likely an event requiring a limited partner to sell his interest will occur (*e.g.*, death, liquidation of an IRA account, divorce, or an extraordinary expense such as a major medical procedure or post-secondary education). See also NASD Response, *supra* note 5 (asserting that, in the aggregate, this market transfers an estimated $250 to $300 million worth of DPP securities annually).

[58] One commenter suggested that the Commission delay its consideration of the proposed rule change until it had rendered a decision regarding two pending NASD petitions for rulemaking. See NPM Letter, *supra* note 4 (discussing the NASD's pending rulemaking petitions concerning the applicability of Rules 10b–17, 17Ad–2, 17Ad–3, 17Ad–4, and 17Ad–6 to the DPP market). The NASD withdrew its request concerning the modification of SEC transfer agent rules under Section 17A of the Act on December 23, 1996. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 (File No. 4–387) Although the pending rulemaking petition addresses important issues, the Commission believes the issues presented in the proposed rule change may be addressed independently of those matters.

[59] See Securities Exchange Act Release No. 37619A, 61 FR 48289 n.58, n.122 (Sept. 12, 1996) (adopting the "Order Execution Obligation Rules" and noting that past Commission enhancements to transparency have resulted in improved liquidity). One commenter claimed that the proposal will harm liquidity because it will reduce spreads which, in turn, will decrease members' compensation and, ultimately, cause market participants to reevaluate the services that they wish to provide. NAPEX Letter, *supra* note 4. The Commission recently addressed a similar concern in connection with its adoption of the Order Execution Obligation Rules. By mandating the display of customer limit orders under most circumstances, the Commission recognized that increased transparency may reduce market maker profits through the narrowing of spreads and, as a result, may force less efficient competitors to stop making markets in some of the securities that they then quoted. Nevertheless, the Commission did not believe the Order Execution Obligation Rules would have a significant negative impact on the market because customers are the ultimate source of liquidity for the markets. Order Execution Obligation Rules, *supra* note 59, at n.118. See also "Why Protect Investors?" Remarks by SEC Chairman Arthur Levitt Before the Commonwealth Club, San Francisco, California (May 17, 1996) available on SEC World Wide Web site at "www.sec.gov/news/spchindx.htm#chair" (noting that a market can exist without brokers, but it cannot exist without investors). Similarly, the Commission believes the proposal's benefits of increased investor protection, elevated liquidity, and improved efficiency outweigh its associated costs, including the potential loss of liquidity provided by market makers.

[60] One commenter expressed concern that approval of the proposal will cause the volume of DPP transactions to explode and unduly exacerbate certain clearance and settlement issues that currently exist in this market. See NPM Letter, *supra* note 4. So also Muth et al., *supra* note 43 (detailing the complicated clearance and settlement process). The Commission disagrees. Although more investors, traders, and dealers may be willing to participate in a fairer, more transparent, more competitive DPP market, any potential increase in the volume of transactions that may occur in this market is limited by the applicable IRC provisions and the rules and regulations promulgated thereunder. Furthermore, this inhibition on volume should prevent these long-term investments from being converted into short-term speculative securities and minimize any potential effect on the primary market for DPPs.

[61] SEC, Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments IV–3 (Jan. 1994) ("Market 2000

The proposal also fosters market efficiency by helping unite the extremely fragmented DPP market. The current structure of this market requires the DPP securities be traded "in the dark" (*i.e.*, with little or not transparency for those trades). This prevents investors from assessing the overall supply and demand for a particular DPP security and, consequently, hampers their ability to determine that security's optimal price. Furthermore, this opaque trading makes price competition difficult and inefficient.[62]

The proposal addresses both of these inefficiencies. First, by requiring that all transactions in DPP securities be reported through ACT[63] and permitting quotes and market information to be disseminated via the OTC Bulletin Board, the proposal provides investors with valuable information that enhances their ability to accurately determine the current value of a DPP, discern the direction of recent trading activity, and determine whether significant trading is occurring between, or outside of, the displayed nonfirm quotes. Second, the proposed rule change fosters price competition in this market[64] because pricing information will be more readily available.[65]

In sum, the increased transparency should reduce the effects of fragmentation and encourage competition.[66] Thus, the Commission believes that proposal's benefits of increased transparency for the DPP market outweigh its potential costs.[67]

B. Tax Issues

Although most of the commenters' concerns[68] are explicitly addressed in Treasury Regulation 1.7704–1,[69] the NASD obtained a private letter ruling that, among other things, specifically addresses each of their tax concerns.[70] In that ruling, the IRS explained that (1) the OTCBB is not an established securities market, a secondary securities market, or the substantial equivalent thereof and (2) the calculations relating to qualification for any applicable safe harbor in Treasury Regulation 1.7704–1 or IRS Notice 88–75 are the sole responsibility of the partnerships whose interests are traded.[71] Thus, there is no need for the NASD to make any additional modifications to the OTCBB.[72]

The IRS also clarified that a QMS may utilize the OTCBB without jeopardizing its status as a QMS, as long as the QMS continues to comply with all of the applicable safe harbor provisions.[73] Hence, a member that has made the capital investment to become a QMS may enjoy an advantage over those members that are not a QMS because the IRS regulations permit QMSs to facilitate transactions until the 10% QMS safe harbor threshold is met, while members relying on the *de minimis* safe harbor are capped at 2%.[74] This advantage should promote competition and increase the market's liquidity by encouraging other NASD members to become QMSs.

C. Clearing Issues

1. Trade Reporting

Notwithstanding the unique contingencies that exist in a DPP transaction, the Commission believes it is appropriate for the NASD to require its members to report transactions in DPP securities as soon as an agreement to trade has been reached. By reporting transactions by T+1, the member will be reporting the current trading interest in a particular DPP. If the reporting requirement were postponed until the date the transfer actually takes place, investors would be receiving information that was several weeks, or possibly months, old. The usefulness of such information to parties attempting to ascertain the current value of a DPP

Study"); Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438 (noting that the depth and liquidity of any particular security is dependent on numerous variables, including the degree of customer buying and selling interest in the security and the quality and capitalization of the issuer).

[62] American Bar Association, Committee on Partnerships and Unincorporated Business Organizations, Publicly Traded Limited Partnership, 39 Bus. Law. 717–18 (1984) (explaining that secondary sales of limited partnership often result in a "haphazard search" to find a buyer for the unit).

[63] See *supra* note 30 (listing the limited exemptions from the reporting requirement).

[64] One commenter asserted that utilizing nonfirm quotes and unpriced indications of interest will encourage market participants to place unrealistic bids to attract sellers. *See* NAPEX Letter, *supra* note 4. This assertion, however, overlooks at least three policing mechanisms inherent in a competitive market.

First, the existence of other quotes limit the ability of a market participant to place an unrealistic quote to attract interest and then move away form this quote once negotiations begin. Assume, for example A, B, and C each place a bid on the OTCBB for a particular DPP at $1050, $1025, and $1000 respectively. Naturally, a prospective seller would begin negotiating with the most favorable bidder, in this case A. If A attempts to reduce its bid lower than $1025, A risks losing the transaction because A does not know B's intentions—B may be willing to pay $1025.

Second, members are under a duty to provide their customers with best execution as to price. NTM–91–69 points out that this requires a member to obtain quotations from at least three dealers to determine the best interdealer market price for a non-Nasdaq security. For example, if W, X, Y, and Z each place a bid on the OTCBB for a particular DPP at $1050, $1025, $1000, and $975 respectively, the seller's broker would contact, at a minimum, W, X, and Y. If W, X, and Y are only willing to trade at prices below Z's bid, the broker should contact Z as well.

Third, the Commission notes that NASD Rule 3310 prohibits members from publishing any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation and is not published for any deceptive or manipulative purpose.

[65] This information will be accessible from almost 6,000 Nasdaq Workstations and an additional 290,000 market data vendor terminals. NASD Repsonse, *supra* note 5.

[66] Market 2000 Study, *supra* note 61, at IV–1.

[67] One commenter claimed that the reporting requirement would increase members' costs by requiring them to procure additional equipment. *See* NAPEX Letter, *supra* note 4. The Commission does not believe the proposal will have a significant impact on the NASD's membership as a whole because this justifiable cost will be limited to a relatively small group of members. *Cf.* NTM–91–69, *supra* note 14 (finding that the DPP market was consisted primarily of two dozen participants acting as principal or agent); CPB Letter No. 2, *supra* note 4 (claiming to have effectuated one-third of all transactions reported to independent sources since 1992); NASD Response, *supra* note 5 (noting that the NASD interviewed all identifiable participants in the secondary market for DPPs). Moreover, the Commission notes that members that average five or fewer trades per day for the previous calendar quarter will not need to acquire any additional equipment because they may utilize the ACT Service Desk to report their trades. Proposed NASD Rule 6920. Thus, of this already limited group, only active members who do not already possess the necessary equipment will be affected. See also *supra* note 59 and accompanying text (discussing the costs associated with increased transparency).

[68] As noted above, the commenters raised several concerns regarding the potential tax implications they believed the proposed rule change could have. Specifically, the commenters requested that: (1) the NASD obtain a private letter ruling from the IRS stating that the inclusion of a DPP on the OTCBB would not, by itself, transform that DPP into a publicly traded partnership; (2) the NASD detail what procedural protections were going to exist to ensure that the IRS safe harbor provisions were not exceeded; and (3) the NASD consider the potential impact the proposal could have on QMSs.

[69] See Treas. Reg. § 1.7704–1(j)(2) (setting forth in Example 2 a hypothetical situation that is virtually identical to the NASD's proposed rule change).

[70] IRS Ruling, *supra* note 37.

[71] IRS Ruling, *supra* note 37.

[72] Nevertheless, the NASD has indicated that it will assist general partners by making transaction data available to them for a nominal fee. The Commission notes, however, that the NASD's rules currently do not contain the formula by which such charges will be calculated. Therefore, the NASD must submit a proposed rule change to the Commission pursuant to Section 19 of the Act before charging such a fee. Moreover, given that this fee will be imposed on non-NASD members, it must be submitted for full notice and comment because it does not qualify for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act. See 15 U.S.C. 78s(b); Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692 (amending Rule 19b–4 and stating that, as a matter of general policy, a proposed rule change that establishes or changes a fee applicable to nonmembers must be filed under Section 19(b)(2) of the Act for full notice and comment).

[73] IRS Ruling, *supra* note 37.

[74] Certain transactions, such as those not involving trading, are not subject to a strict, predetermined cap. *See supra* notes 23 to 28 and accompanying text (providing a general explanation of the IRS safe harbor provisions).

is minimal when compared to information reported by T+1. Moreover, reporting a trade when the agreement occurs, rather than waiting until the transfer actually takes place, is consistent with current industry practice for other securities.

The Commission also does not believe it is necessary for members to submit a notice at a later date if a trade fails due to the unique post-trade contingencies that exist in the DPP market.[75] Ultimately, the price of a security is determined by two factors: the amount of money a buyer is willing to spend to acquire a certain amount of a particular security and the amount of money a seller is willing to accept to sell the same amount of that security. It is this information that investors value the most. The fact that a transaction fails at a later date because a general partner refuses to acknowledge the trade does not disparage the quality of the previously reported information concerning current market interest.[76]

2. Implementation

The Commission believes the NASD's implementation plan adequately addresses the commenters' concerns. The NASD intends to announce the effective date of the proposed rule change in a Notice to Members within forty-five days following the date of this order. This effective date will be no later than 90 days following the publication of that Notice to Members but, in no event, will the effective date be sooner than forty-five days after the date of this order.[77] This implementation schedule should provide the NASD's members with ample time to procure any necessary equipment and enter any essential data into their computer systems.

To facilitate transaction reporting, the NASD has compiled a comprehensive list of symbols that will be utilized by members when reporting a transaction through ACT.[78] If a symbol does not exist for a particular DPP, a member simply calls the ACT Service Desk before reporting the transaction, and a symbol will be assigned.[79]

D. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** Amendment No. 1 simply updates the proposal's internal citations to conform with the new rule numbering system that was implemented by the NASD after it filed SR–NASD–96–08 with the Commission. Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 15A and Section 19(b)(2) of the Act.[80]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–08 and should be submitted by February 5, 1997.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[81] that the proposed rule change (SR–NASD–96–08) is approved, including Amendment No. 1 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[82]

Margaret H. McFarland,

Deputy Secretary.

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[75] Of course, members must correct inaccurate trade reports. For example, a member must correct a trade reported at $680 if, in fact, the trade price was $860.

[76] The Commission assumes that the parties are bargaining in good faith when they reach an agreement that is subsequently reported through ACT. *Cf.* NASD Rule 3310 (prohibiting members from publishing the notice of a purchase or sale of any security without having reasonable cause to believe that such transaction was a bona fide purchase or sale).

[77] Amendment No. 1, *supra* note 6.

[78] This list will automatically be incorporated into the Nasdaq Workstation's on-line symbols directory when the proposed rule change becomes effective. If members would like a copy of this list prior to the proposal's implementation, however, they simply have to contact the Nasdaq Market Operations staff in Trumbull, Connecticut, and an electronic or paper copy will be provided.

[79] The Commission believes the current six digit format is sufficient to service the DPP market. *Contra* NAPEX Letter, *supra* note 4. After polling the major market participants, the NASD represented that it anticipates approximately 2,000 DPP securities to be quoted on the OTCBB. Telephone conversation between Andrew S. Margolin, Senior Attorney, The Nasdaq Stock Market, Inc., and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Jan. 3, 1996). Notwithstanding that the NASD intends to utilize the prefixes of "xx," "yy," and "zz" to indicate DPP securities, the remaining four digits still provide ample capacity because a surplus of approximately 86,000 symbols will exist to accommodate unanticipated or new DPP securities. In addition, the Commission does not believe the expense associated with mandating an entirely new, expanded symbol format to ensure the symbols assigned clearly indicate the issuer of a particular DPP outweighs the potential benefits such a convenience would confer upon NASD members.

[80] 15 U.S.C. 70*o*–3, 78s(b)(2).

[81] 15 U.S.C. 78s(b)(2).

[82] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2499]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Dangerous Goods, Solid Cargoes and Containers; Notice of Meeting

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on January 31, 1997, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Second Session of the DSC Subcommittee of the International Maritime Organization (IMO) which is scheduled for February 24–28, 1997, at the IMO Headquarters in London.

The agenda items of particular interest are:

a. Amendment 29 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the UN Recommendations on the Transport of Dangerous Goods.

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

c. Development of measures complementary to the Irradiated Nuclear Fuel (INF) Code.

d. Amendments to SOLAS chapters VI and VII.

e. Bulk carrier safety: need for fitting water level alarms in cargo holds.

f. Revision of the format of the IMDG Code.

g. Loading and unloading of bulk cargoes.

h. Cargo securing manual.

i. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

j. Evaluation of properties of solid bulk cargoes.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 26, 1996.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–885 Filed 1–14–97; 8:45 am]

BILLING CODE 4810-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on the Negotiation of a Bilateral Trade Agreement Between the United States and Laos

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the United States is in the process of negotiating a bilateral trade agreement with the Lao People's Democratic Republic (Laos). USTR invites comments from the public on concerns or goals of U.S. persons and businesses with respect to trade with Laos, and the extent to which the bilateral trade agreement can address those concerns or help promote those goals. Comments in particular might address current Lao practices that affect (a) market access for U.S. exports, such as tariffs and non-tariff measures, (b) trade and investment in services; and (c) any other measure that impedes trade in goods and services with the United States. Comments received will be considered in developing U.S. positions and objectives in the process of negotiating the bilateral trade agreement.

DATES: Comments should be submitted on or before noon on Monday, February 17, 1997.

ADDRESSES: Comments may be submitted to Joseph Damond, Director for South-East Asian Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Damond, Director for Southeast Asia, at (202)395–6813, or Thomas Robertson, Associate General Counsel, at (202)395–6800.

SUPPLEMENTARY INFORMATION: The United States is currently in the process of negotiating a bilateral trade agreement with Laos. One of the central elements of that agreement would be a bilateral commitment to extend non-discriminatory, most-favored-nation treatment to the products of the other country. We expect legislative action to fulfill this obligation on the part of the United States. The agreement may also address a wide range of other issues, including: (1) Suspension or termination for national security reasons; (2) safeguard arrangements; (3) the protection of intellectual property rights; (4) the settlement of commercial differences and disputes; (5) the promotion of trade; (6) consultations; (7) the grant of national treatment to the products of the other country; (8) the grant of trading rights; (9) the elimination of market access barriers (e.g., tariffs, import and export restrictions, quotas, licensing requirements, customs valuation, and fees and charges); (10) the transparency of legal and regulatory regimes; (11) state trading and industrial subsidies; (12) government procurement; (13) trade-related investment measures; (14) trade in services; and (15) investment restrictions.

USTR invites written comments from the public on market access and any other issues to be addressed in the course of the negotiations with Laos on the bilateral trade agreement. All comments will be considered in developing U.S. positions and objectives during these negotiations on each of the issues noted above or otherwise raised by the public. Issues of interest might include, but are not necessarily limited to: (a) Comments on possible tariff reductions and the removal of border measures such as quotas or import licensing requirements; (b) uniform application of the trading system; (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws concerning trade-related issues, such as protection and enforcement of intellectual property rights (IPR) and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements; (g) subsidies and domestic supports and incentives; (h) safeguard and unfair trade practice procedures applied to imports; (i) plant, animal, and human health and safety requirements; (j) food standards and other technical barriers to trade; (k) activities of state trading enterprises, including restrictions and other trade-distorting practices; (l) price controls and policies; (m) government procurement practices; and (n) the trade-related aspects of investment policies and the protection and enforcement of IPRs. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the ability to provide services on a cross-border basis, and the ability of persons to enter temporarily to provide services. Information on products or practices subject to these negotiations should include, whenever appropriate, the relevant import or export tariff classification number used.

Public Comment: Requirements for Submissions

Comments must be in English and provided with fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as privileged or confidential business information must certify that such information is privileged or business confidential and would not customarily be released to the public by the commenting party. Privileged or confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy. Persons are encouraged to provide a non-confidential summary of the information designated as privileged or business confidential.

A person requesting that information or advice contained in a comment submitted by that person, other than privileged or business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155)

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file containing the public versions of comments, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments made to USTR from the public with respect to the proceeding. An appointment to review the public file may be made by calling Brenda Webb, (202) 395–6186. The

USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Robert Cassidy,

Assistant U.S. Trade Representative for Asia and the Pacific.

[FR Doc. 97–1018 Filed 1–14–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–15, Small Airplane Certification Compliance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–15, Small Airplane Certification Compliance Program. The principal certification activity of general aviation airplanes for the past two decades has been directed toward sophisticated products, i.e., pressurized single-engine airplanes, twin-engine turboprop airplanes, and commuters. These programs necessitated the development of advanced means of compliance. Over time, these more sophisticated procedures became the standard and threatened to obscure simpler means of compliance that are essential for economical development of simple low performance airplanes. A team of industry personnel, Designated Engineering Representatives, and Aircraft Certification Office personnel, who were either directly involved or had access to files related to certification of low performance airplanes during the 1950–1970 era, was assembled to document the most appropriate past practices. This AC is the result of the teams' effort.

DATES: Advisory Circular 23–15 was issued on January 2, 1997, by the Manager of the Small Airplane Directorate, Aircraft Certification Service, in Kansas City, Missouri.

How to Obtain Copies: A copy of AC 23–15 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Kansas City, Missouri, on January 2, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1020 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burlington Regional Airport, Burlington, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burlington Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael R. Salamone, Executive Director, at the following address: Burlington Regional Airport, 2515 Summer Street, Burlington, Iowa 52601–3330.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Southeast Iowa Regional Airport Authority, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Burlington Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 27, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Burlington, Iowa, was not substantially complete within the requirements of § 158.25 of Part 158. The Southeast Iowa Regional Airport Authority submitted supplemental information on November 4, 1996, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than March 4, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July, 1997.

Proposed charge expiration date: February, 2003.

Total estimated PFC revenue: $460,000.

Brief description of proposed project(s): Install security fencing; install lighting, signage and reflectors on Runways 18/36 and 12/30; acquire aircraft rapid intervention firefighting vehicle; update the airport master plan; acquire Tracts 601, 602, and 603 in the runway protection zone; replace existing airfield generator; rehabilitate and narrow Runway 12/30; conduct a feasibility study for Runway 12/30 edge drains; acquire snow removal equipment; construct joint-use (airport/city) aircraft rapid intervention firefighting equipment building; conduct new terminal feasibility study; rehabilitate taxilane and hangar taxilane road.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burlington Regional Airport.

Issued in Kansas City, Missouri on December 2, 1996.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 97–1019 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Sequoyah and LeFlore Counties, OK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be

prepared for a proposed highway project in Sequoyah and LeFlore Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Erickson, Division Administrator, Federal Highway Administration, 715 South Metropolitan Avenue, Suite 700, Oklahoma City, Oklahoma 73108, Telephone: (405) 945–6173.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve US Route 59 (US59) from a two-lane to a four-lane facility from its intersection with State Highway 9 (SH 9), also known as Sunset Corner, north to Interstate 40 (I–40).

This facility has been identified as a Transportation Improvement Corridor (TIC) in the Statewide Intermodal Transportation Plan and improvements to the corridor are considered necessary to meet TIC policy as well as present and future traffic demands. Alternatives under consideration include (1) improve the existing alignment, (2) improve the existing alignment with a new roadway alignment over Wild Horse Mountain, and (3) a new alignment corridor from Sunset Corner north to I–40 just east of Sallisaw.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings and/or public hearings will be held in the vicinity of the proposal in the future. Public notice will be given of the time and place of the meetings and/or hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: January 6, 1997.

Jim Erickson,

FHWA, Division Administrator, Oklahoma City, Oklahoma.

[FR Doc. 97–917 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Docket No. RSGM–96–5]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Beech Mountain Railroad Company (BMRR)

[Waiver Petition Docket Number RSGM–96–5]

The BMRR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223.9 (a), certified glazing) for its two locomotives, ALCO S2 1,000 HP #113 and #115, built in the early 1950s.

BMRR is a Class III railroad operating within Randolph and Upshur counties in the state of West Virginia. According to the requesting railroad, the crew consists of five men comprised of one supervisor, one engineer, one brakeman, and two track servicemen. The BMRR is privately owned by Carter-ROAG Coal Company (CRCC). The purpose of the BMRR's operations is to provide transfer service between the CSX Transportation, Incorporated's interchange located in Alexander, West Virginia, and the CRCC's Preparation Plant located in Star Bridge, West Virginia. The BMRR's line transverses—without instances of broken glass due to projectiles—a remote and isolated area. The railroad states that locomotives are early 1950 models, and installation of the safety glazing would require extensive and expensive refacing of the locomotive cabs. The BMRR also states that all employees are aware of this request for waiver and support it without exception.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–96–5) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–958 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

[FRA Docket No. LI–96–2]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railroad

[Waiver Petition Docket Number LI–96–2]

The Canadian National Railroad (CN) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards, 49 CFR 229.27 (a)(2) and 229.29 (a), concerning the time interval provisions of the periodic cleaning, repairing, and testing of locomotive air brake components for all of their locomotives operating in the United States equipped with 26L type brake equipment. FRA currently permits railroads to operate locomotives equipped with 26L type brakes for periods not to exceed 1,104 days, before performing the testing and inspection required by 49 CFR 229.27 (a)(2) and 229.29 (a).

Transport Canada has now authorized CN to operate its locomotives equipped with 26L braking equipment on 48-month cleaning intervals. The only exceptions are two valves in the system (P2A and H5) which will remain on a 36-month interval until future

evaluations establish that desired improvements with the valves have been achieved. According to CN, during the extensive testing period, which began in 1987 and involved approximately 1,200 locomotives, the reliability of the braking systems was never an issue, therefore, train operating safety is not at risk. With the high number of locomotives operating in international service, CN states that managing two different braking system maintenance intervals would be both problematic and costly. Further, to revert to a 36 month cleaning interval after almost ten years of successful testing at 48 month intervals, would not provide any additional safety benefits. CN would like the 48-month maintenance interval to be accepted for all of their locomotives that operate in the United States.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–96–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–957 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

[FRA Docket No. H–92–3]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for an extension of a waiver of compliance with certain provisions of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Westinghouse Air Brake Company

[Waiver Petition Docket Number H–92–3]

In 1992, the Westinghouse Air Brake Company (WABCO) was granted a waiver for their EPIC microprocessor-based locomotive braking equipment. Specifically, the waiver excludes 1000 locomotives equipped with EPIC braking equipment from the requirements of 49 CFR 229.29 by extending the required time interval for cleaning, testing, and inspecting locomotive air brake valves from 736 calendar days to five years. WABCO requests that the waiver condition which limits the number of locomotives permitted to be equipped with EPIC microprocessor-based braking equipment, be adjusted to include *all* locomotives in the United States that are equipped with EPIC 3102 and EPIC II electronic brake equipment. The EPIC 3101 series electronic brake equipment is *not* included in this request.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–959 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

[BS–AP–No. 3393]

The New Orleans Public Belt Railroad; Public Hearing

The New Orleans Public Belt Railroad has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of 15 signals (No.'s 48, 47, 46, 45, 40, 39, 38, 37, 33, 2, 14, 16, 18, 20, and 22) on the two Running tracks, between Lampert Junction, milepost J.O.2 and East Bridge Junction, milepost J.3.0, in New Orleans, Louisiana.

This proceeding is identified as FRA Block Signal Application Number (BS–AP–No.) 3393.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. on Wednesday, February 19, 1997, in the New Orleans Union Passenger Terminal, Room 201, located at 1001 Loyola Avenue, New Orleans, Louisiana. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–960 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

Surface Transportation Board

[STB No. MC–F–20903]

Greyhound Lines, Inc.; Acquisition of Control; Los Rapidos, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Greyhound Lines, Inc. (GLI or applicant), has filed an application under 49 U.S.C. 14303(a) to acquire control of Los Rapidos, Inc. (LRI). Persons wishing to oppose the transaction must follow the rules at 49 CFR 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative grant of authority will be deemed vacated, and the Board will consider the comments and any replies and will issue a further decision on the application.

DATES: Unless opposing comments are filed, this notice will be effective March 3, 1997. Comments are due by March 3, 1997, and, if any are filed, applicants may reply by March 17, 1997.

ADDRESSES: Send original and 10 copies of any comments referring to STB No. MC–F–20903 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. Also, send one copy of comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: GLI (MC–1515) is a nationwide motor common carrier of passengers over regular routes that controls the following regional interstate motor passenger carriers: Texas, New Mexico & Oklahoma Coaches, Inc.; Continental Panhandle Lines, Inc.; and Vermont Transit, Inc. LRI (MC–293638) is a motor passenger carrier operating in California in interstate and foreign commerce over regular routes between: Los Angeles and Calexico, at the Mexican border; and between Fresno and San Ysidro, at the Mexican border. As a result of this control transaction, LRI will become a wholly owned subsidiary of GLI that will be controlled indirectly through Sistema Internacional de Transporte de Autobuses, Inc. (SITA), GLI's wholly owned noncarrier subsidiary.[1]

GLI states that its aggregate gross operating revenues, and those of its affiliates, exceed the $2 million jurisdictional threshold of 49 U.S.C. 14303(g). It asserts that acquisition of control will stimulate competition and improve the quality and adequacy of motor passenger service available to the Hispanic segment of the traveling public. Additionally, it maintains that the transaction will not cause an increase in fixed charges and that no employees will be adversely affected.

Applicant certifies that: (1) Both it and LRI hold satisfactory safety ratings from the U.S. Department of Transportation; (2) they both have sufficient insurance to cover the services they intend to offer; (3) no party to the transaction is either domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. We tentatively find, based on the application, that the proposed transaction is consistent with the public interest and should be authorized.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is Ordered

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. This notice will be effective on March 3, 1997, but will be deemed vacated if opposing comments are filed on or before that date.

3. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

Decided: January 6, 1997.

[1] SITA on December 2, 1996, entered into a voting trust to permit it to acquire LRI's stock prior to a decision on the merits of this application.

By the Board, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 97–955 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33325]

Lewis & Clark Railway Company, Lease and Operation Exemption; in Clark County, WA

Lewis & Clark Railway Company, a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Clark County, Washington 3.62 miles of rail line from milepost 3.62 at Rye to milepost 0.0 at Vancouver Junction, in Clark County, WA. Consummation was expected to occur on or after December 24, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33325, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005.

Decided: January 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–954 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33330]

Union County Industrial Railroad Company; Corporate Family Transaction Exemption; West Shore Railroad Corporation

Union County Industrial Railroad Company (UCIR) and West Shore Railroad Corporation (WSRC),[1] Class III

[1] UCIR and WSRC are owned and controlled by Richard D. Robey. UCIR owns and operates approximately 3.9 miles of rail line in the Commonwealth of Pennsylvania, which will be acquired by WSRC in *West Shore Railroad Corporation—Acquisition Exemption—Union County Industrial Railroad Company*, STB Finance Docket No. 33329 (STB served Jan. 15, 1997). WCRC

Continued

railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of WSRC into UCIR.

The earliest the transaction could be consummated was December 30, 1996, the effective date of the exemption (7 days after the exemption was filed).

UCIR will provide continuing rail common carrier service on the lines to be acquired by WSRC in STB Finance Docket No. 33329 and those previously operated by WSRC. The merger will improve the overall efficiency of rail operations and reduce costs associated with two corporate entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33330, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 6, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–952 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

operates approximately 8.965 miles of rail line in the Commonwealth of Pennsylvania.

[STB Finance Docket No. 33320]

Union Pacific Railroad Company; Corporate Family Exemption; Missouri Pacific Railroad Company

Union Pacific Railroad Company (UP) and Missouri Pacific Railroad Company (MP), Class I railroad affiliates in the Union Pacific System, have filed a joint notice of exemption to undertake a corporate family transaction. Under the Agreement and Plan of Merger, MP will merge with and into UP. UP will be the surviving corporation, and the corporate existence of MP will cease. The proposed transaction was to be consummated on or about January 1, 1997.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside applicants' corporate family. The purpose of the transaction is to avoid duplicate reporting requirements, and to achieve cost efficiencies which will result through corporate simplification.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33320, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Robert T. Opal, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: January 8, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–956 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33329]

West Shore Railroad Corporation; Acquisition Exemption; Union County Industrial Railroad Company

West Shore Railroad Corporation (WSRC), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire approximately 3.9 miles of rail line from the Union County Industrial Railroad Company (UCIR) between New Columbia, PA (MP 169.7), and Milton, PA (MP 173.6). UCIR will continue to provide rail common carrier service on behalf of WSRC.

The transaction was expected to be consummated on or after December 31, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33329, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 6, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–951 Filed 1–14–97; 8:45 am]

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Federal Register

Wednesday
January 15, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 111, and 310
Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 111, and 310

[Docket Nos. 91P–0186 and 93P–0306]

Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to require label warning statements on products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes, and unit dose packaging for iron-containing products that contain 30 milligrams (mg) or more of iron per dosage unit. FDA is taking these actions because of the large number of acute iron poisonings, including deaths, in children less than 6 years of age attributable to accidental overdoses of iron-containing products. FDA is temporarily exempting one form of elemental iron, carbonyl iron, from the packaging requirements of this final rule. The temporary exemption will automatically expire 1 year from the effective date of this final rule. If, during the temporary exemption period, FDA receives animal data that establish that carbonyl iron is significantly less toxic than at least one commonly used iron salt, FDA will consider permanently exempting carbonyl iron from the packaging requirements of this final rule.

DATES: The regulation is effective July 15, 1997. For compliance dates see §§ 111.50(b)(1) and (b)(2) and 310.518(b)(1) and (b)(2).

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 6, 1994 (59 FR 51030), FDA published a proposed rule (the iron proposal) to require label warning statements for products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes. The proposal did not cover liquid or powder forms of iron and did not bear in any way on conventional foods containing naturally occurring or added iron. FDA also proposed regulations to require unit-dose packaging[1] for iron-containing products[2] that contain 30 mg or more of iron per dosage unit.[3]

FDA proposed these regulations because of the acute iron poisonings, including deaths, in children less than 6 years of age attributable to accidental overdoses of iron-containing products. The intent of these proposed regulations was to reduce the risk of accidental iron poisonings of young children by utilizing FDA's authority in conjunction with the existing requirements of the U.S. Consumer Product Safety Commission (CPSC) for child-resistant packaging for household substances. Since the publication of the iron proposal, FDA has obtained information from the American Association of Poison Control Centers (AAPCC) that indicates that accidental overdose of iron-containing products continues to be a problem in young children (Refs. 1 and 2). In 1994, at least 3,210 children under 5 years of age were treated in emergency rooms for exposure to iron-containing products, and two children are known to have died following such accidental overdose.

The iron proposal responded to citizen petitions submitted by AAPCC (the AAPCC petition) (Docket No. 91P–0186/CP1) (Ref. 3); the Attorneys General of 34 States, Commonwealths, and Territories (the AG petition) (Docket No. 93P–0306/CP1) (Ref. 4); and the Nonprescription Drug Manufacturers Association (the NDMA petition) (Docket No. 93P–0306/CP2) (Ref. 5). These petitions requested that FDA take action to ensure that products containing iron or iron salts do not pose a health hazard to young children and infants.

In the **Federal Register** of February 16, 1995 (60 FR 8989), in response to the Dietary Supplement Health and Education Act of 1994 (DSHEA), FDA published a supplemental proposed rule reflecting a shift in the agency's authority to establish regulations for dietary supplements.

[1] For the purposes of this document "unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units.

[2] Throughout this document, the term "iron-containing products" refers to solid oral dosage forms of both dietary supplement and drug products.

[3] In this document, the term "dosage unit" is used to denote the individual physical units of the iron-containing product such as tablets, capsules, caplets, or other physical forms, irrespective of whether one or more than one of these physical units comprises the recommended dose.

The agency received over 100 responses to the iron proposal and the supplemental proposal with one or more comments each from dietary supplement, drug, and packaging trade associations; consumers; Federal and State Government agencies; State attorneys general; poison control centers; the international community; health care providers; and dietary supplement and drug manufacturers and packers. Comments on the proposed requirement for a warning statement on iron-containing products were generally supportive, although many comments disagreed with the specifics of the agency's proposed text and requirements for prominence and placement. Several comments stated that firms already are including a voluntary warning statement on the label of iron-containing products. Comments on the proposed requirement for unit-dose packaging for iron-containing products that contain more than 30 mg of iron per dosage unit were divided on whether the proposed requirement was needed to ensure the safety of these products, and several comments challenged FDA's authority to establish such regulations.

II. Warning Statement for Iron-Containing Products

A. The Proposed Warning Statements

FDA proposed to require label warning statements on iron-containing dietary supplements and drug products. FDA tentatively concluded that the warning statements should incorporate elements from both the AG petition and the NDMA petition, as well as other elements that are designed to ensure that the statements perform their function.

FDA proposed two warning statements—one statement for use on iron-containing products packaged in unit-dose packaging and a slightly different statement for use on iron-containing products packaged in other than unit-dose packaging, e.g., a container with a child-resistant closure (CRC).

The proposed warning statement for use on iron-containing products packaged in unit-dose packaging reads as follows:

> WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

The proposed warning statement for use on iron-containing products packaged in other than unit-dose packaging reads as follows:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

Each of these proposed warning statements included a handling instruction (e.g., "Close tightly and keep away from children"), an informational statement ("Contains iron, which can harm or cause death to a child"), a provisional statement ("If a child accidentally swallows this product"), and an instructional statement ("Call a doctor or poison control center immediately").

B. Focus Group Findings

In order to determine the effectiveness of the proposed warning statements in alerting consumers to the danger that an accidental overdose of iron poses to young children, FDA contracted with Macro International, Inc., to test several different potential warning messages for iron-containing products in a total of eight focus groups. A notice of the availability of the focus group report was published in the **Federal Register** of May 23, 1995 (60 FR 27321). The notice invited the public to comment on this report. This focus group research supported the agency's tentative conclusion, explained in the iron proposal, that many adults are not aware of the danger that an accidental overdose of iron poses to young children.

In the focus groups, all participants were presented with an information piece detailing the danger that an accidental overdose of iron poses to young children. The information piece contained statistics that showed that accidental overdoses of iron-containing products are a leading cause of poisoning deaths in children under the age of 6, that illness can result from the ingestion of as little as 250 mg of iron in a child weighing 10 kilograms (kg) or less (22 pounds (lb) or less) and that ingestion of 600 mg of iron has been reported to be fatal to children weighing 10 kg or less. Half of the eight groups ("pre-evaluation groups") received the information piece before they evaluated the warning messages, and the other half ("postevaluation groups") received the information piece after they evaluated the warning messages. Participants in the postevaluation groups initially heard only a brief statement about the need for a standardized warning statement on iron-containing products and heard nothing about the nature of the hazard posed by an accidental overdose of iron-containing products or about the number of children who had died. The postevaluation groups subsequently were given the opportunity to reevaluate the warning messages after hearing the longer, more detailed information piece.

Participants in the postevaluation groups found warning messages such as "iron can harm or cause death to a child" to be unnecessarily severe, to the point that they considered the messages to be bizarre and unbelievable. The postevaluation groups tended to like a short generic message that did not identify a specific hazard. In contrast, participants in the pre-evaluation groups were more accepting of stronger statements of the hazard and tended to prefer statements that used the terms "death" or "fatal"—the same statements that the postevaluation groups thought were unacceptably severe. When participants in the postevaluation groups were given information on the nature and magnitude of the hazard subsequent to their evaluation of the various statements, they evaluated the messages in the same way as did the pre-evaluation groups. Finally, when asked for their own suggestions, groups were virtually unanimous in recommending that the general public be better informed about the dangers of iron-containing products to young children.

Most participants in the research expressed the opinion that a good warning statement includes at least three elements: (1) A handling instruction that the product should be kept out of the reach of or away from children; (2) an informational statement that the product contains iron, and that excess or large doses of iron can harm or cause death to a child; and (3) an instructional statement to call a doctor or poison control center immediately in case of overdose. Participants' choices reflected their desire for a concise and unambiguous message with some degree of quantification about the amount of iron that must be ingested to be dangerous. Participants differed over the exact contents and order of the wording for a warning message but agreed that, regardless of what is eventually contained in the message, it should be worded as succinctly and efficiently as possible.

The focus group research also provided information on the language of the handling instruction in the warning statement. The focus group participants did not recognize a strong connection between the informational statement and the specific handling instruction that they were asked to evaluate and were not very positive toward statements such as "Keep in original container" and "Close tightly." They were generally confused about how to interpret "Keep in original package until each use" with respect to blister-packaged products. Participants did not know whether the statement meant that they should keep the product in its original box or in its blister package. The "Close tightly" language was seen as too obvious, intended for products without child-resistant caps or related to product freshness.

The consumer research thus suggests that information about the nature and magnitude of the danger that accidental overdose of iron-containing products poses to young children is essential to the consumer's understanding of the warning statement. It also suggests that the first sentence of a warning statement is likely to influence a consumer's decision as to whether to continue reading the rest of the statement, and that package-specific handling instructions are more likely to confuse consumers than provide a measure of safety. Finally, it evidences that consumers will handle these products appropriately (i.e., by keeping the products in the original package or by keeping a bottle tightly closed) if they are provided with information on the nature and magnitude of the hazard.

C. Comments on the Utility and Scope of the Proposed Warning Statements

Several comments suggested that the warning statement should appear on all iron-containing dietary supplement and drug products rather than only on solid dosage forms. One comment from a State department of health services advised the agency that in September, 1993, a 5-year old child was hospitalized for a serious, though nonfatal, iron poisoning. The iron involved was in the form of a syrup prescribed for the victim. The comment stated that the department of health services did not know how many other children may have suffered injury as the result of ingesting liquid iron supplements.

The agency appreciates receiving the information about the accidental ingestion of a liquid iron-containing product. In the iron proposal, the agency stated that it was not aware of incidents of poisoning being caused by iron-containing products in liquid or powder form, and thus, it did not propose to cover liquid or powder forms of iron-containing products. The agency stated, however, that it would consider what regulatory action is appropriate to take with regard to iron-containing products in liquid or powder form if it becomes aware of information indicating that these products have caused or can cause poisonings in children.

The report of a single case in which a child was hospitalized for a serious, but not fatal, iron poisoning does not justify a change in the agency's tentative view concerning the need for a Federal regulation mandating labeling for liquid forms of iron-containing products. A Federal regulation is appropriate and necessary to protect the public health when safe use of a product cannot be ensured absent such a regulation. No regulation, however, will guarantee zero risk from products regulated by FDA. The existence of a single case report of a serious poisoning does not establish that illness or injury is likely to continue to occur. Rather, this single case report creates some ambiguity. It is not clear based on this report whether poisoning from liquid iron-containing products is an accident of low frequency or one that bears careful monitoring. Therefore, in this final rule, the agency is not including iron-containing products in liquid or powder form within the coverage of the labeling requirement. However, the agency would consider extending the coverage of the labeling and packaging requirements if it receives persuasive information that shows that accidental pediatric ingestion of liquid or powder iron-containing products is a problem, and that a warning statement or some special packaging requirement is necessary to ensure safe use of products that contain either of these forms of iron.

One comment questioned the usefulness of a warning statement because children cannot read. One comment stated that dietary supplement bottles are small, and there is other information competing for attention. Another comment stated that consumers have become accustomed to warning statements, implying that warning statements have become so common that their usefulness is diluted. A comment from a dietary supplement manufacturer stated that a warning statement on all products is not necessary and noted that the firm puts warning statements on products most likely to be attractive to children.

FDA does not agree that a warning statement is not useful because children cannot read. The warning statement is intended to be read by adults so that the adults will understand the nature and magnitude of the problem and the importance of keeping the product out of reach of children. FDA agrees that some dietary supplement and drug bottles are small, and that there is other information competing for attention. Nonetheless, the public health significance of accidental iron overdose compels that manufacturers overcome limitations in package size, if any there be. Therefore, FDA expects that industry will make appropriate revisions to labels on small product containers to provide appropriate space for the warning statement.

FDA does not agree that a warning statement on iron-containing products would be diluted because consumers have become accustomed to such statements. The focus group research shows that consumers want a strong warning on these products, and that consumers will heed the warning if provided with information describing the nature and magnitude of the hazard. FDA disagrees that a warning statement on all products is unnecessary or only useful on products that are attractive to children because the seriousness of the consequences of accidental overdose compel that all products bear the warning. Thus, FDA finds no merit in these comments.

D. Comments on the Text of the Proposed Warning Statement

FDA received a number of comments requesting modification of the wording of the proposed warning statements. The comments objected to the proposed warning statement in three main respects: (1) Failure to include the concept of "overdose;" (2) use of the term "death;" and (3) use of the phrase "keep away from children." In response to these comments, FDA is revising the text of the wording statement. Table 1 of this document provides a side-by-side comparison of the text of the warning statement in the proposed and final rules.

TABLE 1—COMPARISON OF THE TEXT OF THE WARNING STATEMENT IN THE PROPOSED AND FINAL RULES [1]

Element of the Statement	Text of the Warning Statement in the Proposal	Text of the Warning Statement in the Final Rule
	Warning	Warning
Informational statement	Contains iron, which can harm or cause death to a child.	Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6.
Handling instruction	Keep away from children. Keep in original package until each use.[2].	
	[or]	
	Close tightly and keep away from children.[3]	Keep this product out of reach of children.
Provisional statement	If a child accidentally swallows this product * * *	In case of accidental overdose * * *.
Instructional statement	* * * call a doctor or poison control center immediately	* * * call a doctor or poison control center immediately.

[1] The order of the statements in this table is the order of the statements as they appear in the final regulation.
[2] For use on unit-dose packages.
[3] For use on non-unit packages.

1. Informational Statement

Several comments requested that the wording of the warning statement be changed to refer to "large doses" of iron or "excessive consumption" of iron. These comments maintained that the proposed wording of the warning statements implies that iron is toxic at any level of intake, even though iron is only dangerous when consumed in excess. Other comments stated that the warning statements as proposed may frighten and discourage appropriate use of iron-containing products. Several comments stated that the essence of the message should be that "an overdose of iron could be harmful" because this would be more consistent with FDA's stated objective for the warning statement, which is to ensure that products containing iron or iron salts do not pose a health hazard to young children and infants. Another comment cited § 330.1(g) (21 CFR 330.1(g)) as an example of a regulation that uses the term "overdose."

One comment stated that the proposed warning statements appear to be too general and are misleading to the consumer as to the actual danger. This comment stated that it would be sufficient to mention that the products could have the negative effects only in cases of overdose.

FDA has reevaluated the proposed wording of the warning statements in

response to these comments and concludes that the proposed wording implies that iron is inherently toxic and does not inform consumers about the actual nature of the hazard, i.e., an accidental overdose of an iron-containing product. Iron itself is an essential nutrient and is not harmful or fatal unless consumed in large quantities, as may occur in accidental overdoses. Therefore, a statement informing the consumer of the dangers of an accidental overdose is a more appropriate informational statement than those in the proposed warning statements.

The findings of the focus group research support this conclusion. The focus group participants' preferences reflect a desire for some degree of quantification about the amount of iron that must be ingested to be dangerous. The term "overdose" conveys a degree of quantification that makes it unlikely that consumers will mistakenly infer that usual or prescribed dosages of iron-containing products are dangerous. For these reasons, the agency is revising the informational statement to clarify that the hazard is from an accidental overdose of an iron-containing product.

Several comments requested that the agency not use the term "death" in the warning statement because it is unduly alarming and too harsh and may cause avoidance of iron supplementation by patient populations already at risk for low iron intake. One comment stated that "death" may frighten or inflame. Another comment stated that use of the word "death" is a departure from most FDA warnings and from warnings recommended in the citizen petitions.

Some comments suggested replacing the term "death" with the phrase "harmful or fatal" because this phrase conveys the danger of excessive iron while not unduly alarming the general population. A few comments noted that "fatal" is the term in the NDMA voluntary warning in use on many product labels. One comment cited the agency's regulations in 21 CFR 101.17(b)(1) (warnings for foods in self-pressurized containers with hydrocarbon and halocarbon propellants), 21 CFR 201.314 (warning statement on over-the-counter (OTC) drugs containing salicylates), and 21 CFR 201.319(b) (warning labels on OTC drugs containing water soluble gums) as precedent for use of the word "fatal."

FDA has reevaluated the use of the word "death" in this warning statement in light of these comments. FDA sees no reason to maintain the term "death" if, as the comments contend, it will unduly alarm consumers, because the term "fatal" means "cause death" (Webster's New Riverside University Dictionary, 2d ed., 1988). Therefore, FDA is revising the informational statement to remove the term "death" and add the term "fatal."

As a result of the changes that the agency is making in response to this and the preceding comment, the revised informational statement reads: "Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6."

The comments that requested that FDA clarify that the hazard was associated with an accidental overdose of iron-containing products, rather than consumption of iron-containing products under intended conditions of use, made clear that information about the nature and the magnitude of the danger that accidental overdose of iron-containing products poses to young children is essential to consumer understanding of the warning statement. This concept was reiterated by the consumers who participated in FDA's focus group research. Although participants in the consumer research were divided over the order of the elements (informational, handling, provisional, and instructional statements) of the warning statement, the consumer research supported a conclusion that the first sentence of a warning statement is likely to influence a consumer's decision as to whether to continue reading the rest of the statement. Therefore, in this final rule FDA is changing the sequence of the sentences in the warning statement so that the informational statement, which states the nature and magnitude of the danger that accidental overdose of iron-containing products poses to young children, precedes the handling instruction.

2. Handling Statement

FDA proposed two different handling instructions based on whether the iron-containing product was in a unit-dose package or a non-unit-dose package. FDA has reevaluated the need for, and utility of, different warning statements depending on the type of packaging. As already discussed, one of the findings of the focus group research was that package-specific handling instructions are more likely to confuse consumers than provide a measure of safety. Moreover, FDA believes that consumers will handle these products appropriately (i.e., by keeping the product in the original package or by keeping a bottle tightly closed) if they are provided with the information on the nature and magnitude of the hazard. Therefore, in this final rule the agency is removing the proposed package specific element of the handling instruction, which necessitated a different warning statement for products in unit-dose packaging than for products in other than unit-dose packaging. FDA is revising proposed § 101.17(e)(1) and proposed § 310.518(b) (now § 310.518(c)) (21 CFR 310.518(c))) to provide a single required warning statement for all iron-containing supplement and drug products in solid oral dosage form regardless of the type of packaging.

A few comments objected to the phrase "Keep away from children" and suggested as an alternative the use of the phrase "Keep out of reach of children." These comments argued that it would be confusing and inappropriate to say "Keep away * * *" on iron-containing products intended for children, and that the term "Keep out of reach * * *" is a targeted, well understood statement that clearly conveys the message that children should not be given free access to the product.

FDA has reevaluated the proposed language of the handling statement "Keep away from children" and agrees that this statement may imply that the product is inherently toxic to children. Thus, the statement would be confusing to consumers when used on a bottle of tablets used by children. The statement "Keep out of the reach of children" states the proper handling of the product without implying that the product is inherently toxic under intended conditions of use. Therefore, FDA is revising the proposed text of the handling instruction to read "Keep this product out of reach of children" rather than "Keep away from children."

Some comments suggested that FDA should require two types of warning statements based on the level of iron in each dosage unit of the product. These comments suggested that products containing higher doses of iron (such as products that contain 30 mg or more of iron) be required to bear a warning statement, such as the industry voluntary warning statement, and that products containing lower doses of iron (such as multivitamin products) be required to bear a more general warning, such as: "WARNING: Keep out of reach of children. In case of accidental overdose, contact a physician or Poison Control Center immediately." The comments asserted that products containing higher levels of iron are associated with a greater risk than multivitamin-mineral products. In contrast, most participants in the agency's consumer research felt that a single warning message should be used on all iron-containing products regardless of the iron dose.

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Iron-containing products cause injury, including serious injury and death, when children gain uncontrolled access to them. As discussed in the iron proposal (59 FR 51030 at 51036), children's vitamins were the type of product ingested in the majority (45 of 80 or 56 percent) of the cases of nonfatal pediatric iron ingestion reported to the CPSC from 1986 to 1993. Further, the amount of iron that may produce symptoms of iron poisoning (i.e., 25 mg/kg of iron) for a 10 kg child would be provided by as few as 25 tablets containing 10 mg of iron each or approximately 14 tablets containing 18 mg of iron each (59 FR 50130 at 51041). Ten and eighteen mg of iron are the amounts typically contained in children's and adult multivitamin supplements with iron, respectively.

Ingestion of as little as 650 mg of iron has resulted in death (Ref. 6). This amount of iron would be supplied by 65 tablets containing 10 mg of iron or 37 tablets containing 18 mg of iron.

Based on these data, FDA concludes that the potential for poisoning exists with all iron-containing products in solid oral dosage form, regardless of the iron content, and that label warning statements are necessary on all these products. Therefore, the agency is making no changes in the warning statements in response to these comments.

3. Provisional Statement

As already discussed, several comments maintained that the proposed wording of the warning statements implies that iron is toxic at any level of intake, even though iron is only dangerous when consumed in excess.

The proposed provisional statement: "If a child accidentally swallows this product, * * *" implies that iron, rather than an overdose of iron, causes the harm. Therefore, FDA is revising the provisional statement to read: "In case of accidental overdose, * * *" to convey that it is an accidental overdose of iron that requires attention, rather than an accidental swallowing of any amount of iron.

4. Instructional Statement

Several comments supported FDA's instructional statement to "call a doctor or poison control center immediately." These comments concurred with FDA that medical personnel are best equipped to determine the significance of the dose a child has ingested, and that, thus, the label should include this instruction.

One comment challenged FDA's proposed instructional statement to "call a doctor" and suggested that the instructional statement provided in the voluntary industry warning to "seek professional assistance" was more appropriate because it was already understood and accepted when used on OTC products. The comment expressed the opinion that use of the term "call a doctor" would limit the assistance options for consumers by suggesting that only a doctor could help them. The comment pointed out that consumers in FDA's focus groups did not express a strong opinion either in favor of, or in opposition to, the substitution of the phrase "call a doctor" for the common phrase used on OTC products to "seek professional assistance."

FDA realizes that a professional health care provider other than a doctor could provide assistance to a consumer in the event of accidental overdose. FDA disagrees, however, that the word "professional" accurately conveys the meaning "medical." The information that the instructional statement must convey is that consumers should seek medical assistance in the event of accidental overdose. FDA sees no reason to replace the phrase "call a doctor" with the phrase "seek medical assistance" because consumers will understand that "call a doctor" implies that they should seek medical assistance, regardless of whether their customary health care provider is a doctor or other medical professional, and because "call a doctor" is a more succinct phrase than "seek medical assistance." Therefore, FDA is retaining unchanged the proposed instructional statement that describes the appropriate action to take when a child accidentally consumes multiple tablets ("call a doctor or poison control center immediately").

5. Comments on the Consumer Research

FDA received only a few comments on the agency's consumer research. These comments maintained that the consumer research showed that the agency's proposed warning statement was ineffective.

FDA agrees that the consumer research showed that the proposed wording of the warning statement was ineffective because the proposed warning statement did not provide adequate information about the nature and magnitude of the hazard and did not provide such information before the handling, provisional, and instructional elements of the warning statement. However, the revised language of the warning statement (see Table 1 and discussion below) adequately responds to all the concerns raised by the comments and the consumer research.

6. Revised Text of the Warning Statement

Based on the findings of the agency's focus group research, the comments on those findings, and the comments on the proposal, FDA is: (1) Revising the proposed warning statement by changing the sequence of the sentences so that the informational statement precedes the handling instruction; (2) modifying the informational statement so that it better describes the nature of the hazard; (3) eliminating the two different handling instructions based on whether the iron-containing product is in a unit-dose package or a non-unit-dose package; (4) modifying the handling instruction informing the consumer that children should not have free access to the product; and (5) including a reference to overdose in the provisional statement regarding the instruction on appropriate action in instances where a child accidentally consumes multiple tablets. FDA is taking this action to provide consumers with clear and appropriate information on the nature and magnitude of the hazard and to clarify that the hazard is not associated with use of iron-containing products under normal conditions. The revised warning statement reads:

WARNING: Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

7. Other Comments on the Text of the Warning Statement

Several comments suggested that FDA adopt the language of the industry voluntary warning and stated that it is not apparent that FDA's proposed warning statements provide an additional consumer benefit over the voluntary NDMA warning statement. One comment expressed the opinion that FDA's consumer research supported the positions taken by NDMA regarding labeling of products containing iron and did not support the warning statements proposed by FDA. The NDMA voluntary warning statement reads as follows:

WARNING: Close tightly and keep out of reach of children. Contains iron, which can be harmful or fatal to children in large doses. In case of accidental overdose, seek professional assistance or contact a Poison Control Center immediately.

FDA has reviewed the language of the suggested NDMA voluntary warning statement in light of the focus group research. FDA agrees that none of the versions of warning statements tested in

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the focus groups performed any better than the industry voluntary warning statement. However, none of the messages that were tested, including the industry voluntary warning, performed satisfactorily. The focus groups perceived the industry voluntary warning statement to be a standard kind of warning about product toxicity. Because such warnings are seen frequently on many different kinds of products and provide little new or useful information, they fail to command much consumer attention (Ref. 7). The consumer research did not show that the industry voluntary warning statement effectively conveys to consumers the nature of the hazard to young children presented by careless handling and storage of iron-containing products.

The agency's modified warning statement remedies the deficiencies identified by the consumer research in the tested warning statements, including the NDMA voluntary warning statement, in two ways. First, the agency's modified informational statement stresses the nature and magnitude of the hazard as one of accidental overdose. Second, by placing the informational statement before the handling instruction, the modified informational statement will command consumer attention. In contrast, the key concept of overdose appears at the end of the informational statement of the NDMA voluntary warning statement: "Contains iron, which can be harmful or fatal to children in large doses," which diminishes its impact. In addition, the NDMA voluntary warning statement places the informational statement after the handling instruction: "Close tightly and keep out of reach of children," where it will not command as much consumer attention. FDA therefore is not revising §§ 101.17 and 310.518 to codify the language of the NDMA voluntary warning statement.

Several comments provided variations of the agency's proposed warning statement or the voluntary NDMA warning statement or their own versions of a suitable warning statement. Examples of these proposed variations include:

WARNING: Keep all containers of iron-containing products away from children at all times. Reclose the child resistant cap completely *every time* after use. Keep in original package until each use. Iron-containing products can harm or cause death to a child. Should you suspect a child has accidentally swallowed an iron-containing product call a doctor or Poison Control Center immediately.

WARNING: Keep out of reach of children. Contains iron which can harm or be fatal to a child in large doses. In case of accidental overdose, seek professional assistance or contact a poison control center immediately.

FDA is not accepting any of these suggested statements. All of them share one or more fundamental problems with FDA's original proposed statement and the industry warning. Specifically, all of these warning statements begin with a handling instruction rather than an information statement. Some fail to incorporate the concept that it is an overdose of product that is harmful and would therefore lead to the misconception that iron is inherently harmful. Because all of the suggested warnings contain one or more fundamental problems, FDA has rejected these suggested variations.

One comment requested that FDA strengthen the language of the warning so that it is clearly understood that iron may kill.

FDA has considered this comment and determined that the new informational statement that it has developed (i.e., "Accidental overdose of iron-containing products is a leading cause of fatal poisonings in children under 6.") clearly articulates and strengthens the wording compared to the wording in the proposal. Therefore, FDA concludes that the concern expressed by this comment is fully addressed.

A comment from 13 State Attorneys General stated that if the term "warning" and the treatment-oriented information (i.e., the instructional statement) are included on the label in a prominent manner, then it is not necessary to include a reference to the harm that can come from ingestion of large doses or reference to the specific consequences. Other comments stressed the importance of the term "WARNING" and the importance of providing the instructional reference to contact a poison control center.

FDA agrees that the term "WARNING" and the instructional statement advising that a doctor or poison control center be contacted are necessary to alert the consumer to the potential consequences of use of the product and the need to take immediate action. The agency disagrees, however, that the informational statement is not necessary when the term "WARNING" and the instructional statement are present. An informational statement provides consumers with the information they need to readily understand the serious consequences that may result if the warning is not heeded. Therefore, FDA is taking no action in response to these comments.

One comment raised the concern that the proposed warning statement ignores other potential toxicities, such as that caused by an overdose of vitamin A, and suggested replacing the proposed iron-specific warning statement with a general cautionary statement in bold print. The suggested wording of this general cautionary statement was "KEEP OUT OF REACH OF CHILDREN. IN CASE OF ACCIDENTAL OVERDOSE, CONTACT A PHYSICIAN OR POISON CONTROL CENTER IMMEDIATELY."

The agency is not adopting the suggestion to replace the iron-specific warning statement with a general warning statement. The agency has a longstanding policy of limiting the use of warning statements so that such statements do not become so common that they are ignored. The label warning statement required on solid oral dosage forms of iron-containing products is a response to an immediate public health hazard of large proportions, the deaths and injuries of children who accidentally consumed large doses of these products. Therefore, the warning statement is specifically worded to alert consumers to the presence of iron and to the danger that accidental overdose of iron poses to young children.

One comment requested that the label warning statement specifically state that all medicines should be stored in original containers.

As already discussed, FDA has concluded, based on the results of consumer focus groups, that such specific handling instructions are more likely to confuse consumers than to provide an additional measure of safety. Participants in the focus groups were confused about how to interpret "Keep in original package until use" with respect to blister-packaged products. They did not know whether the statement meant that they should keep the product in its original box or in its blister package. Therefore, the agency is taking no action in response to this comment.

One comment questioned the need for a specific warning message where general messages already state that supplements and drugs should be kept out of reach of children, or the packaging itself is child-safe. This comment added that, given these facts, a specific warning message would appear to be more trade-restrictive than necessary.

Dietary supplements marketed in the United States are not required to bear a general warning statement on the label. Drug product labels are required to bear warnings that are adequate to protect consumers. As stated in the response to a previous comment, general warning statements fail to describe the nature of the specific and immediate hazard of

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accidental iron overdose in young children. Therefore, FDA has determined that the warning statement specified in this final rule responds to the known safety concerns associated with solid dosage form of iron-containing products. The warning statement will apply to both domestically produced and imported iron-containing products.

In the Agreement on Technical Barriers to Trade from the Uruguay Round of the multilateral trade negotiations, "technical regulation" is defined as a:

> Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.

Article 2.2 under Technical Regulations and Standards states: "* * * technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of risks non-fulfillment would create. Such legitimate objectives are, inter alia * * * protection of human health or safety."

The warning statement for iron-containing products is necessary to protect the public health by helping to prevent accidental poisoning of young children. Therefore, the agency concludes that the warning statement is neither trade restrictive nor a trade barrier.

One comment from a physician recommended placing a "Mr. Yuk" sticker or emblem on each bottle of iron-containing tablets because this label device is recognized by children as an indication of poison.

FDA disagrees with this comment. The "Mr. Yuk" sticker alerts children that the product is not safe to eat. Iron-containing products, when consumed in appropriate quantities, are safe to eat. Placing a "Mr. Yuk" emblem on a product such as a bottle of children's vitamins would mean that the label would present an inconsistent message that could confuse children about what is safe to eat and what is not. Therefore, FDA is not taking the action suggested in this comment.

A few comments requested that the warning statement be accompanied by a pictograph to readily depict the hazard and to ensure that it will be readily understood by illiterate or non-English-speaking consumers.

FDA recognizes that a pictograph can be useful to convey some information to consumers. However, no data were submitted to show that the message could not be communicated without a pictograph. Given this fact, FDA finds no basis to require the use of a pictograph. However, FDA would have no objection if manufacturers, in conjunction with the required message, used a pictograph (such as a slash line through a picture of a child with an open mouth reaching for something) in addition to the required warning statement.

One comment requested that FDA reconsider its position and include the physical consequences and symptoms that may result from an iron overdose on the product package or container. This comment stated that adults will readily understand consequences and take effective action to eliminate the risk of an accidental child poisoning based on this information.

In the iron proposal (59 FR 51030 at 51044), FDA stated that it feared that setting out this information could lead parents to conclude erroneously that the child is not in danger because he or she does not exhibit one of the listed symptoms. No information was submitted in this comment that would cause the agency to reach a different conclusion. Listing of symptoms is irrelevant because they may not be exhibited by a child, and the most important information is that an overdose may be fatal. Moreover, as discussed above, FDA has revised the warning statement to include an informational sentence describing the nature of the hazard and providing adults with information to motivate them to eliminate the risk. Therefore, FDA is taking no action in response to this comment.

One comment requested that FDA require that the labeling of all iron-containing products display the exact name of the iron ingredient instead of the equivalent amount of iron present in the product. The comment added that this information is extremely important to the medical professionals and emergency personnel who treat iron poisonings.

No action is necessary in response to this comment because this information is already required on the label of food products containing iron under 21 CFR 101.4(b), which requires that the "name of an ingredient must be a specific name and not a collective (generic) name." For dietary supplements containing iron, the ingredient list must include the source of the iron (e.g., ferrous sulfate). In addition, the amount of iron must also be provided in the nutrition labeling.

For drug products containing iron, section 502(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)) and 21 CFR 201.10 require a label statement of a drug's established name and the established name and quantity of the product's active ingredients.

E. Appearance of the Warning Statement on the Label of Iron-Containing Products

FDA proposed in §§ 101.17(e)(2) and 310.518(b)(3) to require that the warning statement:

> * * * appear prominently and conspicuously on the immediate container labeling in such a way that the warning is intact until all of the dosage units to which it applies are used. In cases where the immediate container is not the retail package, the warning statement shall also appear prominently and conspicuously on the principal display panel of the retail package. In addition, the warning statement shall appear on any labeling that contains warnings.

1. Comments on Requiring the Warning Statement to Appear Prominently and Conspicuously on the Immediate Container Labeling

Several comments on the labeling aspects of the proposed rule opposed or questioned the agency's tentative conclusion that the warning statement should be placed on the principal display panel (the PDP) in order to be prominent and conspicuous. Many of these comments noted that warnings on consumer products are generally located together on the side or back panel, and that consumers are accustomed to finding warning information in these places. One comment argued that placing the warning statement on the PDP negates the purpose of the information panel (the IP) because the traditional location for warning statements is the IP, and consumers may overlook a warning statement that is not in the expected location.

One of the comments elaborated upon warning placement by noting that warnings for self-pressurized containers and self-pressurized containers with halocarbons, hydrocarbon propellants, or chlorofluorocarbon propellants are not mandated to appear on the PDP (§ 101.17 (a), (b), and (c)). The regulations for foods containing aspartame also do not require that the warning statement for phenylketonurics appear on the PDP (21 CFR 172.804(e)(2)).

Most of the participants in the focus groups believed that the warning statement should go on the back of the product rather than the front of the product. The participants reasoned that the front of the product was used for marketing purposes, and consumers

were used to looking at the back of the product for warnings. The focus groups also felt that the "clutter" on the front of the product label might dilute the warning message. Similarly, several comments pointed out that the placement of the warning statement on the PDP would overcrowd an already space-limited PDP and result in a diluted warning message, especially if a smaller type size was used.

The agency recognizes that the PDP space is often very limited, and that warnings plus other required information could crowd the PDP. Therefore, in deciding how to provide for placement of the warning, the agency reflected on two basic questions: (1) What is the intent of this regulation? and (2) Can the intent be met by placing the warning statement on a panel other than the PDP?

The agency's purpose in this rulemaking is to inform consumers of the dangers to small children from an accidental overdose of a product that contains iron. Because of the serious, life-threatening consequences of such an overdose, FDA tentatively concluded that warning statements are most likely to be read when they are placed on the PDP. This tentative conclusion followed the precedent established in the regulations requiring warning statements on the PDP of protein products (§ 101.17(d)), whose incorrect use can also result in dire health consequences.

However, after evaluating the above comments and the results of the focus groups, the agency agrees that the warning statement does not need to be placed on the PDP to be effective in informing consumers of the hazard associated with overdose. The intent of the regulation can be met by placing the warning statement on the IP. The IP is the traditional location for warning statements. Information on the IP is readily accessible to consumers, particularly when it is presented in accordance with graphical requirements that enhance its prominence (see discussion below). Therefore, in this final rule the agency is revising proposed §§ 101.17(e) and 310.518(b) (now § 310.518(c)) to require that the warning statement be placed on the IP of the immediate container label.

Several of the comments remarked that the proposal did not require that the warning statement be placed on the PDP of the immediate container if the immediate container was not the retail package.

In the iron proposal (proposed §§ 101.17(e)(2) and 310.518(b)(3)), the agency proposed to require that: (1) The warning statement appear on the immediate container labeling; (2) it appear in such a way that the warning is intact until all of the dosage units to which it applies are used; and (3) if the immediate container is not the retail package, the warning statement must appear on the PDP of the retail package. FDA proposed these requirements as a single regulation that would apply to products in unit-dose packaging, in which the immediate container labeling does not have a PDP, as well as products in other than unit-dose packaging, in which the immediate container label does have a PDP. The comments that deduced that the proposed regulation did not require that the warning statement be placed on the PDP of the immediate container label if the immediate container was not the retail package indicate that the language of that single regulation did not clearly articulate the agency's intent, i.e., that the warning statement be on both the PDP of the retail package and the immediate container label, if there is one.

Therefore, FDA is revising §§ 101.17(e) and 310.518(b) (now § 310.518(c)) to clarify where the warning statement must be placed. Specifically, FDA is splitting the applicable provisions into several subparagraphs, which are described below. In addition, the agency has revised the regulations, as already discussed, to require that the warning statement appear on the IP rather than on the PDP.

In this final rule, §§ 101.17(e)(2)(i) and 310.518(c)(2)(i) require that the warning statement for iron-containing dietary supplements and drugs appear "on the information panel of the immediate container label." Sections 101.17(e)(2)(ii) and 310.518(c)(2)(ii) provide that if iron-containing supplements and drugs are packaged in unit-dose packaging, and if the immediate container bears labeling,[4] but not a label, the warning statement must appear "on the immediate container labeling." Sections 101.17(e)(3) and 310.518(c)(3) require that, where the immediate container is not the retail package, the warning statement for all iron-containing dietary supplements and drugs (i.e., regardless of the manner in which the product is packaged) appear "prominently and conspicuously on the information panel of the retail package label."

These requirements are necessary to ensure that the warning statement is seen by adults with responsibility for proper storage of the product. The placement of the warning statement on the retail package label will make it likely that the warning statement will be seen at the time the product is purchased to inform the purchaser of the product's potential to cause poisoning and of the need to store the product properly when it is brought into the house. However, under customary conditions of use, the retail container is frequently disposed of, and individuals other than the purchaser may use the product. Therefore, FDA is providing that the immediate container also bear the warning if it bears any labeling at all.

In this final rule, §§ 101.17(e)(4) and 310.518(c)(4) provide that the warning statement shall also appear on any labeling that contains warnings. These requirements are unchanged from the proposal, but they have been moved to a separate subparagraph as part of the overall reorganization of §§ 101.17(e)(2) and 310.518(c)(2).

2. Comments on Prominence Through Graphical Requirements

Several comments discussed the use of graphic requirements to set the warning statement apart from the rest of the label information. One comment pointed out that a warning statement can be made prominent and conspicuous by graphics such as surrounding the warning statement with a box, printing the warning statement in capital letters, printing the warning statement in bold typeface, and using contrasting graphics. Several comments recommended that the agency set requirements for graphics and discussed the need for type size specifications. Another comment suggested that FDA let the manufacturers determine the elements of prominence and conspicuousness needed to call attention to the warning statement. One comment cited the saccharin warning requirements as an example of a warning statement with specific contrasting graphic requirements.

Most of the participants in the focus groups agreed that the warning statement should be in a boxed area to separate it from other information and to call attention to the warning. Many participants also felt that printing the warning statement in a color that contrasts with the predominant color of the packaging was eye-catching. Other graphical options considered by the focus groups included using contrasting

[4] FDA recognizes that the package liner of a unit-dose package that bears no printed material is not labeling and would not need to bear the warning statement. Given the importance of the warning, FDA hopes that this fact will not cause manufacturers to cease putting printed material on the package liner.

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print and background, different sizes of print, and bolding of the message.

In the iron proposal, FDA tentatively concluded that graphical requirements were not necessary to ensure that a warning statement placed on the PDP is prominent and conspicuous, because no data were supplied by the petitioners to support the use of graphics in the warning statement, and because the protein products regulation that the agency used as a precedent did not mandate specific graphical requirements. However, as discussed above, in this final rule the agency is moving the location of the warning statement from the PDP to the IP. The agency agrees that use of certain graphical requirements is an effective approach to ensuring that the warning statement is prominent and conspicuous. Moreover, a warning statement that appears on the IP, rather than on the PDP, needs graphical enhancements to ensure that it is prominent and conspicuous because the IP generally is more crowded than the PDP.

Based on the comments and the results of the consumer research, the agency agrees that a box enclosing the warning statement will set the warning statement apart from the rest of the label. FDA has used this mechanism with the nutrition label in response to the directive in the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) that the label be readily observable (Pub. L. 101–535, section 2(b)(1)(A) of the 1990 amendments). Therefore, the agency is requiring, in §§ 101.17(e)(5) and 310.518(c)(5), that the warning statement for iron-containing products be separated from other information by a box. Manufacturers may use other graphics, in addition to the box, if they choose to do so.

Three comments suggested that the cap or the PDP of the product bear a symbol or statement informing consumers that a new warning has been placed on the IP. For example, a prominent flag or a short statement saying "See Iron Warning" or "See New Warning" could be printed prominently on the PDP.

FDA has decided not to require a flag or statement alerting consumers to the new warning label. The comments and the results of the consumer research have convinced the agency that consumers are already in the habit of looking at the IP for important information such as warnings, and the box around the warning statement will draw attention to it.

3. Comments on the Placement of the Warning Statement on Unit-Dose Packaging.

To reinforce the message of the warning after the product is in the home, FDA proposed (proposed §§ 101.17(e)(2) and 310.518(b)(3) (now § 310.518(c)(3))) to require that the mandatory warning statement appear on the immediate container labeling in such a way that it is intact until all of the dosage units to which it applies are used. This provision would have effectively required that unit-dose packaged products bear the warning either directly on each individual cavity of the unit-dose packaging or on some section of the unit-dose packaging in such a way that separating an individual cavity would not destroy the warning label.

FDA received several comments on this proposed requirement. Comments stated that the proposal was unclear as to whether the warning could appear along the full length of a strip of unit-dose packaging, or whether it must appear in its entirety on each unit dose (e.g., on each tablet in a blister pack). Several comments stated it would be physically impossible to place the entire lengthy warning proposed by FDA on each unit dose and still meet the minimum type size requirements of 21 CFR 101.2(c) or the requirements of 21 CFR 101.15(a)(6) that the labeling be prominent and conspicuous. One comment stated that the label space available for each cavity of a multipack blister type unit-dose package is usually less than 1/2 inch by 1/2 inch and if, as proposed, a firm is required to print the entire warning statement, the print size would be so small that it would require magnification to read.

Several comments suggested that the individual units of a unit-dose package be permitted to bear an abbreviated warning statement that alerts consumers to the hazard and preventive measures, such as: (1) "WARNING—Contains Iron. Keep Away From Children;" and (2) "WARNING: Keep in Original Package Until Each Use. Keep Away from Children." One comment also suggested that it would be helpful to manufacturers if FDA specified that the abbreviated warning could be printed on a strip or tab either above or below the individual cavities.

FDA is requiring that the warning must appear on the immediate container of the product because, as discussed in the proposal in this proceeding, reports of 2,000 poisonings in children over approximately 7 years provides strong evidence that many adults are not aware of the potential for serious harm posed by iron-containing products. The agency understands that printing the entire warning statement on each unit dose of an iron-containing product, while necessary to ensure that the warning statement remains intact until all of the individual dosage units to which it applied are used, would present problems in making the warning "prominent and conspicuous." FDA disagrees, however, that placing an abbreviated warning statement on each cavity of a unit-dose package would be effective in alerting consumers to the risk that iron-containing products poses to young children because, as discussed above, FDA has concluded that an informational statement that clearly communicates the nature and magnitude of the hazard is essential for the warning statement to be effective. Therefore, the agency has reconsidered how to achieve the intent of the proposed regulations without requiring that the warning statement remain intact until all of the dosage units to which it applies are used.

FDA notes that, if for example, the full warning statement were placed on any side of a package (i.e., above, below, or on either side of individual cavities) of iron-containing products in unit-dose packaging that contains multiple, individual unit-dose packages that are connected without physical delineations (e.g. perforations) between the individual unit-dose packages, would allow the warning to remain intact until all of the dosage units to which it applies are used. Similarly, for iron-containing products in any unit-dose packaging (i.e., with or without physical delineations between the individual unit-dose packages), multiple copies of the warning statement across the immediate container label would increase the likelihood that at least one complete warning statement will remain intact until most of the individual units have been used. Although this second option could not ensure that the warning statement would remain intact until all of the dosage units to which it applies have been used, it is clear that options such as this can approach, if not fully achieve, the desired outcome of the proposed regulations.

Therefore, in this final rule, FDA is revising § 101.17(e)(2)(ii) to read:

> If a product is packaged in unit-dose packaging, and the immediate container bears labeling, the statements required by paragraph (e)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

FDA also is revising § 310.518(c)(2)(i) to include a parallel requirement. The revised wording of these regulations makes clear that the manufacturer bears the responsibility to show diligence in designing labeling that will meet the agency's goal of informing consumers of the dangers to small children from an accidental overdose of a product that contains iron but provides the manufacturer with flexibility in determining how it will do so.

4. Comments Specific to Prescription Drug Products

One comment suggested that the warning statement on prescription drug products, if placed on a label, should contain a message to the pharmacist not to cover the warning with the prescription label so that the warning remains visible to the consumer.

FDA believes that the comment raises an important point. However, the agency expects that pharmacists will be aware that warnings should not be covered by anything, not by a price tag, a pharmacy label, or anything else. Therefore, FDA is taking no action in response to this comment.

III. Packaging of Iron-Containing Products

FDA also proposed to require unit-dose packaging of iron-containing drugs and dietary supplements with potencies of 30 mg or more of iron per dosage unit. FDA tentatively concluded that unit-dose packaging of such products would contribute in a significant way, over and above the protection provided by warning statements and CRP's, to reduce children's access to potentially fatal doses of iron.

A. FDA's Legal Authority to Establish Packaging Requirements for Iron-Containing Products

Several comments questioned FDA's legal authority to establish regulations requiring packaging of dietary supplements and drugs. The comments argued that Congress never authorized, and never intended, FDA to have such authority under the act. Moreover, these comments contended that even if FDA previously had such authority, Congress transferred this authority from the Secretary of Health, Education, and Welfare (HEW) (now Health and Human Services) to the CPSC under the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1471 *et seq.*) when that agency was created.

These comments argued that the language of both the PPPA and the act are clear in expressing Congress' intent that FDA was not granted authority over the packaging of foods or drugs to prevent childhood poisonings. These comments contended that through passage of the Consumer Product Safety Act (Pub. L. 92–573) (CPSA), Congress intended that CPSC have exclusive jurisdiction over packaging to limit child access to poisonous substances. These comments noted that in enacting the CPSA, Congress transferred from the Secretary of HEW to CPSC certain functions under the Federal Hazardous Substance Act (HSA) (15 U.S.C. 1261 *et seq.*) and the PPPA. In addition, in enacting the CPSA, Congress transferred the administrative and enforcement functions of the PPPA from the Secretary of HEW to CPSC (15 U.S.C. 2079).

FDA disagrees with the comments' interpretation of the provisions of the laws in question. As discussed in the iron proposal and the supplementary proposal, FDA's authority to require unit-dose packaging of iron-containing dietary supplements and drugs derives directly from sections 402(a)(4) and (g) and 501(a)(2)(A) and (a)(2)(B) of the act (21 U.S.C. 342(a)(4) and (g) and 21 U.S.C. 351(a)(2)(A) and (a)(2)(B)). The existence of other laws to which foods and drugs are subject does not limit FDA's authority to fulfill its responsibility under the act to help ensure that foods, including dietary supplements, and drugs are not injurious to health.

FDA disagrees with the comments that asserted that the agency has no authority over how food is packaged. This claim is belied by the act itself. Section 409 of the act (21 U.S.C. 348), although not applicable to this rulemaking, gives FDA authority to prescribe the conditions under which a food additive may be safely used, including packaging requirements deemed necessary to ensure the safety of such use (section 409(c)(1)(A) of the act). Section 721(b)(3) of the act (21 U.S.C. 379e(b)(3)) provides similar authority for color additives.

More relevant to this rulemaking, sections 402(a)(4) and 501(a)(2)(A) of the act provide that a food or a drug is adulterated if it has been packed under insanitary conditions whereby it may have been rendered injurious to health. Section 402(a)(4) has been read broadly (see *United States* v. *Nova Scotia Food Products, Corp.*, 568 F.2d 240, 247 (2d Cir. 1977)) as a grant of authority to ensure that foods are not packed in a manner, including process, package design, and packaging materials, that creates the possibility that the foods will cause harm under their reasonably foreseeable conditions of use. For example, parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) address the steps necessary to ensure that the packaging of low acid and acidified foods does not permit the outgrowth of botulism, whose presence in the food would render the food injurious to health. Part 110 (21 CFR part 110) defines current good manufacturing practice (CGMP) for food generally, and in § 110.80(b)(13) requires that packaging be done in a manner that protects the food against contamination and that ensures that safe and suitable packaging materials are used (see also § 110.5(a)(2)). These provisions provide authority for the agency to require the use of packaging that is designed to help ensure that dietary supplements that contain 30 mg or more of iron per dosage unit are not rendered injurious to health. FDA is aware of no reason why section 501(a)(2)(A) of the act, which contains virtually the same words as section 402(a)(4) of the act, should not be read equally as broadly.

Section 501(a)(2)(B) of the act provides that a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to, or are not operated in conformity with, CGMP to ensure that such drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics which it purports or is represented to have. The agency has determined that, under section 501(a)(2)(B) of the act, manufacturers are responsible for preventing certain foreseeable misuse of a drug product. A drug product may be safe and effective as manufactured, but used in an unsafe and ineffective manner. As discussed earlier, data demonstrate that the current manner of holding products that contain 30 mg or more of iron per dosage unit until their use by the intended consumer fails to ensure that the products will be safe (see 59 FR 51030 at 51033). Large numbers of children are ingesting such products and suffering serious injuries and death. Because unit-dose packaging technology is available and can reduce the danger of iron poisoning, CGMP dictates that such packaging be used for products containing more than 30 mg of iron per dosage unit.

FDA concludes that unit-dose packaging will significantly reduce the likelihood of serious injuries to young children. FDA finds that this will be the case because unit-dose packaging will limit the number of unit doses that a child may consume once it gains access to the product, not because unit-dose packaging will make it any more

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difficult to open the package.[5] The fewer the number of tablets or capsules the child consumes, the smaller the dose of iron the child will ingest. The smaller the dose, the lower the risk that the child will suffer serious injury. Thus, FDA's unit-dose packaging requirement will significantly limit the likelihood that iron products containing 30 mg or more of iron per dosage unit may be injurious to health because the requirement that the child open each package unit will limit the amount of iron that the child can consume (see 59 FR 51030 at 51049). No comments provided any information to the contrary.

The CPSA, HSA, and PPPA do not prevent FDA from acting. Foods and drugs are neither consumer products (see 15 U.S.C. 2052(a)(1)(H) and (a)(1)(I)) nor hazardous substances (see 15 U.S.C. 1261(f)(2)). Thus, the CPSA and HSA are not relevant to this rulemaking. FDA's action is also not precluded by the PPPA because FDA is not establishing a special packaging performance standard for products that contain 30 mg or more of iron per dosage unit. As explained above, nothing in FDA's regulation is designed to define or modify what constitutes child-resistance for iron-containing products. In this rulemaking, FDA is defining the requirements of CGMP for these products to help ensure that they are not packed under conditions whereby they may be rendered injurious to health (sections 402(a)(4), 402(g)(2), and 501(a)(2) of the act). Such action is fully within FDA's authority under the act. Therefore, FDA finds no merit to these comments.

Several comments argued that section 402(f) of the act makes clear that FDA has the burden of demonstrating that any particular dietary supplement is adulterated or unsafe under the conditions of use recommended or suggested in the labeling, or in the absence of such labeling, under ordinary conditions of use. These comments contended that FDA cannot merely assert that a dietary supplement is no longer safe because of the form of packaging in which it is sold. Moreover, these comments contended that FDA must find, for each product, that under the recommended conditions of use, the product presents a significant or unreasonable risk of illness or injury.

FDA disagrees with these comments. The DSHEA, which added section 402(f) to the act, did not exempt dietary supplements that are foods (that is, e.g., that are not intended to prevent, cure, treat, or mitigate a disease) from the food provisions of the act (see section 201(ff) of the act (21 U.S.C. 321(ff))). Under the act as amended by the DSHEA, a dietary supplement that is a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health (section 402(a)(4) of the act). This situation is the one that FDA is addressing in this rulemaking. Moreover, section 402(g)(2) of the act specifically authorizes FDA to adopt good manufacturing practice regulations for dietary supplements. FDA is relying on this provision of the act, as well as sections 402(a)(4) and 701(a) of the act (21 U.S.C. 371(a)), in adopting the unit-dose packaging requirement for dietary supplements that are foods that contain 30 mg or more of iron per dosage unit.

The agency received a comment from the CPSC requesting that FDA amend its proposed regulations to clarify that iron-containing products conforming to FDA's regulation are subject to compliance with certain regulations issued by the CPSC.

In light of the desire of both the CPSC and FDA to ensure that manufacturers of iron-containing products comply with both CPSC's regulations for child-resistant special packaging and FDA's CGMP regulations for iron-containing products, in this final rule FDA is revising proposed §§ 111.50 (21 CFR 111.50) and 310.518(a) to make clear that products subject to these regulations are also subject to 16 CFR parts 1700, 1701, and 1702.

B. Effectiveness of Unit-Dose Packaging

The agency received a number of comments bearing on the effectiveness of unit-dose packaging to limit pediatric access to products. The majority of these comments expressed support for FDA's tentative conclusion that unit-dose packaging will effectively limit pediatric access to products. A few comments challenged this tentative conclusion. None of these comments provided data to support their views.

One comment expressed the view that unit-dose packaging would not be effective because such packaging is subject to compromise. Another comment contended that the child-resistant effectiveness of child-resistant unit-dose packaging is not absolute (i.e., because the CPSC specification is based on the number of units that a child is able to access in a period of time) in contrast to the effectiveness of CRC type packaging (i.e., in which the CPSC regulations specify that opening the closure within a period of time constitutes failure of the system).

FDA recognizes that unit-dose packaging, like all packaging, can be compromised, and that packaging in and of itself cannot make a product safe. However, based on information available to the agency (Refs. 8 and 9) and as discussed in the iron proposal (59 FR 51030 at 51049), unit-dose packaging, even conventional unit-dose packaging, limits pediatric access to multiple dosage units of product. Moreover, the effectiveness of unit-dose packaging to limit pediatric access to product is not dependent on proper reclosure of the packaging. In contrast, the effectiveness of closure type packaging to limit pediatric access is dependent on proper reclosure of the container. If the closure is compromised (i.e., opened, improperly reclosed, or damaged), all of the contents of the package are readily available for ingestion. FDA's concern is limiting the possibility that the product will be injurious to health. Unit-dose packaging, even conventional unit-dose packaging, will help to accomplish this end by limiting the amount of iron that a child can consume in a short period of time. Therefore, FDA finds that the comments provide no basis for modifying its approach to the problem of acute iron poisoning in young children.

C. Access to Products by Certain Persons

The agency received several comments bearing on the potential difficulty that some elderly and handicapped persons may have in gaining access to products in unit-dose packaging. For example, one comment noted that unit-dose packaging may limit access to products by persons with rheumatoid arthritis. Two comments expressed their view that unit-dose packaging is inconvenient. Another comment expressed the view that for adults with limited dexterity, conventional unit-dose packaging is not difficult to open. None of these comments provided any data or information to support their views.

A comment from CPSC noted the difficulty in assessing the extent to which elderly or handicapped persons may be hampered in accessing product packaged in conventional unit-dose packaging, because there are no "accessibility" standards for conventional unit-dose packaging. In their comment, CPSC provided a report of their study examining the accessibility of child-resistant and conventional unit-dose packaging with seniors, aged 60 to 75 years old. CPSC

[5] Given CPSC's child resistance requirements, FDA's action will have no effect on how difficult it is to open the package.

reported that all four child-resistant unit-dose package types passed the senior accessibility test criteria. Moreover, all 100 seniors tested were able to open the conventional unit-dose packaging.

In the iron proposal and the supplemental proposal, FDA anticipated the practical effect of the combination of new §§ 111.50 and 310.518(a) and CPSC's child-resistant packaging regulations for iron-containing drugs and dietary supplements, 16 CFR 1700.14(a)(12) and (a)(13), respectively. Manufacturers and distributors of drugs and dietary supplements containing 30 mg or more of iron per dosage unit and containing 250 mg or more of total iron per package will have two options. One option will be to package their product in child-resistant unit-dose packaging (e.g., child-resistant blisters, child-resistant pouches, or other child-resistant packaging that accomplishes the objective of making a single dosage unit available at a time). A second option will be to package their product in conventional unit-dose packaging through exercising their right to an exemption to CPSC's special packaging regulations as required by the PPPA.

FDA notes that since publication of the iron proposal, CPSC has amended its regulations in 16 CFR part 1700 (60 FR 37710, July 21, 1995) for testing the child-resistant effectiveness of packaging to require a senior adult use effectiveness of not less than 90 percent for a senior adult test panel consisting of 100 adults aged 50 to 70 years old. The intent of these amendments is to increase the use of child-resistant packaging by making it easier for adults to use them properly.

It is not FDA's intent to circumvent the aim of the PPPA to allow access by elderly and handicapped persons who may be unable to use household substances packaged in child-resistant packaging. However, in the absence of information to the contrary, FDA has no basis to conclude that iron-containing products packaged in conventional unit-dose packaging will unduly limit elderly or handicapped persons' access to such products. Therefore, FDA concludes that unit-dose packaging does not limit access to product by elderly or handicapped persons.

D. False Sense of Security

Two comments expressed their view that unit-dose packaging should not be required for products containing 30 mg or more of iron per dosage unit because such a requirement will provide a false sense of security and will not limit pediatric access to product.

FDA recognizes that no single approach is adequate to ensure the safe use of iron-containing products. However, a combination of educational programs, label warning statements, and packaging measures can reasonably be expected to be effective in reducing significantly the incidence of poisonings. As discussed in the iron proposal, FDA is sponsoring educational efforts to better inform health care providers and consumers of the risks presented by iron-containing products, and FDA is requiring label warning statements to provide information to consumers about the hazards to young children presented by iron-containing products. These two approaches will effectively alert health care providers and consumers to the hazards presented by iron-containing products. Moreover, contrary to the comments' contention that these measures, including unit-dose packaging, will provide a false sense of security, these measures more likely will support a heightened sense of concern. Persons informed of the pediatric hazard presented by iron-containing products will take extra measures to ensure that the products are handled appropriately, including ensuring that the unit-dose packaging is not compromised in any way. Therefore, FDA finds no merit in these comments.

E. CRC is Adequate

One comment expressed the view that CRC packaging is adequate for limiting pediatric access to a toxic amount of iron.

As discussed in the iron proposal, based on information available to the agency, misuse of CRC type packaging is one contributing factor to pediatric iron poisonings. For example, in 21 of the 26 pediatric iron poisoning deaths in which the type of packaging was reported, the product was packaged in CRC type packaging (Ref. 10). In the absence of information indicating that misuse of closure type packaging will no longer occur and in light of the potentially fatal consequences when a young child gains access to a lethal amount of iron, FDA is not persuaded that CRC type packaging is adequate to ensure that these products are packaged under conditions that are not injurious to health.

Another comment expressed the view that: "FDA's current effort to go beyond the CPSC requirement for child-resistant closures with respect to iron-containing supplements should be viewed as an anomaly and not as a failure of the CRC system."

The agency disagrees with the view that this rulemaking is an anomaly. Rather, FDA considers that this rulemaking is a special measure in response to a special circumstance, i.e., the large number of acute iron poisonings, including death in children less than 6 years of age, attributable to accidental overdoses of iron-containing products. FDA will continue to exercise its legal authority to fulfill its legislative mandate to ensure that foods, including dietary supplements, and drugs are not injurious to health.

Nonetheless, FDA agrees that this rulemaking should not be viewed as a failure of the CRC system. The agency notes that it is establishing additional packaging requirements only for products that contain 30 mg or more of iron per dosage unit because of the irreversible and potentially fatal consequences presented by these higher dose iron-containing products rather than because of a view that the CRC system has failed in any way.

F. Difficulty in Making Child-Resistant Unit-Dose Packaging

One comment stated that it is more difficult to make a child-resistant unit-dose package that is accessible and acceptable to adults than to make a conventional unit-dose package. The comment further noted that this difficulty was the reason why so few highly toxic products in the market were packaged in a unit-dose package.

FDA is not establishing packaging performance standards, child-resistant or otherwise, for iron-containing products in this rulemaking. Such standards are the responsibility of the CPSC. Rather, FDA is establishing these packaging requirements as a matter of good manufacturing practice to ensure that dietary supplements and drugs that contain 30 mg or more of iron per dosage unit are not packed under conditions whereby they may be rendered injurious to health. Therefore, FDA finds that the comment is not relevant to this rulemaking.

G. Alternative Approaches

Two comments recommended that all iron-containing drugs and dietary supplements be packaged in child-resistant unit-dose packaging to ensure that they are inaccessible to young children.

As discussed in the proposal, information available to FDA demonstrates that the iron-containing products presenting the greatest hazard to young children are those that contain 30 mg or more iron per dosage unit. As discussed above, FDA has concluded, based on the available evidence, that label warning statements and educational efforts are adequate to

address the problems with products containing less than 30 mg of iron per dosage unit, and that label warning statements, educational efforts, and unit-dose packaging are necessary to ensure that products containing 30 mg or more of iron per dosage unit are packaged under conditions that are not injurious to health. Therefore, the agency is rejecting this recommendation.

One comment recommended that, rather than requiring unit-dose packaging of products containing 30 mg or more of iron per dosage unit, FDA should limit the total number of dosage units allowed per package based on the amount of iron that is toxic. No specific upper limit on the total iron to be allowed per container was provided in this comment.

FDA notes that CPSC has taken an approach similar to that suggested by the comment by requiring child-resistant special packaging if the packaging contains more than 250 mg of total iron. In the iron proposal, FDA discussed the amount of ingested iron that is lethal to young children (i.e., to a 10 kg child) and noted that an acute ingestion of 25 mg/kg of iron may produce symptoms of poisoning, 60 mg/kg of iron may develop into clinically significant iron poisoning, and 250 mg/kg of iron may well be lethal for a young child. Because the comment did not specify an upper limit on the total iron to be allowed in the container, FDA will address the comment based on an upper limit of 250 mg of iron (i.e., the amount of iron that may produce symptoms of poisoning).

If FDA were to limit the total number of dosage units in a container based on 250 mg of iron, then a manufacturer would be able to provide up to 8 dosage units of a product containing 30 mg of iron per dosage unit (240 mg of total iron), or 3 dosage units of a product containing 65 mg of iron per dosage unit (195 mg of total iron), per container to meet this requirement. Because CPSC's child-resistant special packaging requirement has a threshold of 250 mg of total iron, such products could be packaged in conventional packaging and still be in compliance with CPSC's child-resistant special packaging regulations.

Packaging eight or fewer dosage units in closure-type packaging is impractical and actually is approaching a requirement of a "unit-dose bottle." Moreover, iron-containing products frequently contain 90 to 100 dosage units per bottle, and consumers who currently purchase iron-containing products in such quantities would be likely to continue this practice, thereby purchasing 12 bottles of an iron-containing product that contains 30 mg of iron per dosage unit or 30 bottles of an iron-containing product that contains 65 mg of iron per dosage unit. Because all of the vials perform the same function, consumers are likely to store them in one place. The existence of multiple vials, particularly if the products are packaged with conventional-type closures, means that a child who discovers and gains access to one vial is likely to gain access to multiple vials. Further, to minimize the space needed for storage, consumers who bring multiple vials into the home may choose to repackage the product into as few bottles as possible, thereby defeating the intent of the regulations. Therefore, FDA concludes that limiting the total number of dosage units per container based on the total amount of iron per container will not contribute in a significant way to achieving the agency's goal of limiting pediatric access to a toxic amount of iron by ensuring that iron-containing products are packaged in a manner that will not render the product injurious to health.

The agency received two comments recommending that opaque packaging material be required for unit-dose packaging to provide additional safeguards to limit pediatric access to product. These comments noted that opaque packaging is required for child-resistant unit-dose packaging in New Zealand and throughout the European Community.

FDA recognizes that opaque packaging is one approach that may reduce pediatric access to product. However, the comments did not provide the agency with sufficient information to enable FDA to conclude that opaque unit-dose packaging is necessary to ensure that iron-containing products are packaged under conditions that are not injurious to health. Given this fact, FDA finds no basis to require the use of opaque packaging at this time. However, FDA would have no objection if manufacturers used opaque unit-dose packaging.

One comment recommended that the proposed regulation be modified to provide flexibility to permit manufacturers to try alternative packaging designs that achieve the same effect of limiting pediatric access to multiple doses of iron-containing products.

In establishing unit-dose packaging requirements for iron-containing products that contain 30 mg or more of iron per dosage unit, one of the agency's goals is to avoid restrictive requirements that unnecessarily limit technological advances that accomplish the objective of reducing pediatric access to potentially lethal amounts of iron. Under new §§ 111.50 and 310.518, the term "unit-dose packaging" means any type of packaging that achieves the goal of allowing access to one dosage unit at a time. The agency wants to clarify that, for the purpose of this rulemaking, several types of packaging can satisfy the definition of "unit-dose-packaging," including blister-type packaging, pouches, and dispensers that deliver one dosage unit at a time. Moreover, the agency anticipates that future advances in package design will result in other types of packaging that will also meet this definition. Therefore, because the regulations as proposed provide for flexibility in the type of packaging used to achieve unit-dose, FDA is taking no action in response to this comment.

One comment asked whether the agency intends to eliminate the practice of packaging iron-containing drug products that are sold by prescription in dispensing size bottles for use by pharmacists. These bottles contain up to 1,000 tablets each. The comment stated that few pharmacists are capable of dispensing these products in unit-dose packaging and added that unit-dose packaging is not necessary for products obtained by prescription. The latter point was made by a second comment as well.

FDA does intend that change be effected in the dispensing and packaging practices of some iron-containing products, including iron-containing drug products sold by prescription. Some of the iron-containing drug products that have caused injury to children have been sold by prescription, and the agency is concerned that their being sold by prescription has not caused adults to ensure that they are kept inaccessible to children. Consequently, the agency believes that unit-dose packaging is necessary for iron-containing prescription drug products that contain 30 mg or more of iron per dosage unit. Therefore, the requirement of this final rule to package iron-containing products that contain 30 mg or more of iron per dosage unit in unit-dose packaging will result, as an unintended consequence, in an elimination of the practice of packaging such iron-containing prescription drug products in dispensing size bottles for use by pharmacists.

One comment recommended that FDA revise the proposal to specify that all iron-containing tablets sold over-the-counter be sold with CRC's. The comment suggested that packaging for iron-containing drug products sold by prescription not be changed because

pharmacies will repackage the contents. The agency understands this latter suggestion to mean that packaging for products sold by prescription should not be subject to regulation since pharmacists will repackage tablets into pharmacy vials.

FDA has not revised the regulations in response to this comment. The distinction between unit-dose packaging and CRC is essential to the rule. As explained above, decisions about child-resistant packaging are the province of CPSC. FDA is requiring unit-dose packaging for products that provide 30 mg or more of iron per dosage unit to ensure that these products are not rendered injurious to health. Serious injuries, including death, are attributable to accidental overdose of products containing this amount of iron per unit. FDA's conclusion, reached on the basis of this rulemaking, is that unit-dose packaging will limit the number of dosage units to which a child will gain access and thereby significantly limit the risk of injury. As noted above, to limit the risk of serious injury and death, the agency intends that such iron-containing drug products sold by prescription will also be packaged in unit-dose packaging.

One comment suggested that FDA review its specifications for unit-dose packaging in a public forum that would include packaging suppliers and associations to determine whether CRC might enhance safety more than unit-dose packaging.

The agency declines to accept this suggestion. As stated previously, FDA is not setting specifications for unit-dose packaging or for CRC's. Such specifications are the responsibility of the CPSC. FDA has the responsibility to ensure that products are packed under conditions that will not render them injurious to health. Young children are gaining access to toxic and potentially fatal amounts of iron from iron-containing products packaged in CRC type packaging. It is for this reason that FDA has determined that unit-dose packaging of products containing 30 mg or more of iron per dosage unit is necessary to ensure that iron containing products are packaged under conditions that will not render them injurious to health.

One comment requested that FDA review its implementation plan with industry and with individual suppliers of unit-dose packaging to discuss issues relevant to materials and machinery, including adequate supply of packaging, cost, validation, stability, and compliance.

FDA declines this request because the agency's analysis of costs and benefits (see section VI. of this document) takes into account these aspects of compliance with the rule. Based on comments received from the packaging industry, the analysis has found that: (1) There is an adequate supply of packaging, and (2) not all firms will need to purchase packaging equipment because adequate capacity exists within the contract packaging industry. The analysis also takes into account other costs of complying with the requirements of this rule, such as administrative costs, storage and transportation costs, stability testing, and label redesign costs.

One comment stated that the proposal failed to address certain regulatory concerns including the impact of the rule on product submissions currently under review by the Center for Drug Evaluation and Research (CDER) and whether new product submissions will be required by this rule.

There currently are no submissions under review by CDER for iron-containing drug products. If future submissions are made to CDER for such products, FDA expects that they will reflect any change in the stability of the products that may be caused by a change to unit-dose packaging. The rule does not, however, in and of itself, establish separate submission requirements for iron-containing drug products.

IV. Formulation and Appearance of Iron-Containing Products

The AG petition recommended that FDA prohibit the manufacture and sale of adult formulations of iron-containing products that look like candy or contain a sweet outer coating. The AAPCC petition asked FDA to urge the industry to voluntarily reformulate iron-containing products containing 30 mg or more of iron per dosage unit to be in less attractive dosage units, specifically avoiding resemblance to popular candies. NDMA asked FDA to reject the recommendation of the AG petition because any provision for "no candy-like appearance" would not be practical and would be difficult to administer because of the subjective nature of assessing candy-like appearance. In the proposal, FDA requested comments on whether use of "candy" and "colorful" coatings on iron-containing products is hazardous to infants and young children because of the apparent attractiveness of the products. FDA stated that the agency would consider action in this regard if the information received presented an objective basis for additional steps that FDA could take to limit the appeal of iron-containing products to young children.

FDA received several comments on the appearance of iron-containing products. Most of these comments expressed an opinion that the resemblance of certain iron-containing products, including products formulated specifically for use by children, to candy or to cartoon characters contributed to the problem of children ingesting large quantities of these products. One comment argued that experience demonstrated that children are attracted to bright, shiny, colorful objects, and that, although children will swallow most objects, they will continue to seek out objects that taste good. This comment stated that changing the sweet coating would be an additional safeguard to ensure that children do not ingest large quantities of these supplements. Another comment asserted that a candy-like appearance and taste both needlessly attract an unsuspecting child and encourage ingestion of large quantities of these products by a child who may be unlikely to chew through the sugar coat.

Another comment, from a State department of health, reported that investigation of 5 of 17 deaths revealed evidence that children chewed or sucked on the iron tablets. A comment from a State consumer protection board expressed the opinion that hazardous products with a look-alike appearance to food products that are safe to consume present conflicting messages that can confuse children about what is safe to eat, and what is not. Some comments noted that current recommendations from industry trade organizations include a recommendation that products containing 30 mg or more of iron per dosage unit should not be manufactured to have a sweet, candy-like outer coating.

In the proposal, FDA stated its tentative view that it may not be possible to objectively measure the candy-like appearance of iron-containing products. None of the comments provided a basis for FDA to change this tentative view. Therefore, FDA is not adopting any requirements relating to the formulation or appearance of iron-containing products.

V. Forms of Iron That May Be Less Toxic

A. Introduction

Three basic types of elemental iron powders are marketed for use in foods: Reduced iron, electrolytic iron, and carbonyl iron. The terms "reduced," "electrolytic," and "carbonyl" refer to the production process by which the iron is manufactured rather than the

composition of the product. In the iron proposal, FDA specifically requested comments on the appropriateness of elemental iron as a source of iron in drugs and dietary supplements. FDA stated that the agency would consider exempting iron-containing products that incorporate elemental iron from any regulations that result from the rulemaking instituted by the iron proposal if the information received was persuasive in establishing that the use of elemental iron would substantially decrease the risk of pediatric poisoning while allowing for effective dietary iron supplementation.

B. Public Workshop

In the **Federal Register** of March 21, 1995 (60 FR 14918), FDA published a notice announcing a public workshop on the acute toxicity of elemental forms of iron relative to that of iron salts. The purpose of the workshop was to solicit scientific data and information about the acute toxicity of elemental forms of iron with regard to whether such forms are sufficiently safe in dietary supplement and drug products to warrant exemption from the special packaging and labeling requirements that FDA had proposed for products containing iron salts.

Specifically, the notice stated that the purposes of the workshop were to: (1) Identify data that objectively describe the acute toxicity of elemental iron; (2) identify the market uses of elemental iron and any adverse reaction reporting systems or processes used by manufacturers and vendors; (3) identify any data on acute, accidental exposure of children or adults to products containing elemental iron; (4) discuss a possible conceptual framework for evaluation of the effects of elemental forms of iron upon acute exposure; and (5) discuss the validity and limitations of acute toxicity data in experimental animals in predicting the risk in young children.

The notice also stated that specific topics that may be relevant and on which discussion was invited included: (1) Physiological factors that influence toxicity of elemental forms of iron, in comparison with those for iron salts; (2) the quality, results, and relevance of animal studies on acute toxicity of elemental iron and iron salts; (3) the quality and results of human studies for evaluating the effects of elemental iron; (4) factors influencing the validity of extrapolation of experimental animal data on acute toxicity of various forms of iron for predicting the risk in young children; and (5) current uses of elemental iron in dietary supplements and drugs and the data available for predicting the risk in young children.

The workshop was held on April 20, 1995, in Rockville, MD. Statements were made by representatives of several manufacturers of iron-containing products, a trade association, a physician, and a law firm representing a manufacturer of iron-containing products. Most of the participants who made oral presentations at the public meeting also submitted written comments containing details of the information discussed at the meeting.

The data and information submitted to FDA in response to the agency's request for data in the notice announcing the public workshop, as well as the data and information submitted to FDA in comments to the iron proposal and the supplementary proposal, are discussed below. Most of the data and information submitted to FDA addressed a single form of elemental iron, namely, carbonyl iron. However, one comment provided data and information on polysaccharide iron complex (PIC), a nonionic iron complex synthesized by the neutralization of a ferric chloride carbohydrate solution. Both forms of iron will be considered below.

C. Market Uses of Elemental Iron

FDA received one comment from a manufacturer who claimed to be the sole producer of carbonyl iron in the United States and who stated that the firm had introduced a pharmaceutical/food grade of carbonyl iron into the marketplace in 1988. The comment provided information on the manufacturers of multivitamins and stand-alone iron supplements who have purchased carbonyl iron for use in those products, brand names of products containing carbonyl iron, the potency (expressed in mg of iron) of the various products, and the distributors who sold the products. The manufacturer stated that carbonyl iron had been used in more than 2 billion tablets marketed by 15 manufacturers in 35 brands of iron-containing dietary supplement and drug products.

Another comment from an industry trade association stated that there are between 1,300 and 3,000 products containing iron, including carbonyl iron, on the market.

The agency received one comment from a manufacturer of PIC, which is approximately 46 percent iron by weight and is sold in solid oral dosage forms in both dietary supplement and drug products in doses ranging from 18 mg of iron to 150 mg of iron. The comment provided information on the brand names of ten products containing PIC in solid oral dosage form and the potency (expressed in mg of iron) of the various products. The comment stated that approximately 255.8 million brand-name tablets or capsules containing PIC had been produced during the period 1993 to 1994.

FDA appreciates receiving this information, which demonstrates that certain forms of elemental iron are used as ingredients in a range of iron-containing products that are marketed for use by children and adults. This information provides a context for evaluating the impact of an agency decision to exempt any form of elemental iron from any or all of the requirements of this final rule. At this time, it appears that between 1 percent and 3 percent of iron-containing products on the market contain carbonyl iron, and that between 0.3 percent and 0.8 percent of iron-containing products on the market contain PIC.

D. Comments on the Acute Toxicity in Animals of Elemental Iron Compared to That of Iron Salts

A comment from a professor of nutrition at a research university stated that there are apparently distinct advantages to the use of carbonyl iron as an alternative to the use of iron salts because of decreased toxicity at the doses that young children are likely to ingest. Another comment from a hematologist urged that carbonyl iron be exempted because of its low acute toxicity. Neither comment, however, supplied any data to support these statements.

Several comments asserted that administering iron as carbonyl iron for the prevention and treatment of iron deficiency provides a greater margin of safety than administering iron as iron salts. One comment conceded that available data are limited but stated that while the estimated lethal dose (LD) of ferrous sulfate in rats was 200 to 300 mg of iron (Fe) (expressed in terms of iron content) per kg body weight,[6] the LD of carbonyl iron in rats and guinea pigs was 50,000 to 60,000 mg Fe/kg body weight or more[7] (Ref. 11). This comment concluded that these studies in experimental animals suggested that carbonyl iron has a 100-to 200-fold

[6] The comment did not provide a literature citation for these data. The comment also did not specify whether the data reflected LD_{50} values (i.e., the dose that is fatal to 50 percent of the animals) or LD_{100} values (i.e., the dose that is fatal to 100 percent of the animals).

[7] The data cited are LD_{100} values. The comment also noted that the LD_0 value (i.e., the dose at which all animals survive) for rats and guinea pigs was 10,000 to 15,000 mg Fe/kg body weight.

greater safety margin than ferrous sulfate.

Another comment from a manufacturer of carbonyl iron included a report, commissioned by that manufacturer, on the toxicity of carbonyl iron powder. This report acknowledged that little data were provided to directly compare the toxicity of carbonyl iron with ionic forms of iron.

FDA has reviewed the animal toxicity data cited in the comments and other available animal toxicity data (Refs. 11 through 16). Most of the reported data were expressed as LD_{50} values (i.e., the dose that is fatal to 50 percent of the animals in the study), although some data were expressed as no-adverse-effect-level (NOAEL) values. For clarity and convenience, the LD_{50} data are summarized in Tables 2 through 4. However, in most cases the data reported in these tables do not reflect studies in which the toxicity of one form of iron was directly (i.e., concurrently) compared to that of other forms of iron.

TABLE 2.—MAGNITUDE OF DIFFERENCES IN STUDIES REPORTING MEDIAN LETHAL DOSE (LD_{50}) LEVELS: CARBONYL IRON VERSUS IRON SALTS [1]

Species	LD_{50} (mg Fe/kg body weight)		Approximate fold difference
	Carbonyl iron	Iron salt	
Rat	30,000	298 to 1,000 (ferrous sulfate)	30 to 90
		580 to >2,300 (ferrous fumarate)	13 to 50
Guinea pig	20,000	300 to 350 (ferrous sulfate)	57 to 67
		263 to 350 (ferrous gluconate)	57 to 76
		350 (ferric ammonium citrate)	57
		2,000 (ferrous carbonate)	10
Dog	>25,000	160 (ferrous sulfate)	156

[1] Data summarized from published literature (Refs. 11 through 16).

TABLE 3.—MAGNUITUDE OF DIFFERENCES IN ST REPORTING MEDIAN LETHAL DOSE (LD_{50}) LEVELS: DIFFERENCES AMONG VARIOUS IRON SALTS [1]

Species	Oral LD_{50} (mg Fe/kg body weight)		Approximate fold difference
Mouse	50–900 (ferrous sulfate)	3,800 (ferrous carbonate)	4 to 25
rat	298–1,000 (ferrous sulfate)	580–>2,300 (ferrous fumarate)	2 to 8
Guinea pig	263–350 (ferrous gluconate)	2,000 (ferrous carbonate)	6 to 8

[1] bid.

TABLE 4.—MEDIAN LETHAL DOSE (LD_{50}) LEVELS REPORTED FROM ORAL EXPOSURE: SPECIES DIFFERENCES [1]

Iron source	Animal species	Oral LD_{50} (mg Fe/kg body weight)	Approximate fold difference
Ferrous sulfate	mouse	150 to 900	1.1 to 10
	rat	298 to 1,000	
	guinea pig	300 to 350	
	rabbit	600 to 720	
	dog	160	
	cat	100	
Ferrous fumarate	mouse	516 to 1,100	2 to 4.5
	rat	580 to>2,300	
Ferrous gluconate	mouse	320 to 1,100	1.3 to 4.2
	rat	518 to 865	
	guinea pig	263 to 350	
	rabbit	463 to 580	
Ferrous carbonate	mouse	3,800	1.9
	guinea pig	2,000	
	rabbit	2,220	
Ferric ammonium citrate	mouse	1,000	2.9
	guinea pig	350	
	rabbit	560	
Carbonyl iron	rat	30,000	1.5
	guinea pig	20,000	
	dog	>25,000	

[1] Ibid.

The data in Tables 2 through 4 show that the reported LD_{50} values for carbonyl iron are at least an order of magnitude greater than those of iron salts. However, although these data do suggest that the acute oral toxicity of carbonyl iron is lower than that of iron salts, FDA does not agree that these data establish that carbonyl iron has a 100- to 200-fold greater safety margin than ferrous sulfate. As explained below, the variations in reported LD_{50} values within and between species, the variations in reported LD_{50} values between different ferrous salts within the same species, and the limited data directly comparing the toxicity of carbonyl iron to that of iron salts prevent the agency from reaching such a conclusion at this time.

In evaluating the LD_{50} data, the agency compared the magnitude of the differences in the reported LD_{50} values for iron salts and for carbonyl iron (see Table 2) to the magnitude of differences in reported LD_{50} values for various iron salts (see Table 3) and to the magnitude of inter-species differences in reported LD_{50} values (see Table 4). For example, the maximum interspecies variation in reported LD_{50} values for ferrous sulfate is tenfold (see Table 4), and the maximum intraspecies variation in reported LD_{50} values for the mouse is twenty-fivefold (see Table 3). By comparison, the difference in the reported LD_{50} values for carbonyl iron and ferrous sulfate ranges from a minimum of thirtyfold in the rat to a maximum of 156-fold in the dog (see Table 2). Thus, while in laboratory animals carbonyl iron appears to be among the least toxic of iron preparations, wide variations in toxicity have been reported among different iron salts and within animal species. In some cases, the magnitude of the difference in reported LD_{50} values between carbonyl iron and iron salts is no greater than the magnitude of difference in reported LD_{50} values between various iron salts or between animal species. Given the facts that most of the LD_{50} data were reported several decades ago, that most of the studies were not conducted as concurrent comparisons of LD_{50} values for carbonyl iron and for iron salts, and that current practice is to characterize LD_{50} values within an order of magnitude range, e.g., 5 to 50 mg/kg (Ref. 17), the agency finds that it is unable to conclude, despite the higher reported LD_{50} values for carbonyl iron, that carbonyl iron provides the quantitative margin of safety compared to iron salts claimed by the comment.

In general, extrapolation from data on acute iron toxicity obtained with experimental animal species to predict acute iron toxicity in humans is not straightforward because there are large inter-species differences in response to large loads of iron. Hoppe, et al. (Ref. 16) reviewed case reports of human deaths from ingestion of ferrous sulfate and found that the average fatal dose of iron in children under 2 years of age was approximately 180 mg/kg body weight. Thus, the LD of ferrous sulfate in children is comparable to the reported LD_{50} values in the dog (160 mg/kg) and in the cat (100 mg/kg) but considerably lower than the reported LD_{50} values for the rat (300 to 1,000 mg/kg) and rabbit (600 to 720 mg/kg). Consequently, because of this variation, in attempting to predict iron toxicity in human children based on data obtained in experimental animals, it would be imprudent to rely on data derived from a single animal species.

The available iron toxicity data primarily provide acute LD levels. Most of these LD_{50} values were reported several decades ago, and details of how the studies were conducted are not available in all cases. Moreover, there are a limited number of studies in which the LD for carbonyl iron was compared directly (i.e., in the same study) to that of iron salts. The known inherent variability and lack of precision in LD_{50} values reported from one study to another (Refs. 17 and 18) make the available data unreliable for use in predicting a margin of safety that carbonyl iron would provide compared to iron salts in the event of accidental overdose. Finally, given the number of pediatric exposures, and the number of moderate and major outcomes associated with those exposures, other measures of acute toxicity, such as clinical chemistry measurements, pathology of the liver and gastrointestinal tract, and clinical signs and symptoms or injuries (e.g., vomiting) are appropriate and necessary to determine whether the acute toxicity of elemental iron is less than that of iron salts.

In summary, the magnitude of the difference in reported LD_{50} values between various iron salts, the magnitude of the inter-species difference in reported LD_{50}, the limited data directly comparing the acute toxicity of carbonyl iron to that of other iron salts, and the lack of measures of acute toxicity other than death mean that the data submitted to support reduced toxicity of carbonyl iron are not suitable for quantitative comparisons of the acute toxicity of carbonyl iron to that of iron salts. Therefore, FDA concludes that the available animal toxicity data are consistent with, but do not establish, reduced toxicity for carbonyl iron relative to that of iron salts.

E. Comments on the Acute Toxicity in Humans of Elemental Iron Compared to the Acute Toxicity of Iron Salts

Several comments cited data from a study (Ref. 19) of human volunteers who, following ingestion of a single dose of 6,000 mg of carbonyl iron (approximately 84 mg Fe/kg body weight), experienced only mild diarrhea without cramp. The comments compared these data to medical guidelines (Refs. 20 and 21) that recommend hospitalization and close observation in response to the acute ingestion of iron salts in doses of 60 mg Fe/kg body weight. One comment from a medical researcher stated that in a study conducted in his own laboratory four adult human volunteers took oral doses of 10,000 mg of carbonyl iron (approximately 140 mg Fe/kg body weight) "without distress" (Ref. 22). The same comment cited a published report in which a single adult human volunteer swallowed 10,000 mg of carbonyl iron "without deleterious effects" (Ref. 23).

The studies described by these comments are small and include so few subjects that they do not, in and of themselves, provide reliable data concerning the toxicity of carbonyl iron. As discussed below, other comments pointed that the incidence of side effects in volunteers who ingested carbonyl iron during a randomized, double-blind study designed to evaluate the bioavailability of carbonyl iron (Ref. 24) was similar to that of volunteers who ingested ferrous sulfate. However, these reports are consistent with other data that suggest that carbonyl iron may be less toxic than iron salts and could be corroborated by larger studies that are specifically designed to evaluate the safety and side effects of using carbonyl iron.

One comment from a physician noted that the reported side effects (such as diarrhea, heartburn, headache, epigastric discomfort, nausea, and abdominal cramps) from comparable doses of carbonyl iron and ferrous sulfate in a randomized, double-blind study designed to evaluate the bioavailability of carbonyl iron (Ref. 24) were similar. This comment stated that it did not make sense that similar side effects with similar dose amounts would translate to total impunity of carbonyl iron from toxic effects.

FDA agrees that reports that side effects in persons who consumed carbonyl iron as a dietary supplement or for therapeutic purposes are similar to side effects in persons who consumed

iron salts for the same purposes signify a need for caution in evaluating the limited evidence concerning the toxicity of carbonyl iron and do not translate to "total impunity" from toxic effects. However, these reports of similar side effects in a therapeutic setting do not necessarily mean that the physiological factors leading to injuries with accidental overdose will be the same for carbonyl iron and iron salts. Moreover, the body's response to an accidental overdose may be different from the body's response to a therapeutic dose.

The requirements of this final rule are intended to help prevent the acute iron poisonings, including deaths, in children less than 6 years of age attributable to accidental overdose of iron-containing products. Although the reports of side effects in adults who consume carbonyl iron as a dietary supplement or for therapeutic purposes raise potential questions of safety, available data are inadequate to document that these observations are necessarily predictive of acute poisoning in young children from accidental overdose of carbonyl iron. These reports, by themselves, do not provide a sufficient basis to determine that carbonyl iron is as toxic as iron salts.

F. Comments Supplying Data on Acute, Accidental Exposure of Children to Products Containing Elemental Iron

One comment from a manufacturer of carbonyl iron stated that the firm had reviewed its files and found no complaints regarding toxicity associated with its carbonyl iron products since the introduction of its pharmaceutical/food grade carbonyl iron product in 1988. The comment also stated that its carbonyl iron had been used in over 2 billion tablets marketed in 35 brands of iron-containing dietary supplement and drug products by 15 manufacturers, and that the firm was unaware of any adverse toxic effects associated with use of those products.

The same comment included data obtained from the Toxic Exposure Surveillance System (TESS) of the AAPCC. The comment summarized exposures, outcomes, symptoms, age group, and iron potency for carbonyl iron exposures and all iron exposures during the period 1989 to 1994. Table 5 compares the exposures and outcomes as summarized in the comment.

TABLE 5.—REPORTED EXPOSURES[1] FOR IRON-CONTAINING VITAMINS AND MINERALS

	Carbonyl iron (Number)	All iron (Number)
Reported exposures:		
Accidental ..	2,635	120,086
Intentional ..	58	9,854
Adverse Reaction	18	863
Unknown/ other	3	15
Total	2,714	130,818
Outcomes of Exposures:[2]		
No effect[3] ..	1,081	54,837
Minor effect[4]	173	17,218
Moderate effect[5]	4	2,012
Major effect[6]	0	177
Death	0	35

[1] The data in the table reflect the data supplied in comment 150 to the iron proposal under Docket No 93P–0306.

[2] See ref. 25 of this document.

[3] The patient developed no signs or symptoms as a result of the exposure.

[4] The patient developed some signs or symptoms as a result of the exposure but they were minimally bothersome, and generally resolved rapidly with no residual disability or disfigurement.

[5] The patient developed signs or symptoms as a result of the exposure which were more pronounced, more prolonged, or more of a systemic nature than minor symptoms. Usually, some form of treatment is indicated.

[6] The patient exhibited signs or symptoms as a result of the exposure which were life-threatening or resulted in significant residual disability or disfigurement.

One comment from a manufacturer of iron-containing supplements stated that the firm had not received a single report of adverse side effects or toxicity in 3 years of marketing products containing carbonyl iron.[8] Another manufacturer of iron-containing supplements submitted data on the composition of two of its multivitamin products containing 10 mg or 18 mg of carbonyl iron and summaries of 133 adverse event reports for the product containing 18 mg of carbonyl iron. This comment also provided data from a poison control center on 10 reports of exposures to a product containing carbonyl iron. Reported exposures ranged from approximately 160 mg of iron (approximately 11 mg Fe/kg) to approximately 1,975 mg of iron (unknown mg Fe/kg). The most common outcome was vomiting. The 2½-year old child who ingested 1,975 mg of carbonyl iron was treated with Ipecac and experienced headache, dizziness, hot flashes, and vomited twice. No further followup was reported for these exposures.

A trade association commented that it had conducted a confidential adverse experience survey of its members and stated that the results supported a conclusion that products containing carbonyl iron are safe and do not require special packaging and labeling. The survey results included data from members who marketed a total of seven products containing carbonyl iron. The survey found a total of 15 instances in which children aged 17 months to 4 years old ingested doses of various products in the range of 180 to 2,000 mg of iron. Only 3 of these 15 exposures resulted in minor outcomes, and none of these exposures was associated with moderate outcomes, major outcomes, or death.

One comment from a physician noted that much of the argument for exempting carbonyl iron from the requirements of the proposal was the data on accidental exposure. This comment pointed out that the absence of clinically significant effects associated with accidental exposure to carbonyl iron may reflect the fact that most of the preparations with carbonyl iron are multivitamin preparations containing lower dosages of iron compared to the preparations that have been associated with clinically significant effects. The comment expressed the opinion that there was a reasonable possibility that if carbonyl iron was exempted from the requirements of the proposal and categorized as a "nontoxic substance," then experience with sublethal toxic exposure would accumulate rapidly. The author of the comment stated that he was "not in favor of such uncontrolled experimentation." The comment further expressed the opinion that it would be prudent to wait until accidental exposure numerically equalled accidental exposure to other forms of iron, or at least to ferrous sulfate, when expressed in dose equivalent amounts.

FDA has evaluated the submitted information on acute, accidental exposure to products containing elemental iron. The summary information from poison control centers showed that: (1) Accidental overdose of carbonyl iron-containing products has resulted in 173 minor outcomes; (2) accidental overdose of carbonyl iron-containing products has resulted in four moderate outcomes; and (3) there were no reported exposures to carbonyl iron-

[8] The comment did not provide information about the nature of its reporting system, e.g., whether the system was systematic.

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containing products that resulted in major outcomes or death. However, the total number of accidental exposures to carbonyl iron is likely to be underestimated because information on the form of iron ingested was not always reported. For example, information on the form of iron ingested is not available in the original report or followup investigation for 8 of the 37 fatalities described in the iron proposal. This likely underestimation of total accidental exposures raises the question of whether the total number of minor, moderate, major, and fatal outcomes resulting from accidental overdose of carbonyl iron is also underestimated. Moreover, the lack of reported major outcomes or death associated with accidental overdose of products known to contain carbonyl iron may be a reflection of both the small number of total exposures to date and the insensitivity of passive reporting systems.

Furthermore, information supplied in the comments concerning the identity and potency of currently available products that contain carbonyl iron indicate that only 7 of 32 brand-name products contained high doses of carbonyl iron (i.e., greater than or equal to 30 mg of iron).[9] This paucity of products containing high-potency carbonyl iron amplifies the agency's concern that the lack of reported major outcomes or death associated with accidental overdose of products known to contain carbonyl iron may be a function of the small number of total exposures to high doses of carbonyl iron (i.e., 30 mg or more of iron) rather than the low toxicity of the substance. Therefore, these data, while encouraging, must be interpreted with caution and do not by themselves provide a sufficient basis for a conclusion of reduced toxicity for carbonyl iron compared to iron salts.

Although FDA agrees that it would be prudent to defer a decision on whether carbonyl iron is sufficiently less toxic than iron salts to merit an exemption from the requirements of this final rule until the amount of data available concerning accidental human exposures to carbonyl iron approaches that for iron salts, the agency realizes that, given the current market share of carbonyl iron-containing products of 1 to 3 percent (see section V.C. of this document), such a delay is not practicable. Moreover, such a delay would not be in the interest of the public health if carbonyl iron is in fact significantly less toxic than iron salts. On the other hand, FDA recognizes that there may be some basis for the concern expressed by the comment. Therefore, although FDA is not adopting the suggestion that the agency wait until exposure to carbonyl iron numerically equals exposure to other forms of iron or to ferrous sulfate before reaching a decision on whether to exempt carbonyl iron from the requirements of this final rule, FDA will remain cautious in evaluating the existing information concerning the toxicity of carbonyl iron.

G. Comparison of Animal Toxicity Data to Human Toxicity Data

One comment from a physician stated that it may be premature to make a regulatory decision about an exemption for carbonyl iron because the toxicity data were based almost entirely on animal studies. Another comment, in a report commissioned by a manufacturer of carbonyl iron, attempted to relate data on the toxicity in humans of carbonyl iron and iron salts to animal toxicity data. First, the report stated that adult humans who were acutely exposed to a single dose of 6,000 mg (i.e., approximately 100 mg/kg) of carbonyl iron experienced no toxicity other than diarrhea,[10] and that adult humans who were acutely exposed to carbonyl iron at doses ranging from 100 to 10,000 mg (i.e., 1.4 to 142 mg/kg)[11] experienced diverse side effects (such as gastrointestinal tract disturbances and headache) but no fatality. Moreover, the report noted that the effects of exposures to carbonyl iron in rats and guinea pigs in this dose range (i.e., 1.4 to 140 mg/kg) also were not life-threatening.[12]

Second, the report noted that as the ingested dose in cases of accidental overdose of iron salts in children approached and exceeded 200 mg/kg, the likelihood of death seemed to markedly increase. By comparison, the report noted that LD_{50} values in rats for iron salts are similar (300 to 1,000 mg/kg, expressed in terms of iron content)[13] to the dose that is frequently fatal in children. The report presented the similarity in lack of toxicity for carbonyl iron in adult humans and experimental animals, and the similarity in toxicity for iron salts in children and experimental animals, as evidence that the data on experimental animals can be extrapolated to humans.

FDA has considered the reasoning in the comments that the available toxicity data in experimental animals can be extrapolated to predict whether carbonyl iron has reduced acute toxicity in children compared to that of iron salts. The available animal toxicity data qualitatively imply reduced toxicity for carbonyl iron compared to iron salts, but the data are not suited for quantitative comparisons, even among animal species. As discussed above, the quantitative toxicity information available consists for the most part of LD_{50} values calculated from nonconcurrent acute toxicity studies with few animals and few doses, and such values are neither precise nor easily compared from one study to another. The fact that most of the available LD_{50} values are derived from studies conducted more than 30 years ago, for which there are only brief details of the experimental methods and test material identity (including comparability to currently marketed forms of iron), further makes comparison of the LD_{50} values difficult. Moreover, the available information does not contain data regarding levels at which there are no toxic effects, and such data are most directly relevant to this rulemaking considering that the issue at hand is one of acute toxicity. Finally, adults are less sensitive to toxic effects than young children, and most of the available data relates to adult humans and animals. Therefore, FDA is unable to say that the available toxicity data can be extrapolated to reliably predict reduced acute toxicity in children of carbonyl iron compared to that of iron salts.

H. Comments on the Bioavailability of Elemental Iron for Dietary Iron Supplementation

FDA requested information with respect to the bioavailability of carbonyl iron to determine whether carbonyl iron provides desirable iron nutrition to those who need iron supplementation. FDA requested this information because it anticipated that an exemption for carbonyl iron from any packaging or labeling requirements in the final regulations would likely result in a shift in product formulations to replace iron salts with carbonyl iron.

Several comments asserted that administering iron as carbonyl iron is as effective for the prevention and treatment of iron deficiency as

[9] Of these seven brand-name products, three contained 50 mg iron, two contained 65 mg iron, and two contained 150 mg iron.

[10] The report did not provide a direct literature citation for this statement, but likely was referring to the study by Sacks and Crosby (Ref. 19) cited by another comment.

[11] The report did not provide a direct literature citation for this statement, but included the studies by Gordeuk et al. (Refs. 22 and 26) in a bibliography.

[12] The report did not provide a direct literature citation for this statement, but included the study by Shelanski (Ref. 11) in a bibliography.

[13] The report did not provide a direct literature citation for this statement, but LD_{50} values for iron salts are reported in this range in Ref. 12.

administering iron as iron salts. In support of this assertion, one comment from a medical researcher described several published studies in female blood donors comparing the bioavailability of carbonyl iron with that of ferrous sulfate. These published studies were also cited in several other comments.

In one study (Ref. 27) comparing treatment with carbonyl iron or ferrous sulfate with use of a placebo, the treatment was intended to replace, within 56 days, the amount (approximately 200 mg) of iron removed by phlebotomy from 75 menstruating women who were regular blood donors. Blood donor volunteers were assigned randomly to one of three treatment groups: (1) High dose (600 mg) carbonyl iron; (2) standard dose (300 mg) ferrous sulfate (equivalent to 60 mg of iron); or (3) placebo. Each treatment was administered three times daily for 1 week immediately after blood donation.

The reported incidence of side effects was similar in both groups receiving sources of iron, even though the dose of iron was 10 times higher in the group receiving carbonyl iron than in the group receiving ferrous sulfate. The authors of the study estimated total iron absorption of 95 percent, 76 percent, and 64 percent of the iron lost through blood donation by the carbonyl iron group, the ferrous sulfate group, and the placebo group, respectively, and concluded that short-term ingestion of carbonyl iron was an efficacious means of replacing iron lost through blood donation.

A followup study (Ref. 28) of the effects of short-term iron supplementation in female blood donors was designed to develop a regimen that would minimize side effects of iron supplementation compared with a placebo while replacing iron losses in all, or nearly all, donors. In this study, a treatment regimen of 100 mg of carbonyl iron given once daily at bedtime was compared with that of a placebo.[14] The conclusions of the study were that, overall, enough iron was absorbed to replace that lost at donation in 85 percent of the carbonyl iron group but in only 29 percent of the placebo group.

In another study (Ref. 24) comparing the bioavailability of carbonyl iron with that of ferrous sulfate, 49 female blood donors with iron deficiency were treated with equal doses (100 mg) of iron once daily at bedtime over a 12-week period. The doses were administered either as carbonyl iron (100 mg) or as ferrous sulfate (500 mg (equivalent to 100 mg of iron)) in a randomized, double-blind fashion. The incidence of side effects was similar in the two groups, and measures of iron status did not differ significantly throughout the study. The conclusions of the study were that estimates of net changes in total body iron suggested that the overall bioavailability of carbonyl iron is approximately 70 percent that of ferrous sulfate.

The comment also included a description of a long-term 2½-year unpublished study, in which repeated courses of 56 days of low dose (100 mg) carbonyl iron were given to one group of volunteers once daily at bedtime after each blood donation. Two other groups of volunteers were permitted unsupervised self-supplementation, with volunteers in one group donating blood in an unscheduled manner, and volunteers in the second group donating blood on a schedule identical to that of the carbonyl iron group. The conclusion of the study was that the prevalence of iron deficiency in the group receiving carbonyl iron declined substantially compared with its prevalence in the two groups who were permitted unsupervised self-supplementation. In addition, the researchers concluded that increases in measures of iron status in the subjects in the carbonyl iron group over the 30-month course of the study suggested that their iron balance was improved during the course of the study.

At the public workshop, the researcher who conducted this study pointed out that the population of subjects in this study was chosen because it is a population in which individuals are iron deficient but not for any pathological reason. The researcher categorized this population as having "probably the highest demands on iron absorption that are seen in normal populations."

However, the comment described as "unexplained" a published study (Ref. 29) conducted in Sweden in which a preparation of carbonyl iron radiolabeled with a particular isotope (^{55}Fe) was used to fortify wheat flour in which the naturally occurring iron of the wheat was extrinsically labeled with another radioisotope of iron (^{59}Fe). Doubly labeled wheat rolls prepared from this flour were served with different meals to human adult volunteers. The authors of the study claimed that the ratio of absorbed ^{55}Fe to absorbed ^{59}Fe is a direct measure of the carbonyl iron that joins the nonheme pool and is made potentially available for absorption. The authors stated that the relative bioavailability of carbonyl iron was unexpectedly low and varied from 5 percent to 20 percent when the iron fortified wheat rolls were served with different meals. The authors also stated that factors such as the baking process or the addition of ascorbic acid did not change the relative bioavailability. The authors of the study concluded that this low and variable bioavailability of carbonyl iron in humans makes it necessary to reconsider the rationale of using elemental iron powders for the fortification of foods for human consumption.

FDA recognizes the apparent discrepancy between the conclusions of the multiple studies conducted in female blood donors and the conclusions of the study conducted in human volunteers who consumed wheat rolls fortified with radiolabeled carbonyl iron. Iron bioavailability is a complex issue affected by a number of factors, including the state of physiological iron stores and state of health, in addition to the iron source and the food matrix and meal composition in which the iron is ingested. In fact, the agency has stated its intent to publish a notice of proposed rulemaking concerning the bioavailability of iron used to fortify food (final rules for the iron fortification of flour and bread, (43 FR 38575 at 38576, August 29, 1978) and (46 FR 43413, August 28, 1981)). At this time, FDA believes that following through with such a proposal makes more sense than trying to resolve such a complex issue as part of this rulemaking. Accordingly, FDA is not requiring demonstrated bioavailability as a precondition in its determination on whether to exempt carbonyl iron from the labeling requirements, packaging requirements, or both requirements of this final rule.

I. Comments on Physiological Factors That Influence Toxicity of Elemental Forms of Iron

Several comments cited animal studies (Ref. 30) that were undertaken to characterize the mechanism by which elemental iron such as carbonyl iron is absorbed (i.e., by conversion of non-ionized to ionized iron in the presence of hydrochloric acid in the stomach) and postulated that the toxicity associated with ionized iron is minimized by both the rate of gastric acid production and the equilibrium between formation of ionized iron and the discharge of the ionized iron from the stomach to the intestine. In light of

[14] The treatment was administered at bedtime to allow the carbonyl iron to remain in the gastrointestinal tract for as long as possible without food that would buffer the stomach acid required for solubilization of the elemental iron to the ferrous form.

this postulated mechanism, some of these comments also discussed the importance of the particle size of carbonyl iron in the conversion process, i.e., the smaller the particle size, the faster the conversion process.[15] A representative of a U.S. manufacturer of carbonyl iron stated that the firm manufactures approximately 40 different grades of carbonyl iron, but only 1 grade is designated for pharmaceutical or nutritional use. The average particle size of this grade is approximately 5 to 6 microns.

FDA agrees that the particle size of carbonyl iron is a key factor in the conversion of the carbonyl iron to the ionized form, and that carbonyl iron with a small particle size will be ionized (and thus absorbed) more rapidly than carbonyl iron with a large particle size. FDA also recognizes that this conversion may be necessary for the carbonyl iron to exhibit the full toxicity associated with iron salts. Therefore, the protocol of any animal studies comparing the toxicity of carbonyl iron to the toxicity of iron salts should specify the particle size of the carbonyl iron used in the studies. If FDA exempts carbonyl iron from any of the requirements of this final rule, FDA will consider including particle size, based on the particle size of the carbonyl iron used in the comparative studies, as a specification for carbonyl iron.

J. Other Comments

At the public workshop, a representative of a manufacturer of carbonyl iron expressed the opinion that, in a rulemaking proceeding, it is FDA's responsibility to establish a need for a regulation for a particular product and suggested that the agency had not presented evidence that products containing carbonyl iron need the same kind of protective measures as those that the agency has proposed for products containing iron salts. In addition, a representative of a manufacturer of iron-containing products expressed the opinion that products containing carbonyl iron and bearing a warning statement such as "Contains iron, which can harm or cause death to a child" would be falsely labeled and therefore misbranded under the act if the carbonyl iron is in fact a safe source of iron.

At the public workshop, in response to this statement, agency representatives pointed out that the source of the iron in some deaths attributable to iron poisoning has not been identified, and that FDA therefore cannot say with certainty that carbonyl iron was not involved in any of the poisoning deaths that were discussed in the iron proposal. Moreover, as discussed above, the lack of reported major outcomes or death associated with accidental overdose of products known to contain carbonyl iron may be attributable to the small number of total exposures to date, particularly exposures to high dosages of carbonyl iron. These comments did not dispute that accidental overdose of iron-containing products can kill a small child, and that such overdoses are a leading cause of fatal poisoning in children under the age of 6.

Faced with this information, the agency is compelled to err on the side of caution. Unless presented with convincing data demonstrating that some forms of iron are sufficiently less toxic that they are unlikely to cause injury and illness, including death, FDA must assume, to ensure that the public health is adequately protected, that all forms of iron have the potential to cause injury and illness, including serious illness and death.

K. Exemption for Carbonyl Iron From the Labeling Requirements of This Final Rule

FDA has considered the kinds of data and information that would be necessary to enable the agency to reach a decision on an exemption for any form of elemental iron, such as carbonyl iron, from the regulations on labeling of iron-containing products. In the iron proposal, FDA stated that the agency would focus on data and information in two topic areas: Toxicity and bioavailability. Specifically, FDA stated that it would focus on whether use of a source of elemental iron would decrease the risk of pediatric poisoning while providing desirable iron nutrition to those who need iron supplementation (59 FR 51030 at 51052).

As already discussed, FDA has decided not to require demonstrated bioavailability of an iron source as a criterion in exempting carbonyl iron from any of the requirements in this final rule. Therefore, the agency's decision on whether to exempt carbonyl iron from the labeling requirements of this final rule turns on whether the available data demonstrate that carbonyl iron is significantly less toxic than iron salts.

In the iron proposal, FDA tentatively concluded that it should require a label warning statement for iron-containing products because a small child is at risk of injury any time he or she gains unlimited access to any iron-containing product. Therefore, the basis for exempting products containing carbonyl iron from the labeling requirements of this final rule would be data that persuade the agency that carbonyl iron is so much less toxic than ionic forms of iron that accidental overdose of products containing carbonyl iron is unlikely to place a small child at risk of injury (including minor, moderate, and major outcomes as well as death). The most compelling information bearing on this question is the available data on the outcomes of acute, accidental exposure of children to iron-containing products because these data, in contrast to animal studies that must be interpreted and extrapolated to predict toxicity in human children, are directly relevant to the question at hand.

As discussed above, the information available from poison control centers shows that accidental overdose of carbonyl iron-containing products has resulted in 173 minor outcomes and 4 moderate outcomes. Even though there were no reported exposures to carbonyl iron-containing products that resulted in major outcomes or death, the reported occurrences of minor and moderate outcomes show that a young child who accidentally consumes an overdose of a carbonyl iron-containing product is at risk of illness or injury. Therefore, the available data on the acute, accidental exposure of children to iron-containing products do not support an exemption for carbonyl iron from the labeling requirements of this final rule. Accordingly, FDA is not exempting products containing carbonyl iron from the labeling requirements of this final rule.

L. Exemption for Carbonyl Iron From the Packaging Requirements of This Final Rule

FDA has considered the kinds of data and information that would be necessary to enable the agency to reach a decision on an exemption for any form of elemental iron, such as carbonyl iron, from the regulations on packaging of iron-containing products. As discussed with respect to an exemption from the labeling requirements of this final rule, the basis for the agency's decision on whether to exempt carbonyl iron would be data on whether the use of carbonyl iron would decrease the risk of pediatric poisoning.

In the iron proposal, FDA stated that the agency was not persuaded that full

[15] Many of the comments that addressed the influence of particle size on the physiological properties of elemental iron discussed the role of particle size from the perspective of the bioavailability of the elemental iron. However, as discussed above, FDA has decided not to require demonstrated bioavailability of an iron source as a criterion in exempting that iron source from any of the requirements of this final rule. Therefore, the discussion of the importance of particle size emphasizes its potential role in toxicity rather than bioavailability.

compliance with CPSC's CRC requirements, even in the presence of warning statements, would be adequate to ensure the safety of the use of iron-containing products. FDA proposed that iron-containing products that contain 30 mg or more of iron per dosage unit be packaged in nonreusable unit-dose packaging in light of the potentially fatal outcome that can result from pediatric iron poisoning. Moreover, many accidental overdoses of iron-containing products that do not result in fatal consequences do have life-threatening consequences. In light of the potentially fatal or life-threatening outcomes that can result from pediatric iron poisoning, the basis for exempting products containing 30 mg or more of carbonyl iron per dosage unit from the packaging requirements would be data that persuade the agency that carbonyl iron is so much less toxic than ionic forms of iron that accidental overdose of products containing a high dose of carbonyl iron is unlikely to result in major outcomes or death. The information bearing on this question is: (1) Data on the outcomes of acute, accidental exposure of children to iron-containing products; (2) data on acute toxicity in animals of carbonyl iron compared to that of iron salts; and (3) the ability to extrapolate from the acute toxicity data in animals to predict a reduced toxicity for carbonyl iron in children.

As discussed above, the information available from poison control centers shows no reported exposures to carbonyl iron-containing products that resulted in major outcomes or death. However, the data from the poison control centers did not always include the source of iron, and therefore the total number of accidental exposures to products containing carbonyl iron is likely to be underestimated. Consequently, the total number of major and fatal outcomes may also be underestimated.[16] The lack of reported exposures to carbonyl iron that resulted in major outcomes is encouraging in light of the fact that at least three major outcomes would be predicted if carbonyl iron was as toxic as iron salts. However, even if carbonyl iron was as toxic as iron salts, less than one death would be predicted from exposure to carbonyl iron. The lack of reported exposures to carbonyl iron that resulted in major outcomes or death therefore may be attributable to both the insensitivity of passive reporting systems and the small number of total exposures to carbonyl iron, particularly exposures to high doses of carbonyl iron, rather than to any reduced toxicity of carbonyl iron relative to that of iron salts. Therefore, although FDA acknowledges that the data are consistent with an interpretation that accidental overdose of carbonyl iron is unlikely to result in major outcomes or death, FDA finds that the data are too preliminary to allow it to comfortably conclude that accidental overdose of carbonyl iron-containing products is unlikely to result in major outcomes or death.

Moreover, as already discussed, the available animal toxicity data are unsuited for the agency's purpose in evaluating whether the acute toxicity in children of carbonyl iron is less than that of iron salts, and it would be premature for FDA to exempt carbonyl iron absent data that permit such an evaluation. In order to reach a decision on whether to exempt carbonyl iron from the packaging requirements of this final rule, FDA needs animal data comparing the acute toxicity of carbonyl iron to that of at least one iron salt that is commonly used in the manufacture of iron-containing supplements and drug products.

In summary, given the possibility that accidental overdose of products containing carbonyl iron could result in death of a small child, the available data on accidental exposure to carbonyl iron-containing products are too preliminary to provide a basis for an exemption for carbonyl iron from the packaging requirements of this final rule. Moreover, it would be premature for FDA to exempt carbonyl iron from the packaging requirements of this final rule given the lack of animal data that clearly establish the lower toxicity of carbonyl iron compared to at least one commonly used iron salt.

Nonetheless, FDA is encouraged by the fact that accidental overdose of products containing 30 mg or more of carbonyl iron per dosage unit thus far is not known to have caused major outcomes or death. FDA also is encouraged by the fact that the existing animal data, limited though they are, are consistent with an interpretation that carbonyl iron may be so much less toxic than iron salts that an accidental overdose of a carbonyl iron-containing product is unlikely to result in a major outcome or death. Therefore, FDA finds that it is appropriate to provide a temporary exemption from the packaging requirements of this final rule to enable interested parties to conduct appropriate animal studies that could establish a reduced toxicity for carbonyl iron relative to that of iron salts.

Accordingly, §§ 111.50(b) and 310.518(b) temporarily exempt carbonyl iron from the packaging requirements of this final rule. The temporary exemption will automatically expire 1 year after date of publication of this final rule in the **Federal Register**. If, during the temporary exemption period, FDA receives animal data that clearly establish that carbonyl iron is significantly less toxic than at least one commonly used iron salt, FDA will consider permanently exempting carbonyl iron from the packaging requirements of this final rule. If, following the temporary exemption period, FDA does not extend the exemption, the packaging requirements of this final rule will become effective for products containing carbonyl iron according to the same principle as for products containing other forms of iron, i.e., on the date that is 180 days after the date of expiration of the temporary exemption, or on July 15, 1998. (See discussion of the effective date in sections VI.B.7. and VIII. of this document.)

To predict the margin of safety that carbonyl iron would afford relative to iron salts in the event of accidental overdose, the agency needs data, in weanling/juvenile laboratory animals of 2 to 3 species,[17,18] in which the acute/short-term toxicity of orally administered elemental iron of known particle size[19] is compared to the acute/short term toxicity of at least one iron salt that is commonly used in the manufacture of iron supplements. The range of particle sizes of the carbonyl iron used in the comparative studies should correspond to that of the product proposed to be exempted.

[16] At the public workshop, FDA stated that the ingested substance had been identified as ferrous sulfate in "16 or 17 out of 37 or 40 deaths." Review of the supporting medical records for the 37 deaths reported in the iron proposal now shows that the source of the iron involved in the accidental overdose exposures resulting in death is known in 29 of those 37 cases and that in each of these 29 cases the source was not carbonyl iron. In addition, FDA is aware that 2 additional children died of accidental overdose of an iron-containing product in 1994, and that the source of iron in both of these cases was ferrous sulfate (Refs. 1 and 2). Therefore, the number of reported pediatric deaths attributable to accidental overdose of an iron-containing product in which the source of iron is not known to FDA is 8 of 39 reported pediatric deaths.

[17] As discussed above, extrapolation from data on iron toxicity obtained with experimental animal species to predict iron toxicity in humans is not straightforward. Consequently, it would be imprudent to rely on data derived from a single animal species.

[18] The studies should be performed on at least one weanling/juvenile rodent and one weanling/juvenile nonrodent species whose gastrointestinal physiology is similar to that of infants and children (e.g., swine).

[19] As discussed above, particle size is an important factor in the rate of ionization, and thus the potential toxicity, of elemental iron.

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The studies should be carried out over a range of doses, so that they can provide information relevant to the acute/short term toxicological profile, including dose responses and NOAEL's for toxic effects. The endpoints of these studies should include deposition of iron in tissues, clinical measures of iron status (e.g., hematocrit, hemoglobin, serum iron, serum ferritin, total iron binding capacity), assessment of systemic tissue damage using biomarkers (e.g., liver enzymes in serum for liver damage; blood urea nitrogen for kidney damage), gross necroscopy examination, histopathology (with emphasis on known primary target organs of acute oral toxicity of iron such as the gastrointestinal tract and liver, and on any gross lesions observed on necropsy), effects on lipid peroxidation in tissues (liver, intestines, red blood cells), and systematic evaluation and recording of clinical signs and symptoms. Such data will provide a direct comparison of the thresholds for toxic effects of carbonyl iron relative to those of ferrous salts. If the inter-species variability is large, the agency will need data in at least one species that closely resembles the human child, such as a primate species, in order to be able to extrapolate from the animal data to predict whether the toxicity of carbonyl iron in children is reduced relative to that of iron salts.

FDA intends to evaluate the animal data described above, as well as any relevant data from studies in humans that may become available, to determine whether they support a reduced toxicity for carbonyl iron such that an extension, temporary or permanent, of the exemption for carbonyl iron from the packaging requirements of this final rule is justified. However, animal data can only be used to support an interpretation that accidental exposure to a carbonyl iron-containing product is unlikely to result in a major outcome or death and cannot supersede data obtained from human exposure to carbonyl iron-containing products. Thus, animal data would not be a sufficient basis for a continued exemption in the event that FDA receives information that accidental exposure to a product containing 30 mg or more of carbonyl iron per dosage unit resulted in a major outcome or death, FDA will likely move quickly to revoke the exemption.

The temporary exemption identifies the form of iron that is exempted as carbonyl iron that conforms to § 184.1375 (21 CFR 184.1375). Section 184.1375 should accurately describe the carbonyl iron used in iron-containing dietary supplement and drug products, and, given the need for promulgation of this final rule, FDA finds that it is appropriate to incorporate it into the final regulation. However, FDA invites the submission of information on whether this description of carbonyl iron is adequate, and whether alternative or additional information is appropriate and necessary in the event that FDA decides to extend, or make permanent, the exemption. For example, FDA solicits information on whether it is appropriate and important to include a specification for the particle size of carbonyl iron that is used to manufacture dietary supplement and drug products. FDA also solicits information on factors other than particle size, such as the physical and chemical properties of the iron as well as binders and excipients, that may influence the rate of ionization of carbonyl iron and recommendations on whether it is appropriate and important to include specifications for such factors used in the manufacture of products containing carbonyl iron.

M. Other Non-Ionic Forms of Iron

The agency received one comment from a manufacturer of PIC. The comment included data obtained from the TESS database of the AAPCC on a total of 228 potentially toxic exposures to products containing PIC. None of the exposures resulted in death. One exposure, which involved a suspected suicide attempt by an adult and was accompanied by the concomitant consumption of other drug products, resulted in a major outcome. The 228 total exposures also resulted in 3 moderate outcomes and 24 minor outcomes. The comment concluded that the overall risk of accidental iron poisoning or death associated with PIC is low.

In order to determine whether PIC merits an exemption from the labeling requirements of this final rule, FDA has considered whether the information supplied in the comment supports a conclusion that accidental overdose of a PIC-containing product is unlikely to place a small child at risk of illness or injury any time he or she gains unlimited access to such products. The total number of reported acute, accidental exposures in humans to PIC is very small, but already has resulted in 3 moderate outcomes and 24 minor outcomes. Therefore, the available data on acute, accidental exposure of humans to PIC does not support an exemption for PIC-containing products from the labeling requirements of this final rule. Accordingly, FDA is not exempting products containing PIC from the labeling requirements of this final rule.

The comment also included data from an acute 14-day oral toxicity study in rats. The study was initiated with a range-finding test consisting of one male and one female rat at five doses ranging from 500 to 5,000 mg Fe/kg body weight. Following the range-finding test, a limit test was performed in which one group of five male and five female rats received a single oral administration of PIC at a dose of 5,000 mg Fe/kg body weight. Following dosing, the limit test rats were observed daily and weighed weekly. A gross necroscopy examination was performed on all limit test rats, and no gross internal findings were observed at necropsy after the 14-day exposure. No mortality occurred during the limit test, and the acute oral LD_{50} for PIC in rats therefore was estimated to be greater than 5,000 mg Fe/kg body weight.

As discussed above for carbonyl iron, the basis for exempting products containing 30 mg or more PIC per dosage unit from the packaging requirements would be data that persuade the agency that accidental overdose of products containing 30 mg or more of PIC per dosage unit is unlikely to result in major outcomes or death. The information bearing on this question is: (1) Data on the outcomes of acute, accidental exposure of children to iron-containing products; (2) data on the acute toxicity in animals of carbonyl iron compared to that of iron salts; and (3) the ability to extrapolate from the acute toxicity data in animals to predict a reduced toxicity for carbonyl iron in children.

As already discussed, the available data on accidental human overdoses are unclear as to whether there have thus far been any major outcomes resulting from exposure to PIC-containing products because the one report of major outcome was not clearly attributable to the consumption of a PIC-containing product. However, the lack of reported major outcomes or death associated with accidental overdose of products known to contain PIC may be attributable to both the insensitivity of passive reporting systems and the small number of total exposures to date. Therefore, FDA finds that the data on accidental exposures to PIC-containing iron products are too preliminary to

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provide a basis for an exemption for PIC from the packaging requirements of this final rule.

Moreover, there are no animal toxicology studies directly comparing the acute toxicity of PIC in animals to that of iron salts. The available animal data therefore have limitations similar to those already discussed for the data submitted in comments discussing the toxicity of carbonyl iron and are unsuited for the agency's purpose in evaluating whether the acute toxicity in children of PIC is less than that of iron salts. It would be premature for FDA to exempt PIC absent such data. In order to reach a decision on whether to exempt PIC from the packaging requirements of this final rule, FDA needs animal data, discussed in detail above for studies with carbonyl iron, comparing the acute toxicity of PIC to that of at least one iron salt that is commonly used in the manufacture of iron-containing supplements and drug products.

At this time, the use of PIC in iron-containing products is not included in any FDA regulations. The comment did not submit sufficient information bearing on the manufacturing process, composition, and physical properties of PIC to allow the agency to adequately describe PIC in any exemption from the packaging requirements of this final rule. For example, the comment did not discuss the role, if any, of particle size and solubility of PIC, or the role of excipients and binders, as factors that may influence the toxicity of PIC. Before FDA can consider an exemption for PIC from the packaging requirements of this final rule, FDA needs information that adequately describes the manufacturing process, composition, and physical properties of PIC. If the agency reached a decision to exempt PIC from the packaging requirements of this final rule, FDA would use this information to define, in the agency's regulations, the substance that is exempt. FDA also solicits information on factors other than the properties of PIC itself, such as the physical and chemical properties of binders and excipients, that may influence the absorption and toxicity of PIC and recommendations on whether it is appropriate and important to include specifications for such factors used in the manufacture of products containing PIC.

In summary, the available data on accidental exposure to PIC-containing products are too preliminary to provide a basis for exempting PIC from the packaging requirements of this final rule. Further, FDA is concerned whether the available data on accidental exposure to PIC-containing products actually signify that PIC is no less toxic than ionic forms of iron. Moreover, it would be premature for FDA to exempt PIC from the packaging requirements of this final rule given the lack of animal data that clearly establish the lower toxicity of PIC compared to at least one commonly used iron salt. In addition, FDA lacks information that would allow the agency to describe the substance that is exempt. Therefore, at this time FDA is not exempting products containing PIC from the packaging requirements of this final rule.

Regardless of whether FDA receives animal data that support a conclusion of reduced toxicity for PIC, the agency cautions that animal data alone may not provide a sufficient basis for an exemption in light of the extremely small number of exposures in humans to date. Further, as already discussed for carbonyl iron, animal data can only be used to support an interpretation that accidental exposure to a PIC-containing product is unlikely to result in a major outcome or death and cannot supersede data that may be obtained in the future from accidental human exposure to PIC-containing products.

VI. Other Matters

One comment requested an exemption from both the labeling and unit-dose packaging requirements for the inert, iron-containing tablets that are included in packages of oral contraceptives. The inert tablets are taken on the days on which the active drug product is not taken to facilitate proper and regular use of the contraceptives by enabling women to take a pill each day rather than having to remember which day to resume after the days for which an active pill is not provided. The comment argued that meeting the requirement for an additional warning statement on the immediate container labeling of oral contraceptive products would be impossible because of the lack of space, the small size of the immediate container, and preexisting label requirements. The comment stated that oral contraceptives are a special class of prescription products that should be exempted from the labeling requirements of this rule.

The agency observes that the inert tablets in oral contraceptive products contain up to 75 mg of ferrous fumarate (equivalent to 25 mg of iron), and therefore a 1-month supply of oral contraceptives containing 7 inert tablets will contain up to 175 mg of iron. The total amount of iron in a 1-month supply of oral contraceptives is only 70 percent of the amount (250 mg) that experts have stated is sufficient to produce symptoms of poisoning in a 10 kg child (see discussion above). Moreover, FDA is not aware of any reported cases of poisoning caused by the inert, iron-containing tablets in packages of oral contraceptives. Moreover, these products are separately regulated. Therefore, FDA is granting the requested exemption from the specific labeling requirement of this final rule (see § 310.518(d)). If FDA becomes aware of poisoning caused by the ingestion of the inert, iron-containing tablets in oral contraceptive packages, it may reconsider the exemption.

The amount of iron per tablet is below the threshold level for unit-dose packaging of 30 mg of iron per dosage unit. Therefore, an exemption from the unit-dose packaging requirement is not necessary.

VII. Economic Impact

FDA has examined the economic implications of the final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small businesses. Though not economically significant, FDA finds that this final rule is a "significant regulatory action" as defined in Section 3(f)(4) of the Executive Order because it raises novel policy issues. The agency also finds under the Regulatory Flexibility Act that the final rule is likely to have a significant impact on a substantial number of small entities. Finally, the agency, in conjunction with the Administrator of OIRA, OMB, finds that this rule is not a major rule for the purposes of congressional review (Pub. L. 104–121).

The rule will result in costs in the first year of approximately $56 million and $4.3 per year starting in year two for total discounted costs of $118 million

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(discounted to infinity at 7 percent). The rule will also result in per year benefits of between $31.5 million and $61 million for total discounted benefits of between $426 million and $847 million (discounted to infinity at 7 percent). Below is a detailed description of FDA's economic analysis.

In response to the iron proposal, the agency received many comments regarding the economic impact of the proposed actions. The comments were from a variety of sources including consumer advocacy organizations, manufacturers, distributors, and trade associations.

A. Description of the Industry

In the analysis of the proposed rule, FDA stated that there are approximately 300 iron-containing products that may be affected by this action, of which approximately one-half contain 30 mg or more of iron per dosage unit. FDA received one comment from an industry trade association stating that there are between 1,300 and 3,000 iron-containing products. The comment did not specify the number or percentage of products containing 30 mg or more of iron per dosage unit.

The agency acknowledges that it originally underestimated the number of iron-containing products that may be affected by these actions. Therefore, the analysis of the final rule will be based on an estimate of 2,150 products ((1,300 + 3,000)/2). The agency will continue to assume that approximately one-half, or 1,075 products, contain 30 mg or more of iron per dosage unit.

The types of iron-containing products that have been associated with poisonings of young children are products offered in solid oral dosage form as multivitamin/mineral supplements, products intended for use as iron supplements, and drug products for therapeutic purposes. Although this final rule requiring warning statements affects all iron-containing products, the requirement for unit-dose packaging affects only products containing 30 mg or more of iron per dosage unit. Typically, multivitamin/mineral supplements provide less than 30 mg of iron per dosage unit and therefore are subject to warning statement requirements but not to packaging requirements. Iron supplements and drug products typically contain 30 mg or more of iron per dosage unit and therefore are subject to both requirements.

Iron-containing products may be purchased by consumers on their own initiative as food supplements, or they may be prescribed by physicians. Information available to the agency at the time of the proposal suggested that the overwhelming majority of iron-containing products are packaged in bottles. Additional information suggested that iron-containing products administered in hospitals are commonly packaged in unit-dose packaging. Unit-dose packaging is preferred by hospitals because use of this type of packaging provides each dosage unit with an identification and an expiration date and allows the hospital to continue to dispense product from a partially used package of drugs rather than discard a bottle opened for a specific patient after that patient is discharged. There were no comments challenging FDA's assumption that iron-containing products dispensed in hospitals are packaged in unit-dose packaging, and, therefore, this assumption is being retained in this analysis.

In the proposed analysis, FDA reported that, according to the National Center for Health Statistics, of the approximately 169 million persons of age 18 or older, 19.7 percent consume iron-containing products. If it is assumed that each individual consumes one dosage unit per day, there are approximately 12 billion dosage units of iron-containing products consumed annually in the United States. The agency does not have complete information on the number of dosage units of iron-containing products that contain 30 mg or more of iron nor did any comments provide such information. According to the recommended dietary allowance published in 1989 by the Food and Nutrition Board of the National Academy of Sciences, only pregnant women require 30 mg Fe/day. Therefore, FDA assumes that the number of higher-dosage iron-containing products consumed per year can be estimated by multiplying the number of pregnant women in the United States by the number of days in 1 year.

In the most recent year (1991) for which data is available, there were 4.1 million live births. Assuming further that each live birth resulted from a distinct pregnant woman (as opposed to more than one birth per pregnant woman), this data implies that there are about 4.1 million pregnant women on any 1 day in the United States, and that the number of dosage units per year can be estimated at 4.1 million times 365 days per year or about 1.5 billion (assumes women who give birth take iron-containing products for 3 months of nursing after delivery). The number of pregnant women may be overestimated because multiple births by one woman are ignored. The number of pregnant women may also be underestimated because using the number of live births ignores pregnancies not resulting in a live birth. In addition, all pregnant women may not necessarily take iron-containing products or begin on the first day of pregnancy, another source of potential overestimation.

B. Comments on Regulatory Options

The proposed analysis raised many possible regulatory alternatives available that may reduce the number of cases of pediatric poisonings from the accidental ingestion of iron-containing products. The options include packaging, warning statements, product reformulation, and educational efforts.

1. Packaging

In the proposal, FDA proposed to require that products containing 30 mg or more of iron per dosage unit be packaged in unit-dose containers. Because of Consumer Product Safety Commission regulations, most iron containing products currently must be packaged in CRC's. Therefore, this option would likely result in child resistant unit-dose packaging for most of these products.

a. Costs. In the analysis of the proposed actions, FDA stated that there are four types of costs associated with a mandated packaging change: Equipment, materials, transportation, and administrative costs. FDA received one comment stating that the changes in packaging will require additional storage costs of $10,800 for four products. In addition, several other comments stated that the packaging requirements would cause manufacturers to incur additional stability testing at a cost of $4,000 per product.

FDA agrees that the packaging requirements will increase storage costs and has changed its analysis to reflect that change. Using the data provided in the comment, the agency estimates storage costs to be approximately $1.4 million per year.

As discussed above, stability testing with new packaging is required under drug CGMP regulations. Therefore, FDA agrees that the packaging requirements of this final rule will increase costs for drug products containing 30 mg or more of iron per dosage unit and will change its analysis to reflect that change. There are approximately 150 drug products containing 30 mg or more iron per dosage unit. Total stability testing costs will be $0.6 million (150 drug products × $4,000).

Several comments expressed concern over the cost of equipment. One

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comment from a manufacturer stated that machine tooling costs would be approximately $20,000 per product. However, one comment from a trade association stated that contract packaging firms can provide unit-dose packaging services at a cost that would be significantly less than purchasing machinery, although there was no data supporting this statement.

In the analysis of the proposed rules, FDA stated that many packagers of iron-containing products will be required to purchase new packaging equipment. Incorporating the costs provided in the comments with information used to develop the estimates used in the proposed analysis, FDA now estimates the cost of equipment used in packaging blisters, one common form of unit-dose packaging, is between $20,000 and $250,000, or on average $135,000. New equipment will not be purchased for each product sold because some manufacturers already possess unit-dose packaging equipment, and some manufacturers will use the services of contract packaging firms. FDA will not change its equipment cost per product, but it will reduce the number of products requiring new equipment based on the assumption that many firms will use contract packagers. If approximately one-third of the 1,075 products containing 30 mg or more of iron per dosage unit require the purchase of new equipment, the total equipment cost will be $48 million.

The cost of child-resistant bottles, currently the most common form of packaging, is approximately $7 per 1,000 dosage units. Child resistant blister packaging materials cost approximately $9 per 1,000 dosage units, a difference of $2 per 1,000 dosage units. FDA received no comments challenging these cost estimates.

In the proposed analysis, FDA stated that it did not have information to estimate transportation costs and requested comments. FDA received one comment providing an estimate of additional transportation costs caused by unit-dose packaging requirements to be approximately $340,000 per year.

Because no other information was provided to the agency, FDA will use this estimate in its analysis.

FDA received one comment regarding administrative costs. One manufacturer stated that its administrative cost of reviewing and implementing the regulation would be $13,000.

FDA notes that this estimate, when examined on a cost-per-product basis, is not out of line with its estimate of approximately $500 per product in the first year. Administrative costs are the dollar value of the incremental administrative effort expended in order to comply with a regulation. Administrative activities include, but are not limited to, reading and interpreting the regulation, establishing a policy to comply with the regulation (which may include, for example, challenging the regulation, compliance with direct requirements, remarketing product, or withdrawal from the market), and identifying the appropriate staff to comply with the regulation, monitoring to ensure staff efforts are consistent with corporate policy, and interacting with Federal inspectors.

The cost for equipment for unit-dose packaging for all products with 30 mg or more of iron per dosage unit is estimated to be $48 million (358 products × $135,000). The cost of materials is estimated to be $3 million per year or $43 million (discounted to infinity at 7 percent). Transportation costs are estimated to be $.34 million per year or $4.86 million (discounted to infinity at 7 percent). Storage costs will be approximately $1.4 million per year or $20 million (discounted to infinity at 7 percent). Administrative costs are estimated to be $0.54 million (1,075 × $500). Total costs associated with requiring unit-dose packaging for products containing 30 mg or more of iron per unit dose are estimated to be $116 million (discounted to infinity at seven percent) with annual costs not exceeding $54 million in any 1 year.

b. Benefits. FDA received two comments concurring with its analysis of the benefits of unit-dose packaging, and no comments challenging that analysis. In the past 8 years, there have been at least 39 cases of pediatric fatalities from the accidental ingestion of iron-containing products, or a mean of 4.9 deaths per year. Data on the dosage of the product consumed is available for 25 of these cases. In all cases for which information is available, the product consumed contained at least 40 mg of iron. In a 7-year period, there were nearly 190 poisonings that were life threatening or resulted in permanent injury, and over 2,000 poisonings that required some form of treatment. FDA believes that most, if not all, such deaths and some poisonings can be prevented by requiring that higher-dosage iron-containing products be packaged in unit-dose containers, because studies indicate that the child is less likely to consume the number of dosage units that may be fatal if the child must first remove each tablet from a unit-dose package.

Although no studies have attempted to directly estimate the value of reducing the risk of death and illness to children in particular, many studies have attempted to estimate the value of reducing these risks to adults. Most of these estimates are based on wage differences between high and low risk jobs and, thus, are derived from the labor market decisions of middle-aged adults. Although these estimates cluster around a fairly small range, $2 million to $10 million, it is not clear that these estimates are valid when applied to children.

FDA has used estimates of the value of reducing risks to adults to a level that would avoid one statistical fatality between $3 million and $5 million in past regulations, including food labeling and Hazard Analysis Critical Control Points (HACCP). One method of estimating the value of reducing risks to children is to adjust the value of reducing risks to adults by accounting for the difference in the number of life-years saved. Under this approach, an often used estimate of the value of reducing the risks to adults to a level that would avoid one statistical fatality is $5 million for a middle-aged adult. If this value does not vary with life years remaining (that is, if we assume that an infant is willing to pay the same amount to avoid risk of death as a 40 year old would be willing to pay and assuming the same distribution of wealth exists in both age groups), then $5 million is a reasonable estimate. If, however, this value does vary with life years remaining, then the corresponding value for reducing the risks to small children would be $11 million. FDA used these figures ($5 to 11 million) in the proposed analysis to provide a range of estimates. FDA received no comments objecting to these estimates and is, therefore, continuing to use these values in this analysis.

Requiring unit-dose packaging for iron-containing products at 30 mg or more of iron per dosage unit would result in benefits of reducing an average of 4.9 deaths per year, valued at between $24.5 million and $54 million per year, or between $350 million and $771 million (discounted to infinity at 7 percent).

Requiring unit-dosage packaging for iron-containing products will also reduce the number of nonfatal cases of pediatric iron poisoning. FDA has obtained from CPSC case reports for 78 iron ingestions necessitating emergency room treatment reported over 7 years, or an average of 11 illnesses per year. The dosage consumed was reported for 12 of these cases. In five of those cases, the dosage reported was under 30 mg of iron per dosage unit. AAPCC data show that from 1986 through 1992 there were nearly 190 poisonings that were life

threatening or resulted in permanent injury, and over 2,000 poisonings requiring some form of treatment as a result of accidental ingestion of adult and pediatric iron-containing products, or an average of 286 per year. FDA is unable to predict the percent of these nonfatal poisonings that would be prevented by substituting unit-dose packaging for bottles. In the proposed analysis, FDA assumed that all nonfatal poisonings would be prevented by the proposed packaging requirements. The agency received no comments on this issue and is, therefore, continuing the assumption in this final analysis.

Using a methodology developed previously for FDA to value morbidity risks, FDA is able to estimate the value of reduced risk of nonfatal poisoning. As described in the proposed analysis, by comparing similar symptoms and medical interventions, the agency has derived an estimate of the value of preventing a nonfatal pediatric iron poisoning of $20,000 per case. Seven out of twelve cases of nonfatal poisonings were a result of ingestion of products of dosages over 60 mg of iron. Assuming this proportion is extrapolated to the remaining cases for which information is unknown, and assuming unit-dose packaging will prevent all nonfatal cases (2,000 cases in 7 years), then requiring unit-dose packaging for products containing 30 mg or more of iron per unit dose will result in reduced morbidity valued $5 million per year, or $71 million (discounted to infinity at 7 percent).

The total value of the benefits of unit-dose packaging options is the sum of the value of reducing both mortality and morbidity risks. Requiring unit-dose packaging for all products containing 30 mg or more of iron per dosage unit, would result in benefits of reducing mortality risks of between $24.5 million and $54 million per year or between $350 million and $771 million (discounted to infinity at 7 percent) and reduced morbidity valued at $5 million per year or $71 million (discounted to infinity at 7 percent). Therefore, total discounted benefits are between $29.5 million and $59 million per year or between $421 million and $842 million (discounted to infinity at 7 percent).

2. Warning Labels

a. Costs. FDA received two comments providing estimates of the cost of relabeling. One manufacturer estimated graphic and design costs at $2,850 per product. Another estimated artwork costs of $240,500 for 100 products, or $2,405 per product.

In the analysis of the proposed actions, FDA estimated that the cost of relabeling was $1,500 per label. Manufacturers of iron-containing products will be required to change their labels on both the product container and the retail package to incorporate warning statements. However, because manufacturers of iron-containing products with 30 mg or more of iron per dosage unit will also be required to change their packaging, they will not incur any incremental cost of adding a warning statement to the product container. Therefore, the redesign cost per product was estimated in the proposal was estimated to be $2,250 ($1,500 x 1.5). FDA notes that this estimate is similar to redesign costs submitted in the comments. Therefore, the analysis will not be changed based on this comment. The total cost of the warning label requirements is one-time cost of $5 million (2,150 products × $2,250).

In the proposed analysis, FDA stated that an additional cost of this regulation may be an increase in iron deficiency anemia if susceptible adults react inappropriately to a warning label targeted for children. It is possible that incidence of iron-deficiency anemia may actually increase as a result of this final action. According to NHANES II, approximately 7.2 percent of women age 15 to 19 and 6.3 percent of women age 20 to 44 suffer from iron-deficiency anemia. In addition, men had a prevalence of less than 1 percent. FDA received no comments on this issue.

b. Benefits. Warning statements will only prevent pediatric iron poisonings to the extent that they lead to changes in the behavior of the adult controlling the use of the product. Whether or not the warning messages prescribed in this final rule will cause a change in behavior will depend on a number of factors, including the degree to which the statement is noticed, read, understood, and acted upon.

There is some evidence that warning statements can change behavior. For example, research indicates that the rate of increase of sales of diet soft drinks declined after saccharin warnings were put on the labels of these products (Ref. 31). However, FDA is unable to predict exactly how many cases of pediatric iron poisoning will be prevented as a result of warning statements. To the extent that warning statements will cause adults to take proper care in handling iron-containing products and to the extent that such care is not taken in the absence of warning statements, some cases of pediatric iron poisoning will be prevented.

FDA did not receive any comments challenging its estimate of the benefits of warning statements. Therefore, the analysis will not be changed by the comments. If all products containing 30 mg or more of iron per dosage unit are subject to the packaging requirements, and packaging is 100 percent effective in preventing both fatal and nonfatal cases, then there are no benefits from warning labels on these products. However, for those products still packaged in bottles, warning labels will have an impact. If each nonfatal case of iron poisoning is valued at $20,000, and the one-time cost of warning statements is $5 million, then benefits of requiring warning statements will exceed costs if warning statements prevent at least 15 nonfatal cases every year out of an average of 285.

3. Product Reformulation—Appearance

In the proposed rule, FDA requested comment on the option of reformulating iron-containing products to be less visually attractive, i.e., not look like candy. FDA received several comments on this issue. As discussed above, none of these comments presented data to support their contention that FDA should take steps to limit the appeal of iron-containing products to young children, and therefore, FDA is not including in this final rule any requirements relating to the formulation and appearance of iron-containing products.

4. Product Reformulation—Taste

In the proposed rule, FDA also requested comment on the option of adding a bitter substance to products containing iron which would discourage multiple ingestions. FDA did not receive any comments specifically addressing this issue. However, as discussed above, FDA did receive a comment expressing an opinion that a candy-like taste needlessly encourages an unsuspecting child, who may be unlikely to chew through the sugar coat, to ingest large quantities of these products. Another comment from a State department of health reported that investigation of 5 of 17 deaths revealed that children chewed or sucked on the iron tablets. However, none of these comments presented data to support a requirement by FDA for adding a bitter substance to products containing iron to discourage multiple ingestions.

5. Forms of Iron That May Be Less Toxic

Several comments requested that iron-containing products containing carbonyl iron, an elemental iron powder, be exempted from the labeling and packaging requirements. Comments stated their belief that carbonyl iron is effective in the prevention or treatment of iron deficiency and yet is less toxic

than other forms of iron commonly used in iron-containing products. Comments also stated that a permanent exemption from both packaging and labeling would dramatically reduce the costs of the regulation.

FDA agrees that such an exemption would reduce the costs of this final regulation. According to one producer of carbonyl iron, there are approximately 35 iron-containing products marketed by 15 manufacturers currently using carbonyl iron. It is likely that, if given an exemption for carbonyl iron, most, if not all, of the rest of the industry would convert their products to this form of iron. Therefore, an exemption from both labeling and packaging requirements would reduce costs by the difference between the cost of switching to carbonyl iron and the cost of making labeling and packaging changes. The cost of carbonyl iron is approximately $5.28 per lb as compared with ferrous sulfate which costs approximately $1.70 per lb. However, carbonyl iron has an iron content which is three times as high as ferrous sulfate. Therefore, on an equivalency basis, the price of the two types of iron are approximately equal ($5.28 for carbonyl iron and $5.10 for ferrous sulfate).

The cost savings from providing an exemption from packaging requirements is $54 million in the first year, or $116 million discounted to infinity at 7 percent. There are minimal cost savings from providing an exemption from labeling requirements because most labels will still be changed to reflect a change in ingredients.

However, as stated previously, although there may be some probability that carbonyl iron is less toxic, FDA is not entirely convinced that carbonyl iron is sufficiently less toxic than other commonly used forms of iron to substantially decrease the risk of pediatric poisoning. Thus, it is possible that providing an exemption from either labeling or packaging requirements, while substantially reducing costs, could also substantially reduce benefits. If carbonyl iron is not sufficiently less toxic than other forms of iron, then encouraging the industry to convert to carbonyl iron will result in lost benefits of between $426 million and $847 million (discounted to infinity at 7 percent). A permanent exemption for carbonyl iron from labeling requirements could result in a net loss to society of approximately $5 million. An exemption for carbonyl iron from packaging requirements could result in a net loss to society of between $421 million and $842 million. On the other hand, if carbonyl iron is sufficiently less toxic than other forms of iron such that accidental overdose of products containing a high dose of carbonyl iron is unlikely to result in major outcomes or death, then an exemption from the packaging requirements would result in a cost savings of $54 million annually with no corresponding loss in benefits.

Because of the uncertainty regarding the relative toxicity of carbonyl iron, FDA is temporarily exempting products containing carbonyl iron from the packaging requirements. At the end of 1 year, those products will be subject to the unit-dose packaging requirements. However, if FDA receives sufficient data to convince the agency that an exemption from carbonyl iron will not result in any loss in benefits, the exemption will be made permanent. The temporary exemption for carbonyl iron will allow manufacturers of iron containing products to delay making changes to their packaging while conducting further studies on the toxicity of carbonyl iron. This delay will result in cost savings equal to the interest on the cost of the packaging changes (7 percent of $54 million, or $4 million). The cost of the studies will depend on the species selected. FDA estimates that conducting the necessary studies will cost approximately $30,000.

6. Consumer Education Campaign

Two of the three petitions submitted advocated educational efforts for the public and health professionals. FDA agrees that the public needs to be informed of the dangers of pediatric iron poisoning. The fact that in 7 years over 2,000 poisonings requiring some kind of treatment occurred, may indicate that the public is not aware of the potential for serious harm or death in young children from accidental ingestion of iron-containing products. FDA is developing materials for a public information campaign utilizing the channels available to FDA.

7. Effective Dates

The agency proposed to make any final rule based on the proposed rule effective 6 months after date of publication of the final rule in the **Federal Register**. FDA received many comments objecting to this effective date.

Several comments stated that the proposed effective date is not feasible for relabeling, urging FDA to consolidate the effective date with the date for the new nutrition labeling rules for dietary supplements that would be issued as a result of the DSHEA and were statutorily mandated to be effective after December 31, 1996. This would amount to a compliance period of approximately 1 year after publication of the final rules, a delay of approximately 6 months compared to the proposed effective date. One comment requested that firms be allowed to use up existing stocks of labeling bearing the voluntary warning statement. One comment stated that revising labeling requires at least 1 year.

FDA agrees that costs of compliance with labeling requirements are reduced with extended effective dates. In general, costs of compliance for labeling are less for longer compliance periods because firms can incorporate mandatory changes to product labeling with regularly scheduled changes. In general, labeling costs are reduced by 50 percent when a compliance period is extended from 6 months to 1 year. However, benefits are also delayed.

FDA has considered the requests to extend the effective date for implementing the labeling requirements of this final rule from a period of 6 months to a period of 1 year. FDA would select the regulatory option of extending the compliance period for the warning statement requirements if the marginal benefit of the option exceeds the marginal cost. The marginal benefit of extending the compliance period to 1 year is the reduction in benefits caused by not preventing nonfatal cases for 6 months. Marginal costs will exceed marginal benefits if 125 cases are not prevented. FDA believes that it is likely that the number of additional nonfatal cases not prevented during the 6-month period will exceed this number. Thus, the savings to manufacturers from a 1-year compliance period will not be as great as the savings from injuries avoided by having the warning statement on all products. Consequently, FDA is denying the requests to extend the compliance period to 1 year.

FDA also has considered the requests to consolidate the effective date for the labeling requirements of this rule with the dietary supplement labeling requirements that would be issued as a result of the DSHEA. At this time, the effective date of this final rule is after December 31, 1996, which is the statutorily mandated date of compliance for the labeling requirements imposed by the DSHEA. However, it is questionable whether FDA's regulations implementing the DSHEA labeling requirements will be finalized before that date. FDA has previously stated its intent to provide a reasonable compliance period for the provisions of DSHEA (61 FR 16423, April 15, 1996). In light of the comments that discussed the extent of the current compliance with the industry's voluntary labeling program, FDA considers that a

reasonable response to the requests for a single compliance date, which still places public health at the forefront, is to retain the effective date of 180 days as proposed but to use enforcement discretion, consistent with its announced intent to provide a reasonable compliance period for the provisions of the DSHEA, for those products that bear a voluntary warning statement (such as the statement suggested by the NDMA). Products that do not bear any warning statement, however, must be in compliance with this final rule within 6 months of its date of publication. In the interest of fairness, the agency is likely to follow a similar approach with respect to iron-containing drug products even though iron-containing drug products are not subject to the agency's labeling regulations implementing DSHEA.

Several comments requested an extension of the effective date for the packaging requirements. One comment stated revising packaging requires at least 1 year. The comment stated that the time required to order, obtain, and implement new tooling and equipment easily exceeds 180 days. Another comment suggested that many firms would have to use outside contractors for unit-dose packaging with resultant costs and time delays but did not provide any estimates. One comment expressed uncertainty about whether the capacity of the packaging industry was sufficient to handle the extra work. One comment from the packaging industry stated that enough capacity exists to unit-dose pack all iron-containing products currently sold in the United States.

FDA agrees that costs of compliance with packaging requirements are reduced with extended effective dates. In general, extending the compliance date for packaging to 1 year would reduce costs of materials, transportation, storage, and administration. The total reduction in cost of packaging due to a 6-month extension would be approximately $5 million. However, the 6-month extension would also decrease benefits. The cost of extending the compliance date for packaging requirements for products containing 30 mg or more of iron per dosage unit is a reduction in benefits caused by not preventing fatal cases for 6 months, valued at an amount between $16 and $32 million.

FDA has considered the requests to extend the effective date for implementing the packaging requirements of this final rule. The agency's calculations show that the reduction in costs that would be expected by extending the compliance period to 1 year is small compared to the overall costs of the rule. Moreover, the reduction in benefits that would be expected by extending the compliance period to 1 year exceed the reduction in costs by a factor of 3 to 6. Therefore, FDA is denying the requests to increase the time for compliance with this final rule.

C. Regulatory Flexibility

FDA stated in the original analysis that it was not aware that any small businesses would be affected by the proposed rule and therefore determined that the rule will not result in a significant burden on small businesses. In response to those statements, FDA received comments indicating that some small businesses will be adversely affected by the rule if finalized as proposed.

One comment requested that FDA conduct an Initial Regulatory Flexibility Analysis and republish the proposed rule with that analysis, allowing for an appropriate period for public comment. FDA is denying this request. The risk of harm from accidental iron pediatric poisonings is too great for FDA to postpone rulemaking on this matter. Republishing the proposed rule would postpone action on this issue for at least 6 additional months. During that time, FDA estimates that 2 fatal cases and as many as 1,000 nonfatal cases that could be prevented by publishing the final rule rather than republishing the proposal. Further, FDA received many comments to the proposed rule providing information that FDA used to modify the provision of the rule to be less burdensome for small entities. FDA does not believe that republishing the proposed rule would result in a final rule that is significantly different from this one.

According to the Small Business Administration's (SBA) size standards, a maker of iron-containing products is small if it employees fewer than 500 persons. According to the National Nutritional Foods Association (NNFA), of approximately 100 of their members that produce iron-containing products, over 90 percent have fewer than 500 employees. However, because not all iron-containing products are produced by members of NNFA, there are probably more than 90 firms producing iron-containing supplements. According to the Bureau of the Census, approximately 84 percent, or 504 firms, of the pharmaceutical industry, which is not limited to manufacturers of iron-containing products, are small. Therefore, a significant portion of the affected industry is small by SBA's definitions. However, sources of information on the number of firms that produce iron-containing products are limited. Several sources collect information only on a subgroup of iron-containing product manufacturers, e.g., members of a particular trade organization. Other sources collect information at such an aggregated level that the information specific to iron-containing products cannot be separated out. Therefore, it is either impossible or impracticable to estimate the number of small entities that produce iron-containing products.

FDA was able to gather specific data on 10 small and 12 large producers of iron-containing supplements. The firms for which data were available sold over-the-counter iron-containing supplements through grocery stores and cannot be considered as representative of the entire industry. Many other iron-containing products are distributed through pharmacies or clinics or are marketed through other types of retail outlets and mail order catalogs. Nevertheless, because these were the only firms for which FDA could find data on the number of employees, annual revenues, and number of iron-containing products produced, the analysis was restricted to these 22 firms.

The 10 small firms employed between 4 and 440 persons (median = 111), had annual sales ranging from $450,000 to $116 million (median = $17 million), and produced between 1 and 8 iron-containing products (median = 3). A total of 35 iron-containing products were produced by small firms in the sample. The impact was heaviest on the two firms with the smallest annual revenues. For these two small firms, the regulatory cost as a percentage of annual revenues were 3 and 6 percent. The regulatory cost could be expected to raise total company expenses by 4 and 8 percent for these two small firms. In addition, the regulatory cost as a percentage of total company profits was 16 and 30 percent for these two small firms. On average, the ten small firms in the sample would experience an increase in total company expenses of 1.6 percent (median = .68 percent). The costs of the regulation as a percentage of total company profits was 6.27 percent on average for the 10 firms in the sample (median = 2.64 percent).

By comparison, the 12 large firms in the sample employed between 600 and 82,000 persons (median = 21,950), had annual sales between $60 million and $19 billion (median = $6.1 billion), and produced between 1 and 15 iron-containing products (median = 5). A total of 67 products were produced by the large firms in the sample. On average, large firms would experience

an increase in total company expenses of 0.05 percent (median = .0021 percent). Regulatory costs as a percent of annual revenues would be 0.04 percent for the average large firm (median = .0017 percent). Regulatory costs as a percent of total company profits would be 0.21 percent on average for large firms (median = .0083 percent).

D. Alternatives to Provide Regulatory Relief for Small Business

There are five alternatives that the agency considered to provide regulatory relief for small entities. First, FDA considered the option of exempting small entities from the requirements of this rule. Second, FDA considered lengthening the compliance period for small entities. Third, the agency considered exempting products containing elemental iron, such as carbonyl iron, from packaging requirements because of its low potential for toxicity. Fourth, FDA considered less restrictive warning label requirements for small entities. Finally, FDA considered the option of establishing performance rather than design standards.

1. Exempt Small Entities

One alternative for alleviating the burden for small entities would be to exempt them from the provisions of this rule. However, the majority of the firms engaged in the manufacture of iron-containing products are small. Even accounting for the fact that large firms produce more products on average than small firms, exempting small firms would exempt a large proportion of iron-containing products. Although this option would clearly eliminate the burden on small firms, it would also result in a significant decrease in the number of pediatric iron poisonings prevented. Therefore, FDA concludes that selecting this alternative would defeat the purpose of the regulation.

2. Lengthen the Compliance Period

As discussed above, the agency proposed to make any final rule effective 6 months after publication of the final rule. The DSHEA imposes certain labeling requirements on dietary supplements to be effective in December 1996. FDA could consolidate the effective date for the warning label requirements with the effective date for the new nutrition labeling format for dietary supplements, thus reducing costs. FDA received many comments stating that extending the compliance period for labeling requirements would reduce the burden for small entities without significantly reducing the benefits of the actions.

FDA agrees that extending the compliance period for the labeling requirements to coincide with the effective date for the requirements of DSHEA would significantly reduce the burden of the labeling requirements on small entities. However, a delay in the effective date for small entities would reduce the number of accidental poisonings that would be prevented by between 7 and 100 nonfatal cases. Therefore, the agency does not agree that the reduction in costs exceeds the reduction in benefits that would be expected. However, because compliance with the industry's voluntary labeling program appears to be significant, as stated previously in this document, FDA is retaining the effective date of 180 days as proposed but intends to exercise its enforcement discretion, consistent with its announced intent to provide a reasonable compliance period for the provisions of the DSHEA, for those products bearing a voluntary warning statement, such as the statement suggested by NDMA, until after the agency begins to enforce the labeling regulations implementing DSHEA. FDA believes that this response will relieve some of the burden associated with the warning statement requirements.

3. Exemption for Carbonyl Iron

Several comments to the proposed rule suggested that an exemption for carbonyl iron would reduce the impact on small entities. Because it is less expensive to switch to carbonyl iron than to comply with the packaging requirements, most or all small producers would likely take advantage of the exemption. Thus, FDA acknowledges that exempting products made with carbonyl iron would significantly reduce the burden on small entities. Because of the uncertainty regarding the relative toxicity of carbonyl iron, FDA is temporarily exempting products containing carbonyl iron from the packaging requirements for 1 year. If FDA receives sufficient data to convince the agency that an exemption from carbonyl iron will not result in a significant loss in benefits, the exemption will be made permanent. Because this exemption would apply to large firms as well as small, FDA does not believe that small entities will bear the cost of developing the necessary data.

4. Less Stringent Labeling Requirements

Elsewhere in this preamble, FDA has responded to comments from both large and small firms regarding more flexible requirements with respect to warning statements. Upon consideration of the comments, FDA has amended its proposed warning label requirements to allow as much flexibility as is possible. For example, FDA is no longer requiring that the warning statement appear on the principal display panel. FDA is also allowing firms that currently use warning statements additional time to modify their labels. Because the requirements of the final warning statements requirements are as flexible as possible, there is no room for additional flexibility for small firms.

5. Performance Standards Rather Than Design Standards

FDA considered the possibility of establishing performance rather than design standards for this final rule. Although specifically prescribing packaging and labeling changes, FDA has written performance based criteria for certain provisions of this rule. In the case of warning label statements for unit-dose containers, FDA has revised the wording of the regulation in such a way that makes clear that the manufacturer bears the responsibility in designing labeling that will meet the agency's goal of informing consumers of the dangers to small children from an accidental overdose of a product that contains iron but provides the manufacturer with flexibility in determining how it will do so. Also, FDA has decided specifically not to require any particular type of packaging, for example blister packs or pouches. Instead, FDA is allowing the manufacturer to determine the most appropriate packaging for its product provided that the packaging meets the goal of allowing access to only one dose at a time.

FDA considered the potential for establishing an acceptable toxicity for iron-containing products rather than prescribing packaging and labeling requirements to reduce risk of harm. It is not clear that this option would be less costly for small entities. For most sources of iron, the available toxicity data either does not exist or is unsuited for the purpose of evaluating the toxicity of the form of iron in humans.

E. Summary

FDA has examined the impact of the final rule in accordance with Executive Order 12866 and has determined that it is not an economically significant rule. The rule will result in costs in the first year of approximately $56 million and $4.3 per year starting in year two for total discounted costs of $118 million (discounted to infinity at 7 percent). The rule will also result in per year benefits of between $31.5 million and $61 million for total discounted benefits of

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between $426 million and $847 million (discounted to infinity at 7 percent).

FDA has also examined the impact of this final rule on small businesses in accordance with the Regulatory Flexibility Act. This analysis with the rest of the preamble constitutes the Final Regulatory Flexibility Analysis. FDA has determined that this rule is likely to have a significant impact on a substantial number of small entities. However, if the temporary exemption for products made with carbonyl iron is made permanent, the impact on small entities will be significantly reduced. FDA is also reducing the impact on small entities by exempting from the labeling requirements those products bearing a voluntary warning statement until after the agency's labeling regulations implementing DSHEA take effect. FDA, in conjunction with the Administrator of OIRA, OMB, has determined that this rule is not a major rule for purposes of congressional review.

F. Public Outreach

FDA has conducted extensive outreach to a wide audience on the problem of accidental overdose of iron-containing products in small children. This outreach included independent FDA activities as well as cooperative efforts between FDA and professional trade organizations.

One focus of FDA's outreach effort was to educate consumers about the danger that iron-containing products posed to small children to foster changes in behavior with respect to safe handling of these products. This effort included direct outreach to consumers through TV and radio public service announcements in English and in Spanish; a camera-ready newspaper column in English and Spanish; multicolored posters, in English and in Spanish, distributed to retail pharmacists and clinics operated by the Women, Infants, and Children Program of the U.S. Department of Agriculture; an FDA backgrounder, which described the agency's efforts to protect children from accidental iron poisoning, that was both disseminated in printed form and made available through electronic means as a special feature in the FDA News section of the agency's home page on the World Wide Web (August 1995); an article in FDA Consumer, the agency's official consumer publication; a "Dear Consumer" letter distributed to more than 500 organizations with more than 10,000 affiliates; and a "Dear Consumer Newsletter Editor" letter to more than 150 consumer publications. FDA believed that many of these efforts would be noticed by small producers of iron supplements.

A second focus of FDA's outreach effort was to inform the professional health care community of the danger that iron-containing products posed to small children so that health care providers could help disseminate educational materials to consumers and promote the safe handling of iron-containing products. FDA notified several dozen pharmacy, medicine, and nursing organizations of the proposed regulation by telefax, including a copy of the press release, backgrounder, and summary of the regulation; mailed a "Dear Doctor" letter to obstetricians/gynecologists; issued a Medical Bulletin; and published columns in leading medical journals.

A third focus of FDA's outreach effort was to inform manufacturers of iron-containing products of the agency's proposed regulations on packaging and labeling such products and encourage them to work together with the agency to develop a final rule based on the proposal. The initial outreach consisted of a telefax notification, including a copy of a press release from the Department of Health and Human Services and the above-mentioned FDA backgrounder, to several trade associations to alert them to the publication of the agency's proposed rule, followed by a direct mailing of a copy of the proposed rule to those organizations. In addition, FDA met with representatives of two manufacturers' trade organizations shortly after the publication of the proposed rule to discuss specific aspects of the proposed regulation. FDA also placed a summary of key provisions of the proposed rule in the FDA News section of the agency's home page on the World Wide Web.

VIII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of October 6, 1994 (59 FR 51030). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IX. Paperwork Reduction Act

The labeling requirement of this final rule is not within the scope of the Paperwork Reduction Act of 1995, because under 5 CFR 1320.3(c)(2),[20] it is excluded from the definition of collection of information.

X. Effective Date

As discussed above (see section VII.B.7. of this document), the effective date of the labeling requirements of this final rule is 180 days after the date of its publication in the **Federal Register** except that the effective date for iron-containing dietary supplement and drug products bearing a voluntary warning statement (such as the statement suggested by the NDMA) is after December 31, 1996 (i.e., after the agency's labeling regulations implementing DSHEA take effect).

As also discussed above (see section VII.B.7. of this document), the effective date of the packaging requirements of this final rule is 180 days after date of its publication in the **Federal Register**, except that FDA is temporarily exempting products that contain carbonyl iron as the sole source of iron from these packaging requirements. The temporary exemption will automatically expire 1 year after date of publication of this final rule in the **Federal Register**. If, following the temporary exemption period, FDA does not temporarily or permanently extend the exemption, the packaging requirements of this final rule will become effective for products that contain carbonyl iron as their sole source of iron source according to the same principle as for products containing other forms of iron, i.e., on the date that is 180 days after date of expiration of the temporary exemption, or on July 15, 1998.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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2. Memorandum of telephone conversation between Paul Whittaker, FDA, and Suzanne Barone, U.S. Consumer Product Safety Commission, dated November 30, 1995.

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List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 111

Drugs, Packaging and containers, and labeling.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and record keeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, title 21 CFR chapter I is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.17 is amended by adding new paragraph (e) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(e) *Dietary supplements containing iron or iron salts.* (1) The labeling of any dietary supplement in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

WARNING: Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

(2)(i) The warning statement required by paragraph (e)(1) of this section shall appear prominently and conspicuously on the information panel of the immediate container label.

(ii) If a product is packaged in unit-dose packaging, and if the immediate container bears labeling but not a label, the warning statement required by paragraph (e)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

(3) Where the immediate container is not the retail package, the warning statement required by paragraph (e)(1) of this section shall also appear prominently and conspicuously on the information panel of the retail package label.

(4) The warning statement shall appear on any labeling that contains warnings.

(5) The warning statement required by paragraph (e)(1) of this section shall be set off in a box by use of hairlines.

3. Part 111 consisting of § 111.50, is added to read as follows:

PART 111—CURRENT GOOD MANUFACTURING PRACTICE FOR DIETARY SUPPLEMENTS

Authority: Secs. 201, 402, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 371).

§ 111.50 Packaging of iron-containing dietary supplements.

(a) The use of iron and iron salts as iron sources in dietary supplements offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, is safe and in accordance with current good manufacturing practice only when such supplements are

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packaged in unit-dose packaging. "Unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term "dosage unit" means the individual physical unit of the product (e.g., tablets or capsules). Iron-containing dietary supplements that are subject to this regulation are also subject to child-resistant special packaging requirements in 16 CFR parts 1700, 1701, and 1702.

(b)(1) Dietary supplements offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, are exempt from the provisions of paragraph (a) of this section until January 15, 1998, if the sole source of iron in the dietary supplement is carbonyl iron that meets the specifications of § 184.1375 of this chapter.

(2) If the temporary exemption is not extended or made permanent, such dietary supplements shall be in compliance with the provisions of paragraph (a) of this section on or before July 15, 1998.

PART 310—NEW DRUGS

The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

4. New § 310.518 is added to subpart E to read as follows:

§ 310.518 Drug products containing iron or iron salts.

Drug products containing elemental iron or iron salts as an active ingredient in solid oral dosage form, e.g., tablets or capsules shall meet the following requirements:

(a) *Packaging.* If the product contains 30 milligrams or more of iron per dosage unit, it shall be packaged in unit-dose packaging. "Unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term "dosage unit" means the individual physical unit of the product, e.g., tablet or capsule. Iron-containing drugs that are subject to this regulation are also subject to child-resistant special packaging requirements in 16 CFR parts 1700, 1701, and 1702.

(b) *Temporary exemption.* (1) Drug products offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, are exempt from the provisions of paragraph (a) of this section until January 15, 1998, if the sole source of iron in the drug product is carbonyl iron that meets the specifications of § 184.1375 of this chapter.

(2) If this temporary exemption is not extended or made permanent, such drug products shall be in compliance with the provisions of § 111.50(a) of this chapter on or before July 15, 1998.

(c) *Labeling.* (1) The label of any drug in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

WARNING: Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

(2)(i) The warning statement required by paragraph (c)(1) of this section shall appear prominently and conspicuously on the information panel of the immediate container label.

(ii) If a drug product is packaged in unit-dose packaging, and if the immediate container bears labeling but not a label, the warning statement required by paragraph (c)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

(3) Where the immediate container is not the retail package, the warning statement required by paragraph (c)(1) of this section shall also appear prominently and conspicuously on the information panel of the retail package label.

(4) The warning statement shall appear on any labeling that contains warnings.

(5) The warning statement required by paragraph (b)(1) of this section shall be set off in a box by use of hairlines.

(d) The iron-containing inert tablets supplied in monthly packages of oral contraceptives are categorically exempt from the requirements of paragraphs (a) and (c) of this section.

Dated: October 24, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–947 Filed 1–14–97; 8:45 am]

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January 15, 1997

Part III

Department of Energy

Office of the Secretary

10 CFR Part 1045
Information Classification; Proposed Rule

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 1045

RIN 1901–AA21

Information Classification

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE or Department) proposes to revise its regulations concerning its policies and procedures on the identification of classified information. These regulations establish the policies and procedures implementing the requirements of the Atomic Energy Act of 1954 for the classification and declassification of information as Restricted Data and Formerly Restricted Data and also implement those requirements of Executive Order 12958 concerning National Security Information (NSI) that directly affect the public. These regulations prescribe procedures to be used by all agencies of the Federal Government in the identification of Restricted Data and Formerly Restricted Data, and describe how members of the public may request DOE NSI and appeal DOE classification decisions regarding such requests.

DATES: Comments on the proposed rule (3 copies) must be submitted on or before March 17, 1997. A public hearing will be held on February 26, 1997. Written requests to speak at the hearing must be received at the address below by February 12, 1997.

ADDRESSES: Send written comments and requests to speak at the hearing to Janet O'Connell, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290. (Docket No. RM–96–1045). The hearing will be held at 9:00 a.m. at the Department of Energy, Forrestal Building, Main Auditorium, 1000 Independence Ave, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Janet O'Connell, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–1113, or Joseph S. Mahaley, Department of Energy, Office of the Assistant General Counsel for National Security, Washington, DC 20585, (202) 586–0806.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis
III. Rulemaking Requirements
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C. Review Under the National Environmental Policy Act
D. Review Under Executive Order 12612
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F. Review Under the Unfunded Mandates Reform Act of 1995
G. Review Under the Regulatory Flexibility Act
IV. Freedom of Information Act Considerations
V. Invitation for Public Comment
VI. Interagency Coordination

I. Background

Under the Atomic Energy Act of 1954, 42 U.S.C. 2011, the Department of Energy is responsible for the classification and declassification of nuclear-related information. Such information is classified as Restricted Data (RD). The DOE has joint responsibility with the Department of Defense (DOD) for the classification and declassification of certain nuclear-related information which relates primarily to the military utilization of nuclear weapons. Military utilization information which can be protected as National Security Information (NSI) is classified as Formerly Restricted Data (FRD). These regulations specify the policies and procedures that organizations and individuals shall follow in classifying and declassifying RD and FRD. In formulating these policies and procedures, DOE has solicited and made use of significant recommendations from the public and other agencies of the Federal Government (hereafter referred to as "agencies"); the Department has embraced the goal of "open policies openly arrived at." The resulting proposed regulation balances the Department's commitment to maximize the amount of information made available to the public with the need to protect national security and prevent nuclear proliferation.

Section 5.6(c) of Executive Order (E.O.) 12958, "Classified National Security Information," requires that agencies that originate or handle classified information promulgate implementing regulations to be published in the **Federal Register** to the extent that they affect members of the public. Subpart D of these proposed regulations implements those requirements of the Executive order and was approved by the Information Security Oversight Office (ISOO) on July 5, 1996, in accordance with section 5.3(b)(3) of E.O. 12958.

This proposed regulation establishes overall classification and declassification policies and procedures and serves as the bridge between the Atomic Energy Act and E.O. 12958, the procedures contained in DOE and agency orders and directives, and the technical guidance in classification guides.

II. Section by Section Analysis

This proposed regulation is written in four Subparts. Subpart A provides general information on the management of the RD classification system, including the responsibilities of DOE and all agencies with access to RD and FRD. Subpart B describes procedures for the classification and declassification of RD and FRD information (as contrasted with classification and declassification of documents containing such information). Requirements and procedures for the review, classification, and declassification of RD and FRD documents to be implemented by all agencies are described in Subpart C. Lastly, Subpart D provides DOE requirements and procedures concerning NSI to the extent that they affect the public, as required by Executive Order 12958.

This regulation incorporates recommendations of the Classification Policy Study of July 1992, the Atomic Energy Act Study of January 1994, and the National Academy of Sciences Review of 1995. Copies of these studies are available from the contact person in the **ADDRESSES** section of this notice. DOE has completed a Fundamental Classification Policy Review Study which is currently undergoing interagency coordination. Its major purpose is to determine what information must still be protected in light of the end of the Cold War and to recommend declassification of all other information. The Department will consider appropriate recommendations from this latest study and seek additional comments if necessary prior to issuance of the regulation in final form.

Subpart A deals with management of the RD classification program. Responsibilities are specified for the DOE Director of Declassification for the management of the Government-wide system for the classification and declassification of RD and FRD; for DOD concerning FRD; for agency heads with access to RD and FRD; and for agency RD management officials to oversee the implementation of the program within their agency. The Nuclear Regulatory Commission (NRC) has responsibility for assuring the review and proper classification of RD under this regulation, generated in NRC and in its licensed or regulated facilities and activities. NRC and the DOE jointly develop classification guides for programs over which both agencies have cognizance.

Definitions of all terms used in any Subpart are provided in proposed § 1045.3. Where appropriate, these definitions follow precisely legal or statutory language, as in the definition of Restricted Data taken from the Atomic Energy Act (AEA). The AEA and E.O. 12958 differ in the wording used for assessing the consequences of unauthorized disclosure of information at the lowest classification level. Therefore, "Confidential" is applied to NSI if disclosure is expected to cause "damage to the national security"; to RD and FRD if the expectation is "undue risk to the common defense and security."

In the proposed regulation, "information" is defined as "facts, data, or knowledge itself." "Document" is defined as "the physical medium on or in which information is recorded, or a product or substance which contains or reveals information, regardless of its physical form or characteristics." The distinction between "information" and "documents" is important in understanding DOE classification and declassification policies and procedures. Only a few senior Government officials have the authority to make decisions concerning the classification and declassification of information and set policy. Conversely, hundreds or even thousands of Government and contractor employees have the authority to make decisions concerning the classification and declassification of documents and follow such policy

The Director, Office of Declassification (hereafter DOE Director of Declassification), is subordinate to the Director, Office of Security Affairs (hereafter DOE Director of Security Affairs). The DOE Director of Declassification reviews new information, potentially falling within the definition of RD to determine if the information should be classified as RD. However, due to the especially sensitive nature of RD information, the authority to declassify RD information is vested in the DOE Director of Security Affairs.

The decisions concerning the classification and declassification of RD made by these Directors are explained in classification guides, which contain detailed instructions as to whether information is classified. These guides are the primary basis for the review of documents to determine whether they contain RD information.

A large number of individuals within the DOE, other agencies, and their contractors may determine whether a document contains RD and, therefore, should be classified or unclassified.

This centralized policy-setting, decentralized policy-following approach ensures consistency and efficiency. However, it means that the full benefit of the Department's Openness Initiative can only be realized if the policy decisions concerning the classification and declassification of RD information made by the DOE Directors of Declassification and Security Affairs are applied by one of the many document reviewers to previously classified documents so that they are declassified and made available to the public.

FRD information and documents are generally handled in the same manner as RD except that DOD and DOE have joint authority over the classification and declassification of FRD information and some RD information which has not been transclassified to FRD but which relates primarily to the military utilization of nuclear weapons. The DOD and the DOE jointly develop classification guides for programs over which both agencies have cognizance.

Proposed § 1045.5 provides for sanctions and alerts employees to the administrative penalties that can result from violation of policies and procedures prescribed in this regulation.

Proposed § 1045.6 states that DOE will maintain an Openness Advisory Panel to advise the Secretary regarding the current status and strategic direction for the Department's classification and declassification policies and programs as well as other aspects of the Department's ongoing Openness Initiative. Several studies of DOE classification policy and recommendations from public stakeholders led DOE to creation of this panel. It is anticipated that this panel will not only provide evaluation and advice on DOE classification policies, but will also serve as an independent authority to confirm for the public the validity of classification decisions in which the full rationale cannot be disclosed for reasons of national security. This panel is currently constituted under the Secretary of Energy's Advisory Board (SEAB), in accordance with the Federal Advisory Committee Act, and composed of thirteen recognized experts in a broad spectrum of disciplines.

Subpart B applies to the small number of DOE and DOD officials who hold the authority to make decisions on the classification of information as RD or FRD. This authority is somewhat analogous to original classification authority for NSI. DOE has decided to publish these procedures and the criteria used in making classification determinations in order to formally implement the Department's openness policies and to assure the public that the RD/FRD classification process serves the public interest as well as national security interests, and will continue to do so in the future.

Section 1045.13 proposes several classification prohibitions and specifies that the classification of RD and FRD shall not be used to prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety. This prohibition is included to fulfill DOE's commitment to the public release of environmental, safety and health information, including information on human radiation experiments.

The definition of RD contained in the AEA has been interpreted to mean that all information falling within the RD definition is automatically classified or "born classified." When the AEA was written, this was effectively true and most of this type of information was classified. Now, this all-encompassing definition for RD has been reduced by nearly fifty years of declassification actions to a core of information. Information which remains classified as RD relates primarily to nuclear weapons design, or the use or acquisition of nuclear weapons or nuclear material, with nuclear science and much nuclear technology excluded because it is no longer classified. Only five areas of nuclear technology still contain information classified as RD or FRD. Each of these broad areas contains specific information that is still classified and other information that has been declassified. Identifying whether specific information is classified in these areas requires technical expertise and reference to a classification guide.

These five areas are: (1) Nuclear weapon design and utilization (includes selected information revealing theory, design principles and details, yields, inventories, mode of operation, methods for command and control, destruction, and vulnerabilities to sabotage or countermeasures); (2) nuclear material and nuclear weapon production (includes selected information revealing special techniques for manufacture); (3) inertial confinement fusion (includes selected target design and operational information judged to be particularly revealing of nuclear weapons technology); (4) military nuclear reactors (includes selected design, development, test, and operational information concerning reactor power systems for military purposes, especially for naval nuclear propulsion, and selected information concerning capabilities and vulnerabilities); and (5) isotope separation (includes key process and design information for practical

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techniques for enrichment of uranium and certain other elements of military significance).

The nuclear field is now quite mature; any new information is likely to be either further detail in an area for which classification guidance is already well established, or characteristics of a new weapon design operating outside the envelope of its predecessors. In the latter case, the classification of such information is not automatically prescribed, but is determined by authorized officials by application of specific criteria. This procedure de-emphasizes, but does not abolish, the "born classified" concept. In order to abolish the concept, an amendment to the AEA would be required.

It is DOE policy to make information publicly available to the maximum extent possible while considering nonproliferation and national security implications. Section 1045.16 specifies the Department's criteria for evaluation of RD and FRD information. These criteria have been applied internally for several years. DOE shall classify information only if a risk of damage to the national security from unauthorized disclosure can be identified and described (for NSI), or if there is undue risk to the common defense and security which can be identified and described (for RD and FRD). If information does not warrant classification under the criteria, it should be declassified and released to the public unless otherwise restricted by law, treaty or international agreement. These criteria collectively form the harm-based system for the classification and declassification of RD and FRD. The proper application of these criteria results in a qualitative analysis of the relative benefits of classification and declassification.

As an aid to application of these criteria, § 1045.15 proposes certain areas in which information may generally be presumed to be classified RD or FRD, and others in which information is generally unclassified. The term "generally" means that, as a rule but not necessarily in every case, information in the identified areas has the classification indicated. These presumptions do not address every possible RD or FRD subject area. They reflect classification decisions that have already been made and, therefore, provide the initial input for the classification decision making process for new information. This proposed regulation requires that DOE be able to provide a publicly releasable justification whenever decisions are made which are contrary to these presumptions.

DOE has traditionally avoided use of the Top Secret classification level for RD, but has required DOE personnel and contractors to follow security procedures for Secret RD that were essentially equivalent to those used throughout the Government for Top Secret NSI. These included the requirement for background investigations to obtain a "Q" clearance authorizing access to Secret RD. Within the DOD, no distinction is made for access to RD. Access to all Secret information is based on a national agency check and credit checks, which is not as in-depth an investigation as a background investigation. Now, as a result of the National Industrial Security Program, security procedures are standardized. To ensure adequate protection for its most sensitive information, DOE is proposing to reinstate use of the Top Secret RD classification for only that nuclear-related information the release of which would cause exceptionally grave damage to the national security.

Section 1045.17 provides a description and examples of information which warrant classification at the Top Secret RD level. This section specifies that information which provides a comprehensive description of a nuclear weapons design warrants classification as Top Secret RD. By upgrading this information to Top Secret RD, a background investigation will be required for all agency and contractor personnel having access to it. This action is consistent with recommendations of the recent National Academy of Sciences study of the DOE classification program calling for "high fences around narrow areas * * * and maintaining stringent security around sharply defined areas." Before the Top Secret RD classification is reinstated by this regulation, the recommendations of the Fundamental Classification Policy Review regarding this issue will be considered.

Section 1045.18 permits the classification of newly generated information in a previously declassified area. For example, established technical information concerning the reprocessing of nuclear reactor fuel is unclassified, but a major breakthrough in reprocessing could be classified if it meets the requirements for classification as RD. This provision could not be used to reclassify information that has been widely disseminated in the public domain. While this provision is expected to be used in rare instances, it provides the opportunity to classify information if the circumstance warrants.

Section 1045.19 institutionalizes accountability by requiring that DOE be able to provide a written justification for classification and declassification decisions. This requirement does not apply to derivative classification decisions made routinely at the document level (which are the subject of Subpart C), but applies only to initial information classification decisions. By including this requirement, the public will be assured access to the rationale for classification decisions. Greater understanding of the decision making process should result in increased public trust. DOE envisions that this requirement may be fulfilled by a report which summarizes all such decisions, updated periodically.

Section 1045.20 would invite proposals for declassification of RD and FRD information from the public, agencies, or contractors. This section is included to seek input so that DOE can focus its declassification efforts on subject areas in which there is public interest. Procedures are included for the submission of such proposals.

DOE authority to classify RD which is privately generated by persons in the U.S., not pursuant to Government contracts, originates in the definition of RD in the AEA and is reconfirmed in §1045.21. This section would limit this unique authority to classify privately generated RD to the Secretary and Deputy Secretary.

Subpart C prescribes requirements for classifying and declassifying documents which are applicable to all Government agencies and industry components with access to RD and FRD. The AEA is the basis for DOE to specify the detailed policies and procedures for the Government-wide RD program and to provide oversight. This Subpart sets the foundation for more effective classification management of nuclear-related information throughout Government and in industry.

Section 1045.32 specifies the authorities for the classification and declassification of documents containing RD and FRD. Classification guides are to be used by RD classifiers as the primary basis for classification decisions. DOE prefers use of classification guides over the use of source documents for derivative classification decisions because use of guides results in greater consistency in classification decisions and fewer classification errors. DOE originally considered mandating the use of guides and prohibiting the use of source documents for derivative classification. After coordinating with other agencies, DOE proposes to allow the use of properly classified source documents

for derivative classification of RD and FRD documents.

Authority for the declassification of RD documents, whatever their origin, is limited to authorized DOE personnel. DOE considered authorizing other agencies with joint DOE/agency guides to declassify RD documents in accordance with those guides. However, because most personnel in other agencies do not have specialized technical knowledge and may lack access to all of the applicable classification guides required to adequately determine if an RD document can be declassified, DOE opted to limit this authority. Future events and circumstances may prompt DOE to reconsider this decision. The development of more advanced technology to support electronic exchange of classified documents between agencies, better distribution of classification guides, improved training of personnel in other agencies, and adequate resources are among the factors which may lead DOE to reevaluate authorities for declassification of RD documents.

Section 1045.33 requires each agency with access to RD and FRD to appoint an RD management official to implement this regulation. This management official is similar to the senior agency official required by E.O. 12958 and can be the same person. An RD management official should be at the appropriate level to effectively communicate with classification and security officials as well as RD classifiers in the agency. This official will also serve as the primary point of contact with DOE for RD classification issues. Within the DOD, an RD management official shall be appointed at each DOD agency.

Section 1045.34 requires that persons who classify RD and FRD documents be designated as RD classifiers, except within the DOD. Because of the size, mission, organizational diversity and personnel turnover rate within DOD, designation of persons who classify RD or FRD is recommended, but not required. In any case, RD management officials within DOD, and within all agencies with access to RD and FRD, will ensure that persons who handle RD and FRD documents have access to classification guides needed and are trained.

Within DOE, all original and derivative classifiers and declassifiers are formally designated, trained, and certified. Training and ongoing performance-based testing of these personnel is standard practice within the DOE. DOE does not require other agencies which generate RD and FRD documents to institute a training program comparable to the DOE program. Section 1045.35 specifies that DOE will take the lead in Government-wide RD related training by developing training materials for RD classifiers in all agencies. DOE and RD management officials will consult periodically concerning the adequacy of training. DOE shall review any RD-related training materials submitted by agencies.

Section 1045.36 specifies that DOE will consult periodically with RD management officials and may conduct on-site reviews of agencies when consultations indicate a need for a review or that such a review would be mutually beneficial. These provisions are proposed in order for DOE to effectively manage the Government-wide RD classification program.

Section 1045.37 prescribes the procedures for the development and use of classification guides. This section would require that all agencies which develop classification guides with RD or FRD topics coordinate a review of those guides with DOE prior to their issuance.

Section 1045.38 emphasizes that documents containing RD and FRD are never automatically declassified; a positive action by an authorized person is required to declassify them. As the automatic declassification provisions of E.O. 12958 are being implemented, DOE is working to ensure that RD and FRD are not inadvertently declassified. This section of the regulation furthers DOE's efforts in this regard.

Section 1045.40 prescribes requirements for marking RD and FRD documents. DOE has never required that individual portions of RD or FRD documents be marked to indicate their classification level or category. In fact, it is DOE policy not to portion mark RD and FRD documents. DOE considered extending this policy to all agencies. However, DOE has determined that most agencies require the portion marking of NSI documents as well as RD and FRD documents. Consequently, this section states that portion marking is an agency option.

To facilitate public release of as much information as possible, §1045.41 emphasizes that originators of RD or FRD documents should prepare a classified addenda whenever classified information constitutes a small portion of an otherwise publicly releasable document.

Section 1045.42 describes the procedure for processing mandatory and Freedom of Information Act reviews of RD and FRD documents. With the exception of the appeal authority, this process is the same as that described for NSI in Subpart D. The DOE appeal authority for RD (as well as NSI) documents is the DOE Director of Security Affairs. However, while NSI denials may be challenged by further appeal to the Interagency Security Classification Appeals Panel, this Panel has no jurisdiction over RD and FRD.

Section 1045.43 formally establishes a Government-wide systematic declassification review program, based on public priorities and likelihood of declassification, for RD and FRD. It is not intended that every classified document should be reexamined at regular intervals because many documents (e.g., nuclear weapons design drawings) will be unlikely candidates for declassification. Instead, resources will be applied to well-defined areas of interest, with systematic review of new areas undertaken as earlier reviews are completed or resources become available. Public interest priorities will be determined by solicitation of stakeholder input. Also, the Openness Advisory Panel will play a major role in determining these priorities. Within DOE, a large-scale declassification review effort has been ongoing to declassify RD and FRD documents. This requirement will codify the current practice within DOE and extend it to other agencies.

E.O. 12958 requires that every agency classifying information as National Security Information (NSI) publish implementing regulations in the **Federal Register** to the extent these regulations affect the public. Subpart D complies with this requirement of the E.O. 12958.

Subpart D does not parallel earlier Subparts in that it does not describe DOE authorities and procedures for the classification and declassification of NSI. These authorities and procedures are uniform throughout the Government as specified in E.O. 12958 and in implementing directives issued by the Information Security Oversight Office (ISOO). Aspects of NSI unique to DOE are the particular procedures DOE has established for the public to use in requesting mandatory review of DOE originated NSI, and for appealing decisions regarding NSI to DOE authorities. This Subpart describes these procedures and identifies the appropriate appeal channels. All other aspects of E.O. 12958 which are being implemented by DOE are specified in internal DOE directives.

III. Rulemaking Requirements

A. Review Under Executive Order 12866

Today's regulatory action does not constitute a "significant regulatory

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action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), and has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.*, are imposed by today's regulatory action.

C. Review Under the National Environmental Policy Act

This rule would amend DOE's policies and procedures for the classification and declassification of information. Implementation of this rule would not affect whether such information might cause or otherwise be associated with any environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of a rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federal assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's regulatory action amends DOE's policies and procedures on information classification and declassification. Therefore, the Department has determined that these amendments will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in Section 3 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of Section 3 (a) and (b) of Executive Order 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. Today's regulatory action amends DOE's policies and procedures on information classification and declassification. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

G. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis for each proposed rule or to certify that the rule will not have a "significant economic impact on a substantial number of small entities." Today's proposed rule would amend DOE's policies and procedures on information classification and declassification. The rule, if promulgated, will apply to all agencies, persons and entities that generate and maintain RD or FRD information or documents. The Department has identified over 50 federal government entities that have access to RD or FRD information or documents. Each of these government entities may, in turn, have contractors or consultants that have access to RD or FRD information or documents.

Section 1045.35 would impose on the government, in the person of the RD management official the responsibility to ensure that RD classifiers are properly trained. That section further imposes on the DOE Director of Declassification the obligation to develop and review training materials related to the implementation of this regulation. The proposed regulation imposes on non-government entities the requirement that persons with access to RD or FRD be properly trained. The economic impact of the training requirement on non-government entities would be limited to the labor hours required to familiarize those persons with access to RD and FRD with the training materials provided by DOE and the RD management official.

Section 1045.40 would require that government and non-government RD classifiers clearly mark each new document generated to convey that it contains RD or FRD information. The burden of the marking requirement would vary depending on the number of documents the entity generates. DOE considers the proper marking of a classified document to be an act integrated in the act of creating the document. As such, the marking of individual documents containing RD and FRD imposes minimal costs on the entity generating new RD documents.

Finally, DOE recognizes that non-government entities that generate documents containing RD or FRD will do so pursuant to a government contract. In those instances, any costs incurred in compliance with the regulation will be charged back to the government.

Based on the foregoing, DOE has determined that the proposed rule, if promulgated, will not have a "significant economic impact." As permitted by section 605 of the Regulatory Flexibility Act, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

IV. Freedom of Information Act (FOIA) Considerations

RD and FRD classified under the Atomic Energy Act fall within the scope of exemption 3 of the FOIA (5 U.S.C. 552(b)(3)). Thus RD and FRD are not subject to disclosure under the FOIA. Similarly, information that is properly classified as NSI under E.O. 12958 may be withheld from disclosure under exemption 1 of the FOIA.

DOE shall process requests for documents made under the FOIA in accordance with applicable DOE regulations and orders which implement the FOIA within the Department. DOE shall process these requests promptly and shall respond to the requester in a timely manner. DOE shall coordinate requests involving FRD information and RD information which relates primarily to the military utilization of nuclear weapons with the DOD. The Director of Security Affairs shall decide all appeals of denials of requests for classified information covered by sections 141 and 142 of the Atomic Energy Act and E.O. 12958.

V. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to today's notice.

Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Information Classification, Docket No. RM 96–1045." In the event any person wishing to provide written comments cannot provide three copies, alternative arrangements can be made in advance with the Department.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, Room 1E–090, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under 10 CFR 1004.11.

B. Public Hearing

A public hearing will be held pursuant to this notice at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this notice. Any person who has an interest in making an oral presentation should make a written request to speak. Such requests should be sent to the address given in the **ADDRESSES** section of this notice and must be received by 4:30 p.m. on the date specified in the **DATES** section. The person should also provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to make an oral presentation should bring nine copies of their statement to the hearing.

DOE will establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes. A DOE official will preside at the hearing, and may ask questions. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel the hearing, DOE will make every effort to give advance notice of the cancellation. The hearing may be canceled in the event no requests to speak are received by the deadline for submission of such a request.

VI. Interagency Coordination

The Department of Energy has coordinated this proposed regulation with classification representatives from the Department of Defense (DOD), Central Intelligence Agency, Nuclear Regulatory Commission (NRC), and Department of State. Concurrence from the NRC was obtained on February 21, 1996. Concurrence from the DOD was obtained on June 28, 1996.

List of Subjects in 10 CFR Part 1045

Classified information.

Issued in Washington, D.C. on January 8, 1997.

Hazel R. O'Leary,

Secretary of Energy.

For the reasons set forth in the preamble, 10 CFR Part 1045 is proposed to be revised to read as follows:

PART 1045—INFORMATION CLASSIFICATION

Subpart A—Program Management of the Restricted Data and Formerly Restricted Data Classification System

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1045.1 Purpose and scope.
1045.2 Applicability.
1045.3 Definitions.
1045.4 Responsibilities.
1045.5 Sanctions.
1045.6 Openness Advisory Panel.
1045.7 Suggestions or complaints.
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Subpart B—Identification of Restricted Data and Formerly Restricted Data Information

Sec.
1045.10 Purpose and scope.
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1045.13 Classification prohibitions.
1045.14 Process for classification and declassification of restricted data and formerly restricted data information.
1045.15 Classification and declassification presumptions.
1045.16 Criteria for evaluation of restricted data and formerly restricted data information.
1045.17 Classification levels.
1045.18 Newly generated information in a previously declassified subject area.
1045.19 Accountability for classification and declassification determinations.
1045.20 Ongoing call for declassification proposals.
1045.21 Privately generated restricted data.
1045.22 No Comment policy.

Subpart C—Generation and Review of Documents Containing Restricted Data and Formerly Restricted Data

Sec.
1045.30 Purpose and scope.
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1045.32 Authorities.
1045.33 Appointment of restricted data management official.
1045.34 Designation of restricted data classifiers.
1045.35 Training requirements.
1045.36 Reviews of agencies with access to restricted data and formerly restricted data.
1045.37 Classification guides.
1045.38 Automatic declassification prohibition.
1045.39 Challenging classification and declassification determinations.
1045.40 Marking requirements.
1045.41 Use of classified addendums.
1045.42 Mandatory and Freedom of Information Act reviews for declassification of restricted data and formerly restricted data documents.
1045.43 Systematic review for declassification.
1045.44 Classification review prior to public release.
1045.45 Review of unmarked documents with potential restricted data or formerly restricted data.

Subpart D—Access to Information: Executive Order 12958, "Classified National Security Information" Requirements Affecting the Public

Sec.
1045.50 Purpose and scope.
1045.51 Mandatory declassification review requests.
1045.52 Appeal of denial of mandatory declassification review requests.

Authority: 42 U.S.C. 2011; E.O. 12958.

Subpart A—Program Management of the Restricted Data and Formerly Restricted Data Classification System

§1045.1 Purpose and scope.

This subpart establishes responsibilities associated with this part, describes the Openness Advisory Panel, defines key terms, describes sanctions related to violation of the policies and procedures in this part, and describes how to submit suggestions or complaints concerning the Restricted Data classification and declassification program, and how to request procedural exceptions.

§1045.2 Applicability.

This subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person who might generate information determined to be RD or FRD.

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§1045.3 Definitions.

As used in this part:

Agency means any "Executive Agency" as defined in 5 U.S.C. 105; any "Military Department" as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into possession of RD or FRD information or documents.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Authorized holder means a person with the appropriate security clearance required to have access to classified information and the need to know the information in the performance of Government-approved activities.

Automatic declassification means the declassification of information or documents based solely upon;

(1) The occurrence of a specific date or event as determined by the classifier; or

(2) The expiration of a maximum time frame for duration of classification established under Executive Order 12958.

Classification means the act or process by which information is determined to be classified information.

Classification Guide means a written record of detailed instructions as to whether specific information is classified, usually concerning a system, plan, project, or program. It identifies information to be classified and specifies the level (and duration for NSI only) of classification assigned to such information. Classification guides are a primary basis for reviewing documents to determine whether they contain classified information.

Classification level means one of three designators:

(1) *Top Secret* is applied to information (RD, FRD, or NSI), the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the appropriate official is able to identify or describe.

(2) *Secret* is applied to information (RD, FRD, or NSI), the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the appropriate official is able to identify or describe.

(3) *Confidential.* (i) For NSI, Confidential is applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the appropriate official is able to identify or describe.

(ii) For RD and FRD, Confidential is applied to information, the unauthorized disclosure of which could reasonably be expected to cause undue risk to the common defense and security that the appropriate official is able to identify or describe.

Classified Information means;

(1) Information classified as RD or FRD under the Atomic Energy Act and this part; or

(2) Information determined to require protection against unauthorized disclosure under Executive Order (E.O.) 12958 or prior Executive orders (also identified as National Security Information or NSI).

Contractor means any industrial, educational, commercial, or other non-Government entity that has access to RD or FRD.

Declassification means a determination by appropriate authority that information or documents no longer require protection against unauthorized disclosure in the interests of national security.

Department or DOE means Department of Energy.

Director of Declassification means the Department of Energy Director, Office of Declassification, or any person to whom the Director's duties are delegated. The Director of Declassification is subordinate to the Director of Security Affairs.

Director of Security Affairs means the Department of Energy Director, Office of Security Affairs, or any person to whom the Director's duties are delegated.

Document means the physical medium on or in which information is recorded or a product or substance which contains or reveals information, regardless of its physical form or characteristics.

Formerly restricted data (FRD) means classified information jointly determined by DOE and the DOD to be related primarily to the military utilization of nuclear weapons and removed (by transclassification) from the RD category pursuant to section 142d of the Atomic Energy Act.

Government means the executive branch of the Federal Government of the United States.

Government information means information that is owned by, produced by or for, or is under the control of the U.S. Government.

Information means facts, data, or knowledge itself.

Interagency Security Classification Appeals Panel means a panel created pursuant to Executive Order 12958 to perform functions specified in that order with respect to National Security Information.

National security means the national defense or foreign relations of the United States.

National security information (NSI) means information that has been determined pursuant to Executive Order 12958 or prior Executive orders to require protection against unauthorized disclosure and is marked to indicate its classification status when in document form.

Nuclear weapon means atomic weapon.

Person means;

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State, or any political subdivision of, or any political entity within a State; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Portion marking means the application of certain classification markings to individual words, phrases, sentences, paragraphs, or sections of a document to indicate their specific classification level and category.

Restricted data (RD) means a kind of classified information that consists of all data concerning the following, but not including data declassified or removed from the RD category pursuant to section 142 of the Atomic Energy Act:

(1) Design, manufacture, or utilization of atomic weapons;

(2) Production of special nuclear material; or

(3) Use of special nuclear material in the production of energy.

Restricted data or RD classifier means an individual who derivatively classifies RD or FRD documents.

Restricted data or RD management official means an individual appointed by any agency with access to RD and FRD who is responsible for managing the implementation of this part within that agency or any person to whom these duties are delegated. This person may be the senior agency official required by E.O. 12958.

Secretary means the Secretary of Energy.

Source document means a classified document, other than a classification guide, from which information is extracted for inclusion in another document. The classification of the information extracted is determined by the classification markings shown in the source document.

Special nuclear material means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Secretary determines to be special nuclear material pursuant to the Atomic Energy Act.

§1045.4 Responsibilities.

(a) The DOE Director of Declassification shall:

(1) Manage the Government-wide system for the classification and declassification of RD and FRD in accordance with the Atomic Energy Act;

(2) In coordination with the DOD, develop regulations to implement the RD and FRD classification system;

(3) Determine whether nuclear-related information is RD;

(4) Oversee agency implementation of the RD and FRD classification system to ensure compliance with this part;

(5) Review agency implementing policies and conduct on-site reviews of each agency's program established under this part;

(6) Prepare and distribute classification guides concerning RD and FRD and review such guides developed by any agency; and

(7) Consider and take action on complaints and suggestions from any person with respect to administration of this program.

(b) The DOE Director of Security Affairs shall:

(1) Declassify RD which may be published without undue risk to the common defense and security;

(2) Jointly with the DOD, determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category; and

(3) Jointly with the DOD, declassify FRD which may be published without undue risk to the common defense and security

(c) The DOD jointly with the DOE shall:

(1) Determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category;

(2) Ensure that classification guides for FRD and RD relating primarily to the military utilization of nuclear weapons are prepared; and

(3) Declassify FRD and RD relating primarily to the military utilization of nuclear weapons which may be published without undue risk to the common defense and security.

(d) The Nuclear Regulatory Commission (NRC) shall:

(1) Jointly with the DOE, develop classification guides for programs over which both agencies have cognizance; and

(2) Ensure the review and proper classification of RD by RD classifiers under this part, generated by the NRC or by its licensed or regulated facilities and activities.

(e) Agency heads with access to RD and FRD shall:

(1) Ensure that RD and FRD are classified in such a manner as to assure the common defense and security in accordance with the policies established in this part:

(2) Designate an RD management official to direct and administer the RD classification program within the agency; and

(3) Promulgate implementing directives.

(f) RD management officials shall:

(1) Jointly with the DOE, develop classification guides for programs over which both agencies have cognizance;

(2) Ensure that agency and contractor personnel who generate RD and FRD documents have access to any classification guides needed;

(3) Ensure that persons with access to RD and FRD are trained on the procedures for classifying, marking, declassifying, and handling the information; and

(4) Cooperate and provide information as necessary to the DOE Director of Declassification to fulfill responsibilities under this part.

§ 1045.5 Sanctions.

(a) Knowing, willful, or negligent action contrary to the requirements of this part which results in the misclassification of information may result in appropriate sanctions. Such sanctions may range from administrative sanctions to civil or criminal penalties, depending on the nature and severity of the action as determined by appropriate authority, in accordance with applicable laws.

(b) Other violations of the policies and procedures contained in this part may be grounds for administrative sanctions as determined by appropriate authority.

§ 1045.6 Openness Advisory Panel.

The DOE shall maintain an Openness Advisory Panel, in accordance with the Federal Advisory Committee Act, to provide the Secretary with independent advice and recommendations on Departmental openness initiatives, including classification and declassification issues that affect the public.

§ 1045.7 Suggestions or Complaints.

(a) Any person who has suggestions or complaints regarding the Department's classification and declassification policies and procedures may direct them in writing to the Openness Coordinator, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290.

(b) Such letters should include a description of the issue or problem, the suggestion or complaint, all applicable background information, and an address for the response.

§ 1045.8 Procedural Exemptions.

(a) Exceptions to the procedural provisions of this part may be granted by the DOE Director of Declassification.

(b) A request for an exception shall be made in writing to the DOE Director of Declassification and shall provide all relevant facts, justification, and a proposed alternate procedure.

Subpart B—Identification of Restricted Data and Formerly Restricted Data Information

§ 1045.10 Purpose and Scope.

(a) This subpart implements sections 141 and 142 (42 U.S.C. 2161 and 2162) of the Atomic Energy Act, which provide for Government-wide policies and procedures concerning the classification and declassification of RD and FRD information.

(b) This subpart establishes procedures for classification prohibitions for RD and FRD, describes authorities and procedures for identifying RD and FRD information, and specifies the policies and criteria DOE shall use in determining if nuclear-related information is RD or FRD.

§ 1045.11 Applicability.

This Subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person who might generate information determined to be RD or FRD.

§ 1045.12 Authorities.

(a) The DOE Director of Declassification may determine whether nuclear-related information is RD.

(b) Except as provided in paragraph (c) of this section, the DOE Director of Security Affairs may declassify RD information.

(c) The DOE Director of Security Affairs jointly with the DOD may determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category.

(d) The DOE Director of Security Affairs jointly with the DOD may declassify FRD information.

§ 1045.13 Classification prohibitions.

In no case shall information be classified RD or FRD in order to:

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person, organization, or Agency;

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(c) Restrain competition;

(d) Prevent or delay the release of information that does not require protection because of national security or nonproliferation concerns;

(e) Unduly restrict dissemination by assigning an improper classification level; or

(f) Prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety.

§ 1045.14 Process for classification and declassification of restricted data and formerly restricted data information.

(a) *Classification of restricted data.* (1) *Submission of potential RD for evaluation.* Any authorized holder who believes he or she has information which may be RD shall submit it to the DOE Director of Declassification for evaluation. The DOE Director of Declassification shall determine whether the information is RD within 90 days of receipt by doing the following:

(i) Determine whether the information is already classified RD;

(ii) If it is not already classified, determine if the information concerns the design, manufacture, or utilization of nuclear weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; and,

(iii) Apply the criteria in § 1045.16 as the basis for determining the appropriate classification.

(2) *Protection of potential RD during evaluation.* Pending a determination by the DOE Director of Declassification, potential RD submitted for evaluation by authorized holders shall be protected at a minimum as Confidential Restricted Data.

(b) *Declassification of restricted data.* The DOE Director of Security Affairs shall apply the criteria in § 1045.16 when determining whether RD may be declassified.

(c) *Classification of formerly restricted data.* The DOE Director of Declassification, jointly with the DOD, shall remove information which relates primarily to the military utilization of nuclear weapons from the RD classification and classify it as FRD.

(d) *Declassification of formerly restricted data.* The DOE Director of Security Affairs, jointly with the DOD, shall apply the criteria in § 1045.16 when determining whether FRD may be declassified.

§ 1045.15 Classification and declassification presumptions.

(a) The DOE Directors of Declassification and Security Affairs shall consider the presumptions listed in paragraphs (d) and (e) of this section before applying the criteria in § 1045.16.

(b) Not all areas of nuclear-related information are covered by the presumptions.

(c) As a general rule, the information listed in paragraphs (d) and (e) of this section has the classification indicated. Inclusion of specific information in one of the presumption categories does not mean that the information is or is not classified, but only that arguments to change the classification status of the information should use the appropriate presumption as a starting point.

(d) The DOE Directors of Declassification and Security Affairs shall presume that information in the following areas is unclassified unless application of the criteria in § 1045.16 indicates otherwise:

(1) Basic science: mathematics, chemistry, theoretical and experimental physics, engineering, materials science, biology and medicine;

(2) Instruments and equipment;

(3) Magnetic confinement fusion technology;

(4) Civilian power reactors, including nuclear fuel cycle information but excluding technologies for uranium enrichment;

(5) Source materials (defined as uranium and thorium and ores containing them);

(6) Fact of use of safety features (e.g., insensitive high explosives, fire resistant pits) to lower the risks and reduce the consequences of nuclear weapon accidents;

(7) Generic weapons effects;

(8) Physical and chemical properties of uranium and plutonium, their alloys and compounds, under standard temperature and pressure conditions;

(9) Nuclear fuel reprocessing technology and reactor products not revealing classified production rates or inventories;

(10) The fact, time, location, and yield range (e.g., less than 20 kiloton or 20–150 kiloton) of all U.S. nuclear tests;

(11) General descriptions of nuclear material production processes and theory of operation;

(12) DOE special nuclear material aggregate inventories and production rates;

(13) Types of waste products resulting from all DOE weapon and material production operations; and

(14) Operations solely relating to the public and worker health and safety or to environmental quality.

(e) The DOE Directors of Declassification and Security Affairs shall presume that information in the following areas is classified unless the application of the criteria in § 1045.16 indicates otherwise:

(1) Detailed designs, specifications, and functional descriptions of nuclear explosives, whether in the active stockpile or retired;

(2) Material properties under conditions achieved in nuclear explosions that is principally useful only for design and analysis of nuclear weapons;

(3) Vulnerabilities of U.S. nuclear weapons to sabotage, countermeasures, or unauthorized use;

(4) Nuclear weapons logistics and operational performance information (e.g., specific weapon deployments, yields, capabilities), related to military utilization of those weapons required by the DOD;

(5) Details of the critical steps or components in nuclear material production processes; and

(6) Features of military nuclear reactors, especially naval nuclear propulsion reactors, that are not common to or required for civilian power reactors.

§ 1045.16 Criteria for evaluation of restricted data and formerly restricted data information.

(a) The DOE Director of Declassification shall classify information as RD and the DOE Director of Security Affairs shall maintain the classification of RD (and FRD in coordination with the DOD) only if the undue risk of damage to the common defense and security from its unauthorized disclosure can be identified and described.

(b) The DOE Director of Declassification shall not classify information and the DOE Director of Security Affairs shall declassify information if there is significant doubt about the need to classify the information.

(c) In determining whether information should be classified or declassified, the DOE Directors of Declassification and Security Affairs shall consider the following:

(1) Whether the information is so widely known or readily apparent to knowledgeable observers that its classification would cast doubt on the credibility of the classification system;

(2) Whether publication of the information would assist in the development of countermeasures or otherwise jeopardize any U.S. weapon or weapon system;

(3) Whether the information would hinder U.S. nonproliferation efforts by significantly assisting potential adversaries to develop or improve a nuclear weapon capability, produce nuclear weapons materials, or make other military use of nuclear energy;

(4) Whether publication of the information would have a detrimental effect on U.S. foreign relations;

(5) Whether publication of the information would benefit the public welfare, taking into account the importance of the information to public discussion and education and potential contribution to economic growth; and

(6) Whether publication of the information would benefit the operation of any Government program by reducing operating costs or improving public acceptance.

§ 1045.17 Classification levels.

(a) *Restricted data.* The DOE Director of Declassification shall assign one of the following classification levels to RD information to reflect the sensitivity of the information to the national security. The greater the damage expected from unauthorized disclosure, the higher the classification level assigned to the information.

(1) *Top Secret.* The DOE Director of Declassification shall classify RD information Top Secret if it is vital to the national security and if its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of RD information that warrant Top Secret classification include comprehensive descriptions of a nuclear explosive design (i.e., a major proliferation threat), information that would make possible the unauthorized use of a U.S. nuclear weapon, or information revealing catastrophic failure or operational vulnerability in a U.S. nuclear weapon.

(2) *Secret.* The DOE Director of Declassification shall classify RD information as Secret if its unauthorized disclosure could reasonably be expected to cause serious damage to the national security, but the RD information is not sufficiently comprehensive to warrant designation as Top Secret. Examples of RD information that warrant Secret classification include designs for specific weapon components, key features of uranium enrichment technologies, or specifications of weapon materials.

(3) *Confidential.* The DOE Director of Declassification shall classify RD information as Confidential if it is deemed to be of significant use to a potential adversary or nuclear proliferant and its unauthorized disclosure could reasonably be expected to cause undue risk to the common defense and security. An example of RD information that warrants Confidential classification is the amount of high explosives used in nuclear weapons.

(b) *Formerly restricted data.* The DOE Director of Declassification, jointly with the DOD, shall assign one of the classification levels in paragraph (a) of this section to FRD information to reflect its sensitivity to the national security.

§ 1045.18 Newly generated information in a previously declassified subject area.

The DOE Director of Declassification may evaluate newly generated specific information in a previously declassified subject area using the criteria in section 1045.16 and classify it as RD, if warranted.

§ 1045.19 Accountability for classification and declassification determinations.

(a) Whenever a classification or declassification determination concerning RD or FRD information is made, the DOE Directors of Declassification and Security Affairs shall be able to justify the determination. For FRD and RD primarily related to military utilization, the DOE Directors of Declassification and Security Affairs shall coordinate the determination and justification with the DOD. If the determination involves a departure from the presumptions in §1045.15, the justification shall include a rationale for the departure. Often the justification itself will contain RD or FRD information. In such a case, the DOE Directors of Declassification and Security Affairs shall ensure that a separate justification can be prepared which is publicly releasable. The publicly releasable justification shall be made available to any interested person upon request to the DOE Director of Declassification.

(b) The DOE Director of Declassification shall prepare a report on an annual basis on the implementation of this part. This report shall be available to any interested person upon request to the DOE Director of Declassification.

§ 1045.20 Ongoing call for declassification proposals.

The DOE Director of Security Affairs shall consider proposals from the public or agencies or contractors for declassification of RD and FRD information on an ongoing basis. Declassification proposals for RD and FRD information shall be forwarded to the Department of Energy, Director of Security Affairs, Washington, D.C. 20585. Any proposed action shall include a description of the information concerned and may include a reason for the request. DOE and DOD shall coordinate with one another concerning declassification proposals for FRD information.

§ 1045.21 Privately generated restricted data.

(a) DOE may classify RD which is privately generated by persons not pursuant to government contracts, in accordance with the Atomic Energy Act.

(b) In order for information privately generated by persons to be classified as RD, the Secretary or Deputy Secretary shall make the determination personally and in writing. This authority shall not be delegated.

(c) DOE shall publish a **Federal Register** notice when privately generated information is classified as RD.

§ 1045.22 No Comment Policy.

(a) Authorized holders of RD and FRD shall not confirm, deny, or expand upon the classification status or technical accuracy of public statements in an RD or FRD subject area.

(b) If the public statements are sufficiently authoritative or credible, the DOE Director of Security Affairs shall examine the possibility of declassification.

Subpart C—Generation and Review of Documents Containing Restricted Data and Formerly Restricted Data

§ 1045.30 Purpose and scope.

This subpart specifies Government-wide classification program implementation requirements for agencies with access to RD and FRD, describes authorities and procedures for RD and FRD document classification and declassification, provides for periodic or systematic review of RD and FRD documents, and describes procedures for the mandatory review of RD and FRD documents. This subpart applies to all RD and FRD documents, regardless of whether they also contain National Security Information (NSI), or other controlled information such as "For Official Use Only" or "Unclassified Controlled Nuclear Information."

§ 1045.31 Applicability.

This subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person generating a document containing RD or FRD.

§ 1045.32 Authorities.

(a) *Classification of RD and FRD documents.* (1) To the extent practical, all RD and FRD documents shall be classified based on classification guides. When not practical, properly classified source documents may be used as an alternative.

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(2) Only individuals designated as RD classifiers may classify RD and FRD documents, except within the DOD. Within the DOD, any individual with access to RD and FRD who has been trained may classify RD and FRD documents.

(b) *Declassification of RD and FRD documents.* (1) Only DOE may declassify documents containing RD.

(2) Except as provided in paragraph (b)(3) of this section, only DOE or appropriate individuals in DOD may declassify documents marked as FRD in accordance with joint classification guides.

(3) The DOE and DOD may delegate these authorities to other agencies and to contractors. Contractors without the delegated authority shall send any document marked as RD or FRD that needs to be considered for declassification to the appropriate agency office.

§ 1045.33 Appointment of restricted data management official.

(a) Each agency with access to RD or FRD shall appoint an official to be responsible for the implementation of this part and shall advise the DOE Director of Declassification of such appointment.

(b) This official shall ensure the proper implementation of this part within his/her agency and shall serve as the primary point of contact for coordination with the DOE Director of Declassification on RD and FRD classification and declassification issues.

(c) Within the DOD, an RD management official shall be appointed in each DOD agency.

§ 1045.34 Designation of restricted data classifiers.

Except within the DOD, RD management officials shall ensure that persons who derivatively classify RD or FRD documents are designated by position or by name as RD classifiers.

§ 1045.35 Training requirements.

(a) RD management officials shall ensure that persons with access to RD and FRD information are trained on the procedures for classifying, declassifying, marking and handling the information.

(b) The DOE Director of Declassification shall develop training materials related to implementation of this part and shall provide these materials to RD management officials and any other appropriate persons.

(c) The DOE Director of Declassification shall review any RD-related training material submitted by agency and contractor representatives to ensure consistency with current policy.

§ 1045.36 Reviews of agencies with access to restricted data and formerly restricted data.

(a) The DOE and each agency with access to RD and FRD shall consult periodically to assure appropriate implementation of this part. Such consultations may result in DOE conducting an on-site review within the agency if DOE and the RD management official determine that such a review would be mutually beneficial or that it is necessary to remedy a problem.

(b) To address issues concerning implementation of this part, the DOE Director of Declassification shall establish a standing group of all RD management officials to meet periodically.

§ 1045.37 Classification guides.

(a) The classification and declassification determinations made by the DOE Directors of Declassification and Security Affairs under the classification criteria in § 1045.16 are promulgated in classification guides.

(b) DOE shall jointly develop classification guides with the DOD, NRC, NASA, and other agencies as required for programs for which DOE and these agencies share responsibility.

(c) Agencies shall coordinate with the DOE Director of Declassification whenever they develop or revise classification guides with RD or FRD information topics.

(d) Originators of classification guides with RD or FRD topics shall review such guides at least every five years and make revisions as necessary.

(e) RD Classifiers shall use classification guides as the primary basis for classifying and declassifying documents containing RD and FRD.

(f) Each RD management official shall ensure that persons working with RD and FRD information have access to all pertinent nuclear classification guides.

§ 1045.38 Automatic declassification prohibition.

(a) Documents containing RD and FRD remain classified until a positive action by an authorized person is taken to declassify them.

(b) In accordance with the Atomic Energy Act, no date or event for automatic declassification ever applies to RD and FRD documents, even if such documents also contain NSI.

(c) E.O. 12958 acknowledges that RD is exempt from all provisions of the E.O., including automatic declassification.

§ 1045.39 Challenging classification and declassification determinations.

(a) Any authorized holder of an RD or FRD document who, in good faith, believes that the RD or FRD document has an improper classification status is encouraged and expected to challenge the classification with the RD Classifier.

(b) Agencies shall establish procedures under which authorized holders of RD and FRD documents are encouraged and expected to challenge any classification status they believe is improper. These procedures shall assure that:

(1) Under no circumstances are persons subject to retribution for bringing forth a classification challenge.

(2) A response is provided within 90 days to the person bringing forth the challenge.

(3) A decision concerning a challenge involving RD or FRD may be appealed to the DOE Director of Declassification. In the case of FRD and RD related primarily to the military utilization of nuclear weapons, the DOE Director of Declassification shall coordinate with the DOD. If the justification for classification is still unsatisfactory, a further appeal may be made to the DOE Director of Security Affairs.

(c) Classification challenges concerning documents containing RD and FRD information are not subject to review by the Interagency Security Classification Appeals Panel, unless those documents also contain NSI which is the basis for the challenge. In such cases, the RD and FRD portions of the document shall be deleted and the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

§ 1045.40 Marking requirements.

(a) RD classifiers shall ensure that each RD and FRD document is clearly marked to convey to the holder that it contains RD or FRD information, the level of classification assigned, and the additional markings in paragraphs (b)(3) and (4) of this section.

(b) *Front marking.* In addition to the overall classification level of the document, the following notices shall appear on the front of the document, as appropriate:

(1) If the document contains RD:

RESTRICTED DATA

This document contains RESTRICTED DATA as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(2) If the document contains FRD but does not contain RD:

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as RESTRICTED DATA in

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foreign dissemination. Section 144b, Atomic Energy Act of 1954.

(3) An RD or FRD document shall be marked to identify the classification guide or source document used to classify the document:

Derived from: _____
(Guide or source document)

(4) An RD or FRD document shall be marked with the identity of the RD classifier, unless the classifier is the same as the document originator or signer.

RD Classifier: _____
(Name or position/title)

(c) *Interior page.* RD Classifiers shall ensure that documents are clearly marked at the top and bottom of each interior page with the overall classification level and category of the document or the classification level and category of the page, whichever is preferred. The abbreviations "RD" and "FRD" may be used in conjunction with the document classification (e.g., SECRET RD, SRD or SECRET FRD, SFRD).

(d) Portion marking of RD and FRD documents is an agency option.

(e) *Declassification marking.* Declassified RD and FRD documents shall be marked with the identity of the RD classifier authorizing its declassification, the declassification date and the classification guide which served as the basis for the declassification. RD classifiers shall ensure that the following marking is affixed on RD and FRD documents which they declassify:

Declassified on: _____
(Date)
RD Classifier: _____
(Name and position/title)
Authority: _____
(Classification Guide)

§ 1045.41 Use of classified addendums.

(a) In order to maximize the amount of information available to the public and to simplify document handling procedures, document originators should segregate RD or FRD into an addendum whenever practical.

(b) When segregation of RD or FRD into an addendum is not practical, DOE document originators are encouraged to prepare separate unclassified versions of documents with significant public interest.

§ 1045.42 Mandatory and Freedom of Information Act reviews for declassification of restricted data and formerly restricted data documents.

(a) *General.* (1) Agencies with documents containing RD and FRD shall respond to mandatory review and Freedom of Information Act requests for these documents from the public.

(2) In response to a mandatory review or Freedom of Information Act request, DOE or DOD may refuse to confirm or deny the existence or nonexistence of the requested information whenever the fact of its existence or nonexistence is itself classified as RD or FRD.

(b) *Processing requests.* (1) Agencies shall forward documents containing RD to DOE for review.

(2) Agencies shall forward documents containing FRD to the DOE or to the DOD for review, depending on which is the originating agency.

(3) The DOE and DOD shall coordinate the review of RD and FRD documents as appropriate.

(c) *Denying official.* (1) The denying official for documents containing RD is the DOE Director of Declassification.

(2) The denying official for documents containing FRD is either the DOE Director of Declassification or an appropriate DOD official.

(d) *Appeal authority.* (1) The appeal authority for RD documents is the DOE Director of Security Affairs.

(2) The appeal authority for FRD documents is either the DOE Director of Security Affairs, or an appropriate DOD official.

(e) The denying official and appeal authority for Naval Nuclear Propulsion Information is the Director, Office of Naval Reactors.

(f) The review and appeal process is the same as that described in subpart D of this part with the exception of the appeal authority. The Interagency Security Classification Appeals Panel (ISCAP) is an appeal authority for mandatory or Freedom of Information Act reviews of documents containing NSI. RD and FRD are not under the jurisdiction of the ISCAP. DOE and DOD shall not forward RD and FRD documents to the ISCAP for appeal review unless those documents also contain NSI. In such cases, the DOE or DOD shall delete the RD and FRD portions and shall forward the NSI and unclassified portions to the ISCAP for review.

(g) RD and FRD information contained in documents shall be withheld from public disclosure under exemption 3 of the FOIA (5 U.S.C. 522(b)(3)) because such information is under the statutory jurisdiction of the Atomic Energy Act.

§ 1045.43 Systematic review for declassification.

(a) The DOE Director of Declassification (and the DOD for FRD) shall ensure that RD documents are periodically and systematically reviewed for declassification. The focus of the review shall be based on the degree of public and researcher interest and likelihood of declassification upon review.

(b) Agencies with RD or FRD document holdings shall cooperate with the DOE Director of Declassification (or the DOD for FRD) to ensure the systematic review of RD and FRD documents.

(c) Review of documents in particular areas of public interest shall be considered if sufficient interest is demonstrated. Proposals for systematic document reviews of given collections or subject areas should be addressed to the Director of Declassification, Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

§ 1045.44 Classification review prior to public release.

Any person with authorized access to RD or FRD who generates a document intended for public release in an RD or FRD subject area shall ensure that it is reviewed for RD or FRD by an RD Classifier prior to its release.

§ 1045.45 Review of unmarked documents with potential restricted data or formerly restricted data.

(a) Individuals reviewing NSI records of permanent historical value under the automatic or systematic review provisions of E.O. 12958 may come upon information they think may be RD or FRD, but which is not so marked. Such documents are not subject to automatic declassification.

(b) Such documents shall be reviewed by an RD Classifier as soon as possible to determine their classification status. Assistance may be requested from the DOE Director of Declassification.

Subpart D—Access to Information: Executive Order 12958 "Classified National Security Information" Requirements Affecting the Public

§ 1045.50 Purpose and scope.

(a) This subpart describes the procedures to be used by the public in questioning or appealing DOE decisions regarding the classification of NSI.

(b) This subpart applies to any person with authorized access to DOE NSI or who desires access to DOE documents containing NSI.

§ 1045.51 Mandatory declassification review requests.

All DOE information classified as NSI is subject to review for declassification by the DOE if:

(a) The request for a review describes the document containing the information with sufficient specificity to

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enable the agency to locate it with a reasonable amount of effort;

(b) The information is not exempted from search and review under the Central Intelligence Agency Information Act;

(c) The information has not been reviewed for declassification within the past 2 years; and

(d) The request is sent to the Department of Energy, Director of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290.

§ 1045.52 Appeal of denial of mandatory declassification review requests.

(a) If the Department has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the Department shall inform the requester of this fact and of the requester's appeal rights.

(b) When the Director of Declassification has denied a request for review of NSI, the requester may, within 30 calendar days of its receipt, appeal the determination to the Director of Security Affairs.

(c) *Elements of appeal.* The appeal shall be in writing and addressed to the Director of Security Affairs, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities which include, but are not limited to DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals, and any judicial determinations being relied upon to support the appeal. A copy of the letter containing the determination being appealed shall be submitted with the appeal.

(d) *Receipt of appeal.* An appeal shall be considered to be received upon receipt by the appeal authority, who is the Director of Security Affairs.

(e) *Action within 60 working days.* The appeal authority shall act upon the appeal within 60 working days of its receipt. If no determination on the appeal has been issued at the end of the 60-day period, the requester may consider his or her administrative remedies to be exhausted and may seek a review by the Interagency Security Classification Appeals Panel. When no determination can be issued within the applicable time limit, the appeal shall nevertheless continue to be processed. On expiration of the time limit, DOE shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be issued, and of his or her right to seek further review by the Interagency Security Classification Appeals Panel. Nothing in this subpart shall preclude the appeal authority and the requester from agreeing to an extension of time for the decision on an appeal. The appeal authority shall confirm any such agreement in writing and shall clearly specify the total time agreed upon for the appeal decision.

(f) *Form of action on appeal.* The appeal authority's action on an appeal shall be in writing and shall set forth the reason for the decision. The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under E.O. 12958.

(g) *Right of final appeal.* The requester has the right to appeal a final Department decision or a failure to provide a determination on an appeal within the allotted time to the Interagency Security Classification Appeals Panel for those appeals dealing with NSI. In cases where NSI documents also contain RD and FRD, the RD and FRD portions of the document shall be deleted and the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–18]

Establishment of Class E2 Airspace; Sawyer Airport, Gwinn, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E2 airspace to accommodate an Automated Weather Observation System/Surface Weather and Reporting System (AWOS/SWARS) to serve runaway 01/19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operational Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On November 21, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate an AWOS/SWARS to serve runaway 01/19 approach at Sawyer Airport, Gwinn, MI (61 FR 59207). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments objecting to the proposal were received. The notice inadvertently listed incorrect coordinates and these coordinates have been corrected in this Final Rule. Class E airspace designations for surface area for an airport are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace to accommodate an Automated Weather Observation System/Surface Weather and Reporting System (AWOS/SWARS) to serve runway 01/19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule"under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Sawyer, MI [New]

Sawyer Airport, MI
(Lat. 46°21'13"N, long. 87°23'43"W)

Within a 4.6-mile radius of Sawyer Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on January 8, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–1115 Filed 1–15–97; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–19]

Establishment of Class E5 Airspace; Sawyer Airport, Gwinn, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace to accommodate an Instrument Landing System (ILS), a Very High Frequency Omnidirectional Range (VOR) and a Distance Measuring Equipment (DME) to serve runway 01/

19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, November 21, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate an ILS, DME, and VOR to runway 01/19, Sawyer Airport, Gwinn, MI (61 FR 59208). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The notice inadvertently listed incorrect coordinates and these coordinates have been corrected in this Final Rule. Class E5 airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace to accommodate an Instrument Landing System (ILS), a Very High Frequency Omnidirectional Range (VOR) and a Distance Measuring Equipment (DME) to serve runway 01/19 approach at Sawyer Airport, Gwinn, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL MI E5 Sawyer, MI [New]

Sawyer Airport, MI
(Lat. 46°21'13"N, long. 87°23'43"W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Sawyer Airport, excluding that airspace within the Marquette, MI, Class E airspace area, and that airspace extending upward from 1,200 feet above the surface within a 34.8-mile radius of the Sawyer Airport.

* * * * *

Issued in Des Plaines, Illinois on January 8, 1997.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 97–1114 Filed 1–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

Beverages

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 100 to 169, revised as of April 1, 1996, § 165.110 is corrected by transferring paragraph (b)(5) from page 531 and inserting text immediately following the note in the second column on page 526.

§ 165.110 Bottled water.

* * * * *

(b) * * *

(5) *Radiological quality.* (i) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b((5)(ii) of this section, meet standards of radiological quality as follows:

(A) The bottled water shall not contain a combined radium–226 and radium–228 activity in excess of 5 picocuries per liter of water.

(B) The bottled water shall not contain a gross alpha particle activity (including radium–226, but excluding radon and uranium) in excess of 15 picocuries per liter of water.

(C) The bottled water shall not contain beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon–emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year.

(ii) Analyses conducted to determine compliance with paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), and "Interim Radiochemical Methodology for Drinking Water," U.S. EPA, EMSL, EPA–600/4–75–008 (Revised), March

1976, both of which are incorporated by reference. The availability of these incorporations by reference is given in paragraph (b)(2) of this section.

* * * * *

[FR Doc. 97–55572 Filed 1-15-97; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8711]

RIN 1545–AU82

Intangibles Under Sections 1060 and 338

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document amends the temporary regulations under sections 1060 and 338(b) of the Internal Revenue Code (Code) relating to purchase price allocations in taxable asset acquisitions and deemed asset purchases. The amendments revise the treatment of intangible assets in such acquisitions to take into account the enactment of section 197 by the Omnibus Budget Reconciliation Act of 1993. This document also makes conforming amendments to the final regulations under section 338. The regulations provide guidance regarding taxable asset acquisitions and deemed asset purchases resulting from elections under section 338. The text of the temporary regulations herein also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective February 14, 1997.

For dates of applicability, see §§ 1.338(b)–2T(c)(4) and 1.1060–1T(a)(2)(ii).

FOR FURTHER INFORMATION CONTACT: Brendan P. O'Hara, Office of Assistant Chief Counsel (Corporate), (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These regulations amend the current temporary regulations under sections 1060 (§ 1.1060–1T) and 338(b) (§§ 1.338(b)–2T and 1.338(b)–3T) (the current regulations) with respect to the treatment of acquired intangible assets. They also amend related examples in the final regulations under section 338. Section 1060 provides for the allocation of purchase price among the assets of a trade or business under regulations. Section 338(b) provides for a similar allocation, also under regulations, for a deemed purchase of assets under section 338. The current regulations employ a residual method of allocation. The legislative history of section 1060, adopted in 1986, noted with approval the use of the residual method under the section 338(b) regulations and required that the same method be used pursuant to regulations to be prescribed under section 1060. S. Rep. No. 99–313, 99th Cong., 2d Sess. 253, 254 (1986); 1986–3 C.B. Vol. 3, 253–54.

The current regulations place each acquired asset into one of four asset classes. The purchase price is allocated among the classes in priority order. No asset in any class except for the last class is allocated more than its fair market value. If the aggregate purchase price allocable to a particular class is less than the aggregate fair market value of the assets within the class, each asset is allocated an amount in proportion to its fair market value and nothing is allocated to any junior class.

The four classes under the current regulations are as follows:

Class I—Cash and cash equivalents;

Class II—Certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency;

Class III—All assets not in Class I, II, or IV; and

Class IV—Intangible assets in the nature of goodwill and going concern value.

Section 197 was enacted as part of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 312 (1993) (the 1993 Act). Prior to the 1993 Act, acquired goodwill and going concern value were not amortizable, but other acquired intangible assets were amortizable if they could be separately identified and their useful lives determined with reasonable accuracy. Section 197 responded to policy and administrative concerns regarding the treatment of acquired intangibles by providing similar treatment for goodwill, going concern value, and certain other intangible assets acquired in a taxable acquisition and held in connection with a trade or business. The 1993 Act allows taxpayers to amortize certain acquired intangible assets (amortizable section 197 intangibles) over 15 years, subject to certain exceptions.

The report of the House Committee on Ways and Means accompanying the 1993 Act states that:

> It is expected that the present [regulations under sections 338 and 1060] will be amended to reflect the fact that [section 197] allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which [section 197] applies.

H.R. Rep. 111, 103d Cong., 1st Sess. 760, 776 (May 23, 1993), 1993–3 C.B. 336, 352.

The current regulations have not yet been amended in accordance with the legislative history of section 197. These new temporary regulations accomplish that change, with slight modifications, as discussed below.

Explanation of Provisions

The temporary and final regulations are amended to conform to the legislative history of the 1993 Act by placing all amortizable section 197 intangibles other than goodwill and going concern value in Class IV.

However, the new regulations also include nonamortizable section 197 intangibles in Class IV. Some section 197 intangibles are amortizable by the buyer though they were not amortizable by the seller. Other section 197 intangibles may not be amortizable because of the application of the anti-churning rules of section 197(f)(9). Although sections 338(b) and 1060 do not require conformity between the buyer and seller on purchase price allocations, they reflect strong policies encouraging conformity, including mandatory application of the rule of *Commissioner* v. *Danielson*, 378 F.2d 771 (3d Cir. 1967), *cert. denied*, 389 U.S. 858 (1967), in cases where the parties have agreed to an allocation, and a reporting system designed to reveal situations where the parties' allocations are inconsistent. These policies favoring conformity are best served by requiring both parties to include the same assets in each class. Moreover, this rule is also more consistent with section 1060(b) as amended by the 1993 Act. Section 1060(b)(1) requires the parties to report, under regulations, "the amount of consideration received for the assets which is allocable to section 197 intangibles." The term *section 197 intangibles* is more inclusive than amortizable section 197 intangibles. The goals of consistency, simplification, and administrability will be better achieved with respect to allocations to section

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197 intangibles if all such assets are removed from Class III and isolated in a junior class (or classes). Accordingly, these regulations classify all section 197 intangibles (other than goodwill and going concern value) as Class IV assets.

To reconcile the original intention of Congress in requiring the residual method of allocation for goodwill and going concern value with the legislative history of the 1993 Act, these regulations provide that goodwill and going concern value will be assigned to a true residual class, Class V. This method is consistent with the policies of section 197 (which regards many intangible assets as the functional equivalent of goodwill and going concern value and thus treats them uniformly) as well as the original intention of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (1986) (that goodwill and going concern value not be valued separately for purchase price allocation purposes). Allocating goodwill and going concern value to Class V avoids the need for determining the value of goodwill and going concern value through a non-residual method. Although this approach places some section 197 intangibles in Class V instead of Class IV, it carries out the expectation set forth in the legislative history of the 1993 Act by making section 197 intangibles junior to all other assets in the allocation scheme. The practical significance of placing goodwill and going concern value in Class V is generally limited to circumstances in which fewer than all of the amortizable section 197 intangibles acquired in a single transaction are subsequently disposed of at a gain. Those situations, in any case, require some method of allocation among the intangibles.

Effective Date

These regulations are effective for applicable asset acquisitions, as defined in section 1060(c), completed on or after February 14, 1997, and for acquisition dates, as defined in section 338(h)(2), on or after February 14, 1997.

As described above, the current regulations have been in conflict with the 1993 Act legislative history concerning the classification of amortizable section 197 intangibles other than goodwill and going concern value since August 10, 1993, generally (the date of enactment of section 197), and, in some cases, since 1991.

The legislative history to the 1993 Act clearly contemplates that changes to the classification system would be made by amended regulations. In the absence of such amendments, the only system available under regulations was the four-class system established before the enactment of section 197. Further, the IRS revised Form 8594, Asset Acquisition Statement under Section 1060, in January of 1996 in a manner consistent with the legislative history, i.e., by placing all amortizable section 197 intangibles in Class IV. For acquisition dates before February 14, 1997, if section 197 applies to any asset acquired or deemed acquired, the taxpayer (and all related parties) may consistently (in all transactions in which AGUB, ADSP, MADSP, or consideration must be allocated under section 338 or 1060)—

(i) apply these new rules in full as written;

(ii) apply the current temporary regulations as written; or

(iii) apply the current temporary regulations as written, but treat all amortizable section 197 intangibles as Class IV assets.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Brendan P. O'Hara, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.338–0, entries for § 1.338(b)–2T(b)(2)(v) and § 1.338(b)–2T(c)(4) are added to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (temporary).

* * * * *

(b) * * *
(2) * * *
(v) Class V assets.
(c) * * *
(4) Effective dates.

* * * * *

Par. 3. Section 1.338–3 is amended by:

1. Revising paragraph (b)(4).

2. Revising paragraph (d)(8)(ii) *Example 1*, paragraph (e); *Example 2*, paragraphs (a), (b), and (d); *Example 3*, paragraph (d); and *Example 4*, paragraphs (d) and (f).

The revisions read as follows:

§ 1.338–3 Deemed sale and aggregate deemed sale price.

* * * * *

(b) * * *

(4) *Classes of assets.* The classes of assets are defined in § 1.338(b)–2T(b).

* * * * *

(d) * * *

(8) * * *

(ii) * * *

Example 1. * * *

(e) The facts are the same as in paragraph (a) of this *Example 1*, except that T also has goodwill (a Class V asset) with an appraised value of $10,000. The results are the same as in paragraphs (b) and (c) of this *Example 1*. Because the ADSP does not exceed the fair market value of the Class III asset, no amount is allocated to the Class V assets (assets in the nature of goodwill and going concern value).

Example 2. * * *

(a) P purchases all of the T stock for $140,000. On July 1 of Year 1, T has liabilities (not including the tax liability for deemed sale gain of its assets) of $50,000, cash (a Class I asset) of $10,000, readily marketable securities (a Class II asset) with a basis of $4,000 and a fair market value of $10,000, goodwill (a Class V asset) with a basis of $3,000, and the following Class III assets:

Asset	Basis	FMV	Ratio
1. Land	$5,000	$35,000	.14

Asset	Basis	FMV	Ratio
2. Inventory	10,000	50,000	.20
3. Equipment A (recomputed basis $80,000)	5,000	90,000	.36
4. Equipment B (recomputed basis $20,000)	10,000	75,000	.30
Totals	$30,000	$250,000	1.00

(b) The ADSP exceeds $20,000. Thus, $10,000 of the ADSP is allocated to the cash and $10,000 to the marketable securities. Except as provided in section 7701(g), the amount allocated to an asset (other than a Class V asset) cannot exceed its fair market value. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

* * * * *

(d) Because, under the preliminary calculations of the ADSP, the amount to be allocated to the Class I, II, III, and IV assets does not exceed their aggregate fair market value, no ADSP amount is allocated to goodwill. Accordingly, the deemed sale of the goodwill results in a capital loss of $3,000. The portion of the ADSP allocable to the Class III assets is finally determined by taking into account this loss as follows:

$ADSP_{III} = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_{III} - B_{III}) + (ADSP_V - B_V)]$

$1ADSP_{III} = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_{III} - \$30,000) + (\$0 - \$3,000)]$

$ADSP_{III} = \$160,820 + .34ADSP_{III}$

$.66ADSP_{III} = \$160,820$

$ADSP_{III} = \$243,666.67$

* * * * *

Example 3. * * *

(d)(1) Based on the preliminary allocation, the ADSP is determined as follows: (In the formula, the amount allocated to the Class I assets is referred to as *I*, the amount allocated to the Class II assets as *II*, and the amount allocated to the Class III assets as *III*.)

$ADSP = G + L + T_R \times [(II - B_{II}) + (III - B_{III}) + (ADSP - (I + II + III + B_V))]$

$ADSP = \$150,000 + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (\$250,000 - \$30,000) + (ADSP - (\$10,000 + \$10,000 + \$250,000 + \$3,000))]$

$ADSP = \$200,000 + .34ADSP - \$15,980$

$.66ADSP = \$184,020$

$ADSP = \$278,818.18$

(2) Because the ADSP as determined exceeds the aggregate fair market value of the Class I, II, III, and IV assets, the $250,000 amount preliminarily allocated to the Class III assets is appropriate. Thus, the amount of the ADSP allocated to Class III assets equals their aggregate fair market value ($250,000), and the allocated ADSP amount for each Class III asset is its fair market value. Further, because there are no Class IV assets, the allocable ADSP amount for the Class V asset (goodwill) is $8,818.18 (the excess of the ADSP over the aggregate ADSP amounts for the Class I, II, and III assets).

Example 4. * * *

(d) Because the portion of the preliminary ADSP allocable to Class III assets ($243,666.67) does not exceed their fair market value ($250,000), no amount is allocated to Class V assets for T. Further, this amount ($243,666.67) is allocated among T's Class III assets in proportion to their fair market values. See paragraph (e) of *Example 2*. Tentatively, $48,733.34 of this amount is allocated to the T1 stock.

* * * * *

(f) The facts are the same as in paragraph (a) of this *Example 4*, except that the T1 inventory has a $12,500 basis and a $62,500 value, the T1 stock has a $62,500 value, and T owns 80% of the T1 stock. In preliminarily calculating ADSPIII, the T1 stock can be disregarded but, because T owns only 80% of the T1 stock, only 80% of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80% of these amounts, the remaining calculations and results are the same as in paragraphs (b), (c), (d), and (e) of this *Example 4*, except that the grossed-up basis in T's recently purchased T1 stock is $44,455.00 ($35,564.00/0.8).

Par. 4. Section 1.338(b)–2T is amended by:

1. Revising paragraphs (b)(2), (c)(1), and (c)(3)(iii).
2. Adding paragraph (c)(4).
3. Revising paragraph (d) *Example 1*, paragraphs (vi) and (x) through (xiii).
4. Revising paragraph (d) *Example 2*, paragraphs (vi) through (viii).

The revisions and addition read as follows:

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (temporary).

* * * * *

(b) * * *

(2) *Other assets*—(i) *In general.* Subject to the limitations and other special rules of paragraph (c) of this section, adjusted grossed-up basis (as reduced by Class I assets) is allocated among Class II assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time, then among Class III assets so held in such proportion, then among Class IV assets so held in such proportion, and finally to Class V assets.

(ii) *Class II assets.* Class II assets are certificates of deposit, U.S. Government securities, readily marketable stock or securities (within the meaning of §1.351–1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(iii) *Class III assets.* Class III assets are all assets of target other than Class I, II, IV, and V assets.

(iv) *Class IV assets.* Class IV assets are all section 197 intangibles, as defined in section 197, except those in the nature of goodwill and going concern value.

(v) *Class V assets.* Class V assets are section 197 intangibles in the nature of goodwill and going concern value.

(c) * * *

(1) *Basis not to exceed fair market value.* The amount of adjusted grossed-up basis allocated to an asset (other than Class V assets) shall not exceed the fair market value of that asset at the beginning of the day after the acquisition date. For modification of this fair market value limitation with respect to certain contingent income assets, see § 1.338(b)–3T(g).

* * * * *

(3) * * *

(iii) *Allocation of adjusted grossed-up basis.* Subject to the limitations in paragraphs (c)(1) and (2) of this section, adjusted grossed-up basis (after reduction by the amount of Class I assets) is allocated among Class II, III, IV, and V assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time. For this purpose, the fair market value of Class V assets is deemed to be the excess, if any, of the hypothetical purchase price over the sum of the amount of the Class I assets and the fair market values of the Class II, III, and IV assets.

(4) *Effective dates.* This section applies for acquisition dates on or after February 14, 1997. For acquisition dates before February 14, 1997, if section 197 does not apply to any asset deemed acquired, the provisions of the regulations in effect before February 14, 1997, apply (see § 1.338(b)–2T as contained in 26 CFR part 1 revised April 1, 1996). For acquisition dates before February 14, 1997 if section 197 applies to any asset deemed acquired, the taxpayer (and all related parties) may consistently (in all transactions in which AGUB, ADSP, MADSP, or consideration must be allocated under section 338 or 1060)—

(i) Apply the provisions of this section;

(ii) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.338(b)–2T as contained in 26 CFR part 1 revised April 1, 1996); or

(iii) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.338(b)–2T as contained in 26 CFR part 1 revised April 1, 1996), but treat all amortizable section 197 intangibles as Class IV assets.

(d) * * *

Example 1. * * *

(vi) T has no Class IV assets. The amount allocated to T's Class V assets (assets in the nature of goodwill and going concern value) is $150, i.e., $2,500–$2,350.

* * * * *

(x) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class III and IV assets are as follows:

Asset class	Asset	Fair market value
I	Cash	$50*
III	Equipment	200
IV	Patent	350
	Total	$600

*Amount

(xi) The amount of AGUB allocable to T1's Class III and IV assets is first reduced by the $50 of cash.

(xii) Since the remaining amount of AGUB ($570) is an amount which exceeds the fair market value of T1's only Class III asset, the equipment, the amount allocated to the equipment is its fair market value ($200). After that, the remaining amount of AGUB ($370) exceeds the fair market value of T1's only Class IV asset, the patent. Thus, the amount allocated to the patent is its fair market value ($350).

(xiii) The amount allocated to T1's Class V assets (assets in the nature of goodwill and going concern value) is $20, i.e., $570 − $550.

Example 2. * * *

(vi) The amount of AGUB ($2,700) available to allocate to T's assets is reduced by the amount of cash to $2,500, i.e., $2,700 − $200. This $2,500 balance is then allocated among the Class II, III, IV, and V assets in proportion to, and not in excess of, their fair market values (as determined under § 1.338(b)–2T(c)(3)(iii)).

(vii) Under paragraph (c)(3) of this section, the fair market value of the Class V assets is deemed to be $150, i.e., the $3,000 hypothetical purchase price minus $2,850 (the sum of T's cash, $200, and the fair market value of its Class II, III, and IV assets, $2,650). The allocation is as follows:

Portfolio of marketable securities	*$268
Inventory	268
Accounts receivable	536
Building	714
Land	178
Investment in T1	402
Goodwill and going concern value	134
Total	$2,500

*All numbers rounded for convenience.

(viii) If the AGUB of T is increased (or decreased) as a result of a subsequent adjustment, the hypothetical purchase price and the deemed fair market value of the Class V assets shall be redetermined and the increase (or decrease) in AGUB shall be allocated among T's acquisition date assets pursuant to § 1.338(b)–3T(f). The increase (or decrease) in AGUB is allocated pursuant to § 1.338(b)–3T(f) even if the hypothetical purchase price, as redetermined, no longer exceeds AGUB, as redetermined.

Par. 5. Section 1.338(b)–3T is amended by:

1. Revising paragraphs (e)(1), (f)(1), and (f)(2).

2. In paragraph (j), redesignating *Example (1)* through *Example (8)* as *Example 1* through *Example 8*.

3. Revising the following newly designated examples in paragraph (j): *Example 1*; *Example 2*; *Example 3*, paragraph (i) and paragraphs (v) through (vii); and *Example 6* through *Example 8*.

The revisions read as follows:

§ 1.338(b)–3T Subsequent adjustments to adjusted grossed-up basis (temporary).

* * * * *

(e) * * *

(1) *In general.* If adjusted grossed-up basis was allocated in accordance with the rules of § 1.338(b)–2T(b)(2), a decrease in adjusted gross-up basis (as determined under paragraph (c)(3) of this section) is allocated in the following order: first, as a reduction in the bases of target's Class V acquisition date assets, second, as a reduction of the bases of target's Class IV acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date, third, as a reduction of the bases of target's Class III acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date, and finally, as a reduction of the bases of target's Class II acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date. The decrease in adjusted grossed-up basis allocated to an asset shall not exceed the adjusted grossed-up basis of target previously allocated to that asset. If adjusted grossed-up basis was allocated among target's assets pursuant to § 1.338(b)–2T(c)(3), a decrease in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is accounted for in accordance with the rules of paragraph (f) of this section.

* * * * *

(f) * * *

(1) *Scope.* This paragraph (f) applies if adjusted grossed-up basis was allocated among new target's Class II, III, IV, and V assets in accordance with § 1.338(b)–2T(c)(3) and an adjustment event occurs after the close of the new target's first taxable year.

(2) *Allocation of increases (decreases) in adjusted grossed-up basis.* If an adjustment event after the close of new target's first taxable year increases (or decreases) adjusted grossed-up basis, the following items shall be redetermined, taking into account such adjustment event: the hypothetical purchase price, the deemed fair market value of Class V assets, and the adjusted grossed-up basis allocable to each acquisition date asset under § 1.338(b)–2T(c)(3) (the redetermined (c)(3) amount). (The redetermination of the deemed fair market value of Class V assets under this paragraph (f)(2) is made by taking into account the target's Class I assets and the fair market values of its Class II, III, and IV assets at the beginning of the day after the acquisition date.) If the redetermined (c)(3) amount for an acquisition date asset exceeds the amount of adjusted grossed-up basis previously allocated to such asset (taking into account prior adjustments under this paragraph (f)), an amount of adjusted grossed-up basis equal to such excess shall be allocated to such asset. If the amount of the adjusted grossed-up basis previously allocated to an acquisition date asset (taking into account prior adjustments under this paragraph (f)) exceeds the redetermined (c)(3) amount for that asset, an amount equal to such excess shall be allocated as a reduction in the basis of such asset. The rules of paragraph (d)(2) of this section (or paragraph (e)(2) of this section) apply for the treatment of amounts allocable under this paragraph (f) to an acquisition date asset that has been disposed of, depreciated, amortized, or depleted.

* * * * *

(j) * * *

Example 1. (i)(A) T's assets other than goodwill and going concern value, and their fair market values at the beginning of the day after the acquisition date, are as follows:

Asset class	Asset	Fair market value
III	Building	$100
III	Stock of X (not a target)	200
	Total	$300

(B) T has no liabilities other than a contingent obligation and T does not use the elective formula under section 338(h)(11).

(ii)(A) On September 1, 1997, P purchases all of the outstanding stock of T for $270 and makes an express election for T. The grossed-up basis of the T stock and T's adjusted grossed-up basis (AGUB) are both $270. The AGUB is ratably allocated among T's Class III

assets in proportion to their fair market values as follows:

Asset	Basis
Building ($270×100/300)	$ 90
Stock ($270×200/300)	180
Total	$270

(B) No amount is allocated to the Class V assets. New T is a calendar year taxpayer.

Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 1998, new T sells the X stock and uses the proceeds to purchase inventory.

(iv) On June 30, 1999, the contingent liability of old T becomes fixed and determinable. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338(b)–2T. Since the redetermined AGUB for T ($330) exceeds the sum of the fair market values at the beginning of the day after the acquisition date of the Class III acquisition date assets ($300), AGUB allocated to those assets is limited to those fair market values under § 1.338(b)–2T(c)(1). As there are no Class IV assets, the remaining AGUB of $30 is allocated to goodwill and going concern value (Class V assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase in AGUB
Building	$ 90	$100	$10
X Stock	180	200	20
Goodwill and going concern value	0	30	30
Total	$270	$330	$60

(vi) Since the X stock was disposed of before the contingent liability became fixed and determinable, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather, such amount, $20, is allowed as a capital loss to T for the taxable year 1999 under the principles of *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building and the $30 increase in AGUB allocated to the goodwill and going concern value are treated as basis redeterminations in 1999. See paragraph (d)(2) of this section.

Example 2. (i) On January 1, 1998, P purchases all of the outstanding stock of T and makes an express election for T. T does not use the elective formula under section 338(h)(11). Assume that the AGUB of T is $500 and is allocated among T's acquisition date assets as follows:

Asset class	Asset	Basis
III	Machinery	$150
III	Land	250
V	Goodwill and going concern value.	100
	Total	$500

(ii) On September 30, 1998, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 2007, the former shareholders refund part of the purchase price to P in a settlement of the lawsuit. This refund results in a decrease of T's AGUB of $140.

(iv) Under paragraph (e)(1) of this section, the decrease in AGUB is allocated among T's acquisition date assets. First, because $100 was originally allocated to the Class V assets, $100 of the decrease is allocated to those assets. As there were no Class IV assets acquired, the remaining decrease in AGUB ($40) is allocated to the Class III assets in proportion to their fair market values at the beginning of the day after the acquisition date. Thus, $15 is allocated to the machinery ($40 x 150/$400) and $25 to the land ($40 x 250/$400).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery is treated as if it were disposed of before the decrease is taken into account. In 2007, T recognizes income of $15, the character of which is determined under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the goodwill and going concern value immediately before the decrease in AGUB is $40. A similar adjustment to income is made in 2007 with respect to the $60 of previously amortized goodwill and going concern value.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 2007, is as follows:

Asset	Basis
Machinery	$0
Land	225
Goodwill and going concern value	0

Example 3. (i) Assume that the facts are the same as *Example 2* of § 1.338(b)–2T(d) except that the recently purchased stock is acquired for $1,600 plus additional payments that are contingent upon T's future earnings. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocable among T's Class II, III, IV, and V acquisition date assets pursuant to § 1.338(b)–2T(c)(3)(iii) as follows:

Asset	Basis
Portfolio of marketable securities	*$268
Inventory	268
Accounts receivable	536
Building	714
Land	178
Investment in T1	402
Goodwill and going concern value	134
Total	$2,500

*All numbers rounded for convenience.

* * * * *

(v) Under §1.338(b)–2T(c)(3) the redetermined fair market value of Class V assets is deemed to be $400, i.e., the hypothetical purchase price, as redetermined, of $3,250 minus $2,850 (the sum of T's cash, $200, and the fair market values of its Class II, III, and IV assets, $2,650).

(vi) The amount of AGUB available to allocate to T's Class II, III, IV, and V acquisition date assets is $2,700 (i.e., redetermined AGUB reduced by cash). AGUB allocable to each of T's acquisition date assets (i.e., the redetermined (c)(3) amount) is redetermined using the deemed fair market value of the Class V assets from paragraph (v) of this Example as follows:

Portfolio of marketable securities	*$266
Inventory	266
Accounts receivable	531
Building	708
Land	177
Investment in T1	398
Goodwill and going concern value	354
Total	$2,700

* All numbers rounded for convenience.

(vii) As illustrated by this example, the application of paragraph (f) of this section results in a basis increase for some assets and a basis decrease for other assets. The amount of increase (or decrease) in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined (c)(3) amount	Increase (or decrease) in AGUB
Portfolio of marketable securities	$268	$266	$(2)
Inventory	268	266	(2)
Accounts receivable	536	531	(5)
Building	714	708	(6)
Land	178	177	(1)
Investment in T1	402	398	(4)
Goodwill and going concern value	134	354	220
Total	$2,500	$2,700	$200

* * * * *

Example 6. (i)(A) T has three assets (other than goodwill and going concern value) whose fair market values as of the beginning of the day after the acquisition date are as follows:

Asset class	Asset	Fair market value
III	Building	$100
III	Equipment	50
IV	Secret process	50
	Total	$200

(B) The secret process is a section 197 intangible. T has no liabilities. Assume that no election under section 338 (h)(10) or (h)(11) is in effect.

(ii) On January 1, 1998, P purchases all of the outstanding T stock for $225 plus 50 percent of the net profits generated by the secret process for each of the next three years, determinable and payable on January 1 of each following year. P and T are calendar year taxpayers.

(iii) As of the beginning of January 2, 1998, T's AGUB is $225, allocated as follows:

Asset class	Asset	Basis
III	Building	$100
III	Equipment	50
IV	Secret process	50
V	Goodwill and going concern value.	25
	Total	$225

(iv) On January 1, 1999, $5 is paid by P for the T stock by reason of the net profits from the secret process. The payments are not attributable in any respect to any of T's other acquisition date assets. As a result, T's AGUB on January 1, 1999 is increased by $5.

(v) Assume that on January 1, 1999, the fair market value of the secret process is redetermined to be $52. (For purposes of this redetermination, only those circumstances that resulted in the increase to AGUB are taken into account.)

(vi) On January 1, 1999, only $2 of the $5 increase in AGUB is allocated to the secret process because the increase in AGUB so allocated cannot increase the basis of the secret process above its redetermined fair market value ($52). The balance of the increase is allocated to goodwill and going concern value because the fair market value limitation of § 1.338(b)–2T(c)(1) precludes allocating additional AGUB to the Class III and IV assets.

(vii) The price for which old target is deemed to have sold the secret process is increased to reflect the $2 increase allocated to its basis to new target. See § 1.338–3(d) and paragraph (h)(1) of this section.

(viii) If the fair market value of the secret process as of January 1, 1999, is unchanged from the fair market value as of the beginning of the day after the acquisition date, then the $5 increase in AGUB is allocated to T's goodwill and going concern value.

Example 7. (i) The facts are the same as in *Example 6* except that—

(A) The secret process is valued at $75 as of the beginning of the day after the acquisition date; and

(B) P pays $250 for the T stock and the former T shareholders agree to refund a portion of the purchase price to P for each of the three years that the net income from the secret process is less than $15 per year, determinable and payable on January 1 of the next year.

(ii) Assume that the secret process in the hands of new T is an amortizable section 197 intangible and, therefore, on January 1, 1999, new T's adjusted basis in the secret process is $70 (i.e., $75–$5 of allowable amortization).

(iii) Assume the net income from the process is less than $15 for 1998, and on January 1, 1999, P receives a refund that reduces the stock purchase price by $3.

(iv) Assume that as of January 1, 1999, the fair market value of the secret process is redetermined to be $65. (For purposes of this redetermination, only those circumstances that resulted in the decrease to AGUB are taken into account.)

(v) As of January 1, 1999, the AGUB of T is decreased by $3. This decrease is allocated to the secret process, the basis of which becomes $67 (i.e., $70–$3) and is amortizable over the remaining 14 years.

(vi) The price for which old target is deemed to have sold the secret process is decreased to reflect the $3 decrease allocated to its basis to new target. See § 1.338–3(d) and paragraph (h)(1) of this section.

Example 8. The facts are the same as in *Example 6* except that the intangible Class IV asset is a patent instead of a secret process. The redetermination of the fair market value of the patent on January 1, 1999, is made without regard to the decrease in the remaining life of the patent because that is not a circumstance that resulted in the increase in AGUB.

Par. 6. Section 1.1060–1T is amended by:

1. Designating the text of paragraph (a)(2) following the heading as paragraph (a)(2)(i), adding a heading to newly designated paragraph (a)(2)(i), and adding paragraph (a)(2)(ii).

2. In paragraph (a)(3), revising the outline of topics entries for (a)(2), (b)(2) and (h)(3).

3. Revising the seventh sentence of paragraph (b)(4).

4. Revising paragraphs (d)(2), (e)(1), and (f)(3)(i).

5. Revising the following examples in paragraph (g): *Example 1; Example 2; Example 3*, paragraphs (i), (viii), and (xi); and *Example 4*.

6. Revising paragraph (h)(3).

The additions and revisions read as follows:

§ 1.1060–1T Special allocation rules for certain asset acquisitions (temporary).

(a) * * *

(2) *Effective date*—(i) *In general.* * * *

(ii) *Allocation of consideration.* Paragraphs (d) and (h)(3) of this section and conforming amendments to other provisions of this section apply to applicable asset acquisitions completed on or after February 14, 1997. For applicable asset acquisitions completed before February 14, 1997, if section 197 does not apply to any of the acquired assets, the provisions of the regulations in effect before February 14, 1997 apply (see § 1.1060–1T as contained in 26 CFR part 1 revised April 1, 1996). For applicable asset acquisitions completed before February 14, 1997, if section 197 applies to any of the acquired assets, the taxpayer (and related parties) may consistently (in all transactions in which AGUB (as defined in § 1.338(b)–1), ADSP (as defined in § 1.338–3), MADSP (as defined in § 1.338(h)(10)–1), or consideration must be allocated under section 338 or 1060)—

(A) Apply the provisions of this section;

(B) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.1060–1T as contained in 26 CFR part 1 revised April 1, 1996); or

(C) Apply the provisions of this section as in effect before February 14, 1997 (see § 1.1060–1T as contained in 26 CFR part 1 revised April 1, 1996), but treat all amortizable section 197 intangibles as Class IV assets.

(3) * * *

(a) * * *

(2) Effective date.

(i) In general.

(ii) Allocation of consideration.

* * * * *

(d) * * *

(2) Assets other than Class I assets.

(i) In general.

(ii) Class II assets.

(iii) Class III assets.

(iv) Class IV assets.

(v) Class V assets.

* * * * *

(h) * * *

(3) Interim procedures for Form 8594.

(b) * * *

(4) * * * The money and other property that are treated as transferred in exchange for the like-kind property (and which are excluded from the assets to which section 1060 applies) are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, then from Class IV assets, and then from Class V assets. * * *

* * * * *

(d) * * *

(2) *Assets other than Class I assets*—(i) *In general.* Subject to the limitations and other special rules of paragraph (e) of this section, consideration (as reduced by the amount of Class I assets) is allocated among Class II assets transferred by the seller in proportion to the fair market values of such Class II assets on the purchase date, then among Class III assets transferred by the seller in proportion to the fair market values of such Class III assets on that date, then among Class IV assets transferred by the seller in proportion to the fair market values of such Class IV assets on that date, and finally to Class V assets.

(ii) *Class II assets.* Class II assets are certificates of deposit, U.S. government securities, readily marketable stock or securities (within the meaning of § 1.351–1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(iii) *Class III assets.* Class III assets are all assets other than Class I, II, IV, and V assets.

(iv) *Class IV assets.* Class IV assets are all section 197 intangibles, as defined in section 197, except those in the nature of goodwill and going concern value.

(v) *Class V assets.* Class V assets are section 197 intangibles in the nature of goodwill and going concern value.

(e) * * *

(1) *Allocation not to exceed fair market value.* The amount of consideration allocated to an asset (other than Class V assets) shall not exceed the fair market value of that asset on the purchase date.

* * * * *

(f) * * *

(3) * * *

(i) *In general.* A decrease in consideration is allocated in the following order: first, as a reduction in the amount previously allocated to Class V assets, second, as a reduction in the amount previously allocated to Class IV assets in proportion to their fair market values, third, as a reduction in the amount previously allocated to Class III assets in proportion to their fair market values, and finally, as a reduction in the amount previously allocated to Class II assets in proportion to their fair market values. Decreases in consideration allocated to an asset shall not exceed the amount of consideration previously allocated to that asset. Except as provided in paragraph (f)(4)(ii) of this section (relating to patents and similar property), the fair market value is the fair market value on the purchase date.

* * * * *

(g) * * *

Example 1. (i) On January 1, 1998, S, a sole proprietor, sells to P, a corporation, a group of assets which constitute a trade or business under paragraph (b)(2) of this section. P pays S $2,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $3,000.

(ii) Assume that P acquires no Class I assets and that on the purchase date, the fair market values of the Class II, Class III, and Class IV assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Portfolio of marketable securities.	$ 400
	Total Class II	$ 400
III	Furniture and fixtures	$ 800
	Building	800
	Land	200
	Equipment	400
	Accounts receivable	100
	Total Class III	$2,300
IV	Covenant not to compete.	$100
	Total Class IV	$100

(iii) Under paragraphs (d)(1) and (2) of this section, the amount of consideration allocable to the Class II, III, IV, and V assets is the total consideration reduced by the amount of any Class I assets. Since P acquired no Class I assets, the total consideration of $3,000 is next allocated first to Class II, then to Class III, and then to Class IV assets. Since the fair market value of the Class II assets is $400, $400 of consideration is allocated to the Class II assets. Since the remaining amount of consideration is $2,600 ($3,000 − $400), an amount which exceeds the sum of the fair market values of the Class III assets ($2,300), the amount allocated to each Class III asset is its fair market value. Since, after the allocation to Class III assets, the remaining amount of consideration is $300 ($3,000 − ($400 + $2,300)), an amount which exceeds the fair market value of the Class IV asset ($100), the amount allocated to the Class IV asset is its fair market value. Thus, the total amount allocated to the Class II assets is $400, the total amount allocated to the Class III assets is $2,300, and the total amount allocated to the Class IV asset is $100.

(iv) The amount allocated to the Class V assets (assets in the nature of goodwill and going concern value) is $200 (i.e., $3,000 − ($400 + $2,300 + $100)).

Example 2. (i) Assume the same facts as in *Example 1.* Assume further that P and S each use the calendar year as the taxable year and that, on September 30, 1998, P files a claim against S alleging fraud in the sale of all of the assets.

(ii) On January 1, 2007, S refunds $400 of the purchase price to P in a settlement of the lawsuit.

(iii) Under paragraph (f)(3)(i) of this section, both S and P take into account the $400 decrease in consideration and allocate it among the assets. First, since $200 of consideration previously was allocated to the assets in the nature of goodwill and going concern value (Class V assets), $200 of the decrease in consideration is allocated to those assets. Then, since $100 of consideration previously was allocated to the only Class IV asset, the covenant not to compete, the next $100 of the remaining decrease in consideration ($200) is allocated to that asset. The remaining decrease in consideration ($100) is then allocated to the Class III assets in proportion to their fair market values on the purchase date as follows:

Asset	Fair market value	Allocation fraction	Decrease in consideration ($100 × Col. (2))
Furniture and fixtures	$800	800/2,300	$34.78
Building	800	800/2,300	34.78
Land	200	200/2,300	8.70
Equipment	400	400/2,300	17.39
Accounts receivable	100	100/2,300	4.35
Total	$2,300		$100.00

(iv) In summary, the redetermined consideration that S received for the group of assets is $2,600 after taking into account the decrease in consideration. After allocating the decrease, P's and S's redetermined consideration is as follows:

Asset	Original consideration	Decrease in consideration	Redetermined consideration
Portfolio of marketable securities	$400.00	$0.00	$400.00
Furniture and fixtures	800.00	34.78	765.22
Building	800.00	34.78	765.22
Land	200.00	8.70	191.30
Equipment	400.00	17.39	382.61
Accounts receivable	100.00	4.35	95.65
Covenant not to compete	100.00	100.00	0.00
Goodwill and going concern value	200.00	200.00	0.00
Total	$3,000.00	$400.00	$2,600.00

(v) Assume that, as a result of deductions under section 168, P's adjusted basis in the equipment immediately before the decrease in consideration is zero. P, therefore, treats the equipment as if it were disposed of before the decrease is taken into account. In 2007, P recognizes income of $17.39, the character of which is determined under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of P's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the covenant not to compete and the goodwill and going concern value immediately before the decrease in consideration is $120. A similar adjustment to income is made in 2007 with respect to the $180 of previously amortized covenant not to compete and goodwill and going concern value.

Example 3. (i) On January 1, 1998, A transfers assets X, Y, and Z worth $1,000 to B in exchange for assets D, E, and F, worth $100, plus $1,000 cash.

* * * * *

(viii) A, as transferor of assets X, Y, and Z, received $100 that must be allocated under section 1060 and paragraph (d) of this section. Since A transferred no Class I, II, III, or IV assets to which section 1060 applies, the $100 is allocated to Class V assets (assets in the nature of goodwill and going concern value).

* * * * *

(xi) B, as transferee of assets X, Y, and Z, gave A $100 that must be allocated under section 1060 and paragraph (d) of this section. Since B received from A no Class I, II, III, or IV assets to which section 1060 applies, the $100 consideration is allocated by B to Class V assets (assets in the nature of goodwill and going concern value).

Example 4. (i) On January 1, 1998, S, a sole proprietor, sells to P, a corporation, a group of assets which constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes a covenant not to compete in P's favor. P pays S $3,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, and Class IV assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Portfolio of marketable securities.	$500
	Total Class II	$500
III	Furniture and fixtures	$800
	Building	800
	Land	200
	Equipment	400
	Accounts receivable	200
	Total Class III	$2,400
IV	Covenant not to compete.	$900
	Total Class IV	$900

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (d) of this section in accordance with the agreed upon fair market values of the assets, so that $500 is allocated to Class II assets, $2,400 is allocated to Class III assets, $900 is allocated to Class IV assets, and $200 ($4,000 total consideration less $3,800 allocated to asset classes II, III, and IV is allocated to the Class V assets (assets in the nature of goodwill and going concern value).

(iv) In connection with the examination of P's return, the District Director, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the District Director correctly determines that the fair market value of the covenant not to compete was $100. Since the allocation of consideration among Class II, III, and IV assets results in allocation up to the fair market value limitation, the $800 of unallocated consideration resulting from the District Director's redetermination of the value of the covenant not to compete is allocated to Class V assets (assets in the nature of goodwill and going concern value).

(h) * * *

(3) *Interim procedures for Form 8594.* Until such time, if any, as Form 8594 is revised to require otherwise, the sum of the amounts allocated to Classes IV and

V should be reported on Form 8594 as Class IV assets.

Approved: December 20, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–656 Filed 1–9–97; 2:53 pm]

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26 CFR Parts 1 and 602

[TD 8712]

RIN 1545–AU62

Definition of Private Activity Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the definition of private activity bonds applicable to tax-exempt bonds issued by state and local governments. These final regulations reflect changes to the applicable law that were made by the Technical and Miscellaneous Revenue Act of 1988. These regulations affect issuers of tax-exempt bonds and provide needed guidance for applying the private activity bond restrictions.

DATES: These regulations are effective May 16, 1997.

For dates of applicability of these regulations, see §§ 1.141–15, 1.141–16, 1.148–6(a)(3) and 1.148–6(d)(1)(iii) of these regulations.

FOR FURTHER INFORMATION CONTACT: Loretta J. Finger or Nancy M. Lashnits, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1451. Responses to these collections of information are mandatory. Pursuant to comments received, the collections of information have been amended, but the estimated annual burden per respondent/recordkeeper has not changed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden hours per respondent/recordkeeper: 3 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20024, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Removal of Existing Regulations for Repealed Sections

Prior to the enactment of the Tax Reduction and Simplification Act of 1977 (Pub. L. 95–30), sections 141 through 144 contained provisions of the Internal Revenue Code of 1954 relating to the standard deduction. Sections 141 ("Standard Deduction"), 142 ("Individuals Not Eligible for Standard Deduction"), and 144 ("Election of Standard Deduction") were repealed by section 101(d)(1) of that act. Section 143 ("Determination of Marital Status") was redesignated section 7703 by section 1301(j)(2) of the Tax Reform Act of 1986 (Pub. L. 99–514). Therefore, existing regulations §§ 1.141–1, 1.142–1, 1.142–2, 1.144–1, 1.144–2, and 1.144–3 are being removed from the Code of Federal Regulations (CFR), and regulation § 1.143–1 is being redesignated § 1.7703–1.

Proposed Regulations

On December 30, 1994, proposed regulations (FI–72–88) were published in the **Federal Register** (59 FR 67658) to provide guidance under the Internal Revenue Code of 1986 (Code) in sections 141 (relating to private activity bonds and to qualified bonds), 142 (relating to exempt-facility bonds), 145 (relating to qualified 501(c)(3) bonds), 147 (relating to other requirements applicable to certain private activity bonds), 148 (relating to arbitrage), 150 (relating to change of use), and 1394 (relating to enterprise zone facility bonds). All subsequent references in this preamble to Code sections are to the Internal Revenue Code of 1986. On June 8, 1995, the IRS held a public hearing on the proposed regulations. Written comments responding to the proposed regulations were received.

On May 31, 1996, final regulations (FI–72–88) were published in the **Federal Register** (61 FR 106) to provide guidance under Code section 1394 to address the issues relating to enterprise zone facility bonds. After consideration of all the comments, certain of the proposed regulations under Code sections 141, 142, 144, 145, 147, 148, and 150 are adopted as revised by this Treasury decision. The principal revisions to the proposed regulations are discussed below.

Explanation of Provisions

Certain commentators suggested that the proposed regulations, with certain modifications, be published again as proposed regulations. A number of other commentators suggested that the proposed regulations, with certain modifications, should be promulgated as final regulations to provide certainty at the earliest possible time. After considering these comments, the IRS and Treasury concluded that state and local government issuers would benefit from the adoption of the proposed regulations, with certain modifications made in response to comments, as final regulations.

A. Section 1.141–1 Definitions and rules of general application.

Replaced amounts. The proposed regulations provide that the proceeds taken into account under the private activity bond tests include certain replacement proceeds that are reasonably expected to be available during the project period.

The final regulations treat replaced amounts also as arising to the extent that the issuer reasonably expects that the term of the issue will be longer than is reasonably necessary for the governmental purposes of the issue, in the same manner as replacement proceeds arise under the arbitrage regulations under Code section 148. Thus, replaced amounts may arise under the private activity bond tests if an issuer reasonably expects that there will be available amounts during the period that the bonds remain outstanding longer than necessary for the governmental purposes of the issue and if those amounts are used for purposes that are inconsistent with the private activity bond tests.

B. Section 1.141–2 Private activity bond tests.

1. Clarification of reasonable expectations test. Under the proposed regulations the private activity bond tests depend on both reasonable expectations as of the issue date and

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subsequent deliberate actions of the issuer.

The final regulations clarify that, in general, the reasonable expectations test is met only if the issuer reasonably expects, as of the issue date, that no action or event during the entire term of the bonds will cause either the private business tests or the private loan financing test to be met. The final regulations further provide, however, that, if certain conditions are met, the period of expected compliance needs to extend only to a mandatory redemption date. This special rule is intended to accommodate issuers that reasonably expect that bond-financed property may be used by nongovernmental persons during the stated term of the issue, but have not entered into any arrangement with a nongovernmental person that will use the property and are unable to predict the timing of that nongovernmental use. This special rule does not permit, however, reasonably expected "recycling" of disposition proceeds because the special rule requires redemption of all nonqualified bonds.

2. Definition of deliberate action. The proposed regulations generally provide that any action within the control of an issuer is treated as a deliberate action and that, if the financed property was designed differently than is reasonably necessary for the governmental purposes of the issuer, an action with respect to that property is treated as deliberate, even if it is not within the issuer's control. Commentators suggested that deliberate action should be more narrowly defined.

The final regulations make certain changes that narrow the scope of the deliberate action rule to minimize administrative burden on state and local governments. First, the special rule for property that is "designed differently" is deleted. The reasonable expectations test adequately addresses the concerns of this special rule. Second, the final regulations clarify that an action taken by a state or local government in response to a regulatory directive of the federal government is not a deliberate action. Finally, the final regulations provide that, if certain conditions are met, dispositions of personal property in the ordinary course of an established governmental program are not treated as a deliberate action.

3. Special rule for general obligation bond programs that finance a large number of separate purposes. The proposed regulations provide a special exception to the definition of disposition proceeds that is intended to minimize the administrative burden of tracing the use of proceeds of general obligation bonds that finance a large number of projects. Commentators suggested that this exception should be available for other types of bonds and that fewer conditions should apply to the exception.

The final regulations provide a similar rule that is broadly stated as an exception to the rule that a deliberate action after the issue date can cause an issue to meet the private activity bond tests. This exception is intended to provide relief for "cash flow" general obligation programs, where issuers use the proceeds of an issue for a large number of projects and spend proceeds promptly. These programs merit special treatment in part because they further the purposes of the arbitrage rules.

4. When a deliberate action occurs. The proposed regulations provide that a deliberate action occurs on the earlier of the date the parties agree on the consideration for the new use or the date on which the new use occurs. Commentators suggested that the regulations should not treat a deliberate action as occurring before the date on which new private business use actually commences, in part because it may not be possible to take a remedial action with disposition proceeds before the date on which the disposition proceeds are received.

The final regulations provide in general that a deliberate action occurs on the date the issuer enters into a binding contract with a nongovernmental person for use of the financed property that is not subject to any material contingencies. In most cases, material conditions to closing a transaction that results in private business use will be treated as material contingencies so that this date will not occur before the date of receipt of disposition proceeds.

C. Section 1.141–3 Definition of private business use.

1. Economic benefit as private business use. Under the proposed regulations, economic benefit to a nongovernmental person may be treated as private business use, even if the nongovernmental person has no special legal rights to use the financed property.

Commentators suggested that the private business use test should not be met unless special legal rights are provided to a nongovernmental person pursuant to an arrangement, and that mere economic benefit is insufficient to give rise to private business use.

The final regulations largely adopt these suggestions. The final regulations provide, however, that, if the financed property is not available for use by the general public, a nongovernmental person may be treated as a private business user of the property based on all of the facts and circumstances, even if that nongovernmental person has no special legal entitlements to use of the property.

2. Ownership. The proposed regulations provide that ownership of property by a nongovernmental person is private business use of that property.

Commentators suggested that ownership for this purpose should be defined to mean ownership for general federal income tax purposes and that mere holding of title to property by a nongovernmental person should not necessarily give rise to private business use. Commentators further suggested that certain customary financing structures that require a nongovernmental person to be a nominal owner of financed property should be accommodated.

The final regulations adopt these suggestions.

3. Discharge of a primary legal obligation. The proposed regulations provide that the use of bond proceeds to provide property that discharges a primary and unconditional legal obligation of a nongovernmental person results in private business use of that property.

Commentators suggested that this rule be deleted from the final regulations. Many commentators indicated that this rule would interfere with traditional tax assessment bond financings for governmental projects such as roads and sidewalks. Some commentators also indicated that certain state and local governments may be required or encouraged under state law to enter into development agreements with private developers that could result in private business use of governmental projects under the discharge of a primary legal obligation rule.

The final regulations adopt this comment by deleting this rule.

4. Management contracts. The proposed regulations provide that management contracts other than qualified management contracts result in private business use of the managed property.

Commentators suggested that the qualified management contract rules should be safe harbors, not substantive rules, and that a management contract should give rise to private business use only if it transfers a proprietary interest in financed property to a manager that is a nongovernmental person. Commentators suggested that the permissible contract terms for qualified management contracts should be further extended and that limitations on the contract term based on useful life of the

financed property should be deleted. In addition, commentators suggested that contracts for incidental services, such as janitorial and equipment repair services, should never give rise to private business use of financed property.

The final regulations provide more flexible accommodation for management contracts that implement cost-saving "privatization" measures for state and local governments, but continue to reflect the view that Congress intended that a management contract can give rise to private business use even if it does not in substance transfer a leasehold or ownership interest to a nongovernmental person for general federal income tax purposes. Thus, the final regulations do not adopt the rule that a management contract gives rise to private business use only if it transfers a proprietary interest to a nongovernmental service provider. The final regulations provide that the determination of whether a management contract that does not meet the qualified management contract safe harbors gives rise to private business use is based on all of the facts and circumstances. In general, a management contract gives rise to private business use if the compensation under the contract is based on net profits. The final regulations further provide, however, that contracts for services solely incidental to the primary governmental function or functions of a financed facility do not otherwise give rise to private business use under the management contract rules. In addition, the final regulations clarify the standards to be applied in determining whether a management contract is properly characterized as a lease.

A separate revenue procedure establishes safe harbors which expand the types of management contracts that do not result in private business use. This revenue procedure in particular permits longer term management contracts for public utility facilities and systems, relaxes certain of the requirements for permitted compensation arrangements, and deletes the requirement that the issuer not control the service provider.

5. Research agreements. The proposed regulations set forth bright line rules for determining when corporate-sponsored research agreements and cooperative research agreements do not give rise to private business use. These rules apply only to basic research.

The final regulations provide a facts and circumstances rule, and a separate revenue procedure establishes safe harbors for determining when corporate-sponsored research agreements and cooperative research agreements do not give rise to private business use. This revenue procedure also expands the definition of basic research, for purposes of Code section 141, to include any original investigation for the advancement of scientific knowledge not having a specific commercial objective.

6. Exception for general public use. The proposed regulations contain detailed quantitative rules for determining when use of financed property by a nongovernmental person is disregarded because the nongovernmental person is treated as using the property as a member of the general public. The proposed regulations also provide that use by a nongovernmental person of financed property is not treated as general public use if the property provides a significant economic benefit to the nongovernmental person because it is functionally and integrally related to other property used by the nongovernmental person.

Commentators suggested that the quantitative rules for defining general public use should be deleted, because they are not sufficiently flexible to accommodate the wide variety of state and local government financings and because they disproportionately affect small local governments.

The final regulations largely delete the quantitative approach in the proposed regulations for general public use. Instead, the final regulations adopt a more qualitative test focusing on whether financed property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business. This approach is more consistent with the requirement in Code section 141 that any activity carried on by a person that is not a natural person is treated as a trade or business activity. Because the final regulations generally do not treat mere economic benefit as private business use, the rules for functionally and integrally related property are deleted. In light of this narrower definition of private business use, the special system improvement rules have also been deleted. The final regulations retain the rule in the proposed regulations that use under an arrangement that conveys priority rights is not used on the same basis as the general public and clarifies that an arrangement for long-term use (defined as more than 180 days) is not treated as general public use. The final regulations provide that use of financed property by a nongovernmental person that is not general public use is not necessarily private business use. Under the approach taken in the final regulations, the definition of general public use is significant for determining when economic benefit alone can give rise to private business use and for determining the permitted terms of short-term arrangements that are not treated as private business use.

7. Exceptions for short-term arrangements. The proposed regulations provide that a lease or similar arrangement that has a term of 1 year or less and that is not renewed or renewable is generally disregarded. Commentators suggested that longer term arrangements should be disregarded.

The final regulations provide different exceptions for various short-term contracts. The exceptions for short-term contracts are based on a hierarchy depending on how broadly contracts with the same terms are offered to other users. Under this approach, a contract that is available to the general public may have a term up to 180 days; a contract not treated as general public use, but offered on the basis of generally applicable or uniformly applied rates, may have a term of up to 90 days; and a specially negotiated contract that provides fair market value compensation may have a term of up to 30 days. In each case, the exception applies only if the property is not financed for a principal purpose of providing that property for use by the nongovernmental person entering into the contract. The final regulations delete the 1-year exception for non-renewable short-term contracts because the final regulations adopt a more flexible rule for measuring private business use, as discussed below.

8. Exception for temporary use by developers. The proposed regulations provide an exception for temporary use by a developer of an improvement that carries out an essential governmental function during an initial development period not exceeding 3 years.

Commentators suggested that the 3-year limitation on the exception is too short for many developments and that a requirement that development proceed with reasonable speed should suffice.

The final regulations largely adopt this comment. This approach focuses more on whether financed property serving an essential governmental function is transferred to a governmental person with reasonable speed than on a specific time frame for development of the property benefited by the improvement.

9. Exceptions for incidental use and qualified improvements. The final regulations remove certain conditions to exceptions for incidental use and qualified improvements.

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10. Measurement of private business use. The proposed regulations generally provide that private business use is measured on an annual basis, except for private business use of output facilities. Commentators suggested that private business use should be measured on an average or cumulative basis over the term of an issue. The final regulations largely adopt the suggestion that private business use should be measured over the term of an issue. In general, the percentage of private business use of financed property is determined according to the average annual private business use of that property over the measurement period. The measurement period begins on the later of the issue date of the issue or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue. For certain bonds that are issued in contemplation of refinancing, such as bond anticipation notes, the measurement period is based on the final maturity date of any bond of the refunding issue. Under an anti-abuse rule, however, if an issuer extends the term of an issue for a principal purpose of increasing the permitted amount of private business use, the Commissioner may determine the amount of private business use according to the greatest percentage of private business use in any 1-year period. Further, if an issuer reasonably expects on the issue date that bonds will be redeemed before the final maturity of the issue because of a deliberate action, the measurement period ends on the reasonably expected date of redemption. In addition, for arrangements that result in ownership of financed property by a nongovernmental person, the amount of private business use is the greatest percentage of private business use in any 1-year period.

This approach of looking to the average amount of private business use over the expected economic life of financed property is more consistent with the approach adopted for measuring private payments and security, which also in effect looks over the term of an issue. This approach also provides issuers with significantly greater flexibility to spread out de minimis private business use over the term of an issue.

The final regulations adopt the measurement-over-the-term rule for private business use, however, only for purposes of determining whether an issue has no more than the permitted amount of private business use (that is, in most cases, the 10 percent threshold). This general approach reflects the view that adoption of the measurement-over-the-term rule for purposes other than the de minimis rules would be unduly complex to administer and could distort the economic substance.

This general approach also simplifies the regulations by providing a single rule for measuring private business use that applies to both output facilities and other governmental facilities. The final regulations reflect the view that all governmental facilities generally would benefit from more flexible private business use measurement rules.

11. Determining average use within an annual period. The proposed regulations generally provide that the average amount of private business use within a year is based on the amount of time financed property is actually used for private business use as a percentage of total time for all actual use, provided that significant differences in fair market value of different times of use must be taken into account.

Some commentators suggested that the average amount of private business use should be based on a comparison of time of private business use to time the financed property is available for use, not to time it is actually used.

The final regulations continue to determine private business use for certain purposes as a percentage of actual use. This method more accurately reflects economic substance. The final regulations also clarify that, in certain cases, the determination of fair market value of private business use must take into account the amount of private payments for that use.

D. Section 1.141–4 Private security or payment test.

1. Payments not directly made by private business users. The proposed regulations provide that payments made with respect to property used for a private business use are taken into account under the private payment test, even if not made by persons that are private business users of proceeds. Commentators suggested that payments by persons that are not private business users should be taken into account only if they can be imputed to a private business user of proceeds.

The final regulations retain the general rule in the proposed regulations but clarify that only payments made for the period of private business use are taken into account. The definition of private business use in the final regulations narrows the application of this general rule.

2. Allocation of private payments to different sources of funding. The proposed regulations provide that a payment from a private business user of property may be allocated first to repay any costs of the property paid by the issuer from a source other than a borrowing ("equity"). The proposed regulations also provide, however, that, if a payment is made for property financed with two or more issues (including issues that are not tax-exempt), the payment must be allocated among those issues according to the relative amount of proceeds of those issues used to finance the property. Commentators generally favored the rule permitting allocations first to equity, but suggested that the same rule should apply to costs financed with taxable bonds.

The final regulations provide a more general facts and circumstances test for the allocation of private payments that looks to the nexus between the private payment and both the property financed and the source of funding. Thus, under the approach of the final regulations, allocations of private payments first to equity before other sources of funding are generally permitted only to the extent that there is a specific nexus between the payment and a prior expenditure. The final regulations do not adopt the recommendation that issuers also be permitted in all cases to allocate private payments first to repayment of taxable bonds, but treat the obligation to pay debt service in future years under the taxable debt as establishing a nexus to future private payments. The final regulations retain the rule that allocations of private payments among issues according to relative amounts of those sources of funding that are expended on the property is generally appropriate, but the final regulations provide issuers with more flexibility to match these allocations to debt service payments associated with various sources of funding.

3. Allocation of private security among issues. The proposed regulations provide that, for bonds other than parity bonds, property or payments securing more than one issue must be fully allocated to each issue under the private security test. Commentators suggested that the rule for allocation of private security among issues should reasonably reflect foreclosure and default scenarios under the bond documents. The final regulations in general adopt this comment.

4. Limitations on private security. The proposed regulations provide that any property that is used for a private business use is taken into account under the private security test if it secures payment of debt service on an issue.

The final regulations provide that

only financed property and property that is provided directly or indirectly by a nongovernmental person that is treated as a user of proceeds are taken into account under the private security test.

5. Exception for generally applicable taxes. The proposed regulations contain specific rules for when a special agreement with respect to a generally applicable tax may cause tax payments to be treated as private payments.

In response to comments, the final regulations are more flexible for arrangements that reduce the amount of tax paid and permit a wider range of tax equivalency payments. The final regulations also clarify that an impermissible agreement entered into by one taxpayer does not affect whether payments made by other taxpayers are treated as generally applicable taxes.

E. Section 1.141–5 Private loan financing test.

1. Definition of proceeds for purposes of the private loan financing test. The proposed regulations provide that the private loan financing test is met if more than the lesser of 5 percent of the "proceeds" or $5 million of "sale proceeds" is used to make or finance loans to nongovernmental persons. Commentators suggested that the definition of proceeds for purposes of the test should be consistent.

The final regulations apply the general private activity bond definition of "proceeds" to both parts of the test. This approach reflects the view that investment proceeds that are used to make or finance loans should be taken into account in determining whether the private loan financing test is met.

2. Requirements for the "tax assessment loan" exception. The proposed regulations provide that a number of special requirements apply to the exception in Code section 141(c)(2) from the private loan financing test for loans that enable the borrower to finance a governmental tax or assessment of general application for a specific essential governmental function. Commentators suggested that these requirements would improperly restrict traditional special tax and assessment tax-exempt financing for governmental infrastructure in some states.

In general, special state law restrictions (for example, state constitutional limitations on issuing general obligation bonds) should not necessarily foreclose state and local governments from access to tax-exempt financing for traditional governmental infrastructure projects. Accordingly, the final regulations relax the requirements for the tax assessment bond exception. The requirement that a tax or assessment of general application be proportionate to the benefit to the taxpayer is deleted. Further, the definition of improvements that serve essential governmental functions is expanded. Under the new definition, all improvements to utilities and systems that are owned by a governmental person and that are available for use by the general public serve essential governmental functions for this purpose. In addition, the final regulations provide that guarantees provided by persons treated as borrowers in most cases will not cause taxes or assessments to fail to qualify for the tax assessment bond exception.

F. Section 1.141–6 Allocation and accounting rules.

1. Allocations of proceeds to expenditures. The proposed regulations in general provide that proceeds must be allocated to expenditures consistently for private activity bond purposes and arbitrage purposes. Commentators suggested that, in light of the different purposes of the private activity bond rules and the arbitrage rules, this consistency should not be required.

The final regulations continue the approach of the proposed regulations. Final regulations are also adopted under Code section 148 clarifying that allocations of proceeds to expenditures for both purposes must be made by a definite time (in no event later than the date that rebate is, or would be, due).

2. Other allocation rules. The proposed regulations contain detailed rules in §§ 1.141–1 and 1.141–6 for allocations of proceeds and bonds, including rules for mixed use facilities and partnerships.

The final regulations reserve these provisions. The IRS and Treasury are considering more flexible rules to accommodate public/private partnerships.

G. Section 1.141–7 Special rules for output contracts.

The proposed regulations contain detailed rules in § 1.141–7 for determining the private business use and private payments resulting from output contracts.

Regulatory changes are dramatically affecting the electric power industry. In order to further consider the issues raised by these changes, the final regulations reserve this section. The final regulations, however, otherwise apply to bonds issued to finance output facilities.

H. Section 1.141–8 $15 million limitation for output facilities.

Clarification of computation of nonqualified amount. The proposed regulations provide guidance on the special $15 million limitation on output facilities of Code section 141(b)(4). The final regulations reserve this section.

I. Section 1.141–12 Remedial actions.

1. Remedial actions generally. The proposed regulations provide that an action that causes the private business tests or the private loan financing test to be met is not treated as a deliberate action if the issuer takes an appropriate remedial action.

The final regulations clarify that a remedial action affects only compliance with the private activity bond rules relating to use of proceeds and does not affect compliance with rules relating to security or payment. This clarification is important for purposes of determining the amount of "nonqualified bonds" with respect to which a remedial action must be taken.

2. Relationship of disposition proceeds and remedial actions. The proposed regulations contain separate rules for use of proceeds derived from the disposition of bond-financed property ("disposition proceeds") and remedial actions. Commentators suggested that the relationship between the disposition proceeds rules and the remedial action rules should be clarified and that, in particular, additional rules should be provided indicating when it is appropriate to treat an issue as financing disposition proceeds rather than the transferred property.

The final regulations take the view that, if an issuer disposes of bond-financed property, it is generally appropriate under Code section 141 for the Commissioner to treat the issue as financing either the transferred property or the disposition proceeds. This is because any disposition of bond-financed property has the potential to transfer the benefits of tax-exempt financing to the purchaser, and the private activity bond rules extend to transactions that have significant potential to transfer these benefits, as well as transactions that actually transfer these benefits. As a matter of administrative convenience, however, the final regulations in certain cases permit an issuer to choose to treat an issue as financing either the transferred property or the disposition proceeds, provided that certain conditions are met that protect against abuse. The final regulations accordingly treat the disposition proceeds rules as conditions to taking certain remedial actions. For

example, in order for an issue to be eligible for a remedial action, the disposition proceeds of an issue must generally be treated as proceeds for purposes of the arbitrage regulations.

3. Conditions to taking a remedial action. The proposed regulations provide that an issuer may take a remedial action to prevent bonds of an issue from becoming private activity bonds only if it made certain covenants and certifications on the issue date. Commentators suggested that these specific requirements should be deleted because they are unnecessary in light of standard industry practice to require similar covenants and certifications. The final regulations adopt this comment.

4. Maturity limitations and remedial actions. The proposed regulations provide that an issuer cannot take advantage of certain favorable rules involving disposition proceeds if the weighted average maturity of an issue is greater than 120 percent of the economic life of the financed property. Commentators suggested that use of this 120 percent maturity limitation as a condition to favorable treatment in taking remedial actions is burdensome for issuers of governmental bonds.

The final regulations provide that an issue is eligible for the remedial action rules only if the term of the issue is not longer than is reasonably necessary for the governmental purposes of the issue. To determine whether the term of an issue is unreasonably long, the final regulations adopt the same standard that is used for purposes of determining whether replacement proceeds arise because the term of an issue is unreasonably long under § 1.148–1(c)(4). This standard provides that the 120 percent maturity limitation is a safe harbor, rather than a requirement in all cases.

5. Special rules for identifying disposition proceeds. Under the proposed regulations, many of the rules for remedial actions depend on identification of disposition proceeds. The final regulations clarify how disposition proceeds are to be allocated to an issue when the transferred property has been financed with different sources of funding. In general, the final regulations provide that disposition proceeds should be allocated first to the outstanding bonds that financed the property (both tax-exempt and taxable) in proportion to the outstanding principal amounts of those outstanding bonds. Only amounts in excess of these outstanding principal amounts may be allocated to other sources of funding, such as equity of an issuer or bonds that are no longer outstanding.

6. Redemption and defeasance as remedial actions. The proposed regulations generally provide that redemption and defeasance of nonqualified bonds are permitted remedial actions. In cases where the disposition is exclusively for cash, only the disposition proceeds need to be used to redeem or defease bonds; in other cases, the entire amount of nonqualified bonds is required to be redeemed or defeased. The proposed regulations also provide, however, that defeasance of bonds to a date that is more than six months from the date of a deliberate action is permitted only if the possibility of a disposition was remote as of the issue date of the bonds. Commentators suggested that this special limitation should be deleted because the remoteness standard is vague and would require governmental issuers to use special call provisions that would substantially increase borrowing costs.

The final regulations delete the "remote possibility" limitation on use of defeasance as a remedial action. Instead, the final regulations permit defeasance as a remedial action only if the first call date of the nonqualified bonds is not greater than 10½ years from the issue date. This limitation presents an administrable standard that will not unduly interfere with customary financing practices of state and local governments, while at the same time preventing improper use of defeasance as a remedial action for bonds that cannot be called for an extended period of time.

7. Alternative qualifying use of a facility as a remedial action. The proposed regulations provide that alternative qualifying use of a bond-financed facility is a permitted remedial action if the facility is used in a manner that meets the requirements for any type of qualified private activity bonds and the bonds are treated as reissued as of the date of the deliberate action for purposes of the tax-exempt bond rules concerning use of bond-financed property. Commentators suggested that for purposes of determining whether bonds that are treated as reissued as of the date of the deliberate action satisfy all of the applicable requirements for qualified bonds, the rules contained in Code section 146 relating to volume cap and the rules contained in Code sections 55 and 57 should not apply. Commentators also suggested that the regulations should clarify whether any limitations are placed on an issuer's use of disposition proceeds when it chooses to use this remedial action.

The final regulations provide that, in order to qualify for this remedial action, an issuer must deposit any disposition proceeds that it receives into a yield-restricted escrow to pay the nonqualified bonds. This requirement is different than the defeasance remedial action, because an issuer is permitted to leave bonds outstanding until maturity (rather than the first call date) and is not subject to the special 10 ½-year call protection limitation on the defeasance remedial action. Also, if an issuer chooses to use this rule, it may receive compensation in installments and use any payments received either to pay debt service or to deposit into a yield-restricted escrow to pay debt service. This requirement is appropriate because it establishes the necessary nexus between the new user and the nonqualified bonds. In effect, the new user is treated, as far as is reasonably practicable, as if it were the conduit borrower of the bond proceeds.

The final regulations also clarify that, for purposes of determining whether nonqualified bonds that are deemed to be reissued meet all of the requirements for qualified private activity bonds, the law in effect on the date of the deliberate action applies. The final regulations do not adopt the suggestion that the rules contained in Code section 146 relating to volume cap and the rules contained in Code sections 55 and 57 should not apply. The IRS and Treasury are issuing a revenue procedure (discussed in paragraph 10 below) to address the change in status of bonds from governmental bonds to qualified private activity bonds and the application of the alternative minimum tax provisions. The final regulations provide that the rules contained in Code section 147(d) relating to the acquisition of existing property do not apply to this remedial action.

8. Nonqualified bonds. The proposed regulations permit an issuer to take a remedial action with respect to a portion of the bonds of an issue, rather than the entire issue. In general, the proposed regulations require that these "nonqualified bonds" be a pro rata portion (among the maturities) of the outstanding bonds of an issue. Commentators suggested that issuers should have greater flexibility to allocate uses of proceeds to bonds when a deliberate action occurs.

The final regulations permit an issuer to redeem or defease bonds with longer maturities than the nonqualified bonds in a remedial action, but in general continue to require that nonqualified bonds be identified on a pro rata basis. Issuers have significant flexibility to allocate bonds of an issue to separate

purposes on or before the issue date under § 1.150–1(c)(3).

Under the final regulations, the percentage of outstanding bonds that are nonqualified bonds is equal to the highest percentage of private business use in any 1-year period commencing with the deliberate action.

9. Effect of deliberate actions and remedial actions on bonds that have been advance refunded. The proposed regulations do not specifically address how deliberate actions and remedial actions affect bonds that have been advance refunded. Commentators suggested that a deliberate action should not affect the status of an advance refunded bond under Code section 141.

The final regulations provide that a remedial action taken with respect to advance refunding bonds proportionately "cures" the bonds that have been advance refunded.

10. Remedial payment revenue procedure. The preamble to the proposed regulations indicates that the IRS and Treasury are considering issuance of a revenue procedure pursuant to which an issuer may request a closing agreement with respect to outstanding bonds. Under the closing agreement, the issuer would make a payment to the IRS to prevent the interest on bonds from being includible in gross income of bondholders as a result of a deliberate action that results in satisfaction of the private activity bond test. In general, the payment would be based on the difference between applicable federal rates for taxable and tax-exempt obligations. The preamble to the proposed regulations indicates that this revenue procedure is being considered in lieu of permitting defeasance as a remedial action. Commentators generally favored the publication of such a revenue procedure but suggested that it should apply in addition to defeasance as a remedial action.

Commentators also suggested that an issuer should be permitted to make a payment to the IRS in those cases where the bonds were issued as governmental bonds, the interest on which was not treated as an item of tax preference for purposes of the alternative minimum tax provisions, but the bonds become qualified private activity bonds, the interest on which is treated as an item of tax preference for purposes of the alternative minimum tax provisions as a consequence of a remedial action taken by the issuer.

The IRS and Treasury are issuing a revenue procedure in addition to permitting defeasance as a remedial action. Under this revenue procedure the amount of the remedial payment is based on a factor that roughly approximates revenue loss to the United States rather than the difference between taxable and tax-exempt applicable federal rates. While this approach may in many cases require greater remedial payments than under the approach described in the proposed regulations, the fluctuation in the difference between taxable and tax-exempt applicable federal rates would result in inconsistent treatment of issuers. Further, a more rigorous standard for determining the remedial payment is appropriate because the revenue procedure is adopted in addition to all of the remedial actions set forth in the final regulations.

In response to comments, this revenue procedure also provides that an issuer may make a payment to prevent the application of the alternative minimum tax provisions to interest payable on bonds that were issued as governmental bonds but, as a consequence of a remedial action taken by an issuer, are qualified private activity bonds. This approach recognizes the difficulty state and local government issuers may have in notifying bondholders of this change in status.

J. Section 1.141–13 Refunding issues.

The final regulations reserve on the treatment of refunding bonds under Code section 141.

K. Section 1.141–14 Anti-abuse rules.

Application of the rule to override specific tracing. The proposed regulations provide that if an issuer enters into a transaction or series of transactions with a principal purpose of transferring to nongovernmental persons (other than as members of the general public) significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of Code section 141, the Commissioner may take any action to reflect the substance of the transaction or transactions.

The final regulations adopt this rule and add examples to clarify that it may be invoked in appropriate cases to override specific tracing of the use of proceeds.

L. Section 1.145–1 Special rules for qualified 501(c)(3) bonds.

1. Application of private activity bond rules to Code section 145(a). The proposed regulations provide that the regulations under Code section 141 interpreting the private activity bond tests apply for purposes of Code section 145(a)(2).

The final regulations in general continue this approach but also provide that certain provisions under Code section 141, which are intended to apply only to governmental programs, do not apply to qualified 501(c)(3) bonds. The final regulations also clarify that regulations under Code section 141 apply in the same manner to the ownership test of Code section 145(a)(1) and to the modified private activity bond test of Code section 145(a)(2).

2. Application of deliberate action and remedial action rules to other provisions of Code section 145. The proposed regulations provide that the deliberate action rules of § 1.141–2 and the remedial action rules of § 1.141–12 generally apply to Code section 145.

The final regulations do not apply to Code sections 145(b), (c), or (d). The $150 million limitation on bonds other than hospital bonds of Code sections 145(b) and (c) involves a number of special considerations, which the IRS and Treasury believe would be more appropriate to consider in a project comprehensively interpreting the operation of the special volume cap rules. Similarly, the restrictions on bonds used to provide residential rental housing for family units of Code section 145(d) involve a number of special considerations, which the IRS and Treasury believe would be more appropriate to consider in a project comprehensively interpreting the special rules for bonds financing residential rental housing.

M. Special rules for other qualified bonds.

1. General standard for compliance. The proposed regulations provide that the requirements for qualified bonds (other than qualified 501(c)(3) bonds) generally must be actually met throughout the term of an issue. Commentators suggested that this rule should be deleted because the compliance standard for each type of qualified bond should be separately considered. Other commentators suggested that the compliance standard applicable to governmental bonds, looking to reasonable expectations and deliberate actions, is generally appropriate for qualified bonds.

The final regulations do not address the general compliance standard for qualified bonds (other than qualified 501(c)(3) bonds). The IRS and Treasury believe that further consideration should be given to whether special rules apply to different types of qualified bonds. Accordingly, the final regulations address only whether remedial actions may be taken to prevent certain types of qualified bonds from failing to meet requirements relating to use of proceeds. Thus, no implication is intended that the

measurement-over-the-term rule for private business use under Code sections 141 and 145 applies in any manner to other qualified bonds.

2. Remedial actions for change in use. The proposed regulations in general provide that, if an action results in nonqualified use of proceeds, the remedial actions that apply to governmental bonds also apply to qualified bonds. The permitted remedial actions include redemption and defeasance of bonds and alternative qualifying use of a facility.

The final regulations address only whether remedial actions may be taken for exempt facility bonds under Code section 142 and qualified small issue bonds under Code section 144(a) and with respect to certain provisions of 147. The final regulations continue to provide that redemption and defeasance are permitted remedial actions for these types of issues, under rules that are similar to the remedial action rules that apply to governmental bonds. The requirements for these types of qualified bonds focus on the use of a particular facility for a particular qualifying use, and, unlike governmental bonds and qualified 501(c)(3) bonds, do not generally focus on the status of the borrower. For this reason, the final regulations generally do not permit an issuer of exempt facility bonds or qualified small issue bonds to take a remedial action based on use of disposition proceeds. Accordingly, the final regulations clarify that the amount of bonds required to be redeemed or defeased under a remedial action is not limited to the amount of disposition proceeds. For administrative convenience, however, the final regulations permit the use of disposition proceeds from the sale of personal property that is incidental to a qualifying facility to replace the personal property that is sold. The final regulations do not permit alternative qualifying use of a facility as a remedial action for exempt facility bonds or qualified small issue bonds.

3. Remedial actions for failure to spend proceeds. The proposed regulations provide that a remedial action may be taken to correct a failure to spend proceeds as required under Code sections 142 and 144. This rule replaces Rev. Proc. 79–5, 1979–1 C.B. 485, and Rev. Proc. 81–22, 1981–1 C.B. 692, which provide guidance on how the requirement in the predecessor to Code section 142 that substantially all of the proceeds be spent for a qualifying purpose is met when excess bond proceeds remain on hand after acquisition or construction has been completed.

The final regulations clarify that the requirements for remedial action in the case of failure to spend proceeds for a qualifying purpose are comparable to the requirements for remedial action in the case of change in use of a qualifying facility. Accordingly, the final regulations require that nonqualified bonds must be redeemed at their first call date, regardless of the amount of call premium that is required to be paid, and that defeasance is permitted only if the first call date is no later than 10½ years after the issue date.

4. Refundings of qualified bonds. The final regulations reserve on the treatment of refundings of qualified bonds.

N. Section 1.150–4 Statutory change of use rules for qualified private activity bonds.

The proposed regulations provide that the change of use provisions of Code section 150(b) apply even if an issuer takes a remedial action that enables an issue of qualified private activity bonds to continue to meet use of proceeds requirements. Commentators suggested that a remedial action that preserves the tax-exempt status of a qualified private activity bond should also prevent application of the interest deduction denial and imputed unrelated business income provisions of Code section 150(b).

The final regulations more specifically address the effect of each type of remedial action on the application of the Code section 150(b) consequences. In general, defeasance of bonds does not prevent application of Code section 150(b). If other remedial actions are taken promptly after the date of the remedial action, however, Code section 150(b) does not apply.

O. Effective dates.

The final regulations generally apply to bonds issued after May 16, 1997. To promote compliance, the final regulations generally permit elective, retroactive application of the regulations in whole, but not in part, to outstanding issues. In addition, the final regulations permit elective, retroactive application to outstanding issues of any of the following sections of the regulations: §1.141–12 (the remedial action rules); §1.141–3(b)(4) (the management contract rules); and §1.141–3(b)(6) (the research agreement rules).

Effect on Other Documents

In part because the existing industrial development bond regulations under §1.103–7 may continue to apply to refunding bonds issued after the effective date of the private activity bond regulations, §1.103–7 is not being removed from the Code of Federal Regulations.

For bonds to which the final regulations apply, the following publications are obsolete:

Notice 87–69, 1987–2 C.B. 378.
Notice 89–9, 1989–1 C.B. 630.

For actions that occur on or after May 16, 1997, the following publications are obsolete:

Rev. Proc. 93–17, 1993–1 C.B. 507.
Rev. Proc. 81–22, 1981–1 C.B. 692.
Rev. Proc. 79–5, 1979–1 C.B. 485.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Michael G. Bailey, Loretta J. Finger, and Nancy M. Lashnits, Office of Assistant Chief Counsel (Financial Institutions and Products), and Linda B. Schakel of the Office of Tax Legislative Counsel. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.148–6 also issued under 26 U.S.C. 148(f), (g), and (i). * * *

Section 1.150–4 also issued under 26 U.S.C. 150(c)(5). * * *

Par. 2. The center heading immediately preceding §1.141–1 is revised to read as follows:

Tax Exemption Requirements for State and Local Bonds

Par. 3. Section 1.141–1 is revised.

§1.143–1 [Redesignated as §1.7703–1]

Par. 4. Section 1.143–1 is redesignated as §1.7703–1.

§1.144–3 [Removed]

Par. 5. Section 1.144–3 is removed.

Par. 6. Sections 1.141–0 and 1.141–2 through 1.141–16 are added.

The revised and added sections read as follows:

§1.141–0 Table of contents.

This section lists the captioned paragraphs contained in §§ 1.141–1 through 1.141–16.

§1.141–1 Definitions and rules of general application.

(a) In general.
(b) Certain general definitions.
(c) Elections.
(d) Related parties.

§1.141–2 Private activity bond tests.

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(b) Scope.
(c) General definition of private activity bond.
(d) Reasonable expectations and deliberate actions.
(1) In general.
(2) Reasonable expectations test.
(3) Deliberate action defined.
(4) Special rule for dispositions of personal property in the ordinary course of an established governmental program.
(5) Special rule for general obligation bond programs that finance a large number of separate purposes.
(e) When a deliberate action occurs.
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(2) Indirect use.
(3) Aggregation of private business use.
(b) Types of private business use arrangements.
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(5) Common areas.
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§1.141–4 Private security or payment test.

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(e) Generally applicable taxes.
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(2) Definition of generally applicable taxes.
(3) Special charges.
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(f) Certain waste remediation bonds.
(1) Scope.
(2) Persons that are not private users.
(3) Persons that are private users.
(g) Examples.

§1.141–5 Private loan financing test.

(a) In general.
(b) Measurement of test.
(c) Definition of private loan.
(1) In general.
(2) Application only to purpose investments.
(3) Grants.
(4) Hazardous waste remediation bonds.
(d) Tax assessment loan exception.
(1) General rule.
(2) Tax assessment loan defined.
(3) Mandatory tax or other assessment.
(4) Specific essential governmental function.
(5) Equal basis requirement.
(6) Coordination with private business tests.
(e) Examples.

§1.141–6 Allocation and accounting rules.

(a) Allocation of proceeds to expenditures.
(b) Allocation of proceeds to property. [Reserved]
(c) Special rules for mixed use facilities. [Reserved]
(d) Allocation of proceeds to common areas. [Reserved]
(e) Allocation of proceeds to bonds. [Reserved]
(f) Treatment of partnerships. [Reserved]
(g) Examples. [Reserved]

§1.141–7 Special rules for output contracts.

[Reserved]

§1.141–8 $15 million limitation for output facilities.

[Reserved]

§1.141–9 Unrelated or disproportionate use test.

(a) General rules.
(1) Description of test.
(2) Application of unrelated or disproportionate use test.
(b) Unrelated use.
(1) In general.
(2) Use for the same purpose as government use.
(c) Disproportionate use.
(1) Definition of disproportionate use.
(2) Aggregation of related uses.
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(d) Maximum use taken into account.
(e) Examples.

§1.141–10 Coordination with volume cap.

[Reserved]

§1.141–11 Acquisition of nongovernmental output property.

[Reserved]

§1.141–12 Remedial actions.

(a) Conditions to taking remedial action.
(1) Reasonable expectations test met.
(2) Maturity not unreasonably long.
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(2) Special rule for use by 501(c)(3) organizations.
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(j) Nonqualified bonds.
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§ 1.141–13 Refunding issues.

[Reserved]

§ 1.141–14 Anti-abuse rules.

(a) Authority of Commissioner to reflect substance of transactions.
(b) Examples.

§ 1.141–15 Effective dates.

(a) Scope.
(b) Effective dates.
(c) Refunding bonds.
(d) Permissive application of regulations.
(e) Permissive retroactive application of certain sections.

§ 1.141–16 Effective dates for qualified private activity bond provisions.

(a) Scope.
(b) Effective dates.
(c) Permissive application.

§ 1.141–1 Definitions and rules of general application.

(a) *In general.* For purposes of §§ 1.141–0 through 1.141–16, the following definitions and rules apply: the definitions in this section, the definitions in § 1.150–1, the definition of placed in service under § 1.150–2(c), the definition of grant under § 1.148–6(d)(4)(iii), the definition of reasonably required reserve or replacement fund in § 1.148–2(f), and the following definitions under § 1.148–1: bond year, commingled fund, fixed yield issue, higher yielding investments, investment, investment proceeds, issue price, issuer, nonpurpose investment, purpose investment, qualified guarantee, qualified hedge, reasonable expectations or reasonableness, rebate amount, replacement proceeds, sale proceeds, variable yield issue, and yield.

(b) *Certain general definitions.*

Common areas means portions of a facility that are equally available to all users of a facility on the same basis for uses that are incidental to the primary use of the facility. For example, hallways and elevators generally are treated as common areas if they are used by the different lessees of a facility in connection with the primary use of that facility.

Consistently applied means applied uniformly to account for proceeds and other amounts.

Deliberate action is defined in § 1.141–2(d)(3).

Discrete portion means a portion of a facility that consists of any separate and discrete portion of a facility to which use is limited, other than common areas. A floor of a building and a portion of a building separated by walls, partitions, or other physical barriers are examples of a discrete portion.

Disposition is defined in § 1.141–12(c)(1).

Disposition proceeds is defined in § 1.141–12(c)(1).

Essential governmental function is defined in § 1.141–5(d)(4)(ii).

Financed means constructed, reconstructed, or acquired with proceeds of an issue.

Governmental bond means a bond issued as part of an issue no portion of which consists of private activity bonds.

Governmental person means a state or local governmental unit as defined in § 1.103–1 or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.

Hazardous waste remediation bonds is defined in § 1.141–4(f)(1).

Measurement period is defined in § 1.141–3(g)(2).

Nongovernmental person means a person other than a governmental person.

Output facility means electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities.

Private business tests means the private business use test and the private security or payment test of section 141(b).

Proceeds means the sale proceeds of an issue (other than those sale proceeds used to retire bonds of the issue that are not deposited in a reasonably required reserve or replacement fund). Proceeds also include any investment proceeds from investments that accrue during the project period (net of rebate amounts attributable to the project period). Disposition proceeds of an issue are treated as proceeds to the extent provided in § 1.141–12. The Commissioner may treat any replaced amounts as proceeds.

Project period means the period beginning on the issue date and ending on the date that the project is placed in service. In the case of a multipurpose issue, the issuer may elect to treat the project period for the entire issue as ending on either the expiration of the temporary period described in § 1.148–2(e)(2) or the end of the fifth bond year after the issue date.

Public utility property means public utility property as defined in section 168(i)(10).

Qualified bond means a qualified bond as defined in section 141(e).

Renewal option means a provision under which either party has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for 1-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

Replaced amounts means replacement proceeds other than amounts that are treated as replacement proceeds solely because they are sinking funds or pledged funds.

Weighted average maturity is determined under section 147(b).

Weighted average reasonably expected economic life is determined under section 147(b). The reasonably expected economic life of property may be determined by reference to the class life of the property under section 168.

(c) *Elections.* Elections must be made in writing on or before the issue date and retained as part of the bond documents, and, once made, may not be revoked without the permission of the Commissioner.

(d) *Related parties.* Except as otherwise provided, all related parties are treated as one person and any reference to "person" includes any related party.

§ 1.141–2 Private activity bond tests.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. The purpose of the private activity bond tests of section 141 is to limit the volume of tax-exempt bonds that finance the activities of nongovernmental persons, without regard to whether a financing actually transfers benefits of tax-exempt financing to a nongovernmental person. The private activity bond tests serve to identify arrangements that have the potential to transfer the benefits of tax-exempt financing, as well as arrangements that actually transfer these benefits. The regulations under section 141 may not be applied in a manner that is inconsistent with these purposes.

(b) *Scope.* Sections 1.141–0 through 1.141–16 apply generally for purposes of the private activity bond limitations under section 141.

(c) *General definition of private activity bond.* Under section 141, bonds are private activity bonds if they meet either the private business use test and private security or payment test of

section 141(b) or the private loan financing test of section 141(c). The private business use and private security or payment tests are described in §§ 1.141–3 and 1.141–4. The private loan financing test is described in § 1.141–5.

(d) *Reasonable expectations and deliberate actions*—(1) *In general.* An issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test. An issue is also an issue of private activity bonds if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be met.

(2) *Reasonable expectations test*—(i) *In general.* In general, the reasonable expectations test must take into account reasonable expectations about events and actions over the entire stated term of an issue.

(ii) *Special rule for issues with mandatory redemption provisions.* An action that is reasonably expected, as of the issue date, to occur after the issue date and to cause either the private business tests or the private loan financing test to be met may be disregarded for purposes of those tests if—

(A) The issuer reasonably expects, as of the issue date, that the financed property will be used for a governmental purpose for a substantial period before the action;

(B) The issuer is required to redeem all nonqualifying bonds (regardless of the amount of disposition proceeds actually received) within 6 months of the date of the action;

(C) The issuer does not enter into any arrangement with a nongovernmental person, as of the issue date, with respect to that specific action; and

(D) The mandatory redemption of bonds meets all of the conditions for remedial action under § 1.141–12(a).

(3) *Deliberate action defined*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3), a deliberate action is any action taken by the issuer that is within its control. An intent to violate the requirements of section 141 is not necessary for an action to be deliberate.

(ii) *Safe harbor exceptions.* An action is not treated as a deliberate action if—

(A) It would be treated as an involuntary or compulsory conversion under section 1033; or

(B) It is taken in response to a regulatory directive made by the federal government.

(4) *Special rule for dispositions of personal property in the ordinary course of an established governmental program*—(i) *In general.* Dispositions of personal property in the ordinary course of an established governmental program are not treated as deliberate actions if—

(A) The weighted average maturity of the bonds financing that personal property is not greater than 120 percent of the reasonably expected actual use of that property for governmental purposes;

(B) The issuer reasonably expects on the issue date that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost; and

(C) The property is no longer suitable for its governmental purposes on the date of disposition.

(ii) *Reasonable expectations test.* The reasonable expectation that a disposition described in paragraph (d)(4)(i) of this section may occur in the ordinary course while the bonds are outstanding will not cause the issue to meet the private activity bond tests if the issuer is required to deposit amounts received from the disposition in a commingled fund with substantial tax or other governmental revenues and the issuer reasonably expects to spend the amounts on governmental programs within 6 months from the date of commingling.

(iii) *Separate issue treatment.* An issuer may treat the bonds properly allocable to the personal property eligible for this exception as a separate issue under § 1.150–1(c)(3).

(5) *Special rule for general obligation bond programs that finance a large number of separate purposes.* The determination of whether bonds of an issue are private activity bonds may be based solely on the issuer's reasonable expectations as of the issue date if all of the requirements of paragraphs (d)(5) (i) through (vii) of this section are met.

(i) The issue is an issue of general obligation bonds of a general purpose governmental unit that finances at least 25 separate purposes (as defined in § 1.150–1(c)(3)) and does not predominantly finance fewer than 4 separate purposes.

(ii) The issuer has adopted a fund method of accounting for its general governmental purposes that makes tracing the bond proceeds to specific expenditures unreasonably burdensome.

(iii) The issuer reasonably expects on the issue date to allocate all of the net proceeds of the issue to capital expenditures within 6 months of the issue date and adopts reasonable procedures to verify that net proceeds are in fact so expended. A program to randomly spot check that 10 percent of the net proceeds were so expended generally is a reasonable verification procedure for this purpose.

(iv) The issuer reasonably expects on the issue date to expend all of the net proceeds of the issue before expending proceeds of a subsequent issue of similar general obligation bonds.

(v) The issuer reasonably expects on the issue date that it will not make any loans to nongovernmental persons with the proceeds of the issue.

(vi) The issuer reasonably expects on the issue date that the capital expenditures that it could make during the 6-month period beginning on the issue date with the net proceeds of the issue that would not meet the private business tests are not less than 125 percent of the capital expenditures to be financed with the net proceeds of the issue.

(vii) The issuer reasonably expects on the issue date that the weighted average maturity of the issue is not greater than 120 percent of the weighted average reasonably expected economic life of the capital expenditures financed with the issue. To determine reasonably expected economic life for this purpose an issuer may use reasonable estimates based on the type of expenditures made from a fund.

(e) *When a deliberate action occurs.* A deliberate action occurs on the date the issuer enters into a binding contract with a nongovernmental person for use of the financed property that is not subject to any material contingencies.

(f) *Certain remedial actions.* See § 1.141–12 for certain remedial actions that prevent a deliberate action with respect to property financed by an issue from causing that issue to meet the private business use test or the private loan financing test.

(g) *Examples.* The following examples illustrate the application of this section:

Example 1. Involuntary action. City B issues bonds to finance the purchase of land. On the issue date, B reasonably expects that it will be the sole user of the land for the entire term of the bonds. Subsequently, the federal government acquires the land in a condemnation action. B sets aside the condemnation proceeds to pay debt service on the bonds but does not redeem them on their first call date. The bonds are not private activity bonds because B has not taken a deliberate action after the issue date. See, however, § 1.141–14(b), *Example 2.*

Example 2. Reasonable expectations test—involuntary action. The facts are the same as in *Example 1*, except that, on the issue date, B reasonably expects that the federal government will acquire the land in a condemnation action during the term of the bonds. On the issue date, the present value of the amount that B reasonably expects to

receive from the federal government is greater than 10 percent of the present value of the debt service on the bonds. The terms of the bonds do not require that the bonds be redeemed within 6 months of the acquisition by the federal government. The bonds are private activity bonds because the issuer expects as of the issue date that the private business tests will be met.

Example 3. Reasonable expectations test—mandatory redemption. City C issues bonds to rehabilitate an existing hospital that it currently owns. On the issue date of the bonds, C reasonably expects that the hospital will be used for a governmental purpose for a substantial period. On the issue date, C also plans to construct a new hospital, but the placed in service date of that new hospital is uncertain. C reasonably expects that, when the new hospital is placed in service, it will sell or lease the rehabilitated hospital to a private hospital corporation. The bond documents require that the bonds must be redeemed within 6 months of the sale or lease of the rehabilitated hospital (regardless of the amount actually received from the sale). The bonds meet the reasonable expectations requirement of the private activity bond tests if the mandatory redemption of bonds meets all of the conditions for a remedial action under § 1.141–12(a).

Example 4. Dispositions in the ordinary course of an established governmental program. City D issues bonds with a weighted average maturity of 6 years for the acquisition of police cars. D reasonably expects on the issue date that the police cars will be used solely by its police department, except that, in the ordinary course of its police operations, D sells its police cars to a taxicab corporation after 5 years of use because they are no longer suitable for police use. Further, D reasonably expects that the value of the police cars when they are no longer suitable for police use will be no more than 25 percent of cost. D subsequently sells 20 percent of the police cars after only 3 years of actual use. At that time, D deposits the proceeds from the sale of the police cars in a commingled fund with substantial tax revenues and reasonably expects to spend the proceeds on governmental programs within 6 months of the date of deposit. D does not trace the actual use of these commingled amounts. The sale of the police cars does not cause the private activity bond tests to be met because the requirements of paragraph (d)(4) of this section are met.

§ 1.141–3 Definition of private business use.

(a) *General rule*—(1) *In general.* The private business use test relates to the use of the proceeds of an issue. The 10 percent private business use test of section 141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Any activity carried on by a person other than a natural person is treated as a trade or business. Unless the context or a provision clearly requires otherwise, this section also applies to the private business use test under sections 141(b)(3) (unrelated or disproportionate use), 141(b)(4) ($15 million limitation for certain output facilities), and 141(b)(5) (the coordination with the volume cap where the nonqualified amount exceeds $15 million).

(2) *Indirect use.* In determining whether an issue meets the private business use test, it is necessary to look to both the indirect and direct uses of proceeds. For example, a facility is treated as being used for a private business use if it is leased to a nongovernmental person and subleased to a governmental person or if it is leased to a governmental person and then subleased to a nongovernmental person, provided that in each case the nongovernmental person's use is in a trade or business. Similarly, the issuer's use of the proceeds to engage in a series of financing transactions for property to be used by nongovernmental persons in their trades or businesses may cause the private business use test to be met. In addition, proceeds are treated as used in the trade or business of a nongovernmental person if a nongovernmental person, as a result of a single transaction or a series of related transactions, uses property acquired with the proceeds of an issue.

(3) *Aggregation of private business use.* The use of proceeds by all nongovernmental persons is aggregated to determine whether the private business use test is met.

(b) *Types of private business use arrangements*—(1) *In general.* Both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

(2) *Ownership.* Except as provided in paragraph (d)(1) or (d)(2) of this section, ownership by a nongovernmental person of financed property is private business use of that property. For this purpose, ownership refers to ownership for federal income tax purposes.

(3) *Leases.* Except as provided in paragraph (d) of this section, the lease of financed property to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. In determining whether a management contract is properly characterized as a lease, it is necessary to consider all of the facts and circumstances, including the following factors—

(i) The degree of control over the property that is exercised by a nongovernmental person; and

(ii) Whether a nongovernmental person bears risk of loss of the financed property.

(4) *Management contracts*—(i) *Facts and circumstances test.* Except as provided in paragraph (d) of this section, a management contract (within the meaning of paragraph (b)(4)(ii) of this section) with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

(ii) *Management contract defined.* For purposes of this section, a management contract is a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

(iii) *Arrangements generally not treated as management contracts.* The arrangements described in paragraphs (b)(4)(iii) (A) through (D) of this section generally are not treated as management contracts that give rise to private business use.

(A) Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services).

(B) The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all

qualified physicians in the area, consistent with the size and nature of its facilities.

(C) A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider.

(D) A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(iv) *Management contracts that are properly treated as other types of private business use.* A management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes, unless an exception under paragraph (d) of this section applies to the arrangement.

(5) *Output contracts.* See § 1.141–7 for special rules for contracts for the purchase of output of output facilities.

(6) *Research agreements*—(i) *Facts and circumstances test.* Except as provided in paragraph (d) of this section, an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all of the facts and circumstances.

(ii) *Research agreements that are properly treated as other types of private business use.* A research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for federal income tax purposes, unless an exception under paragraph (d) of this section applies to the arrangement.

(7) *Other actual or beneficial use*—(i) *In general.* Any other arrangement that conveys special legal entitlements for beneficial use of bond proceeds or of financed property that are comparable to special legal entitlements described in paragraphs (b) (2), (3), (4), (5), or (6) of this section results in private business use. For example, an arrangement that conveys priority rights to the use or capacity of a facility generally results in private business use.

(ii) *Special rule for facilities not used by the general public.* In the case of financed property that is not available for use by the general public (within the meaning of paragraph (c) of this section), private business use may be established solely on the basis of a special economic benefit to one or more nongovernmental persons, even if those nongovernmental persons have no special legal entitlements to use of the property. In determining whether special economic benefit gives rise to private business use it is necessary to consider all of the facts and circumstances, including one or more of the following factors—

(A) Whether the financed property is functionally related or physically proximate to property used in the trade or business of a nongovernmental person;

(B) Whether only a small number of nongovernmental persons receive the special economic benefit; and

(C) Whether the cost of the financed property is treated as depreciable by any nongovernmental person.

(c) *Exception for general public use*—(1) *In general.* Use as a member of the general public (general public use) is not private business use. Use of financed property by nongovernmental persons in their trades or businesses is treated as general public use only if the property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business.

(2) *Use on the same basis.* In general, use under an arrangement that conveys priority rights or other preferential benefits is not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if—

(i) Different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or

(ii) A specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates.

(3) *Long-term arrangements not treated as general public use.* An arrangement is not treated as general public use if the term of the use under the arrangement, including all renewal options, is greater than 180 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if—

(i) The compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and

(ii) The use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

(4) *Relation to other use.* Use of financed property by the general public does not prevent the proceeds from being used for a private business use because of other use under this section.

(d) *Other exceptions*—(1) *Agents.* Use of proceeds by nongovernmental persons solely in their capacity as agents of a governmental person is not private business use. For example, use by a nongovernmental person that issues obligations on behalf of a governmental person is not private business use to the extent the nongovernmental person's use of proceeds is in its capacity as an agent of the governmental person.

(2) *Use incidental to financing arrangements.* Use by a nongovernmental person that is solely incidental to a financing arrangement is not private business use. A use is solely incidental to a financing arrangement only if the nongovernmental person has no substantial rights to use bond proceeds or financed property other than as an agent of the bondholders. For example, a nongovernmental person that acts solely as an owner of title in a sale and leaseback financing transaction with a city generally is not a private business user of the property leased to the city, provided that the nongovernmental person has assigned all of its rights to use the leased facility to the trustee for the bondholders upon default by the city. Similarly, bond trustees, servicers, and guarantors are generally not treated as private business users.

(3) *Exceptions for arrangements other than arrangements resulting in ownership of financed property by a nongovernmental person*—(i) *Arrangements not available for use on the same basis by natural persons not engaged in a trade or business.* Use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not private business use if—

(A) The term of the use under the arrangement, including all renewal options, is not longer than 90 days;

(B) The arrangement would be treated as general public use, except that it is not available for use on the same basis by natural persons not engaged in a trade or business because generally applicable and uniformly applied rates

are not reasonably available to natural persons not engaged in a trade or business; and

(C) The property is not financed for a principal purpose of providing that property for use by that nongovernmental person.

(ii) *Negotiated arm's-length arrangements.* Use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not private business use if—

(A) The term of the use under the arrangement, including all renewal options, is not longer than 30 days;

(B) The arrangement is a negotiated arm's-length arrangement, and compensation under the arrangement is at fair market value; and

(C) The property is not financed for a principal purpose of providing that property for use by that nongovernmental person.

(4) *Temporary use by developers.* Use during an initial development period by a developer of an improvement that carries out an essential governmental function is not private business use if the issuer and the developer reasonably expect on the issue date to proceed with all reasonable speed to develop the improvement and property benefited by that improvement and to transfer the improvement to a governmental person, and if the improvement is in fact transferred to a governmental person promptly after the property benefited by the improvement is developed.

(5) *Incidental use*—(i) *General rule.* Incidental uses of a financed facility are disregarded, to the extent that those uses do not exceed 2.5 percent of the proceeds of the issue used to finance the facility. A use of a facility by a nongovernmental person is incidental if—

(A) Except for vending machines, pay telephones, kiosks, and similar uses, the use does not involve the transfer to the nongovernmental person of possession and control of space that is separated from other areas of the facility by walls, partitions, or other physical barriers, such as a night gate affixed to a structural component of a building (a nonpossessory use);

(B) The nonpossessory use is not functionally related to any other use of the facility by the same person (other than a different nonpossessory use); and

(C) All nonpossessory uses of the facility do not, in the aggregate, involve the use of more than 2.5 percent of the facility.

(ii) *Illustrations.* Incidental uses may include pay telephones, vending machines, advertising displays, and use for television cameras, but incidental uses may not include output purchases.

(6) *Qualified improvements.* Proceeds that provide a governmentally owned improvement to a governmentally owned building (including its structural components and land functionally related and subordinate to the building) are not used for a private business use if—

(i) The building was placed in service more than 1 year before the construction or acquisition of the improvement is begun;

(ii) The improvement is not an enlargement of the building or an improvement of interior space occupied exclusively for any private business use;

(iii) No portion of the improved building or any payments in respect of the improved building are taken into account under section 141(b)(2)(A) (the private security test); and

(iv) No more than 15 percent of the improved building is used for a private business use.

(e) *Special rule for tax assessment bonds.* In the case of a tax assessment bond that satisfies the requirements of §1.141–5(d), the loan (or deemed loan) of the proceeds to the borrower paying the assessment is disregarded in determining whether the private business use test is met. However, the use of the loan proceeds is not disregarded in determining whether the private business use test is met.

(f) *Examples.* The following examples illustrate the application of paragraphs (a) through (e) of this section. In each example, assume that the arrangements described are the only arrangements with nongovernmental persons for use of the financed property.

Example 1. Nongovernmental ownership. State A issues 20-year bonds to purchase land and equip and construct a factory. A then enters into an arrangement with Corporation X to sell the factory to X on an installment basis while the bonds are outstanding. The issue meets the private business use test because a nongovernmental person owns the financed facility. See also § 1.141–2 (relating to the private activity bond tests), and § 1.141–5 (relating to the private loan financing test).

Example 2. Lease to a nongovernmental person. (i) The facts are the same as in *Example 1*, except that A enters into an arrangement with X to lease the factory to X for 3 years rather than to sell it to X. The lease payments will be made annually and will be based on the tax-exempt interest rate on the bonds. The issue meets the private business use test because a nongovernmental person leases the financed facility. See also § 1.141–14 (relating to anti-abuse rules).

(ii) The facts are the same as in *Example 2(i)*, except that the annual payments made by X will equal fair rental value of the facility and exceed the amount necessary to pay debt service on the bonds for the 3 years of the lease. The issue meets the private business use test because a nongovernmental person leases the financed facility and the test does not require that the benefits of tax-exempt financing be passed through to the nongovernmental person.

Example 3. Management contract in substance a lease. City L issues 30-year bonds to finance the construction of a city hospital. L enters into a 15-year contract with M, a nongovernmental person that operates a health maintenance organization relating to the treatment of M's members at L's hospital. The contract provides for reasonable fixed compensation to M for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the hospital. However, the contract also provides that 30 percent of the capacity of the hospital will be exclusively available to M's members and M will bear the risk of loss of that portion of the capacity of the hospital so that, under all of the facts and circumstances, the contract is properly characterized as a lease for federal income tax purposes. The issue meets the private business use test because a nongovernmental person leases the financed facility.

Example 4. Ownership of title in substance a leasehold interest. Nonprofit corporation R issues bonds on behalf of City P to finance the construction of a hospital. R will own legal title to the hospital. In addition, R will operate the hospital, but R is not treated as an agent of P in its capacity as operator of the hospital. P has certain rights to the hospital that establish that it is properly treated as the owner of the property for federal income tax purposes. P does not have rights, however, to directly control operation of the hospital while R owns legal title to it and operates it. The issue meets the private business use test because the arrangement provides a nongovernmental person an interest in the financed facility that is comparable to a leasehold interest. See paragraphs (a)(2) and (b)(7)(i) of this section.

Example 5. Rights to control use of property treated as private business use—parking lot. Corporation C and City D enter into a plan to finance the construction of a parking lot adjacent to C's factory. Pursuant to the plan, C conveys the site for the parking lot to D for a nominal amount, subject to a covenant running with the land that the property be used only for a parking lot. In addition, D agrees that C will have the right to approve rates charged by D for use of the parking lot. D issues bonds to finance construction of the parking lot on the site. The parking lot will be available for use by the general public on the basis of rates that are generally applicable and uniformly applied. The issue meets the private business use test because a nongovernmental person has special legal entitlements for beneficial use of the financed facility that are comparable to an ownership interest. See paragraph (b)(7)(i) of this section.

Example 6. Other actual or beneficial use—hydroelectric enhancements. J, a political subdivision, owns and operates a hydroelectric generation plant and related facilities. Pursuant to a take or pay contract, J sells 15 percent of the output of the plant

to Corporation K, an investor-owned utility. K is treated as a private business user of the plant. Under the license issued to J for operation of the plant, J is required by federal regulations to construct and operate various facilities for the preservation of fish and for public recreation. J issues its obligations to finance the fish preservation and public recreation facilities. K has no special legal entitlements for beneficial use of the financed facilities. The fish preservation facilities are functionally related to the operation of the plant. The recreation facilities are available to natural persons on a short-term basis according to generally applicable and uniformly applied rates. Under paragraph (c) of this section, the recreation facilities are treated as used by the general public. Under paragraph (b)(7) of this section, K's use is not treated as private business use of the recreation facilities because K has no special legal entitlements for beneficial use of the recreation facilities. The fish preservation facilities are not of a type reasonably available for use on the same basis by natural persons not engaged in a trade or business. Under all of the facts and circumstances (including the functional relationship of the fish preservation facilities to property used in K's trade or business) under paragraph (b)(7)(ii) of this section, K derives a special economic benefit from the fish preservation facilities. Therefore, K's private business use may be established solely on the basis of that special economic benefit, and K's use of the fish preservation facilities is treated as private business use.

Example 7. Other actual or beneficial use—pollution control facilities. City B issues obligations to finance construction of a specialized pollution control facility on land that it owns adjacent to a factory owned by Corporation N. B will own and operate the pollution control facility, and N will have no special legal entitlements to use the facility. B, however, reasonably expects that N will be the only user of the facility. The facility will not be reasonably available for use on the same basis by natural persons not engaged in a trade or business. Under paragraph (b)(7)(ii) of this section, because under all of the facts and circumstances the facility is functionally related and is physically proximate to property used in N's trade or business, N derives a special economic benefit from the facility. Therefore, N's private business use may be established solely on the basis of that special economic benefit, and N's use is treated as private business use of the facility. See paragraph (b)(7)(ii) of this section.

Example 8. General public use—airport runway. (i) City I issues bonds and uses all of the proceeds to finance construction of a runway at a new city-owned airport. The runway will be available for take-off and landing by any operator of an aircraft desiring to use the airport, including general aviation operators who are natural persons not engaged in a trade or business. It is reasonably expected that most of the actual use of the runway will be by private air carriers (both charter airlines and commercial airlines) in connection with their use of the airport terminals leased by those carriers. These leases for the use of terminal space provide no priority rights or other preferential benefits to the air carriers for use of the runway. Moreover, under the leases the lease payments are determined without taking into account the revenues generated by runway landing fees (that is, the lease payments are not determined on a "residual" basis). Although the lessee air carriers receive a special economic benefit from the use of the runway, this economic benefit is not sufficient to cause the air carriers to be private business users, because the runway is available for general public use. The issue does not meet the private business use test. See paragraphs (b)(7)(ii) and (c) of this section.

(ii) The facts are the same as in *Example 8(i)*, except that the runway will be available for use only by private air carriers. The use by these private air carriers is not for general public use, because the runway is not reasonably available for use on the same basis by natural persons not engaged in a trade or business. Depending on all of the facts and circumstances, including whether there are only a small number of lessee private air carriers, the issue may meet the private business use test solely because the private air carriers receive a special economic benefit from the runway. See paragraph (b)(7)(ii) of this section.

(iii) The facts are the same as in *Example 8(i)*, except that the lease payments under the leases with the private air carriers are determined on a residual basis by taking into account the net revenues generated by runway landing fees. These leases cause the private business use test to be met with respect to the runway because they are arrangements that convey special legal entitlements to the financed facility to nongovernmental persons. See paragraph (b)(7)(i) of this section.

Example 9. General public use—airport parking garage. City S issues bonds and uses all of the proceeds to finance construction of a city-owned parking garage at the city-owned airport. S reasonably expects that more than 10 percent of the actual use of the parking garage will be by employees of private air carriers (both charter airlines and commercial airlines) in connection with their use of the airport terminals leased by those carriers. The air carriers' use of the parking garage, however, will be on the same basis as passengers and other members of the general public using the airport. The leases for the use of the terminal space provide no priority rights to the air carriers for use of the parking garage, and the lease payments are determined without taking into account the revenues generated by the parking garage. Although the lessee air carriers receive a special economic benefit from the use of the parking garage, this economic benefit is not sufficient to cause the air carriers to be private business users, because the parking garage is available for general public use. The issue does not meet the private business use test. See paragraphs (b)(7)(ii) and (c) of this section.

Example 10. Long-term arrangements not treated as general public use—insurance fund. Authority T deposits all of the proceeds of its bonds in its insurance fund and invests all of those proceeds in tax-exempt bonds. The insurance fund provides insurance to a large number of businesses and natural persons not engaged in a trade or business. Each participant receives insurance for a term of 1 year. The use by the participants, other than participants that are natural persons not engaged in a trade or business, is treated as private business use of the proceeds of the bonds because the participants have special legal entitlements to the use of bond proceeds, even though the contractual rights are not necessarily properly characterized as ownership, leasehold, or similar interests listed in paragraph (b) of this section. Use of the bond proceeds is not treated as general public use because the term of the insurance is greater than 180 days. See paragraphs (b)(7)(i) and (c)(3) of this section.

Example 11. General public use—port road. Highway Authority W uses all of the proceeds of its bonds to construct a 25-mile road to connect an industrial port owned by Corporation Y with existing roads owned and operated by W. Other than the port, the nearest residential or commercial development to the new road is 12 miles away. There is no reasonable expectation that development will occur in the area surrounding the new road. W and Y enter into no arrangement (either by contract or ordinance) that conveys special legal entitlements to Y for the use of the road. Use of the road will be available without restriction to all users, including natural persons who are not engaged in a trade or business. The issue does not meet the private business use test because the road is treated as used only by the general public.

Example 12. General public use of governmentally owned hotel. State Q issues bonds to purchase land and construct a hotel for use by the general public (that is, tourists, visitors, and business travelers). The bond documents provide that Q will own and operate the project for the term of the bonds. Q will not enter into a lease or license with any user for use of rooms for a period longer than 180 days (although users may actually use rooms for consecutive periods in excess of 180 days). Use of the hotel by hotel guests who are travelling in connection with trades or businesses of nongovernmental persons is not a private business use of the hotel by these persons because the hotel is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business. See paragraph (c)(1) of this section.

Example 13. General public use with rights of first refusal. Authority V uses all of the proceeds of its bonds to construct a parking garage. At least 90 percent of the spaces in the garage will be available to the general public on a monthly first-come, first-served basis. V reasonably expects that the spaces will be predominantly leased to natural persons not engaged in a trade or business who have priority rights to renew their spaces at then current fair market value rates. More than 10 percent of the spaces will be leased to nongovernmental persons acting in a trade or business. These leases are not treated as arrangements with a term of use

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greater than 180 days. The rights to renew are not treated as renewal options because the compensation for the spaces is redetermined at generally applicable, fair market value rates that will be in effect at the time of renewal and the use of the spaces under similar arrangements is predominantly by natural persons who are not engaged in a trade or business. The issue does not meet the private business use test because at least 90 percent of the use of the parking garage is general public use. See paragraph (c)(3) of this section.

Example 14. General public use with a specially negotiated rate agreement with agency of United States. G, a sewage collection and treatment district, operates facilities that were financed with its bonds. F, an agency of the United States, has a base located within G. Approximately 20 percent of G's facilities are used to treat sewage produced by F under a specially negotiated rate agreement. Under the specially negotiated rate agreement, G uses its best efforts to charge F as closely as possible the same amount for its use of G's services as its other customers pay for the same amount of services, although those other customers pay for services based on standard district charges and tax levies. F is prohibited by federal law from paying for the services based on those standard district charges and tax levies. The use of G's facilities by F is on the same basis as the general public. See paragraph (c)(2)(ii) of this section.

Example 15. Arrangements not available for use by natural persons not engaged in a trade or business—federal use of prisons. Authority E uses all of the proceeds of its bonds to construct a prison. E contracts with federal agency F to house federal prisoners on a space-available, first-come, first-served basis, pursuant to which F will be charged approximately the same amount for each prisoner as other persons that enter into similar transfer agreements. It is reasonably expected that other persons will enter into similar agreements. The term of the use under the contract is not longer than 90 days, and F has no right to renew, although E reasonably expects to renew the contract indefinitely. The prison is not financed for a principal purpose of providing the prison for use by F. It is reasonably expected that during the term of the bonds, more than 10 percent of the prisoners at the prison will be federal prisoners. F's use of the facility is not general public use because this type of use (leasing space for prisoners) is not available for use on the same basis by natural persons not engaged in a trade or business. The issue does not meet the private business use test, however, because the leases satisfy the exception of paragraph (d)(3)(i) of this section.

Example 16. Negotiated arm's-length arrangements—auditorium reserved in advance. (i) City Z issues obligations to finance the construction of a municipal auditorium that it will own and operate. The use of the auditorium will be open to anyone who wishes to use it for a short period of time on a rate-scale basis. Z reasonably expects that the auditorium will be used by schools, church groups, sororities, and numerous commercial organizations. Corporation H, a nongovernmental person, enters into an arm's-length arrangement with Z to use the auditorium for 1 week for each year for a 10-year period (a total of 70 days), pursuant to which H will be charged a specific price reflecting fair market value. On the date the contract is entered into, Z has not established generally applicable rates for future years. Even though the auditorium is not financed for a principal purpose of providing use of the auditorium to H, H is not treated as using the auditorium as a member of the general public because its use is not on the same basis as the general public. Because the term of H's use of the auditorium is longer than 30 days, the arrangement does not meet the exception under paragraph (d)(3)(ii) of this section.

(ii) The facts are the same as in *Example 16(i)*, except that H will enter into an arm's-length arrangement with Z to use the auditorium for 1 week for each year for a 4-year period (a total of 28 days), pursuant to which H will be charged a specific price reflecting fair market value. H is not treated as a private business user of the auditorium because its contract satisfies the exception of paragraph (d)(3)(ii) of this section for negotiated arm's-length arrangements.

(g) *Measurement of private business use*—(1) *In general.* In general, the private business use of proceeds is allocated to property under §1.141–6. The amount of private business use of that property is determined according to the average percentage of private business use of that property during the measurement period.

(2) *Measurement period*—(i) *General rule.* Except as provided in this paragraph (g)(2), the measurement period of property financed by an issue begins on the later of the issue date of that issue or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property (determined without regard to any optional redemption dates). In general, the period of reasonably expected economic life of the property for this purpose is based on reasonable expectations as of the issue date.

(ii) *Special rule for refundings of short-term obligations.* For an issue of short-term obligations that the issuer reasonably expects to refund with a long-term financing (such as bond anticipation notes), the measurement period is based on the latest maturity date of any bond of the last refunding issue with respect to the financed property (determined without regard to any optional redemption dates).

(iii) *Special rule for reasonably expected mandatory redemptions.* If an issuer reasonably expects on the issue date that an action will occur during the term of the bonds to cause either the private business tests or the private loan financing test to be met and is required to redeem bonds to meet the reasonable expectations test of §1.141–2(d)(2), the measurement period ends on the reasonably expected redemption date.

(iv) *Special rule for ownership by a nongovernmental person.* The amount of private business use resulting from ownership by a nongovernmental person is the greatest percentage of private business use in any 1-year period.

(v) *Anti-abuse rule.* If an issuer establishes the term of an issue for a period that is longer than is reasonably necessary for the governmental purposes of the issue for a principal purpose of increasing the permitted amount of private business use, the Commissioner may determine the amount of private business use according to the greatest percentage of private business use in any 1-year period.

(3) *Determining average percentage of private business use.* The average percentage of private business use is the average of the percentages of private business use during the 1-year periods within the measurement period. Appropriate adjustments must be made for beginning and ending periods of less than 1 year.

(4) *Determining the average amount of private business use for a 1-year period*—(i) *In general.* The percentage of private business use of property for any 1-year period is the average private business use during that year. This average is determined by comparing the amount of private business use during the year to the total amount of private business use and use that is not private business use (government use) during that year. Paragraphs (g)(4) (ii) through (v) of this section apply to determine the average amount of private business use for a 1-year period.

(ii) *Uses at different times.* For a facility in which actual government use and private business use occur at different times (for example, different days), the average amount of private business use generally is based on the amount of time that the facility is used for private business use as a percentage of the total time for all actual use. In determining the total amount of actual use, periods during which the facility is not in use are disregarded.

(iii) *Simultaneous use.* In general, for a facility in which government use and private business use occur simultaneously, the entire facility is treated as having private business use. For example, a governmentally owned facility that is leased or managed by a nongovernmental person in a manner

that results in private business use is treated as entirely used for a private business use. If, however, there is also private business use and actual government use on the same basis, the average amount of private business use may be determined on a reasonable basis that properly reflects the proportionate benefit to be derived by the various users of the facility (for example, reasonably expected fair market value of use). For example, the average amount of private business use of a garage with unassigned spaces that is used for government use and private business use is generally based on the number of spaces used for private business use as a percentage of the total number of spaces.

(iv) *Discrete portion.* For purposes of this paragraph (g), measurement of the use of proceeds allocated to a discrete portion of a facility is determined by treating that discrete portion as a separate facility.

(v) *Relationship to fair market value.* For purposes of paragraphs (g)(4) (ii) through (iv) of this section, if private business use is reasonably expected as of the issue date to have a significantly greater fair market value than government use, the average amount of private business use must be determined according to the relative reasonably expected fair market values of use rather than another measure, such as average time of use. This determination of relative fair market value may be made as of the date the property is acquired or placed in service if making this determination as of the issue date is not reasonably possible (for example, if the financed property is not identified on the issue date). In general, the relative reasonably expected fair market value for a period must be determined by taking into account the amount of reasonably expected payments for private business use for the period in a manner that properly reflects the proportionate benefit to be derived from the private business use.

(5) *Common areas.* The amount of private business use of common areas within a facility is based on a reasonable method that properly reflects the proportionate benefit to be derived by the users of the facility. For example, in general, a method that is based on the average amount of private business use of the remainder of the entire facility reflects proportionate benefit.

(6) *Allocation of neutral costs.* Proceeds that are used to pay costs of issuance, invested in a reserve or replacement fund, or paid as fees for a qualified guarantee or a qualified hedge must be allocated ratably among the other purposes for which the proceeds are used.

(7) *Commencement of measurement of private business use.* Generally, private business use commences on the first date on which there is a right to actual use by the nongovernmental person. However, if an issuer enters into an arrangement for private business use a substantial period before the right to actual private business use commences and the arrangement transfers ownership or is an arrangement for other long-term use (such as a lease for a significant portion of the remaining economic life of financed property), private business use commences on the date the arrangement is entered into, even if the right to actual use commences after the measurement period. For this purpose, 10 percent of the measurement period is generally treated as a substantial period.

(8) *Examples.* The following examples illustrate the application of this paragraph (g):

Example 1. Research facility. University U, a state owned and operated university, owns and operates a research facility. U proposes to finance general improvements to the facility with the proceeds of an issue of bonds. U enters into sponsored research agreements with nongovernmental persons that result in private business use because the sponsors will own title to any patents resulting from the research. The governmental research conducted by U and the research U conducts for the sponsors take place simultaneously in all laboratories within the research facility. All laboratory equipment is available continuously for use by workers who perform both types of research. Because it is not possible to predict which research projects will be successful, it is not reasonably practicable to estimate the relative revenues expected to result from the governmental and nongovernmental research. U contributed 90 percent of the cost of the facility and the nongovernmental persons contributed 10 percent of the cost. Under this section, the nongovernmental persons are using the facility for a private business use on the same basis as the government use of the facility. The portions of the costs contributed by the various users of the facility provide a reasonable basis that properly reflects the proportionate benefit to be derived by the users of the facility. The nongovernmental persons are treated as using 10 percent of the proceeds of the issue.

Example 2. Stadium. (i) City L issues bonds and uses all of the proceeds to construct a stadium. L enters into a long-term contract with a professional sports team T under which T will use the stadium 20 times during each year. These uses will occur on nights and weekends. L reasonably expects that the stadium will be used more than 180 other times each year, none of which will give rise to private business use. This expectation is based on a feasibility study and historical use of the old stadium that is being replaced by the new stadium. There is no significant difference in the value of T's uses when compared to the other uses of the stadium, taking into account the payments that T is reasonably expected to make for its use. Assuming no other private business use, the issue does not meet the private business use test because not more than 10 percent of the use of the facility is for a private business use.

(ii) The facts are the same as in *Example 2(i)*, except that L reasonably expects that the stadium will be used not more than 60 other times each year, none of which will give rise to private business use. The issue meets the private business use test because 25 percent of the proceeds are used for a private business use.

Example 3. Airport terminal areas treated as common areas. City N issues bonds to finance the construction of an airport terminal. Eighty percent of the leasable space of the terminal will be leased to private air carriers. The remaining 20 percent of the leasable space will be used for the term of the bonds by N for its administrative purposes. The common areas of the terminal, including waiting areas, lobbies, and hallways are treated as 80 percent used by the air carriers for purposes of the private business use test.

§ 1.141–4 Private security or payment test.

(a) *General rule*—(1) *Private security or payment.* The private security or payment test relates to the nature of the security for, and the source of, the payment of debt service on an issue. The private payment portion of the test takes into account the payment of the debt service on the issue that is directly or indirectly to be derived from payments (whether or not to the issuer or any related party) in respect of property, or borrowed money, used or to be used for a private business use. The private security portion of the test takes into account the payment of the debt service on the issue that is directly or indirectly secured by any interest in property used or to be used for a private business use or payments in respect of property used or to be used for a private business use. For additional rules for output facilities, see § 1.141–7.

(2) *Aggregation of private payments and security.* For purposes of the private security or payment test, payments taken into account as private payments and payments or property taken into account as private security are aggregated. However, the same payments are not taken into account as both private security and private payments.

(3) *Underlying arrangement.* The security for, and payment of debt service on, an issue is determined from both the terms of the bond documents and on the basis of any underlying arrangement. An underlying arrangement may result from separate agreements between the parties or may

be determined on the basis of all of the facts and circumstances surrounding the issuance of the bonds. For example, if the payment of debt service on an issue is secured by both a pledge of the full faith and credit of a state or local governmental unit and any interest in property used or to be used in a private business use, the issue meets the private security or payment test.

(b) *Measurement of private payments and security*—(1) *Scope.* This paragraph (b) contains rules that apply to both private security and private payments.

(2) *Present value measurement*—(i) *Use of present value.* In determining whether an issue meets the private security or payment test, the present value of the payments or property taken into account is compared to the present value of the debt service to be paid over the term of the issue.

(ii) *Debt service*—(A) *Debt service paid from proceeds.* Debt service does not include any amount paid or to be paid from sale proceeds or investment proceeds. For example, debt service does not include payments of capitalized interest funded with proceeds.

(B) *Adjustments to debt service.* Debt service is adjusted to take into account payments and receipts that adjust the yield on an issue for purposes of section 148(f). For example, debt service includes fees paid for qualified guarantees under § 1.148–4(f) and is adjusted to take into account payments and receipts on qualified hedges under § 1.148–4(h).

(iii) *Computation of present value*—(A) *In general.* Present values are determined by using the yield on the issue as the discount rate and by discounting all amounts to the issue date. See, however, § 1.141–13 for special rules for refunding bonds.

(B) *Fixed yield issues.* For a fixed yield issue, yield is determined on the issue date and is not adjusted to take into account subsequent events.

(C) *Variable yield issues.* The yield on a variable yield issue is determined over the term of the issue. To determine the reasonably expected yield as of any date, the issuer may assume that the future interest rate on a variable yield bond will be the then-current interest rate on the bonds determined under the formula prescribed in the bond documents. A deliberate action requires a recomputation of the yield on the variable yield issue to determine the present value of payments under that arrangement. In that case, the issuer must use the yield determined as of the date of the deliberate action for purposes of determining the present value of payments under the arrangement causing the deliberate action. See paragraph (g) of this section, *Example 3.*

(iv) *Application to private security.* For purposes of determining the present value of debt service that is secured by property, the property is valued at fair market value as of the first date on which the property secures bonds of the issue.

(c) *Private payments*—(1) *In general.* This paragraph (c) contains rules that apply to private payments.

(2) *Payments taken into account*—(i) *Payments for use*—(A) *In general.* Both direct and indirect payments made by any nongovernmental person that is treated as using proceeds of the issue are taken into account as private payments to the extent allocable to the proceeds used by that person. Payments are taken into account as private payments only to the extent that they are made for the period of time that proceeds are used for a private business use. Payments for a use of proceeds include payments (whether or not to the issuer) in respect of property financed (directly or indirectly) with those proceeds, even if not made by a private business user. Payments are not made in respect of financed property if those payments are directly allocable to other property being directly used by the person making the payment and those payments represent fair market value compensation for that other use. See paragraph (g) of this section, *Example 4* and *Example 5.* See also paragraph (c)(3) of this section for rules relating to allocation of payments to the source or sources of funding of property.

(B) *Payments not to exceed use.* Payments with respect to proceeds that are used for a private business use are not taken into account to the extent that the present value of those payments exceeds the present value of debt service on those proceeds. Payments need not be directly derived from a private business user, however, to be taken into account. Thus, if 7 percent of the proceeds of an issue is used by a person over the measurement period, payments with respect to the property financed with those proceeds are taken into account as private payments only to the extent that the present value of those payments does not exceed the present value of 7 percent of the debt service on the issue.

(C) *Payments for operating expenses.* Payments by a person for a use of proceeds do not include the portion of any payment that is properly allocable to the payment of ordinary and necessary expenses (as defined under section 162) directly attributable to the operation and maintenance of the financed property used by that person. For this purpose, general overhead and administrative expenses are not directly attributable to those operations and maintenance. For example, if an issuer receives $5,000 rent during the year for use of space in a financed facility and during the year pays $500 for ordinary and necessary expenses properly allocable to the operation and maintenance of that space and $400 for general overhead and general administrative expenses properly allocable to that space, $500 of the $5,000 received would not be considered a payment for the use of the proceeds allocable to that space (regardless of the manner in which that $500 is actually used).

(ii) *Refinanced debt service.* Payments of debt service on an issue to be made from proceeds of a refunding issue are taken into account as private payments in the same proportion that the present value of the payments taken into account as private payments for the refunding issue bears to the present value of the debt service to be paid on the refunding issue. For example, if all the debt service on a note is paid with proceeds of a refunding issue, the note meets the private security or payment test if (and to the same extent that) the refunding issue meets the private security or payment test. This paragraph (c)(2)(ii) does not apply to payments that arise from deliberate actions that occur more than 3 years after the retirement of the prior issue that are not reasonably expected on the issue date of the refunding issue. For purposes of this paragraph (c)(2)(ii), whether an issue is a refunding issue is determined without regard to § 1.150–1(d)(2)(i) (relating to certain payments of interest).

(3) *Allocation of payments*—(i) *In general.* Private payments for the use of property are allocated to the source or different sources of funding of property. The allocation to the source or different sources of funding is based on all of the facts and circumstances, including whether an allocation is consistent with the purposes of section 141. In general, a private payment for the use of property is allocated to a source of funding based upon the nexus between the payment and both the financed property and the source of funding. For this purpose, different sources of funding may include different tax-exempt issues, taxable issues, and amounts that are not derived from a borrowing, such as revenues of an issuer (equity).

(ii) *Payments for use of discrete property.* Payments for the use of a discrete facility (or a discrete portion of a facility) are allocated to the source or

different sources of funding of that discrete property.

(iii) *Allocations among two or more sources of funding.* In general, except as provided in paragraphs (c)(3)(iv) and (v) of this section, if a payment is made for the use of property financed with two or more sources of funding (for example, equity and a tax-exempt issue), that payment must be allocated to those sources of funding in a manner that reasonably corresponds to the relative amounts of those sources of funding that are expended on that property. If an issuer has not retained records of amounts expended on the property (for example, records of costs of a building that was built 30 years before the allocation), an issuer may use reasonable estimates of those expenditures. For this purpose, costs of issuance and other similar neutral costs are allocated ratably among expenditures in the same manner as in § 1.141–3(g)(6). A payment for the use of property may be allocated to two or more issues that finance property according to the relative amounts of debt service (both paid and accrued) on the issues during the annual period for which the payment is made, if that allocation reasonably reflects the economic substance of the arrangement. In general, allocations of payments according to relative debt service reasonably reflect the economic substance of the arrangement if the maturity of the bonds reasonably corresponds to the reasonably expected economic life of the property and debt service payments on the bonds are approximately level from year to year.

(iv) *Payments made under an arrangement entered into in connection with issuance of bonds.* A private payment for the use of property made under an arrangement that is entered into in connection with the issuance of the issue that finances that property generally is allocated to that issue. Whether an arrangement is entered into in connection with the issuance of an issue is determined on the basis of all of the facts and circumstances. An arrangement is ordinarily treated as entered into in connection with the issuance of an issue if—

(A) The issuer enters into the arrangement during the 3-year period beginning 18 months before the issue date; and

(B) The amount of payments reflects all or a portion of debt service on the issue.

(v) *Allocations to equity.* A private payment for the use of property may be allocated to equity before payments are allocated to an issue only if—

(A) Not later than 60 days after the date of the expenditure of those amounts, the issuer adopts an official intent (in a manner comparable to § 1.150–2(e)) indicating that the issuer reasonably expects to be repaid for the expenditure from a specific arrangement; and

(B) The private payment is made not later than 18 months after the later of the date the expenditure is made or the date the project is placed in service.

(d) *Private security*—(1) *In general.* This paragraph (d) contains rules that relate to private security.

(2) *Security taken into account.* The property that is the security for, or the source of, the payment of debt service on an issue need not be property financed with proceeds. For example, unimproved land or investment securities used, directly or indirectly, in a private business use that secures an issue provides private security. Private security (other than financed property and private payments) for an issue is taken into account under section 141(b), however, only to the extent it is provided, directly or indirectly, by a user of proceeds of the issue.

(3) *Pledge of unexpended proceeds.* Proceeds qualifying for an initial temporary period under § 1.148–2(e)(2) or (3) or deposited in a reasonably required reserve or replacement fund (as defined in § 1.148–2(f)(2)(i)) are not taken into account under this paragraph (d) before the date on which those amounts are either expended or loaned by the issuer to an unrelated party.

(4) *Secured by any interest in property or payments.* Property used or to be used for a private business use and payments in respect of that property are treated as private security if any interest in that property or payments secures the payment of debt service on the bonds. For this purpose, the phrase any interest in is to be interpreted broadly and includes, for example, any right, claim, title, or legal share in property or payments.

(5) *Payments in respect of property.* The payments taken into account as private security are payments in respect of property used or to be used for a private business use. Except as otherwise provided in this paragraph (d)(5) and paragraph (d)(6) of this section, the rules in paragraphs (c)(2)(i)(A) and (B) and (c)(2)(ii) of this section apply to determine the amount of payments treated as payments in respect of property used or to be used for a private business use. Thus, payments made by members of the general public for use of a facility used for a private business use (for example, a facility that is the subject of a management contract that results in private business use) are taken into account as private security to the extent that they are made for the period of time that property is used by a private business user.

(6) *Allocation of security among issues.* In general, property or payments from the disposition of that property that are taken into account as private security are allocated to each issue secured by the property or payments on a reasonable basis that takes into account bondholders' rights to the payments or property upon default.

(e) *Generally applicable taxes*—(1) *General rule.* For purposes of the private security or payment test, generally applicable taxes are not taken into account (that is, are not payments from a nongovernmental person and are not payments in respect of property used for a private business use).

(2) *Definition of generally applicable taxes.* A generally applicable tax is an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of raising revenue to be used for governmental purposes. A generally applicable tax must have a uniform tax rate that is applied to all persons of the same classification in the appropriate jurisdiction and a generally applicable manner of determination and collection.

(3) *Special charges.* A payment for a special privilege granted or service rendered is not a generally applicable tax. Special assessments paid by property owners benefiting from financed improvements are not generally applicable taxes. For example, a tax or a payment in lieu of tax that is limited to the property or persons benefited by an improvement is not a generally applicable tax.

(4) *Manner of determination and collection*—(i) *In general.* A tax does not have a generally applicable manner of determination and collection to the extent that one or more taxpayers make any impermissible agreements relating to payment of those taxes. An impermissible agreement relating to the payment of a tax is taken into account whether or not it is reasonably expected to result in any payments that would not otherwise have been made. For example, if an issuer uses proceeds to make a grant to a taxpayer to improve property, agreements that impose reasonable conditions on the use of the grant do not cause a tax on that property to fail to be a generally applicable tax. If an agreement by a taxpayer causes the tax imposed on that taxpayer not to be treated as a generally applicable tax, the

entire tax paid by that taxpayer is treated as a special charge, unless the agreement is limited to a specific portion of the tax.

(ii) *Impermissible agreements.* The following are examples of agreements that cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to be personally liable on a tax that does not generally impose personal liability, to provide additional credit support such as a third party guarantee, or to pay unanticipated shortfalls; an agreement regarding the minimum market value of property subject to property tax; and an agreement not to challenge or seek deferral of the tax.

(iii) *Permissible agreements.* The following are examples of agreements that do not cause a tax to fail to have a generally applicable manner of determination and collection: an agreement to use a grant for specified purposes (whether or not that agreement is secured); a representation regarding the expected value of the property following the improvement; an agreement to insure the property and, if damaged, to restore the property; a right of a grantor to rescind the grant if property taxes are not paid; and an agreement to reduce or limit the amount of taxes collected to further a bona fide governmental purpose. For example, an agreement to abate taxes to encourage a property owner to rehabilitate property in a distressed area is a permissible agreement.

(5) *Payments in lieu of taxes.* A tax equivalency payment and any other payment in lieu of a tax is treated as a generally applicable tax if—

(i) The payment is commensurate with and not greater than the amounts imposed by a statute for a tax of general application; and

(ii) The payment is designated for a public purpose and is not a special charge (as described in paragraph (e)(3) of this section). For example, a payment in lieu of taxes made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge.

(f) *Certain waste remediation bonds—*(1) *Scope.* This paragraph (f) applies to bonds issued to finance hazardous waste clean-up activities on privately owned land (hazardous waste remediation bonds).

(2) *Persons that are not private users.* Payments from nongovernmental persons who are not (other than coincidentally) either users of the site being remediated or persons potentially responsible for disposing of hazardous waste on that site are not taken into account as private security. This paragraph (f)(2) applies to payments that secure (directly or indirectly) the payment of principal of, or interest on, the bonds under the terms of the bonds. This paragraph (f)(2) applies only if the payments are made pursuant to either a generally applicable state or local taxing statute or a state or local statute that regulates or restrains activities on an industry-wide basis of persons who are engaged in generating or handling hazardous waste, or in refining, producing, or transporting petroleum, provided that those payments do not represent, in substance, payment for the use of proceeds. For this purpose, a state or local statute that imposes payments that have substantially the same character as those described in Chapter 38 of the Code are treated as generally applicable taxes.

(3) *Persons that are private users.* If payments from nongovernmental persons who are either users of the site being remediated or persons potentially responsible for disposing of hazardous waste on that site do not secure (directly or indirectly) the payment of principal of, or interest on, the bonds under the terms of the bonds, the payments are not taken into account as private payments. This paragraph (f)(3) applies only if at the time the bonds are issued the payments from those nongovernmental persons are not material to the security for the bonds. For this purpose, payments are not material to the security for the bonds if—

(i) The payments are not required for the payment of debt service on the bonds;

(ii) The amount and timing of the payments are not structured or designed to reflect the payment of debt service on the bonds;

(iii) The receipt or the amount of the payment is uncertain (for example, as of the issue date, no final judgment has been entered into against the nongovernmental person);

(iv) The payments from those nongovernmental persons, when and if received, are used either to redeem bonds of the issuer or to pay for costs of any hazardous waste remediation project; and

(v) In the case when a judgment (but not a final judgment) has been entered by the issue date against a nongovernmental person, there are, as of the issue date, costs of hazardous waste remediation other than those financed with the bonds that may be financed with the payments.

(g) *Examples.* The following examples illustrate the application of this section:

Example 1. Aggregation of payments. State B issues bonds with proceeds of $10 million. B uses $9.7 million of the proceeds to construct a 10-story office building. B uses the remaining $300,000 of proceeds to make a loan to Corporation Y. In addition, Corporation X leases 1 floor of the building for the term of the bonds. Under all of the facts and circumstances, it is reasonable to allocate 10 percent of the proceeds to that 1 floor. As a percentage of the present value of the debt service on the bonds, the present value of Y's loan repayments is 3 percent and the present value of X's lease payments is 8 percent. The bonds meet the private security or payment test because the private payments taken into account are more than 10 percent of the present value of the debt service on the bonds.

Example 2. Indirect private payments. J, a political subdivision of a state, will issue several series of bonds from time to time and will use the proceeds to rehabilitate urban areas. Under all of the facts and circumstances, the private business use test will be met with respect to each issue that will be used for the rehabilitation and construction of buildings that will be leased or sold to nongovernmental persons for use in their trades or businesses. Nongovernmental persons will make payments for these sales and leases. There is no limitation either on the number of issues or the aggregate amount of bonds that may be outstanding. No group of bondholders has any legal claim prior to any other bondholders or creditors with respect to specific revenues of J, and there is no arrangement whereby revenues from a particular project are paid into a trust or constructive trust, or sinking fund, or are otherwise segregated or restricted for the benefit of any group of bondholders. There is, however, an unconditional obligation by J to pay the principal of, and the interest on, each issue. Although not directly pledged under the terms of the bond documents, the leases and sales are underlying arrangements. The payments relating to these leases and sales are taken into account as private payments to determine whether each issue of bonds meets the private security or payment test.

Example 3. Computation of payment in variable yield issues. (i) City M issues general obligation bonds with proceeds of $10 million to finance a 5-story office building. The bonds bear interest at a variable rate that is recomputed monthly according to an index that reflects current market yields. The yield that the interest index would produce on the issue date is 6 percent. M leases 1 floor of the office building to Corporation T, a nongovernmental person, for the term of the bonds. Under all of the facts and circumstances, T is treated as using more than 10 percent of the proceeds. Using the 6 percent yield as the discount rate, M reasonably expects on the issue date that the present value of lease payments to be made by T will be 8 percent of the present value of the total debt service on the bonds. After the issue date of the bonds, interest rates decline significantly, so that the yield on the bonds over their entire term is 4 percent. Using this actual 4 percent yield as the discount rate, the present value of lease payments made by T is 12 percent of the present value of the actual total debt service

on the bonds. The bonds are not private activity bonds because M reasonably expected on the issue date that the bonds would not meet the private security or payment test and because M did not take any subsequent deliberate action to meet the private security or payment test.

(ii) The facts are the same as *Example 3(i)*, except that 5 years after the issue date M leases a second floor to Corporation S, a nongovernmental person, under a long-term lease. Because M has taken a deliberate action, the present value of the lease payments must be computed. On the date this lease is entered into, M reasonably expects that the yield on the bonds over their entire term will be 5.5 percent, based on actual interest rates to date and the then-current rate on the variable yield bonds. M uses this 5.5 percent yield as the discount rate. Using this 5.5 percent yield as the discount rate, as a percentage of the present value of the debt service on the bonds, the present value of the lease payments made by S is 3 percent. The bonds are private activity bonds because the present value of the aggregate private payments is greater than 10 percent of the present value of debt service.

Example 4. Payments not in respect of financed property. In order to further public safety, City Y issues tax assessment bonds the proceeds of which are used to move existing electric utility lines underground. Although the utility lines are owned by a nongovernmental utility company, that company is under no obligation to move the lines. The debt service on the bonds will be paid using assessments levied by City Y on the customers of the utility. Although the utility lines are privately owned and the utility customers make payments to the utility company for the use of those lines, the assessments are payments in respect of the cost of relocating the utility line. Thus, the assessment payments are not made in respect of property used for a private business use. Any direct or indirect payments to Y by the utility company for the undergrounding are, however, taken into account as private payments.

Example 5. Payments from users of proceeds that are not private business users taken into account. City P issues general obligation bonds to finance the renovation of a hospital that it owns. The hospital is operated for P by D, a nongovernmental person, under a management contract that results in private business use under §1.141–3. P will use the revenues from the hospital (after the required payments to D and the payment of operation and maintenance expenses) to pay the debt service on the bonds. The bonds meet the private security or payment test because the revenues from the hospital are payments in respect of property used for a private business use.

Example 6. Limitation of amount of payments to amount of private business use not determined annually. City Q issues bonds with a term of 15 years and uses the proceeds to construct an office building. The debt service on the bonds is level throughout the 15-year term. Q enters into a 5-year lease with Corporation R under which R is treated as a user of 11 percent of the proceeds. R will make lease payments equal to 20 percent of the annual debt service on the bonds for each year of the lease. The present value of R's lease payments is equal to 12 percent of the present value of the debt service over the entire 15-year term of the bonds. If, however, the lease payments taken into account as private payments were limited to 11 percent of debt service paid in each year of the lease, the present value of these payments would be only 8 percent of the debt service on the bonds over the entire term of the bonds. The bonds meet the private security or payment test, because R's lease payments are taken into account as private payments in an amount not to exceed 11 percent of the debt service of the bonds.

Example 7. Allocation of payments to funds not derived from a borrowing. City Z purchases property for $1,250,000 using $1,000,000 of proceeds of its tax increment bonds and $250,000 of other revenues that are in its redevelopment fund. Within 60 days of the date of purchase, Z declared its intent to sell the property pursuant to a redevelopment plan and to use that amount to reimburse its redevelopment fund. The bonds are secured only by the incremental property taxes attributable to the increase in value of the property from the planned redevelopment of the property. Within 18 months after the issue date, Z sells the financed property to Developer M for $250,000, which Z uses to reimburse the redevelopment fund. The property that M uses is financed both with the proceeds of the bonds and Z's redevelopment fund. The payments by M are properly allocable to the costs of property financed with the amounts in Z's redevelopment fund. See paragraphs (c)(3) (i) and (v) of this section.

Example 8. Allocation of payments to different sources of funding—improvements. In 1997, City L issues bonds with proceeds of $8 million to finance the acquisition of a building. In 2002, L spends $2 million of its general revenues to improve the heating system and roof of the building. At that time, L enters into a 10-year lease with Corporation M for the building providing for annual payments of $1 million to L. The lease payments are at fair market value, and the lease payments do not otherwise have a significant nexus to either the issue or to the expenditure of general revenues. Eighty percent of each lease payment is allocated to the issue and is taken into account under the private payment test because each lease payment is properly allocated to the sources of funding in a manner that reasonably corresponds to the relative amounts of the sources of funding that are expended on the building.

Example 9. Security not provided by users of proceeds not taken into account. County W issues certificates of participation in a lease of a building that W owns and covenants to appropriate annual payments for the lease. A portion of each payment is specified as interest. More than 10 percent of the building is used for private business use. None of the proceeds of the obligations are used with respect to the building. W uses the proceeds of the obligations to make a grant to Corporation Y for the construction of a factory that Y will own. Y makes no payments to W, directly or indirectly, for its use of proceeds, and Y has no relationship to the users of the leased building. If W defaults under the lease, the trustee for the holders of the certificates of participation has a limited right of repossession under which the trustee may not foreclose but may lease the property to a new tenant at fair market value. The obligations are secured by an interest in property used for a private business use. However, because the property is not provided by a private business user and is not financed property, the obligations do not meet the private security or payment test.

Example 10. Allocation of payments among issues. University L, a political subdivision, issued three separate series of revenue bonds during 1989, 1991, and 1993 under the same bond resolution. L used the proceeds to construct facilities exclusively for its own use. Bonds issued under the resolution are equally and ratably secured and payable solely from the income derived by L from rates, fees, and charges imposed by L for the use of the facilities. The bonds issued in 1989, 1991, and 1993 are not private activity bonds. In 1997, L issues another series of bonds under the resolution to finance additional facilities. L leases 20 percent of the new facilities for the term of the 1997 bonds to nongovernmental persons who will use the facilities in their trades or businesses. The present value of the lease payments from the nongovernmental users will equal 15 percent of the present value of the debt service on the 1997 bonds. L will commingle all of the revenues from all its bond-financed facilities in its revenue fund. The present value of the portion of the lease payments from nongovernmental lessees of the new facilities allocable to the 1997 bonds under paragraph (d) of this section is less than 10 percent of the present value of the debt service on the 1997 bonds because the bond documents provide that the bonds are equally and ratably secured. Accordingly, the 1997 bonds do not meet the private security test. The 1997 bonds meet the private payment test, however, because the private lease payments for the new facility are properly allocated to those bonds (that is, because none of the proceeds of the prior issues were used for the new facilities). See paragraph (c) of this section.

Example 11. Generally applicable tax. (i) Authority N issues bonds to finance the construction of a stadium. Under a long-term lease, Corporation X, a professional sports team, will use more than 10 percent of the stadium. X will not, however, make any payments for this private business use. The security for the bonds will be a ticket tax imposed on each person purchasing a ticket for an event at the stadium. The portion of the ticket tax attributable to tickets purchased by persons attending X's events will, on a present value basis, exceed 10 percent of the present value of the debt service on N's bonds. The bonds meet the private security or payment test. The ticket tax is not a generally applicable tax and, to the extent that the tax receipts relate to X's events, the taxes are payments in respect of property used for a private business use.

(ii) The facts are the same as *Example 11(i)*, except that the ticket tax is imposed by N on

tickets purchased for events at a number of large entertainment facilities within the N's jurisdiction (for example, other stadiums, arenas, and concert halls), some of which were not financed with tax-exempt bonds. The ticket tax is a generally applicable tax and therefore the revenues from this tax are not payments in respect of property used for a private business use. The receipt of the ticket tax does not cause the bonds to meet the private security or payment test.

§ 1.141–5 Private loan financing test.

(a) *In general.* Bonds of an issue are private activity bonds if more than the lesser of 5 percent or $5 million of the proceeds of the issue is to be used (directly or indirectly) to make or finance loans to persons other than governmental persons. Section 1.141–2(d) applies in determining whether the private loan financing test is met. In determining whether the proceeds of an issue are used to make or finance loans, indirect, as well as direct, use of the proceeds is taken into account.

(b) *Measurement of test.* In determining whether the private loan financing test is met, the amount actually loaned to a nongovernmental person is not discounted to reflect the present value of the loan repayments.

(c) *Definition of private loan*—(1) *In general.* Any transaction that is generally characterized as a loan for federal income tax purposes is a loan for purposes of this section. In addition, a loan may arise from the direct lending of bond proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed. Thus, the determination of whether a loan is made depends on the substance of a transaction rather than its form. For example, a lease or other contractual arrangement (for example, a management contract or an output contract) may in substance constitute a loan if the arrangement transfers tax ownership of the facility to a nongovernmental person. Similarly, an output contract or a management contract with respect to a financed facility generally is not treated as a loan of proceeds unless the agreement in substance shifts significant burdens and benefits of ownership to the nongovernmental purchaser or manager of the facility.

(2) *Application only to purpose investments*—(i) *In general.* A loan may be either a purpose investment or a nonpurpose investment. A loan that is a nonpurpose investment does not cause the private loan financing test to be met. For example, proceeds invested in loans, such as obligations of the United States, during a temporary period, as part of a reasonably required reserve or replacement fund, as part of a refunding escrow, or as part of a minor portion (as each of those terms are defined in § 1.148–1 or § 1.148–2) are generally not treated as loans under the private loan financing test.

(ii) *Certain prepayments treated as loans.* Except as otherwise provided, a prepayment for property or services is treated as a loan for purposes of the private loan financing test if a principal purpose for prepaying is to provide a benefit of tax-exempt financing to the seller. A prepayment is not treated as a loan for purposes of the private loan financing test if—

(A) The prepayment is made for a substantial business purpose other than providing a benefit of tax-exempt financing to the seller and the issuer has no commercially reasonable alternative to the prepayment; or

(B) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

(3) *Grants*—(i) *In general.* A grant of proceeds is not a loan. Whether a transaction may be treated as a grant or a loan depends on all of the facts and circumstances.

(ii) *Tax increment financing*—(A) *In general.* Generally, a grant using proceeds of an issue that is secured by generally applicable taxes attributable to the improvements to be made with the grant is not treated as a loan, unless the grantee makes any impermissible agreements relating to the payment that results in the taxes imposed on that taxpayer not to be treated as generally applicable taxes under § 1.141–4(e).

(B) *Amount of loan.* If a grant is treated as a loan under this paragraph (c)(3), the entire grant is treated as a loan unless the impermissible agreement is limited to a specific portion of the tax. For this purpose, an arrangement with each unrelated grantee is treated as a separate grant.

(4) *Hazardous waste remediation bonds.* In the case of an issue of hazardous waste remediation bonds, payments from nongovernmental persons that are either users of the site being remediated or persons potentially responsible for disposing of hazardous waste on that site do not establish that the transaction is a loan for purposes of this section. This paragraph (c)(4) applies only if those payments do not secure the payment of principal of, or interest on, the bonds (directly or indirectly), under the terms of the bonds and those payments are not taken into account under the private payment test pursuant to § 1.141–4(f)(3).

(d) *Tax assessment loan exception*—(1) *General rule.* For purposes of this section, a tax assessment loan that satisfies the requirements of this paragraph (d) is not a loan for purposes of the private loan financing test.

(2) *Tax assessment loan defined.* A tax assessment loan is a loan that arises when a governmental person permits or requires property owners to finance any governmental tax or assessment of general application for an essential governmental function that satisfies each of the requirements of paragraphs (d) (3) through (5) of this section.

(3) *Mandatory tax or other assessment.* The tax or assessment must be an enforced contribution that is imposed and collected for the purpose of raising revenue to be used for a specific purpose (that is, to defray the capital cost of an improvement). Taxes and assessments do not include fees for services. The tax or assessment must be imposed pursuant to a state law of general application that can be applied equally to natural persons not acting in a trade or business and persons acting in a trade or business. For this purpose, taxes and assessments that are imposed subject to protest procedures are treated as enforced contributions.

(4) *Specific essential governmental function*—(i) *In general.* A mandatory tax or assessment that gives rise to a tax assessment loan must be imposed for one or more specific, essential governmental functions.

(ii) *Essential governmental functions.* For purposes of paragraph (d) of this section, improvements to utilities and systems that are owned by a governmental person and that are available for use by the general public (such as sidewalks, streets and streetlights; electric, telephone, and cable television systems; sewage treatment and disposal systems; and municipal water facilities) serve essential governmental functions. For other types of facilities, the extent to which the service provided by the facility is customarily performed (and financed with governmental bonds) by governments with general taxing powers is a primary factor in determining whether the facility serves an essential governmental function. For example, parks that are owned by a governmental person and that are available for use by the general public serve an essential governmental function. Except as otherwise provided in this paragraph (d)(4)(ii), commercial or industrial facilities and improvements to property owned by a nongovernmental person do not serve an essential governmental

function. Permitting installment payments of property taxes or other taxes is not an essential governmental function.

(5) *Equal basis requirement*—(i) *In general.* Owners of both business and nonbusiness property benefiting from the financed improvements must be eligible, or required, to make deferred payments of the tax or assessment giving rise to a tax assessment loan on an equal basis (the equal basis requirement). A tax or assessment does not satisfy the equal basis requirement if the terms for payment of the tax or assessment are not the same for all taxed or assessed persons. For example, the equal basis requirement is not met if certain property owners are permitted to pay the tax or assessment over a period of years while others must pay the entire tax or assessment immediately or if only certain property owners are required to prepay the tax or assessment when the property is sold.

(ii) *General rule for guarantees.* A guarantee of debt service on bonds, or of taxes or assessments, by a person that is treated as a borrower of bond proceeds violates the equal basis requirement if it is reasonable to expect on the date the guarantee is entered into that payments will be made under the guarantee.

(6) *Coordination with private business tests.* See §§ 1.141–3 and 1.141–4 for rules for determining whether tax assessment loans cause the bonds financing those loans to be private activity bonds under the private business use and the private security or payment tests.

(e) *Examples.* The following examples illustrate the application of this section:

Example 1. Turnkey contract not treated as a loan. State agency Z and federal agency H will each contribute to rehabilitate a project owned by Z. H can only provide its funds through a contribution to Z to be used to acquire the rehabilitated project on a turnkey basis from an approved developer. Under H's turnkey program, the developer must own the project while it is rehabilitated. Z issues its notes to provide funds for construction. A portion of the notes will be retired using the H contribution, and the balance of the notes will be retired through the issuance by Z of long-term bonds. Z lends the proceeds of its notes to Developer B as construction financing and transfers title to B for a nominal amount. The conveyance is made on condition that B rehabilitate the property and reconvey it upon completion, with Z retaining the right to force reconveyance if these conditions are not satisfied. B must name Z as an additional insured on all insurance. Upon completion, B must transfer title to the project back to Z at a set price, which price reflects B's costs and profit, not fair market value. Further, this price is adjusted downward to reflect any cost-underruns. For purposes of section 141(c), this transaction does not involve a private loan.

Example 2. Essential government function requirement not met. City D creates a special taxing district consisting of property owned by nongovernmental persons that requires environmental clean-up. D imposes a special tax on each parcel within the district in an amount that is related to the expected environmental clean-up costs of that parcel. The payment of the tax over a 20-year period is treated as a loan by the property owners for purposes of the private loan financing test. The special district issues bonds, acting on behalf of D, that are payable from the special tax levied within the district, and uses the proceeds to pay for the costs of environmental clean-up on the property within the district. The bonds meet the private loan financing test because more than 5 percent of the proceeds of the issue are loaned to nongovernmental persons. The issue does not meet the tax assessment loan exception because the improvements to property owned by a nongovernmental person are not an essential governmental function under section 141(c)(2). The issue also meets the private business tests of section 141(b).

§ 1.141–6 Allocation and accounting rules.

(a) *Allocation of proceeds to expenditures.* For purposes of §§ 1.141–1 through 1.141–15, the provisions of § 1.148–6(d) apply for purposes of allocating proceeds to expenditures. Thus, allocations generally may be made using any reasonable, consistently applied accounting method, and allocations under section 141 and section 148 must be consistent with each other.

(b) *Allocation of proceeds to property.* [Reserved]

(c) *Special rules for mixed use facilities.* [Reserved]

(d) *Allocation of proceeds to common areas.* [Reserved]

(e) *Allocation of proceeds to bonds.* [Reserved]

(f) *Treatment of partnerships.* [Reserved]

(g) *Examples.* [Reserved]

§ 1.141–7 Special rules for output contracts. [Reserved]

§ 1.141–8 $15 million limitation for output facilities. [Reserved]

§ 1.141–9 Unrelated or disproportionate use test.

(a) *General rules*—(1) *Description of test.* Under section 141(b)(3) (the unrelated or disproportionate use test), an issue meets the private business tests if the amount of private business use and private security or payments attributable to unrelated or disproportionate private business use exceeds 5 percent of the proceeds of the issue. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (unrelated use) and use that is related but disproportionate to any government use of those proceeds (disproportionate use).

(2) *Application of unrelated or disproportionate use test*—(i) *Order of application.* The unrelated or disproportionate use test is applied by first determining whether a private business use is related to a government use. Next, private business use that relates to a government use is examined to determine whether it is disproportionate to that government use.

(ii) *Aggregation of unrelated and disproportionate use.* All the unrelated use and disproportionate use financed with the proceeds of an issue are aggregated to determine compliance with the unrelated or disproportionate use test. The amount of permissible unrelated and disproportionate private business use is not reduced by the amount of private business use financed with the proceeds of an issue that is neither unrelated use nor disproportionate use.

(iii) *Deliberate actions.* A deliberate action that occurs after the issue date does not result in unrelated or disproportionate use if the issue meets the conditions of § 1.141–12(a).

(b) *Unrelated use*—(1) *In general.* Whether a private business use is related to a government use financed with the proceeds of an issue is determined on a case-by-case basis, emphasizing the operational relationship between the government use and the private business use. In general, a facility that is used for a related private business use must be located within, or adjacent to, the governmentally used facility.

(2) *Use for the same purpose as government use.* Use of a facility by a nongovernmental person for the same purpose as use by a governmental person is not treated as unrelated use if the government use is not insignificant. Similarly, a use of a facility in the same manner both for private business use that is related use and private business use that is unrelated use does not result in unrelated use if the related use is not insignificant. For example, a privately owned pharmacy in a governmentally owned hospital does not ordinarily result in unrelated use solely because the pharmacy also serves individuals not using the hospital. In addition, use of parking spaces in a garage by a nongovernmental person is not treated as unrelated use if more than an insignificant portion of the parking

spaces are used for a government use (or a private business use that is related to a government use), even though the use by the nongovernmental person is not directly related to that other use.

(c) *Disproportionate use*—(1) *Definition of disproportionate use.* A private business use is disproportionate to a related government use only to the extent that the amount of proceeds used for that private business use exceeds the amount of proceeds used for the related government use. For example, a private use of $100 of proceeds that is related to a government use of $70 of proceeds results in $30 of disproportionate use.

(2) *Aggregation of related uses.* If two or more private business uses of the proceeds of an issue relate to a single government use of those proceeds, those private business uses are aggregated to apply the disproportionate use test.

(3) *Allocation rule.* If a private business use relates to more than a single use of the proceeds of the issue (for example, two or more government uses of the proceeds of the issue or a government use and a private use), the amount of any disproportionate use may be determined by—

(i) Reasonably allocating the proceeds used for the private business use among the related uses;

(ii) Aggregating government uses that are directly related to each other; or

(iii) Allocating the private business use to the government use to which it is primarily related.

(d) *Maximum use taken into account.* The determination of the amount of unrelated use or disproportionate use of a facility is based on the maximum amount of reasonably expected government use of a facility during the measurement period. Thus, no unrelated use or disproportionate use arises solely because a facility initially has excess capacity that is to be used by a nongovernmental person if the facility will be completely used by the issuer during the term of the issue for more than an insignificant period.

(e) *Examples.* The following examples illustrate the application of this section:

Example 1. School and remote cafeteria. County X issues bonds with proceeds of $20 million and uses $18.1 million of the proceeds for construction of a new school building and $1.9 million of the proceeds for construction of a privately operated cafeteria in its administrative office building, which is located at a remote site. The bonds are secured, in part, by the cafeteria. The $1.9 million of proceeds is unrelated to the government use (that is, school construction) financed with the bonds and exceeds 5 percent of $20 million. Thus, the issue meets the private business tests.

Example 2. Public safety building and courthouse. City Y issues bonds with proceeds of $50 million for construction of a new public safety building ($32 million) and for improvements to an existing courthouse ($15 million). Y uses $3 million of the bond proceeds for renovations to an existing privately operated cafeteria located in the courthouse. The bonds are secured, in part, by the cafeteria. Y's use of the $3 million for the privately operated cafeteria does not meet the unrelated or disproportionate use test because these expenditures are neither unrelated use nor disproportionate use.

Example 3. Unrelated garage. City Y issues bonds with proceeds of $50 million for construction of a new public safety building ($30.5 million) and for improvements to an existing courthouse ($15 million). Y uses $3 million of the bond proceeds for renovations to an existing privately operated cafeteria located in the courthouse. The bonds are secured, in part, by the cafeteria. Y also uses $1.5 million of the proceeds to construct a privately operated parking garage adjacent to a private office building. The private business use of the parking garage is unrelated to any government use of proceeds of the issue. Since the proceeds used for unrelated uses and disproportionate uses do not exceed 5 percent of the proceeds, the unrelated or disproportionate use test is not met.

Example 4. Disproportionate use of garage. County Z issues bonds with proceeds of $20 million for construction of a hospital with no private business use ($17 million); renovation of an office building with no private business use ($1 million); and construction of a garage that is entirely used for a private business use ($2 million). The use of the garage is related to the use of the office building but not to the use of the hospital. The private business use of the garage results in $1 million of disproportionate use because the proceeds used for the garage ($2 million) exceed the proceeds used for the related government use ($1 million). The bonds are not private activity bonds, however, because the disproportionate use does not exceed 5 percent of the proceeds of the issue.

Example 5. Bonds for multiple projects. (i) County W issues bonds with proceeds of $80 million for the following purposes: (1) $72 million to construct a County-owned and operated waste incinerator; (2) $1 million for a County-owned and operated facility for the temporary storage of hazardous waste prior to final disposal; (3) $1 million to construct a privately owned recycling facility located at a remote site; and (4) $6 million to build a garage adjacent to the County-owned incinerator that will be leased to Company T to store and repair trucks that it owns and uses to haul County W refuse. Company T uses 75 percent of its trucks to haul materials to the incinerator and the remaining 25 percent of its trucks to haul materials to the temporary storage facility.

(ii) The $1 million of proceeds used for the recycling facility is used for an unrelated use. The garage is related use. In addition, 75 percent of the use of the $6 million of proceeds used for the garage is allocable to the government use of proceeds at the incinerator. The remaining 25 percent of the proceeds used for the garage ($1.5 million) relates to the government use of proceeds at the temporary storage facility. Thus, this portion of the proceeds used for the garage exceeds the proceeds used for the temporary storage facility by $0.5 million and this excess is disproportionate use (but not unrelated use). Thus, the aggregate amount of unrelated use and disproportionate use financed with the proceeds of the issue is $1.5 million. Alternatively, under paragraph (c)(3)(iii) of this section, the entire garage may be treated as related to the government use of the incinerator and, under that allocation, the garage is not disproportionate use. In either event, section 141(b)(3) limits the aggregate unrelated use and disproportionate use to $4 million. Therefore, the bonds are not private activity bonds under this section.

§ 1.141–10 Coordination with volume cap. [Reserved]

§ 1.141–11 Acquisition of nongovernmental output property. [Reserved]

§ 1.141–12 Remedial actions.

(a) *Conditions to taking remedial action.* An action that causes an issue to meet the private business tests or the private loan financing test is not treated as a deliberate action if the issuer takes a remedial action described in paragraph (d), (e), or (f) of this section with respect to the nonqualified bonds and if all of the requirements in paragraphs (a) (1) through (5) of this section are met.

(1) *Reasonable expectations test met.* The issuer reasonably expected on the issue date that the issue would meet neither the private business tests nor the private loan financing test for the entire term of the bonds. For this purpose, if the issuer reasonably expected on the issue date to take a deliberate action prior to the final maturity date of the issue that would cause either the private business tests or the private loan financing test to be met, the term of the bonds for this purpose may be determined by taking into account a redemption provision if the provisions of § 1.141–2(d)(2)(ii) (A) through (C) are met.

(2) *Maturity not unreasonably long.* The term of the issue must not be longer than is reasonably necessary for the governmental purposes of the issue (within the meaning of § 1.148–1(c)(4)). Thus, this requirement is met if the weighted average maturity of the bonds of the issue is not greater than 120 percent of the average reasonably expected economic life of the property financed with the proceeds of the issue as of the issue date.

(3) *Fair market value consideration.* Except as provided in paragraph (f) of this section, the terms of any arrangement that results in satisfaction

of either the private business tests or the private loan financing test are bona fide and arm's-length, and the new user pays fair market value for the use of the financed property. Thus, for example, fair market value may be determined in a manner that takes into account restrictions on the use of the financed property that serve a bona fide governmental purpose.

(4) *Disposition proceeds treated as gross proceeds for arbitrage purposes.* The issuer must treat any disposition proceeds as gross proceeds for purposes of section 148. For purposes of eligibility for temporary periods under section 148(c) and exemptions from the requirement of section 148(f) the issuer may treat the date of receipt of the disposition proceeds as the issue date of the bonds and disregard the receipt of disposition proceeds for exemptions based on expenditure of proceeds under §1.148–7 that were met before the receipt of the disposition proceeds.

(5) *Proceeds expended on a governmental purpose.* Except for a remedial action under paragraph (d) of this section, the proceeds of the issue that are affected by the deliberate action must have been expended on a governmental purpose before the date of the deliberate action.

(b) *Effect of a remedial action*—(1) *In general.* The effect of a remedial action is to cure use of proceeds that causes the private business use test or the private loan financing test to be met. A remedial action does not affect application of the private security or payment test.

(2) *Effect on bonds that have been advance refunded.* If proceeds of an issue were used to advance refund another bond, a remedial action taken with respect to the refunding bond proportionately reduces the amount of proceeds of the advance refunded bond that is taken into account under the private business use test or the private loan financing test.

(c) *Disposition proceeds*—(1) *Definition. Disposition proceeds* are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.

(2) *Allocating disposition proceeds to an issue.* In general, if the requirements of paragraph (a) of this section are met, after the date of the disposition, the proceeds of the issue allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If a disposition is made pursuant to an installment sale, the proceeds of the issue continue to be allocated to the transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of this section or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

(3) *Allocating disposition proceeds to different sources of funding.* If property has been financed by different sources of funding, for purposes of this section, the disposition proceeds from that property are first allocated to the outstanding bonds that financed that property in proportion to the principal amounts of those outstanding bonds. In no event may disposition proceeds be allocated to bonds that are no longer outstanding or to a source of funding not derived from a borrowing (such as revenues of the issuer) if the disposition proceeds are not greater than the total principal amounts of the outstanding bonds that are allocable to that property. For purposes of this paragraph (c)(3), principal amount has the same meaning as in §1.148–9(b)(2) and outstanding bonds do not include advance refunded bonds.

(d) *Redemption or defeasance of nonqualified bonds*—(1) *In general.* The requirements of this paragraph (d) are met if all of the nonqualified bonds of the issue are redeemed. Proceeds of tax-exempt bonds must not be used for this purpose, unless the tax-exempt bonds are qualified bonds, taking into account the purchaser's use of the facility. If the bonds are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those bonds within 90 days of the deliberate action.

(2) *Special rule for dispositions for cash.* If the consideration for the disposition of financed property is exclusively cash, the requirements of this paragraph (d) are met if the disposition proceeds are used to redeem a pro rata portion of the nonqualified bonds at the earliest call date after the deliberate action. If the bonds are not redeemed within 90 days of the date of the deliberate action, the disposition proceeds must be used to establish a defeasance escrow for those bonds within 90 days of the deliberate action.

(3) *Notice of defeasance.* The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the defeasance escrow is established.

(4) *Special limitation.* The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (d) if the period between the issue date and the first call date of the bonds is more than 10 1/2 years.

(5) *Defeasance escrow defined.* A defeasance escrow is an irrevocable escrow established to redeem bonds on their earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, bonds from the date the escrow is established to the earliest call date. The escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the bonds.

(e) *Alternative use of disposition proceeds*—(1) *In general.* The requirements of this paragraph (e) are met if—

(i) The deliberate action is a disposition for which the consideration is exclusively cash;

(ii) The issuer reasonably expects to expend the disposition proceeds within two years of the date of the deliberate action;

(iii) The disposition proceeds are treated as proceeds for purposes of section 141 and are used in a manner that does not cause the issue to meet either the private business tests or the private loan financing test, and the issuer does not take any action subsequent to the date of the deliberate action to cause either of these tests to be met; and

(iv) If the issuer does not use all of the disposition proceeds for an alternative use described in paragraph (e)(1)(iii) of this section, the issuer uses those remaining disposition proceeds for a remedial action that meets paragraph (d) of this section.

(2) *Special rule for use by 501(c)(3) organizations.* If the disposition proceeds are to be used by a 501(c)(3) organization, the nonqualified bonds must in addition be treated as reissued for purposes of sections 141, 145, 147, 149, and 150 and, under this treatment, satisfy all of the applicable requirements for qualified 501(c)(3) bonds. Thus, beginning on the date of the deliberate action, nonqualified bonds that satisfy these requirements must be treated as qualified 501(c)(3) bonds for all purposes, including sections 145(b) and 150(b).

(f) *Alternative use of facility.* The requirements of this paragraph (f) are met if—

(1) The facility with respect to which the deliberate action occurs is used in an alternative manner (for example, used for a qualifying purpose by a nongovernmental person or used by a

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501(c)(3) organization rather than a governmental person);

(2) The nonqualified bonds are treated as reissued, as of the date of the deliberate action, for purposes of sections 55 through 59 and 141, 142, 144, 145, 146, 147, 149 and 150, and under this treatment, the nonqualified bonds satisfy all the applicable requirements for qualified bonds throughout the remaining term of the nonqualified bonds;

(3) The deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of another issue of tax-exempt bonds; and

(4) Any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay the debt service on the bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on the bonds to pay the debt service on the bonds on the next available payment date.

(g) *Rules for deemed reissuance.* For purposes of determining whether bonds that are treated as reissued under paragraphs (e) and (f) of this section are qualified bonds—

(1) The provisions of the Code and regulations thereunder in effect as of the date of the deliberate action apply; and

(2) For purposes of paragraph (f) of this section, section 147(d) (relating to the acquisition of existing property) does not apply.

(h) *Authority of Commissioner to provide for additional remedial actions.* The Commissioner may, by publication in the **Federal Register** or the Internal Revenue Bulletin, provide additional remedial actions, including making a remedial payment to the United States, under which a subsequent action will not be treated as a deliberate action for purposes of §1.141–2.

(i) *Effect of remedial action on continuing compliance.* Solely for purposes of determining whether deliberate actions that are taken after a remedial action cause an issue to meet the private business tests or the private loan financing test—

(1) If a remedial action is taken under paragraph (d), (e), or (f) of this section, the private business use or private loans resulting from the deliberate action are not taken into account for purposes of determining whether the bonds are private activity bonds; and

(2) After a remedial action is taken, the amount of disposition proceeds is treated as equal to the proceeds of the issue that had been allocable to the transferred property immediately prior to the disposition. See paragraph (k) of this section, *Example 5.*

(j) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* The percentage of outstanding bonds that are nonqualified bonds equals the highest percentage of private business use in any 1-year period commencing with the deliberate action.

(2) *Allocation of nonqualified bonds.* Allocations to nonqualified bonds must be made on a pro rata basis, except that, for purposes of paragraph (d) of this section (relating to redemption or defeasance), an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

(k) *Examples.* The following examples illustrate the application of this section:

Example 1. Disposition proceeds less than outstanding bonds used to retire bonds. On June 1, 1997, City C issues 30-year bonds with an issue price of $10 million to finance the construction of a hospital building. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the building. On the issue date, C reasonably expects that it will be the only user of the building for the entire term of the bonds. Six years after the issue date, C sells the building to Corporation P for $5 million. The sale price is the fair market value of the building, as verified by an independent appraiser. C uses all of the $5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

Example 2. Lease to nongovernmental person. The facts are the same as in *Example 1*, except that instead of selling the building, C, 6 years after the issue date, leases the building to P for 7 years and uses other funds to redeem all of the $10 million outstanding bonds within 90 days of the deliberate act. The bonds are not treated as private activity bonds because C has taken the remedial action described in paragraph (d) of this section.

Example 3. Sale for less than fair market value. The facts are the same as in *Example 1*, except that the fair market value of the building at the time of the sale to P is $6 million. Because the transfer was for less than fair market value, the bonds are ineligible for the remedial actions under this section. The bonds are private activity bonds because P is treated as a user of all of the proceeds and P makes a payment ($6 million) for this use that is greater than 10 percent of the debt service on the bonds, on a present value basis.

Example 4. Fair market value determined taking into account governmental restrictions. The facts are the same as in *Example 1*, except that the building was used by C only for hospital purposes and C determines to sell the building subject to a restriction that it be used only for hospital purposes. After conducting a public bidding procedure as required by state law, the best price that C is able to obtain for the building subject to this restriction is $4.5 million from P. C uses all of the $4.5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

Example 5. Alternative use of disposition proceeds. The facts are the same as in *Example 1*, except that C reasonably expects on the date of the deliberate action to use the $5 million disposition proceeds for another governmental purpose (construction of governmentally owned roads) within two years of receipt, rather than using the $5 million to redeem outstanding bonds. C treats these disposition proceeds as gross proceeds for purposes of section 148. The bonds are not private activity bonds because C has taken a remedial action described in paragraph (e) of this section. After the date of the deliberate action, the proceeds of all of the outstanding bonds are treated as used for the construction of the roads, even though only $5 million of disposition proceeds was actually used for the roads.

Example 6. Alternative use of financed property. The facts are the same as in *Example 1*, except that C determines to lease the hospital building to Q, an organization described in section 501(c)(3), for a term of 10 years rather than to sell the building to P. In order to induce Q to provide hospital services, C agrees to lease payments that are less than fair market value. Before entering into the lease, an applicable elected representative of C approves the lease after a noticed public hearing. As of the date of the deliberate action, the issue meets all the requirements for qualified 501(c)(3) bonds, treating the bonds as reissued on that date. For example, the issue meets the two percent restriction on use of proceeds of finance issuance costs of section 147(g) because the issue pays no costs of issuance from disposition proceeds in connection with the deemed reissuance. C and Q treat the bonds as qualified 501(c)(3) bonds for all purposes commencing with the date of the deliberate action. The bonds are treated as qualified 501(c)(3) bonds commencing with the date of the deliberate action.

Example 7. Deliberate action before proceeds are expended on a governmental purpose. County J issues bonds with proceeds of $10 million that can be used only to finance a correctional facility. On the issue date of the bonds, J reasonably expects that it will be the sole user of the bonds for the useful life of the facility. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the facility. After the issue date of the bonds, but before the facility is placed in service, J enters into a contract with the federal government pursuant to which the federal government will make a fair market value, lump sum payment equal to 25 percent of the cost of the

facility. In exchange for this payment, J provides the federal government with priority rights to use of 25 percent of the facility. J uses the payment received from the federal government to defease the nonqualified bonds. The agreement does not cause the bonds to be private activity bonds because J has taken a remedial action described in paragraph (d) of this section. See paragraph (a)(5) of this section.

Example 8. Compliance after remedial action. In 1997, City G issues bonds with proceeds of $10 million to finance a courthouse. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the courthouse. G uses $1 million of the proceeds for a private business use and more than 10 percent of the debt service on the issue is secured by private security or payments. G later sells one-half of the courthouse property to a nongovernmental person for cash. G immediately redeems 60 percent of the outstanding bonds. This percentage of outstanding bonds is based on the highest private business use of the courthouse in any 1-year period commencing with the deliberate action. For purposes of subsequently applying section 141 to the issue, G may continue to use all of the proceeds of the outstanding bonds in the same manner (that is, for both the courthouse and the existing private business use) without causing the issue to meet the private business use test. The issue, however, continues to meet the private security or payment test. The result would be the same if D, instead of redeeming the bonds, established a defeasance escrow for those bonds, provided that the requirement of paragraph (d)(4) of this section was met.

§ 1.141–13 Refunding issues. [Reserved]

§ 1.141–14 Anti-abuse rules.

(a) *Authority of Commissioner to reflect substance of transactions.* If an issuer enters into a transaction or series of transactions with respect to one or more issues with a principal purpose of transferring to nongovernmental persons (other than as members of the general public) significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141, the Commissioner may take any action to reflect the substance of the transaction or series of transactions, including—

(1) Treating separate issues as a single issue for purposes of the private activity bond tests;

(2) Reallocating proceeds to expenditures, property, use, or bonds;

(3) Reallocating payments to use or proceeds;

(4) Measuring private business use on a basis that reasonably reflects the economic benefit in a manner different than as provided in § 1.141–3(g); and

(5) Measuring private payments or security on a basis that reasonably reflects the economic substance in a manner different than as provided in § 1.141–4.

(b) *Examples.* The following examples illustrate the application of this section:

Example 1. Reallocating proceeds to indirect use. City C issues bonds with proceeds of $20 million for the stated purpose of financing improvements to roads that it owns. As a part of the same plan of financing, however, C also agrees to make a loan of $7 million to Corporation M from its general revenues that it otherwise would have used for the road improvements. The interest rate of the loan corresponds to the interest rate on a portion of the issue. A principal purpose of the financing arrangement is to transfer to M significant benefits of the tax-exempt financing. Although C actually allocates all of the proceeds of the bonds to the road improvements, the Commissioner may reallocate a portion of the proceeds of the bonds to the loan to M because a principal purpose of the financing arrangement is to transfer to M significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141. The bonds are private activity bonds because the issue meets the private loan financing test. The bonds also meet the private business tests. See also §§ 1.141–3(a)(2), 1.141–4(a)(1), and 1.141–5(a), under which indirect use of proceeds and payments are taken into account.

Example 2. Taking into account use of amounts derived from proceeds that would be otherwise disregarded. County B issues bonds with proceeds of $10 million to finance the purchase of land. On the issue date, B reasonably expects that it will be the sole user of the land. Subsequently, the federal government acquires the land for $3 million in a condemnation action. B uses this amount to make a loan to Corporation M. In addition, the interest rate on the loan reflects the tax-exempt interest rate on the bonds and thus is substantially less than a current market rate. A principal purpose of the arrangement is to transfer to M significant benefits of the tax-exempt financing. Although the condemnation action is not a deliberate action, the Commissioner may treat the condemnation proceeds as proceeds of the issue because a principal purpose of the arrangement is to transfer to M significant benefits of tax-exempt financing in a manner inconsistent with the purposes of section 141. The bonds are private activity bonds.

Example 3. Measuring private business use on an alternative basis. City F issues bonds with a 30-year term to finance the acquisition of an industrial building having a remaining reasonably expected useful economic life of more than 30 years. On the issue date, F leases the building to Corporation G for 3 years. F reasonably expects that it will be the sole user of the building for the remaining term of the bonds. Because of the local market conditions, it is reasonably expected that the fair rental value of the industrial building will be significantly greater during the early years of the term of the bonds than in the later years. The annual rental payments are significantly less than fair market value, reflecting the interest rate on the bonds. The present value of these rental payments (net of operation and maintenance expenses) as of the issue date, however, is approximately 25 percent of the present value of debt service on the issue. Under § 1.141–3, the issue does not meet the private business tests, because only 10 percent of the proceeds are used in a trade or business by a nongovernmental person. A principal purpose of the issue is to transfer to G significant benefits of tax-exempt financing in a manner inconsistent with the purposes of section 141. The method of measuring private business use over the reasonably expected useful economic life of financed property is for the administrative convenience of issuers of state and local bonds. In cases where this method is used in a manner inconsistent with the purposes of section 141, the Commissioner may measure private business use on another basis that reasonably reflects economic benefit, such as in this case on an annual basis. If the Commissioner measures private business use on an annual basis, the bonds are private activity bonds because the private payment test is met and more than 10 percent of the proceeds are used in a trade or business by a nongovernmental person.

Example 4. Treating separate issues as a single issue. City D enters into a development agreement with Corporation T to induce T to locate its headquarters within D's city limits. Pursuant to the development agreement, in 1997 D will issue $20 million of its general obligation bonds (the 1997 bonds) to purchase land that it will grant to T. The development agreement also provides that, in 1998, D will issue $20 million of its tax increment bonds (the 1998 bonds), secured solely by the increase in property taxes in a special taxing district. Substantially all of the property within the special taxing district is owned by T or D. T will separately enter into an agreement to guarantee the payment of tax increment to D in an amount sufficient to retire the 1998 bonds. The proceeds of the 1998 bonds will be used to finance improvements owned and operated by D that will not give rise to private business use. Treated separately, the 1997 issue meets the private business use test, but not the private security or payment test; the 1998 issue meets the private security or payment test, but not the private business use test. A principal purpose of the financing plan including the two issues is to transfer significant benefits of tax-exempt financing to T for its headquarters. Thus, the 1997 issue and the 1998 issue may be treated by the Commissioner as a single issue for purposes of applying the private activity bond tests. Accordingly, the bonds of both the 1997 issue and the 1998 issue may be treated as private activity bonds.

Example 5. Reallocating proceeds. City E acquires an electric generating facility with a useful economic life of more than 40 years and enters into a 30-year take or pay contract to sell 30 percent of the available output to investor-owned utility M. E plans to use the remaining 70 percent of available output for its own governmental purposes. To finance the entire cost of the facility, E issues $30 million of its series A taxable bonds at taxable interest rates and $70 million series

B bonds, which purport to be tax-exempt bonds, at tax-exempt interest rates. E allocates all of M's private business use to the proceeds of the series A bonds and all of its own government use to the proceeds of the series B bonds. The series A bonds have a weighted average maturity of 15 years, while the series B bonds have a weighted average maturity of 26 years. M's payments under the take or pay contract are expressly determined by reference to 30 percent of M's total costs (that is, the sum of the debt service required to be paid on both the series A and the series B bonds and all other operating costs). The allocation of all of M's private business use to the series A bonds does not reflect economic substance because the series of transactions transfers to M significant benefits of the tax-exempt interest rates paid on the series B bonds. A principal purpose of the financing arrangement is to transfer to M significant benefits of the tax-exempt financing. Accordingly, the Commissioner may allocate M's private business use on a pro rata basis to both the series B bonds as well as the series A bonds, in which case the series B bonds are private activity bonds.

Example 6. Allocations respected. The facts are the same as in *Example 5*, except that the debt service component of M's payments under the take or pay contract is based exclusively on the amounts necessary to pay the debt service on the taxable series A bonds. E's allocation of all of M's private business use to the series A bonds is respected because the series of transactions does not actually transfer benefits of tax-exempt interest rates to M. Accordingly, the series B bonds are not private activity bonds. The result would be the same if M's payments under the take or pay contract were based exclusively on fair market value pricing, rather than the tax-exempt interest rates on E's bonds. The result also would be the same if the series A bonds and the series B bonds had substantially equivalent weighted average maturities and E and M had entered into a customary contract providing for payments based on a ratable share of total debt service. E would not be treated by the Commissioner in any of these cases as entering into the contract with a principal purpose of transferring the benefits of tax-exempt financing to M in a manner inconsistent with the purposes of section 141.

§1.141–15 Effective dates.

(a) *Scope.* The effective dates in this section apply for purposes of §§1.141–0 through 1.141–14, and 1.145–0 through 1.145–2 (the private activity bond regulations), and §1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b).

(b) *Effective dates.* Except as otherwise provided in this section, the private activity bond regulations, §1.150–1(a)(3), and the definition of bond documents contained in §1.150–1(b) apply to bonds issued on or after May 16, 1977 (the effective date) that are subject to section 1301 of the Tax Reform Act of 1986.

(c) *Refunding bonds.* The private activity bond regulations, §1.150–1(a)(3), and the definition of bond documents contained in §1.150–1(b) do not apply to bonds issued on or after the effective date to refund a bond to which the private activity bond regulations do not apply unless—

(1) The weighted average maturity of the refunding bonds is longer than—

(i) The weighted average maturity of the refunded bonds; or

(ii) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(2) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(d) *Permissive application of regulations.* Except as provided in paragraph (e) of this section, the private activity bond regulations, §1.150–1(a)(3), and the definition of bond documents contained in §1.150–1(b) may be applied in whole, but not in part, to—

(1) Bonds that are outstanding on the effective date and subject to section 141; or

(2) Refunding bonds issued on or after the effective date.

(e) *Permissive retroactive application of certain sections.* The following sections may each be applied to any bonds issued before the effective date:

(1) Section 1.141–3(b)(4);

(2) Section 1.141–3(b)(6); and

(3) Section 1.141–12.

§1.141–16 Effective dates for qualified private activity bond provisions.

(a) *Scope.* The effective dates of this section apply for purposes of §§1.142–0 through 1.142–2, 1.144–0 through 1.144–2, 1.147–0 through 1.147–2, and 1.150–4.

(b) *Effective dates.* Except as otherwise provided in this section, the regulations designated in paragraph (a) of this section apply to bonds issued on or after May 16, 1997 (the effective date).

(c) *Permissive application.* The regulations designated in paragraph (a) of this section may be applied in whole, but not in part, to bonds outstanding on the effective date.

Par. 7. Sections 1.142–0 and 1.142–3 are added and §§ 1.142–1 and 1.142–2 are revised to read as follows:

§ 1.142–0 Table of Contents.

This section lists the captioned paragraphs contained in §§ 1.142–1 through 1.142–3.

§ 1.142–1 Exempt facility bonds.
(a) Overview.
(b) Scope.
(c) Effective dates.
§ 1.142–2 Remedial actions.
(a) General rule.
(b) Reasonable expectations requirement.
(c) Redemption or defeasance.
(1) In general.
(2) Notice of defeasance.
(3) Special limitation.
(4) Special rule for dispositions of personal property.
(5) Definitions.
(d) When a failure to properly use proceeds occurs.
(1) Proceeds not spent.
(2) Proceeds spent.
(e) Nonqualified bonds.
§ 1.142–3 Refunding issues.
[Reserved]

§ 1.142–1 Exempt facility bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(A), an exempt facility bond issued under section 142 may be a qualified bond.

Under section 142(a), an exempt facility bond is any bond issued as a part of an issue using 95 percent or more of the proceeds for certain exempt facilities.

(b) *Scope.* Sections 1.142–0 through 1.142–3 apply for purposes of the rules for exempt facility bonds under section 142, except that, with respect to net proceeds that have been spent, § 1.142–2 does not apply to bonds issued under section 142(d) (relating to bonds issued to provide qualified residential rental projects) and section 142(f) (2) and (4) (relating to bonds issued to provide local furnishing of electric energy or gas).

(c) *Effective dates.* For effective dates of §§ 1.142–0 through 1.142–2, see § 1.141–16.

§ 1.142–2 Remedial actions.

(a) *General rule.* If less than 95 percent of the net proceeds of an exempt facility bond are actually used to provide an exempt facility, and for no other purpose, the issue will be treated as meeting the use of proceeds requirement of section 142(a) if the issue meets the condition of paragraph (b) of this section and the issuer takes the remedial action described in paragraph (c) of this section.

(b) *Reasonable expectations requirement.* The issuer must have reasonably expected on the issue date that 95 percent of the net proceeds of the issue would be used to provide an exempt facility and for no other purpose for the entire term of the bonds (disregarding any redemption

provisions). To meet this condition the amount of the issue must have been based on reasonable estimates about the cost of the facility.

(c) *Redemption or defeasance*—(1) *In general.* The requirements of this paragraph (c) are met if all of the nonqualified bonds of the issue are redeemed on the earliest call date after the date on which the failure to properly use the proceeds occurs under paragraph (d) of this section. Proceeds of tax-exempt bonds (other than those described in paragraph (d)(1) of this section) must not be used for this purpose. If the bonds are not redeemed within 90 days of the date on which the failure to properly use proceeds occurs, a defeasance escrow must be established for those bonds within 90 days of that date.

(2) *Notice of defeasance.* The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the escrow is established.

(3) *Special limitation.* The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (c) if the period between the issue date and the first call date is more than 10½ years.

(4) *Special rule for dispositions of personal property.* For dispositions of personal property exclusively for cash, the requirements of this paragraph (c) are met if the issuer expends the disposition proceeds within 6 months of the date of the disposition to acquire replacement property for the same qualifying purpose of the issue under section 142.

(5) *Definitions.* For purposes of paragraph (c)(4) of this section, *disposition proceeds* means disposition proceeds as defined in § 1.141–12(c).

(d) *When a failure to properly use proceeds occurs*—(1) *Proceeds not spent.* For net proceeds that are not spent, a failure to properly use proceeds occurs on the earlier of the date on which the issuer reasonably determines that the financed facility will not be completed or the date on which the financed facility is placed in service.

(2) *Proceeds spent.* For net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the bonds not to be used for the qualifying purpose for which the bonds were issued.

(e) *Nonqualified bonds.* For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds. The nonqualified bonds must be determined on a pro rata allocation basis, except that an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

§ 1.142–3 Refunding issues.

[Reserved]

Par. 8. Section 1.144–0 is added and §§ 1.144–1 and 1.144-2 are revised to read as follows:

§ 1.144–0 Table of Contents.

This section lists the captioned paragraphs contained in §§1.144–1 and 1.144–2.

§ 1.144–1 Qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds.
(a) Overview.
(b) Scope.
(c) Effective dates.
§ 1.144–2 Remedial actions.

§ 1.144–1 Qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(D), a qualified small issue bond issued under section 144(a) may be a qualified bond. Under section 144(a), any qualified small issue bond is any bond issued as a part of an issue 95 percent or more of the proceeds of which are to be used to provide certain manufacturing facilities or certain depreciable farm property and which meets other requirements. Under section 141(e)(1)(F) a qualified redevelopment bond issued under section 144(c) is a qualified bond. Under section 144(c), a qualified redevelopment bond is any bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used for one or more redevelopment purposes and which meets certain other requirements.

(b) *Scope.* Sections 1.144–0 through 1.144–2 apply for purposes of the rules for small issue bonds under section 144(a) and qualified redevelopment bonds under section 144(c), except that §1.144–2 does not apply to the requirements for qualified small issue bonds under section 144(a)(4) (relating to the limitation on capital expenditures) or under section 144(a)(10) (relating to the aggregate limit of tax-exempt bonds per taxpayer).

(c) *Effective dates.* For effective dates of §§1.144–0 through 1.144–2, see §1.141–16.

§ 1.144–2 Remedial actions.

The remedial action rules of §1.142–2 apply to qualified small issue bonds issued under section 144(a) and to qualified redevelopment bonds issued under section 144(c), for this purpose treating those bonds as exempt facility bonds and the qualifying purposes for those bonds as exempt facilities.

Par. 9. Sections 1.145–0 through 1.145–2 are added to read as follows:

§ 1.145–0 Table of Contents.

This section lists the captioned paragraphs contained in §§1.145–1 and 1.145–2.

§ 1.145–1 Qualified 501(c)(3) bonds.
(a) Overview.
(b) Scope.
(c) Effective dates.
§ 1.145–2 Application of private activity bond regulations.
(a) In general.
(b) Modification of private business tests.
(c) Exceptions.
(1) Certain provisions relating to governmental programs.
(2) Costs of issuance.

§ 1.145–1 Qualified 501(c)(3) bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(G), a qualified 501(c)(3) bond issued under section 145 is a qualified bond. Under section 145, a qualified 501(c)(3) bond is any bond issued as a part of an issue that satisfies the requirements of sections 145(a) through (d).

(b) *Scope.* Sections 1.145–0 through 1.145–2 apply for purposes of section 145(a).

(c) *Effective dates.* For effective dates of §§1.145–0 through 1.145–2, see §1.141–15.

§ 1.145–2 Application of private activity bond regulations.

(a) *In general.* Except as provided in this section, §§1.141–0 through 1.141–15 apply to section 145(a). For example, under this section, §1.141–1, and §1.141–2, an issue ceases to be an issue of qualified 501(c)(3) bonds if the issuer or a conduit borrower 501(c)(3) organization takes a deliberate action, subsequent to the issue date, that causes the issue to fail to comply with the requirements of sections 141(e) and 145 (such as an action that results in revocation of exempt status of the 501(c)(3) organization).

(b) *Modification of private business tests.* In applying §§1.141–0 through 1.141–15 to section 145(a)—

(1) References to governmental persons include 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under section 513(a);

(2) References to "10 percent" and "proceeds" in the context of the private business use test and the private security or payment test mean "5 percent" and "net proceeds"; and

(3) References to the private business use test in §§1.141–2 and 1.141–12 include the ownership test of section 145(a)(1).

(c) *Exceptions*—(1) *Certain provisions relating to governmental programs.* The following provisions do not apply to section 145: §1.141–2(d)(4) (relating to the special rule for dispositions of personal property in the ordinary course of an established governmental program) and §1.141–2(d)(5) (relating to the special rule for general obligation bond programs that finance a large number of separate purposes).

(2) *Costs of issuance.* Section 1.141–3(g)(6) does not apply to section 145(a)(2) to the extent that it provides that costs of issuance are allocated ratably among the other purposes for which the proceeds are used. For purposes of section 145(a)(2), costs of issuance are treated as private business use.

Par. 10. Sections 1.147–0 through 1.147–2 are added to read as follows:

§ 1.147–0 Table of Contents.

This section lists the captioned paragraphs contained in §§1.147–1 and 1.147–2.

§1.147–1 Other requirements applicable to certain private activity bonds.

(a) Overview.

(b) Scope.

(c) Effective dates.

§1.147–2 Remedial actions.

§ 1.147–1 Other requirements applicable to certain private activity bonds.

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 147, certain requirements must be met for a private activity bond to qualify as a qualified bond.

(b) *Scope.* Sections 1.147–0 through 1.147–2 apply for purposes of the rules in section 147 for qualified private activity bonds that permit use of proceeds to acquire land for environmental purposes (section 147(c)(3)), permit use of proceeds for certain rehabilitations (section 147(d)(2) and (3)), prohibit use of proceeds to finance skyboxes, airplanes, gambling establishments and similar facilities (section 147(e)), and require public approval (section 147(f)), but not for the rules limiting use of proceeds to acquire land or existing property under sections 147(c)(1) and (2), and (d)(1).

(c) *Effective dates.* For effective dates of §§ 1.147–0 through 1.147–2, see § 1.141–16.

§ 1.147–2 Remedial actions.

The remedial action rules of § 1.142–2 apply to the rules in section 147 for qualified private activity bonds that permit use of proceeds to acquire land for environmental purposes (section 147(c)(3)), permit use of proceeds for certain rehabilitations (section 147(d)(2) and (3)), prohibit use of proceeds to finance skyboxes, airplanes, gambling establishments and similar facilities (section 147(e)), and require public approval (section 147(f)), for this purpose treating those private activity bonds subject to the rules under section 147 as exempt facility bonds and the qualifying purposes for those bonds as exempt facilities.

Par. 11. Section 1.148–6 is amended by adding new paragraphs (a)(3) and (d)(1)(iii) to read as follows:

§ 1.148–6 General allocation and accounting rules.

(a) * * *

(3) *Absence of allocation and accounting methods.* If an issuer fails to maintain books and records sufficient to establish the accounting method for an issue and the allocation of the proceeds of that issue, the rules of this section are applied using the specific tracing method. This paragraph (a)(3) applies to bonds issued on or after May 16, 1997.

* * * * *

(d) * * *

(1) * * *

(iii) *Timing.* An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier. This paragraph (d)(1)(iii) applies to bonds issued on or after May 16, 1997.

* * * * *

Par. 12. Section 1.150–1 is amended as follows:

1. Paragraph (a)(3) is added.

2. Paragraph (b) is amended by adding a new definition in alphabetical order.

The additions read as follows:

§ 1.150–1 Definitions.

(a) * * *

(3) *Exception to general effective date.* See § 1.141–15 for the effective date of the definition of bond documents contained in paragraph (b) of this section.

* * * * *

(b) * * *

Bond documents means the bond indenture or resolution, transcript of proceedings, and any related documents.* * *

* * * * *

Par. 13. Section 1.150–4 is added to read as follows:

§ 1.150–4 Change in use of facilities financed with tax-exempt private activity bonds.

(a) *Scope.* This section applies for purposes of the rules for change of use of facilities financed with private activity bonds under sections 150(b)(3) (relating to qualified 501(c)(3) bonds), 150(b)(4) (relating to certain exempt facility bonds and small issue bonds), 150(b)(5) (relating to facilities required to be owned by governmental units or 501(c)(3) organizations), and 150(c).

(b) *Effect of remedial actions*—(1) *In general.* Except as provided in this section, the change of use provisions of sections 150(b) (3) through (5), and 150(c) apply even if the issuer takes a remedial action described in §§ 1.142–2, 1.144–2, or 1.145–2.

(2) *Exceptions*—(i) *Redemption.* If nonqualified bonds are redeemed within 90 days of a deliberate action under § 1.145–2(a) or within 90 days of the date on which a failure to properly use proceeds occurs under § 1.142–2 or § 1.144–2, sections 150(b) (3) through (5) do not apply during the period between that date and the date on which the nonqualified bonds are redeemed.

(ii) *Alternative qualifying use of facility.* If a bond-financed facility is used for an alternative qualifying use under §§ 1.145–2 and 1.141–12(f), sections 150(b) (3) and (5) do not apply because of the alternative use.

(iii) *Alternative use of disposition proceeds.* If disposition proceeds are used for a qualifying purpose under §§ 1.145–2 and 1.141–12(e), 1.142–2(c)(4), or 1.144–2, sections 150(b) (3) through (5) do not apply because of the deliberate action that gave rise to the disposition proceeds after the date on which all of the disposition proceeds have been expended on the qualifying purpose. If all of the disposition proceeds are so expended within 90 days of the date of the deliberate action, however, sections 150(b) (3) through (5) do not apply because of the deliberate action.

(c) *Allocation rules*—(1) *In general.* If a change in use of a portion of the property financed with an issue of qualified private activity bonds causes

section 150 (b)(3), (b)(4), or (b)(5) to apply to an issue, the bonds of the issue allocable to that portion under section 150(c)(3) are the same as the nonqualified bonds determined for purposes of §§ 1.142–1, 1.144–1, and 1.145–1, except that bonds allocable to all common areas are also allocated to that portion.

(2) *Special rule when remedial action is taken.* If an issuer takes a remedial action with respect to an issue of private activity bonds under §§ 1.142–2, 1.144–2, or 1.145–2, the bonds of the issue allocable to a portion of property are the same as the nonqualified bonds determined for purposes of those sections.

(d) *Effective dates.* For effective dates of this section, see § 1.141–16.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.141–1	1545–1451
1.141–12	1545–1451
1.142–2	1545–1451
* * * * *	
1.148–6	1545–1451
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 30, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–710 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0007; FRL–5669–5]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in Section VI of the document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection, Part I: Hayden Station Requirements," as submitted by the Governor with a letter dated August 23, 1996. The revision incorporates into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. The SIP revision is expected to remedy Hayden Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area and, therefore, make reasonable progress toward the Clean Air Act National visibility goal with respect to such contribution. On October 3, 1996, EPA published a notice of proposed rulemaking that proposed to approve this SIP revision and provided a thirty-day period for public comment. EPA received one set of generally supportive comments regarding the proposed revision, and is therefore finalizing the proposal without modification.

EFFECTIVE DATE: This action is effective February 18, 1997.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act (CAA or Act),[1] 42 U.S.C. section 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas[2] (referred to herein as the "National goal" or "National visibility goal"). Section 169A calls for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its State Implementation Plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. section 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

EPA promulgated regulations that require affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10–15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress

[1] The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

[2] Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. section 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. EPA approved this SIP revision in an August 12, 1988 **Federal Register** document (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted a subsequent SIP revision for visibility protection with a letter dated November 18, 1992. This revision was made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. EPA approved that long-term strategy revision on October 11, 1994 (59 FR 51376).[3]

Since Colorado's 1992 long-term strategy review, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig Generating Stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993.

Hayden Station, which is the focus of this SIP revision, is located 19 miles upwind from MZWA. The facility consists of two units as follows: Unit 1 is a 180 megawatt steam generating unit completed in 1965 and Unit 2 is a 260 megawatt steam generating unit completed in 1976. The facility is currently uncontrolled for sulfur dioxide (SO_2) and nitrogen oxides (NO_X) and operates electro-static precipitators to control particulate pollution. The 1995 emissions inventory for Hayden Station indicated that the plant emitted 16,000 tons of SO_2 and 14,000 tons of NO_X. Particulate emissions have been more difficult to estimate due to control equipment malfunction.

On August 18, 1993, the Sierra Club sued the owners of the Hayden Station in United States District Court, alleging over 16,000 violations of the State's opacity standards and arguing that the alleged violations resulted in a number of air quality impacts in MZWA. On July 21, 1995, the Court found the Hayden Station owners liable for over 19,000 violations of the opacity standards between 1988 and 1993. See *Sierra Club* v. *Public Service Company of Colorado, et al.*, 894 F. Supp. 1455 (D. Colo. 1995). In October 1995, the Sierra Club, the Colorado Air Pollution Control Division (APCD), and the Hayden Station owners entered into negotiations to try to reach a "global settlement" of the various issues facing the power plant. These issues included the Sierra Club lawsuit and the USFS certification of impairment in MZWA. In January 1996, EPA issued a Notice of Violation (NOV) to the owners of the Hayden Station for continuing opacity violations and joined in the settlement negotiations.

On May 22, 1996, the parties to the negotiations (EPA, Sierra Club, State of Colorado, and the Hayden Station owners) filed a signed Consent Decree with the United States District Court for the District of Colorado, in Civil Action No. 93–B–1749. The United States published notice of the settlement in the **Federal Register** and provided a thirty-day public comment period. The United States responded to comments in a motion to the Court to approve the Consent Decree. The Court approved the Consent Decree on August 19, 1996. The Consent Decree resolves a number of issues, including the Sierra Club and EPA enforcement actions, and, as part of that resolution, requires substantial reductions in air pollutants that are intended to resolve Hayden Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates incorporation into the SIP of the visibility protection-related requirements of the Consent Decree. The terms "Hayden Consent Decree" or "Consent Decree" are used herein to refer to this judicially-enforceable settlement.

II. Revision Submitted August 23, 1996

With a letter dated August 23, 1996, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's SIP for Visibility Protection; this revision is contained in Section VI of the August 15, 1996 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Visibility Protection, Part I: Hayden Station Requirements" (referred to below as "Long-Term Strategy Document"). The revision was made to fulfill, with respect to Hayden Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy as appropriate following the three-year periodic review.[4] The State reviewed the long-term strategy in light of the USFS's certification of visibility impairment, the results of the Mt. Zirkel Visibility Study[5] and other technical data, and the Hayden Consent Decree. Based on this review, the State concluded that a revision to the long-term strategy was necessary to remedy Hayden Station's contribution to visibility impairment at MZWA and to ensure reasonable progress toward the National visibility goal.

Only Part C of Section VI of the Long-Term Strategy Document contains provisions that are enforceable against the Hayden Station owners. Part C incorporates relevant portions of the Hayden Consent Decree into the long-term strategy. The remainder of the SIP revision contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP.

On October 3, 1996, EPA published a notice of proposed rulemaking in the **Federal Register** (61 FR 51659) that proposed to approve the revision to the long-term strategy portion of Colorado's SIP for Visibility Protection that the Governor submitted on August 23, 1996. EPA provided a thirty-day public comment period and received one set of comments on the proposal. These comments and EPA's responses are provided in section III. of this document.

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[3] As a matter of clarification to EPA's October 11, 1994 action, please note that the September 1 due date referred to by EPA as the reporting deadline for Colorado's long-term strategy three-year reviews applies to the Colorado Air Pollution Control Division's responsibility to provide its review, and revision as appropriate, of the long-term strategy to the Colorado Air Quality Control Commission, with a submittal to EPA made by November 1 of each three-year cycle.

[4] The report resulting from this review was specific to Hayden Station, and the State reviewed the components of the Long-Term Strategy as they relate to Hayden Station only. According to a November 14, 1996 letter from Margie Perkins, Colorado Air Pollution Control Division, to Richard Long, EPA, the State intends to address Colorado's remaining visibility issues in "Part II" of the long-term strategy review and report, to be considered by the Colorado Air Quality Control Commission (AQCC) at a public hearing in March 1997. The State had previously projected a December 1996 AQCC public hearing on "Part II," but found this schedule impossible to meet.

[5] This collaborative study was spearheaded by the State to collect additional information regarding visibility conditions in the Mt. Zirkel Wilderness Area and to identify potential sources of impairment. The final report is available at the addresses listed in the beginning of this document. The study was completed on July 15, 1996.

A. Part C of Section VI: Provisions from the Hayden Consent Decree

The State incorporated into its Visibility SIP revision provisions of the Hayden Consent Decree pertinent to visibility, including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting.[6] Such provisions must be met by the Hayden Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only those sections pertinent to visibility, necessary to ensure enforceability of the requirements related to visibility, and necessary to assure reasonable progress in remedying Hayden Station's contribution to visibility impairment at MZWA were adopted into the SIP. Some changes were made to Consent Decree language to conform to a SIP framework. Finally, changes were made to the force majeure provisions of the Consent Decree to ensure that a demonstration of reasonable progress could be made at this time. Provisions of particular interest incorporated from the Hayden Consent Decree are summarized below.[7]

SO_2 Emission Limitations

As described below, the SO_2 emission limitations will result in at least an 82% reduction in SO_2 from Hayden Station. The Hayden Station owners must install a Lime Spray Dryer (LSD) system to meet the emissions limitations. The following emissions limitations apply:

—No more than 0.160 lbs SO_2 per million Btu heat input on a 30 boiler operating day rolling average basis;
—No more than 0.130 lbs SO_2 per million Btu heat input on a 90 boiler operating day rolling average basis;
—At least an 82% reduction of SO_2 on a 30 boiler operating day rolling average basis (to make sure that substantial reductions occur and that control equipment is run optimally even if lower sulfur coal is used); and
—A unit cannot operate for more than 72 consecutive hours without any SO_2 emissions reductions; that is, it must shut down if the control equipment is not working at all for three days (to prevent the build-up of SO_2 emissions that may lead to visibility impairment events).

Since SO_2 is a chemical precursor to visibility-impairing sulfate particles or aerosols, the State concluded that these SO_2 emissions limitations will help remedy the facility's contribution to visibility impairment in MZWA.

Particulate Emission Limitations

The Hayden Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on each unit. Particulate emissions should be virtually eliminated. Particulate emission limitations for each unit are:

—No more than 0.03 lbs of primary particulate matter per million Btu heat input; and
—No more than 20.0% opacity, with certain limited exceptions, as averaged over each separate 6-minute period within an hour as measured by continuous opacity monitors.

Compliance with Emissions Limits

All required controls must be designed to meet enforceable emission limits. Compliance with the SO_2 and opacity emission limits shall be determined by continuous emission monitors.

Schedule—Coal as Primary Fuel

The schedule for constructing control equipment is as follows:

Unit 1
—Commencement of physical, on-site construction of control equipment by 6/30/97
—Commencement of start-up testing of FFDC and SO_2 control equipment by 12/31/98

Unit 2
—Commencement of physical, on-site construction of control equipment by 6/30/98
—Commencement of start-up testing of FFDC and SO_2 control equipment by 12/31/99

The schedule for commencement of compliance with the emissions limitations is as follows:

SO_2
—For Unit 1, within 180 days after flue gas is passed through the SO_2 control equipment, or by July 1, 1999, whichever date is earlier.
—For Unit 2, within 180 days after flue gas is passed through the SO_2 control equipment, or by July 1, 2000, whichever date is earlier.

Particulates
—For Unit 1, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 1999, whichever date is earlier.
—For Unit 2, within 90 days after flue gas is passed through the FFDC control equipment, or by April 1, 2000, whichever date is earlier.

These construction deadlines and emission limitation compliance deadlines are subject to the "force majeure" provisions of the Consent Decree, which are being included in this SIP revision. A force majeure event refers to an excused delay in meeting construction deadlines or in meeting emission limitation compliance deadlines due to certain limited circumstances wholly beyond the control of the Hayden Station owners.

To help ensure that reasonable progress continues to be made, the State has committed to reopen the SIP (with public notice and hearing) as soon as possible after it is determined that a construction schedule or an emission limitation schedule has been, or will be, delayed by more than 12 months as a result of a force majeure determination or determinations. The State will re-evaluate the SIP at that time to determine whether revisions are necessary to continue to demonstrate reasonable progress. Necessary revisions may include the adoption of new construction or compliance deadlines as necessary to ensure that the emission limitations are met. In addition, the SIP also contains a clarification that the force majeure provisions are not to be construed to authorize or create any preemption or waiver of the requirements of State or Federal air quality laws, or of the requirements contained in the SIP or Consent Decree.

EPA believes that the language of the SIP should assure reasonable progress toward the National visibility goal with respect to Hayden Station's contribution to visibility impairment in the MZWA. In general, if deadlines extend more than twelve months, EPA fully expects the State to revise the SIP.

B. Remainder of SIP Revision

1. Analysis of Reasonable Progress

Congress established as a National goal "the prevention of any future, and the remedying of any existing" anthropogenic visibility impairment in mandatory Class I Federal areas. The statute does not mandate that the national visibility goal be achieved by a specific date but instead calls for "reasonable progress" toward the goal. Section 169A(b)(2) of the CAA requires EPA to issue implementing regulations requiring visibility SIPs to contain such

[6] The Consent Decree also includes requirements for NO_x emission controls and limitations; however, since these controls and limits do not have a direct relationship to visibility, they are not being incorporated into this Visibility SIP revision nor will any detailed discussion be provided. The NO_x requirements were included in the Consent Decree to address acid deposition concerns.

[7] Pursuant to the provisions of the Hayden Consent Decree and the SIP, the Hayden Station owners have elected to continue burning coal at Hayden Station. Thus, although the Consent Decree and the SIP contain provisions applicable to a switch to natural gas, the summary contained herein only addresses Consent Decree requirements applicable to coal combustion.

"emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the National goal."

EPA's implementing regulations provided for an initial round of visibility SIP planning which included a long-term strategy to make reasonable progress toward the National goal. See 40 CFR 51.302(c)(2)(I) and 51.306. The regulations also provide that the affected FLM may certify to a State at any time that visibility impairment exists in a mandatory Class I Federal area. See 40 CFR 51.302(c)(1). Recognizing the need to periodically evaluate the effectiveness of the long-term strategy in protecting visibility, EPA required States to review their long-term strategies at least every three years. See 40 CFR 51.306(c). This requirement ensures that States will periodically assess their visibility-related air quality planning in light of a certification of impairment from the FLM, information about visibility conditions and sources gathered from the visibility monitoring requirements, or other relevant information. A central aspect of the periodic assessment is to evaluate "[a]dditional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national goal." See 40 CFR 51.306(c)(4).

Section 169A(g)(1) of the CAA specifies factors that must be considered in determining reasonable progress including: (1) the costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. Protection of visibility in a mandatory Class I Federal area is the objective.

In this unique case, the Hayden Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Hayden Station's contribution to visibility impairment in MZWA to below perceptible levels. The State analyzed the emission reductions provided for in the Consent Decree in light of the statutory factors for determining reasonable progress and the ultimate objective of protecting visibility. The State concluded that the measures assure reasonable progress by remedying Hayden Station's contribution to perceptible visibility impairment in MZWA and submitted a visibility SIP revision containing these measures.

Further, in a June 24, 1996 letter from Elizabeth Estill, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS concluded that the magnitude of the emission reductions for particulates and sulfur oxides contained in the Consent Decree should effectively address the USFS's concerns with visibility impairment in MZWA associated with the Hayden Station. Based in part on this letter, the State concluded that the pertinent provisions of the Hayden Consent Decree, as embodied in the SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Hayden Station.

EPA has reviewed the State's SIP revision and supporting information in light of the statutory and regulatory requirements and is approving it. EPA believes the State has reasonably concluded that the emission reduction measures at Hayden Station required in the judicially-enforceable Consent Decree and contained in this visibility SIP revision will remedy Hayden Station's contribution to perceptible visibility impairment at MZWA [8], with reasonable costs, an expeditious compliance schedule, and no significant adverse energy or non-air quality environmental impacts. The State's August 15, 1996 SIP revision and accompanying information, available at the addresses listed at the beginning of this document, provide a detailed analysis of each of the "reasonable progress" considerations. EPA's summary and evaluation of the State's analysis can be found in EPA's October 3, 1996 notice of proposed rulemaking (see 61 FR 51662–51664).

2. Six Factors Considered in Developing the Long-Term Strategy

The State considered the six factors contained in 40 CFR 51.306(e) when developing this revision to its long-term strategy. Please refer to EPA's October 3, 1996 notice of proposed rulemaking for a discussion of these six factors (see 61 FR 51664–51665).

C. Additional Requirements

The State met the requirements for FLM consultation prior to adopting the SIP. The SIP also meets EPA requirements related to enforceability. Please refer to EPA's October 3, 1996 notice of proposed rulemaking for a discussion of these requirements (see 61 FR 51665).

[8] It should be noted that current Hayden Station emissions are not expected to contribute to visibility impairment under all meteorological conditions and that regional haze from outside Colorado, emissions from sources outside Colorado, and emissions from other Colorado sources could also be contributing to visibility impairment in MZWA.

III. Public Comments and EPA Responses

EPA received only one set of comments—from the Hayden Station owners. A summary of their comments, and EPA's responses, are provided below.

Comment: The Hayden Station owners indicate their strong support for EPA's proposed approval of the August 23, 1996 revision of the Colorado State Implementation Plan incorporating the requirements for Hayden Station and urge EPA to act quickly in granting final approval of the proposed rule.

Response: EPA notes the Hayden Station owners' support for the proposed action.

Comment: The Hayden Station owners take issue with some of EPA's statements in the discussion accompanying the proposed SIP revision. Although the Hayden Station owners indicate these statements do not impact the Hayden Station owners' support for the proposed rule, EPA is providing responses to the Hayden Station owners' comments. The Hayden Station owners made the following comments that fall in this category:

1. The Hayden Station owners take issue with EPA's statement in the notice of proposed rulemaking that if a force majeure delay lasts more than 12 months, EPA fully expects the State to revise the SIP. The Hayden Station owners claim that EPA has misstated the necessary consequences of a reopening of the SIP in the event that a force majeure delay lasts more than 12 months, and that the State may take action other than revising the SIP in response to a delay greater than 12 months.

Response: In making this statement in the notice of proposed rulemaking, EPA was indicating its expectation that, in general, a delay greater than 12 months will require a SIP revision to ensure reasonable progress. EPA acknowledges that there may be situations—for example, where the delay is not likely to last much longer than 12 months—in which a SIP revision may not be necessary.

2. The Hayden Station owners state that EPA has alleged that malfunctions of existing opacity control equipment have caused primary particulate matter plumes which have degraded visibility in the MZWA. Although the Hayden Station owners do not object to the inclusion of opacity and particulate matter standards in the SIP revision, they state that they are unaware of any data that indicate that primary particulate matter has caused any perceptible change in visibility in the

MZWA. They further state that the MZWA visibility study confirms that primary particulate matter is not a source of visibility impairment in the MZWA.

Response: The Hayden Station owners have mischaracterized EPA's statements in the notice of proposed rulemaking. In the relevant section of the notice of proposed rulemaking, EPA summarizes conclusions made by the State (see 61 FR 51663–51664). The State indicates that particulate plumes may be a source of visibility impairment in the MZWA. EPA agrees with this conclusion and believes the MZWA visibility study supports it. Referring to an episode during which a primary particulate plume emanated from the Hayden Station, the study states, "On one occasion in 1995, a clearly defined, coherent plume from the Hayden generating station could be seen in a west-facing video view from a camera on Storm Peak (which is south of the Wilderness boundary). The plume was moving toward Storm Peak at nearly the same elevation as the camera. The extent to which the plume reached or rose over the Continental Divide could not be determined because it could not be seen in views to the north. However, it is clear that the potential existed for the plume to reach the Storm Peak area. This was the only occasion when a clearly-defined, coherent generating station plume was documented coming close to the Wilderness." This episode shows that particulate plumes are capable of moving from Hayden Station to a distance as far away as the Wilderness boundary. Under the right meteorological and plant operating conditions, EPA believes it is reasonable to expect that particulate plumes may occasionally impair visibility within MZWA. Given the limited duration of the MZWA visibility study and the relatively sparse monitoring network, EPA believes it is unreasonable to conclude, as the Hayden Station owners have suggested, that "the MZWA visibility study confirms that primary particulate matter is not a source of visibility impairment in the MZWA."

3. The Hayden Station owners assert that EPA's analysis of rate impacts is oversimplified and probably inaccurate.

Response: In its notice of proposed rulemaking, EPA was summarizing the State's analysis of the potential impact on rates, not performing its own analysis (see 61 FR 51663). EPA believes the State's analysis was adequate to estimate the potential costs of controls for purposes of this action. Given that the calculation of rates is a complex process, EPA does not assert that the ultimate impact on rates will be exactly consistent with the State's analysis.

IV. Final Action

EPA has reviewed the adequacy of the State's revision to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in Section VI of the August 15, 1996 document entitled "Long-Term Strategy Review and Revision of Colorado's SIP for Class I Visibility Protection, Part I: Hayden Station Requirements," as submitted by the Governor with a letter dated August 23, 1996. EPA is approving this revision, which includes the incorporation of certain requirements from the Hayden Consent Decree. This SIP revision replaces the previous existing impairment portion of the long-term strategy as it relates to the MZWA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by March 17, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 10, 1996.

Kerrigan Clough,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(79) to read as follows:

§52.320 Identification of plan.

* * * * *

(c) * * *

(79) On August 23, 1996, the Governor of Colorado submitted a revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection. The revision was made to incorporate into the SIP, among other things, emissions reduction requirements for the Hayden Station (a coal-fired steam generating plant located near the town of Hayden, Colorado) that are based on a consent decree addressing numerous air pollution violations at the plant. This SIP revision replaces the previous existing impairment portion of the long-term strategy as it relates to the Mt. Zirkel Wilderness Area.

(i) Incorporation by reference.

(A) Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection Part I: Hayden Station Requirements. as follows: Section VI., effective on August 15, 1996.

[FR Doc. 97–1043 Filed 1–15–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

Protection of Stratospheric Ozone

CFR Correction

In title 40 of the Code of Federal Regulations, parts 81 to 85, revised as of July 1, 1996, § 82.32 (e)(1) and (2) was incorrectly revised. The corrected text should read as follows.

§ 82.32 Definitions.

* * * * *

(e)(1) Properly using means using equipment in conformity with Recommended Service Procedures and Recommended Practices for the Containment of R–12 (CFC–12) set forth in appendix A or appendix B to this subpart, as applicable. In addition, this term includes operating the equipment in accordance with the manufacture's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on–site or send the refrigerant off–site for reclamation.

(2) Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air–conditioning and Refrigeration Institute (ARI 700–93) (which is codified at 40 CFR part 82, subpart F, appendix A, and is available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203). Refrigerant may be recycled off–site only if the refrigerant is extracted using recover only equipment, and is subsequently recycled off–site by equipment owned by the person that owns both the recover only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of refrigerant to the atmosphere is an improper use of equipment.

* * * * *

[FR Doc. 97–55573 Filed 1-15-97; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 904, 906, 908, 915, 923, 925, 945, 952, and 970

RIN 1991–AB34

Acquisition Regulation; Technical Amendments

AGENCY: Department of Energy (DOE).

ACTION: Final rule, technical amendments.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to perform "housekeeping" duties such as conforming certain sections of the DEAR to recent Federal Acquisition Regulation changes, updating organizational and other references, correcting dates in contract clauses, and clarifying certain text. These corrections and changes are technical in nature and none of them raises substantive issues or represents changes in policy.

EFFECTIVE DATE: This final rule will be effective February 18, 1997.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0705, 202–586–8250.

SUPPLEMENTARY INFORMATION:

I. Explanation of Revisions
II. Procedural Requirements
A. Procedural Determinations
B. Review Under Executive Order 12612
C. Review Under Executive Order 12866
D. Review Under Executive Order 12988
E. Review Under the National Environmental Policy Act
F. Review Under the Paperwork Reduction Act
G. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Explanation of Revisions

None of the revisions in this rule is substantive. However, readers may benefit from an explanation of some of the revisions.

The authority citations for Parts 925 and 952 have been conformed to those used for all other parts of the regulation

(except for Part 970, which requires a different citation).

Subpart 904.6, Contract Reporting, is deleted because the approach used in the referenced DOE order has been discontinued in conjunction with streamlining initiatives of the Department.

Subsection 906.303–70, Exemption, is removed because it references Special Research Contracts which are no longer addressed in the regulation.

Section 915.401 is revised to delete reference to Special Research Contracts, now obsolete.

Subsection 952.202–1, Definitions, is updated to conform the DEAR to the Federal Acquisition Regulation (FAR) for this subsection.

Subsections 952.211–72 and 952.211–73, sections 970.0406, and subsection 970.5204–50 are deleted because the approaches used in the referenced DOE Directives have been discontinued in conjunction with streamlining initiatives of the Department.

Subsection 970.5204–60 is revised by deleting two paragraphs which referenced DOE Directives that are no longer in existence.

II. Procedural Requirements

A. Procedural Determinations

Pursuant to the Department of Energy Organization Act and the Administrative Procedure Act, DOE hereby waives prior notice and opportunity for public comment as unnecessary because the regulatory amendments are purely technical and largely non-discretionary. 42 U.S.C. 7191(b)(3), 5 U.S.C. 553(b)(3).

B. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

C. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

D. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

E. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

F. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 904, 906, 908, 915, 923, 925, 945, 952, and 970

Government procurement.

Issued in Washington, D.C., on January 3, 1997.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 904, 906, 908, 915, 923, and 945 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. The authority citation for Parts 925 and 952 is revised to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

PART 904—ADMINISTRATIVE MATTERS

904.6 [Removed and Reserved]

4. Subpart 904.6, Contract Reporting, is removed and reserved.

904.702 [Amended]

5. Section 904.702, Applicability, is amended in paragraph (b) by revising the phrase "Chapter V of DOE Order 1324.2 (see current version)," to read "applicable DOE Directives in the records management series".

PART 906—COMPETITION REQUIREMENTS

906.303–70 [Removed]

6. Subsection 906.303–70, Exemption, is removed.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

908.7121 [Amended]

7. Section 908.7121, Special materials, is amended in paragraph (b) in the first sentence by inserting the acronym "DOE" between the words "The" and "Oak" and in the third sentence by inserting the words "The DOE" before "Oak Ridge."

PART 915—CONTRACTING BY NEGOTIATION

915.401 [Amended]

8. Section 915.401, Applicability, is amended by deleting the words "Special Research Contracts (See 917.71)" and the comma immediately after the parenthetical phrase "(See 917.72)."

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

923.7002 [Amended]

9. Section 923.7002, Contract clauses, is amended in paragraph (d), the fourth sentence, by revising "The Principal Deputy Assistant Secretary for Environment, Safety and Health" to read "The Assistant Secretary for Environment, Safety and Health (or designee)."

PART 945—GOVERNMENT PROPERTY

10. Subsection 945.608–2 is amended by revising paragraph (b)(1)(ii) to read as follows:

945.608–2 Standard screening.

(b)(1) * * *

(ii) Excess screening documents and Address Notification forms shall be submitted to the Office of Contractor Management and Administration, within the Headquarters procurement organization.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Subsection 952.202–1 is amended by revising the introductory text of paragraph (b) and by redesignating clause paragraph (d) as clause paragraph (h) to read as follows:

952.202–1 Definitions.

* * * * *

(b) The following shall be added as paragraph (h) except it will be designated paragraph (g) if Alternate I of the FAR clause is used.

* * * * *

12. Subpart 952.2, Text of Provisions and Clauses, is amended to correct the parenthetical dates following clause titles wherever they appear in accordance with the following table:

Subpart 952.2—Text of Provisions and Clauses

Clause at 48 CFR Chapter 9 (DEAR)	Change the date in the parentheses following the clause title from	to read
952.204–2 ..	(APR 1984)	(APR 1994)
952.204–71	(APR 1984)	(APR 1994)
952.204–72	(APR 1984)	(APR 1994)
952.204–73	(APR 1984)	(APR 1994)
952.224–70	(APR 1984)	(APR 1994)
952.227–75	(APR 1984)	(APR 1994)
952.227–76	(APR 1984)	(APR 1994)
952.227–77	(APR 1984)	(APR 1994)
952.227–78	(APR 1984)	(APR 1994)
952.227–79	(APR 1984)	(APR 1994)
952.227–82	(APR 1984)	(APR 1994)
952.235–70	(APR 1984)	(APR 1994)
952.236–71	(APR 1984)	(APR 1994)
952.249–70	(APR 1984)	(APR 1994)

952.211–72 [Removed and Reserved]

13. Subsection 952.211–72, Uniform Reporting System, is removed and reserved.

952.211–73 [Removed and Reserved]

14. Subsection 952.211–73, Cost and schedule control systems criteria, is removed and reserved.

952.216–15 [Amended]

15. Subsection 952.216–15, Predetermined indirect cost rates, is amended by inserting "(APR 1994)" between the word "*Alternate*" and the colon.

952.247–70 [Amended]

16. Subsection 952.247–70 is amended by revising the parenthetical date following the clause title to read "FEB 1997" and in the last sentence of clause paragraph (a) by inserting ", Mexico" between "Canada" and "and."

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.0404–3 [Amended]

17. Subsection 970.0404–3, Responsibilities of contracting officers, is amended in paragraph (a) by revising the phrase "as noted in DOE Order 5631.2" to read "in accordance with applicable DOE Directives in the safeguards and security series." Also, in paragraph (b) the phrase "provisions of DOE Orders (See current versions.) 5634.1; 5635.1; and 5632.2" is revised to read "applicable DOE Directives in the safeguards and security series."

970.0406 [Removed and Reserved]

18. Section 970.0406, Uniform reporting system, is removed and reserved.

970.2273 [Amended]

19. Section 970.2273, Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities, is amended in paragraph (a)(3) by deleting the words "defined as" and the words "in 922.470(e)." Paragraphs (a)(4), (a)(5), and (a)(6) are amended by removing the last parenthetical sentence "(See 922.403–7302(g) and 920.2273(c).)" Paragraph (c)(1) introductory text is amended by deleting the quotation marks around the words "incidental amount," and deleting the words "as defined in 922.470(e)."

Subpart 970.29—Taxes

20. Section 970.2903 is revised to read as follows:

970.2903 Contract clause.

Contracting officers shall include the clause Taxes, at 970.5204–23, in management and operating contracts.

Subpart 970.41—[Added]

21. A new subpart 970.41, Acquisition of Utility Services, is added. Section 970.0803 is transferred to that subpart and redesignated 970.4100, General. In paragraph (a) of newly designated 970.4100, the citation "FAR 8.301" is revised to read "FAR 41.101." In paragraph (c) the citation "FAR subpart 8.3" is revised to read "FAR part 41." Paragraph (d) is removed.

970.52 [Amended]

22. Subpart 970.52, Contract Clauses for Management and Operating Contracts is amended to correct the parenthetical dates following clause titles in accordance with the following table:

Clause at 48 CFR Chapter 9 (DEAR)	Change the date in the parentheses following the clause title from	to read
970.5204–12	(APR 1984)	(JUL 1994)
970.5204–15	(SEP 1991)	(APR 1994)
970.5204–16	(JAN 1991)	(JUL 1991)
970.5204–17	(JUNE 1988)	(JAN 1996)
970.5204–18	(JUL 1991)	(APR 1994)
970.5204–20	(JAN 1992)	(AUG 1993)
970.5204–21	(APR 1984)	(OCT 1995)
970.5204–24	(APR 1984)	(OCT 1995)
970.5204–26	(APR 1984)	(SEP 1991)
970.5204–31	(JUL 1991)	(APR 1994)
970.5204–33(a) and (b) [two places].	(JUNE 1987)	(APR 1994)
970.5204–35	(APR 1984)	(JUL 1994)
970.5204–38	(APR 1984)	(APR 1994)
970.5204–41	(APR 1984)	(APR 1994)
970.5204–43	(APR 1984)	(APR 1994)
970.5204–45	(APR 1984)	(OCT 1995)
970.5204–54	(JUL 1991)	(APR 1994)
970.5204–55	(JUL 1991)	(APR 1994)
970.5204–56	(JUL 1991)	(APR 1994)
970.5204–57	(AUG 1992)	(APR 1994)
970.5204–61	(DEC 1993)	(APR 1994)

970.5204–23 [Amended]

23. Subsection 970.5204–23 is amended in the introductory sentence by revising "970.2902" to read "970.2903".

970.5204–32 [Amended]

24. In subsection 970.5204–32 paragraphs (a) and (b) are amended by revising the introductory text and adding a heading immediately before the clause text to read as follows:

(a) In contracts with nonprofit contractors use the following clause:

Required Bond and Insurance—Exclusive of Government Property (Nonprofit) (APR 1994)

* * * * *

(b) In contracts with profit making contractors use the following clause:

Required Bond and Insurance—Exclusive of Government Property (Profit Making) (APR 1994)

* * * * *

970.5204–44 [Amended]

25. Subsection 970.5204–44, Flowdown of contract requirements to subcontracts, is amended by revising the date following the clause title to read "(FEB 1997)" and in clause paragraph (b)(11) "40 CFR part 60" is revised to read "41 CFR part 60."

970.5204–50 [Removed and Reserved]

26. Subsection 970.5204–50, Cost and schedule control systems, is removed and reserved.

27. Subsection 970.5204–52 is revised to read as follows:

970.5204–52 Foreign travel.

When foreign travel may be required under the contract, insert the clause at 952.247–70.

970.5204–60 [Amended]

28. Subsection 970.5204–60, Facilities management, is amended by revising the date "August 30, 1993" following the clause title to read "(FEB 1997)" and by deleting clause paragraphs (c), Maintenance Management, and (e), Capital Assets Management. Paragraphs (d), Energy Management, and (f), Subcontract Requirements, are redesignated as paragraphs (c) and (d), respectively.

970.7105 [Amended]

29. Section 970.7105, Purchasing from contractor affiliated sources, is amended in paragraph (a)(3) by deleting the parenthetical reference "(See 970.7101(c))".

[FR Doc. 97–938 Filed 1–15–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC84

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Laguna Mountains Skipper and Quino Checkerspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) and quino checkerspot butterfly (*Euphydryas editha quino*) to be endangered species throughout their respective ranges in southwestern California and northwestern Baja California, Mexico, pursuant to the Endangered Species Act of 1973, as amended (Act). The Laguna Mountains skipper occupies montane meadow habitats in a very restricted range within San Diego County, California. The quino checkerspot is locally distributed in sunny openings within chaparral and coastal sage shrublands in portions of Riverside and San Diego counties, California, and northwestern Baja California, Mexico. These taxa are threatened by one or more of the following factors—loss and degradation and fragmentation of habitat due to grazing, urban development, and fire management practices; over-collection and other human disturbance; and naturally occurring events such as fire or weather extremes. This rule implements Federal protection provided by the Act for the Laguna Mountains skipper and quino checkerspot butterflies.

EFFECTIVE DATE: January 16, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Nelson, Biologist, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The Laguna Mountains skipper (*Pyrgus ruralis lagunae*) is a small butterfly in the skipper family (Hesperiidae). It has a wingspan of about 3 centimeters (cm) (1 inch (in.)) and is distinguished from the rural skipper (*P. ruralis ruralis*) by extensive white wing markings that give adults, particularly males, an overall appearance of white rather than mostly black, and by the banding patterns on the hind wings (Scott 1981, Levy 1994). The Laguna Mountains skipper is found in montane meadow habitats.

The Laguna Mountains skipper is one of two recognized subspecies of the rural skipper, *Pyrgus ruralis*. Scott (1981) described *P. ruralis lagunae* from a collection made in 1956 by F. Thorne in the Laguna Mountains of San Diego County, California, based upon population isolation and color differentiation. The Laguna Mountains skipper is restricted to the Laguna Mountains and Mount Palomar in San Diego County. The other subspecies of the rural skipper (*P. ruralis ruralis*) ranges from the mountains of British Columbia and Alberta, Canada, south to the coast ranges and Sierra Nevada of central California, as well as Nevada, Utah, and northern Colorado (Stanford and Opler 1993; John Brown, Dudek and Associates, *in litt.*, 1992) and has darker wings than the Laguna Mountains skipper.

Three other species in the genus *Pyrgus* occur in San Diego County: the common checkered skipper (*P. communis*), the small checkered skipper (*P. scriptura*), and the western checkered skipper (*P. albescens*). The Laguna Mountains skipper can be distinguished from all three of these species by the whitish appearance of the adults and the use of a single larval host

plant, *Horkelia clevelandii* (Cleveland's horkelia), in the rose family (Rosaceae) (Garth and Tilden 1986, Scott 1986). In addition, the western checkered skipper and southern California populations of the small checkered skipper are restricted to desert areas (Garth and Tilden 1986).

The Laguna Mountains skipper population in the Laguna Mountains in San Diego County (J. Brown, *in litt.*, 1992) was not seen during a relatively extensive survey in 1994 (Levy 1994) but was seen in 1995 (Jack Levy, pers. comm., 1995). Prior to that observation, it was last seen in the Laguna Mountains in 1986 occupying a small area along a fence in a U.S. Forest Service (USFS) campground (Levy 1994; Murphy 1990; D. Hogan, San Diego Biodiversity Project, pers. comm., 1993;). The Laguna Mountains population was estimated to consist of fewer than 100 individuals (Murphy 1990; Brown 1991; J. Brown, *in litt.*, 1992).

The Laguna Mountains skipper is currently found at four sites in the Mount Palomar region of San Diego County (Levy 1994). It was detected and collected on Mount Palomar in 1991 by D. Lindsley (J. Brown, *in litt.*, 1992: J. Brown, pers. comm., 1993). Two additional populations were located in 1994 (Levy 1994). The largest of the Mount Palomar populations is estimated to comprise 240 individuals (Levy 1994).

Horkelia clevelandii is the larval host plant of the Laguna Mountains skipper. This plant occurs in meadows, under pines, and on granite in the Laguna, Cuyamaca, Palomar, and San Jacinto Mountains of southwestern California and northwestern Baja California, Mexico, from 1,200 to 2,500 meters (m) (4,000 to 8,000 feet (ft)) in elevation (Hickman 1993). Although the distribution of a butterfly is primarily defined by the presence of its larval host plant, the butterfly may be further restricted by other physiological or ecological constraints. The Laguna Mountains skipper is currently found in a few open meadows of yellow pine forest between 1,200 and 2,000 m (4,000 and 6,000 ft) in elevation. Historically, this skipper may have occurred throughout the higher elevations of San Diego County (Murphy 1990; Brown 1991; J. Brown, *in litt.*, 1992). Murphy (1990) reported that there were at least six populations of this taxon in the Laguna Mountains in the 1950's and 1960's; however, current information indicates only one extant population. Until its rediscovery in 1983 by J. Emmel and subsequent sightings in 1986 and 1995, this skipper had not been seen in the Laguna Mountains since 1972 (J. Brown, *in litt.*, 1992).

Historically, the Mount Palomar populations were small compared to the populations in the Laguna Mountains. Only five specimens have been collected from Mount Palomar in this century (J. Brown, *in litt.*, 1992). Prior to specimens collected in 1991 and the additional populations found in 1994, the last known sightings from Mount Palomar were from 1980 and, prior to that, from 1939 (Brown 1991; Levy 1994; J. Brown, *in litt.*, 1992).

The Laguna Mountains skipper is apparently bivoltine (two generations per year). The adult flight season occurs from April to May with a second smaller flight in late June to late July (Brown 1991, Levy 1994). The Laguna Mountains skipper may have evolved a unique mechanism for coping with the low daytime temperatures it encounters during its spring flight, which is unusually early for butterflies in the Laguna Mountains (Brown 1991). It is assumed that the life history of the Laguna Mountains skipper is similar to that of the nominate subspecies (*Pyrgus ruralis ruralis*), which diapauses (maintains a state of suspended activity) as a full grown larva and lives 10 to 20 days in the adult stage (J. Brown, *in litt.*, 1992).

The quino checkerspot, *Euphydryas* (=*Occidryas*) *editha quino* is a small member of the brush-footed butterfly family (Nymphalidae). It has about a 3 cm (1 in.) wingspan and is checkered with dark brown, reddish, and yellowish spots. It is one of 12 recognized subspecies of *E. editha* (editha checkerspot) (Miller and Brown 1981, Ferris 1989). The quino checkerspot can be distinguished from other subspecies of *E. editha* in that the quino checkerspot tends to be larger with redder wings, and the light spots on the wings tend to be fewer and more discrete (Garth and Tilden 1986). This taxon also looks similar to two other species of butterfly that occur within its range. The Chalcedon checkerspot (*E. chalcedona*) is yellower and slightly larger, with sharper forewings, than the quino checkerspot. Gabb's checkerspot (*Chlosyne gabbii*) is smaller than the quino checkerspot and has orange rather than red markings (Orsak 1977).

The quino checkerspot was first described in 1863 by Hans Herman Behr, an entomologist with the California Academy of Sciences in San Francisco, as *Melitaea quino*, based on a specimen from coastal San Diego County. It was subsequently recognized by Comstock (1927) as a full species of the genus *Euphydryas*. *Euphydryas editha quino* was then inappropriately identified as *E. e. wrightii*, thereby confusing it with earlier taxonomic treatments of the desert checkerspot, *E. chalcedona hennei* (formerly ssp. *quino*) (Scott 1981). This error was rectified by J. Emmel, based on a study of Behr's notes and available specimens (Allen 1990; Dennis Murphy, Stanford University, *in litt.*, 1988). The genus *Euphydryas* is also referred to as *Occidryas*, but most authors retain the former name (Scott 1986, Harrison *et al.* 1988, Murphy 1990, Brown 1991).

Adult quino checkerspot butterflies live from 4 to 8 weeks. The flight season occurs from mid-January to late April and peaks between March and April. The eggs hatch in about 10 days and the larvae begin to feed immediately. Fourth instar (development stage) larvae enter an obligatory diapause as summer approaches and their larval food plant dries up. Extended periods of diapause may occur during times of drought (Greg Ballmer, University of California at Riverside, *in litt.*, 1990). Post-diapause larvae develop through four more instars and then pupate to emerge as adults in the early spring (Murphy and White 1984).

The quino checkerspot is restricted to open grassland and sunny openings within shrubland habitats of the interior foothills of southwestern California and northwestern Baja California, Mexico (G. Ballmer, *in litt.*, 1991). Like the Laguna Mountains skipper, its distribution is defined primarily by that of its larval host plant. The primary larval food plant of the quino checkerspot is *Plantago erecta* (dwarf plantain) in the plantain family (*Plantaginaceae*). However, the larvae may also use *Plantago ovata* and *Castilleja exserta* (owl's-clover in the figwort family (Scrophulariaceae)) (White 1974; G. Ballmer, pers. comm., 1993). These plants grow in or near meadows, vernal pools, and lake margins, and spread to upland shrub communities of sparse chaparral and coastal sage scrub. This butterfly is generally found at sites where high densities of the host plants occur (J. Johnson, *in litt.*, 1989; David Hawks, University of California at Riverside, *in litt.*, 1992) and at a variety of elevations from about sea level to about 900 m (3,000 ft). Within these areas, the quino checkerspot may be preferentially selecting sites where exposure to winter sun is greatest (Weiss *et al.* 1987, Allen 1990). These habitats, like the quino checkerspot, were once common along coastal bluffs, mesas, and inland foothills (Brown and Faulkner 1984).

The quino checkerspot may have been one of the most abundant butterflies in San Diego, Orange, and western

Riverside counties during the early part of the 20th century (Murphy 1990). The original range of the quino checkerspot extended as far south as Valle de la Trinidad in northwestern Baja California, Mexico (Brown *et al.* 1992) and as far north as Point Dume in Los Angeles County (Allen 1990). Currently, only seven or eight populations are known within the United States (the lack of an exact count is due to uncertainty as to whether sightings of very small numbers of butterflies in two areas represent one or two populations). All known extant populations in the United States occur in southwestern Riverside and north-central San Diego counties (G. Ballmer, *in litt.*, 1990 and 1991, pers. comm., 1994; D. Hawks, pers. comm., 1993; Marjorie Nelson, U.S. Fish and Wildlife Service (USFWS), pers. obs., 1994). One population near Upper Otay Lake in San Diego County (D. Murphy, *in litt.*, 1991) was last seen in 1990. In 1996, a very small group of quino checkerspots was sighted on Otay Mesa, but because of the very limited amount of available host plant, this occurrence is not expected to persist beyond 1996 (J. Brown, pers. comm., 1996). At least one population exists in Mexico, in the Sierra Juarez near Tecate (Brown 1991; D. Murphy, *in litt.*, 1991). Although no estimates of population sizes for the quino checkerspot are currently available, all but three populations are known to comprise fewer than five individuals.

Previous Federal Action

On June 3, 1991, the Service received a petition dated May 27, 1991, from Mr. David Hogan of the San Diego Biodiversity Project to list four butterfly taxa as endangered under the Act—the Laguna Mountains skipper (*Pyrgus ruralis lagunae*), Hermes copper (*Lycaena hermes*), Thorne's hairstreak (*Mitoura thornei*), and Harbison's dun skipper (*Euphyes vestris harbisoni*). The petition cited loss and degradation of habitat, through various causes, as the major threat to these butterflies. On July 12, 1993, the Service found that the petition contained substantial information indicating that the requested action may be warranted for the Laguna Mountains skipper, but not for the other three butterflies. The latter finding was made because sufficient information was not available regarding the threats to, and biological vulnerability of, those taxa. An announcement of these findings was published in the **Federal Register** on July 19, 1993 (58 FR 38549).

On September 30, 1988, the Service received a petition dated September 26, 1988, from Dr. Dennis Murphy of the Stanford University Center for Conservation Biology, to list the quino checkerspot butterfly (*Euphydryas editha quino*) as endangered under the Act. At the time the petition was submitted, this taxon had not been seen for several years and was thought to be extinct. Extant populations of the quino checkerspot were reported by Dr. Murphy in a letter dated August 1, 1991, which again requested the Service to consider the petitioned action. The status of the quino checkerspot has been under review by the Service since 1984 (May 22, 1984; 50 FR 37958) and it was classified as a candidate on November 21, 1991 (56 FR 58804), meaning that information in the Service's possession was sufficient to support a proposal to list it as endangered or threatened.

The proposed rule for these two taxa constituted the following findings—the final 12-month finding for the Laguna Mountains skipper that the petitioned action is warranted; the 90-day finding that the petition for the quino checkerspot butterfly presented substantial information that the action may be warranted; and the final 12-month finding for the quino checkerspot that the petitioned action is warranted. The proposed rule was published in the **Federal Register** on August 4, 1994 (59 FR 39868).

The processing of this final rule conforms with the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events: 1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and 2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions. This rule has been updated to reflect any changes in distribution, status and threats since the effective date of the listing moratorium. This additional information was not of a nature to alter the Service's decision to list the species.

Summary of Comments and Recommendations

In the August 4, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the two butterfly taxa considered in this rule. Appropriate Federal and State agencies, county governments, scientific organizations and authorities, and other interested parties were contacted and requested to comment. A notice announcing a public hearing and extension of the public comment period was published in the **Federal Register** on September 26, 1994 (59 FR 49045). Newspaper notices inviting public comment were published in the following newspapers: *San Diego Union-Tribune, Orange County Register, and Riverside County Press-Enterprise.*

A public hearing was held in Rancho Bernardo, California, on October 19, 1994, in conjunction with two other proposals to list three taxa (San Diego fairy shrimp, Cuyamaca Lake downingia, and Parish's meadowfoam), and the comment period was extended to October 31, 1994, to accommodate additional comments. The transcript from this hearing is available for inspection (see ADDRESSES section).

The Service has reviewed the written and oral statements from the hearing and received during the comment period. A total of 21 commenters (from 2 Federal entities and 19 organizations or individuals) submitted 33 comments. Thirty of the comments were either not relevant to this listing action or non-substantive. The remaining comments provided additional information and/or were substantive comments. Two commenters submitted additional information, much of which has been incorporated into this final rule. The issues raised by the other commenters are presented here. Issues of a similar nature were grouped from the comments received and are addressed below.

Issue 1

Several commenters stated that the listing of these butterflies as endangered should be postponed until local multi-species planning efforts are completed. They stated that these actions will eliminate the need for listing by adequately providing for conservation while also permitting economic growth. Another commenter asserted that San Diego County multi-species efforts do not adequately cover the taxa in this rule.

Service Response: Current regional multi-species planning efforts do not

provide sufficient protection for either taxon to preclude their listing under the Act. The Laguna Mountains skipper is not now covered by, nor currently being considered for inclusion in, any local multi-species plan because its distribution lies outside ongoing regional planning areas.

In 1991, the State of California established the Natural Communities Conservation Plan (NCCP) program to address conservation needs throughout the State. The focus of current planning programs is the coastal sage scrub community in southern California, although other vegetation communities are being addressed in an ecosystem-level approach. The NCCP for the Central and Coastal Subregion of Orange County, signed into agreement on July 17, 1996, currently identifies the quino checkerspot as a "conditionally covered species;" however, the butterfly is not currently known to be extant within the planning area. The species coverage under the plan is conditional because quino checkerspot surveys have not been conducted within the planning area and newly discovered populations may have long-term conservation value. If quino checkerspots are found within the Central and Coastal Subregion of Orange County, participating landowners are permitted to "take" quino checkerspots, incidental to otherwise lawful activities, that occur in small and/or satellite populations, reintroduced populations, or populations that have expanded due to reserve system management. To offset any such take, a mitigation plan to be developed in coordination with the Service, California Department of Fish and Game (CDFG), and a non-profit corporation will oversee management of the subregional reserve system. That mitigation plan would (1) minimize impacts and provide appropriate feasible protection for the quino checkerspot, (2) provide for habitat restoration/enhancement for the butterfly; and (3) provide for monitoring and adaptive management of quino checkerspots and their habitat within the reserve system. No "take" is authorized under the permit for those populations that are considered to be essential to the butterfly's conservation.

Other planning efforts do not address the quino checkerspot, or may include the butterfly but have not been completed. The quino checkerspot may be addressed by a planning effort underway in southern Orange County; however, the target species list has not yet been determined. San Diego's Draft Multi-species Conservation Plan (MSCP) does not include quino checkerspot as a covered species because the risk of impacts is unknown and the plan cannot assure protection for this species. A small group of quino checkerspot was sighted in 1996 on Otay Mesa within the MSCP planning area; however, because the amount of host plant available to this population is very low, this population is not expected to persist to 1997 (J. Brown, and M. Singer, pers. comms., 1996). The north-central San Diego County site is not included in any multi-species planning efforts. Only one of the Riverside County quino checkerspot populations occurs within the core reserve areas designated in the approved Stephens' Kangaroo Rat Habitat Conservation Plan (RCHCA 1995). The quino checkerspot apparently will be considered in the western Riverside County multi-species planning effort; however, this plan has not yet been prepared, funded, or approved for implementation.

The Service does not presently have reasonable evidence that conservation plans being implemented or developed will adequately conserve either butterfly within their historic ranges. These taxa would receive no legal protection while plans are being developed. For reasons explained under "Summary of Factors Affecting the Species" below, sufficient threats remain for the Service to justify a listing action.

Issue 2

Two commenters submitted information on three additional populations of Laguna Mountains skipper at Mount Palomar and speculated that the Laguna Mountains skipper has been extirpated from the Laguna Mountains.

Service Response: The Service acknowledges the efforts by the commenters to further determine the distribution and abundance of the Laguna Mountains skipper. The information submitted was used in the "Background" section above and the following "Summary of Factors Affecting the Species." The Service has determined that, although additional populations have been found, the Laguna Mountains skipper is still an extremely rare butterfly threatened by a number of complex factors. As demonstrated by the sightings in 1995, this butterfly is not completely extirpated from the Laguna Mountains. However, failure to locate the taxon in the Laguna Mountains during extensive 1994 survey efforts by Levy indicates extremely low population numbers.

Issue 3

One commenter questioned the extent to which livestock grazing is the main reason for decline of the Laguna Mountains skipper, since the intensity of grazing on public lands has been reduced.

Service Response: Based on information provided by the petitioner and obtained from lepidopterists, *Horkelia clevelandii* plants are stunted in areas that are grazed. As noted by Levy (1994), *Horkelia* is an important nectar source and the loss of flowers to grazing would impact the reproductive success of adult Laguna Mountains skippers. The decline of the Laguna Mountains skipper has occurred over a number of decades, with much of the decrease occurring prior to acquisition of the land by a Federal agency. Additionally, as is stated in the "Background" section, butterflies are frequently more restricted than their larval host plant due to other ecological requirements. Given these considerations and the extreme rarity of this taxon, any incidental trampling or predation by cattle could significantly impact the taxon.

Issue 4

One commenter stated that there are more areas of *Horkelia* that are not grazed than was stated in the proposed rule.

Service Response: The information submitted by the commenter was incorporated into the "Background" and "Summary of Factors Affecting the Species." Subsequent to an analysis of the relevant maps provided by a commenter, the Service concludes that the majority of *Horkelia clevelandii* within the range of the Laguna Mountains skipper appears to be grazed. In addition, the Service concludes that the areas currently not subject to grazing were nonetheless previously grazed.

Issue 5

Two commenters stated that the Laguna Mountains skipper has an ecological need for habitat disturbance. Historically, this disturbance may have been due to a periodic fire regime. However, one of the commenters maintained that grazing represents a substitute for that fire disturbance.

Service Response: Livestock grazing does not replicate the type of disturbance that a fire would bring. Highly managed livestock grazing may be adequate to maintain populations of the host plant, *Horkelia clevelandii*; however, this plant is also a preferred fodder for livestock (Levy 1994). Additionally, the Laguna Mountains skipper is currently found in five areas, only two of which are grazed. The largest grazed habitat occupied by skippers is on both private and public

land, but the intensity of grazing has been reduced on the public land. Another population is in a campground where habitat extends onto a grazing allotment; the pasture closest to the campground is grazed one month per year. A third population is found in a finger of a meadow, across a road from, but not in, the grazed portion of the meadow.

Grazing as a management tool for butterflies must be carefully assessed and monitored for each butterfly species and a general statement cannot be made regarding its effectiveness as a substitute for fire. It is conceivable that if the numbers of Laguna Mountains skipper were higher, there would be a greater tolerance for certain schedules and intensities of livestock grazing. However, because the taxon's numbers are currently extremely low, the impacts of trampling and incidental predation from livestock grazing would likely be significant. Currently there is no empirical evidence that the Laguna Mountains skipper can tolerate grazing.

The Service solicited the expert opinions of seven appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy and biological and ecological information for these two taxa. The response received provided additional data that have been incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Laguna Mountains skipper (*Pyrgus ruralis lagunae* J. Scott) and quino checkerspot butterfly (*Euphydryas editha quino* Behr) should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Laguna Mountains skipper and the quino checkerspot are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The habitats and the ranges of the two taxa listed in this rule have been substantially reduced by urban and agricultural development and recreational activities, and are further threatened with destruction, modification, and curtailment. The Laguna Mountains skipper and the quino checkerspot currently occur within very restricted ranges and are extremely localized in their present distributions. The habitat requirements for these two animals are primarily defined by their larval host plants. The removal or degradation of these plants, as well as that of nectar sources for adults, leads to the elimination of the affected population.

In the case of the Laguna Mountains skipper, *Horkelia clevelandii* is itself a rare species and is only found in the Laguna, Cuyamaca, and San Jacinto Mountains of southwestern California, and in northwestern Baja California, Mexico (Hickman 1993). Historic habitat destruction and degradation from overgrazing and trampling of *H. clevelandii* by domestic cattle is considered to be the primary factor responsible for its decline (Murphy 1990; D. Hogan, *in litt.*, 1991; J. Brown, *in litt.*, 1992).

Currently three of the five localities of Laguna Mountains skipper are not subject to livestock grazing. The fourth population occurs in the Laguna Mountains, in a campground area of the Cleveland National Forest bordering a grazing allotment (Murphy 1990; D. Hogan, pers. comm., 1993). The fifth is on a grazing allotment, with habitat that extends onto private lands. Although the magnitude of livestock grazing on this allotment has been reduced, any impacts from grazing would likely have a significant effect on the taxon due to the small numbers of Laguna Mountains skippers.

If there were greater numbers of individuals and more populations, the Laguna Mountains skipper might be able to tolerate certain levels and timing of livestock grazing. However, given the low numbers of this butterfly, any impacts to its habitat would be significant. The grizzled skipper (*Pyrgus malvae*) in England is able to tolerate grazing at a highly managed level (Levy 1994). The rare Dakota skipper (*Hesperia dacotae*) is sensitive to even light grazing (Royer and Marrone 1992, Moffat and McPhillips 1993). Some species of butterflies have habitat requirements that need a managed grazing scheme whereas others have habitat that recovers with reduced grazing. However, previous studies indicate that the use of grazing as a management tool for butterflies must be done carefully and at low intensities (Kulfan 1990, Thomas *et al.* 1992, Moffat and McPhillips 1993, Thomas and Jones 1993). A grazing plan for management of the Laguna Mountains skipper has yet to be developed.

Fifty to seventy-five percent of the known range of the quino checkerspot has been lost since 1900 due to habitat degradation or destruction (Brown 1991). Sunny openings within chaparral and coastal sage scrub occupied by the quino checkerspot have been degraded by grazing and, to a lesser degree, destroyed by urban development. The primary larval food plant, *Plantago erecta*, can be displaced by exotic plants that invade once the ground is disturbed by discing, grading, and/or grazing (J. Johnson, *in litt.*, 1989; G. Ballmer, *in litt.*, 1990). The host plant then recolonizes in sites where grasses do not grow well, like cattle trails and road edges, where quino checkerspot larvae are subject to trampling (D. Hawks, pers. comm., 1993).

The encroachment of urban development in rural Riverside County potentially threatens two of the largest populations of quino checkerspot. This area is growing rapidly and is projected to be fully developed within the decade (Monroe *et al.* 1992). One population is in an area that is included in a local community plan that provides for subdivision of parcels into 9-hectare (ha) (20-acre (ac)) lots (M. Freitas, *in litt.*, 1993). Another population is on the site of an approved preliminary map for a housing development. The loss of these two populations is likely to preclude survival and recovery of the taxon.

The quino checkerspot population in southern San Diego County may be threatened by a proposed urban development project on Otay Mesa. The preferred alternative for the Otay Ranch New Town Plan (the largest planned community in the southwestern U.S.) would result in the loss of 5,600 ha (14,000 ac) of upland shrub communities, or about 52 percent of the extent of the plant communities within the project area. The effects of this project on the recently observed quino checkerspot population on Otay Mesa are not known at this time but are likely to be significant.

Additional development is expected to further reduce and degrade habitat of the quino checkerspot through construction of homes and roads, and increases in fire frequencies, unauthorized trash dumping, and the distribution and abundance of exotic plants. An existing recreational vehicle park and marina in the vicinity of quino checkerspot habitat attracts unauthorized use of off-road vehicles (ORV's) within natural habitat areas. ORV's increase erosion and fire hazards and destroy habitat by creating trails.

Evidence of ORV use is apparent at one of the quino checkerspot localities, where a recently created dirt road bisects the center of the habitat (G. Ballmer, *in litt.*, 1991). Quino checkerspot habitat at this locality has also been disced in part; these disturbed areas no longer support this taxon, while the surrounding undisturbed areas do (G. Ballmer, *in litt.*, 1991).

Bureau of Land Management (BLM)-administered lands and USFS Wilderness Areas are currently contiguous with some privately owned quino checkerspot habitat. As Riverside County becomes more densely populated, and these privately owned parcels are developed, fragmentation and degradation of this contiguous habitat is expected.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over-collection is a potential threat to both the Laguna Mountains skipper and the quino checkerspot because of their value to butterfly collectors. There is an extensive commercial trade for many imperiled or rare butterflies (Chris Nagano, John Mendoza, and Cindy Schroeder, USFWS, pers. obs., 1992–95). Johnson (*in litt.*, 1989) has noted that as the number of quino checkerspot colonies is reduced, lepidopterists may collect individuals in order to include rare species in their collections and to obtain surplus specimens for exchange or sale to other collectors. The remaining populations of the quino checkerspot and the Laguna Mountains skipper continue to be threatened by over-collection.

In the spring of 1993, populations of the quino checkerspot were the subject of collections for voucher specimens and captive-rearing (D. Hawks, pers. comm., 1993). Although there are no studies of the impact of the removal of individuals on natural populations of either of the butterfly taxa in this rule, related studies of another endangered nymphalid butterfly (Gall 1984a and 1984b) and a lycaenid butterfly (Duffey 1968) suggest that the two taxa in this rule could be adversely affected given the isolation of their apparently small populations. Collecting from small colonies or repeated handling and marking (particularly of females or in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability (Singer and Wedlake 1981, Gall 1984b, Murphy 1988). Collecting females dispersing from a colony can also reduce the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize when they are depleting already substantially reduced butterfly colonies below the thresholds of survival and/or recovery, especially when they lack appropriate biological training or visit the area for a short period of time (Collins and Morris 1985).

An additional significant threat to the survival of both taxa in this rule is the potential for vandalism by landowners who may view the presence of sensitive species as an obstacle to development. The habitat of the largest and densest quino checkerspot population in Riverside County was deliberately disced in 1984 or 1985 to eliminate the population (J. Johnson, *in litt.*, 1989).

C. Disease or Predation

Disease is not known to be a factor affecting the taxa listed in this rule. There are no documented observations of predation on the Laguna Mountains skipper. However, the CDFG has released and is proposing to continue releasing wild turkeys in the Palomar and Descanso Ranger Districts of the Cleveland National Forest for the purposes of recreational hunting. Alternative release sites are within historic Laguna Mountains skipper habitat and upstream from occupied habitat. Wild turkeys feed mostly on wild oats, insects, and acorns. During its first four weeks, 60 to 90 percent of a young turkey's diet consists of animal food, primarily insects. The adult diet consists of 15 to 25 percent animal food and turkeys are known to eat moth larvae (CDFG 1994). The Laguna Mountains skipper is also threatened by incidental predation from livestock grazing. The host plant is palatable to grazers (Levy 1994) and any feeding larvae could be incidentally eaten and/or trampled. This is a significant impact to the low population numbers of the Laguna Mountains skipper.

There is evidence that predation is a threat to the quino checkerspot. Preliminary studies (D. Hawks, pers. comm., 1993; G. Ballmer, pers. comm., 1994) indicate that predation has contributed to the decline of the quino checkerspot at sites where habitat has been invaded by non-native plant species, which may also harbor predatory arthropods. Sites within historical quino checkerspot habitat that have been heavily invaded by Mediterranean plant species also have high sowbug (*Armadillidium* sp. and *Porcellio* sp.) and earwig (*Euborellia annulipes* and *Forficula auricularia*) densities. Sowbugs and earwigs prey upon butterfly eggs. These predators are absent from natural sites currently occupied by the quino checkerspot (D. Hawks, pers. comm., 1993; G. Ballmer, pers. comm., 1994). Argentine ants (*Iridomyrmex humilis*) are also a potential predator that co-occur with earwigs and sowbugs. The number of these introduced predators is expected to increase with the spread of development because these exotics thrive in irrigated horticultural environments which may be adjacent to natural quino checkerspot habitat.

In general, outbreaks of disease or parasitism are more likely to occur under conditions of high population densities. The Laguna Mountains skipper occurs in low population densities; most populations of the Quino checkerspot also occur at low densities. Although specific parasites are unknown for the Laguna Mountains skipper and the quino checkerspot, Johnson (*in litt.*, 1989) suggests that under certain conditions, parasitism can eliminate a butterfly colony by building the parasite load of a population, thus contributing to the crash of that population. This cycle can only continue if the affected area is recolonized by butterflies, which may be unlikely when the host-butterfly population is small, fragmented, and isolated. However, if alternative parasite hosts exist in areas occupied by the butterflies, populations of parasites can be maintained on those alternative hosts in sufficient numbers to affect butterfly populations.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for both the Laguna Mountains skipper and the quino checkerspot include: (1) listing under the California Endangered Species Act; (2) adequate consideration under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); (3) local laws and regulations; (4) occurrence with other species protected by the Federal Endangered Species Act; and (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations for the conservation of these taxa.

Neither of the taxa in this rule is under consideration for listing under the California Endangered Species Act. The CDFG is unable to protect insects under its current regulations (Pete Bontadelli, CDFG, *in litt.*, 1989).

The status of and threats to the Laguna Mountains skipper and the quino checkerspot, as discussed above, reflect the failure of CEQA, NEPA, and local laws and regulations to protect and provide for the conservation of these taxa. Although there are several regional

conservation planning efforts underway within the range of the quino checkerspot, they have either not been completed, approved, funded, or implemented, or they have not provided adequate protection for this taxon.

The Service is not aware of any overlap in distribution between the Laguna Mountains skipper and any State or federally listed animal species. At one or two localities it may overlap with Parish's meadowfoam (*Limnanthes gracilis* ssp. *parishii*), currently proposed for Federal listing as threatened (59 FR 39879). However, the listing of a plant does not afford the same level of protection as the listing of an animal (16 U.S.C. 1538 (a)) and the coincidental protection of the Laguna Mountains skipper would be minimal at best. At some localities, the quino checkerspot co-occurs with the coastal California gnatcatcher (*Polioptila californica californica*), a federally listed threatened species, and Stephens' kangaroo rat (*Dipodomys stephensi*), a federally listed endangered species. However, the habitat requirements for the quino checkerspot are different from either the coastal California gnatcatcher or Stephens' kangaroo rat. Additionally, the Stephens' Kangaroo Rat Habitat Conservation Plan (HCP) for western Riverside County provides protection for only one population of the quino checkerspot (RCHCA 1995). The NCCP/HCP for the Central and Coastal Subregion of Orange County may potentially provide some protection for the quino checkerspot; however, the butterfly is not known to be extant within the planning area and systematic surveys are lacking. The quino checkerspot is not considered adequately conserved by the MSCP in San Diego County.

Some protection is afforded to the Laguna Mountains skipper on USFS land. Considering the small population size and extremely limited distribution of the Laguna Mountains skipper, this protection is insufficient to conserve the taxon. In the case of the quino checkerspot, some protection may be provided to one population by its occurrence, in part, on BLM land in Riverside County. However, this Federal land is currently subject to ORV activity (G. Ballmer, *in litt.*, 1991).

No specific regulations protect the quino checkerspot in Mexico. However, all hunting and export of wildlife in Mexico is prohibited, except under permit (Fuller and Swift 1984; Secretaria de Agricultura y Ganaderia, Subsecretaria y de la Fauna, Departmento de Conservation de la Fauna, undated). Little is known of the status of the isolated populations in Mexico (Allen 1990) and any protection afforded to these populations does not insure the survival of the taxon.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

The extremely restricted range, localized distribution, and small population size of the Laguna Mountains skipper and the quino checkerspot make them vulnerable to the effects of habitat loss, degradation and fragmentation, especially with regard to naturally occurring events (e.g., see Gilpin and Soule 1986). For example, several populations of the butterflies listed in this rule are known to consist of fewer than 5 to 15 individuals. The occurrence of even one of the following naturally occurring events could easily extirpate these populations.

Although both butterflies occur in fire-adapted ecosystems, a single fire event could eliminate affected populations. Orsak (1977) reported that a quino checkerspot population near Hidden Ranch, Black Star Canyon in the Santa Ana Mountains of Orange County was apparently destroyed by a fire in 1967. The quino checkerspot may be extirpated from Orange County.

Fire may be a necessary component for the maintenance of Laguna Mountains skipper habitat. The diversity of montane meadow habitats may be fire-dependent, including the skipper's larval host plant (Levy 1994). Historically, the skipper may have experienced local extirpations and recolonizations following local fire events. However, the present discontinuity and low population numbers would not enable the Laguna Mountains skipper to tolerate local extirpations due to fire.

Periodic droughts, like those that have occurred in recent years in southwestern California, can adversely affect both of the taxa in this rule. Drought is known to decrease numbers of butterflies (Thorne 1963). In addition to killing larvae by desiccation, drought conditions may (1) cause the early senescence or death of the larval host plant prior to completion of larval development or (2) lower the nutritional quality of the host plant (e.g., water content). Drought can also reduce the quantity and quality of adult nectar sources. Larval starvation and extirpation of local populations during periods of drought have been documented for *Euphydryas editha* (White 1974, Ehrlich *et al.* 1980).

The quino checkerspot is somewhat adapted to unpredictable weather patterns but requires sufficient patches of suitable habitat to respond to this environmental variability. The quino checkerspot's dispersal capabilities vary considerably depending upon rainfall patterns and the resulting availability of adult nectar sources and larval food plants. For example, a San Diego County population of the quino checkerspot exhibited an increase in numbers as a result of favorable weather (Murphy and White 1984). The greater number of larvae defoliated the larval food plants. This central core area was left without sufficient egg-laying sites for females, and adults dispersed greater distances in search of additional suitable habitat. Ideally these dispersing adults would have found marginally suitable areas and in subsequent generations would have returned to a central core area. In this case, the mass dispersal failed to restore populations in previously occupied habitat, and the butterflies have not re-colonized the original site (Murphy and White 1984; Murphy, *in litt.*, 1988).

Habitat fragmentation can affect the genetic heterogeneity of small isolated populations like those of the Laguna Mountains skipper and the quino checkerspot. A basic principle of genetics states that small, fragmented populations are subject to a higher frequency of genetic drift and inbreeding. As a consequence, genetic variation of the population and individual heterozygosity is decreased. That can lead to inbreeding depression and lowered fitness of individuals. Low genetic diversity may decrease the ability of a species to adapt to changing environmental conditions. Genetically homogenous populations may be at a greater risk of extinction from environmental or demographic variability (e.g., from fire or drought events) than are large, diverse populations that can more readily recover from such events. For example, variation in the length of diapause among butterfly offspring requires genetic heterogeneity (Seger and Brockman 1987). If a population is variable in diapause length, it has a lower risk of losing an entire cohort to adverse environmental conditions during any given season. Individuals with prolonged diapause may survive if drought causes high mortality during the next season. A large population or metapopulation can maintain the genetic heterogeneity needed to maintain the population during these kinds of events, but small, isolated populations cannot.

Interconnected populations can act as reservoirs to maintain other populations that may be subject to periodic extirpation (Murphy and White 1984, Harrison et al. 1988). If a naturally

occurring event eliminates a population of either of these taxa, few, if any neighboring populations are available to recolonize the area. No information is available regarding the dispersal abilities of the Laguna Mountains skipper. The sedentary behavior of the quino checkerspot decreases the probability that natural, long-distance dispersal could re-establish most extirpated local populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these two taxa in determining to make this rule final. Based on this evaluation, the Service finds that the preferred action is to list the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) and the quino checkerspot (*Euphydryas editha quino*) as endangered. The range and habitat of these taxa has been substantially reduced by historical activities associated with urban and agricultural development and recreational activities. These two taxa are threatened by one or more of the following factors—habitat alteration and destruction resulting from urban and agricultural development, grazing, fire management practices, over-collection, recreational activities, and displacement of the larval host plant by exotic species. The extremely restricted range, localized distribution, and small population size of both butterflies makes them very vulnerable to extinction by the factors listed above as well as by naturally occurring events such as fire and drought. For these reasons, the Service finds that the Laguna Mountains skipper and the quino checkerspot are in imminent danger of extinction throughout all or a significant portion of their ranges. Threatened status would not accurately reflect the diminished status and the threats to these taxa. Other alternatives to this action were considered but not preferred because not listing these taxa would not provide adequate protection and would be inconsistent with the purposes of the Act. Critical habitat is not being proposed for these taxa for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Laguna Mountains skipper and the quino checkerspot at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Publication of precise maps and descriptions of critical habitat for the quino checkerspot and the Laguna Mountains skipper could result in increased collection of specimens by collectors. The commercial trade in rare butterflies could increase demand for these taxa once they are listed as endangered and critical habitat maps could lead unscrupulous collectors to endangered populations. Additional habitat destruction through trampling, discing, grading, and vandalism could result as well. As discussed above under Factor B in "Summary of Factors Affecting the Species," habitat for one of the largest quino checkerspot colonies was graded in Riverside County to deliberately eliminate that population, and a number of quino checkerspot colonies have been subject to collection.

The additional protection provided by the designation of critical habitat to a species would be provided through section 7 of the Act. Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. The two taxa in this rule are confined to small geographical areas, and each population is composed of so few individuals that the determinations for jeopardy to the species and adverse modification of critical habitat would be similar. Therefore, designation of critical habitat provides no benefits beyond those that these taxa would receive by virtue of their listing as endangered species, and would likely increase the risk of threat from collecting or other human activities. The Service concludes that the designation of critical habitat for the Laguna Mountains skipper and the quino checkerspot is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with the Laguna Mountains skipper and the quino checkerspot include the USFS and BLM due to the presence of habitat and populations within their jurisdiction. The Laguna Mountains skipper occurs on private and State-owned land as well as USFS lands. The quino checkerspot mostly occurs on privately owned lands with little or no Federal involvement, although the BLM owns a portion of one

site. The USFS is currently conferencing with the Service under section 7 of the Act in order to address grazing impacts within the Cleveland National Forest on both the Laguna Mountains skipper and quino checkerspot.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service is currently coordinating with the USFS regarding activities on lands under their jurisdiction that may affect the taxa in this rule. Activities that the Service believes could potentially harm the Laguna Mountains skipper and the quino checkerspot and result in take include, but are not limited to:

(1) Unauthorized handling or collecting of the taxa;

(2) Unauthorized destruction/alteration of their habitat, including unauthorized livestock grazing;

(3) Unauthorized pesticide applications in violation of label restrictions.

Activities that the Service believes are unlikely to result in a violation of section 9 are:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, dead specimens of these taxa that were collected prior to the date of publication in the **Federal Register** of the final regulation adding these taxa to the list of endangered species;

(2) Roadkills or injuries by vehicles on designated public roads;

(3) Normal, authorized recreational activities in designated campsites and on authorized trails.

Questions as to whether specific activities will constitute a violation of section 9 should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing such permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on listed wildlife and plants and inquiries on prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services—Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

Where applicable, the Service is encouraging private landowners to include the Laguna Mountains skipper and the quino checkerspot butterflies in habitat conservation plans developed as part of applications for incidental take permits. To date, one plan has included the quino checkerspot in the Central and Coastal Subregion of Orange County.

Reasons for Effective Date

The Service is concerned that issuance of a final rule for these animals that is not effective immediately upon publication will result in greatly intensified levels of collecting and commercial trade of the Laguna Mountains skipper and particularly the quino checkerspot (see Factor B above). In addition, any delay in the effective date of this rule provides an opportunity for vandalism by persons not wanting endangered species on their property. Because of the immediate threat posed by these activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Managment and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Marjorie Nelson of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife

* * * * *

(h) * * *

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Butterfly, quino checkerspot.	*Euphydryas editha quino.*	U.S.A. (CA), Mexico	NA	E	604	NA	NA
*	*	*	*	*	*		*
Skipper, Laguna Mountains.	*Pyrgus ruralis lagunae.*	U.S.A. (CA)	NA	E	604	NA	NA
*	*	*	*	*	*		*

Dated: December 24, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–1111 Filed 1–15–97; 8:45 am]

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OFFICE O MANAGE

5 CFR Pa

RIN 3206–A

Revised A Disability FERS

AGENCY: O Manageme

ACTION: Pr

SUMMARY: Manageme regulation the applic retirement Retiremen Federal Er (FERS). Th employees for disabil applicatio employing year after

DATES: Co or before M

ADDRESSES Landers, C Division; H Service; O Manageme DC 20044; 4351, 1900 DC. Comm by electron

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SUPPLEMEN 8337(b) of establishes applying f the Civil S (CSRS), wh establishes for disabili Federal Em (FERS). Bo retirement the "appli [of Personn employee

Proposed Rules

Federal Register
Vol. 62, No. 11
Thursday, January 16, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 844

RIN 3206–AH68

Revised Application Procedures for Disability Retirement Under CSRS and FERS

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to establish uniformity in the application procedures for disability retirement under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The regulations would allow employees to meet the filing deadline for disability retirement by submitting applications directly to their former employing agency or to OPM within 1 year after separation.

DATES: Comments must be received on or before March 17, 1997.

ADDRESSES: Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington DC. Comments may also be submitted by electronic mail to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Robert Girouard, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 8337(b) of title 5, United States Code establishes the legal requirements for applying for disability retirement under the Civil Service Retirement System (CSRS), while section 8453 of title 5 establishes the application requirements for disability retirement under the Federal Employees Retirement System (FERS). Both laws state that a disability retirement claim may be allowed only if the "application is filed with the Office [of Personnel Management] before the employee or Member is separated from the service or within 1 year thereafter." Both the CSRS and FERS laws allow extension of the time limit only in cases involving the employee's mental incompetence.

Office of Personnel Management (OPM) regulations implementing these provisions of law are found at sections 831.1204 (for CSRS) and 844.201 (for FERS) of Title 5, Code of Federal Regulations. The CSRS regulation requires an employee who is retiring on disability to file an application with OPM before separating from service, or within 1 year after separating. The FERS regulation requires an employee retiring on disability to file an application with his or her employing agency before separating from service, or to file the application with OPM within 1 year after departing.

The proposed revision of these two sections will allow OPM to accept a CSRS or FERS disability application filed with an employee's agency prior to separation, or with either the former employing agency or OPM within 1 year after separation. This revision is a delegation of authority by the Director of OPM under section 1104(a)(2) of title 5, United States Code, allowing an agency's receipt of a disability regulation to satisfy the filing requirement in the law.

Under the current rule, an application filed with the employing agency is not acceptable unless the agency forwards it to OPM in time to meet the 1-year filing deadline. Our proposed change will protect applicants who submit their applications to their employing agency within a year after separation. OPM instructions will require agencies to forward disability applications promptly to OPM for consideration.

In addition, we propose revising sections 831.1204 and 844.201 of Title 5, Code of Federal Regulations to bring the CSRS and FERS disability application filing requirements into conformity with each other, as regards OPM-prescribed disability retirement forms and informal filings. The proposed regulations includes a standard for determining the date of filing, which parallels the standard in regulations of the United States Merit Systems Protection Board at 5 CFR § 1201.4(1).

Finally, we propose revising Section 844.201(c) of Title 5, United States Code to clarify that in FERS, as in CSRS, an agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions, but is not required to delay taking any appropriate personnel action.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement and insurance benefits of retired Government employees and their survivors.

List of Subjects in Parts 831 and 844

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 831 and 844 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336 (d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339 (j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 410; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986 Pub. L. 99–251, 100 Stat. 23; § 831.1204 also issued under 5 U.S.C. 1104; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 stat. 1388–328.

Subpart L—Disability Retirement

2. Section 831.1204 is revised to read as follows:

§ 831.1204 Filing disability retirement applications: General.

(a) Except as provided in paragraphs (c) and (d) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the employing agency or OPM within 1 year thereafter.

(b) An application for disability retirement that is filed with OPM or an employing agency by personal delivery is considered filed on the date on which OPM or the employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which the receiving office is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(c) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(d) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(e) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

PART 844—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—DISABILITY RETIREMENT

3. The authority citation for part 844 is revised to read as follows:

Authority: 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

Subpart A—General Provisions

4. In section 844.201, paragraphs (a) and (c) are revised to read as follows:

§ 844.201 General requirements.

(a)(1) Except as provided in paragraphs (a)(3) and (a)(4) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the employing agency or OPM within 1 year thereafter.

(2) An application for disability retirement that is filed with OPM or an employing agency by personal delivery is considered filed on the date on which OPM or the employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM or the employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date application is given to the overnight delivery service.

(3) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(4) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

* * * * *

(c) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

[FR Doc. 97–1106 Filed 1–15–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. That AD was prompted by one report indicating that a diode failed, which resulted in battery drain and loss of the emergency DC bus power supply; and another report indicating that the circuit breaker of the transformer rectifier unit No. 3 tripped, which resulted in the loss of the emergency DC/AC bus power supply. This action would require a new terminating modification for the existing AFM revisions. This action would also require a new AFM revision to inform the flightcrew that, under certain conditions, an "EMER DC BUS" warning on the multi-function display unit (MFDU) will occur, and to take appropriate corrective actions. The actions specified by the proposed AD are intended to prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane.

DATES: Comments must be received by February 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN

Schipol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–269–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 4, 1995, the FAA issued AD 95–21–10, amendment 39–9396 (60 FR 53110, October 12, 1995), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes. That AD requires revising the Abnormal and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. That action was prompted by one report indicating that a diode failed, which resulted in battery drain and loss of the emergency DC bus power supply; and another report indicating that the circuit breaker of the transformer rectifier unit No. 3 tripped, which resulted in the loss of the emergency DC/AC bus power supply. The requirements of that AD are intended to ensure that the flightcrew is advised of the potential hazard related to failures of the emergency bus power supply, and the procedures necessary to address it.

In the preamble to AD 95–21–10, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is necessary; this proposed AD follows from that determination.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Fokker has issued Service Bulletin SBF100–24–032, dated September 12, 1996, which describes procedures for modification of the DC bus transfer system. For certain airplanes, the modification involves removal of diode CR3; replacement of the DC bus 1 circuit breaker and TRU 3 circuit breaker of the DC emergency bus supply, and replacement of the essential circuit breaker of the AC bus supply. The modification also involves replacement of the two battery power contactors (BPC) with a single BPC and addition of a control relay to the DC emergency bus system. For all airplanes, the modification involves alteration of the wiring to detect a battery drain. The modification will improve the switching logic of the emergency DC bus. Accomplishment of this modification would eliminate the need for the AFM revisions required by AD 95–21–10.

In addition, Fokker has developed procedural information, for inclusion in the Abnormal Procedures Section of the AFM for the affected airplanes, to inform the flightcrew that an "EMER DC BUS" warning on the multi-function display unit (MFDU) will occur when the emergency DC bus is transferred to battery power, and to take appropriate corrective actions.

Accomplishment of the modification and the new AFM revision will positively address the unsafe condition identified as failures of the emergency DC/AC bus power supply, which could lead to loss of on-side displays, autopilot, pressure control, and all communications; this situation could reduce the ability of the flightcrew to control the airplane.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified these service bulletins and the AFM revision as mandatory and issued Netherlands airworthiness directive (BLA) 1995–089/4 (A), dated September 30, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplanes are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–21–10. It would continue to require revising the Abnormal and Normal Procedures Sections of the FAA-approved AFM to include information that will enable the flightcrew to identify failures of the emergency DC/AC bus power supply and to take appropriate corrective actions. However, the proposed AD also would require modification of the DC bus transfer system, which would terminate the existing requirements for the AFM revisions. The modification would be required to be accomplished in accordance with the service bulletin described previously.

Following accomplishment of the modification, the proposed AD also would require revising the Abnormal Procedures Section of the AFM to inform the flightcrew that an "EMER DC BUS" warning on the multi-function

display unit (MFDC) will occur when the emergency DC bus is transferred to battery power, and to take appropriate corrective actions.

Cost Impact

There are approximately 132 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95–21–10, and retained in this proposed AD, would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $7,920, or $60 per airplane.

The modification of the DC bus transfer system that is proposed in this new AD would take approximately 17 (Part 1) or 5 (Part 2) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts could range from $160 to as much as $2,360 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $460 and $3,380 per airplane.

The AFM revision that is proposed in this new AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $7,920, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positi or negative, on a substantial number small entities under the criteria of the gulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9396 (60 FR 53110, October 12, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Fokker: Docket 96–NM–269–AD. Supersedes AD 95–21–10, Amendment 39–9396.

Applicability: All Model F28 Mark 0100 and 0070 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane, accomplish the following:

RESTATEMENT OF ACTIONS REQUIRED BY AD 95–21–10, AMENDMENT 39–9396

Note 2: For Model F28 Mark 0070 series airplanes, on which the procedures specified in Fokker Service Bulletins SBF100–24–033 and SBF100–24–034 have been accomplished, the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

Note 3: For Model F28 Mark 0100 series airplanes, on which the procedures specified in Fokker Service Bulletin SBF100–24–030 have not been accomplished, or on which the procedures specified in Fokker Service Bulletin SBF100–24–033 have been accomplished; the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

(a) For all airplanes: Within 7 days after October 27, 1995 (the effective date of AD 95–21–10, amendment 39–9396), revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

STANDBY ANNUNCIATOR PANEL RED AC SUPPLY LIGHT "ON"

On overhead electrical panel:
GEN LOAD.....CHECK

• If all generator loads are approximately zero:

LOSS OF AC SUPPLY
PROCEDURE .....APPLY

• If not all generator loads are approximately zero:

DC EMER BUS SUPPLY TRU3
CIRCUIT BREAKER.....CHECK

• If circuit breaker has tripped:

DC EMER BUS SUPPLY TRU3
CIRCUIT BREAKER.....RESET

• If reset is unsuccessful:
L and R AUDIO.....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure.

• If circuit breaker has not tripped:
L and R AUDIO.....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure."

(b) For all airplanes: Within 7 days after October 27, 1995, revise the Normal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 5—Normal Procedures

Insert in front of Sub-section 5.01.01—Take-off

• After engine start, select the Standby Annunciator Panel (SAP) backup mode ON via the BACKUP p/b at the SAP.

• Keep the SAP in the backup mode for the whole duration of flight until engine shutdown.

• Monitor the SAP.

Note: Failure conditions as presented on the SAP bypass the Flight Warning Computer (FWC) are not subject to alert inhibition. Be aware that the red LG light on the SAP will illuminate in case one or both thrustlever(s) are below the minimum take-off position and the landing gear is not down."

(c) For all Model F28 Mark 0070 series airplanes; and Model F28 Mark 0100 series

airplanes, in pre-SBF100–24–009 configuration or in post SBF100–24–030 configuration: Within 7 days after October 27, 1995, revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

ERRATIC ELECTRICAL SYSTEM BEHAVIOR

In case of continuous rattling sound, caused by the fast switching of relays and accompanied by blanking or erratic behavior of the three displays on the electric panel:

BATTERIES—SELECT MOMENTARILY OFF, THEN ON

AFFECTED SYSTEMS—RESTORE IF REQD

If the red AC SUPPLY light on the SAP comes ON:

SAP RED AC SUPPLY LIGHT 'ON' PROCEDURE—APPLY"

NEW ACTIONS REQUIRED BY THIS AD

(d) For Model F28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–24–032, dated September 12, 1996: Within 12 months after the effective date of this AD, modify the DC bus transfer system in accordance with Fokker Service Bulletin SBF100–24–032, dated September 12, 1996. Prior to further flight following accomplishment of this modification, accomplish paragraph (e) of this AD.

Note 4: For Fokker Model F28 Mark 0070 series airplanes, Fokker Service Bulletin SBF100–24–032 recommends prior or concurrent accomplishment of the procedures specified in Fokker Service Bulletin SBF100–24–034, dated October 17, 1995, or Revision 1, dated September 12, 1996 (which is currently required by AD 96–26–03, amendment 39–9866).

(e) Revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Sub-section 4.04.05—Electrical Power—Bus Equipment List

Insert a marker □ in each Bus Equipment List table, at the top of the column marked: EMERGENCY—DC.

Add the following note at the beginning of the affected sub-section:

Note: □ When an "EMER DC BUS" fault is presented on the multi-function display unit (MFDU), check whether the electric panel digital readouts are operative.

- If operative, the EMER DC bus is supplied from the battery chargers via the batteries for 90 minutes and all services connected to this bus will remain available. After this time period, batteries will start to discharge and the effects of an EMER DC BUS fault should then be expected.
- If inoperative, continue with the EMER DC BUS FAULT procedure.

At the bottom of each succeeding page (Bus Equipment List table) of sub-section 4.04.05, make a clear reference to the note marked □ located at the beginning of sub-section 4.04.05."

(f) Accomplishment of the modification in accordance with paragraph (d) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), and (c) of this AD. After the modification has been accomplished, the previously required AFM revision may be removed from the AFM.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 9, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1029 Filed 1–15–97; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Multi-Purpose Lighters; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission has reason to believe that unreasonable risks of injury and death may be associated with multi-purpose lighters that can be operated by children under age 5. Multi-purpose lighters are butane-fueled lighters with an extended nozzle from which the flame is emitted. These lighters typically are used to light devices such as charcoal and gas grills and fireplaces. The Commission is aware of 53 fires from January 1988 through October 1996 that were started by children under age 5 using multi-purpose lighters. These fires resulted in 10 deaths and 24 injuries. This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Consumer Product Safety Act ("CPSA"). One result of the proceeding could be the promulgation of a rule mandating performance standards for the child-resistance of the operating mechanism of multi-purpose lighters.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with multi-purpose lighters, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death described in this notice.

DATES: Written comments and submissions in response to this notice must be received by the Commission by March 17, 1997.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments should be captioned "ANPR for Multi-Purpose Lighters."

FOR FURTHER INFORMATION CONTACT: Barbara Jacobson, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477, ext. 1206.

SUPPLEMENTARY INFORMATION:

A. Background

Multi-purpose lighters are butane-filled lighters with an extended nozzle, typically 4 to 8 inches long, from which the flame is emitted. The long nozzle allows the user to reach hard-to-light places and also keeps the user's hand away from the flames. Multi-purpose lighters are usually nonrefillable. The lighters are activated by applying pressure to a trigger or button mechanism, which initiates fuel flow and causes a piezo-electric spark. They are most commonly used to light charcoal or gas grills and fireplaces. The lighters also are used to light campfires, camp stoves, LP gas ranges in recreational vehicles, and pilot lights in household gas appliances. Most multi-purpose lighters now sold include some type of on/off switch. Usually, this is a two-position slider-type switch that

must be in the ON position before the lighter can be activated.

On July 12, 1993, the Commission published a consumer product safety standard that requires disposable and novelty cigarette lighters to have a child-resistant mechanism that makes the lighters difficult for children under 5 years old to operate.[1] 16 CFR 1210. The standard excludes lighters that are primarily intended for igniting materials other than cigarettes, cigars, and pipes. Based on the information currently available to the Commission, multi-purpose lighters are not primarily intended for igniting tobacco, and thus are not subject to the cigarette lighter standard. This conclusion could change if additional information shows use or distribution patterns demonstrating an intent for ignition of tobacco products.

During the development of the cigarette lighter standard, the Commission was not aware of any data indicating that multi-purpose lighters presented an unreasonable risk of injury. The on/off switch currently provided on multi-purpose lighters would not comply with the requirements for child-resistance in the cigarette lighter standard, since it is easy for young children to operate and does not reset to the OFF position automatically after each operation of the ignition mechanism of the lighter. 16 CFR 1210.3(b)(1).

In February 1996, Judy L. Carr petitioned the Commission to "initiate Rulemaking Proceedings to amend 16 CFR 1210 *Safety Standard for Cigarette Lighters* to include the Scripto® Tokai Aim 'n Flame™ disposable butane 'multi-purpose' lighter within the scope of that standard and its child resistant performance requirements." The petitioner provided information about eight incidents associated with the Aim 'n Flame™ lighter. One of the incidents involved the petitioner's child. Information about the other incidents was obtained through discovery in the petitioner's litigation with the product's manufacturer.

The petitioner's 4-year-old daughter was burned over 60 percent of her body when a 6-year-old boy triggered the lighter and ignited her clothing. The petitioner stated that the 6-year-old child was at a 3- to 4-year-old developmental level due to Downs Syndrome. The other seven incidents, all involving the Scripto® Tokai Aim 'n Flame™ lighter, occurred over the 6-year period from 1988 through 1993. In all, the eight incidents resulted in property damage, burn injuries to three children and one adult, and one death. In an incident where a 4-year-old child died, the fire was started by his 5-year-old brother.

The petitioner alleged that the Aim 'n Flame's™ "gun-like shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object." The petitioner highlighted information in four of the incidents provided with the petition that referenced the "gun-like" nature of the lighter. The petitioner also alleged that repeated operation of the trigger will cause the on/off switch to move from the OFF position to the ON position and that the on/off switch is easier to disengage than to engage.

On May 7, 1996 (61 FR 20503), the Commission published a **Federal Register** document soliciting comments on topics related to issues raised by the petition. The Commission received a total of nine comments, including four from lighter importers and one from the Lighter Association, Inc.

B. Incident Data

The Commission's staff searched all relevant CPSC data bases since 1985, when multi-purpose lighters first entered the market, to identify fires started with these lighters by children under 5 years old. These data sources included consumer complaints, newspaper clippings, death certificates, hospital emergency-room-treated injuries, and investigation reports. All incidents involving fires started by children under five that were submitted by the petitioner or by persons commenting on the May 7, 1996, **Federal Register** document are included in the analysis.

The Commission knows of 53 reported incidents involving fires started with multi-purpose lighters by children under age 5 from January 1988 through October 1996. These fires resulted in 10 deaths and 24 injuries. Although many of the reports did not indicate the amount of property damage, 12 reports cited property damage that exceeded $50,000. Two additional incidents involved fires started by older children (ages 5 and 6) with Downs Syndrome, a condition that affects mental development. These children, while over 5 years old, might have been protected by a child-resistant lighter.

Children under age 5 typically are incapable of extinguishing a fire, which puts them and their families at special risk of injury. Almost all of the 10 fatalities were the children who started the fires. At least 3 of the 24 injured persons required hospitalization for treatment. One 15-month-old infant was hospitalized for second and third degree burns over 80 percent of his body, after his 3-year-old brother ignited the playpen in which the infant was sleeping.

Among the 49 fires where the sex of the fire starter was known, 5 were girls and 44 were boys. Many of the children found the multi-purpose lighters in easily accessible locations, such as on kitchen counters or furniture tops. Others, however, obtained the lighters from more inaccessible locations, such as high shelves or cabinets, where parents tried to hide them. Three investigation reports indicated that the children involved (ages 3 and 4) demonstrated that they could operate the on/off switch.

Five or fewer fires from young children using multi-purpose lighters were reported each year from 1988 through 1994. In 1995, however, 11 fires from this cause were reported; these resulted in 3 injuries and 2 deaths. During 1996, through October, 22 such fires have resulted in 15 injuries and 4 deaths. And, there are likely additional fires, deaths, and injuries from this cause, since some multi-purpose lighter fires are reported only as "lighter" fires. In seven incidents, the involvement of a multi-purpose lighter was known only because there was a follow-up investigation.

The apparent increase in the number of fires may be related, in part, to the increase in sales of multi-purpose lighters. As discussed below, there were 1 million of these lighters sold in 1985. Since then sales have risen steadily. Total industry sales for 1995 were estimated at 16 million lighters.

Given the relatively limited number of known incidents, it is not possible to make a national estimate of the total number of fires and casualties at this time.

C. Market Information

The Product

The consumer type of multi-purpose lighter is sold at retail for $2.50 to $8 each, with an average retail price of about $4. Another type of multi-purpose lighter has additional features, such as refillable fuel chambers, flexible extended nozzles, and piezo-electric spark mechanisms powered by replaceable batteries. These lighters retail for about $40 and are most likely to be used in commercial applications, such as during installation or repair of gas appliances. This lighter may not be a consumer product that would be subject to a mandatory standard.

Manufacturers

The largest marketer of multi-purpose lighters is Scripto® Tokai, which

[1] 58 FR 37554. The standard became effective July 12, 1994.

imports its lighters from Mexico. The Pinkerton Group Inc. (Cricket® Lighters) imports its lighters from the Philippines. Both of these firms are members of the Lighter Association, Inc., a trade association located in Washington, D.C. About a dozen other firms market multi-purpose lighters under private labels. All of these privately labeled-lighters are produced by two Chinese manufacturers.

Sales

Multi-purpose lighters were introduced to the U.S. market in 1985, and about 1 million units were sold in the first year. Since 1985, sales have risen steadily. Scripto® Tokai estimated total industry sales of 16 million units for 1995. Scripto® Tokai and the Lighter Association, Inc., estimated total industry sales in excess of 100 million units since their introduction. These industry sources expect sales of multi-purpose lighters to continue to increase, at the rate of 5–10 percent annually, for the foreseeable future. For 1996, sales are projected at 17 to 18 million.

Lighters In Use

The service life of multi-purpose lighters depends on how they are used. Lighters used seasonally for fireplaces or for camping may have useful lives of two years or more. If used in everyday applications, the useful life would be similar to that of disposable butane lighters—i.e., less than one year. Based on an average useful life of one to two years and a linear estimation of sales growth from 1985 forward, there were an estimated 23–36 million multi-purpose lighters available for use at the end of 1995.

Product Substitutes

Readily available substitutes for multi-purpose lighters include matches and disposable butane lighters. The closest substitutes are probably long-stem matches, sometimes called fireplace matches. However, fireplace matches are substantially more costly per light than multi-purpose lighters. These matches commonly retail for about $5 for a box of 50, or 10 cents per light ($5/50 lights). This compares to an average retail price of $4 for a multi-purpose lighter, or 0.4 cents per light ($4/1000 lights). Although disposable butane lighters cost less per light than multi-purpose lighters, at 0.1 cents per light ($1/1000 lights), they do not have features that allow the user to reach hard-to-light places or keep the user's hand away from the flames.

Preliminary Economic Considerations Regarding a Child-Resistant Mechanism

The Commission knows of 11 fires, 3 injuries, and 2 deaths from fires started during 1995 associated with children under age 5 using multi-purpose lighters. These incidents had an estimated societal cost of about $10.3 million. If there were fires from this cause that are not known to the Commission, the actual societal cost, and the cost per lighter, of these fires would be higher.

It is unlikely that a child-resistant feature would eliminate all fires started by young children with multi-purpose lighters. In practice, some children would likely be able to operate even lighters that have a child-resistant mechanism.

Several factors determine the range of benefits that would result from including a child-resistant feature on multi-purpose lighters. One important factor is the reduction that could be achieved in the ability of young children to start fires by playing with these lighters. This reduction would be based on the expected improvement in the child-resistance of multi-purpose lighters caused by the child-resistant feature. By applying the same methodology the Commission used to estimate the incident reduction for child-resistant cigarette lighters, the Commission preliminarily estimates that requiring a child-resistant feature on multi-purpose lighters would reduce these fire incidents by between 73 and 82 percent.[2]

Another important factor in calculating the benefits per lighter from a child-resistant requirement for multi-purpose lighters is the useful life of such lighters. If multi-purpose lighters have a 1-year useful life, then there were 23 million such lighters in use in 1995. And, each of these 23 million lighters had an expected accident cost of about $0.45 ($10.3 million in societal costs ÷ 23 million lighters). If child-resistant multi-purpose lighters are 73 percent effective in reducing incidents, the benefits will be about $0.33 per lighter ($0.45 in accident costs × .73). If the lighters are 82 percent effective in reducing incidents, the benefits will be about $0.37 per lighter ($0.45 in accident costs × .82).

If these lighters have a 2-year useful life, then there were 36 million multi-purpose lighters in use. And, each lighter had an expected accident cost of about $0.57 ($10.3 million ÷ 36 million, for each of 2 years). Under this useful life assumption, the benefits will be about $0.42 per lighter that is 73 percent effective in reducing incidents ($0.57 in accident costs × .73), and about $0.47 per lighter that is 82 percent effective ($0.57 in accident costs × .82).

Industry sources estimate that a safety device that would comply with the requirements of the cigarette lighter standard could add $0.20 to $0.40 to the retail price of a multi-purpose lighter. This relatively high cost is attributed to the difficulty in designing a safety feature that would provide enough fuel to allow ignition at the end of the nozzle.

Thus, the preliminary estimate of the potential benefits, using 1995 data, are $0.33 to $0.47 per lighter, compared to the estimated costs, noted above, of $0.20 to $0.40 per lighter.

Incomplete data for 1996 show 22 fires, 15 injuries, and 4 deaths, for a societal cost of $20.5 million, with sales that are projected at 17 to 18 million multi-purpose lighters. Therefore, the range of potentially achievable benefits per lighter based on the reported cases for 1996 through October—using the same methodology as above, including the .73 to .82 range of injury reduction—would be $0.65 to $0.93. Additionally, it is likely that national estimates of fires and casualties would be still greater than the number of incidents known for both 1995 and 1996. And, the lighters' child-resistance may substantially exceed the standard's minimum requirement in many cases. Thus, the potential benefits are likely to be higher than estimated.

The costs per lighter of adding child-resistance to all multi-purpose lighters produced in 1996, however, would be the same as for 1995. The total cost for providing the feature in 1996 would be

[2] An initial estimate of the extent to which non-child-resistant multi-purpose lighters may resist operation by young children can be calculated from tests that were performed with children using non-child-resistant disposable cigarette lighters. That testing showed that 55 percent of children were able to operate non-child-resistant "roll and press" cigarette lighters ("baseline" child-resistance of 45 percent), and 84 percent were able to operate non-child-resistant "push-button" (including peizo-electric) cigarette lighters (baseline child-resistance of 16 percent). Similar tests have not been performed for multi-purpose lighters, but the Commission assumes for present purposes that the results would be within the range of those derived for cigarette lighters.

The minimum percent reduction in fires and resulting deaths and injuries would occur if all lighters just barely passed at the specified pass/fail criteria, which for cigarette lighters is 85 percent. The minimum percent reduction thus is calculated as follows: % reduction = [(% pass/fail criteria) − (% baseline CR)] × 100 ÷ (100 − % baseline CR) Therefore, the estimated injury reduction for push-button lighters would be 82 percent [(85 − 16)(100)/(100 − 16)]. The estimated injury reduction for roll-and-press lighters would be 73 percent [(85 − 45)(100)/(100 − 45)]. In reality, the child-resistance performance of many lighters may be substantially better than the pass/fail criteria. Therefore, the actual injury and death reductions may be significantly greater than estimated.

only 5 to 10 percent greater than in 1995, reflecting the increase in the number of lighters produced. Thus, using 1996 data, benefits would likely far exceed costs.

D. Issues Raised by the Petitioner

1. *Issue:* Manufacturer's Information. The petitioner stated that Scripto® Tokai Corporation possessed critical fire and injury data concerning multi-purpose lighters that would have been useful to the Commission during development of the Safety Standard for Cigarette Lighters.

Response: Based on summary information submitted by the petitioner, Scripto® Tokai was aware of four fires started by young children with Aim 'n Flame™ lighters prior to publication of the Safety Standard for Cigarette Lighters on July 12, 1993. Two of these fires resulted in burn injuries, and two resulted in property damage. None of the incidents involved a death. The fact that Scripto® Tokai did not communicate information on these incidents to the Commission at that time did not affect the Commission's decision to grant Ms. Carr's petition for multi-purpose lighters.

2. *Issue:* "Gun-Like" Shape. The petitioner stated that the Aim 'n Flame's™ " 'gun-like' shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object." The petitioner highlights information in four of the incidents provided with the petition that reference the "gun-like" nature of the lighter.

Response. The Commission's human factors experts believe that, for some children, the combination of the "toy-like" shape of multi-purpose lighters and the size of the flame could enhance the attractiveness of these lighters over ordinary cigarette lighters or matches.

The appeal and attractiveness of the Aim 'n Flame™ and other multi-purpose lighters to children is based, in part, on the lighters' toy-like appearance. Available incident data indicate some children were first attracted to the product because of its shape. In one incident, a 3-year-old boy saw the lighter on a basement workbench and thought it was a toy gun. His mother reported the child called it a "trigger gun.'

In addition to the shape, the flame of multi-purpose lighters is also an attractive feature to children. Children's curiosity about fire is a normal stage in their development. Fire appeals to young children because it is bright, warm, and exciting. In the case of multi-purpose lighters, the flame produced is larger than those of ordinary cigarette lighters. This may heighten the multi-purpose lighter's appeal to children.

Thus, all multi-purpose lighters produce a flame that appeals to children. Furthermore, multi-purpose lighters other than the particular model addressed by the petitioner have been involved in fire incidents. Accordingly, this rulemaking applies to all multi-purpose lighters.

3. *Comment:* On/off switch. The petitioner stated that Scripto® Tokai has not notified the Commission under Section 15(b) of the Consumer Product Safety Act ("CPSA") that the Aim 'n Flame™ contains a defect that could create a substantial product hazard. The petitioner alleged that repeated operation of the trigger will cause the on/off switch to move from the OFF position to the ON position and that the on/off switch is easier to disengage than to engage.

Response: The issue of whether the Aim 'n Flame™ contains a defect because of these aspects of the on/off switch will be considered as a separate matter by the Commission's Office of Compliance.

E. Comments Received in Response to the May 7, 1996, Federal Register Document

The Commission received nine comments in response to the May 7, 1996, **Federal Register** document. Commenters included: lighter importers Scripto® Tokai, Pinkerton Group Inc. (Cricket®), Colibri Corporation, and Calico Brands, Inc.; the Lighter Association, Inc.; Vinson & Elkins, the petitioner's attorneys; Ms. Diane L. Denton, the petitioner for the cigarette lighter standard; Mr. Davis S. Carson, an attorney; and Dr. John O. Geremia, a lighter expert. Copies of the comments are available upon request from the Office of the Secretary.

Scripto® Tokai and Cricket®, both members of the Lighter Association, Inc., currently import multi-purpose lighters. Mr. Carson, Ms. Denton, and Calico Brands, Inc., wrote in support of including multi-purpose lighters in the current standard. The Commission's responses to the particular comments are given below.

1. *Comment:* Incidents Limited to One Product. The Pinkerton Group, Inc., commented that the incidents appear to be limited to one particular product on the market and questioned whether a rulemaking proceeding for all multi-purpose lighters was warranted.

Response: One manufacturer, who represents approximately 90 percent of U.S. sales, accounted for 20 of the 25 fires in which the product was identified. The other 5 fires were associated with other manufacturers' lighters, establishing that the incidents are not limited to one product alone.

2. *Comment:* Risk Associated with Multi-Purpose Lighters. Scripto® Tokai and the Lighter Association, Inc., commented that there are very few fire incidents involving multi-purpose lighters relative to the number of units sold, and that these lighters present an extremely low risk compared to other open flame products.

Response: At this time, fire data involving multi-purpose lighters are obtained from sources that cannot be used to calculate a national estimate of the fire hazard or the per-unit risk associated with multi-purpose lighters. Even if the per-unit risk was identical for lighters, matches, and multi-purpose lighters, however, there would be many times more fires with matches and lighters, solely because of the larger number of these products in use. Yet, it appears that there may be a reasonable cost-effective standard for multi-purpose lighters that can reduce the risk from these products.

The relative risks of open-flame devices are discussed in the response to the next comment.

3. *Comment:* Consumers Will Switch to More Dangerous Matches. Scripto® Tokai states:

> some consumers are switching to less safe means of lighting tobacco products, such as matches. * * * [T]he number of fires started by children using matches has not declined and in fact may have even increased since the adoption of 16 CFR, Part 1210 [the Safety Standard for Cigarette Lighters]. * * * More fires are started each year by children playing with matches than with any other source.

The Lighter Association, Inc. states, "[t]he difficulty in using child-resistant multi-purpose lighters may cause some users to move to long stem matches."

Response: Current data do not support the claim that more fires are started each year by children with matches than with any other source. In both 1993 and 1994, about the same number of child-play fires involved matches and lighters. In 1994, the most recent year for which fire data are available, matches were involved in an estimated 9,100 child-play fires, compared to 10,600 for lighters.

Because matches are not child-resistant, there is no reason to expect the number of child-play match fires to be declining. And, the Commission is not aware of any data that indicate that child-play fires have increased. As discussed in more detail below, the available data (through 1994) do not allow a determination of whether the number of child-play match fires has increased since the effective date of the

Safety Standard for Cigarette Lighters—July 14, 1994.

The commenters did not provide any supporting evidence that consumers are switching from child-resistant lighters to matches. Additionally, non-child-resistant cigarette lighters present a greater risk than matches. A CPSC study conducted in the late 1980's used the number of lighters in accessible locations and the number of boxes or books of matches in such locations as a measure of exposure to the products. The study found that, using this measure of exposure, lighters were 1.4 times as likely as matches to be involved in a child-play fire, 3.3 times as likely to be involved in a child-play death, and 3.9 times as likely to be involved in a child-play injury.

The Commission is finding that recently introduced child-resistant lighters are easier for adults to use than some of those sold when the rule first took effect. Based on this experience, the Commission believes that child-resistant mechanisms for multi-purpose lighters can be designed that are easy for most consumers to use. In addition, matches are a less convenient and more expensive source of flame. Accordingly, it is unlikely that many consumers would move from child-resistant multi-purpose lighters to long-stem matches.

4. *Comment:* Requiring Multi-Purpose Lighters To Be Child-Resistant May Create Other Hazards. Scripto® Tokai and the Lighter Association, Inc., commented that the automatic reset mechanism required for child-resistant cigarette lighters could be unsafe for multi-purpose lighters. The piezo-electric technology used in most multi-purpose lighters is not completely reliable in producing a flame each time it is activated. These commenters contend that the need to operate the child-resistant mechanism after each actuation could further delay ignition and increase the potential for mini-explosion or flashback fire from accumulated pressurized gas.

Response: The failure of piezo-electric mechanisms to light after each activation creates a potential for "mini explosion" or "flashback fire" under certain conditions. The probability and severity of this type of reaction depends on a number of variables, including whether the user turns the gas appliance on before obtaining a flame from the lighter (which seems unnecessary in any event), the length of time the gas flows, and the air circulation in the area where the gas is to be ignited. The addition of a properly designed child-resistant feature should not add significantly to the delay already inherent in the device. If the Commission decides to develop a rule to require multi-purpose lighters to be child-resistant, this issue will be carefully evaluated.

5. *Comment:* Easy Operability of Multi-Purpose Lighters by Children. Diane Denton, who in April 1985 petitioned for the current standard on cigarette lighters, stated that multi-purpose lighters are easier to operate than small, more common lighters.

Response: While there are no comparison data on the ease of operability between these types of lighters, available incident reports show how easy it is for young children to operate multi-purpose lighters, most of which have a piezo-electric mechanism. After one fire, a mother found that both of her children, ages 2 and 4, could operate the lighter with little difficulty. In another incident, fire investigators asked a 3-year-old to demonstrate how he used the lighter. The child switched the ON/OFF switch to ON and pulled the trigger with one hand. The father said the ON/OFF switch was similar to that on some of his son's toys and the trigger pull action was similar to that of toy guns.

Also, among various types of non-child-resistant lighters tested during the development of the cigarette lighter standard, the piezo-electric mechanism was the easiest to operate. Forty-six out of 50 (92 percent) of the children on a test panel were able to operate the lighter. Multi-purpose lighters can easily be operated by children with one hand, while two hands are required for children to operate most disposable non-child-resistant lighters.

6. *Comment:* Accessibility of Multi-Purpose Lighters to Children. Scripto® Tokai claims that multi-purpose lighters are less accessible to children than disposable lighters and therefore, do not present a similar risk. According to Scripto® Tokai, multi-purpose lighters "are typically stored away in the same manner as tools or implements" and "are not carried in a pants or shirt pocket, or in a purse." In addition, Scripto® Tokai claims that multi-purpose lighters cost more than disposable lighters, and thus are "less likely to be left laying around."

Response: In the available reports of fire incidents, children found the multi-purpose lighters in a variety of locations, some easily accessible and others less accessible. Multi-purpose lighters are sometimes stored in accessible locations convenient to their use. For example, a 2-year-old boy was burned with a multi-purpose lighter that he took off a hook near a fireplace in his grandmother's home.

Storing multi-purpose lighters in the same manner as tools does not necessarily make them inaccessible to children. In one incident, a 3-year-old boy took a multi-purpose lighter out of a relative's tool box and hid it in his toy box. Two weeks later he started a fire with the lighter in the family's living room. Children started fires with lighters that they retrieved from kitchen cabinets, the top of microwave ovens, a 6-foot-high cabinet, a garage shelf, a bathroom medicine chest, a bookcase, a bedroom dresser, a basement workbench, and the top of a water heater in a utility closet.

In addition, these devices are not necessarily "less likely to be left laying around" based on cost, as they are fairly inexpensive. In fact, in some of the incidents, the lighters were obtained free as part of a cigarette promotion. Further, since these lighters are not commonly carried in a pocket or purse, they are likely to be in their normal storage locations, some of which, as noted above, are accessible to children.

7. *Comment:* "False Sense of Security." The Lighter Association, Inc., commented that "there is always the possibility that parents and caretakers will be more careless with child-resistant lighters, erroneously thinking them child-proof." Similarly, Scripto® Tokai stated that child-resistant lighters "are viewed frequently as 'childproof' leading parents to a false sense of security."

Response: It is not likely that the issue of a "false sense of security" will prevent the expected reduction of child-play fires started with multi-purpose lighters. As detailed above, multi-purpose lighters are currently stored in accessible locations convenient to their use. Even when they are stored out of reach, in locations considered inaccessible, children seek them out.

The same argument about a "false sense of security" could be applied to child-resistant packaging used for drugs and household chemicals. However, an article published in the June 5, 1996, Journal of the American Medical Association, "The Safety Effects of Child-Resistant Packaging for Oral Prescription Drugs," demonstrates that child-resistant packaging has reduced childhood poisoning from oral prescription drugs for children under age 5 by about 45 percent since 1974, the year oral prescription drugs became subject to the child-resistant packaging requirements.

8. *Comment:* Education and Supervision. Scripto® Tokai commented that education and supervision are the "first line of defense" in lighter-related fires. They stated that parents must be "repeatedly reminded to keep fire sources out of the

reach of children, and never leave small children unsupervised." Scripto® Tokai further said warnings and labels must be used "to adequately inform consumers of applicable hazards." They claim that the Commission has ignored educational efforts and has narrowly focused on product design.

Colibri Corporation recommended that the Commission review educational materials on multi-purpose lighters.

Calico Brands, Inc., stated that they always place a label on their lighters and lighter packaging warning parents "to keep lighters out of the reach of children." However, they also acknowledge that they are aware the warning is not "foolproof" and that child-resistance is also necessary "to further protect the safety of our children."

The Lighter Association, Inc., stated that "ultimately the issue of fire safety is an issue of parental supervision." The Association recommended that the Commission consider whether this issue could be dealt with through educational efforts.

Response: Educational efforts, warning labels, and supervision are important. But, they are not the sole solution to the problem of child-play fires started with multi-purpose lighters. If a product can be designed at reasonable cost to address a hazard, that is the most effective approach.

Available information indicates that even when consumers were aware of the danger of these lighters and took precautions to keep them out of reach, children still managed to access the lighters. In some instances, it appeared that the lighter was normally stored in a relatively inaccessible space, but was not returned there after its latest use. This is a foreseeable scenario, since people can be expected to be forgetful.

Many children under age 5 are old enough to engage in play activities without being in the same room as a parent or guardian. At the time of the known incidents, the children were under reasonable levels of adult supervision. Fires were started while parents or guardians were in the house. One mother was downstairs fixing lunch at the time of the incident. In other cases, children started fires while a parent was showering or sleeping. These are also foreseeable scenarios, since people cannot be expected to stay in the same room as their children every moment of the day.

9. *Comment:* Safety Standard for Cigarette Lighters. A number of comments were received about how the Safety Standard for Cigarette Lighters might relate to a rulemaking proceeding for multi-purpose lighters. These comments are discussed below.

a. Effectiveness of the current cigarette lighter standard. The Lighter Association, Inc., states that it is not aware of any data available for 1994 or 1995 to demonstrate the effectiveness of the current standard.

Response: The most recent year for which complete fire data are available is 1994. However, since the current standard became effective July 12, 1994—as to lighters manufactured in or imported into the United States on or after that date—non-child-resistant lighters remained in the channels of distribution throughout 1994 and 1995. The full effect of the cigarette lighter standard will not be achieved until the non-child-resistant cigarette lighters made before July 12, 1994, are no longer in use. It will not be possible to fully evaluate the standard's effectiveness until the previously produced non-child-resistant lighters are used up and fire data for a period after then are available.

However, based on tests of non-child-resistant and child-resistant cigarette lighters, the Commission estimates the cigarette lighter standard will eliminate 80 to 105 (53 to 70 percent) of the 150 deaths each year resulting from young children playing with cigarette lighters. The rationale for the cigarette lighter standard appears to also support a child-resistant requirement for multi-purpose lighters. The Commission believes it would not be in the public interest to delay an examination of the need for a standard for multi-purpose lighters until the effectiveness of the cigarette lighter standard can be fully evaluated. Such a delay would allow the deaths and injuries associated with child-play with this product to continue unabated.

b. Consumer resistance to the current standard. The Lighter Association, Inc., commented that there is strong adverse consumer reaction to cigarette lighters that comply with the current child-resistance standard. Since the standard went into effect on July 12, 1994, member companies have received tens of thousands of letters complaining about how difficult it is to operate the new child-resistant lighters.

Scripto® Tokai commented that child-resistant lighters generated daily letters and phone calls from puzzled and upset consumers expressing their frustration and resistance to the inconvenience. According to the commenter, senior citizens and people with disabilities, such as arthritis, found the new lighters difficult to operate. Consumers without children complained there is no choice. Some consumers even found ways to disarm the lighters' child-resistant mechanisms.

Response: When the Safety Standard for Cigarette Lighters went into effect, some consumers wrote to CPSC expressing dissatisfaction and some manufacturers reported receiving complaints from consumers. This is similar to the initial reaction to the requirement for child-resistant packaging of prescription drugs under the Poison Prevention Packaging Act in the early 1970's. It appears that consumer dissatisfaction with child-resistant cigarette lighters has lessened substantially, since the Commission now rarely receives complaint letters.

Additionally, child-resistant mechanisms have been evolving during the period the standard has been in effect. Originally, most of the lighters used some type of lock that could be disabled by moving a lever so that the lighter could then be actuated. These designs were sometimes cumbersome and, for some people, may have required the use of two hands. While some of these lighters are still on the market, the trend now is toward more subtle movements to overcome the child-resistant mechanism, such as pressure on the flint wheel or pressing a button to disable the lock. The Commission expects consumer resistance to be minimized by these new lighters, which are easy for adults to operate but are still highly child resistant.

c. Products designed to defeat the child-resistant features of cigarette lighters. The Lighter Association, Inc., Scripto® Tokai, and Colibri Corporation discussed products that have been marketed that are designed to override the child-resistant features of cigarette lighters. The Association provided a copy of a patent for such a product issued to two inventors in Cottonwood, Arizona. Scripto® Tokai stated that CPSC failed to take action against a particular device that is marketed for overriding the child-resistant features of cigarette lighters.

Response: Although the marketing of tools designed to override the child-resistant features of disposable lighters does not violate any Commission regulation, the Commission has requested the manufacturer of the device referred to by Scripto® Tokai to discontinue its marketing of the device. Increased consumer satisfaction with child-resistant lighters as the designs become easier to operate should drastically reduce if not eliminate the market for such products.

d. CPSC enforcement of the cigarette lighter standard. Without giving details, the Lighter Association, Inc., and

Scripto® Tokai alleged that there were a number of violations of the stockpiling rule in the current cigarette lighter standard.[3] They believe that Chinese importers as a group brought in over 100 million non-child-resistant lighters above the permissible stockpiling limit. These commenters further claim that there are stores still stocking (and restocking) non-child-resistant lighters.

The Lighter Association, Inc., stated that some distributors apparently are buying child-resistant lighters, opening the master cartons, disengaging the child-resistant features, repacking the lighters, and selling the cartons at a substantial premium. Association members believe that some importers are fraudulently bringing in non-child-resistant lighters as child-resistant lighters using "contrived" testing or other ruses.

The Lighter Association, Inc., and Scripto® Tokai request tightening of the stockpiling requirements and stringent enforcement of any new rule relating to multi-purpose lighters.

Response: The Commission has aggressively enforced the requirements of both the safety standard and the anti-stockpiling provisions. In cooperating with the U.S. Customs Service, the Commission has prevented the importation of millions of non-child-resistant lighters. The Commission will continue to vigorously enforce the standards and to investigate any specific reports of possible noncompliance brought to its attention.

e. *Comment:* Recommendations for requirements for multi-purpose lighters. Scripto® Tokai stated that the lessons learned from the disposable cigarette lighter experience must be applied to any effort to regulate new products. This company makes the following recommendations if such a standard is undertaken:

- The standard should include all multi-purpose lighters, whether disposable or refillable, long or short, expensive or inexpensive, or novelty or otherwise.
- Acceptable child-resistant mechanisms should be clearly defined.
- All importers should be required to submit base period and monthly reports to CPSC on importation of both child-resistant and non-child-resistant lighters, including specific manufacturing source information.
- Actions should be taken to insure that importers do not circumvent the stockpiling rules, including working closely with the United States Customs Service and through diplomatic channels.
- Enforcement measures should be applied evenly.

Dr. Geremia questioned the validity of allowing the industry to conduct its own certification tests.[4] He suggested that testing be conducted by CPSC or an independent organization not paid directly by the importers.

Dr. Geremia also recommends that lighters identify the manufacturer's name and address and have a date code.

Response: The Commission does strive to evenly enforce all of its regulations, and routinely works with the U.S. Customs Service as well as other government agencies.

The Safety Standard for Cigarette Lighters requires manufacturers to certify compliance through a reasonable testing program which includes (1) qualification tests on surrogates (non-flame-producing versions) of each model of lighter produced, (2) development of a specification of the characteristics of the surrogates found to meet the child-resistance requirements, and (3) tests performed of lighters from production to demonstrate that they continue to meet the original specifications.

The Commission expects companies to be able to demonstrate that they have a reasonable testing program that evaluates whether their lighters are in compliance. It does not appear that the Commission has express authority to require that certification tests be performed by non-industry testers, particularly absent evidence that industry testing is inadequate. However, the Commission may conduct its own tests and take action against any product that does not comply. The Commission conducts tests using an independent testing organization where appropriate.

Other suggestions specific to an amendment involving multi-purpose lighters will be considered if the Commission proceeds to develop a proposed rule for multi-purpose lighters.

f. Designs for child-resistant features for multi-purpose lighters. Dr. Geremia commented that the following child-resistant designs should be considered:

(i) A trigger guard similar to those used on firearms, except it would remain attached to the unit in some way.

(ii) A design which requires the burner nozzle and handle to be pushed toward each other and then twisted in order for gas to flow.

(iii) A false trigger in the present location, with the real trigger hidden at the base of the handle.

Response: Suggestions specific to child-resistant designs for multi-purpose lighters will be considered if the Commission decides to develop a proposed rule for multi-purpose lighters. It should be noted, however, that the Safety Standard for Cigarette Lighters does not specify product designs. Any design that meets the performance requirements of the testing protocol is acceptable. This allows industry greater flexibility and provides for market-driven solutions.

F. Existing Standards

Multi-purpose lighters are subject to the labeling requirements of section 2(p) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 (p), because they contain a hazardous substance that is intended or packaged in a form suitable for use in the household. The required statements include: "DANGER—EXTREMELY FLAMMABLE" "CONTENTS UNDER PRESSURE" "Keep out of the reach of children."

The only other existing mandatory standard that the Commission is aware of that may be relevant to this proceeding is the Safety Standard for Cigarette Lighters, which does not apply to lighters not primarily intended for lighting tobacco products. 16 CFR 1210.

G. Statutory Authority for This Proceeding

Three of the statutes administered by the Commission have at least some apparent relevance to the risk posed by non-child-resistant multi-purpose lighters. These are the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051–2084; the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471–1476; and the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1278. In issuing its standard for cigarette lighters, the Commission decided to use the authority of the CPSA. A full explanation of the Commission's reasons for that decision was published in the **Federal Register** on July 12, 1993. 58 FR 37554. *See also* 58 FR 37557 (July 12, 1993). For the reasons stated in those notices, the Commission expects that any rule regarding the child-resistance of multi-

[3] Section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of a consumer product safety rule and its effective date at a specified rate that is significantly greater than the rate at which such product was produced or imported during a specified base period before the promulgation of the consumer product safety rule. A stockpiling rule was issued as part of the Safety Standard for Cigarette Lighters. 16 CFR Part 1210, Subpart C.

[4] See the explanation of certification in the discussion of the CPSA in Section G of this document, "Statutory Authority."

purpose lighters also would be issued under the CPSA.

Before adopting a CPSA standard, the Commission first must issue an ANPR as provided in section 9(a) of the CPSA. 15 U.S.C. 2058(a). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must then publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 9(c) of the CPSA. 15 U.S.C. 2058(c). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 9(f)(2) of the CPSA. 15 U.S.C. 2058(f)(2). And before issuing a final regulation, the Commission must make certain statutory findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. CPSC, section 9(f)(3), 15 U.S.C. 2058(f)(3).

H. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths associated with multi-purpose lighters. In addition to possible performance standards similar to those adopted for cigarette lighters, the potential for labeling requirements and information and education campaigns to reduce the risk will be considered. It is also possible that a voluntary standard could be developed that would adequately reduce the risk of child-play fires associated with this product. These alternatives are discussed below.

1. Performance Standard

The Commission will consider issuing a mandatory performance standard for multi-purpose lighters similar to that for cigarette lighters.

2. Labeling

Labeling to warn of the risk of child-play fires from multi-purpose lighters could be required, either instead of or in addition to a mandatory performance standard.

3. Voluntary Standards

The Commission is not aware of any voluntary standards in effect that apply to the risk of children starting fires that is associated with this product. However, if such standards are developed and implemented, the Commission would take this into account in deciding whether a mandatory standard is necessary.

I. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance or labeling standard for multi-purpose lighters to address the risk that young children will use these lighters to start fires. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The types and numbers of multi-purpose lighters produced annually for sale in the U.S. from 1985 to the present;

2. The names and addresses of manufacturers and distributors of the product;

3. The number of persons injured or killed in fires started by children under the age of 5 years using multi-purpose lighters;

4. The circumstances under which these injuries and deaths occur, including the ages of the children who started the fires, the ages of the victims, the locations from which the children obtained the lighters, and physical descriptions of the products involved (including identification of the manufacturers and models, if available);

5. An explanation of designs that could be adapted to multi-purpose lighters to increase their child-resistance;

6. Characteristics of the product that could or should not be used to define which products might be subject to the requested rule;

7. Other information on the potential costs and benefits of the requested rule;

8. Steps that have been taken by industry or others to reduce the risk of injuries from the product;

9. The likelihood and nature of any significant economic impact on small entities;

10. The extent to which consumers turn on the gas flow to appliances before lighting a lighter or match to ignite the appliance;

11. The likely effects on fire incidents and on the multi-purpose lighter market of possible design changes to multi-purpose lighters;

12. The results of any tests on the child-resistance of multi-purpose lighters, whether or not the lighter has features intended to increase child-resistance;

13. The reasons why multi-purpose lighters sometimes require repeated actuations in order to light, and ways the performance of the lighters could be improved in this regard;

14. Designs of child-resistant lighters that would allow repeated actuations of the lighter without substantially delaying ignition compared to non-child-resistant lighters; and

15. The costs and benefits of mandating a labeling requirement.

Also, in accordance with section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. All comments and submissions should be received no later than March 17, 1997.

Dated: January 13, 1997.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–1110 Filed 1–15–97; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Proposed Rulemaking Concerning Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: On December 17, 1996, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a proposed rulemaking that would amend the Commission's procedures for reviewing contract market rules that do not relate to contract terms and conditions (61 FR 66241). The proposal would shorten the Commission's time frame for reviewing complex rules and streamline the review process so that rule changes generally could be deemed approved or be permitted to be put into effect without Commission approval. The comment period for the proposed

rulemaking is scheduled to end on January 16, 1997. The Commission has determined, in this instance, to extend the comment period.

DATES: Comments on the proposed rulemaking must be received by January 31, 1997.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to [secretary@cftc.gov].

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: The Futures Industry Association ("FIA") has filed a petition requesting an extension of time to submit comments on the Commission's proposed rulemaking concerning the review of non-term and condition contract market rule changes. FIA requested a thirty-day extension of the comment period for the proposed rulemaking that currently is scheduled to close on January 16, 1997. FIA stated that it was requesting an extension of the comment period in order to ensure that its members had sufficient opportunity to consider the proposed rulemaking and to prepare any appropriate comment.

The Commission has determined to extend the comment period for the proposed rulemaking by fifteen days until January 31, 1997. The Commission believes that such an extension of the comment period should permit FIA, FIA's members and any other interested parties to evaluate fully the Commission's proposed rulemaking and to submit their comments to the Commission, while also allowing the Commission to deal with this rulemaking in an expeditious manner.

Issued in Washington, D.C. on January 9, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–1027 Filed 1–15–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252665–96]

RIN 1545–AU82

Intangibles Under Sections 1060 and 338

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS amends the temporary regulations under sections 1060 and 338(b) of the Internal Revenue Code (Code) relating to purchase price allocations in taxable asset acquisitions and deemed asset purchases. The amendments revise the treatment of intangible assets in such acquisitions to take into account the enactment of section 197 by the Omnibus Budget Reconciliation Act of 1993. The regulations provide guidance to parties to taxable asset acquisitions and to deemed asset purchases resulting from elections under section 338. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 16, 1997. Outlines of topics to be discussed at the public hearing scheduled for Thursday, May 22, 1997, at 10 a.m. must be received by May 1, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG 252665–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG 252665–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brendan O'Hara at (202) 622–7530; concerning submissions and the hearing, Michael Slaughter, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The temporary and final regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the current temporary regulations under sections 1060 (§ 1.1060–1T) and 338(b) (§§ 1.338(b)–2T and 1.338(b)–3T), and related examples in the final regulations under section 338 (§ 1.338–3), concerning the treatment of acquired intangible assets.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary and final regulations explains the reasons for the amendments.

The amendments only address the effect of the enactment of section 197. The IRS and Treasury also intend to study other aspects of the current regulations under sections 1060 and 338(b). The current regulations have been the subject of public comments. The IRS and Treasury welcome further comments on all issues raised by the current regulations concerning purchase price allocation under sections 338(b) and 1060.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 22, 1997, at 10 a.m. in the Commissioner's Conference

Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by April 16, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic by May 1, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Brendan P. O'Hara, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.338(b)–2 is added to read as follows:

§ 1.338(b)–2 Allocation of adjusted grossed-up basis among target assets.

[The text of this section is the same as the text of the amendments to § 1.338(b)–2T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.338(b)–3 is added to read as follows:

§ 1.338(b)–3 Subsequent adjustments to adjusted grossed-up basis.

[The text of this section is the same as the text of the amendments to § 1.338(b)–3T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1060–1 is added to read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

[The text of this section is the same as the text of the amendments to §1.1060–1T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–655 Filed 1–9–97; 2:53 pm]

BILLING CODE 4830–01–U

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26 CFR Part 1

[REG–209709–94]

RIN 1545–AS77

Amortization of Intangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the amortization of certain intangible property. The proposed regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991. This document also provides notice of a public hearing on the proposed regulations.

DATES: Comments must be received by April 16, 1997. Requests to appear and outlines of oral comments to be presented at the public hearing scheduled for May 15, 1997, must be received by April 24, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209709–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209709–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Regs option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at http:\\www.irs.ustreas.gov\prod\tax__regs\comments.html. The public hearing will be held in the Commissioner's Conference Room (Room 3313), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John Huffman at (202) 622–3110; concerning submissions and the hearing, Michael Slaughter at (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under sections 167(f) and 197. These provisions were added to the Internal Revenue Code of 1986 (the Code) by section 13261 of OBRA '93, and apply to intangible property acquired after August 10, 1993 (or after July 25, 1991, if a valid retroactive election to apply OBRA '93 to intangibles has been made pursuant to § 1.197–1T).

The proposed regulations provide definitions and rules for amortization of intangible property subject to sections 197 and 167(f). On June 24, 1994, the IRS published Announcement 94–92 (1994–28 I.R.B. 139) in the **Federal Register** (59 FR 32670) inviting comments under section 197 relating to the amortization of goodwill and certain other intangibles that should be addressed in proposed regulations. The IRS has reviewed these comments and has addressed certain issues raised in the comments in the proposed regulations. However, because these comments were received in anticipation of the issuance of these proposed regulations, and because these regulations are subject to further comment and a public hearing, no attempt has been made to describe all of the principal comments that are not reflected in these regulations or the reasons therefor.

Explanation of Provisions

1. General Overview

Sections 167(f) and 197 provide comprehensive rules for the depreciation and amortization of many intangible assets. Intangible assets subject to section 197 are broadly defined to include most intangible assets acquired in connection with the acquisition of a trade or business and certain other separately acquired intangible assets. The adjusted basis of an amortizable section 197 intangible must be amortized over a 15-year period. Certain other intangible assets are excluded from section 197 for various reasons. In some cases, such as stock and partnership interests, the asset is property of a character that is not subject to an allowance for depreciation because it represents a permanent investment that can only be recovered through disposition of the asset (including worthlessness). In other cases, such as computer software,

purchased mortgage servicing rights, service and supply contracts, and certain other contracts or rights with a fixed duration, other cost recovery methods were prescribed by the OBRA '93 amendments. In still other cases, such as motion picture films, television series, books, and sound recordings, other cost recovery methods that were in effect prior to OBRA '93 are more appropriate under the circumstances. Section 167(f) provides alternative methods of depreciation for certain of the intangibles excluded from the application of section 197.

The proposed regulations provide guidance for certain intangible property subject to sections 167(f) and 197. The section 167(f) proposed regulations provide rules for intangible property subject to the allowance for depreciation under section 167 and specifically excluded from section 197. These intangible assets include certain computer software, rights to receive tangible property or services, rights of fixed duration, patents, copyrights, and mortgage servicing rights. These proposed regulations reserve guidance on the method of depreciating the cost of separately acquired rights to receive tangible property or services where the amount of the property or services to be received is not specified. The IRS invites comments on possible methods of depreciation in these cases.

Because section 197 provides a method of amortization and, except in the case of certain covenants not to compete, governmental licenses, permits and other rights, and contracts for the use of section 197 intangibles, does not alter the rules for determining the basis of an asset, section 197 generally does not apply to amounts that would otherwise be deductible. For example, section 197 does not generally apply to the costs of advertising because, in most cases, these costs are deductible under other provisions of the Code. See Rev. Rul. 92–80 (1992–2 C.B. 57). In addition, section 197 does not apply to costs that would not, under general principles of Federal income tax law, be included in the basis of a section 197 intangible. For example, if a taxpayer borrows money to purchase the assets of a trade or business (including amortizable section 197 intangibles) and incurs fees in connection with the loan, these costs are generally amortized over the term of the loan rather than under the rules of sections 167(f) and 197. As a further example, if the amortizable section 197 intangibles acquired in the transaction include a favorable supply contract, the amortizable basis in the contract does not include amounts required to be paid for goods to be received pursuant to the contract.

In addition, section 197 does not apply to any amount for which a deduction would be disallowed under other provisions of the Code, such as section 162(k) (relating to amounts paid or incurred by a corporation in connection with the acquisition of its stock or the stock of a related person).

No inference should be drawn from any provision in the proposed regulations concerning the classification of any section197 intangible as property, or whether any section 197 intangible is treated as tangible or intangible property, for other purposes of the Code. Furthermore, no inference should be drawn from any provision in the proposed regulations regarding (a) whether any section 197 intangible that is not an amortizable section 197 intangible may be amortized or depreciated under any provision of the Code other than section 197, or (b) the proper method for determining any allowance therefor. Finally, no inference should be drawn from any provision in the proposed regulations concerning whether any section 197 intangible (or any interest therein) has been purchased, leased, or licensed for Federal income tax purposes.

2. Section 197 Intangibles

The proposed regulations define section 197 intangibles (subject to certain exceptions) as goodwill, going concern value, workforce in place, information base, know-how, customer- and supplier-based intangibles, governmental licenses and permits, covenants not to compete and other similar arrangements, franchises, trademarks, trade names, and contracts for the use of the foregoing assets.

A. Covenants Not to Compete

Some commentators in response to Announcement 94–92 suggested that a covenant not to compete relating to the redemption of stock or a partnership interest from a departing stockholder or partner should be excluded from section 197 because this situation does not involve the acquisition of a trade or business. The legislative history provides, however, that section 197 applies to a covenant not to compete acquired with the assets of a trade or business, the stock in a corporation, or an interest in a partnership engaged in a trade or business. Consequently, the proposed regulations do not provide for this exception. In this regard, the proposed regulations provide that for purposes of section 197(f)(1)(B), the disposition or cancellation of redeemed stock of a corporation will not cause the covenant to be written off faster than over the 15-year amortization period provided for under section 197 (in the case of a covenant to which section 162(k) does not apply).

B. Contracts for the Use of Section 197 Intangibles

Some commentators also requested guidance on the extent to which contracts for the use of section 197 intangibles would be subject to section 197, in some cases suggesting that an intangible was not subject to section 197 unless the taxpayer obtained ownership of property for Federal income tax purposes. However, it is sometimes difficult to determine whether the terms of an agreement confer ownership, for Federal income tax purposes, of property, and the IRS and Treasury believe that the purposes of section 197 could be circumvented through the use of such agreements. Accordingly, the proposed regulations provide that contracts for the use of section 197 intangibles will also be treated as section 197 intangibles. Contracts that are so treated may, however, be excluded under either section 197(e)(4)(B) or (D) on the basis that they are contracts for the receipt of property or services, contracts having a fixed duration, or contracts having a fixed amount and recovered on a unit-of-production method or other similar method.

3. Intangibles Excluded From Section 197

A. Computer Software

Section 197 intangibles do not include computer software that is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified. The proposed regulations provide a safe harbor for purposes of determining whether computer software has been substantially modified. Under the safe harbor, computer software has not been substantially modified if its capitalized cost does not exceed the greater of $2,000 or 125 percent of the price at which the unmodified version of the software is readily available to the general public.

The proposed regulations incorporate some of the provisions of Revenue Procedure 69–21 (1969–2 C.B. 303), involving the treatment of costs of computer software, and modify other provisions to the extent necessary to conform to the amortization rules provided under sections 197 and 167(f). Consequently, if costs for developing computer software that the taxpayer has elected to treat as deferred expenses

under section 174(b) result in the development of a self-created intangible excluded under section 197(c)(2) and subject to the allowance for depreciation under section 167(a), deductions for the unrecovered expenditures are subject to section 167(f)(1). Computer software costs included, without being separately stated, in the cost of the computer hardware (bundled software) continue to be capitalized and depreciated as part of the computer hardware. The proposed regulations also continue to treat as currently deductible software costs properly and consistently treated as deductible (not capitalized) under § 1.162–11.

B. Certain Separately Acquired Intangibles

Certain intangibles are excepted from section 197 if they are not acquired as part of a purchase of a trade or business. The proposed regulations clarify that, for purposes of section 197, a group of assets constitutes a trade or business if their use would constitute a trade or business under section 1060; that is, if goodwill or going concern value could under any circumstances attach to the assets. Temporary and proposed regulations under section 1060, in turn, provide that a group of assets constitutes a trade or business for purposes of section 1060 if the use of such assets would constitute an active trade or business for purposes of section 355. However, in appropriate cases, even if the use of a group of assets would not constitute an active trade or business for purposes of section 355, such assets may nevertheless constitute a trade or business for purposes of section 1060. See §1.1060–1T(b)(2).

The IRS intends to provide additional guidance as to the circumstances under which the acquisition of a group of assets constitutes a trade or business for purposes of section 1060 in regulations under that section. Accordingly, the proposed regulations do not provide substantive guidance on this question, except to the extent that the considerations are unique to the application of section 197. The IRS invites comments on the extent to which additional rules under section 197 may be necessary.

C. Certain Contracts and Governmental Rights

While section 197 intangibles include licenses, permits, and other rights granted by a governmental unit or an agency or instrumentality thereof (section 197(d)(1)(D)), certain rights granted by these governmental entities are excluded from section 197 pursuant to section 197(e)(4) (B) and (D), subject to the conditions and limitations therein. Because a particular right may be described in two or more of these provisions, the proposed regulations provide guidance regarding the potential conflict between, or overlap with, these provisions. Thus, a right that would be subject to section 197 pursuant to section 197(d)(1)(D) may nevertheless be excluded if it is also described in section 197(e)(4) and meets all of the requirements for exclusion. Furthermore, a right that meets the requirements of either section 197(e)(4)(B) or section 197(e)(4)(D) is excluded from section 197 even if it fails to meet one of the requirements for the other exclusion. In addition, any license, permit, or other right granted by a governmental unit that otherwise meets the definition of a franchise under section 197(d)(1)(F), such as an FCC broadcast license or cable television franchise, is treated as a franchise under the regulations. Accordingly, these licenses do not qualify for any of the exceptions from section 197 provided under section 197(e)(4).

4. Special Rules of Application

A. Loss Disallowance Provisions

The proposed regulations contain rules for the loss disallowance provisions set forth in section 197(f)(1). In particular, the proposed regulations provide that a taxpayer may not circumvent the loss disallowance rules, for example, by transferring some intangibles, whose adjusted basis is greater than their fair market value, to a corporation in exchange for stock in the corporation in a transaction described in section 351, while retaining other intangibles acquired in the same or related transaction, and then selling the stock. Special rules are also provided for the application of the loss disallowance provisions in cases where a taxpayer has disposed of all of the amortizable section 197 intangibles acquired in a single transaction but is treated as having retained other amortizable section 197 intangibles solely by virtue of the retention of amortizable section 197 intangibles by a related person.

B. Transactions Involving Partnerships

The proposed regulations provide rules and examples relating to the treatment of section 197 intangibles acquired or transferred in certain partnership transactions, including terminations under section 708(b)(1), and the application of section 197 to the special basis adjustments of partnership property for which a section 754 or section 732(d) election is in effect. Guidance is also provided regarding the effect of curative and remedial allocations and the application of the anti-churning rules to certain partnership transactions.

In the case of the termination of a partnership under section 708(b)(1)(B) (relating to a sale or exchange of an interest), the rules contained in the proposed regulations are based on recently proposed regulations under that section, pursuant to which the new partnership is treated as having directly acquired the assets of the old partnership in exchange for the assumption of its liabilities and the issuance of interests in the new partnership. Accordingly, for purposes of section 197, the consequences of the termination of a partnership under section 708(b)(1)(B) may not be the same as the consequences of such a termination under the rules in effect at the time section 197 was enacted.

C. Treatment of Contingent Payments

The proposed regulations clarify that, except in the case of contingent payments, amounts paid for section 197 intangibles are treated as amounts chargeable to capital account, and the entire principal amount is amortized ratably over the 15-year amortization period beginning with the later of the month in which the intangible is acquired or the date on which the active conduct of a trade or business begins. Contingent payments for section 197 intangibles paid or incurred after the taxable year in which the intangible is acquired are added to basis at such time and generally amortized ratably over the remaining months in the 15-year period as of the beginning of the month the amount is paid or incurred. However, in order to reduce the administrative burden that may result from a requirement to maintain separate amortization schedules for each month during the 15-year period, taxpayers are permitted to use certain simplifying conventions. In addition, any amount that is not properly included in the basis of an amortizable section 197 intangible until after the expiration of the 15-year period is amortized in full immediately upon the inclusion of the amount in the basis of the intangible. The proposed regulations refer to §1.461–1(a)(1) for rules governing the time at which an amount may be taken into account by a taxpayer using the cash receipts and disbursements method. They refer to §1.461–1(a)(2) for rules governing the time at which a liability is incurred and generally taken into account (for example, by treating the amount of the liability as a capital

expenditure) by an accrual basis taxpayer.

5. Anti-Churning Rules

To be eligible for amortization, section 197 intangibles must qualify as amortizable section 197 intangibles. Generally, amortizable section 197 intangibles are section 197 intangibles that are acquired after August 10, 1993 (or acquired after July 25, 1991, and for which the taxpayer made a proper election under § 1.197–1T) and held in connection with the conduct of a trade or business or an activity described in section 212.

The proposed regulations provide anti-churning rules to prevent taxpayers from converting into amortizable section 197 intangibles existing goodwill, going concern value, and any other section 197 intangible for which amortization would not have been allowable prior to OBRA '93 through the use of related persons and certain other transactions. The proposed regulations define the term related person for purposes of these rules.

The proposed regulations also contain provisions for the exception to the anti-churning rules in situations where the seller elects to recognize gain and agrees to pay a specified amount of tax. The regulations reserve guidance on the manner of making this election. The IRS intends to issue a revenue procedure in order to provide interim guidance to taxpayers on the manner of making this election, and the final regulations will include the relevant provisions of this revenue procedure.

The proposed regulations contain both an anti-churning anti-abuse rule and a general anti-abuse rule that provide that the Commissioner may recast any transaction if one of its principal purposes is to avoid the purposes of section 197.

6. Assumption Reinsurance Transactions

Section 197(f)(5) provides special rules for section 197 intangibles resulting from assumption reinsurance transactions. The proposed regulations reserve guidance on certain aspects of these transactions. The IRS invites comments on the extent to which additional guidance on the application of section 197 to these transactions may be necessary.

7. Proposed Effective Dates

The regulations for sections 167(f) and 197 are proposed to be effective on the date on which the final regulations are published in the **Federal Register**. Regulations to implement section 197(e)(4)(D) (separately acquired contracts of fixed duration or amount) are proposed to be effective August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, if a valid retroactive election has been made under §1.197–1T).

8. Accounting Method Changes

A change in the method of depreciation or amortization of intangibles is a change in method of accounting that requires the consent of the Commissioner of Internal Revenue under section 446(e). To obtain this consent, a Form 3115, Application for Change in Accounting Method, generally must be filed within 180 days after the beginning of the taxable year in which the proposed change is to be made. Taxpayers that have adopted a method of accounting for certain intangibles may need to change their method of accounting to comply with the final regulations.

9. Basis Allocation Rules

In separate notices the IRS and Treasury are issuing temporary and proposed amendments to the temporary regulations under sections 1060 and 338(b). The existing temporary regulations establish a four-class system for allocating basis to individual assets in the case of a direct acquisition of assets constituting a trade or business or a deemed acquisition of assets as the result of an election under section 338. Under this system, assets in the nature of goodwill and going concern value are included in Class IV, while other intangible assets, whether or not amortizable, are included in Class III. Each successive class is allocated basis under a residual method, subject to a fair market value limitation for all classes except Class IV. After basis has been allocated to each class in the aggregate, assets within each of the first three classes are allocated basis on a proportional method. This system is inconsistent with the policies of section 197, which prescribes uniform treatment for all amortizable section 197 intangibles. Accordingly, appropriate modifications are being proposed.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in ADDRESSES) timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 15, 1997, at 10 a.m. in the Commissioner s Conference Room (Room 3313), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic (in the manner described in ADDRESSES) by April 16, 1997. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is John Huffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.197–2 also issued under 26 U.S.C. 197(g). * * *

Par. 2. Section 1.167(a)–3 is amended by adding a sentence at the end to read as follows:

§ 1.167(a)–3 Intangibles.

* * * See § 1.197–2 and § 1.167(a)–14 for amortization of goodwill and certain other intangibles acquired after August 10, 1993, or after July 25, 1991, if a valid retroactive election under § 1.197–1T has been made.

Par. 3. Section 1.167(a)–6 is amended by adding two sentences at the end of paragraph (a) to read as follows:

§ 1.167(a)–6 Depreciation in special cases.

(a) * * * See § 1.167(a)–14(c)(4) for depreciation of a separately acquired interest in a patent or copyright described in section 167(f)(2) acquired after the date on which the final regulations are published in the **Federal Register**. See § 1.197–2 for amortization of interests in patents and copyrights that constitute amortizable section 197 intangibles.

* * * * *

Par. 4. Section 1.167(a)–14 is added to read as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

(a) *Overview.* This section provides rules for the amortization of certain intangibles that are excluded from section 197 (relating to the amortization of goodwill and certain other intangibles). These excluded intangibles are specifically described in § 1.197–2(c)(4), (6), (7), (11), and (13) and include certain computer software and certain other separately acquired rights, such as rights to receive tangible property or services, patents and copyrights, rights of fixed duration or amount, and certain mortgage servicing rights. Intangibles for which an amortization amount is determined under section 167(f) and intangibles otherwise excluded from section 197 (for example, self-created intangibles described in § 1.197–2(d)(2)) are amortizable only if they qualify as property subject to the allowance for depreciation under section 167(a).

(b) *Computer software*—(1) *In general.* The amount of the deduction for computer software described in section 167(f)(1) and § 1.197–2(c)(4) is determined by amortizing the adjusted basis of the computer software using the straight line method described in § 1.167(b)–1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning with the month that the computer software is placed in service. If costs for developing computer software that the taxpayer properly elects to defer under section 174(b) result in the development of property subject to the allowance for depreciation under section 167, the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software where these costs are separately stated and the costs are required to be capitalized under section 263(a).

(2) *Exceptions.* Paragraph (b)(1) of this section does not apply to the cost of computer software properly and consistently treated as currently deductible (that is, not capitalized) under § 1.162–11. The cost of acquiring an interest in computer software that is included, without being separately stated, in the cost of the hardware or other tangible property is treated as part of the cost of the hardware or other tangible property that is capitalized and depreciated under other applicable sections of the Internal Revenue Code.

(c) *Certain interests or rights acquired separately*—(1) *Certain rights to receive tangible property or services.* The amount of the deduction for a separately acquired right to receive tangible property or services under a contract or from a governmental unit (specified in section 167(f)(2) and § 1.197–2(c)(6)) is determined as follows:

(i) *Amortization of fixed amounts.* The cost of acquiring a right to receive a fixed amount of tangible property or services is amortized for each taxable year by multiplying the basis (as determined under section 1011) of the right by a fraction, the numerator of which is the amount of tangible property or services received during the taxable year and the denominator of which is the total amount of tangible property or services received or to be received under the terms of the contract or governmental grant. For example, if a taxpayer acquires a favorable contract right to receive a fixed amount of raw materials during an unspecified period, the taxpayer must amortize the cost of acquiring the contract right by multiplying the total cost by a fraction, the numerator of which is the amount of raw materials received under the contract during the taxable year and the denominator of which is the total amount of raw materials received or to be received under the contract.

(ii) *Amortization of unspecified amount over fixed period.* The cost of acquiring a right to receive an unspecified amount of tangible property or services over a fixed period is amortized ratably over the period of the right.

(iii) *Amortization in other cases.* [Reserved]

(2) *Rights of fixed duration or amount.* The amount of the deduction for a separately acquired right of fixed duration or amount received under a contract or granted by a governmental unit (specified in section 167(f)(2) and § 1.197–2(c)(13)) and not covered by paragraph (c)(1) of this section is determined as follows:

(i) *Rights of a fixed amount.* The cost of acquiring a right of a fixed amount is amortized for each taxable year by multiplying the cost of the right by a fraction, the numerator of which is the amount received or delivered during the taxable year and the denominator of which is the total amount to be received or delivered (including amounts received or delivered prior to the close of the taxable year) under the terms of the contract or governmental grant.

(ii) *Rights of unspecified amount and fixed duration of less than 15 years.* The cost of acquiring a right of an unspecified amount and a fixed duration of less than 15 years is amortized ratably over the period of the right.

(3) *Application of renewals.* (i) For purposes of paragraphs (c) (1) and (2) of this section, the duration of a right under a contract (or granted by a governmental unit) includes any renewal period if, based on all of the facts and circumstances in existence at any time during the taxable year in which the right is acquired, the facts clearly indicate a reasonable expectancy of renewal.

(ii) The mere fact that a taxpayer will have the opportunity to renew a contract right or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will generally not be taken into account in determining the duration of such right provided that the bidding produces a fair market value price comparable to the price that would be obtained if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's-length transaction.

(iii) The cost of a renewal not included in the terms of the contract or governmental grant is treated as the acquisition of a separate intangible asset.

(4) *Patents and copyrights.* The amount of the deduction for a separately acquired interest in a patent or copyright described in section 167(f)(2) and § 1.197–2(c)(7) is equal to the purchase price paid or incurred during the year if the purchase price is payable on at least an annual basis as either a

fixed amount per use or a fixed percentage of the revenue derived from the use of the patent or copyright. Otherwise, the cost or other basis of a separately acquired patent or copyright (or an interest therein) is depreciated ratably over its remaining useful life. If a patent or copyright becomes valueless in any year before its legal expiration, the adjusted basis may be deducted in that year.

(5) *Applicable rules and conventions.* The period of amortization under paragraphs (c)(1) through (c)(4) of this section begins when the intangible is placed in service. For other applicable rules, see § 1.197–2(f).

(d) *Mortgage servicing rights.* The amount of the deduction for mortgage servicing rights described in section 167(f)(3) and §1.197–2(c)(11) is determined by using the straight line method described in §1.167(b)–1 (except that the salvage value is treated as zero) and an amortization period of 108 months. Mortgage servicing rights are not depreciable to the extent the rights are stripped coupons under section 1286. An event that renders mortgage servicing rights wholly worthless is considered a disposition of the rights. For purposes of determining the deduction for mortgage servicing rights and any loss from the sale, exchange, or other disposition of the rights, rights to service a pool of mortgages are treated as a single asset. Thus, if some (but not all) mortgages in a pool prepay and the taxpayer retains rights to service the remaining mortgages in the pool, no loss is recognized by reason of the prepayment. The adjusted basis of the mortgage servicing rights is not affected by the unrecognized loss.

(e) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register** except that § 1.167(a)–14(c)(2) (depreciation of the cost of certain separately acquired rights) and so much of § 1.167(a)–14(c)(3) as relates to § 1.167(a)–14(c)(2) are applicable August 11, 1993 (or July 26, 1991, if a valid retroactive election has been made under § 1.197–1T).

Par. 5. Section 1.197–0 is added to read as follows:

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Par. 6. Section 1.197–2 is added to read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

(a) *Overview*—(1) *In general.* Section 197 allows an amortization deduction for the capitalized costs of an *amortizable section 197 intangible* and prohibits any other depreciation or amortization with respect to that property. Paragraphs (b), (c), and (e) of this section provide rules and definitions for determining whether property is a *section 197 intangible*, and paragraphs (d) and (e) of this section provide rules and definitions for determining whether a section 197 intangible is an amortizable section 197 intangible. The amortization deduction under section 197 is determined by amortizing adjusted basis ratably over a 15-year period under the rules of paragraph (f) of this section. Section 197 also includes various special rules pertaining to the disposition of amortizable section 197 intangibles, nonrecognition transactions, anti-churning rules, and anti-abuse rules. Rules relating to these provisions are contained in paragraphs (g), (h), and (j) of this section. Examples demonstrating the application of these provisions are contained in paragraph (k) of this section. The effective date of the rules in this section is contained in paragraph (l) of this section.

(2) *Section 167(f) property.* Section 167(f) prescribes rules for computing the depreciation deduction for certain property to which section 197 does not apply. See § 1.167(a)–14 for rules under section 167(f) and paragraphs (c) (4), (6), (7), (11), and (13) of this section for a description of the property subject to section 167(f).

(3) *Amounts otherwise deductible.* Except as otherwise provided in section 197(f)(3) and paragraphs (b)(11) and (f)(3) of this section, section 197 does not apply to amounts that would be currently deductible without regard to section 197.

(4) *Relationship to other Internal Revenue Code provisions.* Section 197 does not apply to any amount paid or incurred for a section 197 intangible if a deduction for the amount would be disallowed under any provision of the Code other than section 263. (See, for example, section 162(k).)

(b) *Section 197 intangibles; in general.* Except as otherwise provided in paragraph (c) of this section, the term *section 197 intangible* means any property described in section 197(d)(1). The following rules and definitions provide guidance concerning property that is a section 197 intangible unless an exception applies:

(1) *Goodwill.* Section 197 intangibles include goodwill. Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor.

(2) *Going concern value.* Section 197 intangibles include going concern value. Going concern value is the additional value that attaches to property by reason of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership, but does not include any of the intangibles described in any other provision of this paragraph (b). It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(3) *Workforce in place.* Section 197 intangibles include workforce in place. Workforce in place (sometimes referred to as agency force or assembled workforce) includes the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, the amount paid or incurred for workforce in place includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a highly-skilled workforce, an existing employment contract (or contracts), or a relationship with employees or consultants (including, but not limited to, any key employee contract or relationship). Workforce in place does not include any covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section.

(4) *Information base.* Section 197 intangibles include business books and records, operating systems, and any other information base, including lists or other information of current or prospective customers (regardless of the method of recording the information). Thus, the amount paid or incurred for these items includes, for example, any portion of the purchase price of an acquired trade or business attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems. Other examples include the cost of acquiring customer lists, subscription lists, insurance expirations, patient or client files, or lists of newspaper, magazine, radio, or television advertisers.

(5) *Know-how, etc.* Section 197 intangibles include any patent, copyright, formula, process, design, pattern, know-how, format, package design, computer software (as defined in paragraph (c)(4) of this section), or interest in a film, sound recording, video tape, book, or other similar property. (See, however, the exceptions in paragraph (c) of this section.)

(6) *Customer-based intangibles.* Section 197 intangibles include any customer-based intangible. A customer-based intangible is any composition of market, market share, or other value resulting from the future provision of goods or services pursuant to contractual or other relationships in the ordinary course of business with customers. Thus, the amount paid or incurred for customer-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a customer base, a circulation base, an undeveloped market or market growth, insurance in force, the existence of a qualification to supply goods or services to a particular customer. a

mortgage servicing contract (as defined in paragraph (c)(11) of this section), an investment management contract, or other relationship with customers involving the future provision of goods or services. (See, however, the exceptions in paragraph (c) of this section.) In addition, customer-based intangibles include the deposit base and any similar asset of a financial institution. Thus, the amount paid or incurred for customer-based intangibles also includes any portion of the purchase price of an acquired financial institution attributable to the value represented by existing checking accounts, savings accounts, escrow accounts, and other similar items of the financial institution. However, any portion of the purchase price of an acquired trade or business attributable to accounts receivable or other similar rights to income for goods or services provided to customers prior to the acquisition of a trade or business is not an amount paid or incurred for a customer-based intangible.

(7) *Supplier-based intangibles.* Section 197 intangibles include any supplier-based intangible. A supplier-based intangible is the value resulting from the future acquisition, pursuant to contractual or other relationships with suppliers in the ordinary course of business, of goods or services that will be sold or used by the taxpayer. Thus, the amount paid or incurred for supplier-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a favorable relationship with persons providing distribution services (such as favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts. The amount paid or incurred for supplier-based intangibles does not include any amount required to be paid for the goods or services themselves pursuant to the terms of the agreement or other relationship. In addition, see the exceptions in paragraph (c) of this section, including the exception in paragraph (c)(6) of this section for certain rights to receive tangible property or services from another person.

(8) *Licenses, permits, and other rights granted by governmental units.* Section 197 intangibles include any license, permit, or other right granted by a governmental unit (including, for purposes of section 197, an agency or instrumentality thereof) even if the right is granted for an indefinite period or is reasonably expected to be renewed for an indefinite period. These rights include, for example, a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license. The issuance or renewal of a license, permit, or other right granted by a governmental unit is considered an acquisition of the license, permit, or other right. (See, however, the exceptions in paragraph (c) of this section, including the exceptions in paragraph (c)(3) of this section for an interest in land, in paragraph (c)(8) of this section for an interest under a lease of tangible property, and in paragraphs (c) (6) and (13) of this section for certain rights granted by a governmental unit. See paragraph (b)(10) of this section for the treatment of franchises.)

(9) *Covenants not to compete and other similar arrangements.* Section 197 intangibles include any covenant not to compete, or agreement having substantially the same effect, entered into in connection with the direct or indirect acquisition of an interest in a trade or business or a substantial portion thereof. For purposes of this paragraph (b)(9), an acquisition may be made in the form of an asset acquisition (including a qualified stock purchase that is treated as a purchase of assets under section 338), a stock acquisition or redemption, and the acquisition or redemption of a partnership interest. An agreement requiring the performance of services or the provision of property or the use of property (other than property of the acquired trade or business) does not have substantially the same effect as a covenant not to compete to the extent that the amount paid under the agreement represents reasonable compensation for the services actually rendered or for the property or use of the property actually provided.

(10) *Franchises, trademarks, and trade names.* (i) Section 197 intangibles include any franchise, trademark, or trade name. The term *franchise* includes any agreement that provides one of the parties to the agreement with the right to distribute, sell, or provide goods, services, or facilities, within a specified area. (See section 1253(b)(1).) The term includes distributorships or other similar contractual arrangements pursuant to which the transferee is permitted or licensed to operate or conduct a trade or business within a specific area. The term *trademark* includes any word, name, symbol, or device, or any combination thereof, adopted and used by a manufacturer or merchant to identify goods or services and distinguish them from those manufactured or sold by others. The term *trade name* includes any name used by a manufacturer or merchant to identify or designate a particular trade or business or the name or title used by a person or organization engaged in a trade or business. A license, permit, or other right granted by a governmental unit is a franchise if it otherwise meets the definition of a franchise. A trademark or trade name includes any trademark or trade name arising under statute or applicable common law, and any similar right granted by contract. The renewal of a franchise, trademark, or trade name is treated as an acquisition of the franchise, trademark, or trade name.

(ii) Notwithstanding the definitions provided in paragraph (b)(10)(i) of this section, any amount that is paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name and that is subject to section 1253(d)(1) is not included in the basis of a section 197 intangible. (See paragraph (g)(5) of this section.)

(11) *Contracts for the use of, and term interests in, other section 197 intangibles.* Section 197 intangibles include any right under a license, contract, or other arrangement providing for the use of property that would be a section 197 intangible under any provision of this paragraph (b) (including this paragraph (b)(11)) after giving effect to all of the exceptions provided in paragraph (c) of this section. Section 197 intangibles also include any term interest (whether outright or in trust) in such property.

(12) *Other similar items.* Section 197 intangibles include any other intangible property that is similar in all material respects to the property specifically described in section 197(d)(1)(C) and paragraphs (b)(3) through (b)(7) of this section. (See paragraph (g)(4) of this section for special rules regarding certain reinsurance transactions.)

(c) *Section 197 intangibles; exceptions.* The term *section 197 intangible* does not include property described in section 197(e). The following rules and definitions provide guidance concerning property to which the exceptions apply:

(1) *Interests in a corporation, partnership, trust, or estate.* Section 197 intangibles do not include an interest in a corporation, partnership, trust, or estate. Thus, for example, amortization under section 197 is not available for the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not the interests are regularly traded on an established market. (See paragraph (g)(3) of this section for special rules applicable to property of a partnership when a section

754 election is in effect for the partnership.)

(2) *Interests under certain financial contracts.* Section 197 intangibles do not include an interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not the interest is regularly traded on an established market. However, this exception does not apply to an interest under a mortgage servicing contract, credit card servicing contract, or other contract to service another persons indebtedness, or an interest under an assumption reinsurance contract. (See paragraph (g)(4) of this section for the treatment of assumption reinsurance contracts. See paragraph (c)(11) of this section and § 1.167(a)–14(d) for the treatment of mortgage servicing rights.)

(3) *Interests in land.* Section 197 intangibles do not include any interest in land. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral right, timber right, grazing right, riparian right, air right, zoning variance, and any other similar right, such as a farm allotment, quota for farm commodities, or crop acreage base. An interest in land does not include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television service. The cost of acquiring a license, permit, or other land improvement right, such as a building construction or use permit, is taken into account in the same manner as the underlying improvement.

(4) *Certain computer software*—(i) *In general.* Section 197 intangibles do not include any interest in computer software that is (or has been) readily available to the general public on similar terms, is subject to a nonexclusive license, and has not been substantially modified for the user. Computer software will not be considered to have been substantially modified if its cost does not exceed the greater of 125 percent of the price at which the unmodified version of the software is readily available to the general public or $2,000. For the purpose of determining whether computer software has been substantially modified—

(A) Integrated programs acquired in a package from a single source are treated as a single computer program; and

(B) Any cost incurred to install the computer software is not treated as a cost of the software.

(ii) *Separately acquired software.* Section 197 intangibles do not include an interest in computer software that is not acquired as part of a purchase of a trade or business within the meaning of paragraph (e) of this section.

(iii) *Other exceptions.* Neither section 197 nor section 167(f) apply in the following cases:

(A) Any amount of the cost of an interest in computer software that is included, without being separately stated, in the cost of the hardware or other tangible property will be treated as part of the cost of the hardware or other tangible property.

(B) Any amount of the cost of an interest in computer software that would be deductible under any provision other than section 167(f) or 197 may be deducted and is not required to be capitalized.

(iv) *Computer software defined.* For purposes of this section, computer software is any program or routine (that is, any sequence of machine-readable code) that is designed to cause a computer (as defined in section 168(i)(2)(B)(ii)) to perform a desired function or set of functions, and the documentation required to describe and maintain those programs. It includes all forms and media in which the software is contained, whether written, magnetic, or otherwise. Computer programs of all classes, for example, operating systems, executive systems, monitors, compilers and translators, assembly routines, and utility programs as well as application programs, are included. Computer software also includes any incidental and ancillary rights that are necessary to effect the acquisition of the title to, the ownership of, or the right to use the computer software, and that are used only in connection with that specific computer software. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For example, a trademark or trade name that is ancillary to the ownership or use of a specific computer software program in the taxpayer's trade or business and is not acquired for the purpose of marketing the computer software is included in the definition of computer software and is not included in the definition of trademark or trade name. Computer software does not include any data or information base described in paragraph (b)(4) of this section unless the data base or item is in the public domain and is incidental to a computer program. For this purpose, a copyrighted or proprietary data or information base is treated as in the public domain if its availability through the computer program does not contribute significantly to the cost of the program. For example, if a word-processing program includes a dictionary feature used to spell-check a document or any portion thereof, the entire program (including the dictionary feature) is computer software regardless of the form in which the feature is maintained or stored.

(v) *Readily available to the general public.* Computer software will be treated as readily available to the general public if the software may be obtained on substantially the same terms by a significant number of persons that would reasonably be expected to use the software. The requirements of this paragraph (c)(4)(v) can be met even though the software is not available through a system of retail distribution.

(5) *Certain interests in films, sound recordings, video tapes, books, or other similar property.* Section 197 intangibles do not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (such as the right to broadcast or transmit a live event) if the interest is not acquired as part of a purchase of a trade or business. A film, sound recording, video tape, book, or other similar property includes any incidental and ancillary rights (such as a trademark or trade name) that are necessary to effect the acquisition of title to, the ownership of, or the right to use the property and are used only in connection with that property. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For purposes of this paragraph (c)(5), computer software (as defined in paragraph (c)(4)(iv) of this section) is not treated as other property similar to a film, sound recording, video tape, or book. (See section 167 for amortization of excluded intangible property or interests.)

(6) *Certain rights to receive tangible property or services.* Section 197 intangibles do not include any right to receive tangible property or services under a contract or from a governmental unit if the right is not acquired as part of a purchase of a trade or business. Any right that is described in the preceding sentence is not treated as a section 197 intangible even though the right is also described in section 197(d)(1)(D) and paragraph (b)(8) of this section (relating to certain governmental licenses, permits, and other rights) and even though the right fails to meet one or more of the requirements of paragraph (c)(13) of this section (relating to certain rights of fixed duration or amount). (See § 1.167(a)–14(c) (1) and (3) for applicable rules.)

(7) *Certain interests in patents or copyrights.* Section 197 intangibles do not include any interest (including an interest as a licensee) in a patent, patent

application, or copyright that is not acquired as part of a purchase of a trade or business. (See § 1.167(a)–14(c)(4) for applicable rules.)

(8) *Interests under leases of tangible property*—(i) *Interest as a lessor.* Section 197 intangibles do not include any interest as a lessor under an existing lease or sublease of tangible real or personal property. In addition, the cost of acquiring an interest as a lessor in connection with the acquisition of tangible property is taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, any portion of the purchase price attributable to favorable lease terms is taken into account as part of the basis of the shopping center and in determining the depreciation deduction allowed with respect to the shopping center. (See section 167(c)(2).)

(ii) *Interest as a lessee.* Section 197 intangibles do not include any interest as a lessee under an existing lease of tangible real or personal property. For this purpose, an airline lease of an airport passenger or cargo gate is a lease of tangible property. The cost of acquiring such an interest is taken into account under section 178 and §1.162–11(a). If an interest as a lessee under a lease of tangible property is acquired in a transaction with any other intangible property, a portion of the total purchase price may be allocable to the interest as a lessee based on all of the relevant facts and circumstances.

(9) *Interests under indebtedness*—(i) *In general.* Section 197 intangibles do not include any interest (whether as a creditor or debtor) under an indebtedness in existence when the interest was acquired. Thus, for example, the value attributable to the assumption of an indebtedness with a below-market interest rate is not amortizable under section 197. In addition, the premium paid for acquiring a debt instrument with an above-market interest rate is not amortizable under section 197. See section 171 for rules concerning the treatment of amortizable bond premium.

(ii) *Exceptions.* For purposes of this paragraph (c)(9), an interest under an existing indebtedness does not include the deposit base (and other similar items) of a financial institution. An interest under an existing indebtedness includes mortgage servicing rights, however, to the extent the rights are stripped coupons under section 1286.

(10) *Professional sports franchises.* Section 197 intangibles do not include any franchise to engage in professional baseball, basketball, football, or any other professional sport, and any item (even though otherwise qualifying as a section 197 intangible) acquired in connection with such a franchise.

(11) *Mortgage servicing rights.* Section 197 intangibles do not include any right described in section 197(e)(7) (concerning rights to service indebtedness secured by residential real property that are not acquired as part of a purchase of a trade or business). (See § 1.167(a)–14(d) for applicable rules.)

(12) *Certain transaction costs.* Section 197 intangibles do not include any fees for professional services and any transaction costs incurred by parties to a transaction in which all or any portion of the gain or loss is not recognized under part III of subchapter C of the Code.

(13) *Rights of fixed duration or amount.* (i) Section 197 intangibles do not include any right under a contract or any license, permit, or other right granted by a governmental unit if the right—

(A) Is acquired in the ordinary course of business and not as part of a purchase of a trade or business;

(B) Is not described in sections 197(d)(1) (A), (B), (C) (ii), (iv), or (vi), (E), or (F); and

(C) Either—

(*1*) Has a fixed duration of less than 15 years; or

(*2*) Is fixed as to amount and the adjusted basis thereof is properly recoverable (without regard to this section) under a method similar to the unit-of-production method.

(ii) See § 1.167(a)–14(c) (2) and (3) for applicable rules.

(d) *Amortizable section 197 intangibles*—(1) Definition. Except as otherwise provided in this paragraph (d), the term *amortizable section 197 intangible* means any section 197 intangible acquired after August 10, 1993 (or after July 25, 1991, if a valid retroactive election under § 1.197–1T has been made), and held in connection with the conduct of a trade or business or an activity described in section 212.

(2) *Exception for self-created intangibles*—(i) *In general.* Except as provided in paragraph (d)(2)(iii) of this section, amortizable section 197 intangibles do not include any section 197 intangible created by the taxpayer (a self-created intangible).

(ii) *Created by the taxpayer*—(A) *Defined.* A section 197 intangible is created by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs for its creation, production, development, or improvement, whether the actual work is performed by the taxpayer or by another person under a contract with the taxpayer entered into before the creation, production, development, or improvement occurs. For example, a technological process developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process is created by the taxpayer.

(B) *Contracts for the use of intangibles.* A section 197 intangible is not created by the taxpayer to the extent that it results from the entry into (or renewal of) a contract for the use of an existing section 197 intangible. Thus, for example, the exception for self-created intangibles does not apply to legal and other professional fees incurred by a licensee in connection with the entry into (or renewal of) a contract for the use of know-how or similar property.

(C) *Improvements and modifications.* If an existing section 197 intangible is improved or otherwise modified by the taxpayer or by another person under a contract with the taxpayer, the existing intangible and the improvements or other modifications are treated as separate section 197 intangibles for purposes of this paragraph (d).

(iii) *Exceptions.* (A) The exception for self-created intangibles does not apply to any section 197 intangible described in section 197(d)(1)(D) (relating to licenses, permits or other rights granted by a governmental unit), 197(d)(1)(E) (relating to covenants not to compete), or 197(d)(1)(F) (relating to franchises, trademarks, and trade names). Thus, for example, capitalized costs incurred in the development, registration, or defense of a trademark or trade name do not qualify for the exception and are amortized over 15 years under section 197.

(B) The exception for self-created intangibles does not apply to any section 197 intangible created in connection with the purchase of a trade or business (as defined in paragraph (e) of this section).

(C) If a taxpayer disposes of a self-created intangible and subsequently reacquires the intangible in an acquisition described in paragraph (h)(4)(ii) of this section, the exception for self-created intangibles does not apply to the reacquired intangible.

(3) *Exception for property subject to anti-churning rules.* Amortizable section 197 intangibles do not include any property to which the anti-churning rules of section 197(f)(9) and paragraph (h) of this section apply.

(e) *Purchase of a trade or business.* Several of the exceptions in section 197 apply only to property that is not acquired in (or created in connection with) a transaction or series of related

transactions involving the acquisition of assets constituting a trade or business or a substantial portion thereof. Property acquired in (or created in connection with) such a transaction or series of related transactions is referred to in this section as property acquired as part of (or created in connection with) a purchase of a trade or business. For purposes of section 197 and this section, the applicability of the limitation is determined under the following rules:

(1) *Goodwill or going concern value.* A group of assets constitutes a trade or business or a substantial portion thereof if their use would constitute a trade or business under section 1060 (that is, if goodwill or going concern value could under any circumstances attach to the assets). See § 1.1060–1T(b)(2). For this purpose, all the facts and circumstances, including any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of the assets, are taken into account in determining whether goodwill or going concern value could attach to the assets.

(2) *Customer-based intangibles.* Whether or not a group of assets is otherwise described in paragraph (e)(1) of this section, a group of assets constitutes a trade or business or a substantial portion thereof if the assets include any customer-based intangibles (as defined in paragraph (b)(6) of this section) or are acquired in a transaction or series of related transactions that involve the creation of any customer-based intangibles.

(3) *Franchise, trademark, or trade name*—(i) *In general.* The acquisition of a franchise, trademark, or trade name constitutes the acquisition of a trade or business or a substantial portion thereof.

(ii) *Exceptions.* For purposes of this paragraph (e)(3)—

(A) A trademark or trade name is disregarded if it is included in computer software under paragraph (c)(4) of this section or in an interest in a film, sound recording, video tape, book, or other similar property under paragraph (c)(5) of this section; and

(B) A franchise, trademark, or trade name is disregarded if its value is nominal or the taxpayer irrevocably disposes of it immediately after its acquisition.

(4) *Acquisitions to be included.* The assets acquired in a transaction (or series of related transactions) include only assets (including a beneficial or other indirect interest in assets where the interest is of a type described in paragraph (c)(1) of this section) acquired by the taxpayer and persons related to the taxpayer from another person and persons related to that other person. For purposes of this paragraph (e)(4), persons are related only if their relationship is described in section 267(b) or 707(b) or they are engaged in trades or businesses under common control within the meaning of section 41(f)(1).

(5) *Substantial portion.* The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. The value of the assets acquired relative to the value of the assets retained by the transferor is not determinative of whether the acquired assets constitute a substantial portion of a trade or business.

(6) *Deemed asset purchases under section 338.* A qualified stock purchase that is treated as a purchase of assets under section 338 shall be treated as a transaction involving the acquisition of assets constituting a trade or business only if the direct acquisition of the assets of the corporation would have been treated as the acquisition of assets constituting a trade or business.

(f) *Computation of amortization deduction*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, the amortization deduction allowable under section 197(a) is computed as follows:

(i) The adjusted basis (for purposes of determining gain) of an amortizable section 197 intangible is amortized ratably over the 15-year period beginning on the later of—

(A) The first day of the month in which the property is acquired; or

(B) In the case of property held in connection with the conduct of a trade or business, the first day of the month in which the active conduct of the trade or business begins.

(ii) Except as otherwise provided in this section, adjusted basis is determined under section 1011 and salvage value is disregarded.

(iii) Property is not eligible for amortization in the month of disposition.

(iv) The amortization deduction for a short taxable year is based on the number of months in the short taxable year.

(2) *Treatment of contingent amounts*—(i) *Amounts added to basis during 15-year period.* Any amount that is properly included in the basis of an amortizable section 197 intangible after the first month of the 15-year period described in paragraph (f)(1)(i) of this section and before the expiration of this period is amortized ratably over the remainder of the 15-year period. For this purpose, the remainder of the 15-year period begins on the first day of the month in which the basis increase occurs. Any reasonable convention may be used to determine the month in which the basis increase incurs, provided that the method selected is used consistently for all amortizable section 197 intangibles acquired in the same transaction (or series of related transactions) and that it does not result in any amount being added to basis earlier than the midpoint of the period (for example, annual, semi-annual, or quarterly) selected.

(ii) *Amounts becoming fixed after expiration of 15-year period.* Any amount that is not properly included in the basis of an amortizable section 197 intangible until after the expiration of the 15-year period described in paragraph (f)(1)(i) of this section is amortized in full immediately upon the inclusion of the amount in the basis of the intangible.

(iii) *Time for including amounts in basis.* See § 1.461–1(a)(1) for rules governing the time at which an amount may be taken into account by a taxpayer using the cash receipts and disbursements method, and § 1.461–1(a)(2) for rules governing the time at which a liability is incurred and generally taken into account (for example, by treating the amount of the liability as a capital expenditure) by an accrual basis taxpayer.

(3) *Determination of amounts chargeable to capital account in certain cases*—(i) *Covenants not to compete, rights granted by governmental units, and contracts for the use of section 197 intangibles*—(A) *In general.* In the case of a covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section, any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof described in paragraph (b)(8) of this section, or a contract for the use of a section 197 intangible described in paragraph (b)(11) of this section, the amount chargeable to capital account includes all amounts required to be paid pursuant to the agreement or right, whether or not any amount would be deductible under section 162 if the agreement or right were not a section 197 intangible.

(B) *Time for taking amounts into account.* For purposes of this paragraph (f)(3), in applying the provisions of §§ 1.461–1(a)(1) (in the case of a taxpayer using the cash receipts and disbursements method of accounting) and § 1.461–1(a)(2) (in the case of a taxpayer using an accrual method of

accounting), all amounts required to be paid under an agreement described in paragraph (b) (9) or (11) of this section shall be treated as amounts payable under the terms of a debt instrument issued in exchange for property. Contingent payments made under an agreement described in paragraph (b) (9) or (11) of this section will be included in adjusted basis under the rules of paragraph (f)(2) of this section.

(ii) *Franchises, trademarks, or trade names and licenses, permits, and other rights granted by governmental units.* The costs paid or incurred for the renewal of a franchise, trademark, or trade name or any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof are amortized over the 15-year period that begins with the month of renewal. Any costs paid or incurred for the issuance, or earlier renewal, continue to be taken into account over the remaining portion of the amortization period that began at the time of the issuance, or earlier renewal. Any amount paid or incurred for the protection, expansion, or defense of a trademark or trade name and chargeable to capital account is treated as an amount paid or incurred for a renewal.

(iii) *Certain reinsurance transactions.* See paragraph (g)(4)(ii) of this section for special rules regarding the adjusted basis of an insurance contract acquired through an assumption reinsurance transaction.

(4) *Transactions subject to section 338 or 1060.* In the case of a section 197 intangible deemed to have been acquired as the result of a qualified stock purchase within the meaning of section 338(d)(3), the basis shall be determined pursuant to section 338(b)(5) and the regulations thereunder. In the case of a section 197 intangible acquired in an applicable asset acquisition within the meaning of section 1060(c), the basis shall be determined pursuant to section 1060(a) and the regulations thereunder.

(g) *Special rules*—(1) *Treatment of certain dispositions*—(i) *Loss disallowance rules*—(A) *In general.* No loss is recognized on the disposition of an amortizable section 197 intangible acquired in a transaction or series of related transactions in which the taxpayer acquired other amortizable section 197 intangibles if, after the disposition, the taxpayer retains any of the other amortizable section 197 intangibles, or the right to use, or an interest in, any of the other amortizable section 197 intangibles (the retained intangibles). Except as otherwise provided in paragraph (g)(1)(iv)(B) of this section, the adjusted basis of each of the retained intangibles is increased by the product of the loss that is not recognized solely by reason of this rule and a fraction, the numerator of which is the adjusted basis of the retained intangible on the date of the disposition and the denominator of which is the total adjusted bases of all the retained intangibles on that date. The abandonment of an amortizable section 197 intangible, or any other event rendering an amortizable section 197 intangible worthless, is treated as a disposition of the intangible for purposes of this paragraph (g)(1), and the abandoned or worthless intangible is disregarded (that is, it is not treated as a retained intangible) for purposes of applying this paragraph (g)(1) to the subsequent disposition of any other amortizable section 197 intangible.

(B) *Certain nonrecognition transfers.* The loss disallowance rule in paragraph (g)(1)(i)(A) of this section also applies when a taxpayer transfers an amortizable section 197 intangible from an acquired trade or business in a transaction in which the intangible is transferred-basis property and, after the transfer, retains other amortizable section 197 intangibles from the trade or business. Thus, for example, the transfer of an amortizable section 197 intangible to a corporation in exchange for stock in the corporation in a transaction described in section 351, or to a partnership in exchange for an interest in the partnership in a transaction described in section 721, when other amortizable section 197 intangibles acquired in the same transaction are retained, followed by a sale of the stock or partnership interest received, will not avoid the application of the loss disallowance provision to the extent the adjusted basis of the transferred intangible at the time of the sale exceeds its fair market value at that time.

(ii) *Separately acquired property.* Paragraph (g)(1)(i) of this section does not apply to an amortizable section 197 intangible that is not acquired in a transaction or series of related transactions in which the taxpayer acquires other amortizable section 197 intangibles (a separately acquired intangible). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. However, the termination or worthlessness of only a portion of an amortizable section 197 intangible is not the disposition of a separately acquired intangible. For example, neither the loss of several customers from an acquired customer list, the termination of several mortgages (not qualifying for the exception set forth in paragraph (c)(11) of this section) from an acquired mortgage pool, nor the worthlessness of only some information from an acquired data base constitutes the disposition of a separately acquired intangible.

(iii) *Disposition of a covenant not to compete.* If a covenant not to compete or any other arrangement having substantially the same effect is entered into in connection with the direct or indirect acquisition of an interest in a trade or business, the disposition or worthlessness of the covenant or other arrangement will not be considered to occur until the disposition or worthlessness of all interests in that trade or business. For example, a covenant not to compete entered into in connection with the purchase of stock continues to be amortized on a 15-year straight-line basis (even after the covenant expires or becomes worthless) unless all the trades or businesses in which an interest was acquired through the stock purchase (or all the purchaser's interests in those trades or businesses) also are disposed of or become worthless.

(iv) *Taxpayers under common control*—(A) *In general.* Except as provided in paragraph (g)(1)(iv)(B) of this section, all persons that would be treated as a single taxpayer under section 41(f)(1) are treated as a single taxpayer under this paragraph (g)(1). Thus, for example, a loss is not recognized on the disposition of an amortizable section 197 intangible by a member of a controlled group of corporations (as defined in section 41(f)(5)) if, after the disposition, another member retains other amortizable section 197 intangibles acquired in the same transaction as the amortizable section 197 intangible that has been disposed of.

(B) *Treatment of disallowed loss.* If retained intangibles are held by a person other than the person incurring the disallowed loss, only the adjusted basis of intangibles retained by the person incurring the disallowed loss is increased, and only the adjusted basis of those intangibles is included in the denominator of the fraction described in paragraph (g)(1)(i)(A) of this section. If none of the retained intangibles are held by the person incurring the disallowed loss, the loss is allowed ratably, as a deduction under section 197, over the remainder of the period during which the intangible giving rise to the loss would have been amortizable, except that any remaining disallowed loss is allowed in full on the first date on which all other retained intangibles have been disposed of or become worthless.

(2) *Treatment of certain nonrecognition and exchange*

transactions—(i) *In general*—(A) *Transfer disregarded.* Except as otherwise provided in paragraph (h) of this section, if a section 197 intangible is transferred in a transaction described in paragraph (g)(2)(ii) of this section, the transfer is disregarded in determining—

(*1*) Whether, with respect to so much of the intangible's basis in the hands of the transferee as does not exceed its basis in the hands of the transferor, the intangible is an amortizable section 197 intangible; and

(*2*) The amount of the deduction under section 197 with respect to such basis.

(B) *Application of general rule.* If the intangible described in paragraph (g)(2)(i)(A) of this section was an amortizable section 197 intangible in the hands of the transferor, the transferee will continue to amortize its adjusted basis, to the extent it does not exceed the transferor's adjusted basis, ratably over the remainder of the transferor's 15-year amortization period. If the intangible was not an amortizable section 197 intangible in the hands of the transferor, the transferee's adjusted basis, to the extent it does not exceed the transferor's adjusted basis, cannot be amortized under section 197. In either event, the intangible is treated, with respect to so much of its adjusted basis in the hands of the transferee as exceeds its adjusted basis in the hands of the transferor, in the same manner for purposes of section 197 as an intangible acquired from the transferor in a transaction that is not described in paragraph (g)(2)(ii) of this section. The rules of this paragraph (g)(2)(i) also apply to any subsequent transfers of the intangible in a transaction described in paragraph (g)(2)(ii) of this section.

(ii) *Transactions covered.* The transactions described in this paragraph (g)(2)(ii) are—

(A) Any transaction described in section 332, 351, 361, 721, or 731; and

(B) Any transaction between corporations that are members of the same consolidated group immediately after the transaction.

(iii) *Certain exchanged-basis property.* This paragraph (g)(2)(iii) applies to property that is acquired in a transaction subject to section 1031 or 1033 and is permitted to be acquired without recognition of gain (replacement property). Except as otherwise provided in paragraph (h) of this section, replacement property is treated as if it were the property by reference to which its basis is determined (the predecessor property) in determining whether, with respect to so much of its basis as does not exceed the basis of the predecessor property, the replacement property is an amortizable section 197 intangible and the amortization period under section 197 with respect to such basis. Thus, if the predecessor property was an amortizable section 197 intangible, the taxpayer will amortize the adjusted basis of the replacement property, to the extent it does not exceed the adjusted basis of the predecessor property, ratably over the remainder of the 15-year amortization period for the predecessor property. If the predecessor property was not an amortizable section 197 intangible, the adjusted basis of the replacement property, to the extent it does not exceed the adjusted basis of the predecessor property, may not be amortized under section 197. In either event, the replacement property is treated, with respect to so much of its adjusted basis as exceeds the adjusted basis of the predecessor property, in the same manner for purposes of section 197 as property acquired from the transferee in a transaction that is not subject to section 1031 or 1033. (See paragraph (h) of this section for the application of the anti-churning rules.)

(iv) *Transfers under section 708(b)(1).*—(A) *In general.* Paragraph (g)(2)(i) of this section applies to transfers of section 197 intangibles that occur or are deemed to occur by reason of the termination of a partnership under section 708(b)(1).

(B) *Termination by sale or exchange of interest.* In applying paragraph (g)(2)(i) of this section to a partnership that is terminated pursuant to section 708(b)(1)(B) (relating to a sale or exchange of an interest), the terminated partnership is treated as the transferor and the new partnership is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination. (See paragraph (g)(3) of this section for the treatment of increases in the basis of property of the terminated partnership under section 743(b).)

(C) *Other terminations.* In applying paragraph (g)(2)(i) of this section to a partnership that is terminated pursuant to section 708(b)(1)(A) (relating to cessation of activities by a partnership), the terminated partnership is treated as the transferor and the distributee partner is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination.

(D) *Anti-churning rules.* See paragraph (h) of this section for the application of the anti-churning rules.

(v) *Distributions to which section 732(d) applies.* Paragraph (g)(2)(i) of this section applies to a distribution of a section 197 intangible to which section 732(d) (relating to special partnership basis to transferee) applies. For purposes of section 197, any increase in the basis of the distributed intangible under section 732(d) is taken into account by a partner as if the increased portion were attributable to the partner's acquisition of the underlying partnership property on the date of distribution from the transferor of the partnership interest or the deceased partner, as the case may be. For purposes of the effective date and anti-churning rules (paragraphs (d)(1) and (h) of this section), the intangible is treated as having been acquired by the transferee partner at the time of the transfer of the partnership interest described in section 732(d). For purposes of determining the amortization period under section 197 with respect to any increased basis, however, the intangible is treated as having been acquired by the transferee partner at the time of the distribution described in section 732(a). (See paragraph (h) of this section for the application of the anti-churning rules.)

(vi) *Curative and remedial allocations under section 704(c).* For purposes of paragraph (g)(2)(i) of this section, if a section 197 intangible is transferred to a partnership in a transaction described in section 721, the basis of the intangible in the hands of the transferor includes the amount of any curative or remedial allocations of amortization that are made to a noncontributing partner with respect to the contributed intangible under the curative or remedial methods for making allocations under section 704(c). Thus, for example, if a contributed intangible is not an amortizable section 197 intangible in the hands of the transferor, any remedial allocations of amortization made to a noncontributing partner with respect to the intangible are not amortizable under section 197. See § 1.704–3(c) and (d) for a description of the curative and remedial methods.

(3) *Application of section 754 to acquisitions of an interest in an intangible held through a partnership.* Any increase in the basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property) is taken into account under section 197 by a partner as if the increased portion of the basis were attributable to the partner's acquisition of the underlying partnership property and as if the property were acquired from the distributee partner on the date of the

distribution (in the case of a basis increase under section 734(b)) or from the transferor of the partnership interest on the date of the transfer (in the case of a basis increase under section 743(b)). (See paragraph (h) of this section for the application of the anti-churning rules.)

(4) *Treatment of certain reinsurance transactions*—(i) *In general.* Section 197 applies to any insurance contract acquired from another person through an assumption reinsurance transaction. For purposes of section 197, an assumption reinsurance transaction is—

(A) Any arrangement in which one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company); and

(B) Any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338.

(ii) *Determination of adjusted basis*—(A) *Acquisitions (other than under section 338) of specified insurance contracts.* The amount taken into account for purposes of section 197 as the adjusted basis of specified insurance contracts (as defined in section 848(e)(1)) acquired in an assumption reinsurance transaction that is not described in paragraph (g)(4)(i)(B) of this section is equal to the excess of—

(*1*) The amount paid or incurred (or treated as having been paid or incurred) by the reinsurer for the purchase of the contracts (as determined under § 1.817–4(d)(2)), over

(*2*) The amount of the specified policy acquisition expenses that are attributable to the reinsurer's net positive consideration for the reinsurance agreement (as determined under § 1.848–2(f)(3)).

(B) *Other acquisitions.* [Reserved]

(5) *Amounts paid or incurred for a franchise, trademark, or trade name.* If an amount to which section 1253(d) (relating to the transfer, sale, or other disposition of a franchise, trademark, or trade name) applies is described in section 1253(d)(1)(B) (relating to contingent serial payments), the amount is deductible under section 1253(d)(1) and is not included in the adjusted basis of the intangible for purposes of section 197. Any other amount, whether fixed or contingent, to which section 1253(d) applies is chargeable to capital account under section 1253(d)(2) and is amortizable only under section 197.

(6) *Amounts properly taken into account in determining the cost of property that is not a section 197 intangible.* Section 197 does not apply to an amount that is properly taken into account in determining the cost of property that is not a section 197 intangible. The entire cost of acquiring the other property is included in its basis and recovered under other applicable Internal Revenue Code provisions.

(7) *Treatment of amortizable section 197 intangibles as depreciable property*—(i) *In general.* An amortizable section 197 intangible is treated as property of a character subject to the allowance for depreciation under section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221, but if held for more than one year, it generally qualifies under section 1231 as property used in a trade or business. Also, an amortizable section 197 intangible is section 1245 property and section 1239 applies to any gain recognized upon its sale or exchange between related persons (as defined in section 1239(b)).

(ii) *Exceptions and limitations*—(A) *Unstated interest and original issue discount rules.* In the case of the acquisition of any amortizable section 197 intangible in a transaction that would not be treated as the sale or exchange of property by the person from which the intangible was acquired, paragraph (g)(7)(i) of this section shall not apply (and the amortizable section 197 intangible shall not be treated as property) for purposes of—

(*1*) Section 483(c) (relating to payments on account of the sale or exchange of property); and

(*2*) Section 1274(c) (relating to debt instruments given in consideration for the sale or exchange of property).

(B) *Treatment of other parties to transaction.* No person shall be treated as having sold, exchanged, or otherwise disposed of property in a transaction for purposes of any provision of the Internal Revenue Code solely by reason of the application of paragraph (g)(7)(i) of this section to any other party to the transaction.

(h) *Anti-churning rules*—(1) *Conversions of existing goodwill, going concern value, and certain other section 197 intangibles.* Except as otherwise provided in this paragraph (h), goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable prior to the enactment of section 197 may not be amortized as an amortizable section 197 intangible if the section 197 intangible is acquired by a taxpayer after August 10, 1993 (or after July 25, 1991, if a valid retroactive election pursuant to § 1.197–1T has been made) and either—

(i) The taxpayer or a related person held or used the intangible or an interest therein at any time during the transition period;

(ii) The taxpayer acquired the intangible from a person that held the intangible at any time during the transition period and, as part of the transaction, the user of the intangible does not change; or

(iii) The taxpayer grants the right to use the intangible to a person (or a person related to that person) that held or used the intangible at any time during the transition period.

(2) *Amounts deductible under section 1253(d).* For purposes of paragraph (h)(1) of this section, deductions allowable under section 1253(d)(2) or deductions allowable pursuant to an election under section 1253(d)(3) (in either case as in effect prior to the enactment of section 197) are treated as deductions allowable for amortization.

(3) *Transition period.* For purposes of this paragraph (h), the transition period begins on July 25, 1991, and ends on August 10, 1993, except that for taxpayers that made a valid retroactive election pursuant to § 1.197–1T, the transition period is July 25, 1991.

(4) *Exceptions.* The anti-churning rules of this paragraph (h) do not apply to—

(i) The acquisition of an intangible by a taxpayer if the basis of the intangible is determined under section 1014(a); or

(ii) The acquisition of an intangible by a taxpayer that is an amortizable section 197 intangible in the hands of the seller (or transferor), but only if the acquisition by the taxpayer or sale by the seller (or transfer by the transferor) was not part of a transaction or a series of related transactions in which the seller (or transferor) previously acquired the intangible or interest therein.

(5) *Special partnership provisions*—(i) *Basis increases.* In determining whether the anti-churning rules of this paragraph (h) apply to any increase in the basis of partnership property under section 732, 734, or 743, the determinations are made at the partner level and each partner is treated as having owned and used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to an increase in the basis of partnership property under section 743(b) that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest either is not related to the person transferring the partnership interest or acquired the interest upon the death of the former partner. Similarly, the anti-churning rules do not apply to a continuing partner's proportionate share of an increase in the

basis of partnership property under section 734(b) that occurs upon the distribution of property of a partnership that has made a section 754 election if the continuing partner is not related to the distributee partner.

(ii) *Curative and remedial allocations under section 704(c).* In determining whether the anti-churning rules of this paragraph (h) apply, any curative or remedial allocation of amortization made to a noncontributing partner under the curative or remedial methods for making allocations under section 704(c) is treated in the same manner as a noncurative or nonremedial allocation of amortization. Thus, for example, if the anti-churning rules would apply to a nonremedial allocation of amortization to a noncontributing partner, the anti-churning rules apply to any remedial allocation of amortization. See § 1.704–3 (c) and (d) for a description of the curative and remedial methods.

(6) *Related person*—(i) *In general.* Except as otherwise provided in paragraph (h)(6)(iii) of this section, a person is related to another person for purposes of this paragraph (h) if—

(A) The person bears a relationship to that person that would be specified in section 267(b) (determined without regard to section 267(e)) and, by substitution, section 267(f)(1), if those sections were amended by substituting 20 percent for 50 percent; or

(B) The person bears a relationship to that person that would be specified in section 707(b)(1) if that section was amended by substituting 20 percent for 50 percent; or

(C) The persons are engaged in trades or businesses under common control (within the meaning of section 41(f)(1)(A) and (B)).

(ii) *Time for testing relationships.* For purposes of this paragraph (h), a person is treated as related to another person if the relationship exists—

(A) In the case of a single transaction, immediately before or immediately after the acquisition of the intangible involved; or

(B) In the case of a series of related transactions, at any time during the period beginning immediately before the earliest acquisition and ending immediately after the last acquisition of any intangible acquired in the series of transactions.

(iii) *De minimis rule*—(A) *In general.* Two corporations shall not be treated as related persons for purposes of this paragraph (h)(6) if—

(*1*) The corporations would (but for the application of this paragraph (h)(6)(iii)) be treated as related persons solely by reason of substituting "more than 20 percent" for "more than 50 percent" in section 267(f)(1)(A); and

(*2*) The beneficial ownership interest of one corporation in the stock of the other corporation represents less than 10 percent of the total combined voting power of all classes of stock entitled to vote and less than 10 percent of the total value of the shares of all classes of stock outstanding.

(B) *Determination of beneficial ownership interest.* For purposes of this paragraph (h)(6)(iii), the beneficial ownership interest of one corporation in the stock of another corporation shall be determined under the principles of section 318(a), except that—

(*1*) In applying section 318(a)(2)(C), the 50 percent limitation contained therein shall not be applied; and

(*2*) Section 318(a)(3)(C) shall be applied by substituting "20 percent" for "50 percent".

(*7*) *Special rules for entities that owned or used property at any time during the transition period and that are no longer in existence.* A corporation, partnership, or trust that owned or used property at any time during the transition period and that is no longer in existence is deemed to be in existence for purposes of determining whether the taxpayer that acquired the property is related to the corporation, partnership, or trust.

(8) *Special rules for section 338 deemed acquisitions.* In the case of a qualified stock purchase that is treated as a deemed sale and purchase of assets pursuant to section 338, the corporation that is treated as selling its assets as a result of an election thereunder (old target) is not considered related to the corporation that is treated as purchasing the assets (new target) if stock of old target meeting the requirements of section 1504(a)(2) is, or is deemed to have been, acquired by purchase after July 25, 1991. See § 1.338–2(d). Thus, for example, if a corporation (the purchasing corporation) makes a qualified stock purchase of the stock of another corporation (target) from unrelated third parties in July 1997, and a section 338 election is made by the purchasing corporation, the deemed asset purchase shall not be considered as an acquisition between related persons solely by virtue of the fact that old target and new target are treated as the same corporation for certain other purposes of the Code or that old target and new target are the same corporation under the laws of the State or other jurisdiction of its organization. However, the anti-churning rules of this paragraph (h) may nevertheless apply to a deemed asset purchase resulting from a section 338 election because old target and new target are otherwise treated as related parties within the meaning of paragraph (h)(6) of this section.

(9) *Exception to anti-churning rules where gain is recognized*—(i) *In general.* If a taxpayer would not be subject to paragraph (h) but for the substitution of 20 percent for 50 percent under paragraph (h)(6)(i)(A) of this section and the person (whether or not subject to Federal income tax) from which the taxpayer acquires the intangible elects to recognize gain on the disposition of the intangible and, notwithstanding any other provision of the Internal Revenue Code, agrees to pay an amount that, when added to any other Federal income tax, equals the gain on the disposition multiplied by the highest marginal rate of tax imposed by section 1 (for individuals, estates, or trusts) or 11 (for corporations), whichever is applicable, for the taxable year in which the gain is realized by the person from which the taxpayer acquires the intangible, then the anti-churning rules described in this paragraph (h) only apply to the extent the taxpayer s adjusted basis in the intangible exceeds the gain recognized.

(ii) *Manner of making election.* [Reserved]

(iii) *Determination of highest marginal rate of tax.* For the purpose of determining the highest marginal rate of tax applicable to the person from which the taxpayer acquires the intangible, the following rules shall apply:

(A) *Noncorporate taxpayers.* In the case of an individual, estate, or trust, the highest marginal rate of tax shall be the highest marginal rate of tax in effect under section 1, determined without regard to section 1(h).

(B) *Corporations and tax-exempt entities.* In the case of a corporation or an entity that is exempt from tax under section 501(a), the highest marginal rate of tax shall be the highest marginal rate of tax in effect under section 11, determined without regard to any rate that is added to the otherwise applicable rate in order to offset the effect of the graduated rate schedule.

(iv) *Special rule for pass-through entities.* In the case of a partnership or S corporation, the election under paragraph (h)(9)(i) of this section—

(A) Shall be made by the entity rather than by its owners or members; and

(B) Shall constitute an election by each of the owners or members of the entity (rather than the entity itself) to pay a tax, determined as provided in this paragraph (h)(9), on the portion of the gain properly allocable to each such owner or member.

(v) *Coordination with other provisions*—(A) *In general.* For purposes

of applying any provision of chapter 1 or chapter 6 of the Code other than section 197(f)(9)(B), both the amount of gain subject to the tax determined under paragraph (h)(9)(i) of this section and the amount of the tax shall be disregarded. Thus, for example, the amount of the gain shall not be reduced by any net operating loss deduction under section 172(a), any capital loss under section 1212, or any other similar loss or deduction. The amount of tax determined under paragraph (h)(9)(i) of this section shall not be reduced by any credit of the taxpayer. In computing the amount of any net operating loss, capital loss, or other similar loss or deduction, or any credit that may be carried to any taxable year, any gain recognized, and any tax paid, under paragraph (h)(9)(i) of this section shall not be taken into account.

(B) *Section 1374.* No provision of paragraph (h)(9)(iv) of this section shall preclude the application of section 1374 (relating to a tax on certain built-in gains of S corporations) to any gain with respect to which the election described in paragraph (h)(9)(i) of this section is made. Neither paragraph (h)(9)(iv) nor paragraph (h)(9)(v)(A) of this section shall be treated as precluding a taxpayer from applying the provisions of section 1366(f)(2) (relating to treatment of the tax imposed by section 1374 as a loss sustained by the S corporation) in determining the amount of tax payable under paragraph (h)(9)(i) of this section.

(C) *Procedural and administrative provisions.* For purposes of subtitle F, the amount determined under paragraph (h)(9)(i) of this section is treated as a tax imposed by section 1 or 11, as appropriate.

(D) *Installment method.* The gain subject to the tax determined under paragraph (h)(9)(i) of this section may not be reported under the method described in section 453(a). Any such gain that would, but for the application of this paragraph (h)(9)(v)(D), be taken into account under section 453(a) shall be taken into account in the same manner as if an election under section 453(d) (relating to the election not to apply section 453(a)) had been made.

(10) *Transactions subject to both anti-churning and nonrecognition rules.* If a person acquires a section 197 intangible in a transaction described in paragraph (g)(2) of this section from a person in whose hands the intangible was an amortizable section 197 intangible, and as a result of the transaction, the person is or becomes related to any person described in paragraph (h)(1) of this section, the intangible ceases to be an amortizable section 197 intangible in the hands of the transferee unless the exception provided in paragraph (h)(4)(ii) of this section applies. If a person acquires a section 197 intangible in anticipation of becoming related to any person described in paragraph (h)(1) of this section, the intangible is not an amortizable section 197 intangible in the hands of the transferee.

(11) *Anti-churning anti-abuse rule.* Section 197 does not apply to any intangible acquired by a taxpayer if the taxpayer acquires the intangible in a transaction one of the principal purposes of which is to avoid any of the anti-churning rules for intangibles described in paragraph (h)(1) of this section. Thus, for example, if section 197 intangibles are acquired in a transaction (or series of related transactions) in which options to acquire stock are issued to a party to the transaction, but the option is not treated as having been exercised for purposes of paragraph (h)(6) of this section, this paragraph (h)(11) may apply to the transaction.

(i) [Reserved].

(j) *General anti-abuse rule.* The rules in this section shall be interpreted and applied as necessary and appropriate to prevent avoidance of the purposes of section 197. If one of the principal purposes of a transaction is to achieve a tax result that is inconsistent with the purposes of section 197, the Commissioner can recast the transaction for Federal tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 197, in light of the applicable statutory and regulatory provisions and the pertinent facts and circumstances.

(k) *Examples.* The following examples illustrate the application of this section:

Example 1. Computer software. (i) X purchases all of the assets of an existing trade or business from Y. One of the assets acquired is all of Y's rights in certain computer software previously used by Y under the terms of a nonexclusive license from the software developer. The software was developed for use by manufacturers to maintain a comprehensive accounting system, including general and subsidiary ledgers, payroll, accounts receivable and payable, cash receipts and disbursements, fixed asset accounting, and inventory cost accounting and controls. The software was not substantially modified for use by Y within the meaning of paragraph (c)(4)(i) of this section and was acquired directly by Y from the developer. The developer does not maintain wholesale or retail outlets but markets the software directly to ultimate users. Y's license of the software is limited to an entity that is actively engaged in business as a manufacturer.

(ii) Notwithstanding these limitations, the software is considered to be readily available to the general public for purposes of paragraph (c)(4)(i) of this section. Accordingly, the software is not a section 197 intangible.

Example 2. Governmental rights of fixed duration. (i) City M operates a municipal water system. In order to induce X to locate a new manufacturing business in the city, M grants X the right to purchase water for 16 years at a specified price. X incurs legal fees and other costs for professional services in the amount of $10x in connection with its efforts to obtain these rights.

(ii) The rights granted by M are described in section 197(e)(4)(B) and paragraph (c)(6) of this section and, thus, are not a section 197 intangible. This exclusion applies notwithstanding that the rights may not qualify for exclusion under section 197(e)(4)(D) and paragraph (c)(13) of this section or that they also may be described in section 197(d)(1)(D) and paragraph (b)(8) of this section and, as such, may not be treated as self-created intangibles eligible for exclusion under section 197(c)(2).

Example 3. Advertising costs. (i) Q manufactures and sells consumer products through a series of wholesalers and distributors. In order to increase sales of its product by encouraging consumer loyalty to its products and to enhance the value of the goodwill, trademarks, and trade names of the business, Q advertises its products to the consuming public. It regularly incurs costs to develop radio, television, and print advertisements. These costs generally consist of employee costs and amounts paid to independent advertising agencies. Q also incurs costs to run these advertisements in the various media for which they were developed. Except for the possible application of section 197, these costs would be ordinary and necessary expenses deductible under section 162.

(ii) The advertising costs are not subject to amortization under section 197 pursuant to paragraph (a)(3) of this section because they are otherwise deductible.

Example 4. Covenant not to compete acquired in connection with stock redemption. (i) R, a corporation, redeems all of its stock owned by A, an individual. R and A have no business relationships with each other except for the corporate-shartholder relationship. In connection with the stock redemption, R and A enter into an agreement containing a covenant not to compete. Under this agreement, A agrees that A will not compete with the business of R within a prescribed geographical territory for a period of three years after the date on which the stock redemption is completed. In exchange for this agreement, R pays A consideration in addition to the amount paid for the stock redeemed by R.

(ii) Because the agreement was entered into in connection with the reacquisition by R of its stock, section 162(k) provides that no deduction shall be allowed for any amount paid or incurred pursuant to the agreement. Accordingly, pursuant to paragraph (a)(4) of this section, section 197 does not apply to these amounts.

Example 5. Substantial portion of trade or business. (i) S owns and operates 100 restaurants in various locations. Each of these restaurants is operated using a well-established trade name made available to S

under the terms of a franchise agreement with F. S determined to cease operating one of the franchised restaurants. Accordingly, S sold to B all of the assets that it had used exclusively in connection with the operation of its restaurant at that location. B agreed to extend an offer of employment to all of the employees at that location. B acquired no rights to the franchise or to any of the trademarks or trade names that had been used by S.

(ii) The transaction between B and S is a transaction involving the acquisition of assets constituting a trade or business or a substantial portion thereof within the meaning of paragraph (e) of this section, notwithstanding that B did not acquire a franchise from S or that the assets did not represent a substantial portion of the assets used by S in that trade or business.

Example 6. Separate acquisition of franchise. (i) S is a franchisor of retail outlets for specialty coffees. On July 1, 1997, G enters into an agreement with S pursuant to which G is permitted to acquire and operate a store using the S trademark and trade name at the location specified in the agreement. G agrees to pay S $100,000 upon execution of the agreement and also agrees to pay, on a monthly basis throughout the term of the franchise, a specified percentage of gross sales from the store. The agreement contains detailed specifications for the construction and operation of the business, but G is not required to purchase from S any of the materials necessary to construct the improvements at the location specified in the franchise agreement.

(ii) The franchise is a section 197 intangible within the meaning of paragraph (b)(10) of this section. The franchise does not qualify for the exclusion relating to self-created intangibles described in section 197(c)(2) and paragraph (d)(2) of this section because the franchise is described in section 197(d)(1)(F). In addition, because the acquisition of the franchise constitutes the acquisition of an interest in a trade or business or a substantial portion thereof, the franchise may not be excluded under section 197(e)(4). Thus, the franchise is an amortizable section 197 intangible, the basis of which must be recovered over a 15-year period. However, the amounts to be paid by G computed as a percentage of gross sales are not subject to the provisions of section 197 by reason of section 197(f)(4)(C) and paragraph (b)(10)(ii) of this section.

Example 7. Acquisition and amortization of covenant not to compete. (i) As part of the acquisition of a trade or business from C, B and C enter into an agreement containing a covenant not to compete. Under this agreement, C agrees that it will not compete with the business acquired by B within a prescribed geographical territory for a period of three years after the date on which the business is sold to B. In exchange for this agreement, B agrees to pay C $90,000 per year for each year in the term of the agreement. The agreement further provides that, in the event of a breach by C of his obligations under the agreement, B may terminate the agreement, cease making any of the payments due thereafter, and pursue any other legal or equitable remedies available under applicable law. Assume that the amounts payable to C under the agreement represent the value of C's obligations to B pursuant to the covenant and that the present fair market value of B's rights under the agreement is $225,000. The aggregate consideration paid for all assets acquired in the transaction other than the covenant exceeds the sum of the amount of Class I assets and the aggregate fair market value of all Class II and Class III assets and all Class IV assets other than the covenant.

(ii) Because the covenant is acquired in an applicable asset acquisition (within the meaning of section 1060(c)), the basis of B in the covenant cannot exceed its fair market value. See § 1.1060–1T(e)(1). Under section 197(f)(3) and paragraphs (f)(3)(i) and (f)(4) of this section, the adjusted basis of B in the agreement, determined as of the date on which the agreement is entered into, is $225,000. B's deduction for amortization with respect to the amounts to be paid under the agreement is $1,250 per month, or $15,000 per year, for each year in the 15-year period beginning on the date on which the agreement is entered into. The excess of the amounts payable pursuant to the agreement over the amount allocated to the covenant under § 1.1060–1T(e)(1), or $45,000, is allocated to Class V assets.

Example 8. Breach of covenant not to compete subsequent to acquisition. (i) The facts are the same as in *Example 7*, except that at the end of the second year of the agreement, C breaches the agreement by competing against B. B and C enter into a settlement of all claims arising under the agreement and the subsequent breach by C by agreeing that B is not obligated to pay C the final installment of $90,000.

(ii) Under paragraph (g)(1)(iii) of this section, the covenant is not treated as having been disposed of (or becoming worthless) because C has not disposed of all interests in the trade or business acquired in the same transaction as the covenant. The covenant is not a contingent income asset within the meaning of § 1.1060–1T(f)(4)(i). Accordingly, B must decrease the adjusted basis of any asset acquired from C by $90,000 at the beginning of the third year of the agreement in the manner provided by § 1.1060–1T(f)(3)(i). To the extent that any decrease is allocated to an amortizable section 197 intangible, B must reduce the amount of its deduction for amortization under section 197 accordingly.

Example 9. Loss disallowance rules involving related persons. (i) Assume that X and Y are treated as a single taxpayer for purposes of paragraph (g)(1)(iv) of this section. In a single transaction, X and Y acquired from Z all of the assets used by Z in a trade or business. Z had operated this business at two locations, and X and Y each desired to acquire the assets used by Z at one of the locations. Three years after the acquisition, X sold all of the assets, including amortizable section 197 intangibles, to an unrelated purchaser at a loss of $120,000.

(ii) Because X and Y are treated as a single taxpayer for purposes of the loss disallowance rules of section 197(f)(1) and paragraph (g)(1) of this section, X may not recognize its loss on the sale of the amortizable section 197 intangibles. Under paragraph (g)(1)(iv) of this section, X must amortize its disallowed loss under section 197, and Y may not increase its adjusted basis in its amortizable section 197 intangibles by the amount of the realized loss of X that is disallowed. X must amortize the disallowed loss over the remainder of the amortization period for the amortizable section 197 intangibles it sold. Accordingly, X must amortize the disallowed loss at the rate of $10,000 per year (or $833 per month) for each of the 12 years remaining in the 15-year period.

Example 10. Disposition of retained intangibles by related person. (i) The facts are the same as in *Example 9*, except that 10 years after the acquisition of the assets by X and Y and seven years after the sale of the assets by X, Y sells all of the assets acquired from Z, including amortizable section 197 intangibles, to an unrelated purchaser.

(ii) Upon the sale of assets by Y, X may recognize a loss equal to the unamortized loss. Accordingly, pursuant to paragraph (g)(1)(iv) of this section, X may recognize a loss in the amount of $50,000, the amount obtained by reducing the loss on the sale of the assets at the end of the third year ($120,000) by the amount of amortization allowed for the fourth through the tenth years ($70,000).

Example 11. Acquisition of an interest in partnership with no section 754 election. (i) A, B, and C each contribute $1,500 for equal shares in general partnership P. On January 1, 1998, P acquires as its sole asset an amortizable section 197 intangible for $4,500. P still holds the intangible on January 1, 2003, at which time the intangible has an adjusted basis to P of $3,000, and A, B, and C each have an adjusted basis of $1,000 in their partnership interests. D (who is not related to A) acquires A's interest in P for $1,600. No section 754 election is in effect for 2003.

(ii) Pursuant to paragraph (h)(5)(i) of this section, there is no change in the basis or amortization of the intangible and D merely steps into the shoes of A with respect to the intangible. D's proportionate share of P's adjusted basis in the intangible is $1,000, which continues to be amortized over the 10 years remaining in the original 15-year amortization period for the intangible.

Example 12. Acquisition of an interest in partnership with a section 754 election. (i) The facts are the same as in *Example 11*, except that a section 754 election is in effect for 2003.

(ii) Pursuant to section 197(f)(9)(E) and paragraph (h)(5)(i) of this section, for purposes of section 197, D is treated as if P owns two assets. D's proportionate share of P's adjusted basis in one asset is $1,000, which continues to be amortized over the 10 years remaining in the original 15-year amortization period. For the other asset, D's proportionate share of P's adjusted basis is $600 (the amount of the basis increase under section 743 as a result of the section 754 election), which is amortized over a new 15-year period beginning January 2003. With respect to B and C, P's remaining $2,000 adjusted basis in the intangible continues to be amortized over the 10 years remaining in the original 15-year amortization period.

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Example 13. Payment to a retiring partner by partnership with a section 754 election. (i) The facts are the same as in *Example 11*, except that a section 754 election is in effect for 2003 and, instead of D acquiring A's interest in P, A retires from P. A, B, and C are not related to each other within the meaning of paragraph (h)(6) of this section. A receives a payment under section 736 from P of $1,600, all of which is in exchange for A's interest in the intangible asset owned by P.

(ii) Pursuant to paragraph (h)(5)(i) of this section, because of the section 734 adjustment, P is treated as having two amortizable section 197 intangibles, one with a basis of $3,000 and a remaining amortization period of 10 years and the other with a basis of $600 and a new amortization period of 15 years.

Example 14. Termination of partnership under section 708(b)(1)(B). (i) A and B are partners with equal shares in the capital and profits of general partnership P. P's only asset is an amortizable section 197 intangible, which P had acquired on January 1, 1994. On January 1, 1999, the asset had a fair market value of $100 and a basis to P of $50. On that date, A sells his entire partnership interest in P to C, who is unrelated to A, for $50. At the time of the sale, the basis of each of A and B in their respective partnership interests is $25.

(ii) The sale causes a termination of P under section 708(b)(1)(B). Under section 708, the transaction is treated as if P transfers its sole asset to a new partnership in exchange for the assumption of its liabilities and the receipt of all of the interests in the new partnership. Immediately thereafter, P is treated as if it is liquidated, with B and C each receiving their proportionate share of the interests in the new partnership. The contribution by P of its asset to the new partnership is governed by section 721, and the liquidating distributions by P of the interests in the new partnership are governed by section 731. However, C does not realize a special basis adjustment under section 743 with respect to the amortizable section 197 intangible unless P had a section 754 election in effect for its taxable year in which the deemed transfer of the asset to the new partnership occurred.

(iii) Under section 197, if P had a section 754 election in effect for its taxable year in which the deemed transfer of the asset to the new partnership occurred, C is treated as if the new partnership had acquired two assets from P immediately preceding its termination. Even though the adjusted basis of the new partnership in the two assets is determined solely under section 723, because the transfer of assets is a transaction described in section 721, the application of sections 743(b) and 754 to P immediately before its termination causes P to be treated as if it held two assets, for purposes of section 197, at this time. B's and C's proportionate share of the new partnership's adjusted basis is $25 each in one asset, which continues to be amortized over the 10 years remaining in the original 15-year amortization period. For the other asset, C's proportionate share of the new partnership's adjusted basis is $25 (the amount of the basis increase resulting from the application of section 743 to the sale or exchange by A of the interest in P), which is amortized over a new 15-year period beginning in January 1999.

(iv) If P did not have a section 754 election in effect for its taxable year in which the sale of the partnership interest by A to C occurred, the adjusted basis of the new partnership in the amortizable section 197 intangible is determined solely under section 723, because the transfer is a transaction described in section 721, and P does not have a basis increase in its section 197 intangible. Under section 197(f)(2) and paragraph (g)(2) of this section, the new partnership continues to amortize the amortizable section 197 intangible over the 10 years remaining in the original 15-year amortization period. No additional amortization is allowable with respect to this asset under section 197.

Example 15. Disguised sale to partnership. (i) Assume that E and F are individuals who are unrelated to each other within the meaning of paragraph (h)(6) of this section. E has been engaged in the active conduct of a trade or business as a sole proprietor since 1990. E and F form EF Partnership. E transfers all of the assets of the business, having a fair market value of $100x, to EF, and F transfers $40x of cash to EF. E receives a 60 percent interest in EF and the $40x of cash contributed by F, and F receives a 40 percent interest in EF, under circumstances in which the transfer by E is treated as a sale of property to EF under §1.707–3(b).

(ii) Under §1.707–3(a)(1), the transaction is treated as if E had sold to EF a 40 percent interest in each asset for $40x and contributed the remaining 60 percent interest in each asset to EF in exchange solely for an interest in EF. Because E and EF are related persons within the meaning of paragraph (h)(6) of this section, no portion of any transferred section 197 intangible that E held during the transition period (as defined in paragraph (h)(3) of this section) is an amortizable section 197 intangible pursuant to paragraph (h)(1) of this section. Section 197(f)(9)(E) and paragraph (h)(5) of this section do not apply to any portion of the section 197 intangible in the hands of EF because the basis of EF in these assets was not increased under any of sections 732, 734, or 743.

Example 16. Acquisition by related person in nonrecognition transaction. (i) A owns a nonamortizable intangible that A acquired in 1990. In 1997, A sells a one-half interest in the intangible to B for cash. Immediately after the sale, A and B, who are unrelated to each other, form partnership P as equal partners. A and B each contribute their one-half interest in the intangible to P.

(ii) P has a transferred basis in the intangible from A and B under section 723. The nonrecognition transfer rule under paragraph (g)(2)(i) of this section applies to A s transfer of its one-half interest in the intangible to P, and consequently P steps into A's shoes with respect to A's nonamortizable transferred basis. The anti-churning rules of paragraph (h)(1)(i) of this section apply to B's transfer of its one-half interest in the intangible to P, because A, who is related to P under paragraph (h)(6) of this section, held B's one-half interest in the intangible during the transition period. Pursuant to paragraph (h)(10) of this section, these rules apply to B's transfer of its one-half interest to P even though the nonrecognition transfer rule under paragraph (g)(2)(i) of this section would have permitted P to step into B's shoes with respect to B's otherwise amortizable basis. Therefore, P's entire basis in the intangible is nonamortizable.

Example 17. Acquisition of partnership interest following formation of partnership. (i) The facts are the same as in *Example 16* except that, in 1996, A formed P with an affiliate and contributed the intangible to the partnership and except that thereafter, in an unrelated transaction, B purchases a 50 percent interest in P. P has a section 754 election in effect.

(ii) For the reasons set forth in *Example 14*(iii), B is treated as if P owns two assets. B's proportionate share of P's adjusted basis in one asset is the same as A's proportionate share of P's adjusted basis in that asset, which is not amortizable under section 197. For the other asset, B's proportionate share of the remaining adjusted basis of P is amortized over a new 15-year period.

Example 18. Acquisition by related corporation in nonrecognition transaction. (i) The facts are the same as *Example 16*, except that P is a corporation.

(ii) P has a transferred basis in the intangible from A and B under section 362. Pursuant to paragraph (h)(10) of this section, the application of the nonrecognition transfer rule under paragraph (g)(2)(i) and the anti-churning rules of paragraph (h)(1)(i) of this section to the facts of this *Example 18* is the same as in *Example 16*. Thus, P's entire basis in the intangible is nonamortizable.

Example 19. Acquisition from corporation related to purchaser through remote indirect interest. (i) X, Y, and Z are each corporations that have only one class of issued and outstanding stock. X owns 25 percent of the stock of Y and Y owns 25 percent of the outstanding stock of Z. No other shareholder of any of these corporations is related to any other shareholder or to any of the corporations. On June 30, 1997, X purchases from Z section 197 intangibles that Z owned during the transition period (as defined in paragraph (h)(3) of this section).

(ii) Pursuant to paragraph (h)(6)(iii)(B) of this section, the beneficial ownership interest of X in Z is 6.25 percent, determined by treating X as if it owned a proportionate (25 percent) interest in the stock of Z that is actually owned by Y. Thus, even though X is related to Y and Y is related to Z, X and Z are not considered to be related for purposes of the anti- churning rules of section 197.

Example 20. Gain recognition election. (i) B owns 25 percent of the stock of S, a corporation that uses the calendar year as its taxable year. No other shareholder of B or S is related to each other. S is not a member of a controlled group of corporations within the meaning of section 1563(a). S has section 197 intangibles that it owned during the transition period and was not permitted to amortize or depreciate under any other provision of the Code. S had a basis of $25,000 in the intangibles. In 1997, S sells

these intangibles to B for $75,000. S recognizes a gain of $50,000 on the sale and has no other items of income, deduction, gain, or loss for the year, except that S also has a net operating loss of $20,000 from prior years that it would otherwise be entitled to use in 1997 pursuant to section 172(b). As part of the transaction with B, S agrees to make the gain recognition election pursuant to section 197(f)(9)(B).

(ii) If the gain recognition election had not been made, S would have taxable income of $30,000 for 1997 and a tax liability of $4,500. As the result of the election, S must pay a total tax liability for the year of $17,500 (35 percent of $50,000), consisting of the sum of its regular tax liability of $4,500 and the additional amount of $13,000 pursuant to section 197(f)(9)(B).

(iii) Pursuant to paragraph (h)(9)(v)(A) of this section, S determines the amount of its net operating loss deduction in subsequent years without regard to the gain recognized on the sale of the section 197 intangible to B. Accordingly, the entire $20,000 net operating loss deduction that would have been available in 1997 but for the gain recognition election may be used in 1998, subject to the limitations of section 172.

(iv) B has a basis of $75,000 in the section 197 intangibles acquired from S. As the result of the gain recognition election by S, B may amortize $50,000 of its basis under section 197. The remaining basis may not be amortized by B.

Example 21. Section 338 election. (i) P corporation makes a qualified stock purchase of the stock of T corporation from two shareholders in July 1997, and a section 338 election is made by P. One of the selling shareholders is an individual who owns 25 percent of the total value of the stock of each of the T and P corporation. No other shareholder of either T or P owns stock in both of these corporations, and no other shareholder is related to any other shareholder of either corporation.

(ii) Old target and new target (as these terms are defined in § 1.338–1(c)(13)) are members of a controlled group of corporations under section 267(b)(3), as modified by section 197(f)(9)(C)(i), and any section 197 intangible held by old target at any time during the transition period is not an amortizable section 197 intangible in the hands of new target. However, a gain recognition election under paragraph (h)(9)(i) of this section may be made with respect to this transaction.

(l) *Effective dates.* This section is applicable on the date final regulations are published in the **Federal Register**, except that §1.197–2(c)(13) (exception from section 197 for separately acquired rights of fixed duration or amount) is applicable August 11, 1993 (or July 26, 1991, if a valid retroactive election has been made under §1.197–1T).

Margaret Milner Richardson.

Commissioner of Internal Revenue.

[FR Doc. 97–866 Filed 1–9–97; 2:53 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 24

RIN 1018–AD97

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, as designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service also proposes to amend these same regulations by adding the USDA port at Port Huron, Michigan, as a port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these ports to the list of designated ports would facilitate trade and the enforcement of the Act and CITES.

Additionally, the Service proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by removing Laredo, Texas, from the list of ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA no longer operates Laredo as a plant inspection station and has proposed to remove it from the list of plant inspection stations in its regulations. Because the Laredo plant inspection station has closed, it no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. However, the USDA has sufficient staff in place in Laredo for the Service to add it instead as a designated port for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, as discussed in the above paragraph.

DATES: Comments must be submitted on or before March 17, 1997. Requests for a public hearing must be received by March 3, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the same address between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday during the comment period.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538[f]) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants listed as endangered or threatened in 50 CFR 17.12 or in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in section 24.12(a) of the regulations. Certain other

USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(g) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.)

For the purposes of its enforcement of the Act and CITES, the Service requires that a port have personnel with expertise in identifying plants listed as endangered or threatened under the Act, or listed under CITES, to ensure that such plants are properly identified by their accompanying documentation. A port also must possess adequate facilities for holding live plants and plant material, since plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. The Service further requires that, whenever possible, ports be located to coincide with established patterns of plant trade in order to help reduce shipping costs.

Effective November 16, 1995, saw-logs, sawn wood, and veneers of bigleaf mahogany (*Swietenia macrophylla*) from populations in the Americas (North America, South America, and the Caribbean) were listed on CITES Appendix III at the request of the government of Costa Rica. As a consequence of this listing, an export of the material included in the listing, from any country except Costa Rica, must be accompanied by a CITES certificate of origin issued by the government of that country. An export from Costa Rica of the material included in the listing must be accompanied by a CITES export permit issued by the Costa Rican government. Saw-logs, sawn wood, and veneers from listed trees currently may be imported into the United States through one of the ports listed in section 24.12(a), designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES; or through one of the ports listed in section 24.12(e), designated for the importation of logs and lumber from trees listed as endangered or threatened under the Act, or listed under CITES. [As part of this proposed rulemaking, the Service is, for the purposes of correctness and consistency, proposing to amend section 24.12(e) by replacing the term "logs and lumber" with the term "saw-logs, sawn wood, and veneers," which is the term used in the CITES listings and in 50 CFR part 23.]

The USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, are established ports of entry for bigleaf mahogany saw-logs, sawn wood, and veneers imported into the United States. Since bigleaf mahogany now is listed in the appendices to CITES, these four ports must, in order to avoid disrupting an established pattern of legitimate trade, be added to the list of ports designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES.

Therefore, the Service has been asked by the USDA to add the USDA ports at Laredo, Fort Lauderdale, Jacksonville, and Panama City to the list of ports in section 24.12(e), designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES. [Although the USDA port at Laredo is currently listed in section 24.12(a), the USDA no longer operates that port as a plant inspection station and has proposed (in 60 FR 13382; March 13, 1995) to remove it from the list of plant inspection stations in its regulations in 7 CFR 319.37–14. Because its plant inspection station has closed, Laredo no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. Therefore, in this proposed rule the Service is proposing to remove Laredo from the list of ports in section 24.12(a), adding it instead to the list of ports in section 24.12(e).]

The Service also has been asked by the USDA to allow the importation of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada through the USDA port of Port Huron, Michigan. In order to allow such importations, the Service must add Port Huron to the list of ports in section 24.12(d), designated for the importation from Canada and the exportation and reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated for those purposes. Adding Port Huron would facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada.

After consultations with the USDA, the Service has determined that the USDA ports at Laredo, Fort Lauderdale, Jacksonville, Panama City, and Port Huron possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, these locations appear to coincide with established patterns of trade. Therefore, the Service proposes to add the ports at Laredo, Fort Lauderdale, Jacksonville, and Panama City to the list of designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, and to add the port at Port Huron to the list of designated ports for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES.

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. Send requests to the Service's Office of Management Authority at the address listed in the **ADDRESSES** section of this document.

Economic Effects

The USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, are established primary ports of entry for bigleaf mahogany saw-logs, sawn wood, and veneers imported into the United States. Since bigleaf mahogany now is listed in the appendices to CITES, the addition of these four ports to the list of ports designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, would avoid disrupting an established pattern of legitimate trade by allowing operations at those ports related to the importation of bigleaf mahogany saw-logs, sawn wood, and veneers to continue with only minor procedural changes. Adding these ports would not have a significant economic impact on any private entities, nor on local or State governments. Also, adding these ports would not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at these ports to qualify them as designated ports.

However, without these ports being designated, the established legitimate

trade in bigleaf mahogany saw-logs, sawn wood, and veneers through these ports would cease. This would increase shipping costs on importers in the United States who have been using Laredo, Fort Lauderdale, Jacksonville, and Panama City as ports of import for bigleaf mahogany saw-logs, sawn wood, and veneers, by forcing these importers to travel out of their way to one of the current designated ports in order to legally import their bigleaf mahogany. The closest designated Mexican border port to the port of Laredo is Brownsville, Texas, about 150 miles away; the closest designated port to the port of Fort Lauderdale is Miami, Florida, about 30 miles away; the closest designated port to the port of Jacksonville is Orlando, Florida, about 125 miles away; and the closest designated port to the port of Panama City is Mobile, Alabama, about 150 miles away.

Adding the USDA port at Port Huron, Michigan, as a designated port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES, likewise would not have a significant economic impact on any private entities, nor on local or State governments. Also, adding this port would not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at the port to qualify it as a designated port. Adding Port Huron as a designated port would facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated for those purposes. However, Port Huron's designation is not expected to result in a significant increase in the importation of such plants from Canada.

Therefore, the Service has determined under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

This rulemaking would not have any direct effects on the States, in their relationship with the Federal Government, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rulemaking would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*) that this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The Department of the Interior has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995, and found it to contain no information collection requirements.

List of Subjects in 50 CFR Part 24

Endangered and threatened species, Exports, Harbors, Imports, and Plants.

Accordingly, the Service proposes to amend title 50, part 24 as follows:

PART 24—[AMENDED]

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. Section 24.12 would be amended by: Removing "Laredo, Texas" from paragraph (a),

b. Adding the words "and Port Huron" immediately following "Detroit" in paragraph (d), and

c. Revising paragraph (e) to read as follows:

§ 24.12 Designated parts.

* * * * *

(e) The U.S. Department of Agriculture ports at Mobile, Alabama; Fort Lauderdale, Jacksonville, and Panama City, Florida; Savannah, Georgia; Baltimore, Maryland; Gulfport, Mississippi; Wilmington and Morehead City, North Carolina; Portland, Oregon; Philadelphia, Pennsylvania; Charleston, South Carolina; Laredo, Texas; Norfolk, Virginia; and Vancouver, Washington, are designated ports for the importation of saw-logs, sawn wood, and veneers from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

* * * * *

Dated: December 5, 1996.

George T. Frampton,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 97–702 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 11
Thursday, January 16, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 10, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping.

OMB Control Number: 0581–0110.

Summary: The dairy inspection program requires that records be kept for tests and analysis performed on milk and milk products.

Need and use of the Information: The dairy inspection program insures that dairy products are produced under sanitary conditions and buyers are purchasing a quality product.

Description of Respondents: Business or other for-profit.

Number of Respondents: 508.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 1525.

Rural Housing Service

Title: 7 CFR 1951–A, "Account Servicing Policies."

OMB Control Number: 0575–0075.

Summary: Information is collected for account servicing of housing and farm credit type loans.

Need and use of the Information: The information is used for the handling of borrower payments and return of paid-in-full and satisfied notes.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 518.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 130.

Forest Service

Title: Bid Form for National Forest Timber for Sale.

OMB Control Number: 0596–0066.

Summary: The National Forest Management Act prescribes that National Forest timber be sold at not less than appraised value. Approximately 90 percent of National Forest timber is sold on a competitive basis in which prospective purchasers need to complete the bid form in order to qualify for bidding on the timber.

Need and use of the Information: The information is necessary to determine if a bidder submitting a bid to the National System timber sale program meets the requirements of the program.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 5,000.

Frequency of Responses: Recordkeeping; Reporting: Quarterly.

Total Burden Hours: 1,250.

Agricultural Marketing Service

Title: Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906.

OMB Control Number: 0581–0068.

Summary: The Market Order sets provisions regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. Information is collected on production, handling and disposition of the crop.

Need and use of the Information: The information is used to develop a marketing policy each year to recommend seasonal quality regulations, to determine handler compliance, and to prepare annual reports.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 428.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 345.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97–1056 Filed 1–15–97; 8:45 am]
BILLING CODE 3410–01–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: January 29–30, 1997.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530.

Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 97–1223 Filed 1–14–97; 12:28 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 961031306700 3–02]

RIN 0607–XX21

Survey of Plant Capacity

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: Notice is hereby given that the Bureau of the Census is conducting the Survey of Plant Capacity for the years 1995 and 1996 under the authority of Title 13, United States Code, Sections 182, 224, and 225. On the basis of information and recommendations received by the Bureau of the Census and other agencies, the data have significant application to the needs of the public and industry. Data will include the rates of use of manufacturing plants during the fourth quarter of the year, based on operating at full production capability and under a national emergency situation.

FOR FURTHER INFORMATION CONTACT: Elinor Champion, Chief, Special Studies Branch, Manufacturing and Construction Division, (301) 457–4683.

SUPPLEMENTARY INFORMATION: The survey results will be used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense. The data will be used to measure inflationary pressure and capital flows, understand productivity determinants, determine industry's ability to meet increasing demand for products in an emergency, and analyze and forecast economic and industrial trends. We will calculate utilization rates for each 4-digit standard industrial classification code in the manufacturing division. The series is the only comprehensive source of capacity utilization rates covering all manufacturing industries on a consistent basis.

The Bureau of the Census will select a sample of manufacturing plants in the United States. We will mail report forms to plants selected for the survey and require response in 30 days.

This survey has been approved by the Office of Management and Budget (OMB) under OMB control number 0607–0175 in accordance with the Paperwork Reduction Act, Public Law 104–13. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based on the foregoing determination, I have directed that the Survey of Plant Capacity be conducted for the purpose of collecting these data.

Dated: January 8, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–1087 Filed 1–15–97; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 010797A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of its Habitat Protection Committee (Committee).

DATES: This meeting will be held beginning at 10:00 a.m. on January 28, 1997, and ending at 3:00 p.m. on January 30, 1997.

ADDRESSES: This meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Leard, Senior Fishery Biologist; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review NMFS' guidelines regarding essential fish habitat (EFH). These guidelines are mandated by the recent passage of amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

The Committee intends to hold a round-table discussion and review what the Council's role should be with regard to the development and implementation of EFH guidelines. The Committee, on behalf of the Council, will develop comments and recommendations for consideration by NMFS.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 21, 1997.

Dated: January 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1092 Filed 1–15–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 95–306]

Submission for OMB Review Entitled Collection of Historically Black Colleges and Universities/Minority Institutions Award Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new collection requirement.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat plans to submit to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Collection of Historically Black Colleges and Universities/ Minority Institutions Award Data (FAR Case 95–306).

DATES: *Comment Due Date:* March 17, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 95–306 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This collection of information is necessary to implement the reporting requirements of Executive Order 12928. The new information collection requirement consists of a new FAR solicitation provision to provide reporting of contract awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs). The Executive Order requires all agencies to promote the participation of HBCUs and MIs in Federal procurement and requires periodic reporting to the President on the agencies' progress in complying with the laws and requirements addressed in the Executive Order. The proposed solicitation provisions will permit agency officials to report accurate information regarding contract awards to HBCUs and MIs.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.05 hours* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents *9,328;* responses per respondent, *1.2;* total annual responses, *11,194;* preparation hours per response, *.05;* and total response burden hours, *560.*

OBTAINING COPIES OF JUSTIFICATIONS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite FAR case 95–306, Collection of Historically Black Colleges and Universities/Minority Institutions Award Data, in all correspondence.

Dated: January 13, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–1093 Filed 1–15–97; 8:45 am]

BILLING CODE 6820–EP–P

Department of the Army

Notice of Availability of the Revised Final Environmental Impact Statement for the Disposal of Chemical Agents and Munitions Stored at Umatilla Chemical Depot, Oregon

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the Notice of Availability of the Revised Final Environmental Impact Statement (FEIS) on the construction and operation of the proposed chemical agent demilitarization facility at the Umatilla Chemical Depot, Oregon. The proposed facility will be used to demilitarize all stockpiled chemical agents and munitions currently stored at the Umatilla Chemical Depot. The Revised FEIS examines the potential impacts of on-site incineration, alternative sites within Umatilla Chemical Depot and the "no action" alternative. The "no action" alternative is considered to be a deferral of demilitarization with continued storage of agents and munitions at the Umatilla Chemical Depot.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. On February 6, 1989, the Department of the Army published a Notice of Intent (54 FR 5646) which announced that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Umatilla chemical munitions disposal facility. In 1991, the Department of the Army prepared a Draft EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Umatilla Chemical Depot. In late 1991, preparation of a site-specific EIS for Umatilla was suspended pending the outcome of a National Research Council (NRC) study of alternative technologies for the destruction of chemical agents and munitions and the Army's review of that study. After completion of the NRC study in 1994 and an Army review, the draft EIS was revised. A Notice of Availability for this Revised Draft EIS was published on review, the draft EIS was revised. A Notice of Availability for this Revised Draft EIS was published on January 26, 1996 (61 FR 2508) and made available for public comment. Comments on the Revised Draft EIS were considered and responses were included in the FEIS. A Notice of Availability for this FEIS was published on June 21, 1996 (61 FR 31939). After publication of this FEIS, the program performed an additional review and determined more detailed responses to the public comments were necessary. These responses were incorporated into a Revised FEIS which is the subject of this Notice of Availability. After a 30-day waiting period the Army will publish a Record of Decision. Copies of the Revised FEIS may be obtained by writing to the following address: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–ME, Aberdeen Proving Ground, Maryland 21010–5401.

ADDITIONAL INFORMATION: The Environmental Protection Agency (EPA) will also publish a Notice of Availability for the Revised FEIS in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Above address, or Ms. Lori Geckle at (410) 671–1411/3629.

Dated: December 20, 1996.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–1070 Filed 1–15–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Revised Notice of Public Scoping Meetings for the Environmental Impact Statement for Developing Homeport Facilities for Three Nimitz-Class Aircraft Carriers in Support of the United States Pacific Fleet

SUMMARY: The Department of the Navy announced its intent to prepare this Environmental Impact Statement (EIS) and open scoping in the **Federal Register** on December 3, 1996. The announcement was also mailed to identified interested parties. A separate notice to establish the schedule for public scoping meetings was published in the **Federal Register** on January 10, 1997.

This Revised Notice of Public Scoping Meetings supersedes the notice of January 10, 1997 and sets new dates for scoping meetings and a new meeting place in Hawaii.

The scope of the proposed actions is to: (1) determine the appropriate home port for two nuclear-powered aircraft carriers (CVNs) that will replace two conventionally-powered aircraft carriers (CVs) that are currently homeported at Naval Air Station (NAS) North Island in the Naval Complex San Diego, CA, and (2) reevaluate the current location of one CVN home port at Naval Station (NAVSTA) Everett in order to increase efficiency of support infrastructure, maintenance, and repair capabilities, to reduce costs, and to enhance crew quality of life. Decisions for facilities

development need to be made as soon as possible to accommodate planned arrival schedules of the CVNs to the Pacific Fleet (one as early as 2001) and to gain infrastructure benefits prior to upcoming ship maintenance periods (commencing in 1999).

There are three major U.S. areas of Navy concentration in the Pacific: San Diego, CA complex; Puget Sound, WA complex; and Pearl Harbor, HI complex. Naval Air Station (NAS) North Island in the San Diego Naval Complex and Puget Sound Naval Shipyard (PSNS) Bremerton and NAVSTA Everett in the Pacific Northwest are currently designated as CVN home ports. All three locations will be considered as alternative locations for the proposed actions. Although not currently designated as a CVN home port, Pearl Harbor is capable of accommodating deep-draft ships and will also be evaluated as a potential home port.

The EIS will analyze the potential environmental effects of the proposed actions at the alternative locations discussed above, including any associated facilities development and dredging, and other reasonable alternatives identified during the public scoping process. Environmental issues to be addressed in the EIS include: geology, topography, and soils; dredging, hydrology, and water quality; pollution prevention; biology and natural resources; noise; air quality; land use; historic and archeological resources; socioeconomics, schools, and housing; transportation/circulation/parking; public facilities and recreation; safety and environmental health; aesthetics; utilities; and environmental justice. Issue analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts associated with the proposed actions. No decision to implement the proposed actions will be made until the NEPA process is complete.

ADDRESSES: The Department of the Navy has initiated a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to these proposed actions. Public meetings to receive oral comments from the public will be held in the four primary areas of consideration (San Diego, CA; Bremerton, WA; Everett, WA; and Honolulu, HI). The dates and locations of these meetings are as follows: Bremerton, WA: February 3, 1997, 7:00 pm, Bremerton High School, 1500 13th Street, Bremerton, WA; Everett, WA: February 4, 1997, 7:00 pm, Snohomish County Administration/Courthouse Building, 3000 Rockefeller, Everett, WA; Pearl Harbor, HI: February 6, 1997, 7:00 pm, Leeward Community College, 96–045 Ala Ike Street, Pearl City, HI; Coronado, CA: February 10, 1997, 7:00 pm, Village Hall, Village Elementary School, 600 6th Street, Coronado, CA. These meetings will also be announced in local area newspapers. Navy representatives will be available at the scoping meetings to receive comments from the public regarding issues of concern. A brief presentation describing the proposed actions and the NEPA process will precede a request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns that they feel should be addressed during the preparation of the EIS. Oral comments will be limited to three minutes. Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. Written comments or questions regarding the scoping process and/or the EIS should be postmarked no later than February 28, 1997 and sent to the following address.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Muslin (Code 03PL), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190; telephone (619) 532–3403.

Dated: January 13, 1997.

D. E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–1112 Filed 1–15–97; 8:45 am]

BILLING CODE 3810–FF–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 22, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10:00 a.m. at the same location and will include presentations on the GIS and Commission Web Site, U.S. Geological Survey's National Water Quality Assessment Program for the Delaware River Basin and a review of Basin States' policies on discharges to intermittent streams.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will also address the following matters: Minutes of the December 11, 1996 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; a resolution to adopt the 1996–1997 Water Resources Program and public dialogue.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1997, in the aggregate amount of $3,445,500 and a capital budget (Water Supply Storage Facilities Fund) reflecting revenues of $2,187,500 and expenditures and transfers of $2,074,500. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Manetas Farms, Inc. D–81–40 RENEWAL 3.* An application for the renewal of a ground water withdrawal project to supply up to 46.5 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Pond Nos. 1, 2 and 3. Commission approval on June 19, 1991 was limited to five years. The applicant requests that the total withdrawal from all ponds remain limited to 46.5 mg/30 days. The project is located in Fairfield Township, Cumberland County, New Jersey.

2. *C S Water and Sewer Associates D–87–96 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 4.88 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 4 and 5. Commission approval on April 26, 1989 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.88 mg/30 days. The project is located in Lackawaxen Township, Pike County, Pennsylvania.

3. *Stockton Water Company D–95–51 CP.* An application for approval of a ground water withdrawal project to supply up to 1.5 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to limit the withdrawal from all wells to 6 mg/30

days. The project is located in Stockton Borough, Hunterdon County, New Jersey.

4. *AlliedSignal, Inc. D–96–20.* A project to expand the Rohm & Haas Frankford Plant barge dock, operated by AlliedSignal, Inc., on the Delaware River near the Bridesburg area in the City of Philadelphia, Pennsylvania. The project entails new dredging of approximately 0.44 acres adjacent to the existing barge berth to enable simultaneous mooring of two barges.

5. *P & S Development Company D–96–40.* A project to construct a 30,000 gallon per day sewage treatment plant (STP) to replace an existing malfunctioning septic system. The STP will continue to serve The Village Center at Hamlin, a commercial complex located along State Route 590 approximately one mile west of the State Route 191 intersection in Salem Township, Wayne County, Pennsylvania. The STP will provide secondary biological treatment with the sequencing batch reactor activated sludge process as well as tertiary filtration, chlorine disinfection and dechlorination prior to discharge to an unnamed tributary of the West Branch Wallenpaupack Creek in Salem Township, Wayne County, Pennsylvania.

6. *PECO Energy Company D–96–63.* A project to continue operation of the existing United States Steel (USS) Fairless Works Powerhouse and transfer the ownership to PECO Energy Company. PECO proposes to operate the two steam turbines at up to 78 megawatts of electrical capacity to provide electric energy to its regional service center (which in turn can serve the Pennsylvania-Maryland-New Jersey Interconnection Grid). The steam energy will continue to be used by the USS steel fabrication facilities. PECO will divert up to 4,641 mg/30 days (154.7 mgd) of water via the existing USS withdrawal facilities on the Delaware River, primarily for use as cooling water; however, USS will continue to own and operate the intake facilities. The existing cooling water discharge to the Delaware River, just downstream of the intake, will be operated under the responsibility of PECO. The project is located adjacent to the Delaware River in Falls Township, Bucks County, Pennsylvania, just upstream of the Newbold Island area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: January 7, 1997.

Anne M. Zamonski,

Acting Secretary.

[FR Doc. 97–1055 Filed 1–15–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, February 6, 1997: 9:00 a.m.–5:00 p.m. Friday, February 7, 1997: 8:30 a.m.–4:00 p.m.

ADDRESS: Cavanaughs at Columbia Center, 1101 N. Columbia Center Boulevard, Kennewick, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

February Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: FY97 and FY98 Budgets and approach to advice on FY99 Budget, Tank Waste Remediation, 200 Areas Soils Remediation Strategy, N Springs Shoreline Remediation Strategy, Technology Development, Archeological Resource Protection, Reactors on the River, and Institutional Controls. The Board will also receive updates from various Subcommittees, including updates on: the draft Hanford Advisory Board Work Plan, the National Equity Dialogue, the FFTF Restart Decision, Plutonium Disposition Decision, and Tri-Party Agreement Negotiations.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)-376–9628.

Issued at Washington, DC on January 13, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 97–1090 Filed 1–15–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP–97–163–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

January 10, 1997.

Take notice that on December 19, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–163–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate an interconnection between ANR and Central Louisiana Electric Company (CLECO), in St. Mary's Parish, Louisiana. ANR makes such request under its blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the proposed interconnection will consist of a gas chromatograph, associated electronic measurement facilities, and a 10-inch tap on ANR's existing 30-inch pipeline.

It is indicated that the maximum capacity of the proposed interconnection will be 125 MMcf per day. ANR avers that it will provide deliveries to CLECO at the proposed interconnection under its Rate Schedule ITS. It is stated that the volumes to be delivered to CLECO will be within the certificated entitlements of CLECO, and the volumes will not impact ANR's gas supply situation. ANR further states that deliveries of natural gas at the proposed interconnection can be made without detriment or disadvantage to any existing customer.

ANR estimates the total cost of the facilities will be approximately $156,000 and that CLECO will partially reimbursed ANR for those cost.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1045 Filed 1–15–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3096–000]

Idaho Power Company; Notice of Filing

January 10, 1997.

Take notice that on November 29, 1996, Idaho Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1047 Filed 1–15–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3093–000, et al.]

Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 9, 1997.

Take notice that the following filings have been made with the Commission:

1. Montana Power Company

[Docket No. ER96–3093–000]

Take notice that on January 2, 1997, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Village of Belmont City of Juneau, City of Plymouth, City of Reedsburg, City of Sheboygan Falls, and City of Wisconsin Rapids, Wisconsin

[Docket No. EL97–19–000]

Take notice that on December 20, 1996, the Village of Belmont, City of Juneau, City of Plymouth, City of Reedsburg, City of Sheboygan Falls, and City of Wisconsin Rapids, Wisconsin (the Wisconsin Municipals) filed a complaint under Section 206 of the Federal Power Act against Wisconsin Power and Light Company (WP&L). In the complaint the Wisconsin Municipals challenged the term and rate provisions of the ten-year "evergreen" contracts between them and Wisconsin Power and Light Company and request a rate reduction of approximately 23%, or $5 million annually, or that the contracts be terminated. The Wisconsin Municipals also ask the FERC to set a refund effective date under Section 206 of the Act, 60 days after the filing of the complaint.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the compliant shall be due on or before February 10, 1997.

3. NESI Power Marketing, Inc.

[Docket No. ER97–841–000]

Take notice that on January 7, 1997, NESI Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER97–926–000]

Take notice that on December 24, 1996, Interstate Power Company (Interstate), submitted for filing a new "Power Sales Tariff PS–1" (Tariff). The Tariff is intended to provide Interstate with greater flexibility to engage in transactions for capacity and energy at cost-based rates.

Copies of this filing have been served on: Iowa Utilities Board, Illinois Commerce Commission, Minnesota Public Utilities Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Interstate Power Company

[Docket No. ER97–927–000]

Take notice that on December 24, 1996, Interstate Power Company (Interstate), submitted for filing modifications to the following interconnection agreements:

Commonwealth Edison Company, Rate Schedule No. 69

Corn Belt Power Corporation, Rate Schedule No. 82

The proposed modifications are intended to terminate Interstate's right to make energy and power sale under each of the agreements.

Copies of this filing have been served on each of the parties to the above-referenced agreements and the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–928–000]

Take notice that on December 24, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Wisconsin Electric Power Company.

Cinergy and Wisconsin Electric Power Company are requesting an effective date of December 15, 1996.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER97–929–000]

Take notice that on December 24, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement

under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Williams Energy Services Company.

Cinergy and Williams Energy Services Company are requesting an effective date of December 1, 1996.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER97–930–000]

Take notice that on December 24, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 1, 1996 between Cinergy, CG&E, PSI and NIPSCO Energy Services, Inc. (NESI).

The Interchange Agreement provides for the following service between Cinergy and NESI.

1. Exhibit A—Power Sales by NESI
2. Exhibit B—Power Sales by Cinergy

Cinergy and NESI have requested an effective date of December 23, 1996.

Copies of the filing were served on NIPSCO Energy Services, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER97–931–000]

Take notice that on December 26, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Freeport Electric, Freeport, NY, under the NU System Companies' Sale for Resale Tariff No. 7, Market-Based Rates.

NUSCO states that a copy of this filing has been mailed to the Freeport Electric, Freeport, NY.

NUSCO requests that the Service Agreement become effective January 1, 1997.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER97–932–000]

Take notice that on December 26, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to the Aquila Power Corporation (Aquila) under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on Aquila and the Arizona Corporation Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Alabama Power Company

[Docket No. ER97–934–000]

Take notice that on December 27, 1996, Alabama Power Company (APCo), tendered for filing a petition for waiver of Commission's fuel adjustment clause regulations to permit the recovery from its full and partial requirements wholesale customers of an appropriate share of the cost associated with the buyout of 4.45 million tons of coal over the period January 1, 1997 through December 31, 2000 under two contracts with Drummond Company, Inc. APCo states that its purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the buyout costs that it proposes to recover as fuel costs through the fuel cost recovery mechanisms applicable to these customers. The waiver is proposed to be made effective January 1, 1997.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Green Mountain Power Corporation

[Docket No. ER97–935–000]

Take notice that on December 27, 1996, Green Mountain Power Corporation (GMP), tendered for filing an Amendment dated as of September 1, 1996 to a Power Sales Agreement between GMP and the Electric Department of the Village of Northfield, Vermont (Northfield). GMP states it purchases electricity from Northfield under the Power Sales Agreement, and that the Amendment modifies the manner in which an adjustment factor relating to compensation due to Northfield for energy delivered to GMP is administered. GMP has proposed to make the Amendment effective as of September 1, 1996, concurrently with the commencement of the current contract year.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Boston Edison Company

[Docket No. ER97–936–000]

Take notice that on December 27, 1996, Boston Edison Company (Boston Edison), tendered for filing a letter agreement between Boston Edison and Cambridge Electric Light Company (CEL). The tendered letter agreement extends the terms and conditions of the Substation 402 Agreement to and including March 31, 1997. The Substation 402 Agreement is designated as Boston Edison's FERC Rate Schedule No. 149. Boston Edison requests an effective date of December 31, 1996.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER97–937–000]

Take notice that on December 27, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing in the above-captioned docket nine notices of termination of bundled economy energy coordination agreements with Atlantic City Electric Company, Northeast Utilities System, Long Island Lighting Company, New York State Electric & Gas Corporation, PECO Energy, Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Old Dominion Electric Cooperative and the City of Dover, Delaware, and one notice of termination of Schedule A of Delmarva's rate schedule with LG&E Power Marketing, Inc. Delmarva seeks waiver of notice to permit these notices of termination to become effective on January 26, 1997, in accordance with the contract terms.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Co. and Potomac Electric Power Co.

[Docket No. ER97–938–000]

Take notice that on December 27, 1996, Virginia Electric and Power Company (Virginia Power) and Potomac Electric Power Company (Pepco), tendered for filing a Notice of Cancellation of certain Rate Schedules under the Interconnection Agreement between Potomac Electric Power Company and Virginia Electric and Power Company, dated May 25, 1983 (Pepco Rate Schedule FERC No. 35 and Virginia Power Rate Schedule FERC No. 20). Virginia Power and CP&L have requested an effective date of December 31, 1996 for the amendments.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER97–939–000]

Take notice that on December 27, 1996, Virginia Electric and Power

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Company (Virginia Power), tendered for filing a Notice of Cancellation of certain Rate Schedules under the Interconnection Agreement between Appalachian Power Company and Virginia Electric and Power Company, dated February 1, 1948 (APCO Rate Schedule FPC No. 16 and Virginia Power Rate Schedule FPC No. 7). Virginia Power also filed a Certificate of Concurrence executed by American Electric Power Services (AEP) consenting and assenting to these cancellations on behalf of APCO. Virginia Power has requested an effective date of December 31, 1996 for the cancellations.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and Mr. D.W. Bethel, Manager—Interconnection Agreements, American Electric Power Services.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER97–940–000]

Take notice that on December 27, 1996, Montana-Dakota Utilities Co., a division of MDU resources Group, Inc., (Montana-Dakota), tendered an agreement dated January 27, 1983 with Capital Electric Cooperative, Inc. and two supplements to such agreement. Montana-Dakota requests that the Commission disclaim jurisdiction over the agreement and such supplements. Montana-Dakota requests, further, if the Commission will not disclaim jurisdiction, that the Commission accept the agreement and such supplements for filing in accordance with Federal Power Act § 205 and waive the notice requirement to permit the agreement and such two supplements to be effective in accordance with the intent of the contracting parties.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER97–941–000]

Take notice that on December 27, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Toledo Edison Company.

Cinergy and Toledo Edison Company are requesting an effective date of December 15, 1996.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER97–942–000]

Take notice that on December 27, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cleveland Electric Illuminating Company.

Cinergy and Cleveland Electric Illuminating Company are requesting an effective date of December 15, 1996.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Carolina Power & Light Company

[Docket No. ER97–943–000]

Take notice that on December 27, 1996, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission customers: Koch Power Services, Inc.; Williams Energy Services Company; IUC Power Services; and Heartland Energy Services, Inc.; and Service Agreements for Short-Term Firm Point-to-Point Transmission Service with IUC Power Services and Heartland Energy Services, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER97–944–000]

Take notice that on December 27, 1996, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entities: Florida Power Corporation, Potomac Electric Power Company, Atlantic City Electric Company, Duquesne Light Company, and WPS Energy Services, Inc. (ESI). Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Power Company

[Docket No. ER97–945–000]

Take notice that on December 27, 1996, Ohio Power Company (OPC), tendered for filing with the Commission a Facilities, Operations Maintenance and Repair Agreement dated December 12, 1996, between OPC, and South Central Power Company (SCP). SCP is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

SCP has requested OPC provide a new 138–Kv delivery point pursuant to provisions of the Power Delivery Agreement between Columbus Southern Power Company, Buckeye Power, Inc., The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, OPC and Toledo Edison Company, dated January 1, 1968. OPC requests an effective date of December 12, 1996 for the tendered agreements.

OPC states that copies of its filing were served upon the South Central Power Company, Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc.

[Docket No. ER97–946–000]

Take notice that on December 27, 1996, Western Resources, Inc. tendered for filing, Supplement Nos. 3 and 13 to Rate Schedule FPC No. 83, the Agreement for Interchange of Power and Interconnected Operation between The Empire District Electric Company and Kansas Gas and Electric Company (KGE), is to be canceled.

Notice of the proposed cancellation has been served upon the Empire District Electric Company, the Kansas Corporation Commission, and the Missouri Public Service Commission.

Comment date: January 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Detroit Edison Company

[Docket Nos. ES97–18–000 and ES97–18–001]

Take notice that on December 16, 1996, Detroit Edison Company (Detroit Edison) filed an application, as amended,[1] under § 204 of the Federal Power Act, seeking authorization to

[1] The amendment was filed on December 24, 1996.

issue, from time to time, on or before May 31, 1999, short-term debt and promissory notes with maturities of not more than two years, all in an aggregate principal amount of not more than $1 billion outstanding at any one time.

Also, Detroit Edison requests exemption from the Commission's competitive bidding and negotiated placement regulations for the issuance of the promissory notes with maturities of in excess of one year from the date of issuance.

Comment date: February 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Hoosier Energy Rural Electric Cooperative

[Docket No. NJ97–5–000]

Take notice that on January 3, 1997, Hoosier Energy Rural Electric Cooperative (Hoosier Energy) submitted for filing an Open Access Tariff and a request for declaratory order which would find that Hoosier Energy's Transmission Tariff meets the Federal Energy Regulatory Commission's (Commission's) comparability standards and is therefore an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. U.S. Department of Energy Bonneville Power Administration

[Docket No. NJ97–3–000]

Take notice that the Bonneville Power Administration (BPA) on December 20, 1996, tendered two filings for Commission review of BPA's open access transmission terms and conditions, and associated rates. These transmission terms and conditions, and their associated rates are the result of a settlement among most parties to the BPA administrative proceedings that preceded adoption of such terms and conditions, and rates.

First, BPA tendered for filing its Network Integration and Point-to-Point transmission tariff terms and conditions with a Petition for Declaratory Order that the terms and conditions meet or exceed the Commission's open access policies, and are consistent with the reciprocity compliance principles of the Commission's final rule on non-discriminatory open access transmission service.

Second, BPA tendered for filing its rates associated with such tariff terms and conditions with a Petition for Declaratory Order that such rates satisfy the standards applicable to BPA pursuant to Section 212(i)(1) of the Federal Power Act. BPA previously filed these rates on July 26, 1996, in its request for confirmation and approval of its general wholesale power and transmission rates under the standards of the Pacific Northwest Electric Power Planning and Conservation Act in Docket Nos. EF96–2011–000 and EF96–2021–000. Interim approval of such rates was granted by the Commission on September 25, 1996.

BPA requests review of the following rates associated with its Network Integration and Point to Point transmission tariffs for conformance with the standards applicable to BPA under the Federal Power Act: NT–96 Network Integration Transmission Rate; PTP–96 Point-to-Point Firm Transmission Rate; RNF–96 Reserved Nonfirm Transmission Rate; ET–96 Energy Transmission; IS–96 Southern Intertie Transmission, IM–96 Montana Intertie Transmission Rate; AF–96 Advance Funding Rate; UFT–96 Use-of-Facilities Transmission Rate; APS–96 Ancillary Products and Services Rate; and BPA's General Rate Schedule Provisions.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1044 Filed 1–15–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–947–000, et al.]

South Carolina Electric & Gas Company, et al. Electric Rate and Corporate Regulation Filings

January 10, 1997

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Company

[Docket No. ER97–947–000]

Take notice that on December 27, 1996, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing PanEnergy Trading & Marketing Services, L.L.C. (PanEnergy) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of August 21, 1996. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PanEnergy and the South Carolina Public Service Commission.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. ER97–948–000]

Take notice that on December 27, 1996, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its open access tariff.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER97–949–000]

Take notice that on December 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 16, 1996 with Coral Power, L.L.C. (CORAL) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds CORAL as a customer under the Tariff.

PECO requests an effective date of December 16, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to CORAL and to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER97–950–000]

Take notice that on December 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 5, 1996 with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric

and Power Company (collectively, Southern Companies) and Southern Company Services, Inc. (SCS) as agent for Southern Companies (Southern Companies and SCS) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Southern Companies and SCS as a customer under the Tariff.

PECO requests an effective date of December 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Southern Companies and SCS and to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER97–951–000]

Take notice that on December 27, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to Virginia Electric and Power Company, pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 26, 1996.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER97–952–000]

Take notice that on December 27, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Montaup Electric Company (Montaup) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the Tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to Montaup.

NUSCO requests that the Service Agreement become effective December 1, 1996.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER97–953–000]

Take notice that on December 27, 1996, PECO Energy Company (PECO) filed a Service Agreement dated December 5, 1996 with Plum Street Energy Marketing (Plum Street) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Plum Street as a customer under the Tariff.

PECO requests an effective date of December 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Plum Street and to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER97–954–000]

Take notice that on December 27, 1996, Public Service Company of New Mexico Transmission Development and Contracts (PNM Transmission) tendered for filing the Service Agreement for Firm Point-to-Point Transmission Service and Ancillary Service (Service Agreement) between PNM Transmission and the PNM International Business Development (PNM Business Development) executed November 1, 1996.

PNM Transmission requests the Commission to permit the PNM business Development to begin receiving services under the Service Agreement as of January 1, 1997.

Copies of this notice have been mailed to PNM Business Development and the New Mexico Public Utility Commission.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company

[Docket No. ER97–955–000]

Take notice that on December 27, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing an Agreement dated December 9, 1996, between NSP and the City of Shakopee (City). In a previous agreement dated June 11, 1996, between the two parties, City agreed to continue paying NSP the current wholesale distribution substation rate of $0.47/kW-month until December 31, 1996. Since the June 11, 1996, agreement has terminated, this new Agreement has been executed to continue the current wholesale distribution substation rate of $0.47/kW-month until March 31, 1997.

NSP request the Agreement be accepted for filing effective December 30, 1996, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER97–613–000]

Take notice that on December 20, 1996, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 97–1046 Filed 1–15–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5676–8]

Indian Bend Wash—South Superfund Site; Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.E. 9600 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the Indian Bend Wash—South Superfund Site was executed by the United States Environmental

Protection Agency ("EPA")") on November 20, 1996. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against JPI Texas Development, Inc. (the "Purchaser"). The Purchaser plans to acquire a 26.9 acre parcel located within the Indian Bend Wash—South Superfund Site in Arizona for the purposes of building and operating a 500-unit student dormitory near Arizona State University in Tempe. The proposed settlement would require the Purchaser to pay EPA a one-time payment of $75,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before February 18, 1997.

ADDRESSES: The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. The document can be accessed through the Internet on EPA Region 9's Website located at: http://www.epa.gov/region09/waste/brown/ppa.html. A copy of the proposed settlement may also be obtained from William Keener, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "JPI Texas Development, Inc., Indian Bend Wash—South Superfund Site" and "Docket No. 97–01" and should be addressed to William Keener at the above address.

FOR FURTHER INFORMATION CONTACT: William Keener, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: keener.bill@epamail.epa.gov; Phone: (415) 744–1356.

Dated: December 30, 1996.

Dianna Young,

Acting Deputy Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 97–978 Filed 1–15–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

January 8, 1997.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Writtten comments should be submitted on or before February 18, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0004.

Title: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (ET Docket 95–62).

Form No: N/A.

Type of Review: Extension of an existing collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 124,441.

Estimated Time Per Response: 15 minutes - 1 hour per respondent.

Total Annual Burden: 40,301 hours.

Estimated Costs Per Respondent: $100 per respondent conducting Maximum Permissible Exposure Evaluations (approximately 1,416 respondents conduct these evaluations); and $5,000 per respondent conducting Specific Absorption Rate (SAR) Evaluations (approximately 145 respondents conduct these evaluations).

Needs and Uses: The National Environmental Policy Act of 1969 (NEPA) reuires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission adopted RF exposure guidelines for evaluating potential environmental effects of RF radiation from FCC-regulated faciliites. The guidelines reflect more recent scientific studies of the biological effects of RF radiation. The use of these guidelines will help ensure that FCC-regulatef facilities comply with the latest standards. The collections of environmental informat required by Section 1.1307 of the rules will be used the Commission to determine whether the environmental evaluation is sufficiently complete and in compliance with the Commission rules.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–1099 Filed 1–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Friday, January 10, 1997, the Board of Directors of the Federal

Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred by Director Eugene A. Ludwig (Comptroller of the Currency), Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: January 13, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–1193 Filed 1–14–97; 10:28 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. G.B. Financial Services, Inc., Greenbush, Minnesota; to merge with Border Bancshares, Inc., Greenbush, Minnesota, and thereby indirectly acquire Border State Bank, Roseau, Minnesota. Subsequent to the proposed merger, G.B. Financial Services, Inc. will change its name to Border Bancshares, Inc.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Intra Financial Corporation, Cyde, Kansas; to acquire 100 percent of the voting shares of Farmers State Bancshares of Sabetha, Inc., Sabetha, Kansas, and thereby indirectly acquire Farmers State Bank, Sabetha, Kansas.

Board of Governors of the Federal Reserve System, January 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1059 Filed 1–15–97; 8.45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–25]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on December 11, 1996.

Proposed Projects

1. Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody or HIV Antigen (0920–0329)—Reinstatement—In 1987, the President directed the Department of Health and Human Services (DHHS) to determine the nationwide incidence of, to predict the future of, and to determine the extent to which human immunodeficiency virus (HIV) is present in various segments of our population. In response, CDC formed an epidemiologic team to summarize existing information. An extensive review of published and unpublished data led to the conclusion that even though there is information suggesting a very large number of Americans were infected, there was no substitute for carefully and scientifically obtained incidence and prevalence data. The need to monitor HIV seroprevalence existed on the national and at the state and local levels for public health management: targeting and evaluating prevention programs, planning future health care needs and determining health policy.

On a national basis, HIV seroprevalence projects in 1987 consisted of monitoring the HIV status of: civilian applicants for military service; blood donors, including follow-up risk factor evaluation in seropositives; and Job Corps entrants. HIV prevalence was studied in settings of special public health interest including selected colleges and prisons,

among health care workers in hospital emergency rooms and among Native Americans and homeless persons. Other national data sources were examined, such as cohort studies of groups at risk, including homosexual and bisexual men and IV drug users, providing information on knowledge of AIDS and risk behaviors, changes in behavior, and incidence of HIV infection.

In 1987, OMB approved the "Family of HIV Seroprevalence Surveys" (0920–0232). These surveys included seven seroprevalence surveys which involved interaction with individuals (non-blinded surveys). One of these surveys was the surveillance and evaluation of blood donors positive for Human Immunodeficiency Virus (HIV) Antibody.

In 1993, OMB again approved for 3 years the surveillance and evaluation of blood donors who test positive for Human Immunodeficiency Virus (HIV) Antibody and their needle-sharing and sexual partners (0920–0329). This request is for an additional 3-year approval. The total annual burden is 172.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Blood donors (interviews)	160	1	1.0
Blood donors (refuse interview)	120	1	0.1

2. A CLIA Comprehension Survey and Information Program for Physicians—New—The purpose of this contract is to enable the Centers for Disease Control and Prevention (CDC) to assess the depth and accuracy of the knowledge base of clinicians regarding the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) regulations as they relate to physicians' office laboratories (POLs), and to provide specific information and training to practitioners based on this assessment. In 1990, CDC was designated by the Department of Health and Human Services to assist in the implementation of CLIA '88; this project is a direct response to that mandate.

Through contact with the laboratory and physician communities, CDC has become aware of gaps in information and understanding about the CLIA '88 regulations, especially as they relate to physicians" office laboratories. Misconceptions regarding the CLIA '88 regulations in the community may be impeding successful implementation of the regulations and causing unnecessary and inappropriate responses in POL testing sites. Therefore, CDC is proposing a survey of practicing physicians to assess the depth and accuracy of the knowledge base of clinicians regarding the CLIA '88 regulations as they relate to POLs, and to provide specific information and training to practitioners based on this assessment. The total annual burden is 896.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Laboratories	4479	1	.2

3. Development and Implementation of a Comprehensive Evaluation for Project DIRECT (Diabetes Intervention: Reaching and Educating Communities Together)—New—Diabetes mellitus is more prevalent among African-Americans than whites, and African-Americans with diabetes are more likely to suffer its devastating complications. Compared to whites, African-Americans are more likely to develop blindness and end-stage renal disease and are more likely to have amputations. In addition, cardiovascular risk factors are more prevalent among African-Americans than whites and African-Americans are more likely to die with diabetes than are whites. In response to this disparity, the Centers for Disease Control and Prevention (CDC) has launched a large-scale community intervention trial known as Project DIRECT (Diabetes Intervention: Reaching and Educating Communities Together). Based in Raleigh, North Carolina, and sponsored by CDC's Division of Diabetes Translation, Project DIRECT will serve as a model for multilevel community-based diabetes prevention and control programs for urban African-Americans.

This evaluation will determine the effect of (1) diabetes care; (2) outreach, and (3) health promotion interventions in the targeted community and compare this effect to a control community. The intervention activities focus on the African-American population of a geographically defined area of southeast Raleigh, North Carolina. The control community is Greensboro, North Carolina. The populations consist primarily of African-Americans. Health care providers will be identified and solicited from practicing physicians in Raleigh and Greensboro.

The survey will be conducted in four phases. Phase I will randomly identify and solicit participation from household members with and without diabetes from the control and intervention communities. In Phase II, participants with and without diabetes will be randomly selected and administered the survey questionnaire upon granting informed consent. During Phase III, persons with diabetes will undergo a brief physical exam that will consist of physical measures for height, weight, blood pressure, and body mass index. In addition, collection of a venous blood sample and urine sample will be performed. In Phase IV, interviewers will administer a questionnaire to primary care physicians about their knowledge, attitude and practice patterns for caring for persons with diabetes. This study will undergo Institutional Review Board reviews and comply with human subject assurances in accordance with federal regulations. The total annual burden is 3,148.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Households General Population Questionnaire	7,182	1	.1666
Diabetes Module	2,516	1	0.5
Laboratory Specimen Component	580	1	0.5
Provider Survey	580	10.5	
	150	1	0.75

Dated: January 10, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1064 Filed 1–15–97; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 713]

National Institute for Occupational Safety and Health; Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation Model

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for cooperative agreements to

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build State capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment and Control Evaluation (FACE) Model.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, Departments of Industry, etc., located within any State or territory of the United States. Program activities, however, may not be carried out by departmental divisions that are responsible for enforcement of occupational safety and health standards. Awards will be limited to those organizations that can exercise public health authority for intervention into occupational safety and health problems. Only one application per State will be accepted under this announcement.

Availability of Funds

Approximately $315,615 will be available in FY 1997 to fund three to four awards. It is expected that the awards will range from $60,000 to $100,000 with an average award of $80,000. Individual awards may vary by State, and will be based upon the scope and nature of traumatic occupational fatalities documented by the respondent, and upon proposed personnel, administrative, and associated costs. The awards will be made on or about May 30, 1997, with 12-month budget periods within project periods of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be determined on the basis of satisfactory progress and the availability of funds.

Background

Traumatic occupational fatalities represent a public health problem of significant proportion. Based on data from the National Traumatic Occupational Fatalities (NTOF) surveillance system, nearly 6500 workers die each year in the U.S. from traumatic injuries sustained in the workplace. The four highest risk industries for fatal injury are: mining, construction, transportation/ communication/public utilities, and agriculture/ forestry/fishing. Each of these industrial sectors has a traumatic fatality rate that is at least twice the overall civilian workforce rate of 7.0 deaths per 100,000 workers. The leading causes of death for all industries are motor vehicles, machinery, homicide, fails, and electrocutions. These categories account for nearly 60 percent of the occupational fatalities each year. In order to adequately develop and implement intervention strategies aimed at reducing fatal injuries in the workplace, more specific data pertaining to the interaction of the worker, the work environment, and work processes are needed.

Purpose

The purpose of funding these cooperative agreements is to expand the State-based FACE project and significantly strengthen the occupational public health infrastructure. This will be accomplished by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. The ultimate goal of the project is to reduce traumatic occupational fatalities within the States.

Over the past eight years, State-level personnel have shown that the NIOSH FACE model for investigation of occupational fatalities can be successfully implemented in the States. The most immediate products of the State-level FACE programs have been accurate and timely surveillance systems for detecting traumatic occupational fatalities occurring within the State, fatality investigations identifying causal factors, and recommendations for prevention strategies. This program will permit awardees to efficiently integrate resources for prevention of occupational fatalities at the State and local level. Additionally, States will be encouraged to target occupational traumatic injury research and prevention programs based on specific State priority areas. FACE data will be shared with all award recipients.

The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple-source State-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the State.

2. Conduct on-site investigations of specific traumatic occupational fatalities using the NIOSH FACE investigative model.

3. Through case investigations, identify factors common to selected types of traumatic occupational fatalities leading to development and prioritization of prevention strategies.

4. Develop and disseminate prevention recommendations to reduce the risk of fatal occupational injuries within the State.

5. Develop and implement prevention strategies and projects for reducing State incidence of traumatic occupational injuries and fatalities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH Activities):

A. Recipient Activities

1. Develop a comprehensive multiple-source, State-level surveillance system for prompt identification and reporting of epidemiologic data on all traumatic occupational fatalities occurring in the State.

2. Conduct in-depth site investigations of targeted occupational fatalities as determined by NIOSH. Currently; falls from elevations and machinery-related incidents are targeted fatality types. These are among the leading causes of work-place fatalities, as identified by national surveillance systems; however, they may change over the term of the agreement. Greatest emphasis must be placed on the determined targets; however, States may choose, in cooperation with NIOSH, to conduct in-depth investigations of other fatality types identified.

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3. In specified format, develop and submit to NIOSH a narrative report of each in-depth fatality investigation which describes the fatal incident and includes recommendations for preventing future similar occurrences.

4. Submit first reports of fatalities, investigative narrative reports, and supplementary investigative data electronically to NIOSH through CDC's WONDER/PC system.

5. Evaluate surveillance data and investigative findings to identify specific worker populations to which prevention programs should be addressed. [1]

6. Identify entities such as employers, unions, and trade associations that can effect change in the workplace.

7. Communicate recommended preventions to those who can affect change in the workplace and to those at risk through targeted dissemination.

8. Prepare and submit periodic status reports of activities in designated format and an annual report that summarizes the activities and progress made by the State toward meeting the objectives for the State FACE program.

9. Participate in annual NIOSH-conducted FACE project workshop/ conference in Morgantown, West Virginia, or other selected site.

B. CDC/NIOSH Activities

1. Provide formats for data reporting forms, coding formats, computer software, and State personnel training for electronic transmission of FACE surveillance and investigative data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks.

3. Provide initial training in procedures and subsequent technical assistance for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments).

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to State and local health and labor officials, voluntary health groups, workers, unions, employers and professional organizations.

6. Provide technical assistance in identifying and evaluating effective intervention strategies.

7. CDC will provide funds to purchase one IBM-compatible, Pentium-based personal computer, printer, telecommunications equipment, and needed software for use on appropriate activities related to this cooperative agreement, if necessary.

Technical Reporting Requirements

An original and two copies of a progress and Financial Status Report (FSR) are required no later than 90 days after the end of each budget period. A final progress report and FSR are due no later than 90 days after the end of the project period. Monthly electronically transmitted CDC WONDER/PC FACE status reports are due to NIOSH no later than the 10th of the following month. All other reports are submitted to the Grants Management Branch, CDC.

Application

1. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter-of-intent to apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC. (See "Application Submission and Deadline" Section for the address.) It should be postmarked no later than February 15, 1997. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter-of-intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Application Content

A. Abstract

A one-page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should be included in the APPLICATION CONTENT Section of the application, under INTRODUCTION. This abstract is not in lieu of (but in addition to) the INTRODUCTION Section.

B. Narrative

The narrative of the application should:

1. Document the applicant's understanding of the objectives of the project and the proposed agreement.

2. Describe the scope and nature of occupational fatalities in the applicant's State.

3. Describe the applicant's ability to provide qualified and appropriate staff and other resources necessary to implement the project. This may be supported by documentation of the applicant's experience in conducting similar research efforts, including surveillance activities.

4. Describe an implementation plan and provide a proposed schedule for accomplishing each of the activities to be carried out in this project including the implementation of the surveillance, field investigations, dissemination, and prevention components, and a method for evaluating the accomplishments.

5. Provide the names, qualifications, and time allocations of the principal investigator, professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

6. Provide a detailed description of the proposed first year activities, as well as a brief description of future year activities.

7. Not exceed 20 double-spaced typewritten pages exclusive of budget and biographical information and addenda. Information that should be part of the narrative will not be accepted if placed in the appendices.

C. Budget

Completed budget forms should be placed at the beginning of the application. The applicant should provide a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item, providing anticipated costs for personnel, travel (including travel expenses for annual NIOSH-conducted FACE project workshop/ conference in Morgantown, West Virginia, or other selected site), communications, postage, equipment (see Item 7 under CDC/ NIOSH Activities), supplies, etc., and all sources of funds to meet those needs.

For contracts described within the application budget, if known, applicants should name the contractor; describe the service(s) to be performed; provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Budget

[1] A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report (MMWR), March 27, 1992/ Vol.41/Jn. The MMWR can be accessed through World-Wide Web (http://www.cdc.gov/epo/mmwr/mmwr.html).

narrative pages showing, in detail, how funds in each object class will be spent should be placed directly behind form 424A. Do not put these pages in the body of the application.

The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each section of the application on a new page. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten (observing same type size throughout the application), double spaced on 8½" by 11" paper with at least 1" margins, heading and footers, and printed on one side only. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

3. Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before March 21, 1997.

Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicants.

Evaluation Criteria

Evaluation of the applications will be based on the following criteria:

1. Ability to communicate the scope and nature of traumatic occupational fatalities in the State as evidenced by the quality of the narrative and documented research and experience. (10%)

2. The qualifications and time commitment of proposed project staff (principal investigator, field investigator (if already identified), administrative and technical support staff). (30%—Total)

a. The existence of or potential for acquiring expertise in investigation of occupational fatalities. There should be a full-time field investigator dedicated to the project. (15%)

b. The existence of or potential for acquiring safety expertise relevant to formulation of injury prevention strategies. (15%)

3. Applicant's collaborative relationships with various relevant State or territorial agencies or organizations in addressing the problem of traumatic occupational fatality surveillance, investigation, and intervention.(30%—Total)

a. The existence of or potential for establishment of a multiple-source network for identification and reporting of traumatic occupational fatalities. (15%)

b. The existence of or potential for establishment of relationships with public safety departments, safety compliance agencies, and other entities that can provide background and supplementary data relating to specific fatality cases. (15%)

4. Demonstrated ability to communicate recommended preventions to those at risk through targeted dissemination. (25%)

5. Additional personnel/facilities/equipment already in place that can contribute to successful implementation of the project. (5%)

6. Human Subjects (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects? Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

7. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" State recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve collection of information from ten or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulation, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines provided in the application kit.

Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application

package. Business management technical assistance may be obtained from

Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA, 30305, telephone (404) 842–6804, Internet: vxw1@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Ted A. Pettit, State FACE Project Officer, Chief, Trauma Investigations Section, Surveillance and Field Investigations Branch, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop 180P, 1095 Willowdale Road, Morgantown, WV, 26505–2888, telephone (304) 285–5972, *Internet:* tap3@niosr1.em.cdc.gov or Dr. Nancy Stout, Acting Chief, Surveillance and Field Investigations Branch (at the same address), telephone (304) 285–5916.

Please refer to Announcement Number 713 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock Number 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock Number 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 9, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1030 Filed 1–15–97; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 97F–0004]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-(4,6-diphenyl-1,3,5-triazin-2-yl)-5-(hexyloxy)phenol as a light stabilizer/ultraviolet (UV) absorber for polycarbonate resins and polyester elastomers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by February 18, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4531) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-(4,6-diphenyl-1,3,5-triazin-2-yl)-5-(hexyloxy)phenol as a light stabilizer/UV absorber for polycarbonate resins complying with 21 CFR 177.1580 and polyester elastomers complying with 21 CFR 177.1590 intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 18, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 26, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–1116 Filed 1–15–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–095–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November 1996

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice announces that during the month of November 1996, no proposals, under the authority of section 1115 of the Social Security Act were approved, disapproved, or withdrawn. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

DATES: *Comments.* We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act. In exercising her discretionary authority, the Secretary has developed a number of policies and

procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of November 1996

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of November.

2. Pending, Approved, Disapproved, and Withdrawn Proposals

We did not approve or disapprove any Comprehensive Health Reform Programs during November nor were any proposals withdrawn during that month. Pending proposals for the month of October found in the **Federal Register** of December 9, 1996, 61 FR 64914, remain unchanged with the exception of the following one new proposal submitted in October that is now pending.

Demonstration Title/State: State of Washington Medicaid Section 1115(a) Waiver Request—Washington.

Description: Under the "State of Washington Medicaid Section 1115(a) Waiver Request," the State is requesting waivers of the 75/25 and lock-in requirements. The State's intent is for the demonstration to subsume the current 1915(b) Health Options Program. The State is planning innovations with encounter data, Medicaid HEDIS, and quality measures for the disabled population.

Date Received: October 2, 1996.

State Contact: Jane Beyer, Assistant Secretary, Medical Assistance Administration, Department of Social and Health Services, P.O.Box 45500, Olympia, Washington 98504–5500, (360) 586–6513.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

B. Other Section 1115 Demonstration Proposals

1. New, Pending, Approved, Disapproved, and Withdrawn Proposals

We did not receive any new proposals or approve or disapprove any Other Section 1115 Demonstration Proposals during the month of November nor were any proposals withdrawn during that month. Pending proposals for the month of October found in the **Federal Register** of December 9, 1996, 61 FR 64914, remain unchanged.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments).

Dated: December 18, 1996.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 97–1025 Filed 1–15–97; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Project To Assess Bi/Multilingual Services Offered At Selected Community And Migrant Health Centers—NEW—Recognizing the importance of language-appropriate services to full and effective health care provision, the Office of Minority and Women's Health in the Bureau of Primary Health Care [BPHC], Health Resources and Services Administration [HRSA], proposes to conduct a voluntary survey to assess the composition and provision of bi/multilingual services at 150 Community and Migrant Health Centers [C/MHCs] identified as likely to be serving such populations. This effort was developed so that information could be gathered to assist the field, funding agency staff, and policy makers in better understanding what works, what does not, and barriers and facilitators to effective health service provision for speakers of languages other than English.

The information gathered will provide HRSA with an information base upon which to build in making future program decisions regarding C/MHC resource and staffing needs in order to reduce or eliminate the barriers to health care often faced by non- or limited-English-speaking populations. The end result of the program will be to assist the funding agency to help C/MHCs and by extension, other providers of health care for non- or limited-English speaking populations, to provide appropriate services. An estimate of the hour burden anticipated for the 150 C/MHC Directors to whom the survey will be mailed is shown below.

Form	No. of respondents	Responses per respondent	Hours per response	Total hour burden
Bi/Multilingual Services Survey	150 C/MHC Directors	1	2.5 hours	375 hours

2. Study on Ethnicity/Race of Subpopulations: User/Clients and Providers in Bureau-Supported Programs—NEW—National health statistics show that there are disproportionately high numbers of individuals from ethnic minority groups who have low incomes and limited access to health care. In addition, recent published studies indicate that cultural and linguistic barriers discourage many minority group members from seeking medical attention from certain service providers. For these reasons, and given the fact that certain diseases and disorders have a higher prevalence within particular ethnic groups, it is important for the Bureau of Primary Health Care (BPHC) to have full understanding of the ethnicity of clients and providers at health centers supported through the Community Health Center Program, Migrant Health Center Program, Health Care for the Homeless, Primary Health Care in Public Housing, and the HIV Health Center Program. The ultimate purpose of this study is to examine subpopulation data on the service providers and users of these health care agencies supported by BPHC.

In the first stage of the study, emphasis will be on gathering, organizing, analyzing, and reporting on ethnicity/race data that are currently available. This stage will be in preparation for a mail survey of health centers who receive BPHC support (through the programs listed above) to obtain detailed data on the ethnic/racial composition of users and providers. The mail survey will also request information on their data collection processes for ethnicity and race, which will be used to guide future BPHC efforts to collect race/ethnicity subpopulation data, making maximum use of the data collection and storage methods already employed by BPHC grantees.

Type of respondent	No. of respondents	Responses per respondent	Average hours per response	Total burden hours
BPHC Grantees	800	1	1	800

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–1060 Filed 1–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

National Environmental Policy Act Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of Final Revised Procedures for the Fish and Wildlife Service (Service).

SUMMARY: This notice announces final revised procedures for implementing the National Environmental Policy Act (NEPA) for actions implemented by the Fish and Wildlife Service in Appendix 1 in the Department of the Interior's (Departmental) Manual (516 DM 6). The revisions update the agency's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the revisions reflect new initiatives and Congressional mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species Act (ESA) permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other environmental laws and executive orders.

EFFECTIVE DATE: January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Don Peterson, Environmental Coordinator, Fish and Wildlife Service, at (703) 358–2183.

SUPPLEMENTARY INFORMATION: The Service's existing procedures for implementing NEPA with regard to actions proposed to be carried out by the Service appear in Appendix 1 to Chapter 6, Part 516, of the Departmental Manual (516 DM 6, Appendix 1). These procedures are consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (Regulations). These procedures (Appendix 1) were previously published in the **Federal Register** on July 1, 1982 (47 FR 28841), and were incorporated into the Departmental Manual on April 30, 1984. Proposed revised procedures were published in the **Federal Register** on May 1, 1996 (61 FR 19308), for 45-day public review. The comment period closed June 17, 1996.

The final revisions update organizational changes in the Service (section 1.1); provide general guidance for NEPA compliance for Service activities (section 1.2); update guidance to State, local, and private applicants for permits and Federal assistance provided through Service-administered programs (section 1.3); update and expand the categorical exclusions to reflect increased responsibilities, including the implementation of several new programs (section 1.4); add a new section that identifies Service actions normally requiring an environmental assessment (EA) (section 1.5); and revise the list of major actions normally requiring the development of an environmental impact statement (EIS) (section 1.6). The Appendix must be read in conjunction with the Department's NEPA procedures (516 DM 1–6) and CEQ's Regulations (40 CFR 1500–1508). The Department's overall NEPA procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541), and were revised in 49 FR 21437, on May 21, 1984.

RESPONSE TO COMMENTS: A total of eight responses were received during the public comment period. As a result of

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these comments and other internal Service input, several technical changes were made to refine the final revised procedures. The following is the Service's response to substantive comments.

Streamlining, Increased Inter-Agency Cooperation, and Early Coordination To Resolve Issues and To Integrate NEPA are Supported

Many commenters supported the changes, particularly those efforts to integrate Service programs, such as integrating the section 10(a)(1)(B) incidental take process, with NEPA. We are also encouraged by widespread support for increasing Service involvement in cooperative efforts with other agencies and for promoting early coordination with Federal agencies and Tribal, State, and local governments. Additional language was added to section 1.2 to further encourage cooperative and early coordination efforts.

There Should be Consistency Between the Service and the National Marine Fisheries Service in Developing NEPA Procedures for Implementing The Endangered Species Act

One commenter stated that there should be consistency between the Service and the National Marine Fisheries Service (NMFS) in developing NEPA procedures for implementing the provisions of ESA. The Service and NMFS share in the responsibility of implementing many of the provisions of ESA. In that regard, the Service and NMFS are working together, to the extent practicable, given different agency missions and objectives, to seek consistency in applying NEPA to ESA activities.

An EA Must Be Prepared Prior to Finalizing the Revisions

One commenter stated that the Service must prepare an EA prior to finalizing these procedural changes. The final NEPA procedures are considered categorically excluded under an existing Departmental categorical exclusion (516 DM 2, Appendix 1.10), which applies to procedures where the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Individual Service actions are subject later to the NEPA process, pursuant to these procedures, either collectively or on a case-by-case basis.

Regional Directors Should Be Responsible for Contacting State, Tribal, and Local Governments When Initiating an Action

One commenter stated that language should be added to section 1.1E to require each Regional Director to be responsible for contacting State, Tribal, and local governments when initiating an action. Numerous Service guidance documents (e.g., 30 AM 3) already require the Service to coordinate with the effected public when the Service proposes actions requiring an EA or EIS. However, to strengthen this important requirement of the CEQ Regulations, additional language has been added to section 1.1E.

Executive Order 12996 on "Management and General Public use of the National Wildlife Refuge System" Should be Referenced in the Procedures

One commenter stated that the recently published Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System" should be cited in this section. We concur and have added appropriate language to section 1.3A(2).

The NEPA Procedures are Confusing as to Whether they Apply to Service Actions or to the Service Review of Other Agency Activities

One commenter stated that the Service's revised NEPA procedures, particularly section 1.3B, are confusing as to whether they apply to Service actions or to the review of other Federal agency activities. We agree that the revised procedures are not clear on this point. These procedures apply to Service actions only, including, but not limited to, proposed construction, changes in land or human use, issuance of grants, issuance of permits, etc. Section 1.3 provides guidance to permittees who receive permits, grants, or technical assistance on how to assist the Service meet its requirements under NEPA, other Federal laws, and the executive orders. To clarify these procedures, minor language changes have been made in sections 1.2 and 1.3, including the deletion of section 1.3B, which primarily deals with the review of other agency environmental documents.

Terminology to Define Categorical Exclusions is Vague and Undefined and Could Result in Avoiding EAs and EISs

Several commenters suggested that the Service's use of terminology such as "no or minor change", "negligible environmental disturbance", and "suitable habitat", for example, for the categorical exclusions (section 1.4), should be further defined. Although the use of this terminology may at times seem vague, to define limits such as the size of the structure, extent of acreage involved, number of trees removed, etc., is generally not useful as a NEPA trigger. Predetermined limits of physical factors often have little relationship to the actual impact of the action. For example, a proposal to acquire a 1,000-acre parcel from a willing seller as an addition to a national wildlife refuge with little or no changes in management may be categorically excluded because no change in the environmental conditions is proposed or would occur; whereas, the acquisition of a 1,000-acre in-holding which could terminate a popular, locally-significant recreational use, would likely require the preparation of an EA or EIS. Under the CEQ Regulations, it is the level of impact or an established need to determine the level of impact that triggers the preparation of an EA or EIS. In other words, Service managers make NEPA decision based on the level of anticipated impact, or uncertainty of the impact of the action, not merely on the physical size of the action. Service decision makers are given a reasonable amount of flexibility to make these decisions based on their consideration of relevant biophysical factors that could result in anticipated or possible impacts. General guidance is provided in the Departmental NEPA procedures (516 DM 2, Appendix 2) to help Service decisionmakers determine when exceptions to a normally categorically excluded action could occur, thus requiring the preparation of an EA or EIS. Service guidance is also provided in 30 AM 3.9. The Service will continue to rely on this guidance and process to ensure proper compliance with NEPA, consistent with CEQ's Regulations.

The Service is Categorically Excluding Actions That may Require the Preparation of an EA or EIS

Several commenters were concerned that when impacts of actions, normally categorically excluded, are substantial, the Service would not prepare an EA or EIS (section 1.4). Commenters mentioned such actions as the construction of new structures or improvements, section 10 permits, land acquisition, and fire management. An important factor for determining when an action can fit an established categorically exclusion is whether the action could have a significantly impact, either individually or cumulatively. Departmental procedures (preamble to section 1.4) clearly state that if there is an exception to the categorically

exclusion, an EA or EIS must be prepared. The Departmental procedures state that categorically exclusions are not the equivalent of statutory exemptions. Exceptions to the categorical exclusions are found in the Departmental Manual (516 DM 2, Appendix 2). In the past, environmental documents have been prepared for the construction of new or improved structures and for fire-related activities. These procedures continue to require the preparation of an EA or EIS, when required. To ensure coordination, compliance, and consistency with other affected Federal agencies and State, Tribal, and local governments, language to this affect has been inserted at the beginning of section 1.4B.

The Service has no Mechanisms to Assess the Cumulative Impacts of its Actions

Several commenters stated that the Service has not mechanism to assess cumulative impacts of categorically excluded actions (section 1.4), such as multiple minor modifications to existing land use as a result of land acquisition, section 10(a)(1)(B) incidental take permits under ESA, listings, designation of critical habitats, or recovery plans and actions. For land acquisition actions, categorically excluded activities must meet the three criteria set forth in section 1.4A(4). In most cases, the land acquisition action covers the administrative action of transferring title from an owner to the Service. Specific guidance on land acquisition and the application of NEPA to land acquisition actions is found Service guidance (341 FW 2). The land acquisition planning process does not, nor is it intended to, fully address the impacts of future management decisions for refuge. The Service believes that aggregate land acquisition actions, per se, when executed under the Service's current policies and guidelines, are not causing significant impacts. The future development of refuge comprehensive management plans and any step-down management plans, however, are subject to NEPA compliance. The NEPA documents prepared pursuant to these actions are to address all relevant impacts, including cumulative impacts associated with the proposed management of the lands and waters. Specific guidance regarding the development of these plans and the application of NEPA to the development of management plans is found in other Service guidance (602 FW 1–3).

One commenter stated that the number of habitat conservation plans (HCP) prepared pursuant to section 10(a)(1)(B) of the ESA contradicts the Service's assertion that the impacts of such activities would be minor or negligible because of the total number of permits issued by the Service. The commenter combined all HCPs into a single action that was considered to be inevitably "significant." It was also implied that these permits are being issued without reference to any legal or biological standards that mitigate their effects. None of these assertions are true. Each permit application is evaluated to determine the effect on individual species or groups of species and the habitat on which they depend. Mitigation measures are then incorporated into the HCP and permit, as appropriate, to ensure that there is not adverse effect on the species. In some cases, the permit conditions may result in enhancing the species or its habitat. The cumulative impacts from categorically excluded low-effect HCPs are considered when the Service performs internal section 7 (ESA) consultation on the proposed action, pursuant to 50 CFR 402. Under section 7, the cumulative impacts analysis includes the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the action area. Past activities that may affect the environmental baseline are also considered. This process will be described in the final Section 7 Handbook and will be referenced in the final Section 10 Handbook, both to be released in the near future. We believe this process is adequate for ensuring the consideration of potential cumulative impacts of multiple low-effect HCPs within the same geographic area.

Regarding listing actions, CEQ has determined that these actions may be exempt from the requirements of NEPA, including an assessment of cumulative impacts. This assessment is based, in part, on the ESA amendments of 1982, which clearly restrict the information upon which the Secretary of the Interior may make listing decisions. Only scientific, biological criteria can be considered. The Service published this finding in the **Federal Register** on October 1, 1984 (49 FR 38908).

Regarding the cumulative impacts of the designation of critical habitat and the development of recovery plans, the Service believes that these activities do not constitute a proposal under NEPA and, therefore, do not warrant the preparation of an EA or EIS, including an evaluation of cumulative impacts. Implementation of recovery actions, however, is subject to NEPA, including the consideration of cumulative impacts, as appropriate. Refer to other responses below.

The use of Categorical Exclusions Effectively Precludes Public Involvement in Service Decisions

One commenter stated that categorical exclusions (section 1.4) effectively preclude public involvement in Service decisions. The CEQ Regulations clearly focus on those actions with significant impacts on the quality of the human environment or on those actions whereby such a determination must be determined (i.e., the EA), from which a better environmental decision can be encouraged. Categorical exclusions are categories of similar actions identified by agencies that normally do not require the preparation of an EA or EIS because the actions do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). A major purpose of categorical exclusions is to preclude such actions from undergoing detailed NEPA examinations or public review. However, this does not preclude the Service from involving the affected public in the planning and implementation of such decision. In some cases, it is mandatory, such as for recovery plan development. In other cases, the Service routinely includes the affected public in decisions, such as land acquisition actions, and issuance of special use permits, where the actions are normally categorically excluded.

At a Minimum, an EA Should be Prepared for Land Acquisition Actions

One commenter stated that, at a minimum, the Service should prepare an EA for all land acquisitions in cooperation with State, Tribal, and local governments [section 1.4A(4)]. All land acquisition proposals for the establishment or major expansion of national wildlife refuges are completed with the Service's full consideration of NEPA during the detailed pre-acquisition planning phase of a proposal. At that time, the Service considers the environmental impacts of the acquisition of lands within a proposed acquisition boundary. Proposals for the establishment of refuges involve appropriate coordination with Federal agencies and affected State, Tribal, and local governments. Either an EA or EIS is normally prepared, depending on the significance of impacts and/or controversy surrounding the proposal (refer to section 1.5A). The categorical exclusion for land acquisition in section 1.4A(4) is utilized for land acquisition within approved established refuges or for minor adjustments to the acquisition boundary of an existing refuge. Specific guidance on land acquisition and the

application of the NEPA process is found in Service guidance (341 FW 2).

Concerns Were Raised Regarding the Categorical Exclusion for the Reintroduction of Native, Formerly Native, or Established Species

Several commenters raised concerns regarding this categorical exclusion [section 1.4B(6)]. These concerns are fueled, in part, by controversy over the reintroductions of the gray wolf, proposed reintroduction of the Mexican wolf, and debate over the reintroduction of hatchery-raised fish. One commenter recommended that the categorical exclusion be deleted.

The Service is involved in numerous reintroductions through various grants programs (e.g., Federal Aid in Fish and Wildlife Restoration Acts), recovery actions under ESA, and the Service's Fisheries Program. The categorical exclusion for this activity applies only when there are no significant impacts associated with the proposal. The categorical exclusions must be read in context with the Departmental Manual, 516 DM 2, Appendix 2, which identifies exceptions to the categorical exclusions. When an exception applies, such as an action with highly controversial environmental effects, an EA or EIS must be prepared. In a number of recent reintroductions, such as the reintroduction of the gray wolf in Yellowstone National Park and central Idaho, and the proposed reintroduction of the Mexican Wolf in Arizona and New Mexico, an EIS was prepared due to the controversy over environmental effects associated with the proposals.

Several commenters raised specific concerns about the use of this categorical exclusion for the release of hatchery propagated fish. The Service's National Fish Hatchery System produces various species of fish for a variety of purposes. Numerous legislative authorities, such as the Atlantic Striped Bass Conservation Act, Great Lakes Fishery Act, New England Fishery Resources Restoration Act, Sikes Act, and the Water Resources Development Act of 1976, to name a few, direct the Service's Fisheries Program. While it is true that fishery managers in the past sometimes favored using Federal hatcheries to produce and stock non-native fishes, these kinds of activities are very limited today. The Service's Fisheries Program focuses its resources on restoring depleted native populations of fishes, recovering threatened and endangered fishes, and maintaining the health and abundance of inter jurisdictional fish populations. The service uses non-native fish primarily in waterways grossly altered by water projects and in artificial impoundments and sterile waterbodies. Any reintroduction activity covered under this categorical exclusion, whether it involves native or non-native species, will be subject to the exceptions procedures in the Departmental Manual (516 DM 2, Appendix 2). Additional language has been added to this categorical exclusion to clarify that such reintroductions can be categorically excluded only when no or negligible environmental disturbances are anticipated.

The categorical Exclusions are attempting to Bypass the Assessment of Impacts for the Issuance of Permits

Several commenters suggest that the Service, through its categorical exclusions [sections 1.4C(1) and (2)], is attempting to bypass the assessment of impacts from the issuance of permits for endangered and threatened species, species listed under the Convention on International Trade on Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

Although some ESA permits can be issued which involve the killing, removal from natural habitat, or permanent impairment of reproductive capability of species under this revised categorical exclusion, the permit can be issued only if it poses no jeopardy to the species. To ensure this standard, permits include appropriate minimization and mitigation actions in the conditions of the permit. If these actions are not feasible or the conditions are not acceptable to the applicant, the permit application will be denied.

Under the categorical exclusion 1.4C(1) and (2), section 10(a)(1)(B) incidental takes permits and the preparation of accompanying HCPs can now be categorically excluded if the expected impacts are minor or negligible. This standard for "low-effect" HCPs was not included under the previous categorical exclusions, where any permit, for example, involving incidental take, required the preparation of an EA or EIS. The previous language was a far more rigorous standard than required under NEPA. For example, under the previous procedures, incidental take of a listed species would require the preparation of an EA or EIS even when the service established that there was only a minor or negligible effect. The revised language is consistent with NEPA in that the level of impact is the trigger for determining when to prepare an EA or EIS, thus allowing the implementation of a more flexible, efficient section 10(a)(1)(B) permit program. Additional Service guidance on how to determine when a permit proposal will be "low-effect" will be included in the final Section 10 Handbook.

For species listed under CITES, the Wild Bird Conservation Act, and the Marine Mammal Protection Act, the Service carefully reviews possible effects of the proposed activity on the wildlife before issuing a permit. For species listed as injurious wildlife, the Service reviews whether provisions are in place to ensure that wildlife cannot escape and potentially harm native wildlife. The permit review process includes consulting with appropriate State and Federal agencies and species experts. The Services makes a decision to issue a permit only after issuance criteria are met. These are specific to the provisions of the law or treaty. For example, under CITES, the Service's Office of Scientific Authority must make a finding that the import or export would not be detrimental to the survival of the species. If the Service anticipates that a permit may have an incidental environmental impact, the Service would require the preparation of an EA or EIS.

Under the Migratory Bird Treaty Act (MBTA), the Service thoroughly reviews and considers anticipated effects on migratory bird populations before issuing a permit allowing the take of a protected species. Permits are issued at the Regional level pursuant to regulations and requirements (50 CFR 210 and are only issued after careful review by the Region's Permit Review Committee. Like the MBTA, the Bald and Golden Eagle Protection Act (BGEPA) prohibits the taking of bald and golden eagles, except as otherwise permitted pursuant to regulations (50 CFR 22.21 through 22.25). Under MBTA, BGEPA, and applicable regulations, no permits can be issued for actions that would cause harm to the species. If there are incidental impacts as a result of the issuance of the proposed issuance of a permit that are or may be significant, such permits would require the preparation of an EA or EIS.

If any permit action, that normally would be categorically excluded, meets one or more of the exceptions to the categorical exclusion in 516 DM 2, Appendix 2, an EA or EIS is required. This requirement is to ensure that proposals with significant impacts or with impacts that may be significant undergo the NEPA documentation and decisionmaking process.

The Habitat Conservation Plan Process Serves Essentially the Same Purpose as the NEPA Process

One commenter suggested that the HCP process, authorized under section 10(a)(1)(B) of the ESA, serves essentially the same purpose as the NEPA analysis in an EA or EIS. We agree that there are some similarities in the content of the HCP and the NEPA document, such as the identification of alternative, evaluation of impacts, and public review. However, some of these features can differ substantially, depending on the proposal. For example, section 10(a)(1)(B) and subsequent Service guidance limits the analysis of impacts in the HCP to affected listed and proposed species by minimizing and mitigating the incidental take of a listed species. The purpose of the HCP process is to provide an incidental take permit to the applicant that authorizes the incidental take of federally listed species in the context of an HCP. The HCP specifies the impacts that will likely result from the incidental taking, what steps the applicant will take to minimize and mitigate such impacts, what alternative actions are not being utilized, and such other measures as may be required by the Service.

When considering the NEPA analysis as it relates to an incidental take permit and the HCP, it is important to be precise about the nature of the underlying action. The scope of the NEPA analysis covers the direct, indirect, and cumulative effects of the proposed incidental take and the mitigation and minimization measures proposed form the implementation of the HCP. The specific scope of the NEPA analysis will vary depending on the nature of the scope of activities described in the HCP. In some cases, the anticipated environmental effects in the NEPA documents that address the HCP may be confined to effects on endangered species and other wildlife and plants, simply because there are no other important effects. In many cases, the NEPA analysis will focus on the effects of the minimization and mitigation actions on other wildlife and plants and will examine any alternatives or conservation strategies that might not otherwise have been considered. In other cases, the minimization and mitigation activities proposed in the HCP may affect a wider range of impacts analyzed under NEPA, such as cultural resources and water use. It is important to keep in mind, however, that the NEPA analysis for an HCP should be directed towards analyzing direct, indirect, and cumulative effects that would be caused by the approval of the HCP, that are reasonably foreseeable, and that are potentially significant.

Refuge Actions Determined to be Compatible Would not be Subject to Qualitative and Quantitative Evaluations

One commenter suggests that if the Service made a determination of compatibility, that would be sufficient to qualify the issuance or reissuance of refuge special use permit as a categorical exclusion, thus avoiding any qualitative or quantitative assessment of impacts. The categorical exclusion 1.4C(5) requires that three criteria be met before a Refuge action requiring the issuance or reissuance of a permit can apply: the use must be compatible, must contribute to the purposes of the refuge, and result in no or negligible anticipated environmental disturbances. The compatibility criteria is one of three that must be met before this categorical exclusion can be used. This categorical exclusion cannot be used unless it meets the requirements of both the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA (40 CFR 1508.4).

An EA or EIS Should be Prepared for the Preparation of Recovery Plans

One commenter stated that the preparation of recovery plans should require the preparation of an EA or EIS (section 1.4D). Another commenter stated that recovery plans should not be categorically excluded because the issue is currently in litigation. However, several commenters also stated that recovery plans are not "action" documents, and therefore do not constitute a Federal action under NEPA. The Service continues to consider recovery plans categorically excluded under section 1.4B(8), as well as under 516 DM 2, Appendix 1.10. Recovery plans are considered to be advisory in nature and provide technical assistance. These plans merely provide planning strategies and identify possible recovery actions and/or tasks that can be implemented at a later time to help recover the species. The recovery tasks identified in the plan are discretionary. The plans do not authorize, fund, or implement a specific task. Through section 1003 of the ESA amendments of 1988, the Secretary of the Interior provides the public an opportunity to review and comment on draft recovery plans. The NEPA process will be applied at the time specific tasks are proposed to be implemented. The relationship of NEPA to recovery planning will be clarified in revisions to the Service Recovery Manual.

The Service Should Maintain the Flexibility To Issue EAs and FONSIs Without Public Review

One commenter stated that the language in section 1.5C indicates that public review is required for an EA and that this is inconsistent with CEQ's Regulations, which require review of the FONSI only when an action is similar to one which normally requires an EIS or when the nature of the action is without precedent [40 CFR 1501.4(e)(2)]. We agree that this language is inconsistent and it is also somewhat confusing. The language in section 1.5C has been revised to indicate that it is not the EA/FONSI, but the notice of intent to prepare an EIS that is to be made available to the affected public when an EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment.

Although CEQ's Regulations do not normally require public review of EAs, such review is encouraged. The Service routinely involves the public in the review of EAs in conjunction with HCPs. The ESA requires the Service to publish a Notice, called the Notice of Receipt, when a HCP permit application is received. The final Section 10 Handbook will provide guidance encouraging Service personnel to publish a joint notification of the permit application, HCP, and the EA for public review. In practice, the Service normally provides the public an opportunity to review the EA along with the HCP to facilitate the planning and implementation of the incidental take permit.

Designation of Critical Habitat Should Require the Preparation of an EIS

One commenter stated that the designation of critical habitat should require the preparation of an EIS. The Department's NEPA procedures do not specifically state that the designation of critical habitat is categorically excluded. The Service has maintained that these designations are exempt from NEPA and therefore, do not require the preparation of an EA or EIS in conjunction with regulations adopted pursuant to section 4(a) of the ESA, as amended. A notice outlining the Service's reason was published in the **Federal Register** on October 25, 1983 (48 FR 49244). As the commenter notes, two Federal Circuit Courts have disagreed on this issue (9th and 10th Circuits). Pending resolution of this issue by the Courts, the Service will not prepare environmental documents in the 9th Circuit or in other parts of the United States, consistent with our current position, but the

Service will prepare EAs for any designations proposed in areas subject to the 10th Circuit. This admittedly inconsistent approach to the application of NEPA for the designation of critical habitat will likely continue until resolved by the Courts.

Departmental Manual

516 DM 6 Appendix 1

Fish and Wildlife Service

1.1 NEPA Responsibility

A. The Director is responsible for NEPA compliance for Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on Environmental Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC—Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the environmental review and analysis of documents prepared by other agencies and environmental statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office Environmental Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of Environmental Policy and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with 516 DM 6.2.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decisionmakers in his/her area of responsibility contact affected Federal agencies and State, Tribal and local governments when initiating an action subject to an EA or EIS. An individual in each Regional Office, named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office Environmental Coordinator, in accordance with 516 DM 6.2.

1.2 General Service Guidance

Service guidance on internal NEPA matters is found in 30 AM 2–3 (organizational structure and internal NEPA compliance), 550 FW1–3 (in preparation), 550 FW 3 (documenting and implementing Service decisions on Service actions), and 550 FW 1–2 (replacement to 30 AM 2–3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating the NEPA process with other Service programs, environmental laws, and executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decisionmaking activities. Service program guidance on NEPA matters must be consistent with the Service Manual on NEPA guidance and Departmental NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521–523 FW), refuge planning guidance (602 FW 1–3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation Act Grant Application Instructions.

1.3 Guidance to Applicants

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service-administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4), and the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh–3233, 43 U.S.C. 1602–1784). inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the Service Manual (602 FW 1–3). Reference to this and other National Wildlife Refuge System requirements are found in the Code of Federal Regulations, Title 50 parts 25–29, 31–36, 60, and 70–71. Under these regulations, these protections are extended to all Service-administered lands, including the National Fish Hatchery System.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the Anadromous Fish Conservation Act (CFDA #15.600); North American Wetlands Conservation Act; Fish and Wildlife Act of 1956; Migratory Bird Conservation Act; Food Security Act of

1985; Food, Agriculture, Conservation and Trade Act of 1990; Partnerships for Wildlife Act of 1992; and Consolidated Farm and Rural Development Act. The Service administers financial assistance to States under the Sport Fish Restoration Act (CFDA #15.605), Wildlife Restoration Act (CFDA #15.611), Endangered Species Act (CFDA #15.612 and 15.615), Coastal Wetlands Planning Protection and Restoration Act (CFDA #15.614), and Clean Vessel Act of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the Anadromous Fish Conservation Act may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the North American Wetlands Conservation Act may be obtained through the North American Waterfowl and Wetlands Office. U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the departmental categorical exclusions cannot be used. In addition to the actions listed in the departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.

(2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

i. The installation of fences.

ii. The construction of small water control structures.

iii. The planting of seeds or seedlings and other minor revegetation actions.

iv. The construction of small berms or dikes.

v. The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with departmental and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible

effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:

(a) Assessment of civil penalties.

(b) Forfeiture of property seized or subject to forfeiture.

(C) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.

D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2.

1.5 Actions Normally Requiring an EA

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the **Federal Register** and by other appropriate means to notify the affected public.

1.6 Major Actions Normally Requiring an EIS

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the environmental effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

Dated: January 13, 1997.

Willie Taylor,

Director, Office of Environmental Policy and Compliance, Office of the Secretary, U.S. Department of the Interior.

[FR Doc. 97–1071 Filed 11–15–97; 8:45 am]

BILLING CODE 4310–55–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–822203

Applicant: Louisiana Purchase Gardens and Zoo, Monroe, LA.

The applicant requests a permit to purchase a female captive-bred jaguar (*Panthera onca*) from Marion Nature Park, Bellview, Florida, for the purpose of enhancement of the species through captive propagation.

PRT–824037

Applicant: Siegfried & Roy Enterprises, Inc., Las Vegas, NV.

The applicants request a permit to import 2 pair of tigers (*Panthera tigris tigris*) born in captivity from Guadalajara Zoo, Guadalajara, Mexico for survival of the species through propagation and conservation education.

PRT–824036

Applicant: Charles Sammut, Salines, CA.

The applicant requests a permit to export and reimport one male captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–823928

Applicant: Plumpton Park Zoo, Rising Sun, MD.

The applicant requests a permit to import one female Siberian tiger (*Panthera tigris altaica*) born in captivity at the Greater Vancouver Zoological Centre, Canada, to enhance the survival of the species through conservation education.

PRT–823832

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport captive-born tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities done by the applicant over a three year period.

PRT–823896

Applicant: The Jane Goodall Institute's Center for Primate Studies, St. Paul, MN.

The applicant requests a permit to import chimpanzee (*Pan troglodytes*) hair samples collected from night nests in the Gombe National Park, Tanzania, for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 10, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–1031 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–55–P

Endangered and Threatened Species Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permits issued for the months of April 1996—December 1996.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*) Each permit listed as issued was granted only after it was determined that is was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Permit No.	Date issued
Dr. James R. Curry	PRT 810469	4/3/96
Dr. Francesca Cuthbert.	PRT 810834	4/3/96
Dr. Daniel Hornbach.	PRT 811008	4/17/96
Mr. Don Helms	PRT 811314	7/12/96
Dr. Arthur Clarke ...	PRT 811679	4/29/96
Mr. David Evans	PRT 811958	4/29/96
Dr. Kirk Larsen	PRT 813258	4/29/96
Mr. Thomas Erdman.	PRT 813259	6/6/96
National Biological Service.	PRT 813261	7/23/96
N. Anthony and G. Gelembiuk.	PRT 814105	7/26/96
Dr. Mark Hove	PRT 814107	6/6/96
Mr. Robert Bevill	PRT 814684	7/22/96
The Nature Conservancy.	PRT 815484	7/17/96
National Biological Service.	PRT 815942	9/19/96
3D/International	PRT 817175	9/5/96
National Biological Service.	PRT 818186	9/19/96
Dr. Daniel Soluk	PRT 805269 A1*	9/20/96
Ms. Marian Havlik ..	PRT 801471 A1*	6/28/96
Dr. John Whitaker	PRT 802777 A2*	6/18/96
3D/Environmental ..	PRT 809227 A2*	7/18/96

* indicates permit amendment.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone 612/725–3536 x250, during normal business hours (7:30am—4:00pm) weekdays.

Dated: January 9, 1997.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 97–1032 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–930–1430–00; N–57459]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Nye County, Nevada.

SUMMARY: The following described public land in Pahrump, Nye County, Nevada, has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 54 E.,
Section 31, E½NE¼NW¼SE¼
Containing 5 acres, more or less.

This parcel of land, situated in Pahrump, is being offered as a non-competitive FLPMA sale to Mr. Edward E. Wheeler. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Nye County/the City of Pahrump.

Upon publication of this notice in the **Federal Register**, the above described lands will continue to be segregated from all other forms appropriate under the public land laws including the general mining laws, except for sales and disposal under the mineral disposal laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Publication of this notice in the **Federal Register** previously occurred on April 18, 1996 (61 FR 16933), July 13, 1995 (60 FR 36157) and, December 27, 1994 (59 FR 49251). The December 27, 1994, publication allowed for the required 45 day comment period. Publication of this notice will not initiate an additional comment period. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws.

Dated: January 8, 1997.

James Wesley Abbott,

Acting District Manager, Las Vegas, NV.

[FR Doc. 97–1049 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–HC–P

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National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Museum of the South Dakota State Historical Society, Pierre, SD

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the Museum of the South Dakota State Historical Society, Pierre, SD, which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item is a medicine man's rattle made from a buffalo scrotum with a wooden stick handle. The rattle has an incised figure on one side and the opposite side is covered with faded blue pigment.

The rattle was donated to the South Dakota State Historical Society in 1906 by Mary Clementine Collins of Keokuk, IA. During the late 1800s and early 1900s, Miss Collins worked at the Oahe Mission, north of Pierre on the Missouri River, just opposite the Cheyenne River Sioux reservation. Miss Collins identified the rattle as having belonged to "Elk Head, 9th keeper of the sacred pipe." It is not known how Miss Collins acquired the rattle.

Mr. Arvol Looking Horse, keeper of the sacred pipe, traces his ancestry directly and without interruption to Elk Head, his great-great-great grandfather. During consultation, Mr. Looking Horse identified this rattle as a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religion by present-day adherents and has requested the rattle be returned to him as lineal descendent.

Based on the above-mentioned information, officials of the South Dakota State Historical Society have determined that, pursuant to 25 U.S.C. 3001 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the South Dakota State Historical Society have also determined that, pursuant to 25 U.S.C. 3001 (a)(5)(A), Mr. Arvol Looking Horse can trace his ancestry directly and without interruption by means of the traditional kinship system of the Cheyenne River Sioux Tribe to the individual who owned this sacred object.

This notice has been sent to Mr. Arvol Looking Horse and officials of the Cheyenne River Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Claudia Nicholson, Museum of the South Dakota State Historical Society, 900 Governors Dr., Pierre, SD 57501–2217, telephone (605) 773–6011 before February 18, 1997. Repatriation of these objects to Mr. Arvol Looking Horse may begin after that date if no additional claimants come forward.

Dated: January 8, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 97–1067 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the National Park Service, Organ Pipe Cactus National Monument, Ajo, AZ

AGENCY: National Park Service, Interior
ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the National Park Service, Organ Pipe Cactus National Monument which meets the definition of "unassociated funerary object" under Section 2 of the Act.

The object is a large ceramic jar, reportedly recovered from the gravesite of Tomas, a Hia-Ced O'odham medicine man. Museum records indicate that the jar was donated in 1972 to the National Park Service by Mrs. Ramona Mattia, a lineal descendant of Tomas. Information provided by members of the Hia-Ced O'odham Alliance, a non-federally recognized Indian group, indicates that the jar is typical of the type of objects placed near a medicine man's burial site.

Repatriation of the jar has been requested by Josephine Martinez, Tomas' brother's daughter's daughter's daughter. The Hia-Ced O'odham Alliance has provided genealogical information documenting Mrs. Martinez's relationship to Tomas and supports her claim of lineal descent based on the traditional kinship system of the Hia-Ced O'odham. Mrs. Mattia, now deceased, is the daughter of Mrs. Martinez. This genealogical information is available in the records at the Monument.

Officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (3)(B), this object is reasonably believed to have been placed with or near the remains of Tomas at the time of death or later as part of a death rite or ceremony. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3005 (a)(5)(A), Mrs. Martinez can trace her ancestry directly and without interruption by means of the traditional kinship system of the Hia-Ced O'odham to Tomas.

This notice has been sent to Josephine Martinez, officials of the Tohono O'Odham Nation of Arizona, Ak Chin Indian Community of Papago Indians of Arizona, Gila River Pima-Maricopa Indian Community of Arizona, and the Hia-Ced O'odham Alliance, a non-federally recognized Indian group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Harold Smith, Superintendent, National Park Service, Organ Pipe Cactus National Monument, Route 1, Box 100, Ajo, Arizona; telephone: (520) 387–6849 before February 18, 1997. Repatriation of these objects to Josephine Martinez may begin after that date if no additional claimants come forward.

Dated: January 6, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 97–1065 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and an Unassociated Funerary Object from Norwich, CT, in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and an unassociated funerary object in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Mohegan Indian Tribe of Connecticut.

In 1922, human remains representing three individuals were recovered from the Norwich, CT area by W.K. Morehead of the Robert S. Peabody Museum. These human remains were received by the Peabody Museum of Archaeology and Ethnology as a gift from the Robert

S. Peabody Museum, Andover, MA in 1937. Mohegan oral tradition and historical documents indicate Norwich, CT area was a traditional Mohegan burial area. The condition of the human remains indicate internment during the contact period ca. 1600–1800 AD. No known individuals were identified. No associated funerary objects are present.

In 1910, the Peabody Museum of Archaeology and Ethnology purchased a large collection of objects and human remains from Mr. James Eddy Mauran. Included in this collection is one projectile point which is described in the original accession records as having come from "the Grave of Uncas, Sachem of the Mohegans" in Norwich, CT. Evidence presented by Mohegan representatives indicates that projectile points were commonly included in burials as part of Mohegan funerary practices. The Mohegan representatives also state that because ninety-eight percent of Mohegan tribal members are descended from Uncas, no single lineal descendent can be identified.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and unassociated funerary object and the Mohegan Indian Tribe of Connecticut.

This notice has been sent to officials of the Mohegan Indian Tribe of Connecticut. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and unassociated funerary object should contact Ms. Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone (617) 495–2254, before February 18, 1997. Repatriation of the human remains and the unassociated funerary object to the Mohegan Indian Tribe of Connecticut may begin after that date if no additional claimants come forward.

Dated: December 17, 1996.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 97–1068 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the W.H. Over State Museum of the South Dakota State Historical Society, Vermillion, SD

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the W. H. Over State Museum of the South Dakota State Historical Society, Vermillion, SD, which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The object is a drum made from a wooden washtub with hide stretched over the top and tacked with metal nails. The washtub, ivory in color, has four rope handles and is braced around the middle and near the base with heavy wire. A brass plaque attached to the drum reads: "Northern Ponca Hethushka, or War Dance Drum Donated to the South Dakota Museum by Thomas Knudsen October 5, 1963 Restored to its Original Condition under the Direction of Peter Leclaire."

During the late 1950s and early 1960s, when the Northern Ponca were being terminated as a federally-recognized Indian tribe by the Federal government, the Keeper of the Hethu'shka Drum, Thomas Knudsen, removed the drum from the tribal community building for safekeeping. Mr. Knudsen then apparently placed the drum in the hands of Peter LeClaire, then Tribal Historian, in order to have the drum refurbished. The drum was never returned. The drum is noted as coming into the collection of the W.H. Over Museum (then the South Dakota Museum) in the fall of 1963, but no deed of gift has been located. It is likely that Mr. LeClaire actually donated the drum.

The drum's cultural affiliation with the Ponca Tribe of Nebraska is clearly identified through museum records, donor information, and by representatives of the Ponca Tribe of Nebraska. Representatives of the Ponca Tribe of Nebraska state that this drum is used for a variety of Ponca dances and ceremonies, including the Hethu'shka, a warrior society. Further, representatives of the Ponca Tribe of Nebraska state that this drum has ongoing historical, traditional, and cultural importance central to the tribe, and could not have been alienated, appropriated, or conveyed by any individual regardless of whether or not the individual was a member of the tribe.

Officials of the W.H. Over State Museum have determined that, pursuant to 25 U.S.C. 3001(3)(D), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the W.H. Over State Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Ponca Tribe of Nebraska.

This notice has been sent to officials of the Ponca Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Cathleen MacDonald, Assistant Curator, W.H. Over State Museum, 414 E. Clark St., Vermillion, SD 57069, telephone (605) 677–5273 before February 18, 1997. Repatriation of this object to the Ponca Tribe of Nebraska may begin after that date if no additional claimants come forward.

Dated: January 8, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 97–1066 Filed 1–15–97; 8:45 am]

BILLING CODE 4310–70–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of a loan to MUFIS, a.s. ("Borrower"), Prague, Czech Republic, as part of USAID's development assistance program. The proceeds of this loan will be used to enhance the municipal infrastructure finance system for shelter-related infrastructure for the benefit of low-income families in the Czech Republic. At this time, the Borrower has authorized USAID to request proposals from eligible lenders

for a loan under this program of $14 million U.S. Dollars (US$14,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Czech Republic

Project No.: 192–HG–001–$14,000,000.

Housing Guaranty Loan No.: 192–HG–003 A01.

(1) Attn: Mr. Ladislav Macka, MUFIS, a.s., Mailing Address: Jeruzalemska 4, 111 21 Praha 1 Czech Republic, Telefax No. (preferred communication): 42–2–260–273, Telephone No.: 42–2–21009–440/42–2–21009–454.

(2) Attn: Ms. Vera Kamenickova, The Ministry of Finance, Mailing Address: Letenska 15, 118 10 Praha 1 Czech Republic, Telefax No. (preferred communication): 42–2–2454–2120, Telephone No.: 42–2–2454–2258.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by the bid closing date, *Tuesday, January 28, 1997, 12:00 noon Eastern Standard Time.* Bids should be open for a period of 48 hours from the bid closing date. If, in the judgement of the Borrower, interest rates should rise significantly during the bid solicitation period, the Borrower reserves the right to refuse all offers. Copies of all bids should be simultaneously sent to the following:

(1) Mr. Fred Van Antwerp, U.S. Agency for International Development, USAID/Prague, Czech Republic, (Street address: Trziste 15, 118 01 Praha, Czech Republic), Telefax No. (preferred communication): 42–2–2451–0340 or 0341, Telephone No.: 42–2–2451–0847.

(2) Ms. Viviann Gary/Mr. Peter Pirnie, U.S. Agency for International Development, Office of Environment and Urban Program, G/ENV/UP, Room 409, SA–18, 1601 North Kent Street, Rosslyn, VA 22209, Telex No.: 892703 AID WSA, Telefax No. (preferred communication): (703) 875–4639 or (703) 875–4384, Telephone No.: (703) 875–4510 or (703) 875–4300.

(3) Mr. William Frej, U.S. Agency for International Development, USAID/Warsaw, Poland, (Street address: Aleje Jerozolimskie 56C 00803 Warszawa, Poland), Telefax No. (preferred communication): 48–22–6302486, Telephone No.: 48–22–6302480.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $14 million.

(2) *Term:* 30 years; 15 years.

(3) *Grace Period:* Ten years' grace on repayment of principal. (During grace period, semi-annual payments of interest only.) Semi-annual level payments of principal and interest over the remaining 20 or 5-year life of the loan are requested.

(4) *Interest Rate:* Alternatives of (a) 30-Year fixed, and (b) 15-Year fixed are requested.

(a) *30-Year Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the yield on the 6½% U.S. Treasury Bond due November 15, 2026. Such rate is to be set at the time of acceptance. Interest to be payable semi-annually in arrears on a 30/360 day basis.

(b) *15-Year Fixed Interest Rate:* If rates are to be quoted on a spread over an index, the lender should use as the index the yield of the 6½% U.S. Treasury Bond due October 2006. Such rate is to be set at the time of acceptance. Interest to be payable semi-annually in arrears on a 30/360 day basis.

(5) *Prepayment:*

(a) Offers should include options for repayment and identify prepayment premiums, if any, and specify the earliest date the option can be exercised without penalty.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan at par (it should be noted that since the inception of USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender unless by mutual agreement of all the parties.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and, thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from:

Ms. Viviann Gary, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, 1601 N. Kent Street, Rosslyn, VA 22209, Fax Nos.: (703) 875–4384 or (202) 736–7485, Telephone: (703) 875–4300 or (202) 647–9839.

Dated: January 9, 1997.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research Agency for International Development.

[FR Doc. 97–1130 Filed 1–15–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Earl G. Rozeboom, M.D.; Revocation of Registration; Correction

In notice document 96–30377 appearing on page 60730 in the issue of Friday, November 29, 1996, as corrected at 61 FR 68097, December 26, 1996, make the following corrections:

On page 60730, in the first column, first paragraph, 9th line and third column, 3rd line "AR4044611" should read "AR4014611".

Dated: January 9, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–1023 Filed 1–15–97; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

[OJP (OJJDP) No. 1107]

ZRIN 1121–ZA54

Notice of the Fiscal Year 1996 Missing and Exploited Children's Program Final Program Plan and Announcement of Discretionary Competitive Assistance Grant; Correction; Deadline Extension

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: The notice extends the due date for applications until 5:00 p.m. March 14, 1997 and corrects the address for obtaining the Application Kit.

SUMMARY: This is a correction and revision to 61 FR 65436, December 12, 1996.

DATES: The due date for submission of applications is extended to March 14, 1997. All applications must be received by mail or delivered to Office of Juvenile Justice and Delinquency Prevention, Missing and Exploited Children's Program by 5 p.m. e.s.t., March 14, 1997. Applications received after the deadline date will not be considered.

ADDRESSES: Applications must be mailed or delivered to Office of Juvenile Justice and Delinquency Prevention, Missing and Exploited Children's Program, 633 Indiana Avenue, N.W., Room 550, Washington D.C. 20531. Applications Kits can be obtained by contacting the Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, Maryland 20849–6000 or at 1–800–638–8736.

FOR FURTHER INFORMATION CONTACT: Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., 7th Floor, Washington, D.C., 20531. For copies of the original solicitation for applications, refer to **Federal Register**, Vol. 61, No. 240, December 12, 1996. An application kit and supplemental information relevant to the program, can be obtained by calling the Juvenile Justice Clearinghouse, toll free, 24 hours a day, (800) 638–8736.

Dated: January 10, 1997.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Allocation Formula

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of a proposed updated allocation formula described herein, and request for comments.

SUMMARY: The Employment and Training Administration is publishing a notice of a description of and rationale for a new allocation formula for the Job Training Partnership Section 402 migrant and seasonal farmworker programs, and a presentation of preliminary State planning estimates derived therefrom for Program Year (PY) 1997 (July 1, 1997 through June 30, 1998). Public comment is requested.

DATES: Written comments on this notice are invited and must be received on or before March 3, 1997.

ADDRESSES: Written comments shall be submitted to Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 219–5500 (this is not a toll-free number) or e-mail: <kanec@doleta.gov>.

I. Introduction, Scope and Purpose of Notice

This notice is published pursuant to Section 162(d) of the Act, which states:

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary's discretion under this Act, the Secretary shall, not later than 30 days prior to such allotment or allocation, publish such formula in the **Federal Register** for comments along with the rationale for the formula and the proposed amounts to be distributed to each State and area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the **Federal Register**.

Thus, this notice represents the first part of a two-stage process. Upon receipt of comments from the public regarding this notice, modifications to the proposed formula and preliminary planning estimates will be considered. In the second stage, the final formula and planning estimates will be published in the **Federal Register**.

The formula is developed for the purpose of distributing funds geographically by State service areas, on the basis of each State service area's relative share of persons eligible for the program. Beginning with PY 1997, a revised allocation formula is proposed which will update the allocation of funds among the States by using more current data on the distribution of the farmworker population. The revised formula is the result of work done by an Interagency Task Force on Farmworker Population Data (Task Force). The Task Force was convened by ETA in an effort to refine the allocation formula used since 1986.

Part II of this notice provides a discussion for public comment of the issues associated with farmworker population data, including: a description of available farmworker population data sources; a discussion of the factors affecting formula construction; and the rationale for the proposed formula.

Part III describes a hold-harmless provision which is proposed to be put into place for three years following the implementation of the revised allocation formula. The hold-harmless provision is designed to provide a staged transition from old to new funding levels for State service areas.

Part IV describes the proposed application of the formula and the hold-harmless provision using the PY 97 appropriation. These results are presented in a Table appended to this notice.

II. Description of Proposed Allocation Formula

A. Interagency Task Force on Farmworker Population Data

In April 1994, a special task force was convened to explore options for revising the existing formula and its data bases. The Interagency Task Force on Farmworker Population Data consisted of specialists in the fields of demography, economics, sociology, survey research, statistics; an employment and training programs specialist; and a representative of JTPA Section 402 grantees. Staff from ETA, the Bureau of Labor Statistics, the Economic Research Service of the U.S. Department of Agriculture, and the Bureau of the Census of the U.S. Department of Commerce were represented in this group. The Task Force was fortunate to include three members of the 1986 Interagency Task Force that developed the original allocation formula, which the proposed

formula in this notice revises and updates.

The Task Force examined a wide variety of issues in considering those most important to developing a funding formula. The formula proposed in this notice is intended to be responsive to the many concerns about and interest in farmworker population data. It represents the Task Force's best effort at crafting a funding methodology which meets the following statutory and administrative requirements:

(1) The need to use the most current data available on the farmworker population distribution among States and counties;

(2) The need to employ detailed data which enumerate the farmworker population at the State level, to correlate with the State-by-State geographical level at which funds are allocated; and

(3) The need to use data which are descriptive and relevant—that is, which address the socio-economic conditions, particularly the occupations and incomes, experienced by the farmworker population served by the JTPA Section 402 program.

B. Discussion of Data Sources

The following eight data bases were evaluated for possible use in the formula distribution of JTPA Section 402 funds: Census of Population, Census of Agriculture, National Agricultural Workers Survey, Current Population Survey, Farm Labor Survey, Farm Costs and Returns Survey, Bureau of Economic Analysis data, and Migrant Enumeration Project data. Each is discussed separately below. Three measures were applied to each of the data bases. A measure of currency determined whether the data bases were composed of more recent or more obsolete data. A measure of detail determined whether data bases offered descriptions of the farmworker population at national, State and county levels. A measure of relevance determined whether data bases contain meaningful data on the socio-economic conditions experienced by the population. These measures were applied to each data source separately, and in combination with others to determine which one or ones would be suitable for a revised formula.

1. Census of Population

Presently, the Decennial Census of Population (COP) is the only source of data on the farmworker population that provides information on their socio-economic characteristics which is equally available at national, State, and county levels. This is perhaps its greatest strength. The COP, among other things, counts individuals by occupation, industry, income level, and provides the number of family members for respondents. All of these are factors associated with participant eligibility in the JTPA Section 402 program. Finally, the COP has been used, in whole or in part, for the past decade to allocate JTPA Section 402 funds. The funding levels to the grant programs which now comprise the JTPA Section 402 system have been relatively stable as a result.

The COP also has a number of recognized weaknesses with regard to counting the farmworker population. These have been described elsewhere, by numerous, knowledgeable critics and this notice contains only a brief recapitulation of these problems. The 1990 COP was conducted during one reference week period, generally the last week in March or the first week in April. The enumeration in early Spring occurred at a time during which agricultural activity across the country was limited. Occupational questions on the Census form concerned the chief job activity during the survey week. Consequently, those farmworkers who were unemployed due to the seasonal nature of agricultural, or who were employed for a majority of hours in a nonfarm occupation, would not be counted as farmworkers by Census enumerators.

Migrant and seasonal farmworkers as a group, are characterized by many members who: have no fixed address; are highly migratory; have limited English-speaking abilities; have low educational levels; work intermittently in various agricultural and non-agricultural occupations during a single year; have only casual employer-employee links; live in rural, often remote, areas; and are unfamiliar with or actively distrustful of government agencies and agents, such as Census enumerators. The consequent non-identification of such individuals as farmworkers tended to exacerbate the problem of under-counting this population.

The COP's weaknesses as a measuring instrument also include the fact that it occurs decennially and there are no intercensal surveys of equivalent breadth. Additionally, measures of the farmworker (or any *occupationally*-defined) population, are the result of projections made from a sample (in that case 17 percent of households), not the universe of respondents. However, it should be noted that virtually all farmworker data sources suffer this weakness. As a mitigating factor, the COP is based on a much larger sample of households than any other data set.

2. Census of Agriculture

The Census of Agriculture (COA) conducted every five years, measures total hired and contract labor expenses incurred in the operation of farms during an entire year. Additionally, there is a periodic enumeration of the number of hired (but not contract) workers on farms. The COA combined tallies of labor expenditures and number of workers, capture virtually all farmworkers who worked for wages. The COA also offers the most complete geographic coverage of hired and contract farm labor, as measured by labor expenses.

The weakness of the COA include the fact that no measures of individual worker earnings are available. Therefore, it is not possible to determine, without additional refinement of these data, the number and distribution of the economically disadvantaged farmworkers who are the target population for JTPA Section 402 services. Neither does the COA record data based on discrete occupations within agriculture, or the number of farmworker dependents. The COA expenditure data include farm owners/managers, secretaries, clerks and others who are not eligible for program services based on their occupation. In the tally of hired farmworkers, there is a potential for a duplicate count given the high level of turnover in this industry. Finally, there is a potential problem of using expenditure data as a proxy for the number of farmworkers in the States, since areas with substantial agribusiness may have higher unit costs, and higher expenditures do not necessarily equate with larger numbers of workers.

3. National Agricultural Worker Survey

The National Agricultural Workers Survey (NAWS), published by the Department, is conducted three times annually at peak and slack agricultural seasons (January, May and September) and surveys a random sample of agricultural workers. The NAWS is rich in demographic and socio-economic detail, and includes income and family member data.

The principal weakness of the NAWS is that it does not provide an estimate of either the size or the distribution of the farmworker population among the States. A secondary weakness is that its description of the farmworker population is based on a relatively small sample of between 2,000 and 2,700 respondents located in 72 predominantly agricultural counties in 25 States. Additionally, the surveyed respondents work only in perishable

commodities and the NAWS does not survey farmworkers in livestock production; thus, it excludes those livestock workers who may be eligible for JTPA Section 402 program services.

4. Current Population Survey

The Current Population Survey (CPS), published by the Bureau of Labor Statistics, is a monthly probability survey based on a random sample of about 57,000 households. Earnings questions are directed to a subset of the sample households. Although this is the most timely of the data sources considered, with regard to the farmworker population, the extremely small sample size limits its applicability to the whole farmworker population. Furthermore, because of low statistical reliability, DOL does not publish State estimates directly from the CPS for most States.

5. Farm Labor Survey

The Farm Labor Survey (FLS), published by the National Agricultural Statistics Service, is a quarterly count (for California, Florida, and the full United States) of all wage and salary workers on the farm, including clerical and maintenance workers, but excluding contract workers. The FLS is a probability survey based on a sample of roughly 15,000 farms. It projects from this sample the average number of persons engaged in agriculture in 16 States and 15 regions comprised of two or more States. No income information is available from FLS data. However, the FLS reports annual average hourly wages for all hired, field, field and livestock, and hourly workers. Agricultural service workers and contract workers are excluded. The hourly wage rates are available for all States except Alaska. The District of Columbia and the Commonwealth of Puerto Rico also are excluded. These annual wage rates are averages of the wage rates for each survey week, weighted by the number of hours worked during the week. The annual average is based on data collected for January, April, July and October.

6. Farm Costs and Returns Survey

The annual Farm Costs and Returns Survey (FCRS) data reflect total hired and contract labor expenses incurred in the operation of farms during the entire year, including expenses for secretaries and maintenance workers. No individual income data are available from the FCRS, nor are State estimates of the farmworker population derived directly from the FCRS. The FCRS data are used to calculate a national estimate which is then distributed to the States, primarily by using data from the Census of Agriculture.

7. Bureau of Economic Analysis

Bureau of Economic Analysis (BEA) data consist of annual estimates of all wage and salary workers, including farmworkers and others working on a farm, such as clerical and maintenance workers, but excluding contract workers. The BEA estimates are based on data from the Farm Labor Survey, the Farm Costs and Returns Survey, the Census of Agriculture discussed above, and Unemployment Insurance Program data.

8. Migrant Enumeration Project

The Migrant Enumeration Project (MEP) data on the number of farmworkers are developed from a Demand for Labor study sponsored by the Office of Migrant Health of the Department of Health and Human Services in 1991–92. The formula used in the study is constructed from information on crop acreage, hours needed to perform a specific operation (*e.g.* harvest) on one acre of the crop, work hours per farmworker per day, and season length for peak work activity. This information was collected in counties with a migrant presence. Inter- and intra-State duplicate counts are likely with this methodology. The number of dependents found by the MEP was calculated based on NAWS data. No farmworker income information is available from the MEP.

C. Data Correlation

To test the cohesion of the various data bases, the Task Force made a comparison of relative distributions for those data bases able to provide estimates on a State-by-State level. The NAWS was excluded because it does not provide estimates of the distribution of farmworkers. Analysis revealed a surprising degree of correlation (ranging from 0.8 to 0.99) among the data bases as to the relative distribution of farmworkers, despite their differing methodologies, timing, definitions of farmworkers and scope. The degree of correlation deteriorates when data on the large agricultural States of California, Florida and Texas are excluded. In particular, with these States excluded, MEP and CPS data correlate very poorly with other data sets. Even so, the data sets which are proposed for the formula—the COP, the FLS and the COA—range in correlation from 0.86 to 0.91 with all States included and from 0.64 to 0.80 with California, Florida and Texas excluded.

D. Proposed Allocation Formula

Based on evaluation of the data bases, the Department proposes that the data for the allocation of JTPA Section 402 funds among the States in PY 1997 will come from the 1990 Census of Population, the 1992 Census of Agriculture, and the 1992 Farm Labor Survey. These three data bases, while limited in the aspects discussed in this notice, nevertheless meet the tests of currency, detail, and relevance. The Department's decision to continue to use 1990 COP data is, in part, based on Section 162(a) of the Act which provides:

All allotments and allocations under this Act shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to economically disadvantaged and low-income persons shall be based on 1980 Census or later data.

One set of data obtained from the 1990 COP and proposed for use in the formula, is the number of workers in certain occupational and industrial codes associated with agriculture, who reported on the Census questionnaire that they earned an income at or below 70 percent of the Lower Living Standard Income Level (LLSIL) set by the Bureau of Labor Statistics.

A second component of the formula is labor expenditure from the Census of Agriculture 1992. Labor expenditure data are a function of wages times hours worked. Since wage rates vary widely by geographic area, the proposed formula converts expenditures from an absolute to a relative measure by dividing State expenditures by the annual average hired farmworker's wage rate in each State to derive an hours-worked figure. The wage rate data are from the 1992 Farm Labor Survey. Because the FLS does not report on Puerto Rico annual average wages, data for on-the-job training hourly wages in agriculture, from the JTPA Section 402 grantee for the Commonwealth of Puerto Rico, were used as a substitute. Although the COA/FLS data set does not directly measure the number of farmworkers, it does provide a measure of total work supplied farmworkers, and the Department believes it will serve as an effective proxy.

Of the amounts available for allocation by formula for each program year and which will not be set aside for use in technical assistance or special projects pursuant to 20 CFR 633.105(b)(2)—

(1) Fifty percent of the funds would be allocated on a State-by-State basis using 1990 Census data on the relative share distribution of farmworkers

among the States who: (a) performed eligible farmwork, and (b) were economically disadvantaged, defined as family income at or below 70 percent of the Lower Living Standard Income Level; and

(2) Fifty percent of the funds would be allocated on a State-by-State basis according to the relative share distribution of an estimate of the total number of hours of farmwork in each State, determined by using Census of Agriculture data on the total labor expenditures in each State, adjusted by the average annual hourly wage in agriculture, derived from the FLS.

This two-part formula is intended to provide an equitable distribution of the funds available for PY 1997 and beyond.

E. Special Tabulation of COP Data

The State data from the 1992 Census of Agriculture and the Farm Labor Survey portions of the formula were taken from published reports with no further refinement of data.

To collect data for the COP portion of the proposed formula, several steps were taken. The Department requested a special tabulation of 1990 COP data from the Bureau of the Census in the form of a selection of Standard Occupational Classification (SOC) and Standard Industrial Classification (SIC) codes which contain information somewhat different from that used in the current formula.

F. SOC and SIC Codes

COP equivalents were used to capture individuals in the following Standard Occupational Classification codes:

473—farmers, except horticultural
474—horticultural specialty farmers
475—managers, farms except horticultural
476—managers, horticultural specialty farms
477—supervisors, farm workers
479—farm workers
483—marine life cultivation workers
484—nursery workers
485—supervisors, related agricultural occupations
488—graders and sorters, agricultural products
489—inspectors, agricultural products
494—supervisors, forestry and logging workers
495—forestry workers, except logging
496—timber cutting and logging occupations
497—captains and other officers, fishing vessels
498—fishers

COP equivalents were used to capture individuals in the following Standard Industrial Classification codes:

001—agricultural production, crops
002—agricultural production, livestock
007—agricultural services
008—forestry
009—fishing, hunting and trapping
241—logging
515—farm products, raw materials

The Department attempted to examine the widest possible range of workers in agricultural activities in designing its special tabulation. Some of the SOC and SIC categories that were considered are new, e.g., SOC codes 494–498 and SIC codes 008, 009, 241 and 515. The following SOC and SIC codes were deleted as not being representative of the population served by the JTPA Section 402 program: SOC 496—timber cutting and logging occupations; SOC 497—captains and other officers, fishing vessels; SIC 241—logging; and SIC 515—farm products, raw materials. One result of the codes selected for the proposed formula is that funds would be allocated for Alaska. This is almost solely due to a significant number of low income individuals in fishing occupations. Under the current formula, Alaska does not receive JTPA Section 402 funds because of the minimal level of farmwork activity. The Department specifically requests comment on which of the above SOC and SIC codes are appropriate to be retained for the farmworker population database.

The special tabulation was built around a number of tables which provide discrete information on the farmworker population. Data are available on:

(1) The whole count of farmworkers;

(2) The count of farmworkers falling below the Poverty Index;

(3) The count of farmworkers falling below 70 percent of the LLSIL;

(4) The count of individuals who did any farmwork in 1989; this table attempts to capture individuals who, at the time of the Census in April 1990 were farmworkers, but who were unemployed and whose last chief job was in farmwork;

(5) The count of farmworker families falling below the Poverty Index;

(6) The count of farmworker families falling below 70 percent of the LLSIL;

(7) The count of farmworker family members falling below the Poverty Index; this table is a proxy for farmworker dependents who are potentially eligible for JTPA Section 402 program services; and

(8) The count of farmworker family members falling below 70 percent of the LLSIL; this table is a proxy for farmworker dependents who are potentially eligible for JTPA Section 402 program services.

G. Other Formula Design Issues

Following are some of the ancillary issues which surfaced or were revisited (from the 1986 formula deliberations) during the preparation of the proposed new formula.

1. LLSIL v. Poverty Index

The special tabulation from the COP provides counts of farmworkers falling under the Poverty Index and farmworkers falling under 70 percent of the LLSIL. In 1986, the Department decided to change from the Poverty Index to the LLSIL. The Rationale at the time was that this change was consistent with program regulations and the practice of programs funded through other Titles of the JTPA. That rationale continues to be applicable to the proposed formula. As well, the LLSIL count captures a larger absolute number of farmworkers in all States with the exception of Connecticut, Maine, Massachusetts, and Rhode Island. These States experience a large reduction in their relative share under the LLSIL count. Rhode Island has not received any funding under the JTPA Section 402 program, because, under the formula currently in place and under the proposed new formula, its share of program funds has not been deemed sufficient to effectively operate a program. The Department proposes to continue to use the LLSIL as a factor in the farmworker count but specifically invites comment on the effect of using the LLSIL count with regard to Connecticut, Maine, and Massachusetts.

2. SOC v. SIC

In 1986, the Department opted to use SOC codes to define agricultural occupations. The rationale was to exclude those persons working in clerical, administrative and technical positions on a farm. These latter persons are captured in the SIC codes. The special tabulation of 1990 Census data on the farmworker population took a different approach to this issue and did a cross-tabulation of farmworkers against both the SOC and SIC codes. This process is intended to identify all farmworkers, by occupation and by industry, and still exclude clerical, administrative and technical workers.

3. Farmworkers v. Family Member (Dependent) Distribution

The special tabulation of COP data provided a count of farmworker family members. Because family members who are dependents of farmworkers are eligible for JTPA Section 402 seervices, an argument can be made for using the family member distribution, as a proxy for dependents, as the basis for

allocating funds. An analysis of the relationship between the farmworker and the family member LLSIL distributions indicates that these two distributions track each other very closely. Nineteen States would increase their relative shares only slightly under a family member distribution from the COP. For these States, the collective increase in relative share is less than six percent. Therefore, since there are only small differences in the distribution pattern, and because it is not possible to separate actual dependents from the COP family member count, the Department proposes to use the farmworker distribution from the COP in the Section 402 allocation formula.

H. Rationale for Formula Methodology

The Department proposes to use data from the COP, in part, to create a new funding formula because the level of detail, particularly for occupation and income, of COP data at the national, State and local level is not matched by other data bases. It is the Department's position that the strong probability of undercounts and non-identification inherent in the COP design is remediated by the more periodic information collected by the COA and FLS. While use of labor expenditure data as a proxy for the number of hired and contract farmworkers is less than ideal, no other data are available which reach this group. Finally, the COA offers the most complete geographic coverage of hired and contract labor use, as measured by labor expenditures. The proposed weights of 50 percent for the COP data and 50 percent for COA/FLS data are suggested as a balanced approach for equitably measuring the distribution of the farmworker population.

The Department's proposed formula is intended to be responsive to the statutory and administrative design requirements of currency, detail and relevance. In testing the new formula, certain allocation differences emerge from the allocation process presently in place. The Table appended to the notice compares the States' relative shares for the PY 1996 allocation under the current formula and the relative shares under the proposed formula. This Table shows some shifts in funds, including counter-intuitive shifts of funds from large agricultural States to States with a lower presumed presence of farmworkers.

A significant source of differences between funding under the old and proposed formulas is the adjustment that was made to the old formula as the result of the Immigration Reform and Control Act of 1986 (IRCA). Following the enactment of IRCA, Congress appropriated additional sums each year for the JTPA Section 402 program above the statutory levels. Conference language each year also directed the Department to use some of these additional funds to serve those newly legalized individuals admitted under the Special Agricultural Worker (SAW) provisions of IRCA. In response, the Department modified the purely Census-driven allocation formula to incorporate Immigration and Naturalization Service data on SAW applications in the States. The States of California, Texas, and Florida, among others, received additional sums much above the amount they would have received using a straight application of 1980 Census data. SAW data are not proposed for use in the new formula because these data are no longer current and no longer collected.

The hold-harmless provision described in Part III of this notice is intended to act as a staged transition from old to new funding levels which result from the application of the proposed formula.

III. Description of the Hold-Harmless Provision

For Program Years 1997, 1998, and 1999, the Department intends to apply a hold-harmless provision to the allocation formula in order to allow a staged transition from the application of the old formula to the new one. The staged transition of the hold-harmless provision is proposed specifically as follows:

(1) In PY 1997, each State service area will receive an amount equal to at least 90 percent of its relative share of the PY 1996 allotments as applied to the PY 1997 formula funds available;

(2) In PY 1998, each State service area will receive an amount equal to at least 80 percent of its relative share of the PY 1997 allotments as applied to the PY 1998 formula funds available; and

(3) In PY 1999, each State service area will receive an amount equal to at least 70 percent of its relative share of the PY 1998 allotments as applied to the PY 1999 formula funds available.

Thereafter, allocations to each State service area would be for the amount resulting from a direct application of the proposed funding formula without adjustment.

A State area which would receive less than $60,000 by application of the formula will receive no allocation because this amount is deemed insufficient for sustaining an independently administered program. Although the Department has the authority under 20 CFR 633.105(b)(2) not to allocate any funds for use in a State jurisdiction whose allocation is less than $120,000, it is proposed that any State jurisdictions which would receive more than $60,000 but less than $120,000 under the proposed formula will be awarded a minimum allocation of $120,000 both during and after the hold-harmless period.

The Department specifically invites comments on the above application of the funding floors provided for at 20 CFR 633.105(b)(2).

IV. Program Year 1997 Preliminary State Planning Estimates

The allocations set forth in the Table appended to this Notice reflect the allocation formula described above. For PY 1996, $69,285,000 were appropriated for Section 402 migrant and seasonal farmworker programs, of which $65,486,767 were allocated on the basis of the old formula. The remaining $3,798,233 of the PY 1996 Section 402 appropriation retained in the Section 402 national account to fund the housing program ($2,400,409), the Hope, Arkansas, Migrant Rest Center ($266,524), and other training and technical assistance projects ($1,131,300). The figures in the first numerical column show the actual PY 1996 formula allocations to State service areas. The next column shows the percentage of each allocation.

The amount appropriated for PY 1997 is the same as it was for PY 1996 and the amount available for formula allocation remains at $65,486,767. For the purpose of illustrating the effects of the proposed formula, the third column of the Table shows the allocations based on the proposed formula without the application of the hold-harmless or funding minimum provisions, with the percentages reported in column 4. The State service area allocations with the application of the first-year (90%) hold-harmless and funding minimum provisions, followed by the percentages, are shown in columns 5 and 6.

A. Proposed Formula Allocations (Without Hold-Harmless Provision)

The $65,486,767 formula total is proposed for allocation in the following manner:

(1) $32,743,383 (fifth percent of the formula total) would be allocated on a State-by-State basis using 1990 Census data on the relative share distribution of farmworkers among the States who: (a) performed eligible farmwork; and (b) were economically disadvantaged, defined as family income at or below 70 percent of the Lower Living Standard Income Level; and

(2) $32,743,383 (fifty percent of the formula total) would be allocated on a State-by-State basis according to the relative share distribution of an estimate of the total number of hours of farmwork in each State, determined by using 1992 Census of Agriculture data on the total wages paid to hired and contract farmworkers in each State, adjusted by the average annual hourly wage in agriculture, taken from the 1992 Farm Labor Survey.

B. Allocations With Hold-Harmless Provision

To transition State service areas from the current formula to the revised formula funding levels, a graduated hold-harmless provision would be applied the first three years: at 90 percent the first year, at 80 percent the second year, and at 70 percent the third. For PY 1997, the State service areas will receive at least 90 percent of their relative share of the PY 1996 formula, as applied to the PY 1997 formula total. Since the PY 1996 formula total and the PY 1997 formula total are actually the same, the proposed PY 1997 revised formula funding of State service areas will result in no less than 90% of the PY 1996 funding that was actually allocated under the current formula.

For the purpose of comparisons, please refer to the table.

Signed at Washington, DC, this 31st day of December, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U. S. Department of Labor
Employment and Training Administration

Migrant and Seasonal Farmworkers
Impact of Proposed PY 1997 Formula Allotments To States

State	PY 1996 Allotments (1)	% Share (2)	Proposed PY 1997 Without 90% Hold-Harmless or Minimum $ (3)	% Share (4)	Proposed PY 1997 With 90% Hold-Harmless and Minimum $ (5)	% Share (6)
Total	$65,486,767	100.00%	$65,486,767	100.00%	$65,486,767	100.00%
Alabama	772,523	1.18%	686,255	1.05%	695,271	1.06%
Alaska	0	0.00%	97,974	0.15%	120,000	0.18%
Arizona	1,482,583	2.26%	1,201,004	1.83%	1,334,325	2.04%
Arkansas	1,138,936	1.74%	1,172,731	1.79%	1,071,740	1.64%
California	14,235,281	21.74%	13,200,395	20.16%	12,811,753	19.56%
Colorado	785,877	1.20%	1,006,699	1.54%	922,142	1.41%
Connecticut	200,999	0.31%	150,106	0.23%	180,899	0.28%
Delaware	115,448	0.18%	91,586	0.14%	120,000	0.18%
District of Columbia	0	0.00%	4,848	0.01%	0	0.00%
Florida	4,518,461	6.90%	4,238,489	6.47%	4,066,615	6.21%
Georgia	1,669,871	2.55%	1,230,495	1.88%	1,502,884	2.29%
Hawaii	245,471	0.37%	388,475	0.59%	360,980	0.55%
Idaho	856,039	1.31%	1,179,110	1.80%	1,081,718	1.65%
Illinois	1,391,035	2.12%	1,345,159	2.05%	1,251,932	1.91%
Indiana	762,553	1.16%	934,160	1.43%	852,826	1.30%
Iowa	1,282,338	1.96%	1,513,103	2.31%	1,365,776	2.09%
Kansas	680,820	1.04%	1,010,217	1.54%	924,759	1.41%
Kentucky	1,319,625	2.02%	1,562,470	2.39%	1,407,657	2.15%
Louisiana	776,618	1.19%	1,002,048	1.53%	907,163	1.39%
Maine	319,412	0.49%	175,125	0.27%	287,471	0.44%
Maryland	298,821	0.46%	308,026	0.47%	283,308	0.43%
Massachusetts	342,466	0.52%	159,596	0.24%	308,219	0.47%
Michigan	857,212	1.31%	1,299,948	1.99%	1,191,946	1.82%
Minnesota	1,243,685	1.90%	1,436,346	2.19%	1,297,243	1.98%
Mississippi	1,413,704	2.16%	1,013,801	1.55%	1,272,334	1.94%
Missouri	1,067,830	1.63%	1,211,588	1.85%	1,093,183	1.67%
Montana	650,917	0.99%	752,584	1.15%	679,527	1.04%
Nebraska	755,986	1.15%	1,198,633	1.83%	1,094,310	1.67%
Nevada	195,898	0.30%	134,481	0.21%	176,308	0.27%
New Hampshire	109,854	0.17%	75,230	0.11%	120,000	0.18%
New Jersey	390,282	0.60%	363,452	0.56%	351,254	0.54%
New Mexico	584,118	0.89%	697,778	1.07%	635,714	0.97%
New York	1,805,532	2.76%	1,522,274	2.32%	1,624,979	2.48%
North Carolina	2,932,691	4.48%	1,961,833	3.00%	2,639,422	4.03%
North Dakota	456,939	0.70%	697,929	1.07%	625,486	0.96%
Ohio	882,881	1.35%	1,200,305	1.83%	1,095,712	1.67%
Oklahoma	593,313	0.91%	903,985	1.38%	820,214	1.25%
Oregon	1,061,170	1.62%	1,523,303	2.33%	1,393,923	2.13%
Pennsylvania	1,191,652	1.82%	1,662,171	2.54%	1,516,234	2.32%
Puerto Rico	2,867,153	4.38%	1,625,905	2.48%	2,580,438	3.94%
Rhode Island	0	0.00%	23,991	0.04%	0	0.00%
South Carolina	1,053,764	1.61%	679,587	1.04%	948,388	1.45%
South Dakota	675,971	1.03%	715,459	1.09%	643,012	0.98%
Tennessee	934,440	1.43%	900,113	1.37%	840,996	1.28%
Texas	5,833,961	8.91%	5,077,712	7.75%	5,250,565	8.02%
Utah	239,370	0.37%	348,245	0.53%	317,391	0.48%
Vermont	207,936	0.32%	177,166	0.27%	187,142	0.29%
Virginia	1,011,164	1.54%	909,304	1.39%	910,048	1.39%
Washington	1,663,979	2.54%	2,315,795	3.54%	2,122,047	3.24%
West Virginia	213,976	0.33%	201,045	0.31%	192,578	0.29%
Wisconsin	1,199,223	1.83%	1,888,917	2.88%	1,724,904	2.63%
Wyoming	196,987	0.30%	309,816	0.47%	284,031	0.43%

[FR Doc. 97–1101 Filed 1–15–97; 8:45 am]
BILLING CODE 4510–30–C

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Product Testing by Applicant or Third Party

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to "Product Testing by Applicant or Third Party." MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

A copy of the proposed information collection request can be obtained by contacting the person listed in the contact section of this notice.

DATES: Submit comments on or before March 17, 1997.

ADDRESSES: Written comments shall be mailed to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 318 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 878, defines "permissible" equipment as that which has been approved according to specifications which are prescribed by the Secretary of Labor. This approval indicates that the Mine Safety and Health Administration's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, have been met. Additionally, 30 CFR Part 7 provides procedures whereby products may be tested and certified by the applicant or a third party.

II. Current Actions

MSHA is seeking to continue the requirements for approving certain products and equipment for use in underground mines.

Type of Review: Reinstatement.

Agency: Mine Safety and Health Administration.

Title: Product Testing by Applicant or Third Party.

OMB Number: 1219–0100.

Recordkeeping: 30 CFR 7.4(a) requires respondents to maintain records of test results and procedures for a period of at least 3 years. Section 7.6(c) requires respondents to maintain records of the initial sale of each unit having an approval marking for at least the expected shelf life of and service life of the product.

Affected Public: Businesses or other for-profit.

Total Respondents: 392.

Frequency: On occasion.

Total Responses: 403 responses.

Average Time per Response: 0.54 hours.

Estimated Total Burden Hours: 219 hours.

Estimated Total Burden Cost: $52,547.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: January 9, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–1100 Filed 1–15–97; 8:45 am]
BILLING CODE 4510–43–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Presidential Search Committee of the Board of Directors

TIME AND DATE: The Presidential Search Committee of the Legal Services Corporation Board of Directors will meet by teleconference on January 22, 1997, from 10:00 a.m. until approximately 11:30 a.m.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the executive session, the Committee will hear a status report by representatives of the independent search firm assisting the Committee to identify and recruit candidates for the position of President of the Legal Services Corporation and will provide direction to the search firm. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. §552b(c)(2) & (6)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. §1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street NE., Washington, DC 20002, in its 11th floor reception area, and will also be available upon request.

LOCATION: Members of the Committee and directors wishing to participate, as well as members of the Corporation's staff and the public, will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 11th floor of 750 First Street, NE., Washington, DC 20002.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of agenda.
2. Approval of minutes of November 22, 1996.

Closed Session:

3. Discussion with and direction to representatives of Isaacson Miller, the independent search firm assisting the Committee to identify candidates for consideration for the position of President of the Legal Services Corporation, about specific candidates for the position.

Open Session:

4. Other business, including public comment and scheduling of the Committee's next meeting.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel & Secretary of the Corporation, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: January 14, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–1270 Filed 1–14–97; 2:13 pm]

BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Meeting

TIME AND DATE: 10:00 a.m., Thursday, January 16, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor on behalf of Dixon v. Pontiki Coal Corp., Docket No. KENT 94–1274–D. (Issues include whether the judge correctly determined that the Commission does not have jurisdiction over complaints filed by the Secretary of Labor that allege discrimination against miners who have not filed an initiating complaint under section 105(c)(2) of the Mine Act, and whether the judge correctly determined that a person may become a miners' representative before complying with 30 C.F.R. Part 40.)

TIME AND DATE: 1:00 p.m., Thursday, January 16, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session.

1. Secretary of Labor o.b.o. Dixon v. Pontiki Coal Corp., Docket No. KENT 94–1274–D. (*See* oral argument listing, supra, for issues).

TIME AND DATE: 10:00 a.m., Thursday, January 23, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor v. Mingo Logan Coal Co., Docket No. WEVA 93–392 (Issues include whether the judge properly determined that the mine operator was liable for a training violation committed by one of its independent contractors).

TIME AND DATE: 10:00 a.m., Thursday, January 30, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Knotts v. Tanglewood Energy, Inc., et al., Docket No. WEVA 94–357–D (Issues include whether the judge correctly found that the mine operator discriminated against the complainant in violation of section 105(c) of the Mine Act and whether the judge erred in finding individual liability for discriminatory acts under that provision, in assessing the civil penalty for the violation, and in taking unemployment compensation into account when calculating the backpay award).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–1192 Filed 1–14–97; 9:46 am]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth of Massachusetts: Staff Assessment of Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed Agreement with the Commonwealth of Massachusetts.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received, from the Governor of the Commonwealth of Massachusetts, a proposal to enter into an Agreement pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Act). The proposed Agreement would permit Massachusetts to assume certain portions of the Commission's regulatory authority. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing a summary of the NRC staff assessment of the proposed Massachusetts radiation control program. Comments are requested on the proposed Agreement, especially public health and safety aspects, and the assessment.

The Agreement will effectively release (exempt) persons in Massachusetts from certain portions of the Commission's regulatory authority. The Act also requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires January 23, 1997.

Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, along with copies of the request by Governor Weld including referenced enclosures; applicable legislation, regulations for the control of radiation, and the full text of the NRC staff assessment are also available for public

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inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail RLB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Commission has received a request from Governor William Weld of Massachusetts to enter into an Agreement whereby the NRC would discontinue, and the Commonwealth would assume, certain regulatory authority as specified in the Act. Section 274 of the Act authorizes the Commission to enter into such an agreement.

Section 274e of the Act requires that the terms of the proposed Agreement be published for public comment once each week for four consecutive weeks. This notice is being published in the **Federal Register** in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism whereby a State may assume regulatory authority, otherwise reserved to the NRC, over certain radioactive materials [1] and uses thereof. In a letter dated March 28, 1996, Governor Weld certified that the Commonwealth of Massachusetts has a program for the control of radiation hazards that is adequate to protect health and safety of the public within the Commonwealth with respect to the materials covered by the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The specific authorities requested by the Commonwealth of Massachusetts under this proposed Agreement are (1) the regulation of byproduct materials as defined in Section 11e.(1) of the Act, (2) the regulation of source materials, (3) the regulation of special nuclear materials in quantities not sufficient to form a critical mass, (4) the evaluation of the safety of sealed sources and devices (containing materials covered by the Agreement) for distribution in interstate commerce, and (5) the land disposal of low-level radioactive waste (as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. 2021b) received from other persons. The Commonwealth does not wish to assume authority over the regulation of byproduct materials as defined in Section 11e.(2) of the Act, that is over tailings from the recovery of source materials from ore, but does reserve the right to apply at a future date for an amended agreement to assume authority in this area.

(b) The proposed agreement contains nine articles that (1) list the materials and activities to be covered by the Agreement; (2) specify the activity for which the Commission will retain regulatory authority; (3) allow for future amendment of the Agreement; (4) allow for certain regulatory changes by the Commission; (5) reference the continued authority of the Commission for purposes of safeguarding nuclear materials and restricted data; (6) commit the Commonwealth and NRC to exchange information necessary to maintain coordinated and compatible programs; (7) recognize reciprocity of licenses issued by the respective agencies; (8) identify criteria for the suspension or termination of the Agreement; and (9) specify the proposed effective date. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes in style. Also, because of several issues posed by this request which required resolution before the Agreement could be concluded, the effective date requested by the Governor could not be realized. The final text of the Agreement, with the actual effective date, will be published after the Agreement is approved by the Commission.

(c) The Massachusetts radiation control program currently regulates users of naturally-occurring and accelerator-produced radioactive materials, and users of certain radiation-producing electronic machines. The program was enabled by Massachusetts law (Massachusetts General Law [M.G.L.] Chapter 111, §5B) in 1958. This statute was later replaced by M.G.L. Chapter 111, Sections 5M through 5P. In 1987, M.G.L. Chapter 111H was added to provide for the regulation of low-level radioactive waste. Section 7 of the legislation contains the authority for the Governor to enter into an Agreement with the Commission.

The Massachusetts regulations contain provisions for the orderly transfer of authority over NRC licenses to the regulatory control of the Commonwealth. After the effective date of this proposed Agreement, licenses issued by NRC will continue in effect under Massachusetts regulatory authority until these licenses expire or are replaced by Commonwealth issued licenses.

(d) The NRC staff assessment finds the proposed Massachusetts program adequate to protect public health and safety, and compatible with the NRC program for materials regulation.

II. Summary of the NRC Staff Assessment of the Massachusetts Program for the Control of Agreement Materials

NRC staff has examined the proposed Massachusetts radiation control program with respect to the ability of the program to regulate agreement materials. The examination was based on the Commission's policy statement *"Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement"* (referred to herein as the "criteria") (46 FR 7540; January 23, 1981, as amended).

(a) Organization and personnel. The proposed program unit responsible for regulating agreement materials will consist of 13 technical/professional positions within the existing radiation control program of the Massachusetts Department of Public Health. The qualifications for staff members specified in the personnel position descriptions, and the qualifications of the current staff members, meet the criteria for education, training and experience. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Most staff members hold advanced degrees, and have had additional training and experience in radiation protection. Senior staff have more than five years experience each in radiation control programs. The program director has a master's degree in public health and 15 years experience in regulatory health physics.

(b) Legislation and regulations. The Massachusetts Department of Public Health is designated by statute to be the radiation control agency. The Department is provided by statute with the authority to promulgate regulations, issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required by law to provide access to inspectors.

The Department has adopted regulations (Massachusetts Regulations for the Control of Radiation or MRCR) providing radiation protection standards essentially identical to the standards in

[1] The materials, sometimes referred to as "agreement materials," are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) Byproduct materials as defined in Section 11e.(2) of the Act; (c) Source materials as defined in Section 11z. of the Act; and (d) Special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

10 CFR Part 20. Technical definitions in the MRCR are also essentially identical. The MRCR require consideration of the total radiation doses to individuals from all sources of radiation (except background radiation and radiation from medical treatment or examinations, as is the case in the NRC rules), whether the sources are in the possession of the licensee or not. The MRCR also require appropriate surveys and personnel monitoring under the close supervision of technically competent people, and the use of radiation labels, signs and symbols essentially identical to those contained in 10 CFR Part 20. Posting requirements and instruction of workers requirements adopted in the MRCR are compatible with the equivalent current requirements of the NRC.

Nothing in the Massachusetts statutes or regulations seeks to regulate areas not permitted by the Atomic Energy Act. The MRCR contain a provision to avoid interference with those regulatory requirements imposed by NRC pursuant to the Act, and for which Commonwealth licensees have not been exempted under the agreement.

(c) Storage and disposal. The MRCR also contain compatible requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both waste disposal by material users and the land disposal of waste received from other persons. The NRC staff noted some differences in the MRCR waste regulations as compared to the NRC regulations in 10 CFR Part 61, but determined that the differences are related either to the prohibition of shallow land burial as a disposal technology or to the ownership of the disposal site by the Massachusetts Low-Level Radioactive Waste Management Board. Because of these special provisions, NRC staff determined that the differences in the regulations do not reduce the ability of the Massachusetts radiation control program to protect health and safety, nor reduce the compatibility of the program or the regulations themselves.

(d) Transportation of radioactive material. The MRCR contains rules equivalent to 10 CFR Part 71 as in effect prior to April 1, 1996. Effective on that date, the NRC amended Part 71. Under current policy, an existing Agreement State is allowed up to three years after NRC adopts a final rule to adopt a compatible rule, or to impose each regulatory provision of the rule using an alternate legally binding requirement (LBR), such as an order or license condition. A State seeking an agreement is expected to have effective rules or LBRs compatible with those of NRC in effect at the time the agreement becomes effective. The intent of this expectation is to spare licensees in the new Agreement State from the "whipsaw" effect of being subjected first to the new NRC requirements, then the old requirements when the agreement takes effect, then again to the new requirements when later adopted by the State. Massachusetts is in the process of adopting rules compatible with the revised 10 CFR Part 71. However, these rules may not become effective before the Agreement is signed. Massachusetts intends to impose the requirements of the new Part 71 rules in the interim by issuing appropriate orders to the affected licensees.

(e) Recordkeeping and incident reporting. The MRCR incident reporting requirements are similar to the requirements in the NRC rules. The NRC staff noted that for some NRC rules that specify a records retention period of less than five years, the retention period specified in the MRCR is shorter. The NRC staff concluded, however, that the retention periods specified in the MRCR rules are adequate since the retention periods are long enough to permit examination of the records during routine inspections. The MRCR imposes retention requirements similar to the NRC rules for records which must be retained indefinitely or until the license is terminated.

(f) Evaluation of license applications. The MRCR contains requirements equivalent to the current NRC regulations specifying the required content of applications for licenses, renewals, and amendments. The MRCR also provide requirements equivalent to the NRC requirements for issuing licenses and specifying the terms and conditions of licenses. The agreement materials program unit has adopted a procedure for processing applications that assures the regulatory requirements will be met, or, if appropriate, exceptions granted. The program unit has the authority by Statute to impose requirements in addition to the requirements specified in the regulations. The program unit also retains by regulation the authority to grant specific exemptions from the requirements of the regulations. The MRCR specifies qualifications for the use of radioactive materials in or on humans that are similar to the NRC requirements in 10 CFR Part 35.

The Massachusetts licensing procedures manual, along with the accompanying regulatory guides, are adapted from similar NRC documents and contain adequate guidance for the agreement materials program unit staff to use when evaluating license applications.

(g) Inspections and enforcement. The Massachusetts radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The agreement materials program unit has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted procedures for enforcement in the MRCR.

(h) Regulatory administration. The Massachusetts Department of Public Health is bound by procedures specified in Commonwealth statute for rulemaking. The program has adopted procedures to assure fair and impartial treatment of license applicants.

(i) Cooperation with other agencies. The MRCR deems the holder of an NRC license on the effective date of the Agreement to possess a like license issued by Massachusetts. The MRCR provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. The MRCR also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. Licenses in timely renewal are not excluded from the transfer continuation provision. The MRCR provide exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The Department of Public Health and the Department of Labor and Industries have entered into a Memorandum of Understanding, as authorized elsewhere in Massachusetts law, which provides for the Department of Public Health to exercise the responsibility and authority of the Department of Labor and Industries with respect to radiation and radioactive materials. The Department of Environmental Protection is designated as the agency to adopt the suitability standards for any proposed disposal site under the Massachusetts Low-Level Radioactive Waste Management Act. The Department of Public Health will license and regulate the site only after the Executive Secretary for Environmental Affairs has determined that the report on the site characterization study is in conformance with the suitability standards, and the Low-Level

Radioactive Waste Management Board has selected the operator.

The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of like materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff has concluded that the Commonwealth of Massachusetts meets the requirements of Section 274 of the Act. The Commonwealth's statutes, regulations, personnel, licensing, inspection, and administrative procedures are compatible with those of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Since the Commonwealth is not seeking authority over byproduct material as defined in Section 11e.(2) of the Act, Subsection 274o is not applicable to the proposed Agreement. The language of the Agreement requested by Governor Weld has been revised to reflect that the effective date of the proposed Agreement and the location at which it will be signed remain to be determined. Certain conventions have been used to highlight the proposed revisions. New language is shown inside boldfaced arrows, while language that would be deleted is set off with brackets.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 19th day of December 1996.

For the U. S. Nuclear Regulatory Commission.

Paul H. Lohaus,

Acting Director, Office of State Programs.

Appendix A—Proposed Agreement

Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Massachusetts for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Massachusetts is authorized under Massachusetts General Laws, Chapter 111H, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Massachusetts certified on [June 1, 1995,] >March 28, 1996,< that the Commonwealth of Massachusetts (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect [the] public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [November 1, 1995,] >(date to be determined)< that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation[s] between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and;

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth, acting in behalf of the Commonwealth, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. By-product materials as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. Licensing of Low-Level Radioactive Waste Facilities.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of by-product, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of by-product, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other by-product, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting by-product material.

Article III

This Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E, whereby the Commonwealth can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of like materials. The Commonwealth and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on [April 24, 1996,] >(date to be determined)< and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Boston, Massachusetts] >(location to be determined)<, in triplicate, this [24]th Day of [April, 1996] >(date to be determined)<.

For the United States Nuclear Regulatory Commission.

Shirley Ann Jackson,

Chairman.

For the Commonwealth of Massachusetts.

William F. Weld,

Governor.

[FR Doc. 97–716 Filed 1–15–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Company, Trojan Nuclear Plant; Consideration of Approval of Application Regarding Proposed Corporate Restructuring

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of an application concerning the proposed corporate restructuring of Portland General Corporation (PGC), the parent holding company for Portland General Electric (PGE), the licensee for the Trojan Nuclear Plant (TNP).

By letter dated August 20, 1996, as supplemented by letter dated October 30, 1996, PGE informed the Commission that PGE's parent company, PGC, has agreed to a merger with Enron Corporation, subject to certain conditions. Those conditions include approval by the shareholders of the companies and obtaining appropriate governmental approvals which do not impose terms or conditions that would be reasonably likely to have an adverse effect on PGC or Enron. Under the Agreement and Plan of Merger the businesses of Enron and PGC would be combined by means of the re-incorporation of Enron as an Oregon corporation through the merger of Enron with, and into, a wholly owned Enron subsidiary, New Falcon Corporation (the name to be changed to Enron Corporation, but is hereinafter referred to as the "Merger Company"). As a result the shareholders of Enron will become shareholders of the Merger Company. In addition, PGC will combine with the Merger Company. The shareholders of PGC will become shareholders of the Merger Company on a share for share basis. PGE will continue to be headquartered in Portland and senior management will remain in place. The merger will not affect PGE's status as a regulated public electric utility in the State of Oregon. According to PGE, the planned merger of PGE's parent company, PGC, with the Merger Company should improve the overall financial strength and stability of PGE's parent company after the merger. After the merger PGE will continue to be

the NRC licensee for Trojan Nuclear Plant and no direct transfer of the operating license or interests in the unit will result from the merger.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this action, see the licensee's letter dated August 20, 1996, as supplemented by letters dated October 16, 1996, and October 30, 1996. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Branford Price Millar Library, Portland State University, 934 SW Harrison Street, PO Box 1151, Portland, Oregon 97207.

Dated at Rockville, MD., this 10th day of January 1997.

For the Nuclear Regulatory Commission,

Marvin M. Mendonca,

Acting Director Non-Power Reactors and Decommissioning Project Directorate, Division of Reactors Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1089 Filed 1–15–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–356]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Amendment Approving Decommissioning Plan University of Illinois at Urbana-Champaign

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment approving the decommissioning plan for the University of Illinois at Urbana-Champaign (licensee or UIUC) Low Power Reactor Assembly (LOPRA) located on the licensee's campus in Urbana, Illinois, in accordance with the application dated February 10, 1995, as supplemented on April 24, 1995, and October 2, 1996. The approved decommissioning plan will be a supplement to the Safety Analysis Report.

Environmental Assessment

Identification of Proposed Action

By application dated February 10, 1995, as supplemented, UIUC requested authorization to decommission and partially dismantle the LOPRA, Facility Operating License No. R–117, in accordance with the decommissioning plan submitted as part of the application and to terminate Facility Operating License No. R–117. There are two reactors at UIUC, the Advanced TRIGA Research Reactor (TRIGA) and the LOPRA. The LOPRA was created when a subcritical assembly authorized under the TRIGA license was upgraded in 1971 to sustain nuclear fission in a self-supporting chain reactor and licensed as a separate reactor. The LOPRA will be converted back into a subcritical assembly by partial dismantling. All byproduct and special nuclear material under the LOPRA license will then be transferred as part of the decommissioning effort to Facility License No. R–115 for the UIUC TRIGA. Amendment No. 9 to the TRIGA license authorizing possession of the LOPRA byproduct and special nuclear material was issued on August 8, 1996.

Need for Proposed Action

The proposed action is needed in order to convert the LOPRA back into a subcritical assembly, transfer the byproduct and special nuclear material to the TRIGA license, and terminate the LOPRA license.

Environmental Impact of the Proposed Action

All proposed operations in connection with decommissioning and dismantling of the LOPRA will be carefully planned and controlled; all contaminated components will be removed, packaged, and shipped offsite or transferred to the TRIGA license; and radiological control procedures will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

All decommissioning activities will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health-physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The NRC staff estimates that the collective dose equivalent to the UIUC staff and public for the project will be less than 1 mrem.

On the basis of a review of the specific proposed activities associated with the dismantling and decontamination of the UIUC–LOPRA, the staff has determined that there will be no significant increase in the amounts of effluents that may be released off site, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not have any significant impacts on air, water, land, or biota in the area or any other significant environmental impact.

Alternative Use of Resources

The only alternative to the proposed decommissioning, dismantling, and decontamination activities is to have UIUC maintain possession of the reactor. This approach would include monitoring and reporting for the duration of a safe storage period until the TRIGA is decommissioned. However, UIUC intends to convert the reactor to a subcritical assembly under the TRIGA reactor license. This alternative would not be responsive to the licensee's request. The alternative of not decommissioning reactors was rejected in the "Generic Environmental Impact Statement on Decommissioning," NUREG–0586. No alternative appears that will have a different or lesser effect on the use of available resources, and other alternatives need not be evaluated.

Agencies and Persons Consulted

The NRC staff consulted with the Illinois State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons given above.

For detailed information with respect to this proposed action, see the application for a license amendment dated February 10, 1995, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20037.

Dated at Rockville, Maryland this 10th day of January 1997.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1088 Filed 1–15–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards

Subcommittee on Probabilistic Risk Assessment; Meeting

The ACRS Subcommittee on Probabilistic Risk Assessment will hold a meeting on January 28, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, January 28, 1997—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue its discussion of the NRC staff's approach to codify risk-informed, performance-based regulation through development of Standard Review Plan (SRP) sections and associated regulatory guides. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: January 10, 1997.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 97–1091 Filed 1–15–97; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (0420–0007).

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Peace Corps Request for Information Card (PC–1741). The initial **Federal Register** notice was published on November 21, 1996 (pp. 59251). A copy of the information collected may be obtained from Stephen R. Abbott, Office of Communications, Marketing Department, United States PEACE CORPS, 1990 K Street, NW., Washington, DC 20526. Mr. Abbott may be contacted by telephone at (202) 606–3780. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Request for Information Card.

Need for and Use of This Information: Peace Corps needs this information in order to identify prospective applicants for Volunteer service. The information is used to determine what program specific information to send to interested individuals.

Respondents: Individuals interested in learning more about Peace Corps service.

Respondents Obligation to Reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 1,021 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 1.75 min.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 35,000.

f. Estimated cost to respondents: $0.35.

This notice is issued in Washington, DC, on January 13, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–1103 Filed 1–15–97; 8:45 am]

BILLING CODE 6051–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

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DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 1997. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 1997 (*i.e.*, 80 percent of the yield figure for December 1996) is 5.24 percent. The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 1996 and January 1997.

For premium payment years beginning in	The required interest rate is
February 1996	4.84
March 1996	4.99
April 1996	5.28
May 1996	5.43
June 1996	5.54
July 1996	5.65
August 1996	5.62
September 1996	5.47
October 1996	5.62
November 1996	5.45
December 1996	5.18
January 1997	5.24

Late Premium Payments; Underpayments and Overpayments of Single-employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 1997, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
10/1/89	3/31/91	11
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9
1/1/97	3/31/97	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the first quarter (January through March) of 1997 (*i.e.*, the rate reported for December 16, 1996) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Rate (percent)
4/1/90	3/31/91	10.00
4/1/91	6/30/91	9.00
7/1/91	9/30/91	8.50
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25
1/1/97	3/31/97	8.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 1997 under part 4044 are contained in an amendment to part 4044 published on page 2016 in yesterday's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of January 1997.

Martin Slate

Executive Director, Pension Benefit Guaranty Corporation

[FR Doc. 97–1063 Filed 1–15–97; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Expired Information Collection: RI 38–128

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of an expired information collection. Public Law 104–134, requires all retirees and their survivors to use Direct Deposit for their annuity checks unless they certify they do not have an account in any financial institution nor do they have an account established for them by an authorized paying agent. RI 38–128, Direct Deposit Information, is used by retirees to collect this information.

We estimate 45,500 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 22,750 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before February 18, 1997.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1086 Filed 1–15–97; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on December 11, 1996 (61 FR 65249). Individual authorities established or revoked under Schedules A and B and established under Schedule C between November 1, 1996, and November 30, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established in November 1996:

The following Schedule A authorities were revoked in November 1996:

Selective Service System

Executive Secretary, National Selective Service Appeal Board. Effective November 8, 1996.

Department of Energy

Bonneville Power Administration. Five Area Managers. Effective November 11, 1996.

Schedule B

No Schedule B authorities were established or revoked in November 1996.

Schedule C

The following Schedule C authorities were established in 1996:

Council on Environmental Quality

Special Assistant to the Chair for Outreach and Strategic Planning. Effective November 1, 1996.

Department of Agriculture

Speech Writer to the Director, Office of Communications. Effective November 19, 1996.

Area Director, South West Area to the Administrator, Farm Service Agency. Effective November 22, 1996.

Special Assistant to the Administrator, Agricultural Marketing Service. Effective November 22, 1996.

Confidential Assistant to the Director, Empowerment Zone/Enterprise Community. Effective November 22, 1996.

Confidential Assistant to the Administrator, Farm Agency Service. Effective November 22, 1996.

Department of the Army (DOD)

Secretary (Office Automation) to the Assistant Secretary of the Army (Civil Works). Effective November 12, 1996.

Department of Defense

Defense Fellow to the Assistant Secretary, Special Operations/Low Intensity Conflict. Effective November 1, 1996.

Special Assistant to the Assistant Secretary of Defense for Health Affairs. Effective November 22, 1996.

Department of Energy

Attorney-Advisor (General) to the Assistant Attorney General Counsel for General Law. Effective November 14, 1996.

Department of the Interior

Special Assistant to the Commissioner of Reclamation. Effective November 26, 1996.

Department of Transportation

Special Assistant for Scheduling and Advance to the Secretary of Transportation. Effective November 12, 1996.

Deputy Scheduler to the Special Assistant for Scheduling and Advance. Effective November 12, 1996.

Special Assistant to the Secretary of Transportation. Effective November 22, 1996.

Department of the Treasury

Special Assistant to the Deputy Secretary of the Treasury. Effective November 12, 1996.

Office of Management and Budget

Confidential Assistant to the Associate Director for General Government and Finance. Effective November 1, 1996.

Office of National Drug Control Policy

Confidential Secretary to the Deputy Director, Office of National Drug Control Policy. Effective November 26, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1085 Filed 1–15–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22456; File No. 812–9096]

The Palladian Trust, et al.

January 9, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Palladian Trust (the "Trust") and Palladian Advisors, Inc. ("PAI").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extend necessary to permit shares of the Trust to be sold and held by: (1) separate accounts (the "Separate Accounts") funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies"); (2) qualified pension and retirement plans; and (3) investment advisers to the Trust.

FILING DATE: The application was filed on July 1, 1994, and amended on October 26, 1994, June 20, 1996, and December 23, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 3, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036, Attention: Christopher E. Palmer, Esq.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Patrice M. Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts business trust. It currently offers shares of capital stock ("shares") in five separate investment portfolios (the "Portfolios"), each of which has its own investment objective: The Value Portfolio, The Growth Portfolio, The International Growth Portfolio, the Global Strategic Income Portfolio, and the Global Interactive/Telecomm Portfolio. Additional portfolios may be added in the future.

2. PAI is a corporation organized under the laws of Delaware, and is registered as an investment adviser under the Investment Advisers Act of 1940. PAI serves as overall investment manager of the Portfolios. The Trust retains other investment advisers (the "Portfolio Managers") to handle the day-to-day investment management of the Portfolios.

3. The Trust currently sells shares of the Portfolio to First ING of New York Separate Account A1, a separate account of First ING Life Insurance Company of New York, an affiliate of Security Life of Denver Insurance Company (collectively, "Security Life"). The Trust intends to offer shares of the Portfolios to Separate Accounts of other Participating Insurance Companies, including insurance companies that are not affiliated with Security Life, to serve as investment vehicles for various types of insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, the "Contracts").

4. The Trust also intends to offer its shares to qualified pension or retirement plans ("Plans") described in Treasury Regulation § 1.817–6(f)(3)(iii).

5. Each Portfolio Manager has agreed that it or an affiliate (either directly or through a qualified pension or retirement plan) will invest $1 million in the shares of the Portfolio(s) it manages. Each Portfolio Manager purchasing Portfolio shares has agreed that all such shares will be automatically redeemed if and when the Portfolio Manager's advisory agreement with the Trust terminates.

6. PAI will not act as an investment adviser to any Plan which purchases shares of the Trust. While a Portfolio Manager may serve as investment adviser to one or more Plans which invest in the Trust, none of the assets of any Plan advisory account actually managed by such Portfolio Manager will be invested in the Trust. Nor may such Portfolio Manager advise any Plan to invest in the Trust. Plans advised by a Portfolio Manager may independently choose to invest in the Trust.

Applicant's Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) thereof, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit "mixed" and "shared" funding, as defined below.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(2), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." [1] Therefore, the relief grant by Rule 6e–2(b)(15) is

[1] The exemptions provided by Rule 6e–2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account

not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to a variable annuity separate account of the same insurance company or any affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company (or of any affiliated life insurance company) is referred to as "mixed funding." The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of more than one unaffiliated insurance company is referred to as "shared funding." The relief granted by Rule 6e–2(b)(15) is not available to a scheduled premium variable life insurance separate account that owns shares of an underlying management investment company ("underlying fund") which offers its shares to Plans or to its investment advisers.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only to separate accounts owning shares of underlying funds which offer shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

5. Current tax law permits the Trust to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of variable insurance contracts. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an underlying fund must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5 (1989). The regulations do contain certain exceptions to this requirement, however, one of which permits the trustee(s) of a qualified pension or retirement plan to hold shares of an underlying fund, the shares of which are held by the separate accounts of insurance companies, without adversely affecting the status of the underlying fund as an adequately diversified underlying investment vehicle for variable insurance contracts issued through such separate accounts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then-current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants assert, therefore, that applying the restrictions of Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) serves no regulatory purpose.

9. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Trust to the Plans because the Plans are not investment companies and will not be deemed affiliates by virtue of their shareholdings. Applicants further state that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the context of the Trust selling its shares to Portfolio Managers. Rules 6e–2 and 6e–3(T) provide relief from the eligibility restrictions of Section 9(a) only for officers, directors of employees of Participating Insurance Companies or their affiliates. Applicants note that Portfolio Managers are not likely to be employees of the Participating Insurance Companies or their affiliates, and if they were, the Section 9(a) eligibility restrictions would apply to those who participate directly in the management of administration of the Trust. Applicants also maintain that the monitoring requirements should not extend to all officers, directors and employees of the Participating Insurance Companies and their affiliates simply because the Trust sells certain shares to the Portfolio Managers. This monitoring would not benefit Contract owners and Plan participants and would only increase costs, thereby reducing net rates of return.

10. Applicants submit that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a "pass-through voting" requirement with respect to management investment company shares held by a separate account. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(a)(*2*) provide that an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T). Applicants note that Rules 6e–2 and 6e–3(T) both require

that disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If a decision of a Participating Insurance Company to disregard the instructions of Contract owners represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the Trust, to withdraw the investment of its Separate Account in the Trust. No charge or penalty will be imposed as a result of such withdrawal.

11. Applicants further represent that the sale of Trust shares to Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Shares of the Trust sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA does not require pass-through voting to the participants in Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

12. Applicants note, however, that some Plans do provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that Plan participants generally, or participants of a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Therefore, the purchase of Trust shares by Plans that provide voting rights to their participants does not present any complications not otherwise occasioned by mixed and shared funding.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants not that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants state that there is no reason why the investment policies of the Trust providing mixed funding would or should be materially different from what those policies would or should be if the Trust funded only variable annuity or variable life insurance contracts whether flexible premium or scheduled premium contracts. In this regard, Applicants note that each type of variable insurance product is designed as a long-term investment program, and that Plans also have long-term investment horizons. Moreover, Applicants submit that each Portfolio of the Trust will be managed to attempt to achieve the investment objective of the Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of variable insurance product.

15. Applicants note that no single investment strategy can be identified as appropriate to a particular variable insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. An underlying fund supporting even one type of variable insurance product must accommodate these diverse factors in order to attract and retain purchasers.

16. Applicants further note that Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and investment separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate account and variable life insurance Separate Accounts all invest in the same management investment company.

17. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Trust at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan, and a Participating Insurance Company will make distributions in accordance with the terms of the Contract.

18. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the Portfolios will inform each shareholder, including each Separate Account and Plan, of its respective share of ownership in the respective Portfolio. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement.

19. Applicants argue that the ability of the Portfolios to sell their respective shares directly to Plans does not create a "senior security", as that term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Separate Accounts have rights only with respect to their shares of the Trust. Such shares may be redeemed only at net asset value. No shareholders of any of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

20. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basis premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance

commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem shares of one underlying fund held by their Separate Accounts and invest the proceeds in another underlying fund. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can decide to and actually redeem shares of an investment vehicle, and reinvest the proceeds in another investment vehicle without the same regulatory impediments; most Plans may even hold cash pending suitable investment. Based on the foregoing, Applicants represent that should issues arise where the interests of Contract owners and the interests of Plans conflict, the issues can be resolved almost immediately because trustees of the Plans can redeem shares out of the Trust independently.

21. Applicants assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable insurance product market. Applicants submit that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts that currently offers such contracts. These factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Trust as a common investment medium for the Contracts would alleviate these concerns because Participating Insurance Companies would benefit not only from the investment and administrative expertise of PAI and the Portfolio Managers, but also from the cost efficiencies and investment flexibility afforded by a large pool of assets. Applicants state that making the Trust available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts and, accordingly, may increase competition with respect to both the design and the pricing of variable contracts; this can be expected to result in greater product variation and lower charges. Applicants submit that mixed and shared funding will benefit Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Trust to Plans should increase the amount of assets available for investment by the Trust. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

Applicant's Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors of the Trust (the "Board") shall consist of persons who are not "interested persons" of the Trust, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the remaining trustees; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict among the interests of the Contract owners of all of the Separate Accounts investing in the Trust and of the Plan participant investing in the Trust. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurances, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by owners of variable annuity contracts and those given by owners of variable life insurance contracts; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. The Participating Insurance Companies, PAI (or any other investment adviser of the Portfolios), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Trust (collectively, "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonable necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by PAI and each Plan to inform the Board whenever it is determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Plans investing in the Trust under their agreements governing participating in the Trust, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners or, as appropriate, Plan participants.

4. If the Board or a majority of its disinterested members determines that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members), take any steps necessary to remedy or eliminate the material irreconcilable conflict, including: (a) withdrawing the assets allocate to some or all of the Separate Accounts from the Trust or any Portfolio and reinvesting such assets in a different investment medium including another Portfolio of the Trust; (b) submitting the question of whether such segregation should be implemented to a vote of all affected variable insurance contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arise because of a Participating Insurance Company's decision to disregard Contract Owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Trust's election, to withdraw its

Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Trust's election, to withdraw its investment in the Trust and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing their participation in the Trust. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners and Participants in the Plan.

5. For purposes of condition 4, a majority of the disinterested trustees will determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Trust or PAI (or any other investment adviser of the Portfolios) be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially affected by the material irreconcilable conflict. Further, no Plan shall be required by condition 4 to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a vote by Plan participants.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Trust held in their Separate Accounts in a manner consistent with voting instructions timely received from Contract owners. Each Participating Insurance Company also will vote shares of the Trust held in the Participating Insurance Company's Separate Account(s) for which no voting instructions from the Contract owners are timely received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts investing in the Trust calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Trust. Each Plan will vote as required by applicable law and governing Plan documents.

8. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, each Portfolio Manager will vote its shares of the Portfolio in the same proportion as all contract owners having voting rights with respect to that Portfolio; provided, however, that the Portfolio Manager shall vote its shares in such other manner as may be required by the Commission or its staff.

9. All reports received by the Board regarding potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Trust will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that: (a) the Trust is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and certain qualified pension and retirement plans; (b) because of differences in tax treatment and other considerations, the interests of Contract owners investing in the Trust and the interests of Plans investing in the Trust may conflict; and (c) the Board will monitor events to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

11. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Trust) and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trust described in Section 16(c) of the 1940 Act), as well as with Section 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Trust and/or the Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

13. No less than annually, the Participants shall submit to the Board such reports, materials, or data as the Board reasonably may request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when the Board so reasonably requests, shall be a contractual obligation of all Participants under the agreements governing their participation in the Trust.

14. If a Plan becomes an owner of 10% or more of the assets of a Trust, such Plan will execute a participation agreement with the Trust. A Plan will execute an application containing an acknowledgement of this condition upon such Plan's initial purchase of the shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and

Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1035 Filed 1–15–97; 8:45 am]

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[Release No. 34–38142; International Series Release No. 1043; File No. SR–Amex–96–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Listing and Trading of Index Warrants Based on the BEMI South Africa Index

January 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b–4 of the Act proposes to approve for listing and trading under Section 106 (Currency and Index Warrants) of the Amex *Company Guide* index warrants based on the BEMI South Africa Index ("Index"), a market capitalization-weighted broad-based index developed by ING Barings Securities Limited comprised of 30 South African companies representing five different industry groups.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 106 of the Amex *Comany Guide*, the Exchange may approve for listing index warrants based on foreign and domestic market indices. The Amex has received approval to trade a number of index warrant products pursuant to Section 106.[3] The Amex represents that the listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under Section 106, which provide, among other things, that: (1) the issuer shall have tangible net worth in excess of $250,000,000 and otherwise substantially exceed earnings requirements in Section 101(A) of the *Comany Guide* or meet the alternative guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The procedures for determining the cash settlement value for the warrants have not yet been determined by ING Barings. Once those procedures have been determined by ING Barings, they will be fully set forth in the prospectus and in the Information Circular distributed by the Exchange to its membership prior to the commencement of trading the warrant.

The Amex has adopted suitability standards applicable to recommendations to purchasers of Index warrants and transactions in customer accounts. Amex Rule 411, Commentary .02 recommends that index warrants under Section 106 of the *Company Guide* be sold only to investors whose accounts have been approved for options trading pursuant to Rule 921. The requirements under Rule 923 (Suitability) shall apply to recommendations in index warrants both with respect to customer accounts that have been approved for options trading and customer accounts that have not been so approved. Amex Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading of Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Amex is proposing to list index warrants based on the Index, an internationally-recognized capitalization-weighed index representing a broad-based portfolio of 30 large, actively traded stocks from South Africa.[4] The total market capitalization of the Index was $118.6 billion on September 30, 1996. The total available market capitalization [5] of the Index was $32.1 billion on September 30, 1996. The median available capitalization of the companies in the Index on that date was $737 million and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36070 (August 9, 1995), 60 FR 42205 (August 14, 1995) (approval for index warrants on the Deutscher Aktienindex); Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588 (October 15, 1993) (approval for index warrants on the Amex Hong Kong 30 Index); and Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992) (approval for index warrants on the Japan Index).

[4] The list of the component securities and their respective weights in the Index were attached to the proposed rule filing as Exhibit A, and are available for examination at the Amex or at the Commission as specified in Item IV.

[5] A company's "available capitalization" is defined as the lower of (i) the company's "free float" or (ii) the legally available capitalization of the company. A company's "free float" is defined as the percentage of shares which could reasonably be expected to trade on the open market. Generally, government holdings, corporate cross-ownership and other strategic holdings are not considered freely floating.

the average available market capitalization of these companies was $1.07 billion. The individual available market capitalization of the companies ranged from $848 million to $11.8 billion.

The Index was designed by and is maintained by ING Barings. The stocks selected for inclusion in the Index were chosen on the basis of both country and company criteria. To be included in the Index a country must have a minimum Gross Domestic Product per capita of $400 and minimum market trading value of $2 billion per year, in at least one of the last three years. The companies included in the Index are drawn from a database of stock entities, which may represent individual companies in their entirety, or separate lines of stock, e.g., A shares and B shares, of the same company. The criteria for stock entities to be included are: capitalization value greater than 1% of the ING Barings database for that county; minimum free-float of 10%; and minimum average daily trading value of $100,000. In addition shares that rank first or second in their industry sector may be included if they have a minimum capitalization of 0.5% of the ING Baring database for that country and meet the normal free-float & daily trading value rules.

The Index is composed of companies from 5 industry groups including: consumer goods, energy, capital equipment, basic materials, agriculture/food and financial. The largest stock accounts for 11.43% of the Index, while the smallest accounts for 0.716%. The top five stocks in the Index by weight account for 43.64%. The Exchange believes that the Index is a Stock Index Group and a Broad Stock Index Group pursuant to Rule 1100(b).

The Exchange also believes that the proposed Index complies with the information sharing standards of Section 106(g) of the Company Guide.[6] The Exchange has entered into an agreement with the Johannesburg Stock Exchange establishing the appropriate means to obtain comprehensive surveillance information with respect to the Index's component stocks. Once the agreement has been deemed effective by the Commission, the proposed Index will comply with the information sharing standards of Section 106(g) of the Company Guide.

The Index is capitalization-weighted and based on available capitalization. The Index is quoted in U.S. dollars and disseminated daily shortly after 4 p.m. New York time using local market closing prices and Reuters 4 p.m. currency exchange rates. The Index was first calculated on January 7, 1992 with a benchmark value of 100. In the event a component security in the Index does not open for trading, the most recent closing value for that component will be used in the Index's calculation.

The Index is maintained by ING Barings Recomposition Committee. The Recomposition Committee, established at the time of the launch of the Index, reviews on a quarterly basis the Index rules and composition. The committee implements changes or fixes standards as appropriate and overseas the security environment of the Index and its record-keeping. The quarterly recomposition meeting is normally held in the second week of the last month of the quarter. The date of these meetings is posted at least two months in advance on Reuters and the results are posted on Reuters the day after a committee meeting. Any changes in the composition of the Index are implemented on the last day of the month that the committee meeting is held. This is approximately two weeks after the committee meeting.

ING Barings will maintain the Index so that new issues and privatizations are included in the Index at the end of the month in which they have come to market, provided the company has met the criteria for inclusion in the Index. New companies resulting from a spin-off of a component company will be put into the Index and remain in the Index until the next quarterly recomposition meeting. In the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock spilt, reverse stock split, rights offering, reorganization, recapitalization or similar event with respect to the component stocks, the divisor will be adjusted, if necessary, to ensure Index continuity.

According to the Exchange, membership of the committee is regulated by a "Fire Wall."[7] All members are isolated from sales, trading functions and corporate finance functions. Members are drawn from Index research, calculation group, and the legal department of ING Barings. To ensure impartiality and good practice, the committee has retained Russell Systems Limited (part of the Frank Russell Group) to attend all meetings and to provide an audit of attendance and appropriateness of the agenda. Russell Systems Limited also provides advice on good practice in indexation and on how to ensure the use of the best available information on emerging markets.

2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) (5) in particular[8] in that its designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not deisgned to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the

[6] Section 106(g) of the Company Guide states that foreign country securities or American Depository Receipts thereon that are not subject to a comprehensive surveillance agreement, and have less than 50% of their global trading volume in dollar value within the United States, shall not in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading.

[7] *See* Letter from A.N. Marsh, Legal Department, ING Barings, to Richard Mikaliunas, Vice President, Capital Markets Development, Amex, dated November 20, 1996.

[8] 15 U.S.C. 78f(b) (5).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–50 and should be submitted by February 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1033 Filed 1–15–97; 8:45 am]

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[Release No. 34–38143; File No. SR-Amex-96–35]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Relating to the Trading of Options on the Tobacco Index SM

January 8, 1997.

I. Introduction

On October 1, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the trading of options on The Tobacco Index℠. The proposal was published for comment in the **Federal Register** on October 24, 1996.[3] The Exchange filed an amendment ("Amendment No. 1")[4] to its proposal on November 8, 1996. The Exchange filed a second amendment ("Amendment No. 2")[5] to its proposal on December 6, 1996. No comments were received on the proposed rule change. This order approves the Exchange's proposal as amended.

II. Description of the Proposal

A. General

The Amex proposes to trade options on The Tobacco Index℠ ("Index"), a new index developed by the Amex composed of tobacco company stocks (or American Depositary Receipts ("ADRs") thereon) that are traded on the Amex and the New York Stock Exchange ("NYSE"). In addition, the Amex proposes to amend Rule 901C, Commentary .01, to reflect that 90% of the Index's numerical value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915.

B. Composition of the Index

The Amex proposes to trade standardized options on the Index, developed by the Amex, representing a portfolio of large, actively traded tobacco company stocks.[6] The Index will comprise nine tobacco industry stocks. The components of the Index will be American Brands, Inc.; B.A.T. Industries P.L.C.; Dimon, Inc.; Empresas La Modernas (ADR); Loews Corp.; Philip Morris Companies, Inc.; RJR Nabisco Holdings Corporation, Inc.; UST, Inc.; and Universal Corporation.[7] The Index was initialized at a level of 250 at the close of trading on August 16, 1996. As of January 2, 1997, the Index had a value of approximately 289. The Exchange will use an "equal-dollar weighted" method to calculate the value of the Index.[8] The market capitalizations of the individual stocks in the Index as of the close of trading on August 23, 1996 ranged from a high of $73 billion to a low of $762 million, with the median and average being $6.9 billion and $14 billion respectively. As of the close of trading on August 23, 1996, no one stock accounted for more than 11.50% of the Index's total weight, and the percentage weighting of the five largest issues in the Index accounted for 56.92% of the Index's value.

C. Eligibility Standards for the Inclusion of Component Stocks in the Index

The Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in a narrow-based index on which standardized options will be traded on the Exchange. In addition, the Index conforms to most of the criteria set forth in Rule 901C, Commentary .02 (which provides for the commencement of trading of options on an index thirty days after the date of filing)[9] except that there are only nine component securities,[10] and that four (or 44%) of the components have a minimum monthly volume during the preceding six months of less than 1,000,000 shares, with one component having traded less than 500,000 shares in at least one of the last six months.[11]

All of the component securities meet the following eligibility standards: (1) all component securities are traded on the Amex, NYSE, or are traded through the facilities of the National Association of Securities Dealers Automated

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37839 (October 17, 1996), 61 FR 55176.

[4] Amendment No. 1 provides information and representations with respect to the proposed rule change. Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 7, 1996.

[5] Amendment No. 2 provides further information and representations with respect to the proposed rule change. letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated December 5, 1996.

[6] A list of securities comprising the Index, as well as listed shares outstanding and prices as of August 23, 1996, was submitted by the Exchange as Exhibit B, and is available at the principal office of the Amex and at the Commission.

[7] American brands, Inc. Plans to spin off remaining tobacco related business by the middle of next year. As a result of the spin-off the Amex anticipates that it will replace American Brands, Inc. in the Index with a company in the tobacco industry. Amendment No. 1, *supra* note 4.

[8] *See infra* Section II.D entitled "Calculation of the Index" for a description of this calculation method.

[9] Under Amex Rule 901C, Commentary .02, the Amex may list options on a stock industry index pursuant to Section 19(b)(3)(A) under the Act, provided that the index satisfies certain criteria. *See* securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (approving substantially identical proposed rule amendments from the Amex, the NYSE, the Philadelphia Stock Exchange, Inc. ("Phlx"); the Chicago Board Options Exchange, Inc. ("CBOE"); and the Pacific Stock Exchange, Inc. ("PSE") relating to narrow-based index options listing standards).

[10] *Id.* The generic standards require that upon the initial listing of narrow-based index options, the underlying index must include at least ten stocks. Thereafter, the index must contain at least nine component stocks at all times.

[11] *Id.* The generic initial listing standards require that component stocks comprising the top 90 percent of the index, by weight, must have a monthly trading volume of at least 1,000,000 shares per month over the six months preceding the filing of the index with the Commission; thereafter, the component stocks must maintain monthly trading volume of at least 500,000 shares per month. The trading volume for the component stocks constituting the bottom 10 percent of the index, by weight, must have been at least 500,000 shares over the same initial period; thereafter, they must meet an average monthly trading volume of at least 400,000 shares per month.

B.A.T. Industries PLC is the one component whose minimum monthly trading volume was less than 400,000 shares. In February 1996, B.A.T. traded only 395,800 shares. During the most recent six month period, however, B.A.T.'s trading volume has increased, with a high of 6.74 million shares in August 1996, and a low of 866,500 shares in October 1996. Amendment No. 1, *supra* note 4.

Quotation System ("Nasdaq") and are reported national Market System securities;[12] (2) component stocks comprising the top 90 percent of the Index by weight have a market capitalization[13] of at least $75 million, and those component stocks constituting the bottom 10 percent of the Index by weight have a market capitalization of at least $50 million; (3) no single component will represent more than 25% of the weight of the Index and the five highest weighted components will represent no more than 60% of the Index; (4) at least 90% of the Index's numerical value and at least 80% of the total number of component securities is accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915;[14] and (5) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.

D. Calculation of the Index

The Index is calculated using an "equal-dollar weighting" methodology. The following is a description of how equal-dollar weighting calculation method works. As of the market close on August 16, 1996, a portfolio of tobacco company stocks was established representing an investment of approximately $100,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 250.00 at the close of trading on August 16, 1996. Quarterly thereafter, following the close of trading on the third Friday of February, May, August and November, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews, except in the event of certain types of corporate actions, such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining Index components will be calculated and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

E. Maintenance of the Index

The Exchange will maintain the Index so that upon quarterly rebalancing (1) all component securities are traded on the Amex, NYSE, or traded through the facilities of the Nasdaq and are reported National Market System securities,[15] (2) the total number of component securities will not increase or decrease by more than 33-⅓% from the number of components in the Index at the time of its initial listing, and in no event will the Index have less than nine components; (3) component stocks constituting the top 90% of the Index by weight will have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10% of the Index by weight will have a minimum market capitalization of $50 million; (4) stocks constituting 85% of the Index have a monthly trading volume of at least 500,000 shares for each of the last six months and those stocks constituting 15% of the Index have a monthly trading volume of at least 300,000 shares for each of the last six months;[16] (5) no single component will represent more than 25% of the weight of the Index and the five highest weighted components will represent no more than 60% of the Index at each quarterly rebalancing; (6) at least 90% of the index's numerical index value and at least 80% of the total number of component securities individually will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (7) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.[17] If the Index fails to satisfy any of the maintenance criteria set forth above, the Exchange shall, in accordance with Rule 916C, take actions which include, but are not limited to, prohibiting the opening for trading of any additional option series,[18] unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Index has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

F. Expiration and Settlement

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks on the last trading day prior to expiration. In the case of National Market securities traded through Nasdaq, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.[19]

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[12] Securities Exchange Act Release No. 34157, *supra* note 9. The generic initial listing and maintenance listing standards require that all component stocks be deemed "reported securities" as that term is defined in Rule 11Aa3–1 under the Act. Accordingly, a proposed narrow-based index currently can only comprise exchange-listed and Nasdaq National Market System securities.

[13] In the case of ADRs, this represents market capitalization as measured by total world-wide shares outstanding.

[14] Amex staff have represented that all underlying stocks are options eligible, and all but Dimon, Inc. and UST, Inc. currently have options traded on them. Telephone conversation between Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, October 16, 1996.

[15] Amendment No. 1, *supra* note 4.

[16] Amendment No. 2, *supra* note 5.

[17] Amendment No. 1, *supra* note 4.

[18] Amendment No. 2, *supra* note 5. *See also infra* note 28.

[19] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release

G. Contract Specifications

The proposed options on the Index will be European-style (i.e., exercises permitted at expiration only), and cash-settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The options on the Index will expire on the Saturday following the third Friday of the Expiration month "Expiration Friday"). The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the February cycle. In addition, longer-term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months.

H. Exchange Rules Applicable to Stock Index Options

Because the Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), Amex Rules 900C through 980C, which are applicable to the trading of narrow-based index options, will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices,[20] position and exercise limits,[21] margin requirements,[22] and trading halts.[23] Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. Pursuant to Rule 903C(b) regarding exercise prices, the Exchange proposes to list near-the-money option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c) will result in a position limit of 9,000 contracts with respect to options on this Index.[24]

The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European-style exercise. Position limits on reduced value long-term Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options. For example, if the position limit for the full value options is 9,000 contracts on the same side of the market, then the position limit for the reduced value options will be 90,000 contracts on the same side of the market.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the trading of Index options will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the tobacco industry.[26] The trading of options in the Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex has adequately addressed these issues.

A. Index Design and Structure

The Commission believes it is appropriate and consistent with the Act for the Exchange to designate the Index as a narrow-based index for the purposes of options trading. The Index comprises a limited number (nine) of stocks intended to track the tobacco sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.[27] The Commission believes that the large market capitalizations, liquid markets, and relative weighings of the Index's component stocks significantly minimize the potential for manipulation of the Index.

First, the stocks that comprise the Index are actively traded, with a median and average of the minimum monthly trading volume for the six month period ending August 23, 1996 of 3.1 million shares and 7.6 million shares respectively. Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $73 billion to a low of $762 million, with the median and average being $6.9 billion and $14 billion respectively. Third, because the index is equal-dollar weighted, no one particular stock dominates the Index. Specifically, as of August 23, 1996, no one stock accounted for more than 11.50% of the Index's total weight, and the percentage weighting of the five highest weighted stocks in the Index accounted for under 57% of the Index's value.

Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above, at each quarterly review and rebalancing, at least 90% of the Index's numerical index value and at least 80% of the total number of component securities is accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be easily manipulated by abusive trading in smaller stocks contained in the Index. All component stocks in the Index are eligible for standardized options trading, and all of the component stocks, other than Dimon, Inc. and UST, Inc., currently have standardized options trading on them.

No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR–OCC–95–19).

[20] *See* Amex Rule 903C(b).

[21] *See* Amex Rule 904C and 905C.

[22] *See* Amex Rule 462(d)(2)(D)(iv).

[23] *See* Amex Rule 918C.

[24] Amex Rule 904C(c) provides that the position limit for an industry index option will be 9,000 contracts if the Amex determines at the commencement of trading of the options that any single stock in the underlying stock index industry group accounted, on average, for 20% or more of the numerical index value or that any five stocks in the group together accounted, on average, for more than 50% of the numerical index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review.

[25] 15 U.S.C. 78f(b)(5).

[26] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of any such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the tobacco industry in the U.S. stock markets.

[27] *See supra* Section II.H.

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Fifth, if the Index fails to satisfy any of the maintenance criteria set forth above, the Exchange shall, in accordance with Rule 916C, take actions which include, but are not limited to, prohibiting the opening for trading of any additional option series,[28] unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Index has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

Sixth, the Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3–1 of the Act. This will further reduce the potential for manipulation in the value of the Index. Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as other standardized index options currently traded on the Amex, the Commission believes that adequate standards are in place to ensure the protection of investors in Index options.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less susceptible to manipulation.[29] In this regard, the Amex, NYSE, and National Association of Securities Dealers, Inc., on whose markets the component securities of the Index trade, are all members of the Intermarket Surveillance Group ("ISG"), which provide for exchange of all necessary surveillance information.[30] Options on the individual component securities also trade on markets which are ISG members.

D. Market Impact

The Commission believes that the listing and trading of Index options on the Amex will not adversely impact the underlying securities markets.[31] First, as described above, due to the "equal dollar-weighting" method, no one stock or group of stocks dominates the Index. The quarterly rebalancing of the Index also will continue to ensure that domination by one or more stocks will not occur. Second, the component stocks generally will be actively traded, highly capitalized stocks. Third, all stocks comprising the Index are options eligible, and the maintenance standards ensure that at least 90% of the Index's numerical index value will continue to be options eligible. Fourth, the 9,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fifth, existing Amex stock index option rules and surveillance procedures will apply to the Index options. Sixth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation, just like any other standardized option traded in the United States.

Finally, the Commission believes that settling expiring Index options based on the primary exchange regular way opening sale prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.[32]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the amendments clarify and strengthen the proposal by adding maintenance criteria and providing other information about the Index. Furthermore, the Amex's original proposal was published in the **Federal Register** for the full 21 day comment period without any comments being received by the Commission. The Commission notes that, with the exception of the initial number of components underlying the Index and the trading volume of certain components, the proposal, as amended, satisfies the Exchange's generic narrow-based index option listing standards contained in Amex Rule 901C, Commentary .02. As discussed above, the Commission believes that accelerating approval of Amendment Nos. 1 and 2 will allow the Exchange to begin listing options on the Index without further delay in order to provide an additional exchange-traded hedging vehicle for investors with risk exposure to securities in the various technology industries.

Based on the above, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act, and that good cause exists to approve Amendment Nos. 1 and 2 to the Amex's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions

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[28] Other action that might be taken in consultation with Commission staff for failure to meet the maintenance standards would include the prohibition of opening transactions. *See e.g.* AMEX Rule 916C.

[29] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849.

[30] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, dated July 14, 1983, amended January 29, 1990. The members of the ISG are: Amex; Boston Stock Exchange, Inc.; CBOE; Chicago Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; NYSE; PSE; and Phlx. The major stock index futures exchanges, including the Chicago Mercantile Exchange and the Chicago Board of Trade, joined the ISG as affiliate members in 1990.

[31] In addition, the Amex has represented that the Amex and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support this new series of index options that would result from the introduction of Index options. *See* Letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated October 30, 1996; Letter from Charles H. Faurot, Managing Director, Market Data Services, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 4, 1996; Letter from Joseph P. Corrigan, Executive Director, OPRA, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 4, 1996.

[32] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-96-35 and should be submitted by February 6, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR-Amex-96-35), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-1034 Filed 1-15-97; 8:45 am]

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[Release No. 34-38156; File No. SR-NASD-96-43]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Partial Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Implementation of the Commission's Order Handling Rules

January 10, 1997.

On November 18, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b-4 thereunder.[2] On January 9, 1997, the NASD submitted a letter amending the proposed rule change.[3] The proposed rule change adopts a new rule, and amends existing NASD rules and The Nasdaq Stock Market's ("Nasdaq") Small Order Execution System ("SOES") and SelectNet Service to enable the NASD to implement on a timely basis the Commission's new limit order display rule, Rule 11Ac1-4 under the Act [4] ("Display Rule") and amendments to Rule 11Ac1-1 under the Act [5] ("Quote Rule").

Notice of the proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 38008, Dec. 2, 1996) and by publication in the **Federal Register** (61 FR 64550, Dec. 5, 1996). The Commission received over 350 comment letters on the proposal.

I. Introduction and Background

A. The Commission's Order Handling Rules

On August 28, 1996, the Commission adopted the Display Rule, which requires the display of customer limit orders priced better than a market maker or specialist's quote, and adopted amendments to the Quote Rule to enhance the quality of published quotations for securities, and competition and pricing efficiency in U.S. securities markets.[6] These rules (collectively, "Order Handling Rules") were designed to address growing concerns about the handling of customer orders for securities.

Specifically, the Display Rule [7] requires the display of a customer limit order priced better than a specialist's or over-the-counter ("OTC") market maker's quote or that adds to the size associated with such quote if that quote is at the national best bid or offer ("NBBO"). An OTC market maker who receives a customer limit order meeting these parameters must immediately: (1) change its quote and the size associated with its quote to reflect the limit order; (2) execute the limit order; (3) deliver the limit order to an exchange-or association-sponsored system that complies with the requirements of the rule; (4) send the limit order to another market maker or specialist who complies with the requirements of the rule; or (5) deliver a limit order to an electronic communications network ("ECN") that meets certain requirements regarding the display of limit orders, as an alternative to representing the limit order in its quote.[8]

One amendment to the Quote Rule [9] requires an OTC market maker to make publicly available any superior prices that a market maker privately quotes through ECNs ("ECN Amendment"). A market maker may comply with this amendment by changing its quote to display any such superior prices privately quoted. Alternatively, a market maker can deliver better priced orders to an ECN without changing its public quote if that ECN: (i) ensures that the best prices market makers and specialists have entered therein are communicated to the public quotation system; and (ii) provides brokers and dealers equivalent access to orders entered by market makers and specialists into the ECN, so brokers and dealers that do not subscribe to the ECN can trade with those orders ("ECN Display Alternative").

The ECN amendment becomes effective on January 20, 1997 for exchange traded securities and 50 of the 1000 most actively traded OTC securities. These 50 securities have been identified by Nasdaq.[10] The phase-in date for the next 100 securities is scheduled for February 7, 1997. On February 28, 1997, the additional 850 of the 1000 most actively traded securities will be phased in. Finally, on March 28, 1997, the ECN amendment will apply to all remaining OTC securities.

The Limit Order Display Rule also becomes effective on January 20, 1997 for all exchange traded securities and 50 OTC securities identified by Nasdaq. Other Nasdaq securities will become

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[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Letter from Robert E. Aber, NASD to Robert L.D. Colby, Commission, dated January 9, 1997. The amendment would (1) establish a three month pilot for reduction of the market maker minimum quotation size in the fifty Nasdaq securities subject to the first phase-in of the Order Handling Rules; (2) state that a market maker's obligation to maintain its displayed quotation size at or above the applicable minimum quotation size does not apply when the market maker's quote size has been decremented by the execution of SOES orders, until that quotation size is decremented to zero; (3) make the decrementing provision optional for market makers whose quotation in a particular security is equal to or greater than the SOES tier size for that security; and (4) permit market makers to enter riskless principal orders, in addition to agency orders, into the Small Order Execution System.

[4] 17 CFR 240.11Ac1-4.

[5] 17 CFR 240.11Ac1-1.

[6] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release"). *See also* Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (order revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (order revising the effective date of the Order Execution Rules until January 20, 1997).

[7] 17 CFR 240.11Ac1-4.

[8] The Display Rule does not apply to limit orders placed by customers requesting that they not be displayed, limit orders for odd-lots, and limit orders that are all-or-none orders. The rules do not require the display of limit orders of block size (10,000 shares or $200,000) unless the customer requests that the order be displayed.

[9] 17 CFR 240.11Ac1-1.

[10] *See* Letter from S. William Broka, Senior Vice President, Trading & Market Service, Nasdaq Stock Market, Inc., dated December 23, 1996.

subject to the rule on a phased-in basis, with all Nasdaq securities phased in by August 28, 1997.

B. Changes Required to NASD Rules and Systems

The Adopting Release recognized that the Order Handling Rules would require the NASD, as well as national securities exchanges ("exchanges"), to change certain systems and rules to facilitate compliance with the Order Handling Rules by January 20, 1997.[11] For example, the NASD's SOES system currently accepts limit orders. If a limit order is not immediately executable, or non-marketable, (*i.e.*, a limit order to buy priced below the offer price, or a limit order to sell priced above the bid price), it is placed in the SOES limit order file and subsequently executed if the best bid for a buy, or offer for a sell order becomes equal to the limit price. Limit orders placed into SOES are never publicly disseminated, included in the calculation of the best bid or offer, or matched against incoming market orders. Thus, an OTC market maker that places a customer limit order into the SOES limit order facility would not comply with the Display Rule.

In addition, NASD Rule 4613 currently requires Nasdaq market makers to display continuous two-sided quotations in Nasdaq National Market ("NNM") securities (approximately the top 4000 Nasdaq securities) in sizes of 1,000, 500 or 200 shares, depending upon the price and trading volume of the security. However, the Display Rule may require a market maker to display in its quote a customer limit order that is smaller than the mandatory quotation size imposed by NASD Rule 4613. This creates the possibility that a market maker could be required to publish a quote at a price and size that it is otherwise unwilling to trade at for its own account. The changes to the NASD's systems and rules approved today are intended to facilitate compliance with the Order Handling Rules and are intended to more closely tailor a market maker's obligations to the structure of the Nasdaq market anticipated to result from implementation of the Order Handling Rules.

[11] *See supra* note 6.

II. Proposed Rule Changes To Implement the Display Rule

A. Minimum Quotation Size Requirements

1. Quote Size When Displaying Customer Limit Orders

To facilitate the display of customer limit orders in accordance with the Display Rule, the NASD proposes to amend NASD Rules 4613 and 6330 to provide that Nasdaq market makers and CQS market makers may display a quotation size for one normal unit of trading (*i.e.*, 100 shares) or a larger multiple thereof to reflect the actual size of a customer limit order.[12] Thus, if a market maker is bidding 20 for 1000 shares and offering 1000 shares at 20¼ (20 bid—20¼ offered, 1000×1000), and the market maker receives a customer limit order to buy 100 shares at 20⅛, the market maker would be permitted to update its quote to 20⅛–20¼, 100×1000. Market makers would not be responsible for executing any additional shares above the size of the limit order. The NASD believes that this rule change will promote market maker acceptance of limit orders priced inside quoted markets, thereby furthering the investor protection and market transparency objectives of the Order Handling Rules. Moreover, without these rule changes, in instances where a customer limit order is smaller than the applicable minimum quotation size requirement and a market maker's quote is inferior to the limit order price, market makers would be obligated to execute trades at prices superior to their proprietary quotations. The NASD and Nasdaq maintain that subjecting market makers to such an order execution requirement would be unfair and create a disincentive for firms to function as market makers.[13]

[12] As noted above, NASD Rule 4613 currently requires each market maker in a Nasdaq issue to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (*e.g.*, 1,000, 500, or 200 shares for NNM issues and 500 or 100 shares for Nasdaq SmallCap Market issues). NASD Rule 6330 requires registered market makers in exchange-listed securities to display a minimum quotation size of 200 or 500 shares in each reported security (as established and published from time to time by the Association) depending on trading characteristics of the security.

[13] The Commission stated in the Adopting Release:

> The Commission believes that SROs should consider amending such rules and modifying certain systems to allow a specialist or market maker to quote in sizes smaller than the minimum quotation size when such quote represents a customer limit order. With these changes, a specialist or market maker that displays a customer limit order in its quote pursuant to the Display Rule would not be responsible for executing as principal any additional shares at the limit price where the size of the customer limit order is less than the minimum quotation size set by the SRO.

Adopting Release, *supra* note, 61 FR at 48301 n.144.

2. Quote Size When Displaying Proprietary Market Maker Quotes

The NASD stated in its filing that market makers should not be subject to minimum quote size requirements greater than a normal unit of trading in an environment in which Nasdaq market makers will compete with customers to affect quotation prices. The NASD also stated that the new order-driven nature of Nasdaq brought about by the Display Rule will obviate the regulatory justification for minimum quote size requirements because investors will have the capability to display their own orders in the marketplace. The NASD stated that the inclusion of limit orders and ECN orders in Nasdaq quotations should also ensure that market liquidity and price continuity will not be harmed by the elimination of minimum quotation size requirements. Therefore, it proposed to amend NASD Rule 4613 to require market makers to quote in minimum trading increments of 100 shares.

On January 9, 1997 the NASD filed an amendment to its filing that proposes allowing market makers to quote in minimum sizes of 100 shares for a three-month pilot program in the 50 Nasdaq stocks subject to the first phase-in under the Order Handling Rules. The remaining securities would still be subject to the existing minimum quotation display requirements for proprietary quotes.

B. Operation of SOES

1. Current Operation of SOES

NASD Rule 4611(f) requires each market maker in an NNM security to register as a SOES market maker in that security. SOES is voluntary for market makers in Nasdaq SmallCap securities. The maximum SOES order size for a NNM security is either 1,000, 500, or 200 shares, depending on the price and volume of the security; the maximum order size for a Nasdaq SmallCap Market security is 500 shares.[14] SOES automatically executes unpreferenced

[14] A 1,000 share maximum order size applies to NNM securities with an average daily non-block volume of 3,000 shares or more per day, a bid price not exceeding $100 and with three or more market makers. A 500 share maximum order size applies to NNM securities with an average daily non-block volume of 1,000 shares or more per day, a bid price not exceeding $150 and with two or more market makers. A 200 share maximum order size applies to NNM securities with an average daily non-block volume of less than 1,000 shares per day, a bid price not exceeding $250 and with two or more market makers. *See* NASD Notice to Members 88–43 (June 22, 1988).

orders in rotation against those market makers who are at the best quoted bid or offer on Nasdaq at the time the order is entered. With the agreement of the market maker, SOES orders also may be routed or "preferenced" to a particular market maker for execution at the inside market, regardless of what price the preferenced market maker is quoting. A SOES market maker is obligated to execute SOES orders up to the minimum SOES exposure limit for that stock or such greater exposure limit established by the market maker. The minimum exposure limit for a particular stock is two times the applicable maximum SOES order size (*e.g.*, 2,000 shares for stocks in the 1,000 share tier size). If a market maker's exposure limit is exhausted, it is temporarily suspended from SOES, placed in a "closed quote state," and permitted a five-minute period to restore its exposure limit. If a market maker does not restore its exposure limit within five minutes, it is automatically withdrawn from the stock and cannot re-enter quotes in the issue for at least twenty business days.

Thus, SOES is currently designed to execute orders against market makers based on the tier size for a particular stock, without regard to the quotation size displayed by a market maker. Because the minimum quotation sizes for market makers are presently aligned with the maximum SOES order sizes, it would not be possible to enter into SOES an order greater in size than the market maker's quote.

2. Changes to SOES in Response to the Order Handling Rules

Because market maker quotes will at times reflect customer limit orders under the Display Rule, the NASD proposed to modify SOES to execute market orders only against market makers' displayed quotation sizes.

a. *Decrementation of displayed quotation sizes after SOES executions.*

To avoid instances where a market maker could automatically receive multiple SOES executions because it displayed a customer's limit order at a price superior to the market maker's proprietary quote or increased its quote size because of the limit order, the NASD has proposed to modify SOES to decrement [15] a market maker's displayed quote size upon the execution of unpreferenced SOES orders. For example, if a market maker's quote in security ABCD is 20–20¼ (1000 × 1000), and it receives a customer limit order to buy 500 shares at 20⅛, it would update its quote to 20⅛–20¼ (500 × 1000). [16] Thereafter, if the market maker received a SOES execution at 20⅛ for 500 shares, the size of its bid would be depleted to zero and the market maker would have to re-enter a new quotation within five minutes, or withdraw from the stock for 20 days. [17] The NASD states that this change is intended to encourage market makers to accept and display customer limit orders because they will not be subject to mandatory SOES executions larger than the size of the limit orders they display or at prices at which the market maker is not willing to trade for its proprietary account. [18]

The NASD filed a letter amending the proposal to make decrementing optional for market makers whose quotation in a particular security is equal to or greater than the SOES tier size for that security. Thus, market makers who are willing to commit greater capital will have the option of accepting repeated orders at their quoted price and size on a stock-by-stock basis.

In the NASD's proposal for a pilot program for the quotation requirement, the non-pilot stocks would still be subject to the decrementing proposal. Thus, market makers would be required to publish a quote in non-pilot stocks in the required quote size, but this quote could be decremented. Once the quote was decremented to zero, or the market maker chose to manually change the price or size of the proprietary quote, the market maker would be required to enter at least the minimum quote size.

b. *Split order execution.* The NASD proposal would limit a market maker's SOES exposure to its displayed quotation size, even if less than the SOES maximum order size. In addition, SOES would be modified to decrement market makers' displayed quotation sizes in response to unpreferenced SOES executions. To ensure that a SOES order can be executed in full in an environment in which SOES maximum order sizes may be greater than a market maker's displayed quote, the NASD has proposed changes to SOES that would allow one order to be executed against multiple market makers. In addition, the NASD has proposed to change SOES to reject "all-or-none" orders. [19]

For example, if the inside market for ABCD is 20–20¼ and two market makers are each at the inside bid for 500 shares, a SOES market order to sell 1,000 shares of ABCD would be executed at 20, with both market makers buying 500 shares. In addition, because all market maker quotations at the inside could be depleted by the execution of a SOES order, SOES is being modified to permit market orders to be filled at multiple price levels. For example, if the inside market for ABCD is 20–20¼ and Market Makers A and B are each at the inside bid for 100 shares, with Market Maker C bidding at 19⅞ for 800 shares, a SOES market order to sell 1,000 shares of ABCD would be executed against all three market makers. Market Makers A and B would each buy 100 shares at 20 and Market Maker C would buy 800 shares at 19⅞". Finally, a marketable limit order entered into SOES that exceeds the size of market maker quotes at the limit price receives a partial fill. The unfilled portion of the order is returned to the entering firm.

c. *Displayed quotation sizes will constitute exposure limits.* Under the proposal, decrementing market maker quotes after unpreferenced SOES executions will cause each market maker's displayed quotation size to become its exposure limit. SOES will cease executing orders against a market maker once its quote size has gone to zero. Therefore, the NASD has proposed to amend the SOES rules to replace references to exposure limits with references to a market maker's displayed size.

d. *Prohibition against the entry of non-marketable limit orders into SOES.* SOES currently accepts both market orders and limit orders. If a limit order is not immediately executable, or non-marketable, (*i.e.*, a limit order to buy priced below the offer price, or a limit order to sell priced above the bid price) it is placed in the SOES limit order file and subsequently executed if the limit price becomes equal to the best bid or offer. Limit orders placed into SOES are never publicly disseminated, included in the calculation of the best bid or offer, or matched against incoming market orders. The NASD maintains that the processing of such orders conflicts with the requirements of the Display Rule and with the duty of best execution as articulated in the Adopting

[15] The term "decrement" is used here to mean to automatically reduce the quote by the number of shares executed against it.

[16] The market maker could elect to quote a size of 1500 × 1000 if it wished to also represent its own proprietary trading interest at the price established by the customer limit order.

[17] If the market maker is using the auto-refresh feature, described below, the update would be automatic.

[18] The NASD and Nasdaq also propose that displayed quotations not be decremented after the execution of an odd-lot order (*i.e.*, an order for less than 100 shares) and that the execution of a mixed lot order (*i.e.*, an order for greater than 100 shares but in an increment other than 100 shares) will only decrement a market maker's quotation by the number of shares represented by the number of round lots contained in the mixed lot order.

[19] An "all or none" order is a buy or sell order marked to provide that no partial transaction is to be executed.

Release.[20] Therefore, the NASD has proposed that SOES no longer accept non-marketable limit orders.

e. *Modifications to the SOES automated quotation update feature.* Currently, the "auto-refresh" feature of SOES updates both sides of a market maker's quotation in parallel by a predetermined amount after a SOES execution. The NASD has proposed that, with regard to the fifty stocks that would be included in the pilot, the Nasdaq Stock Market would re-establish the market maker's quote, when it is exhausted, for one normal unit of trading. For those securities not subject to the pilot, the market maker's quote would be refreshed for the SOES tier size. For both pilot stocks and all other securities the auto-refresh feature would be modified to only update the side of a market maker's quote that has been decremented.[21]

In its amendment, the NASD proposes to refresh all stocks for the SOES tier size, because most stocks would remain subject to initial quotation requirements at this size. The NASD would refresh stocks subject to the pilot at the SOES tier size, because of difficulties programming its system to provide different refresh sizes for particular stocks.

f. *Allowing SOES market makers to enter agency orders into SOES.* A SOES market maker currently is prohibited from entering agency orders into SOES unless a locked or crossed market exists. This rule was intended to prevent market makers from engaging in "fair weather" market making by executing unwanted orders against other market makers through SOES. However, a market maker's disseminated quote may now reflect a customer limit order displayed in accordance with the Display Rule. The NASD has proposed to amend NASD Rule 4730 to permit a SOES market maker to enter agency orders into SOES to ensure that a customer's order has access to a better-priced customer limit order displayed in a market maker's quote regardless of whether the customer's broker dealer is a SOES market maker. Pursuant to the amendment, market makers would be able to enter riskless principal orders into SOES if these orders reflect customer agency orders.[22]

g. *Processing of marketable limit orders.* SOES currently is designed to execute marketable limit orders ahead of market orders queued in SOES. Although a marketable limit order is functionally equivalent to a market order when the limit price is equal or superior to the inside market,[23] SOES currently provides preferential treatment to marketable limit orders. To eliminate the disparate treatment of substantively identical orders, the NASD proposed to amend SOES to execute market and marketable limit orders on a time priority basis.

h. *Market maker withdrawal from Nasdaq SmallCap Market securities.* Because SOES is voluntary for Nasdaq SmallCap Market securities, when a market maker's exposure limit is exhausted in one of these securities, the NASD does not deem the market maker to have voluntarily withdrawn from the stock, because the market maker can continue to quote the issue without participating in SOES. If market maker quotations are decremented after SOES executions, however, it will now be possible for a market maker in a SmallCap security to go into a "closed quote" state because its quotation size has been depleted. Accordingly, the NASD proposal would amend NASD Rule 4730(b) to specify that a market maker in a SmallCap security shall be deemed to have voluntarily withdrawn from a stock if its quote size remains at zero at the close of the trading day, thereby precluding the market maker from being a market maker in the issue for twenty business days.

C. Proposed Rule Changes to Implement the ECN Amendment

The NASD also proposed to amend certain rules and characteristics of the SOES and SelectNet systems to facilitate the development of a means for ECNs to comply with the requirements of the ECN Display Alternative. As noted above, the ECN Display Alternative relieves an exchange specialist or OTC market maker of the requirement to publicly quote any superior prices that it privately displays through an ECN if that ECN: (1) Ensures that the best priced orders entered by market makers and specialists into the ECN are communicated to an exchange or Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by exchange specialists and OTC market makers into the ECN, so that brokers and dealers who do not subscribe to that ECN can trade with those orders. This access must be equivalent to the access that would have been available had the market makers or specialists reflected these superior prices in their public quotes.[24]

The NASD has proposed to implement, on an interim basis, a linkage to facilitate the operation of the ECN Display Alternative[25] based on existing Nasdaq system platforms, SOES and SelectNet ("SelectNet Linkage"). The methodology for establishing the SelectNet Linkage and the rule changes proposed by the NASD are described below.

1. Overview of the Operation of the SelectNet Linkage

The SelectNet Linkage is intended to provide a means for an ECN to disseminate publicly the price and full size of the orders entered by specialists and OTC market makers to the NASD and to provide access to other broker-dealers to trade at those prices, equivalent to that provided in the market where the prices are disseminated. The SelectNet Linkage would disseminate ECN prices and sizes by utilizing the methodology currently used for displaying Unlisted Trading Privileges ("UTP") exchange quotes,[26] and would provide access to ECN prices in the same manner that broker-dealers currently may preference orders through SelectNet.

The SelectNet Linkage would allow an ECN to enter its best-priced orders into Nasdaq for display on the Nasdaq Workstation. To effect transactions against these displayed prices, an NASD member that subscribes to the Nasdaq Workstation II service would be permitted to access the ECN prices by directing orders through SelectNet to the ECN. New NASD Rule 4623 would

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[20] See Adopting Release, *supra* note , 61 FR at 48324.

[21] The NASD has also proposed to amend the auto-refresh feature to allow a market maker to maintain its quote at the inside market. With this auto-refresh feature, those market makers seeking to buy or sell more stock than its displayed quotation could auto-refresh at its same quotation price if the market maker entered a quotation size equal to or greater than the maximum SOES order size.

[22] See supra note 3.

[23] That is, a limit order to buy priced at or above the offer and a limit order to sell priced at or below the bid.

[24] See Adopting Release, *supra* note 6.

[25] The NASD stated in the filing that they continue to examine other means to develop a longer-term mechanism that would provide a permanent means to establish an ECN Display Alternative that meets every aspect of the Commission's rule. The NASD stated that it would propose a permanent approach separately from the instant filing.

[26] Pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information For Exchange Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privileges Basis ("Nasdaq/NMS/UTP Plan"), Nasdaq acts as the facilities manager for itself and the UTP Exchanges in collecting, consolidating and disseminating quotes from Nasdaq market makers and UTP exchange specialists that trade Nasdaq securities pursuant to Section 12(f) of the Act. The prices quoted by UTP exchange specialists appear on the Nasdaq montage with those quoted by Nasdaq market makers. Currently, UTP exchange specialists are not subject to SOES executions.

provide for display of and access to ECN prices and sizes and would articulate the standards for ECN participation in the SelectNet Linkage.

Proposed NASD Rule 4623 provides that an ECN that wishes to use the SelectNet Linkage, or any future system Nasdaq develops to facilitate compliance with the ECN Display Alternative, must: (1) Demonstrate to the NASD that it meets the ECN definition found in the Quote Rule; (2) be registered as an NASD member; (3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement; (4) agree to provide for Nasdaq's dissemination in the quotation data stream that it makes available to quotation vendors, the prices and sizes of Nasdaq market maker orders [27] at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ECN; and (5) provide an automated execution of priced orders displayed through the linkage or, if the price is no longer available, an automated rejection of any order routed to the ECN through the Nasdaq-provided display alternative.

a. *Display of ECN prices.* For quotation display purposes, ECNs would deliver prices to Nasdaq reflecting customer orders in their systems, and Nasdaq would display and disseminate rounded prices.[28] Nasdaq would furnish ECNs with market maker identifiers ("MMIDs"). While ECNs would be assigned MMIDs, ECNs would not be registered as market makers. With the exception of certain rules such as the NASD's firm quote rule, the two-sided quote requirement,[29] and the locked and crossed markets rule discussed below, ECNs would not be subject to standard market maker requirements in the NASD's Rules. Nasdaq would include the ECN prices and sizes in the Nasdaq Workstation II quote montage with the ECN MMID and incorporate the ECN price in the Nasdaq best price calculation. When the ECN is at the best bid or offer in the market, its price would be included in the NBBO.

For example:

NBBO 20⅛–20¼, 1000 x 1000
ABCD 19⅞–20¼, 1000 x 1000
EFGH 20–20½, 1000 x 1000
ECNA 20⅛–20¼, 1000 x 1000 (an ECN)

Following current practices for UTP exchanges, Nasdaq would not include the ECN as a SOES market maker. Consequently, an ECN participating in the SelectNet Linkage would not be subject to SOES executions. The NASD stated in its filing that it would not subject ECNs to SOES executions because the ECN would be exposed to the risk of double executions and the consequent need to take a principal position, which is inconsistent with the ECN's role of acting solely as agent on behalf of its customers. The NASD stated that the risk of double executions arises because, with electronic order entry capabilities, once an order is displayed in multiple execution systems, such as SOES and an ECN's own system, the same order can be accessed nearly simultaneously by different counterparties.

b. *Access to ECN prices.* NASD members would be able to reach ECN prices displayed in Nasdaq by directing orders through SelectNet, up to the size displayed in the ECN quote. The ECN would have the ability to accept orders at the displayed price, or accept orders at an improved price if its actual price is at an increment better than that displayed.[30] The ECN would review its own file to determine whether the priced order displayed in Nasdaq has already been executed in the ECN's own system. The ECN could reject the order if the order residing in its own system already has been executed by the time the SelectNet order is delivered to the ECN. An ECN cannot decline an order delivered through the SelectNet Linkage because it may find a better order elsewhere. The Commission understands that ECNs that wish to utilize the SelectNet Linkage will be required to provide virtually immediate responses to members entering orders seeking to access publicly displayed ECN orders.[31] The Nasdaq Workstation Subscriber Agreement would require prompt and non-discriminatory execution of linkage orders by the ECN.

In addition, as NASD members and subscribers to the Nasdaq Workstation II service, ECNs would be subject to contractual obligations to demonstrate that their systems are properly designed to operate in high volume trading environments and that they have adequate security and other operational procedures in place to maintain the integrity of Nasdaq systems. ECNs that are not willing or are unable to comply with such system requirements would not be permitted to establish a SelectNet Linkage for ECN Display Alternative purposes.

2. Other Rule Changes Necessitated By Development of the SelectNet Linkage

a. *SelectNet changes.* i. *Current operation of SelectNet.* SelectNet is an automated order routing and execution system that allows a member to direct buy or sell orders in Nasdaq securities to a single market maker (preferenced orders) or broadcast orders to all market makers in the security. Upon receiving a SelectNet order, a member can accept the order, decline it (if consistent with its firm quote obligations), or send a counter-offer to the originating member.

ii. *Elimination of SelectNet Broadcast feature.* The NASD has proposed to eliminate the SelectNet Broadcast feature and allow only the entry of a SelectNet order directed to a specific market maker or ECN. The NASD offered several reasons for eliminating the Broadcast feature in its rule filing. The NASD noted that with the Broadcast feature, SelectNet falls within

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[27] The ECN Amendment does not require an ECN to provide non-market maker interest in the data that would be provided under the ECN Display Alternative. Nasdaq has been informed, however, by several ECNs that have non-NASD member participants, *e.g.*, institutional investors, that these ECNs will deliver to Nasdaq the best prices for each security for which they permit orders to be entered, whether those best prices are from a market maker subject to the rule or an entity not subject to the rule. If the ECN so chooses, it may send priced orders to Nasdaq from other entities that are not Nasdaq market makers or exchange specialists. Nasdaq will display such prices as it does other ECN-provided prices.

[28] ECNs often display priced orders that are quoted in finer increments (*e.g.*, 1/16, 1/32, 1/64) than the minimum variation for Nasdaq (currently ⅛ for stocks over $10). Under the ECN Amendment, Nasdaq would not be required to display the actual price of the finer-incremented order; instead, it would round the order to the nearest standard quote increment (rounding down for increments on the better-priced bids and up for better-priced offers). The Commission in the Adopting Release stated that Nasdaq should develop a capability in its quote dissemination system to flag or specially denote that an ECN priced order is rounded, but noted that this capability does not currently exist. Nasdaq has stated that it is developing a rounding indicator. *See* Letter from Alfred R. Berkeley, President, NASD to Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated November 18, 1996, and letter from Richard R. Lindsey to Alfred R. Berkeley, dated November 22, 1996 (regarding display of rounded prices in public quotes).

[29] The requirement for ECNs to display two-sided quotes is a temporary requirement, contingent on Nasdaq's development of a capability that permits ECNs to display a one-sided quote. Nasdaq recognizes that ECNs often have orders only on one side of the market. Currently, however, because Nasdaq's quote display system was built to display market maker quotations and market makers are required by rule to furnish both a bid and offer, Nasdaq's system would be unable to recognize an ECN price unless that price were also entered with a corresponding bid or offer. Accordingly, until such time as Nasdaq builds a one-sided ECN priced order display capability, ECNs must enter two-sided "quotations." The NASD and Nasdaq believe that the one-sided ECN order entry capability should be available sometime in the first quarter of 1997.

[30] *See* discussion below regarding the execution of SelectNet orders at rounded ECN prices when such orders are priced at increments finer than those permitted to be displayed in the consolidated quote system.

[31] An ECN is expected to respond on an automated basis to orders delivered through the SelectNet Linkage much more rapidly than a market maker that receives an order delivered through SelectNet.

the definition of an ECN[32] because it is an "electronic system that widely disseminates to third parties orders entered therein by an exchange specialist or OTC market maker, and permits such orders to be executed against in whole or in part." The NASD stated that it would be unable to make the systems changes necessary to permit a market maker to rely upon the ECN Display Alternative if it entered a priced order into SelectNet. Consequently, market makers that entered priced orders into SelectNet Broadcast would be required to change their quotes in the Nasdaq Workstation display. The NASD also stated that the SelectNet Broadcast feature is a very significant drain on Nasdaq network capacity resources, and in the face of potentially heavy additional system usage pursuant to the Order Handling Rules, network resources are more appropriately devoted to establishing the ECN linkage for directed orders.

iii. *Acceptance of orders at improved prices.* The NASD has also proposed a modification to SelectNet to permit an ECN or market maker receiving an order through SelectNet at a specific price to execute that order at a price reflecting price improvement without having to go through the currently designed counter-offer mechanism. Currently, when a market maker receives a SelectNet order, it can accept at the price sent by the order entry firm; or it can counter with a different price or size. As soon as the market maker puts in a different price, however, the current system treats the new price as a counter-offer message. Because ECNs are likely to hold orders at increments that cannot currently be shown in Nasdaq, when an ECN attempts to accept an order at a better price, *e.g.*, 1/16th better, the extant SelectNet system would treat the new price as a counter-offer. Accordingly, to comply with the ECN Amendment requirement that orders be executed at their actual prices, Nasdaq will change SelectNet to prevent the counter-offer mechanism from operating in such a situation and will deliver to the order entry firm and the ECN an execution report at the improved price.

b. *SOES rule change.* The NASD also has proposed an amendment to NASD Rule 4730 to modify the SOES system to reject orders entered when an ECN or UTP Exchange alone sets the price of the NBBO. Although UTP exchanges and ECNs can establish the best price in Nasdaq, they are not required to participate in SOES as market makers and therefore are not accessible through SOES. Proposed Rule 4730(b)(10) provides that if there are no SOES market makers at the best bid or offer that is being disseminated by Nasdaq, orders entered into SOES will be returned to the order entry firm to permit the order entry firm to direct the order to the entity establishing the best price.

Because the ECN quote is incorporated in Nasdaq's inside price but is not accessible through SOES under this approach, and SOES is programmed to execute at the best price displayed, SOES, as currently designed and operating, would execute orders against the next available Nasdaq market maker at the inside price established by an ECN whether that Nasdaq market maker is at the better ECN price or at an inferior price. The NASD expressed concern that a person could "game" SOES by entering an order into an ECN that drives the Nasdaq inside quote and obtain multiple SOES automated executions at that price against Nasdaq market makers even though they are not quoting the ECN price.

Therefore, the NASD has proposed to modify SOES to return unexecuted SOES orders to the entering member when the inside quote consists of a SOES-inaccessible price. Order entry firms that enter orders into SOES during the period when there is no SOES market maker at the inside market will be informed that the order has been rejected and may choose to route that order into SelectNet to access the ECN order driving the inside market or take other measures, such as routing the order to a market maker that guarantees the best price.[33] The NASD stated that it believes that order entry firms could avoid submitting orders to SOES during times that a SOES-inaccessible price drives the inside by developing automated means to determine when an ECN or UTP exchange is alone at the inside and delivering orders at such times to an ECN through the SelectNet directed order capability.[34]

c. *Locked and crossed markets rule amendments.* The NASD has proposed amendments to its locked and crossed markets rule, Rule 4613(e), to state that the locked and crossed markets rule applies to any NASD member, when that member enters into an ECN a priced order that is displayed in Nasdaq. The proposed amendment also states that the locked and crossed markets rule would apply to ECNs when the ECN, as an NASD member acting as agent, represents an institutional order or other non-NASD member order the price of which would lock or cross the best bid or offer in Nasdaq. Therefore, under the proposed locked and crossed markets rule, NASD members using ECNs, and ECNs themselves for non-member orders, must comply with Nasdaq's rule that before a market is locked or crossed, the locking or crossing party must first make reasonable efforts to execute the quote that would be locked.

The NASD believes that locked or crossed markets can cause investor confusion because investors will not know the true price of the security at the time when a locked or crossed quote is publicly displayed. The NASD also notes that broker-dealers operating internal order execution systems may be foreclosed from operating those systems when the market for a particular security is locked or crossed.

The NASD and Nasdaq believe that an ECN should be prohibited from entering an institutional order into Nasdaq until the ECN has made a reasonable effort to reach the entity on the other side of the market whose quote would be locked or crossed. It should be noted that if an ECN locks or crosses the market, is alone at that price, and a SOES order is entered against the ECN price that is causing the lock or cross, SOES will be programmed to reject such orders, rather than executing them against a Nasdaq market maker at a different price level.

3. Modifications to Autoquote Policy

Currently, the NASD's Autoquote Policy—which prohibits computer generated quotes—does not allow a market maker to autoquote to display a customer limit order. Although the NASD has previously interpreted the policy to permit a customer limit order to be displayed on an automated basis, because of the requirements of the Display Rule and the benefits to investors and the marketplace to be derived from the Display Rule, the NASD has proposed an amendment to the Autoquote Policy to clarify that it is permissible to autoquote to display a customer limit order.

Another amendment to the Autoquote Policy proposed by the NASD clarifies that ECNs may autoquote to maintain a continuous two-sided quote for as long as Nasdaq requires ECNs to enter two-sided quotes because of existing systems limitations. Once Nasdaq develops a

[32] SEC Rule 11Ac1-1(a)(8).

[33] The NASD and Nasdaq have committed to continue to develop a longer-term approach to the ECN Display Alternative that would better integrate various electronic systems.

[34] The NASD considered the alternative of modifying SOES to ignore the ECN or UTP quote and execute SOES orders at the Nasdaq market maker's inferior price. The NASD expressed concern that this approach would raise best execution concerns because the customer's order entered in SOES would be executed at a price inferior to the best price displayed in Nasdaq's inside market.

system capability that permits ECNs to display a one-sided quote, this exception would lapse.

III. Comments

The Commission received 366 comment letters.[35] A separate summary of comments has been prepared and is available in the public file. The specific issues addressed by commenters will be discussed in the appropriate sections of this order.[36]

IV. Discussion

The standard by which the Commission must evaluate proposed rule changes is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[37] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information.[38] After carefully considering all of the comments, and based on the Commission's experience and knowledge of current market practices and conditions, the Commission believes the NASD's proposed rule changes are consistent with the Act. As noted earlier, the Commission is not acting at this time on the NASD's proposed change to the SelectNet broadcast feature.

Section 15A of the Act, which incorporates by reference Section 11A of the Act, establishes specific standards for NASD rules against which the Commission must measure the NASD proposal.[39] As discussed below, the Commission has evaluated the NASD's proposed changes in light of the standards and objectives set forth in Sections 15A and 11A of the Act.

In enacting the 1975 Amendments and establishing the objective of achieving a national market system, Congress focused closely on the concept of best execution. To this end, Section 11A provides, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions; fair competition among market participants; the availability to brokers, dealers and investors of information with respect to quotations in securities; and the practicality of brokers executing orders in the best market.[40]

Further, as discussed in the Adopting Release for the Order Handling Rules, the 1975 Amendments contain an explicit statutory mandate for the establishment of a national market system. Congress considered mandating certain minimum components of the national market system, but instead created a statutory scheme granting the Commission broad authority to oversee the implementation, operation and regulation of the national market system.[41] In accordance with this mandate, the Commission adopted the Order Handling Rules last year.

The Commission believes that the rule changes proposed by the NASD are consistent with the NASD's obligations under the Order Handling Rules and with the regulatory framework for a national market system established by Congress in the 1975 Amendments. Congress envisioned a national market system supported by accurate and reliable public quotation and transaction information, and the practicability of brokers executing investors' orders in the best market.[42] The Commission expects that the NASD's rule changes will enhance transparency and facilitate best execution of customer orders, thereby contributing to the achievement of the full potential of the national market system. Further, the NASD's rule changes will bring its systems in compliance with the Order Handling Rules and ensure that its members will be able to meet their obligations under the Order Handling Rules.

The Commission also believes that the proposal advances the objectives of Section 11A of the Act.[43] The Commission believes that in furthering the objectives of the Order Handling Rules, the proposed changes submitted by the NASD are designed to remove impediments to the operation of a free and open market and a national market system, enhance the protection of investors and the public interest, and produce fair and informative quotations, consistent with Sections 15A(b)(6)[44] and 15A(b)(11)[45] of the Act. In addition, the Commission believes that the benefits of the proposal in terms of making the systems and regulatory changes necessary to provide for the enhanced opportunities for price improvement and greater transparency of customer limit orders under the Commission's Order Handling Rules outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission believes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[46]

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[35] The Commission received comment letters from numerous broker-dealer firms, some of which are market makers, and others that are order entry firms. The Commission received comment letters from a large number of individuals who could be identified as SOES traders. The Commission also received comment letters from one self-described entrepreneur, several individual investors and academic commenters. In addition, comment letters were received from several professional associations. The Commission also received comment letters from a member of Congress, Instinet, the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE").

[36] Several commenters asked that the Commission extend the comment period to allow additional comment. *See* letter from the Honorable Ralph Hall to Arthur Levitt, Chairman, SEC, dated January 6, 1997. The Commission provided the full comment period required under the statute and received over 350 comments. The Commission also has considered numerous comments received after the close of the comment period. In view of the importance of considering the NASD's proposals before the effective date of the Order Handling Rules, however, a longer comment period was not practicable.

[37] 15 U.S.C. §78s(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards, and does not require the SRO to prove its proposal is the least burdensome solution to a problem.

[38] In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S.Rep. No. 75, 94th Cong., 1st. Sess., at 7 (1975).

[39] See 15 U.S.C. §§ 78k–1 and 78o–3.

[40] 15 U.S.C. § 78k–1(a)(1).

[41] S. Rep. No. 75, 94th Cong., 1st Sess. 8–9 (1975) ("Senate Report").

[42] Exchange Act Section 11A(a)(1)(C)(iii) & (iv), 15 U.S.C. § 78k–1(a)(1)(C)(iii) & (iv).

[43] *See* 15 U.S.C. § 78k–1.

[44] Section 15A(b)(6) authorizes the NASD to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Furthermore, the rules of the NASD must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[45] Section 15A(b)(11) authorizes the NASD to adopt rules relating to quotations. Such rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

[46] S.Rep. at 13–14. In weighing the competitive effects of an SRO rule filing, the Commission must

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The Commission has determined at this time to approve the NASD's proposed rule change.[47] The Commission believes that the rules being approved today are consistent with the Act, in particular, with Sections 11A(a),[48] 15A(b)(6),[49] 15A(b)(9)[50] and 15A(b)(11)[51] of the Act and Rules 11Ac1–1 and 11Ac1–4 thereunder.

Various commenters supported the proposed rule change, including market makers, broker-dealers and associations representing broker-dealers. Most of these commenters believed that the proposed rule change would facilitate the implementation of the Order Handling Rules. Many commenters opposed to the proposed rule change cited a concern for decreased liquidity and increased volatility as a potential result of approving the proposed rule change. Still other commenters, including broker-dealers, individual investors and day traders, supported various aspects of the proposed rule change while opposing others. The Commission has determined, for the reasons discussed below, to partially approve the proposal, and to approve Amendment No. 1 on an accelerated basis.

Most of the favorable comments, as discussed below, supported the NASD's efforts to implement the Order Handling Rules by providing mechanisms for the display of customer limit orders and orders placed in ECNs by market makers within the time frame set forth by the Commission in the Adopting Release. In light of all the comment letters received, the Commission believes that the proposal represents a workable first step in the implementation of the Order Handling Rules. In adopting the Order Handling Rules, the Commission firmly believed that they would increase investor protection by ensuring that customer limit orders were immediately displayed in the markets, thus narrowing the quote and increasing quote competition and customer interaction, and by providing investors information about and access to superior prices that specialists and market makers displayed in ECNs. To provide these benefits to the public as soon as possible, the Commission set an accelerated implementation period that was brief in view of the magnitude of the changes necessary to prepare for the Order Handling Rules.

In responding to the established deadlines with the necessary changes to its systems and rules, the NASD was subject to several significant constraints. First, the NASD sought to create a linkage with ECNs by modifying its existing systems because the schedule for implementation of the rules precluded developing new systems or making extensive revisions to its existing systems. Second, the redesign of the NASD's SOES and SelectNet systems ("Legacy systems"), which the NASD has proposed to replace with a newer NAqcess system, was limited by these existing Legacy systems' age and inflexibility. Third, the Nasdaq system has experienced rapid growth in trading and message volume, and has struggled to maintain sufficient capacity for this growth. The significant quote changes resulting from the Order Handling Rules are expected to place serious additional demands on Nasdaq system capacity. Because of these significant constraints and the need to comply with the Order Handling Rules' effective dates, the NASD made a number of compromises in adapting its systems and rules to the Order Handling Rule requirements. These compromises underlie many of the issues raised by commenters regarding the amendments. In a number of instances, the NASD intends to revise its systems after the rules go into effect, which will reduce some of the concerns raised by the commenters.

A. Changes to Minimum Quote Size Requirements

1. Comments

Commenters favoring this aspect of the proposal include market makers, professional associations, institutions and Instinet. These commenters generally agreed with the NASD that the Order Handling Rules will transform Nasdaq into more of an order-driven market, and that market makers should no longer be required to quote more than 100 shares because investor orders will be displayed to the market and included in Nasdaq quotations. These commenters did not believe that liquidity would be adversely affected by the amendment.

These commenters believe that the amendment will motivate market makers to display a size commensurate with their interest whether as principal or agent. They note that this will enhance price discovery, as market makers will not be forced to a quotation size that is not reflective of their actual trading interest, nor will market makers be restricted in their ability to commit capital without also having an opportunity to negotiate an appropriate clearing price.[52] Making the quotation requirement the lowest unit of trading, rather than an artificial minimum decreed by regulation, also conforms to the practices of other markets (*e.g.*, the NYSE and Amex).[53] Finally, these commenters believe that the competitive environment that will result from allowing market makers to quote in sizes equal to their own freely determined trading interest will enhance pricing efficiency.[54]

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balance any perceived anti-competitive effects against other statutory objectives. The statute does not require the NASD to achieve its objective by selecting the least anti-competitive alternative. *See infra* notes 86–87 and accompanying text.

[47] The Commission is not approving, however, the exception of the proposed elimination of the SelectNet broadcast feature, which the Commission is still considering. Furthermore, the Commission is approving the elimination of the minimum quotation requirement only for the NASD's pilot program for 50 stocks for a three-month period.

[48] Section 11A(a)(1)(C) provides that it is in the public interest among other things, to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

[49] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

[50] Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[51] Section 15A(b)(11) requires the NASD, among other things, to formulate rules designed to produce fair and informative quotations.

[52] Letter from Peter W. Jenkins, Chairman, and Holly A. Stark, Vice Chairman, Security Traders Association Institutional Committee, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("STAIC Letter"); letter from William H. Sulya, Vice President-Manager & Director, Nasdaq/OTC Department, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("A.G. Edwards Letter"); letter from Taymond V. Wilmarth, Vice President and Manager, Equity Trading, Stephens Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Stephens Letter"); letter from Antonio Cecin, Managing Director, Equity Trading, Piper Jaffray Inc., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Piper Jaffray Letter"); letter from Paul Schott Stevens, Senior Vice President and General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("ICI Letter"); letter from Robert J. McCann, Managing Director, Co-Head, Global Equity Markets, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated January 7, 1997 ("Merrill Lynch Letter").

[53] Letter from Dennis Marino, Chairman, and John N. Tognino, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("STA Letter"); letter from Dennis Marino, President and Chief Executive Officer, Sherwood Securities Corp., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Sherwood Securities Letter"); letter from Bart Green, Manager, OTC Trading, and Phil Schwab, Principal, Edward Jones, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Edward Jones Letter"); Merrill Lynch Letter.

[54] Letter from Robert Padala, President, The Security Traders Association of New York, Inc., to

One supporting commenter noted that liquidity will not be reduced because many firms provide automated execution at the quote for small and medium sized customer orders and to other dealers in the market through systems other than SOES.[55] This commenter believes many dealers will continue this practice for competitive reasons.

Commenters opposing the proposal include several order entry firms, some academics, certain individual investors, the Amex and the CBOE. Most of these commenters argued that the proposal would adversely impact liquidity and create volatility. Several commenters were concerned that with the 100-share minimum quotation size all SOES market makers' quotations would easily be exhausted and result in a closed quote state.[56] The NASD rule, in the view of some, would reduce the value of displayed market maker quotes, provide no incentive to quote larger sizes and undermine the Quote Rule.[57]

A few order entry firms asserted that the proposal effectively reduces market maker risk by 90%.[58] A number of commenters said that reducing the minimum quote size would effectively eliminate investors' ability to execute orders against market makers' quotes through SOES during volatile trading conditions in individual stocks or market-wide, under the theory that there would be no trading interest in the market from customers or market makers during such times. These commenters argue that this was the very reason that SOES was made mandatory after the 1987 Market Break.[59] One commenter representing a group of SOES users argued that the display of a limit order does not obviate the need for market maker quotes and that the Commission, in the Adopting Release, seemed to suggest that a need for market maker quotes would continue. This commenter argued that the NASD's proposal is thus inconsistent with the Adopting Release.[60]

Amex and CBOE expressed concern over the rule's impact on options market makers' ability to trade at the quote.[61] Several commenters believed the requirement will hurt small order entry firms without order routing arrangements.[62]

Many commenters, while opposed to the change in the minimum quote size requirement for the market maker's proprietary quote, were not opposed to the change in the minimum quote size for market makers displaying a customer limit order.[63]

Finally, a number of commenters opposed to the rule suggested an alternative under which a market maker would separately display both its own proprietary quote and any customer limit orders it holds.[64] They suggested that this could be accomplished either through separate quotes with separate market maker identifiers or as a separate field in the Nasdaq display.

2. Commission Analysis

The Commission has determined to approve the amendment to reduce quotation size requirements for market makers displaying customer limit orders. The Commission believes there are substantial reasons, as explained below, to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driver market would be beneficial to investors. To gain practical experience with the proposal, the Commission has determined to approve, on a three-month pilot basis, the amendment reducing quotation size requirements for market makers displaying proprietary quotes for the 50 securities first subject to the Limit Order Display Rule.[65] During this pilot program, the Commission, the NASD

Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("STANY Letter"); letter from Alan B. Levenson, Esq. and Robert H. Rosenblum, Esq., Fulbright & Jaworski L.L.P., on behalf of Herzog, Hein, and Geduld, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Herzog, Heine, Geduld Letter"); letter from the Denver Security Traders Association, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("DSTA Letter"); letter from George K. Jennison, Managing Director, Nasdaq Trading, Wheat First Butch Singer, to Jonathan G. Katz, Secretary, SEC, dated December 31, 1996 ("Wheat First Letter"); Merrill Lynch Letter.

[55] Wheat First Letter.

[56] *See* Letters from Scott Dishner, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Dishner Letter"); Patrick G. Dolan, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1996 ("Dolan Letter"); Joseph Pellechia, to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Pellechia Letter"); Ishtaj Rahman, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Rahman Letter"); Joel Rebhun, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("J. Rebhun Letter"); letter from Timothy Whelan, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Whelan Letter").

[57] Letter from Bruce L. Miller, to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("B. Miller Letter"); letter from David K. Whitcomb, Professor of Finance, Graduate School of Management, Rutgers University, to Dr. Richard Lindsey, Director, Division of Market Regulation, SEC, dated November 21, 1996 ("Whitcomb Letter (11/21/96)"); letter from Ilian Petrov, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Petrov Letter"); letter from Sayan Bhattacharya, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Bhattacharya Letter"); letter from John Geisler, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Geisler Letter"); letter from William Turner, President, Turner Vision, to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Turner Vision Letter"); letter from Paul Schultz, Associate Professor of Finance, College of Business, The Ohio State University, to Richard Lindsey, Director, Division of Market Regulation, SEC, dated December 13, 1996 ("Paul Schultz Letter"); letter from Winston Meyer, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Meyer Letter").

[58] Letter from Linda Lerner, General Counsel, All-Tech Investment Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated November 22, 1996 ("All-Tech Letter (11/22/96)"); letter from Marina Kaneti, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Kaneti Letter"); letter from Michael O'Reilly, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("O'Reilly Letter"); letter from Tolga Erman, to Jonathan G. Katz, Secretary, SEC, undated ("Erman Letter"); letter from David Sciortino, to Jonathan G. Katz, Secretary, SEC, December 19, 1996 ("Sciortino Letter"); letter from Frederick N. Balbi, President, FNB Managment [sic] Inc., to Jonathan G. Katz, Secretary, SEC, undated ("FNB Letter").

[59] *See e.g.*, letter from Jason Goldstein, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Jason Goldstein Letter"); letter from Rob Lindauer, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Lindauer Letter"); letter from Bryan Hollander, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Hollander Letter"); letter from James R. Gibbs, Jr., to Jonathan G. Katz, Secretary, SEC, dated December 15, 1996 ("Gibbs Letter"); letter from Alexander Goor, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Goor Letter").

[60] J. Lee Letter.

[61] The Amex also asked the Commission to clarify that the Limit Order Protection Interpretation of the NASD (Manning II) still requires market makers to fill customer limit orders at the quote prior to or at the same time as trading for its dealer account. The Commission notes that the present proposal has no effect on the outstanding Limit Order Protection Interpretation of the NASD. Letter from James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Amex Letter").

[62] Letter from Raymond L. Hope, Jr., to Jonathan G. Katz, Secretary, SEC, dated December 21, 1996 ("Hope Letter"); Turner Vision Letter; letter from David K. Whitcomb, Professor of Finance, Graduate School of Management, Rutgers University, to Richard Lindsey, Director, Division of Market Regulation, SEC, dated January 7, 1997 ("Whitcomb Letter (1/7/97)"). *See also* letter from Yusif Simaan, Associate Professor of Finance, Fordham University, to Richard Lindsey, Director, Division of Market Regulation, SEC, dated December 9, 1996 ("Simaan Letter"); letter from John M. Lang, President, I.Q. Management, Inc., to Jonathan G. Katz, dated December 19, 1996 ("I.Q. Letter").

[63] Letter from Elizabeth Erwin, President, Momentum Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Momentum Letter"); letter from James H. Lee *et al.*, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("J. Lee Letter"); letter from Dongsoo Lee, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Dongsoo Lee Letter").

[64] Whitcomb Letter (11/21/96); letter from Michael F. Frey, President, A.J. Michaels & Co., Ltd., to Jonathan G. Katz, Secretary, SEC, dated November 20, 1996 ("A.J. Michaels Letter"); letter from Dennis Grossman, President, Grossman & Co., to Jonathan G. Katz, Secretary, SEC, dated December 21, 1996 ("Grossman Letter"); letter from Wesley Jordan, to Jonathan G. Katz, Secretary, SEC, undated ("W. Jordan Letter"); letter from David T.K. Lu, to Jonathan G. Katz, Secretary, SEC, undated ("Lu Letter").

[65] These securities, selected by Nasdaq from the 500 most actively traded securities, range in median daily dollar volume from first to 478th, cover a range of industry sectors, and have an average spread ranging from 1/8 to over one dollar.

and Nasdaq will evaluate the effect of reduced quotation sizes on the market for these securities. As discussed below, factors to be considered in this evaluation include, among others, the impact of reduced quotation sizes on liquidity, volatility and quotation spreads. The Commission believes that the quote size amendment is consistent with the Sections 11A and 15 of the Act both for proprietary and limit order quotes because, in the context of the implementation of the Order Handling Rules, it is designed to encourage fair competition and improved quotation prices, thus improving the quality of executions for investors.

The Commission believes that when an OTC market maker displays a customer limit order, it is appropriate to relieve the market maker of the obligation to quote a minimum size at the limit price. As noted by the NASD and many commenters, if the limit order is smaller than the minimum required quotation size, the quotation requirement would expose the market maker to a principal execution at a price established by the limit order, not by its own proprietary trading interest. In adopting the Limit Order Display Rule, the Commission did not intend to increase market makers' principal exposure and indeed expressly noted that the SROs should consider amending their rules as necessary to allow market makers displaying customer limit orders to quote in smaller size increments.[66]

The Commission is also approving, on a limited basis, the NASD's reduction of minimum quotation sizes for proprietary market maker quotes. The Commission recognizes the concerns of many of the opposing commenters regarding the provision's potential impact on liquidity and volatility. The Commission, based on its experience with the markets and discussions with market participants, believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors. As discussed in its release adopting the Order Handling Rules, the Commission expects the public display of market makers' ECN orders and customer orders to add significant depth and stability to the market in OTC stocks. Indeed, the display of customer limit orders provides an unprecedented opportunity in the Nasdaq market for customer interest to interact without the intervention of a dealer. In this regard, the Commission also anticipates that many market makers will choose to display larger quotes as a competitive matter. For these reasons, the Commission also does not believe that the amendments will result in smaller quotes that will prevent investors from obtaining executions in market crises. The Commission also notes that brokers often use other means, such as directing orders to market makers through SelectNet, routing orders on a pre-agreed basis through the NASD's ACES systems, or using private order routing systems, to obtain automated executions for retail investors at sizes larger than market makers' published quotations.

The Commission recognizes that with the shift to a more order driven market, the role of market makers in providing liquidity changes substantially. Currently, Nasdaq market makers are the principal source of liquidity for investors seeking immediacy (*i.e.*, seeking to buy or sell at the best currently available market price). In contrast, on exchanges, where the specialist market maker typically displays most customer orders, those orders provide the principal source of liquidity. With the display of ECN orders and retail and institutional customer limit orders in the Nasdaq market, Nasdaq market makers may frequently find themselves in a similar situation, with customer orders providing the primary source of liquidity and market makers providing liquidity during temporary imbalances in supply and demand.

The Commission believes that it is appropriate to consider whether, in a market displaying customer orders in competition with market maker quotes, there is justification for requiring market makers to quote at a mandatory size. Neither the Act nor the Commission's rules require a quote size larger than 100 shares. Historically, because customer trading interest was not displayed in the Nasdaq market, the NASD determined that it was appropriate that market makers display at least a minimum size in their quotes that would be representative of their trading interest in that security. In contrast, the exchanges have not imposed such a requirement on their own order-driven markets, where specialist market makers are permitted to quote sizes as small as one round lot (100 shares) when they are not representing customer orders. The Commission recognizes, of course, that exchange specialists, in consideration for their central role in a particular security on the exchange, are subject to various trading requirements which are intended to ensure the maintenance of stable and liquid markets.[67] However, a substantial factor contributing to market depth on the exchanges is the peer allocation review process on many of the exchanges, under which specialists are rated on their performance in maintaining stable and liquid markets, and risk forfeiting their stock allocations should their performance lag. The Commission notes that on Nasdaq, not only will customer orders provide liquidity, but multiple market makers compete in various securities. Consequently, even though market makers do not risk losing a stock allocation to another market maker by regulation, they nevertheless risk losing business in the stock to another market maker, an ECN, or a customer order if they are not quoting competitive prices and significant size at those prices. In other words, given a choice between two market makers quoting different sizes at the same price, all else equal, a customer would be more likely to approach the market maker quoting the larger size.[68] Accordingly, at this time the Commission believes that there may be substantial reason to expect that various competitive pressures would encourage market makers to maintain deep markets.

The economic impact on the market of reducing the minimum market maker quote size from 1000 shares to 100 shares raises several issues. The Commission recognizes that the 1000-share quote minimum applicable to many Nasdaq stocks has been viewed as a means of providing liquidity to orders seeking the quoted price. However, the Commission preliminarily believes that a number of factors may well prevent a significant loss of liquidity in moving to 100-share quote minimums.

First, the presence of limit orders mitigates the loss of displayed trading interest by market makers. The Commission believes that the increased representation of customer limit orders is likely to add depth to the markets. As customer limit orders that are priced better than existing market maker quotes are displayed in the public quote, greater flexibility in market maker quotation size may increase trading

[66] Adopting Release, *supra* note 6, at n. 144.

[67] For example, New York Stock Exchange Rule 104.10 requires a specialist to maintain, as far as reasonably practicable, a fair and orderly market, as measured by price continuity and depth, and minimization of the effects of any temporary disparity between supply and demand. *See* Division of Market Regulation, SEC, The October 1987 Market Break Report, (February 1988) p.4–2.

[68] While, as pointed out by commenters, a significant share of retail order flow in the Nasdaq market is internalized or otherwise subject to predetermined order routing arrangements, the Commission nevertheless believes that market maker quotes should serve an important function in attracting trading interest, especially in an order driven environment where there is less incentive and flexibility for market makers to avoid displaying actual trading interest.

interest from market professionals at the inside quotation, thereby adding to market depth. As noted by one commenter, revising minimum quote size will increase the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not.[69] This same commenter notes, and the Commission agrees, that for the most liquid Nasdaq securities, "the ability to interact with live bids and offers that represent real orders, where size is revealed at all price levels (depth of book) is the most fair for all market participants."[70]

Second, the 1000 share minimum quote size represents a barrier to entry for market making. Lowering this barrier to entry could attract more market makers, thereby increasing liquidity and competition across the market. Similarly, with large minimum quotes, smaller firms cannot effectively compete on a price basis for stocks with a high per-share price. For example, if security ABCD is trading at $85 per share, the market maker would be exposed at its quote for executions at a minimum of $85,000 when subject to a minimum quote size of 1000. If the minimum quote size is only 100 shares, the market maker's minimum capital exposure at its quote would be reduced to $8500. The Commission believes that a lower minimum quotation size will likely attract smaller firms into the market, increasing both price competition and liquidity.

Moreover, a significant motivation for the Commission's approval, on a limited basis, of the reduction of minimum quotation sizes for market maker quotes is the belief that greater quotation flexibility is likely to lead to narrowing of the spread. Reducing the quotation size requirement reduces the risk that market makers must take, and should encourage them to quote more aggressive prices.[71] Thus, the Commission believes even if there were a decline in quoted depth in certain securities, many investors in those securities may well receive better executions with narrower spreads.

Even if the spread is not narrowed, reducing the required quotation size could encourage continued and even increased market maker participation at the inside market other prices to the extent that the minimum quotation size requirement poses a barrier to entry. Thus, this change could help maintain or increase liquidity in the stock. This could be particularly significant if the display of customer limit orders reduces the profitability of market making in OTC securities, a possibility predicted by the Commission in the Adopting Release.[72] The reduction in risk resulting from reducing the required quotation size and the concomitant reduced exposure to automated executions should help preserve market maker participation that might otherwise be eroded by the display of limit orders and a larger market maker quote size. As noted below, the Commission has requested that the NASD study include information on the spreads and number of market makers of the 50 stocks that are the subject of the pilot program.[73]

Although the Commission preliminarily believes that the proposal will not adversely affect market quality and liquidity, the Commission believes that it is appropriate to take steps to further assess the effect on the markets. Therefore, the Commission is approving a lowering of the minimum quote size in a limited number of securities at this time to assess this provision's impact on a select group of Nasdaq securities. Thus, the Commission has determined that it is appropriate to allow the NASD to implement its proposed rule change reducing minimum quotation sizes for market makers' proprietary orders for the 50 stocks included in the first phase of the Limit Order Display Rule for a three-month period.[74] The Commission believes that these securities, all of which are among the 500 most actively traded Nasdaq securities, provide the most appropriate basis on which to assess the potential for any negative impact suggested by opposing commenters. The three-month pilot will give the Commission, the NASD and Nasdaq time to assess the impact of the change on the market, before considering the rule change on a broader or permanent basis. The Commission is approving this pilot program to begin at the same time as the first phase of the Order Handling Rules because the Commission believes that it is important for the markets and the Commission, in its oversight role over these markets, to be able to evaluate the combined impact of the NASD's proposed changes to Nasdaq and the Order Handling Rules in a limited group of securities.

The Commission requests that the NASD and Nasdaq conduct a study during this pilot to gauge the effect of the reduction in minimum quote size on the market for these 50 stocks. The Commission notes that these 50 stocks were chosen to provide a broad cross section of the most liquid Nasdaq securities. The number of market makers in these stocks presently ranges from a low of three to a high of 49. The inside spread ranges from ⅛ to $1 and the price ranges from approximately $9 to $141 with an average price of $44.50. The current 1000 share minimum for these stocks therefore represents, on average, approximately $44,000 per trade, a substantial amount in the retail context.

Specifically, the NASD study should include an analysis of: (1) The number of market makers in each of the 50 securities, and any change in the number over time; (2) the average aggregate dealer and inside spread by stock over time; (3) the average spread for each market maker by stock; (4) the average depth by market maker (including limit orders), and any change in the depth over time; (5) the fraction of volume executed by a market maker who is at the inside quote by stock; and (6) a measure of volume required to move the price of each security one increment (to determine the overall liquidity and volatility in the market for each stock). The Commission expects that these factors be contrasted over the time period immediately preceding the pilot and after the beginning of the pilot. Further, the Commission notes that beginning three weeks after the commencement of the pilot on 50 stocks, market makers will be required to display customer limit orders in 100 additional stocks pursuant to Rule 11Ac1–4. These 100 stocks will not be part of the pilot that the Commission is approving today, and therefore provide an opportunity for direct comparison with the stocks in the pilot. Thus, the Commission requests that the NASD and Nasdaq include in the study a matched pairs analysis of the 50 stocks in the pilot with 50 stocks in the second phase-in. This analysis should

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[69] STAIC Letter.

[70] STAIC Letter.

[71] *See* All-Tech Letter (11/22/96); Kaneti Letter; Petrov Letter. *See supra* note 58. Even opponents of change recognize that reducing the mandatory size for quotations reduces market maker risk.

[72] Adopting Release, *supra* note 6.

[73] The Commission is aware of several articles associating smaller quote sizes with narrower spreads. *See* Bacidore, *The Impact of Decimalization on Market Quality: An Empirical Investigation of the Toronto Stock Exchange* (Revised: July 1996); Harris, *Minimum Price Variations, Discrete Bid-Ask Spreads, and Quotation Sizes*, Review of Financial Studies 7 (1994); Copeland, T. and Galai D., *Information Effects of the Bid-Ask Spread*, 38 Journal of Finance (1983). Although cognizant of distinctions in the relevant markets involved in these studies that make comparisons with the Nasdaq market nondefinitive, the Commission believes that these studies provide additional support for the proposed pilot program.

[74] The Commission notes that at the conclusion of the three-month pilot, the market makers must quote the previously required size unless the Commission approves the change on an extended or permanent basis.

encompass the six factors enumerated above. The Commission will consider the results of the study in determining whether to extend or expand the pilot.

Some commenters suggested that the Commission establish a system of dual quotes so that market makers could separately display limit orders and proprietary trading interest.[75] The Act does not require an exchange or association to separately display these two types of trading interest. These changes also could require extensive systems changes on the part of Nasdaq, and could absorb substantial additional Nasdaq systems capacity at a time when Nasdaq capacity may potentially be under strain. The Commission also does not believe that the NASD is statutorily required to move toward a central limit order book or "black box" system, as favored by some commenters.[76] It should be noted that the Commission was recently urged to adopt such approaches as alternatives to its Order Handling proposals. The Commission determined that at present it is in the best interest of investors, and consistent with the Act, to require the display of customer limit orders through the quotations communicated by market makers to the consolidated quotation stream, directly or through market or ECN systems.[77]

B. Changes to SOES in Response to the Order Handling Rules

Many commenters addressed the NASD's proposed changes to SOES in response to the Order Handling Rules. Specific areas of concern are discussed below.

1. Decrementation of Displayed Quotation Sizes After SOES Executions

a. *Comments.* As noted above, the rule change provides that a market maker's displayed size will be decremented after each unpreferenced SOES execution. Market makers generally, and the DSTA and STA, expressed support for the amendment. Several other market makers, while supportive of the provision, argued that a market maker should have the option to set a higher exposure limit than just its displayed quote size.[78] One market maker and the SIA argued that there is no reason to distinguish between preferenced and unpreferenced orders in decrementing the quote, and that a market maker's quote should be decremented upon execution of preferenced orders as well as non-preferenced orders.[79]

Academics, order entry firms and SOES traders opposed the amendment to make the displayed quotation size a firm's exposure limit. Several commenters argued that the proposed reduction of minimum quotation sizes to 100 shares, together with the proposal to establish a market maker's displayed quotation size as its exposure limit, would effectively eliminate SOES.[80] One order entry firm expressed concern that it is not clear what maximum order size limits order entry firms will be held to in the future. In addition, several SOES traders suggested that if this amendment is adopted, the NASD interpretation limiting order entry firms to one 1000-share trade per security every five minutes ("five minute rule") should be eliminated.[81]

Several SOES traders argued that in light of the decrementing provision, the 15-second quote update period following an execution is too long and should be reduced or eliminated.[82] In addition, some of these commenters argued that the five minutes during which a market maker goes into a "closed quote" status following decrementation to zero is too long.[83]

b. *Commission analysis.* The NASD has proposed to replace its current mandatory quote size and SOES exposure limits with voluntary quote size, decremented as executions occur against this quote size. As a result, the maximum exposure at the quote will be reduced from twice the SOES tier size to the displayed quote size. The NASD redesigned the SOES exposure limits to reflect the introduction of customer limit orders required by the Order Handling Rules. Decrementing the quote will ensure that quotes reflecting limit orders are withdrawn once the limit order is fully executed, consistent with display of customer limit orders. The NASD applied decrementing to market maker proprietary quotes as well as customer limit orders in part because of the inability of the system to differentiate between market maker limit order and proprietary quotes. In addition, the NASD believes that reducing the quotation to reflect SOES executions more accurately reflects the nature of the market maker quote when limit orders are required to be displayed.

The Commission believes that allowing both proprietary and customer quote sizes to be reduced to reflect executions may encourage more competitive market maker quotes because, as discussed previously, market makers can control more precisely the extent of their exposure in SOES at the quoted price. This in turn may improve customer execution prices and increase investor participation in the market. In addition, market makers may be encouraged to continue or increase their market making role, mitigating the competitive pressure resulting from the display of ECN prices and customer limit orders.

In addition, the Commission believes that the display of customer limit orders should result in an increase in the displayed quotation size, offsetting at least in part the reduced exposure limits for market maker quotes. The Commission believes that these potential benefits from quotes more representative of market makers' actual trading interest and the display of limit orders offsets the potential for reduced execution size against the quote in

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[75] *See supra* note 64.

[76] Whitcomb Letter (11/21/96); All-Tech Letter (11/22/96).

[77] Adopting Release, *supra* note 6. The Commission also does not believe that the liquidity available to options market makers, like other investors, will be reduced by the Amendments. Nor do the amendments approved today alter the access of options market makers to Nasdaq systems such as SOES or SelectNet.

[78] Letter from Edward J. Johnsen, Vice President and Counsel, Morgan Stanley & Co. Incorporated, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Morgan Stanley Letter"); Stephens Letter; Piper Jaffray Letter

[79] Letter from Bernard L. Madoff, Chairman, Trading Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC dated December 26, 1996 ("SIA Letter"); letter from Lon Gorman, Chief Executive Office, and Leonard Mayer, President, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 27, 1996 ("Mayer & Schweitzer Letter").

[80] All-Tech Letter (11/22/96); Whitcomb Letter (11/21/96); Simaan Letter; Momentum Letter; letter from Mark K. Sydenstricker, Vice President and Chief Financial Officer, The Exchange House, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Exchange House Letter").

[81] *See* e.g., letter from Adam Raichel, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Raichel Letter"); letter from Michael Gleeson, to Jonathan G. Katz, SEC, dated December 19, 1996 ("Gleeson Letter"); letter from Paul R. Rudd, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("P. Rudd Letter"); letter from Chris Boran, to Jonathan G. Katz, Secretary, SEC, undated ("Boran Letter"); letter from Arthur E. Herrmann, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1996 ("Herrmann Letter"); letter from Feral Talib, to Jonathan G. Katz, SEC, undated ("Talib Letter").

[82] Letter from Gil Shapiro, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Shapiro Letter"); letter from Joshua Pohl, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Pohl Letter"); Joseph Walsh, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Walsh Letter"); Raichel Letter; letter from Nancy Tom, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1996 ("Tom Letter"); letter from Charles Rhyee, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Rhyee Letter"); Whelan Letter.

[83] Letter from Matthew Kansler, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Kansler Letter"); letter from John Parente, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Parente Letter"); letter from Alexis Theofilactidis, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Theofilactidis Letter"); letter from Marcie D. Rebhun, to Jonathan G. Katz, Secretary, SEC, dated December 15, 1996 ("M. Rebhun Letter").

SOES. Therefore, the Commission believes that the decrementing of quote size is consistent with the Act, in particular 11A.

In response to commenters who recommended that market makers have an option of setting a higher exposure limit, the NASD has amended the proposal to make the decrementing provision optional for quotes displaying size equal to or more than the SOES tier size for the security.[84] The Commission agrees that this modification is consistent with the Act. The Commission believes that allowing market makers that quote in substantial size to opt out of decrementing will encourage the display of greater quote size and allow market makers to maintain quotes that add depth to the markets.

The Commission notes that the NASD did not propose in the current filing any amendments to the 15-second period following an execution during which a marker maker may update its quote, or the five-minute "closed quote" provision. These provisions thus are not under review at this time. Similarly, amendment of the five minute rule is not part of the current proposal, and thus not under review at this time.[85] However, the Commission believes that these time periods are not inappropriately long in the context of the instant SOES revisions. The Commission also believes that dropping a market maker with a zero quote to the bottom of the display screen helps reduce confusion and makes clear which market makers are "in the market."

Finally, the Commission believes that it is consistent with the Act to modify the quotation requirements for unpreferenced orders only. The Commission recognizes that many firms have arrangements with correspondents by which they agree to execute order flow at the prevailing quote. These preferencing arrangements are wholly voluntary, and can be subject to conditions if so desired by the market maker. The Commission has considered such arrangements in the past,[86] and has not found them to be violative of the investor protection goals of the statute. For firms executing high volumes of trades pursuant to such arrangements, mandatory decrementing pursuant to such activity would require the market maker to repeatedly update its quote in response to orders executed at its quote. The Commission does not believe this outcome is compelled by the statute. In any event, the NASD's current proposal does not include an optional decrementing provision for preferenced order flow, and thus this issue is not currently before the Commission.

2. Split Order Execution

a. *Comments.*Order entry firms and SOES traders argued against allowing SOES executions at split prices. These commenters stated that order entry firms and their customers would experience added expense and delay because their orders could be subject to multiple executions against multiple parties.[87] Several commenters stated that a SOES order of 1000 shares could be split up into as many as 10 trades and executed against 10 separate market makers at a price inferior to the best displayed quote at the time the order was sent.[88] Several commenters also objected to the elimination of "all or none" orders from SOES.[89]

b. *Commission analysis.* The Commission is approving the proposed amendment because it is a necessary adjunct to eliminating required quote sizes for market makers, and allowing display of customer limit orders of less than the SOES order size. As discussed previously, the Commission does not believe that in a market displaying limit orders the Act compels a market maker to trade at a size greater than the minimum trading unit, thus assuming greater risk than it would otherwise. Although split order executions can result in somewhat greater execution costs for an order entry firm, these split executions accurately reflect trading interest in the market at that time. In addition, the amendment is necessary to ensure the smooth functioning of SOES in an environment where market makers must regularly update their quotes to reflect customer limit orders and assess their own desire to assume market risk. Finally, if a customer wants to assure that it does not receive split executions, it may enter orders at the size of the best displayed quotes, or request that its order not be executed through SOES.

The NASD has proposed to prohibit entry of all-or-none orders in SOES because it believes that most users of all-or-none market orders do not expect execution of all-or-none orders at multiple prices. The amendment to the SOES system to allow split executions, combined with the proposed elimination of minimum quote size, could result in SOES orders being executed at more than one price. In addition, revising the SOES system to provide all-or-none executions in the context of the modified SOES system would require substantial Nasdaq resources. The Commission believes that the NASD's decision to not provide for all-or-none orders in the revised SOES system reduces the possibility of investor confusion regarding the execution prices that could result and, thus, is consistent with the directive in Section 15A(b)(6) that the NASD's rules be designed to facilitate the maintenance of fair and orderly markets.

3. Prohibition Against the Entry of Non-Marketable Limit Orders into SOES

a. *Comments.*Several market makers expressed support for prohibiting entry of non-marketable limit orders into SOES while several order entry firms and a SOES trader argued against it. These latter commenters generally argued that the NASD should not prohibit the entry of non-marketable limit orders into SOES and therefore should not eliminate the SOES limit order file.[90] One commenter said that the concept is not adequately described.[91]

b. *Commission analysis.* The Commission believes the prohibition is consistent with the Act because, as noted by the NASD, limit orders held in

[84] *See supra* note 3.

[85] The Commission notes that the NASD has proposed substantial revisions to small order execution in its NAqcess proposal.

[86] *See* Securities Exchange Act Release No. 29810 (October 10, 1991), 56 FR 52098 (October 17, 1991) (order approving SR-NASD–91–18 and SR-NASD–91–26, amendments to SOES).

[87] Letter from Kelly Jordan, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("K. Jordan Letter"); letter from Michael P. Doyle, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Doyle Letter"); letter from Brian Schartz, to Jonathan G. Katz, Secretary, SEC, undated ("Schartz Letter"); letter from Drew Sohn, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1996 ("Sohn Letter"); Bhattacharya Letter, All-Tech Letter (11/22/96); letter from Paul Nadan, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("P. Nadan Letter"); letter from Steve Dworkin, to Jonathan G. Katz, Secretary, SEC, undated ("Dworkin Letter"); Petrov Letter, W. Jordan Letter; letter from Nicola Victory, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Victory Letter"); letter from Cornel Catrina, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Catrina Letter").

[88] Whitcomb Letter (11/21/96); Simaan Letter.

[89] Letter from Ed Chui, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Chui Letter"); letter from Tracy Clarke, to Jonathan G. Katz, Secretary, SEC, undated ("Clarke Letter"); letter from Robert Beers and Stephen Wilk, to Jonathan G. Katz, Secretary, SEC, dated December 26, 1996 ("Beers & Wilk Letter"); letter from Michael T. Studer, President, Castle Securities Corp., to Secretary, SEC, dated December 24, 1996 ("Castle Letter"); letter from Russell A. Grigsby, President, Cornerstone Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Cornerstone Letter"); FNB Letter.

[90] Letter from Warren E. Spehar and Michael J. Schunk, Managing Partners, First Westchester Securities, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("First Westchester Letter"); letter from Seth Hurwitz, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Hurwitz Letter"); FNB Letter.

[91] Grossman Letter.

the SOES limit order file are not displayed in the public quote, thus making the file inconsistent with the Limit Order Display Rule. Further, because of its inherent limitations, the limit order file also was infrequently used, undermining its potential usefulness. Thus, the Commission agrees that it is appropriate to eliminate the file to assure compliance with the Order Handling Rules.[92]

4. Modifications to the SOES Automated Quotation Update Feature

a. *Comments.* Several market makers supported the proposal to allow auto-refreshing of the market maker's quote.[93] One market maker commented that automation facilitates the efficient operation of the multiple market making system and fosters efficiency and liquidity. Without this modification, according to this commenter, market making would become prohibitively expensive for many firms.[94] Another market maker argued that if a market maker could have one side of its quote refreshed at an inferior price without also adjusting the other side of its quote, then the NASD also should modify Rule 4613(d), the NASD excess spread parameters rule.[95] Several commenters were concerned about the NASD's proposal to refresh market maker quotes for 100 shares instead of tier size.[96]

b. *Commission analysis.* The Commission is approving the modification because it believes an automatic quote update feature, which is currently available in SOES, is consistent with the Act. As originally proposed, the auto-refresh capability will update the quote for only the required minimum quote size. In the NASD's amendment establishing the pilot, however, for programming reasons the NASD proposed to auto-refresh the quotation up to the SOES order size for all securities, including the 50 pilot stocks. The market maker would be allowed to reduce the size in these 50 pilot stocks if it wished to quote at a smaller size. The Commission believes that auto-refresh will be a helpful tool for market making in this new environment, and is consistent with the Act.

5. Allowing SOES Market Makers to Enter Agency Orders into SOES

a. *Comments.* Several market makers expressed support for the proposal to allow SOES market makers to enter customer orders into SOES.[97] The SIA and several market makers argued that market makers should be allowed to enter riskless principal orders into SOES as well as agency orders, as these orders are the economic equivalent of agency orders.[98] Several market makers argued that market makers should also be permitted to enter proprietary orders into SOES.[99]

Several SOES traders opposed the proposal.[100] One SOES trader suggested that verification procedures were needed to assure that orders entered by market makers were legitimate agency orders.[101]

b. *Commission analysis.* In the Adopting Release for the Order Handling Rules, the Commission suggested that the NASD consider revising SOES to allow market makers to enter customer orders into SOES in particular to execute against displayed customer limit orders.[102] The Commission was concerned that firms operating internal automated execution systems could execute substantial customer orders based on individual limit orders establishing a best bid or offer price. The Commission suggested that while under best execution principles the firm would be expected to match the displayed quote up to its size, the firm should be provided a mechanism to instead execute the customer limit order directly against the superior displayed quote. The NASD proposal is consistent with this suggestion. The NASD has not permitted market makers to enter orders into SOES for their own account, because to date the NASD has concluded that automated execution by one market maker against another would expose market makers to excessive risk and thus would discourage market making. Therefore, the proposal is limited to market maker riskless principal orders reflecting agency orders held by the market maker. The NASD intends to monitor for compliance with this condition as part of its regular examination program for market makers.

The Commission believes it is consistent with the Act to eliminate differentiating between agency orders entered in SOES by market makers or order entry forms. Accordingly, the Commission is approving the amendment. Furthermore, the Commission notes that riskless principal orders entered by market makers on behalf of customer orders will be accorded like treatment under the rule. The Commission agrees with the NASD that the amendment will help to ensure that all customer orders receive the benefit of interaction with other interest in the market and enhanced price improvement opportunities.

6. Processing of Marketable Limit Orders

a. *Comments.* Only one commenter addressed the issue of eliminating the priority accorded marketable limit orders over market orders in SOES, expressing support for the proposal.[103]

b. *Commission analysis* The Commission believes the amendment is consistent with the Act, and therefore approves this modification. This amendment will eliminate an unwarranted advantage to investors placing marketable limit orders over those placing market orders. This result recognizes the functional equivalency of these two types of orders.

7. Market Maker Withdrawal from Nasdaq SmallCap Market Securities

a. *Comments.* Only one commenter addressed this issue; this market maker believed the provision should be modified such that a market maker would be deemed to have voluntarily withdrawn from the market if its quote remained at zero at the opening of the following trading day.[104]

b. *Commission analysis.* The Commission believes this amendment is consistent with the Act, and therefore

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[92] The Commission notes that the NASD's NAqcess proposal, which would create a publicly displayed limit order book, is still under consideration. *See* Securities Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996).

[93] DSTA Letter; Edward Jones Letter; Herzog, Heine, Geduld Letter.

[94] Edward Jones Letter.

[95] Morgan Stanley Letter.

[96] Castle Letter; Gleeson Letter; letter from Wayne Hong, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Hong Letter"); letter from James B. Carpenter, to Jonathan G. Katz, Secretary, SEC, undated ("Carpenter Letter"); letter from Tai Truong, to Jonathan G. Katz, Secretary, SEC, dated December 15, 1996 ("Truong Letter"); letter from Daniel Balber, to Jonathan G. Katz, Secretary, SEC, undated ("Balber Letter"); letter from John Cassimatis, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("Cassimatis Letter").

[97] *See e.g.*, Herzog, Heine, Geduld Letter; Edward Jones Letter.

[98] SIA Letter; letter from Peter C. Cohan, Managing Director, Pershing to Jonathan G. Katz, Secretary, SEC, dated January 2, 1997 ("Pershing Letter"); Mayer & Schweitzer Letter.

[99] Letter from Dan B. Franks, Senior Vice President, Equity Trading, Scott & Stringfellow, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 23, 1996 ("Scott & Stringfellow Letter"); letter from Leslie Seff, Fidelity Capital Markets, to Jonathan G. Katz, dated December 23, 1996 ("Fidelity Capital Letter").

[100] Gleeson Letter; letter from Stephen Kovacs, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Kovacs Letter"); Grossman Letter.

[101] Letter from Hendrickson, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Hendrickson Letter").

[102] Adopting Release, *supra* note .

[103] Herzog, Heine, Geduld Letter.

[104] Herzog, Heine, Geduld Letter.

approves this modification. The Commission does not believe that requiring a market maker to reenter a quote in a SmallCap security by the close of trading for the day presents a significant hardship to market makers in a security. Furthermore, establishing an outer time frame by which a market maker must reenter its quote makes it clear to the market which market makers in a security are willing to continue market making in the security.

C. Implementing the SelectNet Linkage

As noted above, the NASD proposed to change certain rules and aspects of the SOES and SelectNet systems to implement the SelectNet Linkage, which is intended to facilitate the operation of the ECN Display Alternative based on existing Nasdaq system platforms, SOES and SelectNet. The nature of this linkage was constrained by the needs of the ECNs and the limitations on the Nasdaq computer systems discussed previously.

1. Display of ECN Prices

a. *Comments.* Several market makers and the SIA supported the proposal for the display of ECN prices and characterized it as a "reasonable interim approach."[105] Those favoring the proposal praised the consolidated market maker/ECN quote as increasing market transparency.

Comments criticizing the proposal were submitted by Instinet, individual investors, academics, order entry firms and SOES traders. The majority of critical comments concerned the rounding indicator. Many commenters objected to the determination of the NASD not to disseminate the actual prices displayed by ECNs if those prices are in increments finer than the NASD's minimum quotation increments.[106] Some commenters argued that the failure to display the actual price or an indicator that a price was rounded would make it impossible for brokers to find the best price for retail customers.[107] These commenters requested either that rounding not be approved without the indicator, or encouraged the NASD and Nasdaq to implement the rounding indicator as soon as possible, and move to finer increments or decimal pricing as soon as feasible.[108] One commenter, noting that ECNs with rounded prices will not have display priority over market makers at an inferior, displayed price, but instead will be treated as if their rounded price were their actual price and entered according to time priority, questioned whether any technological reason existed for this approach.[109] One order entry firm suggested that rounding without an indicator permits an ECN to "hide its market" which is inconsistent with the Order Handling Rules.[110] This firm also suggested that once the rounding indicator is available, market makers should be allowed to quote with the indicator. Finally, several order entry firms suggested that rounding permits the market maker to trade at the superior price with the ECN, give its customer a fill at the posted quote, and keep the "hidden" fraction.[111]

b. *Commission analysis.* While recognizing and sharing concern about the lack of a rounding indicator, the Commission believes that this amendment represents a significant step forward in the public display of prices entered into ECNs. For the first time, a consolidated montage displaying both quotes of market makers and ECN prices will enable investors and market professionals alike to view in one place all the trading interest in a particular security in the market. In addition to providing improved transparency, the proposed Nasdaq linkage will enable investors to access prices that previously were available only to subscribers to an ECN. Thus, investors will have access to better prices and the goal of best execution for all customers will be advanced.

The Commission has determined the NASD's proposal to develop the SelectNet linkage is consistent with Act and, thus, is approving the proposal. The Commission believes the SelectNet linkage furthers the Section 11A objective of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market. Specifically, the development of the SelectNet linkage will facilitate the display of customer limit orders, thereby advancing the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, and best execution. The enhanced transparency of these orders also increases the likelihood that limit orders will be executed because contra-side market participants will have a more accurate picture of trading interest in a given security.

In adopting the Order Handling Rules, the Commission recognized that ECNs may display orders in increments smaller than the minimum quotation increments used in the public trading markets. The Order Handling Rules sought to publicize the ECN prices in the existing public quotation systems, but in doing so did not require the SROs to alter their existing trading increment. Rather, the Commission allowed market makers' and specialists' quotes in ECNs at finer increments to be displayed in the SROs markets at prices rounded to the SROs' quotation increment, with a rounding indicator.[112] The NASD and other SROs have indicated that, as a technical matter, display of a rounding indicator is not possible by the implementation date of the rules.

Many commenters stated that the lack of a rounding indicator will make it difficult to determine if an improved price is available from an ECN. The NASD and Nasdaq have acknowledged this difficulty and have committed to resolving this problem by implementing a rounding indicator as soon as possible. The Commission believes the NASD and Nasdaq are acting in good faith and have granted the SROs no-action relief concerning the lack of a rounding indicator until July 31, 1997.[113] The Commission believes that there is much to be gained by going forward with the SelectNet linkage without the indicator, pending Nasdaq's development of an appropriate format for such a notation. The Commission notes that, consistent with the Order Handling Rules, when an order is sent through SelectNet to an ECN and a market maker or specialist has entered an order at a better price, which is rounded for display in Nasdaq, the order sent through SelectNet will receive the better price available in the ECN. Moreover, broker-dealers will be able to enter orders through the SelectNet linkage priced at finer increments than the rounded quotes. Broker-dealers and their customer can use such orders to define the prices at which they are willing to trade.

2. Access to ECN Prices

a. *Comments.*

Some commenters criticized the lack of an electronic linkage between the ECNs and SOES, and argued that it should be possible for SOES orders to be

[105] Herzog, Heine, Geduld Letter; Mayer & Schweitzer Letter; SIA Letter; Pershing Letter.

[106] A.J. Michaels Letter; All-Tech (12/23/96); Grossman Letter; Hope Letter; I.Q. Letter; Hurwitz Letter; Simaan Letter; Whitcomb Letter (11/21/96).

[107] All-Tech Letter (12/23/96), Whitcomb Letter (11/21/96); Simaan Letter; letter from Seth Modlin, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Modlin Letter").

[108] A.J. Michaels Letter; All-Tech Letter (12/23/96); Simaan Letter; Whitcomb Letter (11/21/96). *See also* Hope Letter; I.Q. Letter; Hurwitz Letter.

[109] Whitcomb Letter (12/10/96). *See also* Instinet Letter.

[110] All-Tech Letter (12/23/96).

[111] A.J. Michaels Letter; First Westchester Letter.

[112] Adopting Release, *supra* note .

[113] *See supra* note .

electronically routed to an ECN.[114] Several commenters noted that the lack of the linkage could eliminate the market maker's risk of exposure to executions at the ECN price.[115] Furthermore, commenters argued that without automated execution through the linkage, ECNs would be able to favor their own customers in executions.[116] Other commenters expressed concern that because a SOES/SelectNet linkage was not required, the execution of small orders entered into SOES, but rejected on the basis of a superior ECN quote, will be delayed while they are manually rerouted to SelectNet.[117] In contrast, Instinet argued that the proposal's requirement that ECNs automate SelectNet response functions is costly and excessively burdensome. Instinet further maintained that ECNs should be given flexibility to evaluate the credit worthiness of non-ECN subscribers.

b. *Commission analysis.* As discussed above, some commenters criticized the lack of an automated execution between SOES and the ECNs. The Commission, in the Adopting Release, stated that ECNs must provide broker-dealers who use SOES with equivalent automated access to the best priced market maker orders in the ECN for NNM and SmallCap securities.[118] This could be accomplished either through an electronic linkage to SOES or by other means agreed upon with the NASD.[119] The Commission recognizes that the SelectNet Linkage does not include an electronic linkage to SOES. The SelectNet linkage was developed to accommodate the ECNs, at least on an interim basis, to receive an order rather than an automated execution such as provided by SOES. The ECNs by definition provide automated executions of orders internally. Linking to an external automated execution system would create the risk of two simultaneous executions against the same order, thereby forcing the ECN operator to trade as principal without an order on the other side. Because the Commission expressed strong support for an effective ECN display alternative as an element of the Order Handling Rules,[120] the NASD determined to create the SelectNet linkage as an interim measure to implement the ECN display alternative by the implementation date of the rules. Because of the age and inflexibility of the SOES and SelectNet systems, the NASD was unable to link its SOES system to the SelectNet system by the effective date of the rules, in order to allow SOES orders to be routed to the ECN via SelectNet when the ECN displayed a superior price. The NASD has indicated that the existing linkage is in its view an interim measure, and that it intends to link these functions in the future. The NASD also intends to include in its proposed ECN addendum to the Nasdaq Workstation subscriber agreement requirements that the ECN respond promptly to a SelectNet linkage order.

In response to Instinet's comment opposing the requirement of automated responses from ECNs, the Commission believes that this requirement is necessary to assure the smooth functioning of the SelectNet linkage. The Commission believes that, because the SelectNet linkage does not provide automated executions, any significant delay in response to a SelectNet order from the ECN will unreasonably prolong execution time for the customer. However, the Commission believes that the NASD requirements for ECNs will result in execution response times of a matter of seconds, so that use of the linkage will be virtually immediate.

The Commission takes very seriously the concern expressed that ECNs could potentially favor their own customers. The Commission is satisfied, however, that adequate safeguards are in place to prevent ECNs from discriminating between customers in a manner inconsistent with the Order Handling Rules. First, ECNs will be required to execute an ECN addendum to the Nasdaq Workstation subscriber agreement providing that they cannot prefer their own customers in executions or discriminate against linkage orders. Second, the subscriber agreement requires prompt responses to linkage orders. Finally, the Quote Rule only excepts a broker-dealer from honoring its quote if it is effecting a transaction or is in the process of updating its quote. If an ECN cannot demonstrate that one of these exceptions applies, it will be liable for a violation of its Quote Rule obligations as well as the NASD ECN subscriber agreement.

In response to Instinet's concern about the need for time to examine the credit worthiness of customers, the Commission notes that a key condition of performing as a display alternative under the Order Handling Rules is that the ECN provide access to its prices to broker-dealers equivalent to that provided by market makers and specialists. Market makers and specialists must be firm at their quotes for orders from at a minimum all brokers and dealers. The ECN must satisfy the same standard. The Commission staff has interpreted the Quote Rule to allow a narrow exception so that the market maker may take into account the substantial likelihood that a counterparty may not perform in determining whether to trade with the counterparty at its quote.[121] The SelectNet linkage and the NASD ECN addendum would not preclude an ECN from declining an order from a counterparty if it had a substantial basis for believing the counterparty would not perform; indeed, an ECN could program its system to reject linkage orders from particular counterparties if the ECN can satisfy this narrow exception from the Quote Rule. Rejection of linkage orders for generalized credit concerns would not constitute providing equivalent access as required to qualify as an ECN display alternative.

3. Implementation of the ECN Linkage

a. *Comments.* Instinet argued that the Workstation Subscriber Agreement required by the rule should not contain substantive conditions not imposed on other users Nasdaq workstation users. Instinet also objected to the characterization of the linkage by the NASD and Nasdaq as "interim," and expressed its opposition to further modifications that may make the linkage resemble a consolidated limit order file. Instinet requested that the SEC monitor negotiations regarding further modification between the ECNs and the NASD.

b. *Commission analysis.* In its November interpretive letter,[122] the Commission staff recognized that the SROs should have the ability to establish reasonable conditions on ECNs linking with the SRO pursuant to the ECN display alternative. The Commission believes that the NASD's Workstation Subscriber Agreement addendum is an appropriate vehicle for establishing reasonable conditions for ECNs linking with Nasdaq. Regarding

[114] Morgan Stanley Letter; Instinet Letter; Exchange House Letter; Grossman Letter; Lu Letter.

[115] *See e.g.*, Grossman Letter; Hurwitz Letter.

[116] *See e.g.*, Cornerstone Letter; All-Tech Letter (12/23/96).

[117] All-Tech Letter (11/22/96); Pompeo Letter; Beers & Wilk Letter; Edward Jones Letter.

[118] Adopting Release, *supra* note . The Commission also discussed the provision of telephonic access to ECN prices.

[119] *Id.*

[120] Adopting Release, *supra* note .

[121] The Commission staff interpreted the Quote Rule as permitting a market maker from refraining from trading at its displayed quote if it had a substantial basis for believing that the counterparty to the transaction will not be able to honor the trade. Letter from Richard Lindsey, Director, Division of Market Regulation, SEC, to Richard Grasso, Chairman and CEO, NYSE, dated November 22, 1996, p. 17.

[122] *See* letter from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Richard Grasso, Chairman and CEO, NYSE, dated November 22, 1996.

Instinet's concerns about the NASD's further modifications to the interim approach, the Commission believes it is premature to consider the nature of potential revisions at this time. The Commission believes that it is important to enhance the SelectNet linkage to connect the market order executions systems with the ECN linkages; however, the design of these future enhancements has not been determined and is not before the Commission in the present filing. Any future changes would be filed by the NASD and Nasdaq as a rule filing with the Commission and published for comment. The Commission will fully consider the issues presented by, and comments on, such a filing at that time. The Commission intends to monitor future negotiations between the ECNs and the NASD regarding the design of this linkage.

4. Eliminating SelectNet Broadcast Feature

a. *Comments.* Several market makers, the STA and the DSTA favor the elimination of the SelectNet broadcast feature.[123] Several commenters expressed support for the elimination of the counter-offer function.[124]

Many commenters, including academics, order entry firms and SOES traders, objected to eliminating the SelectNet broadcast feature.[125] Several commenters argued that eliminating the SelectNet broadcast feature effectively eliminated the ability of SelectNet to function as an electronic stock market.[126] These commenters argued that the proposal turns SelectNet into "nothing more than a message routing system."[127]

It was argued that eliminating the SelectNet broadcast feature, together with eliminating the SOES limit order file, meant that public orders could be entered into the market only if a market maker or ECN chose to accept that order in its sole discretion.[128] Another order entry firm echoed this comment and stated that order entry firms will now have no means of displaying orders between the spread.[129] Several order entry firms stated that the elimination of the broadcast function forces order entry firms to subscribe to an ECN.[130]

b. *Commission analysis.* The Commission is not taking action on the SelectNet broadcast feature at this time, pursuant to an NASD consent to an extension of time for consideration of this portion of its proposal. The NASD said that a major basis for its proposal to eliminate the SelectNet broadcast feature was concern that the Nasdaq system had inadequate capacity to continue all current functions once the Order Handling Rules went into effect. The NASD indicated that the SelectNet broadcast feature uses substantial systems capacity. The Commission intends to monitor the impact on Nasdaq systems capacity and quote traffic of the phase-in of the Order Handling Rules before reaching a determination regarding elimination of the SelectNet broadcast feature.

5. Rejection of SOES Orders When ECN or UTP Exchange Is at the Inside Quote

a. *Comments.* Market makers generally were in favor of the proposal to reject SOES orders when no Nasdaq market maker was quoting at the inside quote. They believe it is appropriate for the order to be returned to the entering firm when an exchange or ECN is driving the inside. Order entry firms and SOES traders generally opposed the proposal. One order entry firm argued that it would be possible for an order to be sent to an ECN through the SelectNet Linkage, rejected by the ECN, returned to the broker who then enters the order into SOES, which then rejects the order because in the interim, an ECN established a better price.[131] Another stated that the proposal would render SOES unusable for most large issues for many periods if market makers use the display alternative.[132] Several commenters believed this aspect of the proposal creates a risk that some market makers would improperly use ECNs to avoid being subject to SOES executions.[133] Another order entry firm claimed that the proposal undermines competition and legitimizes collusive behavior.[134] One order entry firm argued that the rule change moves the market from an environment where a customer cannot hope to obtain best execution to an environment where the customer must obtain best execution or no execution at all.[135] This commenter stated that the customer preferring speed and certainty of execution over price improvement is disadvantaged.

b. *Commission analysis.* The Commission is approving the amendment to effect this change as consistent with the Act and the rules thereunder, particularly the Order Handling Rules. As discussed below, the NASD was unable to link the SOES system with the SelectNet linkage by the implementation date for the Order Handling Rules. Therefore, when an ECN or a UTP exchange is alone at the best quote, the SOES system must either reject orders, execute them against Nasdaq market makers at the ECN or UTP exchange quote, or execute them at the Nasdaq market makers' best quote even though that quote is inferior to the NBBO. The Commission agrees with the NASD's analysis that to hold the market maker to a SOES execution at a price that is being driven by the ECN or exchange would be competitively unfair, and to execute SOES orders at the market maker's own quote would result in customer executions at a price that is inferior to the NBBO, generally violating best execution duties of broker-dealers entering the orders.

The Commission recognizes that the shutdown of SOES when better ECN or UTP exchange quotes are displayed in the NBBO will reduce the ability to execute customer orders immediately on an automated basis. At the same time, it will contribute to competitive quotations by encouraging customer orders to be routed to the ECN or UTP exchange displaying the best quote. Market makers that want to attract SOES order flow in these securities will be encouraged to publish a Nasdaq quote equal to or better than that displayed by the ECN or UTP exchange. This competition could improve market quotation quality and produce better prices for investors.

The proposed amendment is intended to address a problem arising from the

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[123] A.G. Edwards Letter; letters from Daryl Andersen (Nasdaq Equity Trading), Joseph G. Geelan (Vice President, Institutional Trading), Jeff Peterson (Vice President, Senior Trader), Daniel L. Henn (Vice President, Nasdaq Equity Trading), Dede Yurecko (Vice President, Senior Trader), Art Kearney (Executive Vice President, Director of Capital Markets), Beth McCann (Vice President, Institutional Trading), John G. Kinnard & Co., to Secretary, SEC, dated December 24, 1996 ("Kinnard Letters"); DSTA Letter, Edward Jones Letter; Mayer & Schweitzer Letter; STA Letter; STAIC Letter; STANY Letter.

[124] Edward Jones Letter.

[125] *See e.g.*, All-Tech Letter (12/23/96); Boran Letter; Frame Letter; Grossman Letter; letter from Gerard Hunter, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("G. Hunter Letter"); FNB Letter, W. Jordan; Cornerstone Letter.

[126] Whitcomb Letter (11/21/96); Simaan Letter.

[127] Simaan Letter, Whitcomb Letter (11/21/96); letter from Jerry Putnum, Terra Nova Trading, LLC, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1996 ("Terra Nova Letter").

[128] *See e.g.* First Westchester Letter; Cornerstone Letter.

[129] Cornerstone Letter.

[130] First Westchester Letter; Grossman Letter.

[131] All-Tech Letter (11/22/96). *See also* Beers & Wilk Letter; letter from Geoffrey Dubey, to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 ("Dubey Letter"); Edward Jones Letter, Lu Letter; letter from Michael McLoughlin, to Jonathan G. Katz, Secretary, SEC, dated December 16, 1996 ("McLoughlin Letter"); letter from Dario Pompeo, to Jonathan G. Katz, Secretary, SEC, dated December 18, 1996 ("Pompeo Letter") (discussing the delay involved with this aspect of the proposal).

[132] Exchange House Letter.

[133] Cornerstone Letter; Morgan Stanley Letter.

[134] First Westchester Letter.

[135] All-Tech Letter (11/22/96).

lack of an interconnectivity between the SOES system and the SelectNet linkage. As discussed previously, the NASD was unable to complete the programming for the SelectNet linkage and the necessary changes to the SOES rules, and also link the separate SelectNet and SOES systems, both of which are aging Legacy systems. As discussed previously, the NASD has indicated that it plans to develop a revised system that will connect its market order execution system with its linkage to ECNs. When this system is developed, it should be possible to route market orders directly to the best market maker or ECN quote prevailing at that time.

In the meantime, the Commission believes that order entry firms should be able to reprogram their systems to scan the quote line and direct their order either into SOES or the SelectNet link, depending on where the best quote is at the time of the order's entry. In this manner, order entry firms can improve the efficiency of order routing and reduce the number of rejections received in the SOES system. The Commission notes that many SOES users are already frequent SelectNet users for orders not eligible for SOES.

The Commission also notes that during the initial stages of implementation of the Order Handling Rules when the rounding indicator is not available, SOES orders will be rejected only when ECN prices are a full quotation increment better than the best bid or offer. When a price is displayed in an ECN at a superior price at a smaller increment, such as 20 1/16, and rounded to a price reflecting a standard trading increment, such as 20 1/8, SOES executions will not stop if the best market maker quote is also at 20 1/8. This should substantially reduce the number of SOES rejections resulting from superior ECN prices, because ECN prices often are superior to Nasdaq by only a smaller quotation increment.

The Commission acknowledges that this provision creates a risk that market makers could enter orders into ECNs to avoid being subject to SOES executions. The Commission preliminarily believes that such activity would raise concerns under a broker-dealer's obligation to observe SRO just and equitable principles of trade.[136] The Commission encourages the NASD to monitor such activity carefully and to consider disciplinary action where warranted.

6. Summary and Effect on SOES Users

A number of commenters argued that the NASD was using the proposed changes as a whole to limit the ability of customers of order entry firms to trade efficiently through SOES. In particular, these commenters argue that the reduction in market makers' minimum quote size to 100 shares, the potential that SOES orders would receive split executions, the inability to enter all-or-none orders, and the inability to enter SOES orders when one or more ECNs are alone at the inside quote would limit their ability to execute orders rapidly and at low cost over SOES.

As discussed above, the Commission has reviewed each of these proposed revisions individually and has determined each of them to be consistent with the purposes of the Act. Furthermore, the Commission does not believe that these revisions, taken together, necessarily adversely affect the ability of customers of order entry firms to trade through SOES. As noted above, far from commenters' predictions of a market of uniform 100-share quotes, the Commission believes that the display of ECN orders and customer limit orders in the market should increase liquidity and narrow spreads in Nasdaq securities. In such an environment, customers entering orders through SOES would be expected to benefit from the better prices in the market. To the extent a SOES order would be subject to multiple executions, any improved prices could in fact offset the increased transactions costs attributable to split executions. Finally, as discussed above, the Commission believes that order entry firms should be able to program their systems to reroute SOES orders through SelectNet when SOES is disabled because one or more ECNs are alone at the inside price.

Therefore, while it is true that the NASD's proposed revisions will require changes in how orders are executed through SOES, the Commission does not believe that the revisions, individually or in the aggregate, impose unfair competitive burdens on SOES order entry firms or their customers, nor do they unfairly discriminate against investors who actively trade on the SOES system or the broker-dealers which service these investors.

After considering the comments, the Commission believes that at this time the NASD's proposed amendment is necessary to promptly effectuate the Order Handling Rules given the abbreviated time frames and the limitations on the NASD's system. The Commission also believes that the ultimate benefits of the availability to the customer of superior quotes resulting from display of ECN prices outweigh the inefficiencies resulting from rejections of SOES orders when ECNs are at better prices.

7. Locked and Crossed Markets Rule Amendments

a. *Comments.* Several market makers, the STA and the STANY commented in favor of applying the locked and crossed markets rule to market makers and other NASD members entering orders into ECNs, and to ECNs that are displaying orders in Nasdaq for non-NASD members.[137] The STANY supports the application of the locked and crossed markets rule to ECNs, because of the market confusion and inefficiency that results from locked and crossed quotes in Nasdaq. A few commenters offered suggestions to modify the rule,[138] including a requirement that a locking or crossing market maker should be required to notify the NASD, which notifies the potentially locked or crossed market maker, before entering the quote.[139] Another market maker supported the amendment as a first step, and suggested that the NASD should have authority to halt trading in locked and crossed markets, as do the exchanges.[140]

Instinet argued that an ECN does not trade as principal and does not have the ability to make "reasonable efforts" to avoid a locked or crossed market. Two commenters questioned the meaning of the exception for "extraordinary circumstances."[141] Another order entry firm stated that the rule is unclear.[142]

Amex and CBOE argued that applying the locked and crossed markets rule, Rule 4613(e), to ECNs, would inhibit the ability of options specialists and market makers to hedge in an ECN. Amex stated that it is impractical to require an options market maker to first "clear the Street" of all Nasdaq market maker quotes that it might cross when entering a hedging order into an ECN. It argued that the effects of the proposed application of the locked and crossed markets rule to ECNs and their users during volatile markets are uncertain and may cause a disruption in the ECN trading of Nasdaq stocks and may further disrupt trading in their options.

b. *Commission analysis.* The NASD has proposed the amendment to the locked and crossed markets rule to

[136] NASD Rule 2110.

[137] DSTA Letter; Herzog, Heine, Geduld Letter; letter from David Kuang, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1996 ("Kuang Letter"); Mayer & Schweitzer Letter; STA Letter; STANY Letter.

[138] STA Letter; Herzog, Heine, Geduld Letter; Morgan Stanley Letter.

[139] Morgan Stanley Letter.

[140] Herzog, Heine, Geduld Letter.

[141] Amex Letter; Cornerstone Letter.

[142] Grossman Letter.

reduce the potential for a very significant and disruptive incidence of locked and crossed markets arising from ECN prices. The NASD argues that locked and crossed quotes interfere with the operation of the Nasdaq market by obscuring the true bid and offer prices at the time, and also may impact the use of firm, automated order execution systems. The NASD thus believes that NASD members, including ECNs, should attempt to trade with a market maker quote before locking or crossing that quote. The Commission believes that it is consistent with the purposes of the Act to maintain Nasdaq quotations that are informative and reliable. The Commission further believes that the NASD's proposal is reasonably designed to maintain the integrity of Nasdaq quotes by reducing the incidence of locking and crossing quotations displayed in Nasdaq by ECNs. The Commission urges the NASD to consider other means of reducing the incidence of locked and crossed quotes such as efficient means of executing against market maker quotes before entering a locking or crossing order.

The Commission notes that the term "extraordinary circumstance" is existing language in the locked and crossed markets rule. It would encourage any market participants unclear about the meaning of this language to seek interpretive guidance from the NASD.

8. Modifications to Autoquote Policy

a. *Comments.* Several commenters expressed support for the modification to the autoquote policy to permit computer generated display of limit orders, responses to executions and ECN prices.[143] One order entry firm argued that autoquoting should not be available in response to a partial fill.[144] One academic argued that the temporary requirement permitting ECNs to autoquote to post two-sided quotes (until technical modifications can permit one-sided quotes) forces ECNs to post "phantom" quotes, further debasing the meaning of quotes in the Nasdaq market.[145]

b. *Commission analysis.* The Commission has determined that the NASD's proposal is consistent with the Act and, therefore, is approving the amendment. The proposed amendments are narrow exceptions to the autoquote policy designed to help effectuate the Order Handling Rules. In the Adopting Release, the Commission urged the NASD to reconsider its general ban on computer generated quotes to allow members to use computer generated quotes that add value to the market.[146] The Commission understands that the NASD continues to consider this policy generally, while proposing these specific modifications to facilitate the Order Handling Rules.

The Commission also notes that the NASD's method of adapting its existing quotation system to accept quotes from ECNs, by permitting ECNs to autoquote to maintain two-sided quotes is only a temporary solution until the NASD can modify its system to accept one-sided quotes from ECNs.

V. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Commission approval of the request made in Amendment No. 1 to grant temporary approval, on a three-month pilot basis, to the minimum quotation size requirements will allow market participants and the Commission to assess the effects of these changes. In addition, the Order Handling Rules will become effective on January 20, 1997. To facilitate the implementation of these rules, the NASD must make changes to its current rules that will affect manner of operation of its systems. The Commission believes that industry participants must be provided sufficient time to acclimate to these changes. Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 15A and Section 19(b)(2) of the Act.[147]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD–96–43 and should be submitted by February 6, 1997.

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposed rule change is consistent with Section 15A(b)(6) of the Act[148] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[149] In addition, the Commission believes the proposed rule change is consistent with Section 15A(b)(9)[150] and Section 15A(b)(11)[151] of the Act because it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act and because it is designed to produce fair and informative quotations.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[152] that the proposed rule change (SR-NASD–96–43) is partially approved, including Amendment No. 1 on an accelerated basis. The Commission is not approving at this time the NASD's elimination of the SelectNet broadcast feature and the elimination of minimum market maker quotation size for securities other than those covered by Amendment No. 1. The pilot program established by Amendment No. 1 expires on April 18, 1997.

By the Commission.

Dated: January 10, 1997.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 97–1107 Filed 1–13–97; 1:58 pm]

BILLING CODE 8010–01–P

[143] Herzog, Heine, Geduld Letter; Kuang Letter.

[144] All-Tech Letter (12/23/96).

[145] Whitcomb Letter (11/21/96).

[146] Adopting Release, supra note.

[147] 15 U.S.C. §§78*o*–3, 78s(b)(2).

[148] 15 U.S.C. §78*o*–3(b)(6).

[149] In making this finding, the Commission notes that the proposal should promote efficiency and competition in the securities markets. 15 U.S.C. §78c(f).

[150] 15 U.S.C. §78*o*–3(b)(9).

[151] 15 U.S.C. §78*o*–3(b)(11).

[152] 15 U.S.C. §78s(b)(2).

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL200–A, Washington, DC 20590: telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative. Since that first index was issued on October 26, 1990, the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions.

The indexes of the Administrator's decisions and orders have been published as follows:

Dates of quarter	FEDERAL REGISTER publication
11/1/89–9/30/90	55 FR 45984; 10/31/90
10/1/90–12/31/90	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–6/30/91	56 FR 31984; 7/12/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93	59 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22196; 4/29/94
4/1/94–6/30/94	59 FR 39618; 8/3/94
7/1/94–12/31/94	60 FR 4454; 1/23/95
1/1/95–3/31/95	60 FR 19318; 4/17/95
4/1/95–6/30/95	60 FR 36854; 7/18/95
7/1/95–9/30/95	60 FR 53228; 10/12/95
10/1/95–12/31/95	61 FR 1972; 1/24/96
1/1/96–3/31/96	61 FR 16955; 4/18/96
4/1/96–6/30/96	61 FR 37526; 7/18/96
7/1/96–9/30/96	61 FR 54833; 10/22/96

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator, Order Number Index

(This index includes all decisions and orders issued by the Administrator from January 1, 1996, to December 31, 1996.)

96–1—[Airport Operator]
1/4/96—CP94**0089
96–2—Skydiving Center of D.C.
1/5/96—CP94EA0261
96–3—America West Airlines
2/13/96—CP93WP0172, CP93WP0173, CP93WP0174
96–4—South Aero
2/13/96—CP94SW0023
96–5—Alphin Aircraft, Inc.
2/13/96—CP93EA0334
96–6—Evgeniy V. Ignatov
2/13/96—CP94GL0076
96–7—Delta Air Lines, Inc.
2/15/96—CP94SO0003
96–8—Empire Airlines, Inc.
2/29/96—CP95NM0034
96–9—[Airport Operator]
3/5/96—CP94**0089
96–10—USAir, Inc.
3/11/96—CP95EA0100
96–11—USAir, Inc.
3/19/96—CP94GL0190
96–12—USAir, Inc.
3/19/96—CP94EA0126
96–13—Kennelm H. Winslow
4/19/96—CP94SO0153
96–14—Midtown Neon Sign Corp.
4/19/96—CP94EA0057
96–15—Valley Air Services, Inc.
5/3/96—CP94NE0095/94EAJANE0017
96–16—WestAir Commuter Airlines, Inc.
5/3/96—CP94WP0019
96–17—Ramon C. Fenner
5/3/96—CP93SO0414
96–18—Thomas Kilrain
5/3/96—CP94NE0268
96–19—[Air Carrier]
6/4/96—CP94**0140
96–20—Donald M. Missilrian
7/31/96—CP95WP0282
96–21—Matthew Houseal
8/2/96—CP95EA0302
96–22—Mary Woodhouse
8/13/96—CP94WP0184, 94EAJAWP0017
96–23—Thomas Kilrain
8/13/96—CP94NE0268
96–24—Horizon Air Industries
8/13/96—CP94NM0228

96–25—USAir, Inc.
8/13/96—CP94EA0045
96–26—Midtown Neon Sign Corp.
8/13/96—CP94EA0057

Civil Penalty Actions—Orders Issued by the Administrator Subject Matter Index

(Current as of December 31, 1996)

Note: No new decisions were issued during the fourth quarter of 1996. Therefore, the subject matter index published at 61 FR 54833, 54834, on October 22, 1996, remains current, and should be referred to for information about the Administrator's decisions and orders.

Civil Penalty Actions—Orders Issued by the Administrator Digests

Note: No new decisions and orders were issued during the fourth quarter of 1996. Therefore, there are no case digests to report for this period.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:
Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;
Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available on Compuserve, FedWorld, and Westlaw. The Database ID for Westlaw is FTRAN–FAA.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd, Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on January 9, 1997.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 97–1113 Filed 1–15–97; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[Finance Docket No. 32760]

Union Pacific Railroad Company—Control and Merger—Southern Pacific Transportation Company: Reno Mitigation Study

AGENCY: Surface Transportation Board.

ACTION: Public information meeting.

SUMMARY: The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) will hold a public meeting concerning its Reno Mitigation Study. In its decision of August 12, 1996, the Board directed SEA to conduct this study in order to develop further mitigation to address the merger-related environmental impacts of increased railroad traffic on the existing Union Pacific (formerly Southern Pacific) right-of-way that runs through Reno, NV. The study will include publication of a draft mitigation plan to submit to the public for review and comment and issuance of a final mitigation plan.

The public information meeting will provide an opportunity for the public to meet members of the study team and to ask questions about and comment on the study process to date. In order to accommodate various Reno citizen scheduling needs, the meeting will be held twice on February 13 at Reno City Hall, Room 211, 490 S. Center St., Reno, NV. An informal open house will be held from 1:30 P.M. to 2:30 P.M. and then again from 6:00 P.M. to 7:00 P.M. during which times the public may review maps and graphics illustrating the study area and the mitigation options under consideration by SEA at this time. The open houses will be followed by public meetings from 2:30 P.M. to 4:30 P.M. and then again from 7:00 P.M. to 9:00 P.M. at which the SEA team will make a brief presentation.

FOR FURTHER INFORMATION CONTACT: Harold McNulty, Section of Environmental Analysis, Rm. 3219, Surface Transportation Board, 12th & Constitution Ave., Washington, DC 20423; Phone Number (202) 927–6217; TDD for the hearing impaired (202) 927–5721.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1104 Filed 1–15–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–33 (Sub-No. 106X)]

Union Pacific Railroad Company—Abandonment Exemption—in Santa Clara County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon an approximately 0.44-mile line of railroad known as the San Jose Industrial Lead from milepost 22.45 (West Carlos Street) to the end of the line at milepost 22.89 (West San Fernando Street, near West San Jose, in Santa Clara County, CA.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 15, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 27, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 21, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1105 Filed 1–15–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 7, 1997.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the survey described below on January 20, 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by January 15, 1997. To obtain a copy of this survey, please contact the U.S. Mint Clearance Officer at the address listed below.

U.S. Mint

OMB Number: 1525–0006.

Project Number: 15250006–2.

Type of Review: Revision.

Title: 1997 U.S. Mint Customer Satisfaction Survey.

Description: This 1997 survey will provide the first follow-up information on customer satisfaction since the 1995 baseline survey and the introduction of new customer service standards in 1996. The 1997 survey will be used for three major purposes: (1) to assess current customer satisfaction with the services and program provided by the Mint; (2) to track changes in customer satisfaction since the 1995 survey and the development of a customer service plan; and (3) to guide development of strategic actions and service standards to improve customer satisfaction.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,100.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 220 hours.

Clearance Officer: Mike Green (202) 326–1600, United States Mint, 633 Third Street, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 97–1058 Filed 1–15–97; 8:45 am]

BILLING CODE 4810–37–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 8832

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8832, Entity Classification Election.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instruction should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Entity Classification Election.

OMB Number: 1545–1516.

Form Number: 8832.

Abstract: An eligible entity that chooses not to be classified under the default rules of Treas. Reg. 301.7701 or that wishes to change its current classification must file Form 8832 to elect a classification. The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for Federal tax purposes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and farms.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 4 hrs. 31 min.

Estimated Total Annual Burden Hours: 22,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1117 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8300

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Number: 1545–0892.

Form Number: Form 8300.

Abstract: Internal Revenue Code section 6050I requires any person in a trade or business who, in the course of the trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions to report it to the IRS and provide a statement to the payer. Form 8300 is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 45,800

Estimated Time Per Respondent: 1 hr., 22 min.

Estimated Total Annual Burden Hours: 62,512.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1118 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Forms 8027 and 8027–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips and Form 8027–T, Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027) and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027–T).

OMB Number: 1545–0714.

Form Number: Forms 8027 and 8027–T.

Abstract: To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees. Forms 8027 and 8027–T are used for this purpose.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 52,050.

Estimated Time Per Respondent: 6 hr., 53 min.

Estimated Total Annual Burden Hours: 358,170.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1119 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 5304–SIMPLE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules).

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institution Rules).

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). The data is used to verify that the employer has a qualified SIMPLE IRA and may deduct contributions to the SIMPLE IRA on the employer's tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 6 hr., 51 min.

Estimated Total Annual Burden Hours: 684,000

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1120 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 1099–LTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–LTC, Long-Term Care and Accelerated Death Benefits.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: Form 1099–LTC.

Abstract: Under the terms of Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Section 6050Q requires all such amounts to be reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions and state, local or tribal government.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hr., 45 min.

Estimated Total Annual Burden Hours: 4,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1121 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 1099–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MSA, Distributions From Medical Savings Accounts.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From Medical Savings Accounts.

OMB Number: 1545–1517.

Form Number: Form 1099–MSA.

Abstract: This form will be used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 45,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1122 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 5498–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–MSA, Medical Savings Account Information.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Medical Savings Account Information.

OMB Number: 1545–1518.

Form Number: Form 5498–MSA.

Abstract: This form will be used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 24 min.

Estimated Total Annual Burden Hours: 60,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1123 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Forms 6559 & 6559–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 6559 and 6559–A, Transmitter Report and Summary of Magnetic Media and Continuation Sheet for Form 6559.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transmitter Report and Summary of Magnetic Media and Continuation Sheet for Form 6559.

OMB Number: 1545–0441.

Form Number: Forms 6559 and 6559–A.

Abstract: Forms 6559 and 6559–A are used by filers of Form W–2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, Federal Government and state, local or tribal government.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1124 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Revenue Procedure 96–61

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–61, Electronic Filing Program.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Filing Program.

OMB Number: 1545–1512.

Revenue Procedure Number: Revenue Procedure 96–61.

Abstract: Revenue Procedure 96–61 informs those who participate in the Electronic Filing Program for Form 1040, Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 75,000.

Estimated Time Per Respondent: 15 hours, 17 minutes (or approximately six (6) minutes per electronically filed return).

Estimated Total Annual Burden Hours: 1,146,272.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1125 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Revenue Procedure 96–62

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–62, On-Line Filing Program.

DATES: Written comments should be received on or before March 17, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: On-Line Filing Program.

OMB Number: 1545–1513.

Revenue Procedure Number: Revenue Procedure 96–62.

Abstract: Revenue Procedure 96–62 informs those who participate in the On-Line Filing Program for Form 1040, Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 14.

Estimated Time Per Respondent: 423 hours (or approximately two (2) minutes per on-line electronically filed return).

Estimated Total Annual Burden Hours: 5,919.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1126 Filed 1–15–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Department of Veterans Affairs' Advisory Committee on Minority Veterans, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1992, that the Department of Veterans Affairs' Advisory Committee on Minority Veterans has been renewed for a 2-year period beginning December 30, 1996, through December 30, 1998.

Dated: January 7, 1997.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–1050 Filed 1–15–97; 8:45 am]

BILLING CODE 8320–01–M

Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee has been renewed for a 2-year period beginning January 3, 1997, through January 3, 1999.

Dated: January 7, 1997.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–1051 Filed 1–15–97; 8:45 am]

BILLING CODE 8320–01–M

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1996. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1997, which began on October 1, 1996.

DATES: These COLAs are effective December 1, 1996. The headstone or marker allowance rate is effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA

costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1996 under the above computation method was $96. Therefore, effective October 1, 1996, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1997 is $96.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.9 percent cost-of-living increase in social security benefits effective December 1, 1996. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1996:

Table 1.—Improved Pension

Maximum annual rates

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $8,486
Veteran with one dependent, $11,115
For each additional dependent, $1,445

(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $13,573
Veteran with one dependent, $16,201
For each additional dependent, $1,445

(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $10,373
Veteran with one dependent, $13,001
For each additional dependent, $1,445

(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $11,115
Either veteran in need of aid and attendance, $16,201
Both veterans in need of aid and attendance, $21,286
Either veteran housebound, $13,001
Both veterans housebound, $14,889
One veteran housebound and one veteran in need of aid and attendance, $18,085
For each dependent child, $1,445

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,688
Surviving spouse and one child in his or her custody, $7,450
For each additional child in his or her custody, $1,445

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $9,096
Surviving spouse with one child in his or her custody, $10,854
For each additional child in his or her custody, $1,445

(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $6,954
Surviving spouse and one child in his or her custody, $8,712
For each additional child in his or her custody, $1,445

(8) Surviving child alone (38 U.S.C. 1542), $1,445

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,922. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $403 reduced on the basis of the parent's annual income according to the following formula:

TABLE 2

[For each $1 of annual income]

The $403 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.08	800	9,654

No DIC is payable under this table if annual income exceeds $9,654.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $290 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

[For each $1 of annual income]

The $290 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.06	800	900
.07	900	1,100
.08	1,100	9,654

No DIC is payable under this table if annual income exceeds $9,654.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $272 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

[For each $1 of annual income]

The $272 monthly rate shall be reduced by	Which is more than	But not more than
$.00	$0	$1,000
.03	1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	12,977

No DIC is payable under this table if combined annual income exceeds $12,977.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the

parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $216 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $9,654 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $10,154 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $12,977 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $13,477 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $7,891 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,079 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,450 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $12,184 (Pub. L. 95–588, section 306(b)).

Dated: January 6, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–1052 Filed 1–15–97; 8:45 am]

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Corr

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DEPARTM

**National O
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50 CFR Pa

RIN 0648-X

**[Docket No
110496A]**

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Correction

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Corrections

Federal Register
Vol. 63, No. 11
Thursday, January 16, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XX71

[Docket No. 961114318-6318-01; I.D. 110496A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 1997 Harvest Specifications

Correction

In rule document 96–30046, beginning on page 60044, in the issue of Tuesday, November 26, 1996, make the following correction:

On page 60047, at the end of Table 2, under Footnote 5, insert "(6) Exempt".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 93

[Docket No. 28537; Amendment Nos. 91–253, 93–73, 121–262, 135–66]

RIN 2120–AF93

Special Flight Rules in the Vicinity of Grand Canyon National Park

Correction

In rule document 96–33146, beginning on page 69302, in the issue of Tuesday, December 31, 1996, make the following correction:

§ 93.301 [Corrected]

1. On page 69330, in the second column, in § 93.301, in the sixteenth line from the bottom, "Lat. 35°5751 N., Long. 113°1106" should read "35°57′51" N., Long. 113°11′06"".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28765; Amdt. No. 1773]
RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

Correction

In rule document 97–314 beginning on page 1051 in the issue of Wednesday, January 8, 1997 make the following correction:

§ 97.23, 97.25, 97.29, 97.31, 97.33 and 97.35 [Corrected]

On page 1052, in the 3rd column, in the 24th and 23rd lines from the bottom "Penn Yan, NDB RWY" should read "Penn Yan, GPS RWY".

BILLING CODE 1505–01–D

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Federal Register

Thursday
January 16, 1997

Part II

United States Information Agency

Revised Exchange-Visitor Skills List; Notice

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UNITED STATES INFORMATION AGENCY

Revised Exchange-Visitor Skills List

SUMMARY: The Exchange-Visitor Skills List which follows incorporates all previous revisions and amendments still in effect, and has been developed after consultation with foreign governments.

DATES: In order to provide time for the dissemination of this list to Foreign Service posts abroad and to interested persons and organizations in the United States, the following Exchange-Visitor Skills List shall become effective March 17, 1997.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin or William G. Ohlhausen, Assistant General Counsels, United States Information Agency, Suite 700, 301–4th Street, SW., Washington, DC 20547. Telephone 202–619–6829.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e), and 22 CFR 41.65(b), The Secretary of State designated on April 25, 1972, and revised on February 10, 1978, a list of fields of specialized knowledge or skills (referred to as the Exchange-Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange-visitor visa and/or became a participant in an Exchange-Visitor Program involving a designated field of specialized knowledge or skill after the effective date of those public notices was subject to the two-year foreign residence (home-country physical presence) requirement of section 212(e) of said Immigration and Nationality Act as provided by said section and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of the United States Information Agency Authorization Act of August 24, 1982 (Pub.L. 97–241) and Executive Orders Nos. 12038 of March 27, 1978 and 12388 of October 14, 1982, the Director, United States Information Agency, further revised the 1972 Exchange-Visitor Skills List on: September 30, 1986; February 5, 1987; March 19, 1987; April 1, 1987; December 16, 1988 and on July 28, 1993.

Exchange visitors who entered the country prior to said effective date shall continue to be governed by the 1972 Exchange-Visitor Skills List, as amended. The Skills Lists have been developed after consultation with foreign governments, USIA area offices, USIS posts abroad, and with the assistance of foreign services officers assigned to USIA's Office of the General Counsel, Waiver Branch, Exchange Visitor Program Services.

Dated: January 7, 1997.

Les Jin,

General Counsel.

The *Revised Exchange Visitor Skills List* appears as follows:

Revised Skills (Master)

Group (1). Fields in the Administration of Public or Public-Oriented Affairs:

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration
1O. Labor Union Administration

Group (2). Fields in the Medical Profession:

2A. General Practice of Medicine (including Osteopaths who also practice Medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice Medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health
2S. Medical Research

Group (3). Fields in Computer Science and Related Professions:

3A. Computer Science
3B. Information Science and Systems Analysis
3C. Data Processing (including, but not limited to the use of data in analyzing census financial planning and feasibility studies)
3D. Computer Programming
3E. Computer Maintenance Technologies

Group (4). Fields in Engineering and Related Professions:

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems,

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safety and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)
4U. Agricultural Engineering
4V. Nuclear Engineering
4W. Natural Resource Management Engineering (including but not Limited to Water Resource Management)
4X. Environmental Engineering

Group (5). Fields in the Natural Sciences and Mathematics:

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including but not limited to Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other Marine Products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies
5V. Botany
5W. Entomology

Group (6). Fields in the Social Sciences:

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
6O. Theology
6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)
6Q. Fashion and Textile Design
6R. Graphic Design
6S. Geography
6T. Home Economics
6U. Language Studies

Group (7). Fields in the Study and Practice of Education:

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling
7Q. Camp Counselor
7R. Educational Technology (Instructional Systems Technology)
7S. Educational Psychology
7T. Curriculum Planning

Group (8). Fields in Communication, Transport and Construction Professions and Skills:

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines
8L. Telecommunications

Group (9). Fields in Business:

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking

9O. Farm Management and Administration
9P. Hotel and Motel Management
9R. Marketing
9S. Finance

Group (10). Fields of Library Science:

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Afghanistan

Please Note: the Skills List For Afghanistan Is Currently Suspended.

Albania

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Algeria

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Child Psychology, Psychometrics and Psychobiology)
6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7J. Agricultural School Teaching
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Argentina

Group (1)

1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1E. Drug Abuse and Narcotics Control
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2C. Veterinary Medicine

Group (3)

All fields listed in part I.

Group (4)

4E. Communication Engineering
4H. Electronic Engineering (including Radio Engineering)
4J. Genetic and Biomedical Engineering
4L. Marine and Aeronautical Engineering and Technology including, but not limited to: Marine and Flight Engineers)
4U. Agricultural Engineering
4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)
4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: Physical and Chemistry Laboratory Technicians)
5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)
5L. Agriculture and Agronomy (including, but not limited to: Veterinarians, Plant Pathologists, Poultry and Dairy Scientists, Animal Husbandry and Animal Nutrition)
5M. Food Science and Technology
5P. Fisheries (or other Marine Products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all

branches of Applied Geology including Geophysicists and Geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6J. Instructional Media and Technology
6M. Linguistics

Group (7)

7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7R. Educational Technology (Instructions Systems Technology)
7T. Curriculum Planning

Group (8)

8L. Telecommunications

Group (9)

9I. Statistics

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Azerbaijan

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2D. Emergency Medicine
2H. Medical Instruments and Technology
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2R. Environmental Health

Group (3)

3B. Information Science and Systems Analysis
3D. Computer Programming

Group (4)

4B. Cartography
4H. Electronic Engineering (including Radio Engineering)
4J. Genetic and Biomedical Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, Plastics, Wood, Paper and Metal, but not including Metal Fabrication)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4S. Printing and Photographic Engineering and Technology

Group (5)

5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5M. Food Science and Technology
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including Geophysicists and Geochemists)
5S. Ecology and Environmental Protection (including Conservation)

Group (6)

6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6R. Graphic Design
6T. Home Economics

Group (7)

7B. Educational Testing, Evaluation and Measurement
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7R. Educational Technology (Instructional Systems Technology)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: Programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9D. Labor and Industrial Relations
9F. Economic Information Analysis (including, but not limited to Management Studies)
9H. Cybernetic Technology
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9M. Operations Research
9N. Banking
9P. Hotel and Motel Management
9R. Marketing
9S. Finance

Bahamas

Group (1)

1A. Public Administration (including but Not Limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)

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1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1M. Technical or Vocational School Administration
1O. Labor Union Administration

Group (3)

All fields listed in part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)
4G. Electrical Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5F. Mathematics
5L. Agriculture and Agronomy (including, but not limited to: Veterinarians, Plant Pathologists, Poultry and Dairy Scientists, Animal Husbandry and Animal Nutrition)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, eg. Oceanology, and all branches of Applied Geology including Geophysicists and Geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5T. Desalinization

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7J. Agricultural School Teaching
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8C. Electrical Communication Technology
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9N. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)
Bahrain

Group (1)

1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1K. Secondary School Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine,Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine. Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2N. All Therapies, Prosthetics And Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

Group (3)

All fields listed in part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)

5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5T. Desalinization

Group (6)

6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

Group (8)

8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: Programmers and Project Evaluation, Business, Total Quality Management)
9I. Statistics
9B. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Bangladesh

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7J. Agricultural School Teaching
7N. Teaching in Medical Schools (including, but not limited to lecturers)

Group (8)

8C. Electrical Communication Technology
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9N. Banking

Benin

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1J. Primary School Administration
1K. Secondary School Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

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2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health
2S. Medical Research

Group (3)

All Files Listed in Part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)
4G. Electrical Engineering
4H. Electrical Engineering (including Radio Engineering)
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4T. Surveying (including Oceanography)
4U. Agricultural Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5O. Forestry
5P. Fisheries (or other Marine Products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6H. Economics

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7J. Agricultural School Teaching
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8C. Electrical Communication Technology
8D. Radio Operation
8G. Architecture (including Marine Architecture)
8H. Construction (including but not limited to builders, but not including skilled and unskilled laborers)
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9N. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Bolivia

Group (1)

1A. Public Administration (including but Not Limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1J. Primary School Administration
1K. Secondary School Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

Group (3)

All fields listed in part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)

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5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to Skilled Metal Crafts Workers)
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6H. Economics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7J. Agricultural School Teaching
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Botswana

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine,Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)

Group (3)

All fields listed in part I.

Group (4)

4D. Civil Engineering (including Airport Engineering)
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4N. Mechanical Engineering (including, but not limited to: systems, safety and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to Skilled metal crafts workers)
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists,

poultry and dairy scientists, animal husbandry and animal nutrition)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6H. Economics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7J. Agricultural School Teaching

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8C. Electrical Communication Technology
8D. Radio Operation
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9N. Banking

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Brazil

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration
1O. Labor Union Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2J. Dental Technology
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2S. Medical Research

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: Veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies
5V. Botany
5W. Entomology

Group (6)

6J. Instructional Media and Technology

Group (7)

7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education

7J. Agricultural School Teaching
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7R. Educational Technology (Instructional Systems Technology)
7T. Curriculum Planning

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8I. Construction-Project Management
8J. Drafting
8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9I. Statistics
9J. Insurance (including Actuaries)

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Burkina Faso

Group (1)

1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transporation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Burma (see Myanmar)

Burundi

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4I. Energy Engineering and Technology (but not including

Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: marine and flight engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including metal fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Cameroon

Group (1)

1A. Public Administration (including but Not Limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery,

Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (Or Other Marine Products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)

Group (6)

6A. Sociology (except Economics and including Criminology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Cape Verde

Group (1)

1A. Public Administration (including but Not Limited To: Urban Studies/Planning, Urban Transportation, City Planning and Public Health)
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1N. Hospital Administration

Group (3)

All fields listed in part I.

Group (4)

4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4U. Agricultural Engineering
4W. Water Resource Management
4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to:

Marine Science, Meteorology and Oceanography
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6E. Anthropology and Archaeology
6H. Economics
6J. Instructional Media and Technology

Group (7)

7E. Vocational and Technical School Teaching

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8G. Architecture (including Marine Architecture)
8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9N. Banking
9P. Hotel and Motel Management
9R. Marketing
9S. Finance

Central African Republic

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to management studies)
9G. Accounting

9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Chad

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Chile

Group (1)

All fields listed in part I.

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine

2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2I. Dentistry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Child Psychology, Psychometrics and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8I. Construction-Project Management

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Development, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

People's Republic of China

Please note that the skills list for the People's Republic of China does not apply to the citizens of Taiwan.

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Colombia

Group (1)

1A. Public Administration (including but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1O. Labor Union Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: marine and flight engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5C. Study of Drugs and Allied Sciences
5E. Genetics
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K . Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8F. Merchant Marine
8I. Construction-Project Management

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Development, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Costa Rica

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6O. Theology
6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)
6Q. Fashion and Textile Design
6R. Graphic Design
6S. Geography
6T. Home Economics
6U. Language Studies

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling
7Q. Camp Counselor
7R. Educational Technology (Instructional Systems Technology)
7S. Educational Psychology
7T. Curriculum Planning

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines
8L. Telecommunications

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Cote d'Ivoire (formerly Ivory Coast)

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine,Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)

6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Croatia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Cyprus

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to, Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7I. College and University Teaching of Business
7K . Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Czech Republic

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health

1G. Tourism and Travel
1H. Law Enforcement and Corrections (including; but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health
2S. Medical Research

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: Physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited To: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies
5V. Botany
5W. Entomology

Group (6)

All fields listed in part 1.

Group (7)

All fields listed in part 1.

Group (8)

All fields listed in part 1.

Group (9)

All fields listed in part 1.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Dominican Republic

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6O. Religion and Theology (including, but not limited to Ministry)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K . Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)

7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Ecuador

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration

Group (2)

2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2H. Medical Instruments and Technology
2J. Dental Technology
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, Plastics, Wood, Paper and Metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: Systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to:

programmers and Project Development, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

El Salvador

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5N. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching

7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8I. Construction-Project Management

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management
Equatorial Guinea

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: Physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

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Ethiopia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Fiji

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration
1O. Labor Union Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including Osteopathic Physicians who also practice medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

All fields listed in part 1.

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8I. Construction-Project Management
8J. Drafting

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Gabon

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Gambia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)

5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Ghana

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited To: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Guatemala

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health

1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1O. Labor Union Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picutre Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to Programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Guinea

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control

1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g., Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics , Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management
Guinea-Bissau

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation

Group (3)

All fields listed in part I.

Group (4)

4B. Cartography
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6J. Instructional Media and Technology
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
6O. Religion and Theology (including, but not limited to Ministry)

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines
8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Guyana

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Haiti

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Honduras

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Hungary

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limitedto International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7B. Educational Testing, Evaluation and Measurement
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

India

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2E. Nuclear Medicine

2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5L. Agriculture and Agronomy (including, but not limited To: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Indonesia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Ivory Coast (see Cote d'Ivoire)

Jamaica

Group (1)

All fields listed in part I.

UMI
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Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Jordan

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electrical Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4U. Agricultural Engineering
4V. Nuclear Engineering
4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)
4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5I. Atmospheric-Hydrospheric Sciences (including but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmentai Protection (including Conservation)
5T. Desalinization
5U. Population Studies
5V. Botany
5W. Entomology

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialtiès in the practice of Law, except in Law Enforcement)
6O. Theology
6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)
6Q. Fashion and Textile Design
6R. Graphic Design
6S. Geography
6T. Home Economics
6U. Language Studies

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)

UMI

7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling
7Q. Camp Counselor
7R. Educational Technology (Instructional Systems Technology)
7S. Educational Psychology
7T. Curriculum Planning

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines
8L. Telecommunications

Group (9)

All files listed in Part I.

Group (10)

All files listed in Part I.

Kazakstan

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

3A. Computer Science
3B. Information Science and Systems Analysis
3C. Data Processing (including, but not limited to the use of data in analyzing census, financial planning and feasibility studies)

Group (4)

All fields listed in part I.

Group (5)

5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5F. Mathematics
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
6U. Language Studies

Group (7)

7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling
7R. Educational Technology (Instructional Systems Technology)

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8C. Electrical Communication Technology
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines
8L. Telecommunications

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Kenya

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Korea

Group (1)

1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics

2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Kuwait

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Laos

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Lebanon

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Lesotho

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1O. Labor Union Administration

Group (2)

2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and

including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8F. Merchant Marine
8I. Construction-Project Management

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Liberia

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2K. Optometry
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Macedonia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Madagascar

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Malawi

Group (1)

All fields listed in part I.

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2I. Dentistry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology, and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Malaysia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Mali

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Malta

Group (1)

All fields listed in part I.

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)

4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g., Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8I. Construction-Project Management

Group (9)

All fields listed in part I.

Mauritania

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited To: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)

2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Mauritius

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine,Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine,Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering and Technology (including Radio Engineering)
4I. Energy Engineering (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education

7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Morocco

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology, and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Myanmar

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Nepal

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health

1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picutre Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Nicaragua

Group (1)

All fields listed in part I.

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation,

Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2J. Dental Technology
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

All fields listed in part I.

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Niger

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences

5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6O. Religion and Theology (including, but not limited to Ministry)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Nigeria

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology, and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Oman

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)

8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Pakistan

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Panama

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Papua New Guinea

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5L. Agriculture and Agronomy (including, but not limited To: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7I. College and University Teaching of Business
7K . Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8I. Construction-Project Management
8J. Drafting

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9L. Financial Planning

9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Paraguay

Group (1)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration
1N. Hospital Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2J. Dental Technology
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5C. Study of Drugs and Allied Sciences
5E. Genetics
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6O. Religion and Theology (including, but not limited to Ministry)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Peru

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Philippines

Group (1)

All fields listed in part I and the following:
1P. Special Child Development Administration *
1Q. Negotiation Skills *
1R. Organizational Development (including, but not limited to: Human Resource Development and Human Resource Managaement *

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health
2T. Genetic and Biomedical Engineering*

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electrical Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)
4U. Agricultural Engineering
4V. Nuclear Engineering
4W. Natural Resource Management Engineering (including but not limited to Water Resource Management)
4X. Environmental Engineering
4Y. Metals Research and Fabrication (including, but not limited to: Tool and Die, Pattern Making, Casting and Risering-Casting Design, Investment Casting, Molds and Die Design, Welding Technology and Preventive Maintenance)*
4Z. Management of Technology*

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)
6P. Cultural Diversity (including, but not limited to: Women's, Minority Ethnic and Area Studies)
6U. Language Studies

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)

7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling
7U. Technical and Vocational Studies in Various Trade Areas (Automotive, Welding, Industrial Electrician, Electronics, Machine Shop and Refrigeration)*

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines
8M. Interior Design*

Group (9)

All fields listed in part I and the following:
9T. Program Project Management*
9U. Social Planning and Policy Analysis*
9V. Development Financing*
9W. Entrepreneurship Development*

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

*These skills are incorporated for the Philippines only per special request of their embassy.

Poland

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)
8F. Merchant Marine
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Qatar

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering

4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including Physical Chemists, Metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Romania

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Rwanda

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

All fields listed in part I.

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Saudi Arabia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)

6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Senegal

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to registered nurses, practical nurses, physician's receptionists and medical records clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Sierra Leone

Group (1)

1C. Public Social Services
1E. Drug Abuse and Narcotics Control
1G. Tourism and Travel
1N. Hospital Administration

Group (2)

2C. Veterinary Medicine
2D. Emergency Medicine
2P. Cancer Research
2R. Environmental Health

Group (3)

3B. Information Science and Systems Analysis

Group (4)

4B. Cartography
4D. Civil Engineering (including Airport Engineering)
4F. Computer Engineering and Technologies
4H. Electronic Engineering (including Radio Engineering)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)

4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including metal fabrication)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)

Group (7)

7B. Educational Testing, Evaluation and Measurement
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)

Group (9)

9O. Farm Management and Administration

Singapore

Group (1)

All fields listed in part I.

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2K. Optometry
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5C. Study of Drugs and Allied Sciences
5D. Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Somalia

Group (1)

1A. Public Administration (including but not limited To: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Sri Lanka (including Maldives)

Group (1)

1A. Public Administration (including, but not limited to Public Health and Urban Studies/Planning and Urban Transportation)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1L. College, University and Higher Education Administration

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health
2S. Medical Research

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, Plastics, Wood, Paper and Metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4U. Agricultural Engineering
4V. Nuclear Engineering
4W. Natural Resource Management Engineering (including, but not limited to Water Resource Management)
4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including Physical Chemists,metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies
5V. Botany
5W. Entomology

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography

6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6O. Religion and Theology (including, but not limited to Ministry)
6P. Cultural Diversity (including, but not limited to Women's, Minority, Ethnic and Area Studies)
6Q. Fashion and Textile Design
6S. Geography
6T. Home Economics
6U. Language Studies

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling
7R. Educational Technology (Instructional systems Technology)
7S. Educational Psychology
7T. Curriculum Planning

Group (8)

8B. Communication Media (including Television and Film)
8F. Merchant Marine
8I. Construction-Project Management
8L. Telecommunications

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management
9R. Marketing
9S. Finance

Sudan

Group (1)

1A. Public Administration (including, but not limited to Public Health and Urban Studies/Planning and Urban Transportation)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Swaziland

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)

5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Tanzania

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited To: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to:

veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Thailand

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Togo

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1J. Primary School Administration
1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Tonga

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Trinidad and Tobago

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology,

Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4O. Mining and Lumbering Engineering and Technology
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)
4U. Agricultural Engineering
4W. Natural Resource Management Engineering (including, but not limited to Water Resource Management)
4X. Environmental Engineering

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies
5V. Botany

Group (6)

6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6J. Instructional Media and Technology
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Tunisia

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Turkey

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7O. Teaching in Law Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8F. Merchant Marine
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9J. Insurance (including Actuaries)
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Uganda

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

United Arab Emirates

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel
1H. Law Enforcement and Corrections (including, but not limited to the Administration of Justice)
1I. Parks and Recreation Management (including, but not limited to Wildlife Management)

1K. Secondary School Administration
1L. College, University and Higher Education Administration
1M. Technical or Vocational School Administration
1N. Hospital Administration

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4D. Civil Engineering (including Airport Engineering)
4E. Communication Engineering
4F. Computer Engineering and Technologies
4G. Electrical Engineering
4H. Electronic Engineering (including Radio Engineering)
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4N. Mechanical Engineering (including, but not limited to: systems, safety, and production engineers, and including Automatic Data Processing)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology
4T. Surveying (including Oceanography)

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Upper Volta (see Burkina Faso)

Uruguay

Group (1)

All fields listed in part I.

Group (2)

2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2M. Medical Cybernetics
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

4A. Aerospace Engineering
4B. Cartography
4C. Chemical Engineering
4E. Communication Engineering
4F. Computer Engineering and Technologies
4I. Energy Engineering and Technology (but not including Petroleum and Natural Gas Engineering and Technology)
4J. Genetic and Biomedical Engineering
4K. Industrial Engineering
4L. Marine and Aeronautical Engineering and Technology (including, but not limited to: Marine and Flight Engineers)
4M. Materials Engineering and Sciences (including, but not limited to: textiles, plastics, wood, paper and metal, but not including Metal Fabrication)
4P. Navigation and Transportation Engineering
4Q. Optical Engineering (including, but not limited to: light and sound technology)
4R. Petroleum and Natural Gas Engineering and Technology
4S. Printing and Photographic Engineering and Technology

Group (5)

5C. Study of Drugs and Allied Sciences
5E. Genetics
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5T. Desalinization
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7I. College and University Teaching of Business
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7P. Career Guidance and Counseling

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8E. Airplane Piloting (including, but not limited to Airline Piloting)
8F. Merchant Marine
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Venezuela

Group (1)

1A. Public Administration (including, but not limited to Public Health and Urban Studies/Planning and Urban Transportation)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2B. Recognized Medical Specializations (including, but not limited to: Anesthesiology, Audiology, Cardiography, Cardiology, Dermatology, Embryology, Epidemiology, Forensic Medicine, Gastroenterology, Hematology, Immunology, Internal Medicine, Neurological Surgery, Obstetrics and Gynecology, Oncology, Ophthalmology, Orthopedic Surgery, Otolaryngology, Pathology, Pediatrics, Pharmacology and Pharmaceutics, Physical Medicine and Rehabilitation, Physiology, Plastic Surgery, Preventive Medicine, Proctology, Psychiatry and Neurology, Radiology, Speech Pathology, Sports Medicine, Surgery, Thoracic Surgery, Toxicology, Urology and Virology)
2C. Veterinary Medicine
2D. Emergency Medicine

2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine, Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

7A. Teaching and Religious Education
7B. Educational Testing, Evaluation and Measurement
7C. Primary School Teaching (including, but not limited to Nursery Schools and Kindergartens)
7D. Secondary School Teaching (including, but Not limited to Remedial Teaching and Teaching of English as a Foreign Language)
7E. Vocational and Technical School Teaching
7F. College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture)
7G. College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education)
7H. College and University Teaching of Education
7I. College and University Teaching of Business
7J. Agricultural School Teaching
7K. Education of the Physically Handicapped (including Education of the Mentally Retarded and Emotionally Disturbed)
7L. Education of Exceptional Children
7M. Physical Education and Recreation (including, but not limited to Coaching)
7N. Teaching in Medical Schools (including, but not limited to lecturers)
7P. Career Guidance and Counseling

Group (8)

8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8F. Merchant Marine
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9L. Financial Planning
9M. Operations Research
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Western Samoa

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Yemen

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

All fields listed in part I.

Group (6)

All fields listed in part I.

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

All fields listed in part I.

Group (10)

All fields listed in part I.

Zaire

Group (1)

1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health
1G. Tourism and Travel

Group (2)

2A. General Practice of Medicine (including Osteopaths who also practice medicine)
2C. Veterinary Medicine
2D. Emergency Medicine
2E. Nuclear Medicine
2F. Geriatrics
2G. Nursing (including, but not limited to Registered Nurses, Practical Nurses, Physician's Receptionists and Medical Records Clerks)
2H. Medical Instruments and Technology
2I. Dentistry
2J. Dental Technology
2K. Optometry
2L. Chiropractic and Osteopathy (not including osteopathic physicians who also practice medicine)
2M. Medical Cybernetics
2N. All Therapies, Prosthetics and Healing (except Medicine,Osteopathy or Osteopathic Medicine, Nursing, Dentistry, Chiropractic and Optometry)
2O. Medical Statistics and Documentation
2P. Cancer Research
2Q. Medical Photography
2R. Environmental Health

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics
6N. Law (including Judicature and all branches and specialties in the practice of Law, except in Law Enforcement)

Group (7)

All fields listed in part I.

Group (8)

All fields listed in part I.

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Development, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Zambia

Group (1)

1A. Public Administration (including, but not limited to: City Planning, Urban Studies/Planning, Urban Transportation, and Public Health)
1B. Public Social Administration (including, but not limited to: Welfare, Dietetics, Nutrition, Family Planning and Public Health)
1C. Public Social Services
1D. Sanitation
1E. Drug Abuse and Narcotics Control
1F. International Health

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g., Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology, and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology
6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including textbook writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

9A. Industrial and Business Administration and Management (including, but not limited to: programmers and Project Evaluation, Business, Total Quality Management)
9B. International Business and Commerce
9C. Industrial Organization
9D. Labor and Industrial Relations
9E. Economic Development and Planning (including Rural Development)
9F. Economic Information Analysis (including, but not limited to Management Studies)
9G. Accounting
9H. Cybernetic Technology
9I. Statistics
9K. Administration of Financial Institutions (including, but not limited to Savings and Loan Organizations and Credit Unions)
9L. Financial Planning
9M. Operations Research
9N. Banking
9O. Farm Management and Administration
9P. Hotel and Motel Management

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

Zimbabwe

Group (1)

All fields listed in part I.

Group (2)

All fields listed in part I.

Group (3)

All fields listed in part I.

Group (4)

All fields listed in part I.

Group (5)

5A. Chemistry (including all branches and specialties in Chemistry, except in Pharmacy and Chemical Engineering)
5B. Life Sciences (including, but not limited to: Pharmacy and Biology)
5C. Study of Drugs and Allied Sciences
5D. Optics and Physics (including physical chemists, metallurgists and all branches and specialties in Physics)
5E. Genetics
5F. Mathematics
5G. Laboratory Technology (including, but not limited to: physical and chemistry laboratory technicians)
5H. Metal Fabrication (including, but not limited to skilled metal crafts workers)
5I. Atmospheric-Hydrospheric Sciences (including, but not limited to: Marine Science, Meteorology and Oceanography)
5J. Astronomy and Space Technology
5K. Repair and Maintenance Technology
5L. Agriculture and Agronomy (including, but not limited to: veterinarians, plant pathologists, poultry and dairy scientists, animal husbandry and animal nutrition)
5M. Food Science and Technology
5N. Zoology (including Animal Behavior and Physiology)
5O. Forestry
5P. Fisheries (or other marine products)
5Q. Geology (including all branches and specialties, e.g. Oceanology, and all branches of Applied Geology including geophysicists and geochemists)
5R. Hydrology (including, but not limited to Water Pollution)
5S. Ecology and Environmental Protection (including Conservation)
5U. Population Studies

Group (6)

6A. Sociology (except Economics and including Criminology)
6B. Psychology (including, but not limited to Psychometrics, Child Psychology and Psychobiology)
6C. History (including Art History)
6D. Philosophy (including Humanities)
6E. Anthropology and Archaeology
6F. Demography
6G. Government and Politics (including, but not limited to International Relations)
6H. Economics
6I. Literature
6J. Instructional Media and Technology

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6K. Fine Arts (including, but not limited to Music, Theater, Sculpture, Motion Picture Arts and Sciences, and Photography)
6L. Estate Management
6M. Linguistics

Group (7)

All fields listed in part I.

Group (8)

8A. Journalism (including, but not limited to editors and reporters, and including text-book writers, interpreters and translators)
8B. Communication Media (including Television and Film)
8C. Electrical Communication Technology
8D. Radio Operation
8F. Merchant Marine
8G. Architecture (including Marine Architecture)
8H. Construction (including, but not limited to builders, but not including skilled and unskilled laborers)
8I. Construction-Project Management
8J. Drafting
8K. Skilled Operation of Construction Machines

Group (9)

All fields listed in part I.

Group (10)

10A. Library Science (including, but not limited to Electronic Data Storage and Retrieval)

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Part III

Department of Education

Bilingual Education—Systemwide Improvement Grants; Applications Invitation, FY 1997; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.291R]

Bilingual Education—Systemwide Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

Purpose of Program: This program provides grants to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency (LEA), that serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

Eligible Applicants: (1) One or more LEAs; or (2) one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: April 4, 1997.

Deadline for Intergovernmental Review: June 3, 1997.

Available Funds: $20 million.

Estimated Range of Awards: $350,000–$650,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7115 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7425 and 7426)).

Grants under this program may be used during the first 12 months exclusively for activities preparatory to the delivery of services. Grants may be used to improve the education of limited English proficient students and their families by reviewing, restructuring, and upgrading—

(A) Educational goals, curriculum guidelines and content, standards and assessments;

(B) Personnel policies and practices including recruitment, certification, staff development, and assignment;

(C) Student grade-promotion and graduation requirements;

(D) Student assignment policies and practices;

(E) Family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children;

(F) The instructional program for limited English proficient students by identifying, acquiring and upgrading curriculum, instructional materials, educational software and assessment procedures and, if appropriate, applying educational technology;

(G) Tutorials and academic or career counseling for children and youth of limited-English proficiency; and

(H) Such other activities, related to the purposes of this part, as the Secretary may approve.

Priorities

Absolute Priority

The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55246–55247) and repeated below, applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the invitational priority in the next paragraph. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants that consider the Department of Education Professional Development Principles in planning and designing a Systemwide Improvement Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following provisions in sections 7115 and 7116 of the Act and 34 CFR 75.210 as selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the project is designed to implement districtwide bilingual education programs or special alternative instruction programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency, that serve a significant number of children and youth of limited English proficiency in local educational agencies with significant concentrations of such children and youth.

(Authority: 20 U.S.C. 7425(a))

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) Data on the number of children and youth of limited-English proficiency in the school district to be served;

(ii) The characteristics of such children and youth, such as language spoken, dropout rates, proficiency in English and the native language, academic standing in relation to the English-proficient peers of those children and youth, and, where applicable, the recency of immigration;

(iii) The needs addressed by the project;

(iv) How the applicant identified those needs;

(v) How those needs will be met by the project; and

(vi) The benefits to be gained by meeting those needs.

(Authority: 20 U.S.C. 7426(g)(1)(A); 34 C.F.R. 75.210(b)(2))

(3) *Plan of operation.* (35 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) How the program is to be implemented and its design—

(A) Relate to the linguistic and academic needs of the children and youth of limited-English proficiency to be served;

(B) Are coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts, as appropriate in accordance with section 14306 of the Act;

(C) Involve the parents of the children and youth of limited-English proficiency to be served;

(D) Ensure accountability in achieving high academic standards; and

(E) Promote coordination of services for the children and youth of limited-English proficiency to be served and their families.

(Authority: 20 U.S.C. 7426(g)(1)(B))

(ii) How, if appropriate, the applicant proposes collaborative activities with institutions of higher education, community-based organizations, local or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the proposed program.

(Authority: 20 U.S.C. 7426(g)(1)(C))

(iii)(A) What current services the applicant provides to children and youth of limited-English proficiency;

(B) What services children and youth of limited-English proficiency will receive under the grant that such children or youth will not otherwise receive;

(C) How funds received will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited-English proficiency;

(D) Specific achievement and school retention goals for the children and youth to be served by the proposed program and how progress toward achieving such goals will be measured; and

(E) Current family education programs if applicable.

(iv) How the applicant's proposed project will be integrated with the applicant's overall educational program.

(Authority: 20 U.S.C. 7426(g)(2)(B)(i))

(v) How training for personnel participating in or preparing to participate in the program will assist those personnel in meeting State and local certification requirements.

(Authority: 20 U.S.C. 7426(i)(5))

(4) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(5) *Quality of key personnel.* (8 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) How the applicant will employ teachers in the proposed program that, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(ii) How the project will use qualified personnel, including personnel who are proficient in the language or languages used in instruction.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(6) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(34 CFR 75.210(b)(5))

(7) *Evaluation plan.* (13 points) The Secretary reviews each application to determine how well the project's evaluation will meet the following requirements. The evaluation must include—

(i) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited-English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, where applicable, native language) proficiency;

(ii) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(iii) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited-English proficiency.

(Authority: 20 U.S.C. 7433)

(8) *Adequacy of resources.* (4 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Student evaluation and assistance procedures must be valid, reliable, and fair for limited-English proficient students.

(ii) Limited-English proficient students who are disabled must be identified and served in accordance with the requirements of the Individuals with Disabilities Education Act.

(iii) The project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited-English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance is reduced or no longer available.

(iv) The project must provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5), and (6))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply

with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.291R, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall —

(1) Mail the original and specified copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA# 84.291R),
Washington, D.C. 20202–4725

or

(2) Hand-deliver the original and specified copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA# 84.291R), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application contains the following forms and instructions, plus a statement regarding estimated public reporting burden, various assurances, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Application Narrative.

d. Estimated Public Reporting Burden.

e. Group Application Certification.

f. Student Data.

g. Project Documentation.

h. Program Assurances.

i. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

j. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

k. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)

l. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

m. Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application and *TWO* copies of the application. The Secretary also requests applicants to send a *THIRD* copy of the application to assist in the Department's review. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Cecile Kreins, James Lockhart, or Harry Logel, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: Cecile Kreins (202) 205–5568, James Lockhart (202) 205–5426, Harry Logel (202) 205–5530). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service(FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**. *Note:* Some of the forms in the Appendix to this notice may not be available from these electronic sources.

Program Authority: 20 U.S.C. 7425.

Dated: January 7, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid

OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 160 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Ave., S.W., Washington, D.C. 20202–6510.

APPLICATION INSTRUCTIONS

Mandatory Page Limit for the Application Narrative

The narrative portion of the application must not exceed 75 pages. These pages must be doubled-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative section must be paginated and should include a one-page abstract. The page limit applies to: (1) the abstract, (2) the proposal narrative, (3) charts, graphs, tables, and graphics, (4) position descriptions (and resumes,if included), and (5) any appendices. The page limit does not apply to: application forms and other forms furnished by the Department, assurances and attachments to those forms, and the table of contents (items 1–13 in the Checklist for Applicants).

Application Narrative

The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities. The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not send letters of support unless they are critical to the instructional design of the project. Do not send curriculum vitae for key personnel; submit position descriptions instead. APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING. THE APPLICATION NARRATIVE MUST BE PAGINATED.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Final Application Preparation

Use the checklist included in this application to verify that your application is complete. Prepare an original copy with an original signature. Prepare three additional copies. Do not bind in notebooks, elaborate bindings, or covers. The application package must be mailed or hand-delivered to the address specified in this notice and postmarked by the deadline date.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the

accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Checklist for Applicants

Systemwide Improvement Grants

The following forms and other items must be included in the application and organized in the same manner listed below:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (if applicable)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year
5. Student Data
6. Project Documentation:
   Transmittal Letter to SEA
   Documentation of Consultation with Nonprofit Private School Officials, if applicable
   Box checked in Section C of this form
7. Program Assurances
8. Notice to All Applicants (OMB No. 1801–0004)
9. Assurances—Non-Construction Programs (SF 424B)
10. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
12. Disclosure of Lobbying Activities (SF–LLL)
13. Table of Contents
14. Application Narrative, including Abstract (not to exceed 75 pages)
15. One Original and Three Copies of the Application to be transmitted to the Department at the address specified in this notice.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 1R

TITLE: Bilingual Education: Systemwide Improvement Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

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STUDENT DATA	
Name of Local Educational Agency	

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

- Comprehensive School Grants
- Systemwide Improvement Grants

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate.
If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

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PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *If known:* Congressional District, *If known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *If known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *If applicable*:	
8. Federal Action Number, *If known:*	9. Award Amount, *If known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(If individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
	Authorized for Local Reproduction Standard Form - LLL	

[FR Doc. 9
BILLING COD

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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Thursday
January 16, 1997

Part IV

Department of Labor

Employment and Training Administration

20 CFR Parts 640 and 650
Federal-State Unemployment Compensation Program; Unemployment Insurance Performance System; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 602, 640, and 650

RIN 1205–AB10

Federal-State Unemployment Compensation Program; Unemployment Insurance Performance System

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this notice is to obtain comments prior to proposing a streamlined regulation regarding a new, more unified system for improving Unemployment Insurance (UI) operational performance. The system, called UI Performs, responds to the call of the Vice President's National Performance Review for a more unified approach to improving UI performance. The broad goal of UI Performs is to improve continuously the quality of services to the UI system's ultimate customers (claimants and employers). It does this by giving both Federal and States partners a more unified performance management system, enabling them to manage more effectively and plan more innovatively.

DATES: The Department invites written comments on this notice. Comments are to be submitted by March 17, 1997.

ADDRESSES: Submit written comments to Mary Ann Wyrsch, Director; Unemployment Insurance Service, Employment and Training Administration (ETA); U.S. Department of Labor; 200 Constitution Avenue, N.W., Room S–4231; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Burman Skrable, Unemployment Insurance Service, ETA; U.S. Department of Labor; 200 Constitution Avenue, N.W., Room S–4522; Washington, DC 20210. Phone (202) 219–5922 (this is not a toll-free number); fax (202) 219–8506.

SUPPLEMENTARY INFORMATION:

1. Background

The legislative framework for the Federal-State UI program reserved many decisions to the States, such as specifying most criteria for eligibility and establishing most parameters of the tax structure. However, it gave the Secretary of Labor responsibility for ensuring compliance with minimum Federal guidelines and for assuring proper and efficient administration of the system. The Secretary's role in carrying out this responsibility has been interpreted to include the assurance of certain minimum levels of operational performance. Over time, the U.S. Department of Labor (DOL) increasingly exercised the Secretary's responsibilities for performance oversight by measuring and assessing program outputs instead of examining processes. It also spelled out some Federal performance requirements in regulations, as indicated below.

Under the impetus of DOL, systems for measuring and improving various facets of UI performance were developed over the years and reflected the conditions of the time. Some highlights of this development include the following:

- Since the 1930s, States have been required to submit financial and activity reports to the Department;
- In the 1960s, States assessed various aspects of their performance using a self-appraisal system developed by DOL;
- In 1971, the Supreme Court issued its decision in *California Human Resources Department* v. *Java* concerning prompt benefit payments and appeals. This decision led DOL to issue regulations, at 20 CFR Parts 640 and 650, specifying Secretary's Standards (SSs) that benefit payments and appeals decisions be made as quickly as "administratively feasible;"
- Later in the 1970s, the Performance Standards project developed the set of performance measures and numerical criteria now called the Quality Appraisal (QA) system. The QA system contains the measures of timeliness and numerical criteria considered to satisfy the SSs for first payment timeliness and lower-level appeals. It also contained other timeliness, quality and accuracy measures, including the Quality Performance Index (QPI) for rating the quality of nonmonetary determinations. Numerical criteria called Desired Levels of Achievement (DLAs) were set for some of these measures;
- Also in the 1970s, the QA system was tied to the budget process: as a condition for obtaining administrative grants, all States pledged to meet certain performance levels and to develop corrective action plans (CAPs) if they failed;
- In 1981, the workload data upon which administrative budgets were formulated and allocated began to be validated through the Workload Validation program;
- Also in 1981, benefit accuracy was first assessed by field-verifying sampled payments through the Random Audit (RA) program. Desiring to improve the accuracy of benefit payments from the levels RA showed, the Department expanded RA into Benefits Quality Control (BQC) and required its performance by regulation, at 20 CFR Part 602;
- In the late 1980s, DOL initiated Revenue Quality Control (RQC) to revise the QA tax measures and the Performance Measurement Review to improve the QA benefits timeliness and quality measures.

Thus, by the early 1990s, the performance system of the UI program was characterized by the following: there were two explicit SSs (for benefit payments timeliness, and for lower and higher authority appeals promptness) in regulation; numerical criteria called "DLAs" were set for other measures under the Secretary's authority for oversight of the system; systems for measuring benefit payment accuracy and tax operation (revenue) quality were established by regulation, but these contained no criteria indicating satisfactory performance; and other elements of a performance system, such as reporting and preparation of an annual performance and budget plan, were established under the Secretary's authority. A small fraction of reported data was validated.

2. Impetus for Change

A 1993 National Performance Review (NPR) issue paper on BQC summarized a number of concerns about the way UI performance was measured and improved. It called on the Department to "reexamine the present mix of systems for improving the performance of the unemployment insurance program and devise a unified strategy that improves its effectiveness" (Paper DOL21, in NPR, *Creating a Government that Works Better and Costs Less: Department of Labor*, September 1993, at 88).

Although the various UI performance measurement systems and programs functioned well in many regards, experience showed the need for improving them. The numeric criteria in regulations had two major deficiencies. First, they were indicative of what the Department considered to be administratively feasible at the time the regulations were issued. However, over the years some States have improved their performance to the extent that the criteria now appear to be set too low. As an example, during 1980, 34 States met the criterion of making 87 percent of intrastate first payments within the 14/21-day timeliness standard, but only 4 States made as many as 93 percent of payments timely. By 1995, 50 States met

the 87 percent criterion, and 27 States paid at least 93 percent timely.

Second, these fixed criteria could be interpreted to mean that performance above the criteria was neither needed nor expected, which does not encourage continuous improvement. Meanwhile, some States continued to perform at substandard levels. For example, in appraisal year 1995, 11 States failed to meet the criterion of disposing of 60 percent of lower authority appeals within 30 days (down from 22 in 1980). However, 15 States were able to dispose of more than 80 percent within 30 days.

Other performance measures also had problems. A 1989 General Accounting Office (GAO) report notes that some of the QA performance indicators "may be inappropriate and provide misleading indications of service quality, wherein an improvement in the measure could actually be indicating a decline in service quality." They cited as an example the field audit penetration rate. The report also concluded that the QA benefits measures "overemphasize timeliness as opposed to other, more qualitative aspects of program performance." (GAO Report GAO/HRD–89–72BR at 44.) At the same time, some areas are not measured at all. For example, the accuracy of paid claims is measured, but not of decisions to deny, (the samples of nonmonetary determinations rated for quality using the QPI include denials, but the scores are not reported separately). There was no single system linking performance measurements to corrective actions.

3. Development of a New Approach: the UI Performs System

Responding to the NPR call to reexamine current performance improvement systems and develop a unified strategy to improve its effectiveness, in 1993, the DOL assembled the Performance Enhancement Workgroup (PEWG). This was a team of Federal UI Service managers and a corresponding team of senior State employment security personnel (designated by the Interstate Conference of Employment Security Agencies) asked to address jointly various concerns regarding the improvement of UI operational performance. The group met fifteen times in two years to develop the outlines of what it would call the UI Performs system. It set itself the broad goal of developing an approach by which the UI system could continuously improve services to the system's ultimate customers (claimants and employers) by encouraging both Federal and State partners to unify their approach to planning and operational improvement. The PEWG proposed embodying key elements of the UI Performs system in a short, streamlined regulation, reserving detail (e.g., definitions of measures and numerical benchmarks) to implementing issuances such as handbooks so that they could be changed more easily as needed. The system would rest on the following six main building blocks.

Block One: Partnership Principles

The basic principles are maintaining mutual trust and respect, working as partners with complementary roles, setting high standards, and teamwork. The partners are expected to work closely together in developing measures, setting criteria, and planning for improved performance.

Block Two: Complementary Roles

Federal law gives the Federal partner primary responsibility for leadership of the UI system as a whole, for providing adequate administrative resources, and for oversight of State operations to ensure that the requirements of Federal law are met. States are responsible for creating their own UI laws in conformity with the requirements of Federal law and conducting basic UI operations in accordance with their laws. This block recognizes the existence and wisdom of the complementary functions in the Federal-State UI partnership.

Block Three: Key Performance Objectives and Measures

The workgroup conducted an extensive review of UI activities and identified a set of customer service objectives for which the DOL and the States should both be held accountable. They then decided how performance relative to those objectives would be measured. Most of the performance measures, which included those used for Secretary's standards, are already being implemented by States. The group then designated certain of these measures for the eventual setting of national performance criteria. National criteria are intended to reflect the same level of performance in all States, so the measures must have the same meaning in all States. They also had to represent basic performance objectives, and so all relate to Federal conformity and compliance requirements. The workgroup's list of key performance objectives, how they are to be measured, and which measures should have national performance criteria set for them is contained in UIPL 41–95 (August 24, 1995), a copy of which can be obtained from the contact person listed in the summary. The PEWG also recommended that objectives, measures and criteria be reviewed periodically and adjusted if necessary.

Block Four: A continuous Improvement (CI) Cycle

States will use the results of past performance to help set future directions and take actions through the planning process to improve performance continuously. Federal responsibilities include setting national priorities; working with each State in creating its plan and setting its planning targets; approving the plan; assisting with analysis of results; providing technical assistance to States needing or requesting it, based on their past or planned performance; and taking action to ensure States meet national performance criteria.

To ensure CI, a new annual planning process would replace the Performance Budget Plan process. Called the State Quality Service Plan (or SQSP) it would be the primary vehicle through which the State, working closely with Federal staff, assesses its situation and sets priorities for improvement while maintaining performance in other areas. Federal UI performance objectives for the planning cycle would set the stage for this State-specific assessment and priority-setting process.

The proposed cycle envisions a more active Federal role in shepherding and motivating performance improvement. This includes technical assistance, either provided directly or brokered from one State to another. The DOL will establish mechanisms for identifying and acknowledging superior performance. It will also work actively to identify deficient performers. Initially, it will try to get poor performers to improve their customer service through the SQSP process. If this routine mechanism proves insufficient, DOL would take steps which may lead all the way to conformity/compliance actions or other actions under Federal law.

Block Five: A Simplified Regulation

The system envisions a relatively short, general regulation (outlined below). Details on key measures and national Federal performance criteria based on certain of the measures would be contained in implementing issuances such as handbooks so they can be updated as necessary. State staff would be involved in crafting all changes and all States would be given opportunity to comment. Implementing the measures and performing up to criteria levels would be explicit parts of the States' administrative grant agreements.

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Block Six: Front-end Activities and Strategies

To succeed, the UI Performs program requires the development of skills and other capacities at both Federal and State levels. Key capabilities include data and systems analyses and the computer capacity and program knowledge to support them. The DOL will both work to enhance its own capabilities in these areas and identify particular skills in various States which can be drawn upon when needed.

The outlines of this new approach have been presented to the UI system and its stakeholders for comment in Unemployment Insurance Program Letter (UIPL) 41–95 (August 24, 1995), and its underlying basic principles in UIPL 46–94 (September 30, 1994). Copies are available from the contact person listed in the summary above. The DOL is now in the process of "rolling it out" by developing and implementing the various components. The main tasks are: Completing the development of new measurement initiatives, including an approach to validating required reports data; modifying the BQC program and reducing its resource requirements; developing, in consultation with States, measurements to fill performance measurement gaps, including denied claims accuracy; developing in consultation with States benchmarks or performance floors for certain key measures; developing the new annual planning process including mechanisms for the negotiation and approval of State-specific objectives; developing a process for the identification. development and brokering of performance improvement skills; development a system of rewards for recognizing exceptional performance; and developing a regulatory base for the UI Performs system. Full development of the system is expected to stretch into 1999.

4. The UI Performs Regulation

An integral part of the overall design of the UI Performs system is a new regulation. The Department envisions a streamlined regulation that would propose the following:

a. Replace/incorporate key features of 20 CFR 602, 640, and 650, in a more cohesive and, if possible, shorter form;

b. Set forth the goals (e.g., continuous improvement, service to ultimate customers) and requirements (e.g., greatest performance that is administratively feasible, performance of certain activities necessary for proper and efficient administration) of the unified strategy embodied in the UI Performs system;

c. Set forth what the UI Performs system requires States to do, including:

- Prepare an Annual Performance Plan (the SQSP) as the basis for receiving administrative grants;
- Conduct certain performance measurement activities, identified or developed through a consultative process, and report data to DOL;
- Validate certain key measures;
- Operate the UI program (pay benefits, collect taxes) with the highest quality (accuracy, timeliness, completeness, adherence to procedure) that is administratively feasible; and
- Take effective action to ensure performance standards are met;

d. Establish Federal performance criteria, developed through a consultative process, for certain measures;

e. Provide that, in determining whether to recommend to the Secretary the commencement of proceedings to determine whether tax credits and/or administrative grants (as appropriate) should be withheld on account of sustained deficient performance, the Department will evaluate all the facts relating to a State's performance in the deficient area; and

f. Require Periodic Review of Measures and Criteria to ascertain whether the measures are useful and the criteria are appropriate and adjust either as needed.

Comments Solicited

Reviewers are encouraged to comment on all items in the proposed regulatory design and to pay particular attention to the specific questions below.

1. This regulation would propose, as Federal requirements, the basic core of performance system. The core components would be: (a) Certain performance measurements or measurement systems; (b) validation of certain reported data elements; (c) a performance plan on an annual cycle; and (d) the premise that performance must be of the greatest quality administratively feasible, implemented in practice by a mutually agreed-upon system of nationwide performance criteria for States to meet. Does this characterization include all appropriate core requirements for the UI Performs system?

2. UIPL 41–95 solicited comments from States and stakeholder groups on proposed UI Performs measures and measures for which national performance criteria would be set. State staff will participate in setting actual performance criteria and the system will be asked to comment on them. The Department offers this Notice as an additional opportunity to comment on what aspects of the UI program should be measured, how these aspects should be measured and what constitutes acceptable performance.

3. Once measures and performance criteria have been agreed upon, the means ensuring adequate performance must be addressed. At present, the Secretary may withhold administrative grants or the Federal Unemployment Tax Act offset credit after notice and an opportunity for a hearing have been provided to the States.

(a) What actions, short of the total termination of tax credits or grants, are appropriate to bring about compliance with performance requirements?

(b) Should there be available to the Secretary less drastic remedies such as a more graduated series of sanctions for sustained poor performance, and if so, what specific sanctions?

(c) How should "sustained poor performance" be defined?

4. Should the Secretary provide rewards for good performance? If so, what specific rewards and under what conditions?

5. Should the regulation provide for the waiver of measurement requirements that are not necessary for the proper and efficient administration of a State's UI program? If so, under what conditions should such waivers be granted?

List of Subjects

20 CFR Part 602

Grant programs, Labor.

20 CFR Parts 640 and 650

Unemployment compensation.

Dated: January 10, 1997.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 97–1102 Filed 1–15–97; 8:45 am]

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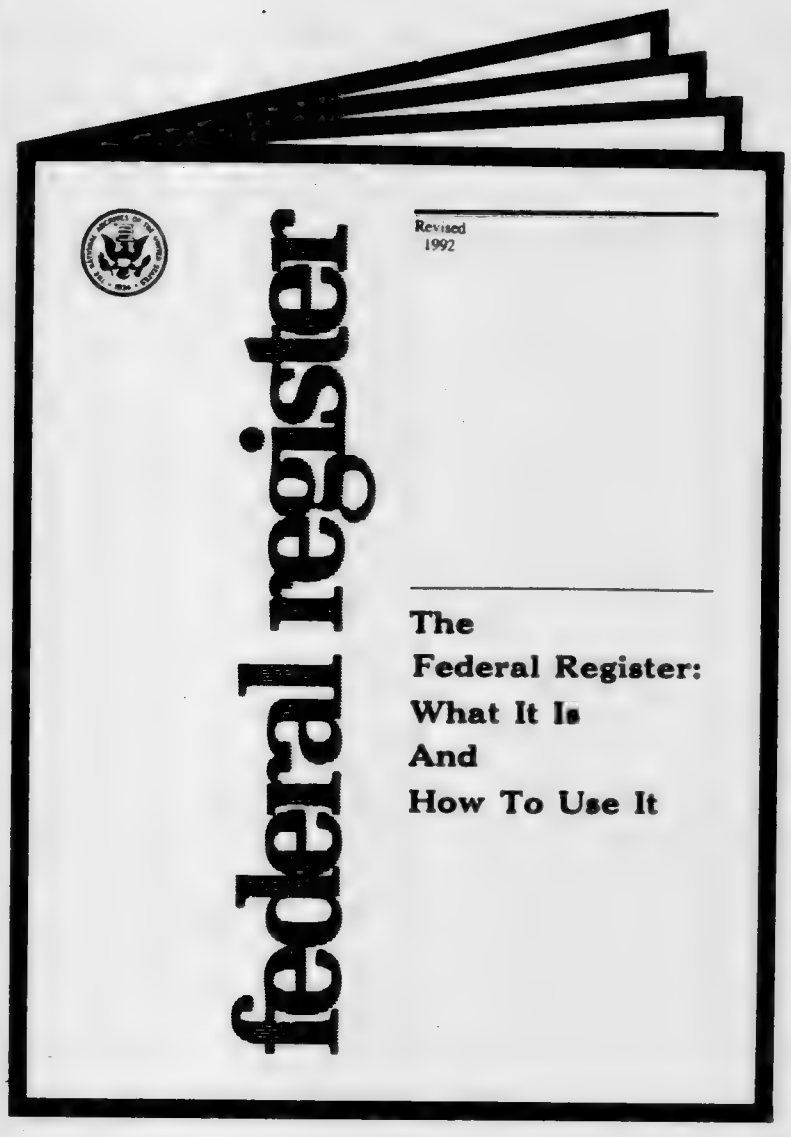

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Rules and Regulations

Federal Register
Vol. 62, No. 12
Friday, January 17, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2470, 2471, 2472, and 2473

Federal Service Impasses Panel-General; Procedures of the Panel; Impasses Arising Pursuant to Agency Determinations Not To Establish or To Terminate Flexible or Compressed Work Schedules; Miscellaneous Requirements

AGENCY: Federal Service Impasses Panel, FLRA.

ACTION: Final rules; correction.

SUMMARY:

This document contains corrections to the final regulations that were published Thursday, August 8, 1996 (61 FR 41293–41297). The regulations pertain to the filing of requests for assistance with the Panel and the filing and service of documents with the Panel, and establish procedures for obtaining a subpena by parties to Panel proceedings.

EFFECTIVE DATE: August 18, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Schimansky, Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC 20424–0001. Telephone (202) 482–6670.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction were intended to revise the Panel's regulations to permit parties to file requests for Panel assistance, and other documents, by facsimile transmission and to establish procedures by which a party to a Panel proceeding may seek to obtain a subpena.

Need For Correction

As published, the final regulations added a new part to the Panel's regulations, 5 CFR part 2473–Subpenas. However, due to an error, the heading *with authority citation for* that part of the regulations was not placed before the regulatory text.

Correction of Publication

Accordingly, the publication on August 8, 1996, of the final regulations at 61 FR 41293–41297 is corrected by adding the heading of Part 24.73 and the authority citation as follows:

PART 2473—SUBPOENAS [CORRECTED]

Authority: 5 U.S.C. 7119, 7134.

Dated: January 13, 1997.

Joseph Schimansky,

Executive Director, Federal Service Impasses Panel.

[FR Doc. 96–1176 Filed 1–16–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV96–925–1 IFR]

Grapes Grown in a Designated Area of Southeastern California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the California Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1997 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of table grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on January 1, 1997. Comments received by February 18, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tershirra T. Yeager, program assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698 or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925 (7 CFR part 925) regulating the handling of table grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, California table grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning January 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they

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present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

There are approximately 80 producers of table grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of table grape producers and handlers are not classified as small entities.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California desert grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 3, 1996, and unanimously recommended 1997 expenditures of $156,865 and an assessment rate of $0.01 per lug of table grapes. In comparison, last year's budgeted expenditures were $114,827. The Committee recommended not to have an assessment rate for the 1996 fiscal year because there was adequate money in the reserve to cover estimated expenses. Major expenditures recommended by the Committee for the 1997 year include $100,000 for research, $25,000 for compliance purposes, and $8,675 for the manager's salary. Budgeted expenses for these items in 1996 were $60,000 for research, $25,000 for the sheriff's patrol and $7,887 for the manager's salary.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California table grapes. Table grape shipments for the year are estimated at 8,000,000 lugs which should provide $80,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997 fiscal year begins on January 1, 1997, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable table grapes handled during such fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new §925.215 are added to read as follows:

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Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§925.215 Assessment rate.

On and after January 1, 1997, an assessment rate of $0.01 per lug is established for grapes grown in a designated area of southeastern California.

Dated: January 10, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1162 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 932

[Docket No. FV96–932–4 IFR]

Olives Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1997 fiscal year and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on January 1, 1997. Comments received by February 18, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906, or Tershirra Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

There are approximately 1,200 producers of olives in the production area and approximately 4 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

The olive marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 11, 1996, and recommended 1997 expenditures of $2,159,265 and an assessment rate of $14.99 per ton covering olives from the appropriate crop year. The vote on the assessment rate was 13 in favor and 1 opposed, with the opposing grower maintaining that the assessment is not sufficient for the industry's needs. In comparison, last year's budgeted expenditures were $2,600,785. The assessment rate of $14.99 is $13.27 lower than last year's established rate. Major expenditures recommended by the Committee for the 1997 fiscal year include $390,890 for

administration, $173,375 for research, and $1,595,000 for market development. Budgeted expenses for these items in 1996 were $388,350, $213,000, and $1,999,435 respectively.

The order requires that the assessment rate for a particular fiscal year apply to all assessable olives handled during the appropriate crop year, which for this season is August 1, 1996, through July 31, 1997. The assessment rate recommended by the Committee was derived by dividing anticipated expenses by actual receipts of olives by handlers during the crop year. Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The recommended budget and rate of assessment is usually acted upon by the Committee after the crop year begins and before the fiscal year starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses. The olive receipts for the year are 144,075 tons which should provide $2,159,684 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

This action will reduce the assessment obligation imposed on handlers. The assessments will be uniform for all handlers. The assessment costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997 fiscal year began on January 1, 1997, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during the appropriate crop year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new § 932.230 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 932.230 Assessment rate.

On and after January 1, 1997, an assessment rate of $14.99 per ton is established for assessable olives grown in California.

Dated: January 10, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1161 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96–033–2]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations to add the rapid automated presumptive test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. We are taking this action because the rapid automated presumptive test has been shown to provide an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. Adding the rapid automated presumptive test to the list of official tests for brucellosis in cattle, bison, and swine will help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Brucellosis Eradication Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1228, (301) 734–7708; or E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used to determine the brucellosis disease status of cattle, bison, and swine. The regulations stipulate that certain cattle, bison, and swine must, among other requirements, test negative to an official brucellosis test prior to interstate movement. Official brucellosis tests are also used to determine eligibility for

indemnity payments for animals destroyed because of brucellosis. In §78.1 of the regulations, the definition of *official test* lists those tests that have been designated as official tests for determining the brucellosis disease status of cattle, bison, and swine.

In a proposed rule published in the **Federal Register** on September 13, 1996 (61 FR 48430–48431, Docket No. 96–033–1), we proposed to amend §78.1 of the regulations to add the rapid automated presumptive (RAP) test as an official test.

We solicited comments concerning our proposed rule for 60 days ending November 12, 1996. We received one comment by that date. The comment we received was from a State cattlemen's association and supported the proposed rule change.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the brucellosis regulations by adding the RAP test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. The RAP test has been shown to provide an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. We believe that adding the RAP test to the list of official tests for brucellosis in cattle, bison, and swine will help to prevent the spread of brucellosis by making available a highly efficient tool for its diagnosis in those animals.

Adding the RAP test as an official test is not expected to affect the market price of the animals tested. Although more rapid testing will likely allow faster marketing, the effect on owners of cattle, bison, and swine will not be significant. Use of the RAP test is optional, and other presumptive official tests remain available for use by State and Federal animal health officials. The cost of the RAP test is equal to or lower than other presumptive official tests in use. Therefore, if those States currently using higher-cost presumptive tests switch over to the RAP test, the total testing costs for the Cooperative State/Federal Brucellosis Eradication Program will be reduced.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. In §78.1, in the definition of *official test*, paragraph (a)(12) is redesignated as paragraph (a)(13) and new paragraphs (a)(12) and (b)(4) are added to read as set forth below.

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(12) *Rapid Automated Presumptive (RAP) test.* An automated serologic test to detect the presence of *Brucella* antibodies in test-eligible cattle and bison. RAP test results are interpreted as either positive or negative; the results are interpreted and reported by a scanning autoreader that measures alterations in light transmission through each test well and the degree of agglutination present. Cattle and bison negative to the RAP test are classified as brucellosis negative; cattle and bison positive to the RAP test shall be subjected to other official tests to determine their brucellosis disease classification.

* * * * *

(b) * * *

(4) *Rapid Automated Presumptive (RAP) test.* An automated serologic test to detect the presence of *Brucella* antibodies in test-eligible swine. RAP test results are interpreted as either positive or negative; the results are interpreted and reported by a scanning autoreader that measures agglutination based on alterations in light transmission through each test well. Swine negative to the RAP test are classified as brucellosis negative; swine positive to the RAP test shall be subjected to other official tests to determine their brucellosis disease classification.

* * * * *

Done in Washington, DC, this 13th day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–1224 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–11N]

Sanitation Standard Operating Procedures (Sanitation SOP's) and E. coli Testing Requirements—Conference

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a conference, "Sanitation Standard Operating Procedures (Sanitation SOP's) and *E. coli* Testing Requirements," on January 23, 1997. The purpose of the conference is to review and discuss initial operational procedures for the Sanitation SOP and *E. coli* testing requirements that are effective on January 27, 1997.

DATES: The conference will be held from 1:00 p.m. until 5:00 p.m. on January 23, 1997.

ADDRESSES: The conference will be held at the Arlington Hilton, 950 N. Stafford Street, Arlington VA 22203, (703) 528–6000.

FOR FURTHER INFORMATION CONTACT: To register for the conference, contact Lisa

Parks at (202) 501–7138, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. The first stage in the implementation of the rule begins on January 27, 1997, when slaughter and processing establishments must have written sanitation standard operating procedures to prevent direct product contamination and ensure food safety, and slaughter establishments must begin testing for *E. coli* as a means of verifying process control for preventing fecal contamination.

To provide interested parties an opportunity to further discuss issues relating to the implementation of Sanitation SOP's and *E. coli* testing requirements, FSIS will meet with the public from 1 p.m. to 5 p.m. on January 23, 1997.

Done at Washington, DC, on: January 13, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–1235 Filed 1–14–97; 1:56 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–64–AD; Amendment 39–9886; AD 97–02–02]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft, Inc. (Fairchild) SA26, SA226, and SA227 series airplanes. This action requires applying torque to the control column pitch bearing attaching nuts, inspecting for any looseness or movement of the bearing assembly, and inspecting the elevator control rod end bearing retainer/dust seals for creasing. If either of these problems are evident, this action requires replacing these parts, as well as installing a new bolt and washer to the elevator control rod end bearing assembly at the walking beam connection. Reports of Fairchild SA227 series airplanes losing pitch control in-flight prompted this action. The actions specified by this AD are intended to prevent loss of pitch control, which if not corrected, could result in loss of the airplane.

DATES: Effective February 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 6, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas, 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

The FAA has recently received two incident reports on Fairchild SA227 series airplanes in which the airplane lost some pitch control because of fatigue failure of the pitch pivot bearing shaft. Further investigation revealed fatigue and wear in the control column pitch pivot bearings resulting from insufficient torque on the control column roller bearing stud attaching nuts. While inspecting the pivot bearing on four other Fairchild airplanes, it was discovered that the rod end bearing retainer of the elevator control rod at the walking beam connection was deformed or creased. This creasing is caused by improper installation and could allow the bearing to come apart, disconnecting the joint, and possibly resulting in loss of pitch control.

Fairchild has issued four service bulletins (SB) numbered 26–27–30–046, 226–27–060, 227–27–041, and CC7–27–010, dated December 11, 1996, which specify applying torque to the control column pitch bearing attaching nut, inspecting the control column roller bearing assembly for movement, replacing the bearing and attaching nut if necessary, inspecting the elevator control rod end bearing retainer/dust covers for creasing, replacing the rod end assemblies, if necessary, and installing a new bolt and washer to the elevator control rod end bearing assembly at the walking beam connection.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of pitch control, which if not corrected, could result in loss of the airplane.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild SA26, SA226, and SA227 series airplanes of the same type design, this AD requires:

(1) Applying torque to the control column pitch bearing attaching nut,

(2) Inspecting for movement in the control column roller bearing assembly,

(3) Replacing the bearing assembly and attaching nut, if applicable,

(4) Inspecting the elevator control rod end bearing retainer/dust covers for creasing,

(5) Replacing the elevator control rod end assemblies, if applicable, and

(6) Installing a new bolt and adding a washer to the elevator control rod end bearing assembly at the walking beam connection.

Related Service Information

These actions are to be done in accordance with the ACCOMPLISHMENT INSTRUCTIONS in Fairchild SBs 26–27–30–046, 226–27–060, 227–27–041, and CC7–27–010, Issued December 11, 1996.

Since a situation exists (possible loss of in-flight pitch control) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–64–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–02–02 Fairchild Aircraft, Inc.: Amendment 39–9886; Docket No. 96–CE–64–AD.

Applicability: Models SA26, SA226, SA227–AC, SA227–AT, SA227–BC, SA227–TT, and SA227–CC/DC (serial numbers CC/DC784, and CC/DC790 through CC/DC884), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of pitch control, which if not corrected, could result in loss of the airplane, accomplish the following:

(a) Apply torque to the control column pitch bearing attaching nuts and inspect for movement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft (Fairchild) Service Bulletin (SB) No. 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(1) If there is no movement, then no further action is necessary.

(2) If there is movement, prior to further flight, replace the pitch control column roller bearing and attaching nut in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(b) Inspect the elevator control rod end bearing retainer/dust seals for evidence of creasing in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(1) If no creasing is found, then rod end assembly replacement is not necessary.

(2) If creasing is found, prior to further flight, replace the elevator control rod end assembly in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(c) Install a new washer (part number (P/N) AN970–4) and replace the bolt (P/N NAS6604D31) with a new bolt (P/N NAS6604D34) on the elevator control rod end bearing assembly at the walking beam connections in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(f) The inspections and replacement required by this AD shall be done in accordance with FAIRCHILD AIRCRAFT Service Bulletin No. SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, Issued: December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9886) becomes effective on February 6, 1997.

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Issued in Kansas City, Missouri, on January 6, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–814 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by the Center for Drug Evaluation and Research (CDER). This amendment updates the titles of CDER delegates and organizational components to reflect the organizational restructuring. This action is intended to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Rixie L. Scott, Center for Drug Evaluation and Research (HFD–54), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0494, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: CDER recently underwent a major organizational restructuring. The Center level structure was approved by the Commissioner of Food and Drugs and published in the **Federal Register** of October 13, 1995 (60 FR 53379). Most of the authorities delegated to the center officials are amended in this document to reflect new titles and organization placement under the restructuring.

This document revises the delegations of authority contained in part 5 (21 CFR part 5) relating to the functions assigned to CDER.

Further redelegation of the authorities delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.22 is amended by revising paragraphs (a)(13)(i) through (a)(13)(v) and by adding new paragraphs (a)(13)(vi) through (a)(13)(viii) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(13)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Director and Deputy Director, Office of Management, CDER.

(iii) The Director and Deputy Director, Office of Compliance, CDER.

(iv) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, and the Director and Deputy Director of the Office of Epidemiology and Biostatistics, Office of Review Management, CDER.

(v) The Directors and Deputy Directors of the Offices of Testing and Research, Generic Drugs, New Drug Chemistry, and Clinical Pharmacology and Biopharmaceutics, Office of Pharmaceutical Science, CDER.

(vi) The Chief, Freedom of Information Staff, Office of Training and Communications, CDER.

(vii) The Directors of the Divisions of Labeling and Nonprescription Drug Compliance, Prescription Drug Compliance and Surveillance, and Manufacturing and Product Quality, Office of Compliance, CDER.

(viii) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

* * * * *

3. Section 5.23 is amended by revising paragraph (b) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(b) The Chief, Product Information Management Branch, Division of Database Management, Office of Management, Center for Drug Evaluation and Research (CDER), is authorized to sign affidavits regarding the presence or absence of records of Registration of Drug Establishments.

* * * * *

4. Section 5.25 is amended by revising paragraph (a)(6) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(6) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

* * * * *

5. Section 5.26 is amended by revising paragraph (g) to read as follows:

§ 5.26 Service fellowships.

* * * * *

(g) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Management, CDER.

* * * * *

6. Section 5.30 is amended by revising paragraphs (a)(2) and (c)(3) to read as follows:

§ 5.30 Hearings.

(a) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

(c) * * *

(3) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER; the

Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

7. Section 5.31 is amended by revising paragraphs (a)(2)(i) through (a)(2)(iii), (b)(1) through (b)(3), (c)(1), (d)(1), (d)(2), (e)(4), the introductory text of paragraph (f)(2), (f)(3), and (f)(5)(ii); by removing paragraph (a)(2)(iv); and by adding new paragraph (d)(3) to read as follows:

§ 5.31 Petitions under part 10.

(a) * * *

(2)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(iii) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(b) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(2) The Director, Office of Drug Evaluation V, Office of Review Management, CDER.

(3) The Director and Deputy Director, Division of Over-the-Counter Drug Products, Office of Drug Evaluation V, Office of Review Management, CDER.

(c) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

* * * * *

(d) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(2) The Director, Office of Drug Evaluation V, Office of Review Management, CDER.

(3) The Director and Deputy Director, Division of Over-the-Counter Drug Products, Office of Drug Evaluation V, Office of Review Management, CDER.

(e) * * *

(4) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER, are authorized to issue 180-day tentative responses to citizen petitions on drug product matters under § 10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center.

* * * * *

(f) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER, are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter on drug product matters in program areas where they have been delegated final approval authority in the following sections of this part:

* * * * *

(3) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, except for those drug products listed in § 314.440(b) of this chapter, are authorized to issue responses to citizen petitions submitted under § 10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product.

* * * * *

(5) * * *

(ii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

* * * * *

8. Section 5.33 is amended by revising paragraph (c) to read as follows:

§ 5.33 Premarket approval of a product that is or contains a biologic, a device, or a drug.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

9. Section 5.37 is amended by revising paragraphs (a)(5)(i) and (a)(5)(ii) and by adding new paragraphs (a)(5)(iii) and (a)(5)(iv) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(5)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Director and Deputy Director, Office of Compliance, CDER.

(iii) The Associate Director for Medical Policy, CDER.

(iv) The Director, Division of Drug Marketing, Advertising, and Communications, Office of Drug Evaluation I, Office of Review Management, CDER.

* * * * *

10. Section 5.38 is amended by revising paragraphs (a)(1) through (a)(6) to read as follows:

§ 5.38 Issuance of written notices concerning patent information, current good manufacturing practices and false or misleading labeling of new drugs, new animal drugs, and feeds bearing or containing new animal drugs.

(a) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Director and Deputy Director, Office of Compliance, CDER.

(3) The Director and Deputy Director, Division of Labeling and Nonprescription Drug Compliance, Office of Compliance, CDER.

(4) The Director and Deputy Director, Division of Manufacturing and Product Quality, Office of Compliance, CDER.

(5) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

(6) The Director and Deputy Director, Division of Scientific Investigations, Office of Compliance, CDER.

* * * * *

11. Section 5.44 is amended by revising paragraphs (a)(1)(iii) and (b)(1)(iii) to read as follows:

§ 5.44 Export of unapproved drugs.

(a) * * *

(1) * * *

(iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

* * * * *

(b) * * *

(1) * * *

(iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

* * * * *

12. Section 5.45 is amended by revising paragraph (f)(2) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(f) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER) and the Director and Deputy Director, Office of Compliance, CDER.

13. Section 5.54 is amended by revising paragraph (c) to read as follows:

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

14. Section 5.55 is amended by revising paragraph (c) to read as follows:

§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

15. Section 5.56 is amended by revising paragraph (c) to read as follows:

§ 5.56 Recall authority.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

16. Section 5.57 is amended by revising paragraph (d) to read as follows:

§ 5.57 Temporary suspension of a medical device application.

* * * * *

(d) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; the Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

17. Section 5.58 is amended by revising paragraphs (c)(1)(i) through (c)(1)(iii) and by removing paragraph (c)(1)(iv) to read as follows:

§ 5.58 Orphan products.

* * * * *

(c) * * *

(1) * * *

(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(iii) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

* * * * *

18. Section 5.60 is amended by removing paragraphs (a)(10) and (b)(9), by redesignating paragraphs (a)(11) through (a)(13) as paragraphs (a)(10) through (a)(12), and (b)(10) through (b)(12) as paragraphs (b)(9) through (b)(11), by revising paragraphs (a)(7) through (a)(9), and paragraphs (b)(6) through (b)(8) to read as follows:

§ 5.60 Required and discretionary postmarket surveillance.

(a) * * *

(7) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(8) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(9) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

(b) * * *

(6) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(7) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(8) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

19. Section 5.70 is revised to read as follows:

§ 5.70 Issuance of notice implementing the provisions of the Drug Amendments of 1962.

The Director, Deputy Center Director for Review Management, and Deputy Director, Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices and amendments thereto implementing section 107(c)(3) of the Drug Amendments of 1962 (Pub. L. 87–781) by announcing new or revised efficacy findings on human drugs that are or were subject to the provisions of sections 505 and 507 of the Federal Food, Drug, and Cosmetic Act.

20. Section 5.71 is amended by revising paragraphs (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2) to read as follows:

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.

(a) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) * * *

(1) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(2) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

* * * * *

(c) * * *

(1) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(2) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

* * * * *

21. Section 5.72 is amended by revising paragraph (a) to read as follows:

§ 5.72 Authority to approve and to withdraw approval of a charge for investigational new drugs.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

* * * * *

22. Section 5.73 is amended by revising paragraphs (a) through (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 5.73 Certification of insulin.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director, Office of Drug Evaluation II, Office of Review Management, CDER.

(c) The Director and Deputy Director, Division of Metabolism and Endocrine Drug Products, Office of Drug Evaluation II, Office of Review Management, CDER.

(d) The Director and Deputy Director, Office of Compliance, CDER.

(e) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

(f) The Team Leader and Assistant, Post-Marketing Surveillance Team, Division of Prescription Drug

Compliance and Surveillance, Office of Compliance, CDER.

23. Section 5.74 is amended by revising paragraphs (a) and (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 5.74 Issuance, amendment, or repeal of regulations pertaining to drugs containing insulin.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director, Office of Drug Evaluation II, Office of Review Management, CDER.

(c) The Director and Deputy Director, Division of Metabolism and Endocrine Drug Products, Office of Drug Evaluation II, Office of Review Management, CDER.

(d) The Director and Deputy Director, Office of Compliance, CDER.

24. Section 5.75 is amended by revising paragraphs (a) through (c) to read as follows:

§ 5.75 Designation of official master and working standards for antibiotic drugs.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Office of Testing and Research, Office of Pharmaceutical Science, CDER.

(c) The Director and Deputy Director, Division of Research and Testing, Office of Testing and Research, Office of Pharmaceutical Science, CDER.

25. Section 5.76 is amended by revising paragraphs (a) through (d) to read as follows:

§ 5.76 Certification of antibiotic drugs.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Office of Compliance, CDER.

(c) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

(d) The Team Leader and Assistant, Post-Marketing Surveillance Team, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

26. Section 5.78 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) through (a)(7) to read as follows:

§ 5.78 Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs.

(a) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Director, Office of Drug Evaluation I, Office of Review Management, CDER.

(3) The Director, Office of Drug Evaluation IV, Office of Review Management, CDER.

(4) The Director and Deputy Director, Division of Oncologic Drug Products, Office of Drug Evaluation I, Office of Review Management, CDER.

(5) The Director and Deputy Director, Division of Anti-Infective Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(6) The Director and Deputy Director, Division of Anti-Viral Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(7) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

27. Section 5.80 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (b), (c)(1)(i) and (c)(1)(ii), (d)(1) through (d)(3), the first sentence in paragraph (e), and paragraph (f) and by removing paragraphs (a)(1)(iii), (c)(1)((iii), and (c)(1)(iv) to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

(a)(1) * * *

(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER, for drugs under their jurisdiction.

* * * * *

(b) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER, for drugs under their jurisdiction, are authorized to perform all functions of the Commissioner of Food and Drugs with regard to approval of supplemental applications to approved new drug applications for drugs for human use that have been submitted under § 314.70 of this chapter and of new drug applications for drug products other than those that contain new molecular entities (new chemical entities). The applications to which this authorization applies may, in appropriate circumstances, continue to be acted upon by the officials so authorized in § 5.10(a) and paragraph (a) of this section.

(c) * * *

(1) * * *

(i) The Director and Deputy Director, Office of Generic Drugs (OGD), Office of Pharmaceutical Science, CDER, except that the Director and Deputy Director, OGD are not authorized to approve new drug applications with a 5S classification if clinical studies are needed.

(ii) The Directors and Deputy Directors of the divisions in Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(d) * * *

(1) The Director and Deputy Director, Division of Chemistry I, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

(2) The Director and Deputy Director, Division of Chemistry II, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

(3) Associate Director for Chemistry, Office of Pharmaceutical Science, CDER.

(e) The Director, Division of Labeling and Program Support, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, are authorized to perform all the functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to abbreviated new drug applications, 5S applications, or 505(b)(2) applications for drugs for human use that are described in § 314.70(b)(3) and (c)(2)(i) through (c)(2)(iv) of this chapter. * * *

(f) The supervisory and team leader chemists in the Divisions of New Drug Chemistry I, II, and III, Office of New Drug Chemistry, Office of Pharmaceutical Science, CDER, are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to new drug applications for drugs for human use that are described in § 314.70(b)(1), (b)(2)(ii) through (b)(2)((x), (c)(1), and (c)(3) of this chapter. Authority to approve supplements that require in vivo bioavailability information or that require a change in the labeling of the drug, except changes that reflect only the use of a different facility or establishment, are not included in this paragraph. The supplemental applications to which this authorization applies may continue to be acted upon by the officials so authorized in § 5.10(a) and paragraphs (a) and (b) of this section.

28. Section 5.82 is amended by revising paragraph (a) to read as follows:

§ 5.82 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices of an opportunity for a hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto on drugs for human use, except for those drugs listed in § 314.440(b) of this chapter, that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act and subpart B of part 314 of this chapter and to issue notices refusing approval or withdrawing approval when opportunity for hearing has been waived.

* * * * *

29. Section 5.93 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

30. Section 5.94 is amended by revising paragraphs (b)(1) through (b)(3) and by removing paragraph (b)(4) to read as follows:

§ 5.94 Extensions or stays of effective dates for compliance with certain labeling requirements for human prescription drugs.

* * * * *

(b) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(3) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

Dated: December 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1202 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Changes in Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies in agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities) from their State Plans. The States of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5–96 and 6–96, published in the **Federal Register** on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States and to notify affected employers and employees of this action. In fourteen (14) other States operating OSHA-approved State plans, enforcement of the field sanitation and temporary labor camp standards in agriculture will not transfer to ESA and will continue as a State responsibility. (These States are: Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington). In all other States under Federal OSHA jurisdiction, ESA will now exercise responsibility for enforcement in agriculture of the OSHA field sanitation and temporary labor camp standards, except as noted.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e). Pursuant to section 18(e) OSHA previously announced in the **Federal Register** final state plan approval and relinquishment of concurrent Federal jurisdiction for each of the following nine States: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming. Through amendments to their State plans, these nine States have excluded coverage of the field sanitation (29 CFR 1928.110) and temporary labor camp (29 CFR 1910.142) standards in agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities) from their State plans. As provided in Secretary of Labor's Orders 5–96 and 6–96, effective February 3, 1997, (62 FR 107–113, January 2, 1997) this authority has been subsequently transferred from the Occupational Safety and Health Administration (OSHA) to the Employment Standards Administration (ESA). Therefore, the applicable subparts of 29 CFR Part 1952 are being revised to effect this change in coverage and enforcement jurisdiction.

B. Background

Following a one year pilot project and pursuant to Secretary's Orders 5–96 and 6–96 (62 FR 107–113), an exchange of specific authorities and responsibilities has been effected between the Assistant Secretary for Occupational Safety and Health and Assistant Secretary for

Employment Standards, as of February 3, 1997. This is the result of a determination that the respective agencies' program expertise would be better utilized, and, therefore, that the Department of Labor's resources would be more effectively and efficiently utilized, by a permanent transfer of particular enforcement activities between the Assistant Secretaries for OSHA and ESA. Secretary's Order 5–96 delegates to the Assistant Secretary for ESA the Secretary's authority under sections 8, 9, and 10 of the Occupational Safety and Health Act to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the OSHA standards on:

(1) Field sanitation, 29 CFR 1928.110; and

(2) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for OSHA retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for ESA under the OSH Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for OSHA.

Similarly, the Secretary's Order 6–96 delegates to the Assistant Secretary for OSHA the authority for investigating and resolving allegations of discriminatory actions taken by employers against employees in violation of the requirements of the following environmental and public health statutes (so called "whistleblower" protection): the Safe Drinking Water Act, the Energy Reorganization Act of 1974, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Solid Waste Disposal Act, and the Clean Air Act) which had been previously delegated to the Assistant Secretary for Employment Standards.

State Plan States

Because OSHA standards under section 6 of the Act are in effect with regard to the issues of field sanitation and temporary labor camp safety and health, the principles of preemption under section 18 of the Act continue to apply and are unaffected by the transfer of responsibility for enforcement of these standards from OSHA to ESA. States may adopt and enforce requirements relating to these occupational issues only through the vehicle of an OSHA-approved State plan.

The 23 States who had assumed responsibility for field sanitation and temporary labor camp enforcement in the private sector under their OSHA-approved State plans were given two options with regard to this Federal transfer of responsibility: (1) They could follow OSHA's example by excluding field sanitation and certain temporary labor camp enforcement in agriculture from coverage under their State plan. OSHA would then modify the "Final Approval Determination," "Level of Federal Enforcement" and the "Changes to Approved Plans" sections in 29 CFR Part 1952 for those State programs to note the exclusion. Nine States [Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming] have chosen to relinquish their authority by submitting appropriate plan change supplements; or, (2) States could choose to retain their OSHA enforcement responsibility for the two standards under their State plan. In this case, ESA would not exercise its delegated authority and would look to the State plan State to continue to enforce the State's analogues of the temporary labor camp and field sanitation standards. Fourteen States [Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington] have chosen to retain their OSHA enforcement responsibility for these two standards. Under the terms of the Secretary's Orders, the Assistant Secretary for OSHA retains the authority to monitor the activity of State plan States with respect to field sanitation and temporary labor camps.

Thus, the delegation of OSHA enforcement authority to ESA with regard to standards on field sanitation and temporary labor camps will apply in all States under Federal OSHA enforcement jurisdiction and in those nine (9) State plan States which choose to exclude these standards from their State Plan. OSHA (and the States) will continue to enforce other standards that are applicable to the agriculture industry, including the temporary labor camp standard as it applies to employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities. The whistleblower authority transferred from ESA to OSHA will be retained Federally as it is not delegable to the State plans States.

C. Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State plans approved in accordance with section 18(c) of the Act and Part 1902. Having reviewed the nine States' plan change supplements in accordance with these procedures, OSHA is hereby amending 29 CFR Part 1952 to reflect approval of these amendments and other related changes with regard to enforcement responsibility.

D. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these State changes are identical to the Federal action and impose no new responsibilities or requirements on employers, employees or the State, no opportunity for further public comment is required.

E. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. Transfer of enforcement responsibility in these nine States will not place small employers in these States under any new or different requirements, nor will any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved State plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health. It is

issued under Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed at Washington, D.C. this 9th day of January 1997.

Joseph A. Dear,

Assistant Secretary.

For the reasons set out in the preamble, 29 CFR part 1952, subparts C (South Carolina), E (Utah), J (Iowa), N (Minnesota), Q (Kentucky), R (Alaska), S (Virgin Islands), Z (Indiana) and BB (Wyoming) are hereby amended as set forth below:

PART 1952—[AMENDED]

1. The authority citation of Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart C—South Carolina

2. Section 1952.94 is amended by revising paragraph (b) to read as follows:

§ 1952.94 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in South Carolina. The plan does not cover private sector maritime employment; military bases; Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas); the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that South Carolina retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

3. Section 1952.95 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.95 Level of Federal enforcement.

* * * * *

(b) (1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the South Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities, and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments, and employment on military bases and at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas). Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.94(b). Federal jurisdiction is also retained with respect to Federal government employers and employees.

* * * * *

4. Section 1952.97 is amended by adding paragraph (c) to read as follows:

§1952.97 Changes to approved plan.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved South Carolina's plan amendment, dated August 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in South Carolina pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart E—Utah

5. Section 1952.114 is amended by revising paragraph (b) to read as follows:

§1952.114 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Utah. The plan does not cover private sector maritime employment; employment on Hill Air Force Base; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142 with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

6. Section 1952.115 is amended by revising paragraph (b) to read as follows:

§1952.115 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Utah plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health enforcement in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor

camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.114(b). Federal jurisdiction is also retained on the Hill Air Force Base, and with respect to all Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. Ineither of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

7. Section 1952.117 is amended by adding paragraph (c) to read as follows:

§1952.117 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Utah's plan amendment, dated July 31, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Utah pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart J—Iowa

8. Section 1952.164 is amended by revising paragraph (b) to read as follows:

§1952.164 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Iowa. The plan does not cover private sector maritime employment; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Iowa retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

9. Section 1952.165 is amended by revising paragraph (b) to read as follows:

§1952.165 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Iowa plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; private sector hazardous waste disposal facilities designated as Superfund sites. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.164(b). In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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10. Section 1952.167 is amended by adding paragraph (b) to read as follows:

§1952.167 Changes to approved plans.

* * * * *

(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Iowa's plan amendment, dated August 2, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Iowa pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart N—Minnesota

11. Section 1952.204 is amended by revising paragraph (b) to read as follows:

§1952.204 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Minnesota. The plan does not cover private sector offshore maritime employment; employment at the Twin Cities Army Ammunition Plant; Federal government employers and employees; any tribal or private sector employment within any Indian reservation in the State; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in

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"agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Minnesota retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

12. Section 1952.205 is amended by revising paragraph (b) to read as follows:

§1952.205 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce offshore all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.204(b). Federal jurisdiction is also retained over the Twin Cities Army Ammunition Plant, over Federal government employers and employees, and over any tribal or private sector employment within any Indian reservation in the State. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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13. Section 1952.207 is amended by adding paragraph (b) to read as follows:

§1952.207 Changes to approved plans.

* * * * *

(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Minnesota's plan amendment, dated July 24, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Minnesota pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart Q—Kentucky

14. Section 1952.234 is amended by revising paragraph (b) to read as follows:

§1952.234 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Kentucky. The plan does not cover private sector maritime employment; employment at Tennessee Valley Authority facilities, and on all military bases as well as any other properties ceded to the U.S. Government; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Kentucky retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

15. Section 1952.235 is amended by revising paragraph (b) to read as follows:

§1952.235 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments); employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the U.S. Government. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.234(b). Federal jurisdiction is also retained with respect to Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised

immediately upon agreement between Federal and State OSHA.

* * * * *

16. Section 1952.237 is amended by adding paragraph (c) to read as follows:

§1952.237 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997 the Assistant Secretary approved Kentucky's plan amendment, dated July 29, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Kentucky pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart R—Alaska

17. Section 1952.243 is amended by revising paragraph (b) to read as follows:

§1952.243 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Alaska. The plan does not cover private sector maritime employment; operations of private sector employers within the Metlakatla Indian Community on the Annette Islands; operations of private sector employers within Denali (Mount McKinley) National Park; worksites located on the navigable waters, including artificial islands; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Alaska retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

18. Section 1952.244 is amended by revising paragraph (b) to read as follows:

§1952.244 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments). Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor (Secretary's Order 5–96, December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.243(b). Federal jurisdiction will also be retained over marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National Park, and for Federal government employers and employees.

* * * * *

19. Section 1952.246 is amended by adding paragraph (c) to read as follows:

§ 1952.246 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Alaska's plan amendment, dated October 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Alaska pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart S—The Virgin Islands

20. Section 1952.253 is amended by revising paragraph (b) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in the Virgin Islands. The plan does not cover occupational health and the issues of maritime safety and health in the private sector; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Virgin Islands retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities. *Note:* The Virgin Islands final approval status under Section 18(c) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

21. Section 1952.254 is amended by revising paragraph (b) to read as follows:

§ 1952.254 Level of Federal enforcement.

* * * * *

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules, or orders,

which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules, or order and all Federal standards, current or future, specifically directed to maritime employment (e.g., 29 CFR Part 1915, shipyard employment; 29 CFR Part 1917, marine terminals; 29 CFR Part 1918, longshoring; 29 CFR Part 1919, gear certification), as well as provisions of general industry (29 CFR Part 1910) standards appropriate to hazards found in these employments. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142 , in agriculture, as described in § 1952.253(b). Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

* * * * *

22. Section 1952.256 is amended by adding paragraph (b) to read as follows:

§ 1952.256 Changes to approved plans.

* * * * *

(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved the Virgin Island's plan amendment, dated July 31, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in the Virgin Islands pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart Z—Indiana

23. Section 1952.324 is amended by revising paragraph (b) to read as follows:

§ 1952.324 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Indiana. The plan does not cover maritime employment in the private sector; private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Indiana retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

24. Section 1952.325 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.325 Level of Federal enforcement.

* * * * *

(b) (1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Indiana plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.324(b). Federal jurisdiction is also retained at private-sector hazardous-waste disposal facilities designated as Superfund sites, and with respect to Federal government employers and employees.

* * * * *

25. Section 1952.327 is amended by adding paragraph (b) to read as follows:

§ 1952.327 Changes to approved plans.

* * * * *

(b) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved Indiana's plan amendment, dated July 9, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Indiana pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

* * * * *

Subpart BB—Wyoming

26. Section 1952.344 is amended by revising paragraph (b) to read as follows:

§ 1952.344 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Wyoming. The plan does not cover private sector maritime employment; employment on the Warren Air Force Base employment; employment at private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest

processing of agricultural or horticultural commodities.

* * * * *

27. Section 1952.345 is amended by revising paragraph (b) to read as follows:

§ 1952.345 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Wyoming plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base and at private-sector hazardous-waste disposal facilities designated as Superfund sites as well as with respect to Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

28. Section 1952.347 is amended by adding paragraph (d) to read as follows:

§ 1952.347 Changes to approved plans.

* * * * *

(d) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved Wyoming's plan amendment, dated July 19, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Wyoming pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

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BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 57

[DoD Instruction 1342.12]

Provision of Early Intervention and Special Education Services to Eligible DOD Dependents in Overseas Areas

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Prior to 1991, the Department of Defense Dependents Schools (DoDDS) was required by the "Defense Dependent's Education Act of 1978," as amended, to adhere to the provisions of the "Education of All Handicapped Children Act." With the enactment of "Individuals with Disabilities Education Act Amendments of 1991," the Department of Defense was required to modify its existing special education program for children with disabilities, ages 3 through 21, and to provide early intervention services to children birth through 2 years. This final rule assigns responsibility for the implementation of the Act to the Under Secretary of Defense for Personnel and Readiness, reflecting a reorganization of the Department of Defense; assigns responsibilities for duties previously assigned to Regional Directors to Area Superintendents, reflecting a reorganization of the DoDDS; requires DoD to provide early intervention services to children with disabilities from birth through 2 years of age, requires DoDDS to extend special education services to students from 3 through 21 years of age rather than from 5 through 21; expands the categories of disability to include both autism and traumatic brain injury; expands special education services to include both assistive technology and transition; expands the role of the DoD Coordinating Committee to include early intervention as well as special education and related services; establishes a DoD Inter-Component Coordinating Council on Early Intervention; expands the definition section to include terminology not contained in the previous part; and transfers the administrative responsibility for conducting hearings pursuant to this rule to the Defense Office of Hearings and Appeals.

EFFECTIVE DATE: March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, DOD, Office of Family Policy, 4015 Wilson Blvd, BCT #3, Arlington, VA 22203–5190, 703–696–5734.

SUPPLEMENTARY INFORMATION: On May 31, 1995 (60 FR 28362), the Department of Defense published a proposed rule. Written comments were invited and due by July 31, 1995. In response to this invitation, six individuals and organizations submitted comments. In addition, pursuant to a notice appearing in the **Federal Register** on July 13, 1995 (60 FR 36081), DoD conducted a public hearing concerning the proposed rule on August 4, 1995. All written comments and the transcript of the public hearing are available for public inspection in the DoD Office of Family Policy at the above address.

The Office of the Secretary of Defense has carefully considered the views of the public as reflected in the written comments and testimony at the public hearing. A description of these views and a discussion of the Department's response to them follow.

General. One commenter noted that the proposed rule did not contain a reference to 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, as amended. This section does not apply to persons outside of the United States. Therefore, the final rule will not include a reference to it.

The same commenter noted that reference should be made to the Architectural Barriers Act of 1968. This act is implemented in other regulatory guidance, and therefore does not require reference in this final rule.

One commenter recommended that consideration be given to consolidating the DoD Instructions that pertain to the

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Department's overseas and domestic schools' special education and related services programs. The underlying statutory bases are different for the DoD domestic and overseas schools and their service delivery models are different. Therefore, the Department will maintain separate regulatory guidance.

Section 57.3. One commenter recommended that the final rule include the term "psychotherapy" in the definition of psychological services. The final rule uses the definition from the U.S. Department of Education regulation regarding special education. That definition does not contain the term "psychotherapy;" therefore, this recommendation was not accepted.

Section 57.3. One commenter requested that the reference to early intervention provided under the supervision of a military health department be changed to acknowledge that early intervention services are not necessarily health or medical in nature. The final rule will not incorporate this suggestion since the assignment of early intervention to the military medical departments was accomplished for organizational efficiency.

The same commenter recommended that reference in the definitions to "medically related services" might confuse the supportive and educational nature of occupational therapy in schools and perpetuate a medical model of services. The final rule will not incorporate this recommendation. Present practice in the DoD includes occupational therapy and some other types of related services under the heading of medically related services because these responsibilities were assigned to the military medical departments. The Department does not believe that this has resulted in the use of the medical model in the provision of medically related services.

Appendix A, Section C.1.M. One commenter noted that the definition for "developmental delay" contained in the proposed rule included two criteria that were not equivalent. In order to clarify the intent of the criteria, the definition was changed to the following. "C.1. The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 2 standard deviations below the mean in at least one area, or by a 25 percent delay in at least one area on assessment instruments that yield scores in months, or a developmental delay of 1.5 standard deviations below the mean in two or more areas, or by a 20 percent delay on assessment instruments that yield scores in months in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive."

Appendix B, Section B.1.(e). One commenter recommended that the term "education" be defined for students with disabilities to delineate clearly that this is a broad concept including socialization and life skills for more involved students. The Final Rule will not further define this term since DoD guidance and practice include the concept of education in the broadest sense of the term.

Appendix B, Section 4. A commenter noted that the frequency of the reevaluation process should not be limited to every three years, but should occur each year. This section in the proposed rule states that "a reevaluation *for eligibility* must occur *at least* every three years, *or more frequently*." Evaluations to determine the need for services may be completed at any time, and progress reports on goals and objectives must be developed at each annual review. The final rule follows the U.S. Department of Education regulation regarding reevaluation. Therefore, this recommendation will not be incorporated in the final rule.

Appendix C, Appendix D, and Appendix E. One commenter recommended expanding the membership on the National Advisory Panel on the Education of Dependents with Disabilities, the DoD Coordinating Committee on Early Intervention, Special Education and Related Services, and the DoD Inter-Component Coordinating Council on Early Intervention to include individuals who are knowledgeable of early intervention, special education, and related services in the States and who have experience in providing those services to children and their families. The proposed rule conformed to the statutory requirements of membership. Therefore, the membership of the committees and panel has not been changed in the final rule.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this final rule will not be significant as defined by Executive Order 12866.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this final rule will not have a significant economic impact on substantial numbers of small entities because it affects only eligible DoD dependents in overseas areas.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that this final rule will not impose any reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

Accordingly, 32 CFR part 57 is revised to read as follows:

PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS IN OVERSEAS AREAS

Sec.
57.1 Purpose.
57.2 Applicability and scope.
57.3 Definitions.
57.4 Policy.
57.5 Responsibilities.
57.6 Procedures.
Appendix A to part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers with Disabilities and their Families
Appendix B to part 57—Procedures for Education Programs and Services for Children with Disabilities, Aged 3 to 21, Inclusive
Appendix C to part 57—The National Advisory Panel (NAP) on the Education of Dependents with Disabilities
Appendix D to part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services
Appendix E to part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention
Appendix F to part 57—Mediation and Hearing Procedures

Authority: 20 U.S.C. 921 and 1400.

§ 57.1 Purpose.

This part:

(a) Implement policy and update responsibilities and procedures under 20 U.S.C. 921–932, 20 U.S.C. 1400 *et seq.*, DoD Directive 1342.6 [1], and DoD Directive 1342.13 [2] for providing the following:

(1) A free appropriate public education (FAPE) for children with disabilities who are eligible to enroll in the Department of Defense Dependent Schools (DoDDS).

(2) Early intervention services for infants and toddlers birth through age 2 years who, but for their age, would be eligible to enroll in the DoDDS under DoD Directive 1342.13.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 57.1(a).

(3) A comprehensive and multidisciplinary program for early intervention services for infants and toddlers with disabilities and their families.

(b) Establishes a National Advisory Panel (NAP) on Education for Children with Disabilities, ages 3 to 21, inclusive, and a DoD Inter-Component Council (ICC) on Early Intervention, in accordance with DoD Directive 5105.4 [3].

(c) Establishes a DoD Coordinating Committee (DoD–CC) on Early Intervention, Special Education, and Medically Related Services (MRS).

(d) Authorizes implementing instructions consistent with DoD 5025.1–M [4], and DoD forms consistent with DoD 83201–M [5], DoD 8910.1–M [6], and DoD Instruction 7750.7 [7].

§ 57.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) Does not apply to schools operated by the Department of defense in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianna Islands, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Islands).

(c) Applies to infants, toddlers, and children receiving or entitled to receive early intervention services or special educational instruction and related services from the Department of Defense, and their parents.

§ 57.3 Definitions.

Area superintendent. The Superintendent of a DoDDS area, or designee.

Assessment. Techniques, procedures, and/or instruments used to measure the individual components of an evaluation.

Assistive technology device. Any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of children with disabilities.

Assistive technology service. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. That term includes the following:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities, or, the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

Audiology. A service that includes the following:

(1) Identification of children with auditory impairments.

(2) Determination of the range, nature, and degree of hearing loss, and communication functions including referral for medical or other professional attention for the habilitation of hearing.

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech-reading (lip-reading), hearing evaluation, and speech conservation.

(4) Creation and administration of programs for the prevention of hearing loss.

(5) Counseling and guidance of pupils for the prevention of hearing loss.

(6) Determination of the child's need for group and individual amplification, selecting and fitting an aid, and evaluating the effectiveness of amplification.

Autism. A development disability significantly affecting verbal and nonverbal communication and social interaction generally evident before age 3 that adversely affects educational performance. That term does not include a child with characteristics of the disability termed "serious emotional disturbance."

Case study committee (CSC). (1) A school-level team comprised of, among others, the principal, other educators, parents, and MRS providers who do the following:

(i) Oversee screening and referral of children who may require special education.

(ii) Oversee the multidisciplinary evaluation of such children.

(iii) Determine the eligibility of the student for special education and related services.

(iv) Formulate an individualized education curriculum reflected in an Individualized Education Program (IEP), in accordance with this part.

(v) Monitor the development, review, and revision of IEPs.

(2) In addition to the required members of the CSC, other membership will vary depending on the purpose of the meeting. An area CSC, appointed by the DoDDS Area Superintendent, acts in the absence of a school CSC. Members of an area CSC may be assigned to augment a school CSC. The area CSC must have at least two members besides the parent. One of the DoDDS members must have the authority to commit DoDDS resources; one shall be qualified to provide, or supervise the provision of special education. Other members may be selected from the following groups:

(i) DoDDS regular education personnel.

(ii) DoDDS special education personnel.

(iii) MRS personnel.

Child-find. The ongoing process used by the DoDDS, the Military Departments, and the other DoD Components to seek and identify children from birth to age 21, inclusive, who may require early intervention services or special education and related services. Child-find activities include the dissemination of information to the public, the identification and screening of children, and the use of referral procedures.

Children with disabilities (ages 3 To 21, inclusive). Children, before graduation from high school or completion of the General Education Degree, who have one or more impairments, as determined by a CSC and who need special education and related services.

Consent. That term means the following:

(1) The parent is fully informed of all information about the activity for which consent is sought in the native language or in another mode of communication, if necessary.

(2) The parent understands and agrees in writing to the implementation of the activity for which permission is sought. That consent describes the activity, lists the child's records (if any) to be released outside the Department of Defense, and specifies to whom the records shall be sent. The signed consent acknowledges

[3] See footnote 1 to § 57.1(a).
[4] See footnote 1 to § 57.1(a).
[5] See footnote 1 to § 57.1(a).
[6] See footnote 1 to § 57.1(a).
[7] See footnote 1 to § 57.1(a).

the parent's understanding that the parental consent is voluntary and may be revoked at any time.

Counseling service. A service provided by a qualified social worker, psychologist, guidance counselor, or other qualified personnel.

Deaf-blindness. Concomitant hearing and visual impairments. That disability causes such severe communication, developmental, and educational problems that it cannot be accommodated in special education programs solely for children with deafness or blindness.

Deafness. A severe hearing loss or deficit that impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the educational performance adversely.

Developmental delay. That term means the following:

(1) A significant discrepancy in the actual functioning of an infant, toddler, or child, birth through age 5, when compared with the functioning of a nondisabled infant, toddler, or child of the same chronological age in any of the following areas: physical, cognitive, communication, social or emotional, and adaptive developmental as measured using standardized evaluation instruments and confirmed by clinical observation and judgment.

(2) *High probability for developmental delay.* An infant or toddler, birth through age 2, with a diagnosed physical or mental condition, such as chromosomal disorders and genetic syndromes, that places the infant or toddler at substantial risk of evidencing a developmental delay without the benefit of early intervention services.

Early identification. The implementation of a formal plan for identifying a disability as early as possible in a child's life.

Early intervention services. (1) Developmental services that meet the following criteria:

(i) Are provided under the supervision of a Military medical Department.

(ii) Are provided using Military Health Services System resources at no cost to the parents. Parents may be charged in those instances where Federal law provides for a system of payments by families including a schedule of sliding fees, if any, (and incidental fees identified in Service guidance) that are normally charged to infants, toddlers, and children without disabilities or to their parents.

(iii) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(A) Physical.

(B) Cognitive.

(C) Communication.

(D) Social or emotional.

(E) Adaptive development.

(iv) Meet the standards developed or adopted by the Department of Defense.

(v) Are provided by qualified personnel including early childhood special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, and pediatricians and other physicians.

(vi) Maximally, are provided in natural environments including the home and community settings where infants and toddlers without disabilities participate.

(vii) Are provided in conformity with an Individualized Family Service Plan (IFSP).

(2) Developmental services include, but are not limited to, the following services: family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above early intervention services; and transportation and related costs necessary to enable an infant or toddler and the family to receive early intervention services.

Eligible. The term refers to children who meet the age, command sponsorship, and dependency requirements established by the DDEA, as amended, 20 U.S.C. 921 *et seq.* and DoD Directive 1342.13. When those conditions are met, children without disabilities, ages 5 to 21, and children with disabilities, ages 3 to 21, inclusive, are authorized to receive educational instruction from the DoDDS. Additionally, an eligible infant or toddler with disabilities is a child from birth through age 2 years who meets all of the DoDDS eligibility requirements except for the age requirement. In school year 1994 through 1995, multidisciplinary assessments, IFSPs, and case management services shall be required and beginning in school year 1995 through 1996, an eligible infant or toddler is entitled to receive early intervention services, in accordance with 20 U.S.C. 1400 *et seq.*

Evaluation. The synthesis of assessment information by a multidisciplinary team used to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive early intervention or special education and/or related services.

Family training, counseling, and home visits. Services provided by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services. Those services assist a family in understanding the special needs of the child and enhancing the child's development.

Free appropriate public education (FAPE). Special education and related services that do the following:

(1) Are provided at no cost to parents of a child with a disability, and are under the general supervision and direction of the DoDDS.

(2) Are provided in the least restrictive environment at a preschool, elementary, or secondary school.

(3) Are provided in conformity with an IEP.

(4) Meet the requirements of this part.

Functional vocational evaluation. A student-centered appraisal process for vocational development and career decision making. It allows students, educators, and others to gather information about such development and decision making. Functional vocational evaluation activities for transitional, vocational, and career planning; instructional goals; objectives; and implementation.

Health services. Services necessary to enable an infant or toddler to benefit from the other early intervention services being received under this part. That term includes the following:

(1) Services such as clean intermittent catheterization, tracheotomy care, tube feeding, changing of dressings or colostomy collection bags, and other health services.

(2) Consultation by physicians with other service providers about the special healthcare needs of infants and toddlers with disabilities that shall need to be addressed in the course of providing other early intervention services.

(3) That term does not include the following:

(i) Services that are surgical or solely medical.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical or health services routinely recommended for all infants or toddlers.

Hearing impairment. An impairment in hearing, whether permanent or

fluctuating, which adversely affects a child's educational performance, but is not included under deafness.

Independent evaluation. An evaluation conducted by a qualified examiner who is not employed by the DoDDS.

Individualized education program (IEP). A written document defining specially designed instruction for a student with a disability, ages 3 to 21, inclusive. That document is developed and implemented, in accordance with this part.

Individualized family service plan (IFSP). A written document for an infant or toddler, age birth through 2, with a disability and the family of such infant or toddler that is based on a multidisciplinary assessment of the unique needs of the child and concerns and priorities of the family, and identifies the early intervention and other services appropriate to meet such needs, concerns, and priorities.

Infants and toddlers with disabilities. Children, ages birth through 2, who need early intervention services because they:

(1) Are experiencing a developmental delay; or,

(2) Have a diagnosed physical or mental condition that has high probability of resulting in a developmental delay.

Inter-component. Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities and to their families.

Medical services. Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and /or credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

Medically related services. (1) Medical services (as defined in definition "Medical services") are those services provided under professional medical supervision, which are required by a CSC to determine a student's eligibility for special education and, if the student is eligible, the special education and related services required by the student under this part.

(2) Direct or indirect services under the development or implementation of an IEP necessary for the student to benefit from the educational curriculum. Those services may include medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

Meetings. All parties attending a meeting to determine eligibility or placement of a child shall appear personally at the meeting site on issuance of written notice and establishment of a date convenient to the concerned parties. When a necessary participant is unable to attend, electronic communication suitable to the occasion may be used to involve the unavailable party. Parents generally shall be responsible for the cost of travel to personally attend meetings about the eligibility or placement of their child.

Mental retardation. Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior. That disability is manifested during the developmental period and adversely affects a child's educational performance.

Multidisciplinary. The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities, and development of an IFSP or an IEP.

Native language. When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parent of the child.

Natural environments. Settings that are natural or normal (e.g., home or day care setting) for the infant, toddler, or child's same-age peers who have no disability.

Non-DoDDS placement. An assignment by the DoDDS of a child with a disability to a non-DoDDS school or facility.

Non-DoDDS school or facility. A public or private school or other institution not operated by the DoDDS.

Nutrition services. Those services to infants and toddlers include the following:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical, and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring plans to address the nutritional needs of infants and toddlers eligible for early intervention services.

(3) Making referrals to community resources to carry out nutrition goals.

Occupational therapy. That term includes services to address the functional needs of children (birth to age 21, inclusive) related to adaptive development; adaptive behavior and play; and sensory, motor, and postural development. Those services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include the following:

(1) Identification, assessment, and intervention.

(2) Adaption of the environment and selection, design, and fabrication of assistive and orthotic devices to help development and promote the acquisition of functional skills.

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

Orthopedic impairment. A severe physical impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot or absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis, and impairments from other causes such as cerebra palsy, amputations, and fractures or burns causing contractures.

Other health impairment. Limited strength, vitality, or alterness due to chronic or acute health problems that adversely affect a child's educational performance. Such impairments include heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, diabetes, or attention deficit disorder.

Parent. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, if such person stands in loco parentis to that child and contributes at least one-half of the child's support.

Parent counseling and training. A service to assist parents in understanding the special needs of their child's development and by providing them with information on child development and special education.

Personally identifiable information. Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Examples include name, parent's name, address, social security number, or a list of personal characteristics.

Physical therapy. That term includes services to children (birth to age 21, inclusive) to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development,

cardiopulmonary status, and effective environmental adaption. Those services include the following:

(1) Screening, evaluation, and assessment to identify movement dysfunction.

(2) Obtaining, interpreting, and integrating information to appropriate program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

Primary referral source. Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and brings the child to the attention of the EIP.

Psychological services. A service that includes the following:

(1) Administering psychological and educational tests and other assessment procedures.

(2) Interpreting test and assessment results.

(3) Obtaining, integrating, and interpreting information about a child's behavior and conditions to learning.

(4) Consulting with other staff members, including service providers, to plan programs to meet the special needs of children, as indicated by psychological tests, interviews, and behavioral evaluations.

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

Public awareness program. Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of early intervention services. Procedures to determine the availability of information on early intervention services to parents are also included in that program.

Qualified. A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides special education or related services or early intervention services to an infant, toddler, or child with a disability.

Recreation. A related service that includes the following.

(1) Assessment of leisure activities.

(2) Therapeutic recreational activities.

(3) Recreational programs in schools and community agencies.

(4) Leisure education.

Rehabilitation counseling. Services provided by a rehabilitation counselor or other qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability.

Related services. Transportation and such developmental, corrective, and other supportive services as required to assist a child, age 3 to 21, inclusive, with a disability to benefit from special education under the child's IEP. The term includes speech therapy and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluative purposes. That term also includes rehabilitation counseling services, school health services, social work services in schools, and parent counseling. The sources for those services are school, community, and medical treatment facilities (MTFs).

School health services. Services provided by a qualified school nurse or other qualified person.

Separate facility. A school or a portion of a school, regardless of whether it is operated by the DoDDS, attended exclusively by children with disabilities.

Serious emotional disturbance. A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affect educational performance, and exhibits one or more of the following characteristics:

(1) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(2) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(3) Inappropriate types of behavior under normal circumstances.

(4) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5) A general pervasive mood of unhappiness or depression. Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are seriously emotionally disturbed.

Service coordination. Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural safeguards, and services that are authorized to be provided under the DoD EIP. Those activities include the following:

(1) Coordinating the performance of evaluation and assessments.

(2) Assisting families to identify their resources, concerns, and priorities.

(3) Facilitating and participating in the development, review, and evaluation of IFSPs.

(4) Assisting in identifying available service providers.

(5) Coordinating and monitoring the delivery of available services.

(6) Informing the family of support or advocacy services.

(7) Coordinating with medical and health providers.

(8) Facilitating the development of a transition plan to preschool services.

Service provider. Any individual who provides services listed in an IEP or an IFSP.

Social work services in schools. A service that includes the following:

(1) Preparing a social or developmental history on a child with a disability.

(2) Counseling a child and the family on a group or individual basis.

(3) Working with those problems in a child's home, school, or community that adversely affect adjustment in school.

(4) Using school and community resources to enable a child to receive maximum benefit from the educational program.

Special education. Instruction and related services for which a child, age 3 to 21, inclusive, becomes entitled when a CSC determines a child's educational performance is adversely affected by one or more disabling conditions.

(1) Special education is specially designed instruction, including physical education, which is provided at no cost to the parent or guardians to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

(2) That term includes speech therapy or any other related service if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(3) That term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(4) *At no cost.* For a child eligible to attend the DoDDS without paying

tuition, specially designed instruction and related services are provided without charge. Incidental fees normally charged to nondisabled students or their parents as a part of the regular educational program may be imposed.

(5) *Physical education.* The development of the following:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(6) *Vocational education.* Organized educational programs for the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Special instruction. That term includes the following:

(1) The design of learning environments and activities to promote acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Curriculum planning, including the planned interaction of personnel, materials, time, and space, that leads to achieving the outcomes in an IEP or an IFSP.

(3) Providing families with information, skills, and support to enhance skill development.

(4) Working with a child to enhance development and cognitive processes.

Specific learning impairment. A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term, commonly called, "specific learning disability," does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic differences.

Speech and language impairments. A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a child's educational performance.

Speech therapy. That related service includes the following:

(1) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills.

(2) Diagnosis and appraisal of specific speech or language impairments.

(3) Referral for medical or other professional attention to correct or habilitate speech or language impairments.

(4) Provision of speech and language services for the correction, habilitation, and prevention of communicative impairments.

(5) Counseling and guidance of children, parents, and teachers for speech and language impairments.

Transition services. That term means the following:

(1) A coordinated set of activities for a student that may be required to promote movement from early intervention, preschool, and other educational programs into different educational settings or programs.

(2) For students 14 years of age and older, transition services are designed in an outcome-oriented process which promotes movement from school to postschool activities; including, post-secondary education, vocational training, integrated employment; and including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, considering the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other postschool adult living objectives, and acquisition of daily living skills and functional vocational evaluation.

Transportation. A service that includes the following:

(1) Services rendered under the IEP of a child with a disability:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel in and around school buildings.

(iii) Specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide transportation for a child with a disability.

(2) Transportation and related costs for early intervention services include the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an eligible child and the family to receive early intervention services.

Traumatic brain injury. An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance. That term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. That term does not include brain injuries that are congenital or degenerative, or brain injuries that are induced by birth trauma.

Vision services. Services necessary to habilitate or rehabilitate the effects of sensory impairment resulting from a loss of vision.

Visual impairment. An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partially seeing and blind children.

§ 57.4 Policy.

It is DoD policy that:

(a) Eligible infants and toddlers with disabilities and their families shall be entitled to receive early intervention services consistent with Appendix A to this part.

(b) Eligible children with disabilities, ages 3 to 21, inclusive, shall be provided a FAPE in the least restrictive environment, consistent with Appendix B to this part.

(c) Parents of eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive, shall be full participants in early intervention and special education services.

§ 57.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) Establish a NAP consistent with Appendix C to this part.

(2) Establish and chair, or designate a "Chair," of the DoD-CC on Early Intervention, Special Education, and MRS consistent with Appendix D to this part.

(3) Establish and chair, or designate a "Chair," of the DoD Inter-Component Coordinating Council (ICC) on Early Intervention consistent with Appendix E to this part.

(4) Ensure compliance with this part in the provision of early intervention services, special education, and related

services through the DoD-CC, in accordance with DoD Instruction 1342.14[8] and other appropriate guidances.

(5) In consultation with the General Counsel of the Department of Defense (GC, DoD) and the Secretaries of the Military Departments, do the following:

(i) Ensure that eligible infants and toddlers with disabilities and their families are provided early intervention services under 20 U.S.C. 921 *et seq.* and 1400 *et seq.*

(ii) Ensure the coordination of early intervention, special education, and related services.

(iii) Ensure the development of a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth to age 21, inclusive, under 20 U.S.C 921 *et seq.* and 1400 *et seq.* who may require early intervention or special education services.

(iv) Ensure that DoD personnel are trained to provide the mediation services specified in Appendix F to this part.

(v) Ensure that transition services are available to promote movement from early intervention, preschool, and other educational programs into different educational settings and postsecondary environments.

(vi) Ensure that DoD personnel who provide services (e.g., child care, medical care, and recreation) to infants and toddlers and their families are participants in a comprehensive inter-Component system for early intervention services.

(vii) Assign functions and geographic regions of responsibility to the Military Departments for providing MRS and early intervention services.

(viii) Ensure that the Military Departments deliver the following:

(A) A comprehensive, coordinated and multidisciplinary program of early intervention services for eligible infants and toddlers with disabilities.

(B) MRS for eligible children with disabilities, ages 3 to 21, inclusive.

(ix) Ensure that qualified personnel participate in providing transition services for eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive.

(x) Ensure the development and implementation of a comprehensive system of personnel development for the DoDDS and the Military Departments. That system shall include professionals, paraprofessionals, and primary referral source personnel in the areas of early intervention, special education, and MRS. That system may include the following:

(A) Implementing innovative strategies and activities for the recruitment and retention of providers of early intervention services, special education, and MRS.

(B) Ensuring that personnel requirements are established consistent with recognized certification, licensing, registration, or other comparable requirements for personnel providing early intervention services, special education, or MRS.

(C) Ensuring that training is provided in and across disciplines.

(D) Training providers of early intervention services, special education, and MRS to work overseas.

(xi) Develop procedures to compile data on the numbers of eligible infants and toddlers with disabilities and their families in need of early intervention services, in accordance with DoD Directives 5400.7 and 5400.11.[9] Those data elements shall include the following:

(A) The number of infants and toddlers and their families served.

(B) The types of services provided.

(C) Other information required to evaluate the implementation of early intervention programs (EIPs).

(xii) Resolve disputes in the DoD Components arising under Appendix A to this part.

(b) The Secretaries of the Military Departments shall:

(1) Provide MRS for eligible children with disabilities, ages 3 to 21, inclusive.

(2) Plan, develop, and implement a comprehensive, coordinated, intra-Component, and community-based system of early intervention services for eligible infants and toddlers with disabilities and their families.

(3) Design and implement activities to ensure compliance through technical assistance and program evaluation for early intervention and MRS.

(c) The Director, Department of Defense Education Activity, shall ensure that the Director, DoDDS, does the following:

(1) Ensures that eligible children with disabilities, ages 3 to 21, inclusive, are provided a FAPE.

(2) Ensures that the educational needs of children with and without disabilities are met comparably, consistent with Appendix B to this part.

(3) Ensures that educational facilities and services operated by the DoDDS for children with and without disabilities are comparable.

(4) Maintains records on special education and related services provided to eligible children with disabilities, ages 3 to 21, inclusive, consistent with DoD Directive 5400.11.

(5) Provides any or all special education and related services required by a child with a disability, ages 3 to 21, inclusive, other than those furnished by the Secretaries of the Military Departments. The Director, DoDDS, may act through inter-Agency, intra-Agency, and inter-Service arrangements, or through contracts with private parties when funds are authorized and appropriated.

(6) Participates in the development and implementation of a comprehensive system of personnel development.

(7) Undertakes activities to ensure compliance by the DoDDS with this part through monitoring, technical assistance, and program evaluation of special education and those related services provided by the DoDDS.

(d) The *Director, Defense Office of Hearings and Appeals,* under the *General Counsel of the Department of Defense,* shall ensure impartial due process hearings are provided consistent with Appendix F to this part.

§ 57.6 Procedures.

(a) The procedures for early intervention services for infants and toddlers with disabilities and their families are prescribed in Appendix A to this part.

(b) The procedures for educational programs and services for children with disabilities, ages 3 to 21, inclusive, are prescribed in Appendix B to this part.

(c) The procedures for conducting hearings are prescribed in Appendix F to this part.

Appendix A to Part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities and Their Families

A. Requirements for an Early Intervention Program (EIP)

1. All eligible infants and toddlers with disabilities from birth through age 2 and their families shall receive early intervention services, as follows:

a. In school years 1991 through 1994, the Department of Defense planned and continues to develop a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among DoD entities involved in providing such services.

b. In school year 1994 through 1995, the Department of Defense implemented and shall continue to implement the following program components described in paragraph A.1.a. of this Appendix:

(1) Multidisciplinary assessments.

(2) IFSPs.

(3) Service coordination.

c. In school year 1995 through 1996, the Department of Defense shall implement the program described in paragraph A.1.a. of this Appendix.[1]

2. Early intervention services shall be provided in the natural environment.

3. Parents of infants and toddlers with disabilities are to be full and meaningful participants in the EIP.

B. Military Department Responsibilities

Each Military Department shall develop and implement in its assigned geographic area a system to provide for the following:

1. A comprehensive child find procedure coordinated with the DoDDS child find system and primary referral sources such as the child development center and the pediatric clinic.

2. Administration and supervision of EIPs and services.

3. Identification of available resources and coordination with those resource providers,

[8] See footnote 1 to § 57.1(a).

[9] See footnote 1 to § 57.1(a).

[1] The EIP shall be continuously implemented.

including the DoD Components, who routinely provide services to infants and toddlers without disabilities and their families.

4. Procedures to provide timely services for infants and toddlers with disabilities and their families.

5. Procedures to resolve inter-Component disputes about the delivery of early intervention services.

6. Procedures to collect and report data reflecting the number of infants and toddlers and their families served, the types of services provided, and other information required by the USD(P&R) implementation of early intervention services.

7. Multidisciplinary, comprehensive, and functional assessment of the unique strengths and needs of infants or toddlers and the identification of services to meet those needs.

8. Procedures for a family-directed assessment to determine resources, priorities, and concerns of a family and to identify services necessary to enhance a family's capacity to meet the child's needs.

9. An IFSP that details the early intervention services and the coordination of those services.

10. A public awareness program focusing on early identification of infants and toddlers with disabilities.

11. A central directory that includes a description of the early intervention services and other relevant resources available in each military community overseas.

12. Information to parents about their EIP procedural safeguards.

13. Establishment of ICCs at appropriate levels. Memberships shall include parents and the DoD Components who are involved in the delivery of early intervention services.

14. Policies and procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the EIP are prepared and trained.

C. Eligibility

Infants and toddlers with disabilities from birth through age 2 are eligible for early intervention services because they meet one of the following criteria:

1. The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 2 standard deviations below the mean in at least one area, or by a 25 percent delay in at least one area on assessment instruments that yield scores in months, or a developmental delay of 1.5 standard deviations below the mean in two or more areas, or by a 20 percent delay on assessment instruments that yield scores in months in two or more of the following areas of development: Cognitive, physical, communication, social or emotional, or adaptive.

2. The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; e.g., chromosomal disorders or genetic syndromes.

D. IFSP

1. Each military medical department shall develop and implement procedures to ensure that an IFSP is developed by a multidisciplinary team including the parents of each infant or toddler with a disability who meets the eligibility criteria in section C.1. of this appendix.

2. Meetings to develop and review the IFSP must include the following participants:

a. The parent or parents of the child.

b. Other family members, as requested by the parent, if possible.

c. An advocate outside of the family, if the parent requests that person's participation.

d. The EIP services coordinator who has worked with the family since the initial referral of the child or who has been designated as "responsible for the implementation of the IFSP."

e. The person(s) directly involved in conducting the evaluations and assessments.

f. As appropriate, persons who shall provide services to the child or family.

3. If a person listed in section D.2. of this appendix is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including the following:

a. Participating in a telephone conference call.

b. Having a knowledgeable representative attend the meeting.

c. Making pertinent records available at the meeting.

4. The IFSP shall be written in a reasonable time after assessment and shall contain the following:

a. A statement of the child's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on acceptable objective criteria.

b. A statement of the family's resources, priorities, and concerns on enhancing the child's development.

c. A statement of the major outcomes expected to be achieved for the child and the family. Additionally, the statement shall contain the criteria, procedures, and timeliness used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the outcomes and services are necessary.

d. A statement of the specific early intervention services necessary to meet the unique needs of the child and the family including the frequency, intensity, and method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of those services.

g. The name of the EIP service coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to preschool or other services.

5. The IFSP shall be evaluated at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the child and family needs).

6. The contents of the IFSP shall be explained to the parents and an informed, written consent from the parents shall be obtained before providing early intervention services described in that plan.

7. With the parent's consent, early intervention services may begin before the completion of the evaluation and assessment when it has been determined by a multidisciplinary team that a service is needed immediately by the child and/or the child's family. Although all assessments have not been completed, an IFSP must be developed before the start of services. The remaining assessments must then be completed in a timely manner.

8. If a parent does not provide consent for participation in all early intervention services, the services shall still be provided for those interventions to which a parent does give consent.

E. Procedural Safeguards in the EIP

1. Parents of infants and toddlers with disabilities are afforded the following procedural safeguards to ensure that their children receive appropriate early intervention services:

a. The timely administrative resolution of parental complaints, including hearing procedures in appendix F to this part.

b. The right to confidentiality of personally identifiable information under DoD Directive 5400.11.[2]

c. The right to written notice and consent to the release of relevant information outside the Department of Defense.

d. The right to determine whether they, their child, or other family members shall accept or decline any early intervention services without jeopardizing other early intervention services.

e. The opportunity to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

f. The right to prior written notice when the EIP multidisciplinary team proposes, or refuses, to initiate or change the identification, evaluation, placement, or provision of early intervention services to the infant or toddler with a disability.

g. The right to prior written notice in their native language, unless it clearly is not possible to do so, which informs them of all procedural safeguards.

h. During the pendency of any proceeding or action involving a complaint, unless the EIP and the parents otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

2. Parents shall be advised of their rights to due process, as defined in appendix F to this part.

Appendix B to Part 57—Procedures for Educational Programs and Services for Children With Disabilities, Ages 3 to 21, Inclusive

A. Identification and Screening

It is the responsibility of school officials of the DoDDS to locate, identify, and with the consent of a child's parent, evaluate all children who are eligible to enroll in the

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

DoDDS under DoD Directive 1342.13[1] who may require special education and related services.

1. *Procedures for Identification and Screening.* The DoDDS officials shall conduct the following activities to determine if a child needs special education and related services:

a. Screen educational records.

b. Screen students using system-wide or other basic skill tests in the areas of reading, math, and language arts.

c. Screen school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel about the health status of a child.

d. Analyze school records to obtain pertinent information about the basis for suspensions, exclusions, withdrawals, and disciplinary actions.

e. In cooperation with the Military Departments, conduct on-going child-finding activities and publish, periodically, any information, guidelines, and direction on child-find activities for eligible children with disabilities, ages 3 to 21, inclusive.

f. Coordinate the transition of children from early intervention to preschool with the Military Services.

2. *Referral of a Child for Special Education or Related Services.* The DoDDS officials, MRS providers, or others who suspect that a child has a possible disabling condition shall refer that child to the CSC.

B. Assessment and Evaluation

Any eligible child who is referred to a CSC shall receive a full and comprehensive diagnostic evaluation of educational needs. An evaluation shall be conducted before an IEP is developed or placement is made in a special education program.

1. *Procedures for Assessment and Evaluation.* A CSC shall ensure that the following elements are included in a comprehensive assessment and evaluation of a child:

a. Assessment of visual and auditory acuity.

b. A plan to assess the type and extent of the disability. A child shall be assessed in all areas related to the suspected disability. When necessary, the assessment plan shall include the following:

(1) Assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.

(2) Observation in an educational environment.

(3) Assessment of physical status including perceptual and motor abilities.

(4) Assessment of the need for transition services for students 14 years and older, the acquisition of daily living skills, and functional vocational assessment.

c. The involvement of parents, under this part.

d. The use of all locally available community, medical, and school resources to accomplish the assessment. At least one specialist with knowledge in the area of the suspected disability shall be a member of the multidisciplinary assessment team.

e. The requirement that each assessor prepare an individual assessment report that describes the instruments and techniques used, the results of the testing, and the relationship of those findings to educational functioning.

f. The inclusion of a description of the problem area constituting the basis for an MRS referral.

2. *Standards for Assessment Selection and Procedures.* All DoD elements, including the CSC and MRS providers, shall ensure that assessment materials and evaluation procedures comply, as follows:

a. Selected and administered so as not to be racially or culturally discriminatory.

b. Administered in the native language or mode of communication of the child unless it clearly is not possible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by trained personnel in compliance with the instructions of the testing instrument.

e. Administered such that no single procedure is the sole criterion for determining an appropriate educational program for a child with a disability.

f. Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

g. Administered to a child with impaired sensor, motor, or communication skills so that the results reflect a child's actual ability or level of achievement, and simply not the impaired skill itself.

3. *Determination of Eligibility for Special Education and Related Services.* The CSC shall be convened to determine the eligibility of a child for special education and related services. The CSC shall do the following:

a. Ensure that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team. The team shall be comprised of teachers or other specialists with knowledge in the area of the suspected disability.

b. Meet as soon as possible after a child has been assessed to determine the eligibility of the child for services.

c. Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

d. Issue a written eligibility report that contains the following:

(1) A description of the nature of the child's disabling condition.

(2) A synthesis of the formal and informal findings of the multidisciplinary assessment team of the child's academic progress.

(3) A summary of information from the parents, the child, or other persons having significant previous contact with the child.

(4) A determination of eligibility statement.

(5) A list of the educational areas affected by a child's disability and a description of a child's educational needs.

4. *Reevaluation for Eligibility for Special Education and Related Services.* School officials shall provide a comprehensive reevaluation of a child with a disability every 3 years, or more frequently, if conditions warrant. The scope and type of the comprehensive reevaluation shall be determined individually based on a child's performance, behavior, and needs during the reevaluation.

C. Individualized Education Program (IEP)

The DoDDS officials shall ensure that the CSC develops and implements an IEP for each child with a disability who is enrolled in the DoDDS or is placed in another institution by the DoDDS.

1. *The CSC Meeting for the Development and Implementation of an IEP.* The CSC shall establish and convene a meeting to develop, review, or revise the IEP of a child with a disability. That meeting shall be scheduled as soon as possible following a determination by the school or area CSC that the child is eligible for special education and related services. The meeting participants shall, minimally, include the following:

a. A principal or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education.

b. The child's teacher.

c. A special education teacher.

d. One or both of the child's parents.

e. The child, if appropriate.

f. For a child with a disability who has been evaluated for the first time, a representative of the evaluation team who is knowledgeable about the evaluation procedures used and is familiar with the results of the evaluation.

g. Other individuals invited at the discretion of the parent or school.

2. *Requirements for the Development of the IEP.* The CSC shall prepare the IEP with the following:

a. A statement of the child's present levels of educational performance.

b. A statement of annual goals including short-term instructional objectives.

c. Objective criteria for determining, at least annually, whether the educational objectives are being achieved.

d. A statement of the physical education program provided in one of the following settings:

(1) In the regular education program.

(2) In the regular education program with adaptations, modifications, or the use of assistive technology.

(3) Through specially designed instruction based on the goals and objectives included in the IEP.

e. A statement of the transition services beginning at age 14 and annually, thereafter. When appropriate, include a statement of the inter-Agency responsibilities or linkages (or both) before the student leaves the school setting. If a specially designed instructional program is required, include the goals and objectives in the IEP.

f. A statement of special transportation requirement.

g. A statement of the amount of time a week that each special education and related service shall be provided to the child.

h. The extent to which the child shall participate in regular educational programs, including the following:

(1) The projected date for the initiation and the anticipated length of IEP activities and services.

(2) Any statements requiring an adjusted school day or an extended school year program.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

i. A statement of the vocational education program for secondary students. If a specially designed instructional program is required, the necessary goals and objectives in the IEP shall be included.

3. *Requirements for the Implementation of the IEP.* The DoDDS CSC shall:

a. Obtain parental agreement and signature before implementation of the IEP.

b. Provide a copy of the child's IEP to the parents.

c. Ensure that the IEP is in effect before a child receives special education and related services.

d. Review and revise the IEP for each child at least annually in a CSC meeting.

e. Accept a child's current IEP when he or she transfers to the DoDDS if the CSC of the gaining school or the area CSC does the following:

(1) Notifies and obtains consent of the parents to use the current IEP and all elements contained in it.

(2) Involves the local DoD Component responsible for the delivery of the MRS of the medical requirements in the IEP.

(3) Initiates a CSC meeting to revise the current IEP.

(4) If necessary, initiates an evaluation of the child.

f. Afford the child's parents the opportunity to participate in every CSC meeting to determine their child's initial or continuing eligibility for special education and related services, or to prepare or change the child's IEP or to determine or change the child's placement.

g. Ensure that at least one parent understands the special education procedures including the due process procedures described in appendix F of this part and the importance of the parent's participation in those processes. School officials shall use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent about the child.

h. Provide special education and related services, in accordance with the IEP. The Department of Defense and its constituent elements and personnel are not accountable if a child does not achieve the growth projected in the IEP.

i. Ensure that all provisions developed for any child entitled to an education by the DoDDS are fully implemented in schools or in non-DoDDS schools or facilities including those requiring special facilities, other adaptations, or assistive devices.

D. Placement Procedures and Least Restrictive Environment

1. A child shall not be placed by the DoDDS in any special education program unless the CSC has developed an IEP. If a child with a disability is applying for initial admission to a school, the child shall enter on the same basis as a child without a disability. A child with a disability and with the consent of a parent and school officials may receive an initial placement in a special education program under procedures listed in paragraph C.3.e. of this appendix.

2. A placement decision requires the following:

a. A parent consent to the placement before actual placement of the child, except as otherwise provided in section F.2. of this appendix.

b. Delivery of educational instruction and related services in the least restrictive environment. To the maximum extent, a child with a disability should be placed with children who are not disabled. Special classes, separate schooling, or other removal of a child with a disability from the regular education environment shall occur only when the type or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

c. The CSC to base placements on the IEP and to review the IEP at least annually.

d. A child shall participate, to the maximum extent, in school activities including meals, assemblies, recess periods, and field trips with children who are not disabled.

e. Consideration of factors affecting the child's well-being including the effects of separation from parents.

f. A child shall attend a DoDDS school that is located as close as possible to the residence of the parent who is sponsoring the child's attendance. Unless otherwise required by the IEP, the school should be the same school that the child would have attended had he or she not been disabled.

E. Children With Disabilities Who Are Placed in a Non-DOD School or Facility

Children with disabilities who are eligible to receive a DoDDS education, but are placed in a non-DoDDS school or facility by the DoDDS, shall have all the rights of children with disabilities who are enrolled in a DoDDS school. A child with a disability may be placed in a non-DoDDS school or facility only if required by the IEP.

1. *Requirements for a Non-DoDDS School or Facility Placement*

a. Placement in a non-DoDDS school or facility shall be made under the host-nation requirements.

b. Placement in a non-DoDDS school or facility is subject to all treaties, Executive agreements, and status of forces agreements between the United States and the host nations, and all DoD and DoDDS regulations.

c. If the DoDDS places a child with a disability in a non-DoDDS school or facility as a means of providing special education and related services, the program of that institution including nonmedical care and room and board, as in the child's IEP, must be provided at no cost to the child or the child's parents. The DoDDS or the responsible DoD Component shall pay the costs in accordance with DoD 1010.13–R [2].

d. Local school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoDDS school or facility should attend the meeting. If the representative cannot attend, the DoDDS officials shall communicate in other ways to ensure participation including individual or conference telephone calls. The IEP must meet the following standards:

(1) Be signed by an authorized DoDDS official before it becomes valid.

(2) Include a determination that the DoDDS does not currently have or cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(3) Include a determination that the non-DoDDS school or facility and its educational program and related services conform to the requirements of this part.

2. *Cost of Tuition For Non-DoDDS School or Facility.* The Department of Defense is not authorized to fund non-DoDDS placement unless it is directed by the DoDDS Area Superintendent in coordination with the Director, DoDDS; or it is directed by an impartial hearing officer or court of competent jurisdiction. A valid IEP must document the necessity of the placement in a non-DoDDS school or facility.

F. Procedural Safeguards for Children and Parents

Parents of children with disabilities are afforded procedural safeguards to ensure that their children receive a free public education consistent with appendix F to this part.

1. *Notice of Procedural Safeguards*

a. Parents shall be provided a written notice in a reasonable time before one of the following:

(1) Receiving a proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of free public education to the child.

(2) Receiving refusal from the DoDDS to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free public education.

b. The notice shall inform the parent of the following:

(1) Parental procedural rights detailed in appendix F to this part.

(2) A description of the action proposed or refused by the DoDDS with a brief explanation for the decision.

c. The notice shall be provided so as to ensure the parent's understanding. That may be achieved by using simplified language, delivering the notice in the parent's native language, or using an interpreter or other person selected by the parents.

2. *Parental Consent*

a. The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before any of the following:

(1) Initiation of formal evaluation procedures.

(2) Initial educational placement.

(3) Change in educational placement.

b. If the parent refuses consent to any formal evaluation or initial placement in a special education program, the DoDDs or the parent may do the following:

(1) Request a conference between the school and parents.

(2) Request mediation.

(3) Initiate an impartial due process hearing under appendix F to this part, to show cause as to why an evaluation or placement in a special education program should or should not occur without such

[2] See footnote 1 to section A. of this appendix.

consent. If the hearing officer sustains the DoDDS position in the impartial due process hearing, the DoDDS may evaluate or provide special education and related services to the child without the consent of a parent, subject to the further exercise of due process rights.

3. *Independent Evaluation*

a. A parent is entitled to an independent evaluation at the expense of the DoDDS if the parent disagrees with the DoDDS evaluation of the child and successfully challenges the evaluation in an impartial due process hearing. An independent evaluation provided at the DoDDS expense must do the following:

(1) Conform to the requirements of this part.

(2) Be conducted, when possible, in the area where the child resides.

(3) Meet DoD standards governing persons qualified to conduct an educational evaluation including an evaluation for MRS.

b. If the final decision rendered in an impartial due process hearing sustains the DoDDS evaluation, the parent has the right to an independent evaluation, but not at the DoDDS expense.

c. The DoDDS, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

4. *Access to Records.* The parents of a child with a disability shall be afforded an opportunity to inspect and review educational records about the identification, evaluation, and educational placement of the child, and the provision of a free public education for the child.

5. *Due Process Rights*

a. The parent of a child with a disability or the DoDDS has the opportunity to file a written petition for an impartial due process hearing at the DoDDS expense under appendix F to this part. The dispute may concern issues effecting a partial child's identification, evaluation, or placement, or the provision of a free and appropriate public education.

b. While an impartial due process hearing or judicial proceeding is pending, unless the DoDDS and a parent of the child agree otherwise, the child shall remain in the present educational setting, subject to the disciplinary procedures prescribed in section H. of this appendix.

6. *Dispute Resolution—Other Complaints.* A parent, teacher, or other person covered by this part may file a written complaint about any aspect of this part that is not a proper subject for adjudication by a due process hearing officer, in accordance with DSR 2500.10.[3]

G. Confidentiality of Records

The DoDDS officials shall maintain all student records, in accordance with DoD Directive 5400.11.[4]

H. Disciplinary Procedures

All regular disciplinary rules and procedures applicable to children receiving educational instruction in the DoDDS shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the following provisions:

1. Before suspending or expelling a child with a disability, the CSC or, a child with a disability in a non-DoDDS school, authorized DoDDS officials, shall determine the following:

a. Whether the behavioral conduct is the result of the child's disability.

b. If any change in the educational placement is needed.

2. If it is determined that the child's conduct results in whole or part from the disability, the child may not be subject to any regular disciplinary rules and procedures and the following procedures must be followed:

a. The child's parents shall be notified of the right to have an IEP meeting before any change in the child's educational placement.

b. The CSC or authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

c. The child may not be suspended for more than 10 days during a school year.

3. A child with a disability may be suspended on an emergency basis when it reasonably appears that the child's behavior may endanger the health, welfare, or safety of self or any other child, teacher, or school personnel. The following conditions apply:

a. The child's parents shall be notified immediately of that suspension and of the time, purpose, and location of the CSC meeting and of their right to attend the meeting.

b. That suspension remains in effect only for the duration of the emergency.

4. If it is determined that the child requires a change in educational placement, the CSC or, in the case of a child with a disability in a non-DoDDS school, authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

Appendix C to Part 57—The National Advisory Panel (Nap) on the Education of Dependents With Disabilities

A. Membership

The NAP shall meet as needed in publicly announced, accessible meetings open to the general public and shall comply with DoD Directive 5105.4[1]. The NAP members, appointed by the Secretary of Defense, or designee, shall include at least one representative from each of the following groups.

1. Persons with disabilities
2. The DoDDS special education teachers
3. The DoDDS regular education teachers.
4. Parents of children, ages 3 to 21, inclusive, who are receiving special education from the DoDDS.
5. The staff personnel of the DoDDS Headquarters.
6. Special education program managers from the DoDDS field activities.
7. Representatives of the Military Departments and overseas commands, including providers of related services.
8. Providers of the DoD early intervention services.
9. Other appropriate persons.

B. Activities

1. The NAP shall perform the following activities:

a. Review information about improvements in service provided to children with disabilities, ages 3 to 21, inclusive in the Department of Defense.

b. Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

c. When necessary establish committees for short-term purposes comprised of representatives from parent, student, professional groups, and individuals with disabilities.

d. Review the findings of fact and decisions of each impartial due process hearing conducted under appendix F of this part.

e. Assist in developing and reporting such information and evaluations as may assist the Department of Defense.

f. Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the special education program.

g. Comment publicly on rules or standards about the education of children with disabilities, ages 3 to 21, inclusive.

h. Perform such other tasks as may be requested by the USD(P&R) or the Director, DoDDS.

2. The NAP members shall serve under appointments that shall be for a term not to exceed 3 years.

C. Reporting Requirements

Submit an annual report of the NAP's activities and suggestions to the USD(P&R) and the Director, DoDDS, by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.[2]

Appendix D to Part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services

A. Committee Membership

The committee shall meet at least twice yearly to facilitate collaboration in early intervention, special education, and Medically Related Services (MRS) in the Department of Defense. The committee shall consist of the following members:

1. A representative of the USD(P&R) or designee, who shall serve as the Chair.
2. Representatives of the Secretaries of the Military Departments.
3. Representatives of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

[3] Copies of the appropriate forms are available at every school office.

[4] See footnote 1 to section A. of this appendix.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this appendix.

4. Representatives from the DoD school systems (domestic and overseas).
5. Representatives from the GC, DoD.

B. Responsibilities

1. Advise and assist the USD(P&R) in the performance of his or her responsibilities.
2. At the direction of the USD(P&R), advise and assist the Military Departments, and the DoD school systems (overseas and domestic) in the coordination of services among providers of early intervention, special education, and MRS.
3. Ensure compliance in the provision of early intervention services for infants and toddlers and special education and related services for children ages 3 to 21, inclusive.
4. Oversee the coordination of early intervention, special education, and related services.
5. Review the recommendations of the NAP and the Early Intervention ICC to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).
6. Promote the coordination of services and information sharing among the providers of early intervention, special education, and MRS.
7. Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and MRS in the DoDDS or the EIP through the Military Departments.

Appendix E to Part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention

A. Council Membership

The USD(P&R) shall appoint members to the ICC. The Council shall meet at least yearly in publicly announced, open meetings that are accessible to the general public and shall comply with DoD Directive 5105.4.[1] The Council shall be comprised of the following:

1. *Parents.* At least 20 percent of the members shall be parents with infants or toddlers with disabilities or children ages 12 or younger with disabilities, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler or a child age 6 or younger.
2. Representatives of the Surgeons General of the Military Departments.
3. Representatives of the family support programs of the Military Departments.
4. Representatives from the ASD(HA).
5. Representative(s) from the DoDDS.
6. A representative from the GC, DoD.

B. Responsibilities

1. Advise and assist the Military medical Departments in the performance of their responsibilities, particularly the identification of appropriate resources and Agencies for providing early intervention services and the promoting of inter-Component agreements.
2. Advise and assist the DoDDS on the transition of toddlers with disabilities to preschool services.
3. Identify strategies to address areas of conflict, overlap, duplication, or omission of early intervention services.
4. Review policy memoranda on effective inter-Department and inter-Component collaboration.
5. Review reports of technical assistance and monitoring activities and make recommendations to improve the policies, procedures, programs, and delivery of early intervention services.
6. Make recommendations based on program and operational information for changes in the policy, procedures, budget, organization, and general management of the EIPs.
7. Provide advice and technical assistance in the establishment, membership, and operation of installation or command level ICCs.
8. When necessary, establish committees for short-term purposes comprised of parents of children with disabilities, service providers, and representatives of professional groups.
9. Submit an annual report of its activities and suggestions to the USD(P&R) by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.[2]

C. Procedures

1. The USD(P&R) shall nominate and select all members to the ICC to include those listed in section A.1. of this appendix.
2. Appointments shall be for a term not to exceed 3 years except for DoD personnel who are not representing the parent category of membership.
3. The USD(P&R), or designee, shall call and conduct the meeting of the Council.

Appendix F to Part 57—Mediation and Hearing Procedures

A. Purpose

This appendix establishes requirements for the resolution of conflicts through mediation and impartial due process hearings. Parents of infants, toddlers, and children who are covered by this Instruction and, as the case may be, the cognizant Military Department or the DoDDS are afforded impartial mediation and/or impartial due process hearings and administrative appeals about the provision of early intervention services, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with 20 U.S.C. 921 *et seq.* and 1400 *et seq.*

B. Mediation

1. Mediation may be initiated by either a parent or the Military Department concerned, or the DoDDS to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the FAPE provided to, a child age 3 to 21, inclusive. The cognizant Military Department, rather than the DoDDS, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the school or Military Department officials may attend mediation sessions.
2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a formal due process hearing authorized by this appendix. Any request by the DoDDS or the Military Department for a hearing under this appendix shall state how that requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

C. Hearing Administration

1. The Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by sections D. through G. of this appendix.
2. This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.
3. Impartial hearing officers who shall be DOHA Administrative Judges, shall be appointed by the Director, DOHA, and shall be attorneys in good standing of the bar of any State, the District of Columbia, or a territory or possession of the United States who are independent of the DoDDS or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the Government, by counsel, and by persons with special knowledge or training with respect to the problems of individuals with disabilities. The DOHA Department counsel normally shall appear and represent the DoDDS in proceedings conducted under this appendix, when such proceedings involve a child age 3 to 21, inclusive. When an infant or toddler is involved, the Military Department responsible under this Instruction for delivering early intervention services shall either provide its own counsel or request counsel from DOHA.

D. Hearing Practice and Procedure

1. *Hearing*

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services to an infant or toddler or the identification or evaluation of such an individual, the parent may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant or toddler and the Military Department concerned shall be the only parties to a hearing conducted under this appendix.

b. Should mediation be refused or otherwise fail to resolve the issues on the provision of a FAPE to a child with a disability, age 3 to 21, inclusive, or the identification, evaluation, or educational placement of such an individual, the parent or the school principal, for the DoDDS, may

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this appendix.

request and shall receive a hearing before a hearing officer to resolve the matter. The parents of a child age 3 to 21, inclusive, and the DoDDS shall be the only parties to a hearing conducted under this appendix.

c. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DOHA. The petitioner shall deliver a copy of the petition to the opposing party (i.e., the parent or the school principal, for the DoDDS, or the military MTF commander, for the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete on mailing. When the DoDDS or the Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

d. An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete on mailing.

e. In 10 calendar days after receiving the petition, the Director, DOHA, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DOHA, shall forward all pleadings to the hearing officer.

f. The questions for adjudication shall be based on the petition and the answer, if a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

g. The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

h. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the "Federal Rules of Evidence" (Rules 1–1102) of 28 U.S.C., serving as a guide.

i. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the DoDDS or the Military Department concerned and to call and question witnesses.

j. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the DoDDS or the Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, if the parents have the right to an open hearing on waiving in writing their privacy rights and those of the individual with disabilities.

k. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent on request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for conforming it to actual testimony after adequate notice of such changes is given to all parties.

l. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, if such matter is made available to all parties before the record is closed under paragraph D.1.m. of this appendix.

m. The hearing officer shall make a full and complete record of a case presented for adjudication.

n. The hearing officer shall decide when the record in a case is closed.

o. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix, is pending.

2. *Discovery*

a. Full and complete discovery shall be available to parties to the proceeding, with the "Federal Rules of Civil Procedure," Rules 26–37, codified at 28 U.S.C. serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the DoDDS or the Military Department concerned shall be made available free of charge to a parent.

3. *Witnesses; Production of Evidence*

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the U.S. Government as to any matter in the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoDDS or the Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence on the hearing officer's own motion or, if good cause be shown, on motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, on the certification provided for in paragraph D.3.d. of this appendix, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. *Hearing Officer's Findings of Fact and Decision*

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

b. The Director, DOHA, shall forward to the Director, DoDDS, or to the Military Department concerned, and to the NAP or the ICC, as appropriate, copies with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. The DoDDS or the Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of an infant, toddler, or child age 3 to 21, inclusive, when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision in the period fixed by paragraph D.1.o. of this appendix.

2. The DoDDS or the Military Department concerned may oppose a request to waive that hearing. In that event, the hearing officer shall rule on that request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.h. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete on mailing.

2. Within 10 calendar days of filing the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete on mailing.

3. The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted replies under section F.2. of this appendix. The DOHA Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

4. The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under 20 U.S.C. 921 *et seq.* and 1400 *et seq.*, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this Instruction or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

G. Publication and Indexing of Final Decisions

The Director, DOHA, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with DoD Directive 5400.11[1].

Dated: January 9, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–888 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC30

Badlands National Park, Commercial Vehicles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is implementing this final rule to exempt local commercial vehicle traffic on the 5.8 miles of park roads between the park's Northeast and Interior Entrances from the general prohibition on the use of NPS roads by commercial vehicles. The Superintendent will retain sufficient discretion: To require permits for local commercial vehicles traveling within or through the park; establish terms and conditions of such permits; and annually establish and adjust fees for such use based on current administrative costs. The rule will prohibit the transportation of hazardous materials on all park roads, except in limited circumstances. The rule will also prohibit certain oversize/overweight vehicles on all park roads, except in limited circumstances.

EFFECTIVE DATE: This rule is effective on February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Irvin L. Mortenson, Superintendent, Badlands National Park, P.O. Box 6, Interior, SD 57750. Telephone 605–433–5361.

SUPPLEMENTARY INFORMATION:

Background

South Dakota Route 240, from Exit 131 on Interstate 90, passes through the northeast corner of Badlands National Park, traversing the Badlands "Wall" at Cedar Pass and intersects with South Dakota Route 377 which, in turn, connects with South Dakota Route 44 at the town of Interior. In 1929, Congress passed legislation authorizing the establishment of Badlands National Monument, subject to the condition "that the State of South Dakota first construct 30 miles of highways through the 'proposed park' area in a manner satisfactory to the Secretary of Interior." After the State of South Dakota completed the highway construction, Badlands National Monument was proclaimed on January 25, 1939. In 1941, the State relinquished ownership to roads within the Monument's boundary.

A general park regulation, 36 CFR 5.6, prohibits commercial traffic in National Parks. Under the final regulation, local commercial traffic would be allowed to use the park road connecting the Northeast entrance and the Interior entrance. The transportation of certain hazardous materials and oversize/overweight vehicles on park roads will be prohibited, except as permitted by the Superintendent. The NPS may allow transportation of certain hazardous materials on park roads as necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the Superintendent.

The paving of South Dakota Highway 44 in 1986 considerably changed the park's recreational and commercial vehicle patterns and number. In December of 1989, in response to these increases, Badlands National Park mailed over 500 "scoping brochures" to various organizations, agencies and individuals seeking public participation in the development of alternatives for the management of commercial traffic in the park. A public scoping meeting was held on January 24, 1990, in Interior, South Dakota, attended by approximately 115 people. Following the public meeting, written comments also were solicited. Public input was received during review of the environmental assessment prepared for the regulation of commercial traffic. This review occurred in April of 1990. Public comments received during that time and NPS review of the issues are reflected in the proposed rule.

Existing Conditions

Local commercial vehicles and some long haul trucks continue to travel through the Badlands National Park's northeast corner on 5.8 miles of park road between the Northeast and the Interior Entrances. South Dakota Route 240 connects with the Badlands Loop Road at the Northeast Entrance and South Dakota Route 377 connects to the park road at the Interior Entrance. South Dakota Routes 240 and 377 are exterior to park boundaries and are maintained by the State of South Dakota only up to the park boundaries. Inside the park, road maintenance is the responsibility of the NPS.

South Dakota Routes 240 and 377 are two-lane, paved rural highways designed for a 55-mph speed limit for all vehicle types. The park roads are two-lane, paved roads designed for 45 mph and 25 mph speed limits. Their purpose, as defined by the *Park Road Standards for the National Park System*,

> * * * "(R)emains in sharp contrast to that of the Federal and State highway systems. Park roads are not intended to provide fast and convenient transportation; they are intended to enhance visitor experience while providing safe and efficient accommodation of park visitors and to serve essential management access needs. They are not, therefore intended nor designed as continuations of the State and Federal-aid network."

Conclusion

Based on available data on road use and relevant environmental analysis, the impact of local commercial traffic on park roads within Badlands National Park is not sufficient to compel the NPS to prohibit all local commercial traffic on park roads between the Northeast

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

and Interior Entrances. The NPS recognizes the potential hazard posed by the transportation of certain hazardous materials and oversize/overweight vehicles through the park and will regulate or prohibit such use. Those local commercial vehicles carrying hazardous materials that require placarding, or marine pollutants that require marking according to U.S. Department of Transportation regulations, must first obtain a permit when such transportation is necessary for access to lands within or adjacent to the park, where access is not otherwise available, or in emergency situations as determined by the Superintendent. Exceptions include local bulk deliveries of gasoline, diesel, LP gas and certain oversize/overweight agricultural vehicles as provided for by South Dakota State Law. The NPS proposed regulation will not regulate state highways or traffic outside of Badlands National Park.

The rule will allow only those vehicles that originate from, or are destined to, U.S. Postal Service ZIP codes within a 45-mile radius of Cedar Pass in Badlands National Park. These Postal Service ZIP codes, which are in close proximity to the park, were chosen because nearly all the commercial traffic accessing the park originates from these areas. The use of geographic County designations for commercial access to the park would not be appropriate because, with the Counties being so large, thousands of additional commercial vehicles could claim entry to the park. The allowable ZIP code service area includes the following towns:

Allen 57714
Belvedere 57521
Cottonwood 57775
Creighton 57729
Interior 57750
Kadoka 57543
Kyle 57752
Long Valley 57547
Owanka 57767
Philip 57567
Scenic 57780
Wall 57790
Wanblee 57577
Wasta 57791

The NPS prepared an Environmental Assessment (EA) addressing commercial traffic on park roads. The assessment was released for public review in 1990. On March 19, 1990, the Regional Director for the Rocky Mountain Region, National Park Service, signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow local commercial traffic on park roads between the park's Northeast and Interior Entrances, but continue the prohibition of the transportation of certain hazardous materials requiring placarding and certain oversize/overweight cargos through Badlands National Park. Copies of this EA are available from the Chief Ranger's Office.

Summary of Public Comments

The proposed rule, which was published in the **Federal Register** on August 7, 1996 (61 FR 41058), afforded the public an opportunity to comment for a period of 60 days, from August 7 to October 7, 1995. No comments were received by the office of the Superintendent at Badlands National Park.

Drafting Information

The principal authors of this proposed rulemaking are Irvin L. Mortenson, Superintendent, former District Ranger Stan Robins, Badlands National Park and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

The collection of information contained in the permit section of this rule is for the purpose of determining which commercial vehicles meet the requirements allowing them to travel through the park. This collection of information is necessary to issue the permit and has previously been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0124 in accordance with the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

An Environmental Assessment was issued in 1990 under the provisions of the National Environmental Policy Act and a Finding of No Significant Impact signed on June 19, 1990.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.23 is added to read as follows:

§ 7.23 Badlands National Park.

(a) *Commercial vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, local commercial vehicles may operate on the park road between the Northeast entrance and the Interior entrance in accordance with the provisions of this section.

(2) The term "Local Commercial Vehicles", as used in this section, will include the definition of "commercial vehicle" in § 5.6(a), but specifically includes only those vehicles that originate from, or are destined to, the following U.S. Postal Service ZIP code areas:

Allen 57714
Belvedere 57521
Cottonwood 57775
Creighton 57729
Interior 57750
Kadoka 57543
Kyle 57752
Long Valley 57547
Owanka 57767
Philip 57567
Scenic 57780
Wall 57790
Wanblee 57577
Wasta 57791

(3) The Superintendent may require a permit and establish terms and conditions in accordance with § 1.6 of this chapter for the operation of local commercial vehicles on the park road between the park's Northeast and Interior entrances. The Superintendent may charge a fee for any permits issued to commercial vehicles in accordance with a fee schedule established annually.

(4) The commercial transport on the park road between the Northeast and Interior entrances of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste that requires placarding, or any marine

pollutant that requires marking, as defined in 49 CFR Subtitle B, is prohibited; except for local bulk deliveries of gasoline, fuel oil and LP gas; provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and may issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(5) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section, is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or Federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(6) The transportation or use of oversize or overweight commercial vehicles on the park road between the Northeast and Interior entrances is prohibited; provided, however that the Superintendent may issue permits for transportation or use of such vehicles and may condition such permits on the use of special routes within the park in order to minimize impacts to park facilities and resources and also may issue permits when the transportation or use of such vehicles is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(7) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

(b) [Reserved]

Dated: December 5, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–1200 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ25–1a–159, FRL–5662–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of twenty-two (22) revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_x) from various sources in New Jersey. The intended effect of this action is to approve the source-specific RACT determinations made by New Jersey in accordance with provisions of its regulation, New Jersey Administrative Code (NJAC) 7:27–19. This action is being taken in accordance with Section 110 of the Clean Air Act (the Act).

DATES: This rule is effective on March 18, 1997, unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

A. Background

The air quality planning requirements for the reduction of NO_x emissions through RACT are set out in section 182(f) of the Act. Section 182(f) requirements are described by EPA in a notice, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 notice should be referred to for detailed information on the NO_x requirements. Additional guidance memoranda which have been released subsequent to the NO_x Supplement should also be referred to.

The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

Section 182(f) of the Act requires states within ozone nonattainment areas classified moderate or above or areas within the ozone transport region to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). For more information on what constitutes a major source, see section 2 of the NO_x Supplement to the General Preamble.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x sources since enactment. States, in their RACT rules, are expected to require final installation of the actual NO_x controls by May 31, 1995 from those sources for which installation by that date is practicable.

States within the Northeast ozone transport region established by section 184(a) should have revised their SIPs to include the RACT measures by November 15, 1992. Because major sources in states in a transport region are generally subject to at least the same level of control as sources in moderate ozone nonattainment areas, EPA believes that the schedule for implementing these RACT rules in the

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ozone transport region should be consistent with the requirements of section 182(b)(2) and were expected to require final installation of the actual NO_X controls by May 31, 1995 on those sources for which installation by that date is practicable. Based on sections 182(f) and 184(b), New Jersey is required to apply the NO_X RACT requirements Statewide.

New Jersey's NO_X RACT Regulation

On November 15, 1993, New Jersey submitted to EPA as a revision to the SIP, Subchapter 19, "Control and Prohibition of Air Pollution From Oxides of Nitrogen" of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 19 contains the NO_X RACT requirements for New Jersey and has an effective date of December 20, 1993. New Jersey held public hearings on Subchapter 19 in March 1993 and adopted it on November 15, 1993. New Jersey submitted Subchapter 19 to EPA as a revision to the SIP on November 15, 1993. EPA found it to be administratively and technically complete on December 29, 1993 and proposed approval of Subchapter 19 on October 2, 1995 (60 FR 51379). Final EPA action on Subchapter 19 is expected to be published in the **Federal Register** soon.

C. Section 19.13—Facility Specific NO_X Emission Limits

Section 19.13 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a particular facility, item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2 and which has the potential to emit more than 10 tons of NO_X per year, except for non-utility boilers, or (2) if the owner or operator of a source operation or item of equipment of a category that is listed in section 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure requires the owners and/or operators of the affected facility to submit either a NO_X control plan if they are not covered by specific emission limitations or a request for an alternative maximum allowable emission rate if they are covered by specific emission limitations. The owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission rate must consider alternative control strategies (e.g., emissions averaging, seasonal fuel switching to natural gas, and repowering) in addition to considering control technologies (e.g., low NO_X burners). In either case, Subchapter 19 provides for New Jersey to establish emission limits based upon a RACT determination specific to the facility. The resulting control plan or alternate maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

D. Analysis of State Submittals

The twenty-two (22) source specific SIP revisions were all adopted by New Jersey at different times during 1994 and 1995 and were found by EPA to be administratively and technically complete. Prior to adoption, New Jersey published their proposed RACT determinations in local newspapers and provided 30 days for public comment and an opportunity to request a public hearing. New Jersey reviewed and responded to all comments made. New Jersey determined that the proposed NO_X control plans and alternative maximum allowable emission rates from the owners conform with the provisions of section 19.13. New Jersey has issued to each owner a "conditions of approval" document incorporating approved permit conditions which are fully enforceable by the State and which contain conditions consistent with Subchapter 19. These "conditions of approval" documents are identified in the "Incorporation by reference" section at the end of this document.

EPA has determined that the NO_X emission limits identified in New Jersey's letters of approval (with attached "conditions of approval" document) to the owners represent RACT for each source identified in this document. The permit conditions include emission limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These permit conditions are consistent with the NO_X RACT requirements specified in Subchapter 19 and conform to EPA NO_X RACT guidance. Therefore, EPA is approving the twenty-two (22) source-specific SIP revisions submitted by New Jersey dated May 26, 1995, November 8, 1995, January 10, 1996 and October 10, 1996 as identified in this document.

EPA's evaluation of each RACT submittal is detailed in a document dated October 29, 1996, entitled "Technical Support Document—NO_X RACT Source Specific SIP Revisions—State of New Jersey." A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

A summary of EPA's findings of each RACT submittal is provided in the following sections and is organized into two groups: I. "Facility-Specific NO_X Emission Limits" in which a major NO_X facility has a source operation or item of equipment for which an emission limit has not been established pursuant to the presumptive limits identified in Subchapter 19, and II. "Alternative NO_X Emission Limits" in which an owner or operator of a source operation or item of equipment of a category that is listed in section 19.2 seeks approval of a RACT emission limit different from that which is established in Subchapter 19. This Notice takes action only on the permitted emission rates and conditions of approval related to emissions of NO_X; action is not being taken on any other pollutants which may be permitted by New Jersey with regard to these sources.

I. Facility-Specific NO_X Emission Limits

1. Edgeboro Disposal, Inc.

Edgeboro Disposal, Inc. operates a solid waste landfill in East Brunswick, Middlesex County, which generates landfill gas that is disposed of by five flares. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the current operation of the existing flares. The facility-specific NO_X emission limit is 0.08 pounds NO_X per million BTUs (lbs/MM BTU).

2. E.I. duPont DeNemours and Company, Inc.

E.I. duPont DeNemours and Company, Inc., operates a carbon regeneration furnace located in Deepwater, Salem County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the use of the previously installed low NO_X burners (LNB), based on DuPont's 1994 updated Best Available Control Technology (BACT) analysis. The facility-specific NO_X emission limit is 18.6 pounds per hour (lbs/hr).

3. Hoeganaes Corporation

The Hoeganaes Corporation, located in Riverton, Burlington County, manufactures iron and steel powders. Its operations include an electric arc furnace (EAF) for melting steel and a tunnel kiln for manufacturing sponge iron. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is regular maintenance of the EAF refractory which is already standard practice at the facility. The facility-specific NO_X emission limit is 33.6 tons per year (TPY).

NO_X emissions from the tunnel kiln are produced from 252 natural gas fired burners and from the combustion of coal

and coke in the process. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is burner adjustments to the tunnel kiln, which is already a normal procedure to maintain proper combustion control. The facility-specific NO_X emission limit is 26.4 TPY.

4. Parsippany-Troy Hills Township Sewer Authority

Parsippany-Troy Hills Township Sewer Authority owns and operates two multiple hearth type incinerators to burn sewage sludge from its wastewater treatment plant located in Parsippany, Morris County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is seasonal natural gas combustion. The facility-specific NO_X emission limit is 21 lbs/hr for each incinerator. The State may establish a lower facility NO_X emission limit based on compliance stack test results after the fuel switch.

5. Sandoz Pharmaceuticals Corporation

Sandoz Pharmaceuticals Corporation operates a small scale trash fired boiler energy recovery system located in East Hanover, Morris County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the previously installed controlled air combustion system. The facility-specific NO_X emission limit is 3.0 lbs/hr.

6. Griffin Pipe Products Company

Griffin Pipe Products Company produces pipe from scrap steel and operates an iron melting cupola and an annealing furnace in Florence, Burlington County. NO_X emissions from the facility are a result of the combustion of coke in the iron melting cupola and natural gas in the annealing furnace. For the cupola, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is the continued use of low excess air and oxygen enrichment technologies. The facility-specific NO_X emission limit is 0.20 lbs/MM BTU. In addition, the conditions of approval include limiting the cupola operation to 2600 hours per year. For the annealing furnace, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustment to the furnace combustion process. The facility-specific NO_X emission limit is 0.15 lbs/MM BTU. Also, the conditions of approval include limiting the annual fuel consumption of the furnace to 200 million standard cubic feet (MMSCF) of natural gas.

7. United States Pipe and Foundry Company

United States Pipe and Foundry Company operates two cupola iron melting furnaces and two annealing ovens in Burlington, Burlington County. NO_X emissions are the result of coke combustion in the cupola and natural gas in the annealing oven. For the cupolas, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is the continued use of oxygen enrichment and preheated blast air. The facility-specific NO_X emission limit is 0.20 lbs/MM BTU. For the annealing ovens, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustment to the combustion process. The facility-specific NO_X emission limit is 0.14 lbs/MM BTU.

8. Johnson Matthey Incorporated

Johnson Matthey Incorporated operates a three-chamber natural gas fired ignition recovery furnace system in West Deptford, Gloucester County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of LNBs. The facility-specific NO_X emission limit is 7.1 lbs/hr.

9. E.I. duPont DeNemours and Company, Inc.

E.I. duPont DeNemours and Company, Inc. owns and operates a hazardous waste incinerator in Deepwater, Salem County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the implementation of Selective Non Catalytic Reduction (SNCR) including ammonia injection, based on a 1994 BACT determination. The facility-specific NO_X emission limit is 10.6 lbs/hr (0.20 lbs/MM BTU).

10. Rollins Environmental Services (NJ), Inc.

Rollins Environmental Services (NJ), Inc. owns and operates a commercial hazardous waste incinerator in Bridgeport, Gloucester County to process organic wastes. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the modification of the existing burners. The facility-specific NO_X emission limit is 75 lbs/hr.

11. Minnesota Mining and Manufacturing Co.

Minnesota Mining and Manufacturing Co. (3M) operates one rotary kiln and two dryers in Belle Mead, Somerset County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of LNBs. In addition, the conditions of approval include requirements that only natural gas will be combusted as the primary fuel and No. 2 fuel oil will be used only during natural gas curtailment. The facility-specific NO_X emission limits while combusting natural gas are 5.7 lbs/hr and 1.6 lbs/hr for the kiln and each dryer, respectively.

12. American Ref-Fuel Company

The American Ref-Fuel Company owns and operates the three mass burning water wall incinerators at the Essex County Resource Recovery Facility in Newark, Essex County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of SNCR technology utilizing ammonia injection, based on a 1993 BACT analysis. The facility-specific NO_X emission limit is 95 lbs/hr/unit, with a concentration limit of 174 parts per million (ppm), based on a 3-hour average.

13. Union County Utilities Authority

The Union County Utilities Authority owns and operates the three mass burning water wall incinerators at the Union County Resource Recovery Facility in Rahway, Union County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of SNCR technology with ammonia injection, based on a 1989 BACT analysis. The facility-specific NO_X emission limit is 80 lbs/hr/unit, with a concentration limit of 225 ppm on a 3-hour basis.

14. General Motors Corporation

General Motors (GM), located in Linden, Union County, owns and operates a Topcoat autobody coating system which has fifty natural gas burners. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the existing practice of limiting the Topcoat system's fuel use to 591.1 MMSCF of natural gas per year and annual combustion adjustments to the burners. The facility-specific NO_X emission limit is 41.4 TPY (0.14 lbs/MM BTU) and the Topcoat system production is limited to operate 5094 hours per year.

II. Alternative NO_X Emission Limit

A summary of EPA's analysis of each source facility granted an alternative NO_X emission limit by New Jersey is as follows.

15. Public Service Electric and Gas Company (PSE&G)

PSE&G operates Hudson Unit Number 2 which is a coal-fired, dry bottom utility boiler in Jersey City, Hudson County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the use of LNB in combination with Overfire Air (LNB/OFA). The

alternative NO_X emission limits are 0.85 lbs/MM BTU for coal and 0.60 lbs/MM BTU for the combustion of natural gas or number 6 fuel oil. These emission limits may be further reduced by New Jersey based upon results of optimization tests with the LNB/OFA installation.

16. General Motors Corporation

GM operates a tangentially oil-fired boiler (Number 4) at its motor vehicle parts plant in Trenton, Mercer County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustments to the combustion process. The alternative NO_X emission limit is 0.45 lbs/MM BTU. The conditions of approval include limiting operation to no more than 1315 hours per year and ceasing boiler operation after May 31, 2005.

17. International Flavors and Fragrances

International Flavors and Fragrances owns and operates a backup gas-fired boiler (Number 5) in Union Beach, Monmouth County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is biannual combustion process adjustments and an operation limit to 1440 hours annually. The alternative NO_x emission limit is 0.18 lbs/MM BTU during natural gas combustion and 0.255 lbs/MM BTU during No. 2 fuel oil combustion. Number 6 fuel oil will no longer be used for the boiler.

18. Algonquin Gas Transmission Company

Algonquin Gas Transmission Company operates two natural gas fired, simple cycle combustion turbines in Hanover Township, Morris County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustments to the combustion process. The alternative NO_x emission limit for each turbine shall be 0.345 lbs/MM BTU.

19. Hoffmann-La Roche Incorporated

Hoffmann-La Roche Incorporated, located in Nutley, Essex County, owns and operates a cogeneration facility with three units consisting of combined cycle combustion turbines and heat recovery steam generators with supplemental firing. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustment to the combustion process on the duct burners installed on each of the three turbines. The alternative NO_x emission limit for each turbine is 0.34 lbs/MM BTU during natural gas combustion. Each turbine is also permitted to use kerosene as a backup fuel for no more than 500 hours in a calendar year.

20. Texas Eastern Transmission Corporation

Texas Eastern Transmission Corporation operates three 2050 horsepower internal combustion engines at the Linden Compressor Station in Union County and four 1100 horsepower engines at the Lambertville Compressor Station in Hunterdon County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the use of electronic ignition controls on each of the Lambertville engines and the use of electronic ignition controls combined with installation of equipment to automatically control the air to fuel ratio on the Linden engines. The alternative NO_x emission limit is 8.26 grams per horsepower-hour (g/hp-hr) for each Linden engine and 7.22 g/hp-hr for each Lambertville engine. After optimization of controls, the NO_x emission limits will be evaluated and lower alternative emission limits may be established.

Final Action

EPA is approving the permitted conditions described above as RACT for the control of NO_x emissions from the sources identified in the twenty-two source-specific SIP revisions.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 18, 1997, unless, by February 18, 1997 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 18, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the state is already imposing. Moreover, this action does not involve generally applicable requirements, but specific requirements for each facility which both the source owner and the State have determined to be economically and technologically reasonable. This action only affects the sources which have requested the SIP revision and which are not small entities. Therefore, EPA certifies that this approval action does not have a significant impact on small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 28, 1996.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(59) to read as follows:

§ 52.1570 Identification of plan.

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(c) * * *

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(59) Revisions to the State Implementation Plan submitted by the New Jersey Department of Environmental Protection on May 26, 1995, November 8, 1995, January 10, 1996 and October 10, 1996.

(i) Incorporation by reference.

(A) Conditions of Approval Documents (COAD):

The following facilities have been issued conditions of approval documents by New Jersey:

(*1*) Edgeboro Disposal's landfill gas flares, Middlesex County, NJ COAD approval dated April 13, 1995, revised October 19, 1995 (effective November 6, 1995).

(*2*) E.I. duPont DeNemours and Co.'s carbon regeneration furnace, Salem County, NJ COAD approval dated June 7, 1995.

(*3*) Hoeganaes Corp.'s electric arc furnace and tunnel kiln, Burlington County, NJ COAD approval dated February 3, 1995.

(*4*) E.I. duPont DeNemours and Co.'s hazardous waste incinerator, Salem County, NJ COAD approval dated July 7, 1995.

(*5*) Rollins Environmental Services' hazardous waste incinerator, Gloucester County, NJ COAD approval dated May 25, 1995.

(*6*) American Ref-Fuel's Municipal Waste Incinerator, Essex County, NJ NO_x RACT approval dated February 6, 1995.

(*7*) Union County Utilities Authority's Municipal Waste Incinerator, Union County; NJ NO_x RACT approval dated May 10, 1994 with an attached permit to construct, operate, and a PSD permit dated December 29, 1989.

(*8*) PSE&G's Hudson Station Unit No. 2 utility boiler, Hudson County, NJ COAD approval dated May 9, 1995.

(*9*) Algonquin Gas Transmission Co.'s simple cycle combustion turbines, Morris County, NJ COAD approval dated March 31, 1995.

(*10*) Hoffmann-La Roche's combined cycle combustion turbines, Essex County, NJ COAD approval dated May 8, 1995.

(*11*) International Flavors and Fragrances' non-utility boiler Number 5, Monmouth County, NJ COAD approval dated June 9, 1995.

(*12*) Parsippany-Troy Hills Township Sewer Authority's sewage sludge incinerators, Morris County, NJ COAD approval dated October 13, 1995.

(*13*) Johnson Matthey's multi-chamber metals recovery furnace, Gloucester County, NJ COAD approval dated June 13, 1995.

(*14*) 3M Company's rotary kiln and dryers, Somerset County, NJ COAD approval dated May 4, 1995.

(*15*) Sandoz Pharmaceuticals Corporation's trash fired boiler, Morris County, NJ COAD approval dated March 23, 1995.

(*16*) General Motors Corporation's non-utility boiler (No.4), Mercer County, NJ COAD approval dated June 22, 1995.

(*17*) General Motors Corporation's Topcoat system, Union County, NJ COAD approval dated November 6, 1995.

(*18*) United States Pipe and Foundry Company's cupolas and annealing ovens (No. 2 and No. 3), Burlington County, NJ COAD approval dated October 16, 1995.

(*19*) Griffin Pipe Products Company's cupola and annealing furnace, Burlington County, NJ COAD approval dated December 14, 1995.

(*20*) Texas Eastern Transmission Corporation's internal combustion engines, Hunterdon County, NJ COAD approval dated May 9, 1995.

(*21*) Texas Eastern Transmission Corporation's internal combustion engines, Union County, NJ COAD approval dated May 9, 1995.

(ii) Additional information—Documentation and information to support NO_x RACT facility-specific emission limits or alternative emission limits in four letters addressed to Regional Administrator Jeanne M. Fox from New Jersey Commissioner Robert C. Shinn, Jr. dated:

(A) May 26, 1995 for two SIP revisions;

(B) November 8, 1995 for eight SIP revisions;

(C) January 10, 1996 for ten SIP revisions; and

(D) October 10, 1996 for two SIP revisions.

[FR Doc. 97–1073 Filed 1–16–97; 8:45 am]

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40 CFR Part 52

[CO–001–0008(a); FRL–5660–9]

Approval and Promulgation of Air Quality Implementation Plans; Colorado: Enhanced Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an enhanced vehicle inspection and maintenance (I/M) State Implementation Plan (SIP) revision submitted by Roy Romer, Governor of Colorado, on September 29, 1995. This revision fulfills the Governor's commitment to adopt final regulations to limit dealership self-testing, allowing EPA to convert Colorado's prior conditional approval to a full approval for the enhanced I/M SIP revisions which established and require the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the Denver and Boulder urbanized area. This action is being taken under Section 110 of the Clean Air Act (CAA).

DATES: This action is effective on March 18, 1997 unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Richard R. Long, Director, Air Programs, USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, at (303) 312–6736 or via e-mail at lee.scott@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region VIII address above.

I. Background

On November 8, 1994, EPA published a rulemaking (59 FR 55584) conditionally approving an enhanced vehicle I/M program for the Denver and Boulder urbanized areas. The conditional approval was based on the State's commitment to adopt final regulations limiting dealership self-testing as required by EPA's I/M Rule (40 CFR part 51, subpart S). EPA limits self-testing to ensure all vehicles receive a proper independent inspection on a regular interval. The State was required to adopt this regulation revision within one year of final conditional approval. On September 22, 1994, the State adopted a replacement regulation, Colorado Regulation No. 11 (5 CCR 1001–13) satisfying the State's commitment to limit dealership self-testing, and on September 29, 1995, forwarded it to EPA to be acted upon.

II. EPA'S Analysis of Colorado's Submittal

As detailed in the Governor's September 29, 1995 letter, the State held a properly noticed public hearing regarding the revised enhanced I/M regulation on September 22, 1994. EPA found the Governor's submittal to be administratively complete on November 30, 1995.

The September 29, 1995, submittal included: Colorado Air Quality Control Commission (AQCC) Regulation Number 11, Motor Vehicle Emissions Inspection Program (5 CCR 1001–13), adopted on September 22, 1994, and effective on November 30, 1994. This replacement Regulation No. 11 limits dealer self-testing to non-consecutive test-cycles as required by EPA's I/M Rule (40 CFR Part 51, Subpart S), and fulfills the State's commitment allowing EPA to fully approve Colorado's program.

In addition to the dealer self-testing provisions, the AQCC adopted minor revisions to the inspection equipment technical specifications. These revisions are technical corrections not considered to be substantive changes impacting the approvability of the program.

III. Action

EPA is fully approving the Colorado enhanced motor vehicle I/M SIP revision as submitted by Governor Romer on September 29, 1995. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, EPA will publish a subsequent document withdrawing this final action before its final effective date. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 18, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section

205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 20, 1996.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows: Authority: 42 U.S.C. 7401–7671q.

2. Section 52.320 is amended by adding paragraph (73) to read as follows:

SUBPART G—COLORADO

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(77) On September 29, 1995, Roy Romer, the Governor of Colorado, submitted a SIP revision to the State Implementation Plan for the Control of Air Pollution. This revision provides a replacement Regulation No. 11, Inspection/Maintenance Program which limits dealer self-testing. This material is being incorporated by reference for the enforcement of Colorado's I/M program.

(i) Incorporation by reference.

(A) Department of Health, Air Quality Control Commission, Regulation No. 11 (Motor Vehicle Emissions Inspection Program) as adopted by the Colorado Air Quality Control Commission (AQCC) on September 22, 1994, effective November 30, 1994.

[FR Doc. 97–1075 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[FL–68–2–9640a; FRL–5662–1]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to the State of Florida State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) to allow the State air pollution control agency to utilize exclusionary rules via general permits for the purpose of limiting potential to emit (PTE) criteria pollutants for certain source categories to less than the title V permitting major source thresholds. EPA is also approving under section 112(l) of the Clean Air Act (CAA) the same source-categories of the submitted regulations for limiting PTE of hazardous air pollutants (HAP) to less than title V permitting major source thresholds. These exclusionary rules allow facilities to compute potential emissions based on actual emissions or raw material usage for the following source categories: Asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations; and mercury reclamation and recovery operations. On April 15, 1996, the State of Florida through the Department of Environmental Protection (DEP) submitted a SIP revision fulfilling the requirements necessary to utilize exclusionary rules to limit PTE of air pollutants in a federally enforceable manner. On August 6, 1996, the State of Florida submitted updates to the earlier submittal which also fulfill the requirements necessary to utilize exclusionary rules to limit PTE in a federally enforceable manner.

DATES: This final rule is effective March 18, 1997 unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–68–2–9640. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Scott Miller, 404/562–9120.

Florida Department of Environmental Protection, Division of Air Resources Management, 2600 Blair Stone Road, MS 5500, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On April 15, 1996, the State of Florida through the DEP submitted a SIP revision designed to allow the agency to utilize exclusionary rules for the purpose of limiting PTE for asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations, and mercury reclamation and recovery operations. On August 6, 1996, the State of Florida submitted updates to the earlier submittal which also fulfill the requirements necessary to utilize exclusionary rules to limit PTE in a federally enforceable manner. Exclusionary rules are designed to create federally enforceable limits on a facility's PTE in a manner that does not require a facility-specific evaluation of emissions and limiting conditions. As such, exclusionary rules are appropriate for the purpose of limiting PTE when a facility has one type of emission source. EPA is approving all source-category rules found at Florida Administrative Code (F.A.C.) at 62–210.300(3)(c) and 62–210.300(4), submitted for purposes of limiting PTE for criteria pollutants into the SIP. The DEP is implementing these exclusionary rules found at 62–210.300(3)(c) through general permitting regulations found at 62–210.300(4). EPA is also approving under section 112(l) of the CAA, the regulations found in the F.A.C. 62–210.300(3)(c) and 62–210.300(4) for purposes of limiting PTE of HAP. For a description of this and other ways to limit PTE for a facility see the EPA guidance document entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" dated January 25, 1995, from John Seitz to the EPA Regional Air Division Directors.

These rules which set out specific conditions for a facility to limit its PTE were designed to meet criteria listed in the EPA guidance memorandum entitled "Guidance for State Rules for Optional Federally Enforceable Emissions Limits Based on Volatile Organic Compound Use" dated October 15, 1993, from D. Kent Barry to the EPA Regional Air Division Directors, an EPA guidance document entitled "Approaches to Creating Federally-Enforceable Emissions Limits" dated November 3, 1993, and the January 25, 1995, guidance memorandum referenced above. These guidance documents set out specific guidelines for exclusionary rule development regarding applicability, compliance determination and certification, monitoring, reporting, record keeping, public involvement, practical enforceability, and the requirement that a facility cannot rely on emission limits or caps contained in a exclusionary rule to justify violation of any rate-based emission limits or other applicable requirements.

These regulations apply to facilities which agree to limit their annual emissions to less than major source thresholds for criteria and/or HAP emissions. A rule which sets out the operating parameters must also provide that a facility owner or operator specifically apply for coverage under the exclusionary rule. F.A.C. Regulations 62–210.300(3)(c) and 62–210.300(4) provide that the exclusionary rules are for certain source categories to define and limit their potential emissions to less than major source levels for title V purposes. The source categories covered by the exclusionary rules are asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations, and mercury reclamation and recovery operations. F.A.C. Regulation 62–210.300(3)(c) provides that even though a facility is exempted from obtaining a title V permit by complying with these exclusionary rules, it is still required to obtain a general permit. As such, these regulations meet the guidelines specified in the October 15, 1993, and the January 25, 1995, guidance documents that require an exclusionary rule to clearly identify the category of sources that qualify for the rule's coverage.

The October 15, 1993, and the January 25, 1995, guidance documents suggest that facilities be required to show compliance with the exclusionary rule on a yearly basis by requiring monthly record keeping of the relevant variable causing emissions and showing compliance using the monthly record of the relevant variable affecting emissions. The January 25, 1995, guidance document stipulates that where monitoring cannot be used to determine emissions directly, limits on appropriate operating parameters must be established for the units or source, and monitoring must verify compliance with those limits. In the case of the Florida exclusionary rule regulations, a facility is required to keep records of the use of or processing of a product or substance that produces the emissions. For instance, F.A.C. Regulation 62–210.300(3)(c)1.g requires concrete asphalt facilities to keep monthly and twelve-month rolling total records of asphaltic concrete produced, gallons of fuel oil consumed and the hours of operation. The asphalt concrete facility must then show compliance with the 500,000 ton per any consecutive twelve-month period, fuel-oil consumption records that show that no more than 1.2 million gallons are combusted in any consecutive twelve-month period, and that fuel-oil sulfur content is less than or equal to 1 percent sulfur as determined by ASTM methods ASTM D4057–88, D129–91, D2622–94, or D4294–90. Finally, a concrete asphalt facility must keep records of its operating hours to show that operating hours do not exceed 4000 hours in any consecutive twelve-month period. EPA believes that the exclusionary rules submitted by the DEP meet the guidelines outlined in the October 15, 1993, and January 25, 1995, guidance documents for purposes of detailing specific compliance monitoring to show compliance with the relevant exclusionary rule limit.

The October 15, 1993, guidance document recommends that all submittals that result from exclusionary rules be certified for truth, accuracy, and completeness. Each facility which chooses to be covered by an exclusionary rule submitted by the DEP must make submissions which are certified by the appropriate official as defined under the Air General Permit Notification Form.*For instance, F.A.C. Regulation 62–210.300(3)(c)1.j requires concrete asphalt facilities to submit a notification to DEP that certifies that the facility is operating in compliance with the exclusionary rule to which it is subject. In addition, the facility must also certify that it will continue to operate in compliance with the exclusionary rule to which it is subject. EPA believes that the DEP exclusionary rules meet the requirements of the October 15, 1993, guidance document for purposes of certifying compliance with the exclusionary rule to which a facility is subject.

The October 15, 1993, guidance document recommends that reporting requirements should vary based on how close the facility emissions are to the relevant major source threshold. For facilities with emissions that are close to the major source threshold, the guidance recommends that a state or local air pollution control agency require more frequent reporting of the variable affecting emissions (e.g., gasoline throughput). In lieu of requiring facilities to report emissions to DEP, DEP requires the facility to

maintain records for a period of five years from their origination. These records are required to be readily available for submission or inspection on-site. In addition, the DEP has committed to inspect ten percent of facilities subject to an exclusionary rule every year. While the rules submitted by the DEP do not match recommended guidelines found in the October 15, 1993, guidance document for reporting requirements, the EPA believes that the DEP inspections of subject facilities, along with the above mentioned record keeping requirements, are sufficient to ensure compliance by subject facilities.

The October 15, 1993, and the January 25, 1995, guidance documents specify that record keeping is required by a facility to show that the facility is eligible for the exclusionary rule and that the facility is in compliance with the relevant exclusionary rule. The October 15, 1993, guidance document requires that record keeping shall be maintained on site and available to the permitting authority upon demand. The October 15, 1993, guidance document also requires that a facility be required to retain records for a period sufficient to support enforcement efforts. The DEP regulations require that copies of all records required to be kept for exclusionary rule purposes be kept on site and be available to each agency on demand. The exclusionary rules submitted by DEP require that records be kept for a period of five years from the date the records are originated. EPA believes that a five year time period is an adequate time period for a facility subject to an exclusionary rule to maintain records in order to support enforcement efforts.

The November 3, 1993, and the January 25, 1995, guidance documents set out requirements for public involvement in the development and application of exclusionary rules. The November 3, 1993, guidance document states that if exclusionary rules are sufficiently reliable and replicable, EPA and the public need not be involved with their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP. The January 25, 1995, guidance document provides that source-category standards approved into the SIP or under section 112(l) of the CAA, if enforceable as a practical matter, can be used as federally enforceable limits on PTE. Once a specific source qualifies under the applicability requirements of the source-category rule, additional public participation is not required to make the limits federally enforceable as a matter of legal sufficiency since the rule itself underwent public participation and EPA review. The DEP general permit exclusionary rules underwent public participation at the State level when these rules were made State-effective by the DEP. EPA has had an opportunity to review these regulations and is publishing this document to take comment on these regulations at the national level. Later in this **Federal Register** document, practical enforceability of DEP's exclusionary rules will be addressed. EPA believes that, with this **Federal Register** document and other public process received at the State and local level, the DEP exclusionary rules satisfy requirements for public participation outlined in the November 3, 1993, and the January 25, 1995, guidance documents.

The January 25, 1995, guidance document sets out requirements for exclusionary rule conditions to be practically enforceable. These requirements stem from past precedence in what the EPA has required for a permit to be considered enforceable as a practical matter. See 54 FR 27274 (June 28, 1989) and a June 13, 1989, EPA policy memorandum entitled "Limiting Potential to Emit in New Source Permitting." The criteria include clear statements as to the applicability, specificity as to the standard that must be met, explicit statements of the compliance time frames (e.g., hourly, daily, monthly, or 12-month averages, etc.), that the time frame and method of compliance employed must be sufficient to protect the standard involved, record keeping requirements must be specified, and equivalency provisions must meet specific requirements. In general, practical enforceability means that the provision must specify; (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping, and reporting. All of these elements have been discussed prior to this paragraph in this **Federal Register** with the exception of (2) above. The DEP regulations require facilities subject to the exclusionary rule to keep records on a monthly basis and to determine compliance with a yearly limit on a calendar monthly rolling average basis. This method for determining compliance with the exclusionary rule limitation was addressed specifically as one practically enforceable way to show compliance with a permit limit in the June 13, 1989, guidance document entitled "Limiting Potential to Emit in New Source Permitting." As such, EPA believes the DEP general permit exclusionary rule regulations meet the requirements necessary for exclusionary rules to be enforceable as a practical matter.

Finally, the October 15, 1993, guidance document stipulates that a facility cannot rely on emission limits or caps contained in a exclusionary rule to justify violation of any rate-based emission limits or other applicable requirements. This requirement is reflected by the fact that exclusionary rules are carried out through general permits. These general permits contain other requirements to which a facility is subject. Since the general permit will include all requirements to which a facility is subject, it follows that the exclusionary rules contained in the general permit cannot be used to override other requirements found in the permit. Therefore, EPA believes that the DEP exclusionary rules meet the requirements listed in the October 15, 1993, guidance document regarding the use of an exclusionary rule cap to justify violation of any rate-based emission limit or other applicable requirements.

Eligibility for federally enforceable exclusionary rule certifications extends not only to certifications made after the effective date of this rule, but also to certifications issued under the State rule prior to the effective date of this rulemaking. If the State agency followed its own regulation, it received exclusionary rule certifications that established a limiting condition on a facility's PTE. EPA will consider all such exclusionary rule certifications which were submitted in a manner consistent with the State agency regulations as federally enforceable upon the effective date of this action.

II. Final Action

In this action, the EPA is approving the State of Florida exclusionary rules and general permit regulations found at FAC Regulation 62–210.300(3)(c) and 62–210.300(4) into the Florida SIP. The EPA is approving Florida regulations FAC Regulation 62–210.300(3)(c) and 62–210.300(4) for purposes of limiting PTE of HAP under section 112(l) of the CAA. The EPA is publishing this document without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 18, 1997 unless, by February 18, 1997,

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adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 18, 1997.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

C. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: August 29, 1996.

R. F. McGhee,

Acting, Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, paragraph (c) is amended by adding paragraph (97) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(97) General permit rules and exclusionary rules for the State of Florida Department of Environmental Protection submitted by the Florida Department of Environmental Protection as part of the Florida SIP.

(i) Incorporation by reference.

(A) Florida Administrative Code Regulation 62–210.300(3)(c) and 62–210.300(4) of the Florida SIP as adopted by the Secretary of the Florida Department of Environmental Protection on July 26, 1996 and which became effective on August 15, 1996.

(ii) Other material. None.

[FR Doc. 96–1077 Filed 1–16–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[IN64–1a; FRL–5662–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, the State of Indiana submitted to EPA a rule for control of Non-Methane Organic Compounds (NMOC) emissions from municipal solid waste (MSW) landfills in Clark, Floyd, Lake, and Porter Counties, as a requested revision to the ozone State Implementation Plan (SIP). This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compound (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this MSW landfills SIP will reduce VOC emissions by 1,132 pounds per day (lbs/day) in Lake and Porter Counties and 345 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: The "direct final" is effective on March 18, 1997, unless EPA receives adverse or critical comments by February 18, 1997. If the effective date is delayed, timely notification will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo at (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Submittal Background

Section 182(b)(1) of the Clean Air Act (the Act) requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for ozone, while Clark and Floyd Counties are classified as "moderate" nonattainment. As such, these counties are subject to the 15% ROP requirement.

The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act, by November 15, 1996. Control measures implemented before November 15, 1990, are precluded from counting toward the 15% reduction.

In addition, section 172(c)(9) requires moderate areas to adopt contingency measures by November 15, 1993. The *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (April 28, 1992, 57 FR at 18070), states that the contingency measures generally must provide reductions of 3% from the 1990 base-year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. First, the State can use its discretion to implement a measure it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either meet the 15% ROP requirement or attain the national ambient air quality standards. In that situation, the reductions must be achieved in the year following that in which the failure has been identified by the State.

On November 21, 1995, and February 14, 1996, Indiana submitted 326 IAC 8–8 as its MSW landfill rules for the control of NMOC, which include VOCs and hazardous air pollutants, as a requested revision to the ozone SIP. This rule establishes emission standards and guidelines which require certain MSW landfills to control emissions from landfills by installing a landfill gas collection and control system that either incinerates or recovers the gas. This rule is intended to be part of the 15% ROP plan for Clark and Floyd Counties, as well as included in the contingency plan for Lake and Porter Counties. (Rulemaking on the overall Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIP revisions will be taken in a subsequent **Federal Register** action).

On July 12, 1995, the Indiana Air Pollution Control Board (IAPCB) adopted the MSW landfill rule. Public hearings on the rule were held on October 5, 1994 and July 12, 1995, in Indianapolis, Indiana. The rule was filed with the Secretary of State on December 19, 1995, and became effective on January 18, 1996; it was published in the Indiana State Register on February 1, 1996. The IDEM formally submitted the MSW landfill rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness of the SIP submittals in a letter dated February 23, 1996.

The November 21, 1995, and February 14, 1996, submittals include the following rules:

326 Indiana Air Code (IAC) 8–8 Municipal Solid Waste Landfills

(1) Applicability
(2) Definitions
(3) Requirements; incorporation by reference of federal standards
(4) Compliance deadlines

The rule establishes NMOC control requirements for new and existing municipal solid waste landfills in Clark, Floyd, Lake, and Porter Counties. Indiana generally based its rules upon EPA's proposed MSW Landfill Standards of Performance for New Stationary Sources (NSPS) and Guidelines for Control of Existing Sources (EG), published in the **Federal Register** on May 30, 1991 (56 FR 24468).

II. Evaluation of Submittal

As previously discussed, Indiana intends that this MSW Landfill SIP revision submittal will be one of the control measures under 15% ROP plan for Clark and Floyd Counties, and included in the contingency plan for Lake and Porter Counties. A review of what emission reduction this SIP achieves for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIPs. (EPA will take rulemaking on these plans in a subsequent rulemaking action).

To determine the approvability of the Indiana MSW landfills SIP, the rule was reviewed for its consistency with the Act, including EPA's proposed and final MSW landfill rules published in the **Federal Register** on March 12, 1996 (61 FR 9905). A summary of the rule and discussion of EPA's analysis follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8–8 rule.

a. Applicability

The rule's applicability criteria in section 1 provide that new and existing MSW landfills located in the subject counties are subject to the requirements of this rule if such operations emit greater than fifty-five (55) tons per day of non-methane organic compound, or if such landfills have a minimum design capacity of one hundred eleven thousand (111,000) tons (one hundred thousand (100,000) megagrams (Mg)) of solid waste.

For purposes of this rule, "Existing municipal solid waste (MSW) landfill" is defined in section 2(c) to mean an existing MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use and for which construction commenced prior to the effective date of the State rule (January 18, 1996). It may be active, which means it either is currently accepting waste, or it is having additional capacity to accept waste. Or, an existing landfill may be closed, which means it is no longer accepting waste or it does not have available capacity for future waste deposition. "New MSW landfill" is defined in section 2(d) to mean a landfill for which construction, modification, or reconstruction commences on or after the effective date of the State rule.

The applicability criteria in section 1 clearly indicate the industry and activities subject to the rule. The rule's applicability criteria therefore, are approvable.

b. Definitions

The rule's definitions are found in section 2 of the State rule. Section 2(a) states that, for purpose of the State landfill rule, the definitions listed in EPA's proposed rule (56 FR 24468, May 30, 1991) shall apply. The only exemptions to the above is the definition of "Administrator" and "U.S. Environmental Protection Agency". Section 2(b)(1) defines "Administrator" as the commissioner of IDEM, and "U.S. EPA" as the IDEM for the purpose of this rule. The only other definitions listed in this section are "Existing municipal solid waste (MSW) landfill" and "New MSW landfill". Both definitions are discussed above in the applicability section. The definition section accurately describes the MSW Landfill industry and therefore, is approvable.

c. Compliance Dates

Section 4 of the Indiana MSW landfill rule requires that landfills meeting the requirements of this rule shall comply with section 3 of the rule by no later than May 1, 1996.

d. Compliance Procedures, Record Keeping, and Reporting

In Section 3(a) of the Indiana rule, the State air pollution control board has incorporated by reference the following provisions from EPA's May 30, 1991, proposed New Source Performance Standard (NSPS) and Emission Guideline (EG) for MSW landfills: (1) Standards for air emissions from MSW landfills; (2) Test methods and procedures; (3) Compliance provisions; (4) Monitoring operations; (5) Reporting requirements; (6) Record-keeping requirements; and (7) Design specifications for active vertical collection systems. (In addition to the above provisions, Indiana needs to submit additional rulemaking by December 12, 1996, to address subsequent requirements contained in EPA's final MSW Landfill rule published March 12, 1996, in the **Federal Register**, regarding statewide control of emissions from certain MSW landfill sources.)

Section 3(b) of the State rule explains that all changes to MSW landfills made under this rule constitute minor modifications under IDEM's solid waste permitting program and must be made in accordance with the minor permit modification requirements under 329 IAC 2–8–11 and the applicable fees as specified in IC 13–7–16.1–2(g). Compliance with the requirements of this rule is also subject to the provisions of 326 IAC 2–1, Air Permitting Rules.

III. Final Action

Based upon the analysis above, the EPA finds that Indiana's rule covering MSW landfill operations, 326 IAC 8–8, as submitted on November 21, 1995, and February 14, 1996, is consistent with Federal requirements. EPA, therefore, is approving this SIP revision submittal for the Counties of Lake, Porter, Clark, and Floyd. (In addition to the rule approved by this action, Indiana will need to submit additional rules, by December 12, 1996, to address subsequent requirements contained in EPA's final MSW Landfill rule published March 12, 1996, in the **Federal Register**, regarding control of emissions from such sources in other counties statewide.)

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 18, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(110) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c)* * *

(110) On November 21, 1995, and February 14, 1996, Indiana submitted Municipal Solid Waste (MSW) Landfill rules for Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan. This rule requires MSW landfills that emit greater than fifty-five tons per day of non-methane organic compound, or that have a minimum design capacity of one hundred eleven thousand tons (one hundred thousand megagrams) of solid waste, to install a landfill gas collection and control system that either incinerates the gas or recovers the gas for energy use.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8–8 Municipal Solid Waste Landfills, Section 1 Applicability, Section 2 Definitions, Section 3 Requirements; incorporation by reference of federal standards, Section 4 Compliance deadlines. Adopted by the Indiana Air Pollution Control Board July 12, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97–1080 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN63–1a; FRL–5663–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, and February 14, 1996, the State of Indiana submitted rules for the control of volatile organic liquid (VOL) storage operations in Clark, Floyd, Lake, and Porter Counties as a requested State Implementation Plan (SIP) revision. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compounds (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. In addition, this rule is intended to satisfy Clean Air Act (Act) requirements to adopt VOC Reasonably Available Control Technology (RACT) rules for non-Control Techniques Guidelines (CTG) sources in Clark, Floyd, Lake, and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this VOL storage SIP will reduce VOC emissions by 2,620 pounds per day (lbs/day) in Lake and Porter Counties and 142 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 18, 1997 unless adverse comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental

Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.
Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.)
U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Air Programs Branch (AR–18J) (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for ozone, while Clark and Floyd Counties are classified as "moderate" nonattainment. As such, these counties are subject to the 15% ROP requirement.

The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act, by November 15, 1996. Control measures implemented before November 15, 1990, are precluded from counting toward the 15% reduction.

In addition, section 172(c)(9) requires moderate and above areas to adopt contingency measures by November 15, 1993. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (April 28, 1992, 57 FR at 18070), states that the contingency measures generally must provide reductions of 3% from the 1990 base-year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. First, the State can use its discretion to implement a measure it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either meet the 15% ROP requirement or attain the national ambient air quality standards. In that situation, the reductions must be achieved in the year following that in which the failure has been identified by the State.

Besides ROP and contingency plan requirements, section 182(b)(2) of the Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above.[1] There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG.[2]

Section 183 of the amended Act requires EPA to issue post-enactment CTGs for thirteen source categories. CTGs were published by this date for four source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors, SOCMI Distillation, Wood Furniture Coating, and Shipbuilding and Ship Repair Coating; however, the CTGs for the remaining source categories have not been completed. To address State requirements regarding post-enactment CTG source categories for which a CTG has not yet been published, the EPA created a CTG document as Appendix E to the General Preamble. In Appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183 of the Act. One of the expected CTGs included on this list was to cover VOL storage tanks. Appendix E states that if EPA fails to issue CTGs for any of the post-enactment CTG source categories by November 15, 1993, the responsibility shifts to the State to submit a non-CTG RACT rule for those source categories.

In October 1993, EPA issued a draft CTG for VOL storage tanks. However, EPA decided not to finalize the CTG and, instead, issued in January 1994, a document entitled "Alternative Control Techniques (ACT) Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks", to assist states in developing rules for controlling emissions from VOL storage. In addition, EPA has adopted a New Source Performance Standard (NSPS) for VOL storage operations in 40 CFR 60, subpart Kb, which contains the same level of control identified in the draft CTG and ACT. Both the draft CTG and the ACT contain a draft model rule for use by the States in developing the SIP revisions.

To comply with 15% ROP plan, contingency measure, and non-CTG RACT requirements, Indiana has submitted, as a requested revision to the SIP, Rule 326 IAC 8–9 for the control of VOL storage operations in Lake, Porter, Clark, and Floyd Counties. The rule is included as a control measure in the 15% ROP plan for Clark and Floyd Counties and is included as a contingency measure for Lake and Porter Counties' contingency plan. (Rulemaking on the overall Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIP revisions will be taken in a subsequent **Federal Register** action).

On May 3, 1995, the Indiana Air Pollution Control Board adopted the VOL storage rule. Public hearings on the rule were held on March 1, 1995, and May 3, 1995, in Indianapolis, Indiana. The rule was signed by the Secretary of State on December 19, 1995, and became effective on January 18, 1996; it was published in the Indiana State Register on February 1, 1996. IDEM formally submitted the VOL storage rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness of this submittal in a letter dated February 23, 1996.

The November 21, 1995, and February 14, 1996, submittals include the following rules:

326 IAC 8–9 Volatile Organic Liquid Storage Vessels

(1) Applicability
(2) Exemptions
(3) Definitions
(4) Standards
(5) Testing and procedures
(6) Record keeping and reporting requirements

II. Evaluation of Rule

As previously discussed, Indiana intends that this VOL storage SIP revision submittal will be one of the control measures under 15% ROP plan for Clark and Floyd Counties, and included in the contingency plan for Lake and Porter Counties. A review of what emission reduction this SIP achieves for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIPs. (EPA will take

[1] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] The EPA publishes CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT.

rulemaking on these plans in a subsequent rulemaking action).

To determine the approvability of the Indiana VOL storage SIP submission, the rule was reviewed for consistency with section 110 and part D of the Act, and with EPA RACT guidance. Because there is no published CTG for VOL storage tanks at this time, EPA is using the draft model rule contained in the draft CTG and the ACT (draft model rule) to determine whether the Indiana rule constitutes RACT. Once the CTG is published, however, State VOL storage rules must achieve the CTG's stringency of control. A summary of the rule and discussion of EPA's analysis follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8–9 rule.

326 IAC 8–9–1 Applicability

This section establishes which VOL storage operations are subject to the rule. Beginning October 1, 1995, stationary vessels used to store VOL that are located in Clark, Floyd, Lake, and Porter Counties are subject to all of the requirements of the rule, except those vessels with a capacity of less than 39,000 gallons, a maximum true vapor pressure of less than 0.75 pounds per square inch absolute (psia), or otherwise exempted under section 2. VOL storage vessels with a capacity less than 39,000 gallons, or a maximum vapor pressure of less than 0.75 psia, however, are subject to certain record keeping and reporting requirements in section 6. These applicability criteria are consistent with applicability criteria contained in the draft model rule, and, therefore, are approvable.

326 IAC 8–9–2 Exemptions

This section exempts the following vessels from the requirements of this rule: (1) vessels at coke oven byproduct plants; (2) pressure vessels designed to operate in excess of 29.4 psia and without emissions to the atmosphere; (3) vessels that are permanently attached to mobile vehicles such as trucks, rail cars, barges, or ships; (4) vessels with a design capacity less than or equal to 420,000 gallons used for petroleum or condensate stored, processed, or treated prior to custody transfer; (5) vessels located at bulk gasoline plants; (6) storage vessels located at gasoline service stations; (7) vessels used to store beverage alcohol; and (8) stationary vessels that are subject to any provision of 40 CFR part 60, subpart Kb, New Source Performance Standard for Volatile Organic Liquid Storage. These exemption provisions are consistent with exemption provisions in the draft model rule and, therefore, are approvable.

326 IAC 8–9–3 Definitions

This section includes the following definitions to apply throughout the Indiana rule: (1) Condensate; (2) Custody transfer; (3) Fill; (4) Gasoline Service Station; (5) Maximum True Vapor Pressure; (6) Petroleum; (7) Petroleum Liquids; (8) Reid Vapor Pressure; (9) Vessel; (10) Volatile Organic Liquid; and (11) Waste. The term, "bulk gasoline plant," which is used in section 2 under the rule, is already defined in section 326 IAC 1–2–7. These definitions are generally consistent with those provided in the ACT's model rule. The definition of maximum true vapor pressure specifies the use of standard reference texts such as certain American Petroleum Institute publications, AP–42, and the Chemical Rubber Company's Handbook of Chemistry and Physics, to determine the maximum true vapor pressure of VOL in a particular vessel at the highest calendar month average ambient temperature in Lake and Porter Counties, which is 73 degrees Fahrenheit, and in Clark and Floyd Counties, which is 77.7 degrees Fahrenheit. This is consistent with the option contained in the draft model rule to use standard reference texts to determine maximum true vapor pressure. The definition of maximum true vapor pressure is approvable.

326 IAC 8–9–4 Standards

Section 4(a) requires that the owner or operator of each vessel with a capacity greater than or equal to 39,000 gallons and which stores VOL with a maximum true vapor pressure greater than or equal to 0.75 psia but less than 11.1 psia shall reduce emissions in accordance with the following control requirements.

Each vessel having a permanently fixed roof is required by section 4(a)(1) to have installed on or before May 1, 1996 either: (A) an internal floating roof meeting the standards for such roofs as specified in section 4(c) of the rule; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule; or (C) an equivalent emission control system resulting in equivalent emissions reductions to that obtained by installing an internal floating roof meeting the standards of section 4(c).

Each vessel having an internal floating roof is required by section 4(a)(2) to have installed either: (A) an internal floating roof meeting the standards for such roofs as specified in section 4(c) of the rule at the time of the next schedule vessel cleaning, but not later than May 1, 2006; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule, on or before May 1, 1996; or (C) an equivalent emissions control system resulting in equivalent emissions reductions to that obtained by installing an internal floating roof meeting the standards of section 4(c), on or before May 1, 1996.

Each vessel having an external floating roof is required by section 4(a)(3) to be installed with either: (A) an external floating roof meeting the standards for such roofs as specified in section 4(e) of the rule at the time of the next scheduled vessel cleaning, but not later than May 1, 2006; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule, on or before May 1, 1996; or (C) an equivalent emissions control system on or before May 1, 1996, resulting in equivalent emissions reductions to that which would be obtained by installing an external floating roof meeting the standards of section 4(e).

Although sections 4(a)(1)(C), 4(a)(2)(C), and 4(a)(3)(C) specify that sources may comply by using an "equivalent control system" to the rule's roof and sealing requirements if equivalent VOC reductions are obtained by May 1, 1996, Indiana has indicated that no sources have used that option for compliance. All sources covered under this rule, therefore, are required to meet either the applicable roof and seals requirements under sections 4(a)(1)(A), 4(a)(2)(A), and 4(a)(3)(A), or the applicable closed vent system and control device requirements under sections 4(a)(1)(B), 4(a)(2)(B), and 4(a)(3)(B). Therefore, provisions which would require alternative control methods to be subject to EPA review, which is generally required by EPA for RACT rules, is not necessary.

Section 4(b) requires that each vessel with a capacity of greater than 39,000 gallons that stores VOL with a maximum true vapor pressure greater than or equal to 11.1 psia shall equip each vessel with a closed vent and control device meeting the standards for such equipment as specified in section 4(d) of the rule.

Section 4(c) specifies that internal floating roofs be equipped with one of the following: (A) a foam or liquid-filled seal mounted in contact with the liquid; (B) two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the vessel and the edge of the internal floating roof; or (C) a mechanical shoe seal that consists of

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a metal sheet held vertically against the wall of the vessel by springs or weighted levers and that is connected by braces to the floating roof, with a flexible coated fabric, or envelope, spanning the annular space between the metal sheet and floating roof. Section 4(c) also requires that the internal floating roof rest or float on the liquid surface during storage of VOL, and that certain equipment be used to properly seal the various fittings of the vessel.

Section 4(d) provides that closed vent systems and control devices being used to comply with the rule meet the following specifications. The closed vent system must be designed to collect all VOC vapors and gases discharged from the vessel and operated with no detectable emission, as indicated by an instrument reading of less than 500 parts per million above background and visual inspections in accordance with the methods specified in 40 CFR 60, subpart VV, 60.485(C). The control device must be designed and operated to reduce inlet VOC emissions by 95% or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements in 40 CFR 60.18, General Provisions.

Section 4(e) requires that each external floating roof tank be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of a primary seal and a secondary seal. The primary seal is required to completely cover the annular space between the edge of the floating roof and vessel wall and shall be either a liquid mounted seal or a shoe seal. The secondary seal shall completely cover the annular space between the external floating roof and the wall of the vessel in a continuous fashion. Section 4(e) also requires that the external floating roof rest or float on the liquid surface during storage of VOL, and that certain equipment be used to properly seal the various fittings of the vessel.

The control requirements contained for fixed roof tanks, internal floating roof tanks, external floating roof tanks, and closed vent systems and control devices in section 4 (a) through (e) are generally consistent with the draft model rule, and, therefore, are approvable.

326 IAC 8–9–5 Testing and Procedures

This section provides the test methods which are to be used to determine compliance with the rule, which consists of visual inspection methods for the internal or external floating roof and the various seals required for each type of roof. This section also indicates the various frequencies by which these inspections are to be conducted, depending on the type of seals used. In addition, section 5 specifies the time frame by which any defects found by a visual inspection must be addressed. Furthermore, this section requires that IDEM be notified at least 30 days in advance so that the agency can have the opportunity to have an observer present. As for VOL storage operations which are complying by means of a closed vent system and control device, the owner or operator must submit to IDEM before January 1, 1996, an operating plan containing documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions, and a description of the parameter or parameters to be monitored to ensure the control device will be operated in conformance with its design. Affected sources must operate the closed vent system and control device and monitor the control devices' parameters in accordance with the operating plan unless the plan is revised by IDEM. Those sources complying through means of a closed vent system and flare shall meet the requirements specified in the general control device requirements in 40 CFR 60.18(e) and 40 CFR 60.18(f). These testing requirements are generally consistent with test methods expressed in the draft model rule, and, therefore, are approvable.

326 IAC 8–9–6 Recordkeeping and Reporting Requirements

The Indiana rule establishes certain recordkeeping and reporting requirements under section 6 which took effect when the rule took effect in October 1, 1995 (as provided under section 1 of the rule). Section 6(a) requires that records be kept for at least 3 years unless specified otherwise. Section 6(b) requires subject sources to maintain a record for the life of each affected vessel and report to IDEM the vessel's identification number, dimensions, capacity, and a description of the vessel's emission control equipment, or schedule for the installation of such equipment, with a certification that the equipment meets the applicable standards. Sources must also, under section 6(c)and 6(d), keep for at least 3 years records of the visual inspection conducted, any required measurements taken, and action taken to address defects, and report to IDEM within 30 days any defects found and the date and action taken to address defects.

Those sources complying through means of a closed vent system with a control device must, under section 6(e), maintain a record of the operating plan and parameter values monitored. Those sources complying through means of a closed vent system with a flare must furnish a report containing required measurements within 6 months of the initial start-up date, and a semiannual report of all periods recorded under section 40 CFR 60.115 in which the pilot flame was absent.

Section 6(g) requires VOL storage vessels with a design capacity greater than 39,000 gallons storing a VOL with a maximum true vapor pressure greater than or equal to 0.5 psia but less than 0.75 psia to maintain a daily record of the maximum true vapor pressure of the VOL stored in the vessel. Section 6(h) requires vessels with a design capacity greater than 39,000 gallons storing a VOL with a maximum true vapor pressure less than 0.75 psia to maintain a record and notify IDEM within 30 days when the maximum true vapor pressure of the VOL exceeds 0.75 psia. Vessels equipped with a closed vent system and control device are exempt from subsection (g) and (h), as provided under subsection (f).

Section 6(i) contains procedures for determining the maximum true vapor pressure. Section 6(j) requires certain monitoring requirements for vessels storing a waste mixture of indeterminate or variable composition. These record keeping and reporting requirements are consistent with those provided under the draft model rule, and, therefore, are approvable.

III. Final Action

Based upon the analysis above, the EPA finds that Indiana's regulation covering VOL storage operations, 326 IAC 8–9, as submitted on November 21, 1995, and February 14, 1996, is generally consistent with EPA's guidance in the draft model rule for this source category and, therefore, is considered to constitute RACT. EPA, therefore, is approving this rule as a revision to Indiana's ozone SIP.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will

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withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 18, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(111) to read as follows:

§52.770 Identification of Plan.

* * * * *

(c) * * *

(111) On November 21, 1995, and February 14, 1996, Indiana submitted a rule for the control of volatile organic compound emissions from volatile organic liquid storage operations in Clark, Floyd, Lake, and Porter Counties.

(i) Incorporation by reference. 326 Indiana Administrative Code 8–9: Volatile Organic Liquid Storage Vessels, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Standards, Section 5: Testing and procedures, Section 6: Record keeping and reporting requirements. Adopted by the Indiana Air Pollution Control Board May 3, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97–1081 Filed 1–16–97; 8:45 am]

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40 CFR Parts 52 and 81

[CA–98–1–7196a; FRL–5661–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Monterey Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is, through direct final procedure, approving the redesignation of the Monterey Bay Area from nonattainment to attainment for ozone. Through this direct final action, EPA is also approving for the Monterey Bay Area the maintenance plan, 1990 base year emissions inventory, emission statement rule, volatile organic compound (VOC) reasonably available control technology (RACT) rule 419 and oxides of nitrogen (NO_X) RACT rule 431 as revisions to California's State Implementation Plan (SIP) for ozone. In addition, EPA is determining that the

Monterey Bay Area has attained the ozone National Ambient Air Quality Standard (NAAQS) and, therefore, that certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the Clean Air Act (CAA or Act), are not applicable to the Monterey Bay Area for as long as the area continues to attain the ozone NAAQS, and that upon final redesignation of the Monterey Bay Area, the area will be entirely relieved of these requirements.

EPA is publishing this document without prior proposal because the Agency views these actions as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA proposes these actions should adverse or critical comments be filed. If adverse comments are received, EPA will withdraw this final rule and address these comments in a final rule based on the proposed rule published in this **Federal Register**. The Agency will not issue a second comment period on these actions.

DATES: This action is effective on March 18, 1997, unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Plans Development Section (A–2–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, 2020 L Street, Sacramento, CA 94814

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Plans Development Section (A–2–2), Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, at (415) 744–1207.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The ozone nonattainment designation for the Monterey Bay Area continued by operation of law according to section 107(d)(1)(C)(i) of the Clean Air Act, as amended in 1990; furthermore, the area was classified by operation of law as moderate for ozone under section 181(a)(1). See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR 81.305.

The District has collected ambient monitoring data that show no violations of the ozone NAAQS (See discussion in Section IV.1. below). Accordingly, on July 14, 1994, California requested redesignation of the area to attainment with respect to the ozone NAAQS and submitted an ozone maintenance SIP for the Monterey Bay Area. The Monterey Bay Unified Air Pollution Control Agency (MBUAPCD or the District), the Association of Monterey Bay Area Governments (AMBAG), and the Council of San Benito County Governments (CSBCG) prepared and adopted the maintenance plan on May 25, 1994, May 11, 1994 and May 5, 1994, respectively. The plan and redesignation request were subsequently submitted to CARB on June 1, 1994, and CARB submitted the plan and redesignation request to EPA on July 14, 1994. On November 14, 1994, CARB submitted a revision to the maintenance plan, adopted by MBUAPCD, AMBAG, and CSBCG on October 19, 1994, October 12, 1994 and October 6, 1994, respectively.

All SIP submittals to EPA must meet certain minimum administrative and technical criteria as set forth in 40 CFR Part 51, Appendix V (the "completeness" criteria) in order for the Administrator to review and take action on the submittal. Section 110(k)(1) of the Act describes the mandatory time frame for EPA's determination of completeness and rulemaking action on plan submissions. In accordance with section 110(k)(1)(B) of the Act, the Monterey Bay Area ozone redesignation request and maintenance plan was deemed complete by operation of law on February 14, 1995.

II. Determination Regarding Reasonable Further Progress, Attainment Demonstration and Related Requirements

The EPA is determining that the Monterey Bay Area ozone nonattainment area has attained the NAAQS for ozone. On the basis of this determination, EPA is also determining that certain RFP and attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the CAA are not applicable to the Monterey Bay Area for so long as the area continues to attain the ozone NAAQS.

Subpart 2 of Part D of Title 1 contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as to not require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of air quality monitoring data at each monitor). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title 1 (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or related contingency measures. As explained in a memorandum dated May 10, 1995, from John Seitz to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard," EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of Part D of Title 1, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be

required by the Administrator for the purpose of ensuring attainment of the applicable (NAAQS) by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that the Agency took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title 1 of the Clean Air Act Amendments of 1990 (57 FR 13498, (April 16, 1992)), and that the Agency is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emission * * * as necessary to attain the (NAAQS) by the attainment date applicable under this Act." As with RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title 1, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.[3]

The determination with regard to the applicability of certain RFP and attainment demonstration requirements does not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emissions reductions if necessary and appropriate to deal with transport situations.

III. Redesignation Evaluation Criteria

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area has met all relevant requirements under section 110 and Part D of the Act; (3) the area has a fully approved SIP under section 110(k) of the Act; (4) the air quality improvement must be permanent and enforceable; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status.

IV. Review of State Submittal

The California redesignation request for the Monterey Bay Area meets the five requirements of section 107(d)(3)(E), noted above. Following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the Ozone NAAQS

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and Appendix H to that Section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a rolling three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

The State of California's request is based on actual quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. This data comes from the District's State and Local Air Monitoring Station (SLAMS) network. The request is based on ambient air ozone monitoring data for calendar years 1988 through 1990. This data clearly shows the expected exceedance rate for the ozone standard of less than 1.0 per year for each of the monitors, including the monitor on which the nonattainment designation was based. Monitoring data also shows that no violations have occurred in the network area through 1995. The District has also committed to continue monitoring in the area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements: Section 110 and Part D

On December 20, 1983 (48 FR 56215), EPA fully approved California's SIP for the Monterey Bay Area as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act, with the exception of the motor vehicle inspection and maintenance (I/M) program which was signed for final

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *see also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

[3] The lack of a requirement to submit the SIP revisions exists only for as long as the area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revision would no longer exist. The EPA would then notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, if the area continues to attain the standard and submits a request for redesignation to attainment, upon final approval of the redesignation to attainment the area is entirely relieved of these requirements.

approval by the Regional Administrator on September 25, 1996. The 1990 amended Act, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the State submitted its redesignation request, as set forth in EPA policy.[4] As explained in Section II. of this document, the RFP and attainment demonstration requirements are not applicable for areas meeting the ambient air quality standard because these requirements only have meaning for areas not attaining the standard.

All of the SIP requirements must be met by the District and approved into the SIP by EPA by the time the area is redesignated.

A. Section 110 Requirements

Although section 110 was amended in 1990, the Monterey Bay Area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment EPA approved SIP met these requirements. As to those requirements that were amended, (*see* 57 FR 27936 and 23939 (June 23, 1993)), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations, requires monitoring, compiling, and analyzing of ambient air quality data, requires preconstruction review of new major stationary sources and major modifications to existing ones, provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

B. Part D Requirements

Before the Monterey Bay Area may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D of the Act. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of Part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1) or table 3 of section 186(a). The Monterey Bay Area was classified under table 1 of section 181(a)(1) as a moderate ozone nonattainment area (See 56 FR 56694, codified at 40 CFR 81.305). Therefore, in order to be redesignated to attainment, the District must meet the applicable requirements of Subpart 1 of Part D—specifically sections 172(c) and 176, as well as the applicable requirements of Subpart 2 of Part D.

B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, unless EPA establishes an earlier date. As discussed in section II. of this **Federal Register** document, EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement is not applicable for the Monterey Bay Area based on the area's attainment of the ozone NAAQS. Also, the 172(c)(9) contingency measures and additional 172(c)(1) non-RACT reasonable available control measures (RACM) are not applicable, since those measures are specifically related to RFP.

The 172(c)(3) emissions inventory requirement has been met by the submission and approval of the 1990 base year emissions inventory discussed in section V.1. of this **Federal Register** document.

As for the 172(c)(5) New Source Review (NSR) requirement, the Monterey Bay Area NSR program was approved on July 11, 1996 (61 FR 36501).

The 172(d) requirements for SIP revisions pursuant to section 110(k)(5) have been met and are discussed below in section 2.B3 and further in sections V.3 and 4. (VOC and NO_X RACT rules).

Finally, for purposes of redesignation, the Monterey Bay Area SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements were satisfied. The MBUAPCD SIP approved under section 110 of the Act (40 CFR 52.220) and the revisions to the SIP approved in section V. of this **Federal Register** document satisfy all applicable Part D, Title 1 requirements for moderate area ozone SIPs.

B.2. Subpart 1 of Part D—Section 176(c) Conformity Plan Provisions

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act ("transportation conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate.[5] These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two

[4] "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

"State Implementation Plan (SIP) Requirements for Areas Submitted Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

"Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

[5] Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title 1 informed States that the conformity regulation would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)). EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118), and general conformity regulations on November 30, 1993 (58 FR 63214). Pursuant to 40 CFR 51.851 of the general conformity rule, the State of California was required to submit a SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and December 1, 1994, respectively. The conformity rules for California were submitted to EPA, Region 9 by some of the local districts. Because EPA and Department of Transportation (DOT) have already amended the conformity regulation twice and have proposed a third set of amendments, EPA is allowing areas to incorporate all revisions to their conformity SIPs within one year of the publication of the **Federal Register** on the new regulation amendments. The anticipated submittal date of the new conformity SIP revisions in response to this amendment to the conformity regulations is early 1998.

factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

B.3. Subpart 2 of Part D—Section 182(a) and 182(b) Requirements

As a moderate ozone nonattainment area, the Monterey Bay Area must meet the requirements for marginal areas under Subpart 2 of Part D, section 182(a) as well as the requirements for moderate areas contained in section 182(b). As discussed in Section II. of this **Federal Register** document, EPA has determined that the RFP requirement for a moderate ozone nonattainment area under Subpart 2 of Part D is not applicable to the Monterey Bay Area based on the area's attainment of the ozone NAAQS.

For purposes of redesignation, the Monterey Bay Area must meet only those requirements of sections 182 (a) and (b) which were due prior to or at the time of the submittal of a complete redesignation request. Monterey must meet the section 182(a)(1) requirement for an emission inventory, the section 182(a)(2)(a) requirement for Reasonably Available Control Technology (RACT) rules and the section 182(a)(3)(b) requirement for a rule regarding emission statements for stationary sources. In sections V.1., 2., 3. and 4. of this **Federal Register** document, EPA is approving revisions to the SIP meeting the requirements mentioned above. EPA approval of these revisions completes the District's requirements to meet all applicable requirements of section 110 and Part D of the Act.

3. Fully Approved SIP Under Section 110(k) of the Act

In order for EPA to take final action approving the redesignation request, the District must have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D. As discussed in Section 2.A. above, EPA approved numerous provisions of the Monterey Bay Area SIP under the pre-amended Act and finds that these provisions meet the requirements of section 110(a)(2). Also, EPA approval of the emissions inventory and emission statement rule (Regulation III, Rule 300, parts 4.4–4.4.3) and the District's amended VOC RACT rule 419 and the NO_x RACT rule 431, as revisions to the SIP as required by sections 182 (a) and (b), fulfills the requirement that the District have a fully approved SIP under section 110(k).

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, EPA approved California's SIP control strategy for the Monterey Bay Area nonattainment area, which satisfies the requirement that the rules are permanent and enforceable. The Monterey Bay Area attained the ozone NAAQS in 1990, therefore, emission reductions achieved as a result of those rules are permanent. Since enactment of the 1990 Amendments, the State has made additional submittals as identified in the discussion of the section 182(b) requirements above and in Table 1.A below.

TABLE 1.A

Rule number, title	Adoption	EPA approval
416-Organic Solvents	04/20/94	02/12/96, 61 FR 5288.
417-Storage of Organic Liquids	08/25/93	02/15/95, 60 FR 8565.
418-Transfer of Gasoline into Stationary Storage	08/25/93	02/15/95, 60 FR 8565.
420-Effluent Oil Water Separators	08/25/93	02/09/96, 61 FR 4890.
425-Use of Cutback Asphalt	08/25/93	02/05/96, 61 FR 4215.
426-Architectural Coatings	08/25/93	02/09/96, 61 FR 4890.
427-Steam Drive Crude Oil Production Wells	08/25/93	02/15/95, 60 FR 8565.
430-Leather Processing Operations	05/25/94	10/25/95, 60 FR 54595
433-Organic Solvent Cleaning	06/15/95	02/12/96, 61 FR 5288.
434-Coating of Metal Parts & Products	06/15/95	02/12/96, 61 FR 5288.
1002-Transfer of Gasoline into Vehicle Fuel Tanks	11/23/94	02/09/96, 61 FR 4892.

In addition, EPA finds that a comparison of the Monterey emission inventories by source category (see Table 1.B below), reasonably attributes the improvement in air quality to emission reductions from controls which are permanent, and are enforceable as they have been adopted into the SIP and approved by EPA.

TABLE 1.B

Pollutant	Source category	1979	1987	1990
ROG*(TPD)	Stationary	67	62	50
	Mobile	41	44	46
	Total	108	106	96
NO_x	Stationary	82	34	32
	Mobile	46	60	61
	Total	128	94	93

*ROG (Reactive Organic Gases) mainly differs from VOC in that it includes ethane. Ethane is solely a product of combustion; VOC accounts for 98.5 percent of combustion.

The actual reduction in overall emissions from 1979 to 1990 was 12 tons per day (TPD) of VOC and 35 TPD of NO_X, which reflects growth in emissions from some sources and reductions in overall emissions due to all control measures. EPA finds that the combination of existing EPA-approved SIP and Federal measures contributes to the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

EPA is approving the State's maintenance plan for the Monterey Bay Area because EPA finds that the District's submittal meets the requirements of section 175A. Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

5.A. Attainment Emissions Inventory

The MBUAPCD adopted comprehensive inventories of VOC, and NO_X emissions from area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1990 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory.[6]

The latest revised annual and peak ozone season 1990 comprehensive inventories of actual emissions were adopted by the Monterey Bay Unified Air Pollution Control District (the District) on October 19, 1994 and submitted by CARB to EPA on November 15, 1994 as a SIP revision. CARB provided a more detailed clarification of the inventories on March 30, 1995. EPA notified the State of the completeness of the emissions inventories in a letter dated April 18, 1995.

The State submittal contains the detailed inventory data and summaries by county and source category. The District provided the stationary source estimates, and area source emissions for each source category based on emission and activity factors for each county in the nonattainment area. These factors are cited or their sources referenced in *Methods for Assessing Area Source Emissions in California*, California Air Resources Board, September 1991. CARB based on-road mobile source emission and activity estimates on CARB's EMFAC7F and BURDEN7C models, respectively.

The comprehensive base year emissions inventory discussed above has been entered into the Aerometric Information Retrieval System (AIRS). AIRS is EPA's computerized data storage system for air quality and emission source data. EPA, under contract with Radian Corporation, has entered the base year emissions inventory of stationary sources into AIRS and has also prepared computer software to convert the California Emission Data System stationary source data to AIRS/AFS format for entry into AIRS. California is responsible for entering 1990 area and mobile source (AMS) data into AIRS according to a fiscal year 1994 Clean Air Act section 105 air program grant agreement.

5.B. Demonstration of Maintenance

The MBUAPCD developed projected VOC and NO_X emissions inventories based on the 1990 actual inventory for the years 1995, 2000, 2005 and 2010 by applying growth factors in accordance with EPA guidance. The projected inventories, provided in Table 2.A. and 2.B. below, show that the ozone standard will be maintained and that emissions are not expected to exceed the level of the 1990 inventory during the maintenance period.

5.C. Verification of Continued Attainment

The plan demonstrates attainment of the NAAQS for at least 10 years after the area is redesignated. The tables below show the forecasts for ozone precursors VOC (Table 2.A.) and NO_X (Table 2.B.).

TABLE 2.A.—VOC EMISSIONS FOR AVERAGE SUMMER WEEKDAY*

[Tons Per Day]

Source categories	1990	1995	2000	2005	2010
Stationary:					
Fuel Combustion	00.86	00.80	00.86	00.87	00.88
Waste Burning	00.95	01.02	01.09	01.17	01.23
Solvent Use	21.45	20.60	22.29	24.13	25.82
Petroleum Processes, Storage & Transfer	06.07	01.72	02.21	02.22	02.22
Industrial Processes	00.49	00.56	00.58	00.63	00.66
Miscellaneous Processes	19.68	19.48	19.61	14.82	15.05
Banked Emissions	00.24	00.24	00.24	00.24	00.24
Stationary total	49.74	44.42	46.88	44.08	46.10
Mobile:					
On-Road	39.09	20.74	17.75	13.340	09.95
Non-Road	06.88	06.31	05.71	05.86	05.90
Mobile total	45.97	27.05	23.46	19.20	15.85
Total	95.71	71.47	70.34	63.28	61.95

*Anthropogenic sources of ozone precursors.

[6] "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

TABLE 2.B.—NO_X EMISSIONS FOR AVERAGE SUMMER WEEKDAY*

[Tons Per Day]

Source categories	1990	1995	2000	2005	2010
Stationary:					
Fuel Combustion	29.79	26.40	28.18	21.27	27.50
Waste Burning	00.15	00.16	00.17	00.18	00.19
Petro. Processes, Storage & Transfer	00.02	00.02	00.02	00.02	00.02
Industrial Processes	02.33	02.77	02.98	03.25	03.48
Miscellaneous Processes	00.01	00.01	00.01	00.01	00.01
Banked Emissions	00.14	00.14	00.14	00.14	00.14
Stationary total	32.44	29.50	31.50	24.87	26.34
Mobile:					
On-Road	43.13	28.99	27.77	25.54	24.86
Non-Road	17.34	17.46	18.31	18.90	19.37
Mobile total	60.48	46.45	46.08	44.44	44.23
Total	92.92	75.95	77.58	69.31	70.57

*Anthropogenic sources of ozone precursors.

The projections show that the area will continue to demonstrate attainment of the ozone NAAQS with current control measures. The Monterey Bay Area is not subject to additional emission reduction requirements for the CAA (since the area can demonstrate maintenance of the NAAQS for the 10 year maintenance period without additional controls). In addition, the emission inventory projections contained in the maintenance plan show a decrease in VOC emissions and NO_X emissions.

Continued attainment of the ozone NAAQS in the Monterey Bay Area depends, in part, on the State's efforts to track indicators of continued attainment during the maintenance period. MBUAPCD will analyze annually the three most recent consecutive years of ambient air quality monitoring data to verify continued attainment of the national ozone standard, in accordance with 40 CFR part 50, appendix H. The District will submit to EPA an annual report of data collected from the previous calendar year. This information, in conjunction with the reports from the previous two years, will provide adequate information for determining continued compliance with the ozone NAAQS.

5.D. Contingency Plan

The level of VOC and NO_X emissions in the Monterey Bay Area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required pursuant to section 175A, the District has developed a contingency plan, including specific measures with a schedule for implementation in the event of a future ozone air quality problem. The District has chosen three monitored exceedances of the NAAQS at one monitoring site within a consecutive three year period as the trigger for the contingency plan.

At the time of local adoption of the redesignation request and maintenance plan, the District identified several VOC and NO_X stationary source control measures as the contingency measures which would be implemented should the triggering event occur at a monitoring site during the maintenance period. Tables 3.A. and 3.B., below, summarize the contingency control measures. Rules to implement these controls are scheduled for adoption through 1997. However, should the triggering threshold described above occur before adoption, adoption would be scheduled within six months of the triggering event. When contingency measures are triggered, implementation of the measures will occur within 6 to 24 months of rule adoption.

TABLE 3.A.VOC—CONTINGENCY MEASURES

Title	Action needed	VOC reductions (TPD)
Adhesives	Adopt	.39–.4
Architectural Coatings (rule 426)	Revise	.35
Automobile Refinishing	Adopt	1.04–1.12
Cutback Asphalt Paving (rule 425)	Revise	2.15–2.39
Disposal of Organic Wastes/Hazardous Waste Minimization	Adopt	N/A
Fiberglass Fabrication/Polyester Resin Use	Adopt	.02
Fixed & Floating Roof Petroleum Storage Tanks (rule 417)	Revise	.23
Fugitive Emissions from Petroleum Production	Adopt	.06
Furniture Staining	Adopt	.04
Graphic Arts Printing & Coating Operations	Adopt	.06
Landfill Gas Collection Systems	Adopt	1.52–1.63
Marine Coatings	Adopt	.01
Petroleum Production & Separation	Adopt	N/A
Petroleum Sumps, Wastewater Separators & Well Cellars	Adopt	.08
Plastic Coatings	Adopt	N/A
Semiconductor Manufacturing Operations	Adopt	N/A

TABLE 3.A.VOC—CONTINGENCY MEASURES—Continued

Title	Action needed	VOC reductions (TPD)
Spray Booths-Misc. Coating & Cleanup Solvents (rule 429)	Revise	1.55–1.61
Wood Products Coatings	Adopt	.19

TABLE 3.B.—NO_X CONTINGENCY MEASURES

Title	Action needed	NO_x reductions (TPD)
Boilers, Steam Generators	Adopt	3.36–3.4
Kilns	Adopt	3.2–3.32
Stationary Internal Combustion Engines	Adopt	.97

5E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the District has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten year period.

V. Revisions to the SIP

1. 1990 Base Year Inventory

CARB submitted a revised 1990 base year emissions inventory to EPA on March 30, 1995 as required under section 182(a)(1). Table 4 below summarizes the 1990 peak ozone season weekday inventories submitted on March 30, 1995.

1990 BASE YEAR INVENTORY SUMMARY*

[Tons Per Day]

1990 peak ozone season (tpd)	Stationary point source	Stationary area source	Onroad mobile source	Offroad mobile source	Anthropogenic total	Biogenic source
VOC	4.06	51.23	37.08	6.41	98.80	171.00
NO_X	25.38	6.93	41.21	17.53	91.06	.....
CO	34.62	22.62	309.81	68.97	436.01	.....

Section 182(a)(1) of the CAA requires States with ozone nonattainment areas classified marginal and above to submit base year (1990) emission inventories by November 15, 1992, as a revision to the SIP. The inventories are to be comprehensive, accurate, and current inventories of actual emissions from all sources, in accordance with the guidance provided by the EPA Administrator.

The State submitted base year annual and peak season inventories for each of the ozone precursors on November 17, 1992 and subsequently revised those inventories. The latest submittal of revised annual average and peak ozone season average weekday 1990 inventories for VOC, NO_X, and carbon monoxide (CO) were submitted on March 30, 1995 as clarification of the inventories adopted by the MBUAPCD Board on October 19, 1994 and submitted by the State to EPA on November 15, 1994.

2. Emission Statement Rule

The EPA is approving Regulation III, Rule 300, parts 4.4–4.4.3, the Emission Statement (ES) Rule for the Monterey Bay ozone nonattainment area as a revision to the California SIP, in accord with CAA section 182(a)(3)(B)(i) for all ozone nonattainment areas classified marginal and above. The CAA mandates the adoption of a rule which requires owners or operators of each stationary source of VOC or NO_X to provide the State with a statement showing actual emissions of those pollutants. The ES must be in a form prescribed by the EPA Administrator, unless the Administrator accepts an equivalent alternative developed by the State. Section 182(a)(3)(B)(ii) allows States to waive the application of the ES rule for any class or category of stationary sources which emit less than 25 tons per year of VOC or NO_X if the State, in its submissions of base year or periodic inventories, provides an inventory of emissions from such class or category of sources based on the use of emission factors established by the Administrator or other methods acceptable to the Administrator.

On January 7, 1992, EPA approved an equivalent alternate form of ES developed by the State. However, the State failed to submit ES rules for parts of seven ozone nonattainment areas, including the Monterey Bay Area, by the November 15, 1992 CAA deadline. On January 15, 1993, EPA issued a letter to the State finding that the State had failed to meet the CAA deadline for submittal of the ES rule. This action triggered the start of sanctions and Federal Implementation Plan (FIP) clocks. On June 9, 1993, the District adopted the above-referenced rule. The State subsequently submitted the ES rule for the Monterey Bay Area on November 18, 1993. On June 22, 1994, by letter, EPA notified the State of the completeness of the ES rule, thus stopping the sanction clocks. With today's approval of the ES rule, the FIP clock is also halted for the Monterey Bay Area.

The ES rule requires: (1) Emission data from stationary sources of VOC and NO_X, (2) the source owner or operator's certification that the emission data/information is accurate to the best of his/her knowledge, and (3) the data to be reported on a specific form or in a specific format. The rule also waives reporting requirements for facilities with the potential to emit less that 25 tons per year of VOC or NO_X.

3. VOC RACT Rule Correction

Section 182(a)(2) requires ozone nonattainment areas to adopt and correct RACT rules pursuant to pre-

amended Act section 172(b) as interpreted in pre-amended Act guidance.[7] EPA developed a series of Control Technology Guideline (CTG) documents based on the underlying requirements of the Act and which specify the presumptive norms for what is RACT for specific source categories. The CTGs applicable to this rule are entitled "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" (EPA–450/2–77–026) and "Control of Volatile Organic Emissions from Bulk Gasoline Plants" (EPA–450/2–77–035). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MBUAPCD's revised Rule 419, Bulk Gasoline Plants and Terminals, was adopted on November 23, 1994 and submitted to EPA by CARB on November 30, 1994. EPA found this rule complete on December 7, 1994. The rule includes the following significant changes from the current SIP version:

- Added definitions section
- Strengthened provisions for bulk terminals
- Added provisions for bulk plants
- Added recordkeeping requirements
- Added test methods

EPA has reviewed this rule and has determined the rule to be consistent with the CAA requirements, and EPA regulations as found in section 110 and Part D of the CAA and 40 CFR part 51, and EPA policy. Thus, EPA is approving, as part of this direct final action, the MBUAPCD VOC RACT Rule 419—Bulk Gasoline Plants and Terminals.

4. NO_X RACT Rule 431

The air quality planning requirements for the reduction of NO_X emissions through RACT are set out in section 182(f) of the CAA.[8] Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of VOCs, in moderate or above ozone nonattainment areas.

NO_X emissions contribute to the production of ground level ozone and smog. The MBUAPCD rule 431 controls emissions from utility power boilers. The rule was adopted as part of the District's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. The rule was submitted in response to the CAA requirements cited above.

However, subsequent to the complete submittal of the NO_X rule pursuant to the CAA, the District applied for an exemption from the NO_X RACT requirements pursuant to Section 182(f) of the CAA.[9] The basis for the Monterey Bay Area's exemption was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO_X measures. While the District had adopted and submitted the measure in response to both the state and federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. Subsequently, EPA evaluated the exemption request and published approval for the Monterey Bay Area's petition for a NO_X RACT exemption on April 25, 1995 (60 FR 20233).

The MBUAPCD has identified the reductions obtained from Rule 431 as contributing to future maintenance of the ozone standard.

EPA has evaluated Monterey's rule 431 for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement and various EPA policy guidance documents.[10] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions. However, because the measure is being incorporated into the SIP as a maintenance measure for the area's redesignation plan, and since the District applied for and received a NO_X RACT exemption, the rule is not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rule is being incorporated into the SIP as an attainment maintenance measure for ozone, and is being evaluated for SIP enforceability purposes.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, the rule is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

VI. Conclusion

In today's final action, EPA is determining that as a consequence of EPA's determination that the Monterey Bay Area ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard prior to the effective date of this redesignation.

Finally, EPA is approving the Monterey Bay Area ozone maintenance plan as it meets the requirements of section 175A, and the Agency is redesignating the Monterey Bay Area to attainment for ozone because the State of California has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Additionally, EPA is approving the 1990 emissions inventory, VOC RACT Rule 419 and NO_X RACT Rule 431 corrections, and the Emissions Statement Rule as revisions to the California SIP for the Monterey Bay Area as they meet the requirements of sections 182(a) and (b) of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The ozone SIP is designed to satisfy the requirements

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[7] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[8] On November 25, 1992, EPA published a NPRM entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

[9] See "Guidance for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)", issued by EPA's Office of Air Quality Planning and Standards, December 1993 and EPA's NO_X Supplement to the General Preamble, 57 FR 55628, November 25, 1992.

[10] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

of Part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State of California to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved ozone SIP. Changes to the ozone SIP VOC RACT regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted and approved by EPA. Unauthorized relaxations, deletions, and/or changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA, and approval of an emissions inventory do not impose any new requirements on small entities. Additionally, the approval of the emission statement rule, which waives reporting requirements for facilities with the potential to emit less than 25 tons per year of VOC or NO_x, does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve the requirements that the State is already imposing. Therefore, the Administrator certifies that the approval of the SIP revisions and redesignation will not affect a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base Agency actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and 182(a)(1) of the Clean Air Act. Also, EPA's final action approving the emission inventory does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

These actions have been classified as Table 2 and Table 3 actions for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 14,1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation and by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from the requirements of section 6 of Executive Order 12866.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental Protection Air pollution control, National Parks, Wilderness Areas.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 15, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(F)(*5*), (c)(207)(i)(E)(*1*), (c)(209), (c)(213), and (c)(225)(i)(E)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(F) * * *

(*5*) Rule 300—Regulation 3, Part 4, Paragraph 4.4 adopted on June 9, 1993.

* * * * *

(207) * * *

(i) * * *

(E) * * *

(*1*) Rule 419, adopted on November 23, 1994.

* * * * *

(209) Redesignation Request and Ozone Maintenance Plan for the redesignation of the Monterey Bay Unified Air Pollution Control District submitted on July 14, 1994 and November 14, 1994, respectively, by the Governor's designee.

(i) Incorporation by reference.

(A) Maintenance Plan for the redesignation of the Monterey Bay Area adopted on October 19, 1994 by the Monterey Bay Unified Air Pollution Control District, October 12, 1994 by the Association of Monterey Bay Area Governments, and October 6, 1994 by the Council of San Benito County Governments.

* * * * *

(213) Statewide 1990 Base-year Ozone Precursor Emission Inventory for Ozone Nonattainment Areas submitted on March 30, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Area Unified Air Pollution Control District.

(*1*) 1990 Base-year ozone emissions inventory, adopted on October 19, 1994.

* * * * *

(225) * * *

(i) * * *

(E) * * *

(*1*) Rule 431, adopted on August 16, 1995.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501, 7515, 7601.

Subpart B—Designation of Air Quality Control Regions

2. In § 81.305, the table for "California—Ozone" is amended by revising the entry "Monterey Bay Area" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
. . . . .				
Monterey Bay Area ..... Monterey County, San Benito County, Santa Cruz County	February 18, 1997	Attainment.		
. . . . .				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–876 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 799

[OPPTS–42150B; FRL–5570–2]

RIN 2070–AB94

Testing Consent Order For Phenol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final consent agreement and order; direct final rule.

SUMMARY: Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with AlliedSignal Inc., Aristech Chemical Corporation, The Dow Chemical Company, Dakota Gasification Company, Georgia Gulf Corporation, General Electric Company, GIRSA, Inc., JLM Chemicals, Inc., Kalama Chemical, Inc., Merichem Company, Mitsubishi International Corporation, Mitsui Co. (U.S.A.), Inc., Shell Chemical Company, and Texaco Refining Marketing Inc. (collectively the Companies). The Companies have agreed to perform certain health effects tests on phenol (CAS No. 108–95–2). This notice summarizes the ECA and adds phenol to the list of chemicals subject to testing consent orders and hence subject to export notification requirements.

EFFECTIVE DATE: The effective date of the ECA and Order (including the export notification requirements) is January 17, 1997. The effective date for the addition of phenol to the list of chemicals in 40 CFR 799.5000 subject to testing consent orders, and thus, the effective date of the export notification requirements contained in this notice for those entities not party to the ECA is March 18, 1997.

If EPA receives any adverse comments on the addition of phenol to the list of chemicals contained in 40 CFR 799.5000, which makes the export notification requirements in this notice applicable to all exporters of phenol, EPA will withdraw this rule. Instead, EPA will issue a proposed rule addressing this issue and will provide a 30-day period for public comment. If no adverse comments are received, the rule will become effective as a final rule on the date specified.

ADDRESSES: Each comment must bear the docket control number OPPTS–42150B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Persons submitting information any portion of which they believe is entitled to treatment as confidential business information (CBI) by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter. Three sanitized copies of any comments

containing information claimed as CBI must also be submitted and will be placed in the public record for this action.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–42150B. No CBI should be submitted through e-mail. Electronic comments on this direct final rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. ET–543B, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For specific information regarding this direct final rule or the ECA and Order, contact Keith J. Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–8157; fax: (202) 260–1096; e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces the ECA and Order for phenol and amends 40 CFR 799.5000 by adding phenol to the list of chemical substances and mixtures subject to testing consent orders and export notification requirements.

I. Introduction

TSCA section 12(b)(1) requires persons who export or intend to export a chemical substance for which the submission of data is required under section 4 of TSCA to notify EPA of such export or intent to export. Section 799.5000 of title 40 of the Code of Federal Regulations contains a list of chemical substances and mixtures that are subject to testing consent orders and for which export notification is required under 40 CFR 799.19. This notice adds phenol to the list contained in 40 CFR 799.5000, thus making all persons who export or intend to export phenol subject to the export notification requirements contained in 40 CFR part 707 (see Unit VI of this document). EPA is amending 40 CFR 799.5000 by direct final rulemaking. However, EPA does not expect adverse comments on this rule because the burden of compliance with the export notification requirements (set forth at Unit VIII. A. of this notice) is minimal.

II. Chemical-Specific Background

At the request of EPA, the Interagency Testing Committee (ITC) received a subset of chemicals included on EPA's Integrated Risk Information System (IRIS) data base for which the Agency believed there is inadequate data. The ITC designated six chemicals included in IRIS (acrylic acid addressed in a separate rulemaking at 57 FR 7656, March 4, 1992), acetophenone, phenol, N,N-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol for priority consideration as candidates for chemical fate, health effects, and environmental effects testing. The reasons for these recommendations by the ITC are further discussed in the **Federal Register** of March 6, 1991 (56 FR 9534), and in the chemical specific sections of the November 22, 1993 (58 FR 61654) **Federal Register** notice.

On July 17, 1992, EPA published a **Federal Register** notice (57 FR 31714) announcing an "open season". The open season was a time during which industry and other interested parties could submit to EPA proposals for enforceable consent agreements (ECAs) to test substances for which the Agency had not issued final test rules. In that notice, EPA indicated that it would review the submissions and select candidates for negotiation of ECAs pursuant to 40 CFR 790.22. EPA also indicated that it would, at a future date, publish a **Federal Register** notice soliciting persons interested in participating in or monitoring negotiations for the development of ECAs on the chemical substances selected.

After evaluating the testing proposals submitted during the open season (57 FR 31714), EPA issued a **Federal Register** notice on March 30, 1993 (58 FR 16669), which identified a three tier priority ranking of the testing proposals received from manufacturers, solicited parties interested in monitoring or participating in ECA negotiations of tier I chemicals to identify themselves to EPA, and extended the opportunity for manufacturers to supplement their test proposals for tier I, tier II, tier III and unranked chemicals.

In response to the March 30, 1993, notice EPA received, among other items, a request for removing carbon disulfide from the open season program, a testing proposal for brominated flame retardants, and a request for adding phenol to tier I.

On November 22, 1993 (58 FR 61654), EPA proposed a test rule under section 4(a) of TSCA that would require manufacturers and processors of five chemicals (phenol, acetophenone, N,N-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol) to conduct testing for certain chemical fate, health and environmental effects. In addition, in this proposed rulemaking, EPA also invited manufacturers and/or processors of these chemical substances to participate in consent agreement negotiations for the chemicals proposed for testing to develop and submit consent agreement proposals to EPA.

In evaluating the ITC's testing recommendations for phenol in the proposed test rule, EPA considered the information provided by the ITC, the on-line IRIS data base, and supplemental information developed by EPA. In developing the testing requirements, EPA has also considered the status of phenol under the Clean Air Act amendments of 1990. These considerations have influenced the testing routes of administration selected.

EPA believes that phenol is used in a wide variety of industrial and consumer activities. The annual production volume is estimated to exceed 3.5 billion pounds. Approximately 320,000 workers may be exposed to phenol. In addition, phenol is used in numerous consumer products indicating a potential for exposure to consumers.

In the November 22, 1993 proposal, EPA proposed that phenol be tested, by the inhalation route of administration, for subchronic toxicity, toxicokinetics, neurotoxicity (acute and subchronic), and reproductive toxicity. In addition, EPA proposed that toxicokinetics testing by the oral route of administration and both reproductive and developmental toxicity testing be conducted by gavage.

EPA also proposed, in the Hazardous Air Pollutants (HAPS) test rule (61 FR 33178, June 26, 1996) (FRL–4869–1) that phenol be tested for acute toxicity and immunotoxicity in addition to the testing proposed earlier (58 FR 61654). On the basis of information provided by the Phenol Panel, EPA requested that manufacturers conduct a 14-day inhalation study so that inhalation risks of phenol exposure could be extrapolated from the oral test data and pharmacokinetics data that the Panel members had agreed to conduct, rather than the acute study. The inhalation study is necessary to determine portal-of-entry effects from inhalation

exposure which can only be obtained from a well conducted inhalation study. The pharmacokinetics data can be used to calculate the inhalation exposures that correspond to the doses used in the oral studies for the systemic effects, thus permitting an estimation of the inhalation doses that would be required to produce the responses observed in the oral studies. The Panel provided EPA with test data which are sufficient to characterize the immunotoxicity of phenol.

III. Enforceable Consent Agreement Negotiations

In response to EPA's proposed rule and offer to negotiate an ECA, The Chemical Manufacturer's Association (CMA) Phenol Panel submitted a proposal for a testing program (Ref. 1).

EPA held a public meeting to negotiate an ECA for phenol on October 26, 1995. This meeting was attended by representatives of the Companies and other interested parties. During the public meeting, consensus was reached on the ECA, and on the tests to be included in the ECA. On September 6, 1996, EPA received the ECA signed by the Companies. On January 9, 1997, EPA signed the ECA and accompanying Order.

IV. Proposed Test Rule

EPA has decided not to finalize the proposed test rules for phenol (58 FR 61654, November 22, 1993; 61 FR 33178, June 26, 1996). EPA has instead reached agreement with the Companies that the testing requirements for phenol in both proposed rules, will be met by implementing the ECA and Order, and that the issuance of the ECA and Order constitutes final EPA action for purposes of 5 U.S.C. 704. Should EPA decide in the future that it requires additional data on phenol, the EPA will initiate a separate action.

V. Testing Program

Table 1 describes the required testing, test standards, and reporting requirements under the ECA for phenol. This testing program will allow EPA to characterize further the potential health hazards resulting from exposure to phenol.

Table 1.—Required Testing, Test Standards and Reporting Requirements for Phenol

Description of test	Test standard (40 CFR citation)	Deadline for final report[1] (months)	Interim reports required[2] (number)
Respiratory toxicity:			
1. 14-day, inhalation.	Appendix I	12	1
Reproductive toxicity:			
1. Reproductive toxicity, drinking water.	798.4700 (40 CFR) (Appendix II)	29	4
Neurotoxicity:			
1. Subchronic neurotoxicity, functional observational battery, motor activity, neuropathology, drinking water.	91–154617 (National Technical Information Service) (Appendix III)	21	3
2. Developmental neurotoxicity,[3] drinking water.	91–154617 (National Technical Information Service) (Appendix III)	[4]21	3

[1] Number of months after the effective date of the testing consent order.
[2] Interim reports are required every 6 months from the effective date until the final report is submitted. This column shows the number of interim reports required for each test.
[3] If the Agency determines that the results of the neuropathology study are not negative, then this required testing must be performed.
[4] Figure indicates the reporting deadline, in months, calculated from the date the notification to the test sponsor by certified letter or **Federal Register** notice that the Agency has determined this required testing must be performed.

VI. Export Notification

Upon publication of this notice, the ECA and Order subject any of the Companies who export or intend to export phenol, of any purity, to the export notification requirements of section 12(b) of TSCA. Upon the effective date of the rule, any other persons who export or intend to export phenol, of any purity, will be subject to the export notification requirements of section 12(b) of TSCA. The listing of a chemical substance or mixture at 40 CFR 799.5000 serves as notification to persons who export or intend to export such chemical substance or mixture that the substance or mixture is the subject of an ECA and Order and that 40 CFR part 707 applies.

VII. Public Record

EPA has established a record for this ECA and Order under docket number OPPTS–42150B, which is available for inspection Monday through Friday, excluding legal holidays, in Rm. NE–B607, 401 M St., SW., Washington, DC, 20460 from noon to 4 p.m. Information claimed as Confidential Business Information (CBI), while part of the record, is not available for public review.

Electronic comments can be sent directly to EPA at: oppt-ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

A. Supporting Documentation

This record contains the basic information considered in developing this ECA and Order and includes the following information.

(1) Testing Consent Order for Phenol, with incorporated Enforceable Consent

Agreement and associated testing protocols attached as appendices.

(2) **Federal Register** notices pertaining to this notice, the Testing Consent Order and the Enforceable Consent Agreement, consisting of:

(a) Notice of Proposed Rulemaking for Acetophenone, Phenol, N,N-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol (58 FR 61654; November 22, 1993).

(b) Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements (57 FR 31714; July 17, 1992).

(c) Notice of Testing Consent Agreement Development for Listed Chemical Substances; Solicitation for Interested Parties (58 FR 43893; August 18, 1993).

(3) Communications consisting of:

(a) Written letters.

(b) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

1. The Phenol Regulatory Task Group of the Chemical Manufacturers Association. Letter from Gordon D. Strickland to EPA. Enforceable Testing Consent Agreement Proposal for Phenol. Washington, DC. (February 22, 1994).

VIII. Regulatory Requirements

A. Regulatory Assessment Requirements

For regulatory assessment purposes, the ECA and Order for phenol announced in this notice do not constitute a rule as defined by sections 3 (d) and (e) of Executive Order 12866 (58 FR 51735, October 4, 1993) or section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Order incorporates the ECA and the ECA is an agreement between and among EPA and the Companies. This notice, however, is a rule because it amends 40 CFR 799.5000, thereby subjecting all persons who export or intend to export phenol to export notification requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA has determined that few, if any, entities which currently export phenol, or are likely to export phenol in the future, are small as defined by 40 CFR 704.3. Furthermore, the exporter is required only to include the following information in the notice to EPA: The name of the chemical substance (i.e., in this case, phenol); the name and address of the exporter; the country (ies) of import; the date(s) of export or intended export; and the section of TSCA under which EPA has taken action (i.e., in this case, TSCA section 4). The cost of compliance with these routine administrative requirements is minimal. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. As described above, the export notification procedure is a routine administrative act and the cost of compliance is minimal. The requirements of section 203 of UMRA which relate to regulatory requirements that may significantly or uniquely affect small governments also do not apply to today's rule because the rule affects only the private sector, i.e., those who export or intend to export phenol.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0033 (EPA ICR No. 1139) for implementation of the ECA and Order, and OMB control number 2070–0030 (EPA ICR No. 0795) for compliance with export notification requirements. This action does not impose any burdens requiring additional OMB approval.

The public reporting burden for the collection of information relating to the ECA and Order is estimated to average 388 hours per response. This estimate includes the time for reviewing the test protocols attached to the ECA, generating and analyzing the test results, and submitting the results to EPA. The public reporting burden for the collection of information relating to the export notification requirements is estimated to average 0.55 hours per response.

B. Submission to Congress and the General Accounting Office

This action is not a "major rule" as defined by 5 U.S.C. 804(2). Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted this action to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to its publication in today's **Federal Register**.

List of Subjects in 40 CFR Part 799

Environmental Protection, Chemicals, Chemical export, Hazardous substances, Health effects, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: January 9, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, title 40 of the Code of Federal Regulations, chapter I, subchapter R, part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding phenol to the table in CAS number order, effective March 18, 1997, to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

CAS Number	Substance or mixture name	Testing	FR publication date
*	* * *	* *	*
108–95–2	Phenol	Health Effects	January 17, 1997
*	* * *	* *	*

[FR Doc. 97–1263 Filed 1–16–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–64; RM–8747]

Radio Broadcasting Services; Boulder and Lafayette, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Chananel 234C from Boulder to Lafayette, Colorado, and modifies the license of Salem Media of Colorado, Inc. for Station KRKS-FM to specify operation on Channel 234C at Lafayette, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 61 FR 15022, April 4, 1996. The allotment of Channel 234C to Lafayette will provide that community with its first local aural transmission facility without depriving Boulder of local transmission service. Coordinates used for Channel 234C at Lafayette, Colorado are 39–40–35 and 105–29–09. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of theCommission's Report and Order, MM Docket No. 96–64, adopted January 3, 1997. and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by removing Channel 234C at Boulder and adding Lafayette, Channel 234C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1097 Filed 1–16–97; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 215, and 252

[DFARS Case 96–D310]

Defense Federal Acquisition Regulation Supplement; Procurement Integrity

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect amendments to certain statutory procurement integrity restrictions.

DATES: Effective date: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4304 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) amended the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and repealed 10 U.S.C. 2397–2397c, which addressed post-Federal employment of certain former Department of Defense employees. This final rule removes regulations implementing the repealed statutes and conforms DFARS 203.104 to the FAR revisions published as Item I of Federal Acquisition Circular 90–45 (62 FR 226, January 2, 1997).

A proposed rule with request for public comments was published on September 6, 1996 (61 FR 47100). One comment was received, which recommended no changes to the proposed rule.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to "major defense contractors" (i.e., contractors with DoD contracts exceeding $10 million per Government fiscal year), and affects only the ability of such contractors to provide compensation to certain former DoD employees.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule eliminates the information collection and reporting requirements of DFARS 203.170–2 and the associated clause at 252.203–7000. The requirements that are eliminated were approved by the Office of Management and Budget (OMB) under OMB Clearance number 0704–0277.

List of Subjects in 48 CFR Parts 203, 215, and 252

Government Procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 203, 215, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 203, 215, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

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PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.104–4 [Removed]

2. Section 203.104–4 is removed.

203.104–5 [Amended]

3. Section 203.104–5 is amended by redesignating paragraph (e)(4) as (d)(4); and revising, in newly redesignated paragraph (d)(4), the reference "FAR 3.104–5(e)(4)" to read "FAR 3.104–5(d)(4)".

203.170 through 203.170–4 [Removed]

4. Sections 203.170 through 203.170–4 are removed.

PART 215—CONTRACTING BY NEGOTIATION

5. Section 215.608 is amended by revising the last sentence of paragraph (b) to read as follows:

215.608 Proposal evaluation.

* * * * *

(b) * * * Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Removed and reserved]

6. Section 252.203–7000 is removed and reserved.

[FR Doc. 97–1037 Filed 1–16–97; 8:45 am]
BILLING CODE 5000–04–M

48 CFR Parts 215, 219, 225, 226, 227, 233, and 252

[DFARS Case 96–D306]

Defense Federal Acquisition Regulation Supplement; Elimination of Certifications

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove particular certification requirements for contractors and offerors that are not specifically imposed by statute.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 96–D306 in all correspondence related to this case.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Parts 215, 219, 225, 226, 227, 233, and 252 to remove particular certification requirements for contractors and offerors. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(b) requires the head of each executive agency, that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute, to issue for public comment a proposal to remove from the agency regulations those certification requirements that are not specifically imposed by statute. The head of the agency can omit such a certification from its proposal only if: (1) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (2) the head of the executive agency approves in writing the retention of such certification requirement. A proposed rule was published in the **Federal Register** on September 6, 1996 (61 FR 47101). Eighteen comments were received from four respondents. All comments were considered in the development of the final rule.

In response to the public comments, DFARS 215.873(d) was revised to replace "furnishes any certification" with "identifies any such data" to avoid any potential misinterpretation that a certification not specifically required by statute or regulation is permitted. Additionally, the language at DFARS 252.236–7006(c) was revised to more clearly define the requirement for offerors to indicate that proposed items, subject to cost limitations, include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

Several certifications for contractors and offerors associated with Foreign Contracting had been proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications are being proposed for retention, because the self-policing discipline of a certification requirement is important to enforcing a national policy grounded in vital economic and security interests. The Government believes that elimination of these certification requirements would have created a need for offerors to submit more detailed information regarding the origin of offered products. Therefore, the certification is viewed as a less burdensome alternative. Interested parties are invited to submit comments on the retention of these certification requirements. Please cite Holding File 96–708–02, Regulatory Reform—Certifications DFARS, in correspondence. Comments should be limited to the retention of the following certifications for contractors and offerors that were proposed for elimination but have been retained as a result of the analysis of public comments:

DFARS Cite	Clause/provision No.	Title
225.109	252.225–7000	Buy American Act—Balance of Payments Program Certificate.
225.408	252.225–7006	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
225.408	252.225–7035	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

B. Regulatory Flexibility Act

This final rule is expected to have a significant beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it reduces the number of certifications that offerors and contractors must provide to the Government. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and may be obtained from the address specified herein. A copy of the FRFA has been submitted to the Chief Council for Advocacy of the Small Business Administration. The analysis is summarized as follows:

UMI

The objective and legal basis for this rule is Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule implements Section 4301(b) by amending the DFARS to remove certain certification requirements for contractors and offerors that are not specifically imposed by statute. There were no public comments received in response to the initial regulatory flexibility analysis. Certifications relating to the Buy American Act, Trade Agreements Act, and North American Free Trade Agreement Implementation Act were originally proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications were retained. The rule will apply to all large and small entities that are interested in receiving Government contracts. The number of small entities to which the rule will apply is estimated to be 20,378. This rule does not impose any reporting, recordkeeping, or other compliance requirements. Flexible compliance was considered but determined inappropriate because the rule eliminates, rather than imposes, certification burdens on large and small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 215, 219, 225, 226, 227, 233, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 219, 225, 226, 227, 233, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215, 219, 225, 226, 227, 233, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is amended by revising paragraph (d) to read as follows:

215.873 Estimated data prices.

* * * * *

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.301 is amended by revising paragraph (b) to read as follows:

219.301 Representation by the offeror.

* * * * *

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror represents that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or subcontinent Asian American, unless the offeror represents that—

(A) It currently is in the Section 8(a) program; or

(B) Within the 6 months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

4. Section 219.302–70 is amended by revising paragraphs (d) and (e) to read as follows:

§ 219.302–70 Protesting a small disadvantaged business representation.

* * * * *

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness; and

(3) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest; or

(2) The offeror represents that, within the 6 months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

* * * * *

PART 225—FOREIGN ACQUISITION

5. Section 225.603 is amended by revising paragraph (1)(iii)(C)*(2)* to read as follows:

§ 225.603 Procedures.

(1) * * *

(iii) * * *

(C) * * *

(2) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and the duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

6. Section 226.7005 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 226.7005 Eligibility as an HBCU or MI.

* * * * *

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at 252.226–7001, unless—

(1) Another offeror challenges the status; or

* * * * *

§ 226.7008 [Amended]

7. Section 226.7008 is amended in paragraph (b) by removing the word "Certification" and inserting the word "Status" in its place.

PART 227—PATENTS, DATA, AND COPYRIGHTS

§ 227.7004 [Amended]

8. Section 227.7004 is amended in paragraph (a)(6) by removing the word "certification" and inserting the word "declaration" in its place.

227.7103–6 [Amended]

9. Section 227.7103–6 is amended in paragraph (e)(3) by removing the word

"Certification" and inserting the word "Declaration" in its place.

227.7104 [Amended]

10. Section 227.7104 is amended in paragraph (e)(5) by removing the word "Certification" and inserting the word "Declaration" in its place.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.70 [Removed]

11. Subpart 233.70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

12. Section 252.212–7001 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing the entry "252.233–7000 Certification of Claims and Requests for Adjustment or Relief (10 U.S.C. 2410)".

13. Section 252.216–7000 is amended by revising the clause date to read ("JAN 1997)"; by removing paragraph (c)(4); and by revising paragraph (e)(1) to read as follows:

252.216–7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

* * * * *

(e) * * *

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

* * * * *

252.216–7001 [Amended]

14. Section 252.216–7001 is amended by revising the clause date to read "(JAN 1997)"; in the introductory text of paragraph (f)(2) by removing the words "and certifying"; and in the first sentence of paragraph (f)(4) by removing the word "certified".

15. Section 252.217–7005 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (e)(6) to read as follows:

252.217–7005 Inspection and Manner of Doing Work.

* * * * *

(e) * * *

(6) Furnish the Contracting Officer or designated representative with a copy of the "gas-free" or "safe-for-hotwork" certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

* * * * *

16. Section 252.219–7000 is amended by revising the clause date to read "(JAN 1997)"; and by revising the introductory text of paragraph (c) to read as follows:

252.219–7000 Small Disadvantaged Business Concern Representation (DoD Contracts).

* * * * *

(c) Complete the following—

* * * * *

17. Section 252.225–7009 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraphs (i)(9) and (i)(10) to read as follows:

252.225–7009 Duty-Free Entry—Qualifying Country End Products and Supplies.

* * * * *

(i) * * *

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;

* * * * *

18. Section 252.225–7010 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (c)(10) to read as follows:

252.225–7010 Duty-Free Entry—Additional Provisions.

* * * * *

(c) * * *

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

* * * * *

19. Section 252.225–7018 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (e) to read as follows:

252.225–7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

* * * * *

(e) The offeror (_____) is (_____) is not a U.S. firm.

(End of provision)

20.–21. Section 252.225–7037 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraphs (i)(9) and (i)(10) to read as follows:

252.225–7037 Duty-Free Entry—NAFTA Country End Products and Supplies.

* * * * *

(i) * * *

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

* * * * *

22. Section 252.226–7001 is amended by revising the section title, clause title and date, and paragraph (b) to read as follows:

252.226–7001 Historically Black College or University and Minority Institution Status.

* * * * *

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION STATUS (JAN 1997)

* * * * *

(b) *Status.*

If applicable, the offeror shall check the appropriate space below:

_____A historically black college or university

_____A minority institution

(End of provision)

23. Section 252.227–7036 is revised to read as follows:

252.227–7036 Declaration of Technical Data Conformity.

As prescribed at 227.7103–6(e)(3) or 227.7104(e)(5), use the following clause:

DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997)

All technical data delivered under this contract shall be accompanied by the following written declaration: The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Authorized Official _____

(End of clause)

252.233–700 [Removed].

24. Section 252.233–7000 is removed.

25. Section 252.236–7003 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (c)(3) to read as follows:

252.236–7003 Payment for Mobilization and Preparatory Work.

* * * * *

(c) * * *

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

* * * * *

26. Section 252.236–7006 is amended by revising the clause date to read "(JAN 1997)"; and by revising paragraph (c) to read as follows:

252.236–7006 Cost Limitation.

* * * * *

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

* * * * *

252.239–7007 [Amended].

27. Section 252.239–7007 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (d)(1) by removing the word "certified".

252.247–7001 [Amended].

28. Section 252.247–7001 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (g) by removing the word "certification" and inserting the word "statement" in its place.

[FR Doc. 97–1036 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Part 225

[DFARS Case 96–D030]

Defense Federal Acquisition Regulation Supplement; Metalworking Machinery—Trade Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the expiration of certain statutory restrictions on the acquisition of machine tools.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 96–D030 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534 (a)(4)(B) restricted the acquisition of non-domestic machine tools in certain Federal Supply Classes for metalworking machinery. This restriction ceased to be effective on October 1, 1996. On November 15, 1996 (61 FR 58488), the DFARS was amended to remove language that implemented 10 U.S.C. 2534(a)(4)(B), at 225.7004, 252.225–7017, and 225.7040. This final rule makes a related amendment at DFARS 225.403–70. The rule removes the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534(a)(4)(B).

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D030 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.403–70 [Amended]

2. Section 225.403–70 is amended by removing the entry "34 Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)" and inserting in its place the entry "34 Metalworking machinery".

[FR Doc. 97–1040 Filed 1–6–97; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Part 225

[DFARS Case 96–D319]

Defense Federal Acquisition Regulation Supplement; Authority To Waive Foreign Purchase Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 810 of the National Defense Authorization Act of Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D319 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, applicable to buses, chemical weapons antidote, air circuit breakers, ball and roller bearings, totally enclosed lifeboat survival systems, and anchor and mooring chain, if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding. However, this waiver authority will not be effective with regard to the additional restrictions on the acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems, contained in defense appropriations acts (and implemented at DFARS 225.7012, 225.7019, and 225.7022, respectively).

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems is presently restricted to domestic sources by defense

appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D319 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, and was effective upon enactment on September 23, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7005 is amended by revising paragraph (a)(3) to read as follows:

225.7005 Waiver of certain restrictions.

* * * * *

(a) * * *

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

* * * * *

3. Section 225.7019–3 is amended by revising paragraph (a)(1)(iv) to read as follows:

225.7019–3 Waiver.

(a) * * *

(1) * * *

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

[FR Doc. 97–1038 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

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48 CFR Parts 225 and 252

[DFARS Case 96–D021]

Defense Federal Acquisition Regulation Supplement; Contingent Fees—Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to changes adopted in the Federal Acquisition Regulation (FAR), pertaining to elimination of requirements for Government review of a prospective contractor's contingent fee arrangements.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D021 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 225.73, 252.212–7001, and 252.225–7027 to conform to the FAR revisions published as Item I of Federal Acquisition Circular 90–40 (61 FR 39188, July 26, 1996), which removed requirements for prospective contractors to provide certain information to the Government regarding contingent fee arrangements. This interim rule makes the associated DFARS changes related to contingent fees under contracts for foreign military sales.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule removes requirements for contracting officer review of contingent fee arrangements under foreign military sales contracts, but does not change the policy pertaining to the allowability of contingent fees under these contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule conforms the DFARS to changes already adopted in the FAR. Federal Acquisition Circular 90–40 (FAR Case 93–009) eliminated the clause at FAR 52.203–4, Contingent Fee Representation and Agreement; the

Standard Form 119, Statement of Contingent or Other Fees; and the associated requirements in FAR Subpart 3.4 relating to review and evaluation of contingent fees. This interim rule makes the associated DFARS changes related to contingent fees for foreign military sales. Immediate publication of an interim rule is necessary because compliance with the existing requirements of DFARS 225.7302 and 225.7303 is no longer feasible. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7302 [Amended]

2. Section 225.7302 is amended by removing paragraph (a)(1), and by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4).

3. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Contingent fees are allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable contingent fees (as defined in FAR subpart 3.4) is limited to $50,000.

(b) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer prohibit the payment of contingent fees unless the payments have been identified and payment approved in writing by the foreign customer before contract award. (See 225.7308(a).)

4. Section 225.7308 is amended by revising paragraph (a) to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in all solicitations and contracts for foreign military sales.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.212–7001 is amended by revising the clause date to read "(JAN 1997)", and by removing the entry "252.225–7027 Limitation on Sales Commissions and Fees (12 U.S.C. 2779)" and inserting in its place the entry "252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779)".

6. Section 252.225–7027 is revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

Restriction on Contingent Fees for Foreign Military Sales (Jan 1997)

Contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are not an allowable cost, and the contract price (including any subcontracts) shall not include any direct or indirect cost of contingent fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract, unless—

(a) The amount of contingent fee per foreign military sale does not exceed $50,000; and

(b) For sales to the Government(s) of _____, the contingent fees have been identified and payment approved in writing by the named Government(s) before contract award.

(End of clause)

[FR Doc. 97–1039 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–283]

Organization and Delegation of Powers and Duties, Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104–324. This amendment adds a new paragraph 1.66(x) to reflect this delegation of authority.

EFFECTIVE DATE: This rule becomes effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–2811 or Gwyneth Radloff, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9305.

SUPPLEMENTARY INFORMATION: Under sections 1008, 1009, and 1013 of Public Law 104–324 , the Secretary of Transportation (Secretary) may convey the right, title, and interest of the United States Government in certain specified vessels, equipment, and materials to specified recipients or for specified purposes. This amendment to 49 CFR Part 1 delegates the Secretary's authorities related to the above responsibilities to the Maritime Administrator.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by inserting a new paragraph (x), to read as follows:

§ 1.66 Delegation to Maritime Administrator.

* * * * *

(x) Carry out the responsibilities and exercise the authorities of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104–324;

* * * * *

Issued at Washington, DC this 31st day of December 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97–1252 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–118; Amendment 192–80]

RIN 2137–AB97

Excess Flow Valve—Performance Standards

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This action concerns a petition from the American Gas Association (AGA) to reconsider and clarify certain provisions of the excess flow valve (EFV) performance standards regulations. AGA's request to clarify the rule by deleting language in the regulation concerning sizing of the EFV and locating the EFV beyond the hard surface is granted because some operators are apparently misinterpreting this language. AGA's request to delete the recommended installation standards from the performance standards rule and include them in the notification rulemaking is denied because such standards are applicable to an EFV's safe and reliable operation. AGA's request to allow an operator to determine how to identify the presence of an EFV in the service line is denied because the final rule already allows the operator this flexibility.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366–4571, regarding this final rule or the Dockets Unit, (202) 366–5046, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 1996 (61 FR 31449), RSPA published regulations (49 CFR 192.381) prescribing performance standards for EFVs used to protect single-residence service lines. In a petition for reconsideration and request for clarification dated July 17, 1996, AGA asked RSPA to reconsider several provisions of this final rule on EFV performance standards. On July 30, 1996, OPS and AGA met to discuss the issues in the petition.

AGA Petition for Reconsideration

I. AGA contended that the marking requirement (§ 192.381(c)) and recommendations concerning where to locate the EFV (§ 192.381(d)) and whether to install an EFV in certain circumstances (§ 192.381(e)) are installation standards and should not have been included in the final rule on EFV performance standards. AGA maintained that these requirements should have been included in RSPA's notice of proposed rulemaking on EFV customer notification (61 FR 33476; June 27, 1996), and subject to notice and comment.

Response: RSPA disagrees that the marking requirement and the recommendations on locating and installing an EFV are misplaced and were not subject to notice and comment. RSPA established the EFV performance standards as minimum requirements for an EFV to perform safely and reliably when installed in a gas piping system. The marking requirement and the recommendations on locating and installing an EFV were included in the rule because RSPA considers them integral to an EFV's performance.

RSPA recommended the circumstances in which an operator should not install an EFV and where the operator should locate the EFV to address concerns raised during the EFV rulemaking process. Because these recommendations addressed comments that were made during the EFV rulemaking process, although not specifically proposed, RSPA considered them to be within the scope of the EFV rulemaking. To address commenters' concern about placing an EFV in a system where contaminants could cause a malfunction, RSPA included a recommendation that operators consider this factor when installing an EFV. Similarly, to address concerns about protecting the maximum length of service line, as well as comments about logistical and economic difficulties in installing or removing an EFV beneath a hard surface, RSPA recommended that an operator locate the EFV beyond the hard surface and as near the gas supply main as practical. Both recommended standards affect an EFV's operation and reliability, and are better suited to the performance standards rule than the notification rulemaking. The proposed notification rule proposes to require operators to notify customers about the availability, safety benefits, and cost associated with EFV installation, issues not related to an EFV's operation.

The requirement to identify the presence of an EFV in a service line by marking or other means is intended to alert personnel servicing the line to its presence. Although not technically a performance standard, the requirement is better placed in the performance standards rule because it helps to ensure that a service line with an EFV is properly serviced.

Accordingly, for the reasons discussed, RSPA does not adopt AGA's suggestion to amend the final rule by deleting these sections. However, AGA's additional concerns about the recommendation to locate an EFV beyond the hard surface are addressed in section III of this document.

II. AGA requested RSPA to clarify the requirement to mark, or otherwise identify, the presence of an EFV in a service line (§ 192.381(c)). AGA expressed concern that marking would notify the public of the valve's existence to the detriment of the public's safety. AGA suggested that RSPA amend this requirement to allow each operator to determine the method to identify the presence of an EFV in the service line.

Response: By requiring an operator to mark or otherwise identify the presence of an EFV in a service line, the final rule intended for each operator to determine how to identify the presence of an EFV to personnel servicing the line. The language in the rule left to the operator's discretion whether to identify the EFV's presence by marking the line, by indicating on maps and records, or by using some other method. When, during the meeting, OPS explained that this language was not intended to limit an operator, AGA agreed that further clarifying language was not needed. Thus, we do not see any necessity for modifying the rule.

III. The final rule (§ 192.381 (d)) recommended that an operator locate an EFV beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply. In its petition AGA said that the language specifying that an EFV *should be located beyond the hard surface* could increase the costs of installation and reduce the safety benefits of EFVs. AGA explained that

under the three most common installation and replacement methods (trenching, boring, insertion), an additional excavation or cutting and resealing of the pipe would be needed to accommodate the requirement. Furthermore, the effect of this requirement would be to install the EFV further from the service line than necessary.

Response: RSPA intended in the final rule that if an EFV were installed in a service line, it would be located as near the gas supply main as practical. RSPA further recommended that the EFV be located beyond the hard surface to alleviate concerns raised during the rulemaking process that installing or removing an EFV under a hard surface would result in increased installation or removal costs. To avoid any confusion for the operator about where best to locate an EFV, RSPA is deleting the language "beyond the hard surface" from the rule.

RSPA continues to believe that if an EFV is installed, it is placed as near the source of gas supply as practical to ensure the EFV protects the maximum length of service line. Therefore, we are further amending the section to clarify the original intent of the rule by changing "should locate" to "shall locate the EFV as near as practical to the fitting connecting the service line to its source of gas supply." The clarification continues to allow the operator to decide if such an installation is practical.

IV. AGA argued in its petition that the language requiring that the EFV be "sized to close at * * *" (§ 192.381(a)(3)(I)), has caused confusion among operators. AGA explained that because sizing is usually done by an engineer, not the manufacturer, an operator could not ensure that the manufacturer had sized the valve correctly. AGA recommended RSPA delete this language or clarify who bears responsibility for ensuring the EFV is correctly sized.

Response: In RSPA's experience, the language concerning sizing should not cause confusion. Nonetheless, to preclude this possibility, RSPA is deleting the language "[b]e sized to * * *" from § 192.381(a)(3)(I).

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review this final rule. Also, DOT does not consider this final rule to be significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979). Because this final rule merely clarifies an existing rule, the economic impact is too minimal to warrant an evaluation of costs and benefits. However, an economic evaluation of the original final rule is available for review in the docket.

Executive Order 12612

We analyzed this final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not modify the paperwork burden that operators already have. Therefore, a paperwork evaluation is unnecessary.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and record keeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.381 is amended by revising paragraphs (a)(3)(i), and (d) to read as follows:

§ 192.381 Service lines: Excess flow valve performance standards.

(a) * * *

(3) At 10 psig:

(i) Close at, or not more than 50 percent above, the rated closure flow rate specified by the manufacturer; and

* * * * *

(d) An operator shall locate an excess flow valve as near as practical to the fitting connecting the service line to its source of gas supply.

* * * * *

Issued in Washington, DC, on January 14, 1997.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–1249 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961105310–6374–02; I.D. 102396A]

RIN 0648–AJ31

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 17 and to correct the regulations implementing Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP). Framework 17 restores unused days-at-sea (DAS) to vessels enrolled in the DAS effort-control call-in system that fished less than one-sixth of their Amendment 7 DAS allocation during the months of May and June 1996. The intent of this rule is to provide vessels with their full Amendment 7 allocation of DAS and to correct an inadvertent omission in a previous rule.

EFFECTIVE DATE: January 14, 1997.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (RFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 17 documents are available upon request from Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Amendment 7 to the FMP (61 FR 27710, May 31, 1996) became effective on July 1, 1996, and implemented reductions in DAS for vessels already under the effort-control system. During the developmental stages of Amendment 7, it became clear that the New England Fishery Management Council (Council) would be unable to submit the amendment in time for it to be implemented before the May 1 start of the new fishing year. To address this situation, the Council agreed to prorate DAS to adjust for the gap between the

start of the fishing year and the implementation date of the revised allocations. However, because this had the unintended effect of assessing a prorated number of DAS, regardless of whether the DAS were actually used, and because the call-in system is in place to assess actual DAS used, the Council opted, through Framework 17, to use the actual method for those vessels subject to the call-in system in May and June. Further details concerning justification for and development of Framework Adjustment 17 were provided in the notice of proposed rulemaking (61 FR 58365, November 14, 1996) and are not repeated here.

This framework restores unused DAS (up to one-sixth of the full-year allocation) to vessels enrolled in the call-in system in May and June 1996, and that did not record more than one-sixth of their full-year allocation. Since these vessels (vessels holding a 1996 Amendment 5 multispecies permit in the Individual, Fleet, or Combination Vessel categories) had the opportunity to request a change in permit category, provided that the application was completed and sent to the Regional Administrator by August 15, 1996, the restoration of DAS will be calculated based on the permit category held by the vessel on August 16, 1996.

This rule also adds surf clam and ocean quahog dredge gear to the definition of exempted gear with respect to the NE multispecies fishery (i.e., gear that is deemed not capable of catching multispecies). This gear was inadvertently excluded from the definition in the final rule for Amendment 7, which created an inconsistency with the final Amendment 7 document.

Comments and Responses

Comment: Associated Fisheries of Maine, Maine Fishermen's Wives Association, Atlantic Trawlers Fishing, Inc., Senators Olympia J. Snowe and William S. Cohen, and one individual submitted written comments in support of Framework 17. The commenters asserted that the proposed rule to Amendment 7 did not explain how DAS would be prorated and, consequently, was interpreted by many to mean that DAS would be prorated only for those vessels that were not under the call-in system previous to Amendment 7. Because of this interpretation, one commenter stated that many vessels reserved their DAS in May and June for periods of time throughout the year that are traditionally more profitable to fish. Several others stated that it would create a financial hardship if their unused DAS were not restored.

Response: With the approval of Framework Adjustment 17, DAS will automatically be restored to vessels enrolled in the call-in system that fished less than one-sixth of their Amendment 7 allocation during the months of May and June 1996.

Classification

In addition to the restoration of unused DAS for which prior notice and opportunity for public comment was provided, this rule corrects a provision for which full prior notice and opportunity for comment were provided during the development and implementation of Amendment 7. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds that additional prior notice and opportunity for public comment is unnecessary.

Under 5 U.S.C. 553(d)(1), both provisions of this rule are not subject to a delay in effectiveness because they relieve restrictions on the fishing industry.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the notice of proposed rulemaking for Framework Adjustment 17. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 13, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Exempted gear" is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), surf clam and ocean quahog dredges, and midwater trawls.

* * * * *

3. In § 648.82, paragraphs (b)(1)(i), (b)(2)(i), (b)(5)(i), and (b)(7)(i) are revised, and paragraph (j) is added to read as follows:

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *DAS allocation*. A vessel fishing under the Individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, multiplied by the proration factor of 0.833 for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

* * * * *

(2) * * *

(i) *DAS allocation*. A vessel fishing under the Fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 88 DAS for the 1997 fishing year and beyond.

* * * * *

(5) * * *

(i) *DAS allocation*. A vessel fishing under the Combination Vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, multiplied by the proration factor of 0.833 for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

* * * * *

(7) * * *

(i) *DAS allocation*. A vessel fishing under the Large Mesh Fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year,

unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the Large Mesh Fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7–inch (17.78–cm) diamond mesh or trawl gear with a minimum mesh size of 8–inch (20.32–cm) diamond mesh, as described under § 648.80(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

* * * * *

(j) *Restoration of unused DAS.* Vessels that held valid 1996 Amendment 5 NE multispecies permits in the Individual, Fleet or Combination Vessel categories are eligible for restoration of unused DAS if DAS fished during May and June 1996 was less than one-sixth of their 1996 Amendment 7 allocation. Restoration of DAS will be based on the NE multispecies permit category held on August 16, 1996. These vessels will be automatically credited with DAS equal to the difference between the proration reduction and their DAS fished during May and June 1996, as recorded in the NMFS call-in system specified at § 648.10(c) (or on other verifiable evidence of days spent fishing for multispecies). If the number of DAS fished during this time period exceeded the proration reduction amount, those days will not be subtracted from a vessel's 1996 allocation.

[FR Doc. 97–1204 Filed 1–14–97; 4:13 pm]

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Proposed Rules

Federal Register
Vol. 62, No. 12
Friday, January 17, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0958]

Bank Holding Companies and Change in Bank Control (Regulation Y); Review of Restrictions in the Board's Section 20 Orders

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed conditions to board orders.

SUMMARY: The Board has conducted a comprehensive review of the prudential limitations established in its decisions under the Bank Holding Company Act and section 20 of the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is seeking comment on modifications to these limitations that the Board believes will allow section 20 subsidiaries to operate more efficiently and serve their customers more effectively. These modifications would allow section 20 subsidiaries to operate more readily in conjunction with an affiliated bank, thereby maximizing synergies, enhancing services, and possibly reducing costs.

DATES: Comments should be received on or before March 10, 1997.

ADDRESSES: Comments, which should refer to Docket No. R–0958, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected In room MP–500 between 9:00 a.m. and 5:00 p.m., except as provided in Section 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202) 452–3236, Thomas Corsi, Senior Attorney (202) 452–3275, Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202) 452–2781, Division of Banking Supervision and Regulation; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

Section 20 of the Glass-Steagall Act provides that a member bank of the Federal Reserve System may not be affiliated with a company that is "engaged principally" in underwriting and dealing in securities.[1] Beginning in 1987, the Board has issued a series of orders authorizing bank holding companies to establish "section 20 subsidiaries" to engage in underwriting and dealing in securities not eligible for underwriting and dealing by a member bank.[2] In those orders, the Board established a series of prudential restrictions as conditions for approval under the Bank Holding Company Act. The restrictions are designed to prevent securities underwriting and dealing risk from being passed from a section 20 subsidiary to an affiliated insured depository institution, and thus to the federal safety net, and to mitigate the potential for conflicts of interest, unfair competition, and other adverse effects that may arise from the conduct of bank-ineligible securities activities.

The Board's original section 20 order in 1987 contained twenty restrictions, and the Board's subsequent order in 1989 allowing underwriting and dealing in all debt and equity securities contained more stringent restrictions, numbering twenty-eight in all. The restrictions contained in these orders are not imposed on any nonbank subsidiary of a bank holding company other than a section 20 subsidiary.

Although the restrictions imposed in the Board's section 20 orders are commonly known as "firewalls," the term is something of a misnomer. While some of the most important restrictions are intended to prevent an outbreak of trouble at a section 20 subsidiary from spreading to an affiliated depository institution, many serve other purposes. For example, some of the "firewalls" are procedural, and others are directed towards consumer protection or preventing unfair competition.

Taken together, the section 20 firewalls are a very conservative regime designed to isolate a section 20 subsidiary from any affiliated depository institution or bank holding company. The firewalls have prevented bank holding companies from reaping possible synergy gains from the operation of an investment bank. The reasons the Board chose such a conservative regime are rooted in the time they were adopted.

First, when the Board approved establishment of the initial section 20 subsidiaries in 1987, it had little experience supervising investment banks in the United States. Because affiliation between banks and securities underwriters and dealers was long considered impractical or illegal, bank holding companies had not operated such entities since enactment of the Glass-Steagall Act in 1933. Moreover, pre-Glass-Steagall affiliations were considered, rightly or wrongly, to have caused losses to the banking industry and investors.[3] Thus, affiliation of banks and investment banks presented unknown risks that were considered substantial.

Second, although the Board recognized in 1987 that supervision and regulation of broker-dealers by the Securities and Exchange Commission provided significant protections, the Board had little experience with how

[1] 12 U.S.C. 377.

[2] *See, e.g., J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192 (1989) (hereafter, *1989 Order*); *Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp.*, 73 Federal Reserve Bulletin 473 (1987) (hereafter, *1987 Order*); *see also Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990) (applying earlier orders to section 20 subsidiaries of foreign banks) (hereafter, *1990 Order*).

[3] Recent research indicates that this belief may have been inaccurate. *See, e.g.*, George J. Benston, The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered 41 (1990) ("The evidence from the pre-Glass-Steagall period is totally inconsistent with the belief that banks' securities activities or investments caused them to fail or caused the financial system to collapse.").

these protections operated in general or would operate within a bank holding company in particular.

Third, significant protections that currently exist with respect to section 20 subsidiaries were not present in 1987. Most significantly, section 23B of the Federal Reserve Act was under consideration but had not been adopted at the time of the Board's *1987 Order*. As noted below, many of the firewalls duplicate or overlap the restrictions of section 23B, which requires inter-affiliate transactions to be on arm's length terms, prohibits representing that a bank is responsible for a section 20 affiliate's obligations, and prohibits a bank from purchasing certain products from a section 20 affiliate.[4] Similarly, risk-based capital standards did not exist in 1987. Because those standards address some of the risks present in a bank's affiliation with an investment bank, they too overlap with some of the firewalls. Also, the Interagency Statement on Retail Sales of Nondeposit Investment Products was not adopted until 1994. The Interagency Statement is now the primary means by which the federal banking agencies seek to ensure that retail banking customers are not misled about the nature of the products that they are purchasing.

Introduction

In recognition that its concerns about affiliation could abate, the Board stated at the time it adopted the firewalls that it would continue to review their appropriateness in the light of its experience in supervising section 20 subsidiaries. The Board has now undertaken a comprehensive review of the restrictions imposed in its section 20 orders, and is proposing to eliminate most of them, and incorporate the rest in a statement of operating standards that the Board believes are appropriate for section 20 subsidiaries.

The risks of securities underwriting and dealing have in the Board's experience proven to be manageable in a bank holding company framework, and bank holding companies and banks have successfully undertaken and managed activities posing similar risks for which no firewalls were erected. Finally, many of the firewalls are duplicated, or at least addressed in some way, by other statutes or regulations that are more narrowly tailored to addressing the perceived risk or conflict. Thus, in many cases where the Board is proposing to eliminate a firewall, another restriction will remain.

The Board believes that the proposed changes will allow section 20 subsidiaries to operate more efficiently and serve their customers more effectively, consistent with the safety and soundness of affiliated banks. The most important changes being proposed by the Board address the firewalls regarding funding of a section 20 subsidiary by an affiliated bank, credit enhancements provided by a bank to issuers of securities underwritten by a section 20 affiliate, and loans provided by a bank to customers purchasing products of a section 20 affiliate. These changes would allow section 20 subsidiaries to operate more readily in conjunction with an affiliated bank, thereby maximizing synergies, enhancing services, and possibly reducing costs.

The Board is proposing to retain those restrictions that address issues of bank safety and soundness, significant conflicts of interest, or other concerns that are not addressed by other statutes or regulations. With respect to safety and soundness, the Board believes that it is essential that any bank holding company operating a section 20 subsidiary ensure that its subsidiary banks are well capitalized. Accordingly, the Board is proposing to reserve the discretion to reimpose the funding, credit extension, and credit enhancement firewalls in the event that an affiliated bank or thrift becomes less than well capitalized and the bank holding company does not promptly restore it to the well-capitalized level.

The Board proposes to incorporate in a statement of operating standards the practices that it believes a bank holding company and its section 20 subsidiary should follow in order to ensure safety and soundness and avoid conflicts of interest. For each of the existing firewalls, the Board seeks comment on whether that firewall, either alone or as part of a larger framework of restrictions, is necessary to ensure that underwriting and dealing in bank-ineligible securities is conducted in a safe and sound manner, and not subject to significant conflicts of interests, and should therefore be included as an operating standard.

The Board also seeks comment on whether adjustments to the proposed operating standards are necessary to address issues unique to foreign banks. In its *1990 Order*, the Board adopted a modified series of firewalls for foreign banks. The Board intends for the proposed operating standards to apply to both domestic and foreign banking organizations operating a section 20 subsidiary.

Discussion

Set forth below are: (1) each of the firewalls established in the Board's *1989 Order*, including any amendments subsequently made to that firewall;[5] (2) a description of whether the firewall was included in the *1987 Order* and the *1990 Order*; and (3) a request for comments on the firewall.

I. Capital Adequacy Conditions

Firewall 1(a) (Deduction of investment in Subsidiary From Bank Holding Company Capital)

Text of 1989 Order. In determining compliance with the Board's Capital Adequacy Guidelines, each Applicant shall deduct from its consolidated primary capital any investment it makes in the underwriting subsidiary that is treated as capital in the underwriting subsidiary. In accordance with the risk-based component of the Board's Capital Guidelines, Applicant shall deduct 50 percent of the amount of any investment in the underwriting subsidiary from Tier 1 capital and 50 percent from Tier 2 capital. In calculating primary capital and risk-based capital ratios, Applicant should also exclude the underwriting subsidiary's assets from the holding company's consolidated assets.

1987 and 1990 Order. The *1987 Order* provided for a similar capital deduction under an earlier set of capital standards. The *1990 Order* requires compliance with internationally accepted risk-based capital requirements after deduction of any investment in the section 20 subsidiary that is treated as capital in that subsidiary.

Request for Comment. The Board proposes to eliminate this restriction. The purpose of this firewall was to ensure that a bank holding company maintained sufficient resources to support its federally insured depository institutions and other banking operations by deducting any exposure to its section 20 subsidiary from its regulatory capital. The Board has viewed the deduction as reinforcement for the important requirement that any bank holding company that seeks to establish a section 20 subsidiary, and the insured depository institutions controlled by that bank holding company, be strongly capitalized.

In practice, however, the deconsolidation requirement has created regulatory burden without strengthening the capital of the organization. The deconsolidation requirement is inconsistent with GAAP and has therefore created confusion and imposed costs by requiring bank

[4] 12 U.S.C. 371c–1.

[5] Footnotes to the orders are omitted.

holding companies to prepare statements on two bases. Meanwhile, the deduction does not strengthen the capital of any insured depository institution affiliate of the section 20 subsidiary or the section 20 subsidiary itself, which is already subject to SEC-imposed capital requirements. Elimination of the deduction would not create or expose any incentive for a bank holding company to take capital necessary to support a depository institution and reinvest it in a section 20 subsidiary. Finally, the Board has recently adopted a system for analyzing market risk that will better measure the capital adequacy of a banking organization.

Moreover, based on its experience supervising section 20 subsidiaries over the past nine years, the Board does not believe that the activities of a section 20 subsidiary are so uniquely risky as to merit a capital treatment different from other nonbank affiliates, which are not subject to a deduction requirement.

Firewall 1(b) (Deduction of Extensions of Credit From Holding Company Capital)

Text of 1989 Order. Applicant shall also deduct from its regulatory capital any credit it or a nonbank subsidiary extends directly or indirectly to the underwriting subsidiary unless the extension of credit is fully secured by U.S. Treasury securities or other marketable securities and is collateralized in the same manner and to the same extent as would be required under section 23A(c) of the Federal Reserve Act if the extension of credit were made by a member bank. In the case of the risk-based component of the Board's Capital Guidelines, the deductions for unsecured or not fully-secured or inadequately collateralized loans shall be taken 50 percent from Tier 1 and 50 percent from Tier 2 as described above. Notwithstanding these adjustments, Applicant should continue to maintain adequate capital on a fully consolidated basis.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* A similar deduction was required under the *1990 Order.*

Request for Comment. The Board proposes to eliminate the deduction required by this firewall for the same reasons as Firewall 1(a),[6] but retain the requirement that a bank holding company maintain adequate capital on a fully consolidated basis as a condition for operating a section 20 subsidiary.

Firewall 2 (Prior Approval Requirement for Investments in Subsidiary)

Text of 1989 Order. No Applicant nor any of its nonbank subsidiaries shall, directly or indirectly, provide any funds to, or for the benefit of, an underwriting subsidiary, whether in the form of capital, secured or unsecured extensions of credit, or transfer of assets, without prior notice to and approval by the Board.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* The same restriction was included in the *1990 Order.*

Board Action. The Board is repealing this restriction, which requires prior notice and Board approval before a bank holding company or its nonbank subsidiaries may advance funds to its section 20 subsidiary. As the firewall is procedural, the Board is not seeking comment on the change, which will be effective immediately.

The prior approval requirement, which is applied only to investments in a section 20 subsidiary, was intended to ensure that resources needed to support a bank holding company's insured subsidiaries were not diverted to the underwriting subsidiary. However, in practice, bank holding companies require sufficient funding flexibility to accommodate business growth over a multi-year period, and the Board has thus been faced with the choice of allowing them this flexibility by approving open-ended funding plans or micromanaging the funding of section 20 subsidiaries. The Board has opted for the former course, relying on supervisory tools that allow the Board to institute corrective action should it determine that excessive bank holding company resources are being diverted to a section 20 subsidiary. The normal supervisory process, which includes annual inspections, off-site monitoring, and review of annual reports, has proven sufficient to determine whether a bank holding company is disadvantaging its insured depository institution subsidiaries by making imprudent investments in a nonbank subsidiary. The Board therefore believes that the prior approval firewall can be eliminated, especially as section 23A of the Federal Reserve Act will continue to limit any transfer of funds from an insured depository institution affiliate.[7]

Firewall 3 (Requirement of Capital Plan)

Text of 1989 Order. Before commencing the new activities, each Applicant must submit to the Board acceptable plans to raise additional capital as required by this Order or demonstrate that it is strongly capitalized and will remain so after making the capital adjustments authorized or required by this Order. An Applicant may not commence the proposed activities until it has received a Board determination that the capital plan satisfies the requirements of this Order and has raised the additional capital required under the plan.

1987 and 1990 Order. This restriction was not included in the *1987 Order* or the *1990 Order.*

Request for Comment. The Board analyzes the capital adequacy, financial condition, and business plan of each applicant before approving its application to engage in underwriting and dealing pursuant to section 20. The Board has authority, independent of this firewall, to require an applicant to raise additional capital whenever appropriate. The Board proposes to eliminate this firewall as superfluous.

Firewall 4 (Capital Adequacy Requirement)

Text of 1989 Order. The underwriting subsidiary shall maintain at all times capital adequate to support its activity and cover reasonably expected expenses and losses in accordance with industry norms.

1987 and 1990 Order. Same.

Request for comment. The Board seeks comment on whether to retain this firewall, which has been understood to require section 20 subsidiaries to maintain capital levels consistent with industry norms for independent investment banks. The purpose of this capital requirement was to prevent a section 20 subsidiary from operating below industry capital standards by trading on the reputation of its affiliated bank. The requirement thus seeks to prevent section 20 subsidiaries from being able to leverage themselves more than, and gain a competitive advantage over, their independent competitors, and to serve as a buffer to protect the affiliated bank.

This restriction has proven confusing and controversial, as "industry norms" are difficult to determine. Although the SEC imposes capital and "haircut" requirements on all broker-dealers, including section 20 subsidiaries, these levels cannot be considered industry norms.[8] Most investment banks,

[6] The Board's Capital Guidelines may continue to require certain deductions from regulatory capital independent of this restriction, and those deductions would be unaffected.

[7] 12 U.S.C. 371c.

[8] 17 CFR 240.15c3–1. The SEC capital rule is intended to allow prompt liquidation of a broker-dealer in order to satisfy the claims of its creditors, and broker-dealers failing to meet SEC capital requirements are immediately liquidated. Thus,

particularly significant underwriters, maintain capital greatly in excess of SEC minimums, and Federal Reserve examiners have accordingly expected section 20 subsidiaries to maintain capital before haircuts that is at least 100 percent greater capital than SEC haircut requirements. Some section 20 subsidiaries have complained that their competitors maintain a lesser amount of capital. They also argue that whereas SEC capital requirements allow all capital to be concentrated in the broker-dealer and dedicated to meeting capital requirements, a bank holding company must meet capital requirements at the bank and holding company levels as well.

Moreover, the Board already measures bank holding company capital on a consolidated basis, including the capital and assets of the section 20 subsidiary. Therefore, the Board believes that it may be unnecessary to impose a separate capital requirement on the bank holding company's section 20 subsidiary. The Board notes that such capital requirements have not been generally imposed on other holding company subsidiaries.

II. Credit Extensions to Customers of the Underwriting Subsidiary

The purpose of Firewalls 5–12 is to prevent a bank or bank holding company from exposing itself to loss in order to benefit the underwriting or dealing activities of its affiliate. They are the firewalls most directly linked to the hazards of commercial and investment banking affiliation that motivated the authors of the Glass-Steagall Act. The Board has noted that preserving the soundness and impartiality of credit is one of its major concerns under the banking laws.

However, as financial intermediation has evolved, corporate customers frequently seek to obtain a variety of funding mechanisms from one organization. By prohibiting banks from providing routine credit enhancements in tandem with a section 20 affiliate, the existing firewalls hamper the ability of bank holding companies to serve as full-service financial services providers and reduce options for customers. For example, existing corporate customers of a bank may wish to issue commercial paper or issue debt in some other form. Although the bank may refer the customer to its section 20 affiliate, the bank is prohibited from providing credit enhancements even though it may be the institution best suited to perform a credit analysis—and, with smaller customers, perhaps the only institution willing to perform a credit analysis.

Furthermore, these restrictions do not apply to credit extensions or credit enhancements extended in conjunction with underwriting of bank-eligible securities by a section 20 affiliate, and there has not been significant abuse in this area.[9] As with bank-eligible securities, even in the absence of these firewalls, protections for the bank would remain; those protections are discussed below in the context of each firewall. Finally, as noted above, the Board is proposing to reserve its authority to impose the funding, credit extension, and credit enhancement firewalls in the event that an affiliated bank or thrift becomes less than well capitalized and the bank holding company does not promptly restore it to the well-capitalized level.

Firewall 5 (Restriction on Credit Enhancement)

Text of 1989 Order. No Applicant or subsidiary shall directly or indirectly extend credit, issue or enter into a stand-by letter of credit, asset purchase agreement, indemnity, guarantee, insurance or other facility that might be viewed as enhancing the creditworthiness or marketability of an ineligible securities issue underwritten or distributed by the underwriting subsidiary.

1987 and 1990 Order. The *1987 Order* was substantially the same, and the *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board proposes to eliminate the credit enhancement firewall, as it believes that other protections adequately serve its purposes, and its burden on section 20 subsidiaries and their customers therefore cannot be justified. First, a bank would be required to hold capital against all credit enhancements extended to customers of its section 20 affiliate. Notably, at the time the firewalls were adopted, the existing regulatory capital regime did not take account of off-balance-sheet obligations. Thus, a bank exposing itself to loss by issuing a standby letter of credit, guarantee, or other credit enhancement would not have been required to hold capital against that exposure. Under the current risk-based capital system, a bank would be required to hold capital against the credit equivalent amount of such an obligation.[10]

Second, the amount of credit that a bank could extend to an issuer of securities underwritten by a section 20 affiliate would also be limited by loan-to-one borrower rules. For example, national banks may only lend an amount equal to 15 percent of their capital on an uncollateralized basis and an additional 10 percent of their capital on a collateralized basis, and credit enhancements generally would be aggregated along with all other credit extended to an issuer in measuring compliance with these limits.[11]

Third, the proposed operating standards include the existing firewalls emphasizing the importance of credit standards and documentation. Such controls should ensure that any credit enhancement is extended consistent with the internal procedures of the bank, that independent credit judgment is exercised, and that documentation is maintained that would allow examiners to assess compliance with these policies. A credit that would generally fail to meet the bank's credit standards should not be extended because the credit would directly or indirectly benefit a section 20 affiliate.

Finally, section 23B of the Federal Reserve Act would require that all credit enhancements extended to an issuer whose securities are being underwritten by a section 20 affiliate be on an arm's-length basis. Thus, for example, a bank could not offer such credit enhancements below market prices, or to customers who were poor credit risks, in order to generate underwriting business for a section 20 affiliate. Similarly, section 106 of the Bank Holding Company Act Amendments of 1970 would prohibit a bank from offering discounted credit enhancements on the condition that an issuer obtain investment banking services from a section 20 affiliate.

Firewall 6 (Restriction on Funding Purchases of Securities)

Text of 1989 Order. No Applicant or subsidiary (other than the underwriting subsidiary) shall knowingly extend credit to a customer directly or indirectly secured by, or for the purpose of purchasing, any ineligible security that an affiliated underwriting subsidiary underwrites during the period of the underwriting or for 30 days thereafter, or to purchase from the underwriting subsidiary any ineligible security in which the underwriting

healthy broker-dealers do not operate near SEC minimum requirements.

[9] Furthermore, since 1981, national banks have been allowed to credit enhance their own private placements of bank-ineligible securities. The Board is not aware of any unmanageable losses having arisen from this activity.

[10] *See, e.g.*, 12 CFR 208, Appendix A.III.D (risk-based capital standards for state member banks).

[11] 12 U.S.C. 84; 12 CFR 32.2.

subsidiary makes a market. This limitation extends to all customers of Applicant and its subsidiaries, including broker-dealers and unaffiliated banks, but does not include lending to a broker-dealer for the purchase of securities where an affiliated bank is the clearing bank for such broker-dealer.

1987 and 1990 Order. The *1987 Order* did not extend the restriction for 30 days after the underwriting period, but was otherwise substantially the same. The 1990 Order applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks, and also prohibited the section 20 subsidiary from arranging for an extension of credit by the foreign bank or its subsidiaries.

Request for Comment. Firewall 6 addresses what the Board believes to be one of the most important potential conflicts of interests arising from the affiliation of commercial and investment banking: the possibility that a bank would extend credit below market rates in order to induce customers to purchase securities underwritten by its section 20 affiliate or that it holds in inventory. The primary concerns are threefold: that such extensions of credit may not be repaid, thereby harming the bank; that customers will be induced by easy credit into purchasing risky securities, thereby harming the customer; and that a section 20 affiliate could reap a competitive advantage over competitors who do not have a federally subsidized affiliate to provide credit to their customers.

Section 11(d) of the Securities Exchange Act of 1934 addresses some of the same concerns as Firewall 6. Section 11(d) prohibits a broker-dealer (including a section 20 affiliate) that is acting as an underwriter from extending or arranging for credit to customers purchasing the newly issued securities during the underwriting period. Thus, a section 20 subsidiary acting as underwriter would be prohibited from arranging for an affiliated bank to make loans to customers for purchases during an underwriting period. Still, section 11(d) would not apply in the absence of arranging and, unlike Firewall 6, would not cover loans to purchase a security in which a section 20 affiliate makes a market or purchases from parties other than the section 20 affiliate.

Section 23B of the Federal Reserve Act, and in some cases section 23A of the Federal Reserve Act, would address many of these remaining concerns and overlap the restrictions of section 11(d). Section 23B would apply to loans to fund purchases by customers of securities from a section 20 affiliate during the existence of the underwriting or selling syndicate, and to any loan to purchase a security from the inventory of the section 20 affiliate, including securities in which the section 20 affiliate makes a market.[12] Section 23B requires that inter-affiliate transactions be on market terms. To the extent that the bank extended credit knowing that the proceeds would be transferred to an affiliate, section 23A would also apply.[13] Section 23A limits transactions with any one affiliate to 10 percent of the bank's capital, and transactions with all affiliates to 20 percent of capital, and also requires that collateral be pledged to a bank for any extension of credit.

The Board seeks comment on whether these protections are sufficient to address the conflicts of interests that motivated creation of Firewall 6.

Firewall 7 (Restriction on Extensions of Credit for Repayment of Underwritten Securities)

Text of 1989 Order. No Applicant or any of its subsidiaries may, directly or indirectly, extend credit to issuers of the ineligible securities underwritten by an affiliated underwriting subsidiary for the purpose of the payment of principal, interest or dividends on such securities. To assure compliance with the foregoing, any credit lines extended to an issuer by any bank holding company or any subsidiary shall provide for substantially different timing, terms, conditions and maturities from the ineligible securities being underwritten. It would be clear, for example, that a credit has substantially different terms and timing if it is for a documented special purpose (other than the payment of principal, interest or dividends) or there is substantial participation by other lenders.

1987 and 1990 Order. The *1987 Order* did not prohibit extensions of credit for the payment of dividends but was otherwise substantially the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks, and also included an arranging restriction.

Request for Comment. The Board proposes to eliminate this restriction. The Board stated in 1987 that it was adopting this firewall in order to prevent a bank from making unwise loans to improve the financial condition of companies whose securities were underwritten or dealt in by the section 20 affiliate, either to assist in the marketing of the securities or to prevent the customers of the section 20 affiliate from incurring losses on securities sold by the subsidiary. However, the firewall has proven burdensome and has had unintended effects. For example, banks face compliance problems renewing a company's revolving line of credit if a section 20 subsidiary has underwritten an offering by that company since the credit was first extended; the bank must either recruit other lenders to participate in the renewal or amend the line of credit in order to specify its purpose. As a result, companies seeking the best short-term funding options sometimes find it easier to move from the bank credit market to the commercial paper market than the reverse.

In addition, other restrictions would apply in the absence of the firewall. Section 23B of the Federal Reserve Act would generally apply to extensions of credit for the purpose of payment of principal, interest or dividends that are currently covered by Firewall 7. In addition, the conflict of interest addressed by Firewall 7 appears more tenuous than those addressed by the prior two credit firewalls, as most of the funds extended do not flow to the section 20 affiliate. Thus, the Board believes that section 23B, together with the capital requirements discussed above, should be sufficient protection against this conflict of interest.

Firewall 8 (Procedures for Extensions of Credit)

Text of 1989 Order. Each Applicant shall adopt appropriate procedures, including maintenance of necessary documentary records, to assure that any extension of credit by it or any of its subsidiaries to issuers of ineligible securities underwritten or dealt in by an underwriting subsidiary are on an arm's length basis for purposes other than payment of principal, interest, or dividends on the issuer's ineligible securities being underwritten or dealt in by the underwriting subsidiary. An extension of credit is considered to be on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions with issuers whose securities are not underwritten or dealt in by the underwriting subsidiary.

1987 and 1990 Order. The *1987 Order* did not restrict extensions of credit for the payment of dividends but was otherwise substantially the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

[12] Section 23B applies to "any transaction or series of transactions with a third party * * * if an affiliate is a participant in such transaction or series of transactions." 12 U.S.C. 371c-1(a)(2)(E).

[13] 12 U.S.C. 371c(a)(2).

Request for Comment. The Board proposes to eliminate this firewall. Section 23B, enacted since this firewall was initially adopted, requires extensions of credit by a bank in conjunction with an issuance of securities underwritten by a section 20 affiliate to be on arm's-length terms. The federal banking agencies examine for compliance with section 23B, and require any bank that does not maintain those procedures necessary to ensure compliance to adopt them immediately.

Although the firewall also includes extensions of credit by nonbank subsidiaries, those extensions of credit do not directly implicate the federal safety net. In amending section 23A and adopting section 23B in 1987, Congress did not apply their restrictions to the parent bank holding company or any other nonbank lender. Moreover, the bank holding company will remain subject to capital requirements.

Firewall 9 (Restriction on Thrifts)

Text of 1989 Order. In any transaction involving an underwriting subsidiary, Applicants' thrift subsidiaries shall observe the limitations of sections 23A and 23B of the Federal Reserve Act as if the thrifts were banks.

1987 and 1990 Order. The *1987 Order* did not include this restriction. The *1990 Order* was the same.

Request for Comment. This condition became superfluous when the Home Owners' Loan Act was amended to apply sections 23A and 23B of the Federal Reserve Act to a thrift as if were a member bank [14]. The Board proposes to eliminate it.

Firewall 10 (Restriction on Industrial Revenue Bonds)

Text of 1989 Order. The requirements relating to credit extensions to issuers noted in paragraphs 5–9 above shall also apply to extensions of credit to parties that are major users of projects that are financed by industrial revenue bonds.

1987 and 1990 Order. Same.

Request for Comment. As the Board is proposing to eliminate the incorporated restrictions, the Board is proposing to eliminate this restriction as well.

Firewall 11 (Loan Documentation and Exposure Limits)

Text of 1989 Order. Applicants shall cause their subsidiary banks and thrifts to adopt policies and procedures, including appropriate limits on exposure, to govern their participation in financing transactions underwritten or arranged by an underwriting subsidiary as set forth in this Order. The Reserve Banks shall ensure that these policies and procedures are in place at Applicants' subsidiary banks and thrifts and Applicants shall assure that loan documentation is available for review by Reserve Banks to ensure that an independent and thorough credit evaluation has been undertaken in connection with bank or thrift participation in such financing packages and that such lending complies with the requirements of this Order and section 23B of the Federal Reserve Act.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* The *1990 Order* applied the same restriction to U.S. affiliates and branches and agencies of a foreign bank.

Request for Comment. The Board is proposing to include this restriction in slightly amended form in its operating standards for all section 20 subsidiaries.

Firewall 12 (Procedures for Limiting Exposure to One Customer)

Text of 1989 Order. Applicants should also establish appropriate policies, procedures, and limitations regarding exposure of the holding company on a consolidated basis to any single customer whose securities are underwritten or dealt in by the underwriting subsidiary.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* The *1990 Order* applied the same restriction to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board is seeking comment on whether to include this restriction in its operating standards for section 20 subsidiaries. The firewall restricts the ability of a holding company to expose itself to one issuer in support of its section 20 subsidiary. However, the need for internal limits and the appropriate sophistication of those limits varies greatly from company to company, and might be better addressed through the examination process.

III. Limitations to Maintain Separateness of an Underwriting Affiliate's Activity

Firewall 13 (Interlocks Restriction)

Text of 1989 Order (as amended). [15] Directors, officers or employees of a bank or thrift shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer of an affiliated bank or thrift. The underwriting subsidiary will have separate offices from any affiliated bank or thrift.

1987 and 1990 Order. The *1987 Order* is the same. The *1990 Order* applies the same restriction to the U.S. bank and thrift subsidiaries and branches and agencies of foreign banks.

Request for Comment. The Board recently amended the interlocks restriction, and is not proposing further changes to that restriction. However, Firewall 13 also contains a requirement that a section 20 subsidiary have separate offices from any affiliated bank, thrift, branch or agency. The purpose of this restriction was to ensure that customers of a section 20 subsidiary clearly understand that they are not dealing with a bank or thrift affiliate, and that the products they are purchasing are not federally insured or bank guaranteed.

The Board is proposing to eliminate the separate office requirement. First, in the Board's experience, maintaining separate offices for functions that do not involve retail customers—for example, back-office functions—serves no purpose and represents a needless expense. Second, for sales to retail customers, the Board proposes to rely on the Interagency Statement on Retail Sales of Nondeposit Investment Products, which largely duplicates this restriction. According to the Interagency Statement, sales or recommendations of nondeposit investment products on the premises of a depository institution—including sales by a section 20 affiliate—should be conducted in a physical location distinct from the area where retail deposits are taken.

IV. Disclosure by the Underwriting Subsidiary

Firewall 14 (Customer Disclosures)

Text of 1989 Order. An underwriting subsidiary will provide each of its customers with a special disclosure statement describing the difference between the underwriting subsidiary and its bank and thrift affiliates and pointing out that an affiliated bank or thrift could be a lender to an issuer and referring the customer to the disclosure documents for details. In addition, the statement shall state that securities sold, offered, or recommended by the underwriting subsidiary are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated bank or thrift, and are not otherwise an obligation or responsibility of such a bank or thrift (unless such is the case). The underwriting subsidiary should also disclose any material lending

[14] 12 U.S.C. 1468(a)(1).

[15] 61 FR 57679, 57683 (1996).

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relationship between the issuer and a bank or lending affiliate of the underwriting subsidiary as required under the securities laws and in every case whether the proceeds of the issue will be used to repay outstanding indebtedness to affiliates.

1987 and 1990 Order. The *1987 Order* required a less detailed but similar disclosure. The *1990 Order* extended the same restriction to U.S. bank and thrift affiliates and branches and agencies of foreign banks.

Request for Comment. The Board continues to believe that customer disclosures are important to ensuring that customers of a section 20 subsidiary clearly understand that its products are not federally insured or otherwise guaranteed by an affiliated bank. Indeed, the Board relied on disclosures in concluding that it was appropriate to eliminate firewalls on cross-marketing and employee interlocks. In order to ease the burden of compliance, though, the Board is proposing to amend the disclosure firewall to follow the Interagency Statement on Retail Sales of Nondeposit Investment Products that applies to sales by bank employees or on bank premises. A section 20 subsidiary would be required to provide each of its retail customers the same disclosures that the Interagency Statement mandates for retail customers of banks, even when it was operating off bank premises. This would narrow the firewall by no longer requiring disclosures to institutional customers (who should be aware of whether a product is federally insured or bank guaranteed) but broaden the firewall to require an acknowledgement of the disclosure by retail customers.

V. Marketing Activities on Behalf of an Underwriting Subsidiary

Firewall 15 (Restriction on Advertising Bank Connection)

Text of 1989 Order. No underwriting subsidiary nor any affiliated bank or thrift institution will engage in advertising or enter into an agreement stating or suggesting that an affiliated bank or thrift is responsible in any way for the underwriting subsidiary's obligations as required under section 23B of the Federal Reserve Act.

1987 and 1990 Order. The *1987 Order* did not contain the reference to section 23B of the Federal Reserve Act, but was otherwise identical. The *1990 Order* extended the same restriction to bank and thrift affiliates and branches and agencies of a foreign bank.

Request for Comment. This restriction has been superseded by section 23B(c) of the Federal Reserve Act, and the Board is proposing to eliminate it.

Firewall 16 (Cross-marketing and Agency Activities by Banks)

Text of 1989 Order. Reserved. [16]

1987 and 1990 Order. Same.

VI. Investment Advice by Bank/Thrift Affiliates

Firewall 17

Text of 1989 Order. An affiliated bank or thrift institution may not express an opinion on the value or the advisability of the purchase or the sale of ineligible securities underwritten or dealt in by an affiliated underwriting subsidiary unless the bank or thrift notifies the customer that the underwriting subsidiary is underwriting, making a market, distributing or dealing in the security.

1987 and 1990 Order. The *1987 Order* was substantially the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board proposes to retain this restriction. An SEC rule (Rule 10b–10) and NASD rule (Rule 2250) require a broker-dealer to disclose to a customer that it is a market maker in a security before selling or recommending that security. These restrictions are based on the conflict of interest between the broker-dealer's duty to advise its customers and its financial interest in selling its security. The firewall extends this restriction to an affiliated bank based on the concern that it would have a similar financial incentive to give advice that would benefit its affiliate. A disclosure to the customer appears to be a sufficient means of addressing that conflict. Accordingly, the proposal retains this requirement, combining it with another disclosure standard.

Nonetheless, the Board is concerned with the difficulty of complying with, and examining for compliance with, this standard, particularly with respect to large bank holding companies operating around the world. The Board seeks comment on whether a bank or thrift should only be prohibited from expressing an opinion without disclosure if it knows of its affiliate's role in the transaction. The Board also seeks comment on whether, with this knowledge requirement or without it, this standard is enforceable.

Firewall 18 (Restriction on Fiduciary Purchases During Underwriting Period or From Market Maker)

Text of 1989 Order. No Applicant nor any of its bank, thrift, or trust or investment advisory subsidiaries shall purchase, as a trustee or in any other fiduciary capacity, for accounts over which they have investment discretion ineligible securities (a) underwritten by the underwriting subsidiary as lead underwriter or syndicate member during the period of any underwriting or selling syndicate, and for a period of 60 days after the termination thereof, and (b) from the underwriting subsidiary if it makes a market in that security, unless, in either case, such purchase is specifically authorized under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

1987 and 1990 Order. The *1987 Order* did not restrict purchases of securities in which the section 20 subsidiary makes a market but was otherwise the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board proposes to eliminate this restriction. Section 23B(b)(1)(B) of the Federal Reserve Act largely duplicates the restrictions of Firewall 18 when a bank or thrift is making the purchase. [17] Section 23B prohibits a bank from purchasing, as principal or fiduciary, any security for which a section 20 affiliate is a principal underwriter during the existence of the underwriting or selling syndicate, unless such a purchase has been approved by a majority of the bank's board of directors who are not officers of any bank or any affiliate. If the purchase is as fiduciary, the purchase must be permitted by the instrument creating the fiduciary relationship, court order, or state law.

Firewall 18 is broader than section 23B in that it applies for 60 days after the underwriting period. The Board does not believe that it should reimpose a restriction that Congress decided was unnecessary, and is not aware of any compelling reason to do so.

Firewall 18 is also broader than section 23B in that the firewall applies when a bank holding company or its nonbank subsidiary acting as fiduciary purchases the securities. However, if the purchases are fiduciary, the Board believes that other protections remain. For example, if the purchase were on behalf of a pension plan, then the company would be subject to ERISA. [18] If the purchase were on behalf of a mutual fund, then sections 10 and 17 of

[16] This firewall was rescinded. 61 FR 57679, 57683 (1996).

[17] In its 1987 order, the Board noted that section 23B was pending as proposed legislation, and appears to have created the firewall in anticipation of that legislation.

[18] 29 U.S.C. 1002(21), 1104.

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the Investment Company Act of 1940 restrict the ability of the mutual fund to purchase securities from an affiliate of the investment advisor. [19]

VII. Extensions of Credit and Purchases and Sales of Assets

Firewall 19 (Restrictions on Purchases as Principal During Underwriting Period or From Market Maker)

Text of 1989 Order (as amended). No Applicant nor any of its subsidiaries, other than the underwriting subsidiary, shall purchase, as principal, ineligible securities that are underwritten by the underwriting subsidiary during the period of the underwriting and for 60 days after the close of the underwriting period, or shall purchase from the underwriting subsidiary any ineligible security in which the underwriting subsidiary makes a market.

In the case of ineligible securities that are being issued in a simultaneous cross-border underwriting in which the underwriting subsidiary and a foreign affiliate or affiliates are participating, such securities may be purchased or sold pursuant to an inter-syndicate agreement for the period of the underwriting where the purchase or sale results from *bona fide* indications of interest from customers. Such purchases or sales shall not be made for the purpose of providing liquidity or capital support to the underwriting subsidiary or otherwise to evade the requirements of this Order. An underwriting subsidiary shall maintain documentation on such transactions.[20]

1987 and 1990 Order. The *1987 Order* was the same. The *1990 Order* was substantially the same.

Request for Comment. The Board proposes to eliminate this restriction, which precludes bank and nonbank subsidiaries of a bank holding company subsidiary from obtaining attractive issues underwritten or dealt in by a section 20 affiliate. As with Firewall 18, section 23B prohibits a bank from purchasing, as principal or fiduciary, any security for which a section 20 affiliate is a principal underwriter during the existence of the underwriting or selling syndicate, unless such a purchase has been approved by a majority of the bank's board of directors who are not officers of the bank or any affiliate. Since 1989, the Board has authorized bank holding companies engaged in private placement activities to place up to 50 percent of an issue of securities with their nonbank affiliates, [21] and no supervisory concerns have arisen from this practice.

Furthermore, if the bank purchases the security as principal directly from the section 20 affiliate, section 23A would apply. The bank would also be required to hold capital against these exposures. Finally, member banks are limited to purchasing only investment securities. [22]

Firewall 20 (Restriction on Underwriting and Dealing in Affiliates' Securities)

Text of 1989 Order (as amended). [23] An underwriting subsidiary may not underwrite or deal in any ineligible securities issued by its affiliates or representing interest in, or secured by, obligations originated or sponsored by its affiliates (except for grantor trusts or special purpose corporations created to facilitate underwriting of securities backed by residential mortgages originated by a non-affiliated lender). An underwriting subsidiary may underwrite or deal in ineligible securities issued by (or representing interests in, or secured by, obligations of) affiliates provided the securities are (1) rated by an unaffiliated, nationally recognized statistical rating organization, or (2) issued or guaranteed by FNMA, FHLMC or GNMA (or represent interests in securities issued or guaranteed by FNMA, FHLMC, or GNMA).

1987 and 1990 Order. Same.

Request for Comment. The Board proposes to eliminate this restriction, which prohibits a section 20 affiliate from underwriting securities issued by an affiliated bank. The purpose of the restriction was to address the conflicts of interest presented because a section 20 subsidiary may have an incentive to overstate the quality of the securities being issued by its affiliate.

However, Rule 2720 of the National Association of Securities Dealers already imposes substantially the same restriction. Rule 2720, to which section 20 subsidiaries are subject, provides that if a member of the NASD proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities, then the price or yield of the issue must be set by a qualified independent underwriter who shall also participate in the preparation of the registration statement and prospectus, offering circular, or similar document, exercising due diligence.

Furthermore, the Board previously has granted waivers from Firewall 20 to allow section 20 subsidiaries to underwrite equity securities issued by affiliates. [24] In granting these waivers the Board relied in each case on the fact that there were independent sources, such as third-party underwriters acting as syndicate managers, judging the creditworthiness and pricing of the securities offered.

Firewall 21(a) (Prohibition on Extensions of Credit to Section 20 Subsidiary)

Text of 1989 Order. Applicants shall assure that no bank or thrift subsidiary shall, directly or indirectly, extend credit in any manner to an affiliated underwriting subsidiary or a subsidiary thereof; or issue a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, for the benefit of the underwriting subsidiary or a subsidiary thereof.

1987 and 1990 Order. This restriction was not contained in the *1987 Order.*

The *1990 Order* applied the same restrictions to U.S. bank and thrift subsidiaries and branches and agencies of foreign banks.

Request for Comment. The Board proposes to eliminate this restriction except insofar as it applies to intra-day extensions of credit for clearing purposes. The purpose of the restriction was to prevent any bank funding of a section 20 affiliate.

Because this firewall was not applied under the *1987 Order,* bank subsidiaries of the fourteen companies operating under that order have therefore been free to, and have in fact, funded their section 20 affiliates. In nine years of supervising companies operating under the 1987 Order, the Board has not encountered significant problems arising from such funding.

Such transactions are subject to sections 23A or 23B of the Federal Reserve Act, which address potential conflicts of interest. Thus, even if the firewall were repealed, a bank would not be able to expose more than 10 percent of its capital to the section 20 affiliate directly, would have to deal with the section 20 affiliate on arm's-length (market) terms, could not purchase low-quality assets from the affiliate, and could not purchase securities underwritten by a section 20

[19] 15 U.S.C. 80a–10, 80a–17.

[20] *1990 Order* at 158, 164–65, 172 (1990).

[21] *J.P. Morgan & Co.,* 76 Federal Reserve Bulletin 26, 28 (1990).

[22] 12 U.S.C. 24(Seventh), 335.

[23] 75 Federal Reserve Bulletin 751 (1989).

[24] *See* Letter, dated May 2, 1996, from Jennifer J. Johnson, Deputy Secretary of the Board to Thomas A. Plant; Letter, dated January 6, 1994, from Jennifer J. Johnson, Associate Secretary of the Board to Kevin Barnard, Esq.

affiliate during the existence of the underwriting or selling syndicate unless the bank's board of directors approves.[25]

One issue arises with respect to whether intra-day extensions of credit should continue to be restricted. The Board proposes to include an operating standard prohibiting intra-day extensions of credit for clearing purposes unless they are (1) On market terms consistent with section 23B of the Federal Reserve Act, and (2) fully secured. In effect, the Board would be requiring that (1) The bank apply the same internal exposure limits and collateral requirements in clearing for a section 20 affiliate that it applies to third parties, and (2) even if its general policy does not require the bank to be fully secured in clearing, the bank be fully secured in clearing for its section 20 affiliate. The Board seeks comment on whether the latter requirement is feasible.

Firewall 21(b)

Text of 1989 Order. This prohibition shall not apply to an extension of credit by a bank or thrift to an underwriting subsidiary that is incidental to the provision of clearing services by the bank or thrift to the underwriting subsidiary with respect to securities of the United States or its agencies, or securities on which the principal and interest are fully guaranteed by the United States or its agencies, if the extension of credit is fully secured by such securities, is on market terms, and is repaid on the same calendar day. If the intra-day clearing of such securities cannot be completed because of a *bona fide* fail or operational problem incidental to the clearing process that is beyond the control of the bank or thrift and the underwriting subsidiary, the bank or thrift may continue the intra-day extension of credit overnight provided the extension of credit is fully secured as to principal and interest as described above, is on market terms, and is repaid as early as possible on the next business day.

1987 and 1990 Orders. No exception was necessary in the *1987 Order.* The *1990 Order* contained the same exception.

Request for Comment. If Firewall 21(a) were eliminated, the Board would propose to eliminate Firewall 21(b) as moot.

Firewall 22 (Financial Assets Restriction)

Text of 1989 Order (as amended).[26] No bank or thrift (or U.S. branch or agency of a foreign bank) shall, directly or indirectly, for its own account, purchase financial assets of an affiliated underwriting subsidiary or a subsidiary thereof or sell such assets to the underwriting subsidiary or subsidiary thereof. This limitation shall not apply to the purchase and sale of assets having a readily identifiable and publicly available market quotation and purchased at that market quotation for purposes of section 23A of the Federal Reserve Act, 12 U.S.C. 371c(d)(6), provided that those assets are not subject to a repurchase or reverse repurchase agreement between the underwriting subsidiary and its bank or thrift affiliate.

1987 and 1990 Orders. The *1990 Order* is the same. The *1987 Order* did not include a financial assets restriction.

Request for Comment. The Board proposes to eliminate this firewall, which is designed to prevent a bank from using purchases and sales as a means of funding a section 20 affiliate. Section 23B of the Federal Reserve Act would still require that all such purchases be made on arm's-length terms, and section 23A would impose quantitative limits. Section 23A(a)(3) also generally prohibits a bank from purchasing a low-quality asset from an affiliate. A "low-quality asset" is defined to include: (A) An asset classified as "substandard", "doubtful", or "loss" or treated as "other loans especially mentioned" in the section 20 affiliate's most recent report of examination or inspection; (B) an asset in a non-accrual status; (C) an asset on which principal or interest payments are more than thirty days past due; or (D) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.[27] Moreover, the National Bank Act limits the type of investment securities that a national bank may hold, generally to investment grade securities.

Elimination of this restriction would allow repurchase and reverse repurchase agreements as a funding vehicle between a section 20 subsidiary and its affiliated banks. Such agreements would have to be consistent with sections 23A and 23B, however.

VIII. Limitations on Transfers of Information

Firewall 23 (Disclosure of Nonpublic Information)

Text of 1989 Order. No bank or thrift shall disclose to an underwriting subsidiary, nor shall an underwriting subsidiary disclose to an affiliated bank or thrift, any nonpublic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that bank or thrift, or underwriting subsidiary) without the consent of that customer.

1987 and 1990 Order. The *1987 Order* was substantially the same. The *1990 Order* applied the same restrictions to U.S. bank and thrift subsidiaries and branches and agencies of foreign banks.

Request for Comment. The Board proposes to include this restriction in its operating standards, as it constitutes an important customer protection.

IX. Reports

Firewall 24 (Reports to Federal Reserve)

Text of 1989 Order. Applicants shall submit quarterly to the appropriate Federal Reserve Bank FOCUS reports filed with the NASD or other self-regulatory organizations, and detailed information breaking down the underwriting subsidiaries' business with respect to eligible and ineligible securities, in order to permit monitoring of the underwriting subsidiaries' compliance with the provisions of this Order.

1987 and 1990 Order. Same.

Request for Comment. The Board proposes to retain this requirement in modified form as one of the operating standards.

X. Transfer of Activities and Formation of Subsidiaries of an Underwriting Subsidiary To Engage in Underwriting and Dealing

Firewall 25 (Scope of Order)

Text of 1989 Order. The Board's approval of the proposed underwriting and dealing activities extends only to the subsidiaries described above for which approval has been sought in the instant applications. The activities may not be conducted by Applicants in any other subsidiary without prior Board

[25] The Board is proposing to impose a new operating standard that applies sections 23A and 23B to U.S. branches and agencies of foreign banks for this purpose. Currently, branches and agencies are not covered by these requirements, most notably the collateral requirement of section 23A. This exemption has not given section 20 affiliates of foreign banks any material competitive advantage over their domestic counterparts; generally, *all* lending has been prohibited by Firewall 21(a). However, if that firewall were removed in reliance on sections 23A and 23B, foreign banks would have a competitive advantage unless those provisions were applied to their branches and agencies, as their branches and agencies could fund a section 20 affiliate without requiring collateral. With respect to foreign banks operating under the *1990 Order*, the proposal represents relief from a restriction. Although this proposal would impose new requirements on foreign banks operating under the *1987 Order*, the Board specifically reserved its right to impose new restrictions should circumstances change to make such requirements appropriate. *See Sanwa Bank, Ltd.*, 76 Federal Reserve Bulletin 568, 570 (1990).

[26] 61 FR 57679, 57683 (1996).

[27] 12 U.S.C. 371c (a)(3), (b)(10).

review. Pursuant to Regulation Y, no corporate reorganization of any underwriting subsidiary, such as the establishment of subsidiaries of the underwriting subsidiary to conduct the activities, may be consummated without prior Board approval.

1987 and 1990 Order. Same.

Request for Comment. The Board proposes to eliminate this firewall. Each order approving section 20 activities can make plain the scope and organizational structure of the activities approved.

XI. Limitations on Reciprocal Arrangements and Discriminatory Treatment

Firewall 26 (Prohibition on Reciprocity Arrangements)

Text of 1989 Order. No Applicant nor any of its subsidiaries may, directly or indirectly, enter into any reciprocal arrangement. A reciprocal arrangement means any agreement, understanding, or other arrangement under which one bank holding company (or subsidiary thereof) agrees to engage in a transaction with, or on behalf of, another bank holding company (or subsidiary thereof), in exchange for the agreement of the second bank holding company (or any subsidiary thereof) to engage in a transaction with, or on behalf of, the first bank holding company (or any subsidiary thereof) for the purpose of evading any requirement of this Order or any prohibition on transactions between, or for the benefit of, affiliates of banks established pursuant to federal banking law or regulation.

1987 and 1990 Order. The *1990 Order* is the same, but the restriction is not included in the *1987 Order.*

Request for Comment. The Board proposes to eliminate this firewall. Anti-competitive reciprocity arrangements are prohibited by the antitrust laws, and reciprocity arrangements involving a bank are subject to a special *per se* prohibition in section 106 of the Bank Holding Company Act Amendments of 1970.[28] The Board could also rely on the examination process to identify any evasions of the proposed operating standards that do not run afoul of a statutory prohibition.

Firewall 27 (Prohibition on Discriminatory Treatment)

Text of 1989 Order. No bank or thrift affiliate of an underwriting subsidiary shall, directly or indirectly:

(a) acting alone or with others, extend or deny credit or services (including clearing services), or vary the terms or conditions thereof, if the effect of such action would be to treat an unaffiliated securities firm less favorably than its affiliated underwriting subsidiary, unless the bank or thrift demonstrates that the extension or denial is based on objective criteria and is consistent with sound business practices; or

(b) extend or deny credit or services or vary the terms or conditions thereof with the intent of creating a competitive advantage for an underwriting subsidiary of an affiliated bank holding company.

1987 and 1990 Order. This restriction is not contained in the *1987 Order.* The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. This firewall addresses a potential conflict of interest that arises when a bank is dealing with competitors of its section 20 affiliate. The firewall prohibits the bank from denying services to such competitors or charging them higher prices than it would charge its affiliate. The Board is proposing to eliminate the firewall because other laws adequately address the potential conflict.

First, the Board notes that whereas securities firms had been restricted by section 8(a) of the Securities Exchange Act of 1934 in the types of lenders from which they could obtain loans secured by securities collateral—generally, to banks and other broker-dealers—section 8(a) was recently repealed, and such restriction thereby eliminated.[29] Thus, the possibility that a bank would be able to enforce unfavorable credit terms on a competitor of a section 20 affiliate is remote.

Second, section 106 of the Bank Holding Company Act Amendments of 1970 prohibits a bank from, among other things, restricting availability of, or offering discounts on, its products on the condition that the customer not obtain products from any competitor of the bank or its affiliates.

XII. Requirement for Supervisory Review Before Commencement of Activities

Firewall 28 (Infrastructure Review)

Text of 1989 Order. An Applicant may not commence the proposed debt and equity securities underwriting and dealing activities until the Board has determined that the Applicant has established policies and procedures to ensure compliance with the requirements of this Order, including computer, audit and accounting systems, internal risk management controls and the necessary operational and managerial infrastructure. In this regard, the Board will review in one year whether Applicants may commence underwriting and dealing in equity securities based on a determination by the Board that they have established the managerial and operational infrastructure and other policies and procedures necessary to comply with the requirements of this Order.

1987 and 1990 Order. The *1987 Order* does not contain this restriction. The *1990 Order* contains the same restriction.

Request for Comment. The purpose of this restriction is to ensure that a bank holding company has the necessary systems, internal controls, and infrastructure to operate a section 20 subsidiary. The Board believes that these systems are vital to the successful operation of a section 20 subsidiary. However, because the Board and not the section 20 subsidiary performs the review, the Board intends to require an infrastructure review in the context of each application rather than including it as an "operating standard" for section 20 subsidiaries.

The Board generally will continue to conduct an inspection prior to allowing commencement of underwriting and dealing in corporate debt or equity securities pursuant to the *1989 Order.* In special cases such as an acquisition, the inspection will occur as soon as practicable after consummation. Although the existing firewall suggests that a review of the infrastructure for equity securities activities might not occur for a year after approval of an application, the Board has substantially modified and shortened the pre-approval inspection period for equity securities activities. Such inspections now frequently begin shortly after the filing of an application, and may be completed before the application is considered by the Board. Thus, the pre-commencement examination generally does not create a substantial delay beyond the application processing period.

List of Subjects 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 225 as follows:

[28] 12 U.S.C. 1972(1).

[29] 15 U.S.C. 78h(a) (1995); National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996).

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PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3908, and 3909.

2. An undesignated center heading and § 225.200 would be added to read as follows:

Conditions to Orders

§ 225.200 Conditions to Board's section 20 Orders.

(a) *Introduction.* Section 20 of the Glass-Steagall Act and section 4(c)(8) of the Bank Holding Company Act allow subsidiaries of bank holding companies to engage to a limited extent in underwriting and dealing in securities in which a member bank could not engage. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, these so-called section 20 subsidiaries are required to register with the SEC as broker-dealers and are subject to all the financial reporting, anti-fraud and financial responsibility rules applicable to broker-dealers. In addition, member banks are restricted in their transactions with section 20 affiliates by sections 23A and 23B of the Federal Reserve Act. The Board expects a section 20 subsidiary, like any other subsidiary of a bank holding company, to be operated prudently. Doing so would include observing corporate formalities (such as the maintenance of separate accounting and corporate records), maintaining adequate capital, and instituting appropriate risk management, including independent trading and exposure limits consistent with parent company guidelines. However, given the unique risks of affiliation between a section 20 subsidiary and a depository institution, the Board particularly expects the bank holding company to ensure that its subsidiary banks are well capitalized, and requires adherence to the following operating standards as a condition to each order approving establishment of a section 20 subsidiary.

(b) *Conditions.*—(1) *Capital.* (i) The bank holding company or foreign bank shall maintain adequate capital on a fully consolidated basis.

(ii) In the event that a bank or thrift affiliate of a section 20 subsidiary shall become less than well capitalized (as defined in section 38 of the Federal Deposit Insurance Act), and the bank holding company or foreign bank shall fail to restore it promptly to the well capitalized level, the Board may reimpose the funding, credit extension and credit enhancement firewalls contained in its 1989 order allowing underwriting and dealing in bank-ineligible securities.[1]

(2) *Internal controls.* (i) Each bank holding company or foreign bank shall cause its subsidiary banks, thrifts, and U.S. branches and agencies to adopt policies and procedures, including appropriate limits on exposure, to govern their participation in transactions underwritten or arranged by a section 20 affiliate.

(ii) Each bank holding company or foreign bank shall ensure that an independent and thorough credit evaluation has been undertaken in connection with bank, thrift, or U.S. branch or agency participation in such financing transactions, and that adequate documentation of that evaluation is maintained for review by examiners of its appropriate Federal banking agency and the Federal Reserve.

(3) *Interlocks restriction.* Directors, officers or employees of a bank holding company's or foreign bank's U.S. bank or thrift subsidiaries, branches or agencies shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer[2] of an affiliated U.S. bank or thrift subsidiary, branch or agency, except that the manager of a branch or agency may act as a director of the underwriting subsidiary.

(4) *Customer disclosure.* A section 20 subsidiary shall provide each of its retail customers the disclosures, and obtain the customer acknowledgement, required by the Interagency Statement on Retail Sales of Nondeposit Investment Products, even when the section 20 subsidiary is dealing with the customer off bank premises. An affiliated bank or thrift institution may not express an opinion on the value or the advisability of the purchase or the sale of ineligible securities underwritten or dealt in by an affiliated underwriting subsidiary unless the bank or thrift notifies the customer that the underwriting subsidiary is underwriting, making a market, distributing or dealing in the security.

(5) *Credit for clearing purposes.* Any intra-day extension of credit for purposes of clearing securities that is extended to a section 20 subsidiary by an affiliated bank, thrift, branch or agency shall be:

(i) On market terms consistent with section 23B of the Federal Reserve Act; and

(ii) Fully secured.

(6) *Confidentiality of customer information.* A section 20 subsidiary and its affiliated banks, thrifts, branches or agencies shall not share with each other any nonpublic customer information without the consent of that customer.

(7) *Reporting requirement.* Each bank holding company or foreign bank shall submit quarterly to the appropriate Federal Reserve Bank FOCUS reports filed with the NASD or other self-regulatory organizations, and information necessary to monitor compliance with these operating standards and section 20 of the Glass-Steagall Act, on forms provided by the Board.

(8) *Foreign banks.* A foreign bank shall ensure that any extension of credit by its U.S. branch or agency to a section 20 affiliate, and any purchase by such branch or agency, as principal or fiduciary, of securities for which a section 20 affiliate is a principal underwriter, conforms to sections 23A and 23B of the Federal Reserve Act, and that its branches and agencies not advertise nor suggest that they are responsible for the obligations of a section 20 affiliate, consistent with section 23B(c) of the Federal Reserve Act.

(c) *Establishment of additional limitations.* Based upon the supervisory process and experience with the activities, the Board may establish additional limitations on the conduct of these activities to ensure that the section 20 subsidiaries' activities are consistent with safety and soundness, conflict of interest and other considerations relevant under the Bank Holding Company Act.

By order of the Board of Governors of the Federal Reserve System, January 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–1010 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–P

[1] Firewalls 5–8, 19, 21 and 22 of *J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192, 214–16 (1989) and, for foreign banks, *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158, (1990). The Federal Reserve Bulletin is available for sale from Publication Services—Mail Stop 127, Board of Governors of the Federal Reserve System, Washington, DC 20551.

[2] For purposes of this standard, the manager of a U.S. branch or agency of a foreign bank normally will be considered to be the chief executive officer of the branch or agency.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–38159; File No. S7–27–96]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Securities and Exchange Commission ("Commission") is extending from December 27, 1996, until March 31, 1997, the comment period for Securities Exchange Act Release No. 37850 (October 22, 1996), 61 FR 55593 (October 28, 1996). In the release the Commission proposed amendments to the broker-dealer books and records rules.

DATES: Comments on the release should be submitted on or before March 31, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549, and should refer to File No. S7–27–96. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. The file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's public reference room, 450 Fifth St., N.W., Washington D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director at (202) 942–0131; Peter R. Geraghty, Assistant Director at (202) 942–0177; Matthew G. McGuire, Attorney at (202) 942–7103; or Michael E. Greene, Attorney at (202) 942–4169; Office of Risk Management and Control, Division of Market Regulation, Mail Stop 5–1, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 22, 1996, the Commission proposed amendments to Rules 17a–3 [1] and 17a–4,[2], the broker-dealer books and records rules. The proposed amendments clarify, modify, and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the proposed amendments specify certain types of books and records that broker-dealers must make available in their local offices. The Commission is proposing amendments to the books and records rules in response to certain concerns raised by members of the North American Securities Administrators Association. The proposed amendments are intended to obligate broker-dealers to make and retain certain additional records that would be available to state regulators during examination and enforcement proceedings. The Commission originally requested that comments on the proposed rulemaking be received by December 27, 1996.

Based on requests from prospective commenters, including NASD Regulation, Inc. and the New York Stock Exchange, and the Commission's desire to consider the views of all interested persons on the subject, the Commission believes that an extension of the comment period is appropriate. Therefore, the comment period for responding to Securities Exchange Act Release No. 37850 is extended from December 27, 1996, until March 31, 1997.

Dated: January 13, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1221 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.17a–3.

[2] 17 CFR 240.17a–4.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251520–96]

RIN 1545–AU70

Classification of Certain Transactions Involving Computer Programs; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (REG–251520–96) which was published in the **Federal Register** on Wednesday, November 13, 1996 (61 FR 58152).

The notice of proposed rulemaking relates to the tax treatment of certain transactions involving the transfer of computer programs.

FOR FURTHER INFORMATION CONTACT: William H. Morris (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is subject to these corrections is under section 861 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–251520–96) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG–251520–96) which is the subject of FR Doc. 96–29055 is corrected as follows:

§ 1.861–18 [Corrected]

1. On page 58157, column 2, § 1.861–18, paragraph (h), paragraph (ii)(B) of *Example 10.*, line 2, the language "circumstances, P is properly treated as the" is corrected to read "circumstances, Corp E is properly treated as the".

2. On page 58157, column 2, § 1.861–18, paragraph (h), paragraph (i) of *Example 12.*, line 8, the language "fee, Corp C receives the right to receive" is corrected to read "fee, Corp E receives the right to receive".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–1127 Filed 1–16–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ25–1b–159; FRL–5662–2]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve twenty-two State Implementation Plan (SIP) revisions submitted by the State of New Jersey related to development of reasonably available control

technologies for oxides of nitrogen from various sources in the State. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revisions, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 29, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–1072 Filed 1–16–97; 8:25 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CO–001–0008(b); FRL–5661–1]

Approval and Promulgation of Air Quality Implementation Plans; Colorado: Enhanced Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Colorado on September 29, 1995, for the purpose of meeting Federal requirements for a final approval of the Denver-Boulder urbanized area enhanced motor vehicle inspection and maintenance (I/M) program. The SIP revision was submitted by the State to satisfy the State's commitment to limit dealership self-testing as required by EPA's I/M Rule (40 CFR part 51, subpart S). This rulemaking proposes to convert EPA's original November 8, 1994 conditional approval (59 FR 55584) to a full approval for this program. In the Final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writ g by February 18, 1997.

ADDRESSES: Comments may be mailed to Richard R. Long, Director, Air Programs, USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, at (303) 312–6736 or via e-mail at lee.scott@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region VIII address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the rules section of this **Federal Register**.

Dated: November 26, 1996.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 96–1074 Filed 1–16–97; 8:25 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FL–68–2–9640b; FRL–5661–9]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to State of Florida State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of allowing the State agency to utilize exclusionary rules via general permits for the purpose of limiting potential to emit air pollutants for certain source categories to less than the title V permitting major source thresholds. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 18, 1997.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal

business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–68–2–9640. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303. Scott Miller, 404/562–9120

Florida Department of Environmental Protection, Division of Air Resources Management, 2600 Blair Stone Road, MS 5500, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 29, 1996.

R.F. McGhee,

Acting Regional Administrator.

[FR Doc. 97–1076 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN64–1b; FRL–5662–6]

Indiana State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Indiana on November 21, 1995, for a rule to control Non-Methane Organic Compounds emissions from municipal solid waste landfills in Clark, Floyd, Lake, and Porter Counties. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compound (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 18, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–1082 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN63–1b; FRL–5662–8]

Indiana State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Indiana on November 21, 1995, and February 14, 1996, which consist of rules for the control of volatile organic liquid (VOL) storage operations in Clark, Floyd, Lake, and Porter Counties. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan control strategies for Volatile Organic Compounds (VOC) emissions in Clark, Floyd, Lake, and Porter Counties. In addition, this rule is intended to satisfy Clean Air Act (Act) requirements to adopt VOC Reasonably Available Control Technology (RACT) rules for non-Control Techniques Guidelines (CTG) source categories in Clark, Floyd, Lake, and Porter Counties. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 18, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–1083 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[CA–66–1–7196b; FRL–5661–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Monterey Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: In the Final Rules section of this **Federal Register**, EPA is approving as revisions to the California State Implementation Plan (SIP) for the Monterey ozone nonattainment area, the maintenance plan, emission inventory, emission statement rule and volatile organic compounds (VOC) and oxides of nitrogen (NOx) reasonably available control technology (RACT) rules. EPA is also making the determination that the Monterey Bay Area has attained the ozone National Ambient Air Quality Standards (NAAQS) and a determination regarding the applicability of the Reasonable Further Progress (RFP) and attainment demonstration and related requirements based on the area's attainment of the ozone NAAQS. Finally, EPA is redesignating the Monterey Bay Area from nonattainment to attainment for the ozone NAAQS. A detailed rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments concerning any part of the rule, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this action must be received by February 18, 1997.

ADDRESSES: Written comments should be mailed to: David P. Howekamp, Director, Air Toxics Division (A–1), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the redesignation request, State submittals and the EPA's technical support document (TSD) are available for public review at the above address and at the California Air Resources Board, 2020 L Street, Sacramento, CA 95814, or the Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1207.

SUPPLEMENTARY INFORMATION: This document concerns the Monterey Bay Unified Air Pollution Control District SIP revisions and redesignation to attainment for ozone. For further information, please see the information provided in the Direct Final action located in the Final Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 15, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–877 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2920, 4100, 4300, 4700, 5460, 5510, 8200, 8340, 8350, 8360, 8370, 8560, 9210, and 9260

[WO–130–1820–00 24 1A]

RIN 1004–AC30

Law Enforcement—Criminal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed regulations, extension of comment period.

SUMMARY: On November 7, 1996, the Bureau of Land Management ("BLM") published a document in the **Federal Register** announcing a proposed rule to revise and consolidate many of the regulations which instruct the public regarding BLM criminal law enforcement (61 FR 57605). The 60-day comment period for the proposed rule expired on January 6, 1997. After receiving requests for more time to comment, BLM extended the comment period for 30 days (61 FR 66008, December 16, 1996). Once again, BLM has received requests for an extension of the comment period. BLM is therefore extending the comment period for an additional 30 days.

DATES: Submit comments by March 7, 1997.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the Internet to WOComment@wo.blm.gov. Please include "attn: AC30", and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at (202) 452–5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 452–5084, or Dennis McLane, (208) 387–5126.

Dated: January 13, 1997.

Annetta Cheek,

Regulatory Affairs Group Manager.

[FR Doc. 97–1248 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 97–21] [FCC 97–11]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed rulemaking and notice of inquiry.

SUMMARY: On January 10, 1997, the Commission adopted a Notice of Proposed Rulemaking (NPRM) and an accompanying Notice of Inquiry (NOI) to amend the Commission's rules consistent with proposals to permit the National Exchange Carrier Association (NECA) to change the size and composition of its Board of Directors. In the NPRM, the Commission tentatively concludes that the composition of NECA's Board of Directors must be altered to make the Board more representative of all segments of the telecommunications industry before NECA may be appointed as the temporary administrator of the new universal service support mechanisms, pursuant to the Universal Service proceeding in CC Docket 96–45. In the

Notice of Inquiry (NOI), the Commission seeks comment on how the Commission might amend its rules to remove any regulatory barriers that otherwise may prevent NECA from satisfying the Joint Board's criteria for a neutral third party permanent administrator for the new universal service support mechanisms. The NOI also seeks comment as to what, if any, additional reforms the Commission should adopt with respect to the administration of the current access tariff and pool revenue distribution programs and whether, in connection with any such proposed reforms, interested parties, in addition to NECA, should be entitled to participate in a selection process to serve as the administrator of those programs. The Commission seeks comment on the NPRM and NOI.

DATES: NPRM comments should be filed on or before January 27, 1997 and NPRM reply comments should be filed on or before February 3, 1997. NOI comments should be filed on or before March 3, 1997 and NOI reply comments should be filed on or before April 3, 1997.

ADDRESSES: Interested parties must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Comments should reference CC Docket No. 96–. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, NW., Washington, DC 20037. After filing, comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

Parties are also asked to submit comments on diskette. Diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd, Common Carrier Bureau, 2100 M Street, NW., Room 8611, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd at 202–530–6040.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Notice of Inquiry adopted and released on January 10, 1997 (FCC 97–11). The full text of this NPRM and NOI is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, DC 20554.

Summary of Notice of Proposed Rulemaking

1. On October 18, 1996, NECA requested that the Commission amend section 69.602 of the Commission's rules to permit NECA to modify the size and composition of its Board of Directors to reflect the interests of competitive local exchange carriers (LECs), interexchange carriers, wireless carriers, and non-carriers such as schools, libraries, rural healthcare providers, and the states.

2. On March 8, 1996, the Commission initiated a rulemaking in CC Docket 96–45, pursuant to section 254 of the Communications Act of 1934 (Communications Act), as amended by the Telecommunications Act of 1996 (1996 Act), to reform our system of universal service support. On November 8, 1996, the Federal-State Joint Board (Joint Board) on Universal Service released a Recommended Decision regarding numerous universal service issues. The Joint Board recommended that NECA be appointed as the temporary fund administrator of the universal service support mechanisms for schools, libraries and health care providers in order to provide supported telecommunications services to these entities as quickly as possible. The Joint Board also recommended that, prior to appointing NECA as temporary administrator, the "Commission permit NECA to add significant, meaningful representation" for non-incumbent LEC interests to the NECA Board of Directors.

3. NECA is an association of incumbent LECs. Along with administering the interstate access tariff and revenue distributions processes, NECA currently administers the existing universal service fund, the Lifeline Assistance program, the long term support (LTS) program and the interstate Telecommunications Relay Services (TRS) fund. The universal service fund, the Lifeline Assistance program, and the LTS program were designed to promote affordable telephone service throughout the nation. The TRS fund is the cost recovery mechanism that reimburses eligible TRS providers for interstate TRS minutes of use. NECA presently has a 15-member Board of Directors that consists of five directors from outside of the LEC industry, two directors representing Bell Operating Companies (BOCs), two directors representing other LECs having operating revenues in excess of $40 million, and six directors representing LECs having annual operating of less than $40 million.

4. Under NECA's proposal, three directors would represent carrier participants such as interexchange carriers, wireless carriers, and competitive LECs, and three would represent non-carriers, such as schools, libraries, rural health care providers, and states. Under NECA's proposal, the new Board members would participate in NECA's administration of the current universal service, Lifeline Assistance, and LTS programs, as well as Board oversight of auditing, finance, and general corporate matters. Access tariffs and pool revenue distribution, however, would continue to be the responsibility of the access charge committees, consisting of current members of NECA's Board. We find that for NECA to act on this proposal, § 69.602 of the Commission's rules would require amendment in order to create a fourth category or subset of six new directors, with three of those directors representing non-incumbent LEC participants, such as interexchange carriers, wireless carriers, and competitive LECs, and three directors representing support beneficiaries of universal service policies or other non-carriers, potentially including schools, libraries, rural health care providers, and states.

5. In this Notice of Proposed Rulemaking (NPRM), we address NECA's request and the Joint Board's recommendations and seek comment on how the Commission should amend its rules so that NECA can reform its Board of Directors in a manner that will enable it to become eligible to serve as the temporary administrator of the universal service support mechanisms. We tentatively conclude that, in order to be eligible to serve as the temporary administrator, NECA's Board of Directors must become more representative of the telecommunications industry as a whole. Accordingly, in order to meet the implementation schedule recommended by the Joint Board in its Recommended Decision and consistent with the recommendation that the Commission appoint NECA as temporary administrator of the new universal service support mechanisms, this NPRM proposes to amend § 69.602 of the Commission's rules so that NECA may modify the size and composition of its Board of Directors to make the Board more representative of the telecommunications industry. We also

seek comment on whether other part 69 rule sections should be modified in conjunction with the proposed rule changes to § 69.602.

Notice of Inquiry

6. In the Recommended Decision released on November 8, 1996, the Joint Board recommended that the permanent administrator of the new universal service support mechanisms, including its Board of Directors: (1) Be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission. In declining to recommend NECA for the position of permanent administrator, the Joint Board emphasized the importance of the permanent administrator's ability to maintain an "appearance of impartiality" and questioned NECA's ability to do this in light of its current membership and governance. The Joint Board specifically cited commenters' concerns that NECA's ability to appear to be a neutral arbitrator among contributing carriers, its current membership of incumbent LECs, and the advocacy role it has assumed in several Commission proceedings created an appearance to non-LECs of NECA's bias favoring incumbent LECs. The Joint Board further stated that "[i]f changes to its membership and governance render NECA a neutral, third-party, NECA should be eligible to compete in the advisory board's selection process" for choosing a permanent administrator.

7. In this NOI, we seek comment as to how the Commission might amend subpart G of its part 69 rules to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third party and satisfying the four criteria identified by the Joint Board. We also seek comment on whether, and if so how, the Commission should streamline its rules to enable NECA to change the composition of its Board without unnecessary regulatory oversight. Alternatively, the Commission could repeal the rules currently contained in part 69 constraining NECA's structure and functions so that NECA could make whatever organizational changes it deems necessary without Commission endorsement or sanction. If the Commission's oversight function of NECA's structure and functions were diminished in this fashion, we seek additional comment with respect to whether the interests of NECA's current membership, as well as other carriers, could be adversely affected by how NECA might administer tariffs and access charges.

8. In the Recommended Decision, the Joint Board also recommended that the qualified applicant have the capacity to process large amounts of data and bill large number of carriers. Accordingly, we seek comment on whether existing Commission rules prevent NECA from satisfying these criteria, and if so, how such rules should be amended.

9. Finally, we seek comment as to what, if any, additional reforms the Commission should adopt with respect to the administration of the current access tariff and pool revenue distribution programs and whether, in connection with any such proposed reforms, interested parties, in addition to NECA, should be entitled to participate in a selection process to serve as the administrator of one or more of those programs. As noted above, NECA currently administers the CL and TS access tariff pools, the existing universal service fund, the Lifeline Assistance program, the LTS program, and the TRS fund. Consistent with the de-regulatory and pro-competitive spirit of the 1996 Act, we seek comment regarding whether additional amendments to the Commission's part 69 rules are needed with respect to the administration of these programs and whether the administration of one or more of the programs should be subject to a competitive bidding process. In light of the Commission's recent reappointment of NECA to an additional four-year term as administrator of the TRS fund and given that NECA's reappointment to that fund was unopposed, we do not seek comment at this time on NECA's role as TRS administrator. Accordingly, we seek comment on whether administration of the CL and TS access tariff pools, the Lifeline Assistance program, and the LTS program should remain the exclusive province of NECA or whether other interested parties should be entitled to participate in a selection process to serve as the administrator of those programs. We request from those commenters advocating other parties' participation in the selection process suggestions on how such participation could be effectuated and what changes to our rules would be necessary to effectuate these changes.

Procedural Matters

10. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

11. We invite comment on the proposals and tentative conclusions set forth above. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file NPRM comments on or before January 27, 1997 and NPRM reply comments on or before February 3, 1997. Interested parties may file NOI comments on or before March 3, 1997 and NOI reply comments on or before April 3, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. Five courtesy copies should also be sent to Tejal Mehta at 2100 M Street, NW., Room 8611, Washington, DC 20554. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street, NW., Suite 140, Washington, DC 20037. ITS's telephone number is 202–857–3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. For further information concerning this proceeding, contact Sheryl Todd, Accounting and Audits Division, Common Carrier Bureau at 202–530–6001.

Initial Regulatory Flexibility Analysis

12. Section 603 of the Regulatory Flexibility Act (RFA), as amended, requires an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless the head of the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The NPRM portion of this proceeding applies only to NECA and concerns the proposal to amend the Commission's rules to modify the size and composition of NECA's current Board of Directors to make the Board more representative of the telecommunications industry as a whole.

13. For the purposes of this NPRM, the RFA defines a "small business" to be the same as a "small business

concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" includes a small organization, which is defined as a non-profit enterprise that is not independently owned and operated and is not dominant in its field. NECA is a non-profit, quasi-governmental association that was initially created to administer the Commission's interstate access tariff and revenue distribution processes. Therefore, NECA is not a small organization within the meaning of the RFA. Furthermore, these proposals do not apply to other "small business concerns" since they propose to modify the composition of NECA's Board of Directors. For this reason, we tentatively conclude that these proposals would not have a significant economic impact on a substantial number of small entities.

14. We therefore certify, pursuant to Section 605(b) of the RFA, that these proposals would not have a significant economic impact on a substantial number of small entities. We seek comment on this tentative conclusion. The Commission shall publish this certification in the **Federal Register**, and shall provide a copy of this NPRM, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

15. Accordingly, It is ordered that, pursuant to §§ 1, 4(i), 201–205, 218–220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–05, 218–20, 254 and 403, notice is hereby given of proposed amendments to Part 69 of the Commission's rules, 47 CFR part 69, as described in this notice of proposed rulemaking.

16. Accordingly, it is ordered that, pursuant to sections 1, 4(i), 201–205, 218–220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–05, 218–20, 254 and 403, notice is hereby given of proposals described in this notice of inquiry.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–1133 Filed 1–16–97; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 96–248, RM–8950]

Radio Broadcasting Services; Dickson, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Redwood Broadcasting, Inc., seeking the allotment of Channel 278C3 to Dickson, Oklahoma, as the community's first local aural transmission service. Channel 278C3 can be allotted to Dickson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–11–14 North Latitude and 96–59–03 West Longitude.

DATES: Comments must be filed on or before February 3, 1997, and reply comments on or before February 18, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ronald G. London, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, D.C. 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–248, adopted December 6, 1996, and released December 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1094 Filed 1–16–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–264, RM–8977]

Radio Broadcasting Services; Roxton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Northeast Texas Broadcasters requesting the allotment of Channel 257A to Roxton, Texas, as the community's first local FM service. Channel 257A can be allotted to Roxton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) north to avoid short-spacing conflicts with the licensed operation of Station KPLX(FM), Channel 258C, Fort Worth, Texas, and to a construction permit for a station operating on Channel 257C3 at Linden, Texas, at coordinates 33–39–17 NL; 95–44–54 WL.

DATES: Comments must be filed on or before March 3, 1997, and reply comments on or before March 18, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Post Office Box 403, Westfield, Massachusetts 10186 (Counsel for petitioners).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–264, adopted December 27, 1996, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may

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also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1096 Filed 1–16–97; 8:45 am]

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Notices

Federal Register
Vol. 62, No. 12
Friday, January 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–099–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: A copy of the environmental assessment and finding of no significant impact is available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For a copy of the environmental assessment and finding of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to the permit number listed below when ordering the document.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing the permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which is based on data submitted by the applicant and on a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field test.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

PERMIT NUMBER	PERMITTEE	DATE ISSUED	ORGANISMS	FIELD TEST LOCATION
96–256–01	Sanford Scientific, Inc.	11–20–96	Geranium plants genetically engineered to express resistance to plant pathogenic bacteria and fungi.	California.

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 13th day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–1225 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Clearwater National Forest, Idaho County, Idaho Spruce Moose and Moose Lake Right-of-way

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On October 30, 1995, the Powell Ranger District, Clearwater National Forest, began public scoping for the Spruce Moose project, a proposed salvage timber sale and private land access request. During 1996, the environmental effects of the proposed action were analyzed. During the course of this analysis, it was determined that potential effects on steelhead trout (proposed for listing under the Endangered Species Act), Bull

Trout (listing under ESA is warranted, but precluded), spring chinook and westslope cutthroat trout (both Sensitive Species) may be significant enough to require an Environmental Impact Statement.

During the summer of 1996, additional field information was gathered and used to update the proposed action as follows.

The Clearwater National Forest is planning to prepare an environmental impact statement (EIS) to disclose the environmental effects of a proposal to harvest 2.4 million board feet of timber, construct 4.1 miles of new forest roads, and reconstruct 0.4 miles of existing forest road. Included in the proposed road construction is a request from Plum Creek Timber Company for easements across one mile of National Forest System Land to access privately owned timberland. A joint sediment reduction plan to repair existing sediment sources on existing roads is also included in the proposal.

The Spruce Moose Planning Area is located northeast of the Powell Ranger Station, Powell Ranger District, Clearwater National Forest, Idaho County, Idaho. Proposed activities are located in the Spruce Creek drainage. The proposal's actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The purposes of the project are (1) to design and implement vegetation treatments using ecosystem management principles within the forest stands that are at high risk of change in the next decade, (2) to design and implement a cost share road system with Plum Creek Timber Company to provide a single road system that serves both landowners, and (3) to restore and maintain aquatic ecosystem structure and function to provide historic habitat conditions for aquatic species.

This project level EIS will tier to the Clearwater National Forest Land and Resources Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Clearwater National Forest.

Analysis will be conducted in compliance with the Clearwater Forest Plan lawsuit settlement agreement between the Forest Service and the Sierra Club, et al (signed September 13, 1993).

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing on or before March 3, 1997 to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency in March, 1997. The Final EIS and the Record of Decision are expected to be issued in December, 1997.

ADDRESSES: Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Margaret Gorski, District Ranger, Powell Ranger District, Clearwater National Forest, Lolo, Montana 59847.

RESPONSIBLE OFFICIAL: The Forest Supervisor, Clearwater National Forest, will be the responsible official and decide on the harvest and road construction alternatives and whether to issue access easements to Plum Creek Timber Company.

FOR FURTHER INFORMATION CONTACT: District Ranger, Powell Ranger District, Clearwater National Forest, (208) 942–3113.

SUPPLEMENTARY INFORMATION: Plum Creek Timber Company (PCTC) requested right-of-way access across National Forest System land in Sections 20 and 30, T38N, R17E, Boise Meridian. The purpose of this request was for Plum Creek Timber Company to access the private land in Sections 19 and 29 for their use and enjoyment.

Access to non-Federal inholdings in governed by Section 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA). Implementing direction for this authority is found in regulation at 36 CFR 251.110.

The Forest Service and Plum Creek Timber Company are cooperators in a jointly constructed and maintained road system on the Powell Ranger District. The purpose of this joint road system is to serve the access needs of both cooperators with a single network of permanent roads within the checkerboard land ownership portion of the Powell Ranger District.

In 1995, the Powell District conducted an Integrated Resource Analysis for a portion of the Spruce Creek watershed and proposed management actions which were linked to Plum Creek Timber Company's proposed road and request for access. This was documented in an Integrated Resource Assessment and Position Statement.

On October 10, 1995, Plum Creek Timber Company updated its request for access to include an easement across 200 feet of section 26, T38N, R16E to access private land in Section 25. This new request was included in the proposed action to properly assess the cumulative effects of road construction and timber harvest on National Forest resources.

Preliminary issues include the effects on timber growth and yield, effects on old growth and snag habitat, effects on elk habitat security, and effects on water quality and fish habitat. These issues will be refined and developed in detail as scoping proceeds. Comments on the issues and suggestions for additional issues are welcome in response to this Notice of Intent.

Preliminary scoping and public involvement began on October 30, 1995, when an Integrated Resource Analysis and Position Statement was mailed to about 100 individuals asking for comment. The interdisciplinary team worked with the comments from this early scoping effort to identify preliminary issues and to refine the proposed action.

The interdisciplinary team will be working to develop a range of alternatives to the proposed action and to assess the environmental effects of the alternatives. One of the alternatives will be the "No Action" alternative. Other alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the environmental issues and other resource values. Comments concerning the range of alternatives or possible environmental effects would be useful to the team in completing their analysis.

It is anticipated that the environmental analysis and preparation of the draft and final environmental impact statements will take about one year. The draft environmental impact statement can be expected in March, 1997 and a final environmental impact statement can be expected in December, 1997.

A 45 day comment period will be provided for the public to make comments on the draft environmental impact statement. This comment period will be in addition to scoping and will begin when the Environmental Protection Agency's Notice of Availability of the Draft EIS appears in the **Federal Register**. A Record of Decision will be prepared and filed with the final environmental impact statement. A forty-five day appeal period will be applicable.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or

the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 US 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

I am the responsible official for this environmental impact statement. My address is Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544.

Dated: December 31, 1997.

James L. Caswell,

Forest Supervisor, Clearwater National Forest.

[FR Doc. 97–1186 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 18, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 27 and November 22, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 50805 and 59401) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Head Harness, Skull Cap
4240–01–390–3057

Services

Grounds Maintenance, Camp Lejeune, Main Gate and Holcomb Boulevard, Jacksonville, North Carolina

Janitorial/Custodial, VA Connecticut Healthcare System, Newington Campus, Newington, Connecticut

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–1244 Filed 1–16–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement list; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Paper, Tabulating Machine

7530–00–800–0996
(Requirements for the Burlington, New Jersey Depot only)
NPA: Alabama Industries for the Blind, Talladega, Alabama
Arizona Industries for the Blind, Phoenix, Arizona
Lighthouse for the Blind, St. Louis, Missouri
Blind Work Association, Binghamton, New York
Tarrant County Association for the Blind, Fort Worth, Texas
The Lighthouse for the Blind, Inc., Seattle, Washington

Beverly L. Milkman,
Executive Director.
[FR Doc. 97–1245 Filed 1–16–97; 8:45 am]
BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Potpourri
M.R. 400
M.R. 401
M.R. 403
NPA: Wichita Industries and Services for the Blind, Inc., Wichita, Kansas

Bucket, Plastic
M.R. 997
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Service

Facilities Services Support, Air Base Ground Defense Training Campus, Camp Bullis, Texas
NPA: Physically Challenged Service Industries, Inc., San Antonio, Texas

Beverly L. Milkman,
Executive Director.
[FR Doc. 97–1247 Filed 1–16–97; 8:45 am]
BILLING CODE 6353–01–P

Proposed Additions to the Procurement List; Correction

In the document appearing on page 1427, F.R. Doc. 97–657, in the issue of January 10, 1997, in the first column, the service listed as Storage and Distribution of Uniform Accessories (Vendor Parts Accessories), Defense Personnel Support Center, Philadelphia, Pennsylvania was inadvertently re-published and should be deleted from the document. This service was initially published October 11, 1996, as Distribution of Belts and Belt Buckles, Defense Personnel Support Center, Philadelphia, Pennsylvania.

Beverly L. Milkman,
Executive Director.
[FR Doc. 97–1246 Filed 1–16–97; 8:45 am]
BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 6 p.m. and recess at 9 p.m. on Friday, January 31, 1997, and reconvene on Saturday, February 1, 1997, at 10 a.m. and adjourn at 4:00 p.m., at the Travelodge Hotel-Harbor Island, 1960 Harbor Island Drive, San Diego, California 92101. The individual subcommittees will meet on Friday to discuss the progress of projects. The subcommittees will report to the full Committee at the Saturday, February 1 meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Fernando Hernandez, 310–696–0104, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 9, 1997.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 97–1128 Filed 1–16–97; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Program Dynamics—Bridge Survey.

Form Number(s): SPD–1(L), 1(L)SP, 2(L), 3.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 26,875 hours.

Number of Respondents: 35,000.

Avg. Hours Per Response: 45 minutes—interview; 11 minutes—reinterview.

Needs and Uses: With the August 22, 1996 signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193), the Bureau of the Census is required to conduct the Survey of Program Dynamics (SPD) using as the sample households from the 1992 and 1993 Survey of Income and Program Participation (SIPP). The SPD will be a large, longitudinal, nationally-representative study that measures features of the welfare programs, including both programs that are being reformed and those that remain unchanged. The SPD will also measure other important social, economic, demographic and family changes that reflect the effectiveness of the welfare reforms.

A sample of respondents originally in the 1992 and 1993 SIPP panels will be interviewed once a year from 1997–2001, and perhaps longer depending on funding. Separate OMB clearance requests will be submitted for a 1997 pretest and the 1998–2001 surveys. Prior to conducting the pretest of the initial SPD questionnaire, the Bureau of the Census will conduct a bridge survey (the subject of this request) during April-June 1997 using the March 1997 Current Population Survey (CPS) questionnaire, which contains annual retrospective questions on work experience, earnings, program participation, and health insurance coverage. A portion of the bridge survey panel, approximately 10 percent, will be reinterviewed for quality control purposes.

This bridge survey and data already gathered in the 1992 and 1993 SIPP panels will provide baseline data for approximately 35,000 households for the period prior to the implementation of the welfare reform activities. With the pretest in the fall of 1997, the full survey implementation in the spring of 1998, and annually thereafter through 2001, the data gathered for the 10-year period (1992–2001) will aid in assessing short to medium-term consequences or outcomes of the welfare legislation. We plan to utilize a financial incentive program in the bridge survey as an attempt to attain a higher response rate. Some households that complete an interview will receive a small monetary gift for their cooperation in the survey. We will observe how this financial incentive affects response rates.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 U.S.C., Section 614 (Pub. L. 104–193, Sect. 414).

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 8, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1177 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–07–P

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Survey of the Finances of Public Employee Retirement Systems.

Form Number(s): F–10.

Agency Approval Number: 0607–0143.

Type of Request: Extension of a currently approved collection.

Burden: 416 hours.

Number of Respondents: 104.

Avg. Hours Per Response: 1 hour.

Needs and Uses: This survey provides, on a quarterly basis, nationwide data on the cash and security holdings of the 104 largest public-employee retirement systems. These 104 systems control billions of asset dollars and represent 80 percent of the total assets of all public employee retirement systems. The Census Bureau conducts this survey at the request of the Council of Economic Advisors and the Federal Reserve Board. Economists from these agencies, the Department of Treasury, the Bureau of Economic Analysis, and others use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.

Affected Public: State, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 8, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1178 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–07–P

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1997 Economic Census of the Outlying Areas Including Puerto Rico, Guam, Northern Mariana Islands and the U.S. Virgin Islands.

Form Number(s): OA–9819, 9820, 9873, 9883.

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 49,500 hours.

Number of Respondents: 54,000.

Average Hours Per Response: .917 hours.

Needs and Uses: The 1997 Economic Census of the Outlying Areas will be conducted as part of the 1997 Economic Censuses required by Title 13, U.S.C. and is the primary source of dependable facts about each of the outlying areas economy, and features the only recognized source of data at a geographic level equivalent to U.S.

counties. Outlying areas economic census statistics serve to benchmark estimates of net income and gross product, and provide essential information for government (Federal and local), business, and the general public. The 1997 Economic Census of the Outlying Areas will cover the following sectors: retail and wholesale trades, certain services industries, construction, and manufactures. The information collected in the 1997 Economic Census of the Outlying Areas will produce basic statistics by kind of business for a number of establishments, sales, payroll, and employment. It also will yield a variety of industry-specific statistics, including value of shipments, sales by commodity and merchandise lines, and number of hotel rooms. The 1997 Economic Census of the Outlying Areas will be conducted using mailout/mailback procedures. As in the 1992 census, only one form covering all economic activity within the scope of the census is used for each area. Since administrative records for the outlying areas sometimes have classification deficiencies, the use of one form eliminates time spent by the respondent requesting a sector-appropriate form.

Affected Public: Businesses or other for-profit, individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th & Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, NW Executive Office Building, Washington, DC 20503.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1179 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–07–M

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office.

Agency Approval Number: 0651–0017.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 3,278 hours.

Number of Respondents: 350 for record keeping maintenance, and 85 for violation reporting.

Avg. Hours Per Response: 9 hours for record keeping maintenance, and 1½ hours for violation reporting.

Needs and Uses: Information is required to insure compliance with the Patent and Trademark Office (PTO) Code of Responsibility which requires that registered attorneys and agents maintain complete records of clients, and report violations of the Code and evidence of such violations to the PTO. The Code further mandates that attorneys and agents cooperate with the Director of the Office of Enrollment and Discipline in connection with any investigation.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 10236, New Executive Office building, Washington, D.C. 20503.

Dated: January 8, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1190 Filed 1–16–97; 8:45 a.m.]

BILLING CODE 3510 16–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tagged Groundfish Research Program.

Agency Form Number: N/A.

OMB Number: 0648–0276.

Type of Review: Renewal of an existing collection.

Burden: 336.

Number of Respondents: 1,167 (4,201 responses).

Avg Hours Per Response: 5 minutes.

Needs and Uses: Tagging groundfish for subsequent tracking and recovery is an important tool for managing fishery resources. Information is collected from fishermen and others who have recovered a tagged fish. The information provided through this program provides essential research data on groundfish/sablefish life histories and migration patterns. The information is used to determine growth rates, differences by area, sex, size, etc.

Affected Public: Individuals, businesses or other for-profit organizations, federal government, state, local or tribal government.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1191 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–P

Foreign-Trade Zones Board

[Docket 1–97]

Foreign-Trade Zone 149; Freeport, Texas; Proposed Foreign-Trade Subzone, Phillips Petroleum Company, (Oil Refinery Complex), Brazoria County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Port Freeport, grantee of FTZ

149, requesting special-purpose subzone status for the oil refinery complex of Phillips Petroleum Company, located at sites in Brazoria County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 2, 1997.

The refinery complex (2,095 acres, 1,300 employees) consists of 5 sites and connecting pipelines in Brazoria County, Texas: *Site 1* (1315 acres)—main refinery and petrochemical complex (200,000 BPD) located at Texas State Highway 35 at Farm Market Road 524, south of Sweeney; *Site 2* (160 acres)—Freeport I Terminal and storage facility (1.6 million barrel storage capacity) located at County Road 731, some 28 miles southeast of the refinery; *Site 3* (183 acres)—six crude oil storage tanks (2.4 million barrel capacity) at Jones Creek Terminal, located at 6215 State Highway 36, some 17 miles southeast of the refinery; *Site 4* (34 acres)—San Bernard Terminal and storage facility (207,000 barrel capacity), located at County Road 378, 5 miles southeast of the refinery; *Site 5* (403 acres)—Clemens Terminal underground LPG storage (12.8 million barrel capacity), located at County Road 314, 15 miles east of the refinery.

The refinery is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels and naphthas. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, propylene, ethylene, butylene, butadiene, butane, benzene, toluene, xylene, carbon black oil and sulfur. Some 95 percent of the crude oil (60 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced crude oil. The duty rates on crude oil range from 5.25¢/barrel to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 18, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 2 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 1160, 500 Dallas, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 7, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–1259 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping finding and one antidumping duty order in part.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received timely requests to revoke in part the antidumping finding on elemental sulphur from Canada and the antidumping duty order on certain welded stainless steel pipe from Taiwan.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than December 31, 1997.

	Period to be reviewed
Antidumping Duty Proceedings	
CANADA: Elemental Sulphur	
A–122–047	12/1/95–11/30/96
Mobile Oil Canada, Ltd.	
JAPAN: Light Scattering Instruments [1]	
A–588–813	11/1/95–10/31/96
Otsuka Electronics	
JAPAN: Polychloroprene Rubber	
A–588–046	12/1/95–11/30/96
Denki Kagujo, K.K.	
Denki/Hoei Sangyo Co., Ltd.	
Mitsui Bussan, K.K.	
Showa Neoprene, K.K.	
Showa/Hoei Sangyo Co., Ltd.	
Suzugo Corporation	
Tosoh Corporation (formerly Toyo Soda)	
Tosoh/Hoeii Sangyo Co., Ltd.	
MEXICO: Porcelain-on-Steel Cookware	
A–201–504	12/1/95–11/30/96
Cinsa, S.A. de C.V.	
Esmaltaciones de Norte America, S.A. de C.V.	
TAIWAN: Welded Stainless Steel Pipes	
A–583–815	12/1/95–11/30/96
Ta Chen Stainless Steel Pipe Co., Ltd.	

	Period to be reviewed
THE PEOPLE'S REPUBLIC OF CHINA: Cased Pencils[2]	
A–570–827	12/1/95–11/30/96
Anhui Stationery Company, Ltd.	
China First Pencil Company, Ltd.	
Shanghai Three Star Stationery Company, Ltd.	
Guagdong Stationery & Sporting Goods	
Beijing Pencil Factory	
Dalian Pencil Factory	
Donghua Pencil Factory	
Harvin Pencil Factory	
Jiangsu Pencil Factory	
Jinan Pencil Factory	
Juihai Pencil Factory	
Julong Pencil Factory	
Quindao Pencil Factory	
Shenyiang Pencil Factory	
Songnan Pencil Factory	
China First Pencil Company, Ltd.	
Shanghai Three Star Stationery Com.	
Shanghai Foreign Trade Corporation	
Guandong Stationery & Sporting Goods I/E Corporation	
Shanghai Lansheng Co., Ltd. (aka Stationery & Sporting Goods I/E Corporation	
Shanghai Machinery & Equipment I/E Corporation	
Tianjin Pencil Factory	
Xinbang Joint Venture Pencil Factory	
AEMPAC Systems (Hong Kong)	
Anhui I/E Group Corporation	
Anhui Light Industrial Products I/E Corp.	
Anhui Provincial I/E Corporation	
Applause Products	
Atico International	
Atico Overseas	
Beijing Light Industrial Products I/E Corporation	
CS Container Line (Hong Kong)	
Cargo Service (Hong Kong)	
Cargo Systems	
Changzhou Foreign Economic Technical & Trading Company	
Changzhou Foreign Trade Group	
Chiangshu Foreign Trading	
China Fujian Foreign Trade Center	
China National Light Industrial Products I/E Corporation (all branches)	
China North Industries Tianjin Corporation	
Dalian Light Industrial Products I/E Corp.	
China Shenzhen SEZ Foreign Trade	
El Ocean (Hong Kong)	
Far East Enterprises	
Fuji Industrial (Hong Kong)	
Gansu Provincial Machinery	
Golden Way Trading Company	
Guangzhou Foreign Trade Group	
Hianan Provincial Foreign Trade	
Haiwang Enterprises Company, Ltd.	
Han Maritime	
Jin Hai Jei Air International Forwarding	
Heilongiang Light Industrial Products I/E Corporation	
Ideal Consolidators (Hong Kong)	
Ideal Ocean Lines (Hong Kong)	
Inteks Transport International	
Jacky Maeder (Hong Kong)	
Jiangsu Light Industrial Products I/E Group Corporation	
Jilin Provincial Machinery & Equipment I/E Corporation	
King Sun (Hong Kong)	
Kwok Luen Plastic Manufacturing	
Lailon Enterprises (Hong Kong)	
LEP Guangzhou Delegation Office	
LEP Transport International	
Liaoning Light Industrial Products I/E Corp.	
Licken Industrial (Hong Kong)	
Maritime International	
Onan Shipping (Hong Kong)	
Orwave	
Panalpina	
Panalpina (Hong Kong)	
Perpetual Product Development	
Po Shing Industrial	
Premier Shipping	
Qingdao Light Industrial Products I/E Corporation	
Regent C&C Shanghai Office	
Regent Express	
Shandong Light Industrial Products I/E Corporation	
Shantou Light Industrial Products I/E Corporation	
Shantou Stationery & Sporting Goods I/E Corporation	
Shanxi Light Industrial Products I/E Corporation	
Shenyiang Light Industrial Products I/E Corporation	
Shum Yip (Shenzen) Industry & Trade Development Corporation	
Translink Transportation	
Sichuan Light Industrial Products I/E Corporation	
Sui Jun International (Hong Kong)	
THI (Hong Kong)	
The Merton Company, Ltd. (Hong Kong)	
Tianjin Beifing Corporation	
Tianjin Stationery & Sporting Goods I/E Corporation	
Tony Trading (Hong Kong)	
Trade Power (Taiwan)	
Trinity Mark Industries	
Tru Blue Products	
UT Consolidators (Hong Kong)	
Wah Luen Stationery Supplies	
Y.K. Shipping International	
Yangjiang Light Industrial Products I/E Corporation	
Zhenjiang Foreign Trade Corporation	
THE PEOPLE'S REPUBLIC OF CHINA: Porcelain-on-Steel Cooking Ware[3]	
A–570–506	12/1/95–11/30/96
Clover Enamelware Enterprise/ Lucky Enamelware Factory Limited	

Countervailing Duty Proceedings

None.

[1] Inadvertently omitted from previous initiation notice.

[2] All other exporters of certain cased pencils from the People's Republic of China are conditionally covered by this review.

[3] All other exporters of porcelain-on-steel cooking ware from the People's Republic of China are conditionally covered by this review.

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: January 15, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–1397 Filed 1–16–97; 9:06 am]

BILLING CODE 3510–DS–M

[A–834–805]

Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Dorothy Tomaszewski at (202) 482–0631, or Erik Warga at (202) 482–0922, Office of Antidumping Investigations, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to the current regulations, as amended by the interim regulations, published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Final Determination

We determine that beryllium metal and high beryllium alloys ("beryllium") from the Republic of Kazakstan ("Kazakstan") are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on August 21, 1996 (61 FR 44293, August 28, 1996 ("preliminary determination")), the following events have occurred:

In October 1996, we verified the respondents' questionnaire responses. Additional publicly available information on surrogate values was submitted by petitioner and respondents on November 15, 1996, and November 22, 1996. Petitioner and respondents submitted case briefs on November 29, 1996 and rebuttal briefs on December 6, 1996. A public hearing was held on December 9, 1996. At the Department's request, additional information was filed by petitioner and respondents on December 10, 1996, and December 12, 1996. On December 19, 1996, and December 23, 1996, the Department received surrogate factor data from the Foreign Commercial Service Office in Lima, Peru.

Scope of Investigation

The scope of this investigation is beryllium metal and high beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting and/or fabricating into sheet, extrusions, forgings or other shapes in order to meet the specifications of the end user. Beryllium and high beryllium alloys within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") 8112.11.6000, 8112.11.3000, 7601.20.9075, and 7601.20.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1995, through December 31, 1995.

Separate Rates

Respondents made no claim for receiving a separate rate. Therefore, lacking any information to support a conclusion that a separate rate is appropriate, the Department assigned a single Kazakstan-wide rate to all producers and exporters.

Fair Value Comparisons

To determine whether sales of beryllium from Kazakstan to the United States were made at less than fair value, we compared Export Price ("EP") to the Normal Value ("NV"), as specified in the "Export Price" and "Normal Value" sections of this notice.

Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. Although respondents have a U.S. subsidiary, Beryllium Metals International Ltd. ("BMI"), calculation of constructed export price ("CEP") under section 772(b) is not otherwise warranted for purposes of the final determination based on the facts of this investigation. It has been the Department's longstanding and well-recognized practice that a transaction will be considered an export price sale, despite the involvement of an affiliate in the United States where: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent; (2) this was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of documentation and a communication link with the unrelated buyer. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany* (61 FR 38166, 38175, July 23, 1996)). Verification findings confirm that the merchandise is not taken into the physical inventory of the U.S. subsidiary. Because there has only been one sale, we conclude that there is no "customary commercial channel." Therefore, we are continuing to disregard this criterion for purposes of this final determination. Finally, verification findings confirmed the limits on BMI's authority to finalize sales and that BMI is acting solely as a processor of documentation and communications link (*see* November 8, 1996, verification report at page 6). Therefore, we conclude that the sale in question is properly characterized as an EP sale.

We calculated EP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate, based on the same methodologies in the preliminary determination with the following exceptions: we made minor corrections to certain movement charges pursuant to verification findings.

Normal Value

When the Department is investigating imports from a non-market economy ("NME"), section 773(c)(1) of the Act directs us to base NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Therefore, as in the preliminary determination, we calculated NV based on factors of production reported by the Kazak Joint-Stock Company of Ulba Metallurgical Plant ("Ulba"), the sole Kazakstani producer of subject merchandise.

To calculate NV, the verified per-unit factor quantities were first multiplied by Peru values; the resulting products were then summed. We then added amounts for overhead, general expenses (including interest) ("SG&A"), profit, and, packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We made adjustments to the reported factors of production to reflect actual production experience for 1991 and 1993, based on verification findings.

Valuation of Factors

As in our preliminary determination, we have relied on Peru as the primary surrogate country in accordance with section 773(c)(4) of the Act. Accordingly, we have continued to calculate NV using Peru prices for the Kazakstani producer's factors of

production. We have obtained and relied on publicly-available information wherever possible.

Except as noted below, we applied surrogate values to the factors of production in the same manner as in our preliminary determination. For a complete discussion of surrogate values, *see* the *Calculation Memorandum*, dated January 10, 1996. Surrogate overhead was based on the experience of a silicomanganese producer in Brazil; SG&A and profit were based on the experience of an aluminum producer in Peru; and packing expenses were based on 1995 Peru import statistics data.

Kazakstan-Wide Rate

Kazakstan identified what we believe to be the only Kazakstani exporter, Kazak Joint-Stock Company of Atomic Energy and Industry ("KATEP"), and producer, Ulba, that sold beryllium to the United States during the POI. Both have responded in this investigation. We compared the respondents' sales data with U.S. import statistics for time periods including the POI and found no indication of unreported sales. Accordingly, we have based the Kazakstan-wide rate on the weighted-average of the margins calculated in this proceeding, excluding zero or de minimis margins, if any.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Use of Respondents' Verified Data

Petitioner argues that the discrepancies uncovered at verification between the factor information submitted and the factor information verified, as well as the discovery of information never reported, would support a decision by the Department to reject respondents' data in favor of basing the final determination on facts otherwise available (*i.e.*, the information submitted in the petition).

Respondents assert that the Department has no basis for rejecting its sales and factors of production information on the record. According to respondents, all sales and production data were submitted in a timely manner to the Department and verified. While its reported factor data was modified during verification, respondents argue that these revisions should not be rejected as "untimely" because the revisions were a result of adjusting reported standard factor input information to reflect actual factor input information. Finally, respondents argue that even if its revised factor information was deemed untimely, the verified data should nevertheless be used as "facts otherwise available."

DOC Position

Certain minor discrepancies in respondents' reported sales and factors of production data were discovered during verification. While the Department is always concerned over such discrepancies, we did not identify any attempt to mislead the Department or to distort information on the record, nor does the record indicate that respondents did not cooperate to the best of their ability. Accordingly, such errors will be corrected individually by the Department using revised information and do not warrant an overall application of adverse facts available for the final determination. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review* 61 FR 18558 (April 26, 1996).) The details of these errors and steps taken to correct them are set forth in the January 10, 1997, *Final Determination Calculation Memorandum*.

Comment 2: Selection of Appropriate Surrogate Country

Petitioner argues that the Department should select Brazil as the primary surrogate country because (1) Brazil is comparable to Kazakstan in economic development and (2) Brazil is one of the few sources of the primary factor input required in the production of beryllium, beryl ore.

Respondents counter that, since the preliminary determination, no new information has been placed on the record to justify the change in the surrogate country for Kazakstan from Peru to Brazil.

DOC Position

We agree with respondents and continue to use Peru as the primary surrogate country for purposes of valuating Kazakstan's factors of production. Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME and (2) are significant producers of comparable merchandise. As noted in the preliminary determination, Peru is at a level of economic development comparable to Kazakstan in terms of per-capita gross national product ("GNP") levels and distribution of the labor force in the varying sectors of the economy. Brazil's 1993 per-capita annual income was $2930 versus $1560 for Kazakstan and $1490 for Peru. Even though Brazil is endowed with the primary material input (beryl ore) used to produce beryllium, Brazil does not produce beryllium.

As discussed in the preliminary determination, none of the potential surrogate countries produces merchandise comparable to the subject merchandise. Indeed, Kazakstan and the United States are the only known producers of beryllium. Absent information on a market economy country which produces beryllium and is at a level of economic development comparable to that of Kazakstan, the Department continues to use Peru as the primary surrogate country based on its comparable level of economic development for purposes of the final determination.

Comment 3: Use of 1995 Surrogate Country Factor Data

Respondents argue that the Department must determine whether the factor values based on the 1995 UN data are broadly consistent with other measures of market value to ensure that the factor values used in the final margin calculation constitute a reasonable representation of the costs that a NME producer would face if it were to produce in a market economy. In particular, respondents identify five Peru values used in the preliminary determination which they allege to be unreasonable when compared to various broader benchmarks.

Petitioner notes that if the Department were to perform such an exercise, this analysis should be applied in a consistent manner for all direct material factors.

DOC Position

For the final determination, we have used Peru import statistics based on 1995 UN trade data as the primary source of surrogate factor values. The Department's analysis indicates, however, that several factor values derived from the 1995 Peru import statistics appear to be not reasonable. For example, the unit value based on 1995 Peru import statistics for one material factor is over twenty times the weighted-average unit value based on import statistics from the five countries identified by the Department as

appropriate surrogates for Kazakstan (*see* preliminary determination).

In order to assess whether material factor values derived from the 1995 Peru import statistics are reasonable for the purpose of approximating the factor costs in Kazakstan, we compared all 1995 Peru material values to the weighted-average unit value based on import statistics from all five appropriate surrogate countries (*see* June 10, 1996, *Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Division I Director, Office of Antidumping Investigations*). Where differences between the unit value figures appeared unreasonable, we resorted to the weighted-average based on the five surrogate countries' data. (*See* January 10, 1996, *Calculation Memorandum* for further details).

Comment 4: Time Period for Factors of Production

Respondents state that Ulba produced the subject merchandise through 1991 and had several months of production of subject merchandise in 1993; however, Ulba ceased production of subject merchandise at the end of 1993. Respondents note that the factors of production used in 1991 differ from those used in 1993. Under these circumstances, respondents argue that the Department should use 1991 factor input data to calculate normal value because 1991 data reflects input usages applied for an entire year of uninterrupted production and, therefore, better reflects actual production experience. Respondents also contend that 1991 data be used because it is closest to the year that the subject merchandise sold during the POI was produced. In contrast, respondents argue, 1993 factor data (the last calendar year in which there was significant production) is an unreliable indicator of respondents' production process because the Kazakstani production facility was in the process of shutting down; therefore, the 1993 usages were unusually high when compared to usage rates during previous years.

Petitioner argues that the Department should use the 1993 data because these factor quantities best reflect the factors that respondents would have used if they had produced beryllium during the POI. Petitioner asserts that contemporaneity is an important factor in determining which year's factors to use. According to petitioner, the fact that production data for 1993 reflects higher usage levels in comparison to 1991 is not a result of irregular production for that year; rather, it is the particular chemistry of inputs used in any particular year that will affect input usage. Therefore, petitioner maintains that the factors of production should be based on the production information closest in time to the POI—1993.

DOC Position

The subject merchandise sold to the United States during the POI was produced long before the POI (although the actual time period of production is unknown). Not only is it unclear when the merchandise imported during the POI was produced, there is no evidence of which factors were used. Therefore, we must choose between the two years for which we have factor information, both of which are long removed from the period of production.

Where necessary information is not available on the record, and where a respondent has cooperated to the best of its ability, Section 776 of the Act directs the Department to use non-adverse facts available in place of unavailable information. In these circumstances, we do find it significant that the 1993 period is closer in time to the POI. Therefore, we determine that the use of 1993 factor input data is appropriate in calculating normal value.

Comment 5: Overhead and SG&A

Petitioner contends that its production experience as a beryllium producer is the only reasonable basis on which to value factory overhead and SG&A for a beryllium producer. In support of this argument, petitioner notes that (1) no data exists for either factory overhead or SG&A from a Peru producer of subject merchandise and (2) the Department determined that there is no other product comparable to beryllium in terms of production processes or inputs. Given these circumstances, petitioner asserts that the only market-economy producer of beryllium available for valuing these costs is the U.S. producer (*i.e.*, petitioner).

Additionally, petitioner argues that its overhead costs do not account for expenses incurred for certain materials used by respondents, although the Department believed these expenses were included in the petitioner's overhead rate for the preliminary determination. Finally, petitioner contends that the Department should adjust petitioner's reported overhead rate to account for capacity and utilization.

Respondents counter that the information on the record concerning petitioner's calculation of its overhead and SG&A rates confirms that the factory overhead and SG&A rates that petitioner reported are unreasonably high. According to respondents, it appears that petitioner's calculation of its overhead and SG&A rates included line item expenses irrelevant to the production of subject merchandise. In the event that the Department decides to use petitioner's information, respondents recommend that the Department consider (1) the clerical error noted by petitioner in calculating its overhead rate and (2) the respondents' revised calculation of the SG&A rate based on petitioner's financial data for 1994 and 1995.

DOC Position

In evaluating appropriate surrogate factor rates for SG&A and overhead, it is important to note that information does not exist on overhead and SG&A figures from a beryllium producer in a country that is economically comparable to Kazakstan. As discussed above and in the preliminary determination, the only known beryllium producer in the world, other than the Kazakstani producer, is the U.S. petitioner. The Department's regulations provid clear instructions that U.S. surrogate values are to serve only as a last resort (*see* 19 CFR 353.52(b)). This is true even when such values are not available from an industry producing the same merchandise (*see* 19 CFR 353.52(b)(1)).

Given that the only source of industry-specific overhead and SG&A rates is the petitioner, we considered the economic comparability of the surrogate country to Kazakstan an important criterion for selecting appropriate surrogate factor data to approximate Kazakstan's overhead and SG&A rates. While the specific processes differ, the complexity and duration of the production processes for different light metals are comparable and thus, unlikely to generate differences in overhead and SG&A between the beryllium industry and other light metals industries. Therefore, in this case, we determine that overhead and SG&A figures based on production experience of a light metal industry (*e.g.*, aluminum, silicomanganese) in an appropriate surrogate country are a reasonable approximation of Kazakstan's overhead and SG&A costs incurred in the production of beryllium. For SG&A and profit, we applied ratios based on financial data from a Peru aluminum producer. Absent detailed overhead data from Peru, we applied an overhead ratio based on financial data from a silicomanganese producer in Brazil for the final determination. While Brazil, as noted earlier, is not among the five countries most similar to Kazakstan in terms of economic development, we determine that it is comparable, and far

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more similar to Kazakstan than is the United States. Moreover, the regulations, at 19 CFR 353.52(b)(2), indicate that even a foreign country which is not a level of economic development comparable to the home market country is preferable to the United States as a source of surrogate value information.

Comment 6: Basket-Product-Category Import Statistics

Petitioner contends that the Department should apply product-specific world-market prices to value beryllium-containing material inputs rather than data on Peru imports under broad basket categories. Because there is no beryllium producer or beryllium industry in Peru, petitioner notes that it is highly unlikely that Peru import statistics used to value beryllium-containing material inputs in the preliminary determination contain any imports of beryllium-containing materials. Instead, petitioner recommends the use of world market prices based on U.S. import statistics which provide more representative values available for the beryllium-containing inputs.

Respondents counter that the Department should reject petitioner's alternative source of data to calculate surrogate values for beryllium-containing materials. According to respondents, the Department's policy and practice provide no justification to abandon data obtained from the primary surrogate country because some alternative country (*i.e.*, the United States) offers more product-specific price information. Further, with respect to the U.S. Geological Survey ("USGS") data used to value beryl ore in the preliminary determination, respondents maintain that petitioner did not provide any reason to question the accuracy of this data source. Therefore, respondents recommend continued use of USGS data for valuing beryl ore in the final determination.

DOC Position

We agree, in part, with petitioner. For those beryllium-containing inputs for which we used UN import statistics based on basket product-categories in the preliminary determination, we used for the final determination 1995 import statistics from the European Union with more product-specific categories as data which more accurately reflects the values for these inputs.

With respect to the USGS value for beryl ore, the unit value based on USGS data is specific to the particular material input used in the production process. Further, there is no information on the record to dispute the validity of this data. Therefore, we continued to rely on the USGS data for valuing beryl ore in the final determination.

Comment 7: Incorrect Surrogate Values for Certain Material Inputs

Petitioner contends that the Department incorrectly valued a certain material input using import data for a different material. For the final determination, petitioner urges the Department to use 1994 U.S. data specific to the material input in question to value the material input.

DOC Position

We agree, in part, with petitioner. Verification findings indicated that two varying types of the material in question were used in the production of beryllium from Kazakstan. It was possible to identify product categories that correspond to each type of material input. Given that data corresponding to the materials from the primary surrogate country is available for consideration, the use of U.S. data suggested by petitioner was not required. Therefore, for the final determination, we are valuing the two material inputs based on 1995 Peru import data with corresponding product categories.

Comment 8: Adjustment to the Surrogate Labor Rate

Petitioner contends that the surrogate labor rate used in the preliminary determination was understated and should be adjusted to account for (1) normal hours and days worked in Peru; (2) salary bonuses mandated by law in Peru; and (3) a skilled level of labor, as used in the beryllium industry in Kazakstan.

DOC Position

We agree with petitioner and have adjusted the labor rate used at the preliminary determination to account for (1) normal hours and days worked in Peru and (2) annual salary bonuses mandated by law. As noted in Price Waterhouse's publication, *Doing Business in Peru*, eight hours is a normal work day in Peru with a work week not exceeding 48.11 hours. In order to avoid overstating the number of hours worked per day, we based our calculation of number of hours worked per day on a six-day work week to reflect an eight-hour work day. Additionally, annual salary bonuses mandated by Peruvian law were not reflected in the labor rate used in the preliminary determination. Therefore, we are also adjusting the labor rate in the final determination to reflect this portion of labor cost.

However, we continued to use the International Labor Organization's ("ILO") earnings per day rate as the base for the labor rate because it is a labor rate for manufacturing specific to the non-ferrous basic metal industry in Peru. The Price Waterhouse "skilled" average monthly wages in Peru, recommended by petitioner as a preferable rate to the ILO rate because it is a skilled labor rate, is not specific to any industry. Further, it is not clear whether the average monthly wages are gross or net of employee contributions; it is clear from information on the record that the ILO rate reflects gross earnings (*i.e.*, employee's contributions are included in this earnings figure). Therefore, we continued to use the ILO rate as the base labor rate for the final determination.

Comment 9: Circumstance-of-Sale Adjustments

Petitioner contends that the Department is required by the Act to adjust normal value to account for differences in circumstances of sale. In particular, petitioner argues that imputed credit expenses and the value of a price markup between the Kazakstani producer and its U.S. subsidiary should be added to NV.

Respondents counter that verification findings show that payment for the reported sale was received from the U.S. customer in advance of the payment terms agreed to in the sales contract; therefore, there is no basis on which to calculate imputed credit expenses for the reported U.S. sales transactions. Additionally, respondents assert that petitioner's request to adjust NV to account for an alleged commission payment should also be denied because there is no evidence on the record that a commission was made at arm's length.

DOC Position

We agree with respondents. Section 773 (a) (6) (C) of the Act allows NV to be increased or decreased for differences in circumstances of sale as long as "it has been established to the satisfaction of the administering authority" that such adjustments are warranted. (*See, also Notice of Final Determination: Bicycles from the PRC*, 61 FR 19031, 19032 (April 30, 1996)).

An adjustment to NV for imputed credit expense is not warranted in this case. Because such expenses are usually included in the financial statements used as the basis for calculating SG&A, it is assumed any credit expense is captured in the SG&A figure calculated under the factors of production methodology, unless demonstrated otherwise. (*See, Sulfanilic Acid from the*

PRC: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 61 FR 53702, 53709 (1996) and *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the PRC*, 58 FR 48833, 48839 (1993)).

Further, the price markup reflected in sales invoice documentation between the Kazakstani producer and its U.S. subsidiary is considered an intra-company transfer and does not warrant any adjustment to NV. As respondents correctly note, the Department generally allows adjustments only for commission payments to unaffiliated parties; however, in this case, the Kazakstani producer and the U.S. subsidiary are considered to be affiliated parties for purposes of this investigation. (*See, also, Federal Mogul Corp.* v. *United States*, 918 F. Supp. 386, 413–414 (CIT 1996)). Therefore, no adjustment to NV for commissions is warranted because the record does not provide any information to suggest that any commission payment from the Kazakstani producer to its U.S. subsidiary was made at arm's length.

Comment 10: U.S. Sales Transactions in the Final Margin Calculation

Petitioner asserts that all U.S. sales transactions involving Kazakstani beryllium invoiced and shipped during the POI should be included in the final margin calculation. In particular, petitioner argues that the Department should continue to consider the sale of certain off-specification beryllium as part of the reported U.S. sale transaction because verification findings confirmed that the price adjustments at issue were post-sale price adjustments, rather than new sales occurring outside the POI. In support of this argument, petitioner notes that respondents stated for the record that the date of sale was unaffected by any modifications to the sale contract after shipment. Finally, petitioner argues that the Department should include the unreported U.S. sales transaction discovered at verification.

Respondents assert that the sale of the off-specification material did not meet the specifications of the sales contract within the POI but was only shipped at the same time as the POI contract's merchandise. According to respondents, because of the lengthy negotiations following the shipment of the off-specification merchandise, the final sale (and agreement to price) of this merchandise was not formally concluded until after the POI.

Additionally, respondents argue that the unreported U.S. sale discovered at verification constitutes a sample shipment of insignificant quantity of merchandise outside of the scope of the investigation (*i.e.*, not characterized as ingot, billet, powder, lump, chunk, blank, or other semi-finished form). Therefore, respondents recommend the Department to disregard this sale for purposes of the final margin calculation.

DOC Position

We agree with petitioner and continue to include the reported sales of off-specification merchandise with post-sale price adjustments in the final margin calculation. Verification findings indicated that the merchandise in question was sold pursuant to the sales contract and invoice issued during the POI.

With respect to the unreported sale discovered at verification, respondents are correct in characterizing this sale as a transaction of insignificant quantity. Therefore, we have excluded this transaction from the final margin calculation.

Comment 11: Verified International Freight and Customs Expenses

For the final determination, petitioner asserts that the Department should adjust export price for (1) line item expenses omitted from reported international freight charge and (2) under-reported Customs duties payments.

DOC Position

We agree with petitioner and used the verified international freight and Customs duties charges in the final margin calculation.

Comment 12: Inflation Adjustment for Non-Contemporaneous Data

Respondents maintain that in the preliminary determination the Department erred in converting 1994 values to 1995 values by multiplying U.S. dollar-denominated prices by foreign currency inflation rates without adjusting for changes in the value of the foreign currency relative to the U.S. dollar. Respondents argue that, where appropriate, the Department should account for both foreign currency inflation and exchange rate fluctuations.

DOC Position

We agree with respondents and, where appropriate, adjusted factor values to account for both foreign currency inflation and exchange rate fluctuations between the U.S. dollar and the foreign currency.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of beryllium from Kazakstan, that are entered, or withdrawn from warehouse for consumption, on or after August 28, 1996 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Ulba Metallurgical Plant/KATEP	16.56
Kazakstan-Wide Rate	16.56

The Kazakstan-Wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 10, 1997.

Robert LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1258 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–DS–P

[A-580-812]

Dynamic Random Access Memory Semiconductors From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 2, 1996, the Department of Commerce (the Department) published the amended final results of its administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMs) from the Republic of Korea (61 FR 20216). Subsequent to the publication of the final results of review on May 6, 1996, the petitioner, Micron Technology, Inc. (Micron), and one respondent in this review (LG Semicon Co., Ltd. (LGS)), filed suit with the Court of International Trade (CIT) with respect to the Department's methodology used in calculating LGS" dumping margin. No suit was filed by any parties to this proceeding with respect to the dumping calculations pertaining to the other respondent in this review, Hyundai Electronics Industries, Co., Ltd. (Hyundai). We published an amended final results of review on October 2, 1996, correcting four ministerial errors with respect to sales of subject merchandise by Hyundai. We have corrected one clerical error introduced into the calculations for Hyundai as a result of the amended final results of review. This error was present in our amended final results of review. The review covers the period October 29, 1992, through April 30, 1994. We are publishing this amendment to the amended final results of review in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr. or Thomas F. Futtner, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone at (202) 482–0651 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers two manufacturers/exporters of DRAMs from the Republic of Korea (Korea): Hyundai and LGS, during the period of October 29, 1992 through April 30, 1994. The Department published the preliminary results of review on September 11, 1995 (60 FR 47149), the final results of review on May 6, 1996 (61 FR 20216), and the amended final results of review on October 2, 1996 (61 FR 51410).

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

The period of review (POR) covers from October 29, 1992 through April 30, 1994 for all respondents.

Ministerial Error in Amended Final Results of Review

After reviewing an allegation of a ministerial error submitted by Hyundai, the Department determined that it should correct this the following clerical error pertaining to Hyundai.

In the amended final results of review we made corrections to our calculations of constructed value (CV). In so doing, we mistakenly deducted U.S. packing expenses incurred in Korea from the United States price in our margin calculations for U.S. sales compared to CV. We have corrected the amended final results of review to deduct the correct expense for U.S. repacking from United States price for Hyundai.

Amended Final Results of Review

Upon correction of the ministerial error listed above, the Department has determined that the following margin exists for the periods of October 29, 1992 through April 30, 1994:

Manufacturer/exporter:	*Percent margin*
October 29, 1992 through April 30, 1994: Hyundai Electronics Industries	0.10

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hyundai will be zero percent; (2) for previously

reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85%, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. *See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1256 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–811]

Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 11, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain grain-oriented electrical steel from Italy (61 FR 36551). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period February 9, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. No comments were received, and we have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Robin Gray, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1996, the Department published in the **Federal Register** (61 FR 36551) the preliminary results of the administrative review of the antidumping duty order on certain grain-oriented electrical steel from Italy (59 FR 41431, August 12, 1994). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The product covered by this review is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7225.10.0030, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1030, 7226.10.5015, 7226.10.5056, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000. Although the HTS subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

This review covers one manufacturer/exporter of grain-oriented electrical steel, Acciai Speciali Terni S.p.A. ("AST"), and the period February 9, 1994, through July 31, 1995.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period February 9, 1994, through July 31, 1995:

Manufacturer/exporter	Margin (percent)
Acciai Speciali Terni S.p.A.	60.79

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for AST will be the rate established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for

the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 60.79 percent, the all others rate established in the final results of the less than fair value investigation (59 FR 41431, August 12, 1994).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: January 7, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1257 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[ID 100996A]

RIN 0648–AI63

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 44/44; Definition of Overfishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of fishery management plan amendments.

SUMMARY: NMFS announces the approval of Amendments 44/44 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). These amendments revise definitions of acceptable biological catch (ABC) and overfishing levels (OFLs) for groundfish species or species groups. This action is necessary to ensure that conservation and management measures continue to be based upon the best scientific information available and is intended to advance the North Pacific Fishery Management Council's (Council's) ability to achieve, on a continuing basis, the optimum yield from fisheries under its authority.

EFFECTIVE DATE: January 9, 1997.

ADDRESSES: Copies of Amendments 44/44 and the environmental assessment and related economic analaysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: In response to the national standards established in the Magnuson Fishery Conservation and Management Act and advisory guidelines codified at 50 CFR part 600, subpart D, the Council developed an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the FMPs (56 FR 2700, January 24, 1991). In the years since implementation of that definition, fishery scientists have had the opportunity to evaluate the efficacy of current definitions of ABC and overfishing. In light of that experience and with increased understanding of the reference fishing mortality rates used to define ABCs and overfishing, fishery scientists have raised several concerns about the present definitions and the extent to which they reflect and account for levels of uncertainty about fish populations. Consequently, NMFS' Overfishing Definitions Review Panel and the Council's Scientific and Statistical Committee recommended redefining ABC and overfishing to facilitate more conservative, risk-averse management measures when stock size and mortality rates are not fully known.

Amendments 44/44 revise the definitions of OFL and ABC consistent with these recommendations.

A Notice of Availability of Amendments 44/44, which describes the proposed amendments and solicited comments from the public until December 10, 1996, was published in the **Federal Register** (October 17, 1996; 61 FR 54145). One comment was received in support of the amendments. After review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS determined that Amendments 44/44 are consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendments 44/44 on January 9, 1997. Additional information on this action is contained in the October 17, 1996, Notice of Availability (61 FR 54145).

No regulatory changes are necessary to implement these FMP amendments.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 10, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1154 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010997B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a research permit (P625).

SUMMARY: Notice is hereby given that Sarah V. Mitchell of NOAA Gray's Reef National Marine Sanctuary (P625) has applied in due form for a scientific research permit to take listed loggerhead sea turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before February 18, 1997.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Sarah V. Mitchell, NOAA Gray's Reef National

Marine Sanctuary (P625), requests a research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant requests a five-year research permit to take up to 25 listed loggerhead sea turtles each year in the waters within and adjacent to the Gray's Reef National Marine Sanctuary and on Wassaw, Ossabaw, Sapelo, or Blackbeard Islands on the Georgia coast. The turtles would be taken for examination, tagging, testing, observation, collection of biological information, rehabilitation if necessary, and release. Turtles would be acquired by takes from the wild and also from sources authorized to incidentally capture. Animals would be tagged with flipper (inconel), and PIT (passive inductive transponder) tags, radio, sonic, or satellite telemeters. Biological information would be collected in the form of blood samples. All information gathered would augment an extensive sea turtle database used to study population trends, migrations, habitat, and diving behavior.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 13, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1152 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011097A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for modification 1 to scientific research permit 994 (P497D).

SUMMARY: Notice is hereby given that the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU) has applied in due form for a modification to a permit that authorizes a take of threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before February 18, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: ICFWRU requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Permit 994 currently authorizes ICFWRU (P497D) takes of adult, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to assess the passage success of migrating adult salmonids at the four dams and reservoirs in the lower Columbia River in the Pacific Northwest, evaluate fish responses to specific flow and spill conditions, and evaluate measures to improve passage. For modification 1, ICFWRU proposes to include adult sockeye salmon in the study, a percentage of which will be adult, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*). Adult sockeye salmon are proposed to be captured, anesthetized, fitted with radio transmitters and identifier tags, allowed to recover from the anesthetic, and released. Once returned to the river, the movement and migration timing of each fish will be recorded at fixed-site and mobile receiver stations as the fish migrate upstream. Primary benefits of the study will be the ability to identify areas in the fishways that are problematic for adult passage and to determine the proportion of salmonids that pass the upstream dams and enter tributaries to spawn, enter hatcheries, are taken in fisheries, or are losses between the dams. Modification 1 is requested for the duration of the permit. Permit 994 expires on December 31, 2000.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 13, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1153 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Relating to the Delivery Procedures, Quality Standards and Quality Price Differentials, and Speculative Position Limit Specifications for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to its live cattle futures contract. The primary proposed amendments will: (1) Modify the par yield grade and weight range specifications and the sources and calculation methods for establishing price differentials for non-par quality grades, yield grades, and carcass-weights; (2) extend the delivery period for live-graded deliveries by five business days; (3) change the last trading day of expiring contract months; and (4) increase to 600 from 300 contracts the spot month speculative position limit applicable on those days preceding the last five trading days, with the existing limit of 300 contracts being retained during the last five trading days of the contract month.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed changes in quality standards, delivery procedures, and the speculative position limits for the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202–418–5273, or electronic mail: flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the current terms of the live cattle futures contract, a par delivery unit consists of 40,000 pounds of steers. At the buyer's option, steers may be delivered either to a CME-approved livestock yard, for grading by United States Department of Agriculture (USDA) personnel on a live basis, or to a CME-approved slaughter plant, for grading by USDA personnel on a carcass basis. The par delivery lot is composed of 55% USDA Choice, and 45% USDA Select quality grade steers or carcasses, with a yield grade of 1, 2, 3, or 4. No more than one yield grade 4 steer or carcass is permitted in a par delivery unit.

For live-graded delivery, the average weight of the live steers in a par delivery unit must fall between 1,050 and 1,250 pounds, with no individual steer weighing more than 100 pounds above or below the average weight of the delivery unit. For carcass-graded delivery, no individual carcass may weigh less than 600 pounds nor more than 900 pounds. The hot yield of a par delivery unit is 63 percent.

The futures contract's existing terms also provide for the delivery at specified price differentials for delivery units of live steers or steer carcasses that deviate from the above-specified par delivery standards. In particular, each additional Choice grade steer or carcass above the 55 percent minimum level in a delivery unit is deliverable at a price differential calculated by subtracting the "Select 1–3 Boxed Beef Cut-Out Value" from the "Choice 1–3 Boxed Beef Cut-Out Value," which are published on the delivery day by the USDA Market News Service on the National Carlot Meat Report, and multiplying this difference by 63 percent. Similarly, each additional Select grade steer or carcass in excess of the 45 percent maximum level in a delivery unit is deliverable at a price differential calculated by subtracting the "Choice 1–3 Boxed Beef Cut-Out Value" from the "Select 1–3 Boxed Beef Cut-Out Value," that are published by the USDA Market News Service on the delivery day, and multiplying this difference by 63 percent. In addition, any carcass grading below USDA Select is deliverable at a discount of 25% of the settlement price using the average live weight of the steers included in the delivery unit. Carcasses grading USDA Prime are considered to be USDA Choice for purposes of calculating the value of delivery units. Each additional yield grade 4 carcass above the par allowable number of one is deliverable at a discount of $20 per hundredweight, or 25% of the settlement price, whichever is greater, on a live weight basis. Any carcass with a yield grade of 5 is deliverable at a discount of $30 per hundredweight, or 40 percent of the settlement price, whichever is greater, on a live weight basis.

Live steers that weigh 100 to 200 pounds above or below the delivery unit's average weight are deliverable at a discount of three cents per pound. Individual steers that weigh more than 200 pounds over or under the delivery unit's average weight, or that weigh less than 1,000 pounds or greater than 1,300 pounds, are not deliverable on the futures contract. Steer carcasses that weigh less than 600 pounds or more than 900 pounds are deliverable at a discount of 20 percent of the settlement price.

Delivery may be made on any business day of the contract month beginning with the seventh business day following the first Friday of the contract month, plus the first two business days in the succeeding calendar month.

The primary proposed amendments will:

(1) Change the par yield grade specification to USDA yield grade 3 steers or carcasses, from the existing par specification of USDA yield grade 1, 2, 3, or 4 steers or carcasses;

(2) Change the weight requirement for live-graded delivery units deliverable at par by specifying an average steer weight range of 1,100 pounds to 1,300 pounds (from the existing 1,050 pounds to 1,250 pounds range), and an individual steer weight range of 1,050 pounds to 1,350 pounds (from the existing 1,000 pounds to 1,300 pounds range);

(3) Remove the existing limitation on the number of yield grade 4 steers permitted in live-graded delivery units and allow the delivery of yield grade 5 steers in such units;

(4) Modify the sources and calculation procedures for determining price differentials for quality grade, yield grade, and carcass weight as described in proposed rule 1504.A below:

* * * * *

A. Sources and Calculation of Adjustment Factors Quality grade adjustments for all delivery units will make use of the live weight equivalent of the Choice-Select boxed beef spread calculated from information reported by USDA (in $/cwt.) for the day of tender in the National Carlot Meat Report. This is referred to hereafter as the Live-Equivalent Choice-Select Spread (LECSS) and is computed by subtracting the "Select 1–3 Boxed Beef Cut-Out Value" from the "Choice 1–3 Boxed Beef Cut-Out Value" and multiplying that result by 0.0063. Boxed Beef Cut-Out Values from the 550/700 pound category are used for live-graded delivery units with an average live weight less than 1,111 pounds and for carcass-graded delivery units with an average carcass weight less than 700 pounds. Boxed Beef Cut-Out Values from the 700/850 pound category are used for live-graded delivery units with an average live weight greater than or equal to 1,111 pounds and for carcass-graded delivery units with an average carcass weight greater than or equal to 700 pounds.

The National Carlot Meat Report for the day of tender shall also serve as the source of information for calculating the condemned liver factor used in carcass-graded deliveries. The condemned liver factor shall equal the reported liver value (in $/cwt.) from the "By-Product Value Calculation" multiplied by −0.01.

In addition, quality grade, yield grade and carcass weight adjustments will make use of factors calculated from values reported by USDA (in $/cwt.) in the National Carcass Premiums and Discounts for Slaughter Steers and Heifers report. The Prime, Standard, Yield Grade 1, Yield Grade 2, Yield Grade 4, Yield Grade 5, and 900–950 lbs. factors are calculated by multiplying the reported simple average for the corresponding category by 0.0063. If a quality grade or yield grade is broken into subcategories on this report, then the factor for that quality or yield grade shall be the simple average of all reported averages for the subcategories in that category multiplied by 0.0063. The most recently issued report with respect to the day a Certificate is tendered shall be used to calculate the factors for that delivery unit. When a Certificate is tendered on the same day that a new report is issued,

that new report shall be used in factor calculation regardless of the time of day that the report is released.

The sub-Standard factor shall equal −25% of the tender-day settlement price.

Should the USDA determine that an error exists in any of the reports used to calculate adjustment factors and subsequently issues a corrected report, that corrected report shall be used in place of the original.

* * * * *

All live steers or steer carcasses in a delivery unit shall receive a quality grade adjustment computed from the Live-Equivalent Choice-Select Spread (LECSS) factors and other factors described in proposed Rule 1504.A. Per pound quality grade adjustments shall be as follows:

USDA Prime: +0.45 × LECSS + Prime factor
USDA Choice: +0.45 × LECSS
USDA Select: −0.55 × LECSS
USDA Standard: +0.45 × LECSS + Standard factor
Below USDA Standard: +0.45 × LECSS + Standard factor + sub-Standard factor

The per animal quality grade adjustment shall be calculated by multiplying the per pound quality grade adjustment by the average live weight of the delivery unit. Carcasses deemed ungradeable with respect to quality grade by the USDA shall receive a per pound quality grade discount equal to 25% of the settlement price. In addition, carcasses weighing between 900 and 950 pounds will be deliverable at a price differential that is based on the adjustment factors described in proposed Rule 1504.A (rather than at the existing discount equal to 20% of the settlement price);

(5) Expand the delivery period to include the first seven business days of the calendar month following the delivery month (from the first two business days of such months);

(6) Change the last trading day of expiring contract months to the last business day of such months (from the last business day immediately preceding the last five business days of the contract month); and

(7) Increase to 600 from 300 contracts the speculative position limit applicable during that part of the spot month which begins on the first business day following the first Friday of the contract month and ends on the business preceding the last five trading days of the expiring contract month. The existing spot-month speculative position limit of 300 contracts would remain applicable during the last five trading days of the expiring contract month.

The CME intends to apply the proposed amendments to all newly listed contract months following receipt of Commission approval.

In support of the proposed amendments, the Exchange states that "[t]hese changes are in the best interests of both the Live Cattle contract and the cattle feeding industry as a whole, particularly as the cash market continues to move toward increased usage of value-based marketing methods." In addition, the Exchange believes the proposal will increase deliverable supplies by permitting wider variations from the par quality specifications at market-based price differentials. The Exchange believes the proposed increase in the spot month speculative position limit preceding the last five trading days is supported by the increased deliverable supplies associated with the proposed amendments as well as other contract changes that were implemented in 1995.

The Commission is requesting comments specifically with respect to (1) the extent to which the proposed amendments reflect prevailing cash market practices; (2) the extent to which the proposed price differentials for the delivery of differing qualities of live steers or steer carcasses reflect commercial price differences; and (3) the impact of the proposed amendments on the level of economically deliverable supplies at the contract's delivery points during the delivery months traded under the futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 418–5105.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC, on January 8, 1997.

Blake Imel,

Acting Director, Division of Economic Analysis.

[FR Doc. 97–1241 Filed 1–16–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–2575–000 and ER96–2858–000]

The Cleveland Electric Illuminating Company; Notice of Filing

January 13, 1997.

Take notice that on December 30, 1996, The Cleveland Electric Illuminating Company (CEI) pursuant to Section 205 of the Federal Power Act and Part 35 of the FERC's Regulations thereunder, submitted for filing addenda to electric power service agreements between CEI and Wabash Valley Power Association, Inc.; Morgan Stanley Capital Group, Inc.; Duke/Louis Dreyfus L.L.C.; and Citizens Lehman Power Sales. CEI requests an effective date of the agreements of January 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1170 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–183–000]

MIGC, Inc.; Notice of Application

January 13, 1997.

Take notice that on January 6, 1997, MIGC, Inc. (MIGC), Suite 230, 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP97–183–000 an

application pursuant to Section 7(c) of the Natural Gas Act for authorization to install and operate a compressor, a back-up compressor, and related appurtenant facilities at the Hilight Processing Plant in Campbell County, Wyoming, and to increase the Maximum Authorized Operating Pressure (MAOP) on a 71-mile segment of its 16-inch mainline, all as more fully set forth in the application on file with the Commission and open to public inspection.

MIGC states that the compression facilities, each compressor with a rating of 1350 horsepower, and uprating of the MAOP from 1060 psig to 1250 psig are required to satisfy a need for additional capacity on MIGC's mainline and that the proposal would double the throughput on a 75.4 mile section of MIGC's system running south from the Hilight Processing Plant to interconnections with Colorado Interstate Gas Company and KN Energy, Inc. It is asserted that the proposal would increase the existing firm capacity from 45,000 Mcf of natural gas per day to 90,000 Mcf per day. MIGC estimates the cost of the proposal at $2.62 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 3, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MIGC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1168 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER96–1823–001 and ER97–544–000]

Minnesota Power & Light Company; Notice of Filing

January 13, 1997.

Take notice that on December 12, 1996, Minnesota Power & Light Company (MP) tendered for filing a report of short term transactions that occurred during the quarter ending September 30, 1996, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000. Also, the amended filing included a copy of the umbrella service agreements under which such transactions were made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1169 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–182–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

January 13, 1997

Take notice that on January 3, 1997, Mississippi River Transmission Corporation (MRT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151–0001, filed in Docket No. CP97–182–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon pipeline facilities and a delivery tap to be located in St. Louis County, Missouri, under MRT's blanket certificate issued in Docket No. CP82–489–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to abandon in place: (1) Line A–123, which consists of 14,377 feet of 10-inch pipe and a 2-inch delivery tap, certificated in Docket No. G–863, located in St. Louis County, Missouri and (2) A 7,401-foot portion of 10-inch pipe on Line A–97, certificated in Docket No. C–291, located in St. Louis County, Missouri. MRT states that the subject pipeline laterals are deteriorated, require high maintenance, and are bare-coated.

MRT asserts that historically, these lines have been used to deliver natural gas to Laclede Gas Company (Laclede). However, MRT states Laclede installed 2,150 feet of 2-inch pipe to an existing MRT tap, which has eliminated MRT's requirement or need to use Line A–123 and the designated portion of Line A–97. MRT advises this proposed abandonment will not affect their ability to serve Laclede or any other customer on its system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1167 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3104–000]

Montana Power Company; Notice of Filing

January 13, 1997.

Take notice that on January 2, 1997, Montana Power Company tendered for filing an amendment to its original filing in the above-referenced docket.

A copy of the filing was served upon Public Utility District #1 of Benton County.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1171 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–765–000]

Revelation Energy Resources Corporation; Notice of Filing

January 13, 1997.

Take notice that on January 7, 1997, Revelation Energy Resources Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1172 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG97–7–000]

TransColorado Gas Transmission Company; Notice of Filing

January 13, 1997.

Take notice that on January 6, 1997, TransColorado Gas Transmission Company (TransColorado) filed standards of conduct under section 161.3(j) of the Commission's Regulations, 18 CFR § 161.3(j).

TransColorado states that copies of this filing have been mailed to all shippers on TransColorado's system and affected state regulatory commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1173 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–159–000]

Transwestern Pipeline Company; Notice of Application

January 13, 1997.

Take notice that on December 18, 1996, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas, 77251–1188, pursuant to Section 7(c) of the Natural Gas Act (NGA), filed an application with the Commission in Docket No. CP97–159–000 for a certificate of public convenience and necessity to operate two compressor units at their design horsepower level, in order to increase operational efficiency and capacity on that portion of Transwestern's system described as its "Panhandle Lateral", all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Specifically, Transwestern proposes to increase the horsepower of each of the compressor units at its P1 and P2 Compressor Stations in Roosevelt County, New Mexico and Deaf Smith County, Texas, respectively, to a design capacity level of 4,700 horsepower (HP). Each compressor station currently has one Solar turbine operating at a 3,500 ISO HP equivalent, the current certificated capacity level. The increase in horsepower will be achieved by straightening the inlet guide vanes at the P1 and P2 compressor stations. Transwestern estimates the cost of straightening the inlet guide vanes is approximately $22,600 which would be financed with internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 3, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1166 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–76–000]

Wyoming Interstate Company, Ltd.; Notice on Technical Conference

January 13, 1997.

On November 29, 1996, the Commission issued an order [1] in the captioned docket requiring, among other things, a technical conference on Wyoming Interstate Company, Ltd.'s proposed increase in the Fuel Gas and Unaccounted-for Gas percentage component of its transportation rates. The conference will be held at 10:00 a.m., on January 28, 1997, at 888 First Street, N.E., Washington, D.C., in a room to be designated at that time.

Any questions concerning the conference should be directed to John M. Robinson, (202) 208–0808, or Yolanda Hart-Harris, (202) 208–0069.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1165 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed with the Commission

January 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Yakima-Tieton Irrigation District.

c. *Project No:* The proposed Tieton Dam Hydroelectric Project, FERC No. 3701-025, is to be located at the Bureau of Reclamation's Tieton Dam and Reservoir on the Tieton River, in Yakima County, Washington.

d. *Date Filed:* December 5, 1996.

e. *Pursuant to:* Public Law 104–244.

f. *Applicant Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, D.C. 20006, (202) 783–4141.

g. *FERC Contract:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* February 28, 1997.

i. *Description of the Request:* The licensee for the subject project has requested that the deadline for commencement of construction at its project be extended. The deadline to commence project construction for FERC Project No. 3701 would be extended to May 31, 1999. The deadline for completion of construction would be extended to May 31, 2001.

j. *This notice also consists of the following standard paragraph:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1163 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

January 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Request for Extension of Time To Commence and Complete Project Construction.

b. *Project No.:* FERC No. 4204–020, White River Lock & Dam No. 1, located on the White River near the City of Batesville, Independence County, Arkansas. Licensee: City of Batesville, AR.

c. *Project No.:* FERC No. 4659–022, White River Lock & Dam No. 3, located on the White River in the City of Marcella, Stone County, Arkansas. Licensee: Independence County, AR.

d. *Project No.:* FERC No. 4660–024, White River Lock & Dam No. 2, located on the White River in the Cities of Locust Grove and Batesville, Independence County, Arkansas. Licensee: Independence County, AR.

e. *Date Filed:* November 26, 1996.

f. *Pursuant to:* Public Law 104–241.

g. *Applicants Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue N.W., Washington, D.C. 20006, (202) 783–4141.

h. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

i. *Comment Date:* February 28, 1997.

j. *Description of the Request:* The licensees for the subject projects have requested that the deadlines for commencement of construction at each project be extended. The deadline to commence project construction for FERC Project Nos. 4204 and 4659 would be extended to February 27, 2000. The deadline to commence project construction for FERC Project No. 4660 would be extended to November 7, 1999. The deadline for completion of construction for FERC Project Nos. 4204 and 4659 would be extended to February 27, 2002. The deadline for completion of construction for FERC Project Nos. 4660 would be extended to November 7, 2001.

k. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

[1] 77 FERC ¶ 61,220 (1995).

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Representative Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1164 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application

January 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original License for Major Project.

b. *Project No.:* 11243–002.

c. *Date filed:* January 6, 1997.

d. *Applicant:* Whitewater Engineering Corporation.

e. *Name of Project:* Power Creek Hydroelectric Project.

f. *Location:* On Power Creek, near the town of Cordova, in Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Thom Fischer, Whitewater Engineering Corporation, 1050 Larrabee Avenue, Suite 104–107, Bellingham, WA 98225, (360) 738–9999.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Description of Project:* The proposed run-of-river project would consist of: (1) A 20-foot-high concrete and earthfill diversion structure on Power Creek; (2) a 5,900-foot-long tunnel and pipeline system; (3) a powerhouse containing three generating units with a total installed capacity of 6 MW; (4) a tailrace returning water to Power Creek; (5) a 7.2-mile-long underground transmission line; (6) 2.5 miles of access roads; and (7) appurtenant facilities.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1174 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5476–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 06, 1997 Through January 10, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970004, Draft EIS, FTA, NJ, Newark-Elizabeth Rail Link (NERL) Study Corridor, Transportation Improvements, Light Rail Transit (LRT), Essex and Union Counties, NJ, Due: March 04, 1997, Contact: Steve F. Faust (212) 264–8162.

EIS No. 970005, Draft EIS, AFS, WI, Oconto River Seed Orchard Pest Management Plan, Implementation, Nicolet National Forest, Oconto County, WI, Due: March 03, 1997, Contact: Dennis Weber (503) 326–7171.

EIS No. 970006, Draft EIS, BLM, WY, Greybull Valley Irrigation District Dam and Reservoir Project, Issuance of Right-of-Way Permit and COE Section 404 Permit, Park County, WY, Due: March 03, 1997, Contact: Don Ogaard (307) 347–5100.

EIS No. 970007, Draft EIS, FHW, VA, VA–17-George Washington Highway, Improvements between VA–104—Dominion Boulevard and the North Carolina State Line, City of Chesapeake, VA, Due: March 03, 1997, Contact: Roberto Fonseca-Martine (804) 281–5100.

EIS No. 970008, Draft EIS, COE, NY, NJ, Newark Bay Confined Disposal Facility (NBCDF), Construction, Dredged Material Disposal Site, NY and NJ, Due: March 03, 1997, Contact: Marc Helman (212) 264–3912.

Dated: January 14, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–1253 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5476–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 30, 1996 Through January 03, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (65 FR 15251).

Draft EISs

ERP No. D–COE–G30014–LA Rating LO, Westwego to Harvey Canal Hurricane Protection Project, Implementation, Lake Cataouatche Area, Jefferson Parish, LA.

Summary: EPA had no objections to the project as proposed. ERP No. D–DOE–L09811–00 Rating EC2, Wildlife Mitigation Program Standards and Guidelines, Implementation, Columbia River Basin, WA, OR, ID, MT, UT, WY and NV.

Summary: EPA requested that the final document include more background information and specific wildlife mitigation techniques relating to the preferred alternative.

ERP No. DS–USN–D11024–PA Rating EC2, Former Naval Hospital Philadelphia, Pennsylvania Disposal and Reuse, New Information concerning Additional Alternatives, Implementation, City of Philadelphia, PA.

Summary: EPA expressed concern regarding asbestos, lead-based paint and the proposed parking facility. EPA requested that these issues be clarified in the final document.

Final EISs

ERP No. F–AFS–K65169–CA Snowy Trail Off-Highway Vehicle Re-Route, Smith Fork Parcel of Los Padres National Forest, Approval and Implementation, Mount Pinos Ranger District, Ventura County, CA.

1*Summary:* Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BOP–D80024–VA Lee County, Virginia Federal Correctional Institution, Construction and Operation, Site Selection near the Town of Pennington Gap, Lee County, VA.

Summary: EPA had no objections to the action as proposed. ERP No. F–COE–C36073–NJ Absecon Island Interim Feasibility Study, Storm Damage Reduction, Brigantic Inlet to Great Egg Harbor Inlet, Atlantic County, NJ.

Summary: EPA had no objections to the implementation of the proposed project. Based on our review of the final EIS our concerns have been adequately addressed.

ERP No. F–COE–E36174–FL Programmatic EIS—Florida's Everglades, Stormwater Treatment Areas Construction Project, NPDES and COE Section 404 Permits, Implementation, Lake Okeechobee, Palm Beach and Hendry Counties, FL.

Summary: EPA supports the general intent of the Programmatic EIS, and looks forward to working with the Corps as the project proceeds.

ERP No. F–COE–K36117–CA Kaweah River Basin Investigation Feasibility Study, Flood Protection of Terminus Dam, Increase Storage Space in Lake Kaweah for Irrigation of Water Supply, Construction, Modification and Operation, San Joaquin Valley, Tulare and King Counties, CA.

Summary: EPA expressed objections to the Corps' decision to pursue the National Economic Development Plan alternative, rather than the Locally Preferred Plan (LPP) alternative. EPA stated that the LPP alternative would best address the adverse impacts to recreation and fisheries while meeting the flood protection and water supply project purposes. EPA urged the Corps to address the long-term sedimentation issues through alternative methods.

ERP No. F–DOE–A06178–00 Programmatic EIS-Stockpile Stewardship and Management Project, Reduced Nuclear Weapons Stockpile in the Absence of Underground Testing, Eight Sites: Oak Ridge Reservation (ORR), Savannah River Site (SRS), Kansas City Plant (KCP) Pantex Plant, Los Alamos Nat'l Lab., Lawrence Livermore Nat'l Lab., Sandia Nat'l and Nevada Test.

Summary: EPA's previous environmental concerns have been adequately addressed, therefore, the EPA has no objections to the project as proposed.

ERP No. F–DOE–A06180–00 Adoption—Naval Spent Nuclear Fuel Container System Management, Loading, Handling and Dry Storage, Transportation and Storage, Handling and Transportation of certain Associated Radioactive Waste, Implementation, United States.

Summary: EPA's previous environmental comments have been adequately addressed, therefore, the EPA has no objections to the project as proposed.

ERP No. F–DOE–K11068–NV Nevada Test Site (NTS) and Off-Site Locations, Implementation, at the Following Sites: Tonopah Test Range; Portions of the Nellis Air Force Range (NAFR) Complex; the Central Nevada Test Area and Shoal Area Project, Nye County, NV.

Summary: While most previous issues have been resolved EPA continues to be concerned regarding pollution prevention, polychlorinated bipheryls and Native American Tribal consultations. EPA requested that these issues be clarified in the Record of Decisions.

ERP No. F–FHW–K40217–CA Arden Garden Connector Project, Arden Way in North Sacramento to Garden Highway in South Natomas across the Natomas East Main Drainage Canal, Funding, Sacramento County, CA.

Summary: FHWA addressed all of EPA's comments on the draft EIS.

ERP No. F–FRC–C05145–NY Felts Mills Hydroelectric Project (FERC No. 4715–006), Issuance of Original License, Construction, Operation and Maintenance, Site Specific, Black River, Jefferson County, NY.

Summary: EPA's earlier concerns with the draft EIS have been adequately addressed. However, EPA may submit additional comments as part of the Clean Water Act Section 404 permit process.

ERP No. F–IBR–K39039–NV Southern Nevada Water Authority Treatment and Transmission Facility, Construction and Operation, Issuance of Permits, Right-of-Way Grants and Modification of existing Water Delivery/Service Contracts, Clark County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–IBR–K50009–CA American River Bridge Crossing Project, Construction and Roadway Improvement, Funding, Right-of-Way Approval, Coast Guard Bridge Permit and COE Section 404 Permit, City of Folsom, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS-FHW-G40127–TX TX–161 Construction, Updated Information on I–20 to TX–183, Funding, Coast Guard Section 10 Permit and Possible COE Section 404 Permit, Cities of Grand Prairie and Irving, Dallas County, TX.

Summary: EPA had no objections to the action as proposed.

Dated: January 14, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–1254 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5677–7]

Environmental Laboratory Advisory Board; Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Laboratory Advisory Board (ELAB) will convene an open meeting on February 6, 1997, from 9:00 am to 5:00 pm. The meeting will be held in the Bethesda Hyatt Regency at 1 Bethesda Metro Center (the corner of Wisconsin Avenue and Old Georgetown Road) in Bethesda, MD. Additional information on directions can be obtained from the hotel by calling (301) 657–1234.

The agenda will include discussions of the fact findings of several subcommittees, i.e. the Third Party Subcommittee; the Good Laboratory Practices (GLP) Subcommittee; the Performance Based Methods Subcommittee; and the Proficiency Testing Subcommittee. In addition, the National Environmental Laboratory Accreditation Conference (NELAC) will respond to a previous ELAB recommendation regarding the establishment of an ad hoc committee on the proposed national database; the process to discuss nominees for the next ELAB term to serve from July 1997–July 1999 will also be discussed. Finally, your comments and activities from the Interim meeting will be addressed.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Jeanne Mourrain; Designated

Federal Official; USEPA; NERL (MD–75); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4101, or E-mail "MOURRAIN.JEANNE@EPAMAIL.EPA.GOV".

Dated: January 13, 1997.

Larry Weinstock,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. 97–1269 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5677–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et, seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1037.05; Oral and Written Purchase Orders; was approved 12/31/96; OMB No. 2030–0007; expires 12/31/99.

EPA ICR No. 0909.05; Information Requirements for Construction Grants Delegation to States; was approved 12/20/96; OMB No. 2040–0095; expires 12/31/99.

EPA ICR No. 1362.03; National Emission Standards for Coke Oven Batteries, 40 CFR Part 63, Subpart L; was approved 12/18/96; OMB No. 2060–0253; expires 12/31/99.

EPA ICR No. 1780.01; Voluntary Cover Sheet for TSCA Submissions; was approved 12/18/96; OMB No. 2070–0156; expires 12/31/99.

EPA ICR No. 0276.08; Application for Experimental Purposes Only; was approved 11/29/96; OMB No. 2070–0040; expires 11/30/99.

EPA ICR No. 0997.05; NSPS for Petroleum Dry Cleaners; was approved 11/22/96; OMB No. 2060–0079; expires 11/30/99.

EPA ICR No. 1150.04; NSPS for Polymer Manufacturing Industry—Subpart DDD; was approved 11/22/96; OMB No. 2060–0145; expires 11/30/99.

EPA ICR No. 1130.05; NSPS for Information Requirements for Grain Elevators—Subpart DD; was approved 11/22/96; OMB No. 2060–0082; expires 11/30/99.

EPA ICR No. 1715.02; TSCA Section 402 and Section 404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities; was approved 11/13/96; OMB No. 2070–0155; expires 11/30/99.

Extension of Expiration Date

EPA ICR No. 1204.05; Submission of Unreasonable Adverse Effects Information under Section 6(A)(2) of FIFRA; OMB No. 2070–0039; expiration date was extended to 02/28/97.

Dated: January 8, 1997.

Joseph Retzer.

Director, Regulatory Information Division.

[FR Doc. 97–1265 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5677–8]

Release of Volume 1, Framework For Environmental Health Risk Management—January 29, 1997—Commission on Risk Assessment and Risk Management

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will release Volume 1, *Framework for Environmental Health Risk Management*, of its two-volume final report on January 29. It is anticipated that Volume 2 will be released at the end of February. A public meeting will be held on January 29, 1997; from 10:00 a.m. to 11:30 a.m. in Room 2322 at the Rayburn House Office Building located on Independence Avenue and South Capitol Street, SW, Washington, DC. **Federal Register**, Vol. 61, No. 251, page 68745, dated December 30, 1996 issued a notice of the January 29th meeting; however, the location was not yet determined.

If you are unable to attend, but wish to receive a copy of the final report, either fax your request to 202–233–9540, mail your request to the Commission on Risk Assessment and Risk Management, 529 14th Street, NW, Room 452, Washington, DC 20045, or obtain via the internet at http://www.riskworld.com. Be sure to indicate your complete mailing address and a phone number where you can be reached. *If you have already requested a copy of the draft report, it is not necessary to send another request.* Everyone who requested a draft report will be sent Volume 1 immediately following the public meeting and Volume 2 when it becomes available.

If you need additional information, please call 202–233–9537. The report will not be available prior to January 29, 1997.

Dated: January 13, 1997.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 97–1268 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5644–7]

Proposed Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended ("CERCLA"), 42 U.S.C. 9601 et seq., In the Matter of the Torch Lake Superfund Site, Houghton, MI

AGENCY: Environmental Protection Agency.

ACTION: Notice of a proposed administrative settlement and request for public comment.

SUMMARY: The Environmental Protection Agency ("EPA") is hereby giving notice that it proposes to enter into an administrative prospective purchaser settlement relating to the Mason Sands of the Torch Lake Superfund Site located in Houghton County, Michigan. The proposed settlement is with Quincy Development Corporation ("Quincy") and Lakeshore Estates Associates, Inc. ("Lakeshore"), and will resolve their prospective liability, pursuant to Sections 106 and 107(a) of CERCLA, for injunctive relief and for past response costs incurred in connection with 197 acres of the Torch Lake Site known as the Mason Sands. This notice is an invitation to file written comments on the proposed administrative settlement.

DATES: Comments must be provided on or before February 18, 1997.

ADDRESSES: Comments should be addressed to Beth Reiner, Office of Superfund, Mail Code SR–6J, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and

should refer to: In the Matter of Torch Lake Superfund Site.

FOR FURTHER INFORMATION CONTACT: Beth Reiner, Office of Superfund, Mail Code SR–6J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, 312/353–6576.

SUPPLEMENTARY INFORMATION: The Torch Lake Superfund Site is located on the Upper Peninsula of Michigan in Houghton County. Copper milling and smelting operations occurred at the site for over 100 years. By the late 1960s milling operations in the Torch Lake area had ceased. In 1984 the Site was proposed for the National Priorities List (NPL) and in 1986 the Site was placed on the NPL. The Risk Assessment concluded there was no unacceptable risk to human health from the stampsands. However, the benthic community in the sediment of Torch Lake had been adversely affected and was not recovering. Two Records of Decision (ROD) were issued for the Site. The ROD for Operable Units (OU) I and III, which addressed all land covered with stampsands, was issued on 9/30/92 and called for deed restrictions, soil cover and vegetation of stampsands. The OU II ROD, which addressed only Torch Lake itself, was issued on 3/31/94 and called for no action on Torch Lake itself.

Quincy Development Corp. (QDC) was identified by U.S. EPA as a Potentially Responsible Party (PRP) for cleanup costs at the Site. They are the current owner of approximately 390 acres of OUI land. Lakeshore Estates Associates, Inc. (Lakeshore), a developer, is interested in purchasing approximately 197 acres of land currently owned by QDC which is part of the Torch Lake Superfund Site.

In consideration of and in exchange for the United States' Covenant Not to Sue in the Prospective Purchaser Agreement, Lakeshore agrees to:

(1) Provide roads from the public roadway to the borrow areas on Lakeshore's property and a road from the borrow areas to the isthmus in Torch Lake (where the Mason Sands almost connect to the eastern shore of Torch Lake) and/or any other roads required to allow U.S. EPA to access Lakeshore's property in order to excavate soils and truck them off Lakeshore's property;

(2) Clear of trees and brush a minimum of 25 acres of land to allow U.S. EPA to excavate the soils (to a depth of approximately 6 to 8 feet) for use as cover material as required by the Record of Decision;

(3) Grant U.S. EPA and its representatives access (for an estimated 3 years from the start of the remedial action) to the roads and borrow areas on Lakeshore's property to remove up to 241,000 cubic yards of soil; and

(4) Maintain the soil cover and vegetation over the stampsands on property Lakeshore will purchase from Quincy.

The Superfund liability associated with the QDC land currently prevents the beneficial re-use of the property. In the absence of an agreement which resolves this liability, no redevelopment is

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 97–1267 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5678–8]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding the City of Sedalia, Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the city of Sedalia, Missouri.

SUMMARY: The EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). The EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. The EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. The EPA provides the public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On November 22, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of the City of Sedalia, Missouri, EPA Docket No. VII–97–W–0003.

The Complaint proposes a penalty of Sixty-Five Thousand Dollars ($65,000) for failure to comply with the Pretreatment implementation requirements of its National Pollutant Discharge Elimination System (NPDES) permit.

FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the city of Sedalia, Missouri, is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: December 18, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–1266 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will

meet in open session at 10:00 a.m. on Tuesday, January 21, 1997, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposal to Rescind Statement of Policy on Money Laundering.

Memorandum and resolution re: Proposal to Rescind Statement of Policy on the Sale of U.S. Government Guaranteed Loans and Sale Premiums.

Memorandum and resolution re: Revision of 12 C.F.R. Part 304: Forms, Instructions and Reports.

Discussion Agenda

Memorandum re: Proposed Memorandum of Understanding between the FDIC and FICO Regarding the Collection of Assessments.

Memorandum and resolution re: Notice of Proposed Rulemaking and Request for Comment—12 C.F.R. Part 328—Advertisement of Membership.

Memorandum and resolution re: Interim Rule to Amend Part 337 of FDIC's Regulations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 14, 1997.
Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–1347 Filed 1–15–97; 11:26 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 217–011563.

Title: NOL/HMM Space Charter Agreement

Parties:

Neptune Orient Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed Agreement authorizes HMM to charter space to NOL on its vessels in the trade between all ports and points in the Far East and South East Asia, and ports and points on the U.S. Pacific Coast including Alaska.

By order of the Federal Maritime Commission.

Dated: January 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1135 Filed 1–16–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Barbara E. Dunlap, Rushden, Northants, United Kingdom NN10; to acquire an additional 35 percent, for a total of 44.52 percent, of the voting shares of New Richmond Bancorporation, New Richmond, Ohio, and thereby indirectly acquire New Richmond National Bank, New Richmond, Ohio.

Board of Governors of the Federal Reserve System, January 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1184 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-33160) published on pages 68756 and 68757 of the issue for Monday, December 30, 1996.

Under the Federal Reserve Bank of San Francisco heading, the entry for TRP Acquisition Corporation, Burr Ridge, Illinois, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. TRP Acquisition Corporation, Burr Ridge, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Trans Pacific Bancorp, San Francisco, California, and thereby indirectly acquire Trans Pacific National Bank, San Francisco, California.

In connection TRP Acquisition Corporation, also has applied to acquire at least 19.9 percent of the voting shares of Trans Pacific Bancorp, San Francisco, California, and thereby indirectly acquire Trans Pacific National Bank, San Francisco, California.

Comments on this application must be received by January 24, 1997.

Board of Governors of the Federal Reserve System, January 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1185 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Cumberland Bancorp, Inc., Carthage, Tennessee; to acquire 100 percent of the voting shares of First Federal Bancshares, Inc., Memphis, Tennessee, and thereby indirectly acquire First Federal Bank, FSB, Memphis, Tennessee, and First Federal Bank, FSB, Nashville, Tennessee. These institutions will convert to bank charters.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Farmers National Bancorp, Inc., Geneseo, Illinois, and thereby indirectly acquire Farmers National Bank of Geneseo, Geneseo, Illinois.

Board of Governors of the Federal Reserve System, January 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1183 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1342 Filed 1–15–97; 11:25 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $13,813,000 for section 8(a)(1), and $1,381,300 for section 8(a)(2)(A).

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

(Authority: 15 U.S.C. § 19(a)(5))

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–1237 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 120996 AND 122096

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Gerald F. Cerce, BEC Group, Inc., Foster Grant Group, L.P., et al	97–0424	12/09/96
New York Life Insurance Company, John W. Titus, Snowstate Restaurant Corp. & Franklin Restaurant Corp	97–0477	12/09/96
Hollingsworth & Vose Company, Exide Corporation, Evanite Fiber Corporation	97–0495	12/09/96
Gespa S.A., Tarmac PLC, Tarmac Minerals, Inc	97–0508	12/09/96
HA–LO Industries, Inc., Linden D. Nelson, Creative Concepts In Advertising, Inc	97–0533	12/09/96
Linden D. Nelson, HA–LO Industries, Inc., HA–LO Industries, Inc	97–0535	12/09/96
Union Bank of Switzerland, Ernst Ohnell, Communications Supply Corporation	97–0539	12/09/96
Universal Outdoor Holdings, Inc., Merrill Lynch Capital Appreciation Partnership, B–XXVII, Revere Holding Corp	97–0540	12/09/96
Seacor Holdings, Inc., Waveland Marine Service, Inc., Waveland Marine Service, Inc	97–0542	12/09/96
Bob Marbut, Gannett Co., Inc., Combined Communications Corporation of Oklahoma, Inc	97–0544	12/09/96
The Horne Family Voting Trust, Rosecliff Ames Partners, Ames Holdings, Inc	97–0547	12/09/96
CAT Limited (a Bermuda company) Enterprise Reinsurance Corporation, Enterprise Reinsurance Corporation	97–0550	12/09/96
John L. Morris, Mako Marine International, Inc., Mako Marine International, Inc	97–0551	12/09/96
General Electric Company, Enterprise Reinsurance Corporation, Enterprise Reinsurance Corporation	97–0552	12/09/96
Central Parking Corporation, SLC Holdings, L.L.C., Civic Parking, L.L.C	97–0554	12/09/96
Menasha Corporation, Poly Hi Solidur, Inc. (Newco), Poly Hi Solidur, Inc. (Newco)	97–0555	12/09/96
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Kwik Wash Laundries, Inc., Kwik Wash Laundries, Inc	97–0560	12/09/96
Performance Contracting Group, Inc., National Service Industries, Inc., North Bros., Inc	97–0564	12/09/96
The Progressive Corporation, Midland Financial Group, Inc., Midland Financial Group, Inc	97–0565	12/09/96
Louis J. Appell Residuary Trust, Bridge Associates II, WHMA(AM) and WHMA(FM)	97–0567	12/09/96
Metropolitan Life Insurance Company, Aldrich, Eastman, & Waltch, Inc Aldrich, Eastman, & Waltch, Inc.,	97–0569	12/09/96
Joaquin Viso and Olga Lizardi (Husband and Wife), SmithKline Beecham plc, SB Pharmco Puerto Rico, Inc	97–0571	12/09/96
Gulf South Medical Supply, Inc., North American Fund II, L.P., Gateway HealthCare Corporation	97–0573	12/09/96
Insurance Partners, L.P., Superior National Insurance Group, Inc., Superior National Insurance Group, Inc.	97–0574	12/09/96
Crestar Financial Corporation, Great Western Financial Corporation, Great Western Bank	97–0575	12/09/96
The Deaconess Associations, Inc., Mark Waters, Elk Valley Professional Affiliates, Inc	97–0584	12/09/96
Union Bank of Switzerland, Metrocall, Inc., Metrocall, Inc	97–0600	12/09/96
Reilly Family Limited Partnership, Outdoor Advertising Company, Outdoor East, L.P	97–0158	12/10/96
Kellogg Company, Philip Morris Companies, Inc., Kraft Foods, Inc	97–0476	12/10/96
Pearson PLC, The Seagram Company Ltd. (a Canadian company), The Putnam Berkley Group, Inc	97–0519	12/10/96
Philip Environmental Inc., Luntz Corporation, Luntz Corporation	97–0538	12/10/96
MCN Corporation, Main Pass Gas Gathering Company, Main Pass Gas Gathering Company	97–0576	12/10/96
Paul Fred Ricart, Jr., Robert A. Layman, Jr., Bobby Layman Chevrolet, Inc	97–0578	12/10/96
Weatern Resources, Inc., Westinghouse Electric Corporation, Westinghouse Security Systems, Inc	97–0588	12/10/96
Tencor Instruments, Uniphase Corporation, Ultrapointe Corporation	97–0590	12/10/96
Proffitt's, Inc., G.R. Herberger's Inc., G.R. Herberger's, Inc	97–0591	12/10/96
Claneil Enterprises, Inc., Scandipharm, Inc., Scandipharm, Inc	97–0592	12/10/96
Bruckmann, Rosser, Sherrill & Co., L.P., Specialty Foods Acquisition Corporation, Specialty Foods Acquisition Corporation	97–0596	12/10/96
IMCO Recycling, Inc., EnviroSource, Inc., IMSAMET, Inc	97–0603	12/10/96
Caritas Christi, Daughters of Charity National Health System, Inc., Carney Hospital, et al	97–0604	12/10/96
Rhett Calvin Ricart, Robert A. Layman, Jr., Bobby Layman Chevrolet, Inc.	97–0608	12/10/96
American International Group, Inc., CH–Twenty, Inc., CH–Twenty, Inc	97–0614	12/10/96
Hyundai Electronics Industries Co., Ltd., General Wireless, Inc., General Wireless, Inc	97–0620	12/10/96
Linde AG, The Pro-Quip Corporation, The Pro-Quipp Corporation	97–0624	12/10/96
McCown De Leeuw & Co. III, Unilever NV, Conopco Inc	97–0628	12/10/96
MBNA Corporation, First Western BanCorp, Inc., First Western Bank, N.A. and First Western Bank, f.s.b	97–0629	12/10/96
Dimeling, Schreiber & Park, Burlington Motor Holdings, Inc., a Debtor-in-possession, Burlington Motor Holdings, Inc	97–0636	12/10/96
Phillip Frost, M.D., BBI Healthcare Corporation, BBI Healthcare Corporation	97–0421	12/11/96
Jane Hsaio, Ph.D, BBI Healthcare Corporation, BBI Healthcare Corporation	97–0422	12/11/96
Robert E. Martini, BBI Healthcare Corporation, BBI Healthcare Corporation	97–0433	12/11/96
Bergen Brunswig Corporation, IVAX Corporation, IVAX Corporation	97–0441	12/11/96
IVAX Corporation, Bergen Brunswig Corporation, Bergen Brunswig Corporation	97–0442	12/11/96
Textron, Inc., Klockner-Werke, AG, Kautex North America, Inc. & Kautex Corporation	97–0515	12/11/96
Hellman & Friedman Capital Partners II, L.P., Franklin Resources, Inc, Franklin Resources, Inc	97–0563	12/11/96
General Electric Company, NEFF Corporation, NEFF Corporation	97–0470	12/12/96
Rosen's Diversified, Inc., Paul J. Weiss, Skylark Meats, Inc. and Mid-America Transportation, Inc	97–0496	12/12/96
Rosen's Diversified, Inc., Reynold G. Hochstein, Skylark Meats, Inc. and Mid-America Transportation, Inc	97–0498	12/12/96
Saint Barnabas Corporation, Trico Health Care, Inc., West Hudson Hospital Association; West Hudson Foundation	97–0514	12/12/96
Warren A. Hood, Jr., U.S. Industries, Inc., QPF Corporation	97–0516	12/12/96
PhyCor, Inc., Straub Clinic & Hospital, Inc., Straub Clinic & Hospital, Inc	97–0530	12/12/96
Ralph Milo, Cooperative Tradeka Corporation, C.G. America Corporation	97–0536	12/12/96
Gannett, Co., Inc., Bob Marbut, Argyle Television, Inc	97–0543	12/12/96
Philip Environmental, Inc., Pechiney S.A., PPC (ISW), Inc	97–0582	12/12/96
STERIS Corporation, Bristol-Myers Squibb Company, E.R. Squibb & Sons, Inc	97–0593	12/12/96
J.W. Childs Equity Partners, L.P., Central Tractor Farm & Country, Inc., Central Tractor Farm & Country, Inc	97–0619	12/12/96
Bell Industries, Inc., Milgray Electronics, Inc., Milgray Electronics, Inc	97–0642	12/12/96
The Clorox Company, McKesson Corporation, Armor All Products Corporation	97–0644	12/12/96

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 120996 AND 122096—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Golder, Thoma, Cressey, Rauner Fund, IV, L.P., Brim Inc., Brim Inc	97–0531	12/13/96
Atlantic Richfield Company, Mobil Corporation, Mobil Alaska Pipeline Company	97–0545	12/13/96
DI Industries, Loews Corporation, Diamond M. Onshore, Inc	97–0556	12/13/96
Atlantic Equity Partners, L.P., Quality Foods, L.P., Quality Foods, L.P	97–0558	12/13/96
Burger Bros., Inc., Holiday Companies, Holiday Sports, Inc. and Holiday Stationstores, Inc	97–0562	12/13/96
Front Royal, Inc., Trirock Limited Partnership, Rockwood Casualty Insurance Co	97–0566	12/13/96
Dynatech Corp., Texlon Corporation, Itronix Corporation	97–0581	12/13/96
PIC Insurance Group, Inc., Front Royal Inc., Front Royal Inc	97–0606	12/13/96
Front Royal, Inc., PIC Insurance Group, Inc., Rockwood Casualty Insurance Company	97–0611	12/13/96
Orgill, Inc., Beacon Holding Corporation, Beacon Holding Corporation	97–0615	12/13/96
ING Groep, N.V., TransCare Corporation, TransCare Corporation	97–0633	12/13/96
Primark Corporation, Bowne & Co., Inc., Baseline Financial Services, Inc	97–0634	12/13/96
Nabors Industries, Inc., ADCOR-Nicklos Drilling Company, ADCOR-Nicklos Drilling Company	97–0639	12/13/96
VEBA AG, Burris Chemical, Inc., Burris Chemical, Inc	97–0641	12/13/96
Republic Industries, Inc., R. Todd Neilson, Chapter 11 Trustee, New-Val Ford Inc., Val-New Lincoln Mercury Inc	97–0659	12/13/96
Suiza Foods Corporation, James N. Bahan, Model Dairy, Inc	97–0413	12/14/96
Suiza Foods Corporation, Thomas E. Bahan, Model Dairy, Inc	97–0420	12/14/96
Jitney-Jungle Stores of America, Inc., McCarty-Holman Co., Inc., McCarty-Holman Co., Inc	97–0831	12/16/96
HIG Investment Group, L.P., Ronald L. Koonsman, National Cellular, Inc.; Telephone Warehouse, Inc	97–0694	12/16/96
JPE, Inc., Pebra GmbH Paul Braun I.K. (a German company), Pebra Inc	97–0462	12/17/96
Teleport Communications Group, Inc., Ralph J. Roberts, Comcast CAP of Philadelphia, Inc	97–0548	12/17/96
Orkla, A.S., Frank W. Kulesza, PolyOrganix, Inc	97–0580	12/17/96
First Reserve Fund VII, Limited Partnership, Teleo Ventures, Inc., Teleo Ventures, Inc	97–0597	12/17/96
Laidlaw Inc., Robert Ramsey, SW General, Inc	97–0618	12/17/96
Ciba-Geigy Ltd., Sandoz Ltd., Sandoz Ltd	96–1399	12/17/96
Sandoz Ltd., Ciba-Geigy Ltd., Ciba-Geigy Ltd	96–1402	12/17/96
Torstar Corporation, Sumner M. Redstone, American Teaching Aids, Inc	97–0630	12/17/96
Carlo Salvi, Gensia, Inc., Gensia, Inc	97–0635	12/17/96
Brooks Fiber Properties, Inc., World-Net Access, Inc., World-Net Access, Inc	97–0643	12/17/96
Calgon Carbon Corporation, Florida Progress Corporation, Advanced Separation Technologies, Inc	97–0646	12/17/96
BASF AG, Sandoz Ltd., a Swiss company, Sandoz Agro, Inc	97–0647	12/17/96
Baxter International Inc., Immuno International AG, Immuno International AG	96–2926	12/18/96
Sisters of Mercy of the Amer., Regional Comm. Cincinnati, The Sisters of the Humility of Mary, Humility of Mary Health Care System	97–0483	12/18/96
Dr. Ing. h.c. F. Porsche AG, PPF Holding AG, PPF Holding AG	97–0549	12/18/96
Federal Express Corporation, UAL Corporation, United Air Lines, Inc. (Used DC10 Aircraft)	97–0653	12/18/96
Dovenmuehle Mortgage Company, L.P., Royal Bank of Scotland Group plc, Citizens Financial Group, Inc	97–0658	12/18/96
National Data Corporation, Blue Cross & Blue Shield of Virginia, Health Communication Services, Inc.; Health Communication	97–0660	12/18/96
Tessenderlo Chemie S.A., CI Holdings Corp., Chelsea Industries, Inc., Chelfab, Inc	97–0661	12/18/96
EQUUS II Incorporated, BankAmerica Corporation, Sun Sportswear, Inc	97–0668	12/18/96
OMI Corp., Wilco AS, Wilomi, Inc	97–0669	12/18/96
OMI Corp., Awilco ASA, Wilomi, Inc	97–0670	12/18/96
Watsco, Inc., Inter-City Products Corporation (a Canadian company), Inter-City Products Corporation (USA, CDS Holdings Inc	97–0671	12/18/96
Alco Standard Corporation, Thomas E. Wallace, Mon-Wal, Inc	97–0672	12/18/96
BMI–MI, Inc., Lobdell Holdings, Inc., Lobdell Holdings, Inc	97–0675	12/18/96
Pioneer Financial Services, Inc., Secura Insurance, Secura Life Insurance Company	97–0676	12/18/96
Heidelberger Zement AG, Cimenteries C.B.R. S.A., Cimenteries C.B.R. S.A	97–0677	12/18/96
The Greenbrier Companies, The Greenbrier Companies, Greenbrier Transportation Limited Partnership	97–0683	12/18/96
Bayer AG, Pharmacia & Upjohn, Inc., Oxford Veterinary Laboratories, Inc	97–0435	12/19/96
MCN Corporation, Lyondell Petrochemical Company, Lyondell Petrochemical Company	97–0466	12/19/96
John Rutledge Partners II, L.P., H&C Holding Corporation, H&C Holding Corporation	97–0583	12/19/96
BankAmerica Corporation, EXOR Group, Duo-Tang, Inc	97–0708	12/19/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Jupiter/Smith TV Investors of Michigan, L.P., Jupiter/Smith TV Investors of Michigan, L.P	97–0503	12/20/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Jupiter/Smith TV Investors of Rochester, L.P., Jupiter/Smith TV Investors of Rochester, L.P	97–0504	12/20/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Jupiter/Smith TV Investors of Salinas/Monterey, L.P., Jupiter/Smith TV Investors of Salinas/Monterey, L.P	97–0505	12/20/96
Barry Baker, Sinclair Broadcast Group, Inc., Sinclair Broadcast Group, Inc	97–0513	12/20/96
Boston Ventures Limited Partnership IV, Sinclair Broadcast Group, Inc., Sinclair Broadcast Group, Inc	97–0521	12/20/96
Boston Ventures Limited Partnership IVA, Sinclair Broadcasting Group, Inc., Sinclair Broadcasting Group, Inc	97–0522	12/20/96
WinStar Communications, Inc., WinStar Communications, Inc., Milliwave Limited Partnership	97–0553	12/20/96
Global DirectMail Corp., Paul G. Mandel, Alliance Peripheral Systems, Inc	97–0640	12/20/96
Ira Leon Rennert, Costain Group PLC, a British company, Costain Coal, Inc	97–0681	12/20/96
Connective Therapeutics, Inc., SmithKline Beecham plc, SmithKline Beecham Corporation, SmithKline Beecham	97–0688	12/20/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 120996 AND 122096—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
George L. Argyros, Specialty Foods Acquisition Corporation, WFB Holdings, Inc. and Specialty Foods Finance Corp	97–0700	12/20/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–1236 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3311]

Jeanette L. Douglass; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Douglass, an officer of Computer Business Services, Inc. (CBSI), from misrepresenting the earnings or success rate of CBSI investors, the existence of a market for CBSI's products or services, and the amount of time it would take investors to recoup their investments. The order also bars Douglass from making any representation about the performance, benefits, efficacy, or success rate of any product or service unless she possesses reliable evidence to substantiate the claims. The agreement settles allegations that potential earnings and profit claims made by CBSI were false and misleading.

DATES: Comments must be received on or before March 18, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, IL 60603. (312) 353–8156.

Catherine R. Fuller, Federal Trade Commission, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, IL 60603. (312) 353–5576.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 12, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Jeanette L. Douglass.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns earnings and success claims made regarding business ventures promoted by respondent. The Commission's complaint charges that respondent, in concert with Computer Business Services, Inc. ("CBSI"), made false and unsubstantiated claims that consumers who purchase or use CBSI's business ventures ordinarily succeed and earn substantial income. In fact, the complaint alleges, the vast majority of consumers never even recoup their initial investment. The complaint also alleges that respondent falsely represented that endorsements appearing in CBSI's advertisements reflect the actual experiences of its customers and that those endorsements reflect the typical or ordinary experience of purchasers of CBSI's business ventures. Further, the complaint alleges that respondent represented that consumers can successfully utilize automatic telephone dialing systems to market their businesses but failed to disclose that federal law prohibits the use of such systems in the unattended mode to initiate a call to any residential telephone line in certain circumstances.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order extends to all business ventures and to all products or services that are part of any business venture.

Part I of the proposed consent order prohibits the respondent from misrepresenting the earnings or success of its purchasers, the existence of a market for the products or services promoted by respondent, or the amount of time within which a prospective purchaser can reasonably expect to recoup his or her investment. Part II of the proposed order prohibits the respondent from misrepresenting the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless at the time such representation is made the respondent possesses and relies upon competent and reliable evidence that substantiates the representation. Part III of the proposed order prohibits the respondent from misrepresenting that a user testimonial or endorsement is typical or ordinary and from using, publishing or referring to any user testimonial or endorsement unless respondent has good reason to believe that at the time of such use, publication or reference, the person or

organization named subscribes to the facts and opinions stated therein. Part IV of the proposed order requires respondent to disclose, in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message.

The remaining parts of the proposed consent order require the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the Order, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–1238 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3689]

Fresenius AG, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the California-based subsidiary of Fresenius AG to divest its Lewisberry, Pennsylvania hemodialysis concentrate production facility to Di-Chem, Inc., of Maple Grove, Minnesota, or to another Commission-approved acquirer, if the Di-Chem deal falls through.

DATES: Complaint and Order issued October 15, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/S–3627, Washington, DC 20580, (202) 326–2949.

SUPPLEMENTARY INFORMATION: On Thursday, August 1, 1996, there was published in the **Federal Register**, 61 FR 40220, a proposed consent agreement with analysis In the Matter of Fresenius AG, et al. for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1232 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3687]

Koninklijke Ahold nv, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Georgia-based supermarket chain to divest a total of 30 supermarkets or supermarket properties, within 30 days, to Commission-approved acquirers. If the transactions are not completed as required, the Commission may appoint a trustee to divest the properties.

DATES: Complaint and Order issued September 30, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Marimichael Skubel, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Room S–2105, Washington, DC 20580, (202) 326–2611.

SUPPLEMENTARY INFORMATION: On Thursday, July 25, 1996, there was published in the **Federal Register**, 61 FR 38741, a proposed consent agreement with analysis In the Matter of Koninklijke Ahold nv, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1231 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3678]

The Loewen Group Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Kentucky-based company to divest a funeral home in Castlewood, Virginia, within nine months, to a Commission-approved acquirer. If the transaction is not completed as required, the Commission may appoint a trustee to divest the property.

DATES: Complaint and Order issued July 29, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Thomas Carter or Gary Kennedy, Dallas Regional Office, Federal Trade Commission, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–0907.

SUPPLEMENTARY INFORMATION: On Wednesday, May 22, 1996, there was published in the **Federal Register**, 61 FR 25672, a proposed consent agreement with analysis In the Matter of The Loewen Group Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1229 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3677]

The Loewen Group Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Kentucky-based company to divest one of its three funeral homes in Brownsville, Texas and either a large funeral home in San Benito, Texas, or two smaller funeral homes in Harlingen, Texas, within 12 months, to Commission-approved acquirers. If the transactions are not completed as required, the Commission may appoint a trustee to divest the properties.

DATES: Complaint and Order issued July 29, 1996.[1].

FOR FURTHER INFORMATION CONTACT: Thomas Carter, Dallas Regional Office, Federal Trade Commission, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–0907.

SUPPLEMENTARY INFORMATION: On Wednesday, May 22, 1996, there was published in the **Federal Register**, 61 FR 25677, a proposed consent agreement with analysis In the Matter of The Loewen Group Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1230 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3676]

The May Department Stores Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Missouri-based company to cease unwarranted collection activity on certain acquired credit card accounts, to correct the inaccurate or obsolete credit data it sent to credit reporting agencies concerning these accounts, and to take steps to ensure that the information maintained and reported with respect to the acquired accounts is accurate. In addition, the consent order prohibits the respondent from sending credit cards to consumers, except: in response to an oral or written request or application for the credit card; or as a renewal of, or substitute for, an accepted credit card.

DATES: Complaint and Order issued July 9, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Christopher W. Keller, FTC/S–4429, Washington, DC 20580. (202) 326–3159.

SUPPLEMENTARY INFORMATION: On Tuesday, April 30, 1996, there was published in the **Federal Register**, 61 FR 19064, a proposed consent agreement with analysis In the Matter of The May Department Stores Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*)

Donald S. Clark,

Secretary.

[FR Doc. 97–1234 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3688]

Syncronys Softcorp, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the California-based computer software manufacturer and three of its officers from making performance claims regarding their software programs or any substantially similar product unless the claims are true and substantiated. The consent order also prohibits the respondents from making any claims that a product intended to improve computer performance is licensed, endorsed, authorized, or certified by any person or organization, unless those claims are true.

DATES: Complaint and Order issued October 7, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Michael Bloom or Robin Eichen, Federal Trade Commission, New York Regional Office, 150 William St., Suite 1300, New York, N.Y. 10038. (212) 264–1201.

SUPPLEMENTARY INFORMATION: On Thursday, July 25, 1996, there was published in the **Federal Register**, 61 FR 38747, a proposed consent agreement with analysis in the Matter of Syncronys Softcorp, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 97–1233 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8 a.m.–5 p.m., February 4–5, 1997.

Place: Terrace Garden Hotel, Magnolia Room, Terrace Meeting Level Access, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Purpose: The Safety and Occupational Health Study Section will review, discuss and evaluate grant applications in response to NIOSH's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation of the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness.

Research funded will examine and evaluate current and emerging problems in occupational safety and health in a variety of settings for health and injured workers.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: January 13, 1997.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1208 Filed 1–16–97; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 60 FR 53379, October 13, 1995) is amended to reflect an organizational change in the Office of Testing and Research and the Office of Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), in the Food and Drug Administration (FDA).

CDER believes this organizational change will improve operations management and strengthen the existing research and testing structure to more effectively accomplish the Center's mission.

Under section HF–B, Organization:

1. Delete the subparagraphs under the **Chemistry Policy Staff (HFNS1)**, Office of Pharmaceutical Science and insert the following new subparagraphs under **Product Quality Support Staff (HFNS1)**, reading as follows:

Product Quality Support Staff (HFNS1). Manages and facilitates the development, review, coordination, dissemination, organization, and implementation of new chemistry manufacturing policies, procedures, and guidelines related to chemistry and microbiology reviews of new and generic drug applications.

Performs assessments of environmental impact of actions within the drug approval system which may significantly affect the quality of the human environment.

Performs quality assurance and quality control functions for chemistry reviews of both new and generic drug applications.

Provides support for the operations of quality expert working groups or committees focused on the chemistry manufacturing control technical aspects of the drug review process.

Provides necessary training for chemists, as appropriate.

Develops and implements policies and procedures in support of compendial operations and directs appropriate programs related to compendial initiatives.

2. Delete the subparagraphs under the **Formulation Research Staff (HFNS2)**, Office of Pharmaceutical Science (HFNS) in its entirety.

3. Delete the subparagraphs under the **Office Testing and Research (HFNSD)** in its entirety and insert new subparagraphs reading as follows:

Office of Testing and Research (HFNSD). Conducts research and develops scientific standards on the composition, quality, safety, and effectiveness of human drug products.

Directs the FDA insulin certification program.

Directs large scale drug quality surveillance activities for the Center as required by regulations.

Conducts and coordinates basic and applied research.

Provides scientific training for new employees through the development and coordination of Staff College programs.

Sponsors cooperative university-based and industry-linked education programs for postdoctoral traineeships and sabbatical programs. Initiates and coordinates the holding of scientific workshops.

In coordination with the Office of the Commissioner, educates the public on Center and Agency policy and activities.

4. Insert the following new subparagraphs under the **Regulatory Research and Analysis Staff (HFNSD–1)**, *Office of Testing and Research (HFNSD)* reading as follows:

Regulatory Research and Analysis Staff (HFNSD–1). Serves as the scientific and regulatory liaison to the FDA National Center for Toxicological Research, the National Institute of Environmental Health Sciences National Toxicology Program and other Federal agencies. Coordinates Center-sponsored and Center-related research and communicates scientific information to the Office of Review Management, the Pharmacology/Toxicology Coordinating Committee and the Center's review divisions.

Establishes and maintains a computerized toxicology knowledge database using data derived from Center files in areas such as carcinogenicity, reproductive toxicity, developmental toxicity and genotoxicity. Application of this resource includes regulatory review support, international harmonization,

and the development of Center regulatory policy and guidance.

Evaluates the potential application of computer-based toxicology predictive modeling systems for pharmaceuticals. Utilizes toxicology information in Center databases to enhance the predictive power of modeling systems for pharmaceuticals.

5. Insert the following new subparagraphs under the **Laboratory of Clinical Pharmacology (HFNSD–2)**, *Office of Testing and Research (HFNSD)* reading as follows:

Laboratory of Clinical Pharmacology (HFNSD–2). Serves as the Center's principal resource for laboratory research which is related to the discipline of clinical pharmacology.

Develops preclinical model systems which assist in expediting the initiation of early clinical trials.

Collaborates with the Office of Clinical Pharmacology and Biopharmaceutics and other Center components on appropriate research.

Collaborates in joint projects with other Government agencies.

6. **Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 27, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–1201 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Area Health Education Centers (AHEC) and Health Education Training Centers (HETC): Managed Care Inventory Project—New—Section 746(a) of the Public Health Service Act authorizes Federal assistance to schools of medicine (allopathic and osteopathic) which have cooperative arrangements with one or more public or nonprofit private area health education centers (AHECs) for the planning, development and operation of area health education center programs. Section 746(f) of the PHS Act authorizes Federal assistance to schools of allopathic and osteopathic medicine, or parent institutions on behalf of such schools, or a consortium of such schools to plan, develop, establish, maintain or operate HETCs. The support is designed to improve the supply, distribution, quality, and efficiency of (a) personnel providing health services in the State of Florida or along the border between the United States and Mexico and (b) personnel providing, in other urban and rural areas of the U.S., health services to any population group, including Hispanic individuals and recent refugees, that have demonstrated serious health care needs. Program support is also used to encourage health promotion and disease prevention through public education.

A telephone survey is proposed of federally funded AHEC and HETC programs to determine the variety and extent of managed care training activities that are ongoing or planned within the next two years. The survey results will be used to formulate recommendations for managed care training, and to help guide the AHEC/HETCs in planning and directing training programs and clinical experience in managed care. The burden estimates are as follows:

Type of center	No. of respondents	Responses per respondent	Hours per response	Total burden hours
AHECs	36	1	2 hrs	72 hrs.
HETCs	10	1	2 hrs	20 hrs.
Total	46	1	2 hrs	92 hrs.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 14, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–1260 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986 and as amended, governs the VICP. The VICP, administered by the Secretary of Health and Human Services (the Secretary), provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Court of Federal Claims. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and

the "average cost of a health insurance policy, as determined by the Secretary."

Section 100.2 of the VICP's implementing regulations (42 CFR part 100) provides that revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published from time to time in a notice in the **Federal Register**. The previously published amount of an average cost of a health insurance policy was $202.46 per month (60 FR 32533, June 22, 1995); this amount was based on data from a survey by the Health Insurance Association of America, updated by a formula using changes in the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City average) for the period July 1, 1993, through December 31, 1994.

The Secretary announces that for the 12-month period, January 1, 1995, through December 31, 1995, the medical care component of the CPI increased 3.9 percent. According to the regulatory formula (§ 100.2), 2 percent is added to the actual CPI change for each year. Therefore, the adjusted CPI change results in an increase of 5.9 percent for this 12-month period. Applied to the baseline amount of $202.46, this results in the amount of $214.41.

The medical care component of the CPI change for the 6-month period, January 1, 1996, through June 30, 1996, was 1.8 percent. According to the regulatory formula, one-half of the annual adjustment, or 1.00 percent, is added to the actual CPI change for this 6-month period. Therefore, according to the current regulatory formula, the adjusted CPI change results in an increase of 2.8 percent for this 6-month period. Applied to the $214.41 amount, this results in a new amount of $220.41.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $220.41 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims (formerly known as the United States Claims Court). Such notice was delivered to the Court on December 13, 1996.

Dated: January 10, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–1203 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Access to Community Care and Effective Services and Supports (ACCESS) evaluation study—Revision—The Center for Mental Health Services (CMHS) will seek OMB approval to continue an evaluation study that is assessing service systems integration (SI) approaches for homeless persons with serious mental illnesses. The evaluation study will collect data through interviews with homeless persons with serious mental illness and providers of services to homeless persons. SI sites will be contrasted with comparison sites to assess the impact of SI. The evaluation will describe approaches to SI, processes by which SI takes place, factors that influence SI, and the impact that SI has on homeless persons with serious mental illness. The estimated annualized burden is shown below.

	Number of respondents (5 Years)	Number of responses per respondent	Average burden per response	Total burden hours (5 Years)	Total annualized burden hours
Clients (homeless persons)	7,200	2.6	.98	18,702	3,742
Service providers	1,159	111.6	.11	13,587	2,717

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 12, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 97–1209 Filed 1–16–97; 8:45 am]

BILLING CODE 4162–20–P

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services—Revision—The Census is a

complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within the Center for Mental Health Services for assessing deinstitutionalization practices of State and county mental hospitals. The annual burden estimate is as follows:

	No. of respondents	No. of responses per respondent	Average burden per response	Total annual burden
State Statisticians and Superintendents of State Mental Hospitals	58	1	2 hrs	116 hrs.

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 14, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–1261 Filed 1–16–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–21]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street S.W, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 381.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Mr. Bob Swieconek, Army Corps of Engineers, Civilian Facilities Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000; (202) 761–1753; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–2059; Navy: Mr. John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Energy: Ms. Marsha Penhaker,

Department of Energy, Facilities Planning and Acquisition Branch, FM–30, Room 6H–058, Washington, DC 20585; (202) 586–1191; Interior: Ms. Lola D. Knight, Property Management Specialist, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: January 10, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 01/17/97

Suitable/Available Properties

Buildings (by State)

Colorado

Weather Service Forecast Ofc.
Limon Co: Lincoln, CO 80828–
Landholding Agency: GSA
Property Number: 549640019
Status: Excess
Comment: 2650 sq. ft., needs repair, most recent use—office, existing easements
GSA Number: 7–C–CO–640.

Mississippi

Old Greenville Depot
Greenville Co: Washington, MS 38701–
Landholding Agency: GSA
Property Number: 549640020
Status: Excess
Comment: 3365 sq. ft. bldg., 3.442 acres, most recent use—office, garage and mooring site for Coast Guard, periodic flooding, wetlands
GSA Number: 4–U–MS–551.

Virginia

Young Property
Rt. 2, Box 547
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640007
Status: Unutilized
Comment: 1113 sq. ft. residence, guest cottage, shop building, storage shed, off-site use only.

Walker Property
Rt. 2, Box 553
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640008
Status: Unutilized
Comment: 1200 sq. ft. residence, feed shed, workshop, haybarn, storage shed, spring house, off-site use only.

Nichols Property
Rt. 2, Box 554
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640009
Status: Unutilized
Comment: 1520 sq. ft. residence, off-site use only.

Golding Property
Rt. 2, Box 555
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640010
Status: Unutilized
Comment: 2224 sq. ft. residence, needs repair, barn rental cottage, shed, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 319640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access.

Pennsylvania

Govt. Dwelling
Younghiogheny River Lake
Confluence Co: Fayette, PA 15424–9103
Landholding Agency: COE
Property Number: 319640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/basement, most recent use—residental.

Unsuitable Properties

Buildings (by State)

California

Bldgs. 7010, 7013
Naval Air Weapons Station, Point Mugu Co: Ventura, CA 93042–5001
Landholding Agency: Navy
Property Number: 779640045
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 4
Iroquois Point Housing
Ewa Beach Co: Honolulu, HI 96706–
Landholding Agency: Navy
Property Number: 779640046
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 682
Naval Submarine Base
Pearl Harbor Co: Honolulu, HI 96860–6500
Landholding Agency: Navy
Property Number: 779640047
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 305
Argonne National Laboratory
Argonne CO: DuPage, IL 60439–
Landholding Agency: Energy
Property Number: 419640007
Status: Unutilized
Reason: Extensive deterioration.

New York

Bldgs. 501, 502
Scotia Storage Depot
Scotia, NY 12302–
Landholding Agency: GSA
Property Number: 549640021
Status: Excess
Reason: Extensive deterioration.
GSA Number: 1–G–NY–554E.

North Carolina

Swain Green House
Gashes Creek Rd.
Asheville Co: Buncombe NC 28803–
Landholding Agency: Interior
Property Number: 619640006
Status: Unutilized
Reason: Extensive deterioration.

Virginia

Matthews Property
Rt. 2
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640005
Status: Unutilized
Reason: Extensive deterioration.

[FR Doc. 97–1026 Filed 1–16–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary; Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held at 10 a.m. on January 30, 1997. The Department is holding this meeting to receive and discuss proposed work program topics on recreation and tourism.

DATES: The meeting will be held on January 30, 1997, at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Federal Building and Courthouse, 709 West 9th, Room 541A, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), and 41 CFR 101–6.1015(b).

The Alaska Land Managers Forum is a Federal Advisory Committee consisting of representatives of land management agencies of the Departments of Agriculture and the Interior and the State of Alaska, and Alaska Natives.

Dated: January 14, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–1387 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27(f)(3)), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
Northern Geophysical of America, Inc. Exploration.	.....	Oct. 31, 1996.
Western Atlas International, Inc.	Exploration ..	Oct. 31, 1996.
BP Exploration (Alaska) Inc.	Exploration ..	Nov. 7, 1996.
BP Exploration (Alaska) Inc.	Production ...	Dec. 10, 1996.
BP Exploration (Alaska) Inc.	Exploration ..	Dec. 11, 1996.
BP Exploration (Alaska) Inc.	Development	Dec. 20, 1996.
ARCO Alaska, Inc.	Exploration ..	Dec. 24, 1996.
Western Atlas International, Inc.	Exploration ..	Dec. 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities" (58 FR 60402; November 16, 1993); modified and extended (60 FR 42805; August 17, 1995).

Dated: January 3, 1997.

Robyn Thorson,

Deputy Regional Director.

[FR Doc. 97–1131 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NM–952–07–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 7, 1996.

New Mexico Principal Meridian, New Mexico

T. 27 N., R. 18 W., accepted August 16, 1996, and T. 28 N., R. 18 W., Accepted August 16, 1996, for Group 870 NM., and T. 22 N., R. 21 W., NM, Accepted September 25, 1996, for Group 871 NM, and a Protraction Diagram for T. 4 N., R. 3 W., accepted October 10, 1996.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 7, 1997.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 97–1155 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–FB–M

[ID–990–1020–01]

Upper Snake River Districts Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting location and time.

SUMMARY: In accordance with Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The meeting will involve a discussion on healthy rangeland standards and guidelines, and the Upper Columbia Basin EIS. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have a time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is January 29, 1997, starts at 1:00 p.m. at the Health & Welfare Regional Office, 601 Pole Line Road, Twin Falls, Idaho, Public comments from 1:00 p.m.–1:30 p.m.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: January 10, 1997.

Gary Bliss,

Acting District Manager.

[FR Doc. 97–1156 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–GG–M

[OR-050-1020-00: GP7-0067]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; February 27, 1997.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on February 27, 1997 from 8:00 am to 5:00 pm, at the Red Lion Inn, 304 SE Nye Ave, Pendleton, Oregon. Public comments will be received from 1:00 pm to 2:00 pm on February 27, 1997. Topics to be discussed include the Interior Columbia Basin Ecosystem Management Project, Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, and Council Work Plan for 1997.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754, or call 541–416–6700.

James L. Hancock,

District Manager.

[FR Doc. 97–1188 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–1430–01]

Emergency Restriction on Use of Trails on Public Land, Catron County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency Use Restriction.

SUMMARY: Notice is hereby given that the Las Cruces District is implementing an emergency use restriction on two vehicle trails leading into private property. Effective immediately, the use of motorized vehicles on the following described vehicle trails is restricted to the period from August 15 through November 30 of each year. Motorized vehicles are prohibited from using the trails each year during the period from December 1 through August 14.

The use restriction is implemented to prevent damage to the adjacent and nearby private property. The need for the emergency restriction was based on recurring incidents of property damage and vandalism to improvements on the private property accessed by the vehicle trails. The authority for this emergency restriction is 43 CFR 8364.1: Closure and Restriction Orders. The first vehicle trail begins on the north boundary of U.S. Highway 60, within the public land in section 22 and ends on the south boundary of section 15, all in T. 1 N., R. 17 W., NMPM. The second vehicle trail begins on the north boundary of U.S. Highway 60, within public land in the NW¼ of section 22 and ends on the boundary between sections 16 and 21, all in T. 1 N., R. 17 W., NMPM.

The use restriction is not intended to affect valid existing rights or other public land uses on the subject land or rights-of-way of any private landowners. This order is not intended to affect uses or restrictions on New Mexico State-owned land. Persons that are exempt from this restriction are Mr. Robert Wellborn, and any Federal, State or local officer, or member of any organized rescue or firefighting force in the performance of an official duty, or any person authorized or permitted in writing by the BLM. BLM personnel conducting official duties, cooperating agency personnel, and contractors authorized by the BLM are included in the exemption from this order.

DATES: This order is effective immediately and shall remain in effect until rescinded or modified by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Ron Dunton, Socorro Resource Area Manager, or Jon Hertz, Chief, Multi-Resources, 198 Neel Avenue, NW., Socorro New Mexico 87801 or at (505) 835–0412.

SUPPLEMENTARY INFORMATION: Violations of this order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year.

This use restriction will be evaluated in an environmental assessment to be completed by the Socorro Resource Area in the near future. Copies of the restriction order and maps showing the location of the trails are available from the Socorro Resource Area Office, 198 Neel Avenue, NW., Socorro, New Mexico 87801.

Dated: January 10, 1997.

Richard T. Watts,

Acting District Manager.

[FR Doc. 97–1207 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–VC–P

[NM–930–1310–01; NMNM 83040]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 83040 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1996, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S,C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: January 10, 1997.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 97–1189 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Revision of The National List of Plant Species That Occur in Wetlands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service seeks public input and comment on a revised National List of Plant Species That Occur in Wetlands (Reed 1988) (hereafter, "National list"). The revised National list conforms to Kartesz (1994). A wetland indicator was assigned to each species that expresses the fidelity to wetlands by region and sub-region. The National list was originally developed as an appendix to Cowardin et al.(1979). The National list has also been used to determine the presence of hydrophytic vegetation in the Clean Water Act Section 404 wetland regulatory program and in implementing the swampbuster provisions of the Food Security Act.

DATES: Comments on the revised National list must be received by April 15, 1997.

ADDRESSES: Copies of the revised National list including its regional subdivisions are available on February 15, 1997, from the Fish and Wildlife Service, National Wetlands Inventory, Suite 101, Monroe Building, 9720 Executive Center Drive, St. Petersburg, FL 33702–2440. Electronic copies of the

above lists are available for downloading from the World Wide Web at http://www.nwi.fws.gov/ecology.htm. Written comments may be submitted to the Fish and Wildlife Service, National Wetlands Inventory, Suite 101, Monroe Building , 9720 Executive Center Drive, St. Petersburg, FL 33702–2440, faxed to (813) 570–5409, or electronically transmitted to: ecology@wetlands.nwi.fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Porter B. Reed, Jr., Fish and Wildlife Service, at (813) 570–5425, Dr. Russell Theriot, U.S. Army Corps of Engineers, at (601) 634–2733, Mr. William Sipple, Environmental Protection Agency, at (202) 260–6066, or Dr.Norman Melvin, Natural Resources Conservation Service, at (301) 497–5933.

SUPPLEMENTARY INFORMATION: The 1996 National list is a revision of Reed (1988). The revised National list is provided to encourage additional public review and comments on the draft regional wetland indicator assignments. The National list was produced under the guidance of National and Regional Interagency Review Panels composed of representatives of the Fish and Wildlife Service, U.S. Army Corps of Engineers, Environmental Protection Agency, and the Natural Resources Conservation Service. The National Panel provides guidance and direction for the development and maintenance of the National list. The wetland ecologist of the National Wetlands Inventory, Fish and Wildlife Service, coordinates the activities of the National Panel.

The National Panel meets as necessary to review Regional Interagency Review Panel progress and to set future direction and goals. The Regional Panels solicit and obtain information from their agency personnel, regional reviewers, and from published literature. This information is used by the Regional Panels to assign regional wetland indicators. The Regional Panels are coordinated by a Fish and Wildlife Service representative, usually the Regional Wetland Inventory Coordinator. The Regional Panels also meet as necessary to consider and assess all new submissions recommending changes to the National list that relate to their respective regions.

In 1996, the cooperating agencies responsible for the development and continued enhancement of the National list signed an "Agreement for Coordination in the Refinement of the National list of Vascular Plant Species That Occur in Wetlands." The National list is a combination of the Regional lists into a single list and will be released as a Fish and Wildlife Service publication available to the other agencies and the public. The production of new National lists will occur every 5 years. If changes to the Regional lists become necessary outside the 5-year cycle, those changes will be made in compliance with these procedures.

The National list will remain dynamic and the submission of well documented review comments based on field experience is encouraged. All scientific plant names included in a submission must be contained in the 1994 Synonymized Checklist or the Natural Resource Conservation Agency's PLANTS database http// trident.ftc.nrcs.usda.gov/npdc/. Complete documentation, including a description and explanation of the variety of field sites and/or data supporting the recommended wetland indicator, is necessary for the Regional Interagency Review Panels to adequately understand and consider a submission. To assist in documentation and to facilitate the review, a submission should contain a strong rationale supporting the proposed recommendation including the extent of the area that the field experience and data provided are based. Information presented in the submission from botanical and ecological texts and periodicals should be supplied with the citation of the source. The rationale should clearly discuss, as part of the field information, the percentage of occurrence of the taxon in both wetland and non-wetland areas. A complete submission ideally should present, for each field site referenced in the submission, community information including the scientific names, quantitative measurements of vegetation (e.g. density, frequency, cover, or importance data), soils data including classification and morphology (especially the presence of field indicators (USDA 1996), hydrologic data (especially any intensive water table and redox potential monitoring), and landscape position. A review form is provided with the 1996 National list on the Ecology Section World Wide Web site to facilitate review submission. Completed review forms can be delivered by the World Wide Web to ecology@wetlands.nwi.fws.gov.

Literature Cited

Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish & Wildlife Service. FWS/OBS–79/31. 103pp.

Kartesz, John T. 1994. A Synonymized Checklist of the Vascular Flora of the United States, Canada, and Greenland. Volume I—Checklist & Volume II—Thesaurus. Timber Press, Portland, OR. Vol. I: 622 pp. Vol. II: 816 pp.

Reed, Jr., Porter B. 1988. National List of Plant Species That Occur in Wetlands: National Summary. U.S. Fish & Wildlife Service. Biol. Rep. 88 (24). 244 pp.

U.S. Department of Agriculture, Natural Resources Conservation Service. 1996. Field Indicators of Hydric Soils in the United States. G.W. Hurt, Whited, P.M., and Pringle, R.F. (eds.). USDA, NRCS, Fort. Worth, TX.

Dated: January 6, 1997

John G. Rodgers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–1255 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[OR–957–00–1420–00: G7–0013]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

WILLAMETTE MERIDIAN

Oregon

T. 40 S., R. 2 E., accepted November 19, 1996
T. 2 N., R. 6 E., accepted October 18, 1996
T. 39 S., R. 13 E., accepted November 29, 1996
T. 28 S., R. 14 E., accepted August 29, 1996
T. 16 S., R. 36 E., accepted October 28, 1996
T. 22 S., R. 3 W., accepted October 28, 1996
T. 5 S., R. 6 W., accepted August 28, 1996

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management,

Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision, For Further Information Contact: Bureau of Land Management, (1515 S.W. 5th Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: January 6, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–1132 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–33–M

[NM–010–1430–01; NMNM 97074]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,434.56 acres of Federal lands and 1,076.97 acres of non-Federal lands in Taos and Rio Arriba Counties to protect the recreational and scenic values of the Rio Grande Corridor, NM. This notice closes the land for up to 2 years from surface entry and mining.

DATES: Comments and requests for a public meeting must be received by April 17, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road N.E., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, BLM, Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On January 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Federal Lands

T. 23 N., R. 9 E.,
- Sec. 22, SE¼SE¼;
- Sec. 23, lots 1 to 4, inclusive;
- Sec. 24, SW¼NW¼ and N½SW¼ except 2.84 acres in tract A;
- Sec. 26, NW¼NW¼;
- Sec. 27, NE¼, SE¼NW¼, SW¼, and W½SE¼;
- Sec. 34, N½NW¼, SW¼NW¼, and N½SW¼.

T. 23 N., R. 10 E.,
- Sec. 15, lots 6 to 9, inclusive;
- Sec. 16, lot 3, and SW¼SW¼;
- Sec. 19, lots 14, 20 to 22, inclusive, lots 36 and 37;
- Sec. 20, lots 13 to 16, inclusive;
- Sec. 21, lots 1 and 2, and 6 to 8, inclusive.

T. 24 N., R. 11 E.,
- Sec. 32, lot 3.

T. 25 N., R. 11 E.,
- Sec. 35, lot 1, N½NE¼, SW¼NE¼, NW¼SE¼;
- Sec. 36, lot 1.

T. 27 N., R. 11 E.,
- Sec. 36, lots 5 to 7, inclusive, and a parcel of land lying along the west boundary and within the Antoine Leroux Land Grant.

T. 27 N., R. 12 E.,
- Sec. 30, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
- Sec. 31, lots 1 to 4, inclusive, N½NW¼, and 130 acres of the Antoine Leroux Land Grant meandering the east boundary of the Rio Grande.

T. 28 N., R. 12 E.,
- Sec. 10: N½NW¼ except patent # 39879.

The areas described aggregate 2,434.56 acres in Taos and Rio Arriba Counties.

Non-Federal Lands

T. 23 N., R. 9 E.,
- Sec. 23, tract A, NE¼SW¼, and SE¼;
- Sec. 24, lot 1, tract A, patent #178, patent #179, N½NE¼, SW¼NE¼, SE¼NW¼, SW¼SW¼, and NW¼SE¼.

T. 23 N., R. 10 E.,
- Sec. 16, lots 1 to 2, inclusive, small holding claim (SHC) 966 tr. 2, SHC 2143, and SHC 1536.
- Sec. 19, lots 3 to 4, inclusive and lots 13, 29, and 30, SHC 3266, SHC 388, SHC 969, SHC 561 tr. 3, SHC 559 tr. 1, SHC 556 tr. 2, SHC 560 tr. 2 and 4, SHC 792 tr. 1 and 2, SHC 792 (2), SHC 966, SHC 380 tr. 3, SHC 386, SHC 389, SHC 382 tr. 1, and SHC 494 tr. 2.
- Sec. 20, lots 1, 3, 4, SHC 560 tr. 4, SHC 968 tr. 2, SHC 556 tr. 3, SHC 1121 Borrego, Archuleta, Roybal, SHC 561 tr. 4, SHC 798 Romero, Bolton, SHC 801 tr. 1, 2, & 3, SHC 1000, SHC 1120, SHC 4472 tr. 2, and SHC 1111 tr. 3.
- Sec. 21, SHC 1111 tr. 3, SHC 1120, SHC 966 tr. 1, SHC 349, SHC 355, SHC 402, SHC 403, SHC 488, SHC 487 tr. 1 & 2, SHC 490 Romero, Roybal, SHC 487 Romero, Ortega, SHC 966 tr. 2, SHC 2143, and SHC 1536.

The areas described aggregate 1,076.972 acres in Rio Arriba County.

The purpose of the proposed withdrawal is to protect the recreational and scenic values of the Rio Grande Corridor, NM.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meetings.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: January 7, 1997.

Michael R. Ford,

District Manager.

[FR Doc. 97–1187 Filed 1–16–97; 9:06 am]

BILLING CODE 4310–FB–P

[NM–038–1100–00; NMNM95104]

Notice of Public Meeting: Proposed Withdrawal; Devil's Backbone Bighorn Sheep Habitat Area, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with 43 CFR 2310.3–1, notice is hereby given that a public meeting will be held to provide the public an opportunity to obtain information and to identify issues related to the BLM's proposed withdrawal of 5,607.52 acres of public land in Socorro County, New Mexico to protect State endangered desert bighorn

sheep habitat in the Devil's Backbone Bighorn Sheep Habitat Area.

DATES: The public meeting will be held on February 24, 1997 at 2 p.m. in the Socorro Resource Area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801.

ADDRESSES: Additional information regarding the scheduled public meeting may be obtained at the Socorro Resource Area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: On November 22, 1996, a petition was approved allowing the BLM to file an application to withdraw the subject public land from settlement, sale, location and entry under the general land laws, including the mining laws, subject to valid existing rights.

Dated: January 10, 1997.

Richard T. Watts,

Acting District Manager.

[FR Doc. 97–1206 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–VC–P

National Park Service

Concession Contract Negotiations; Gateway National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing marina and food service facilities and services for the public at Gateway National Recreation Area for a period of approximately fifteen (15) years from date of contract execution.

EFFECTIVE DATE: March 18, 1997.

ADDRESSES: Interested parties should contact the Superintendent, Jamaica Bay/Breezy Point Unit, Gateway National Recreation Area, Floyd Bennett Field, Brooklyn, NY 11234. Telephone (718) 318–4300, to obtain a copy of the prospectus describing the requirements of the proposed contract. The cost for each prospectus will be $100.00.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner does not have a right of preference in the renewal of its contract. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the Superintendent, New England System Support Office, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: December 23, 1996.

Sandra S. Corbett,

Acting Field Director, Northeast Field Area.

[FR Doc. 97–1197 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of Commission members and guests.
(2) Superintendent's welcome.
(3) Review Commission's role and purpose.
(4) Status of Commission membership.
(5) Election of Officers:
  a. Chair.
  b. Vice Chair.
(6) Old business:
  a. Review and approve minutes from last meeting (November 5–6, 1992).
  b. Status of 1992 *Draft* Hunting Plan Recommendations:
  1. Recommendation 92–1 (NPS should continue to allow trapping within Aniakchak National Monument and use of traditional place names.)
  2. Recommendation 92–2 (NPS should continue to allow subsistence hunting within Aniakchak National Monument.)
  3. Recommendation 92–3 (Commission supports development of a list of qualified subsistence users for the Monument.)
  4. Recommendation 92–4 (Revise existing customary and traditional determinations for brown bear, caribou, hares, moose and ptarmigan within Unit 9(E) to allow residents of Chignik, Chignik Lake, Chignik Lagoon, Meshik, Port Heiden, Ivanof Bay and Perryville to take wildlife within Aniakchak National Monument.)
  5. Recommendation 92–6 (Commission supports NPS moose studies in Unit 9(E).)
(7) New business:
  a. National Park Service report on Subsistence Issues Paper.
  b. Federal Subsistence Program Update.
(8) Public and other agency comments.
(9) Subsistence Hunting Plan Work Session:
  a. Finalize recommendations.
  b. Draft new recommendations.
(10) Set time and place of next SRC meeting.
(11) Adjournment.

DATES: The meeting will begin at 9 a.m. on Tuesday, February 4, and conclude around 6 p.m. The meeting will reconvene at 9 a.m. on Wednesday, February 5, and conclude at 12 noon.

LOCATION: The meeting will be held at the Chignik Lake School in Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, or Susan Savage, Subsistence Manager, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Ralph Tingey,

Acting Field Director.

[FR Doc. 97–1198 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for a technical training program course effectiveness evaluation.

DATES: Comments on the proposed information collection must be received

by March 18, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for approval.

OSM will request a 3-year term of approval for the information collection activity.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the equality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Small Operator Assistance.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: On Occasion.

Description of Respondents: Small operators and State regulatory authorities.

Total Annual Responses: 300.

Total Annual Burden Hours: 12,140 hours.

Dated: January 13, 1997.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 97–1108 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1831–97]

Important Announcement for Class Members of American Baptist Churches v. Thornburgh (ABC) Regarding Changes of Address and Temporary Closure of the ABC Post Office Box

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice Regarding Changes of Address and Temporary Closure of ABC Post Office Box.

SUMMARY: This Notice informs *ABC* class members who previously submitted a Change of Address Form (I–855) to the *ABC* Post Office Box in Washington, DC, between the period July 1, 1996, through December 6, 1996, that they will need to resubmit these forms to the address listed in this notice. This action is necessary since the *ABC* Post Office Box was temporarily closed, and mail received between the period August 14, 1996, through December 6, 1996, was either returned to the sender by the Post Office or was never properly received by the Immigration and Naturalization Service ("the Service"). This notice also reminds *ABC* class members of the need to notify the Service of any change in address and explains how to obtain change of address forms and other information about *ABC*.

EFFECTIVE DATE: January 18, 1997.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, Asylum Officer, Asylum Division, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC, 20536, Attn: ULLICO, Third Floor; Telephone number (202) 305–2741.

SUPPLEMENTARY INFORMATION: Any *ABC* class member who previously sent a Change of Address Form (Form I–855) to the *ABC* Post Office Box between July 1, 1996, through December 6, 1996, must resubmit that change of address form immediately to the following address: *ABC* Project, Immigration and Naturalization Service, P.O. Box 96821, Washington, DC 20090.

The *ABC* Post Office Box was mistakenly closed, and mail received at the *ABC* Post Office Box between August 14, 1996, and December 6, 1996, was returned to sender or otherwise not properly received by the Immigration and Naturalization Service. The Service regrets any inconvenience this error has caused class members.

All *ABC* class members are reminded that they must notify the Service at the *ABC* Post Office Box within 10 days of any change of address. An *ABC* class member may lose the right to an *ABC* asylum interview and may have his or her asylum request denied if he or she fails to appear for an interview because the Service did not receive written notification of the address change. The Service encourages any class member who is unsure whether the Service has the most recent address to resend his or her address to the *ABC* Post Office Box listed in this notice.

Other than by request, the Service will begin *ABC* interviews no sooner than April 7, 1997, and interview notices will not be issued until 60 days from the date of this notice. Any *ABC* class member may request an expedited *ABC* interview by sending a written request to the Asylum Office that has jurisdiction over the applicant's place of residence.

An *ABC* class member may call 1–800–755–0777 to obtain information and to order *ABC* change of address forms and a list of legal service organizations provided by attorneys representing the *ABC* class. The legal service organizations on the list may be able to help class members who have questions or need advice.

Note: The attached *ABC* Change of Address Form, Form I–855, will not appear in the Code of Federal Regulations.

Dated: January 7, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

U.S. DEPARTMENT OF JUSTICE—IMMIGRATION AND NATURALIZATION SERVICE

[ABC Change of Address Form]

AVISO 18

AMERICAN BAPTIST CHURCHES

FORMULARIO PARA CAMBIO DE DIRECCIÓN

(Inglés y Español)

Yo he solicitado la Protección Provisional "TPS" o las disposiciones de *American Baptist Churches*, y mi dirección actual es distinta de la que puse en la solicitud.

Nombre y apellido _____

_____

Número de Archivo A–_____

Mi dirección ACTUAL de domicilio es:

_____

_____

Mi país de nacimiento es: _____

Fecha de nacimiento: _____

La última dirección que informé a INS es:

_____

_____

Firma _____

Fecha _____

COMPLETE ESTE FORMULARIO Y ENVÍELO A:

ABC Project
Immigration and Naturalization Service
P.O. Box 96821
Washington, DC 20090

No envíe otras cosas a esta dirección. INS no las aceptará.

GUARDE COPIA DE ESTE FORMULARIO.

RECUERDE: SI SE CAMBIE DE DIRECCIÓN DE NUEVO, *DEBE DE INFORMAR AL SERVICIO DE INMIGRACIÓN ("INS")*, EN LA DIRECCIÓN SEÑALADA. PUEDE USAR ESTE FORMULARIO. SI NO INFORMA AL INS SU CAMBIO DE DIRECCIÓN, PODRÍA PERDER SU DERECHO DE UNA NUEVA ENTREVISTA Y DECISIÓN DE ASILO.

En cuanto tenga una solicitud de asilo pendiente con INS, se le recomienda enviar copia de este formulario de *ABC* de cambio de dirección a su oficina local de asilo. Form I–855 (06–29–95)

NOTICE 18

AMERICAN BAPTIST CHURCHES

CHANGE OF ADDRESS FORM

(English and Spanish)

I have applied for TPS or for benefits under *American Baptist Churches* and have a different address from the address on my registration application.

Name _____

_____

A-Number A–_____

My NEW address is:

_____

_____

My country of birth is: _____

Date of birth: _____

The last address I reported to INS is:

_____

_____

Signature _____

Date _____

FILL OUT THIS FORM AND SEND IT TO:

ABC Project
Immigration and Naturalization Service
P.O. Box 96821
Washington, DC 20090

Do not send anything else to this address. INS will not accept it.

KEEP A COPY OF THIS FORM.

REMINDER: IF YOUR ADDRESS CHANGES AGAIN *YOU MUST INFORM INS* AT THE ABOVE ADDRESS. YOU MAY USE AN *ABC* CHANGE OF ADDRESS FORM. YOU CAN LOSE YOUR RIGHT TO A NEW ASYLUM INTERVIEW AND DECISION IF YOU DO NOT INFORM INS OF YOUR CHANGE OF ADDRESS.

Once you have filed an asylum application with the INS, you are encouraged to also send a copy of this *ABC* Change of Address form to your local Asylum Office.

[FR Doc. 97–833 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1800–96]

Request For Volunteers To Participate In a Foreign Student/Exchange Visitor Program Pilot

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS), consistent with its statutory authority to regulate foreign students and exchange visitors under sections 101(a)(15)(F), (J) and (M) of the Immigration and Nationality Act as amended (the Act), and in consultation with the United States Information Agency (USIA), the Department of State (DOS), and the Department of Education (DoE), is initiating a pilot program (hereinafter referred to as "the pilot") for the 1997/1998 academic year, commencing with the 1997 fall semester, to redesign and improve the collection and reporting of information regarding foreign students and exchange visitors as required under Subtitle D, section 641, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). The INS and USIA are seeking out schools and exchange visitor programs located in Alabama, Georgia, North Carolina, and South Carolina willing to volunteer as participants in the operation of the pilot. The states of Georgia, Alabama, South Carolina, and North Carolina have been identified based on their location within the eastern time zone; their being subject to uniform jurisdiction under the Atlanta District Office, which also has immigration jurisdiction for the Port-of-Entry at Hartsfield International airport; and Atlanta's accessibility to INS headquarters project managers and contractors via daily direct non-stop air flights to and from the Washington, DC., area. The types of schools and exchange visitor programs solicited include universities, colleges, vocational training schools, flight schools, and post secondary English as Second Language schools. Since the INS is limiting pilot participation to approximately 20 schools and/or exchange visitor programs, it is possible that not all eligible applicants will be selected. The INS will conduct an on-site visit prior to selecting pilot participants.

DATES: Requests to participate in the pilot must be submitted in writing on or before February 26, 1997. The limited period for submission of requests to participate in the pilot is necessitated by the statutory requirement that INS establish a national foreign student and exchange visitor information collection program by January 1, 1998. The INS will notify all schools, institutions, and exchange visitor programs of the status of their request on or before March 31, 1997.

ADDRESSES: Please submit written requests in triplicate to: Brian Collins, Foreign Students and Schools Pilot Program; INS Support, 13600 EDS Drive, M/S A5S–A52; Herndon, Virginia 20171. To ensure proper handling, please reference INS No. 1800–96 on your correspondence.

FOR FURTHER INFORMATION CONTACT: For information regarding nonimmigrant "F" or "M" portions of the pilot contact: Maurice Berez, Adjudications Officer, Adjudications and Nationality Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014. For information regarding the nonimmigrant "J" Exchange Visitor program portion of the pilot, contact: Diane Culkin, Program Designation Officer, or Tamara Martin, Program Designation Officer, Exchange Visitor Program Services, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 401–9810.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

In June 1995, the INS established a task force to conduct a comprehensive review and analysis of the current process for the collection of information regarding foreign students and exchange visitors in the United States. As a result of the review, the task force proposed substantial changes for the collection of information on foreign students and exchange visitors. These changes were subsequently adopted by Congress. See Subtitle D, section 641, of Pub. L. 104–208. Section 641 requires the INS to collect information on an ongoing basis from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable. Accordingly, the pilot will test automated data systems and telecommunication technology through: (1) The issuance of machine-readable cards to foreign students and exchange visitors at the participating pilot schools and exchange visitor programs, and (2) computer-based reporting from schools to the INS on matters relating to the immigration status of foreign students and exchange visitors.

Prior to August 30, 1997, the INS will amend existing regulations to cover the use of any forms and processes tested under the pilot and found suitable for use on a nationwide basis. Prior to promulgation of such regulations, participants in the pilot shall comply with all existing regulations governing their respective activities.

Primary Pilot Objectives

The primary objectives of the pilot are:

- To improve service by reducing paperwork and expediting processing required for students and exchange visitors for the duration of their nonimmigrant status in the United States;
- To collect accurate, timely, and reliable information for use by Federal agencies charged with monitoring foreign students and exchange visitors;
- To improve communication and cooperation between the Federal Government, educational institutions, and exchange visitor programs;
- To calculate and determine the fees provided for under section 641(e) of Pub. L. 104–208. The INS will not impose such fees during the pilot;
- To work in concert with educational institutions and exchange visitor programs to improve the effectiveness of current foreign student and exchange visitor programs by testing the following:

—Prototype Forms I–20 and IAP–66 which incorporate bar-code technology;
—Prototype machine-readable student/exchange visitor cards to be used in place of Forms I–20 and IAP–66; and
—Electronic reporting to the INS from pilot participants via the Internet and other electronic media.

Application Requirements and Criteria

Applicants must meet the eligibility requirements set forth in section I below. In addition, applicants must provide the information requested in Section II below.

I. Eligibility Requirements

To participate in the pilot, educational institutions and exchange visitor programs must:

A. Be physically located in at least one of the following states: Georgia, Alabama, South Carolina, and North Carolina;

B. Have continuously participated in a Federally approved foreign student or exchange visitor program for the previous 5 years;

C. Have complied with the requirements set forth in 8 CFR 314.3 and 22 CFR part 514.

II. Information Requirements

Educational institutions or exchange visitor programs desiring to participate in the pilot must provide, in writing, the following information:

A. A letter of request to participate in the pilot signed by an official who has the authority to enter into a participation agreement with the INS on behalf of the school, institution, or exchange visitor program;

B. The school, institution, or exchange visitor program's legal name; its INS approval code and/or Exchange Visitor Program number; the original date of approval by INS or designation by USIA and, if applicable, the date of re-approval or re-designation;

C. The mailing address of the school, institution, or exchange visitor program (if a P.O. Box, specify a street address location, telephone number, and facsimile number);

D. Total size of student body at the school, institution, or exchange visitor program;

E. A current job description of the primary and alternate official(s) responsible for foreign students and/or exchange visitors, together with the business telephone/facsimile numbers and Internet (e-mail) address for such official(s). These officials must be employed on a full-time basis in their position;

F. The total number of: (1) F–1 and M–1 foreign students and J–1 exchange visitors at the institution for each of the previous 3 years; (2) individuals within each separate foreign student or exchange visitor category for such period, (3) dependents of such individuals in each separate category (F–2, M–2, and J–2) for such period;

G. A description of: (1) The foreign student/exchange visitor record-keeping system currently in use; (2) the registration record-keeping system currently in use for the general student body, and (3) the communication links between such systems. The description should cover, among other things, hardware, software, operating systems and network architecture;

H. If applicable, a description of Electronic Data Interchange (EDI) use at the school, institution, or program; and

I. A sequential outline of the current procedures used by the school, institution, or exchange visitor program for administering foreign students and exchange visitors. This outline should cover the process from the point of receiving the foreign student's or exchange visitor's initial application for admission through registration, orientation, and completion or termination of program.

Notification to Applicants

The INS, in consultation with the USIA, will prepare a Memorandum of Understanding ("MOU"), to be signed by the INS and selected prospective participants, setting forth the terms and conditions of participation in the pilot.

Participation in the pilot is contingent on the INS conducting an on-site visit and the signing of the MOU.

Duration of Pilot

Although the INS anticipates that the duration of the pilot will be one academic year, it may extend the pilot for one or more academic terms, as deemed necessary to comply with the statute. The INS, if it deems appropriate, may terminate the pilot at any time. The INS may also, in its discretion, terminate participation in the pilot of an individual school, institution, or exchange visitor program at any time.

OMB Reporting Burden

The public reporting burden to prepare the requested application to participate in the pilot is estimated to be 60 hours, including time for reviewing instructions, identifying and describing existing data systems and computer capabilities, and completing and reviewing the collection of information required to apply. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Immigration and Naturalization Service, 425 I Street, NW., HQPDI, Room 5307, Washington, DC 20536. These requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, and are recorded as OMB Control Number 1115–0204, with an expiration date of June 30, 1997.

Dated: January 8, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–1205 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1826–96]

Citizens Advisory Panel Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), in accordance with the Federal Advisory Committee Act [5 U.S.C. App. 2] and 41 CFR 101–6.1001–101–6.1035 (1992), has established a Citizens' Advisory Panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces the CAP's forthcoming meeting and the agenda for the meeting.

DATES: February 3–4, 1997, at 8:30 a.m.

ADDRESSES: The Chester Arthur Building, 425 I Street, NW., Sixth Floor Conference Room, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Susan B. Wilt, CAP Designated Federal Official (DFO), Immigration and Naturalization Service, Room 3260, Chester Arthur Building, 425 I Street NW., Washington, DC 20536, Telephone (202) 616–7072.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102–331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994, at 59 FR 6658)

Summary of Agenda: The principal purpose of the meeting is to finalize the report providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service.

Public Participation: The CAP meeting is open to the interested public but limited to the space available. Public comments will be heard on February 3, 1997, and should focus on the information in the recommendation paper. A draft copy of the recommendation paper may be obtained by contracting Susan B. Wilt at (202) 616–7072. Persons wishing to make an oral presentation should notify the DFO at least 2 business days prior to the meeting.

Hearing-challenged individuals wishing to attend should contact the DFO by January 24, 1997, so services can be arranged.

Members of the public may file written statements with the CAP DFO before the meeting. Materials submitted at the meeting should be submitted in 25 copies. Minutes of the meeting will be available on request from the CAP DFO.

Dated: January 9, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–1181 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–10–M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed collection; Comment Request

ACTION: Notice of Information Collection Under Review; Three Month Individual Youth Program Tracking Form, Evaluation of the "Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program"

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until February 18, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1590. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of

information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information collection

(1) Type of information collection: New collection.

(2) The title of the form/collection: Three Month Individual Youth Program Tracking Form, Evaluation of the "Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program"

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Not-for-Profit Institutions. Other: State, Local, or Tribal Government. The study will obtain interview and test information on youth background, social adjustment, deviancy/crime activity, self-esteem, and depression/personality adjustment. The information obtained will be used to determine what the nature of contacts made and services provided to program youth are, how workers evaluate these contacts and services, and what the characteristics of workers are. It will determine the effectiveness of the program, comparing program subjects to non-program gang youth of the same ages, approximately 13 to 20 years old, and their backgrounds.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5.104 hours per response unit times 400.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,041.1 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: January 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–1134 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates and publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA960001 (March 15, 1996)
MA960017 (March 15, 1996)
MA960018 (March 15, 1996)
MA960019 (March 15, 1996)

Volume II

Pennsylvania
PA960001 (March 15, 1996)
PA060004 (March 15, 1996)
Virginia
VA960002 (March 15, 1996)
VA960007 (March 15, 1996)
VA960040 (March 15, 1996)
West Virginia
WV960002 (March 15, 1996)
WV960003 (March 15, 1996)

Volume III

NONE

Volume IV

Indiana
IN960001 (May 17, 1996)
IN960003 (March 15, 1996)

IN960060 (August 2, 1996)
Michigan
MI960002 (March 15, 1996)
MI960005 (March 15, 1996)
MI960012 (March 15, 1996)
MI960047 (April 19, 1996)
MI960062 (March 15, 1996)

Volume V

Iowa
IA960002 (March 15, 1996)
IA960003 (March 15, 1996)
IA960004 (March 15, 1996)
IA960010 (March 15, 1996)
IA960031 (March 15, 1996)
Nebraska
NE960003 (March 15, 1997)
NE960009 (March 15, 1996)
NE960011 (March 15, 1996)

Volume VI

California
CA960033 (March 15, 1996)
CA960035 (March 15, 1996)
CA960036 (March 15, 1996)
CA960037 (March 15, 1996)
CA960038 (March 15, 1996)
CA960039 (March 15, 1996)
CA960040 (March 15, 1996)
CA960042 (March 15, 1996)
CA960043 (March 15, 1996)
CA960044 (March 15, 1996)
CA960045 (March 15, 1996)
CA960046 (March 15, 1996)
CA960047 (March 15, 1996)
CA960048 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960005 (March 15, 1996)
Oregon
OR960001 (March 15, 1996)
OR960004 (March 15, 1996)
OR960017 (March 15, 1996)
Washington
WA960008 (March 15, 1996)
WA960023 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 10th day of January 1997.

John Frank,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–992 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary; Submission for OMB Emergency Review; Comment Request

January 14, 1997.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OBM) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by January 22, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 166).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

Agency: U.S. Department of Labor, ETA.

Title: Statutory Waiver Requests.

OMB Number: 1205–Onew.

Frequency: On occasion.

Affected Public: States and Local Service Delivery Areas.

Number of Respondents: 56.

Estimated Time Per Respondent: 80 hours.

Total Burden Hours: 4,480.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $5,000.

Description: This request is related to the passage of Pub. L. 104–208 which permits States to submit statutory waiver proposals to the Department of Labor in order to overcome barriers to implementing improvements to their workforce development system (see below).

Who: Governors may request statutory waivers from the Secretary of Labor.

What: Governors may request statutory or regulatory waivers under the Job Training Partnership Act (titles I–III) and the Wagner-Peyser (section 8–10).

When: After receipt of guidance.

Where: By submitting the requests to the ETA Regional offices.

Why: To overcome statutory or regulatory barriers which prevent the States from implementing reforms to their workforce development system.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–1226 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Submission for OMB Emergency Review; Comment Requested

January 14, 1997.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by January 22, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096 ext. 166).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316).

The Office of Management and Budget is particularly interested in comments which:

• evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

Agency: U.S. Department of Labor, ETA.

Title: Workforce Flexibility (work-flex) Partnership Demonstration Program.

OMB Number: 1205–Onew.

Frequency: On Occasion.

Affected Public: States.

Number of Respondents: 20 potential.

Estimated Time Per Respondent: 80 hours.

Total Burden Hours: 1,600.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $5,000.

Description: This request is related to the passage of P.L. 104–208 which permits States to submit requests to be considered as Workforce Flexibility Partnership Demonstration Programs (see below):

Who: Up to six States, of which at least three States shall each have populations not in excess of 3,500,000, with a preference given to those States that have been designated Ed-Flex Partnership States.

What: Workforce Flexibility (work-flex) Partnership Demonstration Program.

When: March 28, 1997.

Where: Submit an application to the Department of Labor.

Why: To obtain authority to waive any statutory or regulatory requirement applicable to service delivery areas or substate areas within the state under titles I–III of the Job Training Partnership Act (except for requirements relating to wage and labor standards, grievance procedures and judicial review, nondiscrimination, allotment of funds and eligibility, and any of the statutory or regulatory requirements of sections 8–10 of the Wagner-Peyser Act (except for requirements relating to the provision of services to unemployment insurance claimants and veterans, and to universal access to basic labor exchange services without cost to job seekers), for a duration not to exceed the waiver period authorized under section 311(e) of Public Law 103–227, pursuant to a plan submitted by such states and approved by the Secretary for the provision of workforce employment and training activities in the States, which includes a description of the process by which service delivery areas and substate areas may apply for and have waivers approved by the State, the requirements of the Wagner-Peyser Act to be waived, the outcomes to be achieved and other measures to be taken to ensure appropriate accountability for federal funds.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–1228 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–30–M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 30, 1997, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs. Phone: (202) 219–7597.

Signed at Washington, D.C. this 10th day of January 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97–1227 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL ENDOWMENT FOR THE ARTS

Submission for OMB Review; Comment Request

January 15, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for reviews and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Research Division Director, Tom Bradshaw ((202) 682–5432).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: 1997 Survey of Public Participation in the Arts.

OMB Number: New.

Frequency: One time.

Affected Public: Individuals or households.

Number of Respondents: 13,320.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 3,871.
Total Annualized Capital/Startup Costs: 0.
Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.
Description: The National Endowment for the Arts proposes to conduct a national Survey of Public Participation in the Arts (SPPA) in 1997 to provide information on the extent to which the adult population participates in the arts.

Responses will be analyzed to determine arts participation patterns and differences by population subgroup and geography and changes from prior SPPA's conducted in 1982, 1985, and 1992. Results will be used by arts administrators, researchers, and policymakers at the national, state and local level.

Murray Welsh,
Director, Administrative Services.
[FR Doc. 97–1216 Filed 1–16–97; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Social, Behavioral, and Economic Sciences

Proposed Data Collection: Comment Request
Title of Proposed Request: Survey of Earned Doctorates

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Survey of Earned Doctorates: The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by five Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data is obtained from each person earning a research doctorate on their field of specialty, educational background, sources of support in graduate school, postgraduation plans for employment, and demographic characteristics. The information is used extensively by the Federal government, universities, and others. The National Science Foundation, as the lead agency, publishes statistics from the survey in the annual publication series Selected Data on Science and Engineering Doctorates (available in print and electronically on the World Wide Web). The National Academy of Sciences also disseminates a free report entitled Summary Report: Doctorate Recipients from U.S. Universities.

A total response rate of 95% of the total 41,610 persons who earned a research doctorate was obtained in fiscal year 1995.

Burden estimates are as follows:
Total Number of Respondents FY 1995—41,610.

Burden Hours—20 minutes per respondent=1,383 hours total.

Send comments to Herman Fleming, Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by March 17, 1997.

Dated: January 13, 1997.
Herman G. Fleming,
NSF Clearance Officer.
[FR Doc. 97–1136 Filed 1–16–97; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).
Date and Time: February 3, 1997, 8:30 am to 5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Suite 370, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.
Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.
Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 97–1138 Filed 1–16–97; 8:45 am]
BILLING CODE 7555–01–M

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences.
Date and Time: February 5, 6, and 7, 1997.
Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 370, 380, and 390, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Charles O'Kelly, Dr. Elizabeth Lyons, Dr. Taber Allison, Division Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Doctoral Dissertation Research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 17, 1997.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 97–1147 Filed 1–16–97; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special

Emphasis Panel in Chemistry (1191) will be holding panel meetings for the purpose of reviewing proposals submitted to the Faculty Early Career Development (CAREER) Program. In order to review the large volume of proposals, panel meetings will be held on January 28–29, February 3, February 13–14, and February 24–25. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 am to 5:00 pm each day.

Contact Person: Dr. Karolyn Eisenstein, Program Director, Office of Special Projects, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1850.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1140 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: February 13–14, 1997.

Place: Room 1020, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Rubottom, Program Director, Organic Chemistry, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1851.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: to review and evaluate proposals for the Faculty Early Career Development Program (CAREER) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1143 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205)

Date and Time: Thursday, February 6 & Friday, February 7, 1997, 8:30 a.m. to 5:00 p.m.

Place: Rooms 530 & 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Craig S. Hartley & Sunil Saigal, Program Directors, Mechanics and Materials Program. National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1145 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 6–7, 1997, 9:00 a.m. to 5:00 p.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Knowledge Model and Cognitive Systems Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1142 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 6–7, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology and Organizations Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1148 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).
Date and Time: February 3–4, 1997, 8:30 a.m. to 5:00 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1120, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Database and Expert Systems Program Career proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1149 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent System; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).
Date and Time: February 3–4, 1997, 8:30 a.m. to 5:00 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1115N, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Robotics and Machine and Intelligence Program proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1150 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name and Committee Code: Special Emphasis Panel in Materials Research #1203.
Date and Time: February 10, 1997; 1:00 pm–9:00 pm; February 11, 1997; 8:00 am–5:00 pm.
Place: Princeton Center for Complex Materials, Bowen Hall, Princeton University, Princeton, NJ 08544.
Type of Meeting: Closed.
Contact Person: Dr. Carmen Huber, Associate Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1996.
Purpose of Meeting: To provide advice and recommendations concerning support for the Materials Research Science and Engineering Center, Princeton University.
Agenda: Presentations and evaluation of progress.
Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1139 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).
Date and Time: February 3–5, 1997; 8:30 a.m. until 5:00 p.m.
Place: Room 1060, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Joe Jenkins, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate the Analysis Program nominations/applications as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1137 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Mathematical Sciences (#1204).
Date & Time: February 10–12, 1997, 8:00 a.m. to 5:00 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 1060, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Lloyd E. Douglas, Program Director, Office of Special Projects, Mathematical Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230, Telephone: (703) 306–1870.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To Review and evaluate proposals for Faculty Early Career Development (CAREER) Program in Chemistry.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1146 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (#1204).

Date and Time: February 10–12, 1997, 8:30 am–5:00 p.m.

Place: Rooms 340 and 360 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd E. Douglas, Program Director, Office of Special Projects, Mathematical Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals in the Infrastructure Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1151 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: January 31–February 1, 1997 from 8:30 a.m. to 5:00 p.m.

Place: Room 1060, NSF 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Virginia Brown, Program Director for Theoretical Physics, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1805.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Theoretical Physics proposals as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1144 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

United States Antarctic Program (USAP) Blue Ribbon Panel; Notice of Meeting; Amendment

The meeting originally scheduled for January 31–February 1 has been postponed until February 7 and 8. There are no other changes in the meeting notice. The announcement of this meeting appearing in the **Federal Register** on January 7, 1997 at 62 FR 1001. For the convenience of the reader, the notice is being re-published in its entirety.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: United States Antarctic (USAP) Program Blue Ribbon Panel (#5131).

Date and Time: February 7 and 8, 1997—8:00 am–6:00 pm on 2/7 and 8:30 am–5 pm on 2/8.

Place: Room 1235, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of the research and implement U.S. policy in Antarctica under realistic budget scenarios.

Agenda: Draft panel report to NSF.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1141 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–277]

Peco Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PECO Energy Company (PECO, the licensee) to withdraw its January 13, 1995, as supplemented by letters dated March 14, 1995 and April 12, 1995, application for proposed amendment to Facility Operating License No. DPR–44 for the Peach Bottom Atomic Power Station, Unit No. 2, located in York County, Pennsylvania.

The proposed amendment would have revised Tables 3.7.1 and 3.7.4 of the Technical Specifications to reflect a change in the number of primary containment penetrations and isolation valves associated with the traversing in-core probe (TIP) system. The change in primary containment penetrations was the result of planned modifications to the TIP system for both Unit 2 and Unit 3. The Commission issued Amendment 203 for Peach Bottom Unit 3 on April 24, 1995 which incorporated the requested changes for Unit 3.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 1, 1995 (60 FR 11139). However, by letter dated March 15, 1996, the licensee withdrew the proposed change for Peach Bottom Unit 2.

For further details with respect to this action, see the application for amendment dated January 13, 1995, as supplemented by letters dated March 14, 1995 and April 12, 1995, and the licensee's letter dated March 15, 1996, which withdrew the application for license amendment for Peach Bottom Unit 2. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 10th day of January 1997.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1212 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Safety Research Review Committee (NSRRC) Meeting of the Subcommittee on Research in Support of Risk-Based Regulation (PRA Subcommittee) and the Subcommittee on Instrumentation and Control (I&C) and Human Factors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC PRA and I&C and Human Factors Subcommittees will hold a joint meeting on January 24, 1997. The meeting will take place from 9:00 a.m.–5:00 p.m. in room T–10A1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD and will be open to public attendance.

The Subcommittees will: (1) Continue to review the progress of human factors research; (2) Identify those human factor areas where progress for inclusion in PRA is likely; and (3) Provide recommendations for integrating these human factor considerations into PRA methods.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the presiding Subcommittee Chairman; written statements will be accepted and made available to the Subcommittees. Questions may be asked only by members of the NSRRC Subcommittees and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portions of the meetings, the Subcommittees may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will hold discussions with representatives of the NRC staff regarding the topics to be discussed.

Further information regarding topics to be covered, the rescheduling and/or cancellation of meeting sessions, and the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted for discussion can be obtained by a telephone call to Dr. Jose Luis M. Cortez (telephone 301/415–6596) between 9:00 a.m. and 4:30 p.m. (EST). Persons planning to attend these meetings are urged to contact the above named individual one or two business days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 13, 1997.

Jose Luis M. Cortez,

Senior Research Program Coordinator, Office of Nuclear Regulatory Research.

[FR Doc. 97–1213 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 5, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 5, 1997—10:00 a.m. until 12:00 Noon.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 13, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–1210 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–498 AND 50–499]

South Texas Project; Intent to Relocate Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) will be relocating the local public document room (LPDR) for records pertaining to Houston Lighting and Power Company's South Texas Project. The LPDR is currently located at the J. M. Hodges Library, Wharton County Junior College, Wharton, Texas. Library staff informed the NRC that they are no longer able to maintain the document collection and request that it be moved. This notice invites public comment on possible LPDR locations in the vicinity of the South Texas Project, Bay City, Texas.

The South Texas Project LPDR collection includes all NRC publicly-available records dated January 1, 1981 forward, which are provided in microfiche form. All South Texas Project documents prior to January 1, 1981, are available in paper copy and take up approximately 27 linear feet of shelf space.

Among the factors the NRC will consider in selecting a new location for the LPDR are the following:

(1) Whether the institution is an established document repository located near the nuclear facility with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, storage space, patron workspace, copying equipment and computer access;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The nature and extent of related research resources, such as government documents;

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(5) The public accessibility of the library, including handicap accessibility, parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(6) The proximity of the library to existing user groups of the collection, if known.

Comment period expires February 18, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

Written comments may be submitted to Mr. David Meyer, Chief, Regulatory Publications Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street NW, Washington, DC.

Questions concerning the NRC's LPDR Program should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number 301–415–7170, or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, the 13th day of January, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management.

[FR Doc. 97–1214 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

Strategic Assessment and Rebaselining Stakeholders Release of Phase II Stakeholder Interaction Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Release of Phase II Stakeholder Interaction Report.

SUMMARY: On January 13, 1996, the Nuclear Regulatory Commission released the Strategic Assessment and Rebaselining Initiative Phase II Stakeholder Interaction Report for public information. Volume I of this report provides an analysis of significant comments received from stakeholders through various media and public conferences. Volume II consists of copies of stakeholder's written comments. Volume III consists of transcripts from the three public conferences held in the fall of 1996.

This four-phase effort was initiated in September 1995, with the goal of producing a strategic plan in CY 1997. The development and implementation of this strategic plan will meet the requirements of the Government Performance and Results Act (GPRA) of 1993.

The Commission will utilize stakeholder comments as it makes final decisions on the issue papers. These decisions will provide the bases for the NRC's Strategic Plan.

The plan will provide a basis for aligning the agency organization and budget with the agency mission and general goals. It will be the agency tool for setting priorities and allocating resources consistent with the vision and goals of the agency.

In Phase I, a steering committee was established comprising senior agency managers. The steering committee reviewed the NRC's activities to understand where the NRC is today, and what needs to be considered in providing options for responding to change. Some key objectives identified by the steering committee were: establish a strategic framework under which the NRC will continue to meet its primary responsibility of protecting public health and safety and the environment; provide a sound and well-rounded foundation for the NRC's direction and decision-making for the rest of this decade and into the next century; ensure that the Commission, its staff, Congress, other Government agencies, and the public have a common understanding of what the NRC's strategic goals are; and establish agency performance measures to determine the extent to which strategic or tactical objectives are being achieved.

In Phase II, the steering committee developed issue papers. They obtained the Commission's preliminary decisions on the issues, and they released the papers for public comments of its stakeholders—Federal entities (Administration/OMB, Congress, and other agencies), NRC employees and their representatives, Agreement States, non-Agreement States, compliers (e.g., licensees, employees of licensees, industry groups), public interest groups, and the public—as part of the decision-making process.

They asked that the stakeholders focus on the following in responding to the NRC:

1. What, if any, important considerations may have been omitted from the issue papers?

2. How accurate are the NRC's assumptions and projections for internal and external factors discussed in the issue papers?

3. Do the Commission's preliminary views associated with each issue paper respond to the current environment and challenges?

4. Additionally, the Commission sought comments on specific questions identified in the "Preliminary Commission View" section of each issue paper.

Volumes I and III can be obtained electronically from the NRC's Home Page on the World Wide Web (Internet address http://www.nrc.gov) and FedWorld at 1–800–303–9672. Paper copies of all three volumes are available by calling NRC's Public Document Room at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: John W. Craig, Coordinator, Strategic Assessment Task Group at 301–415–3812 or NRC's Public Affairs Office at 415–8200.

Dated in Rockville, Maryland this 13th day of January 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle

Secretary of the Commission

[FR Doc. 97–1211 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26643]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 3, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall

identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation (70–8969)

Unitil Corporation ("Unitil"), 6 Liberty Lane West, Hampton, New Hampshire, 03842–1720, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated November 16, 1992 (HCAR No. 25677), Unitil was authorized to issue and sell up to 76,827 shares of common stock, no par value ("Common Stock"), under its Dividend Reinvestment and Stock Purchase Plan ("DRIP"). Unitil now proposes to issue up to an additional 100,000 shares of Common Stock under the DRIP on substantially the same terms as previously authorized.

Participants in the DRIP can have cash dividends on all or part of their shares reinvested at a 5% discount from current market prices and/or invest optional cash payments, which range from $25 to $5,000 per calendar year at current market prices, whether or not dividends are reinvested.

Employees of Unitil and its subsidiaries who are eligible to participate have the additional option to use payroll deductions in the place of direct cash payments. No commission or service charge is paid by participants in connection with purchases under the DRIP. Current market prices are the average of the high and low prices reported by the American Stock Exchange during each of the last five trading days that end with the date of the dividend.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1159 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22459; File No. 812–10294]

SoGen Variable Funds, Inc., et al. January 10, 1997

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an Exemption pursuant to the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: SoGen Variable Funds, Inc. (the "Company"), Societe Generale Asset Management Corp. (the "Adviser") and certain life insurance companies and their separate accounts investing now or in the future in the Company.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF THE APPLICATION: Applicants seek an order to permit shares of the Company to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") or qualified pension and retirement plans outside the separate account context ("Plans").

FILING DATES: The application was filed on August 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 4, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Philip J. Bafundo, Societe Generale Asset Management Corp., 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Veena K. Jain, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Company, incorporated in Maryland, is registered under the 1940 Act as an open-end management investment company. The Company currently consists of one series, the SoGen Overseas Variable Fund (the "Fund," together with future series of the Company, the "Funds"). Additional series may be established.

2. The Adviser, an indirect, majority-owned subsidiary of Societe Generale, is registered pursuant to the 1940 Act as an investment adviser and is the investment adviser to the Company.

3. Shares of the Funds will be offered initially to the Continental Assurance Company and Valley Forge Life Insurance Company, and eventually to Participating Insurance Companies and Plans, to serve as investment vehicles for insurance contracts, which may include variable annuity contracts, variable life insurance contracts and variable group life insurance contracts (collectively, "Contracts").

4. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the Federal securities laws in connection with any Contract issued by such Company.

5. The Advisory will not act as investment adviser to any of the Plans that will purchase shares of the Company. There will be no pass-through voting to the participants in such Plans.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit "mixed" and "shared" funding, as defined below.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company."

4. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any other affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to as "Mixed Funding." The relief granted by Rule 6e–2(b)(15) is also not available with respect to a variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as "Shared Funding." Rule 6e–2(b)(15), therefore, precludes Mixed and Shared Funding.

5. In connection with flexible premium variable life insurance contracts issued through a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where the UIT's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Rule 6e–3(T)(b)(15) thus permits Mixed Funding but does not permit Shared Funding.

6. Applicants state that because the relief under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is also necessary if shares of the Funds are to be also sold to Plans. Applicant assert that the relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of the Funds to Plans.

7. Applicants submit that Mixed and Shared Funding should benefit Contract owners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Company, thereby promoting economies of scale, permitting greater safety though greater diversification, and/or making the addition of Funds more feasible; and (c) encouraging more insurance companies to offer Contracts, resulting in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund of the Company will be managed to attempt to achieve the Fund's investment objectives and not to favor or disfavor any participating insurer or type of insurance product.

8. Applicants state that Section 817(h) of the Internal Revenue Code, as amended, ("Code") imposes certain diversification requirements on the underlying assets of Contracts. The Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying Contracts. Treas. Reg. 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by Plans without adversely effecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. 1.817–5(f)(3)(iii).

9. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

Disqualification

10. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 63–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participates in the management or administration of the fund.

11. Applicants state that the partial relief from section 9(a) of the 1940 Act found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants assert that those rules reflect a recognition that it is not necessary for the protection of investors or the purposes fairly intended by the policy or provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. It is also unnecessary to apply section 9 (a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Company as the funding medium for Contracts. Therefore, Applicants assert, applying the restrictions of section 9(a) serves no regulatory purpose. Applicants also state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, to section 9(a).

Pass-Through Voting

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account.

13. Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of

its Contract owners with respect to the investments of an underlying fund, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) also provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

14. Applicants state that shares of the Funds sold to Plans will be held by the trustees of such Plans as required by section 403(a) of the Employee Retirement Income Security Act ("ERISA"). Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans because the Plans are not entitled to pass-through voting privileges.

Conflicts of Interest

15. Applicants assert that Shared Funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds. The requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participating in the Company.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by Contract owners. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal. The requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participating in the Company.

18. Applicants submit that there is no reason why the investment policies of a fund with Mixed Funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts, whether flexible premium or scheduled premium policies. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

19. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Contracts held in the portfolios of management investment companies. Treasury regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions are taxed for Contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Company at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will make distributions in accordance with the terms of the Contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the transfer agent for the Company will inform each Participating Insurance Company of its share ownership as well as inform the trustees of Plans of their holdings. A Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

22. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a "senior security," as such term is defined under section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of Plan participants and Contract owners under their respective Plans and Contracts, the Plans and separate accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of the Company has any preference over any other shareholder with respect to

distribution of assets or payment of dividends.

23. Applicants state that there are no conflicts of interest between Contract owners and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one Fund and investing those assets in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from the Company and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of the Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Company.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors ("Board") of the Company shall consist of persons who are not "interested persons" of the Funds, as defined by section 2(a)(19) of the 1940 Act and rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any director, then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Company for the existence of any material irreconcilable conflict between and among the interests of Contract owners of all separate accounts investing in the Company. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Company are managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; or (f) a decision by an insurer to disregard voting instructions of Contract owners.

3. Participating Insurance Companies and the Adviser, and any Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the issued and outstanding shares of the Company (collectively, "Participating Parties") will report any potential or existing conflicts of which it becomes aware to the Board. participating Parties will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties investing in the Company under their agreements governing participation in the Company, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners and, if applicable, Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating parties shall, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Company or any Fund therein and reinvesting such assets in a different investment medium, which may include another Fund, if any, of the Company or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Plans from the Company and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because a Participating Insurance Company's decision to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Company's election, to withdraw its separate account's investment in the Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of the existence of a material irreconcilable conflict and bearing the cost of such remedial action, shall be a contractual obligation of all Participating Parties under their agreements governing participation in the Company, and these responsibilities will be carried out with a view only to the interests of the Contract owners and, as applicable, Plan participants. For purposes of this Condition Four, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Company or the Adviser or any Plan be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially adversely affected by the material irreconcilable conflict.

5. All Participating Parties will be promptly informed in writing of the Board's determination that a material irreconcilable conflict exists and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of

their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Company will be a contractual obligation of all participating Insurance Companies under the agreements governing participation in the Company. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares it owns in the same proportion as it votes shares for which it has received instructions.

7. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. The Company will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of Mixed and Shared Funding may be appropriate. The Company shall disclose in its prospectus that: (a) Its shares are offered to Plans and to separate accounts that fund all types of Contracts offered by various insurance companies; (b) material irreconcilable differences may arise; and (c) the Board will monitor events in order to identify any material conflicts of interest and determine what action, if any, should be taken.

9. The Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be the persons having a voting interest in the shares of the Company) and in particular, the Company will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or, if annual meetings are not held, comply with section 16(c) of the 1940 Act (although the Company is one of the trusts described in section 16(c) of the 1940 Act), as well as with section 16(a) and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If an to the extent Rule 6e–2 or Rule 6e–3(T) is am emended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to Mixed and Shared Funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Company and/or the Participating Parties, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participating Parties shall submit to the Board such reports, materials, or data as the Board may reasonable request so that it may carry out fully the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of Participating Parties to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Company.

12. In the event that a Plan shareholder should ever become an owner of 10 percent or more of the assets of the Company, that Plan shareholder will execute a fund participating agreement with the Company. A Plan shareholder will execute an application containing an acknowledgement of this condition at the time of the initial purchase of shares of the Company.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1160 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22458; 811–4394]

TrustFunds Institutional Funds; Notice of Application

January 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: TrustFunds Institutional Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Sec's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 28 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Massachusetts business trust. On August 23, 1985, applicant registered under the Act and filed a registration statement of Form N–1A under the Act and the Securities Act of 1933. Applicant has never commenced operations.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1158 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22457; 811–4353]

TrustFunds Mortgage + Plus Trust; Notice of Application

January 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: TrustFunds Mortgage + Plus Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 28 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a Massachusetts business trust. On July , 1985, applicant registered under the Act and filed a registration statement of Form N–1A under the Act and the Securities Act of 1933. Applicant has never commenced operations.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1157 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38152; File No. SR–CBOE–96–79]

January 10, 1997.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Elimination of Position and Exercise Limits for FLEX Equity Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to Rule 19b–4 of the Act, proposes to revise Exchange Rules 4.11, 4.12, and 24A.7 to eliminate position and exercise limits for FLEX Equity Options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate position and exercise limits for FLEX Equity Options. Currently, Exchange Rule 24A.7(b) sets forth position limits for FLEX Equity Options[3] equal to three times the positions limits for corresponding Non-FLEX Equity Options. Generally, position limits are set forth in Exchange Rule 4.11 and exercise limits are set forth in Exchange Rule 4.12.

The Exchange believes that the elimination of such limits is appropriate given the institutional nature of the market for FLEX Equity Options. According to the Exchange, many large investors find the use of exchange-traded options impractical because of the constraints imposed by position limits. The Exchange believes that the elimination of position limits will attract additional investors to exchange-traded options, thereby reducing transaction costs as well as improving price efficiency for all exchange-traded option market participants.

The Exchange also believes that FLEX Equity Options, after the elimination of position limits, may become an important part of large investors' investment strategies. In the absence of position limits, investors will be able to use options to implement specific viewpoints regarding the underlying common stock.

The Exchange also anticipates that issuers of stocks underlying FLEX Equity Options will use these options, primarily through the sale of puts, as part of their stock repurchase programs.[4] In many cases, the size of announced buy-back programs significantly exceeds the number of shares that could be repurchased under the position limits currently imposed on FLEX Equity Options. While the Exchange does not expect that corporate

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In general, FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, and exercise style.

[4] The Commission notes that issuers would, of course, need to comply with all applicable provisions of the federal securities laws in conducting their share repurchase programs.

issuers will use the sale of put options to buy all the securities that are covered by their repurchase programs, FLEX Equity Options without position limits at least will provide issuers with an alternative. The inability of corporations to use the sale of exchange-traded equity put options on a significant scale relegates this activity to less transparent markets, such as offshore markets which do not come under Commission oversight.

Pursuant to Section 13(d) of the Act and the rules and regulations thereunder, the inclusion of any option position is required when reporting the beneficial ownership of more than 5% of any equity security.[5] The integration of options and reporting requirements in the underlying security pursuant to Section 13(d) makes large option positions widely known and easily monitored by regulators and other market participants. In this light, FLEX Equity Options trading will have the transparency of any exchange-traded option transaction or position (open interest) plus the call market focus of liquidity inherent in the Request for Quote ("RFQ") process. Similar to Non-FLEX options, positions in FLEX options are required, pursuant to Exchange Rule 4.13, to be reported to the Exchange when an account establishes aggregate same-side of the market position of 200 or more FLEX option contracts.

The Exchange recognizes the theoretical possibility that a would-be manipulator could initiate a large FLEX Equity Option RFQ with no intention of actually trading. Such tactics, however, would be obvious to the Exchange surveillance staff as well as to the Commission, and could be handled under current Exchange rules.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

[5] Pursuant to Rule 13d–3 under the Act, a person will be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within sixty days, including the right to acquire through the exercise of any option.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–79 and should be submitted by February 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1222 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38163; File No. SR–ISCC–96–06]

January 13, 1997.

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Officer Titles

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 11, 1996, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies ISCC's rules and by-laws to create the new title of managing director.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to conform with how ISCC and many firms in the industry operate, ISCC has created the new title of managing director. The purpose of the proposed rule change is to modify ISCC's rules and by-laws to accommodate the change in ISCC's internal management structure. Section 3.1 of the by-laws is amended to reflect the creation of the new position of managing director and also to permit ISCC to designate one or more vice presidents as senior vice presidents. The proposed rule change amends Section

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by ISCC.

3.5 of the by-laws to provide managing directors with the powers and duties formerly given to executive vice presidents. Sections 1.2 and 1.8 of the by-laws are amended to permit managing directors to call special shareholder meetings and to act as presiding officer at a shareholder meeting. Section 3.6 is amended to provide that in the event the President is unable to act, managing directors, executive vice presidents, and then vice presidents may assume such duties.

The proposed rule change also makes certain amendments to ISCC's rules. Rule 22 is amended to eliminate the ability of an executive vice president or vice president to suspend the rules and to permit the general counsel to exercise such authority. Rule 23 is amended to eliminate the ability of executive vice presidents to act on behalf of ISCC and to grant such authority to managing directors. Pursuant to Rule 33, the Board of Directors can now delegate the authority to prescribe procedures and regulations to managing directors rather than to executive vice presidents.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it makes technical modifications to ISCC's rules and by-laws so that they coincide with ISCC's new internal management structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and pursuant to Rule 19b–4(e)(3)[5] promulgated thereunder in that the proposed rule change is concerned solely with the administration of ISCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of ISCC.

All submissions should refer to File No. SR–ISCC–96–06 and should be submitted by February 7, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–1218 Filed 1–16–97; 8:45 am]
BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1.
[4] 15 U.S.C. 78s(b)(3)(A)(iii).
[5] 17 CFR 240.19b–4(e)(3).

[Release No. 34–38158; File No. SR–NYSE–96–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. to Make Permanent the Near Neighbor, Capital Utilization and Rule 103A Pilot Programs for Measuring Specialist Performance and Adopt a New Specialist Performance Measure

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposal to make permanent the Near Neighbor, Capital Utilization, and Rule 103A pilot programs for measuring specialist performance.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of making permanent certain pilot programs for measuring specialist performance and adopting a new specialist performance measure. The three pilots are the Near Neighbor pilot, the Capital Utilization Data pilot, and the Rule 103A pilot.[4] The Exchange also proposes to adopt a new performance measure, the "adjusted stabilization" rate measure.

[6] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

[3] In partially approving the NYSE proposal, the Commission is not approving, at this time, the portion of the proposal relating to implementing a new specialist performance measure, the "adjusted stabilization" rate. That portion of the proposal is being published for comment in this notice.

[4] The Commission notes that the capital utilization and near neighbor measures currently are only used by the Allocation Committee in making specialist allocation decisions. The Commission initially approved the capital utilization program on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension of the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995). The Commission approved two subsequent extensions of the pilot so that the Exchange and the Commission could evaluate the capital utilization, near neighbor, and Rule 103A programs concurrently. *See* Securities Exchange Act Release Nos. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) (extending pilot through September 10, 1996) and 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996) (extending pilot through January 10, 1997). The Commission approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35927 (July 11, 1995) (pilot approved through September 10, 1996). The Commission approved an extension of the near neighbor pilot program, until January 10, 1997, in Securities Exchange Act Release No. 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996). The Rule 103A pilot program was initially adopted in 1979. *See* Securities Exchange Act Release Nos. 15827 (May 15, 1979), 44 FR 100 (May 22, 1979). Since then, the program has been extended many times. The most recent extension continues the pilot until January 10, 1997. *See* Securities Exchange Act Release No. 37667 (September 11, 1996), 61 FR 49185 (September 18, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently uses several programs to measure specialist performance, including specialist capital utilization, the "near neighbor" approach, and the standards of acceptable performance specified in Rule 103A. Information on these measures is supplied to the Allocation Committee for its use in determining allocation of listing companies.[5] The "near neighbor" measure compares certain performance measures of a stock (price continuity, depth, quotation spread, and capital utilization) to those stocks with similar trading characteristics; the comparison is made over "rolling" three-month periods.[6] The "near neighbor" measure has been in use on a pilot basis since August 1995. Capital utilization focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks.[7] It has been utilized as a pilot since February 1994. These measures are presented to the Allocation Committee in summary form for each unit applying for a new listing and are a factor in allocating newly-listed stock.

Rule 103A, adopted in 1979, codifies standards based on the Specialist Performance Evaluation Questionnaire ("SPEQ") and specialist performance with respect to openings of stocks and turnaround of order reports and administrative messages received. Data with respect to these standards is also provided to the Allocation Committee. In addition, the Market Performance Committee uses the Rule 103A information to initiate performance improvement actions for specialist units that fall below the criteria detailed in the Rule. A unit's continued inability to raise its performance level can lead to a reallocation of one or more of its stocks.

Commission staff have indicated to the NYSE staff the position that sufficient experience has been gained through extended operation of these pilot programs in order for the NYSE to determine whether each should be approved on a permanent basis. Permanent approval will not mean that the programs cannot be periodically revised and amended to improve their effectiveness. For example, the Exchange is currently working with consultants from the Massachusetts Institute of Technology to refine the near neighbor and capital utilization data to increase its usefulness. The NYSE notes that these efforts are ongoing and may lead to enhancements in the future.

In addition to making the three pilot programs permanent, the Exchange proposes to add, as a new measure of specialist performance, "adjusted stabilization" rates. Specialists are expected to stabilize stock price movements by buying and selling from their own account against the prevailing trend of the market. "Stabilization" refers to those instances where a stock dealer purchases on minus and zero minus ticks, and sells on plus and zero plus ticks. For purposes of the proposed specialist performance measure, "adjusted stabilization" would consist of proprietary purchases by specialists on minus and zero minus ticks, as well as zero plus tick purchases on the current bid (provided the current bid is below the offer of the immediately preceding trade); and proprietary sales on plus and zero plus ticks, as well as zero minus tick sales on the current offer (provided the current offer is above the bid of the immediately preceding trade). The Exchange believes that "adjusted stabilization" is a useful concept in that it reflects liquidity added to the market by specialists, and is consistent with the specialist's overall obligation to stabilize the market in that the specialist is not initiating either a transaction or a price change, but is rather adding depth to the market at prices at which transactions have already occurred.

Adjusted stabilization rate information would be provided to the Allocation Committee to assist the Committee in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these requirements in that continuing to develop objective measures of specialist performance would help perfect the mechanism of a free and open market and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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[5] The Exchange's Allocation Policy and Procedures govern the allocation of equity securities to NYSE specialist units. The Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy. The Allocation Policy emphasizes that the most significant allocation criterion is specialist performance. In this regard, the Allocation Policy states that the Allocation Committee will base its allocation decisions on the Specialist Performance Evaluation Questionnaire ("SPEQ"), objective performance measures, and the Committee's expert professional judgment. *See* Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy).

The weight given in the allocation decision making process to the SPEQ was reduced from 1/3 to 1/4 in recognition of the Exchange's adoption for allocation decision purposes of the near neighbor and capital utilization objective measures. *See* Securities Exchange Act Release No. 35932 (June 30, 1995), 60 FR 35763 (June 30, 1995).

[6] For a more detailed description of the near neighbor measure, see Securities Exchange Act Release No. 35927, *supra* note. 1.

[7] For a comprehensive description of the capital utilization measure of specialist performance, see Securities Exchange Act Release No. 35926, *supra* note 1.

[8] 15 U.S.C. 78f(b)(5).

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(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the portion of the proposed rule change relating to making permanent the three pilot programs on an accelerated basis prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–34 and should be submitted by [insert date 21 days from date of publication].

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the portion of the proposed rule change making permanent the specialist performance measure pilot programs is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[9] Section 6(b)(5) requires, among other things, that the Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Further, the Commission finds that the portion of the proposal to make permanent the pilot programs is consistent with Section 11(b) of the Act [10] and Rule 11b–1 thereunder,[11] which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. For the reasons set forth below, the Commission continues to believe that the consideration of specialist near neighbor and capital utilization analysis and the Rule 103A performance evaluation process by the Allocation Committee will enhance the Exchange's allocation process and encourage improved specialist performance, consistent with helping to perfect the mechanism of a free and open market and to protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of fair and orderly markets in designated securities.[12] To ensure that specialists fulfill these obligations, it is important that the Exchange implement objective measures of specialist performance and prescribe stock allocation procedures and policies that encourage specialists to strive for optimal performance. The Commission supports NYSE's ongoing efforts to develop objective measures of specialist capital utilization and near neighbor analysis for use in the allocation process to encourage improved specialist performance and market quality. In addition, effective oversight, including periodic evaluation of the specialist's performance, is important to the maintenance of a fair and efficient marketplace. The Commission believes that the NYSE's Rule 103A performance evaluation is critical to this oversight in that it provides the Exchange with the means to identify and correct poor specialist performance, to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, and to bring performance evaluation actions as a result of the evaluation process.

The Commission also believes that making permanent the pilot programs for these three measures is appropriate because the Exchange indicates that it has found these measures useful in providing the NYSE Allocation Committee with measures of specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is specialist performance.[13] In the Commission's view, performance based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.[14]

The Commission finds good cause for approving the portion of the proposed rule change relating to making permanent the pilot programs prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of that portion of the proposal is appropriate because it will enable the Exchange to continue to make use of the capital utilization, near neighbor, and Rule 103A evaluation measures of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process. Further, the initial proposals to adopt the capital utilization pilot and the near neighbor pilot were noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on these proposals.[15] In addition, a substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [17] that the portion of the proposed rule change (File No. SR–NYSE–96–34) relating to making permanent the pilot programs is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1220 Filed 1–16–97; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k(b).

[11] 17 CFR 240.11b–1.

[12] *See, e.g.*, 17 CFR 240.11b–1; NYSE Rule 104.

[13] *See e.g.*, Securities Exchange Act Release No. 34906, *supra* note 4.

[14] The Commission notes that it would still like the near neighbor and capital utilization measures to be incorporated into the Rule 103A evaluation process.

[15] *See supra* Securities Exchange Act Release Nos. 33369 and 35927, note 2.

[16] *See* Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (September 23, 1987); 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[Release No. 34–38157; File No. SR–PHLX–96–46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Listing and Trading of European-Style Options on the Philadelphia Stock Exchange Semiconductor Index

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 18, 1996, the Philadelphia Stock Exchange Inc., ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by PHLX. On December 30, 1996, and January 6, 1997, PHLX amended the filing ("Amendment No. 1" and "Amendment No. 2," respectively).[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHLX proposes to list and trade European-style index options[3] and LEAPS[4] on the PHLX Semiconductor index. The European-style index options would trade side-by-side with the existing American-style Semiconductor index options.[5] With the exception of the exercise style, the two indices are otherwise identical.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHLX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHLX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX proposes to list and trade European-style options on PHLX's Semiconductor index.[7] This index would trade side-by-side with the American-style Semiconductor index options presently listed and trading on the Exchange. The proposed index options would have the same specifications as the American-style index options with the exception of the exercise style.[8] PHLX would differentiate the proposed European-style Semiconductor index options by using the symbol SXE, while the symbol for the American-style index options would remain SOX. The Exchange will provide notice to its membership and the public prior to the effectiveness of this filing emphasizing the difference between the symbols and the exercise style of both index options. Following Commission approval, the Exchange agrees that on a quarterly basis, it will notify its membership of the differentiation between the two index options, their exercise styles, and the aggregation of position limits for European-style and American-style options on PHLX's Semiconductor index.

The Exchange received numerous customer requests for a European-style Semiconductor Index option indicating that many investors prefer to trade index options that cannot be exercised except on the last trading day prior to expiration. European-style index options have certain advantages, including the elimination of the risk of early exercise. For example, investors holding spread positions would not have to be concerned that one leg of a short position can be exercised prior to expiration. The elimination of the early exercise also allows the investor to engage in long range planning and long range strategies. However, the Exchange also recognizes the great success of the existing American-style option which allows those investors who like the early exercise feature to have that ability.

The exercise price of the options will be set at 5 point intervals. Additional exercise prices will be added in accordance with PHLX Rule 1101A(a). The last trading day for expiring contracts will be the Thursday before the third Friday of the expiration month. PHLX will trade consecutive and cycle month series of the options pursuant to Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus at least two additional near term months. LEAPS will also be traded on the Index pursuant to Exchange Rule 1101A(b)(iii). The Semiconductor index is an industry index, and therefore the PHLX will employ position limits and exercise limits pursuant to PHLX Rules 1001A(b)(i) and 1002A respectively. The position and exercise limits will be aggregated with the American-style index options presently trading on the Semiconductor index. Therefore, the aggregated position limit will be 15,000 contracts.[9] The options will trade during the hours of 9:30 a.m. and 4:10 p.m. eastern time.

The options will be traded pursuant to current PHLX rules governing the trading of the index options, particularly PHLX Rules 1000A through 1102A and generally, PHLX Rules 1000 to 1072. The Exchange also represents that surveillance procedures currently used to monitor the trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include having complete access to the trading activity in the underlying securities which are all traded on either the NYSE or NASDAQ. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement") dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the index.

PHLX believes the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5),[10] in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, while protecting investors and the public

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[1] 15 U.S.C. 78s(b)(1).

[2] Letters from Nandita Yagnik, Esq., New Product Development, PHLX, to Margaret Blake, Office of Supervision, Division of Market Regulation, Commission (December 23, 1996 and January 2, 1997).

[3] A European-style option may be exercised only during a specified period before the option expires.

[4] LEAPS are long-term index options having up to 36 months to expire.

[5] See Securities Exchange Act Release No. 34546 (August 4, 1994) 59 FR 43881 (order approving the listing and trading of options and long term options on the PHLX Semiconductor Index).

[6] A list of the specific stocks together with their price, market value, and weight in the index is attached as Exhibit B to the filing and is available for review in the Public Reference Section of the Commission, or the principal office of the PHLX.

[7] The Semiconductor Index is a price weighted index consisting of 16 stocks of companies listed on the New York or NASDAQ stock exchanges which are primarily involved in the design, manufacture, sale and distribution of Semiconductors used in computer and other electronic device manufacturing. As of the close of trading on October 14, 1996 the index had a value at 195.70. The Semiconductor index had a two for one split on July 24, 1995.

[8] The European-style options on PHLX's Semiconductor index will be a.m. settled like the American-style options currently trading on the Semiconductor index.

[9] See Securities Exchange Act Release No. 37863 (October 28, 1996), 61 FR 56599 (order approving an increase in Narrow-Based index option position and exercise limits).

[10] 15 U.S.C. § 78f(b)(5).

interest. Specifically the Exchange believes that the proposal provides investors with a choice that allows the investor to choose the exercise style most suitable to their investment needs. In addition, the Exchange believes that the proposal will not create investor confusion regarding the two indices because of the difference in the symbols representing the two index options.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change shall become operative 30 days after the date of filing the amended proposal,[11] or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PHLX. All submissions should refer to File No. SR–PHLX–96–46 and should be submitted by February 7, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1217 Filed 1–16–97; 8:45 am]

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[11] PHLX submitted the last amendment on January 6, 1997 and therefore the 30 days will be calculated from this date.

[12] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38154; File No. SR–PHLX–96–40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Order Approving of Proposed Rule Change Relating to Equity Margin Rules

January 10, 1997.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 1, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change relating to its equity margin rules. The proposal was published for comment in the **Federal Register** on November 25, 1996.[2] No comments were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

The PHLX has proposed to amend Rules 721, 722, and 723 in order to harmonize the PHLX's margin rules with those of the other self-regulatory organizations ("SROs").

Amended Rule 721 will now provide for initial customer margin requirements that will be identical to the initial customer equity margin requirements of the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX") and the Pacific Stock Exchange ("PSE").[3] Specifically, a customer must deposit at least the greater of the amount specified by Regulation T or $2,000 equity, except that cash need not be deposited in excess of any security purchased.

The PHLX has proposed to amend Rule 722 to provide for good faith margin in instances where a member organization carries the proprietary account of another broker-dealer in compliance with the requirements of Regulation T. The rule will further provide that the member organization may not carry the account in a deficit position and must deduct from its own net capital the difference between the margin required by other sections of this rule and the equity on deposit. The PHLX proposed adding these provisions so as to parallel its margin rule with that of the NYSE.[4]

The PHLX has proposed to completely restate Rule 723. The pre-amended version of Rule 723 applied to member and member firm trading which is now governed by PHLX Rules 722 and 703.[5] Exchange research identified that the current text of Rule 723 has not been amended since at least 1937.[6] Accordingly, the arcane text predates all modern margin and capital rules of the PHLX. In lieu of the outdated provisions of Rule 723, the Exchange proposes replacing such text with the current customer day-trading provisions and the prohibition against free-riding which have been promulgated by the other major SROs.[7]

This rule will require a customer to have sufficient equity to meet the margin required on either the long or short transaction, whichever occurred first on an intra-day basis. For purposes of this rule, the term "customer" will be defined, as it is in Rule 722(e)(2), to not include "a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of a member organization or its customers."

In addition, a prohibition against free riding in a customer's cash account has been included in order to preclude a customer from making a practice of paying for a security by selling the same security on an intra-day basis.

Other major SROs do not have any intra-day margin requirements

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37962 (November 19, 1996), 61 FR 59919.

[3] *See* NYSE Rule 431(b); AMEX Rule 462; PSE Rules 2.15(e), 2.16(a).

[4] *See* NYSE Rule 431(e)(6).

[5] Rule 722 concerns margin accounts, and Rule 703 concerns financial responsibility and reporting.

[6] In researching the history of Rule 723 the PHLX reviewed Exchange guides from as far back as the 1930s, wherein, the rule appeared exactly as it now reads. Furthermore, Rule 723 itself makes no reference to ever having been amended. *See* PHLX Rule 723.

[7] The PHLX proposes adopting the language promulgated by the New York Stock Exchange. *See* NYSE Rule 431(f)(8)(B)–(C) and (f)(9).

governing member trading.[8] The "daylight" trading requirements of the PHLX serve no current purposes other than to force PHLX members to meet intra-day trading requirements on transactions which were not specifically exempted by the obsolete rule. In addition, because other major exchanges do not have these intra-day requirements, the PHLX has been placed at a competitive disadvantage. Members are forced to actively manage non-exempted transactions on an intra-day basis in order to maintain compliance with the rule, while other exchanges' margining and capital requirements are only imposed at the end of the business day. Furthermore, the proposed day trading and free riding provisions provide additional protection in the market where it is most needed. Accordingly, the PHLX rules should be brought into harmony with the other exchanges so as to relieve these competitive disadvantages.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[9] The proposed rule change is designed to remove impediments to and perfect the mechanism of a national market system and to protect investors and the public interest. The Commission believes that the proposed amendments to the equity margin rules will result in the harmonization of the PHLX's equity margin rules with those of other SROs.

Specifically, the Commission finds appropriate the proposal to amend Rule 721 to provide for initial customer margin requirements that are identical to the initial customer equity margin requirements of the NYSE, the AMEX, and the PSE. The rule will require that a customer must deposit at least the greater of the amount specified by Regulation T or $2,000 equity, except that cash need not be deposited in excess of any security purchased.

The Commission also finds appropriate the PHLX proposal to amend Rule 722 to parallel the NYSE margin rule, to provide for good faith margin in instances where a member organization carries the proprietary account of another broker-dealer in compliance with the requirements of Regulation T. The PHLX rule will further provide that the member organization may not carry the account in a deficit position and must deduct from its own net capital the difference between the margin required by other sections of this rule and the equity on deposit.

Rule 723 will be restated to require a customer to have sufficient equity to meet the margin required on either the long or short transaction, whichever occurred first on an intra-day basis. In addition, a prohibition against free riding in a customer's cash account has been included in order to preclude a customer from making a practice of paying for a security by selling the same security on an intra-day basis. The Commission finds these proposals appropriate in light of their consistency with the rules of other SROs.[10] The Commission believes that it is appropriate for the PHLX to completely restate Rule 723 to eliminate intra-day margin requirements governing member trading, consistent with the requirements of other SROs. The restatement of the rule also is appropriate in light of the fact that other provisions of the pre-amendment version of Rule 723 are now governed by other PHLX rules.[11]

The Commission finds that these amendments will enhance financial protections and, as a result, enhance the integrity of the Exchange's markets by ensuring that members and customers maintain adequate margin reserves. Because the amendments result in PHLX equity margin rules that are identical to those of other SROs, they do not raise new regulatory concerns.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PHLX–96–40) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1219 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[8] The NYSE, AMEX and the PSE do not have intra-day margining requirements for members. The NYSE does however, have intra-day margining requirements for customers.

[9] 15 U.S.C. § 78f(b)(5).

[10] *Supra* note 7.

[11] *Supra* note 5 and accompanying text.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Small Business and Agriculture Regulatory Enforcement Ombudsman".

Type of Request: New.

Form No: SBA Form 1993.

Description of Respondents: Small Business Owners and Farmers.

Annual Responses: 1000.

Annual Burden: 500.

Comments: Send all comments regarding this information collection to Dorothy Overal, Office of Field Operations, Small Business Administration, 409 3rd Street, S. W., Suite 7125 Washington, D.C. 20416. Phone No.: 202–205–6808.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–1196 Filed 1–16–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2926]

California; Declaration of Disaster Loan Area

Humboldt County and the contiguous counties of Del Norte, Mendocino, Siskiyou, and Trinity in the State of California constitute a disaster area as a result of damages caused by severe storms and flooding which occurred December 7–9, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 14, 1997 and for economic injury until the close of business on October 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 292606 and for economic injury the number is 933900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 13, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–1195 Filed 1–16–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2894]

North Carolina; Declaration of Disaster Loan Area (Amendment #6)

In accordance with a notice from the Federal Emergency Management Agency, dated January 3, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to February 4, 1997.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is June 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 10, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–1194 Filed 1–16–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending January 10, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2045.
Date filed: January 7, 1997.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/087 dated November 29, 1996 r1-r60, Book of Finally Adopted Resos, Minutes—PSC/Minutes/008 dated December 9, 1996, Intended effective date: June 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–1251 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending January 10, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2044.
Date filed: January 7, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 4, 1997.
Description: Application of Mesaba Aviation, Inc., d/b/a Mesaba Airlines d/b/a Mesaba Northwest Airlink, applies, pursuant to 14 C.F.R. 204.5 and Subpart Q of the Department's Procedural Regulations, for an amendment to its certificate of public convenience and necessity to allow Mesaba to operate aircraft with a seating capacity greater than 60 seats.

Docket Number: OST–97–2046.
Date filed: January 7, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 4, 1997.
Description: Application of United Air lines, Inc., pursuant to 49 U.S.C. 41101, and Subpart Q of the Regulations, applies for renewal of authority to engage in scheduled foreign air transportation of persons, property, and mail between the United States and Sao Paulo, Rio de Janeiro, Brasilia, and Belem, Brazil; Barranquilla, Colombia; and Buenos Aires, Argentina. These services are authorized on segments 1 and 6 of United's certificate of public convenience and necessity for Route 632.

Docket Number: OST–97–2054.
Date filed: January 10, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1997.
Description: Application of British Airways Plc, pursuant to 49 U.S.C. 41305, and Subpart Q of the Regulations, applies for an amended Foreign Air Carrier Permit authorizing scheduled foreign air transportation of persons, property, and mail between points in the United Kingdom and points in the United States, and beyond the United States with Fifth Freedom Rights to the full extent consistent with the United Kingdom-United States bilateral agreement. British Airways further seeks the right to integrate the requested authority with all of its existing and future authority to engage in foreign air transportation under its foreign air carrier permit and certain exemptions issued by the Department.

Docket Number: OST–97–2056.
Date filed: January 10, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1997.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between points in the United States and points in the United Kingdom, and beyond the United Kingdom with traffic rights to the full extent consistent with applicable bilateral agreements. American further seeks the right to integrate the requested authority with all of its existing and future authority to engage in foreign air transportation under certificates of public convenience and necessity and exemptions issued by the Department.

Docket Number: OST–97–2058.
Date filed: January 10, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 31, 1997.
Description: Joint application of American Airlines, Inc. and British Airways Plc, pursuant to 49 U.S.C. 41308 and 41309, for approval of and antitrust immunity for their alliance agreement of June 11, 1996 (Exhibit JA–1). The joint applicants request that antitrust immunity be effective no later

than March 30, 1997, and remain in place for a period of at least five years.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–1250 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 97–002]

Chemical Transportation Advisory Committee; Subcommittee on the Review/Update of Vapor Control System Regulations Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Vapor Control System (VCS) Regulations Review/Update Subcommittee of the Chemical Transportation Advisory Committee (CTAC) will meet to evaluate the need for revision of the marine vapor control regulations found in Title 33, Code of Federal Regulations, Part 154 and Title 46, Code of Federal Regulations, Part 39. The meeting is open to the public.

DATES: The meeting of the VCS Subcommittee will be held on January 29–30, 1997, from 9:30 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before January 24, 1997.

ADDRESSES: The meeting of the VCS Subcommittee will be held in the training room at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Houston, TX 77029. For directions to MSO Houston-Galveston, please contact Lieutenant J.J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; telephone (202) 267–0087, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Presentation of each subcommittee member's work thus far and plans for the future.

(2) Review and discuss the work completed by each member.

After a brief meeting together, the subcommittee members will form into two work groups to discuss in detail their assigned tasks. The two groups are Facility VCS work group and Vessel VCS work group.

Procedural

This meeting is open to the public. At the Subcommittee Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify Mr. Paul J. Book no later than January 24, 1997. Written material for distribution at the meeting should reach the Coast Guard no later than January 24, 1997. If a person submitting material would like a copy distributed to each member of the subcommittee on advance of the meeting, that person should submit 25 copies to Mr. Book no later than January 24, 1997.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact Lieutenant Plunkett as soon as possible.

Dated: January 10, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–1175 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board

[STB Docket No. AB–43 (Sub-No. 163)]

Illinois Central Railroad Company—Abandonment—Between Aberdeen Junction and Kosciusko, in Holmes and Attala Counties, MS

AGENCY: Surface Transportation Board.

ACTION: Notice of Findings.

SUMMARY: The Board has found that the public convenience and necessity permit Illinois Central Railroad Company to abandon its 21.70-mile rail line between milepost H–0.20 at Aberdeen Junction and milepost H–21.90 at Kosciusko, in Holmes and Attala Counties, MS, subject to environmental conditions and standard employee protective conditions.

DATES: The Board's decision will be effective and abandonment may be carried out on February 12, 1997, unless, prior to that date, the Board finds that one or more financially responsible persons have offered financial assistance (through subsidy or purchase) regarding the line.

Financial assistance offers must be filed with the Board and the railroad no later than January 28, 1997. Any offer previously made must be remade by the due date.

ADDRESSES: Send offers of financial assistance referring to STB Docket No. AB–43 (Sub-No. 163) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423; and (2) Illinois Central's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer mailed to the Board: "Office of Proceedings, AB-OFA."

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904 and 49 CFR 1152.27.

Decided: January 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1215 Filed 1–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 97–3]

Capital and Accounting Standards

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the reporting requirements of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), we have submitted our report to the Chairman and ranking minority member of the Committee on Banking, Housing and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking and Financial Services of the House of Representatives identifying the differences between the capital and accounting standards used by the office of Thrift Supervision (OTS) and the capital and accounting standards used by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of, the Federal Reserve System (FRB)(collectively, the banking agencies).

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Our report contains two attachments. Attachment I, "Summary of Differences in Capital Standards," identifies and explains the reasons for differences in the OTS capital standards and those of the other banking agencies. Attachment II, "Summary of Differences in Accounting Practices," identifies and explains the reasons for the major differences between OTS and the other banking agencies in supervisory reporting practices that affect their respective capital standards.

Despite some differences, the capital and accounting rules of OTS generally parallel those of the banking agencies (collectively, the "agencies"). Many of the differences result from either statutory requirements (*e.g.*, deduction of investment in subsidiaries engaged in activities impermissible for national banks) or historical differences between the banking and thrift industries (*e.g.*, investment authorities, mutual form of organization).

Moreover, the agencies continue to work together to minimize their current differences and to ensure that the new rules and policies they adopt are consistent and result in a uniform national banking policy. The agencies frequently issue joint regulatory and policy documents in working toward the general goal of interagency consistency set forth in section 303 of the Reigle Community Development and Regulatory Improvement Act of 1994 (CDRIA).

Today's report reflects differences as of September 30, 1996. It indicates how these differences will be resolved, in accordance with the agencies' *Joint Report: Streamlining of Regulatory Requirements* (Sept. 23, 1996) (Joint Report).

Furthermore, the OTS requires that savings associations follow generally accepted accounting principles (GAAP) for regulatory reports. This complies with the requirement of section 121(a) of FDICIA that the accounting principles applicable to reports or statements filed with OTS be consistent with GAAP.

The OTS capital standards comply with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), including the general requirement that the capital standards applicable to savings associations be no less stringent than those applicable to national banks.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: John Connolly, Senior Program Manager for Capital Policy, (202) 906–6465, Supervision Policy; or Timothy J. Stier, Chief Accountant, (202) 906–5699, Accounting Policy, Supervision, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Attachment I—Summary of Differences in Capital Standards

FDICIA requires a report to Congress on the differences in the capital standards for banks and savings associations. Below is a summary of the differences.

A. Major Differences

1. Interest-Rate Risk Component

Interest-Rate Risk Component: The OTS has adopted a final rule incorporating an interest-rate risk component into its risk-based capital requirements. Under the rule, institutions with an above-normal level of interest-rate risk will be subject to a capital charge commensurate with their risk exposure. Institutions have been submitting their interest-risk data and receiving a report on their interest-risk exposure under the OTS model from OTS staff since March 1991. This interest-rate risk analysis is considered so valuable by savings associations that a considerable number of associations not required to file reports do so voluntarily. Furthermore, the OTS supervisory staff considers institutions' interest-rate risk exposure in assessing institutions' capital adequacy and asset/liability management. OTS has not yet implemented the requirement for associations to deduct an interest-rate risk component in calculating their risk-based capital.

The banking agencies also are implementing policies under which they consider banks' interest-rate risk exposure in the examination process. On August 2, 1995, the banking agencies published a joint final rule in the **Federal Register** on interest-rate risk. See 60 FR 39490 (August 2, 1995). The final rule amends their capital adequacy guidelines to clarify the authority of the banking agencies to include in their evaluation of bank capital adequacy an assessment of banks' exposure to declines in capital due to interest rate movements. Concurrent with the publication of the final rule, the banking agencies issued a joint policy statement for comment that describes the process that the banking agencies will use to measure and assess the exposure of a bank's economic value to changes in interest rates. See 60 FR 39495 (August 2, 1995).

The OTS interest-rate risk approach differs from that of the banking agencies in important respects. The major differences are the methodology and data used to measure interest rate exposure.

Reason for OTS Difference: Because interest-rate risk is a significant risk to savings associations, OTS believes that it is important to use a relatively sophisticated model to measure the interest-rate risk exposure of individual institutions. OTS believes that it is particularly important to use a model that is capable of measuring the option component in mortgages and the effect of financial derivatives on an institution's overall interest-rate-risk exposure. As a consequence, OTS uses an option-based pricing model to measure exposure and collects detailed financial data on a reporting form that was designed to provide the financial data that OTS needs to measure exposure.

2. Leverage Ratio Standard

The agencies use uniform leverage ratio standards for purposes of the capital ratio thresholds used in defining the prompt corrective action (PCA) categories under section 38 of the Federal Deposit Insurance Act (FDIA). Institutions, other than CAMEL–1 rated institutions, must satisfy a leverage ratio standard requiring institutions to have Tier 1 (core) capital equal to four percent of assets to be adequately capitalized for purposes of the prompt corrective action system. The leverage ratio standard for CAMEL–1 rated institutions only requires them to have Tier 1 (core) capital equal to three percent of assets, although most CAMEL–1 rated institutions exceed this requirement by a wide margin. The leverage ratio requirements in the banking agencies' capital regulations mirror those in their PCA regulations.

Although the OTS capital rule continues to contain a three percent leverage ratio requirement, the four percent leverage ratio requirement to be "adequately capitalized" for PCA purposes is, in effect, the controlling standard for thrifts.

Reason for OTS Difference: Initial adoption of a three percent leverage ratio requirement in the OTS capital rule in 1989 prior to adoption of the banking agencies' current standard. As indicated in the September 23 Joint Report, the agencies will be issuing a proposed rule to make all of their leverage ratio regulations uniform.

3. Subsidiaries

Subsidiary (general): OTS defines a subsidiary as a five percent or greater ownership interest in an entity. The OTS requires full consolidation of any subsidiary with its parent association if the subsidiary is consolidated for

reporting purposes consistent with generally accepted accounting principles (GAAP) (except for subsidiaries engaged as principal in activities impermissible for national banks, as described below). If an association owns a five percent or greater interest, but does not have control under GAAP, OTS requires pro-rata consolidation, as discussed below.

The banking agencies generally follow the GAAP approach for the definition and consolidation of subsidiaries, but do not require consolidation of subsidiaries not exceeding certain "de minimis" thresholds. Subject to these exceptions, subsidiaries generally are fully consolidated if the parent institution holds more than 50 percent of the outstanding voting stock, or if the subsidiary is otherwise controlled or capable of being controlled by the parent institution (*see* exception for depository institutions).

The OTS, however, instead of applying, "pro rata" consolidation, has decided to use its discretion under its capital rule to follow GAAP and the banking agencies' approach in consolidating community development subsidiaries and low-income housing tax credit limited partnerships.

Reason for OTS Difference: Policy decision in 1989 based, in part, on the wide array of subsidiaries that state-chartered associations had previously been permitted to hold. In 1994, however, the OTS decided to follow the consolidation approach of GAAP and the other Federal banking agencies in consolidating community development subsidiaries. This beneficial capital treatment avoids the requirement for associations to deduct their investments in community development subsidiaries engaged in activities that are permissible for subsidiaries of national banks, but impermissible for national banks themselves. In June 1996, the OTS proposed to define "subsidiary" for capital purposes generally in the same manner as the banking agencies.

Subsidiaries (impermissible): FIRREA and the OTS capital rule require the deduction from core capital of savings associations' investments in and loans to subsidiaries that engage in activities not permissible for national banks. Generally, any new investment after April 13, 1989, in such nonincludable subsidiaries has had to be deducted immediately. Furthermore, because all transition schedules for grandfathered investments in nonincludable subsidiaries expired as of June 30, 1996, all investments in nonincludable subsidiaries must be deducted in computing core capital.

As of July 1, 1996, savings associations must deduct all investments in, and extensions of credit to, nonincludable real estate subsidiaries, consistent with the deduction requirement applicable to other types of nonincludable subsidiaries since July 1, 1994.

The banking agencies may require the deduction of investments in certain subsidiaries, generally on a case-by-case basis. For example, the FRB deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from a member bank's capital. The FDIC similarly deducts investments in, and unsecured advances to, securities subsidiaries and mortgage banking subsidiaries. The FDIC also exercises similar authority over the subsidiaries of state nonmember banks engaged in activities not permissible for national banks.

Reason for OTS Difference: The Home Owners' Loan Act, as amended by FIRREA, requires associations to deduct investments in and loans to subsidiaries engaged as principal in activities impermissible for national banks. Generally, savings associations are required to deduct the total amount of their investments in, and advances to, such nonincludable subsidiaries.

The deduction of investments in subsidiaries from parent associations' capital is designed to insulate associations' capital from activities potentially riskier than those in which associations are permitted to engage. The statutory standard for whether an activity is risky is whether a national bank may engage in that activity, plus certain other expressly permissible activities.

Subsidiaries (Permissible—Minority Ownership): The OTS capital rule, as discussed above, requires the pro-rata consolidation of subsidiaries where the association does not have control, as defined under GAAP, but owns a five percent or greater ownership interest in the subsidiary. The banking agencies generally require capital to be held only against the investments in such subsidiaries but may, on a case-by-case basis, deduct them from capital or consolidate them either fully or on a pro-rata basis.

Reason for OTS Difference: Policy decision in 1989 to ensure ample capital against the diverse assets then held by thrift subsidiaries, particularly subsidiaries of certain state-chartered associations. The proposed changes to the OTS's definition of subsidiary for capital purposes will remove this difference.

Subsidiaries (Lower-tier Depository Institutions): Under OTS rules, a depository institution subsidiary is automatically consolidated with its parent association if the subsidiary was acquired prior to May 1, 1989. The parent association's investment in such subsidiaries is automatically excluded from the parent association's capital if the depository institution subsidiary was acquired on or after May 1, 1989, unless it engages only in activities permissible for a national bank. On a case-by-case basis, the OTS requires consolidation of lower-tier depository institutions, if consolidation results in a higher capital requirement than the exclusion requirement. For purposes of risk-based capital, the banking agencies generally consolidate majority-owned subsidiaries.

Reason for OTS Difference: The Home Owners' Loan Act, as amended by FIRREA, requires associations to deduct investments in and loans to subsidiaries, including depository institutions acquired after May 1, 1989, engaged as principal in activities impermissible for national banks. OTS's policy addresses the need for both the parent and subsidiary institutions to have adequate capital on a consolidated and unconsolidated basis. It also ensures that OTS capital standards are at least as stringent as those imposed on banks. (HOLA sections 5(t)(5)(A), (C), (E)) .

4. *Equity Investments:* Savings associations must deduct the amount of their equity investments, as defined in the OTS capital rule, in computing total capital used to satisfy their risk-based capital requirements. The banking agencies allow only a limited range of equity investments and place those investments in the 100 percent risk-weight category, rather than requiring deduction.

In March 1993, OTS issued a final rule that provides parallel treatment of equity investments for thrifts and national banks. Equity investments of thrifts that are permissible for national banks (primarily stock of Freddie Mac, stock of Fannie Mae and certain loans with equity characteristics) are placed in the 100 percent risk-weight category.

Reason for OTS Difference: OTS will continue to require the deduction from capital of equity investments that are impermissible for national banks. This approach is designed to insulate the institution and the insurance fund from the risk of these investments. This policy is intended to result in such investments being either divested or "pushed down" into subsidiaries, where savings associations can limit their liability and attempt to attract partial market funding for the subsidiaries. The OTS will address the safety and

soundness of equity investments of thrifts that are permissible for national banks through the same capital and supervisory approach used by the banking agencies.

5. *20 Percent Risk-Weight for High Quality Mortgage-backed Securities:* OTS includes agency securities (i.e., issued by Freddie Mac or Fannie Mae) in the 20 percent risk-weight category. OTS also places high-quality, private-issue, mortgage-related securities (i.e., eligible securities under the Secondary Mortgage Market Enhancement Act (SMMEA)) in the 20 percent risk-weight category. These private-issue mortgage-backed securities represent interests in residential or mixed-use real estate and are rated in one of the two highest investment-grade rating categories by a nationally recognized statistical rating organization. Generally, the banking agencies place private-issue, mortgage-backed securities in the 50 percent or 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to take the high credit quality of these securities into account in risk-weighting these securities.

6. *Qualifying Multifamily Mortgage Loans:* OTS and the banking agencies have uniform rules placing multifamily loans satisfying the criteria of section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTC Act), in the 50 percent risk-weight category.

The OTS, however, extended grandfathered treatment to multifamily mortgage loans that were in the 50 percent risk-weight category under a prior OTS rule in March 1994, when OTS adopted its rule implementing section 618(b) of the RTC Act. Those low-risk, grandfathered multifamily loans must continue to satisfy the criteria of the prior OTS rule. Those criteria are that the loans are secured by multifamily residential buildings with 5–36 units, have maximum 80 percent loan-to-value ratios and maintain occupancy rates of at least 80 percent.

Reason for OTS Difference: The rules of the OTS and the banking agencies are generally consistent. The OTS, however, decided to extend grandfathered treatment to low-risk multifamily loans previously qualifying for the 50 percent risk-weight category under the prior OTS multifamily rule.

7. *Intangible Assets and Mortgage Servicing Rights:* The final rule on the capital treatment of intangible assets adopted by the OTS generally is consistent with the rules adopted by the banking agencies. The OTS rule, however, contains a grandfathering provision and a transition provision for purchased mortgage servicing rights included in capital prior to adoption of the revised final rule.

The OTS rule also contains a grandfathering provision allowing continued inclusion of core deposit premiums included in associations' capital on the effective date of the final rule. These core deposit premiums were previously included in capital pursuant to temporary OTS guidance if an association's management determined that they passed a three-part test and the amount included did not exceed 25 percent of core capital. The new rule requires the deduction of nongrandfathered core deposit premiums from capital.

In August 1995, the OTS also issued a joint rule with the other banking agencies adopting uniform interim capital treatment of originated mortgage servicing rights. The Financial Accounting Standards Board required originated mortgage servicing rights to be capitalized in accordance with prescribed valuation criteria by adopting Statement of Financial Accounting Standard No. 122, "Accounting for Mortgage Servicing Rights", in May 1995. The joint interim rule generally applies the same treatment to originated mortgage servicing rights that the agencies previously applied to purchased mortgage servicing rights. This capital treatment includes a 50 percent of Tier 1 capital limit and valuation at the lower of 90 percent of fair market value or 100 percent of amortized book value.

Reason for OTS Difference: The treatment of intangible assets and mortgage servicing rights under the capital rules of OTS and the banking agencies are generally uniform. The OTS, however, decided to allow associations to continue to include purchased mortgage servicing rights and core deposit premiums in capital computations if the specific assets had previously been included in associations' capital under prior OTS rule or policy.

8. Recourse Arrangements

Assets Sold with Recourse (Nonmortgage): If a savings association makes a GAAP sale of nonmortgage assets with recourse, the OTS (i) treats the transaction as a sale for purpose of reporting and leverage ratio computation and (ii) requires capital to be held against the total amount of the loans sold with recourse in calculating the association's risk-based capital requirement. Despite being a GAAP sale, the banking agencies treat the transaction as a financing. This means that the original assets are considered still on the books, along with the proceeds received, in computing the leverage and risk-based assets.

Reason for OTS Difference: OTS follows GAAP in determining whether a transaction is a sale for reporting purposes and in computing associations' leverage ratio capital requirements. The OTS policy also ensures that the economic risk to associations from sales with recourse is captured in determining associations' risk-based capital requirements.

Assets Sold with Recourse (Mortgages—Private Transactions): If a savings association sells mortgage assets with recourse to private entities and the transaction is treated as a sale under GAAP, OTS follows the same policy as it follows regarding sales of nonmortgage assets. Under this policy, OTS (i) treats the transaction as a sale and (ii) requires capital to be held against the total amount of loans sold with recourse in calculating the association's risk-based capital requirement.

A bank that sells pools of residential mortgages to private entities with recourse generally is required to hold the full amount of capital against the mortgages sold, as well as the proceeds received, regardless of the amount of recourse retained and the treatment of the transactions for regulatory reporting purposes.

The rules of the FRB and OCC, however, provide that no capital is required against pools of 1- to 4-family mortgages sold to private entities with "insignificant recourse" (i.e., less than expected losses) for which a specific noncapital reserve or liability account is established and maintained for the maximum amount of possible loss under the recourse provision.

If *"significant"* recourse is retained, the transaction is not reported as a sale and the assets remain on the balance sheet. Capital is required to be held against the on-balance sheet amount of the assets. The FDIC follows this approach for all sales with recourse; the FDIC has not adopted an "insignificant recourse" policy.

Reason for OTS Difference: OTS follows GAAP in determining whether a transaction is a sale for reporting purposes and in computing associations' leverage ratio capital requirement. The OTS policy also ensures that the economic risk to associations from sales with recourse will be captured in determining their risk-based capital requirements. The banking agencies' application of their limited recourse provisions for computing banks' risk-based capital requirements has affected the

significance of the "insignificant recourse" provisions of the FRB and OCC.

Assets Sold with Recourse (Limited Recourse): In accordance with section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, the banking agencies adopted a low-level recourse rule. The OTS adopted its low-level recourse provision in 1989. The remaining difference regarding such sales with recourse is that the OTS follows GAAP in according sales treatment to those transactions for reporting and leverage computation purposes. The banking agencies generally do not accord sales treatment to sales with low-level recourse and continue to treat the transaction as a financing in computing banks' leverage ratio requirements, subject to the "insignificant recourse" provisions of the FRB and OCC.

Reason for OTS Difference: The agencies, low-level recourse provisions, in accordance with section 350 of the Riegle Act, limit an institution's capital requirement to its maximum contractual liability under its recourse obligation. The difference between OTS and the banking agencies for reporting and leverage ratio purposes is caused by the OTS decision to follow GAAP in determining whether to accord sales treatment.

Recourse Servicing: Where savings associations are responsible for credit losses on loans they service, OTS requires capital against the amount of the underlying loans consistent with the recourse policy set forth above. Although savings associations do not own the underlying assets, they have a contingent liability and are subject to losses on those loans. OTS requires associations to hold capital against the underlying loans posing economic risk for the associations. The banking agencies do not assess capital on the underlying loans but only on the value of the servicing rights.

Reason for OTS difference: Policy decision to assess capital on underlying loans to buffer associations from the risk of loss on such loans.

9. *Purchased Subordinated Securities:* The OTS risk-based capital standard requires associations to hold capital against the amount of their subordinated securities and any more senior securities. It does not matter whether the subordinated securities were acquired from others or result from the securitization of loans they originated. Associations' risk-based capital requirements are limited, however, by the low-level recourse provision.

Banks are only required to hold capital against the amount of more senior securities if the institution originated and sold the underlying loans. The banking agencies do not require banks to hold capital against securities senior to acquired subordinated securities if a bank acquired the securities in the market from third parties.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. Whether institutions create subordinated securities or purchase subordinated securities, the risks are similar.

10. *Consequences of Failure to Meet Capital Standards:* The PCA provisions of FDICIA impose a stringent regulatory regimen on thrifts and banks failing their capital requirements. The PCA provisions of section 131 of FDICIA establish five regulatory categories, with the distinctions primarily based on institutions' capital ratios. Section 131 imposes various sanctions and restrictions on institutions in the lower three PCA categories, while other regulations (brokered deposits and the risk-based premium rules of the FDIC) provide preferential treatment to the well-capitalized institutions. The agencies issued a joint preamble and parallel rules implementing PCA.

Savings associations are also subject to additional restrictions and requirements under the HOLA, as enacted in FIRREA. The OTS will continue to apply these provisions to savings associations, but is coordinating their implementation with the PCA provisions to the extent possible. The HOLA provisions do not apply to banks.

Reason for OTS Difference: The agencies have adopted uniform rules implementing the PCA provisions of FDICIA. The HOLA, however, continues to impose additional restrictions on savings associations (HOLA section 5(t)(6)).

11. Collateralized Transactions

Since December 1994, the agencies have had three different rules for the capital treatment of transactions that are supported by qualifying collateral. The FDIC's and OTS's risk-based capital standards provide that the portion of a transaction collateralized by cash on deposit in the lending institution or by the market value of central government securities of countries that are members of the Organization for Economic Cooperation and Development (OECD securities) may be assigned to the 20 percent risk-weight category. The FRB's general rule is like the FDIC's and OTS's rule, but with a limited exception. The exception is that transactions fully collateralized with cash or OECD securities marked-to-market daily with positive collateral margin maintained. The OCC's rule permits the portion of a transaction that is collateralized with a positive margin by cash or OECD securities, which must be marked-to-market daily, to receive a zero percent risk-weighting.

Reason for OTS Difference: The OTS and FDIC regulations on collateralized transactions have not been changed since 1989. The FRB and OCC revised their regulations in different ways in 1992 and 1994, respectively. As indicated in the September 23 Joint Report, consistent with section 303 of the Riegle Act, in August, 1996, the agencies jointly proposed a uniform approach to the capital treatment of collateralized transactions. Under the proposed approach, designated portions of claims are included in the zero percent risk-weight category if the institution marks the designated portion to market daily and requires the obligor to adjust the amount of underlying collateral to maintain a positive daily margin on the designated portion of the claim.

B. Minor Differences

1. *1.5 Percent Tangible Capital Requirement:* OTS has an explicit 1.5 percent tangible capital requirement; the bank regulators do not.

Reason for OTS Difference: FIRREA required OTS to establish a tangible capital requirement of at least 1.5 percen of assets. (HOLA 5(t)(2)(B)).

2. *Collateralized Mortgage Obligations (CMO) Tranches:* In its final interest-rate risk rule, OTS eliminated the placement of stripped securities and certain collateralized mortgage obligations in the 100 percent risk-weight category because of their interest-rate risk sensitivity. The OTS interest-rate risk model evaluates the interest-rate risk stemming from these assets. The OTS examination and supervisory staffs consider associations, interest-rate risk exposure, along with aspects of associations, capital position, in determining the associations, capital adequacy under the CAMEL system. Residual securities remain in the 100 percent risk-weight category because of their degree of credit risk and other risks.

The banking agencies vary in their approach: OCC has stated that any CMO tranche absorbing more than its pro-rata share of the risk of losing principal is risk-weighted at 100 percent (others generally at 20 percent); FRB has stated that any CMO tranche absorbing more than its pro-rata share of loss is risk-weighted at 100 percent (others

generally at 20 percent); FDIC undertakes a case-by-case review.

Reason for OTS Difference: Policy decision to address the interest-rate risk of CMOs through the OTS interest-rate risk rule, model and supervisory oversight. Policy determination that dealing with these securities in this way made continued risk-weighting for credit risk in the 100 percent risk-weight category unwarranted. The degree of credit risk and other risks to which residual securities expose associations warrant their continued risk-weighting in the 100 percent risk-weight category.

3. *Pledged Deposits/Nonwithdrawable Accounts:* OTS includes these instruments as core capital for mutual associations if they meet the same requirements as non-cumulative perpetual preferred stock. If they do not meet the requirements for inclusion in core capital, OTS includes them as supplementary capital provided they meet the standards for preferred stock or subordinated debt. The banking agencies do not address this issue because these instruments represent the capital of mutual associations legally restricted from issuing equity securities (i.e., their depositor members are their owners). Banks generally are not organized in mutual form.

Reason for OTS Difference: Policy decision to treat these instruments the same as the equity instruments of corporate thrifts because they provide the same protection as equity to the mutual associations and the deposit insurance fund.

4. *Qualifying Single Family Mortgage Loans:* In order to be placed in the 50 percent risk-weight category, OTS requires that mortgages have no more than an 80 percent loan-to-value (LTV) ratio (unless they have private mortgage insurance (PMI) bringing the LTV ratio down to 80 percent). The banking agencies require "prudent, conservative" underwriting without specific LTV ratio requirements.

Reason for OTS Difference: Policy decision to make explicit what OTS believes is generally "prudent and conservative"; the banking agencies generally include a similar LTV standard in their examiner guidance.

5. *Loans to Individual Purchasers for the Construction of Their Homes:* OTS and OCC place these assets in the 50 percent risk-weight category. The FRB and FDIC may treat them as construction loans (100 percent) or as mortgage loans (50 percent) depending on their characteristics.

Reason for OTS Difference: Policy decision to include such loans in standard treatment of 1–4 family mortgage loans, as does the OCC. As indicated in the September 23 Joint Report, the agencies expect to issue a proposal to make their regulations uniform in this area.

6. *Holding of First and Second Liens on Home Mortgages by the Same Institution:* The FRB and OTS generally treat first and second liens held by the same institution as single loans if there are no intervening liens. The OCC generally places second liens in the 100 percent risk-weight category. The FDIC combines first and second liens in evaluating whether the first lien is prudently underwritten, but places all second liens in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision generally to treat two extensions of credit to the same individual and secured by the same 1–4 family residence the same as a single extension of credit. The combined credit should be placed in the appropriate risk-weight depending on whether the combined credit meets the other criteria for a qualifying mortgage loan. As indicated in the September 23 Joint Report, the agencies expect to issue a proposal to make their regulations uniform in this area.

7. *Rules on Maturing Capital Instruments (MCI):* OTS and the banking agencies use different rules to determine how much of MCI counts toward capital. OTS (i) grandfathers issuances of MCI issued on or before November 7, 1989 (which was the date of the rule change) and (ii) allows two options for issuances of MCI after November 7, 1989 (a) the bank rule (five year amortization) or (b) a limit of 20 percent of total capital maturing in any one year for instruments within seven years of maturity.

The banking agencies require use of the straight five-year approach.

Reason for OTS Difference: Policy decision to minimize unnecessary disincentives for issuance of subordinated debt and to avoid unduly penalizing pre-FIRREA issuances of MCI.

8. *Limitation on Subordinated Debt:* The banking agencies limit subordinated debt to 50 percent of core capital. OTS has no limit on the amount of subordinated debt that can count as supplementary capital.

Reason for OTS Difference: Policy decision to encourage issuance of supplementary capital.

9. *Nonresidential Construction and Land Loans:* OTS requires the amount of these loans above an 80 percent LTV ratio to be deducted from total capital (with a five year phase-in). The banking agencies place the whole loan amount in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS experience indicates that high-LTV ratio land loans and nonresidential construction loans present particularly high levels of risk.

10. *FSLIC/FDIC-covered Assets:* OTS places these assets in the zero percent risk-weight category. The banking agencies generally place these assets in the 20 percent risk-weight category.

Reason for OTS Difference: Policy decision to recognize OTS Capital and Accounting Standards that these assets have never resulted in losses and that these government guaranteed obligations are supported by a "backup" call on the United States Treasury.

11. *Mutual Funds:* In general, OTS establishes the risk weighting for mutual funds on the asset with the highest capital requirement actually held by the mutual fund. The banking agencies base their capital charge on the highest risk-weighted asset that is a permissible investment by the mutual fund. The 20 percent risk-weight category is the lowest risk-weight category in which associations may place mutual fund investments.

OTS allows, on a case-by-case basis, "pro-rata" risk-weighting of investments in mutual funds, based on the assets of the mutual fund (i.e., if 90 percent of a mutual fund's assets are 20 percent risk-weight assets and 10 percent are 100 percent risk-weight assets, we may allow 90 percent of the investment in 20 percent risk-weight category and 10 percent in the 100 percent risk-weight category). The OCC permits national banks to pro-rate mutual fund investments between risk-weight categories based on the maximum amount of different types of assets that mutual funds may hold in accordance with their prospectuses. The FDIC and FRB do not allow banks to pro-rate mutual fund investments between risk-weight categories.

Reason for OTS Difference: Policy decision to ensure appropriate capital against the risk of these assets. OTS believes that allowing institutions to pro-rate their investments and focus on "actual" assets ensures that savings associations hold capital in an amount essentially equivalent to that required if they directly held the assets in which the mutual fund invested. However, as indicated in the September 23 Joint Report, the agencies expect to issue a proposal in the near future to make their regulations uniform in this area.

12. *Capital Requirement on Holding Companies:* FRB applies the risk-based

capital requirements to bank holding companies; OTS does not apply them to thrift holding companies.

Reason for OTS Difference: OTS policy decision to not impose capital requirements on corporate entities because they do not pose a risk to the deposit insurance fund.

13. *Agricultural Loan Losses:* The banking agencies, due to a statutory requirement, allow such losses to be deferred (and, effectively, allow these losses to be "included" in supplementary capital). OTS does not allow such losses to be deferred or included in assets or capital.

Reason for OTS Difference: OTS has no statutory requirement to allow such deferred losses in assets or capital.

14. *Income Capital Certificates (ICCS) and Mutual Capital Certificates (MCCs):* OTS allows inclusion in supplementary capital. Because these items do not exist in the banking industry, the banking agencies do not address them.

Reason for OTS Difference: ICCs/MCCs are counted as supplementary capital due to their being functionally equivalent to net worth certificates (which are required, by statute, to be included in capital).

Attachment II—Summary of Differences in Accounting Practices

Differences by each agency in accounting or supervisory reporting practices may cause differences in amounts of regulatory capital maintained by depository institutions. These differences are the result of an evolutionary process that primarily reflects historical agency philosophy and industry trends.

The OTS follows generally accepted accounting principles for regulatory reporting purposes. The other banking agencies require banks to follow certain prescribed regulatory accounting principles (RAP) instead of GAAP for reporting purposes. The banking agencies, however, are contemplating moving toward GAAP reporting in 1997, which will eliminate most remaining differences between the reporting of OTS and the other banking agencies.

A summary of these differences is presented below.

1. Futures and Forward Contracts

OTS practice is to follow generally accepted accounting principles. In accordance with SFAS 80, when hedging criteria are satisfied, the accounting for the futures contract shall be related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred gains and losses in accordance with GAAP.

The banking agencies do not follow GAAP, but report changes in the market value of futures contracts even when used as hedges in the current period's income statement. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

2. Excess Service Fees

OTS practice is to follow GAAP in valuing excess service fees. When loans are sold with servicing retained and the stated servicing fee rate differs materially from a normal servicing fee rate, the sales price should be adjusted in determining the gain or loss from the sale of the loans. This provides for the recognition of a normal fee in each subsequent year that servicing continues on the loans. The gain recorded at the date of sale cannot be larger than the gain assuming the loans were sold servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

The banking agencies follow GAAP for residential mortgage loan pools. For all other types of loans, the banking agencies do not follow GAAP. In those cases they require that excess servicing fees retained on loans sold be reported as realized over the contractual life of the transferred asset.

3. In-Substance Defeasance of Debt

OTS practice is to follow GAAP. In accordance with SFAS 76, when a debtor irrevocably places risk-free monetary assets in a trust solely to satisfy the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

The banking agencies do not follow GAAP. The banking agencies continue to report the defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

4. Sales of Assets with Recourse

OTS practice is to follow GAAP. A transfer of receivables with recourse is recognized as a sale under GAAP if (i) the transferor surrenders control of the future economic benefits, (ii) the transferor's obligation under the recourse provisions can be reasonably estimated, and (iii) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

However, in the calculation of OTS risk-based capital, certain off-balance sheet conversions are performed that result in capital being required for the risk retained. See further discussion of capital differences with respect to this item in Attachment I, Capital Differences.

The practice of the banking agencies is generally to report transfers of receivables with recourse as sales only when the transferring institution (i) retains no risk of loss from the assets transferred and (ii) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not as sales.

However, this general rule does not apply to the transfer of mortgage loans under one of the government programs of the Government National Mortgage Association, Freddie Mac or Fannie Mae. Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, the OCC and FRB provide for the treatment of private transfers of mortgages as sales if the transferring institution does not retain a significant risk of loss on the assets transferred.

5. Negative Goodwill

OTS practice is to follow GAAP for reporting purposes. OTS permits negative goodwill to offset goodwill reported as an asset. The banking agencies require that negative goodwill be reported as a liability, and not be netted against goodwill assets.

6. Push-Down Accounting

OTS practice is to follow GAAP. OTS requires push-down accounting when there is at least a 90 percent change in ownership. Push-down accounting generally applies the fair value concepts of purchase accounting in the context of a holding company's acquisition of a company to be held as a separate subsidiary or combined with an existing subsidiary.

The banking agencies require push-down accounting when there is at least a 95 percent change in ownership.

Dated: January 6, 1997.

By the Office of Th ft Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–1182 Filed 1–16–97; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

BILLING CODE: 8720–01.

AGENCY: United States Enrichment Corporation Board of Directors.

TIME AND DATE: 8:00 am, Wednesday, January 22, 1997.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial matters of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: January 15, 1997.

Robert J. Moore,

Corporate Secretary.

[FR Doc. 97–1429 Filed 1–15–97; 3:09 pm]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Care Interagency Reimbursement Rates for FY 1997

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11, Section 12.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1997. These rates will be charged for such medical care provided on and after December 1, 1996, at health care facilities under the direct jurisdiction of the Secretary of Veterans Affairs.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Besecker, Director, Medical Care Cost Recovery Office (174), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202)–273–5662.

SUPPLEMENTARY INFORMATION: The Interagency Reimbursement Rates, effective December 1, 1996, are as follows:

VA Hospital Care, rates per inpatient day:	
General Medicine	946
Neurology	915
Rehabilitation Medicine	743
Blind Rehabilitation	886
Spinal Cord Injury	884
Surgery	1761
General Psychiatry	448
Substance Abuse (Alcohol and Drug Treatment)	297
Intermediate Medicine	385
VA Nursing Home Care, rate per day:	
Nursing Home Care	258
VA Outpatient Care, rates per visit or per prescription filled:	
Outpatient Visit *	178
Emergency Dental Outpatient Visit	107
Prescription Filled	19

* Rate includes dialysis treatments and non-emergency dental visits.

Inpatient charges to other Federal agencies will be at the current Interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Prescription filled charge in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. This charge applies whether the patient receives the prescription in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such services.

Dated: January 8, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–1180 Filed 1–16–97; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 63, No. 12
Friday, January 17, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

Correction

In rule document 96–30032 beginning on page 60513 in the issue of Friday, November 29, 1996 make the following corrections:

§1499.1 [Corrected]

1. On page 60515, in the third column, in the third line, "standing" should read "stranding".

§1499.8 [Corrected]

2. On page 60519, in the first column, §1499.8(h)(3) should read "*No demurrage.* CCC will not pay demurrage."and remove the remaining text.

3. On the same page, in the same column, insert the following section heading above paragraph (a):

§ 1499.9 Arrangements for entry and handling in the foreign country.

§1499.12 [Corrected]

4. On the same page, in the third column, in §1499.12(d), in the second line, insert a coma after "part".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research

Correction

In notice document 97–157, beginning on page 876, in the issue of Monday, January 6, 1997, make the following correction:

On page 876, in the third column, in the third paragraph, in the eighth line, "$41,134,612" should read "$1,134,612".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1997; Solicitation of Proposals

Correction

In notice document 97–159, beginning on page 884, in the issue of Monday, January 6, 1997, make the following correction:

On page 886, in the first column, in the first full paragraph, in the fifth line, "psh@reeusda.gov" should read "psb@reeusda.gov".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AE82

Amendments to the Peanut Poundage Quota Regulations

Correction

In rule document 96–17690, beginning on page 36997, in the issue of Tuesday, July 16, 1996, make the following correction.

§ 729.214 [Corrected]

On page 37001, in § 729.214, in the second column, in the last paragraph, in the first line, the paragraph designation "(1)" should read "(l)".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–6312–01; I.D. 102296B]

RIN 0648–XX69

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands; Proposed 1997 Harvest Specifications for Groundfish

Correction

In proposed rule document 96–30045, beginning on page 60076, in the issue of November 26, 1996, make the following corrections:

1. On page 60079, in Table 2, in Footnote 6, "Reminder" should read "Remainder".

2. On page 60083, in Table 7, in the first column, under "Total" insert "Non-trawl Fisheries".

3. On page 60081, Table 6 is corrected to read as set forth below:

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TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1997 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS

Sablefish CDP recipient	Area	Percent	Allocation (mt)
Atka Fishermen's Association	BS	0	0
	AI	0	0
Bristol Bay Economic Development Corp	BS	0	0
	AI	25	34
Coastal Villages Fishing Cooperative	BS	0	0
	AI	25	34
Norton Sound Economic Development Corporation	BS	25	20
	AI	30	40
Pribilof Island Fishermen	BS	0	0
	AI	0	0
Yukon Delta Fisheries Development Association	BS	75	59
	AI	10	13
Aleutian Pribilof Islands Community Development Association	BS	0	0
	AI	10	13
Total	BS	100	79
	AI	100	134

BILLING CODE 1505-01-D

FOR THE

Allocation (mt)
0
0
0
34
0
34
20
40
0
0
59
13
0
13
79
134

federal register

Friday
January 17, 1997

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5672–5]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Amendments.

SUMMARY: On April 22, 1994 and June 6, 1994, the EPA issued the National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. This rule is commonly known as the Hazardous Organic NESHAP or the HON. In June 1994, petitions for review of the April 1994 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 75 technical issues and concerns with drafting clarity of the rule.

On August 26, 1996, the EPA proposed correcting amendments to the rule to address the petitioners' issues. Among the proposed amendments were proposed revisions to definitions that apply to wastewater and wastewater treatment and revised control and compliance provisions for wastewater. A new compliance date of April 22, 1999, was proposed for process wastewater, heat exchange systems, equipment subject to the provisions of §63.149, and maintenance wastewater. The EPA also proposed a separate compliance date for wastewater streams affected by the omission of nitrobenzene from the list of compounds subject to the wastewater provisions. The proposed revisions to the other provisions to the rule also included corrections and clarifications to ensure the rule is implemented as intended. The proposed amendments also included some additional compliance options that would reduce the burden associated with the recordkeeping and reporting requirements of the rule. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541–5254 or Mary Tom Kissell, Waste and Chemical Processes Group, at (919) 541–4516. For technical questions on wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499. The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult one of the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background on Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the **Federal Register** the NESHAP for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following **Federal Register** notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); and December 5, 1996 (61 FR 64571).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA*, 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA*, 94–1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule.

In the August 26, 1996 document, the EPA committed to taking final action on some portions of the proposed amendments to the rule as soon as possible after the close of the comment period in order to give sources as much lead time as possible. In the December 5, 1996 **Federal Register**, the EPA took final action on those portions of the proposed amendments that would eliminate the need for filing some implementation plans that would otherwise be due December 31, 1996, and would allow the filing of requests for compliance extensions up to 4 months before the April 1997 compliance date.

Today the EPA is taking final action on the remaining portions of the amendments proposed on August 26, 1996.

C. Public Comment on the August 26, 1996 Proposal

Eighteen comment letters were received on the August 26, 1996 **Federal Register** document that proposed

changes to the rule. All comment letters received were from industry representatives and trade associations. Most of the comment letters were supportive of the proposed amendments. A few of these comment letters also included suggested editorial revisions to further clarify some aspects of the proposed amendments or to address oversights in the proposed amendments. The EPA considered these suggestions and, where appropriate, made changes to the proposed amendments. The significant issues raised and the changes to the proposed amendments are summarized in this preamble. A memorandum containing the EPA's response to all comments can be found in Docket A–90–19, item number IX–C–1. The response to comments may also be obtained over the Internet at http://ttnwww.rtpnc.epa.gov or from the EPA's Technology Transfer Network (TTN). The TTN is a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

D. Judicial Review

Under Section 307(b)(1) of the CAA, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Overview of Amendments to Rule

With today's action, the EPA is issuing clarifying and correcting amendments to subparts F, G, H, and I of 40 CFR part 63 that were proposed on August 26, 1996. Readers should refer to the August 26, 1996 **Federal Register** document for a complete discussion of the background and the proposed changes to the rule. Today's revisions are intended to remove any ambiguity and clearly convey the EPA's intent, to make the rule easier to read and implement, and to increase flexibility for the source.

These amendments include an extension of the existing source compliance date to April 22, 1999 for process wastewater, heat exchange systems, maintenance wastewater, and equipment subject to the provisions of §63.149 and also establish a separate compliance date for wastewater streams affected by the omission of nitrobenzene from table 9 of subpart G. A three year compliance date is being established for process wastewater streams that are subject to control requirements due to the presence of nitrobenzene due to an error in the April 22, 1994 rule. Equipment subject to the other provisions of the rule must be in compliance by April 22, 1997, unless a compliance extension is granted.

Today's amendments also include the revisions to the wastewater sections of subpart G, §§63.132 through 63.147. As discussed in the August 26, 1996 document, the wastewater sections have been redrafted to improve organizational structure and clarity. The revised wastewater sections reflect the concept that only when water is "discarded" from a process is it "wastewater," and thus subject to the HON wastewater provisions. The revised wastewater sections in subpart G also include provisions that: (1) Ensure that streams traveling from one piece of process equipment to another are handled appropriately to avoid emissions to the environment, and (2) ensure that the changes in the wastewater definition do not permit sources to dilute their streams prior to the point the streams are considered wastewater, thus avoiding control requirements. The amendments to the wastewater provisions also include the provisions that would allow a HON source owner or operator to ship waste off-site for treatment. Under these revisions to the rule, the owner or operator choosing not to treat wastewater on-site may only ship to a facility that has certified that it will treat the waste to the standard required by the HON.

In contrast to the significant revisions of the wastewater provisions, only minor changes are being made to other sections of the rule. In addition to removing ambiguity and increasing flexibility for the source, some revisions reduce the reporting and recordkeeping burden for sources. The reporting and recordkeeping revisions include changes that (1) reduce the number of copies of reports that must be submitted to the EPA and the States, and (2) provide for alternative, less frequent recordkeeping of monitoring data where sources are able to demonstrate that no violations have occurred for prolonged stretches of time.

III. Summary of Major Comments and Changes to the Proposed Amendments to the Rule

A. Applicability of Rule to Storage Vessels Located in a Tank Farm or Marine Terminal

In the August 26, 1996 document, the EPA proposed amendments to clarify the applicability of the rule to storage vessels located in tank farms and marine tank farms. Due to an oversight, the provisions currently in § 63.100(g) of subpart F of the April 1994 rule did not include instructions regarding allocation of tanks in remote locations, such as tank farms. The proposed amendments, § 63.100(g)(3), provided explicit procedures to be followed to assign the storage vessels to a process and then to determine the applicability of the rule.

Most commenters were supportive of the proposed amendment. However, one commenter requested clarification of the difference between a remote storage tank owned by a chemical process facility and a remote storage tank owned by a for-hire, bulk liquid terminal. The commenter thought the proposed amendments to § 63.100(g) could inappropriately cause a remote storage tank owned by a for-hire, bulk liquid terminal to be considered subject to the HON. The commenter requested that the rule specifically state that remote storage vessels at independent tank farm distribution facilities are not subject to the rule.

The EPA agrees with the commenter that the focus of this rule is on chemical manufacturing plants and not on for-hire terminals that store products for distribution. The EPA believes that the commenter's concern arose because the preamble description of this proposed change was not sufficiently clear that this assignment procedure was for allocation of storage vessels at remote locations within the plant site. The EPA believes that when the provisions of § 63.100(g)(3) are considered within context of all the applicability criteria in subpart F it is clear that this proposed assignment procedure for storage vessels in tank farms does not extend the applicability to for-hire terminals that are not part of the major source. For the amendments to affect any specific storage vessel (or transfer rack or distillation unit), it would have to be part of a chemical manufacturing process unit at a major source subject to the rule. In order for a storage vessel (or transfer rack or distillation unit) to be part of a major source, it would have to be (among other things) under the control of the owner or operator of the chemical manufacturing process unit

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and located within the same contiguous area as the chemical manufacturing process unit. A storage vessel owned by a for-hire bulk liquid terminal could only be subject to the HON if it was under the control of the owner or operator of the HON chemical manufacturing process unit, and contiguously located, and therefore part of the same major source. The EPA believes that the applicability of the rule is clear and it is not necessary to add explicit language to the rule to specify that storage vessels at for-hire terminals that are not part of the major source are not subject to the rule.

B. Revision to Table 2 of Subpart F List of Regulated Organic Hazardous Air Pollutants

In the August proposal, the EPA proposed to revise table 2 of subpart F to list 21 specific compounds that are to be regulated as polycyclic organic matter (POM) in the HON. The specific compounds listed were identified as being consistent with the historical working definition of POM, which emphasizes emissions from incomplete combustion and pyrolysis processes (49 FR 31680). This change was proposed to address requests for clarification of the scope of the term POM in the HON.

Several commenters contended that 1,2-naphthylamine sulfonic acid, 1,4-naphthylamine sulfonic acid, α-naphthol, and β-naphthol should not have been included on the list of specific compounds proposed to be added to table 2 to replace the hazardous air pollutants category POM. These commenters all asserted that these compounds do not meet the historical working definition of POM, as claimed by the EPA in the August 26, 1996 document. In support of that view, the commenters stated that, in 1992, the EPA acknowledged the potential problems with the statutory definition of POM and stated that, although the definition would remain, the EPA would emphasize emissions from combustion and pyrolysis activities (letter from John Seitz to Larry Thomas, The Society of the Plastics Industry, March 3, 1992). The commenters also believe that, in 1994, the EPA announced a new POM definition in a response to comments Background Information Document (EPA–453/R–94–003d) for the HON that states:

> Polycyclic organic matter is generally formed or emitted during thermal processes including (1) incomplete combustion, (2) pyrolysis, (3) the volatilization of fossil fuels or bitumens, or (4) the distillation or thermal processing of non-fossil fuels. (HON BID, Vol. 2D, p.4)

The commenters believe that these four compounds do not meet what they describe as the revised definitions of POM since the compounds are not produced by combustion processes and are not used in the types of processes intended to be covered by this listing. The commenters recommended that these specific compounds not be added to table 2 of subpart F. One commenter also argued that the EPA should follow the listing process in section 112(b) of the CAA if the EPA wished to list these specific compounds as hazardous air pollutants.

The EPA does not agree with the commenters that these four compounds do not meet the historical working definition of POM and thus, should not be added to table 2 of subpart F. The term POM, as defined in section 112(b) of the CAA, includes organic compounds with more than one benzene ring and which have a boiling point greater than or equal to 100° C. This definition is very broad and does not limit the term to the group of compounds which the EPA believes are principally responsible for mutagenicity and carcinogenicity in humans and animals. This arises because the current statutory definition includes any compound with more than one benzene ring and is not limited to fused ring compounds. Neither the March 1992 Seitz letter, nor the HON Background Information Document amend the statutory definition of POM. The August 26, 1996 proposal, to list 21 specific compounds on table 2 of subpart F instead of listing POM generally, is consistent with the molecular structures of concern in the historical definition. Specifically, the 21 compounds have molecular structures with two or more fused rings at least one of which is benzenoid in structure. These chemicals were identified as chemical products produced by the chemical manufacturing processes considered to be within the definition of the SOCMI source category. Whether these compounds were produced by extraction from materials produced by pyrolysis processes or derived from petroleum feedstocks, was not a consideration in the listing. The EPA does not agree with the commenter's interpretation that compounds can be considered POM only if formed by incomplete combustion and/or pyrolysis operations; the statutory definition of POM is not limited in that fashion.

The reason for including these specific compounds on table 2 instead of listing POM generally was to ensure that emissions of these compounds from the chemical manufacturing process unit producing these chemicals would be subject to the requirements of the rule. All of these compounds meet the definition of POM in section 112(b) of the CAA. Specification of these compounds on table 2 will not result in application of the rule to sources using these chemical products to produce other products. It will require that emissions of these substances from sources subject to this rule to be subject to the requirements of the rule. Before today's changes to table 2 of subpart F, emissions of the 21 substances were subject to the requirements of the rule. Today's changes merely clarify what the substances are rather than referring to POM generally.

Finally, the EPA disagrees with the commenter who argued that the EPA should follow the listing process in section 112(b) to list these compounds as hazardous air pollutants. The specific hazardous air pollutants added to table 2 meet the definition of POM in section 112(b) and therefore are already subject to the requirements of section 112 without further listing action.

One commenter also asserted that listing 1,2-naphthylamine sulfonic acid and 1,4-naphthylamine sulfonic acid as Hazardous Air Pollutants has potential consequences under other statutes. The commenter noted that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 101(14)(e) incorporates by reference any hazardous air pollutant listed under the CAA. This, in turn, establishes Federal authority to respond to releases or threats of releases of hazardous substances and triggers notification requirements of releases to the National Response Center above the Reportable Quantity (RQ) and liability for costs associated with cleanup and any natural resources damages resulting from the release. Another possible result is under section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) that the owner or operator of a facility from which an RQ or more of a CERCLA hazardous substance has been released must immediately notify state and local emergency response authorities.

The EPA does not agree with the commenter's assessment of the potential consequences of the proposed listing of the 21 compounds in table 2 of 40 CFR part 63, subpart F. The commenter's opinion that the listing of the chemicals of interest in table 2 in place of POM generally triggers new CERCLA and EPCRA reporting requirements is incorrect, as the requirements were effective upon enactment of the CAA by virtue of CERCLA section 101(14) and, in turn, section 102(b). The POM category was one of five broad generic

categories of CAA section 112 hazardous air pollutants codified as a hazardous substance pursuant to CERCLA section 101(14) in 40 CFR 302.4. Section 101(14) of CERCLA states that the term "hazardous substance" includes "any hazardous air pollutant listed under section 112 of the Clean Air Act." Thus, the CAA categories automatically became hazardous substances under CERCLA when listed as hazardous air pollutants under section 112 in 1990. In the June 12, 1995 **Federal Register** (60 FR 30926), the EPA stated that "All substances within the (CAA section 112 hazardous air pollutants) categories, as well as the categories themselves, are CERCLA hazardous substances" and that "CERCLA section 102(b) provides that an RQ of one pound applies to hazardous substances (which include the CAA hazardous air pollutants) until this RQ is adjusted by regulation. Therefore, the section 112 listing of POM in the CAA automatically triggers a one pound RQ for any chemical which falls within the section 112(b) definition of POM. Issuance of a MACT standard requiring control of specific hazardous air pollutants has no additional effect on CERCLA coverage.

C. Compliance Extension for New Sources

The August 26, 1996 proposal included an extension of the compliance date to April 22, 1999 for heat exchange systems, maintenance wastewater, equipment subject to § 63.149, and process wastewater for existing sources. This proposed change was in § 63.100(k)(2)(ii) of the proposed rule.

Several commenters suggested that the compliance schedule should be extended for new sources to April 22, 1999 or initial startup, whichever is later. The commenter's did not state the basis for their belief that more than 2 additional years should be provided for new sources.

While the EPA believes that, in some limited instances new sources may need more time for compliance than was provided in the April 1994 rule, the EPA does not believe that 2 years is justified. In today's final rule the EPA has provided that, in general, new sources that commenced construction or reconstruction up to the date of proposal of the August 1996 amendments continue to have a compliance date of April 22, 1994, (the date of the original final rule) or start-up, whichever is later.

However, some exceptions have been added. Commenters had requested more compliance time for heat exchange systems, maintenance and process wastewater streams, and equipment subject to §63.149 (those pieces of equipment for which a new, later compliance date has been set with respect to existing sources). In response to this request the EPA has decided that heat exchange systems, maintenance wastewater streams, process wastewater streams, and equipment subject to §63.149 that are part of new sources on which construction or reconstruction commenced before proposal of the August 1996 amendments will have a compliance date that is the later of start-up or 180 days from the date of today's final rule.

These exceptions will provide new sources that commenced planning for, or actually achieved compliance with, the April 22, 1994 rule, 6 months more time to allow any minor adjustments necessary to comply with the provisions of today's final rule applicable to the heat exchange system, maintenance and process wastewater streams, and equipment subject to §63.149.

In addition, today's final rule provides that new sources upon which construction or reconstruction commenced after the August 1996 proposal, must be in compliance upon the later of initial start-up or the date of today's final rule.

The EPA believes that 180 days from today is ample time for any new sources that are already in compliance with the April 1994 final rule to make the necessary adjustments to their recordkeeping and reporting procedures to ensure compliance with today's rule. Those sources that commenced construction after December 31, 1992, but have not yet reached start-up will be able to adjust their start-up date to allow time to reach compliance as will any new sources commencing construction after the August 26, 1996 proposal.

D. Delay of Repair for Heat Exchangers

The August proposal included new §63.104 requirements for monitoring heat exchange systems for leaks of process fluids into cooling water. The proposed §63.104 would replace the existing provisions in §63.104 of subpart F. The revisions were proposed to address issues with the existing provisions related to the availability of monitoring methods with sufficient analytical sensitivity, lack of flexibility in some of the requirements, and the burden associated with the monitoring requirements. The proposed §63.104 also included revisions to the delay of repair provisions to allow delay until the next shutdown if a shutdown is planned within 2 months of determination that delay of repair is necessary. The proposed revisions to §63.104 also provided that repair may be delayed up to a maximum of 120 days if the necessary parts or personnel were not available. These new provisions would replace the provisions in the April 1994 rule which only allows delay of repair when it can be demonstrated that immediate shutdown for repair would create more emissions than the emissions that would result from delaying repair of the leaking heat exchanger until the next shutdown. In the August 26, 1996 document, it was explained that the proposed revisions to the delay of repair provisions of the rule were being made to make these provisions workable and to minimize debate over modeling of emissions from heat exchanger systems.

Several commenters objected to this change in the delay of repair provisions in §63.104. The commenters argued that it is inappropriate to require an unscheduled shutdown if it can be demonstrated that greater emissions would result than would occur if the leak were repaired at the next scheduled shutdown. The commenters thought that this change was an unintended result of other changes to the wording of the provision.

As a result of this comment, the EPA reconsidered the circumstances where delay of repair would be appropriate and the approach used to develop an enforceable provision. Based on further examination of situations that might arise in a facility subject to the standard, the EPA concluded that §63.104(e)(2) could be revised to allow delay of repair in situations where greater emissions would result than would occur if the leak were repaired at the next scheduled shutdown if the procedure for calculating emissions were specified in the rule. The revised §63.104(e)(2) includes delay of repair provisions for cases where the maximum potential emissions from the leaking heat exchanger are less than the emissions that would result from an unscheduled shutdown. The proposed 120 day maximum delay due to unavailability of parts or personnel to effect the repair is also retained in the final provisions. The EPA believes that the added provision will address cases involving low flow rate heat exchangers that can not be isolated from the process and where process unit shutdowns may result in substantial emissions. The EPA believes that the revised §63.104(e)(2) provides the flexibility needed while maintaining the enforcability of the provision.

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E. Wastewater Issues

1. Point of Determination

In the August 26, 1996 proposal, the EPA proposed to revise the wastewater provisions to base the determination of applicability of control requirements to a wastewater stream on its characteristics at the point where the wastewater stream exits the last recovery device instead of at the point of generation (POG). The new location for determining the characteristics of a wastewater stream was termed the point of determination (POD) to distinguish it from the POG concept used in other air rules for waste and wastewater such as the Benzene Waste NESHAP. This proposed revision was one of several changes proposed to address problems with the clarity and structure of the wastewater provisions in the April 1994 rule.

The public comment on the proposal was supportive of the new POD concept. Therefore, the proposed revision changing from a POG approach to the POD approach is being incorporated into the final rule without revision. However, some public inquiries on the proposal also indicated that confusion exists regarding some details of the concept. Specifically, some readers have mistakenly interpreted POD by confusing the meaning of "recovery device" and "treatment process." This section of the preamble sets forth the EPA's intent and emphasizes that key definitions and provisions should be used together to understand and correctly implement the POD concept in this rule.

The EPA's intent in developing the POD approach was to have a decision criterion that is replicable and clearly specifies the location for evaluation of a wastewater stream for the purposes of control. All equipment prior to the POD is considered to be part of the process and equipment downstream of the POD is not considered to be part of the process. The POD is defined as each point where process wastewater exits the chemical manufacturing process unit. To understand the POD approach, other portions of the rule must be understood, especially the definitions of wastewater, recovery device, and treatment process and the provisions in §63.149:

"Wastewater" is defined, inter alia, as water that is discarded from a chemical manufacturing process unit. Under the revised approach for defining wastewater, a stream does not become wastewater until it exits the last recovery device. At that point, because the stream is no longer being processed or used, it is considered to be discarded. "Recovery device" is defined as an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value, use, or reuse or for sale for one of these purposes.

A "treatment process" is defined in the HON as a specific technique that removes or destroys organics in a wastewater stream or residual. Examples of treatment processes are a steam stripper (which separate the organic material from the water) and a biological treatment process (which destroys the organic compounds).

The EPA recognizes that the same categories of equipment, such as oil-water separators or organic removal devices such as decanters or strippers, may be recovery devices or treatment devices depending upon the specific application in a particular process' operations. To determine whether a particular item of equipment should be considered a recovery device or a treatment process, it is necessary to consider the subsequent utilization or disposition of the materials that pass through the item of equipment. If the recovered materials are then used for the same general purpose for which chemicals are utilized within the facility (i.e., used for the chemical properties of the material or for use as a fuel), then the equipment would be considered a recovery device. If the material is not recovered for use, reuse, or fuel value or for sale for use, reuse, or fuel value (under normal circumstances), the equipment can not be considered a recovery device. For example, an organic water separator, such as a steam stripper could not be considered to be a recovery device if the separated organic material is later sent to an incinerator for disposal. However, if the separated organic material were used in a process or incorporated into product, the steam stripper would be considered part of the process.

In developing the POD approach, the EPA assumed that organic hazardous air pollutants containing fluids within the process would be managed in closed systems to minimize losses of a recoverable material. The EPA based this assumption on information provided by industry representatives and the EPA's experience with the chemical industry. The provisions in table 35 of subpart G and the new §63.149 were designed to ensure that conveyance and handling of organic hazardous air pollutants containing process fluids would be handled in a manner consistent with the requirements for wastewater streams subject to control.

The EPA considers the POD approach as appropriate for this rule because the HON addresses the other emission points in the chemical manufacturing process unit. The EPA does not believe that the POD approach would be appropriate for other rules that are not as comprehensive in the coverage of emission points. For example, the POD concept would not be appropriate in cases where it is known that other emission points would not be subject to any control requirements.

2. Clarification of Safety Relief Device Provisions for Waste Management Units

The August proposed revisions to §63.132 included provisions to allow waste management units to be equipped with pressure relief devices needed for safety purposes, §63.132 (a)(2)(i) and (b)(3)(i). Although no comments were received on these proposed provisions, the EPA has received inquiries from some industry representatives and consultants requesting clarification of the intent of these provisions. The inquiries concerned whether these provisions prohibit the use of pressure-vacuum vents on wastewater tanks storing wastewater streams or whether these provisions would allow venting of emissions to the atmosphere of wastewater tanks storing Group 1 wastewater streams.

The intent of the pressure relief valve provisions in §63.132 (a)(2)(i) and (b)(3)(i) is to provide for safety releases in emergency situations only. These provisions provide that a pressure relief device on waste management units is allowed "provided the pressure relief device is not used for planned or routine venting of emissions." These provisions should not be interpreted as providing for routine venting of emissions from waste management units.

Neither should these provisions be interpreted as prohibiting pressure-vacuum vents on fixed roof wastewater tanks allowed for tanks storing wastewater streams with a maximum true vapor pressure of less than: (1) 13.1 kPa if the tank capacity is greater than or equal to 75 m^3 but less than 151 m^3; or (2) less than 5.2 kPa if the tank capacity exceeds 151 m^3 as specified in §63.133(a)(1). The rule requires that tanks meeting these criteria be equipped with a fixed roof and allows the roof to be equipped with openings necessary for operation, inspection, and maintenance. There is no requirement to control emissions from tanks meeting these criteria.

3. Issues Associated With Biological Treatment Processes

The August proposal included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In this proposed change to the April 1994 rule, the compounds listed in table 9 of subpart G were divided into three lists. In the proposal, a performance evaluation would not be required for activated sludge systems that met the definition of enhanced biological treatment system and the unit was controlling wastewater streams that contained only list 1 compounds. The proposed revisions to appendix C still required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

All comments on the proposed compliance demonstration provisions for biological treatment systems were supportive of this approach. However, based on conversations with industry representatives, the EPA has learned that some people are misinterpreting the proposed definition of "enhanced biological treatment system or biological treatment process." This section of the preamble sets forth the EPA's intent and reiterates the basis for the proposed compliance demonstration exemption for certain biological treatment units. Because of the potential for misinterpretation of the term, a clarifying change has been made to the proposed definition for "enhanced biological treatment system or enhanced biological treatment process."

The proposed revisions to the rule defined an enhanced biological treatment system as an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. The EPA's intent in defining the enhanced biological treatment system was to reflect the modeling of an activated sludge system with a well-mixed biological treatment unit that was used to develop the three lists of compounds in table 36. (A well-mixed or completely mixed system is a biological treatment unit where particles entering the tank are dispersed immediately throughout the tank and the system has uniform characteristics (Docket A–90–23, item VII–B–8).) The requirement to recycle biomass indicated an activated sludge system. The requirement to have the biomass suspended and aerated indicated an aerobic biological unit. The phase "throughout each aeration unit" was intended to mean that the unit was well-mixed. It is this phrase that is being misinterpreted or overlooked by readers. Therefore, the EPA has slightly revised the definition for enhanced biological treatment systems in today's rule to help clarify the intent. In today's rule the second sentence of the definition reads, "the mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter homogeneously distributed throughout each aeration unit." The additional phrase, "homogeneously distributed," was added to clarify the EPA's intent to define a uniformly well-mixed biological treatment unit. The EPA believes this revision clarifies the original intent and does not alter the meaning of the term.

An example of a system that would meet the enhanced biological treatment system definition would be a conventional well-designed, operated, and maintained activated sludge system. The biological treatment unit of this enhanced biological treatment system would contain a homogeneous mixture or, in other words, the biological treatment unit would have the same concentration, mixed liquor volatile suspended solids (MLVSS), and dissolved oxygen throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the HON enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket A–90–23, item VII–B–8). Plug-flow systems are not considered acceptable units for the compliance demonstration exemption because they may tend to have higher air emissions at the front of the system where the concentration is higher. This is not to say that a well operated plug-flow system would not be an acceptable biological treatment system; however, the EPA was not as confident that the parameters required to operate an acceptable plug-flow system could be defined. These systems are required to demonstrate compliance through use of the procedures in appendix C. Appendix C has been revised to state that the calculation procedures (forms) in the appendix are for well-mixed systems and to include suggestions for ways to address systems that are not uniform well-mixed systems.

F. Miscellaneous Changes

The EPA also made a number of clarifying changes to several sections of the August 1996 proposal. Examples of provisions that were revised to clarify requirements include § 63.145(f)(5), § 63.146(d)(1), and the oxygen control system requirements in section 2.1.6 of Methods 304A and 304B. The EPA believes that these revisions clarify the original intent and do not alter the effect of the rule.

In addition to clarifying changes to the August 1996 proposed amendments to the rule, the EPA also made minor revisions to provide consistency with other similar provisions elsewhere in the rule or in other rules. The EPA slightly revised the provisions in § 63.144(b)(5)(i)(C) to provide consistency between the requirements for use of alternative methods allowed in the HON with similar requirements in 40 CFR part 265, subpart CC (61 FR 59932). One of the changes is to remove a requirement to perform the initial calibration of the analytical system with the compounds for which the analysis is being conducted for Methods 624 and 625. This requirement is already addressed in the procedures outlined in Methods 624 and 625. The other change is to reference a procedure that may be used to add compounds to a method's published list of approved compounds for Methods 624, 625, 1624, and 1625. The record retention requirements for the heat exchanger monitoring plan in § 63.104(c) were revised from the requirements in § 63.103(c) to specify requirements that are similar to the proposed requirements in § 63.152(g)(1)(vi)(D). The revised provisions require that the owner or operator maintain, at all times, the monitoring plan that is currently in use and retain copies of the most recently superceded plan for 15 years. This revision was made to ensure that there could be no misunderstanding that copies of the current plan must be maintained regardless of the duration of the retention period.

G. Technical Corrections

The following amendments are minor technical corrections that were not part of the August 26, 1996 proposal. These changes are being made as part of today's action as a matter of efficiency in rulemaking. Furthermore, these changes are noncontroversial and do not substantively change the requirements of the rule. By promulgating these technical corrections directly as a final rule, the EPA is foregoing an

opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 of the United States Code and section 307(b) of the CAA permit an agency to forego notice and comment when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature and because they do not substantively change the requirements of the HON. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unncessary.

1. Removal of Caprolactam From Table 2 of 40 CFR Part 63, Subpart F

On June 18, 1996 (61 FR 30816), the EPA took final action deleting caprolactam from the list of hazardous air pollutants under section 112(b) of the CAA. Accordingly, as caprolactam is no longer subject to regulation under section 112(d) of the CAA, the EPA is removing caprolactam from table 2 of 40 CFR part 63, subpart F.

2. Correction of § 63.174(h)(2)

On June 20, 1996 (61 FR 31440), the EPA amended § 63.174(h)(1) of subpart H to replace references to "glass or glass-lined connectors" with the terminology "ceramic or ceramic-lined connectors." This change was made to use the more generic terminology for these connectors (60 FR 18074). The need to amend § 63.174(h)(2) was overlooked at the time these amendments were issued. In today's action, the EPA is revising § 63.174(h)(2) to use the terminology "ceramic or ceramic-lined connectors" instead of "glass or glass-lined connectors". This change will remove an inconsistency in the drafting of § 63.174(h).

IV. Administrative Requirements

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the Provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington DC 20460 or by calling (202) 260–2740.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The changes included in this rule will have no impact on the information collection burden estimates previously made. The changes consist of new definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements. Consequently, the ICR has not been revised for this rule.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments issued today clarify the rule and correct structural problems with the drafting of some sections. The amendments also provide additional flexibility for sources and provide opportunities to reduce the recordkeeping and reporting burden. These amendments do not add any new control requirements. Therefore, this regulatory action is considered "not significant."

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The changes to the rule remove a reporting requirement and provide additional time to request compliance extensions. Therefore, the changes do not create a burden for any of the regulated entities.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 26, 1996.

Carol M. Browner,

Administrator.

Chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended as follows:

a. By revising paragraphs (b)(2), (c), (e), (f) introductory text, (f)(1), (g) introductory text, (g)(1) introductory text in paragraphs, (g)(2) introductory text, (h)(1) introductory text, (h)(2) introductory text, (h)(1)(i), (h)(2)(i), (h)(2)(ii)(A), (j)(4), (k)(1), (k)(2), (k)(3) introductory text;

b. By redesignating paragraphs (f)(6) through (f)(9) as (f)(8) through (f)(11);

c. By adding paragraphs (f)(6), (f)(7), (g)(3), (g)(4), (h)(3), and (k)(9); and

d. By removing paragraph (h)(2)(v).

The revisions and additions read as follows:

§63.100 Applicability and designation of source.

* * * * *

(b) * * *

(2) Use as a reactant or manufacture as a product, or co-product, one or more of the organic hazardous air pollutants listed in table 2 of this subpart;

* * * * *

(c) The owner or operator of a chemical manufacturing process unit that meets the criteria specified in paragraphs (b)(1) and (b)(3) of this section but does not use as a reactant or manufacture as a product or co-product, any organic hazardous air pollutant listed in table 2 of this subpart shall comply only with the requirements of § 63.103(e) of this subpart. To comply with this subpart, such chemical manufacturing process units shall not be required to comply with the provisions of subpart A of this part.

* * * * *

(e) The source to which this subpart applies is the collection of the process vents; storage vessels; transfer racks; waste management units; maintenance wastewater; heat exchange systems; equipment identified in § 63.149 of subpart G; and pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers that are associated with the collection of all chemical manufacturing process units at a major source that meet the criteria specified in paragraphs (b)(1) through (b)(3) of this section. The source also includes equipment required by, or utilized as a method of compliance with this subpart F, subpart G or H of this part which may include control devices and recovery devices.

(1) This subpart applies to maintenance wastewater and heat exchange systems within a source that is subject to this subpart.

(2) This subpart F and subpart G of this part apply to process vents, storage vessels, transfer racks, equipment identified in § 63.149 of subpart G of this part, and wastewater streams and associated treatment residuals within a source that is subject to this subpart.

(3) This subpart F and subpart H of this part apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers within a source that is subject to this subpart. If specific items of equipment, comprising part of a chemical manufacturing process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any chemical manufacturing process unit within the source for all purposes under subpart H of this part, providing there is no delay in the applicable compliance date in § 63.100(k).

(f) The source includes the emission points listed in paragraphs (f)(1) through (f)(11) of this section, but those emission points are not subject to the requirements of this subpart F and subparts G and H of this part. This subpart does not require emission points that are listed in paragraphs (f)(1) through (f)(11) of this section to comply with the provisions of subpart A of this part.

(1) Equipment that is located within a chemical manufacturing process unit that is subject to this subpart but the equipment does not contain organic hazardous air pollutants.

* * * * *

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

* * * * *

(g) The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(4) of this section to determine whether a storage vessel is part of the source to which this subpart applies.

(1) Where a storage vessel is dedicated to a chemical manufacturing process unit, the storage vessel shall be considered part of that chemical manufacturing process unit.

* * * * *

(2) If a storage vessel is not dedicated to a single chemical manufacturing process unit, then the applicability of this subpart F and subpart G of this part shall be determined according to the provisions in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

* * * * *

(3) Where a storage vessel is located at a major source that includes one or more chemical manufacturing process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart F and subpart G of this part shall be determined according to the provisions in paragraphs (g)(3)(i) through (g)(3)(iv) of this section.

(i) The storage vessel may only be assigned to a chemical manufacturing process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any chemical manufacturing process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the chemical manufacturing process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the chemical manufacturing process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no chemical manufacturing process unit at the major source that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, this subpart F and subpart G of this part do not apply to the storage vessel.

(iii) If there is only one chemical manufacturing process unit at the major source that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that chemical manufacturing process unit. Applicability of this subpart F and subpart G to this part to the storage vessel shall then be determined

according to the provisions of paragraph (b) of this section.

(iv) If there are two or more chemical manufacturing process units at the major source that meet the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those chemical manufacturing process units according to the provisions of paragraph (g)(2) of this section. The predominant use shall be determined among only those chemical manufacturing process units that meet the criteria of paragraph (g)(3)(i) of this section. Applicability of this subpart F and subpart G of this part to the storage vessel shall then be determined according to the provisions of paragraph (b) of this section.

(4) If the storage vessel begins receiving material from (or sending material to) another chemical manufacturing process unit, or ceasing to receive material from (or send material to) a chemical manufacturing process unit, or if the applicability of this subpart F and subpart G of this part to a storage vessel has been determined according to the provisions of paragraphs (g)(2)(i) through (g)(2)(iii) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(h) * * *

(1) Where a loading rack is dedicated to a chemical manufacturing process unit, the loading rack shall be considered part of that specific chemical manufacturing process unit.

(i) If the chemical manufacturing process unit is subject to this subpart according to the criteria specified in paragraph (b) of this section and the loading rack does not meet the criteria specified in paragraphs (f)(9) and (f)(10) of this section, then the loading rack is considered a transfer rack (as defined in § 63.101 of this subpart) and is part of the source to which this subpart applies.

* * * * *

(2) If a loading rack is shared among chemical manufacturing process units, then the applicability of this subpart F and subpart G of this part shall be determined at each loading arm or loading hose according to the provisions in paragraphs (h)(2)(i) through (h)(2)(iv) of this section.

(i) Each loading arm or loading hose that is dedicated to the transfer of liquid organic hazardous air pollutants listed in table 2 of this subpart from a chemical manufacturing process unit to which this subpart applies is part of that chemical manufacturing process unit and is part of the source to which this subpart applies unless the loading arm or loading hose meets the criteria specified in paragraphs (f)(9) or (f)(10) of this section.

(ii) * * *

(A) If the chemical manufacturing process unit is subject to this subpart according to the criteria specified in paragraph (b) of this section, then the loading arm or loading hose is part of the source to which this subpart applies unless the loading arm or loading hose meets the criteria specified in paragraphs (f)(9) or (f)(10) of this section.

* * * * *

(3) If a loading rack that was dedicated to a single chemical manufacturing process unit begins to serve another chemical manufacturing process unit, or if applicability was determined under the provisions of paragraphs (h)(2)(i) through (h)(2)(iv) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the applicability of this subpart to the loading rack, loading arm, or loading hose.

* * * * *

(j) * * *

(4) Process vents from batch operations within a chemical manufacturing process unit;

* * * * *

(k) * * *

(1)(i) New sources that commence construction or reconstruction after December 31, 1992, but before August 27, 1996 shall be in compliance with this subpart F, subparts G and H of this part upon initial start-up or by April 22, 1994, whichever is later, as provided in § 63.6(b) of subpart A of this part, and further, where start-up occurs before January 17, 1997 shall also be in compliance with this subpart F and subparts G and H of this part (as amended on January 17, 1997) by January 17, 1997, except that, with respect to all new sources that commenced construction or reconstruction after December 31, 1992, and before August 27, 1996:

(A) Heat exchange systems and maintenance wastewater, that are part of a new source on which construction or reconstruction commenced after December 31, 1992, but before August 27, 1996, shall be in compliance with this subpart F no later than initial start-up or 180 days after January 17, 1997, whichever is later;

(B) Process wastewater streams and equipment subject to § 63.149, that are part of a new source on which construction or reconstruction commenced after December 31, 1992, but before August 27, 1996, shall be in compliance with this subpart F and subpart G of this part no later than initial start-up or 180 days after January 17, 1997, whichever is later; and

(ii) New sources that commence construction after August 26, 1996 shall be in compliance with this subpart F, subparts G and H of this part upon initial start-up or by January 17, 1997, whichever is later.

(2) Existing sources shall be in compliance with this subpart F and subpart G of this part no later than the dates specified in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, unless an extension has been granted by the Administrator as provided in § 63.151(a)(6) of subpart G of this part or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part.

(i) Process vents, storage vessels, and transfer racks at an existing source shall be in compliance with the applicable sections of this subpart and subpart G of this part no later than April 22, 1997.

(ii) Heat exchange systems and maintenance wastewater shall be in compliance with the applicable sections of this subpart, and equipment subject to § 63.149 and process wastewater streams shall be in compliance with the applicable sections of this subpart and subpart G of this part no later than April 22, 1999, except as provided in paragraphs (k)(2)(ii)(A) and (k)(2)(ii)(B) of this section.

(A) If a process wastewater stream or equipment subject to § 63.149 is subject to the control requirements of subpart G of this part due to the contribution of nitrobenzene to the total annual average concentration (as determined according to the procedures in § 63.144(b) of subpart G of this part), the wastewater stream shall be in compliance no later than January 18, 2000.

(B) If a process wastewater stream is used to generate credits in an emissions average in accordance with § 63.150 of subpart G of this part, the process wastewater stream shall be in compliance with the applicable sections of subpart G of this part no later than April 22, 1997.

(3) Existing sources shall be in compliance with subpart H of this part no later than the dates specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section, except as provided for in paragraphs (k)(4) through (k)(8) of this section, unless an extension has been granted by the Administrator as provided in § 63.182(a)(6) of this part or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part. The group designation for each

process unit is indicated in table 1 of this subpart.

* * * * *

(9) All terms in this subpart F or subpart G of this part that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(i) Notwithstanding time periods specified in this subpart F or subpart G of this part for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(ii) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (k)(9)(ii)(A) or (k)(9)(ii)(B) of this section, as appropriate.

(A) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(B) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(iii) In all instances where a provision of this subpart F or subpart G of this part requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

* * * * *

3. Section 63.101 is amended as follows:

a. By revising the definitions of "Chemical manufacturing process unit," "Control device", "Process vent", "Recovery device," "Shutdown", and "Start-up", the first sentence in the definition for "Transfer rack", and revising the definitions for "Unit operation", and "Vapor balancing system"; and "Wastewater"; and

b. By adding in alphabetical order the definitions of "Fuel gas," "Fuel gas system", "On-site or On site", "Recapture device", and "Waste management unit" to read as follows:

§ 63.101 Definitions.

* * * * *

Chemical manufacturing process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. A chemical manufacturing process unit consists of more than one unit operation. For the purpose of this subpart, chemical manufacturing process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A chemical manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems. A chemical manufacturing process unit is identified by its primary product.

Control device means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recapture devices are considered control devices but recovery devices are not considered control devices. For a steam stripper, a primary condenser is not considered a control device.

* * * * *

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in in-process combustion equipment such as furnaces and gas turbines either singly or in combination.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the chemical manufacturing process unit to which the records pertain, or storage in central files elsewhere at the major source.

* * * * *

Process vent means a gas stream containing greater than 0.005 weight-percent total organic hazardous air pollutants that is continuously discharged during operation of the unit from an air oxidation reactor, other reactor, or distillation unit (as defined in this section) within a chemical manufacturing process unit that meets all applicability criteria specified in § 63.100 (b)(1) through (b)(3) of this subpart. Process vents are gas streams that are discharged to the atmosphere (with or without passing through a control device) either directly or after passing through one or more recovery devices. Process vents exclude relief valve discharges, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under subpart H of this part.

* * * * *

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of subpart G of this part, recapture devices are considered recovery devices.

* * * * *

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a chemical manufacturing

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process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, equipment required or used to comply with this subpart F, subparts G, or H of this part or the emptying and degassing of a storage vessel. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

* * * * *

Start-up means the setting into operation of a chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or equipment required or used to comply with this subpart F, subpart G, or H of this part or a storage vessel after emptying and degassing. Start-up includes initial start-up, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

* * * * *

Transfer rack means the collection of loading arms and loading hoses, at a single loading rack, that are assigned to a chemical manufacturing process unit subject to this subpart according to the procedures specified in § 63.100(h) of this subpart and are used to fill tank trucks and/or railcars with organic liquids that contain one or more of the organic hazardous air pollutants listed in table 2 of this subpart. * * *

* * * * *

Unit operation means one or more pieces of process equipment used to make a single change to the physical or chemical characteristics of one or more process streams. Unit operations include, but are not limited to, reactors, distillation units, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor balancing system means a piping system that is designed to collect organic hazardous air pollutants vapors displaced from tank trucks or railcars during loading; and to route the collected organic hazardous air pollutants vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header or to compress and route to a process or a fuel gas system the collected organic hazardous air pollutants vapors.

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: Wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery then it is part of a chemical manufacturing process unit and is not a waste management unit.

Wastewater means water that:

(1) Contains either:

(i) an annual average concentration of Table 9 compounds (as defined in § 63.111 of subpart G of this part) of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater, or

(ii) An annual average concentration of Table 9 compounds (as defined in § 63.111 of subpart G) of at least 10,000 parts per million by weight at any flow rate, and that

(2) Is discarded from a chemical manufacturing process unit that meets all of the criteria specified in § 63.100 (b)(1) through (b)(3) of this subpart. Wastewater is process wastewater or maintenance wastewater.

4. Section 63.102 is amended by revising paragraphs (a)(1) and (a)(2); adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 63.102 General standards.

(a) * * *

(1) The provisions set forth in this subpart F and subpart G of this part shall apply at all times except during periods of start-up or shutdown (as defined in § 63.101 of this subpart), malfunction, or non-operation of the chemical manufacturing process unit (or specific portion thereof) resulting in cessation of the emissions to which this subpart F and subpart G of this part apply. However, if a start-up, shutdown, malfunction or period of non-operation of one portion of a chemical manufacturing process unit does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart F and subpart G of this part during the start-up, shutdown, malfunction or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel in the chemical manufacturing process unit would still be required to be controlled in accordance with § 63.119 of subpart G of the part. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of § 63.113 of subpart G of this part.

(2) The provisions set forth in subpart H of this part shall apply at all times except during periods of start-up or shutdown, as defined in § 63.101(b) of this subpart, malfunction, process unit shutdown (as defined in § 63.161 of subpart H of this part), or non-operation of the chemical manufacturing process unit (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which subpart H of this part applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart F, subpart G or H of this part during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart F, subpart G or H of this part applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the chemical manufacturing process unit or portion thereof.

(4) During start-ups, shutdowns, and malfunctions when the requirements of this subpart F, subparts G and/or H of this part do not apply pursuant to paragraphs (a)(1) through (a)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term "excess emissions" means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart F, subparts G and/or H of this part. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

* * * * *

5. Section 63.103 is amended by adding two sentences to the end of the introductory text of paragraph (c); revising paragraphs (c)(1), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii); removing paragraph (c)(2)(iv); revising paragraph (d)(1); revising paragraph (e); and

revising the last sentence of paragraph (f) to read as follows:

§ 63.103 General compliance, reporting, and recordkeeping provisions.

* * * * *

(c) * * * If an owner or operator submits copies of reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of reports.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. The remaining four and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) * * *

(i) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or of air pollution control equipment or continuous monitoring systems used to comply with this subpart F, subpart G, or H of this part during which excess emissions (as defined in § 63.102(a)(4)) occur.

(ii) For each start-up, shutdown, and malfunction during which excess emissions (as defined in § 63.102(a)(4)) occur, records that the procedures specified in the source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device (e.g., the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the start-up, shutdown, and malfunction plan for the event.

(iii) For continuous monitoring systems used to comply with subpart G of this part, records documenting the completion of calibration checks and maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(d) * * *

(1) Wherever subpart A of this part specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent on or before the specified date.

* * * * *

(e) The owner or operator of a chemical manufacturing process unit which meets the criteria of § 63.100(b)(1) and § 63.100(b)(3), but not the criteria of § 63.100(b)(2), shall comply with the requirements of either paragraph (e)(1) or (e)(2) of this section.

(1) Retain information, data, and analysis used to determine that the chemical manufacturing process unit does not use as a reactant or manufacture as a product or co-product any organic hazardous air pollutant. Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the chemical manufacturing process unit does not use as a reactant or manufacture as a product or co-product any organic hazardous air pollutant.

* * * * *

(f) * * * Compliance with this subpart F and subpart G of this part shall be no later than April 22, 1997, or as otherwise specified in § 63.100(k)(2)(ii) of this subpart, unless an extension has been granted by the EPA Regional Office or permitting authority as provided in § 63.6(i) of subpart A of this part.

* * * * *

6. Section 63.104 is revised to read as follows:

§ 63.104 Heat exchange system requirements.

(a) Unless one or more of the conditions specified in paragraphs (a)(1) through (a)(6) of this section are met, owners and operators of sources subject to this subpart shall monitor each heat exchange system used to cool process equipment in a chemical manufacturing process unit meeting the conditions of § 63.100 (b)(1) through (b)(3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart, according to the provisions in either paragraph (b) or (c) of this section. Whenever a leak is detected, the owner or operator shall comply with the requirements in paragraph (d) of this section.

(1) The heat exchange system is operated with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(2) There is an intervening cooling fluid, containing less than 5 percent by weight of total hazardous air pollutants listed in table 4 of this subpart, between the process and the cooling water. This intervening fluid serves to isolate the cooling water from the process fluid and the intervening fluid is not sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(3) The once-through heat exchange system is subject to a National Pollution Discharge Elimination System (NPDES) permit with an allowable discharge limit of 1 part per million or less above influent concentration or 10 percent or less above influent concentration, whichever is greater.

(4) The once-through heat exchange system is subject to an NPDES permit that:

(i) Requires monitoring of a parameter(s) or condition(s) to detect a leak of process fluids into cooling water;

(ii) Specifies or includes the normal range of the parameter or condition;

(iii) Requires monitoring for the parameters selected as leak indicators no less frequently than monthly for the first six months and quarterly thereafter; and

(iv) Requires the owner or operator to report and correct leaks to the cooling water when the parameter or condition exceeds the normal range.

(5) The recirculating heat exchange system is used to cool process fluids that contain less than 5 percent by weight of total hazardous air pollutants listed in table 4 of this subpart.

(6) The once-through heat exchange system is used to cool process fluids that contain less than 5 percent by weight of total hazardous air pollutants listed in table 9 of subpart G of this part.

(b) The owner or operator who elects to comply with the requirements of paragraph (a) of this section by monitoring the cooling water for the presence of one or more organic hazardous air pollutants or other representative substances whose presence in cooling water indicates a leak shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section. The cooling water shall be monitored for total hazardous

air pollutants, total volatile organic compounds, total organic carbon, one or more speciated HAP compounds, or other representative substances that would indicate the presence of a leak in the heat exchange system.

(1) The cooling water shall be monitored monthly for the first 6 months and quarterly thereafter to detect leaks.

(2)(i) For recirculating heat exchange systems (cooling tower systems), the monitoring of speciated hazardous air pollutants or total hazardous air pollutants refers to the hazardous air pollutants listed in table 4 of this subpart.

(ii) For once-through heat exchange systems, the monitoring of speciated hazardous air pollutants or total hazardous air pollutants refers to the hazardous air pollutants listed in table 9 of subpart G of this part.

(3) The concentration of the monitored substance(s) in the cooling water shall be determined using any EPA-approved method listed in part 136 of this chapter as long as the method is sensitive to concentrations as low as 10 parts per million and the same method is used for both entrance and exit samples. Alternative methods may be used upon approval by the Administrator.

(4) The samples shall be collected either at the entrance and exit of each heat exchange system or at locations where the cooling water enters and exits each heat exchanger or any combination of heat exchangers.

(i) For samples taken at the entrance and exit of recirculating heat exchange systems, the entrance is the point at which the cooling water leaves the cooling tower prior to being returned to the process equipment and the exit is the point at which the cooling water is introduced to the cooling tower after being used to cool the process fluid.

(ii) For samples taken at the entrance and exit of once-through heat exchange systems, the entrance is the point at which the cooling water enters and the exit is the point at which the cooling water exits the plant site or chemical manufacturing process units.

(iii) For samples taken at the entrance and exit of each heat exchanger or any combination of heat exchangers in chemical manufacturing process units, the entrance is the point at which the cooling water enters the individual heat exchanger or group of heat exchangers and the exit is the point at which the cooling water exits the heat exchanger or group of heat exchangers.

(5) A minimum of three sets of samples shall be taken at each entrance and exit as defined in paragraph (b)(4) of this section. The average entrance and exit concentrations shall then be calculated. The concentration shall be corrected for the addition of any makeup water or for any evaporative losses, as applicable.

(6) A leak is detected if the exit mean concentration is found to be greater than the entrance mean using a one-sided statistical procedure at the 0.05 level of significance and the amount by which it is greater is at least 1 part per million or 10 percent of the entrance mean, whichever is greater.

(c) The owner or operator who elects to comply with the requirement of paragraph (a) of this section by monitoring using a surrogate indicator of heat exchange system leaks shall comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section. Surrogate indicators that could be used to develop an acceptable monitoring program are ion specific electrode monitoring, pH, conductivity or other representative indicators.

(1) The owner or operator shall prepare and implement a monitoring plan that documents the procedures that will be used to detect leaks of process fluids into cooling water. The plan shall require monitoring of one or more surrogate indicators or monitoring of one or more process parameters or other conditions that indicate a leak. Monitoring that is already being conducted for other purposes may be used to satisfy the requirements of this section. The plan shall include the information specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) A description of the parameter or condition to be monitored and an explanation of how the selected parameter or condition will reliably indicate the presence of a leak.

(ii) The parameter level(s) or conditions(s) that shall constitute a leak. This shall be documented by data or calculations showing that the selected levels or conditions will reliably identify leaks. The monitoring must be sufficiently sensitive to determine the range of parameter levels or conditions when the system is not leaking. When the selected parameter level or condition is outside that range, a leak is indicated.

(iii) The monitoring frequency which shall be no less frequent than monthly for the first 6 months and quarterly thereafter to detect leaks.

(iv) The records that will be maintained to document compliance with the requirements of this section.

(2) If a substantial leak is identified by methods other than those described in the monitoring plan and the method(s) specified in the plan could not detect the leak, the owner or operator shall revise the plan and document the basis for the changes. The owner or operator shall complete the revisions to the plan no later than 180 days after discovery of the leak.

(3) The owner or operator shall maintain, at all times, the monitoring plan that is currently in use. The current plan shall be maintained on-site, or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. If the monitoring plan is superseded, the owner or operator shall retain the most recent superseded plan at least until 5 years from the date of its creation. The superseded plan shall be retained on-site (or accessible from a central location by computer or other means that provides access within two hours after a request) for at least 6 months after its creation.

(d) If a leak is detected according to the criteria of paragraph (b) or (c) of this section, the owner or operator shall comply with the requirements in paragraphs (d)(1) and (d)(2) of this section, except as provided in paragraph (e) of this section.

(1) The leak shall be repaired as soon as practical but not later than 45 calendar days after the owner or operator receives results of monitoring tests indicating a leak. The leak shall be repaired unless the owner or operator demonstrates that the results are due to a condition other than a leak.

(2) Once the leak has been repaired, the owner or operator shall confirm that the heat exchange system has been repaired within 7 calendar days of the repair or startup, whichever is later.

(e) Delay of repair of heat exchange systems for which leaks have been detected is allowed if the equipment is isolated from the process. Delay of repair is also allowed if repair is technically infeasible without a shutdown and any one of the conditions in paragraph (e)(1) or (e)(2) of this section is met. All time periods in paragraphs (e)(1) and (e)(2) of this section shall be determined from the date when the owner or operator determines that delay of repair is necessary.

(1) If a shutdown is expected within the next 2 months, a special shutdown before that planned shutdown is not required.

(2) If a shutdown is not expected within the next 2 months, the owner or operator may delay repair as provided in paragraph (e)(2)(i) or (e)(2)(ii) of this section. Documentation of a decision to delay repair shall state the reasons repair was delayed and shall specify a

schedule for completing the repair as soon as practical.

(i) If a shutdown for repair would cause greater emissions than the potential emissions from delaying repair, the owner or operator may delay repair until the next shutdown of the process equipment associated with the leaking heat exchanger. The owner or operator shall document the basis for the determination that a shutdown for repair would cause greater emissions than the emissions likely to result from delaying repair as specified in paragraphs (e)(2)(i)(A) and (e)(2)(i)(B) of this section.

(A) The owner or operator shall calculate the potential emissions from the leaking heat exchanger by multiplying the concentration of total hazardous air pollutants listed in table 4 of this subpart in the cooling water from the leaking heat exchanger by the flowrate of the cooling water from the leaking heat exchanger by the expected duration of the delay. The owner or operator may calculate potential emissions using total organic carbon concentration instead of total hazardous air pollutants listed in table 4 of this subpart.

(B) The owner or operator shall determine emissions from purging and depressurizing the equipment that will result from the unscheduled shutdown for the repair.

(ii) If repair is delayed for reasons other than those specified in paragraph (e)(2)(i) of this section, the owner or operator may delay repair up to a maximum of 120 calendar days. The owner shall demonstrate that the necessary parts or personnel were not available.

(f)(1) *Required records.* The owner or operator shall retain the records identified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section as specified in § 63.103(c)(1).

(i) Monitoring data required by this section indicating a leak and the date when the leak was detected, and if demonstrated not to be a leak, the basis for that determination;

(ii) Records of any leaks detected by procedures subject to paragraph (c)(2) of this section and the date the leak was discovered;

(iii) The dates of efforts to repair leaks; and

(iv) The method or procedure used to confirm repair of a leak and the date repair was confirmed.

(2) *Reports.* If an owner or operator invokes the delay of repair provisions for a heat exchange system, the following information shall be submitted in the next semi-annual periodic report required by § 63.152(c) of subpart G of this part. If the leak remains unrepaired, the information shall also be submitted in each subsequent periodic report, until repair of the leak is reported.

(i) The owner or operator shall report the presence of the leak and the date that the leak was detected.

(ii) The owner or operator shall report whether or not the leak has been repaired.

(iii) The owner or operator shall report the reason(s) for delay of repair. If delay of repair is invoked due to the reasons described in paragraph (e)(2) of this section, documentation of emissions estimates must also be submitted.

(iv) If the leak remains unrepaired, the owner or operator shall report the expected date of repair.

(v) If the leak is repaired, the owner or operator shall report the date the leak was successfully repaired.

7. Current tables 2 and 3 of subpart F are revised and table 4 is added to read as follows:

TABLE 2 TO SUPBART F—ORGANIC HAZARDOUS AIR POLLUTANTS

Chemical name[a,b]	CAS No.[c]
Acenaphthene	83329
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Alizarin	72480
Allyl chloride	107051
Aniline	62533
Anisidine (o-)	90040
Anthracene	120127
Anthraquinone	84651
Benzene	71432
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(chloromethyl)ether	542881
Bromoform	75252
Bromonaphthalene	27497514
Butadiene (1,3-)	106990
Carbon disulfide	75150
Carbon tetrachloride	56235
Chloroacetic acid	79118
Chloroacetophenone (2-)	532274
Chlorobenzene	108907
2-Chloro-,1,3-butadiene (Chloroprene)	126998
Chloroform	67663
Chloronaphthalene	25586430
Chrysene	218019
Cresols and cresylic acids (mixed)	1319773
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (m-)	108394

TABLE 2 TO SUPBART F—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Chemical name[a,b]	CAS No.[c]
Cresol and cresylic acid (p-)	106445
Cumene	98828
Dichlorobenzene (p-)	106467
Dichlorobenzidine (3,3′-)	91941
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethylether (Bis(2-chloroethyl)ether)	111444
Dichloropropene (1,3-)	542756
Diethanolamine (2,2′-Iminodiethanol)	111422
Dimethylaniline (N,N-)	121697
Diethyl sulfate	64675
Dimethylbenzidine (3,3′-)	119937
Dimethylformamide (N,N-)	68122
Dimethylhydrazine (1,1-)	58147
Dimethylphthalate	131113
Dimethylsulfate	77781
Dinitrophenol (2,4-)	51285
Dinitrotoluene (2,4-)	121142
Dioxane (1,4-) (1,4–Diethyleneoxide)	123911
1,2–Diphenylhydrazine	122667
Epichlorohydrin (1–Chloro-2,3-epoxypropane)	106898
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene glycol	107211
Ethylene oxide	75218
Ethylidene dichloride (1,1–Dichloroethane)	75343
Fluoranthene	206440
Formaldehyde	50000
Glycol ethers[d].	
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	110543
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methylbromide (Bromomethane)	74839
Methylchloride (Chloromethane)	74873
Methyl ethyl ketone (2–Butanone)	78933
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methylene chloride (Dichloromethane)	75092
Methylene diphenyl diisocyanate (4,4′-) (MDI)	101688
Methylenedianiline (4,4′-)	101779
Naphthalene	91203
Naphthalene sulfonic acid (α)	85472
Naphthalene sulfonic acid (β)	120183
Naphthol (α)	90153
Naphthol (β)	135193
Naphtholsulfonic acid (1-)	567180
Naphthylamine sulfonic acid (1,4-)	84866
Naphthylamine sulfonic acid (2,1-)	81163
Naphthylamine (1-)	134327
Naphthylamine (2-)	91598
Nitronaphthalene (1-)	86577
Nitrobenzene	98953
Nitrophenol (p-)	100027
Nitropropane (2-)	79469
Phenanthrene	85018
Phenol	108952
Phenylenediamine (p-)	106503
Phosgene	75445
Phthalic anhydride	85449
Propiolactone (beta-)	57578
Propionaldehyde	123386
Propylene dichloride (1,2–Dichloropropane)	78875
Propylene oxide	75569

TABLE 2 TO SUPBART F—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Chemical name[a,b]	CAS No.[c]
Pyrene	129000
Quinone	106514
Styrene	100425
Tetrachloroethane (1,1,2,2-)	79345
Tetrachloroethylene (Perchloroethylene)	127184
Tetrahydronaphthalene	119642
Toluene	108883
Toluene diamine (2,4-)	95807
Toluene diisocyanate (2,4-)	584849
Toluidine (o-)	95534
Trichlorobenzene (1,2,4-)	120821
Trichloroethane (1,1,1-) (Methyl chloroform)	71556
Trichloroethane (1,1,2-) (Vinyl trichloride)	79005
Trichloroethylene	79016
Trichlorophenol (2,4,5-)	95954
Triethylamine	121448
Trimethylpentane (2,2,4-)	540841
Vinyl acetate	108054
Vinyl chloride (Chloroethylene)	75014
Vinylidene chloride (1,1–Dichloroethylene)	75354
Xylenes (NOS)	1330207
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423

[a] For all Listings above containing the word "Compounds," the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic) as part of that chemical's infrastructure.

[b] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

[c] CAS No.=Chemical Abstract Service number.

[d] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R-(OCH_2CH_2)_n-OR$ where:

n=1, 2, or 3;

R=alkyl or aryl groups; and

R'=R, H or groups which, when removed, yield glycol ethers with the structure:

$R-(OCH_2CH_2)_n-OH$

Polymers are excluded from the glycol category.

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]

Reference	Applies to subparts F, G, and H	Comment
63.1(a)(1)	Yes	Overlap clarified in §63.101, §63.111, §63.161.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§63.110 and §63.160(b) of subparts G and H identify which standards are overridden.
63.1(a)(4)	No	Subpart F specifies applicability of each paragraph in subpart A to subparts F, G, and H.
63.1 (a)(5)—(a)(9)	No.	
63.1(a)(10)	No	Subparts F, G, and H specify calendar or operating day.
63.1(a)(11)	No	Subpart F §63.103(d) specifies acceptable methods for submitting reports.[a]
63.1 (a)(12)—(a)(14)	Yes.	
63.1(b)(1)	No	Subpart F specifies applicability.
63.1(b)(2)	Yes.	
63.1(b)(3)	No.	
63.1(c)(1)	No	Subpart F specifies applicability.
63.1(c)(2)	No	Area sources are not subject to subparts F, G, and H.
63.1(c)(3)	No.	
63.1(c)(4)	Yes.	
63.1(c)(5)	No	Subparts G and H specify applicable notification requirements.
63.1(d)	No.	
63.1(e)	No	Subparts F, G, and H established before permit program.
63.2	Yes	Subpart F §63.101(a) specifies those subpart A definitions that apply to the HON. Subpart F definition of "source" is equivalent to subpart A definition of "affected source."
63.3	No	Units of measure are spelled out in subparts F, G, and H.
63.4 (a)(1)—(a)(3)	Yes.	
63.4(a)(4)	No	This is a reserved paragraph in subpart A of part 63.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms "source" and "stationary source" in §63.5(a)(1) should be interpreted as having the same meaning as "affected source."

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]—Continued

Reference	Applies to subparts F, G, and H	Comment
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.100(l) defines when construction or reconstruction is subject to standards for new sources.
63.5(b)(2)	No	This is a reserved paragraph in subpart A of part 63.
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except the cross reference to § 63.9(b) is limited to § 63.9(b) (4) and (5). Subpart F overrides § 63.9 (b)(1) through (b)(3).
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except § 63.100(l) defines when construction or reconstruction is subject to standards for new sources.
63.5(c)	No	This is a reserved paragraph in subpart A of part 63.
63.5(d)(1)(i)	No	For subpart G, see § 63.151(b) (2)(ii) and (2)(iii) for the applicability and timing of this submittal; for subpart H, see § 63.182(b) (2)(ii) and (b)(2)(iii) for applicability and timing of this submittal.
63.5(d)(1)(ii)	Yes	Except § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	Subpart G requires submittal of the Notification of Compliance Status in § 63.152(b); subpart H specifies requirements in § 63.182(c).
63.5(d)(2)	No.	
63.5(d)(3)	Yes—subpart G No—subpart H.	Except § 63.5(d)(3)(ii) does not apply to subpart G.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except the cross-reference to § 63.5(d)(1) is changed to § 63.151(b)(2)(ii) of subpart G and to § 63.182(b)(2)(ii) of subpart H. The cross-reference to § 63.5(b)(2) does not apply.
63.6(a)	Yes.	
63.6(b)(1)	No	Subparts F and H specify compliance dates for sources subject to subparts F, G, and H.
63.6(b)(2)	No.	
63.6(b)(3)	Yes.	
63.6(b)(4)	No	May apply when standards are proposed under Section 112(f) of the Clean Air Act.
63.6(b)(5)	No	Subparts G and H include notification requirements.
63.6(b)(6)	No.	
63.6(b)(7)	No.	
63.6(c)(1)	No	Subpart F specifies the compliance dates for subparts G and H.
63.6(c)(2)	No.	
63.6(c)(3)	No.	
63.6(c)(4)	No.	
63.6(c)(5)	Yes.	
63.6(d)	No.	
63.6(e)	Yes	Except as otherwise specified for individual paragraphs. Does not apply to Group 2 emission points unless they are included in an emissions average.[b]
63.6(e)(1)(i)	No	This is addressed by § 63.102(a)(4) of subpart F.
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For subpart H, the startup, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices subject to the provisions of subpart H and is optional for other equipment subject to subpart H. The startup, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.102(a)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.103(c)(2) of subpart F and § 63.152(d)(1) of subpart G.
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.103(c)(2) of subpart F and § 63.152(d)(1) of subpart G.
63.6(e)(3)(v)	No	Records retention requirements are specified in § 63.103(c).
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii)(A)	Yes.	
63.6(e)(3)(vii)(B)	Yes	Except the plan must provide for operation in compliance with § 63.102(a)(4).
63.6(e)(3)(vii)(C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	No	§ 63.102(a) of subpart F specifies when the standards apply.

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]—Continued

Reference	Applies to subparts F, G, and H	Comment
63.6(f)(2)(i)	Yes.	
63.6(f)(2)(ii)	Yes—subpart G No—subpart H.	§63.152(c)(2) of subpart G specifies the use of monitoring data in determining compliance with subpart G.
63.6(f)(2)(iii) (A), (B), and (C)	Yes.	
63.6(f)(2)(iii)(D)	No.	
63.6(f)(2)(iv)	Yes.	
63.6(f)(2)(v)	Yes.	
63.6(f)(3)	Yes.	
63.6(g)	No	Procedures specified in §63.102(b) of subpart F.
63.6(h)	No.	
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	No	For subpart G, §63.151(a)(6) specifies procedures; for subpart H, §63.182(a)(6) specifies procedures.
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in §63.151(a)(6)(i) of subpart G and §63.182(a)(6)(i) of subpart H.
63.6(i)(4)(ii)	No.	
63.6(i) (5)—(14)	Yes.	
63.6(i)(15)	No.	
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	No	Subparts F, G, and H specify required testing and compliance demonstration procedures.
63.7(a)(2)	No	For subpart G, test results must be submitted in the Notification of Compliance Status due 150 days after compliance date, as specified in §63.152(b); for subpart H, all test results subject to reporting are reported in periodic reports.
63.7(a)(3)	Yes.	
63.7(b)	No.	
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)(1)	Yes.	
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subparts F, G, and H specify test methods and procedures.
63.7(e)(4)	Yes.	
63.7(f)	No	Subparts F, G, and H specify applicable methods and provide alternatives.
63.7(g)	No	Performance test reporting specified in §63.152(b) of subpart G: Not applicable to subpart H because no performance test required by subpart H.
63.7(h)(1)	Yes.	
63.7(h)(2)	Yes.	
63.7(h)(3)	No	§63.103(b)(5) of subpart F specifies provisions for requests to waive performance tests.
63.7(h)(4)	No.	
63.7(h)(5)	Yes.	
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No.	
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subparts G and H specify locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For subpart G, submit as part of periodic report required by §63.152(c); for subpart H, retain as required by §63.181(g)(2)(ii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	Subpart G specifies monitoring frequency by kind of emission point and control technology used (e.g., §63.111, §63.120(d)(2), §63.143, and §63.152(f)); subpart H does not require use of continuous monitoring systems.
63.8 (c)(5)–(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8 (f)(1)–(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request specified in §63.151(f) or (g) of subpart G; not applicable to subpart H because subpart H specifies acceptable alternative methods.

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]—Continued

Reference	Applies to subparts F, G, and H	Comment
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subparts G and H do not require continuous emission monitoring.
63.8(g)	No	Data reduction procedures specified in §63.152(f) and (g) of subpart G; not applicable to subpart H.
63.9(a)	Yes.	
63.9(b)(1)	No	Specified in §63.151(b)(2) of subpart G; specified in §63.182(b) of subpart H.
63.9(b)(2)	No	Initial Notification provisions are specified in §63.151(b) of subpart G; in §63.182(b) of subpart H.
63.9(b)(3)	No.	
63.9(b)(4)	Yes	Except that the notification in §63.9(b)(4)(i) shall be submitted at the time specified in §63.151(b)(2)(ii) of subpart G; in §63.182(b)(2) of subpart H.
63.9(b)(5)	Yes	Except that the notification in §63.9(b)(5) shall be submitted at the time specified in §63.151(b)(2)(ii) of subpart G; in §63.182 (b)(2) of subpart H.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No.	
63.9(f)	No.	
63.9(g)	No.	
63.9(h)	No	§63.152(b) of subpart G and §63.182 (c) of subpart H specify Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§63.103(c) of subpart F specifies record retention requirements.
63.10(b)(2)	No	§63.103(c) of subpart F specifies required records.
63.10(b)(3)	No.	
63.10(c)	No.	
63.10(d)(1)	No.	
63.10(d)(2)	No	§63.152(b) of subpart G specifies performance test reporting; not applicable to subpart H.
63.10(d)(3)	No.	
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by §63.10(d)(5) shall be submitted at the time specified in §63.152(d) of subpart G and in §63.182(d) of subpart H.
63.10(e)	No.	
63.10(f)	Yes.	
63.11–63.15	Yes.	

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

[b] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 4. TO SUBPART F.—ORGANIC HAZARDOUS AIR POLLUTANTS SUBJECT TO COOLING TOWER MONITORING REQUIREMENTS IN §63.104

Chemical name	CAS Number[a]
Acetaldehyde	75070
Acetonitrile	75058
Acetophenone	98862
Acrolein	107028
Acrylonitrile	107131
Allyl chloride	107051
Aniline	62533
Anisidine (o-)	90040
Benzene	71432
Benzyl chloride	100447
Biphenyl	92524
Bromoform	75252
Butadiene (1,3-)	106990
Carbon disulfide	75150

TABLE 4. TO SUBPART F.—ORGANIC HAZARDOUS AIR POLLUTANTS SUBJECT TO COOLING TOWER MONITORING REQUIREMENTS IN § 63.104—Continued

Chemical name	CAS Number[a]
Carbon tetrachloride	56235
Chloroacetophenone (2-)	532274
Chlorobenzene	108907
2–Chloro-1,3-butadiene (Chloroprene)	126998
Chloroform	67663
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (m-)	108394
Cresol and cresylic acid (p-)	106445
Cumene	98828
Dichlorobenzene (p-)	106467
Dichlorobenzidine (3,3'-)	91941
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
Dichloropropene (1,3-)	542756
Diethylene glycol diethyl ether	112367
Diethylene glycol dimethyl ether	111966
Diethyl sulfate	64675
Dimethylaniline (N,N-)	121697
Dimethylhydrazine (1,1-)	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
Dinitrophenol (2,4-)	51285
Dinitrotoluene (2,4-)	121142
Dioxane (1,4-) (1,4-Diethyleneoxide)	123911
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene glycol dimethyl ether	110714
Ethylene glycol monobutyl ether	111762
Ethylene glycol monobutyl ether acetate	112072
Ethylene glycol monoethyl ether acetate	111159
Ethylene glycol monoethyl ether	110805
Ethylene glycol monomethyl ether	109864
Ethylene glycol monomethyl ether acetate	110496
Ethylene glycol monopropyl ether	2807309
Ethylene oxide	75218
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	110543
Isophorone	78591
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl ethyl ketone (2–Butanone)	78933
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methylene chloride (Dichloromethane)	75092
Methylenedianiline (4,4'-)	101779
Naphthalene	91203
Nitrobenzene	98953
Nitropropane (2-)	79469
Phenol	108952
Phenylenediamine (p-)	106503
Phosgene	75445
Propionaldehyde	123386
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
Quinone	106514
Styrene	100425
Tetrachloroethane (1,1,2,2-)	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
Toluidine (o-)	95534

TABLE 4. TO SUBPART F.—ORGANIC HAZARDOUS AIR POLLUTANTS SUBJECT TO COOLING TOWER MONITORING REQUIREMENTS IN § 63.104—Continued

Chemical name	CAS Number*
Trichlorobenzene (1,2,4-)	120821
Trichloroethane (1,1,1-) (Methyl chloroform)	71556
Trichloroethane (1,1,2-) (Vinyl trichloride)	79005
Trichloroethylene	79016
Trichlorophenol (2,4,5-)	95954
Triethylamine	121448
Trimethylpentane (2,2,4-)	540841
Vinyl acetate	108054
Vinyl chloride (chloroethylene)	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423

*CAS Number=Chemical Abstract Service number.

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

8. Section 63.110 is amended by adding paragraphs (d)(10) and (h) and by revising paragraph (e)(1) to read as follows:

§ 63.110 Applicability.

* * * * *

(d) * * *

(10) As an alternative to the requirements of paragraphs (d)(2), (d)(3), (d)(5), (d)(6), (d)(8), and/or (d)(9) of this section as applicable, if a chemical manufacturing process unit has equipment subject to the provisions of this subpart and equipment subject to the provisions of 40 CFR part 60, subpart III, NNN, or RRR, the owner or operator may elect to apply this subpart to all such equipment in the chemical manufacturing process unit. If the owner or operator elects this method of compliance, all total organic compounds minus methane and ethane, in such equipment shall be considered for purposes of applicability and compliance with this subpart, as if they were organic hazardous air pollutants. Compliance with the provisions of this subpart, in the manner described in this paragraph, shall be deemed to constitute compliance with 40 CFR part 60, subpart III, NNN, or RRR, as applicable.

(e) * * *

(1) After the compliance dates specified in § 63.100 of subpart F of this part, the owner or operator of a Group 1 or Group 2 wastewater stream that is also subject to the provisions of 40 CFR part 61, subpart FF is required to comply with the provisions of both this subpart and 40 CFR part 61, subpart FF. Alternatively, the owner or operator may elect to comply with the provisions of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, which shall constitute compliance with the provisions of 40 CFR part 61, subpart FF.

(i) Comply with the provisions of this subpart; and

(ii) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF on or after December 31, 1992, comply with the requirements of this subpart for Group 1 wastewater streams.

* * * * *

(h) *Overlap with other regulations for monitoring, recordkeeping, or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in § 63.100 of subpart F of this part, if any combustion device, recovery device, or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.152(b).

9. Section 63.111 is amended by redesignating "average concentration" as "annual average concentration" and "average flow rate" as "annual average flow rate"; revising the definition for "boiler"; adding the definition for "chemical manufacturing process unit"; adding the definition for "closed biological treatment process"; revising the definitions for "closed vent system," "combustion device," "continuous record," "continuous seal," "control device," and "cover"; adding the definition for "enhanced biological treatment system or enhanced biological treatment process"; revising the definitions for "flame zone" and "flow indicator"; adding the definitions for "fuel gas" and "fuel gas system"; revising the definitions for "Group 1 wastewater stream," "individual drain system," and "junction box"; removing the definition for "mass flow rate"; revising the definition for "metallic shoe seal or mechanical shoe seal"; adding the definition for "open biological treatment process"; removing the definition for "point of generation"; adding the definition for "point of determination"; revising the definition for "process unit," adding the definition for "recapture device"; revising the definitions for "recovery device," "reference control technology for process vents," "reference control technology for transfer racks," "reference control technology for wastewater" and "residual"; revising the definition for "specific gravity monitoring device"; adding the definitions for "Table 8 compound" and "Table 9 compound"; revising the definition for "temperature monitoring

device"; removing the definitions for "total volatile organic hazardous air pollutant concentration," "volatile organic concentration or VO concentration," and "volatile organic hazardous air pollutant concentration or VOHAP concentration"; and revising the definition of "waste management unit" to read as follows:

§ 63.111 Definitions.

* * * * *

Annual average concentration * * *

Annual average flow rate * * *

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

* * * * *

Chemical manufacturing process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. A chemical manufacturing process unit consists of more than one unit operation. For the purpose of this subpart, chemical manufacturing process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A chemical manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems. A chemical manufacturing process unit is identified by its primary product.

Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and air emissions from the treatment process are routed to either a control device by means of a closed vent system or to a fuel gas system by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in § 63.111 of this subpart, or a floating flexible membrane cover that meets the requirements specified in § 63.134 of this subpart.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic hazardous air pollutant emissions.

* * * * *

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.152(f) or § 63.152(g) of this subpart.

* * * * *

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

* * * * *

Control device means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recapture devices are considered control devices but recovery devices are not considered control devices, and for a steam stripper, a primary condenser is not considered a control device.

Cover, as used in the wastewater provisions, means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

* * * * *

Enhanced biological treatment system or enhanced biological treatment process means an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter homogeneously distributed throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation.

* * * * *

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

* * * * *

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices, or in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

* * * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater as defined in § 63.101 of subpart F at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) of this subpart for Table 9 compounds and/or a wastewater stream consisting of process wastewater at a new source that meets the criteria for Group 1 status in § 63.132(d) of this subpart for Table 8 compounds.

* * * * *

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes hard-piping, all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, conveying wastewater streams or residuals. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

* * * * *

Junction box means a manhole or access point to a wastewater sewer line or a lift station.

* * * * *

Metallic shoe seal or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage

vessel by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

* * * * *

Open biological treatment process means a biological treatment process that is not a closed biological treatment process as defined in this section.

* * * * *

Point of determination means each point where process wastewater exits the chemical manufacturing process unit.

Note to definition for point of determination: The regulation allows determination of the characteristics of a wastewater stream (1) at the point of determination or (2) downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 8 or Table 9 compounds as determined in § 63.144 of this subpart. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy hazardous air pollutants.

* * * * *

Process unit has the same meaning as *chemical manufacturing process unit* as defined in this section.

* * * * *

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

* * * * *

Reference control technology for process vents means a combustion device or recapture device used to reduce organic hazardous air pollutant emissions by 98 percent, or to an outlet concentration of 20 parts per million by volume.

* * * * *

Reference control technology for transfer racks means a combustion device, recapture device, or recovery device used to reduce organic hazardous air pollutants emissions by 98 percent, or to an outlet concentration of 20 parts per million by volume; or a vapor balancing system.

Reference control technology for wastewater means the use of:

(1) Controls specified in § 63.133 through § 63.137;

(2) A steam stripper meeting the specifications of § 63.138(d) of this subpart or any of the other alternative control measures specified in § 63.138(b), (c), (e), (f), (g), or (h) of this subpart; and

(3) A control device to reduce by 95 percent (or to an outlet concentration of 20 parts per million by volume for combustion devices or for noncombustion devices controlling air emissions from waste management units other than surface impoundments or containers) the organic hazardous air pollutants emissions in the vapor streams vented from wastewater tanks, oil-water separators, containers, surface impoundments, individual drain systems, and treatment processes (including the design steam stripper) managing wastewater.

Residual means any liquid or solid material containing Table 9 compounds that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organics (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: the organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals are: silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

* * * * *

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ± 0.02 specific gravity units.

* * * * *

Table 8 compound means a compound listed in table 8 of this subpart.

Table 9 compound means a compound listed in table 9 of this subpart.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of (a) ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or (b) ±0.5 degrees (°C), whichever is greater.

* * * * *

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: Wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery, then it is part of a chemical manufacturing process unit and is not a waste management unit.

* * * * *

10. Section 63.112 is amended by revising the introductory text of paragraph (e) and adding paragraphs (e)(3) and (h) to read as follows:

§ 63.112 Emission standard.

* * * * *

(e) The owner or operator of an existing or new source may comply with the process vent provisions in §§ 63.113 through 63.118 of this subpart, the storage vessel provisions in §§ 63.119 through 63.123 of this subpart, the transfer operation provisions in §§ 63.126 through 63.130 of this subpart, the wastewater provisions in §§ 63.131 through 63.147 of this subpart, the leak inspection provisions in § 63.148, and the provisions in § 63.149 of this subpart.

* * * * *

(3) When emissions of different kinds (e.g., emissions from process vents, transfer operations, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149 of this subpart) are combined, and at least one of the emission streams would be classified as Group 1 in the absence of combination with other emission streams, the owner or operator shall comply with the requirements of either paragraph (e)(3)(i) or paragraph (e)(3)(ii) of this section.

(i) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (e.g., the

requirements in §§ 63.113 through 63.118 of this subpart G for process vents, and the requirements of §§ 63.126 through 63.130 for transfer operations); or

(ii) Comply with the first set of requirements identified in paragraphs (e)(3)(ii)(A) through (e)(3)(ii)(E) of this section which applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as Group 1 in the absence of combination with other emission streams, or the owner chooses to consider that emission stream to be Group 1 for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (e)(3)(ii)(A) through (e)(3)(ii)(E) of this section constitutes compliance with all other requirements in paragraphs (e)(3)(ii)(A) through (e)(3)(ii)(E) of this section applicable to other types of emissions in the combined stream.

(A) The requirements of this subpart for Group 1 process vents, including applicable monitoring, recordkeeping, and reporting;

(B) The requirements of this subpart for Group 1 transfer racks, including applicable monitoring, recordkeeping, and reporting;

(C) The requirements of § 63.119(e) for control of emissions from Group 1 storage vessels, including monitoring, recordkeeping, and reporting;

(D) The requirements of § 63.139 for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting; or

(E) The requirements of § 63.139 for closed vent systems for control of emissions from in-process equipment subject to § 63.149, including applicable monitoring, recordkeeping, and reporting.

* * * * *

(h) Where the provisions of this subpart require a performance test, waiver of that requirement shall be addressed only as provided in § 63.103(b)(5) of subpart F of this part.

11. Section 63.113 is amended by revising the introductory text of paragraph (a); revising paragraph (a)(2); revising the second sentence in paragraph (a)(3); and revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 63.113 Process vent provisions.

(a) The owner or operator of a Group 1 process vent as defined in this subpart shall comply with the requirements of paragraph (a)(1), (a)(2), or (a)(3) of this section.

* * * * *

(2) Reduce emissions of total organic hazardous air pollutants by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3-percent oxygen, and compliance can be determined by measuring either organic hazardous air pollutants or total organic carbon using the procedures in § 63.116 of this subpart.

(i) Compliance with paragraph (a)(2) of this section may be achieved by using any combination of combustion, recovery, and/or recapture devices, except that a recovery device may not be used to comply with paragraph (a)(2) of this section by reducing emissions of total organic hazardous air pollutants by 98 weight-percent, except as provided in paragraph (a)(2)(ii) of this section.

(ii) An owner or operator may use a recovery device, alone or in combination with one or more combustion or recapture devices, to reduce emissions of total organic hazardous air pollutants by 98 weight-percent if all the conditions of paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(D) of this section are met.

(A) The recovery device (and any combustion device or recapture device which operates in combination with the recovery device to reduce emissions of total organic hazardous air pollutants by 98 weight-percent) was installed before the date of proposal of the subpart of this part 63 that makes this subpart G applicable to process vents in the chemical manufacturing process unit.

(B) The recovery device that will be used to reduce emissions of total organic hazardous air pollutants by 98 weight-percent is the last recovery device before emission to the atmosphere.

(C) The recovery device, alone or in combination with one or more combustion or recapture devices, is capable of reducing emissions of total organic hazardous air pollutants by 98 weight-percent, but is not capable of reliably reducing emissions of total organic hazardous air pollutants to a concentration of 20 parts per million by volume.

(D) If the owner or operator disposed of the recovered material, the recovery device would comply with the requirements of this subpart for recapture devices.

(3) * * * If the TRE index value is greater than 1.0, the vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable.

* * * * *

(c) * * *

(1) If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device, including but not limited to a scrubber, before it is discharged to the atmosphere.

(i) Except as provided in paragraph (c)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 99 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour, whichever is less stringent.

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour, whichever is less stringent.

(2) A halogen reduction device, such as a scrubber or other technique, may be used to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour prior to any combustion control device, and thus make the vent stream nonhalogenated; the vent stream must comply with the requirements of paragraph (a)(1) or (a)(2) of this section.

* * * * *

12. Section 63.114 is amended by revising the introductory text of paragraph (a); revising paragraph (a)(4)(ii); adding paragraph (a)(5); revising the introductory text of paragraph (b); revising paragraphs (b)(3), (c)(1), (c)(3), revising the first sentence of paragraph (d)(1), and revising paragraph (d)(2); and adding a sentence to the end of paragraph (e) to read as follows:

§ 63.114 Process vent provisions—monitoring requirements.

(a) Each owner or operator of a process vent that uses a combustion device to comply with the requirements in § 63.113 (a)(1) or (a)(2) of this subpart, or that uses a recovery device or recapture device to comply with the requirements in § 63.113(a)(2) of this subpart, shall install monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this section, depending on the type of device used. All monitoring equipment shall be installed, calibrated, maintained, and

operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(4) * * *

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (a)(4)(ii)(A) through (a)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart specified in § 63.100(k) of subpart F of this part, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.103(c).

(5) Where a recovery device or recapture device is used to comply with the requirements of § 63.113(a)(2) of this subpart, the owner or operator shall utilize the appropriate monitoring device identified in paragraph (b), (b)(1), (b)(2), or (b)(3) of this section.

(b) Each owner or operator of a process vent with a TRE index value greater than 1.0 as specified under § 63.113(a)(3) or §63.113(d) of this subpart that uses one or more recovery devices shall install either an organic monitoring device equipped with a continuous recorder or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. Monitoring is not required for process vents with TRE index values greater than 4.0 as specified in § 63.113(e) of this subpart.

* * * * *

(3) Where a carbon adsorber is the final recovery device in the recovery system, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used.

(c) * * *

(1) Uses a combustion device other than an incinerator, boiler, process heater, or flare; or

* * * * *

(3) Uses one of the combustion or recovery or recapture devices listed in paragraphs (a) and (b) of this section, but seeks to monitor a parameter other than those specified in paragraphs (a) and (b) of this section.

(d) * * *

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. * * *

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line.

(e) * * * The range may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by the EPA, and the owner or operator is not required to conduct a performance test under § 63.116 of this subpart, if the prior performance test was conducted using the same methods specified in § 63.116 and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

13. Section 63.115 is amended by revising the introductory text of paragraph (a) and the first sentence in the introductory text of paragraph (e) to read as follows:

§ 63.115 Process vent provisions—methods and procedures for process vent group determination.

(a) For purposes of determining process vent stream flow rate, total organic hazardous air pollutants or total organic carbon concentration or TRE index value, as specified under paragraph (b), (c), or (d) of this section, the sampling site shall be after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present and prior to release to the atmosphere.

* * * * *

(e) The owner or operator of a Group 2 process vent shall recalculate the TRE index value, flow, or organic hazardous air pollutants concentration for each process vent, as necessary to determine whether the vent is Group 1 or Group 2, whenever process changes are made that could reasonably be expected to change the vent to a Group 1 vent.

* * * * *

14. Section 63.116 is amended by revising paragraph (a)(1); by revising the introductory text of paragraph (b); revising paragraph (b)(3); adding paragraph (b)(5); revising the introductory text of paragraph (d); and revising paragraphs (d)(1), (d)(3), (d)(4), and (e) to read as follows:

§ 63.116 Process vent provisions—performance test methods and procedures to determine compliance.

(a) * * *

(1) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

* * * * *

(b) An owner or operator is not required to conduct a performance test when any control device specified in paragraphs (b)(1) through (b)(5) of this section is used.

* * * * *

(3) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same methods specified in this section and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or

without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(5) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

* * * * *

(d) An owner or operator using a combustion device followed by a scrubber or other halogen reduction device to control halogenated process vent streams in compliance with § 63.113(c)(1) shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with the less than 0.45 kilogram per hour outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

* * * * *

(3) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the less than 0.45 kilogram per hour outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below 0.45 kilogram per hour.

* * * * *

(e) An owner or operator using a scrubber or other halogen reduction device to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour prior to a combustion control device in compliance with § 63.113(c)(2) of this subpart shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in § 63.115(d)(2)(v) of this subpart.

15. Section 63.118 is amended by revising paragraph (a)(2); revising the introductory text of paragraph (b); and revising paragraph (b)(2) to read as follows:

§ 63.118 Process vents provisions—Periodic reporting and recordkeeping requirements.

(a) * * *

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.152(f). For flares, records of the times and duration of all periods during which all pilot flames are absent shall be kept rather than daily averages.

* * * * *

(b) Each owner or operator using a recovery device or other means to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 as specified in § 63.113(a)(3) or § 63.113(d) of this subpart shall keep the following records up-to-date and readily accessible:

* * * * *

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.152(f). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in table 4 of this subpart shall be kept instead of the daily averages.

* * * * *

16. Section 63.119 is amended by revising paragraphs (a)(1), (a)(2), (b)(2), and (c)(4); and by adding new paragraphs (e)(6) and (f) to read as follows:

§ 63.119 Storage vessel provisions—reference control technology.

(a) * * *

(1) For each Group 1 storage vessel (as defined in table 5 of this subpart for existing sources and table 6 for new sources) storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is less than 76.6 kilopascals, the owner or operator shall reduce hazardous air pollutants emissions to the atmosphere either by operating and maintaining a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system and control device, or routing the emissions to a process or a fuel gas system in accordance with the requirements in paragraph (b), (c), (d), (e), or (f) of this section, or equivalent as provided in § 63.121 of this subpart.

(2) For each Group 1 storage vessel (as defined in table 5 of this subpart for existing sources and table 6 of this subpart for new sources) storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is greater than or equal to 76.6 kilopascals, the owner or operator shall operate and maintain a closed vent system and control device meeting the requirements specified in paragraph (e) of this section, or route the emissions to a process or a fuel gas system as specified in paragraph (f) of this section, or equivalent as provided in § 63.121 of this subpart.

* * * * *

(b) * * *

(2) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

* * * * *

(c) * * *

(4) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

* * * * *

(e) * * *

(6) An owner or operator may use a combination of control devices to achieve the required reduction of total organic hazardous air pollutants specified in paragraph (e)(1) of this section. An owner or operator may use a combination of control devices installed on a storage vessel on or before December 31, 1992 to achieve the required reduction of total organic hazardous air pollutants specified in paragraph (e)(2) of this section.

(f) The owner or operator who elects to route emissions to a fuel gas system or to a process, as defined in § 63.111 of this subpart, to comply with the requirements of paragraph (a)(1) or (a)(2) of this section shall comply with the requirements in paragraphs (f)(1) through (f)(3) of this section, as applicable.

(1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation. If emissions are routed to a process, the organic hazardous air pollutants in the emissions shall predominantly meet one of, or a combination of, the ends specified in paragraphs (f)(1)(i) through (f)(1)(iv) of

this section. The owner or operator shall comply with the compliance demonstration requirements in § 63.120(f).

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not organic hazardous air pollutants;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(2) If the emissions are conveyed by a system other than hard-piping, any conveyance system operated under positive pressure shall be subject to the requirements of § 63.148 of this subpart.

(3) The fuel gas system or process shall be operating at all times when organic hazardous air pollutants emissions are routed to it except as provided in § 63.102(a)(1) of subpart F of this part and in paragraphs (f)(3)(i) through (f)(3)(iii) of this section. Whenever the owner or operator by-passes the fuel gas system or process, the owner or operator shall comply with the recordkeeping requirement in § 63.123(h) of this subpart. Bypassing is permitted if the owner or operator complies with one or more of the conditions specified in paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(i) The liquid level in the storage vessel is not increased;

(ii) The emissions are routed through a closed-vent system to a control device complying with § 63.119(e) of this subpart; or

(iii) The total aggregate amount of time during which the emissions by-pass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except start-ups/shutdowns/malfunctions or product changeovers of flexible operation units and periods when the storage vessel has been emptied and degassed), does not exceed 240 hours.

17. Section 63.120 is amended by revising the last sentence of paragraph (a)(4); revising the first sentence of paragraph (b)(2)(ii); revising the last sentence of paragraphs (b)(7)(ii) and (b)(8); revising the introductory text of paragraph (d); and adding paragraphs (d)(8) and (f) to read as follows:

§ 63.120 Storage vessel provisions—procedures to determine compliance.

(a) * * *

(4) * * * Documentation of a decision to utilize an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

* * * * *

(b) * * *

(2) * * *

(ii) Seal gaps, if any, shall be measured around the entire circumference of the vessel in each place where an 0.32 centimeter (⅛ inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel. * * *

* * * * *

(7) * * *

(ii) * * * Documentation of a decision to utilize an extension shall include an explanation of why it was unsafe to perform the inspection or seal gap measurement, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the vessel will be emptied as soon as practical.

(8) * * * Documentation of a decision to utilize an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

* * * * *

(d) To demonstrate compliance with § 63.119(e) of this subpart (storage vessel equipped with a closed vent system and control device) using a control device other than a flare, the owner or operator shall comply with the requirements in paragraphs (d)(1) through (d)(7) of this section, except as provided in paragraph (d)(8) of this section.

* * * * *

(8) A design evaluation or performance test is not required, if the owner or operator uses a combustion device meeting the criteria in paragraph (d)(8)(i), (d)(8)(ii), (d)(8)(iii), or (d)(8)(iv) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

* * * * *

(f) To demonstrate compliance with § 63.119(f) of this subpart (storage vessel routed to a process), the owner or operator shall prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the ends specified in § 63.119(f)(1)(i) through (f)(1)(iv) are being met. The owner or operator shall submit the design evaluation as part of the Notification of Compliance Status required by § 63.152(b) of this subpart.

18. Section 63.122 is amended by adding a sentence to the end of the introductory text of paragraph (c); and adding paragraph (c)(3) to read as follows:

§ 63.122 Storage vessel provisions—reporting.

* * * * *

(c) * * * An owner or operator who elects to comply with § 63.119(f) of this subpart by routing emissions to a process or to a fuel gas system shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the information specified in paragraph (c)(3) of this section.

* * * * *

(3) If emissions are routed to a process, the owner or operator shall submit the information specified in § 63.120(f). If emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to the fuel gas system and whether the conveyance system is subject to the requirements of § 63.148.

* * * * *

19. Section 63.123 is amended by adding paragraph (h) to read as follows:

§ 63.123 Storage vessel provisions—recordkeeping.

* * * * *

(h) An owner or operator who uses the by-pass provisions of § 63.119(f)(3) of this subpart shall keep in a readily accessible location the records specified in paragraphs (h)(1) through (h)(3) of this section.

(1) The reason it was necessary to by-pass the process equipment or fuel gas system;

(2) The duration of the period when the process equipment or fuel gas system was by-passed;

(3) Documentation or certification of compliance with the applicable provisions of § 63.119(f)(3)(i) through § 63.119(f)(3)(iii).

20. Section 63.126 is amended by revising paragraphs (a)(1) and (a)(3); revising the introductory text of paragraph (b), and revising paragraphs (b)(1) and (b)(3); adding paragraph (b)(4); and revising paragraphs (d)(1), (d)(2), (h), and (i) to read as follows:

§ 63.126 Transfer operations provisions—reference control technology.

(a) * * *

(1) Each vapor collection system shall be designed and operated to collect the organic hazardous air pollutants vapors displaced from tank trucks or railcars during loading, and to route the collected hazardous air pollutants vapors to a process, or to a fuel gas system, or to a control device as provided in paragraph (b) of this section.

* * * * *

(3) Whenever organic hazardous air pollutants emissions are vented to a process, fuel gas system, or control device used to comply with the provisions of this subpart, the process, fuel gas system, or control device shall be operating.

(b) For each Group 1 transfer rack the owner or operator shall comply with paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section.

(1) Use a control device to reduce emissions of total organic hazardous air pollutants by 98 weight-percent or to an exit concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3-percent oxygen. If a boiler or process heater is used to comply with the percent reduction requirement, then the vent stream shall be introduced into the flame zone of such a device. Compliance may be achieved by using any combination of combustion, recovery, and/or recapture devices.

* * * * *

(3) Reduce emissions of organic hazardous air pollutants using a vapor balancing system designed and operated to collect organic hazardous air pollutants vapors displaced from tank trucks or railcars during loading; and to route the collected hazardous air pollutants vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route to a process collected hazardous air pollutants vapors.

(4) Route emissions of organic hazardous air pollutants to a fuel gas system or to a process where the organic hazardous air pollutants in the emissions shall predominantly meet one of, or a combination of, the ends specified in paragraphs (b)(4)(i) through (b)(4)(iv) of this section.

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not organic hazardous air pollutants;

(iii) Incorporated into a product; and/or

(iv) Recovered.

* * * * *

(d) * * *

(1) If a combustion device is used to comply with paragraph (b)(1) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device, including, but not limited to, a scrubber before it is discharged to the atmosphere.

(i) Except as provided in paragraph (d)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 99 percent or shall reduce the outlet mass emission rate of total hydrogen halides and halogens to 0.45 kilograms per hour or less, whichever is less stringent.

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour, whichever is less stringent.

(2) A halogen reduction device, such as a scrubber, or other technique may be used to make the vent stream non-halogenated by reducing the vent stream halogen atom mass emission rate to less than 0.45 kilograms per hour prior to any combustion control device used to comply with the requirements of paragraphs (b)(1) or (b)(2) of this section.

* * * * *

(h) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure-relief device in the transfer rack's vapor collection system or in the organic hazardous air pollutants loading equipment of each tank truck or railcar shall begin to open during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(i) Each valve in the vent system that would divert the vent stream to the atmosphere, either directly or indirectly, shall be secured in a non-diverting position using a carseal or a lock-and-key type configuration, or shall be equipped with a flow indicator. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief devices needed for safety purposes is not subject to this paragraph.

21. Section 63.127 is amended by revising the introductory text of paragraph (a) and revising paragraph (a)(4)(ii); revising the introductory text of paragraph (b), revising paragraph (b)(3), and revising the first sentence of paragraph (d)(1) to read as follows:

§ 63.127 Transfer operations provisions—monitoring requirements.

(a) Each owner or operator of a Group 1 transfer rack equipped with a combustion device used to comply with the 98 percent total organic hazardous air pollutants reduction or 20 parts per million by volume outlet concentration requirements in § 63.126(b)(1) of this subpart shall install, calibrate, maintain, and operate according to the manufacturers' specifications (or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately) the monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, as appropriate.

* * * * *

(4) * * *

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (a)(4)(ii)(A) through (a)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart specified in § 63.100(k) of subpart F of this part, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream

flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.103(c).

(b) Each owner or operator of a Group 1 transfer rack that uses a recovery device or recapture device to comply with the 98-percent organic hazardous air pollutants reduction or 20 parts per million by volume hazardous air pollutants concentration requirements in § 63.126(b)(1) of this subpart shall install either an organic monitoring device equipped with a continuous recorder, or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device or recapture device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(3) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle shall be used.

* * * * *

(d) * * *

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes.

* * *

* * * * * *

22. Section 63.128 is amended by revising paragraph (a)(9)(iv); by revising the first sentence in the introductory text of paragraph (b)(1); by revising the introductory text of paragraph (c), revising paragraph (c)(3) and adding paragraph (c)(7); revising the introductory text of paragraph (d); and revising paragraphs (d)(1), (f)(2), and (g) to read as follows:

§ 63.128 Transfer operations provisions—test methods and procedures.

(a) * * *

(9) * * *

(iv) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic hazardous air pollutants or organic compound samples, and the samples shall be taken during the same time that the organic hazardous air pollutants or organic compound samples are taken.

* * * * *

(b) * * *

(1) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions. * * *

* * * * *

(c) An owner or operator is not required to conduct a performance test when any of the conditions specified in paragraphs (c)(1) through (c)(7) of this section are met.

* * * * *

(3) When emissions are routed to a fuel gas system or when a boiler or process heater is used and the vent stream is introduced with the primary fuel.

* * * * *

(7) When a hazardous waste incinerator is used for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements 40 CFR part 265, subpart O.

(d) An owner or operator using a combustion device followed by a scrubber or other halogen reduction device to control a halogenated transfer vent stream in compliance with § 63.126(d) of this subpart shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator complying with the 0.45 kilogram per hour outlet mass emission rate limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to release to the atmosphere.

* * * * *

(f) * * *

(2) A pressure measurement device which has a precision of #2.5 millimeters of mercury or better and which is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(g) An owner or operator using a scrubber or other halogen reduction device to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilograms per hour prior to a combustion device used to comply with § 63.126(d)(2) shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in paragraph (d)(3) of this section.

* * * * *

23. Section 63.129 is amended by revising paragraph (a)(1) and the last sentence of paragraph (a)(4)(ii), and by adding paragraph (a)(8) to read as follows:

§ 63.129 Transfer operations provisions—reporting and recordkeeping for performance tests and Notification of Compliance Status.

(a) * * *

(1) Keep an up-to-date, readily accessible record of the data specified in paragraphs (a)(4) through (a)(8) of this section, as applicable.

* * * * *

(4) * * *

(ii) * * * For combustion devices, the concentration shall be reported on a dry basis corrected to 3-percent oxygen.

* * * * *

(8) Report that the emission stream is being routed to a fuel gas system or a process, when complying using § 63.126(b)(4).

* * * * *

24. Section 63.130 is amended by revising the introductory text of paragraph (a)(2); removing paragraphs (a)(2)(i) through (a)(2)(iv); redesignating paragraphs (a)(2)(v) through (a)(2)(vii) as (a)(2)(i) through (a)(2)(iii); and revising paragraph (b)(1), the last sentence of paragraph (b)(2), and revising paragraph (d)(4) to read as follows:

§ 63.130 Transfer operations provisions—periodic recordkeeping and reporting.

(a) * * *

(2) Records of the daily average value of each monitored parameter for each operating day determined according to

the procedures specified in § 63.152(f), except as provided in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

* * * * *

(b) * * *

(1) Hourly records of whether the flow indicator specified under § 63.127(d)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(2) * * * In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the by-pass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken, as listed in table 7 of this subpart.

* * * * *

(d) * * *

(4) Reports of all times recorded under paragraph (b)(2) of this section when maintenance is performed on car-sealed valves, when the car seal is broken, when the by-pass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

* * * * *

§ 63.131 [Removed and Reserved]

25. Section 63.131 is removed and reserved.

26. Sections 63.132 through 63.147 are revised to read as follows:

§ 63.132 Process wastewater provisions—general.

(a) *Existing sources.* This paragraph specifies the requirements applicable to process wastewater streams located at existing sources. The owner or operator shall comply with the requirements in paragraphs (a)(1) through (a)(3) of this section, no later than the applicable dates specified in § 63.100 of subpart F of this part.

(1) *Determine wastewater streams to be controlled for Table 9 compounds.* Determine whether each wastewater stream requires control for Table 9 compounds by complying with the requirements in either paragraph (a)(1)(i) or (a)(1)(ii) of this section, and comply with the requirements in paragraph (a)(1)(iii) of this section.

(i) Comply with paragraph (c) of this section, determining whether the wastewater stream is Group 1 or Group 2 for Table 9 compounds; or

(ii) Comply with paragraph (e) of this section, designating the wastewater stream as a Group 1 wastewater stream.

(iii) Comply with paragraph (f) of this section.

(2) *Requirements for Group 1 wastewater streams.* For wastewater streams that are Group 1 for Table 9 compounds, comply with paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) Comply with the applicable requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil/water separators as specified in § 63.133 through § 63.137 of this subpart, except as provided in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and § 63.138(a)(3) of this subpart.

(A) The waste management units may be equipped with pressure relief devices that vent directly to the atmosphere provided the pressure relief device is not used for planned or routine venting of emissions.

(B) The pressure relief device remains in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(ii) Comply with the applicable requirements for control of Table 9 compounds as specified in § 63.138 of this subpart. Alternatively, the owner or operator may elect to comply with the treatment provisions specified in § 63.132(g) of this subpart.

(iii) Comply with the applicable monitoring and inspection requirements specified in § 63.143 of this subpart.

(iv) Comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(3) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2, comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(b) *New sources.* This paragraph specifies the requirements applicable to process wastewater streams located at new sources. The owner or operator shall comply with the requirements in paragraphs (b)(1) through (b)(4) of this section, no later than the applicable dates specified in § 63.100 of subpart F of this part.

(1) *Determine wastewater streams to be controlled for Table 8 compounds.* Determine whether each wastewater stream requires control for Table 8 compounds by complying with the requirements in either paragraph (b)(1)(i) or (b)(1)(ii) of this section, and comply with the requirements in paragraph (b)(1)(iii) of this section.

(i) Comply with paragraph (d) of this section, determining whether the wastewater stream is Group 1 or Group 2 for Table 8 compounds; or

(ii) Comply with paragraph (e) of this section, designating the wastewater stream as a Group 1 wastewater stream for Table 8 compounds.

(iii) Comply with paragraph (f) of this section.

(2) *Determine wastewater streams to be controlled for Table 9 compounds.* Determine whether each wastewater stream requires control for Table 9 compounds by complying with the requirements in either paragraph (b)(2)(i) or (b)(2)(ii) of this section, and comply with the requirements in paragraph (b)(2)(iii) of this section.

(i) Comply with paragraph (c) of this section, determining whether the wastewater stream is Group 1 or Group 2 for Table 9 compounds; or

(ii) Comply with paragraph (e) of this section, designating the wastewater stream as a Group 1 wastewater stream.

(iii) Comply with paragraph (f) of this section.

(3) *Requirements for Group 1 wastewater streams.* For wastewater streams that are Group 1 for Table 8 compounds and/or Table 9 compounds, comply with paragraphs (b)(3)(i) through (b)(3)(iv) of this section.

(i) Comply with the applicable requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil/water separators specified in the requirements of § 63.133 through § 63.137 of this subpart, except as provided in paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section and § 63.138(a)(3) of this subpart.

(A) The waste management units may be equipped with pressure relief devices that vent directly to the atmosphere provided the pressure relief device is not used for planned or routine venting of emissions.

(B) The pressure relief device remains in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(ii) Comply with the applicable requirements for control of Table 8 compounds specified in § 63.138 of this subpart. Alternatively, the owner or operator may elect to comply with the provisions specified in § 63.132(g) of this subpart.

(iii) Comply with the applicable monitoring and inspection requirements specified in § 63.143 of this subpart.

(iv) Comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(4) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2 for both Table 8 and Table 9 compounds, comply with the recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(c) *How to determine Group 1 or Group 2 status for Table 9 compounds.* This paragraph provides instructions for determining whether a wastewater stream is Group 1 or Group 2 for Table 9 compounds. Total annual average concentration shall be determined according to the procedures specified in § 63.144(b) of this subpart. Annual average flow rate shall be determined according to the procedures specified in § 63.144(c) of this subpart.

(1) A wastewater stream is a Group 1 wastewater stream for Table 9 compounds if:

(i) The total annual average concentration of Table 9 compounds is greater than or equal to 10,000 parts per million by weight at any flow rate; or

(ii) The total annual average concentration of Table 9 compounds is greater than or equal to 1,000 parts per million by weight and the annual average flow rate is greater than or equal to 10 liters per minute.

(2) A wastewater stream is a Group 2 wastewater stream for Table 9 compounds if it is not a Group 1 wastewater stream for Table 9 compounds by the criteria in paragraph (c)(1) of this section.

(d) *How to determine Group 1 or Group 2 status for Table 8 compounds.* This paragraph provides instructions for determining whether a wastewater sream is Group 1 or Group 2 for Table 8 compounds. Annual average concentration for each Table 8 compound shall be determined according to the procedures specified in § 63.144(b) of this subpart. Annual average flow rate shall be determined according to the procedures specified in § 63.144(c) of this subpart.

(1) A wastewater stream is a Group 1 wastewater stream for Table 8 compounds if the annual average flow rate is 0.02 liter per minute or greater and the annual average concentration of any individual table 8 compound is 10 parts per million by weight or greater.

(2) A wastewater stream is a Group 2 wastewater stream for Table 8 compounds if the annual average flow rate is less than 0.02 liter per minute or the annual average concentration for each individual Table 8 compound is less than 10 parts per million by weight.

(e) *How to designate a Group 1 wastewater stream.* The owner or operator may elect to designate a wastewater stream a Group 1 wastewater stream in order to comply with paragraph (a)(1) or (b)(1) of this section. To designate a wastewater stream or a mixture of wastewater streams a Group 1 wastewater stream, the procedures specified in paragraphs (e)(1) and (e)(2) of this section and § 63.144(a)(2) of this subpart shall be followed.

(1) From the point of determination for each wastewater stream that is included in the Group 1 designation to the location where the owner or operator elects to designate such wastewater stream(s) as a Group 1 wastewater stream, the owner or operator shall comply with all applicable emission suppression requirements specified in §§ 63.133 through 63.137.

(2) From the location where the owner or operator designates a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream, such Group 1 wastewater stream shall be managed in accordance with all applicable emission suppression requirements specified in §§ 63.133 through 63.137 and with the treatment requirements in § 63.138 of this part.

(f) Owners or operators of sources subject to this subpart shall not discard liquid or solid organic materials with a concentration of greater than 10,000 parts per million of Table 9 compounds (as determined by analysis of the stream composition, engineering calculations, or process knowledge, according to the provisions of § 63.144(b) of this subpart) from a chemical manufacturing process unit to water or wastewater, unless the receiving stream is managed and treated as a Group 1 wastewater stream. This prohibition does not apply to materials from the activities listed in paragraphs (f)(1) through (f)(4) of this section.

(1) Equipment leaks;

(2) Activities included in maintenance or startup/shutdown/malfunction plans;

(3) Spills; or

(4) Samples of a size not greater than reasonably necessary for the method of analysis that is used.

(g) *Off-site treatment or on-site treatment not owned or operated by the source.* The owner or operator may elect to transfer a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream to an on-site treatment operation not owned or operated by the owner or operator of the source generating the wastewater stream or residual, or to an off-site treatment operation.

(1) The owner or operator transferring the wastewater stream or residual shall:

(i) Comply with the provisions specified in §§ 63.133 through 63.137 of this subpart for each waste management unit that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream prior to shipment or transport.

(ii) Include a notice with the shipment or transport of each Group 1 wastewater stream or residual removed from a Group 1 wastewater stream. The notice shall state that the wastewater stream or residual contains organic hazardous air pollutants that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(2) The owner or operator may not transfer the wastewater stream or residual unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat any Group 1 wastewater stream or residual removed from a Group 1 wastewater stream received from a source subject to the requirements of this subpart in accordance with the requirements of either §§ 63.133 through 63.147, or § 63.102(b) of subpart F, or subpart D of this part if alternative emission limitations have been granted the transferor in accordance with those provisions. The certifying entity may revoke the written certification by sending a written statement to the EPA and the owner or operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph. Upon expiration of the notice period, the owner or operator may not transfer the wastewater stream or residual to the treatment operation.

(3) By providing this written certification to the EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (g)(2) of this section with respect to any shipment of wastewater or residual covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(4) Written certifications and revocation statements, to the EPA from the transferees of wastewater or residuals shall be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater.

§ 63.133 Process wastewater provisions—wastewater tanks.

(a) For each wastewater tank that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section as specified in table 10 of this subpart.

(1) The owner or operator shall operate and maintain a fixed roof except that if the wastewater tank is used for heating wastewater, or treating by means of an exothermic reaction or the contents of the tank is sparged, the owner or operator shall comply with the requirements specified in paragraph (a)(2) of this section.

(2) The owner or operator shall comply with the requirements in paragraphs (b) through (h) of this section and shall operate and maintain one of the emission control techniques listed in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) A fixed roof and a closed-vent system that routes the organic hazardous air pollutants vapors vented from the wastewater tank to a control device.

(ii) A fixed roof and an internal floating roof that meets the requirements specified in § 63.119(b) of this subpart;

(iii) An external floating roof that meets the requirements specified in §§ 63.119(c), 63.120(b)(5), and 63.120(b)(6) of this subpart; or

(iv) An equivalent means of emission limitation. Determination of equivalence to the reduction in emissions achieved by the requirements of paragraphs (a)(2)(i) through (a)(2)(iii) of this section will be evaluated according to § 63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(2)(iv)(A) or (a)(2)(iv)(B) of this section.

(A) Actual emissions tests that use full-size or scale-model wastewater tanks that accurately collect and measure all organic hazardous air pollutants emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(B) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(b) If the owner or operator elects to comply with the requirements of paragraph (a)(2)(i) of this section, the fixed roof shall meet the requirements of paragraph (b)(1) of this section, the control device shall meet the requirements of paragraph (b)(2) of this section, and the closed-vent system shall meet the requirements of paragraph (b)(3) of this section.

(1) The fixed-roof shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the fixed roof and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(ii) Each opening shall be maintained in a closed position (e.g., covered by a lid) at all times that the wastewater tank contains a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream except when it is necessary to use the opening for wastewater sampling, removal, or for equipment inspection, maintenance, or repair.

(2) The control device shall be designed, operated, and inspected in accordance with the requirements of § 63.139 of this subpart.

(3) Except as provided in paragraph (b)(4) of this section, the closed-vent system shall be inspected in accordance with the requirements of § 63.148 of this subpart.

(4) For any fixed roof tank and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in § 63.148 of this subpart.

(c) If the owner or operator elects to comply with the requirements of paragraph (a)(2)(ii) of this section, the floating roof shall be inspected according to the procedures specified in § 63.120(a)(2) and (a)(3) of this subpart.

(d) Except as provided in paragraph (e) of this section, if the owner or operator elects to comply with the requirements of paragraph (a)(2)(iii) of this section, seal gaps shall be measured according to the procedures specified in § 63.120(b)(2)(i) through (b)(4) of this subpart and the wastewater tank shall be inspected to determine compliance with § 63.120(b)(5) and (b)(6) of this subpart.

(e) If the owner or operator determines that it is unsafe to perform the seal gap measurements specified in § 63.120(b)(2)(i) through (b)(4) of this subpart or to inspect the wastewater tank to determine compliance with § 63.120(b)(5) and (b)(6) of this subpart because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with the requirements in either paragraph (e)(1) or (e)(2) of this section.

(1) The owner or operator shall measure the seal gaps or inspect the wastewater tank within 30 calendar days of the determination that the floating roof is unsafe, or

(2) The owner or operator shall empty and remove the wastewater tank from service within 45 calendar days of determining that the roof is unsafe. If the wastewater tank cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. Documentation of a decision to utilize an extension shall include an explanation of why it was unsafe to perform the inspection or seal gap measurement, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the wastewater tank will be emptied as soon as practical.

(f) Except as provided in paragraph (e) of this section, each wastewater tank shall be inspected initially, and semi-annually thereafter, for improper work practices in accordance with § 63.143 of this subpart. For wastewater tanks, improper work practice includes, but is not limited to, leaving open any access door or other opening when such door or opening is not in use.

(g) Except as provided in paragraph (e) of this section, each wastewater tank shall be inspected for control equipment failures as defined in paragraph (g)(1) of this section according to the schedule in paragraphs (g)(2) and (g)(3) of this section.

(1) Control equipment failures for wastewater tanks include, but are not limited to, the conditions specified in paragraphs (g)(1)(i) through (g)(1)(ix) of this section.

(i) The floating roof is not resting on either the surface of the liquid or on the leg supports.

(ii) There is stored liquid on the floating roof.

(iii) A rim seal is detached from the floating roof.

(iv) There are holes, tears, cracks or gaps in the rim seal or seal fabric of the floating roof.

(v) There are visible gaps between the seal of an internal floating roof and the wall of the wastewater tank.

(vi) There are gaps between the metallic shoe seal or the liquid mounted primary seal of an external floating roof and the wall of the wastewater tank that exceed 212 square centimeters per meter of tank diameter or the width of any portion of any gap between the primary seal and the tank wall exceeds 3.81 centimeters.

(vii) There are gaps between the secondary seal of an external floating roof and the wall of the wastewater tank that exceed 21.2 square centimeters per meter of tank diameter or the width of any portion of any gap between the secondary seal and the tank wall exceeds 1.27 centimeters.

(viii) Where a metallic shoe seal is used on an external floating roof, one end of the metallic shoe does not extend into the stored liquid or one end of the metallic shoe does not extend a minimum vertical distance of 61 centimeters above the surface of the stored liquid.

(ix) A gasket, joint, lid, cover, or door has a crack or gap, or is broken.

(2) The owner or operator shall inspect for the control equipment failures in paragraphs (g)(1)(i) through (g)(1)(viii) of this section according to the schedule specified in paragraphs (c) and (d) of this section.

(3) The owner or operator shall inspect for the control equipment failures in paragraph (g)(1)(ix) of this section initially, and semi-annually thereafter.

(h) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification. If a failure that is detected during inspections required by paragraphs (a)(2)(i) or (a)(3)(ii) of this section cannot be repaired within 45 calendar days and if the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. Documentation of a decision to utilize an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

§ 63.134 Process wastewater provisions—surface impoundments.

(a) For each surface impoundment that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b), (c), and (d) of this section.

(b) The owner or operator shall operate and maintain on each surface impoundment either a cover (e.g., air-supported structure or rigid cover) and a closed-vent system that routes the organic hazardous air pollutants vapors vented from the surface impoundment to a control device in accordance with paragraph (b)(1) of this section, or a floating flexible membrane cover as specified in paragraph (b)(2) of this section.

(1) The cover and all openings shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(ii) Each opening shall be maintained in a closed position (e.g., covered by a lid) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the surface impoundment except when it is necessary to use the opening for sampling, removal, or for equipment inspection, maintenance, or repair.

(iii) The cover shall be used at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the surface impoundment except during removal of treatment residuals in accordance with 40 CFR 268.4 or closure of the surface impoundment in accordance with 40 CFR 264.228.

(2) Floating flexible membrane covers shall meet the requirements specified in paragraphs (b)(2)(i) through (b)(2)(vii) of this section.

(i) The floating flexible cover shall be designed to float on the liquid surface during normal operations, and to form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (100 mils); or

(B) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in paragraph (b)(2)(i) of this section, and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in paragraph (b)(2)(v) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of organic hazardous air pollutants to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered in designing the closure devices shall include: The effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(vii) Whenever a Group 1 wastewater stream or residual from a Group 1 wastewater stream is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position. Opening of closure devices or removal of the cover is allowed to provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations and/or to remove accumulated sludge or other residues from the bottom of surface impoundment. Openings shall be maintained in accordance with § 63.148 of this subpart.

(3) The control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(4) Except as provided in paragraph (b)(5) of this section, the closed-vent system shall be inspected in accordance with § 63.148 of this subpart.

(5) For any cover and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with

the requirements specified in § 63.148 of this subpart.

(c) Each surface impoundment shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For surface impoundments, improper work practice includes, but is not limited to, leaving open any access hatch or other opening when such hatch or opening is not in use.

(2) For surface impoundments, control equipment failure includes, but is not limited to, any time a joint, lid, cover, or door has a crack or gap, or is broken.

(d) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification.

§ 63.135 Process wastewater provisions—containers.

(a) For each container that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b) through (f) of this section.

(b) The owner or operator shall operate and maintain a cover on each container used to handle, transfer, or store a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with the following requirements:

(1) Except as provided in paragraph (d)(4) of this section, if the capacity of the container is greater than 0.42 m^3, the cover and all openings (e.g., bungs, hatches, sampling ports, and pressure relief devices) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(2) If the capacity of the container is less than or equal to 0.42 m^3, the owner or operator shall comply with either paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) The container must meet existing Department of Transportation specifications and testing requirements under 49 CFR part 178; or

(ii) Except as provided in paragraph (d)(4) of this section, the cover and all openings shall be maintained without leaks as specified in § 63.148 of this subpart.

(3) The cover and all openings shall be maintained in a closed position (e.g., covered by a lid) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the container except when it is necessary to use the opening for filling, removal, inspection, sampling, or pressure relief events related to safety considerations.

(c) For containers with a capacity greater than or equal to 0.42 m^3, a submerged fill pipe shall be used when a container is being filled by pumping with a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream.

(1) The submerged fill pipe outlet shall extend to no more than 6 inches or within two fill pipe diameters of the bottom of the container while the container is being filled.

(2) The cover shall remain in place and all openings shall be maintained in a closed position except for those openings required for the submerged fill pipe and for venting of the container to prevent physical damage or permanent deformation of the container or cover.

(d) During treatment of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, including aeration, thermal or other treatment, in a container, whenever it is necessary for the container to be open, the container shall be located within an enclosure with a closed-vent system that routes the organic hazardous air pollutants vapors vented from the container to a control device.

(1) Except as provided in paragraph (d)(4) of this section, the enclosure and all openings (e.g., doors, hatches) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(2) The control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(3) Except as provided in paragraph (d)(4) of this section, the closed-vent system shall be inspected in accordance with § 63.148 of this subpart.

(4) For any enclosure and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in § 63.148 of this subpart.

(e) Each container shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For containers, improper work practice includes, but is not limited to, leaving open any access hatch or other opening when such hatch or opening is not in use.

(2) For containers, control equipment failure includes, but is not limited to, any time a cover or door has a gap or crack, or is broken.

(f) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 15 calendar days after identification.

§ 63.136 Process wastewater provisions—individual drain systems.

(a) For each individual drain system that receives or manages a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b), (c), and (d) or with paragraphs (e), (f), and (g) of this section.

(b) If the owner or operator elects to comply with this paragraph, the owner or operator shall operate and maintain on each opening in the individual drain system a cover and if vented, route the vapors to a process or through a closed vent system to a control device. The owner or operator shall comply with the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) The cover and all openings shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the cover and all openings (e.g., access hatches, sampling ports) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(ii) The cover and all openings shall be maintained in a closed position at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the drain system except when it is necessary to use the opening for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) The control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(3) Except as provided in paragraph (b)(4) of this section, the closed-vent system shall be inspected in accordance with § 63.148 of this subpart.

(4) For any cover and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in § 63.148 of this subpart.

(5) The individual drain system shall be designed and operated to segregate the vapors within the system from other drain systems and the atmosphere.

(c) Each individual drain system shall be inspected initially, and semi-

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annually thereafter, for improper work practices and control equipment failures, in accordance with the inspection requirements specified in table 11 of this subpart.

(1) For individual drain systems, improper work practice includes, but is not limited to, leaving open any access hatch or other opening when such hatch or opening is not in use for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) For individual drain systems, control equipment failure includes, but is not limited to, any time a joint, lid, cover, or door has a gap or crack, or is broken.

(d) Except as provided in §63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 15 calendar days after identification.

(e) If the owner or operator elects to comply with this paragraph, the owner or operator shall comply with the requirements in paragraphs (e)(1) through (e)(3) of this section:

(1) Each drain shall be equipped with water seal controls or a tightly fitting cap or plug. The owner or operator shall comply with paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) For each drain equipped with a water seal, the owner or operator shall ensure that the water seal is maintained. For example, a flow-monitoring device indicating positive flow from a main to a branch water line supplying a trap or water being continuously dripped into the trap by a hose could be used to verify flow of water to the trap. Visual observation is also an acceptable alternative.

(ii) If a water seal is used on a drain receiving a Group 1 wastewater, the owner or operator shall either extend the pipe discharging the wastewater below the liquid surface in the water seal of the receiving drain, or install a flexible shield (or other enclosure which restricts wind motion across the open area between the pipe and the drain) that encloses the space between the pipe discharging the wastewater to the drain receiving the wastewater. (Water seals which are used on hubs receiving Group 2 wastewater for the purpose of eliminating cross ventilation to drains carrying Group 1 wastewater are not required to have a flexible cap or extended subsurface discharging pipe.)

(2) Each junction box shall be equipped with a tightly fitting solid cover (i.e., no visible gaps, cracks, or holes) which shall be kept in place at all times except during inspection and maintenance. If the junction box is vented, the owner or operator shall comply with the requirements in paragraph (e)(2)(i) or (e)(2)(ii) of this section.

(i) The junction box shall be vented to a process or through a closed vent system to a control device. The closed vent system shall be inspected in accordance with the requirements of §63.148 and the control device shall be designed, operated, and inspected in accordance with the requirements of §63.139.

(ii) If the junction box is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level, the owner or operator may vent the junction box to the atmosphere provided that the junction box complies with the requirements in paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section.

(A) The vent pipe shall be at least 90 centimeters in length and no greater than 10.2 centimeters in nominal inside diameter.

(B) Water seals shall be installed and maintained at the wastewater entrance(s) to or exit from the junction box restricting ventilation in the individual drain system and between components in the individual drain system. The owner or operator shall demonstrate (e.g., by visual inspection or smoke test) upon request by the Administrator that the junction box water seal is properly designed and restricts ventilation.

(3) Each sewer line shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visible gaps or cracks in joints, seals, or other emission interfaces.

(f) Equipment used to comply with paragraphs (e)(1), (e)(2), or (e)(3) of this section shall be inspected as follows:

(1) Each drain using a tightly fitting cap or plug shall be visually inspected initially, and semi-annually thereafter, to ensure caps or plugs are in place and that there are no gaps, cracks, or other holes in the cap or plug.

(2) Each junction box shall be visually inspected initially, and semi-annually thereafter, to ensure that there are no gaps, cracks, or other holes in the cover.

(3) The unburied portion of each sewer line shall be visually inspected initially, and semi-annually thereafter, for indication of cracks or gaps that could result in air emissions.

(g) Except as provided in §63.140 of this subpart, when a gap, hole, or crack is identified in a joint or cover, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

§63.137 Process wastewater provisions—oil-water separators.

(a) For each oil-water separator that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (c) and (d) of this section and shall operate and maintain one of the following:

(1) A fixed roof and a closed vent system that routes the organic hazardous air pollutants vapors vented from the oil-water separator to a control device. The fixed roof, closed-vent system, and control device shall meet the requirements specified in paragraph (b) of this section;

(2) A floating roof meeting the requirements in 40 CFR part 60, subpart QQQ §§60.693–2(a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4). For portions of the oil-water separator where it is infeasible to construct and operate a floating roof, such as over the weir mechanism, the owner or operator shall operate and maintain a fixed roof, closed vent system, and control device that meet the requirements specified in paragraph (b) of this section.

(3) An equivalent means of emission limitation. Determination of equivalence to the reduction in emissions achieved by the requirements of paragraphs (a)(1) and (a)(2) of this section will be evaluated according to §63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(3)(i) or (a)(3)(ii) of this section.

(i) Actual emissions tests that use full-size or scale-model oil-water separators that accurately collect and measure all organic hazardous air pollutants emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(ii) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(b) If the owner or operator elects to comply with the requirements of paragraphs (a)(1) or (a)(2) of this section, the fixed roof shall meet the requirements of paragraph (b)(1) of this section, the control device shall meet the requirements of paragraph (b)(2) of this section, and the closed-vent system shall meet the requirements of paragraph (b)(3) of this section.

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(1) The fixed-roof shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the fixed roof and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be maintained in accordance with the requirements specified in §63.148 of this subpart.

(ii) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that the oil-water separator contains a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream except when it is necessary to use the opening for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) The control device shall be designed, operated, and inspected in accordance with the requirements of §63.139 of this subpart.

(3) Except as provided in paragraph (b)(4) of this section, the closed-vent system shall be inspected in accordance with the requirements of §63.148 of this subpart.

(4) For any fixed roof and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements of §63.148 of this subpart.

(c) If the owner or operator elects to comply with the requirements of paragraph (a)(2) of this section, seal gaps shall be measured according to the procedures specified in 40 CFR part 60, subpart QQQ §60.696(d)(1) and the schedule specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Measurement of primary seal gaps shall be performed within 60 calendar days after installation of the floating roof and introduction of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream and once every 5 years thereafter.

(2) Measurement of secondary seal gaps shall be performed within 60 calendar days after installation of the floating roof and introduction of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream and once every year thereafter.

(d) Each oil-water separator shall be inspected initially, and semi-annually thereafter, for improper work practices in accordance with §63.143 of this subpart. For oil-water separators, improper work practice includes, but is not limited to, leaving open or ungasketed any access door or other opening when such door or opening is not in use.

(e) Each oil-water separator shall be inspected for control equipment failures as defined in paragraph (e)(1) of this section according to the schedule specified in paragraphs (e)(2) and (e)(3) of this section.

(1) For oil-water separators, control equipment failure includes, but is not limited to, the conditions specified in paragraphs (e)(1)(i) through (e)(1)(vii) of this section.

(i) The floating roof is not resting on either the surface of the liquid or on the leg supports.

(ii) There is stored liquid on the floating roof.

(iii) A rim seal is detached from the floating roof.

(iv) There are holes, tears, or other open spaces in the rim seal or seal fabric of the floating roof.

(v) There are gaps between the primary seal and the separator wall that exceed 67 square centimeters per meter of separator wall perimeter or the width of any portion of any gap between the primary seal and the separator wall exceeds 3.8 centimeters.

(vi) There are gaps between the secondary seal and the separator wall that exceed 6.7 square centimeters per meter of separator wall perimeter or the width of any portion of any gap between the secondary seal and the separator wall exceeds 1.3 centimeters.

(vii) A gasket, joint, lid, cover, or door has a gap or crack, or is broken.

(2) The owner or operator shall inspect for the control equipment failures in paragraphs (e)(1)(i) through (e)(1)(vi) of this section according to the schedule specified in paragraph (c) of this section.

(3) The owner or operator shall inspect for control equipment failures in paragraph (e)(1)(vii) of this section initially, and semi-annually thereafter.

(f) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification.

§ 63.138 Process wastewater provisions—Performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.

(a) *General requirements.* This section specifies the performance standards for treating Group 1 wastewater streams. The owner or operator shall comply with the requirements as specified in paragraphs (a)(1) through (a)(6) of this section. Where multiple compliance options are provided, the options may be used in combination for different wastewater streams and/or for different compounds (e.g., Table 8 versus Table 9 compounds) in the same wastewater streams, except where otherwise provided in this section. Once a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream has been treated in accordance with this subpart, it is no longer subject to the requirements of this subpart.

(1) *Existing source.* If the wastewater stream, at an existing source, is Group 1 for Table 9 compounds, comply with § 63.138(b).

(2) *New source.* If the wastewater stream, at a new source, is Group 1 for Table 8 compounds, comply with § 63.138(c). If the wastewater stream, at a new source, is Group 1 for Table 9 compounds, comply with § 63.138(b). If the wastewater stream, at a new source, is Group 1 for Table 8 and Table 9 compounds, comply with both § 63.138(b) and § 63.138(c).

Note to paragraph (a)(2): The requirements for Table 8 and/or Table 9 compounds are similar and often identical.

(3) *Biological treatment processes.* Biological treatment processes in compliance with this section may be either open or closed biological treatment processes as defined in § 63.111. An open biological treatment process in compliance with this section need not be covered and vented to a control device as required in § 63.133 through § 63.137 of this subpart. An open or a closed biological treatment process in compliance with this section and using § 63.145(f) or § 63.145(g) of this subpart to demonstrate compliance is not subject to the requirements of § 63.133 through § 63.137 of this subpart. A closed biological treatment process in compliance with this section and using § 63.145(e) of this subpart to demonstrate compliance shall comply with the requirements of § 63.133 through § 63.137 of this subpart. Waste management units upstream of an open or closed biological treatment process shall meet the requirements of § 63.133 through § 63.137 of this subpart, as applicable.

(4) *Performance tests and design evaluations.* If design steam stripper option (§ 63.138(d)) or Resource Conservation and Recovery Act (RCRA) option (§ 63.138(h)) is selected to comply with this section, neither a design evaluation nor a performance test is required. For any other non-biological treatment process, and for closed biological treatment processes as defined in § 63.111 of this subpart, the owner or operator shall conduct either a design evaluation as specified in § 63.138(j), or a performance test as specified in § 63.145, of this subpart. For each open biological treatment

process as defined in § 63.111 of this subpart, the owner or operator shall conduct a performance test as specified in § 63.145 of this subpart.

Note to paragraph (a)(4): Some open biological treatment processes may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(5) *Control device requirements.* When gases are vented from the treatment process, the owner or operator shall comply with the applicable control device requirements specified in § 63.139 and § 63.145 (i) and (j), and the applicable leak inspection provisions specified in § 63.148, of this subpart. This requirement does not apply to any open biological treatment process that meets the mass removal requirements. Vents from anaerobic biological treatment processes may be routed through hard-piping to a fuel gas system.

(6) *Residuals: general.* When residuals result from treating Group 1 wastewater streams, the owner or operator shall comply with the requirements for residuals specified in § 63.138(k) of this subpart.

(7) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process or control device to comply with emissions limitations, the owner or operator may use multiple treatment processes or control devices, respectively. For combinations of treatment processes where the wastewater stream is conveyed by hard-piping, the owner or operator shall comply with either the requirements of paragraph (a)(7)(i) or (a)(7)(ii) of this section. For combinations of treatment processes where the wastewater stream is not conveyed by hard-piping, the owner or operator shall comply with the requirements of paragraph (a)(7)(ii) of this section. For combinations of control devices, the owner or operator shall comply with the requirements of paragraph (a)(7)(i) of this section.

(i)(A) For combinations of treatment processes, the wastewater stream shall be conveyed by hard-piping between the treatment processes. For combinations of control devices, the vented gas stream shall be conveyed by hard-piping between the control devices.

(B) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 63.133 through § 63.137 of this subpart except as provided in paragraph (a)(3) of this section.

(C) The owner or operator shall identify, and keep a record of, the combination of treatment processes or of control devices, including identification of the first and last treatment process or control device. The owner or operator shall include this information as part of the treatment process description reported in the Notification of Compliance Status.

(D) The performance test or design evaluation shall determine compliance across the combination of treatment processes or control devices. If a performance test is conducted, the "inlet" shall be the point at which the wastewater stream or residual enters the first treatment process, or the vented gas stream enters the first control device. The "outlet" shall be the point at which the treated wastewater stream exits the last treatment process, or the vented gas stream exits the last control device.

(ii)(A) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 63.133 through § 63.137 of this subpart except as provided in paragraph (a)(3) of this section.

(B) The owner or operator shall identify, and keep a record of, the combination of treatment processes, including identification of the first and last treatment process. The owner or operator shall include this information as part of the treatment process description reported in the Notification of Compliance Status.

(C) The owner or operator shall determine the mass removed or destroyed by each treatment process. The performance test or design evaluation shall determine compliance for the combination of treatment processes by adding together the mass removed or destroyed by each treatment process.

(b) *Control options: Group 1 wastewater streams for Table 9 compounds.* The owner or operator shall comply with either paragraph (b)(1) or (b)(2) of this section for the control of Table 9 compounds at new or existing sources.

(1) *50 ppmw concentration option.* The owner or operator shall comply with paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) Reduce, by removal or destruction, the total concentration of Table 9 compounds to a level less than 50 parts per million by weight as determined by the procedures specified in § 63.145(b) of this subpart.

(ii) This option shall not be used when the treatment process is a biological treatment process. This option shall not be used when the wastewater stream is designated as a Group 1 wastewater stream as specified in § 63.132(e). Dilution shall not be used to achieve compliance with this option.

(2) *Other compliance options.* Comply with the requirements specified in any one of paragraphs (d), (e), (f), (g), (h), or (i) of this section.

(c) *Control options: Group 1 wastewater streams for Table 8 compounds.* The owner or operator shall comply with either paragraph (c)(1) or (c)(2) of this section for the control of Table 8 compounds at new sources.

(1) *10 ppmw concentration option.* The owner or operator shall comply with paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) Reduce, by removal or destruction, the concentration of the individual Table 8 compounds to a level less than 10 parts per million by weight as determined in the procedures specified in § 63.145(b) of this subpart.

(ii) This option shall not be used when the treatment process is a biological treatment process. This option shall not be used when the wastewater stream is designated as a Group 1 wastewater stream as specified in § 63.132(e). Dilution shall not be used to achieve compliance with this option.

(2) *Other compliance options.* Comply with the requirements specified in any one of paragraphs (d), (e), (f), (g), (h), or (i) of this section.

(d) *Design steam stripper option.* The owner or operator shall operate and maintain a steam stripper that meets the requirements of paragraphs (d)(1) through (d)(6) of this section.

(1) Minimum active column height of 5 meters,

(2) Countercurrent flow configuration with a minimum of 10 actual trays,

(3) Minimum steam flow rate of 0.04 kilograms of steam per liter of wastewater feed within the column,

(4) Minimum wastewater feed temperature to the steam stripper of 95 °C, or minimum column operating temperature of 95 °C,

(5) Maximum liquid loading of 67,100 liters per hour per square meter, and

(6) Operate at nominal atmospheric pressure.

(e) *Percent mass removal/destruction option.* The owner or operator of a new or existing source shall comply with paragraph (e)(1) or (e)(2) of this section for control of Table 8 and/or Table 9 compounds for Group 1 wastewater streams. This option shall not be used for biological treatment processes.

(1) *Reduce mass flow rate of Table 8 and/or Table 9 compounds by 99 percent.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the

mass flow rate of Table 8 and/or Table 9 compounds by 99 percent or more. The removal/destruction efficiency shall be determined by the procedures specified in § 63.145(c), for noncombustion processes, or § 63.145(d), for combustion processes.

(2) *Reduce mass flow rate of Table 8 and/or Table 9 compounds by Fr value.* For wastewater streams that are Group 1 for Table 8 and/or Table 9 compounds, the owner or operator shall reduce, by removal or destruction, the mass flow rate by at least the fraction removal (Fr) values specified in Table 9 of this subpart. (The Fr values for Table 8 compounds are all 0.99.) The removal/destruction efficiency shall be determined by the procedures specified in § 63.145(c), for noncombustion treatment processes, or § 63.145(d), for combustion treatment processes.

(f) *Required mass removal (RMR) option.* The owner or operator shall achieve the required mass removal (RMR) of Table 8 compounds at a new source for a wastewater stream that is Group 1 for Table 8 compounds and/or of Table 9 compounds at a new or existing source for a wastewater stream that is Group 1 for Table 9 compounds. For nonbiological treatment processes compliance shall be determined using the procedures specified in § 63.145(e) of this subpart. For aerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145 (e) or (f) of this subpart. For closed anaerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145(e) of this subpart. For open biological treatment processes compliance shall be determined using the procedures specified in § 63.145(f) of this subpart.

(g) *95-percent RMR option, for biological treatment processes.* The owner or operator of a new or existing source using biological treatment for at least one wastewater stream that is Group 1 for Table 9 compounds shall achieve a RMR of at least 95 percent for all Table 9 compounds. The owner or operator of a new source using biological treatment for at least one wastewater stream that is Group 1 for Table 8 compounds shall achieve a RMR of at least 95 percent for all Table 8 compounds. All Group 1 and Group 2 wastewater streams entering a biological treatment unit that are from chemical manufacturing process units subject to subpart F shall be included in the demonstration of the 95-percent mass removal. The owner or operator shall comply with paragraphs (g)(1) through (g)(4) of this section.

(1) Except as provided in paragraph (g)(4) of this section, the owner or operator shall ensure that all Group 1 and Group 2 wastewater streams from chemical manufacturing process units subject to this rule entering a biological treatment unit are treated to destroy at least 95-percent total mass of all Table 8 and/or Table 9 compounds.

(2) For open biological treatment processes compliance shall be determined using the procedures specified in § 63.145(g) of this subpart. For closed aerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145 (e) or (g) of this subpart. For closed anaerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145(e) of this subpart.

(3) For each treatment process or waste management unit that receives, manages, or treats wastewater streams subject to this paragraph, from the point of determination of each Group 1 or Group 2 wastewater stream to the biological treatment unit, the owner or operator shall comply with §§ 63.133 through § 63.137 of this subpart for control of air emissions. When complying with this paragraph, the term Group 1, whether used alone or in combination with other terms, in § 63.133 through § 63.137 of this subpart shall mean both Group 1 and Group 2.

(4) If a wastewater stream is in compliance with the requirements in paragraph (b)(1), (c)(1), (d), (e), (f), or (h) of this section before entering the biological treatment unit, the hazardous air pollutants mass of that wastewater is not required to be included in the total mass flow rate entering the biological treatment unit for the purpose of demonstrating compliance.

(h) *Treatment in a RCRA unit option.* The owner or operator shall treat the wastewater stream or residual in a unit identified in, and complying with, paragraph (h)(1), (h)(2), or (h)(3) of this section. These units are exempt from the design evaluation or performance tests requirements specified in § 63.138(a)(3) and § 63.138(j) of this subpart, and from the monitoring requirements specified in § 63.132(a)(2)(iii) and § 63.132(b)(3)(iii) of this subpart, as well as recordkeeping and reporting requirements associated with monitoring and performance tests.

(1) The wastewater stream or residual is discharged to a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) The wastewater stream or residual is discharged to a process heater or boiler burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) The wastewater stream or residual is discharged to an underground injection well for which the owner or operator has been issued a final permit under 40 CFR part 270 or 40 CFR part 144 and complies with the requirements of 40 CFR part 122. The owner or operator shall comply with all applicable requirements of this subpart prior to the point where the wastewater enters the underground portion of the injection well.

(i) *One megagram total source mass flow rate option.* A wastewater stream is exempt from the requirements of paragraphs (b) and (c) of this section if the owner or operator elects to comply with either paragraph (i)(1) or (i)(2) of this section.

(1) *All Group 1 wastewater streams at the source.* The owner or operator shall demonstrate that the total source mass flow rate for Table 8 and/or Table 9 compounds is less than 1 megagram per year using the procedures in paragraphs (i)(1)(i) and (i)(1)(ii) of this section. The owner or operator shall include all Group 1 wastewater streams at the source in the total source mass flow rate. The total source mass flow rate shall be based on the mass as calculated before the wastewater stream is treated.

(i) Calculate the annual average mass flow rate for each Group 1 wastewater stream by multiplying the annual average flow rate of the wastewater stream, as determined by procedures specified in § 63.144(c), times the total annual average concentration of Table 8 and/or Table 9 compounds, as determined by procedures specified in § 63.144(b) of this subpart. (The mass flow rate of compounds in a wastewater stream that is Group 1 for both Table 8 and Table 9 compounds should be included in the annual average mass flow rate only once.)

(ii) Calculate the total source mass flow rate from all Group 1 wastewater streams by adding together the annual average mass flow rate calculated for each Group 1 wastewater stream.

(2) *Untreated and partially treated Group 1 wastewater streams.* The owner or operator shall demonstrate that the total source mass flow rate for untreated

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Group 1 wastewater streams and Group 1 wastewater streams treated to levels less stringent than required in paragraph (b) or (c) of this section is less than 1 megagram per year using the procedures in paragraphs (i)(2)(i) and (i)(2)(ii) of this section. The owner or operator shall manage these wastewater streams in accordance with paragraph (i)(2)(iii) of this section, and shall comply with paragraph (i)(2)(iv) of this section.

(i) Calculate the annual average mass flow rate in each wastewater stream by multiplying the annual average flow rate of the wastewater stream, as determined by procedures specified in § 63.144(c), times the total annual average concentration of Table 8 and/or Table 9 compounds, as determined by procedures specified in § 63.144(b). (The mass flow rate of compounds in a wastewater stream that are Group 1 for both Table 8 and Table 9 compounds should be included in the annual average mass flow rate only once.)

(A) For each untreated Group 1 wastewater stream, the annual average flow rate and the total annual average concentration shall be determined for that stream's point of determination.

(B) For each Group 1 wastewater stream that is treated to levels less stringent than those required by paragraph (b) or (c) of this section, the annual average flow rate and total annual average concentration shall be determined at the discharge from the treatment process or series of treatment processes.

(C) The annual average mass flow rate for Group 1 wastewater streams treated to the levels required by paragraph (b) or (c) of this section is not included in the calculation of the total source mass flow rate.

(ii) The total source mass flow rate shall be calculated by summing the annual average mass flow rates from all Group 1 wastewater streams, except those excluded by paragraph (i)(2)(i)(C) of this section.

(iii) The owner or operator of each waste management unit that receives, manages, or treats the wastewater stream prior to or during treatment shall comply with the requirements of §§ 63.133 through 63.137 of this subpart, as applicable.

(iv) Wastewater streams included in this option shall be identified in the Notification of Compliance Status required by §63.152(b).

(j) *Design evaluations or performance tests for treatment processes.* Except as provided in paragraph (j)(3) or (h) of this section, the owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each nonbiological treatment process used to comply with paragraphs (b)(1), (c)(1), (e), and/or (f) of this section achieves the conditions specified for compliance. The owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each closed biological treatment process used to comply with paragraphs (f) or (g) of this section achieves the conditions specified for compliance. If an open biological treatment unit is used to comply with paragraph (f) or (g) of this section, the owner or operator shall comply with § 63.145(f) or § 63.145(g), respectively, of this subpart. Some biological treatment processes may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine whether the open biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(1) A design evaluation and supporting documentation that addresses the operating characteristics of the treatment process and that is based on operation at a representative wastewater stream flow rate and a concentration under which it would be most difficult to demonstrate compliance. For closed biological treatment processes, the actual mass removal shall be determined by a mass balance over the unit. The mass flow rate of Table 8 or Table 9 compounds exiting the treatment process shall be the sum of the mass flow rate of Table 8 or Table 9 compounds in the wastewater stream exiting the biological treatment process and the mass flow rate of the vented gas stream exiting the control device. The mass flow rate entering the treatment process minus the mass flow rate exiting the process determines the actual mass removal.

(2) Performance tests conducted using test methods and procedures that meet the applicable requirements specified in § 63.145 of this subpart.

(3) The provisions of paragraphs (j)(1) and (j)(2) of this section do not apply to design stream strippers which meet the requirements of paragraph (d) of this section.

(k) *Residuals.* For each residual removed from a Group 1 wastewater stream, the owner or operator shall control for air emissions by complying with §§ 63.133–137 of this subpart and by complying with one of the provisions in paragraphs (k)(1) through (k)(4) of this section.

(1) Recycle the residual to a production process or sell the residual for the purpose of recycling. Once a residual is returned to a production process, the residual is no longer subject to this section.

(2) Return the residual to the treatment process.

(3) Treat the residual to destroy the total combined mass flow rate of Table 8 and/or Table 9 compounds by 99 percent or more, as determined by the procedures specified in § 63.145(c) or (d) of this subpart.

(4) Comply with the requirements for RCRA treatment options specified in § 63.138(h) of this subpart.

§ 63.139 Process wastewater provisions—control devices.

(a) For each control device or combination of control devices used to comply with the provisions in §§ 63.133 through 63.138 of this subpart, the owner or operator shall operate and maintain the control device or combination of control devices in accordance with the requirements of paragraphs (b) through (f) of this section.

(b) Whenever organic hazardous air pollutants emissions are vented to a control device which is used to comply with the provisions of this subpart, such control device shall be operating.

(c) The control device shall be designed and operated in accordance with paragraph (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section.

(1) An enclosed combustion device (including but not limited to a vapor incinerator, boiler, or process heater) shall meet the conditions in paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, alone or in combination with other control devices. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(i) Reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions vented to the control device by 95 percent by weight or greater;

(ii) Achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume on a dry basis corrected to 3 percent oxygen. The owner or operator shall use either Method 18 of 40 CFR part 60, appendix A, or any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part; or

(iii) Provide a minimum residence time of 0.5 seconds at a minimum temperature of 760° C.

(2) A vapor recovery system (including but not limited to a carbon adsorption system or condenser), alone

or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions vented to the control device of 95 percent by weight or greater or achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 63.134 or § 63.135 of this subpart.

(3) A flare shall comply with the requirements of § 63.11(b) of subpart A of this part.

(4) A scrubber, alone or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions in such a manner that 95 weight-percent is either removed, or destroyed by chemical reaction with the scrubbing liquid or achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 63.134 or § 63.135 of this subpart.

(5) Any other control device used shall, alone or in combination with other control devices, reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions vented to the control device by 95 percent by weight or greater or achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 63.134 or § 63.135 of this subpart.

(d) Except as provided in paragraph (d)(4) of this section, an owner or operator shall demonstrate that each control device or combination of control devices achieves the appropriate conditions specified in paragraph (c) of this section by using one or more of the methods specified in paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(1) Performance tests conducted using the test methods and procedures specified in § 63.145(i) of this subpart for control devices other than flares; or

(2) A design evaluation that addresses the vent stream characteristics and control device operating parameters specified in paragraphs (d)(2)(i) through (d)(2)(vii) of this section.

(i) For a thermal vapor incinerator, the design evaluation shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(ii) For a catalytic vapor incinerator, the design evaluation shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(iii) For a boiler or process heater, the design evaluation shall consider the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(iv) For a condenser, the design evaluation shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(v) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed adsorber, the design evaluation shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(vi) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design evaluation shall consider the vent stream composition, constituent concentrations, mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(vii) For a scrubber, the design evaluation shall consider the vent stream composition; constituent concentrations; liquid-to-vapor ratio; scrubbing liquid flow rate and concentration; temperature; and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) of this section for trays and a packed column scrubber.

(A) Type and total number of theoretical and actual trays;

(B) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

(3) For flares the compliance determination specified in § 63.11(b) of subpart A of this part and § 63.145(j) of this subpart.

(4) An owner or operator using any control device specified in paragraphs (d)(4)(i) through (d)(4)(iv) of this section is exempt from the requirements in paragraphs (d)(1) through (d)(3) of this section and from the requirements in § 63.6(f) of subpart A of this part.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the emission stream is introduced with the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iv) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(e) The owner or operator of a control device that is used to comply with the provisions of this section shall monitor the control device in accordance with § 63.143 of this subpart.

(f) Except as provided in § 63.140 of this subpart, if gaps, cracks, tears, or holes are observed in ductwork, piping, or connections to covers and control devices during an inspection, a first effort to repair shall be made as soon as practical but no later than 5 calendar days after identification. Repair shall be completed no later than 15 calendar days after identification or discovery of the defect.

§ 63.140 Process wastewater provisions—delay of repair.

(a) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.101 of subpart F of this part, or if the owner or operator determines that emissions of purged material from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of this equipment shall occur by the end of the next shutdown.

(b) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the equipment is emptied or is no longer used to treat or manage Group 1 wastewater streams or residuals removed from Group 1 wastewater streams.

(c) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified is also allowed if additional time is necessary due to the unavailability of parts beyond the control of the owner or operator. Repair shall be completed as soon as practical. The owner or operator who uses this provision shall comply with the requirements of § 63.147(c)(7) to document the reasons that the delay of repair was necessary.

§ 63.141 Reserved.

§ 63.142 Reserved.

§ 63.143 Process wastewater provisions—inspections and monitoring of operations.

(a) For each wastewater tank, surface impoundment, container, individual drain system, and oil-water separator that receives, manages, or treats a Group 1 wastewater stream, a residual removed from a Group 1 wastewater stream, a recycled Group 1 wastewater stream, or a recycled residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the inspection requirements specified in table 11 of this subpart.

(b) For each design steam stripper and biological treatment unit used to comply with § 63.138 of this subpart, the owner or operator shall comply with the monitoring requirements specified in table 12 of this subpart.

(c) If the owner or operator elects to comply with Item 1 in table 12 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the biological treatment unit. The request shall be submitted according to the procedures specified in § 63.151(f) of this subpart, and shall include a discription of planned reporting and recordkeeping procedures. The owner or operator shall include as part of the submittal the basis for the selected monitoring frequencies and the methods that will be used. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(d) If the owner or operator elects to comply with Item 3 in table 12 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the selected treatment process. The request shall be submitted according to the procedures specified in § 63.151(f) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(e) Except as provided in paragraphs (e)(4) and (e)(5) of this section, for each control device used to comply with the requirements of §§ 63.133 through 63.139 of this subpart, the owner or operator shall comply with the requirements in § 63.139(d) of this subpart, and with the requirements specified in paragraph (e)(1), (e)(2), or (e)(3) of this section.

(1) The owner or operator shall comply with the monitoring requirements specified in table 13 of this subpart; or

(2) The owner or operator shall use an organic monitoring device installed at the outlet of the control device and equipped with a continuous recorder. Continuous recorder is defined in § 63.111 of this subpart; or

(3) The owner or operator shall request approval to monitor parameters other than those specified in paragraphs (e)(1) and (e)(2) of this section. The request shall be submitted according to the procedures specified in § 63.151(f) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(4) For a boiler or process heater in which all vent streams are introduced with primary fuel, the owner or operator shall comply with the requirements in § 63.139(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(5) For a boiler or process heater with a design heat input capacity of 44 megawatts or greater, the owner or operator shall comply with the requirements in § 63.139(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(f) For each parameter monitored in accordance with paragraph (c), (d), or (e) of this section, the owner or operator shall establish a range that indicates proper operation of the treatment process or control device. In order to establish the range, the owner or operator shall comply with the requirements specified in §§ 63.146(b)(7)(ii)(A) and (b)(8)(ii) of this subpart.

(g) Monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

§ 63.144 Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations (determining which wastewater streams require control).

(a) *Procedures to determine applicability.* An owner or operator shall comply with paragraph (a)(1) or (a)(2) of this section for each wastewater stream to determine which wastewater streams require control for Table 8 and/or Table 9 compounds. The owner or operator may use a combination of the approaches in paragraphs (a)(1) and (a)(2) of this section for different wastewater streams generated at the source.

(1) *Determine Group 1 or Group 2 status.* Determine whether a wastewater stream is a Group 1 or Group 2 wastewater stream in accordance with paragraphs (b) and (c) of this section.

(2) *Designate as Group 1.* An owner or operator may designate as a Group 1 wastewater stream a single wastewater stream or a mixture of wastewater streams. The owner or operator is not

required to determine the concentration or flow rate for each designated Group 1 wastewater stream for the purposes of this section.

(b) *Procedures to establish concentrations, when determining Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the annual average concentration for Table 8 and/or Table 9 compounds according to paragraph (b)(1) of this section for existing sources or paragraph (b)(2) of this section for new sources. The annual average concentration shall be a flow weighted average representative of actual or anticipated operation of the chemical manufacturing process unit generating the wastewater over a designated 12 month period. For flexible operation units, the owner or operator shall consider the anticipated production over the designated 12 month period and include all wastewater streams generated by the process equipment during this period. The owner/operator is not required to determine the concentration of Table 8 or Table 9 compounds that are not reasonably expected to be in the process.

(1) *Existing sources.* An owner or operator of an existing source who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the flow weighted total annual average concentration for Table 9 compounds. For the purposes of this section, the term concentration, whether concentration is used alone or with other terms, may be adjusted by multiplying by the compound-specific fraction measured (Fm) factors listed in table 34 of this subpart unless determined by the methods in § 63.144(b)(5)(i)(A) and/or (B). When concentration is determined by Method 305 as specified in § 63.144(b)(5)(i)(B), concentration may be adjusted by dividing by the compound-specific Fm factors listed in table 34 of this subpart. When concentration is determined by Method 25D as specified in § 63.144(b)(5)(i)(A), concentration may not be adjusted by the compound-specific Fm factors listed in table 34 of this subpart. Compound-specific Fm factors may be used only when concentrations of individual compounds are determined or when only one compound is in the wastewater stream. Flow weighted total annual average concentration for Table 9 compounds means the total mass of Table 9 compounds occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The total annual average concentration shall be determined for each wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. The procedures specified in paragraphs (b)(3), (b)(4), and (b)(5) of this section are considered acceptable procedures for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another.

(2) *New sources.* An owner or operator of a new source who elects to comply with the requirements of paragraph (a)(1) of this section shall determine both the flow weighted total annual average concentration for Table 9 compounds and the flow weighted annual average concentration for each Table 8 compound. For the purposes of this section, the term concentration, whether concentration is used alone or with other terms, may be adjusted by multiplying by the compound-specific Fm factors listed in table 34 of this subpart unless determined by the methods in § 63.144(b)(5)(i)(A) and/or (B). When concentration is determined by Method 305 as specified in § 63.144(b)(5)(i)(B), concentration may be adjusted by dividing by the compound-specific Fm factors listed in table 34 of this subpart. When concentration is determined by Method 25D as specified in § 63.144(b)(5)(i)(A), concentration may not be adjusted by the compound-specific Fm factors listed in table 34 of this subpart. Compound-specific fraction measured factors are compound specific and shall be used only when concentration of individual compounds are determined or when only one compound is in the wastewater stream. The flow weighted annual average concentration of each Table 8 compound means the mass of each Table 8 compound occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. Flow weighted total annual average concentration for Table 9 compounds means the total mass of Table 9 compounds occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The annual average concentration shall be determined for each wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. Procedures specified in paragraphs (b)(3), (b)(4), and (b)(5) of this section are considered acceptable procedures for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another.

(3) *Knowledge of the wastewater.* Where knowledge is used to determine the annual average concentration, the owner or operator shall provide sufficient information to document the annual average concentration for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average concentration is not required for Group 1 streams. Examples of acceptable documentation include material balances, records of chemical purchases, process stoichiometry, or previous test results. If test data are used, the owner or operator shall provide documentation describing the testing protocol and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination.

(4) *Bench-scale or pilot-scale test data.* Where bench-scale or pilot-scale test data are used to determine the annual average concentration, the owner or operator shall provide sufficient information to document that the data are representative of the actual annual average concentration, or are reliably indicative of another relevant characteristic of the wastewater stream that could be used to predict the annual average concentration. For concentration data, the owner or operator shall also provide documentation describing the testing protocol, and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination of annual average concentration.

(5) *Test data from sampling at the point of determination or at a location downstream of the point of determination.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the concentration for the relevant Table 8 or Table 9 compounds, the owner or operator shall comply with the requirements of this paragraph. For each wastewater stream, measurements shall be made either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made

according to paragraph (b)(6) of this section. A minimum of three samples from each wastewater stream shall be taken. Samples may be grab samples or composite samples.

(i) *Methods.* The owner or operator shall use any of the methods specified in paragraphs (b)(5)(i)(A) through (b)(5)(i)(F) of this section.

(A) *Method 25D.* Use procedures specified in Method 25D of 40 CFR part 60, appendix A.

(B) *Method 305.* Use procedures specified in Method 305 of 40 CFR part 63, appendix A.

(C) *Methods 624 and 625.* Use procedures specified in Methods 624 and 625 of 40 CFR part 136, appendix A and comply with the sampling protocol requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR 136.4 and 136.5 shall be followed. For Method 625, make corrections to the compounds for which the analysis is being conducted based on the accuracy as recovery factors in Table 7 of the method.

(D) *Method 1624 and Method 1625.* Use procedures specified in Method 1624 and Method 1625 of 40 CFR part 136, appendix A and comply with the requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR 136.4 and 136.5 shall be followed.

(E) *Other EPA method(s).* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and either paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section.

(F) *Method(s) other than EPA method.* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and (b)(5)(iii)(A) of this section.

(ii) *Sampling plan.* The owner or operator who is expressly referred to this paragraph by provisions of this subpart shall prepare a sampling plan. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity. The sample plan shall include procedures for determining recovery efficiency of the relevant hazardous air pollutants listed in table 8 or table 9 of this subpart. An example of an acceptable sampling plan would be one that incorporates similar sampling and sample handling requirements to those of Method 25D of 40 CFR part 60, appendix A. The sampling plan shall be maintained at the facility.

(iii) *Validation of methods.* The owner or operator shall validate EPA methods other than Methods 25D, 305, 624, 625, 1624, and 1625 using the procedures specified in paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section. The owner or operator shall validate other methods as specified in paragraph (b)(5)(iii)(A) of this section.

(A) *Validation of EPA methods and other methods.* The method used to measure organic hazardous air pollutants concentrations in the wastewater shall be validated according to section 5.1 or 5.3, and the corresponding calculations in section 6.1 or 6.3, of Method 301 of appendix A of this part. The data are acceptable if they meet the criteria specified in section 6.1.5 or 6.3.3 of Method 301 of appendix A of this part. If correction is required under section 6.3.3 of Method 301 of appendix A of this part, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 of appendix A of this part are not required. The concentrations of the individual organic hazardous air pollutants measured in the water may be corrected to their concentrations had they been measured by Method 305 of appendix A of this part, by multiplying each concentration by the compound-specific fraction measured (Fm) factor listed in table 34 of this subpart.

(B) *Validation for EPA methods.* Follow the procedures as specified in "Alternative Validation Procedure for EPA Waste Methods" 40 CFR part 63, appendix D.

(iv) *Calculations of average concentration.* The average concentration for each individually speciated Table 8 compound shall be calculated by adding the individual values determined for the specific compound in each sample and dividing by the number of samples. The total average concentration of Table 9 compounds shall be calculated by first summing the concentration of the individual compounds to obtain a total hazardous air pollutants concentration for the sample; add the sample totals and then divide by the number of samples in the run to obtain the sample average for the run. If the method used does not speciate the compounds, the sample results should be added and this total divided by the number of samples in the run to obtain the sample average for the run.

(6) *Adjustment for concentrations determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average concentration or total annual average concentration when the concentration is determined downstream of the point of determination at a location where: two or more wastewater streams have been mixed; one or more wastewater streams have been treated; or, losses to the atmosphere have occurred. The owner or operator shall make the adjustments either to the individual data points or to the final annual average concentration.

(c) *Procedures to determine flow rate, when evaluating Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with paragraph (a)(1) of this section shall determine the annual average flow rate of the wastewater stream either at the point of determination for each wastewater stream, or downstream of the point of determination with adjustment for flow rate changes made according to paragraph (c)(4) of this section. These procedures may be used in combination for different wastewater streams at the source. The annual average flow rate for the wastewater stream shall be representative of actual or anticipated operation of the chemical manufacturing process unit generating the wastewater over a designated 12-month period. The owner or operator shall consider the total annual wastewater volume generated by the chemical manufacturing process unit. If the chemical manufacturing process unit is a flexible operation unit, the owner or operator shall consider all anticipated production in the process equipment over the designated 12-month period. The procedures specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section are considered acceptable procedures for determining the flow rate. They may be used in combination, and no one procedure shall take precedence over another.

(1) *Knowledge of the wastewater.* The owner or operator may use knowledge of the wastewater stream and/or the process to determine the annual average flow rate. The owner or operator shall use the maximum expected annual average production capacity of the process unit, knowledge of the process, and/or mass balance information to either: Estimate directly the annual average wastewater flow rate; or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year. Where knowledge is used to determine the

annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(2) *Historical Records.* The owner or operator may use historical records to determine the annual average flow rate. Derive the highest annual average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit. Where historical records are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(3) *Measurements of flow rate.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the flow rate, the owner or operator shall comply with the requirements of this paragraph. Measurements shall be made at the point of determination, or at a location downstream of the point of determination with adjustments for flow rate changes made according to paragraph (c)(4) of this section. Where measurement data are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(4) *Adjustment for flow rates determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average flow rate of a wastewater stream when it is determined downstream of the point of determination at a location where two or more wastewater streams have been mixed or one or more wastewater streams have been treated. The owner or operator shall make corrections for such changes in the annual average flow rate.

§63.145 Process wastewater provisions—test methods and procedures to determine compliance.

(a) *General.* This section specifies the procedures for performance tests that are conducted to demonstrate compliance of a treatment process or a control device with the control requirements specified in §63.138 of this subpart. Owners or operators conducting a design evaluation shall comply with the requirements of paragraph (a)(1) or (a)(2) of this section. Owners or operators conducting a performance test shall comply with the applicable requirements in paragraphs (a) through (i) of this section.

(1) *Performance tests and design evaluations for treatment processes.* If design steam stripper option (§63.138(d)) or RCRA option (§63.138(h)) is selected to comply with §63.138, neither a design evaluation nor a performance test is required. For any other non-biological treatment process, the owner or operator shall conduct either a design evaluation as specified in §63.138(j), or a performance test as specified in this section. For closed biological treatment processes, the owner or operator shall conduct either a design evaluation as specified in §63.138(j), or a performance test as specified in this section. For each open biological treatment process, the owner or operator shall conduct a performance test as specified in this section.

Note: Some open biological treatment processes may not require a performance test. Refer to §63.145(h) and table 36 of this subpart to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(2) *Performance tests and design evaluations for control devices.* The owner or operator shall conduct either a design evaluation as specified in §63.139(d), or a performance test as specified in paragraph (i) of this section for control devices other than flares and paragraph (j) of this section for flares.

(3) *Representative process unit operating conditions.* Compliance shall be demonstrated for representative operating conditions. Operations during periods of startup, shutdown, or malfunction and periods of nonoperation shall not constitute representative conditions. The owner or operator shall record the process information that is necessary to document operating conditions during the test.

(4) *Representative treatment process or control device operating conditions.* Performance tests shall be conducted when the treatment process or control device is operating at a representative inlet flow rate and concentration. If the treatment process or control device will be operating at several different sets of representative operating conditions, the owner or operator shall comply with paragraphs (a)(4)(i) and (a)(4)(ii) of this section. The owner or operator shall record information that is necessary to document treatment process or control device operating conditions during the test.

(i) *Range of operating conditions.* If the treatment process or control device will be operated at several different sets of representative operating conditions, performance testing over the entire range is not required. In such cases, the performance test results shall be supplemented with modeling and/or engineering assessments to demonstrate performance over the operating range.

(ii) *Consideration of residence time.* If concentration and/or flow rate to the treatment process or control device are not relatively constant (i.e., comparison of inlet and outlet data will not be representative of performance), the owner or operator shall consider residence time, when determining concentration and flow rate.

(5) *Testing equipment.* All testing equipment shall be prepared and installed as specified in the applicable test methods, or as approved by the Administrator.

(6) *Compounds not required to be considered in performance tests or design evaluations.* Compounds that meet the requirements specified in paragraph (a)(6)(i), (a)(6)(ii), or (a)(6)(iii) of this section are not required to be included in the performance test. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not be adjusted by the compound-specific Fm factor listed in table 34 of this subpart.

(i) Compounds not used or produced by the chemical manufacturing process unit; or

(ii) Compounds with concentrations at the point of determination that are below 1 part per million by weight; or

(iii) Compounds with concentrations at the point of determination that are below the lower detection limit where the lower detection limit is greater than 1 part per million by weight. The method shall be an analytical method for wastewater which has that compound as a target analyte.

(7) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process to comply with emissions limitations, the owner or operator may use multiple treatment processes. The owner or operator complying with the requirements of §63.138(a)(7)(i), when wastewater is

conveyed by hard-piping, shall comply with either §63.145(a)(7)(i) or §63.145(a)(7)(ii) of this subpart. The owner or operator complying with the requirements of §63.138(a)(7)(ii) of this subpart shall comply with the requirements of §63.145(a)(7)(ii) of this subpart.

(i) The owner or operator shall conduct the performance test across each series of treatment processes. For each series of treatment processes, inlet concentration and flow rate shall be measured either where the wastewater stream enters the first treatment process in a series of treatment processes, or prior to the first treatment process as specified in § 63.145(a)(9) of this subpart. For each series of treatment processes, outlet concentration and flow rate shall be measured where the wastewater stream exits the last treatment process in the series of treatment processes, except when the last treatment process is an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in § 63.145 (f) or (g) of this subpart. When the last treatment process is either an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in § 63.145 (f) or (g) of this subpart, inlet and outlet concentrations and flow rates shall be measured as provided in paragraphs (a)(7)(i)(A) and (a)(7)(i)(B) of this section. The mass flow rates removed or destroyed by the series of treatment processes and by the biological treatment process are all used to calculate actual mass removal (AMR) as specified in § 63.145(f)(5)(ii) of this subpart.

(A) The inlet and outlet to the series of treatment processes prior to the biological treatment process are the points at which the wastewater enters the first treatment process and exits the last treatment process in the series, respectively, except as provided in paragraph (a)(9)(ii) of this section.

(B) The inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process or the outlet from the series of treatment processes identified in paragraph (a)(7)(i)(A) of this section, except as provided in paragraph (a)(9)(ii) of this section.

(ii) The owner or operator shall conduct the performance test across each treatment process in the series of treatment processes. The mass flow rate removed or destroyed by each treatment process shall be added together to determine whether compliance has been demonstrated using § 63.145 (c), (d), (e), (f), and (g), as applicable. If a biological treatment process is one of the treatment processes in the series of treatment processes, the inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process, or the inlet to the equalization tank if all the criteria of paragraph (a)(9)(ii) of this section are met.

(8) When using a biological treatment process to comply with § 63.138 of this subpart, the owner or operator may elect to calculate the AMR using a subset of Table 8 and/or Table 9 compounds determined at the point of determination or downstream of the point of determination with adjustment for concentration and flowrate changes made according to § 63.144(b)(6) and § 63.144(c)(4) of this subpart, respectively. All Table 8 and/or Table 9 compounds measured to determine the RMR, except as provided by § 63.145(a)(6), shall be included in the RMR calculation.

(9) The owner or operator determining the inlet for purposes of demonstrating compliance with § 63.145 (e), (f), or (g) of this subpart may elect to comply with paragraph (a)(9)(i) or (a)(9)(ii) of this section.

(i) When wastewater is conveyed exclusively by hard-piping from the point of determination to a treatment process that is either the only treatment process or the first in a series of treatment processes (i.e., no treatment processes or other waste management units are used upstream of this treatment process to store, handle, or convey the wastewater), the inlet to the treatment process shall be at any location from the point of determination to where the wastewater stream enters the treatment process. When samples are taken upstream of the treatment process and before wastewater streams have converged, the owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 63.138 (e) or (f) to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 63.138(g) to comply, except as provided in § 63.145(a)(6).

(ii) The owner or operator may consider the inlet to the equalization tank as the inlet to the biological treatment process if all the criteria in paragraphs (a)(9)(ii)(A) through (a)(9)(ii)(C) of this section are met. The outlet from the series of treatment processes prior to the biological treatment process is the point at which the wastewater exits the last treatment process in the series prior to the equalization tank, if the equalization tank and biological treatment process are part of a series of treatment processes. The owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 63.138 (e) or (f) to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 63.138(g) to comply, except as provided in § 63.145(a)(6).

(A) The wastewater is conveyed by hard-piping from either the last previous treatment process or the point of determination to the equalization tank.

(B) The wastewater is conveyed from the equalization tank exclusively by hard-piping to the biological treatment process and no treatment processes or other waste management units are used to store, handle, or convey the wastewater between the equalization tank and the biological treatment process.

(C) The equalization tank is equipped with a fixed roof and a closed vent system that routes emissions to a control device that meets the requirements of § 63.133(a)(2)(i) and § 63.133 (b)(1) through (b)(4) of this subpart.

(b) *Noncombustion treatment process—concentration limits.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a noncombustion treatment process with the parts per million by weight wastewater stream concentration limits at the outlet of the treatment process. This compliance option is specified in § 63.138(b)(1) and § 63.138(c)(1). Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). Samples shall be collected and analyzed using the procedures specified in § 63.144 (b)(5)(i), (b)(5)(ii), and (b)(5)(iii) of this subpart. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 may be adjusted by dividing each concentration by the compound-specific Fm factor listed in Table 34 of this subpart. Concentration measurements based on methods other than Method 305 may be adjusted by multiplying each concentration by the compound-specific Fm factor listed in table 34 of this subpart. (For wastewater streams that are Group 1 for both Table 8 and Table 9 compounds, compliance is

demonstrated only if the sum of the concentrations of Table 9 compounds is less than 50 ppmw, and the concentration of each Table 8 compound is less than 10 ppmw.)

(c) *Noncombustion, nonbiological treatment process: Percent mass removal/destruction option.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a noncombustion, nonbiological treatment process with the percent mass removal limits specified in § 63.138(e) (1) and (2) for Table 8 and/or Table 9 compounds. The owner or operator shall comply with the requirements specified in § 63.145 (c)(1) through (c)(6) of this subpart.

(1) *Concentration.* The concentration of Table 8 and/or Table 9 compounds entering and exiting the treatment process shall be determined as provided in this paragraph. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in Table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in Table 34 of this subpart.

(2) *Flow rate.* The flow rate of the entering and exiting wastewater streams shall be determined using inlet and outlet flow meters, respectively. Where the outlet flow is not greater than the inlet flow, a flow meter shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate—for noncombustion, nonbiological treatment processes.* The mass flow rates of Table 8 and/or Table 9 compounds entering and exiting the treatment process are calculated as follows.

$$QMW_a = \frac{\rho}{p*10^6}\left(\sum_{k=1}^{p} Q_{a,k} C_{T,a,k}\right) \qquad \text{(Eqn WW1)}$$

$$QMW_b = \frac{\rho}{p*10^6}\left(\sum_{k=1}^{p} Q_{b,k} C_{T,b,k}\right) \qquad \text{(Eqn WW2)}$$

Where:

QMW_a, QMW_b=Mass flow rate of Table 8 or Table 9 compounds, average of all runs, in wastewater entering (QMW_a) or exiting (QMW_b) the treatment process, kilograms per hour.

ρ=Density of the wastewater, kilograms per cubic meter.

$Q_{a,k}$, $Qb_{b,k}$=Volumetric flow rate of wastewater entering ($Q_{a,k}$) or exiting ($Q_{b,k}$) the treatment process during each run k, cubic meters per hour.

$C_{T,a,k}$, $C_{T,b,k}$=Total concentration of Table 8 or Table 9 compounds in wastewater entering ($C_{T,a,k}$) or exiting ($C_{T,b,k}$) the treatment process during each run k, parts per million by weight.

p=Number of runs.

k=Identifier for a run.

10^6=conversion factor, mg/kg

(4) *Percent removal calculation for mass flow rate.* The percent mass removal across the treatment process shall be calculated as follows:

$$E = \frac{QMW_a - QMW_b}{QMW_a} \times 100 \qquad \text{(Eqn WW3)}$$

Where:

E=Removal or destruction efficiency of the treatment process, percent.

QMW_a, QMW_b=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering (QMW_a) and exiting (QMW_b) the treatment process, kilograms per hour (as calculated using Equations WW1 and WW2).

(5) *Calculation of flow-weighted average of Fr values.* If complying with § 63.138(e)(2), use Equation WW8 to calculate the flow-weighted average of the Fr values listed in Table 9 of this subpart. When the term "combustion" is used in Equation WW8, the term "treatment process" shall be used for the purposes of this paragraph.

(6) *Compare mass removal efficiency to required efficiency.* Compare the mass removal efficiency (calculated in Equation WW3) to the required efficiency as specified in § 63.138(e) of this subpart. If complying with § 63.138(e)(1), compliance is demonstrated if the mass removal efficiency is 99 percent or greater. If complying with § 63.138(e)(2), compliance is demonstrated if the mass removal efficiency is greater than or equal to the flow-weighted average of the Fr values calculated in Equation WW8.

(d) *Combustion treatment processes: percent mass removal/destruction option.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a combustion treatment process with the percent mass destruction limits specified in § 63.138(e) (1) and (2) for Table 9 compounds, and/or § 63.138(e)(1) for Table 8 compounds. The owner or operator shall comply with the requirements specified in § 63.145 (d)(1) through (d)(9) of this subpart. (Wastewater streams that are Group 1 for both Table 8 and Table 9 compounds need only do the compliance demonstration for Table 9 compounds.)

(1) *Concentration in wastewater stream entering the combustion treatment process.* The concentration of

Table 8 and/or Table 9 compounds entering the treatment process shall be determined as provided in this paragraph. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 of appendix A of this part shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in table 34 of this subpart.

(2) *Flow rate of wastewater entering the combustion treatment process.* The flow rate of the wastewater stream entering the combustion treatment process shall be determined using an inlet flow meter. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate in wastewater stream entering combustion treatment processes.* The mass flow rate of Table 8 and/or Table 9 compounds entering the treatment process is calculated as follows:

$$QMW_a = \frac{\rho}{p * 10^6}\left(\sum_{k=1}^{p} Q_{a,k} * C_{T,a,k}\right) \qquad \text{(Eqn WW4)}$$

Where:

QMW_a=Mass flow rate of Table 8 or Table 9 compounds entering the combustion unit, kilograms per hour.

ρ=Density of the wastewater stream, kilograms per cubic meter.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

$C_{T,a,k}$=Total concentration of Table 8 or Table 9 compounds in the wastewater stream entering the combustion unit during run k, parts per million by weight.

p=Number of runs.

k=Identifier for a run.

(4) *Concentration in vented gas stream exiting the combustion treatment process.* The concentration of Table 8 and/or Table 9 compounds exiting the combustion treatment process in any vented gas stream shall be determined as provided in this paragraph. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18 of 40 CFR part 60, appendix A. Alternatively any other test method validated according to the procedures in Method 301 of appendix A of this part may be used.

(5) *Volumetric flow rate of vented gas stream exiting the combustion treatment process.* The volumetric flow rate of the vented gas stream exiting the combustion treatment process shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(6) *Calculation of mass flow rate of vented gas stream exiting combustion treatment processes.* The mass flow rate of Table 8 and/or Table 9 compounds in a vented gas stream exiting the combustion treatment process shall be calculated as follows:

$$QMG_a = K_2\left(\sum_{i=1}^{n} CG_{a,i}MW_i\right)QG_a \qquad \text{(Eqn WW5)}$$

$$QMG_b = K_2\left(\sum_{i=1}^{n} CG_{b,i}MW_i\right)QG_b \qquad \text{(Eqn WW6)}$$

Where:

$CG_{a,i}$, $CG_{b,i}$=Concentration of total organic compounds (TOC) (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering ($CG_{a,i}$) and exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering (QMG_a) and exiting (QMG_b) the control device, dry basis, kilograms per hour.

MW_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_a,QG_b=Flow rate of gas stream entering (QG_a) and exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57×10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(7) *Destruction efficiency calculation.* The destruction efficiency of the combustion unit for Table 8 and/or Table 9 compounds shall be calculated as follows:

$$E = \frac{QMW_a - QMG_b}{QMW_a} * 100 \qquad \text{(Eqn WW7)}$$

Where:

E=Destruction efficiency of Table 8 or Table 9 compounds for the combustion unit, percent.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds entering the combustion unit, kilograms per hour.

QMG_b=Mass flow rate of Table 8 or Table 9 compounds in vented gas stream exiting the combustion treatment process, kilograms per hour.

(8) *Calculation of flow-weighted average of Fr values.* Use Equation WW8 to calculate the flow-weighted average of the Fr values listed in table 9 of this subpart.

$$Fr_{avg} = \left[\frac{\sum_{i=1}^{n} \sum_{k=1}^{p} Fr_i * C_{i,a,k} * Q_{a,k}}{\sum_{k=1}^{p} \sum_{i=1}^{n} C_{i,a,k} * Q_{a,k}} \right] * 100 \qquad \text{(Eqn WW8)}$$

Where:

Fr_{avg}=Flow-weighted average of the Fr values.

$C_{i,a,k}$=Concentration of Table 8 and/or Table 9 compounds in wastewater stream entering the combustion unit, during run k, parts per million by weight.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

Fr_i=Compound-specific Fr value listed in table 9 of this subpart.

(9) *Calculate flow-weighted average of Fr values and compare to mass destruction efficiency.* Compare the mass destruction efficiency (calculated in Equation WW 7) to the required efficiency as specified in § 63.138(e). If complying with § 63.138(e)(1), compliance is demonstrated if the mass destruction efficiency is 99 percent or greater. If complying with § 63.138(e)(2), compliance is demonstrated if the mass destruction efficiency is greater than or equal to the flow-weighted average of the Fr value calculated in Equation WW8.

(e) *Non-combustion treatment processes including closed biological treatment processes: RMR option.* This paragraph applies to performance tests for non-combustion treatment processes other than open biological treatment processes to demonstrate compliance with the mass removal provisions for Table 8 and/or Table 9 compounds. Compliance options for noncombustion treatment processes are specified in § 63.138(f) of this subpart. Compliance options for closed aerobic or anaerobic biological treatment processes are specified in § 63.138(f) and § 63.138(g) of this subpart. When complying with § 63.138(f), the owner or operator shall comply with the requirements specified in § 63.145(e)(1) through (e)(6) of this subpart. When complying with § 63.138(g), the owner or operator shall comply with the requirements specified in § 63.145(e)(1) through (e)(6) of this subpart. (Wastewater streams that are Group 1 for both Table 8 and Table 9 compounds need only do the compliance demonstration for Table 9 compounds.)

(1) *Concentration in wastewater stream.* The concentration of Table 8 and/or Table 9 compounds shall be determined as provided in this paragraph. Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 63.144(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in table 34 of this subpart.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 63.144(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for non-combustion treatment processes including closed biological treatment processes.* When using § 63.138(f) to comply, the required mass removal of Table 8 and/or Table 9 compounds for each Group 1 wastewater stream shall be calculated as specified in paragraph (e)(3)(i) of this section. When using § 63.138(g) to comply, the required mass removal shall be calculated as specified in paragraph (e)(3)(ii) of this section.

(i) When using § 63.138(f) to comply, the required mass removal of Table 8 and/or Table 9 compounds for each Group 1 wastewater stream shall be calculated using Equation WW9.

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} (C_i * Fr_i) \qquad \text{(Eqn WW9)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of Table 8 or Table 9 compounds in stream.

C_i=Concentration of Table 8 or Table 9 compounds at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a Table 8 or Table 9 compound. Fr values are listed in table 9 of this subpart.

10^9=Conversion factor, mg/kg * l/m^3.

(ii) When using § 63.138(g) to comply, the required mass removal is 95 percent of the mass flow rate for all Group 1 and Group 2 wastewater streams combined for treatment. The required mass removal of Table 8 and/or Table 9 compounds for all Group 1 and Group 2 wastewater streams combined for treatment when complying with § 63.138(g) shall be calculated using the following equation:

$$RMR = \frac{0.95\rho}{10^9} Q \sum_{i=1}^{n} (C_i) \qquad \text{(Eqn WW9a)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of Table 8 or Table 9 compounds in stream.

C_i=Concentration of Table 8 or Table 9 compounds at the point of determination, parts per million by weight.

10^9=Conversion factor, mg/kg * l/m^3

(4)(i) The required mass removal is calculated by summing the required mass removal for each Group 1 wastewater stream to be combined for treatment when complying with § 63.138(f).

(ii) The required mass removal is calculated by summing the required mass removal for all Group 1 and Group 2 wastewater streams combined for treatment when complying with § 63.138(g).

(5) *The AMR calculation procedure for non-combustion treatment processes including closed biological treatment processes.* The AMR shall be calculated as follows:

$$AMR = (QMW_a - QMW_b) \qquad \text{(Eqn WW10)}$$

Where:

AMR=Actual mass removal of Table 8 or Table 9 compounds achieved by treatment process or series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering the treatment process or first treament process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of Table 8 or Table 9 compounds in wastewater exiting the last treatment process in a series of treatment processes, kilograms per hour.

(6) *Compare RMR to AMR.* When complying with § 63.138(f), compare the RMR calculated in Equation WW9 to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to the RMR. When complying with § 63.138(g), compare the RMR calculated in Equation WW–9a to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to 95-percent mass removal.

(f) *Open or closed aerobic biological treatment processes: Required mass removal (RMR) option.* This paragraph applies to the use of performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the mass removal provisions for Table 8 and/or Table 9 compounds. These compliance options are specified in § 63.138(f) of this subpart. The owner or operator shall comply with the requirements specified in § 63.145 (f)(1) through (f)(6) of this subpart. Some compounds may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine which compounds may be exempt from the requirements of this paragraph.

(1) *Concentration in wastewater stream.* The concentration of Table 8 and/or Table 9 compounds shall be determined as provided in this paragraph. Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 63.144(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements

based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in table 34 of this subpart.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 63.144(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for open or closed aerobic biological treatment processes.* The required mass removal of Table 8 and/or Table 9 compounds for each Group 1 wastewater stream shall be calculated using the following equation:

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} (C_i * Fr_i) \qquad \text{(Eqn WW11)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of Table 8 or Table 9 compounds in stream.

C_i=Concentration of Table 8 or Table 9 compounds at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a Table 8 or Table 9 compound. Fr values are listed in table 9 of this subpart.

10^9=Conversion factor, mg/kg * l/m^3.

(4) The required mass removal is calculated by adding together the required mass removal for each Group 1 wastewater stream to be combined for treatment.

(5) *Actual mass removal calculation procedure for open or closed aerobic biological treatment processes.* The actual mass removal (AMR) shall be calculated using Equation WW12 as specified in paragraph (f)(5)(i) of this section when the performance test is performed across the open or closed aerobic biological treatment process only. If compliance is being demonstrated in accordance with § 63.145(a)(7)(i), the AMR for the series shall be calculated using Equation WW13 in § 63.145(f)(5)(ii). (This equation is for situations where treatment is performed in a series of treatment processes connected by hard-piping.) If compliance is being demonstrated in accordance with § 63.145(a)(7)(ii), the AMR for the biological treatment process shall be calculated using Equation WW12 in § 63.145(f)(5)(i). The AMR for the biological treatment process used in a series of treatment processes calculated using Equation WW12 shall be added to the AMR determined for each of the other individual treatment processes in the series of treatment processes.

(i) Calculate AMR for the open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a * F_{bio} \qquad \text{(Eqn WW12)}$$

Where:

AMR=Actual mass removal of Table 8 or Table 9 compounds achieved by open or closed biological treatment process, kilograms per hour.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering the treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of Table 8 or Table 9 compounds biodegraded. F_{bio} shall be determined as specified in § 63.145(h) and appendix C of this subpart.

(ii) Calculate AMR across a series of treatment units where the last treatment unit is an open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a - (QMW_b)(1 - F_{bio}) \qquad \text{(Eqn WW13)}$$

Where:

AMR=Actual mass removal of Table 8 or Table 9 compounds achieved by a series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering the first treatment process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of Table 8 or Table 9 compounds in wastewater exiting the last treatment process in a series of treatment processes prior to the biological treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of Table 8 or Table 9 compounds biodegraded. F_{bio} shall be determined as specified in § 63.145(h) and appendix C of this subpart.

(6) *Compare RMR to AMR.* Compare the RMR calculated in Equation WW11 to the AMR calculated in either Equation WW12 or WW13, as applicable. Compliance is demonstrated if the AMR is greater than or equal to the RMR.

(g) *Open or closed aerobic biological treatment processes: 95-percent mass removal option.* This paragraph applies to performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the 95-percent mass removal provisions for Table 8 and/or Table 9 compounds. This compliance option is specified in § 63.138(g) of this subpart. The RMR for this option is 95-percent mass removal. The owner or operator shall comply with the requirements specified in § 63.145(g)(1) to determine AMR, § 63.145 (e)(3)(ii) and (e)(4)(ii) to determine RMR, and (g)(2) of this subpart to determine whether compliance has been demonstrated. Some compounds may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine which compounds may be exempt from the requirements of this paragraph. (Wastewater streams that are Group 1 for both Table 8 and Table 9 compounds need only do the compliance demonstration for Table 9 compounds.)

(1) The owner or operator shall comply with the requirements specified in paragraphs (f)(1), (f)(2), and (f)(5) of this section to determine AMR. References to Group 1 wastewater streams shall be deemed Group 1 and Group 2 wastewater streams for the purposes of this paragraph.

(2) *Compare RMR to AMR.* Compliance is demonstrated if the AMR is greater than or equal to RMR.

(h) *Site-specific fraction biodegraded (F_{bio}).* The compounds listed in table 9 of this subpart are divided into three sets for the purpose of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are designated as lists 1, 2, and 3 in table 36 of this subpart.

(1) *Performance test exemption.* If a biological treatment process meets the requirements specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this section, the owner or operator is not required to determine F_{bio} and is exempt from the applicable performance test requirements specified in § 63.138 of this subpart.

(i) The biological treatment process meets the definition of "enhanced biological treatment process" in § 63.111 of this subpart.

(ii) At least 99 percent by weight of all compounds on table 36 of this subpart that are present in the aggregate of all wastewater streams using the biological treatment process to comply with § 63.138 of this subpart are compounds on list 1 of table 36 of this subpart.

(2) *F_{bio} determination.* For wastewater streams that include one or more compounds on lists 2 and/or 3 of table 36 of this subpart that do not meet criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(i) or (h)(2)(ii) of this section. For biological treatment processes that do not meet the definition for enhanced biological treatment in § 63.111 of this subpart, the owner or operator shall determine the F_{bio} for the biological treatment process using any of the procedures in appendix C to part 63, except the batch tests procedure.

(i) *Wastewater streams without list 3 compounds that are treated in enhanced biological treatment processes.* For wastewater streams that include no compounds on list 3 of table 36 of this subpart and the biological treatment process meets the definition of enhanced biological treatment process in § 63.111 of this subpart, the owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C of 40 CFR part 63. (The symbol "f_{bio}" represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.) The owner or operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in Form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, 40 CFR part 63.

(ii) *Wastewater streams with list 3 compounds that are treated in enhanced biological treatment processes.* For wastewater streams that include one or more compounds on list 3 of table 36 of this subpart, the owner or operator shall determine f_{bio} for the list 3 compounds using any of the procedures specified in appendix C, 40 CFR part 63, except the batch tests procedure. The owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C, 40 CFR part 63. The owner or operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in Form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, of 40 CFR part 63.

(iii) *Performance tests for control devices other than flares.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a control device with the efficiency limits specified in § 63.139(c). If complying with the 95-percent reduction efficiency requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(9) of this section. If complying with the 20 ppm by volume requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(6) and (i)(9) of this section. The 20 ppm by volume limit or 95 percent reduction efficiency requirement shall be measured as either total organic hazardous air pollutants or as TOC minus methane and ethane.

(1) *Sampling sites.* Sampling sites shall be selected using Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate. For determination of compliance with the 95 percent reduction requirement, sampling sites shall be located at the inlet and the outlet of the control device. For determination of compliance with the 20 parts per million by volume limit, the sampling site shall be located at the outlet of the control device.

(2) *Concentration in gas stream entering or exiting the control device.* The concentration of total organic hazardous air pollutants or TOC in a gas stream shall be determined as provided in this paragraph. Samples may be grab samples or composite samples (i.e., integrated samples). Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18 of 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part may be used.

(3) *Volumetric flow rate of gas stream entering or exiting the control device.* The volumetric flow rate of the gas stream shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(4) *Calculation of TOC concentration.* The TOC concentration (CG_T) is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or operator shall compute TOC for each run using the following equation:

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \qquad \text{(Eqn WW14)}$$

Where:

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$CGS_{i,j}$=Concentration of sample components in vented gas stream for sample j, dry basis, parts per million by volume.

i=Identifier for a compound.

n=Number of components in the sample.

j=Identifier for a sample.

m=Number of samples in the sample run.

(5) *Calculation of total organic hazardous air pollutants concentration.* The owner or operator determining compliance based on total organic hazardous air pollutants concentration (C_{HAP}) shall compute C_{HAP} according to the Equation WW14, except that only Table 9 compounds shall be summed.

(6) *Percent oxygen correction for combustion control devices.* If the control device is a combustion device, comply with the requirements specified in paragraph (i)(6)(i) of this section to determine oxygen concentration, and in paragraph (i)(6)(ii) of this section to calculate the percent oxygen correction.

(i) *Oxygen concentration.* The concentration of TOC or total organic hazardous air pollutants shall be corrected to 3 percent oxygen if the control device is a combustion device. The emission rate correction factor for excess air, composite sampling (i.e., integrated sampling) and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the actual oxygen concentration ($\%0_{2d}$). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total organic hazardous air pollutants samples are taken.

(ii) *3 percent oxygen calculation.* The concentration corrected to 3 percent oxygen (CG_c), when required, shall be computed using the following equation:

$$CG_C = CG_T\left(\frac{17.9}{20.9 - \%0_{2d}}\right) \qquad \text{(Eqn WW15)}$$

Where:

CG_c=Concentration of TOC or organic hazardous air pollutants corrected to 3 percent oxygen, dry basis, parts per million by volume.

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$\%0_{2d}$=Concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(7) *Mass rate calculation.* The mass rate of either TOC (minus methane and ethane) or total organic hazardous air pollutants shall be calculated using the following equations. Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by methods specified in paragraph (i)(2) of this section are summed using Equations WW16 and WW17. Where the mass rate of total organic hazardous air pollutants is being calculated, only Table 9 compounds shall be summed using Equations WW16 and WW17.

$$QMG_a = K_2\left(\sum_{i=1}^{n} CG_{a,i}\, MW_i\right) QG_a \qquad \text{(Eqn WW16)}$$

$$QMG_b = K_2\left(\sum_{i=1}^{n} CG_{b,i}\, MW_i\right) QG_b \qquad \text{(Eqn WW17)}$$

Where:

$CG_{a,i}$, $CG_{b,i}$=Concentration of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering ($CG_{a,i}$) and exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering (QMG_a) and exiting (QMG_b) the control device, dry basis, kilograms per hour.

MW_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_a, QG_b=Flow rate of gas stream entering (QG_a) and exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57×10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(8) *Percent reduction calculation.* The percent reduction in TOC (minus methane and ethane) or total organic hazardous air pollutants shall be calculated as follows:

$$E = \frac{QMG_a - QMG_b}{QMG_a}(100\%) \qquad \text{(Eqn WW18)}$$

Where:

E=Destruction efficiency of control device, percent.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream entering and exiting (QMG_b) the control device, dry basis, kilograms per hour.

(9) *Compare mass destruction efficiency to required efficiency.* If complying with the 95 percent reduction efficiency requirement, compliance is demonstrated if the mass destruction efficiency (calculated in Equation WW18) is 95 percent or greater. If complying with the 20 parts per million by volume limit in § 63.139 (c)(1)(ii) of this subpart, compliance is demonstrated if the outlet total organic compound concentration, less methane and ethane, or total organic hazardous

air pollutants concentration is 20 parts per million by volume, or less. For combustion control devices, the concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

(j) *Compliance demonstration for flares.* When a flare is used to comply with § 63.139 (c) of this subpart, the owner or operator shall comply with the flare provisions in § 63.11(b) of subpart A of this part.

(1) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(2) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic hazardous air pollutants or TOC concentration when a flare is used.

§ 63.146 Process wastewater provisions—reporting.

(a) For each waste management unit, treatment process, or control device used to comply with §§ 63.138 (b)(1), (c)(1), (d), (e), (f), or (g) of this subpart for which the owner or operator seeks to monitor a parameter other than those specified in table 11, table 12, or table 13 of this subpart, the owner or operator shall submit a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g) of this subpart.

(b) The owner or operator shall submit the information specified in paragraphs (b)(1) through (b)(9) of this section as part of the Notification of Compliance Status required by § 63.152(b) of this subpart.

(1) [Reserved]

(2) For each new and existing source, the owner or operator shall submit the information specified in table 15 of this subpart for Table 8 and/or Table 9 compounds.

(3) [Reserved]

(4) For each treatment process identified in table 15 of this subpart that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in table 17 of this subpart.

(5) For each waste management unit identified in table 15 of this subpart that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in table 18 of this subpart.

(6) For each residual removed from a Group 1 wastewater stream, the owner or operator shall report the information specified in table 19 of this subpart.

(7) For each control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall report the information specified in paragraphs (b)(7)(i) and (b)(7)(ii) of this section.

(i) For each flare, the owner or operator shall submit the information specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C) of this section.

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.139(c)(3) of this subpart; and

(C) Reports of the times and durations of all periods during the compliance determination when the pilot flame is absent or the monitor is not operating.

(ii) For each control device other than a flare, the owner or operator shall submit the information specified in paragraph (b)(7)(ii)(A) of this section and in either paragraph (b)(7)(ii)(B) or (b)(7)(ii)(C) of this section.

(A) The information on parameter ranges specified in § 63.152(b)(2) of this subpart for the applicable parameters specified in table 13 of this subpart, unless the parameter range has already been established in the operating permit; and either

(B) The design evaluation specified in § 63.139(d)(2) of this subpart; or

(C) Results of the performance test specified in § 63.139(d)(1) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value of each parameter being monitored in accordance with § 63.143 of this subpart; and applicable supporting calculations.

(8) For each treatment process used to comply with § 63.138 (b)(1)(iii)(C), (c)(1)(iii)(D), (d), or (e) of this subpart, the owner or operator shall submit the information specified in paragraphs (b)(8)(i) and (b)(8)(ii) of this section.

(i) For Items 1 and 2 in table 12 of this subpart, the owner or operator shall submit the information specified in paragraphs (b)(8)(i)(A) and (b)(8)(i)(B) of this section.

(A) The information on parameter ranges specified in § 63.152(b)(2) of this subpart for the parameters approved by the Administrator, unless the parameter range has already been established in the operating permit.

(B) Results of the initial measurements of the parameters approved by the Administrator and any applicable supporting calculations.

(ii) For Item 3 in table 12 of this subpart, the owner or operator shall submit the information on parameter ranges specified in § 63.152(b)(2) of this subpart for the parameters specified in Item 3 of table 12 of this subpart, unless the parameter range has already been established in the operating permit.

(9) Except as provided in paragraph (b)(9)(iii) of this section, for each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), (d), (e), (f), (g), or (h)(3) of this subpart, the owner or operator shall submit the information specified in either paragraph (b)(9)(i) or (b)(9)(ii) of this section.

(i) The design evaluation and supporting documentation specified in § 63.138(j)(1) of this subpart.

(ii) Results of the performance test specified in § 63.138(j)(2) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value of each parameter being monitored in accordance with § 63.143 of this subpart; and applicable supporting calculations.

(iii) If the owner or operator elects to use one of the technologies specified in § 63.138(h) of this subpart, the owner or operator is exempt from the requirements specified in paragraphs (b)(9)(i) and (b)(9)(ii) of this section.

(c) For each waste management unit that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) of this subpart the results of each inspection required by § 63.143(a) of this subpart in which a control equipment failure was identified. Control equipment failure is defined for each waste management unit in §§ 63.133 through 63.137 of this subpart. Each Periodic Report shall include the date of the inspection, identification of each waste management unit in which a control equipment failure was detected, description of the failure, and description of the nature of and date the repair was made.

(d) Except as provided in paragraph (f) of this section, for each treatment process used to comply with § 63.138(b)(1), (c)(1), or (e) of this subpart, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) the information specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section for the monitoring required by § 63.143(b) of this subpart.

(1) For Item 1 in table 12, the owner or operator shall submit the results of measurements that indicate that the biological treatment unit is outside the range established in the Notification of Compliance Status or operating permit.

(2) For Item 2 in table 12, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of a continuously monitored parameter is outside the range established in the Notification of Compliance Status or operating permit.

(3) For Item 3 in table 12 of this subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter approved in accordance with § 63.151 (f) was outside the range established in the Notification of Compliance Status or operating permit.

(e) Except as provided in paragraph (f) of this section, for each control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) of this subpart the information specified in either paragraph (e)(1) or (e)(2) of this section.

(1) The information specified in table 20 of this subpart, or

(2) If the owner or operator elects to comply with § 63.143(e)(2) of this subpart, i.e., an organic monitoring device installed at the outlet of the control device, the owner or operator shall submit the monitoring results for each operating day during which the daily average concentration level or reading is outside the range established in the Notification of Compliance Status or operating permit.

(f) Where the owner or operator obtains approval to use a treatment process or control device other than one for which monitoring requirements are specified in § 63.143 of this subpart, or to monitor parameters other than those specified in table 12 or 13 of this subpart, the Administrator will specify appropriate reporting requirements.

(g) If an extension is utilized in accordance with § 63.133(e)(2) or § 63.133(h) of this subpart, the owner or operator shall include in the next periodic report the information specified in § 63.133 (e)(2) or § 63.133(h).

§ 63.147 Process wastewater provisions—recordkeeping.

(a) The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 63.132(g) of this subpart shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic hazardous air pollutants which are required to be managed and treated in accordance with the provisions of this subpart.

(b) The owner or operator shall keep in a readily accessible location the records specified in paragraphs (b)(1) through (b)(7) of this section.

(1) A record that each waste management unit inspection required by §§ 63.133 through 63.137 of this subpart was performed.

(2) A record that each inspection for control devices required by § 63.139 of this subpart was performed.

(3) A record of the results of each seal gap measurement required by §§ 63.133(d) and 63.137(c) of this subpart. The records shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 63.120(b)(2), (3), and (4) of this subpart.

(4) For Item 1 and Item 2 of table 12 of this subpart, the owner or operator shall keep the records approved by the Administrator.

(5) Except as provided in paragraphs (e) and (g) of this section, continuous records of the monitored parameters specified in Item 3 of table 12 and table 13 of this subpart, and in § 63.143(e)(2) of this subpart.

(6) Documentation of a decision to use an extension, as specified in § 63.133(e)(2) or (h) of this subpart, which shall include a description of the failure, documentation that alternate storage capacity is unavailable, and specification of a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

(7) Documentation of a decision to use a delay of repair due to unavailability of parts, as specified in § 63.140(c), shall include a description of the failure, the reason additional time was necessary (including a statement of why replacement parts were not kept on site and when the manufacturer promised delivery), and the date when repair was completed.

(c) For each boiler or process heater used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall keep a record of any changes in the location at which the vent stream is introduced into the flame zone as required in § 63.139(c)(1) of this subpart.

(d) The owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), except as provided in paragraphs (d)(1) and (d)(2) of this section.

(1) For flares, records of the times and duration of all periods during which the pilot flame is absent shall be kept rather than daily averages.

(2) For carbon adsorbers, the owner or operator shall keep the records specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section instead of daily averages.

(i) Records of the total regeneration stream mass flow for each carbon bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration cycle.

(e) Where the owner or operator obtains approval to use a control device other than one for which monitoring requirements are specified in § 63.143 of this subpart, or to monitor parameters other than those specified in table 12 or table 13 of this subpart, the Administrator will specify appropriate recordkeeping requirements.

(f) If the owner or operator uses process knowledge to determine the annual average concentration of a wastewater stream as specified in § 63.144(b)(3) of this subpart and/or uses process knowledge to determine the annual average flow rate as specified in § 63.144(c)(1) of this subpart, and determines that the wastewater stream is not a Group 1 wastewater stream, the owner or operator shall keep in a readily accessible location the documentation of how process knowledge was used to determine the annual average concentration and/or the annual average flow rate of the wastewater stream.

27. Section 63.148 is amended by revising paragraphs (c)(2), (c)(4)(ii), (c)(5), (i)(3)(i), (i)(3)(ii), and (j)(2) to read as follows:

§ 63.148 Leak inspection provisions.

* * * * *

(c) * * *

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(2)(i) of this section, the

instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(2)(i) of this section.

* * * * *

(4) * * *

(ii) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in §§ 63.180(b) and (c) of subpart H of this part. The owner or operator shall subtract background reading from the maximum concentration indicated by the instrument.

* * * * *

(i) * * *

(3) * * *

(i) Hourly records of whether the flow indicator specified under paragraph (f)(1) of this section was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with paragraph (f)(2) of this section, hourly records of flow are not required. In such cases, the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

* * * * *

(j) * * *

(2) Reports of the times of all periods recorded under paragraph (i)(3)(i) of this section when the vent stream is diverted from the control device through a bypass line; and

* * * * *

28. Section 63.149 is added to read as follows:

§ 63.149 Control requirements for certain liquid streams in open systems within a chemical manufacturing process unit.

(a) The owner or operator shall comply with the provisions of table 35 of this subpart, for each item of equipment meeting all the criteria specified in paragraphs (b) through (d) and either paragraph (e)(1) or (e)(2) of this section.

(b) The item of equipment is of a type identified in table 35 of this subpart;

(c) The item of equipment is part of a chemical manufacturing process unit that meets the criteria of § 63.100(b) of subpart F of this part;

(d) The item of equipment is controlled less stringently than in table 35 and is not listed in § 63.100(f) of subpart F of this part, and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part; and

(e) The item of equipment:

(1) is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with a total annual average concentration greater than or equal to 10,000 parts per million by weight of Table 9 compounds at any flowrate; or a total annual average concentration greater than or equal to 1,000 parts per million by weight of Table 9 compounds at an annual average flow rate greater than or equal to 10 liters per minute. At a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR 63.100(l)(2), the criteria of this paragraph are also met if the item of equipment conveys water with an annual average concentration greater than or equal to 10 parts per million by weight of any Table 8 compound at an annual average flow rate greater than or equal to 0.02 liter per minute, or

(2) Is a tank that receives one or more streams that contain water with a total annual average concentration greater than or equal to 1,000 ppm (by weight) of Table 9 compounds at an annual average flowrate greater than or equal to 10 liters per minute. At a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR 63.100 (l)(2), the criteria of this paragraph are also met if the tank receives one or more streams that contain water with an annual average concentration greater than or equal to 10 parts per million by weight of any Table 8 compound at an annual average flow rate greater than or equal to 0.02 liter per minute. The owner or operator of the source shall determine the characteristics of the stream as specified in paragraphs (e)(2) (i) and (ii) of this section.

(i) The characteristics of the stream being received shall be determined at the inlet to the tank.

(ii) The characteristics shall be determined according to the procedures in § 63.144 (b) and (c).

29. Section 63.152 is amended by revising the introductory text of paragraph (b)(1); revising paragraph (b)(2) introductory text and paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B); adding paragraph (b)(5); revising the introductory text of paragraphs (c)(2), (c)(2)(ii), and (c)(2)(ii)(A); revising paragraphs (c)(2)(ii)(A)(*2*) and (c)(2)(ii)(A)(*3*); revising the introductory text of paragraph (c)(2)(ii)(B); revising paragraphs (c)(2)(ii)(C) and (c)(2)(ii)(E); adding paragraph (c)(2)(iv); revising the introductory text of paragraph (c)(4); revising paragraph (c)(4)(iii) and adding paragraph (c)(4)(iv); adding a sentence to the end of paragraphs (c)(5)(iii) and (c)(6)(v); revising the introductory text of paragraph (f), revising paragraph (f)(2)(ii), revising the introductory text of paragraph (f)(5), revising paragraph (f)(7); and adding paragraph (g) to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(b) * * *

(1) The notification shall include the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and any other information used to demonstrate compliance or required to be included in the Notification of Compliance Status under § 63.110 (h) for regulatory overlaps, under § 63.117 for process vents, § 63.122 for storage vessels, § 63.129 for transfer operations, § 63.146 for process wastewater, and § 63.150 for emission points included in an emissions average.

* * * * *

(2) For each monitored parameter for which a range is required to be established under § 63.114 for process vents, § 63.127 for transfer, § 63.143 for process wastewater, § 63.150(m) for emission points in emissions averages, or § 63.151(f), or § 63.152(e), the Notification of Compliance Status shall include the information in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section, unless the range and the

operating day definition have been established in the operating permit. The recordkeeping and reporting requirements applicable to storage vessels are located in §§ 63.122 and 63.123.

* * * * *

(ii) * *

(A) If a performance test is required by this subpart for a control device, the range shall be based on the parameter values measured during the performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of permitted parameter values.

(B) If a performance test is not required by this subpart for a control device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

* * * * *

(5) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(c) * * *

(2) Except as provided in paragraph (c)(2)(iv) of this section, for an owner or operator of a source complying with the provisions of §§ 63.113 through 63.147 for any emission points, Periodic Reports shall include all information specified in §§ 63.117 and 63.118 for process vents, § 63.122 for storage vessels, §§ 63.129 and 63.130 for transfer operations, and § 63.146 for process wastewater, including reports of periods when monitored parameters are outside their established ranges.

* * * * *

(ii) The parameter monitoring data for Group 1 emission points and emission points included in emissions averages that are required to perform continuous monitoring shall be used to determine compliance with the required operating conditions for the monitored control devices or recovery devices. For each excursion, except for excused excursions, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(A) An excursion means any of the three cases listed in paragraph (c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), or (c)(2)(ii)(A)(*3*) of this section. For a control device or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), or (c)(2)(ii)(A)(*3*) of this section, this is considered a single excursion for the control device or recovery device.

* * * * *

(*2*) When the period of control device or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(*3*) When the period of control device or recovery device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

* * * * *

(B) The number of excused excursions for each control device or recovery device for each semiannual period is specified in paragraphs (c)(2)(ii)(B)(*1*) through (c)(2)(ii)(B)(*6*) of this section. This paragraph applies to sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

* * * * *

(C) If a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with the source's start-up, shutdown, and malfunction plan as required by § 63.6(e)(3) of subpart A of this part) or during periods of nonoperation of the chemical manufacturing process unit or portion thereof (resulting in cessation of the emissions to which the monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions for determining compliance.

* * * * *

(E) Paragraph (c)(2)(ii) of this section, except paragraph (c)(2)(ii)(C) of this section, shall apply only to emission points and control devices or recovery devices for which continuous monitoring is required by §§ 63.113 through 63.150.

* * * * *

(iv) The provisions of paragraphs (c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section do not apply to any storage vessel for which the owner or operator is not required, by the applicable monitoring plan established under § 63.120(d)(2), to keep continuous records. If continuous records are required, the owner or operator shall specify, in the monitoring plan, whether the provisions of paragraphs (c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section apply.

* * * * *

(4) Periodic Reports shall include the information in paragraphs (c)(4)(i) through (c)(4)(iv) of this section, as applicable:

* * * * *

(iii) Notification if any Group 2 emission point becomes a Group 1 emission point, including a compliance schedule as required in § 63.100 of subpart F of this part, and

(iv) For process wastewater streams sent for treatment pursuant to § 63.132 (g), reports of changes in the identity of the treatment facility or transferee.

* * * * *

(5) * * *

(iii) * * * For storage vessels to which the provisions of paragraphs (c)(2)(i) through (c)(2)(iii) of this section do not apply (as specified in paragraph (c)(2)(iv) of this section), the owner or operator is required to comply with the provisions of the applicable monitoring plan, and monitoring records may be used to determine compliance.

* * * * *

(6) * * *

(v) Paragraphs (c)(2)(i) through (c)(2)(iii) of this section shall govern the use of monitoring data to determine compliance for Group 1 emission points. For storage vessels to which the provisions of paragraphs (c)(2)(i) through (c)(2)(iii) of this section do not apply (as specified in paragraph (c)(2)(iv) of this section), the owner or operator is required to comply with the provisions of the applicable monitoring plan, and monitoring records may be used to determine compliance.

* * * * *

(f) Owners or operators required to keep continuous records by §§ 63.118, 63.130, 63.147, 63.150, or other sections of this subpart shall keep records as specified in paragraphs (f)(1) through (f)(7) of this section, unless an alternative recordkeeping system has been requested and approved under § 63.151(f) or (g) or § 63.152(e) or under § 63.8(f) of subpart A of this part, and except as provided in paragraph (c)(2)(ii)(C) of this section or in paragraph (g) of this section. If a monitoring plan for storage vessels pursuant to § 63.120(d)(2)(i) requires continuous records, the monitoring plan shall specify which provisions, if any, of

paragraphs (f)(1) through (f)(7) of this section apply.

* * * * *

(2) * * *

(ii) Block average values for 15-minute or shorter periods calculated from all measured data values during each period or at least one measured data value per minute if measured more frequently than once per minute.

* * * * *

(5) Daily average values of each continuously monitored parameter shall be calculated for each operating day, and retained for 5 years, except as specified in paragraphs (f)(6) and (f)(7) of this section.

* * * * *

(7) Monitoring data recorded during periods identified in paragraphs (f)(7)(i) through (f)(7)(v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions;

(v) Periods of non-operation of the chemical manufacturing process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(g) For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (g)(1) or (g)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 63.114, 63.117, and 63.118 for process vents, §§ 63.127, 63.129, and 63.130 for transfer operations, §§ 63.143, 63.146, and 63.147 for wastewater, and/or § 63.152(f), except that § 63.152(f)(7) shall apply. The owner or operator shall retain each record required by paragraph (g)(1) or (g)(2) of this section as provided in § 63.103(c) of subpart F of this part, except as provided otherwise in paragraph (g)(1) or (g)(2) of this section.

(1) The owner or operator may retain only the daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (g)(1)(i) through (g)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (g)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the periodic report immediately preceding implementation of the requirements of paragraph (g)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than startups, shutdowns, or malfunctions (e.g., a temperature reading of −200° C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (g)(1)(ii)(A) through (g)(1)(iii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least 6 1-hour average values; and

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than startups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (g)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (g)(1) of this section, at the times specified in paragraphs (g)(1)(v)(A) through (g)(1)(v)(C) of this section. The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (g)(1)(vi) (A) through (C) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (g) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraph (g)(1)(i) through (g)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description. The description, and the most recent superseded description, shall be retained as provided in § 63.103(c) of subpart F of this part, except as provided in paragraph (g)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (g)(1) of this section.

(D) Owners and operators subject to paragraph (g)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain the most recent superseded description at least until 5 years from the date of its creation. The superseded description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after its creation. Thereafter, the superseded description may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (g)(1) of this section, and a period of 6 consecutive months has passed without an excursion as defined

in paragraph (g)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment, for any operating day when the daily average value is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next periodic report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (g)(2) of this section, there is an excursion as defined in paragraph (g)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average value for each day, and shall notify the Administrator in the next periodic report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (g)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (g)(1) (i), (ii), (iii), (iv), (v), and (vi) of this section. For any calendar week, if compliance with paragraphs (g)(1) (i), (ii), (iii), and (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For purposes of paragraph (g) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (g)(2)(iv)(A) and (g)(2)(iv)(B) of this section.

(A) The daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (g)(2), if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by § 63.6(e)(3) of subpart A of this part.

(B) An excused excursion, as described in § 63.152(c)(2)(ii) (B) and (C), shall not be considered an excursion for purposes of this paragraph (g)(2).

30. The tables in the appendix to subpart G are amended by revising tables 3, 4, 7, 11, 12, and 13; removing and reserving tables 14a and 14b; removing tables 15a and 15b, and adding table 15; removing and reserving table 16; revising tables 17, 18, and 20; table 34 is amended by revising the F_m entry for chlorobenzene from "0.96" to "1.00", the F_m entry for isophorone from "0.47" to "0.51," the F_m entry for trichloroethane (1,1,2-) (Vinyl trichloride) from "0.98" to "1.00," and the F_m entry for trichlorophenol (2,4, 5-) from "1.00" to "0.11"; and adding tables 35, 36, and 37 and by revising figure 1 and removing figures 2 through 10 to read as follows:

TABLE 3.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 Parts Per Million by Volume

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature[b] [63.114(a)(1)(i)]	1. Continuous records.[c] 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS.[d] 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all daily average temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.[g]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed [63.114(a)(1)(ii)].	1. Continuous records. 2. Record and report the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test—NCS. 3. Record the daily average upstream temperature and temperature difference across the catalyst bed for each operating day.[e] 4. Report all daily average upstream temperatures that are outside the range established in the NCS or operating permit—PR. 5. Report all daily average temperature differences across the catalyst bed that are outside the range established in the NCS or operating permit—PR. 6. Report all operating days when insufficient monitoring data are collected.[f]
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is *not* introduced with or as the primary fuel.	Firebox temperature[b] [63.114(a)(3)] ..	1. Continuous records. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all daily average firebox temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
Flare	Presence of a flame at the pilot light [63.114(a)(2)].	1. Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. 3. Record the times and durations of all periods when all pilot flames are absent or the monitor is not operating. 4. Report the times and durations of all periods when all pilot flames of a flare are absent—PR.

TABLE 3.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 Parts Per Million by Volume—Continued

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Recapture devices	The appropriate monitoring device identified in table 4 when, in the table, the term "recapture" is substituted for "recovery." [63.114(a)(5)].	1. The recordkeeping and reporting requirements for monitored parameters identified for the appropriate monitoring device in table 4 of this subpart.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent [63.114(a)(4)(i)], and.	1. Continuous records. 2. Record and report the pH of the scrubber effluent averaged over the full period of the performance test—NCS. 3. Record the daily average pH of the scrubber effluent for each operating day.[e] 4. Report all daily average pH values of the scrubber effluent that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare) (Continued).	Scrubber liquid and gas flow rates [63.114(a)(4)(ii)].	1. Continuous records of scrubber liquid flow rate. 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. 3. Record the daily average scrubber liquid/gas ratio for each operating day.[e] 4. Report all daily average scrubber liquid/gas ratios that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
All control devices	Presence of flow diverted to the atmosphere from the control device [63.114(d)(1)] *or*.	1. Hourly records of whether the flow indicator was operating and whether diversion was detected at any time during each hour. 2. Record and report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating—PR.
	Monthly inspections of sealed valves [63.114(d)(2)].	1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed—PR.

[a] Regulatory citations are listed in brackets.
[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[c] "Continuous records" is defined in § 63.111 of this subpart.
[d] NCS=Notification of Compliance Status described in § 63.152 of this subpart.
[e] The daily average is the average of all recorded parameter values for the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] The periodic reports shall include the duration of periods when monitoring data is not collected for each excursion as defined in § 63.152(c)(2)(ii)(A) of this subpart.
[g] PR=Periodic Reports described in § 63.152 of this subpart.

TABLE 4.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR MAINTAINING A TRE INDEX VALUE >1.0 AND ≤4.0

Final recovery device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Absorber[b]	Exit temperature of the absorbing liquid [63.114(b)(1)], and.	1. Continuous records.[c] 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the TRE determination—NCS.[d] 3. Record the daily average exit temperature of the absorbing liquid for each operating day.[e] 4. Report all the daily average exit temperatures of the absorbing liquid that are outside the range established in the NCS or operating permit—PR.[f]
	Exit specific gravity [63.114(b)(1)]	1. Continuous records. 2. Record and report the exit specific gravity averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit specific gravity for each operating day.[e] 4. Report all daily average exit specific gravity values that are outside the range established in the NCS or operating permit—PR.
Condenser[a]	Exit (product side) temperature [63.114(b)(2)].	1. Continuous records. 2. Record and report the exit temperature averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit temperature for each operating day.[e] 4. Report all daily average exit temperatures that are outside the range established in the NCS or operating permit—PR.

TABLE 4.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR MAINTAINING A TRE INDEX VALUE >1.0 AND <4.0—Continued

Final recovery device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Carbon adsorber.[d]	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s) [63.114(b)(3)], and.	1. Record of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the period of the TRE determination—NCS. 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit—PR.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] [63.114(b)(3)].	1. Records of the temperature of the carbon bed after each regeneration. 2. Record and report the temperature of the carbon bed after each regeneration during the period of the TRE determination—NCS. 3. Report all carbon bed regeneration cycles during which temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit—PR.
All recovery devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device [63.114 (b)].	1. Continuous records. 2. Record and report the concentration level or reading averaged over the full period of the TRE determination—NCS. 3. Record the daily average concentration level or reading for each operating day.[e] 4. Report all daily average concentration levels or readings that are outside the range established in the NCS or operating permit—PR.

[a] Regulatory citations are listed in brackets.
[b] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table under "All Recovery Devices."
[c] "Continuous records" is defined in § 63.111 of this subpart.
[d] NCS=Notification of Compliance Status described in § 63.152 of this subpart.
[e] The daily average is the average of all values recorded during the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] PR=Periodic Reports described in § 63.152 of this subpart.

TABLE 7.—TRANSFER OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature[b] [63.127(a)(1)(i)]	1. Continuous records[c] during loading. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS.[d] 3. Record the daily average firebox temperature for each operating day.[e] 4. Report daily average temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.[g]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed [63.127(a)(1)(ii)].	1. Continuous records during loading. 2. Record and report the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test—NCS. 3. Record the daily average upstream temperature and temperature difference across catalyst bed for each operating day.[e] 4. Report all daily average upstream temperatures that are outside the range established in the NCS or operating permit—PR. 5. Report all daily average temperature differences across the catalyst bed that are outside the range established in the NCS or operating permit—PR. 6. Report all operating days when insufficient monitoring data are collected.[f]
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is *not* introduced with or as the primary fuel.	Firebox temperature[b] [63.127(a)(3)] ..	1. Continuous records during loading. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all daily average firebox temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient data are collected[f]—PR.

TABLE 7.—TRANSFER OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME—Continued

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Flare	Presence of a flame at the pilot light [63.127(a)(2)].	1. Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. 3. Record the times and durations of all periods when all pilot flames are absent or the monitor is not operating. 4. Report the duration of all periods when all pilot flames of a flare are absent—PR.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent [63.127(a)(4)(i)], and.	1. Continuous records during loading 2. Record and report the pH of the scrubber effluent averaged over the full period of the performance test—NCS 3. Record the daily average pH of the scrubber effluent for each operating day.[e] 4. Report all daily average pH values of the scrubber effluent that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
	Scrubber liquid and gas flow rates [63.127(a)(4)(ii)].	1. Continuous records during loading of scrubber liquid flow rate. 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. 3. Record the daily average scrubber liquid/gas ratio for each operating day.[e] 4. Report all daily average scrubber liquid/gas ratios that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
Absorber[b]	Exit temperature of the absorbing liquid [63.127(b)(1)], and.	1. Continuous records during loading. 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the performance test—NCS. 3. Record the daily average exit temperature of the absorbing liquid for each operating day.[e] 4. Report all daily average exit temperatures of the absorbing liquid that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
	Exit specific gravity [63.127(b)(1)]	1. Continuous records during loading. 2. Record and report the exit specific gravity averaged over the full period of the performance test—NCS. 3. Record the daily average exit specific gravity for each operating day.[e] 4. Report all daily average exit specific gravity values that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
Condenser[b]	Exit (product side) temperature [63.127(b)(2)].	1. Continuous records during loading. 2. Record and report the exit temperature averaged over the full period of the performance test—NCS. 3. Record the daily average exit temperature for each operating day.[e] 4. Report all daily average exit temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
Carbon adsorber[b]	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s) [63.127(b)(3)], and.	1. Record of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the period of the performance test—NCS. 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] [63.127(b)(3)].	1. Records of the temperature of the carbon bed after each regeneration. 2. Record and report the temperature of the carbon bed after each regeneration during the period of the performance test—NCS. 3. Report all the carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.

TABLE 7.—TRANSFER OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME—Continued

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
All recovery devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device [63.127(b)].	1. Continuous records during loading. 2. Record and report the concentration level or reading averaged over the full period of the performance test—NCS. 3. Record the daily average concentration level or reading for each operating day.[d] 4. Report all daily average concentration levels or readings that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected[f]—PR.
All control devices and vapor balancing systems.	Presence of flow diverted to the atmosphere from the control device [63.127(d)(1)] *or.* Monthly inspections of sealed valves [63.127(d)(2)].	1. Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour. 2. Record and report the duration of all periods when the vent stream is diverted through a bypass line or the monitor is not operating—PR. 1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] Regulatory citations are listed in brackets.
[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[c] "Continuous records" is defined in § 63.111 of this subpart.
[d] NCS = Notification of Compliance Status described in § 63.152 of this subpart.
[e] The daily average is the average of all recorded parameter values for the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] The periodic reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 63.152(c)(2)(ii)(A) of this subpart.
[g] PR = Periodic Reports described in § 63.152 of this subpart.
[h] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table under "All Recovery Devices."

TABLE 11.—WASTEWATER—INSPECTION AND MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS

To comply with	Inspection or monitoring requirement	Frequency of inspection or monitoring	Method
Tanks:			
63.133(b)(1)	Inspect fixed roof and all openings for leaks.	Initially Semi-annually	Visual.
63.133(c)	Inspect floating roof in accordance with §§ 63.120 (a)(2) and (a)(3).	See § 63.120 (a)(2) and (a)(3)	Visual.
63.133(d)	Measure floating roof seal gaps in accordance with §§ 63.120 (b)(2)(i) through (b)(4).		See § 63.120 (b)(2)(i) through (b)(4).
	—Primary seal gaps	Once every 5 years Initially Annually.	
	—Secondary seal gaps		
63.133(f) 63.133(g)	Inspect wastewater tank for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
Surface impoundments:			
63.134(b)(1)	Inspect cover and all openings for leaks	Initially Semi-annually	Visual.
63.134(c)	Inspect surface impoundment for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
Containers:			
63.135(b)(1), 63.135(b)(2)(ii).	Inspect cover and all openings for leaks	Initially Semi-annually	Visual.
63.135(d)(1)	Inspect enclosure and all openings for leaks.	Initially Semi-annually	Visual.
63.135(e)	Inspect container for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
Individual Drain Systems[a]:			
63.136(b)(1)	Inspect cover and all openings to ensure there are no gaps, cracks, or holes.	Initially Semi-annually	Visual.
63.136(c)	Inspect individual drain system for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
63.136(e)(1)	Verify that sufficient water is present to properly maintain integrity of water seals.	Initially Semi-annually	Visual.

TABLE 11.—WASTEWATER—INSPECTION AND MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS—Continued

To comply with	Inspection or monitoring requirement	Frequency of inspection or monitoring	Method
63.136(e)(2), 63.136(f)(1) ...	Inspect all drains using tightly-fitted caps or plugs to ensure caps and plugs are in place and properly installed.	Initially Semi-annually	Visual.
63.136(f)(2)	Inspect all junction boxes to ensure covers are in place and have no visible gaps, cracks, or holes.	Initially Semi-annually	Visual or smoke test or other means as specified.
63.136(f)(3)	Inspect unburied portion of all sewer lines for cracks and gaps.	Initially Semi-annually	Visual.
Oil-water separators:			
63.137(b)(1)	Inspect fixed roof and all openings for leaks.	Initially Semi-annually	Visual.
63.137(c)	Measure floating roof seal gaps in accordance with 40 CFR 60.696(d)(1).	Initially[b]	See 40 CFR 60.696(d)(1).
	—Primary seal gaps	Once every 5 years.	
63.137(c)	—Secondary seal gaps	Initially[b] Annually.	
63.137(d)	Inspect oil-water separator for control equipment failures and improper work practices.	Initially Semi-annually	Visual.

[a] As specified in §63.136(a), the owner or operator shall comply with either the requirements of §63.136 (b) and (c) or §63.136 (e) and (f).
[b] Within 60 days of installation as specified in §63.137(c).

TABLE 12.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Required mass removal of Table 8 and/or Table 9 compound(s) from wastewater treated in a properly operated biological treatment unit 63.138(f), 63.136(g).	Appropriate parameters as specified in §63.143(c) and approved by permitting authority.	Appropriate frequency as specified in §63.143 and as approved by permitting authority.	Appropriate methods as specified in §63.143 and as approved by permitting authority.
2. Design steam stripper 63.138(d).	Steam flow rate	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder.
	Wastewater feed mass flow rate	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder.
	Wastewater feed temperature	Continuously	Liquid temperature monitoring device installed at stripper influent and equipped with a continuous recorder.
3. Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in §63.151(f).		

TABLE 13.—WASTEWATER—MONITORING REQUIREMENTS FOR CONTROL DEVICES

Control Device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder[b] *or*.	1. Presence of flow diverted from the control device to the atmosphere *or*.	Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves.	Monthly.
Thermal Incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox[a] and equipped with a continuous recorder[b].	Firebox temperature	Continuous.
Catalytic Incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed and equipped with a continuous recorder[b].	1. Temperature upstream of catalyst bed *or*. 2. Temperature difference across catalyst bed.	Continuous.

TABLE 13.—WASTEWATER—MONITORING REQUIREMENTS FOR CONTROL DEVICES—Continued

Control Device	Monitoring equipment required	Parameters to be monitored	Frequency
Flare	Heat sensing device installed at the pilot light and equipped with a continuous recorder[a].	Presence of a flame at the pilot light.	Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour.
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox[a] and equipped with continuous recorder[b].	Combustion temperature	Continuous.
Condenser	Temperature monitoring device installed at condenser exit and equipped with continuous recorder[b].	Condenser exit (product side) temperature.	Continuous.
Carbon adsorber (regenerative)	Integrating regeneration stream flow monitoring device having an accuracy of ± 10 percent, *and*.	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s).	For each regeneration cycle, record the total regeneration stream mass or volumetric flow.
	Carbon bed temperature monitoring device.	Temperature of carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)].	For each regeneration cycle and within 15 minutes of completing any cooling cycle, record the carbon bed temperature.
Carbon adsorber (Non-regenerative).	Organic compound concentration monitoring device.[c].	Organic compound concentration of adsorber exhaust.	Daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater.
Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements in §63.143(e)(3).		

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous recorder" is defined in §63.111 of this subpart.
[c] As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

Table 14a [Reserved]

Table 14b [Reserved]

TABLE 15.—WASTEWATER—INFORMATION ON TABLE 8 AND/OR TABLE 9 COMPOUNDS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS FOR PROCESS UNITS AT NEW AND/OR EXISTING SOURCES[a,b]

Process unit identification code[c]	Stream identification code	Concentration of table 8 and/or table 9 compound(s) (ppmw)[d,e]	Flow rate (lpm)[e,f]	Group 1 or Group 2[g]	Compliance approach[h]	Treatment process(es) identification[i]	Waste management unit(s) identification	Intended control device

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.
[b] Other requirements for the NCS are specified in §63.152(b) of this subpart.
[c] Also include a description of the process unit (e.g., benzene process unit).
[d] Except when §63.132(e) is used, annual average concentration as specified in §63.132 (c) or (d) and §63.144.
[e] When §63.132(e) is used, indicate the wastewater stream is a designated Group 1 wastewater stream.
[f] Except when §63.132(e) is used, annual average flow rate as specified in §63.132 (c) or (d) and in §63.144.
[g] Indicate whether stream is Group 1 or Group 2. If Group 1, indicate whether it is Group 1 for Table 8 or Table 9 compounds or for both Table 8 and Table 9 compounds.
[h] Cite §63.138 compliance option used.

Table 16 [Reserved]

TABLE 17.—INFORMATION FOR TREATMENT PROCESSES TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a,b]

Treatment process identification [c]	Description [d]	Wastewater stream(s) treated [e]	Monitoring parameters [f]

[c] Identification codes should correspond to those listed in Table 15.

[e] Stream identification code for each wastewater stream treated by each treatment unit. Identification codes should correspond to entries listed in Table 15.

[f] Parameter(s) to be monitored or measured in accordance with Table 12 and §63.143 of this Subpart.

TABLE 18.—INFORMATION FOR WASTE MANAGEMENT UNITS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a,b]

Waste management unit identification [c]	Description [d]	Wastewater stream(s) received or managed [e]

[c] Identification codes should correspond to those listed in Table 15.

[e] Stream identification code for each wastewater stream received or managed by each waste management unit. Identification codes should correspond to entries listed in Table 15.

TABLE 20.—WASTEWATER—PERIODIC REPORTING REQUIREMENTS FOR CONTROL DEVICES USED TO COMPLY WITH §§ 63.133–63.138

Control device	Reporting requirements
Thermal incinerator	1. Report all daily average [a] temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Catalytic incinerator	1. Report all daily average [a] upstream temperatures that are outside the range established in the NCS [b] or operating permit. 2. Report all daily average [a] temperature differences across the catalyst bed that are outside the range established in the NCS [b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected. [c]
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is not mixed with the primary fuel.	1. Report all daily average [a] firebox temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Flare	1. Report the duration of all periods when all pilot flames are absent.
Condenser	1. Report all daily average [a] exit temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Carbon adsorber	1. Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is outside the range established in the NCS [b] or operating permit. 2. Report all carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS [b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected. [c]
All control devices	1. Report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating, or 2. Report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] The daily average is the average of all values recorded during the operating day, as specified in § 63.147(d) of this subpart.

[b] NCS = Notification of Compliance Status described in § 63.152 of this subpart.

[c] The periodic reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 63.152(c)(2)(ii)(A) of this subpart.

TABLE 35.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.149 OF SUBPART G

Item of equipment	Control requirement [a]
Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) Water seal with submerged discharge or barrier to protect discharge from wind.

TABLE 35.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.149 OF SUBPART G—Continued

Item of equipment	Control requirement [a]
Manhole [b]	(a) TFSC; or (b) TSFC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and route vapors to a process or to a fuel gas system, or equip with a closed vent system that routes vapors to a control device meeting the requirements of § 63.139(c); or (b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank [c]	Maintain a fixed roof.[d] If the tank is sparged [e] or used for heating or treating by means of an exothermic reaction, a fixed roof and a system shall be maintained that routes the organic hazardous air pollutants vapors to other process equipment or a fuel gas system, or a closed vent system that routes vapors to a control device that meets the requirements of 40 CFR § 63.119 (e)(1) or (e)(2).

[a] Where a tightly fitting solid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.
[b] Manhole includes sumps and other points of access to a conveyance system.
[c] Applies to tanks with capacities of 38 m^3 or greater.
[d] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.
[e] The liquid in the tank is agitated by injecting compressed air or gas.

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(b))

List 1	List 2	List 3
Acetonitrile	Acetaldehyde	Allyl Chloride.
Acetophenone	Acrolein	Bromomethane.
Acrylonitrile	Benzene	Butadiene 1,3.
Biphenyl	Benzyl Chloride	Carbon Disulfide.
Chlorobenzene	Bromoform	Carbon Tetrachloride.
Dichloroethyl Ether	Cumene (isopropylbenzene)	Chloroethane (ethyl chloride).
Diethyl Sulfate	Dichlorobenzene 1,4	Chloroform.
Dimethyl Sulfate	Dichloroethane 1,2	Chloroprene.
Dimethyl Hydrazine 1,1	Dichloroethane 1,1 (ethylidenedichloride)	Dibromoethane 1,2.
Dinitrophenol 2,4	Dichloropropane 1,2	Dichloroethene 1,1 (vinylidene chloride).
Dinitrotoluene 2,4	Dimethylaniline N,N	Dichloropropene 1,3.
Dioxane 1,4	Epichlorohydrin	Hexane-n.
Ethylene Glycol Monobutyl Ether Acetate	Ethyl Acrylate	Methyl Chloride.
Ethylene Glycol Monomethyl Ether Acetate	Ethylbenzene	Methylene Chloride (dichloromethane).
Ethylene Glycol Dimethyl Ether	Ethylene Dibromide	Phosgene.
Hexachlorobenzene	Ethylene Oxide	Propylene Oxide.
Isophorone	Hexachlorobutadiene	Trichloroethane 1,12.
Methanol	Hexachloroethane	Trichloroethylene.
Methyl Methacrylate	Methyl Ethyl Ketone, (2 butanone)	Trimethylpentane 2,2,4.
Nitrobenzene	Methyl Isobutyl Ketone	Vinyl Chloride.
Toluidine	Methyl Tertiary Butyl Ether	
Trichlorobenzene 1,2,4	Naphathalene	
Trichlorophenol 2,4,6	Nitropropane 2	
Triethylamine	Propionaldehyde	
	Styrene.	
	Tetrachloroethane 1,1,2,2.	
	Toluene.	
	Trichloroethane 1,1,1 (methyl chloroform).	
	Vinyl Acetate	
	Xylene-m	
	Xylene-o	

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(b))—Continued

List 1	List 2	List 3
	Xylene-p	

TABLE 37.—DEFAULT BIORATES FOR LIST 1 COMPOUNDS

Compound name	Biorate, K1 L/g MLVSS-hr
ACETONITRILE	0.100
ACETOPHENONE	0.538
ACRYLONITRILE	0.750
BIPHENYL	5.643
CHLOROBENZENE	10.000
DICHLOROETHYL ETHER	0.246
DIETHYL SULFATE	0.105
DIMETHYL HYDRAZINE(1,1)	0.227
DIMETHYL SULFATE	0.178
DINITROPHENOL 2,4	0.620
DINITROTOLUENE(2,4)	0.784
DIOXANE(1,4)	0.393
ETHYLENE GLYCOL DIMETHYL ETHER	0.364
ETHYLENE GLYCOL MONOMETHYL ETHER ACETATE	0.159
ETHYLENE GLYCOL MONOBUTYL ETHER ACETATE	0.496
HEXACHLOROBENZENE	16.179
ISOPHORONE	0.598
METHANOL	0.200
METHYL METHACRYLATE	4.300
NITROBENZENE	2.300
TOLUIDINE (-0)	0.859
TRICHLOROBENZENE 1,2,4	4.393
TRICHLOROPHENOL 2,4,5	4.477
TRIETHYLAMINE	1.064

Figure 1.—Definitions of Terms Used in Wastewater Equations

Main Terms

AMR=Actual mass removal of Table 8 and/or Table 9 compounds achieved by treatment process or a series of treatment processes, kg/hr.

C=Concentration of Table 8 and/or Table 9 compounds in wastewater, ppmw.

CG=Concentration of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, dry basis, ppmv.

CG_c=Concentration of TOC or organic hazardous air pollutants corrected to 3-percent oxygen, in vented gas stream, dry basis, ppmv.

CGS=Concentration of sample compounds in vented gas stream, dry basis, ppmv.

E=Removal or destruction efficiency, percent.

F_{bio}=Site-specific fraction of Table 8 and/or Table 9 compounds biodegraded, unitless.

f^{bio}=Site-specific fraction of an individual Table 8 or Table 9 compound biodegraded, unitless.

Fm=Compound-specific fraction measured factor, unitless (listed in table 34).

Fr=Fraction removal value for Table 8 and/or Table 9 compounds, unitless (listed in Table 9).

Fr_{avg}=Flow-weighted average of the Fr values.

i=Identifier for a compound.

j=Identifier for a sample.

k=Identifier for a run.

K_2=Constant, $41.57 * 10^{-9}$, $(ppm)^{-1}$ (gram-mole per standard m^3) (kg/g), where standard temperature (gram-mole per standard m^3) is 20 °C.

m=Number of samples.

M=Mass, kg.

MW=Molecular weight, kg/kg-mole.

n=Number of compounds.

p=Number of runs.

$\%O_{2d}$=Concentration of oxygen, dry basis, percent by volume.

Q=Volumetric flowrate of wastewater, m^3/hr.

QG=Volumetric flow rate of vented gas stream, dry standard, m^3/min.

QMG=Mass flowrate of TOC (minus methane and ethane) or organic hazardous air pollutants, in vented gas stream, kg/hr.

QMW=Mass flowrate of Table 8 and/or Table 9 compounds in wastewater, kg/hr.

ρ=Density, kg/m^3.

RMR=Required mass removal achieved by treatment process or a series of treatment processes, kg/hr.

t_T=Total time of all runs, hr.

Subscripts

a=Entering.

b=Exiting.

i=Identifier for a compound.

j=Identifier for a sample.

k=Identifier for a run.

m=Number of samples.

n=Number of compounds.

p=Number of runs.

T=Total; sum of individual.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

31. Section 63.161 is amended by revising the definitions of "control device", "first attempt at repair", and "repaired"; and by adding the definitions for "combustion device," "fuel gas," fuel gas system," "on-site or on site," "recapture device," and "recovery device", and "routed to a process or route to a process" to read as follows:

§ 63.161 Definitions.

* * * * *

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic hazardous air pollutant emissions.

* * * * *

Control device means any equipment used for recovering, recapturing, or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, flares, boilers, and process heaters.

* * * * *

First attempt at repair means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in §63.180(b) and (c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

* * * * *

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the chemical manufacturing process unit to which the records pertain, or storage in central files elsewhere at the major source.

* * * * *

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. Recapture devices include, but are not limited to, absorbers, carbon absorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use or reuse. Recovery devices include, but are not limited to, absorbers, carbon absorbers, and condensers. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Repaired means that equipment:

(1) is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart, and

(2) unless otherwise specified in applicable provisions of this subpart, is monitored as specified in § 63.180 (b) and (c), as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed by hard-piping or a closed vent system to any enclosed portion of a process unit where the emissions are predominately recycled and/or consumed in the same manner as a material that fulfills the same function in the process; and/or transformed by chemical reaction into materials that are not organic hazardous air pollutants; and/or incorporated into a product; and/or recovered.

* * * * *

32. Section 63.162 is amended by revising paragraphs (f)(2) and (f)(3); adding paragraphs (g) and (h) to read as follows:

§ 63.162 Standards: General.

* * * * *

(f) * * *

(2) The identification on a valve may be removed after it has been monitored as specified in §§ 63.168(f)(3), and 63.175(e)(7)(i)(D) of this subpart, and no leak has been detected during the follow-up monitoring. If the owner or operator elects to comply using the provisions of § 63.174(c)(1)(i) of this subpart, the identification on a connector may be removed after it is monitored as specified in § 63.174(c)(1)(i) and no leak is detected during that monitoring.

(3) The identification which has been placed on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 63.174(c)(1)(i), may be removed after it is repaired.

(g) Except as provided in paragraph (g)(1) of this section, all terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), refer to the standard calendar periods unless specified otherwise in the section or subsection that imposes the requirement.

(1) If the initial compliance date does not coincide with the beginning of the standard calendar period, an owner or operator may elect to utilize a period beginning on the compliance date, or may elect to comply in accordance with the provisions of paragraphs (g)(2) or (g)(3) of this section.

(2) Time periods specified in this subpart for completion of required tasks may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part. For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(3) Except as provided in paragraph (g)(1) or (g)(2) of this section, where the period specified for compliance is a standard calendar period, if the initial compliance date does not coincide with the beginning of the calendar period, compliance shall be required according to the schedule specified in paragraphs (g)(3)(i) or (g)(3)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(4) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during each period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

(h) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this subpart to fail to take action to repair the leaks within the specified time. If action is taken to repair the leaks within the specified time, failure of that action to successfully repair the leak is not a violation of this subpart. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by applicable provisions of this subpart.

33. Section 63.163 is amended by revising paragraphs (e)(1)(ii) and (g) to read as follows:

§ 63.163 Standards: Pumps in light liquid service.

* * * * *

(e) * * *
(1) * * *
(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 63.172 of this subpart; or
* * * * *
(g) Any pump equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or to a fuel gas system or to a control device that complies with the requirements of § 63.172 of this subpart is exempt from the requirements of paragraphs (b) through (e) of this section.
* * * * *

34. Section 63.164 is amended by revising paragraphs (b)(2) and (h) to read as follows:

§ 63.164 Compressors.

* * * * *
(b) * * *
(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 63.172 of this subpart; or
* * * * *
(h) A compressor is exempt from the requirements of paragraphs (a) through (f) of this section if it is equipped with a closed-vent system to capture and transport leakage from the compressor drive shaft seal back to a process or a fuel gas system or to a control device that complies with the requirements of § 63.172 of this subpart.
* * * * *

35. Section 63.165 is amended by revising paragraph (c) to read as follows:

§ 63.165 Standards: Pressure relief devices in gas/vapor service.

* * * * *
(c) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 63.172 of this subpart is exempt from the requirements of paragraphs (a) and (b) of this section.
* * * * *

36. Section 63.168 is amended by revising the meaning of $\%V_L$ in paragraph (e)(1) and revising paragraph (f)(3) to read as follows:

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

* * * * *
(e)(1) * * *
$\%V_L$=Percent leaking valves as determined through periodic monitoring required in paragraphs (b) through (d) of this section.
* * * * *
(f) * * *
(3) When a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair.
(i) The monitoring shall be conducted as specified in § 63.180 (b) and (c), as appropriate, to determine whether the valve has resumed leaking.
(ii) Periodic monitoring required by paragraphs (b) through (d) of this section may be used to satisfy the requirements of this paragraph (f)(3), if the timing of the monitoring period coincides with the time specified in this paragraph (f)(3). Alternatively, other monitoring may be performed to satisfy the requirements of this paragraph (f)(3), regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in this paragraph (f)(3).
(iii) If a leak is detected by monitoring that is conducted pursuant to paragraph (f)(3) of this section, the owner or operator shall follow the provisions of paragraphs (f)(3)(iii)(A) and (f)(3)(iii)(B) of this section, to determine whether that valve must be counted as a leaking valve for purposes of § 63.168(e) of this subpart.
(A) If the owner or operator elected to use periodic monitoring required by paragraphs (b) through (d) of this section to satisfy the requirements of paragraph (f)(3) of this section, then the valve shall be counted as a leaking valve.
(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraphs (b) through (d) of this section, to satisfy the requirements of paragraph (f)(3) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.
* * * * *

37. Section 63.169 is amended by revising paragraph (c)(3) to read as follows:

§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

* * * * *
(c) * * *
(3) For equipment identified in paragraph (a) of this section that is not monitored by the method specified in § 63.180(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.
* * * * *

38. Section 63.172 is amended by revising paragraphs (b), (c), (h)(2), and (j)(2), and adding paragraph (n) to read as follows:

§ 63.172 Standards: Closed-vent systems and control devices.

* * * * *
(b) Recovery or recapture devices (e.g., condensers and absorbers) shall be designed and operated to recover the organic hazardous air pollutant emissions or volatile organic compounds emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts par million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to the provisions of § 63.179.
(c) Enclosed combustion devices shall be designed and operated to reduce the organic hazardous air pollutant emissions or volatile organic compounds emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent, or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C.
* * * * *
(h) * * *
(2) Repair shall be completed no later than 15 calendar days after the leak is detected, except as provided in paragraph (i) of this section.
* * * * *
(j) * * *
(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line.
* * * * *
(n) After the compliance dates specified in § 63.100 of subpart F of this part, the owner or operator of any control device subject to this subpart that is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart BB, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart BB, may elect to

comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been chosen, in the next periodic report required by § 63.182(d).

39. Section 63.173 is amended by revising paragraphs (d)(1)(ii), (f), and (g) to read as follows:

§ 63.173 Standards: Agitators in gas/vapor service and in light liquid service.

* * * * *

(d) * * *

(1) * * *

(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 63.172 of this subpart; or

* * * * *

(f) Any agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or fuel gas system or to a control device that complies with the requirements of § 63.172 of this subpart is exempt from the requirements of paragraphs (a) through (c) of the section.

(g) Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(1) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each agitator is visually inspected as often as practical and at least monthly.

* * * * *

40. Section 63.174 is amended by revising paragraphs (c)(1)(i), (c)(1)(ii), the introductory text of paragraph (c)(2), revising paragraph (c)(2)(ii); adding paragraphs (c)(2)(iii) and (c)(2)(iv); removing and reserving paragraph (e); revising paragraph (h)(2); and revising paragraphs (i)(1) and (i)(2) to read as follows:

§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.

* * * * *

(c)(1)(i) Except as provided in paragraph (c)(1)(ii) of this section, each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks when it is reconnected or within the first 3 months after being returned to organic hazardous air pollutants service. If the monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section, unless it is determined to be nonrepairable, in which case it is counted as a nonrepairable connector for the purposes of paragraph (i)(2) of this section.

(ii) As an alternative to the requirements in paragraph (c)(1)(i) of this section, an owner or operator may choose not to monitor connectors that have been opened or otherwise had the seal broken. In this case, the owner or operator may not count nonrepairable connectors for the purposes of paragraph (i)(2) of this section. The owner or operator shall calculate the percent leaking connectors for the monitoring periods described in paragraph (b) of this section, by setting the nonrepairable component, C_{AN}, in the equation in paragraph (i)(2) of this section to zero for all monitoring periods.

* * * * *

(2) As an alternative to the requirements of paragraph (b)(3) of this section, each screwed connector 2 inches or less in nominal inside diameter installed in a process unit before the dates specified in paragraph (c)(2)(iii) or (c)(2)(iv) of this section may:

* * * * *

(ii) Be monitored for leaks within the first 3 months after being returned to organic hazardous air pollutants service after having been opened or otherwise had the seal broken. If that monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section.

(iii) For sources subject to subparts F and I of this part, the provisions of paragraph (c)(2) of this section apply to screwed connectors installed before December 31, 1992.

(iv) For sources not identified in paragraph (c)(2)(iii) of this section, the provisions of paragraph (c)(2) of this section apply to screwed connectors installed before the date of proposal of the applicable subpart of this part that references this subpart.

* * * * *

(e) [Reserved]

* * * * *

(h) * * *

(2) If any inaccessible or ceramic or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 63.171 of this subpart and paragraph (g) of this section.

* * * * *

(i) * * *

(1) For the first monitoring period, use the following equation:

$$\% C_L = C_L/(C_t + C_C) \times 100$$

where:

$\% C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b) of this section.

C_L = Number of connectors measured at 500 parts per million or greater, by the method specified in § 63.180(b) of this subpart.

C_t = Total number of monitored connectors in the process unit.

C_C = Optional credit for removed connectors = 0.67 × net (i.e., total removed—total added) number of connectors in organic hazardous air pollutants service removed from the process unit after the compliance date set forth in the applicable subpart for existing process units, and after the date of initial start-up for new process units. If credits are not taken, then $C_C = 0$.

(2) For subsequent monitoring periods, use the following equation:

$$\% C_L = [(C_L - C_{AN})/(C_t + C_C)] \times 100$$

where:

$\% C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b) of this section.

C_L = Number of connectors, including nonrepairables, measured at 500 parts per million or greater, by the method specified in § 63.180(b) of this subpart.

C_{AN} = Number of allowable nonrepairable connectors, as determined by monitoring required in paragraphs (b)(3) and (c) of this section, not to exceed 2 percent of the total connector population, C_t.

C_t = Total number of monitored connectors, including nonrepairables, in the process unit.

C_C = Optional credit for removed connectors = 0.67 × net number (i.e., total removed—total added) of connectors in organic hazardous air pollutants service removed from the process unit after the compliance date set forth in the applicable subpart for existing process units, and after the date of initial start-up for new process units. If credits are not taken, then $C_C = 0$.

* * * * *

41. Section 63.180 is amended by revising paragraphs (b)(4)(ii), the introductory text of paragraph (c), and paragraph (c)(2) to read as follows:

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§ 63.180 Test methods and procedures.

* * * * *

(b) * * *

(4) * * *

(ii) Mixtures of methane in air at the concentrations specified in paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(A) For Phase I, a mixture of methane or other compounds, as applicable, in air at a concentration of approximately, but less than, 10,000 parts per million.

(B) For Phase II, a mixture of methane or other compounds, as applicable, and air at a concentration of approximately, but less than, 10,000 parts per million for agitators, 5,000 parts per million for pumps, and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

(C) For Phase III, a mixture of methane or other compounds, as applicable, and air at a concentration of approximately, but less than, 10,000 parts per million methane for agitators; 2,000 parts per million for pumps in food/medical service; 5,000 parts per million for pumps in polymerizing monomer service; 1,000 parts per million for all other pumps; and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

* * * * *

(c) When equipment is monitored for compliance as required in §§ 63.164(i), 63.165(a), and 63.172(f) or when equipment subject to a leak definition of 500 ppm is monitored for leaks as required by this subpart, the owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects to not adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(4) of this section. In such case, all instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

* * * * *

(2) The background level shall be determined, using the same procedures that will be used to determine whether the equipment is leaking.

* * * * *

42. Section 63.181 is amended by revising paragraphs (d)(7)(i) and (d)(7)(ii), revising the introductory text of paragraphs (g)(2) and (g)(3), and revising paragraph (i) to read as follows:

§ 63.181 Recordkeeping requirements.

* * * * *

(d) * * *

(7)(i) Identification, either by list, location (area or grouping), or tagging of connectors that have been opened or otherwise had the seal broken since the last monitoring period required in § 63.174(b) of this subpart, as described in § 63.174(c)(1) of this subpart, unless the owner or operator elects to comply with the provisions of § 63.174(c)(1)(ii) of this subpart.

(ii) The date and results of monitoring as required in § 63.174(c) of this subpart. If identification of connectors that have been opened or otherwise had the seal broken is made by location under paragraph (d)(7)(i) of this section, then all connectors within the designated location shall be monitored.

* * * * *

(g) * * *

(2) Records of operation of closed-vent systems and control devices, as specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

* * * * *

(3) Records of inspections of closed-vent systems subject to the provisions of § 63.172, as specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

* * * * *

(i) The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (i)(1) or (i)(2) of this section, as provided in paragraph (i)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of "in light liquid service." Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

* * * * *

43. Section 63.182 is amended by adding paragraph (d)(2)(xvii) to read as follows:

§ 63.182 Reporting requirements.

* * * * *

(d) * * *

(2) * * *

(xvii) If applicable, the compliance option that has been selected under § 63.172(n).

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

44. Section 63.190 is amended by adding a sentence to the end of paragraph (d) and revising the last sentence in paragraphs (e)(5)(i) and (e)(5)(ii) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(d) * * * If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.) those items of equipment may be aggregated with any process unit within the source for all purposes under subpart H of this part, providing there is no delay in the applicable compliance date in paragraph (e) of this section.

(e) * * *

(5)(i) * * * The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(m) of this subpart.

(ii) * * * The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(m) of this subpart.

* * * * *

45. Section 63.191 is amending by adding the definition for "on-site or on site" to read as follows:

§ 63.191 Definitions.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the process unit to which the records pertain, or storage in central files elsewhere at the major source.

* * * * *

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46. Section 63.192 is amended by adding two sentences to the end of the introductory text of paragraph (f); revising paragraph (f)(1); adding a sentence to the end of paragraph (f)(2)(iii) and paragraph (g)(1); removing paragraphs (g)(1(i) and (g)(1)(ii); and revising paragraph (k) to read as follows:

§ 63.192 Standard.

* * * * *

(f) * * * If an owner or operator submits copies of reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of reports.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request.

(2) * * *

(iii) * * * These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(g) * * *

(1) * * * Submittals shall be sent on or before the specified date.

* * * * *

(k) The owner or operator of a process unit which meets the criteria of § 63.190 (c), shall comply with the requirements of either paragraph (k)(1) or (k)(2) of this section.

(1) Retain information, data, and analysis used to determine that the process unit does not have the designated organic hazardous air pollutant present in the process. Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the chemical manufacturing process unit does not have the designated organic hazardous air pollutant present in the process.

* * * * *

47. Section 63.193 is revised to read as follows:

§ 63.193 Delegation of authority.

In delegating implementation and enforcement authority to a State under section 112(l) of the Clean Air Act, the authority for § 63.177 of subpart H of this part shall be retained by the Administrator and not transferred to a State.

48. Appendix A of part 63 is amended by revising Methods 304A and 304B to read as follows:

Appendix A to Part 63—Test Methods

Method 304A: Determination of Biodegradation Rates of Organic Compounds (Vent Option)

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. The rates measured by this method shall be used in conjunction with the procedures listed in appendix C of this part to calculate the fraction emitted to the air versus the fraction biodegraded.

1.2 *Principle.* A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The benchtop bioreactor is operated under conditions nearly identical to the target full-scale activated sludge process. Bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the full-scale process are the parameters which are duplicated in the benchtop bioreactor. Biomass shall be removed from the target full-scale activated sludge unit and held for no more than 4 hours prior to use in the benchtop bioreactor. If antifoaming agents are used in the full-scale system, they shall also be used in the benchtop bioreactor. The feed flowing into and the effluent exiting the benchtop bioreactor are analyzed to determine the biodegradation rates of the target compounds. The flow rate of the exit vent is used to calculate the concentration of target compounds (utilizing Henry's law) in the exit gas stream. If Henry's law constants for the compounds of interest are not known, this method cannot be used in the determination of the biodegradation rate and Method 304B is the suggested method. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the benchtop bioreactor are left to the discretion of the source, except where validated methods are available.

2. Apparatus

Figure 1 illustrates a typical laboratory apparatus used to measure biodegradation rates. While the following description refers to Figure 1, the EPA recognizes that alternative reactor configurations, such as alternative reactor shapes and locations of probes and the feed inlet, will also meet the intent of this method. Ensure that the benchtop bioreactor system is self-contained and isolated from the atmosphere (except for the exit vent stream) by leak-checking fittings, tubing, etc.

2.1 *Laboratory apparatus.*

2.1.1 *Benchtop Bioreactor.* The biological reaction is conducted in a biological oxidation reactor of at least 6 liters capacity. The benchtop bioreactor is sealed and equipped with internal probes for controlling and monitoring dissolved oxygen and internal temperature. The top of the reactor is equipped for aerators, gas flow ports, and instrumentation (while ensuring that no leaks to the atmosphere exist around the fittings).

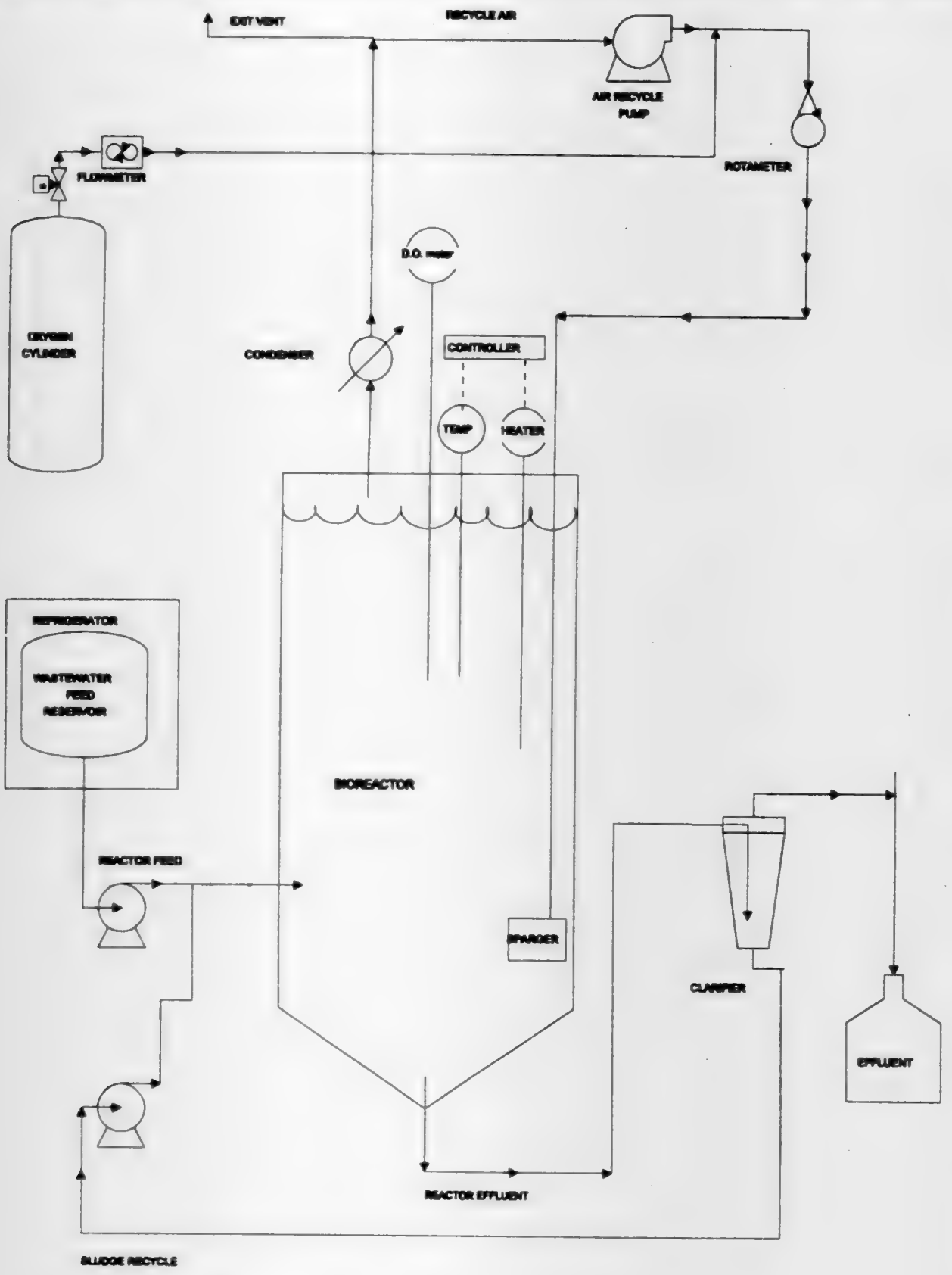

EPA METHOD 304A VENT BIOREACTOR SYSTEM

2.1.2 *Aeration gas.* Aeration gas is added to the benchtop bioreactor through three diffusers, which are glass tubes that extend to the bottom fifth of the reactor depth. A pure oxygen pressurized cylinder is recommended in order to maintain the specified oxygen concentration. Install a blower (e.g., Diaphragm Type, 15 SCFH capacity) to blow the aeration gas into the reactor diffusers. Measure the aeration gas flow rate with a rotameter (e.g., 0–15 SCFH recommended). The aeration gas will rise through the benchtop bioreactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the benchtop bioreactor through a water-cooled (e.g., Allihn-type) vertical condenser. Install the condenser through a gas-tight fitting in the benchtop bioreactor closure. Install a splitter which directs a portion of the gas to an exit vent and the rest of the gas through an air recycle pump back to the benchtop bioreactor. Monitor and record the flow rate through the exit vent at least 3 times per day throughout the day.

2.1.3 *Wastewater Feed.* Supply the wastewater feed to the benchtop bioreactor in a collapsible low-density polyethylene container or collapsible liner in a container (e.g., 20 L) equipped with a spigot cap (collapsible containers or liners of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

2.1.3.1 *Refrigeration System.* Keep the wastewater feed cool by ice or by refrigeration to 4 °C. If using a bleed stream from the equalization tank, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

2.1.3.2 *Wastewater Feed Pump.* The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the benchtop bioreactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the benchtop bioreactor that is numerically equivalent to the retention time in the full-scale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the full-scale system residence time.

2.1.3.3 *Treated wastewater feed.* The benchtop bioreactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

2.1.4 *Clarifier.* The effluent flows to a separate closed clarifier that allows separation of biomass and effluent (e.g., 2-liter pear-shaped glass separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom). Benchtop bioreactor effluent enters the clarifier through a tube inserted to a depth of 0.08 m (3 in.) through a stopper at the top of the clarifier. System effluent flows from a tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the benchtop bioreactor. An additional port is provided near the bottom of the benchtop bioreactor for sampling the reactor contents. The mixed liquor from the benchtop bioreactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

2.1.5 *Temperature Control Apparatus.* Capable of maintaining the system at a temperature equal to the temperature of the full-scale system. The average temperature should be maintained within ±2 °C of the set point.

2.1.5.1 *Temperature Monitoring Device.* A resistance type temperature probe or a thermocouple connected to a temperature readout with a resolution of 0.1 °C or better.

2.1.5.2 *Benchtop Bioreactor Heater.* The heater is connected to the temperature control device.

2.1.6 *Oxygen Control System.* Maintain the dissolved oxygen concentration at the levels present in the full-scale system. Target full-scale activated sludge systems with dissolved oxygen concentration below2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 0.5 mg/L of the target dissolved oxygen level. Target full-scale activated sludge systems with dissolved oxygen concentration above 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 1.5 mg/L of the target dissolved oxygen concentration; however, for target full-scale activated sludge systems with dissolved oxygen concentrations above 2 mg/L, the dissolved oxygen concentration in the benchtop bioreactor may not drop below 1.5 mg/L. If the benchtop bioreactor is outside the control range, the dissolved oxygen is noted and the reactor operation is adjusted.

2.1.6.1 *Dissolved Oxygen Monitor.* Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (e.g., 0 to 15 mg/L, 0 to 50 °C).

2.1.6.2 *Benchtop bioreactor Pressure Monitor.* The benchtop bioreactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 13-cm water vacuum to 13-cm water pressure or better. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed), admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ± 0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

2.1.7 *Connecting Tubing.* All connecting tubing shall be Teflon or equivalent in impermeability. The only exception to this specification is the tubing directly inside the pump head of the wastewater feed pump, which may be Viton, Silicone or another type of flexible tubing. Note: Mention of trade names or products does not constitute endorsement by the U.S. Environmental Protection Agency.

2.2 *Analysis.* If the identity of the compounds of interest in the wastewater is not known, a representative sample of the wastewater shall be analyzed in order to identify all of the compounds of interest present. A gas chromatography/mass spectrometry screening method is recommended.

2.2.1 After identifying the compounds of interest in the wastewater, develop and/or use one or more analytical techniques capable of measuring each of those compounds (more than one analytical technique may be required, depending on the characteristics of the wastewater). Test Method 18, found in appendix A of 40 CFR part 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile to make this technique appropriate. The limit of quantitation for each compound shall be determined.[1] If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, the operation of the Method 304 unit may be altered to attempt to increase the effluent concentration above the limit of quantitation. Modifications to the method shall be approved prior to the test. The request should be addressed to Method 304 contact, Emissions Measurement Center, Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

2.2.2 *Calibration Standards.* Prepare calibration standards from pure certified standards in an aqueous medium. Prepare and analyze three concentrations of calibration standards for each target component (or for a mixture of components) in triplicate daily throughout the analyses of the test samples. At each concentration level, a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

3. *Reagents*

3.1 *Wastewater.* Obtain a representative sample of wastewater at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (see section 2.1.3).

If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of determination as possible. Collect the sample by pumping the wastewater into the 20–L collapsible container. The loss of volatiles shall be minimized from the wastewater by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

3.2 *Biomass.* Obtain the biomass or activated sludge used for rate constant determination in the bench-scale process from the existing full-scale process or from a representative biomass culture (e.g., biomass that has been developed for a future full-scale process). This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. Collect the sample either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. Transport the sample to the laboratory within no more than 4 hours of collection. Maintain the biomass concentration in the benchtop bioreactor at the level of the full-scale system +10 percent throughout the sampling period of the test method.

4. *Procedure.* Safety Note: If explosive gases are produced as a byproduct of biodegradation and could realistically pose a hazard, closely monitor headspace concentration of these gases to ensure laboratory safety. Placement of the benchtop bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

4.1 *Benchtop Bioreactor Operation.* Charge the mixed liquor to the benchtop bioreactor, minimizing headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. Fasten the benchtop bioreactor headplate to the reactor over the liquid surface. Maintain the temperature of the contents of the benchtop bioreactor system at the temperature of the target full-scale system, +2 °C, throughout the testing period. Monitor and record the temperature of the benchtop bioreactor contents at least to the nearest 0.1 °C.

4.1.1 *Wastewater Storage.* Collect the wastewater sample in the 20–L collapsible container. Store the container at 4 °C throughout the testing period. Connect the container to the benchtop bioreactor feed pump.

4.1.2 *Wastewater Flow Rate.* The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test, the container shall be connected to the feed pump and solution shall be pumped to the benchtop bioreactor at the required flow rate to achieve the calculated hydraulic residence time of wastewater in the aeration tank.

$$Q_{test} = Q_{fs}\frac{L}{V_{fs}} \qquad \text{Eqn 304A} - 1$$

Where:

Q_{test}=wastewater flow rate (L/min)

Qf_{fs}=average flow rate of full-scale process (L/min)

V_{fs}=volume of full-scale aeration tank (L)

The target flow rate in the test apparatus is the same as the flow rate in the target full-scale process multiplied by the ratio of benchtop bioreactor volume (e.g., 6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. Discharge the benchtop bioreactor effluent to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.

4.1.3 *Sludge Recycle Rate.* Set the sludge recycle rate at a rate sufficient to prevent accumulation in the bottom of the clarifier. Set the air circulation rate sufficient to maintain the biomass in suspension.

4.1.4 *Benchtop Bioreactor Operation and Maintenance.* Temperature, dissolved oxygen concentration, exit vent flow rate, benchtop bioreactor effluent flow rate, and air circulation rate shall be measured and recorded three times throughout each day of benchtop bioreactor operation. If other parameters (such as pH) are measured and maintained in the target full-scale unit, these parameters, where appropriate, shall be monitored and maintained to target full-scale specifications in the benchtop bioreactor. At the beginning of each sampling period (section 4.2), sample the benchtop bioreactor contents for suspended solids analysis. Take this sample by loosening a clamp on a length of tubing attached to the lower side port. Determine the suspended solids gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods[3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the benchtop bioreactor, and the volume that is wasted shall be replaced with an equal volume of the reactor effluent. Add thickened activated sludge mixed liquor as necessary to the benchtop bioreactor to increase the suspended solids concentration to the desired level. Pump this mixed liquor to the benchtop bioreactor through the upper side port (Item 24 in Figure 1). Change the membrane on the dissolved oxygen probe before starting the test. Calibrate the oxygen probe immediately before the start of the test and each time the membrane is changed.

4.1.5 *Inspection and Correction Procedures.* If the feed line tubing becomes clogged, replace with new tubing. If the feed flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump or check the flow measuring device and measure flow rate again until target flow rate is achieved.

4.2 *Test Sampling.* At least two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. Sample the clarifier discharge directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the benchtop bioreactor feed, removing a connector, and squeezing the collapsible feed container. Store both influent and effluent samples at 4 °C immediately after collection and analyze within 8 hours of collection.

4.2.1 *Frequency of Sampling.* During the test, sample and analyze the wastewater feed and the clarifier effluent at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, sample the wastewater feed simultaneously with or immediately after the effluent sample. Calculate the relative standard deviation (RSD) of the amount removed (i.e., effluent concentration—wastewater feed concentration). The RSD values shall be < 15 percent. If an RSD value is > 15 percent, continue sampling and analyzing influent and effluent sets of samples until the RSD values are within specifications.

4.2.2 *Sampling After Exposure of System to Atmosphere.* If, after starting sampling procedures, the benchtop bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), allow at least one hydraulic residence time to elapse before resuming sampling.

5. Operational Checks and Calibration

5.1 *Dissolved Oxygen.* Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. Control the dissolved oxygen concentration in the benchtop bioreactor by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, bleed a small amount of aeration gas from the system on the pressure side (i. e., immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, slow or stop the oxygen input to the system until the dissolved oxygen concentration approaches the correct level.

5.2 *Sludge Wasting.* Determine the suspended solids concentration (section 4.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, determine the suspended solids concentration after the final sample set is taken. If the suspended solids concentration

exceeds the specified concentration, remove a fraction of the sludge from the benchtop bioreactor. The required volume of mixed liquor to remove is determined as follows:

$$V_W = V_r\left(\frac{S_m - S_s}{S_m}\right) \qquad \text{Eqn 304A} - 2$$

Where:
V_w is the wasted volume (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

Remove the mixed liquor from the benchtop bioreactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. Clamp the tube when the correct volume has been wasted. Replace the volume of the liquid wasted by pouring the same volume of effluent back into the benchtop bioreactor. Dispose of the waste sludge properly.

5.3 *Sludge Makeup.* In the event that the suspended solids concentration is lower than the specifications, add makeup sludge back into the benchtop bioreactor. Determine the amount of sludge added by the following equation:

$$V_w = V_r\left(\frac{S_s - S_m}{S_w}\right) \qquad \text{Eqn 304A} - 3$$

Where:
V_w is the volume of sludge to add (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_w is the solids in the makeup sludge (g/L),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

5.4 *Wastewater Pump Calibration.* Determine the wastewater flow rate by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. Adjust the pump speed to deliver the specified flow rate.

6. Calculations

6.1 *Nomenclature.* The following symbols are used in the calculations.

C_i=Average inlet feed concentration for a compound of interest, as analyzed (mg/L)
C_o=Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)
X=Biomass concentration, mixed liquor suspended solids (g/L)
t=Hydraulic residence time in the benchtop bioreactor (hours)
V=Volume of the benchtop bioreactor (L)
Q=Flow rate of wastewater into the benchtop bioreactor, average (L/hour)

6.2 *Residence Time.* The hydraulic residence time of the benchtop bioreactor is equal to the ratio of the volume of the benchtop bioreactor (L) to the flow rate (L/h)

$$t = \frac{V}{Q} \qquad \text{Eqn 304A} - 4$$

6.3 *Rate of Biodegradation.* Calculate the rate of biodegradation for each component with the following equation:

$$\text{Rate}\left(\frac{mg}{L-h}\right) = \frac{C_i - C_o}{t} \qquad \text{Eqn 304A} - 5$$

6.4 *First-Order Biorate Constant.* Calculate the first-order biorate constant (K1) for each component with the following equation:

$$K1\left(\frac{L}{g-h}\right) = \frac{C_i - C_o}{t\,C_o X} \qquad \text{Eqn 304A} - 6$$

6.5 *Relative Standard Deviation (RSD).* Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$RSD = \frac{100}{\bar{S}}\left(\sum_{i=1}^{n}\frac{(S_i - \bar{S})^2}{(n-1)}\right)^{1/2} \qquad \text{Eqn 304A} - 7$$

6.6 *Determination of Percent Air Emissions and Percent Biodegraded.* Use the results from this test method and follow the applicable procedures in appendix C of 40 CFR part 63, entitled, "Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit" to determine F_{bio}.

7. Bibliography

1. "Guidelines for data acquisition and data quality evaluation in Environmental Chemistry", Daniel MacDoughal, Analytical Chemistry, Volume 52, p. 2242, 1980.

2. Test Method 18, 40 CFR part 60, appendix A.

3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105 °C, APHA, 1985.

4. Water7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

Method 304B: Determination of Biodegradation Rates of Organic Compounds (Scrubber Option)

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. Full-scale systems embody biodegradation and air emissions in competing reactions. This method measures biodegradation in absence of air emissions. The rates measured by this method shall be used in conjunction with the procedures listed in appendix C of this part to calculate the fraction emitted to the air versus the fraction biodegraded.

1.2 *Principle.* A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The benchtop bioreactor is operated under conditions nearly identical to the target full-scale activated sludge process, except that air emissions are not a factor. The benchtop bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the target full-scale process are the parameters which are duplicated in the laboratory system. Biomass shall be removed from the target full-scale activated sludge unit and held for no more than 4 hours prior to use in the benchtop bioreactor. If antifoaming agents are used in the full-scale system, they shall also be used in the benchtop bioreactor. The feed flowing into and the effluent exiting the benchtop bioreactor are analyzed to determine the biodegradation rates of the target compounds. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the benchtop bioreactor

are left to the discretion of the source, except where validated methods are available.

2. Apparatus

Figure 1 illustrates a typical laboratory apparatus used to measure biodegradation rates. While the following description refers to Figure 1, the EPA recognizes that alternative reactor configurations, such as alternative reactor shapes and locations of probes and the feed inlet, will also meet the intent of this method. Ensure that the benchtop bioreactor system is self-contained and isolated from the atmosphere by leak-checking fittings, tubing, etc.

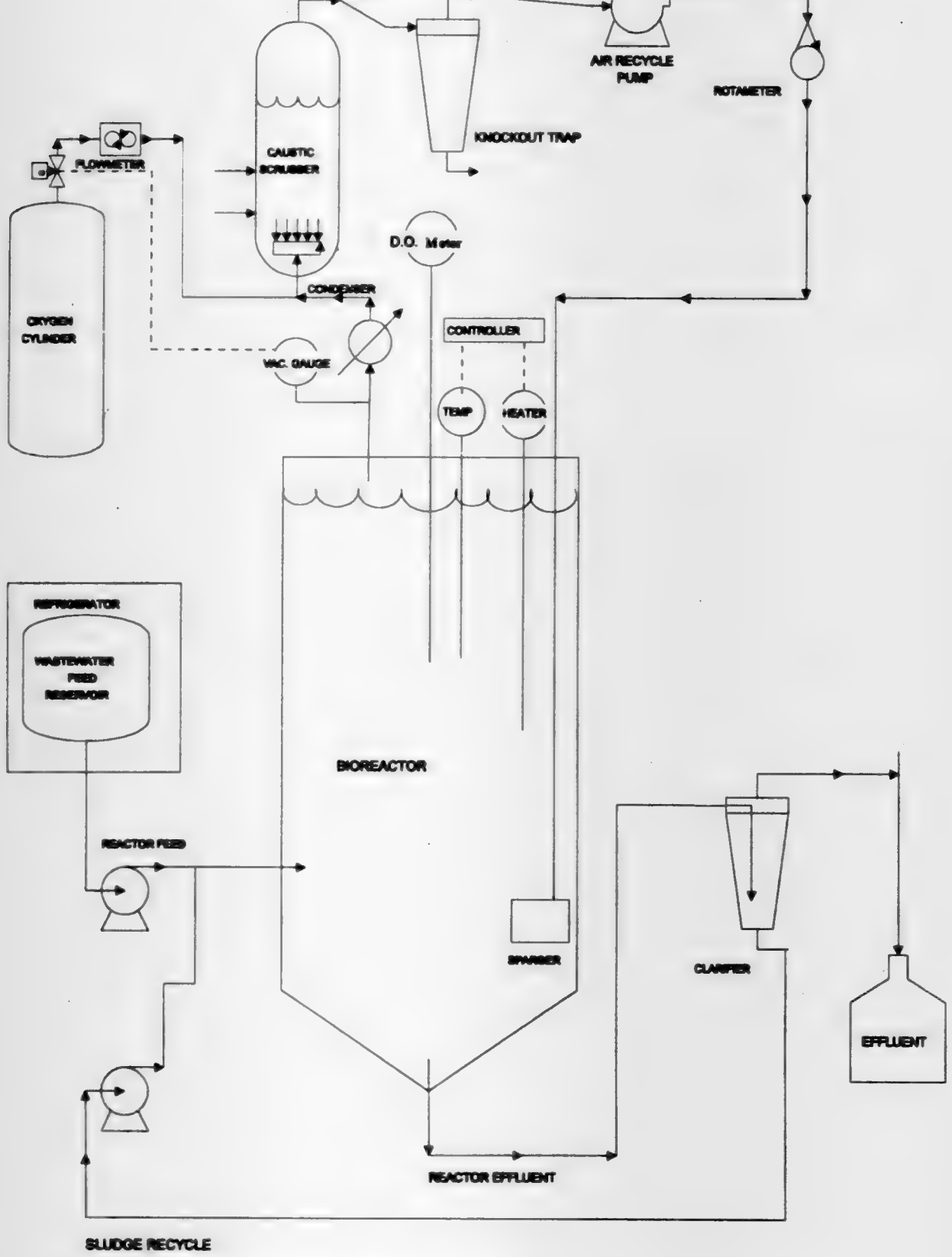

EPA METHOD 304B BIOREACTOR SYSTEM

2.1 *Laboratory apparatus.*

2.1.1 *Benchtop Bioreactor.* The biological reaction is conducted in a biological oxidation reactor of at least 6-liters capacity. The benchtop bioreactor is sealed and equipped with internal probes for controlling and monitoring dissolved oxygen and internal temperature. The top of the benchtop bioreactor is equipped for aerators, gas flow ports, and instrumentation (while ensuring that no leaks to the atmosphere exist around the fittings).

2.1.2 *Aeration gas.* Aeration gas is added to the benchtop bioreactor through three diffusers, which are glass tubes that extend to the bottom fifth of the reactor depth. A pure oxygen pressurized cylinder is recommended in order to maintain the specified oxygen concentration. Install a blower (e.g., Diaphragm Type, 15 SCFH capacity) to blow the aeration gas into the benchtop bioreactor diffusers. Measure the aeration gas flow rate with a rotameter (e.g., 0–15 SCFH recommended). The aeration gas will rise through the benchtop bioreactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the benchtop bioreactor through a water-cooled (e.g., Allihn-type) vertical condenser. Install the condenser through a gas-tight fitting in the benchtop bioreactor closure. Design the system so that at least 10 percent of the gas flows through an alkaline scrubber containing 175 mL of 45 percent by weight solution of potassium hydroxide (KOH) and 5 drops of 0.2 percent alizarin yellow dye. Route the balance of the gas through an adjustable scrubber bypass. Route all of the gas through a 1–L knock-out flask to remove entrained moisture and then to the intake of the blower. The blower recirculates the gas to the benchtop bioreactor.

2.1.3 *Wastewater Feed.* Supply the wastewater feed to the benchtop bioreactor in a collapsible low-density polyethylene container or collapsible liner in a container (e.g., 20 L) equipped with a spigot cap (collapsible containers or liners of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

2.1.3.1 *Refrigeration System.* Keep the wastewater feed cool by ice or by refrigeration to 4°C. If using a bleed stream from the equalization tank, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

2.1.3.2 *Wastewater Feed Pump.* The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the benchtop bioreactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the benchtop bioreactor that is numerically equivalent to the retention time in the target full-scale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the target full-scale system residence time.

2.1.3.3 *Treated wastewater feed.* The benchtop bioreactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

2.1.4 *Clarifier.* The effluent flows to a separate closed clarifier that allows separation of biomass and effluent (e.g., 2-liter pear-shaped glass separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom). Benchtop bioreactor effluent enters the clarifier through a tube inserted to a depth of 0.08 m (3 in.) through a stopper at the top of the clarifier. System effluent flows from a tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the benchtop bioreactor. An additional port is provided near the bottom of the benchtop bioreactor for sampling the reactor contents. The mixed liquor from the benchtop bioreactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

2.1.5 *Temperature Control Apparatus.* Capable of maintaining the system at a temperature equal to the temperature of the full-scale system. The average temperature should be maintained within ±2°C of the set point.

2.1.5.1 *Temperature Monitoring Device.* A resistance type temperature probe or a thermocouple connected to a temperature readout with a resolution of 0.1°C or better.

2.1.5.2 *Benchtop Bioreactor Heater.* The heater is connected to the temperature control device.

2.1.6 *Oxygen Control System.* Maintain the dissolved oxygen concentration at the levels present in the full-scale system. Target full-scale activated sludge systems with dissolved oxygen concentration below 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 0.5 mg/L of the target dissolved oxygen level. Target full-scale activated sludge systems with dissolved oxygen concentration above 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 1.5 mg/L of the target dissolved oxygen concentration; however, for target full-scale activated sludge systems with dissolved oxygen concentrations above 2 mg/L, the dissolved oxygen concentration in the benchtop bioreactor may not drop below 1.5 mg/L. If the benchtop bioreactor is outside the control range, the dissolved oxygen is noted and the reactor operation is adjusted.

2.1.6.1 *Dissolved Oxygen Monitor.* Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (e.g., 0 to 15 mg/L, 0 to 50°C).

2.1.6.2 *Benchtop Bioreactor Pressure Monitor.* The benchtop bioreactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 13-cm water vacuum to 13-cm water pressure or better. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed), admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ± 0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

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2.2.1 After identifying the compounds of interest in the wastewater, develop and/or use one or more analytical technique capable of measuring each of those compounds (more than one analytical technique may be required, depending on the characteristics of the wastewater). Method 18, found in appendix A of 40 CFR part 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile to make this technique appropriate. The limit of quantitation for each compound shall be determined.[1] If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, the operation of the Method 304 unit may be altered to attempt to increase the effluent concentration above the limit of quantitation. Modifications to the method shall be approved prior to the test. The request should be addressed to Method 304 contact, Emissions Measurement Center, Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

2.2.2 *Calibration Standards.* Prepare calibration standards from pure certified standards in an aqueous medium. Prepare and analyze three concentrations of calibration standards for each target component (or for a mixture of components) in triplicate daily throughout the analyses of the test samples. At each concentration level,

a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

3. Reagents

3.1 *Wastewater.* Obtain a representative sample of wastewater at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (See Section 2.1.3). If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of determination as possible. Collect the sample by pumping the wastewater into the 20–L collapsible container. The loss of volatiles shall be minimized from the wastewater by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

3.2 *Biomass.* Obtain the biomass or activated sludge used for rate constant determination in the bench-scale process from the existing full-scale process or from a representative biomass culture (e.g., biomass that has been developed for a future full-scale process). This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. Collect the sample either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. Transport the sample to the laboratory within no more than 4 hours of collection. Maintain the biomass concentration in the benchtop bioreactor at the level of the target full-scale system +10 percent throughout the sampling period of the test method.

4. Procedure

Safety Note: If explosive gases are produced as a byproduct of biodegradation and could realistically pose a hazard, closely monitor headspace concentration of these gases to ensure laboratory safety. Placement of the benchtop bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

4.1 *Benchtop Bioreactor Operation.* Charge the mixed liquor to the benchtop bioreactor, minimizing headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. Fasten the benchtop bioreactor headplate to the reactor over the liquid surface. Maintain the temperature of the contents of the benchtop bioreactor system at the temperature of the target full-scale system, +2 °C, throughout the testing period. Monitor and record the temperature of the reactor contents at least to the nearest 0.1 °C.

4.1.1 *Wastewater Storage.* Collect the wastewater sample in the 20–L collapsible container. Store the container at 4 °C throughout the testing period. Connect the container to the benchtop bioreactor feed pump.

4.1.2 *Wastewater Flow Rate.* The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test, the container shall be connected to the feed pump and solution shall be pumped to the benchtop bioreactor at the required flow rate to achieve the calculated hydraulic residence time of wastewater in the aeration tank.

$$Q_{test} = Q_{fs}\frac{L}{V_{fs}} \qquad \text{Eqn 304B–1}$$

Where:

Q_{test}=wastewater flow rate (L/min)

Q_{fs}=average flow rate of full-scale process (L/min)

V_{fs}=volume of full-scale aeration tank (L)

The target flow rate in the test apparatus is the same as the flow rate in the target full-scale process multiplied by the ratio of benchtop bioreactor volume (e.g., 6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the target full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. Discharge the benchtop bioreactor effluent to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.

4.1.3 *Sludge Recycle Rate.* Set the sludge recycle rate at a rate sufficient to prevent accumulation in the bottom of the clarifier. Set the air circulation rate sufficient to maintain the biomass in suspension.

4.1.4 *Benchtop Bioreactor Operation and Maintenance.* Temperature, dissolved oxygen concentration, flow rate, and air circulation rate shall be measured and recorded three times throughout each day of testing. If other parameters (such as pH) are measured and maintained in the target full-scale unit, these parameters shall, where appropriate, be monitored and maintained to full-scale specifications in the benchtop bioreactor. At the beginning of each sampling period (section 4.2), sample the benchtop bioreactor contents for suspended solids analysis. Take this sample by loosening a clamp on a length of tubing attached to the lower side port. Determine the suspended solids gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods[3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the benchtop bioreactor, and the volume that is wasted shall be replaced with an equal volume of the benchtop bioreactor effluent. Add thickened activated sludge mixed liquor as necessary to the benchtop bioreactor to increase the suspended solids concentration to the desired level. Pump this mixed liquor to the benchtop bioreactor through the upper side port (Item 24 in Figure 1). Change the membrane on the dissolved oxygen probe before starting the test. Calibrate the oxygen probe immediately before the start of the test and each time the membrane is changed. The scrubber solution shall be replaced each weekday with 175 mL 45 percent W/W KOH solution to which five drops of 0.2 percent alizarin yellow indicator in water have been added. The potassium hydroxide solution in the alkaline scrubber shall be changed if the alizarin yellow dye color changes.

4.1.5 *Inspection and Correction Procedures.* If the feed line tubing becomes clogged, replace with new tubing. If the feed flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump or check the flow measuring device and measure flow rate again until target flow rate is achieved.

4.2 *Test Sampling.* At least two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. Sample the clarifier discharge directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the benchtop bioreactor feed, removing a connector, and squeezing the collapsible feed container. Store both influent and effluent samples at 4°C immediately after collection and analyze within 8 hours of collection.

4.2.1 *Frequency of Sampling.* During the test, sample and analyze the wastewater feed and the clarifier effluent at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, sample the wastewater feed simultaneously with or immediately after the effluent sample. Calculate the RSD of the amount removed (i.e., effluent concentration—wastewater feed concentration). The RSD values shall be < 15 percent. If an RSD value is > 15 percent, continue sampling and analyzing influent and effluent sets of samples until the RSD values are within specifications.

4.2.2 *Sampling After Exposure of System to Atmosphere.* If, after starting sampling procedures, the benchtop bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), allow at least one hydraulic residence time to elapse before resuming sampling.

5. Operational Checks and Calibration

5.1 *Dissolved Oxygen.* Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. Control the dissolved oxygen concentration in the benchtop bioreactor by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, bleed a small amount of aeration gas from the system

on the pressure side (i.e., immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, slow or stop the oxygen input to the system until the dissolved oxygen concentration approaches the correct level.

5.2 *Sludge Wasting.* Determine the suspended solids concentration (section 4.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, determine the suspended solids concentration after the final sample set is taken. If the suspended solids concentration exceeds the specified concentration, remove a fraction of the sludge from the benchtop bioreactor. The required volume of mixed liquor to remove is determined as follows:

$$V_w = V_r\left(\frac{S_m - S_s}{S_m}\right) \qquad \text{Eqn 304B} - 2$$

Where:
V_w is the wasted volume (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

Remove the mixed liquor from the benchtop bioreactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. Clamp the tube when the correct volume has been wasted. Replace the volume of the liquid wasted by pouring the same volume of effluent back into the benchtop bioreactor. Dispose of the waste sludge properly.

5.3 *Sludge Makeup.* In the event that the suspended solids concentration is lower than the specifications, add makeup sludge back into the benchtop bioreactor. Determine the amount of sludge added by the following equation:

$$V_w = V_r\left(\frac{S_s - S_m}{S_w}\right) \qquad \text{Eqn 304B} - 3$$

Where:
V_w is the volume of sludge to add (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_w is the solids in the makeup sludge (g/L),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

5.4 *Wastewater Pump Calibration.* Determine the wastewater flow rate by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. Adjust the pump speed to deliver the specified flow rate.

6. Calculations

6.1 *Nomenclature.* The following symbols are used in the calculations.

C_i=Average inlet feed concentration for a compound of interest, as analyzed (mg/L)
C_o=Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)
X=Biomass concentration, mixed liquor suspended solids (g/L)
t=Hydraulic residence time in the benchtop bioreactor (hours)
V=Volume of the benchtop bioreactor (L)
Q=Flow rate of wastewater into the benchtop bioreactor, average (L/hour)

6.2 *Residence Time.* The hydraulic residence time of the benchtop bioreactor is equal to the ratio of the volume of the benchtop bioreactor (L) to the flow rate (L/h)

$$t = \frac{V}{Q} \qquad \text{Eqn 304B} - 4$$

6.3 *Rate of Biodegradation.* Calculate the rate of biodegradation for each component with the following equation:

$$\text{Rate}\left(\frac{mg}{L-h}\right) = \frac{C_i - C_o}{t} \qquad \text{Eqn 304B} - 5$$

6.4 *First-Order Biorate Constant.* Calculate the first-order biorate constant (K1) for each component with the following equation:

$$K1\left(\frac{L}{g-h}\right) = \frac{C_i - C_o}{t\,C_o X} \qquad \text{Eqn 304B} - 6$$

6.5 *Relative Standard Deviation (RSD).* Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$RSD = \frac{100}{\bar{S}}\left(\sum_{i=1}^{n}\frac{(S_i - \bar{S})^2}{(n-1)}\right)^{1/2} \qquad \text{Eqn 304B} - 7$$

6.6 *Determination of Percent Air Emissions and Percent Biodegraded.* Use the results from this test method and follow the applicable procedures in appendix C of 40 CFR part 63, entitled, "Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit" to determine F_{bio}.

7. Bibliography

1. "Guidelines for data acquisition and data quality evaluation in Environmental Chemistry", Daniel MacDoughal, Analytical Chemistry, Volume 52, p. 2242, 1980.
2. Test Method 18, 40 CFR part 60, Appendix A.
3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105 °C, APHA, 1985.
4. Water7, Hazardous Waste Treatment, Storage, and disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.
5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

52. Appendix C of part 63 is revised to read as follows:

Appendix C to Part 63—Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

I. Purpose

The purpose of this appendix is to define the procedures for an owner or operator to use to calculate the site specific fraction of organic compounds biodegraded (F_{bio}) in a biological treatment unit. If an acceptable level of organic compounds is destroyed rather than emitted to the air or remaining in the effluent, the biological treatment unit may be used to comply with the applicable treatment requirements without the unit being covered and vented through a closed vent system to an air pollution control device.

The determination of F_{bio} shall be made on a system as it would exist under the rule. The owner or operator should anticipate changes that would occur to the wastewater flow and concentration of organics, to be treated by the biological treatment unit, as a result of enclosing the collection and treatment system as required by the rule.

The forms presented in this appendix are designed to address uniform well-mixed or completely mixed systems. Uniform well-mixed or completely mixed systems are biological treatment activated sludge systems where measurements of parameters that indicate performance, e.g., MLVSS, organic compound concentration, and dissolved oxygen, are consistent throughout the system.

Systems that are not uniform well-mixed systems should be subdivided into a series of zones that have uniform characteristics within each zone.

The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. The number of zones could vary from one in a well-mixed conventional activated sludge tank to numerous zones in a large surface-aerated impoundment system. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

II. Definitions

Biological treatment unit = wastewater treatment unit designed and operated to promote the growth of bacteria to destroy organic materials in wastewater.

f_{bio} = The fraction of individual applicable organic compounds in the wastewater biodegraded in a biological treatment unit.

F_{bio} = The fraction of total applicable organic compounds in the wastewater biodegraded in a biological treatment unit.

Fe = The fraction of applicable organic compounds emitted from the wastewater to the atmosphere.

K1 = First order biodegradation rate constant, L/g MLVSS-hr

KL = liquid-phase mass transfer coefficient, m/s

M = compound specific mass flow weighted average of organic compounds in the wastewater, Mg/Yr

III. Procedures for Determination of f_{bio}

The first step in the analysis to determine if a biological treatment unit may be used without being covered and vented through a closed-vent system to an air pollution control device, is to determine the compound-specific f_{bio}. The following four procedures may be used to determine f_{bio}:

(1) EPA Test Method 304A or 304B (appendix A, part 63)—Method for the Determination of Biodegradation Rates of Organic Compounds,

(2) Performance data with and without biodegradation,

(3) Inlet and outlet concentration measurements,

(4) Batch Tests.

All procedures must be executed so that the resulting F_{bio} is based on the collection system and waste management units being in compliance with the regulation. If the collection system and waste management units meet the suppression requirements at the time of the test, any of the four procedures may be chosen. If the collection system and waste management units are not in compliance at the time of the performance test, then only Method 304A, 304B, or the Batch Test shall be chosen. If Method 304A, 304B, or the Batch Test is used, any anticipated changes to the influent of the full-scale biological treatment unit that will occur after the facility has enclosed the collection system must be represented in the influent feed to the benchtop bioreactor unit, or test unit.

Select one or more appropriate procedures from the four listed above based on the availability of site specific data. If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a benchtop bioreactor to determine the first-order biodegradation rate constant. For compounds that represent a small proportion of the mass of the regulated compounds in the wastewater, an owner or operator may elect to assume the first order biodegradation constant is zero. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. For compounds that represent a small proportion of the mass of the regulated compounds in the wastewater, an owner or operator may elect to assume the first order biodegradation constant is zero. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a uniform well-mixed or completely mixed system. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used, is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and start-up of the unit. The flow chart in Figure 1 outlines the steps to use for each of the procedures.

A. Method 304A or 304B (Procedure 1)

If the first procedure is selected, follow the instructions in appendix A of part 63 Method 304A "Method for the Determination of Biodegradation Rates of Organic Compounds (Vented Option)" or Method 304B "Method for the Determination of Biodegradation Rates of Organic Compounds (Scrubber Option)." Method 304A or 304B provides instruction on setting up and operating a self-contained benchtop bioreactor system which is operated under conditions representative of the target full-scale system. Method 304A uses a benchtop bioreactor system with a vent, and uses modeling to estimate any air emissions. Method 304B uses a benchtop bioreactor system which is equipped with a scrubber and is not vented.

There are some restrictions on which method a source may use. If the facility is measuring the rate of biodegradation of compounds that may tend to react or hydrolyze in the scrubber of Method 304B, this method shall not be used and Method 304A is the required method. If a Henry's law value is not available to use with Form V, then Method 304A shall not be used and Method 304B is the required method. When using either method, the feed flow to the benchtop bioreactor shall be representative of the flow and concentration of the wastewater that will be treated by the full-scale biological treatment unit after the collection and treatment system has been enclosed as required under the applicable subpart.

The conditions under which the full-scale biological treatment unit is run establish the operating parameters of Method 304A or 304B. If the biological treatment unit is operated under abnormal operating conditions (conditions outside the range of critical parameters examined and confirmed in the laboratory), the EPA believes this will adversely affect the biodegradation rate and is an unacceptable treatment option. The facility would be making multiple runs of the test method to simulate the operating range for its biological treatment unit. For wide ranges of variation in operating parameters, the facility shall demonstrate the biological treatment unit is achieving an acceptable level of control, as required by the regulation, across the ranges and not only at the endpoints.

If Method 304A is used, complete Form V initially. Form V is used to calculate K1 from the Method 304A results. Form V uses the Henry's law constant to estimate the fraction lost from the benchtop reactor vent. The owner or operator shall use the Henry's law values in Table I. Form V also gives direction for calculating an equivalent KL. Note on Form V if the calculated number for line 11 is greater than the calculated value for line 13, this procedure shall not be used to demonstrate the compound is biodegradable. If line 11 is greater than line 13, this is an indication the fraction emitted from the vent is greater than the fraction biodegraded. The equivalent KL determined on Form V is used in Form II (line 6). Estimation of the Fe and f_{bio} must be done following the steps in Form III. Form III uses the previously calculated values of K1 and KL (equivalent KL), and site-specific parameters of the full-scale bioreactor as input to the calculations. Forms II, III, and V must be completed for each organic compound in the wastewater to determine Fe and f_{bio}.

If Method 304B is used, perform the method and use the measurements to determine K1, which is the first-order biodegradation rate constant. Form I lists the sequence of steps in the procedure for calculating K1 from the Method 304B results. Once K1 is determined, KL must be calculated by use of mass transfer equations. Form II outlines the procedure to follow for use of mass transfer equations to determine KL. A computer program which incorporates these mass transfer equations may be used. Water7 is a program that incorporates these mass transfer equations and may be used to determine KL. Refer to Form II–A to determine KL, if Water7 or the most recent update to this model is used. In addition, the Bay Area Sewage Toxics Emission (BASTE) model version 3.0 or equivalent upgrade and the TOXCHEM (Environment Canada's Wastewater Technology Centre and Environmega, Ltd.) model version 1.10 or equivalent upgrade may also be used to determine KL for the biological treatment unit with several stipulations. The programs must be altered to output a KL value which is based on the site-specific parameters of the unit modeled, and the Henry's law values listed in Table I must be substituted for the existing Henry's law values in the programs. Input values used in the model and corresponding output values shall become documentation of the f_{bio} determination. The owner or operator should be aware these programs do not allow modeling of certain

units. To model these units, the owner or operator shall use one of the other appropriate procedures as outlined in this appendix. The owner or operator shall not use a default value for KL. The KL value determined by use of these models shall be based on the site-specific parameters of the specific unit. This KL value shall be inserted in Form II (line 6). Estimation of the Fe and f_{bio} must be done following the steps in Form III. Form III uses the previously calculated values of K1 and KL, and site-specific parameters of the full-scale bioreactor as input to the calculations. Forms I, II, and III must be completed for each organic compound in the wastewater to determine Fe and f_{bio}.

B. Performance Data With and Without Biodegradation (Procedure 2)

Procedure 2 uses site-specific performance data that represents or characterizes operation of the unit both with and without biodegradation. As previously mentioned, proper determination of f_{bio} must be made on a system as it would exist under the rule. Using Form IV, calculate KL and K1. After KL and K1 are determined, Form III is used to calculate Fe and f_{bio} for each organic compound present in the wastewater.

C. Inlet and Outlet Concentration Measurements (Procedure 3)

Procedure 3 uses meesured inlet and outlet organic compound concentrations for the unit. This procedure may only be used on a uniform well-mixed or completely mixed system. Again, proper determination of f_{bio} must be made on a system as it would exist under the rule. The first step in using this procedure is to calculate KL using Form II. A computer model may be used. If the Water7 model or the most recent update to this model is used, then use Form II–A to calculate KL. After KL is determined using field data, complete Form VI to calculate K1. The TOXCHEM or BASTE model may also be used to calculate KL for the biological treatment unit, with the stipulations listed in procedure 304B. After KL and K1 are determined, Form III is used to calculate Fe and f_{bio} for each organic compound.

D. Batch Tests (Procedure 4)

Two types of batch tests which may be used to determine kinetic parameters are: (1) The aerated reactor test and (2) the sealed reactor test. The aerated reactor test is also known as the BOX test (batch test with oxygen addition). The sealed reactor test is also known as the serum bottle test. These batch tests should be conducted only by persons familiar with procedures for determining biodegradation kinetics. Detailed discussions of batch procedures for determining biodegradation kinetic parameters can be found in references 1–4.

For both batch test approaches, a biomass sample from the activated sludge unit of interest is collected, aerated, and stored for no more than 4 hours prior to testing. To collect sufficient data when biodegradation is rapid, it may be necessary to dilute the biomass sample. If the sample is to be diluted, the biomass sample shall be diluted using treated effluent from the activated sludge unit of interest to a concentration such that the biodegradation test will last long enough to make at least six concentration measurements. It is recommended that the tests not be terminated until the compound concentration falls below the limit of quantitation (LOQ). Measurements that are below the LOQ should not be used in the data analysis. Biomass concentrations shall be determined using standard methods for measurement of mixed liquor volatile suspended solids (MLVSS) (reference 5).

The change in concentration of a test compound may be monitored by either measuring the concentration in the liquid or in the reactor headspace. The analytical technique chosen for the test should be as sensitive as possible. For the batch test procedures described in this section, equilibrium conditions must exist between the liquid and gas phases of the experiments because the data analysis procedures are based on this premise. To use the headspace sampling approach, the reactor headspace must be in equilibrium with the liquid so that the headspace concentrations can be correlated with the liquid concentrations. Before the biodegradation testing is conducted, the equilibrium assumption must be verified. A discussion of the equilibrium assumption verification is given below in sections D.1 and D.2 since different approaches are required for the two types of batch tests.

To determine biodegradation kinetic parameters in a batch test, it is important to choose an appropriate initial substrate (compound(s) of interest) concentration for the test. The outcome of the batch experiment may be influenced by the initial substrate (S_O) to biomass (X_O) ratio (see references 3, 4, and 6). This ratio is typically measured in chemical oxygen demand (COD) units. When the S_O/X_O ratio is low, cell multiplication and growth in the batch test is negligible and the kinetics measured by the test are representative of the kinetics in the activated sludge unit of interest. The S_O/X_O ratio for a batch test is determined with the following equation:

$$\frac{S_0}{X_0} = \frac{S_i}{1.42\,X} \quad \text{(Eqn App. C-1)}$$

Where:

S_O/X_O=initial substrate to biomass ratio on a COD basis

S_i=initial substrate concentration in COD units (g COD/L)

X=biomass concentration in the batch test (g MLVSS/L)

1.42 = Conversion factor to convert to COD units

For the batch tests described in this section, the S_O/X_O ratio (on a COD basis) must be initially less than 0.5.

1. *Aerated Reactor Test.* An aerated draft tube reactor may be used for the biokinetics testing (as an example see Figure 2 of appendix C). Other aerated reactor configurations may also be used. Air is bubbled through a porous frit at a rate sufficient to aerate and keep the reactor uniformly mixed. Aeration rates typically vary from 50 to 200 ml/min for a 1 liter system. A mass flow rate controller is used to carefully control the air flow rate because it is important to have an accurate measure of this rate. The dissolved oxygen (DO) concentration in the system must not fall below 2 mg/liter so that the biodegradation observed will not be DO-limited. Once the air flow rate is established, the test mixture (or compound) of interest is then injected into the reactor and the concentration of the compound(s) is monitored over time. Concentrations may be monitored in the liquid or in the headspace. A minimum of six samples shall be taken over the period of the test. However, it is necessary to collect samples until the compound concentration falls below the LOQ. If liquid samples are collected, they must be small enough such that the liquid volume in the batch reactor does not change by more than 10%.

Before conducting experiments with biomass, it is necessary to verify the equilibrium assumption. The equilibrium assumption can be verified by conducting a stripping experiment using the effluent (no biomass) from the activated sludge unit of interest. Effluent is filtered with a 0.45 um or smaller filter and placed in the draft tube reactor. Air is sparged into the system and the compound concentration in the liquid or headspace is monitored over time. This test with no biomass may provide an estimate of the Henry's law constant. If the system is at equilibrium, the Henry's law constant may be estimated with the following equation:

$$-\ln\left(C/C_0\right) = \left(GK_{eq}/V\right)t \quad \text{(Eqn App. C-2)}$$

26Where:

C=cencentration at time, t (min)

C_O=concentration at t=0

G=volumetric gas flow rate (ml/min)

V=liquid volume in the batch reactor (ml)

K_{eq}=Henry's law constant (mg/L-gas)/(mg/L-liquid)

t=time (min)

A plot of—ln(C/C_o) as a function of t will have a slope equal to GK_{eq}/V. The equilibrium assumption can be verified by comparing the experimentally determined K_{eq} for the system to literature values of the Henry's Law constant (including those listed in this appendix). If K_{eq} does not match the Henry's law constant, K_{eq} shall be determined from analysis of the headspace and liquid concentration in a batch system.

The concentration of a compound decreases in the bioreactor due to both biodegradation and stripping. Biodegradation processes are typically described with a Monod model. This model and a stripping expression are combined to give a mass balance for the aerated draft tube reactor):

$$-\frac{ds}{dt}=\left(\frac{GK_{eq}}{V}\right)s+\left(\frac{Q_mX}{K_s+s}\right)s \qquad \text{(Eqn App. C-3)}$$

Where:
s=test compound concentration, mg/liter
G=volumetric gas flow rate, liters/hr
K_{eq}=Henry's Law constant measured in the system, (mg/liter gas)/(mg/liter liquid)
V=volume of liquid in the reactor, liters
X=biomass concentration (g MLVSS/liter)
Q_m=maximum rate of substrate removal, mg/g MLVSS/hr
K_S=Monod biorate constant at half the maximum rate, mg/liter

Equation App.C-3 has the analytical solution:

$$-t=\frac{VK_s}{A}\ln\left(\frac{s}{s_0}\right)+\frac{Q_mXV^2}{AB}\ln\left(\frac{A+Bs}{A+Bs_0}\right) \qquad \text{(Eqn App. C-4)}$$

Where:
$A=GK_{eq}K_S+Q_mVX$
$B=GK_{eq}$
S_O=test compound concentration at t=0

This equation is used along with the substrate concentration versus time data to determine the best fit parameters (Q_m and K_S) to describe the biodegradation process in the aerated reactor. If the aerated reactor test is used, the following procedure is used to analyze the data. Evaluate K_{eq} for the compound of interest with Form XI. The concentration in the vented headspace or liquid is measured as a function of time and the data is entered on Form XI. A plot is made from the data and attached to the Form XI. K_{eq} is calculated on Form XI and the results are contrasted with the expected value of Henry's law obtained from Form IX. If the comparison is satisfactory, the stripping constant is calculated from K_{eq}, completing Form XI. The values of K_{eq} may differ because the theoretical value of K_{eq} may not be applicable to the system of interest. If the comparison of the calculated K_{eq} from the form and the expected value of Henry's law is unsatisfactory, Form X can alternatively be used to validate K_{eq}. If the aerated reactor is demonstrated to not be at equilibrium, either modify the reactor design and/or operation, or use another type of batch test.

The compound-specific biorate constants are then measured using Form XII. The stripping constant that was determined from Form XI and a headspace correction factor of 1 are entered on Form XII. The aerated reactor biotest may then be run, measuring concentrations of each compound of interest as a function of time. If headspace concentrations are measured instead of liquid concentrations, then the corresponding liquid concentrations are calculated from the headspace measurements using the K_{eq} determined on Form XI and entered on Form XII.

The concentration data on Form XII may contain scatter that can adversely influence the data interpretation. It is possible to curve fit the concentration data and enter the concentrations on the fitted curve instead of the actual data. If curve fitting is used, the curve-fitting procedure must be based upon the Equation App. C-4. When curve fitting is used, it is necessary to attach a plot of the actual data and the fitted curve to Form XII.

If the stripping rate constant is relatively large when compared to the biorate at low concentrations, it may be difficult to obtain accurate evaluations of the first-order biorate constant. In these cases, either reducing the stripping rate constant by lowering the aeration rate, or increasing the biomass concentrations should be considered.

The final result of the batch testing is the measurement of a biorate that can be used to estimate the fraction biodegraded, f_{bio}. The number transferred to Form III is obtained from Form XII, line 9.

2. *Sealed Reactor Test.* This test uses a closed system to prevent losses of the test compound by volatilization. This test may be conducted using a serum bottle or a sealed draft tube reactor (for an example see Figure 3 of appendix C). Since no air is supplied, it is necessary to ensure that sufficient oxygen is present in the system. The DO concentration in the system must not fall below 2 mg/liter so that the biodegradation observed will not be DO-limited. As an alternative, oxygen may be supplied by electrolysis as needed to maintain the DO concentration above 2 mg/liter. The reactor contents must be uniformly mixed, by stirring or agitation using a shaker or similar apparatus. The test mixture (or compound) of interest is injected into the reactor and the concentration is monitored over time. A minimum of six samples shall be taken over the period of the test. However, it is necessary to monitor the concentration until it falls below the LOQ.

The equilibrium assumption must be verified for the batch reactor system. In this case, K_{eq} may be determined by simultaneously measuring gas and liquid phase concentrations at different times within a given experiment. A constant ratio of gas/liquid concentrations indicates that equilibrium conditions are present and K_{eq} is not a function of concentration. This ratio is then taken as the K_{eq} for the specific compound in the test. It is not necessary to measure K_{eq} for each experiment. If the ratio is not constant, the equilibrium assumption is not valid and it is necessary to (1) increase mixing energy for the system and retest for the equilibrium assumption, or (2) use a different type of test (for example, a collapsible volume reactor).

The concentration of a compound decreases in the bioreactor due to biodegradation according to Equation App. C-5:

$$\frac{ds}{dt}=\left[\frac{-V_l}{V_gK_{eq}+V_l}\right]\left[\left(\frac{Q_mX}{K_s+s}\right)s\right] \qquad \text{(Eqn App. C-5)}$$

Where:
s=test compound concentration (mg/liters)
V_l=the average liquid volume in the reactor (liters)
V_g=the average gas volume in the reactor (liters)
Q_m=maximum rate of substrate removal (mg/g *MLVSS*/hr)
K_{eq}=Henry's Law constant determined for the test, (mg/liter gas)/(mg/liter liquid)
K_s=Monod biorate constant at one-half the maximum rate (mg/liter)
t=time (hours)
X=biomass concentration (g *MLVSS*/liter)
s_o=test compound concentration at time t=0

Equation App. C-5 can be solved analytically to give:

$$t = \frac{-\left(V_s K_{eg} + V_l\right)}{V_l Q_m X}\left[\left(s - s_0\right) + K_s \ln\left(\frac{s}{s_0}\right)\right] \qquad \text{(Eqn App. C-6)}$$

This equation is used along with the substrate concentration versus time data to determine the best fit parameters (Q_m and K_s) to describe the biodegradation process in the sealed reactor.

If the sealed reactor test is used, Form X is used to determine the headspace correction factor. The disappearance of a compound in the sealed reactor test is slowed because a fraction of the compound is not available for biodegradation because it is present in the headspace. If the compound is almost entirely in the liquid phase, the headspace correction factor is approximately one. If the headspace correction factor is substantially less than one, improved mass transfer or reduced headspace may improve the accuracy of the sealed reactor test. A preliminary sealed reactor test must be conducted to test the equilibrium assumption. As the compound of interest is degraded, simultaneous headspace and liquid samples should be collected and Form X should be used to evaluate K_{eq}. The ratio of headspace to liquid concentrations must be constant in order to confirm that equilibrium conditions exist. If equilibrium conditions are not present, additional mixing or an alternate reactor configuration may be required.

The compound-specific biorate constants are then calculated using Form XII. For the sealed reactor test, a stripping rate constant of zero and the headspace correction factor that was determined from Form X are entered on Form XII. The sealed reactor test may then be run, measuring the concentrations of each compound of interest as a function of time. If headspace concentrations are measured instead of liquid concentrations, then the corresponding liquid concentrations are calculated from the headspace measurements using K_{eq} from Form X and entered on Form XII.

The concentration data on Form XII may contain scatter that can adversely influence the data interpretation. It is possible to curve fit the concentration data and enter the concentrations on the fitted curve instead of the actual data. If curve fitting is used, the curve-fitting procedure must be based upon Equation App. C–6. When curve fitting is used, it is necessary to attach a plot of the actual data and the fitted curve to Form XII.

If a sealed collapsible reactor is used that has no headspace, the headspace correction factor will equal 1, but the stripping rate constant may not equal 0 due to diffusion losses through the reactor wall. The ratio of the rate of loss of compound to the concentration of the compound in the reactor (units of per hour) must be evaluated. This loss ratio has the same units as the stripping rate constant and may be entered as the stripping rate constant on line 1 of Form XII.

If the loss due to diffusion through the walls of the collapsible reactor is relatively large when compared to the biorate at low concentrations, it may be difficult to obtain accurate evaluations of the first-order biorate constant. In these cases, either replacing the materials used to construct the reactor with materials of low permeability or increasing the biomass concentration should be considered.

The final result of the batch testing is the measurement of a biorate that can be used to estimate the fraction biodegraded, f_{bio}. The number transferred to Form III is obtained from Form XII, line 9.

The number on Form XII line 9 will equal the Monod first-order biorate constant if the full-scale system is operated in the first-order range. If the full-scale system is operated at concentrations above that of the Monod first-order range, the value of the number on line 9 will be somewhat lower than the Monod first-order biorate constant. With supporting biorate data, the Monod model used in Form XII may be used to estimate the effective biorate constant K1 for use in Form III.

If a reactor with headspace is used, analysis of the data using equation App. C–6 is valid only if V_l and V_g do not change more than 10% (i.e., they can be approximated as constant for the duration of the test). Since biodegradation is occurring only in the liquid, as the liquid concentration decreases it is necessary for mass to transfer from the gas to the liquid phase. This may require vigorous mixing and/or reducing the volume in the headspace of the reactor.

If there is no headspace (e.g., a collapsible reactor), equation App. C–6 is independent of V_l and there are no restrictions on the liquid volume. If a membrane or bag is used as the collapsible-volume reactor, it may be important to monitor for diffusion losses in the system. To determine if there are losses, the bag should be used without biomass and spiked with the compound(s) of interest. The concentration of the compound(s) in the reactor should be monitored over time. The data are analyzed as described above for the sealed reactor test.

3. *Quality Control/Quality Assurance (QA/QC).* A QA/QC plan outlining the procedures used to determine the biodegradation rate constants shall be prepared and a copy maintained at the source. The plan should include, but may not be limited to:

1. A description of the apparatus used (e.g., size, volume, method of supplying air or oxygen, mixing, and sampling procedures) including a simplified schematic drawing.

2. A description of how biomass was sampled from the activated sludge unit.

3. A description of how biomass was held prior to testing (age, etc.).

4. A description of what conditions (DO, gas-liquid equilibrium, temperature, etc.) are important, what the target values are, how the factors were controlled, and how well they were controlled.

5. A description of how the experiment was conducted, including preparation of solutions, dilution procedures, sampling procedures, monitoring of conditions, etc.

6. A description of the analytical instrumentation used, how the instruments were calibrated, and a summary of the precision for that equipment.

7. A description of the analytical procedures used. If appropriate, reference to an ASTM, EPA or other procedure may be used. Otherwise, describe how the procedure is done, what is done to measure precision, accuracy, recovery, etc., as appropriate.

8. A description of how data are captured, recorded, and stored.

9. A description of the equations used and their solutions, including a reference to any software used for calculations and/or curve-fitting.

IV. Calculation of F_{bio}

At this point, the individual f_{bio}'s determined by the previously explained procedures must be summed to obtain the total F_{bio}. To determine the F_{bio} multiply each compound specific f_{bio} by the compound-specific average mass flow rate of the organic compound in the wastewater stream (see regulation for instruction on calculation of average mass flow rate). Sum these products and divide by the total wastewater stream average mass flow rate of organic compounds.

$$F_{bio} = \frac{\sum_{i=1}^{N}\left(f_{bio}i \times M_i\right)}{\sum_{i=1}^{n} M_i} \qquad \text{(Eqn App. C-7)}$$

M=compound specific average mass flow rate of the organic compounds in the wastewater (Mg/Yr)
n=number of organic compounds in the wastewater

The F_{bio} is then used in the applicable compliance equations in the regulation to determine if biodegradation may be used to comply with the treatment standard without covering and venting to an air pollution control device.

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2. Ellis, T.G. et al. "Determination of Toxic Organic Chemical Biodegradation Kinetics Using Novel Respirometric Technique". Proceedings Water Environment Federation, 67th Annual Conference, October 15–19, 1994.

3. Pitter, P. and J. Chudoba. Biodegradability of Organic Substances in the Aquatic Environment. CRC Press, Boca Raton, FL. 1990.

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5. Eaton, A.D., et al. eds., Standard Methods for the Examination of Water and Wastewater, 19th Edition, American Public Health Association, Washington, DC, 1995.

6. Chudoba P., B. Capdeville, and J. Chudoba. Explanation of biological meaning of the So/Xo ratio in batch cultivation. Wat. Sci. Tech. 26 (3/4), 743–751, 1992.

TABLE I

	Compound	H_L @ 25°C (atm/mole frac)	H_L @ 100°C (atm/mole frac)
1	Acetaldehyde	4.87e+00	5.64e+01
3	Acetonitrile	1.11e+00	1.78e+01
4	Acetophenone	5.09e−01	2.25e+01
5	Acrolein	4.57e+00	6.61e+01
8	Acrylonitrile	5.45e+00	6.67e+01
9	Allyl chloride	5.15e+02	2.26e+03
10	Aniline	9.78e−02	1.42e+00
12	Benzene	3.08e+02	1.93e+03
14	Benzyl chloride	1.77e+01	2.88e+02
15	Biphenyl	2.27e+01	1.27e+03
17	Bromoform	2.96e+01	3.98e+02
18	1,3-Butadiene	3.96e+03	1.56e+04
20	Carbon disulfide	1.06e+03	3.60e+03
21	Carbon tetrachloride	1.68e+03	1.69e+04
23	2-Chloroacetophenone	4.84e−02	1.43e+01
24	Chlorobenzene	2.09e+02	3.12e+03
25	Chloroform	2.21e+02	1.34e+03
26	Chloroprene	5.16e+01	1.74e+02
29	o-Cresol	9.12e−02	2.44e+01
31	Cumene	7.28e+02	7.15e+03
32	1,4-Dichlorobenzene(p)	1.76e+02	1.95e+03
33	Dichloroethyl ether	1.14e+00	3.57e+01
34	1,3-Dichloropropene	1.97e+02	1.44e+03
36	N,N-Dimethylaniline	7.70e−01	5.67e+02
37	Diethyl sulfate	3.41e−01	4.22e+01
38	3,3'-Dimethylbenzidine	7.51e−05	5.09e−01
40	1,1-Dimethylhydrazine	9.11e−02	1.57e+01
42	Dimethyl sulfate	2.23e−01	1.43e+01
43	2,4-Dinitrophenol	2.84e−01	1.50e+02
44	2,4-Dinitrotoluene	4.00e−01	9.62e+00
45	1,4-Dioxane	3.08e−01	9.53e+00
47	Epichlorohydrin	1.86e+00	4.34e+01
48	Ethyl acrylate	1.41e+01	3.01e+02
49	Ethylbenzene	4.38e+02	4.27e+03
50	Ethyl chloride (chloroethane)	6.72e+02	3.10e+03
51	Ethylene dibromide	3.61e+01	5.15e+02
52	Ethylene dichloride (1,2-Dichloroethane)	6.54e+01	5.06e+02
54	Ethylene oxide	1.32e+01	9.09e+01
55	Ethylidene dichloride (1,1-Dichloroethane)	3.12e+02	2.92e+03
57	Ethylene glycol dimethyl ether	1.95e+00	4.12e+01
60	Ethylene glycol monoethyl ether acetate	9.86e−02	6.03e+00
62	Ethylene glycol monomethyl ether acetate	1.22e−01	6.93e+00
64	Diethylene glycol dimethyl ether	8.38e−02	4.69e+00
69	Diethylene glycol diethyl ether	1.19e−01	7.71e+00
72	Ethylene glycol monobutyl ether acetate	2.75e−01	2.50e+01
73	Hexachlorobenzene	9.45e+01	2.57e+04
74	Hexachlorobutadiene	5.72e+02	6.92e+03
75	Hexachloroethane	4.64e+02	7.49e+04
76	Hexane	4.27e+04	9.44e+04
78	Isophorone	3.68e−01	1.68e+01
80	Methanol	2.89e−01	7.73e+00
81	Methyl bromide (Bromomethane)	3.81e+02	2.12e+03
82	Methyl chloride (Chloromethane)	4.90e+02	2.84e+03
83	Methyl chloroform (1,1,1-Trichloroethane)	9.67e+02	5.73e+03

TABLE I—Continued

	Compound	H_L @ 25°C (atm/mole frac)	H_L @ 100°C (atm/mole frac)
84	Methyl ethyl ketone (2-Butanone)	7.22e+00	5.92e+01
86	Methyl isobutyl ketone (Hexone)	2.17e+01	3.72e+02
88	Methyl methacrylate	7.83e+00	9.15e+01
89	Methyl tert-butyl ether	3.08e+01	2.67e+02
90	Methylene chloride (Dichloromethane)	1.64e+02	9.15e+02
93	Naphthalene	2.68e+01	7.10e+02
94	Nitrobenzene	1.33e+00	2.80e+01
96	2-Nitropropane	6.61e+00	8.76e+01
99	Phosgene	7.80e+02	3.51e+03
102	Propionaldehyde	3.32e+00	1.42e+02
103	Propylene dichloride	1.59e+02	1.27e+03
104	Propylene oxide	1.98e+01	1.84e+02
106	Styrene	1.45e+02	1.72e+03
107	1,1,2,2-Tetrachloroethane	1.39e+01	1.99e+02
108	Tetrachloroethylene (Perchloroethylene)	9.83e+02	1.84e+04
109	Toluene	3.57e+02	2.10e+03
112	o-Toluidine	1.34e−01	1.15e+01
113	1,2,4-Trichlorobenzene	1.07e+02	1.04e+03
114	1,1,2-Trichloroethane	4.58e+01	5.86e+02
115	Trichloroethylene	5.67e+02	7.66e+03
116	2,4,5-Trichlorophenol	4.84e−01	6.27e+01
117	Triethylamine	6.94e+00	2.57e+02
118	2,2,4-Trimethylpentane	1.85e+05	9.74e+05
119	Vinyl acetate	2.82e+01	2.80e+02
120	Vinyl chloride	1.47e+03	6.45e+03
121	Vinylidene chloride (1,1-Dichloroethylene)	1.44e+03	1.40e+04
123	m-Xylene	4.13e+02	3.25e+03
124	o-Xylene	2.71e+02	2.55e+03
125	p-Xylene	4.13e+02	3.20e+03

BILLING CODE 6560-50-P

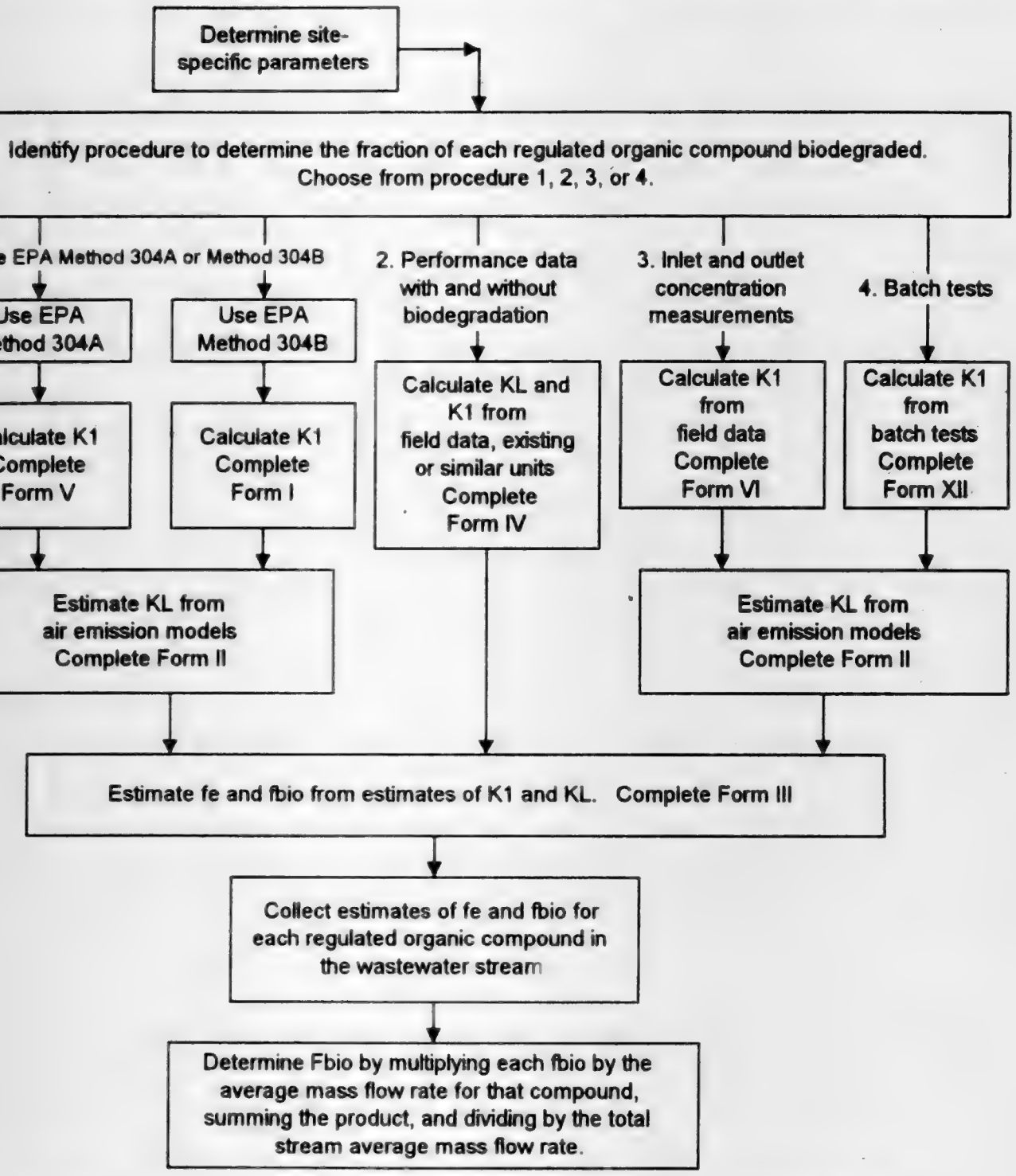

Figure 1. ALTERNATIVE EXPERIMENTAL METHODS FOR DETERMINING THE FRACTION OF ORGANIC COMPOUND BIODEGRADED (Fbio) IN A BIOLOGICAL TREATMENT UNIT

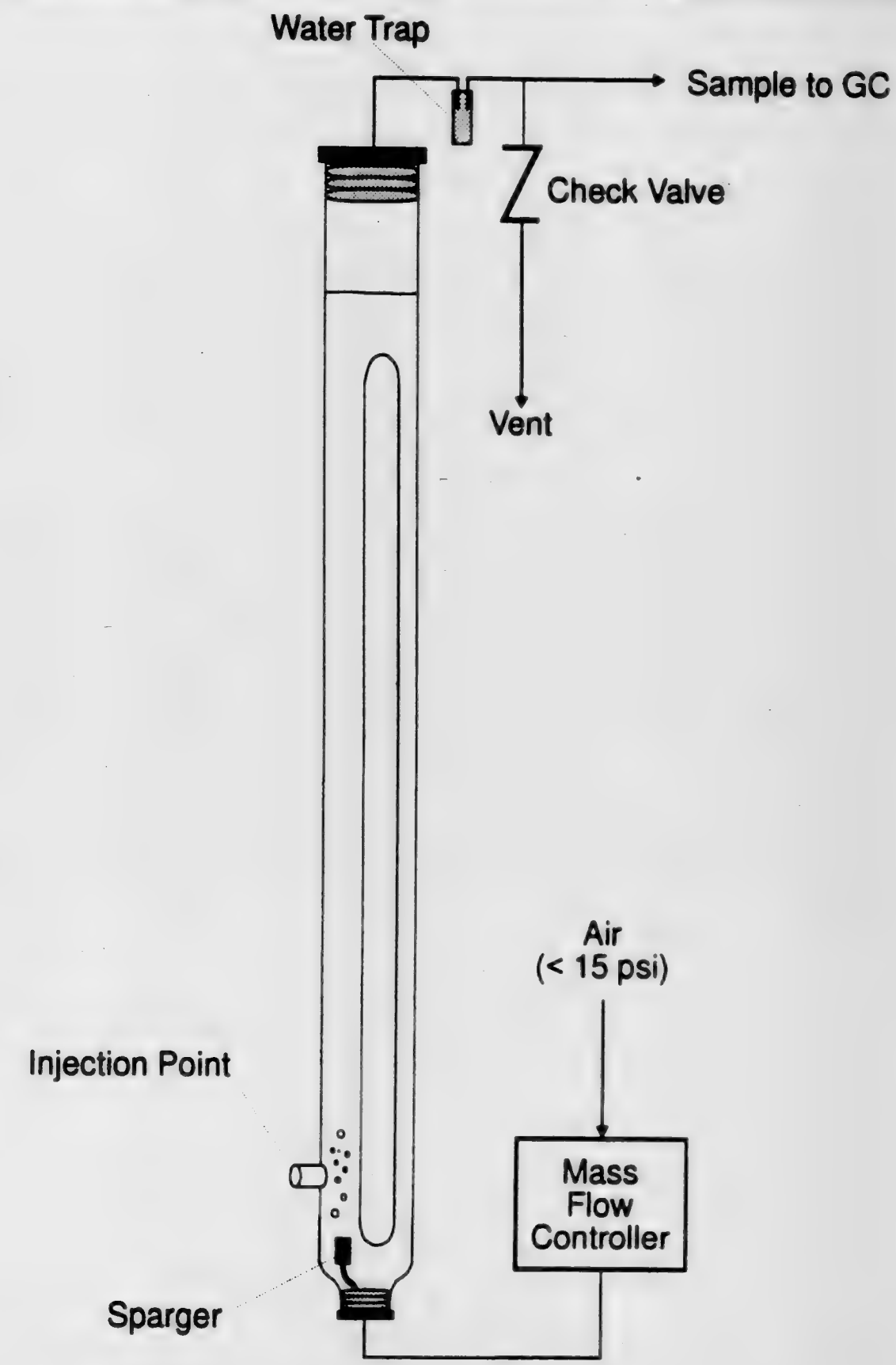

Figure 2. Example Aerated Draft Tube Reactor

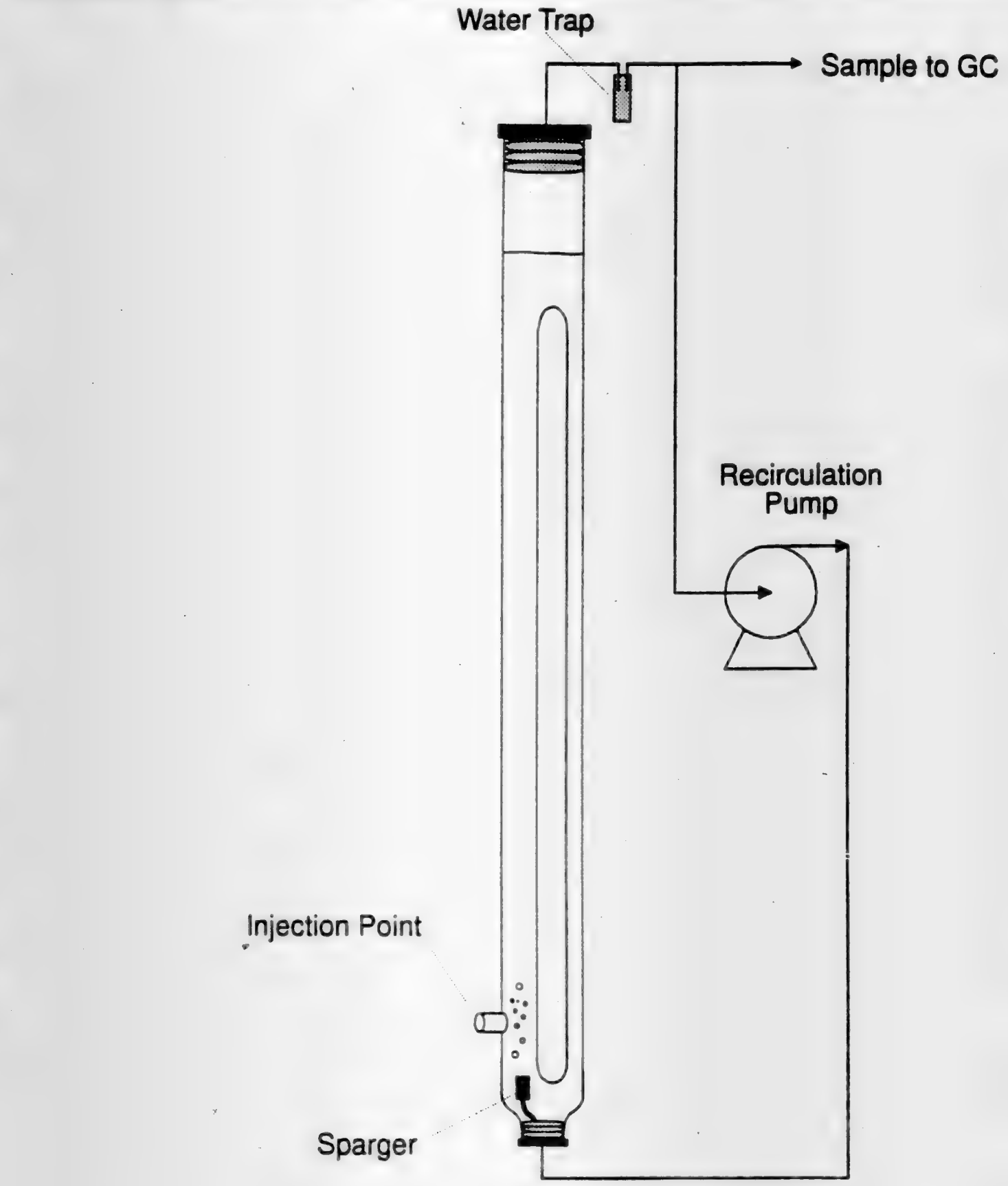

Figure 3. Example Sealed Draft Tube Reactor

Form I DATA FORM FOR THE ESTIMATION OF THE EPA METHOD 304B FIRST ORDER BIORATE CONSTANT			
NAME OF THE FACILITY for site specific biorate determination			Example
COMPOUND for site specific biorate determination			*METHANOL*
INLET CONCENTRATION used in EPA METHOD 304B	1		78
EXIT CONCENTRATION measured by EPA METHOD 304B	2		6
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the bench scale bioreactor.	3		0.075
TEMPERATURE OF BIOREACTOR (deg. C)	4		35
VOLUME of EPA METHOD 304B bench scale bioreactor (L)	5		6
FLOW RATE of waste treated in the bench scale bioreactor (L/hr)	6		0.146
CALCULATIONS FROM EPA METHOD 304B DATA MEASUREMENTS			
RESIDENCE TIME (hr) Divide the number on line 5 by the number on line 6 and enter the results here.	7		41.10
Concentration Decrease (g/m^3). Subtract the number on line 2 from the number on line 1 and enter the results here.	8		72.00
BIORATE (g/m^3-hr). Divide the number on line 8 by the number on line 7 and enter the results here.	9		1.75
Product of concentration and biomass. Multiply the number on line 2 by the number on line 3 and enter the results here.	10		0.45
BIORATE K1 (L/g bio-hr) Divide the number on line 9 by the number on line 10 and enter the results here.	11		3.89
Temperature adjustment. Subtract 25 deg. C from the number on line 4 and enter the results here.	12		10
Temperature adjustment factor. 1.046 is the default temperature adjustment factor. Enter the temperature adjustment factor here.	13		1.046
Biorate temperature ratio. Raise the number on line 13 to the power of the number on line 12.	14		1.567
BIORATE K1 at 25 deg. C (L/g MLVSS-hr) Divide the number on line 11 by the number on line 14 and enter the results here.	15		2.48

Note: With Monod kinetics, use Kmax=1000 to convert the Monod kinetics to first order. If a different temperature adjustment factor than the default is entered on line 13, make sure that the adjustment factor used in the calculations agrees with the value entered on line 13.

Form II	**PROCEDURES FORM FOR THE ESTIMATION OF THE KL FROM UNIT SPECIFICATIONS**		
NAME OF THE FACILITY for site specific biorate determination			
NAME OF UNIT for site specific biorate determination			
NAME OF COMPOUND			
HENRY'S LAW constant for the compound (mole fraction in gas per mole fraction in water at 25 degrees Celsius)			
IDENTIFY THE TYPE OF UNIT			(check one box below)
	Quiescent impoundment	1	
	Surface agitated impoundment	2	
	Surface agitated impoundment with submerged air	3	
	Unit agitated by submerged aeration gas	4	
	EPA Method 304A, Covered unit, UNOX system, or bench scale reactor	5	

PROCEDURES BASED UPON THE TYPE OF UNIT

UNIT	PROCEDURE TO FOLLOW
1	Use the quiescent impoundment model to determine KL. Use Kq as KL as determined from Form VII.
2	Use the quiescent impoundment model to determine KL for the quiescent zone, Form VII. Use the aerated impoundment model to determine KL for the agitated surface, Form VIII.
3	Use the quiescent impoundment model to determine Kq for the quiescent zone, Form VII. Use the aerated impoundment model to determine KL for the agitated surface, Form VIII. The total system KL is the sum of the KL from Form VIII and the equivalent KL from Form V. Use the submerged air rate as the vent rate in form V.
4	Use the aerated impoundment model to determine KL if the surface is agitated. Use the quiescent impoundment model if the surface is not agitated. KL includes the effect of volatilization in the air discharge. See section 5.6.1 in AIR EMISSIONS MODELS FOR WASTE AND WASTEWATER (EPA-453/R-94-080A). The total system KL is the sum of the KL from Form VIII and the equivalent KL from Form V. Use the submerged air rate as the vent rate in Form V.
5	KL for the surface is assumed to be equal zero. Determine equivalent KL based upon air discharge. Use Form V for EPA Method 304A or if the concentration in the vent is not measured. Use Form V-A if the concentration in the vent is measured.

Estimate of KL obtained from above procedures (m/s)	6	

Form II-A	PROCEDURES FORM FOR THE ESTIMATION OF THE KL FROM WATER 7		
NAME OF THE FACILITY for site specific biorate determination			
NAME OF UNIT for site specific biorate determination			
NAME OF COMPOUND			
HENRY'S LAW COMPOUND			
IDENTIFY THE TYPE OF UNIT			(check one box below)
	Quiescent impoundment	1	
	Surface agitated impoundment	2	
	Surface agitated impoundment with submerged air	3	
	Unit agitated by submerged aeration gas	4	
	Covered unit, UNOX system, bench scale reactor	5	

PROCEDURES BASED UPON THE TYPE OF UNIT

unit	procedure to follow
1	Use the quiescent impoundment model to determine KL.
2	Use the aerated impoundment model to determine KL for the combined agitated surfaces and quiescent surfaces.
3	Use the aerated impoundment model to determine KL for the combined agitated surfaces and quiescent surfaces.
4	Use the aerated impoundment model to determine KL if the surface is agitated. Use the quiescent impoundment model if the surface is not agitated. KL includes the effect of volatilization in the air discharge. See section 5.6.1 in AIR EMISSIONS MODELS FOR WASTE AND WASTEWATER (EPA-453/R-94-080A).
5	KL for the surface is assumed to equal zero. Select the covered unit option with the aerated impoundment model.

Form III **DATA FORM FOR THE ESTIMATION OF THE COMPOUND FRACTION BIODEGRADED AND AIR EMISSIONS**			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
ESTIMATE OF K1 from Form I line 11, Form V line 15, Form V-A line 15, Form IV line 14, Form VI line 13, or Form XII line 9. (L/g MLVSS-hr)	1		3.89
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the full-scale bioreactor.	2		2.4
VOLUME of full-scale system (cubic meters)	3		2700
AREA of the liquid surface of the full-scale system (square meters)	4		1500
ESTIMATE OF KL from Form II, II-A, IV, V, V-A, or V-B (m/s)	5		0.0000036
FLOW RATE of waste treated in full-scale bioreactor (m^3/s)	6		0.1565
CALCULATIONS FROM ESTIMATES OF K1 AND KL			
BIORATE (m^3/s) Multiply the numbers on lines 1, 2, and 3 together and divide the results by 3600. Enter the results here.	7		7.0020000
AIR STRIPPING (m^3/s). Multiply the numbers on lines 4 and 5 together. Enter the results here.	8		0.0054000
EFFLUENT DISCHARGE (m^3/s). Enter the number on line 6 here.	9		0.1565000
TOTAL of the three loss mechanisms. Add the numbers on lines 7, 8, and 9. Enter the results here.	10		7.1639000
Fraction biodegraded: Divide the number on line 7 by the number on line 10 and enter the results here.	11		0.9774006
Fraction air emissions: Divide the number on line 8 by the number on line 10 and enter the results here.	12		0.0007538
Fraction remaining in unit effluent: Divide the number on line 9 by the number on line 10 and enter the results here.	13		0.0218456
Total: add the numbers on lines 11, 12, and 13. The sum should equal 1.0	14		1.0000000

Form IV	DATA FORM FOR THE ESTIMATION OF K1 AND KL FROM FULL SCALE UNIT DATA WITH AND WITHOUT BIODEGRADATION		
For a general discussion of this approach, see Air Emissions Models for Waste and Wastewater, EPA-453/R-94-080A, Chapter 5, November 1994.			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the full-scale bioreactor.	1		2.4
VOLUME of full-scale system (cubic meters)	2		2700
AREA of the liquid surface of the full-scale system (square meters)	3		1500
INLET CONCENTRATION of compound (g/m^3 or ppmw)	4		133.5
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	5		10.57
EXIT CONCENTRATION (NO BIODEGRADATION) of compound (g/m^3 or ppmw)	6		133
FLOW RATE of waste treated in the full-scale bioreactor (m^3/s)	7		0.1565
ESTIMATES OF K1 AND KL FROM FIELD DATA WITH AND WITHOUT BIODEGRADATION			
REMOVAL WITH BIODEGRADATION (g/s) Subtract the number on line 5 from the number on line 4 and multiply the results by the number on line 7. Enter the results here.	8		19.238545
REMOVAL WITHOUT BIODEGRADATION (g/s) Subtract the number on line 6 from the number on line 4 and multiply the results by the number on line 7. Enter the results here.	9		0.078250
KL A ESTIMATE (m^3/s) Divide the number on line 9 by the number on line 6. Enter the results here.	10		0.000588
K1 B V + KL A ESTIMATE (m^3/s) . Divide the number on line 8 by the number on line 5. Enter the results here.	11		1.820108
K1 B V ESTIMATE (m^3/s) Subtract the number on line 10 from the number on line 11. Enter the results here.	12		1.819520
Product of B and V. Multiply the number on line 1 by the number on line 2 and enter the results here.	13		6480
K1 ESTIMATE (L/gMLVSS-hr) Divide the number on line 12 by the number on line 13 and multiply by 3600 s/hr. Enter the results here.	14		1.010844
KL ESTIMATE (m/s) Divide the number on line 10 by the number on line 3. Enter the results here.	15		0.0000004

Form V	**DATA FORM FOR THE ESTIMATION OF K1 FOR EPA METHOD 304A OR FROM A COVERED, VENTED BIODEGRADATION UNIT.**		
For a general discussion of this approach, see Air Emissions Models for Waste and Wastewater, EPA-453/R-94-080A, Chapter 5, November 1994			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the unit.	1		0.075
VENT RATE of total gas leaving the unit (G, m^3/s)	2		1
TEMPERATURE of the liquid in the unit (deg. C)	3		25
INLET CONCENTRATION of compound (g/m^3 or ppmw)	4		100
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	5		5
ESTIMATE OF Henry's law constant (H, g/m^3 in gas / g/m^3 in liquid). Obtained from Form IX	6		0.00021
AREA OF REACTOR (m^2)	7		3400
VOLUME OF REACTOR (m^3)	8		10000
FLOW RATE of waste treated in the unit (m^3/s)	9		0.146
CALCULATION OF THE ESTIMATE OF K1			
TOTAL REMOVAL (g/s) Subtract the number on line 5 from the number on line 4 and multiply the result by the number on line 9. Enter the results here.	10		13.870000
[H G] ESTIMATE (m^3/s) Multiply the number on line 2 by the number on line 6. Enter the results here.	11		0.000021
[K1 B V + H G] (m^3/s) Divide the number on line 10 by the number on line 5. Enter the results here.	12		2.774000
[K1 B V] ESTIMATE (m^3/s) Subtract the number on line 11 from the number on line 12. Enter the results here.	13		2.773979
If the number on line 11 is greater than the number on line 13, this procedure cannot be used to demonstrate that the compound is biodegradable. Do not complete lines 14 and 15.			
Product of B and V. Multiply the number on line 1 by the number on line 8 and enter the results here.	14		750.000000
K1 ESTIMATE (L/g MLVSS-hr) Divide the number on line 13 by the number on line 14 and multiply by 3600 s/hr. Enter the results here.	15		13.315099
EQUIVALENT KL. Divide the number on line 11 by the number on line 7. Enter the results on line 16.	16		6.18e-09

This form may be used to estimate the Equivalent KL with input data for lines 2, 6, and 7.

Form V-A DATA FORM FOR THE CALCULATION OF K1 FROM A COVERED, VENTED BIODEGRADATIN UNIT. THE VENT CONCENTRATION IS MEASURED.			
For a general discussion of this approach, see Air Emissions Models for Waste and Wastewater, EPA-453/R-94-080A, Chapter 5, November 1994.			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the unit.	1		0.075
VENT RATE of total gas leaving the unit (G, m^3/s)	2		.1
TEMPERATURE of the liquid in the unit (deg. C)	3		25
INLET CONCENTRATION of compound (Ci, g/m^3 or ppmw)	4		100
EXIT CONCENTRATION of compound (Ce, g/m^3 or ppmw)	5		5
VENT CONCENTRATION of compound (Cv, g/m^3)	6		0.001
AREA OF REACTOR SURFACE (m^2)	7		3400
VOLUME OF REACTOR (m^3)	8		10000
FLOW RATE of waste treated in the unit (m^3/s)	9		0.146
CALCULATION OF THE ESTIMATE OF K1			
TOTAL REMOVAL (g/s) Subtract the number on line 5 from the number on line 4 and multiply the results by the number on line 9. Enter the results here.	10		13.87
[G Cv/Ce] ESTIMATE (m^3/s) Multiply the number on line 2 by the number on line 6 and divide by the number on line 5. Enter the results here.	11		0.000020
[K1 B V + G Cv/Ce] (m^3/s) Divide the number on line 10 by the number on line 5. Enter the results here.	12		2.77
[K1 B V] ESTIMATE (m^3/s) Subtract the number on line 11 from the number on line 12. Enter the results here.	13		2.77
If the number on line 11 is greater than the number on line 13, this procedure cannot be used to demonstrate that the compound is biodegradable. Do not complete lines 14 and 15.			
Product of B and V. Multiply the number on line 1 by the number on line 8 and enter the results here.	14		750.00
K1 ESTIMATE (L/g MLVSS-hr) Divide the number on line 13 by the number on line 14 and multiply by 3600 s/hr. Enter the results here.	15		13.30
EQUIVALENT KL. Divide the number on line 11 by the number on line 7. Enter the results here.	16		5.9e-09

This form may be used to calculate the Equivalent KL with input data for lines 2, 5, 6, and 7.

Form V-B DATA FORM FOR THE CALCULATION OF EQUIVALENT KL FROM A VENTED BIODEGRADATIN UNIT WITH AN AIR SUPPORTED COVER. THE VENT CONCENTRATION IS MEASURED.			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
Vent rate of total gas entering the cover (m^3/s)	1		120
Vent rate of total gas leaving the cover transferred to a control device (m^3/s)	2		100
TEMPERATURE of the liquid in the unit (deg. C)	3		25
Area of air supported cover (m^2)	4		1950
Permeability through the cover (cm/s)	5		5E-6
VENT CONCENTRATION of compound (g/m^3)	6		0.0022
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	7		10.57
AREA OF REACTOR SURFACE (m^2)	8		1500
Performance of vent control device (% control)	9		95
CALCULATION OF THE ESTIMATE OF EQUIVALENT KL			
Loss of forced air in the cover due to leakage. (m^3/s) Subtract the number on line 2 from the number on line 1. Enter the results here.	10		20
Loss of compound in forced air (g/s) Multiply the number on line 10 by the number on line 6. Enter the results here.	11		0.044
Loss of compound by permeation through cover (g/s). Line 4 times line 5, line 6, and divide by 100. Enter the results here.	12		0
Loss of compound by permeation through vent (g/s). Line 2 times line 6. Enter the results here.	13		0.22
Treatment of compound in control device (g/s). Line 13 times line 9, divided by 100. Enter the results here.	14		0.209
Total removal from air phase (g/s). Sum of 11, 12, and 13.	15		0.264
Total treatment effectiveness (%) Line 14 divided by 15 times 100.	16		79.1666
[G Cv/Ce] ESTIMATE (m^3/s) Divide line 15 by line 7.	17		0.025
EQUIVALENT KL. Divide the number on line 17 by line 8.	18		1.67e-05

The permeability is the ratio of the flux (g/cm^2) to the gas concentration (g/cm^3).

If the gas is generated by the unit, the gas entering the cover may be estimated from an estimate of the cover leak rate and the total gas transferred to the control device.

Form VI	DATA FORM FOR THE ESTIMATION OF K1 FROM FULL SCALE UNIT DATA WITH BIODEGRADATION		
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the full-scale bioreactor.	1		0.075
VOLUME of full-scale system (cubic meters)	2		100000
AREA of the liquid surface of the full-scale system (square meters)	3		10000
INLET CONCENTRATION of compound (g/m^3 or ppmw)	4		100
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	5		5
ESTIMATE OF KL from Form II (m/s)	6		0.00001
FLOW RATE of waste treated in the full-scale bioreactor (m^3/s)	7		0.146
CALCULATION OF THE ESTIMATE OF K1 FROM FIELD DATA			
REMOVAL WITH BIODEGRADATION (g/s) Subtract the number on line 5 from the number on line 4 and multiply the results by the number on line 7. Enter the results here.	8		13.87
[KL A] ESTIMATE (m^3/s) Multiply the number on line 3 by the number on line 6. Enter the results here.	9		0.10
[K1 B V + KL A] (m^3/s) Divide the number on line 8 by the number on line 5. Enter the results here.	10		2.774
[K1 B V] ESTIMATE (m^3/s) Subtract the number on line 9 from the number on line 10. Enter the results here.	11		2.674
Product of B and V. Multiply the number on line 1 by the number on line 2 and enter the results here.	12		7500
K1 ESTIMATE (L/g MLVSS-hr) Divide the number on line 11 by the number on line 12 and multiply by 3600 s/hr. Enter the results here.	13		1.28352

FORM VII

DATA FORM FOR CALCULATING THE
MASS TRANSFER COEFFICIENT FOR A QUIESCENT SURFACE IMPOUNDMENT

Facility Name: _____

Waste Stream Compound: _____

Enter the following:

F - Impoundment fetch (m) _____
D - Impoundment depth (m) _____
U_{10} - Windspeed 10 m above liquid surface (m/s) _____
D_w - Diffusivity of compound in water (cm^2/s) _____
D_{ether} - Diffusivity of ether in water (cm^2/s) _____
μ_G - Viscosity of air, (g/cm-s) _____
ρ_G - Density of air, (g/cm^3) _____
D_a - Diffusivity of compound in air, (cm^2/s) _____
A - Area of impoundment, (m^2) _____
H - Henry's law constant, (atm-m^3/g mol) _____
R - Universal gas constant, (atm-m^3/g mol.°K) _____
μ_L - Viscosity of water, (g/cm-s) _____
ρ_L - Density of liquid, (g/cm^3) _____
T - Impoundment temperature, (°C) _____

Calculate the following:

Calculate F/D: _____

A. Calculate the liquid phase mass transfer coefficient, k_L, using one of the following procedures, (m/s)

1. Where F/D < 14 and U_{10} > 3.25 m/s, use the following procedure from MacKay and Yeun:

Calculate the Schmidt number on the liquid side, Sc_L, as follows:
$Sc_L = \mu_L/\rho_L D_w$ _____

Calculate the friction velocity, U^*, as follows, (m/s):
$U^* = 0.01 \times U_{10}(6.1 + 0.63\ U_{10})^{0.5}$ _____

Where U^* is > 0.3, calculate k_L as follows:
$k_L = (1.0 \times 10^{-6}) + (34.1 \times 10^{-4})U^* \times Sc_L^{-0.5}$ _____

Where U^* is < 0.3, calculate k_L as follows:
$k_L = (1.0 \times 10^{-6}) + (144 \times 10^{-4})(U^*)^{2.2} \times Sc_L^{-0.5}$ _____

2. For all other values of F/D and U_{10}, calculate k_L using the following procedure from Springer:[1]

[1]Springer, C., P. D. Lunney, and K. T. Valsaraj. Emission of Hazardous Chemicals from Surface and Near Surface Impoundments to Air. U.S. Environmental Protection Agency, Solid and Hazardous Waste Research Division. Cincinnati, OH. Project Number 808161-02. December 1984.

Where U_{10} is < 3.25 m/s, calculate k_L as follows:
$k_L = 2.78 \times 10^{-6}(D_w/D_{ether})^{2/3}$

Where U_{10} is > 3.25 and 14 < F/D < 51.2, Calculate k_L as follows:
$k_L = [2.605 \times 10^{-9}(F/D) + 1.277 \times 10^{-7}] U_{10}^2 (D_w/D_{ether})^{2/3}$

Where U_{10} > 3.25 m/s and F/D > 51.2, calculate k_L as follows:
$k_L = (2.611 \times 10^{-7})U_{10}^2 (D_w/D_{ether})^{2/3}$

B. Calculate the gas phase mass transfer coefficient, k_G, using the following procedure from MacKay and Matsasugu, (m/s):[2]

Calculate the Schmidt number on the gas side, Sc_G, as follows: $Sc_G = \mu_G/\rho_G D_a$

Calculate the effective diameter of the impoundment, d_e, as follows, (m):
$d_e = (4A/\pi)^{0.5}$

Calculate k_1 as follows, (m/s): $k_1 = 4.82 \times 10^{-3} U_{10}^{0.78} Sc_G^{-0.67} d_e^{-0.11}$

C. Calculate the partition coefficient, Keq, as follows: Keq = H/[R(T+273)]

D. Calculate the overall mass transfer coefficient, K_q, as follows, (m/s):
$1/K_q = 1/k_L + 1/Keq\text{-}k_G$

Where the total impoundment surface is quiescent:
$KL = K_q$

Where a portion of the impoundment surface is turbulent, continue with Form VIII.

[2]Hwang, S. T. Toxic Emissions from Land Disposal Facilities. Environmental Progress. 1:46-52. February 1982.

FORM VIII

DATA FORM FOR CALCULATING THE
MASS TRANSFER COEFFICIENT FOR AN AERATED SURFACE IMPOUNDMENT

Facility Name: _____

Waste Stream Compound: _____

Enter the following:

J - Oxygen transfer rating of surface aerator, (lb O_2/hr-hp) _____
POWR - Total power to aerators, (hp) _____
T - Water temperature, (°C) _____
O_t - Oxygen transfer correction factor _____
MW_L - Molecular weight of liquid _____
A_t - Turbulent surface area of impoundment, (ft^2) _____
(If unknown, use values from Table 1)
A - Total surface area of impoundment, (ft^2) _____
ρ_L - Density of liquid, (lb/ft^3) _____
D_w - Diffusivity of constituent in water, (cm^2/s) _____
$D_{O_2,w}$ - Diffusivity of oxygen in water, (cm^2/s) _____

d - Impeller diameter, (cm) _____
w - Rotational speed of impeller, (rad/s) _____
ρ_a - Density of air, (gm/cm^3) _____
N - Number of aerators _____
g_c - Gravitation constant, (lb_m-$ft/s^2/lb_f$) _____
d' - Impeller diameter, (ft) _____
D_a - Diffusivity of constituent in air, (cm^2/s) _____
MW_a - Molecular weight of air _____
R - Universal gas constant, (atm-m^3/g mol.°C) _____
H = Henry's law constant, (atm-m^3/g mol) _____

Calculate the following:

A. Calculate the liquid phase mass transfer coefficient, k_L, using the following Equation from Thibodeaux:[3],[4]

$k_L = [8.22 \times 10^{-9} J (POWR)(1.024)^{T-20} O_t 10^6 MW_L/(Va_t\rho_L)] (D_w/ D_{O_2,w})^{0.5}$, (m/s)

_____

---

[3]GCA Corporation. Emissions Data and Model Review for Wastewater Treatment Operations. Draft Technical Note. Prepared for U.S. Environmental Protection Agency. Contract No. 68-01-6871, Assignment 49. August 1985. p. 4-2.

[4]Hwang, S. T. Toxic Emissions from Land Disposal Facilities. Environmental Progress. 1:46-52. February 1982.

B. Calculate the gas phase mass transfer coefficient, k_G, using the following procedure from Reinhardt:[5,6]

Calculate the viscosity of air, μ_a, as follows, (g/cm.s):
$\mu_a = 4.568 \times 10^{-7} T + 1.7209 \times 10^{-5}$

Calculate the Reynold's number as follows:
$R_e = d^2 w \rho_a / \mu_a$

Calculate power to impeller, P_I, as follows, ($ft.lb_f/s$):
$P_I = 0.85 (POWR) 550/N$

Calculate the power number, p, as follows:
$p = P_I g_c / (\rho_L d^{*5} w^3)$

Calculate the Schmidt number, Sc_G, as follows:
$Sc_G = \mu_a / \rho_a D_a$

Calculate the Fronde number, F_r, as follows:
$F_r = d^* w^2 / g_c$

Calculate k_G as follows:
$k_G = 1.35 \times 10^{-7} R_e^{1.42} p^{0.4} Sc_G^{0.5} F_r^{-0.21} D_a MW_a / d$, (m/s)

C. Calculate the partition coefficient, Keq, as follows:
$Keq = H/[R(T+273)]$

D. Calculate the overall turbulent mass transfer coefficient, K_t, as follows, (m/s):
$1/K_t = 1/k_L + 1/Keq.k_G$

E. Calculate the quiescent mass transfer coefficient, K_q, for the impoundment using Form VII.

F. Calculate the overall mass transfer coefficient, KL, for the impoundment as follows:

$$KL = \frac{K_q(A-A_t) + K_t A_t}{A}$$

[5]GCA Corporation. Emissions Data and Model Review for Wastewater Treatment Operations. Draft Technical Note. Prepared for U.S. Environmental Protection Agency. Contract No. 68-01-6871, Assignment 49. August 1985. p. 4-3.

[6]Reinhardt, J. R. Gas-Side Mass-Transfer Coefficient and Interfacial Phenomena of Flat-Bladed Surface Agitators. Ph.D. dissertation, University of Arkansas, Fayetteville, Ar. 1977. p. 48.

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Table 1. Turbulent Areas and Volumes for Surface Agitators[a]

ω, Motor horsepower, hp	A_t, Turbulent area, ft^2	A_t, Turbulent area, m^2	Effective depth, ft	V, Agitated volume, ft^3	a_v, Area per volume ft^2/ft^3
5	177	16.4	10	1,767	0.100
7.5	201	18.7	10	2,010	0.100
10	227	21	10.5	2,383	0.0952
15	284	26.4	11	3,119	0.0909
20	346	32.1	11.5	3,983	0.0870
25	415	38.6	12	4,986	0.0833
30	491	45.7	12	5,890	0.0833
40	661	61.4	13	8,587	0.0769
50	855	79.5	14	11,970	0.0714
60	1,075	100	15	16,130	0.0666
75	1,452	135	16	23,240	0.0625
100	2,206	205	18	39,710	0.0555

[a]Data for a high speed (1,200) rpm) aerator with 60 cm propeller diameter (d).

Form IX DATA FORM FOR THE ESTIMATION OF THE HENRY'S LAW CONSTANT FOR A COMPOUND IN THE BIOLOGICAL TREATMENT UNIT			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
LISTED HENRY'S LAW VALUE AT 25 degrees Celsius. (Table 1, ratio of mol fraction in gas to mole fraction in water)	1		.2885
TEMPERATURE of the liquid in the unit (deg.C)	2		25
CALCULATION OF K			
Temperature adjusted Henry's law value (equals the value on line 1 if the temperature on line 2 is 25)	3		0.2885
Discuss basis of temperature adjustment			
Temperature in degrees Kelvin. Add 273.16 to the number on line 2. Enter the results here.	4		298.1600
Temperature ratio. Divide 273.16 by the number on line 4. Enter the results here.	5		0.9162
Henry's Law adjustment factor. Multiply the number on line 5 by 0.804 and enter the results here.	6		0.7366
Henry's Law value (g/m3 gas per g/m3 liquid) Multiply the number on line 3 by the number on line 6 and divide the results by 1000. Enter the results here and on Form V line 6.	7		0.000213
Henry's Law value (atm m3 per mol) Divide the number on line 3 by 55555 and enter the results here.	8		0.000005

Form X DATA FORM FOR THE CALCULATION OF THE HENRY'S LAW CONSTANT FOR A COMPOUND IN A SEALED BATCH TEST			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
REACTOR HEADSPACE VOLUME, (L)	1		1
REACTOR LIQUID VOLUME (L)	2		10
TEMPERATURE of the liquid in the unit (deg.C)	3		25

Wastewater compounds are biodegraded by biomass in a sealed batch test. For the compound listed above, a data set of liquid and gas concentrations is measured at four different times during the sealed batch test. The data are entered below, and the ratio of the concentrations for each data set is entered in column E.

A	B	C	D	E	
Data set	Time (hr)	Liquid Conc. (mg/L)	Gas Conc. (mg/L)	K_{eq} D/C	.0002108
1					
2					
3					
4					

Temperature in degrees Kelvin. Add 273.16 to the number on line 3. Enter the results here	4		298.16
Molar ratio. Multiply the number on line 4 by 4.555. Enter the results on line 5.	5		1,358.12
Henry's law value (mg/L gas per mg/L liquid). Enter the average value in column E above on line 6.	6		0.000211
Henry's law value (mole fraction gas per mole fraction liquid) Multiply the number on line 6 by the number on line 5. Enter the results on line 7.	7		0.286563
Expected Henry's law value. Enter the number from Form IX line 3.	8		0.288500

Precision: Discuss any variability of the numbers in column E.
Accuracy: Discuss any difference between the numbers on line 7 and line 8. Identify which value will be used for evaluating the biodegradation rate data. Divide the Henry's law value by the number on line 5 and enter the results on line 9.

K_{eq} value (mg/L gas per mg/L liquid)	9		0.000211
HEADSPACE CORRECTION FACTOR. Divide the number on line 2 by the sum of the number on line 2 and the product of the numbers on line 9 and line 1. Enter the result on line 10.	10		0.999979

The headspace correction factor should equal approximately 1 if the headspace is relatively small. Reducing the headspace volume may improve the test data quality if the headspace correction factor is substantially less than one.

Form XI **DATA FORM FOR THE CALCULATION OF THE HENRY'S LAW CONSTANT AND THE STRIPPING CONSTANT FOR A COMPOUND IN AN AERATED BATCH TEST**			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
Concentration basis (liquid or gas)			gas
TEMPERATURE of the liquid in the unit (deg.C)	1		25
GAS FLOW RATE (L/hr)	2		1
LIQUID VOLUME (L)	3		10
Co concentration measurement at time=0 (mg/L)	4		

A	B	C	D	E
data point	time (hr)	Concentration, C (mg/L)	C/Co	-ln(C/Co)
1				
2				
3				
4				
5				

CALCULATIONS. Use additional lines as needed in an expansion of the above table. Plot the values in column E (y axis) vs the data in column B (x axis). Reject outliers. Curve fit with a straight line. Calculate the slope and enter the slope on line 7. Attach the plot and table to this form.

Temperature in degrees Kelvin. Add 273.16 to the number on line 1. Enter the results here	5		298.16
MOLAR RATIO. Multiply the number on line 5 by 4.555. Enter the results on line 6.	6		1,358.12
Slope of the plot of -ln(C/Co) vs time (per hour)	7		2.10e-05
Calculated K_{eq} value (mg/L gas per mg/L liquid). Divide the number on line 7 by the number on line 2 and multiply the results by the number on line 3. Enter the results on line 8.	8		0.000210
Expected K_{eq} value. Divide the number from Form IX line 3 by the number on line 6 and enter the results on line 9.	9		0.000212
Discuss any differences between the numbers on line 8 and line 9. Identify which value will be used for the evaluation of the stripping constant (line 10). Problems can sometimes be resolved by system redesign, changing the bubble size, or confirming the experimental value of K_{eq} by using Form X.			
K_{eq} value (mg/L gas per mg/L liquid)	10		0.000210
STRIPPING CONSTANT(per hour). Divide the number on line 10 by number on line 3 and multiply by the number on line 2. Enter the final result on line 11.	11		0.000021
The headspace correction factor equals one for an aerated batch test.			

Form XII	**DATA FORM FOR THE CALCULATION OF BATCH RATES AND THE DETERMINATION OF THE MONOD CONSTANTS**		
Complete this table with measured liquid concentrations from the batch test. If headspace concentrations were measured and equilibrium has been verified, convert them to liquid concentrations by using K_{eq}. If the data are scattered, plot the concentration vs. time data, and fit the data with a curve based on Equation Appendix C-4 for the Aerated Batch test or Equation Appendix C-6 for the Sealed Batch test. Complete this form with concentrations obtained from that fitted curve. If the curve fitting approach is used, attach a plot of the data and the associated fitted curve to this form. Note: If the initial results appear to be anomalous, do not use the initial results.			
COMPOUND for site specific biorate determination			Methanol
Stripping rate constant (/hr) Form XI, line 11	1		2.1e-5
Enter the batch test Biomass concentration (g/L) on line 2.	2		.258
Headspace correction factor. For a Sealed Batch test use Form X line 10 or 1.00 for an Aerated Batch test.	3		0.999979

A	B	C	D	E	F	G
concentration S (mg/L)	time (hr)	Rate for interval (mg/L-hr) $(a_i-a_{i-1})/(b_{i-1}-b_i)$	Log Mean S for interval (mg/L) $(a_i-a_{i-1})/\ln(a_i/a_{i-1})$	Ratio of rate to S (/hr) (C/D)	Adjusted rate (/hr) (E-line 1)	Reciprocal of adj. rate (hr) (1/F)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						

Continue table on attached sheet as needed. Plot values in column G on y axis, values in column D on x axis. Extrapolate the trend of data points to the y intercept (S=0). Attach the plot to the form.			
Slope of line near intercept (hr-L/mg)	4		.4845
Y intercept from plot (hr)	5		1.938
First order rate constant K1 (or Qm/Ks, L/g-hr). The number 1.00 divided by the products of the values on line 5, line 2, and line 3.	6		2.000026
Zero order rate constant (Qm, /hr). The number 1.00 divided by the products of the values on line 4, line 2, and line 3.	7		8.000104
Concentration applicable to full-scale unit. Enter on line 8.	8		5
Effective biorate K1 ESTIMATE (L/g MLVSS-hr)*	9		0.9606
*Match the concentration on line 8 to the values in Column D and look up the equivalent rate in Column F. Divide the result with both the biomass concentration (line 2) and the headspace correction factor (line 3). Enter this value on line 9. Do not use this method to estimate K1 for line 9 if the data quality is poor in Column F. The number on line 9 is multiplied by the biomass and the system concentration to estimate the full scale biorate. Alternatively, the Monod model parameters may be used.			

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federal register

Friday
January 17, 1997

Part III

Department of Education

Bilingual Education: Program Enhancement Projects; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.289P]

Bilingual Education: Program Enhancement Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7113 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7423 and 7426)).

Purpose of Program: This program provides grants to carry out highly focused, innovative, locally designed projects to expand or enhance existing bilingual education or special alternative instructional programs for limited English proficient (LEP) students.

Eligible Applicants: (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education, community-based organization, other LEAs, or a State educational agency; or (3) a community-based organization or an institution of higher education which has an application approved by the local educational agency to enhance early childhood education or family education programs or to conduct an instructional program which supplements the educational services provided by a local educational agency.

Deadline for Transmittal of Applications: March 14, 1997.

Deadline for Intergovernmental Review: May 13, 1997.

Available Funds: $10.8 million.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 86.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program

Funds under this program are to carry out highly focused, innovative, locally designed projects to expand or enhance existing bilingual education or special alternative instructional programs for LEP students. Grantees shall provide inservice training to classroom teachers, administrators, and other school or community-based organization personnel to improve the instruction and assessment of language-minority and LEP students. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by: implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priority

Under 34 CFR 75.105(c)(1) and section 7113(b)(2)(A) of the Act, the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applicants that consider the Department of Education Professional Development Principles in planning and designing required inservice training activities in their Program Enhancement proposal. Those Principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a) (1) The Secretary uses the following selection criteria in 34 CFR 75.210 and Section 7116(i)(1) of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 7113 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act)), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Act.

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (23 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) The quality of the applicant's plan to provide an opportunity for participation of students enrolled in private schools.

(4) *Proficiency in English and another language.* (5 points)

(i) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(5) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(7) *Evaluation plan.* (12 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Are, to the extent possible, objective and produce data that are quantifiable.

(8) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.289P, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.289P), Washington, D.C. 20202–4725.

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.289P), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

a. Estimated Public Reporting Burden.

b. Group Application Certification.

c. Student Data.

d. Project Documentation.

e. Program Assurances.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: This form is intended for the use of grantees and should not be transmitted to the Department.

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application and *THREE* copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Ana Garcia (202) 205–8077, Patrick Smith (202) 205–9729, and Edia Velez (202) 205–9715, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7423.

Dated: January 14, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

Program Enhancement Grants

The following forms and other items must be included in the application:

- ☐ 1. Application for Federal Assistance (SF 424)
- ☐ 2. Group Application Certification (if applicable)
- ☐ 3. Budget Information (ED Form No. 524)
- ☐ 4. Itemized Budget for each year
- ☐ 5. Student Data
- ☐ 6. Project Documentation Transmittal Letter to SEA Documentation of Consultation with Nonprofit Private School Officials (Check Section C)
- ☐ 7. Notice to all Applicants (OMB1801)
- ☐ 8. Program Assurances
- ☐ 9. Non-Construction Programs (SF 424B)
- ☐ 10. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
- ☐ 11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80–0014)
- ☐ 12. Disclosure of Lobbying Activities (SF–LLL)
- ☐ 13. Table of Contents
- ☐ 14. Application Narrative (not to exceed 25 pages including Abstract, see instructions below)
- ☐ 15. One original and three copies of the application for transmittal to the Department's Application Control Center

Mandatory Page Limits for the Application Narrative

The application narrative must not exceed 25 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative must be paginated. The narrative portion of the application package, including abstract, charts, graphs, tables, position descriptions, illustrations, and appendices, must not exceed the 25 page limit. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities. The page limit applies only to item 14 and not to the other items in the checklist. APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the instructional design and all other project components.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 28, 1997.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant

proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Additional Non-Regulatory Guidance

(Questions and Answers)

Program Enhancement Grants

Q. Are Program Enhancement Grants directed to single schools, groups of schools or entire school districts?

A. The grants are directed to all of the above, as long as the eligible applicant has an existing bilingual education or special alternative instructional program that is to be enhanced or expanded. To qualify for eligibility for a Program Enhancement Grant, the existing bilingual education or special alternative educational program does not necessarily have to be a Title VII project but could also be a State or local project.

Q. Are preschool/early childhood and adult education programs eligible?

A. Preschool/early childhood programs for limited English proficient (LEP) students are eligible for funding. Also, programs that serve adults are eligible for funding if the program is specifically designed as a family education program with parent outreach and training activities that will assist parents to become active participants in the education of their children. (Section 7113(b)(2)(B)(i); 20 U.S.C. 7423(b)(2)(B)(i)). All applicants must propose programs that expand or enhance "existing bilingual education and/or special alternative instructional programs." The statute provides specific definitions for a bilingual education program, a special alternative instructional program, and a family education program that applicants should consult in preparing their proposals. (Section 7501(1)(6) and (15); 20 U.S.C. § 7601(1), (6), and (15)).

Q. When can a CBO or an IHE become the lead entity on a Program Enhancement Grant?

A. A CBO or IHE may become the lead entity only if the application is approved by an LEA, and if it proposes one or more of the following programs: (1) early childhood programs; (2) family education programs; and (3) instructional programs which supplement the educational services provided by the LEA. (Section 7113(c)(3); 20 U.S.C. 7423(c)(3)).

Q. What is meant by the provision that allows local educational agencies (LEA's) to apply "in collaboration with an institution of higher education, community-based organization or local or State educational agency?"

A. Unless a community-based organization (CBO) or institution of higher education (IHE) is applying under the provision discussed in the previous question and answer, it must submit an application under this program in collaboration with an LEA. In order for a State educational agency (SEA) to participate in this program at all, it must submit an application in collaboration with an LEA. (Section 7113(c)(2); 20 U.S.C. 7423(c)(2)). The requirements for entering into a joint or group application, which would include a collaborative application, are set out in 34 CFR 75.127 to 75.129.

Q. Is there a requirement that preservice activities take place before a Program Enhancement Grant can be carried out?

A. No. Because Program Enhancement Grants expand or enhance existing bilingual education projects and only last for two years, there are no requirements regarding activities that must take place before a Program Enhancement Grant can be carried out.

Q. What should be included in the narrative of the application for the Program Enhancement Grants?

A. Since the narrative of the application has a mandatory 25 page limit, we recommend that it include a short, but thorough, discussion of the existing program's design and its progress in meeting its goals and objectives. We also suggest that the applicant address what components of the project are to be enhanced or expanded, plans for implementation, goals and objectives, etc.

Q. May we use the same title or name for a Program Enhancement Grant that was used for a previous Title VII grants?

A. Yes, you may keep the same name of your project or select a new one.

Q. Is there a requirement that the applicant must consult with the private schools in designing its application?

A. Yes. The statutory authority for this program requires applicants to take account, in designing the applications, of the needs of students with limited English proficiency enrolled in nonprofit private elementary and secondary schools in the area to be served by the proposed project. Consultation by the applicant with appropriate private school officials is part of the requirement.

The full requirement is set out at Section 7116(h)(2)(20 U.S.C. § 7426(h)(2)), and should be carefully reviewed by all applicants. The Department, before it can approve an application under this program, must determine that this requirement has been met. For that reason, applicants should address this requirement in their application and must include documentation of their efforts to comply with provision's requirement to consult with private school officials.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 8 9P

TITLE: Bilingual Education: Program Enhancement Project

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

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STUDENT DATA					
Name of Local Educational Agency					
SECTION A - PROGRAM ENHANCEMENT GRANT					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					%
SECTION B					
Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	Non-LEP	Total
Total number of students to be served					

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PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

PROGRAM ENHANCEMENT PROJECT

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

> **Sec. 7116. Applications.** "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."
>
> (Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate.
If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

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PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

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Certification of Agreement

NOTE: This form must be included in an application from a community-based organization or an institution of higher education for the following program:

PROGRAM ENHANCEMENT GRANT PROGRAM

Section 7112 of the Elementary and Secondary Education Act of 1965 as amended specifies that a community-based organization or an institution of higher education, to be an eligible applicant, must have its application "approved by the (appropriate) local educational agency to develop and implement early childhood education or family education programs or to conduct an instructional program which supplements the educational services provided by a local educational agency." (20 U.S.C.7422(c)(3))

In order to comply with this statutory requirement, an application from a community-based organization or an institution of higher education must include the following signed certification.

As the duly authorized representative of the local educational agency (LEA) named below, I certify that this application has been approved by the LEA named below.

Authorized Representative		Name of Local Educational Agency
Signature	Title	
Typed Name	Date Signed	

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PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.**

- As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- **Program Enhancement Grants**

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under this program.

- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.

(Authority: 20 U.S.C. 7426(g)(1))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: *Attach Continuation Sheet(s) SF-LLL-A, if necessary*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 97-1243 Filed 1-16-97; 8:45 am]
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federal register

Friday
January 17, 1997

Part IV

Department of Defense

48 CFR Parts 225, 236, and 252
Defense Federal Acquisition Regulation Supplement; Preference for U.S. Firms on MILCON Overseas Construction and Restriction on MILCON Overseas Architect-Engineer Contracts; Interim Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 236, and 252

[DFARS Case 96-D328]

Defense Federal Acquisition Regulation Supplement; Preference for U.S. Firms on MILCON Overseas Construction

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104–196). Section 112 provides a 20 percent preference for United States firms on all contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

DATES: *Effective date:* January 17, 1997.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered 9n the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D328 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to implement Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). The rule contains, at 236.274(a), the statutory restriction on award of overseas military construction contracts; and adds a solicitation provision at 252.236-7010, Overseas Military Construction-Preference for United States Firms.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf. It is estimated that only 12 such contracts are awarded per year. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D328 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. It is estimated that the new provision at DFARS 252.236-7010 will increase, by 5 hours, the annual paperwork burden associated with DFARS Part 236 and related provisions/clauses. The Office of Management and Budget (OMB) has approved this increase under OMB Control Number 0704-0255.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 112 provides a 20 percent preference for United States firms on all contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf. Immediate publication of an interim rule is necessary to promptly comply with Section 112. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 236, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 236, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7000 is amended by revising paragraph (a) to read as follows:

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by Defense appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

* * * * *

3. Section 225.7003 is added to read as follows:

225.7003 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Section 236.274 is amended by redesignating the introductory text as paragraph (b); by redesignating paragraphs (a) and (b) as paragraphs (b)(1) and (b)(2), respectively; by redesignating paragraphs (b)(1) through (b)(8) as paragraphs (b)(2)(i) through (b)(2)(viii); and by adding a new paragraph (a) to read as follows:

236.274 Construction in foreign countries.

(a) In accordance with Section 112 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, military construction contracts that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless the lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent.

* * * * *

5. Section 236.570 is amended by adding paragraph (c) to read as follows:

236.570 Additional provisions and clauses.

* * * * *

(c) Use the provision at 252.236–7010, Overseas Military Construction-Preference for United States Firms, in solicitations for military construction

contracts that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.236–7010 is added to read as follows:

252.236–7010 Overseas Military Construction—Preference for United States Firms.

As prescribed in 236.570(c), use the following provision:

Overseas Military Construction—Preference for United States Firms (Jan 1997)

(a) *Definition.*

"United States firm," as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) *Status.* The offeror _____ is, _____ is not a United States firm.

(End of provision)

[FR Doc. 97–1041 Filed 1–16–97; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 225, 236, and 252

[DFARS Case 96-D329]

Defense Federal Acquisition Regulation Supplement; Restriction on MILCON Overseas Architect-Engineer Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Pub. L. 104–196). Section 111 restricts award of architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to United States firms or United States firms in joint venture with host nation firms.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D329 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104–196). The rule contains, at 236.602–70, the statutory restriction on award of overseas architect-engineer contracts; and adds a new solicitation provision at 252.236-7011, Overseas Architect-Engineer Services–Restriction to United States Firms.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D329 in correspondence.

C. Paperwork Reduction act

The Paperwork Reduction Act does not apply because this interim rule does not impose any information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 111 restricts award of architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to United States firms or United States firms in joint venture with host nation firms. Immediate publication of an interim rule is necessary to promptly comply with Section 111. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 236, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 236, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7004 is added to read as follows:

225.7004 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3. Section 236.102 is amended by adding paragraph (4) to read as follows:

236.102 Definitions.

* * * * *

(4) *United States firm* is defined in the provisions at 252.236–7010, Overseas Military Construction-Preference for United States Firms, and 252.236–7011,

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Overseas Architect-Engineer Services-Restriction to United States firms.

4. Section 236.602–70 is added to read as follows:

236.602–70 Restriction on award of overseas architect-engineer contracts to foreign firms.

In accordance with Section 111 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, A–E contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

5. Section 236.609–70 is amended by revising the title; by redesignating paragraphs (a)(1) and (2)(2) as paragraphs (a)(1)(i) and (a)(1)(ii), respectively; by redesignating paragraph (a) introductory text as paragraph (a)(1); by redesignating paragraph (b) as paragraph (a)(2); and by adding a new paragraph (b) to read as follows:

236.609–70 Additional provisions and clauses.

* * * * *

(b) Use the provision 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A–E contracts that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.236–7011 is added to read as follows:

252.236–7011 Overseas Architect-Engineer Services—Restriction to United States Firms.

As prescribed in 236.609–70(b), use the following provision:

Overseas Architect-Engineer Services—Restriction to United States Firms (Jan 1997)

(a) *Definition.*

United States firm, as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 12 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

[FR Doc. 97–1042 Filed 1–16–97; 8:45 am]

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federal register

Friday
January 17, 1997

Part V

Department of Education

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.290U]

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7114 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7424 and 7426)).

Purpose of Program: This program provides grants to implement schoolwide bilingual education programs or special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all or virtually all limited English proficient (LEP) children and youth in one or more schools with significant concentrations of these children and youth.

Eligible Applicants: One or more local educational agencies (LEAs), or one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: March 21, 1997.

Deadline for Intergovernmental Review: May 20, 1997.

Available Funds: $22.9 million.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 90.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program

Funds under this program are to be used to reform, restructure, and upgrade all relevant operations and programs, within a school, that serve LEP children and youth. Before carrying out a project assisted under this program, a grantee shall plan, train personnel, develop curriculum, and acquire or develop materials. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priorities

Absolute Priority: The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, 1995 (60 FR 55245), applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Applicants that consider the Department of Education Professional Development Principles in planning and designing a Comprehensive School Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7114 and 7116 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the project will implement schoolwide bilingual education programs or special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all (or virtually all) children and youth of limited English proficiency in schools with significant concentrations of those children and youth.

(Authority: 20 U.S.C. 7424(a))

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the authorizing statute, including consideration of—

(i) Data on the number of children and youth of limited English proficiency in the school or school district to be served and the characteristics of those children and youth, such as language spoken, dropout rates, proficiency in English and the native language, academic standing in relation to the English proficient peers of those children and youth, and, if applicable, the recency of immigration;

(ii) The needs addressed by the project;

(iii) How the applicant identified those needs;

(iv) How those needs will be met by the project; and

(v) The benefits to be gained by meeting those needs.

(Authority: 20 U.S.C. 7426(g)(1)(A); 34 CFR 75.210(b)(2))

(3) *Project activities.* (20 points) The Secretary reviews each application to determine—

(i) How well the project will improve the education of limited English

proficient students and their families by carrying out one or more of the following activities:

(A) Implementing family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children.

(B) Improving the instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures, and, if appropriate, applying educational technology.

(C) Compensating personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to children and youth of limited English proficiency.

(D) Providing training for personnel participating in or preparing to participate in the program that will assist that personnel in meeting State and local certification requirements and, to the extent possible, obtaining college or university credit.

(E) Providing tutorials and academic or career counseling for children and youth of limited English proficiency.

(F) Providing intensified instruction;

(ii) The degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, and the appropriate local and State educational agency or businesses; and

(iii) How well the project will build the recipient's capacity to continue to offer high-quality bilingual and special alternative education programs and services to children and youth of limited English proficiency once Federal assistance is reduced or eliminated.

(Authority 20 U.S.C. 7424(b)(3), 7426(i)(4)-(5), and 7428)

(4) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) The quality of the applicant's plan to provide an opportunity for participation of students enrolled in private schools.

(Authority: 34 CFR 75.210(b)(3))

(5) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(6) *Quality of key personnel.* (5 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (6)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (6)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(Authority: 34 CFR 75.210(b)(4))

(7) *Language skills of personnel.* (3 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) The program will use qualified personnel, including personnel who are proficient in the language or languages used for instruction.

(ii) The applicant will employ teachers in the proposed program who, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(8) *Budget and cost effectiveness.* (3 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 34 CFR 75.210(b)(5))

(9) *Integration of project funds.* (2 points) The Secretary reviews each application to determine how well funds received under this program will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(2)(A)(iii))

(10) *Evaluation plan.* (13 points) The Secretary reviews each application to determine how well the project's evaluation will meet the following requirements. The evaluation must include—

(i) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(ii) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(iii) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7433(c)(1)–(3); 34 CFR 75.210(b)(6))

(11) *Adequacy of resources.* (4 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, that will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited English proficiency.

(iii) The applicant will have the resources and commitment to continue

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the program when assistance under this program is reduced or no longer available.

(iv) The project must provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5)–(6); 34 CFR 75.210(b)(7))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.290U, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Washington, D.C. 20202–4725, or

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 18010004).

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

g. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and THREE copies of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Brenda Compton-Turner ((202) 205–9839), Diane DeMaio ((202) 205–5716), or Ursula Lord ((202) 205–5709), U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Note: Some of the forms in the Appendix to this notice may not be available from these electronic sources.

Program Authority: 20 U.S.C. 7424

Dated: January 14, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for the Application Narrative

Mandatory Page Limit for the Application Narrative

The application narrative must not exceed 45 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative must be paginated. The narrative portion of the application package, including abstract, charts, graphs, tables, position descriptions, illustrations, and appendices, must not exceed the 45 page limit. The page limit applies only to item 14 and not to the other items in the Checklist for Applicants. APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes, in addressing the selection criterion on quality of key personnel.

Additional Guidance

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Prepare one original with an original signature and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

Notice to all Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM. What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys

to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Checklist for Applicants Comprehensive School Grants

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (if applicable)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year
5. Student Data
6. Project Documentation
   Transmittal Letter to SEA
   Documentation of Consultation with Nonprofit Private School Officials
   Check Box in Section C
7. Program Assurances
8. Assurances—Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
11. Disclosure of Lobbying Activities (SF-LLL)
12. Notice to All Applicants (OMB No. 18010004)
13. Table of Contents
14. Application Narrative, including Abstract (See Instructions for the Application Narrative and Additional Guidance)
15. One original and three copies of the application for transmittal to the Department's Application Control Center

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 0U
TITLE: Bilingual Education: Comprehensive School Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:
Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to average 15 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management, U.S. Department of Education, Washington, DC 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Secretary may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing the form.

Line 1 - Personnel: Enter costs of salaries for project staff.

Line 2 - Fringe Benefits: Enter costs of employee benefits.

Line 3 - Travel: Enter costs of travel for project staff.

Line 4 - Equipment: Enter costs of equipment to be purchased for the project.

Line 5 - Supplies: Enter costs of supplies for the project.

Line 6 - Contractual: Enter costs of contracts for the project.

Line 7 - Construction: Enter costs of construction for the project.

Line 8 - Other: Enter costs of other items for the project.

Line 9 - Total Direct Costs: Enter the total of lines 1-8.

Line 10 - Indirect Costs: Enter costs of indirect costs for the project.

Line 11 - Training Stipends: Enter costs of training stipends for the project.

Line 12 - Total Costs: Enter the total of lines 9-11.

If the project is multi-year, complete the budget for each year. Complete the budget for the total project in the last column.

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative										
Typed Name										
Title										
Signature										
Date Signed										
Telephone Number (Including Area Code)										
Name of Institution/ Organization										

STUDENT DATA	
Name of Local Educational Agency	

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____	_____
_____	_____
_____	_____
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_____	_____

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PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate.
If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ☐

- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ☐

- **There are no eligible nonprofit private schools in the proposed service delivery area.** ☐

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PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a)-Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

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Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report ____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. **a. Name and Address of Lobbying Entity Registrant** *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:** (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. **Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**	

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 97-1242 Filed 1-16-97; 8:45 am]
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Friday
January 17, 1997

Part VI

Ounce of Prevention Council

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

The President's Crime Prevention Council; Ounce of Prevention Grant Program; Notice

OUNCE OF PREVENTION COUNCIL

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP) No. 1111]

[ZRIN No. 1121–ZA58]

The President's Crime Prevention Council; Ounce of Prevention Grant Program: Notice of Funding Availability for Youth Substance Use Prevention Program and Notice of Evaluation

AGENCIES: Ounce of Prevention Council (The President's Crime Prevention Council) and the United States Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Funding Availability.

SUMMARY: The President's Crime Prevention Council ("Council") and the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention ("OJJDP") are announcing that the Fiscal Year 1996 grant program has up to $1 million available to assist community-based, youth-led, and grassroots organizations that sponsor activities designed to combat youth drug and alcohol use.

DATES: The application period for funding under this grant program is 60 days and runs from January 17, 1997 through March 18, 1997. The deadline date for submission of an application is on or before 5:00 pm, Eastern Standard Time, on March 18, 1997.

CONTACT INFORMATION:

(1) To have the Application Kit or a copy of this Notice of Funding Availability (NOFA) faxed or mailed to you, *CALL OJJDP's Juvenile Justice Clearinghouse at 800–638–8736.*

(2) If you have questions about the grant program or need assistance in completing the Application Kit, you may *CALL the Department of Justice Response Center at 800–421–6770.*

(3) All required forms and documentation must be submitted by the application deadline to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 1600 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. No faxes accepted.

SUPPLEMENTARY INFORMATION:

I. Letter From the Vice President

Dear Friend:

As Chair of the President's Crime Prevention Council, I am pleased to announce the Fiscal Year 1996 Ounce of Prevention Grant Program. You are being notified, along with others, because of your commitment to the prevention of youth drug and alcohol use.

As you know, drug and alcohol use is a significant problem among youth today. Traditional, adult-managed substance use prevention programs do not always address youth-specific problems. Youth may respond more favorably to substance use prevention programs, however, if other young people from the same community play substantial and meaningful roles in such programs. Based on this belief, the Ounce of Prevention Grant Program targets youth-led organizations. Specifically, the program requires that young people between the ages of 12 and 21 hold significant policy or management positions within the proposed projects. More youth leadership and participation may yield better program results—with a goal of preventing the nation's young people from turning to drugs and alcohol.

The members of the President's Crime Prevention Council and I hope you will consider applying for a grant under this competition. It was created—with you and your colleagues in mind—to provide assistance to those organizations involved with drug and alcohol prevention initiatives. Please share this information with others who may be interested. For additional announcements and applications, call toll-free at 800–638–8736.

Thank you for your commitment to our nation's youth. Together we can continue to help communities and families fight drug and alcohol use by our young people.

Sincerely,
Al Gore.

II. Overview of the Ounce of Prevention Grants

A. Eligible Applicants: Eligible applicants are organizations that (1) have at least 50 percent of their management or policy positions staffed by youth (between the ages of 12 and 21); (2) have been in operation for at least three years: (3) show that they do not expect to expend more than 15 percent of their total budget on administrative costs; (4) fund, on their own, 25 percent of the cost of the proposed activities; (5) are located in an economically distressed area; and (6) meet other eligibility requirements.

B. Award Amount: The Council and OJJDP may award up to $1 million in grant funds. Up to $100,000 per program is available for this program.

The Council and OJJDP retain the right to award more or less than $1 million and to continue this grant program beyond the prescribed award period set forth below, based upon the quality of the applications, grantee performance, and the availability of funds.

C. Award Period: The grant awards will be for a 12-month period.

III. Background

A. Drug and alcohol use is a significant problem among youth today. Traditional, adult-managed substance use prevention programs do not always address youth-specific problems. The Ounce of Prevention Grant Program is in response to this concern and supports the Administration's strong commitment to reverse the tide of youth substance use.

The Council believes that youth may respond more favorably to substance use prevention programs if other young people from the same community play substantial and meaningful roles in the management and operation of such programs. In light of these factors, this grant program targets organizations that are led by or involve in a substantial way young people between the ages of 12 and 21.

B. Goal: To enhance or expand existing youth-led activities that prevent substance use among youth. Such activities should seek to meet the following prevention goals:

(1) increase collaboration between community-based, youth-serving and youth-led groups and law enforcement, schools, houses of worship, health-care providers, cultural organizations, and government;

(2) assist and empower youth to help solve problems that affect them; and

(3) promote personal growth and social responsibility among our young people.

C. Program Strategy: This grant program will help fund youth-led activities devoted to helping youth combat substance use. If your organization has more than one mission, the component of your organization that focuses on youth substance use—or the entire organization—is eligible to apply for this grant. Proposed activities shall consist of specific, concrete services, including, but not limited to, peer-to-peer mentoring; counseling; parent involvement; and leadership development. These activities must include a specific plan to meet the substance use prevention goals identified above. For example, an applicant's goal might be to increase enrollment in its substance use prevention classes by 30 percent.

D. Eligibility Requirements: Applications will be accepted only if they meet all of the following five criteria:

(1) *Youth-Led/Youth-Involved Organizations and Activities.* The applicant must have at least 50 percent of their management or policy positions staffed by youth (between the ages of 12 and 21) for the proposed program. Such organizations include, but are not limited to school clubs, community groups, and programs administered through houses of worship, local agencies, and private non-profits.

(2) *Partnership with a Local Unit of Government or Established Entity.* The applicant must be a legally constituted non-profit organization or must jointly apply with a legal entity (i.e., Indian tribal government, city, county, or other municipality; a school board; a college or university; a private nonprofit 501(c)(3) organization; or a consortium of the aforementioned entities). Where the youth-led organization is not a legally constituted non-profit organization, the co-applicant shall be designated as the grant recipient and administering entity. The youth-led organization may be affiliated with or be part of a larger network of community organizations or foundations, but may not pay dues to or receive a majority of its funding from or through a national organization unless it is the sole provider for a large geographical area.

(3) Required Length of Existence. The applicant must have been continuously operational for at least three years.

(4) Substance Use Prevention Experience. The applicant must have engaged in activities related to substance use prevention activities for at least one year.

(5) Geographic Location. The applicant must be located within one of the following areas:

(a) a census tract with a poverty rate of 25 percent or more;

(b) a census tract that (a) has a population under 2,000 or is zoned for at least 75 percent industrial or commercial use and (b) is located next to a census tract with a poverty rate of at least 25 percent; or

(c) a locale designated as a Federal Empowerment Zone, Supplemental Empowerment Zone, Enterprise Community or Enhanced Enterprise Community.

Applicants may determine whether they are located in one of these geographic areas by calling 800–998–9999 and giving their address and zip code, or by accessing the electronic locator map on the World Wide Web at http://www.caliper.com/hud (then type in your street address and zip code).

E. Criteria for Review and Selection of Grant Applicant: The application review and evaluation process consists of three levels. First, all applications will be screened to determine if they meet the eligibility requirements. Second, those applications that meet the eligibility requirements will be evaluated and rated by a peer review panel consisting of experts in the field of youth drug and alcohol use. Third, the Council's review panel will evaluate the applications rated most highly by the peer review panel and will make final recommendations to the Council and OJJDP based on the criteria and geographic distribution factors.

Applications will be judged on a 100-point scale based on the following criteria:

(1) Problems to be Addressed (5 points). Applicants must concisely describe the nature and extent of the specific drug and alcohol problems in their community and provide a discussion of the possible causes of these problems. For example, applicants might state that lack of adult supervision and adequate recreational opportunities contribute to underage drinking.

(2) Goals and Objectives (10 points). Applicants must provide a clear discussion of the project goals and objectives as they relate to the stated problems. In developing the project goals and objectives, applicants should consider, "If this program is successful, what will be different about the stated problems (project goals), and what will need to be done (project objectives) to make these changes occur?" Applicants must provide clearly stated goals and objectives that logically address the problems described in section (1). For example, one of your project objectives may be to expand your mentoring or peer counseling program to service an additional 100 youth to address the lack of adult supervision.

(3) Program Design (25 points). Applicants must provide a detailed description of the proposed project activities and how these activities will achieve the goals and objectives specified in section (2).

The proposed activities should be practical and achievable. Applicants must present a plan that lays out how the proposed project activities will lead to achieving the goals and objectives and how work requirements will be met. This activity plan should demonstrate creativity in your approaches for engaging young people and combating substance use. For example, if you intend to expand your outreach services to seven additional youth recreation centers, you should describe exactly how you will go about expanding those services to achieve that project objective.

In addition, the Program Design must specifically describe how you will monitor progress toward achieving your goals and objectives, including the types of information you will collect and how you will collect it, so that you know the program is on track and working. For example, in order to measure whether you actually expanded your outreach services as described, you will need to compare the number of recreation centers involved before and after the project.

(4) Management and Organizational Capability (25 points). Applicants must indicate how long their organization has been in existence and demonstrate that their management, staffing, and experience are adequate and appropriate to implement and complete the project successfully, efficiently, and cost-effectively. Applicants must show that youth (individuals between the ages of 12 and 21) hold at least 50 percent of the management or policy positions in the operation of the component that will manage this project. In order to determine the extent of youth involvement, applicants must provide the job descriptions and current background information, including age information, for all key staff members.

(5) Collaboration (15 points). Preference shall be given to applicants that have a history of collaboration and are part of a coalition of a broad spectrum of community-based and social service organizations. Applications must show a coordinated approach to reducing the effects of substance use and providing alternatives for at-risk youth. Applicants must show how such collaboration and participation have enhanced their youth drug or alcohol prevention activities. For example, applicants might describe their collaboration with local law enforcement officials on a particular activity.

(6) Budget (20 points). Applicants must submit a detailed, reasonable, and cost-effective budget for the proposed program and evaluation activities. In addition, applicants must submit a budget narrative that describes and justifies proposed program and evaluation activities and costs. Administrative costs (defined as costs for non-program items, such as salaries, operation of space and property, and office supplies unrelated to the program) must not exceed 15 percent of the applicant's total budget.

Grant award amounts may not exceed 75 percent of the total cost of an applicant's activities for the 12-month

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grant term. To meet this requirement, applicants must demonstrate that they will provide, from a source other than the grant program, 25 percent of their total cost in-kind (non-cash equivalent) for the proposed activities for this 12-month period.

The Council and OJJDP retain the right to waive the 15 percent minimum administrative budget requirement and/or the 25 percent non-federal share requirement upon demonstration of compelling financial hardship or need. Documentation may include financial statements about your organization's need for the waiver, including a supporting written report.

IV. Application Requirements

A. Page Limitation and Format: The narrative portion of the application, exclusive of appendices and exhibits, is strictly limited to 25 double-spaced pages in length, and must be submitted on 8½- by 11-inch paper, double-spaced on one side of the paper in a standard 10- or 12-point font.

Appendices shall be limited to the following three items:

Appendix A: Listing of individuals, their affiliations, signatures, and contact information for the persons participating in the development of this proposal.

Appendix B: Legislation, executive orders, memoranda of understanding, and other formal commitments of bona fide partnerships (e.g., combined funding or procedures for service coordination). Documentation should be provided.

Appendix C: Staff background information and position descriptions.

B. Application Instructions and Contact Information: To apply for this program, you must complete an Application Kit which includes detailed instructions, forms, checklists, worksheets, and application forms. To have the Application Kit or a copy of this Notice of Funding Availability (NOFA) faxed to you, *CALL OJJDP's Juvenile Justice Clearinghouse at 800–638–8736,* select option #1 for automated ordering services, then select option #2 for fax on demand, then select document #9023 for the Application Kit and/or document #9021 for the NOFA. Note: When you call, you will be asked to give a customer number. If you do not have one, be prepared to answer a few survey questions.

To have a copy of this NOFA and/or an Application Kit mailed to you, *CALL 800–638–8736,* select option #2 for publication ordering, then request publication #SL 000188 for the Application Kit and/or publication #SL 000186 for the NOFA.

If you have questions about the grant program or need assistance in completing the Application Kit, you may *CALL the Department of Justice Response Center at the toll free number, 800–421–6770,* Monday through Friday, 9:00 am to 5:00 pm Eastern Standard Time.

C. Application Submission and Deadline: All required forms and documentation must be submitted by the application deadline to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 1600 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. (The following telephone number is to be used only for sending an express package: 301–251–5535). *Note: In the lower left-hand corner of the envelope, you must clearly write "Substance Use Prevention Program."* All applications must be received, not postmarked, by the submission deadline.

The application period for funding under this grant program is 60 days and runs from January 17, 1997 through March 18, 1997. The deadline date for submission of an application is on or before 5:00 pm, Eastern Standard Time, on March 18, 1997. Applicants are responsible for ensuring that the original and five copies of the application package are received at the OJJDP address by that deadline date. No faxes are allowed.

V. Report and Evaluation Requirements

A. Report Requirement: After awards have been made, grant recipients will be required to submit, in a form prescribed by OJJDP grant guidelines and the Council, two reports that describe the specific use of the grant funds, the activities conducted and the results and benefits achieved. The reports must be submitted 6 months and 12 months after the grant recipient receives funding.

B. Evaluation Requirement: Evaluation is a powerful tool that supports program planning, management, and our understanding of "what works" to prevent youth from using alcohol and drugs. By submitting an application for the Youth Substance Use Prevention Program, applicants agree to cooperate fully with the national evaluation that the Council and OJJDP will conduct (described below). At a minimum, grantees will be expected to maintain records on how the program is operating and the extent to which program objectives are being attained, as described in their Program Design. In addition, grantees will be expected to work with the national evaluator to develop an evaluation strategy, tailored to each grantee's program design, and to work with the national evaluator to collect key program information that will help assess the extent to which programs are meeting their objectives and achieving their goals. The types of information collected might include, but are not limited to: meeting agendas and minutes; attendance lists; client rosters; chronology of program events; numbers of clients served; number of contacts made; duration and frequency of prevention activities, for example, one hour per week for six weeks; etcetera.

VI. National Evaluation NOFA

OJJDP and the Council are ensuring that a thorough national evaluation of the Ounce of Prevention's Youth Substance Use Prevention Grant Program is conducted by an outside evaluator. OJJDP and the Council are announcing the availability of funding for a national evaluation of the Grant Program and will publish the Notice of Funding Availability (NOFA) in the **Federal Register** at a later date. The purpose of this evaluation will be to document and analyze the process of the youth-involvement collaboration and substance use prevention activities that have taken place during the course of the program.

The Council and OJJDP will invite applications from public and private agencies, organizations, institutions, or individuals who can demonstrate that they have experience in the design and implementation of this type of evaluation. Joint applications from two or more eligible applicants are welcome provided one is designated primary applicant and the other a co-applicant. Applicants will be asked to demonstrate their technical knowledge of evaluation methods and tools; their practical knowledge of substance use prevention among juveniles; and their skills for assisting those who must develop and make decisions about program directions. To have the Application Kit or the Evaluation Notice of Funding Availability (NOFA) faxed to you, call OJJDP's Juvenile Justice Clearinghouse at 800–638–8736, select option #1 for automated ordering services, then select option #2 for fax on demand, then select document #9023 for the Application Kit and/or document #9022 for the Evaluation NOFA.

To have the Application Kit or the Evaluation NOFA mailed to you, call 800–638–8736, select option #2 for publication ordering, then request publication #SL 000188 for the Application Kit and/or publication #SL 000187 for the Evaluation NOFA.

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VII. Additional Information

A. Statutory Authority: Sections 30101 and 30102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13741) ("Act") authorize the Council's "Ounce of Prevention Grant Program." Pursuant to Section 30101(a)(3) of the Act, the Council has delegated to OJJDP the authority to administer certain aspects of this program in consultation with the Council. Authority for OJJDP to administer this program is found in the Economy Act of 1932, as amended.

B. Appropriate Use of Grant Funds: The grant funds may not be used to replace program or administrative services funded by the state, local, or federal government.

Dated: January 14, 1997.

Nancy Hatamiya,

Chief of Staff, President's Crime Prevention Council.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

References

The following publications may assist in preparing your application and implementing your program. They are available from the Juvenile Justice Clearinghouse, by calling 800–638–8736, select option #2 for publication ordering, then reference the NCJ # associated with each title you want to order.

Delinquency Prevention Works. 1995 (May). Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. NCJ 155006.

Evaluation of Boys and Girls Clubs in Public Housing. 1995 (November). Washington, D.C.: National Institute of Justice, U.S. Department of Justice. FS 000100.

Howell, J.C., ed. 1995 (May). *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. NCJ 153681.

Huizinga, D. et al. 1995 (August). *Urban Delinquency and Substance Abuse.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. NCJ 143454.

Harrell, A. 1996 (April). *Intervening with High-Risk Youth, Preliminary Findings from the Children-at-Risk Program.* Washington, D.C.: National Institute of Justice, U.S. Department of Justice. FS 000140.

Office of National Drug Control Policy. 1996 (February). *National Drug Control Strategy: 1996.* Washington, D.C.: Office of the President. NCJ 160086.

Partnerships To Prevent Youth Violence. 1994 (August). Washington, D.C.: National Crime Prevention Council and the Bureau of Justice Assistance, U.S. Department of Justice. NCJ 148459.

Preventing Crime and Promoting Responsibility: 50 Programs That Help Communities Help Their Youth. 1995 (September). Washington, D.C.: President's Crime Prevention Council. NCJ 158622.

Rosenbaum, D.P. et al. 1994. *Community Responses to Drug Abuse: A Program Evaluation.* Washington, D.C.: National Institute of Justice, U.S. Department of Justice. NCJ 145945.

Working as Partners With Community Groups. 1994 (September). Washington, D.C.: National Crime Prevention Council and the Bureau of Justice Assistance, U.S. Department of Justice. NCJ 148458.

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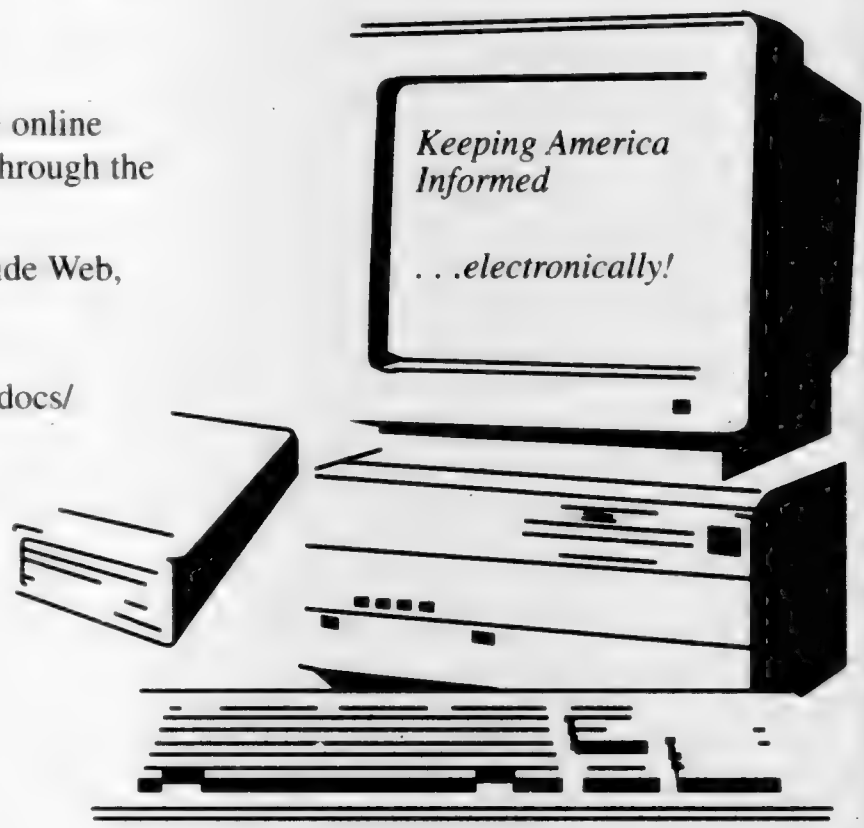

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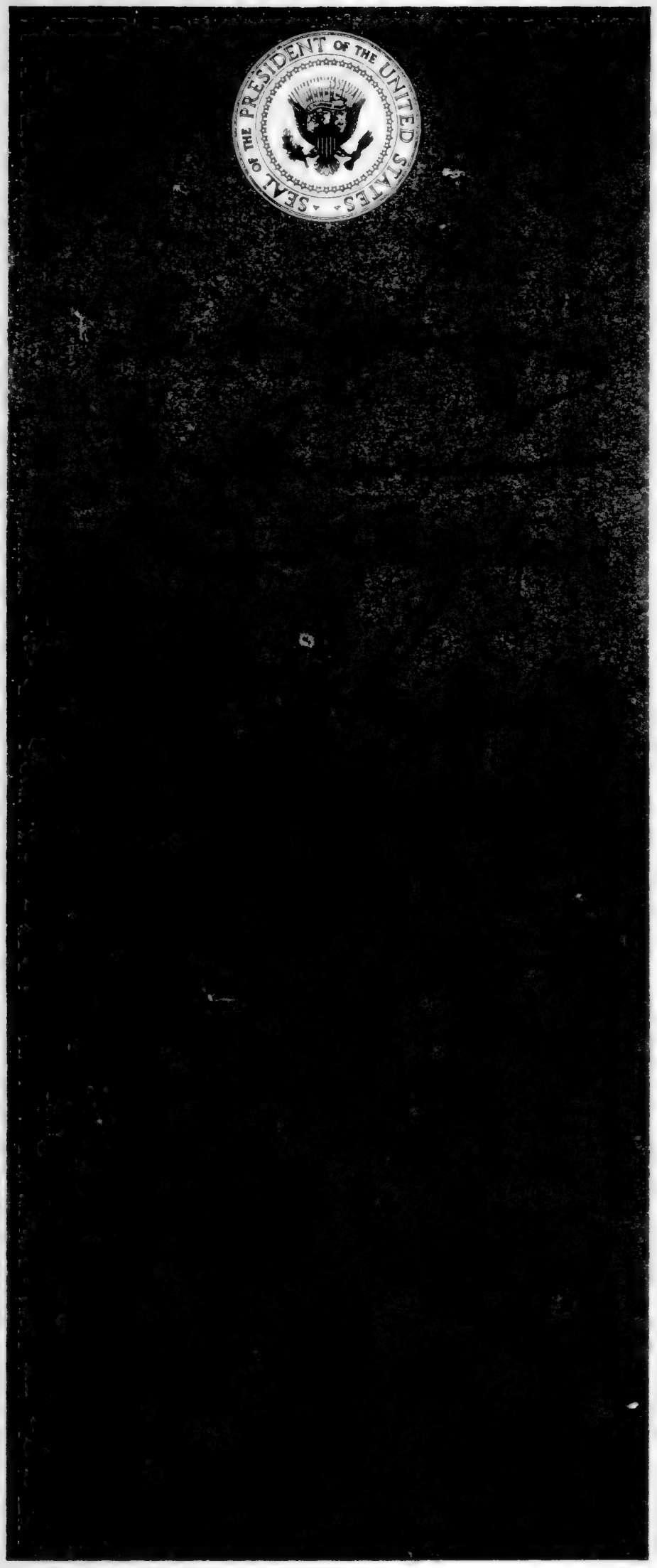

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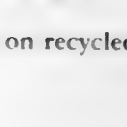

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7 CFR Part

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SUPPLEMENT
Department

Rules and Regulations

Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV–95–305]

Shelled Almonds and Almonds in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Shelled Almonds and the United States Standards for Grades of Almonds in the Shell. The Agricultural Marketing Service (AMS), in cooperation with the almond industry and other interested parties, develops and revises standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

The revision will change the foreign material tolerances; the tolerance for live insects inside the shell; remove the language "appearance of the lot" from all definitions in the standards; combine tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revise current definitions; and add new definitions.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090–6456, or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Act, and issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under these standards and approximately 7,000 producers of almonds. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A majority of handlers and producers of almonds may be classified as small entities.

The revisions will change the foreign material tolerances; the tolerance for live insects inside the shell; remove the language "appearance of the lot" from all definitions in the standards; combine tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revise current definitions; and add new definitions. These changes are being made in order to bring the standards into conformity with current cultural, harvesting and marketing practices. (The standards were last revised in August 1960 and July 1964, respectively.) Accordingly, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Shelled Almonds, and the United States Standards for Grades of Almonds in the Shell, was published in the **Federal Register** on April 22, 1996 (61 FR 17580–17586).

The Almond Board of California's Grades Subcommittee (ABCGS) requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices.

The 60-day comment period ended June 21, 1996, and a total of seven comments were received from growers, handlers, shippers, and receivers.

A copy of the proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information concerning the possible effect of the proposed revision on pesticide use. ARS was unable to identify any relevant information.

Three comments were in favor of the proposal in its entirety. These commentors agreed that due to changes in current cultural, harvesting, and marketing practices of almonds, it was necessary to change the standards as proposed.

One commentor was in favor of the proposal with one exception, the zero tolerance for glass and metal in the U.S. Standards for Grades of Shelled Almonds "could be devastating especially in a year of low prices to processors." The commentor states that "a customer may claim to have found a small piece of glass or metal after the product has been graded and shipped which would cause rejection of the whole load." AMS disagrees that this would be a problem for the industry. Furthermore, an inspection at any point along the marketing chain may be requested. In addition, the ABCGS, which represents a majority of the industry, contends that the zero tolerance for glass and metal, which is

included in the tolerances for foreign material, reflects the current requirements of most buyers and meets current food safety concerns.

The three remaining comments were in favor of the proposal except for its provisions regarding embedded shell as it pertains to foreign material; the definition of similar varietal characteristics; and, definitions and tolerances for chipped and scratched kernels as well as split and broken kernels. All three comments expressed concern over "embedded shell" as a defect in the U.S. Standards for Grades of Almonds in the Shell. The commentors contend that almond shell that has become embedded in the almond nutmeat—embedded shell, should be considered as foreign material. AMS disagrees with classifying embedded shell as foreign material. The definition of foreign material in the standards does not include almonds or almond kernels, and has historically been reserved for material other than pieces of almond or almond kernels. Currently, embedded shell is scored as damage against the tolerance for "other defects." Additionally, AMS understands that the industry is forming a working group to study this issue and to make a recommendation to AMS. Revising the standards to include the commentors' recommendation at this time would be premature in light of this study. Therefore, no change is being made to the rule in response to these comments.

Two of the three comments expressed concern over the proposed revision to the definition of similar varietal characteristics. One of the commentors raised the concern that the similarity in the shape and appearance is critical. The other commentor raised the concern that this definition is being "relaxed where varieties are not properly identified." AMS disagrees. The proposed definition of similar varietal characteristics includes "kernels that are similar in shape and appearance." Unless the lot is specified as "California," the lot must have kernels that are similar in shape and appearance. Therefore, this should not relax the identification of varieties but enhance it. No change is being made to the rule in response to these comments.

Two of the three comments expressed concern over the proposed revision to the definitions of, and the tolerances for the defects "chipping and scratching," and "split and broken." One of the commentors raised the concern that the tolerances for chipping and scratching and split and broken in the U.S. Sheller Run grade "* * * need to be measured separately." AMS is of the view that the proposed changes do address the defects separately. In the U.S. Standards for Grades of Shelled Almonds, § 51.2109 U.S. Sheller Run grade, paragraph (c) For kernels damaged by chipping and/or scratching or split and broken allows 35 percent, provided that not more than 15 percent shall be allowed for split and broken. The intent of this section is that chipped and/or scratched kernels have to be measured separately from broken and split kernels. The other commentor stated that the "removal of the separate control limits for the two defects (chipping and scratching or split and broken) will result in wide product variance." AMS agrees that there will be some product variance in the U.S. Standards for Grades of Shelled Almonds, § 51.2109 U.S. Sheller Run grade, but only for chipped and scratched kernels. The proposed changes would allow up to 35 percent chipped and scratched kernels (with 0 percent split and broken), or any combination of the two types of defects totaling 35 percent (or less), as long as the percentage of split and broken does not exceed 15 percent. A contract between interested parties may specify a more restrictive tolerance for these defects. Chipped and scratched kernels essentially retain their full shape, but have superficial chips and scratches of the pellicle and meat. Split and broken kernels are those with ⅛ or more of the kernel split or broken off. In addition, ABCGS views chipped and scratched kernels as less objectionable than split and broken kernels. Therefore, there will be some product variance but only for chipped and scratched kernels, which is less objectionable than split and broken kernels, and contract specifications can further restrict these tolerances. Therefore, no change is being made to the rule in response to these comments.

Lastly, one of the three comments suggested revisions to the definitions of "whole," "split or broken kernels," and "injury." The commentor suggested extensive revisions to these definitions in terms of redefining what they mean. AMS is of the view that these definitions have served for the more than 30 years and they have become common terminology among those who buy and sell commercial volumes of almonds. Changing these definitions, when no need has been adequately demonstrated, could disrupt the efficient marketing of almonds. Therefore, no change is being made to the rule in response to this comment.

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of the proposed rule are being finalized without any changes.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 51, Subpart—United States Standards for Grades of Almonds in the Shell is revised to read as follows:

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

Sec.

51.2075 U.S. No. 1.
51.2076 U.S. No. 1 Mixed.
51.2077 U.S. No. 2.
51.2078 U.S. No. 2 Mixed.

Application of Tolerances

51.2079 Application of tolerances.

Determination of Grade

51.2080 Determination of grade.

Definitions

51.2081 Similar varietal characteristics.
51.2082 Loose extraneous and foreign material.
51.2083 Clean.
51.2084 Fairly bright.
51.2085 Fairly uniform color.
51.2086 Well dried.
51.2087 Decay.
51.2088 Rancidity.
51.2089 Damage.
51.2090 Serious damage.
51.2091 Thickness.

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

§ 51.2075 U.S. No. 1.

"U.S. No. 1" consists of almonds in the shell which are of similar varietal characteristics and free from loose extraneous and foreign material. The shells are clean, fairly bright, fairly uniform color, and free from damage caused by discoloration, adhering hulls, broken shells or other means. The kernels are well dried, free from decay, rancidity, and free from damage caused by insects, mold, gum, skin discoloration, shriveling, brown spot or other means.

(a) Unless otherwise specified, the almonds are of a size not less than 28/64 of an inch (11.1 mm) in thickness.

(b) In order to allow for variations incident to proper grading and handling, the following tolerances are provided as specified:

(1) *For external (shell) defects.* 10 percent, by count, for almonds which fail to meet the requirements of this grade other than for variety and size;

(2) *For dissimilar varieties.* 5 percent, by count, including therein not more than 1 percent for bitter almonds mixed with sweet almonds;

(3) *For size.* 5 percent, by count, for almonds which are smaller than the specified minimum thickness;

(4) *For loose extraneous and foreign material.* 2 percent, by weight, including therein not more than 1 percent which can pass through a round opening 24/64 inch (9.5 mm) in diameter: Provided, that such material is practically free from insect infestation; and,

(5) *For internal (kernel) defects.* 10 percent, by count, for almonds with kernels failing to meet the requirements of this grade: Provided, that not more than one-half of this tolerance or 5 percent shall be allowed for kernels affected by decay or rancidity, damaged by insects or mold or seriously damaged by shriveling: And provided further, that no part of this tolerance shall be allowed for live insects inside the shell.

§ 51.2076 U.S. No. 1 Mixed.

"U.S. No. 1 Mixed" consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that two or more varieties of sweet almonds are mixed.

§ 51.2077 U.S. No. 2.

"U.S. No. 2" consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that an additional tolerance of 20 percent shall be allowed for almonds with shells damaged by discoloration.

§ 51.2078 U.S. No. 2 Mixed.

"U.S. No. 2 Mixed" consists of almonds in the shell which meet the requirements of U.S. No. 2 grade, except that two or more varieties of sweet almonds are mixed.

Application of Tolerances

§ 51.2079 Application of tolerances.

The tolerances for the foregoing grades are applied to the entire lot of almonds, based upon a composite sample drawn from containers throughout the lot.

Determination of Grade

§ 51.2080 Determination of grade.

In grading the inspection sample, the percentage of loose hulls, pieces of shell, chaff and foreign material is determined on the basis of weight. Next, the percentages of nuts which are of dissimilar varieties, undersize or have adhering hulls or defective shells are determined by count, using an adequate portion of the total sample. Finally, the nuts in that portion of the sample are cracked, and the percentage having internal defects is determined on the basis of count.

Definitions

§ 51.2081 Similar varietal characteristics.

Similar varietal characteristics means that the almonds are similar in shape, and are reasonably uniform in degree of hardness of the shells, and that bitter almonds are not mixed with sweet almonds. For example, hard-shelled varieties, semi-soft shelled varieties, soft-shelled varieties and paper-shelled varieties are not mixed together, nor are any two of these types mixed under this definition.

§ 51.2082 Loose extraneous and foreign material.

Loose extraneous and foreign material means loose hulls, empty broken shells, pieces of shells, external insect infestation and any substance other than almonds in the shell or almond kernels.

§ 51.2083 Clean.

Clean means that the shell is practically free from dirt and other adhering foreign material.

§ 51.2084 Fairly bright.

Fairly bright means that the shells show good characteristic color.

§ 51.2085 Fairly uniform color.

Fairly uniform color means that the shells do not show excessive variation in color, whether bleached or natural.

§ 51.2086 Well dried.

Well dried means that the kernel is firm and brittle, not pliable or leathery.

§ 51.2087 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2088 Rancidity.

Rancidity means that the kernel is noticeably rancid to taste.

§ 51.2089 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almond. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Discoloration of the shell which is medium gray to black and affects more than one-eighth of the surface in the aggregate. Normal variations of a reddish or brownish color shall not be considered discoloration;

(b) Adhering hulls which cover more than 5 percent of the shell surface in the aggregate;

(c) Broken shells when a portion of the shell is missing, or the shell is broken or fractured to the extent that moderate pressure will permit the kernel to become dislodged;

(d) Insect injury when the insect, web or frass is present or there is definite evidence of insect feeding;

(e) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(f) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(g) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin;

(h) Shriveling when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat. An almond containing two kernels shall not be classed as damaged if either kernel has more than three-fourths of the pellicle filled with meat; and,

(i) Brown spot which affects an aggregate area on the kernel greater than the area of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2090 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold. The following defect shall be considered as serious damage: Shriveling when the kernel is seriously withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered seriously damaged if more than one-fourth of the pellicle is filled with meat.

§ 51.2091 Thickness.

Thickness means the greatest dimension between the two semi-flat surfaces of the shell measured at right angles to a plane extending between the seams of the shell.

3. In Part 51, Subpart—United States Standards for Grades of Shelled Almonds is revised to read as follows:

Subpart—United States Standards for Grades of Shelled Almonds

Grades

Sec.
51.2105 U.S. Fancy.
51.2106 U.S. Extra No. 1.
51.2107 U.S. No. 1.
51.2108 U.S. Select Sheller Run.
51.2109 U.S. Standard Sheller Run.
51.2110 U.S. No. 1 Whole and Broken.
51.2111 U.S. No. 1 Pieces.

Mixed Varieties

51.2112 Mixed varieties.

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51.2113 Size requirements.
51.2114 Tolerances for size.

Application of Tolerances

51.2115 Application of tolerances.

Definitions

51.2116 Similar varietal characteristics.
51.2117 Whole.
51.2118 Clean.
51.2119 Well dried.
51.2120 Decay.
51.2121 Rancidity.
51.2122 Insect injury.
51.2123 Foreign material.
51.2124 Doubles.
51.2125 Split or broken kernels.
51.2126 Particles and dust.
51.2127 Injury.
51.2128 Damage.
51.2129 Serious damage.
51.2130 Diameter.
51.2131 Fairly uniform in size.

Subpart—United States Standards for Grades of Shelled Almonds

Grades

§ 51.2105 U.S. Fancy.

"U.S. Fancy" consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from injury caused by chipped and scratched kernels, and free from damage caused by mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 3 percent;

(c) *For kernels injured by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 2 percent, including not more than one-half of this amount, or 1 percent, for split or broken kernels, and including not more than one-half of the former amount, or 1 percent, for seriously damaged kernels.

§ 51.2106 U.S. Extra No. 1.

"U.S. Extra No. 1" consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 5 percent;

(c) *For kernels damaged by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 4 percent, including not more than one-fourth of this amount, or 1 percent, for split or broken kernels, and including not more than three-eighths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2107 U.S. No. 1.

"U.S. No. 1" consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling. the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 10 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 5 percent including not more than one-fifth of this amount, or 1 percent, for split or broken kernels, and including not more than three-tenths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2108 U.S. Select Sheller Run.

"U.S. Select Sheller Run" consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 20 percent;

(d) *For foreign material.* One-tenth of 1 percent (0.10 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(f) *For split and broken kernels.* 5 percent: Provided, that not more than two-fifths of this amount, or 2 percent, shall be allowed for pieces which will pass through a round opening $^{20}/_{64}$ inch (7.9 mm) in diameter; and,

(g) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2109 U.S. Standard Sheller Run.

"U.S. Standard Sheller Run" consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 25 percent;

(c) *For kernels damaged by chipping and/or scratching or split and broken.* 35 percent; Provided, that not more than three-sevenths of this amount, or 15 percent, shall be allowed for split and broken: And Provided Further, that not more than one-third of this latter amount, or 5 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter;

(d) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2110 U.S. No. 1 Whole and Broken.

"U.S. No. 1 Whole and Broken" consists of shelled almonds of similar varietal characteristics which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) In this grade not less than 30 percent, by weight, of the kernels shall be whole. Doubles shall not be considered as whole kernels in determining the percentage of whole kernels.

(b) Unless otherwise specified, the minimum diameter shall be not less than 20/64 of an inch (7.9 mm). (See §§ 51.2113 and 51.2114.)

(c) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(2) *For doubles.* 35 percent;

(3) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(4) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(5) *For undersize.* 5 percent; and,

(6) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

§ 51.2111 U.S. No. 1 Pieces.

"U.S. No. 1 Pieces" consists of shelled almonds which are not bitter, which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) Unless otherwise specified, the minimum diameter shall be not less than 8/64 of an inch (3.2 mm). (See §§ 51.2113 and 51.2114.)

(b) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For bitter almonds mixed with sweet almonds.* 1 percent;

(2) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(3) *For particles and dust.* 1 percent; and

(4) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

Mixed Varieties

§ 51.2112 Mixed varieties.

Any lot of shelled almonds designated as "one type" or undesignated as to type, which consists of a mixture of two or more dissimilar varieties which meet the other requirements of any of the grades of U.S. No. 1, U.S. Select Sheller Run, U.S. Standard Sheller Run, U.S. No. 1 Whole and Broken may be designated as: "U.S. No. 1 Mixed;" "U.S. Select Sheller Run Mixed;" "U.S. Standard Sheller Run Mixed;" "U.S. No. 1 Whole and Broken Mixed;" respectively; but no lot of any of these grades may include more than 1 percent of bitter almonds mixed with sweet almonds.

Size

§ 51.2113 Size requirements.

The size may be specified in terms of range in count of whole almond kernels per ounce or in terms of minimum, or minimum and maximum diameter. When a range in count is specified, the whole kernels shall be fairly uniform in size, and the average count per ounce shall be within the range specified. Doubles and broken kernels shall not be used in determining counts. Count ranges per ounce commonly used are shown below, but other ranges may be specified: Provided, that the kernels are fairly uniform in size.

Count Range Per Ounce
16 to 18, inclusive.
18 to 20, inclusive.
20 to 22, inclusive.
22 to 24, inclusive.
23 to 25, inclusive.
24 to 26, inclusive.
26 to 28, inclusive.
27 to 30, inclusive.
30 to 34, inclusive.
34 to 40, inclusive.
40 to 50, inclusive.
50 and smaller.

§ 51.2114 Tolerances for size.

(a) When a range is specified as, for example, "18/20," no tolerance for counts above or below the range shall be allowed.

(b) When the minimum, or minimum and maximum diameter are specified, a total tolerance of not more than 10 percent, by weight, may fail to meet the specified size requirements: Provided, that not more than one-half of this amount, or 5 percent, may be below the minimum size specified.

Application of Tolerances

§ 51.2115 Application of tolerances.

The tolerances for the grades are to be applied to the entire lot, and a composite sample shall be taken for determining the grade. However, any container or group of containers in which the almonds are found to be materially inferior to those in the majority of the containers shall be considered a separate lot.

Definitions

§ 51.2116 Similar varietal characteristics.

Similar varietal characteristics means that the kernels are similar in shape and appearance. For example, long types shall not be mixed with short types, or broad types mixed with narrow types, and bitter almonds shall not be mixed with sweet almonds. Color of the kernels shall not be considered, since there is often a marked difference in skin color of kernels of the same variety.

(a) When a lot is specified as "one type," all kernels shall be the same in shape and appearance; and,

(b) When a lot is specified and carton marked as "California," kernels present may include any one or a combination of blanchable varieties within the "California" Marketing Classification. In addition, Nonpareil or similar types may be included provided that it does not exceed twenty-five percent (25%), by weight, of the lot.

§ 51.2117 Whole.

Whole means that there is less than one-eighth of the kernel chipped off or missing, and that the general contour of

the kernel is not materially affected by the missing part.

§ 51.2118 Clean.

Clean means that the kernel is practically free from dirt and other foreign substance.

§ 51.2119 Well dried.

Well dried means that the kernel is firm and brittle, and not pliable or leathery.

§ 51.2120 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2121 Rancidity.

Rancidity means that the kernel is noticeably rancid to the taste.

§ 51.2122 Insect injury.

Insect injury means that the insect, web, or frass is present or there is definite evidence of insect feeding.

§ 51.2123 Foreign material.

Foreign material means pieces of shell, hulls or other foreign matter which will not pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2124 Doubles.

Doubles means kernels that developed in shells containing two kernels. One side of a double kernel is flat or concave.

§ 51.2125 Split or broken kernels.

Split or broken kernels means seven-eighths or less of complete whole kernels but which will not pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2126 Particles and dust.

Particles and dust means fragments of almond kernels or other material which will pass through a round opening 8/64 of an inch (3.2 mm) in diameter.

§ 51.2127 Injury.

Injury means any defect which more than slightly detracts from the appearance of the individual almond. The following shall be considered as injury:

(a) Chipped and scratched kernels when the affected area on an individual kernel aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2128 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almonds. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Chipped and scratched kernels, when the affected area on an individual kernel aggregates more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(b) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(c) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(d) Shriveling, when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat;

(e) Brown spot on the kernel, either single or multiple, when the affected area aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter; and,

(f) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin.

§ 51.2129 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay. rancidity, insect injury and damage by mold.

§ 51.2130 Diameter.

Diameter means the greatest dimension of the kernel, or piece of kernel at right angles to the longitudinal axis. Diameter shall be determined by passing the kernel or piece of kernel through a round opening.

§ 51.2131 Fairly uniform in size.

Fairly uniform in size means that, in a representative sample, the weight of 10 percent, by count, of the largest whole kernels shall not exceed 1.70 times the weight of 10 percent, by count, of the smallest whole kernels.

Dated: January 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1330 Filed 1–17–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 51

[Docket Number FV–96–301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. This rule revises the "Application of Tolerances" sections, which establishes the limitations of defective fruit per sample. It also sets a minimum sample size of twenty-five fruit.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090–6456, or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 150 handlers of Florida citrus who are subject to regulation under these standards and approximately 11,000 producers of citrus in Florida. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A majority of handlers and producers of Florida citrus may be classified as small entities.

The revisions are to the "Application of Tolerances" sections, which establishes the limitations of defective fruit per sample and the "Tolerances" sections, which add a minimum of twenty-five fruit per sample. The industry stated that without these

revisions to the standards it would be very costly to the Florida citrus industry. If the standards are not revised an excessive amount of destruction to consumer packages could occur, resulting in costly repacking of fruit and replacing of these destroyed packages. Also, without these changes the tolerances would be too restrictive for consumer packages, ultimately resulting in failing to market citrus account of one piece of defective fruit. They also indicated that the minimum sample size should be a minimum of twenty-five fruit. Accordingly, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

The interim final rule with request for comment, United States Standards for Grades of Florida Grapefruit, Florida Orange and Tangelos, and Florida Tangerines, was published in the **Federal Register** on August 2, 1996 (61 FR 40289–40290).

The United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and United States Standards for Grades of Florida Tangerines were recently revised following extensive discussions with the Florida citrus industry. However, we received two requests after the publication date concerning the revisions to the standards. One was from the Florida Citrus Packers, Inc., which "represents nearly 90 percent of Florida's fresh commercial citrus industry, growers and shippers" and from the Commissioner of the Florida Department of Agriculture and Consumer Services (FDACS). Both requested revision of the "Application of Tolerances" sections of the standards and they requested a minimum sample size of twenty-five fruit for each of the U.S. standards for Florida citrus.

The 60-day comment period for the interim final rule ended October 1, 1996, and a total of two comments were received. One comment was from an industry trade association which represents growers and shippers of Florida citrus, and the other comment was from the FDACS. Both comments were in favor of the revisions in their entirety.

The industry stated that without these revisions to the standards it would be very costly to the Florida citrus industry. If the standards are not revised an excessive amount of destruction to consumer packages could occur, resulting in costly repacking of fruit and replacing of these destroyed packages. Also, without these changes the tolerances would be too restrictive for consumer packages, ultimately resulting in failing to market citrus on account of one piece of defective fruit. They also indicated that the minimum sample size should be a minimum of twenty-five fruit.

The FDACS stated that they "* * * support the interim final rule which bases tolerances and application of tolerances on a minimum 25 count sample for U.S. grades of Florida citrus."

This rule finalizes the interim final rule which changed Sections 51.760, 51.1151, and 51.1820 "Tolerances," to set a minimum sample size of twenty-five fruit, which reads as follows: "In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:" The Sections 51.761, 51.1152, and 51.1821 "Application of Tolerances," will also change from individual package limitations to limitations on individual samples and will read as follows:

"Individual samples are subject to the following limitations, unless otherwise specified in §§ 51.760, 51.1151, 51.1820, respectively. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade."

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.760 is amended by revising the introductory text to read as follows:

§ 51.760 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

3. Section 51.761 is revised to read as follows:

§ 51.761 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.760. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade.

4. Section 51.1151 is amended by revising the introductory text to read as follows:

§ 51.1151 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

5. Section 51.1152 is revised to read as follows:

§ 51.1152 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1151. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade.

6. Section 51.1820 is amended by revising the introductory text to read as follows:

§ 51.1820 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on

a minimum 25 count sample, are provided as specified:

* * * * *

7. Section 51.1821 is revised to read as follows:

§ 51.1821 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1820. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade.

Dated: January 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1329 Filed 1–17–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–242–AD; Amendment 39–9883; AD 97–01–12]

RIN 2120–AA64

Airworthiness Directives; Airtell International, Inc., Centaurus Model C3–100 Ground Proximity Warning System (GPWS), as Installed in Various Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airtell International, Inc., Centaurus Model C3–100 GPWS equipment that is installed on any type of airplane, that requires replacement of this equipment with a similar type of equipment that meets specific performance requirements. This amendment is prompted by results of an investigation, which revealed that, under certain circumstances, the Centaurus GPWS equipment does not provide the flight crew with aural warnings to indicate that the airplane is descending. The actions specified by this AD are intended to prevent failure of the GPWS equipment to provide such aural warnings. If the flight crew relies on receiving such warnings and the GPWS equipment fails to provide those warnings, the ability of the flight crew to prevent the airplane from impacting the ground may be inhibited.

EFFECTIVE DATE: February 25, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John P. Dimtroff, Aerospace Engineer, Flight Test and Systems Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2117; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airtell International, Inc., Centaurus Model C3–100 ground proximity warning system (GPWS) equipment that is installed on any type of airplane was published in the **Federal Register** on October 18, 1996 (61 FR 54364). That action proposed to require removal and replacement of Centaurus Model C3–100 GPWS equipment with a similar type of equipment that meets specific performance requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $16,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $516,000, or $17,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–01–12 Airtell International, Inc.: Amendment 39–9883. Docket [96–NM–242–AD.]

Applicability: Centaurus Model C3–100 ground proximity warning system (GPWS) equipment, as installed in, but not limited to, the following airplanes, certificated in any category:

Beech 99 series airplanes;
Beech 200 series airplanes;
Dassault Aviation Model Mystere-Falcon 200 series airplanes;
EMBRAER (Empresa Brasileira de Aeronautica S.A.) EMB–110 series airplanes;
Fairchild Aircraft Model SA226–TC series airplanes;
Fairchild Aircraft Model SA227–AT series airplanes; and

Grumman Model G–73 Mallard airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the GPWS equipment to provide certain aural warnings, which could inhibit the ability of the flight crew to prevent the airplane from impacting the ground, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove and replace Centaurus Model C3–100 GPWS equipment with a similar type of equipment that meets minimum performance standards specified in Technical Standard Order (TSO) C–92b, dated August 19, 1976. Accomplish the actions in accordance with a method approved by the Manager, Flight Test and Systems Branch, ANM–111, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Flight Test and Systems Branch, ANM–111. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Flight Test and Systems Branch, ANM–111.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Flight Test and Systems Branch, ANM–111.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on February 25, 1997.

Issued in Renton, Washington, on January 3, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1351 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AEA–09]

Establishment of Class E Airspace; Montauk, NY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the airspace description of the Montauk, NY, Class E airspace area published in a final rule on November 27, 1996 (61 FR 60187), Airspace Docket Number 96–AEA–09.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Sammartino, Air Traffic Division, Operations Branch, AEA–530, Federal Aviation Administration, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553–4530.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–30207, Airspace Docket 96–AEA–09, published on November 27, 1996 (61 FR 60187) established the Class E airspace at Montauk, NY. An error was discovered in the legal description. This action adds the Hampton VORTAC to the legal description.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace legal description, as published on November 27, 1996 (61 FR 60187), **Federal Register** Document 96–30207; page 60187, column 3 is corrected in the legal description to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

* * * * *

AEA NY E5 Montauk, NY [Corrected]

Montauk Airport, NY
(lat. 41°04′35″ N, long. 71°55′15″ W)
Hampton VORTAC
(lat. 40°55′08″ N, long. 72°19′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Montauk Airport and within 4 miles each side of the 062° bearing from the Hampton VORTAC extending from the 6.5-mile radius to 10 miles northeast of the VORTAC and excluding that portion within the Block Island, RI 700 foot Class E Airspace Area and that portion within the East Hampton, NY Class E Airspace Area.

* * * * *

Issued in Jamaica, New York, on January 8, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–1399 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AEA–13]

Amendment to Class E Airspace; Galax, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Galax, VA, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 36 at Twin County Airport. This amendment also corrects the geographic position of Twin County Airport published as a Notice of Proposed Rulemaking in the **Federal Register** November 27, 1996 (61 FR 60237). The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 27, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Galax, VA, (61 FR 60237). This action would provide adequate Class E airspace for IFR operations at Twin County Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies Class E airspace area at Galax, VA, to accommodate a GPS RWY 36 SIAP and for IFR operations at Twin County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Galax, VA [Revised]

Twin County Airport, VA
(lat. 36°45'58" N, long. 80°49'25" W)
Pulaski VORTAC
(lat. 37°05'16" N, long. 80°42'46" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Twin County Airport and within 4 miles each side of the Pulaski VORTAC 194° radial extending from the 6.3-mile radius to 7 miles south of the VORTAC and within 4 miles each side of the 179° bearing from the airport extending from the 6.3-mile radius to 12 miles south of the airport.

* * * * *

Issued in Jamaica, New York on January 8, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–1400 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 95N–0033]

Dental Devices; Endodontic Dry Heat Sterilizer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endodontic dry heat sterilizer, a medical device. Commercial distribution of this device must cease, unless a manufacturer or importer has filed with FDA a PMA or a notice of completion of a PDP for its version of the endodontic dry heat sterilizer within 90 days of the effective date of this regulation. This regulation reflects FDA's exercise of its discretion to require a PMA or notice of completion of a PDP for the preamendments device.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA issued a final rule classifying the endodontic dry heat sterilizer (§ 872.6730 (21 CFR 872.6730)) into class III (premarket approval). Section 872.6730 applies to: (1) Any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, the date of enactment of the Medical Devices Amendments of 1976 (Pub L. 94–295), and (2) any device that FDA has found to be substantially equivalent to the endodontic heat sterilizer and that has been marketed on or after May 28, 1976.

In the **Federal Register** of December 30, 1980 (45 FR 86155), FDA published the recommendation of the Dental Device Classification Panel (the panel), of the Medical Devices Advisory Committee, an FDA advisory committee, regarding the classification of the device.

The panel recommended that the device be in class III (premarket approval) because the device presented an unreasonable risk of illness or injury. According to the panel, the devices failed to sterilize adequately various endodontic and dental instruments. The panel felt that the failures could be the result of: (1) The device not reaching and maintaining an adequate temperature because of a faulty thermostat or (2) the result of unequal heat distribution by the glass beads throughout the well despite sufficient heat. The panel believed that it was not possible to establish an adequate performance standard for the device because satisfactory performance had never been demonstrated. The panel recommended the device to be subject to premarket approval to ensure that manufacturers of the device demonstrate satisfactory performance and that further study was necessary to determine the causes of the device's ineffectiveness.

FDA agreed with the panel's recommendation that endodontic dry heat sterilizers be classified into class III. FDA believed that there was an unreasonable risk of illness or injury because of the potential failure of the device to sterilize dental instruments adequately. FDA believed that there was inadequate information to determine if general controls or a performance standard would provide reasonable assurance of safety and effectiveness.

In the **Federal Register** of June 7, 1995 (60 FR 30032), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a PMA or a notice of completion of a PDP for the endodontic dry heat sterilizer. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device (60 FR 30032 at 30037). The June 7, 1995, proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings. Under section 515(b)(2)(B) of the act, FDA also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in classification of the endodontic heat sterilizer was required to be submitted by September 5, 1995. The comment period closed August 7, 1995.

FDA received one comment in response to the proposed rule. The comment recommended that the endodontic dry heat sterilizer remain classified as class III, until sufficient evidence has been submitted documenting the safety and efficacy of these devices. It also pointed out concern in the use of the endodontic dry heat sterilizer for the generalized sterilization of instruments because of marked temperature gradients within the well which could result in inadequate sterilization and the appropriate use of the devices to sterilize large bulk instruments. FDA agrees with the concern and the comment that a PMA be required for endodontic dry heat sterilizers.

II. Findings With Respect to Risks and Benefits

A. Degree of Risk

The primary risk to health is infection through the use of inadequately sterilized instruments. A review of the literature has identified the following problems associated with the use of endodontic dry heat sterilizers which can contribute to the inability of these devices to sterilize instruments, including general medical instruments.

1. Temperature Variations Within the Well.

There are many reports in the literature describing the temperature variations found within the wells of endodontic dry heat (glass bead) sterilizers. It has been reported that the temperature distribution in four brands of these devices at two different sites from the center and at six different depths in the well varied significantly depending upon location. The temperature was highest at a location which was closest to the wall and midway down from the surface. Furthermore data have demonstrated temperature variations as much as 10 °C over time near the periphery of the well. The information in the literature suggested that endodontic dry heat (glass bead) sterilizers should not be used as a substitute for dry heat convection or steam sterilization sterilizers because of the temperature variations.

2. Exposure Times for the Sterilization of Instruments.

The manufacturers' recommended exposure times for sterilization of instruments vary from as short as 2 seconds to 45 seconds for sterilizers whose purported operating temperatures were from 218 to 260 °C. However, location in the well, size and mass, number and shape of the instruments must be factored into the amount of time required for sterilization. Larger instruments composed of more metal take more time to heat than smaller instruments. It was reported that the time required to raise an instrument's temperature was dependent upon its size. Small instruments such as root canal files heated rapidly while large instruments such as cotton pliers never reached the specified operating temperature. Endodontic dry heat (glass bead) sterilizers have been reported to be effective only with small instruments that can be imbedded into the heat transfer media and that their effectiveness has not been demonstrated for instruments of larger bulk. The insertion of large instruments would reduce the temperature of the glass beads below the minimum temperature required for sterilization. Heat conduction in a large, partially imbedded device would be variable.

Precleaning of the instruments before insertion into the heat transfer medium in the well of the sterilizer is critical to the effectiveness of the device. It was reported that if endodontic instruments were contaminated with a protein load (blood), the time required for sterilization was more than doubled. Such adverse conditions can easily be found in infected or gangrenous pulp. There are reports that spores, which are more resistant to sterilization processes than vegetative organisms, have been found in the oral cavity and cultured from pulp material.

3. Lack of Methods to Monitor the Performance/Sterilization Efficacy of the Device.

There are no identified methods for the routine monitoring of the sterilization efficacy of the endodontic dry heat sterilizer such as the ones which exist with the traditional sterilization methods, i.e., steam autoclaves, hot air dry heat sterilizers, or ethylene oxide sterilizers. Chemical and biological indicators are available for routine monitoring of the efficacy of the cycle parameters and for the validation of the process specifications for these traditional sterilizers. The data in the literature, as noted above, suggest that the user can not be assured that instruments inserted into an endodontic dry heat sterilizer will be reliably exposed to the minimum cycle parameters required for sterilization, i.e., exposure of the device to the set temperature for the specified time.

4. Warm–up Times for Endodontic Dry Heat (Glass Bead) Sterilizers.

Reported warm–up times for these devices range from 15 minutes to 50 minutes with the average of 15–20 minutes. However, it has been reported that it took up to 30 minutes for the temperature of the glass beads to stabilize even though the manufacturer claimed that the device reached operating temperature within 10 minutes.

5. Maintenance of Sterility After Removal From the Device.

The instructions for use for most of the devices do not instruct the user on the proper procedure to remove instruments from the device and how to maintain sterility of the instruments or the processed portion of the instrument during the cool down period. Because of the temperature variations reported within the wells, there exists the possibility that heat resistant microorganisms could survive on the glass beads in the cooler regions near the top of the glass beads and contaminate the instruments as they are removed from the well. Since endodontic dry heat sterilizers only process that portion of the instrument which has been inserted into the glass beads, there is also the potential of contaminating a sterile field with a device which had not been properly processed.

6. Heat Transfer Medium Remaining Upon the Devices.

Occasionally the heat transfer medium has been observed to adhere to wet instruments. If the particles are not detected before the devices are inserted into the site, then they could cause blockage of the wound site. This would cause significant problems if the heat transfer media were glass beads or molten metal.

B. Benefit of the Device

The endodontic dry heat sterilizer is used to decontaminate endodontic instruments during a procedure on a single patient provided the instruments are properly cleaned to remove organic debris before insertion into the unit. In theory the number of microorganisms that would be introduced into the same site or into a new site on the same patient during a single procedure would be reduced. Once the procedure is over, the instruments should be processed using traditional methods of decontamination and sterilization before use in the next patient.

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C. Discussion of Risks and Benefits

The data in the literature indicate a lack of uniform sterilization parameters among the various endodontic dry heat (glass bead) sterilizers which have been marketed. Because of the temperature variations found within the wells of glass bead sterilizers, exposure of an instrument to an adequate sterilizing temperature is difficult to determine and must be confirmed independently for each instrument. Also determination of the sterilization exposure time is dependent upon instrument size and mass. It has been reported that some instruments never reach the appropriate temperature because of their size and mass; and that endodontic dry heat sterilizers are not appropriate for large bulk instruments.

Review of the claims being made for these devices suggests that manufacturers are expanding the claims beyond those originally defined in § 872.6730. The claims have been expanded to include the sterilization of general medical instruments and electrolysis and acupuncture needles, and to devices not regulated by FDA such as manicurist's instruments. The claims imply that these devices can be used as a substitute for the traditional methods of sterilization. It has been noted in the literature that endodontic dry heat sterilizers are not sterilizers, but are decontaminating devices and that they should not be used to sterilize instruments between patients. No system exists for: (1) Monitoring the exposure of the instrument to sterilization conditions or (2) demonstrating that the sterilization exposure parameters have been achieved within the well. Only the portion of the instrument which is inserted into the heat transfer medium has the potential of being sterilized; the portion which is not inserted into the glass beads is not sterilized. The use of endodontic dry heat sterilizers with general medical instruments and with the implication as a substitute sterilization method raises serious safety and efficacy questions which the manufacturers of these devices have not adequately addressed. There is the serious risk of infection through the use of inadequately processed instruments.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, endodontic dry heat device, by revising § 872.6730(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed with FDA within 90 days of the effective date of this regulation for any endodontic dry heat sterilizer device that was in commercial distribution before May 28, 1976, or any device that FDA has found to be substantially equivalent to such a device on or before September 5, 1995. An approved PMA or declared completed PDP is required to be in effect for any such device on or before 180 days after FDA files the application. Any other endodontic dry heat sterilizer device that was not in commercial distribution before May 28, 1976, or that FDA has not found, on or before September 5, 1995, to be substantially equivalent to an endodontic dry heat sterilizer device that was in commercial distribution before May 28, 1976, is required to have an approved PMA or declared completed PDP in effect before it may be marketed.

If a PMA or notice of completion of a PDP for an endodontic dry heat sterilizer device is not filed on or before September 5, 1995, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations part 812 (21 CFR part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the endodontic dry heat sterilizer devices. Further, FDA concludes that investigational endodontic dry heat sterilizer devices are significant risk devices as defined in § 812.3(m) and advises that as of the effective date of the regulations in § 872.6730(c), requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an endodontic dry heat sterilizer device. For any endodontic dry heat sterilizer device that is not subject to a timely filed PMA or notice of completion of a PDP, an IDE must be in effect under § 812.20 on or before September 5, 1995, or distribution of the device for investigational purposes must cease. FDA advises all persons currently sponsoring a clinical investigation involving an endodontic dry heat sterilizer to submit an IDE application to FDA no later than August 7, 1995, to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because for more than 10 years the manufacturers of these devices have been aware of the need to prepare PMA's for these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 872.6730 is amended by revising paragraph (c) to read as follows:

§ 872.6730 Endodontic dry heat sterilizer.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 5, 1995, for any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, or that has on or before September 5, 1995, been found to be substantially equivalent to the endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976. Any other endodontic dry heat sterilizer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated:September 18, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–1336 Filed 1–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 127–97]

Exemption of Systems of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA), is amending its Privacy Act regulations to to provide clarity and to include an additional reason for the exemption from subsection (e)(3). The additional reason will contribute to a better understanding of the need for the exemption. The revised language applies to the following systems of records as named in paragraphs (c)(1) through (c)(6): Air Intelligence Program (Justice/DEA–001), Investigative Reporting and Filing System (Justice/DEA–008), Planning and Inspection Division Records (Justice/DEA–010), Operations Files (Justice/DEA–011), Security Files (Justice/DEA–013), System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014).

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, Program Analyst (202–616–0178).

SUPPLEMENTARY INFORMATION: On October 17, 1996 (61 FR 54112), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as set forth below.

Dated: December 30, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552B(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.98 is amended by revising paragraph (d)(6) as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—Limited Access.

* * * * *

(d) * * *

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety or either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

* * * * *

[FR Doc. 97–1317 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–06–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Additional Designations and Removal of Four Individuals

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendices A and B to 31 CFR chapter V the names of 57 individuals and 21 entities, and revising information concerning 58 individuals and one entity, who have been determined to play a significant role in international narcotics trafficking centered in Colombia or have been determined to be owned or controlled by, or to act for or on behalf of, other specially designated narcotics traffickers. In addition, one individual specially designated narcotics trafficker and three individuals previously designated as acting for or on behalf of Iraq are being removed from the appendices.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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= ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") (61 FR 32936, June 26, 1996). Pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order"), the following additional 21 entities and 57 individuals are added to the appendices as persons who have been determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). Any property subject to the jurisdiction of the United States in which an SDNT has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which an SDNT has an interest. Supplemental identifying information is also added to certain existing SDNT entries, which are revised in their entirety.

The name of one SDNT individual, and three individuals designated pursuant to economic sanctions imposed against Iraq, are being removed since they are no longer subject to the applicable criteria for designation. All real and personal property of these individuals, including all accounts in which they have any interest, are unblocked; and all transactions involving U.S. persons and these individuals are permissible.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the Federal Register, or upon prior actual notice.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1641; 3 U.S.C. 301; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, with respect to the SDNT entries, and (2) 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; Pub.L. 101–513, 104 Stat. 2047–55 (50 U.S.C. 1701 note); Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); Pub. L 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 3 U.S.C. 301; E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1992 Comp., p. 317; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317, with respect to the Iraqi entries, appendices A and B to chapter V of 31 CFR are amended as set forth below:

1. Appendices A and B to chapter V of 31 CFR are amended by adding the following names inserted in alphabetical order (1) in appendix A and (2) under the heading "Colombia" in appendix B:

ACERO, Cesar Augusto, Avenida 7N No. 17A-48, Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 70564947 (Colombia)) (individual) [SDNT]

AGROPECUARIA LA ROBLEDA S.A., Carrera 61 No. 11-58, Cali, Colombia; Avenida 2DN No. 24N-76, Cali, Colombia (NIT # 800160353-2) [SDNT]

AGUDELO GALVEZ, Lieride, c/o INVERSIONES GEMINIS S.A., Cali, Colombia (Cédula No. 6511576 (Colombia)) (individual) [SDNT]

AGUDELO, Ivan de Jesus, Avenida 6N No. 47-197 17, Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia (individual) [SDNT]

ARIAS RAMIREZ, Jhon Helmer, c/o-IMPORTADORA Y COMERCIALIZADORA LTDA., Cali, Colombia (Cédula No. 16796537 (Colombia)) (individual) [SDNT]

ARIZABALETA ARZAYUS, Phanor (Fanor), Avenida 39 No. 15-22, Bogotá, Colombia; Calle 110 No. 30-45, Bogotá, Colombia; Carrera 9 No. 9S-35, Buga, Colombia; Carrera 4 No. 12-41 of. 710, Cali, Colombia; c/o CONSTRUCTORA ALTOS DE RETIRO LTDA., Bogotá, Colombia; c/o INVERSIONES ARIO LTDA., Cali, Colombia (DOB 12 May 1938; Cédula No. 2879530 (Colombia)) (individual) [SDNT]

BANDERAS, Aracelly, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]

BECERRA BECERRA, Alvaro, c/o AGROPECUARIA LA ROBLEDA LTDA., Cali, Colombia (Cédula No. 2730788 (Colombia)) (individual) [SDNT]

CASTAÑO PATIÑO, Maria Janet, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 31149394 (Colombia)) (individual) [SDNT]

CASTRILLON CRUZ, Maria Leonor, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]

CASTRO VERGARA, Sandra, c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 31924082 (Colombia)) (individual) [SDNT]

CHAVARRO, Hector Fabio, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 16263212 (Colombia)) (individual) [SDNT]

CLAVIJO GARCIA, Hector Augusto, c/o GANADERIAS DEL VALLE, Cali, Colombia (Cédula No. 16613930 (Colombia)) (individual) [SDNT]

COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Avenida Caracas No. 59-77 of. 201A, 401B y 405B, Bogotá, Colombia (NIT # 800080719-0) [SDNT]

COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Avenida Caracas No. 59-77 of. 201A, 401B, 405B y 407B, Bogotá, Colombia (NIT # 800075687-3) [SDNT]

CONSTRUCTORA ALTOS DEL RETIRO LTDA., Carrera 4 No. 86-88, Bogotá, Colombia; Carrera 7 No. 72-28 of. 301, Bogotá, Colombia; Transversal 3 No. 85-10 apt. 401 Interior 1, Bogotá, Colombia (NIT # 890329139-8) [SDNT]

CONSTRUVIDA S.A., Avenida 2N No. 7N-55 of. 521, Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia; Carrera 68 No. 13B-61 of. 104B, Cali, Colombia (NIT # 800108122-8) [SDNT]

CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Avenida 2N No. 7N-55 of. 421, Cali, Colombia (NIT # 800109042-1) [SDNT]

CORREA PULGARIN, Ernesto, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 2510585 (Colombia)) (individual) [SDNT]

CUERO MARTINEZ, Otalvaro, c/o INVHERESA S.A., Cali, Colombia (individual) [SDNT]

CULZAT LUGSIR, Rafael Alberto, Calle 7 Oeste No. 2-228, Cali, Colombia; Transversal 3 No. 86-73, Bogotá, Colombia; c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia; c/o INVERSIONES CULZAT GUEVARA Y CIA. S.C.S., Cali, Colombia (DOB 23 October 1940; Passport No. P551220 (Colombia); Cédula No. 14962523 (Colombia)) (individual) [SDNT]

DIAZ, Manuel, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA, Bogotá, Colombia (Cédula No. 396358 (Colombia)) (individual) [SDNT]

DIAZ, Rosa Isabel, c/o INVHERESA S.A., Cali, Colombia (individual) [SDNT]
FIGUEROA DE BRUSATIN, Dacier, c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia (Cédula No. 29076093 (Colombia)) (individual) [SDNT]
GANADERIAS DEL VALLE S.A., Avenida 2FN No. 24N-92, Cali, Colombia; Carrera 61 No. 11-58, Cali, Colombia; Carrera 83 No. 6-50, Cali, Colombia (NIT # 800119808-9) [SDNT]
GARCIA ROMERO, Audra Yamile, c/o INVHERESA S.A., Cali, Colombia (Cédula No. 66765096 (Colombia)) (individual) [SDNT]
GARCIA, Freddy (Fredy), c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia (individual) [SDNT]
HENAO, Maria Nohelio, c/o INVHERESA S.A., Cali, Colombia (Cédula No. 26271587 (Colombia)) (individual) [SDNT]
HERRERA BUITRAGO, William, c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia (DOB 29 November 1964; Passport No. P046550 (Colombia); Cédula No. 16716887 (Colombia)) (individual) [SDNT]
IDROBO ZAPATA, Edgar Hernando, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 6078860 (Colombia)) (individual) [SDNT]
IMPORTADORA Y COMERCIALIZADORA LTDA. (a.k.a. IMCOMER), Avenida 6N y Avenida 4 No. 13N-50 of. 1201, Cali, Colombia (NIT # 800152058-0) [SDNT]
INDUSTRIA MADERERA ARCA LTDA., Calle 11 No. 32-47 Bodega 41 Arroyohondo, Cali, Colombia; Calle 32 No. 11-41 Bodega 4 Arroyohondo, Cali, Colombia (NIT # 800122866-7) [SDNT]
INMOBILIARIA BOLIVAR LTDA., Calle 17N No. 6N-28, Cali, Colombia; Calle 24N No. 6N-21, Cali, Colombia (NIT # 890330573-3) [SDNT]
INMOBILIARIA GALES LTDA., Avenida Caracas No. 59-77 of. 201A, 401B y 405B, Bogotá, Colombia (NIT # 800061287-1) [SDNT]
INTERVENTORIA, CONSULTORIA Y ESTUDIOS LIMITADA INGENIEROS ARQUITECTOS (a.k.a. INCOES), Avenida 6N No. 13N-50 of. 1209, Cali, Colombia (NIT # 800144790-0) [SDNT]
INVERSIONES AGRICOLAS AVICOLAS Y GANADERAS LA CARMELITA LTDA., Carrera 61 Nos. 11-58 y 11-62, Cali, Colombia (NIT # 800052898-1) [SDNT]
INVERSIONES ARIO LTDA., Carrera 4 No. 12-41 of. 608 y 701, Cali, Colombia (NIT # 890328888-1) [SDNT]
INVERSIONES CULZAT GUEVARA Y CIA. S.C.S., Avenida 4A Oeste No. 5-107 apt. 401, Cali, Colombia; Avenida 4A Oeste No. 5-187 apt. 401, Cali, Colombia; Avenida 7N No. 23N-39, Cali, Colombia (NIT # 860065523-1) [SDNT]
INVERSIONES VILLA PAZ S.A., Avenida 2CN No. 24N-92, Cali, Colombia; Avenida 2DN No. 24-N76, Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia; Carrera 61 No. 11-58, Cali, Colombia (NIT # 800091083-2) [SDNT]
INVHERESA S.A., Avenida 2N No. 7N-55 of. 501, Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia (NIT # 800108121-0) [SDNT]
LAVERDE GOMEZ, German, c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia (individual) [SDNT]
LONDOÑO DE UPEGUI, Maria del Carmen, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (individual) [SDNT]
LOPEZ RODRIGUEZ, Cecilia, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia (individual) [SDNT]
LOPEZ ZAPATA, Hernan de Jesus, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia (Cédula No. 16344058 (Colombia)) (individual) [SDNT]
MERCAVICOLA LTDA., Calle 34 No. 5A-25, Cali, Colombia; Calle 47AN, Cali, Colombia (NIT # 800086338-5) [SDNT]
MILLAN BONILLA, German, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 14995885 (Colombia)) (individual) [SDNT]
MONTOYA MARTINEZ, Juan Carlos, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 16801475 (Colombia)) (individual) [SDNT]
MORENO, Carlos Arturo, c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 14264233 (Colombia)) (individual) [SDNT]
MURILLO MURILLO, Jose Tolentino, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 2240779 (Colombia)) (individual) [SDNT]
NUÑEZ PEDROZA, Humberto, c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia (Cédula No. 4326541 (Colombia)) (individual) [SDNT]
OBEYMAR MAFLA, Carlos, c/o MERCAVICOLA LTDA., Cali, Colombia (Cédula No. 6226643 (Colombia)) [SDNT]
ORDOÑEZ MEDINA, Elizabeth, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia (individual) [SDNT]
OSPINA DUQUE, Elssy, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (Cédula No. 31834998 (Colombia)) (individual) [SDNT]
PATIÑO RINCON, Octavio, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 2438955 (Colombia)) (individual) [SDNT]
PERDOMO ZUÑIGA, Hugo Ivan, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 16669843 (Colombia)) (individual) [SDNT]
PEREZ ORTEGA, Publio Eliecer, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 16597479 (Colombia)) (individual) [SDNT]
PEREZ SERNA, Wilmar Armando, c/o INVHERESA S.A., Cali, Colombia (individual) [SDNT]
PIEDRAHITA, Gustavo Adolfo, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (Cédula No. 16764002 (Colombia)) (individual) [SDNT]
POSSO DE LONDOÑO, Maria del Carmen, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 29664243 (Colombia)) (individual) [SDNT]
PROCESADORA DE POLLOS SUPERIOR S.A. (a.k.a. COMERCIALIZADORA INTERNACIONAL VALLE DE ORO S.A.), A.A. 1689, Cali, Colombia; Avenida 2N No. 7N-55 of. 521, Cali, Colombia; Carrera 3 No. 12-40, Cali, Colombia; Km 17 Recta Cali-Palmira, Palmira, Colombia (NIT # 800074991-3 (Colombia)) [SDNT]
PROHUEVO DE COLOMBIA LTDA., 1 Km Antes de Cavasa Palmira-Cali, Colombia; Calle 34 No. 5A-25, Cali, Colombia; Granja Pio Pio Carretera Cali-Candelaria Km 12, Cali, Colombia (NIT # 800089683-5) [SDNT]
QUIGUA ARIAS, Omar, c/o IMCOMER, Cali, Colombia; c/o INCOES, Cali, Colombia (individual) [SDNT]
RAMIREZ BUITRAGO, Luis Eduardo, c/o INCOES, Cali, Colombia (individual) [SDNT]
RAMIREZ BUITRAGO, Placido, c/o COMERCIALIZADORA INTERNACIONAL VALLE DE ORO S.A., Cali, Colombia (individual) [SDNT]
RAMIREZ SANCHEZ, Alben, c/o INCOES, Cali, Colombia (individual) [SDNT]
RAMOS RAYO, Heriberto, c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 6186403 (Colombia)) (individual) [SDNT]
REYES MURCIA, Edgar, c/o CONSTRUVIDA S.A., Cali, Colombia (Cédula No. 17181081 (Colombia)) (individual) [SDNT]
ROZO C., Miguel, c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia (Cédula No. 17093270 (Colombia)) (individual) [SDNT]
SALAZAR, Jose Leonel, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia (individual) [SDNT]
SEPULVEDA SEPULVEDA, Manuel Salvador, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia (Cédula No. 16855038 (Colombia)) (individual) [SDNT]
SERNA, Maria Norby, c/o INVHERESA S.A., Cali, Colombia (Cédula No. 29475049 (Colombia)) (individual) [SDNT]
SOTO GUTIERREZ, Hernan, c/o INVERSIONES ARIO LTDA, Cali, Colombia (individual) [SDNT]
VALENCIA DE JARAMILLO, Maria Diocelina, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]
VALENCIA FRANCO, Manuel, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (individual) [SDNT]

VALLE DE ORO S.A., Cali, Colombia; Pollo Tanrico Km 17 Recta Cali-Palmira, Palmira, Colombia (NIT # 890331067-2 (Colombia)) [SDNT]

VARGAS LOPEZ, Gustavo Adolfo, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia (Cédula No. 6457925 (Colombia)) (individual) [SDNT]

ZAMBRANO CERON, Maria Concepcion, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia (individual) [SDNT]

ZAMORA, Jose Hernan, c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (individual) [SDNT]

2. Appendices A and B to chapter V of 31 CFR are amended by revising the following existing entries to include additional identifying information (1) in appendix A and (2) under the heading "Colombia" in appendix B, to read as follows:

ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Avenida 2CN No. 24N-92, Cali, Colombia; Calle 17N No. 6N-28, Cali, Colombia (NIT #800149060-5) [SDNT]

ABRIL CORTEZ, Oliverio (f.k.a. CORTEZ, Oliverio Abril), c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; Calle 18A No. 8A-20, Jamundi, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia (Cédula No. 3002003 (Colombia)) (individual) [SDNT]

AGUADO ORTIZ, Luis Jamerson, c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia (Cédula No. 2935839 (Colombia)) (individual) [SDNT]

ALAVAREZ GAVIRIA, Jaime Antonio, c/o EXPORT CAFE LTDA., Cali, Colombia (DOB 17 August 1947; Cédula No. 10060853 (Colombia)) (individual) [SDNT]

AMEZQUITA MENESES, Salustio, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia (Cédula No. 14943885 (Colombia)) (individual) [SDNT]

ARBELAEZ PARDO, Amparo, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE, Bogotá, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia (DOB 9 November 1950; alt. DOB 9 August 1950; Passports AC 568973 (Colombia), PEDO1850 (Colombia); Cédula No. 31218903 (Colombia)) (individual) [SDNT]

BUITRAGO DE HERRERA, Luz Mery, c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o SOCOVALLE, Cali, Colombia; c/o W. HERRERA Y CIA., Cali, Colombia (Cédula No. 29641219 (Colombia)) (individual) [SDNT]

CASTANO ARANGO, Fernando, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (Cédula No. 14953602 (Colombia)) (individual) [SDNT]

DAZA QUIROGA, Hugo Carlos, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (Cédula No. 19236485 (Colombia)) (individual) [SDNT]

DAZA RIVERA, Pablo Emilio, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (Cédula No. 4904545 (Colombia)) (individual) [SDNT]

DOMINGUEZ GARIBELLO (GARIVELLO), Freddy Orlando, c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (Cédula No. 16659634 (Colombia)) (individual) [SDNT]

GALINDO, Gilmer Antonio (a.k.a. GUZMAN TRUJILLO, Carlos Arturo), c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; Carrera 4C No. 53-40 apt. 307, Cali, Colombia (Cédula No. 16245188 (Colombia)) (individual) [SDNT]

GALINDO HERRERA, Diana Paola, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia (individual) [SDNT]

GALINDO HERRERA, Diego Alexander, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia (individual) [SDNT]

GARCIA MANTILLA, Edgar Alberto (a.k.a. GARCIA MOGAR, Edgar; a.k.a. GARCIA MONTELLA, Edgar Alberto; a.k.a. GARCIA MONTILLA, Edgar Alberto), c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia (DOB 28 November 1946; Passports AC365457 (Colombia), PE008603 (Colombia), PO564495 (Colombia), AA294885 (Colombia); Cédula No. 14936775 (Colombia)) (individual) [SDNT]

GARZON RESTREPO, Juan Leonardo, c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia; Diagonal 53 No. 38A-20 apt. 103, Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; Carrera 7P No. 76-90, Cali, Colombia (DOB 14 January 1962; Cédula No. 16663709 (Colombia)) (individual) [SDNT]

GIL OSORIO, Alfonso, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (DOB 17 December 1946; alt. DOB 17 December 1940; Passports 14949229 (Colombia), 14949279 (Colombia), 14949289 (Colombia), AC342060 (Colombia); Cédula No. 14949279 (Colombia)) (individual) [SDNT]

GUTIERREZ CANCINO, Fernando Antonio, c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o SERVICIOS SOCIALES LTDA., Cali, Colombia (DOB 4 December 1941; Cédula No. 6089071 (Colombia)) (individual) [SDNT]

GUTIERREZ LOZANO, Ana Maria, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (DOB 1972; Cédula No. 39783954 (Colombia)) (individual) [SDNT]

GUTIERREZ LOZANO, Juan Pablo, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (DOB 11 April 1972; Passport AC480604 (Colombia); Cédula No. 79570028 (Colombia)) (individual) [SDNT]

HERRERA BUITRAGO, Stella, c/o COMERCIAL DE NEGOCIOS CLARIDAD Y CIA., Bogotá, Colombia; c/o COMERCIALIZADORA EXPERTA Y CIA. S. EN C., Bogotá, Colombia; c/o INMOBILIARIA GALES LTDA., Bogotá, Colombia; Avenida 1B Oeste No. 1-44 apt. 602, Medeira Building, Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia (DOB 7 October (Year Unknown); Cédula No. 31143871 (Colombia)) (individual) [SDNT]

HOLGUIN SARRIA, Alvaro, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (Cédula No. 14950269 or 18950260 (Colombia)) (individual) [SDNT]

IBANEZ LOPEZ, Raul Alberto, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INCOES LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia (Cédula No. 16640123 (Colombia)) (individual) [SDNT]

IDARRAGA ORTIZ, Jaime, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INVERSIONES CAMINO REAL S.A., Cali, Colombia (Cédula No. 8237011 (Colombia)) (individual) [SDNT]

JAIMES RIVERA, Jose Isidro, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; (Cédula No. 19090006 (Colombia)) (individual) [SDNT]

LARRANAGA CALVACHE, Juan Carlos, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia (Cédula No. 12982064 (Colombia)) (individual) [SDNT]

LINARES REYES, Ricardo Jose (a.k.a. LLENARES REYES, Jose Ricardo), c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INCOVALLE, Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; c/o VIAJES MERCURIO LTDA, Cali, Colombia; c/o W. HERRERA Y CIA. S. EN C., Cali, Colombia (DOB 8 March 1955; Passport PO466638 (Colombia); Cédula No. 14440139 (Colombia)) (individual) [SDNT]

LOZANO CANCINO DE GUTIERREZ, Maria Gladys (a.k.a. LOZANO DE GUTIERREZ, Gladys), c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o SERVICIOS SOCIALES LTDA., Bogotá, Colombia (DOB 19 October 1948; Cédula No. 41444092 (Colombia)) (individual) [SDNT]

LOZANO DE GOMEZ, Zilia, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia (Cédula No. 541577886 (Colombia)) (individual) [SDNT]

LUGO VILLAFAÑE, Jesus Alberto, c/o CONCRETOS CALI S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia; c/o INVHERESA S.A., Cali, Colombia; Calle 70N No. 14-31, Cali, Colombia (Cédula No. 14977685 (Colombia)) (individual) [SDNT]

MARMOLEJO LOAIZA, Carlos Julio, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES AGRICOLAS AVICOLAS Y GANADERAS LA CARMELITA LTDA., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia (Cédula No. 16601783 (Colombia)) (individual) [SDNT]

MOGOLLON RUEDA, Eduardo, c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO Y CIA. S. EN C., Cali, Colombia (DOB 5 February 1953; Cédula No. 19194691 (Colombia)) (individual) [SDNT]

MONDRAGON DE RODRIGUEZ, Mariela, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o COMPAX LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia (DOB 12 April 1935; Passport 4436059 (Colombia); Cédula No. 29072613 (Colombia)) (individual) [SDNT]

MONROY ARCILA, Francisco Jose, c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia (Cédula No. 79153691 (Colombia)) (individual) [SDNT]

MUÑOZ RODRIGUEZ, Juan Carlos, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (DOB 25 September 1964; Passport 16703148 (Colombia); Cédula No. 16703148 (Colombia)) (individual) [SDNT]

MUÑOZ RODRIGUEZ, Soraya, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia (DOB 26 July 1967; Passport AC569012 (Colombia); Cédula 31976822 (Colombia)) (individual) [SDNT]

PINZON, Marco Antonio, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia (Cédula No. 17801803 (Colombia)) (individual) [SDNT]

RAMIREZ CORTES, Delia Nhora (Nora), c/o CONSTRUCTORA ALTOS DEL RETIRO LTDA., Bogotá, Colombia; c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; c/o VIAJES MERCURIO LTDA., Cali, Colombia (DOB 20 January 1959; Cédula No. 38943729 (Colombia)) (individual) [SDNT]

RAMIREZ GARCIA, Manuel Hernan, c/o RADIO UNIDAS FM S.A., Cali, Colombia; Calle 5 No. 37A-65 of. 203, Cali, Colombia; Carrera 91 No. 17-17, Casa 4, Cali, Colombia (Cédula No. 14975762 (Colombia)) (individual) [SDNT]

RAMIREZ LIBREROS, Gladys Miriam, c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o INVERSIONES MOMPAX LTDA., Cali, Colombia (DOB 20 November 1945; Passport 38974109 (Colombia); Cédula No. 38974109 (Colombia)) (individual) [SDNT]

RAMIREZ VALENCIANO, William, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o IMCOMER LTDA., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; Calle 3C No. 72-64 10, Cali, Colombia (Cédula No. 16694719 (Colombia)) (individual) [SDNT]

RIZO MORENO, Jorge Luis, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o CONSTRUVIDA S.A., Cali, Colombia; c/o IMCOMER LTDA., Cali, Colombia; c/o INCOES LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia; Transversal 11, Diagonal 23-30 apt. 304A, Cali, Colombia (Cédula No. 16646582 (Colombia)) (individual) [SDNT]

RODRIGUEZ ABADIA, William, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia; c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o ASPOIR DEL PACIFICO Y CIA. LTDA., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o M. RODRIGUEZ O. Y CIA. S. EN C., Cali, Colombia; c/o MUÑOZ Y RODRIGUEZ Y CIA. LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (DOB 31 July 1965; Cédula No. 16716259 (Colombia)) (individual) [SDNT]

RODRIGUEZ ARBELAEZ, Maria Fernanda, c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (DOB 28 November 1973; alt. DOB 28 August 1973; Passport AC568974 (Colombia); Cédula No. 66860965 (Colombia)) (individual) [SDNT]

RODRIGUEZ DE ROJAS, Haydee (a.k.a. RODRIGUEZ DE MUÑOZ, Haydee; a.k.a. RODRIGUEZ OREJUELA, Haydee), c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o HAYDEE DE MUÑOZ Y CIA. S. EN C., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia (DOB 22 September 1940; Cédula No. 38953333 (Colombia)) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Alexandra (a.k.a. RODRIGUEZ MONDRAGON, Maria Alexandra), c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o TOBOGON, Cali, Colombia (DOB 30 May 1969; alt. DOB 5 May 1969; Passport AD359106 (Colombia); Cédula No. 66810048 (Colombia)) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Humberto, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o MAXITIENDAS TODO EN UNO, Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (DOB 21 June 1963; Passport AD387757 (Colombia); Cedula No. 16688683 (Colombia)) (individual) [SDNT]

RODRIGUEZ MONDRAGON, Jaime, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador (Cédula No. 16637592 (Colombia)) (individual) [SDNT]

RODRIGUEZ OREJUELA DE GIL, Amparo, c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia (DOB 13 March 1949; Passport AC342062 (Colombia); Cédula No. 31218703 (Colombia)) (individual) [SDNT]

RODRIGUEZ RAMIREZ, Claudia Pilar (Patricia), c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia (DOB 30 June 1963; alt. DOB 30 August 1963; alt. DOB 1966; Passports 007281 (Colombia), P0555266 (Colombia); Cédula No. 51741013 (Colombia)) (individual) [SDNT]

ROSALES DIAZ, Hector Emilio, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o MERCAVICOLA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia (Cédula No. 16588924 (Colombia)) (individual) [SDNT]

SALCEDO RAMIREZ, Nhora Clemencia, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia (Cédula No. 31273613 (Colombia)) (individual) [SDNT]

URIBE GONZALEZ, Jose Abelardo, c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIAS LTDA., Cali, Colombia (Cédula No. 16647906 (Colombia)) (individual) [SDNT]

VALENCIA, Reynel (Reinel), c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia (Cédula No. 16258610 (Colombia)) (individual) [SDNT]

VICTORIA POTES, Nestor Raul, c/o ADMINISTRACION INMOBILIARIA S.A., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o PROHUEVO DE COLOMBIA LTDA., Cali, Colombia; Calle 70N No. 14-31, AA26397, Cali, Colombia (Cédula No. 16247701 (Colombia)) (individual) [SDNT]

VILLALOBOS CASTAÑO, Luis Enrique, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia (Cédula No. 14875020 (Colombia)) (individual) [SDNT]

VILLEGAS ARIAS, Maria Deisy (Deicy), c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INDUSTRIA MADERERA ARCA LTDA., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; Calle 66 No. 1A-6 51, Cali, Colombia (Cédula No. 31200871 (Colombia)) (individual) [SDNT]

VILLEGAS BOLAÑOS, Silver Amado, c/o ADMINISTRACION INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSULTORIA EMPRESARIAL ESPECIALIZADA LTDA., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia (Cédula No. 10480869 (Colombia)) (individual) [SDNT]

ZUÑIGA OSORIO, Marco Fidel, c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLANCO PHARMA, Bogotá, Colombia (individual) [SDNT]

3. Appendices A and B to chapter V of 31 CFR are amended by (1) removing the entries in the names "ABRAHAM, Trevor", "ALLEN, Peter Francis", "HENDERSON, Paul", and "RIVERA MOSQUERA, Mauricio Jose" from appendix A and (2) under the heading "England" in appendix B, removing the entries in the names "ABRAHAM, Trevor", "ALLEN, Peter Francis", and "HENDERSON, Paul"; and under the heading "Colombia" in appendix B, removing the entry in the name "RIVERA MOSQUERA, Mauricio Jose".

Dated: December 30, 1996.

Loren L. Dohm,

Acting Director, Office of Foreign Assets Control.

Approved: December 30, 1996.

Elisabeth A. Bresee,

Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 97-1306 Filed 1-15-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO35–1–6190, CO41–1–6826, CO40–1–6701, CO42–1–6836; FRL–5664–5]

Clean Air Act Approval and Promulgation of State Implementation Plans; Colorado; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State implementation plan (SIP) revisions submitted by the Governor of Colorado on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. These submittals revised Colorado Regulation No. 3 and the Common Provisions Regulation pertaining to the State's new source review (NSR) permitting requirements. The submittals included revisions to make the State's NSR rules more compatible with its title V operating permit program, the addition of nonattainment NSR provisions for new and modified major sources of PM–10 precursors locating in the Denver PM–10 nonattainment area, a change from the dual "source" definition to the plantwide definition of "source" in the State's nonattainment NSR permitting requirements, and correction of deficiencies in the State's construction permitting rules. EPA proposed approval of these SIP revisions in the August 28, 1996 **Federal Register**, and no comments were received. EPA is approving these regulatory revisions because they provide for consistency with the Clean Air Act (Act), as amended, and the corresponding Federal regulations and guidance.

Also, EPA is revising 40 CFR 52.320 to list various sections of the Common Provisions Regulation in the "Incorporation by reference" section which EPA approved in past actions but which EPA did not list in the CFR. Last, EPA is deleting two NSR rule disapprovals listed in 40 CFR 52.324(c) and 52.343(a)(1) because the State has submitted, and EPA has approved, revisions addressing the disapprovals.

EFFECTIVE DATE: This action is effective February 20, 1997.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993, the Governor of Colorado submitted revisions to its construction permitting requirements in Regulation No. 3, including the State's nonattainment NSR provisions, for approval as part of the SIP. The State made numerous revisions to Regulation No. 3 as a result of the State's adoption of its title V operating permit program. In order to address deficiencies identified by EPA in the November 12, 1993 submittal, the State submitted additional revisions to Regulation No. 3 on September 29, 1994 and January 29, 1996. On August 25, 1994, the State also submitted PM–10 precursor NSR requirements applicable in the Denver PM–10 nonattainment area. In addition, on November 17, 1994, the State submitted a change in the definition of "source," to switch from the dual definition of source to the plantwide definition of source in its nonattainment NSR rules. On August 28, 1996, EPA proposed to approve all of the revisions submitted, with the exception of Section IV.C. of Part A of Regulation No. 3 (see 61 FR 44264–44269). A sixty-day public comment period was provided, and no public comments were received on the proposal.

A. November 12, 1993, September 29, 1994, and January 29, 1996 Submittals

The revisions to the State's construction permitting program submitted on November 12, 1993 were adopted at the same time as the State's title V operating permit program, and the majority of the changes were adopted to make the two permitting programs work together and to allow for implementation of certain title V provisions. In addition, the State completely restructured Regulation No. 3 in the November submittal, so it is now divided into four parts:

1. Part A contains all definitions and provisions that apply to both the construction permit and operating permit programs. In this part, Colorado extended the administrative permit amendment provisions and some of the operational flexibility provisions of 40 CFR part 70 to the construction permit program;

2. Part B contains provisions which apply only to the construction permit program (including the nonattainment NSR and prevention of significant deterioration (PSD) programs). The State made revisions to allow certain aspects of the operating permit program to also apply to construction permits (e.g., combined permits and general permits) and to allow certain operational flexibility provisions to be implemented through the operating permit program without requiring construction permits (e.g., minor modifications, SIP equivalency, and other permit changes);

3. Part C contains provisions which apply solely to the State's operating permit program; and

4. Part D contains the Statements of Basis and Purpose for each revision to Regulation No. 3.

Parts A and B of Regulation No. 3 were submitted for approval as part of the SIP in the November 12, 1993 SIP submittal. Parts A and C of Regulation No. 3 were submitted for approval as part of the State's title V operating permit program on November 5, 1993.

In a September 19, 1994 letter to the State, EPA identified many deficiencies in the State's November 12, 1993 SIP submittal. In that letter, EPA identified deficiencies that needed to be addressed by the State before EPA would proceed to act on the November 1993 SIP submittal. EPA also recommended other revisions to provide for clarity in the State's permitting regulations.

Some of the deficiencies identified by EPA in the State's November 12, 1993 SIP submittal were also identified as deficiencies in the State's title V operating permit program which EPA required the State to address before EPA would proceed with interim approval of the State's title V program. Those deficiencies included (1) the fact that the State does not currently have a SIP-approved generic emissions trading program under which the trading described in Section IV.B. of Part A of Regulation No. 3 would be allowed, and (2) the allowing of alternative emission limits to be developed in permits when Section IV.D.1.i. of Part B of Regulation No. 3 did not adequately provide for this flexibility. The State adopted revisions intended to address these deficiencies (as well as to address other deficiencies in its title V operating permit program) on August 18, 1994 and submitted these revisions for approval in the SIP and for revision to its title V program on September 29, 1994.

EPA's review of the September 29, 1994 submittal found that the State adequately addressed these SIP/title V deficiencies by clarifying that Section IV.B. of Part A could only be implemented if the SIP included an EPA-approved trading program and by

deleting Section IV.D.1.i. of Part B. Based on this September 29, 1994 title V program revision (which also included correction of other title V program deficiencies), EPA granted interim approval of Colorado's operating permit program on January 24, 1995 (60 FR 4563).

On March 16, 1995, the State adopted further revisions to Regulation No. 3 intended to address the remaining deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Those revisions were submitted to EPA for approval on January 29, 1996 and include the following:

1. Changes to the definitions of "lowest achievable emission rate (LAER)" and "net emissions increase" to be consistent with the Federal definitions in 40 CFR 51.165(a)(1)(xiii) and 40 CFR 51.165(a)(1)(vi), respectively;

2. Consolidation of the State's definitions of "air pollution source," "stationary source," and "new source" so that only the term "stationary source," which is consistent with the Federal definition, is used in the provisions of Regulation No. 3. The State also retained the definition of "air pollution source" because it reflects the definition found in State statute, but it is no longer used in Regulation No. 3;

3. The addition of a requirement to the definition of "volatile organic compound (VOC)" requiring EPA approval prior to use of any test method that is not an EPA reference test method;

4. Revisions to the administrative process in Section II.D.5. of Part A of Regulation No. 3 which allows for processing individual requests to exempt additional sources from the State's Air Pollution Emission Notice (APEN) requirements (and, consequently, from construction permit requirements) to require EPA approval of any new exemptions prior to use;

5. Revisions to the definition of "surplus" in Section V.C.10. of Part A of Regulation No. 3 to be consistent with EPA's Emission Trading Policy Statement (see 51 FR 43832, 12/4/86);

6. The addition of a provision to Section V.E. of Part A of Regulation No. 3 to ensure that new source growth cannot interfere with reasonable further progress towards attainment, in order to be consistent with section 173(a)(1)(A) of the Act;

7. The addition of a reference to the State's definition of "net emission increase" in Section V.I. of Part A of Regulation No. 3 (which discusses netting);

8. The addition of a requirement to Section IV.C.1. of Part B of Regulation No. 3 requiring the opportunity for public comment on permits for sources trying to obtain Federally enforceable limits on their potential to emit; and

9. The deletion of an exemption from nonattainment NSR requirements for sources undergoing fuel switches due to lack of adequate fuel supply (which is not allowed by EPA). EPA believes these regulatory revisions adequately address the deficiencies described above.

The State addressed some of EPA's other comments with an opinion from the State Attorney General's office dated July 3, 1995. Those comments and the State's responses are as follows:

1. EPA recommended adding definitions to Regulation No. 3 of "begin actual construction," "necessary preconstruction approvals or permits," and "construction" to be consistent with the Federal definitions. The State did not add these definitions because the State contends that its definitions of "commenced construction," "construction" in the Common Provisions Regulation, and "modification" made the addition of these definitions unnecessary. After further review of the definitions referred to by the State, EPA agrees with the State's contention; and

2. Section IV.A. of Part A of Regulation No. 3 allows for alternative operating scenarios to be included in a construction permit, and this provision is based on the title V provision in 40 CFR 70.6(a)(9). However, in order to approve this provision for construction permits, EPA wanted assurances from the State that it would require compliance with all PSD or nonattainment NSR provisions (e.g., ambient air quality analysis or net air quality benefit) for every scenario allowed under the permit. The State's July 3, 1995 letter included an interpretation that compliance with all PSD or nonattainment NSR requirements (whichever was applicable) would be ensured under the provision in Section IV.A.2. of Regulation No. 3, which requires that the permit contain conditions to ensure each scenario meets all applicable Federal and State requirements. This satisfies EPA's concern.

EPA believes the comments discussed above were adequately addressed by the State in its revisions to Regulation No. 3 adopted on March 16, 1995 and its opinion from the State Attorney General's office. In addition, the State also addressed many of EPA's recommended revisions to Regulation No. 3, which EPA believes will help to strengthen the State's construction permit regulations.

EPA had also commented on Section IV.C. of Part A of Regulation No. 3, which provides for a construction permit (as well as a title V operating permit) to contain terms and conditions allowing for the trading of emissions decreases and increases under a permit cap, as long as certain conditions are met. This provision is based on the title V operating permit requirement in 40 CFR 70.4(b)(12)(iii), but EPA had concerns with the use of this provision in construction permitting. EPA is currently working on revisions to the Federal NSR regulations as part of the "NSR Reform" rules that would allow a source to establish a cap in its construction permit (termed a plantwide applicability limit or PAL) for NSR applicability under which emissions trading might be allowed. EPA proposed these NSR Reform rules for public comment on July 23, 1996 (see 61 FR 38250). Until the final EPA regulations are promulgated on this issue, EPA does not believe it is appropriate to approve the State's provision allowing trading under permit caps for construction permits, as EPA could be approving a rule that is inconsistent with the forthcoming Federal regulations. However, as discussed in the preamble to the July 23, 1996 rulemaking, Colorado may be able to consider the issuance of permits with emissions caps on a case-by-case basis under EPA's existing regulations (see 61 FR 38264).

EPA believes the State adequately addressed all of the deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Thus, EPA is approving the revisions to Regulation No. 3 submitted on November 12, 1993, September 29, 1994, and January 29, 1996. However, as discussed above, EPA is not acting on Section IV.C. of Part A of Regulation No. 3 at this time. For further details, see the Technical Support Document (TSD) accompanying this document.

B. August 25, 1994 SIP Submittal of Nonattainment NSR Rules for New and Modified Sources of PM–10 Precursors

When the Act was amended in 1990, it included, among other things, revised requirements for nonattainment areas which are set out in part D of title I of the Act. It also set out specific deadlines for submittals of SIP revisions addressing these new requirements, including the submittal of nonattainment NSR rules for which the deadlines varied depending on the type and designation of the nonattainment area. In response to those requirements, the Governor of Colorado submitted a

SIP revision on January 14, 1993 to bring the State's nonattainment NSR rules up to date with the requirements of the amended Act. EPA acted on that submittal on August 18, 1994 (59 FR 42500). Specifically, EPA approved the State's nonattainment NSR rules as meeting the requirements of the amended Act for the State's ozone and carbon monoxide areas, as well as for the Canon City, Pagosa Springs, and Lamar PM–10 nonattainment areas. However, EPA only partially approved the State's NSR submittal in that action for the Aspen, Telluride, and Denver moderate PM–10 nonattainment areas because the State had not submitted NSR regulations for new and modified major sources of PM–10 precursors and because, at the time of publication of the August 18, 1994 **Federal Register** document, EPA had not promulgated findings that such sources of PM–10 precursors did not contribute significantly to exceedances of the PM–10 national ambient air quality standards (NAAQS) in any of these three areas. [1] (See 59 FR 42503–42504 for further details.)

Since that August 18, 1994 **Federal Register** action, EPA has promulgated findings that sources of PM–10 precursors do not contribute significantly to PM–10 NAAQS exceedances in the Aspen and Telluride PM–10 nonattainment areas (see 59 FR 47092–47093, September 14, 1994, and 59 FR 47809, September 19, 1994, respectively), resulting in fully approved NSR provisions for these two PM–10 nonattainment areas. However, in the Denver moderate PM–10 nonattainment area, EPA has indicated that it does consider major stationary sources of PM–10 precursors (specifically oxides of nitrogen (NO_X) and sulfur dioxide (SO_2)) to contribute significantly to exceedances of the PM–10 NAAQS (see 58 FR 66331, December 20, 1993).

On February 17, 1994, the State adopted nonattainment NSR provisions for new and modified major sources of PM–10 precursors (defined as SO_2 and NO_X) in the Denver metropolitan moderate PM–10 nonattainment area. These Regulation No. 3 revisions were formally submitted to EPA for approval into the SIP on August 25, 1994.

As discussed in EPA's August 28, 1996 proposed rulemaking on the State's submittal, EPA believes the State's August 25, 1994 submittal of NSR revisions adequately addresses all of the PM–10 precursor NSR requirements in the Denver moderate PM–10 nonattainment area. Specifically, those requirements include requiring new major stationary sources (based on the 100 ton per year major source threshold) of PM–10 precursors in the Denver moderate PM–10 nonattainment area, as well as major modifications of PM–10 precursors (based on the major modification significance levels for SO_2 and NO_X), to meet all of the nonattainment NSR permitting requirements (including, among other things, application of lowest achievable emission rate (LAER) and the requirements to obtain emission offsets providing a net air quality benefit).

The State adopted specific provisions regarding NSR offsets for new and modified major stationary sources of PM–10 and PM–10 precursors, as follows: In Section V.F.1. of Part A of Regulation No. 3 which identifies the criteria for approval of all emissions trading transactions including NSR offsets, the State added provisions explaining which interpollutant trades between PM–10 and PM–10 precursors are allowed for NSR offsets. Specifically, Section V.F.1. provides that new or modified major sources of a PM–10 precursor can obtain offsets from reductions in that same precursor or in PM–10, while new or modified major sources of PM–10 can only obtain offsets from reductions in PM–10. This is consistent with EPA's current policy regarding offsets for PM–10.

However, the State did adopt an exception to this requirement in Section V.H.9. of Part A of Regulation No. 3. Specifically, Section V.H.9. allows interpollutant offsets other than those discussed in Section V.F.1. to be approved on a case-by-case basis, provided that the applicant demonstrates, on the basis of EPA-approved methods where possible, that the emissions increases for the new or modified source will not cause or contribute to a violation of the NAAQS. Section V.H.9. further provides that the source's permit application will not be approved by the State until written approval has been received from the EPA. Because written approval will be required from EPA before a permit will be issued which allows an interpollutant trade for offsetting (other than those trades allowed in Section V.F.1.), EPA believes that it will be able to ensure any interpollutant offsets will meet the requirements of the Act concerning NSR. Thus, this exception is acceptable to EPA.

Thus, EPA is fully approving the State's nonattainment NSR rules for the Denver moderate PM–10 nonattainment area. For further details on the State's August 25, 1994 SIP submittal, see the August 28, 1996 notice of proposed rulemaking (61 FR 44266–44267) and the TSD.

C. November 17, 1994 SIP Submittal Revising the Definition of "Source"

On October 14, 1981, EPA deleted the dual source definition from the nonattainment NSR permitting requirements and replaced it with the plantwide definition to give States the option of adopting the plantwide definition of source in nonattainment areas (see 46 FR 50766). Under the dual source definition, emissions increases that occurred either at an individual piece of process equipment or at the entire plant were reviewed to determine whether a major modification had occurred. This dual source definition precluded major sources undergoing a modification at an individual piece of process equipment from considering other emission decreases within the plant in determining the net emissions increase of the modification.

In the October 1981 **Federal Register** document, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). EPA reasoned that, since part D of the Act requires States to adopt adequate SIPs which demonstrate attainment and maintenance of the NAAQS, "deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with part D" (46 FR 50767). EPA also added that, by bringing more plant modifications into the NSR permitting process, the dual source definition may discourage replacement of older, dirtier processes and, hence, retard not only economic growth but also progress toward clean air. Last, EPA pointed out that, under the plantwide definition, new equipment would still be subject to any applicable new source performance standard (NSPS). Thus, EPA regarded changing to the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans and, at best, the potential for air quality improvements driven by the marketplace. In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the

[1] Section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. Any such determination that sources of PM_{10} precursors do not contribute significantly is generally made concurrently with EPA's promulgation of an action on a SIP submittal for a PM_{10} nonattainment area.

conflicting purposes of part D of the Act and, hence, well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778.

Consequently, on November 17, 1994, Colorado submitted revisions to the Common Provisions Regulation and Regulation No. 3 to change from the dual definition of "source" to the plantwide "source" definition in its nonattainment NSR permitting requirements.

In the October 14, 1981 **Federal Register** which deleted the dual source definition from the Federal nonattainment NSR permitting requirements, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual source or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (see 46 FR 50767 and 50769).

This 1981 ruling allowing States to adopt a plantwide definition assumed that nonattainment areas already had, or shortly would have, approved part D plans in place. However, the Act was amended in 1990, creating new requirements and deadlines for submittal of attainment plans for areas which were not in attainment of the NAAQS. In light of these changes, EPA will now approve adoption of the plantwide definition into SIPs for nonattainment areas that need but lack adequate part D attainment plans approved by EPA only if the State has demonstrated that it is making, and will continue to make, reasonable efforts to adopt and submit complete plans for timely attainment in these areas.

For the majority of Colorado's nonattainment areas that are required to have part D attainment plans, the State has EPA-approved part D plans. The only areas for which the State does not yet have fully approved part D attainment plans are the Denver PM–10, Denver carbon monoxide (CO), Longmont CO, and Steamboat Springs PM–10 nonattainment areas. The State has submitted part D plans for all of these areas, but EPA has not yet completed action on these submittals. Thus, EPA believes the State has adequately demonstrated that it has made, and will continue to make, reasonable efforts to get an approved part D attainment plan in place for these areas.

Further, the State has certified that it did not, and will not, rely on any emissions reductions from the operation of the NSR program using the dual source definition in any of its nonattainment area demonstrations of attainment. EPA's examination of the State's attainment demonstrations confirmed the State's certification. Therefore, EPA believes it is appropriate to approve Colorado's switch to a plantwide definition of source in accordance with EPA's 1981 action, inasmuch as the State has demonstrated that it is making, and will continue to make, reasonable efforts to get approved part D attainment plans in place for all of its nonattainment areas.

II. Final Action

EPA is approving the revisions to Colorado's construction permitting program in Regulation No. 3 submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. EPA is also approving the revisions to the Common Provisions Regulation submitted on November 17, 1994. However, for the reasons discussed above, EPA is taking no action, at this time, on Section IV.C. of Part A of Regulation No. 3.

EPA would also like to clarify its action regarding the State's provisions for trading of emission reduction credits in Section V. of Part A of Regulation No. 3. The State initially submitted those provisions to EPA on November 17, 1988, along with other revisions to Regulation No. 3, for approval as a generic emissions trading rule. However, in EPA's June 17, 1992 rulemaking on the State's November 17, 1988 SIP submittal, EPA stated that the State's emission reduction credit trading rule was only being approved as a rule which requires case-by-case SIP revisions for approval of all bubbles. (See 57 FR 26999.) In the SIP submittals being acted on in this action, the State did not submit any revisions intended to change EPA's June 17, 1992 rulemaking regarding the State's emissions trading provisions. Thus, in this action, EPA is only approving Section V. of Part A as a rule that requires case-by-case SIP revisions for approval of all bubbles.

Also in this action, EPA is revising 40 CFR 52.320 to list in the "Incorporation by reference" section various sections of the Common Provisions Regulation that EPA approved in past actions but that EPA did not list in the CFR, as follows:

A. Section I.A. and the definitions of "emission control regulation" and "volatile organic compound," which were part of the State's January 14, 1993 SIP submittal that EPA approved on August 18, 1994 (59 FR 42500–42506); and

B. The definitions of "baseline area" and "reconstruction," which were part of the State's April 9, 1992 SIP submittal that EPA approved on September 27, 1993 (58 FR 50269–50271).

Last, EPA is deleting two NSR rule disapprovals listed at 40 CFR 52.324(c) and 52.343(a)(1). The State corrected deficiencies in these rules in its January 14, 1993 SIP submittal, which EPA approved on August 18, 1994 (see 59 FR 42504). Therefore, these disapprovals no longer apply to Colorado's NSR program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal

inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 5, 1996.

Jack W. McGraw,

Acting Regional Administrator

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(72) to read as follows:

§52.320 Identification of plan.

* * * * *

(c) * * *

(72) On November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996, the Governor of Colorado submitted revisions to the State's construction permitting requirements in Regulation No. 3 and the Common Provisions Regulation. These revisions included nonattainment new source review permitting requirements for new and modified major sources of PM–10 precursors locating in the Denver moderate PM–10 nonattainment area, changing from the dual source definition to the plantwide definition of source in nonattainment new source review permitting, other changes to Regulation No. 3 to make the construction permitting program more compatible with the State's title V operating permit program, and correction of deficiencies. In addition, the Governor submitted revisions to the Common Provisions Regulation on April 9, 1992 and January 14, 1993.

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definitions of "baseline area" and "reconstruction;" adopted 10/17/91, effective 11/30/91.

(B) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definitions of "net emissions increase" and "stationary source;" adopted 8/20/92, effective 9/30/92.

(C) Common Provisions Regulation, 5 CCR 1001–2, Section I.A. and Section I.G., definitions of "emission control regulation" and "volatile organic compound;" adopted 11/19/92, effective 12/30/92.

(D) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/18/94, effective 9/30/94, as follows: Part A (with the exception of Section IV.C.) and Part B. This version of Regulation No. 3, as incorporated by reference here, supersedes and replaces all versions of Regulation No. 3 approved by EPA in previous actions.

(E) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted on 3/16/95, effective 5/30/95, as follows: Part A: Sections I.B.12., I.B.31., I.B.32., I.B.35.B., I.B.36., I.B.37., I.B.41., I.B.50., I.B.57., I.B.66., II.D.5.c., II.D.5.d., V.B., V.C.6., V.C.10., V.E.1.c., V.E.1.d., V.H.4. through V.H.8., V.I.1., VI.C.1.f., and VII.A.; Part B: Sections III.D.2., III.D.3., IV.B.4., IV.C.1., IV.D.1.a., IV.D.2.c.(i)(E), IV.D.4.a., and IV.J.

(ii) Additional material.

(A) July 3, 1995 letter from Martha E. Rudolph, First Assistant Attorney General, Colorado Office of the Attorney General, to Jonah Staller, EPA.

* * * * *

§52.324 [Amended]

3. Section 52.324 is amended by removing paragraph (c).

4. Section 52.329 is amended by adding paragraph (b) to read as follows:

§52.329 Rules and regulations.

* * * * *

(b) On January 14, 1993 and on August 25, 1994, the Governor of Colorado submitted revisions to the State's nonattainment new source review permitting regulations to bring the State's regulations up to date with the 1990 Amendments to the Clean Air Act. With these revisions, the State's regulations satisfy the part D new source review permitting requirements for the Denver metropolitan moderate PM–10 nonattainment area.

§52.343 [Amended]

5. Section 52.343 is amended by removing paragraph (a)(1) and by redesignating paragraphs (a)(2), (a)(3), and (a)(4) as (a)(1), (a)(2) and (a)(3) respectively.

[FR Doc. 97–1064 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KY-092-9649a; FRL-5653-9]

Approval and Promulgation of Revisions to the Commonwealth of Kentucky's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 19, 1996, the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) submitted revisions to the Kentucky SIP. This revision exempts acetone and perchloroethylene (tetrachloroethylene) from the list of compounds regulated as volatile organic compounds (VOC) for ozone control purposes.

DATES: This action will be effective March 24, 1997 unless adverse or critical comments are received by February 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by KNREPC may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 100 Alabama Street, Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 100 Alabama Street, SW, Atlanta, Georgia 30303–3104. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION: On June 19, 1996, the Commonwealth of Kentucky through the KNREPC submitted revisions to the Kentucky SIP. The EPA is approving the following revisions to the Kentucky SIP. 401 KAR Chapters 50, 51, 59, 61, 63, and 65 were amended to add acetone and perchloroethylene (tetrachloroethylene) to the list of compounds excluded from the definition of VOC on the basis that these compounds have been determined to have negligible photochemical reactivity. Hence, acetone and perchloroethylene will be excluded as a VOC for ozone control purposes. The EPA published notices in the **Federal Register** on June 16, 1995, (60 FR 31633) and February 7, 1996, (61 FR 4590), that document the Agency's decision to add acetone and perchloroethylene to this list of excluded compounds, respectively.

Final Action

The EPA is approving the aforementioned revisions because they meet the Agency requirements. This action is being published without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision, should adverse or critical comments be filed. This action will be effective March 24, 1997 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule published with this action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action would impose no new requirements, since such sources are already subject to these

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regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under 801(a)(1)(A) of the Administrative Procedures Act (APAA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APAA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: November 4, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(85) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(85) The Commonwealth of Kentucky submitted revisions to the Kentucky SIP on June 19, 1996. These revisions involve changes to 401 KAR Chapters 50, 51, 59, 61, 63, and 65.

(i) Incorporation by reference. 401 KAR Chapters 50:010(62), 51.001(62), 59:001(63), 61:001(63), 63:001(62), and 65:001(31) of the Kentucky regulations effective on June 6, 1996.

(ii) Other material. None.

[FR Doc. 97–1333 Filed 1–17–97; 8:45 am]

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40 CFR Part 52

[IL143–1a; FRL–5671–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 8, 1996, the State of Illinois submitted to EPA a site-specific State Implementation Plan (SIP) revision request for Reynolds Metals Company's (Reynolds) McCook Sheet and Plate Plant in McCook, Illinois (in Cook County). The purpose of this request is to amend the State's volatile organic material (VOM) reasonably available control technology (RACT) requirements for Reynolds' aluminum rolling operations to mirror the facility's RACT requirements promulgated under the Chicago area Federal Implementation Plan (FIP). VOM, as defined by the State of Illinois, is identical to "volatile organic compounds" (VOC), as defined by EPA. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. RACT rules establish the lowest VOC emission limitation that major stationary sources are capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. In this action, EPA is approving the requested SIP revision through a "direct final" rulemaking; the rationale for this approval is set forth in the "supplementary information" section of this rulemaking. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 24, 1997 unless adverse comments are received by February 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Air Programs Branch (AR–18J) at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1990, the EPA promulgated a FIP which contained RACT regulations for stationary sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will.[1] Included in EPA's rules was a requirement that major non-Control Techniques Guideline (CTG) sources be subject to 40 CFR 52.741 (s), (u), (v), (w), or (x).[2] The major non-CTG limits in 40 CFR 52.741(x) applied to the hot and cold aluminum rolling operations at the Reynolds McCook facility, and required the facility's rolling mills to meet an 81 percent (%) reduction in uncontrolled VOM emissions. On August 19, 1991, Reynolds requested that EPA reconsider the application of 40 CFR 52.741(x) to the facility, and on October 17, 1991, Reynolds requested that EPA promulgate site-specific RACT limits for the facility's hot and cold rolling mills. EPA agreed to reconsider the RACT control requirements for Reynold's aluminum rolling operations, and on March 10, 1995, revised the FIP as it applied to Reynolds by promulgating site-specific lubricant selection and temperature control requirements as RACT for the facility (60 FR at 3042). On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act; Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (Act). Section 182(b)(2) of the Act requires states with moderate and above ozone nonattainment areas to adopt RACT rules covering "major" sources not already covered by a CTG for all areas designated nonattainment for ozone and classified as moderate or

[1] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT. Sources which are not covered by a CTG are called "non-CTG" sources.

above. The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as "severe" nonattainment for ozone, and, hence, is subject to the Act's non-CTG RACT requirement. Under Section 182(d), sources located in severe ozone nonatttainment areas are considered "major" sources if they have the potential to emit 25 tons per year or more of VOC.

On October 21, 1993, and March 4, 1994, the State of Illinois submitted RACT rules covering major non-CTG sources in the Chicago severe ozone nonattainment area, which includes Subparts PP, QQ, RR, TT, and UU of Part 218 of the 35 Illinois Administrative Code (IAC), as a revision to the Illinois SIP. These State rules were based on the Chicago FIP as promulgated on June 29, 1990. The SIP revision was approved by EPA on October 21, 1996 (61 FR at 54556). Included in the SIP revision was section 218.103, which provided that if EPA amended the June 29, 1990 FIP for any source, Illinois would adopt and submit to EPA site-specific SIP revision corresponding to that amendment.

On June 9, 1995, Reynolds and the Illinois Environmental Protection Agency (IEPA) filed a joint petition for an adjusted standard with the Illinois Pollution Control Board (Board). The adjusted standard petition requested that Illinois revise its RACT requirements for Reynolds' aluminum rolling operations to mirror Reynolds' requirements under the March 10, 1995, FIP revision. A public hearing on the adjusted standard petition was held on July 18, 1995, in Chicago, Illinois. On September 21, 1995, the Board adopted a Final Opinion and Order, AS 91–8, granting the adjusted standard requested by Reynolds. The adjusted standard also became effective on September 21, 1995.

The IEPA formally submitted the adjusted standard for Reynolds on January 8, 1996, as a site-specific revision to the Illinois SIP for ozone. In doing so, IEPA intends to cover the Act's Section 182(b)(2) major non-CTG RACT requirement for Reynolds' McCook, Illinois facility.

II. Analysis of SIP Submittal

The adjusted standard's requirements for the Reynolds McCook facility are as follows:

A. Hot Rolling Mill

The Reynolds facility's hot rolling operations must use an oil/water emulsion rolling lubricant not to exceed 15 percent, by weight, of petroleum-based oil and additives. The hot rolling operations must also not exceed a maximum inlet sump rolling lubricant temperature of 200 degrees Fahrenheit (F). Compliance shall be demonstrated by a monthly analysis of a grab rolling lubricant sample from the hot mill and continuous temperature reading of the rolling lubricant temperature measured at or after the inlet sump but prior to the lubricant nozzles.

The lubricants at the hot mill must be sampled and tested, for the percentage of oil and water, on a monthly basis. ASTM Method D95–83 (Reapproved 1990), "Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation," shall be used to determine the percent by weight for petroleum-based oil and additives.

B. Cold Rolling Mills

For the Reynolds McCook facility's cold rolling mills, the rolling lubricants used must have an initial and final boiling point between 460 and 635 degrees F. To demonstrate compliance, all incoming shipments of the oils to be used as lubricants must be sampled and tested using ASTM 86–90 "Standard Test Method for Distillation of Petroleum Products." Moreover, a grab sample of the as-applied rolling lubricant must be taken on a monthly basis during any month the mill is in operation, and tested using ASTM 86–90, as well.

Reynolds' cold rolling mills must also not exceed an inlet supply rolling lubricant temperature of 150 degrees F. Compliance with this temperature control shall be demonstrated through continuous temperature readings of the rolling lubricant temperature measured at or after the inlet sump but prior to the lubricant nozzles.

C. Coolant Temperature Monitoring

Coolant temperature shall be monitored at all of the rolling mills by use of thermocouple probes and chart recorder or computer data system which automatically record values at least every five (5) minutes.

D. Recordkeeping and Reporting

The Reynolds McCook facility must maintain records of all emulsion formulations, percent oil tests, and rolling lubricant temperatures used in hot rolling operations for three years. Likewise, Reynolds must maintain records of rolling lubricant formulations, distillation range tests for incoming shipments of oils and as-applied rolling lubricants, and rolling lubricant temperatures for three years, as well. These records shall be made available to IEPA or EPA upon request.

If Reynolds violates the control requirements specified in the adjusted standard for any reason, it must submit a written report providing a description of the deviation, along with a date and time, cause of the deviation, if known, and any corrective action taken. Such written report shall be submitted, for each calendar year, by May 1 of the following year, unless more frequent or detailed reporting is required under other provisions, including permit conditions.

E. Compliance Date

Reynolds shall comply with the above requirements listed above by November 20, 1995.

III. Final Action

The EPA has undertaken its analysis of the site-specific SIP revision request for Reynolds McCook facility and has determined that the VOM control measures specified for the facility's aluminum rolling mills is generally consistent with the March 10, 1995, site-specific FIP revision for the facility, and, therefore, constitutes RACT. On this basis, this site-specific SIP revision is approvable.

This site-specific SIP revision consists of adjusted standard AS 91–8, which was adopted on September 21, 1995, and became effective on September 21, 1995. This adjusted standard replaces the requirements of section 218.986 of the 35 IAC as they apply to Reynolds McCook facility's hot and cold aluminum rolling operations.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 24, 1997 unless, by February 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public

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is advised that this action will be effective on March 24, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: December 17, 1996.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(132) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(132) On January 8, 1996, Illinois submitted a site-specific revision to the State Implementation Plan establishing lubricant selection and temperature control requirements for the hot and cold aluminum operations at Reynolds Metals Company's McCook Sheet and Plate Plant in McCook, Illinois (in Cook County), as part of the Ozone Control Plan for the Chicago area.

(i) Incorporation by reference.

September 21, 1995, Opinion and Order of the Illinois Pollution Control Board AS 91–8, effective September 21, 1995.

[FR Doc. 97–1331 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 53

[CC Docket No. 96–150; FCC 96–490]

Accounting Safeguards Under the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 23, 1996, the Commission adopted a Report and Order ("Order") establishing accounting safeguards necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"). This Order prescribes the way incumbent local exchange carriers, including the Bell Operating Companies ("BOCs"), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications, information, manufacturing, electronic publishing, alarm monitoring and payphone services, to ensure compliance with the 1996 Act.

EFFECTIVE DATE: The requirements and regulations established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997. The Commission will publish a document at a later date establishing the effective date.

FOR FURTHER INFORMATION CONTACT: Mark Ehrlich, Attorney/Advisor, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0385. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget

(OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. This is a summary of the Commission's Report and Order adopted December 23, 1996, and released December 24, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 239), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service (202) 857–3800 1919 M Street, N.W., Suite 246, Washington, D.C. 20554.

Paperwork Reduction Analysis

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction At of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due March 24, 1997. Comments should address: (1) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0734

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: Revision.

Respondents: Businesses or other for profit.

Section/title	No. of respondents	Est. time per Response (hrs.)	Total annual burden (hrs.)
Affiliate Company, Books, Records & Accounts, Section 272	20	6,056.25	121,125
Affiliate Company, Books, Records & Accounts, Section 274	7	6,056.25	42,383.75
Est. Fair Market, Value—Recordkeeping	20	24	480
Arms' Length Requirement	7	72	504
Biennial Federal/State Audit/Audit Planning/ Audit Analysis & Evaluation	7	250	1,750
Filing Written Contract	7	1	7
Compliance Audit	7	250	1,750
Report of Exceptions	7	80	560
10–K Requirement	7	1,711	11,977

Total Annual Burden: 180,536.75 Hours.

Estimated Costs Per Respondents: $632,500.

Needs and Uses: The information that subject carriers are required to submit under the Order will enable the Commission to ensure that the subscribers to regulated telecommunications services do not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers. If the information collections in this submission are not conducted, or conducted less frequently, the Commission would not be able to prevent cross-subsidization between these new nonregulated activities and the local exchange carriers' regulated operations and the Commission would not be in compliance with the 1996 Act. The Commission concludes that the burden on the BOCs and incumbent local exchange carriers to comply with these rules will be minimal.

Regulatory Flexibility Analysis

We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), does not apply to these rules because they will not have a significant economic impact on a substantial number of small entities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration. Entities directly subject to these rule changes are engaged in the provision of local exchange and exchange access telecommunications services. These entities are generally large corporations that are dominant in their fields of operations and thus, are not "small entities" as defined by the Act. While these companies may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the Regulatory Flexibility Act. Because the small incumbent local exchange carriers subject to these rules are either dominant in their field of operations or are not independently owned and operated, they should be excluded from the definition of "small entity" and "small business concerns." Moreover, to the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers as is evidenced by this proceeding.

Summary of Report and Order

I. Safeguards for Integrated Operations

The Order establishes accounting safeguards for telemessaging, certain interLATA telecommunications and information, alarm monitoring, and payphone services that the BOCs and other incumbent local exchange carriers may provide on an integrated basis in accordance with sections 260, 271, 275 and 276 of the 1996 Act. It concludes that our existing cost allocation rules satisfy the requirements of these sections that certain competitive telecommunications and information services not be subsidized by subscribers to regulated

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telecommunications services. In general, our current cost allocation rules help ensure that interstate ratepayers do not bear the costs and risks of the telephone companies' nonregulated activities by prescribing how telecommunications carriers must separate the costs of certain regulated activities from the costs of nonregulated activities. Under these rules, incumbent local exchange carriers may not apportion the costs of nonregulated activities to regulated products and services. We discuss below the application of our cost allocation rules to services permitted under sections 260, 271, 275, and 276.

Section 260—Telemessaging Service

Section 260(a)(1) provides that each incumbent local exchange carrier providing telemessaging service "shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access." "Telemessaging service" includes voice mail and voice storage and retrieval services, and any live operator services used to record, transcribe, or relay messages. The Order concludes that our existing accounting safeguards will effectively prevent cross-subsidization of telemessaging services in accordance with section 260(a)(1). Our existing Part 64 cost allocation rules are designed to prevent cross-subsidization of nonregulated activities such as telemarketing by establishing a methodology for allocating joint and common costs between regulated and nonregulated activities. Under our cost allocation rules, carriers must assign costs directly, wherever possible, to regulated or nonregulated activities. If costs cannot be directly assigned, they are considered "common costs" and must be placed in homogenous cost pools. The carrier must then divide the costs in each pool between regulated and nonregulated activities using formulas or factors known as "allocators." Whenever possible, common costs must be directly attributed based upon a direct analysis of the origins of those costs. Common costs that cannot be directly attributed must be indirectly attributed based on an indirect, but cost-causative, linkage to another cost pool or pools for which a direct assignment or attribution is possible. Only if direct or indirect attribution factors are not available may the carrier allocate a pool of common costs using what is known as a "general allocator."

Section 271—InterLATA Telecommunications Services

Section 254(k) prohibits telecommunications carriers from using "services that are not competitive to subsidize services that are subject to competition." The Order concludes that section 254(k) bars all incumbent local exchange carriers, including BOCs, from subsidizing competitive interLATA telecommunications services, such as out-of-region services and certain types of incidental interLATA services, with revenues from exchange services and exchange access that are not subject to competition. Moreover, it concludes that our cost allocation rules, as outlined above, should apply to interLATA telecommunications services, including out-of-region services and certain types of incidental services, that may be provided by incumbent local exchange carriers on an integrated basis. However, in order to protect against improper cost allocations from one regulated activity to another regulated activity, we will now treat both out-of-region and certain types of incidental interLATA services that may be provided by incumbent local exchange carriers on an integrated basis like nonregulated activities.

Section 272(e)(3)—Imputation of Charges

Section 272(e)(3) requires that "[a] Bell operating company * * * impute to itself (if using [exchange] access for its provision of its own services), an amount for access that is *no less than* the amount charged to any unaffiliated interexchange carriers for such service." The Order concludes that to record imputed exchange access charges required under section 272(e)(3), BOCs should debit the nonregulated operating revenue account by the amount of the imputed exchange access charges and credit the regulated revenue account by the amount of the imputed exchange access charges. By requiring BOCs to account for imputed exchange access charges in this manner, the accounting for this imputed revenue will be consistent with our current accounting rules for imputing revenues derived from services provided to nonregulated affiliates. Where a BOC charges different rates to different unaffiliated carriers for access to its telephone exchange service, the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers. In determining the highest rate paid by unaffiliated carriers, the BOC may consider the comparability of the service provided. If, for example, rates charged unaffiliated carriers vary based on the volume purchased, the BOC may consider comparable volume in determining the highest rate to impute to its integrated operations. Accordingly, a BOC may take advantage of the same volume discount purchases offered to its interLATA affiliate and other unaffiliated carriers.

Section 275—Alarm Monitoring Services

Section 275(e) defines "alarm monitoring service" as "a service that uses a device located at a residence, place of business, or other fixed premises (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person" about the emergency. Section 275(b)(2) specifies that an incumbent local exchange carrier engaged in the provision of alarm monitoring services "not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations." As with the prohibition against subsidizing telemessaging services, the Order concludes that our present Part 64 cost allocation rules will adequately safeguard against the subsidies prohibited by section 275(b)(2).

Section 276—Payphone Services

Section 276(a)(1) states that "any Bell operating company that provides payphone service shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations." To implement the prohibition, section 276(b)(1)(C) directs the Commission to prescribe nonstructural safeguards for BOC payphone service that, "at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding." In Computer III, we examined our regulatory regime for the provision of enhanced services and replaced our previous requirements with a series of nonstructural safeguards. These safeguards included the Part 64 cost allocation rules and the affiliate transactions rules. Our experience with accounting safeguards in Computer III has demonstrated that these safeguards can effectively guard against the subsidization of competitive activities by regulated ratepayers, which section 276 prohibits. Accordingly, the Order concludes that we should apply accounting safeguards identical to those adopted in Computer III to BOCs and incumbent local exchange carriers

providing payphone service on an integrated basis.

II. Safeguards for Separated Operations

Previously, we adopted rules to govern how carriers record costs when conducting business with nonregulated affiliates. These affiliate transactions rules were designed to protect ratepayers from subsidizing the competitive ventures of incumbent local exchange carriers' affiliates. The affiliate transactions rules do not require carriers or their affiliates to charge any particular price for assets transferred or services provided; rather, the rules require carriers to use certain specified valuation methods in determining the amounts to record in their Part 32 accounts, regardless of the prices charged. The Order concludes that, except where the 1996 Act imposes specific additional requirements, our current affiliate transactions rules generally satisfy the statute's requirement of safeguards to ensure that these services are not subsidized by subscribers to regulated telecommunications services. However, the Order adopts several modifications to our current affiliate transactions rules, as discussed more fully below. These modifications apply to all transactions between incumbent local exchange carriers currently subject to these rules and their affiliates, not just to transactions between BOCs and their affiliates required under the Act.

Section 272—Manufacturing and InterLATA Services

Section 272(b)(5) of the 1996 Act requires that transactions between a BOC and its affiliates engaged in the manufacturing activities, origination of interLATA telecommunications services, and offering of interLATA information services described in section 272(a)(2) be conducted on "an arm's length basis." The Order concludes that our affiliate transactions rules will ensure compliance with the "arm's length" requirement of section 272(b)(5). Furthermore, in order to satisfy section 272(b)(5)'s requirement that transactions between section 272 affiliates and the BOC of which they are an affiliate be "reduced to writing and available for public inspection," the Order requires the separate affiliate, at a minimum, to provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page. The description of the asset or service and the terms and conditions of the transaction should be sufficiently detailed to allow us to evaluate compliance with our accounting rules. This information must also be made available for public inspection at the principal place of business of the BOC, along with a certification statement described in the Order. While section 272(b)(5) requires BOCs to reduce their transactions to writing and make them "available for public inspection," we will protect the confidential information of BOCs, as well as other incumbent local exchange carriers.

Changes to the Affiliate Transactions Rules

Prevailing Price

Under our current affiliate transactions rules, BOCs may use, under certain circumstances, the "prevailing price" method as a valuation method for recording affiliate transactions between themselves and their affiliates engaged in activities described in section 272(a)(2). The prevailing price describes the price at which a company offers an asset or service to the general public. Prevailing price currently represents just one component in the hierarchy of methods for valuing transactions between a carrier and its affiliate. A carrier subject to our current affiliate transactions rules currently uses one of the following methods to value asset transfers for regulated accounts: (1) Tariffed rates, (2) prevailing company prices, (3) net book cost, or (4) estimated fair market value. In comparison, carriers must record transactions involving services in their Part 32 accounts according to one of three valuation methods: (1) Tariffed rates, (2) prevailing company prices, or (3) fully distributed cost.

One of the difficulties we have identified with respect to prevailing price valuation has been determining when carriers should apply the prevailing price method to transfers of particular assets or services. The mere offering of an asset or service to unaffiliated entities is not sufficient to establish a prevailing price. A substantial quantity of business must be conducted with unaffiliated third parties in order to establish a true prevailing price. Specifically, if the percentage of third-party business is small, there can be no assurance that the price agreed upon by the carrier and its affiliate represents the true market price, thus raising legitimate questions as to whether the parties actually negotiated "on an arm's length basis." In such situations, the use of prevailing prices to value transactions could permit an affiliate to charge inflated prices to its affiliated regulated carrier, possibly leading to higher prices for customers purchasing the regulated services. The Order solves these difficulties by modifying and clarifying the prevailing price valuation method.

Our previous rules did not clarify the meaning of a "substantial" amount of third-party business for the purpose of establishing a true prevailing price. The Order concludes that annual sales, as measured by quantity, of greater than 50 percent of a particular product or service to third parties must occur to satisfy the requirement that there be a "substantial" amount of outside business in order to produce a true prevailing price for that particular product or service. The Order also concludes that this 50 percent threshold must be applied on a product-by-product and service-by-service basis, rather than on a product-line or service-line basis, because applying the 50 percent threshold on a product-line or service-line basis would give carriers the incentive to define product lines and service lines as broadly as possible in order to be able to value as many transactions as possible at prevailing price. However, products and services subject to section 272 need not meet the 50 percent threshold in order for a BOC to record the transaction involving such products and services at prevailing price.

Valuation Methods for Assets and Services

Our Part 64 cost allocation rules direct subject carriers to use different methods to value transfers of assets and transfers of services. The Order directs carriers to now apply the valuation method currently prescribed for asset transfers to service transfers as well. We believe that requiring carriers to use the same valuation methods for both services and asset transfers will reduce the incentive for a carrier to record an affiliate transaction as a service transfer, rather than an asset transfer. Requiring a carrier to value transfers of services using the same valuation methods currently used for asset transfers will reduce the carrier's ability to value a transfer so that a carrier can pass on to their affiliates any financial advantages flowing from how they choose to characterize the transaction. We continue, however, to define the cost of asset transfers in terms of net book cost and the cost of service transfers in terms of fully distributed costs because the net book cost of an asset is comparable to the fully distributed cost of a service.

However, transactions where a carrier *purchases* from its affiliate services that are neither tariffed nor subject to prevailing company prices and such

affiliate exists *solely* to provide services to members of the carrier's corporate family will continue to be valued at fully distributed cost. This allows ratepayers to enjoy the benefits of economies of scale and scope that are created by an affiliate established to provide services solely to the carrier's corporate family. Requiring carriers to perform fair market valuations for such transactions would increase the cost to ratepayers while providing limited benefit.

Fair Market Value

The Order concludes that the procedures carriers use in estimating fair market value should vary with the circumstances of each transaction. For this reason, the Order does not specify the methodologies that carriers must follow to estimate fair market value where such a valuation method is required under the affiliate transactions rules. Allowing carriers to make good faith determinations of fair market value, rather than prescribing specific methodologies, will provide them with the flexibility to use a methodology appropriate for the circumstances of the transaction. This good faith requirement will help ensure that transactions involving a BOC and its section 272 affiliate satisfy the "arm's length" requirement of section 272. Furthermore, this good faith requirement is now imposed on all affiliate transactions between an incumbent local exchange carrier currently subject to our affiliate transactions rules and any of its affiliates, not just to affiliate transactions involving the activities described in section 272(a). When estimating the market value of transactions using independent valuation methods, carriers may use appraisals, catalogs listing similar items, competitive bids, replacement cost of an asset, and net realizable value of an asset. If sales to third parties of a product at a particular price generate large revenues then the sale price is strong evidence of a good faith estimate of fair market value. When situations arise involving transactions that are not easily valued by independent means, the Order requires carriers to maintain records sufficient to support their value determination. Specifically, the valuation method chosen by the carrier must succeed in capturing the available supporting information regarding the transaction and must utilize generally accepted techniques and principles regarding the particular type of transaction at issue.

Tariffed-Based Valuation

Under section 252, incumbent local exchange carriers may submit agreements adopted by negotiations or arbitration to State commissions for approval or rejection without filing a tariff. Alternatively, they may file statements of generally available terms pursuant to section 252(f) that state terms on which these incumbent local exchange carriers would provide services to all customers who desire them. The Order amends our affiliate transactions rules to allow incumbent local exchange carriers to use charges appearing in publicly-filed agreements submitted to a State commission pursuant to section 252(e) or statements of generally available terms pursuant to section 252(f) in the place of tariffed rates when tariffed rates are not available.

Return Component for Allowable Costs

Previously, the Commission determined that fully distributed costs should include a return on investment, but no "profit" in excess of the return then prescribed for the carrier's interstate regulated activities. Consequently, carriers that utilize fully distributed cost to value affiliate transactions include in their cost computations a component for rate of return. The Commission has prescribed a unitary, overall rate of return of 11.25 percent for those incumbent local exchange carriers still subject to rate-of-return regulation to use in computing interstate revenue requirements, unless a carrier can show that such use would be confiscatory. The Order concludes that incumbent local exchange carriers should use the rate of return on interstate services, as amended periodically by the Commission, to determine the fully distributed costs associated with affiliate transactions. The prescribed interstate rate of return is consistent with the return on investment that an incumbent local exchange carrier could anticipate if it were to use its investment to provide services to third parties. The Order also concludes that for all affiliate transactions, incumbent local exchange carriers bear the burden of demonstrating with specificity that the business risks that they face in providing services to their affiliates would justify a risk-based adjustment to the cost of capital that would result in a rate of return different than 11.25%.

Accounting Requirements of Sections 272(b)(2) and (c)(2)

Section 272(b)(2) requires the separate affiliates prescribed under section 272(a)(2) to "maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate." The Order concludes that separate affiliates prescribed under section 272(a)(2) must maintain their books, records, and accounts in accordance with GAAP, which will result in a uniform audit trail at minimal cost. Moreover, a requirement of GAAP for separate affiliates required under section 272(a)(2) imposes some degree of uniformity upon these affiliates. We find no reason to impose the additional burden of requiring separate affiliates required under Section 272(a)(2) to maintain their books, records, and accounts in accordance with the Part 32 Uniform System of Accounts.

Application to InterLATA Telecommunications Affiliates

Section 272(b)(5) requires BOC affiliates established under section 272(a), such as an affiliate providing in-region services, to "conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis." The Order concludes that the current affiliate transactions rules satisfy section 272(b)(5)'s "arm's length" requirement by treating interLATA telecommunications services like a nonregulated activity strictly for accounting purposes, and applying our affiliate transactions rules to transactions between each BOC and any interLATA telecommunications affiliate it establishes under section 272(a), such as an affiliate providing in-region services. However, when a BOC affiliate provides both regulated Title II services permitted under sections 271 and 272, such as interLATA telecommunications services, and nonregulated activities, such as interLATA information services, the Order concludes that we need not apply our cost allocation rules to prevent subsidization of nonregulated activities by subscribers to these interLATA telecommunications services because market forces leave BOC affiliates with little ability to subsidize nonregulated activities by interLATA telecommunications services.

Application to Sharing of Services

BOCs are permitted to share in-house services other than operating, installation, and maintenance services with their section 272 affiliates if the agreement to share in-house services complies with the requirements of section 272, including section 272(b)(1)'s "operate independently"

requirement, section 272(b)(3)'s "separate officers, directors, and employees" requirement, section 272(b)(5)'s "arm's length" requirement, and section 272(c)(1)'s nondiscrimination requirements. Earlier in this Order, we determined that our affiliate transactions rules should apply to transactions between BOCs and their section 272 affiliates in order to satisfy section 272(b)(5)'s "arm's length" requirement. The Order concludes, therefore, that our affiliate transactions rules apply to transactions between BOCs and their section 272 affiliates for the sharing of in-house services, including joint marketing services. Moreover, the sharing of in-house services by a BOC and its section 272 affiliate constitutes a "transaction" under section 272(b)(5) that must be "reduced to writing and available for public inspection."

Audit Requirements

Section 272(d) requires that a company required to operate a separate subsidiary under section 272 "shall obtain and pay for a joint federal/State audit every two years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under [section 272(b)]." The purpose of the required audits is to determine whether the BOCs and their separate subsidiaries are complying with the accounting and structural safeguards required by section 272 and to report the audit results to the Commission and the state regulatory agencies. Because of the critical nature of accounting safeguards in promoting competition in the telecommunication marketplace and the critical role the biennial audit will play in ensuring that the safeguards are working, the Order concludes that the Commission and the States need to oversee the scope, terms and conditions of the biennial audit.

Under the rules adopted in the Order, the Chief, Common Carrier Bureau has the authority to form a federal/State joint audit team with the States having jurisdiction over a BOC's local exchange service. This joint audit team will review the conduct of the audit and direct the independent auditor to take such action as the team finds necessary to ensure compliance with the audit requirements. The structural and transactional requirements and the nondiscrimination safeguards set forth in sections 272(b) 272(c) and 272(e) will be subject to audits. The BOCs cannot hire independent auditors who have participated during the two years preceding the biennial audit in designing any of the systems under review in the audit.

The rules adopted in the Order set an orderly schedule for conducting the audit and for submitting the audit report to the Commission and the States as well as to interested parties for comment. The rules call for participation and agreement by the BOC and by the federal/State joint audit team in defining the scope and purpose of the audit prior to its commencement. The federal/State joint audit team may review and, if necessary, direct modifications to the design of the independent auditor's audit program.

The final audit report must include: (1) The findings and conclusions of the independent auditor; (2) exceptions of the federal/State joint audit team to the auditor's findings and conclusions; (3) response of the BOC to the auditor's findings and conclusions, and (4) reply of the independent auditor to both the exceptions of the federal/State joint audit team and the response of the BOC. The independent auditor's section of the audit report must include a discussion of: (1) The scope of the work conducted, with a description of how the affiliate's or joint venture's books were examined and the extent of the examination; (2) the auditor's findings and conclusions on whether examination of the books, records and operations has revealed compliance or non-compliance with section 272 and with the affiliate transactions rules and any applicable nondiscrimination requirements; and (3) a description of any limitations imposed on the auditor in the course of its review by the affiliate or joint venture or other circumstances that might affect the auditor's opinion. However, the Order does not require a statement by the auditor that the carrier's cost allocation methodologies conform to the Act. The first audit will begin at the close of the first full year of operations. The next audit will begin two years later and will cover the operations of the previous two years. Each BOC must obtain one audit that covers all affiliates engaged in services specified in section 272(a)(2), including resale, rather than requiring individual audits for each of these services.

Workpapers related to the biennial audits, including material obtained from the examined entities, will receive confidential treatment consistent with section 220(f) and the Commission's policy for Part 64 audits. Any State commission having access to the audit workpapers should have provisions in place to ensure the protection of proprietary information as required by section 272(d)(3)(C). Without such provisions in place, a State commission could neither be represented on the federal/State joint audit team nor participate in the biennial audit. To the extent the biennial audit and the cost allocation manual audit under Part 64 overlap, we will permit the biennial audit to meet the requirement of the section 64.904 annual audit. For a biennial audit to satisfy any part of a cost allocation manual audit, we will require a statement by the auditor that the carrier's cost allocation methodologies conform to the Act. We also note that, unlike the biennial audits, the cost allocation manual audits under Part 64 do not involve State participation. Thus, by relying on the biennial audit, we will allow State participation in the overlapping areas of the audits. In their cost allocation manual audit workpapers, the independent auditors should include copies of the audit work performed under the biennial audit.

Section 273—Manufacturing by Certifying Entities

Section 273(d) requires entities that certify telecommunications or customer premises equipment to maintain separate affiliates in order to engage in certain types of manufacturing activities. Under section 273(d)(3), when such an entity certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity, the certifying entity "shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous eighteen months, certification activity * * * through a separate affiliate." "[N]otwithstanding [section 273(d)(3)]," section 273(d)(1)(B) prohibits "Bell Communications Research, Inc., or any successor entity or affiliate" from "engag[ing] in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated [BOC] or successor or assign of any such company." Section 273(d)(3)(B) requires the separate affiliate to "maintain books, records, and accounts separate from those of the entity that certifies such equipment, consistent with generally acceptable accounting principles[,]" and to "have segregated facilities and separate employees" from the certifying entity. Section 273(g) permits "[t]he Commission [to] prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section,

and otherwise to prevent discrimination and cross-subsidization in a [BOC's] dealings with its affiliates and with third parties."

The Order concludes that our affiliate transactions rules, as modified here, satisfy section 273(g)'s requirement that we "prescribe such additional rules and regulations as [we] determine are necessary to * * * prevent * * * cross-subsidization in a [BOC's] dealings with its affiliate." Elsewhere in this Order, we concluded that BOCs are subject to the modified affiliate transactions rules in their dealings with their affiliates engaged in activities permitted under section 272(a), including manufacturing affiliates, in order to assure compliance with the "arm's length" requirement of section 272(b)(5). Accordingly, BOCs that perform certification activities are already subject to the affiliate transactions rules in dealings with their manufacturing affiliates under section 272(b)(5) and current conditions do not warrant additional rules to satisfy section 273(g). In addition, as long as a certifying entity, such as Bellcore, remains affiliated with a regulated BOC, our affiliate transactions rules apply to any transactions between that certifying entity and its section 273 separated, nonregulated manufacturing affiliate that ultimately result in an asset or service being provided to the BOC.

Section 274—Electronic Publishing

Section 274 prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) permits a BOC or its affiliate to provide electronic publishing over its own or its affiliate's basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture." The Order concludes that in order to satisfy sections 274(b) and 254(k), we must apply our affiliate transactions rules, as modified in this Order, to transactions between BOCs and their "separated" electronic publishing affiliates or joint ventures. This will serve as a safeguard against the misallocation of costs from a BOC's nonregulated services, such as electronic publishing services, to regulated telecommunication services. Our affiliate transactions rules, as modified in this Order, prevent the BOCs' ratepayers from bearing the costs of competitive services provided by BOC affiliates and are, therefore, sufficient to implement section 254(k)'s requirement that carriers not "use services that are not competitive to subsidize services that are subject to competition."

Section 274(b)(8) requires that a BOC and its electronic publishing "separated" affiliate or joint venture each perform an annual compliance review conducted by "an independent entity" to determine compliance with section 274. The Order concludes that we need not adopt any rules regarding the compliance review beyond the plain language of section 274(b)(8)(A). Because of the differences between a compliance review under section 274 and an audit, it further concludes that a carrier may not use the electronic publishing compliance review to satisfy any portion of the annual cost allocation manual audit required by section 64.904 of the Commission's rules.

Section 274(b)(9) requires the BOC and its electronic publishing "separated" affiliate or joint venture to file a report with the Commission of any exceptions and corrective action resulting from the compliance review. Section 274(b)(9) further requires the Commission to "allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under [section 274]." The Order found that these requirements of section 274(b)(9) are self-effectuating and, therefore, we need not adopt any rules regarding this requirement beyond the plain language of section 274(b)(9). The same treatment will be given to confidential information in such reports as is applied to confidential information contained in other Commission filings.

Section 274(f)'s Reporting Requirement

Section 274(f) requires any "separated" affiliate under section 274 to file annual reports with the Commission "in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange Commission." To minimize burdens on the filing companies, the Order concludes that when an electronic publishing "separated" affiliate already files a Form 10–K with the SEC, the "separated" affiliate may file the same Form 10–K with the Common Carrier Bureau within 90 days after the end of the "separated" affiliate's fiscal year in satisfaction of section 274(f)'s requirements. For each "separated" affiliate not subject to the SEC's Form 10–K requirement, however, the Order concludes that the "separated" affiliate need not file an actual SEC Form 10–K with the Commission. Instead, such affiliates must file with the Commission a report containing the same information as is required in the SEC's Form 10–K. In accordance with section 274(f), the report must be organized "in a form substantially equivalent to the Form 10–K required by regulations of the [SEC]."

Section 274 Transactional Requirements

Section 274(b)(1) requires the "separated" affiliate or joint venture and the BOC with which it is affiliated to "maintain separate books, records, and accounts and prepare separate financial statements." Section 274(b) requires the "separated" affiliate or joint venture to "be operated independently from the [BOC]." Pursuant to section 274(b)(3), the "separated" affiliate or joint venture and the BOC with which it is affiliated must "carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards." Section 274(b)(4) requires the "separated" affiliate or joint venture to "value any assets that are transferred directly or indirectly from the [BOC] to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies." The Order concludes that section 274(b)(1)'s requirement of separate books, records, accounts, and financial statements is self-effectuating and, therefore, does not adopt any rules regarding this requirement beyond the plain language of section 274(b)(1). Furthermore, section 274(b)(3)(A)'s requirement that transactions be carried out "in a manner consistent with such independence" requires that transactions between a "separated" electronic publishing affiliate or joint venture and its affiliated BOC occur on an arm's length basis, as the transaction would occur between unrelated parties. The phrase "such independence" in section 274(b)(3)(A) refers to section 274(b)'s requirement that a "separated" electronic publishing affiliate or joint venture "be operated independently from the [BOC]."

However, we find the language of section 274(b)(3)(B) to be ambiguous. Pursuant to this section, a BOC and its separated affiliate shall carry out transactions "pursuant to written contracts or tariffs that are filed with the Commission and made publicly available." From this language it is unclear whether written contracts must be filed with the Commission or whether only tariffs are required to be filed with the Commission. It is also unclear whether written contracts must be made publicly available or whether only tariffs are required to be made

publicly available. We therefore intend to seek further comment on the meaning of section 274(b)(3)(B) in CC Docket No. 96–152.

Section 274 "separated" electronic publishing affiliates or joint ventures must maintain their books, records, and accounts in accordance with GAAP in order to satisfy section 274(b)(3)(C)'s requirement that transactions be "auditable in accordance with generally accepted auditing standards."

Moreover, the Order concludes that we should conform our valuation methods governing the provision of services between an electronic publishing "separated" affiliate or joint venture and the BOC with which it is affiliated to those governing asset transfers. We therefore will require all non-tariffed affiliate transactions to be recorded at prevailing price if such price exists, and otherwise at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee. We will continue to define the applicable cost benchmarks as net book cost for asset transfers and fully distributed costs for service transfers. Although section 274(b)(4) only refers to asset transfers, we read section 274's requirement that the "separated" affiliate or joint venture and the BOC with which it is affiliated "carry out transactions * * * in a manner consistent with such independence" to prohibit the "separated" affiliate or joint venture and the BOC with which it is affiliated from subsidizing electronic publishing services from regulated telecommunications services. We designed our affiliate transactions rules to prevent such cross-subsidization. We therefore conclude that the affiliate transactions rules, as we modify them in this Order, should apply to all transactions—both asset transfers and the provision of services—between a BOC and its "separated" affiliate or joint venture engaged in electronic publishing activities permitted under section 274.

Finally, our modified affiliate transactions rules apply whenever a BOC under common ownership or control with an electronic publishing "separated" affiliate or joint venture provides network access and interconnections for basic telephone service to such "separated" affiliates or joint venture.

Separated Operations Under Sections 260 and 271 Through 276

Even when sections 260 and 271 through 276 do not require BOCs or other incumbent local exchange carriers to offer services through a separate affiliate, an incumbent LEC might choose to perform these activities through an affiliate. Under such circumstances, the Order concludes that our affiliate transactions rules should apply to transactions between an incumbent local exchange carrier and any of its affiliates engaged in activities of the types permitted by these sections 260 and 271 through 276, regardless of whether the Act requires those activities to be conducted through a separate affiliate. In order to protect against the subsidies prohibited by these sections, we conclude that we must apply our affiliate transactions rules to all transactions between non-BOC incumbent local exchange carriers and their affiliates engaged in telemessaging activities, incidental interLATA services, alarm monitoring activities, and payphone services. We also conclude we must apply our affiliate transactions rules to all transactions between incumbent local exchange carriers and their affiliates providing any of the competitive services of the types permitted under sections 260 and 271 through 276.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 260, 271–76, 303(r), 403 of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. §§ 154(i), 154(j), 201–205, 218, 220, 260, 271–176, 303(r), 403, the rules, requirements and policies discussed in this order are *adopted* and sections 32.27, 53.209, 53.211, and 53.213 of the Commission's rules, 47 CFR §§ 32.27, 53.209, 53.211, and 53.213 *are amended* as set forth below.

It is further ordered that the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Separate affiliate safeguards, Telephone, Uniform System of Accounts.

47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 32 and 53 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220; Telecommunications Act of 1996, Public Law No. 104–104, sec. 402(c), 110 Stat 56 (1996) unless otherwise noted.

2. Section 32.27 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 32.27 Transactions with affiliates.

* * * * *

(b) Assets sold or transferred between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other assets sold by or transferred from a carrier to its affiliate, the assets shall be recorded at the higher of fair market value and net book cost. For all other assets purchased by or transferred to a carrier from its affiliate, the assets shall be recorded at the lower of fair market value and net book cost. For purposes of this section carriers are required to make a good faith determination of fair market value.

(c) Services provided between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a carrier and its affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other services provided by a carrier to its affiliate, the

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services shall be recorded at the higher of fair market value and fully distributed cost. For all other services received by a carrier from its affiliate, the service shall be recorded at the lower of fair market value and fully distributed cost, except that services received by a carrier from its affiliate that exists solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost. For purposes of this section carriers are required to make a good faith determination of fair market value.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this section, sales of a particular asset or service to third parties must encompass greater than 50 percent of the total quantity of such product or service sold by an entity. Carriers shall apply this 50 percent threshold on a asset-by-asset and service-by-service basis, rather than on a product line or service line basis. In the case of transactions for assets and services subject to section 272, a BOC may record such transactions at prevailing price regardless of whether the 50 percent threshold has been satisfied.

* * * * *

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

1. The authority citation for Part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

2. Section 53.209 is added to subpart C to read as follows:

§ 53.209 Biennial audit.

(a) A Bell operating company required to operate a separate affiliate under section 272 of the Act shall obtain and pay for a Federal/State joint audit every two years conducted by an independent auditor to determine whether the Bell operating company has complied with the rules promulgated under section 272 and particularly the audit requirements listed in paragraph (b) of this section.

(b) The independent audit shall determine:

(1) Whether the separate affiliate required under section 272 of the Act has:

(i) Operated independently of the Bell operating company;

(ii) Maintained books, records, and accounts in the manner prescribed by the Commission that are separate from the books, records and accounts maintained by the Bell operating company;

(iii) Officers, directors and employees that are separate from those of the Bell operating company;

(iv) Not obtained credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

(v) Conducted all transactions with the Bell operating company on an arm's length basis with the transactions reduced to writing and available for public inspection.

(2) Whether or not the Bell operating company has:

(i) Discriminated between the separate affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or the establishment of standards;

(ii) Accounted for all transactions with the separate affiliate in accordance with the accounting principles and rules approved by the Commission.

(3) Whether or not the Bell operating company and an affiliate subject to section 251(c) of the Act:

(i) Have fulfilled requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates;

(ii) Have made available facilities, services, or information concerning its provision of exchange access to other providers of interLATA services on the same terms and conditions as it has to its affiliate required under section 272 that operates in the same market;

(iii) Have charged its separate affiliate under section 272, or imputed to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

(iv) Have provided any interLATA or intraLATA facilities or services to its interLATA affiliate and made available such services or facilities to all carriers at the same rates and on the same terms and conditions, and allocated the associated costs appropriately.

(c) An independent audit shall be performed on the first full year of operations of the separate affiliate required under section 272 of the Act, and biennially thereafter.

(d) The Chief, Common Carrier Bureau, shall work with the regulatory agencies in the states having jurisdiction over the Bell operating company's local telephone services, to attempt to form a Federal/State joint audit team with the responsibility for overseeing the planning of the audit as specified in § 53.211 and the analysis and evaluation of the audit as specified in § 53.213. The Federal/State joint audit team may direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements listed in paragraph (b) of this section. If the state regulatory agencies having jurisdiction choose not to participate in the Federal/State joint audit team, the Chief, Common Carrier Bureau, shall establish an FCC audit team to oversee and direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements in paragraph (b) of this section.

3. Section 53.211 is added to subpart (C) to read as follows:

§ 53.211 Audit planning.

(a) Before selecting a independent auditor, the Bell operating company shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Federal/State joint audit team organized pursuant to § 53.209(d);

(b) The Federal/State joint audit team shall review the preliminary audit requirements to determine whether it is adequate to meet the audit requirements in § 53.209 (b). The Federal/State joint audit shall have 30 days to review the audit requirements and determine any modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Federal/State joint audit team, the Bell operating company shall engage within 30 days an independent auditor to conduct the biennial audit. In making its selection, the Bell operating company shall not engage any independent auditor who has been instrumental during the past two years in designing any of the accounting or reporting systems under review in the biennial audit.

(d) The independent auditor selected by the Bell operating company to conduct the audit shall develop a detailed audit program based on the final audit requirements and submit it to the Federal/State joint audit team. The Federal/State joint audit team shall have 30 days to review the audit program and determine any modifications that shall be incorporated into the final audit program.

(e) During the course of the biennial audit, the independent auditor, among other things, shall:

(1) Inform the Federal/State joint audit team of any revisions to the final

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audit program or to the scope of the audit.

(2) Notify the Federal/State joint audit team of any meetings with the Bell operating company or its separate affiliate in which audit findings are discussed.

(3) Submit to the Chief, Common Carrier Bureau, any accounting or rule interpretations necessary to complete the audit.

4. Section 53.213 is added to subpart (C) to read as follows:

§ 53.213 Audit analysis and evaluation.

(a) Within 60 dates after the end of the audit period, but prior to discussing the audit findings with the Bell operating company or the separate affiliate, the independent auditor shall submit a draft of the audit report to the Federal/State joint audit team.

(1) The Federal/State joint audit team shall have 45 days to review the audit findings and audit workpapers, and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Federal/State joint audit team to the finding and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(2) Within 15 days after receiving the Federal/State joint audit team's recommendations and making appropriate revisions to the audit report, the independent auditor shall submit the audit report to the Bell operating company for its response to the audit findings and send a copy to the Federal/State joint audit team. The independent auditor may request additional time to perform additional audit work as recommended by the Federal/State joint audit team.

(b) Within 30 days after receiving the audit report, the Bell operating company will respond to the audit findings and send a copy of its response to the Federal/State joint audit team. The Bell operating company's response shall be included as part of the final audit report along with any reply that the independent auditor wishes to make to the response.

(c) Within 10 days after receiving the response of the Bell operating company, the independent auditor shall make available for public inspection the final audit report by filing it with the Commission and the state regulatory agencies participating on the joint audit team.

(d) Interested parties may file comments with the Commission within 60 days after the audit report is made available for public inspection.

[FR Doc. 97–1388 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 53

[CC Docket No. 96–149; FCC 96–489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Report and Order (Order) released December 24, 1996 clarifies certain provisions of sections 271 and 272 of the Communications Act of 1934, as amended, and promulgates regulations to implement other provisions. The intended effect of this Order is to further the Commission's goal of fostering competition in the telecommunications market.

EFFECTIVE DATE: February 20, 1997. The collections of information contained within sections 53.203(b) and (e) of these Rules are contingent upon approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 23, 1996, and released December 24, 1996. This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. This is a synopsis, the full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96489.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

We determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the rules adopted in this Order because they do not have a significant economic impact on a substantial number of small entities, as defined by section 301(3) of the Regulatory Flexibility Act.

Paperwork Reduction Act

Some of the rules adopted in this Order impose information collection requirements that are explained in a companion order, entitled *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96–150, FCC 96–490. The paperwork reduction estimates associated with these rules are contained in this section. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due (60 days from date of publication in the **Federal Register**.) Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0734.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Type of review: Revision.

Respondents: Businesses or other for profit.

Section/title	No. of respondents	Est. time per response	Total annual burden
Affiliate Company, Books, Records and Accounts, Section 272	20	6,056.25 hrs.	121,125 hrs.
Arms' Length Requirement	7	72 hrs.	504 hrs.

Total Annual Burden: 121,629 total hours in this Report and Order (Total Annual Burden hours for OMB control number 3060–0734—180,536.75).

Estimated Costs Per Respondents: $0.

Needs and Uses: The attached item adopts safeguards to govern the Bell Operating Companies' (BOCs) entry into certain new markets. It promulgates rules and policies implementing and, where necessary, clarifying the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 271 and 272 of the Communications Act of 1934, as amended. These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter.

Synopsis of First Report and Order

I. Introduction

In February 1996, the Telecommunications Act of 1996 became law. Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996 Act), *to be codified at* 47 U.S.C. §§ 151 *et seq.* The intent of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."

In this proceeding, we adopt non-accounting safeguards, pursuant to section 272 of the Communications Act, to govern entry by the Bell Operating Companies (BOCs) into certain new markets. This proceeding is one of a series of interrelated rulemakings that collectively will implement the telephony provisions of the 1996 Act. Other proceedings under the 1996 Act have focused on opening markets to entry by new competitors, establishing rules to preserve and advance universal service, establishing rules for competition in those markets that are opened to competitive entry, and on lifting legal and regulatory barriers to competition.

Upon enactment, the 1996 Act permitted the BOCs immediately to provide interLATA services that originate outside of their in-region states. The 1996 Act conditions the BOCs' entry into in-region interLATA services on their compliance with certain provisions of section 271. Under section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and the rules adopted herein. Section 272 addresses the BOCs' provision of interLATA telecommunications services originating in states in which they provide local exchange and exchange access services, interLATA information services, and BOC manufacturing activities.

On July 18, 1996, we initiated this proceeding by releasing a Notice of Proposed Rulemaking (NPRM) 61 FR 39397 (July 29, 1996) that sought comment on the non-accounting separate affiliate and nondiscrimination safeguards of the 1996 Act. These provisions govern the BOCs' entry into certain new markets. We initiated a separate proceeding to address the accounting safeguards required to implement sections 260 and 272 through 276 of the Communications Act. Comments on the non-accounting separate affiliate and nondiscrimination safeguards were filed on August 15, 1996, and reply comments were filed on August 30, 1996.

The NPRM also sought comment on whether we should relax the dominant carrier classification that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOCs' interLATA affiliates. Further, the NPRM sought comment on whether we should modify our existing rules for regulating the provision of in-region, interstate, interexchange services by independent local exchange carriers (LECs) (namely, carriers not affiliated with a BOC). Finally, the NPRM considered whether to apply the same regulatory treatment to the BOC affiliates' and independent LECs' provision of in-region, international services, as would apply to the provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic interexchange services, respectively. This order addresses only the non-accounting separate affiliate and nondiscrimination safeguards in sections 271 and 272. The classification of BOC affiliates or independent LECs (and their affiliates) as dominant or non-dominant will be addressed in a separate Report and Order in this docket.

In this order, we promulgate rules and policies implementing, and, where necessary, clarifying the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 271 and 272. These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter. Our action today continues the process of enhancing competition in all telecommunications markets as envisioned by the 1996 Act.

A. Background

The fundamental objective of the 1996 Act is to bring to consumers of telecommunications services in all markets the full benefits of vigorous competition. As we recognized in the *First Interconnection Order*, 61 FR 45476 (August 29, 1996), "[t]he opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices, and increased innovation to American consumers." With the removal of legal, economic, and regulatory impediments to entry, providers of various telecommunications services will be able to enter each other's markets and provide various services in competition with one another. Both the BOCs and other firms, most notably existing interexchange carriers, will be able to offer a widely recognized brand name that is associated with telecommunications services. As firms expand the scope of their existing operations to new product lines, they will increasingly offer consumers the ability to purchase local, intraLATA,

and interLATA telecommunications services, as well as wireless, information, and other services, from a single provider (*i.e.*, "one stop shopping"), and other advantages of vertical integration.

The 1996 Act opens local markets to competing providers by imposing new interconnection and unbundling obligations on existing providers of local exchange service, including the BOCs. The 1996 Act also allows the BOCs to provide interLATA services in the states where they currently provide local exchange and exchange access services once they satisfy the requirements of section 271. Moreover, by requiring compliance with the competitive checklist set out in section 271(c)(2)(B) as a prerequisite to BOC provision of in-region interLATA service, the statute links the effective opening of competition in the local market with the timing of BOC entry into the long distance market, so as to ensure that neither the BOCs nor the existing interexchange carriers could enjoy an advantage from being the first to enter the other's market.

In enacting section 272, Congress recognized that the local exchange market will not be fully competitive immediately upon its opening. Congress, therefore, imposed in section 272 a series of separate affiliate requirements applicable to the BOC's provision of certain new services and their engagement in certain new activities. These requirements are designed, in the absence of full competition in the local exchange marketplace, to prohibit anticompetitive discrimination and cost-shifting, while still giving consumers the benefit of competition.

As we observed in the NPRM, BOC entry into in-region interLATA services raises issues for competition and consumers, even after a BOC has satisfied the requirements of section 271(d)(3). BOCs currently are the dominant providers of local exchange and exchange access services in their in-region states, accounting for approximately 99.1 percent of the local service revenues in those markets. If a BOC is regulated under rate-of-return regulation, a price caps structure with sharing (either for interstate or intrastate services), a price caps scheme that adjusts the X-factor periodically based on changes in industry productivity, or if any revenues it is allowed to recover are based on costs recorded in regulated books of account, it may have an incentive to allocate improperly to its regulated core business costs that would be properly attributable to its competitive ventures.

In addition, a BOC may have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications services and information services markets. For example, a BOC may have an incentive to degrade services and facilities furnished to its affiliate's rivals, in order to deprive those rivals of efficiencies that its affiliate enjoys. Moreover, to the extent carriers offer both local and interLATA services as a bundled offering, a BOC that discriminates against the rivals of its affiliates could entrench its position in local markets by making these rivals' offerings less attractive. With respect to BOC manufacturing activities, a BOC may have an incentive to purchase only equipment manufactured by its section 272 affiliate, even if such equipment is more expensive or of lower quality than that available from other manufacturers.

Moreover, if a BOC charges other firms prices for inputs that are higher than the prices charged, or effectively charged, to the BOC's section 272 affiliate, then the BOC could create a "price squeeze." In that circumstance, the BOC affiliate could lower its retail price to reflect its unfair cost advantage, and competing providers would be forced either to match the price reduction and absorb profit margin reductions or maintain their retail prices at existing levels and accept market share reductions. This artificial advantage may allow the BOC affiliate to win customers even though a competing carrier may be a more efficient provider in serving the customer. Unlawful discriminatory preferences in the quality of the service or preferential dissemination of information provided by BOCs to their section 272 affiliates, as a practical matter, can have the same effect as charging unlawfully discriminatory prices. If a BOC charged the same rate to its affiliate for a higher quality access service than the BOC charged to unaffiliated entities for a lower quality service, or disclosed information concerning future changes in network architecture to its manufacturing affiliate before disclosing it to others, the BOC could effectively create the same "price squeeze" discussed above.

The structural and nondiscrimination safeguards contained in section 272 ensure that competitors of the BOC's section 272 affiliate have access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against the competitors and in favor of the BOC's affiliate. Because the BOC has the incentive to provide its affiliate with the most efficient access, the statute requires the BOC to provide competitors the same access. Access to such inputs on nondiscriminatory terms will enable a new entrant to compete effectively, assuming it is at least as efficient as the BOC and/or its section 272 affiliate. At the same time, Congress also was sensitive to the value to the BOCs of potential efficiencies stemming from economies of scale. Our task is to implement section 272 in a manner that ensures that the fundamental goal of the 1996 Act is attained—to open all telecommunications markets to robust competition—but at the same time does not impose requirements on the BOCs that will unfairly handicap them in their ability to compete. The rules and policies adopted in this order seek to preserve the carefully crafted statutory balance to the extent possible until facilities-based alternatives to the local exchange and exchange access services of the BOCs make those safeguards no longer necessary.

B. Overview and Summary

Section 272 allows a BOC to engage in the manufacturing of telecommunications equipment and CPE, the origination of certain interLATA telecommunications services, and the provision of interLATA information services, as long as the BOC provides these activities through a separate affiliate. Unless extended by the Commission, the statutory separate affiliate requirements for manufacturing and interLATA telecommunications services expire three years after a BOC or any BOC affiliate is authorized to provide in-region interLATA services. The statutory interLATA information services separate affiliate requirement expires on February 8, 2000, four years after enactment of the 1996 Act, unless extended by the Commission.

This order implements the structural separation requirements mandated by section 272 in a manner that is designed to prevent improper cost allocation between the BOC and its section 272 affiliate and discrimination by the BOC in favor of its section 272 affiliate. In particular, we construe the section 272(b)(1) "operate independently" requirement to prohibit the BOC and its section 272 affiliate from jointly owning transmission and switching facilities or the land and buildings on which such facilities are located. Moreover, we prohibit a BOC and its affiliates, other than the section 272 affiliate itself, from providing operating, installation, and maintenance services associated with the facilities owned by the section 272

affiliate. Similarly, a section 272 affiliate may not provide such services associated with the BOC's facilities. These requirements should reduce the potential for the improper allocation of costs to the BOC that should be allocated to the section 272 affiliate. In addition, they should ensure that a section 272 affiliate must follow the same procedures as its competitors in order to gain access to a BOC's facilities. Consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), however, a section 272 affiliate may negotiate with an affiliated BOC on an arm's length basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or obtain services other than those expressly prohibited herein.

The structural separation requirements of section 272, in conjunction with the affirmative nondiscrimination obligations imposed by that section, also are intended to address concerns that the BOCs could potentially use local exchange and exchange access facilities to discriminate against competitors in order to gain an anticompetitive advantage for their affiliates that engage in competitive activities. We interpret section 272(c)(1) as imposing a flat prohibition against discrimination more stringent than the bar on "unjust and unreasonable" discrimination contained in section 202 of the Act. In short, the BOCs must treat all other entities in the same manner in which they treat their section 272 affiliates. We conclude that a BOC may not discriminate in favor of its section 272 affiliate by: (1) Providing exchange access services to competing interLATA service providers at a higher rate than the rate offered to its section 272 affiliate; (2) providing a lower quality service to competing interLATA service providers than the service it provides to its section 272 affiliate at a given price; (3) giving preference to its affiliate's equipment in the procurement process; or (4) failing to provide advance information about network changes to its competitors. We seek comment in a Further Notice of Proposed Rulemaking on specific disclosure requirements to implement section 272(e)(1).

In this order, we also seek to ensure that BOC section 272 affiliates have the same opportunity to compete for customers as other long distance service providers. The joint marketing rules we have established limit the ability of the largest interexchange carriers to market jointly their interLATA service with resold BOC local exchange service, until the BOC receives in-region, interLATA authority under section 271 or until 36 months after enactment of the 1996 Act. Once the BOC receives interLATA authority, the restrictions on interexchange carrier joint marketing expire, and the interexchange carriers and the BOCs and their section 272 affiliates may engage in the same types of marketing activities.

In addition, we clarify that the Communications Act allows a section 272 affiliate to purchase unbundled elements pursuant to section 251(c)(3) and telecommunications services at wholesale rates under section 251(c)(4). Thus, the section 272 affiliate may provide integrated services in the same manner as other competitors. Such an approach is consistent with the objectives of the 1996 Act, which are to give service providers the freedom to develop a wide array of service packages and allow consumers to select what best suits their needs. We note, however, that the BOC may not transfer local exchange and exchange access facilities and capabilities to the section 272 affiliate, or another affiliate, in order to evade regulatory requirements.

We recognize that no regulatory scheme can completely prevent or deter discrimination, particularly in its more subtle forms. In this order, we shift the burden of production to the BOCs in the context of section 271(d)(6) enforcement proceedings in order to alleviate the burden on the complainant and facilitate the detection of anticompetitive behavior. Because the BOC is likely to be in sole possession of most of the relevant information necessary to establish the complainant's case, shifting the burden is the most efficient way of resolving complaints alleging violations of the conditions of in-region interLATA entry under section 271(d)(3). The goal of this proceeding and others is to establish a regulatory framework that enables service providers to enter each other's markets and compete on an equal footing by not allowing one service provider to game regulatory requirements in such a way as to hinder competition.

II. Scope of Commission Authority

A. Rulemaking Authority

1. Background

In the NPRM, we addressed the scope of the Commission's authority, pursuant to sections 271 and 272, over interLATA services, interLATA information services and manufacturing activities. Although we did not seek comment on whether the Commission has authority to adopt rules implementing section 272, several commenters addressed this issue.

2. Discussion

We reject as unfounded the assertion that the Commission lacks authority to adopt regulations implementing section 272. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate in order to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 272 bars the Commission from exercising the rulemaking authority granted by these sections of the Act to clarify and implement the requirements of section 272. Moreover, courts repeatedly have held that the Commission's general rulemaking authority is "expansive" rather than limited. In addition, as AT&T notes, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements. Contrary to those parties that argue that section 272 is self-executing, we find that Congress enacted in section 272 broad principles that require interpretation and implementation in order to ensure an efficient, orderly, and uniform regime governing BOC entry into in-region interLATA telecommunications and other markets covered by section 272. In the NPRM, we identified areas of ambiguity in the requirements of section 272 with the specific goal of clarifying and implementing Congress' intent in that provision. That remains our goal in this Order. Due to the importance of the introduction of competition to the local exchange market, we believe this Order to be both important and necessary to protect BOC customers and new entrants. Further, we agree with PacTel that it serves the interests of justice for us to clarify in advance the section 272 requirements so that BOCs and other parties may be advised of what is required to meet the condition for 271 authorization that in-region interLATA services be provided in compliance with section 272.

We are not persuaded by the argument that the removal of the Senate bill's provision regarding implementing regulations from the 1996 Act indicates Congress' intent that section 272 be self-executing. Parties advancing this argument rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. The courts have rejected this rule of statutory construction, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the

meaning of the omission of the Senate provision appears in the Joint Explanatory Statement. According to that Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein "except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes." Because the Joint Explanatory Statement did not address the removal of the Senate bill provision, the logical inference is that Congress regarded the change as an inconsequential modification, rather than a significant alteration. Moreover, it seems implausible that, in enacting the final version of section 272, Congress intended a radical alteration of the Commission's general rulemaking authority. We therefore conclude that elimination of the proposed provision was a nonsubstantive change. Based on the foregoing, we find, pursuant to the general rulemaking authority vested in the Commission by sections 4(i), 201(b), and 303(r) of the Act, and consistent with fundamental principles of administrative law, that the Commission has the requisite authority to promulgate rules implementing section 272 of the Act.

B. Scope of Commission's Authority Regarding InterLATA Services

1. Background

In the NPRM, we tentatively concluded that the Commission's authority under sections 271 and 272 applies to intrastate and interstate interLATA services provided by BOCs or their affiliates. We based this tentative conclusion in part on our analysis that Congress intended sections 271 and 272 to replace the pre-Act restrictions on the BOCs contained in the MFJ, which barred their provision of both intrastate and interstate interLATA services. We also observed that the interLATA/intraLATA distinction appears to some extent to have supplanted the traditional interstate/intrastate distinction for purposes of sections 271 and 272. We further noted that reading sections 271 and 272 as applying to all interLATA services fits well with the structure of the statute as a whole, and that reading the sections as limited to interstate services would lead to implausible results. We also indicated that we do not believe that section 2(b) of the Act precludes the conclusion that our authority under sections 271 and 272 applies to intrastate as well as interstate interLATA services. Finally, we asked parties that disagreed with the foregoing analysis to comment on the extent to which the Commission may have authority to preempt state regulation with respect to some or all of the non-accounting matters addressed by sections 271 and 272.

2. Discussion

For the reasons set forth below, we conclude that sections 271 and 272, and the Commission's authority thereunder, apply to intrastate as well as interstate interLATA services provided by the BOCs or their affiliates. We base this conclusion on the scope of the pre-1996 Act MFJ restrictions on the BOCs' provision of interLATA services, as well as on the plain language of sections 271 and 272, and the requirements of those sections. In addition, we find that section 2(b) does not bar the Commission from establishing regulations to clarify and implement the requirements of section 272 that apply to intrastate interLATA services and other intrastate matters that are within the scope of section 272. We hold, therefore, that the rules we establish to implement section 272 are binding on the states, and the states may not impose regulations with respect to BOC provision of intrastate interLATA service that are inconsistent with section 272 and the Commission's rules under section 272. We emphasize, however, that the scope of the Commission's authority under sections 271 and 272 extends only to matters covered by those sections. Those sections do not alter the jurisdictional division of authority with respect to matters falling outside their scope. For example, rates charged to end users for intrastate interLATA service have traditionally been subject to state authority, and will continue to be.

We stated in the NPRM, and several parties agree, that section 601(a) of the 1996 Act indicates that Congress intended the provisions of the Act to supplant the MFJ. That section provides:

> Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [MFJ] shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by [the MFJ].

No party challenges the fact that the MFJ generally prohibited the BOCs and their affiliates from providing any interLATA services—interstate or intrastate. Moreover, no party challenges the fact that the term "interLATA services" as used in the MFJ referred to both intrastate and interstate services.

Similarly, with respect to the term "interLATA services" as used in sections 271 and 272, the DOJ, AT&T, and BellSouth maintain that, because the Act defines the term "interLATA" to include intrastate services, references in sections 271 and 272 to interLATA services apply to both intrastate and interstate services. We agree.

The Act defines "interLATA service" as "telecommunications between a point in a local access and transport area and a point located outside such area." The Act further defines the term "LATA" as "a contiguous geographic area * * * established before the date of enactment of the [1996 Act] by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the [MFJ]" or subsequently modified with approval of the Commission. This definition expressly recognizes that a LATA may comprise an area, such as a metropolitan statistical area, that is smaller than a state. Indeed, the DOJ notes that most LATAs established by the MFJ consist of only parts of individual states; only nine LATAs out of a total of 158 encompass an entire state. Thus, by defining an interLATA service as telecommunications from a point inside a LATA to a point outside a LATA, the Act expressly recognizes that interLATA services may include telecommunications between two LATAs within a single state. Accordingly, we find that the term "interLATA services," as used in sections 271 and 272, expressly refers to both intrastate and interstate services.

Although the term "interLATA services" as used in the MFJ and in sections 271 and 272 refers to both interstate and intrastate interLATA services, the New York Commission and others assert that, when Congress transferred responsibility for enforcing the prohibition on the BOCs' provision of interLATA services from the U.S. District Court to the Commission, it intended to limit our authority only to interstate interLATA services. To the contrary, we find that reading sections 271 and 272 as granting the Commission authority over intrastate as well as interstate interLATA services is consistent with, and indeed necessary to effectuate, Congress' intent that sections 271 and 272 replace the restrictions of the MFJ with respect to BOC provision of interLATA services.

The jurisdictional limitation that the New York Commission and others seek

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to read into sections 271 and 272 would lead to implausible results. Specifically, under that statutory interpretation, the BOCs would have been permitted to provide in-region, intrastate, interLATA services upon enactment, without complying with the section 271 entry requirements or the section 272 safeguards, and subject only to any existing, generally applicable state rules on interexchange entry. Any such rules, presumably, would not have been specifically directed at BOC entry, because of the long-standing MFJ prohibition on entry. Because concerns about BOC control of bottleneck facilities needed for the provision of in-region interLATA services are applicable to both interstate and intrastate services, it seems clear that sections 271 and 272 apply equally to the BOCs' provision of both intrastate and interstate, in-region, interLATA services. We find no reasonable basis for concluding that Congress intended to lift the MFJ's ban on BOC provision of intrastate interLATA services, which constitute approximately 30 percent of interLATA traffic, and permit the BOCs to offer such services before satisfying the requirements of sections 271 and 272. As the DOJ notes, "Congress could not have intended, for example, to open up the intrastate interLATA market immediately for BOC entry, without the carefully-devised entry requirements of Section 271, while at the same time establishing those requirements with respect to interstate interLATA entry. Nor could Congress have meant to defeat the safeguards carefully imposed under Section 272 by permitting the BOCs to engage in the behavior which Section 272 prohibits, as long as they do it within the individual states." Indeed, we find it significant that neither the states nor the BOCs have argued that such a result was intended. In light of this analysis, we find that the Commission's authority under sections 271 and 272 extends to both intrastate and interstate interLATA services.

Similarly, several parties support the conclusion that our authority to consider the applications of BOCs seeking to provide in-region interLATA service pursuant to section 271(d) applies to both interstate and intrastate services. None of the state representatives and BOCs commenting on this issue claims that the Commission's authority under section 271(d) does not apply to a BOC's provision of intrastate interLATA services. Despite the lack of controversy on this point, several commenters claim that rules adopted under section 272 apply only to interstate services. We believe that the requirements of sections 271 and 272 repudiate this argument. In granting an application under section 271(d), the Commission must determine, among other things, that the BOC meets the requirements of section 271(d)(3)(B). Under this provision, the Commission must find that the requested authorization "will be carried out in accordance with the requirements of section 272." In light of the Commission's authority to approve entry into both intrastate and interstate in-region interLATA service, pursuant to section 271, it seems logical and necessary that the Commission's authority to impose safeguards established by section 272, should similarly extend to both intrastate and interstate interLATA service.

Several parties have argued that, although the MFJ restrictions on the BOCs applied to both interstate and intrastate interLATA services, the states retained authority to regulate a BOC's intrastate interLATA services when such services were authorized by the MFJ court. They assert, therefore, that, even if sections 271 and 272 apply to intrastate services, those provisions would not divest the states of authority over intrastate services. As we stated at the outset of this discussion, the scope of the Commission's authority under sections 271 and 272 extends only to matters covered by those sections, *i.e.*, authorization for BOC entry into in-region interLATA service and the safeguards imposed in section 272. We do not dispute that the states retain their authority to regulate intrastate services in other contexts.

We further find that the requirements of sections 271 and 272 buttress our conclusions regarding the scope of the Commission's jurisdiction. For example, we find it significant that section 271(h) directs the Commission to address intrastate matters relating to BOC provision of incidental interLATA services. That section states that "[t]he Commission shall ensure that the provision of [incidental interLATA services] by a Bell operating company or its affiliate *will not adversely affect telephone exchange service ratepayers* or competition in any telecommunications market." Telephone exchange service is primarily an intrastate service. This reference to a plainly intrastate service indicates that the scope of section 271 encompasses intrastate matters, and thus the Commission's authority thereunder applies to both intrastate and interstate interLATA services.

State representatives and some BOCs argue that sections 2(b) and 601(c) of the Act preserve the states' authority to adopt rules regarding BOC provision of intrastate interLATA services. They argue that section 2(b) bars the Commission from exercising authority under sections 271 and 272 to establish rules applicable to intrastate interLATA services. For the reasons set forth below, we find that section 2(b) does not preclude us from finding that sections 271 and 272, and our authority to promulgate rules thereunder, apply to BOC provision of intrastate interLATA services.

In *Louisiana Public Service Commission* v. *Federal Communications Commission*, 476 U.S. 355, 377 (1986), the Supreme Court determined that, in order to overcome section 2(b)'s limits on the Commission's jurisdiction with respect to intrastate communications service, Congress must either modify section 2(b) or grant the Commission additional authority. As explained above, we find that the term "interLATA services," by the Act's own definition, includes intrastate services, and that Congress, in sections 271 and 272, expressly granted the Commission authority over intrastate interLATA services for purposes of those sections. Accordingly, consistent with the Court's statement in *Louisiana*, we find that section 2(b) does not limit our authority over intrastate interLATA services under sections 271 and 272.

In addition, we find that, in enacting sections 271 and 272 after section 2(b), and squarely addressing therein the issues before us, Congress intended for sections 271 and 272 to take precedence over any contrary implications based on section 2(b). In construing these provisions, we are mindful that "it is a commonplace of statutory construction that the specific governs the general." Moreover, where amended and original sections of a statute cannot be harmonized, the new provisions should be construed to prevail as the latest declaration of legislative will. We find also that, in enacting the 1996 Act, there are other instances where Congress indisputably gave the Commission intrastate jurisdiction without amending section 2(b). For instance, section 251(e)(1) provides that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." Section 253 directs the Commission to preempt state regulations that prohibit the ability to provide intrastate services. Section 276(b) directs the Commission to "establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call." Section 276(c) provides

that, "[t]o the extent that any State [payphone] requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." None of these provisions is specifically excepted from section 2(b), yet all of them explicitly give the Commission jurisdiction over intrastate matters. Thus, we find that the lack of an explicit exception in section 2(b) does not require us to conclude that the Commission's jurisdiction under sections 271 and 272 is limited to interstate services. A contrary holding would nullify several explicit grants of authority to the Commission, noted above, and would render substantial parts of the statute meaningless. Thus, in this instance, we believe that the lack of an explicit exception in section 2(b) is not dispositive of the scope of the Commission's jurisdiction.

Moreover, as stated above, with the exception of the New York Commission, the parties challenging the Commission's authority to preempt state regulation under sections 272 do not address the issue of whether "interLATA services" are defined by the Act to include intrastate services. The New York Commission agrees with us that it does. These parties (including the New York Commission) also do not challenge the proposition that Congress vested in the Commission authority over BOC entry into all in-region interLATA services—intrastate and interstate. We find it difficult to reconcile these parties' silence on these issues, as well as the New York Commission's agreement that "interLATA services" includes intrastate services, with their position that section 2(b) limits the application of the Commission's implementing rules under section 272 to interstate interLATA services. If, as it remains undisputed in the record, the Commission would necessarily determine, in assessing whether to allow BOC entry into in-region interLATA services, whether a BOC's provision of intrastate as well as interstate interLATA services complies with section 272, we can find no basis to maintain that the Commission's authority under sections 271 and 272 does not include authority to apply its interpretation of section 272 to all of the interLATA services—intrastate and interstate—at issue in the BOC's 271 in-region interLATA services application.

NARUC and the Missouri Commission stress that earlier drafts of the legislation would have amended section 2(b) to make an exception for certain sections of Title II, including sections 271 and 272, but the enacted version did not include that exception. They argue that this change demonstrates that Congress intended that section 2(b)'s limitations remain fully in force with regard to sections 271 and 272. We find this argument unpersuasive.

As noted above, parties that attach significance to the omission of the proposed amendment of section 2(b) rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. This rule of statutory construction has been rejected, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the meaning of the omission of the section 2(b) amendment appears in the Joint Explanatory Statement. According to the Joint Explanatory Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein "except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes." Because the Joint Explanatory Statement did not address the removal of the section 2(b) amendment from the final bill, the logical inference is that Congress regarded the change as an inconsequential modification rather than a significant alteration. It seems implausible that, by enacting the final version, Congress intended a radical alteration of the Commission's authority under sections 271 and 272, given the total lack of legislative history to that effect. Based on the foregoing, we conclude that elimination of the proposed amendment of section 2(b) was a nonsubstantive change.

Moreover, even if it were appropriate to speculate as to the meaning of the omission of the section 2(b) exception, we disagree with the argument that the omission necessarily indicates that Congress intended *not* to provide the Commission authority over intrastate services in sections 271 and 272. We find it is equally possible that Congress omitted the exception based on an understanding that the use of the term interLATA in sections 271 and 272 established a clear grant of authority over intrastate services and therefore that such an exception was unnecessary.

We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters. Section 601(c) of the 1996 Act provides that the Act and its amendments "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." As explained above, we conclude that sections 271 and 272, which apply to interLATA services, were expressly intended to modify federal and state law and jurisdictional authority.

For all of the reasons discussed above, we conclude that sections 271 and 272, and the Commission's authority thereunder, apply to intrastate and interstate interLATA services provided by the BOCs or their affiliates. We hold, therefore, that the rules we establish to implement section 272 are binding on the states, and the states may not impose, with respect to BOC provision of intrastate interLATA service, requirements inconsistent with sections 271 and 272 and the Commission's rules under those provisions. In this regard, based on what we find is clear congressional intent that the Commission is authorized to make determinations regarding BOC entry into interLATA services, we reject the suggestion by the Wisconsin Commission that, after the Commission has granted a BOC application for authority under section 271, a state nonetheless may condition or delay BOC entry into intrastate interLATA services.

C. Scope of Commission's Authority Regarding Manufacturing Services

In the NPRM, we tentatively concluded that the Commission's authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. Only two parties, Sprint and TIA, commented on this issue, and both agreed with our tentative conclusion.

We adopt our tentative conclusion that our authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. As we stated in the NPRM, to the extent that sections 271 and 272 address BOC manufacturing activities, we believe that the same statutory analysis set forth above with respect to interLATA services would apply. We see no basis for distinguishing among the various subsections of sections 271 and 272. Even apart from that analysis, however, we believe that the provisions concerning manufacturing clearly apply to all manufacturing activities. Section 2(b) of the Communications Act limits the Commission's authority over "charges, classifications, practices, services, facilities, or regulation for or in connection with intrastate communications service." Even though, for the reasons stated above, we find section 2(b) not to be relevant to

sections 271 and 272, we find that the manufacturing activities addressed by sections 271 and 272 are not, in any event, within the scope of section 2(b). Alternatively, even if section 2(b) were deemed to apply with respect to BOC manufacturing, we find that such manufacturing activities plainly cannot be segregated into interstate and intrastate portions. Thus, any state regulation inconsistent with sections 271 and 272 or our implementing regulations would necessarily thwart and impede federal policies, and should be preempted.

III. Activities Subject to Section 272 Requirements

Section 272(a) provides that a BOC (including any affiliate) that is a LEC subject to the requirements of section 251(c) may provide certain services only through a separate affiliate. Under section 272, BOCs (or BOC affiliates) may engage in the following activities only through one or more affiliates that are separate from the incumbent LEC entity: (A) Manufacturing activities; (B) interLATA telecommunications services that originate in-region; and (C) interLATA information services. We discuss below both the activities subject to the section 272 separate affiliate requirements and the activities that are exempt from these requirements.

A. General Issues

1. Definition of "InterLATA services"

a. Background. In the NPRM, we indicated that the 1996 Act defines "interLATA service" as a telecommunications service. We further stated that, where the 1996 Act draws distinctions between in-region and out-of-region "interLATA services," these distinctions do not apply to interLATA information services.

b. Discussion. Upon consideration of the arguments raised in the record, we modify our interpretation of the scope of the term "interLATA service." Consistent with the views of the commenters that addressed this point, we conclude that the term "interLATA services" encompasses both interLATA information services and interLATA telecommunications services.

We are persuaded that the definition of "interLATA service," which is "telecommunications between a point located in a [LATA] and a point located outside such area," does not limit the scope of the term to telecommunications services because, as MFS and BellSouth point out, information services are also provided *via telecommunications.* Elsewhere in this Report and Order, we conclude that "interLATA information services" must include a bundled, interLATA transmission component. Thus, interLATA information services are provided via interLATA telecommunications transmissions and, accordingly, fall within the definition of "interLATA service." Moreover, we believe that it is a more natural, common-sense reading of "interLATA services" to interpret it to include both telecommunications services and information services. In addition, as MFS argues, in section 272(a)(2), Congress uses and distinguishes between "interLATA telecommunications services" and "interLATA information services," demonstrating that it limited the term "interLATA services" to transmission services when it wished to. Further, if Congress had intended the term "interLATA services" to include only interLATA telecommunications services, its use of the term "interLATA telecommunications services" in section 272(a)(2) would have been unnecessary and redundant.

As MCI points out, interpreting the term "interLATA services" to include both interLATA telecommunications and interLATA information services means that a BOC may not provide in-region interLATA information services until it obtains section 271 authorization. As a practical matter, we believe that interpreting "interLATA services" to include interLATA information services will not alter the application of section 271. As noted above, and discussed in greater detail below, we conclude that the term "interLATA information service" refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component provided to the customer for a single charge. Thus, regardless of whether we interpret "interLATA service" to include interLATA information services, a BOC would be required to obtain section 271 authorization prior to providing, in region, the interLATA telecommunications transmission component of an interLATA information service.

2. Application of Section 272 Safeguards to International InterLATA Services

In the NPRM, we tentatively concluded that Congress intended the section 272 safeguards to apply to all domestic and international interLATA services. All of the parties that commented on this point supported this tentative conclusion. As noted above, the 1996 Act defines "interLATA services" as "telecommunications between a point located in a [LATA] and a point located outside such area." The definition does not distinguish between domestic and international interLATA services. Further, international telecommunications services, which originate in a LATA and terminate in a country other than the United States, or vice versa, fit within the statutory definition of interLATA services. Thus, we hereby adopt our tentative conclusion.

3. Provision of Services Through a Single Affiliate

a. Background. In the NPRM, we tentatively concluded that BOCs may conduct all, or some combination of, manufacturing activities, interLATA telecommunications services, and interLATA information services through a single separate affiliate, so long as the affiliate satisfies all statutory and regulatory requirements imposed on the provision of each type of service. Elsewhere in the NPRM, we sought comment on whether the 1996 Act permits us to, and if so, whether we should, interpret or apply any of the requirements of section 272(b) differently with respect to a BOC's provision of interLATA telecommunications services, which are regulated under Title II, as opposed to a BOC's engagement in manufacturing and provision of interLATA information services, which are unregulated activities. In addition, we sought comment on how we could impose different regulatory requirements if a BOC provides both regulated and unregulated services through a single affiliate.

b. Discussion. Based on the comments submitted in the record and our analysis of the 1996 Act, we adopt our tentative conclusion that BOCs may conduct all, or some combination, of manufacturing activities, interLATA telecommunications services, and interLATA information services through a single separate affiliate. Section 272(a) requires a BOC to provide these services through "one or more affiliates" that are "separate from any operating company entity that is subject to the requirements of section 251(c)." We conclude that this language is intended to allow the BOCs flexibility in structuring their provision of competitive services, so long as those services are separated from the BOCs' provision of any local exchange services that are subject to the requirements of section 251(c).

We further conclude, as a policy matter, that it is not necessary to require the BOCs to separate their manufacturing activities from their

provision of interLATA telecommunications services and interLATA information services, as suggested by VoiceTel. First, a BOC's manufacturing activities do not entail control over bottleneck local exchange facilities. Second, during the period that the MFJ prohibited the BOCs from engaging in manufacturing activities, a competitive market for these activities developed. The market for information services is fully competitive; the market for interLATA telecommunications services is also substantially competitive. Thus, while a BOC may achieve certain efficiencies and economies of scope by conducting all three categories of activity through the same section 272 affiliate, it cannot thereby increase its ability to exercise market power in either the manufacturing, interLATA telecommunications services, or interLATA information services markets. Further, we note that section 273, which is the subject of a separate proceeding, establishes additional safeguards applicable to BOC manufacturing activities, which are intended to promote competition and prevent discrimination. For these reasons, we conclude that BOCs may conduct all, or some combination of, manufacturing activities, interLATA telecommunications services, and interLATA information services through the same section 272 affiliate.

Further, we decline to adopt different requirements pursuant to section 272(b) for regulated and unregulated activities. The safeguards of section 272(b) apply to any "separate affiliate required by" section 272(a). Thus, the section 272(b) safeguards address the BOCs' potential to allocate costs improperly and to discriminate in favor of their section 272 affiliates, irrespective of the activities in which those affiliates engage.

4. Manufacturing Activities

In the NPRM, we stated that BOCs may only engage in manufacturing activities through a separate affiliate that meets the requirements of section 272, and noted that section 273 sets forth additional safeguards applicable to BOC entry into manufacturing activities. Subsequent to the closing of the record in this proceeding, the Commission released a Notice of Proposed Rulemaking to clarify and implement the provisions of section 273. Several parties have raised arguments relating to the section 273 provisions on the record in this proceeding. Because this proceeding implements the non-accounting safeguards provisions of sections 271 and 272, arguments relating to the specific provisions of section 273 are more appropriately addressed in the section 273 proceeding. We note that BOCs must conduct their manufacturing activities through a section 272 separate affiliate, manufacture and provide telecommunications equipment and CPE in accordance with section 273, and comply with the regulations that the Commission promulgates to implement both sections 272 and 273.

B. Mergers/Joint Ventures of Two or More BOCs

1. Background

In the NPRM, we tentatively concluded that, pursuant to sections 271(i)(1) and 153(4)(B), if two or more of the BOCs combine their operations through merger or acquisition, the in-region states of the resultant entity shall include all of the in-region states of each of the BOCs involved in the merger/acquisition. We sought comment on whether the entry into a merger agreement or a joint venture arrangement by two or more BOCs affects the application of the section 271 and 272 non-accounting separate affiliate and nondiscrimination requirements to those BOCs. We further sought comment on whether additional safeguards are required to ensure that these BOCs do not provide the affiliates of their merger partners with an unfair competitive advantage during the pendency of their merger agreement.

2. Discussion

We note the unanimous support among parties that commented on the issue, and hereby affirm our tentative conclusion that, upon completion of a merger between or among BOCs, the in-region states of the merged entity shall include all of the in-region states of each of the BOCs involved in the merger. We decline, however, to adopt a general rule that would treat the regions of merging BOCs as combined prior to completion of the merger, for the purposes of applying the section 272 separate affiliate and nondiscrimination safeguards. Section 272 requires a BOC to provide certain services (interLATA telecommunications and information services and manufacturing activities) through one or more separate affiliates, and establishes nondiscrimination requirements that apply to the BOC's conduct and its relationship with these affiliates. Section 3(1), in turn, defines an "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership and control with, another person." Prior to completion of a merger, the merging BOCs are neither affiliates, nor successors or assigns, of one another. Thus, entry into a merger agreement does not render the section 272 safeguards applicable to a BOC's relationship with its merger partner, nor to its relationship with its merger partner's affiliates. Moreover, treating the regions of merging BOCs as combined from the inception of a merger agreement might create considerable problems in applying the section 271 and 272 safeguards. For example, if BOC A were offering out-of-region interLATA services in BOC B's region at the time the two entered a merger agreement, BOC A might be required immediately to cease the provision of such services until it had received approval under section 271 to offer in-region interLATA services. That result would be both disruptive and confusing to customers.

We further decline to adopt any additional regulations applicable to pending mergers or joint ventures between or among BOCs. We are persuaded that adequate protections against discriminatory and anticompetitive conduct already apply to mergers, acquisitions, and joint ventures among BOCs. As the DOJ and other commenters point out, these protections include the nondiscrimination obligations of sections 201 and 202 of the Communications Act, which, among other things, prevent the BOCs from unjustly or unreasonably discriminating in providing facilities or services to interexchange carriers, and would thus govern a BOC's relationship with the long-distance affiliate of its merger partner. Continuing enforcement of the MFJ equal access requirements and pre-existing Commission-prescribed interconnection requirements, pursuant to section 251(g), also safeguards against BOC discrimination in favor of the affiliates of their merger partners. Further, as USTA notes, BOCs will be subject to the pre-merger review process under the Hart-Scott-Rodino amendment to the Clayton Act. See 15 U.S.C. § 18a. Moreover, as MCI suggests, we retain our authority to impose additional safeguards in the context of particular mergers, should circumstances demonstrate the need for such safeguards, on a case-by-case basis.

C. Previously Authorized Activities

1. Background

In the NPRM, we sought comment on the meaning of and interaction between sections 271(f), 272(a)(2)(B)(iii), and 272(h). Specifically, we sought comment on whether, subject to the

exception established by section 272(a)(2)(B)(iii), section 272(h) requires the BOCs to come into compliance with the section 272 safeguards with respect to all of the activities listed in section 272(a)(2) (A)–(C) that they were providing on the date of enactment of the 1996 Act. We observed that section 272(a)(2)(B)(iii) establishes an exemption for "previously authorized activities described in section 271(f)" from the separate affiliate requirement for "origination of interLATA telecommunications services." We sought comment on whether Congress intended, through section 272(h), to require BOCs engaged in previously authorized manufacturing activities and interLATA information services to come into compliance with the section 272 requirements.

2. Discussion

Based on the record before us and our analysis of the relevant statutory terms, we conclude that BOCs may continue to provide all previously authorized services without interruption, pursuant to the terms and conditions set forth in the MFJ court orders that authorize those services. Previously authorized interLATA information services and manufacturing activities must come into compliance with the section 272 separate affiliate requirements within one year. Previously authorized interLATA telecommunications services, which do not have to comply with the section 272 separate affiliate requirements, must continue to be provided pursuant to the terms and conditions of the MFJ court orders that authorize them.

Section 271(f). As a general matter, section 271 addresses the timing and requirements for BOC entry into the interLATA market. Section 271(f) specifies that neither section 271(a) nor section 273 "prohibits" a BOC or its affiliate from engaging, at any time after enactment, in any activity previously authorized by an order of the MFJ court, subject to the terms and conditions imposed by the court. We conclude that the purpose of Section 271(f) is to preserve the BOCs' ability to engage in previously authorized activities, without first having to obtain section 271 authorization from the Commission. Section 271(f) by its terms does not address, and thus does not preclude, application of the section 272 separate affiliate requirements to previously authorized services. Except for specifying that BOCs may continue to provide previously authorized services pursuant to the terms and conditions contained within the MFJ court order authorizing the service, section 271(f) does not address the manner in which BOCs must structure their provision of previously authorized services, or whether they must provide these services through a separate affiliate. These issues are addressed in section 272.

Section 272(a)(2)(B)(iii). Section 272 sets forth separate affiliate and nondiscrimination requirements with which the BOC must comply in order to provide certain services. Separate subsections of section 272(a)(2) establish separate affiliate requirements for BOC provision of manufacturing activities (section 272(a)(2)(A)), origination of interLATA telecommunications services (section 272(a)(2)(B)), and interLATA information services (section 272(a)(2)(C)). Section 272(a)(2)(B)(iii) exempts "previously authorized activities described in section 271(f)" from the separate affiliate requirement for "origination of interLATA telecommunications services." We conclude that, because this exemption appears in section 272(a)(2)(B), it applies by its terms only to previously authorized activities that involve the origination of interLATA telecommunications services.

Previously authorized activities described in section 271(f) may include both manufacturing activities and interLATA information services. Neither of these types of previously authorized activities, however, is exempt from the section 272 separate affiliate requirements, because neither section 272(a)(2)(A) nor section 272(a)(2)(C) contains an exemption for previously authorized activities similar to the explicit exemption set forth in section 272(a)(2)(B)(iii). We reject Ameritech's argument that section 272(a)(2)(B)(iii) exempts previously authorized interLATA information services from the section 272 separate affiliate requirements, because section 272(a)(2)(B) applies only to origination of interLATA telecommunications services. Section 272(a)(2)(C) establishes the separate affiliate requirement for BOC provision of interLATA information services; there are exceptions to this requirement for electronic publishing services and alarm monitoring services, but there is no exception specified for previously authorized activities.

Section 272(h). As the majority of commenters agree, section 272(h) establishes a one-year transition period for BOCs to comply with the separate affiliate requirements of section 272 for all services they were providing on the date of enactment of the 1996 Act that are not exempt from these requirements. Because we concluded in the preceding paragraphs that previously authorized interLATA information services and manufacturing activities are not exempt from the section 272 separate affiliate requirements, BOCs providing these services must comply with those requirements within one year of enactment. We reject PacTel's argument that section 272(h) gives the BOCs one year to comply with the various requirements imposed by section 272 on their provision of exchange and exchange access services, because we find these requirements are effective immediately upon a BOC's entry into the in-region interLATA market pursuant to section 271.

Differential Treatment. We conclude that, with respect to requiring compliance with the section 272 separate affiliate requirements, Congress intended to treat previously authorized interLATA telecommunications services differently from previously authorized interLATA information services and manufacturing activities. Certain of the BOCs argue that such a distinction is justified because it would be more difficult to provide previously authorized interLATA telecommunications services on a separated basis. Ameritech, however, argues that certain previously authorized interLATA information services, such as TDDS, would be equally difficult to provide on a separated basis. Section 10 of the Communications Act requires us to forbear from applying any provision of the Act that is not necessary to ensure just and reasonable charges and practices in the telecommunications marketplace, or to protect consumers, if we find that such forbearance would promote competition and is consistent with the public interest. Thus, to the extent a BOC demonstrates, with respect to a particular previously authorized interLATA information service, that forbearance from the section 272 separate affiliate requirement fully satisfies the section 10 test, we must forbear from requiring the BOC to provide that service through a section 272 affiliate.

D. Out-of-Region InterLATA Information Services

1. Background

In the NPRM, we tentatively concluded that the BOCs must provide interLATA information services through a separate affiliate, regardless of whether these services are provided in-region or out-of-region. We observed that section 272(a)(2)(B)(ii) exempts out-of-region interLATA services from the

separate affiliate requirement for "origination of interLATA telecommunications services," but there is no analogous exemption from the section 272(a)(2)(C) separate affiliate required for interLATA information services (other than electronic publishing and alarm monitoring services).

2. Discussion

Based on the record before us and our own statutory analysis, we hereby adopt our tentative conclusion that BOCs must provide out-of-region interLATA information services through a section 272 separate affiliate. Although we concluded above that "interLATA information services" are included within the term "interLATA services" as used in section 271(b), that determination does not alter the conclusion that BOCs must provide out-of-region interLATA information services through a section 272 separate affiliate. Section 271(b)(2) permits a BOC or its affiliate to provide interLATA services, including interLATA information services, that originate outside its in-region states, immediately upon enactment of the 1996 Act. Section 271, however, does not address whether such services must be provided through a separate affiliate; that issue is addressed in section 272(a).

Section 272(a)(2)(B) requires a separate affiliate for the "origination of interLATA telecommunications services," but exempts from that requirement "out-of-region services described in section 271(b)(2)." We conclude that the exception created by section 272(a)(2)(B)(ii) extends only to out-of-region interLATA services that are telecommunications services. Section 272(a)(2)(C) requires a separate affiliate for "interLATA information services," and exempts electronic publishing and alarm monitoring services from that requirement. There are no other exceptions to the requirements of section 272(a)(2)(C). As several commenters noted, section 272(a)(2)(B) explicitly excludes out-of-region services, but section 272(a)(2)(C) does not. We agree with MCI that the explicit exclusion of out-of-region interLATA telecommunications services in one subsection of the statute, and the absence of such an express exclusion of out-of-region interLATA information services in another subsection of the same provision, suggests that Congress intended not to exclude the latter from the separate affiliate requirement. Therefore, we find that out-of-region interLATA information services are not excluded from the separate affiliate requirement for interLATA information services.

BellSouth has argued that requiring BOCs to provide out-of-region interLATA information services through a section 272 separate affiliate violates the First Amendment. As noted above, we find that this result is required by the statute. Although the courts have ultimate authority to determine the constitutionality of this and other statutes, we find it appropriate to state that we find BellSouth's argument to be without merit. BellSouth bases its argument on an assertion that as "content-related" services, information services are commercial speech entitled to First Amendment protections. We conclude, first, that with respect to certain information services, a BOC neither provides, nor exercises editorial discretion over, the content of the information associated with those particular services, and therefore provision of those information services does not constitute speech subject to First Amendment protections. Second, to the extent that BOC provision of other interLATA information services constitutes speech for First Amendment purposes, the section 272 separate affiliate requirement neither prohibits the BOCs from providing such services, nor places any restrictions on the content of the information the BOCs may provide. Instead, the section 272 separate affiliate requirement is a content-neutral restriction on the manner in which BOCs may provide interLATA information services, intended by Congress to protect against improper cost allocation and discrimination concerns. Thus, we conclude that the separate affiliate requirement imposed by section 272 of the Communications Act on BOC provision of interLATA information services does not violate the First Amendment.

E. Incidental InterLATA Services

1. Background

In the NPRM, we sought comment on whether we should establish any non-accounting structural or nonstructural safeguards for BOC provision of the "incidental interLATA services" set forth in section 271(g), in light of section 271(h). Section 271(h) directs the Commission to ensure that the provision of incidental interLATA services "will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market," and states that the provisions of section 271(g) "are intended to be narrowly construed." We also sought comment regarding the interplay between section 271(h) and section 254(k), which prohibits telecommunications carriers from "us[ing] services that are not competitive to subsidize services that are subject to competition."

2. Discussion

Section 271(b)(3) permits the BOCs to provide incidental interLATA services described in section 271(g) immediately after the date of enactment of the 1996 Act. Thus, unlike other in-region interLATA services, BOCs may provide incidental interLATA services originating in their own in-region states without receiving prior authorization from the Commission pursuant to section 271(d). Neither section 271(b) nor section 271(g) addresses whether BOCs must provide incidental interLATA services through a section 272 separate affiliate; this issue is addressed by section 272 itself.

Scope of the section 272(a)(2)(B)(i) exemption. Section 272(a)(2)(B)(i) sets forth an exception to the separate affiliate requirement imposed on "origination of interLATA telecommunications services." Congress specifically limited this exception to the "incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g)." Consistent with the analysis set forth in the two immediately preceding sections of this Order, we conclude that the section 272(a)(2)(B)(i) exception applies, by its terms, to the origination of incidental interLATA services that are telecommunications services.

For the most part, the incidental interLATA services enumerated within the section 272(a)(2)(B)(i) exception are telecommunications services. (Congress deliberately excluded remote data storage and retrieval services that fall within section 271(g)(4) from the section 272(a)(2)(B)(i) exception.) Although the incidental interLATA services set forth in sections 271(g)(1)(A), (B), and (C) include audio, video, and other programming services that do not appear to be solely telecommunications services, section 271(h) specifies that these incidental interLATA services "are limited to *those interLATA transmissions incidental to* the provision by a [BOC] or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public." We therefore conclude that, pursuant to section 272(a)(2)(B)(i), BOCs are not required to provide the interLATA telecommunications transmission incidental to provision of the programming services listed in sections 271(g)(1)(A), (B), and (C) through a

section 272 separate affiliate. Moreover, alarm monitoring services, listed as incidental interLATA services under section 271(g)(1)(D), are explicitly excepted from the section 272 separate affiliate requirements under section 272(a)(2)(C).

In addition, section 271(g)(2), which designates as "incidental interLATA services" the interLATA provision of "two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5)," may encompass services that are not solely telecommunications services. The statute does not classify educational interactive interLATA services as either telecommunications services or information services. We conclude, however, that the explicit inclusion of section 271(g)(2) in the list of services subject to the section 272(a)(2)(B)(i) exception exempts educational interactive interLATA services from the section 272 separate affiliate requirements. This interpretation is consistent with Congress' clear intent, expressed in other provisions of the 1996 Act, to promote the provision of advanced telecommunications and information services, of which educational interactive interLATA services are examples, to eligible public and non-profit elementary and secondary schools. The inclusion of educational interactive interLATA services among the list of "incidental interLATA services" that BOCs could provide immediately upon enactment of the 1996 Act without prior Commission authorization promotes the congressional goal of rapidly deploying advanced telecommunications by permitting the BOCs to offer such services. Thus, we further find it reasonable to conclude that Congress did not wish to impose a significant regulatory barrier, in the form of a separate affiliate requirement, on BOC provision of these services.

Additional regulation of incidental interLATA services. We decline to impose the section 272 separate affiliate requirements on incidental interLATA services that, as discussed above, are exempt from those requirements under section 272(a)(2)(B)(i). Section 272 itself does not require the BOCs to provide these services through a separate affiliate. Further, we conclude as a legal matter that neither section 271(h) nor section 254(k) requires us to impose the section 272 separate affiliate requirements on exempt incidental interLATA services in order to protect telephone exchange ratepayers or competition in the telecommunications market. Moreover, we decline to do so as a matter of policy, because we see no present need to impose structural separation requirements beyond those mandated by Congress in order to protect against improper cost allocation and access discrimination. We likewise decline to impose any other structural separation requirements on BOC provision of these services, as suggested by certain commenters. This decision comports with the Commission's prior determinations not to impose structural separation requirements in contexts in which it found that nonstructural safeguards provide sufficient protection against improper cost allocation and access discrimination (*e.g.*, BOC provision of enhanced services).

Under our rules, the BOCs are subject to existing nonstructural safeguards in their provision of incidental interLATA services, and we conclude that these safeguards are sufficient to protect telephone exchange ratepayers and competition in telecommunications markets, in accordance with section 271(h). For accounting purposes, incidental interLATA services will be treated as non-regulated services under our Part 32 affiliate transaction rules and Part 64 cost allocation rules, and accordingly costs associated with provision of those services may not be allocated to regulated services accounts. Further, at the federal level and in many states, the BOCs are subject to price cap regulation, which reduces their incentive to engage in strategic cost-shifting behavior. The BOCs are also subject to the section 251 interconnection and unbundling requirements, which compel them to make available to other telecommunications carriers the local network elements and local exchange facilities that such carriers may require to provide services comparable to the incidental interLATA services listed in section 271(g). Further, the BOCs are subject to network disclosure requirements imposed by section 251(c)(5), which require them to give timely information about network changes to their affiliates' competitors.

Given the complement of nonstructural safeguards to which the BOCs are subject in their provision of incidental interLATA services, we find that the record in this proceeding does not justify the imposition of additional nonstructural safeguards on these services. We decline to extend to the integrated provision of incidental interLATA services any of the section 272(c) and 272(e) nondiscrimination requirements that depend on the existence of a section 272 affiliate, as suggested by AT&T. Further, we decline to adopt any additional unbundling requirements applicable to BOC provision of incidental interLATA services, as suggested by MCI. We agree with BellSouth that it would be inconsistent with the 1996 Act for us to require the BOCs to unbundle and make available interLATA transmission services that they are not authorized to provide except as components of an incidental interLATA service (*i.e.*, without obtaining prior authorization under section 271 or complying with the section 272 separation requirements). For the foregoing reasons, we decline to adopt any additional structural or nonstructural safeguards applicable specifically to BOC provision of incidental interLATA services.

F. InterLATA Information Services

1. Relationship Between Enhanced Services and Information Services

a. Background. In the NPRM, we sought comment on the services that are included in the statutory definition of "information service," and whether that term encompasses all activities that the Commission classifies as "enhanced services." We noted that the statutory definition of "information service" is based on the definition used in the MFJ, and that prior to passage of the 1996 Act, neither the Commission nor the MFJ court resolved the question of whether the definition of enhanced services under the Commission's rules was synonymous with the definition of information services under the MFJ.

b. Discussion. We conclude that all of the services that the Commission has previously considered to be "enhanced services" are "information services." We are persuaded by the arguments advanced by ITAA, CIX, and others, that the differently-worded definitions of "information services" and "enhanced services" can and should be interpreted to extend to the same functions. We believe that interpreting "information services" to include all "enhanced services" provides a measure of regulatory stability for telecommunications carriers and ISPs alike, by preserving the definitional scheme under which the Commission exempted certain services from Title II regulation. We agree with ISPs that regulatory certainty and continuity benefits both large and small service providers. In sum, we find no basis to conclude that by using the MFJ term "information services" Congress intended a significant departure from the Commission's usage of "enhanced services."

We also find, however, that the term "information services" includes services that are not classified as "enhanced services" under the Commission's current rules. Stated differently, we conclude that, while all enhanced services are information services, not all information services are enhanced services. As noted by U S West, "enhanced services" under Commission precedent are limited to services "offered over common carrier transmission facilities used in interstate communications," whereas "information services" may be provided, more broadly, "via telecommunications." Further, we agree with BellSouth and AT&T that live operator telemessaging services that do not involve "computer processing applications" are information services, even though they do not fall within the definition of "enhanced services."

We further conclude that, subject to the exceptions discussed below, protocol processing services constitute information services under the 1996 Act. We reject Bell Atlantic's argument that "information services" only refers to services that transform or process the content of information transmitted by an end-user, because we agree with Sprint that the statutory definition makes no reference to the term "content," but requires only that an information service transform or process "information." We also agree with ITI and ITAA that an end-to-end protocol conversion service that enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol clearly "transforms" user information. We further find that other types of protocol processing services that interpret and react to protocol information associated with the transmission of end-user content clearly "process" such information. Therefore, we conclude that both protocol conversion and protocol processing services are information services under the 1996 Act.

This interpretation is consistent with the Commission's existing practice of treating end-to-end protocol processing services as enhanced services. We find no reason to depart from this practice, particularly in light of Congress' deregulatory intent in enacting the 1996 Act. Treating protocol processing services as telecommunications services might make them subject to Title II regulation. Because the market for protocol processing services is highly competitive, such regulation is unnecessary to promote competition, and would likely result in a significant burden to small independent ISPs that provide protocol processing services. Thus, policy considerations support our conclusion that end-to-end protocol processing services are information services.

We note that, under *Computer II* and *Computer III*, we have treated three categories of protocol processing services as basic services, rather than enhanced services, because they result in no net protocol conversion to the end-user. These categories include protocol processing: (1) involving communications between an end-user and the network itself (*e.g.*, for initiation, routing, and termination of calls) rather than between or among users; (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end-user). We agree with PacTel that analogous treatment should be extended to these categories of "no net" protocol processing services under the statutory regime. Because "no net" protocol processing services are information service capabilities used "for the management, control, or operation of a telecommunications system or the management of a telecommunications service," they are excepted from the statutory definition of information service. Thus, "no net" protocol conversion services constitute telecommunications services, rather than information services, under the 1996 Act.

We further find, as suggested by PacTel, that services that the Commission has classified as "adjunct-to-basic" should be classified as telecommunications services, rather than information services. In the *NATA Centrex* order, the Commission held that the enhanced services definition did not encompass adjunct-to-basic services. *See* 101 FCC 2d 349, 359–361, ¶¶ 24–28 (1985). Although the latter services may fall within the literal reading of the enhanced service definition, they facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service. Similarly, we conclude that "adjunct-to-basic" services are also coveréd by the "telecommunications management exception" to the statutory definition of information services, and therefore are treated as telecommunications services under the 1996 Act.

2. Distinguishing InterLATA Information Services Subject to Section 272 From IntraLATA Information Services

a. Background. In the NPRM, we sought comment on how to distinguish between interLATA information services, which are subject to the section 272 separate affiliate requirements, and intraLATA information services, which are not. In particular, we asked whether an information service should be considered an interLATA service only when the service actually involves an interLATA telecommunications transmission component, or, alternatively, when it potentially involves interLATA telecommunications transmissions (e.g., the service can be accessed across LATA boundaries). We further sought comment regarding how the manner in which a BOC structures its provision of an information service may affect whether the service is classified as interLATA.

We also invited comment on whether a particular service for which a BOC had applied for or received an MFJ waiver should presumptively be treated as an interLATA information service subject to the separate affiliate requirements of section 272. In addition, we sought comment on whether we should presume that services provided by BOCs pursuant to CEI plans approved by the Commission prior to the enactment of the 1996 Act are intraLATA information services.

b. Discussion. InterLATA Transmission/Resale. We conclude that, as used in section 272, the term "interLATA information service" refers to an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge. We find, as noted in the comments of AT&T, MCI, and the BOCs, that this definition of interLATA information service conforms to the MFJ precedent in this area. *See United States* v. *Western Electric*, 907 F.2d 160, 163 (D.C. Cir. 1990). We further conclude that a BOC provides an interLATA information service when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider. This conclusion also comports with MFJ precedent.

USTA contends that BOC provision of interLATA transmission through resale should be permitted because it does not

raise improper cost allocation and discrimination concerns. This argument, however, does not address the key issue of what is required by the statute. As discussed above, we find that section 601(a) of the 1996 Act indicates that Congress intended the provisions of the 1996 Act to supplant the MFJ. Therefore, we conclude that the restrictions imposed by the 1996 Act on BOC provision of interLATA services, like the interLATA restrictions imposed under the MFJ, apply to services provided through resale, as well as to services provided through the BOC's own transmission facilities. Moreover, we decline to adopt PacTel's suggestion that end-user receipt of an "interLATA benefit" should be the test for determining whether an information service is interLATA. PacTel's proposed test is inconsistent with MFJ precedent and would be very difficult to administer. Finally, we reject the arguments raised by Sprint and MFS that we should classify all information services as interLATA services because of the difficulties inherent in distinguishing between interLATA and intraLATA information services. We conclude that it is possible to distinguish between interLATA and intraLATA information services by applying the rule established by this Order.

InterLATA Access. We agree with AT&T and the BOCs that an information service may not be considered interLATA merely because it may be accessed on an interLATA basis by means independently chosen by the customer, such as a presubscribed interexchange carrier. In interpreting the statutory restrictions on BOC provision of interLATA information services, we are concerned not with the manner in which an information service is used, but rather with the components of the service that are provided by the BOC. When a BOC is neither providing nor reselling the interLATA transmission component of an information service that may be accessed across LATA boundaries, the statute does not require that service to be provided through a section 272 separate affiliate. We reject MFS's contention that, where an interLATA transmission service is necessary for a customer to obtain access to a particular BOC-provided information service, that information service should be considered interLATA, even if the necessary interLATA transmission component is separately provided by another carrier. In such circumstances, the BOC is not providing any interLATA services, and therefore is not required by section 272 to provide the information service in question through a separate affiliate.

Moreover, as the BOCs point out, if we were to determine that the mere possibility of interLATA access was sufficient to classify an information service as an interLATA service, that rule would render any telecommunications service that carries traffic that originates in one LATA and terminates in another, including local exchange service and exchange access service, an interLATA service. Congress clearly did not intend that result.

In addition, we agree with the BOCs that classifying information services as interLATA solely because end-users may obtain access to the service across LATA boundaries would represent a significant departure from Commission precedent, as well as from MFJ precedent. BOCs are currently providing a number of information services on an integrated basis pursuant to the Commission's *Computer III* regulations, and users may obtain access to some, if not all, of these services on an interLATA basis. If we were to determine that these services were interLATA services simply because end-users may obtain access across LATA boundaries, BOCs would have to change the manner in which they are providing many of these services, which would likely result in lost efficiency and disruption of services to customers. We see no basis in the statute to adopt such an interpretation, as sections 271 and 272 are intended to govern the BOCs' provision of services that they were previously prohibited from providing under the MFJ, not services that they were previously authorized to provide under the MFJ.

Bundling. As we concluded above, an interLATA information service incorporates a bundled interLATA telecommunications transmission component. When a customer obtains interLATA transmission service from an interexchange provider that is not affiliated with a BOC, the use of that transmission service in conjunction with an information service provided by a BOC or its affiliate does not make the information service a BOC interLATA service offering. A customer also may obtain an in-region interLATA telecommunications service from a BOC section 272 affiliate that the customer uses in conjunction with an intraLATA information service provided by that affiliate or by the BOC itself. When such telecommunications and information services are provided, purchased, and priced separately, we conclude that they do not collectively constitute an interLATA information service offering by the BOC. (We note that even when an information service and interLATA transmission service are ostensibly separately priced, if the BOC offers special discounts or incentives to customers that take both services, this would constitute sufficient evidence of bundling to render the information service an interLATA information service.) In such a situation, the BOC would, of course, be required to provide the in-region interLATA transmission service pursuant to section 271 authorization and the section 272 separate affiliate and nondiscrimination requirements. The BOC could choose to provide the separate, intraLATA information service either on an integrated basis, in compliance with the Commission's CEI and *ONA* requirements, or through a separate affiliate.

Remote Databases/Network Efficiency. BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization. Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate of "a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA." Because BOCs were able to provide incidental interLATA services immediately upon enactment of the 1996 Act, they may provide interLATA information services that fall within the scope of section 271(g)(4) without receiving section 271(d) authorization from the Commission. Since section 271(g)(4) services are not among the incidental interLATA services exempted from section 272 separate affiliate requirements, however, they must be provided in compliance with those requirements. To the extent that parties have argued in the record that centralized data storage and retrieval services that fall within section 271(g)(4) either are not interLATA information services, or are not subject to the section 272 separate affiliate requirements, we specifically reject these arguments.

We also reject the BOCs' argument that their use of interLATA transmission, outside the control of the end-user and solely to maximize network efficiencies, in connection with

the provision of an information service, does not render that information service interLATA in nature. Whenever interLATA transmission is a component of an information service, that service is an interLATA information service, unless the end-user obtains that interLATA transmission service separately, *e.g.*, from its presubscribed interexchange provider. To the extent that BOCs are allowed to perform certain interLATA call processing functions associated with their provision of telephone exchange service or exchange access service in connection with an intraLATA information service, however, they may continue to do so without transforming that information service into an interLATA information service.

We also reject PacTel's claim that a BOC's use of interLATA transmission solely for its own business convenience in providing an information service falls within the "telecommunications management exception" to "information service." We disagree with PacTel's assertion that this practice is covered by the "technical management exception," because the BOC would be providing interLATA transmission in connection with the management of an information service, not "the management of a telecommunications service," as specified by section 3(20). Further, as noted above, we believe that the "telecommunications management exception" is analogous to the Commission's classification of certain services as "adjunct-to-basic;" that is, it covers services that may fit within the literal reading of the information services definition, but that are used to facilitate the provision of a basic telecommunications transmission service, without altering the character of that service. In other words, the "technical management exception" relates to the classification of services as either telecommunications services or information services; it has no bearing upon the classification of either of these types of services as intraLATA or interLATA. As such, the "telecommunications management exception" provides no safe harbor for interLATA transmission services employed by BOCs in connection with the provision of information services.

Presumptions Regarding Previously Authorized Information Services. With respect to information services that the BOCs were authorized to provide prior to passage of the 1996 Act, we conclude that as a matter of administrative convenience it is helpful to establish several rebuttable presumptions regarding intraLATA or interLATA classification. Thus, we will presume that information services that BOCs were authorized to provide pursuant to CEI plans, without MFJ waivers, are intraLATA information services. Similarly, we will presume that information services for which BOCs were required to obtain MFJ waivers are interLATA information services. We conclude that these presumptions are rebuttable, rather than conclusive, because the BOCs have noted that, for expediency purposes, they sometimes requested and obtained MFJ waivers in order to provide services that were not clearly interLATA in nature. Thus, a BOC would be able to rebut the presumption that an information service provided pursuant to an MFJ waiver is an interLATA information service by showing that it had obtained a waiver to provide the service on an intraLATA basis prior to 1991. Similarly, the presumption that an information service provided pursuant to a CEI plan is an intraLATA information service may be rebutted by a showing that the information service incorporates a bundled, interLATA telecommunications transmission component, as specified in this Order.

3. BOC-provided Internet Access Services

a. Background. On June 6, 1996, the Common Carrier Bureau (Bureau) released an order approving a CEI plan filed by Bell Atlantic for the provision of Internet Access Service. MFS had filed comments opposing Bell Atlantic's plan, arguing, *inter alia*, that Bell Atlantic's Internet access service offering is an interLATA service that Bell Atlantic may only provide through a section 272 affiliate after obtaining section 271 authorization from the Commission. Following release of the *Bell Atlantic CEI Plan Order*, MFS filed a petition for reconsideration of that Order, raising similar arguments. At about the same time, Southwestern Bell Telephone Company (SWBT) filed a CEI plan for Internet Support Services. On July 25, 1996, one week after the Commission released the NPRM in this proceeding, MFS filed with the Commission a petition seeking to consolidate proceedings related to the *Bell Atlantic CEI Plan Order* reconsideration and the SWBT Internet support CEI plan with the instant proceeding, on the grounds that the three proceedings raise similar novel, policy, factual, and legal arguments. Although the NPRM in the instant proceeding did not specifically seek comment on the proper classification or regulatory treatment of BOC-provided Internet services and Internet access services under the 1996 Act, several parties discussed these matters in their comments, in the course of addressing how we should define "interLATA information services."

b. Discussion. The preceding sections of this Order establish a definition of "interLATA information service" that should assist the BOCs and other interested parties in determining the types of information services that the BOCs are statutorily-required to provide through section 272 affiliates. If a BOC's provision of an Internet or Internet access service (or for that matter, any information service) incorporates a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a section 272 affiliate, after the BOC has received in-region interLATA authority under section 271. We believe that this is not the appropriate forum for considering whether the various specific Internet services provided by the BOCs are "interLATA information services" because such determinations must be made on a case-by-case basis. We believe that the lawfulness of the specific Internet services provided by Bell Atlantic and SWBT is more appropriately analyzed in the context of the separate CEI plan proceedings regarding each service that are currently pending before the Bureau, consistent with the rules and policies enunciated in this rulemaking proceeding. Therefore, we deny MFS's request to consolidate proceedings related to the provision of Internet and Internet access services by Bell Atlantic and SWBT with the instant proceeding.

4. Impact of the 1996 Act on the Computer II, Computer III, and ONA requirements

a. Background. In the NPRM, we concluded that, because the 1996 Act does not establish regulatory requirements for BOC provision of intraLATA information services, *Computer II*, *Computer III*, and *ONA* requirements continue to govern BOC provision of these services, to the extent that these requirements are consistent with the 1996 Act. We sought comment on which of the Commission's existing requirements were inconsistent with, or had been rendered unnecessary by, the 1996 Act, as well as on the specific provisions of the 1996 Act that supersede the existing requirements. We also sought comment on the impact of the statute on our pending *Computer III Further Remand Proceedings.*

b. Discussion. Consistency of Commission's Computer II, Computer III, and ONA Rules with the 1996 Act.

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We conclude that the *Computer II*, *Computer III*, and *ONA* requirements are consistent with the 1996 Act, and continue to govern BOC provision of intraLATA information services. By its terms, the 1996 Act imposes separate affiliate and nondiscrimination requirements on BOC provision of "interLATA information services," but does not address BOC provision of intraLATA information services. We concluded above that, for the purposes of applying sections 271 and 272, interLATA information services must include a bundled interLATA transmission component. We further conclude, in light of our definition of interLATA information services, that BOCs are currently providing a number of information services on an intraLATA basis. We find that the BOCs may continue to provide such intraLATA information services on an integrated basis, in compliance with the nonstructural safeguards established in *Computer III* and *ONA*.

We reject Bell Atlantic's conclusory assertions that the 1996 Act's customer proprietary network information (CPNI), network disclosure, nondiscrimination, and accounting provisions supersede various of the Commission's *Computer III* nonstructural safeguards. We also reject NYNEX's claim that the section 251 interconnection and unbundling requirements render the Commission's *Computer III* and *ONA* requirements unnecessary. Based on our review of the record in this proceeding, we conclude that the pending *Computer III Further Remand Proceedings* are the appropriate forum in which to examine the necessity of retaining any or all of these individual *Computer III* and *ONA* requirements. We therefore plan to issue a Further NPRM in that proceeding to determine how to regulate BOC provision of intraLATA information services in light of the 1996 Act.

In the interim, the Commission's *Computer II*, *Computer III*, and *ONA* rules are the only regulatory means by which certain independent ISPs are guaranteed nondiscriminatory access to BOC local exchange services used in the provision of intraLATA information services. As noted above, the section 272 nondiscrimination requirements do not apply to BOC provision of intraLATA information services, and ISPs that are not telecommunications carriers cannot obtain interconnection or access to unbundled elements under section 251. Thus, we believe that continued enforcement of these safeguards is necessary pending the conclusion of the *Computer III Further Remand Proceedings* and establishes important protections for small ISPs that are not provided elsewhere in the Act.

Requiring section 272 affiliates for intraLATA information services. We decline to require the BOCs to provide intraLATA information services through section 272 affiliates. It is clear that section 272 does not require the BOCs to offer intraLATA information services through a separate affiliate. We further decline to exercise our general rulemaking authority to impose such a requirement. We conclude that the record in this proceeding does not justify a departure from our determination, in *Computer III*, to allow BOCs to provide intraLATA information services on an integrated basis, subject to appropriate nonstructural safeguards. Some parties in this proceeding argue that we should harmonize our regulatory treatment of intraLATA information services provided by the BOCs with the section 272 requirements imposed by Congress on interLATA information services. We invite these parties to comment on these matters in response to the Further NPRM we intend to issue in the *Computer III Further Remand Proceedings*.

Application of Computer II, Computer III, and ONA requirements to section 272 affiliate activities. We conclude that a BOC that provides interLATA telecommunications services and information services through the same section 272 affiliate may bundle such services without providing comparably efficient interconnection to the basic underlying interLATA telecommunications services. Under our definition of "interLATA information service," as explained above, such service must include a bundled interLATA telecommunications element. Hence, to prohibit a BOC affiliate from bundling interLATA telecommunications and information services would effectively prevent the BOCs from offering any interLATA information services, a result clearly not contemplated by the statute. Further, we note that the market for information services is fully competitive, and the market for interLATA telecommunications services is substantially competitive. Thus, we see no basis for concern that a section 272 affiliate providing an information service bundled with an interLATA telecommunications service would be able to exercise market power. If, however, a BOC's section 272 affiliate were classified as a facilities-based telecommunications carrier (*i.e.*, it did not provide interLATA telecommunications services solely through resale), the affiliate would be subject to a *Computer II* obligation to unbundle and tariff the underlying telecommunications services used to furnish any bundled service offering.

Under our current regulatory regime, a BOC must comply fully with the *Computer II* separate subsidiary requirements in providing an information service in order to be relieved of the obligation to file a CEI plan for that service. We decline to adopt NYNEX's proposal that we find that all BOC information services provided through a section 272 separate affiliate satisfy the *Computer II* separate subsidiary requirements, because we conclude that the record in this proceeding is insufficient to support such a conclusion. Instead, we intend to examine this issue further in the context of the *Computer III Further Remand Proceedings*. Further, we reject USTA's argument that *ONA* reporting requirements do not extend to intraLATA information services provided through a section 272 separate affiliate. BOCs must comply with the *ONA* requirements regardless of whether they provide information services on a separated or integrated basis.

G. Information Services Subject to Other Statutory Requirements

1. Electronic Publishing (section 274)

a. Background. In the NPRM, we observed that, although electronic publishing is specifically identified as an information service, interLATA provision of electronic publishing is exempt from section 272, and is instead subject to section 274. Noting that we had initiated a separate proceeding to clarify and implement, *inter alia*, the requirements of section 274, we sought comment on how to distinguish information services subject to the section 272 requirements from electronic publishing services subject to the section 274 requirements. We also invited parties to comment on whether, in situations involving services that do not clearly fall within either the definition of "electronic publishing" (section 274(h)(1)) or the enumerated exceptions thereto (section 274(h)(2)), we should identify as "electronic publishing" those services for which the carrier controls, or has a financial interest in, the content of information transmitted by the service.

b. Discussion. Upon review of the record and further consideration, we conclude that it is not necessary to adopt the "financial interest or control" test in determining whether a particular BOC service involves the provision of electronic publishing, in addition to the definitions set forth in sections

274(h)(1) and 274(h)(2). Generally speaking, if a particular service does not appear to fit clearly within either the definition of "electronic publishing," set forth in section 274(h)(1), or the exceptions thereto listed in section 274(h)(2), determining the appropriate classification of that service will involve a highly fact-specific analysis that is better performed on a case-by-case basis. In the context of such a case-by-case determination, the Commission may consider a number of factors, including whether the BOC controls, or has a financial interest in, the content of information transmitted to end-users. We also note that the definition of electronic publishing, as well as specific services encompassed by that definition, may be further refined in the *Electronic Publishing* proceeding.

We also decline to adopt ITAA's suggestion that, because of potential difficulties in distinguishing between information services and electronic publishing services, we should impose substantially the same separate affiliate requirements on both. Such an approach would be directly contrary to the statute. Congress set forth distinct separate affiliate and nondiscrimination requirements in sections 272 and 274, and specified that the former apply to interLATA information services, while the latter apply to all BOC-provided electronic publishing services. To impose the section 272 requirements on electronic publishing services, or to impose the section 274 requirements on interLATA information services, would be inconsistent with the clear statutory scheme.

Moreover, we specifically reject AT&T's contention that electronic publishing services are subject to the section 272 separate affiliate requirements, pursuant to section 272(a)(2)(B), which imposes a separate affiliate requirement on interLATA telecommunications services. Electronic publishing services, however, are specifically included within the statutory definition of information services. Accordingly, electronic publishing services would be subject to section 272(a)(2)(C), which imposes a separate affiliate requirement on interLATA information services, except that section 272(a)(2)(C) specifically exempts "electronic publishing (as defined in section 274(h))."

2. Telemessaging (section 260)

a. Background. In the NPRM, we tentatively concluded that "telemessaging" is an information service. We further tentatively concluded that BOC provision of telemessaging on an interLATA basis is subject to the section 272 separate affiliate requirements, in addition to the section 260 safeguards.

b. Discussion. Based on our review of the comments and analysis of the statute, we hereby adopt our tentative conclusion that telemessaging is an information service. We reject PacTel's contention that live operator services do not constitute information services. Under the statute, live operator services "used to record, transcribe, or relay messages" are telemessaging services. Because these functions plainly provide "the capability for * * * storing * * * or making available information" via telecommunications, we conclude that live operator telemessaging services fall within the statutory definition of information services. We also adopt our tentative conclusion that BOCs that provide telemessaging services that meet the definition of interLATA information services must do so in accordance with the section 272 requirements, in addition to the section 260 requirements.

IV. Structural Separation Requirements of Section 272

A. Application of the Section 272(b) Requirements

Section 272(b) of the Communications Act establishes five structural and transactional requirements for separate affiliate(s) established pursuant to section 272(a). We address each of the requirements below, with the exception of section 272(b)(2), which we discuss in the *Accounting Safeguards Order.*

B. The "Operate Independently" Requirement

1. Background

Section 272(b)(1) states that a separate affiliate "shall operate independently from the BOC." The Act does not elaborate on the meaning of the phrase "operate independently." We stated in the NPRM that under principles of statutory construction, a statute should be interpreted so as to give effect to each of its provisions. We therefore tentatively concluded that the section 272(b)(1) "operate independently" provision imposes requirements beyond those contained in subsections 272(b)(2)-(5).

As we observed in the NPRM, section 274(b) contains similar language to section 272(b)(1). It states that "[a] separated affiliate or electronic publishing joint venture shall be operated independently from the [BOC]." Subsections 274(b)(1)-(9) list several requirements that govern the relationship of an electronic publishing entity and the BOC with which it is affiliated. We sought comment on the relevance of the "operated independently" language of section 274(b) when construing the "operate independently" requirement of section 272(b)(1).

In addition, we sought comment on what rules, if any, we should adopt to implement the requirements of section 272(b)(1). Moreover, we asked whether we should impose one or more of the separation requirements established in the *Computer II* or *Competitive Carrier* proceedings.

In the *Computer II* proceeding, the Commission required AT&T to provide enhanced services through a separate affiliate, a requirement that the Commission extended to the BOCs following divestiture. The Commission required the enhanced services subsidiary to "have its own operating, marketing, installation and maintenance personnel for the services and equipment it offer[ed]," to comply with information disclosure requirements, and to maintain its own books of account. The Commission prohibited the regulated entity and its enhanced services subsidiary from using in common any leased or owned physical space or property on which transmission equipment or facilities used in basic transmission services were located, barred them from sharing computer capacity, and limited the regulated entity's ability to provide software to the affiliate. Moreover, the Commission barred the enhanced services subsidiary from constructing, owning, or operating its own transmission facilities, thereby requiring it to obtain such facilities from a local exchange carrier pursuant to tariff.

In the *Competitive Carrier* proceeding, the Commission prescribed the separation requirements to which independent LECs must conform to be regulated as nondominant in the provision of domestic, interstate, interexchange services. Specifically, an independent LEC must provide interstate interexchange services through an affiliate that:

(1) maintains separate books of account; (2) does not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquires that exchange telephone company's services at tariffed rates and conditions.

2. Discussion

We adopt our tentative conclusion that the "operate independently" requirement of section 272(b)(1) imposes requirements beyond those listed in sections 272(b)(2)–(5). This conclusion is based on the principle of

statutory construction that a statute should be construed so as to give effect to each of its provisions.

Relationship of Section 272(b)(1) to Section 274(b). Section 274(b) mandates that a separated affiliate or electronic publishing joint venture be "operated independently" and then lists nine specific requirements governing the relationship between a BOC and a separated affiliate. In contrast, section 272(b) imposes five structural and transactional requirements governing the relationship between a BOC and a section 272 affiliate, one of which is that the affiliate "shall operate independently from the [BOC]." The structural differences in the organization of the two sections suggest that the term "operate independently" in section 272(b)(1) should not be interpreted to impose the same obligations on a BOC as section 274(b). In particular, while the enumerated requirements of section 274(b) may be interpreted to define the term "operated independently" in that context, they do not define the term "operate independently" as used in section 272(b). We agree with SBC that, because the requirements listed in sections 274(b)(1)–(9) of the Act overlap with the requirements of sections 272(b), (c), and (e), it would be redundant to incorporate all of the section 274(b) requirements into the "operate independently" requirement of section 272(b)(1).

Defining "Operate Independently." The requirements that we adopt to implement section 272(b)(1) are intended to prevent a BOC from integrating its local exchange and exchange access operations with its section 272 affiliate's activities to such an extent that the affiliate could not reasonably be found to be operating independently, as required by the statute. In order to protect against the potential for a BOC to discriminate in favor of a section 272 affiliate in a manner that results in the affiliate's competitors operating less efficiently, we seek to ensure that a section 272 affiliate and its competitors enjoy the same level of access to the BOC's transmission and switching facilities. Accordingly, we conclude that operational independence precludes the joint ownership of transmission and switching facilities by a BOC and its section 272 affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Furthermore, operational independence precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities. Likewise, it bars a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. Consistent with these requirements and those established pursuant to sections 272(b)(5) and 272(c)(1), a section 272 affiliate may negotiate with an affiliated BOC on an arm's length and nondiscriminatory basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or to obtain services other than those expressly prohibited herein.

We agree with several commenters that joint ownership of transmission and switching facilities and the property on which they are located would permit such substantial integration of the BOCs' local operations with their interLATA activities as to preclude independent operation, in violation of section 272(b)(1). Imposing a prohibition on such joint ownership also avoids the need to allocate the costs of such transmission and switching facilities between BOC activities and the competitive activities in which a section 272 affiliate may be involved. We agree with the claims of some commenters that, because the costs of wired telephony networks and network premises are largely fixed and largely shared among local, access, and other services, sharing of switching and transmission facilities may provide a significant opportunity for improper allocation of costs between the BOC and its section 272 affiliate.

By prohibiting joint ownership of transmission and switching facilities, we also reduce the potential for a BOC to discriminate in favor of its section 272 affiliate. Consistent with this purpose, we define transmission and switching facilities broadly to include the facilities used to provide local exchange and exchange access service. The prohibition ensures that a section 272 affiliate must obtain any such facilities pursuant to section 272(b)(5), which requires all transactions between a BOC and its section 272 affiliate to be on an arm's length basis and reduced to writing. Requiring section 272 affiliates to obtain transmission and switching facilities from a BOC on an arm's length basis will increase the transparency of such transactions, thereby facilitating monitoring and enforcement of the section 272 requirements. Moreover, a section 272 affiliate and its interLATA competitors will have to follow the same procedures when obtaining services and facilities from a BOC. As described below, sections 272(c) (1) and (e) require a section 272 affiliate to obtain services and facilities on the same rates, terms, and conditions available to unaffiliated entities. Contrary to the suggestion of some commenters, those nondiscrimination safeguards would offer little protection if a BOC and its section 272 affiliate were permitted to own transmission and switching facilities jointly. To the extent that a section 272 affiliate jointly owned transmission and switching facilities with a BOC, the affiliate would not have to contract with the BOC to obtain such facilities, thereby precluding a comparison of the terms of transactions between a BOC and a section 272 affiliate with the terms of transactions between a BOC and a competitor of the section 272 affiliate. Together, the prohibition on joint ownership of facilities and the nondiscrimination requirements should ensure that competitors can obtain access to transmission and switching facilities equivalent to that which section 272 affiliates receive.

The requirement that a BOC and its section 272 affiliate not commonly own the land and buildings where their transmission and switching facilities are located, like the prohibition on joint ownership of facilities, should ensure that a section 272 affiliate and its competitors both receive the best available access to transmission and switching facilities. It does not, however, preclude a section 272 affiliate from collocating its equipment in end offices or on other property owned or controlled by its affiliated BOC. Rather, as IDCMA recognizes, the requirement should ensure that collocation agreements between a BOC and its section 272 affiliate are reached pursuant to arm's length negotiations and that the same collocation opportunities are available to similarly situated non-affiliated entities. Moreover, the ban on joint ownership of facilities should protect local exchange competitors that request physical collocation by ensuring that a BOC's section 272 affiliate does not obtain preferential access to the limited available space in the BOC's central office.

We decline to read the "operate independently" requirement to impose a blanket prohibition on joint ownership of property by a BOC and a section 272 affiliate. Rather, we limit the restriction to joint ownership of transmission and switching facilities and the land and buildings where those facilities are located. We conclude that the prohibition we have adopted should ensure that the section 272 affiliate's

competitors gain nondiscriminatory access to those transmission and switching facilities that both section 272 affiliates and their competitors may be unable to obtain from other sources. We find that joint ownership of other property, such as office space and equipment used for marketing or the provision of administrative services, may provide economies of scale and scope without creating the same potential for discrimination by the BOCs. Moreover, we believe that the Commission's accounting rules; the separate books, records, and accounts requirement of section 272(b); and the audit requirement of section 272(d) provide adequate protection against the potential for improper cost allocation.

We further conclude that allowing the same personnel to perform the operating, installation, and maintenance services associated with a BOC's network and the facilities that a section 272 affiliate owns or leases from a provider other than the BOC would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1). Regardless of whether the BOC or the section 272 affiliate were to provide such services, we agree with AT&T that allowing the same individuals to perform such core functions on the facilities of both entities would create substantial opportunities for improper cost allocation, in terms of both the personnel time spent in performing such functions and the equipment utilized. We conclude, as we did in the *BOC Separations Order*, 49 FR 1190 (January 10, 1984), that allowing the sharing of such services would require "excessive, costly and burdensome regulatory involvement in the operation, plans and day-to-day activities of the carrier * * * to audit and monitor the accounting plans necessary for such sharing to take place." Accordingly, we read section 272(b)(1) to bar a section 272 affiliate from contracting with a BOC or another entity affiliated with the BOC to obtain operating, installation, and maintenance functions associated with the section 272 affiliate's facilities. As stated above, we believe that a prohibition on joint ownership of transmission and switching facilities is necessary to ensure that a BOC complies with the nondiscrimination requirements of section 272. Consistent with that approach, we further interpret the term "operate independently" to bar a BOC from contracting with a section 272 affiliate to obtain operating, installation, or maintenance functions associated with the BOC's facilities. Allowing a BOC to contract with the section 272 affiliate for operating, installation, and maintenance services would inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors.

We clarify that section 272(b)(1) does not preclude a BOC or a section 272 affiliate from providing telecommunications services to one another, so long as each entity performs itself, or obtains from an unaffiliated third party, the operating, installation, and maintenance functions associated with the facilities that it owns or leases from an entity unaffiliated with the BOC. In particular, if a section 272 affiliate obtains unbundled elements from a BOC, that BOC can perform the operating, installation, and maintenance functions associated with those facilities. Moreover, we recognize the need for an exception to the prohibition on shared operating, installation, and maintenance services to allow the BOC to obtain support services for sophisticated equipment purchased from the affiliate on a compensatory basis. For instance, the BOC could contract with the section 272 affiliate for the installation, maintenance, or repair of equipment, or the affiliate could train the BOC's personnel to perform such functions. We further note that the limited prohibition on shared services that we adopt is consistent with section 272(e)(4), which states that a BOC or BOC affiliate that is subject to section 251(c) "may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions." As we discuss below, section 272(e)(4) does not grant a BOC the authority to provide particular services to its affiliate, but rather prescribes the manner in which a BOC must provide those services that it is otherwise authorized to provide. Thus, section 272(e)(4) does not grant a BOC the authority to provide operating, installation, and maintenance services associated with the facilities that a section 272 affiliate owns or leases from a provider other than the BOC.

In imposing these requirements, we reject the contention of some commenters that Congress considered and rejected a prohibition on the joint ownership of telecommunications transmission or switching equipment or other property. Although the House bill contained such a prohibition, the Senate bill did not. The Joint Explanatory Statement indicates merely that the conference committee adopted the Senate version of this provision with several modifications and does not offer any specific explanation for the exclusion of the joint ownership restriction. In these circumstances, our obligation is to interpret the language of section 272(b)(1) in a manner consistent with its purpose, which is to ensure the operational independence of a section 272 affiliate from its affiliated BOC.

The limited prohibition on shared services that we impose rests on the "operate independently" requirement of section 272(b)(1), rather than the requirement of section 272(b)(3) that a BOC and its section 272 affiliate have "separate officers, directors, and employees." Accordingly, we reject the statutory construction argument advanced by several BOCs, which is predicated on the text of the latter provision. Those BOCs argue that, if a rule against separate employees were sufficient to prevent the sharing of in-house services, Congress would not have prohibited a BOC from engaging in purchasing, installation, maintenance, hiring, training, and research and development for the separated affiliate, in addition to forbidding the BOC and its separated affiliate from having common officers, directors, and employees, in section 274(b).

We believe it is consistent with both the letter and purposes of section 272 to strike an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination. We decline to impose additional structural separation requirements given the nondiscrimination safeguards, the biennial audit requirement, and other public disclosure requirements imposed by section 272. In combination with the accounting protections established in the *Accounting Safeguards Order*, we believe the requirements set forth herein will protect against potential anticompetitive behavior.

In particular, we decline to read the "operate independently" requirement to impose a prohibition on all shared services. We recognize the inherent tension between the "operate independently" requirement and allowing the integration of services. As we discuss further below, however, we believe the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for competitive harm created thereby. Therefore, we permit the sharing of administrative and other services. For example, we read

section 272(b)(1) not to preclude a BOC and a section 272 affiliate from contracting with one another to provide marketing services.

In construing other provisions of section 272, we address the concerns of those commenters who urge us to interpret section 272(b)(1) to prohibit a BOC and a section 272 affiliate from engaging in various forms of joint research and development. As a preliminary matter, we note that the MFJ Court considered equipment design and development to be an integral part of "manufacturing," as the term was used in the MFJ. We emphasize that to the extent that research and development is a part of manufacturing, it must be conducted through a section 272 affiliate, pursuant to section 272(a). To the extent that a BOC seeks to develop services for or with its section 272 affiliate, the BOC must develop services on a nondiscriminatory basis for or with other entities, pursuant to section 272(c)(1).

Finally, although a number of commenters support a *Computer II*-type prohibition on a section 272 affiliate's ability to construct, own, or operate its own local exchange facilities, we conclude that such a prohibition is not required by the language of section 272(b)(1). As several BOCs suggest, limiting a section 272 affiliate to resale would not necessarily increase the affiliate's operational independence, particularly if the affiliate had to acquire facilities from its affiliated BOC as a result of the requirement.

C. Section 272(b)(3) and Shared Services

1. Background

In the NPRM, we tentatively concluded that the section 272(b)(3) requirement that a BOC and its section 272 affiliate have "separate officers, directors, and employees" prohibits the sharing of in-house functions, including operating, installation, and maintenance, as well as administrative services. We noted that, pursuant to the *Computer II* proceeding, the Commission allowed AT&T and its enhanced services subsidiaries to share certain administrative services—accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services—on a cost reimbursable basis, but required the subsidiary to have its own operating, marketing, installation, and maintenance personnel for the services and equipment it offered. We sought comment on whether section 272(b)(3) forbids the sharing of outside services or other types of personnel sharing.

In the context of our discussion of section 272(g), we sought comment on the related question of whether a section 272 affiliate must purchase marketing services from an affiliated BOC on an arm's length basis, pursuant to section 272(b)(5). Moreover, we sought comment on whether it is necessary to require a BOC and its section 272 affiliate to contract jointly with an outside marketing entity for joint marketing of interLATA and local exchange services in order to comply with section 272(b)(3). Finally, we invited parties to comment on the corporate and financial arrangements that are necessary to comply with sections 272(g)(2), 272(b)(3), and 272(b)(5).

2. Discussion

Sharing of Services. Based on the record before us, we decline to prohibit the sharing of services other than operating, installation, and maintenance services, as described above. We clarify that "sharing of services" means the provision of services by the BOC to its section 272 affiliate, or vice versa. In response to our tentative conclusion on this issue in the NPRM, the BOCs have argued persuasively that such a prohibition is neither required as a matter of law, nor desirable as a matter of policy. We note that section 272(b)(3) on its face is silent on the issue of shared services. We are persuaded by the arguments of the BOCs that the section 272(b)(3) requirement that a BOC and a section 272 affiliate have separate officers, directors, and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its section 272 affiliate. Thus, as MFS asserts, an individual may not be on the payroll of both a BOC and a section 272 affiliate. As discussed below, to the extent that a BOC provides services to its section 272 affiliate, it must provide them to other entities on the same rates, terms, and conditions, pursuant to section 272(c)(1).

We also decline to impose a prohibition on the sharing of services other than operating, installation, and maintenance services, on policy grounds. We find that, if we were to prohibit the sharing of services, other than those restricted pursuant to section 272(b)(1), a BOC and a section 272 affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services. We do not believe that the competitive benefits of allowing a BOC and a section 272 affiliate to achieve such efficiencies are outweighed by a BOC's potential to engage in discrimination or improper cost allocation. As we have noted, the Commission permitted the sharing of administrative services in the *Computer II Final Order*, 45 FR 31319 (May 13, 1980), on the grounds that "[w]ith an appropriate accounting system, whatever administrative efficiencies may exist are preserved." We reject the arguments of some parties that, because of changes in the telecommunications marketplace and the language of the 1996 Act, a different outcome is warranted in this case.

We recognize that allowing the sharing of in-house services will require a BOC to allocate the costs of such services between the operating company and its section 272 affiliate and provide opportunities for improper cost allocation, exchanges of information, and discriminatory treatment that may not be revealed in a subsequent audit. Indeed, in the *Computer II* proceeding, the Commission indicated that a major reason for prohibiting the sharing of particular services, such as marketing services, was its desire to eliminate "the inherent difficulties in allocating joint and common costs." For these reasons, we conclude that a BOC and a section 272 affiliate may share in-house services with each other only to the extent that such sharing is consistent with sections 272(b)(1), 272(b)(5), and 272(c)(1) of the Act.

Consistent with section 272(b)(1), a BOC and its section 272 affiliate may not share operating, installation, and maintenance services, as discussed above. In addition, as we conclude in the *Accounting Safeguards Order*, an agreement to provide in-house services by a BOC to its section 272 affiliate (or vice versa) constitutes a transaction between that BOC and its section 272 affiliate, so that the requirements of section 272(b)(5) govern. Accordingly, such transactions must be conducted on an arm's length basis, reduced to writing, and made available for public inspection. Moreover, such transactions must be consistent with the affiliate transaction rules, as modified in the *Accounting Safeguards Order*. In addition, the section 272 requirements that a BOC and its section 272 affiliate maintain separate books, records, and accounts, and be subject to an audit every two years should strengthen the ability of competitors and regulators to detect any inequities in cost allocation for shared services. We agree with commenters who contend that, in any event, federal price cap regulation reduces a BOC's incentives to allocate costs improperly. Finally, section 272(c)(1) ensures that to the extent that

a BOC provides services to its section 272 affiliate, it must make them available to the affiliate's competitors on the same rates, terms, and conditions.

We further conclude that section 272(b)(3) does not preclude the parent company of the BOC and the section 272 affiliate from performing functions for both the BOC and the section 272 affiliate, subject to the requirements of section 272(b)(1). Similarly, an affiliate of the BOC, such as a services affiliate, could provide services to both a BOC and a section 272 affiliate. We are not persuaded by claims that the sharing of services provided to a BOC and its section 272 affiliate by a parent company or another BOC affiliate would allow the BOC and the section 272 affiliate to achieve an unacceptable level of integration. Instead, we agree with the view that the section 272(b)(3) separate employees requirement extends only to the relationship between a BOC and its section 272 affiliate. To the extent that the BOC contracts with an unregulated affiliate, it is subject to the affiliate transaction rules. Moreover, a parent company or a BOC affiliate that performs services for both a BOC and its section 272 affiliate must fully document and properly apportion the costs incurred in furnishing such services.

Consistent with our conclusions, we decline to read section 272(b)(3) to preclude the sharing of marketing services. Given that section 272(g) expressly contemplates that the each entity may market or sell the services of the other, we conclude that a BOC and its section 272 affiliate may provide marketing services for each other. We agree with those commenters that assert that the entities must provide such services pursuant to arm's length transactions, consistent with the requirements of section 272(b)(5). Moreover, the parent of a BOC and its section 272 affiliate or another BOC affiliate may perform marketing functions for both entities.

Services Provided by an Outside Entity. We further conclude that section 272(b)(3) does not prohibit a BOC and its section 272 affiliate from obtaining services from the same outside supplier. Indeed, we find no statutory support for limiting permissible outsourcing, as proposed by MCI or Time Warner.

Nor do we construe section 272(b)(3), when read in light of section 272(b)(1), to require a BOC and a section 272 affiliate to contract with outside entities to perform their joint marketing services. We agree with the Citizens for a Sound Economy Foundation that such a requirement would reduce the BOCs' ability to serve consumers without providing additional protection against anticompetitive behavior. Each entity, however, must pay its full share of any outsourced services that it receives.

Other activities. We reject AT&T's request that we interpret section 272(b)(3) to prohibit compensation schemes that base the level of remuneration of BOC officers, directors, and employees on the performance of the section 272 affiliate, or vice versa. We conclude that tying the compensation of an employee of a section 272 affiliate to the performance of a Regional Holding Company and all of its enterprises as a whole, including the performance of the BOC, does not make that individual an employee of the BOC. Similarly, tying the compensation of a BOC employee to the performance of a Regional Holding Company and all of its enterprises as a whole, including the performance of the section 272 affiliate, does not make that individual an employee of the section 272 affiliate.

E. Section 272(b)(4)

1. Background

Section 272(b)(4) states that a section 272 affiliate "may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC]." In the NPRM, we tentatively concluded "that a BOC may not co-sign a contract or any other instrument with a separate affiliate that would allow the affiliate to obtain credit in a manner that violates" this section. We sought comment on what other types of activities section 272(b)(4) prohibits, whether the Commission should establish specific requirements regarding those activities, and the relative costs and benefits of such regulation.

2. Discussion

As we stated in the NPRM, the intent of this provision is to protect ratepayers from shouldering the cost of a default by a section 272 affiliate. We adopt our tentative conclusion that section 272(b)(4) prohibits a BOC from co-signing a contract or any other instrument with a section 272 affiliate that would allow the affiliate to obtain credit in a manner that grants the creditor recourse to the BOC's assets in the event of default by the section 272 affiliate. Moreover, because the provision precludes the section 272 affiliate from obtaining credit under "any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC]," we find that section 272(b)(4) likewise prohibits the parent of a BOC or any non-272 affiliate from co-signing a contract or any other arrangement with the BOC's section 272 affiliate that would allow the creditor to obtain such recourse to the BOC's assets in the event of default by the section 272 affiliate. Indeed, we conclude that section 272(b)(4) prohibits a section 272 affiliate from entering into any arrangement to obtain credit that permits the lender recourse to the BOC in the event of default.

While preventing the affiliate from jeopardizing ratepayer assets, we conclude that section 272(b)(4) does not forbid a section 272 affiliate from using assets other than its own as collateral when seeking credit. To impose such a restriction where, as here, it is not needed to protect ratepayer assets, would force section 272 affiliates to operate inefficiently, to the detriment of consumers and competition. In particular, we agree with MCI and Sprint that a BOC's parent could secure credit, whether through the issuance of bonds or otherwise, for the benefit of the section 272 affiliate, provided that BOC assets are not at risk.

F. Section 272(b)(5)

1. Background

Section 272(b)(5) states that an affiliate "shall conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection." In the NPRM, we sought comment on whether this provision necessitates the adoption of any non-accounting safeguards.

2. Discussion

We conclude that we need not adopt additional non-accounting safeguards to implement section 272(b)(5). In the *Accounting Safeguards Order*, we address the definition of "transactions" and consider the provision's requirement that all transactions be "reduced to writing and available for public inspection." Moreover, in our discussion of sections 272(b)(1) and (b)(3), we make clear that "transactions" include the provision of services and transmission and switching facilities by the BOC and its affiliate to one another. We reject CompTel's proposal to adopt additional requirements, which are addressed generally in other parts of this Order and the companion *Accounting Safeguards Order*.

V. Nondiscrimination Safeguards

As we observed in the NPRM, after a BOC enters a competitive market, such as long distance, it may have an incentive to use its control of local exchange facilities to discriminate against its affiliate's rivals. Section

272(c) of the Act responds to these competitive concerns by establishing nondiscrimination safeguards that apply to the BOCs' provision of manufacturing, interLATA telecommunications, and interLATA information services. We address the requirements of this section below.

A. Relationship of Section 272(c)(1) and Pre-existing Nondiscrimination Requirements

1. Background

Section 272(c)(1) states that "[i]n its dealings with its affiliate described in subsection (a), a [BOC] (1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." In the NPRM, we sought comment on the relationship between the nondiscrimination obligations imposed by sections 272(c)(1) and the Commission's pre-existing nondiscrimination obligations in sections 201 and 202. In particular, we sought comment on whether the flat prohibition against discrimination in section 272(c)(1) imposes a stricter standard for compliance than the "unjust and unreasonable" standard in section 202.

2. Discussion

We find that section 272(c)(1) establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities. Section 202(a), by contrast, prohibits "any unjust or unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage." Because the text of the section 272(c)(1) nondiscrimination bar differs from the section 202(a) prohibition, we conclude that Congress did not intend section 272's prohibition against discrimination in the 1996 Act to be synonymous with the "unjust and unreasonable" discrimination language used in the 1934 Act, but rather, intended a more stringent standard. We therefore reject the arguments of those who argue that the section 272(c)(1) standard is not materially different from the standard in section 202.

B. Meaning of Discrimination in Section 272(c)(1)

1. Background

We tentatively concluded in the NPRM that the prohibition against discrimination in section 272(c)(1) means, at a minimum, that BOCs must treat all other entities in the same manner as they treat their section 272 affiliates, and must provide and procure goods, services, facilities, and information to and from these other entities under the same terms, conditions, and rates. We noted, however, that a requesting entity may have equipment with different technical specifications than the equipment of the BOC section 272 affiliate. We sought comment, therefore, on whether the terms of section 272(c)(1) could be construed to require a BOC to provide a requesting entity with a quality of service or "functional outcome" identical to that provided to its affiliate even if this would require the BOC to provide goods, facilities, services, or information to a requesting entity that are different from those provided to the affiliate.

2. Discussion

We affirm our tentative conclusion that BOCs must treat all other entities in the same manner as they treat their section 272 affiliates. We conclude therefore that, pursuant to section 272(c)(1), a BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. We decline, as some commenters suggest, to interpret section 272(c)(1) more broadly to conclude that a BOC must provide unaffiliated entities different goods, services, facilities, and information than it provides to its section 272 affiliate in order to ensure that it is providing the same quality of service or functional outcome to both its affiliate and unaffiliated entities. To do so would, in effect, be interpreting this section the same way we interpreted section 251(c)(2) in the *First Interconnection Order*, 61 FR 45476 (August 29, 1996). We believe that to interpret the nondiscrimination requirement of section 272(c)(1) in this manner would be inappropriate as a matter of statutory construction, inconsistent with its legislative purpose, and unenforceable.

As a matter of statutory construction, we find that the nondiscrimination provision of section 272(c)(1), by its terms, is much narrower in scope than the requirement in section 251(c)(2). Section 251(c)(2) imposes on incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network * * * that is at least equal in quality to that provided by the [LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." In the *First Interconnection Order*, we interpreted the term "equal in quality" as requiring an incumbent LEC to provide interconnection to its network at a level of quality that is at least indistinguishable from that which the incumbent LEC provides itself. Further, we found that, to the extent a carrier requests interconnection that is of a superior or lesser quality than the incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection to the extent technically feasible.

The language of section 272(c)(1), in contrast, contains no such "equal in quality" requirement; it simply requires that unaffiliated entities receive the same treatment as the BOC gives to its section 272 affiliate. Unlike section 251, therefore, section 272(c) is not a vehicle by which requesting entities can require a BOC to provide goods, facilities, services, or information that are different from those that the BOC provides to itself or to its affiliates. Nor is it, as some commenters suggest, designed to prevent a BOC from discriminating between unaffiliated competitors.

Our reading of the statutory language of sections 251 and 272 is consistent with the differing underlying purposes of those provisions. The section 251 requirements are designed to ensure that incumbent LECs do not discriminate in opening their bottleneck facilities to competitors. As we stated in the *First Interconnection Order*, "[u]nder section 251, incumbent [LECs], including [BOCs], are mandated to take several steps to open their network to competition, including providing interconnection, offering access to unbundled elements to their networks, and making their retail services available at wholesale rates so that they can be resold." In implementing section 251, therefore, we adopted rules to open one of the last monopoly bottleneck strongholds in telecommunications—the local exchange and exchange access market.

In adopting rules in this proceeding, however, our goal is to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition in the new markets they are entering—interLATA services and manufacturing. The section 272 safeguards, among other things, are intended to protect competition in these markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage. We find that when viewed in this context, the section 272(c)(1) nondiscrimination provision is designed to provide the BOC an

incentive to provide efficient service to rivals of its section 272 affiliate, by requiring that potential competitors do not receive less favorable prices or terms, or less advantageous services from the BOC than its separate affiliate receives.

We find that interpreting section 272 to require "functional equality" between a BOC section 272 affiliate and any unaffiliated entity would not only be impractical, but unenforceable. The "functional equality" standard would require a BOC to provide additional services or functions to other entities that it does not provide to its own affiliate. Because section 272, unlike section 251, contains no requirement that a BOC must provide goods, services, facilities, and information to the extent "technically feasible," it would be extremely difficult, as a practical matter, to limit the types of goods, services, and facilities that a BOC would be obligated to provide to requesting entities. Further, the terms "functional outcome" or "functional equality" are likely to mean different things to different entities. Because the meaning of these terms is likely to depend on the particular characteristics of each requesting entity, the Commission would be required to apply this standard to a myriad of factual circumstances on a case-by-case basis. As one commenter observes, ensuring this type of equality would be impossible to do, as well as impossible to enforce.

We reject the argument that, because our interpretation of section 272(c)(1) effectively limits competitors to those options that the BOC affiliate finds "useful," a BOC will be able to design network interfaces that work optimally only with its section 272 affiliate's specifications and not with the specifications of other entities. Section 272(c)(1) prohibits a BOC from discriminating in the establishment of standards. As we conclude below, a BOC's adoption of a network interface that favors its section 272 affiliate and disadvantages an unaffiliated entity will establish a *prima facie* case of discrimination under section 272(c)(1). Further, section 272(c)(1) prohibits a BOC from discriminating in the provision of facilities or information, and section 251(c)(5) imposes upon BOCs certain network disclosure requirements. As mentioned above, section 251(c)(5) requires incumbent LECs to provide reasonable public notice of network changes affecting competing service providers' performance or ability to provide telecommunications services, as well as changes that would affect the incumbent LEC's interoperability with other service providers. In the *Second Interconnection Order*, 61 FR 47284 (September 6, 1996), we interpreted this provision to require incumbent LECs to disclose changes subject to this requirement at the "make/buy" point. In light of the requirements of sections 272(c)(1) and 251(c)(5), we decline at this time to impose additional obligations on the BOCs to ensure that they structure their own networks to achieve the same level of interoperability that the section 272 affiliate receives from the BOC.

We also decline to adopt MCI's suggested presumption that the specifications requested by an unaffiliated entity are the appropriate ones for a truly separate and independent affiliate and that any different specifications needed by the BOC's section 272 affiliate reflect a lack of proper physical and operational separation from the BOC. We recognize that there may be circumstances, such as the adoption of a new and innovative technology by the BOC section 272 affiliate, where differences in technical specifications between a section 272 affiliate and an unaffiliated entity do not evidence a lack of structural separation between the BOC and its section 272 affiliate.

As discussed below, we conclude that the protection of section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate. We therefore agree with AT&T that to the extent a BOC develops new services for or with its section 272 affiliate, it must develop new services for or with unaffiliated entities in the same manner. That is, we find that the development of new services, including the development of new transmission offerings, is the provision of service under section 272(c)(1) that, once provided by the BOC to its section 272 affiliate, must be provided to unaffiliated entities in a nondiscriminatory manner. In the NPRM, we recognized the potential for competitive harm in a situation in which a BOC failed to cooperate with an interLATA carrier that is introducing an innovative new service until the BOC's section 272 affiliate is ready to initiate the same service. Similarly, AT&T asserts that the section 272(c)(1) nondiscrimination requirement should be interpreted to prevent BOCs from denying a competitor's request for a new or more cost effective access arrangement on the ground that all entities, including its section 272 affiliate, are receiving the same access service at the same price. We find that the BOC, under section 272(c)(1), is obligated to work with competitors to develop new services if it cooperates in such a manner with its section 272 affiliate.

We agree with AT&T therefore that if, as we outlined in our NPRM, a BOC purposely delayed the implementation of an innovative new service by denying a competitor's reasonable request for interstate exchange access until the BOC section 272 affiliate was ready to provide competing service, such conduct may constitute unlawful discrimination under the Act. Moreover, as we observed in the NPRM, although the 1996 Act imposes specific nondiscrimination obligations on the BOCs and their section 272 affiliates, the Communications Act imposed certain pre-existing nondiscrimination requirements on common carriers providing interstate communications service. Among them, section 201 provides that all common carriers have a duty "to establish physical connections with other carriers," and to furnish telecommunications services "upon reasonable request therefor." We conclude, therefore, that if a BOC were to engage in strategic behavior to benefit its section 272 affiliate, in the manner suggested by AT&T, such action may not only violate section 272(c)(1), but would also violate sections 201(a) of the Act.

Finally, we conclude that a complainant will be found to have established a *prima facie* case of unlawful discrimination under section 272(c)(1) if it can demonstrate that a BOC has not provided unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions. To rebut the complainant's case, the BOC may demonstrate, among other things, that rate differentials between the section 272 affiliate and unaffiliated entity reflect differences in cost or that the unaffiliated entity expressly requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. We recognize, as Sprint and Time Warner suggest, there will be some instances where the costs of providing certain goods, services, or facilities to its affiliate and to an unaffiliated entity differ. As we stated in the *First Interconnection Order*, where costs differ, rate differences that accurately reflect those differences are not unlawfully discriminatory. Strict application of the section 272(c)(1) prohibition on discrimination would itself be discriminatory if the costs of supplying customers are different. Similarly, we also conclude, as we did

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in the *First Interconnection Order*, that "price differences, such as volume and term discounts, when based upon legitimate variations in costs, are permissible under the 1996 Act when justified."

C. Definition of "Goods, Services, Facilities and Information" in Section 272(c)(1)

1. Background

In the NPRM we sought comment on the interplay among the definitions of the terms "services," "facilities," and "information" in various subsections of 272, and between section 272 and section 251(c). We also sought comment on what regulations, if any, are necessary to clarify the types or categories of services, facilities, or information that must be made available under section 272(c)(1). We asked parties to comment on whether further defining the terms "goods," "services," "facilities," and "information" would enable competing providers to detect violations of this section by enabling them to compare more accurately a BOC's treatment of its affiliate with a BOC's treatment of unaffiliated competing providers.

2. Discussion

We conclude that any attempt to define exhaustively the terms "goods, services, facilities, and information" in section 272(c)(1) may unnecessarily limit the scope of this section's otherwise unqualified nondiscrimination requirement. At the same time, however, we disagree with ITAA that the Commission should refrain from attempting to clarify the meaning of these terms. We find instead that clarifying the types of activities these terms encompass will provide useful guidance to potential competitors that seek to avail themselves of the protections of section 272(c)(1). In enforcing the nondiscrimination requirement of section 272(c)(1), we intend to construe these terms broadly to prevent BOCs from discriminating unlawfully in favor of their section 272 affiliates.

We find that neither the terms of section 272(c)(1), nor the legislative history of this provision, indicates that the terms "goods, services, facilities, and information" should be limited in the manner suggested by some commenters. We therefore decline to interpret the terms in section 272(c)(1) as including only telecommunications-related or, even more specifically, common carrier-related "goods, services, facilities, and information." Similarly, we reject arguments set forth by NYNEX, PacTel, and U S West that the term "services" should exclude administrative and support services. Although NYNEX contends that, as a practical matter, unaffiliated entities are unlikely to avail themselves of such services, we find that there are certain administrative services, such as billing and collection services, that unaffiliated entities may find useful. Further, as discussed above, we construe the term "services" to encompass any service the BOC provides to its section 272 affiliate, including the development of new service offerings.

We conclude therefore that the protection of section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate. For example, we find that if a BOC were to decide to transfer ownership of a unique facility, such as its Official Services network, to its section 272 affiliate, it must ensure that the transfer takes place in an open and nondiscriminatory manner. That is, pursuant to the nondiscrimination requirement of section 272(c)(1), the BOC must ensure that the section 272 affiliate and unaffiliated entities have an equal opportunity to obtain ownership of this facility.

We also conclude that the terms "services," "facilities," and "information" in section 272 should be interpreted to include, among other things, the meaning of these terms under section 251(c). The term "facilities," therefore, includes but is not limited to the seven unbundled network elements described in the *First Interconnection Order*. We decline to limit the scope of these terms to their meaning in section 251 because section 272 encompasses a broader range of activities than does section 251. We also emphasize that in contrast to section 251, where an incumbent LEC is prohibited from discriminating against any requesting telecommunications carrier, section 272(c)(1) prohibits BOCs from discriminating against "any other entity." Because section 272 does not define the term "entity," we interpret this unqualified term broadly to ensure that all competitors may benefit from the protections of section 272(c)(1). Thus, we agree with Sprint that this term should include the definition of the term "entity" as set forth in the electronic publishing section of the Act; however, we also find it appropriate to include within the meaning of "entity" the providers of the activities encompassed by section 272. We conclude, therefore, that the term "entity" includes telecommunications carriers, ISPs, and manufacturers.

We disagree with ATSI and CIX, however, that by interpreting "any other entity" to include information service providers and by concluding that the term "facilities" in section 272(c)(1) encompasses the meaning of that term as it is used in section 251(c), ISPs acquire the right to obtain unbundled access to the local loop and other network elements whenever BOCs provide their section 272 affiliates with such access. Pursuant to section 251(c)(3), only telecommunications carriers providing a telecommunications service are entitled to obtain access to unbundled network elements. Because ISPs may only obtain access to unbundled elements pursuant to section 251 to the extent they are providing telecommunications services, we conclude that they may not attempt to circumvent the limitations of section 251 by virtue of their rights under section 272(c)(1). This conclusion is consistent with our finding in the *Second Interconnection Order* that the inclusion of information services in the definition of "services" under section 251(c)(5) "does not vest information service providers with substantive rights under other provisions of section 251, except to the extent that they are also operating as telecommunications carriers." To the extent, however, that a BOC chooses voluntarily to provide facilities, including network elements, to a section 272 affiliate that is solely providing information services (and thus does not qualify as a telecommunications carrier under section 251), we conclude that a BOC must, pursuant to section 272(c)(1), provide such facilities to other requesting ISPs.

We therefore agree with MFS that, if a BOC chooses to allow its information service affiliate to collocate routers, servers, or other equipment, section 272(c)(1) requires that the same accommodations be extended, on a nondiscriminatory basis, to competing ISPs. Collocation is a means of achieving interconnection and access to unbundled network elements that incumbent LECs, including BOCs, must provide to requesting carriers under section 251. Although section 251 does not require incumbent LECs to permit entities other than telecommunications carriers to collocate equipment on an incumbent LEC's premises, sections 251 and 272 do not prohibit BOCs from voluntarily allowing ISPs to collocate equipment on their premises. Thus, we find that, if a BOC permits its section 272 affiliate to collocate facilities used to provide information services, the BOC must permit collocation, under

section 272(c)(1), by similarly situated entities. If the BOC's section 272 affiliate qualifies as a "telecommunications carrier," the BOC need only permit other telecommunications carriers to collocate their equipment. If, however, the BOC's section 272 affiliate only provides information services, the BOC must permit similarly situated ISPs to collocate equipment at the BOCs premises, even if such entities do not qualify as telecommunications carriers.

As Sprint points out, the term "information" in section 272(c)(1) is not limited as it is in section 272(e)(2) to information "concerning [the BOC's] provision of exchange access." In fact, as noted above, we find no limitation in the statutory language on the type of information that is subject to the section 272(c)(1) nondiscrimination requirement. For this reason, we reject U S West's assertion that section 272(c)(1) only governs that information which may give a separate affiliate an "unfair advantage." We conclude, however, that the term "information" includes, but is not limited to, CPNI and network disclosure information. We therefore reject arguments made by some BOCs that the nondiscrimination provision of section 272(c)(1) does not govern the BOCs use of CPNI. With respect to CPNI, we conclude that BOCs must comply with the requirements of both sections 222 and 272(c)(1). We decline to address parties' arguments raised in this proceeding regarding the interplay between section 272(c)(1) and section 222 to avoid prejudging CPNI issues that will be addressed in a separate proceeding.

D. Establishment of Standards

1. Background

Section 272(c)(1) prohibits a BOC from discriminating between its section 272 affiliate and other entities in the "establishment of standards." In the NPRM we sought comment on what "standards" are encompassed by this provision. We observed that a BOC may act anticompetitively by creating standards that require or favor equipment designs that are proprietary to its section 272 affiliate. We sought comment on what procedures, if any, we should implement to ensure that a BOC does not discriminate between its affiliate and other entities in setting standards. We asked parties to comment, for example, on whether BOCs should be required to participate in standard-setting bodies in the development of standards covered by section 272(c)(1).

2. Discussion

We conclude that the term "standards" in section 272(c)(1) includes the meaning of this term as it is used in section 273. In the *Manufacturing NPRM*, we sought comment on how the term "standards" should be defined "for purposes of implementation of the 1996 Act to ensure that standards processes are open and accessible to the public." We note, however, that unlike the use of the term "standards" in sections 273(d)(4) and 273(d)(5), the term "standards" in section 272(c)(1) is not limited by the term "industry-wide." We conclude, therefore, that section 272(c)(1) prohibits discrimination in the establishment of *any* standard, not only those that are "industry-wide."

As we observed in the *Manufacturing NPRM*, the process by which standards are established may present opportunities for anticompetitive behavior by the BOCs. We decline, however, to implement additional procedures, beyond those outlined in section 273, to ensure that BOCs do not discriminate between their section 272 affiliates and other entities in establishing industry-wide standards. Rather, we agree with Bellcore and PacTel that the procedures for the establishment of industry-wide standards and generic requirements for telecommunications equipment and CPE appear at this time to be adequately addressed by the requirements contained in section 273(d)(4). For example, in response to MCI, we note that section 273(d)(4) already provides for an open standards-setting process whereby all interested parties have the opportunity to fund and participate in the development of industry-wide standards or generic requirements on a "reasonable and nondiscriminatory basis." We find no basis in the record for concluding that the requirements established by section 273, and any regulations adopted thereunder, will not be sufficient to deter discrimination in the establishment of industry-wide standards.

Although we decline at this time to establish additional procedures beyond those required in section 273(d)(4), we recognize that there is a distinct potential competitive danger that a BOC will use standards in its own and its section 272 affiliate's network that are not "industry-wide" (that is, not employed by "at least 30 percent of all access lines") or established by an accredited standards development organization, but rather specifically tailored to meet its own needs or those of its section 272 affiliate. Because such standards may not be developed in an open and nondiscriminatory process, such as the one required for the establishment of industry-wide standards in section 273(d)(4), we find that those standards may place unaffiliated entities at a competitive disadvantage. For example, if a BOC adopts a particular non-accredited or non-industry-wide protocol or network interface, it may, by virtue of its substantial size and market share, effectively force competing entities to alter their specifications in order to maintain the same level of interoperability with the BOC or the BOC affiliate. We conclude, therefore, that the adoption of *any* standard that has the effect of favoring the BOC's section 272 affiliate and disadvantaging an unaffiliated entity will establish a *prima facie* violation of section 272(c)(1).

We also conclude, on the basis of the record before us, that it is not necessary as a matter of law, nor desirable as a matter of policy, to require BOC participation in the standards-setting process. The language of section 272(c)(1) cannot be read as requiring such participation; moreover, BOCs have an interest in participating voluntarily in standard-setting organizations because standards that are ultimately adopted may materially impact the BOCs' competitive position. Further, we decline to become involved at this time in the standard-setting process, as suggested by AT&T, in order to accomplish the purposes of section 272(c)(1). Unlike section 256, which, among other things, permits the Commission to participate in the development of public telecommunications network interconnectivity standards that promote access, section 272(c)(1) does not contemplate Commission involvement. Moreover, we reject MCI's proposal that we insert ourselves into the dispute resolution process to accomplish the purposes of section 272(c)(1). Section 273(d)(5) requires the Commission to prescribe a dispute resolution process to address the anticompetitive harms that may result from the establishment of industry-wide standards under section 273(d)(4) and expressly prohibits the Commission from becoming a party to this process. As to disputes that may arise in the context of other public standard-setting processes, we find, on the basis of the record before us, that Commission involvement beyond its existing role in the section 208 complaint process is unnecessary.

E. Procurement Procedures

1. Background

Section 272(c)(1) also prohibits the BOCs from discriminating between their section 272 affiliates and other entities in their procurement of goods, services, facilities, and information. In the NPRM, we observed that this provision prohibits a BOC from purchasing manufactured network equipment solely from its affiliate, purchasing the equipment from the affiliate at inflated prices, or giving any preference to the affiliate's equipment in the procurement process and thereby excluding rivals from the market in the BOC's service area. We sought comment on how the BOCs could establish nondiscriminatory procurement procedures designed to ensure that other entities are treated on the same terms and conditions as a BOC affiliate. We invited comment, specifically, on the nature and extent of rules necessary to ensure that such procedures are implemented.

2. Discussion

As stated above, we find that section 272(c)(1) establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities. We conclude, therefore, that any discrimination with respect to a BOC's procurement of goods, services, facilities, or information between its section 272 affiliate and an unaffiliated entity establishes a *prima facie* case of discrimination under section 272(c)(1). For example, consistent with our observations in the NPRM, we find that a *prima facie* case of discrimination under section 272(c)(1) may be established if a BOC purchases manufactured network equipment solely from its section 272 affiliate, purchases such equipment from its affiliate at inflated prices, or gives any preference to the affiliate's equipment in the procurement process, thereby excluding rivals from the market in the BOC's service area.

Insofar as section 272(c)(1) governs a BOC's procurement of manufacturing services, we find that BOC procurement of telecommunications equipment should be performed in a manner consistent with the manufacturing requirements of section 273. We conclude, therefore, that section 272(c)(1) requires a BOC to adhere to the nondiscrimination and procurement standards governing the procurement of telecommunications equipment set forth in sections 273(e)(1) and 273(e)(2) of the Act. We therefore defer consideration of detailed procurement procedures with respect to telecommunications equipment to the *Manufacturing NPRM*, which specifically addresses the requirements of these sections. We conclude, however, that the BOCs must, at a minimum, comply with any and all regulations adopted to implement the standards of sections 273(e)(1) and 273(e)(2); failure to do so may be evidence of discrimination under section 272(c)(1).

We recognize, however, that the nondiscrimination requirement of section 272(c)(1) encompasses a broader range of activities than those described in sections 273(e)(1) and 273(e)(2). Nevertheless, because the record is largely silent on the nature and extent of rules necessary to ensure that BOCs do not discriminate in their procurement of goods, services, facilities, and information under section 272(c)(1), we decline, at this time, to adopt rules to implement this requirement. In response to TIA's concerns, therefore, we conclude that the record in this proceeding does not support adoption of any concrete procurement procedures beyond those already mandated by sections 273(e)(1) and 273(e)(2). Although we decline to issue rules, we caution BOCs that allegations of discrimination in their procurement of goods, services, facilities, and information under section 272(c)(1) will be evaluated in light of that section's unqualified prohibition on discrimination. Further, we note that allegations of discrimination may more easily be rebutted by demonstrated compliance with pre-existing, publicly available procedures for procurement.

F. Enforcement of Section 272(c)(1)

In the NPRM, we observed that the Commission previously adopted a regulatory scheme to ensure that the BOCs do not discriminate in the provision of basic services used to provide enhanced services or in disclosing changes in the network that are relevant for the competitive manufacture of CPE. We sought comment on whether any of the reporting and other requirements that the Commission applied to the BOCs in the *Computer III* and *ONA* proceedings, which were adopted in lieu of the structural separation requirements of *Computer II*, are sufficient to implement section 272(c)(1) and provide protection against the type of BOC behavior that section 272(c)(1) seeks to curtail. We address this issue, as well as the requirements and mechanisms necessary to facilitate the detection and adjudications of section 272 violations, below in part IX.

VI. Fulfillment of Certain Requests Pursuant to Section 272(e)

A. Section 272(e)(1)

1. Background

Section 272(e)(1) states that a BOC and a BOC affiliate subject to section 251(c) "shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates." In the NPRM, we tentatively concluded that the term "unaffiliated entity" includes "any entity, regardless of line of business, that is not affiliated with a BOC" as defined under section 153(1) of the Act. We sought comment on the scope of the term "requests" and on whether it included, *inter alia*, "initial installation requests, as well as any subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of * * * services." We tentatively concluded that section 272(e)(1) requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access, but does not grant unaffiliated entities any additional rights beyond those otherwise granted by the Communications Act or Commission rules. We also sought comment regarding how to implement section 272(e)(1) and specifically inquired whether reporting requirements for service intervals analogous to those imposed by *Computer III* and *ONA* would be sufficient.

2. Discussion

Based on our analysis of the record, we adopt our tentative conclusion that the term "unaffiliated entity" includes "any entity, regardless of line of business, that is not affiliated with a BOC" as defined under section 153(1) of the Act. Also based on the record, we conclude that section 272(e)(1) requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access, but does not grant unaffiliated entities any additional rights to make requests beyond those granted by the Communications Act or Commission rules. We conclude that the term "requests" should be interpreted broadly, and that it includes, but is not limited to, initial installation requests, subsequent requests for improvement, upgrades or modifications of service, or

repair and maintenance of these services.

Section 272(e)(1) unambiguously states that a BOC must fulfill requests from unaffiliated entities at least as quickly as it fulfills its own or its affiliates' requests. To implement this statutory directive, we conclude that, for equivalent requests, the response time a BOC provides to unaffiliated entities should be no greater than the response time it provides to itself or its affiliates. We are not persuaded by the BOC's argument that variations among individual requests make any comparison between requests meaningless, and thus make such a standard unachievable. The BOC must fulfill equivalent requests within equivalent intervals. Thus, for example, an unaffiliated entity's request of a certain size, level of complexity, or in a specific geographic location must be fulfilled within a period of time that is no longer than the period of time in which a BOC responds to an equivalent request from itself or its affiliates. Because we anticipate that the facts relating to each request will vary, we believe it is appropriate to determine whether requests are equivalent on a case-by-case basis.

Section 272(e)(1) requires a BOC to fulfill the requests of unaffiliated entities within a period no longer than the period in which it fulfills its own or its affiliates requests. Because the statute does not mandate that a BOC follow a particular procedure in meeting this requirement, we decline to adopt the proposals of AT&T and Teleport to require the BOCs to use electronic order processing systems or to use the identical systems that the BOCs use to process their own service requests. We emphasize, however, regardless of the procedures that a BOC employs to process service orders from unaffiliated entities, it must be able to demonstrate that those procedures meet the statutory standard. Under current industry practice, BOCs and interexchange carriers use electronic mechanisms to implement PIC changes; exchange billing information; and, in some instances, provide ordering, repair, and trouble administration information. We believe that these current mechanisms, and the requirement that incumbent LECs provide nondiscriminatory access to operation support systems functions pursuant to sections 251(c)(3) and 251(c)(4) of the Act, will promote the use of electronic interfaces between unaffiliated entities and the BOCs.

We also conclude that the BOCs must make available to unaffiliated entities information regarding the service intervals in which the BOCs provide service to themselves or their affiliates. The statute imposes a specific performance standard on the BOCs in section 272(e)(1), and we conclude that, absent Commission action, the information necessary to detect violations of this requirement will be unavailable to unaffiliated entities. Unlike the information necessary to ensure compliance with other subsections of section 272, there is no requirement that the information necessary to verify compliance with section 272(e)(1) must be disclosed under other provisions of the Act or Commission rules. Without the disclosure requirements imposed here, parties will be unable readily to ascertain how long it takes a BOC to fulfill its own or its affiliates' requests for service. Section 272(b)(5), which requires that all transactions between a BOC and its section 272 affiliate be reduced to writing and made available for public inspection, does not provide parties an adequate mechanism to obtain information necessary to evaluate compliance with section 272(e)(1) because section 272(b)(5) is necessarily prospective in nature. The information disclosed pursuant to section 272(b)(5) will allow unaffiliated entities to determine that a BOC and its section 272 affiliate have reached an agreement and the relevant terms and conditions of that agreement, but the document produced to satisfy section 272(b)(5) will not allow parties to determine the time it actually takes for a BOC to fulfill its own or its affiliates' requests. Section 272(e)(1) governs actual BOC performance, not contractual arrangements. Moreover, section 272(b)(5) by itself is insufficient to implement section 272(e)(1) because it will only make information available about transactions between a BOC and its section 272 affiliate; section 272(e)(1), in contrast, governs requests by the BOC itself and all of the BOC's affiliates. We also conclude that, in order to provide meaningful enforcement of section 272(e)(1), interval response times must be disclosed more frequently than the biennial audit required by section 272(d). Finally, a disclosure obligation will allow all entities to compare, in a timely fashion, their own service intervals with those provided to the BOC or its affiliates. Contrary to the contentions of some BOCs, vendor management programs similar to the one utilized by AT&T would not provide this information. These vendor management programs provide information to a BOC customer about the service intervals the BOC provides to that customer, but do not provide comparative data about the service intervals provided to other entities, such as BOC affiliates.

We do not agree with PacTel that the absence of discrimination found in *ONA* reports indicates that disclosure requirements are of little value in enforcing section 272(e)(1). Disclosure requirements are valuable because they promote compliance and give aggrieved competitors a basis for seeking a remedy directly from a BOC. If competitors can easily obtain data about a BOC's compliance with section 272(e)(1), this increases the likelihood that potential discrimination can be detected and penalized; this, in turn, decreases the danger that discrimination will occur in the first place. Disclosure requirements also minimize the burden on the Commission's enforcement process because entities will have the information needed to resolve disputes informally prior to submitting a complaint to the Commission. We also are not persuaded by NYNEX and Ameritech that the automation and nondiscriminatory design of their provisioning and maintenance procedures obviate the need for disclosure requirements. Although the BOCs' use of nondiscriminatory, automated order processing systems is important for meeting the requirements of section 272(e)(1), the existence of these systems does not guarantee that requests placed via these systems are actually completed within the requisite period of time. Finally, we are not persuaded by the arguments of U S West and PacTel that, because parties are able to incorporate information disclosure requirements into agreements negotiated under sections 251 and 252 of the Act, a separate information disclosure requirement is unnecessary. Section 272(e)(1) and section 251 do not govern similar activities. Section 251 provides a framework that requires incumbent LECs to provide, *inter alia*, interconnection, unbundled network elements, and wholesale services to requesting telecommunications carriers. In contrast, section 272(e)(1) requires BOCs to fulfill requests for telephone exchange service and exchange access from unaffiliated entities on a nondiscriminatory basis. To link compliance with section 272(e)(1) to the outcome of individual negotiations would not adequately implement section 272(e)(1), particularly because the class of entities entitled to nondiscriminatory treatment under section 272(e)(1) is much broader than the class of entities who may make requests under section 251.

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In response to the comments raised in the record, we conclude that we should seek further comment on the specific information disclosure requirements proposed by AT&T in an *ex parte* letter filed after the official pleading cycle closed. In the NPRM, we sought comment on whether reporting requirements analogous to the *Computer III* and *ONA* reporting requirements would be sufficient to implement section 272(e)(1). The parties are divided about the usefulness of service interval reporting similar to *ONA* reporting for implementing section 272(e)(1) and on the merits of AT&T's proposal. We agree with NYNEX that we should provide an additional opportunity for parties to comment on the specific aspects of the disclosure requirements needed to implement section 272(e)(1); therefore, we are separately issuing a Further Notice of Proposed Rulemaking regarding these matters.

We reject at this time, however, AT&T's more expansive proposal to require BOCs to submit to the Commission the underlying data for the information they must make publicly available. The submission of data necessary to meet this requirement—including, for example, every trouble report submitted to a BOC for a given period—would impose a substantial administrative burden on the BOCs, and possibly on the Commission as well, and is unnecessary to enforce section 272(e)(1). We also decline to order the BOCs to publicize the response times for all entities, as suggested by AT&T and Teleport, because the standard established by section 272(e)(1) is the response time given to the BOC itself and its affiliates.

B. Section 272(e)(2)

1. Background

Section 272(e)(2) states that a BOC and a BOC affiliate that is subject to section 251(c) "shall not provide any facilities, services, or information concerning its provision of exchange access to [a section 272(a) affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions." In the NPRM, we sought comment on the scope of the term "facilities, services, or information concerning its provision of exchange access" and the term "other providers of interLATA services in that market." We also sought comment on the relevance of the MFJ and prior Commission proceedings, including our equal access rules, in implementing this provision.

2. Discussion

Definitional issues. We conclude that section 272(e)(2) does not require a BOC to provide facilities, services, or information concerning its provision of exchange access to ISPs, as suggested by ITAA and MFS. Although ISPs are included within the term "other providers of interLATA services," ISPs do not use exchange access as it is defined by the Act, and, therefore, section 272(e)(2)'s requirement that BOCs provide exchange access on a nondiscriminatory basis is not applicable to ISPs. "Exchange access" is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." "Telephone toll service" is defined, in turn, as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." This definition makes clear that "telephone toll service" is a "telecommunications service." Therefore, by definition, an entity that uses "exchange access" is a telecommunications carrier. Because ISPs do not provide telephone toll services, and therefore are not telecommunications carriers, they are not eligible to obtain exchange access pursuant to section 272(e)(2).

We are not persuaded by ITAA's argument that, because section 272(f)(2) states that the requirements of section 272 cease to apply with respect to interLATA information services at sunset, but exempts section 272(e) from the sunset requirement, section 272(e), including section 272(e)(2), must apply to ISPs. Section 272(f)(2) cannot be read to extend the application of section 272(e)(2) beyond its express terms. Similarly, we reject MFS's argument that we should use section 272(e)(2) to grant ISPs rights under section 251 because, as we articulated above, this would expand the scope of section 251 beyond its express limitations.

We agree with U S West that the term "in that market" is intended to ensure that, to benefit from section 272(e)(2), an interLATA provider must be operating in the same geographic area as the relevant BOC affiliate. Therefore, we conclude that the term "providers of interLATA services in that market" means any interLATA services provider authorized to provide interLATA service in the same state where the relevant section 272 affiliate is providing service. We have designated a state as the relevant geographic area for purposes of section 272(e)(2) because the BOCs will obtain authorization to provide interLATA services on a state-by-state basis.

Implementation of section 272(e)(2). In light of the protections imposed in other portions of the Act and our rules, we conclude that we do not need to adopt rules to implement section 272(e)(2) at this time. In our *First Interconnection Order* and *Second Interconnection Order*, we adopted rules implementing section 251 of the Act, which address, *inter alia*, the provision of exchange access and network disclosure requirements under the Act. In addition, section 251(g) of the Act preserves the equal access requirements in place prior to the passage of the 1996 Act, including obligations imposed by the MFJ and any Commission rules. If, in the future, it appears that additional rules are necessary to enforce the requirements of section 272(e)(2), we will take action at that time.

We conclude that a separate disclosure requirement under section 272(e)(2) is not warranted. Section 272(b)(5) requires that all transactions between a BOC and its section 272 affiliate be reduced to writing and made available for public inspection. Parties will be able to determine the specific services and facilities that a BOC provides to its section 272 affiliate by inspecting the documentation that must be maintained pursuant to section 272(b)(5). In addition, information about a BOC's provision of exchange access to itself or to its affiliates will be available through the information disclosure requirement we are imposing pursuant to section 272(e)(1). Accordingly, we reject AT&T's suggestion that the Commission require the BOCs to disclose publicly all exchange access services and facilities used by their interLATA affiliates and to update these disclosures whenever upgrades are made.

We conclude that our current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any "information concerning * * * exchange access" on a nondiscriminatory basis. Therefore, we conclude that AT&T's suggestion that the Commission mandate additional technical disclosure requirements is unnecessary. Section 251(c)(5) imposes on incumbent LECs "[t]he duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks." We have adopted detailed rules specifying how this requirement is to be implemented.

Further, the Commission's prior network disclosure requirements are still in place, including the *Computer II* "all carrier rule" and the *Computer III* network disclosure requirements. We emphasize that if a BOC preferentially disclosed information to its section 272 affiliate or withheld information from competing providers of interLATA services, that BOC would be in violation of section 272(e)(2). Our rules implementing section 251(c)(5) explicitly prohibit this behavior: they require LECs to make network disclosures according to a specific timetable, and prohibit preferential disclosures in advance of that timetable. We do not address IDCMA's concerns regarding information disclosures for manufacturers because section 273 addresses the needs of manufacturers in detail, and we are addressing the implementation of section 273 in a separate proceeding.

C. Section 272(e)(3)

1. Background

Section 272(e)(3) provides that a BOC and a BOC affiliate that is subject to the requirements of section 251(c) "shall charge [a section 272(a) affiliate], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." In the NPRM, we tentatively concluded that a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or imputation of tariffed rates to the BOC, would be sufficient to implement section 272(e)(3). We additionally sought comment regarding the appropriate mechanism to enforce this provision in the absence of tariffed rates.

2. Discussion

We adopt our tentative conclusion that a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or a BOC's imputation of tariffed rates, will ensure compliance with section 272(e)(3). If a section 272 affiliate purchases telephone exchange service or exchange access at the highest price that is available on a nondiscriminatory basis under tariff, section 272(e)(3)'s requirement that a BOC must charge its section 272 affiliate an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier will be fulfilled. In addition, we conclude that other mechanisms are available under the Act to ensure that BOCs charge nondiscriminatory prices in accordance with section 272(e)(3). If a section 272 affiliate were to acquire services or unbundled elements from a BOC at prices that are available on a nondiscriminatory basis under section 251, the terms of section 272(e)(3) would be met. To the extent that a statement of generally available terms filed pursuant to section 271(c)(1)(B) would include prices that are available on a nondiscriminatory basis in a manner similar to tariffing, and a BOC's section 272 affiliate obtains access or interconnection at a price set forth in the statement, this would also demonstrate compliance with section 272(e)(3). We address the appropriate allocation and valuation of these transactions for accounting purposes in our companion *Accounting Safeguards Order*.

We further conclude that section 272(e)(3) requires that a BOC must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers. We do not agree, however, with those parties that suggest that additional requirements are necessary to implement section 272(e)(3). AT&T, for example, proposes that a BOC or section 272 affiliate pay "a price per unit of traffic that reflects the highest unit price that any interexchange carrier pays for a like exchange or exchange access service." We agree with the BOCs that AT&T's suggested rule would unfairly disadvantage BOC affiliates by preventing them from receiving volume discounts that other interexchange carriers with similar access traffic volumes would receive. We agree with Ameritech that, because the provision of services that fall under section 272(e)(3) must either be tariffed or made publicly available under section 252(h), unaffiliated interexchange carriers will be able to detect discriminatory arrangements. We recognize that a BOC may have an incentive to offer tariffs that, while available on a nondiscriminatory basis, are in fact tailored to its affiliate's specific size, expansion plans, or other needs. Our enforcement authority under section 271(d)(6) and section 208 are available to address this and other forms of potential discrimination by a BOC.

We reject MCI's proposal that the Commission review the BOC section 272 affiliates' prices, or profits, or both, to ensure that the section 272 affiliates' prices cover their access charges and all other costs. MCI's contention that access charges are excessive is more appropriately addressed in the Commission's forthcoming proceeding on access charge reform. We also note that the ability of competing carriers to acquire access through the purchase of unbundled elements (if those unbundled elements are properly priced) will increase pressure on the BOCs to decrease access charges, and will give competing carriers the opportunity to charge retail prices that reflect the lower cost of unbundled elements. We interpret section 272(e)(3) to require the BOCs to charge nondiscriminatory prices, as indicated above, and to allocate properly the costs of exchange access according to our affiliate transaction and joint cost rules, as modified by our companion *Accounting Safeguards Order*. We conclude that further rules addressing predatory pricing by BOC section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem. A BOC section 272 affiliate that charges a rate for interstate services below its incremental cost of providing such services would be in violation of sections 201 and 202 of the Act. Federal antitrust law also would apply to the predatory pricing of interstate and intrastate services; and the pricing of intrastate services can also be addressed at the state level. Further, as we indicated in the NPRM, the danger of successful predation by BOCs in the interexchange market is small. We also reject MCI's proposal because, as the BOCs argue and MCI concedes, Commission review of affiliates' retail prices would place an enormous administrative burden on the Commission. Such a review would also discourage BOC section 272 affiliates from competing on the basis of service prices. Because we find that adequate remedies exist to address anticompetitive pricing by BOC section 272 affiliates, we believe that regulation of these new interLATA providers' retail prices pursuant to section 272(e)(3) would not conform with the deregulatory, pro-competitive goals of the 1996 Act.

D. Section 272(e)(4

1. Background

Section 272(e)(4) states that a BOC and a BOC affiliate that is subject to section 251(c) "may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated." In the NPRM, we sought comment regarding the scope of the

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term "interLATA or intraLATA facilities or services" including, for example, whether it included "information services and all facilities used in the delivery of such services."

2. Discussion

We conclude that section 272(e)(4) does not alter the requirements of sections 271 and 272(a). Section 272(e)(4) is not a grant of authority for BOCs to provide "interLATA or intraLATA facilities or services" in contravention of the scheme governing BOC provision of in-region interLATA services in section 271 or the requirement that these services must be provided through a separate affiliate in section 272(a). Section 272(e)(4) is intended to ensure the nondiscriminatory provision of services that the BOCs are authorized to offer directly, and not through an affiliate, such as those services exempted from section 271 prior to the sunset of the separate affiliate requirement. Like the other subsections of section 272, section 272(e)(4) prescribes the manner in which a BOC must offer services and facilities it is authorized to provide.

We find no basis in the 1996 Act for the BOCs' argument that section 272(e)(4) is a grant of authority for the BOCs to provide interLATA services and facilities. By its terms, section 272(e)(4) contains no reference to the provisions of section 271 governing BOC entry into in-region interLATA services. Therefore, interpreting section 272(e)(4) as an immediate and independent grant of authority that allows BOCs to provide "*interLATA* or intraLATA facilities or *services*," even where such provision is prohibited by other sections of the statute, would contravene the requirement of section 271 that BOCs receive Commission approval prior to providing these services.

We are also unpersuaded by PacTel's alternative argument that section 272(e)(4) is not a grant of authority, but that section 272 allows the BOCs to provide wholesale, "carrier to carrier" interLATA services directly, rather than through the section 272 affiliate. PacTel states that section 271 requires BOCs to obtain authorization from the Commission before providing "interLATA services," but, in contrast, section 272(a)(2)(B) only requires BOCs to offer interLATA "telecommunications service" through a separate affiliate. PacTel also states that the definition of "interLATA service" is broad and makes no distinction between retail and wholesale offerings, but that "telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." PacTel therefore argues that only interLATA telecommunications services offered "directly to the public" must be offered through a separate affiliate. PacTel contends that retail services are services offered "directly to the public" that must be offered through a section 272 affiliate, but that wholesale services may be offered from the BOC because they are not "telecommunications services." We reject PacTel's argument because it is inconsistent with language of section 251(c)(4) and because the legislative history indicates that the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services, which include wholesale services to other carriers.

A comparison between the definitions relied upon by PacTel and the language of section 251(c)(4) leads us to conclude that wholesale services are not excluded from the definition of "telecommunications service." Unlike the definition of telecommunications service, section 251(c)(4) explicitly uses the terms "retail" and "wholesale." Section 251(c)(4) states that incumbent LECs must offer, "at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers * * *" This language implicitly recognizes that some telecommunications services are wholesale services. If this were not the case, the qualifying phrase "that the carrier provides at retail" would be superfluous.

The legislative history and the definition of common carriage further support this conclusion. The Joint Explanatory Statement states that the definition of telecommunications service "recognize[s] the distinction between common carrier offerings that are provided to the public * * * and private services." Therefore, the term "telecommunications service" was not intended to create a retail/wholesale distinction, but rather a distinction between common and private carriage. Common carrier services include services offered to other carriers. For example, exchange access service is offered on a common carrier basis, but is offered primarily to other carriers. In addition, both the Commission's rules and the common law have held that offering a service to the public is an element of common carriage. The Commission's rules define a "communication common carrier" as "any person engaged in rendering communication for hire to the public," and the courts have held that the indiscriminate offering of a service to the public is an essential element of common carriage. Neither the Commission nor the courts, however, has construed "the public" as limited to end-users of a service. In *NARUC I*, the Court of Appeals for the D.C. Circuit held that an entity may qualify as a common carrier even if "the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population." *See NARUC* v. *FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976). In light of the statutory language of section 251(c)(4), legislative history, Commission precedent, and the common law, we decline to limit the definition of telecommunications services to retail services.

If a BOC wishes to utilize the capacity on its Official Services network to provide interLATA services to other carriers or to end-users, it must do so in accordance with the requirements of the 1996 Act and our rules. Specifically, the BOC must provide in-region, interLATA services through a section 272 affiliate as required by section 272(a). If a BOC, therefore, seeks to transfer ownership of its Official Services network to its section 272 affiliate, it must ensure that the transfer takes place in a nondiscriminatory manner, as explained *supra* in part V.C, and must comport with our affiliate transaction rules.

Finally, although the term "interLATA services" includes both interLATA information services and interLATA telecommunications services, we conclude that ISPs are not entitled to nondiscriminatory treatment under section 272(e)(4). The definitional sections of the Act make clear that the term "carriers" is synonymous with the term "common carriers," which does not include ISPs. Therefore, the requirement that the BOCs provide interLATA or intraLATA facilities or services to "all carriers" on a nondiscriminatory basis does not extend to ISPs under section 272(e)(4).

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E. Sunset of Subsections 272(e) (2) and (4)

1. Background

The NPRM sought comment regarding how to reconcile an apparent conflict between sections 272(e) and 272(f). We noted that subsections 272(e)(2) and (e)(4) establish standards that refer to BOC affiliates. On the one hand, those sections could be interpreted as subject to sunset because they depend on the existence of a separate affiliate. On the other hand, section 272(f) specifically exempts section 272(e) from the sunset requirements. We sought comment regarding whether Congress intended to eliminate the requirements of sections 272(e)(2) and (e)(4) once the BOCs were no longer required to maintain separate affiliates under section 272(a).

2. Discussion

We find that the plain language of the statute compels us to conclude that sections 272(e)(2) and 272(e)(4) can be applied to a BOC after sunset only if that BOC retains a separate affiliate. The nondiscrimination obligations imposed by subsections (e)(2) and (e)(4) are framed in reference to a BOC's treatment of its affiliates. In contrast, the nondiscrimination obligations imposed by subsections (e)(1) and (e)(3) are framed in reference to the BOC "itself" as well as the BOC affiliate. If a BOC does not maintain a separate affiliate, subsections (e)(2) and (e)(4) cannot be applied because there will be no frame of reference for the BOC's conduct. Section 272(f), however, exempts section 272(e) from sunset without qualification. In order to give meaning to section 272(f), we conclude that subsections (e)(2) and (e)(4) will apply to a BOC's conduct so long as that BOC maintains a separate affiliate. Subsections (e)(1) and (e)(3) will continue to apply in all events.

A number of safeguards will be available to prevent discriminatory behavior by BOCs after the separate affiliate requirements of section 272 cease to apply. As we explain in detail above, section 251(c)(5), section 251(g), and the Commission's rules imposing network disclosure and equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis. In addition, intraLATA services and facilities must be provided on a nondiscriminatory basis under section 251(c)(3), and the provision of interLATA services and facilities will continue to be governed by the nondiscrimination provisions of sections 201 and 202 of the Act. In addition, once local competition develops, it will provide a check on the BOCs' discriminatory behavior because competitors of the BOC affiliates will be able to turn to other carriers for local exchange service and exchange access.

VII. Joint Marketing

A. Joint Marketing Under Section 271(e)

1. Background

Section 271(e)(1) limits the ability of certain interexchange carriers to market interLATA services jointly with BOC local services purchased for resale. Specifically, the statute states that:

Until a Bell operating company is authorized pursuant to [section 271(d)] to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

In the NPRM, we sought comment on whether we should interpret section 271(e) to prohibit, for example, promoting the availability of interLATA services and local exchange services in the same advertisement, making these services available from a single source, or providing bundling discounts for the purchase of both services. We also observed that the clear language of the statute only restricts covered interexchange carriers (*i.e.*, those carriers that fall within the scope of section 271(e) of the Act) from joint marketing interLATA services and BOC local services purchased for resale. Thus, section 271(e) does not preclude these interexchange carriers from jointly marketing local exchange services provided over their own facilities, or through the purchase of unbundled network elements pursuant to section 251(c)(3). Nor does section 271(e) prohibit those interexchange carriers from "marketing" BOC resold local exchange services. Rather, the prohibition is limited to "jointly marketing" BOC resold local services with interLATA services.

2. Discussion

Scope of section 271(e). We agree with the consensus of the commenters that the language in section 271(e) is clear—the joint marketing prohibition applies only to the marketing of interLATA services together with BOC local exchange services purchased for resale pursuant to section 251(c)(4). We refer to the latter services in the balance of this discussion as "BOC resold local services." In the *First Interconnection Order*, we stated that the terms of section 271(e) do not prevent affected interexchange carriers from marketing interLATA services jointly with local exchange services provided through the use of unbundled network elements obtained pursuant to section 251(c)(3). We affirm that conclusion and, accordingly, reject USTA's suggestion that we extend the section 271(e) restriction to apply to the joint marketing of such services. We find that the express text of the statute limits the prohibition to BOC resold local services obtained pursuant to section 251(c)(4) and we decline to extend the restriction beyond the limits mandated by Congress. We further conclude, for the same reason, that the joint marketing restriction does not apply if the covered interexchange carrier provides local service over its own facilities, or by reselling local exchange services purchased from a local exchange carrier that is not a BOC.

Specific Joint Marketing Restrictions. We conclude that Congress adopted the joint marketing restriction in section 271(e) in order to limit the ability of covered interexchange carriers to provide "one-stop-shopping" of certain services until the BOC is authorized to provide interLATA service in the same territory. We agree with the majority of commenters that bundling BOC resold local services and interLATA services (including interLATA telecommunications and interLATA information services) into a package that can be sold in a single transaction constitutes the type of joint marketing that Congress intended to restrict by enacting section 271(e). We define "bundling" to mean offering BOC resold local exchange services and interLATA services as a package under an integrated pricing schedule. Thus, we find that section 271(e) restricts covered interexchange carriers from, among other things, providing a discount if a customer purchases both interLATA services and BOC resold local services, conditioning the purchase of one type of service on the purchase of the other, and offering both interLATA services and BOC resold local services as a single combined product. This restriction applies until the BOC receives authorization under section 271 to offer interLATA service in an in-region state, or February 8, 1999, whichever comes first.

We also conclude that section 271(e) bars covered interexchange carriers from marketing interLATA services and BOC resold local services to consumers through a single transaction. We define

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a "single transaction" to include, at a minimum, the use of the same sales agent to market both products to the same customer during a single communication. Although requiring separate transactions for different types of services might preclude interexchange carriers from taking advantage of economies of scale, we agree with those commenters who argue that such a restriction is an essential element of the joint marketing prohibition in section 271(e) during the period the limitation remains in effect. We reject the suggestion of some BOCs that the section 271(e) restriction requires covered interexchange carriers to establish separate sales forces for marketing interLATA services and BOC resold local services. We agree with the commenting parties that claim neither the statute nor the legislative history indicates that Congress intended to impose such a requirement. Moreover, in our view, requiring a separate sales force is not necessary to accomplish the primary congressional objective of barring the affected interexchange carrier from offering "one-stop shopping" for interLATA and BOC resold local services. Thus, a single agent is permitted to market interLATA services in the context of one communication, and to market BOC resold local services to the same potential customer in the context of a separate communication.

The application of the section 271(e) joint marketing restriction to advertising implicates constitutional issues. We are aware of our obligation under Supreme Court precedent to construe the statute "where fairly possible so as to avoid substantial constitutional questions." *See United States* v. *X-Citement Video*, 115 S.Ct. 464, 467, 469 (1994). In the advertising context, the Supreme Court has held that the First Amendment protects "the dissemination of truthful and nonmisleading commercial messages about lawful products and services." *See 44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495, 1504 (1996) (*44 Liquormart*). We must be careful, therefore, not to construe section 271(e) as imposing an advertising restriction that is overly broad. The fact that section 271(e) permits a covered interexchange carrier to *offer and market separately* both interLATA services and BOC resold services and also permits such carriers to *offer and market jointly* interLATA services and local services provided through means other than BOC resold local services (*e.g.*, through the use of unbundled network elements, over its own facilities, or by reselling local exchange services purchased from a local exchange carrier that is not a BOC) makes the task of crafting an effective advertising restriction particularly difficult. For example, we see no lawful basis for restricting a covered interexchange carrier's right to advertise a combined offering of local and long distance services, if it provides local service through means other than reselling BOC local exchange service. In addition, we cannot adopt a blanket rule that prohibits interexchange carriers from publicizing in one advertisement that they offer interLATA services and publicizing in a separate advertisement that they offer BOC resold local services. As MCI points out, the statute permits interexchange carriers to offer both types of services through the same corporate entity and under the same brand name. Thus, such advertisements would be truthful statements about lawful activities.

A closer question is whether we may ban a covered interexchange carrier from claiming in a single advertisement that it offers both interLATA services and local services in instances where the carrier intends to furnish the latter through BOC resold local services, which it is authorized to market only on a stand-alone basis. On the one hand, such an advertisement would contain truthful statements about services that the interexchange carrier is authorized to provide. On the other hand, such an advertisement may be inconsistent with the section 271(e) prohibition against jointly marketing the two types of services. As some BOCs appear to recognize, however, the principal concern with the promotion of both services in a single advertisement is that it may suggest "to consumers that the services are available jointly as a package when in fact they are not." We agree with these commenters that the First Amendment does not confer the right to deceive the public. Indeed, the Supreme Court has emphasized that the First Amendment does not prevent the government from regulating commercial speech to avoid such deceptions. Further, the Court has held that the government "may require commercial messages to appear in such a form, or include such additional information, warnings and disclaimers, as are necessary to prevent its being deceptive." *See 44 Liquormart*, 116 S.Ct. at 1506 (internal quotation marks omitted). Consistent with this precedent, we conclude that a covered interexchange carrier may advertise the availability of interLATA services and BOC resold local services in a single advertisement, but such carrier may not mislead the public by stating or implying that it may offer bundled packages of interLATA service and BOC resold service, or that it can provide "one-stop shopping" of both services through a single transaction. As discussed above, both activities are prohibited under section 271(e).

We further conclude that the joint marketing restriction in section 271(e) applies only to activities that take place prior to the customer's decision to subscribe. We agree with AT&T that, after a potential customer subscribes to both interLATA and BOC resold local services from a covered interexchange carrier, that carrier should be permitted to provide joint "customer care" (*i.e.*, a single bill for both BOC resold local services and interLATA services, and a single point-of-contact for maintenance and repairs). Such activities are post-marketing activities. To impose additional prohibitions on post-marketing activities would add additional burdens not required by the statute. Furthermore, a rule that would require a customer to send separate payments to the same corporate entity would be confusing and burdensome, and therefore would not serve the public interest. Customers should also be permitted to make a single phone call for complaints and repairs about both local and long distance services once they have ordered both services. Because we interpret section 271(e) to apply only to activities that take place prior to a customer's decision to subscribe, we conclude that, once a customer subscribes to both local exchange and interLATA services from a carrier that is subject to the restrictions of 271(e), that carrier may market new services to an existing subscriber.

We recognize that the principles we have adopted to implement the requirements of section 271(e) may not address all of the possible marketing strategies that a covered interexchange carrier might initiate to sell BOC resold local services and interLATA services to the public. We emphasize, however, that in enforcing this statutory section, we intend to examine the specific facts closely to ensure that covered interexchange carriers are not contravening the letter and spirit of the congressional prohibition on joint marketing by conveying the appearance of "one-stop shopping" BOC resold local services and interLATA services to potential customers.

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B. Section 272(g)

1. Marketing Restrictions on BOC Section 272 Affiliates

a. Background. Section 272(g)(1) provides that a BOC affiliate may not market or sell telephone exchange services provided by the BOC "unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services." In the NPRM, we requested comment on what regulations, if any, are necessary to implement this provision.

b. Discussion. We agree with the BOCs that no regulations are necessary to implement section 272(g)(1). We do not adopt the three-month advance notice period proposed by AT&T, because it is not required by the statute. Nor do we believe that such a notice period is necessary in order for other carriers to receive nondiscriminatory treatment. As PacTel notes, any agreement between a BOC and its affiliate that enables the affiliate to market or sell BOC services must be conducted on an arm's length basis, reduced to writing, and made publicly available as required by section 272(b)(5). Thus, under section 272(g)(1), other entities offering services that are the same or similar to services offered by the BOC affiliate would have the same opportunity to market or sell the BOC's telephone exchange service under the same conditions as the BOC affiliate.

We also agree with Sprint that the term "same or similar service" in section 272(g)(1) encompasses information services. Thus, a section 272 affiliate may not market or sell information services and BOC telephone exchange services unless the BOC permits other information service providers to market and sell telephone exchange services. Finally, we decline to adopt MCI's requested clarification that 272(g)(1) applies to the international sphere. MCI appears to be concerned about a BOC's discriminatory provision of exchange access to foreign carriers. We conclude, however, that section 272(g)(1) applies only to the provision of "telephone exchange" service, not to the provision of "exchange access." Section 202 bars a BOC from unreasonable discrimination in the provision of exchange access services used to originate and terminate domestic interstate and international toll traffic.

2. Marketing Restrictions on BOCs

a. Background. Section 272(g)(2) states that "[a BOC] may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d)." In the NPRM, we sought comment on whether section 272(g)(2) imposes the same types of restrictions on the BOCs that section 271(e) imposes on the interexchange carriers.

b. Discussion. We agree with the BOCs that no regulations are necessary to implement section 272(g)(2). The statute clearly states that BOCs are prohibited from either selling or marketing in-region interLATA services provided by a section 272 affiliate until they have received approval from the Commission under section 271. We note, however, that section 272 does not prohibit a BOC that provides out-of-region interLATA services, or intraLATA toll service, from marketing or selling those services in combination with local exchange services. If such advertisements reach in-region customers, however, the BOC must make it clear to those customers that the advertisements do not apply to in-region interLATA services. This obligation is similar to the obligation discussed above, which requires covered interexchange carriers to disclose to consumers receiving BOC resold local service that bundled packages are not available to them. After a BOC receives authorization under section 271, the restriction in section 272(g)(2) is no longer applicable, and the BOC will be permitted to engage in the same type of marketing activities as other service providers.

Inbound Marketing. We conclude that BOCs must continue to inform new local exchange customers of their right to select the interLATA carrier of their choice and take the customer's order for the interLATA carrier the customer selects. The obligation to continue to provide such nondiscriminatory treatment stems from section 251(g) of the Act, because we have not adopted any regulations to supersede these existing requirements. Specifically, the BOCs must provide any customer who orders new local exchange service with the names and, if requested, the telephone numbers of all of the carriers offering interexchange services in its service area. A customer orders "new service" when the customer either receives service from the BOC for the first time, or moves to another location within the BOC's in-region territory. As part of this requirement, a BOC must ensure that the names of the interexchange carriers are provided in random order. We decline to adopt NCTA's request that we extend this obligation to require that BOCs inform inbound callers of other cable operators and providers of video services in the area, however, because no such obligation currently exists, and no new requirement is imposed by the statute. We further conclude that the continuing obligation to advise new customers of other interLATA options is not incompatible with the BOCs' right to market and sell the services of their section 272 affiliates under section 272(g). Thus, a BOC may market its affiliate's interLATA services to inbound callers, provided that the BOC also informs such customers of their right to select the interLATA carrier of their choice.

Teaming. We conclude that section 272(g) is silent with respect to the question of whether a BOC may align itself with an unaffiliated entity to provide interLATA services prior to receiving section 271 approval. We agree with the BOCs that the language of section 272(g) only restricts the BOC's ability to market or sell interLATA services "provided by an affiliate required by [section 272]." We note, however, that any equal access requirements pertaining to "teaming" activities that were imposed by the MFJ remain in effect until the BOC receives section 271 authorization. Thus, to the extent that BOCs align with non-affiliates, they must continue to do so on a nondiscriminatory basis.

3. Section 272(g)(3)

a. Background. Section 272(g)(3) states that "[t]he joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection [272](c)."

b. Discussion. Some of the activities identified by the parties appear to fall clearly within the scope of section 272(g)(3) and hence would be excluded from the section 272(c) nondiscrimination requirements. For example, activities such as customer inquiries, sales functions, and ordering, appear to involve only the marketing and sale of a section 272 affiliate's services, as permitted by section 272(g). Other activities identified by the parties, however, appear to be beyond the scope of section 272(g), because they may involve BOC participation in the planning, design, and development of a section 272 affiliate's offerings. In our view, such activities are not covered by the section 272(g) exception to the BOC's nondiscrimination obligations. We see no point to attempt at this time to compile an exhaustive list of the specific BOC activities that would be covered by section 272(g). We recognize

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that such determinations are fact specific and will need to be made on a case-by-case basis.

C. Interplay Between Sections 271(e), 272(g) and Other Provisions of the Statute

1. Background

In the NPRM, we sought comment on whether the affiliate may purchase marketing services from the BOC on an arm's length basis pursuant to section 272(b)(5), or whether a BOC and its affiliate should be required to contract jointly with an outside marketing entity for joint marketing of interLATA and local exchange service in order to comply with section 272(b)(3). We also sought comment on the interplay between the marketing restrictions in sections 271 and 272 and the CPNI provisions set forth in section 222 that are the subject of a separate proceeding. In addition, we requested comment on whether the joint marketing provision in section 274(c) has any bearing on how we should apply the joint marketing provisions in sections 271 and 272.

2. Discussion

As discussed above in Part IV.C, we conclude that a BOC and its affiliate are not required to contract jointly with an outside entity in order to comply with section 272(b)(3). Thus, a BOC and its affiliate may provide marketing services for each other, provided that such services are conducted pursuant to an arm's-length transaction, consistent with the requirements of section 272(b)(5). We decline to address parties' arguments raised in this proceeding regarding the interplay between section 272(g) and either section 222 or section 274(c) to avoid prejudging issues in our pending CPNI proceeding, CC Docket No. 96–115, or our electronic publishing proceeding, CC Docket No. 96–152. We emphasize that, if a BOC markets or sells the services of its section 272 affiliate pursuant to section 272(g), it must comply with the statutory requirements of section 222 and any rules promulgated thereunder.

VIII. Provision of Local Exchange and Exchange Access by BOC Affiliates

A. Background

In the NPRM, we expressed concern that a BOC might attempt to circumvent the section 272 safeguards by transferring local exchange and exchange access facilities and capabilities to one of its affiliates. We requested comment on whether we should prohibit all transfers of network capabilities from a BOC to an affiliate. Alternatively, we sought comment on whether a BOC transfer of network capabilities to an affiliate would make that affiliate a successor or assign of the BOC pursuant to section 3(4)(B) of the Act and, consequently, subject the affiliate to the nondiscrimination requirements of section 272(c)(1) and 272(e).

We also requested comment on whether, if a BOC were permitted to transfer local exchange and exchange access capabilities to an affiliate, we should exercise our general rulemaking authority to adopt regulations to prevent such an affiliate from engaging in discriminatory practices, or whether existing statutory prohibitions on discrimination are sufficient. For example, we noted that BOC affiliates that provide interstate interLATA telecommunications services already would be subject to the requirements of sections 201 and 202, which are applicable to all common carriers. Those obligations would not apply to information services affiliates and manufacturing affiliates, however, because they are not "common carriers" under the Act. As an additional matter, we tentatively concluded that a BOC affiliate that is classified as an incumbent LEC would also be subject to the nondiscrimination requirements of section 272(c).

B. Discussion

Transfer of local exchange and exchange access capabilities. We conclude that a BOC cannot circumvent the section 272 requirements by transferring local exchange and exchange access facilities and capabilities to an affiliate. As we discussed above, all goods, services, facilities, and information that the BOC provides to its section 272 affiliate are subject to the section 272(c)(1) nondiscrimination requirement. Application of section 272(c)(1) to the BOC's provision of such items should address to a large extent concerns about the BOC "migrating" or "transferring" key local exchange and exchange access services and facilities to the 272 affiliate. We note, however, that there are still legitimate concerns that a BOC could potentially evade the section 272 or 251 requirements by, for example, first transferring facilities to another affiliate or the BOC's parent company, which would then transfer the facilities to the section 272 affiliate. To address this problem, we conclude that, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), we will deem such entity to be an "assign" of the BOC under section 3(4) of the Act with respect to those network elements. Any successor or assign of the BOC is subject to the section 272 requirements in the same manner as the BOC. Thus, the interLATA and manufacturing operations contemplated by section 272 would need to occur in an affiliate other than the one to which the local exchange and exchange access facilities have been transferred. We also note that, based on the plain language of the statute, section 272(c) only applies to the BOC or an affiliate that is a "successor or assign" of the BOC. We agree with Ameritech that, unlike sections 272 (a) and (e), section 272(c) does not apply to BOC affiliates merely because they qualify as incumbent LECs.

We decline to adopt an absolute prohibition on a BOC's ability to transfer local exchange and exchange access facilities and capabilities to an affiliate, because we conclude based on the record before us that such a restriction would be overly broad and exceed the requirements of the Act. We note, however, that our determination does not preclude a state from prohibiting a BOC's transfer of local exchange facilities under its regulatory framework for incumbent LECs.

In view of our decision to treat a BOC affiliate as a "successor or assign" of the BOC if the BOC transfers network elements to the affiliate, we find it unnecessary at this time to adopt additional nondiscrimination regulations applicable to section 272 affiliates. A section 272 affiliate that is not deemed a "successor or assign" of a BOC would nevertheless be subject to the obligations imposed by section 202—which prohibits common carriers from, among other things, engaging in "unjust and unreasonable" practices with respect to the provision of interstate services. Moreover, BOC interLATA services affiliates that offer intrastate interLATA telecommunications services would be subject to corresponding nondiscrimination obligations that state statutes and regulations typically impose on common carriers. We conclude based on the current record that these existing requirements should be adequate to protect competition and consumers against anticompetitive conduct by a BOC section 272 affiliate.

Integrated affiliates. Numerous commenters also request that we address whether the separate affiliate safeguards imposed by section 272 prohibit a section 272 affiliate from offering local exchange service through the same corporate entity. Based on our analysis of the record and the applicable statutory provisions, we conclude that

section 272 does not prohibit a section 272 affiliate from providing local exchange services in addition to interLATA services, nor can such a prohibition be read into this section. Specifically, section 272(a)(1) states that—

> A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in [section 272(a)(2)] unless it provides that service through one or more affiliates that * * * are separate from any operating company entity that is subject to the requirements of section 251(c) * * *

We find that the statutory language is clear on its face—a BOC section 272 affiliate is not precluded under section 272 from providing local exchange service, provided that the affiliate does not qualify as an incumbent LEC subject to the requirements of section 251(c). Because the text and the purpose of the statute are clear, there is no need, as CCTA suggests, to resort to legislative history. We also agree with Ameritech that a BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange services; rather, section 251(c) applies only to entities that meet the definition of an incumbent LEC under section 251(h). Section 251(h)(1) defines an incumbent LEC as, *inter alia*, a local exchange carrier that: (1) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service, and (2) was a member of the National Exchange Carrier Association (NECA) or becomes a successor or assign of such a member. Because no BOC affiliate was a member of NECA when the 1996 Act was enacted, such affiliates may be classified as incumbent LECs under this statutory provision only if they are successors or assigns of their affiliated BOCs. Alternatively, under section 251(h)(2), if the Commission determines that a carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by the incumbent LEC, and such carrier has substantially replaced an incumbent LEC, such carrier may be treated by rule as an incumbent LEC for purposes of section 251. We find no basis in the record of this proceeding to find that a BOC affiliate must be classified as an incumbent LEC under section 251(h)(2) merely because it is engaged in local exchange activities. Absent such a finding, BOC affiliates that are neither one of the Bell operating companies listed under 153(4)(A), nor a successor or assign of any such company, are not subject to the separation requirements of section 272.

Furthermore, we conclude that section 251 does not preclude section 272 affiliates from obtaining resold local exchange service pursuant to section 251(c)(4) and unbundled elements pursuant to section 251(c)(3), because the statute does not place any restrictions on the types of telecommunications carriers that may qualify as "requesting carriers." We disagree with CCTA's assertion that section 272 affiliates cannot be treated as requesting carriers, because such affiliates are "part of the standard for determining nondiscriminatory interconnection by the [incumbent LEC] for all other telecommunications carriers." The fact that a determination of whether an incumbent LEC provides nondiscriminatory access may be based on a comparison of the access that the incumbent LEC provides itself or its affiliate does not preclude such affiliate from being a "requesting carrier" under section 251. There is nothing inconsistent with both requiring nondiscriminatory access and at the same time allowing an affiliate to be a requesting carrier. Moreover, we find nothing in the statute or in the *First Interconnection Order* that limits the definition of "requesting carrier" to non-affiliates. Thus, section 272 affiliates cannot be precluded under section 251 from qualifying as "requesting carriers" that are entitled to purchase unbundled elements or retail services at wholesale rates from the BOC.

We further conclude that section 272(g)(1) cannot be read as imposing a limitation on the ability of section 272 affiliates to exercise their rights under section 251(c)(3). We are not persuaded by AT&T's argument that, because section 272(g)(1) sets forth limited conditions under which section 272 affiliates may "market or sell" local exchange services, allowing those affiliates to purchase unbundled elements is inconsistent with the Act. Rather, we agree with CCTA that section 272(g)(1) speaks only to marketing issues, and does not address the conditions under which a section 272 affiliate may provide local exchange services. Furthermore, we find AT&T's claim that allowing section 272 affiliates to provide local exchange service through unbundled elements will "artificially and decisively slant [the] playing field in the BOC's favor" unpersuasive, because other telecommunications carriers will be able to provide local exchange service through unbundled elements on the same terms and conditions. AT&T's concern that the affiliate will be able to avoid access charges by obtaining the unbundled elements appears to be premised on the view that access charges are currently too high. The issue of reforming access charges will, however, be addressed in a separate proceeding. Moreover, we conclude that MCI's argument—that opportunities for discrimination and cross-subsidy are greater when the BOC provides network elements to its affiliate than when it provides resold services—is speculative. To the extent that concerns over discrimination arise, there are safeguards in sections 251 and 252 to address such concerns. We therefore decline to distinguish between a section 272 affiliate's ability to provide local service by reselling BOC local exchange service and its ability to offer such service by purchasing unbundled elements from the BOC.

We also conclude as a matter of policy that regulations prohibiting BOC section 272 affiliates from offering local exchange service do not serve the public interest. The goal of the 1996 Act is to encourage competition and innovation in the telecommunications market. We agree with the BOCs that the increased flexibility resulting from the ability to provide both interLATA and local services from the same entity serves the public interest, because such flexibility will encourage section 272 affiliates to provide innovative new services. To the extent that there are concerns that the BOCs will unlawfully subsidize their affiliates or accord them preferential treatment, we reiterate that improper cost allocation and discrimination are prohibited by existing Commission rules and sections 251, 252, and 272 of the 1996 Act, and that predatory pricing is prohibited by the antitrust laws. Our affiliate transaction rules, as modified by our companion *Accounting Safeguards Order*, address the BOCs' ability to engage in improper cost allocation. The rules in this Order and our rules in our *First Interconnection Order* and our *Second Interconnection Order* ensure that BOCs may not favor their affiliates. In sum, we find no basis in the record for concluding that competition in the local market would be harmed if a section 272 affiliate offers local exchange service to the public that is similar to local exchange service offered by the BOC.

Although we conclude that the 1996 Act authorizes section 272 affiliates to purchase unbundled elements, we emphasize that BOC facilities and services provided to section 272 affiliates must be made available to others on the same terms, conditions, and prices provided to the BOC affiliate

pursuant to the nondiscrimination requirements of sections 272 and 251(c)(3). Thus, if a BOC affiliate is a requesting carrier under section 251, the BOC is required to treat unaffiliated requesting carriers in the same manner that the BOC treats its affiliate, unless the unaffiliated entity has requested different treatment. For example, if a BOC were to provide its section 272 affiliate with access to operational support systems (OSS) functions via a different method or system than it provides to requesting carriers under section 251, we would regard such discriminatory treatment as a violation of section 251(c)(3). We believe such nondiscrimination requirements will prevent BOCs from providing special treatment to their affiliates.

State regulation. As mentioned above, several BOCs have already submitted applications to state regulatory commissions seeking authority to provide both local exchange services and interLATA services from the same affiliate. Although we conclude that the 1996 Act permits section 272 affiliates to offer local exchange service in addition to interLATA service, we recognize that individual states may regulate such integrated affiliates differently than other carriers.

IX. Enforcement

A. Reporting Requirements under Section 272

1. Background

BOCs are required under *Computer III* to provide information to third parties regarding changes to the network and new network services and to report periodically on the quality and timeliness of installation and maintenance. We sought comment in the NPRM on what requirements or mechanisms were necessary to facilitate the detection of violations of the separate affiliate and nondiscrimination requirements of section 272. We asked parties to comment on whether we should impose reporting and other requirements on BOCs analogous to those requirements imposed in the *Computer III* and subsequent *ONA* proceedings to ensure compliance with section 272 requirements. We specifically requested comment on whether these requirements are sufficient to implement the section 272(c)(1) nondiscrimination requirement.

2. Discussion

We conclude that none of the reporting or other requirements of *Computer III/ONA* is necessary to implement the requirements of section 272(c)(1) at this time. For the same reasons, we further conclude that (with the exception of section 272(e)(1)), no reporting requirements are needed to facilitate the detection and adjudication of violations of the separate affiliate and nondiscrimination requirements of section 272. As many commenters observe, reporting requirements serve two primary purposes. First, they act to deter potential anticompetitive behavior by requiring BOCs to provide objective proof of their compliance with the separate affiliate and nondiscrimination requirements. Second, they enable competitors, as well as the Commission, to detect any potential violations of these requirements. We believe, however, that sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements. Nevertheless, we intend to monitor compliance with section 272 requirements and, of course, reserve the ability to undertake appropriate measures in the event that future developments warrant.

The requirements of section 272(b), as discussed above, discourage anticompetitive behavior by the BOC by requiring the BOC and its section 272 affiliate to adhere to certain structural and transactional requirements, including the requirement to "operate independently." We therefore conclude that it is unnecessary to impose the *Computer III/ONA* reporting requirements in order to implement the separate affiliate and nondiscrimination requirements of section 272. Further, we note that even some commenters that support imposing *Computer III/ONA* reporting requirements on BOCs admit that they do not seem useful or practical.

We find, instead, that several of the disclosure requirements established in the 1996 Act will facilitate the detection of anticompetitive behavior. Section 272(d), for example, requires that a BOC obtain and pay for a biennial joint federal/state audit to determine whether it has "complied with [section 272] and the regulations promulgated under this section * * *." We conclude that this broad audit requirement is intended to verify BOC compliance with the accounting and non-accounting requirements of section 272, as implemented. In addition, we note that, pursuant to section 271(d)(3)(B), a BOC may not receive authorization to provide in-region interLATA services until it shows, among other things, that the "requested authorization will be carried out in accordance the requirements of section 272." In view of these requirements, we reject ITAA's suggestion that BOCs should submit to the Commission section 272 compliance plans, and periodic reports regarding their implementation of those plans, as unnecessarily burdensome.

In addition, the section 272(b)(5) requirement that all transactions between a BOC and its section 272 affiliate be reduced to writing and made publicly available should serve as a powerful mechanism both to detect violations of the section 272 requirements and to deter anticompetitive behavior. Similarly, we find that our interpretation of section 272(c)(1) as a flat prohibition against discrimination will work in conjunction with the section 272(b)(5) disclosure requirement to deter anticompetitive behavior. Under section 272(c)(1), any difference between the goods, services, and facilities given to a section 272 affiliate and those given to an unaffiliated entity may give rise to a claim of discrimination. Some commenters argue that the requirement of section 272(b)(5) should be extended to encompass not only transactions between a BOC and its section 272 affiliate, but also transactions between a BOC and unaffiliated entities. We find, however, that section 272(b)(5), by its terms, applies only to the transactions between the BOC and its section 272 affiliate. Extending such a requirement to transactions between a BOC and unaffiliated entities would expand the scope of this section beyond the statutory requirements and is not necessary to detect the type of discrimination that section 272 is intended to prevent. As discussed below, parties may make a request for such reporting requirements in the context of their interconnection negotiations with BOCs. Presented with such a request, the BOC will have the obligation to negotiate this proposal in good faith pursuant to section 251(c)(1).

In addition to the requirements of section 272, the Act also imposes other disclosure requirements on the BOCs that, in our view, largely address the concerns cited by parties arguing for additional reporting requirements. For example, section 251(c)(5) requires all incumbent LECs, including BOCs, to disclose publicly information about network changes that will affect a competing service provider's performance or ability to provide service or will affect the incumbent LEC's interoperability with other service providers. In implementing this requirement in our *Second Interconnection Order*, we found that this disclosure about network changes "promotes open and vigorous

competition" and provides "sufficient disclosure to insure against anticompetitive acts." Similarly, section 273(c)(1) requires BOCs to maintain and file with the Commission full and complete information of the protocols and technical requirements used for network connection, and section 273(c)(4) requires BOCs to provide "to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment."

We also find that, beyond the reporting requirements mandated under the 1996 Act, there are other avenues by which a telecommunications carrier may obtain information relevant to detecting anticompetitive BOC conduct. For example, competitive telecommunications carriers, on their own initiative, could seek to incorporate certain performance and quality standards into their negotiated or arbitrated interconnection agreements to ensure that BOCs satisfy their obligation to provide service in a nondiscriminatory manner. As noted above, BOCs, like any other incumbent LEC, are obligated to negotiate such requests in good faith pursuant to section 251(c)(1). Through this process, competitive carriers will be able to tailor the interconnection agreement to include only those reporting requirements that they deem necessary or find to be most useful. Further, pursuant to section 252(a), BOCs must file all interconnection agreements with the appropriate state commission and under section 252(h) these agreements must be made publicly available; the terms and conditions of these interconnection agreements, therefore, are on public record and available to competitors. We also note that there are several state utility commissions that, pursuant to state administrative code, require LECs to conform to certain service standards and make service quality reports publicly available. New York and Virginia, for example, require all LECs to file periodic service quality or standard of service reports.

We believe that the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC in its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements. We, therefore, agree with those parties who argue that there is no need to impose additional reporting requirements at this time. Further, we note that even several parties who advocate the imposition of additional reporting requirements recognize the inherent difficulty of identifying and preventing every type of discrimination through regulatory measures.

Finally, we believe that the complaint process will bring violations of section 272 to the attention of the Commission. Congress has established a mechanism in section 271(d) to facilitate the enforcement of the requirements of section 272. Further, as discussed below, if the information necessary to prove a complainant's claim is not publicly available, the complainant has the opportunity to obtain the necessary documentation from the BOC in the context of an enforcement proceeding. We expect that BOC competitors will be vigilant in detecting BOC deficiencies and will avail themselves of the expedited complaint process established by section 271(d)(6).

B. Section 271(d)(6) Enforcement Provisions

As discussed in the NPRM, section 271(d)(6) of the Communications Act gives the Commission specific authority to enforce the conditions that a BOC is required to meet in order to obtain Commission authorization to provide in-region interLATA services. Specifically, section 271(d)(6) states:

(A) Commission Authority.—If at any time after the approval of an application under [section 271(d)(3)], the Commission determines that a [BOC] has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

(i) issue an order to such company to correct the deficiency;

(ii) impose a penalty on such company pursuant to title V; or

(iii) suspend or revoke such approval.

(B) Receipt and Review of Complaints.—The Commission shall establish procedures for the review of complaints concerning failures by [BOCs] to meet conditions required for approval under [section 271(d)(3)]. Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

1. Commission's Enforcement Authority under Section 271(d)(6)

a. Background. In the NPRM, we sought to clarify the relationship between the Commission's authority under section 271(d)(6) and the Commission's existing enforcement authority under sections 206–209 of the Communications Act. We tentatively concluded that, in the context of "complaints concerning failures by [BOCs] to meet the conditions required for approval under [section 271(d)(3)]," section 271(d)(6) generally augments the Commission's existing enforcement authority. We sought comment on whether, in a situation where a complaint alleges that a BOC has ceased to meet the conditions for approval to provide in-region interLATA telecommunications services and seeks damages as a result of the underlying alleged unlawful conduct, a Commission determination that the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction would fulfill the Commission's duty to "act on such complaint within 90 days."

In order to approve a BOC's application to provide in-region interLATA services pursuant to section 271(d)(3), the Commission must determine that the BOC: meets the requirements of section 271(c)(1); satisfies the competitive checklist in section 271(c)(2)(B); complies with the requirements of section 272; and demonstrates that the approval of its application is consistent with the public interest, convenience, and necessity. Section 271(d)(6)(A) sets forth various actions the Commission may take at any time after the approval of an application, and after notice and opportunity for a hearing, if it determines that a BOC has ceased to meet any of these conditions. In the NPRM, we stated that the Commission may determine that a BOC has ceased to meet the conditions of its approval under section 271(d)(3) either via the resolution of an expedited complaint proceeding pursuant to section 271(d)(6)(B) or in a proceeding commenced on its own motion.

b. Discussion. We affirm our tentative conclusion that section 271(d)(6) augments the Commission's existing enforcement authority. We reject both NYNEX's contention that the specific remedies of section 271(d)(6)(A) supersede the general sanctions contained in sections 206–209 of the Act as well as SBC's assertion that there is no statutory basis for applying the provisions of section 206–209 when a violation of section 271(d)(3) has been alleged. As AT&T observes, there is no support in the statute or its legislative history for the assertion that Congress intended to eliminate the damages remedy that applies to all other violations of Title II for violations of sections 271 and 272, especially in light of the competitive concerns that underlie the 1996 Act. We also conclude

that, where a complainant seeks damages as a result of the underlying alleged violative conduct, a Commission determination on whether the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction, where appropriate, would fulfill the Commission's statutory duty to "act on such complaint within 90 days." Completion of this statutory obligation, however, would not preclude the complainant from filing a supplemental complaint to determine the actual amount of damages.

With respect to imposition of a Title V penalty (*e.g.*, forfeiture and fines) pursuant to section 271(d)(6)(A)(ii), we note that Title V provides for a separate process that is initiated by the issuance of a notice of apparent liability. We find, therefore, that the Commission's obligation under section 271(d)(6) is satisfied with respect to Title V penalties if, within 90 days (or longer if parties agree) of receiving a complaint, the Commission, upon finding a BOC liable for unlawful conduct, issues a notice of apparent liability pursuant to section 503. Finally, we affirm our tentative conclusion that the Commission may make a determination that a BOC has ceased to meet the conditions for entry either in a proceeding commenced on its own motion or via the resolution of a complaint proceeding. We further find, as most commenters suggest, that the Commission is not bound by the 90-day time constraint when it initiates a proceeding on its own motion.

2. Legal and Evidentiary Standards

a. Background. We sought comment in the NPRM on the legal and evidentiary standards necessary to establish that a BOC has ceased to meet the conditions required for its approval to provide in-region interLATA service. The majority of commenters assert that prescribing the elements of every claim that could conceivably be brought before the Commission would, at this point, be a fruitless exercise. USTA maintains that, in order to invoke section 271(d)(6), the complainant's allegations and supporting proof must be of such character that, had it been presented prior to entry, the Commission would not have approved the BOC's application. Similarly, MCI contends that a complainant seeking section 271(d)(6) relief should state that the defendant BOC is no longer meeting the conditions for entry, cite the specific requirements the BOC is violating, and describe how it is violating them.

b. Discussion. MCI and USTA correctly point out that section 271(d)(6) cannot be invoked unless the complainant alleges that the BOC has failed to meet the conditions of entry under section 271(d)(3). We conclude, however, that the procedural aspects of this showing are best addressed in our pending proceeding to adopt expedited complaint procedures. We agree with the majority of commenters and conclude that, beyond the duties and obligations discussed elsewhere in this Order, we need not establish at this time substantive rules that would define the specific legal elements of a claim that a BOC has failed or ceased to meet the conditions for entry under section 271(d)(3). Although we recognize that the establishment of substantive standards or "bright line" tests could assist in expediting the ultimate disposition of complaints invoking the 90-day statutory resolution deadline under section 271(d)(6), the conditions for entry include not only compliance with the section 272 requirements, but also satisfaction of the requirements of the competitive checklist in section 271(c)(2)(B), as well as a demonstration that the BOC application is consistent with the public interest, convenience, and necessity. Given the widely varying circumstances that may arise in the context of complaints alleging failure to meet the conditions of entry, we conclude that it is best to determine a BOC's compliance or noncompliance with these requirements on the basis of concrete facts presented in particular cases, rather than by substantive rule in this notice-and-comment proceeding.

For these same reasons, we agree with a majority of the commenters that it would be impractical to prescribe specific evidentiary standards for establishing violations of all of the substantive requirements contained in the competitive checklist. Just as the circumstances that arise in the context of 271(d)(6) complaints are likely to vary from case to case, so too will the information necessary to prove or disprove allegations that the BOC has ceased to meet the conditions of entry. We note as a general matter that, consistent with the requirements of the APA, the Commission's practice in formal complaint proceedings pursuant to section 208 has been to determine compliance or noncompliance with the Act or the Commission's rules and orders according to a "preponderance of the evidence" standard of proof. Neither section 271 nor its legislative history prescribe a different standard of proof for establishing a BOC's failure to meet the conditions required for entry; we conclude, therefore, that this evidentiary standard applies equally to section 271(d)(6) complaints. In the paragraphs that follow, we address related issues regarding what constitutes a *prima facie* showing that a BOC has ceased to meet one or more of the conditions for interLATA entry and whether the burden of proof should shift to the defendant BOC once the complainant makes such a showing. Notwithstanding the existence of a *prima facie* showing or any shift in the burden of production, as discussed below, to the extent that a complainant and defendant BOC differ over the material facts underlying a section 271(d)(6) complaint, the preponderance of evidence standard will guide our ultimate disposition of the complaint.

3. Prima Facie Standard

a. Background. We sought comment in the NPRM on what constitutes a *prima facie* showing that a BOC has ceased to meet one or more of the conditions for interLATA entry. We asked parties to comment on whether it is enough for complainants invoking the expedited complaint procedures under section 271(d)(6)(B) to plead, along with proper supporting evidence, "facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation" in order to establish a *prima facie* showing that the BOC has ceased to meet the conditions for approval in section 271(d)(3).

b. Discussion. We conclude that complainants invoking the expedited complaint procedures of section 271(d)(6)(B) must plead, along with proper supporting evidence, facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation in order to establish a *prima facie* showing that a BOC has ceased to meet the conditions for entry. Contrary to the suggestion of NYNEX and others, we did not propose in our NPRM that it would be sufficient for a complainant to establish a *prima facie* case without the submission of "proper supporting evidence." Such a showing is not permissible under either our present pleading requirements or under the rules we propose in the *Enforcement NPRM*, 61 FR 67978 (December 26, 1996), on expedited complaint procedures. Under our present rules, a formal complaint is required to include certain categories of information, including specific facts and legal authorities upon which the complaint is based. In addition, a formal complaint must identify or describe specifically and in detail the carrier conduct that forms the basis for the complaint as well as the nature of injury sustained. Further, in our *Enforcement NPRM*, we recently proposed to

augment these requirements by requiring that a formal complaint include facts supported by relevant documentation or affidavits. Under our proposed rules, a complainant that fails to meet these pleading requirements may face either a dismissal of the complaint or a summary denial of the relief sought. Thus, in light of the pleading requirements that presently exist, as well as those proposed in the *Enforcement NPRM*, we reject allegations by some commenters that the *prima facie* standard we are adopting in this Order will violate the defendant's procedural rights, allow a complainant to file only a "bare notice-type complaint," or invite a flood of frivolous suits designed to harass the BOCs.

We reject the recommendations of AT&T and MCI that we adopt specific criteria the complainant must demonstrate in order to establish a *prima facie* showing. As we stated above, beyond the legal and evidentiary standards established in this proceeding, it would be imprudent for us, at this time, to attempt to propose a comprehensive list of the showings that complainants will be required to make in order to demonstrate violations of the conditions of entry. Rather, we find it more appropriate to establish a generally applicable *prima facie* standard that is suitable for all complaints invoking section 271(d)(6), not just those alleging specific violations of the section 272 requirements.

4. Burden-Shifting and Presumption of Reasonableness

a. Background. In the NPRM, we sought comment on whether the pro-competitive goals of the Act are advanced by shifting the ultimate burden of proof from the complainant to a defendant BOC, not just in complaints alleging discrimination under section 202(a), but in all complaints alleging that a BOC has ceased to meet any of the conditions for its approval to provide interLATA services under section 271(d)(3). We sought comment specifically on whether the burden should shift to the defendant BOC once the complainant makes a *prima facie* showing that a BOC has ceased to meet the conditions of section 271(d)(3).

We also observed in the NPRM that in complaints challenging the rates, terms, and conditions of non-dominant carrier service offerings under sections 201(b) and 202(a), the Commission has effectively established a rebuttable presumption that such rates and practices are lawful. We tentatively concluded that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier.

b. Discussion. For the reasons and in the manner discussed below, we conclude that the burden of production with respect to an issue should shift to the BOC after the complainant has demonstrated a *prima facie* case that a defendant BOC has ceased to meet the conditions of entry. As an initial matter, we note that the term "burden of proof" has historically been used to describe two separate but related concepts. First, it has been used to describe the burden of persuasion with respect to a particular issue which, under the traditional view, never shifts from one party to the other at any stage in the proceeding. Second, it has been used to describe the burden of going forward with evidence necessary to avoid an adverse decision on that issue. This burden may shift back and forth between the parties. Under the approach we adopt today, the burden of production or coming forward with evidence will shift to the defendant BOC once the complainant has established a *prima facie* case that the conditions of interLATA entry have been violated. In other words, the defendant BOC will have an affirmative obligation to produce evidence and arguments necessary to rebut the complainant's *prima facie* case or risk an adverse ruling. The complainant, however, will have the ultimate burden of persuasion throughout the proceeding; that is, to show that the "preponderance of the evidence" produced in the proceeding weighs in its favor. As explained more fully below, shifting the burden of production to the defendant BOC once a *prima facie* case has been made will require the party most likely to have relevant information in its possession to produce the information at an early stage in the proceeding.

Currently, in a typical complaint proceeding, the complainant has the burden of establishing that a common carrier has violated the Communications Act or a Commission rule or order. This burden of persuasion does not shift to the defendant carrier at any time in the proceeding. As Sprint observes, however, in view of the statutory mandate to resolve section 271(d)(3) complaints in 90 days, the Commission must balance the need for expeditious resolution of the complaint against the need to develop a full record. We recognize, as do many commenters, that, even though some information may be publicly available, in many cases the BOC will be the sole possessor of certain information relevant to the disposition of the complainant's case. Our primary goal, as we expressed in the NPRM, is to give full force and effect to the pro-competitive policies underlying section 271(d)(6) by ensuring the full and fair resolution of complaints challenging a BOC's compliance with the conditions for interLATA entry within the statutory 90-day period. We find that shifting the burden of production to the defendant BOC after a *prima facie* showing has been made by the complainant will facilitate our ability to reach this goal.

Further, as we observed in the NPRM, effective enforcement of the conditions of interLATA entry, including the separate affiliate and nondiscrimination requirements of section 272, is critical to ensuring the full development of competition in the local and interexchange telecommunications markets. Many commenters argue that prompt enforcement of these conditions is essential not only to ensure the advent of true competition, but also to ensure that the BOCs take the conditions of entry seriously, particularly after they enter the in-region interLATA market. We conclude that shifting the burden of production to the BOC will facilitate the detection of anticompetitive behavior by the BOC and will enable us to adjudicate expeditiously complaints alleging violations of section 271(d)(3). Further, as mentioned above, in the context of a complaint proceeding, BOCs will have an affirmative obligation to produce all relevant evidence in their possession to rebut the complainant's claim or face an adverse ruling. Shifting the burden of production, therefore, may ultimately reduce the number of complaints filed against the BOCs by encouraging them to divulge exculpatory evidence before enforcement proceedings begin.

Many commenters that support shifting the burden of proof do not specify whether they advocate shifting the burden of persuasion or the burden of production. It is evident from the context of some comments, however, that a few commenters support a shift in the burden of persuasion, rather than a shift in the burden of production. In response to these commenters, we find that most of the competitive concerns they raise in support of shifting the burden of persuasion are more than adequately addressed by shifting the burden of production. For example, some parties that advocate shifting the burden of persuasion argue that complainants frequently will require

specific information that is within the exclusive possession of the BOC in order to substantiate their claim. These parties contend that requiring the complainant to maintain the burden of proof would result in needless, extensive discovery, and shifting the burden will give BOCs the incentive to produce information necessary to resolve the complaint. We conclude that these concerns, as well as our goal of facilitating the full and fair resolution of claims alleging violations of the conditions of entry within the statutory 90-day period, are satisfied without requiring BOCs to prove a negative in order to avoid liability, i.e., to prove, by a preponderance of the evidence, that they did not violate the conditions of entry. Further, we find it unnecessary to address most of the BOCs' arguments against burden-shifting because they are directed against shifting the ultimate burden of persuasion rather than the burden of production.

We do find it necessary, however, to respond to Ameritech's argument that informational asymmetry between the complainant and defendant is best addressed in the context of the discovery process. Ameritech maintains that, if the Commission's discovery processes are too cumbersome, they ought to be reformed rather than replaced with burden-shifting. Similarly, other commenters propose various procedural requirements that we might impose to enable us to resolve complaints within the 90-day statutory window. Moreover, a few commenters suggest that Alternative Dispute Resolution may be another mechanism by which to facilitate resolution of complaints alleging a violation of section 271(d)(3).

In response to these arguments, we note that purpose of the *Enforcement NPRM* is to streamline our current procedures and pleading requirements so that we may expedite the processing of all formal complaints and resolve complaints within the deadlines imposed by the 1996 Act. We therefore find that it would be inadvisable to attempt to establish any new procedural rules in this proceeding. Moreover, as PacTel points out, we do not have an adequate record on which to base any such rules. In response to Ameritech, we note that in the *Enforcement NPRM* we specifically proposed to reform our discovery process. Specifically, we sought comment on a range of options to eliminate or modify the discovery process, including prohibiting discovery as a matter of right, limiting the amount or scope of discovery, and allowing the state to set timetables for completion of discovery on an individual case basis. By shifting the burden of production to the BOC after a *prima facie* showing has been made by the complainant, we are ensuring that information relevant to the complainant's claim is disclosed early in the process, and thereby providing the Commission a sufficient record on which to make a decision, even in the potential absence of traditional discovery.

Finally, we affirm our tentative conclusion that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier. The presumption of lawfulness given to nondominant carrier rates and practices is employed in the context of complaints alleging violations of sections 201(b) and 202(b), where the complaint must demonstrate that the defendant's rates and practices are "unjust and unreasonable." We agree with MCI that a presumption of reasonableness is an irrelevant concept in the context of complaints alleging violations of the conditions of interLATA approval in section 271(d)(3), particularly given our interpretation of section 272(c)(1) as an unqualified prohibition on discrimination.

5. Enforcement Measures under Section 271(d)(6)(A)

a. Background. Section 271(d)(6)(A) provides that if, at any time after approval of a BOC application, the Commission determines that the BOC has ceased to meet any of the conditions of its approval to provide interLATA services, the Commission may, after notice and opportunity for a hearing: (1) Issue an order to the BOC to "correct the deficiency;" (2) impose a penalty pursuant to Title V; or (3) suspend and revoke the BOC's approval to provide in-region interLATA services.

In the NPRM, we tentatively concluded that we will follow the procedures set forth in Title V to impose Title V penalties, including forfeitures, under section 271(d)(6)(A). As to the non-forfeiture enforcement measures, we sought comment on whether the Commission should exercise its enforcement discretion and impose these sanctions on an individual case basis, or whether we should establish specific legal and evidentiary standards for each type of sanction. Further, we sought comment on the appropriate "notice and opportunity for a hearing" for the imposition of these non-forfeiture sanctions, both in the context of a complaint proceeding and on the Commission's own motion. We interpreted "opportunity for hearing" not to require a trial-type hearing before an Administrative Law Judge (ALJ). We also tentatively concluded that Congress, by imposing a 90-day deadline for complaints, did not intend to afford the BOC trial-type hearings in enforcement proceedings pursuant to section 271(d).

b. Discussion. We affirm our tentative conclusion that we will follow the procedures set forth in Title V to impose Title V penalties in enforcement actions alleging violations of the conditions of entry under section 271(d)(3). As to non-forfeiture enforcement measures, we conclude that it is impractical, at this point in time, to prescribe the specific elements and factors that would warrant issuance of an order to "correct the deficiency" or an order suspending or revoking a BOC's approval to provide in-region interLATA service. We agree with AT&T that to do so would limit our remedial flexibility. Nor do we find it appropriate to establish specific evidentiary standards; rather, our determination of which non-forfeiture measure to impose will depend on the specific facts and circumstances presented in a particular case. We find, nevertheless, that a BOC will have a full and fair opportunity to submit evidence and arguments challenging the imposition of a prescribed sanction within the statutory 90-day period.

We conclude that the phrase "opportunity for hearing" in section 271(d)(6)(A) does not require a trial-type hearing before an ALJ prior to the imposition of non-forfeiture enforcement measures. Although we recognize, as PacTel and USTA suggest, that hearings may be necessary to resolve material questions of fact; such as when oral testimony or cross-examination is required, we do not agree that trial-type hearings before an ALJ are required before the Commission imposes any non-forfeiture sanction. We find instead that, regardless of whether the Commission is imposing a non-forfeiture sanction in a proceeding commenced on its own motion or in the context of a complaint proceeding, the Commission can satisfy the hearing requirement of section 271(d)(6)(A) through written submissions rather than oral testimony. Finally, we affirm our tentative conclusion that Congress, by imposing a 90-day deadline for complaints, did not intend to afford BOCs trial-type hearings in all enforcement proceedings pursuant to section 271(d)(6)(B).

X. Final Regulatory Flexibility Certification

The Commission certified in the NPRM that the proposed rules would not have a significant economic impact on a substantial number of small entities because the proposed rules did not pertain to small entities. Written public comment was requested on this proposed certification, and only one comment was received. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

The RFA incorporates the definition of small business concerns set forth in 15 U.S.C. § 632 (small business concerns are independently owned and operated, not dominant in their field of operations, and meet any additional criteria established by the Small Business Administration (SBA)). The rules we adopt in this Order implement the non-accounting separate affiliate and nondiscrimination provisions of sections 271 and 272 of the Act, and will apply to the BOCs when they enter previously restricted markets. The NPRM stated that, because BOCs are dominant in their field of operations, they are by definition not small entities and therefore no regulatory flexibility analysis is required. We now note as well that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. The order also clarifies the joint marketing restrictions that will apply to the nation's largest interexchange carriers for an interim period pursuant to section 271. The most recent data shows that only AT&T, MCI, and Sprint meet the statutory threshold. Moreover, these carriers are not small entities under the SBA definition because each has more than 1,500 employees.

NTCA contends that small incumbent LECs should be considered small entities under the SBA's definition, and therefore, the basis of the proposed certification was incorrect. The certification contained in the NPRM applied both to our proposed rules implementing sections 271 and 272 and to our proposed rules addressing LEC interexchange services. This Order implements only sections 271 and 272, and, as we have indicated, affects only the BOCs, AT&T, MCI and Sprint. NTCA's arguments concerning small incumbent LECs are not relevant to this Order, therefore, and will be addressed in a separate Order in this docket.

We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this order do not have a significant economic impact on a substantial number of small entities. The Commission shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. The certification will also be published in the **Federal Register.**

Report to Congress. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register.**

XI. Ordering Clauses

Accordingly, It is Ordered that pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r) the REPORT AND ORDER IS ADOPTED, effective 30 days after publication of a summary in the **Federal Register.** The collections of information contained within are contingent upon approval by the Office of Management and Budget.

It is further Ordered that the MFS Petition to Consolidate Proceedings in CC Docket Nos. 96–149, 85–229, 90–623, 95–20, and CCBPol 96–09 filed on July 25, 1996 is DENIED.

It is further Ordered that Part 53 of the Commission's Rules, 47 CFR § 53 is ADDED as set forth below.

List of Subjects in 47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 53 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Subpart A—General Information

Sec.

53.1 Basis and purpose.
53.3 Terms and definitions.

Subpart B—Bell Operating Company Entry into InterLATA Services

53.101 Joint marketing of local and long distance services by interLATA carriers.

Subpart C—Separate Affiliate; Safeguards

53.201 Services for which a section 272 affiliate is required.
53.203 Structural and transactional requirements.
53.205 Fulfillment of certain requests. [Reserved]
53.207 Successor or assign.

Subpart D—Manufacturing by Bell Operating Companies

53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

53.401 [Reserved]

Subpart F—Alarm Monitoring Services

53.501 [Reserved]

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

Subpart A—General Information.

§ 53.1 Basis and purpose.

(a) *Basis.* The rules in this part are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this part is to implement sections 271 and 272 of the Communications Act of 1934, as amended, 47 U.S.C. 271 and 272.

§ 53.3 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Act means the Communications Act of 1934, as amended.

Affiliate. An affiliate is a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this part, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

AT&T Consent Decree. The AT&T Consent Decree is the order entered August 24, 1982, in the antitrust action styled *United States* v. *Western Electric,* Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after August 24, 1982.

Bell Operating Company (BOC). The term *Bell operating company*

(1) Means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England

Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(2) Includes any successor or assign of any such company that provides wireline telephone exchange service; but

(3) Does not include an affiliate of any such company, other than an affiliate described in paragraphs (1) or (2) of this definition.

In-Region InterLATA service. In-region interLATA service is interLATA service that originates in any of a BOC's in-region states, which are the states in which the BOC or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on February 7, 1996. For the purposes of this part, 800 service, private line service, or equivalent services that terminate in a BOC's in-region state and allow the called party to determine the interLATA carrier are considered to be in-region interLATA service.

InterLATA Information Service. An *interLATA information service* is an information service that incorporates as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge.

InterLATA Service. An *interLATA service* is a service that involves telecommunications between a point located in a LATA and a point located outside such area. The term "interLATA service" includes both interLATA telecommunications services and interLATA information services.

Local Access and Transport Area (LATA). A *LATA* is a contiguous geographic area:

(1) Established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or

(2) Established or modified by a BOC after February 8, 1996 and approved by the Commission.

Local Exchange Carrier (LEC). A *LEC* is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of such term.

Out-of-Region InterLATA service. Out-of-region interLATA service is interLATA service that originates outside a BOC's in-region states.

Section 272 affiliate. A *section 272 affiliate* is a BOC affiliate that complies with the separate affiliate requirements of section 272(b) of the Act and the regulations contained in this part.

Subpart B—Bell Operating Company Entry Into InterLATA Services

§ 53.101 Joint marketing of local and long distance services by interLATA carriers.

(a) Until a BOC is authorized pursuant to section 271(d) of the Act to provide interLATA services in an in-region State, or until February 8, 1999, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of the Act with interLATA services offered by that telecommunications carrier.

(b) For purposes of applying section 271(e) of the Act, telecommunications carriers described in paragraph (a) of this section may not:

(1) Market interLATA services and BOC resold local exchange services through a "single transaction." For purposes of this section, we define a "single transaction" to include the use of the same sales agent to market both products to the same customer during a single communication;

(2) Offer interLATA services and BOC resold local exchange services as a bundled package under an integrated pricing schedule.

(c) If a telecommunications carrier described in paragraph (a) of this section advertises the availability of interLATA services and local exchange services purchased from a BOC for resale in a single advertisement, such telecommunications carrier shall not mislead the public by stating or implying that such carrier may offer bundled packages of interLATA service and BOC local exchange service purchased for resale, or that it can provide both services through a single transaction.

Subpart C—Separate Affiliate; Safeguards

§ 53.201 Services for which a section 272 affiliate is required.

For the purposes of applying section 272(a)(2) of the Act:

(a) *Previously authorized activities.* When providing previously authorized activities described in section 271(f) of the Act, a BOC shall comply with the following:

(1) A BOC shall provide previously authorized interLATA information services and manufacturing activities through a section 272 affiliate no later than February 8, 1997.

(2) A BOC shall provide previously authorized interLATA telecommunications services in accordance with the terms and conditions of the orders entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree that authorized such services.

(b) InterLATA information services. A BOC shall provide an interLATA information service through a section 272 affiliate when it provides the interLATA telecommunications transmission component of the service either over its own facilities, or by reselling the interLATA telecommunications services of an interexchange provider.

(c) *Out-of-region interLATA information services.* A BOC shall provide out-of-region interLATA information services through a section 272 affiliate.

§ 53.203 Structural and transactional requirements.

(a) *Operational independence.*

(1) A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

(2) A section 272 affiliate shall not perform any operating, installation, or maintenance functions associated with facilities owned by the BOC of which it is an affiliate.

(3) A BOC or BOC affiliate, other than the section 272 affiliate itself, shall not perform any operating, installation, or maintenance functions associated with facilities that the BOC's section 272 affiliate owns or leases from a provider other than the BOC.

(b) *Separate books, records, and accounts.* A section 272 affiliate shall maintain books, records, and accounts, which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate.

(c) *Separate officers, directors, and employees.* A section 272 affiliate shall have separate officers, directors, and employees from the BOC of which it is an affiliate.

(d) *Credit arrangements.* A section 272 affiliate shall not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC of which it is an affiliate.

(e) *Arm's-length transactions.* A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.

§ 53.205 Fulfillment of certain requests. [Reserved]

§ 53.207 Successor or assign.

If a BOC transfers to an unaffiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3) of the Act, such entity will be deemed to be an "assign" of the BOC under section 3(4) of the Act with respect to such transferred network elements. A BOC affiliate shall not be deemed a "successor or assign" of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.

Subpart D—Manufacturing by Bell Operating Companies

§ 53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

§ 53.401 [Reserved]

Subpart F—Alarm Monitoring Services

§ 53.501 [Reserved]

[FR Doc. 97–1390 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–105; RM–8793 and RM–8852]

Radio Broadcasting Services; Ely, Hermantown & Pine City, MN and Siren, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 221C3 for Channel 221A at Hermantown, Minnesota, in response to a petition filed by Harbor Broadcasting, Inc. *See* 61 FR 24262, May 14, 1996. In accordance with Section 1.420(g) of the Commission's Rules we shall also modify the construction permit for Channel 221A to specify operation on Channel 221C3. The coordinates for Channel 221C3 are 46–49–30 and 92–17–00. To accommodate the upgrade at Hermantown, we shall substitute Channel 233A for Channel 221A, Ely, Minnesota, at coordinates 47–53–40 and 91–51–50, and modify the construction permit for Station WELY-FM accordingly. We shall also substitute Channel 265A for Channel 221A at Pine City, Minnesota, at coordinates 45–54–07 and 92–57–25, and modify the license for Station WCMP-FM accordingly. In response to a counterproposal filed by Badger Broadcasting Corporation, we shall allot Channel 289A to Siren, Wisconsin, at coordinates 45–50–56 and 92–27–13. There is a site restriction 8 kilometers (5 miles) northwest of the community. Canadian concurrence has been obtained for each of the above allotments. With this action, this proceeding is terminated.

DATES: Effective February 24, 1997. The window period for filing applications for Channel 289A at Siren, Wisconsin, will open on February 24, 1997, and close on March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–105, adopted January 3, 1997, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202)857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 221A and adding Channel 233A at Ely, removing Channel 221A and adding Channel 221C3 at Hermantown, and removing Channel 221A and adding Channel 265A at Pine City.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Siren, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1095 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–134; RM 8679, 8720]

Radio Broadcasting Services; Sanford, Robbins, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal allotting Channel 276A at Robbins, North Carolina, as the community's first local aural transmission service at the request of WWGP Broadcasting Corp. See 60 FR 44003 (August 24, 1995). This document also denies a petition for rule making filed by Woolstone Corporation requesting allotment of Channel 276A at Sanford, North Carolina and an alternative proposal filed by WWGP Broadcasting requesting substitution of Channel 276A for Channel 288A at Sanford, deletion of Channel 288A from FM Table of Allotments, and modification of license of Station WFJA(FM) to specify Channel 276A. Channel 276A can be allotted at Robbins without a site restriction at coordinates 35–25–48 and 79–34–48.

DATES: Effective February 24, 1997. The window period for filing applications

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for Channel 276A at Robbins, North Carolina, will open on February 24, 1997, and close on March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130. Questions related to the window application filing process for Channel 276A at Robbins, North Carolina, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–134, adopted January 3, 1997 and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Robbins, Channel 276A.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1098 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket No. HM–207F; Amdt. Nos. 107–40; 171–152]

RIN 2137–AC96

Hazardous Materials Regulations; Penalty Guidelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is increasing the maximum civil penalty, from $25,000 to $27,500, for a knowing violation of Federal hazardous materials transportation law or the Hazardous Materials Regulations. RSPA is also publishing revised baseline assessments for frequently cited violations of the Hazardous Materials Regulations, in order to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. These revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to $27,500.

EFFECTIVE DATE: This rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Edward H. Bonekemper, III, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Increase in Maximum Penalty

Under Section 4 of the Federal Civil Penalties Inflation Act of 1990 (the Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), all Federal agencies must adjust civil penalties they administer to consider the effects of inflation. These adjustments were to be made no later than October 23, 1996, and must be made at least once every 4 years thereafter, and must be published in the **Federal Register**. A formula for determining the amount of a periodic adjustment in civil penalty amounts is set forth in Section 5 of the Act; however, the 1996 amendment provided that the initial adjustment may not exceed 10 percent. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

The Credit and Debt Management Division of the Department of the Treasury's Financial Management Service has calculated that the new maximum civil penalty for a knowing violation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, is $27,500. To carry out the statutory mandate, RSPA is adding a new § 171.1(c) to the HMR specifying that the maximum civil penalty for violations of the Federal hazardous materials transportation law or the HMR, that occur after January 21, 1997, is $27,500. RSPA is also amending the references to the maximum civil penalty in § 107.329 and Appendix A to Part 107, subpart D, to set forth the increased maximum civil penalty applicable to violations that occur after January 21, 1997. In a future rulemaking, RSPA will propose changes to other sections of the HMR that refer to the maximum civil penalty.

There is no change in the statutory minimum $250 civil penalty for a knowing violation of the Federal hazardous material transportation law or HMR.

II. Revisions to Civil Penalty Baseline Guidelines

On March 6, 1995, RSPA published its hazardous material transportation enforcement civil penalty guidelines as Appendix A to 49 CFR Part 107, subpart D, in response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994. *See* Docket No. HM–207D, 60 FR 12139. Publication of these guidelines provides the regulated community and the general public with information concerning the manner in which RSPA generally begins its hazmat penalty assessment process and the types of information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

At that time, RSPA explained that its enforcement personnel and attorneys use these guidelines as a partial means of determining a baseline civil penalty for selected violations of the HMR or the Federal hazardous material transportation law. RSPA also explained that the penalty guidelines are periodically updated and were being published as they existed on January 18, 1995. As a general statement of agency policy and practice, these guidelines are informational, impose no requirements, are not finally determinative of any issues or rights, and do not have the force of law. For a further discussion of the nature and RSPA's use of these penalty guidelines, as a statement of agency policy for which no notice of proposed rulemaking is necessary, please see the preamble of the March 6, 1995 final rule. 60 FR 12139–40.

This final rule publishes revisions that RSPA has made to the List of Frequently Cited Violations, and their baseline assessments, since publication of the penalty guidelines in March 1995. These revisions to Part II of the guidelines were the result of an overall review RSPA conducted of its penalty

guidelines during the past year. These revisions consider the increase in the maximum civil penalty to $27,500, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as discussed above.

RSPA has also changed many of the baseline assessments in an effort to more appropriately reflect the risks posed by, and the likely consequences of, the particular violation of the HMR. For example, the range of penalties applicable to shipping a hazardous material in an unauthorized packaging has been restated as three different numbers for materials in Packing Group I, II, and III, respectively, with the greatest baseline amount for a Packing Group I material in order to reflect the greater hazards posed by that material. Similarly, RSPA has increased the baseline assessment for certain violations that increase the likelihood of a failure of a compressed gas cylinder, with catastrophic results (such as the failure to condemn a cylinder with excessive permanent expansion), while penalties for some violations that appear to have no effect on the actual performance of a cylinder (such as illegible markings) have been reduced. In a few instances where the baseline assessment is stated as a range (*e.g.*, $5,000 to $10,000), the factors generally considered in determining an amount within that range are indicated within the description of the violation (*e.g.*, the length of time that a continuing violation has lasted). Otherwise, RSPA generally uses the middle of the range for the "normal" type of violation.

RSPA has also revised, added, deleted or combined individual violations from the List of Frequently Cited Violations, as considered appropriate, in order to make the guidelines a more useful device for both the public and RSPA personnel. Citations to sections of the HMR were supplied for certain violations, and the wording "Various" (rather than "N/A") is being used when a generally stated violation may be covered by more than one section of the HMR (*e.g.*, the testing requirements applicable to the manufacture of each different DOT specification cylinder are contained in different sections of 49 CFR Part 178). The table has also been reorganized to place offeror violations together, and references to violations of the regulations concerning manufacture and use of packagings have been revised to reflect the fact that, after October 1, 1996, non-bulk packagings manufactured to DOT specifications are no longer authorized (unless filled before October 1, 1996) in place of packagings that must meet the performance-oriented packaging standards adopted in RSPA's rulemaking Docket No. HM–181 and located in 49 CFR Part 178, subpart M. See 49 CFR 171.14(a)(2).

RSPA created and uses these penalty guidelines to promote consistency and provide a standard for imposing similar penalties in similar cases. When a violation not described in the guidelines is encountered, RSPA often determines a baseline assessment by analogy to a similar violation in the guidelines. However, as emphasized in Parts III and IV of the guidelines, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331. Therefore, regardless of whether or not the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. Consideration of these criteria often warrants a final penalty that is less or greater than the initial baseline assessment.

These penalty guidelines remain subject to revision, and, in any particular case, RSPA's Office of Hazardous Materials Enforcement (OHME) and Office of the Chief Counsel will use the version of the guidelines in effect at the time a matter is referred by OHME for possible issuance of a notice of probable violation. Questions concerning RSPA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Because this final rule carries out a statutory mandate without interpretation and revises an informational appendix without imposing any requirements, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact on any person who complies with Federal hazardous materials law and the HMR.

D. Paperwork Reduction Act

There are no new information requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–134 § 31001.

§ 107.329 [Amended]

2. In § 107.329 (a) and (b), the parenthetical phrase "($27,500 for a

violation occurring after January 21, 1997)" is added after "$25,000."

3. Appendix A to subpart D of part 107 is amended by replacing the List of Frequently Cited Violations (Part II) to read as follows:

Appendix A—[Amended]

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

II. List of Frequently Cited Violations

Violation description	Section or cite	Baseline assessment
PART 107—REQUIREMENTS		
Failure to register as a carrier or shipper of hazardous material	107.608	$1,000 +, $500 each add'l year.
PART 171—REQUIREMENTS		
Failure to give immediate telephone notice of a reportable hazardous materials incident	171.15	$3,000.
Failure to file a DOT 5800.1 Hazardous Materials Incident Report within 30 days following an unintentional release of hazardous materials in transportation.	171.16	$500 to $2,500.
PART 172—REQUIREMENTS		
Shipping Papers (§ 172.200—172.205):		
Failure to execute a shipping paper for a shipment of hazardous materials	172.201	$3,000 to $6,000.
Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1)	$1,200.
Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.	172.202	$800 to $1,600.
Failure to include a hazard class/division number in the shipping description	172.202	$1,000 to $2,000.
Using an incorrect hazard class/identification number	172.202.	
-that does not affect compatibility requirements		$800,
-that affects compatibility requirements		$3,000 to $6,000.
Failure to include an identification number in the shipping description	172.202	$1,000 to $2,000.
Using an incorrect identification number	172.202.	
-that does not change the response information		$800,
-that changes the response information		$3,000 to $6,000.
Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$800.
Using a shipping description not in required sequence	172.202	$500.
Using a shipping description with two or more required elements missing or incorrect	172.202	
-such that the material is misdescribed		$3,000.
-such that the material is misclassified		$6,000.
Failure to include the total quantity of hazardous material covered by a shipping description	172.202(c)	$400.
The letters "RQ" are not used in the shipping description to identify materials that are hazardous substances.	172.203(c)(2)	$500.
Using a shipping description for Class 7 (radioactive) material that fails to contain the required additional entries, or contains incorrect information for these additional entries.	172.203(d)	$2,000 to $4,000.
Failure to include a required technical name in parentheses for a listed generic or "nos" material	172.203(k)	$1,000.
Failure to list an exemption number in association with the shipping description	172.203(a)	$800.
Failure to include the required shipper's certification on a shipping paper	172.204(a)	$1,000.
Failure to execute the required shipper's certification on a shipping paper	172.204	$800.
Emergency Response Information Requirements (§ 172.600—172.604):		
Providing or listing incorrect emergency response information with or on a shipping paper	172.602.	
-no significant difference in response		$800,
-significant difference in response		$3,000 to $6,000.
Failure to include an emergency response telephone number on a shipping paper	172.604	$2.600.
Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.	172.604	$1,300.
Listing a fraudulent emergency response telephone number on a shipping paper	172.604	$2,600 to $4,200.
Listing an incorrect or non-working emergency response telephone number on a shipping paper	172.604	$1,300.
Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604	$1,300.
Package Marking Requirements (§ 172.300—172.338):		
Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package.	172.301(a)	$800 to $1,600.

Violation description	Section or cite	Baseline assessment
Failure to mark the identification number on a package	172.301(a)	$1,000 to $2,000.
Marking a package with an incorrect identification number	172.301(a).	
-that does not change the response information		$800,
-that changes the response information		$3,000 to $6,000.
Failure to mark the proper shipping name and identification number on a package	172.301(a)	$3,000 to $6,000.
Marking a package with an incorrect shipping name and identification number	172.301(a).	
-that does not change the response information		$1,500 to $3,000.
-that changes the response information		$3,000 to $6,000.
Failure to include the required technical name(s) in parentheses for a listed generic or "no" entry	172.301(c)	$1,000.
Failure to mark a package containing liquid hazardous materials with required orientation marks	172.312	$2,500 to $3,500.
Package Labeling Requirements (§ 172.400–172.450):		
Failure to label a package.	172.400	$5,000.
Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package..	172.400	$5,000.
Placing a label on a package that does not contain a hazardous material.	172.401(a)	$800.
Placing a label on Class 7 (radioactive) material that understates the proper label category.	172.403	$5,000.
Placing a label on Class 7 (radioactive) material that fails to contain, or has erroneous, entries for the name of the radionuclide(s), activity, and transport index..	172.403(g)	$2,000 to $4,000.
Placing a label not conforming to size requirements on a package.	172.407(c)	$800.
Placing a label on a different surface of the package than, or far away from, the proper shipping name..	172.406(a)	$800.
Placing a label that does not meet color specification requirements on a package (depending on the variance)..	172.407(d)	$600 to $2,500.
Failure to place a required subsidiary label on a package.	172.402	$500 to $2,500.
Failure to provide an appropriate class or division number on a label.	172.411	$2,500.
Placarding Requirements (§ 172.500–172.560):		
Failure to properly placard a freight container or vehicle containing hazardous materials when Table 1 is applicable..	172.504	$1,000 to $9,000.
Failure to properly placard a freight container or vehicle containing hazardous materials when Table 2 is applicable..	172.504	$800 to $7,500.
Training Requirements (§ 172.700–172.704):		
Failure to train hazmat employees in the three required areas of training	172.702	
-more than 10 hazmat employees.		$2,400 and up.
-10 hazmat employees or less.		$1,500 and up.
Failure to train hazmat employees in any one of the three required areas of training	172.702	
-more than 10 hazmat employees.		$800 and up.
-10 hazmat employees or less.		$500 and up.
Failure to maintain training records	172.704.	
-more than 10 hazmat employees.		800 and up.
-10 hazmat employees or less.		$500 and up.
PART 173—REQUIREMENTS		
Overpack Requirements (§ 173.25)		
Failure to mark an overpack with a statement indicating that the inside packages comply with prescribed specifications when specification packaging is required..	173.25(a)(4)	$3,000.
Reconditioner Requirements (§173.28):		
Representing, marking, or certifying a drum as a reconditioned UN standard packaging, when the drum did not meet a UN standard..	173.28(c) & (d)	$6,000 to $10,800.
Marking an incorrect registration number on a reconditioned packaging	173.28(b)(2)(ii) ..	
-incorrect number.		$800.
-fraudulent use of another reconditioner's number.		$7,200.
Failure to properly conduct alternate leakage test	173.28(b)(2)(i) ..	
-improper test.		$2,000.
-no test at all.		$4,000.
Representing, marking, or certifying a drum as altered from one standard to another, when the drum had not actually been altered..	173.28(d)	$500.
Portable and IM Tank Requirements (§§173.32(e), 173.32c, 173.315)		
Offering hazardous materials for transportation in a DOT specification or exemption portable tank which is out of test..	173.32(a)(1), 173.315(a), Applicable Exemption.	$3,500 to $7,000.
Offering an IM portable tank for transportation that has not been hydrostatically tested within the last 2½ years per 173.32b(a)..	173.32c(c)	$3,500.
Offering an IM portable tank for transportation that has not been visually inspected in last five years per 173.32b(b)..	173.32c(c)	$3,500.

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Violation description	Section or cite	Baseline assessment
Offering an IM portable tank for transportation that has not been visually or hydrostatically tested as required, or failing to remove the safety relief valves during testing..	173.32c(c)	$7,000.
Offering a hazardous material for transportation in an IM portable tank equipped with bottom outlets, when the material contained is prohibited from being offered in this type of packaging.	173.32c(g)	
-Packing Group II.	.....	$7,000.
-Packing Group III.	.....	$5,000.
Failure to provide the required outage for a shipment of hazardous materials, that results in the release of hazardous materials..	173.32c(k)	$6,000 to $12,000.
Offering a hazardous material for transportation in an DOT, exemption, or IM portable tank which fails to bear markings that it has been properly retested..	173.32(e)(3), 173.32b(d).	$3,000.
Cylinder Retesters (§§173.23, 173.34, and 173.302):		
Failure to remark as DOT 3AL an aluminum cylinder manufactured under a former exemption.	173.23(c)	$600.
Certifying or marking as retested a nonspecification cylinder	173.34	$800.
Marking a cylinder in or on the sidewall area when not permitted by the applicable specification	173.34(c)(1)	$6,000 to $10,800.
Failure to maintain legible markings on a cylinder	173.34(e)	$800.
Failure to perform hydrostatic retesting at the minimum of 5/3 times the service pressure, or at the minimum specified test pressure.	173.34(e)	$2,100 to $5,200.
Failure to conduct a complete visual external and internal examination	173.34(e)(1)	$2,100 to $5,200.
Failure to have a retester's identification number (RIN)	173.34(e)(1)(i) ..	$4,000.
Failure to have current authority due to failure to renew a retester's identification number	173.34)(e)(1)(i)	$2,000.
Failure to have a retester's identification number and marking another RIN on a cylinder	173.34(e)(1)(i) ..	$7,200.
Marking a RIN before successfully completing a hydrostatic retest	173.34(e)(1)(ii) ..	$800.
Requalifying a DOT cylinder without performing the visual inspection or hydrostatic retest	173.34(e)(1)(ii) ..	$4,200 to $10,400.
Performing hydrostatic retesting without demonstrating the accuracy of the testing equipment	173.34(e)(3)	$2,100 to $5,200.
Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	173.34(e)(3)	$3,100.
Failure to perform a second retest, after equipment failure, at a pressure of 10% more or 100 psi more, whichever is less (includes exceeding 90% of test pressure prior to conducting a retest).	173.34(e)(3)	$3,100.
Failure to condemn a cylinder with permanent expansion of 10% or greater (5% for certain exemption cylinders); failure to condemn cylinders with evidence of internal or external corrosion, denting, bulging, or rough usage.	173.34(e)(4)	$10,000.
Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption.	$6,000 to $10,800.
Failure to keep complete and accurate records of cylinder reinspection and retest.		
—No records kept	.....	$4,000.
—Incomplete or inaccurate records	173.34(e)(5)	$1,000 to $3,000.
Improper marking of the RIN or retest date on a cylinder	173.34(e)(5)	$800
Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp	173.34(e)(13)(iv).	$6,000 to $10,800.
Marking a "+" sign on a cylinder without determining the average or maximum wall stress, by calculation or reference to CGA Pamphlet C–5.	173.302(c)(3)	$3,000 to $4,000.
Representing, marking, or certifying a cylinder as meeting the requirements of an exemption, when the cylinder was not maintained or retested in accordance with the exemption.	171.2(c), Applicable Exemption.	$2,000 to $6,000.
Rebuilder Requirements (§173.34):		
Representing a DOT–4 series cylinder as meeting the requirements of the Hazardous Materials Regulations without being authorized to do so by the Associate Administrator for Hazardous Materials Safety.	173.34(l)	$6,000 to $10,800.
Offeror Requirements (General):		
Offering a hazardous material for transportation in an unauthorized non-UN standard or nonspecification packaging (includes the failure to comply with the terms of an exemption authorizing the use of a nonstandard or nonspecification packaging).	Various	
—Packing Group I (includes §172 504 Table 1 materials)	.....	$9,000.
—Packing Group II	.....	$7,000.
-Packing Group III	.....	$5,000.
Offering a hazardous material for transportation in a packaging that has successfully been tested to an applicable UN standard, but is not marked with the required UN marking.	178.3(a), 178.503(a).	$3,600.
Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation.	173.24(b)	
—Packing Group I (includes §172.504 Table 2 materials)	.....	$12,000.
—Packing Group II	.....	$9,000.
—Packing Group III	.....	$6,000.
Overfilling a package so that the effectiveness is substantially reduced	173.24(b)	
—Packing Group I (includes §172.504 Table 1 materials)	.....	$9,000.
—Packing Group II	.....	$6,000.
—Packing Group III	.....	$3,000.
Offering a hazardous material for transportation after October 1, 1996, in an unauthorized non-UN standard packaging marked as manufactured to a DOT specification.	171.14	

Violation description	Section or cite	Baseline assessment
—packaging meets DOT specification		$3,000.
—packaging does not meet DOT specification		$5,000 to $9,000.
Offeror Requirements (Class 1—Explosives):		
Failing to mark the "EX" approval number on a package containing an explosive	172.320	$1,200.
Offering an unapproved explosive for transportation	173.54 and 173.56(b).	
—Div 1.3 & 1.4 fireworks meeting the chemistry requirements (both quantity and type) of APA Standard 87–1.		$5,0000 to $10,000.
—all other explosives (including forbidden explosives)		$10,000 to $27,500.
Offering a leaking or damaged package of explosives for transportation	173.54(c)	$10,000 to $27,500.
Offeror Requirements (Class 7—Radioactive Materials):		
Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data.	173.415(a), 173.461.	
-tests and evaluation not performed		$8,400.
-complete records not maintained		$2,000 to $5,000.
Offering a Type B packaging without holding a valid NRC approval certificate	173.416(b), 173.471(d).	
-never having obtained one		$2,500.
-holding an expired certificate		$1,000.
Offering a limited quantity of radioactive materials without marking the inner (or single) packaging "Radioactive."	177.421(d)	$5,000 and up.
Offering low specific activity (LSA) radioactive materials consigned as exclusive use without providing instructions for maintenance of exclusive use shipment controls.	173.425(b)(9) & (c)(7).	$800.
Offering a package that exceeds the permitted limits for surface radiation or transport index	173.441	$10,000 and up.
Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$5,000 and up.
Storing packages of radioactive material in a group with a total transport index more than 50	173.447(a)	$5,000 and up.
Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.	173.476(a) & (b)	$2,500.
Offeror Requirements (Cylinders):		
Offering a compressed gas for transportation in a cylinder that is out of test	173.301(c)	$4,200 to $10,400.
Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for at least 30 days.	173.303(d)	$5,000.
Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failing to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 130° F, without evidence of leakage, distortion, or other defect.	173.306(a)(3), (h).	$1,500 to $6,000.
PART 178—REQUIREMENTS		
Third-Party Packaging Certifiers (General):		
Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (*e.g.*, steel drum to be marked UN 4G).	1171.2(e), 1178.2(b), 178.3(a), 178.503(a).	$500 per item.
Manufacturers (General):		
Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing.	178.601(b)	
—Packing Group I (includes § 172.504 Table 1 materials)		$10,800.
—Packing Group II		$8,400.
—Packing Group III		$6,000.
Certifying a packaging as meeting a UN standard when design qualification testing was not performed	178.601(d)	
—Packing Group I (includes §172 504 Table 2 materials)		$10,800.
—Packing Group II		$8,400.
—Packing Group III		$6,000.
Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).	178.601(e)	$2,000 to $10,800.
Failure to properly conduct testing for UN standard packaging (*e.g.*, testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test).		
—design qualification testing	178.601(d)	$2,000 to $10,800.
—periodic retesting	178.601(e)	$500 to $10,800.

Violation description	Section or cite	Baseline assessment
Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	178.2(b), 178.3(a), 178.503(a)(8).	$7,200.
Failure to maintain testing records	178.601(1)	
—design qualification testing		$1,000 to $5,000.
—periodic retesting		$500 to $2,000.
Improper marking of UN certification	178.503	$500 per item.
Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.	171.14	
—if packaging does meet DOT specification		$3,000.
—if packaging does not meet DOT specification		$6,000 to $10,800.
Manufacturing Requirements—Drums		
Failure to properly conduct production leakproofness test	178.604(b)(1)	
—improper testing	173.28	$2,000.
—no testing performed		$2,000 to $10,800.
Manufacturing Requirements—Cylinders		
Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	Various	$7,500 to $15,000.
Failure to have a registration number or failure to mark the registration number on the cylinder	Various	$800.
Marking another company's number on a cylinder	Various	$7,200.
Failure to mark the date of manufacture or lot number on a DOT–39 cylinder	178 65–14	$3,000.
Failure to have a chemical analysis performed in the US for a material manufactured outside the US/ failure to obtain a chemical analysis from the foreign manufacturer.	Various	$5,000.
Failure to meet wall thickness requirements	Various	$7,500 to $15,000.
Failure to heat treat cylinders prior to testing	Various	$5,000 to $15,000.
Failure to conduct a complete visual internal examination	Various	$2,500 to $6,200.
Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment	Various	$2,500 to $6,200.
Failure to conduct a flattening test	Various	$7,500 to $15,000.
Failure to conduct a burst test on a DOT–39 cylinder	178.65–11	$5,000 to $15,000.
Failure to have inspections and verifications performed by an inspector	Various	$7,500 to $15,000.
Failure to maintain a required inspector's reports	Various	
—no reports at all		$5,000.
—incomplete or inaccurate reports		$1,000 to $4,000.

Other Requirements

Carrier Requirements:		
Transporting packages of hazardous materials that have not been secured against movement within the vehicle.	177.834(a) & (g)	$3,000.
Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage such explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent such damage.	177.835(i)	$5,200.
Transporting railway track torpedoes outside of flagging kits, in violation of E–7991	171.2(b)	$7,000.
Transporting Class 7 (radioactive) material having a total transport index more than 50	177.842(a)	$5,000 and up.
Transporting Class 7 (radioactive) material without maintaining the required separation distance	177.842(b)	$5,000 and up.
Failing to comply with requirements of an exemption authorizing the transportation of Class 7 (radioactive) material having a total transport index more than 50.	171.2(b)	
-failure to have the radiation survey record required by ¶¶ 7(f), 8(b)(3)		$5,000.
-failure to have other accompanying documents required by ¶ 8(b)		$500 each.
-other violations of ¶¶ 7 and 8		$5,000 and up.
Exemptions:		
Offering or transporting hazardous materials, or otherwise performing a function, covered by an exemption after expiration of the exemption.	171.2(a), (b), (c), Various.	$1,000 + $500 each add'l year.

4. In Appendix A to subpart D of part 107, under the section entitled "Penalty Increase for Multiple Counts" (Section IV.C.), the parenthetical phrase "($27,500 for a violation occurring after January 21, 1997)" is added after "$25,000.'

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, § 4 (28 U.S.C. 2461 note); Pub. L. 104–134, § 31001.

6. In § 171.1, as revised in the final rule under Docket No. HM–200 on January 8, 1997 (62 FR 1215), new paragraph (c) is added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(c) Any person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A, an exemption issued under subchapter A, of this subchapter, is liable for a civil penalty of not more than $25,000 ($27,500 for a violation that occurs after January 21, 1997) and not less than $250 for each violation. When the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates § 171.2(g) of this subchapter or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

Issued in Washington, DC on January 14, 1997, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–1398 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 14]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This document amends the automatic transmission park position test procedure described in Standard No. 114, "Theft Protection," to clarify an ambiguity. The test procedure is unclear in that it requires the service brakes to be applied once in the beginning of the test and once near the end of the test, but does not specify that they should be released anywhere in between these instructions. In addition, outdated sections, i.e., for vehicle manufactured before September 1, 1996, will be removed.

DATES: Effective date: This rule is effective February 20, 1997.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Chris Flanigan, Office of Safety Performance Standards, NPS–21, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–4918. For legal issues: Mr. Paul Atelsek, Office of Chief Counsel, NCC–20, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–2992.

SUPPLEMENTARY INFORMATION: On August 22, 1995, Toyota Motor Corporate Services of North America, Inc. (Toyota) requested an interpretation regarding the automatic transmission park position test procedure outlined in Standard No. 114. The test procedure involves these steps: (1) Drive the subject vehicle forward up a ten percent grade, (2) stop the vehicle with the service brakes, (3) apply the parking brake, (4) move the shift lever to the "park" position, (5) apply the service brakes, (6) release the parking brake, (7) release the service brakes, (8) remove the key, (9) verify that the transmission is locked in the "park" position, and (10) verify that the vehicle has moved no more than 150 millimeters (mm) from its original position.

The standard currently has a test procedure in S5.2 for vehicles manufactured prior to September 1, 1996 and a test procedure in S5.3 for vehicles manufactured on or after September 1, 1996. The only difference between the two test procedures is that for vehicles manufactured on or after September 1, 1996, the third step (apply the parking brake) is only required if there is a parking brake present. The purpose of using the parking brake is for the safety of those conducting the test. If the parking brake is used in conjunction with the service brakes, there is a backup in case the vehicle operator's foot slips off of the service brakes during the test. This could be hazardous if there is someone in close proximity to the wheels perhaps measuring the vehicle's position.

Toyota states that the unclear part of the test procedure concerns the application of the service brakes. The second step in the procedure is to stop the vehicle on the ten percent grade with the service brakes. The fifth step in the procedure is to apply the service brakes. However, the test procedure does not require the service brakes to be released anywhere in between the second and fifth steps. It is, therefore, unclear whether the service brakes should have been released at any point between the two steps.

In its letter requesting an interpretation of the test procedure, Toyota offers two ways to rectify this ambiguity. First, the fifth step (apply the service brakes) could be removed. In this instance, there would only be one instruction in the procedure (the second step) to apply the service brakes. In this case, the service brakes would remain applied until the seventh step, just before the measurement of vehicle movement is taken.

Second, Toyota proposed inserting an additional step after the third step (apply the parking brake) to release the service brakes. In this case, the service brakes would be applied and then released once the vehicle is on the ten percent grade and the parking brake has been set. Then, once the vehicle's shift mechanism has been placed in the "park" position, the service brakes would be applied again while the parking brake is released. Once the parking brake is released, the service brakes would then be released. The measurement of vehicle movement could then be made.

NHTSA believes that, rather than adding more steps to the test procedure, the best way to eliminate this ambiguity is to remove the fifth step. Because the second step in the procedure requires application of the service brakes and there is no direction to release the service brakes until the seventh step, there is no need to require that they be applied again in the fifth step.

Regarding the removal of dated sections, the standard makes reference

to vehicles manufactured after September 1, 1983, to vehicles manufactured before September 1, 1996, and to vehicles manufactured on or after September 1, 1996. Since these dates are all in the past, these references will be removed, as there is no need to differentiate between them.

NHTSA finds good cause to make this amendment effective 30 days after publication of this document. This amendment makes minor changes to Standard No. 114 that clarify the standard without affecting its requirements.

NHTSA also finds for good cause that notice and an opportunity for comment on this document are unnecessary. This document does not impose any additional responsibilities on any manufacturer. Instead, this document simply clarifies a test procedure and removes outdated sections in the standard.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, this action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. This rule clarifies a test procedure and eliminates outdated sections in Standard No. 114 without changing any of the requirements in the standard. Because this rule does not affect any substantive requirement of the theft prevention standard, its impacts are so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this rule simply clarifies a test procedure and eliminates outdated sections in Standard No. 114. It has no effect on the manufacture or sale of vehicles or motor vehicle equipment.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, parts 571 of title 49 of the Code of Federal Regulations are amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.114 is amended as follows:

a. S4.1 is revised.
b. S4.2 is revised.
c. S5.2 is revised.
d. S5.3 is removed.

The revisions will read as follows:

§571.114 Standard No. 114; theft protection.

* * * * *

S4.1 Each truck and multipurpose passenger vehicle having a GVWR of 4536 kilograms or less and each passenger car shall meet the requirements of S4.2, S4.3, S4.4, and S4.5. However, open-body type vehicles that are manufactured for operation without doors and that either have no doors or have doors that are designed to be easily attached to and removed from the vehicle by the vehicle owner are not required to comply with S4.5.

S4.2 Each vehicle shall have a key-locking system which, whenever the key is removed, prevents:

(a) The normal activation of the vehicle's engine or motor; and

(b) Either steering or forward self-mobility of the vehicle or both.

S4.2.1 (a) Except as provided in S4.2.2 (a) and (b), the key-locking system required by S4.2 in each vehicle which has an automatic transmission with a "park" position shall, when tested under the procedures in S5.2, prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

(b) Each vehicle shall not move more than 150 mm on a 10 percent grade when the transmission or transmission shift lever is locked in "park."

* * * * *

S5.2 Test procedure. (a) Move the transmission shift lever to any position where it will remain without assistance, including a position between the detent positions, except for the "park" position. Try to remove the key from each possible key position in each such shift position.

(b) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake (if present). Move the shift mechanism to the "park" position. Note the vehicle position. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift lever or transmission is locked in "park." Verify that the vehicle, at rest, has moved no more than 150 mm from the position noted prior to release of the brakes.

Issued on: January 14, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–1301 Filed 1–17–97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Small Business Administration (SBA) proposes to amend its size and government contracting assistance regulations to incorporate the Very Small Business Program together with a definition of a very small business concern for purposes of the SBA's small business set-aside program. Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103–403) authorized the SBA Administrator to establish and carry out a pilot program for very small business concerns. The Act defines a very small business concern as one that has 15 or fewer employees together with average annual receipts that do not exceed $1 million. The Act establishes September 30, 1998, as the expiration date for this pilot.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: Send comments to: Nancyellen Gentile, Office of Prime Contracts, U.S. Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Nancyellen Gentile, Office of Government Contracting, (202) 205–6471, or Carl J. Jordan, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The Small Business Administration Reauthorization and Amendments Act of 1994 (Act) authorized the SBA to establish a pilot program for very small business concerns. (See Pub. L. 103–403, Section 304) The purpose of this pilot program is to improve access to Federal contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among very small business concerns. Very small business concerns that receive a very small business set-aside contract are eligible for loan application support and assistance under the very small business prequalification component of this pilot program. This pilot program will expire on September 30, 1998, unless extended through legislation.

The Very Small Business Program is being established in § 125.7 of these regulations and the definition of a very small business concern is being established in § 121.413. Under section 304(j)(4) of the Act, a very small business concern is one that has no more than 15 employees and average annual receipts that total no more than $1 million. The size standard requirements applicable to small business concerns contained in Part 121 of this chapter, such as the definitions and calculation of average annual receipts and number of employees, self-certification, and size status protests, also will apply to very small business concerns. Section 125.7 also describes the types of procurements which will be eligible for the pilot program.

Under this pilot, the SBA proposes that procurements of $50,000 or less that could be set-aside for small business will be reserved for concerns meeting the statutory definition of a very small business. Currently, the simplified acquisition procedures apply to all requirements less than $100,000. The SBA has elected $50,000 as the very small business set-aside threshold for the following reasons. The nature of requirements ranging in value between $2,500 and $50,000 is that of standard off-the-shelf products and services which typically lend themselves to performance by very small businesses. The SBA analyzed the fiscal year 1995 Federal procurement activity within the Small Business Competitiveness Demonstration Program and determined that the average dollar value of a contract action awarded to an emerging small business (a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity) was $51,842. Further analysis of this data shows that the average dollar value of a contract action awarded to an emerging small business in the architectural and engineering services industry was $31,317. Smaller requirements will develop the ability of very small business concerns to do business in the federal marketplace at a gradual pace. The dollar size of this requirement will enable a very small business concern to take on the requirement without greatly disrupting operations. It will also allow the very small business concern to take advantage of multiple opportunities. A review of fiscal year 1995 federal procurement data shows that awards of $50,000 or less totaled $544,212,000. This represents 1.3 percent of the total awards received by small business concerns. Therefore, this threshold for very small business set-aside requirements will minimize any adverse impact on existing procurement assistance programs for larger small business concerns. Requirements above the $50,000 threshold will continue to be reserved for small businesses where appropriate. (Note: Procurements of $2,500 and below are processed under new micro-purchase procedures contained in FASA and are not reserved for small business competition. Thus, the proposed rule would not apply.)

The SBA is proposing that to qualify for an award under this program a firm must be an eligible small business concern under 13 CFR part 121 as well as one that has 15 or fewer employees and average annual receipts that do not exceed $1 million. Also, due to the limited number of, and geographical distance between the designated SBA districts, the SBA believes that eligible firms should be those whose headquarters are located within a geographical area serviced by a designated SBA district office where the procurement is offered, as opposed to all very small businesses in the country. This will also serve to ensure that SBA and participating federal agencies are familiar with potential very small business sources. Since very small businesses receiving contract awards are entitled to prequalification financial assistance under this program, the SBA believes that eligibility should be limited to firms located within those SBA districts that offer a prequalification loan program to ensure consistent and efficient administration of both programs.

The Act authorizes administration of this pilot program in not less than five (5) nor more than ten (10) SBA districts. The Act permits SBA to determine the operating details of the program. For informational purposes, the following are the SBA districts where this pilot program will be implemented:

Albuquerque, NM
Boston, MA
Columbus, OH
Detroit, MI
El Paso, TX
Los Angeles, CA
Louisville, KY
New Orleans, LA
Philadelphia, PA
Santa Ana, CA

These SBA districts have the required available resources to implement and administer the pilot. A prequalification loan pilot program is available in each of these designated districts to provide loan application support and assistance. Also, SBA will achieve nationwide geographical coverage by designating at least one pilot site within broad regional areas of the country. Each site will have a procurement center representative to work with the various procuring activities to implement the program. SBA may, from time to time, through notice in the **Federal Register**, find it necessary to make modifications to this list, provided, however, the total number of participating districts will remain within the legislated number.

Federal agencies will implement this program, working with SBA procurement center representatives to identify opportunities appropriate to be set aside for very small businesses. The SBA district offices and procurement center representatives will assist the buying activities in identifying very small business concerns likely to compete. The contracting officer will advertise very small business set-aside opportunities. The contracting officer will rely on the offeror's self-certification in a specific bid or proposal. If the self-certification of a very small business concern is protested on a very small business set-aside, the size determination will be made using the statutorily imposed size standard of 15 or fewer employees *and* average annual receipts of $1 million or less. If there are not two or more very small business concerns eligible to compete on a specific procurement, then the very small business program will not apply to that contract.

The Act establishes April 30, 1997, as the date by which the Administrator of SBA will report the results of this pilot program to the Congress. Before that date, SBA will obtain from participating agencies a record of all contract awards under this program, after advising them of the manner and frequency of such reporting. At a minimum, reports will include the date of solicitation, the date of an award, the contractor's name and address, the standard industrial classification code or a brief description of the product or service, and the dollar value of the agency's purchase.

Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

The SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The value of procurements awarded under the Very Small Business Program is expected to be less than $100 million since the program is being implemented as a pilot program in only eight locations and is targeted to businesses that have historically experienced limited participation in the federal market. This rule does not impose costs upon the businesses which might be affected by it. The rule would have no effect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within the small business set-aside program. Therefore, it would not have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

As required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, the SBA has prepared a regulatory flexibility analysis of this proposed rule. This analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration, and is available upon request.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of SBA.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

For the reasons set forth above, Title 13, Code of Federal Regulations (CFR) is amended as set forth below.

List of Subjects in 13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and record keeping requirements, Small businesses, Technical assistance.

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); Pub. L. 102–486, 106 Stat. 2776, 3133; and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Section 121.401 is revised to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The requirements set forth in §§ 121.401 through 121.413 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency program, SBA's Minority Enterprise Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, the Federal Small Disadvantaged Business programs, and the Very Small Business program.

3. The following new § 121.413 is added after § 121.412 to read as follows:

§ 121.413 What size firm is eligible for the Very Small Business Program?

A concern eligible for the very small business program, as established in § 125.7, is one that, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million.

PART 125—[AMENDED]

1. The authority citation for 13 CFR part 125 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702; and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. The following new § 125.7 is added after § 125.6 to read as follows:

§ 125.7 What is the Very Small Business Program?

(a) The Very Small Business Program is an extension of the small business set-aside program, administered by the SBA as a pilot to increase opportunities for very small business concerns. The program is limited to contracts of $50,000 or less that could be set aside for small business, and to concerns that

meet the very small business size standard defined in § 121.413.

(b) If there are not two or more very small business concerns eligible to compete on a specific procurement, then the very small business program will not apply to that contract.

(c) This pilot program will be implemented in the following SBA districts: Albuquerque, NM; Los Angeles, CA; Boston, MA; Louisville, KY; Columbus, OH; New Orleans, LA; Detroit, MI; Philadelphia, PA; El Paso, TX; Santa Ana, CA. Only very small businesses whose headquarters are located within the geographical area serviced by a designated SBA district office where the procurement is offered are eligible for award of a contract under this pilot program.

(d) This pilot program terminates on September 30, 1998.

Dated: January 14, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–1308 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–239–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, and –300 series airplanes, that would have required the replacement of certain switches located behind the cabin attendant's panel at door 4 right, with new improved switches. That proposal was prompted by reports indicating that fires have occurred on some airplanes due to the internal failure of some of these switches. This action revises the proposed rule by adding a requirement to replace switches located at door 2 right. The actions specified by this proposed AD are intended to prevent the installation and use of switches that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane.

DATES: Comments must be received by February 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2790; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–239–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, and –300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 29, 1996 (61 FR 60653). That NPRM would have required the replacement of switches S4 and/or S5, or switches S7 and S8 that are installed on the cabin attendant's panel at door 4 right, with new improved switches. That NPRM was prompted by reports indicating that fire and smoke have occurred on some airplanes due to the internal failure of some of these switches.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received a report of the failure of these same switches located at the cabin attendant panel located at door 2 right on at least two airplanes. Failure of the switches at this location presents the same unsafe condition addressed in the previous proposal.

Accordingly, the FAA has determined that, in addition to replacing these switches at the panel at door 4, operators must replace the switches at the panel at door 2, as well.

Requirements of the Revised Proposed Rule

This supplemental NPRM proposes to require removing switches S4 and/or S5, or switches S7 and S8, that are currently installed on the cabin attendant's panel at door 4 right, and the equivalent switches at door 2 right, and replacing them with new improved switches.

The compliance time for accomplishing the replacement would be extended from the previously proposed 6 months to 10 months. The FAA finds that such an extension is appropriate in consideration of the increased number of work hours and required parts that would be necessary to accomplish the proposed actions.

These actions would be required to be accomplished in accordance with the procedures described in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996. Although those procedures address replacing only the switches located at door 4, they can be

used just as effectively for replacing the switches located at door 2.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 648 Boeing Model 747–100, –200, and –300 series airplanes of the affected design in the worldwide fleet. Of this number, the FAA estimates that 167 airplanes are of U.S. registry and would be affected by this proposed AD

The proposed replacement of the switches would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,112. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $235,804, or $1,412 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 96–NM–239–AD.

Applicability: Model 747–100, –200, and –300 series airplanes; as listed in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the installation and use of switches in the cabin attendant's panel that could short circuit when they fail, and consequently cause fire and smoke aboard the airplane, accomplish the following:

(a) Within 10 months after the effective date of this AD, remove switches S4 and/or S5, or switches S7 and S8, that are installed in the cabin attendant's panel at door 4 right, and the equivalent switches at door 2 right, and replace them with new switches in accordance with the procedures specified in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996.

(b) As of the effective date of this AD, no person shall install at door 2 right or at door 4 right of any airplane an attendant's panel having switch part numbers identified in the "Old Switch" column of any table contained in Boeing Alert Service Bulletin 747–33A2252, dated August 1, 1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1293 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. This proposal is prompted by a report from the manufacturer indicating that full-scale fatigue testing on the test model revealed fatigue cracking in this area. The actions specified by the proposed AD are intended to prevent fatigue cracking in this area, which can reduce the structural integrity of fuselage frame 36 and the wing center section.

DATES: Comments must be received by February 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–105–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report from the manufacturer indicating that full-scale fatigue testing on the test model revealed fatigue cracking in the rib flange on the front spar side of the wing center section. This cracking, which occurred at 83,550 simulated flights, was located perpendicular to vertical posts at fuselage frame 36, and began at the vertical fillets of the rib flange. Such fatigue cracking, if not prevented, could result in reduced structural integrity of fuselage frame 36 and the wing center section.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1013, Revision 1, dated September 29, 1992, which describes procedures for modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (C/N) 95–098–066(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 5 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 13 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $576 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,780, or $1,356 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–105–AD.

Applicability: Model A320 airplanes as listed in Airbus Service Bulletin A320–57–1013, Revision 1, dated September 29, 1992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the rib flange on the front spar side of the wing center section, and consequent reduced structural integrity of fuselage frame 36 and the wing center section, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 3 months after the effective date of this AD, whichever occurs later, modify the rib flange on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings, in accordance with Airbus Service Bulletin A320–57–1013, Revision 1, dated September 29, 1992.

Note 2: Modification of the rib flange accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1013, dated April 12, 1989, is considered acceptable for compliance with the modification required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1352 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–092–1–9649b; FRL–5653–8]

Approval and Promulgation of Revisions to the Commonwealth of Kentucky's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet submitted revisions to the Kentucky SIP. This revision exempts acetone and perchloroethylene (tetrachloroethylene) from the list of compounds regulated as volatile organic compounds (VOC) for ozone control purposes.

In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth of Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 20, 1997.

ADDRESSES: Written comments on this action should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4, Air Planning Branch, Atlanta Federal Center, 100 Alabama Street SW, Atlanta, GA 30303–3104

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region IV Air Programs Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register.**

Dated: November 4, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–1334 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[Region II Docket No. NJ26–1–161, FRL–5678–3]

Approval and Promulgation of Implementation Plans; New Jersey; Consumer and Commercial Products Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the proposed approval of a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for Ozone. The SIP revision was submitted by the New Jersey Department of Environmental Protection and consists of the adopted new rule Subchapter 24, "Control and Prohibition of Volatile Organic Compounds (VOCs) from Consumer and Commercial Products," which establishes limits on the amount of VOCs contained in certain consumer and commercial products. The intended effect is to reduce the emission of VOCs which will assist in attaining the health based ozone air quality standard.

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino,

Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1996, the New Jersey Department of Environmental Protection (NJDEP) submitted to EPA a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS) for Ozone. The revisions to the New Jersey Ozone SIP reflect the adoption to New Jersey Administrative Code (N.J.A.C) of 7:27–24 entitled "Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products," (Subchapter 24). This new rule was adopted by New Jersey on October 3, 1995, and became effective upon publication in the New Jersey Register on November 6, 1995. This portion of New Jersey's Ozone SIP submittal was found to be complete on March 15, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.

State Submittal

New Jersey's January 25, 1996 SIP revision submittal consists of new rule Subchapter 24, which establishes limits on the amount of volatile organic compounds (VOC) or high volatility organic compounds (HVOC) contained in certain consumer and commercial products. Certain products manufactured after April 30, 1996, and sold for use in New Jersey are subject to these VOC content limits. The types of consumer and commercial products regulated by this new rule and the corresponding VOC content limits are listed in the table below.

VOC CONTENT LIMITS FOR CONSUMER PRODUCTS

Consumer product category	Maximum allowable VOC content (percent by weight)
Air Fresheners:	
Single phase aerosol	70
Double-phase aerosol	30
Liquid/pump	18
Solid/gel	3
Antiperspirants:	
Aerosol	HVOC 60
Non-aerosol	HVOC 0
Bathroom and tile cleaners:	
Aerosols	7
All other forms	5
Carburetor choke cleaners	75
Cooking sprays, aerosol	18
Deodorants:	
Aerosol	HVOC 20
Non-aerosol	HVOC 0
Dusting aids:	
Aerosol	35
All other forms	7
Engine degreasers	75
Fabric protectants	75
Floor polishes/waxes:	
Products for flexible flooring material.	7
Products for nonresilient flooring.	10
Wood floor wax	90
Furniture maintenance products, aerosol.	25
General purposes cleaners	10
Glass cleaners:	
Aerosols	12
All other forms	8
Hair mousses	16
Hair sprays	80
Hair styling gels	6
Household adhesives:	
Aerosol	75
Contact	80
Construction and panel	40
General purpose	10
Structural waterproof	(1)
Insecticides:	
Crawling bug	40
Flea and tick	25
Flying bug	35
Foggers	45
Lawn and garden	20
Laundry prewash:	
Aerosol/solids	22
All other forms	5
Laundry starch products	5
Nail polish removers	85
Oven Cleaners:	
Aerosol/pump sprays	8
Liquids	5
Shaving creams	5

[1] Reserved.

In March 1995, EPA published a Report to Congress entitled "Study of Volatile Organic Compound Emissions from Consumer and Commercial Products," (EPA–453/R–94–066–A). Based on the information provided in this report, the NJDEP expects to achieve VOC emission reductions of 7.9 tons per day from the 1990 baseline emissions. This level of emission reductions when achieved, constitutes a 18 percent reduction from the 1990 baseline emissions for the categories regulated in Subchapter 24. These emission reductions reflect a per capita VOC emission reduction of 0.75 pounds of VOC per person per year.

Applicability

Subchapter 24 applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures any consumer product listed in the table above for use in New Jersey. Consumer products that are sold in New Jersey for shipment and use outside of the State of New Jersey are exempt from the VOC content limits, and administrative and testing requirements of Subchapter 24. This exemption reflects the intent to regulate only the manufacture and distribution of consumer products that are actually used in New Jersey and not to interfere in the transportation of goods that are destined for outside of the State.

The VOC content limits included in Subchapter 24, do not apply to consumer products manufactured prior to April 30, 1996 provided such consumer products have a date of manufacture code on the container or packaging. This provision allows the manufacturers and distributors sufficient notice and a reasonable amount of time, from the state effective date of the rule, to comply with VOC content limits contained in Subchapter 24.

Subchapter 24 excludes certain products from the applicable VOC content limits. The rationale for these exclusions is that the products do not emit VOCs, or there are no existing acceptable alternatives, or because the active ingredient is present in concentrated form resulting in less VOC emissions. Such products that are exempt are: bait station insecticides that contain bait weighing more than 0.5 ounces; household adhesives sold in a container of one fluid ounce or less or a container of more than one United States gallon (128 fluid ounces); air fresheners or insecticides which contain at least 98 percent by weight para-dichlorobenzene; air fresheners consisting entirely of fragrance, inorganic compounds, or compounds excluded from the definition of VOC in Subchapter 24. Generally, these exclusions are consistent with similar regulations in other states and have been approved by EPA.

Certain substances for the purposes of determining the VOC content on consumer products are excluded from the requirements of Subchapter 24, specifically, VOCs with known low vapor pressures of less than 0.1 millimeters of mercury at 20 degrees Celsius, VOCs with unknown vapor pressures consisting of more than 12 carbon atoms per molecule, and VOCs with unknown vapor pressures that have melting points higher than 20 degrees Celsius and do not sublime. Examples of such compounds include high molecular weight resins used in hair sprays and the heavy oils used in furniture polishes. Subsection 24 also excludes fragrances up to a combined two percent by weight contained in any consumer product.

Subchapter 24 also provides for granting exemptions for products that reduce VOC emissions using non-traditional methods, referred to as "innovative products." The concept behind an innovative product provision is to provide an alternative to complying with the specified content standard found in the rule. A product may be exempted from VOC content standards if the manufacturer demonstrates that due to some characteristics of the formulation, design, delivery system or other factor, VOC emissions resulting from the use of the innovative product would be less than the emissions resulting from the use of a representative product that meets the VOC content standard.

If a manufacturer was granted an innovative product exemption pursuant to the California Air Resource Board (CARB) consumer products regulations (Title 17, Subchapter 8.5, article 1, section 94503.5 or article 2, section 94511 of the California Code of Regulations), the manufacturer may also claim this exclusion by submitting a copy of the CARB exemption decision and CARB's statement of the conditions on its approval of the exemption to the NJDEP.

As stated in their response to comments, New Jersey commits to forwarding all innovative product exemptions that New Jersey accepts to EPA, Region 2, in order for EPA to be able to determine compliance with the New Jersey SIP, once it is approved. SIP revisions would not be necessary for such innovative products excluded from complying with the VOC content limits of Subchapter 24, because the VOC emissions from such products have been demonstrated to be less than those from a complying product and because an appropriate level of opportunity for public comment regarding the mechanisms and criteria for such exclusions has been made during New Jersey's proposal of new rule Subchapter 24.

In addition, CARB's rules, measures and procedures for their consumer products regulation have been approved by EPA as part of the California SIP. CARB's consumer products rule includes a "federal enforceability" provision which requires that those innovative product exemptions approved by CARB be submitted to EPA Region 9 as SIP revisions after adhering to a specific procedure or mechanism. Since New Jersey is recognizing only those innovative product exemptions approved by CARB, and which are required to be federally enforceable through CARB's rule, it would be redundant to have New Jersey submit those exemptions to EPA Region 2 for EPA approval.

In addition, Subchapter 24 provides relief due to extraordinary reasons that are beyond the reasonable control of the manufacturers of regulated consumer products. The maximum allowable VOC content limits do not apply to any consumer product if an agency of another state, which has an adopted consumer product variance provision in its rules as of December 2, 1995, has granted to the manufacturer of that product a variance. This exclusion shall be effective in New Jersey until the other state agency's approved variance expires or is revoked, at which time the exclusion from the requirements of Subchapter 24 shall automatically expire. This exclusion shall be effective in New Jersey provided that the manufacturer claiming this exclusion submits a copy of the state agency's exemption decision and statement of the conditions of the state agency's approval of the exemption to the NJDEP.

As stated in their response to comments, New Jersey commits to forwarding all variances pursuant to Subchapter 24 to EPA, Region 2, in order for EPA to be able to determine compliance with the New Jersey SIP, once it is approved. Since there is already a specific procedure or mechanism established for making the variances federally enforceable, it is not necessary to go through the process again.

Administrative Requirements

Subchapter 24 requires manufacturers of consumer products subject to Subchapter 24, to submit a registration report to the NJDEP by October 1, 1996 which identifies the categories of products they manufacture and the specific products affected by the rule.

Each manufacturer of a consumer product subject to Subchapter 24 is required to clearly display on each consumer product container or packaging the month and year in which the product was manufactured (or a code indicating such date). This will allow the verification of whether the product was required to meet the VOC content limits specified in Subchapter 24.

Subchapter 24 also requires manufacturers of consumer products to keep records demonstrating compliance with the VOC content limits. These records are required to be kept for a period of at least three years and shall be made available within 30 days upon request. In addition, manufacturers of consumer products are required to submit within 90 days upon request, estimations of the product quantities sold in New Jersey. This provision enables the NJDEP to conduct an emission estimation survey at a future date. Any person who submits information to the NJDEP pursuant to Subchapter 24 may assert a confidentiality claim in accordance with the procedures specified in N.J.A.C. 7:27–1.6.

Test Methods

Compliance is determined using mass balance based on manufacturers' formation data and records of raw material purchase. Further analysis could make use of methods which are shown to accurately determine the concentration of VOCs in a product. Such methods shall include any methods issued by EPA or CARB which have been established for the measurement of VOCs in consumer products. Subchapter 24 does not cite any specific analytical method for determining the VOC content of consumer products as such methods are currently being developed by CARB and EPA. Until specific analytical methods become available, compliance with Subchapter 24 will rely heavily upon manufacturer's records of the constituents used to produce the consumer products.

Federal Supersession

Subchapter 24 includes a provision which addresses any potential conflicts between New Jersey's Subchapter 24 and any national consumer products rule EPA may issue. Generally, Subchapter 24 provides that where a Federal rule establishes a VOC content limit or product applicability criteria that differs from New Jersey's requirement, the Federal rule shall supersede New Jersey's regulation. However, where the Federal rule does not regulate the VOC content of a product category for which Subchapter

24 has established a limit, New Jersey's regulation shall remain in effect. On April 2, 1996, EPA proposed national VOC emission standards for consumer products, 61 FR 14531, which includes similar consumer products and VOC content limits as those approved by New Jersey. It is anticipated that the national rule will be promulgated in 1997.

Conclusion

EPA has evaluated the revisions to the New Jersey Ozone SIP which consists of the adoption of a new rule Subchapter 24, "Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products," and has determined that all of the provisions contained in Subchapter 24 are consistent with EPA policy and guidance and are approvable. Therefore, EPA is proposing approval of Subchapter 24.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 30, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–1370 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL143–1b; FRL–5671–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Illinois' January 8, 1996, submittal of a site-specific State Implementation Plan (SIP) revision request for Reynolds Metals Company's McCook Sheet and Plate Plant in McCook, Illinois (in Cook County). The purpose of this request is to amend the State's volatile organic material (VOM) reasonably available control technology (RACT) requirements for Reynolds' aluminum rolling operations to mirror the facility's RACT requirements promulgated under the Chicago area Federal Implementation Plan. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 20, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 17, 1996.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 97–1332 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Part 194

RIN 2060–AE30

[FRL–5679–2]

Opportunity To Present Oral Testimony on the DOE's Compliance Certification Application for the Waste Isolation Pilot Plant; Notice of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings.

SUMMARY: The Environmental Protection Agency (EPA) intends to certify whether or not the Waste Isolation Pilot Plant (WIPP) will comply with EPA's environmental radiation protection standards for the disposal of radioactive waste (40 CFR part 191). The WIPP is being constructed by the Department of Energy (DOE) near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste. Pursuant to the WIPP Land Withdrawal Act of 1992, as amended, EPA must certify that the WIPP will comply with EPA's radioactive waste disposal standards, as well as other applicable environmental laws and regulations, before DOE may commence disposal of radioactive waste at the WIPP.

EPA will determine whether the WIPP will comply with EPA's disposal standards based on the application submitted by the Secretary of Energy. DOE's Compliance Certification Application was received by the EPA on October 29, 1996. EPA is reviewing the application and has requested supplemental information from DOE. Copies of the application and the letter from EPA to DOE requesting additional information are available for review at each of EPA's WIPP docket locations (see Supplementary Information for specifics). The Administrator will make a determination as to the completeness of the application in the near future and will notify the Secretary of Energy, in writing, when the Agency deems the application "complete." EPA will evaluate the "Department's" application in determining whether the WIPP will comply with the Agency's radioactive waste disposal standards. EPA requests public comment on all aspects of the DOE's application.

DATES: EPA will conduct public hearings to receive comments on the Department of Energy's (DOE) Compliance Certification Application for the Waste Isolation Pilot Plant (WIPP) in Carlsbad, NM on February 19, from Noon to 5:00 p.m. and from 7:00 p.m. to 9:00 p.m.; in Albuquerque, NM on February 20 from noon to 5:00 p.m. and from 7:00 p.m. until 9:00 p.m.; and in Santa Fe, NM from Noon to 5:00 p.m. and from 7:00 p.m. to 9:00 p.m.

Testifiers are requested to pre-register. Contact Rafaela Ferguson, EPA, by telephone or fax at (202) 233–9362 or (202) 233–9649 with the following information: Name/Organizational Affiliation (if any)/address/hearing date, location, time(s) available to testify, and a daytime telephone number. Individual speakers will be allocated 5 minutes and individuals testifying as the official representative or spokesperson on behalf of groups and organizations will be allocated 10 minutes for an oral presentation exclusive of any time consumed by questions from the government panel and answers to these questions. In order to guarantee an opportunity to testify, requests must be received by February 14, 1997. Speakers not registered in advance may register at the door and will be scheduled to testify, if openings are still available and time permits.

ADDRESSES: EPA's public hearings to accept comments on DOE's Compliance Certification Application will be held on February 19, at the Pecos River Village Conference Center, Room #5, 302 South Canal Street, Carlsbad, NM; on February 20, at the Albuquerque Convention Center, Cochiti/Taos Room, 401 Second Street, NW, Albuquerque, NM; and on February 21, at the Sweeney Convention Center, Room #1, 201 W. Marcy, Santa Fe, NM.

Information on EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and DOE's compliance certification application is listed under Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon–Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9. For purposes of judicial review, EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Note: The dockets in New Mexico only contain major items from the official docket (WDC) plus all those documents added to the official docket since October 1992 when the WIPP Land Withdrawal Act was enacted.

As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Rafaela Ferguson, Office of Radiation and Indoor Air, (202) 233–9362 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of transuranic (TRU) radioactive waste. TRU wastes are materials containing elements having atomic numbers greater than 92 in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes, with half-lives greater than twenty years, per gram of waste. Most TRU wastes are items that have become associated with the production of nuclear weapons, e.g., rags, equipment, tools, and contaminated organic and inorganic sludges.

On October 30, 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579) was enacted, and on September 23, 1996, the Act was amended. Among other things, the Act, as amended, specifies the terms and conditions for the DOE's activities at the WIPP and the regulatory requirements which apply throughout various stages of the repository's development including the requirement that before beginning disposal of radioactive wastes at the WIPP, DOE must demonstrate that the WIPP will comply with the Environmental Protection Agency's (EPA) radioactive wastes disposal standards, e.g., "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes" (40 CFR Part 191).

Under the Act, as amended, EPA is required to develop criteria for the Administrator's certification of compliance with the 40 CFR part 191 disposal standards. On February 11, 1993, EPA published an Advance Notice of Proposed Rulemaking, 58 FR 8029, in the **Federal Register** requesting information and comments pertinent to the development of the compliance criteria.

On January 11, 1995, EPA Administrator Carol Browner signed the proposed compliance criteria rule. The 90-day public comment period began on January 30, the date the proposed compliance criteria rule notice appeared at 60 FR 5766 in Part II of the **Federal Register**, and ended on May 1, 1995. EPA opened a second public comment period on August 1, which ended on September 15, 1995 (60 FR 39131). EPA issued final compliance criteria on February 9, 1996, at 61 FR 5224–5245, approximately one year after prosposal in the **Federal Register**. On March 29, 1996, EPA issued the Compliance Application Guidance (CAG) which provided DOE with specific guidelines regarding the format and content of the compliance certification application and a clear description of the information that EPA would need to make its certification decision. The guidance provided in the CAG is within the framework established by 40 CFR parts 194 and 191 and under the authority of the WIPP Land Withdrawl Act, as amended. On November 15, 1996, EPA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 61 FR 58499–58500, entitled "Decision to Certify Whether the Waste Isolation Pilot Plant Complies With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria." The WIPP Land Withdrawal Act, as amended, requires the DOE to demonstrate compliance with EPA's disposal standards and to submit an application for certification of WIPP's compliance to the EPA Administrator. In submitting such an application, the DOE must meet the requirements of the EPA compliance criteria that will be used by the Agency to certify whether or not the WIPP complies with the radioactive waste disposal standards.

If EPA decides that the WIPP meets its radioactive waste disposal standards, then DOE may proceed with the opening of the WIPP. Following the opening of the facility and throughout its operational phase, DOE will be required to submit a re-certification application to EPA every five years. The Agency will review this application and determine whether the WIPP remains in compliance with the disposal standards. The public will be permitted to inspect and comment on any re-certification application. By law, all public comments must be considered by the Agency prior to making a final decsion on WIPP's continued operation.

Dated: January 15, 1997.

Rob Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–1366 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS–130; Notice 4]

RIN 2137–AC30

Notice of Public Hearing; Response Plans for Onshore Oil Pipelines

AGENCY: Research and Special Programs Administration (RSPA), Office of Pipeline Safety (OPS), DOT.

ACTION: Announcement of public hearing; Correction.

SUMMARY: In proposed rule document 96–30316 beginning on page 60674 in the issue of Friday, November 29, 1996, RSPA did not include a full agenda. RSPA anticipates a discussion of the interim final rule 49 CFR part 194 in its entirety, including the issues identified in the following draft agenda. RSPA expects the meeting to be attended by a broad cross-section of the pipeline industry, as well as environmental groups, state environmental agencies, and other federal agencies such as the Environmental Protection Agency and the National Transportation Safety Board. The draft agenda is as follows:

January 29, 1997, 8:30 a.m.–4:30 p.m.

New Orleans Hilton Riverside in New Orleans, Louisiana

Opening Remarks

Definition of significant and substantial harm

Facility response plan requirements for pipelines transporting hazardous substances

Credit for secondary containment around breakout tanks

Update on RSPA breakout tank regulations, and adoption of API standards 650–653

Changing RSPA plan review cycle from three-year cycle to five-year cycle

Regulatory definition of "oil" for purposes of response planning

Requirement for secondary communications systems for emergency response

Jurisdictional issues for offshore pipelines

Planning for "a substantial threat of a discharge"

Distribution of exercise guidance document

Incorporating the PREP guidance into 49 CFR 194 by reference

Developing a tool to measure how pipeline operators implement their FRP

Adopting the National Response Team's Integrated Contingency Plan

Use of NAVIC–72 & EPA guidelines to assess response resources

Elimination of references to high/low volume port tiers

Requirement for response strategies/ techniques

Adjourn

Issued in Washington, D.C. on January 14, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–1291 Filed 1–17–97; 8:45 am]

BILLING CODE: 4910–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7202]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Colorado Springs (City), El Paso County.	Pine Creek	Approximately 950 feet upstream of Interstate 25.	None	*6,319
			Approximately 480 feet upstream of Academy Boulevard.	None	*6,441
		Pine Creek Tributary	Approximately 225 feet above confluence with Pine Creek.	None	*6,378
			Approximately 2,100 feet upstream of confluence with Pine Creek.	None	*6,398
Maps are available for inspection at the City of Colorado Springs Regional Building Department, 101 West Costilla Street, Colorado Springs, Colorado.					
Send comments to The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.					
	Manitou Springs (City), El Paso County.	Sutherland Creek	Approximately 1,200 feet upstream of confluence with Fountain Creek.	None	*6,267
			Approximately 1,250 feet upstream of Crystal Hills Boulevard.	None	*6,505
Maps are available for inspection at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.					
Send comments to The Honorable Gherald "Bud" Ford, Mayor, City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, Colorado 80829.					
	Monument (Town), El Paso County.	Black Forest-Baptist Road Tributary.	At Baptist Road	None	*7,020
			Approximately 120 feet upstream of Baptist Road.	None	*7,022
		Crystal Creek	Approximately 70 feet upstream of confluence with Monument Lake.	*6,220	*6,923

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 160 feet downstream of Interstate 25.	None	*7,053
		Dirty Woman Creek	At Mitchell Street	*6,883	*6,886
			Just downstream of Westwood Lane	None	*6,995

Maps are available for inspection at the Town Hall, 166 Second Street, Monument, Colorado.

Send comments to The Honorable Si Bell, Mayor, Town of Monument, 166 Second Street, Monument, Colorado 80132.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 10, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1279 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[CC Docket No. 96–149, FCC 96–489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On December 24, 1996, the Commission released a First Report and Order which is published elsewhere in this issue. On the same day, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on proposed disclosure requirements to implement section 272(e)(1). The intended effect of this FNPRM is to further the Commission's goal of fostering competition in the telecommunications market.

DATES: Comments are due on or before February 19, 1997 and Reply Comments are due on or before March 21, 1997. Written comments by the public on the proposed and/or modified information collections are due February 19, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 24, 1977.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarker, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this FNPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted December 23, 1996 and released December 24,1996 (FCC 96–489). This FNPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96489.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Paperwork Reduction Act: This FNPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due March 24, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0736.

Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Information collection	Number of respondents (approximate)	Estimated time per response (hours)	Total annual burden (hours)
Service interval disclosure (information disclosure requirement)	5	24	120
Annual affidavit ...	5	.5	2.5

Total Annual Burden: 122.5 hours.

Respondents: Business or other for profit.

Estimated costs per respondent: $0.

Needs and Uses: The FNPRM seeks comment on a number of issues, the result of which could lead to the imposition of information collections. The FNPRM seeks comment on certain reporting requirements to implement the non-accounting nondiscrimination requirements of Section 272(e)(1) of the Communications Act.

Synopsis of Further Notice of Proposed Rulemaking

A. Information Disclosure Requirements Under Section 272(e)(1)

1. Background

Section 272(e)(1) states that BOCs "shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates." In the NPRM, we sought comment on how to implement section 272(e)(1) and specifically inquired whether reporting requirements for service intervals analogous to those imposed by *Computer III* and *ONA* would be sufficient. We concluded above, in Part VI.A, that specific public disclosure requirements are necessary to implement section 272(e)(1) effectively. We also noted that the record does not provide sufficient detail for us to determine whether the current *ONA* disclosure requirements are suitable for assessing compliance with section 272(e)(1), or whether requirements are suitable for assessing compliance with section 272(e)(1), or whether another proposal, such as AT&T's proposed reporting requirements, would be a better approach.

2. Comments

AT&T, Teleport, and MCI support the imposition of reporting requirements to implement section 272(e)(1) and argue that the existing *ONA* installation and maintenance reporting requirements are insufficient. AT&T suggests, for example, that the service interval reporting requirements established in the *ONA* proceeding measure average response times, and would not provide an adequate mechanism for determining whether a BOC is complying with section 272(e)(1).

AT&T proposes a reporting scheme that is based on measures it currently uses to monitor the quality of access services provided to it by LECs. AT&T proposes that the BOCs report data in eleven categories, most of which are broken down into subcategories according to the type of access service provided. AT&T's proposal includes relatively specific units of measure for these categories, such as, for example, the percentage of circuits installed within each successive twenty-four hour period, until a ninety-five percent installation level is reached. According to AT&T, LECs currently track information in these categories to monitor the service they provide to AT&T.

Teleport proposes a reporting format that includes eight service categories for both installation and service performance. MCI proposes categories based on those used in Automated Reporting Management Information Systems (ARMIS), including additional categories for billing disputes and payment intervals. MCI proposes quarterly reporting broken down among the BOC, its affiliate, and all other unaffiliated entities.

The BOCs oppose AT&T's proposal. Bell Atlantic, for instance, states that some of the categories in AT&T's proposal ask for information beyond the information AT&T currently requests from the BOCs. Bell Atlantic further argues that AT&T improperly proposes that the BOCs report on intermediate checkpoints that do not provide information on the ultimate timeliness of the BOCs' provision of service. Several BOCs argue that the information AT&T seeks is already available in existing ARMIS reports. Ameritech opposes the monthly updates proposed by AT&T, favoring quarterly updates instead. Ameritech opposes reporting that would provide detail below a BOC's total service region. Ameritech favors consolidating AT&T's DS0 subcategories into a single DS0 category. PacTel argues that the disclosure of the absolute number of requests placed by its affiliate would reveal competitively sensitive information, and that disclosure of relative data, such as the percentage of missed appointments and average time intervals, would provide sufficient information to monitor BOC behavior.

BOCs also oppose Teleport's proposal. PacTel disagrees with Teleport's suggestion that BOCs provide data for each exchange area in their territory. PacTel also indicates that reporting on DS0 as a separate category would unfairly disadvantage the one interexchange carrier that dominates the DS0 market.

While the BOCs generally oppose reporting requirements, they state that, if the Commission imposes a reporting requirement, the *ONA* format should be utilized because it is currently in place and is well-understood. PacTel provides an example of a modified *ONA* report that reflects the services provided to interLATA telecommunications providers. Ameritech indicates that it would not oppose a reporting requirement that compares data for BOC affiliates with aggregated data for all unaffiliated carriers.

3. Discussion

In order to implement section 272(e)(1) effectively, we concluded that the BOCs must make publicly available the intervals within which they provide service to their affiliates. We concluded that, without this requirement, competitors will not have the information they require to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1).

Method of information disclosure. In requiring the BOCs to disclose information regarding the service intervals within which they provide telephone exchange service and exchange access, we seek to avoid imposing any unnecessary administrative burdens on the BOCs, unaffiliated entities, and the Commission. Consequently, we tentatively conclude that the BOCs need not submit directly to the Commission the data that must be disclosed under section 272(e)(1). Instead, we tentatively conclude that, upon receiving permission to provide interLATA services pursuant to section 271, each BOC must submit a signed affidavit stating: (1) the BOC will maintain the required information in a standardized format; (2) the information will be updated in compliance with our rules; (3) the information will be maintained accurately; and (4) how the public will be able to access the information. We

tentatively conclude that, if a BOC makes any material change in the manner in which the information covered by the affidavit is made available to the public, it must submit an updated affidavit within 30 days of the change. Further, we tentatively conclude that each BOC must submit an annual affidavit each year thereafter, affirming that the BOC has complied with the four requirements set out above during the preceding year. We note that, in order to address potential complaints alleging discrimination pursuant to section 272(e)(1), the BOCs are likely to maintain information regarding the service they provide to their affiliates and to unaffiliated entities, regardless of whether they must disseminate such information publicly or file it with the Commission. Therefore, we tentatively conclude that maintaining this information for public dissemination will not impose a significant additional burden on the BOCs. We seek comment on the foregoing tentative conclusions.

We tentatively conclude that the BOCs must make such information available to the public in at least one of their business offices during regular business hours, and must include this information in their annual affidavits. We seek comment on this tentative conclusion. We seek comment on whether this information should also be available electronically. For example, we seek comment on whether the BOCs should make this information available on the Internet, or whether the information should be available through another electronic mechanism. We also seek comment on other methods to facilitate the access and use of this information by unaffiliated entities, including small entities.

Service categories and units of measure. We seek comment on whether the BOCs should maintain the information described below in a standardized format, and seek comment on whether the format in the attachment would be appropriate. Parties favoring an alternative format should submit examples of their proposals.

We seek comment on whether we should require the BOCs to maintain information in the following service categories: (1) successful completion according to desired due date, measured in a percentage; (2) time from the BOC-promised due date to circuit being placed in service, measured in terms of the percentage installed within each successive twenty-four hour period until ninety-five percent complete; (3) time to firm order confirmation, measured in terms of the percentage received within each successive twenty-four hour period until ninety-five percent complete; (4) time from PIC change requests to implementation, measured in terms of percentage implemented within each successive six hour period until ninety-five percent complete; (5) time to restore and trouble duration, measured in terms of the percentage restored within each successive one hour interval until ninety-five percent of incidents are resolved; (6) time to restore PIC after trouble incident, measured by percentage restored within each successive one hour interval until ninety-five percent restored; and (7) mean time to clear network and the average duration of trouble, measured in hours. We seek comment on whether any additional categories proposed by commenters should be included.

We have sought comment on whether the BOCs should disclose the interval between the due date promised by the BOC and the time a circuit is actually placed in service, measured in terms of the percentage of circuits installed within each successive twenty-four hour period. We have sought comment on a category that differs from AT&T's proposed category, which would measure a BOC's response time in relation to a customer's desired due date, because we recognize that the BOCs have no control over a customer's requested due date. We have proposed this category because the BOCs have control over the due date they promise at the time an order is placed. Further, the amount of delay in installing a circuit, and not just whether a due date was missed, may be a significant source of difficulty to a customer. Because our service category differs from the service category proposed by AT&T, we seek comment on whether any corresponding changes to the unit of measure are warranted.

We seek comment on whether we should require the BOCs to disclose the BOC-promised due date itself, *i.e.*, the length of the interval promised by the BOCs to their affiliates at the time an order is placed. Parties favoring such a disclosure should provide a detailed description of the appropriate unit of measure and level of aggregation for these disclosures.

We seek comment on whether our proposed service categories and units of measure for these categories are more appropriate to implement section 272(e)(1) than the categories currently included in the *ONA* installation and maintenance reports or than PacTel's proposed modification of *ONA* installation and maintenance reports. Our proposal addresses the provision of exchange access to interLATA service providers, unlike *ONA* reports, which address the provision of *ONA* unbundled elements to enhanced service providers. The units of measure in our proposal are more precise than the *ONA* intervals. We therefore seek comment on whether these measures will provide a better guide for unaffiliated entities and the Commission to determine whether the BOCs are complying with section 272(e)(1).

We recognize that our proposal is patterned after arrangements regarding the provision of access between interexchange carriers and LECs. We seek comment on whether these categories will also provide sufficient information to ISPs, and whether our proposal is sufficient to implement the nondiscriminatory provision of telephone exchange service in accordance with section 272(e)(1).

We do not believe that the requirements proposed here will impose a significant additional administrative burden on the BOCs, particularly because under our existing price cap rules, the BOCs must track service intervals for end-users as part of their service quality reporting requirements. Nevertheless, we seek comment on whether, and to what extent, the industry or state regulators currently collect data using the service categories and units of measure included in our proposal, and the need for the BOCs to modify their current tracking systems to comply with our proposal.

Several BOCs argue that extensive reporting of their affiliates' requests could cause competitive harm to their affiliates. Specifically, PacTel argues that relative data such as the percentage of missed appointments and average time intervals provide sufficient information to monitor BOC behavior, and that the disclosure of absolute figures for the number of orders placed by an affiliate would reveal competitively sensitive proprietary information. We seek comment on whether our proposal, which uses percentages and averages and does not require disclosure of the absolute number of BOC affiliate requests, adequately protects the competitive interests of BOC affiliates. Any party favoring other levels of aggregation should provide a specific alternative proposal and explain why that alternative proposal is sufficient to implement section 272(e)(1). The party should also explain how its alternative proposal addresses commenters' concerns regarding the inadequacy of *ONA* installation and maintenance reporting requirements.

Frequency of Updates and Length of Retention. We seek comment on how

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often the BOCs should be required to update the data that they must maintain. For example, we seek comment on whether the BOCs should update the data quarterly or monthly. Parties should substantiate their positions by comparing the amount of underlying data used to produce *ONA* reports or other reports that are prepared on a quarterly basis, with the amount of data that will be used to produce the information in our proposal. We also seek comment on how long the BOCs must retain the data that they must maintain.

Levels of Aggregation. Because section 272(e)(1) states that the BOCs must fulfill requests for unaffiliated entities in the period of time that the BOCs provide service to "itself or to its affiliates," we seek comment on whether the BOCs should aggregate their own requests and the requests of all of their affiliates for each service category, or whether they should maintain data for each affiliate and themselves separately. We seek comment on whether the BOCs should maintain separate data for each state in their service regions. Parties favoring other levels of aggregation, such as by BOC region, or by exchange area, should provide detailed support for their proposals.

We seek comment on whether the BOCs should provide the information required in service categories four and six, described above, by carrier identification code (CIC). We seek comment on whether the BOCs should provide the information required by service category seven in two subcategories: DS1 Non-Channelized and DS0. We seek comment on whether information in all other service categories should be broken down into three subcategories: DS3, DS1, and DS0. We also seek comment on whether, in the alternative, we should further divide the DS0 subcategory into DS0 Voice Grade and DS0 Digital, as suggested by AT&T.

Consistency with other reporting requirements. We seek comment on the extent of overlap, if any, between the disclosure requirements we propose in this Further NPRM and reporting currently required by state commissions. We also seek comment on whether the information provided under ARMIS form 43–05 provides sufficient information to implement section 272(e)(1), as several BOCs suggest, or whether further disaggregation of the ARMIS service categories is necessary, as MCI suggests. Parties that favor relying on ARMIS data alone, rather than imposing an information disclosure requirement under section 272(e)(1), should explain why ARMIS reports are sufficient, given that ARMIS reports must be filed on an annual basis and that they focus on services provided to the end-user, rather than services provided between carriers. Any parties contending that sufficient information to enforce section 272(e)(1) is available from other sources should explain, in detail, the categories and units of measure included in these alternative sources as compared with our proposal. Finally, we note that much of Teleport's proposal appears directed toward the implementation of local competition by incumbent LECs, and therefore does not address service intervals provided by the BOCs. Teleport has raised many of these same proposals in its petition for reconsideration of the *First Interconnection Order* 61 FR 45476 (August 29, 1996). We tentatively conclude, therefore, that we should limit the scope of the proposals considered in this docket to requirements necessary to implement the service interval requirements of section 272(e)(1). We seek comment on this tentative conclusion.

B. Procedural Matters

1. Ex Parte Presentations

This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.

2. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, (RFA) as amended, requires an initial regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a significant number of small entities." A "small entity" is an entity that is "independently owned and operated, * * * not dominant in its field of operation," and meets any additional criteria established by the Small Business Admfnistration (SBA). SBA regulations define small telecommunications entities in SIC code 4813 (Telephone Companies Except Radio Telephone) as entities with fewer than 1,500 employees. This proceeding pertains to the BOCs which, because they are dominant in their field of operation and have more than 1,500 employees, do not qualify as small entities under the RFA. We now note as well that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. We therefore certify, pursuant to section 605(b) of the RFA, that the rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this Further NPRM, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

3. Initial Paperwork Reduction Act of 1995 Analysis

This Further NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this Further NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

4. Comment Filing Procedures

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before February 19, 1997, and reply comments on or before March 21, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544,

Washington, DC., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

Written comments by the public on the proposed and/or modified information collections are due February 19, 1997, and reply comments must be submitted not later than March 21, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain_t@al.eop.gov.

C. Ordering Clauses

It is further ordered that pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r) the further notice of proposed rulemaking is adopted. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

It is further ordered that the Secretary shall send a copy of this further notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

ATTACHMENT.—FORMAT FOR INFORMATION DISCLOSURES PURSUANT TO SECTION 272(e)(1)

Service category	Types of access	Outcome for BOC and BOC affiliates
(1) Successful Completion According to Desired Due Date (measured in a percentage)	DS3 and above. DS1. DS0.	
(2) Time from BOC Promised Due Date to Circuit being placed in service (measured in terms of percentage installed within each successive 24 hour period, until 95% installation completed).	DS3 and above. DS1. DS0.	
(3) Time to Firm Order Confirmation (measured in terms of percentage received within each successive 24 hour period, until 95% completed).	DS3 and above. DS1. DS0.	
(4) Time from PIC Change request to implementation (measured in terms of percentage implemented within each successive 6 hour period, until 95% completed).	By CIC (10XXX).	
(5) Time to Restore and trouble duration (percentage restored within each successive 1 hour interval, until resolution of 95% of incidents).	DS3 and above. DS1. DS0.	
(6) Time to restore PIC after trouble incident (measured by percentage restored within each successive 1 hour interval, until resolution of 95% restored).	By CIC (10XXX).	
(7) Mean time to clear network / average duration of trouble (measured in hours)	DS1 Non-Channelized. DS0.	

[FR Doc. 97–1389 Filed 1–17–97; 8:45 am]
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47 CFR Part 73

[MM Docket No. 96–247, RM–8914]

Radio Broadcasting Services; Pangburn, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Greers Ferry Broadcasting requesting the allotment of Channel 256A to Pangburn, Arkansas, as that community's first local aural transmission service. Coordinates used for Channel 256A at Pangburn are 35–26–52 and 91–48–57.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Rick D. Rhodes, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, NW., Suite 200, Washington, DC 20036–3101.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–247, adopted November 22, 1996, and released December 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 97–1348 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–246, RM–8904]

Radio Broadcasting Services; Salida, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Cyrus Esphahanian requesting the allotment of Channel 229C3 to Salida, Colorado, as that community's second local FM service. Coordinates used for Channel 229C3 at Salida are 38–29–10 and 105–58–53.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin and Richard J. Estevez, Esqs., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, 11th Floor, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–246, adopted November 22, 1996, and released December 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140,Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 97–1349 Filed 1–17–97; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14, Notice 112]

Federal Motor Vehicle Safety Standards; Occupant Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of technical workshop; request for comments.

SUMMARY: This document announces that NHTSA will be holding a public workshop to explore technical issues relating to the agency's occupant protection standard and smart air bags. The purposes of the workshop are to—

- Review the types of smart air bags (e.g., automatic deactivation based on weight sensors, automatic deactivation based on other or additional types of sensors, and automatic modulation of the speed and force of air bag deployment so as not to seriously injure occupants) and the specific technologies which can be used, singly or in combination, to provide smart capability;
- Assess the suitability of the agency's definitions of smart passenger air bags (provided in the agency's November 27, 1996 labeling final rule), and discuss appropriate definitions for smart driver air bags;
- Assess which types of specific smart air bag technologies or combinations of technologies are best suited for addressing passenger risks

and which are best suited for addressing driver risks;

- Consider what test procedures and test devices should be proposed by the agency to assure the proper performance of each type of smart air bag in the short run, and what procedures and devices would be appropriate for the long term;
- Consider whether, in the interest of promoting the early availability of reliable smart air bags, manufacturers should be encouraged or required to install relatively simple versions of smart air bags in the short term;
- Consider whether, in the interest of minimizing the risk of air bag deaths and preserving or enhancing air bag benefits, manufacturers should be encouraged or required to install more sophisticated smart air bags in the long run;
- Consider whether to use a phase-in and, if so, what phase-in schedule(s) should be proposed for smart passenger and driver air bags; and
- Discuss other issues related to the rapid introduction of smart air bag systems.

DATES: *Public workshop:* The public workshop will be held in Washington DC on February 11 and 12, 1997, from 9:00 a.m. to 5:00 p.m.

Those wishing to participate in the workshop should contact Clarke Harper, at the address or telephone number listed below, by January 31, 1997. Copies of statements to be presented on the first day of the workshop should be provided to Mr. Harper by February 7, 1997.

Written comments: Written comments may be submitted to the agency and must be received by February 21, 1997.

ADDRESSES: *Public workshop:* The public workshop will be held in room 2230 of the Nassif Building, 400 Seventh St. SW., Washington DC 20590.

Written comments: All written comments must refer to the docket and notice number of this notice and be submitted (preferable 10 copies) to the Docket Section, National Highway Traffic Safety Administration (NHTSA), Room 5109, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clarke Harper, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590 (telephone 202–366–2264; fax 202–493–2739).

SUPPLEMENTARY INFORMATION:

I. Background

The history of NHTSA's consideration of air bags to address the problem of deaths in frontal vehicle impacts is almost as long as the history of the agency itself. In 1969, three years after the enactment of the National Traffic and Motor Vehicle Safety Act of 1966, the agency held its first public meeting on air bags.

The agency's first requirement for automatic restraints (i.e., automatic belts or air bags) was issued in the early 1970's, but was overturned on judicial review due to several ambiguities in the test procedures. A requirement for automatic restraints was reissued by Secretary Adams in 1977 and rescinded by the agency in the early 1980's because it concluded that the vehicle manufacturers were planning to install a type of automatic belt that the agency regarded as unlikely to be effective in increasing belt use. After the U.S. Supreme Court overturned the rescission, Secretary Dole reissued a requirement for automatic restraints in 1984. The 1984 rule encouraged, but did not require, the installation of air bags. Manufacturers continued under the rule to have the option of installing automatic belts.

Since then, there has been considerable experience with air bags.[1] Manufacturers responded to the agency's third automatic restraint requirement by voluntarily choosing to install significant numbers of driver air bags instead of automatic belts in cars beginning in model year 1986 and in light trucks beginning in model year 1991. Installation of passenger air bags came somewhat later. Manufacturers began voluntarily installing significant numbers of passenger air bags in cars in model year 1989 and in light trucks in model year 1994. As of the end of model year 1996, approximately 56 million driver air bags and 27 million passenger air bags had been installed in cars and light trucks. All were voluntarily installed. The first federally-required air bags appeared after model year 1996. Mandatory installation of air bags in passenger cars began with the current model year, model year 1997, pursuant to section 2508 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and will begin for light trucks in model year 1998.

While these air bags saved approximately 1,700 lives through the end of 1996 and prevented many more serious injuries, they pose a lethal danger to infants in rear-facing child seats and to some other occupants, primarily unbelted ones, in low speed collisions. Air bags are killing a growing number of children. They have also killed a number of drivers, especially short women, although only one driver is known to have been killed by an air bag in this country in calendar year 1996.[2]

The agency has conducted a series of rulemaking proceedings over the last four years to address the risks posed by air bags. Most recently, the agency issued two final rules on this issue. One required new, attention-getting warning labels for child restraints and for vehicles without a "smart" passenger air bag, i.e., an air bag that automatically shuts off or adjusts its deployment so as not to adversely affect children. The other final rule extended the period during which manufacturers may install manual devices for deactivating passenger air bags in vehicles lacking a rear seat that can accommodate child restraints.

The agency also issued two proposals to provide interim solutions to the adverse side effects of air bags. One proposal would permit the deactivation of driver and passenger air bags in existing vehicles and in vehicles manufactured during the next several model years. The other proposal sets forth two alternatives to permit the depowering of air bags.

The first alternative depowering proposal would increase the current limit on the level of chest g's permitted in tests using an unbelted dummy. While Standard 208 does not specify a particular level of power, it does have the effect of limiting the extent to which air bags can be depowered. Many air bags cannot be sufficiently depowered without violating the existing limit or cutting into the compliance margins needed by the manufacturers. The second alternative would allow greater levels of depowering, by simplifying the test procedures and specifying a single crash pulse regardless of vehicle size. It would also allow all air bags in need of

[1] The first installation of air bags occurred a decade earlier. In the mid-1970's, driver and passenger air bags were installed in approximately 10,000 passenger cars by General Motors.

[2] The agency's figures for driver fatalities are based on information that NHTSA has developed through NHTSA's Special Crash Investigation program and are not the result of a census. Studies of Fatal Accident Reporting System data are underway to obtain more precise figures.

depowering to be modified and tested more quickly.

II. Smart Air Bags

There is a consensus among national regulatory authorities in this country and Canada, the vehicle industry and its suppliers, insurance industry and consumer groups that the smart air bag is the best means in the long term for preventing air bag deaths and preserving and even enhancing air bag benefits. In a November 22, 1996 press conference, NHTSA announced that it was considering issuing a proposal to mandate the phasing-in of smart air bags, beginning with 1999 models.

The agency defined smart passenger air bags as follows in its final rule on the new labels (S4.5.5 of Standard No. 208):

For purposes of this standard, a smart passenger air bag is a passenger air bag that:

(a) Provides an automatic means to ensure that the air bag does not deploy when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat, or

(b) Incorporates sensors, other than or in addition to weight sensors, which automatically prevent the air bag from deploying in situations in which it might have an adverse effect on infants in rear-facing child seats, and unbelted or improperly belted children, or

(c) Is designed to deploy in a manner that does not create a risk of serious injury to infants in rear-facing child seats, and unbelted or improperly belted children.

This definition was intended to broadly encompass passenger air bag designs that automatically avoid injuring the two groups of children shown by experience to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys. The agency has not provided a definition for driver smart air bags.

Vehicle manufacturers and air bag suppliers are working on many different design concepts that could, individually or when used with other concepts, qualify as smart air bags. The simplest concept, for passenger air bags, appears to be a weight sensor that would deactivate the air bag when either no passenger or only a child of less than 30 kilograms or 66 pounds is present. Other concepts include automatic deactivation based on other or additional types of sensors, such as ones which sense occupant position, and automatic modulation of the speed and force of air bag deployment (e.g., using dual or multiple level inflators) so as not to seriously injure occupants.

Vehicle manufacturers have broad flexibility to introduce smart air bags under the existing provisions of Standard No. 208. Smart air bags were permissible under the 1984 requirements and continue to be permissible today, even under the standard as amended pursuant to ISTEA.[3]

III. Air Bag Safety Meeting

On January 6, 1997, the NHTSA and the National Transportation Safety Board co-sponsored an Air Bag Safety Meeting of interested persons from government, industry and consumer groups. The participants focused on behavioral solutions, including public education, legislation regarding safety use laws, and enforcement, and on technological solutions, especially smart air bags.

IV. Public Workshop

A. Purposes

The purposes of the workshop are to—

- Review the types of smart air bags (e.g., automatic deactivation based on weight sensors, automatic deactivation based on other or additional types of sensors, and automatic modulation of the speed and force of air bag deployment so as not to seriously injure occupants) and the specific technologies which can be used, singly or in combination, to provide smart capability;
- Assess the suitability of the agency's definitions of smart passenger air bags (provided in the agency's November 27, 1996 labeling final rule), and discuss appropriate definitions for smart driver air bags;
- Assess which types of specific smart air bag technologies or combinations of technologies are best suited for addressing passenger risks and which are best suited for addressing driver risks;
- Consider what test procedures and test devices should be proposed by the agency to assure the proper performance of each type of smart air bag in the short run, and what procedures and devices would be appropriate for the long term;
- Consider whether, in the interest of promoting the early availability of reliable smart air bags, manufacturers should be encouraged or required to install relatively simple versions of smart air bags in the short term;
- Consider whether, in the interest of minimizing the risk of air bag deaths and preserving or enhancing air bag benefits, manufacturers should be encouraged or required to install more sophisticated smart air bags in the long run;
- Consider whether to use a phase-in and, if so, what phase-in schedule(s) should be proposed for smart passenger and driver air bags; and
- Discuss other issues related to the rapid introduction of smart air bag systems.

NHTSA is especially interested in specific technical input concerning how a regulation, including appropriate test procedures, can be crafted that would ensure that the adverse effects of air bags are addressed by the expeditious implementation of effective, reliable smart air bags, without being unnecessarily design restrictive. The agency notes that there is limited time to develop new test procedures, since the agency expects manufacturers to begin to phase in smart air bags by model year 1999. Therefore, the agency solicits comments on those requirements and test procedures that would be appropriate for the short term (i.e., through model year 2002) and those that would be appropriate in the long term.

At the January 6, 1997 air bag safety meeting, the American Automobile Manufacturers Association recommended that the agency consider the following three principles in developing a proposal for smart air bags: (1) Optimize protection for restrained occupants, (2) Do no harm to children and small-statured adults, and (3) Highest feasible protection for unrestrained adults. The agency requests comments on this recommendation and on possible test

[3] The Standard's automatic protection requirements are performance requirements and do not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on properly positioned test dummies, during a barrier crash test, at speeds up to 30 mph.

While the Standard requires air bags to provide protection for properly positioned adult occupants (belted and unbelted) in relatively severe crashes, and very fast air bags may be necessary to provide such protection, the standard does not require the same speed of deployment in the presence of out-of-position occupants, or even any deployment at all. Instead, the standard permits the use of dual or multiple level inflator systems and automatic cut-off devices to protect out-of-position occupants and rear-facing infants. Therefore, regulatory changes are not needed to permit manufacturers to implement these solutions.

The agency also notes that there are many other variables in air bag design and related vehicle design that can affect potential aggressivity. Variables related to air bag design include air bag volume, fold patterns, tethering, venting, mass/material, shape and size of air bag module opening, and module location and deployment path. Related vehicle design variables include such things as recessing the inflator/air bag in the steering wheel assembly or in the dash, pedal adjusters, safety belt pretensioners and webbing clamps. The standard's performance requirements permit manufacturers to adjust all of these variables to minimize adverse effects of air bags.

procedures that could result in air bag designs consistent with these principles.

The agency notes that there are particular challenges in developing test procedures to ensure the proper functioning of smart air bag concepts other than weight sensors. In the case of weight sensors, it appears that a relatively simple, inexpensive static test procedure could be developed. The procedure would check whether the sensor ensured that the air bag was on or off under specified conditions related to the amount of weight on the seat, and perhaps the distribution of that weight.

However, dynamic procedures might be needed to assess the performance of other smart air bag concepts. For example, in order to measure the performance of a system which deactivated the air bag based on occupant position, it might be necessary to check whether the sensor would reliably turn the air bag off in such situations as that of a child who is propelled into the dashboard as a result of pre-crash braking just before a crash. In order to measure the performance of a system which used automatic modulation of the speed and force of air bag deployment, it might be necessary to check whether the forces from the air bag would cause injury to occupants in various conditions, possibly using dummies. NHTSA notes that, given the large number of potential conditions involving out-of-position occupants, a wide array of conditions might need to be tested to ensure adequate performance.

The agency requests comments on whether and how adequate performance can or should be ensured solely by means of dynamic test requirements, and, if not, what other regulatory approaches might be appropriate. NHTSA notes that, in its rulemaking to improve the stability and control of medium and heavy vehicles during braking, it adopted the approach of requiring vehicles to be equipped with antilock brake systems that meet a specific definition, and supplementing that requirement with limited dynamic performance requirements. See 60 FR 13216; March 10, 1995. The agency requests comments on whether an approach along those lines might be appropriate for a proposal for smart air bags, either as an interim measure to get requirements in place quickly or as a longer term approach as well.

NHTSA requests that vehicle manufacturers and air bag suppliers provide written comments describing their recent and anticipated efforts to develop and assess smart air bag technologies. The agency specifically requests that they provide descriptions of their recent and anticipated component and vehicle testing, market surveys, and any other developmental work. NHTSA recognizes the sensitivity of this information and will protect confidentiality as authorized by law.

B. Procedural Matters

February 11

The first day will be devoted to presentations by public participants concerning technical issues. The time available for individual presentations will be determined by the agency based on the number of persons who submit requests to participate by the January 31 deadline. If necessary, parties with similar points of view will be encouraged to coordinate their presentations to avoid duplication.

February 12

The second day will be devoted to an interactive discussion among interested persons. Procedures for encouraging an exchange of ideas during the interactive phase of the workshop will be discussed at the beginning of the session on that day. Those persons interested in actively participating in this phase of the workshop should contact Mr. Harper not later than January 31. The agency will make available an agenda setting forth the sequence of issues to be discussed during the interactive phase.

To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the workshop. Any person desiring assistance of auxiliary aids should contact Ms. Bernadette Millings, NHTSA Office of Crashworthiness Standards, telephone (202) 366–1740, no later than 10 days before the workshop. For any presentation that will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the workshop so that NHTSA can readily include the material in the public record.

NHTSA will place a copy of any written statement in the docket for this notice. In addition, the agency will make a verbatim record of the public workshop and place a copy in the docket.

IV. Written Comments

Participation in the workshop is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: January 14, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–1292 Filed 1–14–97; 4:28 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 011397D]

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will

hold one public hearing on Draft Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) and its associated analyses of regulatory and environmental impacts, including a draft supplemental environmental impact statement (DSEIS).

DATES: Written comments on Amendment 8 will be accepted until January 27, 1997. The public hearing will be held on January 24, 1997, at 6 p.m. and will end when business is completed. Council staff members will be available at the hearing location from 5 p.m. to 6.p.m. (1 hour before the hearing) to answer any questions about the amendment.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Copies of the draft amendment and DSEIS are available from Susan Buchanan at 803–571–4366. The draft amendment and DSEIS will also be available to the public at the hearing. The hearing will be held at the Monroe County Regional Service Center, 2798 Overseas Highway (mile marker 47.5 Gulf side), Marathon, FL 33050; telephone: 305–289–2543.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Council is holding a public hearing on Draft Amendment 8 to the FMP and associated analyses of regulatory and environmental impacts, including a DSEIS. A January 10, 1997, hearing at the Banana Bay Resort was previously announced at 61 FR 67294 (December 20, 1996) and 62 FR 384 (January 3, 1997). That hearing was cancelled and this document announces the rescheduled date of January 24, 1997.

Amendment 8 includes the following management measures:

1. Limit permit holders to those who can demonstrate landings of at least 1,000 lb (454 kg) of snapper-grouper species in 2 of the 3 years, 1993, 1994, and 1995, and have held a valid snapper-grouper permit for those years.

2. Control fishing effort by establishing trip limits for identified sub-unit groups of species within the FMP's management unit.

3. Redefine the FMP's definitions of overfishing and optimum yield for all species in the snapper-grouper management unit.

4. Increase the red porgy minimum size limit from 12 inches (30.5 cm) total length (TL) to 14 inches (36 cm) TL for recreational and commercial fishermen and establish a recreational fishery bag limit of two red porgy.

5. Increase the black sea bass minimum size limit from 8 inches (20.3 cm) TL to 10 inches (25.4 cm) TL for both recreational and commercial fishermen.

6. Designate a black sea bass Special Management Zone.

7. Establish a recreational fishery bag limit of 10 black sea bass.

8. Require escape vents and escape panels with degradable fasteners in black sea bass pots.

9. Establish measures for greater amberjack that would extend the April closure throughout the South Atlantic EEZ and prohibit sale during April, reduce the recreational fishery bag limit to one fish per person per day, implement a commercial quota to reduce landings by 21 percent based on average landings from 1986–1995, implement a 500–1,000 lb (227–454 kg) trip limit, change the start of the fishing year from January 1 to July 1, and prohibit coring.

10. Establish, effective January 1, 1998, an annual commercial quota for vermilion snapper of 600,000 lb (272,155 kg), a recreational fishery bag limit of five fish, and a recreational fishery minimum size limit of 12 inches (30.5 cm).

11. Increase the gag minimum size limit from 20 inches (50.8 cm) TL to 24 inches (61 cm) TL for the commercial and recreational fisheries, and prohibit all harvest January through March.

12. Require logbook reporting by the 10th of the month following the month of fishing activity.

13. Establish a zone in the South Atlantic exclusive economic zone (EEZ) through which vessels carrying fish traps could transit if they have valid Gulf reef fish permits and fish trap endorsements.

14. Restrict vessels with bottom longline gear on board to possessing only snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.

15. Allow use of one bait net per boat, up to 50 ft (1,524 cm) long by 10 ft (305 cm) high with a stretched mesh size of 1.5 inches (3.75 cm) or smaller; also, allow possession and use of cast nets for catching bait.

16. Allow species within the snapper grouper fishery management unit (whether whole or fillets) caught in Bahamian waters in accordance with Bahamian law, to be possessed on board a vessel in the EEZ and landed in the United States, provided the vessel is in transit from the Bahamas and valid Bahamian fishing and cruising permits are on board.

17. Establish an aggregate snapper-grouper recreational fishery bag limit of 20–25 fish inclusive of all species in the snapper-grouper fishery management unit.

18. The Council is considering a number of options under this action to reduce fishing mortality, including establishing a closure of the South Atlantic EEZ for species in the snapper-grouper fishery management unit, implementing a trip limit for all temperate, mid-shelf snapper-grouper species, or establishing an aggregate temperate mid-shelf species quota.

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1313 Filed 1–14–97; 4:45 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Middle Deep Red Run Watershed, Tillman, Kiowa, and Comanche Counties, Oklahoma

AGENCY: Natural Resources Conservation Service, DOA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969: the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Middle Deep Red Run Watershed, Tillman, Kiowa, and Comanche Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, Natural Resources Conservation Service, 100 USDA, Suite 203, Stillwater, Oklahoma, 74074–2655, telephone: 405–742–1204.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie L. Clark, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for flood prevention and fish and wildlife. Alternatives under consideration to reach these objectives include systems for conservation land treatment and earth dams.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held in Tillman County to evaluate the proposed action. Further information on the proposed action may be obtained from Ronnie L. Clark, State Conservationist, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 9, 1997.

Steven P. Elsener,

Biologist.

[FR Doc. 97–1296 Filed 1–17–97; 8:45 am]

BILLING CODE 3210–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation—Wave 5 of the 1996 Panel; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, c/o U.S. Census Bureau, DSD—Room 3319–3, Washington DC 20233–8400, or telephone 301/457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Survey of Income and Program Participation (SIPP) is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs such as obtaining information about the terms of child support agreements and whether they are being fulfilled by the absent parent, examining the program participation status of persons with specific health and disability statuses; and obtaining detailed information needed to understand the current status of the employment-based health care system and changes that have occurred. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 1996 Panel Wave 5 are the following: (1) School Enrollment and Financing; (2) Child Support Agreements; (3) Support for Nonhousehold Members; (4) Functional Limitations and Disability-Adults; (5) Functional Limitations and Disability-Children and (6) Employer

Provided Health Care. Wave 5 interviews will be conducted from August through November 1997.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of about 4 years in the survey. All household members 15 years old or older are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit (PSU) will be followed and interviewed at their new address. Persons 15 years old or older who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 77,700.
Estimated Time Per Response: 30 minutes per person
Estimated Total Annual Burden Hours: 117,800.
Estimated Total Annual Cost: $27,690,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1359 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–07–P

Economic Development Administration

Area Designations and Overall Economic Development (Formerly Simplification and Streamlining of Regulations of the Economic Development Administration)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Wendy Tucker, Economic Development Administration, Room 7814B, Washington, DC 20230, and (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to ascertain if an area has a planning process in place and has thoroughly thought out what type of economic development needs to take place in the area to alleviate unemployment, underemployment, and to increase incomes. The information is required under the Public Works and Economic Development Act of 1965 (P.L. 89–136), as amended.

II. Method of Collection

State, local, or Tribal governments and not-for-profit organizations respond to guidelines by preparing proposals to determine eligibility for area designations, approval of boundary changes for designated redevelopment areas, and approval of overall economic development programs.

III. Data

OMB Number(s): 0610–0093.

Type of Review: Extension of a currently approved collection.

Burden: 72,000 hours.

Affected Public: State, local or Tribal governments and not-for-profit organizations.

Estimated Number of Respondents: 700.

Estimated Time per Response: 240 hours.

Estimated Total Annual Burden Hours: 176,400.

Estimated Total Annual Cost: $3,360,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1357 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–34–P

International Trade Administration

[A–412–801, A–428–801, A–475–801, A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, Italy, Japan, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On December 17, 1996, the Department of Commerce (the Department) published the final results of administrative reviews of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom in the **Federal Register**.

The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The review period is May 1, 1993, through April 30, 1994. We received allegations of clerical errors from petitioners and respondents regarding subject merchandise from Germany, Italy, Japan, and the United Kingdom. Based on the correction of clerical errors, we have changed the margins for BBs for 5 companies, CRBs for 2 companies, and SPBs for 1 company.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1996, the Department of Commerce (the Department) published the final results of the fifth administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom in the **Federal Register** (61 FR 66472). The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. The reviews cover 64 manufacturers/exporters. The review period is May 1, 1993, through April 30, 1994.

After publication of our final results, we received in a timely fashion allegations of clerical errors from petitioners and several respondents: Barden, FAG, NSK, and NSK/RHP. Where we agree with the allegations, we have made corrections as appropriate (see company-specific analysis memoranda).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Amended Final Results of Review

We have determined the following weighted-average margins to exist for the period May 1, 1993, through April 30, 1994:

Country	Company	Class or kind	Rate (percent)
Germany	FAG	BBs	12.93
		CRBs	13.57
		SPBs	*2.00
	SKF	BBs	*2.67
		CRBs	*9.46
		SPBs	14.29
Italy	FAG	BBs	1.37
		CRBs	*0.00
Japan	NSK Ltd.	BBs	18.88
		CRBs	*15.37
United Kingdom	Barden	BBs	1.48
	NSK/RHP	BBs	7.69
		CRBs	7.13

* This rate did not change as a result of the correction.

Because we issued final results of reviews for these firms for the subsequent period, May 1, 1994 through April 30, 1995, on January 6, 1997 (scheduled to be published in the **Federal Register** on January 15, 1997), we will not change the cash deposit rates for the above firms to reflect these amended final results of reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1396 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–433–807]

Notice of Postponement of Preliminary Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Herring or Dana Mermelstein, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4149 or (202) 482–0984, respectively.

Postponement of Preliminary Determination

We have determined that the respondent parties to this proceeding are cooperating, thus far, in this investigation. We also have determined that this case is extraordinarily complicated because of the novel legal and methodological issues in this investigation and that additional time is necessary to make the preliminary determination. In particular, the Department must consider novel questions regarding the appropriate date of sale, differences in quantity adjustments, and affiliation. Therefore, pursuant to section 733(c)(1)(B) of the Act, as amended, we are postponing the date of the preliminary determination as to whether sales of open-end spun rayon singles yarn from Austria have been made at less than fair value until not later than March 18, 1997.

This notice is published pursuant to section 733(c)(2) of the Act, and 19 CFR 353.15(d).

Dated: January 15, 1997.

Jeffery P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–1395 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

University of Connecticut Health Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–110. *Applicant:* University of Connecticut Health Center, Farmington, CT 06030–3505. *Instrument:* High Intensity Xenon Flashlamp, Model XF–10. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 57397, November 6, 1996. *Reasons:* The foreign instrument provides: (1) a three-lens quartz condensor, (2) a flash repetition rate, variable from 0.05–10Hz and (3) pulse length, variable from 400–1500ns. *Advice received from:* The National Institutes of Health, November 22, 1996.

Docket Number: 96–111. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599–3270. *Instrument:* 4 each Operant Boxes with 9–Hole Nosepoke Wall. *Manufacturer:* Paul Fray Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 57397, November 6, 1996. *Reasons:* The foreign instrument provides: (1) a 9-hole nosepoke panel to permit randomized positioning of stimuli in a 5-choice serial reaction time task for rats and (2) 4.0 cm-deep ports to minimize undesirable head orientation. *Advice received from:* The National Institutes of Health, November 22, 1996.

Docket Number: 96–112. *Applicant:* Harvard University, Boston, MA 02115. *Instrument:* Stopped-Flow Spectrometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 57397, November 6, 1996. *Reasons:* The foreign instrument provides measurement of small-sample enzyme/substrate reactions at temperatures as low as −5° C. *Advice received from:* The National Institutes of Health, November 22, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–1394 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Southwest Region Logbook Family of Forms; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, California 90802, telephone 310–980–4034.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Fisheries Logbook Program administered by the Southwest Region, NMFS, is the principal mechanism for monitoring the extent and nature of fishing in the pelagic longline, crustacean, bottomfish and precious corals fisheries in the western Pacific region. These fisheries are regulated under fishery management plans prepared by the Western Pacific Fishery Management Council and approved by the Secretary of Commerce. Persons who have permits to participate in these fisheries must maintain and provide to the Southwest Regional Administrator, NMFS, data concerning catch, effort, results of experimental fishing, or other records. These data are needed to ensure the ability to determine the effects of the fishery on the fish stocks, determine the economic and social values associated with the fisheries, evaluate the effectiveness of management and the impacts of potential changes in management, and enforce the regulations governing the fisheries.

II. Method of Collection

Where logbooks are required, permittees are provided with the required forms that are filled out while on a fishing trip and are submitted to the Regional Administrator on the completion of a trip. For experimental fishing, permittees are advised of the information that must be provided to the Regional Administrator at the completion of the experiment, but are left to furnish that information in the manner they see fit. NMFS will provide guidance as requested. Observers may be placed on vessels to ensure that more complete and accurate data are provided to NMFS than could reasonably be expected of the fishing vessel operator. Sales report forms are provided where appropriate. Pre-trip and pre-landings reports are made by radio or by messaging using automated vessel monitoring system equipment. Protected species interaction reports are made in a manner determined by the permittee.

III. Data

OMB Number: 0648–0214.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals and Businesses (commercial fishermen).
Estimated Number of Respondents: 215.
Estimated Time Per Response: 5 minutes per logbook day, 5 minutes for sales reports and notifications, and 4 hours for experimental fishing reports.
Estimated Total Annual Burden Hours: 1,293.
Estimated Total Annual Cost to Public: $0—no capital, operations, or maintenance costs are expected.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1358 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 010897D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS has revised the marine mammal stock assessment reports and the guidelines upon which the reports were based in accordance with the Marine Mammal Protection Act (MMPA). Draft revised reports are available for public review and comment. Copies of the revised guidelines are also available for review.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Send comments and requests for copies of reports or guidelines to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle, Office of Protected Resources, NMFS, at (301) 713–2322; Douglas P. DeMaster at (206) 526–4045, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE, BIN 15700, Seattle, WA 98115–0070 regarding Alaska regional stock assessments; James Lecky at (310) 980–4020, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, regarding Pacific regional stock assessments; or Gordon Waring at (508) 495–2311, Northeast Fisheries Science Center, NMFS, 166 Water Street, Woods Hole, MA 02543–1097 for Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

NMFS convened a workshop in April 1996 to evaluate the guidelines upon which stock assessment reports were based and to revise the guidelines as needed. The workshop results indicated that substantive changes to the guidelines were not required; however, several provisions were clarified, primarily to ensure that default values for various parameters were interpreted correctly.

The MMPA also requires NMFS and FWS to update these reports annually for strategic stocks of marine mammals and every 3 years for stocks determined to be non-strategic consistent with any new information. NMFS has revised those reports for which new information is available. Table 1 contains a summary of the information included in the reports. NMFS solicits public comments on the draft revised reports.

Most proposed changes to the stock assessment reports incorporate new information into abundance or mortality estimates. Stock structure was also reexamined, which resulted in revised stock identification for killer whales in the Alaska and Pacific regions and for harbor porpoise in Alaska; none of these stocks is designated as strategic.

Three stocks were identified as special subsistence stocks in the initial stock assessment reports; these included harbor seals in the Gulf of Alaska and beluga whales in Cook Inlet and Norton Sound. After examining new information, and in accordance with advice from the Alaska Scientific Review Group, NMFS proposes to revise these reports to present the full information required under the MMPA. Two of the stocks, Gulf of Alaska harbor seals and Cook Inlet beluga would be identified as strategic stocks because total human-caused mortality exceeds the calculated Potential Biological Removal level (PBR). Norton Sound beluga would be identified as non-strategic. Any management actions concerning these or any other stock that is used for subsistence purposes would be addressed through a co-management process as indicated by section 119 of the MMPA.

New abundance estimates for beaked whales in the Pacific Ocean, which included a recently developed correction factor for animals not seen on the track line, allowed NMFS to determine that human-caused mortality and serious injury of these stocks did not exceed PBR; therefore, these stocks have been designated as nonstrategic. Uncertainty in field identification of these stocks does not allow either mortality or abundance estimates to be

identified to species in all cases, and estimates for these stocks continue to be combined.

New information may become available during the comment period for these stock assessment reports; NMFS anticipates completion of a status review of North Atlantic right whales in the near future. This new information may be incorporated into final stock assessment reports without additional public review and comment if incorporation of the new information does not change the status of the affected stock (e.g., strategic to non-strategic).

Dated: January 13, 1997.

Ann Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
Steller sea lion	Western U.S.	AKA	AKC	42,536	0.12	0.3	766	518	38	Y
Steller sea lion	Eastern	AKA	AKC	23,533	0.12	0.75	1,059	9	4	Y
Northern fur seal	North Pacific	AKA	AKC	969,595	0.086	0.5	20,846	1,731	18	Y
Harbor seal	Southeast Alaska	AKA	AKC	35,226	0.12	1.0	2,114	1,630	34	N
Harbor seal	Gulf of Alaska	AKA	AKC	22,427	0.12	0.5	673	966	35	Y
Harbor seal	Bering Sea	AKA	AKC	12,648	0.12	0.5	379	242	30	N
Spotted seal	Alaska	AKA	AKC	N/A[1]	0.12	0.5	N/A	N/A	2	N
Bearded seal	Alaska	AKA	AKC	N/A	0.12	0.5	N/A	N/A	2	N
Ringed seal	Alaska	AKA	AKC	N/A	0.12	0.5	N/A	N/A	1	N
Ribbon seal	Alaska	AKA	AKC	N/A	0.12	0.5	N/A	N/A	1	N
Beluga	Beaufort Sea	AKA	AKC	39,039	0.04	1.0	781	168	0	N
Beluga	Eastern Chukchi Sea.	AKA	AKC	3,710	0.04	1.0	74	63	0	N
Beluga	Norton Sound	AKA	AKC	6,439	0.04	1.0	129	109	0	N
Beluga	Bristol Bay	AKA	AKC	1,526	0.04	1.0	31	21	1	N
Beluga	Cook Inlet	AKA	AKC	981	0.04	1.0	20	40	0	Y
Killer whale	Eastern North Pacific, Northern Resident.	AKA	AKC	764	0.04	0.5	7.6	1.2	1.2	N
Killer whale	Eastern North Pacific, Transient.	AKA	AKC	314	0.04	0.5	3.1	1.2	1.2	N
Pacific white-sided dolphin.	North Pacific	AKA	AKC	486,719	0.04	0.5	4,867	2	2	N
Harbor porpoise	Southeast Alaska	AKA	AKC	8,156	0.04	0.5	82	4	4	N
Harbor porpoise	Gulf of Alaska	AKA	AKC	7,085	0.04	0.5	71	27	27	N
Harbor porpoise	Bering Sea	AKA	AKC	8,549	0.04	0.5	86	2	2	N
Dall's porpoise	Alaska	AKA	AKC	76,874	0.04	1.0	1,537	42	42	N
Sperm whale	Alaska	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Baird's beaked whale.	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Cuvier's beaked whale.	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Stejnerger's beaked whale.	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Gray whale	Eastern North Pacific.	AKA	AKC	21,597	0.04	1.0	432	47	3	N
Humpback whale	Western North Pacific.	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Humpback whale	Central North Pacific.	AKA	AKC	1,407	0.04	0.1	2.8	1.6	1.6	Y
Fin whale	N. Pacifc	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Minke whale	Alaska	AKA	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Northern right whale.	North Pacific	AKA	AKC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Bowhead whale	Western Arctic	AKA	AKC	7,738	0.04	0.5	77[2]	51	0.0	Y
Harbor seal	Western North Atlantic.	ATL	NEC	28,810	0.12	1.0	1,729	476	476	N
Gray seal	Northwest North Atlantic.	ATL	NEC	2,035	0.12	1.0	122	4.5	4.5	N
Harp seal	Northwest North Atlantic.	ATL	NEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Hooded seal	Northwest North Atlantic.	ATL	NEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Harbor porpoise	Gulf of Maine/Bay of Fundy.	ATL	NEC	48,289	0.04	0.5	483	1,834	1,834	Y
Risso's dolphin	Western North Atlantic.	ATL	NEC	11,140	0.04	0.5	111	68	68	N
Atlantic white-sided dolphin.	Western North Atlantic.	ATL	NEC	19,196	0.04	0.5	192	181	181	N

TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION—Continued

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
White-beaked dolphin.	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	N
Common dolphin ...	Western North Atlantic.	ATL	NEC	3,996	0.04	0.5	40	234	234	Y
Atlantic spotted dolphin.	Western North Atlantic.	ATL	NEC	[3]1,617	0.04	0.5	16	[3]22	[3]22	Y
Pantropical spotted dolphin.	Western North Atlantic.	ATL	NEC	[3]1.617	0.04	0.5	16	[3]22	[3]22	Y
Striped dolphin	Western North Atlantic.	ATL	NEC	18,220	0.04	0.45	164	47	47	N
Spinner dolphin	Western North Atlantic.	ATL	NEC	N/A	N/A	N/A	N/A	1.0	1.0	N
Bottlenose dolphin	Western North Atlantic, offshore.	ATL	NEC	[4]8,794	0.04	0.5	88	82	82	N
Bottlenose dolphin	Western North Atlantic, coastal.	ATL	SEC	2,482	0.04	0.5	25	29	29	Y
Dwarf sperm whale	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.2	0.2	Y
Pygmy sperm whale.	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	N/A	N/A	Y
Killer whale	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	N
Pygmy killer whale	Western North Atlantic.	ATL	SEC	6	0.04	0.5	0.1	0.0	0.0	N
Northern bottlenose whale.	Western North Atlantic.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	N
Cuvier's beaked whale.	Western North Atlantic.	ATL	NEC	[6]895	0.04	0.5	8.9	9.7	[6]9.7	Y
Nesopidont beaked whale.	Western North Atlantic.	ATL	NEC	[5]895	0.04	0.5	8.9	9.7	[6]9.7	Y
Pilot whale, long-finned (*Globiephala* spp.).	Western North Atlantic.	ATL	NEC	[7]4,968	0.04	0.5	50	42	[8]42	Y
Pilot whale, short-finned.	Western North Atlantic.	ATL	NEC	457	0.04	0.5	3.7	42	[8]42	Y
Sperm whale	Western North Atlantic.	ATL	NEC	1,617	0.04	0.1	3.2	0.2	0.2	Y
North Atlantic right whale.	Western North Atlantic.	ATL	NEC	295	0.025	0.1	0.4	2.7	0.4	Y
Humpback whale ...	Western North Atlantic.	ATL	NEC	4,884	0.04	0.1	9.7	0.7	0.7	Y
Fin whale	Western North Atlantic.	ATL	NEC	1,704	0.04	0.1	3.4	0.0	0.0	Y
Sei whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Minke whale	Canadian east coast.	ATL	NEC	2,053	0.04	0.5	21	2.5	2.5	N
Blue whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.1	N/A	0.0	0.0	Y
Bottlenose dolphin	Gulf of Mexico, outer continental shelf.	ATL	SEC	43,233	0.04	0.5	432	2.8	[9]2.8	N
Bottlenose dolphin	Gulf of Mexico, continental shelf edge and slope.	ATL	SEC	4,530	0.04	0.5	45	2.8	[9]2.8	N
Bottlenose dolphin	Western Gulf of Mexico coastal.	ATL	SEC	2,938	0.04	0.5	29	13	[10,11]13	N
Bottlenose dolphin	Northern Gulf of Mexico coastal.	ATL	SEC	3,518	0.04	0.5	35	10	[11]10	N
Bottlenose dolphin	Eastern Gulf of Mexico coastal.	ATL	SEC	8,963	0.04	0.5	90	8	[11]8	N
Bottlenose dolphin	Eastern Gulf of Mexico bay, sound, and estuarine[12].	ATL	SEC	3,934	0.04	0.5	39.7	30	[11]30	Y
Atlantic spotted dolphin.	Northern Gulf of Mexico.	ATL	SEC	2,255	0.04	0.5	23	[3]1.5	[3]1.5	N

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TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION—Continued

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
Pantropical spotted dolphin.	Northern Gulf of Mexico.	ATL	SEC	26,510	0.04	0.5	265	[3]1.5	[3]1.5	N
Striped dolphin	Northern Gulf of Mexico.	ATL	SEC	3,409	0.04	0.5	34	0.0	0.0	N
Spinner dolphin	Northern Gulf of Mexico.	ATL	SEC	4,465	0.04	0.5	45	0.0	0.0	N
Rough-toothed dolphin.	Northern Gulf of Mexico.	ATL	SEC	660	0.04	0.5	6.6	0.0	0.0	N
Clymene dolphin	Northern Gulf of Mexico.	ATL	SEC	4,120	0.04	0.5	41	0.0	0.0	N
Fraser's dolphin	Northern Gulf of Mexico.	ATL	SEC	66	0.04	0.5	0.7	0.0	0.0	N
Killer whale	Northern Gulf of Mexico.	ATL	SEC	197	0.04	0.5	2.0	0.0	0.0	N
False killer whale ...	Northern Gulf of Mexico.	ATL	SEC	236	0.04	0.5	2.4	0.0	0.0	N
Pygmy killer whale	Northern Gulf of Mexico.	ATL	NEC	285	0.04	0.05	2.8	0.0	0.0	N
Dwarf sperm whale	Northern Gulf of MExico.	ATL	SEC	N/A	0.04	N/A	N/A	0.0	0.0	Y
Pygmy sperm whale.	Northern Gulf of Mexico.	ATL	NEC	N/A	0.04	N/A	N/A	0.0	0.0	Y
Melon-headed whale.	Northern Gulf of Mexico.	ATL	SEC	2,888	0.04	0.5	29	0.0	0.0	N
Risso's dolphin	Northern Gulf of Mexico.	ATL	SEC	2,199	0.04	0.5	22	19	19	N
Cuvier's beaked whale.	Northern Gulf of Mexico.	ATL	SEC	20	0.04	0.5	0.2	0.0	0.0	N
Blainville's beaked whale.	Northern Gulf of Mexico.	ATL	SEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Gervais' beaked whale.	Northern Gulf of Mexico.	ATL	SEC	N/A	N/A	N/A	N/A	0.0	0.0	N
Pilot whale, short-finned.	Northern Gulf of Mexico.	ATL	SEC	186	0.04	0.5	1.9	0.3	0.3	Y
Sperm whale	Northern Gulf of Mexico.	ATL	SEC	411	0.04	0.1	0.8	0.0	0.0	Y
Bryde's whale	Northern Gulf of Mexico.	ATL	SEC	17	0.04	0.5	0.2	0.0	0.0	N
California sea lion ..	U.S.	PAC	SWC	106,825	0.12	1.0	6,410	1,294	1,242	N
Guadalupe fur seal	Mexico to California	PAC	SWC	3,028	0.137	0.5	104	0.0	0.0	Y
Northern fur seal ...	San Miguel Island	PAC	AKC	5,018	0.086	1.0	216	1	1	N
Habor seal	California	PAC	SWC	27,962	0.12	1.0	1,678	325	316	N
Habor seal	Oregon/Washington.	PAC	AKC	25,665	0.12	1.0	1,540	15	15	N
Habor seal	Washington inland waters.	PAC	AKC	15,349	0.12	1.0	921	36	36	N
Northern elephant breeding.	California breeding	PAC	SWC	48,000	0.083	1.0	1,992	151	151	N
Hawaiian monk seal.	Hawaii	PAC	SWC	1,366	0.07	0.1	[13]4.8	N/A	N/A	Y
Habor porpoise	Central California ..	PAC	SWC	3,431	0.04	0.48	33	14	14	N
Habor porpoise	Northern California	PAC	SWC	7,640	0.04	0.5	76	0.0	0.0	N
Habor porpoise	Oregon/Washington coast.	PAC	AKC	22,046	0.04	0.5	220	13	13	N
Dall's porpoise	California/Oregon/Washington.	PAC	SWC	34,393	0.04	0.48	330	28	28	N
Pacific white-sided dolphin.	California/Oregon/Washington.	PAC	SWC	82,939	0.04	0.48	796	13	13	N
Risso's dolphin	California/Oregon/Washington.	PAC	SWC	22,388	0.04	0.48	215	32	32	N
Bottlenose dolphin	California coastal ..	PAC	SWC	121	0.04	0.5	1.2	0.0	0.0	N
Bottlenose dolphin	California/Oregon/Washington offshore.	PAC	SWC	1,904	0.04	0.5	19	0.0	0.0	N
Striped dolphin	California/Oregon/Washington.	PAC	SWC	19,248	0.04	0.4	154	2.0	2.0	N
Common dolphin, short-beaked.	California/Oregon/Washington.	PAC	SWC	309,717	0.04	0.5	3,097	183	183	N

TABLE 1.

Specie

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Killer whale

Killer whale

Pilot whale,
finned.
Baird's beak
whale.
Mesoplodont
beaked wh
Cuvier's beal
whale.
Pygmy sperm
whale.
Dwarf sperm

Sperm whale

Humpback w
Blue whale .
Fin whale ...

Bryde's whal

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Minke whale

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phin.
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Pantropical s
dolphin.
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[1] N/A mean
[2] The IWC
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TABLE 1.—SUMMARY OF MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION—Continued

Species	Stock area	SRG region	NMFS center	Nmin	Rmax	Fr	PBR	Total annual mort.	Annual fish. mort.	Strategic status
Common dolphin, long-beaked.	California	PAC	SWC	5,504	0.04	0.48	53	15	15	N
Northern right whale dolphin.	California/Oregon/ Washington.	PAC	SWC	15,080	0.04	0.5	151	50	50	N
Killer whale	Southern Resident Stock.	PAC	AKC	96	0.04	1.0	1.9	0.0	0.0	N
Killer whale	California/Oregon/ Washington.	PAC	SWC	436	0.04	0.4	3.5	2.0	2.0	N
Pilot whale, short-finned.	California/Oregon/ Washington.	PAC	SWC	741	0.04	0.48	7.1	20	20	Y
Baird's beaked whale.	California/Oregon/ Washington.	PAC	SWC	252	0.04	0.4	2.02	2.00	2.00	N
Mesoplodont beaked whales.	California/Oregon/ Washington.	PAC	SWC	[14] 1,169	0.04	0.48	[15] 11	5.7–7.7	5.7–7.7	N
Cuvier's beaked whale.	California/Oregon/ Washington.	PAC	SWC	6,070	0.04	0.5	61	29	29	N
Pygmy sperm whale.	California/Oregon/ Washington.	PAC	SWC	2,059	0.04	0.4	16	2.3	2.3	N
Dwarf sperm whale	California/Oregon/ Washington.	PAC	SWC	N/A	0.04	0.5	N/A	0.0	0.0	N
Sperm whale	California to Washington.	PAC	SWC	896	0.04	0.1	1.8	5	5	Y
Humpback whale	California/Mexico	PAC	SWC	563	0.04	0.1	0.5	1.0	0.0	Y
Blue whale	California/Mexico	PAC	SWC	1,463	0.04	0.1	1.5	<1	0.0	Y
Fin whale	California to Washington.	PAC	SWC	747	0.04	0.1	1.5	<1	0.0	Y
Bryde's whale	Eastern Tropical Pacific.	PAC	SWC	11,163	0.04	0.5	[16] 0.2	N/A	0.0	N
Sei whale	Eastern North Pacific.	PAC	SWC	N/A	0.04	0.1	N/A	N/A	0.0	Y
Minke whale	California/Oregon/ Washington.	PAC	SWC	122	0.04	0.4	1.0	2.0	2.0	Y
Rough-Toothed dolphin.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Risso's dolphin	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Bottlenose dolphin	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pantropical spotted dolphin.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Spinner dolphin	Hawaii	PAC	SWC	677	0.04	0.5	6.8	N/A	N/A	N
Striped dolphin	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Melon-headed whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pygmy killer whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
False killer whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Killer whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pilot whale, short-finned.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Blainville's beaked whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Cuvier's beaked whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Pygmy sperm whale.	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Dwarf sperm whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N
Sperm whale	Hawaii	PAC	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y
Blue whale	Hawaii	PAC	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y
Fin whale	Hawaii	PAC	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y
Bryde's whale	Hawaii	PAC	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N

[1] N/A means that an estimate for the affected value is not available.
[2] The IWC subsistence quota is not affected by the calculation of PBR using the formula specified in the MMPA.
[3] This value includes either or both of *Stenella frontalis* or *Stenella attenuata*.
[4] Estimates may include sightings of the coastal form.
[5] This estimate includes Cuvier's beaked whales and mesoplodont beaked whales.
[6] This is the average mortality of beaked whales (*Mesoplodon* sp.) based on 5 years of observer data. This annual mortality rate includes an unknown number of Cuvier's beaked whales.
[7] This estimate includes both long-finned and short-finned pilot whales.
[8] Mortality data are not separated by species; therefore, species-specific estimates are not available. The mortality estimate represents both short- and long-finned pilot whales.
[9] This value may include either or both of the Gulf of Mexico, continental shelf edge and slope and the outer continental shelf stocks of bottlenose dolphins.

[10] Low levels of bottlenose dolphin mortality (0–4 per year) incidental to commercial fisheries have been reported. It is unknown to which stock this mortality can be attributed.
[11] Estimates derived from stranded animals with signs of fishery interactions, and these could be either coastal or estuary stocks.
[12] This entry encompasses 33 stocks of bottlenose dolphins. All stocks are considered strategic; see the full report for information on individual stocks. The listed estimates for abundance, PBR and mortality are sums across all bays, sounds, and estuaries.
[13] Although the calculated PBR is 5.0, the allowable take is zero due to findings under the ESA.
[14] This value includes a species-specific minimum abundance estimate of 249 Blainville's beaked whales, *Mesoplodon densirostris.*
[15] This PBR includes 2.5 Blainville's beaked whales.
[16] This PBR has been adjusted because only 0.2% of this stock is estimated to be in U.S. waters.

[FR Doc. 97–1312 Filed 1–17–97; 8:45 am]
BILLING CODE 3510–25–P

[I.D. 011097B]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet in Anchorage, Alaska the week of February 3, 1997. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation. An executive session is tentatively scheduled for noon on February 7, 1997.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The Advisory Panel (AP) will begin on February 3, 1997 at 8:00 a.m.; the Scientific and Statistical Committee (SSC) will begin on February 3, 1997 at 1:00 p.m. The AP and SSC should conclude their meetings by February 6. The Council will meet jointly with the Alaska Board of Fisheries beginning at 8:00 a.m. on February 4, 1997, and begin their normal plenary session on February 5, 1997 at 8:00 a.m., concluding by February 9, 1997.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the meetings will include the following subjects:

1. Reports from NMFS on the current status of the fisheries off Alaska, the status of Steller sea lions, and marine mammal research, and a special progress report on the Alaska Sealife Center.

2. Reports on halibut stocks, actions taken by the International Pacific Halibut Commission, consideration of the need for revisions to the Halibut Area 4 Catch Sharing Plan, and discussion of seabird avoidance for the halibut individual fishery quota (IFQ) fishery.

3. Review and consider approval of initial analysis for halibut charterboat management.

4. Review of tasking mandated by the Magnuson-Stevens Act, including:

(a) Review development of a central title registry for IFQs;

(b) Review development of IFQ/Community Development Quota (CDQ) fee and loan programs; and

(c) Status report on National Academy of Sciences study of IFQ/CDQ programs and make-up of Secretary of Commerce's IFQ panel for the western United States.

5. Discussion of further direction on vessel bycatch allowances.

6. Final review of research priorities for 1997.

7. Discuss and comment on NMFS guidelines for describing and identifying essential fish habitat.

8. Approve revisions to the Council Standard Operating Procedures in response to Magnuson-Stevens Act amendments.

9. Groundfish issues to be discussed include:

(a) Final review of management options for the Gulf of Alaska pelagic shelf rockfish fisheries to be managed by the State of Alaska; and

(b) Discussion paper on rolling closures at sablefish su[illegible]ey sites in the Gulf of Alaska.

10. Staff tasking.

11. The agenda for the joint meeting of the Council and the Alaska Board of Fisheries will include:

(a) Discussion of state crab management, including Adak pot limits, Bristol Bay red king crab size reductions and other Bristol Bay red king crab management options; and

(b) Discussion of the State's groundfish management plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1309 Filed 1–17–97; 8:45 am]
BILLING CODE 3510–22–F

[I.D. 011397A]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Ecosystem Committee will meet in Seattle, WA.

DATES: The meeting will be held on January 23–24, 1997. The meeting will begin at 9:00 a.m. on January 23, and will continue until 5:00 p.m. On January 24, the meeting will begin at 8:30 a.m. and will conclude by 5:00 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, Room 2979, Building 4, 7600 Sand Point Way, NE, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will receive reports on various ecosystem-related programs and management regimes, research gaps, and current and potential links to fishery management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1311 Filed 1–17–97; 8:45 am]
BILLING CODE 3510–22–F

[I.D. 010997D]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a meeting of its Snapper Grouper Assessment Group to review biological and fishery data on the condition of wreckfish (*Polyprion Americanus*) in the management unit, and to make recommendations to the Council for Wreckfish Framework Actions (e.g. 1997/98 Wreckfish total allowable catch - TAC).

DATES: The meeting will be held on January 28 from 1:30 p.m. to 5:00 p.m., and on January 29, 1997 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571–1000.

Council address: One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366; fax: (803) 769-4520; email: safmc@safmc.nmfs.gov

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520.

SUPPLEMENTARY INFORMATION:

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 21, 1997.

Dated: January 14, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1310 Filed 1–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Keesler Medical Center, Keesler Air Force Base, Biloxi, MS, has been designated as a Specialized Treatment Service (STS) Facility for Neonatal Intensive Care for TRICARE Region 4. This designation covers the following Diagnosis Related Group (DRGs):

370 Cesarian section with comorbidity/complications
372 Vaginal delivery with complicating diagnoses
383 Other antepartum diagnoses with medical complications
604 Neonate, birth weight 750–999g, discharged alive
607 Neonate, birth weight 1000–1499g, without significant operating room procedures, discharged alive
611 Neonate, birth weight 1500–1999g, without significant operating room procedures, with multiple major problems
612 Neonate, birth weight 1500–1999g, without significant operating room procedures, with major problem
613 Neonate, birth weight 1500–1999g, without significant operating room procedures, with minimal problems
617 Neonate, birth weight 2000–2499g, without significant operating room procedures, with multiple major problems
618 Neonate, birth weight 2000–2499g, without significant operating room procedures, with major problem
622 Neonate, birth weight over 2499g, with significant operating room procedures, with multiple major problems
626 Neonate, birth weight over 2499g, without significant operating room procedures, with multiple major problems
636 Neonatal diagnosis, age over 28 days

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by Keesler Medical Center in accordance with the provisions of the Joint Federal Travel Regulation. All DoD beneficiaries who reside in the STS Catchment Area for TRICARE Region 4 must be evaluated by Keesler Medical Center before receiving CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to Keesler Medical Center. If the procedure cannot be performed at Keesler Medical Center, the facility will provide a medical necessity review in order to support issuance of a Nonavailability Statement.

The Region 4 Regional STS Catchment Area is defined by zip code in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 4 that fall within a 200 mile radius of Keesler Medical Center.

EFFECTIVE DATE: March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Ellen Lewis, TRICARE Region 4, (601) 377–9627; or Captain Margaret Orcutt, OSD (Health Affairs), at (703) 695–6800.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58995–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually.

Dated: January 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–1346 Filed 1–17–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Notice of Available Surplus Buildings and Land at Ontario Air National Guard Station Located in Ontario, CA

SUMMARY: This notice provides information regarding the redevelopment authority that has been established to plan the reuse of Ontario Air National Guard Station (ANGS), Ontario, CA and the surplus property that is located at the Station. The property is located approximately 3 miles southeast of downtown Ontario and 35 miles east of downtown Los Angeles. Ontario International Airport is located immediately north and west of the Station. Access to the property is provided by Jurupa Street in the City of Ontario which approaches the southeastern Station boundary.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McTiver, Site Manager, Air Force Base Conversion Agency, March Air Force Base, CA, telephone (909) 697–6722.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Assistance Act of 1994.

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Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421), the following information regarding the local redevelopment authority and surplus property at Ontario ANGS, Ontario, CA is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for Ontario ANGS, CA for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended is the City of Ontario, CA. The redevelopment authority point of contact is the Mr. Byron L. Woosley, Office of the City Manager, City of Ontario, CA, telephone (909) 986–1151, extension 4302.

Surplus Property Descriptions

The following is a listing of the land and facilities at Ontario ANGS, Ontario, CA that are surplus to the federal government.

Land: There are approximately eight (8) acres of surplus property at Ontario ANGS. The property will be available October 1, 1997.

Buildings: Improvements consist of nine (9) structures totaling approximately 35,300 square feet of building space, associated roads, parking lots, and open areas. The structures can be classified as industrial and commercial.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. State and local governments, representatives of the homeless, and other interested parties located in the vicinity of Ontario ANGS shall submit to the City of Ontario a notice of interest of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said section 2905 (b), the City of Ontario shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in CA the date by which expressions of interest must be submitted.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–1299 Filed 1–17–97; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The 1997 Science & Technology (S&T) Panel Chairs Meeting of the HQ USAF Scientific Advisory Board will meet on 19–21 February 1997 at the Arnold & Mabel Beckman Center, Irvine, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to assess the general direction and scope of the S&T program; advise on technical areas; recommend guidance for the annual AFAE S&T Executive Guidance Memorandum; and rate the technical quality of each TAP thrust.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–1297 Filed 1–17–97; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Conventional Weapons Panel Meeting, relating to the DDR&E Technology Area Review and Assessment (TARA) Team, in support of the HQ USAF Scientific Advisory Board will meet on 24–28 February 1997 at Dahlgren, VA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to assess the progress being made toward achieving S&T objectives stated in the Defense S&T Strategy, the Joint Warfighting S&T Plan and the Defense Technology Area Plans (DTAP's).

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–1298 Filed 1–17–97; 8:45 am]

BILLING CODE 3910–01–P

Corps of Engineers

Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Dade County Erosion Control and Hurricane Protection Project, Project Modification at Sunny Isles

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for the Dade County Erosion Control and Hurricane Protection Project, Project Modification at Sunny Isles. The study is a cooperative effort between the U.S. Army Corps of Engineers and the Dade County Department of Environmental Resources Management (DERM) which is also a cooperating agency for this DEIS.

FOR FURTHER INFORMATION CONTACT: Kenneth Dugger, 904–232–1686, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: The Beach Erosion Control and Hurricane Protection (BEC & HP) Project for Dade County, Florida was authorized by the Flood Control Act of 1968. The Supplemental Appropriations Act of 1985 and the Water Resources Development Act of 1986 (Public Law 99–662) provided authority for extending the northern limit of the authorized project to include the construction of a protective beach along the 2.5 mile reach of shoreline north of Haulover Beach Park (Sunny Isles) and for periodic nourishment of the new beach.

Beach fill placed along the northern portion of Sunny Isles rapidly erodes due to spreading (end) losses. Following each beach fill placement, a large discontinuity in berm widths exists at the Sunny Isles/Golden Beach city limit. Material from the wide post-nourishment Sunny Isles shoreline diffuses rapidly northward into Golden Beach, which is offset approximately 150 feet further landward immediately following beach fill placement.

To resolve the problem of end losses and to increase storm protection along the Sunny Isles coastline, a combination of interacting and interdependent shore protection measures have been studied. The proposed action consists of construction of a 120 foot wide advance maintenance berm (along Sunny Isles Beach), a 1500 foot beach fill transition (offshore Golden Beach), and two 400 ft

segments of submerged geotextile breakwater (offshore Sunny Isles). All construction of the beach fill transition offshore of Golden Beach would occur on State of Florida lands, which are located below the mean high water line. The transition would taper from 120 feet wide at the Sunny Isles/Golden Beach city limit to zero feet, over a length of 1500 feet offshore of Golden Beach. The planned source of borrow for this action is a southerly extension of an offshore borrow site south of Government Cut. The forecast completion date for the proposed project modification would be by the end of 1998.

The 2nd Periodic Renourishment at Sunny Isles was addressed in a final Environmental Assessment dated May 1995. The proposed modification primarily differs from the 2nd Periodic Renourishment in that it uses a different borrow source, places additional material on the beach (an advance maintenance berm), and it also involves two project features not previously used at this location. These are a geotextile breakwater (offshore of Sunny Isles) and a transition fill (offshore of Golden Beach). The proposed action including the above was described in the feasibility study and final Environmental Impact Statement for the "Coast of Florida Erosion and Storm Effects Study, Region III" dated November 1996 but was not proposed for authorization in that document.

Alternatives: Alternatives considered include no action, non-structural measures, the construction of revetments, perched beaches, breakwaters, beach fills of varying widths, construction of submerged nearshore berms, beach fill transitions, and a beach fill/groin combination. Alternative sand sources in addition to the use of the proposed borrow area for nourishment, include the use of other local offshore sand sources, the use of other sand sources such as upland sources, Bahamian sand, other foreign sands, or other distant sources.

Issues: The EIS will consider impacts on coral reefs and other hardbottom communities, protected species, shore protection, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: A scoping letter was sent to interested parties on April 21, 1993. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time there are no plans for a public scoping meeting.

Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

Agency Role: As cooperating agency, non-Federal sponsor, and leading local expert; DERM will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DEIS Preparation: It is estimated that the DEIS will be available to the public on or about February 1, 1997.

Dated: December 31, 1996.

Hanley K. Smith,

Acting Chief, Planning Division.

[FR Doc. 97–1335 Filed 1–17–97; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 20, 1977.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202)708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are ava'lable from Patrick J. Sherrill at the address specified above.

Dated: January 14, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Longitudinal Evaluation of School Change and Performance (LESCP).

Frequency: Annually.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

UMI
VOL
62
ISS
13
JA
21
1997
UMI

Responses: 18,620 Burden Hours: 64,310.

Abstract: The LESCP is being conducted in response to the legislative requirement in P.L. 103–382, Section 1501 to assess the implementation of Title I and related education reforms. The information will be used to examine changes—over a 3-year period—that are occurring in schools and classrooms. Teachers and teacher aides will complete a mail survey, and district Title I administrators, principals, school-based staff, and parents will be interviewed during on-site field work.

[FR Doc. 97–1307 Filed 1–17–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has decided to implement a program to provide for safe and secure storage of weapons-usable fissile materials (plutonium and highly enriched uranium [HEU]) and a strategy for the disposition of surplus weapons-usable plutonium, as specified in the Preferred Alternative in the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (S&D Final PEIS, DOE/EIS–0229, December 1996). The fundamental purpose of the program is to maintain a high standard of security and accounting for these materials while in storage, and to ensure that plutonium produced for nuclear weapons and declared excess to national security needs (now, or in the future) is never again used for nuclear weapons.

DOE will consolidate the storage of weapons-usable plutonium by upgrading and expanding existing and planned facilities at the Pantex Plant in Texas and the Savannah River Site (SRS) in South Carolina, and continue the storage of weapons-usable HEU at DOE's Y–12 Plant at the Oak Ridge Reservation (ORR) in Tennessee, in upgraded and, as HEU is dispositioned, consolidated facilities. After certain conditions are met, most plutonium now stored at the Rocky Flats Environmental Technology Site (RFETS) in Colorado will be moved to Pantex and SRS. Plutonium currently stored at the Hanford Site (Hanford), the Idaho National Engineering Laboratory (INEL), and the Los Alamos National Laboratory (LANL) will remain at those sites until disposition (or movement to lag storage at the disposition facilities).

DOE's strategy for disposition of surplus plutonium is to pursue an approach that allows immobilization of surplus plutonium in glass or ceramic material for disposal in a geologic repository pursuant to the Nuclear Waste Policy Act, and burning of some of the surplus plutonium as mixed oxide (MOX) fuel in existing, domestic, commercial reactors, with subsequent disposal of the spent fuel in a geologic repository pursuant to the Nuclear Waste Policy Act. DOE may also burn MOX fuel in Canadian Deuterium Uranium [CANDU] reactors in the event of an appropriate agreement among Russia, Canada, and the United States, as discussed below. The timing and extent to which either or both of these disposition approaches (immobilization or MOX) are ultimately deployed will depend upon the results of future technology development and demonstrations, follow-on (tiered) site-specific environmental review, contract negotiations, and detailed cost reviews, as well as nonproliferation considerations, and agreements with Russia and other nations. DOE's program will be subject to the highest standards of safeguards and security throughout all aspects of storage, transportation, and processing, and will include appropriate International Atomic Energy Agency verification.

Due to technology, complexity, timing, cost, and other factors that would be involved in purifying certain plutonium materials to make them suitable for potential use in MOX fuel, approximately 30 percent of the total quantity of plutonium (that has or may be declared surplus to defense needs) would require extensive purification to use in MOX fuel, and therefore will likely be immobilized. DOE will immobilize at least 8 metric tons (MT) of currently declared surplus plutonium materials that DOE has already determined are not suitable for use in MOX fuel. DOE reserves the option of using the immobilization approach for all of the surplus plutonium.

The exact locations for disposition facilities will be determined pursuant to a follow-on, site-specific disposition environmental impact statement (EIS) as well as cost, technical and nonproliferation studies. However, DOE has decided to narrow the field of candidate disposition sites. DOE has decided that a vitrification or immobilization facility (collocated with a plutonium conversion facility) will be located at either Hanford or SRS, that a potential MOX fuel fabrication facility will be located at Hanford, INEL, Pantex, or SRS (only one site), and that a "pit" disassembly and conversion facility will be located at Hanford, INEL, Pantex, or SRS (only one site). ("Pits" are weapons components containing plutonium.) The specific reactors, and their locations, that may be used to burn the MOX fuel will depend on contract negotiations, licensing, and environmental reviews. Because there are a number of technology variations that could be used for immobilization, DOE will also determine the specific immobilization technology based on the follow-on EIS, technology developments, cost information, and nonproliferation considerations. Based on current technological and cost information, DOE anticipates that the follow-on EIS will identify, as part of the proposed action, immobilizing a portion of the surplus plutonium using the "can-in-canister" technology at the Defense Waste Processing Facility (DWPF) at the Savannah River Site.

The use of MOX fuel in existing reactors would be undertaken in a manner that is consistent with the United States' policy objective on the irreversibility of the nuclear disarmament process and the United States' policy discouraging the civilian use of plutonium. To this end, implementing the MOX alternative would include government ownership and control of the MOX fuel fabrication facility at a DOE site, and use of the facility only for the surplus plutonium disposition program. There would be no reprocessing or subsequent reuse of spent MOX fuel. The MOX fuel would be used in a once-through fuel cycle in existing reactors, with appropriate arrangements, including contractual or licensing provisions, limiting use of MOX fuel to surplus plutonium disposition.

The Department of Energy also retains the option of using MOX fuel in Canadian Deuterium Uranium (CANDU) reactors in Canada in the event a multilateral agreement is negotiated among Russia, Canada, and the United States to use CANDU reactors for surplus United States' and Russian plutonium. DOE will engage in a test and demonstration program for CANDU MOX fuel as appropriate and consistent with future cooperative efforts with Russia and Canada.

These efforts will provide the basis and flexibility for the United States to initiate disposition efforts either multilaterally or bilaterally through negotiations with other nations, or unilaterally as an example to Russia and

other nations. Disposition of the surplus plutonium will serve as a nonproliferation and disarmament example, encourage similar actions by Russia and other nations, and foster multilateral or bilateral disposition efforts and agreements.

EFFECTIVE DATE: The decisions set forth in this Record of Decision (ROD) are effective upon issuance of this document, in accordance with DOE's National Environmental Policy Act (NEPA) Implementing Procedures and Guidelines (10 CFR Part 1021) and the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508).

ADDRESSES: Copies of the S&D Final PEIS, the Technical Summary Report For Long-Term Storage of Weapons-Usable Fissile Materials, the Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition, the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition, and this ROD may be obtained by writing to the U.S. Department of Energy, Office of Fissile Materials Disposition, MD–4, 1000 Independence Avenue, SW., Washington, DC 20585, or by calling (202) 586–4513. The 56-page Summary of the S&D Final PEIS, the other documents noted above (other than the full PEIS), and this ROD are also available on the Fissile Materials Disposition World Wide Web Page at: http://web.fie.com/htdoc/fed/DOE/fsl/pub/menu/any/

FOR FURTHER INFORMATION CONTACT: For information on the storage and disposition of weapons-usable fissile materials program or this ROD contact: Mr. J. David Nulton, Director, NEPA Compliance and Outreach, Office of Fissile Materials Disposition (MD–4), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4513.

For information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The end of the Cold War has created a legacy of surplus weapons-usable fissile materials both in the United States and the former Soviet Union. Further agreements,on disarmament may increase the surplus quantities of these materials. The global stockpiles of weapons-usable fissile materials pose a danger to national and international security in the form of potential proliferation of nuclear weapons and the potential for environmental, safety, and health consequences if the materials are not properly safeguarded and managed.

In September 1993, President Clinton issued a Nonproliferation and Export Control Policy in response to the growing threat of nuclear proliferation. Further, in January 1994, President Clinton and Russia's President Yeltsin issued a Joint Statement Between the United States and Russia on Nonproliferation of Weapons of Mass Destruction and the Means of Their Delivery. In accordance with these policies, the focus of the U.S. nonproliferation efforts in this regard is five-fold: (i) To secure nuclear materials in the former Soviet Union; (ii) to assure safe, secure, long-term storage and disposition of surplus weapons-usable fissile materials; (iii) to establish transparent and irreversible nuclear arms reductions; (iv) to strengthen the nuclear nonproliferation regime; and (v) to control nuclear exports. The policy also states that the United States will not encourage the civil use of plutonium and that the United States does not engage in plutonium reprocessing for either nuclear power or nuclear explosive purposes.

To demonstrate the United States' commitment to these objectives, President Clinton announced on March 1, 1995, that approximately 200 metric tons of U.S.-origin weapons-usable fissile materials, of which 165 metric tons are HEU and 38 metric tons are weapons-grade plutonium, had been declared surplus to the United States' defense needs.[1] The safe and secure storage of weapons-usable plutonium and HEU, and the disposition of surplus weapons-usable plutonium, consistent with the Preferred Alternative in the S&D Final PEIS and the decisions described in section V of this ROD, are consistent with the President's nonproliferation policy.

[1] The Secretary of Energy's Openness Initiative announcement of February 6, 1996, announced that the United States has about 213 metric tons of surplus fissile materials, including the 200 metric tons the President announced in March, 1995. Of the 213 metric tons of surplus materials, the Openness Initiative announcement indicated that about 174.3 metric tons are HEU and about 38.2 metric tons are weapons-grade plutonium. Additional quantities of plutonium may be declared surplus in the future; therefore, the S&D Final PEIS analyzes the disposition of a nominal 50 metric tons of plutonium, as well as the storage of 89 metric tons of plutonium and 994 metric tons of HEU.

II. Decisions Made in This ROD

This ROD encompasses two categories of decisions: (1) The sites and facilities for storage of non-surplus weapons-usable plutonium and HEU, and storage of surplus plutonium and HEU pending disposition; and (2) the programmatic strategy for disposition of surplus weapons-usable plutonium. This ROD does not encompass the final selection of sites for plutonium disposition facilities, nor the extent to which the two plutonium disposition approaches (immobilization or MOX) will ultimately be implemented. Those decisions will be made pursuant to a follow-on EIS. However, DOE does announce in this ROD that the slate of candidate sites for plutonium disposition has been narrowed. This ROD does not include decisions about the disposition of surplus HEU, which were made in July 1996 in the separate ROD for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, 61 FR 40619 (Aug. 5, 1996).[2]

III. NEPA Process

A. S&D Draft PEIS

On June 21, 1994, DOE published a Notice of Intent (NOI) in the **Federal Register** (59 FR 31985) to prepare a Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement (S&D PEIS), which was originally to address the storage and disposition of both plutonium and HEU. DOE subsequently concluded that a separate EIS on surplus HEU disposition would be appropriate. Accordingly, DOE published a notice in the **Federal Register** (60 FR 17344) on April 5, 1995, to inform the public of the proposed plan to prepare a separate EIS for the disposition of surplus HEU.

DOE published an implementation plan (IP) for the S&D PEIS in March 1995 (DOE/EIS–0229–IP). The IP recorded the issues identified during the scoping process, indicated how they would be addressed in the S&D PEIS, and provided guidance for the preparation of the S&D PEIS. DOE issued the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (S&D Draft PEIS, DOE/EIS–0229–D) for public comment in February 1996. On March 8, 1996, both DOE and the Environmental Protection

[2] The material considered in the S&D Final PEIS, and covered by the decisions in this ROD, does not include spent nuclear fuel, irradiated targets, uranium-233, plutonium-238, plutonium residues of less than 50-percent plutonium by weight, or weapons program materials-in-use.

Agency (EPA) published Notices of Availability of the S&D Draft PEIS in the **Federal Register** (61 FR 9443 and 61 9450), announcing a public comment period from March 8 until May 7, 1996. In response to requests from the public, DOE on May 13, 1996 published another Notice in the **Federal Register** (61 FR 22038) announcing an extension of the comment period until June 7, 1996. Eight public meetings on the S&D Draft PEIS were held during March and April 1996 in Washington, DC and in the vicinity of the DOE sites under consideration for the proposed actions.

During the 92-day public comment period, the public was encouraged to provide comments via mail, toll-free fax, electronic bulletin board (Internet), and toll-free telephone recording device. By these means, DOE received 8,442 comments from 6,543 individuals and organizations for consideration. In addition, 250 oral comments were recorded from some of the 734 individuals who attended the eight public meetings. All of the comments received, and the Department's responses to them, are presented in Volume IV (the Comment Response Document) of the S&D Final PEIS. All of the comments were considered in preparation of the S&D Final PEIS, and in many cases resulted in changes to the document. The Notice of Availability for the S&D Final PEIS was published by EPA in the **Federal Register** on December 13, 1996 (61 FR 65572). DOE published its own Notice of Availability for the S&D Final PEIS in the **Federal Register** on December 19, 1996 (61 FR 67001).

B. Alternatives Considered

The S&D PEIS analyzes the reasonable action alternatives in addition to the Preferred Alternative and the No Action Alternative. The Preferred Alternative, which is described below in section V, Decisions, and which DOE has decided to implement, represents a combination of alternatives for both storage and disposition.

1. The Proposed Action

The proposed action, as described in the S&D PEIS, would involve the following actions for U.S. weapons-usable fissile materials:

- Storage—provide a long-term storage system (for up to 50 years) for nonsurplus plutonium and HEU that meets the Stored Weapons Standard [3] and applicable environmental, safety, and health standards while reducing storage and infrastructure costs.
- Storage Pending Disposition—provide storage that meets the Stored Weapons Standard for inventories of weapons-usable plutonium and HEU [4] that have been or may be declared surplus.
- Disposition—convert surplus plutonium and plutonium that may be declared surplus in the future to forms that meet the Spent Fuel Standard,[5] thereby providing evidence of irreversible disarmament and setting a model for proliferation resistance.

2. Long-Term Storage Alternatives and Related Activities

a. No Action. Under the No Action Alternative, all weapons-usable fissile materials would remain at existing storage sites. Maintenance at existing storage facilities would be done as required to ensure safe operation for the balance of the facility's useful life. Sites covered under the No Action Alternative included Hanford, INEL, Pantex, the ORR, SRS, RFETS, and LANL. Although there are no weapons-usable fissile materials within the scope of the S&D PEIS stored currently at Nevada Test Site (NTS), it was also analyzed under No Action to provide an environmental baseline against which impacts of the storage and disposition action alternatives were analyzed.

b. Upgrade at Multiple Sites. Under this alternative for storage, DOE would either modify certain existing facilities or build new facilities, depending on the site's ability to meet standards for nuclear material storage facilities, and would utilize existing site infrastructure to the extent possible. These modified or new facilities would be designed to operate for up to 50 years. Plutonium materials currently stored at Hanford, INEL, Pantex, and SRS would remain at those four sites (in upgraded or new facilities), and HEU would remain at ORR (in upgraded, consolidated facilities). This alternative does not apply to NTS because NTS does not currently store weapons-usable fissile materials.

A sub-alternative of relocating portions of the plutonium inventory (a total of 14.4 metric tons according to DOE's Openness Initiative announcements of December 7, 1993, and February 6, 1996, respectively) from RFETS and LANL to one or more of the four existing plutonium storage sites is analyzed. Storage of surplus materials without strategic reserve and weapons research and development (R&D) materials is also included as a sub-alternative. Within some of the five candidate storage sites under this alternative, there are also multiple storage options.

c. Consolidation of Plutonium. Under this alternative, plutonium materials at existing sites would be removed, and the entire DOE inventory of plutonium would be consolidated at one site, while the HEU inventory would remain at ORR. Again, Hanford, INEL, Pantex and SRS would be candidate sites for plutonium consolidation. In addition, NTS would be a candidate site for this alternative. Consolidation of plutonium at ORR would result in a situation in which inventories of plutonium and HEU were collocated at one site; this alternative was therefore analyzed as one option under the Collocation Alternative (see below). A sub-alternative to account for the separate storage of surplus materials without strategic reserve and weapons R&D materials was also included.

d. Collocation of Plutonium and Highly Enriched Uranium. Under the Collocation Alternative, the entire DOE inventory of plutonium and HEU would be consolidated and collocated at the same site. The six candidate sites would be Hanford, NTS, INEL, Pantex, ORR, and SRS. A sub-alternative for the separate storage of surplus materials without strategic reserve and weapons R&D materials was also included.

3. Plutonium Disposition Alternatives and Related Activities

The disposition technologies analyzed in the S&D PEIS were those that would convert surplus plutonium into a form that would meet the Spent Fuel Standard. For the purpose of environmental impact analyses of the various disposition alternatives, both generic and specific sites were used to provide perspective on these

[3] The "Stored Weapons Standard" for weapons-usable fissile materials storage was initially defined in Management and Disposition of Excess Weapons Plutonium, National Academy of Sciences, 1994. DOE defines the Stored Weapons Standard as follows: The high standards of security and accounting for the storage of intact nuclear weapons should be maintained, to the extent practical, for weapons-usable fissile materials throughout dismantlement, storage, and disposition.

[4] The S&D PEIS covers long-term storage of nonsurplus HEU and storage of surplus HEU pending disposition. Until storage decisions are implemented, surplus HEU that has not gone to disposition will continue to be stored pursuant to, and not to exceed the 10-year interim storage time period evaluated in, the Environmental Assessment for the Proposed Interim Storage of Enriched Uranium Above the Maximum Historical Storage Level at the Y–12 Plant, Oak Ridge, Tennessee (Y–12 EA) (DOE/EA–0929, September 1994) and Finding of No Significant Impact (FONSI).

[5] The "Spent Fuel Standard" for disposition was also initially defined in Management and Disposition of Excess Weapons Plutonium, National Academy of Sciences, 1994. DOE defines the Spent Fuel Standard as follows: The surplus weapons-usable plutonium should be made as inaccessible and unattractive for weapons use as the much larger and growing quantity of plutonium that exists in spent nuclear fuel from commercial power reactors.

alternatives. Under each alternative, there are various ways to implement the alternative. These "variants" (such as the can-in-canister[6] approach) are shown in Table 1 to provide a range of available options for consideration.

TABLE 1.—DESCRIPTION OF VARIANTS UNDER PLUTONIUM DISPOSITION ALTERNATIVES

Alternatives analyzed	Possible variants
• Deep Borehole Direct Disposition	• Arrangement of plutonium in different types of emplacement canisters.
• Deep Borehole Immobilized Disposition	• Emplacement of pellet-group mix.
	• Pumped emplacement of pellet-grout mix.
	• Plutonium concentration loading, size and shape of ceramic pellets.
• New Vitrification Facilities	• Collocated pit disassembly/conversion, plutonium conversion, and immobilization facilities.
	• Use of either Cs–137 from capsules or HLW as a radiation barrier.
	• Wet or dry feed preparation technologies.
	• An adjunct melter adjacent to the DWPF at SRS, in which borosilicate glass frit with plutonium (without highly radioactive radionuclides) is added to borosilicate glass containing HLW from the DWPF.
	• A can-in-canister approach at SRS in which cans of plutonium glass (without highly radioactive radionuclides) are plaed in DWPF canisters which are then filled with borosilicate glass containing HLW in the DWPF (see Appendix O of the Final PEIS).
	• A can-in-canister approach similar to above but using new facilities at sites other than SRS.
• New Ceramic Immobilization Facilities	• Collocated pit disassembly/plutonium conversion, and immobilization facilities.
	• Use of either Cs–137 from capsules or HLW as a radiation barrier.
	• Wet or dry feed preparation technologies.
	• A can-in-canister approach at SRS in which the plutonium is immobilized without highly radioactive radionuclides in a ceramic matrix and then placed in the DWPF canisters that are then filled with borosilicate glass containing HLW (See Appendix O of the Final PEIS).
	• A can-in-canister approach similar to above but using new facilities at sites other than SRS.
• Electrometallurgical Treatment (glass-bonded zeolite form)	• Immobilize plutonium into metal ingot form.
	• Locate at DOE sites other than ANL–W at INEL.
• Existing LWR With New MOX Facilities	• Pressurized or Boiling Water Reactors.
	• Different numbers of reactors.
	• European MOX fuel fabrication.
	• Modification/completion of existing facilities for MOX fabrication.
	• Collocated pit disassembly/conversion, plutonium conversion, and MOX facilities.
	• Reactors with different core management schemes (plutonium loadings, refueling intervals).
• Partially Completed LWR With New MOX Facilities	• Same as for existing LWR (except that MOX fuel would not be fabricated in Europe).
• Evolutionary LWR With New MOX Facilities	• Same as for partially completed LWR.
• Existing CANDU Reactor With New MOX Facilities	• Different numbers of reactors.
	• Modification/completion of existing facilities for MOX fabrication.
	• Collocated pit disassembly/conversion, plutonium conversion, and MOX facilities.
	• Reactors with different core management schemes (plutonium loadings, refueling intervals).

Note: ANL–W=Argonne National Laboratory-West; Cs–137=cesium-137; HLW=high-level waste; LWR=light water reactor

The first step in plutonium disposition is to remove the surplus plutonium from storage, then process this material in a pit disassembly/conversion facility (for pits) or in a plutonium conversion facility (for non-pit materials). The processing would convert the plutonium material into a form suitable for each of the disposition alternatives described in the following sections. The pit disassembly/conversion facility and the plutonium conversion facility would be built at a DOE site. The six candidate sites for long-term storage were evaluated for the potential environmental impacts of constructing and operating these facilities.

a. No Disposition Action. A "No Plutonium Disposition" action means disposition would not occur, and surplus plutonium-bearing weapon components (pits) and other forms, such as metal and oxide, would remain in storage in accordance with decisions on the long-term storage of weapons-usable fissile materials.

b. Deep Borehole Category. Under this category of alternatives, surplus weapons-usable plutonium would be disposed of in deep boreholes that would be drilled at least 4 kilometers (km) (2.5 miles [mi]) into ancient, geologically stable rock formations beneath the water table. The deep borehole would provide a geologic barrier against potential proliferation. A generic site was evaluated for the construction and operation of a borehole complex where the surplus plutonium would be prepared for emplacement in the borehole. This complex would consist of five major facilities: Processing; drilling; emplacing/sealing; waste management; and support (security, maintenance, and utilities).

(1) Direct Disposition (Borehole). Under the Direct Disposition Alternative, surplus plutonium would be removed from storage, processed as necessary, converted to a form suitable for emplacement, packaged, and placed in a deep borehole. The deep borehole would be sealed to isolate the

[6] In the can-in-canister variant, cans of plutonium in a glass or ceramic matrix would be placed in a canister. This canister would then be filled with borosilicate glass containing high-level radioactive waste (HLW) or highly radioactive material such as cesium. This variant, at an existing facility (the Defense Waste Processing Facility [DWPF] at SRS), is described in Appendix O of the S&D Final PEIS.

plutonium from the accessible environment. Long-term performance of the deep borehole would depend on the stability of the geologic system. A generic site was used for the borehole complex to analyze the environmental impact of this alternative.

(2) Immobilized Disposition (Borehole). Under the Immobilized Disposition Alternative, the surplus plutonium would be removed from storage, processed, and converted to a suitable form for shipment to a ceramic immobilization facility. The output of this facility would be spherical ceramic pellets containing plutonium, facilitating handling during transportation and emplacement. The ceramic pellets (about 2.54 centimeters [cm] [1 inch {in}] in diameter and containing 1 percent plutonium by weight) would then be placed in drums and shipped to the borehole complex. At the deep borehole site, the ceramic pellets would be mixed with non-plutonium ceramic pellets and fixed with grout during emplacement. The deep borehole would be sealed to isolate the plutonium from the accessible environment. Long-term performance of the deep borehole would depend on the stability of the geologic system.

Although a generic site was used for analyses of the borehole complex in this alternative, the ceramic immobilization facility would be built at a DOE site. Therefore, the six candidate sites for long-term storage were used to evaluate the environmental impacts of the borehole immobilization facility.

c. Immobilization Category. Under this category of alternatives, surplus plutonium would be immobilized to create a chemically stable form for disposal in a geologic repository pursuant to the Nuclear Waste Policy Act (NWPA).[7] The plutonium material would be mixed with or surrounded by high-level waste (HLW) or other radioactive isotopes and immobilized to create a radiation field that could serve as a proliferation deterrent, along with safeguards and security comparable to those of commercial spent nuclear fuel, thereby achieving the Spent Fuel Standard. All immobilized plutonium would be encased in stainless steel canisters and would remain in onsite vault-type storage until a geologic repository pursuant to the NWPA is operational.

(1) Vitrification. Under the Vitrification Alternative, surplus plutonium would be removed from storage, processed, packaged, and transported to the vitrification facility. In this facility, the plutonium would be mixed with glass frit and highly radioactive cesium-137 (Cs-137) or HLW to produce borosilicate glass logs (a slightly different process, using HLW, would be used for the can-in-canister variant, as discussed in Appendix O of the S&D Final PEIS). The Cs-137 isotope could come from the cesium chloride (CsCl) capsules currently stored at Hanford or from existing HLW if the site selected for vitrification already manages HLW. Each glass log produced from the vitrification facility would contain about 84 kilograms (kg) (185 pounds [lb]) of plutonium. The vitrification facility would be built at a DOE site. The six candidate sites for long-term storage were analyzed for this alternative.

(2) Ceramic Immobilization. Under the Ceramic Immobilization Alternative, surplus plutonium would be removed from storage, processed, packaged, and transported to a ceramic immobilization facility. In this facility, the plutonium would be mixed with nonradioactive ceramic materials and Cs-137 or HLW to produce ceramic disks (a slightly different process, using HLW, would be used for the can-in-canister variant, as discussed in Appendix O of the S&D Final PEIS). Each disk would be approximately 30 cm (12 in) in diameter and 10 cm (4 in) thick, and would contain approximately 4 kg (9 lb) of plutonium. The Cs-137 or HLW would be provided as previously described. The ceramic immobilization facility would be built at a DOE site. The six candidate sites for long-term storage were analyzed for this alternative.

(3) Electrometallurgical Treatment. Under the Electrometallurgical Treatment Alternative, surplus plutonium would be removed from storage, processed, packaged, and transported to new or modified facilities for electrometallurgical treatment. This process could immobilize surplus fissile materials into a glass-bonded zeolite (GBZ) form. With the GBZ material, the plutonium would be in the form of a stable, leach-resistant mineral that is incorporated in durable glass materials.[8] Existing electrometallurgical facilities at INEL were used as a representative site for analysis of potential environmental impacts.

d. Reactor Category. Under the reactor alternatives considered in the S&D PEIS, DOE would fabricate surplus plutonium into MOX fuel for use in reactors. The irradiated MOX fuel would reduce the proliferation risks of the plutonium material, and the reactors would also generate electricity. MOX fuel would be used in a once-through fuel cycle, with no reprocessing or subsequent reuse of spent fuel. The spent nuclear fuel generated by the reactors would then be sent to a geologic repository pursuant to the NWPA.

Because the United States does not have a MOX fuel fabrication facility or capability, a new dedicated MOX fuel fabrication facility would be built at a DOE or commercial site.[9] The surplus plutonium from storage would be processed, converted to plutonium dioxide (PuO_2), and transferred to the MOX fuel fabrication facility. In this facility, PuO_2 and uranium dioxide (UO_2) (from existing domestic sources) would be blended and fabricated into MOX pellets, loaded into fuel rods, and assembled into fuel bundles suitable for use in the reactor alternatives under consideration.

(1) Existing Light Water Reactors. Under the Existing Light Water Reactor (LWR) Alternative, the MOX fuel containing surplus plutonium would be fabricated and transported to existing commercial LWRs in the United States, where the MOX fuel would be used instead of conventional UO_2 fuel. The LWRs employed for domestic electric power generation are pressurized water reactors (PWRs) and boiling water reactors (BWRs). Both types of reactors use the heat produced from nuclear fission reactions to generate steam that drives turbines and generates electricity. Three to five reactor units would be needed.[10]

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[7] Also referred to as a permanent, or HLW repository. Pursuant to the Nuclear Waste Policy Act, DOE is currently characterizing the Yucca Mountain Site in Nevada as a potential repository for spent nuclear fuel and HLW. Legislative clarification, or a determination by the Nuclear Regulatory Commission that the immobilized plutonium should be isolated as HLW, may be required before the material could be placed in Yucca Mountain should DOE and the President recommend, and Congress approve, its operation. No Resource Conservation and Recovery Act (RCRA) wastes would be immobilized unless the immobilization would constitute adequate treatment under RCRA. The immobilized product would be consistent with the repository's waste acceptance criteria.

[8] In May 1996, the Department issued a Finding of No Significant Impact (FONSI) (61 Fed. Reg. 25647) and decision to proceed with the limited demonstration of the electrometallurgical treatment process at Argonne National Laboratory-West (ANL–W) at INEL for processing up to 125 spent fuel assemblies from the Experimental Breeder Reactor II (100 drivers and 25 blanket assemblies). Although this alternative could be conducted at other DOE sites, ANL–W is described in the S&D PEIS as the representative site for analysis.

[9] Although a generic commercial site was evaluated in the S&D PEIS, it is not part of the Preferred Alternative or the decisions in this ROD.

[10] It is possible that an existing LWR can be configured to produce tritium, consume plutonium as fuel, and generate revenue through the production of electricity. This configuration is called a multipurpose reactor. Environmental

(2) Partially Completed Light Water Reactors. Under the Partially Completed LWR Alternative, commercial LWRs on which construction has been halted would be completed. The completed reactors would use MOX fuel containing surplus plutonium. The characteristics of these LWRs would be the same as those of the existing LWRs discussed in the Existing LWR Alternative. The Bellefonte Nuclear Plant located along the west bank of the Tennessee River in Alabama was used as a representative site for the environmental analysis of this alternative. Two reactor units (such as those at the Bellefonte Nuclear Plant) would be needed to implement this alternative.

(3) Evolutionary Light Water Reactors. The evolutionary LWRs are improved versions of existing commercial LWRs. Two design approaches were considered in the S&D PEIS. The first is a large PWR or BWR similar to the size of the existing PWR and BWR. The second is a small PWR approximately one-half the size of the large PWR. Two large or four small evolutionary LWRs would be needed to implement this alternative.

Under each design approach for this alternative, evolutionary LWRs would be built at a DOE site. Therefore, the six candidate sites for long-term storage were used to evaluate the environmental impacts of this alternative.

(4) Canadian Deuterium Uranium Reactor. Under the CANDU Reactor Alternative, the MOX fuel containing surplus plutonium would be fabricated in a U.S. facility, then transported for use in one or more commercial heavy water reactors in Canada. The Ontario Hydro Bruce-A Nuclear Generating Station identified by the Government of Canada was used as a representative site for evaluation of this alternative. This station is located on Lake Huron about 300 km (186 mi) northeast of Detroit, Michigan. Environmental analysis of domestic activities up to the U.S./Canadian border is presented in the S&D PEIS. The use of CANDU reactors would be subject to the policies, regulations, and approval of the Federal and Provincial Canadian Governments. Pursuant to Section 123 of the Atomic Energy Act, any export of MOX fuel from the United States to Canada must be made under the agreement for cooperation between the two countries. Spent fuel generated by a CANDU reactor would be disposed under the Canadian spent fuel program.

C. Preferred Alternative

The S&D Final PEIS presented the Department's Preferred Alternative for both storage and disposition. DOE has decided to implement the Preferred Alternative as described in the S&D Final PEIS. Thus, the Preferred Alternative is described in Section V of this ROD, Decisions.

D. Environmental Impacts

Chapter 4 and the appendices of the S&D Final PEIS analyzed the potential environmental impacts of the storage and disposition alternatives in detail. The S&D Final PEIS also evaluated the maximum site impacts that would result at Hanford, INEL, Pantex, and SRS from combining the Preferred Alternative for storage with the Preferred Alternative for disposition. Consistent with the Preferred Alternative, Hanford, INEL, Pantex, and SRS are each a possible location for all or some plutonium disposition activities. The siting, construction, and operation of disposition facilities will be covered in a separate, follow-on EIS. The S&D Final PEIS described the total life cycle impacts that would result from the Preferred Alternative at the DOE sites identified for potential placement of the disposition facilities.

Based on analyses in the S&D Final PEIS, the areas where impacts might be significant are as follows:

- The use of groundwater at the Pantex Plant for storage and disposition facilities could contribute to the overall declining water levels of the Ogallala Aquifer. The projected No Action Alternative water usage at Pantex in the year 2005 reflects a reduction from current usage due to planned downsizing over the next few years. The Preferred Alternative would require a 72-percent increase in the projected No Action Alternative water use; the total amount (428 million liters per year) is considerably less than what is currently being withdrawn (836 million liters per year) at Pantex.
- A set of postulated accidents was used for each plutonium disposition alternative over the life of the campaign to obtain potential radiological impacts at the four DOE sites where disposition facilities could be built. The PEIS analyzes the risk of latent cancer fatalities (reflecting the probability of accident occurrence and the latent cancer fatalities potentially caused by the accident) for accidents that have low probabilities of occurrence and severe consequences, as well as those that have higher probabilities and low consequences. For potential severe accidents, the risk of latent cancer fatalities to the population located within 80 kilometers (50 miles) of the accident for the "front-end" disposition process campaign would range from 4.5×10^{-16} (that is, approximately 1 chance in 2 quadrillion) to 1.7×10^{-4} (approximately 1 chance in 6,000) for the pit disassembly/conversion facility, and from 1.5×10^{-16} to 1.3×10^{-4} for the plutonium conversion facility. This risk would range from 2.8×10^{-14} to 1.8×10^{-5} for the vitrification facility, from 7.0×10^{-16} to 1.9×10^{-7} for the ceramic immobilization facility, and from 4.6×10^{-16} to 4.3×10^{-4} for the MOX fuel fabrication facility. To estimate the change in risk associated with using MOX fuel instead of uranium fuel in existing LWRs, the severe accident scenarios assumed a large population distribution near a generic existing LWR and extreme meteorological conditions for dispersal, leading to large doses that were not necessarily reflective of actual site conditions. The resultant change in risk of cancer fatalities to a generic population located within 80 km (50 mi) of the severe accidents was estimated to range from -2.0×10^{-4} to 3.0×10^{-5} per year [11], reflecting a postulated risk of using MOX fuel that ranges from seven percent lower to eight percent higher than the risk of using uranium fuel. Under the Preferred Alternative, the estimated risk of cancer fatalities under severe accident conditions using MOX fuel in existing LWRs ranges from 0.01 to 0.098 for an 11-year campaign.
- Under the Preferred Alternative, HEU would continue to be stored at the Y–12 Plant at ORR in existing facilities that would be upgraded to meet requirements for withstanding natural phenomena, including earthquakes and tornadoes. This upgrade would reduce the expected risk for the design basis accidents analyzed in the Y–12 EA (for example, Building 9212) by approximately 80 percent, resulting in a latent cancer fatality risk of 7.4×10^{-6} (approximately 7 in a million) to the maximally exposed individual, 5.7×10^{-8} (approximately 6 in 100

analysis of the multipurpose reactor is included in Chapter 4 of the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (TSR PEIS) (DOE/EIS–0161, October 1995) and Appendix N of the S&D PEIS. In the TSR PEIS ROD (December 1995), the multipurpose reactor was preserved as an option for future consideration. The Fast Flux Test Facility (FFTF) at Hanford has been under consideration for tritium production, and could also use surplus plutonium as reactor fuel if it were shown to be useful for tritium production. This ROD does not preclude use of the FFTF for tritium production or the potential use of surplus plutonium as fuel for the FFTF.

[11] Accidents severe enough to cause a release of plutonium involved combinations of events that are highly unlikely. Estimates and analyses presented in Chapter 4 and summarized in Table 2.5–3 of the PEIS indicate a range of latent cancer fatalities of 5,900 to 7,300 and a risk of 0.016 to 0.15 of a fatality in the population for the 17-year campaign analyzed under the Existing LWR Alternative.

million) to a non-involved worker, and 5.1×10^{-7} (approximately 5 in 10 million) to the 80-km offsite population.

• Under the Preferred Alternative, safe, secure storage would continue for materials at Hanford, INEL, and ORR, pending disposition. Therefore, there would be no transportation impact at these sites until disposition. The storage transportation impact would come from movement of the RFETS materials to Pantex and SRS. If, following the EIS for construction and operation of plutonium disposition facilities, potential plutonium disposition activities were added to Hanford, INEL, Pantex, and SRS, the estimated total health effects for the life of the project from transportation of surplus plutonium (including transportation of those materials from RFETS to Pantex and SRS) would range from 0.193 fatalities for transportation to Pantex, to 1.87 fatalities for transportation to SRS (primarily from normal expected traffic accidents, not from radiological releases). In addition to the disposition activities at DOE sites, there would be transportation of the MOX fuel from the DOE fuel fabrication site to existing LWRs. The location of the LWRs and the destination of the MOX fuel could be either the eastern or western United States. For 4,000 km (2,486 mi) of such transportation, there could be up to an additional 3.61 potential fatalities (primarily from normal expected traffic accidents, not from radiological releases) for the life of the campaign, assuming 100 percent of the surplus plutonium would be used in commercial reactors. The actual amount would be smaller, and therefore potential fatalities would be lower, under the Preferred Alternative.

• At Hanford, INEL, Pantex, and SRS the Preferred Alternative would slightly increase regional employment and income. At RFETS, phaseout of plutonium storage would result in the loss of approximately 2,200 direct jobs. Compared to the total employment in the area, the loss of these jobs and the impacts to the regional economy would not be severe.

DOE has fully considered all of the environmental analyses in the S&D Final PEIS in reaching the decisions set forth in Section V, below.

E. Avoidance/Minimization of Environmental Harm

For the long-term storage of fissile material, there are four sites (Hanford, NTS, INEL, and LANL) where the Preferred Alternative is "no action"; that is, no plutonium would be stored at NTS, and at Hanford, INEL, and LANL, DOE would continue storage at existing facilities, using proven nuclear materials safeguards and security procedures, until disposition. These existing facilities would be maintained to ensure their safe operation and compliance with applicable environmental, safety and health requirements. At RFETS, the Preferred Alternative is to phase out storage of weapons-usable fissile materials, thus mitigating environmental impacts at RFETS. There are three sites (Pantex, ORR, and SRS) where the Preferred Alternative is to upgrade existing and planned new facilities. Site-specific mitigation measures for storage at these sites have been described in the S&D Final PEIS, and are summarized as follows:

• At Pantex, to alleviate the effects from using groundwater from the Ogallala Aquifer, the city of Amarillo is considering supplying treated wastewater to Pantex from the Hollywood Road Wastewater Treatment Plant for industrial use; the Department will use such treated wastewater to the extent possible. Radiation doses to individual workers will be kept low by maintaining comprehensive badged monitoring and programs to keep worker exposures "as low as reasonably achievable" (ALARA).

• At ORR, radiation doses to individual workers will be kept low by maintaining comprehensive badged monitoring and ALARA programs, including worker rotations. Upgrades for HEU storage to meet performance requirements will include seismic structural modifications as documented in Natural Phenomena Upgrade of the Downsized/Consolidated Oak Ridge Uranium/Lithium Plant Facilities. These modifications will reduce the risk of accidents to workers and the public.

• At SRS, to minimize soil erosion impacts during construction, storm water management and erosion control measures will be employed. Mitigation measures for potential Native American resources will be identified through consultation with the potentially affected tribes. Radiation doses to individual workers will be kept low by maintaining comprehensive badged monitoring and ALARA programs including worker rotations. The modified Actinide Packaging and Storage Facility (APSF) will be designed and operated in accordance with contemporary DOE Orders and regulations to reduce risks to workers and the public.

From a nonproliferation standpoint, the highest standards for safeguards and security will be employed during transportation, storage, and disposition. With respect to transportation, DOE will coordinate the transport of plutonium and HEU with State officials, consistent with current policy. Although the actual routes will be classified, they will be selected to circumvent populated areas, maximize the use of interstate highways, and avoid bad weather. DOE will continue to coordinate emergency preparedness plans and responses with involved states through a liaison program. The packaging, vehicles, and transport procedures being used are specifically designed and tested to prevent a radiological release under all credible accident scenarios.

For the Preferred Alternative for disposition, site-specific mitigation measures will be addressed in the follow-on, site-specific EIS. In the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives, measures are proposed to reduce the possibility of the theft or loss of material. For both immobilization and MOX fuel fabrication, bulk processing is the point in the disposition process when the material is most vulnerable to covert attempts to steal or divert it. A variety of opportunities for improving safeguards, some of which are already implemented at large, modern facilities, include near real-time accounting, increased automation in the process design, and improved containment and surveillance.

The security risks posed by transportation can be reduced by minimizing the amount of transportation required (for example, putting the plutonium processing and MOX fabrication operations at the same site), minimizing the number of sites to which material has to be shipped, and minimizing the distance between those sites.

F. Environmentally Preferable Alternatives

The environmental analyses in Chapter 4 of the S&D Final PEIS indicate that the environmentally preferable alternative (the alternative with the lowest environmental impacts over the 50 years considered in the PEIS) for storage of weapons-usable fissile materials would be the Preferred Alternative, which consists of No Action at Hanford, NTS, INEL, and LANL pending disposition, phaseout of storage at RFETS, and upgrades that would ultimately reduce environmental vulnerabilities at ORR, SRS, and Pantex.

For disposition of surplus plutonium, the environmentally preferable alternative would be the No Disposition Action alternative, because the

plutonium would remain in storage in accordance with decisions on the long-term storage of weapons-usable fissile materials, and there would be no new Federal actions that could impact the environment. For normal operations, analyses show that immobilization would be somewhat preferable to the existing LWR and preferred alternatives, although these alternatives, with the exception of waste generated, would be essentially environmentally comparable.[12]

Severe facility accident considerations indicate that immobilization options would be environmentally preferable to the existing reactor and preferred alternatives, although the likelihood of occurrence of severe accidents and the risk to the public are expected to be fairly low. Although No Disposition Action would be environmentally preferable, it would not satisfy the purpose and need for the Proposed Action, because the stockpile of surplus plutonium would not be reduced, and the Nonproliferation and Export Control Policy would not be implemented.

The hybrid approach (pursuing both reactors/MOX and immobilization) is being chosen over immobilization alone because of the increased flexibility it will provide by ensuring that plutonium disposition can be initiated promptly should one of the approaches ultimately fail or be delayed. Establishing the means for expeditious plutonium disposition will also help provide the basis for an international cooperative effort that can result in reciprocal, irreversible plutonium disposition actions by Russia. (See discussion in sections IV and V, below.)

IV. Non-Environmental Considerations

A. Technical Summary Reports

To assist in the preparation of this ROD, DOE's Office of Fissile Materials Disposition prepared and in July 1996 issued a *Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition and a Technical Summary Report for Long-Term Storage of Weapons-Usable Fissile Materials.* These Technical Summary Reports (TSRs) summarize technical, cost, and schedule data for the storage and disposition alternatives that are considered in the S&D PEIS. After receiving comments on each of the TSRs, DOE issued revised versions of the reports in October and November, 1996, respectively.

1. Storage Technical Summary Report

This report provides technical, cost and schedule information for long-term storage alternatives analyzed in the S&D PEIS. The cost information for each alternative is presented in constant 1996 dollars and also discounted or present value dollars. It identifies both capital costs and life cycle costs. The following costs are in 1996 dollars.

The cost analyses show that the combination (preferred) alternative for the storage of plutonium would provide advantages to the Department with respect to implementing disposition technologies and would be the least expensive compared to other storage alternatives. The cost of the combination (preferred) alternative would be approximately $30 million in investment and $360 million in operating costs from inception until disposition occurs. The cost of the upgrade at multiple sites alternative would be approximately $380 million in investment and $3.2 billion in operating costs for 50 years. The costs for the consolidation alternative could range from approximately $40 million to $360 million in investment and $600 million to $1.1 billion for operating costs for 50 years, depending on the extent to which existing facilities and capabilities can be shared with other programs at the sites.

The schedule analysis shows that the upgraded storage facilities for plutonium under the combination (preferred) alternative could be operational by 2004 at Pantex (Zone 12), and by 2001 at SRS. The upgrade for the storage of HEU could be completed by 2004 (or earlier). RFETS pits could be received at Pantex beginning in 1997 in Zone 4 on a temporary basis until Zone 12 upgrades are completed. The other analyzed alternatives (upgrade and consolidation) would require about six years to complete.

2. Disposition Technical Summary Report

This report provides technical viability, cost, and schedule information for plutonium disposition alternatives and variants analyzed in the S&D PEIS. The variants analyzed in the report are based on pre-conceptual design information in most cases.

a. Technical Viability Estimates. The report indicates that each of the alternatives appears to be technically viable, although each is currently at a different level of technical maturity. There is high confidence that the technologies are sufficiently mature to allow procurement and/or construction of facilities and equipment to meet plutonium disposition technical requirements and to begin disposition in about a decade.[13]

Reactor Alternatives—Light water reactors (LWRs) can be readily converted to enable the use of MOX fuels. Many European LWRs currently operate on MOX fuel cycles. Although some technical risks exist, they are all amenable to engineering resolution. Sufficient existing domestic reactor capacity exists, unless significant delays occur in the disposition mission. CANDU reactors appear to be capable of operating on MOX fuel cycles, but this has never been demonstrated on any industrial scale. Therefore, additional development would be required to achieve the level of maturity for the CANDU reactors that exists for light water reactors. Partially complete and evolutionary LWRs would involve increased technical risk relative to existing LWRs, as well as the need to complete or build (and license) new reactor facilities. The spent MOX fuel waste form that results from reactor disposition of surplus plutonium will have to satisfy waste acceptance criteria for the geologic repository.

Immobilization Alternatives—All vitrification alternatives require additional research and development prior to implementation of immobilization of weapons-usable plutonium. However, a growing experience base exists relating to the vitrification of high-level waste. These existing technologies can be adapted to the plutonium disposition mission, though different equipment designs and glass formulations will generally be necessary due to criticality considerations and chemical differences between plutonium and HLW that may affect the stability of the glass matrix. Vitrification and ceramic immobilization alternatives are similar with regard to the technical maturity of incorporating plutonium in their respective matrices. The technical viability of electrometallurgical treatment has not yet been established for the plutonium disposition mission. The experimental data base for this alternative is limited, and critical questions on waste form performance are not yet resolved. This alternative is considered practical only if the underlying technology is further

[12] The potential risk of latent cancer fatality for a maximally exposed individual of the public from lifetime accident-free operation under the various alternatives are: $1.2x10^{-9}$ to $1.2x10^{-7}$ for boreholes, $1.2x10^{-9}$ to $1.2x10^{-7}$ for immobilization (vitrification or ceramic immobilization), $1.3x10^{-6}$ to $2.6x10^{-6}$ for existing LWRs, and $9.0x10^{-7}$ to $1.7x10^{-6}$ for the Preferred Alternative.

[13] Actual timing would depend on technical demonstrations, follow-on site-specific environmental review, detailed cost estimates, and international agreements.

developed for spent nuclear fuels.[14] All of the immobilization alternatives will require qualification (to meet acceptance criteria) of the waste form for the geologic repository, and may require legislative clarification or NRC rulemaking.

Deep Borehole Alternatives—Uncertainties for the deep borehole alternatives relate to selecting and qualifying a site; additional legislation and regulations, or legislative and regulatory clarification, may be required. The front-end feed processing operations for the deep borehole alternatives are much simpler than for other alternatives because no highly radioactive materials are processed, thus avoiding the need for remote handling operations. Emplacement technologies are comprised of largely low-technology operations which would be adaptations from existing hardware and processes used in the oil and gas industry.

Hybrid Approaches—Two hybrid approaches that combine technologies were considered as illustrative examples, using existing LWR or CANDU reactors in conjunction with a can-in-canister (immobilization) approach. Hybrids provide insurance against technical or institutional hurdles which could arise for a single technology approach for disposition. If any significant roadblock is encountered in any one area of a hybrid, it would be possible to simply divert the feed material to the more viable technology. In the case of a single technology, such roadblocks would be more problematic.

b. Cost Estimates. The following discussion is in constant 1996 dollars unless otherwise stated.

(1) Investment Costs.

• The investment costs for existing reactor variants tends to be about $1 billion; completing or building new reactors increases the investment cost to between $2 billion and $6 billion.

• The investment cost for the immobilization alternatives ranges from approximately $0.6 billion for the can-in-canister variants to approximately $2 billion for new greenfield variants.[15]

• Hybrid alternatives (combining both immobilization and reactor alternatives) require approximately $200 million additional investment over the existing light water reactor stand-alone alternatives.

• Investment costs for the deep borehole alternatives range from about $1.1 billion for direct emplacement to about $1.4 billion for immobilized emplacement.

• Alternatives that utilize existing facilities for plutonium processing, immobilization, or fuel fabrication would realize significant investment cost savings over building new facilities for the same function.

• Large uncertainties in the cost estimates exist, relating to both engineering and institutional factors.

• A significant fraction of the investment cost for an alternative/variant is related to the front-end facilities for the extraction of the plutonium from pits and other plutonium-bearing materials and for other functions that are common to all alternatives.

(2) Life Cycle Costs.

• The life cycle costs for hybrid alternatives are similar to the stand-alone reactor alternatives. For the existing LWR/immobilization hybrid alternative (preferred alternative), the cost is $260 million higher than the stand-alone reactor alternative; for the CANDU/immobilization hybrid alternative, the cost is $70 million higher.

• The combined investment and net operating costs for MOX fuel are higher than for commercial uranium fuel; thus, the cost of MOX fuel cannot compete economically with low-enriched uranium fuel for LWRs or natural uranium fuel for CANDU reactors.

• The can-in-canister approaches are the most attractive variants for immobilization based on cost considerations.

• The deep borehole alternatives are more expensive than the can-in-canister and existing reactor alternatives. The immobilized borehole alternative life cycle cost is $1 billion greater than that for the direct emplacement alternative ($3.6 billion vs. $2.6 billion).

• Large uncertainties in the cost estimates exist, relating to engineering, regulatory, and policy considerations.

c. Schedule Estimates. The key conclusions of the Disposition Technical Summary Report with respect to schedules are as follows:

• Significant schedule uncertainties exist, relating to both engineering and institutional factors.

• Opportunities for compressing or expanding schedules exist.

(1) Reactor Alternatives. • The rate at which MOX fuel is consumed in reactors will depend on the rate that MOX fuel is provided and fabricated, and the rate that plutonium oxide is provided to the MOX fuel fabrication facility.

• The time to attain production scale operation in existing LWRs and CANDU reactors could be about 8–12 years, depending on the need for and source of test assemblies that might be required.

• The time to complete the disposition mission is a function of the number of reactors committed to the mission, among other factors. For the variants considered, the time to complete varies from about 24 to 31 years.

(2) Immobilization Alternatives.

• The time to start the disposition mission ranges from 7 to 13 years, depending on the technology used and whether existing facilities are used.

• The operating campaign for the immobilization alternatives at full-scale operation would be about 10 years; it is possible to compress or expand the operating schedule by several years, if desired, by resizing the immobilization facility designs selected for analysis in this study. The overall mission duration (including research and development, construction, and operation) is expected to be about 18 to 24 years.

• Potential delays for start-up of the immobilization alternatives involve completing process development and demonstration, and qualifying the waste form for a geologic repository.

(3) Deep Borehole Alternatives. • The time to start-up is expected to be 10 years.

• The operating duration of the mission would be about 10 years, although completing all burial operations at the borehole site in 3 years is possible. Therefore, the overall mission duration is estimated to be 20 years with accelerated emplacement reducing the duration by about 7 years.

• The schedule for the deep borehole alternatives would depend in part on selecting and qualifying a site, and obtaining legislative and regulatory clarification as well as any necessary permits.

(4) Hybrid Approaches. • In general, the schedule data that apply to the component technologies apply to the hybrid alternatives as well.

• Confidence in an early start-up and an earlier completion can both be improved with a hybrid approach, relative to stand-alone alternatives.

• Hybrid alternatives provide an inherent back-up technology approach to enhance confidence in attaining schedule goals.

[14] A recent study by the National Research Council concludes that the electrometallurgical treatment technology is not sufficiently mature to provide a reliable basis for timely plutonium disposition. "An Evaluation of the Electrometallurgical Approach for Treatment of Excess Weapons Plutonium" (National Academy Press, Washington, D.C., 1996).

[15] "Greenfield" means a variant involving a new facility, with no existing plutonium-handling infrastructure.

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B. Nonproliferation Assessment

To assist in the development of this ROD, DOE's Office of Arms Control and Nonproliferation, with support from the Office of Fissile Materials Disposition, prepared a report, Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives. The report was issued in draft form in October 1996, and following a public comment period, was issued in final form in January 1997. It analyzes the nonproliferation and arms reduction implications of the alternatives for storage of plutonium and HEU, and disposition of excess plutonium. It is based in part on a Proliferation Vulnerability Red Team Report prepared for the Office of Fissile Materials Disposition by Sandia National Laboratory. The assessment describes the benefits and risks associated with each option. Some of the "options" and "alternatives" discussed in the Nonproliferation Assessment are listed as "variants" (such as can-in-canister) in the S&D Final PEIS. The key conclusions of the report, as presented in its Executive Summary, are reproduced below.

1. Storage. • Each of the options under consideration for storage of U.S. weapons-usable fissile materials has the potential to support U.S. nonproliferation and arms reduction goals, if implemented appropriately.

• Each of the storage options could provide high levels of security to prevent theft of nuclear materials, and could provide access to excess materials for international monitoring.

• Making excess plutonium and HEU available for bilateral U.S.-Russian monitoring and International Atomic Energy Agency (IAEA) safeguards, while protecting proliferation-sensitive information, would help demonstrate the U.S. commitment never to return this material to nuclear weapons, providing substantial arms reduction and nonproliferation benefits in the near-term.

2. Disposition of U.S. Excess Plutonium

a. In General. • Each of the options for disposition of excess weapons plutonium that meets the Spent Fuel Standard would, if implemented appropriately, offer major nonproliferation and arms reduction benefits compared to leaving the material in storage in directly weapons-usable form. Taking into account the likely impact on Russian disposition activities, the no-action alternative appears to be by far the least desirable of the plutonium disposition options from a nonproliferation and arms reduction perspective.

• Carrying out disposition of excess U.S. weapons plutonium, using options that ensured effective nonproliferation controls and resulted in forms meeting the Spent Fuel Standard, would:

• reduce the likelihood that current arms reductions would be reversed, by significantly increasing the difficulty, cost, and observability of returning this plutonium to weapons;

• increase international confidence in the arms reduction process, strengthening political support for the nonproliferation regime and providing a base for additional arms reductions, if desired;

• reduce long-term proliferation risks posed by this material by further helping to ensure that weapons-usable material does not fall into the hands of rogue states or terrorist groups; and

• lay the essential foundation for parallel disposition of excess Russian plutonium, reducing the risks that Russia might threaten U.S. security by rebuilding its Cold War nuclear weapons arsenal, or that this material might be stolen for use by potential proliferators.

• Choosing the "no-action alternative" of leaving U.S. excess plutonium in storage in weapons-usable form indefinitely, rather than carrying out disposition:

• would represent a clear reversal of the U.S. position seeking to reduce excess stockpiles of weapons-usable materials worldwide;

• would make it impossible to achieve disposition of Russian excess plutonium;

• could undermine international political support for nonproliferation efforts by leaving open the question of whether the United States was maintaining an option for rapid reversal of current arms reductions; and

• could undermine progress in nuclear arms reductions.

• The benefits of placing U.S. excess plutonium under international monitoring and then transforming it into forms that met the Spent Fuel Standard would be greatly increased, and the risks of these steps significantly decreased, if Russia took comparable steps with its own excess plutonium on a parallel track. The two countries need not use the same plutonium disposition technologies, however.

• As the 1994 NAS committee report [16] concluded, options for disposition of U.S. excess weapons plutonium will provide maximum nonproliferation and arms control benefits if they:

• minimize the time during which the excess plutonium is stored in forms readily usable for nuclear weapons;

• preserve material safeguards and security during the disposition process, seeking to maintain to the extent possible the same high standards of security and accounting applied to stored nuclear weapons (the Stored Weapons Standard);

• result in a form from which the plutonium would be as inaccessible and unattractive for weapons use as the larger and growing quantity of plutonium in commercial spent fuel (the Spent Fuel Standard).

• In order to achieve the benefits of plutonium disposition as rapidly as possible, and to minimize the risks and negative signals resulting from leaving the excess plutonium in storage, it is important for disposition options to begin, and to complete the mission as soon as practicable taking into account nonproliferation, environment, safety, and health, and economic constraints. Timing should be a key criterion in judging disposition options. Beginning the disposition quickly is particularly important to establishing the credibility of the process, domestically and internationally.

• Each of the options under consideration for plutonium disposition has its own advantages and disadvantages with respect to nonproliferation and arms control, but none is clearly superior to the others.

• Each of the options under consideration for plutonium disposition can potentially provide high levels of security and safeguards for nuclear materials during the disposition process, mitigating the risk of theft of nuclear materials.

• Each of the options under consideration for plutonium disposition can potentially provide for effective international monitoring of the disposition process.

• Plutonium disposition can only reduce, not eliminate, the security risks posed by the existence of excess plutonium, and will involve some risks of its own:

• Because all plutonium disposition options would take decades to complete, disposition is not a near-term solution to the problem of nuclear theft and smuggling. While disposition will make a long-term contribution, the near-term problem must be addressed through programs to improve security and safeguarding for nuclear materials, and to ensure adequate police, customs, and intelligence capabilities to interdict nuclear smuggling.

[16] See footnote 3, above.

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• All plutonium disposition options under consideration would involve processing and transport of plutonium, which will involve more risk of theft in the short term than if the material had remained in heavily guarded storage, in return for the long-term benefit of converting the material to more proliferation-resistant forms.

• Both the United States and Russia will still retain substantial stockpiles of nuclear weapons and weapons-usable fissile materials even after disposition of the fissile materials currently considered excess is complete. These weapons and materials will continue to pose a security challenge regardless of what is done with excess plutonium.

• None of the disposition options under consideration would make it impossible to recover the plutonium for use in nuclear weapons, or make it impossible to use other plutonium to rebuild a nuclear arsenal. Therefore, disposition will only reduce, not eliminate, the risk of reversal of current nuclear arms reductions.

• A U.S. decision to choose reactor alternatives for plutonium disposition could offer additional arguments and justifications to those advocating plutonium reprocessing and recycle in other countries. This could increase the proliferation risk if it in fact led to significant additional separation and handling of weapons-usable plutonium. On the other hand, if appropriately implemented, plutonium disposition might also offer an opportunity to develop improved procedures and technologies for protecting and safeguarding plutonium, which could reduce proliferation risks and would strengthen U.S. efforts to reduce the stockpiles of separated plutonium in other countries.

• Large-scale bulk processing of plutonium, including processes to convert plutonium pits to oxide and prepare other forms for disposition, as well as fuel fabrication or immobilization processes, represents the stage of the disposition process when material is most vulnerable to covert theft by insiders or covert diversion by the host state. Such bulk processing is required for all options, however; in particular, initial processing of plutonium pits and other forms is among the most proliferation-sensitive stages of the disposition process, but is largely common to all the options. More information about the specific process designs is needed to determine whether there are significant differences between the various immobilization and reactor options in the overall difficulty of providing effective assurance against theft or diversion during the different types of bulk processing involved, and if so, which approach is superior in this respect.

• Transport of plutonium is the point in the disposition process when the material is most vulnerable to overt armed attacks designed to steal plutonium. With sufficient resources devoted to security, however, high levels of protection against such overt attacks can be provided. International, and particularly overseas, shipments would involve greater transportation concerns than domestic shipments. [17]

b. Conclusions Relating to Specific Disposition Options.

• The reactor options, homogeneous immobilization [18] options, and deep borehole immobilized emplacement option can all meet the Spent Fuel Standard. The can-in-canister options are being refined to increase the resistance to separation of the plutonium cans from the surrounding glass, with the goal of meeting the Spent Fuel Standard. The deep borehole direct emplacement option substantially exceeds the Spent Fuel Standard with respect to recovery by sub-national groups, but could be more accessible and attractive for recovery by the host state than spent fuel.

• The reactor options have some advantage over the immobilization options with respect to perceived irreversibility, in that the plutonium would be converted from weapons-grade to reactor-grade, even though it is possible to produce nuclear weapons with both weapons and reactor-grade plutonium. The immobilization and deep borehole options have some advantage over the reactor options in avoiding the perception that they could potentially encourage additional separation and civilian use of plutonium, which itself poses proliferation risks.

• Options that result in accountable "items" (for purposes of international safeguards) whose plutonium content can be accurately measured (such as fuel assemblies or immobilized cans without fission products in the "can-in-canister" option) offer some advantage in accounting to ensure that the output plutonium matches the input plutonium from the process. Other options (such as homogeneous immobilization or immobilized emplacement in deep boreholes) would require greater reliance on containment and surveillance to provide assurance that no material was stolen or diverted—but in some cases could involve simpler processing, easing the task of providing such assurance.

• The principal uncertainty with respect to using excess weapons plutonium as MOX in U.S. LWRs relates to the potential difficulty of gaining political and regulatory approvals for the various operations required.

• Compared to the LWR option, the CANDU option would involve more transport and more safeguarding issues at the reactor sites themselves (because of the small size of the CANDU fuel bundles and the on-line refueling of the CANDU reactors). Demonstrating the use of MOX in CANDU reactors by carrying out this option for excess weapons plutonium disposition could somewhat detract from U.S. efforts to convince nations operating CANDU reactors in regions of proliferation concern not to pursue MOX fuel cycles, but these nations are likely to base their fuel cycle decisions primarily on factors independent of disposition of this material. Disposing of excess weapons plutonium in another country long identified with disarmament could have significant symbolic advantages, particularly if carried out in parallel with Russia. Disposition of Russian plutonium in CANDU reactors, however, would require resolving additional transportation issues and additional questions relating to the likely Russian desire for compensation for the energy value of the plutonium.

• The immobilization options have the potential to be implemented more quickly than the reactor options. They face somewhat less political uncertainty but somewhat more technical uncertainty than the reactor options.

• The likelihood of very long delays in gaining approval for siting and construction of deep borehole sites represents a very serious arms reduction and nonproliferation disadvantage of the borehole option, in either of its variants. While the deep borehole direct-emplacement option requires substantially less bulk processing than the other disposition options, that option may not meet the Spent Fuel Standard for retrievability by the host state, as mentioned above. Any potential

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[17] International shipments would be involved (from the United States to Canada) if the CANDU option were pursued as a result of international agreements among the U.S., Canada, and Russia. Overseas shipments would be involved if European MOX fuel fabrication were utilized in the interim before a domestic MOX fabrication facility were completed. The Preferred Alternative and the decisions in this ROD do not involve European MOX fuel fabrication.

[18] The term "homogeneous immobilization" refers to mixing of solutions of plutonium and either HLW or cesium in liquid form, followed by solidification of the mixture in either glass or ceramic matrices. This contrasts with the "can-in-canister" variant, in which the plutonium and HLW or cesium materials are never actually mixed together.

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advantage from the reduced processing is small compared to the large timing uncertainty and the potential retrievability disadvantage.

• Similarly, the electrometallurgical treatment option, because it is less developed than the other immobilization options, involves more uncertainty in when it could be implemented, which represents a significant arms reduction and nonproliferation disadvantage. It does not appear to have major compensating advantages compared to the other immobilization options.

• The "can-in-canister" immobilization options have a timing advantage over the homogeneous immobilization options, in that, by potentially relying on existing facilities, they could begin several years sooner. As noted above, however, modified systems intended to allow this option to meet the Spent Fuel Standard are still being designed.

C. Comments on the S&D Final PEIS

After issuing the Final PEIS, DOE received approximately 100 letters from organizations and individuals commenting on the alternatives addressed in the PEIS. Many of these letters expressed opposition to the MOX fuel approach for surplus plutonium disposition. The major concern raised in these letters was the contention that the use of MOX fuel is associated with proliferation risk as well as additional delays, costs, and safety and environmental risks. One of these letters was from a coalition of 14 national organizations recommending that the Department decide to utilize immobilization for the disposition of all surplus plutonium and that MOX be retained for use, if at all, only as an "insurance policy" if immobilization should prove infeasible. Several of those 14 organizations also wrote separately making similar points. Conversely, many of the letters provided comments in support of the use of MOX fuel and/or a dual path, while a few expressed opposition to the immobilization alternatives.

Seven of the letters received suggested the use of disposition approaches that were not analyzed in the PEIS. Three of these approaches (dropping plutonium into volcanoes, burying it in the sea at the base of a volcano, and storing it in large granite or marble structures) are similar to options that were either considered (but found to be unreasonable) in a screening process that preceded the PEIS, or were addressed in the PEIS Comment Response Document. These approaches were considered to be potentially damaging to the environment, among other things, and were therefore dismissed as unreasonable. Three other alternatives (plasma technology, binding and neutralizing plutonium with a new organic material, and use in rocket engines) recommended in these letters would require a substantial amount of development and could not be accomplished in the same time frame as alternatives analyzed in the PEIS. One commentor suggested adding the plutonium to the radioactive sludge being stored at Hanford for eventual disposal. The Department views this as unreasonable because of delays and increased costs that would be incurred in the program to manage the wastes in the Hanford tanks. One commentor was opposed to the utilization of Hanford's Fuels and Materials Examination Facility for MOX fuel fabrication and the Fast Flux Test Facility for MOX fuel burning.

All of the issues raised in these letters are covered in the body of the Final PEIS, in the Comment Response Document, the Summary Report of the Screening Process (DOE/MD–0002, March 19, 1995), the Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition, or the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives, which have each been considered in reaching this ROD.

The Department's decision for surplus plutonium disposition is to pursue both the existing LWR (MOX fuel) and immobilization approaches. DOE recognizes that the estimated life-cycle cost of immobilization alone would be less than that of the hybrid approach (pursuing both), but the additional expense would be warranted by the increased flexibility should one of the approaches ultimately fail, and the increased ability to influence Russian plutonium disposition actions. (The lowest cost approach would be the No Disposition Action alternative; however, as noted in section III.F, above, that option would not satisfy the purpose and need for this program.) DOE also recognizes that analyses in the PEIS indicated that, for normal operation, the environmental and health impacts would be somewhat lower for immobilization, although, with the exception of waste generation, impacts for the preferred, immobilization, and existing LWR (MOX) alternatives would be essentially comparable (see prior discussion).

Potential latent cancer fatalities for members of the public under the MOX approach would be significantly higher than under the immobilization approach only under highly unlikely facility accident scenarios; the risk (taking into account accident probabilities) to the public of latent cancer fatalities from accidents would be fairly low for both approaches.

From the nonproliferation standpoint, results of the Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives (see section IV.B) indicated that each of the options under consideration for plutonium disposition has its own advantages and disadvantages, and each can potentially provide high levels of security and safeguards for nuclear materials during the disposition process, mitigating the risk of theft of nuclear materials. Initial processing of plutonium pits and other forms is among the most proliferation-sensitive stages of the disposition process, but is largely common to all the options. Although the Assessment also concluded that none of the approaches is clearly superior to the others, both the Nonproliferation Assessment and a letter from the Secretary of Energy Advisory Board Task Force on the Nonproliferation and Arms Control Implications of Weapons-Usable Fissile Materials Disposition Alternatives (included as Appendix B to the Nonproliferation Assessment) concluded that the hybrid approach (both reactors/MOX and immobilization) is preferable because of uncertainties in each approach and because it would minimize potential delays should problems develop with either approach. Numerous comment letters have made similar points.

One such letter was received from five individuals who were the U.S. participants on the U.S.-Russian Independent Scientific Commission on Disposition of Excess Weapons Plutonium. This letter supported the dual-track approach on the grounds that "ruling out reactors and thus depending solely on vitrification as the only approach to plutonium disposition that might be implementable anytime soon, would have far bigger nonproliferation liabilities then would the two-track approach." These commentors argued that designating only immobilization as the preferred approach, with MOX as a back-up, would have essentially all the nonproliferation and arms reduction liabilities of a one-track approach, which would weaken the U.S. position and have severe consequences for the likely success of programs to carry out permanent disposition of weapons plutonium in Russia, and therefore jeopardize the success of programs to

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carry out U.S. disposition. These commentors stated that without the dual-track approach, the U.S. will lose any leverage it might have over the conditions and safeguards accompanying the use of Russian plutonium in their reactors. They also pointed out that pursuing both the MOX option and immobilization in the U.S. may be the best way to convince Russia, which currently favors converting its own plutonium to MOX fuel, of the value of immobilization for a portion of its excess plutonium. These commentors argued that the dual-track approach would not undermine U.S. nonproliferation policy, would not increase the risk of nuclear theft and terrorism, and would not lead to a new domestic plutonium recycle industry since it would not significantly affect the huge economic barriers to using MOX fuel on a commercial basis.

Two commentors expressed opposition to plutonium recycling (reprocessing), citing the Final Generic Environmental Statement on the Use of Recycle Plutonium in Mixed Oxide Fuel in Light Water Cooled Reactors (GESMO), NUREG–0002, which was issued by the NRC in 1976, and President Carter's decision to ban plutonium recycling. DOE notes that plutonium recycling is not part of the plutonium disposition program or the decisions in this ROD; on the contrary, this ROD includes conditions on the use of MOX fuel that are intended to prevent the use of recycled plutonium.

The use of MOX fuel in existing reactors would be undertaken in a manner that is consistent with the United States' policy objective on the irreversibility of the nuclear disarmament process and the United States' policy discouraging the use of plutonium for civil purposes. To this end, implementing the MOX alternative would include government ownership and control of the MOX fuel fabrication facility at a DOE site, and use of the facility only for the surplus plutonium disposition program. There would be no reprocessing or subsequent reuse of spent MOX fuel. The MOX fuel would be used in a once-through fuel cycle in existing reactors, with appropriate arrangements, including contractual or licensing provisions, limiting use of MOX fuel to surplus plutonium disposition.

One commentor, who opposed MOX fuel use, urged DOE not to use European MOX fuel fabrication capability if the MOX approach is pursued. In this ROD, DOE has not decided to use European MOX fuel fabrication.

V. Decisions

A. Storage of Weapons-Usable Fissile Materials

Consistent with the Preferred Alternative in the S&D Final PEIS, the Department has decided to reduce, over time, the number of locations where the various forms of plutonium are stored, through a combination of storage alternatives in conjunction with a combination of disposition alternatives. DOE will begin implementing this decision by moving surplus plutonium from RFETS as soon as possible, transporting the pits to Pantex beginning in 1997, and non-pit plutonium materials to SRS upon completion of the expanded Actinide Packing and Storage Facility (APSF), anticipated in 2001. Over time, DOE will store this plutonium in upgraded facilities at Pantex and in the expanded APSF. Surplus and non-surplus HEU will be stored in upgraded facilities at ORR. Storage facilities for the surplus HEU will also be modified, as needed, to accommodate international inspection requirements consistent with the President's Nonproliferation and Export Control Policy. Accordingly, DOE has decided to pursue the following actions for storage:

- Phase out storage of all weapons-usable plutonium at RFETS beginning in 1997; move pits to Pantex, and non-pit materials to SRS upon completion of the expanded APSF. At Pantex, DOE will repackage pits from RFETS in Zone 12, then place them in existing storage facilities in Zone 4, pending completion of facility upgrades in Zone 12. At SRS, DOE will expand the planned new APSF, and move separated and stabilized non-pit plutonium materials from RFETS to the expanded APSF upon completion. The small number of pits currently at RFETS that are not in shippable form will be placed in a shippable condition in accordance with existing procedures prior to shipment to Pantex. Additionally, some pits and non-pit plutonium materials from RFETS could be used at SRS, LANL, and Lawrence Livermore National Laboratory (LLNL) for tests and demonstrations of aspects of disposition technologies (see disposition decision, below). All non-pit weapons-usable plutonium materials currently stored at RFETS are surplus.

The Department's decision to remove plutonium from RFETS is based on the cleanup agreement among DOE, EPA, and the State of Colorado for RFETS, the proximity of RFETS to the Denver metropolitan area, and the fact that some of the RFETS plutonium is currently stored in buildings 371 and 376, two of the most vulnerable facilities as defined by and identified in DOE's Plutonium Working Group Report on Environmental, Safety, and Health Vulnerabilities Associated With the Department's Plutonium Storage (DOE/EH–0414, November, 1994).

- Upgrade storage facilities at Zone 12 South (to be completed by 2004) at Pantex to store those surplus pits currently stored at Pantex, and surplus pits from RFETS, pending disposition. Storage facilities at Zone 4 will continue to be used for these pits prior to completion of the upgrade.
- In accordance with the preferred alternative in the Final Programmatic Environmental Impact Statement for Stockpile Stewardship and Management (Stockpile Stewardship and Management PEIS), store Strategic Reserve pits at Pantex in other upgraded facilities in Zone 12.

The Department's decision to consolidate pit storage at Pantex places the pits at a central location where most of the pits already reside and where the expertise and infrastructure are already in place to accommodate pit storage.[19] Pantex has more than 40 years of experience with the handling of pits. Zone 12 facilities would be modified for long-term storage of the Pantex plutonium inventory and the small number of pits transferred from RFETS and SRS for a modest cost (about $10 million capital cost). Pursuant to the Final EIS for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components (DOE/EIS–0225), DOE is proposing to continue nuclear weapons stockpile management operations and related activities at the Pantex Plant, including interim storage of up to 20,000 pits.[20] Consequently, the storage of surplus pits at Pantex would offer the opportunity to share trained people and other resources, and a decreased cost could be realized over other sites without similar experience. Using the Pantex Plant for pit storage would also involve the lowest cost and the least new construction relative to other sites.

- Expand the planned APSF at SRS (Upgrade Alternative) to store those surplus, non-pit plutonium materials currently at SRS and surplus non-pit plutonium materials from RFETS, pending disposition (see disposition decision, below). DOE analyzed the

[19] A small number of research and development pits located at RFETS that have been and will continue to be packaged and returned to LANL and LLNL are outside the scope of the S&D PEIS and this ROD.

[20] The pits that are to be moved to Pantex pursuant to this ROD fall within the 20,000 pit limit.

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potential impacts of constructing and operating the APSF in the Final Environmental Impact Statement, Interim Management of Nuclear Materials (DOE/EIS–0220) and announced the decision to build the facility in the associated ROD (60 FR 65300, December 19, 1995). DOE, pursuant to the decisions announced here to store surplus non-pit plutonium at SRS, will likely design and build the APSF and the expanded space to accommodate the RFETS material as one building,[21] which DOE plans to complete in 2001. The RFETS surplus non-pit plutonium materials [22] will be moved to SRS after stabilization is performed at RFETS under corrective actions in response to Defense Nuclear Facilities Safety Board Recommendation 94–1; and after the material is packaged in DOE-approved storage and shipping containers pursuant to existing procedures. The surplus plutonium already on-site at SRS and the movement of separated and stabilized non-pit plutonium from RFETS would result in the storage of a maximum of 10 metric tons of surplus plutonium in the new, expanded APSF at SRS. In addition, shipment of the non-pit plutonium from RFETS to SRS, after stabilization, would only be implemented if the subsequent ROD for a plutonium disposition site (see Section V.B., below) calls for immobilization of plutonium at SRS. Placement of surplus, non-pit plutonium materials in a new storage facility at SRS will allow utilization of existing expertise and plutonium handling capabilities in a location where disposition activities could occur (see disposition decision, below). The decision to store non-pit plutonium from RFETS at SRS places most non-pit material at a plutonium-competent site with the most modern, state-of-the-art storage and processing facilities, and at a site with the only remaining large-scale chemical separation and processing capability in the DOE complex.[23] Pits currently located at SRS will be moved to Pantex for storage consistent with the Preferred Alternative in the Stockpile Stewardship and Management PEIS. There are no strategic non-pit materials currently located at SRS.

- Continue current storage (No Action) of surplus plutonium at Hanford and INEL, pending disposition (or movement to lag storage [24] at disposition facilities when selected).[25] This action will allow surplus plutonium to remain at the sites with existing expertise and plutonium handling capabilities, and where potential disposition activities could occur (see disposition decision, below). There are no non-surplus weapons-usable plutonium materials currently stored at either site.
- Continue current storage (No Action) of plutonium at LANL, pending disposition (or movement to lag storage at the disposition facilities). This plutonium will be stored in stabilized form with the non-surplus plutonium in the upgraded Nuclear Material Storage Facility pursuant to the No Action alternative for the site.
- Take No Action at the NTS. DOE will not introduce plutonium to sites that do not currently have plutonium in storage.
- Upgrade storage facilities at the Y–12 Plant (Y–12) (to be completed by 2004 or earlier) at ORR to store non-surplus HEU and surplus HEU pending disposition. Existing storage facilities at Y–12 will be modified to meet natural phenomena requirements, as documented in Natural Phenomena Upgrade of the Downsized/Consolidated Oak Ridge Uranium/Lithium Plant Facilities (Y/EN–5080, 1994). Storage facilities will be consolidated, and the storage footprint will be reduced, as surplus HEU is dispositioned and blended to low-enriched uranium, pursuant to the ROD for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement (61 FR 40619, August 5, 1996). Consistent with the Preferred Alternative in the Stockpile Stewardship and Management PEIS, HEU strategic reserves will be stored at the Y–12 Plant.

B. Plutonium Disposition

Consistent with the Preferred Alternative in the S&D Final PEIS, DOE has decided to pursue a strategy for plutonium disposition that allows for immobilization of surplus weapons plutonium in glass or ceramic forms and burning of the surplus plutonium as mixed oxide fuel (MOX) in existing reactors. The decision to pursue disposition of the surplus plutonium using these approaches is supported by the analyses in the Disposition Technical Summary Report (section IV.A.2 above) and the Nonproliferation Assessment (section IV.B above), as well as the S&D Final PEIS. The results of additional technology development and demonstrations, site-specific environmental review, detailed cost proposals, nonproliferation considerations, and negotiations with Russia and other nations will ultimately determine the timing and extent to which MOX as well as immobilization is deployed. These efforts will provide the basis and flexibility for the United States to initiate disposition efforts either multilaterally or bilaterally through negotiations with other nations, or unilaterally as an example to Russia and other nations.

Pursuant to this decision, the United States policy not to encourage the civil use of plutonium and, accordingly, not to itself engage in plutonium reprocessing for either nuclear power or nuclear explosive purposes, does not change. Although under this decision some plutonium may ultimately be burned in existing reactors, extensive measures will be pursued (see below) to ensure that federal support for this unique disposition mission does not encourage other civil uses of plutonium or plutonium reprocessing. The United States will maintain its commitments regarding the use of plutonium in civil nuclear programs in western Europe and Japan.

The Disposition Technical Summary Report (section IV.A.2 above) concluded that the lowest cost option for plutonium disposition would be immobilization using the can-in-canister variant and existing facilities to the maximum extent possible, with a net life-cycle cost of about $1.8 billion. The Disposition Technical Summary Report also estimated that the net life-cycle cost of the hybrid immobilization/MOX approach would be about $2.2 billion. The additional expense of pursuing the hybrid approach would be warranted by

[21] Building the APSF in this way, rather than as originally configured plus an expansion, will not increase the potential impacts of constructing and operating the facility beyond those analyzed in the S&D Final PEIS in conjunction with the analyses in the Final Environmental Impact Statement, Interim Management of Nuclear Materials.

[22] This decision does not include residues at RFETS that are less than 50-percent plutonium by weight, or scrub alloys. The management and disposition of those materials has been or is being considered in separate NEPA reviews. See Environmental Assessment for Solid Residue Treatment, Repackaging, and Storage (DOE/EA–1120, April 1996); Notice of Intent to Prepare an EIS on the Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (61 FR 58866, November 19, 1996).

[23] SRS is one of the preferred candidate sites for plutonium disposition facilities, including the potential for the early start of disposition by immobilization using the can-in-canister option at the DWPF.

[24] Lag storage is temporary storage at the applicable disposition facility.

[25] Lawrence Livermore National Laboratory (LLNL) currently stores 0.3 metric tons of plutonium, which are primarily research and development and operational feedstock materials not surplus to government needs. Adequate storage facilities for this material currently exist at LLNL, where it will be stored and used for research and development activities. None of the plutonium stored at LLNL falls within the scope of the disposition alternatives in the S&D Final PEIS or the disposition decisions in this ROD.

the increased flexibility it would provide, as noted in the Nonproliferation Assessment, to ensure that plutonium disposition could be initiated promptly should one of the approaches ultimately fail or be delayed. Establishing the means for expeditious plutonium disposition will also help provide the basis for an international cooperative effort that can result in reciprocal, irreversible plutonium disposition actions by Russia. This disposition strategy signals a strong U.S. commitment to reducing its stockpile of surplus plutonium, thereby effectively meeting the purpose of and need for the Proposed Action.

To accomplish the plutonium disposition mission, DOE will use, to the extent practical, new as well as modified existing buildings and facilities for portions of the disposition mission. DOE will analyze and compare existing and new buildings and facilities, and technology variations, in a subsequent, site-specific EIS. In addition, all disposition facilities will be designed or modified, as needed, to accommodate international inspection requirements consistent with the President's Nonproliferation and Export Control Policy. Accordingly, DOE has decided to pursue the following strategy and supporting actions for plutonium disposition:

- Immobilize plutonium materials using vitrification or ceramic immobilization at either Hanford or SRS, in new or existing facilities. Immobilization could be used for pure or impure forms of plutonium. In the subsequent EIS (referenced above), DOE anticipates that the preferred alternative for vitrification or ceramic immobilization will include the can-in-canister variant, utilizing the existing HLW and the DWPF at SRS (see below). Alternatively, new immobilization facilities could be built at Hanford or SRS. The immobilized material would be disposed of in a geologic repository. Pursuant to appropriate NEPA review, DOE will continue the research and development leading to the demonstration of the can-in-canister variant at the DWPF using surplus plutonium and the development of vitrification and ceramic formulations.
- Convert surplus plutonium materials into mixed oxide (MOX) fuel for use in existing reactors. Pure surplus plutonium materials including pits, pure metal, and oxides could be converted without extensive processing into MOX fuel for use in existing commercial reactors. Other, already separated forms of surplus plutonium would require additional purification. (This purification would not involve reprocessing of spent nuclear fuel.) The Government-produced MOX fuel (from plutonium declared surplus to defense needs) would be used in existing LWRs with a once-through fuel cycle, with no reprocessing or subsequent reuse of the spent fuel. In addition, DOE will explore appropriate contractual limits to ensure that any reactor license modification for use of the MOX fuel is limited to governmental purposes involving the disposition of surplus, weapons-usable plutonium, so as to discourage general civil use of plutonium-based fuel. The spent MOX fuel would be disposed of in a geologic repository. If partially completed LWRs were to be completed by other parties, they would be considered for this mission. The MOX fuel would be fabricated in a domestic, government-owned facility at one of four DOE sites (SRS, Hanford, INEL, or Pantex).

The Department reserves as an option the potential use of some MOX fuel in CANDU reactors in Canada in the event that a multilateral agreement to deploy this option is negotiated among Russia, Canada, and the United States. DOE will engage in a test and demonstration program for CANDU MOX fuel consistent with ongoing and potential future cooperative efforts with Russia and Canada.

The test and demonstration activities could occur at LANL and at sites in Canada, potentially beginning in 1997, and will be based on appropriate NEPA review. Fabrication of MOX fuel for CANDU reactors would occur in a DOE facility, as would be true in the case of domestic LWRs. Strict security and safeguards would be employed in the fabrication and transport of MOX fuel to CANDU reactors, as well as domestic reactors. Whether, and the extent to which, the CANDU option is implemented will depend on multi-national agreements and the results of the test and demonstration activities.

Due to technology, complexity, timing, cost, and other factors that would be involved in purifying certain plutonium materials to make them suitable for potential use in MOX fuel, approximately 30 percent of the total quantity of plutonium that has been or may be declared surplus to defense needs would require extensive purification for use in MOX fuel, and therefore will likely be immobilized. Of the plutonium that is currently surplus, DOE will immobilize at least 8 metric tons that it has determined are not suitable for use in MOX fuel.[26] DOE reserves the option of using the immobilization approach for all of the surplus plutonium.

The timing and extent to which either option is ultimately utilized will depend on the results of international agreements, future technology development and demonstrations, site-specific environmental review, detailed cost proposals, and negotiations with Russia and other nations. In the event both technologies are utilized, because the time required for plutonium disposition using reactors would be longer than that for immobilization, it is probable that some surplus plutonium would be immobilized initially, prior to completion of reactor irradiation for other surplus plutonium.

Implementation of this strategy will involve some or all of the following supporting actions:

- Construct and operate a plutonium vitrification facility or ceramic immobilization facility at either Hanford or SRS. DOE will analyze alternative locations at these two sites for constructing new buildings or using modified existing buildings in subsequent, site-specific NEPA review. SRS has existing facilities (the DWPF) and infrastructure to support an immobilization mission, and at Hanford, DOE has proposed constructing and operating immobilization facilities for the wastes in Hanford tanks.[27] DOE will not create new infrastructure for immobilizing plutonium with HLW or cesium at INEL, NTS, ORR, or Pantex. Due to the substantial timing and cost advantages associated with the can-in-canister option, as discussed in the Technical Summary Report For Surplus Weapons-Usable Plutonium Disposition and summarized in section IV.A.2, above, DOE anticipates that the proposed action for immobilization in the follow-on plutonium disposition EIS will include the use of the can-in-canister option at the DWPF at SRS for immobilizing a portion of the surplus, non-pit plutonium material.[28]

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[26] The S&D Final PEIS, for purposes of analysis of impacts of the preferred alternative (using both reactors and immobilization), assumed that about 30 percent (approximately 17 MT) of the surplus plutonium materials might be immobilized because they are impure. DOE's decision here that immobilization will be used for at least 8 MT currently located at SRS and RFETS is based on DOE's current assessment that that quantity of material is so low in quality that its purification for use in MOX fuel would not be cost-effective. This decision does not preclude immobilizing all of the surplus plutonium, but it does preclude using the MOX/reactor approach for all of the material.

[27] See Final Environmental Impact Statement for the Tank Waste Remediation System, Hanford Site, Richland, Washington (DOE/EIS–0189, August 1996); ROD expected early in 1997.

[28] DOE expects to issue a Notice of Intent to prepare the follow-on EIS shortly following this ROD. Reasonable alternatives for the proposed

• Construct and operate a plutonium conversion facility for non-pit plutonium materials at either Hanford or SRS. DOE will collocate the plutonium conversion facility with the vitrification or ceramic immobilization facility discussed above. In subsequent, site-specific NEPA review, DOE will analyze alternative locations at Hanford and SRS for constructing new buildings or using modified existing buildings for the plutonium conversion facility.

• Construct and operate a pit disassembly/conversion facility at Hanford, INEL, Pantex, or SRS (only one site). DOE will not introduce plutonium to sites that do not currently have plutonium in storage. Therefore, two sites analyzed in the S&D PEIS, NTS and ORR, will not be considered further for plutonium disposition activities. DOE will analyze alternative locations at Hanford, INEL, Pantex, and SRS for constructing new buildings or using modified existing buildings in subsequent, site-specific NEPA review. Based on appropriate NEPA review, DOE anticipates demonstrating the Advanced Recovery and Integrated Extraction System (ARIES) concept at LANL for pit disassembly/conversion beginning in fiscal year 1997.

• Construct and operate a domestic, government-owned, limited-purpose MOX fuel fabrication facility at Hanford, INEL, Pantex, or SRS (only one site). As noted above, NTS and ORR will not be considered further for plutonium disposition activities. In follow-on NEPA review, DOE will analyze alternative locations at Hanford, INEL, Pantex, and SRS, for constructing new buildings or using modified existing buildings. The MOX fuel fabrication facility will serve only the limited mission of fabricating MOX fuel from plutonium declared surplus to U.S. defense needs, with shut-down and decontamination and decommissioning of the facility upon completion of this mission. [29]

DOE's program for surplus plutonium disposition will be subject to the highest standards of safeguards and security for storage, transportation, and processing (particularly during operations that involve the greatest proliferation vulnerability, such as during MOX fuel preparation and transportation), and will include International Atomic Energy Agency verification as appropriate. Transportation of all plutonium-bearing materials under this program, including the transportation of prepared MOX fuel to reactors, will be accomplished using the DOE Transportation Safeguards Division's "Safe Secure Transports" (SSTs), which affords these materials the same level of transportation safety, security, and safeguards as is used for nuclear weapons.

Pursuant to appropriate NEPA review(s), DOE will continue research and development and engage in further testing and demonstrations of plutonium disposition technologies which may include: dissolution of small quantities of plutonium in both glass and ceramic formulation; experiments with immobilization equipment and systems; fabrication of MOX fuel pellets for demonstrations of reactor irradiation at INEL; mechanical milling and mixing of plutonium and uranium feed; and testing of shipping and storage containers for certification, in addition to the testing and demonstrations previously described for the can-in-canister immobilization variant, the ARIES system, and other plutonium processes.

DOE has decided not to pursue several disposition alternatives that were evaluated in the S&D PEIS: two deep borehole alternatives, electrometallurgical treatment, evolutionary reactors, and partially-completed reactors (unless they were completed by others, in which case they would qualify as existing reactors). Although the deep borehole options are technically attractive, the institutional uncertainties associated with siting of borehole facilities make timely implementation of this alternative unlikely. To implement the borehole alternatives, new legislation and regulations, or clarification of existing regulations, may be necessary. DOE has decided not to pursue the electrometallurgical treatment option for immobilization because its technology is less mature than vitrification or ceramic immobilization. [30] DOE has decided not to pursue evolutionary reactors or partially-completed reactors because they offer no advantages over existing reactors for plutonium disposition and would involve higher costs, greater regulatory uncertainties, higher environmental impacts from construction, and less timely commencement of disposition actions.

VI. Conclusion

DOE has decided to implement a program to provide for safe and secure storage of weapons-usable fissile materials and for disposition of weapons-usable plutonium that is declared excess to national security needs (now or in the future), as specified in the Preferred Alternative in the S&D Final PEIS. DOE will consolidate the storage of weapons-usable plutonium by upgrading and expanding existing facilities at the Pantex Plant in Texas and SRS in South Carolina, continuing storage of surplus plutonium currently onsite at Hanford, LANL, and INEL pending disposition, and continuing storage of weapons-usable HEU at DOE's Y–12 Plant in Tennessee, in upgraded and, as surplus HEU is down-blended under the ROD for Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, consolidated facilities. DOE will provide for disposition of surplus plutonium by pursuing a strategy that allows: (1) Immobilization of surplus plutonium for disposal in a repository pursuant to the Nuclear Waste Policy Act, and (2) fabrication of surplus plutonium into MOX fuel, for use in existing domestic commercial reactors (and potentially CANDU reactors, depending on future agreements with Russia and Canada). The timing and extent to which each of these disposition technologies is deployed will depend upon the results of future technology development and demonstrations, site-specific environmental review, detailed cost proposals, and the results of negotiations with Russia, Canada, and other nations. This programmatic decision is effective upon being made public, in accordance with DOE's regulations implementing NEPA (10 CFR 1021.315). The goals of this program are to support U.S. nuclear weapons nonproliferation policy by reducing global stockpiles of excess fissile materials so that they may never be used in weapons again. This program will demonstrate the United States' commitment to its nonproliferation goals, as specified in the President's Nonproliferation and Export Control Policy of 1993, and provide an example for other nations, where stockpiles of surplus weapons-usable fissile materials may be less secure from potential theft or diversion than those in the United

action will be considered in the follow-on disposition EIS.

[29] DOE supports external regulation of its facilities, and in the Report of Department of Energy Working Group on External Regulation (DOE/UF–0001, December 1996), DOE proposed to seek legislation that would generally require NRC licenses for new DOE facilities. Therefore, DOE anticipates seeking an NRC license for the MOX fuel fabrication facility, which would be limited to a license to fabricate MOX fuel from plutonium declared surplus to defense needs. DOE may also seek legislation that would by statute limit the MOX fuel fabrication facility to disposition of surplus plutonium.

[30] An evaluation by the National Research Council in a recent report (see footnote 12, above) concluded that the electrometallurgical treatment process is not sufficiently mature to provide a reliable basis for timely plutonium disposition.

States, to encourage them to take similar actions.

The decision process reflected in this Notice complies with the requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and its implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Issued in Washington, D.C., January 14, 1997.

Hazel R. O'Leary,

Secretary.

[FR Doc. 97–1355 Filed 1–17–97; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed three-year extension of existing form DOE–887, "Department of Energy Customer Surveys."

DATES: Written comments must be submitted on or before March 24, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Herbert T. Miller, Office of Statistical Standards, EI–73, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (Phone 202–426–1103, FAX 202-426–1081, or e-mail hmiller@eia.doe.gov).

FOR FURTHER INFORMATION: Requests for additional information should be directed to Herbert Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C., Chapter 35).

On September 11, 1993, the President signed Executive Order No. 12862 aimed at "* * * ensuring the Federal government provides the highest quality service possible to the American people." The Order discusses surveys as a means for determining the kinds and qualities of service desired by Federal Government customers and for determining satisfaction levels for existing services. These voluntary customer surveys will be used to ascertain customer satisfaction with the Department of Energy in terms of services and products. Respondents will be individuals and organizations that are the recipients of the Department's services and products. Previous customer surveys have provided useful information to the Department for assessing how well the Department is delivering its services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for DOE to conduct customer surveys. During the past clearance cycle, over 20 customer surveys have been conducted by telephone and mail. (Examples of previously conducted customer surveys are available upon request.) Our planned activities in the next 3 fiscal years reflect our increased emphasis on and expansion of these activities, including an increased use of electronic means for obtaining customer input (CD–ROM and World Wide Web).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion?

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Average public reporting burden for a customer survey is estimated to be .25 hours per response (8,333 respondents per year x 15 minutes per response = 2,083 hours annually). Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

B. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated (1) total dollar amount annualized for capital and start-up costs and (2) recurring annual dollar amount of operation and maintenance and purchase of services costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information.

C. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC on January 13, 1997.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–1353 Filed 1–17–97; 8:45 am]

BILLING CODE 6450–01–P

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed on or before February 20, 1997. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–457A/G, "Residential Energy Consumption Survey"

2. Energy Information Administration, OMB No. 1905–0092, Revision of a currently approved collection, Mandatory

3. EIA–457A/G is used to collect comprehensive national and regional data on both the consumption of and expenditures for energy in the residential sector of the economy. Data are used for analyzing and forecasting residential energy consumption. Housing, appliance, and demographic characteristics data are collected via personal interviews with households, and consumption and expenditures billing data are collected from the energy suppliers.

4. Individuals or households, Business or other for-profit, Federal Government, and State, Local or Tribal Government.

5. 2,005 hours (.4899 hours per response x .25 responses per year x 16,370 respondents). The EIA–457 A/G will be conducted on a quadrennial basis.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, January 13, 1997.

Yvonne M. Bishop,

Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–1354 Filed 1–17–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–187–000]

Honeoye Storage Corporation; Notice of Application

January 14, 1997.

Take notice that on January 8, 1997, Honeoye Storage Corporation (Honeoye), One State Street, Suite 1200, Boston, Massachusetts, 02109, filed in Docket No. CP97–187–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon storage service of 6,814 MMBtu per day of Average Daily Withdrawal Quantity (ADWQ) for Long Island Lighting Company (Lilco), and pursuant to Section 7(c) of the Natural Gas Act, to authorize the allocation of the abandoned service to two new customers, Providence Gas Company (Providence), and ProMark Energy, Inc. (ProMark), all as more fully set forth in the application on file with the Commission and open to public inspection.

Honeoye states that on March 21, 1996, Lilco notified Honeoye that Lilco was terminating its Service Agreement with Honeoye effective March 31, 1997 in accordance with Article Five of its Service Agreement. Honeoye indicates that currently Lilco is entitled to 1,226,400 MMBtu of Maximum Quantities Storage (MQS), and a Maximum Daily Withdrawal Quantity (MDWQ) of 10,220 MMBtu per day. Honeoye hereby requests authorization to abandon such service in accordance with Lilco's wishes.

Honeoye also states that it conducted an open season, offering potential customers the service to be relinquished by Lilco under the terms, conditions, and rate of Honeoye's existing tariff. Honeoye further states that as a result of such open season, Honeoye proposes to provide the abandoned service in equal proportions to Providence and ProMark.

Any person desiring to be heard or to make protest with reference to said application should on or before January 24, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Honeoye to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1314 Filed 1–17–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–109–007, et al.]

Duke Energy Marketing Corp., et al.; Electric Rate and Corporate Regulation Filings

January 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Marketing Corp.

[Docket No. ER96–109–007]

Take notice that on December 20, 1996, Duke Energy Marketing Corp. tendered for filing Notification of Change in Status relating the proposed combination of Duke Power Company and PanEnergy Corp.

2. Southwestern Public Service Company v. El Paso Electric Company

[Docket No. EL97-18-000]

Take notice that on December 20, 1996, Southwestern Public Service Company tendered for filing a complaint against El Paso Electric Company. Southwestern requests that the Commission order El Paso to enter into an agreement with Southwestern for the provision of firm point-to-point transmission service.

Comment date: February 12, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before February 12, 1997.

3. Eclipse Energy, Inc., Lambda Energy Marketing Company, Mid-American Natural Resources, Inc., Seagull Power Services, Inc., Wheeled Electric Power Company, Southern Energy Marketing Corp., Inc., and SDS Petroleum Products, Inc.

[Docket No. ER94–1099–010, Docket No. ER94–1672–008, Docket No. ER95–1423–003, Docket No. ER96–342–003, Docket No. ER96–1150–002, Docket No. ER96–1516–001, and Docket No. ER96–1724–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 26, 1996, Eclipse Energy, Inc. filed certain information as required by the Commission's June 15, 1994, order in Docket No. ER94–1099–000.

On October 21, 1996, Lambda Energy Marketing Company filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000.

On October 7, 1996, Mid-American Natural Resources, Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1423–000.

On December 5, 1996, Seagull Power Services, Inc. filed certain information as required by the Commission's February 15, 1996, order in Docket No. ER96–342–000.

On December 19, 1996, Wheeled Electric Power Company filed certain information as required by the Commission's April 17, 1996, order in Docket No. ER96–1150–000.

On December 16, 1996, Southern Energy Marketing Corp., Inc. filed certain information as required by the Commission's May 8, 1996, order in Docket No. ER96–1516–000.

On November 15, 1996, SDS Petroleum Products, Inc. filed certain information as required by the Commission's June 6, 1996 order in Docket No. ER96–1724–000.

4. Duke/Louis Dreyfus Energy Services (New England) L.L.C.

[Docket No. ER96–1121–003]

Take notice that on December 20, 1996, Duke/Louis Dreyfus, Energy Services (New England) L.L.C. tendered for filing Notification of Change in Status relating the proposed combination of Duke Power Company and PanEnergy Corp.

5. Lykes-Duke/Louis Dreyfus, Ltd.

[Docket No. ER96–2919–001]

Take notice that on December 20, 1996, Lykes-Duke/Louis Dreyfus, Ltd. tendered for filing Notification of Change in Status relating the proposed combination of Duke Power Company and PanEnergy Corp.

6. Central Maine Power Company

[Docket No. ER97–956–000]

Take notice that on December 27, 1996, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Baltimore Gas & Electric Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Electric Power Company

[Docket No. ER97–957–000]

Take notice that on December 27, 1996, Maine Electric Power Company (MEPCO), tendered for filing a Non-Firm Point-to-Point Transmission service agreement entered into with Baltimore Gas & Electric Company. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company

[Docket No. ER97–958–000]

Take notice that on December 27, 1996, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Northeast Utilities Service Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co. (re: Holyoke Water Power Co.

[Docket No. ER97–959–000]

Take notice that on December 27, 1996, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliate, Holyoke Water Power Company (HWP), tendered for filing, pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a Water Use Agreement between HWP, O'Connell Engineering & Financial, Inc. (O'Connell), and the City of Holyoke (Gas & Electric Department), dated as of January 2, 1996. The Water Use Agreement entitles HWP to operate its hydro-electric generating facilities with water to which O'Connell is contractually entitled through a sub-lease with the City of Holyoke. In exchange, the City of Holyoke will receive a certain amount of energy from HWP based on the amount of energy O'Connell's hydro-electric facility could have generated with the water used by HWP. NUSCO requests that the Agreement be made effective sixty days following its filing.

NUSCO states that a copy of this filing has been provided to HWP, O'Connell and the City of Holyoke.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER97–960–000]

Take notice that on December 27, 1996, The Washington Water Power Company, tendered for filing pursuant to § 205 of the Federal Power Act experimental Direct Access Delivery Service Tariffs for the state of Washington and the state of Idaho. WWP requests that the Commission defer to local state regulation.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER97–961–000]

Take notice that on December 27, 1996, Central Illinois Public Service Company (CIPS), filed the Second Amendment, dated November 27, 1996 (Second Amendment), to the Power Supply and Transmission Services Agreement, dated January 2, 1992, between CIPS and Wabash Valley Power Association, Inc. (Wabash Valley). The Second Amendment provides for a rate decrease.

CIPS requests an effective date for the Second Amendment of January 1, 1997. Accordingly, CIPS requests waiver of the Commission's notice requirements. A copy of the filing, with privileged information redacted, has been served on the Illinois Commerce Commission and the Indiana Utility Regulatory Commission. A copy of the complete filing has been served on Wabash Valley.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Company

[Docket No. ER97–963–000]

Take notice that on December 30, 1996, Consumers Power Company (Consumers), filed a new Power Sales Agreement with Edison Sault Electric Company.

Consumers states the Power Sale Agreements will take effect January 1, 1997, and provide for the sale of both firm and interruptible wholesale power on an unbundled basis. The Power Sales Agreement will replace earlier wholesale power agreements presently in effect.

Copies of the filing were served upon Edison Sault Electric Company and the Michigan Public Service Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Power Company

[Docket No. ER97–964–000]

Take notice that on December 30, 1996, Consumers Power Company d.b.a. Consumers Energy Company (Consumers), submitted for filing a wholesale power sales tariff (PST–1) to permit Consumers to make wholesale electric generation sales to eligible customers at up to cost-based ceiling rates.

Consumers requests an effective date of January 1, 1997 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER97–965–000]

Take notice that on December 30, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Sonat Power Marketing, L.P., dated as of September 30, 1996. Duke requests that the Agreement be made effective as of December 30, 1996.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER97–966–000]

Take notice that on December 30, 1996, Western Resources, Inc. on behalf of its wholly owned subsidiary Kansas Gas and Electric Company (KGE) filed a notice of cancellation of Service Schedule C—Economy Energy Service and Service Schedule I—Power Interchange Service, designated by the Commission as Service Schedule C to KGE's Rate Schedule No. 97 and Supplement No. 7 to KGE's Rate Schedule FPC No. 97 respectively. Western Resources requests a cancellation date of March 1, 1997.

Notice of the proposed cancellation has been served upon Oklahoma Gas and Electric Company, the Oklahoma Corporation Commission, and the Kansas Corporation Commission.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER97–967–000]

Take notice that on December 30, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing 14 Notices of Termination of existing rate schedules.

Central Vermont requests waiver of the Commission's Regulations to permit the Terminations to become effective 30 days from the date Notice of Termination is provided by Central Vermont.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Kansas City Power & Light Company

[Docket No. ER97–968–000]

Take notice that on December 30, 1996, Kansas City Power & Light Company (KCPL), tendered for filing Service Schedules for nine municipalities. KCPL proposes the schedules become effective upon acceptance by the Commission. These Schedules provide for the sale of Term energy.

The Schedules are for the municipalities listed below: Baldwin City, Kansas, FERC No. 85; Carrollton, Missouri, FERC No. 86; Gardner,

Kansas, FERC No. 105; Garnett, Kansas, FERC No. 78; Higginsville, Missouri, FERC No. 108; Marshall, Missouri, FERC No. 83; Osawatomie, Kansas, FERC No. 77; Ottawa, Kansas, FERC No. 90; and Salisbury, Missouri, FERC No. 109.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER97–969–000]

Take notice that on December 30, 1996, Wisconsin Public Service Corporation (WPS), tendered for filing a set of contract and rate schedule documents under which Morgan Stanley Capital Group, Inc. (MS) will take over certain of WPS' power supply commitments to Oconto Electric Cooperative (Oconto) beginning on January 1, 1997. Both MS and Oconto have consented to the restructured power supply arrangement.

WPS requests an effective date of January 1, 1997 for its filing, assuming that necessary transmission service arrangements are in place. WPS states that it has served copies of its filing on MS, Oconto and the Public Service Commission of Wisconsin.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Indiana Gas and Electric Company

[Docket No. ER97–970–000]

Take notice that on December 30, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing eight (8) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Intercoast Power Marketing.
2. Heartland Energy Services.
3. Northern Indiana Public Service Company.
4. Duke/Louis Dreyfus L.L.C.
5. Wabash Valley Power Association, Inc.
6. Louisville Gas & Electric Company.
7. SIGECO Wholesale Power Marketing.
8. PECO Energy Company.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER97–971–000]

Take notice that on December 30, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its open access transmission tariff with Electric Clearinghouse, Inc. The service agreement is for umbrella non-firm transmission service.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Indiana Gas and Electric Company

[Docket No. ER97–974–000]

Take notice that on December 30, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing five (5) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Intercoast Power Marketing.
2. Heartland Energy Services.
3. Northern Indiana Public Service Company.
4. Duke/Louis Dreyfus, L.L.C.
5. Wabash Valley Power Association, Inc.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Baltimore Gas and Electric Company

[Docket No. ER97–975–000]

Take notice that on December 30, 1996, Baltimore Gas and Electric Company (BGE), filed Service Agreements with: LG&E Power Marketing, Inc., dated November 27, 1996; Federal Energy Sales, Inc., dated September 10, 1996; Carolina Power & Light Company, dated November 27, 1996; Vitol Gas & Electric L.L.C., dated November 1, 1996; and VTEC Energy Inc., dated November 27, 1996 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreements, BGE agrees to provide services to the parties to the Service Agreements under the provisions of the Tariff. BGE requests an effective date of December 1, 1996 for the Service Agreements. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Company Services, Inc.

[Docket No. ER97–976–000]

Take notice that on December 30, 1996, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Southern Company System), submitted for filing Amendment No. 7 to The Southern Company System Intercompany Interchange Contract (IIC) dated October 31, 1988, as amended. By means of the amendment, the Southern Company Systems is complying with the Commission's requirement that transactions among members be placed under the open access transmission tariff. In addition, the amendment removes certain transmission related provisions of the IIC as a consequence of the separation of functions required by the Commission's Order Nos. 888 and 889. SCS states that the amendment will have no effect on rates under the IIC.

SCS requests an effective date of March 1, 1997 for this submittal.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER97-977-000]

Take notice that on December 30, 1996, UtiliCorp United Inc. (UtiliCorp) filed service agreements with UtiliCorp Energy Group for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Inland Power Pool

[Docket No. ER97-978-000]

Take notice that on December 30, 1996, Public Service Company of Colorado (Public Service), on behalf of itself and the other members of the Inland Power Pool tendered for filing an Amended and Restated Inland Power Pool Agreement. The primary purpose of the Amended and Restated Agreement is to amend and restate the Revised Inland Power Pool Agreement to bring it into compliance with the requirements of FERC Order No. 888. It is requested that the Agreement be made effective on December 31, 1996.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. New York Power Authority

[Docket No. NJ97-4-000]

Take notice that on December 30, 1996, the New York Power Authority (NYPA) tendered for filing a petition for Declaratory Order. NYPA asserts that it seeks the Declaratory Order necessary to implement its open access transmission tariff that it has filed with the Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Green Mountain Power Corporation

[Docket No. OA96-37-002]

Take notice that on January 2, 1997, Green Mountain Power Corporation tendered for filing its modified Pro Forma Tariff in the above-referenced docket.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Dayton Power & Light Company

[Docket No. OA96-64-001]

Take notice that on January 2, 1997, Dayton Power & Light Company tendered for filing an amendment to Open Access Transmission Tariff.

The modifications are being made to comply with FERC's Order Granting in Part, and Denying in Part, Waivers of Non-Rate Terms and Conditions of Open Access Tariffs and Directing Modifications issued December 18, 1996.

Copies of the filing were served on the intervenors to this docket and the Public Utilities Commission of Ohio.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Puget Sound Power & Light Company

[Docket No. OA96-161-001]

Take notice that on January 2, 1997, Puget Sound Power & Light Company tendered for filing its proposed Open Access Transmission Tariff, in accordance with the Commission's Rule No. 888 issued April 26, 1996 in Docket No. RM95-8-000 and Docket No. RM94-74-001.

Comment date: January 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Indiantown Cogeneration, L.P.

[Docket No. QF90-214-002]

On January 3, 1997, Indiantown Cogeneration, L.P. (Applicant), of 7500 Old Georgetown Road, Bethesda, Maryland 20814-6161 submitted for filing an application for recertification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located in Indiantown, Florida. The Commission previously certified the facility as a qualifying cogeneration facility, *Indiantown Cogeneration, L.P.*, 60 FERC ¶ 62,133 (1992). A notice of self-certification was filed on August 22, 1990. The instant request for recertification is due to the reconfiguration of the facility.

Comment date: February 5, 1997 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-1341 Filed 1-17-97; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 8296-043]

Malacha Hydro Limited Partnership; Notice of Availability of Environmental Assessment

January 14, 1997.

An environmental assessment (EA) is available for public review. The EA is for an amendment of license application for the Muck Valley Hydroelectric Project, located in Lassen County, California. The amendment application concerns minor structural modifications to the project's existing diversion and intake structures. The EA finds that the modifications to the project would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2-A, 888 First Street, NE., Washington, D.C. 20426. Additional information can be obtained by calling the project manager, Jon Cofrancesco at (202) 219-0079.

Lois D. Cashell,

Secretary.

[FR Doc. 97-1315 Filed 1-17-97; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11500-001, Tennessee]

Armstrong Energy Resources; Notice of Surrender of Preliminary Permit

January 14, 1997.

Take notice that Armstrong Energy Resources, permittee for the Reynolds Creek Pumped Storage Project No. 11500, located on the Reynolds Creek and Big Brush Creek in Sequatchie County, Tennessee, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 16, 1994, and would have expired on November 30, 1997. The permittee states that it has decided to concentrate its efforts on another project.

The permittee filed the request on January 3, 1997, and the preliminary permit for Project No 11500 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 97-1316 Filed 1-17-97; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Toxic Chemicals; PCBs; Submission of ICR No. 1000 to OMB; Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Polychlorinated Biphenyls (PCBs): Use in Electrical Equipment and

Transformers [EPA ICR # 1000.06; OMB Control # 2070–0003] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on April 30, 1997. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60 day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on August 8, 1996 (61 FR 41404). EPA received two comments in response to that notice and has considered the comments in developing the final ICR. A copy of the comments received, along with a summary response, are appended to the ICR submitted to OMB and available in the docket.

DATES: Additional comments may be submitted on or before February 20, 1997.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1000.06 and OMB Control No. 2070–0003.

ADDRESSES: Send comments, referencing EPA ICR No. 1000.06 and OMB Control No. 2070–0003, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Management Division (Mailcode: 2136), 401 M Street, SW., Washington, DC 20460; and to

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1000.06; OMB Control No. 2070–0003.

Current Expiration Date: Current OMB approval expires on April 30, 1997.

Title: Polychlorinated Biphenyls (PCBs): Use in Electrical Equipment and Transformers

Abstract: Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing, distribution in commerce and use of PCBs. EPA has authority, however, to allow a use of PCBs to continue if it determines that the use will not present unreasonable risks to public health and the environment. In the case of regulating PCB electrical equipment, EPA has promulgated a series of rules since the 1978 prohibition on the use of PCBs (see 40 CFR part 761).

EPA imposed the reporting requirements contained in these rules to ensure that the National Response Center is informed immediately of fires involving PCB transformers. PCB transformer fires generate hazardous dioxins and furans, substances many times more toxic than PCBs. The recordkeeping requirements are used to document the use, location and condition of PCB equipment. The reporting and recordkeeping requirements are essential to prevent adverse effects to human health and the environment from leaks or spills of PCB fluids or from potential exposures to dioxins and furans during transformer fires. Without such recordkeeping and reporting safeguards, EPA would not be able to fulfill its responsibility under TSCA of preventing unreasonable risk to human health and the environment from exposure to PCBs. Responses to the collection of information are mandatory (see 40 CFR parts 761). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average approximately 1.0 hours per response for six respondents. The annual recordkeeping burden is estimated to average approximately 0.166 hours per respondent for 150,000 respondents. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are owners of PCB-containing transformers used in industry, utilities, government and private buildings or elsewhere.

Estimated No. of Respondents: 150,000.

Estimated Total Annual Burden on Respondents: 24,906 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is a decrease of 8,300 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 33,206 hours currently to an estimated 24,906 hours. This reflects the fact that EPA estimates that there are fewer transformers to be inspected than was the case at the time this collection was last approved by OMB, and therefore a smaller total respondent burden.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted as described above.

Dated: January 13, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–1368 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5678–7]

Proposal for Using Voluntary Environmental Management Systems in State Water Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of competitive funding proposal to support the use of voluntary environmental management systems in water pollution control programs administered by States. Request for applications.

SUMMARY: The Office of Water at the Environmental Protection Agency (EPA) announces its intention to provide financial support, through a competitive grant process, for States that encourage and support the use of voluntary environmental management systems (EMS), using the ISO 14001 International Standard as a baseline, for facilities under State water programs in either delegated or non-delegated States. States should also consider more specific requirements necessary to ensure that the EMS contain measurable performance objectives and targets that address: (1) continual improvement of environmental performance, (2)

pollution prevention, and (3) improved compliance. Facilities would need to have a history of good compliance and compliance management programs in place that are consistent with EPA's Self Policing Policy, issued in December, 1995. Facilities would also need to implement outreach programs with relevant external stakeholders as they develop and implement their EMS.

Grants will be provided to States on a competitive basis to assist in the implementation of this program. The EPA anticipates that 5–7 States will be accepted initially for participation in this program. While the specific amount of grant funds to be provided to each State have not been decided, EPA will try to make as much as $100,000 available to each participating state. States could use grant funds provided by EPA for a variety of activities, including training, technical assistance, or overall project management.

After final selection, States would be asked to develop a more detailed workplan, including specific milestones, for implementing their program covering an initial period of two years.

DATES: Applications from States wishing to be considered for this program should be submitted no later than March 13, 1997.

ADDRESSES: Applications should be submitted to: James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 401 M Street, S.W., Washington, D.C. 20460. *Mail Code:* 4201.

States should also send copies of each application to the appropriate EPA Regional Water Management Division Director.

FOR FURTHER INFORMATION CONTACT: James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5802. *Mail Code:* 4201.

SUPPLEMENTARY INFORMATION:

I. Background

Around the world, the use of voluntary EMS's is increasing as organizations try to improve their overall environmental performance and demonstrate this performance to outside parties, including regulatory agencies. While EMS's per se do not guarantee improved performance or set specific performance standards, they do provide organizations with a mechanism to systematically analyze the impacts of their activities on the environment, including compliance with regulatory requirements, and take steps to reduce these impacts through pollution prevention, effective compliance management, and continual improvement of overall environmental performance, including activities that may not be regulated.

Environmental management systems, if properly implemented, could potentially support a number of key reinvention activities underway in both EPA and the States. These include reductions in unnecessary reporting and monitoring, focusing more on environmental results instead of levels of activity, and using market-based approaches to complement ongoing regulatory, compliance, and enforcement programs.

In the future, regulatory agencies can also expect organizations with EMS's in place to seek greater flexibility from current regulatory or other requirements for achieving environmental protection. Thus, it is appropriate for regulatory agencies, in key areas like permitting and monitoring to consider ways in which they could respond favorably to organizations that can demonstrate that they have and can maintain a record of good compliance and can implement management systems that, over time, will improve environmental performance.

The use of comprehensive EMS's as a supplement to traditional approaches for ensuring environmental protection has not been a major point of discussion in developing public policy. Therefore, Federal and State agencies must proceed carefully in evaluating whether these systems are indeed a useful tool for improving environmental performance, including compliance. This evaluation must also take place through a transparent and inclusive process with all key stakeholders.

The initiative described in more detail below represents an effort to support and encourage State agencies, through their water programs, to evaluate the use of EMS's as a tool to promote improved environmental performance and, as appropriate, identify more flexible ways for regulators to work with the regulated community. The initiative is also meant to support long-term integration of these management systems into the ongoing operations of a major regulatory program that is jointly administered by EPA and States.

Based on a series of general requirements described below, it gives States discretion in the way they incorporate EMSs into their water programs. Finally, this initiative provides financial assistance for those States selected to participate.

The ISO 14001 International Standard for EMS's has recently been issued in its final form. Over time, organizations around the world are expected to seek to become certified to the standard, through the use of accredited third-party auditors. Certification to the standard may also become a *de facto* requirement of doing business in certain countries, as has been the case with the ISO 9000 standards for quality management.

Under this initiative, third party certification by accredited registrars is clearly one option that States may consider when evaluating facility EMS's. However, States will be allowed to consider other approaches as long as these approaches include mechanisms for the conduct of an initial audit of the management system by qualified personnel and a process for conducting ongoing evaluations of individual facility's systems based on their *performance* against stated objectives and targets.

Within EPA, the Office of Water (OW) has represented the Agency, through the EPA Standards Network, on the U.S. Technical Advisory Group (TAG) charged with developing a consensus U.S. position on the ISO 14001 standard. In addition, OW has sponsored a number of demonstration projects designed to educate organizations on the standard and encourage their use of it, including small and medium-sized organizations. Finally, the water program, which is jointly administered by EPA and States, regulates well in excess of 70,000 individual facilities, both industrial and municipal, the majority of which are small or medium-sized.

II. Guidelines for Participation

When submitting applications for participation under this program, States are asked to adhere to the following guidelines:

1. States should use the ISO 14001 EMS Standard, which has just been issued in final form, as the baseline for evaluating EMS's implemented by regulated facilities.

2. States can also consider more specific EMS requirements, if necessary. These more specific requirements should help ensure that individual facility systems:

(a) have measurable performance objectives and targets that include pollution prevention, improved compliance, and continual improvement of overall environmental performance;

(b) have compliance management programs in place that include environmental audits or objective, documented, and systematic procedures to detect violations, promptly correct these violations, analyze the root causes

of these violations, and take steps to prevent the violations from recurring;

(c) are developed through an open process for communicating with relevant external stakeholders, including representatives from the surrounding community. Facilities are also asked to share information on the performance of their management systems with these stakeholders.

(d) are comprehensive in scope in order to address all significant environmental impacts, not just water impacts.

3. States should ensure that facilities have an acceptable level of historical compliance, as follows:

(a) No criminal convictions ever under any Federal or State environmental statute for falsifying monitoring data or violations within the past three years which presented an imminent and substantial endangerment to public health or welfare;

(b) No criminal actions pending or under investigation;

(c) For civil judicial actions, completion of all injunctive relief and payment of penalties;

(d) For administrative enforcement actions, in compliance with all Administrative Penalty Orders (APOs) or Administrative Orders (AOs) and payment of any assessed penalty; and

(e) No repeat violations as defined by EPA's Incentives for Self-Policing Policy (60 FR 66706) or similar State policy.

However, these conditions, with the exception of criminal convictions, could be waived for facilities that demonstrate an exceptional commitment to implementing an environmental system, based on the discretion of the State and applicable EPA Regional office.

While States could use this program to facilitate entry into the Environmental Leadership Program (ELP) by individual facilities, participation in the ELP is *not* a requirement for facilities to participate in this program.

4. As part of their participation in this program, States are asked to undertake a dialogue with interested stakeholders to determine the type and timing of incentives and flexibility that would be appropriate to offer to facilities that implement EMS's based on the guidelines outlined above. The results of these discussions and recommendations on specific incentives are to be submitted to EPA within one year from the initiation of each State's program.

5. Finally, each participating State will be asked to share common sets of information on their experiences with other States and EPA. EPA will consider holding a conference after States are selected but before their programs are initiated to bring together all participants and identify the common information that is to be shared among the participants and with other stakeholders, including EPA.

III. Process for Submitting Applications and Matching Requirements

States are requested to submit their applications to the Office of Wastewater Management at the address listed above no later than March 13, 1997. A copy of the application should also be sent to Director of the Water Management Division in the relevant EPA Regional office.

While there is no prescribed format for submitting applications, States are asked to address, to the extent possible, all of the items identified under Guidelines for Participation above. The primary basis for evaluating each application will be the degree to which each State can address these items. In addition, States should indicate clearly a commitment to integrate this initiative into their ongoing water programs. Finally, States should indicate a willingness to provide matching resources of not less than 10% of the total grant amount provided by EPA to support this program. These matching resources could be provided either through in-kind services or cash. Specific questions that each State should address in its application are included below in Section IV.

Once all applications are received, a panel comprised of individuals from both EPA Headquarters and Regional offices, will be convened to make final decisions on each application.

EPA will make every effort to complete the final selection process and notify the individual States selected by April 18, 1997.

Grant awards will then be made to each State by the relevant EPA Regional Office within 45 days after this notification. States selected will then be asked to develop workplans, including specific milestones, for their programs covering a period of two years as part of the formal grant application.

IV. Questions To Be Addressed by Applicants

In order to assist States wishing to apply for participation in this program, EPA is providing the following list of questions to be addressed in each application.

1. Who in your organization will be responsible for managing your participation in this initiative? If that person is not in the water program, how will that person work with persons in the water program?

2. What are the major activities that will be supported with the grants provided to your State?

3. Similarly, what level of matching resources will be provided and what major activities will be supported with these resources?

4. What approach will the State employ to determine that each of the guidelines for State and facility participation in Section II are met?

5. How will the State integrate this initiative into its on-going water program?

6. Finally, how will the State integrate this initiative into other EMS's pilot projects it plans to undertake?

Dated: January 14, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–1371 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5678–6]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Automobile Manufacturing, Computers and Electronics, and Iron and Steel Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Automobile Manufacturing, Computers and Electronics, and Iron and Steel Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at all three meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the three announcements below.

(1) Automobile Manufacturing Sector Subcommittee Meeting—February 6, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Automobile Manufacturing Sector Subcommittee on Thursday, February 6, 1997, from 9:30 a.m., EST until 3:30 p.m., EST. The meeting will be at the Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC. The telephone number is (202) 234–0700.

The purpose of the meeting is to review and discuss workplans and

reports from the Life Cycle Management Supplier Partnership Team and the Alternative Strategies Regulatory Systems and Community Team. In particular, the Regulatory Initiatives Team will update the Subcommittee on their progress in developing alternative strategies and their work on the Louisville, Kentucky community project. The Subcommittee will continue exploring other regulatory change opportunities presented in the December meeting.

For further information concerning this Automobile Manufacturing Sector Subcommittee meeting, please contact either Alan W. Powell, Designated Federal Officer (DFO), at EPA, Region 4, by telephone on (404) 562–9045, by fax on (404) 562–9068 or by mail at 100 Alabama Street, S.W., Atlanta, Georgia 30303; or Keith Mason, Alternate DFO, at EPA (202) 260–1360.

(2) Computers and Electronics Sector Subcommittee—February 11 and 12, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Computers and Electronics Sector Subcommittee on Tuesday, February 11, 1997, from 8:30 a.m. PST until 5:00 p.m. PST and on Wednesday, February 12, 1997, from 8:30 a.m. PST to 3:00 p.m. PST, at the Cathedral Hill Hotel, 1101 Van Ness Avenue, San Francisco, California 94109.

Both days, February 11 and 12 will be devoted partly to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for Electronics) and partly to plenary session. Over the course of the two days, the Subcommittee will be discussing management of consumer electronics product recycling and recovery and alternative strategies for environmental protection in the computers and electronics industry. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning this meeting of the Common Sense Initiative's Computers and Electronics Sector Subcommittee, please contact John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street, S.W., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, Region 9, U.S. EPA on (415) 744–2266.

(3) Iron and Steel Sector Subcommittee—February 27, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Iron and Steel Sector Subcommittee of the Common Sense Initiative Council on Thursday, February 27, 1997, in Chicago, Illinois. The meeting will begin at 8:00 a.m. CST and will run until 4:00 p.m. CST. The meeting will be held at the Metcalf Federal Building, Great Lakes Conference Center, 12th floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

For the past two years, the Iron and Steel Sector Subcommittee has been working on nine projects (Brownsfields, Permit Recommendations, Multi-media Permit, Consolidated Reporting, Alternative Compliance, Community Advisory Committee, Electronic Web Site, Spent Pickle Liquor Work Shop, and Innovative Technology Barriers) through four workgroups (Brownsfields, Permits, Compliance, and Innovative Technology) and an *ad hoc* task force (Community Involvement). The workgroups have been responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee would undertake, and for carrying out projects once approved. Most of these projects are reaching completion or are going through the pilot testing phase and require only relatively limited Subcommittee oversight. The purpose of this meeting is for the Subcommittee to discuss what it wants to accomplish over the next year, how it wants to accomplish it, and what kind of agenda it wants to set for itself. Additionally, the Subcommittee will address any recommendations that its current workgroups propose for Subcommittee action. The four workgroups will meet the preceding day, Wednesday, February 26, 1997, from approximately 10:00 a.m. CST to 5:00 p.m. CST, at the Metcalf Building.

For further information concerning this meeting of the Iron and Steel Sector Subcommittee, please contact Judith Hecht, Alternate DFO, on (202) 260–5682 in Washington, DC., or Ms. Uylaine McMahan on (312) 886–4454.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Daria Willis at willis.daria@epamail.epa.gov.

Dated: January 14, 1997.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 97–1369 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5678–8]

Meeting of the Local Government Advisory Committee

The Local Government Advisory Committee will conduct its next meeting on February 6–7, 1997. Members will hear presentations on sustainability and creating livable cities from two panels, one presenting the experiences of San Francisco-area local government officials and one presenting experiences at the Presidio. The Roles and Responsibilities and the Tools for Local Decision-Makers Subcommittees will meet in subcommittee sessions to continue work on their recommendations to the Agency.

The meeting will be held at EPA's Region IX Office located at 75 Hawthorne Street in San Francisco, California. The meeting will begin at 8:30 a.m., on Thursday, February 6th and conclude at 4:00 p.m. on the 7th. From 10:45–11:00 a.m. on the 6th, the Committee will hear comments from the public. Each individual or organization wishing to address the Committee will be allowed three minutes. Please contact the Designated Federal Officer at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, S.W. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees

as much as possible. However, seating will be on a first come, first serve basis.

Denise Zabinski Nay,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 97–1372 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5677–6]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Winter meeting of the Ozone Transport Commission to be held on January 28, 1997.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on January 28, 1997 from 10:00 a.m. to 4:00 p.m.

ADDRESSES: *Place:* The meeting will be held at: The Gideon-Putnam Hotel and Conference Center, The Avenue of the Pines, Saratoga Springs, NY 12866, (518) 584–3000.

FOR FURTHER INFORMATION CONTACT:

EPA: Susan Studlien, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

The State Contact: Host Agency: Lisa Cerniglia, New York State Dept. of Environmental Conservation, 50 Wolf Road, Albany, NY 12233–1010, (518) 457–1415.

For Documents and Press Inquiries Contact: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on January 28, 1997. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (or by e-mail: ozone@sso.org) on Tuesday, January 21, 1997. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, and to discuss market-based programs to reduce pollutants that cause ozone.

Dated: December 24, 1996.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 97–1367 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 97–60]

Federal-State Joint Board on Universal Service: Staff Workshops on Proxy Cost Models on January 14–15, 1997

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 9, 1997, the Federal Communications Commission released a public notice regarding the staff workshop on proxy cost models that will be held on January 14 and 15, 1997. The purpose of the notice is announce the agenda and the panelists for the workshops.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 530–6023.

SUPPLEMENTARY INFORMATION: The federal and state staff of the Federal-State Joint Board on Universal Service will hold workshops on proxy cost models on Tuesday, January 14, 1997 and Wednesday, January 15, 1997. The workshops will be held in the Commission's room 856 at 1919 M Street, N.W, Washington, D.C. beginning at 9 a.m. each day, and are open to the public. The workshops will consist of four round table discussions on issues relating to the selection of a proxy cost model for determining the cost of providing the service supported by the universal service support mechanism. The first panel will discuss modeling network investment; the second panel will discuss modeling operating and support expenses; the third panel will discuss modeling capital expenses; and the fourth panel will discuss validation of the models.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 97–1273 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of floodplain data from communities participating in the National Flood Insurance Program (NFIP). *Supplementary Information.* Under 44 CFR 59.22(b)(2), FEMA requires that communities participating in the NFIP submit an annual or biennial report describing the progress made during the year in the implementation and enforcement of floodplain management regulations. Currently, FEMA has determined that this data will be collected on a biennial reporting cycle and the data collection is now referred to as the Biennial Report. The NFIP Biennial Report enables FEMA to meet its regulatory

requirement under 59.22(b)(2). It also enables FEMA to be more responsive to the on-going changes that occur in each participating community's flood hazard area. These changes include, but are not limited to, new corporate boundaries, changes in flood hazard areas, new floodplain management measures, and changes in rate of floodplain development. It is also used to evaluate the effectiveness of the community's floodplain management activities. The evaluation is accomplished by analyzing information provided by the community, such as the number of variances and floodplain permits granted by each community in relationship to other information contained in the Biennial Report, as well as other data available in FEMA's Community Information System (CIS).

Collection of Information

Title. National Flood Insurance Program Biennial Report.

Type of Information Collection. Extension of a currently approved collection.

OMB Number: 3067–0018.

Abstract. FEMA requests that communities participating in the NFIP submit a biennial report on progress made in the implementation and enforcement of their floodplain management regulations. The information provided by communities using FEMA Forms 81–28, 81–29, or 81–29A enables FEMA to be more responsive to the ongoing changes which occur in each participating community's flood hazard area, as well as to evaluate the effectiveness of the community's floodplain management activities.

Affected Public: State, Local or Tribal Governments.

Estimated Total Biennial Burden Hours. 8,215.

FEMA forms	Form titles	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Biennial burden hours (AxBxC)
81–28	Biennial Report for Emergency and Regular Program (Minimally Floodprone).	5,011	Biennial	.4	2,004
81–29	Biennial Report for Regular Program (With Base Flood Elevations).	11,914	Biennial	.5	5,957
81–29A	Biennial Report for Regular Program (No Special Flood Hazard Area.	1,270	Biennial	.2	1,270
Total ...		18,195	Biennial	8,215	.....

Estimated Cost. $72,500.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received on or before March 24, 1997.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Robert Shea, Division Director, Program Implementation Division, Mitigation Directorate, 202–646–4621 for additional program information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed forms and OMB clearance package.

Dated: January 9, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–1274 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–01–P

[FEMA–1155–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1155–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: January 7, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

Contra Costa, Fresno, Marin, Mariposa and Tulare Counties, and the City of Morgan Hill for Individual Assistance and debris removal and emergency protective measures under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–1278 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1148–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1148–DR), dated December 9, 1996, and related determinations.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of December 9, 1996:

Chemung and Delaware Counties for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

Franklin County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–1275 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1149–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1149–DR), dated December 23, 1996, and related determinations.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from flooding, land and mud slides, wind and severe storms beginning on November 17, 1996, and continuing through December 11, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert C. Freitag of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Coos, Douglas, and Lane Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–1276 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–01–P

[FEMA–1150–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1150–DR), dated December 23, 1996 and related determinations.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe thunderstorms, high winds, rain, and flooding on November 8–15, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Tioga County for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–1277 Filed 1–17–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, Hyundai Carnival Cruise Lines, Inc. and Cruise Ship Leasing Company Trust, 3655 N.W. 87th Avenue, Miami, Florida 33178–2193

Vessel: TROPICALE

Isabel Cortes Ferry Service Limited, International Shipping Partners, Inc. and St. Thomas Cruises Limited, 1250 Port Road, Port Isabel, Texas 78578

Vessel: REGAL VOYAGER

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line) and Actinor Cruise AS, Two Alhambra Plaza, 95 Merrick Way, Coral Gables, Florida 33134

Vessel: ROYAL ODYSSEY

Radisson Wilmington Corporation (d/b/a Radisson Seven Seas Cruises), Radisson Worldwide Inc. and Diamond Cruise Ltd., 600 Corporate Drive, Suite 410, Fort Lauderdale, Florida 33334

Vessel: RADISSON DIAMOND

Royal Caribbean Cruises Ltd. and Grandeur of the Seas Inc., 1050 Caribbean Way, Miami, Florida 33132

Vessel: GRANDEUR OF THE SEAS

Dated: January 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1321 Filed 1–17–97; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Glacier Bay Park Concessions, Inc. and Glacier Bay Marine Services, Inc., 520 Pike Street, Suite 1400, Seattle, Washington 98101

Vessel: WILDERNESS ADVENTURER

Holland America Line-Westours Inc. (d/b/a Holland America Line and Holland America) and HAL Cruises Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: ROTTERDAM VI

Isabel Cortes Ferry Service Limited, 1250 Port Road, Port Isabel, Texas 78578

Vessel: REGAL VOYAGER

Radisson Wilmington Corporation (d/b/a Radisson Seven Seas Cruises) and Radisson Worldwide Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, Florida 33334

Vessel: RADISSON DIAMOND

Dated: January 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1322 Filed 1–17–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Joseph Lowrie Dean, Jr., Opelika, Alabama; to acquire an additional .08 percent, for a total of 12.68 percent, of the voting shares of The First Corporation, Opelika, Alabama, and thereby indirectly acquire The First National Bank of Opelika, Opelika, Alabama.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. S.C. Investments, L.P., Palatine, Illinois, Gerald F. Fitzgerald, Jr., Inverness, Illinois, Otis Road Investments, L.P., Inverness, Illinois, Julie F. Schauer, Glen Ellyn, Illinois, Thomas G. Fitzgerald, Inverness, Illinois, Gerald F. Fitzgerald IRA Rollover, Palatine, Illinois, Fitzgerald Children 1992 Trust, Peter G. Fitzgerald, Trustee, Palatine, Illinois, Fitzgerald Descendants 1992 Trust, Peter G. Fitzgerald, Trustee, Palatine, Illinois; acting in concert to acquire 87.9 percent of the voting shares of LaSalle Bancorp, Inc., LaSalle, Illinois, and thereby indirectly acquire LaSalle National Bank, LaSalle, Illinois.

Board of Governors of the Federal Reserve System, January 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1343 Filed 1-17-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. River Falls Bancshares, Inc., River Falls, Wisconsin; to become a bank holding company by acquiring 99.18 percent of the voting shares of River Falls State Bank, River Falls, Wisconsin.

Board of Governors of the Federal Reserve System, January 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1345 Filed 1-17-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to acquire First Federal Savings Bank of Brunswick, Brunswick, Georgia, and thereby engage in operating a savings association, pursuant to 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. TB&C Bancshares, Inc., and Synovus Financial Corp., both of Columbus, Georgia; to engage *de novo* through their subsidiary, Golden Retriever Systems, L.L.C., Chandler, Arizona, in a joint venture in providing comprehensive information management and reporting services for the bankcard industry, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1344 Filed 1-17-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–97–01]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. AIDS Prevention and Surveillance Project Reports, (0920–0208)—Extension—CDC funds cooperative agreements for 65 HIV Prevention Projects (50 states, 6 cities, 7 territories, Washington, D.C., and Puerto Rico). The cooperative agreements support counseling, testing, referral, and partner notification programs conducted by official public health agencies of states, territories, and localities (project areas). HIV counseling and testing in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health agencies has been described as a primary prevention strategy of the national HIV Prevention Program. These project areas have increased HIV counseling and testing activities to specifically reach more minorities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention activities conducted under the cooperative agreement. Counseling and testing programs are a major component of the HIV Prevention Program. Without data to measure the impact of counseling and testing programs, priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all project areas on the number of at-risk persons tested and the number positive for HIV. The HIV Counseling and Testing Report Form provides a simple yet complete means to collect this information. We are requesting a three year extension for this study. The estimated cost to the respondents is $10,320 per year.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Manual Form Project Areas	21	4	2	168
Scan Form Project Areas	44	4	0.25	44
Total				212

2. Multi-Center Cohort Study to Assess the Risk and Consequences of Hepatitis C Virus Transmission from Mother to Infant (0920–0344)—Extension—The purpose of the study is to determine the incidence of vertical hepatitis C virus (HCV) transmission, to assess risk factors for vertical HCV transmission, to assess the clinical course of disease among infants with HCV infection, and to assess diagnostic methods for detecting HCV infection in infants. Respondents for the study will be anti-HCV positive mothers.

There is no cost to the respondents. They will be remunerated for travel costs; provided well-child visits and free vaccinations for infants enrolled in the study; and, provided anti-HCV testing to all family members free of charge. The total response burden for the study, over a 3 year period, is as follows:

Respondents	Form name	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Individual Mothers	Form A	300	1	0.25	75
Mothers	Form B	1200	1	0.25	300
Mothers	Form C	300	1	0.10	30
Mothers	Form D	300	1	0.25	75
Family members	Form E	700	1	0.25	175
Mothers	Form F	300	1	0.25	75
Mothers	Form G	300	8	0.10	240
Total					*970

*The annualized response burden is estimated to be 970 hours/3 years=323 hours.
(Target enrollment in the study is 300; the target population will be drawn from those who complete Form B. Family members will complete Form E.)

3. Continuing Medical Education (CME) Activity Registration Form—(0923–0013)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. As stated in CERCLA, the Administrator of ATSDR is charged to "assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on this topic".

The development and use of activity registration forms for documenting participation in these activities at these meetings is an integral part of this process. This attendance documentation process is required by the Accreditation Council for Continuing Medical Education (ACCME), the body that authorizes agencies and institutions to award nationally recognized continuing medical education (CME) credit. As a condition of relicensure, physicians in 40 states are required to participate in CME courses. Individual physicians in these states are required to submit the number of hours of CME credit to state boards of professional registration at the time of relicensure. Failure by the physician to provide this information in a timely fashion will result in suspension of professional licensure.

This request is for a 3-year extension of the current OMB approval of uniform CME activity registration forms—one machine entry form and the other manually entered—to serve as the initial step in the development of an attendance documentation system. Other than their time, there will be no cost to the respondents.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Manual Entry Registration Form	2,000	1	0.066	132
Scantron Registration form	3,000	1	0.083	250
Total				382

4. National Surveillance System for Hospital Health Care workers (NASH)—New—CDC has developed surveillance system that focuses on surveillance of exposures and infections among hospital-based health care workers (HCWs). This system, modeled after the National Nosocomial Infections Surveillance (NNIS) system for patient infections, includes standardized methodology for various occupational health issues (OMB 0920–0012). The Hospital Infections Program, National Center for Infectious Diseases (NCID) has developed this system in

collaboration with the Hepatitis Branch, Division of Viral and Rickettsial Diseases, NCID; the Division of Tuberculosis (TB) Elimination, National Center for HIV, STD, and TB Prevention; the National Immunization Program (NIP), and the National Institute for Occupational Safety and Health (NIOSH).

The NASH system consists of modules for collection of data about various occupational issues. Baseline information about each HCW such as demographics, immune-status for vaccine-preventable diseases, and TB status is collected when the HCW is enrolled in the system. Results of routine tuberculin skin test (TST) are collected and entered in the system every time a TST is placed and read. In the event that an HCW is exposed to blood/bloodborne pathogen, to a vaccine-preventable disease, or to a TB infectious patient/HCW, epidemiologic data will be collected about the exposure. For HCWs exposed to a bloodborne pathogen (i.e. HIV, HCV, or HBC), follow-up data will be collected during the follow-up visits. Once a year, the hospitals will perform a survey to assess the level of underreporting of needlesticks (HCW survey) and will complete a hospital survey to provide denominator data. Data will be sent entered into the software and diskettes will be sent to CDC. No identifiers of the HCW will be sent to CDC. This system is protected by the Assurance of Confidentiality (308d).

Data collected in this surveillance system will assist hospitals, HCWs, HCW organizations, and public health agencies. This system will allow CDC to monitor national trends, to identify newly emerging hazards for HCWs, to assess the risk of occupational infection, and to evaluate preventive measures, including engineering controls, work practices, protective equipment, and postexposure prophylaxis to prevent occupationally acquired infections. Hospitals who volunteer to participate in this system will benefit by receiving technical support and standardized methodologies, including software, for conducting surveillance activities on occupational health.

This system has been developed and piloted in large teaching hospitals. Prior to implementation in a nationwide network of hospitals, an expansion of this pilot project to include more medium/small size hospitals is essential for further refinement of protocols and software. The first pilot project ran from October 1994 to September 1996 (RFP–200–94–0834(p)) and included four hospitals; the second pilot started in October 1996 (RFP–200–96–0524(P)) and includes five hospitals. Fifteen hospitals are expected to participate in this proposed project, including the five currently participating. Once the expanded pilot project is completed, the system will be made available to all short-term care hospitals in the United States who wish to voluntarily participate in this project. The total estimated maximum cost to respondents is $201,840 ($15 an hour for hospital personnel who will collect/input the data).

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Baseline Information (form)	22,500	1	0.3333	7,500
TST Result Form	22,500	1	0.1666	3,750
Exposure Form	1,500	1	0.416	625
Follow-up Form	750	1	0.25	188
Exposure to vaccine-prv. dis Summary Form	120	1	0.333	40
HCW Form	240	1	0.333	80
Exposure to TB Form	45	1	0.50	23
HCW Survey	7,500	1	0.166	1,250
Total				13,456

*The same 15 hospitals will be completing the 8 separate forms listed above. The number of respondents includes x number of employees time each of 15 hospitals.

5. Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—Extension—The Agency for Toxic Substances and Disease Registry is announcing the request for a 3-year extension of the OMB approval for the Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to accept and respond to petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 USC 9604(i)(6)(B)). The Agency conducts public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under CERCLA. The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 5[illegible] FR 37382–89.

ATSDR anticipates approximately 36 requests will be received each year. This estimate is based on the number of requests received since the enabling legislation was enacted and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives. There is no cost to the respondents other than their time.

Respondent	No. of respondents	No. of responses respondents	Avg. burden response (in hrs.)	Total burden (in hrs.)
General Public	3	1	.50	18

Respondent	No. of respondents	No. of responses respondents	Avg. burden response (in hrs.)	Total burden (in hrs.)
Total				18

Dated: January 14, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1340 Filed 1–17–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. February 12, 1997, 9 a.m., Gaithersburg Marriott Washingtonian Center, Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA Dental Products Panel meeting block. Reservations may be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Christie Wyatt, KRA Corp., 301–495–1591, ext. 267. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing for the reclassification of over-the-counter (OTC) denture cushions or pads, 9 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11:30 a.m.; open public hearing for the reclassification of temporary mandibular condyle implant prostheses, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5:30 p.m.; Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel, code 12518. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 5, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two petitions for the reclassification of OTC denture cushions or pads that are prefabricated or noncustom made disposable devices intended to improve the fit of loose or uncomfortable dentures. (This does not include OTC denture cushions or pads made of wax-impregnated cotton cloth that are to be applied to the base or inner surface of a denture and are to be discarded following 1 day's use; this device is presently class I). The committee will also discuss a petition for the reclassification of mandibular condyle implant prostheses for temporary use in the treatment of patients following tumor resection.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the

contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 13, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–1337 Filed 1–17–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

National Practitioner Data Bank; Change in User Fee

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing the elimination of the discount fee charged to entities authorized to request information from the National Practitioner Data Bank (Data Bank) for queries which meet all requirements for fully automated processing.

The current fee structure was announced in the **Federal Register** on February 8, 1996 (61 FR 4788). The user fee is $3.00 less $1.00 discount per name per query fee for queries submitted via telecommunications network and paid via an electronic funds transfer or credit card, with query response sent via the telecommunications network. Six dollars is charged for queries submitted electronically on a diskette to pay for the extra handling and mailing costs for these queries. An additional $4.00 is charged for all queries which are paid for by check or money order rather than by electronic funds transfer or credit card to cover the cost of debt management.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in §60.12 (b) of the regulations, as well as allowable costs pursuant to the DHHS Appropriations Act of 1997, P.L. 104–208, enacted September 30, 1996. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

"The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service."

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is eliminating the $1.00 discount fee for users who: (1) query and receive responses via the telecommunications network, and (2) pay query fees by credit card, electronic funds transfer or such other electronic transfer options as may be offered in the future.

Despite the elimination of the discount, electronic querying (telecom network) and electronic payment continue to be the most cost-effective methods for requesting information from the Data Bank. Consequently, the fee for querying the Data Bank by diskette with electronic payment continues to be $6.00. The new fee for electronic queries (telecom network) with electronic payment will be $3.00. This change is effective February 20, 1997.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate total fee will be $3.00 (plus a $3.00 and/or a $4.00 surcharge for submission and payment as described above) multiplied by the number of individuals about whom information is being requested. All other fees remain the same. For examples, see the table below.

The Department will review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Telecom network) with electronic payment.	$3.00 (if paid electronically via credit card or other electronic means and response received electronically).[1].	10 names in query. 10x$3 = $30.00.
Electronic query (Diskette) with electronic payment.	$6.00 (if paid electronically via credit card or other electronic means and response received on paper) ($3.00 fee plus $3.00 surcharge).	10 names in query. 10x$6 = $60.00.
Electronic query (Telecom network) with non-electronic payment.	$7.00 (if not paid via credit card or other electronic means) ($3.00 fee plus $4.00 surcharge).	10 names in query. 10x$7 = $70.00.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Diskette) with non-electronic payment.	$10.00 (if not paid via credit card or other electronic means) ($3.00 fee plus $3.00 and $4.00 surcharges).	10 names in query. 10x$10 = $100.00.

[1] This new fee represents the elimination of the $1.00 discount.

Dated: January 14, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–1404 Filed 1–17–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Center for Research Resources, Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Comparative Medicine.

Date: February 24, 1997.

Time: 5:00 p.m.

Place: The Latham Hotel, Washington/Jefferson Conference Room, 3000 M Street, NW., 7965, Washington, DC 20007, (202) 726–5000.

Contact Person: Dr. Bela Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b (c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Sciences and Primate Research, National Institutes of Health, HHS)

Dated: January 13, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1469 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Planning, Developing, Implementing, and Evaluating Health Communication Products and Activities for NHLBI Education Programs and Other Technology Transfer Activities.

Date: February 18, 1997.

Time: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Demonstration and Education Research Applications.

Date: March 4–5, 1997.

Time: 9:00 a.m.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1378 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the National Advisory Council for Nursing Research and its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health and its Planning Subcommittee on February 11–12, 1997, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, Maryland.

The Council meeting will be open to the public on February 11 from 1:00 p.m. to recess and on February 12 from approximately 9:00 a.m. to 11:00 a.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from 11:00 a.m. to adjournment on February 12. There will also be a meeting, closed to the public, of the Planning Subcommittee on February 11 from 9:00 a.m. to 11:00 a.m. in Building 31, Room 5B03. These meetings are closed for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meetings, rosters of committee members, and other information may be obtained from the Executive Secretary, Dr. Lynn Amende, NINR, NIH, Building 45, Room 3AN–12, Bethesda, Maryland 20892, 301/594–5968. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: January 10, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1373 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

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Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 12–13, 1997. The meeting of the full Council will be open to the public on February 12, from 8:30 a.m. to 12:00 p.m. in Conference Room 10, Building 31C National Institutes of Health, Bethesda, Maryland, to discuss administrative issues relating to Council business and special reports. The following subcommittee meetings will be open to the public February 12th from 1:00 p.m. to 2:00 p.m.: Diabetes, Endocrine and Diseases Subcommittee meeting will be held in Conference Room 10, Building 31C: Digestive Diseases and Nutrition Subcommittee meeting will be held in Conference Room 7, Building 31C; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 8, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittee will be closed to the public on February 12, from 2:00 p.m. to 5:00 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; and Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The full Council will meet in closed session on February 13 from 8:30 a.m. to 10:00 a.m. in Conference Room 10, Building 31C. These deliberations, whether held in a subcommittee or in the full council, could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion for personal privacy.

A final open session of the full Council will be held from 10:00 a.m. to 12:00 p.m. to hear reports from the Division Directors.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Natcher Building, Room 6AS–25C, Bethesda, Maryland 20892, (301) 594–8834, in advance of the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 45, Room 6AS–37J, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–8892.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 14, 1997.

Paula Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1374 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of Board of Scientific Counselors, National Institute of Environmental Health Services

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, February 9–11, 1997, in Building 101, Main Conference Room, South Campus, National Institute of Environmental Health Services (NIEHS), Research Triangle Park, North Carolina.

This meeting will be open to the public from 8:00 a.m. to approximately 4:30 p.m. on February 10, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Signal Transduction. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 9 from approximately 8:00 p.m. to recess and will be held at the Siena Hotel, 1505 E. Franklin Street, Chapel Hill, North Carolina, and on February 11 at the NIEHS South Campus address above, from 8:30 a.m. to adjournment, for the evaluation of the programs of the laboratories listed above, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Exeuctive Secretary, Dr. Carl Barrett, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish rosters of committee members and program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1375 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Chemistry Support Services for the Environmental Toxicology Program (Telephone Conference Call).

Date: February 6, 1997.

Time: 1:00 p.m.–3:30 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Better Nitrone Spin Traps for Oxygen Centered Radicals—SBIR (Telephone Conference Call)

Date: February 27, 1997.

Time: 1:00 p.m.–4:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 1, Rm. 103, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964..

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Methods of Assessing the Estrogenicity and Other Endocrine, Activity of Environmental Chemicals—SBIR (Telephone Conference Call).

Date: March 3, 1997.

Time: 1:00 p.m.–3:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Device/Capability for Quantitative Assessment of Bone Strength in Rodents—SBIR (Telephone Conference Call).

Date: March 7, 1997.

Time: 1:00 p.m.–4:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1376 Filed 1–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee

Date: February 19–21, 1997

Time: 8 am–5:30 pm, February 19; 8 am–5:30 pm, February 20; 8 am–adjournment February 21

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852

Contact Person: Mary V. Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1377 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Transplantation Tolerance.

Date: February 5–7, 1997.

Time: 7:00 p.m.

Place: Holiday Inn-Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879 (301–948–8900).

Contact Person: Dr. Allen Stoolmiller, Scientific Review Adm.,6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1380 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Board of Governors of the Warren Grant Magnusen Clinical Center and its Executive Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center and its Executive Committee, February 9–10, 1997. The Executive Committee will meet on February 9 at the Bethesda Hyatt, One Metro Center, Bethesda, Maryland, from 6:00 p.m. to adjournment, and the Board of Governors will meet on February 10 at the National Institutes of Health, Clinical Center (Building 10), Medical Board Room, 9000 Rockville Pike, Bethesda, Maryland, at 1:00 p.m. until approximately 3:30 p.m.

Both meetings will be entirely open to the public and will discuss issues related to the Clinical Center Strategic Plan, including cost savings plans and relations with insurers. The Board of Governors will also review the report of the Executive Committee. Attendance by the public will be limited to space available.

For further information, contact Ms. Maggi Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496–4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

Dated: January 14, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1379 Filed 1–17–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians; Office of Trust Funds Management

ACTION: Notice is hereby given that the Office of the Special Trustee (OST), Office of Trust Funds Management (OTFM), will conduct four (4) consultation meetings with all Indian Tribes, bands, nations, or other organized groups or communities, including any Alaska Native villages or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the trust programs and services provided by the United States

to Indians because of their status as Indians.

SUMMARY: The purpose is to consult with and obtain oral and/or written comments regarding the review of the Special Trustee's draft comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities. The assessment, opinions and plan are a work in progress which is subject to modification and change before it becomes final and is recommended to the Secretary of the Interior, the Office of Management and Budget and the Congress.

DATES (1997): Four (4) consultation sessions will be conducted:

- February 25: Radisson Hotel Seattle Airport, 17001 Pacific Highway S., Seattle, Washington, 98188, (206) 244–6000.
- February 27: Adam's Mark Denver, 1550 Court Place, Denver, Colorado 80202, (303) 893–3333.
- March 6: Holiday Inn Airport North, 1380 Virginia Avenue, East Point, Georgia, 30344, (404) 762–8411.
- March 12: Sheraton Uptown Albuquerque, 2600 Louisiana NE, Albuquerque, New Mexico, (505) 881–0000.

All sessions will begin at 9 a.m. and adjourn at 5 p.m. Comments, oral or written, will be taken until all are received or 5 p.m., whichever comes first.

FOR FURTHER INFORMATION: Contact Shelly Farmer, Staff Assistant, Department of the Interior, Office of the Special Trustee, Office of Trust Funds Management, 505 Marquette N.W., Suite 1000, Albuquerque, New Mexico 87102, telephone number (505) 248–5736 and fax number (505) 248–5741.

SUPPLEMENTARY INFORMATION: All oral and written comments that are presented at the consultation meetings, will be recorded and transcribed. Summaries of the meetings will be available for public inspection after the final meeting or after March 17, 1997.

Dated: January 16, 1997.

Bonnie Cohen,

Assistant Secretary—Policy, Management & Budget.

[FR Doc. 97–1239 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CA–063–00–1150–00]

Draft Rangewide Strategy; CA and AZ, Flat-tailed Horned Lizard

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Flat-tailed Horned Lizard Rangewide Management Strategy.

SUMMARY: An interagency working group has prepared a Draft Flat-tailed Horned Lizard Rangewide Strategy (Draft Rangewide Strategy) to provide guidance for the conservation and management of sufficient habitat to maintain viable populations of flat-tailed horned lizards (Phrynosoma mcallii). The species is found only in southwestern Arizona, southeastern California, and adjacent portions of Sonora and Baja California Norte, Mexico. The species was proposed for listing as a threatened species by the U.S. Fish and Wildlife Service (USFWS) on November 29, 1993.

The Draft Rangewide Strategy calls for the establishment of five flat-tailed horned lizard management areas—four in California and one in Arizona. Surface disturbing activities would be limited in these areas. Activities would not be restricted outside of these management areas, but mitigation and compensation measures would be applied. In addition, one research area is proposed.

The Draft Rangewide Strategy was prepared by representatives from Federal, state, and local governments. It is intended to be used as the basis for a conservation agreement among the agencies. Signatory agencies will incorporate measures in the final Rangewide Strategy into their management plans. If the final Rangewide Strategy is adequate in removing threats, listing of the species may not be required.

The Draft Rangewide Strategy is available for review at or may be obtained by writing the following offices:

BLM Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92509;

BLM Yuma Field Office, 2555 Gila Ridge Road, Yuma, AZ 85365

USFWS Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, CA 92008

USFWS Phoenix State Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951.

DATES: Written comments must be submitted or postmarked no later than February 26, 1997. Two public meetings have been scheduled at the following times and locations:

February 19—7:00–9:00 p.m. PST—BLM El Centro Office, 1661 South 4th Street, El Centro, California; (619) 337–4400

February 20—7:00–9:00 p.m. MST—BLM Yuma Field Office, 2555 Gila Ridge Road, Yuma, AZ 85365; (520) 317–3200

ADDRESSES: Written comments on the Draft Rangewide Strategy should be addressed to: Flat-tailed Horned Lizard Rangewide Management Strategy, 6221 Box Spring Boulevard, Riverside, California 92507.

FOR ADDITIONAL INFORMATION CONTACT: Larry Foreman, BLM California Desert District, (909) 697–5387, or Brenda Smith, BLM Yuma Field Office, (520) 317–3216.

Dated: January 14, 1997.

Molly Brady,

Acting District Manager.

[FR Doc. 97–1338 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–01–M

Bureau of Land Management, Interior

[CA–920–1310–03; CACA 20391]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 20391 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1996, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at the rate of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management (BLM) for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Bonnie Edgerly, Land Law Examiner, Bureau of Land Management, 2135 Butano Drive, Sacramento, California 95825–0451, (916) 979–2860.

Dated: January 9, 1997.

Leroy M. Mohorich,

Chief, Branch of Energy and Mineral Science and Adjudication.

[FR Doc. 97–1294 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–40–P

[ID–943–1430–01; IDI–15535]

Public land order No. 7236; Revocation of the Executive Order dated July 2, 1910; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order as it affects 5,063.30 acres of public lands withdrawn for Phosphate Reserve No. 2. Of the lands being revoked, 108.73 acres have been conveyed out of Federal ownership. The 4,954.57-acre balance remains closed to surface entry and mining due to overlapping withdrawals, but these lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Phosphate Reserve No. 2, is hereby revoked in its entirety:

Boise Meridian

T. 5 S., R. 41 E.,
Sec. 35, NW¼ and S½.
T. 14 S., R. 44 E.,
Secs. 20, 27, 28, 29, 32, 33, and 34.
T. 2 S., R. 45 E.,
Sec. 13, lots 2, 3, 6, and 7, and W½SW¼.

The areas described aggregate 5,063.30 acres in Caribou, Bonneville, and Bear Lake Counties.

2. The surface and mineral estate of the following described land has been conveyed out of Federal ownership:

T. 2 S., R. 45 E.,
Sec. 13, lots 2 and 3.

The area described contains 108.73 acres in Bonneville County.

3. The lands described in paragraph 1, except those described in paragraph 2, are within overlapping withdrawals and will not be opened to surface entry or mining.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–1324 Filed 1–17 97; 8:45 am]

BILLING CODE 4310–GG–P

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 8, 1997.

The plat representing the dependent resurvey of a portion of lot 1 in section 35 and the survey of lot 7 in section 35, T. 7 N., R. 6 E., Boise Meridian, Idaho, Group No. 876, was accepted January 8, 1997. This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV, Payette National Forest.

All inquires concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: January 8, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–1295 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–GG–M

[CA–066–1050–00, CACA 35556]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 19.83 acres of public land in Riverside County to protect the archaeological and Native American Religious values of the Pechanga Historic Site. This notice closes the land for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws, and to the operations of the mineral leasing laws and the Materials Act of 1947.

DATES: Comments and request for a public meeting must be received by April 21, 1997.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825–0451.

FOR FURTHER INFORMATION CONTACT: Mike Mitchell, BLM, Palm Springs-South Coast Resource Area Office, (619) 251–4821.

SUPPLEMENTARY INFORMATION: On January 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, and to the operations of the mineral leasing laws and the Material Act of 1947, subject to valid existing rights:

San Bernardino Meridian

T. 5 S., R. 4 W.,
Sec. 22, lot 5

The area described contains 19.83 acres in Riverside County.

The purpose of the proposed withdrawal is to protect the archaeological and Native American Religious values of the Pechanga Historic Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of land, as determined by BLM.

Dated: January 9, 1997.

David McIlnay,

Chief, Lands Section.

[FR Doc. 97–1304 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–40–P

[CA-330-1430-01; CACA 36364]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 308.49 acres of public lands in Humboldt County to protect the Mattole Estuary. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing and the Materials Act of 1947. Up to approximately 514 acres of non-federally owned lands would be subject to this withdrawal if they are acquired by the United States in the future by exchange, donation, or purchase.

DATES: Comments and requests for a public meeting must be received by April 21, 1997.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM California State Office (CA-931), 2135 Butano Drive, Sacramento, California 95825-0451.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916-979-2858 or Charlotte Hawks, BLM Arcata Resource Area Office, 707-825-2319.

SUPPLEMENTARY INFORMATION: On January 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Humboldt Meridian

T. 2 S., R. 2 W.,
Sec. 17, NE¼NW¼ and W½NW¼;
Sec. 18, NW¼SE¼.
T. 2 S., R. 3 W.,
Sec. 12, lot 3;
Sec. 13, lots 1 and 2.

The areas described aggregate 308.49 acres in Humboldt County.

In addition, if any of the non-federally owned land within the area described below are acquired by the United States in the future by exchange, donation, or purchase, that land will be subject to this withdrawal:

Humboldt Meridian

T. 2 S., R. 2 W.,
Sec. 16, N½SW¼, SW¼SW¼, SE¼, and that portion described as Parcels 1, 2, and 3 of Parcel Map No. 1369 recorded under Document No. 18699 on August 23, 1976, in Book 12 of Parcel Maps on page 32, Humboldt County Records;
Sec. 21, N½NE¼, SE¼NE¼, and NE¼SE¼.

The areas described aggregate approximately 514 acres in Humboldt County.

The purpose of the proposed withdrawal is to protect the fragile aquatic and estuary resources and critical wildlife habitat on and adjacent to the Mattole River.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by BLM.

Dated: January 9, 1997.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 97-1305 Filed 1-17-97; 8:45 am]

BILLING CODE 4310-40-P

[ID-933-1430-01; IDI-31261]

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 3,805.87 acres of National Forest System land for the Forest Service's Howell Canyon Recreation Complex expires March 30, 1997, after which the land will be opened to mining. The land is located in the Boise National Forest. The land has been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: March 30, 1997.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208-373-3864.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (60 FR 62, March 31, 1995), which segregated the land described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires March 30, 1997. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Boise Meridian

T. 12 S., R. 24 E.,
Sec. 36, SW¼,NW¼, W½SW¼ and S½SE¼.
T. 12 S., R. 25 E.,
Sec. 31, lot 4, NE¼,NE¼, SW¼NE¼, W½SE½NE¼, SE¼SW¼ and SE¼;
Sec. 32, S½,SE¼SW¼NW¼, SE¼NW¼ and N½SW¼.
T. 13 S., R. 24 E.,
Sec. 1, N½ lot 1, lots 2 to 4 inclusive, S½NW¼ and SW¼;
Sec. 2;
Sec. 3, lots 1 to 4 inclusive, S½N½, N½S½, SW¼SW¼; and SE¼SW¼;
Sec. 4, lots 1 and 2, S½NE¼, NE¼SW¼, NW¼SW¼, S½SW¼ and SE¼;
Sec. 5, SE¼;
Sec. 9, N½NE¼, SW¼NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, N½SE¼ and SE¼NE¼;
Sec. 10, W½NW¼;
Sec. 11, NE¼;
Sec. 12, NW¼.

The area described aggregate 3,805.87 acres in Cassia County.

At 9 a.m. on March 30, 1997, the land shall be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 10, 1997.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 97–1323 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF INTERIOR

National Park Service

Indian Memorial Advisory Committee; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Little Bighorn Battlefield National Monument Advisory Committee (a.k.a. Indian Memorial Advisory Committee.) Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: February 15–16, 1997, 9:00 a.m.–5:00 p.m. on 02/15/97, 1:00 p.m.–5:45 p.m. on 02/16/97.

ADDRESSES: Radisson Northern Hotel, Broadway & 1st Avenue North, Billings, Montana 59101. (406) 252–7400.

THE AGENDA OF THIS MEETING WILL BE: Introductions and agenda changes, approve minutes of last meeting, symposium results, budget report, fundraising strategy, future role of NPS support team, jury sub-committee report on design competition, recommendation to Secretary of Interior, development of winning design, plans for traveling exhibit, set schedule and agenda for next meeting.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Chief, Office of American Indian Trust Responsibilities, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: January 10, 1997.

Gerard A. Baker,

Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 97–1356 Filed 1–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Air Products and Chemicals, et al.*, Civil Action No. 92–3860 (JBS) (consolidated with Civil Action No. 84–0152 (JBS)), was lodged on January 2, 1997 with the United States District Court for the District of New Jersey. The Settlers are 273 defendants in the pending litigation related to the Gloucester Environmental Management Services ("GEMS") Landfill Superfund Site ("Site") in Gloucester Township, Camden County, New Jersey.

Under the terms of the proposed decree, 21 Reopener Settling Defendants will perform certain remedial activities involving the construction and operation of a groundwater extraction system and an on-site groundwater pre-treatment system. In addition, the Reopener Settling Defendants and the 252 *De Minimis* Settling Defendants will pay the United States and the State of New Jersey $9.6 million in settlement of past costs, of which the United States receives $3.275 million, and for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Air Products and Chemicals, et al.* D.J. reference #90–11–2–292A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Room 502, Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please enclose a check in the amount of $17.50 for solely the consent decree text and an additional $241.25 if copies of the appendices are also requested, or a total of $258.75 for both the text and the appendices (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–1320 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act as Amended by the Oil Pollution Control Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Conoco Pipe Line Company*, Civil Action No. 96–1482–WEB, was lodged on December 31, 1996 with the United States District Court for the District of Kansas. In a complaint filed contemporaneously with the lodging of the proposed consent decree, the United States alleges that Defendant Conoco Pipe Line Company ("CPL"), pursuant to Sections 301, 309 and 311 of the Clean Water Act ("CWA"), as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 1311, 1319 and 1321, spilled 594 barrels of oil on five separate occasions into navigable waters in Kansas and Missouri between March 1991 and August 1994.

The proposed consent decree provides that the Defendant will conduct pipe-to-soil surveys, inspect its pipelines, and replace and bury approximately 960 feet of existing pipeline at three water crossings as measures to prevent future oil spills into navigable waters. CPL will also pay a civil penalty of $112,500.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Conoco Pipe Line Company*, DOJ Ref #90–5–1–1–4208.

The proposed consent decree may be examined at the Office of the United States Attorney, 1200 Epic Center, 301 North Main, Wichita, Kansas 67202; the Region VII Office of the Environmental Protection Agency, Office of Regional Counsel, Air, Water, Toxics and General Law Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), for a copy of the consent decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 97–1318 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Yaffe Iron and Metal Company, Inc.*, Civil Action No. 95–308–B, was lodged on December 30, 1996 with the United States District Court for the Eastern District of Oklahoma.

The proposed consent decree relates to Yaffe's twenty-acre metal reclamation facility located in Muskogee, Oklahoma. This facility is used to recover aluminum and copper from scrap metal. The complaint in this civil action alleges that Yaffe discharges process waste water to an unnamed, intermittent creek, ("UI Creek") which is connected to Coody Creek, a tributary of the Arkansas River.

The proposed consent decree requires Yaffe to pay a civil penalty of $150,000.00, complete its application for a NPDES permit, and have performed, by an independent company, an environmental audit and correct all violations of environmental statutes disclosed by such audit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Yaffee Iron and Metal Company, Inc.*, DOJ Ref. #90–5–1–1–5019.

The proposed consent decree may be examined at the office of the United States Attorney, 33 U.S. Courthouse, 5th & Okmulgee Streets, Muskogee, Oklahoma 74401; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $26.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–1319 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–54]

Rocco's Pharmacy; Revocation of Registration

On May 23, 1994, the then-Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rocco's Pharmacy (Respondent) of Bristol, Pennsylvania, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AR8587125, and deny any pending applications for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that the pharmacy's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

On July 5, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on March 22, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify, and introduced documentary evidence.

Following the hearing, but before post-hearing briefs were filed, on April 10, 1995, Respondent filed a Motion to Reopen the Record to Permit Testimony Regarding the Accuracy of the Pill Count (Motion to Reopen the Record), a Motion to Permit Oral Argument at the Conclusion of the Briefing Schedule (Motion for Oral Argument), and a Motion to Admit Character Reference Testimony into the Record. On April 19, 1995, the Government filed a Motion in Opposition to Respondent's Motion to Reopen the Record to Permit Testimony Regarding the Accuracy of the Pill Count, and on April 24, 1995, the Government filed a Motion in Opposition to Respondent's Motion to Permit Oral Argument. On May 10, 1995, the Administrative Law Judge issued a Memorandum to Counsel and Ruling on Motions granting Respondent's Motion to Admit Character Reference Testimony into the Record, and denying Respondent's Motion to Reopen the Record and Motion for Oral Argument.

Subsequently, both parties filed proposed findings of fact, conclusions of law and argument. Then on June 20, 1995, Respondent filed a Motion for Disqualification of Chief Administrative Law Judge Mary Ellen Bittner and Memorandum of Law in Support of Motion (Motion for Disqualification). On March 26, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, denying Respondent's Motion for Disqualification and recommending that Respondent's DEA Certificate of Registration be revoked. Thereafter, on April 18, 1996, Respondent filed its Exceptions to Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and on April 30, 1996, the record of these proceedings was transmitted to the Deputy Administrator.

Subsequently, on May 9, 1996, Respondent submitted a Motion for Leave to File Supplemental Exceptions as well as Supplemental Exceptions to Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. Judge Bittner forwarded these filings to the Deputy Administrator on May 9, 1996. By letter dated May 10, 1996, the then-Deputy Administrator accepted for consideration Respondent's Supplemental Exceptions and provided the Government an opportunity to file a response to these exceptions. The Government filed its Response to

Respondent's Supplemental Exceptions on May 20, 1996.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Findings of Fact, Conclusions of Law and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds James Rocco, Jr. has been a registered pharmacist since 1965, and has owned Respondent pharmacy since 1976. In August 1989, a confidential informant indicated to the Bristol Township Pennsylvania Police Department (Bristol P.D.) that an individual named Ozzie Willis was his source for pharmaceutical drugs and that Mr. Willis was obtaining controlled substances from Respondent without a prescription. Subsequently, Mr. Willis, while under surveillance, obtained controlled substances from Respondent without presenting a prescription and then gave the drugs to the confidential informant in exchange for money. Mr. Willis was then arrested in April 1990. At the time of his arrest, Mr. Willis' car was searched, revealing two empty prescription vials indicating that they had been filled with Percocet, a Scheduled II controlled substance, at another pharmacy, an envelope with 31 Tylenol with codeine #4 (Tylenol #4), a Schedule III controlled substance, a vial from another pharmacy containing 27 Percocet tablets and several loose pills.

Prior to 1990, Ozzie Willis had been found guilty in 1984 and 1986 of the unlawful sale of controlled substances. At the time of his arrest in April 1990, Mr. Willis agreed to cooperate in an investigation of Respondent. Mr. Willis was told that the Bristol P.D. could not promise him anything in exchange for his cooperation, but would testify on his behalf in any proceedings regarding his recent arrest. As part of his agreement with the Bristol P.D., Ozzie Willis was not to purchase controlled substances elsewhere or to go into Respondent pharmacy except when under police surveillance.

Consequently, Mr. Willis, while under surveillance, went to Respondent pharmacy on 15 occasions between April 30 and June 29, 1990 attempting to obtain controlled substances. On each occasion, Mr. Willis was equipped with a recording device and he and his car were thoroughly searched before he entered Respondent. He was under constant police surveillance from the time of the search until he entered the pharmacy and again from the time he left until he was searched again. He was not given advance notice of when an attempted controlled buy would occur.

Mr. Willis' first attempted buy was on April 30, 1990, when he went into Respondent with $40.00 and a prescription vial for prescription number 377809 dated April 18, 1989 for Ozzie Willis. Mr. Willis came out of Respondent with 90 tablets of Tylenol #4 in the prescription vial he brought into the pharmacy. The transcript of this visit reflects that Ozzie Willis stated, "* * * so this is 40 here for a hundred for today, Social Security check come in I'll pay you 40 right? I didn't bother you last week remember that?" to which Mr. Rocco replied, "Yea, O.K." Mr. Rocco testified that he dispensed Tylenol #4 to Ozzie Willis pursuant to a telephone prescription from Dr. N. However, Dr. N testified at Mr. Rocco's subsequent criminal trial that while Ozzie Willis had previously been a patient of his, he no longer practiced in the area; he had last treated Ozzie Willis in August 1986; and had not authorized the April 30, 1990 prescription.

Ozzie Willis returned to Respondent on May 3, 1990. While Mr. Willis did not obtain any controlled substances on this occasion the transcript indicates that Mr. Willis asked for Percocet and Mr. Rocco replied, "* * * I'll tell you what, I'll get a script tonight from a doctor, pick it up tomorrow * * *." Mr. Rocco testified at both his criminal trial and at the hearing before Judge Bittner that he would say anything to Mr. Willis to get him to leave the pharmacy because he was rude and obnoxious.

Mr. Willis went back to Respondent pharmacy the next day, May 4, 1990, and came out of Respondent with 30 Percocet tablets in a bottled marked UNI–ACE, a nonprescription pain reliever. Respondent introduced into evidence at the hearing a copy of a prescription for a J.C. dated May 2, 1990 for Percocet, and a copy of a receipt dated May 4, 1990 made out to Ozzie Willis listing two prescriptions for J.C. The transcript of this visit indicates that Ozzie Willis paid Mrs. Rocco $30.00, however there was no mention of J.C. and his prescriptions. Mr. Rocco testified at the hearing that he sold UNI–ACE to Ozzie Willis on May 4, 1990. However, there is nothing on the receipt introduced into evidence by Respondent indicating such a sale.

Ozzie Willis returned to Respondent on May 7, 1990. According to the Bristol police detective who testified at the hearing, Mr. Willis was given $40.00 and the same prescription bottle used on April 30, 1990. Mr. Willis came out of Respondent with 101 Tylenol #4 in the prescription bottle. A receipt introduced into evidence by Respondent indicated that Ozzie Willis picked up a prescription for S.C. and paid $40.00 on his account. Mr. Rocco testified at the criminal trial that he did not provide Tylenol #4 to Ozzie Willis on May 7, 1990.

According to the transcript, on May 9, 1990, Ozzie Willis went to Respondent and asked Mrs. Rocco to "* * * ask Rocco if I can, can get some more Percs one day next week, either that or either Placidyls." Ozzie Willis did not obtain any controlled substances on this occasion.

Mr. Willis returned to Respondent pharmacy on May 16, 1990 with $40.00 and the prescription bottle used on April 30, 1990. He came out of Respondent without the $40.00 and with 100 Tylenol #4 in the prescription bottle. Respondent introduced into evidence a copy of call-in prescription number 409233 from Dr. N for Ozzie Willis for 100 APAP with codeine 60 mg. and a copy of a receipt dated May 16, 1990, indicating that Ozzie Willis paid $20.00 for "Rx 409233" and $20.00 for lottery tickets. According to the transcript of this visit, Ozzie Willis told Mr. Rocco, "* * * I really need them Percs * * *. I done got part of the guy's money." Mr. Rocco replied, "* * * I just got a script from that doctor, thought I'd get you 30 and that would be it. Thirty I got." Mr. Rocco told Ozzie Willis to check back with him in two weeks.

On May 18, 1990, Mr. Willis went to Respondent and asked Mr. Rocco if he had obtained "the script from that other doctor," to which Mr. Rocco replied, "No, not til the end of the month." Mr. Rocco testified that he assumed that at the time of this conversation that Ozzie Willis was showing him a bottle for a prescription that could not be filled until the following week.

Ozzie Willis returned to Respondent on May 24, 1990 with $100.00 and emerged with $60.00 and a prescription vial bearing prescription number 410166, indicating that Dr. N was the prescriber, and containing 30 Placidyl, a Schedule IV controlled substance. Respondent placed into evidence a copy of such a call-in prescription. The doctor testified at Mr. Rocco's criminal trial and denied ever having called in any of the prescriptions in question to Respondent.

On May 30, 1990, another controlled buy was attempted, but Ozzie Willis did not obtain any controlled substances.

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While in the pharmacy, Mr. Willis told Mr. Rocco, "I thought you said Percocet, on the first." Mr. Rocco replied, "I'll let you know when I get that * * * from the doctor."

On June 4, 1990, Ozzie Willis visited Respondent and asked Mr. Rocco, "* * * did you see that doctor?" to which Mr. Rocco replied, "No, not yet." Mr. Willis then asked, "You don't know when?" and ultimately Mr. Rocco responded, "Thursday morning, come in and see me then."

Ozzie Willis then went to Respondent on June 7, 1990, with $60.00 and when he exited the pharmacy, he had a white plastic bottle marked "Pfeiffer 3+weight loss supplement" which contained 100 Tylenol #4. The transcript indicates that Mrs. Rocco refers to a $40.00 charge. Respondent introduced into evidence a copy of a call-in prescription number 411301 from Dr. N for Ozzie Wills for 100 APAP with codeine 60 mg. and copy of a receipt dated June 7, 1990 indicating that Ozzie Willis paid $40.00 on account, including $20.00 for prescription number 411301. Again, Dr. N testified earlier that he had not called not called in any of the prescriptions for Ozzie Willis during the time period in question.

While in Respondent on June 12, 1990, Ozzie Willis said to Mrs. Rocco, "He [apparently referring to Mr. Rocco] told me I could get Percocets the first of this month." Mrs. Rocco then told Mr. Willis to call Mr. Rocco the next day.

Ozzie Willis telephoned Respondent on June 13, 1990. During the conversation, Mr. Willis told Mr. Rocco, "I was in yesterday and Mrs. Rocco told me to call you this morning about the Percocets I was supposed to get the first of the month." Mr. Rocco replied, "yea, if I can get the script." Mr. Rocco indicated that the doctor was in the hospital and Ozzie Willis then asked, "You got any idea when, cause I got people, got three guys waiting for them." Mr. Rocco responded, "it probably won't be till the end of the month, he's supposed to be back the 25th, to work." Mr. Willis then asked if he could get some "4's" next week, apparently referring to Tylenol #4. Mr. Rocco replied, "Yea, next week's fine."

On June 20, 1990, Mr. Willis visited Respondent but did not obtain any controlled substances. During the conversation there was some discussion of whether Mr. Willis could "get these this week." Mr. Rocco said, "No sooner than Thursday," and then asked Mr. Willis, "You gonna hold it or not?" Mr. Willis responded affirmatively, and Mr. Rocco said, "Yea cause it goes by days, everything's finally computerized, you can't, you know * * *."

According to the transcript, on June 28, 1990 Ozzie Willis asked Mr. Rocco, "Did the doctor, you tell me the 25th * * *" and Mr. Rocco replied, "yea, tomorrow morning come back * * *." According to Respondent's prescription log book, Ozzie Willis picked up two prescriptions for non-controlled substances for S.C.

On June 29, 1990, Ozzie Willis went into Respondent with $60.00 and returned with $30.00 and 30 Percocet in a small unlabeled box in a brown bag. Mr. Rocco testified that he did not dispense Percocet to Ozzie Willis on this occasion and that he never provided medication to Ozzie Willis, or to anyone else, in other than a properly labeled container. There was no prescription for Percocet for Ozzie Willis dated June 29, 1990 found at Respondent pharmacy.

Subsequent to the completion of the investigation, it was learned that Ozzie Willis was in Respondent on several occasions when he was not under surveillance by the Bristol P.D., and that he obtained controlled substances from other pharmacies between April 30 and June 29, 1990, both in violation of his agreement with the Bristol P.D. In addition, evidence was introduced into the record which indicated that both before and after the dates of the investigation, Ozzie Willis obtained controlled substances from other pharmacies pursuant to doctors' prescriptions.

Mr. Rocco testified that he had known Ozzie Willis for approximately 6–7 years before the investigation; that Mr. Willis was a very rude person; that he never came into the pharmacy as frequently as he did between April 30 and June 29, 1990; and that Ozzie Willis' prescriptions indicated that the medication was for back pain and perhaps arthritis. Mr. Rocco testified that because Ozzie Willis was so loud and obnoxious when he was in Respondent, Mr. Rocco would say anything and agree with Mr. Willis in order to get him out of the store. However, Mr. Rocco testified that he never provided Ozzie Willis with controlled substances except pursuant to what Mr. Rocco believed to be a proper prescription.

On July 23, 1990, a search warrant was executed at Respondent pharmacy by a number of officers of the Bristol P.D., an agent of the Pennsylvania Bureau of Narcotics Investigation (BNI), and an assistant district attorney. Given the number of people in Respondent during the execution of the warrant, it was very crowded and chaotic. Respondent's records pertaining to controlled substances, as well as its computer, were seized. No biennial inventory was found. Mr. and Mrs. Rocco cooperated with the search and showed the officers the various locations where the controlled substances and controlled substance records were kept. The BNI agent conducted a count of the Schedule II controlled substances on hand, however Mr. Rocco testified that it was not done under his "direct supervision" because he was getting things for the other officers.

Subsequent to the execution of the search warrant, a DEA investigator conducted an accountability audit of Respondent's handling of Percocet and its generic equivalents for the period May 1, 1989 through July 23, 1990. Since Respondent did not have a biennial inventory, the investigator first used a zero initial inventory figure for May 1, 1989. However, after reviewing Respondent's records, the investigator determined that while Respondent had not received any Percocet or its generic equivalents between May 1, and May 28, 1990 (the date of its first record of receipt), it had dispensed 1,708 dosage units. Therefore, the investigator used 1,708 as the initial inventory figure on the premise that Respondent could not have dispensed what it did not have. In its post-hearing filings, Respondent argued that the investigator's premise was incorrect because it contended that Respondent's first receipt of Percocet was May 25, 1990 and not May 28, 1990, and that it had dispensed 278 dosage units between May 25 and May 27, 1990. The Acting Deputy Administrator concludes that the investigator's interpretation of the records was correct. Pursuant to 21 CFR 1305.09(e), a purchaser of controlled substances (in this instance Respondent) is required to indicate the date of receipt of Schedule II controlled substances on the appropriate copy of the order form. Respondent introduced into evidence a copy of the order form signed by Mr. Rocco which indicates that the Percocet was received on May 28. It is possible that Respondent is confused and that May 25 is the date the Percocet was shipped by the wholesaler, but it was not the date received. Accordingly, the Acting Deputy Administrator finds that the initial inventory figure of 1,708 was proper.

Respondent's records, as well as summaries from the wholesaler, indicated that Respondent received 27,000 dosage units of Percocet and its generic equivalents during the audit period. Therefore, Respondent was accountable for 28,708 dosage units.

The DEA investigator did not conduct the closing inventory, but used the

figure provided to her by the BNI agent who conducted the count of drugs on hand during the execution of the search warrant. The BNI agent testified at the hearing that it was unusual to conduct a pill count during execution of a warrant and both Mr. and Mrs. Rocco testified that it was chaotic with so many people in the store. However, the BNI agent repeatedly asked both Mr. and Mrs. Rocco where all of the Schedule II controlled substances were located. The BNI agent testified that in conducting the count, she used a pill counter, but since that is not very reliable, she verified the count by hand. Mrs. Rocco stated that she did not see the agent doing a hand count. However, as noted above, it was very crowded and chaotic in the store.

During questioning at the hearing regarding her notes of the pill count, the BNI agent stated that she would not know which specific types of generic equivalents of Percocet she counted since she listed everything under Percocet, specifying each bottle by the manufacturer, not the name of the substance, However, the BNI agent testified that she counted all of the Percocet and generic equivalents shown to her by the Roccos. The BNI agent concluded that Respondent had 2,657 dosage units of Percocet and its generic equivalents on hand on July 23, 1990.

Respondent argues that the closing inventory is inaccurate since the BNI agent's notes do not reflect the generic manufacturers for oxycet and roxicet and therefore those substances were not counted. Both Mr. and Mrs. Rocco testified that they believed that throughout 1990, Respondent always maintained some oxycet and roxicet. Order forms introduced into evidence by Respondent indicate that both oxycet and roxicet were purchased during the audit period. However the Acting Deputy Administrator agrees with the Administrative Law Judge that Respondent offered no definitive evidence that oxycet and roxicet were on hand on July 23, 1990, and given Respondent's overall dispensing pattern of Percocet it would not be unreasonable to find that there might not have been any on hand on that date.

In its Supplemental Exceptions, Respondent also argues that the closing inventory figure in the computation chart is inaccurate due to a mathematical error. Respondent contends that the BNI agent's notes indicate that the closing figure should have been 4,248 dosage units rather than 2,657, since the BNI agent failed to add in 1,591 which was noted as "Perc Gen" in her notes. The Acting Deputy Administrator finds that this argument is without merit. As the Government asserts, "Perc Gen" is most likely referring to Percodan, not Percocet. This assertion is supported by the BNI agent's working papers which were put into evidence by Respondent where a listing of the controlled substances counted indicates 1,591 next to "Percodan". Therefore, the Acting Deputy Administrator finds that the closing inventory figure used by the DEA investigator in conducting the audit of Percocet and its generic equivalents was correct.

To determine how much Percocet and its generic equivalent were sold by Respondent during the audit period, the DEA investigator looked at both Respondent's prescription records, as well as reports required to be filed with the BNI regarding all Schedule II prescriptions dispensed. In reviewing the records, it was revealed that during the audit period, 21 prescriptions found at Respondent pharmacy were not listed in the BNI reports, and 21 different prescriptions listed in the reports were not found in Respondent's records. In arriving at the sales figure for the audit, the DEA investigator included all of these prescriptions in the total amount dispensed. In its Motion to Reopen the Record, Respondent argued that the sales figure was inaccurate since the DEA investigator did not look at Respondent's Schedule III–V prescription files to see if any prescriptions for Percocet or its generic equivalent were misfiled. The Acting Deputy Administrator finds this argument to be without merit since the DEA investigator testified at both the criminal trial and the hearing before Judge Bittner that she reviewed all of the prescription files, including Schedules III–V, to look for prescriptions for Percocet or its generic equivalent.

The audit revealed that Respondent could not account for 2,167 dosage units of Percocet and its generic equivalent.

The DEA investigator testified that during the course of her review of the records seized during execution of the search warrant, she found only one prescription for Ozzie Willis. It was dated May 24, 1990 for Placidyl and indicated that it had been called in by Dr. N. As noted above, Dr. N previously testified that he did not authorize this prescription. In addition, the investigator's review of the BNI reports filed by Respondent did not reveal any prescriptions listed for Ozzie Willis.

As a result of the investigation, criminal charges were brought against Mr. Rocco. Neither party submitted direct evidence regarding these charges and/or their disposition. However, it appears based upon Respondent's assertions in its post-hearing filing and statements made by the DEA investigator that testified in these proceedings, that Mr. Rocco was charged with seven counts of dispensing controlled substances without a prescription; that the jury was hung on six of those counts and found Mr. Rocco not guilty of the seventh; that rather than retry Mr. Rocco, he was accepted into an Accelerated Rehabilitation Disposition program in March 1992; and pursuant to that program, all charges against Mr. Rocco were dropped in March 1994.

Respondent introduced into evidence a number of character references from various members of his community, all stating that they had known Mr. Rocco for many years and attesting to his personal and professional integrity, his professional expertise and his concern for his customers.

On April 10, 1996, after the hearing was concluded but prior to the filing of post-hearing briefs, Respondent submitted its Motion to Reopen the Record, Motion for Oral Argument, and Motion to Admit Character Reference Testimony into the Record. The Government did not oppose Respondent's Motion regarding character reference testimony, and on May 10, 1995, Judge Bittner granted this motion and received Respondent's character reference letters into evidence.

In its Motion to Reopen the Record, Respondent argues that it was prejudiced by the Government's failure to comply with the Prehearing Ruling issued by the Administrative Law Judge. Respondent argues that the Prehearing Ruling ordered the Government to advise Respondent in writing of the documents that were used as the basis for the pill count and the preparation of the computation chart, and that Respondent did not receive a copy of the BNI agent's notes regarding her pill count taken during the execution of the search warrant on July 23, 1990, until the hearing in this matter. In support of its Motion, Respondent also argues that the BNI agent was uncertain about generic equivalents of Percocet; that the DEA investigator's starting inventory of 1,708 dosage units of Percocet was incorrect because it failed to account for a shipment Respondent received on May 25, 1989; that the sales figure on the computation chart was incorrect because it failed to take into account six misfiled prescriptions; that the closing inventory must have been inaccurate because Respondent dispensed more generic oxycodone with APAP between the date of the closing inventory and its next shipment than it would have had

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on hand according to the inventory; that the circumstances in which the closing inventory was taken were unfair to Respondent; that its May 1991 inventory showed a surplus; and that reopening the record to permit Respondent to adduce new evidence is required in the interests of justice and would not unduly burden the Government or waste judicial resources.

In denying Respondent's motion, Judge Bittner found that "[t]here is no indication that [the DEA investigator] relied on any documents (the BNI agent) drafted in preparing the computation chart." Judge Bittner therefore found "no merit to Respondent's contention that the Government failed to comply with the prehearing ruling." Judge Bittner also found that Respondent's argument that it dispensed more generic form of Percocet than the closing inventory plus subsequent receipts is "untenable" inasmuch as the BNI agent's notes are ambiguous regarding whether her figures referred to Percocet or its generic equivalents. Further, in rejecting Respondent's Motion to Reopen the Record, Judge Bittner found that there was no showing that Respondent could not have found the allegedly misfiled prescriptions earlier, and that an order form in evidence as a Respondent exhibit, correctly shows that May 28, 1989 was the date Respondent first received Percocet or its generic equivalent after May 1, 1989.

As the Government correctly asserts in its Opposition to Respondent's Motion to Reopen the Record, neither the DEA regulations nor the Administrative Procedure Act provide for the submission of additional evidence after the hearing has been concluded and the record closed. The Deputy Administrator has previously held that he has discretionary authority to request that a record be reopened to receive newly discovered evidence on the basis that a final order must be issued based upon a full and fair record. See *Robert M. Golden, M.D.*, 61 FR 24,808 (1996). In *Golden*, the Deputy Administrator concluded that, "to prevail on such a motion, the moving party must who that the evidence sought to be introduced (1) was previously unavailable and (2) would be material and relevant to the matters in dispute."

Respondent was on notice as of May 23, 1994, the date of the Order to Show Cause that Respondent's failure to keep complete and accurate records regarding controlled substances would be an issue in this case. By October 1994, Respondent was provided a copy of the audit computation chart. Other than the BNI agent's notes regarding the pill count, there is no evidence in Respondent's motion that other information was previously unavailable.

Regarding the closing inventory, Respondent contends that the Government did not comply with the Prehearing Ruling since it failed to turn over the BNI agent's notes regarding the pill count in advance of the hearing. Judge Bittner disagreed with this contention, seemingly confining her order to those documents relied upon by the DEA investigator in preparing the computation chart. Since the Acting Deputy Administrator was not a party to the prehearing discussions, it is difficult to know what was actually agreed to regarding the underlying documents to the computation chart. However, a plain reading of Judge Bittner's Prehearing Ruling appears to support Respondent's contention. The Prehearing Ruling orders the Government counsel to advise counsel for Respondent "in writing what documents was used as the basis for the inventory count on July 23, 1990, and the subsequent preparation of the computation chart." Therefore, the Acting Deputy Administrator disagrees with the Administrative Law Judge that the Government did not violate the Prehearing Ruling.

However, the Acting Deputy Administrator does not find that the Government's failure to turn over the notes was intentional, since Government counsel asserts that she was not aware of the notes herself and apparently mistakenly thought, as did the Administrative Law Judge, that she only needed to turn over what the Government witness relied upon in preparing the computation chart. The DEA investigator testified that in obtaining the closing inventory figure she relied upon the verbal representation of the BNI agent.

Respondent argued that its failure to obtain the BNI agent's notes prior to the hearing put it at an unfair disadvantage and the record should be reopened. The Acting Deputy Administrator disagrees. First, the only aspect of the audit that the notes pertain to is the closing inventory. Therefore, the failure to turn over the notes regarding the pill count does not give rise to the entire audit being reopened. Respondent was clearly on notice regarding the other parts of the audit, and had ample opportunity to prepare for the hearing. Second, Respondent argues that the notes of the pill count indicate that the BNI agent did not count oxycet and roxicet and therefore the closing inventory figure is incorrect. The transcript of the hearing clearly indicates that Respondent thoroughly questioned the BNI agent as to whether she counted all of the percocet and its generic equivalents. Respondent also questioned both Mr. and Mrs. Rocco regarding its stock of the substances, and introduced into evidence copies of orders forms indicating the purchase of the substances during the audit period.

Consequently, the Acting Deputy Administrator finds that Respondent was not prejudiced by not being provided the BNI agent's notes in advance of the hearing. Therefore, while not agreeing with the Administrative Law Judge regarding whether there was a violation of the Prehearing Ruling, the Acting Deputy Administrator does agree with her denial of the motion to reopen the record. Respondent did not present any evidence that, other than the BNI agent's notes, the evidence was previously unavailable. Further, Respondent was not prejudiced by not receiving the notes earlier since it had the opportunity to not only question the BNI agent about the pill count, but also introduced other evidence in the record regarding oxycet and roxicet.

In its Motion for Oral Argument, Respondent argued that oral argument after filing of the briefs would effectively summarize testimony from the criminal proceeding which is in evidence in this proceeding; that it would facilitate the Administrative Law Judge's understanding of the parties' positions; and that it would not substantially prejudice the Government. In denying Respondent's Motion, Judge Bittner stated that she was "not persuaded * * * that oral argument would significantly assist [her] in preparing a decision in this proceeding * * *." She further stated that her denial of the motion is "without prejudice to Respondent's right to raise in its posthearing brief the issues it intended to argue orally."

As the Government correctly notes, there is nothing in the regulations governing these proceedings that provides for oral argument following the filing of briefs. Consequently, the Acting Deputy Administrator finds that it is in the Administrative Law Judge's discretion whether or not to permit oral argument.

On June 20, 1995, Respondent filed a Motion for Disqualification of the Chief Administrative Law Judge. Respondent contends that the "Judge in this case has exhibited open and obvious favoritism to the Government which not only shatters the appearance of impartiality, but in fact demonstrates actual pro-Government bias * * *." Respondent argues that the Administrative Law Judge's admonishment of Respondent's counsel for failing to request a subpoena more in advance of the proceeding is

evidence of their bias. The Acting Deputy Administrator concludes that any statement made regarding the timing of the subpoena of the BNI agent is irrelevant to his decision in this matter. The BNI agent ultimately appeared and testified at the hearing, and this final order is based upon the testimony and documentary evidence introduced at the hearing.

Respondent argues that the Administrative Law Judge's bias is exhibited by her mischaracterization of her own Prehearing Ruling by finding that the Government did not violate the Ruling by failing to turn over the BNI agent's notes regarding the pill count to Respondent's counsel. While, the Acting Deputy Administrator has already found that it appears that the Administrative Law Judge did mischaracterize her Prehearing Ruling, such a mischaracterization in no way warrants disqualification. The regulations governing these proceedings provide for the filing of exceptions when a party disagrees with a finding, conclusion and/or ruling of the Administrative Law Judge. Respondent availed himself of this opportunity, and the Acting Deputy Administrator concurs with Respondent's contention that the Prehearing Ruling was mischaracterized. However, as previously discussed, the discovery of the BNI agent's notes was not significant enough to reopen the record since the notes only affected the closing inventory, and Respondent questioned the BNI agent about the closing inventory at the hearing.

Respondent further argues that the Administrative Law Judge was biased in her ruling denying Respondent's Motion to Reopen the Record, as evidenced by her acceptance of the DEA investigator's interpretation of when controlled substances were first received by Respondent after May 1, 1989, without allowing Respondent an opportunity to introduce evidence to rebut the interpretation. The Acting Deputy Administrator finds no evidence of bias in this ruling since he concurs with Judge Bittner's conclusion. First, since Respondent was on notice of the computation chart well in advance of the hearing, it had more than ample opportunity to prepare for this aspect of the audit. Respondent's lack of preparation does not warrant reopening the record. Second, even if Respondent had been allowed to present evidence regarding the initial inventory after the record had been closed, the Acting Deputy Administrator's conclusion would not change. Respondent's own order form signed by Mr. Rocco demonstrates that Respondent received the controlled substances in question on May 28, 1989.

Respondent also argues that the Administrative Law Judge's denial of Respondent's Motion for Oral Argument evidences Judge Bittner's bias in that "the Government enjoyed an effective veto power." Respondent contends that Judge Bittner's denial of this motion is "difficult to rationalize on any basis other than the fact that the Government opposed it." As stated previously, the regulations do not provide for oral argument following submission of the briefs, therefore, to grant such a request would be extraordinary. Consequently, the Acting Deputy Administrator does not find Judge Bittner's denial of Respondent's motion unreasonable since as she stated, she was "not persuaded at this time that oral argument would significantly assist [her] in preparing a decision in this proceeding * * *."

Finally, Respondent argues that "the very structure of Administrative Law Judges inherently raises suspicions about their capacity for judicial independence." As Judge Bittner noted in her opinion, "the Supreme Court of the United States and various United States Courts of Appeals have found that the Administrative Procedure Act 5 U.S.C. 551 et. seq., safeguards the procedural and substantive due process rights of parties to administrative proceedings and the independence of the Administrative Law Judges who hear them." See, e.g., *Butz* v. *Economou*, 438 U.S. 478, 513–15 (1978); *Nash* v. *Califano*, 613 F.2d 10, 14–16 (2d Cir. 1980).

The Acting Deputy Administrator concludes that other than her mischaracterization of the Prehearing Ruling, Judge Bittner's rulings in this matter have been correct based upon a careful consideration of the evidence and the laws and regulations governing these proceedings. The Acting Deputy Administrator is not persuaded by Respondent's arguments that the Administrative Law Judge has exhibited pro-Government bias in this matter. Accordingly, Respondent's Motion for Disqualification was properly denied.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwartz, Jr., M.D., Docket No. 88–42, 54 FR 16.422 (1989).

Regarding factor one, there is no evidence in the record that any action has been taken by any state agency against either Respondent pharmacy or Mr. Rocco, therefore, this factor is not relevant in determining the public interest in this case. Respondent argues in his exceptions that the Administrative Law Judge should have considered this lack of state action in Respondent's favor in rendering her recommendation. The Acting Deputy Administrator concludes that this factor should be given no weight since there is no evidence in the record that a hearing was conducted by a state agency and no action was taken or that the state agency formally reviewed the evidence and declined to take action.

Regarding factor two, Respondent's experience in dispensing controlled substances, Mr. Rocco has been a practicing pharmacist for over 30 years. It has introduced letters into evidence form various members of the community attesting to Mr. Rocco's professionalism and value to the community. While the other evidence in the record regarding this factor covers a relatively small portion of Mr. Rocco's 30 years as a pharmacist, his dispensing to Ozzie Willis and the results of the audit covering an approximately 14 month period of time raise serious concerns regarding Respondent's continued registration.

Respondent contends that Mr. Rocco only dispensed controlled substances to Ozzie Willis pursuant to what he believed to be valid prescriptions. Respondent argues that either Dr. N authorized the prescription or Mr. Willis called the prescriptions into the pharmacy since he knew Dr. N's DEA registration number. However, the Acting Deputy Administrator, like Judge Bittner, does not credit this explanation

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for the drugs provided on April 30, May 16, May 24, and June 7, 1990. Dr. N testified in Mr. Rocco's criminal proceeding that he did not authorize any of these prescriptions, and other than the May 24th prescription for Placidyl, none of these prescriptions were found in Respondent's records seized during execution of the search warrant.

On the other occasions, May 4, May 7, and June 29, 1990, when Ozzie Willis came out of Respondent pharmacy with controlled substances, Respondent argues that Mr. Willis had had an opportunity to plant the drugs. While Respondent argues in its exceptions that Mr. Willis might have had a motive to plant incriminating evidence on Respondent's premises, the Acting Deputy Administrator finds that this argument is speculative. The transcripts of Mr. Willis' visits, as well as the fact that no evidence was presented that anyone saw Ozzie Willis planting and/or retrieving the drugs belie such a theory. As Judge Bittner noted in her opinion, "on May 3 Mr. Rocco told Mr. Willis that he would obtain a prescription that night; on subsequent visits Mr. Rocco repeatedly said he would see a doctor and/or obtain a prescription, on June 13 Mr. Rocco said that the doctor in question was hospitalized until June 25, and on June 28 Mr. Rocco told Mr. Willis to come back the next day." Therefore, the Acting Deputy Administrator agrees with Judge Bittner that "it is reasonable to infer * * * that on May 4 and June 29 Mr. Rocco carried out his previously stated intention to provide Percocet to Mr. Willis" rather than that the drugs were planted.

Respondent argues that the fact that no Percocet prescriptions for Ozzie Willis were found at Respondent pharmacy supports the theory that Mr. Rocco was only talking about obtaining a prescription from a doctor to get Ozzie Willis out of the pharmacy. However, the Acting Deputy Administrator finds that nothing in the transcript of Mr. Willis' visits indicates that a prescription would be written in Ozzie Willis' name, but just that Mr. Rocco needed to obtain a prescription from a doctor before he could give Mr. Willis any Percocet.

Regarding the May 7th visit, Respondent argues that Ozzie Willis had an opportunity to plant the Tylenol #4 obtained on that occasion. Again, the Acting Deputy Administrator finds this argument to be speculative. Mr Willis was not given advance notice when he would be sent into the pharmacy, and there was no evidence presented that anyone saw Mr. Willis planting and/or retrieving the drugs.

Respondent contends that he only dispensed controlled substances in properly labeled containers, but that Ozzie Willis switched the controlled substances into the other containers. The Acting Deputy Administrator finds this argument also to be speculative. Since Mr. Willis was searched and under surveillance going into the pharmacy and after coming out of the pharmacy, he would have had to switch containers in the store. Like with the theory that Mr. Willis planted drugs, there is no evidence in the record that anyone saw Ozzie Willis switching containers while in the pharmacy. In addition, on May 24, 1990, Mr. Willis emerged from Respondent with Placidyl in a properly labeled container even though the prescription was not authorized by Dr. N. If as Respondent argues, Mr. Willis was switching containers, it would follow that he would have switched the container on this occasion also.

The Acting Deputy Administrator finds the transcripts of conversations between the Roccos and Mr. Willis of considerable significance in evaluating Respondent's experience in dispensing controlled substances. On May 3, 1990, Ozzie Willis asked for Percocet, and Mr. Rocco replied, "I'll tell you what, I'll get a script tonight from a doctor, pick it up tomorrow * * *." The next day, Ozzie Willis came out of Respondent pharmacy with 30 Percocet tablets in a UNI–ACE bottle.

On May 9, 1990, Ozzie Willis asked Mrs. Rocco to "ask Rocco if I can, can get some *more* Percs one day next week, either that or either Placidyls." (emphasis added). The Acting Deputy Administrator finds it noteworthy that since no Percocet prescriptions for Ozzie Willis were found at Respondent pharmacy, why would Mr. Willis ask for "more Percs", unless he had been dispensed the Percocets without a valid prescription.

Ozzie Willis told Mr. Rocco on May 16, 1990, "* * * I really need them Percs * * * I done got part of the guy's money." Mr. Rocco replied, "* * * I just got a script from that doctor, thought I'd get you 30 and that would be it. Thirty I got." Mr. Rocco told Mr. Willis to come back in two weeks. The Acting Deputy Administrator finds significant that two weeks before this visit, on May 4th, Ozzie Willis came out of Respondent's pharmacy with 30 Percocet after being told the day before that Mr. Rocco would get a prescription from a doctor.

On May 18, 1990, Ozzie Willis asked Mr. Rocco, "* * * you get the script from that other doctor?" Mr. Rocco replied, "No, not til the end of the month." On May 30, 1990, Mr. Rocco stated, "I'll let you know when I get that." Then on June 4, 1990, Mr. Willis asked Mr. Rocco, "did you see that doctor?" Mr. Rocco replied, "no, not yet * * *. Thursday morning, come in and see me then." During a telephone conversation on June 13, 1990, Mr. Willis asked about "the Percocets I was supposed to get the first of the month." Mr. Rocco replied, "Yeah, not this month though." Mr. Willis then stated, "last month you told me, the first of June," to which Mr. Rocco answered, "* * * if I can get the script * * * but I haven't got the script." Mr. Rocco went on to explain that the doctor went into the hospital. Mr. Willis asked, "You got any idea when, cause I got people, got three guys waiting for them." Mr. Willis replied, "* * * it probably won't be till the end of the month he's supposed to be back the 25th, to work."

Then on June 28, 1990, Mr. Willis asked about the doctor and Mr. Rocco stated, "Yea, tomorrow morning come back." On June 29th Ozzie Willis came out of Respondent pharmacy with 30 Percocet in a small unlabeled box in a brown bag.

The Acting Deputy Administrator concludes that these transcripts show that Ozzie Willis and Mr. Rocco were discussing the dispensing of Percocet to Mr. Willis without a valid prescription.

Respondent contends that Ozzie Willis was unreliable and dishonest; that he wrongly stated that Respondent was his source of controlled substances; and that the entire investigation was tainted because Ozzie Willis violated his agreement with the Bristol P.D. by going to Respondent when he was not under surveillance and by continuing to obtain controlled substances from other sources during the investigation. The Acting Deputy Administrator finds that given the criminal trial testimony and printouts from various pharmacies admitted into evidence in this proceeding, as well as the contents of Ozzie Willis' car at the time of his arrest on April 30, 1990, it is clear that Mr. Willis was obtaining controlled substances from places other than Respondent pharmacy. The Acting Deputy Administrator also finds that Ozzie Willis clearly violated his cooperation agreement with the Bristol P.D. and was convicted two times previously of offenses relating to drugs. However, the Acting Deputy Administrator concludes that regardless of these facts, the evidence is clear that Ozzie Willis obtained controlled substances from Respondent without a valid prescription.

Respondent's inability to account for over 2,000 dosage units of Percocet and its generic equivalents over an approximately 14 month period of time is of serious concern to the Acting Deputy Administrator in evaluating Respondent's experience in dispensing controlled substances.

Regarding factor three, other than Respondent's assertions in its post-hearing filing, there is virtually no evidence in the record regarding this factor, However, it appears that criminal charges against Mr. Rocco were ultimately dismissed after his successful participation in an Accelerated Rehabilitation Disposition program. Therefore, since there is no evidence of a conviction regarding controlled substances, the Acting Deputy Administrator concurs with Judge Bittner's finding that this factor does not weigh against Respondent's continued registration.

As to factor four, the Acting Deputy Administrator concurs with Judge Bittner's conclusion that "Respondent's failure to comply with state law and the Controlled Substances Act and its implementing regulations weigh in favor of a finding that its continued registration would not be in the public interest." Respondent's dispensing of controlled substances without a valid prescription to Ozzie Willis was in violation of 21 U.S.C. 829 and 21 CFR 1306.11 and 1306.21 Further, his dispensing of some of these substances in improperly labeled containers violated 21 CFR 1306.14 and 1306.24.

In addition, the review of Respondent's records seized during the execution of the search warrant on July 23, 1990 revealed recordkeeping violations, First, Respondent failed to comply with state law as evidenced by the reports it filed with BNI regarding its dispensing which did not indicate 21 prescriptions which were found in Respondent's files. Second, Respondent violates 21 U.S.C. 827 and 21 CFR 1304.04 as evidenced by the 21 prescriptions noted on the BNI reports that were not found in Respondent's records seized from the pharmacy. Respondent also violated 21 CFR 1304.13, by failing to maintain a biennial inventory. Finally, Respondent violated 21 U.S.C. 827 and 21 CFR 1304.21, by failing to maintain complete and accurate records of controlled substances as evidenced by the shortage of Percocet revealed by the DEA accountability audit.

Respondent argued in its exceptions that in assessing Respondent's compliance with applicable state and Federal laws and regulations, the Administrative Law Judge's decision "was heavily dependent on her interpretation of the meaning of audiotaped conversations," and that "she relied entirely on typed transcripts" rather than listening to the tapes themselves. The transcripts of the conversations are all that are in evidence in this proceeding, and there is no indication in the transcript of the hearing in this matter that Respondent objected to their admission into evidence. Therefore, the Acting Deputy Administrator finds that the Administrative Law Judge did not err in relying on these transcripts in rendering her recommended decision.

Respondent also argues that the Administrative Law Judge improperly relied upon hearsay testimony of Dr. N that he did not authorize the call-in prescriptions in question in this proceeding and that Judge Bittner erred in finding that Dr.N had no motivation to lie, and in ignoring the possibility that Ozzie Willis, knowing Dr. N's DEA number could have called the prescriptions in to Respondent's pharmacy. The Acting Deputy Administrator has considered these arguments and is not persuaded by them, particularly since only one of these prescriptions was found in Respondent's records seized during execution of the search warrant.

The Acting Deputy Administrator does however concur with Respondent's exception regarding the Administrative Law Judge's reliance as evidence of unlawful dispensing on the discovery of a prescription profile in Ozzie Willis' name spelled backwards. There is no evidence in the record regarding this profile other than the fact that it was discovered and therefore the Acting Deputy Administrator does not rely upon it as evidence of unlawful dispensing of controlled substances and Respondent pharmacy.

Respondent also argues that the Administrative Law Judge ignored the prescription for J.C. for Percocet dated May 2, 1990 which was picked up by Ozzie Willis on May 4th. However, the Acting Deputy Administrator notes that on May 3, 1990, Mr. Rocco told Ozzie Willis that he'd get a prescription from a doctor that night and for Mr. Willis to pick up the Percocet the next day. Therefore, the Acting Deputy Administrator concurs with the Administrative Law Judge's finding that Respondent dispensed Percocet on May 4, 1990 without a valid prescription.

Respondent also argues that the audit was improperly based on hearsay statements from an employee of Respondent's wholesaler. First, the Acting Deputy Administrator finds that hearsay is clearly admissible in administrative proceedings. See *Klinestiver* v. *Drug Enforcement Administration*, 606 F.2d 1128 (D.C. Cir. 1979). Second, in conducting the audit, the DEA investigator sought information from the wholesaler to verify Respondent's own records which it is required to maintain pursuant to the Controlled Substances Act.

The Acting Deputy Administrator finds the Respondent clearly violated both state and Federal laws and regulations relating to controlled substances and therefore factor four is highly relevant in determining whether Respondent's continued registration is in the public interest.

Regarding factor five, the Acting Deputy Administrator concurs with the Administrative Law Judge's finding that "Mr. Rocco's apparent dishonesty and refusal to accept responsibility for his misconduct does not augur well for his future responsibility if permitted to retain his DEA registration." In a previous case, the Administrator found that a pharmacist's "refusal to acknowledge the impropriety of his dispensing practices * * * give[s] rise to the inference that [he] is not likely to act more responsibly in the future." Medic-Aid Pharmacy, 55, FR 30,043 (1990). Like Judge Bittner, the Acting Deputy Administrator has considered Respondent's character references, however they do not outweigh the evidence of Respondent's improper dispensing and recordkeeping. Consequently, this factor weighs against Respondent's continued registration.

The Acting Deputy Administrator agrees with Judge Bittner, that based upon a careful consideration of the factors enumerated in 21 U.S.C. 823(f), the record as a whole establishes that Respondent's continued registration would be inconsistent with the public interest. Respondent pharmacy's dispensing of controlled substances without a valid prescription, the shortage of Percocet and its generic equivalents revealed by the accountability audit, its violations of applicable laws and regulations, and Mr. Rocco's continued denials of any wrongdoing whatsoever support such a conclusion. Therefore, the Acting Deputy Administrator concludes that revocation of Respondent's DEA Certificate of Registration is an appropriate remedy.

Respondent asserts in its exceptions that the Administrative Law Judge improperly focused on the same misconduct in her analysis of three of the five factors. The Acting Deputy Administrator concludes that there is no merit to this argument, finding that there is nothing in the statute that

precludes the same behavior from being considered under multiple factors. DEA has consistently considered the same conduct under more than one factor. See Robert M. Golden, M.D., 61 FR 24,808 (1996); Herman E. Walker, Jr., M.D., 60 FR 52,705 (1995).

Respondent, in its post-hearing filings further argues that DEA's failure to initiate administrative proceedings against Respondent's DEA Certificate of Registration sooner or to immediately suspend Respondent's registration pursuant to 21 U.S.C. 824(d), "is inconsistent with a contention that continued registration would violate the public interest." The Acting Deputy Administrator finds no merit to this argument. First, an immediate suspension of a registration pursuant to 21 U.S.C. 824(d) can only be utilized by DEA when a finding has been made "that there is an imminent danger to the public health or safety." Since a registration is immediately suspended without first providing an opportunity for a hearing, clearly Congress did not intend this tool to be used in every instance where DEA alleges that continued registration would be inconsistent with the public interest. Therefore, the Acting Deputy Administrator rejects Respondent's contention that, "* * * rather than put this case on the fast track, the DEA put it on a slow track which belies any contention about threats to the public interest."

Second, as to DEA's failure to initiate proceedings sooner, the Acting Deputy Administrator finds that while passage of time, alone is not dispositive, it is a consideration in assessing whether Respondent's continued registration is inconsistent with the public interest. See Norman Alpert, M.D., 58 FR 67,420 (1993). However, in Alpert, the then-Acting Administrator found significant, "Respondent's recognition of the serious abuse of his privileges as a DEA registrant, and his sincere regret for his actions." In this case, Mr. Rocco continues to deny that the pharmacy has misused its DEA registration. Therefore, the Acting Deputy Administrator concludes that the fact that DEA did not initiate proceedings sooner is outweighed by Respondent's continued denial of wrongdoing.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 hereby orders that DEA Certificate of Registration AR8587125, issued to Rocco's Pharmacy, be, and it hereby is, revoked and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective February 20, 1997.

Dated: January 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–1385 Filed 1–17–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–005]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: February 6, 1997, 9:00 a.m. to 3:00 p.m.; and February 7, 1997, 1:00 p.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–0682.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Update on Activities at NASA
—Top Technology Developments
—National Space Biomedical Research Institute
—Cross-enterprise Coordination of Exobiology
—Launch Vehicle Policy
—NASA Relationship with ASEB
—Technology and Commercialization Advisory Committee Restructuring
—Committee Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–1282 Filed 1–17–97; 8:45 am]

BILLING CODE 7510–02–M

[Notice 97–004]

NASA Advisory Council, Earth Systems Science and Applications Advisory Committee (ESSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: January 29–30, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room 7H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Robert A. Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1876.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The provisional agenda for the meeting is as follows:

—Update of Mission to Planet Earth
—Biennial Review—Role for ESSAAC
—General Discussion
—Progress Towards and EOSDIS Federation
—EOSDIS Cost Analysis
—Summary and General Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–1281 Filed 1–17–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Effectiveness of Ultrasonic Testing Systems in Inservice Inspection Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: On December 31, 1996, (61 FR 69120) the NRC published for public comment a proposed generic letter concerning the effectiveness of ultrasonic testing systems in inservice inspection programs. The generic letter will enable the NRC to determine if addressees are taking appropriate action to qualify future ultrasonic testing (UT) examinations. The comment period for this proposed generic letter was originally scheduled to expire on January 30, 1997. In a letter dated January 6, 1997, the Nuclear Energy Institute requested a 29-day extension of the comment period to permit sufficient time to solicit input from its members, assemble an integrated set of industry comments, and submit a consolidated comment package to the NRC for review. In response to this request, the NRC has decided to extend the comment period.

DATES: The comment period has been extended 29 days and will now expire on February 28, 1997. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald G. Naujock (301) 415–2767.

Dated at Rockville, Maryland, this 14th day of January, 1997.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 97–1365 Filed 1–17–97; 8:45 am]

BILLING CODE 7590–01–P

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as will as feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific issues (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Three plenary sessions are planned, two of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held April 1–2, 1997.

ADDRESSES: The conference will be held at the Capital Hilton Hotel, 16th and K Streets, N.W., Washington, DC 20036, Telephone: (202) 393–1000, FAX: (202) 639–5742 (Refer to NRC Meeting for special conference rate).

FOR REGISTRATION INFORMATION CONTACT: ES Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585, after January 20, 1997.

PARTICIPATION: This conference is open to the general public; however, advance registration is required by March 10, 1997. The following is the preliminary program for the conference:

Tuesday, April 1, 1997—(8:30 a.m.–5:15 p.m.)

1. Welcome and Introductory Remarks—Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
2. Morning Speaker: NRC Chairman Shirley A. Jackson
3. Morning Plenary Session: Regulatory Trends
4. Breakout Sessions:
   1. Electric Power Industry Restructuring and Deregulation
   2. Design Basis FSAR and Vertical Slice Architect/Engineer Inspections
   3. Spent Fuel Storage Issues
   4. PRA Implementation, Plant Risk Monitoring
5. Post-Luncheon Speaker: Commissioner Kenneth C. Rogers
6. Afternoon Plenary Session: Regional Administrators' Panel: Each Regional Administrator will make presentations on topics of current interest
7. Breakout Sessions:
   1. Enforcement Issues
   2. Steam Generator Issues
   3. License Renewal
   4. Core Performance/Fuel Issues

Wednesday, April 2, 1997—(8:30 a.m.–4:45 p.m.)

1. Breakout Sessions:
   1. NRC/Licensee Interface and Communications, REGION I
   2. NRC/Licensee Interface and Communications, REGION II
   3. NRC/Licensee Interface and Communications, REGION III
   4. NRC/Licensee Interface and Communications, REGION IV
2. Breakout Sessions:
   1. Organizational Changes and Strategic Planning
   2. Maintenance Rule Experience
   3. Decommissioning
   4. Allegation/Employee Concerns
3. Post-Luncheon Speaker: Commissioner Nils J. Diaz
4. Breakout Sessions:
   1. 10 CFR 50.59
   2. Reactor Licensing Priorities and Process Improvements
   3. Reactor Pressure Vessel and Internals
   4. Fire Protection Issues
5. Closing Plenary Session: Samuel J. Collins, Director, NRR/NRC

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for April 14–15, 1998, at the Capital Hilton Hotel, Washington, DC.

Dated in Rockville, Maryland, this 10th day of January 1997.

For the Nuclear Regulatory Commission.

Kathryn O. Greene,

Chief, Administration Branch, Division of Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1363 Filed 1–17–97; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–206, 50–361 and 50–362]

Southern California Edison Company and San Diego Gas and Electric Company, San Onofre Nuclear Station; Notice of Reopening of Local Public Document Room

Notice is hereby given that the Main Library, University of California, Irvine, California, which serves as the Nuclear Regulatory Commission (NRC) local public document room (LPDR) for Southern California Edison Company's and San Diego Gas and Electric Company's San Onofre Nuclear Station, has reopened to the public after being temporarily closed in order to make seismic upgrades to the library building. Notice of the temporary closing of the LPDR was published in the **Federal Register** on May 23, 1996 (61 FR 25923). The telephone number for library staff at the LPDR is (714) 824–7234.

Questions concerning the NRC's LPDR program or the availability of agency documents at LPDRs should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (800) 638–8081.

Dated at Rockville, Maryland, this 14th day of January, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management.

[FR Doc. 97–1364 Filed 1–17–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 24b–1
SEC File No. 270–205
OMB Control No. 3235–0194

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rule:

Rule 24b–1 (17 CFR 240.24b–1) requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are eight national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $63 per year, calculated as one half hour of clerical time ($7) plus copying ($12) plus storage ($44), resulting in a total cost of compliance for the respondents of $504.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: January 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1302 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22465; 812–10404]

Liberty Term Trust, Inc.—1999; Notice of Application

January 14, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Liberty Term Trust, Inc.—1999 (the "Trust").

RELEVANT ACT SECTIONS: Order requested under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt the Trust, a closed-end management investment company, from the 1.5% sales load limitation of section 12(d)(1)(F)(ii).

FILING DATE: The application was filed on October 17, 1996 and amended on November 21, 1996. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 10, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant: S. Elliott Cohan, Esq., Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is registered under the Act as a diversified, closed-end management investment company. Federated Advisers (the "Adviser"), a wholly-owned subsidiary of Federated Investors ("Federated"), serves as investment adviser to the Trust.

2. The investment objective of the Trust is to return (*i.e.*, provide a liquidating value equal to) at least $10 per share (the initial public offering price per share) to investors on or shortly before December 31, 1999, while providing high monthly income. The Trust seeks to return at least $10 per Share to investors on or shortly before December 31, 1999, by preserving capital through active management of its portfolio of high quality debt securities and through its investments in municipal securities, including municipal zero coupon securities. The Trust seeks to achieve high monthly income by investing in high quality debt securities—primarily mortgage-backed securities issued or guaranteed by the United States Government, its agencies, or instrumentalities—and by actively managing the Trust's assets in relation to market conditions, interest rate changes, and the remaining terms of the Trust.

3. The Trust conducted its initial public offering in April 1992, pursuant to which the price of its shares ("Shares") included underwriting discounts and commissions of 5.0%. The Trust's shares are traded on the New York Stock Exchange under the symbol "LTT." As of November 8, 1996, the Trust had a net asset value per Share of $8.57 and a per share closing price of $7⅞, reflecting a discount to net asset value of 8.1%. A combination of mortgage prepayments in 1993 and a bear market in fixed income securities in 1994 caused the Trust and other limited-life close-end investment

companies ("Term Trusts") investing in mortgage-backed and other fixed incomes securities to realize significant losses. Although the Trust realized portfolio gains from the strong performance of the bond market during the second half of 1995, the Trust and the Adviser anticipate that the Trust may not fully recover previously realized losses. Accordingly, without some modifications to the Trust's current investment strategy, applicants believe that it will be difficult to provide a liquidating value of at least $10 per share to investors by December 1999. The Trust has taken a number of steps to improve the likelihood that it will be able to satisfy this portion of its investment objective, including open market repurchases of its shares, as permitted by section 23 of the Act. To argument these measures, the Trust wishes to have additional flexibility to invest a greater portion of its assets in securities issued by other closed-end management investment companies that (i) are trading at a discount to net asset value ("NAV"); (ii) are Term Trusts with similar investment objectives; and (iii) have undertaken to liquidate on or before December 31, 2002. In accordance with the Trust's investment restrictions and policies as set forth in its registration statement, the Trust proposes to allocate its assets among one or more such closed-end investment companies (each an "Underlying Fund" and collectively the "Underlying Funds") according to the following defined limits: (i) limit investment in the securities of any one Underlying Fund to not more than 3% of the total outstanding voting stock of such Underlying Fund; (ii) limit investment in the securities of any one Underlying Fund to not more than 25% of the value of the total assets of the Trust; and (iii) limit investment in the securities of all Underlying Funds to not more than 65% of the value of the total assets of the Trust.

4. Because the Trust is obligated to liquidate and distribute cash to its shareholders in December 1999, the Adviser, as matter of prudent portfolio management, generally will invest Trust assets in securities with maturities consistent with the 1999 termination date. Accordingly, as the average maturity of the Trust's portfolio shortens, the opportunity to realize capital appreciation from fluctuations in the value of portfolio securities diminishes. Moreover, while a portion of the Trust's assets have been invested in zero coupon municipal securities which, over time, should increase in value through accretion, it is not expected that the Trust will experience a significant increase in NAV from these portfolio investments to offset previously realized portfolio losses. In order to bring the Trust's NAV per share closer to $10 over time, the Trust would like to invest a substantial portion of its assets in securities issued by other Term Trusts. Since the Trust will only be buying securities of closed-end investment companies that are trading at a discount from NAV, the Trust will realize a profit if and when the discount decreases or disappears. Furthermore, the Trust will only invest in securities issued by Term Trusts that have terms expiring on or before December 31, 2002, since the Adviser expects each Underlying Fund's discount to decrease due to market factors and/or as such fund's term nears its end. If the discount decreases for any of the Underlying Funds, the Trust will realize portfolio gains, thus resulting in an increase in its NAV.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if immediately after the purchase or acquisition not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and the acquiring company does not impose a sales load of more than 1.5% on its shares after January 1, 1971. In addition, no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. Because the Trust incurred underwriting discounts and commissions in excess of 1.5% during its initial public offering, applicant seeks relief from the 1.5 during its initial public offering, applicant seeks relief from the 1.5% sales load limitation of section 12(d)(1)(F)(ii).

3. Applicant states that section 12(d) of the Act is intended to prevent the unregulated pyramiding of investment companies and the negative effects which are perceived to arise from such pyramiding. Applicant submits that these abuses include (a) undue influence by a fund holding company over its underlying funds; (b) the threat of large scale redemptions of the securities of the underlying investment companies; (c) unnecessary duplication of costs (such as sales charges, advisory fees, and administrative costs); and (d) unnecessary complexity. Applicant asserts that the proposed arrangement will not give rise to these dangers.

4. Applicant submits that the potential problems of pyramiding of voting control will be eliminated because, as a condition to the granting of the order, the Trust will comply with the requirements of section 12(d)(1)(F) (other than the sales load limitation therein), which requires the Trust to exercise voting rights with respect to any securities acquired in the manner prescribed by subsection (E) of section 12(d)(1). Subsection (E) requires that a fund holding company exercise voting rights in the portfolio securities only by passing them through to its security holders or voting such units in the same proportion as the vote of all other holders of the securities. Applicants believe that, under these conditions, orderly management of the Underlying Funds will not be threatened or disrupted.

5. Applicant argues that the concern of large-scale redemptions is not present under the proposed arrangement for several reasons. First, applicant notes that the Trust will invest only in closed-end companies, which do not stand ready to redeem their units at net asset value as do open-end investment companies and are not required to have cash on hand to cover redemptions by unitholders. Therefore, applicant believes that there is no danger of large-scale redemptions and a resulting liquidity crisis with respect to closed-end investment companies. Moreover, applicant states that the Trust itself is a closed-end fund, so its liquidity needs will be minimal.

6. With regard to layering of fees and expenses, applicant states that the Trust is an already existing closed-end fund, and therefore the concern of an excessive sales load is not present. Applicant submits that the Trust is seeking relief from the 1.5% sales load limitation of section 12(d)(1)(F) since the initial public offering of the Trust's shares, completed in April 1992,

included underwriting discounts and commissions of 5.0%. Applicant states that the initial public offering of the Shares was conducted in compliance with all applicable rules of the National Association of Securities Dealers, Inc. ("NASD"). Applicant note that, in particular, the underwriting terms and arrangements were reviewed and approved by the NASD pursuant to section 44 of Article III of the NASD's Rules of Fair Practice (recodified as rule 2740 of the Conduct Rules) governing corporate financing.

7. Furthermore, applicant states that the Trust will only invest in securities issued by closed-end investment companies that are traded on the open market. Applicant states that therefore, no front-end sales loads, contingent deferred sales charges, 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the purchase or sale of any of the Underlying Funds by the Trust. Applicant states that, although the Trust will likely incur brokerage commissions in connection with its open market purchases of securities of closed-end investment companies, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities. In addition, applicant states that, by purchasing the securities of closed-end investment companies in the secondary market, the Trust avoids the payment of any underwriting spreads common during the initial offering of such shares.

8. Applicant states that the Adviser would continue to charge the Trust an annual investment advisory fee in an amount equal to 0.45% of the average weekly net asset value of the Trust. Applicant states that such fee would be for services that are in addition to and not duplicative of the investment advisory services that are being furnished to the Underlying Funds. Applicant states that, the Adviser anticipates that it will devote significant resources to evaluating and monitoring individual portfolio securities, as well as the overall portfolio structure, of Term Trusts in which it invests or considers for investment, to ensure the appropriateness of such investments and their consistency with the Trust's investment objective. Thus, while shareholders of the Trust would indirectly bear their proportional share of the advisory fees and administrative expenses charged to the Underlying Funds, applicant does not believe that there would be the duplication of fees.

9. Applicant believes that the concern about undue complexity is not present under the proposed arrangement because the Trust agrees, as a condition to relief, that it will not knowingly invest in any Underlying Fund that, at the time of acquisition, acquires securities of any other investment company in excess of the limits contained in section 12(d)(1)(A). Under this condition, applicant represents that it will determine whether a prospective Underlying Fund is a "fund of funds" at the time of acquisition. However, applicant states that, if an Underlying Fund subsequently acquires securities of other investment companies in excess of the limits of section 12(d)(1), the Trust will not be required to divest itself of its holdings. Applicant argues that because the Underlying Funds are unaffiliated with the Trust, the Trust cannot bind or control the Underlying Funds.

10. Section 12(d)(1)(J) provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicant submits that, under the circumstances and conditions of the application, the requested exemption is in the public interest and consistent with the protection of investors.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. The Trust will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. The Trust will not knowingly acquire securities of an Underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1360 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38151; File No. SR–DCC–96–15]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Amendment of Fees Charged for Options

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 11, 1996, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend DCC's fee schedule for the clearance of options on U.S. Government Securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend DCC's fee schedule for the clearance of options on U.S. Treasury Securities as follows:

Options maturity	Fee
Overnight up to 14 days.	$5 per option contract per participant.
15 days up to 90 days.	$10 per option contract per participant.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

Options maturity	Fee
91 days up to 2 years	$15 per option contract per participant.

The proposed rule change complies with Section 17A(b)(3)(D) of the Act [3], which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants. DCC believes the proposed rule change will result in increased utilization of its clearing services thereby resulting in more securities transactions being cleared and settled through a registered clearing agency environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Comments were neither solicited nor received.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(e)(2) thereunder.[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at DCC. All submissions should refer to the File No. SR–DCC–96–15 and should be submitted by February 11, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1362 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(2).

[Release No. 34–38162; File No. SR–MSRB–96–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–12(h) on Close-Outs

January 13, 1997.

On December 23, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–96–13), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an interpretive notice concerning rule G–12(h) on Close-Outs (hereinafter referred to as "the proposed rule change"). The rule currently requires that a dealer taking action in a close-out must provide telephonic notice to the appropriate party, followed no later than the next business day with a written notice.[2] The rule further requires that written notices be sent "return receipt requested." The Board previously has interpreted this provision to allow the use of certified mail, registered mail, messenger services, and Depository Trust Company's Participant Exchange Service ("PEX") system. Use of these procedures allows the sender to obtain acknowledgement of delivery of the notice from the recipient.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Dealers have asked whether the use of a facsimile transmission would satisfy the requirement in the rule that written notices be sent "return receipt requested." The Board has determined that the requirements of the rule would be satisfied by the facsimile transmission of written notices as long as the facsimile transmission provides the sender with an acknowledgment of successful delivery of the notice. The Board emphasizes that, prior to the sending of written notices, dealers are required to notify the appropriate parties by telephone of their intention to take action under Board rule G–12(h) on close-outs.

(2) Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[3] which provides that the Board's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Telephonic and written notices are required when dealers (i) originate a close-out; (ii) retransmit a close-out; (iii) extend delivery dates; and (iv) execute a close-out. The Board's Manual on Close-Out Procedures contains a detailed explanation of the procedures required by rule G–12(h).

[3] 15 U.S.C. 78o–4(b)(2)(C).

market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the Board's existing rule G–12(h), and therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b–4[5] thereunder. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–13 and should be submitted by February 11, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1303 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 200–30–3(a)(12).

[Release No. 34–38165; File No. SR–OCC–96–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Expiration Time and Assignment Processing Procedures for Certain Flexibly Structured Foreign Currency Options

January 14, 1997.

On December 17, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–96–19) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to modify the expiration time and assignment processing procedures for certain flexibly structured foreign currency options.[1] Notice of the proposal was published in the **Federal Register** on December 23, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The rule change modifies the expiration time and assignment processing procedures for certain flexibly structured foreign currency options, including certain flexibly structured cross-rate foreign currency options. Under the rule, all flexibly structured foreign currency options and flexibly structured cross-rate foreign currency options (collectively referred to as "flexibly structured FCOs") listed for trading after January 14, 1997, and expiring on or after April 1, 1997, will expire at 10:15 a.m. Eastern Time ("ET") instead of 11:59 p.m. ET. Furthermore, all flexibly structured FCOs will be subject to pro rata assignment instead of random assignment.

The Philadelphia Stock Exchange ("PHLX") presently trades two types of flexibly structured FCO contracts. They are (1) flexibly structured FCOs for which market participants do not specify an expiration date ("standard flex FCOs") which expire on standard mid-month and end-of-month expiration dates at 11:59 p.m. ET (this expiration time is consistent with standard foreign currency options); and (2) custom dated flexibly structured FCOs ("custom dated flex FCOs") for which market participants specify the expiration date and which expire at 10:15 a.m. ET on such expiration date. Exercise notices regarding standard flex FCOs are subject to random assignment processing. Exercise notices regarding custom dated flex FCOs are subject to pro rata assignment processing.

PHLX requested that OCC modify its rules to provide that the expiration time for both types of flexibly structured FCOs be 10:15 a.m. ET on their expiration date, and that exercises involving such flexibly structured FCOs be assigned pursuant to OCC's pro rata procedures.[3] PHLX also requested that this change be effective for any standard flex FCOs listed for trading after January 14, 1997, with an expiration on or after April 1, 1997. Accordingly, any standard flex FCO contract established on or before January 14, 1997, will expire at 11:59 p.m. ET and be subject to a random assignment process. Currently, there is open interest in standard flex FCOs expiring mid-month and end-of-month for the months of March, April, July, September, and October 1997.[4] Because the existing standard flex FCOs will be exempt from the new procedures, OCC will be required to execute two separate processing cycles, one in the morning and one in the evening. OCC has represented to the Commission that the execution of two separate processing cycles will not adversely affect OCC or its participants.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38070 (December 20, 1996), 61 FR 68807.

[3] The Commission has approved a proposed rule change by PHLX regarding the trading hours, expiration times, assignment procedures and other operational procedures for flexibly structured FCOs. Securities Exchange Act Release No. 37718 (September 24, 1996), 61 FR 51479 [File No. SR–PHLX–96–13] (order approving proposed rule change).

[4] Notwithstanding the above, PHLX has indicated that it may ask holders of existing series to direct OCC to adjust the expiration time so that such contracts will expire at 10:15 a.m. ET with pro rata assignment. If the holders and the writers direct OCC to make these adjustments, OCC will act accordingly provided that OCC receives the proper authorizations from all parties involved.

[5] Additionally, OCC believes that the change in assignment processing is merely a change in OCC's procedures and does not affect the methodologies of either the random or pro rata assignment process.

Certain definitions in OCC's by-laws have been amended to be consistent with the previously approved PHLX rules.[6] Articles I, XV, and XX of OCC's by-laws regarding expirations dates and times for standard option contracts, foreign currency options, and cross-rate foreign currency options, respectively, have been amended to better define the distinction between standard foreign currency options and flexibly structured FCOs and will clarify that, but for standard flex FCOs established on or before January 14, 1997, all flexibly structured FCOs, whether standard flex FCOs or custom dated flex FCOs, will expire at 10:15 a.m. on the expiration date and be subject to a pro rata assignment process. In addition, Section 1.E(4)(iii) of Articles XV and XX of OCC's by-laws will serve as a transitional rule to govern the expiration time and assignment processing to be used for existing standard flex FCO contracts (*i.e.*, standard flex FCO contracts established on or before January 14, 1997) and to exempt such standard flex FCO contracts from the rule change.

II. Discussion

Section 17A(b)(3)(F) of the Act[7] provides that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with OCC's obligation under the Act because it will increase uniformity in the expiration time and assignment processing procedures for all flexibly structured FCOs. Because OCC has modified its by-laws to create uniform expiration times for all flexibly structured FCO contracts listed for trading after January 14, 1997 with an expiration on or after April 1, 1997 to 10:15 a.m. ET, any investor confusion resulting from the disparate expiration times for standard flex FCOs and custom flex FCOs should be reduced which should promote the prompt and accurate clearance and settlement of securities transactions.

Furthermore, OCC's by-laws also have been modified to require that exercise notices regarding both custom flex and standard flex FCOs be assigned pursuant to OCC's pro rata procedures as opposed to random assignment procedures. Under random assignment procedures, option writers are randomly assigned and exercised against.[8] Under pro rata assignment, the number of contracts assigned to a particular option writer is directly proportional to the total number of option contracts assigned to all option writers.[9] Pro rata assignment should allow member participants to ascertain their exercise exposures more quickly than with random assignment processing. Accordingly, because standard flex FCO writers will be able to ascertain their exposures, the rule change should increase liquidity thereby enhancing the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing so that the proposal can be implemented by January 14, 1997 in conjunction with the end of a foreign currency options expiration cycle.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1361 Filed 1–17–97; 8:45 am]

BILLING CODE 8010–01–M

[6] The specific changes to OCC's by-laws are set forth in OCC's proposed rule change, which is available for review through OCC and the Commission's Public Reference Room.

[7] 15 U.S.C. 78q-1(b)(3)(F).

[8] For example, option writers could have none, some, or all of their positions in a particular series of contracts assigned.

[9] For example, under pro rata processing if 25% of all outstanding contracts in a particular series are exercised, an individual writer will know that only 25% of its short position in such contracts will be assigned.

[10] 17 CFR 200.30–3 (a) (12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California dated July 22, 1996, the United States Small Business Administration hereby revokes the license of Builders Capital Corporation, a California corporation, to function as a small business investment company under Small Business Investment Company License No. 09/09–0209 issued to Builders Capital Corporation on November 10, 1977 and said license is hereby declared null and void as of September 18, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1286 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of Florida dated October 29, 1996, the United States Small Business Administration hereby revokes the license of Cubico Ltd., Inc., a Florida corporation, to function as a small business investment company under Small Business Investment Company License No. 04/04–5154 issued to Cubico Ltd., Inc. on August 9, 1979 and said license is hereby declared null and void as of December 18, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1289 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Idaho, dated June 27, 1996, the United States Small Business Administration hereby revokes the license of First Idaho Venture Capital Corporation, an Idaho corporation, to function as a small business investment company under the Small Business Investment Company License No. 10/10–0161 issued to First Idaho Venture Capital Corporation on March 19, 1974 and said license is hereby declared null and void as of September 30, 1996.

Dated: January 17, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1288 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of Michigan dated August 23, 1996, the United States Small Business Administration hereby revokes the license of Inner-City Capital Access Center, Inc., a Michigan corporation, to function as a small business investment company under Small Business Investment Company License No. 05/05–5141 issued to Inner-City Capital Access Center, Inc. on September 25, 1979 and said license is hereby declared null and void as of September 18, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1290 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Eastern District of Texas, dated October 5, 1995, the United States Small Business Administration hereby revokes the license of Red River Ventures, Inc., a Texas corporation, to function as a small business investment company under the Small Business Investment Company License No. 06/06–0170 issued to Red River Ventures, Inc. on February 21, 1974 and said license is hereby declared null and void as of December 14, 1995.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1287 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Minnesota, dated July 15, 1996, the United States Small Business Administration hereby revokes the license of Retailers Growth Fund, Inc., a Minnesota corporation, to function as a small business investment company under the Small Business Investment Company License No. 05/08–0015 issued to Retailers Growth Fund, Inc. on October 4, 1962 and said license is hereby declared null and void as of September 25, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1284 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of Florida, dated March 7, 1996, the United States Small Business Administration hereby revokes the license of Safeco Capital, Inc., a Florida corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–5158 issued to Safeco Capital, Inc. on August 30, 1979 and said license is hereby declared null and void as of June 5, 1996.

Dated: January 14, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–1285 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Southern District of Florida, dated October 18, 1995, the United States Small Business Administration hereby revokes the license of Universal Financial Services, Inc., a Florida corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–5153 issued to Universal Financial Services, Inc. on September 15, 1978 and said license is hereby declared null and void as of February 21, 1996.

United States Small Business Administration.

Dated: January 14, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[97–1283 Filed 1–17–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the Committee is necessary and in the public interest.

Members of the Committee will be appointed by the Assistant Secretary for Administration. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d) and 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, contact Dr. Ernest N. Mannino, Executive Secretary of the Committee at 703–875–7800.

Dated: January 15, 1997.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 97–1381 Filed 1–17–97; 8:45 am]

BILLING CODE 4710–24–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Intellectual Property Rights; Request for Public Comment on Products Affected by Partial Withdrawal of Argentina's Benefits

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment.

SUMMARY: This notice informs the public that in light of his determination that Argentina fails to provide adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, the President has indicated his intention to withdraw partially duty-free treatment accorded Argentina under the Generalized System of Preferences (GSP) program. Specifically, the President has indicated his intention to withdraw fifty percent of Argentina's benefits under the GSP program. This notice invites public comments on which products will be affected.

DATES: Comments are due by 5 p.m. on Wednesday, February 19, 1997.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative (USTR), 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. The GSP Program

The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The program is authorized by Title V of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 *et seq.*). Once granted, GSP benefits may be withdrawn, suspended or limited by the President with respect to any article or with respect to any country. In making this determination, the President must consider several factors, one of which is the extent to which a beneficiary country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights. 19 U.S.C. 2462(c)(5).

II. IPR Protection in Argentina

On April 30, 1996, the USTR announced that Argentina was being moved from the Watch List to the Priority Watch List under the "Special 301" provisions of the Trade Act, given that Argentina's newly enacted patent legislation and an implementing decree fell fall short of adequate and effective protection, and failed to achieve earlier Argentine assurances. The USTR also announced that she would continue to seek improvements, monitor the situation and review Argentina's status through an out-of-cycle review in December 1996.

Despite sustained efforts by the Menem Administration, there have been inadequate improvements in Argentina's patent regime since April 1996, and Argentina's recently enacted legislation on the protection of test data submitted for marketing approval of pharmaceutical products falls well short of international standards. As a result, the President has determined that Argentina fails to provide adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property. He has therefore indicated his intention to withdraw benefits for fifty percent of Argentina's exports under the GSP program. The public is invited to comment on which of the products of Argentina currently enjoying GSP benefits should be subject to the withdrawal.

The Presidential Proclamation partially withdrawing GSP benefits will be issued and published in the **Federal Register** after all comments are received and reviewed. In order to give U.S. importers sufficient time to adjust, the partial withdrawal of GSP benefits for the products of Argentina will be effective 30 days after the publication of the Proclamation in the **Federal Register.**

III. Public Comment: Requirements for Submissions

Interestedd persons are invited to submit written comments concerning which products of Argentina should or should not be subject to the withdrawal of GSP benefits. Comments must be filed in accordance with the requirements set forth in 15 CFR 2007, including the information required by 15 CFR 2007.1, and must be filed on or before 5 p.m. on Wednesday, February 19, 1997. Comments must be in English and provided with the original plus fourteen copies to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. Comments received after the deadline will not be accepted.

Pursuant to the requirements of 15 CFR 2007.7, information submitted in confidence will be exempt from public inspection if it is determined that the disclosure of such information is not required by law. A party requesting an exemption from public inspection for information submitted must clearly mark each page "Submitted in Confidence" at the top, and must submit the original plus fourteen copies of non-confidential version of the submission containing a non-confidential summary of the confidential information. That party must also provide a written explanation of why the material should be so protected. The version that does not contain confidential information. That party must also provide a written explanation of why the material should be so protected. The version that does not contain confidential information must be clearly marked with "public version" on the top of each page.

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room. An appointment to review the comments may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Federick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–1524 Filed 1–17–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps James M. Cox-Dayton International Airport Dayton, Ohio

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Dayton, Ohio, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 6, 1994, the FAA determined that the noise exposure maps submitted by the city of Dayton, Ohio, under Part 150 were in compliance with applicable requirements. On October 30, 1996, the Associate Administrator for Airports approved the James M. Cox-Dayton International Airport noise compatibility program. All of the recommendations of the program were approved.

The city of Dayton, Ohio, has also requested under FAR Part 150, section 150.35(f), that FAA determine that the revised noise exposure map submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program is in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised noise exposure map for James M. Cox-Dayton International Airport for the year 1998 submitted with the noise compatibility program, is in compliance with applicable requirements of FAR Part 150 effective December 16, 1996.

EFFECTIVE DATE: The effective date of the FAA's approval of the James M. Cox-Dayton International Airport noise compatibility program is October 30, 1996. The effective date of the FAA's determination on the revised noise exposure map is December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7293. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for James M. Cox-Dayton International Airport, effective October 30, 1996, and that revised noise exposure map for 1998 for this same airport is determined to be in compliance with applicable requirements of FAR Part 150.

A. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The city of Dayton, Ohio, submitted to the FAA on January 28, 1993, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1991, through December 1992. The James M. Cox-Dayton International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 6, 1994. Notice of this determination was published in the **Federal Register** on June 30, 1994. The five year forecast map was subsequently revised and FAA's determination on this map follows in Paragraph B under the heading Supplemental Information.

The James M. Cox-Dayton International Airport study contains a proposed noise compatibility program comprised on actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2012. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 3, 1996, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained twenty four proposed actions for noise mitigation on and/or off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program therefore, was approved by the Associate Administrator for Airports effective October 30, 1996.

Outrights approval was granted for all of the specific program elements. These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on October 30, 1996.

B. The FAA has also completed its review of the revised noise exposure map and related descriptions submitted by the city of Dayton, Ohio. The specific map under consideration is Exhibit D1—"1998 Noise Exposure Map," submitted as part of the NCP. The sponsor's September 19, 1996, letter formally requested FAA to make a determination on the revised map's acceptability. The FAA has determined that the map for James M. Cox-Dayton International Airport is in compliance with applicable requirements. This determination is effective on December 16, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans.

If questions arise concerning the precise relationship of specific

properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Mr. Roy Williams, Director of Aviation, James M. Cox-Dayton International Airport, Terminal Building, Vandalia, OH 45377.

Questions on either of these FAA determinations may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, December 16, 1996.

Robert H. Allen,

Assistant Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 97–1327 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–3]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson, (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 15, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 137CE
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 23.3
Description of Relief Sought: To permit the AT–10, a freight carrying aircraft, to exceed the 12,500 pound limitation for a normal category aircraft.

Docket No.: 28750
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.585(b)(1)
Description of Relief Sought: To permit Philip Cline to occupy an exit row seat without meeting the requirements specified.

[FR Doc. 97–1401 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–4]

Petitions for Exemption; Summary of petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. 28479, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 15, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28479
Petitioner: Strong Enterprises
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought: To amend Exemption No. 6474, which allows employees, representatives, and other volunteer experimental parachute test jumpers under the petitioner's control to make tandem parachute jumps while wearing a dual-harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute. This amendment would include the use of a dual harness, dual parachute pack by tandem instructors who are certified by the petitioner but are not under the direct supervision of the petitioner.

[FR Doc. 97–1402 Filed 1–17–97; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport, Springfield, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon Avenue, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert O'Brien Jr., Director of Aviation of the Springfield Airport Authority at the following address: Springfield Airport Authority, Capital Airport, Springfield, IL 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, P.E., Assistant Manager, Chicago Airports District Office, 2300 E. Devon Ave., Room 260, Des Plaines, IL 60018, (847) 294–7435. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 18, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Springfield Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 1997.

The following is a brief overview of the application.

PFC Application Number: 97–07–C–00–SPI.

Level of the PFC: $3.00.

Charge effective date: February 1, 1994.

Revised charge expiration date: February 1, 2010.

Total estimated PFC revenue: $4,156,493.00.

Brief description of proposed project(s):

Use Only Projects

Local Share Fee Parcel Nos. 9–4–EE, 9–4–FF, 9–4–HH, 9–4–II, 9–4–JJ; Acq Fee Parcel Nos. 9–4–J, 9–4–PP, 9–4–P & 17–3–A; Local Share Fee Parcel Nos. 16–4–A, 16–4–B1, 16–4–B2, & 16–4–C; Local Share Easement Parcel Nos. 16–2–B & 16–4–E; Local Share for Rehab Runway 4/22 & 18/36; Local Share for Rehab Runway 13; Local Share for Widen Taxiway A; Local Share Update Exhibit A; Local Share for Update Master Plan; Acq Snow Removal Equipment (Blower & Plow); Terminal Building Expansion; Acq Disabled Passenger Lift.

Impose and Use Project

Snow removal equipment (sweeper).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on January 6, 1997.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–1325 Filed 1–17–97; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application to: Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Columbus Metropolitan Airport, Columbus, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Colombia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Oropeza, Airport Director of the Columbus Metropolitan Airport at the following address: Mr. Mark Oropeza, Airport Director, 3250 West Britt David Road, Columbus, GA 31909.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mr. Daniel Gaetan, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747, (404) 305–7146.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 20, 1996 the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 2, 1997.

This application is for authority to use excess PFC revenues collected under previous collection authority. The following is a brief overview of the application:

Total estimated excess PFC revenue: $199,000.

Total amount of use approval requested in this application: $199,000.

Application number: 96–02–C–00–CSG.

Brief description of proposed impose and use projects: 107 Security Access Control System, remove and replace carpet with ceramic tiles in public use areas of the terminal building, and remove and replace carpeting in public holdrooms of the terminal building.

Class or classes of air carriers which the public agency has requested to be r. quired to collect PFCs: Three.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbus Metropolitan Airport.

Issued in College Park, Georgia on December 20, 1996.

Dell Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 97–1326 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tampa International Airport, Tampa, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue form a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Louis E. Miller, Executive Director of the Hillsborough County Aviation Authority at the following address: Hillsborough County Aviation Authority, Terminal Building, 3rd level, Blue Side, Tampa International Airport, Tampa, Florida 33622–2287.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hillsborough County Aviation Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. C. Ed Howard, Plans and Program Manager, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024, (407) 812–6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue form a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 10, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Hillsborough County Aviation Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 1997

The following is a brief overview of PFC Application No. 97–03–C–00–TPA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1999.

Proposed charge expiration date: September 1, 2000.

Total estimated PFC revenue: $25,540,952.

Brief description of proposed project(s):

Project 1.1: Acquire land for runway approach and transition zone for Runway 27.
Project 1.2: Expand and improve Federal Inspection Facilities.
Project 1.3: Landside terminal building fire protection system.
Project 1.4: Reconstruct existing Runway 18R/36L.
Project 1.5: Master Plan and Part 150 noise study update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at the Authority's main passenger terminal buildings, or (2) enplane less than 500 passengers per year at Tampa International Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hillsborough County Aviation Authority.

Issued in Orlando, Florida on January 10, 1997.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 97–1328 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration (NHTSA)

Denial of Petition for a Defect Investigation

This notice sets forth the reason for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162 requesting that the agency commence a

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proceeding to determine the existence of a defect related to motor vehicle safety.

By letter dated August 20, 1996, Adrienne Mitchem, Legislative Counsel, Washington Office, and Donald L. Mays, Director of Testing, Recreation and Home Improvement Department, Consumers Union (CU), petitioned the Administrator of NHTSA to investigate the Evenflo Travel Tandem child safety seat. Their petition is based on testing conducted before August 1996 for CU by an independent testing facility that utilized the 20-pound test dummy included in the test procedure for Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," that took effect on September 1, 1996.

The Evenflo infant/child restraint snaps into a base that can be left in the car. The seat base is secured to the vehicle seat with the vehicle seat belt and does not need to be unstrapped each time the child seat is removed from the vehicle. The Evenflo Travel Tandem is designed to be used only in a rearward facing position by children less than 20 pounds in weight.

The Travel Tandem seat shell fractured around the buckle assembly and the buckle released in two of the three CU tests when used in the rearward facing position with the seat snapped into the base, where it is held by two spring-loaded latching pawls. This method of using the seat is preferred by many parents, as it is a much faster and more convenient method of placing the child seat into the vehicle compared to fastening and unfastening the vehicle seat belt. The seat can also be used without the provided base, by securing it directly to the vehicle with the seat belts. When secured in this manner, the seat successfully completed all the crash tests conducted for CU. The seat portion is equipped with a handle, so that the infant can be carried in the seat to and from the vehicle.

The Travel Tandem seats tested by CU were manufactured in December 1995 and January 1996. In the version of FMVSS No. 213 in effect at that time, Section S7.1 requires that a seat that is recommended by its manufacturer for use by children up to 20 pounds be tested in the rearward facing position in a 30 mph dynamic test using a "6-month-old" dummy that weighs 17 pounds. Among many performance requirements, S5.1.1(a) provides that the seat must "[e]xhibit no complete separation of any load bearing structural element * * *." In addition, pursuant to S5.1.4, "* * * the angle between the system's back support surface for the child and the vertical shall not exceed 70 degrees."

During an FMVSS No. 213 test, the child restraint is secured with a conventional seat belt to a standard specified passenger seat, which is mounted on a dynamic test sled. The sled is subjected to an acceleration intended to simulate that experienced in a typical 30 mph frontal vehicle crash. This acceleration is commonly measured in units of g, each of which is equal to 32.174 feet per second squared (i.e., the acceleration of gravity). The shape of the curve depicting the g's over time during a dynamic test is referred to as the acceleration "pulse" of the sled.

Section 6 of FMVSS No. 213 specifies the velocity change and acceleration conditions for dynamic tests of child restraints. The velocity change shall be 30 mph with the acceleration pulse of the test sled entirely within the curve shown in figure 2 of FMVSS No. 213.

Depending on the type of sled and how the sled is calibrated, the magnitude of the peak acceleration and the duration of time the seat is subjected to the acceleration can vary. If a particular sled subjects the seat to higher peak g's or if the duration of time that g's are sustained is longer than that specified in FMVSS No. 213, then the sled test is considered to be a more "severe" test than that specified in FMVSS No. 213. This appears to be the case with the CU Travel Tandem test and may have affected the outcome.

Revised requirements of FMVSS No. 213 took effect on September 1, 1996. Under the revised version of S7.1, a seat that is recommended by its manufacturer for use by children in a range up to 10 kg (22 pounds) is tested with a "newborn" test dummy (7.5 pounds) and a 9-month-old test dummy (20 pounds).

These test conditions, however, were not required for the seats tested by CU in order to be certified by Evenflo as complying with the standard because the seats were manufactured prior to September 1, 1996.

The petitioners reported that when CU tested Travel Tandem seats in the rearward-facing position with a 20-pound dummy at a speed of slightly over 30 mph, with the seat mounted on the seat base, two of the three seats tested exhibited fractures. In the two cases, the shell of the seat body fractured around the buckle assembly and the buckle released. This could create a serious problem, because in an actual collision the child can be ejected from the vehicle. In fact, in one of the three tests the child dummy was sent hurtling through the air when the buckle was released during the testing.

In NHTSA's ongoing compliance testing program, four Evenflo Travel Tandem seats, one in each fiscal year from 1993 through 1996, were tested by the Calspan SRL Corporation, Buffalo, New York, using a 17-pound test dummy. All seats passed the requirements of FMVSS No. 213.

NHTSA has reviewed all reported cases of the safety seat body/frame cracking and inadvertent buckle release, and found no such cases involving the Evenflo Travel Tandem child seat.

In its petition, CU provided the agency with data indicating that the Evenflo Travel Tandem seat may fracture around the buckle assembly when the acceleration or dummy weight exceeds the specifications of FMVSS No. 213. However, the seat successfully passed the tests that were conducted in strict conformance with the test procedures of FMVSS No. 213 applicable to the seats tested by CU.

When a safety standard establishes minimum performance requirements for motor vehicles or items of motor vehicle equipment through the use of specific values for particular parameters, as is the case here, NHTSA does not consider performance failures at higher levels to, in themselves, demonstrate that a safety-related defect exists. Moreover, NHTSA has consistently taken the position that the fact that a vehicle or item of motor vehicle equipment would not comply with a newly-issued, more stringent safety standard, which was not in effect on the date the vehicle or equipment was manufactured, does not constitute evidence that the vehicle or its equipment is defective. Thus, given the fact that the the Evenflo Travel Tandem seat appears to satisfy the performance requirements of FMVSS No. 213 when tested with a 17-pound test dummy utilizing a conforming acceleration pulse, its performance with heavier dummies or at higher test speeds and accelerations does not indicate the existence of a safety defect.

On September 11, 1996, Evenflo Company, Inc. issued a press release stating that Evenflo products are designed and tested to meet or exceed FMVSS No. 213. Nevertheless, Evenflo will be offering a reinforcing plate to any consumers who are concerned about the performance of their seats based on the CU report.

In consideration of the available information, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect based on the petitioner's allegations would be issued at the

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conclusion of an investigation. Therefore, the petition has been denied.

Authority: 49 U.S.C. 30162(a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 7, 1997.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 97–706 Filed 1–17–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Docket No. AB–474X]

Old Augusta Railroad Company—Whole-Line Abandonment Exemption—In Perry County, MS

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the requirements of 49 U.S.C. 10903–04, the abandonment by Old Augusta Railroad Company of its entire 2.5-mile rail line located between milepost 0.0 at Augusta and milepost 2.5 at New Augusta, in Perry County, MS, subject to labor protective conditions.

DATES: This exemption will be effective on February 20, 1997. Petitions to stay must be filed by February 5, 1997 and petitions to reopen must be filed by February 17, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–474X to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 6, 1997.

By the Board, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons. Commissioner Simmons did not participate.

Vernon A. Williams,

Secretary,

[FR Doc. 97–1383 Filed 1–17–97; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Victorians: British Painting in the Reign of Queen Victoria, 1837–1901" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC from on or about February 16, 1997 to May 11, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 15, 1997.

Wally Stuart,

Acting General Counsel.

[FR Doc. 97–1436 Filed 1–17–97; 8:45 am]

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[1] A copy of this list may be obtained by contacting Jacqueline H. Caldwell, Esq., Assistant General Counsel, at 202–619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on January 22 in Room 600, 301 4th Street, S.W., Washington D.C. from 11:00 a.m. to 12:00 noon.

The Commission will participate in a discussion with members of the Public Diplomacy Foundation to discuss the Foundation's role and information age foreign policy. Representing the Foundation will be its President Barry Zorthian, Leonard Baldyga, and Jack Harrod.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: January 14, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–1386 Filed 1–17–97; 8:45 am]

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federal register

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Part II

Department of the Treasury

Customs Service

19 CFR Parts 7, 10, et al.
Drawback; Proposed Rule

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 145, 173, 174, 181, 191

RIN 1515–AB95

Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Customs Regulations regarding drawback. The document proposes to revise the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; to change some administrative procedures involving manufacturing and unused merchandise drawback, for the purpose of expediting the filing and processing of drawback claims thereunder, while maintaining effective Customs enforcement and control over the drawback program; and to generally simplify and improve the editorial clarity of the regulations.

DATE: Comments must be received on or before March 24, 1997.

ADDRESS: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Maryanne Carney, Chief, Drawback and Records Branch, New York, (212–466–4575)
Legal aspects: Paul Hegland, Office of Regulations and Rulings, (202–482–7040)

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. The statute providing for specific types of drawback is 19 U.S.C. 1313, the implementing regulations for which are contained in part 191, Customs Regulations (19 CFR part 191).

The North American Free Trade Agreement Implementation Act, Pub. L. 103–182 (December 8, 1993), specifically Title VI thereof, popularly known as the Customs Modernization Act, significantly amended certain Customs laws. In particular, section 632 of Title VI effected extensive and major amendments to the drawback law, 19 U.S.C. 1313. Also, section 622 of Title VI authorized the establishment of a "Drawback Compliance Program" as well as specific civil monetary penalties for false drawback claims.

Public Law 103–182 also approved and implemented the North American Free Trade Agreement (NAFTA). Section 203 of the Public Law provides special drawback provisions for exports to NAFTA countries. NAFTA drawback is separately provided for in part 181 of the Customs Regulations (19 CFR part 181). Drawback and other duty-deferral programs are addressed in subpart E of part 181. General drawback provisions under part 191 and the NAFTA drawback regulations in part 181 contain substantial differences (e.g., the "lesser of" calculation versus full drawback, same condition versus unused merchandise drawback, etc.) Separate claims are required for drawback claims governed by NAFTA (see 19 CFR 181.46 and 191.0a).

Accordingly, this document proposes regulatory revisions principally to part 191 in implementation of the statutory changes. In addition, this document proposes to generally rearrange and revise part 191 largely in an effort to further simplify and improve the editorial clarity of those regulatory procedures primarily dealing with the manufacturing and unused merchandise provisions, these being the most commonly used types of drawback. Several administrative changes are being proposed as well with respect to the regulatory procedures governing these provisions, for the purpose of expediting the filing and processing of drawback claims thereunder, while ensuring that Customs has the necessary enforcement information to maintain effective administrative oversight over the drawback program. Also, minor conforming changes occasioned by the general reorganization of part 191 are made with respect to other parts of the Customs Regulations (19 CFR parts 7, 10, 145, 173, 174 and 181).

Specifically, with regard to part 173, a minor change is proposed whereby a party requesting the reliquidation of a consumption entry pursuant to 19 U.S.C. 1520(c)(1) would be required to state whether to the best of such party's knowledge, the entry is the subject of a drawback claim, or whether such entry was referenced on a certificate of delivery or a certificate of manufacture and delivery and thus could be made the subject of drawback. Likewise, a change is proposed to part 174 whereby a party filing a protest must state whether, to the best of such party's knowledge, the consumption entry whose liquidation is protested is the subject of a drawback claim, or whether it was referenced on a certificate of delivery or a certificate of manufacture and delivery and thus could be the subject of a drawback claim. A corresponding change is also proposed in part 191, whereby a drawback claimant would be required to state whether, to the best of such claimant's knowledge, any consumption entry identified or designated as a basis for drawback is either under protest or the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)). In this regard, when accelerated payment of drawback has been paid to a claimant on the basis of an entry of imported merchandise which has not been finally liquidated, and the duties on the import entry are increased or decreased in such final liquidation, drawback must be increased or reduced accordingly on liquidation of the drawback entry.

Proposed changes to part 191 other than the major changes described below include the addition of new definitions for purposes of part 191 in the section listing such definitions. New definitions for the following terms are set forth in the proposed regulations: Certificate of delivery; Certificate of manufacture and delivery; Act; Commercially interchangeable merchandise; Designated merchandise; Destruction; Exported article; Exportation; General manufacturing drawback ruling; Manufacture or production; Possession; Relative value; Specific manufacturing drawback ruling; and Substituted merchandise. Most of these definitions incorporate into the regulations terms which are used for drawback. The definition of commercially interchangeable merchandise is necessary because of the change (described elsewhere in this background) from fungibility as the standard for substitution to commercial interchangeability in the former same condition substitution drawback law (now unused substitution drawback law, in 19 U.S.C. 1313(j)(2)). Similarly, the definition of possession is added because possession of the exported merchandise is a requirement for drawback under section 1313(j)(2) and because the statute includes defining language. The definition of exportation is based on the definition of that term currently in 19 CFR 101.1(k), but notice is also given that an exportation may be deemed to have occurred: (1) Under the

Foreign Trade Zones Act (see 19 U.S.C. 81c(a)) when zone-restricted status is taken; (2) or under 19 U.S.C. 1309, if goods subject to drawback are used for certain aircraft or vessel supplies. The definition of manufacture or production is based on court cases and administrative rulings interpreting that phrase (see *Anheuser-Busch Brewing Association* v. *The United States*, 207 U.S. 556 (1908); *United States* v. *International Paint Co., Inc.*, 35 CCPA 87 (1948); *et al.*). In regard to the latter case, it is noted that a manufacture or production, for drawback purposes, occurs even if the processing operation does not change the general use for which the merchandise may be used (*e.g.*, as paint) but does change the particular use for which the merchandise may be used (*e.g.*, as anti-fouling paint designed for preventing marine growth on the bottom of ships).

In addition, two current definitions, those of fungible merchandise and substitution drawback, are modified. In the case of the former, the modification makes it clear that the definition applies to both merchandise and articles, but does not change the definition of fungibility. In the case of the latter, instead of defining substitution drawback (referring only to substitution manufacturing drawback), as is currently true, the definition defines substituted merchandise, and does so for purposes of each of the subsections of 19 U.S.C. 1313 authorizing such substitution.

In regard to the definition of fungibility, for drawback purposes "merchandise" is that which is imported, or substituted when substitution is permitted, and an "article" is that which is manufactured or produced, as provided for in the drawback law, from merchandise. Also in regard to the definition of fungibility, although the standard for substitution under unused (formerly same condition) drawback (19 U.S.C. 1313(j)(2)) is no longer fungibility (it is now commercial interchangeability, as discussed below), the definition of fungibility is retained in the proposed regulations because fungibility continues to be a significant concept in the proposed regulations (*i.e.*, when merchandise or articles are identified by accounting method; see proposed § 191.14). The definition of fungibility was first added to the Customs drawback regulations for this purpose and before enactment of the substitution provision for 19 U.S.C. 1313(j)(2) (see T.D. 83–212, 19 CFR 191.2(l)).

Also related to definitions for drawback purposes, the current regulations (§ 191.3) provide that duties subject to drawback include all ordinary Customs duties and marking duties assessed under 19 U.S.C. 1304(c). It is proposed to define "ordinary Customs duties", as used in this provision, to include finally liquidated duties paid on an entry, or withdrawal from warehouse, for consumption and estimated duties paid on such an entry or warehouse, provided that the application and waiver currently provided for in § 191.71 are filed. Also defined as such "ordinary Customs duties" would be voluntary tenders of the unpaid amount of lawful ordinary Customs duties and any other payment of duties related to an entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), under certain enumerated conditions. This latter proposed addition to the definition of "ordinary Customs duties" is consistent with Customs current administrative practice (see Customs Service Decision 85–50 (1985)). The enumerated conditions referred to are that liquidation of the import entry or withdrawal must have become final prior to the payment to Customs, that the payment must be specifically identified as being of duties for a specific entry or withdrawal, and that the drawback entry in which the import entry or withdrawal is designated may not itself have been finally liquidated. In the case of voluntary tenders and other payments of duty, procedures are proposed for a written request and waiver by the drawback claimant and any other party responsible for the other payments of duties similar to the current procedures for the payment of drawback on estimated duties.

Other minor proposed changes are that a named officer or any other individual legally authorized to bind a corporation may sign drawback documents, instead of only those named officers. This is consistent with current regulations regarding Customs business (see 19 CFR 111.3; see also 19 U.S.C. 1641(b)(1)). Correspondingly, the regulations on so-called (in the current regulations) general or specific "contracts" are proposed to be changed so that only the names of the persons who are authorized by regulation to sign drawback documents and who will sign such documents are listed.

(In regard to the above-referenced general or specific drawback "contracts", as discussed in detail below, it is proposed to change the terminology for these procedures, from "specific drawback contracts" to "specific manufacturing drawback rulings" and from "general drawback contracts" to "general manufacturing drawback rulings" and to set out the formats for applying for the specific manufacturing drawback rulings, and the general manufacturing drawback rulings, in Appendices to part 191 of the Customs Regulations. The remainder of the background to this document uses the proposed new terms (*i.e.*, "specific manufacturing drawback ruling" is used instead of "specific drawback contract" and "general manufacturing drawback ruling" is used instead of "general drawback contract").)

Also in regard to general manufacturing drawback rulings, it is proposed to require that a description of the merchandise and articles covered by the ruling be submitted with the information required for letters of notification of intent to operate under a general ruling, unless such information is specifically provided in the particular general manufacturing drawback ruling. It is proposed to modify the regulations for both general and specific rulings for manufacturing drawback so that, consistent with Customs treatment of corporations for drawback purposes (see *Moberly* v. *United States*, 4 Cust. Ct. 91, C.D. 294 (1940), and C.S.D. 89–12 (1989)), when a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to give notice of its intent to operate under, or apply for, the general or specific ruling and cannot operate under any ruling issued in favor of the parent corporation. Finally, in regard to general and specific rulings for manufacturing drawback, it is proposed to provide that they will remain in effect indefinitely, unless no drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years. If no such drawback claim or certificate is filed for 5 years, the ruling would automatically terminate following the publication of a notice to that effect in the Customs Bulletin. Currently, a drawback "contract" may remain in effect for 15 years unless a written request is filed to renew the "contract". This change would reduce unnecessary paperwork for drawback claimants and Customs.

Also among changes to part 191 not listed below are proposed modifications to the subpart of part 191 regarding drawback on supplies for certain vessels and aircraft (current subpart I; proposed subpart K). It is proposed to add to the regulation regarding a composite (monthly) notice of lading of fuel laden on vessels or aircraft as supplies that the fuel included in such a notice includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska,

or any U.S. possessions, consistent with the applicability of the underlying statute (19 U.S.C. 1309). Also, consistent with the changes to the Exporter's Summary Procedure (ESP) (*i.e.*, to make that procedure an alternative, instead of a privilege; see below) and an April 17, 1978, administrative ruling, it is proposed to modify these regulations to make it clear that the ESP may be used for drawback under this subpart and that if the ESP is used, the applicable requirements must be complied with.

The major changes to part 191 necessitated by statute are addressed below, following which the major administrative changes made to part 191 are outlined.

Manufacturing Drawback

Under the direct identification manufacturing drawback law, 19 U.S.C. 1313(a), upon the exportation of articles manufactured or produced with the use of imported, duty-paid merchandise, 99% of the duty so paid may be refunded as drawback. Under substitution manufacturing drawback, 19 U.S.C. 1313(b), if imported, duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles, then upon the exportation of such articles, 99% of the duty so paid on the imported merchandise may be refunded as drawback, notwithstanding that none of the exported articles was manufactured with the imported merchandise.

Section 632 of the Customs Modernization Act (hereinafter section 632) amended section 1313 (a) and (b) to permit drawback on articles destroyed under Customs supervision, in lieu of being exported. In addition, it is made clear that for drawback to accrue, the articles manufactured or produced cannot be used in the United States prior to their exportation or destruction.

The proposed regulations provide for a contract between the principal and agent when such a relationship is claimed to exist for purposes of substitution manufacturing drawback. The person who asserts that it is the manufacturer or producer by virtue of a principal-agency agreement under this section must establish that there was a contract between the principal and agent specifying the items in § 191.9(c)(1) (i) through (vi). The person asserting this relationship has the burden of providing satisfactory evidence to establish the above. The question of the existence of such a contract is an evidentiary question. Of course, the terms of a written contract are always easier to establish than those of an oral contract.

Principal-agency principles, in the drawback context, are used for drawback purposes to meet the "one manufacturer" requirement in 19 U.S.C. 1313(b) (*i.e.*, the requirement that the imported merchandise and the substituted merchandise must be used in a manufacture or production by the same person). With the use of principal-agency principles for drawback, the principal in such a relationship is treated as the manufacturer or producer when the agent performs that function as agent of the principal. The principal does not complete a certificate of delivery for merchandise transferred to the agent (because the principal, in effect, would be treated as transferring the merchandise to itself). The agent would be required to furnish a certificate of manufacture and delivery for the manufactured articles, relating to the designated or substituted merchandise and identifying the owner for whom the processing was conducted (*i.e.*, to document the manufacturing or processing operation). However, such a certificate of manufacture and delivery would not assign the potential drawback rights to the principal (because, by virtue of the relationship, the agent would not have those rights to transfer; the rights would have remained in the principal).

Rejected Merchandise Drawback

Section 632 also amended the rejected merchandise drawback law, 19 U.S.C. 1313(c). Under section 1313(c), drawback is allowable upon the exportation of merchandise which is found not to conform to sample or specifications, or which is shipped without the consent of the consignee. Such merchandise previously had to be returned to Customs custody prior to exportation, generally within 90 days after its release from Government custody unless Customs extended this period.

As amended by section 632, section 1313(c) extends the period for the return of merchandise to Customs custody to 3 years, permits destruction of the merchandise under Customs supervision in lieu of exportation, and allows drawback if the merchandise is determined to have been defective at the time of its importation without reference to purchase specifications or samples.

Unused Merchandise Drawback

Formerly, under 19 U.S.C. 1313(j)(1), drawback was allowable on the exportation, or destruction under Customs supervision, of imported merchandise which was not used in the United States before exportation or destruction, and which was in the same condition at the time of exportation or destruction as it was when imported. Under the substitution provision, 19 U.S.C. 1313(j)(2), a similar drawback was allowable if other (fungible) merchandise was instead exported, or destroyed under Customs supervision, provided that before exportation or destruction, the fungible merchandise was not used in the United States, was in the possession of the party claiming drawback, and was in the same condition at the time of exportation or destruction as was the imported merchandise when imported.

Section 632 liberalized these provisions in a number of ways. First, the requirement has been eliminated that the exported or destroyed merchandise be in the same condition as the imported merchandise when imported. Now it only must have been unused. For example, chemicals which deteriorated after importation are not in the same condition as the imported merchandise when imported and were not eligible for "same condition" drawback. Now such goods would be eligible for drawback under section 1313(j) as "unused". Second, the provision interpreting the restriction on "use" has been changed. Formerly, this provision provided that the performing of certain incidental operations on imported or substituted merchandise which did not amount to a manufacture or production for drawback purposes was not a "use". The new provision provides that the performing of *any* operations or combination of operations not amounting to a manufacture or production for drawback purposes on the imported or substituted merchandise is not a "use". The list of examples of the operations involved was expanded to include, but is not limited to: testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking, provided that they do not amount to manufacture or production for drawback purposes.

In addition to the foregoing, a number of additional statutory changes were made by section 632 with respect to the substitution provision, 19 U.S.C. 1313(j)(2). The substituted merchandise exported or destroyed for drawback need no longer be fungible (commercially identical) with the imported merchandise. Instead the imported and substituted merchandise must be commercially interchangeable. The legislative history of section 632

states that in determining whether merchandise is "commercially interchangeable", Customs should consider, but not be limited to, such factors as Governmental and recognized industrial standards, part numbers, tariff classification and values. Such merchandise, to be commercially interchangeable, need not be interchangeable in all situations.

The proposed regulations would require a determination of "commercial interchangeability" for all claims filed under 19 U.S.C. 1313(j)(2). This determination can be obtained in one of three ways: (1) A formal binding ruling from the Entry and Carrier Rulings Branch, Office of Regulations and Rulings, (2) a nonbinding predetermination request sent directly to the appropriate drawback office, or (3) submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed. The details for the documentation needed are outlined in the regulations. In the interest of administrative efficiency and because commercial interchangeability is no more restrictive than fungibility, all prior unrevoked rulings finding merchandise to be fungible may continue to be relied upon to establish commercial interchangeability and reapplication is unnecessary for the same merchandise.

Moreover, the party entitled to claim drawback under section 1313(j)(2), as amended by section 632, has now been more precisely defined. Such party must either be the importer of the imported merchandise, or must have received, directly or indirectly, from the importer the imported merchandise, commercially interchangeable merchandise, or any combination thereof. Thus, the proposed regulations allow for multiple transfers of imported or substituted merchandise, but do not permit multiple substitutions (see 19 U.S.C. 1313(j)(2)(C)(ii)). Such transfers must be documented by a certificate of delivery. For example, it would be permissible for party A to import merchandise, transfer to party B commercially interchangeable merchandise documented by a Certificate of Delivery, and for party B to transfer the commercially interchangeable merchandise to party C documented by a Certificate of Delivery. If party C exports the merchandise, then party C is entitled to claim drawback, or to assign the right to claim drawback back through the chain of possession. To be entitled to claim drawback, the claimant must have been in possession of the specific substituted merchandise which is exported or destroyed with drawback. In this latter respect, the concept of possession under section 1313(j)(2), as amended by section 632, is further elucidated, to expressly include ownership while in bailment, in leased facilities, in transit to, or in any manner under the operational control of, the party claiming drawback.

Substitution of Finished Petroleum Derivatives

As amended by section 632, drawback is payable under section 1313(p) (19 U.S.C. 1313(p)), upon the timely exportation of an article which is of the same kind and quality as a qualified article. A qualified article is essentially either an imported, duty-paid article, or a manufactured article that would be eligible for drawback under 19 U.S.C. 1313 (a) or (b), should such qualified article itself be exported; furthermore, the qualified article, to be such, must be described in headings 2707, 2708, 2710–2715, 2901, and 2902, or in headings 3901–3914 (to the extent that these latter headings apply to liquids, pastes, powders, granules and flakes), of the Harmonized Tariff Schedule of the United States (HTSUS).

Also, for drawback to accrue under section 1313(p), the exporter of the exported article must have imported the qualified article or have manufactured it under section 1313 (a) or (b); or have purchased or exchanged, directly or indirectly, the qualified article from an importer, or from a refinery or facility which produced the article under section 1313 (a) or (b). In any event, the qualified article must have been manufactured, imported, or acquired by the exporter in the aforementioned manner, in a quantity at least as great as the quantity of the exported article. In addition, the exported article must be exported during the period in which the qualified article is manufactured or produced under section 1313 (a) or (b), or within 180 days after the close of such period; or within 180 days after the date of entry of a qualified imported article.

To be of the same kind and quality as the qualified article (solely for the purpose of section 1313(p)), the exported article must fall within the same 8-digit HTSUS tariff classification as, or be commercially interchangeable with, the qualified article. The drawback payable pursuant to section 1313(p) is 99% of the duty attributable to the qualified article when the qualified article is a manufactured article that would be eligible for drawback under 19 U.S.C. 1313 (a) or (b) and 100% of the duty attributable to the qualified article when the qualified article is an imported, duty-paid article and no such manufacture or production under section 1313 (a) or (b) is involved (19 U.S.C. 1313(p)(4)).

Packaging Material

Section 632 also amended 19 U.S.C. 1313(j)(4), recodifying this provision as 19 U.S.C. 1313(q), to allow drawback on imported material used to package or repackage goods that are exported or destroyed under Customs supervision and are eligible for drawback under the manufacturing, rejected or unused merchandise drawback provisions (19 U.S.C. 1313 (a), (b), (c), or (j)). Drawback is payable under the particular provision to which the packaged goods themselves are subject. The duty refund on the packaging material is, of course, based on the particular tariff provision under which the packaging material itself was entered.

Filing Under Wrong Subsection

Section 632 also amended the drawback law to provide that if a claimant files for drawback under one provision of section 1313, and Customs believes that drawback is more properly allowable under another provision thereof, the claim may simply be deemed filed under such other provision and processed with drawback accordingly.

The legislative history to this provision makes it clear that this provision is not intended to require Customs to investigate all alternatives in addition to the claimed basis before liquidating a drawback claim as presented. That is, the burden of bringing to Customs attention the possible applicability of the alternative subsection is on the claimant, not Customs. Claimants who are denied drawback under the provision claimed may raise alternative claims under another provision by protest under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514) (see 19 CFR part 174).

Since section 1313(r)(2) specifically requires that the claim be allowable under such other subsection (*i.e.*, not the subsection under which the claim was originally filed), the requirements in the law for drawback under the other subsection must be met. For example, if the original claim is under subsection (a) or (b) and the other provision is subsection (j), exportation or destruction would have to be within 3 years of importation, not 5 years; if the original claim was under subsection (j) and the other provision was subsection (c), the merchandise would have to be timely returned to Customs custody for exportation or destruction. These are

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statutory requirements, and cannot be waived.

Successorship Under 19 U.S.C. 1313 (b) and (j)(2)

Under substitution manufacturing drawback, 19 U.S.C. 1313(b), the party manufacturing the articles on which drawback is claimed also must have used in manufacture the imported, duty-paid merchandise which forms the basis for the claim. Similarly, under the substitution unused merchandise provision, 19 U.S.C. 1313(j)(2), in pertinent part, the drawback claimant must have either imported the duty-paid merchandise, or received from the importer the imported merchandise, commercially interchangeable merchandise, or any combination thereof (in addition to possessing the exported or destroyed merchandise on which drawback is claimed).

Section 632 adds a new provision, codified as 19 U.S.C. 1313(s), which, under certain conditions, authorizes a business entity (the successor) to obtain the pre-existing drawback rights, whether vested or contingent, of another party (the predecessor) in the course of either acquiring all or substantially all of the rights and liabilities of such party, or acquiring the assets and business interests of a single plant, division or other business unit of such party, provided, in the case of the latter, that the value of the transferred property (real and personal) as well as intangibles, exceeds the value of the drawback rights.

As a result, in manufacturing drawback, section 1313(b), this enables a company to satisfy the "one manufacturer" requirement. Duty-paid merchandise used in manufacture by the predecessor before the date of acquisition (the succession) may thus form a basis for drawback on articles manufactured by the successor after the date of succession. The use of the duty-paid merchandise by the predecessor is imputed to the successor.

Likewise, in substitution unused merchandise drawback, section 1313(j)(2), under the general circumstances outlined above, duty-paid merchandise imported by the predecessor before the date of succession may form a basis for drawback on exported or destroyed merchandise possessed by the successor after the date of succession. The importation of the duty-paid merchandise is implicitly ascribed to the successor.

Similarly, commercially interchangeable merchandise received by a predecessor before the date of succession (19 U.S.C. 1313(s)(2)(B)) could become the basis for drawback on substituted merchandise received by the successor after the date of succession.

Agricultural Products Subject to Drawback

Section 404(e)(5) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), codified as 19 U.S.C. 1313(w)(1), states that no drawback shall be available with respect to an agricultural product subject to an over-quota rate of duty established under a tariff-rate quota, except pursuant to 19 U.S.C. 1313(j)(1) (direct identification unused merchandise drawback). In addition, section 422(d) of the URAA, codified as 19 U.S.C. 1313(w)(2), provides that drawback shall be available under 19 U.S.C. 1313(a) (direct identification manufacturing) on any tobacco recognized as an agricultural product that is subject to an over-quota rate of duty established under a tariff-rate quota.

Because this statute precludes the availability of drawback "with respect" to a described agricultural product, the proposed regulations provide that no drawback will be available when either the designated imported merchandise or the substituted merchandise, if substitution drawback is claimed, is such an agricultural product. Additionally, based on the legislative history to this provision of the URAA, which makes it clear that the limitation on drawback applies only to merchandise for which the over-quota tariff must be paid (*i.e.*, only that exceeding the quantity provided for in the tariff rate quota), the proposed regulations make clear that the restriction applies to merchandise or articles to which the over-quota tariff rate is applicable.

Major Administrative Changes

The proposed revision of part 191 also presents several administrative changes and additions to the regulatory procedures principally governing the manufacturing and unused merchandise provisions (19 U.S.C. 1313 (a), (b), and (j)).

Manufacturing Drawback "Contracts"

Under the current regulations, Customs requires manufacturers or producers of articles intended for exportation with drawback to apply for a so-called "specific drawback contract" (see subpart B of part 191) or a so-called "general drawback contract" (see subpart D of part 191).

In the case of the former, manufacturers or producers are currently required to file with the appropriate Customs office a proposal describing the manufacturing operation fully and the method of compliance with all requirements of the drawback law and regulations, to make a statement as to the records which will be maintained, and to agree to follow the methods and keep records concerning drawback procedures. Currently, Customs makes available sample proposals to prospective drawback applicants who request them. Customs reviews proposals submitted by manufacturers or producers and, if the proposals comply with the law and regulations, approves the proposals by means of a letter of approval to the applicant and publication in the Customs Bulletin of a synopsis of the approved proposal.

In the case of the latter, Customs currently publishes in the Customs Bulletin an offer for a "general drawback contract" in situations where numerous manufacturers or producers have similar operations and wish to claim drawback. Any manufacturer or producer who can comply with the terms and conditions of the published offer may adhere to it by simply notifying a drawback office in writing of its acceptance and providing certain identifying information, after which the appropriate drawback office acknowledges, in writing, the letter of adherence.

After thorough review and consideration of these procedures, changes to the current terminology for these procedures are proposed. In the case of "specific drawback contracts", what actually is involved is the request, by a prospective drawback claimant, for a ruling, in a special format described by Customs in the "sample proposals" referred to in the current regulations. Customs reviews the request and, if it complies with the law and regulations (*e.g.*, if the specifications proposed for same-kind-and-quality substitution under 19 U.S.C. 1313(b) meet the requirements for such substitution), Customs grants approval of the proposal. This is basically the procedure under which administrative rulings are obtained under part 177 of the Customs Regulations, with the addition for drawback of the special format described in the "sample proposals". Accordingly, it is proposed to substitute for the "specific drawback contracts" provided for in the current regulations the term "specific manufacturing drawback rulings".

As is true in the current regulations, it is proposed that unless operating under a general manufacturing drawback ruling (currently, a "general drawback contract"; see discussion below), each manufacturer or producer

of articles intended to be claimed for drawback will be required to apply for a specific manufacturing drawback ruling. Sample formats for applications (combined application under 19 U.S.C. 1313(a) and (b); application under 19 U.S.C. 1313(b); application under 19 U.S.C. 1313(b) for petroleum drawback (T.D. 84–49); application under 19 U.S.C. 1313(d); and application under 19 U.S.C. 1313(g)) are contained in Appendix B of proposed part 191. Except for the described changes to the terminology and conforming changes necessitated by the proposed changes to the regulations, as described in this document, the sample formats for applications for specific manufacturing drawback rulings contained in appendix B are the same as the corresponding sample "specific drawback contracts" currently made available by Customs to persons requesting them.

Also as is currently true in regard to "specific drawback contracts", it is proposed that an application for a specific manufacturing drawback ruling be submitted to Customs Headquarters which will review it for consistency with the law and regulations and, based upon such review, approve or disapprove the application. If approved, a letter of approval will be issued to the applicant and a synopsis of the ruling will be published in the Customs Bulletin. If disapproved, the applicant will be promptly notified, with notification of the specific reason(s) for disapproval. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to another office in Customs Headquarters.

In the case of "general drawback contracts", what actually is involved is the publication by Customs, as a Treasury Decision, of the requirements and specific interpretations for a particular kind of operation (for example, certain manufactures involving orange juice (T.D. 85–110) or steel (T.D. 81–74)). The operation is one used by numerous manufacturers or producers. A manufacturer or producer using one of these operations may, basically merely by giving Customs notice, claim drawback using the procedures in a "general drawback contract". Thus, these procedures are basically a publication of a general ruling. It is proposed to substitute for the "general drawback contracts" provided for in the current regulations the term "general manufacturing drawback rulings".

As is true in the current regulations, it is proposed that a manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification to give Customs notice of the manufacturer's or producer's intent to operate under the general ruling. The current general rulings (for manufacturing under 19 U.S.C. 1313(a) (T.D.s 81–234 and 83–123); manufacturing under 19 U.S.C. 1313(b) for agents (T.D. 81–181); manufacturing under 19 U.S.C. 1313(b) for orange juice (T.D. 85–110); manufacturing under 19 U.S.C. 1313(b) for steel (T.D. 81–74); manufacturing under 19 U.S.C. 1313(b) for refined sugar (T.D. 81–92); and manufacturing under 19 U.S.C. 1313(b) for raw sugar (T.D. 83–59)) are contained in Appendix A of proposed part 191. Customs proposes to update this Appendix whenever new general manufacturing drawback rulings are issued or any such existing T.D.s are revised. Except for the described changes to the terminology and conforming changes necessitated by the proposed changes to the regulations, as described in this document, the general manufacturing drawback rulings contained in Appendix A are the same as the corresponding "general drawback contracts" published in the existing referenced Treasury Decisions.

Also as is currently true in regard to "general drawback contracts", the letter of notification of intent to operate under a general ruling will be submitted to the drawback office where drawback claims are intended to be filed, and will contain certain identifying information. The drawback office is required to acknowledge, in writing, this letter of notification, after which no further action is required before drawback claims may be filed on the basis of the general manufacturing drawback ruling.

These required procedures (*i.e.*, notification and acknowledgement) are intended to facilitate Customs administrative processing of manufacturing drawback claims to be filed.

Completion of Drawback Claims

In order to better ensure consistency and uniformity of practice, the section of the regulations dealing with the completion of drawback claims has been rewritten to clarify what documents constitute a complete drawback claim. The claim will be considered to be complete if all the required documentation is present with all the basic information provided.

In regard to certificates of manufacture and delivery, which are a required part of a complete claim when the claim is based on such a certificate, it is recognized that a certificate of manufacture and delivery may relate to articles which are the subject of more than one drawback claim. In such an instance, only one certificate of manufacture and delivery is required and the proposed regulations specifically provide that certificates of manufacture and delivery applicable to a claim must be filed with the claim, unless previously filed with Customs (if previously filed, the certificates must be referenced in the claim).

In cases in which there is some minor change or addition needed, such as a missing signature, numbers added incorrectly, information placed in the wrong part of the form, etc., the claim will be accepted and the 3-year time period to file a complete drawback claim after the date of exportation will be met although the claim must be corrected. However, if documentation is missing or the claim contains major inaccuracies and inconsistencies, the claim will be rejected and returned to the claimant for correction. The claim will not be considered to have been accepted by Customs and the 3-year time period will not be consid-ered to have been met by the filing of such an incomplete claim. Proposed rules have also been included to allow Customs to require claimants to restructure drawback claims in order to improve administrative efficiency, as long as the restructuring is not shown to be impossible or impractical for the claimant.

The regulations also differentiate between "perfecting" and "amending" a claim which has been accepted. The claim is "perfected" when the claimant, in response to a request from Customs, makes minor changes to the claim or provides documentation in support of the claim. The claim is "amended" when a major change must be made to the claim such as the designation of a different import entry or the claiming of a different export.

Privileges

The proposed regulation establishes Waiver of Prior Notice to Export or Destroy Unused Merchandise (WPN) (§191.91) and Accelerated Payment (AP) (§191.92) as special privileges that may be requested by formal application. The Exporters' Summary Procedure (ESP) is no longer a special privilege because of the changes in the filing requirements. ESP is now available to all claimants as an option for establishing exportation. The application requirements for privileges are designed to address key internal controls identified by the Treasury Inspector General by providing Customs: (1) Reasonable assurance of the accuracy of drawback claims; and (2) a sufficient basis to appropriately

verify the validity of drawback claims. These key internal controls are applicable when the issue is whether to grant a privilege. Claim sufficiency would be determined on an assessment of past facts.

Customs will allow claimants or exporters who hold existing privileges to continue utilizing these privileges for a period of one year after the effective date of the new drawback regulations. Those who want to continue these privileges must reapply prior to the conclusion of the one-year period under the requirements of the new regulations. Privileges will be revoked unless the claimant reapplies. This revocation would apply to all exportations subsequent to the revocation.

Claimants may continue with their privileges once the new application has been submitted and received by Customs, unless Customs denies the new application. The one-year period provides a reasonable opportunity for applicants to assemble and submit the required material.

Customs will act on the application within 90 days of submission or notify the applicant in writing regarding the reasons for requiring a longer time for acting on the application. Customs objective is to use the application process as an opportunity to promote informed compliance in the drawback process.

If applications for privileges are received by Customs prior to the date of publication (not effective date) of the final rule in the **Federal Register**, Customs will process these applications based on the current drawback procedures and regulations in place. Claimants must understand that even though the applications will be processed under the drawback regulations and procedures in place at the time of receipt of the applications, they will still be required to reapply for these privileges within one year from the effective date of the new drawback regulations. Therefore, Customs would encourage new applicants to prepare their applications under the guidelines of the new regulations.

Notice of Intent to Export or Destroy

Claimants filing a claim under 19 U.S.C. 1313 (j) or (c) must notify Customs prior to exportation or destruction (notice of destruction procedures also are applicable to drawback under 19 U.S.C. 1313 (a) and (b)). This notice should be filed at the port of intended examination or destruction. It must provide the information needed by Customs to determine if the merchandise should be examined. Under section 1313(c), the merchandise must always be returned to Customs custody. Customs intends to make this determination in an expedited manner and it will notify the party designated on the Notice of Intent to Export or Destroy of its decision. It is the responsibility of the filer to deliver the goods in a prompt manner once the filer receives notice of Customs decision to examine the merchandise. Customs will work with the claimant if a problem arises on how promptly the merchandise should be presented to Customs, but it should be done as promptly as is reasonably possible.

The terms "present", "presented", and "presentation", as used in proposed § 191.35 (c) and (d) and in proposed § 191.91(c)(1)(iv), mean the actual transporting of the merchandise to a location where Customs can examine it. Such transporting of the merchandise, however, is to take place only after Customs has notified the exporter or claimant of Customs decision to examine the merchandise.

There are two different situations which are envisioned here. The first is a situation in which examination takes place at the premises of the claimant or exporter. The second is a situation in which the exporter or claimant transports the merchandise to a Customs designated location. In either of these situations, arrangements must be made mutually between Customs and the exporter or claimant.

For exports that occur on or after the effective date of the regulations, a Notice of Intent to Export or Destroy must be filed with Customs, unless the exportation is covered by an existing waiver of prior notice. For destructions, a Notice of Intent to Export or Destroy must continue to be filed with Customs in all cases.

In addition, the notice of exportation form (Customs Form 7511) would be eliminated, and the drawback entry forms would be consolidated into one form (Customs Form 331). Furthermore, a new form would be devised on which a party would give advance notice of intent to export or destroy merchandise or articles for drawback purposes.

In recognition of the realities of the marketplace, it is further proposed to reduce the time frame from the current period of 5 working days to 2 working days from the date of intended exportation, within which prior notice of intent to export, unless waived, must be given to Customs for unused merchandise drawback, 19 U.S.C. 1313(j). A new Customs form (not a drawback entry form) will be devised on which prior notice would be given. Unless the claimant should be advised by Customs to the contrary during this 2-day period, the subject merchandise could thereafter be exported without delay. A drawback entry would later be filed with Customs.

The proposed regulations allow a drawback claim to be filed for qualifying merchandise which has been destroyed under Customs supervision. However, if a drawback claimant has not filed the Notice of Intent to Export/Destroy at least 7 working days prior to the intended destruction of the merchandise, the Customs Service must reject the drawback claim.

Once the Notice of Intent to Export or Destroy has been filed, the Customs Service has four working days to advise the party filing the notice as to whether Customs will witness the destruction. If the party is not so notified within four working days, the merchandise may be destroyed without delay and the destruction will be deemed to have occurred under Customs supervision.

Evidence of destruction must be included with the drawback claim.

For multiple or continuous drawback destructions other prearranged procedures may be developed with the applicable drawback office to foster administrative efficiency.

Retroactive Waiver of Notice of Intent to Export

The proposed regulations eliminate the retroactive waiver practice which was reported as a significant internal control weakness by the Treasury Inspector General. However, the proposed regulations allow a *one-time* opportunity for drawback claims under 19 U.S.C. 1313(j) on merchandise which a party exported or destroyed without having provided Customs with prior notice. This was included to: (1) Provide a reasonable method for first time claimants or exporters who were not aware of the requirement for prior notice of intent to export to obtain such drawback; and (2) make potential claimants aware of the waiver privilege and how to apply for it.

More than one claim may be included in this *one-time* opportunity, subject to the time requirements for filing complete claims (three years from the date of export). This would enable claimants to file for unused merchandise drawback on exportations which occur before the claimant may have known of the requirement for prior notice of intent to export.

Waiver of Notice of Intent to Export

Claimants and exporters may apply for a waiver of the requirement (under proposed § 191.35) to notify Customs of intent to export unused merchandise. The proposed regulations require that

applications include sufficient information about merchandise, export activities and recordkeeping to provide Customs reasonable assurance that merchandise subject to drawback claims will be unused and exported. The information will also give Customs a sufficient basis for verifying unused merchandise drawback claims.

When applying for the waiver or the one-time application to file drawback claims on past exports, as provided for in proposed § 191.36 of the regulations, a certification by the claimant is required. The claimant must certify the ability to support with business, laboratory or inventory records (prepared in the ordinary course of business) that the imported and exported or substituted merchandise (as applicable) was not used in the United States and, if substituted, was commercially interchangeable with the imported merchandise. The certification must also state that documentary evidence establishing compliance with all other applicable drawback requirements is likewise available. What is generally referred to is evidence (when applicable):

1. Of possession of the substituted merchandise within statutory time periods.
2. That the export and import transactions upon which the claim is based are within statutory time periods.
3. That the exportation is bonafide.
4. That Certificates of Delivery, when necessary, are in the possession of the claimant.
5. That any waivers or assignments from one party to another, when necessary, are in the possession of the claimant.
6. That any facts or conditions to complete the claim can be supported, such as those for successorship.

It is proposed that Customs approval of an application for the waiver of prior notice privilege would be conditioned from the outset on the agency's right to immediately stay the privilege holder's operation under the privilege, for a specified reasonable period, should the agency desire for any reason to examine the merchandise being exported with drawback for purposes of verification. This key proposed limitation on the grant of approval of the privilege would not be an adverse action, suspension, or other form of sanction against the privilege or privilege holder. Rather, it is a proposed restriction on the grant of the privilege itself. *See, e.g., Atlantic Richfield Co.* v. *United States*, 774 F.2d 1193, 1201 (D.C. Cir. 1985). The Customs Service believes this limited privilege structure would best protect the revenue and the public interest in sound administration of the drawback program. Accordingly, the agency proposes to provide the privilege holder a letter notifying it of any stay, specifying the reason(s) therefor, and the period in which the stay will remain in effect. The stay would expire at the end of the period specified in the agency's letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege could resume. The mere lifting of a stay is not tantamount to a certification of compliance; it simply reactivates the agency's predictive judgment in granting the privilege in the first place.

Accelerated Payment of Drawback

As is true under the current regulations, accelerated (*i.e.*, before liquidation) payment of drawback claims is available for drawback claims under the manufacturing, rejected, or unused merchandise law, as well as claims under the law for substitution of finished petroleum derivatives. The proposed regulations require that applications for this privilege include sufficient information about the applicant and its drawback program, including specific information about the bond coverage that the applicant intends to use to cover accelerated payment of drawback, to provide Customs reasonable assurance against losses to the revenue when accelerated payments of drawback are made. The proposed regulations also require a certification by the applicant that all applicable statutory and regulatory requirements for drawback will be met and a description (with sample documents) of how the applicant will ensure compliance with these requirements. The detail required in this description will vary, depending on the size and complexity of the applicant's accelerated drawback program. To assist applicants, Customs will make available a sample format for requests for accelerated payment of drawback.

It is proposed that Customs would review and verify the information submitted in and with the application and, based on that information (and any additional information relating to the application requested by Customs), and the applicant's record of transactions with Customs, Customs would approve or deny the application. Criteria for Customs action, including the presence or absence of unresolved Customs charges, the accuracy of the claimant's past claims, and whether any previously approved drawback privilege was revoked or suspended, are specifically set forth in the proposed regulation.

If an applicant is approved for accelerated payment of drawback, the applicant would be required to furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond, subject to increase if the amount of the bond is exceeded. Drawback claims for which accelerated payment of drawback was requested and approved would be certified for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing otherwise. In regard to electronic filing of drawback claims, currently procedures exist for electronic filing of certain "coding sheet" data as a part of drawback claims. The agency is working on the development of the drawback components under NCAP, in accordance with its responsibilities under the cited statutory provisions. It is anticipated that by the effective date of a Final Rule, a component for electronic filing under NCAP will have been properly implemented so that participants will be able to take advantage of the 3-week time period in the proposed regulations.

As is true of waiver of prior notice (see above), approval of the accelerated payment drawback privilege would be conditioned from the outset on the agency's right to immediately stay operation of that privilege, for a specified reasonable period, should the agency desire for any reason to examine compliance with the drawback law and regulations for purposes of verification. Claims filed in the absence of a privilege, or during the effect of a stay, would be paid in the normal manner—upon liquidation of the associated drawback entry(ies). However, if an accelerated payment privilege is granted, or reactivated after a stay, payment could proceed according to such privilege notwithstanding that the claim was filed in absence of such privilege or during a stay.

Harmonized Tariff Schedule or Schedule B Numbers

A fundamental requirement for drawback is that there be a duty-paid importation and an exportation and that the claimant have evidence to prove each. Under the laws and regulations governing dutiable entries for consumption (see 19 U.S.C. 1484, 1498 and 19 CFR parts 141, 142, and 143), the tariff classification is required from the importer of record of the merchandise. Such tariff classification is required to be shown on the entry summary and

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other documentation, including the invoice for the merchandise (19 CFR 141.61(e), 19 CFR 141.90(b)). Under 19 CFR 141.61(e), the statistical reporting number required by the General Statistical Notes (GSN's) of the Harmonized Tariff Schedule of the United States (HTSUS) (10-digit number, see GSN 3), is required to be shown on the entry summary and other entry documentation. These documents (*i.e.*, entry summaries and other entry documentation, such as invoices) comprise evidence which is used to establish duty-paid importation of imported merchandise for drawback purposes.

The correct commodity number from Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, is required by the Census Bureau to be provided for exported merchandise. This Schedule B commodity number is required to be entered in the space provided on the Shipper's Export Declaration (SED) form (15 CFR 30.7(l)) (for most exports to Canada, no SED is required (see 15 CFR 30.58; see also Department of Commerce Final Rule published in the **Federal Rgister** on November 30, 1990 (55 FR 49613))). Under GSN 5 of the HTSUS, as well as in the "Notice to Exporters" following GSN 5 of the HTSUS, the HTSUS statistical reporting numbers referred to in the preceding paragraph may, with certain exceptions, be substituted on the SED in place of comparable Schedule B numbers. The SED, with other documentation, comprises evidence which is used to establish exportation for drawback purposes.

In regard to imports, the proposed regulations would require claimants to provide on all drawback claims they submit the HTSUS number, to the six-digit level, for the designated imported merchandise. When such claimants are importers of record, the HTSUS number would be provided from the entry summary(s) and other entry documentation under which the merchandise originally entered the country. When such claimants are not importers of record (and thus would have received a Certificate of Delivery or a Certificate of Manufacture and Delivery for the imported merchandise (or substituted merchandise in certain cases; see below)), the HTSUS number would be provided from such Certificate (see below).

Also in regard to imports, the proposed regulations would require importers of record and any other party(ies) preparing Certificates of Delivery and Certificates of Manufacture and Delivery to provide the HTSUS number for the imported merchandise, to the six-digit level, on such Certificates. Any intermediate party(ies) receiving merchandise on a Certificate of Delivery would be required to transfer it to another party using such a Certificate. If the party preparing the Certificates is the importer of record, the HTSUS number would be from the entry summary(s) and other entry documentation under which the merchandise originally entered the country. If the party preparing the Certificates is another party (*e.g.*, an intermediate party), the HTSUS number would be from the Certificate on which that party received the merchandise, and thus ultimately be derived from the entry summary(s) and other entry documentation.

The requirement for the HTSUS number on the Certificates of Delivery and Certificates of Manufacture and Delivery is necessary because, under the proposed regulations, these Certificates would no longer be part of the drawback entry form, as is currently true. In the case of Certificates of Delivery, those Certificates will not be filed with a claim; they will be required to be in the possession of the claimant at the time that a claim is filed. Therefore, for Certificates of Delivery, the HTSUS number must be on both the Certificates and the claim (so that the claim preparer can derive the HTSUS number, ultimately, from the entry summary(s) and other entry documentation and so that that HTSUS number is on the drawback claim filed with Customs). In the case of Certificates of Manufacture and Delivery, such Certificates are required to be filed with a claim or to have been previously filed with Customs and are necessary parts of a complete claim. Therefore, providing the HTSUS number on the Certificates, if a claim is based on such certificates, satisfies the requirement for providing the HTSUS number on the claim (*i.e.*, if a claim is based on Certificate(s) of Manufacture and Delivery filed with the claim or previously filed with Customs, the HTSUS number need only be on the Certificate(s) and not the drawback entry form).

In addition, in the case of the transfer of merchandise substituted for the imported merchandise under 19 U.S.C. 1313(j)(2) or 19 U.S.C. 1313(p), the proposed regulations would require the claim and any Certificate of Delivery or Certificate of Manufacture and Delivery (see above) to bear the tariff numbers, to the six-digit level, for the substituted merchandise. This additional information proposed to be required for substituted merchandise is necessary to establish compliance with the drawback statute (*i.e.*, either as one of the criteria to establish commercial interchangeability for purposes of section 1313(j)(2), see House Report No. 103–361, *supra*, page 131, and Senate Report No. 103–189, *supra*, page 83, or to establish same kind and quality for purposes of section 1313(p), per the explicit language in that subsection itself).

In regard to exports, the proposed regulations would require all drawback claimants to provide on all drawback claims they submit the Schedule B numbers, or HTSUS numbers substituted therefor, for the exported merchandise or articles upon which the claims are based. These numbers would be provided from the SED(s) for such exported merchandise or articles, when an SED is required. If no SED is required (*e.g.*, for certain exports to Canada (15 CFR 30.58)), the claimant is required to provide the Schedule B commodity number(s) or HTSUS number(s), to the 6-digit level, that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED.

Consistent with the stated intent of both the House Committee on Ways and Means and the Senate Committee on Finance, although the amended drawback law will allow claimants to make greater use of drawback, Customs will be able to ensure greater compliance through the use of enhanced penalty and automated drawback selectively programs authorized elsewhere in the NAFTA Implementation Act (see 19 U.S.C. 1593a, and its legislative history in House Report No. 103–361, *supra*, page 130, and Senate Report No. 103–189, *supra*, page 81). Customs intends the above-described proposed requirements, incorporating already required HTSUS and Schedule B commodity numbers into the drawback claim itself, to directly serve those specified means for achieving greater compliance. More generally, the above-described proposed requirements also serve the basic automation goals behind Title VI (Customs Modernization) of the NAFTA Implementation Act. These proposed requirements will result in numerical descriptions of merchandise or articles instead of narrative descriptions, which are far more amenable to electronic processing and automation. That is, since HTSUS and commodity numbers are the basic terms of reference for imports and exports of merchandise, inclusion of this information in drawback claims is necessary for Customs to be able to offer the enhanced electronic processing, uniformity, and automation Congress intended (see,

House Report No. 103–361, *supra*, pages 106–107; Senate Report No. 103–189, *supra*, pages 63–64).

For imports, the proposed requirement will go into effect for merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the regulations. For exports, the proposed requirement will go into effect for exported merchandise or articles exported one year after the effective date of the regulations.

Procedures to Evidence Exportation

It is the obligation of the claimant to have adequate evidence of export to support his drawback claim. There may be cases where the consignee shown on the bill of lading is not the ultimate consignee, or where, to retain commercial confidentiality, the identity of the ultimate consignee is not known to the claimant. The current practice in such a situation is for the exporter to either cut out or blank out the name of the ultimate consignee from the proof of export submitted to the claimant.

As noted above in this background, under "Privileges", the Exporter's Summary Procedure (ESP) would no longer be a special privilege, but would be available to all claimants as an option for establishing exportation. It is proposed to revise the current subpart regarding evidence of exportation (subpart E) accordingly. That is, the proposed regulations would list the alternative procedures for establishing exportation (actual evidence of exportation, export summary, certified export invoice for mail shipments, notice of lading for supplies for certain vessels or aircraft, and notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone). The actual evidence of exportation alternative is modified to make it clear that the documentary evidence listed therein consists of *originals* of the listed documents, or certified copies thereof (the current regulations omit the word "original"). In addition, the "Chronological Summary of Exports", provided for in the ESP regulations, is proposed to be simplified to list only necessary information (date of export, unique export identifier (explained in a footnote) description, net quantity, Schedule B number or HTSUS number (see discussion of Harmonized Tariff Schedule or Schedule B Numbers in this background), and destination).

Selectivity

The U.S. Customs Service has had an electronic selectivity program in operation for its National Drawback Program since 1994. The present system is a random statistical sampling whose methodology is based on the drawback claimant's overall history with Customs. This selectivity system will be further expanded in late 1996 to become a two-tier system whereby rules and criteria elements such as tariff classification numbers of the subject merchandise and articles, import and export locations, etc., would be used to evaluate risk and designate the level of Customs review of the claim. After this initial review, a random statistical targeting based on the claimant and the claimant's overall history with Customs would also be run (see Item 4 under discussion of liquidation, below).

Drawback Compliance Program

The drawback compliance program is designed to allow Customs to review claims in a post audit mode on an account basis rather than transaction by transaction. Any person, corporation or business may be certified as a participant in the drawback compliance program. Under 19 U.S.C. 1593a(e), claimants and other parties in interest may participate. A "party" is considered to include any person or company who is involved in providing data on which a drawback claim may be based or who is the drawback claimant. This would include importers, intermediary parties and drawback claimants. Therefore, any party that provides information or documentation to one who intends to file a drawback claim is encouraged to participate in the drawback compliance program.

Customs will be publishing another regulatory package in the **Federal Register** concerning penalties. That package, which will be subject to public comment, will set forth mitigation guidelines.

In evaluating a drawback compliance application package, Customs will consider the following factors:

—Size of the company;
—Nature of the business;
—Type of drawback claims being filed;
—Number of claims being filed.

In addition, depending on the complexity of the applicant's actual drawback program, Customs may request additional information or details before making its decision.

It is anticipated that the initial number of requests will make it difficult to approve applicants within a specified time period.

For corporations that have various business units and divisions, are decentralized or use several brokers to administer all or part of their drawback program, each entity may apply separately for the drawback compliance program.

Identification By Accounting Methods

For those situations in which the statute does not allow substitution of merchandise or articles (see above), and in which a company is not able to specifically identify merchandise or articles (*e.g.*, by serial number), accounting methods may be used to determine the identity thereof. Such identification may be made on the basis of a company's records, rather than on the basis of the actual physical movement of the inventory. Previous regulations and rulings required that merchandise or articles be commingled in the same inventory location in order for a company to use an accounting method to identify the merchandise or articles. The proposed regulations clarify that such commingling is allowed, but not mandated, and that a company's records will be the determining factor in the employment of an accounting method.

Four accounting methods are approved for use in the proposed revision of part 191: first-in, first-out (FIFO), last-in, first-out (LIFO), low-to-high, and weighted average. Provision is also made for Customs to approve either a modification of one of these methods, or a different method. These proposed regulations reflect Customs position that a properly established turn-over period may be used to establish timely use in manufacture or production of the imported designated and other (substituted) merchandise under 19 U.S.C. 1313(b), and the manufacture or production of the finished articles under 19 U.S.C. 1313 (a) and (b). These proposed regulations also incorporate the criteria set forth in T.D. 95–61, 60 FR 40995 (August 11, 1995), and are designed to provide a greater degree of predictability in the accounting methods that may be approved for drawback purposes.

Recordkeeping

Records are required to be kept to establish compliance with the requirements in the drawback law and the regulations issued under that law. Individual records are identified and described in the proposed revision of part 191 at the point where the requirements underlying those records are found.

Records supporting the information contained in any document required for filing a drawback claim would have to be maintained by the claimant or by the responsible party (*e.g.*, importer, exporter, possessor). If deficiencies are revealed in the underlying records on

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which a drawback claim is based, the payment of the claim would, of course, to this extent be adversely affected, notwithstanding that such records were generated and maintained by persons other than the claimant. Regarding the retention period for records kept by parties other than the claimant, it is the responsibility of such parties to communicate with the claimant to determine when a related claim for drawback has been filed and paid by Customs. The retention period for certificates of delivery begins upon their issuance (19 U.S.C. 1313(t)). In addition, the retention period for records generally, including that for certificates of delivery, ends 3 years after the date of payment of the related claim. Notwithstanding the recordkeeping retention requirements, claimants are urged to maintain records that support the claim until the liquidation of the drawback entry becomes final. Moreover, records not specifically subject to recordkeeping retention which are maintained by a claimant, and support a claim, ought to be maintained until the liquidation of the drawback entry becomes final.

Redistribution of Drawback Workload

Customs may transfer drawback claims to a location other than where they were originally filed to ensure the timely and efficient processing of the claims. This would occur primarily to evenly distribute the drawback claims or because an office has a particular expertise with a specific account or product. Customs believes that this is an internal Customs work management issue which does not require regulatory action. Therefore, the proposed regulations do not address this issue. However, Customs recognizes the public's concerns over the possibility of lost documentation or delays in processing. Customs will develop procedures to safeguard documents that are mailed and to monitor the time to process them. Customs believes that, until a fully-developed selectivity system and compliance program are operating, quicker, more efficient and more accurate processing of drawback claims will be the result of transferring claims among offices. If a claim is transferred for processing, the notice of liquidation of the associated drawback entry will remain the bulletin notice of liquidation posted at the port where the drawback claim was originally filed.

Liquidation of Drawback Entries

The committee reports of both the Senate and House commented on their expectation that Customs drawback regulations will take into account the various time frames for recordkeeping, filing claims, amendments, and clarifications, and for auditing and liquidating drawback entries. Customs believes that these proposed regulations have addressed many of the Committees' concerns, specifically in proposed §§ 191.25, 191.26, 191.37, 191.51, 191.52, 191.53, 191.61, and 191.62. These proposed regulations do not, however, specify a time frame for liquidating drawback entries. This is because Customs believes that, absent statutory language such as the "deemed liquidated" language of 19 U.S.C. 1504, it lacks the authority to specify a deadline after which the drawback entry is "deemed liquidated" as entered.

Customs is aware of the Congressional and trade interest in shortening the time between the filing of a drawback entry and the liquidation of that entry. Customs is pursuing the following actions in order to reduce the time in which to liquidate drawback entries:

1. Customs has established 11 new positions and filled vacancies in all 8 drawback offices in order to bring them up to their designated staffing levels;

2. Customs has developed and delivered standardized, national training to all drawback specialists (not just the new specialists) in FYs '95 and '96;

3. Customs has developed automated tools (initially, diskette filings and ABI transmission of drawback claims) to more quickly identify, reject and return to filers claims that do not meet minimum filing standards.

4. Customs has developed and is improving a selectivity system in ACS which already has reduced the number of designated import entries that must be physically retrieved by the drawback office, prior to liquidation of related drawback entries. Enhancements to this system will eventually lead to virtual "instant liquidation" of those drawback entries not selected by the system for pre-liquidation scrutiny by the drawback specialists.

5. Through the Drawback Compliance Program, and increased use of claimant interviews and visits for claimants not in the Drawback Compliance Program, Customs expects to inform drawback claimants of their responsibilities with respect to filing and supporting their claims as well as to learn about claimants' drawback programs, recordkeeping, and internal controls. In the past, when drawback specialists questioned the claims, or sought evidence to support the claim, they often relied upon Regulatory Audit. With better staffing and training, as well as use of interviews with claimants, Customs expects that the number of referrals to Regulatory Audit will significantly decrease.

6. In partnership with trade groups, Customs plans to use meetings, conferences, publications, satellite meetings and other forums, to educate and to learn from claimants.

7. The largest single reason for the delays in liquidating drawback entries is that the designated import entry has not been liquidated. Approximately 75% of entries withheld from liquidation are because of suspensions under the antidumping or countervailing duty laws; however, antidumping and countervailing duties are not subject to drawback. In recognition of this, Customs announced in the **Federal Register** on May 17, 1996, a pilot of the reconciliation process provided for in 19 U.S.C. 1484(b) (as amended by section section 637 of the NAFTA Implementation Act) for entry summaries suspended under the antidumping or countervailing duty laws. The use of the reconciliation entry process will allow for the liquidation of the ordinary duty on these entry summaries, thereby expediting the liquidation of the drawback entries referencing those import entries.

Customs believes that these actions, taken together, will bring about faster liquidation of drawback entries, thereby addressing the Congress's concerns.

Comments

Customs has consulted extensively with the drawback community/trade in formulating these proposed regulations. Three drafts of the proposed regulations were made available to the public through Customs Automated Broker Interface (ABI) and the Customs Electronic Bulletin Board. Copies were also sent out to interested persons upon request. Additionally, since January 1992, Customs met 42 times with various groups representing drawback claimants, exporters, brokers, attorneys, and consultants to explain and discuss its proposals. In the summer of 1995, the trade expressed its continuing dissatisfaction with the modifications Customs had made based upon comments to those earlier drafts.

At the request of the American Association of Exporters and Importers, Customs agreed to continue these informal rulemaking consultations with trade groups in a series of meetings. These meetings were a continuation of the previous informal consultations with the trade. They were not a negotiation, mediation or a formal rulemaking procedure as provided for in the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, codified at 5 U.S.C. 561 *et seq.*). Other groups that

participated in these meetings were the National Council on International Trade Development, the National Customs Brokers and Forwarders Association of America, and the American Petroleum Institute. The Customs participants represented the Trade Compliance program managers at Headquarters, the Office of Regulations and Rulings, field drawback offices, and Regulatory Audit. In view of concerns regarding Customs obligations under the Chief Financial Officer Act of 1990 (Pub. L. 101–576), representatives of the Treasury Inspector General and the Customs Office of Financial Management also participated. In addition, comments and recommendations from the public, the trade and Customs drawback offices were considered in this process.

These proposed regulations are subject to the requirements of the Administrative Procedures Act (5 U.S.C. 553), which requires Customs to give notice and afford interested persons the opportunity to comment on the proposed rules. Therefore, before adopting this proposal, full consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. The comments submitted will receive full consideration and only Customs staff will prepare the analysis of the comments submitted in response to this notice of proposed rulemaking.

In view of Customs extensive consultation with groups of interested persons, Customs believes that a 60-day comment period is adequate for review and comment by all interested parties. Interested persons are encouraged to file their comments within the 60-day period.

All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed rule would amend the Customs drawback regulations principally to reflect changes to the law occasioned by the Customs modernization portion of the NAFTA Implementation Act. The proposed rule also makes certain administrative changes to the existing regulations which are essentially intended to simplify and expedite the filing and processing of claims for the payment of drawback, and it generally revises and rearranges these regulations to improve their editorial clarity. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, it is not subject to the requirements of 5 U.S.C. 603 or 604, nor would it result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in this document is in §§ 191.0–191.195. This information is necessary and will be used to enforce the requirements of the drawback law and protect the revenue. The likely respondents and/or recordkeepers are business and other for-profit institutions.

Estimated annual reporting and/or recordkeeping burden: 216,650 hours.

Estimated average annual burden per respondent/recordkeeper: one hour for providing Harmonized Tariff System numbers; 60 hours for drawback compliance program participation.

Estimated number of respondents and/or recordkeepers: 7000.

Estimated annual frequency of responses: on occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Parallel Reference Table

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191.]

Revised section	Old section
191.0	191.0.
191.0a	New.
191.1	191.1.
191.2(a)	191.2(p).
191.2(b)	New.
191.2(c)	New.
191.2(d)	New.
191.2(e)	New.
191.2(f)	191.2(b).
191.2(g)	New.
191.2(h)	191.2(j).
191.2(i)	191.2(a).
191.2(j)	191.2(i).
191.2(k)	191.2(h).
191.2(l)	191.2(g).
191.2(m)	New.
191.2(n)	191.2(l).
191.2(o)	191.2(f).
191.2(p)	New.
191.2(q)	New.
191.2(r)	New.
191.2(s)	191.2(m).
191.2(t)	191.2(n).
191.2(u)	191.2(e).
191.2(v)	191.2(o).
191.3	191.3.
191.4	191.11.
191.5	191.13.
191.6	191.6.
191.7(a)	191.41.
191.7(b)(1)	191.42(a).
191.7(b)(2)	191.42(b).
191.7(c)	191.43.
191.7(d)	191.44
191.8(a)	191.21(a).
191.8(b)	191.21(c).
191.8(c)	191.21(b).
191.8(d)	191.21(d); 191.23(a).
191.8(e)	191.23(b).
191.8(f)	191.24.
191.8(g)(1)	191.25 (a)&(b)(1).
191.8(g)(2)	191.25(b)(2).
191.8(g)(3)	191.25(c).
191.8(h)	191.26.
191.9	191.21(a)(2); 191.34; 191.66 (b), (f).
191.9(a), first sentence.	New.
191.10(a)	191.65(a).
191.10(b)	191.22(e).
191.10(c)(1)	191.65(b).
191.10(c)(2)	191.66(d).
191.10(d)	191.5; 191.22(e).
191.10(e)	New.
191.10(f)	191.65(d).
191.11	191.27.
191.12	New.
191.13	191.4(a)(11).
191.14	191.22(c).
191.21	191.4(a)(1).

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Revised section	Old section
191.22(a)	191.4(a)(2).
191.22(b)	191.32(c).
191.22(c)	191.32(d).
191.22(d)	New.
191.22(e)	191.22(a)(5) & 191.33.
191.23(a)-(c)	New.
191.23(d)(1)	191.22(a)(2) & 191.32(b).
191.23(d)(2)	191.22(a)(1)(iv).
191.24(a)	191.66(a).
191.24(b)	New.
191.24(c)	191.22(a)(4); 191.62(a)(2)(i).
191.24(d)	New.
191.25(a)(1)	191.22(a)(1).
191.25(a)(1)(iii)	191.22(a)(3).
191.25(a)(2)	191.22(b).
191.25(a)(3)	191.22(c).
191.25(b)	191.32(a).
191.25(c)	191.22(a)(2) & 191.32(b).
191.25(d)	191.62(a)(2)(ii).
191.25(e)	191.65(a)&(b).
191.25(f)	191.62(c).
191.25(g)	191.5.
191.26(a)	191.8(a); 191.22(a)(1)(v).
191.26(b)	191.32(a).
191.26(c)	191.23(c).
191.27	New.
191.31(a)	191.4(a)(9); 191.141(a)(1).
191.31(b)	191.8(b); 191.141(a)(2).
191.31(c)	191.141(a)(3).
191.32(a)	191.141(a)(10).
191.32(b)	191.141(h).
191.32(c)	New.
191.32(d)	191.141(h).
191.32(e)&(f)	New.
191.33	New.
191.34(a)	191.65(a); 191.141 (b) & (e).
191.34(b)	New.
191.34(c)	191.65(d).
191.35	191.141(b).
191.36	New.
191.37(a)	191.5
191.37(b)	191.22(b).
191.41	191.142(a)(1).
191.42	191.142(b).
191.43	191.142(a)(2).
191.44	New.
191.51(a)	191.62 (a)&(b).
191.51(b), (c) & (d)	New.
191.52(a)	191.61.
191.52(b) & (c)	191.64.
191.61	191.10.
191.62(a)	191.9.
191.62(b)	New.
191.71	191.141(f).
191.72	191.51.
191.73	191.53.
191.74	191.54.
191.75	191.55.
191.76	191.67.
191.81	191.71.
191.82	191.73(a).
191.83	191.73(b).
191.84	191.7.
191.91	191.141(b)(2)(ii).
191.92	191.72.
191.93	New.

Revised section	Old section
191.101	191.81.
191.102	191.82.
191.103	191.83.
191.104	191.84.
191.105	191.85.
191.106	191.86.
191.111	191.91.
191.112	191.92; 191.93.
191.121	191.101.
191.122	191.102.
191.123	191.103.
191.131	191.111.
191.132	191.112.
191.133	191.113.
191.141	191.121.
191.142	191.122.
191.143	191.123.
191.144	191.124.
191.151	191.131.
191.151(a)(1)	191.8(c).
191.152	191.132.
191.153	191.133.
191.154	191.134.
191.155	191.135.
191.156	191.136.
191.157	191.137.
191.158	191.138.
191.159	191.139.
191.161	191.151.
191.162	191.152.
191.163	191.153.
191.164	191.154.
191.165	191.155.
191.166	191.156.
191.167	191.157.
191.168	191.158.
191.171	New.
191.172	New.
191.173	New.
191.174	New.
191.175	New.
191.176	New.
191.181	191.161.
191.182	191.162.
191.183	191.163.
191.184	191.164.
191.185	191.165.
191.186	191.166.
191.191	New.
191.192	New.
191.193	New.
191.194	New.
191.195	New.

Parallel Reference Table

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191.]

Old section	Revised section
191.0	191.0.
191.1	191.1.
191.2(a)	191.2(i).
191.2(b)	191.2(f).
191.2(c)	Deleted.
191.2(d)	Deleted.
191.2(e)	191.2(u).
191.2(f)	191.2(o).
191.2(g)	191.2(l).
191.2(h)	191.2(k).
191.2(i)	191.2(j).

Old section	Revised section
191.2(j)	191.2(h).
191.2(k)	Deleted.
191.2(l)	191.2(n).
191.2(m)	191.2(s).
191.2(n)	191.2(t).
191.2(o)	191.2(v).
191.2(p)	191.2(a).
191.3	191.3
191.4(a)(1)	191.21.
191.4(a)(2)	191.22(a).
191.4(a) (3)–(8)	Deleted.
191.4(a)(9)	191.31(a).
191.4(a)(10)	191.32(a).
191.4(a)(11)	191.13.
191.4(a) (12)–(14)	Deleted.
191.4(b)	Deleted.
191.5	191.10(d); 191.25(g); 191.37(a).
191.6	191.6.
191.7	191.84.
191.8(a)	191.26(a).
191.8(b)	191.31(b).
191.8(c)	191.151(a)(1).
191.9	191.62(a).
191.10	191.61.
191.11	191.4.
191.12	Deleted.
191.13	191.5.
191.21(a)	191.8(a).
191.21(a)(1)	Deleted.
191.21(a)(2)	191.9.
191.21(b)	191.8(c).
191.21(c)	191.8(b).
191.21(d)	191.8(d).
191.21(e)	Deleted.
191.22(a)(1)	191.25(a)(1).
191.22(a)(1)(iv)	191.23(d)(2).
191.22(a)(1)(v)	191.26(a).
191.22(a)(2)	191.23(d)(1); 191.25(c).
191.22(a)(3)	191.25(a)(1)(iii).
191.22(a)(4)	191.24(c).
191.22(a)(5)	191.22(e).
191.22(b)	191.25(a)(2).
191.22(c)	191.14.
191.22(d)	Deleted.
191.22(e)	191.10 (b) & (d).
191.23(a)	191.8(d).
191.23(b)	191.8(e).
191.23(c)	191.26(c).
191.23(d)	Deleted.
191.24	191.8(f).
191.25(a)	191.8(g)(1).
191.25(b)(1)	191.8(g)(1).
191.25(b)(2)	191.8(g)(2).
191.25(c)	191.8(g)(3).
191.26	191.8(h).
191.27	191.11.
191.31	Deleted.
191.32(a)	191.25(b).
191.32(b)	191.25(c).
191.32(c)	191.22(b).
191.32(d)	191.22(c).
191.33	191.22(e).
191.34	191.9.
191.41	191.7(a).
191.42(a)	191.7(b)(1).
191.42(b)	191.7(b)(2).
191.43	191.7(c).

Old s
191.44
191.45
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191.62(a)
191.62(a)(2
191.62(b)
191.62(c)
191.62(d)
191.63
191.64
191.65(a)
191.65(b)
191.65(c)
191.65(d)
191.66(a)
191.66(b)
191.66(c)
191.66(d)
191.66(e)
191.66(f)
191.67
191.71
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191.73(a)
191.73(b)
191.81
191.82
191.83
191.84
191.85
191.86
191.91
191.92, 19
191.101
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191.122
191.123
191.124
191.131
191.132
191.133
191.134
191.135
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191.137
191.138
191.139
191.141(a)(
191.141(a)(
191.141(a)(
191.141(b)
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191.141(c)
191.141(d)
191.141(e)
191.141(f)
191.141(g)
191.141(h)

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Old section	Revised section
191.44	191.7(d).
191.45	Deleted.
191.51	191.72.
191.52	Deleted.
191.53	191.73.
191.54	191.74.
191.55	191.75.
191.56	Deleted.
191.57	Deleted.
191.61	191.52(a).
191.62(a)	191.51(a).
191.62(a)(2)(ii)	191.25(d).
191.62(b)	191.51(a).
191.62(c)	191.25(f).
191.62(d)	Deleted.
191.63	Deleted.
191.64	191.52 (b) & (c).
191.65(a)	191.10(a); 191.25(e).
191.65(b)	191.10(c)(1); 191.25(e).
191.65(c)	Deleted.
191.65(d)	191.10(f); 191.34(c).
191.66(a)	191.24(a).
191.66(b)	191.9.
191.66(c)	Deleted.
191.66(d)	191.10(c)(2).
191.66(e)	Deleted.
191.66(f)	191.9.
191.67	191.76.
191.71	191.81.
191.72	191.92.
191.73(a)	191.82.
191.73(b)	191.83.
191.81	191.101.
191.82	191.102.
191.83	191.103.
191.84	191.104.
191.85	191.105.
191.86	191.106.
191.91	191.111.
191.92, 191.93	191.112.
191.101	191.121.
191.102	191.122.
191.103	191.123.
191.111	191.131.
191.112	191.132.
191.113	191.133.
191.121	191.141.
191.122	191.142.
191.123	191.143.
191.124	191.144.
191.131	191.151.
191.132	191.152.
191.133	191.153.
191.134	191.154.
191.135	191.155.
191.136	191.156.
191.137	191.157.
191.138	191.158.
191.139	191.159.
191.141(a)(1)	191.31(a).
191.141(a)(2)	191.31(b).
191.141(a)(3)	191.31(c).
191.141(b)	191.34(a); 191.35.
191.141(b)(2)(ii)	191.91.
191.141(c)	191.51.
191.141(d)	191.73.
191.141(e)	Deleted.
191.141(f)	191.71.
191.141(g)	191.51; 191.52.
191.141(h)	191.32 (b) & (d).
191.142(a)(1)	191.41.
191.142(a)(2)	191.43.
191.142(b)	191.42.
191.151	191.161.
191.152	191.162.
191.153	191.163.
191.154	191.164.
191.155	191.165.
191.156	191.166.
191.157	191.167.
191.158	191.168.
191.161	191.181.
191.162	191.182.
191.163	191.183.
191.164	191.184.
191.165	191.185.
191.166	191.186.

List of Subjects

19 CFR Part 7

Customs duties and inspection, Exports, Imports.

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 145

Customs duties and inspection, Imports, Postal Service.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments

It is proposed to amend chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), by amending parts 7, 10, 145, 173, 174, 181 and 191 as set forth below.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The general authority for part 7 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.1 [Amended]

2. It is proposed to amend § 7.1(a) by removing the reference to "§§ 191.85 and 191.86" where appearing therein, and by adding in place thereof, "§§ 191.105 and 191.106".

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.38 [Amended]

2. It is proposed to amend § 10.38(f) by removing the reference to "§ 191.10" where appearing therein, and by adding in place thereof, "§ 191.61".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.72 [Amended]

2. It is proposed to amend § 145.72(e) by removing the reference to "§ 191.142" where appearing therein, and by adding in place thereof, "§ 191.42".

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 would continue to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

2. It is proposed to amend §173.4 by adding a sentence at the end of paragraph (c) to read as follows:

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§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(c) * * * The party requesting reliquidation under section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§181.50(b) and 191.81(b) of this chapter).

* * * * *

PART 174—PROTESTS

1. The general authority citation for part 174 would continue to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. It is proposed to amend § 174.13 by adding a new paragraph (a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) *Contents, in general.* * * *

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and § 191.81(b) of this chapter).

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.44 [Amended]

2. It is proposed to amend § 181.44(d) by removing the reference to "§ 191.2(m)" where appearing therein, and by adding in place thereof, "§ 191.2(s)".

3. It is proposed to amend the "Example" in § 181.44(f) by removing the reference to "Customs Form 7575–A" where appearing therein, and by adding in its place, "Customs Form 331".

§ 181.45 [Amended]

4. It is proposed to amend § 181.45(b)(2)(i) by removing the reference to "§ 191.141(e)" where appearing therein, and by adding in place thereof, "§ 191.14".

§ 181.46 [Amended]

5. It is proposed to amend § 181.46(b) by removing the term "port(s)" and where appearing in the first sentence, and adding in place thereof, "drawback office(s)".

§ 181.47 [Amended]

6. It is proposed to amend § 181.47(b)(2)(i)(C) by removing the words "Exporter's" and "exporter's" where appearing therein, and by adding in place thereof, "Export" and "export", respectively.

7. It is proposed to amend § 181.47(b)(2)(ii)(A) by removing "Customs Form 7539J", and adding in place thereof, "Customs Form 331".

8. It is proposed to amend § 181.47(b)(2)(ii)(D) by removing the phrase "The certificate of delivery portion of Customs Form 331" where appearing therein, and adding in place thereof, "A certificate of delivery".

9. It is proposed to amend § 181.47(b)(2)(ii)(G) by revising the first two sentences to read:

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier".

* * *

10. It is proposed to amend § 181.47(b)(2)(iii)(A) by removing "Customs Form 7539C" where appearing therein, and by adding in place thereof, "Customs Form 331".

§ 181.48 [Amended]

11. It is proposed to amend § 181.47(b)(2)(v) by removing the reference to "subpart L" where appearing therein, and by adding in place thereof, "subpart N".

§ 181.49 [Amended]

12. It is proposed to amend § 181.49 by removing the reference to "§ 191.5" where appearing therein, and by adding in place thereof, "§ 191.25(d)".

§ 181.50 [Amended]

13. It is proposed to amend § 181.50(c) by removing the reference to "§ 191.72" where appearing therein, and by adding in place thereof, "191.92".

PART 191—DRAWBACK

1. It is proposed to revise part 191 to read as follows:

Sec.

191.0 Scope.
191.0a Claims filed under NAFTA.

Subpart A—General Provisions

191.1 Authority of the Commissioner of Customs.
191.2 Definitions.
191.3 Duties and fees subject or not subject to drawback.
191.4 Merchandise in which a U.S. Government interest exists.
191.5 Guantanamo Bay, insular possessions, trust territories.
191.6 Authority to sign drawback documents.
191.7 General manufacturing drawback ruling.
191.8 Specific manufacturing drawback ruling.
191.9 Agency.
191.10 Certificate of delivery.
191.11 Tradeoff.
191.12 Claim filed under incorrect provision.
191.13 Packaging materials.
191.14 Identification of merchandise or articles by accounting.

Subpart B—Manufacturing drawback

191.21 Direct identification drawback.
191.22 Substitution drawback.
191.23 Methods of claiming drawback.
191.24 Certificate of manufacture and delivery.
191.25 Recordkeeping for manufacturing drawback.
191.26 Time limitations.
191.27 Person entitled to claim drawback.

Subpart C—Unused Merchandise Drawback

191.31 Direct identification.
191.32 Substitution drawback.
191.33 Person entitled to drawback.
191.34 Certificate of delivery required.
191.35 Notice of intent to export; examination of merchandise.
191.36 Failure to file notice of intent to export or destroy merchandise.
191.37 Records.

Subpart D—Rejected Merchandise

191.41 Rejected merchandise drawback.
191.42 Procedure.
191.43 Unused merchandise claim.
191.44 Destruction under Customs supervision.

Subpart E—Completion of Drawback Claims

191.51 Completion of drawback claims.
191.52 Completing, perfecting or amending claims.
191.53 Restructuring of claims.

Subpart F—Verification of Claims

191.61 Verification of drawback claims.
191.62 Falsification of drawback claims.

Subpart G—Evidence of Exportation and Destruction

191.71 Drawback on articles destroyed under Customs supervision.
191.72 Alternative procedures for establishing exportation.
191.73 Export summary procedure.
191.74 Certification of exportation by mail.
191.75 Exportation by the Government.
191.76 Landing certificate.

Subpart H—Liquidation and Protest of Drawback Entries

191.81 Liquidation.
191.82 Person entitled to claim drawback.
191.83 Person entitled to receive payment.
191.84 Protests.

Subpart I—Privileges

191.91 Waiver of notice of intent to export.
191.92 Accelerated payment.
191.93 Combined applications.

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured from Domestic Tax-Paid Alcohol

191.101 Drawback allowance.
191.102 Procedure.
191.103 Additional requirements.
191.104 Alcohol, Tobacco and Firearms certificates.
191.105 Liquidation.
191.106 Amount of drawback.

Subpart K—Supplies for Certain Vessels and Aircraft

191.111 Drawback allowance.
191.112 Procedure.

Subpart L—Meats Cured with Imported Salt

191.121 Drawback allowance.
191.122 Procedure.
191.123 Refund of duties.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

191.131 Drawback allowance.
191.132 Procedure.
191.133 Explanation of terms.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

191.141 Drawback allowance.
191.142 Procedure.
191.143 Drawback entry.
191.144 Refund of duties.

Subpart O—Merchandise Exported from Continuous Customs Custody

191.151 Drawback allowance.
191.152 Merchandise released from Customs custody.
191.153 Continuous Customs custody.
191.154 Filing the entry.
191.155 Merchandise withdrawn from warehouse for exportation.
191.156 Bill of lading.
191.157 Landing certificates.
191.158 Procedures.
191.159 Amount of drawback.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

191.161 Refund of taxes.
191.162 Procedure.
191.163 Documentation.
191.164 Return to Customs custody.
191.165 No exportation by mail.
191.166 Destruction of merchandise.
191.167 Liquidation.
191.168 Time limit for exportation or destruction.

Subpart Q—Substitution of Finished Petroleum Derivatives

191.171 General; Drawback allowance.
191.172 Definitions.
191.173 Imported duty-paid derivatives (no manufacture).
191.174 Derivatives manufactured under 19 U.S.C. 1313 (a) or (b).
191.175 Drawback claimant; maintenance of records.
191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

Subpart R—Merchandise Transferred to a Foreign Trade Zone from Customs Custody

191.181 Drawback allowance.
191.182 Zone-restricted merchandise.
191.183 Articles manufactured or produced in the United States.
191.184 Merchandise transferred from continuous Customs custody.
191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.
191.186 Person entitled to claim drawback.

Subpart S—Drawback Compliance Program

191.191 Purpose.
191.192 Certification for compliance program.
191.193 Application procedure for compliance program.
191.194 Action on application to participate in compliance program.
191.195 Combined application for Certification in Drawback Compliance Program and Drawback Privileges.

Appendix A to Part 191—General Manufacturing Drawback Rulings

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Ruling Applications

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 191.84 also issued under 19 U.S.C. 1514;

§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;

§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;

§ 191.182–191.186 also issued under 19 U.S.C. 81c;

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§191.2 Definitions.

For the purposes of this part:

(a) *Abstract.* "Abstract" means the summary of the actual production records of the manufacturer.

(b) *Certificate of delivery.* "Certificate of delivery" means Customs Form xxx summarizing information contained in original documents, establishing:

(1) The delivery of imported merchandise, substituted merchandise under 19 U.S.C. 1313(j)(2), or drawback product, from one party (transferor) to another (transferee); and

(2) The assignment of drawback rights for the merchandise transferred from the transferor to the transferee.

(c) *Certificate of manufacture and delivery.* "Certificate of manufacture and delivery" means Customs Form xxx summarizing information contained in original documents, establishing the manufacture or production of articles under 19 U.S.C. 1313 (a) or (b). A certificate of manufacture and delivery must contain the information, and has the effect, set forth in §191.24 of this part.

(d) *Act.* "Act", unless indicated otherwise, means the Tariff Act of 1930, as amended.

(e) *Commercially interchangeable merchandise.* "Commercially interchangeable merchandise" means merchandise which may be substituted under the substitution unused merchandise drawback law, section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see §191.32(b)(2) of this part), or under the provision for the substitution of finished petroleum derivatives, section 313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise.* "Designated merchandise" means either

eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313 (b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction.* "Destruction" means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback.* "Direct identification drawback" means drawback authorized either under section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also sections 313 (c), (e), (f), (g), (h), and (q)).

(i) *Drawback.* "Drawback" means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d).

(j) *Drawback claim.* "Drawback claim" means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry.* "Drawback entry" means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 331.

(l) *Drawback product.* A "drawback product" means a product which is finished, partially finished or wholly manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become "drawback products" when applicable substitution provisions of the Act are met. For purposes of section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see section 1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see section 191.24 of this part).

(m) *Exportation.* "Exportation" means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are used as aircraft or vessel supplies in accordance with section 309(b) of the Act, as amended (19 U.S.C. 1309(b)).

(n) *Fungible merchandise or articles.* "Fungible merchandise or articles" means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(o) *General manufacturing drawback ruling.* A "general manufacturing drawback ruling" means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation which is published in appendix A of this part. A manufacturer or producer whose operation is within this description may operate under a particular "general manufacturing drawback ruling" by submitting to the appropriate drawback office a letter of notification of intent to operate under the general ruling, in accordance with § 191.7, after which Customs issues a letter of acknowledgment.

(p) *Manufacture or production.* "Manufacture or production" means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (p)(1) of this section.

(q) *Possession.* "Possession", for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(r) *Relative value.* "Relative value" means the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product or by-product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product or by-product based on its relative value at the time of separation.

(s) *Substituted merchandise.* "Substituted merchandise" means same kind and quality merchandise that may be substituted under the substitution drawback provisions, either section 313(b) or 313(p) of the Act, as amended (19 U.S.C. 1313 (b) or (p)). Under section 313(b), substituted merchandise is of the same kind and quality if it is capable of being used interchangeably in manufacture or production of exported or destroyed articles with no substantial change in the manufacturing or production process. Under section 313(p), as amended, an exported article and a qualified article are of the same kind and quality if they fall under the same 8-digit Harmonized Tariff Schedule of the United States (HTSUS) tariff classification as enumerated in section 313(p)(3)(A)(i) (I) or (II), as amended, or are commercially interchangeable (see § 191.2(e)). Under section 313(j)(2), substituted merchandise means merchandise which is commercially interchangeable with the imported designated merchandise.

(t) *Schedule.* A "schedule" means a document filed by a drawback claimant, under section 313 (a) or (b), as amended (19 U.S.C. 1313 (a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(u) *Specific manufacturing drawback ruling.* A "specific manufacturing drawback ruling" means an application, in one of the formats published in appendix B of this part, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used, together with a letter of approval issued by Customs Headquarters to the applicant in response to the application in accordance with §191.8. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis

being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(v) *Verification.* "Verification" means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final and for which the drawback claimant and any other party responsible for the payment of liquidated import duties have filed a written request and waiver under §191.82(b) of this part;

(iii) Voluntary tenders of the unpaid amount of lawful duties on an entry, or withdrawal from warehouse, for consumption, provided that the import entry, or withdrawal from warehouse, for consumption for which the voluntary tender was made is specifically identified in the voluntary tender and provided that liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final and that the drawback claimant and any other party responsible for the payment of the voluntary tender have filed a written request and waiver under § 191.82(c) of this part; or

(iv) Any payment of duty for an import entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), provided that the payment is specifically identified as duty on a specifically identified import entry, or withdrawal from warehouse, for consumption the liquidation of which became final prior to such payment, and provided that liquidation of the drawback entry in which that specifically identified entry, or withdrawal from warehouse, for consumption is designated has not become final and that the drawback claimant and any other party responsible for the other payments of duties have filed a written request and waiver under § 191.82(c) of this part;

(2) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)); and,

(3) Internal revenue taxes which attach upon importation (see § 101.1(i) of this chapter).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fee (see § 24.23 of this chapter); and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product to which an over-quota rate of duty established under a tariff-rate quota is applicable, except that:

(1) Agricultural products as described in paragraph (c) of this section may be eligible for drawback under section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)); and

(2) Tobacco otherwise meeting the description of agricultural products in paragraph (c) of this section may also be eligible for drawback under section 313(a) of the Act, as amended (19 U.S.C. 1313(a)).

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) *Allowance of drawback.* If the merchandise was sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Under 19 U.S.C. 1313, drawback of Customs duty is not allowed on articles shipped to Puerto Rico, the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of a business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Applications of manufacturers or producers for approval of specific manufacturing drawback rulings, schedules, and supplemental schedules;

(5) Letters of notification for general manufacturing drawback rulings;

(6) Endorsements of exporters on bills of lading or evidence of exportation; and

(7) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

§ 191.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-

incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication.* General manufacturing drawback rulings are contained in Appendix A to this part. The Appendix will be updated when new general drawback rulings are issued (as Treasury Decisions) or existing general drawback rulings are revised.

(2) *Submission.* Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted in duplicate to any drawback office where drawback entries will be filed and liquidated. If claims are to be filed at more than one drawback office, two additional copies of the letter of notification shall be filed for each additional office and the drawback office with which the letter of notification is submitted shall forward the additional copies to such additional office(s).

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of producer or manufacturer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 191.6(a)(1) through (5) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Description of the merchandise and articles, unless specifically described in the letter of notification;

(v) Basis of claim used for calculating drawback; and

(vi) IRS (Internal Revenue Service) number of the manufacturer or producer.

(c) *Acknowledgment.* The appropriate drawback office shall acknowledge in writing the receipt of the letter of notification of intent to operate under the general manufacturing drawback ruling.

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in § 191.8(h) for specific manufacturing drawback rulings.

§ 191.8 Specific manufacturing drawback ruling.

(a) *Proper applicant.* Unless operating under a general manufacturing drawback ruling (see § 191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in Appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 191.6(a)(1) through (5) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Entry and Carrier Rulings Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, two additional copies of the application shall be filed for each additional office.

(e) *Review and action by Customs.* Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 2 copies of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each approved specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing contract number which appears in the published synopsis and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, Customs Headquarters shall promptly inform the applicant that the application cannot be approved and shall specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to Customs Headquarters (Attention: Director, International Trade Compliance Division).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling.*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling in the form of the original application to Customs Headquarters (Attention: Entry and Carrier Rulings Branch, Office of Regulations and Rulings). Except as specifically provided in this section, such modifications (not including those provided for in paragraph (g)(2) of this section) shall be subject to the procedures provided for in part 177 of this chapter.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where

the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity; or

(E) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person (that is, such a modification need not be in the form of an original application, as under paragraph (g)(1) of this section).

(h) *Duration.* Subject to part 177 of this chapter, an approval of a specific manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

§ 191.9 Agency.

(a) *Applicability.* The principal-agent procedures described in paragraphs (b) through (e) of this section are applicable only in substitution manufacturing drawback under 19 U.S.C. 1313(b).

(b) *General.* An owner of the designated and substituted merchandise that is used to produce the exported articles may employ another person to do part, or all, of the work that transforms either the designated or substituted merchandise into articles for the purpose of 19 U.S.C. 1313(b), or which accomplishes any of the other manufacture or production processes stated in § 191.2(p). The person who asserts that it is the manufacturer or producer under 19 U.S.C. 1313(b) must establish by its manufacturing records, the manufacturing records of its agent, or the manufacturing records of both parties, that the designated and substituted merchandise were used in the manufacture or production of articles.

(c) *Requirements.*—(1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise for the principal. The contract must specify:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest for the purpose of 19 U.S.C. 1313(b).

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to show compliance with the requirement in 19 U.S.C. 1313(b) that the principal was the manufacturer or producer of the articles.

(d) *Specific manufacturing drawback rulings; general manufacturing drawback rulings.*—(1) *Owner.* An owner who intends to show that it is the manufacturer or producer of articles under 19 U.S.C. 1313(b) through the work of an agent must state that intent in any application for a specific manufacturing drawback ruling filed under § 191.8.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification for the general manufacturing drawback ruling (see § 191.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(e) *Certificate of manufacture and delivery; drawback entry.*—(1) *Agent.* Each agent manufacturer conducting operations under this section shall furnish the principal for whom such agent processed merchandise a certificate of manufacture and delivery applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted. Certificates of Manufacture and Delivery issued to document the transfer of articles under this section do not assign the potential right to drawback to the person to whom such certificates are issued.

(2) *Principal.* The principal for whom processing was conducted under this section shall complete and file a drawback entry on Customs Form 331 and attach to it the forms from its agents or agent, if necessary (see §§ 191.10(e) and 191.24(c) of this part). The principal shall not complete a certificate of delivery for merchandise which it transfers to its agent(s) under the procedures in this section.

§ 191.10 Certificate of delivery.

(a) *Purpose; when required.* A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313 (a) and/or (b): May transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback has attached; and

(3) Assigns such right to the transferee (see § 191.82 of this part).

(b) *Required information.* The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

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(4) Quantity delivered;
(5) Total duty paid on, or attributable to, the delivered merchandise;
(6) Date certificate was issued;
(7) Date of importation;
(8) Port where import entry filed;
(9) Person from whom received; and
(10) Description of the merchandise delivered, and if such merchandise is the designated imported merchandise or merchandise substituted therefor under 19 U.S.C. 1313(j)(2) or 1313(p), the HTSUS number with a minimum of 6 digits. (For designated imported merchandise, such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, in which case such HTSUS number shall be from the other certificate of delivery.)

(c) *Intermediate transfer.*—(1) *Imported merchandise.* If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) *Manufactured article.* If the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) is not delivered directly from the manufacturer to the exporter (or destroyer), each intermediate transfer of the article shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) *Retention period; supporting records.* Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim.

(e) *Submission to Customs; certification.* The certificate of delivery shall be retained by the drawback claimant and, if requested, submitted to Customs as part of the claim. If the certificate is requested by Customs, but is not submitted as part of the claim, the drawback claim dependent on that certificate will be rejected (see § 191.52 of this part).

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) *Exchanged merchandise.* To comply with §§191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in §191.2(s) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by section 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of a straight tradeoff of same kind and quality merchandise, with no additional payments of any type, including additional payment in kind.

(c) *Application.* Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Entry and Carrier Rulings Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the drawback application. For those users manufacturing under direct identification drawback, the request should be made by a separate letter.

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of section 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such other provision.

§ 191.13 Packaging materials.

Drawback of duties is provided for in section 313(q) of the Act, as amended (19 U,S.C. 1313(q)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to section 313 (a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313 (a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim.

§ 191.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture. This section is not applicable to situations in which the drawback law authorizes substitution (see 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p)). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution. This section is not applicable to the identification of merchandise by accounting procedures for drawback under 19 U.S.C. 1313(j)(1) for exportations to Canada or Mexico under the NAFTA (see §181.45(b)(2)).

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see §191.2(n) of this part);

(2) The person using the identification method must establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the

ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section (see, for example, paragraph (c)(5) of this section) or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see §191.61 of this part). If Customs requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) *First-in, first-out (FIFO).* The FIFO method is the method by which fungible merchandise or articles are identified on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(2) *Last-in, first out (LIFO).* The LIFO method is the method by which fungible merchandise or articles are identified on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(3) *Low-to-high.*—(i) *General.* The low-to-high method is the method by which fungible merchandise or articles are identified on the basis of the lowest drawback amount per unit of the merchandise or articles received into the inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then that with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. This method may be used without accounting for domestic withdrawals. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) *Use with inventory turn-over period.* The low-to-high method may be used with an established inventory turn-over period, provided that:

(A) Merchandise or articles identified for drawback purposes under this method are the merchandise or articles with the least amount of drawback attributable to them among the lots of merchandise or articles received into the inventory during the inventory turn-over period preceding the month in which the merchandise or articles identified were withdrawn; and

(B) The person establishes the average turnover period, as described in this paragraph. For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used. This method may be used without accounting for domestic withdrawals.

(iii) *Examples.* (A) If the inventory contained 100 units with no drawback attributable to them, 100 units with $1 drawback attributable per unit, 100 units with $2 drawback attributable per unit, and the inventory turn-over method is not to be used, withdrawals would be identified as follows: The first 100 units withdrawn would have no drawback attributable to them, the next 100 units withdrawn would have a drawback attribution of $1 per unit, and the third 100 units withdrawn would have a drawback attribution of $2 per unit. If 50 units were first withdrawn for non-drawback purposes and the next 250 units were withdrawn for drawback purposes, the 250-unit withdrawal would consist of 100 units with no drawback attributable, 100 units with $1 drawback attributable per unit, and 50 units with $2 drawback attributable per unit.

(B) If the average turn-over period for the merchandise or articles identified is 3 months, the inventory turn-over method is used, and the withdrawal is any date in September, the merchandise or articles with the lowest drawback attribution received into inventory in June, July, and August would be that identified.

(C) If the average turn-over period for the merchandise or articles identified is 3 months, the inventory turn-over method is used, the person using the identification method has more than one kind of merchandise or articles with different inventory turn-over periods the longest of which is 6 months, and the withdrawal is any date in September, the merchandise or articles with the lowest drawback attribution received into inventory in March, April, May, June, July, and August would be that identified.

(4) *Average.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation (by weighted averaging) of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. A person proposing to use this method should obtain a ruling from Customs (see 19 CFR part 177).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(ii)(B) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and

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other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

Subpart B—Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise. Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(r)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

§ 191.22 Substitution drawback.

(a) *General.* If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor.*—(1) *General rule.* Upon compliance with the requirements in this section, a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A "drawback successor" is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personality, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3) (i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *By-products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback shall be distributed to each product in accordance with its relative value (see §191.2(r)) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see §191.2(r) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping.* Records shall be maintained showing the relative value of each product at the time of separation.

§ 191.23 Methods of claiming drawback.

(a) *Used in.* Drawback may be paid based on the amount of the imported or

substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are byproducts also necessarily and concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Recordkeeping.*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used in manufacture or production, as well as the market value of the resulting waste (see § 191.2(r) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the "appearing in" basis may be used (see paragraph (b) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 191.24 Certificate of manufacture and delivery.

(a) *When required.* When the imported merchandise or drawback product undergoes some process of manufacture under a general manufacturing drawback ruling or a specific manufacturing drawback ruling, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer. To assign drawback rights, see §191.82 of this part.

(b) *Information required on certificate.* The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(2) Import entry numbers, HTSUS number to at least the 6th digit (such HTSUS number shall be from the entry summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts, if applicable;

(3) Date received at factory, if applicable;

(4) Date used in manufacture, if applicable;

(5) Value at factory, if applicable;

(6) Quantity of waste, if any, if applicable;

(7) Market value of any waste, if applicable;

(8) Total quantity and description of merchandise appearing in or used;

(9) Total quantity and description of articles produced;

(10) Date of manufacture or production of the articles; and

(11) The quantity of articles transferred.

(c) *Filing of certificate.* The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see §191.51 of this part).

(d) *Effect of certificate.* A certificate of manufacture and delivery is used to document the physical delivery of articles from the manufacturer or producer to another party. A certificate of manufacture and delivery issued with respect to articles identifies such articles as being those to which a potential right to drawback has attached. Unless it is explicitly provided on the certificate of manufacture and delivery that potential drawback rights are not transferred by such certificate (for example, in the case of a principal-agency relationship under this part (see §191.9)), a certificate of manufacture and delivery assigns such potential rights to the transferee (see §191.82 of this part).

§ 191.25 Recordkeeping for manufacturing drawback.

(a) *Direct identification manufacturing.*—(1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing in (see §191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the nondrawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in § 191.14 of this part.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) *Substitution manufacturing.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in paragraph (a)(1)(i)–(vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearance in) the exported articles; and

(3) That, within 3 years after receiving the designated merchandise at its plant,

the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used, as well as the quantity and market value of the waste incurred (see § 191.2(r) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles, reduced by the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured articles for exportation.* Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of manufacture and delivery as part of the claim (see § 191.51(a)(1) of this part).

(e) *Delivery of imported merchandise to manufacturer.* The claimant shall retain the certificate of delivery for any identified or designated import entry covering merchandise that was not imported by the manufacturer.

(f) *Multiple claimants.*—(1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, a chemical is exported in a container, where the chemical and the container have been produced by different manufacturers under drawback conditions).

(2) *Procedures.*—(i) *Submission of letter.* Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) *Use of export summary procedure.* If the parties elect to use the export summary procedure, each drawback claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. The claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(g) *Retention of records.* All records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant shall be retained for 3 years after the date of payment of the related claims.

§ 191.26 Time limitations.

(a) *Direct identification manufacturing.* Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution manufacturing.* Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgment or approval, as appropriate.

§ 191.27 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

Subpart C—Unused Merchandise Drawback

§ 191.31 Direct identification.

(a) *General.* Section 1313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) *Use.* In general, for purposes of this section, merchandise is "used" when it is employed to perform the function for which it was intended (for example, shoes worn as footwear have been "used"). The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise is not a use of that merchandise for purposes of this section.

§ 191.32 Substitution drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, within 3 years after the importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable merchandise is not used in the United

States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Requirements.* (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback; and

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section).

(c) *Determination of commercial interchangeability.* In determining commercial interchangeability, factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. This determination can be obtained in one of three ways:

(1) A formal ruling from the Entry and Carrier Rulings Branch, Office of Regulations and Rulings;

(2) A nonbinding predetermination request sent directly to the appropriate drawback office; or

(3) A submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

(d) *Time limitations.* For substitution unused merchandise drawback:

(1) The claimant must have had possession of the exported or destroyed merchandise at some time during the 3-year period following the date of importation of the imported designated merchandise; and

(2) The merchandise to be exported or destroyed to qualify for drawback must be exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported designated merchandise.

(e) *Use.* In general, for purposes of this section, merchandise is "used" when it is employed to perform the function for which it was intended (for example, shoes worn as footwear have been "used"). The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the commercially interchangeable substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor*—(1) *General rule.* Upon compliance with the requirements of this section, a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or commercially interchangeable merchandise which was transferred to the predecessor and for which the predecessor received, before the date of succession, a certificate of delivery from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor.* A "drawback successor" is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence.*-(i) *Records of predecessor.* The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or commercially interchangeable merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or commercially interchangeable merchandise as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3) (i) through (iii) of this section, must be retained by the appropriate party(ies) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

§ 191.33 Person entitled to claim drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), the exporter (or destroyer) shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The claimant shall file such certification as part of the drawback claim.

(b) *Substitution.* (1) Under 19 U.S.C. 1313(j)(2), the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party shall be entitled to claim drawback.

(ii) In situations where the exporter or destroyer receives from the person who imported and paid the duty on the imported merchandise a certificate of delivery documenting the transfer of imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise, and exports such transferred merchandise, that exporter shall be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under § 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) shall be documented by certificate(s) of delivery, and the exporter or destroyer shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer

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shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The claimant shall file such certification as part of the drawback claim.

§ 191.34 Certificate of delivery required.

(a) *Direct identification; purpose; when required.* If the exported or destroyed merchandise claimed for drawback under 19 U.S.C. 1313(j)(1) was not imported by the exporter or destroyer, the drawback claimant must have a properly executed certificate of delivery prepared by the importer and each intermediate party. Each such transfer of the merchandise must be documented by its own certificate of delivery.

(1) *Completion.* The certificate of delivery shall be completed as provided in § 191.10 of this part. Each party must also certify on the certificate of delivery that the party did not use the exported or destroyed merchandise (see § 191.31(c) of this part).

(2) *Retention.* The drawback claimant shall retain the certificate for submission to Customs as part of the claim, if requested (see § 191.51(a)(2) of this part).

(b) *Substitution.* For purposes of substitution unused merchandise drawback, 19 U.S.C. 1313(j)(2), if the importer transfers to another party imported, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, the importer shall prepare and issue in favor of such party a certificate of delivery covering the transferred merchandise. The certificate of delivery must expressly state that it is prepared pursuant to 19 U.S.C. 1313(j)(2). Merchandise so transferred for which drawback is allowed under 19 U.S.C. 1313(j)(2) may not be designated as imported merchandise for the purpose of manufacturing drawback. Certificates of delivery under this paragraph are subject to the provisions for completion and retention of certificates of delivery in paragraphs (a)(1) and (a)(2) of this section.

(c) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery need be prepared covering prior transfers of merchandise while in a bonded warehouse, because such transfers will be recorded in the warehouse entry (see § 144.22 of this chapter).

§ 191.35 Notice of intent to export; examination of merchandise.

(a) *Notice.* A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended examination a Notice of Intent to Export/Destroy on Customs Form xxx at least 2 working days prior to the date of intended exportation unless Customs approves another filing period or the claimant has been granted a waiver of prior notice (see § 191.91 of this part).

(b) *Required information.* The notice shall certify that the merchandise has not been used in the United States before exportation. In addition, the notice shall provide the bill of lading number, if known, the name and telephone number of a contact person, and the location of the merchandise should Customs decide to examine the merchandise.

(c) *Decision to examine or to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export/Destroy (see paragraph (a) of this section), Customs will notify the party designated on the Notice of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (d) of this section), but the merchandise is exported without having been presented to Customs for examination, any drawback claim, or part thereof, based on the Notice of Intent to Export/Destroy, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay.

(d) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine routinely (to the extent determined to be necessary) the items exported.

§ 191.36 Failure to file Notice of Intent to Export or Destroy merchandise.

(a) *General; application.* Merchandise which has been exported without complying with the requirements of § 191.35(a) or § 191.91 of this part may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application shall include the following:

(i) Required information.

(A) Name, address, and identification number of applicant;

(B) Name, address, and identification number of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application;

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) The port(s) of exportation;

(H) Estimated dollar value of potential drawback to be covered in this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) Written declarations regarding:

(A) The reason(s) that Customs was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)):

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and

(*3*) Inventory records prepared in the ordinary course of business tracing all

relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-time use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) *Customs action.* In order for Customs to evaluate the application under this section, Customs may request, and the applicant shall provide, any of the information listed in paragraph (a)(1)(iii)(A) (*1*) through (*3*) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A) (*1*) through (*3*) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) *Time for Customs action.* Customs will notify the applicant in writing within 90 days of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application.

(d) *Appeal of denial of application.* If Customs denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the denial date of the application. If Customs denies this initial appeal, the applicant may file a further written appeal with Customs Headquarters, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. Customs may extend the 30 day period for appeal to the drawback office or to Customs Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30 day period above.

(e) *Future intent to export unused merchandise.* If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see §191.91 of this part). If the applicant seeks waiver of prior notice under §191.91, any documentation submitted to Customs to comply with this section will be included in the request under §191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with §191.35.

§191.37 Records.

(a) *Maintained by claimant; by others.* All records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313 (j)(1) or (j)(2), as applicable, and this part, shall be retained for 3 years after payment of such claims.

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313 (j)(1) and (j)(2) shall be accounted for in a manner which will enable the claimant:

(1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;

(2) To determine, and Customs to verify, the applicable exportation; and

(3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

Subpart D—Rejected Merchandise

§191.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee.

§191.42 Procedure.

(a) *Return to Customs custody.* The claimant must return the merchandise to Customs custody within 3 years after the date the merchandise was originally released from Customs custody. Drawback will be denied on merchandise returned to Customs custody after the statutory 3-year time period or exported without return to Customs custody.

(b) *Required documentation.* The claimant shall submit documentation to the drawback office as part of the drawback claim to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation. If the claimant was not the importer, the claimant must:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended redelivery to Customs custody a Notice of Intent to Export/Destroy on Customs Form xxx at least 5 working days prior to the date of intended return to Customs custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (see §191.91 of this part) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice shall provide the bill of lading number, if known, the name and telephone number of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export/Destroy (see paragraph (c) of this section), Customs will notify the party designated on the Notice of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (f) of this section), but the merchandise is exported without having been presented to Customs for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export/Destroy, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the

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merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay and shall be deemed to have been returned to Customs custody.

(f) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs, and in such case the merchandise shall be deemed to have been returned to Customs custody. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(g) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (see §191.51(b) of this part). The procedures for restructuring a claim (see §191.53 of this part) shall apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* The claimant shall export the merchandise under Customs supervision and shall provide documentary evidence of exportation. The claimant may establish exportation by mail as set out in §191.74 of this part.

§191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in §191.71(a) of this part relating to destruction.

Subpart E—Completion of Drawback Claims

§191.51 Completion of drawback claims.

(a) *General.*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 331, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export or Destroy, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) *Certificates.* Additionally, the associated certificate(s) of delivery must be in the possession of the claimant at the time of the filing of the claim. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates of manufacture and delivery, if required, shall be referenced in the claim.

(b) *Drawback due.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990. Claims exceeding 99 percent will not be paid until the calculations have been corrected by the claimant.) Claims for less than 99 percent will be paid as filed, unless the claimant amends the claim in accordance with §191.52(c).

(c) *HTSUS number(s) or Schedule B commodity number(s) of imports and exports.* Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the Schedule B commodity number(s) for the exported article or articles. For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, otherwise. For exports, the HTSUS number(s) or Schedule B commodity number(s) shall be from the Shipper's Export Declaration(s) (SEDs), when required. If no SED is required (see, *e.g.*, 15 CFR 30.58), the claimant shall provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED. Manufacturing drawback claimants filing drawback claims based on certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) on such certificate(s). The HTSUS number will be stated to at least 6 digits.

(d) *Place of filing.* For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

§191.52 Completing, perfecting or amending claims.

(a) *Completing the claim.* (1) Upon review of a drawback claim, if the claim is determined to be incomplete (see §191.51(a)(1)), the claim will be rejected and Customs will notify the filer. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years (see paragraph (a)(2) of this section).

(2) A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the articles which are the subject of the claim. No extension will be granted unless the claimant establishes that the Customs Service was responsible for the untimely filing (see 19 U.S.C. 1313(r)(1)). The only exception is for landing certificates under §191.76 of this part.

(b) *Perfecting the claim; additional evidence required.* If Customs determines that the claim is complete according to the requirements of §191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) A copy of the export bill of lading which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading, showing that the party filing the entry

is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated; and

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed.

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in §191.84 of this part and part 174 of this chapter.

§191.53 Restructuring of claims.

(a) *General.* Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by Customs and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§191.61 Verification of drawback claims.

(a) *Authority*—(1) *Drawback office.* All claims shall be subject to verification by the port director where the claim is filed.

(2) *Two or more locations.* The port director selecting the claim for verification may forward copies of the claim and, as applicable, letters of notification and acknowledgement for the general manufacturing drawback ruling or application for, and letter of approval of, a specific manufacturing drawback ruling, and request for verification, to other drawback offices when deemed necessary.

(b) *Method.* The verifying office shall verify the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entries for those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate port director issues a report. In the event that a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or, in Customs discretion, all claims for that claimant.

§191.62 Falsification of drawback claims.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be subject to the criminal provisions of 18 U.S.C. 550, 1001 or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

Subpart G—Evidence of Exportation and Destruction

§ 191.71 Drawback on articles destroyed under Customs supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export/Destroy on Customs Form xxx shall be filed by the claimant with the Customs port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days, Customs shall advise the filer of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under Customs supervision. Unless Customs determines to witness the destruction, the destruction of the articles following timely notification on Customs Form xxx shall be deemed to have occurred under Customs supervision. If Customs attends the destruction, it must certify the Notice of Intent to Export/Destroy.

(b) *Evidence of destruction.* When Customs declines the opportunity to attend the destruction, the claimant must submit evidence that destruction took place in accordance with the approved Notice of Intent to Export/Destroy. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of "destruction" in § 191.2(g) (*i.e.*, that no articles of commercial value remained after destruction).

(c) *Completion of drawback entry.* After destruction, the claimant and, if applicable, the Customs official witnessing the destruction shall certify on an attachment to Customs Form 331 the time and place of destruction.

§ 191.72 Alternative procedures for establishing exportation.

Exportation of articles for drawback purposes shall be established by complying with one of the procedures provided for in this section (in addition to providing prior notice of intent to export (see §§ 191.35, 191.36, 191.42, and 191.91 of this part)). Supporting documentary evidence shall establish fully the time and fact of exportation

and the identity of the exporter. The alternative procedures for establishing exportation outlined by this section are:

(a) Actual evidence of exportation consisting of documentary evidence, such as the original bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or certified copies thereof, issued by the exporting carrier;

(b) Export summary (§ 191.73);

(c) Certified export invoice for mail shipments (§ 191.74);

(d) Notice of lading for supplies on certain vessels or aircraft (§ 191.112); or

(e) Notice of transfer for articles manufactured or produced in the U.S. which are transferred to a foreign trade zone (§ 191.183).

§ 191.73 Export summary procedure.

(a) *General.* The export summary procedure consists of a chronological summary of exports used to support a drawback claim. It may be submitted as part of the claim in lieu of actual documentary evidence of exportation. It may be used by any claimant for manufacturing drawback, and for unused or rejected merchandise drawback, as well as for drawback involving the substitution of finished petroleum derivatives (19 U.S.C. 1313 (a), (b), (c), (j), or (p)). It is intended to improve administrative efficiency.

(b) *Format of chronological export summary.* The chronological summary of the exports shall contain the data provided for in the following sample:

CHRONOLOGICAL SUMMARY OF EXPORTS

Drawback entry No. _____. _____
Claimant _____; Exporter _____ (if different from claimant)
Period from _____ to _____.

Date of export	Unique export identifier [1]	Description	Net quantity	Sched. B com. # or HTSUS #	Destination #
(1)	(2)	(3)	(4)	(5)	(6)

[1] This number is to be used to associate the export transaction presented on the Chronological Export Summary to the appropriate documentary evidence of exportation (for example, Bill of Lading, Manifest no., invoice, etc.).

(c) *Documentary evidence*—(1) *Records.* The claimant, whether or not the exporter, shall maintain the chronological summary of the exports and such additional evidence of exportation required by Customs to establish fully the identity of the exported articles and the fact of exportation. The bill of lading issued by the exporting carrier is the primary proof of export for drawback purposes.

(2) *Maintenance of records.* The claimant shall submit as part of the claim the chronological export summary (see § 191.51). The claimant shall retain records supporting the Chronological Export Summary for 3 years after payment of the related claim. Customs may at any time request to review the underlying documentation supporting the Chronological Export Summary.

§ 191.74 Certification of exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records which describe the mail shipment shall be sufficient to prove exportation. The postal record shall be identified on the drawback entry, and shall be retained by the claimant and submitted as part of the drawback claim (see § 191.10(e) of this part).

§ 191.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 191.73. No bond shall be required when the United States Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 191.82 of this part claims drawback, exportation shall be established under § 191.73.

§ 191.76 Landing certificate.

(a) *Requirement.* Prior to the liquidation of the drawback entry, Customs may require a landing certificate for every aircraft departing from the United States under its own power if drawback is claimed on the aircraft or a part thereof, except for the exportation of supplies under section 309 of the Act, as amended (19 U.S.C. 1309). The certificate shall show the exact time of landing in the foreign destination and describe the aircraft or parts subject to drawback in sufficient detail to enable Customs officers to identify them with the documentation of exportation.

(b) *Written notice of requirement and time for filing.* A landing certificate shall be filed within one year from the written Customs request, unless Customs Headquarters grants an extension.

(c) *Signature.* A landing certificate shall be signed by a revenue officer of the foreign country of the export's destination, unless the embassy of that country certifies in writing that there is no Customs administration in that country, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Inability to produce landing certificates.* A landing certificate shall be waived by the requiring Customs authority if the claimant demonstrates inability to obtain a certificate and offers other satisfactory evidence of export.

Subpart H—Liquidation and Protest of Drawback Entries

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the import entry becomes final; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.* (1) Drawback may be paid on estimated duties if the import entry has not been liquidated, or the liquidation has not become final (because of a protest being filed) (see also § 173.4(c) of this chapter), and the drawback claimant and any other party responsible for the payment of liquidated import duties each file a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law. The drawback claimant shall, to the best of its knowledge, identify each import entry that has been protested or that is the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)) and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties, shall not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall:

(i) Be liable for 1 percent of all increased duties found to be due on that

portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *Voluntary tenders.* Drawback may be paid on voluntary tenders of the unpaid amount of lawful ordinary Customs duties on an entry, or withdrawal from warehouse, for consumption provided that:

(i) The entry, or withdrawal from warehouse, for consumption for which the voluntary tender was made is specifically identified in the voluntary tender; and

(ii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Other payments of duty.* Drawback may be paid on any other payment of lawful ordinary Customs duties for an entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), provided that:

(i) The payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(3) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each file a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any right to payment or refund under other provisions of law.

(d) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the articles has been established, the drawback office shall determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information.

(f) *Distribution and value of multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative value at the time of separation.

(2) *Value.* The value to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value (see § 191.2(r) of this part), unless another value is approved by Customs.

(g) *Payment.* The drawback office shall authorize the amount of the refund due as drawback to the claimant.

§ 191.82 Person entitled to claim drawback.

Unless otherwise provided in this part (see §§ 191.42(b), 191.162, 191.175(a), 191.186), the exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1), see § 191.33(a)). Such certification shall also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party.

§ 191.83 Person entitled to receive payment.

Drawback is paid to the claimant (see § 191.82).

§ 191.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry shall be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Privileges

§ 191.91 Waiver of prior notice of intent to export.

(a) *General.* The requirement in § 191.35 of this part for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under section 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application with the drawback office where the claims will be filed. Such application shall include the following:

(i) Required information:

(A) Name, address, and identification number of applicant;

(B) Name, address, and identification number of current exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next 12-month period covered by this application;

(G) Port(s) of exportation to be used during the next 12-month period covered by this application;

(H) Estimated dollar value of potential drawback during the next 12-month period covered by this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)):

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with other applicable drawback

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requirements, upon Customs request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, Customs Form 7501), sample of export document (for example, bill of lading), and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A) (*1*) through (*3*) of this section, to be available to Customs upon request).

(c) *Action on application*—(1) *Customs review.* The drawback office shall review and verify the information submitted on and with the application. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application. In order for Customs to evaluate the application, Customs may request any of the information listed in paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to Customs for examination after Customs had timely notified the party filing a Notice of Intent to Export/Destroy of Customs intent to examine the merchandise (see §191.35 of this part).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export, under this section, shall operate prospectively, applying only to those export shipments occurring after the date of the waiver. It shall be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* A privilege holder's privilege may be stayed, for a specified reasonable period, should the agency desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. A stay of this privilege shall take effect on the date of the agency's letter notifying the privilege holder of the stay and shall remain in effect for the period specified in that letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege may resume.

(e) *Proposed revocation.* Customs may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). Customs shall give written notice of the proposed revocation of a waiver of prior notice of intent to export. The notice shall specify the reasons for Customs proposed action and provide information regarding the procedures for challenging Customs proposed revocation action as prescribed in paragraph (g) of this section.

(f) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by Customs Headquarters, will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant shall submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or privilege holder for such extension filed with the appropriate office within the 30-day period.

§191.92 Accelerated payment.

(a) *Scope.* Accelerated payment of drawback is available on claims covering exportations (or destructions, if applicable) under the manufacturing, rejected or unused merchandise drawback provisions, as well as claims for the substitution of finished petroleum derivatives (19 U.S.C. 1313 (a), (b), (c), (j), or (p)). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Identification number (including suffixes);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (see paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Type(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the

applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify Customs of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, shall provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application.* (1) *Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or any other drawback privilege was previously revoked or suspended.

(2) *Notification to applicant.* Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application.

(3) *Approval.* The approval of an application for accelerated payment, under this section, shall operate prospectively, applying to those claims filed after the date of approval. It shall be subject to a stay, as provided in paragraph (f) of this section.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Stay.* A privilege holder's privilege may be stayed, for a specified reasonable period, should the agency desire for any reason to examine compliance with the drawback law and regulations for purposes of verification. A stay of this privilege shall take effect on the date of the agency's letter notifying the privilege holder of the stay and shall remain in effect for the period specified in the agency's letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege may resume.

(g) *Proposed revocation.* Customs may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, Customs shall give written notice of the proposed revocation of the accelerated payment privilege. The notice shall specify the reasons for Customs proposed action and the procedures for challenging Customs proposed revocation action as prescribed in paragraph (i) of this section.

(h) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke the privilege of accelerated payment of drawback will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for accelerated payment of drawback is approved and the claimant desires accelerated payment of drawback in a drawback claim filed in a drawback office other than the approving drawback office, the claimant shall submit a copy of the approval letter with the first drawback claim filed in the drawback office other than the approving office.

(i) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or privilege holder for such extension filed with the appropriate office within the 30-day period.

(j) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was

requested (and in which the claimant has been approved for accelerated payment of drawback under this section) shall certify the drawback claim for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing, if the claim is filed manually. After liquidation, the drawback office shall certify payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not refunded within 30 days after the date of liquidation of the related drawback entry shall be considered delinquent (see §§ 24.3a and 113.65(b) of this chapter.)

§ 191.93 Combined applications.

An applicant for the privileges provided for in §§191.91 and 191.92 of this subpart may apply for only one privilege, both privileges separately, or both privileges in one application package. In the latter instance, the intent to apply for both privileges must be clearly stated. In all instances, all of the requirements for the privilege(s) applied for must be met (for example, in a combined application for both privileges, all of the information required for each privilege, all required sample documents for each privilege, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured from Domestic Tax-Paid Alcohol

§ 191.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (see subpart B of this part) shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under §191.8 of this part, shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer shall apply for a new specific manufacturing drawback ruling pursuant to § 191.8 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the appropriate drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from Customs Headquarters.

(e) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in 19 U.S.C. 1313(r)(1) shall be applicable to claims for drawback under this subpart.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol stated in the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under section 5131, 5132, 5133 and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133 and 5134).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Drawback office where the claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

§ 191.104 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the Customs drawback office where the

drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs drawback office where the drawback claim will be processed.

(c) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that drawback office. The drawback office shall note that the copy of the extract was prepared and transmitted.

§ 191.105 Liquidation.

The drawback office shall ascertain the final amount of drawback due by reference to the certificate of manufacture and delivery and the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 191.106 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.103 of this subpart shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.81(f) of this part.

Subpart K—Supplies for Certain Vessels and Aircraft

§ 191.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 191.112 Procedure.

(a) *General.* The provisions of this subpart shall override other conflicting provisions of this part.

(b) *Customs forms.* The drawback claimant shall file with the drawback office the drawback entry on Customs Form 331 annotated for 19 U.S.C. 1309, and attach thereto a notice of lading on Customs Form 7514, in quadruplicate, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the drawback notice of lading on Customs Form 7514 may be filed either before or after the lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(d) *Contents of notice.* The notice of lading shall show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Assignment of numbers and return of one copy.* The drawback office shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(f) *Declaration*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts shall complete the section of the notice entitled "Declaration of Master or Other Officer".

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the drawback office and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the drawback office both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(g) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(h) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the drawback office shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. The drawback office shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback claim.

(i) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the drawback office shall return to the exporter or the person designated by the exporter two copies of the notice, noting the absence of a requirement for clearance or permit to proceed, for subsequent filing with the drawback claim. The claimant shall file with the claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(j) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed shall require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(k) *Fuel laden on vessels or aircraft as supplies.*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading on the reverse side of Customs Form 7514, for each calendar month. The composite notice of lading shall

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describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions (see § 10.59 of this chapter).

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse side of Customs Form 7514 or on a continuation sheet:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(l) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of section 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured with Imported Salt

§ 191.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 191.122 Procedure.

(a) *General.* Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.123 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

§ 191.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 191.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) Foreign account and ownership. Foreign account and ownership, as used in section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 191.142 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 331, modified to show that the entry covers jet aircraft engines processed under section 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.144 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported from Continuous Customs Custody

§ 191.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise.*—(1) Under 19 U.S.C. 1557(a). Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313.* Imported merchandise that has not been regularly entered or withdrawn for consumption, shall not satisfy any requirement for use, importation, exportation or destruction, and shall not be available for drawback, under section 313 of the Act, as amended (19 U.S.C. 1313) (see 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.152 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in section 557(c) of the Act, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.153 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate Customs office shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when estimated duty has been deposited and the appropriate Customs office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores.*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate Customs office shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 191.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him in writing shall file with the drawback office a direct export drawback entry on Customs Form 331 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the drawback office an entry naming the transporting conveyance, route, and port of exit. The drawback office shall certify one copy and forward it to the Customs office at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry (Customs Form 331) shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office shall transmit the request and its accompanying evidence to the Office of Field Operations, Customs Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 191.157 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.76 of this part.

§ 191.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries shall be liquidated in accordance with the provisions of § 191.81 of this part.

§ 191.159 Amount of drawback.

Drawback due under this subpart shall not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

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§ 191.162 Procedure.

The export procedure shall be the same as that provided in § 191.42 except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.163 Documentation.

(a) *Entry.* Customs Form 331 shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the drawback office requires to establish that the merchandise is unmerchantable.

§ 191.164 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.165 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 331.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the drawback office where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

§ 191.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing entries under Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.168 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, prior to the expiration of the 90-day period, the drawback office grants an extension of not more than 90 days.

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 191.171 General; Drawback allowance.

(a) *General.* Section 313(p), of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback on the basis of qualified articles which consist of either imported duty-paid petroleum derivatives, or petroleum derivatives manufactured or produced in the United States and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313 (a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

§ 191.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article.* "Qualified article" means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of headings 3901 through 3914, the definition is limited as those headings apply to liquids, pastes, powders, granules and flakes.

(b) *Same kind and quality article.* "Same kind and quality article" means an article which is commercially interchangeable with, or which is referred to under the same 8-digit classification of the HTSUS as, the article to which it is compared. (For example, unleaded gasoline and jet fuel (naphtha or kerosene-type), both falling under the same HTSUS classification (2710.00.15) would be considered same kind and quality articles because they fall under the same 8 digit HTSUS classification, even though they are not "commercially interchangeable".)

(c) *Exported article.* "Exported article" means an article which has been exported and is the qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 191.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313 (a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a "qualified article" as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an "exported article" as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article which serves as the basis for drawback.

§ 191.174 Derivatives manufactured under 19 U.S.C. 1313 (a) or (b).

When the basis for drawback under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313 (a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313 (a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a "qualified article" as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an "exported article" as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313 (a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (see § 191.8 of this part) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) which serves as the basis for drawback.

§ 191.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of that article. Any of these persons may designate another person to file the drawback claim.

(b) *Certificate of manufacture and delivery or delivery.* A drawback claimant under 19 U.S.C. 1313(p) must provide a certificate of manufacture and delivery or a certificate of delivery, as applicable, establishing the drawback eligibility of the articles for which drawback is claimed.

(c) *Maintenance of records.* The manufacturer, producer, importer, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims shall be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 191.53 of this part) shall apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives (no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313 (a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on Customs Form 331 and the letter "P" is marked thereon; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

(d) *Derivatives manufactured under 19 U.S.C. 1313 (a) or (b).* When the basis for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313 (a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on Customs Form 331 and the letter "P" is marked in block 15 thereof;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313 (a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The 8-digit HTSUS tariff classification of the qualified article and the exported article is the same;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.181 Drawback allowance.

The fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), provided there is compliance with the regulations of this subpart.

§ 191.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.181 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

§ 191.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer—(1) Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the drawback office where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of drawback office on the notice of transfer.* The drawback office shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback claim.

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 331 to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I, _____ (member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated _____

_____

Transferor or agent.

§ 191.184 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part shall be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 331 in duplicate. The drawback office shall forward one copy of Customs Form 331 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator shall certify on the copy of Customs Form 331 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 331 to the drawback office in place of the bill of lading required by § 191.156.

(d) *Modification of drawback entry—*
(1) *Indication of transfer.* Customs Form 331 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 331 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in the entry was received from _____ on _____, 19 _____ ; in Foreign Trade Zone No. _____, (City and State) Exceptions: _____.

_____ (Name and title)

By _____ (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 331 as follows:

TRANSFEROR'S DECLARATION

I, _____, of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No._____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated _____

(Transferor)

§ 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office an entry on Customs Form 331 in duplicate. The drawback office shall forward one copy of Customs Form 331 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 331 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the declarations provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 331 to the drawback office in place of the bill of lading required by §191.156.

(d) *Modification of drawback entry.—*
(1) *Indication of transfer.* Customs Form 331 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 331 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in this entry was received from _____ on _____, 19 _____, in Foreign Trade Zone No. _____, _____ (City and State). Exceptions: _____.

_____ (Name of operator)

By _____ (Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 331 as follows:

TRANSFEROR'S DECLARATION

I, _____, of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated _____

Transferor

§ 191.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 191.191 Purpose.

This subpart sets forth the requirements for the Customs drawback compliance program in which claimants and other parties in interest, including Customs brokers, may participate after being certified by Customs. Participation in the program is voluntary. Under the program, Customs is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 191.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and Customs. Certification requirements shall take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must be able to demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by Customs regarding original records, or if approved by Customs, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying Customs of variances in, or violations of, the drawback compliance or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

(c) *Broker certification.* A Customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (see §191.194(b)). To do so, a Customs broker who is employed to assist a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker shall ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 191.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as Customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section shall be submitted to any drawback office. However, in the event the applicant is a claimant for drawback, the application shall be submitted to the drawback office where the claims will be filed.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program shall file with the applicable drawback office a written application in letter format, signed by an individual authorized to sign drawback documents (see §191.6 of this part). The detail required in the application shall take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application shall contain at least the following information:

(1) Name of applicant, address, IRS identification number, and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. (For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.)

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling

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(see §§191.7 and 191.8 of this part), as appropriate, if such letter of notification has not yet been acknowledged or application has not yet been approved;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying Customs of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by Customs of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

§ 191.194 Action on application to participate in compliance program.

(a) *Review by applicable drawback office.*—(1) *General.* It is the responsibility of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with Customs Headquarters and with the other field drawback offices as appropriate. Customs processing of the package will consist of the review of the information contained therein as well as any additional information requested (see paragraph (a)(2) of this section).

(2) *Criteria for Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in §191.193 (c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs shall include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or any other drawback privilege was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The applicable drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A Customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.*—(1) *Alternative to penalties; written notice.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (see §191.62(b) of this part), Customs shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under section 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a Customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to Customs, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied to an applicant, the applicant shall be given written notice by the applicable drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the appropriate drawback office and then appealed to Customs Headquarters.

(e) *Proposed revocation.* If the participant commits repeated violations of its drawback compliance program or negotiated alternative program, the applicable drawback office, by written notice, may propose to revoke certification from the participant, until corrective action, satisfactory to Customs, is taken to prevent such violations. The written notice will describe the cause for the proposed revocation and the corrective actions required for re-certification.

(f) *Appeal of denial or challenge to proposed revocation.* A party may appeal a denial or challenge a proposed revocation of certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of the date of such denial or proposed revocation, with the applicable drawback office. A denial of an appeal or challenge to a proposed revocation may itself be appealed to Customs Headquarters within 30 days of receipt of the applicable drawback office's decision. The 30-day period for appeal or challenge with the applicable drawback office and/or with Customs Headquarters may be extended for good cause, upon written request by the applicant for such extension filed with the applicable drawback office or with Customs Headquarters, as the case may be, within the 30-day period.

§ 191.195 Combined application for certification in drawback compliance program and drawback privileges.

An applicant for certification in the drawback compliance program may also, in the same application, apply for the drawback privileges provided for in subpart I of this part (waiver of prior notice of intent to export and accelerated payment of drawback). Alternatively, an applicant may separately apply for certification in the drawback compliance and one or both privilege(s). In the former instance, the intent to apply for certification and one or both privileges must be clearly stated. In all instances, all of the requirements for certification and the privilege(s) applied for must be met (for example, in a combined application for certification in the drawback compliance program and both privileges, all of the information required for certification and each privilege, all required sample documents for certification and each privilege, and all required certifications must be included in and with the application).

UMI

Appendix A to Part 191—General Manufacturing Drawback Rulings

I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person who can comply with the conditions of any one of these rulings may notify a Customs drawback office in writing of its intention to operate under the ruling. Such a letter of notification shall include the following information:

1. Name and address of operator;

2. Factories which will operate under the general ruling;

3. If a business entity, the names of officers or other persons legally authorized to bind the corporation who will sign drawback documents on behalf of operator;

4. Description of the merchandise and articles, unless specifically described in the general ruling;

5. For the general ruling for manufacturing drawback under section 1313(a) and the general ruling for manufacturing drawback (agents under section 1313(b)), if the drawback office has doubts as to whether the conversion of the imported merchandise into the exported articles is a manufacturing or production operation, the operator will be asked to give details of the operation.

B. These general manufacturing drawback rulings supersede general "contracts" previously published under the following Treasury Decisions (T.D.'s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–59, 83–73, 83–123, 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous "contract".

II. General Drawback Manufacturing Ruling Under 19 U.S.C. 1313(a)

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

D. By-Products

1. Relative values. Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If by-products are produced records will be maintained of the market value of each product or by-product at the time it is first separated in the manufacturing process.

2. Appearing-in method. The appearing in basis may not be used if by-products are produced unless all products are valued identically.

E. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that is of the same kind and quality as the imported merchandise, meeting specifications set forth in the application by the operator for a determination of same kind and quality (see §191.11(c)), shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings (see 19 CFR 191.11).

G. Stock in Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

H. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [2] used in producing the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(a), part 191 of the Customs Regulations and this general ruling.

III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Agents

Operators under this general ruling must comply with T.D.s 55027(2) and 55207(1), 19 U.S.C. 1313(b), and 19 CFR part 191 (see particularly, §191.9).

A. Name and Address of Principal

B. Imported Merchandise or Drawback Products, or Other (Substituted) Merchandise, Used in Manufacture or Production

C. Articles Manufactured or Produced From the Imported Merchandise or Drawback Products or Other (Substituted) Merchandise Used in Manufacture or Production.

D. Process of Manufacture or Production.

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the merchandise received from the principal;

2. The date such merchandise was received from the principal;

3. The date the merchandise received from the principal was used in manufacture or production, and the identity and

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles."

specifications of the articles produced thereby; and

4. The date the articles produced were returned to the principal.

F. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the number or locations of the operator's offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products [1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Component parts identified by individual part numbers.	Component parts identified with the same individual part numbers as those in the column immediately to the left hereof.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for Customs officers. The imported merchandise designated on drawback claims will be so similar to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. By-Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

[2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

[3] The date of production is the date an article is completed.]

V. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Orange Juice

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which Will be Used in the Production of Exported Products.
Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

The imported merchandise designated on drawback claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).
2. Frozen concentrated orange juice.
3. Bulk concentrated orange juice.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. By-Products, Waste, Loss or Gain

Not applicable

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

G. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the designated merchandise to produce articles. During the same 3-year period, the operator produced [3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

[2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

[3] The date of production is the date an article is completed.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as cutback, it will not be included in the pound solids when computing the drawback due.

J. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Piece Goods

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products [1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Piece goods.	Piece goods.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The piece goods used in manufacture will be the same kind and quality as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products, by-products, or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods of the same kind and quality as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more

than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.*, print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, *etc.* The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. The substituted piece goods used in the manufacture of articles for exportation with drawback will be so similar in quality to the imported piece goods designated for the basis of allowance of drawback, that the piece goods used, if imported, would have been subject to the same or greater amount of duty as was paid on the imported designated piece goods. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.s. 55027(2) and 55207(1).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. By-Products

Not applicable.

F. Waste

Rag waste may be incurred. The operator's records shall show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it shall be assumed in liquidation that such rag waste constituted 2% of the piece goods put into the finishing processes.

G. Shrinkage, Gain, and Spoilage

The operator's records shall show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Steel

A. Same kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Steel of one general class, *e.g.*, an ingot, falling within one SAE, AISI, or ASTM[2] specification, and if the specification contains one or more grades falling within one grade of the specification.	Steel of the same general class, specification and grade as the steel in the column immediately to the left hereof.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

1. The duty-free or domestic steel used instead of the duty-paid steel will be interchangeable for manufacturing purposes with the duty-paid steel. To be

[2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

[3] The date of production is the date an article is completed.

interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (*e.g.*, chrome content). If such variances occur, designation will be by "price extra", and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 5, *infra*, insofar as the coating or plating is concerned.

3. The duty-paid steel will be so similar in quality to the steel used to manufacture the articles on which drawback will be claimed that the steel so used, if imported, would be classifiable in the same tariff subheading number and at the same rate of duty as the duty-paid imported steel.

4. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

5. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-free or domestic steel used in place of the duty-paid steel will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within a SAE, AISI, ASTM specification, any duty-free or domestic coated or plated steel covered by the same specification and grade (if two or more grades are in the specification) is considered to meet this criterion for same kind and quality.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. By-Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The operator will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [3] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced [4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

[3] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

[4] The date of production is the date an article is completed.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products [1] to be Designated as the Basis for Drawback on the Exported Products	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees	1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be so similar in quality to the sugar used in manufacture of the products exported with drawback that the sugar used in manufacture would, if imported, be subject to the same amount of duty paid on a like quantity of designated sugar. Differences in value resulting from factors other than quality,

such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances,
3. Boiling with other substances,
4. Baking with other substances,
5. Additional similar processes

E. By-Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The operator will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles.
3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

IX. General Drawback Ruling under 19 U.S.C. 1313(b) for Raw Sugar.

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance shall not exceed 99 percent of the duty paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All "blackstrap," "unfiltered sirup," and "final molasses" shall be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by such abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records shall show the date of melting, the number of pounds of each lot of

[2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

[3] The date of production is the date an article is completed.

raw sugar melted, and the full analysis at melting.

J. There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking shall be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract shall be in the form described in Treasury Decision 83–59.

O. The refiner shall file with each abstract a statement, in the form described in Treasury Decision 83–59.

P. At the end of each calendar month the refiner shall furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling shall be in accordance with the example set forth in Treasury Decision 83–59.

R. Certificates of delivery under this general ruling shall be in the form described in Treasury Decision 83–59.

S. Drawback claims under this general ruling shall be in the form described in Treasury Decision 83–59.

T. General Statement. The refiner manufactures for its own account. The refiner may produce articles for the account of another or another manufacturer may produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the "appearing in" method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. Tradeoff. The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality requirements provided for in this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

X. Procedures And Records Maintained. Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [2] used to produce the exported articles; and

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to produce articles. During the same 3-year period, the refiner produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The refiner's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

These sample formats for applications for specific manufacturing drawback rulings are not rulings until reviewed and approved by Customs Headquarters. A specific manufacturing drawback ruling consists of the application plus the letter of acceptance, as provided in 19 CFR 191.8. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

Format for Sample 1313 (a) and (b) Application Company Letterhead (Optional)

U.S. Customs Service, Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.*, Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§ 1313 (a) and (b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

Location of Factory

(Give the address of the factory(s) where the process of manufacture or production

[2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

[3] The date of production is the date an article is completed.

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will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will Be Filed

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the designated merchandise? (If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles? (If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and appendix A) or an application for a specific manufacturing drawback ruling (see § 191.8 and this appendix B).)

3. Will the applicant be the exporter? (If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)) (Since the permission to grant use of the accelerated payment procedure rests with the Customs office with which claims will be filed, do not include any reference to that procedure in this application.)

Procedures Under Section 1313(b)

Parallel Columns—"Same Kind and Quality"

Imported merchandise or drawback products[2] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise of the same kind and quality as that designated which will be used in the production of the exported products.
1.	1.
2.	2.
3.	3.

[2] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.*, ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; *etc.* Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.* CAS number; Color Index Number, *etc.*)

(In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the "same kind and quality" merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

Exported Articles on Which Drawback Will Be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

Process of Manufacture or Production

(Drawback under section 1313(b) is not allowable except where a manufacture or production exists. A manufacture or production exists when a "new and different article emerges having a distinctive name, character, or use", or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also *Anheuser-Busch Brewing Assoc.* v. *United States*, 207 U.S. 556 (1907); *United States* v. *International Paint Co.*, 35 CCPA 87 (1948), *et al.*). In order to obtain drawback under section 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a "new and different article" has been formed. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of

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merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

By-Products

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of by-products, but is not allowable on exports of valuable waste. In making this distinction between by-product or valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The BY-PRODUCT section consists of two sub-sections: Relative Values and Producibility. If no by-products result from your operation state "Not Applicable" for the entire section. If by-products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your by-product operation state "Not Applicable" for this sub-section.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

Stock in Process

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of imported material used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore the amount of imported merchandise used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

Tradeoff

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [3] we used to produce the exported articles.

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced [4] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

1Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS

[3] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce.");

[4] (The date of production is the date an article is completed.)

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Failure to describe how the specific records will show receipt, use and export may be a ground to deny use of the accelerated payment procedure until completion of a satisfactory audit. Drawback is not payable without proof of compliance.)

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used Less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. "Appearing In" may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In" basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

Procedures Under Section 1313(a) Imported Merchandise or Drawback Products Used Under 1313(a)

(List the imported merchandise or drawback products)

Exported Articles on Which Drawback Will be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under section 1313(a) is not also used under section 1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under section 1313(a). However, if the merchandise used under section 1313(a) is also used under section 1313(b) these sections need not be repeated unless they differ in some way from the section 1313(b) descriptions.)

Procedures and Records Maintained

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[5] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

Inventory Procedures

(This section must be completed separately from that set forth under the section 1313(b) portion of your application. The legal requirements under section 1313(a) differ from those under section 1313(b).)

(Describe your inventory procedures and state how you will identify the imported merchandise from the time it is received at your factory until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

Basis of Claim for Drawback

(See section with this title for procedures under section 1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under section 1313(a).)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(a) & (b), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on

_____
(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[6] _____
(Signature and Title)

_____
(Print Name)

Format for 1313(b) Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

Location of Factory

(Give the address of the factory(ies) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2), 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS[2] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS.	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.

[5] If claims are to be made on an "Appearing In" basis, the remainder of the sentence should read "appearing in the exported articles we produce."

[6] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")—Continued

1.	1.
2.	2.
3.	3.

[2] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.*, ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; *etc.* Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.* CAS number; Color Index Number, *etc.*)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the "same kind and quality" merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

Exported Articles on Which Drawback Will be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

Process of Manufacture or Production

(Drawback under section 1313(b) is not allowable except where a manufacture or production exists. A manufacture or production exists when a "new and different article emerges having a distinctive name, character, or use", or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also *Anheuser-Busch Brewing Assoc.* v. *United States*, 207 U.S. 556 (1907); *United States* v. *International Paint Co.*, 35 CCPA 87 (1948), *et al.*). In order to obtain drawback under section 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a "new and different article" has been formed. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

By-Products

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of by-products, but is not allowable on exports of valuable waste. In making this distinction between by-product or valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The BY-PRODUCT section consists of two sub-sections: Relative Values and Producibility. If no by-products result from your operation state "Not Applicable" for the entire section. If by-products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your by-product operation state "Not Applicable" for this sub-section.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as

wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

Stock in Process

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of imported material used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore the amount of imported merchandise used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

Tradeoff

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provisions has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise [3] we used to produce the exported articles.

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced [4] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED.To insure compliance the following areas should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS
RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

[3] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce."

[4] The date of production is the date an article is completed.

(Proof of time frames may be specific or inclusive, *e.g.*, within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Failure to describe how the specific records will show receipt, use and export may be a ground to deny use of the accelerated payment procedure until completion of a satisfactory audit. Drawback is not payable without proof of compliance.)

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of material

designated, which may not exceed the quantity of eligible material that appears in the exported articles. "Appearing In" may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In" basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2.Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on

_____
(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [5] _____
(Signature and Title)

(Print Name)

Format for 1313(b) Petroleum Drawback Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We (Applicant's Name), a (State, *e.g.* Delaware) corporation (or other described entity), submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a).)

Location of Refinery

(Give the address of the refinery(s) where the process of manufacture or production will take place. If the refinery is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be

[5] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will Be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS[2] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.

[2] (Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

We will substitute crude petroleum for crude petroleum and a petroleum derivative for the same petroleum derivative on a class-for-class basis only.

Class Designations:
Class I—API Gravity 0–11.9
Class II—API Gravity 12.0–24.9
Class III—API Gravity 25.0–44.9
Class IV—API Gravity 45–up

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

Exported Articles on Which Drawback Will Be Claimed

(Name each article to be exported. When the identity of the product is not clearly evident by its name, state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

By-Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, we agree to record the relative values at the time of separation. The entire period covered by an abstract is to be treated as the time of separation. The value per unit of each product shall be the average market value for the abstract period.

2. Producibility

We can vary the proportionate quantity of each product. We understand that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. Our records will show that all of the products exported for which drawback will be claimed under this specific manufacturing drawback ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

We agree to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[3]

There are no valuable wastes as a result of the processing. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

Loss or Gain

Because we keep records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

Tradeoff

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated

[3] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to the Customs Service in order for those proposed standards to be verified in accordance with T.D. 84–49.

merchandise we used to produce the exported articles.

3. That, within 3 years after receiving it at our refinery, we used the designated merchandise to produce articles. During the same 3-year period, we produced the exported articles.

4(a). We agree to use a 28–31 day period (monthly) abstract period for each refinery covered by this application for a specific manufacturing drawback ruling.

(b). We propose to use an abstract period _____ (not to exceed 1 year) for each refinery covered by this application for a specific manufacturing drawback ruling. We certify that if we were to file abstracts covering each manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed, for the same class of designated merchandise, the material introduced into the manufacturing process during that monthly period. (Select (a) or (b))

5. On each abstract of production we agree to show the value per barrel to five decimal places.

6. We agree to file claims in the format set forth in exhibits A through F which are attached to this application for a specific manufacturing drawback ruling. We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights shall be deemed waived. The procedure we shall follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights shall be filed only at the port where the Exhibit E reserving such right was filed.

Inventory Procedures

We realize that inventory control is of major importance. In accordance with our normal accounting procedures, each refinery prepares a monthly stock and yield report, which accounts for inventories, production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to our drawback claims and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

Basis of Claim for Drawback

The amount of raw material on which drawback may be based shall be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of any one type and class of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry shall not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material of the same type and class which would be required to produce the exported products in the quantities exported.

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on

_____
(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[4] _____
(Signature and Title)

_____
(Print Name)

(Exhibits A–F of the Petroleum Drawback Proposal follow)

EXHIBIT A.—ABSTRACT OF MANUFACTURING RECORDS, ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Material Used (in Bbls. at 60°)]

	Totals	Crudes				Derivatives	
		Class I	Class II	Class III	Class IV	Crude tops class IV	Unfinished naphtha class IV
(1) Opening Inventory	4,007,438						
(2) Material Introduced*	7,450,732	0	619,473	6,367,991	0	101,224	362,044
(3) Closing Inventory	3,671,005						

[4] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

EXHIBIT A.—ABSTRACT OF MANUFACTURING RECORDS, ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995—Continued

[Material Used (in Bbls. at 60°)]

	Totals	Crudes				Derivatives	
		Class I	Class II	Class III	Class IV	Crude tops class IV	Unfinished naphtha class IV
(4) Total Consumption	7,787,165						

Line (1)—Stock in process at beginning of manufacturing period.
Line (2)—Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84–49.
Line (3)—Stock in process at end of period.
Line (4)—Total Consumed, namely, line 1 plus line 2 less line 3.
* All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B.—ABSTRACT OF PRODUCTION ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Product	Quantity in bbls.	Value per bbl.	Value of product	Drawback factor per bbl.
(5)	(6)	(7)	(8)	(9)
1. Motor Gasoline	2,699,934	$ 6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	.68712
5. Kerosene and Range Oil	321,263	4.69857	1,509,477	.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	.77398
7. Residual Oils	308,002	2.51322	774,077	.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	.21583
11. Asphalt	75,231	3.59105	270,158	.62358
12. Road Oil	0	0	0	0
13. Still Gas	245,784	1.00530	247,087	.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	.38726
15. Petrochemical Synthetic Rubber	0	0	0	0
16. Petrochemical Plastics & Resins	0	0	0	0
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
Total	7,787,165		44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.
Col. (7) Weighted average realization for the period covered.
Col. (8) Column 6 multiplied by column 7.
Col. (9) Quantity of raw materials allowable per barrel of product. (Formula for obtaining drawback factors: $44,844,327÷7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C.—INVENTORY CONTROL SHEET ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals all other	
	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11–A) Receipts.								
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries							696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (see column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D

Aviation Gasoline	
Residual Oils	
Lubricating Oils	
Petrochemicals all other	
Other	
Total	

Duty paid on
Amount
Less 19
Amount

Col. (16) L
Col. (17) C
Col. (18) C
Col. (19) T
Col. (20) P
Col. (20a)

EXHIBIT E

Aviation Gas
Residual Oil
Lubricating
Petrochemic
Petrochemic
Petrochemic

Total

A—Crude
B—Total
C—Large
D—The e
most efficie
exported (or
E—Minim
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EXHIBIT D.—RECAPITULATION OF DRAWBACK ENTRY ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Product	Quantity in bbls. exported	Quantity in bbls. in the terms of the Abstract	Drawback factor per bbl.	Crude allowed for drawback in bbls.	Crude to be allowed for drawback deliveries in bbls.
(16)	(17)	(18)	(19)	(20)	(20a)
Aviation Gasoline	11,410	11,218	1.00126	11,232	
		176	1.01300	178	
Residual Oils	125,618	21,221	.45962	9,754	
		104,397	.43642	45,561	
Lubricating Oils	8,875	8,774	4.52178	39,674	
Petrochemicals—		696	1.00244		698
Other		319	1.07895		344
	195	195	1.00244	195	
Total	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation—$.1050 per bbl. (class III crude):	
Amount of drawback claim—gross—106,594 × .1050 =	$11,192
Less 1%	−112
Amount of drawback claim—net	11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col. (20) Raw materials (crude or derivatives) allowable, determined by multiplying column 18 by column 19.
Col. (20a) Raw materials (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E.—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (percent)	Quantity of raw material of type and class designated needed to produce product
(21)	(22)	(23)	(24)
Aviation Gasoline	11,394	40	28,485
Residual Oils	125,618	83	151,347
Lubricating Oils	8,774	50	17,548
Petrochemicals, other	(195)	.....	.....
Petrochemicals, other (Drawback Deliveries)	(1,015)	.....	.....
Petrochemicals—Total	1,210	29	4,172
Total	146,996	.....	.....

A—Crude allowed (column 20: 106,594 plus column 20a: 1,042; 107,636 bbls.
B—Total quantity exported (including drawback deliveries) (column 22): 146,996; 107,636 bbls.
C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 151,347; 107,636 bbls.
D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.
E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347, None.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E–1.—PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED ABC OIL CO., INC.—TULSA, OKLAHOMA REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (percent)	Quantity of raw material of type and class designated needed to produce product		Covered by: 1. period 2. refinery	Drawback factor per barrel	Crude allowed for drawback
			Separate	Combined			
(21)	(22)	(23)	(24)			(19)	(20)
Aviation Gasoline	11,394	40	28,485	29,125		1.00126	11, 232
						1.01300	178
Residual Oils	125,618	83	151,347	151,347	1. Jan. 1995	.45962	9,754
						.43642	45,561
Lubricating Oils	8,774	50	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, Other	(195)					1.00244	195
Petrochemicals, Other (Drawback Deliveries)	(1,015)						
	1,210	29	4,172	4,503			
[Residual Rights]:							
Aviation Gasoline	256	40	640	29,125		1.01265259	259
Lubricating Oils	192	50	384	17,932	1. Jan. 1995	4.59006881	881
Petrochemicals, Other	96	29	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3807	89	4,278	4,278		.76624	2,917
Subtotal							4,165
Total	151,347						110,759

A—Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042); 111,801 bbls.
B—Total quantity exported (including drawback deliveries) (column 22): 151,347 bbls.
C—Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347.
D—The excess of raw material over the largest of line A, B, or C, require to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, th exported articles (including drawback deliveries) in the quantities exported (or delivered): None.
E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347.

Drawback Computation

4,165*bbls. @10½ = $437.33
Less 1% 4.37
Amount of Drawback Claim—Net $432.96
See subtotal, col. 20, for Residual Rights above.

Certificate

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

The attached sample, EXHIBIT E (COMBINATION), illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on EXHIBIT D will be as follows:

Duty paid on raw material selected for designation:
$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claim—gross: 81,638 × .1050=	$8,571.99
24,956 × .0525=	1,310.19
	9,882.18
(Rounded Off)	9,882
Less 1%	−99
Amount of drawback claim—net:	9,783

EXHIBIT E (COMBINATION).—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (percent)	Quantity of raw material of type and class designated needed to produce product	Drawback factor per barrel	Crude allowed for drawback
(21)	(22)	(23)	(24)	(19)	(20)
Aviation Gasoline	11,218	40	28,485	1.00126	11,232
	176			1.01300	178
Residual Oils	21,221	83	25,567	.45962	9,754
	47,214	83	56,884	.43642	20,605
Lubricating Oils	8,774	50	17,548	4.52178	39,674
Petrochemicals, Other	195			1.00244	195
Petrochemicals, Other	696			1.00244	
(Drawback Deliveries)	319			1.07895	
	1,210	29	4,172		
Total	89,813				81,638

A—Crude allowed (column 20: 81,638; plus crude allowed for drawback deliveries: 1,042): 82,680 bbls.
B—Total quantity exported (including drawback deliveries) (column 22): 89,813 bbls.
C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 82,451 bbls.
D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): 10,187.
E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 100,000 bbls.
I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 100,000 barrel of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT F.—DESIGNATIONS FOR DRAWBACK CLAIM ABC OIL CO., INC.—BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Certificate of delivery number	Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
	26192	04/13/93	Class III Crude	75,125	04/13/93	May 1993	$.1050
	23990	08/04/94	Class III Crude	37,240	08/04/94	Oct. 1994	.1050
3155	22517	10/05/94	Class III Crude	38,982	10/05/94	Nov. 1994	.1050

Format for 1313(d) Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.*, Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

Location of Factory

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will Be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The exact material placed under this heading in individual cases will vary, but it

should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for his own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of his products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(Regarding drawback operations conducted under section 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

Tax-Paid Material Used Under Section 1313(d)

(Describe or list the tax-paid material)

Exported Articles on Which Drawback Will Be Claimed

(Name each article to be exported)

Process of Manufacture or Production

(Drawback under section 1313(d) is not allowable except where a manufacture or production exists. A manufacture or production exists when a "new and different article emerges having a distinctive name, character, or use", or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also (*Anheuser-Busch Brewing Assoc.* v. *United States*, 207 U.S. 556 (1907); *United States* v. *International Paint Co.*, 35 CCPA 87 (1948), *et al.*). In order to obtain drawback under section 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

Stock in Process

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of domestic tax-paid alcohol used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore, the amount of domestic tax-paid alcohol used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

Procedures and Records Maintained

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[2] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
MANUFACTURING RECORDS
FINISHED STOCK STORAGE RECORDS

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).) (For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

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[2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce."

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste will replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons "Used In" or the 90 gallons "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In" basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(d), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____ , makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [3]_____ _____

(Signature and Title)

_____

(Print Name)

[3] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

Format for 1313(g) Application Company Letterhead (Optional)

U.S. Customs Service,
Entry and Carrier Rulings Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229

Dear Sir: We, (Applicant's Name), a (State, *e.g.*, Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

Name and Address and IRS Number of Applicant

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

Location of Factory or Shipyard

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

Corporate Officers

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

Customs Office Where Drawback Claims Will be Filed

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;
New York, NY;
Miami, FL;
New Orleans, LA;
Houston, TX;
Long Beach, CA;
Chicago, IL;
San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback

office, two additional copies of the application must be furnished for each additional office indicated.)

General Statement

(The following questions must be answered:

1. Who will be the importer of the merchandise?

(If the applicant will not always be the importer, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

3. Will the applicant be the drawback claimant?

(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?)

(There shall be included under this heading the following statement:

We are particularly aware of the terms of § 191.76(a)(1) of and subpart M of part 191 of the Customs Regulations, and shall comply with these sections where appropriate.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

Imported Merchandise or Drawback Products Used

(Describe the imported merchandise or drawback products)

Articles Constructed and Equipped for Export

(Name the vessel or vessels to be made with imported merchandise or drawback products)

Process of Construction and Equipment

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported or drawback merchandise and of the articles resulting from the processing.)

Waste

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

Loss or Gain (Separate and Distinct From WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

Procedures and Records Maintained

We will maintain records to establish:

1. That an exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise [2] we used in producing the exported article.

([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce.")

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
CONSTRUCTION AND EQUIPMENT RECORDS
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

Basis of Claim for Drawback

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of imported material which appears in the exported articles. "Appearing In" may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported

product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In" basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

Agreements

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(g), part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19 _____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [3] _____

(Signature and Title)

_____

(Print Name)

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: December 10, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–1048 Filed 1–17–97; 8:45 am]

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[3] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.

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Part III

Securities and Exchange Commission

17 CFR Parts 228, 229, 230, and 239
Plain English Disclosure; Proposed Rules

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 239

[Release Nos. 33–7380; 34–38164; IC–22464; File No. S7–3–97; International Series No. 1044]

RIN 3235–AG88

Plain English Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: One of the fundamental protections provided to investors by our federal securities laws is full and fair disclosure, but investors must be able to understand these disclosures to benefit from them. Prospectuses often use a complex, legalistic language that is foreign to all but financial or legal experts. To address these problems, our rule proposals would: Require companies to use plain English principles in writing the front and back cover pages, summary and risk factor sections of prospectuses; revise current requirements for highly technical information in the front of prospectuses; and revise the rule on the preparation of prospectuses to provide companies with more specific guidance on the clarity required in the entire document.

DATES: Public comments are due March 24, 1997.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6009. Comments can be sent electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7–3–97; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters in the SEC's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Ann D. Wallace, Senior Counsel to the Director, Division of Corporation Finance, at (202) 942–2980, or Kathleen K. Clarke, Special Counsel, Division of Investment Management, at (202) 942–0724, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: To implement the first step in our plain English initiatives, we are publishing for comment amendments to Rules 421 [1] and 461 [2] of Regulation C [3] and Items 101,[4] 301,[5] 501,[6] 502,[7] 503,[8] and 508 [9] of Regulation S–K.[10] We also are proposing minor amendments to Forms S–2,[11] S–3,[12] S–4,[13] S–20,[14] F–3,[15] and Form F–4,[16] as part of this plain English initiative.

The Office of Investor Education and Assistance is issuing simultaneously a draft of the text of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents*. The handbook covers proven techniques and tips on how to create plain English documents. You may request a copy of the draft handbook by calling 1–800–SEC–0330; or you may access the document on our Internet site (http://www.sec.gov).

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I. Executive Summary

Full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. Documents that communicate clearly and effectively play a crucial role in achieving the basic protections provided by disclosure. For many years, it has been recognized that the language and style of disclosure documents could be improved. Most recently, the Task Force on Disclosure Simplification [17] criticized prospectuses for their dense writing, legal boilerplate, and repetitive disclosures. These problems are magnified by the complex transactions and novel securities that dominate today's securities market.

As part of our ongoing commitment to give investors more understandable disclosure documents, we are proposing a rule for public comment that requires the use of plain English writing principles when drafting the front of prospectuses—the cover page, summary, and risk factor sections of these documents. The proposed rule would require public companies and mutual funds to write this information in everyday language that investors can understand on the first reading.

The efforts to date of the public companies participating in our plain English pilot programs support our belief that disclosure documents can be made more readable without sacrificing substantive business and financial information. Our proposed plain English rule, Rule 421(d), would specify six minimum plain English writing principles that public companies should use in drafting the front of prospectuses: Active voice, short sentences, everyday

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[1] 17 CFR 230.421.
[2] 17 CFR 230.461.
[3] 17 CFR 230.400 *et seq.*
[4] 17 CFR 229.101.
[5] 17 CFR 229.301.
[6] 17 CFR 229.501.
[7] 17 CFR 229.502.
[8] 17 CFR 229.503.
[9] 17 CFR 229.508.
[10] 17 CFR 229.10 *et seq.* We are proposing similar revisions to Regulation S–B governing disclosure by small business issuers. 17 CFR 228.10 *et seq.*
[11] 17 CFR 239.12.
[12] 17 CFR 239.13.
[13] 17 CFR 239.25.
[14] 17 CFR 239.20.
[15] 17 CFR 239.33.
[16] 17 CFR 239.34.

[17] S.E.C. Report of the Task Force on Disclosure Simplification (1996), Section II, Presentation of Information. The staff task force, with Philip K. Howard providing valuable advice, recommended ways to streamline, simplify and modernize our rules and forms on capital formation without compromising investor protection.

language, tabular presentation of complex material, no legal jargon, and no multiple negatives. This proposal would not reduce or eliminate any of the substantive disclosures public companies must give investors. The prospectus would continue to contain detailed business and financial information, which would be available to investors and others in the marketplace who use this information.

Recognizing that many of our rules have contributed to the legalistic language and tone of these documents, we also are proposing to eliminate highly formatted and overly technical information required on the cover page. The proposed rules move to the body of the document technical information that may be important to the offering process, but is not critical for the cover page. In addition, we are proposing other revisions to Rule 421, the rule on the preparation of prospectuses, to give companies guidance on how to improve the readability of the rest of the prospectus.

Because our plain English proposals will change customary drafting practices, we are continuing our plain English pilot programs to help companies draft clearer disclosure documents. The documents filed by pilot participants will provide other companies with examples of plain English documents. Also, the Office of Investor Education and Assistance today is issuing a draft of the text of *A Plain English Handbook: How To Create Clear SEC Disclosure Documents* to explain the plain English principles of our proposed rule and other techniques for producing clearer documents. The staff welcomes your views on the draft handbook and how it can be improved. Once the staff receives your comments, the handbook will be finalized and available to the public at no cost.

We have used a number of the plain English writing techniques in this release. For example, we have kept sentences and paragraphs short and avoided defined terms, cross-references, and other legalistic or formal writing conventions. We also have used the personal pronoun "we" when referring to the SEC and "you" when referring to public companies and mutual funds that would need to comply with our plain English proposals.

We encourage everyone involved in the public offering process—public companies, lawyers, accountants, underwriters and investment bankers—to give us their comments on the proposed rules and other ways we can improve the language in disclosure documents. Most importantly, we would like investors, financial analysts, brokers, and other users of these disclosure documents to give us their views on our plain English proposals and ways to improve the readability of these documents.

II. Background

A. Prospectus Disclosure Problems

Giving investors full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. The legislative history of the Securities Act of 1933[18] states that the purpose of disclosure "is to secure for potential buyers the means of understanding the intricacies of the transaction into which they are invited."[19] The prospectus—the traditional offering document—must describe the company's business, management, and financial condition to enable investors to make informed investment decisions.

Investors often complain that prospectuses use arcane, complex, and incomprehensible language.[20] As a result, many investors may skim, rather than read, prospectuses.[21] A recent study on the investment concerns of senior citizens concluded:

> The notion that there is "full disclosure" to Americans about their investments is, by and large, a myth * * * [m]ost written disclosures are too long and too complicated to be of any practical use to someone other than a securities lawyer or expert investor.[22]

The Task Force's report criticized prospectuses for their dense writing, legal boilerplate, and repetitive descriptions of the company's business. Noting that trivial points sometimes receive as much attention as material ones, the report found that dense disclosure can often bury the points that are most significant to making an informed investment decision. The report expressed concern that prospectuses are filled with legal jargon and over-inclusive disclosures.

These problems are not new. More than forty-five years ago, Professor Louis Loss identified prospectus readability as one of the basic problems with the registration process.[23] In 1969, the Wheat Report found that prospectuses included unnecessary information, and were often so long or complex that the average investor could not readily understand them.[24]

Over the years, the SEC has attempted to address these problems. The SEC's concern about prospectuses for employee benefit plans prompted a 1966 release encouraging issuers to avoid complex legal and other technical language in the plan prospectus. Most plan prospectuses either repeated the full text of the legal document adopting the plan or summarized the legal document using the same legal language. In the release, the SEC recognized that the chief goal of registration is to provide investors with disclosures that they can readily understand, concluding that "* * * failure to use language that is clear and understandable by the investor may operate to defeat the purpose of the prospectus."[25]

When the SEC adopted the integrated disclosure system in 1982, it encouraged issuers to deliver their more readable glossy annual reports to shareholders, rather than the legalistic annual report on Form 10–K. The SEC believed that the more readable annual reports would "promote the goal of concise, effective communication in the Securities Act context."[26]

Also in 1982, the SEC codified, in Rule 421 of Regulation C, the requirement for clear, concise and understandable presentation of information in prospectuses.[27] This rule calls for descriptive captions or headings, and reasonably short paragraphs or sections. The rule also permits summaries of the information required in the prospectus, except for financial or tabular information.

Several of the existing disclosure items already require companies to use plain English tools—a table or chart—to improve clarity and increase the likelihood that investors can grasp the information. For example, disclosure of managements' compensation must be in

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[18] 15 U.S.C. 77a *et seq.*

[19] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 8 (1933).

[20] See, e.g., Letter from American Association of Retired Persons, the Consumer Federation of America, and the National Council of Individual Investors on the Private Securities Litigation Reform Act of 1995 regarding the Act's provision requiring a study on protections for senior citizens and qualified retirement plans (May 1, 1996).

[21] See, Richard C. Wydick, *Plain English for Lawyers*, 3 (1994).

[22] See, AARP/CFA/NASAA Background Report: The Five Biggest Problems "Legitimate" Investing Poses For Older Investors (March 1995).

[23] *Disclosure to Investors: A Reappraisal of Administrative Policies under the '33 and '34 Acts* 77–78 (1969) (Wheat Report) (citing Loss, *Securities Regulation* 148—66 (1st. ed. 1951).

[24] Wheat Report at 77. *See also Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission. Appendix to the Report of the Advisory Committee on Corporate Disclosure*, 6, 21–22 (November 3, 1977).

[25] Securities Act Release No. 4844 (August 5, 1966) [31 FR 10667].

[26] Securities Act Release No. 6383 (March 3, 1982) [45 FR 11380].

[27] In 1982, the SEC rescinded the guidelines for the preparation of prospectuses in Securities Act Release No. 4936 (December 9, 1968) [33 FR 18617] except for the guide requiring clear, concise prospectus information, which was moved to Rule 421 of Regulation C.

tables.[28] Proxy statements must use a table showing the identity, background, and security holdings of nominees for the board of directors,[29] and the security ownership of management and significant owners of an issuer's equity securities.[30] Another provision encourages the use of tables, schedules, charts, and graphic illustrations to make financial information more understandable.[31]

In 1991, the U.S. Congress and others expressed serious concern about the complexity and length of limited partnership prospectuses, and particularly the documents used to roll up limited partnerships. In congressional hearings on the need for legislation to reform the roll-up process, former SEC chairman Richard Breeden addressed the problem of unreadable disclosure: "I have taken a look at some of the documents filed with us in these roll-up transactions and I would like to meet the person who can understand all of the disclosures in some of these documents."[32]

To address these concerns, the SEC issued an interpretive release to advise issuers on the requirements for clear, concise, and understandable disclosure in limited partnership offerings.[33] Even with the interpretive release, our review staff in the Division of Corporation Finance continues to see documents that do not clearly explain the terms of these complex offerings.

Beginning in 1994, we renewed our efforts to promote more readable disclosure documents, which led us to explore alternatives. With the support and participation of various industry groups and public companies, we instituted pilot projects to encourage the use of plain English and to gain practical experience on how to fashion rule changes that would improve the disclosure to investors. We recognize that everyone involved in the process—issuers, accountants, lawyers, underwriters, investment bankers, and the SEC—has a role in creating more readable documents.

B. SEC Plain English Initiatives

We are committed to providing investors with better and more understandable disclosure documents. Our ultimate goal is to have all disclosure documents written in plain English, and we have undertaken several initiatives to improve the readability of these documents. With the cooperation of the Investment Company Institute and several large mutual fund groups, we recently organized a pilot program to permit mutual funds to use "profiles" with their prospectuses.[34] The "profile" provides a standard format summary of eleven specific items of information so that investors can compare funds more easily. We are developing a proposed rule for public comment that would build on this experience.

In the spring of 1996, our Division of Corporation Finance began a plain English pilot program that encourages companies to draft their prospectuses and other disclosure documents more clearly. The Division, together with our Office of Investor Education and Assistance, offers advice on how to organize these documents, as well as examples of how to rewrite the legalese in plain English. To companies that undertake plain English disclosure, the Division offers expedited review of their documents.[35] The reception to our plain English pilot program has been positive, and the pilot participants' documents are serving as examples of clearer disclosure.[36]

C. Arguments for Plain English

The plain English movement started in the early 1970s with the simplification of insurance contracts, and gained momentum when more than half the states enacted statutes requiring plain English insurance contracts. A number of state bar associations, starting with Michigan, established plain English committees. Federal agencies, such as the Federal Communications Commission, the Small Business Administration, and the Department of the Interior, redrafted some or all of their regulations, as well as legal documents such as subpoenas, in plain English. The movement is also active in Canada, England, and Australia.

Plain English has been implemented successfully in many areas. For example, after Citibank started using a plain English promissory note, the number of collection lawsuits dropped considerably because borrowers had a better understanding of their obligations.[37] One law review article on using plain English in contracts under the Uniform Commercial Code, concluded that ". . . [p]reparing documents in plain English will decrease the number of good faith disputes over the meaning of the words of the agreement."[38] Past experience with plain English suggests that its adoption in the securities area will increase investors' understanding of the business and financial condition of companies and lessen misunderstandings that lead to costly legal disputes. Clearer disclosure also should assist market professionals in making recommendations to clients and assist the courts in determining whether a company has made proper disclosure.

D. Criticisms of Plain English

When initially considering the change from a formal, legalistic writing style to plain English, the following reservations often are raised: (1) Legal language is more precise and is necessary to make complex material clear and accurate; and (2) federal securities law liability provisions particularly the strict liability provisions of section 11 of the Securities Act[39] requires legal language. Neither case law nor the experience of

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[28] Item 402(b) of Regulation S–K, 17 CFR 229.402.

[29] Item 7, Schedule 14A of Regulation 14A and Item 1, Schedule 14C of Regulation 14C Securities Exchange Act, 17 CFR 240.14a–101, 240.14c–101.

[30] Item 403 of Regulation S–K, 17 CFR 229.403.

[31] Note to Item 11 of Rule 14a–3 of Regulation 14A, Securities Exchange Act, 17 CFR 240.14a–3.

[32] H.R. Rep. No. 102–254, 102d Cong., 1st Sess. (1991).

[33] Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979].

[34] Letter from Jack W. Murphy, Associate Director and Chief Counsel, Division of Investment Management, SEC, to Paul Schott Stevens, General Counsel, ICI (July 31, 1995). The Division has permitted the pilot program, with some modifications, to continue for another year. See, letter from Heidi Stam, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, Vice President and Senior Counsel, ICI (July 29, 1996).

[35] The first companies to participate in this pilot project, Bell Atlantic and NYNEX, drafted a plain English cover page and summary for their joint merger proxy statement (File No. 333–11573). The lawyers involved reported that writing in plain English did not increase their costs. *See* B. Fromson, *At Last, A Proxy in Plain English*, Washington Post (Sept. 22, 1996), at H4.

[36] For example, Baltimore Gas and Electric Company (File No. 333–19263) has filed a plain English prospectus for their medium term note offering; ITT Corporation (File No. 333–7221) filed a universal shelf offering with the front of the document in plain English and plain English techniques applied to the entire document; Unisource Worldwide, Inc. (File No. 1–14482) filed a Form 10 registration statement under the Exchange Act with the front of the document written in plain English; General Mills, Inc./ Ralcorp, Inc. (File No. 333–18849) filed a merger proxy statement with the front of the document written in plain English; SCANA (File No. 333–18149) filed a registration statement covering their dividend reinvestment plan written in plain English; Antec Corporation/TSX Corporation (File No. 333–19129) filed a merger proxy statement with the front of the document written in plain English; and Keyspan Energy Corp. (File No. 333–18025) filed a merger proxy statement with the front of the document written in plain English.

[37] *How Plain English Works for Business, Twelve Case Studies*, U.S. Department of Commerce, Office of Consumer Affairs (March 1984).

[38] Steven O. Weise, *"Plain English" Will Set the UCC Free*, 28 Loy. L.A.L. Rev. 376 (1994). The article notes that "[p]arties to contracts can reduce [inaccurate interpretations] by presenting courts and juries with documents that permit only one reasonable interpretation. . . ." See also Mark Duckworth and Christopher Balmford, *Convincing Business That Clarity Pays*, Michigan B. J. 1314 (Dec. 1994).

[39] 15 U.S.C. 77k.

plain English practitioners appear to support these arguments.

1. Plain English Is Imprecise and Unsuited for Complex Material

In using plain English, you are *not* forced to choose between clarity and precision. The disclosure obviously must be correct, but plain English often is more precise than the obscure and complex writing style that is prevalent in prospectuses. While legal terms like "hereafter," "hereinafter," and "herein" may give a legal flavor to writing, they do not add precision.[40] Needlessly wordy documents can actually increase ambiguity and usually hide important facts. Ambiguities and omissions that go unnoticed in long and turgid documents become more obvious when these documents are written in plain English, and are more likely to be detected and corrected by those who review these documents for accuracy.[41]

Unfortunately, some equate the term "plain" with "simplistic." They fear their writing will be reduced to a simple style and restricted to a limited vocabulary ill-suited to conveying complex information. But plain English does not mean "dumbing down" complex information. It means writing it well so that it is not needlessly difficult to understand.

Some in the legal profession have used plain English techniques to clarify a number of complex legal procedures and statutes. The Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure has proposed revising these rules using elements of plain English.[42] While these rules are currently being circulated for public comment, initial reaction to the rewrites appears to be positive. Such efforts are not limited to the United States. In Australia, a task force is rewriting Australia's Corporation Law under a mandate to simplify it.[43] Earlier, the Law Reform Commission of Victoria, Australia, redrafted Victoria's Takeover Code in plain English.[44]

2. Plain English Will Increase Liability

Stemming largely from the misconceptions addressed above, some practitioners expressed concern that the use of plain English will expose companies to greater liability under section 11. Liability should not increase. First, the rule proposals do not reduce the substantive information that must be given to an investor; plain English does not mean leaving out anything important or material. Second, we know of no case that has held anyone liable under Section 11 for clearly disclosing material information to investors.[45] In all likelihood, liability should decrease with the use of plain English because it results in less confusing and ambiguous disclosure.

III. Elements of Plain English

Plain English simply means writing well.[46] Plain English, or plain language, has been described as follows:

> There is no one absolute form of plain language. It does not consist only of one-syllable words and one-clause sentences. It is not simplified or reduced English. It is the opposite not of elaborate language but of obscure language, for it seeks to have the message understood on the first reading. The plainness of a passage is defined in terms of the audience for that passage. It is clear, straightforward language for that audience.[47]

In summary, plain English requires you to:

- Know your audience;
- Know what material information needs to be disclosed;
- Use clear writing techniques to communicate the information; and
- Design and structure your document so it is easy and inviting to read.

A. Know Your Audience

Since the purpose of using plain English is to communicate substantive information clearly to investors and the marketplace, you must first identify the investor groups to whom you are writing.[48] The educational background and financial sophistication of your current or prospective investors should dictate the language you use.

If your company has a mix of sophisticated institutional investors and less experienced institutional and individual investors, you should write at a level that the less experienced investors would understand. While the language may change, the information will not. To serve an audience of various levels of sophistication such as securities analysts and others in the marketplace, some issuers present information in a format that makes it easy for investors to locate the basic information while providing additional detailed information for anyone who is interested.[49] Where an offering is directed at only the most sophisticated institutional investors, clear writing still is necessary for your audience to understand the disclosure and to serve the needs of the securities markets.

B. Know What Information Needs To Be Disclosed

You can only communicate clearly when you understand the substance precisely and accurately.[50] A failure common to disclosure documents is the tendency to indiscriminately combine material and immaterial information in dense and long sentences, in effect dumping large amounts of information on the reader. Disclosure documents typically fail to prioritize information and organize it logically so the reader can process it intelligently and quickly. All too often, details are disclosed before investors even know why they are receiving or reading a document. Plain English requires you to make judgments as to the importance of this information and the order in which you present it to investors.

A standard prospectus cover page—the cover page for an initial public offering, a merger, or a shelf offering—usually has dense print running to each of the four corners of the page. The sentences typically run 60 to 100 words long, with superfluous information and defined terms that interrupt the readers' attention. The name of the company, terms of the security, and underwriters' compensation are repeated two or three times. We believe that the cover page of the prospectus should invite the investor to read the document and should highlight key information about the offering. This information includes

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[40] David Mellinkoff, *The Language of the Law* 312–16 (1963). See also David Mellinkoff, "The Myth of Precision and the Law Dictionary," 31 *UCLA L. Rev.* 31 423 (1983).

[41] See Joseph Kimble, "Answering the Critics of Plain Language," 5 *Scribes J. of Legal Writing* 51 (1994–1995).

[42] Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of Proposed Revision of the Federal Rules of Appellate Procedure Using Guidelines for Drafting and Editing Court Rules and Preliminary Draft of Proposed Amendments to Appellate Rules 27, 28 and 32*, (April 1996). See also Bryan A. Garner, *Guidelines For Drafting And Editing Court Rules* (Administrative Office of the United States Courts 1996).

[43] See Note 41 above at 59.

[44] *Id* at 56–57.

[45] The staff's review of the few reported cases finding section 11 liability indicates that no case required the use of specific legal language or turned on the use of legal language.

[46] George Hathaway, *An Overview of the Plain English Movement for Lawyers . . . Ten Years Later*, Michigan B. J. 26, (Jan. 1994).

[47] Robert D. Eagleson, *What Lawyers Need To Know About Plain Language*, Michigan B. J. 44 (1994).

[48] See, Janice C. Redish, *How To Write Regulations And Other Legal Documents In Clear English*, 8 (Sept. 1991) (available at American Institutes for Research Document Design Center, Washington, D.C. 20007).

[49] See Caterpillar Inc., Third Quarter 1996 Financial Results (a two part document with statistical highlight and condensed financial information and a detailed analysis including financial statements for those who want additional detailed information)

[50] Bryan A. Garner, *The Elements of Legal Style* 4 (1991).

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such items as the name of the company, the type of security, price and amount offered, and whom an investor should contact to purchase the security. The original cover pages and the plain English rewrites of the cover page of pilot participants documents in Appendix A give you examples of how to address this issue.

When a prospectus summary is included in the document, it frequently runs 10 to 30 pages. These so-called summaries often provide a long description of the company's business and its business strategy. Where the prospectus provides a description of the security, it is often copied from the indenture or other legal document that is filed as an exhibit to the registration statement.

The summary should not, and is not required to, contain all of the detailed information in the prospectus. As current Rule 421 states and as explained in the interpretive release on limited partnerships, the summary should provide investors with a clear, concise, and coherent "snapshot" description of the most significant aspects of the offering. The summary should be balanced, giving investors both the pluses and the minuses of investing in your company or participating in the proposed transaction.

C. Use Clear Writing Techniques To Communicate Information

Although it is impossible to give a precise formula for clear writing, using the following plain English principles will help you produce clearer and more readable disclosure documents. Our proposed rule would require you, at a minimum, to comply substantially with each of these plain English principles in drafting the front and back cover pages and the summary and risk factors sections of the prospectus:

- Active voice;
- Short sentences;
- Definite, concrete, everyday language;
- Tabular presentation and "bullet lists" for complex material whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

Success in clear writing is, of course, ultimately a question of how well all the elements are put together, and requires a good faith effort to achieve clarity. The draft plain English handbook offers numerous examples of how to use these and other plain English tools to write more clearly. We provide examples of these requirements only to illustrate the plain English principle. You should make sure that your disclosure reflects the facts of your particular situation.

1. Active Voice

The active voice generally is easier to understand than the passive because the reader can clearly identify the person or the thing performing the action. The passive voice delays readers' comprehension, and in some cases, allows the writer to delete who is performing the action altogether, further hindering comprehension. When the sentence is long and complicated, the passive voice forces the reader to go back and start at the beginning. The passive voice usually results in needlessly longer sentences. Consider the following examples:

Before	After
No person has been authorized to give any information or make any representation other than those contained or incorporated by reference in this joint proxy statement/prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized.	You should rely only on the information contained in this document or incorporated by reference. We have not authorized anyone to provide you with information that is different.
The proxies solicited hereby for the Heartland Meeting may be revoked, subject to the procedures described herein, at any time up to and including the date of the Heartland Meeting.	You may revoke your proxy at any time up to and including the day of the meeting by following the directions on page 18.

Notice that in the proxy example, the passive legalese is ambiguous because it never states who can revoke a proxy. Also, when you use a vague cross-reference, you hinder your readers' ability to locate the information. The rewrite is clearer because it uses everyday language and provides the page number where investors can find out how to revoke their proxies.

2. Short Sentences

The plain English requirement for short sentences addresses one of the most critical language problems in disclosure documents. It is fairly common for sentences in prospectuses or other disclosure documents to be 60 to 100 words or more, with clauses and parenthetical phrases that increase their complexity. Needlessly complex sentences, which often mix substantive information with definitions and numerous qualifications, can overwhelm the reader. You should strive to have shorter sentences, typically 25 to 30 words. We believe that the rewrites in the following examples are shorter, clearer and less vague:

Before	After
Machine Industries and Great Tools, Inc., are each subject to the information requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith file reports, proxy statements, and other information with the Securities and Exchange Commission (the "Commission").	We must comply with the Securities Exchange Act of 1934. Accordingly, we file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission

Before	After
The Drake Capital Corporation (the "Company") may offer from time to time its Global Medium-Term Notes, Series A, Due from 9 months to 60 Years From Date of Issue, which are issuable in one or more series (the "Notes"), in the United States in an aggregate principal amount of up to U.S. $6,428,598,500, or the equivalent thereof in other currencies, including composite currencies such as the European Currency Unit (the ECU) (provided that, with respect to Original Issue Discount Notes (as defined under Description of Notes—Original Issue Discount Notes), the initial offering price of such Notes shall be used in calculating the aggregate principal amount of Notes offered hereunder).	The Drake Capital Corporation may offer from time to time up to $6,428,598,500 of Global Medium-Term Notes, Series A, that will mature from 9 months to 60 years from the date issued. We will offer our notes, in one or more series, in U.S., foreign, and composite currencies, like the European Currency Unit. If we offer original discount notes, we will use their initial offering prices to calculate when we reach $6,428,598,500.

3. Definite, Concrete, Everyday Language

Language that is vague or abstract begs for further explanation. It is not enough merely to translate information into clearer language. As the following example shows, you must reassess the disclosure to determine whether more information is needed to make it understandable. *You should note that the rewrite reflects an analysis of all of the information in the prospectus.*

Before	After
History of Net Losses. The Company has recorded a net loss under generally accepted accounting principles for each fiscal year since its inception in May 1990, as well as for the nine months ended June 30, 1995. However, these results include the effect of certain significant, non-cash accounting charges related to the accounting for the Company's acquisitions and related transactions.	History of Net Losses. We have recorded a net loss under generally accepted accounting principles for each year since we started in 1990, and for the nine months ended June 30, 1995. Our losses were caused, in part, by the annual write-off of a portion of the goodwill resulting from the ten acquisitions we made during this period.

In the rewrite, the reasons for the history of net losses replaces the general, vague language on the "significant, non-cash accounting charges" causing the loss.

4. Tabular Presentations

A tabular presentation organizes complex material in a manner that greatly facilitates investor comprehension. For example, an "if-then" table highlights for investors the events of defaults and their remedy under the indenture. An illustration follows:

Before

The following will be "Events of Default" under the Indenture:

(i) failure to pay any interest on any Note when it becomes due and payable, and such failure shall continue for a period of 30 days; (ii) failure to pay the principal of (or premium, if any) on any Note at its Maturity (upon acceleration, optional or mandatory redemption, required repurchases or otherwise); (iii) there shall have been the entry by a court of competent jurisdiction of (a) a decree or order for relief in respect of the Company, in an involuntary case or proceeding under any applicable Bankruptcy Law or (b) a decree or order adjudging the Company bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company, or of any substantial part of their respective properties, or ordering the winding up or liquidation of their affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order shall be unstayed and in effect, for a period of 60 consecutive days, the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding may, and the Trustee at the request of such Holders shall, declare all unpaid principal of (and premium, if any, on) and accrued interest on all the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Notes); If an Event of Default specified in clause (iii) occurs, then all the Notes shall *ipso facto* become and be immediately due and payable, in an amount equal to the principal amount of the Notes, together with accrued and unpaid interest, if any, to the date the Notes become due and payable, without any declaration or other act on the part of the Trustee or any holder.

After

Event of default (If)	Remedy (Then)
• Interest payment 30 days late	• Trustee or holders of at least 25% of these notes outstanding may notify the company in writing that the principal, premium, if any, and accrued interest are immediately due and payable; or Upon written request of the holders of at least 25% of these notes outstanding, the Trustee shall notify the company in writing that the principal, premium, if any, and accrued and unpaid interest are immediately due and payable.
• Failure to pay principal or premium at maturity, acceleration, redemption, or repurchase.	• Same as above.
• Court ordered bankruptcy, insolvency, reorganization, liquidation, or similar action continuing for 60 consecutive days.	• Neither the Trustee nor holders are required to act. The principal, accrued and unpaid interest will be immediately payable.

Before	After
The Indenture provides that no Holder of any Senior Debt Securities of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or the Senior Debt Securities of such series, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless: (i) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Senior Debt Securities of such series; (ii) the Holders of at least 25% in aggregate principal amount of outstanding Senior Debt Securities of all such series affected shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture; (iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against any cost, liabilities or expenses to be incurred in compliance with such request; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Senior Debt Securities of all such affected series have not given the Trustee a direction that is inconsistent with such written request.	Before you may take legal or any other formal action relating to the indenture or this series of securities, the following must take place: • You must give the trustee written notice of a continuing event of default; • The holders of at least 25% of the principal amount of all affected senior debt securities outstanding of this series must make a written request of the trustee to take action because of the default; • The holders must have offered indemnification, reasonably satisfactory to the trustee, against the cost, liabilities and expenses for taking such action; • The trustee must not have taken action for 60 days after receipt of notice, request for action, and the indemnification offer; and • During this 60 day period, the holders of a majority of the principal amount of all affected senior debt securities outstanding of this series have not asked the trustee to take any action inconsistent with the request.

5. No Legal Jargon or Highly Technical Business Terms

One of the persistent criticisms of the prospectus writing style is the use of legal jargon and legalese. Here are two examples from debt offerings replete with legalese:

Before	After
The new debt will rank *pari passu* with other senior debt of the company.. The following description encompasses all the material terms and provisions of the Notes offered hereby and supplements, and to the extent inconsistent therewith replaces, the description of the general terms and provisions of the Debt Securities (as defined in the accompanying Prospectus) set forth under the heading "Description of Debt Securities" in the Prospectus, to which description reference is hereby made.	The new debt will rank equally with the other senior debt of the company. We disclose information about our notes in two separate documents that progressively provide more detail on the note's specific terms: the prospectus, and this pricing supplement. Since the specific terms of notes are made at the time of pricing, rely on information in the pricing supplement over different information in the prospectus.

When you use defined terms and excessive cross-references, practices common to legal drafting, you force the reader to learn a new vocabulary—your vocabulary. These writing conventions may be a short hand for the writer but they inhibit the reader's ability to understand the information.

6. No Multiple Negatives

Negative sentences and multiple negatives within a sentence hinder comprehension as the reader deciphers the meaning of the negatives. Ask yourself which sentences are clearer.

Before	After
No clause can become valid unless approved by both parties. ..... Except when an applicant has submitted a request for withdrawal without the appropriate tax identification number, the request will be honored within one business day..	A clause becomes valid only if both parties approve it. We will send your money within one business day if you include your tax identification number in your withdrawal request.

D. Design And Organize Your Document So It Is Easy and Inviting To Read

We believe the dense copy used in the typical prospectus coupled with its legal tone, discourages investors from reading the document. By importing into your disclosure documents the design concepts you already use in your annual reports to shareholders, you can make disclosure documents visually inviting and easier to read.

Experts believe, generally, that the eye can only comfortably scan 50–70 characters in a line without losing its place.[51] It is thus difficult to read dense blocks of text that run across an entire page. A number of the plain English pilot participants solved the problem by using two columns. White space also relieves the eye and encourages the investor to read the document. The use of all capital letters, right-hand margins that are justified, and tissue-like paper can make the job of reading a document extremely hard.

If your prospectus includes a table of contents with descriptive captions, subcaptions, and page numbers, an investor will be able to locate information easily in the prospectus. Captions and descriptive headings throughout the document also cue the reader as to the subject matter.

Depending on the type of offering and the audience, a question-and-answer format can greatly increase the readability of your document. We have

[51] Duncan A. MacDonald, *Drafting Documents in Plain Language*, Practicing Law Institute, 229 (1979).

encouraged the use of the question-and-answer format for employee stock purchase plans.[52] Several of the plain English pilot participants used a question and answer format to answer common questions raised by investors.

Although not part of our proposed rules, another effective tool for producing plain English documents is to use personal pronouns. Personal pronouns immediately engage your readers' attention. A familiar writing style where "we" or "I" refers to management or the company, and "you" refers to the investor, involves your reader and increases comprehension. If you avoid distant and abstract language like "the company" and "a shareholder," your writing becomes clearer and more appealing because you are communicating directly with your reader.

Take, for example, a recent offering made by Berkshire Hathaway.[53] The cover page of the prospectus contains the following personal communication: "Warren Buffet, as Berkshire's Chairman, and Charles Munger, as Berkshire's Vice Chairman, want you to know the following (and urge you to ignore anyone telling you that these statements are 'boilerplate' or unimportant)."

This introduction is followed by clear warnings regarding the company's asset growth, share price, and the market for the securities offered. A similar personal approach, with the frequent use of the pronoun "we" to refer to the company, Warren Buffet, or Charles Munger, is used in Berkshire Hathaway's 1995 annual report to shareholders.

Several of the pilot participants used personal pronouns throughout their documents. Others employed a modified approach in which personal pronouns were used when referring to the company but a more formal designation like "holder" or "noteholder" was used when referring to the investor.[54]

IV. Plain English Rule Proposals

The Task Force on Disclosure Simplification recommended developing a plain English introduction to the prospectus and, to enhance the prospectus's readability, eliminating boilerplate "legalese," requiring a summary of key information, and enhancing the disclosure to include significant financial ratios and other information. The Task Force also recommended that the Commission issue a plain English interpretive release. Our proposals include most of the Task Force's specific recommendations for improving the readability of documents. This release serves as our interpretative advice on plain English. We have decided to defer action on the Task Force's recommendation to provide investors with disclosure on significant financial ratios. Further study is needed to determine the best format for providing important financial indicators to investors and the ratios that should be provided.

A. Proposed Plain English Rule 421(d)

While all prospectuses must be clear and understandable, our proposals would also require the front of the prospectus to meet the plain English requirements in proposed Rule 421(d). In addition, we are proposing to codify our interpretive advice, first given for limited partnership offerings, to give you more guidance on how to meet the requirements for clear, concise and understandable disclosure in prospectuses.

If adopted as proposed, Rule 421(d) would require you, when drafting the cover page, summary, and risk factors sections, to use the plain English principles, discussed above in the section, Elements of Plain English. You should design these sections of the document to make them inviting and easy to read. This design could take many forms, including the use of pictures, logos, charts, graphs, or other features, so long as the design is not misleading and the required information is clear. The examples from pilot participants' documents, included in Appendix A, and the staff's draft handbook give you guidance in this area. We will include on our Internet site examples of other plain English documents to help you draft more readable disclosure documents.

Our proposals for plain English cover pages, prospectus summary, and risk factors sections should improve greatly the readability of the entire document. We encourage you to use plain English techniques to draft the entire prospectus. We also encourage you to use these techniques for drafting your other disclosure documents.

We request your comments on all aspects of the proposed rule. Your comments should provide any factual support for your position. Please comment on whether you believe the proposed plain English requirements will achieve clearer disclosure and improve readability. We also request your comments as to whether compliance with the proposed rule changes will cause registrants to highlight key information for investors and eliminate redundant or uninformative information.

B. Clear, Concise and Understandable Prospectuses—Rule 421(b)

We are proposing the following expansion of Rule 421(b) to give you guidance on the minimum requirements to meet the current provision for clear, concise, and understandable disclosure in the prospectus and to identify drafting problems to avoid. These standards and common prospectus drafting problems were identified in our interpretive release on limited partnership offerings. In drafting the disclosure in the prospectus you should apply the following techniques:

- Information must be presented in clear, concise paragraphs and sentences. If possible, information should be presented in short explanatory sentences and "bullet" lists;
- Captions and subheading titles must describe specifically the information included in the section;
- Terms that are not clear from the context generally should be defined in a glossary or other section of the document. Glossaries are recommended where they facilitate understanding of the disclosure. Frequent reliance on glossaries or defined terms as the primary means of explaining information in the body of the prospectus should be avoided; and
- Legal and highly technical business terminology should be avoided.

Our proposals also include a Note to Rule 421(b) that lists drafting conventions that you should avoid in presenting prospectus information. The proposed Note to Rule 421(b) identifies the following problems in drafting prospectus disclosure:

- Legalistic, overly complex presentations that make the substance of the disclosure difficult to understand;
- Vague "boilerplate" explanations that are imprecise and readily subject to differing interpretations;
- Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- Disclosure repeated in different sections of the document that increases the size of the document, does not enhance the quality of the information, and does not enlighten the reader.

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[52] Securities Act Release No. 4844 (August 5, 1966) (31 FR 10667).

[53] Berkshire Hathaway Inc., Form S–3, filed April 2, 1996, effective May 8, 1996, File No. 333–2141.

[54] Bell Atlantic Corporation used personal pronouns for both the company and the shareholder in their merger proxy statement. ITT Corporation and Baltimore Gas and Electric Corporation used the modified approach. See Appendix A. Bell Atlantic also used personal pronouns in the management's discussion and analysis section of the Form 10–Q for the quarter ended September 30, 1996 (File No. 1–8606).

Some have suggested that the undue length of many prospectus also makes them difficult to read. You are encouraged to use the current provision of Rule 421 which allows you to condense or summarize information in the prospectus, information other than the financial statements.

C. Proposed Revisions to Regulation S–K

1. Front of Registration Statement and Outside Front Cover Page of Prospectus

We propose to revise the requirements for the outside front cover page of the prospectus to eliminate the stylized format and require legal warnings in plain English. We believe that the legal language specified by the requirements is not informative to investors. More importantly, we believe the dense format of the cover page discourages investors from reading the important business and financial disclosures in the prospectus.

Substantially the same changes are being proposed to the requirements for small business issuers, except Regulation A offerings. In 1992, we adopted major revisions to the Regulation A offering process for companies not subject to our reporting requirements. Because few Regulation A offerings were made last year, we are not proposing changes to the disclosure requirements for these offerings. We request your comments, however, on whether the legal legends required in these offerings should be changed to conform to our proposals to draft these legends in plain English.[55] The table below shows the current requirements of Regulation S–K and our proposed changes.[56]

REGULATION S–K—ITEM 501

Current	Proposed
• Information in highly formatted design	• Information formatted in clear, inviting design.
• Company name	• Same.
• Title and amount of securities offered	• Same.
• By whom securities offered	• Same.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Bullet list or other design that highlights the price, underwriting commission, and proceeds of offering.
• Instruction on showing bona fide estimate of range of maximum offering price.	• Retain.
• Instruction on showing how price determined	• Retain.
• Formatted best efforts distribution table	• Bullet list or other design that highlights the information.
• Specific language and print type for legal warnings	• Clear language with no type specified.
• No requirement	• Name of underwriters and type of underwriting arrangements.
• Cross-references to disclosure in prospectus	• Delete.
• Specific cross-reference to risk factors	• Delete.
• Underwriters' over-allotment option	• Move to underwriting section.
• Expenses of offering	• Move to underwriting section.
• Commissions paid by others and other non-cash consideration	• Move to underwriting section.
• Finders fees	• Move to underwriting section.

Our proposals would require you to format the outside front cover page in a design that invites an investor to read the information. The proposals would allow you to use pictures, graphs, charts, and other designs that accurately depict your company, its business, products, or financial condition, so long as the information is not misleading. The proposals would eliminate the current requirements for cover page cross-references, including the cross-reference to risk factors. A cross-reference may unnecessarily clutter the cover page and duplicate the information in the table of contents. We believe that our proposed requirement for risk factors in plain English will improve the disclosure to investors, making the cross-reference unnecessary. We propose to retain the cross-reference to risk factors on the cover page for small business issuers since often these companies present greater risks because of their limited operations and financial condition.

Your comments are requested, however, as to whether the existing requirements should be retained, and if so, which ones. We also request that you indicate other information or design elements for the cover page that would provide clearer, more readable disclosure. We ask you to give us your comments on whether the proposed disclosure requirements are sufficiently flexible to permit you to meet the plain English requirements. Your comments are requested on whether the cross-reference to risk factors should be retained for all offerings or whether the plain English requirements make it unnecessary for any offering, including small business issuer offerings.

The legal warnings required by our regulations would be in plain English.[57] Because the current requirement for printing the legend in all capital letters makes the information difficult to read, no print type or size is proposed. We offer one example of a plain English legend, however, you are encouraged to draft your own plain English version, so long as the content is retained. One example of the current legend rewritten in plain English is as follows:

[55] Regulation A requires a bold-face, all-capital legend that the SEC does not approve or disapprove of the securities offered, 17 CFR 230.253, and a legend indicating the document is incomplete, 17 CFR 230.255. In addition, Form 1–A requires legal warnings in all-capital letters regarding the risk of the offering in the Model 1–A disclosure alternative.

[56] See Item 501 of Regulation S–K, 17 CFR 229.501 and Item 501 of Regulation S–B, 17 CFR 228.501. See Appendix B for a chart showing the changes to Regulation S–B.

[57] The staff is working with the North American Securities Administrators Association, Inc.'s Disclosure Reform Task Force to coordinate our efforts to assure clearer communications with investors. The Disclosure Reform Task Force is considering the effect of our plain English initiatives on the states' disclosure requirements, particularly the language used in state-required legends.

Before	After
THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.	The Securities and Exchange Commission has not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Our proposals would require the legend indicating an incomplete prospectus, commonly called the "red herring" legend, to be in any plain English format. One example of the current legend in plain English would read as follows:

Before	After
Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any State.	The information in this prospectus is not complete and may be amended. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

Although no requirement currently exists to disclose the name of the underwriter and the type of offering, this information is usually provided on the cover page. Our proposal would specifically provide for this information in plain English on the cover page.

We have not proposed any specific print size or font type for the plain English portion of the prospectus. Our proposals allow you the flexibility to use a print type and font size that enhances your document design so long as the information is easily readable. We request your comments as to whether we should require or prohibit any specific print type or font size and the reason for your position.

Your comments should address specifically the proposed revisions to the legends and suggest alternative plain English legends. Your comments should address whether the plain English legends adequately inform investors, and whether the proposed cover page information should be mandated, or whether other information should be permitted and, if so, what information. For example, should information on the cover page be limited to the name of the company and the securities offered, with the other information disclosed in the summary section of the document?

In addition, we request public comment on whether specific information should be required for the cover pages of merger proxy statements, registered exchange offers, or other offerings. Please provide examples of the types of information that should be required. We specifically request your comments on whether the limited partnership roll-up transactions should be subject to these plain English proposals or should different standards apply to these transactions and, if so, what standard should apply. For example, the current roll-up disclosure provisions [58] provide for a detailed discussion of risks of the offering, while the proposals made today would require risk factors to be brief. Also, risk factors are required on the cover page, summary section and risk factors section in limited partnership roll-up prospectuses.[59] Our proposals would require the risks to be described in plain English only in the risk factor section.

2. Inside Front and Outside Back Cover Pages of Prospectus

Currently, information of a highly technical nature is required on either the inside front or outside back cover page of the prospectus.[60] Except for the availability of Exchange Act reports,[61] the table of contents, and the legend concerning the dealer's prospectus delivery obligation, we propose to move this technical information to the body of the prospectus, as shown in the following table.

REGULATION S–K—ITEM 502

Current	Proposed
• Stabilization activities by underwriters	• Move to underwriting section.
• Underwriters' passive market making activities legend	• Delete because it duplicates information in underwriting section.
• Disclosure of dealer prospectus delivery obligation	• Move to back cover page.
• Availability of Exchange Act reports generally	• Move to back cover page or include with incorporation by reference disclosure in short form registration statements.
• Availability of Exchange Act reports incorporated by reference in short form registration statements.	• Move to registration statement forms permitting incorporation by reference.

[58] Item 904 of Regulation S–K, 17 CFR 229.904.

[59] See Items 902(b)(2) of Regulation S–K 17 CFR 229.902(b)(2); Item 903(b)(1) of Regulation S–K, 17 CFR 229.903(b)(1); and Item 904(a)(2) of Regulation of S–K, 17 CFR 229.904(a)(2).

[60] See Item 502 of Regulation S–K, 17 CFR 229.502 and Item 502 of Regulation S–B 17 CFR 228.502.

[61] Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

REGULATION S–K—ITEM 502—Continued

Current	Proposed
• Availability of annual reports to shareholders with GAAP audited financial statements for foreign issuers and others not subject to our proxy rules.	• Move to business description section.
• Enforceability of civil liability provisions of federal securities laws against foreign persons.	• Move to business description section.
• Table of contents	• Move to inside front cover page or immediately following the cover page.

Much of the currently required information is highly technical and drafted in legal language that often confuses rather than informs investors. We believe that placing this information in the front of the prospectus overshadows the essential business and financial information fundamental to an investment decision. Because the disclosure will be elsewhere in the prospectus, the information provided investors will be the same. Moving this information to the body of the prospectus will give you the freedom to design an inviting cover page which highlights key information for investors.

We believe the current information on the underwriter's stabilization activities, passive market making activities, and the dealer's obligations to deliver prospectuses is key information on the orderly distribution of the offering. But this information is not essential for the front of the document. We propose relocating the stabilization information to the underwriting section of the prospectus.[62] Information on passive market making activities currently is required both in the underwriting section of the prospectus and as a legal legend on either the inside front or outside back cover page. Duplication of this information on the cover page is unnecessary and we propose to delete it from the cover page but retain the information in the underwriting section.

We also propose to retain the requirement to disclose the dealer's prospectus delivery obligations on the back cover page of the prospectus. This will help dealers meet their obligations to deliver a prospectus in connection with the distribution of the securities. However, we request your views as to whether this information is necessary and, if so, whether we should require that this notice to dealers be disclosed elsewhere in the document, like the inside front cover page.

You have an obligation to send to security holders, upon request and at no charge, the Exchange Act reports incorporated by reference in short-form registration statements. We currently require you to disclose this obligation on the inside front cover page or elsewhere, as appropriate. We propose to relocate this information to the section of the short form registration statements detailing what information you must incorporate by reference.

We propose to move the disclosure regarding the availability of Exchange Act reports to the back cover page of the prospectus. Alternatively, it could be included as part of the disclosure incorporating Exchange Act reports by reference into short form registration statements. Moving the information to the back cover page would provide you the flexibility to design the front of the document in a clear manner. Requiring this information to be provided where the Exchange Act reports are incorporated by reference would eliminate duplication in short form registration statements.[63]

Because we now have an 800 number that gives information on how to obtain the reports filed with us and because copies of these reports are now available on the Internet, the proposed revisions would delete the requirement that our headquarters and regional office addresses be given. For this reason, we are also proposing to delete the requirement to disclose the availability of these reports at the exchange where the issuers' securities are listed. Of course, you must continue to send copies of your Exchange Act reports to the exchange where your securities are listed.[64] We request your comments on whether the information should be required elsewhere in the document, or whether the requirements should give companies greater flexibility to place the information where it is highlighted best for investors, given the design of the document. If your Exchange Act reports are on your Internet site, our rule proposals encourage you to give the web site address in your documents.

One example of a plain English rewrite of this disclosure follows:

Before	After
Our company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and, in accordance therewith, files reports and other information with the Securities and Exchange Commission (the "Commission"). The reports and other information filed by our company with the Commission can be inspected and copied at the Commission's public reference room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, and at the public reference facilities in the Commission's regional offices located at: 7 World Trade Center, 13th Floor, New York, New York 10048; and at Northwest Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained at prescribed rates by writing to the Securities and Exchange Commission, Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549..	Our company files annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information we file at the SEC's public reference room in Washington, D.C. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference rooms. Our SEC filings are also available to the public on the SEC Internet site (http://www.sec.gov.).

[62] Item 508 of Regulation S–K, 17 CFR 229.508 and Item 508 of Regulation S–B, 17 CFR 228.508.

[63] Our proposals would amend Forms S–2, S–3, S–4, F–3 and F–4 to include the requirement to disclose the availability of documents incorporated by reference with the disclosure on incorporation by reference of Exchange Act reports.

[64] Rule 12b–11, 17 CFR 240.12b–11.

Our proposals would move to the body of the prospectus the information on the availability of audited financial statements, where the company is a foreign private issuer or is not subject to our proxy rules. As proposed, we would require the information to appear, under a descriptive heading, as part of the business description.[65] We believe that relocating this information in the business section of the prospectus would inform investors of the continued availability and type of financial information your company will provide.

Currently, you may provide information as to the enforceability of civil liabilities against foreign persons on the inside front cover page or in the front of the prospectus. We propose to move this information to the business description section of the prospectus.[66] The staff's experience is that this information is often provided as a generic risk factor. If enforceability of civil liabilities presents a material risk to an investor given the company and its operations, our proposal for plain English prioritized risk factors would require risk disclosure. Your comments should address whether, given our global markets, the information now is sufficiently routine to make this disclosure more appropriate in the business description and required as a risk factor only when it is a material risk relating to an investment in the company. If you believe the information should be disclosed in another section of the prospectus, please give us the reason(s) for your position.

As currently permitted, the table of contents often appears on the back cover page. We question whether a reader goes to the back of the document first to locate a guide to the document, so our proposals would require this information to be on the inside front cover or immediately behind the cover page. We request your comments on whether the information flow of the document should permit you the flexibility to place the table of contents where you believe it best serves as a guide to the document, and the reasons for your position.

3. Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges[67]

Currently, you are required to include a summary of the information contained in the prospectus where the length or complexity of the prospectus makes a summary appropriate. The existing requirements also specify that a risk factor section be provided, where appropriate, and that this section immediately follow either the summary section or the cover page. In addition, information is required as to the ratio of earnings to fixed charges.

a. Summary

Our proposals would require a prospectus summary in plain English. To address the problem where the summary is ten to twenty-five pages long, we have revised the current provision to require that the summary section be brief. The current requirement continues to be a general provision giving you the flexibility to draft a meaningful summary appropriate to the type of offering.

We request your comment as to whether the summary should be further limited to a specific number of pages. For example, should the summary be no more than three, four, or five pages? We also request your comments as to whether we should require specific information in this section, such as condensed financial information and a summary of management's discussion and analysis. Please indicate any specific information you believe should be in the summary.

A recent review by the staff of a number of the short form registration statements indicates that these offerings often include a summary or similar section describing the company's business and operations. This discussion contains a lengthy discussion of the company's business, risk factors, and summarized financial information. The information is not specifically required, but apparently is considered important to the selling effort. If you elect to include this information, the disclosure would be subject to the same plain English disclosure requirements as we propose for the front of the document. Please give us your comments on whether short registration forms should have a summary and, if so, which offerings, and the reasons for your position. We also request your comments as to whether a summary section should be required for all prospectuses, given the current complexity of these documents.

b. Risk Factors

Our proposals would require the risk factors to be in plain English and be listed in order of their importance. As is currently the case, the discussion would immediately follow the summary, if one is provided, or the cover page of the prospectus. Often the risk factor disclosure in a prospectus is boilerplate, listing risks that could apply to any offering or that are not likely to occur. Because boilerplate risks do not provide meaningful information to investors, we believe they should not be used and our proposals specifically prohibit them.

For example, if your company is making an initial public offering of common stock and the securities will be listed and traded on a national securities exchange, it is not helpful to investors to provide a statement that management can give no assurance that an active market will develop in the company's securities. If, given these facts, you believe that a market will develop for the securities, then the risk factor is not helpful to an investor. On the other hand, if, given these facts, you believe that a market reasonably may not develop, additional information would be necessary as to why a trading market may not develop.

We are concerned, however, that plain English alone will not address the problem of listing many risk factors that are so general that they are not meaningful and add to the length of the document making the document difficult to read. We request your comments on whether we should require disclosure of a specific number of risk factors, such as eight, or alternatively limit the risk factor discussion to no more than two pages.

Your comments specifically are requested as to whether there should be any limit on the number of prioritized risk factors or the number of pages, or whether the limit should be higher or lower than eight risk factors or the two pages. For instance, should there be no more than four risk factors discussed in this section, divided equally between company and offering risks, or should the number of permitted risk factors be increased to 10 or 12 with no allocation as to the nature of the risk? Should there be a page limit and should the limit be no more than two pages, three pages, four pages or higher?

c. Ratio of Earnings to Fixed Charges

When you issue debt or a class of preferred equity, you are required to disclose a ratio of earnings to fixed charges. Since this information usually is included in the prospectus with selected financial data, we propose to move the requirement to that section.[68] Where a prospectus summary is included, we propose that the ratio of earnings to fixed charges be shown as part of the summarized financial data, as is currently the practice.

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[65] Item 101 of Regulation S-K and Regulation S-B.

[66] Item 101 of Regulation S-K and Regulation S-B.

[67] See Item 503 of Regulation S-K. 17 CFR 229.503 and Item 503 of Regulation S-B, 17 CFR 228.503.

[68] Item 301 of Regulation S–K. 17 CFR 229.301.

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D. Proposed Rules for Investment Companies

Current disclosure standards direct investment companies to provide clear, concise, and understandable disclosure in prospectuses.[69] We are concerned, however, that fund prospectuses are overly complex and difficult to follow. We have commenced significant disclosure initiatives to improve the information provided to fund investors, including consideration of a summary disclosure document or "profile" for funds and updating prospectus disclosure requirements. We expect to announce proposals that would implement these initiatives in the near future.

The plain English disclosure proposals complement these disclosure initiatives. The proposed changes to Rule 421 would apply to funds.[70] The proposed revisions in Regulation S–K intended to improve the clarity of disclosure in prospectuses of corporate issuers would not apply to funds, although similar legal legends and other requirements are included in specific rules for investment companies.[71] We plan to consider conforming changes to the rules for fund prospectuses in connection with the disclosure initiatives for investment companies. We request your comments on whether the proposed changes to Rule 421 should be modified for fund prospectuses.

The phase-in of plain English requirements proposed for corporate issuers discussed below may need to be modified for investment companies since they are engaged in continuous offerings of securities. We also request comment on special requirements that may be necessary to allow for the orderly phase-in of the proposed plain English requirements for investment companies.

[69] See, e.g., General Instruction G of Form N–1A.

[70] While the disclosure in fund prospectuses must be clear, concise, and understandable, the proposed plain English principles in Rule 421(d) would apply to the front and back cover pages of the prospectus and summary, if any. The specific requirement for plain English risk factors disclosure referred to in proposed Rule 421(d) would not apply to funds since the same disclosure is not required in their prospectuses.

[71] See, e.g., proposed Item 501(b) (5) and (8) of Regulation S–K (SEC legend and subject to completion legend); similar legends are required for mutual funds by Rule 481(b) (1) and (2) of Regulation C, 17 CFR 230.481(b) (1) and (2). Many of the proposed revisions to Regulation S–K would, if applied to funds, affect relatively few offerings of fund securities, e.g., descriptions of underwritten offerings in proposed Item 501(b)(6).

V. Staff Review

A. Plain English Pilot Program

The Division of Corporation Finance has established a pilot program to work with public companies on drafting plain English documents filed under either the Securities Act or the Exchange Act. We also expedite the review of these filings. The staff's comments, in plain English, will be consistent with these plain English proposals. The staff has issued five interpretive letters under the plain English pilot program. The staff granted interpretive relief from compliance with the legend requirements in the front of the prospectus, the distribution table showing the price, underwriters' commissions and proceeds of the offering, and the disclosure regarding the availability of Exchange Act reports.[72] The staff also stated its view that identification of a company's web site and the statement "[o]ur SEC filings are also available to the public from our web site" will not, by itself, include or incorporate by reference any information into the registration statement that is included or hot linked to the issuer's regular web site that is not otherwise incorporated by reference into the registration statement.[73] Because the staff's interpretive position on these matters is now well established, other pilot participants may rely on these positions and do not need to submit a specific written request.

B. Denial of Request for Acceleration

Currently, we consider a number of factors in determining whether the statutory requirements for acceleration of registration statements for public offerings, including mutual fund offerings, have been met, and may refuse to accelerate the effective date in appropriate circumstances. Among the factors that we consider is the clarity of the disclosure. We may refuse to accelerate a registration statement:

> Where there has not been a bona fide effort to make the prospectus reasonably concise and readable, so as to facilitate an understanding of the information required or permitted to be contained in the prospectus."[74]

Our proposals amend this provision to reflect the proposed requirement for plain English. To effectively implement plain English we are committed to administering this rule in a manner that achieves its goal of readable documents. If your document, when filed, indicates a good faith effort to meet the requirement, our staff will work with you, in the review and comment process, to meet any plain English requirements adopted and your financing schedule. We request your views as to other actions that we should take to make the prospectus clearer to investors and implement the plain English requirements.

C. Phase-In of Plain English Requirements

To make sure that our plain English proposals do not interfere with your need to access the capital markets on a timely basis, any plain English rule that is finally adopted would be phased in as follows:

- Registration statements pending on the effective date of the rule would not need to be revised to meet the plain English requirements;
- An updating amendment to a registration statement filed to meet section 10(a)(3) of the Securities Act[75] would be required to comply with the rule in effect at the time of filing;
- Any shelf registration statement affected by the plain English rule would be required to comply with the requirement at the time a new shelf registration statement is filed, but no later than December 31, 1998.
- All filings would be required to comply with the rule no later than December 31, 1998.

Please give us your comments on whether this schedule provides you the necessary flexibility to meet the proposed revisions, if adopted.

VI. Request for Comments

We request your comments on whether plain English should be mandated or only recommended, and whether there are other alternatives that will provide for a more reader-friendly and understandable disclosure document. Your comments are also requested on whether or not plain English should be required for the entire prospectus and not just the cover page, prospectus summary, and risk factors section. Please furnish the specific reasons for your position. We request your comment on whether additional plan English techniques should be required and, if so, which ones. If you have concerns that plain English will increase liability we request information on the substantive basis for your

[72] Division of Corporation Finance letters to ITT Corporation (dated November 12, 1996 and January 6, 1997), Baltimore Gas and Electric Corporation (two letters dated January 6, 1997) and SCANA Corporation (dated January 6, 1997).

[73] Division of Corporation Finance letter to ITT Corporation (December 6, 1996) and BGE Corporation (dated January 6, 1997).

[74] Rule 461 of Regulation C.

[75] 15 U.S.C. 77j(a)(3).

concern and, if available, the factual data in support of your position.

We specifically request that investors provide comments on the proposals.

VII. Cost-Benefit Analysis

Our plain English proposals streamline existing requirements and require a clear writing style and format. We believe the proposals, if adopted, would result in little additional costs as issuers implement the organizational, language, and document structure changes necessary to comply with these proposals. Additional cost, if any, should be short-term and would be outweighed by the significant improvement in disclosure to investors. In addition, a number of the proposals simplify the cover page format, which should result in some printing and other cost savings in preparing prospectuses.

We request your comment on whether the proposed rules would be "major rules" for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. We have tentatively concluded that the proposed rules would not result in a major increase in costs or prices for consumers or individual industries or significant adverse effects on competition, employment, investment, productivity, innovation, or small business. We request comments on whether the proposed rules are likely to have a $100 million or greater annual effect on the economy. Your comments should provide empirical data to support your views.

As an aid in evaluating the cost and benefits of the proposals, we request your comments and those of others involved in the registration process on this cost/benefit analysis. Please provide empirical data in support of your position to assist us in determining the cost and benefits of the proposals. We specifically request individual investors to provide us their views on the cost and benefits of the proposals.

VIII. Summary of the Initial Regulatory Flexibility Analysis

We have prepared an initial regulatory flexibility analysis, IRFA, in accordance with 5 U.S.C. 603 concerning the proposed rules. As discussed more fully in the IRFA, the proposed rules would codify our interpretive advice, eliminate requirements that are no longer useful, and require plain English to be used to simplify the language used in the front of the documents. The rule amendments are proposed under sections 6, 7, 8, 10, and 19(A) of the Securities Act, and sections 3, 12, 13, 14, 14(d), 23(a), and 35A of the Exchange Act.

As the IRFA describes, we are aware of approximately 1100 Exchange Act reporting companies and approximately 800 active registered investment companies that currently satisfy the definition of "small businesses" under Rule 157 of the Securities Act. However, there is no reliable way to determine how many businesses may become subject to reporting obligations in the future or may otherwise be impacted by the rule proposals. The proposed rules do not affect the substance of disclosures registrants must make. The proposals do not impose any new recordkeeping requirements or require reporting of additional information. Thus, we believe that the proposals will not increase reporting, recordkeeping, or compliance burdens, and in some cases may slightly reduce those burdens for small businesses. Our view is also based on the experience of participants in the plain English pilot program. Pilot participants reported that the time required to understand the reporting requirements and prepare disclosures was the same, and in some cases a little less, than under existing rules. Although none of the program participants is a "small business" as defined by our rules, we believe the proposals will affect all registrants in the same way.

As discussed more fully in the IRFA, several possible significant alternatives to the proposals were considered. These included establishing different compliance or reporting requirements for small entities, or exempting them from all or part of the proposed requirements. We believe that such alternatives are not appropriate for the following reasons: (i) They would be inconsistent with our mandate to require prospectuses to fully and fairly disclose all material information to investors; (ii) they would negate the important benefits of the proposals; and (iii) they would not reduce small issuers' compliance costs. The IRFA also indicates that there are no current federal rules that duplicate, overlap, or conflict with the proposed rules.

We encourage written comments on any aspect of the IRFA. In particular, we seek comment on: (i) The number of small entities that would be affected by the proposed rules; and (ii) the determination that the proposed rules would not increase, and in some cases might slightly reduce, reporting, recordkeeping, and other compliance requirements for small entities. If you believe the proposals will significantly impact a substantial number of small entities please describe the nature of the impact and estimate the extent of the impact. For purposes of making determinations required by the Small Business Regulatory Enforcement Act of 1966, we are also requesting data regarding the potential impact of the proposed rules on the economy on an annual basis. Your comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Ann D. Wallace, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Paperwork Reduction Act

The proposed amendments would affect several regulations and forms [76] that contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[77] In order to obtain Office of Management and Budget approval, we previously submitted estimates to that Office of the time and cost burdens imposed on public companies by each regulation and form. Each of the regulations and forms currently is approved by that Office and displays a Paperwork Reduction Act control number.

We believe that the proposed amendments would not result in a substantive or material change to the collection of information requirements based on our experience with the plain English pilot programs. Pilot participants have indicated that they do not believe that drafting plain English documents has increased their time or cost burdens. In addition, the proposed rules do not affect the substance of the disclosure required. We anticipate that the proposals would not materially change the annual burden reporting and burden hours, because the proposals provide guidance on meeting existing disclosure obligations and simplify the format of the disclosure provided to investors.

We solicit comment on our determination that the proposals would not result in a substantive or material change to the collection of information requirement and burdens. If you believe the proposals will affect materially the annual burden, you are asked to provide

[76] We are proposing changes to Rules 421 and 461 of Regulation C, Items 101, 501, 502, 503 and 508 of Regulation S–K and Regulation S–B and Item 301 of Regulation S–K. We also are proposing minor amendments to registration Forms S–2, S–3, S–4, S–20, F–3 and F–4 under the Securities Act. Regulation S–K, Regulation S–B and Regulation C do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is assigned one burden hour. The burden hours imposed by the disclosure regulations are reflected in the estimates for the forms that refer to the regulations.

[77] 44 U.S.C. 3501 *et seq.*

an estimate of the change in the burden and the basis for your position.

X. Statutory Authority

The rule amendments outlined above are proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 228, 229, 230 and 239

Reporting and recordkeeping requirements, Securities and Investment companies.

XI. Text of the Proposals

In accordance with the foregoing, Title 17, Chapter 11 of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.101 to add paragraphs (c) and (d) to read as follows:

§ 228.101 (Item 101) Description of business.

* * * * *

(c) *Reports to security holders.* If the small business issuer is not required to deliver an annual report to security holders, indicate whether it will voluntarily send an annual report and whether the report will include audited financial statements.

(d) *Canadian Issuers.* Canadian issuers shall provide the information required by Item 101(f) of Regulation S–K (§ 228.101(f)) (Enforceability of Civil Liabilities Against Foreign Persons).

3. Section 228.501 is amended by adding an introductory text, revising paragraphs (a)(4), (a)(5), (a)(7) and (a)(8) and removing paragraph (a)(11) to read as follows:

§ 228.501 (Item 501) Front of registration statement and outside front cover of prospectus.

The following information must be provided in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) * * *

(4) Cross reference to and identify the location in the prospectus (e.g., by page number or other specific location) of the risk factors section of the prospectus. The information should be highlighted by prominent type or otherwise.

(5) The small business issuer must provide disclosure that informs investors that the Securities and Exchange Commission has not approved the securities or passed on the adequacy of the disclosures in the prospectus and that any representation to the contrary is a criminal offense. The disclosure may be in one of the following formats or other clear and concise language.

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of the prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission ("SEC") has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(6) * * *

(7) If the securities are to be offered for cash, the small business issuer should set forth the price to the public, and the cash underwriting discounts and commissions. The information may be set forth in a table, term sheet format or other clear presentation. The small business issuer may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading. The information must be shown on a per unit and aggregate basis. If the offering is made on a minimum/maximum basis, information on the aggregate minimum/maximum must be shown. For best efforts or best efforts minimum/maximum offerings the cover page should disclose the date the offering will end and the provisions to place the funds in an escrow, trust, or similar account. Note that Item 508(a) requires all compensation and expenses of the underwriters to be disclosed in that section.

(8) A prospectus used before the effective date of the registration statement must include a prominent statement that indicates that:

(i) The information in the prospectus will be amended or completed;

(ii) The securities may not be sold until the registration statement becomes effective; and

(iii) The prospectus is not an offer to sell nor is it seeking an offer to buy the securities in any State where the offering is not permitted. The legend may be in the following language or other clear, and understandable language:

The information in this prospectus is not complete. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

(iv) Comparable information must be provided if the prospectus is used before the determination of the initial public offering price in the case of a prospectus that omits this information as permitted by § 230.430A of this chapter.

* * * * *

4. Section 228.502 is revised to read as follows:

§ 228.502 (Item 502) Inside front and outside back cover page of prospectus.

A small business issuer must disclose the following information in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Information available to security holders.* (1) On the inside front or outside back cover page of the prospectus, the small business issuer must state whether it is a reporting company; and

(2) The small business issuer shall describe the nature and frequency of the reports and other information the issuer is required to file with the Securities and Exchange Commission (SEC) that are available to investors. The small business issuer shall indicate that the documents can be reviewed and copied at the Commission's Public Reference Room in Washington, DC. 20549. In addition, if the small business issuer is an electronic filer, the disclosure shall indicate that the reports may be viewed on the SEC's Internet site (http://www.sec.gov) or that copies may be obtained, upon payment of a duplicating fee, by writing to the SEC's Public Reference Section. The small business issuer should indicate that information on the operation of the public reference room may be obtained by calling the SEC at 1–800–SEC–0330. Small business issuers are encouraged to give their Internet site address, if one is available.

(3) The small business issuer shall state the name of any national securities exchange on which its securities are listed.

(b) *Address and telephone number.* The small business issuer must include on the inside front cover page, or in the summary of the prospectus, the complete mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Dealer Prospectus Delivery Obligations.* The small business issuer must set forth information on the outside back cover page of the prospectus which advises dealers conducting transactions in the securities, whether or not they are participating in the distribution, that

they may be required to deliver a prospectus. The disclosure should specify the time period during which dealers must deliver a prospectus as specified in section 4(3) of the Securities Act and § 230.174 of this chapter. The following legend may be used or any other format that includes the required content and is clear and concise;

Until (insert date) all dealers that buy, sell or trade these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(d) *Table of Contents.* On the inside front cover page of the prospectus, or immediately following the cover page, the small business issuer should provide a reasonably detailed table of contents showing the location in the prospectus, including page number, if practicable, of the subject matter of the various sections or subdivisions of the prospectus, including the risk factors section required by Item 503 of Regulation S–B.

(e) *Financial Data Graphs.* Registrants are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that presents the data in an understandable manner. Any presentation must be consistent with the financial statements and related non-financial information. The graphs and charts must be drawn to scale and the information provided must not be misleading.

5. By revising § 228.503 to read as follows:

§ 228.503 (Item 503) Summary information and risk factors.

The following information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information contained in the prospectus where the length and complexity of the prospectus make a summary useful. The summary should be brief. The summary should not and is not required to contain all of the detailed information in the prospectus.

(b)(1) *Risk factors.* Discuss under the caption "Risk Factors" any factors that make the offering speculative or risky. The risk factor disclosure should highlight critical factors that the investor must consider in making an investment decision. Generic and boilerplate risks that could apply to any issuer or any offering should not be provided. The risk factors must be discussed in the order of their importance. The factors may include, among other things, the following:

(i) The small business issuer's lack of recent profits from operations;

(ii) The small business issuer's poor financial position;

(iii) The small business issuer's business or proposed business; or

(iv) The lack of a market for the small business issuer's common equity securities.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included, a pricing information section that immediately follows the cover page.

Instruction to Item 503(b)(2)

"Pricing information" as used in paragraph (b) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on § 230.430A(a) of this chapter and information disclosed in a prospectus but is subject to change as a result of pricing.

6. Section 228.508 is amended to add a sentence to the end of paragraph (a) and paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of distribution.

* * * * *

(a) *Underwriters and underwriting obligations.* * * * Disclose in a table all underwriting compensation including the other expenses of the offering specified in Item 511 of this Regulation S–B.

* * * * *

(j) *Stabilization and other transactions.* The small business issuer must provide disclosure which briefly describes any transaction that the underwriters intend to conduct during the offering that stabilizes, maintains or otherwise affects the market price of the offered securities. Disclosure should be provided to indicate, if true, that the underwriters may discontinue these transactions at any time and indicate the exchange or other market on which these transactions may occur.

(1) If the stabilizing begins before the effective date of the registration statement, the small business issuer must state the amount of securities bought, the prices at which they were bought and the period within which they were bought. If § 230.430A of this chapter is used, the final prospectus must include information on the stabilizing transactions before the public offering price was set.

(2) In connection with warrant or rights offerings to existing security holders, where securities not purchased by security holders are reoffered to the public, give the following information in the reoffer prospectus:

(i) The amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the securities subscribed for during the rights offering period;

(iii) The amount of the securities purchased by the underwriter during the rights offering period; and

(iv) The amount of the securities reoffered to the public and the offering price.

Instruction to Paragraph (j)

The disclosure should include information on stabilizing transactions, syndicate short covering transactions, penalty bids or any other transaction that affects the offered security's price. The nature of the transactions should be described in a clear understandable manner.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

7. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

8. By amending § 229.101 to add paragraphs (e) and (f) before "Instructions to Item 101" to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Reports to security holders.* Where a registrant is not required to deliver an annual report to security holders (or holders of American Depositary Receipts) by Section 14 of the Exchange Act (15 U.S.C. 78n) or stock exchange requirements, describe briefly the nature and frequency of reports that will be given to security holders. Specify whether or not such reports will contain financial information that has been examined and reported upon, with an opinion expressed by, any independent public or certified public accountant. In the case of the reports of a foreign private issuer, state whether the report will contain financial information prepared in accordance with United States generally accepted accounting

principles, or whether the report will include a reconciliation of such information with such accounting principles.

(f) *Enforceability of civil liabilities against foreign persons.* (1) A foreign private issuer shall provide disclosure which informs an investor as to whether actions may be brought under the civil liabilities provisions of the Federal securities laws against the registrant, its officers and directors, the underwriters or experts located in or residents of a foreign country or whose assets are located outside the United States. The disclosure shall address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in United States courts against the persons based upon the civil liability provisions of the Federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of United States courts based upon the civil liability provisions of the Federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the Federal securities laws.

(2) If any of the disclosures are based upon an opinion of counsel, counsel must be named in the prospectus. The foreign private issuer must file a signed consent of counsel, to the use of counsel's name and opinion, as an exhibit to the registration statement.

9. By amending § 229.301 by designating the introductory text as paragraph (a), introductory text, redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2); redesignating existing instruction as "Instructions to Item 301(a)" and adding paragraph (b) to read as follows:

§ 229.301 (Item 301) Selected financial data.

* * * * *

(b) *Ratio of Earnings to Fixed Charges.* If debt securities are registered, a ratio of earnings to fixed charges must be shown. If preference equity securities are registered, a ratio of combined fixed charges and preference dividends to earnings must be shown. The ratio must be presented for each of the last five fiscal years and the latest interim period for which financial statements are presented. If proceeds from the sale of debt or preference securities will be used to repay any of the registrant's outstanding securities, and the change in the ratio would be ten percent or greater, a pro forma ratio must be shown.

Instructions to Item 301(b)

1. *Definitions.* The following definitions apply when calculating the ratio of earnings to fixed charges.

A. *Fixed charges.* The term "fixed charges" means the sum of the following: (i) Interest expensed and capitalized, (ii) amortized premiums, discounts and capitalized expenses related to indebtedness, (iii) an estimate of the interest within rental expense, and (iv) preference security dividend requirements of consolidated subsidiaries.

B. *Preference security dividend.* The term "preference security dividend" is the amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. The dividend requirement shall be computed as the amount of the dividend divided by (1—the effective income tax rate applicable to continuing operations).

C. *Earnings.* The term "earnings" is the amount resulting from adding and subtracting the following items. Add: (i) Pretax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (ii) fixed charges; (iii) amortization of capitalized interest, (iv) distributed income of equity investees, and (v) the registrant's share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. Subtract: (i) interest capitalized, (ii) preference security dividend requirements of consolidated subsidiaries, and (iii) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that are accounted for using the equity method. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

2. *Disclosure.* The following disclosure should be provided when showing the ratio of earnings to fixed charges.

A. *Deficiency.* If a ratio indicates less than one-to-one coverage, the registrant must disclose the dollar amount of the deficiency.

B. *Pro forma ratio.* The pro forma ratio may only be shown for the most recent fiscal year and the latest interim period. Only the net change in interest or dividends of the refinancing may be used to calculate the ratio.

C. *Foreign private issuer.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. If materially different, the ratio also must be shown based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles.

D. *Summary Section.* If a summary section is provided in the prospectus, registrants should show the ratios in that section.

3. *Exhibit.* The registrant must file an exhibit to the registration statement to show the figures used to calculate the ratios. See paragraph (12) of Item 601 of Regulation S–K.

10. By revising § 229.501 to read as follows:

§ 229.501 (Item 501) Front of the registration statement and outside front cover page of the prospectus.

(a) *Facing Page.* The facing page must indicate the approximate date of the proposed sale to the public and, where appropriate, must include the delaying amendment legend required by § 230.473 of Regulation C of this chapter.

(b) *Outside Front Cover Page of Prospectus.* The following information, if applicable, must appear on the outside cover page of the prospectus, and must be in plain English as required by § 230.421(d) of Regulation C of this chapter. The information may be presented in a table, bullet list, term sheet format or other clear design. Registrants should design the outside cover page in a manner and format that is easy to read and encourages the investor to read the disclosure. Registrants may use any design that does not diminish the required information and is not misleading.

(1) *Name.* The registrant's name should be set forth. A foreign private registrant must give the English translation of the name.

Instruction to Paragraph 501(b)(1)

If the registrant's name is the same as that of a company that is well known, the registrant must include information to eliminate any possible confusion with the other company. If the name indicates a line of business in which the registrant is not engaged or is engaged only to a limited extent, the registrant must include information to remove a misleading inference as to the registrant's business. In some circumstances disclosure may not be sufficient and the registrant may be required to change its name. A name change is not required where the registrant is an established company, the character of its business has changed, and the investing public is aware generally of the change and the registrant's current business.

(2) *Title and amount of securities.* The title and amount of securities offered must be given. The amount of securities offered by selling security holders must be stated separately. A brief description of the securities must also be given except where the information is clear from the title of the security. For example, no description is necessary for common stock that has full voting rights, dividends and liquidation rights usually associated with common stock.

(3) *Offering price, underwriting commissions and offering proceeds.* Where securities are to be offered for cash, the price to the public, the underwriting discounts and commissions, and the proceeds to be received by the registrant and the proceeds to be received by the selling shareholders, if any, should be shown.

Instructions to Paragraph 501(b)(3)

1. If a preliminary prospectus is circulated and the registrant is not subject to the reporting requirements of Section 13(a) or 15 (d) of the Exchange Act, set forth either:

(A) A *bona fide* estimate of the range of the maximum offering price and the maximum number of securities offered; or

(B) A *bona fide* estimate of the principal amount of the debt securities offered.

2. If it is impracticable to state the price to the public, the method by which the price is to be determined should be explained. If the securities are to offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

3. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Only cash commissions paid by the registrant or selling security holders are to be shown. See Item 508 of Regulation S–K as to the requirements to disclose other expenses of the offering.

4. The proceeds shown should be the gross proceeds of the offering less underwriting discounts and commissions. The price and proceeds information should be shown on both a per unit and an aggregate basis. Registration statements on Form S–8 relating to employee benefit plans, Form S–4 or F–4 covering securities issued in a merger transaction or Form S–3 or F–3 relating to a dividend reinvestment plan are not required to comply with this paragraph.

(4) *State Legend.* Any legend or statement required by the law of any State in which the securities are to be offered should be set forth.

(5) *Commission Legend.* Disclosure should be furnished that indicates that the Securities and Exchange Commission has not approved the securities or passed upon the adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following formats or other clear and concise language:

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission (SEC) has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(6) *Underwriting.* Identify the underwriter(s) and briefly indicate the nature of the underwriting arrangements. If the securities are offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar account. If no such arrangements have been made, so state. Registrants may use any clear, concise, and accurate description of the underwriting arrangements. The following descriptions of underwriting arrangements may be used, where appropriate:

Example A: *Best efforts offering.* The underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered.

Example B: *Best efforts, minimum-maximum offering.* The underwriter must sell the minimum number of securities offered (insert number) but is only required to use their best efforts to sell the maximum number of securities offered (insert number).

Example C: *Firm commitment.* The underwriters are required to purchase all of the securities if any of the securities are purchased.

(7) *Date of Prospectus.* The approximate date of the prospectus should be given.

(8) *"Subject to Completion" Legend.* Any prospectus used before the effective date of the registration statement must include a prominent statement that indicates that:

(i) The information in the prospectus will be amended or completed;

(ii) The securities may not be sold until the registration statement becomes effective; and

(iii) The prospectus is not an offer to sell nor is it seeking offers to buy the securities in any State where offers or sales is not permitted. The legend may be in the following language or other clear, and understandable language:

The information in this prospectus is not complete. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

(iv) Comparable information must be provided if the prospectus is used before to the determination of the initial public offering price in the case of a prospectus that omits this information as permitted by § 230.430A of this chapter.

11. By revising § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

This information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Available Information.* Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) at the time the registration statement is filed must provide disclosure indicating:

(1) That the registrant is subject to the information requirements of the Exchange Act and files reports and other information with the Securities and Exchange Commission;

(2) That reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act (15 U.S.C. 78n(a) and (c)), proxy and information statements) and other information filed by the registrant can be reviewed and copied at the Commission's Public Reference Room in Washington, DC 29549. In addition, if the registrant is an electronic filer, the disclosure must indicate that the reports may be viewed on the SEC's Internet site (http://www.sec.gov) or that copies may be obtained, upon payment of a duplicating fee, by writing to the SEC's Public Reference Section. The registrant must indicate that information on the operation of the public reference rooms may be obtained by calling the SEC at 1–800–SEC–0330. Registrants are encouraged to give their Internet site address, if one is available. This information must appear on the back cover page or in the prospectus where the registrant discloses the reports incorporated by reference;

(3) The name of any national securities exchange on which the registrant's securities are listed.

(b) *Table of Contents.* The registrant must provide on the inside front cover page, or immediately following the cover page, a reasonably detailed table of contents. The table of contents should show the location in the prospectus, including the page number, if practicable, of the subject matter of the various sections or subdivisions of the prospectus, including the risk factor section required by Item 503 of Regulation S–K.

(c) *Address and Telephone Number.* Registrants must include the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(d) *Financial Data Graphs.* Registrants are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that presents the data in an understandable manner. Any presentation must be consistent with the financial statements and related non-financial information. The graphs and charts must be drawn to scale and the information provided must not be misleading.

(e) *Dealer Prospectus Delivery Obligations.* Information must be set forth on the outside back cover page of the prospectus that advises brokers of their prospectus delivery obligation, including the expiration date specified by section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. If the expiration date is not known on the effective date of the registration statement, the date must be included in the copy of the prospectus filed under § 230.424(b) of this chapter. The legend can be in any format so long as the content is set forth. No legend is required if dealers are not required to deliver a prospectus under § 230.174 of this chapter or section 24(d) of the Investment Company Act (15 U.S.C. 80a–24). The legend may read as follows:

> Until (insert date) all dealers that buy, sell or trade these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

12. By revising § 229.503 to read as follows:

§ 229.503 (Item 503) Prospectus summary and risk factors.

The following information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter. The information may be presented in table, bullet list, term sheet format, or other clear design. Registrants should structure and organize the prospectus summary and risk factors discussion in a manner and format that is easy to read and encourages investors to read the disclosure. Registrants may use any format or design that does not obscure the required information and is not misleading.

(a) *Prospectus Summary.* Registrants must include a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary appropriate. The summary section should be brief. The summary should not and is not required to contain all of the detailed information in the prospectus.

Instruction to paragraph (a)

The summary section must provide investors with a clear, concise and coherent "snapshot" description of the most significant aspects of the offering. Summaries should not randomly repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Registrants must carefully consider and identify the aspects of an offering that are the most significant and determine how best to highlight these points in everyday language.

(b) *Risk Factors.* Where appropriate, registrants must set forth under the caption "Risk Factors" a discussion of the most significant factors that make the offering speculative or one of high risk. The risk factors must be discussed in the order of their importance. The risk factors discussion should be short, concise and organized in a logical manner. The prioritized risk factors must highlight critical factors the investor must weigh in making an investment decision. Generic and boilerplate risk that could apply to any registrant or any offering should not be provided. Each risk factor must be set forth under a subcaption that adequately describes the risk. The risk factor discussion should immediately follow the summary section, if one is included, or the cover page of the prospectus. The factors may include, among other things, the following:

(1) The registrant's lack of an operating history;

(2) The registrant's lack of profitable operations in recent periods;

(3) The registrant's financial position;

(4) The registrant's business or proposed business; or

(5) The lack of a market for the registrant's common equity securities or securities convertible into or exercisable for common equity securities.

13. By amending § 229.508 by revising paragraphs (b) and (e) and adding paragraph (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(b) *New Underwriters.* Where securities being registered are those of a registrant that has not previously been required to file reports under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) and any of the managing underwriter(s) (or where there are no managing underwriters, a majority of the principal underwriters) was organized, reactivated, or first registered as a broker-dealer within the past three years, these facts should be disclosed in the prospectus. If appropriate, disclosure that the principal business function of the underwriters is to sell the securities to be registered, or that the promoters of the registrant have a material relationship with such underwriter(s) should be provided. Sufficient details shall be given to allow full appreciation of the underwriter(s)' experience and its relationship with the registrant, promoters and their controlling persons.

* * * * *

(e) *Underwriters' compensation.* Set forth in tabular form the nature of the compensation and the amount of discounts and commissions to be allowed or paid to the underwriters. Separately show amounts to be paid by the company and the selling shareholders. In addition, all other items deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rules of Fair Practice must be shown in the table.

Instructions to Paragraph 508(e)

1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Show cash commissions paid by the registrant or selling security holders separately in the table. Commissions paid by other persons also shall be set forth in the table. Any finder's fee or similar payments shall be disclosed in a note in the table.

2. Where an underwriter has received an over-allotment option, maximum-minimum information shall be presented in the table, based on the purchase of all or none of the shares subject to the option. The terms of the option should be described in the narrative.

* * * * *

(*l*) *Stabilization and other transactions.* (1) The registrant must provide disclosure which briefly describes any transaction that the underwriter(s) intends to conduct during the offering that stabilizes, maintains or otherwise affects the market price of the offered securities. Disclosure should be provided to indicate, if true, that the underwriter(s) may discontinue these transactions at any time and indicate the exchange or other market on which these transactions may occur.

(2) If the stabilizing began before the effective date of the registration statement, set forth the amount of securities bought, the prices at which the securities were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed pursuant to § 230.424(b) of this chapter or included in a post-effective amendment must include information

as to stabilizing transactions effected before the determination of the public offering price set forth in such prospectus.

(3) If the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offerings period, the registrant shall be set forth, in a supplement or otherwise, in the prospectus used in connection with such reoffering:

(i) The amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought;

(ii) The amount of the offering securities subscribed for during such period;

(iii) The amount of the offered securities subscribed for by the underwriters during the period;

(iv) The amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which the securities were sold; and

(v) The amount of the offered securities to be reoffered to the public and the public offering price.

Instruction to Paragraph (j)

The disclosure should include information on stabilizing transactions, syndicate short covering transactions, penalty bids or any other transaction that affects the offered security's price. The nature of the transactions should be described in a clear, understandable manner.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

14. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78(d), 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

15. By amending § 230.421 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 230.421 Presentation of information in prospectuses.

* * * * *

(b) The information set forth in a prospectus should be presented in a clear, concise and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections. Registrants shall prepare the prospectus using the following standards:

(1) Information shall be presented in clear, concise paragraphs and sentences. If possible, information shall be presented in short explanatory sentences and "bullet" lists;

(2) Captions and subheading titles shall specifically describe the disclosure included in the section;

(3) Terms that are not clear from the context generally should be defined in a glossary or other section of the document. Glossaries are recommended where they facilitate understanding. Frequent reliance on defined terms as the primary means of explaining information in the body of the prospectus must be avoided; and

(4) Legal and highly technical business terminology should be avoided.

Notes to § 230.421(b)

In drafting prospectus information, registrants should avoid the following:

1. Legalistic, overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to differing interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document, does not enhance the quality of the information, and overwhelms the reader.

(d)(1) The registrant must use plain English principles in the organization, language, and structure of the front and back cover pages, and the summary and risk factors sections, if any, included in the prospectus. These sections should communicate the information clearly to investors. At a minimum, the disclosure should substantially comply with each of the following plain English writing principles:

(i) Active voice;

(ii) Short sentences;

(iii) Definite, concrete, everyday words;

(iv) Tabular presentation or "bullet" list for complex material, whenever possible;

(v) No legal jargon, or highly technical business terms; and

(vi) No multiple negatives.

(2) The design of these sections or other sections of the prospectus may include pictures, logos, charts, graphs or other design elements so long as the design is not misleading and the required information is clear.

16. By amending § 230.461 by adding a sentence to the end of paragraph (b)(1) to read as follows.

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(1) * * * Where the plain English prospectus requirements of § 230.421(d) of this chapter have not been met.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

§ 229.12 [Form S–2 Amended]

18. By amending Form S–2 (referenced in § 239.12), Item 12 to add paragraph (d) to read as follows:

[**Note:** The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM S–2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.13 [Form S–3 Amended]

19. By amending Form S–3 (referenced in § 239.13) Item 12 to add paragraph (c) before the instruction to read as follows:

[**Note:** The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(c) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.20 [Form S–20 Amended]

20. By amending Form S–20 (referenced in § 239.20) to revise the reference in Item 1 "Item 502(f) of Regulation S–K [§ 229.502(f) of this chapter]" to read "Item 101(f) of Regulation S–K [§ 229.101(f) of this chapter]".

§ 239.25 [Form S–4 Amended]

21. By amending Form S–4 (referenced in § 239.25) to revise Item 2 to read as follows:

[Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM S–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of the Prospectus.

Set forth the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page, the registrant shall include information that highlights by print type or otherwise that the prospectus incorporates by reference important business and financial information about the company that is not included in or delivered with the document but which is available to security holders upon request. Give the name, address and telephone number where the request should be directed. In addition, the registrant should indicate that in order to obtain timely delivery, the request should be made no later than five business days prior to the date on which the investment decision must be made.

* * * * *

§ 239.33 [Form F–3 amended]

22. By amending Form F–3 (referenced in § 239.33) by adding paragraph (d) to Item 12 before the instruction to read as follows:

[**Note:** The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.34 [Form F–4 Amended]

23. By amending Form F–4 (referenced in § 239.34) to revise Item 2 to read as follows:

[**Note:** The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations]

FORM F–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of the Prospectus.

Set forth the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page, the registrant shall include information that highlights by print type or otherwise that the prospectus incorporates by reference important business and financial information about the company that is not included in or delivered with the document but which is available to security holders upon request. Give the name, address and telephone number where the request should be directed. In addition, the registrant should indicate that in order to obtain timely delivery, the request should be made no later than five business days prior to the date on which the investment decision must be made.

* * * * *

Dated: January 14, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble does not appear in the Code of Federal Regulations and the examples to Appendix A will not be in the **Federal Register** but may be viewed on our Internet site (http://www.sec.gov)

Appendix A—Examples of Plain English Disclosure Documents

The following pages are before and after samples taken from document filed by some of the Plain English Pilot participants:

- Bell Atlantic Corporation
- ITT Corporation
- Baltimore Gas and Electric Company
- Unisource Worldwide, Inc.

Some of the "after" examples do not contain all of the information that appears in the corresponding "before". To make these documents clearer and easier for investors to understand, these registrants either moved this information to a more logical section of the document or eliminated it because it was redundant.

Note: Appendix B to the Preamble does not appear in the Code of Federal Regulations

Appendix B—Chart on Small Business Issuer Rule Proposals

REGULATION S–B—ITEM 501—FRONT OF REGISTRATION STATEMENT AND OUTSIDE FRONT COVER OF PROSPECTUS

Current	Proposed
• Small business issuer name	• Same.
• Title, amount and description of securities offered	• Same.
• Selling security holders' offering identified	• Same.
• Cross-reference to risk-factors	• Same.
• SEC legal legend	• Rewritten in plain English.
• Formatted distribution table showing price, underwriting commission, and proceeds.	• Bullet list or other design that highlights the information
• Instruction on bona fide estimate of price	• Retain
• Instruction requiring terms of best efforts offering	• Retain on cover page. No longer permitted in summary.
• Legal legend where preliminary prospectus incomplete	• Rewritten in plain English.
• Legend required by state law	• Rewritten in plain English.
• Date of prospectus	• Retain.

REGULATION S–B—ITEM 501—FRONT OF REGISTRATION STATEMENT AND OUTSIDE FRONT COVER OF PROSPECTUS—Continued

Current	Proposed
• Expenses of offering	• Move to underwriting section.

REGULATION S–B—ITEM 502—INSIDE FRONT AND OUTSIDE BACK COVER PAGES OF PROSPECTUS

Current	Proposed
• Availability of Exchange Act Reports	• Retain on back cover page or include with incorporation by reference disclosure in short-form registration statements.
• Availability of reports with audited financial statements	• Move to business description section.
• Availability of reports incorporated by reference	• Move to prospectus where incorporation by reference disclosure provided.
• Stabilization legend	• Move to underwriting section.
• Passive market making legend	• Delete.
• Dealer prospectus delivery legend	• Move to back cover page of prospectus.
• Table of contents	• Inside front cover page or immediately following cover page.
• Canadian issuers disclosure on enforceability of civil liability against foreign person.	• Retain as part of business description.

REGULATION S–B—ITEM 503—SUMMARY INFORMATION AND RISK FACTORS

Current	Proposed
• Summary	• Retain in plain English. Propose to require discussion to be brief.
• Small business issuer address and telephone number	• Move to inside cover page or summary.
• Risk factors	• Retain in plain English. Codify prior interpretation to prioritize risk factors.

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Part IV

Department of Education

Applications for New Awards for Fiscal Year 1997 and Final Priorities; Notices

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice of Final Priorities

AGENCY: Department of Education.

SUMMARY: The Secretary announces final priorities for three programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1997 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on February 20, 1997.

FOR FURTHER INFORMATION CONTACT: The address, and telephone number at the Department to contact for information on each final priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains six final priorities under three programs authorized by the Individuals with Disabilities Education Act, as follows: Research in Education of Individuals with Disabilities Program (one priority); Educational Media Research, Production, Distribution, and Training Program (four priorities); and Technology, Educational Media, and Materials for Individuals with Disabilities Program (one priority). The purpose of each program is stated separately under the title of that program.

On October 9, 1996, the Secretary published a notice of proposed priorities for these programs in the **Federal Register** (61 FR 53032).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1997 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, one party submitted comments. An analysis of the comment follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter suggested that the Initial Career Awards priority should: (1) include individuals who have completed a professional degree, such as physical therapists, but who are not doctorally prepared; and (2) permit researchers to request up to five years of research support.

Discussion: The Department has a basic three-pronged approach to develop the capacity of the special education research community. First, there is the Student-Initiated Research Projects priority (begun in 1974) that targets students at the post-secondary level to encourage students to pursue special education research. Under the Student-Initiated Research Projects priority, awards are made for up to a 12-month period. Second, the Initial Career Awards (ICA) competition (begun in 1990) is intended to bridge the gap between students and established researchers by providing support to individuals who are in the initial phases of their careers to initiate and develop promising lines of research. Under the ICA competition, awards are made for up to three years. Third, the Field-Initiated Research Projects (FIR) competition (begun in 1964) provides support to researchers who may be associated with institutions of higher education, State and local educational agencies, and other public agencies and nonprofit private organizations. Awards under the FIR competition may be for up to 5 years. The Department believes this approach should be maintained because historically the students and beginning researchers have a difficult time competing against established researchers, and the Department believes it is important to encourage and support their participation to expand the special education research capacity into as broad a range as possible. The Department believes that limiting the ICA competition to individuals who are doctorally prepared supports the commitment to increase the capacity of individuals who intend to pursue careers in special education research, rather than individuals who may be capable of conducting research, but who are not making special education research a career. The Department has limited ICA to three years since these awards are intended as start-up rather than long-term investments.

Changes: None.

Research in Education of Individuals With Disabilities Program

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals who work with children with disabilities in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only those applications that meet this absolute priority:

Absolute Priority—Initial Career Awards

The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first four years after completing a doctoral program and graduating (e.g., for fiscal year 1997 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1991–92 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the

capacity of the researcher to pursue effectively the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

A project's budget must include funds to attend the two-day Research Project Directors' meeting to be held in Washington, DC each year of the project.

For Further Information Contact: For further information on the priority under the Research in Education of Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 3529, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette_Carey@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441.

Educational Media Research, Production, Distribution, and Training Program

Purpose of Program: To promote the general welfare of individuals who are deaf or hard of hearing and individuals with visual disabilities, and to promote the educational advancement of individuals with disabilities.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary will fund under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—Closed-Captioned Sports Programs

Background

This priority supports cooperative agreements to continue and to expand closed-captioning of major national sports programs shown on national commercial broadcast or basic cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables individuals who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national sporting events. Funds provided under this priority may be used to support no more than sixty percent of the captioning costs for the first year of the project, fifty-five percent for the second year, and fifty percent for the third year.

Priority

To be considered for funding under this competition, a project must—

(1) Include criteria for selecting programs for captioning that take into account the preference of consumers for particular sports programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals who are deaf or hard of hearing;

(2) Provide a flexible plan, including back-up systems, to ensure closed-captioning of sports programs without interruption, while accommodating last-minute program substitutions and new programs;

(3) Identify the total number of hours and the projected cost per hour for each of the programs to be captioned;

(4) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(5) Identify the methods of captioning to be used for each program—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(6) Demonstrate the willingness of major national commercial broadcast or basic cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 2—Video Description

Background

This priority supports cooperative agreements to provide video description in two areas: (1) Broadcast and cable television programs; and (2) home video. The purpose of this activity will be to describe television programs and videos to make television programming and home videos more accessible to children and adults with visual disabilities. The intent of this priority is to provide access to described television programming and home videos in order to enhance shared educational, social, and cultural experiences for children and adults with visual disabilities.

Priority

To be considered for funding under this priority, a project must—

(1) Include criteria for selecting programs and videos that take into account the preference of consumers for particular topics of interest, the diversity of programs or videos available, and the contribution of these programs or videos to the general educational, social, and cultural experiences of individuals with visual disabilities;

(2) Identify the total number of hours to be described and the projected cost per hour for each program or video to be described;

(3) Identify the source of private or public support, if any, for each program or video to be described, and the projected dollar amount of that support;

(4) Demonstrate the willingness of program or video producers to permit video description and distribution of their program or video; and,

(5) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations.

Absolute Priority 3—Educational Video Selection and Captioning

Background

This priority supports one cooperative agreement that would screen, evaluate, obtain, caption, and make available educational videos, including classics and general interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of individuals who are deaf or hard of hearing, and other individuals directly involved in activities promoting the advancement of individuals who are deaf or hard of hearing. This activity includes the preparation of captions on computer diskettes or CD–ROM, as appropriate, and the preparation of lesson guides for educational videos. This priority would ensure that students and other individuals who are deaf or hard of hearing may benefit from the same educational and general interest videos used to enrich the educational experiences of students and other individuals without hearing disabilities.

Priority

To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of students who are deaf or hard of hearing in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and

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suggestions of users into the selection and captioning process;

(3) Develop and implement criteria and procedures for screening, evaluating, and captioning selected videos;

(4) Obtain videos from film and video distributors for screening, evaluation, and possible captioning. Select from among video titles submitted by evaluators those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(5) Make arrangements with respective producers and distributors to have selected videos captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under Part F of IDEA and 34 CFR Part 330 (by purchasing up to 100 copies of each captioned title, which must be open-captioned). Closed-captioned masters must be made available to producers and distributors in an effort to promote the use of captioned videos.

(6) For selected titles, prepare captions on computer diskettes or CD–ROM, as appropriate, and check for accuracy. These captions would take into account the age and reading levels of the likely target audience;

(7) For selected educational videos, prepare lesson guides;

(8) Identify, select, and, if necessary, provide training or technical assistance to video evaluators, caption checkers, and captioning service providers; and

(9) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned.

Absolute Priority 4—Research on Educational Captioning

Background

This priority supports research on captioning of educational media and materials. Research can be based on the instructional use of captioning or the use of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing. Media and technologies explored or used by projects funded under this priority may include, but are not limited to: (1) Television—including high-definition television; (2) videos; and (3) other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Priority

Under this competition, projects must—

(1) Identify specific technological approaches that would be investigated;

(2) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the ategies to be studied, the research de gn, and target population;

(3) Collect, analyze and report (a) characteristics and outcome data (actual rather than expected results), including the settings, the service providers, and the individuals targeted by the project; and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(4) Conduct the research in realistic settings such as residential or integrated schools or colleges, or in community settings, as appropriate; and

(5) Conduct the research using methodological procedures that would: (a) Produce unambiguous findings regarding the effects of approaches and effects of the interaction among particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses.

For Further Information Contact: For further information on the four priorities under the Educational Media Research, Production, Distribution, and Training Program contact the U.S. Department of Education, 600 Independence Avenue SW., room 4627, Switzer Building, Washington, DC 20202–4641. Telephone: (202) 205–8894. FAX: (202) 205–8971. Internet: Jeffrey__Payne@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

Technology, Educational Media, and Materials for Individuals With Disabilities Program

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities

This priority provides support for development projects that design or adapt technology, assistive technology, educational media, or materials to improve the education of children and youth with disabilities.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) *Create Innovative Tools*—by encouraging development of varied and integrated technologies, media, and materials that open up and expand the lives of those with disabilities. This work should enable individuals with disabilities to achieve the outcomes expected of all students, such as independence, productivity and an improved quality of life, that promote equity in opportunity; or

(b) *Foster the Creation of State-of-the-Art Instructional Environments*—both in and out of school. These environments should use technology, educational media, and materials to enable students with disabilities to access knowledge, develop skills and problem-solving strategies, and engage in educational experiences necessary for their success as adults who are fully included in our society.

For Further Information Contact: For further information on the priority under the Technology, Educational Media, and Materials for Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., Room 4617, Switzer Building, Washington, D.C. 20202–2734. Telephone: (202) 205–9884. FAX: (202) 205–8971. Internet: Robin Murphy@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review

The programs (except for the Research in Education of Individuals with Disabilities Program) included in this notice are subject to the requirements of

Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Media Research, Production, Distribution, and Training Program, 84.026; and Technology, Educational Media, and Materials for Individuals with Disabilities Program, 84.180)

Dated: January 14, 1997.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–1391 Filed 1–17–97; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year 1997

AGENCY: Department of Education.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1997 competitions under three programs authorized by the Individuals with Disabilities Education Act. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Research in Education of Individuals With Disabilities Program

[CFDA No. 84.023]

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals who work with children with disabilities in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Eligible Applicants: State and local educational agencies; institutions of higher education; and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 324.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Absolute Priority—Initial Career Awards (84.023N)

The priority for Initial Career Awards in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Estimated Number of Awards: 4.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $75,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 30 double-spaced 8½×11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priority under the Research in Education of Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3529, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette_Carey@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441.

Educational Media Research, Production, Distribution, and Training Program

[CFDA No. 84.026]

Purpose of Program: To promote the general welfare of individuals who are deaf or hard of hearing and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 332.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

(Note: If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each affected priority.)

Absolute Priority 1—Closed-Captioned Sports Programs (84.026A)

The priority for Closed-Captioned Sports Programs in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 4.

Maximum Award: The Secretary rejects and does not consider an

application that proposes a budget exceeding $175,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

Absolute Priority 2—Video Description (84.026C)

The priority for Video Description in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 4.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

Absolute Priority 3—Educational Video Selection and Captioning (84.026D)

The priority for Educational Video Selection and Captioning in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $2,000,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 60 double-spaced 8½×11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 48 months.

Absolute Priority 4—Research on Educational Captioning (84.026R)

The priority for Research on Educational Captioning in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 2.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $120,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priorities under the Educational Media Research, Production, Distribution, and Training Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4627, Switzer Building, Washington, D.C. 20202–2734. Telephone: (202) 205–8894. FAX: (202) 205–8971. Internet: Jeffrey—Payne@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

Technology, Educational Media, and Materials for Individuals With Disabilities Program

[CFDA No. 84.180]

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Eligible Applicants: Institutions of higher education; State educational agencies; local educational agencies; public agencies; and nonprofit or for-profit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 333.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Absolute Priority—Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities (84.180T)

The priority for Technology, Educational Media, and Materials Projects That Create Innovative Tools for Students With Disabilities in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: April 14, 1997.

Deadline for Intergovernmental Review: June 13, 1997.

Estimated Number of Awards: 5.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 24 months.

For Application Information Contact: For the priority under the Technology, Educational Media, and Materials for Individuals with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2734. Telephone: (202) 205–9884. FAX: (202) 205–8971. Internet: Robin—Murphy@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1461.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). In addition, information on downloading application packages from the World

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Wide Web can be obtained at the Office of Special Education Programs homepage (at http://www.ed.gov/offices/OSERS/OSEP). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**. Application packages are available in an alternate format upon request.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Educational Media Research, Production, Distribution, and Training Program, 84.026; and Technology, Educational Media, and Materials for Individuals with Disabilities Program, 84.180)

Dated: January 14, 1997.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–1392 Filed 1–17–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
January 21, 1997

Part V

Department of Education

Individuals With Disabilities; Applications for New Awards for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Individuals With Disabilities; Applications for New Awards for Fiscal Year 1997

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1997.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1997 competitions under five programs authorized by the Individuals with Disabilities Education Act. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Early Education Program for Children With Disabilities [CFDA No. 84.024]

Purpose of Program: To support activities that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Eligible Applicants: Public agencies and private nonprofit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only those applications that meet one of these absolute priorities:

Absolute Priority 1—Model Demonstration Projects for Young Children with Disabilities (84.024B). The priority for Model Demonstration Projects for Young Children with Disabilities in the notice of final priority for this program, published in the **Federal Register** on February 2, 1996 at 61 FR 4171 applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 10.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 48 months. (Applicants should note that the 48-month project period is a change from previous competitions that allowed for a project period of up to 60 months. Previously, in determining whether to continue a project funding for the fourth and fifth years, the Secretary considered, among other things, the evaluation by a review team in the project's third year. The Secretary has determined that this approach is too cumbersome, and that three years does not allow projects sufficient time to develop the model for projects under this program.)

The project period change in the priority is considered a change to a rule under 553 of the Administrative Procedure Act, which would normally require the Secretary to offer interested parties the opportunity to comment. However, because it is a procedural change the Secretary has determined, under 5 U.S.C. 553(b)(A), that rulemaking requirements do not apply.

Absolute Priority 2—Outreach Projects for Young Children with Disabilities (84.024D). The priority for Outreach Projects for Young Children with Disabilities in the notice of final priority for this program, published in the **Federal Register** on February 2, 1996 at 61 FR 4172, applies to this competition.

Competitive Priority

Under 34 CFR 75.105(c)(2), the Secretary gives a competitive preference to applications that are otherwise eligible for funding under this priority and that meet the following competitive priority:

Propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by the projects. To meet this priority an applicant must indicate that it will:

- Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprises Communities; or
- Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of, these zones and communities.

As appropriate, the proposed project under the Individuals with Disabilities Education Act must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities.

The Secretary awards 5 points to an application that meets this competitive priority relating to Empowerment Zones and Enterprises Communities, which was published in the **Federal Register** on November 7, 1994 (59 FR 55534). These points are in addition to any points the application earns under the selection criteria for the program.

A listing of areas that have been selected as Empowerment Zones or Enterprises Communities is included in an appendix to a notice published in the **Federal Register** on December 6, 1995 (60 FR 62699).

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 17.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priorities under the Early Education Program for Children with Disabilities contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3072, Switzer Building, Washington, D.C. 20202–2651. Telephone: (202) 205–8761. FAX: (202) 205–9070. Internet: Ernestine_Jefferson@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 260–7381.

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training [CFDA 84.029]

Purpose of Program: The purpose of Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

Eligible Applicants: Institutions of higher education; State agencies; and other appropriate nonprofit agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 318.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority: Special Projects (84.029K). This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(a) Appropriate areas of interest include—

(1) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(2) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(3) Inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(4) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(5) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(6) Recruitment and retention of special education, related services, and early intervention personnel.

(b) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators. (See 34 CFR 318.11(a)(5).)

Invitational priorities: Within this absolute priority the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Projects that develop, demonstrate, evaluate, and disseminate—

(a) Approaches to prepare teachers with strategies, including behavioral management techniques, for addressing the conduct of children with disabilities that impedes their learning and that of non-disabled children in the classroom;

(b) Approaches to better enable faculty at schools and colleges of education to prepare teachers to serve students with disabilities in regular classrooms;

(c) Approaches to prepare teachers in innovative instructional methodologies designed to help children with disabilities improve their reading performance; or

(d) Intensive and sustained inservice training of teachers or teams of teachers through institutes or other methods designed to ensure that they have the knowledge and skills necessary to help children with disabilities meet challenging standards established for all children.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 16.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in

evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½x11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, résumés, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch).

If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priority under the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1431.

Postsecondary Education Programs for Individuals With Disabilities [CFDA No. 84.078]

Purpose of Program: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities (84.078C). The priority for Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities in the notice of final priority for this program, published in the **Federal Register** on February 2, 1996 at 61 FR 4175, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 11.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½ × 11" pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Applications and General Information Contact: For the priority under the Postsecondary Education Programs for Individuals with Disabilities contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1424a.

Secondary Education and Transitional Services for Youth With Disabilities Program [CFDA No. 84.158]

Purpose of Program: To (1) assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other public and nonprofit private institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under this competition only those applications that meet any one of these absolute priorities:

Absolute Priority 1—Outreach Projects for Services for Youth with Disabilities (84.158Q). The priority for Outreach Projects for Services for Youth with Disabilities in the notice of final priority for this program, published in the **Federal Register** on February 2, 1996 at 61 FR 4176, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 11.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $140,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

Absolute Priority 2—Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students with Disabilities (84.158V). The priority for Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students with Disabilities in the notice of final priority for this program, published in the **Federal Register** on February 2, 1996 at 61 FR 4177, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: March 28, 1997.

Deadline for Intergovernmental Review: May 27, 1997.

Estimated Number of Awards: 14.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 40 double-spaced 8½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priorities under the Secondary Education and Transitional Services for Youth with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia_Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1425.

Special Studies Program [CFDA No. 84.159]

Purpose of Program: To support studies to assess the impact and effectiveness of the Individuals with Disabilities [redacted]cation Act (IDEA), including State and local efforts to provide a free appropriate public education to children and youth with disabilities and early intervention services to infants and toddlers with disabilities, and to provide State, local, and Federal agencies with information relevant to program management, administration, delivery, and effectiveness with respect to that education and those early intervention services.

Eligible Applicants: Public or private agencies, institutions, organizations, and other appropriate parties as designated in the statute and regulations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85,

and 86; and (b) The regulations for this program in 34 CFR Part 327.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—State-Federal Administrative Information Exchange (84.159K). The priority for State-Federal Administrative Information Exchange in the notice of final priority for this program, published in the **Federal Register** on May 6, 1996 at 61 FR 20417, applies to this competition.

Applications Available: February 10, 1997.

Deadline for Transmittal of Applications: April 14, 1997

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative to no more than 50 double-spaced 8 ½×11″ pages (on one side only) with one-inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Project Period: Up to 36 months.

For Application Information Contact: For the priority under the Special Studies Program contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 4627, Switzer Building, Washington, D.C. 20202–4641. Telephone: (202) 205–8894. FAX: (202) 205–8971. Internet: Jeffrey__Payne@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1418.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). In addition, information on downloading application packages from the World Wide Web can be obtained at the Office of Special Education Programs homepage (at http://www.ed.gov/offices/OSERS/OSEP). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**. Application packages are available in an alternate format upon request.

(Catalog of Federal Domestic Assistance Numbers: Early Education Program for Children with Disabilities, 84.024; Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training, 84.029; Postsecondary Education Programs for Individuals with Disabilities, 84.078; Secondary Education and Transitional Services for Youth with Disabilities Program, 84.158; and Special Studies Program, 84.327)

Dated: January 14, 1997.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–1393 Filed 1–17–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
January 21, 1997

Part VI

The President

Proclamation 6966—Religious Freedom Day, 1997

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Federal Register
Vol. 62, No. 13
Tuesday, January 21, 1997

Presidential Documents

Title 3—

The President

Proclamation 6966 of January 16, 1997

Religious Freedom Day, 1997

By the President of the United States of America

A Proclamation

Every day, in neighborhoods and communities across our Nation, Americans come together to worship and to reaffirm their most deeply held spiritual values. Our right to worship freely—each in our own way—is essential to our well-being. Religious Freedom Day offers us an invaluable opportunity to reflect on this precious human right and to give thanks for its protection in our Nation.

Freedom from religious persecution was of such profound importance to our founders that they placed it first among the freedoms guaranteed by the Bill of Rights. History has proved the wisdom of that decision. America's commitment to religious tolerance has empowered us to achieve an atmosphere of understanding, trust, and respect in a society of diverse cultures and religious traditions. And today, much of the world still looks to the United States as the champion of religious liberty.

Yet, even in America, we must be ever vigilant in protecting the freedoms so important to our ancestors and so admired by people throughout the world. The church arsons and the desecration of synagogues and mosques in recent years demonstrated for us all that our country is not entirely free from violence and religious hatred. My Administration took quick and decisive action, including working with the Congress to help churches rebuild and to prevent future incidents. And I am pleased that the American people are coming together as a national community to speak out against such crimes and to renew the climate of trust and tolerance so that all our people can worship without fear.

We must also support the aspirations of ethnic and religious minorities in other nations as they strive for their own right to worship freely. My Administration has established the Advisory Committee on Religious Freedom Abroad to provide counsel on how best to prevent persecution and promote reconciliation among people of different faiths. I invite all nations to join us in supporting individuals in houses of worship around the world as they exercise one of the most sacred of human rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 1997, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, and I urge them to reaffirm their commitment to the principle of religious freedom.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97-1609
Filed 1-17-97; 11:55 am]
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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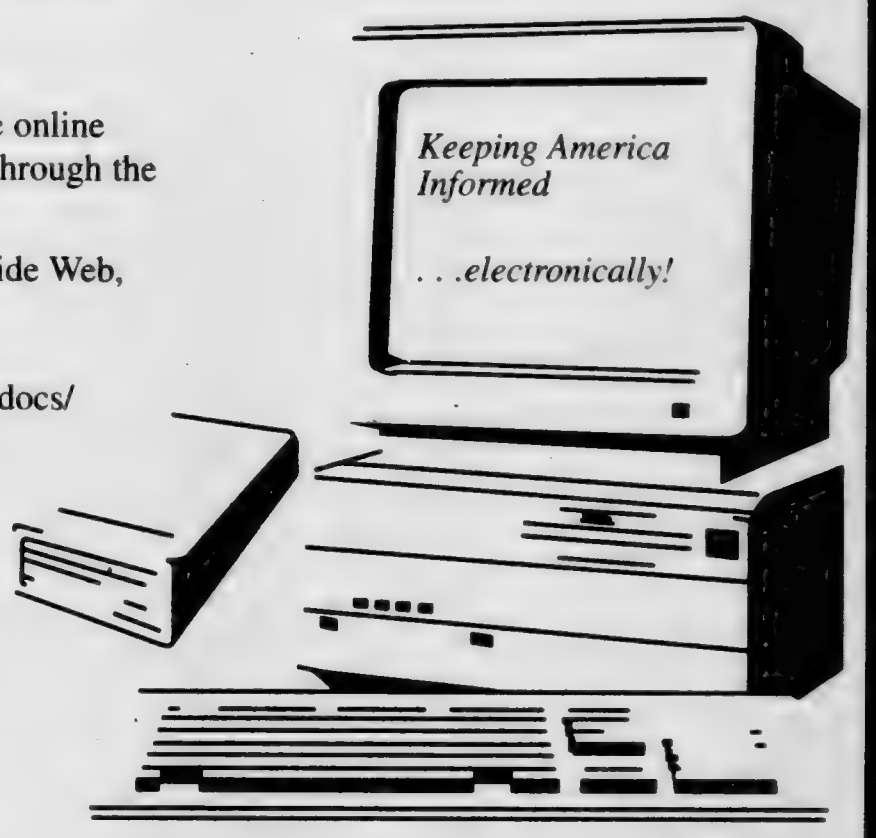

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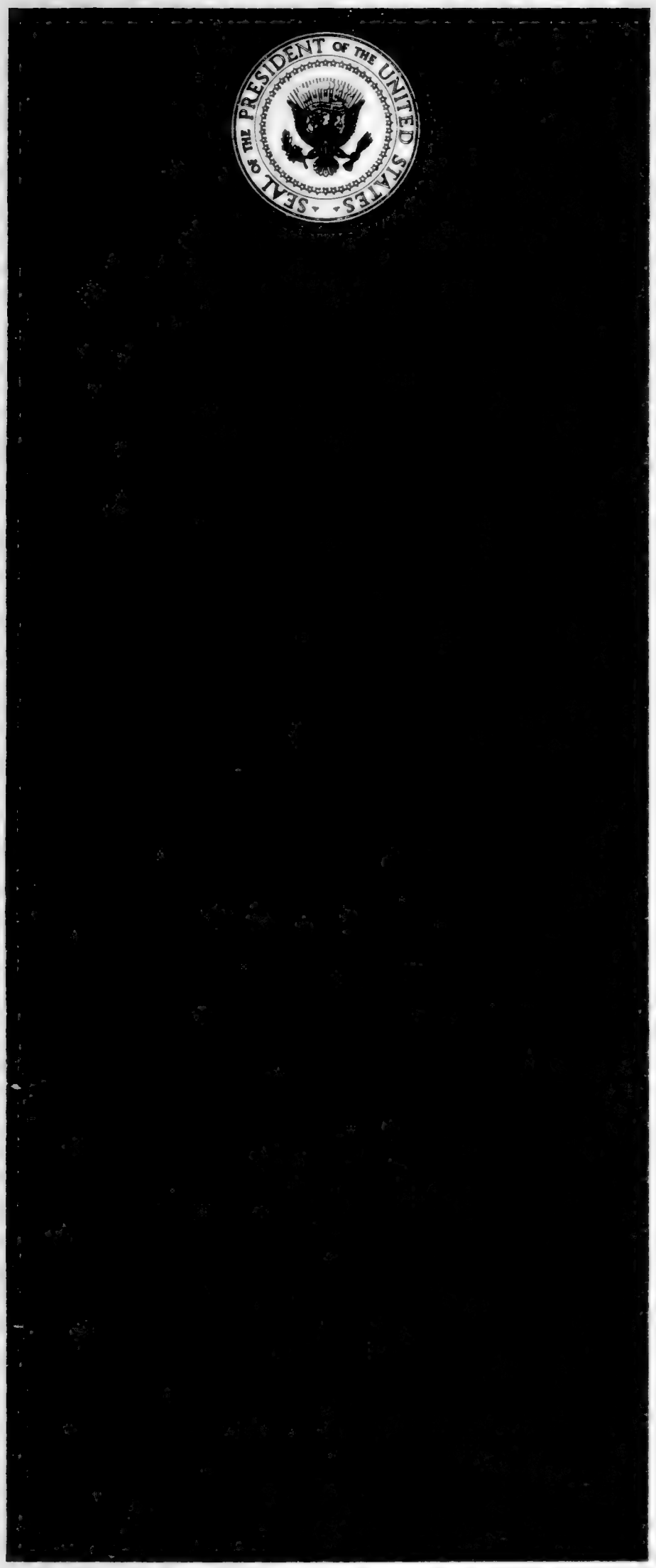

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Rules and Regulations

Federal Register
Vol. 62, No. 14
Wednesday, January 22, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 362 and 315

RIN 3206–AH53

Presidential Management Intern Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations for the Presidential Management Intern (PMI) Program. Part 362 is amended to clarify nomination, selection, and employment procedures, to modify the career development portion of the Program, and to make editorial changes. We are amending part 315 to clarify that PMI's do not serve probation when converted to career or career-conditional appointments.

DATES: Effective date: January 22, 1997. Written comments will be considered if received on or before March 24, 1997.

ADDRESSES: Send or deliver written comments to Joseph Stix, Director, Philadelphia Service Center, U.S. Office of Personnel Management, Federal Building, Room 3400, 600 Arch Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph A. McMaster, Jr. 215–597–7136 or Kathleen Keeney, 215–597–1920, FAX 215–597–8136.

SUPPLEMENTARY INFORMATION: To revitalize the PMI Program, the President's Management Council requested that OPM and the Human Resources Development Council (an interagency group of training officials) analyze the PMI Program and meet with agencies that use the Program. Their recommendations were adopted by the President's Management Council. The goals are to encourage maximum use of the PMI Program as authorized in Executive Order 12645 (July 12, 1988) and to assure uniformity in Program operations. The recommendations are incorporated into these regulations.

The clarification of part 315 reflects longstanding policy that PMI's do not serve a probationary period when they are converted to career or career-conditional because the 2-year intern program serves the same purpose as a probation.

Originally, interim regulations on the PMI Program were issued in March 1995. No final regulations were issued. Because of program changes needed to implement the President's Management Council recommendations, we are again issuing interim regulations for comment.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the current PMI applicants have already started the evaluation process for final selection. A delay would result in the postponement of job offers and loss to the Federal Government of the most highly qualified participants in the program.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 315 and 362

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 315 and part 362 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

2. Section 315.708 is revised to read as follows:

§ 315.708 Conversion based on service as a Presidential Management Intern.

(a) Agency authority. An agency may convert noncompetitively to career or career-conditional employment, a Presidential Management Intern who:

(1) Has satisfactorily completed a 2-year Presidential Management Internship, under § 213.3102(ii) of this chapter, at the time of conversion;

(2) Is recommended for conversion within 90 calendar days before completion of the Internship; and

(3) Meets the citizenship requirement.

(b) Tenure on conversion. (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it under § 315.201(c) of this chapter.

(c) Acquisition of competitive status. A person converted to career or career conditional employment under this section does not serve probation and acquires competitive status immediately upon conversion.

3. Part 362 is revised to read as follows:

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PART 362—PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Subpart A—Purpose and Definitions

Sec.
362.101 Purpose.
362.102 Definitions.

Subpart B—Program Administration

362.201 Nomination and selection.
362.202 Appointment and extentions.
362.203 Conversion to competitive service.
362.204 Resignation, termination, and reduction in force.
362.205 Movement of interns between departments or agencies.
362.206 Career development.

Authority: E.O. 12364, of May 24, 1982, 3 CFR, 1982 Comp., p. 185.

Subpart A—Purpose and Definitions

§ 362.101 Purpose.

The Presidential Management Intern (PMI) Program is designed to attract to Federal service outstanding men and women from a wide variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs.

§ 362.102 Definitions.

(a) A *Presidential Management Intern* is appointed in the excepted service under § 213.3102(ii) of this chapter, in an executive agency or department. The individual must have completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic program director, successfully completed an OPM-administered assessment process, and been selected and appointed by an agency for a 2-year Presidential Management Internship.

(b) A *qualifying college or university* is an academic institution formally accredited by an accrediting organization recognized by the Secretary of the U.S. Department of Education (34 CFR part 602).

Subpart B—Program Administration

§ 362.201 Nomination and selection.

(a) Eligibility. Individuals eligible to be nominated for the Program are graduate students from a variety of academic disciplines completing or expecting to complete, during the current academic year, an advanced degree from a qualifying college or university. These individuals must demonstrate an exceptional ability, a clear interest in, and a commitment to a career in the analysis and management of public policies and programs.

(b) Nomination procedure. (1) The college or university making nominations for the Program shall establish a competitive nomination process to ensure that all eligible students are aware of the PMI Program and how to apply for nomination. The process will also ensure that applicants receive careful and thorough review, and that all receive equal opportunity for nomination.

(2) Students must be nominated by the dean, chairperson, or academic program director.

(3) Students who apply to be nominated must be rated qualified or not qualified for nomination. Nominations are made by school officials through completion of the PMI application form.

(4) Students eligible for veterans' preference who apply for nomination and are found qualified must be nominated. Based on the documentation provided by the student, the college or university must determine preliminary eligibility for veterans' preference. Students eligible for veterans' preference who believe they met the college or university's nomination qualification requirements, but were not nominated, may request a review by the OPM PMI Program office.

(c) Selection. Selection of Program finalists will be based on an OPM evaluation of the PMI application and a structured assessment center process. Veterans' preference will be adjudicated by OPM.

§ 362.202 Appointment and extensions.

(a) Appointing Authority. The appointment authority for Presidential Management Interns is 5 CFR 213.3102(ii). Appointments cannot exceed 2 years unless extended for up to 1 additional year by the agency with the approval of OPM under § 362.202(b).

(b) Completion of degree requirements. Agencies must assure that all graduate degree requirements have been met at the time of appointment. Interns may not be appointed prior to the completion of all graduate degree requirements. Exceptions may be made on an individual basis, but in no case will an intern be allowed to remain in the program if all degree requirements are not completed by August 31 of the year in which the intern was selected as a finalist.

(c) Time period. Agencies may appoint individuals with formal notification of their selection as PMI finalists no later than December 31 of the year in which they were selected as finalists. Exceptions may be granted on a case-by-case basis upon request of the agency to the OPM PMI Program office no later than December 15 of the year in which the interns were finalists.

(d) Grade and pay. Initial appointments must be made at the grade 9, step 1 level of the General Schedule. If an intern has had prior higher level Federal Government service, the individual may be placed at a higher step within the GS–9 rate consistent with the maximum payable rate rules under 5 CFR 531.203(c). Promotion to the GS–11 level may occur after satisfactory completion of 1 year of continuous service. Under 5 CFR 213.3102(ii), intern positions are authorized only at the GS–9 and GS–11 levels. Therefore, the agency has the option of promoting an intern to the GS–12 level on or after the date of conversion to the competitive service.

(e) Citizenship. Interns do not need to be United States citizens during their internship. However, if a noncitizen intern is hired, the agency must make sure that:

(1) The intern is lawfully admitted to the United States as a permanent resident or otherwise is authorized to be employed by the U.S. Immigration and Naturalization Service;

(2) The agency is authorized to pay the noncitizen under the annual appropriations act ban or any agency-specific enabling appropriation statute; and

(3) The intern acquires United States citizenship prior to conversion under 5 CFR 315.708.

(f) Extensions. Agencies must request, in writing, OPM approval to extend an internship for up to 1 additional year beyond the authorized 2 years in order to provide the intern with additional training and developmental activities. The request should be submitted no later than 60 days prior to the end of the initial 2-year period.

§ 362.203 Conversion to competitive service.

(a) In accordance with 5 CFR 315.708, employees who are United States citizens and have successfully completed Presidential Management Internships may be converted noncompetitively to career or career-conditional appointments in positions for which they are qualified.

(b) Conversions will be effective on the date the 2-year service requirement is met, unless the internship is extended by the agency, with approval of OPM, for up to one additional year.

(c) Agencies must inform the OPM PMI Program office when an individual will not be converted.

§ 362.204 Resignation, termination, and reduction in force.

(a) Resignation. An employee who resigns during the internship does not

have reinstatement eligibility for competitive service positions and cannot be re-interned to the PMI Program.

(b) Termination. The appointment of a Presidential Management Intern expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with 5 CFR 315.708, or extend the internship in accordance with § 362.202(b). If neither action is taken, the PMI appointment terminates.

(c) Reduction in Force. Presidential Management Interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

§ 362.205 Movement of interns between departments or agencies.

To move from one agency to another during the internship, the intern must separate from the current agency and be reappointed under PMI appointment by the new employing agency without a break in service. The intern does not begin a new 2-year internship period; the time previously served under the PMI Program counts toward the completion of the 2-year period. The new employing agency must notify the OPM PMI Program office of the action.

§ 362.206 Career development.

(a) OPM responsibilities. OPM will:

(1) Provide orientation and graduation programs for each intern class; and

(2) Serve as a clearinghouse of available training opportunities.

(b) Agency responsibilities. Each agency will:

(1) Work with the intern to develop a written outline of core competencies and technical skills (called an individual development plan) the intern must gain before conversion to a target position;

(2) Provide at least 80 hours of formal training a year, including training in core competencies targeted to a functional area into which the intern will most likely be converted; and

(3) Provide at least one rotational assignment to another functional area, made at the discretion of the agency.

[FR Doc. 97–1419 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AH59

Prevailing Rate Systems; Abolishment of San Joaquin, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the San Joaquin, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine its sole county (San Joaquin County) as an area of application to the Sacramento, CA, NAF wage area for pay-setting purposes.

EFFECTIVE DATE: February 21, 1997. Employees currently paid rates from the San Joaquin, CA, NAF wage schedule will continue to be paid from that schedule until their conversion to the Sacramento, CA, NAF wage schedule on April 18, 1997, 1 day before the effective date of the next Sacramento, CA, wage schedule.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 17, 1996, OPM published an interim rule to abolish the San Joaquin, CA, NAF wage area and redefine its sole remaining county (San Joaquin County) as an area of application to the Sacramento, CA, NAF wage area. This change was necessary because the Stockton Naval Communication Station, host installation for the wage area, closed on September 30, 1996. The remaining installation in the area, the Defense Distribution Region West, has approximately 18 FWS employees and no longer meets the minimum FWS employment criterion (26 employees) required to be a survey area. The interim rule provided a 30-day comment period. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on September 17, 1996 (61 FR 48817), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1417 Filed 1–21–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560–AF11

Disaster Reserve Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) is announcing the availability of assistance under the Disaster Reserve Assistance Program to relieve the distress of livestock producers whose production of livestock feed has been adversely affected by natural disasters.

DATES: Interim rule effective January 10, 1997. Comments on this rule must be received on or before February 21, 1997. Comments on the information collection must be received on or before March 24, 1997.

ADDRESSES: Comments may be mailed to the Director, Emergency and Noninsured Assistance Program Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0527, P.O. Box 2415, Washington, DC. 20013–2415.

FOR FURTHER INFORMATION CONTACT: Leona Dittus, Director, Emergency and Noninsured Assistance Program Division, Farm Service Agency, United States Department of Agriculture, STOP 0526, P.O. Box 2415, Washington, DC 20013–2415, 202–720–3168.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a

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notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12778

The interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive to January 10, 1997. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Due to the extreme weather conditions and the need for immediate action, CCC has determined that, pursuant to section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it is impracticable, unnecessary and contrary to the public interest to require this rule to conform to the requirements of section 801 of that Act. Accordingly, this rule is effective January 10, 1997.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, CCC will submit an emergency information collection request (ICR) to OMB for the approval of the Disaster Reserve Assistance Program reports as necessary for the proper functioning of the program.

Title: Emergency Livestock Feed Assistance and Disaster Reserve Assistance Program.

OMB Control Number: 0560–0029.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0029, as identified above, is needed to enable the CCC to effectively administer the Disaster Reserve Assistance Program.

The CCC requires some of the information it collects to be reported in a standard manner. Although other institutions, public and private, generally require and collect information similar to that requested by CCC, there is a wide diversity in reporting practices.

Respondents generally consist of livestock owners applying for emergency livestock feed assistance. Compliance with local, State, and Federal laws is required, and evidence of compliance with these laws may be required.

The information collection required by this rule will be used by the CCC to approve or determine the eligibility and amount of assistance in accordance with this rule. The CCC considers the information collected to be essential to prudent eligibility and assistance determinations. Failure to make sound decisions in providing emergency livestock feed assistance would result in large losses to both the livestock owners and the Government, and weaken the overall agricultural economy.

Estimate of Burden: Public reporting burden for this information collections estimated to average .21 hours per response.

Respondents: Livestock owners.

Estimated Number of Respondents: 60,000.

Estimated Number of Responses per Respondents: 6.35.

Estimated Total Annual Burden on Respondents: 381,000 hours.

Topics for comments include: (a) whether the collection of information is necessary for the proper performance of the functions of the CCC, including whether the information will have practical utility; (b) the accuracy of the CCC's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Leona Dittus, Director, Emergency and Noninsured Assistance Program Division, FSA, USDA, STOP 0527, P.O. Box 2415, Washington, D.C. 20013–2415, (202) 720–3168. Copies of the information collection may be obtained from Leona Dittus at the above address.

OMB is required to make a decision concerning the collection(s) of information contained in these interim regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Agriculture on any substantive DRAP regulations that may be the subject of other notices.

All responses will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Executive Order 12612

It has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.452.

Background

Pursuant to the authority set forth in section 813(c) of the Agricultural Act of 1970, as amended, it has been determined that:

1. Severe and prolonged natural disasters adversely affecting livestock producers across the country warrant implementing a Disaster Reserve Assistance Program to alleviate the distress caused by natural disaster conditions.

2. A notice published on October 29, 1996 (61 FR 55783) explained how provisions of 7 CFR part 1439 will apply to the Disaster Reserve Assistance Program. Contrary to the October 29, 1996, notice, sections 1439.401 through 403 will be applicable with the following revision.

3. This rule will amend part 1439 to provide assistance for feed losses in crop year 1996, for losses occurring

because of snow and freezing conditions. For Disaster Reserve Assistance Program applications made after January 10, 1997, assistance may be made available with respect to livestock feed losses occurring because of snow and freezing conditions. Such assistance shall be made without regard to the livestock being commingled, stranded, or the identity of ownership of the livestock and may be either donated CCC-inventory, donated hay, or a direct payment. Accordingly, 7 CFR 1439.402(a) is amended by adding the following: "For applications made in 1997, assistance for feed loss or inaccessibility may be made without respect to the livestock being commingled, stranded, and unidentified as to the livestock owner. Such losses must occur during the 1996 crop year because of snow or freezing conditions where an emergency declaration has been made by the President and while emergency snow conditions exist as determined by DAFP".

4. Based on the determinations made in the **Federal Register** notice of October 29, 1996, the Disaster Reserve Assistance Program is authorized for 1996 crop year livestock feed losses or inaccessibility for livestock owners who are determined eligible. Program payments will be contingent on the availability of CCC funds.

Accordingly, 7 CFR part 1439 is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1427 and 1471j.

2. Section 1439.402(a) is revised to read as follows:

§ 1439.402 Assistance.

(a) Assistance is for eligible livestock that are commingled, stranded, and unidentified as to the livestock owner. For applications made in 1997, assistance for feed loss or inaccessibility may be made without respect to the livestock being commingled, stranded, and unidentified as to the livestock owner. Such losses must occur during the 1996 crop year because of snow or freezing conditions where a emergency declaration has been made by the President and while emergency snow conditions exist as determined by DAFP.

* * * * *

Signed at Washington, DC, on January 16, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–1523 Filed 1–16–97; 3:15 pm]

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7 CFR Part 1464

RIN 0560–AD93

Tobacco—Tobacco Loan Program, Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On April 20, 1995, the Commodity Credit Corporation (CCC) published an interim rule in the **Federal Register** (60 FR 19665) which, in accord with contemporaneous legislation, conditionally provided for certain revisions of the budget deficit marketing assessment (BDMA) for imported tobacco in the event that the President should issue a proclamation establishing a tariff-rate-quota (TRQ) for imported tobacco. This final rule adopts the interim rule with modifications to reflect that the proclamation has now been issued. Also, modifications have been made to other sections to eliminate references to tobaccos for which price support is not available, to modify the penalty provisions of the rules to reflect the quota proclamation made by the President, and to make other technical changes.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: David W. Anderson, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0514, P. O. Box 2415, Washington, DC 20013–2415, telephone 202–690–2518.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 USC 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V published at 48 FR 2915 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt state laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 and 7 CFR part 711, as applicable must be exhausted.

Paperwork Reduction Act

The information collection requirements contained in these regulations (7 CFR part 1464) have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0560–0148.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background and Discussion

Since 1990 there has been a budget deficit marketing assessment (BDMA) collected on all price supported tobaccos. As reflected in an interim rule of April 20, 1995, 60 FR 19665, Congress, in legislation in 1993 extended the BDMA to all imports of tobacco. However, by legislation in 1994, the Congress imposed new limits on the BDMA and on the amount of the

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BDMA, as it applied to imported tobacco, to take effect in the event that the President should issue a TRQ quota for tobacco. The interim rule, by amendment to 7 CFR part 1464, provided for these conditional modifications to take effect on the fulfillment of the condition. The proclamation was issued on September 13, 1995.

No comments were received in response to the interim rule and it is adopted in this notice as a final rule with modifications to reflect the issuance of the proclamation. In addition, this final rule makes technical changes to other sections of 7 CFR part 1446. Among these, the rule removes a reference to tobacco grown in Puerto Rico. The reference is not needed since that tobacco is no longer price supported. Also, the reference repeats, essentially, a condition which applies elsewhere under the rules applicable to all tobacco. In addition, this final rule: (1) conforms the penalty rate provisions of part 1464, as they apply to failures to remit the BDMA on imported tobacco, to the 1994 legislation (by tieing the rate to that which would apply to the corresponding domestic tobacco); (2) provides a postmark rule for determining the remittance date of mailed payments; and (3) extends from 15 days to 30 days the time in which a request for reconsideration can be made in the event of a dispute. The latter amendment, regarding rehearing, conforms the rule to other appeal regulations for commodity matters. As these amendments are required by law and are matters of agency procedure or are merely technical in nature, it has been determined that further rule-making is not needed.

List of Subjects in 7 CFR Part 1464

Assessments, Agriculture, Loan program, Price support program, Tobacco, Warehouses.

For the reasons set forth, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, and 1445–2; 15 U.S.C. 714b, 714c.

§ 1464.2 [Amended]

2. Section 1464.2(a) is amended by removing the following kinds of tobacco from the list of tobaccos for which price support is available.

"Maryland tobacco, type 32."
"Cigar filler tobacco, type 41."
"Puerto Rican tobacco, type 46."
"Cigar binder tobacco, types 51 and 52."

3. Section 1464.8 is amended by removing paragraph (h) and redesignating paragraph (i) as paragraph (h).

§ 1464.11 [Amended]

4. Section 1464.11 is amended by removing "1995" each time it appears in the section and adding "1998" in its place and by removing paragraph (f).

5. Section 1464.102 is revised to read as follows:

§ 1464.102 Budget deficit marketing assessment.

(a) *General.* Subject to the limits set out below, a budget deficit marketing assessment (BDMA) shall be remitted by all importers of tobacco for tobacco entered into the commerce of the United States.

(b) *Period of coverage.* Except as provided for in (h), this section shall only apply to tobacco imported after September 13, 1995, and through the 1998 calendar year.

(c) *Tobacco covered.* Except as provided in (g) and (h), this section shall only apply to unmanufactured tobacco entered for consumption into the commerce of the United States that is, as determined by the Director, the same kind or a like kind of tobacco for which a domestic price support program is in effect; provided further that, except as provided in (g) and (h), this section shall not apply to cigar kinds of tobacco.

(d) *Rate.* Except as provided in (h) and subject to provisions in this section dealing with mixed lots, the BDMA rate shall be the rate for the corresponding domestic tobacco for the marketing year for the domestic tobacco which is in progress when the imported tobacco becomes subject to the assessment. The BDMA rate shall be applied on a per kilogram basis to all quantities of such tobacco imported for consumption, except for *de minimis* special entries approved by the Director.

(e) *Mixed entries.* For entries of mixed kinds of tobacco, the importer shall certify the composition of the mixed lot and remit the amount of assessment due for the respective quantity of each applicable kind of tobacco in the mixture. If the importer is unable or unwilling to determine and certify the composition of the mixed lot, the entire lot shall be subject to the BDMA rate for the kind of tobacco with the highest rate.

(f) *Remittance of BDMA.* The BDMA amount due shall be remitted in accordance with § 1464.104 of this part. Failure to remit or timely remit BDMAs shall subject the importer to a marketing penalty on the quantity for which such failure occurred. The penalty will be assessed in accordance with § 1464.106 of this part.

(g) *Records and disputes.* It shall be the responsibility of all importers of tobacco to establish that their tobacco is not subject to any BDMA or is not subject to a higher BDMA than that claimed to be due by such importer. All importers of tobacco must, accordingly, maintain sufficient records to demonstrate that they are not liable for a higher BDMA amount. Disputes involving the application of the BDMA shall be resolved by the Director.

(h) *Tobacco entered prior to September 13, 1995.* Notwithstanding other provisions of this section, all imported tobacco which was entered for consumption into the United States from January 1, 1994, through September 13, 1995, shall be subject to a BDMA to the extent provided for under those rules which were in effect under this part during that period. BDMA's payable for that period shall be paid by the importer and shall be at the rate specified in those rules and subject to the terms of those rules.

6. Section 1464.104 is amended by revising paragraph (b) to read as follows:

§ 1464.104 Remittance of importer assessments.

* * * * *

(b) *When to remit.* Importer assessments shall be remitted within 10 business days after the date on which the imported tobacco is entered. For remittances that are mailed, the date of the remittance will be considered the date on which the official U.S. Postal Service postmark was affixed.

* * * * *

7. Section 1464.106 is amended by revising subparagraph (a)(1) to read as follows:

§ 1464.106 Marketing penalties.

(a) * * *

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in § 1464.102, if an importer fails to pay or to timely remit the BDMA, such importer shall be subject to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective like kind domestic tobacco being imported for the domestic marketing year which immediately preceded the domestic marketing year in which the imported tobacco became subject to the BDMA. Such marketing penalty rate shall apply to the quantity of tobacco on which the failure occurred. Amounts due for the penalty shall be in addition to any other amount as may be due, including, but not limited to, the

amount due for the BDMA itself, or any applicable late fees, charges, or interest.

* * * * *

8. In § 1464.108, the second sentence is amended by removing "15" and adding "30" in its place.

Signed at Washington, D.C. on January 9, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–1463 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 97–03]

RIN 1557–AB57

Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Gutierrez, Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, or Carolyn Amundson, Senior Attorney, Enforcement and Compliance Division, (202) 874–4800; Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Inflation Adjustment Act (28 U.S.C. 2461 note) requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP provided by law within its jurisdiction to account for inflation. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires the initial adjustments set out in this regulation, and requires subsequent adjustments at least once every four years hereafter.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act also provides rules for rounding off increases,[1] and provides that any increase in a CMP applies only to violations that occur after the date of the adjustment. Additionally, section (s)(2) of the Debt Collection Improvement Act limits the initial adjustment of a CMP pursuant to the Inflation Adjustment Act to 10 percent of the amount set by statute.[2]

This final rule adjusts each CMP amount within the jurisdiction of the OCC in accordance with these statutory requirements. It does so by adding a new subpart O to part 19, entitled "Civil Money Penalty Inflation Adjustments." Section 19.240 of new subpart O contains a table that identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision. Section 19.241 states that the adjustments made in § 19.240 apply only to violations that occur after January 22, 1997.

The OCC intends to readjust these amounts in the year 2000 and every four years thereafter, assuming no further changes to the mandate imposed by the Inflation Adjustment Act.

Public Notice and Comment and Delayed Effective Date Not Required

The OCC has determined for good cause that public notice and comment is unnecessary and impracticable pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)(B)). The Debt Collection Improvement Act leaves the OCC with no discretion in calculating the adjustment, and requires the OCC to publish regulations within 180 days of its enactment. For these same reasons, the OCC for good cause is adopting an immediate effective date consistent with the Administrative Procedure Act (see 5 U.S.C. 553(d)).

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) (see 5 U.S.C. 601(2)). Because the OCC has determined for good cause that public notice and comment on this final rule is unnecessary and impracticable pursuant to 5 U.S.C. 553(b)(B), the OCC is not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78 (h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. A new subpart O is added to read as follows:

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[1] The statute's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; $25,000 in the case of penalties greater than $200,000.

[2] There is an ambiguity as to whether to apply the rounding rules before or after applying the 10 percent limitation. The OCC, in order to remain consistent with the other Federal banking agencies, has elected to apply the rounding rules before (and not after) applying the 10 percent limitation.

Subpart O—Civil Money Penalty Inflation Adjustments

§ 19.240 Inflation adjustments.

The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. code citation	Description	Adjusted maximum penalty
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F)	Tier 1	5,500
	Tier 2	27,500
	Tier 3	1,100,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,000
	Tier 2	22,000
	Tier 3	1,100,000
12 U.S.C. 1832(c) and 3909(d)(1)		1,100
12 U.S.C. 1884		110
12 U.S.C. 3110(a)		27,500
15 U.S.C. 78u–2(b)	Tier 1 (natural person)	5,500
	Tier 1 (other person)	55,000
	Tier 2 (natural person)	55,000
	Tier 2 (other person)	275,000
	Tier 3 (natural person)	110,000
	Tier 3 (other person)	550,000
42 U.S.C. 4012a(f)(5)	Per violation	350
	Per year	105,000

§ 19.241 Applicability.

The adjustments in § 19.240 apply to violations that occur after January 22, 1997.

Dated: January 13, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–1507 Filed 1–21–97; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–46–AD; Amendment 39–9884; AD 97–01–13]

Airworthiness Directives; Cessna Aircraft Company 100, 200, 300, and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company (Cessna) 100, 200, 300, and 400 series airplanes. This action requires checking the airplane maintenance records for any fuel, oil, or hydraulic hose, Cessna part number (P/N) S51–10, replaced between March 1995 and February 3, 1997 (the effective date of this AD); immediately checking any of these hoses for a diagonal or spiral external reinforcement wrap; and immediately replacing any of these hoses that have a diagonal or spiral external reinforcement wrap with one that has a criss-cross external reinforcement wrap. This action was prompted by reports of operators experiencing a loss of engine power because of low fuel feed, in addition to Cessna discovering that the rubber hose installed at the factory on certain Cessna Models 208 and 208B airplanes was defective. The Cessna P/N S51–10 rubber hose is utilized on fuel, oil, and hydraulic hoses on the affected airplanes. The actions specified by this AD are intended to prevent fuel, oil, or hydraulic systems failure caused by a collapsed hose.

DATES: Effective February 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550; facsimile (316) 942–9006. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Pearson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4134, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has recently received several incident reports of fuel flow blockage to the engines of certain Cessna 208 series airplanes. Examination of the Cessna part number (P/N) S51–10 rubber hoses installed on these airplanes revealed a deterioration to the point of delamination of the inner tube from the external wrap. This rubber hose is utilized on fuel, oil, and hydraulic hoses on Cessna 100, 200, 300, and 400 series airplanes. This kind of deterioration eventually causes the rubber hose to collapse, which could result in failure of the fuel, oil, or hydraulic systems.

Further investigation revealed this particular rubber hose was manufactured by Buckeye Rubber Products Company in January 1995, and Cessna purchased 300 feet of this hose for factory installation on certain Cessna Models 208 and 208B airplanes between March 1995 and June 1995. The

remaining portion of hose was distributed in March 1995 as replacement hose. With this in mind, the Cessna P/N S51–10 hose could be installed by field approval on any Cessna 100, 200, 300, and 400 series airplanes, as well as at manufacture on certain Cessna Models 208 and 208B airplanes.

Relative Service Information

Cessna has issued the service bulletins presented below, which include ACCOMPLISHMENT INSTRUCTIONS for (1) Checking for the installation of fuel, oil, and hydraulic hoses, Cessna P/N S51–10, with a diagonal or spiral external reinforcement wrap, and (2) replacing any of these hoses that have a diagonal or spiral external reinforcement wrap with one that has a criss-cross external reinforcement wrap:

—REIMS/CESSNA Service Bulletin (SB) CAB96–21, dated October 18, 1996; Model Affected: F406

—Cessna Aircraft Company SB CQB96–3, dated October 18, 1996; Model Affected: 425

—Cessna Aircraft Company SB SEB96–15, dated October 18, 1996; Models Affected: 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 175, 175A, 175B, 175C, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182,182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, P206A, P206B, P206C, P206D, P206E, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, 207, 207A, T207, T207A, 210, 210–5 (205), 210–5A, (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, and T210F.

—Cessna Aircraft Company SB CAB96–15, Revision 1, October 18, 1996; Models Affected: 208 and 208B.

—Cessna Aircraft Company SB MEB96–10, dated October 18, 1996; Models Affected: T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, FTB337 T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H–SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent fuel, oil, or hydraulic systems failure caused by a collapsed hose.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna 100, 200, 300, and 400 series airplanes of the same type design, the FAA is issuing an AD. This AD requires checking the airplane maintenance records for any fuel, oil, or hydraulic hose, Cessna part number (P/N) S51–10, replaced between March 1995 and February 3, 1997 (the effective date of this AD); immediately checking any of these hoses for a diagonal or spiral external reinforcement wrap; and immediately replacing any of these hoses that have a diagonal or spiral external reinforcement wrap with one that has a criss-cross external reinforcement wrap. Accomplishment of the hose check and replacement is required in accordance with the service bulletins referenced previously.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time and hours time-in-service (TIS). Delamination of the rubber hose inner tubing and separation of the inner tube from the external wrap is caused by an error in manufacturing. This condition can develop regardless of whether the airplane is in flight. The breakdown of the hose may not be noticed initially, but as the hose continues to erode, collapse is inevitable, which could result in fuel, oil, or hydraulic systems failure. For these reasons, the FAA is requiring a compliance time of specific hours TIS and calendar time (the prevalent one being that which occurs first).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–46–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures

(44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97-01-13 Cessna Aircraft Company: Amendment 39-9884; Docket No. 96-CE-46-AD.

Applicability: All serial numbers of Models 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172RG, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, T182, R182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, P206A, P206B, P206C, P206D, P206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, 207, 207A, T207, T207A, 208, 208B, 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, T210F, P210N, P210R, 210-5 (205), 210-5A (205A), T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP FT337HP, FTB337, T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H-SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, F406, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, and 425 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent fuel, oil, or hydraulic systems failure caused by a collapsed hose, accomplish the following:

(a) Within the next 60 hours time-in-service or within the next 60 calendar days, whichever occurs first, check the airplane maintenance records for any fuel, oil, or hydraulic hose, Cessna part number (P/N) S51-10, replaced between March 1995 and February 3, 1997 (the effective date of this AD).

(b) Prior to further flight after the check required by paragraph (a) of this AD, physically check any fuel, oil, or hydraulic hose, Cessna P/N S51-10, that has been replaced between March 1995 and February 3, 1997 (the effective date of this AD) for a diagonal or spiral external reinforcement wrap in accordance with the ACCOMPLISHMENT INSTRUCTIONS of the applicable service bulletin presented below:

(1) REIMS/CESSNA Service Bulletin (SB) CAB96-21, dated October 18, 1996; Model Affected: F406

(2) Cessna Aircraft Company SB CQB96-3, dated October 18, 1996; Model Affected: 425

(3) Cessna Aircraft Company SB SEB96-15, dated October 18, 1996; Models Affected: 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 175, 175A, 175B, 175C, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, P206A, P206B, P206C, P206D, P206E, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, 207, 207A, T207, T207A, 210, 210-5 (205), 210-5A, (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, and T210F.

(4) Cessna Aircraft Company SB CAB96-15, Revision 1, October 18, 1996; Models Affected: 208 and 208B.

(5) Cessna Aircraft Company SB MEB96-10, dated October 18, 1996; Models Affected: T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, FTB337 T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H-SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C.

Note 2: Figure 1 of this AD is included to show the diagonal or spiral external reinforcement wrap on the hose that is referenced in the check required by paragraph (b) of this AD.

BILLING CODE 4910-13-U

Figure 1

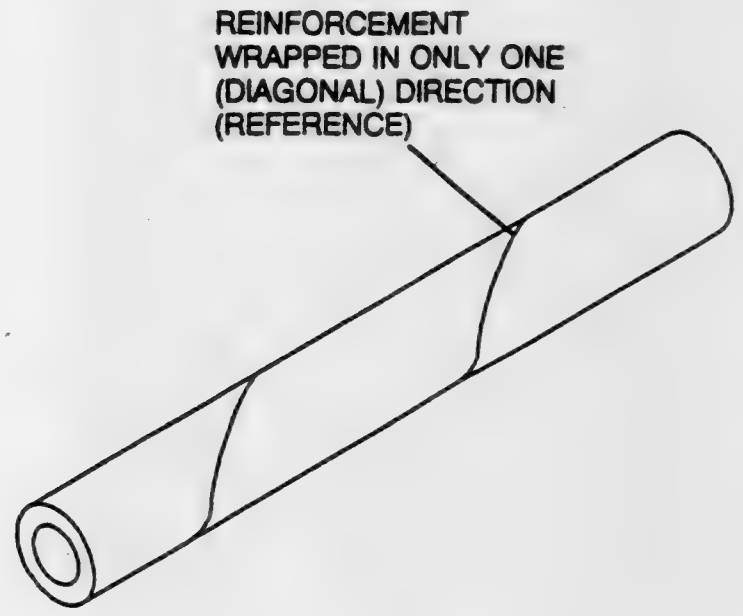

OLD STYLE S51-10 HOSE WITH REINFORCEMENT WRAPPED IN ONLY ONE (DIAGONAL) DIRECTION THE LENGTH OF THE HOSE (REMOVE AND REPLACE WITH REPLACEMENT STYLE HOSE)

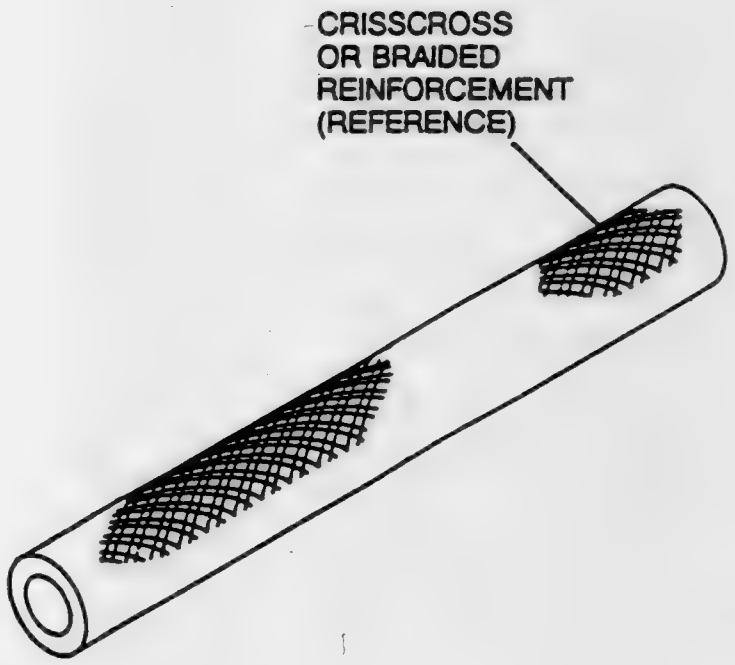

REPLACEMENT STYLE S51-10 HOSE WITH A CRISS-CROSS OR BRAIDED REINFORCEMENT PATTERN

BILLING CODE 4910–13–C

(c) Prior to further flight after the check required by paragraph (b) of this AD, replace any Cessna P/N S51–10 that has a diagonal or spiral pattern external reinforcement wrap with a Cessna P/N S51–10 hose that has a criss-cross pattern external wrap. Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS of the applicable service bulletin in paragraph (b) of this AD.

Note 3: Cessna Model 208 airplanes (serial number 20800241 through 20800258) and Model 208B (serial number 208B0416 through 208B0560) had Cessna P/N S51–10 hoses with a diagonal or spiral external reinforcement wrap installed at manufacture. All other airplanes may have had the hose installed by field approval. Cessna determined that these hoses were available for distribution between March 28, 1995 and June 28, 1996.

(d) As of the effective date of this AD, no person shall install a fuel, oil, or hydraulic hose having Cessna P/N S51–10 with a diagonal or spiral external reinforcement wrap.

(e) The checks required by paragraphs (a) and (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(h) The hose check and replacement required by this AD shall be done in accordance with the following applicable service bulletins:

—REIMS/CESSNA Service Bulletin (SB) CAB96–21, dated October 18, 1996; Model Affected: F406

—Cessna Aircraft Company SB CQB96–3, dated October 18, 1996; Model Affected: 425

—Cessna Aircraft Company SB SEB96–15, dated October 18, 1996; Models Affected: 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 175, 175A, 175B, 175C, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, P206A, P206B, P206C, P206D, P206E, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, 207, 207A, T207, T207A, 210, 210–5 (205), 210–5A, (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, and T210F.

—Cessna Aircraft Company SB CAB96–15, Revision 1, October 18, 1996; Models Affected: 208 and 208B.

—Cessna Aircraft Company SB MEB96–10, dated October 18, 1996; Models Affected: T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, FTB337, T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H–SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment (39–9884) becomes effective on February 3, 1997.

Issued in Kansas City, Missouri, on January 7, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–815 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–227–AD; Amendment 39–9888; AD 97–02–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, A310, and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A300–600, A310, and A320 series airplanes, that currently requires an inspection of the landing gear brakes for wear, and replacement if the specified wear limits are not met. That AD also requires incorporation of the specified wear limits into the FAA-approved maintenance inspection program. This amendment requires that certain wear limits that are dependent on brake stack weight be used in conjunction with specified brake stack weights, and that maximum allowable brake wear limits for additional brake units be incorporated into the FAA-approved maintenance program. This amendment is prompted by a report that some brakes that are subject to the requirements of the existing AD have not been removed from service and by the determination of the maximum allowable brake wear limits for additional brake unit part numbers. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy rejected takeoff.

EFFECTIVE DATE: February 26, 1997.

ADDRESSES: The service information that pertains to this rulemaking action may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164; Allied Signal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (206) 227–2011; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–26–05, amendment 39–9101 (59 FR 65927, December 22, 1994), which is applicable to certain Airbus Model A300, A300–600, A310, and A320 series airplanes, was published in the **Federal Register** on June 13, 1996 (61 FR 29996). The action proposed to continue to require inspection of certain landing gear brakes for wear, replacement of the brakes if certain wear limits are not met, and incorporation of the specified wear limits into the FAA-approved maintenance inspection program. Additionally, the action proposed to:

1. Revise certain brake part numbers and maximum brake wear information specified in the existing AD;

2. Require that certain wear limits that are dependent on brake stack weight be used in conjunction with appropriate brake stack weights specified in various service documents; and

3. Require that maximum allowable brake wear limits for additional brake units be incorporated into the FAA-approved maintenance program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the proposed rule.

Request for Clarification of Information in TABLE 3

One commenter states that certain information in TABLE 3 of the proposal needs clarification to add the following information:

1. Messier-Bugatti C20060–100 series brakes can also be installed on Airbus Model A300B4–200 series airplanes; however, TABLE 3 indicates only the Model A300–600 as having these brakes installed.

2. Messier Bugatti C20175100 series brakes should be included as brakes that can be installed on Model A300–600 series airplanes.

3. Messier-Bugatti C20210500 series brakes should be included as brakes that can be installed on Model A300 B4–600R series airplanes.

The commenter points out that these brake models (and their applicable brake wear limits) are included in the referenced manufacturer's Component Maintenance Manual (CMM), but TABLE 3 did not make it clear which airplane models are equipped with them.

The FAA concurs with the commenters observations and has made the appropriate revisions to both TABLE 3 and TABLE 4 accordingly.

Request to Increase Wear Pin Length for Modified Brakes

One commenter requests that the proposal be revised to increase the allowable wear pin length for Messier Bugatti C20210200 series brakes from 1.97 inches to 2.559 inches by installation of a shim at the thrust plate. The commenter states that this provision is contained in Messier Service Bulletin 470–32–675, Revision 1, dated September 26, 1994 (which is cited in TABLE 4 under the brake wear limit references for Model A300 B4–600R series airplanes).

The FAA does not concur. The FAA contacted the manufacturer, who clarified this provision: When the shim is added, the total wear of the heat pack is increased. However, the wear pin limit of 1.97 inches does not change. In light of this, the FAA finds that the wear limit of 1.97 inches, as indicated in the notice, is correct.

Request for Addition of Wear Limits for Brakes with Carbon /D3/ Heat Packs

One commenter requests that the proposal be revised to specify what the wear limits are for brakes equipped with the latest version of Messier carbon /D3/ heat packs.

The FAA does not concur that a revision is necessary. The manufacturer has advised the FAA that, contrary to what was previously assumed, some /D3/ heat packs are still in service. However, the manufacturer confirmed that the allowable wear limits specified in the notice are independent of whether or not a /D3/ heat pack is used. The wear limits, as stated in the notice, are correct.

Request to Clarify Requirement to Incorporate TABLE 3 Information

One commenter expresses confusion concerning the requirements of proposed paragraph (b)(1), which appears to indicate that the entirety of TABLE 3 must be incorporated into the FAA-approved maintenance program, regardless of the type of airplane an operator may operate or the type of brakes used. The commenter requests that this be clarified.

The FAA concurs that clarification may be necessary. In presenting the information in the form of a table, the FAA assumed that operators would incorporate into their programs only the specific information pertaining to the airplanes that they actually operate, rather than all of the information contained in TABLE 3. The table format was selected as a more convenient method of displaying this information, rather than designating individual paragraphs applicable to each individual airplane model and/or brake models. Regardless of the format in which this information is introduced, operators are required to comply only with those items that directly affect the equipment that they operate. The FAA has revised the wording of paragraph (b)(1) of the final rule to make this more precise.

Request to Clarify Provisions Regarding Brake Stack Weights

One commenter requests that proposed paragraph (b)(3) be clarified with regard to its specific requirements. That paragraph states first that the brake wear is to be measured in accordance with certain documents; it then states that listed brake wear limits that are identified in referenced service documents as being dependent on brake stack weights "shall be used in conjunction with the brake stack weights specified in that service information." The commenter considers this to be "impossible to understand."

The FAA concurs that clarification may be appropriate. The purpose of paragraph (b)(3) is to direct operators to service information that provides specific procedures for measuring the brake wear of each type of brake addressed in this AD. As indicated in that paragraph, these procedural instructions are contained in the following sources:

1. Chapter 32–42–27 of the Airplane Maintenance Manual;

2. Chapter 32–32–( ) of the brake manufacturers Component Maintenance Manual; and/or

3. Service bulletins listed in TABLE 4 of this AD.

The second sentence of paragraph (b)(3) addresses particular brakes that, because of their lower (brake stack) weight, have proven to be unable to withstand maximum rejected takeoff (RTO) energy when they are fully worn to the limit that is specified in the previously issued AD. If any of the service bulletins listed in TABLE 4 indicates that the brake wear limit for a specific brake is dependent on the brake stack weight of that brake, then the operator must verify that the brake wear limit specified in TABLE 3 is being used with the correct brake stack weight. The FAA points to an incident that occurred previously in which the brake wear limit specified in the previously issued AD was used with an incorrect brake

stack weight. This situation presented an unsafe condition because the brake wear limit being used was beyond what the particular brake actually should have been limited to in order to maintain braking effectiveness during a high energy RTO. The wording of paragraph (b)(3) is an attempt to prevent that error from occurring again.

The FAA has revised the wording of paragraph (b)(3) in this final rule to clarify the intent of that paragraph.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 165 Model A300, A300–600, A310, and A320 series airplanes of U.S. registry that will be affected by this proposed AD.

Incorporation of the revision of the FAA-approved maintenance inspection program, which is currently required by AD 94–26–05, takes approximately 20 work hours per operator (for 4 U.S. operators) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators to accomplish this currently required action is estimated to be $4,800, or $1,200 per operator.

The inspection currently required by AD 94–26–05 takes approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) will be approximately $2,236 per airplane. The FAA estimates that 46 of the 165 affected airplanes of U.S. registry will be required to accomplish the inspection. Based on these figures, the cost impact on U.S. operators to accomplish the currently required inspection is estimated to be $144,256, or $3,136 per airplane.

The new actions that are required in this AD action will affect 1 U.S. operator of 8 airplanes. The FAA estimates that the new actions will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,236 per airplane. Based on these figures, the cost impact on the affected U.S. operator of the requirements of this AD is estimated to be $3,136 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9101 (59 FR 65927, December 22, 1994), and by adding a new airworthiness directive (AD), amendment 39–9888, to read as follows:

97–02–04 Airbus Industrie: Amendment 39–9888. Docket 95–NM–227–AD. Supersedes AD 94–26–05, Amendment 39–9101.

Applicability: Model A300, A300–600, A310, and A320 series airplanes equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) brakes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

Restatement of Requirements of AD 94–26–05

(a) Within 180 days after January 23, 1995 (the effective date of AD 94–26–05, amendment 39–9101), accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed in TABLE 1, below, for wear. Any brake worn more than the maximum wear limit specified in TABLE 1, below, must be replaced, prior to further flight, with a brake within that limit.

TABLE 1

[Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes Equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) Brakes]

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300 B2–100	Messier-Bugatti	286349–115	0.98"(25.0 mm).

TABLE 1—Continued

[Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes Equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) Brakes]

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300 B2–100	Messier-Bugatti	286349–115	0.98"(25.0 mm).
A300 B2–100	BFGoodrich	2–1449	1.4"(35.6 mm).
A300 B2–100	BFGoodrich	2–1449	1.1"(27.9 mm) S.C.*
A300 B2–100	Messier-Bugatti	A21329–41–7	1.1"(28.0 mm).
A300 B4–100	Messier-Bugatti	A21329–41–17	1.1"(28.0 mm).
A300 B4–100	ALS (Bendix)	2606802–3/–4/–5	0.9"(22.9 mm).
A300 B4–100	ALS (Bendix)	2606802–3/–4/–5	1.48"(37.6 mm) S.C.*
A300 B4–100	BFGoodrich	2–1449	1.4"(35.6 mm).
A300 B4–100	BFGoodrich	2–1449	1.1"(27.9 mm) S.C.*
A300 B4–200	Messier-Bugatti	C20060–100	1.1"(28.0 mm).
A300–600	Messier-Bugatti	C20060–100	1.1"(28.0 mm).
A300–600	ALS (Bendix)	2607932–1	0.9"(22.9 mm).
A300–600	ALS (Bendix)	2607932–1	1.48"(37.6 mm) S.C.*
A300 B4–600R	Messier-Bugatti	C20210000	1.97"(50.0 mm).
A300 B4–600R	Messier-Bugatti	C20210200	1.97"(50.0 mm).
A310–200	Messier-Bugatti	C20089000	1.1"(28.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.26"(32.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.5"(38.2 mm) S.C.*
A310–300	Messier-Bugatti	C20194000	1.97"(50.0 mm).
A310–300	Messier-Bugatti	C20194200	1.97"(50.0 mm).
A310–300	ABS	5010995	1.97"(50.0 mm).
A320	Messier-Bugatti	C20225000	1.97"(50.0 mm).
A320	Messier-Bugatti	C20225200	1.97"(50.0 mm).
A320	BFGoodrich	2–1526–2	1.97"(50.0 mm).
A320	BFGoodrich	2–1526–3/–4	2.68"(68.0 mm).

*S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's Component Maintenance Manual (CMM).

Note 2: Measuring instructions that must be revised to accommodate the new brake wear limits specified in TABLE 1, above, can be found in Chapter 32–42–27 of the Airplane Maintenance Manual (AMM), in Chapter 32–32–( ) or 32–44–( ) of the brake manufacturer's CMM, or in certain service bulletins (SB), as listed in TABLE 2, below:

TABLE 2

Brake manufacturer	Part No.	Document/Chapter	Date/Revision (or later revisions)
For Model A300 B2–100 Series Airplanes:			
Messier-Bugatti	286349–115	CMM 32–42–27	April 1991.
Messier-Bugatti	286349–116	CMM 32–42–27	April 1991.
BF Goodrich	2–1449 and S.C.*	CMM 32–44–37	January 1993.
		SB 567, (2–1449–32–4)	January 30, 1993.
For Model A300 B4–100 Series Airplanes:			
ALS (Bendix)	2606802–3	CMM 32–42–02	September 1993.
	2606802–4, 2606802–5, and S.C.*	SB 2606802– 32–003	March 31, 1993.
BF Goodrich	2–1449 and S.C.*	CMM 32–44–37	January 1993.
		SB 567 (2–1449–32–4)	January 30, 1993.
For Model A300 B4–200 and A300–600 Series Airplanes:			
ALS (Bendix)	2607932–1 and S.C.*	CMM 32–42–27	September 1993.
		SB 2607932–32–002	March 31,1993, and Revision 1 October 1, 1993.
For Model A300 B4–600R Series Airplanes:			
Messier-Bugatti	C20210000 and C20210200	Airbus SB 470–32–675	April 6, 1990.
For Model A310–200 Series Airplanes:			
ALS (Bendix)	2606822–1 and S.C.*	CMM 32–42–03	September 1993.
		SB 2606822–32–002	March 31, 1993.
For Model A310–300 Series Airplanes:			
Messier-Bugatti	C20225000 and C20225200	Airbus SB 470–32–675	April 6, 1990.

*S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's CMM.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

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Note 3: Once an operator has complied with the requirements of paragraphs (a)(1) and (a)(2) of this AD, those paragraphs do not require that operators subsequently record accomplishment of those requirements each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program.

New Requirements of This AD

(b) Within 90 days after the effective date of this AD, revise the FAA-approved maintenance program to include the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD. Accomplishment of these requirements terminates the requirements of paragraph (a) of this AD.

(1) Incorporate into the FAA-approved maintenance program the maximum brake wear limits specified in paragraph TABLE 3 of this AD for the applicable airplane model.

(2) Comply with those measurements thereafter.

(3) Measure the brake wear in accordance with Chapter 32–42–27 of the AMM; or Chapter 32–32–( ) of the brake manufacturer's CMM; or the service bulletins (SB) listed in TABLE 4, below. Note that the brake wear limits specified in TABLE 3 may be dependent on brake stack weight. In those cases, refer to the service information specified in TABLE 4 to verify that the correct brake stack weight is being used.

(4) If any brake has measured wear beyond the maximum wear limits specified in TABLE 3 of this AD, prior to further flight, replace it with a brake that is within the wear limits specified in TABLE 3.

TABLE 3

[Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes Equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) Brakes]

Airplane model/Series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300 B2–100	Messier-Bugatti	286349–115	0.98″ (25.0 mm).
A300 B2–100	Messier-Bugatti	286349–116	0.98″ (25.0 mm).
A300 B2–100	BFGoodrich	2–1449	1.4″ (35.6 mm).
A300 B2–100 S.C.*	BFGoodrich	2–1449	1.1″ (27.9 mm).
A300 B4–100	Messier-Bugatti	A21329–41–7	1.1″ (28.0 mm).
A300 B4–100	Messier-Bugatti	A21329–41–17	1.1″ (28.0 mm).
A300 B4–100/-200	ALS (Bendix)	2606802–3/-4/-5	0.9″ (22.9 mm).
A300 B4–100/-200	ALS (Bendix)	2606802–3/-4/-5	1.48″ (37.6 mm) S.C.*
A300–B4–100	BFGoodrich	2–1449	1.4″ (35.6 mm).
A300–B4–100	BFGoodrich	2–1449	1.1″ (27.9 mm) S.C.*
A300–B4–200	Messier-Bugatti	C20060–100 Series	1.1″ (28.0 mm).
A300–600	Messier-Bugatti	C20060–100 Series	1.1″ (28.0 mm).
A300–600	Messier-Bugatti	C20175100	1.1″ (50.0 mm).
A300–600	ALS (Bendix)	2607932–1	0.9″ (22.9 mm).
A300–600	ALS (Bendix)	2607932–1	1.48″ (37.6 mm) S.C.*
A300 B4–600R	Messier-Bugatti	C20210000 Series	1.97″ (50.0 mm).
A300 B4–600R	Messier-Bugatti	C20210200 Series	1.97″ (50.0 mm).
A300 B4–600R	Messier-Bugatti	C20210500 Series	1.97″ (50.0 mm).
A310–200	Messier-Bugatti	C20089000 Series	1.1″ (28.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.26″ (32.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.5″ (38.2 mm) S.C.*
A310–300	Messier-Bugatti	C20194000 Series	1.97″ (50.0 mm).
A310–300	Messier-Bugatti	C20194200 Series	1.97″ (50.0 mm).
A310–300	ABS	5010995	2.22″ (56.39 mm).
A320	Messier-Bugatti	C20225000 Series	1.97″ (50.0 mm).
A320	Messier-Bugatti	C20225200 Series	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526–2	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526–5	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526–3/-4	2.68″ (68.0 mm).
A320	BFGoodrich	2–1572	2.68″ (68.0 mm).
A320	ABS	5011075	2.14″ (54.36 mm).

* S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's CMM.

TABLE 4

[Service information sources containing measuring instructions that must be revised to accommodate the new brake wear limits specified in TABLE 3. (Refer to paragraph (b)(3) of this AD.)]

Brake manufacturer	Part No.	Document/Chapter	Date/Revision (or later revisions)
For Model A300 B2–100 Series Airplanes:			
Messier-Bugatti	286349–115	CMM 32–42–27	April 30, 1991.
Messier-Bugatti	286349–116	CMM 32–42–27	April 30, 1991.
BFGoodrich	2–1449	CMM 32–44–37	January 30, 1993.
	and S.C.*	SB 567 (2–1449–32–4)	January 30, 1993.
For Model A300 B4–100 Series Airplanes:			

TABLE 4—Continued

[Service information sources containing measuring instructions that must be revised to accommodate the new brake wear limits specified in TABLE 3. (Refer to paragraph (b)(3) of this AD.)]

Brake manufacturer	Part No.	Document/Chapter	Date/Revision (or later revisions)
Messier-Bugatti	A21329–41–17	CMM 32–44–37	January 30, 1993.
ALS (Bendix)	2606802–3	CMM 32–42–02	Revision 7/April 30, 1995.
	2606802–4	SB 2606802–32–003	March 31, 1993, and Revision 1/October 1, 1993.
	2606802–5 and S.C.*		
BFGoodrich	2–1449	CMM 32–44–37	January 30, 1993.
	and S.C.*	SB 567 (2–1449–32–4)	January 30, 1993.
For Model A300 B4–200 Series Airplanes:			
Messier-Bugatti	C20060–100 Series	CMM 32–44–24	December 31, 1991.
ALS (Bendix)	2606802–3	CMM 32–42–02;	Revision 7/April 30, 1995.
	2606802–4, 2606802–5 and S.C.*	SB 2606802–32–003	March 31, 1993, and Revision 1/October 1, 1993.
For Model A300–600 Series Airplanes:			
Messier-Bugatti	C20060–100 Series	CMM 32–44–24	December 31, 1991.
Messier-Bugatti	C20175100	CMM 32–44–50	November 30, 1991.
ALS (Bendix)	2607932–1 and S.C.*	CMM 32–42–05;	Revision 4/February 15,1992.
		SB 2607932–32–002;	March 31,1993, and Revision 1/October 1, 1993.
		SB 2607932–32–003	May 31, 1995.
For Model A300 B4–600R Series Airplanes:			
Messier-Bugatti	C20210000	CMM 32–44–51	August 31, 1994.
	and C20210200 Series	SB 470–32–675	Revision 1/September 26, 1994.
Messier-Bugatti	C20210500 Series	CMM 32–44–68	November 30, 1995.
For Model A310–200 Series Airplanes:			
Messier-Bugatti	C20089000 Series	CMM 32–46–23	January 31, 1992.
ALS (Bendix)	2606822–1 and S.C.	CMM 32–42–03	Revision 5/January 31, 1991.
		SB 2606822–32–002	March 31, 1993.
For Model A310–300 Series Airplanes:			
Messier-Bugatti	C20194000	CMM 32–46–37	August 31, 1994.
	and C20194200 Series	SB 470–32–675	Revision 1/September 26, 1994.
ABS	5010995	CMM 32–43–97	February 28, 1991.
For Model A320 Series Airplanes:			
Messier-Bugatti	C20225000	CMM 32–47–20	January 31, 1995.
	and C20225200 Series	SB 580–32–3042	Revision 1/June 30, 1995.
BFGoodrich	2–1526/–2/–5	CMM 32–44–38	March 15, 1993.
	2–1526–3/–4	CMM 32–44–38	March 15, 1993.
	2–1572	CMM 32–41–63	April 29, 1994.
ABS	5011075	CMM 32–41–18	February 28, 1991.

*S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's CMM.

Note 4: Once an operator has complied with the requirement of paragraph (b) of this AD, that paragraph does not require that the operator subsequently record accomplishment of those requirements each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program.

(c) Prior to installation of any brake having a part number other than those specified in TABLE 3 of this AD, revise the FAA-approved maintenance program to include the provisions specified in paragraph (b) of this AD for that part number brake, that have been approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on February 26, 1997.

Issued in Renton, Washington, on January 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–810 Filed 1–21–97; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–201–AD; Amendment 39–9891; AD 96–25–06 R1]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that currently requires inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. This action corrects information concerning the terminating action for the requirements of the AD. This action is necessary to ensure that operators are not required to perform additional actions unnecessarily after modifying their airplanes.

DATES: Effective January 27, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 27, 1997 (61 FR 66885, December 19, 1996).

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On December 2, 1996, the FAA issued AD96–25–06, amendment 39–9848 (61 FR 66885, December 19, 1996). That AD requires repetitive inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. That AD action was prompted by a report of jamming of a flap due to incorrect tolerances of the flap-hinge installation, which caused high bearing stress on the bushings in the flap fittings. The actions required by that AD are intended to prevent such high bearing stress, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

Explanation of Necessary Correction of AD

Recently, the FAA has become aware of the fact that, as AD 96–25–06 is currently worded, certain of the terminating action provisions in it are not clear.

Specifically, paragraph (a) of the AD requires repetitive visual inspections to detect cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38. Paragraph (a)(2) of the AD states that, if any cracking is found during one of these visual inspections, operators must immediately replace the flap fittings with new improved flap fittings and install improved bushings. This installation is specified as Modification 2628—Part 3 in the Accomplishment Instructions of Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995. Paragraph (a)(2) of the AD then states, "After this modification is accomplished, no further action is required by this paragraph."

While it is correct that the operators who accomplished that modification would not have to continue to perform the visual inspections required by paragraph (a), they also would not have to accomplish any other portion of the AD. In other words, that modification constitutes terminating action for the requirements of the AD, not merely the requirements of paragraph (a).

While AD 96–25–06 may have been unclear on this point, it was the FAA's intent that the modification be considered terminating action for the requirements of the AD. Additionally, the referenced Saab service bulletin (340–57–027), as well as the parallel Swedish airworthiness directive (SAD No. 1–072), indicate that no further work is required of operators who accomplish Modification 2628—Part 3.

Corrective Action Taken

The FAA has determined that it is appropriate to take action to correct paragraph (a)(2) of AD 96–25–06 to state: "After this modification is accomplished, no further action is required *by this AD.*" The FAA finds this correction is necessary in order to prevent operators from having to perform additional and unnecessary work on these airplanes.

Action is taken herein to correct the error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the AD remains January 27, 1997.

The AD is being reprinted in its entirety, below, for the convenience of affected operators.

No Need for Additional Notice and Public Comment

Since this action only clarifies the intent of a provision of an AD, and relieves affected operators from having to perform what could be additional and unnecessary work, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9848 (61 FR 66885, December 19, 1996), and by adding a new airworthiness directive (AD), amendment 39–9891, to read as follows:

96–25–06 R1 SAAB Aircraft AB: Amendment 39–9891. Docket 95–NM–201–AD. Revises AD 96–25–06, amendment 39–9848.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high bearing stress on the bushings in the flap fittings, which could result in jamming of the flaps and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 800 hours time-in-service after the effective date of this AD: Perform a visual inspection to detect damage or cracking of the forward and aft attachment lugs of the

flap fittings at wing station (WS) 123.38, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If no cracking or damage is found, and the flap fittings have not been modified or replaced, repeat the visual inspection thereafter at intervals not to exceed 800 hours time-in-service.

(2) If any cracking is found, prior to further flight, replace the flap fittings with new improved flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 3) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(b) Within 4,500 hours time-in-service after the effective date of this AD, perform an inspection to determine the size of the inboard and outboard holes (swaged bushings) of the flap fittings, and to detect loose swaged bushings, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If the sizes of the holes are within the limits specified in the service bulletin, and if no loose swaged bushings are found, prior to further flight, install improved bushings in accordance with the Accomplishment Instructions (Modification 2628—Part 1) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(2) If the size of any hole is outside the limits specified in the service bulletin, or if any loose swaged bushing is found, prior to further flight, install oversize bushings in the flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 2) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, replacement, and installations shall be done in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 27, 1997 (61 FR 66885, December 19, 1996). Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment is effective January 27, 1997.

Issued in Renton, Washington, on January 14, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1439 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 150; PR4–2, FRL–5675–1]

Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the approval of revisions to the Puerto Rico "Regulations for the Control of Atmospheric Pollution," submitted to EPA by the Puerto Rico Environmental Quality Board (EQB) on September 29, 1995. This action approves revisions to Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, 121, 201, 203, 204, 205, 206, 209, 301, 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, 417, and 501. At the request of EQB, EPA will be taking final action on Rules 112 and 211 at a later date. EPA is not incorporating new Rule 422 into the federally approved Puerto Rico State Implementation Plan (SIP). EPA is also withdrawing Rules 411, 418, 419, 420 and 421 from the Puerto Rico SIP at the request of the EQB. However, although requested by the EQB, EPA is not withdrawing Rule 404 from the SIP. In addition, EPA is adding a new section to the Code of Federal Regulations which clearly identifies those Puerto Rico regulations which are a part of the SIP.

EFFECTIVE DATE: This rule is effective February 21, 1997.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

Environmental Protection Agency, Region II Caribbean Field Office Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, Santurce, Puerto Rico 00909

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: On June 21, 1996 (61 FR 31886), EPA published, in the **Federal Register**, a proposed rulemaking concerning revisions to the Puerto Rico "Regulations for the Control of Atmospheric Pollution" (the Regulations). On September 29, 1995, the Puerto Rico Environmental Quality Board (EQB) submitted to EPA a request for approval of revisions to the Puerto Rico Regulations. Included in that request were revisions to the general Regulations, regulations needed to support the Title V of the Clean Air Act (Act) Operating Permits Program, revisions to the Puerto Rico PM_{10} SIP for the Municipality of Guaynabo, and, a request that certain rules of the Regulations which are currently included as part of Puerto Rico's approved SIP be withdrawn from the SIP. However, these regulations will remain enforceable by Puerto Rico. Also included, was a regulation concerning Hazardous Air Pollutants (HAPs) to be approved by EPA under section 112(l) of the Act. Under the context of the Act, the Commonwealth of Puerto Rico is regarded as a state.

The revisions and rationale for EPA's approval and rulemaking actions were explained in the June 21, 1996 proposal and will not be restated here. The reader is referred to the proposal for a detailed explanation of Puerto Rico's SIP revision.

In response to EPA's proposed approval of Puerto Rico's SIP revision, comments were received from eight interested parties. The commenters are as follows: American Petroleum Institute [A], Puerto Rico Sun Oil Company [B], Schering-Plough Corporation [C], Puerto Rico Manufacturers Association [D], Pharmaceutical Research and Manufacturers of America [E], Ford Motor Company [F], National Environmental Development Association [G], Texaco Inc. [H]. All of the comments received were of a similar

nature. The comments and EPA's responses are listed below.

Comment

Among the changes to the Puerto Rico SIP proposed to be adopted by EPA is an amendment to Rule 112, "Compliance Determination/ Certification," of the Puerto Rico Regulations which provides that "any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the Puerto Rico SIP and that certain information will constitute presumptively credible evidence of whether a violation has occurred."

The use of other "credible evidence" has been recognized under the Act, but specifically limited to penalty calculations as evidence of the duration of a violation proven through the use of approved reference test methods. Consequently, the commenters assert that the proposed revision in question affecting Rule 112 is not consistent with, nor required or supported by the Act and its legislative history. Absent a legal foundation to support the inclusion of the "credible evidence" provision of Rule 112, the commenter objected to its proposed incorporation into the SIP. EPA should withhold taking any final action regarding Rule 112. [A,B,C,D,E,F,G,& H]

Response

Puerto Rico's Rule 112 was adopted in response to EPA's SIP requirement notification that was issued in conjunction with the release of EPA's Enhanced Monitoring (EM) rule which was proposed on October 22, 1993 (58 FR 54648). However, adverse comments were received with respect to EPA's EM proposed rule. EPA has developed a Compliance Assurance Monitoring (CAM) rule to replace the EM rule. EPA announced the availability of the draft in September 1995 and a revised version on August 13, 1996 (61 FR 41991). EPA anticipates proposing the CAM rule by December 1996 and promulgating it by July 1997. The August 13, 1996 **Federal Register** notice states that the rulemaking on the credible evidence provisions as proposed originally in October 22, 1993 is expected to be finalized ahead of the CAM rule, in December 1996. EQB formally requested, in an October 4, 1996 letter, that EPA delay approval of Rule 112 until EPA promulgates the credible evidence rule and/or the CAM rule. This would allow EPA and EQB to further evaluate Rule 112 to determine if it meets EPA's final requirements. Therefore, EPA concurs with EQB's request that EPA withhold taking final action on Puerto Rico's revision to Rule 112 until EQB submits a future request.

Comment

Upon the adoption and promulgation of Rule 211, "Synthetic Minor Source Emissions" by EQB, EQB issued Resolution R–96–13–4 on March 26, 1996 clarifying the underlying intended purpose of the rule. EPA should incorporate the clarifications made by EQB regarding this rule, as drafted in EQB's Resolution R–96–13–4, in order that the synthetic minor source provisions of the Puerto Rico SIP be interpreted consistent with its underlying intended scope and extent. [D]

Response

EQB informed EPA in an October 4, 1996 letter of its intent to change the definition of "Minor Source (for the purpose of Rule 211)" in Rule 102, "Definitions" of the Regulations, to delete the exclusion which provides that sources subject to a New Source Performance Standards or National Emission Standard for Hazardous Air Pollutants cannot be considered minor sources for the purpose of limiting potential emissions of criteria pollutants. Because EQB has informed EPA of this plan to revise the Regulation pursuant to the Resolution R–96–13–4, EQB and EPA have agreed to withhold taking final action on Rule 211 until it is further revised by EQB and submitted to EPA as a SIP revision. Similarly, EPA is withholding action on Rule 211 to the extent that it would be a method to provide sources with a mechanism to limit potential HAP emissions under 112(l) of the Act. EPA will address this when EQB submits the revised regulation defining minor source for purposes of Rule 211 for EPA approval. Therefore, EPA concurs with EQB's request that EPA withhold taking final action on Puerto Rico's revision to Rule 211 until EQB submits a future request.

Conclusion

EPA is approving revisions to Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, 121, 201, 203, 204, 205, 206, 209, 301, 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, 417, and 501 of the Puerto Rico Regulations. As requested by the EQB, final action on Rules 112 and 211 will be delayed until issues associated with these rules are resolved by EQB and EPA. In addition, EPA is not incorporating new Rule 422 into the federally approved Puerto Rico SIP. EPA is also withdrawing Rules 411, 418, 419, 420 and 421 from the Puerto Rico SIP at the request of the EQB. Although requested by the EQB, EPA is not withdrawing Rule 404 from the SIP.

Additionally, a new § 52.2723 of the Code of Federal Regulations, "EPA—approved Puerto Rico regulations," is being promulgated in the regulatory section at the end of this action. This new section identifies all Puerto Rico regulations approved by EPA as part of the Puerto Rico SIP, the dates when the regulations were made effective by the Commonwealth, and the dates (and **Federal Register** citation) when they were last approved by EPA for incorporation into the Puerto Rico SIP.

New § 52.2723 also includes regulations which were previously approved by EPA. Puerto Rico's September 28, 1995 SIP submittal consisted of the compiled air regulations which included regulations that had not been changed, however, these rules have been given a new Commonwealth effective date. Therefore, EPA is listing them in § 52.2723 under a new Commonwealth effective date and new EPA approval date.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not

create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 13, 1996.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Section 52.2720 is amended by adding paragraph (c)(36) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(36) Revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution (the Regulations) submitted on September 29, 1995 by the Puerto Rico Environmental Quality Board (EQB).

(i) Incorporation by reference.

(A) Regulations:

(*1*) Amendments to Part I, "General Provisions", Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, and 121, effective September 28, 1995.

(*2*) Amendments to Part II, "Approval and Permit", Rules 201, 203, 204, 205, 206, and 209, effective September 28, 1995.

(*3*) Amendments to Part III, "Variance", Rule 301, effective September 28, 1995.

(*4*) Amendments to Part IV, "Prohibitions", Rules 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, and 417, effective September 28, 1995.

(*5*) Amendments to Part V, "Fees", Rule 501, effective September 28, 1995.

(ii) Additional information.

(A) Request by EQB to remove Rules 411, 418, 419, 420 and 421 of Part IV, "Prohibitions" of the Regulations from the federally approved SIP dated September 29, 1995.

(B) An October 4, 1996 letter from EQB to EPA requesting that EPA delay approval of Rules 112 and 211.

3. A new § 52.2723 is added to Subpart BBB to read as follows:

§ 52.2723 EPA—approved Puerto Rico regulations.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
PART I, GENERAL PROVISIONS			
Rule 101—Title	9/28/95	[Insert date of publication and FR page citation.]	
Rule 102—Definitions	9/28/95	.....do.	
Rule 103—Source Monitoring, Recordkeeping, Reporting, Sampling and Testing Methods.	9/28/95	.....do.	
Rule 104—Emission Data Available to Public Participation.	9/28/95	.....do.	
Rule 105—Malfunction	9/28/95	.....do.	
Rule 106—Test Methods	9/28/95	.....do.	

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION—Continued

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
Rule 107—Air Pollution Emergencies	9/28/95	.....do.	
Rule 108—Air Pollution Control Equipment	9/28/95	.....do.	
Rule 109—Notice of Violation	9/28/95	.....do.	
Rule 110—Revision of Applicable Rules and Regulations.	9/28/95	.....do.	
Rule 111—Applications, Hearings, Public Notice	9/28/95	.....do.	
Rule 113—Closure of a Source	9/28/95	.....do.	
Rule 114—Compulsory and Optional Hearing	9/28/95	.....do.	
Rule 115—Punishment	9/28/95	.....do.	
Rule 116—Public Nuisance	9/28/95	.....do.	
Rule 117—Overlapping or Contradictory Provisions	9/28/95	.....do.	
Rule 118—Segregation and Combination of Emissions	9/28/95	.....do.	
Rule 119—Derogation	9/28/95	.....do.	
Rule 120—Separability Clause	9/28/95	.....do.	
Rule 121—Effectiveness	9/28/95	.....do.	
PART II, APPROVAL AND PERMIT			
Rule 201—Location Approval	9/28/95	.....do.	
Rule 202—Air Quality Impact Analysis	9/28/95	.....do.	
Rule 203—Permit to Construct a Source	9/28/95	.....do.	
Rule 204—Permit to Operate a Source	9/28/95	.....do.	
Rule 205—Compliance Plan for Existing Emission Sources.	9/28/95	.....do.	
Rule 206—Exemptions	9/28/95	.....do.	
Rule 207—Continuing Responsibility for Compliance	9/28/95	.....do.	
Rule 208—Agricultural Burning Authorized	9/28/95	.....do.	
Rule 209—Modification of the Allowed Sulfur-in-Fuel Percentage.	9/28/95	.....do.	
Rule 210—(Reserved) Part III, "Variance".			
PART III, VARIANCE			
Rule 301—Variances Authorized	9/28/95	.....do.	
Rule 302—Emergency Variances	9/28/95	.....do.	
PART IV, PROHIBITIONS			
Rule 401—Generic Prohibitions	9/28/95	.....do.	
Rule 402—Open Burning	9/28/95	.....do.	
Rule 403—Visible Emissions	9/28/95	.....do.	
Rule 404—Fugitive Emissions	9/28/95	.....do.	
Rule 405—Incineration	9/28/95	.....do.	
Rule 406—Fuel Burning Equipment	9/28/95	.....do.	
Rule 407—Process Sources	9/28/95	.....do.	
Rule 408—Asphaltic Concrete Batching Plants	9/28/95	.....do.	
Rule 409—Non-Process Sources	9/28/95	.....do.	
Rule 410—Maximum Sulfur Content in Fuels	9/28/95	.....do.	
Rule 412—Sulfur Dioxide Emissions: General	9/28/95	.....do.	
Rule 413—Sulfuric Acid Plants	9/28/95	.....do.	
Rule 414—Sulfur Recovery Plants	9/28/95	.....do.	
Rule 415—Non-Ferrous Smelters	9/28/95	.....do.	
Rule 416—Sulfite Pulp Mills	9/28/95	.....do.	
Rule 417—Storage of Volatile Organic Compounds	9/28/95	.....do.	
Rule 423—Limitations for the Guaynabo PM_{10} Nonattainment Area.	4/2/94	5/31/95; 60 FR 28333.	
PART V, FEES			
Rule 501—Permit Fees	9/28/95	.....do.	
Rule 502—Excess Emission Fees	9/28/95	.....do.	
Rule 503—Test Fees	9/28/95	.....do.	
Rule 504—Modification	9/28/95	.....do.	

[FR Doc. 97–1420 Filed 1–21–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[CA 157–0022a; FRL–5669–1]

Clean Air Act Approval and Promulgation of Emission Reduction Credit Banking Provisions; Implementation Plan for California State Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD or the District). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to control air pollution in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) with regard to new source review (NSR) in areas of MDAQMD that are not in attainment of the national ambient air quality standards (NAAQS). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on March 24, 1997 unless adverse or critical comments are received by February 21, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permitting Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Steve Ringer, Permitting Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1260.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: rule 1400, General; rule 1401, Definitions; rule 1402, Emission Reduction Credit Registry; and rule 1404, Emission Reduction Credit Calculation. These rules were adopted on June 28, 1995, and were submitted by the State of California to EPA on August 10, 1995, (rules 1400, 1401, 1402, and 1404 will hereafter be referred to as the "submitted rules").

This document promulgates EPA's direct-final action for the submitted rules. These submitted rules were found to be complete on October 4, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [1] and are being finalized for approval into the SIP. The submitted rules establish a system by which the District will calculate and bank reductions in emissions prior to use as offsets for future increases in emissions.

Background

The air quality planning requirements for nonattainment areas are set out in 40 CFR 51.165. The general requirements for the use of emission reductions are set out in EPA's Emissions Trading Policy Statement (ETPS), at 51 FR 43814, December 4, 1986.

Section 173 of the Clean Air Act requires that major new sources and major modifications in nonattainment areas obtain offsetting emission reductions as a part of the preconstruction permitting process. The submitted rules create a system to provide for the banking and transfer of such reductions. As detailed in 40 CFR 51.165 and EPA's ETPS, offsets must reflect reductions in actual emissions, and they must be enforceable, permanent, quantifiable, and surplus of other regulatory requirements. For a description of how the submitted rules ensure that emission reductions meet these requirements, please refer to EPA's Technical Support Document (TSD) for this action.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA Evaluation and Action

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD rules 1400, 1401, 1402, and 1404 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 24, 1997, unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over a population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the

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Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 8, 1996.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(224)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(224) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rules 1400, 1401, 1402, 1404. Adopted on June 28, 1995.

* * * * *

[FR Doc. 97–1421 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN70–1a; FRL–5675–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 13, 1996, and June 27, 1996, the State of Indiana submitted, as a requested revision to the State Implementation Plan (SIP) for ozone, 326 IAC 8–12, a rule controlling volatile organic compound (VOC) emissions from shipbuilding and ship repair coating operations in Clark, Floyd, Lake, and Porter Counties. This rule is part of the State's 15% Rate-of-Progress (ROP) plan for reducing VOC emissions in Clark and Floyd Counties. VOCs are air pollutants which combine with oxides of nitrogen to form ground-level ozone, a pollutant which can damage lung tissue and cause serious respiratory illness. ROP plans are intended to help areas with ozone problems attain the public health based Federal ozone air quality standard. Indiana expects that the control measures required by this requested SIP revision will reduce VOC emissions by 1,164 pounds per day in Clark and Floyd Counties. In this action, EPA is approving the requested SIP revision through a "direct final" rulemaking; the rationale for this approval is set forth in the **SUPPLEMENTARY INFORMATION** section of this rulemaking. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 24, 1997 unless adverse comments are received by February 21, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Air Programs Branch (AR–18J), (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act, as amended in 1990, requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for ozone, while Clark and Floyd Counties are classified as "moderate" nonattainment. As such, these counties are subject to the 15%

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ROP requirement. The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through revisions to the SIP, the promulgation of federal rules, or through permits under Title V of the Act, by November 15, 1996.

On September 6, 1995, the Indiana Air Pollution Control Board (IAPCB) adopted a shipbuilding and ship repair rule for purposes of meeting the State's 15% ROP plan requirements. Public hearings on the rule were held on June 7, 1995, and September 6, 1995, in Indianapolis, Indiana. The rule was signed by the Secretary of State on April 1, 1996, and became effective on May 1, 1996; it was published in the Indiana State Register on May 1, 1996. The Indiana Department of Environmental Management (IDEM) formally submitted the rule to EPA on February 13, 1996, as a revision to the Indiana ozone SIP; supplemental documentation to this revision was submitted on June 27, 1996. EPA made a finding of completeness in a letter dated July 5, 1996.

II. Summary of Rule

The February 13, 1996, and June 27, 1996, submittals include the following rule:

326 Indiana Administrative Code (IAC) 8–12 Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties

(1) Applicability.
(2) Exemptions.
(3) Definitions.
(4) Volatile organic compound emissions limiting requirements.
(5) Compliance requirements.
(6) Test methods and procedures.
(7) Record keeping, notification, and reporting requirements.

A summary of the rule follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8–12 rule.

326 IAC 8–12–1 Applicability

This section establishes which shipbuilding or ship repair operations are subject to the rule. Beginning November 1, 1995, shipbuilding or ship repair facilities which are (a) located in Clark or Floyd County which have the potential to emit 100 tons per year (TPY) of VOCs, or (b) located in Lake and Porter Counties which have the potential to emit 25 TPY of VOCs, are subject to the requirements of the rule.[1] "Shipbuilding and ship repair facility," as defined under section 3(21) of the rule, means any facility that builds, repairs, repaints, converts, or alters ships. Section 3(20) defines "ship" to mean any marine or freshwater vessel made of steel and used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys), and includes, but is not limited to, all of the following: (A) military and United States Coast Guard vessels, (B) commercial cargo and passenger (cruise) ships, (C) ferries, (D) barges, (E) tankers, (F) container ships, (G) patrol and pilot boats, and (H) dredges. For purposes of the rule, offshore oil and gas drilling platforms are not considered ships.

326 IAC 8–12–2 Exemptions

This section exempts the following marine coatings from the rule's VOC content limitations in section 4: (1) any marine coating used in volumes of less than 20 gallons in any one calendar year, provided, however, the total of all exempt coatings shall not exceed 400 gallons in any 1 calendar year; (2) any marine coating applied using a hand-held aerosol can; and (3) any marine coating used in a touch-up operation. However, these coatings are nonetheless subject to all other provisions contained in the rule, including record keeping requirements under section 7.

326 IAC 8–12–3 Definitions

This section contains definitions which describe the terms used in the Indiana rule for compliance purposes, particularly in regard to the various coatings which are subject to limits under the rule.

326 IAC 8–12–4 Volatile organic compound emissions limiting requirements

Section 4(a) requires that, on and after May 1, 1996, the owner or operator of a subject facility must meet certain VOC content limits when applying specialty coatings. Section 2(22) defines "specialty coatings" to include the following coatings: air flask coating, antenna coating, antifoulant coating, heat resistant coating, high-gloss coating, high-temperature coating, inorganic zinc (high-build) coating, military exterior coating, mist coating, navigational aids coating, nonskid coating, nuclear coating, organic zinc coating, pretreatment wash primer coating, repair and maintenance of thermoplastic coating of commercial vessels, rubber camouflage coating, sealant coating for thermal spray aluminum, special marking coating, specialty interior coating, tack coating, undersea weapons systems coating, water based weld-through (shop) preconstruction primer, and weld-through (shop) preconstruction primer.

Section 4(a) also requires that, beginning May 1, 1996, subject sources must meet certain VOC content limitations when applying general use coatings from May 1 through September 30. The limitations for specialty coatings apply year-round.

The VOC content limits for specialty and general use coatings are as follows:[2]

Coating	Lbs/gallon
Special Marking Coatings	4.08
Heat Resistant	3.50
High Gloss	3.50
High Temperature	4.17
Weld-through (shop) preconstruction.	See below
All other specialty coatings	2.83
General use coating	2.83

No thinner shall be added to any general use coating when the general use coating limit is in effect. Weld-through (shop) preconstruction primers are required throughout the year to be water based and meet a VOC content limit of 0.00 when applied. No cleaning material shall be used in the primer application facility, and no thinner shall be added to the primer. Additionally, if the owner or operator determines that a water based weld-through (shop) preconstruction primer can no longer be used due to an operational, performance, or availability constraint, the rule provides that, as an alternative to meeting the primer requirement, the owner or operator can request IDEM for permission to comply by means of a control system with an overall VOC reduction efficiency of 95 percent, subject to certain provisions.

Section 4(b) requires that on and after May 1, 1996, subject sources must use gasket-sealed containers to store used cleaning accessories, new and spent coating, and solvent. Cleaning materials for spray equipment, including spray lines, must be collected using equipment which collect the cleaning materials when used and minimize the materials evaporation into the atmosphere. All containers, tanks, vats, drums, and piping systems must be free

[1] The applicability thresholds of 100 TPY potential to emit for the Clark and Floyd Counties' moderate ozone nonattainment area, and 25 TPY potential to emit for the Lake and Porter Counties' severe ozone nonattainment area, are identical to the thresholds used to define " major sources" under the Act (*See* section 302(j), section 182(b)(2), and section 182(d) of the Act).

[2] "VOC content" is defined in section 2(25) of the Indiana rule as the weight of VOC, per unit volume of any general use or specialty coating or cleaning material, less water and less exempt compounds.

of cracks, holes, or other defects, and must be closed unless materials are being added or removed from them, and handling of the VOC-containing materials shall be conducted in a manner that minimizes drips and spills, and any spills shall be cleaned up promptly.

Section 4(c) requires that the owner or operator of a subject source must meet certain training program requirements. On or before January 1, 1996, the owner or operator must develop a written worker training program. This program shall contain written procedures, and hands-on demonstration, as appropriate, in order to instruct all workers, including contractors, that engage in activities regulated under the rule in how to comply with the rule when performing those activities. All affected personnel shall be certified by the trainer to have satisfactorily completed necessary training on or before May 1, 1996, with refresher training prior to May 1, annually. Untrained employees can perform an activity covered under the training program for no longer than 180 days. Records shall be kept by the owner or operator of the training completed by each worker.

8–12–5 Compliance requirements

Section 5 provides that the VOC content emission limits for coatings and cleaning materials contained in section 4 shall be achieved each day on an as-applied basis for each operating day (as defined by 326 IAC 8–12–3(18)), and that compliance with the work practice standards of section 4 shall be achieved each operating day. Compliance with VOC content limits shall be demonstrated using EPA Method 24, contained in 40 CFR part 60, Appendix A, or, if certain specified procedures are followed, a certificate from the coating manufacturer indicating compliance. Under section 3(7), this certification needs to attest to the VOC content as determined through analysis by EPA Method 24, or through use of the forms and procedures outlined in EPA publication EPA 450/3–84–019, revised June 1986. If any discrepancy exists between the manufacturer's certification and EPA Method 24, EPA Method 24 shall govern. (It should be noted that the owner or operator retains liability should subsequent testing reveal a violation).

326 IAC 8–12–6 Test methods and procedures

This section specifies that 326 IAC 8–1–4, EPA Method 24 (40 CFR part 60, Appendix A), and section 5 of the rule shall be used to determine compliance with the rule. 326 IAC 8–1–4, the State's VOC rule testing procedures for coating and control system requirements, was approved by EPA and incorporated in the Indiana SIP on March 6, 1992 (57 FR at 8082). 40 CFR Part 60 Appendix A is Method 24, EPA's established test method for determining VOC content in surface coatings.

326 IAC 8–12–7 Record keeping, notification, and reporting requirements

Section 7(a) requires certain records be kept at a subject source for a minimum of 3 years. Subsection (a)(1) requires certification of annual employee training under the source's training program be kept. Subsection (a)(2) requires certain information regarding each coating used each working day of surface coating operation be recorded. Such information includes: the coating identification (trade name, manufacturer, coating category consistent with rule definitions, and applicable VOC content requirement); the VOC content of the coating, as supplied; certification of the VOC content of the supplied coating from the coating manufacturer, Material Safety Data Sheets (MSDS), or product data sheet for each coating used; the volume of the coating used; the thinner added to the coating, including thinner description, VOC content, and volume added. It should be noted that this record keeping requirement is applicable to coatings otherwise exempted from VOC content limitations in section 2.

Subsection (a)(2) also requires that for each solvent used each working day, subject sources must keep records of the solvent description; solvent use (thinning or cleanup); VOC content; volume used for thinning; and volume used for cleanup.

Subsection (a) (3) and (4) requires copies of the compliance plan and quarterly compliance report required under subsection (b). Subsection (b) requires that on or before January 1, 1996, each subject source shall submit to IDEM for review a compliance plan which addresses the source's required compliance procedures, training program, record keeping procedures, and procedures to comply with the rule's work practice standards. A source may revise its compliance plan upon notifying IDEM in writing that a major change in the source's operations has occurred. Beginning May 1, 1996, and within 60 days after the end of each quarter, each subject source shall submit a quarterly compliance report indicating the compliance status with the rule's work practice standards, training program, emission standards, compliance procedures, and provision of the compliance plan. Also required to be included in the report is each instance of noncompliance, the corrective action taken, and the reason for the noncompliance. Reporting frequency may be changed to semiannually after May 1, 1997, if a source requests such a change in writing, and IDEM approves it.

III. Evaluation of Rule

As previously discussed, Indiana intends that this shipbuilding and ship repair SIP revision submittal will be one of the control measures which will satisfy 15% ROP plan requirements under the Act for Clark and Floyd Counties. A review of the emission reduction credit claimed for this rule for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd 15% ROP plan SIP. (EPA will take rulemaking on the overall 15% ROP plan in a subsequent rulemaking action.)

On August 27, 1996, a Control Techniques Guidelines (CTG) document was published which recommends Reasonably Available Control Technology (RACT) control measures for shipbuilding and ship repair coating operations (61 FR 44050).[3] In turn, states with moderate and above ozone nonattainment areas are required under section 182(b)(2) to submit a SIP revision providing regulations consistent with RACT for VOC source categories that are covered by a CTG issued after enactment of the Act's amendments of 1990, but prior to the time of attainment. This Act requirement, however, is separate from the requirement under section 182(b)(1) that states adopt and implement control measures to achieve 15% VOC reduction; such control measures need not constitute RACT to be creditable under the 15% ROP plan. Since the Indiana shipbuilding and ship repair rule was submitted primarily for purposes of the 15% ROP plan, was adopted and submitted before the CTG was published, and tightens the stringency of the SIP, EPA is approving the control measures contained in the Indiana rule at this time without

[3] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are documents intended to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT.

determining whether they satisfy RACT requirements under section 182(b)(2).

As for the remainder of the Indiana rule, EPA has reviewed the rule's definitions, exemptions, compliance methods, testing, and record keeping and recording requirement to determine whether the rule is enforceable. The definitions provided under section 3 of the rule are based upon definitions used in the promulgated national emissions standards for hazardous air pollutants (NESHAP) for this industry (60 FR 64330, December 15, 1995). The rule's definitions adequately describe the terms used in the rule for purposes of compliance, and are, therefore, approvable.

As for the coating exemption provision under section 2, EPA has requested that Indiana clarify what types of coating are covered under section 2(3): "Any marine coating used in a touch-up operation." IDEM has stated in a September 3, 1996, letter that this exemption is intended only to apply to coatings which are used to repair minor surface damage and imperfections, and that this exemption does not apply to primary coatings (primers, general use, and specialty coatings) except when they are used in touch-up operations. The exemption provisions under section 2 are approvable.

The provisions in section 5 which allow a source to demonstrate compliance through a certificate issued by the manufacturer certifying the VOC content of each batch of coating used are based upon similar compliance procedures promulgated in the shipbuilding and ship repair NESHAP. As was discussed before, this certification must, as provided under section 3(7), attest to the VOC content as determined through analysis by EPA Method 24, or through use of the forms and procedures outlined in EPA publication EPA 450/3–84–019, revised June 1986. If any discrepancy exists between the manufacturer's certification and EPA Method 24, EPA Method 24 shall govern. Also section 5(5) provides that IDEM or EPA may test or have tested any coating for VOC content using EPA Method 24, and if any discrepancies exist between the manufacturer's certification and EPA Method 24 test results, the Method 24 test results shall take precedence. These compliance procedures are approvable.

The rule's daily record keeping and quarterly reporting requirements under section 7 will assure that VOC content limits are met as applied and that any thinning of coating will not result in non-compliance, and that the work practice standards and training requirements of the rule will be properly met. The rule's record keeping and reporting requirements are approvable.

IV. Final Action

Indiana's rule covering ship building or ship repair operations, 326 IAC 8–12, as submitted on February 13, 1996, and June 27, 1996, contain enforceable VOC control measures which tighten the stringency of the Indiana ozone SIP for Clark, Floyd, Lake, and Porter Counties. On this basis, the rule is approvable. EPA, however, is not rulemaking at this time as to whether this rule satisfies RACT requirements pursuant to section 182(b)(2) of the Act.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 24, 1997 unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 24, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is

not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: December 24, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(113) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(113) On February 13, 1996, and June 27, 1996, Indiana submitted rules for the control of volatile organic compound emissions from shipbuilding and ship repair operations in Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan.

(i) Incorporation by reference. 326 Indiana Administrative Code 8–12: Shipbuilding or Ship Repair operations in Clark, Floyd, Lake, and Porter Counties, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Volatile organic compound emissions limiting requirements, Section 5: Compliance requirements, Section 6: Test methods and procedures, and Section 7: Record keeping, notification, and reporting requirements. Adopted by the Indiana Air Pollution Control Board September 6, 1995. Filed with the Secretary of State April 1, 1996. Published at Indiana Register, Volume 19, Number 8, May 1, 1996. Effective May 1, 1996.

[FR Doc. 97–1425 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 105–0012a; FRL–5673–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; San Diego County Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), the San Diego County Air Pollution Control District (SDCAPCD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate five rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_x) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_x emissions from boilers, steam generators, process heaters, electric utility boilers, internal combustion engines, and stationary gas turbines. The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonttainment areas.

DATES: This action is effective on March 24, 1997 unless adverse or critical comments are received by February 21, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

San Diego County Air Pollution Control District, Rule Development Section, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

Written comments should be submitted to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 95105.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: KCAPCD's Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen); Rule 427, Stationary Piston Engines (Oxides of Nitrogen); SDCAPCD's Rule 69.4, Stationary Reciprocating Internal Combustion Engines; VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions; and Rule 74.23, Stationary Gas Turbines. These rules were submitted by the California Air Resources Board (CARB) to EPA on February 11, 1994 (Rule 59), October 19, 1994 (Rule 69.4), May 25, 1995 (Rule 425.2), and March 26, 1996 (Rules 74.23 and 427).

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides

Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes the requirements of section 182(f). The NO_x Supplement should be referred to for further information on the NOx requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Kern County is classified as a serious nonattainment area.[1] San Diego County is classified as a serious nonattainment area, and Ventura County area is classified as severe for ozone.[2] All areas are subject to the RACT requirements of section 182(b)(2), cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x category since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls by May 31, 1995 for those sources where installation by that date is practicable.

This document addresses EPA's direct-final action for the KCAPCD's Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen); Rule 427, Stationary Piston Engines (Oxides of Nitrogen); SDCAPCD's Rule 69.4, Stationary Reciprocating Internal Combustion Engines; and for the VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions; and Rule 74.23, Stationary Gas Turbines. The KCAPCD adopted Rule 425.2 on April 6, 1995 and Rule 427 on January 1, 1996. The SDCAPCD adopted Rule 69.4 on September 27, 1994 and the VCAPCD adopted Rule 59 on October 12, 1993 and Rule 74.23 on October 10, 1995. The submitted KCAPCD's Rule 425.2 was found to be complete on July 24, 1995 and Rule 427 on May 15, 1996. SDCAPCD's Rule 69.4 was found to be complete on October 21, 1994. VCAPCD's Rule 59 was found to be complete on April 11, 1994; and Rule 74.23 on May 15, 1996 pursuant to EPA's completeness criteria set forth in 40 CFR Part 51 Appendix V[3] and are being finalized for approval into the SIP.

NO_x emissions contribute to the production of ground level ozone and smog. The five rules control emissions of NO_x from electric utilities and various industries used in a wide variety of applications. The rules were adopted as part of the KCAPCD's, SDCAPCD's, and VCAPCD's efforts to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. All five rules are required to satisfy the mandates of the Clean Air Act requirements, and were submitted pursuant to the CAA requirements cited above.

EPA Evaluation

In determining the approvability of a NO_x rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretations of these requirements, which form the basis for this action, appear in the NO_x Supplement and various other EPA policy guidance documents.[4] Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT should be determined for major stationary sources of NO_X emissions. The document sets RACT emission levels specifically for electric utility boilers. For all other source categories, EPA expects States/Districts to establish RACT levels comparable to those levels for utility boilers taking into account cost, cost-effectiveness, and emission reductions.

While most of the guidance issued by EPA (previous to the NO_X Supplement) on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control techniques documents (ACTs), that identify alternative controls for most categories of stationary sources of NO_X. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. While providing guidance and information for States to use in making RACT determinations, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been issued by EPA to ensure that submitted NO_X RACT rules are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 425.2 sets NO_X emission limits for units with annual heat input of 9 billion Btu or more at 70 parts per million (ppm) by volume for gas-fired units and 115 ppm for liquid-fired units. Emission limits are corrected to 3% oxygen. Rule 425.2 meets EPA's RACT guidance and May 31, 1995 implementation requirements by requiring that RACT be fully implemented by November 1997 and that interim measures including submission of a compliance plan and an application for authority to construct be met to ensure progress toward final compliance.

EPA established RACT levels for electric utility boilers and recommended for other source categories that States/Districts make RACT determinations comparable to those EPA established for electric utility boilers. This comparability should be based on several factors including cost, cost-effectiveness, and emission reductions.

The California Air Resources Board RACT/BARCT Guidance[5] document for institutional, commercial, and industrial

[1] Kern County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] The San Diego and Ventura County Areas retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). The San Diego Area was reclassified from severe to serious on February 21, 1995. See 60 FR 3771 (January 19, 1995).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

[5] Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (RACT/BARCT guidance for ICI boilers), California Air Resources Board, July 18, 1991.

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(ICI) boilers suggests a RACT limit of 70 ppm corrected to 3% O_2 for units fired with gaseous fuel and 115 ppm for units fired with fuels other than gas. EPA has used CARB's Guidance document in evaluating Rule 425.2 for consistency with the CAA's RACT requirements. Rule 425.2's RACT emission limits (70/115 ppm) are generally comparable to the emission limits of CARB's Guidance document and meet federal RACT requirements.

Kern Rule 427 contains different requirements depending upon the size of the engines. Engines rated greater than 50 bhp are required to conduct regular maintenance procedures. Engines rated greater than 250 bhp are required to meet the emissions limits by June 1997. The rule establishes RACT emission limits for engines rated 250 bhp or greater at 50 parts per million (ppm), 125 ppm, and 600 ppm for rich burn engines, lean burn engines, and diesel engines, respectively. In lieu of meeting the emissions limits, sources may install control equipment that reduces NO_x emissions by 90%, 80%, and 30% for rich-burn, lean-burn, and diesel engines, respectively. Although final compliance with the emissions limits is not required until 1999, the rule does require interim measures be met by 1995. Emission control plans and maintenance procedures are required in the interim to ensure progress toward final compliance with the emission limits in 1999.

San Diego Rule 69.4 describes emission limits and reduction requirements in two tables. One table establishes RACT concentration limits and the other table sets percent reduction limits. Rule 69.4 establishes RACT at 50 ppm for rich burn engines, 125 ppm for lean burn engines, and 700 ppm for diesel engines. The concentration limits are referenced to 15% oxygen on a dry basis. The alternative control device efficiencies are set at 90%, 80%, and 25% for rich, lean, and diesel engines, respectively. The rule requires the RACT limits be met by May 31, 1995 for existing engines and upon start-up for new engines.

The current SIP approved version of VCAPCD Rule 59 limits NO_x emission from boilers rated greater than or equal to 2,150 million British Thermal Units (MMBtu) to 0.10 pounds per megawatt-hour (lb/MW-hr) produced, and limits NO_x emissions from boilers rated less than 2,150 MMBtu to 0.20 lb/MW-hr produced. Final compliance with these limits is required by June 4, 1994 and June 4, 1996 respectively. The significant changes in the October 12, 1993 version of Rule 59 are: (1) boilers under 2,150 million Btu per hour are now limited to 0.10 pound per megawatt-hour (lb/MW-hr) produced at loads at or above 43 megawatts (MW); and (2) the start-up duration of this exemption for auxiliary boilers has been changed from one hour to four hours. The additional reduction of NO_x emissions derived from this rule is part of VCAPCD's effort towards achieving the state and federal ozone standards.

VCAPCD's Rule 74.23 sets NO_x limits at 42 ppm (gas-fired) and 65 ppm (oil-fired) for units rated at or above 0.3 MW but less than 2.9 MW and for units rated 4 MW and greater, but operating at less than 877 hours per year. For all other units, the rule sets the following emission limits: (i) 25 ppm (gas-fired), corrected for turbine efficiency and 65 ppm (oil-fired) for units rated at or above 2.9 MW but less than 10 MW; (ii) 9 ppm (gas-fired) and 25 ppm (oil-fired) for units rated greater than 10 MW with selective catalytic reduction (SCR); and (iii) 15 ppm (gas-fired) and 42 ppm (oil-fired) for units rated greater than 10 MW with no SCR. Rule 74.23 meets EPA's RACT guidance and May 31, 1995 implementation requirements by requiring that BARCT limits be fully implemented by April 2001, and that interim measures including submitting a compliance plan and implementing interim emission limits be met to ensure progress toward the final emission limit of the rule.

The California Air Resources Board RACT/BARCT Guidance[6] document for stationary gas turbines suggest RACT limits of 42 ppm for gas-fired units and 65 ppm for oil fired units. BARCT limits for units with SCR are 9 ppm and 25 ppm for gas-fired units and oil-fired units respectively. For units without SCR, the BARCT limits are 15 ppm (gas-fired units) and 42 ppm (oil-fired units). Rule 74.23 emission limits meet the values of CARB's RACT/BARCT limits, thereby meeting the CAA requirements for RACT.

EPA agrees that the RACT emissions limits established in the Kern Rules 425.2 and 427, the San Diego Rule 69.4, and the Ventura Rules 59 and 74.23 are consistent with the Agency's guidance and policy for making RACT determinations, and believes the rules satisfy the NO_X RACT requirement of the CAA for ICI boilers in Kern County, the I/C engines in Kern and San Diego Counties, the electric utility boilers and the stationary gas turbines in Ventura County.

EPA is incorporating these rules into the SIP because they strengthen the SIP through the addition of enforceable measures such as NO_x emission limits, recordkeeping, test methods, definitions, and compliance tests. EPA believes all five rules for these source categories in each district satisfy the RACT requirements of the CAA. A more detailed discussion of the sources controlled, the controls required, and the analysis of how these controls meet RACT can be found in the Technical Support Document (TSD) for each rule available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. All five rules meet RACT requirements for their particular category, and contain implementation dates consistent with the CAA and EPA's policy. Therefore, all five are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110 and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 24, 1997, unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

[6] Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines (RACT/BARCT guidance for gas turbines), California Air Resources Board, May 18, 1992.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rules in today's **Federal Register**. These rules are not major rules as defined by section 804(2) of the APA as amended.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 23, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(195)(i)(B)(*2*), (C)(202)(i)(C)(*5*), (C)(221)(i)(A)(*3*), (C)(230)(i)(A)(*2*) and (C)(230)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(195)* * *

(i) * * *

(B) * * *

(*2*) Rule 59, adopted on October 12, 1993.

* * * * *

(202) * * *

(i) * * *

(C) * * *

(*5*) Rule 69.4, adopted on September 27, 1994.

* * * * *

(221) * * *

(i) * * *

(A) * * *

(*3*) Rule 425.2, adopted on April 6, 1995.

* * * * *

(230) * * *

(i) * * *

(A) * * *

(*2*) Rule 74.23, adopted on October 10, 1995.

* * * * *

(C) Kern County Air Pollution Control District.

(*1*) Rule 427, adopted on January 25, 1996.

[FR Doc. 97–1078 Filed 1–21–97; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7204]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska	Kenai Peninsula Borough.	October 17, 1996, October 24, 1996, *Peninsula Clarion.*	The Honorable Don Gilman, Mayor, Kenai Peninsula Borough, 144 North Binkley, Soldotna, Alaska 99669–7599.	September 24, 1996	020012
Arkansas: Benton	Unincorporated Areas	October 31, 1996, November 7, 1996, *Benton County Daily Record.*	The Honorable Bruce Rutherford, Benton County Judge, 215 East Central, Suite #9, Bentonville, Arkansas 72712.	October 15, 1996	050419
Arkansas: Lonoke	City of Cabot	December 4, 1996, December 11, 1996, *Cabot Star Herald.*	The Honorable Joe L. Allman, Mayor, City of Cabot, P.O. Box 1113, Cabot, Arkansas 72023.	November 12, 1996	050309
Arkansas: Lonoke	Unincorporated Areas	December 4, 1996, December 11, 1996, *Cabot Star Herald.*	The Honorable Don R. Bevis, County Judge, Lonoke County, 301 North Center, Suite 201, Lonoke, Arkansas 72086.	November 12, 1996	050448

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff	October 25, 1996, November 1, 1996, *The Arizona Daily Sun.*	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	October 8, 1996	040020
Arizona: Maricopa	City of Glendale	November 22, 1996, November 29, 1996, *Arizona Republic.*	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	October 24, 1996	040045
Arizona: Maricopa	Unincorporated Areas	November 22, 1996, November 29, 1996, *Arizona Republic.*	The Honorable Tom Rawles, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, Phoenix, Arizona 85003.	October 24, 1996	040037
Arizona: Santa Cruz	City of Nogales	October 18, 1996, October 25, 1996, *Nogales International.*	The Honorable Louie Valdez, Mayor, City of Nogales, 777 North Grand Avenue, Nogales, Arizona 85621.	September 11, 1996 ...	040091
Arizona: Maricopa	City of Peoria	November 22, 1996, November 29, 1996, *Arizona Republic.*	The Honorable Ken C. Forgia, Mayor, City of Peoria, 8401 West Monroe, Phoenix, Arizona 85345.	October 24, 1996	040050
California: Riverside	City of Moreno Valley	November 7, 1996, November 14, 1996, *The Valley Times.*	The Honorable Denise Lanning, Mayor, City of Moreno Valley, P.O. Box 88005, Moreno Valley, California 92552–0805.	October 18, 1996	065074
Kansas: Johnson	City of Shawnee	October 14, 1996, October 21, 1996, *The Olathe Daily News.*	The Honorable Jim Allen, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, Kansas 66203–2799.	September 27, 1996 ...	200177
Missouri: St. Louis	Unincorporated Areas	November 1, 1996, November 8, 1996, *St. Louis-Post Dispatch.*	The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central, Clayton, Missouri 63105.	October 11, 1996	290327
Nevada: Clark	Unincorporated Areas	October 24, 1996, October 31, 1996, *Las Vegas Review-Journal.*	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Commissioners, 225 Bridger Avenue, Sixth Floor, Las Vegas, Nevada 89155.	September 27, 1996 ...	320003
Nevada: Clark	Unincorporated Areas	November 15, 1996, November 25, 1996, *Las Vegas Review-Journal.*	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Commissioners, 225 Bridger Avenue, Sixth Floor, Las Vegas, Nevada 89155.	October 31, 1996	320003
Nevada: Clark	City of Mesquite	October 24, 1996, October 31, 1996, *Las Vegas Review-Journal.*	The Honorable Kenneth Carter, Mayor, City of Mesquite, P.O. Box 69, Mesquite, Nevada 89024.	September 27, 1996 ...	320035

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Mexico: Bernalillo	City of Albuquerque	October 10, 1996, October 17, 1996, *Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 23, 1996 ...	350002
Oklahoma: Payne	City of Stillwater	October 17, 1996, October 24, 1996, *Stillwater Newspress.*	The Honorable Terry Miller, Mayor, City of Stillwater, P.O. Box 1449, Stillwater, Oklahoma 74076.	September 27, 1996 ...	405380
Texas: Tarrant	City of Arlington	October 25, 1996, November 1, 1996, *Fort Worth Star Telegram.*	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	October 8, 1996	485454
Texas: Tarrant	City of Arlington	November 15, 1996, November 22, 1996, *Fort Worth Star Telegram.*	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	October 30, 1996	485454
Texas: Tarrant	City of Fort Worth	November 15, 1996, November 22, 1996, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	October 30, 1996	480596
Texas: Harris	City of Houston	November 18, 1996, November 25, 1996, *Houston Chronicle.*	The Honorable Robert Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251.	November 7, 1996	480296
Texas: Gregg and Harrison.	City of Longview	November 27, 1996, December 4, 1996, *Longview News Journal.*	The Honorable I.J. Patterson, Jr., Mayor, City of Longview, P.O. Box 1952, Longview, Texas 75606.	November 13, 1996	480264
Texas: Dallas	City of Mesquite	November 14, 1996, November 21, 1996, *The Mesquite News.*	The Honorable Cathye Ray, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	November 1, 1996	485490
Texas: Midland	City of Midland	November 15, 1996, November 22, 1996, *Midland Reporter-Telegram.*	The Honorable Robert E. Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	October 30, 1996	480477

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1505 Filed 1–21–97; 8:45 am]

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44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation

determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7200).	Unincorporated Areas.	August 22, 1996, August 29, 1996, Arizona Republic.	The Honorable Ed King, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, Tenth Floor, Phoenix, Arizona 85003.	August 7, 1996.	040037
Arizona: Maricopa (FEMA Docket No. 7200).	Town of Paradise Valley.	August 22, 1996, August 29, 1996, Arizona Republic.	The Honorable Marvin Davis, Mayor, Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, Arizona 85253.	August 7, 1996.	040049
Arizona: Maricopa (FEMA Docket No. 7200).	City of Phoenix	August 22, 1996, August 29, 1996, Arizona Business Gazette.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	August 7, 1996.	040051
California: Orange (FEMA Docket No. 7196).	City of Irvine	August 14, 1996, August 21, 1996, Orange County Register.	The Honorable Michael Ward, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92713–9575.	July 10, 1996	060222
Colorado: Arapahoe (FEMA Docket No. 7200).	City of Aurora	August 22, 1996, August 29, 1996, Villager.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Suite 808, Aurora, Colorado 80012.	July 15, 1996	080002
Colorado: Arapahoe (FEMA Docket No. 7200).	Unincorporated Areas.	August 22, 1996, August 29, 1996, Villager.	The Honorable Polly Page, Chairman, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0001.	July 15, 1996	080011
Colorado: Jefferson (FEMA Docket No. 7200).	City of Lakewood	August 22, 1996, August 29, 1996, Jefferson Sentinel.	The Honorable Linda Morton, Mayor, City of Lakewood, 445 South Allison Parkway, Lakewood, Colorado 80226–3105.	August 8, 1996.	085075
Hawaii: Maui (FEMA Docket No. 7200).	Unincorporated Areas.	August 16, 1996, August 23, 1996, Maui News.	The Honorable Linda Crockett-Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	July 23, 1996	150003

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kansas: Johnson (FEMA Docket No. 7200).	City of Leawood	August 20, 1996, August 27, 1996, Legal Record.	The Honorable Marcia Rinehart, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, Kansas 66211.	July 24, 1996	200167
Kansas: Johnson (FEMA Docket No. 7200).	City of Overland Park.	August 16, 1996, August 23, 1996, Overland Park Sun.	The Honorable Ed Eilert, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	July 24, 1996	200174
Nevada: Elko (FEMA Docket No. 7196)	City of Elko	August 9, 1996, August 16, 1996, Elko Daily Free Press.	The Honorable Mike Franzoia, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	July 23, 1996	320010
Nevada: Elko (FEMA Docket No. 7196).	Unincorporated Areas.	August 9, 1996, August 16, 1996, Elko Daily Free Press.	The Honorable Royce Hackworth, Chairperson, Elko County, Board of Commissioners, 569 Court Street, Elko, Nevada 89801.	July 23, 1996	320027
Texas: Tarrant (FEMA Docket No. 7196).	City of Arlington	August 2, 1996, August 9, 1996, Dallas Morning News.	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	July 15, 1996	485454
Texas: Tarrant (FEMA Docket No. 7196).	City of Fort Worth ...	July 17, 1996, July 24, 1996, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	June 26, 1996.	480596
Texas: Tarrant (FEMA Docket No. 7196).	City of Fort Worth ...	August 2, 1996, August 9, 1996, Dallas Morning News.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	July 15, 1996	480596
Texas: Tarrant (FEMA Docket No. 7200).	City of Fort Worth ...	August 16, 1996, August 23, 1996, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	August 6, 1996.	480596
Texas: Tarrant (FEMA Docket No. 7200).	City of Fort Worth ...	August 23, 1996, August 30, 1996, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	August 5, 1996.	480596
Texas: Tarrant (FEMA Docket No. 7196).	City of Haslet	July 17, 1996, July 24, 1996, Fort Worth Star-Telegram.	The Honorable I.J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	June 26, 1996.	480600
Texas: Tarrant (FEMA Docket No. 7200).	City of Haslet	August 16, 1996, August 23, 1996, Fort Worth Star-Telegram.	The Honorable I.J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	August 6, 1996.	480600
Texas: Midland (FEMA Docket No. 7189).	City of Midland	June 14, 1996, June 21, 1996, Midland Reporter-Telegram.	The Honorable Robert E. Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	May 21, 1996, September 30, 1996.	480477
Texas: Collin (FEMA Docket No. 7196).	City of Plano	August 14, 1996, August 21, 1996, Plano Star Courier.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	July 30, 1996	480140
Texas: Bexar (FEMA Docket No. 7196).	City of San Antonio	July 31, 1996, August 7, 1996, San Antonio Express-News.	The Honorable William E. Thornton, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	July 17, 1996	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1503 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
ARIZONA	
Navajo County (Unincorporated Areas) (FEMA Docket No. 7194)	
Buckskin Wash:	
Approximately 0.59 mile downstream of Green Valley Road	*6,481
Approximately 0.54 mile upstream of South Meadow Road	*6,551
Maps are available for inspection at the Navajo County Public Works Department, County Courthouse, South Highway 77, Holbrook, Arizona.	
CALIFORNIA	
Angels (City), Calaveras County (FEMA Docket No. 7194)	
Angels Creek:	
Approximately 2,900 feet downstream of State Highway 49	*1,314
At Kurt Lane	*1,403
China Gulch:	
Approximately 1,650 feet downstream of Purdy Way	*1,384
Approximately 1,650 feet upstream of Purdy Way	*1,475
Maps are available for inspection at City Hall, 585 South Main Street, Angels Camp, California.	
Blue Lake (City), Humboldt County (FEMA Docket No. 7194)	
Mad River:	
Approximately 1,300 feet downstream of confluence with Dave Power's Creek (westernmost corporate limit)	*68
Just downstream of Hatchery Road	*85
Dave Power's Creek:	
At confluence with Mad River	*70
Approximately 2,100 feet upstream of confluence with Mad River	*75
Maps are available for inspection at the City of Blue Lake Public Works Department, City Hall, Blue Lake, California.	
Glenn County (Unincorporated Areas) (FEMA Docket No. 7194)	
Sacramento River (West Overbank at Hamilton):	
At dirt road located 3,000 feet north of St. John Road	*139
Approximately 1.9 miles upstream of State Highway 132	*153
Maps are available for inspection at the Glenn County Public Works Department, 777 North Colusa Street, Willows, California.	
Lompoc (City), Santa Barbara County (FEMA Docket No. 7194)	
Santa Ynez River:	
Just upstream of Floradale Avenue	*70
Approximately 1,530 feet downstream of State Highway 1	*80
Maps are available for inspection at the City of Lompoc Engineering Division, 100 Civic Center Plaza, Lompoc, California.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Marin County (Unincorporated Areas) (FEMA Docket No. 7194)	
Miller Creek:	
Just upstream of the Southern Pacific Railroad	*12
Approximately 3,000 feet upstream of the Southern Pacific Railroad	*20
At U.S. Highway 101	*31
Miller Creek—Left Overbank Channel:	
At confluence with Miller Creek, approximately 1,150 feet upstream of the Southern Pacific Railroad	*14
Approximately 3,500 feet upstream of the Southern Pacific Railroad	*23
Miller Creek—Right Overbank Channel:	
Just upstream of the Southern Pacific Railroad	*10
Approximately 2,900 feet upstream of the Southern Pacific Railroad	*23
Maps are available for inspection at the Marin County Department of Public Works, 3501 Civic Center Drive, Room 304, San Rafael, California.	
Mono County (Unincorporated Areas) (FEMA Docket No. 7194)	
Big Slough:	
At Larson Lane	*5,208
At divergence from West Walker River	*5,374
West Walker River:	
At Larson Lane	*5,192
At Eastside Lane	*5,446
Maps are available for inspection at the Mono County Planning Department, Courthouse Annex, Bridgeport, California.	
Santa Barbara County (Unincorporated Areas) (FEMA Docket No. 7194)	
Santa Ynez River:	
Just upstream of Floradale Avenue	*70
Approximately 1,530 feet downstream of State Highway 1	*80
Romero Creek:	
Approximately 590 feet upstream of Sheffield Drive	*92
Approximately 2,350 feet upstream of Sheffield Drive	*134
Buena Vista Creek (East Branch):	
Approximately 360 feet downstream of Sheffield Drive	*110
Approximately 1,030 feet upstream of Sheffield Drive	*144
Maps are available for inspection at the Santa Barbara County Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, California.	
Sonoma (City), Sonoma County (FEMA Docket No. 7194)	
Fryer Creek:	
Just upstream of Leveroni Road	*56
Approximately 1,200 feet upstream of Andrieux Street	*74
Maps are available for inspection at the City of Sonoma City Hall, Community Development Department, #1 The Plaza, Sonoma, California.	
LOUISIANA	
Caddo Parish (Unincorporated Areas) (FEMA Docket No. 7194)	
Cross Bayou:	
Approximately 500 feet downstream of confluence of Twelve Mile Bayou	*167
Approximately 1,100 feet upstream of confluence of Twelve Mile Bayou	*167
Twelve Mile Bayou:	
At confluence with Cross Bayou	*167
Approximately 3,000 feet upstream of confluence with Cross Bayou	*167
McCain Creek:	
Approximately 15,000 feet upstream of confluence with Twelve Mile Bayou	*170
Just downstream of Pine Hill Road	*178
Bickham Bayou:	
Just upstream of Jefferson Paige Road	*188
Approximately 2,500 feet upstream of Jefferson Paige Road	*194
Galaxy Lateral:	
Approximately 2,200 feet upstream of confluence with Cross Lake	*177
Just upstream of Jefferson Paige Road	*197
Brush Bayou:	
At confluence with Boggy Bayou	*159
Approximately 12,500 feet upstream of confluence with Boggy Bayou	*163
Ranchmoor Lateral:	
Approximately 700 feet downstream of Lynwood Avenue	*168
At Lynwood Avenue	*168
Summer Grove Ditch:	
Just downstream of Williamson Way	*170
Approximately 1,000 feet upstream of Williamson Way	*170
Boggy Bayou:	
Just upstream of Mansfield Road	*168
Approximately 2,400 feet downstream of State Route 525	*174
Gilmer Bayou:	
Approximately 1,500 feet upstream of confluence with Boggy Bayou	*169
Just upstream of Bert Kouns Industrial Loop	*177
Approximately 1,000 feet downstream of Buncomb Road	*207
Industrial Park Lateral:	
At confluence with Gilmer Bayou	*171
Approximately 10,000 feet downstream of Bert Kouns Industrial Loop	*203
Approximately 2,300 feet upstream of Bert Kouns Industrial Loop	*218
Lincoln Memorial Lateral:	
At confluence with Industrial Park Lateral	*186
Just upstream of Flournoy Lucas Road	*214
Approximately 7,100 feet upstream of Flournoy Lucas Road	*230
Southwood High Lateral:	
At confluence with Gilmer Bayou	*177
Approximately 1,600 feet upstream of Dean Road Extension	*196
Bayou Pierre:	
At State Highway 175	*144
Just downstream of Leonard Road	*154
Approximately 4,200 feet upstream of Flournoy Lucas Road	*160
Sand Beach Bayou:	
At confluence with Bayou Pierre	*156
At confluence of South Broadmoor Lateral	*159
South Broadmoor Lateral:	
Approximately 1,950 feet upstream of Pomeroy Street	*159
Old River:	
Approximately 1,800 feet downstream of Kings Highway	*160
Just upstream of Kings Highway	*160
Page Bayou:	
At confluence with Cross Lake	*177

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Approximately 500 feet upstream of confluence with Cross Lake	*177
Maps are available for inspection at 525 Marshall, Suite 200, Shreveport, Louisiana.	
Shreveport (City), Caddo and Bossier Parishes (FEMA Docket No. 7192)	
Bayou Pierre:	
Approximately 1,050 feet downstream of Flournoy-Lucas Road	*158
At Texas and Pacific Railroad	*161
At Gregg Street	*167
Sand Beach Bayou:	
At confluence with Broadmoor Lateral	*159
Approximately 600 feet upstream of Youree Drive	*162
South Broadmoor Lateral:	
At confluence with Sand Beach Bayou	*159
Approximately 1,950 feet upstream of Pomeroy Street	*159
Old River:	
At confluence with Sand Beach Bayou	*160
Approximately 3,500 feet upstream of East 70th Street	*162
Pierremont Ditch:	
At confluence with Bayou Pierre	*165
At Creswell Avenue	*165
Maps are available for inspection at the City of Shreveport City Hall, 1234 Texas Avenue, Shreveport, Louisiana.	
NEBRASKA	
Scribner (City), Dodge County (FEMA Docket No. 7194)	
Elkhorn River:	
Approximately 9,360 feet downstream of Bridge Street	*1,247
Approximately 9,140 feet upstream of Bridge Street	*1,260
Maps are available for inspection at the City Clerk's Office, 415 Third Street, Scribner, Nebraska.	
Dodge County (Unincorporated Areas) (FEMA Docket No. 7194)	
Elkhorn River:	
Just downstream of Bridge Street	*1,254
Pebble Creek:	
At confluence with Elkhorn River	*1,246
Approximately 4,350 feet upstream of confluence of Silver Creek	*1,262
Maps are available for inspection at the Dodge County Courthouse, 435 North Park, Fremont, Nebraska.	
NEVADA	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7194)	
East Fork Carson River:	
At State Highway 88	*4,710
Just downstream of Cottonwood Diversion Dam	*4,792
Just downstream of Washoe Bridge	*4,920
Cottonwood Slough:	
At State Highway 88	*4,710
Approximately 4,000 feet upstream of Waterloo Lane	*4,782
Henningson Slough:	
At State Highway 88	*4,720
At Centerville Lane	#2
Rocky Slough:	
At State Highway 88	*4,723
Near Waterloo Lane	*4,730
At Centerville Lane	*4,768
Maps are available for inspection at the Douglas County Community Development Department, 1594 Esmeralda Avenue, Room 201, Minden, Nevada.	
OKLAHOMA	
Blackwell (City) and Kay County (Unincorporated Areas) (FEMA Docket No. 7194)	
Chikaskia River:	
Approximately 3.9 miles downstream of Blackwell Avenue	*996
Approximately 1.2 miles downstream of Blackwell Avenue	*999
Approximately 2,100 feet upstream of U.S. Highway 177	*1,009
Tributary 1:	
At confluence with Chikaskia River	*999
Approximately 150 feet downstream of South Main Street	*1,001
Maps are available for inspection at the City of Blackwell City Hall, 221 West Blackwell, Blackwell, Oklahoma.	
Maps are available for inspection at the Kay County Courthouse, Main Street, Newkirk, Oklahoma.	
OREGON	
Aurora (City), Marion County (FEMA Docket No. 7194)	
Pudding River:	
Approximately 600 feet downstream of Southern Pacific Railroad	*99
Approximately 10,000 feet upstream of Southern Pacific Railroad	*104
Maps are available for inspection at the City of Aurora, 21420 Main Street, Aurora, Oregon.	
TEXAS	
Orange (City), Orange County (FEMA Docket No. 7194)	
Sabine River:	
Approximately 23,000 feet downstream of Interstate 10	*8
Approximately 69,400 feet above mouth	*8
Little Cypress:	
Approximately 1,600 feet downstream of Southern Pacific Railroad	*10
Just upstream of State Highway 87	*10
Maps are available for inspection at 1413 20th Street, Orange, Texas.	
Orange County (Unincorporated Areas) (FEMA Docket No. 7194)	
Sabine River:	
Approximately 30,000 feet downstream of Interstate 10	*8
Approximately 5,000 feet upstream of Southern Pacific Railroad	*11
Approximately 150,820 feet above mouth	*16
Little Cypress Bayou:	
At confluence with Sabine River	*8
Approximately 4,500 feet downstream of Little Cypress Road	*10
Approximately 3,000 feet upstream of Little Cypress Road	*14
Maps are available for inspection at the Precinct 1 Community Center, North Highway 87, Orange, Texas.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Rowlett (City), Dallas and Rockwall Counties and Dallas (City), Dallas, Denton, Collin, Rockwall, and Kaufman Counties (FEMA Docket No. 7194)	
Rowlett Creek:	
Just upstream of Rowlett Road	*437
Just upstream of State Highway 66	*455
Approximately 3,800 feet upstream of State Highway 66	*457
Maps are available for inspection at the City of Rowlett, 3901 Main Street, Rowlett, Texas.	
Maps are available for inspection at the City of Dallas, 320 Jefferson, Room 321, Dallas, Texas.	
Austin (City) and Travis County (Unincorporated Areas) (FEMA Docket No. 7194)	
Boggy Creek South:	
At confluence of Onion Creek	*560
Approximately 150 feet upstream of Cameron Loop	*780
Maps are available for inspection at Travis County Transportation and Natural Resources, 411 West 13th Street, Austin, Texas.	
Maps are available for inspection at the City of Austin City Hall, Stormwater Management Division, 505 Barton Springs Road, Suite 908, Austin, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1502 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; FCC 96–487]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *First Memorandum Opinion and Order* ("MO&O") amends the Commission's Rules to extend the transition period for applicants and station licensees to determine compliance with our new requirements for evaluating the environmental effects of radiofrequency (RF) electromagnetic fields from transmitters regulated by the Federal Communications Commission (FCC). For most radio services, the transition period is extended by eight months to September 1, 1997. For the Amateur Radio Service the transition period is extended to January 1, 1998. The extensions are necessary to allow applicants and licensees adequate time to understand and implement requirements for ensuring compliance with RF exposure guidelines adopted by the FCC in August of 1996.

EFFECTIVE DATES: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland or Richard Engelman, Office of Engineering and Technology, Federal Communications Commission, (202) 418–2464.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Memorandum Opinion and Order (First MO&O)* in ET Docket 93–62, FCC 96–487, adopted December 23, 1996, and released December 24, 1996. The complete text of the *First MO&O* is available for inspection and copying during business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. The text of the *First MO&O* can also be viewed and downloaded from the World Wide Web site of the FCC's Office of Engineering and Technology. The address is: www.fcc.gov/Bureaus/Engineering—Technology/Orders/fcc96487.txt.

Summary of the First Memorandum Opinion and Order

1. On August 1, 1996, the FCC adopted a *Report and Order*, 61 FR 41006, August 7, 1996, in this proceeding which amended the FCC's rules for evaluating the environmental effects of radiofrequency (RF) electromagnetic fields produced by FCC-regulated transmitters.[1] Human exposure to RF electromagnetic fields is one of several environmental factors considered by the FCC in determining whether its actions may adversely affect the quality of the human environment as required by the National Environmental Policy Act (NEPA).[2] The FCC's *Report and Order* adopted new guidelines and methods for evaluating human exposure to RF fields based on updated recommendations from the National Council on Radiation Protection and Measurements (NCRP) and the American National Standards Institute (ANSI).

2. The *Report and Order* also provided a transition period for applicants and stations to come into compliance with the new guidelines. After considering the comments filed in this proceeding and the impact of the new requirements, the FCC concluded that the new requirements would apply to station applications filed after January 1, 1997, as described in the amended 47 CFR 1.1307(b)(4). Also, recognizing that this relatively short transition period might cause some difficulties for certain applicants, we gave our Bureaus delegated authority for one year to address, through the granting of waivers or similar actions, the specific needs of individual parties that make a good-cause showing that they require additional time to comply with the new guidelines.

3. Seventeen petitions for reconsideration and/or clarification, as well as a motion for extension of the effective date, were filed in response to the *Report and Order*. The petitioners ask that we extend the transition period beyond January 1, 1997, arguing that the existing transition period does not allow adequate time for affected parties to achieve compliance with the new requirements. This request is supported by comments filed by others in response to these petitions. In addition, the Amateur Radio Relay League, Inc., (ARRL) requests that we provide a reasonable transition period for compliance with the requirements adopted in the *Report and Order* regarding amateur radio license examinations and question pools.

4. Opposition to the proposals to extend the transition period was filed by several groups. These latter parties generally argue that an extension could result in adverse public health risks and would allow the continued proliferation of facilities that do not comply with the new requirements.

5. The Commission has decided to grant the petitioners' request to extend the transition period. We are extending the transition period so that the new RF guidelines will apply to station applications filed after September 1,

[1] *See Report and Order*, ET Docket 93–62, 11 FCC Rcd 15123 (1996).

[2] National Environmental Policy Act of 1969, 42 U.S.C. Section 4321, *et seq.*

1997, as described in Section 1.1307(b)(4) of the rules. When we adopted the *Report and Order*, we anticipated that it might cause difficulties for certain applicants to have to determine compliance with the new RF guidelines by January 1, 1997. Accordingly, we gave delegated authority to our Bureaus to extend this transition period on a case-by-case basis. Based on the petitions and comments we have now received, it is clear that most station applicants will need additional time to determine that they comply with the new requirements. An extension of the transition period would eliminate the need for the filing and granting of individual waiver requests, and would allow time for our applicants and licensees to review the results of the decisions we will be taking in the near future to address the other issues raised in the petitions. It would also allow applicants to review the revised Bulletin 65 and to make the necessary measurements or calculations to determine that they are in compliance.

6. While we concur with petitioners who request that we extend the transition period, we believe that it would be unnecessary, in most circumstances, to extend the transition period for a full year or more. At the same time, we do not concur with petitioners who suggest that granting any extension of the transition period will have significant adverse effects on public health. Accordingly, we are extending the transition period for station applications until September 1, 1997.

7. We are also extending the transition period to January 1, 1998, for amateur operators to come into compliance with the new requirements. We see merit in the arguments expressed by the ARRL that, due to the uniqueness of the Amateur Radio Service, additional time is needed to ensure compliance. In particular, we note that amateur stations can use a wide variety of equipment and antennas, and this can make it very difficult to determine whether excessive RF electromagnetic fields may be produced by individual stations. Furthermore, all amateur radio stations in the past had been categorically exempt from these regulations, and many amateur operators may not be familiar with the new requirements and may need additional time to determine how to perform correctly a routine environmental evaluation.

8. With respect to amateur operator license examination requirements, we agree with the arguments raised by the ARRL. The volunteers recently released revised versions of two of the pools which contain the required questions. Teachers and publishers are currently incorporating the new material into training manuals and courses for use by those preparing to take the examinations starting July 1, 1997. Work is also underway to similarly revise the third and final question pool for use starting July 1, 1998. We are, therefore, staying the enforcement of the new examination provisions adopted in the *Report and Order* in the amended 47 CFR § 97.503(b) to July 1, 1997, with respect to Element 2 and 3(A) examinations and to July 1, 1998, with respect to Element 3(B) examinations. Recognizing that a relatively short transition period might cause some difficulties for certain applicants, we are delegating authority, as we did in the *Report and Order*, to our Bureaus until July 1, 1998, to address the specific needs of individual parties that make a good cause showing that they require additional time to meet the new guidelines. Such relief could come through waivers of our rules or through other similar actions.

9. The rules we are adopting temporarily relieve existing restrictions. Pursuant to 5 U.S.C. §§ 553(d)(1) and 553(d)(3), we find that good cause exists to make these rules effective immediately rather than to follow the normal practice of making them effective 30 days after publication in the **Federal Register**. This will permit all parties filing applications during the next 30 days to take advantage of the extension of the transition periods. Accordingly, pursuant to the authority contained in Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r) and 332(c)(7), it is ordered that, effective upon adoption, Part 1 of the Commission's Rules and Regulations, 47 CFR Part 1, is amended as specified in rule changes.

10. It is further ordered that, to the extent discussed above and as reflected in the new rules, certain aspects of the various petitions and motions filed in this proceeding are granted. It is also ordered that motions filed by the Ad-hoc Association of Parties Concerned about the Federal Communications Commission's Radiofrequency Health and Safety Rules ("Ad-hoc Association") to accept a late-filed petition for reconsideration, by the Ad-hoc Association to accept a late filed reply to an opposition to a petition for reconsideration, and by the Cellular Phone Taskforce to accept a late-filed opposition to petition for reconsideration and clarification are granted. Because the decisions we are taking in this proceeding relate specifically to important public health issues, we believe that it is in the public interest to consider these late-filed documents along with all of the other timely petitions and comments in this proceeding. It is also ordered that enforcement of the amendments to 47 CFR §§ 97.503(b)(1) and 97.503(b)(2) adopted in the *Report and Order* are stayed until July 1, 1997, and enforcement of the amendments to 47 CFR § 97.503(b)(3) is stayed until July 1, 1998.

Final Regulatory Flexibility Analysis

11. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Notice)*, 58 FR 19393, March 14, 1993.[3] The Commission sought written public comments on the proposals in the *Notice*, including on the IRFA. In the *Report and Order* in this proceeding, the Commission adopted a Final Regulatory Flexibility Analysis (FRFA).[4] Petitions for reconsideration were filed in response to the *Report and Order* by seventeen parties. Several technical and legal issues have been raised in the petitions and subsequent comments. In addition, several petitions have raised questions about the original FRFA. This *First Memorandum Opinion and Order* addresses those petitions and comments requesting extension of the transition period specified in the *Report and Order*. We intend to address the other issues raised in the petitions in a separate action in the very near future. This FRFA addresses the impact of the extension of the transition period as well as the comments that were made on the original FRFA contained in the *Report and Order*. The FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).[5]

12. Need for and Purpose of This Action

The National Environmental Policy Act (NEPA) of 1969 requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted revised

[3] *See Notice of Proposed Rule Making*, ET Docket No. 93–62, 8 FCC Rcd 2849 (1993).

[4] *See* Appendix A to *Report and Order*, ET Docket 93–62, 11 FCC Rcd 15123 (1996), 61 FR 41006 (August 7, 1996).

[5] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

radiofrequency (RF) exposure guidelines for purposes of evaluating potential environmental effects of RF electromagnetic fields produced by FCC-regulated facilities. The new guidelines reflect more recent scientific studies of the biological effects of RF electromagnetic fields. Based on the petitions and comments received in response to the *Report and Order*, it is clear that most station applicants need additional time to understand the new requirements and determine that they comply with them. This *First Memorandum Opinion and Order* addresses those needs.

13. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the IRFA. In general comments on the *Notice*, however, some commenters raised issues that might affect small entities. These issues were discussed in the FRFA contained in the *Report and Order* in this proceeding.

14. Summary of Issues Raised Regarding the Final Regulatory Flexibility Analysis (FRFA) by the Petitions, Motions, and Comments in Response to the Report and Order

The American Radio Relay League, Inc. (ARRL), points out that we did not consider in the original FRFA the impact that new amateur operator license examination requirements would have on the ARRL and other Volunteer Examiner Coordinators (VEC), which the ARRL alleges should be treated as small business entities.[6] The ARRL expresses particular concern that the new rules, which were effective immediately, required that additional questions be added to the amateur operator license examinations. The ARRL indicates that the examinations now in circulation do not contain the requisite number of questions, and it would be impossible for the thousands of volunteer examiners (VEs) to comply with the new requirements unless they are given time to implement them. The ARRL requests that the implementation dates for the new examination requirements be extended to July 1, 1997, for certain examinations and to July 1, 1998, for other examinations. The ARRL maintains that such an extension would permit the VECs to make the required changes as they are routinely revising the existing examinations.

[6] See ARRL "Motion for Extension of Effective Date of Rules," filed on November 7, 1996, at 1–6.

15. Paging Network, Inc. (PageNet) and the Personal Communications Industry Association (PCIA) maintain that the original FRFA underestimates the number of transmitters that will require a determination of compliance with the new rules and the associated burden on communications carriers.[7] PCIA notes that the original FRFA indicates that we receive only 10,000 paging applications a year, and calculates that only 1176 will be subject to routine environmental evaluation. According to PCIA, however, many paging facilities can be constructed without prior Commission authorization and, therefore, significant numbers of facilities are built annually that are not included in the 10,000 total. Further, PCIA continues, some of those 10,000 applications are renewal applications that may cover hundreds of sites, and the assumption that only 11% will require evaluation does not appear to be accurate. PCIA notes that initial feedback from carriers indicates that a substantially higher number of applications will require routine evaluation. PCIA also calls our estimate of one burden hour per routine evaluation "unrealistic." Instead, PCIA maintains, the process of evaluation may possibly involve a site visit and field measurements, which can take 24 hours.

16. These comments have been considered during the preparation of this revised FRFA, as indicated in Section IV below. In addition, as discussed in Section V, we have taken certain steps to address the concerns raised regarding the amount of burden imposed by these rules.

17. Description and Estimate of the Small Entities Subject to the Rules.

The rules being adopted in this *First Memorandum Opinion and Order* apply to the following eleven industry categories and services. The RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. Based on that statutory provision, we will consider a small business concern one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The RFA SBREFA provisions also apply to nonprofit organizations and to governmental organizations. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small business within each of these services or the number of small business that would be affected by this action. We have, however, made estimates based on our knowledge about applications that have been submitted in the past. To the extent that a government entity may be a licensee or an applicant, the impact on those entities is included in the estimates for small businesses below.

[7] PageNet Petition at 2–3, PCIA Petition at 11.

18. Under the new rules adopted in the *Report and Order*, many radio services are categorically excluded from having to determine compliance with the new RF exposure limits. This exclusion is based on a determination that there is little potential for these services causing exposures in excess of the limits. Within the following services that are not categorically excluded in their entirety, many transmitting facilities are categorically excluded based on antenna location and power. These categorical exclusions significantly reduce the burden associated with these rules, and may reduce the impact of these rules on small businesses. Furthermore, the extension of the transition periods contained in this *First Memorandum Opinion and Order* will reduce the impact on applicants, particularly small businesses, by allowing them adequate time to understand the new requirements and ensure that their facilities are in compliance with them in a orderly and reasonable manner.

A. Cellular Radio Telephone Service

19. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[8] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to make a precise estimate of the number of cellular firms which are small businesses.

20. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone

[8] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

companies with 500 or more employees.[9] We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[10] Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in the Final Regulatory Flexibility Analysis, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

21. We assume that all of the current rural cellular licensees are small businesses. Two small business associations filed comments in our proceeding on "Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems" of relevance. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) states that 2/3 of its 440 members provide cellular service.[11] The Rural Cellular Association (RCA) states that its members serve 80 cellular service areas.[12] We recognize that these numbers represent only part of the current rural cellular licensees because there might be other rural companies not represented by either association.

22. The Commission processes roughly 700 applications for cellular transmitters facilities, involving 7,000 site locations, per year. Because we do not require licensees to provide us with site information, we cannot predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 2,800 transmitting facilities will exceed the categorical exclusion criteria and will require a determination of compliance with the new RF exposure limits, based on calculations or measurements.

B. Personal Communications Service (PCS)

23. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR § 24.720(b), the Commission has defined "small entity" for Blocks C and F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.[13]

24. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are approximately 90 non-defaulting winning bidders that qualify as small entities in the Block C auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this *Report and Order* includes the 90 non-defaulting winning bidders that qualify as small entities in the Block C broadband PCS auction.

25. At present, no licenses have been awarded for Blocks D, E, and F for spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which have started. Eligibility for the 493 F Block licensees is limited to "entrepreneurs" with the average gross revenues of less than $125 million in the last two years. However, we cannot estimate how many small businesses under the Commission's definition will win F Block licenses, or D and E Block licenses. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

26. After all PCS licenses have been issued, the Commission expects to receive approximately 1,000 applications per year involving 10,000 sites. Because we do not require licensees to provide us with site information, we cannot predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 3000 sites will not meet the categorical exclusion criteria and will involve a determination of compliance with the RF exposure guidelines.

C. Private Land Mobile Radio Services, Specialized Mobile Radio (SMR)

27. Pursuant to 47 CFR § 90.814(b)(1), the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[14]

28. The rule adopted in the *Report and Order* applied only to certain "covered" SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have average gross revenues of less than $15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in average gross revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that the remaining existing extended implementation authorizations may be held by small entities, as that term is defined by the SBA.

29. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60

[9] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[10] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[11] OPASTCO Comments at 1–2, CC Docket No. 94–102, filed January 9, 1995.

[12] RCA Comments at 2, CC Docket No. 94–102, filed January 9, 1995.

[13] *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[14] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

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winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in the *Report and Order* includes these 60 small entities.

30. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

31. The Commission receives about 3,000 applications for covered SMR transmitters facilities per year. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 1,000 transmitters will exceed categorical exclusion criteria and will require a determination of compliance.

D. Satellite Communications Services

32. The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[15]

33. Because the Regulatory Flexibility Act amendments were not in effect until the comment period for this proceeding was closed, the Commission was unable to request information regarding the number of licensees in the international services discussed below that meet this definition of a small business. Thus, we are providing an estimate of licensees that constitute a small business.

34. *Fixed Satellite Earth Stations.* Fixed satellite earth stations include international and domestic earth stations operating in the 4/6 GHz AND 11/12/14 GHz bands. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Earth Stations. Although we were unable to request the revenue information, we estimate that some of the licensees of these earth stations would constitute a small business under the SBA definition.

35. *Fixed Satellite Small Earth Stations.* Small transmit/receive earth stations operate in the 4/6 GHz frequency bands with antennas that are two meters or less in diameter. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Earth Stations. Although we were unable to request the revenue information, we estimate that some of the fixed satellite small earth stations would constitute a small business under the SBA definition.

36. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* VSAT systems operate in the 12/14 GHz frequency bands. Although various size small earth stations may be used, all stations of a particular size must be technically identical. Because these stations operate on a primary basis, frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications for fixed satellite VSAT systems. At this time, we are unable to make a precise estimate of the number of small businesses that are VSAT system licensees and could be impacted by this action.

37. *Mobile Satellite Earth Stations.* Mobile satellite earth stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub station or stations. The network may provide a variety of land, maritime and aeronautical voice and data services. There are 2 mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be impacted by this action.

38. *Radio Determination Satellite Earth Stations.* A radio determination satellite earth station is used in conjunction with a radio determination satellite service (rdss) system for the purpose of providing position location information. These stations operate as part of a network that includes a fixed hub station or stations and operate in the frequency bands (1610–1626.5 MHz and 2483.5–2500 MHz) allocated to rdss. There are 4 licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are radio determination satellite earth station licensees and could be impacted by the forfeiture guidelines.

39. It should be noted that in most of the satellite areas discussed above, the Commission issues one license to an entity but generally issues blanket license authority for thousands or even hundreds of thousands of earth stations or hand held transceivers. Overall, the Commission receives about 600 applications for satellite facilities per year. All applicants for satellite earth stations (except for receive-only stations) must make a determination of compliance with the limits, based on calculations or measurements.

E. Radio Broadcast Service

40. The extension of the transition period contained in this *First Memorandum Opinion and Order* will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[16] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[17] Included in this industry are commercial, religious, educational, and other television stations.[18] Also included are establishments primarily engaged in television broadcasting and which produce taped television program

[15] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4899.

[16] 13 CFR § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[17] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 "CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE," Series UC92–S–1, Appendix A–9 (1995).

[18] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

materials.[19] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[20] There were 1,509 television stations operating in the nation in 1992.[21] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[22] For 1992 [23] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[24]

41. Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[25] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[26] Included in this industry are commercial religious, educational, and other radio stations.[27] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[28] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[29] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[30] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[31] As of August, 1996, official Commission records indicate that 12,088 radio stations were operating.[32]

42. Thus, the proposed rules will affect approximately 1,550 television stations; approximately 1,194 of those stations are considered small businesses.[33] Additionally, the proposed rules will affect 12,088 radio stations, approximately 11,605 of which are small businesses.[34] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.[35] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.[36] We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act.

43. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the rules adopted in this action. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

44. The Commission receives about 1,800 applications for broadcast facilities per year. All applicants must make a determination of compliance with the limits, either by calculation or measurement.

F. Stations in the Maritime Services

45. The *Report and Order* required licensees and applicants for ship satellite earth terminals to make a determination of compliance with the new RF exposure requirements. The Commission has not developed a definition of small entities applicable to ship satellite earth station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

46. Ship mobile satellite service (MSS) stations are similar to mobile satellite earth stations, as discussed above, except that earth stations are aboard maritime vessels rather than traditional earth stations in the MSS. In the area of ship MSS, the Commission has two pending licensees for operation of the satellite service, one of which can be considered small business.

47. The Commission receives about 272 applications for ship earth stations per year. All applicants must make a determination of compliance with the new RF exposure limits.

G. Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services

48. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). It also includes

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[19] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 "CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE," Series UC92–S–1, Appendix A–9 (1995).

[20] *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[21] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra.* note 78, Appendix A–9.

[22] FCC News Release No. 64958, Sept. 6, 1996.

[23] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra.* note 78, III.

[24] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[25] 13 CFR § 121.201, SIC 4832.

[26] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra.* note 78, Appendix A–9.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[31] FCC News Release No. 31327, Jan. 13, 1993.

[32] FCC News Release No. 64958, Sept. 6, 1996.

[33] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

[34] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[35] "Minority Commercial Broadcast Ownership in the United States", U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[36] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, "Women-Owned Business," WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. "Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities," *Notice of Proposed Rulemaking*, 10 FCC Rcd 2788, 2797 (1995).

Instructional Television Fixed Service stations, which are used to relay programming to the home or office, similar to that provided by cable television systems. The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

49. Our computer databases show that there are 532 FM translator and booster stations, 4,152 low power TV, TV translators and TV booster stations, and 142 Instructional Television Fixed Service (ITFS) stations which are not categorically excluded from complying with the new RF exposure requirements adopted in the *Report and Order*.[37] All of these stations would be impacted by the extension of the transition period being adopted in this action. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities, including Low Power TV stations, could be classified as small businesses by themselves. We also recognize that many translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). As we indicated earlier, 96% of radio stations and 77% of TV stations are designated as small.

50. The approximate number of annual applications processed by the Commission for this service is 1,032. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, based on our existing database records, we would expect that 42% of these applications would be required to have a determination made regarding compliance with the new RF exposure limits.

H. Multipoint Distribution Service (MDS)

51. This service involves a variety of transmitters, which are most commonly used to deliver programming to subscribers of wireless cable systems, similar to that provided by cable television systems. The Commission has refined the definition of "small entity" for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[38] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[39]

52. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We conclude that for purposes of this FRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

53. The approximate number of annual applications processed by the Commission for MDS is 900. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 113 will not meet the categorical exclusion criteria and have to make a determination of compliance with the RF exposure limits.

I. Paging and Radiotelephone Service, and Private Land Mobile Radio Services, Paging Operations

54. Since the Commission has not yet approved a small entities definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons.

55. The Commission anticipates that a total of 16,754 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,754 MTA licenses and 14,000 EA licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective paging licensees can be made, we assume, for purposes of this FRFA, that all the 16,754 geographic area paging licenses will be awarded to small entities, as that term is defined by the Small Business Administration (SBA).

56. We estimate that the approximately 600 current paging carriers could take the opportunity to partition and/or disaggregate a license to obtain an additional license through partitioning or disaggregation. We estimate that up to 52,062 licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning or disaggregation. This number is based on the total estimate of paging carriers (approximately 600) and non-nationwide geographic area licenses to be awarded (16,754) and our estimate that each license will probably not be partitioned and/or disaggregated to no more than three parties. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of future paging licensees can be made, we assume for purposes of this FRFA that all of the licensees will be awarded to small businesses. We believe that it is possible that a significant number of up to approximately 52,062 licensees or potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning

[37] Low power TV, TV translators and boosters, and FM translators and boosters are categorically excluded if their power is less than or equal to 100 watts. ITFS stations are categorically excluded if their power is less than 1640 watts EIRP or if the center of their antenna is more than 10 meters above ground and the antenna is not located on a rooftop. *See* 47 CFR § 1.1307(b)(1). Our database records do not indicate how many of the 142 ITFS stations that are authorized more than 1640 watts operate with non-rooftop antennas. According to the FCC news release, "Broadcast Station Totals as of June 30, 1996", released July 10, 1996, there are a total of 2,637 FM translator and booster stations, 4,910 TV translator and booster stations, and 1,903 low power TV stations. There are also 2,032 ITFS licensees.

[38] 47 CFR § 21.961(b)(1).

[39] See "Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding," MM Docket No. 94–31 and PP Docket No. 93–253, *Report and Order*, 10 FCC Rcd 9589 (1995).

and/or disaggregation will be a small business.

57. In our original FRFA, we indicated that we receive about 10,000 applications for paging facilities per year; 1,176 transmitters were expected to exceed the categorical exclusion. PageNet and PCIA have commented that these numbers underestimate the impact on paging carriers. PCIA notes that many paging facilities can be constructed without prior Commission authorization, and therefore significant numbers of paging facilities are built annually that are not included in the 10,000 count. PCIA questions our initial estimate that 11% of the applications would require routine evaluations, and believes most of these routine evaluations would involve field measurements that could take around 24 hours to complete. Although both PageNet and PCIA question our original analysis, neither party has submitted detailed information on how many paging facilities they believe would be covered under the new rules.

58. We have categorically excluded from routine environmental evaluation all paging stations that operate with an ERP of 1000 watts or less. We have also categorically excluded paging stations that use antennas that are not located on a rooftop and are at least 10 meters above ground. Paging is authorized under both Part 22 and Part 90 of our rules. For Part 22 paging, we estimate that we receive 10,000 applications for paging stations per year, 2939 of these involve power more than 1000 watts ERP. We believe that 40% of these would be located on a rooftop. For Part 90 paging, we estimate that we receive 2,000 applications per year, 200 of which would be above 1000 watts. We believe that 75% of these would be located on a rooftop. Virtually all of the non-rooftop installations in both Parts 22 and 90 would use antennas more that 10 meters above ground and, therefore, would be categorically excluded.

59. As of January 1995, we have allowed paging licensees to increase the ERP of their stations to 3500 watts without notifying us as long as the service contour does not change. In addition, we do require licensees to file information with respect to transmitters used for contour fill-in. Therefore, it is impossible to determine precisely the actual number of paging transmitters for which a routine environmental evaluation will be required. However, if we presume that: (1) for every application there are actually 2 transmitting facilities (in some cases there will be more and in many cases there will only be one facility); (2) only 10% of the "fill in" facilities will use more than 1000 watts (because they are filling in the service, these transmitters likely do not need as much power) but 75% of these will be located on a rooftop; and (3) only 10% of those stations that were initially 1000 watts or below ultimately increase their power (they could have originally asked for more power if they needed it); then a total of 2,643 paging stations per year would be subject to routine environmental evaluation requirements.

60. We believe that many of the routine environmental evaluations can be done rather quickly, by reviewing OET Bulletin 65, considering the station and site configuration, and determining whether anyone would have access to an area near enough to the antenna that the RF exposure limits might be exceeded. These studies would take on the order of 1–3 hours to complete per transmitter site. In some cases, field measurements or more detailed calculations would be necessary, especially if more than one transmitter is located in the same area. The more detailed studies could take 24 hours, as suggested by PCIA.

J. Experimental Radio Service

61. The Commission has not developed a definition of small entities applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[40] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small experimental radio businesses and is unable at this time to make a precise estimate of the number of Experimental Radio Services which are small businesses.

62. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications, 70 percent, are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

[40] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

63. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half or 500 of these are renewals and the other half are for new licenses. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 500 of these applications will be required to make an initial determination of compliance with our new RF guidelines.

K. Amateur Radio Service Volunteer Examiner Coordinator (VECs)

64. In our original FRFA, we did not analyze the possible impact and burden on Amateur Radio Service (ARS) VECs. The ARRL has commented that our original FRFA is flawed because it fails to address the impact of the rules on small business entities such as itself and one other VEC.[41] The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field . . ."[42] Our rules do not specify the nature of the entity that may act as a VEC.[43] However, all of the sixteen VEC organizations would appear to meet the RFA definition for small organization. Consequently, we have now analyzed the burden associated with this action on VECs.

65. The VECs coordinate the activities of the VEs who prepare and administer the Commission's amateur operator license examination system. The administering VEs prepare written examinations using questions drawn

[41] The ARRL/VEC and the W5YI–VEC are components of organizations that publish materials marketed to persons for the purpose of preparing for passing the examinations required for the grant of an amateur operator license. This publishing activity, however, is separate from their VEC activity.

[42] 5 U.S.C. § 601(4).

[43] Our rules, however, require that a VEC be an organization that has entered into a written agreement with the FCC to coordinate the examinations for amateur operator licenses. The examinations are prepared and administered by tens of thousands of amateur operators who serve as VEs. The VEC organization must exist for the purpose of furthering the amateur service, be capable of serving as a VEC in at least one of the thirteen VEC regions, agree to coordinate the examinations, agree to assure that every examinee is registered without regard to race, sex, religion, national origin or membership in any amateur service organization, and cooperate in maintaining the question pools for the VEs. *See* 47 CFR §§ 97.521 and 97.523, which outline the qualifications for VECs and question pools.

from common question pools.[44] The VEs also prepare the questions for the question pools which are maintained by the VECs. The questions in the pools are updated and revised periodically. In the *Report and Order*, we required that new examination questions on RF safety be added to the examinations. That requirement was made effective immediately. In response to the *Report and Order*, the ARRL filed a petition requesting that we allow the examinations to be modified according to the VECs' normal revision schedule. We are adopting such an implementation plan into this *First Memorandum Opinion and Order*. As a result, the VECs can proceed with their normal schedule for soliciting questions from the VEs and revising the question pools. The VECs, therefore, will have a minimum burden in meeting the new requirements.

66. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

This *First Memorandum Opinion and Order* extends the transition period associated with the new RF exposure rules that were adopted in the *Report and Order*. There are no reporting, recordkeeping or other compliance requirements associated with the extension of the transition period and this action.

67. Steps Taken to Minimize the Economic Impact on Small Entities

We have made every effort to devise ways to minimize the impact of the new RF exposure requirements on small entities, while protecting the health and safety of the public. We have incorporated substantial flexibility in the procedures to make compliance as minimally burdensome as possible. In particular, we took the following steps in the *Report and Order* to ease the impact on small businesses:

68. We created categorical exclusions that require only those transmitters that appear to have the highest potential to create a significant environmental effect to perform an environmental evaluation.

69. We indicated that we would revise OST Bulletin No. 65 in the near future to provide guidance for determining compliance with FCC-specified RF limits. This should be of particular assistance to small businesses since it will provide straightforward information that should allow a quick understanding of the requirements and a quick assessment of the potential for compliance problems without the need for an expensive consultant or measurement.

70. We allowed various methods for ensuring compliance with RF limits such as fencing, warning signs, labels, and markings, locked doors in roof-top areas, and the use of personal monitors and RF protective clothing in an occupational environment.

71. We rejected our initial proposal to adopt induced and contact currents limits due to the lack of reliable equipment available.

72. We specified a variety of acceptable testing methods and procedures that may be used to determine compliance. This will allow each small business to choose a procedure that best meets its needs in the manner that is least burdensome to it.

73. We have always allowed multiple transmitter sites, i.e., antenna farms, to pool their resources and have only one study done for the entire site. This is very common at sites that have multiple entities such as TV, FM, paging, cellular, etc. In most circumstances, rather than each licensee hiring a separate consultant and submitting a study showing their compliance with the guidelines, one consulting radio technician or radio engineer can be hired by the group of licensees. The consultant surveys the entire site for compliance and gives his recommendations and findings to each of the licensees at the site. The licensees can then use the findings to show their compliance with the guidelines. In this way the cost of compliance is minimized as no one licensee has to pay the entire consulting fee, rather just a portion of it.

74. In this *First Memorandum Opinion and Order*, we have also taken the following additional steps to reduce the burden on small businesses and organizations:

75. We extended the transition period for station applicants to come into compliance with the new requirements. This will give licensees, and applicants for new stations many of which may be small businesses, more time to learn the nature of the new requirements, make studies to determine whether they comply, and take steps to come into compliance if necessary.

76. We decided to permit the required changes in the ARS examinations to be made as the examinations are being routinely revised. This ensures that a minimal burden is put on the small organizations acting as VECs.

77. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1, is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303 and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising the introductory text of paragraph (b)(4) to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(4) *Transition Provisions.* For applications filed with the Commission prior to September 1, 1997 (January 1, 1998 for the Amateur Radio Service only), Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations, or modifications in existing facilities require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b) (4)(i) through (4)(iii) of this section. These transition provisions do not apply to applications for equipment authorization or use of mobile, portable, and unlicensed devices specified in paragraph (b)(2) of this section.

* * * * *

[FR Doc. 97–1350 Filed 1–21–97; 8:45 am]

BILLING CODE 6712–01–P

[44] See 47 CFR § 97.507, which outlines the requirements for preparing examinations for an amateur operator license.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC33

Endangered and Threatened Wildlife and Plants; Notice of Availability of Regulatory Flexibility Analysis for the Designation of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability of a Regulatory Flexibility Analysis examining the effects on small entities of the designation of critical habitat for the marbled murrelet. This is the Regulatory Flexibility Analysis for the final rule published on May 24, 1996 (61 FR 26251).

ADDRESSES: Requests for copies of the Regulatory Flexibility Analysis should be directed to the State Supervisor, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Oregon State Supervisor, at the above address, telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1994, the Service published a proposed rule for the designation of critical habitat for the marbled murrelet (59 FR 3811). The Service significantly amended its proposed critical habitat designation and published a supplemental proposed rule on August 10, 1995 (60 FR 40892). Based on the Service's interpretation of Public Law 104–6 as prohibiting the expenditure of funds for making a final determination of critical habitat, the record was closed and the comments archived at the end of the public comment period. On February 29, 1996, a Federal Judge ordered the Service to complete the final designation by May 15, 1996. The final rule was published on May 24, 1996 (61 FR 26251).

Section 3(5) of the Endangered Species Act defines critical habitat as those specific areas which contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(5)). Designations of critical habitat are made upon the basis of the "best scientific data available" after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). The final critical habitat for the marbled murrelet identified 32 critical habitat units encompassing approximately 1,582,600 hectares (3,907,660 acres) of Federal and non-Federal lands.

When the final rule was published, the Department of the Interior found that timely compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) was impracticable in light of the emergency situation resulting from the court order. Completion of a Regulatory Flexibility Analysis was deferred. The analysis has now been completed, and it concludes that the designation of critical habitat for the marbled murrelet will not have a significant impact on a substantial number of small entities. There is a limited effect on small entities from critical habitat designation on Federal lands or the issuance of Federal permits, and there is only a minor effect on regional timber supply from the application of Washington State Forest Practices tied to Federal critical habitat designation.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Dated: November 20, 1996.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–1506 Filed 1–21–97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 14
Wednesday, January 22, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0959]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation E, (Electronic Fund Transfers). The proposed revisions implement an amendment to the Electronic Fund Transfer Act (EFTA), contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that exempts certain electronic benefit transfer (EBT) programs from the EFTA. Generally, EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The Board's proposal exempts from Regulation E needs-tested EBT programs established or administered by state or local government agencies. Federally administered EBT programs and state and local employment-related EBT programs (such as state pension programs) would continue to be subject to modified requirements that recognize the special characteristics of EBT programs.

DATES: Comments must be received on or before February 19, 1997.

ADDRESSES: Comments should refer to Docket No. R–0959, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any consumer electronic fund transfer initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home-banking program; and provide rules that govern these and other electronic transfers. The regulation sets rules for issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Electronic Benefit Transfer Programs

Electronic benefit transfer (EBT) programs are designed to deliver government benefits such as Aid to Families with Dependent Children (AFDC), food stamps, Supplemental Security Income (SSI) and social security. These systems function much like commercial systems for EFT. Eligible recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and they access benefits through electronic terminals. In the case of cash benefits such as AFDC or SSI, the terminals may include ATMs that are part of existing commercial networks; for food stamp benefits, POS terminals in grocery stores are typically used.

EBT offers numerous advantages over paper-based delivery systems, both for recipients and for program agencies. For recipients, these advantages include faster access to benefits, greater convenience in terms of times and locations for obtaining benefits, improved security because funds may be accessed as needed, lower costs because recipients avoid check-cashing fees, and greater privacy and dignity. For agencies, EBT programs offer a system that can more efficiently deliver benefits for both state and federal programs by reducing the cost of benefit delivery, facilitating the management of program funds, and helping to reduce fraud.

In March 1994, the Board amended Regulation E to bring EBT programs expressly within its coverage. 59 FR 10678 (March 7, 1994). The special provisions, contained in § 205.15, applied most of the requirements of the regulation—including those relating to liability for unauthorized transactions and error resolution—with some modifications. The major exception related to the requirement to provide periodic statements of account activity: EBT programs need not provide periodic statements as long as (1) account balance information is made available to benefit recipients via telephone and electronic terminals and (2) a written account history is given upon request. The basic premise underlying the Board's 1994 amendments to Regulation E was that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E. To enable states that are interested in EBT to test and implement their programs, the Board delayed the date of mandatory compliance to March 1, 1997.

II. Proposed Regulatory Provisions

On August 22, 1996, the Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law (Pub. L. 104–193, 110 Stat. 2105) ("the 1996 Act"). The 1996 Act contains

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III. Sectio
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amendments to the EFTA that exempt "needs-tested" EBT programs established or administered under state or local law (for example, benefits such as the food stamp and AFDC programs). The 1996 amendments were enacted by the Congress at the urging of state officials, who expressed concern about the costs of compliance with the EFTA and Regulation E. In particular, the states believed that the EFTA provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the state level.

The proposed amendments to Regulation E implement the amendments to the EFTA. Federally administered EBT programs and employment-related programs established by federal, state, or local governments (such as state pension programs) would continue to be subject to the modified rules established by the Board's 1994 rulemaking.

III. Section-by-Section Analysis of Proposed Amendments

Section 205.15—Electronic Fund Transfers of Government Benefits

Section 205.15 contains the rules that apply to EBT programs as defined by the regulation. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices. Employment-related benefit programs established by federal, state, or local governments (as well as federally administered programs) remain subject to these modified rules.

15(a) Government Agency Subject to Regulation

15(a)(1)

The act and regulation define coverage in terms of "financial institution," a term that is broadly construed. Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. Paragraph (a)(1) specifies when a government agency is a financial institution for purposes of the act and regulation. Under the Board's proposal, this provision has been revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 statutory amendments.

15(a)(2)

The term "account" is defined generally in § 205.2(b). For purposes of EBT programs, "account" is defined in § 205.15(a)(2) to mean an account established by a government agency for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section includes the use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. Under the Board's proposal, the definition would be revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 amendments to the EFTA. Government benefits that would remain covered include federally administered benefits such as social security and SSI and state and local benefits that are employment-related such as retirement and unemployment benefits.

IV. Form of Comments Letters

Comment letters should refer to Docket No. R–0959. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments also may be submitted on 3.5 or 5.25 inch computer diskettes, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation E. The amendments, which establish an exemption for certain EBT programs established or administered by a state or local agency, are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

An agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for Regulation E is 7100–0200.

The disclosures required by this regulation are found in 12 CFR Part 205 and are required to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer services provided to consumers. The recordkeepers are providers of these services. Records must be retained for 24 months.

Regulation E applies to all types of institutions that offer EFT services, not just state member banks. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation E only for state member banks. Any estimates of paperwork burden for institutions other than state member banks are provided by the federal agency or agencies that supervise those institutions.

There are 1,042 state member banks that are covered by Regulation E requirements, with an average frequency of 85,808 responses per year per bank. The total annual burden for all state member banks is estimated to be 478,804 hours; the combined annual cost is estimated to be $9,496,080. The proposed amendments provide an exemption for state-administered or state-established electronic benefit transfer (EBT) programs; the amendments are not expected to increase the hour burden that the regulation imposes on state member banks or on other institutions.

The disclosures to consumers under Regulation E are mandatory. Because the records would be maintained at state member banks, no issue of confidentiality under the Freedom of Information Act arises. Disclosures relating to specific transactions or accounts are not publicly available.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 205 as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for Part 205 is revised to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.15 would be amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account►, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency◄. The agency shall comply with all applicable requirements of the act and this part, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals►, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 15, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–1384 Filed 1–21–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209332–80]

RIN 1545–AB43

Installment Obligations Received From Liquidating Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of previous notice of proposed rulemaking; Notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** (49 FR 1742) on January 13, 1984, and proposes new regulations relating to the use of the installment method to report the gain recognized by a shareholder who receives, in exchange for the shareholder's stock, certain installment obligations that are distributed upon the complete liquidation of a corporation. Changes to the applicable tax law were made by the Installment Sales Revision Act of 1980 and the Tax Reform Act of 1986. These regulations would affect taxpayers who receive installment obligations in exchange for their stock upon the complete liquidation of a corporation.

DATES: Comments or requests for a public hearing must be received by April 22, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209332–80), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209332–80), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: George F. Wright, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 453(h), relating to the tax treatment of installment obligations received by a shareholder from a liquidating corporation, was added to the Internal Revenue Code of 1954 by the Installment Sales Revision Act of 1980. Proposed regulations under section 453(h) were published in the **Federal Register** on January 13, 1984 (49 FR 1742). Subsequently, section 453(h) was amended by the Tax Reform Act of 1986. This document withdraws a portion of the regulations proposed on January 13, 1984, at 49 FR 1742 and proposes new regulations under section 453(h). The new proposed regulations are issued under the authority contained in sections 453(j)(1), 453(k) and 7805 of the Internal Revenue Code of 1986 (Code).

Explanation of Provisions

Prior to the Installment Sales Revision Act of 1980, a shareholder recognized gain or loss on receipt of an installment obligation that was distributed by a liquidating corporation in exchange for the shareholder's stock. Gain could not be reported under the installment sale provisions of section 453 as payments were received on the obligation distributed by the corporation in the liquidation.

As enacted by the Installment Sales Revision Act of 1980 and amended by the Tax Reform Act of 1986, section 453(h) provides a different treatment for certain installment obligations that are distributed in a complete liquidation to which section 331 applies. Under section 453(h), a shareholder that does not elect out of the installment method treats the payments under the obligation, rather than the obligation itself, as consideration received in exchange for the stock. The shareholder then takes into account the income from the payments under the obligation using the installment method. In this manner, the shareholder generally is treated as if the shareholder sold the shareholder's stock to an unrelated purchaser on the installment method.

This treatment under section 453(h) applies generally to installment obligations received by a shareholder (in exchange for the shareholder's stock) in a complete liquidation to which section 331 applies if (a) the installment obligations are qualifying installment obligations, i.e., the installment obligations are acquired in respect to a sale or exchange of property by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted, and (b) the liquidation is completed within that 12-month period. However, an installment obligation acquired in a sale or exchange of inventory, stock in trade, or property held for sale in the ordinary course of business qualifies for this treatment only if the obligation arises from a single bulk sale of substantially

all of such property attributable to a trade or business of the corporation. If an installment obligation arises from both a sale or exchange of inventory, etc., that does not comply with the requirements of the preceding sentence and a sale or exchange of other assets, the portion of the installment obligation that is attributable to the sale or exchange of other assets is a qualifying installment obligation.

Interaction of Section 453(h) and Limitations on the Installment Method

Under section 453(k)(2), an installment obligation arising out of a sale of stock or securities that are traded on an established securities market does not qualify for installment method reporting. Accordingly, if the stock of a liquidating corporation is traded on an established securities market, an installment obligation received by a shareholder from that corporation as a liquidating distribution is not a qualifying installment obligation and does not qualify for installment reporting, regardless of whether the requirements of section 453(h) are otherwise satisfied. However, if an installment obligation received by a shareholder from a liquidating corporation, the stock of which is not publicly traded, arose from a sale by the corporation of stock or securities that are traded on an established securities market, then the obligation generally is a qualifying installment obligation in the hands of the shareholder. An exception to this rule applies to the extent the liquidating corporation is formed or availed of for a principal purpose of avoiding limitations on the availability of installment sale treatment through the use of a related party. For example, the exception would apply if a shareholder contributed a substantial amount of publicly traded stock to a corporation shortly before or after the corporation adopted a plan of liquidation and sold its assets, including the publicly traded stock, for an installment obligation. Under the exception, the allocable portion of the installment obligation is not a qualifying installment obligation and, thus, is treated as a payment received in exchange for the shareholder's stock. The IRS specifically requests comments on this exception, which is contained in § 1.453–11(c)(5) of these proposed regulations.

Determination of Shareholder's Selling Price

All amounts distributed or treated as distributed incident to the liquidation are included in the selling price of the shareholder's stock in the liquidating corporation. This selling price includes the issue price of a qualifying installment obligation that is distributed in the liquidation. For this purpose, the issue price of a qualifying installment obligation is equal to the sum of the adjusted issue price of the obligation on the date of the distribution and the amount of any qualified stated interest that has accrued prior to the distribution but that is not payable until after the distribution. In this manner, the accrued but unpaid qualified stated interest is treated as having been received and taken into account by the liquidating corporation, and then distributed by the corporation to the shareholder in exchange for the shareholder's stock. The issue price is also used to compute interest and original issue discount accruals for the shareholder.

Liquidating Distributions Received in More Than One Year

Generally, a shareholder that receives liquidating distributions in more than one taxable year may recover the basis in the shareholder's stock completely before recognizing any gain. This general rule is inconsistent with installment method reporting, which requires that basis be ratably recovered as payments are received. Therefore, if a shareholder receives liquidating distributions in more than one taxable year, and included in the distributions is an installment obligation that qualifies for section 453(h) treatment, then upon completion of the liquidation, basis must be reallocated among all property received, or to be received, in all years. See section 453(h)(2). One method of achieving this basis reallocation would be to require the shareholder to file an amended return if the reallocation of basis would affect the computation of gain recognized in an earlier year. An alternative method would be to require the shareholder to recognize in the current year the additional amount of gain that would have been recognized in the earlier year had the total amount of liquidating distributions been known in the earlier year. This portion of the proposed regulations is reserved and comments are specifically requested regarding these and any other methods of accomplishing the basis reallocation.

Recognition of Gain or Loss to the Distributing Corporation Under Section 453B

Under section 453B, the disposition of an installment obligation generally results in the recognition of gain or loss to the transferor. Thus, in accordance with sections 453B and 336, a C corporation generally recognizes gain or loss upon the distribution of an installment obligation to a shareholder in exchange for the shareholder's stock, including complete liquidations covered by section 453(h). Section 453B(d) provides an exception to this general rule if the installment obligation is distributed in a liquidation to which section 337(a) applies (regarding certain complete liquidations of 80 percent owned subsidiaries). However, that exception does not apply to liquidations under section 331.

The Internal Revenue Code provides for a different treatment in the case of a liquidating distribution by an S corporation. Section 453B(h) provides that if an S corporation distributes an installment obligation in exchange for a shareholder's stock, and payments under the obligation are treated as consideration for the stock pursuant to section 453(h)(1), then the distribution generally is not treated as a disposition of the obligation by the S corporation. Thus, except for purposes of sections 1374 and 1375 (relating to certain built-in gains and passive investment income), the S corporation does not recognize gain or loss on the distribution of the installment obligation to a shareholder in a complete liquidation covered by section 453(h).

Proposed Effective Date

The proposed regulations provide that this section will be effective for distributions of qualifying installment obligations made on or after the date final regulations are filed with the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

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comments that are submitted timely (in the manner described in the **ADDRESSES** portion of the preamble) to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is George F. Wright of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.453–2 (a), (b), (c), (d) and (f) in the notice of proposed rulemaking that was published on January 13, 1984 (49 FR 1742) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.453–11 also issued under 26 U.S.C. 453 (j)(1) and (k). * * *

Par. 2. Section 1.453–11 is added to read as follows:

§ 1.453–11 Installment obligations received from a liquidating corporation.

(a) *In general*—(1) *Overview.* Except as provided in section 453(h)(1)(C) (relating to installment sales of depreciable property to certain closely related persons), a qualifying shareholder (as defined in paragraph (b) of this section) who receives a qualifying installment obligation (as defined in paragraph (c) of this section) in connection with a liquidation that satisfies section 453(h)(1)(A) treats the receipt of payments in respect to the obligation, rather than the receipt of the obligation itself, as a receipt of payment for the shareholder's stock. The shareholder reports the payments received on the installment method unless the shareholder elects otherwise in accordance with § 15a.453–1(d) of this chapter.

(2) *Coordination with other provisions*—(i) *Deemed sale of stock for installment obligation.* Except as specifically provided in section 453(h)(1)(C), a qualifying shareholder treats a qualifying installment obligation, for all purposes of the Internal Revenue Code, as if the obligation is received by the shareholder from the person issuing the obligation in exchange for the shareholder's stock in the liquidating corporation. For example, if the stock of a corporation that is liquidating is traded on an established securities market, an installment obligation distributed to a shareholder of the corporation in exchange for the shareholder's stock does not qualify for installment reporting pursuant to section 453(k)(2).

(ii) *Special rules to account for the qualifying installment obligation*—(A) *Issue price.* A qualifying installment obligation is treated by a qualifying shareholder as newly issued on the date of the distribution. The issue price of the qualifying installment obligation on that date is equal to the sum of the adjusted issue price of the obligation on the date of the distribution (as determined under § 1.1275–1(b)) and the amount of any qualified stated interest (as defined in § 1.1273–1(c)) that has accrued prior to the distribution but that is not payable until after the distribution. For purposes of the preceding sentence, if the qualifying installment obligation is subject to § 1.446–2 (e.g., a debt instrument that has unstated interest under section 483), the adjusted issue price of the qualifying installment obligation is determined by reference to the issue price of the qualifying installment obligation under § 1.446–2(d)(1).

(B) *Variable rate debt instrument.* If the qualifying installment obligation is a variable rate debt instrument (as defined in § 1.1275–5), the shareholder uses the equivalent fixed rate debt instrument (within the meaning of § 1.1275–5(e)(3)(ii)) constructed for the qualifying installment obligation on the date the obligation was issued to the liquidating corporation to determine the accruals of original issue discount, if any, and interest on the obligation.

(3) *Liquidating distributions treated as selling price.* All amounts distributed or treated as distributed to a qualifying shareholder incident to the liquidation, including cash, the issue price of qualifying installment obligations as determined under paragraph (a)(2)(ii)(A) of this section, and the fair market value of other property (including obligations that are not qualifying installment obligations) are considered as having been received by the shareholder as the selling price (as defined in § 15a.453–1(b)(2)(ii) of this chapter) for the shareholder's stock in the liquidating corporation. For the proper method of reporting liquidating distributions received in more than one taxable year of a shareholder, see paragraph (d) of this section. An election not to report on the installment method an installment obligation received as a liquidating distribution applies to all distributions received in the liquidation.

(4) *Assumption of corporate liability by shareholders.* For purposes of this section, if in the course of a liquidation a shareholder assumes secured or unsecured liabilities of the liquidating corporation, or receives property from the corporation subject to such liabilities (including any tax liabilities incurred by the corporation on the distribution), the amount of the liabilities is added to the shareholder's basis in the stock of the liquidating corporation. These additions to basis do not affect the shareholder's holding period for the stock. These liabilities do not reduce the amounts received in computing the selling price.

(5) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples. Except as otherwise provided, assume in each example that A, an individual who is a calendar-year taxpayer, owns all of the stock of T corporation. A's adjusted tax basis in that stock is $100,000. On February 1, 1998, T, an accrual basis taxpayer, adopts a plan of complete liquidation that satisfies section 453(h)(1)(A) and immediately sells all of its assets to unrelated B corporation in a single transaction. The examples are as follows:

Example 1. (i) The stated purchase price for T's assets is $3,500,000. In consideration for the sale, B makes a down payment of $500,000 and issues a 10-year installment obligation with a stated principal amount of $3,000,000. The obligation provides for interest payments of $150,000 on January 31 of each year, with the total principal amount due at maturity.

(ii) Assume that for purposes of section 1274, the test rate on February 1, 1998, is 8 percent, compounded semi-annually. Also assume that a semi-annual accrual period is used. Under § 1.1274–2, the issue price of the obligation on February 1, 1998, is $2,368,450. Accordingly, the obligation has $631,550 of original issue discount ($3,000,000 – $2,368,450). Between February 1 and July 31, $19,738 of original issue discount and $75,000 of qualified stated interest accrue with respect to the obligation and are taken into account by T.

(iii) On July 31, 1998, T distributes the installment obligation to A in exchange for

A's stock. No other property is ever distributed to A. On January 31, 1999, A receives the first annual payment of $150,000 from B.

(iv) When the obligation is distributed to A on July 31, 1998, it is treated as if the obligation is received by A in an installment sale of shares directly to B on that date. Under § 1.1275–1(b), the adjusted issue price of the obligation on that date is $2,388,188 (original issue price of $2,368,450 plus accrued original issue discount of $19,738). Accordingly, the issue price of the obligation under paragraph (a)(2)(ii)(A) of this section is $2,463,188, the sum of the adjusted issue price of the obligation on that date ($2,388,188) and the amount of accrued but unpaid qualified stated interest ($75,000).

(v) The selling price and contract price of A's stock in T is $2,463,188, and the gross profit is $2,363,188 ($2,463,188 selling price less A's adjusted tax basis of $100,000). A's gross profit ratio is thus 96 percent (gross profit of $2,363,188 divided by total contract price of $2,463,188).

(vi) Under §§ 1.446–2(e)(1) and 1.1275–2(a), $98,527 of the $150,000 payment is treated as a payment of the interest and original issue discount that accrued on the obligation from July 31, 1998, to January 31, 1999 ($75,000 of qualified stated interest and $23,527 of original issue discount). The balance of the payment ($51,473) is treated as a payment of principal. A's gain recognized in 1999 is $49,414 (96 percent of $51,473).

Example 2. (i) T owns Blackacre, unimproved real property, with an adjusted tax basis of $700,000. Blackacre is subject to a mortgage (underlying mortgage) of $1,100,000. A is not personally liable on the underlying mortgage and the T shares held by A are not encumbered by the underlying mortgage. The other assets of T consist of $400,000 of cash and $600,000 of accounts receivable attributable to sales of inventory in the ordinary course of business. The unsecured liabilities of T total $900,000.

(ii) On February 1, 1998, T adopts a plan of complete liquidation complying with section 453(h)(1)(A), and promptly sells Blackacre to B for a 4-year mortgage note (bearing adequate stated interest and otherwise meeting all of the requirements of section 453) in the face amount of $4 million. Under the agreement between T and B, T (or its successor) is to continue to make principal and interest payments on the underlying mortgage. Immediately thereafter, T completes its liquidation by distributing to A its remaining cash of $400,000 (after payment of T's tax liabilities), accounts receivable of $600,000, and the $4 million B note. A assumes T's $900,000 of unsecured liabilities and receives the distributed property subject to the obligation to make payments on the $1,100,000 underlying mortgage. A receives no payments from B on the B note during 1998.

(iii) Unless A elects otherwise, the transaction is reported by A on the installment method. The selling price is $5 million (cash of $400,000, accounts receivable of $600,000, and the B note of $4 million). The total contract price also is $5 million. A's adjusted tax basis in the T shares, initially $100,000, is increased by the $900,000 of unsecured T liabilities assumed by A and by the obligation (subject to which A takes the distributed property) to make payments on the $1,100,000 underlying mortgage on Blackacre, for an aggregate adjusted tax basis of $2,100,000. Accordingly, the gross profit is $2,900,000 (selling price of $5 million less aggregate adjusted tax basis of $2,100,000). The gross profit ratio is 58 percent (gross profit of $2,900,000 divided by the total contract price of $5 million). The 1998 payments to A are $1 million ($400,000 cash plus $600,000 receivables) and A recognizes gain in 1998 of $580,000 (58 percent of $1 million).

(iv) In 1999, A receives payment from B on the B note of $1 million (exclusive of interest). A's gain recognized in 1999 is $580,000 (58 percent of $1 million).

(b) *Qualifying shareholder.* For purposes of this section, *qualifying shareholder* means a shareholder to which, with respect to the liquidating distribution, section 331 applies. For example, a creditor that receives a distribution from a liquidating corporation, in exchange for the creditor's claim, is not a qualifying shareholder as a result of that distribution regardless of whether the liquidation satisfies section 453(h)(1)(A).

(c) *Qualifying installment obligation—*(1) *In general.* For purposes of this section, *qualifying installment obligation* means an installment obligation (other than an evidence of indebtedness described in § 15a.453–1(e) of this chapter, relating to obligations that are payable on demand or are readily tradable) acquired in a sale or exchange of corporate assets by a liquidating corporation during the 12-month period beginning on the date the plan of liquidation is adopted. See paragraph (c)(4) of this section for an exception for installment obligations acquired in respect to certain sales of inventory. Also see paragraph (c)(5) of this section for an exception for installment obligations attributable to sales of certain property that do not generally qualify for installment sale treatment.

(2) *Corporate assets.* Except as provided in section 453(h)(1)(C), in paragraph (c)(4) of this section (relating to certain sales of inventory), and in paragraph (c)(5) of this section (relating to certain tax avoidance transactions), the nature of the assets sold by, and the tax consequences to, the selling corporation do not affect whether an installment obligation is a qualifying installment obligation. Thus, for example, the fact that the fair market value of an asset is less than the adjusted basis of that asset in the hands of the corporation; or that the sale of an asset will subject the corporation to depreciation recapture (e.g., under section 1245 or section 1250); or that the assets of a trade or business sold by the corporation for an installment obligation include depreciable property, certain marketable securities, accounts receivable, installment obligations, or cash; or that the distribution of assets to the shareholder is or is not taxable to the corporation under sections 336 and 453B, does not affect whether installment obligations received in exchange for those assets are treated as qualifying installment obligations by the shareholder. However, an obligation received by the corporation in exchange for cash, in a transaction unrelated to a sale or exchange of noncash assets by the corporation, is not treated as a qualifying installment obligation.

(3) *Installment obligations distributed in liquidations described in section 453(h)(1)(E)—*(i) *In general.* In the case of a liquidation to which section 453(h)(1)(E) (relating to certain liquidating subsidiary corporations) applies, a qualifying installment obligation acquired in respect to a sale or exchange by the liquidating subsidiary corporation will be treated as a qualifying installment obligation if distributed by a controlling corporate shareholder (within the meaning of section 368(c)) to a qualifying shareholder. The preceding sentence is applied successively to each controlling corporate shareholder, if any, above the first controlling corporate shareholder.

(ii) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples:

Example 1. (i) A, an individual, owns all of the stock of T corporation, a C corporation. T has an operating division and three wholly-owned subsidiaries, X, Y, and Z. On February 1, 1998, T, Y, and Z all adopt plans of complete liquidation.

(ii) On March 1, 1998, the following sales are made to unrelated purchasers: T sells the assets of its operating division to B for cash and an installment obligation. T sells the stock of X to C for an installment obligation. Y sells all of its assets to D for an installment obligation. Z sells all of its assets to E for cash. The B, C, and D installment obligations bear adequate stated interest and meet the requirements of section 453.

(iii) In June 1998, Y and Z completely liquidate, distributing their respective assets (the D installment obligation and cash) to T. In July 1998, T completely liquidates, distributing to A cash and the installment obligations respectively issued by B, C, and D. The liquidation of T is a liquidation to which section 453(h) applies and the liquidations of Y and Z into T are liquidations to which section 332 applies.

(iv) Because T is in control of Y (within the meaning of section 368(c)), the D obligation acquired by Y is treated as acquired by T

pursuant to section 453(h)(1)(E). A is a qualifying shareholder and the installment obligations issued by B, C, and D are qualifying installment obligations. Unless A elects otherwise, A reports the transaction on the installment method as if the cash and installment obligations had been received in an installment sale of the stock of T corporation. Under section 453B(d), no gain or loss is recognized by Y on the distribution of the D installment obligation to T. Under sections 453B(a) and 336, T recognizes gain or loss on the distribution of the B, C, and D installment obligations to A in exchange for A's stock.

Example 2. (i) A, a cash-method individual taxpayer, owns all of the stock of P corporation, a C corporation. P owns 30 percent of the stock of Q corporation. The balance of the Q stock is owned by unrelated individuals. On February 1, 1998, P adopts a plan of complete liquidation and sells all of its property, other than its Q stock, to B, an unrelated purchaser for cash and an installment obligation bearing adequate stated interest. On March 1, 1998, Q adopts a plan of complete liquidation and sells all of its property to an unrelated purchaser, C, for cash and installment obligations. Q immediately distributes the cash and installment obligations to its shareholders in completion of its liqaidation. Promptly thereafter, P liquidates, distributing to A cash, the B installment obligation, and a C installment obligation that P received in the liquidation of Q.

(ii) In the hands of A, the B installment obligation is a qualifying installment obligation. In the hands of P, the C installment obligation was a qualifying installment obligation. However, in the hands of A, the C installment obligation is not treated as a qualifying installment obligation because P owned only 30 percent of the stock of Q. Because P did not own the requisite 80 percent stock interest in Q, P was not a controlling corporate shareholder of Q (within the meaning of section 368(c)) immediately before the liquidation. Therefore, section 453(h)(1)(E) does not apply. Thus, in the hands of A, the C obligation is considered to be a third-party note (not a purchaser's evidence of indebtedness) and is treated as a payment to A in the year of distribution. Accordingly, for 1998, A reports as payment the cash and the fair market value of the C obligation distributed to A in the liquidation of P.

(iii) Because P held 30 percent of the stock of Q, section 453B(d) is inapplicable to P. Under sections 453B(a) and 336, accordingly, Q recognizes gain or loss on the distribution of the C obligation. P also recognizes gain or loss on the distribution of the B and C installment obligations to A in exchange for A's stock. See sections 453B and 336.

(4) *Installment obligations attributable to certain sales of inventory*—(i) *In general.* An installment obligation acquired by a corporation in a liquidation that satisfies section 453(h)(1)(A) in respect to a broken lot of inventory is not a qualifying installment obligation. If an installment obligation is acquired in respect to a broken lot of inventory and other assets, only the portion of the installment obligation acquired in respect to the broken lot of inventory is not a qualifying installment obligation. The portion of the installment obligation attributable to other assets is a qualifying installment obligation. For purposes of this section, the term *broken lot of inventory* means inventory property that is sold or exchanged other than in bulk to one person in one transaction involving substantially all of the inventory property attributable to a trade or business of the corporation. See paragraph (c)(4)(ii) of this section for rules for determining what portion of an installment obligation is not a qualifying installment obligation.

(ii) *Rules for determining nonqualifying portion of an installment obligation.* If a broken lot of inventory is sold to a purchaser together with other corporate assets for consideration consisting of an installment obligation and either cash, other property, the assumption of (or taking property subject to) corporate liabilities by the purchaser, or some combination thereof, the installment obligation is treated as having been acquired in respect to a broken lot of inventory only to the extent that the fair market value of the broken lot of inventory exceeds the sum of unsecured liabilities assumed by the purchaser, secured liabilities which encumber the broken lot of inventory and are assumed by the purchaser or to which the broken lot of inventory is subject, and the sum of the cash and fair market value of other property received. This rule applies solely for the purpose of determining the portion of the installment obligation (if any) that is attributable to the broken lot of inventory.

(iii) *Example.* The following example illustrates the provisions of this paragraph (c)(4). In this example, assume that all obligations bear adequate stated interest within the meaning of section 1274(c)(2) and that the fair market value of each nonqualifying installment obligation equals its face amount.

The example is as follows:

Example. (i) P corporation has three operating divisions, X, Y, and Z, each engaged in a separate trade or business, and a minor amount of investment assets. On July 1, 1998, P adopts a plan of complete liquidation that meets the criteria of section 453(h)(1)(A). The following sales are promptly made to purchasers unrelated to P: P sells all of the assets of the X division (including all of the inventory property) to B for $30,000 cash and installment obligations totalling $200,000. P sells substantially all of the inventory property of the Y division to C for a $100,000 installment obligation, and sells all of the other assets of the Y division (excluding cash but including installment receivables previously acquired in the ordinary course of the business of the Y division) to D for a $170,000 installment obligation. P sells ⅓ of the inventory property of the Z division to E for $100,000 cash, ⅓ of the inventory property of the Z division to F for a $100,000 installment obligation, and all of the other assets of the Z division (including the remaining ⅓ of the inventory property worth $100,000) to G for $60,000 cash, a $240,000 installment obligation, and the assumption by G of the liabilities of the Z division. The liabilities assumed by G, which are unsecured liabilities and liabilities encumbering the inventory property acquired by G, aggregate $30,000. Thus, the total purchase price G pays is $330,000.

(ii) P immediately completes its liquidation, distributing the cash and installment obligations, which otherwise meet the requirements of section 453, to A, an individual cash-method taxpayer who is its sole shareholder. In 1999, G makes a payment to A of $100,000 (exclusive of interest) on the $240,000 installment obligation.

(iii) In the hands of A, the installment obligations issued by B, C, and D are qualifying installment obligations because they were timely acquired by P in a sale or exchange of its assets. In addition, the installment obligation issued by C is a qualifying installment obligation because it arose from a sale to one person in one transaction of substantially all of the inventory property of the trade or business engaged in by the Y division.

(iv) The installment obligation issued by F is not a qualifying installment obligation because it is in respect to a broken lot of inventory. A portion of the installment obligation issued by G is a qualifying installment obligation and a portion is not a qualifying installment obligation, determined as follows: G purchased part of the inventory property (with a fair market value of $100,000) and all of the other assets of the Z division by paying cash ($60,000), issuing an installment obligation ($240,000), and assuming liabilities of the Z division ($30,000). The assumed liabilities ($30,000) and cash ($60,000) are attributed first to the inventory property. Therefore, only $10,000 of the $240,000 installment obligation is attributed to inventory property. Accordingly, in the hands of A, the G installment obligation is a qualifying installment obligation to the extent of $230,000, but is not a qualifying installment obligation to the extent of the $10,000 attributable to the inventory property.

(v) In the 1998 liquidation of P, A receives a liquidating distribution as follows:

Item	Qualifying installment obligations	Cash and other property
cash		$190,000
B note	$200,000	
C note	100,000	
D note	170,000	
F note		100,000

Item	Qualifying installment obligations	Cash and other property
G note [1]	230,000	10,000
Total	700,000	300,000

[1] Face amount $240,000.

(vi) Assume that A's adjusted tax basis in the stock of P is $100,000. Under the installment method, A's selling price and the contract price are both $1 million, the gross profit is $900,000 (selling price of $1 million less adjusted tax basis of $100,000), and the gross profit ratio is 90 percent (gross profit of $900,000 divided by the contract price of $1 million). Accordingly, in 1998, A reports gain of $270,000 (90 percent of $300,000 payment in cash and other property). A's adjusted tax basis in each of the qualifying installment obligations is an amount equal to 10 percent of the obligation's respective face amount. A's adjusted tax basis in the F note, a nonqualifying installment obligation, is $100,000, i.e., the fair market value of the note when received by A. A's adjusted tax basis in the G note, a mixed obligation, is $33,000 (10 percent of the $230,000 qualifying installment obligation portion of the note, plus the $10,000 nonqualifying portion of the note).

(vii) In respect to the $100,000 payment received from G in 1999, $10,000 is treated as the recovery of the adjusted tax basis of the nonqualifying portion of the G installment obligation and $9,000 (10 percent of $90,000) is treated as the recovery of the adjusted tax basis of the portion of the note that is a qualifying installment obligation. The remaining $81,000 (90 percent of $90,000) is reported as gain from the sale of A's stock.

(5) *Installment obligations attributable to sales of certain property*—(i) *In general.* An installment obligation acquired by a liquidating corporation, to the extent attributable to the sale of property described in paragraph (c)(5)(ii) of this section, is not a qualifying obligation if the corporation is formed or availed of for a principal purpose of avoiding section 453(b)(2)(A) (relating to dealer dispositions), section 453(i) (relating to sales of property subject to recapture), or section 453(k) (relating to dispositions under a revolving credit plan and sales of stock or securities traded on an established securities market) through the use of a party bearing a relationship, either directly or indirectly, described in section 267(b) to any shareholder of the corporation.

(ii) *Covered property.* Property is described in this paragraph (c)(5)(ii) if, within 12 months before or after the adoption of the plan of liquidation, the property was owned by any shareholder and—

(A) The shareholder regularly sold or otherwise disposed of personal property of the same type on the installment plan or the property is real property that the shareholder held for sale to customers in the ordinary course of a trade or business (provided the property is not described in section 453(l) (2)(relating to certain exceptions to the definition of dealer dispositions));

(B) The sale of the property by the shareholder would result in recapture income (within the meaning of section 453(i)(2)), but only if the amount of recapture is equal to or greater than 50 percent of the property's fair market value on the date of the sale by the corporation;

(C) The property is stock or securities that are traded on an established securities market; or

(D) The sale of the property by the shareholder would have been under a revolving credit plan.

(iii) *Safe harbor.* Paragraph (c)(5)(i) of this section will not apply to the liquidation of a corporation if, on the date the plan of complete liquidation is adopted and thereafter, less than 15 percent of the fair market value of the corporation's assets is attributable to property described in paragraph (c)(5)(ii) of this section.

(iv) *Example.* The provisions of this paragraph (c)(5) are illustrated by the following example:

Example. Ten percent of the fair market value of the assets of T is attributable to stock and securities traded on an established securities market. T owns no other assets described in paragraph (c)(5)(ii) of this section. T, after adopting a plan of complete liquidation, sells all of its stock and securities holdings to C corporation in exchange for an installment obligation bearing adequate stated interest, sells all of its other assets to B corporation for cash, and distributes the cash and installment obligation to its sole shareholder, A, in a complete liquidation that satisfies section 453(h)(1)(A). Because the C installment obligation arose from a sale of publicly traded stock and securities, T cannot report the gain on the sale under the installment method pursuant to section 453(k)(2). In the hands of A, however, the C installment obligation is treated as having arisen out of a sale of the stock of T corporation. In addition, the general rule of paragraph (c)(5)(i) of this section does not apply, even if a principal purpose of the liquidation was the avoidance of section 453(k)(2), because the fair market value of the publicly traded stock and securities is less than 15 percent of the total fair market value of T's assets. Accordingly, section 453(k)(2) does not apply to A, and A may use the installment method to report the gain recognized on the payments it receives in respect to the obligation.

(d) *Liquidating distributions received in more than one taxable year.* [Reserved]

(e) *Effective date.* This section is applicable for distributions of qualifying installment obligations made on or after the date final regulations are filed with the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–1522 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

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31 CFR Part 103

RIN 1506–AA15

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting of Cross-Border Transportation of Certain Monetary Instruments

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to include instruments drawn by foreign banks on accounts in the United States within the definition of monetary instruments for purposes of the requirement under those regulations to report the physical transportation of currency or monetary instruments in an aggregate amount exceeding $10,000 into or out of the United States.

DATES: Written comments must be received on or before April 22, 1997.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182–2536, *Attention*: NPRM—Foreign Bank Drafts. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading "Request for Comments on Specific Subjects."

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Financial Crimes Enforcement Network ("FinCEN") reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Roger G. Weiner, Assistant Director (Compliance and Enforcement), Office

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of Regulatory Policy and Enforcement, FinCEN, at (202) 622–0400, or Stephen R. Kroll, Legal Counsel, FinCEN, at (703) 905–3534.

SUPPLEMENTARY INFORMATION:

Introduction

The Department of the Treasury ("Treasury") proposes to expand the definition of "monetary instrument" for purposes of the Bank Secrecy Act rules. The expansion, contained in a proposed new paragraph (u)(1)(vi) of 31 CFR 103.11, would treat as a monetary instrument any bank draft, bank or cashier's check or similar instrument drawn by a bank operating outside of the United States on an account of that bank at a financial institution in the United States. The change in the definition of "monetary instrument" would apply for purposes of 31 CFR 103.23 and other provisions of Part 103 that implement the provisions of 31 U.S.C. 5316 (Reports on exporting and importing monetary instruments). The proposed rule reflects the authority contained in 31 U.S.C. 5312(a)(3)(C), which was added to the Bank Secrecy Act by section 405(a) of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994).

Background

The statute popularly known as the "Bank Secrecy Act," Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting of the transportation of currency or monetary instruments into or out of the United States at any one time in aggregate amounts exceeding $10,000 (and of the receipt of currency or monetary instruments in that amount transported into the United States) has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.23, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5316. Reports required by 31 CFR 103.23 are made on United States Customs Service Form 4790 (Report of International Transportation of Currency or Monetary Instruments); the form is commonly called a "CMIR" and the reporting requirement is sometimes referred to below as the "CMIR reporting requirement."

As indicated, the CMIR reporting requirement applies to transportation not just of currency but also of certain non-currency monetary instruments. The statutory boundaries of the monetary instrument definition are set by 31 U.S.C. 5312(a)(3). Prior to enactment of the Money Laundering Suppression Act, paragraph (a)(3) provided that:

> 'monetary instruments' means—
> (A) United States coins and currency; and
> (B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material.

Implementing rules reflecting the statutory language defined the term "monetary instrument" to include traveler's checks in any form; all negotiable instruments in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete instruments; and securities or stock in bearer form (or, again, otherwise in such form that title thereto passes upon delivery). *See* 31 CFR 103.11(u)(1) (ii)–(iv).

Section 405 of the Money Laundering Suppression Act added a third category to the definition of monetary instrument in 31 U.S.C. 5312(a)(3), specifically for purposes of the CMIR reporting requirement. Under the new language, the definition could include:

> (C) as the Secretary of the Treasury shall provide by regulation for purposes of section 5316 [the CMIR reporting requirement], checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

Enactment of the new, potentially extremely broad, authority reflected Congressional concern that the effect of the CMIR reporting requirement was being vitiated, and money laundering fostered, by the increasing flow into the United States of drafts (often called "foreign bank drafts") drawn by banks outside the United States on dollar accounts of those banks at financial institutions in the United States. Although the foreign bank drafts were not in bearer form, and hence not subject to the CMIR reporting requirements under the existing terms of the rules, the drafts were the practical equivalent of currency or bearer instruments. The Conference Report on the Money Laundering Suppression Act explains:

> The Conferees' concern about these instruments stems from reports by Treasury that they are frequently used in money laundering schemes. . . . These drafts are U.S. dollar-denominated checks drawn by the foreign bank on its own account at a U.S. bank and sold to customers like cashier's checks.

See H.R. Rep. 130–652 (the "Conference Report"), 103d Cong., 2nd Sess. 189 (August 2, 1994). As the Conferees Noted, section 405 of the Money Laundering Suppression Act reflected descriptions of the problem and the need for corrective legislation to meet it, presented by the Assistant Secretary of the Treasury (Enforcement), the Director of FinCEN, and the United States Customs Service. *See* Conference Report, *supra*, at 189–190.[1]

The resultant legislation was drawn broadly, to permit the Secretary of the Treasury as much flexibility as was necessary to deal with the use of non-bearer instruments to move the proceeds of crime into or out of the United States. The present notice of proposed rulemaking thus implements only so much of the permitted authority as the Department of the Treasury believes is required to deal with the issue that sparked the legislation: the sale outside the United States of bank drafts drawn on U.S. dollar accounts within the United States.

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[1] The statement of Brian Bruh, then the Director of FinCEN, referred to at page 189 of the Conference Report, can be found in Serial No. 103–53, "Anti-Money Laundering Efforts in Texas," Field Hearing Before the Committee on Banking, Finance and Urban Affairs of the House of Representatives, 103d Cong., 1st Sess. 110, 115–16 (July 8, 1993). The statement of Ronald K. Noble, then Assistant Secretary of the Treasury (Enforcement), also referred to at page 189 of the Conference Report, can be found in Serial No. 103–79, "H.R. 3235; The Anti-Money Laundering Act of 1993, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance, of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, 103d Cong., 1st Sess. 2, 6 (oral statement), 17 (questions from Chairman Neal) (October 20, 1993) ; Assistant Secretary Noble's prepared statement can be found in Serial No. 103–79, *supra*, at 58, 64–65. *See also*, S. Hrg. 103–574, the Anti-Money Laundering Act of 1993—S. 1664, Hearing before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 103d. Cong., 2d Sess. 2, 4 (oral statement of Assistant Secretary Noble), 35, 37–38 (prepared statement of Assistant Secretary Noble) (March 15, 1994).

Explanation of Provisions

A. Overview

The proposed regulations would expand the definition of monetary instrument, for purposes of the CMIR reporting requirement and related rules, to include official bank checks, cashier's checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such foreign bank in the United States. Such instruments would hence become subject to the CMIR reporting requirements—*i.e.*, reports would be required upon their transportation into or out of the United States in amounts that, by themselves or combined with currency or other instruments treated as monetary instruments for purposes of the reporting requirements, exceeded $10,000.

B. Expanded Definition of "Monetary Instrument"

The expanded definition of monetary instrument is contained in a proposed new paragraph 31 CFR 103.11(u)(1)(vi).[2] The definition itself is straightforward and relies to the extent possible upon the terms used in paragraph (u)(1)(iii) relating to negotiable instruments in bearer form. Similarly, the new definition does not change the CMIR reporting requirement's procedures or the placement of the filing obligation. Rather, it simply adds instruments drawn by foreign banks[3] on accounts in the United States to the classes of monetary instruments that are to be counted in determining whether a cross-border transportation of monetary instruments exceeding $10,000 has occurred.

C. Exemption for Interbank Collection and Reconciliation Process

The Conference Report states that Congress intended that the expanded definition of monetary instrument should be implemented in such a way as to "avoid unnecessary burdens on routine financial transactions of foreign financial institutions," and specifically notes that:

> An exemption should be prescribed with regard to CMIRs when the monetary instruments cross the border as part of the interbank collection and reconciliation process.

Conference Report, *supra*, at 190. However, it is unclear whether any change in the relevant rules is necessary to accomplish that result, in light of the exemptions from the CMIR reporting requirement already contained in 31 CFR 103.23(c). Treasury intends to implement the new requirements consistently with the Congressional intent, and comments are thus specifically requested below upon whether additional language is required to avoid, or where that is impossible, to minimize burden, by virtue of the expanded definition of monetary instrument, upon either the interbank collection and reconciliation process or other aspects of routine financial transactions of foreign banks.

D. Coverage or Exemption of Instruments From Particular Nations

Congress was aware, in considering the Money Laundering Suppression Act, that an expanded definition of monetary instrument for purposes of the CMIR reporting requirements would affect certain nations more than others. However, in light of the general obligations of the United States with respect to the trade in financial services, and in recognition of the continued ingenuity and flexibility of those who seek to launder the proceeds of crime, the authorizing legislation was general in scope. Congress noted only that:

> The Conferees * * * believe that Treasury, in adopting regulations under this section, should consider whether a foreign country is participating in the Financial Action Task Force (FATF), has implemented the FATF's recommendations for combatting money laundering, and has appropriate currency recordkeeping or reporting requirements.

Conference Report, *Id.* Comments are specifically requested below on the best way to incorporate these considerations.

E. Request for Comments on Specific Subjects

FinCEN specifically seeks comment on the following questions:

1. Are additional changes necessary to prevent the imposition of burden on routine transactions of foreign banks as a result of the expanded definition of monetary instrument proposed in this document?

2. Does commercial practice provide a basis for distinguishing between instruments drawn by foreign banks on dollar accounts in the United States and instruments drawn on such accounts by financial services providers outside the United States that are not banks?

3. Are changes to the language of 31 CFR 103.23(c) necessary to exempt from the CMIR reporting requirements the transportation of the proposed new class of monetary instrument in the course of the interbank reconciliation and clearance process?

4. Are other changes to the exemptions in 31 CFR 103.23(c) necessary to prevent unnecessary interference with commercial activities?

5. What steps can and should be taken at this time, consistent with the obligations of the United States generally, to differentiate among particular nations in the application of the CMIR reporting requirements to the proposed new class of monetary instrument?

6. What steps should be taken to publicize the new reporting requirement in advance of its effective date?

In seeking guidance on these and other issues raised by this notice of proposed rulemaking, FinCEN is interested in hearing from all parties potentially affected by the proposed rule.

Treasury is continuing to consider the need for modernization of the CMIR reporting requirements generally. Comments are requested on this matter as well.

Submission of Comments

Comments on all aspects of the proposed regulation are welcome and will be considered if submitted in writing prior to April 22, 1997. An original and four copies of any comments must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Proposed Effective Date

The amendments to 31 CFR Part 103 proposed in this notice of proposed rulemaking will become effective 90 days following publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates.

Special Analyses

It has been determined that this notice of proposed rulemaking (i) is not subject to the "budgetary impact statement" requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this proposed rule, if adopted as a final rule, will have an annual effect on the economy of $100 million or more. Nor will it, if so adopted, affect adversely in a material

[2] No language in the monetary instrument definition is being deleted; the word "and" that separates current paragraphs (u)(1) (iv) and (v) of 103.11 is simply being moved to reflect the addition of a new paragraph (u)(1)(vi).

[3] "Foreign bank" is already a defined term in the Bank Secrecy Act regulations. *See* 31 CFR 103.11(o).

way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. The proposed rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues.

A "description of the reasons why action by the agency is being considered" and a "succinct statement of the objectives of, and legal basis for, the proposed rule"—all as required by 5 U.S.C. 553(b)—are found elsewhere in this preamble.

Paperwork Reduction Act

FinCEN hereby presents the following information concerning the retention of information on currency and monetary instruments, in accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, to assist those persons wishing to comment on the proposed information retention requirement.

Title: Report of International Transportation of Currency or Monetary Instruments.

Form Number: U.S. Customs Service Form 4790.

OMB Number: 1506–0005.

Description of Respondents: All persons.

Estimated Number of Respondents: 250,000.

Frequency: As required.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = approximately 54,167 hours; recordkeeping burden estimate = 8,333 hours. Estimated combined total of 62,500 hours per year.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost of compliance with the proposed recordkeeping rule is estimated to be approximately $1,250,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary to further the purposes of the Bank Secrecy Act, including whether the information retained shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be retained; and (d) ways to minimize the burden of the collection of information on the affected industry, including through the use of automated storage and retrieval techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995, *supra*, requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the retention of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the retention of the information covered by the requirement.

The information collection in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. Comments on the proposed collection may be directed to FinCEN, Office of Regulatory Policy and Enforcement, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182–2536, Attn: Paperwork Reduction Act, and to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for the Treasury Department. Responses to this request for comments from FinCEN will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, banking, Currency, Foreign banking, Gambling, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 is amended by:

a. Removing the word "and" at the end of paragraph (u)(1)(iv);

b. Removing the period and adding "; and" at the end of paragraph (u)(1)(v); and

c. Adding new paragraph (u)(1)(vi).

The addition reads as follows:

§ 103.11 Meaning of terms.

* * * * *

(u) * * *

(1) * * *

(vi) For purposes of § 103.23 and other provisions of this part implementing 31 U.S.C. 5316, official bank checks, cashier's checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such foreign bank in the United States.

* * * * *

Dated: January 15, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–1403 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–03–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157–0022b; FRL–5677–1]

Clean Air Act Approval and Promulgation of Emission Reduction Credit Banking Provisions; Implementation Plan for California State Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules submitted by the State of California on behalf of the Mojave Desert Air Quality Management District (MDAQMD or the District) for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) with regard to emission reduction credit (ERC) banking for new source review (NSR).

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act. In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second public comment period on this

document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 21, 1997.

ADDRESSES: Written comments on this action should be addressed to: Steve Ringer, Permits Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permitting Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street S.W., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Steve Ringer at (415) 744–1260.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP:

Rule 1400, General; rule 1401, Definitions; rule 1402, Emission Reduction Credit Registry; and rule 1404, Emission Reduction Credit Calculation (rules 1400, 1401, 1402, and 1404 will hereafter be referred to as the "submitted rules"). The submitted rules were adopted on June 28, 1995, and were submitted by the State of California to EPA on August 10, 1995. EPA found the submitted rules to be complete on October 4, 1995.

For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Dated: December 8, 1996.

Authority: 42 U.S.C. 7401–7671q.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–1422 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN70–1b; FRL–5675–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 13, 1996, and June 27, 1996, the State of Indiana submitted rules for the control of volatile organic compound (VOC) emissions from shipbuilding and ship repair operations in Clark, Floyd, Lake, and Porter Counties, as a requested revision to the State Implementation Plan (SIP) for ozone. This rule is part of the State's 15% Rate-of-Progress plan for reducing VOC emissions in Clark and Floyd Counties. This rule requires facilities which build or repair commercial ships or barges to use coatings which meet volatile organic compound content limits, as well as comply with certain work practices to lower emissions when using solvents. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 21, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 24, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–1426 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 105–0012b; FRL–5673–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; San Diego Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_x) emissions from the operations of boilers, steam generators, process heaters, electric utility boilers, internal combustion engines, and stationary gas turbines.

The intended effect of proposing approval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rule Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed action, no further activity is contemplated in relation to this action. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 21, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District's (KCAPCD) Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen), Rule 427, Stationary Piston Engines (Oxides of Nitrogen), San Diego County Air Pollution Control District's (SDCAPCD) Rule 69.4, Stationary Reciprocating Internal Combustion Engines, and Ventura County Air Pollution Control District's (VCAPCD) Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions, and Rule 74.23, Stationary Gas Turbines. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 25, 1995, March 26, 1996, October 19, 1994, February 11, 1994 and March 26, 1996, respectively. For further information, please see the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 23, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–1079 Filed 1–21–97; 8:45 am]

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40 CFR Part 52

[PA 098–4032; FRL–5679–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Conditional Approval of 15 Percent Reasonable-Further-Progress Plan and 1990 VOC Emission Inventory for the Pittsburgh Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to conditionally approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, for the Pittsburgh ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan), also known as rate-of-progress (ROP) requirements of the Clean Air Act. EPA is proposing conditional approval because the 15 percent plan submitted by Pennsylvania for the Pittsburgh area requires additional documentation to quantify the 15% emission reduction. The 1990 emissions inventory for volatile organic compounds (VOCs) used in the 15% plan as the baseline for reasonable further progress contains inconsistencies, which must be reconciled by Pennsylvania. EPA is, therefore, proposing conditional approval of the 1990 VOC emission inventory.

DATES: Comments on this proposed action must be postmarked by February 21, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2180. Questions may also be addressed via e-mail, at the following address: stahl.cynthia@epamail.epa.gov Please note that while information may be requested via e-mail, only written comments can be accepted for inclusion in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(1) of the Clean Air Act (the Act or CAA), as amended in 1990, requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by fifteen percent from the 1990 baseline inventory for the area. These "15% plans" were due to be submitted to EPA by November 15, 1993, with the reductions to occur within 6 years of enactment of the 1990 Clean Air Act Amendments (i.e. November 15, 1996). Furthermore, the Act sets limitations on the creditability of certain control measures toward reasonable further progress. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g. new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. The Act also does not allow credit towards RFP for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990.

Additionally, section 172(c)(9) of the Act requires "contingency measures" to be included in the plan revision. These measures are required to be implemented immediately if reasonable further progress is not achieved, or if the NAAQS standard is not attained under the deadlines set forth in the Act.

In Pennsylvania, three nonattainment areas are subject to the Clean Air Act 15% rate-of-progress requirements. These are the Philadelphia severe nonattainment area, the Pittsburgh moderate nonattainment area, and the Reading moderate nonattainment area. On July, 19, 1995, EPA published, in the **Federal Register**, a final rule waiving the 15% rate-of-progress requirements for the Pittsburgh and Reading moderate ozone nonattainment areas. The basis

for that action was a May 10, 1995 EPA policy memo (entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard") allowing such "waivers" for areas having ambient monitoring data which demonstrated compliance with the ozone standard. On June 4, 1996, EPA revoked the waiver for the Pittsburgh area, and reinstated the 15% plan requirement. Pennsylvania submitted separate SIP revisions for Philadelphia and Pittsburgh. EPA is taking action today only on Pennsylvania's 15% plan submittal (including the 1990 VOC emissions inventory), which addresses only the Pittsburgh ozone nonattainment area. EPA will act separately on the contingency plan for the Pittsburgh 15% plan and the 1990 NO_x emissions inventory, at a later date. The Pittsburgh moderate ozone nonattainment area consists of the following counties in Pennsylvania: Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, Westmoreland.

EPA has reviewed the March 22, 1996 Pittsburgh area 15% plan submittal and has identified several deficiencies, which prohibit full approval of this SIP, per section 110 of the Act. A detailed discussion of these deficiencies is included below, in the 'Analysis' portion of this rulemaking action, and also in the technical support document (TSD) for this action. Due to these deficiencies, the 15% plan cannot be assured of achieving the total reductions required by the rate-of-progress requirements of the Act. Therefore, EPA is proposing to conditionally approve this plan.

For further information regarding EPA's analysis of the Commonwealth's submittal, please refer to the TSD for this action (found in the official docket). A summary of the EPA's findings follows.

Analysis of the SIP Revision

Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emission inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile sources, and off-road mobile sources. Pennsylvania submitted a formal SIP revision containing their official 1990 base year emission inventory on November 12, 1992. EPA has not yet taken rulemaking action on that inventory submittal. In its March 22, 1996 submittal, Pennsylvania stated that the 1990 emission inventory included with that submittal is meant to supercede the 1992 emission inventory submittal. Therefore, this rulemaking will address the 1990 VOC emission inventory only as it pertains to the Pittsburgh ozone nonattainment area and no further rulemaking action will be taken on the November 12, 1992 emission inventory submittal as it pertains to the Pittsburgh ozone nonattainment area. The March 1996 inventory submittal of the 1990 inventory contains inconsistencies including inconsistencies with the inventory summaries in the 15% plan. Additional information and documentation from Pennsylvania regarding the March 1996 submittal of the Pittsburgh 1990 emission inventory is necessary in order for EPA to accept it as a replacement for the official 1990 base year inventory SIP revision. EPA has been working with Pennsylvania to compile the necessary documentation to approve the 1990 base year emissions inventory. Pennsylvania has recently submitted some additional information that may clarify some of the questions about the 1990 inventory. This additional information has been placed in the docket for this rulemaking. Please refer to the TSD for a specific discussion of the inventory. Therefore, EPA is proposing to conditionally approve the 1990 VOC emission inventory for the Pittsburgh ozone nonattainment area that was submitted on March 22, 1996.

Growth in Emissions Between 1990 and 1996

EPA has interpreted the Clean Air Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% RFP requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to a 15 percent reduction of VOC emissions. Thus, an estimate of VOC emissions growth from 1990 to 1996 is necessary for demonstrating reasonable further progress. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each stationary (point) source or by area source category, since sources typically grow at different rates. Even within a stationary source, individual emission unit emissions may grow at different rates during the same time period. EPA's inventory preparation guidance recommends the following indicators as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: Product output, value added, earnings, and employment. As a last resort, population can also serve as a surrogate indicator.

Pennsylvania's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the Commonwealth, please refer to the TSD for this action. Although EPA has identified some problematic issues with the methods used to project growth in the 1996 Pittsburgh inventory, EPA is not conditioning the approval of the 15% plan on the resolution of these issues. The rationale for this summarized below and in more detail in the TSD. Consequently, EPA is proposing to approve the Commonwealth's 1990–1996 emissions growth projections for the Pittsburgh 15% plan.

Pennsylvania did not provide EPA with all the documentation necessary to verify the growth projections for the on-road vehicle category. EPA, however, has no reason to believe that the Commonwealth's methodology or assumptions in making these projections are flawed. Therefore, EPA is accepting the Commonwealth's 15% plan projection for highway vehicle emissions growth that is based on growth in total vehicle miles of travel (VMT) for the region, which the Commonwealth expects to increase by 2.8 million miles per day. In addition, the Commonwealth expects that on-road emissions are projected to decrease by 21.35 tons/day. Emissions from on-highway emissions control measures are calculated separately in the plan (including reductions associated with fleet turnover and the pre-1990 motor vehicle standards) and Pennsylvania indicates that this growth is based solely upon increasing VMT growth. Typically, growth in highway emissions is determined independently of mobile source control strategies. Fifteen percent plans usually indicate what, if any, other factors effect highway emissions growth, other than the previously identified VMT influence. EPA cannot definitively determine how motor vehicle emissions are declining from this data but believes, based on the sample calculation submitted by Pennsylvania, that Pennsylvania's mobile model inputs are correct. Those interested in obtaining the data necessary to verify the Commonwealth's calculations are encouraged to contact PA DEP for that information. Therefore, EPA is proposing to approve the

Commonwealth's on-road motor vehicle growth projection.

For the point source categories, Pennsylvania used the Bureau of Economic Analysis (BEA) growth factors to project point source emissions on a point source category basis to 1996. Typically, this is an acceptable method of estimating point source growth. However, Pennsylvania operates an emissions bank in the Commonwealth that allows facilities to bank emission reduction credits for subsequent use or sale. In addition, Pennsylvania states specifically in its 15% plan that it is not taking VOC emission reduction credit from shutdown sources since those sources are being allowed to sell their VOC emission reductions as credits to other sources. These shutdowns all occurred after January 1, 1990. Since the BEA growth factors are devised to account for all economic activity, including the shutdown of facilities (through loss of employment, income, etc.), allowing both the use of the BEA point source growth factors for these source categories where the shutdowns occurred and allowing the sources in these categories to sell their emission reduction credits could result in the double counting of emission reductions, which is not allowed. In the General Preamble for the Implementation of Title I of the Clean Air Act Amendments (57 FR 13498, April 16, 1992), EPA addresses the issue of accounting for emission reduction credits (ERCs) by stating that banked emission reduction credits need to be accounted for such that their use is consistent with the area's 15% rate of progress plan and attainment plan. For any ERCs that are either used or available for use prior to the end of the planning period (in this case, the end of 1996), the state must appropriately account or plan for their use in the applicable air quality plan (in this case, the 15% plan). In Pennsylvania's March 1996 15% plan submittal, DEP did not identify which sources had shut down or in which source categories these shutdowns had occurred. Without the proper identification of these sources and accounting in the 15% plan, there is no guarantee that the use of those shutdown or banked ERCs would be consistent with the 15% plan. This potential double counting of emissions is not a problem unique to Pennsylvania. EPA guidance to date has not addressed this issue in detail. Therefore, EPA is not conditioning the approval of the Pittsburgh 15% plan on the resolution of this issue. EPA will, however, require that this issue be satisfactorily resolved prior to approval of any subsequent air quality plans required for the Pittsburgh nonattainment area such as the attainment demonstration.

Calculation of Target Level Emissions

Pennsylvania calculated a "target level" of 1996 VOC emissions, per EPA guidance. First, the Commonwealth calculated the non-creditable reductions from the FMVCP program and subtracted those emissions from the 15 percent plan's 1990 inventory estimate. This yields the 1990 "adjusted inventory". The emission reduction required to meet the 15 percent rate-of-progress requirement equals the sum of 15 percent of the adjusted inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in place before 1990. Table 1 summarizes the calculations for the seven-county Pittsburgh nonattainment area's VOC target level.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS [1] FOR THE PITTSBURGH NONATTAINMENT AREA'S 15% PLAN (TONS/DAY)

1990 Base Year Inventory	402.20
Adjustments for FMVCP/RVP (pre-1990 program)	28.70
1990 Adjusted Base Year Inventory	373.50
15% Reduction Requirement	56.03
RACT "fix-ups"	0.0
FMVCP & RVP Reductions	8.70
Required Reduction (w/o growth)	84.73
1990 Baseline Emissions	402.20
Required Reductions (w/o growth)	−84.73
1996 Target Level	317.47
1990–1996 Emissions Growth	−20.51
Required Reductions (w/o growth)	84.73
Total Required Reduction	64.22
Total Reduction Claimed by Pennsylvania	67.48

[1] Emission figures presented here are from the March 27, 1996 submittal. These figures will likely change once Pennsylvania makes the corrections to the plan to reconcile inventory inconsistencies, etc.

Control Strategies in the 15% Plan:

The specific measures adopted (either through state or federal rules) for the Pittsburgh area are addressed, in detail, in the Commonwealth's 15% plan. The following is a brief description of each control measure that Pennsylvania has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Clean Air Act rate-of-progress requirement.

Creditable Emission Control Strategies

The control measures described below are creditable towards the rate-of-progress requirements of the Act. However, the documentation provided by the Commonwealth with the March 22, 1996 submittal does not clearly show how the claimed emission reductions from the implementation of the benzene National Emission Standards for Hazardous Air Pollutants (NESHAP) were obtained and calculated. Pennsylvania has recently sent EPA additional material pertaining to the calculation of the NESHAP credit. This additional information has been placed in the docket for this rulemaking. If EPA determines that the additional material with the original submittal is adequate to document the NESHAP credit, EPA will state that Pennsylvania has met the condition that requires adequate documentation of the NESHAP credit. For the mobile source measures, which Pennsylvania estimates using a Post-Processor for Air Quality (PPAQ) computer model, limited documentation was provided. The PPAQ model uses MOBILE modeling information as input, and determines total reductions for mobile source control strategies. The Commonwealth recently provided some sample calculations used in this modeling, but no detailed documentation of the MOBILE runs. However, as mentioned earlier, EPA has no reason to believe that Pennsylvania's methodology is flawed. Therefore, EPA is proposing to approve the claimed mobile emission reductions.

As described below, EPA cannot fully approve the reductions from the benzene NESHAP measure without additional documentation to verify the emissions estimates. As mentioned above, the documentation recently submitted by the Commonwealth and placed in the docket for this rulemaking may address this issue. For further details regarding EPA's review of the Commonwealth's control measures, please refer to the TSD for this action.

Benzene NESHAP

EPA promulgated the benzene NESHAP (40 CFR part 61, subpart L, National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants) on September 19, 1991. The coke oven battery NESHAP (40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries) was promulgated on October 27, 1993. The rule regulates the emissions from new and existing coke oven batteries. The benzene NESHAPs are expected to produce high emission

reductions. However, EPA is unable to fully verify the 35.0 tons/day credit estimate claimed by the Commonwealth for this program, due to a lack of detail regarding the methodology used to quantify the benzene NESHAP emission reductions and inconsistencies with the emission inventory figures for sources where this credit is being claimed for the 15% plan. Therefore, while it is not unlikely that a 35 ton/day credit from these requirements, Pennsylvania must provide the documentation that supports it. As stated earlier, Pennsylvania has recently provided some additional information regarding this calculation that may clarify how the credits were calculated.

Architectural and Industrial Maintenance (AIM) Coating

EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in architectural and industrial maintenance coatings, such as building and bridge paints, etc. This is a national rule that EPA proposed on June 25, 1995 (61 FR 32729), which expected compliance with the coating requirements by April 1997. Subsequently, EPA has been sued over this proposed national rule and has negotiated a compliance date of no earlier than January 1, 1998. VOC emissions emanate from the evaporation of solvents used in the coating process. In a memorandum dated March 22, 1995 ("Credit for the 15% Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule"), EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. In this memorandum, EPA stated that although the emission reductions are not expected to occur until April 1997, states will be allowed to use the expected emission reduction credit from this measure in their 15% plans. EPA believes that even though the compliance date has been pushed to January 1, 1998, the emission reduction from the national AIM rule are creditable in state 15% plans.

Use of emissions reductions from EPA's expected national rule is acceptable towards the 15% plan target. Pennsylvania claims a 20% reduction, or 5.0 tons/day (1996 uncontrolled emissions x 20% emission reduction) from their 1996 projected uncontrolled AIM emissions. Since the 1996 uncontrolled emissions are 20.83 tons/day, a 20% emission reduction is 4.16 tons/day. Therefore, there appears to be a discrepancy in the calculated emission reduction expected from the implementation of this national rule. Pennsylvania must resolve this discrepancy and determine the proper emission credit from this national rule.

Treatment Storage and Disposal Facilities (TSDFs)

TSDFs are private facilities that manage dilute wastewater, organic/inorganic sludges, and organic/inorganic solids. Waste disposal can be done by various means including: incineration, treatment, or underground injection or landfilling. EPA promulgated a national rule on June 21, 1990 for the control of TSDF emissions (55 FR 25454). Pennsylvania claims an expected VOC reduction of 9.59 tons/day from this national rule in one part of the 15% plan submittal; although in the narrative description of the TSDF credit, Pennsylvania claims 10.0 tons per day (TPD) credit. Using the figures provided by Pennsylvania, the expected emission reduction from this measure is calculated using the 12.75 TPD projected 1996 emissions and multiplying this by the control efficiency (94%) and rule effectiveness (80%), resulting in an emission credit of 9.59 TPD. EPA believes that the creditable emissions from this control measure, given the inventory information provided by Pennsylvania, is 9.59 TPD.

Consumer/Commercial Products National Rule

Section 183(e) of the Clean Air Act required EPA to conduct a study of VOC emissions from consumer and commercial products. EPA was then required to list (and eventually) to regulate those product categories that account for 80% of those consumer products emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule—including personal, household, and automotive products. EPA intends to issue a final rule covering these products in Spring 1997. The Commonwealth claims a 20% reduction from the consumer products portion of their 1996 uncontrolled inventory, or a 4.0 tons/day reduction. Using the amended emission inventory figures provided by DEP on October 7, 1996, the actual emission credit available is 5.06 TPD. This is a creditable emission reduction for the Pittsburgh 15% plan.

Tier I Federal Motor Vehicle Control Program

EPA promulgated a national rule establishing "new car" standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Act was amended in 1990, the resulting emission reductions are creditable toward the 15% reduction goal. The EPA agrees with the Commonwealth's projected emission reductions. Due to the three-year phase-in period for this program, and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Pennsylvania claimed a reduction of 6.0 tons/day from this post-1990 Federal Motor Vehicle Control Program. EPA accepts this estimate of expected emission reductions from this program.

Inspection and Maintenance Program

Section 182(b)(1) of the CAA requires that States containing ozone nonattainment areas classified as Moderate or above prepare State Implementation Plans (SIPs) that provide for a 15% VOC emissions reduction by November 15, 1996. Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most States experienced substantial difficulties with these enhanced I/M programs, only a few States are currently actually testing cars using their original enhanced I/M protocols.

On September 18, 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program precludes States that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under CAA section 182(b)(1) of the Act, and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA believes that it is no longer possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these

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circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996.

Specifically, EPA will propose approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable. To make this "as soon as practicable" determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions. However, as a minimum requirement, EPA will approve a 15% SIP only if it achieves the reductions from I/M needed to reach the 15% level by no later than November 15, 1999.

In the case of Pittsburgh, the Pennsylvania has submitted a 15% SIP that would achieve the amount of reductions needed from I/M by late 1998. The Pennsylvania I/M program is an annual program with implementation required to begin no later than November 15, 1997. Pennsylvania has submitted a 15% SIP for Pittsburgh that includes control measures that are creditable toward the 15% plan. Emission reductions in the Pittsburgh nonattainment area resulting from the implementation of the benzene NESHAP and from implementation of FMVCP—Tier I have already occurred. EPA believes that this SIP contains all measures, including I/M, that achieves the required reductions as soon as practicable for this nonattainment area.

EPA has examined other potentially available SIP measures to determine if they are practicable for the Pittsburgh moderate ozone nonattainment area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. EPA proposes to determine that the SIP contains the appropriate measures. For the Pittsburgh area, reformulated gasoline (RFG) and Stage II vapor recovery, are regulatory options that, theoretically, might be implemented prior to 1998. For RFG, since the Commonwealth has not petitioned EPA to opt back into the program, and since the section 211(k)(6)(A) of the Act provides a one year implementation timeframe for opt-ins of the RFG program, EPA believes the Commonwealth is meeting 15% as soon as practicably possible. For Stage II, the Commonwealth currently has a compliance moratorium in the Pittsburgh nonattainment area on their existing Stage II regulation (Pennsylvania Code Title 25, Subpart C, Article III, Chapter 129.82). Even if the Commonwealth were to choose to lift their moratorium, the emission reductions from the implementation of Stage II are unlikely to occur prior to 1998 since the regulated community will have to be given some time to make the capital investments, purchase and install the equipment to implement this program.

The Commonwealth has recently concluded the Southwestern Pennsylvania Stakeholders Group process that will result in recommendations to the Governor of Pennsylvania as to the control measures that should be implemented in the Pittsburgh nonattainment area in order to reach attainment of the ozone national ambient air quality standard. The stakeholders final report and recommendation to the Governor is expected to be released soon. For the Pittsburgh 15% plan, the Commonwealth has chosen to implement the I/M program in the Pittsburgh nonattainment area, which is expected to produce a 13 ton per day emission reduction beginning in 1998. The details of this analysis are contained in the accompanying TSD.

SUMMARY OF CREDITABLE EMISSION REDUCTIONS FOR THE PITTSBURGH OZONE NONATTAINMENT AREA

[Tons/day]

Required Reduction for the Pittsburgh area	64.22
Creditable reductions:	
Benzene NESHAP [1]	35.00
FMVCP (Tier I)	6.00
Inspection and Maintenance Program [2]	5.00
AIM Coatings Rules	4.16
Consumer/Commercial Products	5.06
TSDF Controls	9.59
Total	64.81

[1] The emission reductions from this program have not been substantiated by Pennsylvania.

[2] Partial credit from this program is taken in the 15% plan with the remaining credit taken in the contingency plan, which is not the subject of this rulemaking notice.

III. Proposed Action

The EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations, and EPA policy. On its face, this RFP plan for Pittsburgh achieves the required 15% VOC emission reduction to meet the requirements of section 182(b)(1) of the Act. While all the emissions inventory figures have not been substantiated and the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA believes that the submittal for Pittsburgh contains enough of the required structure to warrant conditional approval.

In light of the above deficiencies, EPA is proposing to conditionally approve this SIP revision, which includes the 15% plan and the 1990 emission inventory, under section 110(k)(4) of the Act. The submittal does not fully satisfy the requirements of section 182(b)(1) of the Act regarding the 15 percent reasonable further progress plan or section 182(a)(1) of the Act regarding emission inventories.

Today's notice of proposed rulemaking begins a 30-day clock for the Commonwealth to make a commitment to EPA to correct the major elements of the SIP that EPA considers deficient, by date certain, within 1 year of conditional approval. These elements are described as follows. In order to make this 15% plan approvable, Pennsylvania must fulfill the following conditions by no later than 12 months after EPA's final conditional approval:

(1) Reconcile the 1990 VOC point source emissions inventory with all the appendices, tables and narratives throughout the 15% document, wherever emissions are cited;

(2) After establishing consistent figures as described in (1) above, provide sample calculations for point source 1990, 1990 adjusted, and 1996 projected emissions showing how each of these figures were obtained (The level of documentation must be equivalent to that required for approval of a 1990 emissions inventory as described in the emission inventory documents at the beginning of this technical support document.);

(3) Provide additional documentation for the emissions for those sources categories where credit is claimed (NESHAP);

(4) Provide a written commitment to remodel the I/M program as implemented in the Pittsburgh nonattainment area in accordance with EPA guidance (December 23, 1996 memo entitled "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance), submit the remodeling to EPA; and

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(5) Fulfill the conditions listed in the I/M SIP rulemaking notice (proposed October 3, 1996, 61 FR 51638) and summarized here as: (a) Geographic program coverage and program start dates, (b) ongoing mass-based transient program evaluation, (c) test types, test procedures and emission standards, (d) test equipment specifications, and (e) motorist compliance enforcement demonstration.

After making all the necessary corrections to establish accuracy and consistency in the emission inventory, baseline and projected figures, and the creditability of chosen control measures, Pennsylvania must demonstrate that 15% emission reduction is obtained in the Pittsburgh nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance issued pursuant to section 182(c)(1). Resolution of the issues pertaining to banked emissions and projected growth is not a condition of this 15% plan approval. Satisfactory resolution of these issues will be required for any approval of subsequent air quality plans. If the Commonwealth does not make the required written commitment to EPA within 30 days, EPA is today proposing in the alternative that this SIP revision be disapproved.

EPA and Pennsylvania have worked closely since the March 1996 submittal in order to resolve all the issues necessary to fully approve the Pittburgh 15% plan. Pennsylvania is aware of the above deficiencies and is currently working to amend the Pittsburgh 15% plan to address the above-named deficiencies. Some of these amendments have been sent to EPA and others remain to be sent. While some of these deficiencies currently remain, EPA believes that all issues will be resolved no later than 12 months after EPA's final conditional approval of the Pittsburgh 15% plan. While this rulemaking was being prepared, Pennsylvania has provided some additional information pertaining to their March 1996 submittal. This additional information has been placed in the rulemaking docket and is available to the public. EPA will consider all information submitted as a supplement or amendment to the March 1996 submittal prior to any final rulemaking action. In addition, since Congress passed the National Highway Systems Designation Act of 1995, which amended federal I/M program requirements and granted states authority to revise their I/M programs, and Pennsylvania has utilized that authority to revise its I/M program, revision of the 15% plan to reflect the I/M program changes is expected. When the Commonwealth submits an amended 15% plan, EPA will review the whole Pittsburgh 15% plan and the Pittsburgh 1990 base year emissions inventory, including its amendments, for compliance with the requirements of the Clean Air Act. At that time, EPA will re-propose rulemaking action based on the merits of the original submittal and its amendments.

Nothing in today's action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This proposed conditional approval action for the Pennsylvania 15% plan and the 1990 VOC emission inventory for Pittsburgh has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

The Regional Administrator's decision to approve or disapprove the

SIP revision pertaining to the Pittsburgh ozone nonattainment area 15% plan and 1990 VOC emission inventory will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: January 13, 1997.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 97–1493 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7206]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Madera County (Unincorporated Areas).	Fresno River	Just upstream of State Highway 41	None	*2,253
			Approximately 1,100 feet upstream of Road 426.	None	*2,262
		China Creek	Approximately 500 feet upstream of confluence with Fresno River.	None	*2,256
			Approximately 4,160 feet upstream of Road 425–B.	None	*2,363
		Oak Creek	At confluence with Fresno River	None	*2,262

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Oak Creek Tributary ...	Just upstream of Road 428	None	*2,342
			Approximately 500 feet upstream of confluence with Oak Creek.	None	*2,310
			Approximately 1,100 feet upstream of confluence with Oak Creek.	None	*2,315

Maps are available for inspection at the Department of Engineering and General Service, 135 West Yosemite Avenue, Madera, California.
Send comments to The Honorable Al Ginsburg, Chairman, Madera County Board of Commissioners, County Court House, 209 West Yosemite Avenue, Madera, California 93637.

	Modoc County (Unincorporated Areas).	Bidwell Creek	Approximately 2,300 feet downstream of Fee Street.	None	*4,497
			Approximately 1,800 feet upstream of North Street.	None	*4,595

Maps are available for inspection at the Modoc County Planning Department, 202 West Fourth Street, Alturas, California.
Send comments to Mr. Mike Maxwell, Director of Administration, Modoc County, 120 South Main Street, Alturas, California 96101.

	Santa Paula (City) and Ventura County (Unincorporated Areas).	Santa Paula Creek	At Southern Pacific Railroad (SPRR)	None	*319
			Approximately 4,500 feet upstream of SPRR.	None	*400
			Approximately 3,500 feet downstream of Rafferty Road.	*536	*536
		Profile Base Line No. 1.	Approximately 550 feet downstream of Say Road.	*404	None
			Approximately 2,450 feet upstream of Hawthorne Street.	*460	None
		Profile Base Line	At Outer Drive No. 2	*240	*240
			Approximately 150 feet downstream of Seventh Street.	*252	*248
			Just downstream of 12th Street	*270	*267
			At Garcia Street	*275	*#3
		Profile Base Line No. 3.	Approximately 400 feet downstream of Orchard Street.	*340	None
			Approximately 200 feet upstream of Gatewood Lane.	*499	None

Maps are available for inspection at 200 South Tenth, Santa Paula, California.
Send comments to The Honorable Alfonso Urias, Mayor, City of Santa Paula, P.O. Box 569, Santa Paula, California 93061.
Maps are available for inspection at 800 South Victoria Avenue, Ventura, California.
Send comments to The Honorable Maggie Kildee, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.

Kansas	Finney County (Unincorporated Areas).	Arkansas River	Approximately 11,100 feet downstream of confluence of Ditch No. 1.	None	*2,799
			Approximately 5,000 feet upstream of Main Street.	None	*2,890

Maps are available for inspection at the County Courthouse, 425 North Eighth Street, Garden City, Kansas.
Send comments to The Honorable Gary Dick, Chairman, Finney County Board of Commissioners, P.O. Box M, Garden City, Kansas 67846–0450.

	Garden City (City) Finney County.	Arkansas River	Approximately 3,700 feet downstream of U.S. Highway 83.	*2,832	*2,829
			Approximately 6,000 feet upstream of U.S. Highway 83.	None	*2,841

Maps are available for inspection at the City Administration Center, 301 North Eighth Street, Garden City, Kansas.
Send comments to The Honorable Tim Cruz, Mayor, City of Garden City, 301 North Eighth Street, Garden City, Kansas 67846.

	Holcomb (City) Finney County.	Arkansas River	At downstream corporate limit (adjacent to Nunn Drive).	None	*2,873
			At upstream corporate limit	None	*2,885

Maps are available for inspection at City Hall, 200 North Lynch, Holcomb, Kansas.
Send comments to The Honorable Janelle Robins-Gaede, Mayor, City of Holcomb, P.O. Box 69, Holcomb, Kansas 67851.

	Lyons (City) Rice County.	Salt Creek	Approximately 3,000 feet downstream of American Road.	None	*1,654
			At Second Street	None	*1,686

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Surprise Creek	Approximately 200 feet downstream of American Road.	None	*1,662
			At Second Street	None	*1,686

Maps are available for inspection at City Hall, 217 East Avenue South, Lyons, Kansas.

Send comments to The Honorable Charles Nichols, Mayor, City of Lyons, 217 East Avenue South, Lyons, Kansas 67554.

	Rice County (Unincorporated Areas).	Arkansas River	Approximately 7,500 feet downstream of State Highway 96.	None	*1,627
			Approximately 14,000 feet upstream of State Highway 96.	None	*1,648
		Surprise Creek	Approximately 600 feet downstream of American Road.	None	*1,662
			Just downstream of Taylor Street	None	*1,672
		Salt Creek	Approximately 3,000 feet downstream of American Road.	None	*1,655
			Just downstream of American Road	None	*1,666

Maps are available for inspection at the County Courthouse, 101 West Commercial, Lyons, Kansas.

Send comments to The Honorable Frank Dill, Chairman, Rice County Board of Commissioners, 101 West Commercial, Lyons, Kansas 67554.

	Sterling (City) Rice County.	Arkansas River	At Highway 96	None	*1,637
			Approximately 7,000 feet upstream of Highway 96.	*1,640	*1,642

Maps are available for inspection at City Hall, 114 North Broadway, Sterling, Kansas.

Send comments to The Honorable Tom Simpson, Mayor, City of Sterling, 114 North Broadway, Sterling, Kansas 67579.

Nebraska	Bayard (City) Morrill County.	Wildhorse Drain	Just upstream of Main Street	None	*3,755
			Just downstream of Eighth Street	None	*3,762

Maps are available for inspection at City Hall, 445 Main Street, Bayard, Nebraska.

Send comments to The Honorable Vern Huck, Mayor, City of Bayard, 445 Main Street, Bayard, Nebraska 69334.

Oklahoma	Madill (City) and Marshall County (Unincorporated Areas).	Glasses Creek	Approximately 4,000 feet downstream of Burlington Northern Railroad.	None	*732
			Approximately 60 feet upstream of Burlington Northern Railroad.	None	*750
			Just upstream of U.S. Highway 70	None	*757
		Whiskey Creek	Approximately 1,200 feet downstream of Burlington Northern Railroad.	None	*761
			Just upstream of State Route 99	None	*792
		Whiskey Creek Tributary.	Approximately 70 feet downstream of Park Road.	None	*785
			Just upstream of Park Road	None	*791

Maps are available for inspection at the City of Madill City Hall, 201 East Overton Street, Madill, Oklahoma.

Send comments to The Honorable Donney Raley, Mayor, City of Madill, 201 East Overton Street, Madill, Oklahoma 73446.

Maps are available for inspection at the Marshall County Courthouse, Madill, Oklahoma.

Send comments to The Honorable Jim Kusler, Chairman, Marshall County Board of Commissioners, County Courthouse, Courthouse Square, Room 106, Madill, Oklahoma 73446.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1504 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD39

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Endangered Status for Sixteen Plants From the Northern Channel Islands of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period for 16 plant species that have been proposed as endangered—*Arabis hoffmannii* (Hoffmann's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Berberis pinnata* ssp. *insularis* (island barberry), *Castilleja mollis* (soft-leaved paintbrush), *Dudleya blochmaniae* ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. "East Point" (munchkin dudleya), *Dudleya nesiotica* (Santa Cruz Island dudleya), *Galium buxifolium* (island bedstraw), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Helianthemum greenei* (island rush-rose), *Heuchera maxima* (island alumroot), *Malacothamnus fasciculatus* ssp. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (Santa Cruz Island malacothrix), *Malacothrix squalida* (island malacothrix), *Phacelia insularis* ssp. *insularis* (island phacelia), and *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod). The comment period has been reopened to receive public comments on new information on the conservation measures proposed by the National Park Service for those proposed endangered plant species on Santa Rosa Island since the close of the original comment period on October 9, 1995.

DATES: The public comment period, which originally closed on October 9, 1995, now closes February 21, 1997.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, U.S. Fish and Wildlife Service, at the address listed above; telephone 805–644–1766, facsimile 805–644–3958.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995, the Service published in the **Federal Register** (60 FR 37993) a proposal to list 16 plants as endangered species pursuant to the Endangered Species Act of 1973, as amended (Act), and requested public comment. The 16 plants are restricted primarily to the northern Channel Islands (Anacapa, Santa Cruz, Santa Rosa, and San Miguel) of California. The Service received comments until the close of the original comment period on October 9, 1995. Since that time, the National Park Service has prepared a Resource Management Plan and Draft Environmental Impact Statement to address the conservation needs for the proposed endangered plants on Santa Rosa Island, which is within the boundaries of the Channel Islands National Park.

Since the publication of the proposed rule, new information has been made available to the Service that may affect the status of one or more of the proposed species. In 1996, *Arabis hoffmannii*, last seen on the Island in the 1930's, was discovered on a small protected ledge in Lobo Canyon on Santa Rosa Island. A small population of *Malacothrix indecora* was discovered on Santa Rosa Island, previously only known from Santa Cruz and San Miguel Islands. A new population of the *Heuchera maxima* has been discovered in Lobo Canyon on Santa Rosa Island. The editor of *Madroño* (Journal of the California Botanical Society) has provisionally accepted the manuscript for the description of the "new" dudleya (munchkin dudleya) species from Santa Rosa Island to be published as *Dudleya gnoma*. The National Park Service has constructed exclosure fencing around the entire population of this dudleya and a portion of the largest population of *Gilia tenuiflora* ssp. *hoffmannii*. In compliance with the terms and conditions of a section 7 consultation for the western snowy plover, the park constructed an electric fence to keep cattle off of the beaches that include the entire population of *Dudleya blochmaniae* ssp. *insularis*. In spite of active surveys, there have been no observations of *Thysanocarpus conchuliferus* for 2 years.

Public Comments Solicited

Due to the changes in resource management plans and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. The Service is requesting comments from the public on the measures presented by the National Park Service to protect the proposed endangered plant species on Santa Rosa Island and the new information on distribution and status of the proposed species. All comments received by the date specified above will be considered in the Service's final decision.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 13, 1997.

H. Dale Hall,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 97–1496 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 62, No. 14
Wednesday, January 22, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) intent to request extensions for and revisions to a currently approved collection of crop and land use information in support of programs administered by FSA as authorized by the Agricultural Adjustment Act of 1938, as amended by the Food Security Act of 1985, and as amended by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before March 24, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Nix, Agricultural Program Specialist, Compliance and Production Adjustment Division, USDA, FSA, STOP 0517, P.O. Box 2415, Washington, D.C. 20250–2415, (202) 690–4091.

SUPPLEMENTARY INFORMATION:

Title: Report of Acreage.
OMB Number: 0560–0004.
Expiration Date: June 30, 1997.
Type of Request: Extension and revision of a currently approved information collection.

Abstract: Crop and acreage information is collected from producers to determine eligibility for benefits under a variety of programs administered by FSA. Crop and acreage information is collected once for each crop during established acreage reporting cycles. This single collection supports all FSA requirements. FSA's approach to collecting this information is to collect only the information needed to support program eligibility and compliance requirements. The majority of the information collected is used to support multiple program requirements such as the Noninsured Crop Disaster Assistance Program (NAP), Conservation Reserve Program (CRP), price support loan programs, and the Production Flexibility Contract Program in Title 1 of the 1996 Act. The 1996 Act changed the requirements of previously approved information collections. Specifically, FSA will require acreage data collection for farms with Production Flexibility Contracts only if a fruit or vegetable was planted for harvest. FSA does not require data to be submitted when producers did not plant fruits and vegetables. As a result of the 1996 Act, CCC provided instructions to FSA county offices on the information collection requirements for those crops that need verification of compliance, loan eligibility, or crop loss. As directed by CCC, FSA provided producers information through news releases, newsletters, radio, television, and public meetings on the information required to maintain eligibility for: CRP payments; marketing assistance loans; price support loans; and loan deficiency payments (LDP); and NAP benefits.

In contrast, prior to the enactment of the 1996 Act, FSA required producers to report acreage information for all program crops. The 1995 acreage data collected from producers for all programs used the farm number, tract number, and optional field number to establish the location of the crop. The crop information collected consisted of the crop and variety (if applicable), irrigation practice, intended use of the crop, crop status, land use code, and planting pattern, for applicable crops. Crop acreage, producer identification and producer's percent share in the crop were collected to calculate payments based on acreage. Additional information was also collected for those crops that were eligible for benefits under NAP in those cases where the information was not otherwise collected for another purpose. Consequently, crop and acreage information needed to support eligibility requirements for NAP were not included in the previous OMB approval for collecting this information. These requirements are being included in this revised information collection package.

With respect to loan and LDP eligibility for wheat, corn, grain sorghum, rice, upland cotton, oats, barley, soybeans, ELS cotton, and oilseeds, FSA only requires acreage information from those producers requesting such benefits.

With respect to CRP, the data collected is the acreage enrolled or requested to be enrolled for new CRP contracts. The data collected is utilized in verification that the farm has correctly maintained the CRP acreage and producer identification and percent share is correct.

Acreage report data is not only used for verifying compliance with program provisions in the field offices. Historical and projected plantings are also used for the following:

(1) Supply and demand projections released in the monthly World Agriculture Supply and Demand Estimates publication, (2) the semi-annual long-term supply and demand forecasts released in the President's Budget and Mid-session Review, (3) analyzing supply, demand, outlay, and income impacts of options for implementing CRP provisions, (4) analyzing legislative proposals.

The acreage report data obtained at the farm level is used to examine the planting of crops on individual farms and how these plantings change in response to prices and farm program provisions. The data is also used to forecast plantings on farms with expiring CRP contracts.

The Agency cost estimates are $2.44/per acreage report for data collection. Identification of crops on acreage reports allows FSA to use 35mm slides for aerial compliance to determine crop acreage. Failure to obtain acreage reports would raise the cost of compliance per farm because FSA would require additional field visits to identify crops.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individual producers.
Estimated Number of Respondents: 1,239,500.
Estimated Number of Responses per Respondent: 3.
Estimated Total Annual Burden on Respondents: 309,875 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to David M. Nix, Agricultural Program Specialist, USDA, Farm Service Agency, Compliance and Production Adjustment Division, STOP 0517, PO Box 2415, Washington, D.C. 20250–2415, (202) 690–4091.

Signed at Washington, DC, on January 9, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–1462 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–05–P

Food and Consumer Service

The Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 1997

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing food assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 1997. The commodities made available under this notice shall, at the discretion of the State, be distributed to organizations for use in preparing meals, and/or for distribution to households for home consumption.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Program Administration Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities determined to be available for donation by the Secretary of Agriculture under the authority of section 416 of the Agricultural Act of 1949, Public Law 81–439 (hereinafter referred to as section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, Public Law 74–320 (hereinafter referred to as section 32), which have been determined by the Secretary to be in excess of the quantities needed to carry out other programs, including CCC sales obligations. The types of commodities available under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, and fruits. Donations of surplus commodities were initiated in 1981 as part of the Department's efforts to reduce stockpiles of government-owned commodities, such as cheese, flour, butter, and cornmeal, which had been acquired under section 416. These donations responded to concern over the costs to taxpayers of storing large quantities of foods, while at the same time there were persons in need of food assistance. The authority to donate surplus commodities for distribution through TEFAP was codified in Title II of Public Law 98–8, the Emergency Food Assistance Act (EFAA) of 1983 (7 U.S.C. 612c note).

In recent years, the supply of surplus commodities has been drastically reduced. These reductions are the result of changes in the commodity loan programs which have brought supply and demand into better balance, and accelerated donations and sales. As a result, the Department anticipates that there will not be sufficient quantities of commodities available under section 416 to support their donation for distribution through TEFAP in FY 1997. However, the Secretary of Agriculture anticipates that sufficient quantities of dried figs, dried prunes, canned salmon and frozen ground beef will be purchased under section 32 to warrant their donation for distribution through TEFAP during FY 1997. While sufficient quantities of these commodities may be available in FY 1997 to support such donations, the Department would like to point out that commodity purchases under section 32 are based on changing agricultural market conditions; therefore, such commodities may not be available for donation in FY 1998.

Purchased Commodities

Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100–435, which added sections 213 and 214 to the EFAA. Those sections required the Secretary to purchase commodities for distribution to States, in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (hereinafter referred to as "the Personal Responsibility Act"), signed by President Clinton on August 22, 1996, amended the Food Stamp Act of 1977 to require the Secretary to use $100 million from the funds made available to carry out the Food Stamp Act of 1977 for each of FYs 1997 through 2002 to purchase a variety of nutritious and useful commodities and distribute the commodities to States for distribution through TEFAP. The Act also amends the EFAA to delete the authorization of appropriations for food purchases under section 214. However, in the Agriculture, Rural Development, Food and Drug Administration and Related Appropriations Act, 1997 (P.L. 104–180), Congress appropriated funds that can be used for TEFAP commodity purchases in addition to the $100 million earmarked by the Personal Responsibility Act. The Department has determined that up to $45 million of the funds appropriated and available to TEFAP under P.L. 104–180 will be used for TEFAP commodity purchases, bringing the maximum amount of funds potentially available to buy TEFAP commodities to $145 million.

For FY 1997, the Department anticipates purchasing for distribution through TEFAP the following commodities: peanut butter, vegetable oil, rice, macaroni, spaghetti, grits, fortified cereal, roasted peanuts, dehydrated potatoes, dry bagged beans and dried egg mix; canned apple, grapefruit, orange and tomato juices, vegetarian beans, carrots, green beans, tomatoes, tomato sauce, corn, peaches, applesauce, pineapple, pork, salmon, beef, and chicken; and frozen ground beef and turkey, cut-up chicken, and turkey roasts. The amounts of each item purchased will depend on the prices USDA must pay, as well as the quantity of each item requested by the States. Changes in agricultural market

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conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above. Once USDA has made the commodities available to States, State officials will be responsible for determining how to allocate the State's "fair share" to eligible organizations. States have full discretion in determining the amount of commodities that will be made available to organizations for distribution to needy households for use in home-prepared meals or for providing prepared meals to the needy at congregate feeding sites. In accordance with section 871 of the Personal Responsibility Act, which amended section 202A of the EFAA, the Department does, however, encourage States to establish a State advisory board comprised of public and private entities with an interest in the distribution of TEFAP commodities. Such advisory boards can provide valuable input on how commodities should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their resources in the most efficient and effective manner possible.

In section 110 of the Hunger Prevention Act, Congress established the Soup Kitchens/Food Banks Program. Under the provisions of section 110, the Secretary was required to purchase and distribute commodities to States for use by soup kitchens and food banks. Section 873 of the Personal Responsibility Act deletes section 110 of the Hunger Prevention Act and provides for the absorption of the Soup Kitchens/Food Banks Program into TEFAP. Therefore, commodities will not be purchased for distribution under the Soup Kitchens/Food Banks Program in FY 1997. Organizations that had been eligible for SK/FB will, however, be eligible to receive commodities under the expanded TEFAP.

Dated: January 13, 1997.

William E. Ludwig,

Administrator.

[FR Doc. 97–1432 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Permitting Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) in the White Mountain National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY:

Proposed Federal Action.—The proposed Federal action is to authorize AMC under a 30-year term special use permit (38 Stat., 11.01, as amended) to continue to occupy National Forest System (NFS) land in order to operate, maintain, and reconstruct its facilities to provide public recreation and information services as defined in the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and to provide other services as outlined in the AMC's Master Development Plan (MDP), consistent with the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and Special Use Permit Authority.

Based on Forest Plan goals, the primary purposes of the Huts and Pinkham Notch Visitor Center (PNVC) are to provide recreation opportunities and information services. Other uses proposed in AMC's master plan are not essential to these two purposes; however, they are not in conflict. Therefore, uses at the huts within the proposed action include: Food and lodging (seasonally); information services; education programs; support for research, trails, and search and rescue; and retail sales. Uses at PNVC include: Food and lodging; visitor information services; educational programs; administration of programs; public meeting space; a support center for search and rescue; employee housing; visitor center store; and other public facilities (parking, showers). The specific activities within the authorized uses will be reviewed through the annual Operating Plan, and subject to environmental review as necessary. For example, we propose to authorize Pinkham Notch Visitor Center as an administrative center for research. Specific research proposals will be addressed on a case by case basis.

The facilities on National Forest System lands are Pinkham Notch Visitor Center, Greenleaf Hut, Galehead Hut, Zealand Hut, Mizpah Hut, Lakes of the Clouds Hut, Carter Notch Hut, and the area around Madison Spring Hut (the Hut itself is on one acre of private land). There is no proposed change to the overnight capacity at PNVC or the Huts. There are also no proposed changes to the facilities, except for the reconstruction of Galehead Hut and the PNVC parking lot.

The proposal to reconstruction Galehead Hut includes adding 430 square feet to the existing footprint and rotating the Hut southward 33 degrees. In addition, the septic system (gray water and grease trap) would be moved to the north of the Hut away from the viewshed of the Pemigewasset Wilderness.

The proposed redesign and reconstruction of the parking lot at PNVC will occur within the existing footprint. The proposal includes: Paving and marking the lot to maximize utilization of available parking space; improving vegetation barriers between the lot and highway; parking and access for persons with disabilities; a minimum 3-foot grass perimeter for snow loading and filtering runoff; and recycling pavement where removed. The existing parking lot lighting will be retained.

This proposed action includes monitoring impacts of solid and sanitary waste disposal on water quality, and the effects of soil compaction on surrounding vegetation within the permitted area of the huts.

Responsible Official.—The responsible official is Donna Hepp, Forest Supervisor, White Mountain National Forest, 719 Main Street, Laconia, New Hampshire.

Decision to be Made.—The decision is whether or not to authorize AMC under a 30 year term special use permit to continue to occupy National Forest System (NFS) land in order to operate, maintain, and reconstruct its facilities to provide public recreation and information services as defined in the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and to provide other services as outlined in the AMC's MDP, consistent with the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and Special Use Permit Authority. The decision includes the Forest Supervisor's approval of site specific mitigation and/or monitoring requirements.

Issuing authority—The issuing authority will be a term special use permit under the Term Permit Act of March 4, 1915 (38 Stat., 11.01, as amended). The length of permit depends on the level of investment on National Forest System lands. The value of PNVC and the Huts indicates a term of 30 years.

Alternatives—In preparing the environmental impact statement the Forest Service will consider a reasonable range of alternatives to the proposed action, including a "no action" alternative. The no action alternative will be the continuation of operations under the terms and conditions of the permit issued to the AMC in 1965, as amended up through October 29, 1995. The no action alternative is the baseline against which the effects of other alternatives are

compared, and represents the present course until the action is changed.

Response to AMC's proposed Master Development Plan demonstrated interest by some people to consider removal of the huts from the alpine zone. This, as well as other alternatives based on public comment, may be analyzed. Suggestions on alternatives that meet the purpose and need for action are welcome.

Issues—Tentative physical, biological and socio-economic issues that have been identified related specifically to the AMC Hut and PNVC proposal are: (1) Impacts on the alpine zone; (2) impacts on Threatened and Endangered (T&E) species; (3) impacts on native plants and animals; (4) impacts on water resources; (5) impacts on soil; (6) impacts on the quality of the recreation experience; (7) impacts on the amount of recreation use at the Huts and PNVC; (8) maintenance of recreation opportunities represented by these facilities as part of the implementation of the Forest Plan; (9) impacts on the visual resource; (10) impacts on Wilderness; (11) impacts on Appalachian Trail users; (12) impacts on the quality of life in local communities and (13) impacts on the economy. Other comments were received during the review of the Master Development Plan. Many comments related to administration of the permit, concerns about community relations, advocacy, etc. Since these are not environmental issues they will not be resolved in the EIS. They will be considered through permit administration and other measures.

Assisting Agencies—The U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, the New Hampshire Department of Resources and Economic Development, Natural Heritage Inventory and New Hampshire Department of Fish and Game have been asked to provide assistance.

For further information—Direct questions about the proposed action and environmental impact statement to AMC Permit Project Coordinator, White Mountain National Forest, 719 Main Street, Laconia, New Hampshire 03246, ATT: R. Oreskes, or phone Rebecca Oreskes at 603–466–2713 Ext 212.

SCOPING: The initial scoping period begins January 21, 1997 and ends March 7, 1997. The DEIS is expected to be completed in the fall of 1997.

The Forest Service is inviting written comments and suggestions on the scope of the analysis. A scoping letter will be sent to interested and affected individuals and organizations. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision.

Public participation has been and will continue to be important throughout this process. Before this official scoping began the Forest Service asked for comment on AMC's proposed Master Development Plan. The Forest held three public listening sessions and received several thousand comments, letters, cards and phone calls on AMC's operation in the Forest. These comments are still valid and will be used in the scoping process and environmental analysis.

All the input received to date as well as the input from this scoping will be used as part of the formal scoping process which includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determining potential cooperating agencies and task assignments.

Submit additional written comments and suggestions concerning the scope of the analysis to AMC Permit Team, White Mountain National Forest, 719 Main St., Laconia, New Hampshire 03246. Comments beyond those already on hand must be received by March 7, 1997.

The second stage of formal public involvement is on the Draft Environmental Impact Statement (DEIS). The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in Fall 1997. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The White Mountain National Forest will begin the process of Forest Plan revision in 1997 and plans to issue a Notice of Intent in 1998. To date we believe three Forest Plan level issues have been raised in the context of the AMC permit. We will carefully separate those comments applicable to the Forest Plan revision from those in the site specific analysis. These three issues are: (1) Appalachian Trail management, (2) the types of recreation use on public lands and (3) the intensity of recreation use on the Forest.

Appalachian Trail Management

PNVC and some of the Huts predate the Appalachian Trail and the Appalachian Trail was routed to take advantage of these existing facilities. There are two types of issues relating to the Appalachian Trail: (1) Forest Plan Standards and Guides and (2) the site specific effects on Appalachian Trail users. We will not address the first issue in this analysis since it relates to a larger Management Area issue than just the AMC Huts; nothing in the AMC Hut or PNVC permitting analysis will compromise the ability to resolve the greater Appalachian Trail/Forest Plan Standards and Guides issue. We will address the site specific Appalachian Trail experience in the EIS.

Types of Recreation Use on Public Lands

The current Forest Plan defines a mix of recreation uses. Neither our monitoring nor public comment has shown user conflicts relevant to the AMC permits that cannot be resolved on a site specific basis.

Intensity of Recreation Use

This concerns the level of recreation use on the Forest. This is a Forest-wide issue and will continue to be addressed in Forest planning. There are specific aspects of this issue which we will look at in this analysis. We will analyze the site specific direct, indirect, and cumulative effects of the Huts and PNVC and major access trails in the EIS.

In all cases the Land and Resource Management Plan takes primacy over special use permits. Changes in the Forest Land and Resource Management Plan may lead to changes to special use permits.

Importance of Timely Response

The Forest Service believes that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also,

environmental objections that could be raised at the draft environmental impact stage that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by responding to the DEIS by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by the Fall of 1997. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal under 36 CFR part 217 and 36 CFR part 251.

Dated: January 14, 1997.

Donna Hepp,

Forest Supervisor.

[FR Doc. 97–1476 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Business and Professional Classification Report.

Form Number(s): B–625(97).

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,101 hours.

Number of Respondents: 42,000.

Average Hours Per Response: 13 minutes.

Needs and Uses: The Bureau of the Census conducts the Business and Professional Classification Report to collect sales and other information from a sample redrawn every quarter of retail, wholesale, service, and unclassified business recently assigned Federal Employer Identification numbers (EIN). We are informed of the existence of these new businesses from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax-exempt status, wholesale inventories, type of operation, and assign a new or more refined kind-of-business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the sampling frames for our current business surveys up-to-date with the business universe. We plan to make the necessary revisions to the B–625 form to enable us to assign kind-of-business codes based on the new North American Industry Classification Systems (NAICS) in addition to the existing Standard Industrial Classification (SIC) system.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions.

Frequency: One time only per respondent.

Respondent's Obligation: Voluntary.

Legal Authority: Title, 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the information collection proposal should be sent within 30 days of publication to this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, D.C. 20503.

Dated: January 14, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1525 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–07–F

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Patent Cooperation Treaty.

Agency Form Number: PCT/RO/101 and Annex 134/144; PCT/IPEA/401 and Annex PCT/1B/328; PCT/Model Power of Attorney; Model of General Power of Attorney.

OMB Approval Number: 0651–0021.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 98,195 hours.

Number of Respondents: 15,800 (102,950 submissions per year).

Avg. Hours Per Response: Varies between .25 and 4 hours depending on the requirement.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty. The general purpose of the Treaty is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

Affected Public: Individuals, businesses or other for-profit organizations, not-for profit institutions, farms, federal, state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by

calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20503.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1526 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–16–P

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held February 21, 1997, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Sessions:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session:

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: January 14, 1997.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 97–1464 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

NOAA's Teacher At Sea Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judy Sohl, 1801 Fairview Ave. E., Seattle, WA 98102 [phone (206) 553–2633].

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Teacher At Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels. Teachers wishing to participate must submit an application that provides information about themselves and their teaching situation, provide two recommendations, submit a follow-up report with ideas for classroom application, and complete a Medical History Form.

II. Method of Collection

Applicants submit application forms.

III. Data

OMB Number: 0648–0283.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals (teachers, educators).
Estimated Number of Respondents: 300.
Estimated Time Per Response: .67 hours.
Estimated Total Annual Burden Hours: 230.
Estimated Total Annual Cost to Public: $0 (no capital, operations, or maintenance costs are expected).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1527 Filed 1–21–97; 8:45 a.m.]

BILLING CODE 3510–12–P

[I.D. 011497B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on February 3, 1997, beginning at 1:00 p.m. and may go into the evening until business for the day is completed. The team will recess all day February 4, 1997 to participate in a workshop on essential marine fish habitat, and will reconvene from 8:00 a.m. to 5:00 p.m.

on February 5, 1997 and February 6, 1997.

ADDRESSES: The meeting will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the Council's October 1996 instructions to the team, review its organization and prepare a schedule of team activities for 1997. The agenda also includes reviews of the inseason catch tracking process for 1997, review of the new stock assessment process, and a review of the harvest rate policy for various species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 15, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1499 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011397C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for scientific research permit (P496A).

SUMMARY: Notice is hereby given that David A. Nelson of U.S. Corps of Engineers (P496A) has applied in due form for scientific research permit to take listed sea turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before February 21, 1997.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250);

or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141). Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: David A. Nelson, U.S. Corps of Engineers (P496A), requests application under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant has requested a five-year permit to tag, track, blood sample, and relocate 900 loggerhead (*Caretta caretta*), 60 green (*Chelonia mydas*), 40 Kemp's ridley (*Lepidochelys kempii*), 3 leatherback (*Dermochelys coriacea*), and 2 hawksbill (*Eretmochelys imbricata*) sea turtles per year. These turtles would be captured incidental to dredging activities in the Atlantic and the Gulf of Mexico, as authorized by section 7 consultations. The turtles may receive PIT-tags, flipper-tags, and radio, satellite, or sonic tags. The purpose of the research is to minimize sea turtle-dredge interactions by determining sea turtle habits, abundance, and distribution.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 15, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1498 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Submission for OMB Review; Comment Request Entitled Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification (FAR Case 95–307)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification. A request for public comments was published at 61 FR 47893, September 11, 1996. No comments were received.

DATES: *Comment Due Date:* February 21, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The interim rule amends the Federal Acquisition Regulation to implement changes in the numbering system used by the Government to identify contractors in reporting to the Federal Procurement Data System. The rule substitutes the Data Universal

Numbering System (DUNS) number for the current Contractor Establishment Code (CEC).

Concerns have been raised that the same numbering system should be used for reporting to the Federal Procurement Data System (FPDS) and identifying vendors in the FACNET vendor registration database. Beginning with FY 1996 first quarter submissions to the Federal Procurement Data Center (FPDC), agencies may report the DUNS number.

The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the FPDC which collects, processes, and disseminates official statistical data on Federal contracting. The DUNS number is replacing the current CEC as the primary contractor identification number used to identify contractors in the FPDS. Changes to the FPDS reporting requirements are currently in process to conform to the requirements of Section 10004 of the Federal Acquisition Streamlining Act.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *50,400*; responses per respondent, *4*; total annual responses, *201,600*; preparation hours per response, *.0166*; and total response burden hours, *4,147*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: January 15, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–1494 Filed 1–21–97; 8:45 am]

BILLING CODE 6820–EP–P

Corps of Engineers, Department of the Army

Deauthorization of Water Resources Projects: Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Correction of Project Deauthorization List.

SUMMARY: This notice corrects the list of "Projects Deauthorized on November 29, 1995, by Section 1001(a) of Public Law 99–662," published by the Corps of Engineers in the **Federal Register** on December 18, 1996, (Vol. 61, No. 244, 66654). The Sault Sainte Marie, Second Lock, MI, project should not have been listed because preconstruction engineering and design funds were obligated on the project prior to November 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Micik, Headquarters, U.S. Army Corps of Engineers, Attention: CECW–BA, Washington, DC 20314–1000. Tel. (202) 761–0705.

Dated: January 15, 1997.

H. Martin Lancaster,

Assistant Secretary of the Army (Civil Works).

PROJECTS DEAUTHORIZED ON NOVEMBER 29, 1995 BY SECTION 1001(A) OF PUBLIC LAW 99–662

[Corrected List.—Corrects the list published in the Federal Register on December 18, 1996 (Vol. 61, No. 244, 66654).]

District	Project name	Primary state	Purpose
SWL	Mud Creek Wetlands	AR	FC
SPK	Pajaro River, Santa Cruz*	CA	FC
SPN	Santa Cruz Harbor, East Jetty*	CA	N
SWA	Belen	NM	FC
NAN	Lake George	NY	FC
NCB	Conneaut Small Boat Harbor*	OH	N
NCB	Fairport Harbor Dredging*	OH	N
NCB	Fairport Small Boat Harbor*	OH	N
LMM	Memphis Harbor*	TN	N
SWF	East Fork of Trinity River*	TX	FC
Total: 10			

*Projects reauthorized in 1990. See Federal Register notice of September 9, 1994.

Key To Abbreviations:
LMM Memphis District
NAN New York District
NCB Buffalo District
SPK Sacramento District
SPN San Francisco District
SWA Albuquerque District
SWF Fort Worth District
SWL Little Rock District
FC Flood Control
N Navigation

[FR Doc. 97–1472 Filed 1–21–97; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Design and Methodology and Reporting and Dissemination committees of the National Assessment Governing Board.

This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 21, 1997.

TIMES: Reporting and Dissemination Committee, 10:00 a.m.–12:00 noon, (open); Reporting and Dissemination and Design and Methodology Joint Committee, 12:00 noon–2:30 p.m., (open); Design and Methodology Committee, 2:30–4:00 p.m., (open).

LOCATION: Homewood Suites Hotel, 432 West Market Street, San Antonio, Texas.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On January 21, between the hours of 10:00 a.m. to 12:00 p.m. there will be a meeting of the Reporting and Dissemination Committee. The Committee will receive a briefing on the 1996 math results by the contractor and review the NAEP constituent survey instrument. Beginning at 12:00 noon, there will be a joint meeting of the Reporting and Dissemination and Design and Methodology Committees to discuss sampling issues related to IEP and LEP students, and private schools. At the conclusion of the joint committee meeting, approximately 2:30 p.m., the Design and Methodology Committee will meet to discuss issues related to the conduct of NAEP at the state level.

The public is being given less than fifteen days notice of this meeting because the Governing Board has been informed that the contractor requires decisions on these issues, no later than, January 23, 1997.

Records are kept on all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: January 15, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–1427 Filed 1–21–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–181–000]

Colorado Interstate Gas Company; Notice of Application

January 15, 1997.

Take notice that on January 3, 1997, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP97–181–000, an application pursuant to Section 7(c) and 7(b) of the Natural Gas Act (NGA), for authority to convert two existing injection/withdrawal wells in CIG's Flank Storage Field in Baca County, Colorado, to observation wells, and to abandon the wellhead facilities and gathering lines to the two injection/withdrawal wells, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

CIG states that the subject two injection/withdrawal wells proposed for conversion to observation wells have failed to function as injection/withdrawal wells to any appreciable extent even after CIG attempted to stimulate the wells by conducting hydraulic fracture treatment. However, because of their location in the storage field, the wells will be of value as observation wells by using electric logs to provide information concerning the integrity of the seal in the reservoir.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 5, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1443 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–146–000]

Columbia Gas Transmission Corporation; Notice of Application

January 15, 1997.

Take notice that on December 10, 1996, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–146–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon storage wells, numbered 5918 and 5804 together with associated well lines and appurtenances located in Columbia's Medina Storage Field.

Columbia states that due to ongoing encroachment problems resulting from rapid residential development in the area of the wells, it believes it is imperative to plug and abandon the facilities as soon as possible. Columbia further states that a review of its Medina Storage Field indicates the facilities are

not needed for the continued operation of the field.

The net debit to accumulated provision for depreciation for the proposed abandonment is estimated to be $222,779.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1442 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–185–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 15, 1997.

Take notice that on January 7, 1997, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP97–185–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an additional point of delivery for interruptible transportation service to Commonwealth Gas Services, Inc. (COS), located in Sussex County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery to COS for interruptible service under Part 284 of the Commission's Regulations. Columbia advises that the estimated quantities of natural gas to be delivered at the new point of delivery are 1,080 Mcf/Day and 155,000 Mcf/Annually. Columbia asserts the end use of the gas will be residential and the point of delivery will be utilized to serve Sussex County Prison.

Columbia states the interconnecting facilities to be constructed will consist of installing a 4-inch tap, 4-inch check valve, and approximately 40 feet of 4-inch pipe, located in Sussex County, Virginia, at an estimated cost of $12,500. Columbia advises they will be reimbursed by COS for 100% of the total actual cost of the proposed construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1444 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–542–000]

The Energy Spring, Inc., Notice of Issuance of Order

January 16, 1997.

The Energy Spring, Inc. (Energy Spring) submitted for filing a rate schedule under which Energy Spring will engage in wholesale electric power and energy transactions as a marketer. Energy Spring also requested waiver of various Commission regulations. In particular, Energy Spring requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Energy Spring.

On January 8, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy Spring should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Energy Spring is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy Spring's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1511 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP97–198–001]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 7, 1997, Gulf States Transmission Corporation (GSTC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 58G to be effective January 1, 1997.

GSTC states that the purpose of the filing is to remove a paragraph from Sheet No. 58G which GSTC originally filed in Docket No. RP97–174, and has not yet been approved by the Commission. On December 20, 1996, GSTC filed tariff sheets in compliance with Order No. 582. GSTC inadvertently included certain language on Sheet No. 58G that was filed as part of a compliance filing in Docket No. RP97–174, and has not yet been approved by the Commission. As such, GSTC is refiling Sheet No. 58G to remove that language. The remainder of Sheet No. 58G is unchanged.

GSTC states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1452 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–209–003]

Koch Gateway Pipeline Company; Notice of Refund Report

January 15, 1997.

Take notice that on January 8, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing a final refund report for the Cash-In/Cash-Out program as directed by FERC in Docket No. RP96–2091. On Friday December 13, 1996, Koch states that it refunded to all of its transportation customers the 1995 positive balances in the cash out program pursuant Section 20.1 (D) (ii) of the General Terms and Conditions of Koch's tariff. The refund made by Koch is a credit to each customer's account based on the volume transported during the first, third, and fourth quarters of 1995.

Koch Gateway states that copies of this filing have been served on all affected customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before January 22, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1448 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–116–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

January 15, 1997.

Take notice that on January 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective January 1, 1997:

Substitute Second Revised Sheet No. 1410
Substitute Third Revised Sheet No. 1411

Koch states that these revised tariff sheets are filed to comply with the Commission's "Order Accepting Tariff Sheets Subject to Condition" issued on December 31, 1996 in Docket No. RP97–116. As directed, Koch revised the tariff sheets to allow Customers requesting new firm transportation thirty (30) days to execute a service agreement after its tender by Koch if the term of the contract is greater than one year. For requests with contract terms of less than or equal to one year, Customers will have two (2) business days after tender by Koch to execute a new service agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1453 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–188–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

January 15, 1997.

Take notice that on January 9, 1997, Mississippi River Transmission Corporation (MRT) 1600 Smith Street, Houston, Texas 77002, filed in the above docket a request pursuant to §§ 157.205 and 157.212 of the Regulations under its blanket certificate issued in Docket No. CP82–489–000 to operate certain facilities in Arkansas as jurisdictional facilities to provide transportation services under Subpart G of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, MRT requests authority to operate one 2-inch I-shape meter station under Subpart G of Part 284 of the Commission's Regulations, located no MRT's Mainline 1 in Ashley County, Arkansas. MRT states that these facilities were initially constructed solely to provide transportation of natural gas under section 311 of the Natural Gas Policy Act and Subpart B of the Commission's Regulations to Arkla, a distribution division of NorAm Energy Corporation (ARKLA).

MRT states that the estimated volumes being delivered through these facilities are approximately 80,000 MMBtu annually and 216 MMBtu on a peak day. The cost of construction is estimated to be $9,167 and MRT will be reimbursed by Arkla for the total cost of construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations

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under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1445 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–342–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 10, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing, Second Revised Sheet No. 219 to replace First Revised Sheet No. 219 of Third Revised Volume No. 1 of its FERC Gas Tariff.

MRT states that the purpose of this filing is to correct minor pagination problems that have developed as a result of MRT's August 16, 1996 filing in Docket No. RP96–342–000 due to administrative oversight.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1450 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–5–16–001]

National Fuel Gas Supply Corporation; Notice of Correction to Tariff Filing

January 15, 1997.

Take notice that on January 8, 1997, National Fuel Gas Supply Corporation (National) tendered for filing, a correction to part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of January 1, 1997.

National states that it should have captioned Sheet No. 29 in this filing as Fourth Revised Sheet No. 29. This correction is necessary since the changes to that tariff sheet which National proposed in this proceeding must conform to the tariff sheet approved in Docket No. RP96–331–000, in order to retain the negotiated rate language approved in that proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1455 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–302–003]

Northern Natural Gas Company; Notice of Compliance Filing

January 15, 1997.

Take notice that on January 8, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective January 1, 1997:

Substitute 31 Revised Sheet No. 53
Substitute 2 Revised Sheet No. 148
Substitute 1 Revised Sheet No. 290
Substitute 3 Revised Sheet No. 291
Substitute 2 Revised Sheet No. 292

On July 1, 1996 in Docket No. RP96–302–000, Northern filed tariff sheets to revise its penalty provisions. On July 31, 1996, the Commission issued an Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Technical Conference to become effective January 1, 1997. The Technical Conference was convened on September 18, 1996. Northern filed pro forma tariff sheets with its reply comments in the instant proceeding on October 31, 1996. On December 19, 1996, the Commission issued an Order After Technical Conference in Docket No. RP96–302–000 (Order). The reason for this filing is to comply with the Commission's Order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1449 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–18–000]

P&T Power Company; Notice of Issuance of Order

January 16, 1997.

P&T Power Company (P&T Power) submitted for filing a rate schedule under which P&T Power will engage in wholesale electric power and energy transactions as a marketer. P&T Power also requested waiver of various Commission regulations. In particular, P&T Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by P&T Power.

On January 8, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by P&T Power should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, P&T Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of P&T Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1510 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–8–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 9, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective January 1, 1997.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that Appendix B attached to the filing contains explanations of the rate changes and details regarding the computation of the revised Rate Schedule LSS and GSS rates.

Transco states that copies of the filing are being mailed to each of its LSS and GSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1456 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–352–003]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 10, 1997 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective January 1, 1997

Substitute 3rd Revised Sheet No. 64A
Substitute Original Sheet No. 64A.1
4th Revised Sheet No. 95A
1st Revised Sheet No. 95B.1
5th Revised Sheet No. 95C
4th Revised Sheet No. 95D
4th Revised Sheet No. 95E
4th Revised Sheet No. 95F
3rd Revised Sheet No. 95G
3rd Revised Sheet No. 95H
2nd Revised Sheet No. 95L

Transwestern states that the purpose of this filing is to comply with the Commission's December 31, 1996, order accepting Transwestern's December 2, 1996 Pilot Program filing subject to certain conditions.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1451 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–225–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 8, 1997, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective February 8, 1997:

Third Revised Sheet No. 207
Second Revised Sheet No. 208

WNG states that this filing is being made pursuant to Subpart C of part 154 of the Commission's regulations. The purpose of the filing is to permit WNG to respond to customer complaints on gas quality and to bring WNG's quality provisions in line with other connecting pipelines. Third Revised Sheet No. 207 has been revised to restrict the content of nitrogen in the gas to no more than 4% by volume and the total amount of inert gases to 5%. The amount of fuel consumed will be lowered by pumping less inert gases.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1454 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–3–000 and Docket No. RM95–4–000]

Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs; Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Data Availability for Working Groups

January 10, 1997.

Take notice that the draft specifications for filing rate cases electronically is available on the Federal Energy Regulatory Commission's (Commission's) bulletin board system (BBS) for review by the Working Group—Filings. The draft rate case filing instructions are available under the Gas Pipeline Data (GPD) option of the BBS under the Order 581/582 Working Group Menu under the topic, "Rate Filings—Working Group" in a file entitled RATESJ.EXE.

The Commission invites comments on the draft specifications for filing rate cases. Such comments may be uploaded to the Commission's BBS or addressed to Richard A. White, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments may also be e-mailed to Elizabeth.Taylor@FERC.fed.us, Thomas.Brownfield@FERC.fed.us, or Jacqueline.McDuffy@FERC.fed.us or uploaded to the GPD portion of the BBS. Comments should be received by January 22, 1997. We encourage commenters to submit written comments also on a 3½" diskette in ASCII so they can be posted on the Commission's bulletin board. It is preferable for comments uploaded to the Commission's BBS to be in ASCII format so files may be viewed on-line and easily converted to other software formats.

The upload option, available under the Order No. 581/582 Working Group Menu, is designed to permit members of the public to upload a file to the BBS. To do so, select upload from the Working Group menu. You will be prompted for the File Mask. Enter the Drive, directory, if applicable, and the filename. For example:

File Mask? C:FERC Rate_com.txt

You will be prompted to enter a file description. A file description must accompany every file. The basic file description can be no more than 70 characters. An option exists which permits you to enter a more detailed description. After typing the detailed description, select send to associate it with your file. Other menu features are explained under the help option.

The system will not allow you to upload a file with the same name as a file already on the bulletin board. It is preferable to incorporate your company initials or some other unique identifier in the file name to distinguish your files from others' files.

Files uploaded to the Commission's bulletin board will not be immediately available for download. The party uploading the file may, however, check the file list to ensure the file uploaded properly.

This document is available for inspection or copying by accessing the Commission Issuance Posting System (CIPS). CIPS and GPD are part of the Commission's electronic bulletin board service providing access to documents issued by or available electronically from the Commission. CIPS and GPD are available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397, if local, or 1–800 856–3920, if long distance.

To access the Commission's bulletin board system, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format.

The Commission's bulletin board system can also be accessed through the FedWorld system directly by modem or through the Internet.

By modem:

Dial (703) 321–3339 and logon to the FedWorld system. After logging on, type:

/go FERC

Through the Internet:

Telnet to: fedworld.gov
Select the option: [1] FedWorld
Logon to the FedWorld system
Type: /go FERC

Or:

Point your Web Browser to: http://www.fedworld.gov
Scroll down the page to select FedWorld Telnet Site
Select the option: [1] FedWorld
Logon to the FedWorld system
Type: /go FERC

Lois D. Cashell,

Secretary.

[FR Doc. 97–1508 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2703–000, et al.]

Citizens Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

January 14, 1996.

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Company

[Docket No. ER96–2703–000]

Take notice that on December 24, 1996 and January 6, 1997, Citizens Utilities Company tendered for filing amendments in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. West Penn Power Company

[Docket No. ER96–3146–000]

Take notice that on December 26, 1996, West Penn Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER97–315–000]

Take notice that on December 18, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER97–316–000]

Take notice that on December 18, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER97–317–000]

Take notice that on December 18, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

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Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER97–979–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to NUI Energy Brokers, Inc. pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon NUI Energy Brokers, Inc. and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER97–980–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to National Gas and Electric L.P., pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon National Gas and Electric L.P. and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER97–981–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy individually to American Electric Power Service Corporation on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company and Ohio Power Company, a New York Corporation (AEP), pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon AEP and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. ER97–982–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Delmarva Power & Light pursuant to the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon Delmarva Power & Light and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER97–983–000]

Take notice that on December 30, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated November 19, 1996, between KCPL and Tennessee Power Company (TPCO). KCPL proposes an effective date of December 12, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and TPCO.

In this filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corporation

[Docket No. ER97–984–000]

Take notice that on December 30, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Baltimore Gas and Electric Company under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1997.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Company

[Docket No. ER97–985–000]

Take notice that on December 30, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a Form of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing CNG Power Services Corporation as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of December 19, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER97–988–000]

Take notice that on December 31, 1996, Texas-New Mexico Power Company, tendered for filing an application for a Commission order accepting a proffered rate schedule for market-based rates and providing for associated authorizations and requirements.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER97–989–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Termination Agreement for the Twin Cities-Iowa-Omaha-Kansas City 345 Kv Interconnection and Coordinating Agreement.

NSP requests that the Commission accept the agreement effective December 31, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER97–990–000]

Take notice that on December 31, 1996, Northern States Power Company (NSP), tendered its Amendment No. 1 to the Electric Services Agreement among the City of Rice Lake, Wisconsin, Northern States Power Company (MIN) and NSPW dated December 24, 1996, unbundled power sale rate information

and cost support data for the Electric Services Agreement with the City of Rice Lake. NSP requests an effective date of January 1, 1997.

Under this Amendment No. 1, provision is made to include requirements for reactive power and power factor.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER97–991–000]

Take notice that on December 31, 1996, Northern States Power Company, Minnesota (NSP), tendered its filing of Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the City of Buffalo, Minnesota. The filing contains cost support and the unbundled power sale rate information.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER97–992–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of Minnkota Power Cooperative) under the Northern States Power Company's Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER97–993–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and City of New Ulm, MN.

NSP requests that the Commission accept the agreement effective December 18, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company)

[Docket No. ER97–994–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of United Power Association) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota Company)

[Docket No. ER97–995–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of City of Buffalo, Minnesota) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company)

[Docket No. ER97–996–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Medford, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northern States Power Company (Minnesota Company)

[Docket No. ER97–997–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Rice Lake, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northern States Power Company (Minnesota Company)

[Docket No. ER97–998–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP-Wholesale (on behalf of City of Cornell, Wisconsin).

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company (Minnesota Company)

[Docket No. ER97–999–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of Ottertail Power Company) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northern States Power Company (Wisconsin Company)

[Docket No. ER97–1000–000]

Take notice that on December 31, 1996, Northern States Power Company, (Wisconsin) (NSPW), tendered its revised Service Schedule A to the Electric Services Agreement between

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the City of Wisconsin Rapids, Wisconsin and NSPW, unbundled power sale rate information and cost support data. NSP requests an effective date of January 1, 1997.

Under the revised Service Schedule A, NSP is responsible for providing the reserve capacity obligation associated with the capacity sold.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1001–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement and the Non-Firm Transmission Service Agreement between NSP and Northwestern Wisconsin Electric Company.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northeast Utilities Service Company

[Docket No. OA97–442–000]

Take notice that on January 3, 1997, Northeast Utilities Service Company tendered for filing a Request for Temporary Waiver of Reporting Requirements under Part 37 of the Commission's Regulations.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1509 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–1002–000, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 15, 1997.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1002–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement and the Non-Firm Transmission Service Agreement between NSP and North Central Power Co., Inc.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company

[Docket No. ER97–1003–000]

Take notice that on December 31, 1996, Northern States Power Company, Wisconsin (NSPW), tendered its Power and Energy Supply Agreement by and between the City of Cornell, Wisconsin and NSPW dated December 2, 1996, cost support data and unbundled power sale rate information. NSP requests an effective date of January 1, 1997.

Under this new agreement, the City of Cornell will be entitled to discounts from NSPW's rates currently in effect under its W–1 Rate Schedule and that such discounts are being offered to all of its wholesale electric customers. The agreement contains a provision allowing the customer to obtain a negotiated rate upon two years prior notice.

A copy of the filing was served upon the City of Cornell, the Wisconsin Public Service Commission and the Michigan Public Service Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1004–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of City of Kasson, Minnesota) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1005–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Wisconsin Rapids, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1006–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP-Wholesale (on behalf of City of Bangor, Wisconsin).

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1007–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission

Service Agreement between NSP and the City of Medford, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1008–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of Enron) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1009–000]

Take notice that on December 31, 1996, Northern States Power Company, Minnesota (NSP), tendered its filing of Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the City of Kasson, Minnesota. The filing contains cost support and the unbundled power sale rate information.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER97–1010–000]

Take notice that on December 31, 1996, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Central Hudson Gas & Electric Corporation, Western Power Services, Inc., PanEnergy Trading and Market Services, L.L.C., North American Energy Conservation, Inc., Orange and Rockland Utilities, Inc., Morgan Stanley, Inc., and Niagara Mohawk Power Corporation (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of January 2, 1997 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER97–1011–000]

Take notice that on December 31, 1996, Southern California Edison Company (Edison), tendered for filing amendments (Amendments) to the following supplemental agreements and associated FTS agreement to the 1990 Integrated Operations Agreement (1990 IOA) between Edison and the City of Azusa (Azusa):

Amendment No. 1 to the Supplemental Agreement for the Integration of the Pasadena Power Sales Agreement

Amendment No. 1—1995 Supplemental Agreement Between Southern California Edison Company and the City of Azusa for the Integration City's Entitlement in San Juan Unit 3

Amendment No. 1 to the Edison-Azusa 1995 San Juan Unit 3 Firm Transmission Service Agreement Between Southern California Edison Company and City of Azusa

Amendment No. 2 to the Edison-Azusa Pasadena Firm Transmission Service Agreement

Additionally, pursuant to 35.15 of the Commission's Regulations under the Federal Power Act (18 CFR 35.15) and the Amendments, Edison tenders for filing a Notice of Cancellation of FERC Rate Schedule Nos. 247.13 and 247.13.1, to be effective January 1, 1997.

Edison and Azusa entered into the Amendments to accommodate changes made in the Pasadena Power Sale Agreement between Azusa and the City of Pasadena. Edison requests waiver of the Commission's 60-day notice requirement and an effective date of January 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER97–1012–000]

Take notice that on December 31, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with Oneida Madison Electric Cooperative, Inc. of New York (OMEC), for facilities Agreement.

NYSEG requests an effective date of January 2, 1997, and therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Oneida Madison Electric Cooperative, Inc. and on the Public Service Commission of the State of New York.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER97–1015–000]

Take notice that on December 31, 1996, Southern California Edison Company (Edison), tendered for filing a Transmission Substation Facilities Agreement (Agreement) between Edison and the City of Azusa. Pursuant to the terms of the Agreement, Edison is also submitting revisions to Rate Schedule FERC Nos. 16, 160, 247.4, 247.6, 247.8, 247.24, and 247.29, and a Notice of Cancellation of Rate Schedule FERC No. 247.32 and Supplements thereto.

Edison requests waiver of the Commission's 60-day notice requirement and an effective date of January 1, 1997 for the Agreement, the rate schedule changes, and the Notice of Cancellation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc.

[Docket No. ER97–1016–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Rate Schedule FPC No. 4, Power Transmission Agreement between Western Resources, Inc. (formerly The Kansas Power and Light Company), Kansas Gas and Electric Company (a wholly owned subsidiary of Western Resources) and Omaha Public Power District (OPPD).

Notice of the proposed cancellation has been served upon Omaha Public Power District and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Western Resources, Inc.

[Docket No. ER97–1017–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement Nos. 1 and 3 to Rate Schedule FPC No. 72, Electric Interconnection Contract between WestPlains Energy, a division of Utilicorp United, Inc. and Western Resources, Inc. (formerly The Kansas Power and Light Company).

Notice of proposed cancellation has been served upon UtiliCorp United, Inc. and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER97–1018–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement No. 2 to Rate Schedule FPC No. 84, Electric Interchange Agreement between Missouri Public Service, a division of UtiliCorp United, Inc. and Western Resources, Inc. (formerly The Kansas Power and Light Company).

Notice of the proposed cancellation has been served upon UtiliCorp United, Inc., the Kansas Corporation Commission, and the Missouri Public Service Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER97–1019–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Rate Schedule FPC No. 92, Power Interchange Agreement between Western Resources, Inc.'s wholly owned subsidiary Kansas Gas and Electric Company and Omaha Public Power District.

Notice of the proposed cancellation has been served upon Omaha Public Power District and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER97–1020–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement No. 3 to Rate Schedule FPC No. 101, the Electric Interconnection Contract between WestPlains Energy, a division of UtiliCorp United, Inc. and Kansas Gas and Electric Company (KGE), as filed by Western Resources, Inc. on behalf of Western Resources' wholly owned subsidiary KGE.

Notice of the proposed cancellation has been served upon UtiliCorp United, Inc. and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER97–1021–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement No. 2 to Rate Schedule FPC No. 106, the Power Interchange Agreement between Missouri Public Service, a division of UtiliCorp United, Inc. and Kansas Gas and Electric Company (KGE), as filed by Western Resources, Inc. on behalf of Western Resources' wholly owned subsidiary KGE.

Notice of the proposed cancellation has been served upon UtiliCorp United, Inc., the Kansas Corporation Commission, and the Missouri Public Service Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Western Resources, Inc.

[Docket No. ER97–1022–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement Nos. 1 and 2 to Rate Schedule FPC No. 123, Electric Interconnection contract between Midwest Energy, Inc. and Western Resources Inc. (formerly the Kansas Power and Light Company).

Notice of the proposed cancellation has been served upon Midwest Energy, Inc. and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Detroit Edison Company

[Docket No. ER97–1024–000]

Take notice that on December 31, 1996, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service (the Service Agreement) between Detroit Edison Power Delivery Transactions and Detroit Edison Merchant Operations dated as of December 26, 1996. Detroit Edison requests that the Service Agreement be made effective as of January 1, 1997.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Company

[Docket No. ER97–1025–000]

Take notice that on December 31, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated August 1, 1996, with CINergy Operating Companies (CINergy), for and on behalf of the CINergy Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.), for the sale of capacity and/or energy under PP&L's Short Term Capacity and/or Energy Sales Tariff. The Service Agreement adds CINergy as an eligible customer under the Tariff.

PP&L requests an effective date of December 30, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CINergy and to the Pennsylvania Public Utility Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1512 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11286–SC]

City of Abbeville; Notice of Availability of Draft Environmental Assessment

January 15, 1997.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for relicensing the Abbeville Hydroelectric Project, located in Abbeville and Anderson Counties, South Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of licensing the existing project and has concluded that issuing a license for the project, with appropriate environmental projection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1–A, Washington, D.C. 20426. Please affix "Abbeville Hydroelectric Project No. 11286" to all comments. For further information, please contact Frank Karwoski at (202) 219–2782.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1447 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Non-Project Use of Project Lands

January 15, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-project Use of Project Lands (Expansion of Marina).

b. Project No.: 1494–135.

c. Date Filed: December 17, 1996.

d. Applicant: Grand River Dam Authority (GRDA).

e. Name of Project: Pensacola Project.

f. Location: The proposed marina expansion would be located in the Elk River arm of Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant contact: Marsha Hawkins, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. FERC contact: John K. Hannula, (202) 219–0116.

j. Comment date: February 27, 1997.

k. Description of the Application: GRDA requests approval to permit Billy Kuykendall, d/b/a The Ponderosa, to add two additional docks containing 20 boat slips and replace one existing dock.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1446 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00206; FRL–5582–2]

Renewal of Agency Information Collection Activities; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: This notice announces that the Agency intends to renew the Information Collection Request (ICR) entitled "Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection" (ICR No. 1249.05; OMB No. 2070-0074) which will expire on April 30, 1997. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the information collection as described below.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00206 and the appropriate ICR number by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00206" and the appropriate ICR number. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not

contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

I. Information Collection Request

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection (ICR No. 1249.05; OMB No. 2070-0074). Expiration date: April 30, 1997.

Affected entities: Parties affected by this information collection are registrants of 1080 collars, the state lead agencies of participating states, and certified pesticide applicators using the 1080 collars for livestock protection.

Abstract: As a condition of the Sodium Monofluoroacetate (Compound 1080) registration, EPA has required submission of annual reports monitoring use of all Livestock Protection Collar products. This ICR is a recordkeeping activity in which respondents keep records of: (a) Number of collars purchased; (b) number of collars placed on livestock; (c) number of collars punctured or ruptured; (d) apparent cause of puncture or rupture; (e) number of collars lost or unrecovered; (f) number of collars in use and in storage; and (g) location and species data on each animal poisoned as an apparent result of the toxic collar. As a condition of registration, EPA has required submission of annual reports monitoring use of all Livestock Protection Collar products as required by a 1982 court decision.

Burden statement: The annual respondent burden for the 1080 Livestock Collar Program is estimated to average 32 hours per certified applicator, 77 hours per state, and 9 hours per registrant participating in the program, including time for: Planning activities; creating information; gathering information; processing, compiling, and reviewing information for accuracy; recording, disclosing or displaying the information; and storing, filing, and maintaining the data. Third party notification is included in this ICR as the applicators are reporting to state lead agencies.

The entities affected include small business, however, the degree of imposition that these recordkeeping and reporting requirements impose on such individuals is minimal. The main purpose of the recordkeeping requirements is to promote responsible use and handling, and the main purpose for requiring monitoring reports is to establish a process through which it is mandatory to inform the EPA of the results of collar use.

Any Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Record

A record has been established for this action under docket number "OPP-00206" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: January 14, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–1489 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66234; FRL 5579–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 21, 1997 orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 49 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000000 WA—96—0035	Baciticide	Sodium hypochlorite
000100 AR—90—0005	Ridomil 5G-Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 AZ—85—0008	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 AZ—86—0015	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—82—0024	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—85—0068	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—86—0018	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—91—0005	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CO—88—0001	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 FL—81—0017	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 FL—86—0002	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 FL—89—0023	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 GA—81—0004	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ID—83—0033	Apron TM 70SD	*cis*-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ID—89—0005	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 KY—81—0003	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 LA—92—0004	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 MD—81—0014	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 MD—88—0004	Triumph 4E Insecticide	*O,O*-Diethyl *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)phosphorothioate
000100 NC—81—0011	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 OH—81—0011	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 OK—90—0005	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 OR—89—0008	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 PA—81—0018	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 PA—93—0006	Pace Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 SC—81—0001	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 TN—87—0015	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 TX—91—0011	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 TX—92—0015	Pace Turf Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 VA—81—0007	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 VA—88—0006	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—83—0035	Apron TM 70SD	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—87—0002	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—89—0015	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—90—0033	Apron 35 SD	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000100 WA—92—0042	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000264—00326	Sevin Brand 85% Manufacturing Concentrate Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264—00329	Sevin 95% Technical Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264—00347	Sevin Bait MC Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000769—00622	SMCP Professional Exterminators Concentrated Aerosol Insecticide	Aliphatic petroleum hydrocarbons
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
002596—00027	Hartz Indoor No	Methyl nonyl ketone
006665—00008	Gro Green Weed 'n Feed 60	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester
		Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
007078—00001	Cidex Aqueous Activated Dialdehyde Solution	Glutaraldehyde
007078—00004	Cidex Formula 7° Long-Life Activated Dialdehyde Solution	Glutaraldehyde
007078—00014	Cidex Plus° 28 Day Solution	Glutaraldehyde
049320—00006	Natur - Gro R-50	Ryanodine
049320—00007	Tri-Excel DS Natur - Gro Triple Plus	Pyrethrins
		Rotenone
		Cube Resins other than rotenone
		Ryanodine
069421—00063	Insecticide Aerosol D-Phenothrin, 2%	(3-Phenoxyphenyl)methyl *d-cis and trans*° 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
070051—00010	Superneem 4.5 Botanical Insecticide	Azadirachtin

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
002596	Hartz Mountain Corp., 400 Plaza Dr, Secaucus, NJ 07094.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
006665	Gro Green Prod Inc., 717 Elk St., Buffalo, NY 14210.
007078	Johnson & Johnson Medical Inc., Box 90130, Arlington, TX 76004.
049320	Progressive Agri-Systems, Inc., 125 W. Seventh Street, Wind Gap, PA 18091.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
069421	Black Flag Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.
070051	Thermo Trilogy Corp., 7500 Grace Dr., Columbia, MD 21044.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrants to explore the possibility of withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
15662–33–6	Ryanodine	049320

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before July 21, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 30, 1996.

Oscar Morales,

Acting Director, Program Management Support Division, Office of Pesticide Programs.

[FR Doc. 97–1262 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30427; FRL–5582–4]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by February 21, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30427] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30427]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joan Karrie, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8699; e-mail: karrie.joan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67702–G. Applicant: W. Neudorff GmbH KG, Postfach 1209, an der Muhle 3, D–31860 Emmerthal, Germany. Product name: NEU 1165M Slug and Snail Bait. Molluscicide. Active ingredient: Iron phosphate at 1.0 percent. Proposed classification/Use: None. For on vegetables, fruits (including citrus), berries, outdoor ornamentals, greenhouses, and lawns.

2. File Symbol: 70061–R. Applicant: Themac Incorporation P.O. Box 5209, Valdosta, GA 31603–5209. Product name: Game Stop. Vertebrate repellent. Active ingredient: Fish oil at 11.6 percent. Proposed classification/Use: None. For use on foliage and twigs of trees, shrubs, and ornamental plants which are fed on by rabbits and deer.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30427] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 6, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–1264 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50823; FRL–5581–4]

Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (13), Office of Pesticide Programs, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit: *54555–EUP–6.* Extension. SKW Trostberg, AG, c/o Siemer & Associates, Inc., 4672 W. Jennifer, Suite 103, Fresno, CA 93722. This experimental use permit allows the use of 20,978 pounds of the growth regulator hydrogen cyanamide on 4,680 acres of various crops to evaluate its ability to stimulate uniform budbreak. The program is authorized only in the States of California and Georgia. The experimental use permit is effective from October 18, 1996 to March 1, 1998.

Persons wishing to review this experimental use permit are referred to the designated product manager. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 8, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–1490 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–690; FRL–5583–3]

Interregional Research Project No. 4; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: This notice announces the filing of an amendment to pesticide petition (PP) 5E4598 proposing to extend the effective date for the time-limited tolerance established for indirect or inadvertent combined residues of the insecticide imidacloprid and its metabolites resulting from crop rotational practices in or on the raw agricultural commodities of the cucurbit vegetables crop group. This notice includes a summary of the amended petition that was prepared by Bayer Corporation (Bayer), the registrant, and submitted by the Interregional Research Project No. 4, the petitioner.

DATES: Comments, identified by the docket number [PF–690], must be received on or before February 21, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov or by submitting disks. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by the docket number [PF–690]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment that does

not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783, e-mail:jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received an amendment to PP 5E4598 from the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. The amended petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.472 by extending the effective date to expire on December 31, 1997, for the time-limited tolerance established for the indirect or inadvertent combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, resulting from crop rotational practices in or on the raw agricultural commodities in the cucurbit vegetables crop group at 0.2 parts per million (ppm). This tolerance will not support registration for imidacloprid on cucurbit vegetables. EPA will not consider applications for section 3 or section 24(c) registration for use of imidacloprid on cucurbit vegetables based on this time-limited tolerance. The tolerance will allow growers to produce cucurbit vegetables in rotation with crops that are treated in accordance with registered uses of imidacloprid. Imidacloprid registrations prohibit growers from planting crops that lack an imidacloprid tolerance on ground treated with the insecticide within a 12-month period. Crop rotational studies indicate that plant back crops grown in fields treated with imidacloprid may contain measurable amounts of the pesticide residue, if the rotational crop is planted within 12 months of application of the pesticide. In some areas, however, it is a common practice for growers to plant back cucurbit vegetables (melons, squash and cucumbers) in fields that have been used to produce tomatoes and peppers. Imidacloprid is registered and tolerances are established for the fruiting vegetables crop group (including tomatoes and peppers).

IR–4 has submitted PP 6E4766, which proposes a permanent tolerance for residues of imidacloprid and its metabolites in or on the cucurbit vegetables crop group at 0.5 ppm. Although PP 6E4766 proposes a tolerance in support of registration for use of imidacloprid on cucurbit vegetables, the proposed tolerance, if established, will be adequate to cover indirect or inadvertent residues on cucurbits resulting from registered uses of imidacloprid. EPA's evaluation of PP 6E4766 will not be completed in time to establish a permanent tolerance, prior to the December 31, 1996, expiration date for the time-limited tolerance. Therefore, IR–4 proposes that the time-limited tolerance for imidacloprid be extended to December 31, 1997, to allow EPA additional time to review IR–4's petition for permanent tolerance for residues of imidacloprid on cucurbit vegetables.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality and Protection Act IR–4 included in the amendment a summary of the petition provided by Bayer and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Bayer; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Plant Metabolism and Analytical Method

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. There is an additional confirmatory method available. Imidacloprid and its metabolites have been shown to be stable for at least 24 months in frozen storage.

B. Toxicological Profile of Imidacloprid

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 to 475 milligrams (mg)/kilogram (kg) body weight (bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was >69 mg/cubic meter (m^3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A two-generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* Ninety-day feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies, respectively.

5. *Chronic toxicity/oncogenicity.* A 2–year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/ bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical.

6. *Endocrine effects.* The toxicology database for imidacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

7. *Mode of action.* Imidacloprid exhibits a mode of action different from

traditional organophosphate, carbamate, or pyrethroid insecticides. Imidacloprid acts by binding to the nicotinergic receptor sites at the postsynaptic membrane of the insect nerve. Due to this novel mode of action, imidacloprid has not shown any cross resistance to registered alternative insecticides.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. Those potential exposures are addressed below:

1. *Dietary.* The EPA has determined that the reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. As published in the **Federal Register** of December 13, 1995 (60 FR 64006) and June 12, 1996 (61 FR 2674) (petition to establish tolerances on leafy green vegetables (PP 5F4522/R2237)), the theoretical maximum residue contribution (TMRC) from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7 percent of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (<1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1 percent of the RfD. Therefore, Bayer believes that dietary exposure from the existing uses (including this time-limited tolerance) will not exceed the reference dose for any subpopulation (including infants and children).

2. *Water.* Although the various imidacloprid labels contain a statement that this chemical demonstrates the properties associated with chemicals detected in groundwater, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the United States. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. In addition, groundwater monitoring studies are currently underway in California and Michigan. Therefore, Bayer believes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

3. *Non-occupational*— a. *residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 to 41,546 for 10–year-old children and 6,859 to 45,249 for 5–year-old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year-old children ranged from 5.6 to 38.2 micrograms (μg)/square centimeter (cm^2) and for 5–year-old children from 5.1 to 33.5 $\mu g/cm^2$. This compares with the average imidacloprid transferable residue level of 0.080 $\mu g/cm^2$ present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

b. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

c. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2 percent of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

d. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's Occupational and Residential Exposure Branch who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

4. *Cumulative effects.* No other chemicals having the same mechanism of toxicity are currently registered, therefore, Bayer believes that there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

D. Safety Determinations

1. *U.S. population in general.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, Bayer concludes that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15 percent of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100 percent of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a two-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, EPA has concluded that the TMRC from use of imidacloprid from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7 percent of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (<1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1 percent of the RfD. Therefore, Bayer concludes that dietary exposure from the existing uses including the currently proposed tolerances will not exceed the reference dose for any subpopulation (including infants and children).

E. Other Considerations

There is no reasonable expectation that secondary residues will occur in milk and eggs, or meat, fat, and meat byproducts of livestock or poultry; there are no livestock feed items associated with the cucurbit vegetables.

F. International Tolerances

No CODEX Maximum Residue Levels (MRL's) have been established for residues of Imidacloprid on any crops at this time.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docment number [PF–690].

A record has been established for this notice of filing under docket number [PF–690] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 10, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–1491 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5679–6]

Notice of Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the C&J Disposal Superfund Site, Town of Eaton, Madison County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, relating to the C&J Disposal Superfund Site ("Site") in the Town of Eaton, Madison County, New York. This Site formerly was on the National Priorities List ("NPL") established pursuant to Section 105(a) of CERCLA. The Site was deleted from the NPL in 1994 following completion of a CERCLA cleanup of the Site. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement (the "Agreement"), is being entered into by EPA and the Occidental Chemical Corporation ("Occidental"). Under the Agreement, Occidental will pay $700,000 to the Hazardous Substance Superfund in settlement of EPA's July 31, 1995 demand for past costs, plus interest, incurred by EPA with respect to the Site between May 23, 1991 and January 31, 1995. EPA, in turn, covenants not to sue Occidental for those past costs under Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

DATES: EPA will accept written comments relating to the proposed settlement on or before February 21, 1997.

ADDRESSES: Comments should be addressed to the individual listed below and should refer to: "C&J Disposal Superfund Site, U.S. EPA Index No. II CERCLA–96–0213". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Douglas L. Fischer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: (212) 637–3180.

Dated: December 24, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–1492 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (36 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

CNC Shipping International Inc.
7774 N.W. 71 Street
Miami, FL 33166
Officers:
Nilda Correa, President
Frank Cigarroa, Vice President

Aladdin Freight International
1000 Aladdin Avenue
San Leandro, CA 94577
Kristine Highsmith
Sole Proprietor

Dated: January 15, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1430 Filed 1–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Todd E. Arendt, and Revocable Trust Agreement of Angela D. Hulin, both of Gilman, Iowa; to each acquire an additional 25.00 percent, for a total of 50.22 percent, of the voting shares of Gilman Investment Co., Oskaloosa, Iowa, and thereby indirectly acquire Citizens Savings Bank, Gilman, Iowa.

Board of Governors of the Federal Reserve System, January 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1470 Filed 1-21-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–26]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on January 16, 1997.

Proposed Project

Studies of Immunotoxicity in Occupational Groups—(0920–0333)—Reinstatement—A number of chemicals to which U.S. workers are potentially exposed, including metals such as lead and beryllium and solvents such as carbon tetrachloride, have been found to be immunotoxic in experimental animals. There is little data on immunosuppression, hypersensitivity or autoimmune disease in workers exposed to chemicals that are immunotoxic in experimental animals. NIOSH has undertaken a coordinated series of studies to focus on immune-system effects related to specific chemical exposures in the workplace. In the previous three years, NIOSH conducted studies of lead and egg protein exposed workers.

In this reinstatement of the program, it is anticipated that up to six additional research studies will be conducted under this program. Examples of chemicals for which studies are being considered are latex, silica, and solvents. In most of these studies, the immune function of a group of workers exposed to the chemical of interest, and not exposed to any other known or potential immunotoxins, will be compared to the immune function in a group of individuals with no occupational exposure to known or suspected immunotoxins. In some studies, the immune function in a group of individuals will be compared before and after they have exposure to the potential immunotoxin. The primary information collected will be data on the level of exposure to the potential immunotoxin (as measured in the air in the breathing zone of the respondent, and/or in the respondent's blood or urine) and data on specific markers of the status of the immune system from blood or saliva samples provided by the subjects. The questionnaire data will be directed at demographic, lifestyle, and medical factors (other than the exposure or condition of interest) which may influence the function of the immune system. In selected studies, the questionnaire will be used to assess the presence of respiratory symptoms, dermatologic conditions and/or reproductive effects, if the literature indicates a potential relationship to these health problems. Study populations will be identified through telephone contact and follow-up site visits (if needed) with workplace facilities that use the chemical of interest. The total annual burden is 1607.

Respondent (form)	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Interview and blood collection	600	1	1	600
Additional interview module (respiratory, dermatologic, or reproductive)	600	1	.5	300
Peak flow measurement (hypersensitivity studies *only*)	200	28	.08	467
Allergy skin tests (hypersensitivity studies *only*)	200	1	1	200
Company interview	40	1	1	40

Dated: January 15, 1997.

William G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1475 Filed 1–21–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Comprehensive Child Development Program Management Information System.

OMB No.: 0980–0226.

Description: The Comprehensive Child Development Program (CCDP) provides comprehensive services to low-income families through 10 grantees. Data on the feasibility and management of the program will be collected through the management information (MIS) submitted here. The data will be collected from CCDP

grantee agencies and will continue to be used for (1) research, (2) federal monitoring, and (3) internal project management.

Respondents: Not-for-profit institutions; Individuals or Households; and State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Recruitment	566	1	.25	142
New family profile	566	1	.50	283
Updated family profile	2,460	1	.17	418
Development screening/assessment	4,846	.25	.25	1,212
Family needs assessment	2,460	2	.50	2,460
Family service plan	2,460	2	.25	1,230
Contact summary	2,460	50	.12	14,760
Rehabilitative services	8,069	4	.12	3,873
Pregnancy description	418	1	.25	105

Estimated total annual burden hours: 24,483.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: January 15, 1997.

Douglas O. Godesky,

Reports Clearance Officer.

[FR Doc. 97–1497 Filed 1–21–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0454]

Agency Information Collection Activities: Proposed Collections; Comment Request; Reinstatements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on provisions related to investigational device exemptions (IDE) reports and records; requirements for premarket notifications and summaries filed under the Federal Food, Drug, and Cosmetic Act (the act); and reporting and recordkeeping requirements imposed on entities that have had products detained during an establishment inspection that are believed to be adulterated or misbranded, or have had products banned.

DATES: Submit written comments on the collections of information by March 24, 1997.

ADDRESSES: Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burdens of the proposed collections of information, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

1. Investigational Device Exemptions Reports and Records (Part 812 (21 CFR Part 812)) (OMB Control Number 0910–0078—Reinstatement)

This information is collected under the statutory authority of the act regarding investigational devices (section 520(g) (21 U.S.C. 360j(g))). An IDE allows a device, which would otherwise be subject to provisions of the act such as premarket notification or premarket approval, to be used in

investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of this section, as explained in § 812.1, is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. Under §§ 812.20, 812.25, and 812.27, information collected in the application includes sponsor information; a report of prior investigations including reports of all prior clinical, animal, and laboratory testing of the device, a bibliography of all publications, and a summary of all other unpublished information; an investigational plan including study, purpose, protocol, risk analysis, device description, and monitoring procedures; a description of the methods, facilities, and controls used for the manufacture, processing, packing, and storage of the device; investigator information including agreements and certifications; institutional review board (IRB) information; information on the amount to be charged for the device; device labeling; and informed consent materials.

Section 812.10 (waiver of IDE requirements) states that if a sponsor does not wish to comply with certain requirements of part 812, the sponsor may voluntarily submit a waiver request.

Under § 812.35, when an investigational plan changes, a sponsor is required to submit a supplemental application to FDA, and the sponsor may not begin a part of an investigation at a facility until the IRB has approved the investigation, FDA has received the certification of IRB approval, and FDA has approved the supplemental application relating to that part of the investigation.

Section 812.140 requires investigators to maintain records, including correspondence and reports concerning the study; records of receipt, use or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required, under the same section, to maintain records including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, if of nonsignificant risk, an explanation of nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, IRB information, and statement on the extent that good manufacturing practices will be followed.

Section 812.150 requires investigators to submit reports on unanticipated adverse device effects, withdrawal of IRB approval, progress reports, deviations from investigational plan, failure to obtain informed consent, and final report. Sponsors are required to submit reports on unanticipated adverse device effects, withdrawal of IRB approval, withdrawal of FDA approval, current investigator lists, progress reports, notification of recall and device disposition, final report, failure to obtain informed consent, and significant risk device determination.

The following parts of the IDE regulations are covered by other sections of part 812, and thus are not mentioned as separate reporting or recordkeeping burden requirements. The requirements for § 812.18 (import and export requirements for IDE's) are already covered under § 812.20(b)(1). Section 812.18 states that foreign companies are required to be sponsored by a U.S. agent, whose identity is required under the IDE application. This is not an additional information collection, and a separate requirement for information is not essential just because this is an imported device. Sections 812.40, 812.45, and 812.46, regarding the general responsibilities of sponsors, are described under §§ 812.20 (actual application) and 812.150 (recordkeeping).

Section 812.5 (the labeling of investigational devices) is included under § 812.20(b)(10), where the submitter is required to enclose a copy of the label that bears information required by § 812.5 (i.e., name and place of business of manufacturer, packer, or distributor, the quantity of contents if appropriate, and the following statement: "CAUTION-Investigational device. Limited by Federal (or United States) law to investigational use"). This label shall describe all relevant contraindications, hazards, adverse effects, interfering substances or devices, warnings, and precautions. The label will also not bear any statement that is false or misleading in any particular and shall not represent that the device is safe or effective for the purposes for which it is being investigated. If the device is being used solely for animal research, the label shall bear the following statement: "CAUTION-Device for investigational use in laboratory animals or other tests that do not involve human subjects." This section's burden is required under § 812.20(b)(10), therefore a separate burden estimate is not required.

This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject enrolled in the study and will not violate the subject's rights.

The likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.10 (waiver requests)	0.0	0.0	0.0	0.50[1]	0.1[2]
812.20, 812.25, and 812.27 (original application)	500	0.428	214	80	17,120
812.35 and 812.150 (amendments and supplements)	500	6.86	3,430	6	20,580
Total					37,700

There are no capital costs or operating and maintenance costs associated with this collection of information.
[1]FDA's best estimate given the fact that no waiver request has ever been submitted.
[2]FDA's best estimate given the fact that no sponsor has submitted such a request between fiscal years 1991 and 1995.

Based on past conversations with manufacturers, industry and trade association representatives, and businesses, FDA has estimated that the annual reporting burden for one IDE original application takes approximately 80 hours to complete, and the annual reporting burden for one IDE amendment and supplement takes

approximately 6 hours to complete. The number of respondents who annually respond to this collection of information has decreased from 700 to 500, due to multiple applications received from each respondent.

Based on an average of IDE's submitted from fiscal years 1991 through 1995, approximately 500 respondents submit IDE applications (originals and supplements) annually. Based on data from fiscal years 1991 to 1995, an average of 214 original IDE applications are submitted annually.

The reporting burden for nonsignificant risk device studies is negligible. Normally, nonsignificant risk device studies are not reported to FDA unless a problem is reported such as an unanticipated adverse device reaction, failure to obtain informed consent, withdrawal of IRB approval, or a recall of a device. In the past, an average of 10 incidences or less annually have been reported to FDA.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
812.140 (original and supplement)	500	0.428	214	10	2,140
		6.86	3,430	1	3,430
812.140 (nonsignificant)	500	1	500	6	3,000
Total					8,570

There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past several years, in conversations with manufacturers, industry trade association groups, and businesses, FDA has estimated that the recordkeeping burden for preparing an original IDE submission averages 10 hours for each original IDE submission. Similarly, through the same conversations mentioned above, FDA has estimated recordkeeping for each supplement requires 1 hour.

The recordkeeping burden for nonsignificant risk device investigations is difficult to estimate because nonsignificant risk device investigations are not required to be submitted to FDA. The IDE staff estimates that the number of nonsignificant risk device investigations is equal to the number of active significant risk device investigations. The recordkeeping burden, however, is reduced for nonsignificant risk device studies.

2. Information Required In A Premarket Notification Submission (21 CFR 807.87, 807.92, and 807.93) (OMB Control Number 0910–0281—Reinstatement)

Under section 510 of the act (21 U.S.C. 360), a premarket notification must be filed before the introduction or delivery for introduction of a device intended for human use. Under § 807.87 (21 CFR 807.87), premarket notifications are required to contain certain information, including the device name, establishment registration number, class of the device, the device's proposed labeling, action taken by the person required to register to comply with performance standards, and a 510(k) summary as described in 21 CFR 807.92 or a 510(k) (of the act) statement as described in § 807.93 (21 CFR 807.93). In addition, § 807.87(i) requires that those filing premarket notification who claim substantial equivalence to certain devices as described in § 807.87(i), that are classified into class III, must submit to FDA a summary of safety and effectiveness problems and a citation to the information upon which the summary is based. The premarket notification submitter must also furnish FDA with a certification that a reasonable search has been conducted of all known information.

The information collected in the premarket notification is necessary to enhance FDA's ability to ensure that only premarket notification submissions for devices that are as safe and as effective as legally marketed predicate devices are cleared for marketing. In addition, FDA makes publicly available this information concerning devices for which a marketing order has been issued, in order to provide to the public the agency's basis for equivalence determinations.

Respondents to this collection of information are medical device manufacturers and distributors.

FDA estimates the burden of this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.87(h) and 807.92 (simple 510(k) summaries)	2,592	1	2,592	8	20,736
807.87(h) and 807.92 (complex 510(k) summaries)	247	1	247	12	2,964
807.87(h) and 807.93 (510(k) statements)	2,896	1	2,896	1	2,896
807.87(i) and 807.94 (certifications)	208	1	208	40	8,320
Total					34,916

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in the table above.

Under § 807.93, anyone submitting a 510(k) statement must make that information available to anyone who requests it.

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TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.93	2,896	10	28,960	0.5	14,480
Total					14,480

There are no capital costs or operating and maintenance costs associated with this collection of information.

3. Administrative Detention and Banned Medical Devices (21 CFR 800.55, 800.55(k), 895.21, and 895.22) (OMB Control Number 0910–0114—Reinstatement)

FDA has the statutory authority under section 304(g) of the act (21 U.S.C. 334(g)), to detain during establishment inspections devices that are believed to be adulterated or misbranded. On March 9, 1979, FDA issued a final regulation on administrative detention procedures, which includes, among other things, certain reporting requirements (§ 800.55(g) (21 CFR 800.55(g))) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. The final regulation for banned devices contains certain reporting requirements (§§ 895.21(d) and 895.22(a) (21 CFR 895.21(d) and 895.22(a))). Section 895.21(d) states that if the Commissioner of Food and Drugs (the Commissioner) decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the **Federal Register**, and this notice will contain the finding that the device presents a substantial deception or an unreasonable and substantial risk of illness or injury. The notice will also contain the reasons why the proceeding was initiated, an evaluation of data and information obtained under other provisions of the act, any consultations with the panel, and a determination as to whether the device could be corrected by labeling or change of labeling, or change of advertising, and if that labeling or change of advertising has been made. Under § 895.21(d), any interested person may request an informal hearing and submit written comments. Under § 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

Respondents to this collection of information are those manufacturers, distributors, or importers whose products FDA seeks to detain or ban. As previously stated, the collection of data and information under these regulations is conducted on a very infrequent basis and only as necessary.

FDA estimates the burden of this collection of information as follows:

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22(a)[2]	0	0	0	0	0
Total					25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] No devices were banned during the past 3 years (§§ 895.21 and 895.22). Therefore, no burden has been imposed upon industry. When the prosthetic hair fibers were banned, there were no firms in the United States that were manufacturing or distributing the products. Thus, FDA has put zeroes in the columns estimating reporting and recordkeeping burdens.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
800.55(k)	1	1	1	20	20
Total					20

There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past 3 years, there has been an average of one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained.

FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with one of the three firms whose devices had been detained over the last 3 years.

Dated: January 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1481 Filed 1–21–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0003]

Dulal C. Chatterji; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Dulal C. Chatterji, 8025 Cobble Creek Circle, Potomac, MD 20854, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Chatterji was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Chatterji has notified FDA that he acquiesces to debarment and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: November 1, 1995.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Dulal C. Chatterji, formerly vice-president for scientific affairs and head of the research and development (R&D) division at Quad Pharmaceuticals, Inc. (Quad), pled guilty to, and on May 12, 1994, was sentenced for, obstructing an agency proceeding, a Federal felony under 18 U.S.C. 1505. The basis for this conviction was as follows:

In its new drug application (NDA) for colistimethate sodium, Quad falsely represented to FDA that it had produced three sterile batches of the drug. In fact, the firm had produced two nonsterile batches and only one sterile batch. During a subsequent FDA audit of Quad's R&D department, Mr. Chatterji directed that samples from the nonsterile batches of colistimethate sodium be destroyed.

Mr. Chatterji is subject to debarment based on a finding, under section 306(a) of the act (21 U.S.C. 355a(a)), that he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Chatterji's conduct related to the regulation of a drug product because, in causing the destruction of drug samples, he obstructed FDA's investigation of fraudulent NDA data submitted by Quad.

In a letter received by FDA on November 1, 1995, Mr. Chatterji notified FDA of his acquiescence to debarment, as provided for in section 306(c)(2)(B) of the act. A person subject to debarment is entitled to an opportunity for an agency hearing on disputed issues of material fact under section 306(i) of the act, but by acquiescing to debarment, Mr. Chatterji waived his opportunity for a hearing and any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Mr. Dulal C. Chatterji has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing findings and based on his notification of acquiescence, Mr. Dulal C. Chatterji is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 1, 1995, the date of notification of acquiescence (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Chatterji, in any capacity, during his period of debarment, will be subject to civil money penalties. If Mr. Chatterji, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications (ANDA's) submitted by or with the assistance of Mr. Chatterji during his period of debarment.

Any application by Mr. Chatterji for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 96N–0003 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 7, 1997.

Janet Woodcock

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–1477 Filed 1–21–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91N–0404]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information regarding Medical Devices, Humanitarian Use Devices has been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. This document announces the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 1996 (61 FR 55804), the agency announced that the proposed information collection requirements on medical devices, humanitarian use devices (21 CFR 814.102, 814.104, 814.106. 814.108, 814.110(a), 814.112(b), 814.116(b), 814.118(d), 814.120(b), 814.124(b), 814.126(b)(i) and (ii)) had been submitted to OMB for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the collection of information and assigned OMB control number 0910–0332. The approval expires on November 30, 1999. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

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Dated: January 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1482 Filed 1–21–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for Partnering, Informatics and Technology Development

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a company that can collaboratively pursue development of an expert, information based system of technology development and transfer. In particular, the Office of Technology Development ("OTD"), National Cancer Institute seeks to co-develop a system for modeling current OTD processes. The system will be tested using both the selected collaborator's processes and outcomes and real-time OTD experiences.

ADDRESSES: Questions about this opportunity may be addressed to William Cotreau, J.D., or Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd., MSC 7182, Bethesda, MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117. from whom further information may be obtained.

DATES: In view of the important priority of developing a technology informatics system, interested parties should notify this office in writing no later than March 10, 1997. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: "Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and amendments (including 104 P.L. 133) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Office of Technology Development (OTD) serves as the Institute focal point for the implementation of the Federal Technology Transfer Act of 1986. The OTD provides advice, guidance and assistance to Institute staff on such things as: the development and management of intellectual property; registration and management of patents; terms and negotiation of licensing and research and development agreements; management and administration of royalties; transfer of research material; interpretation of laws, policies, rules and regulations especially related to the implementation of the Federal Technology Transfer Act; and other related matters.

The Government is seeking a partner with which, in accordance with the requirements of the regulations governing the transfer of technology in which the Government has taken an active role in developing (37 CFR 404.8), can co-develop a system for modeling technology development processes using information technologies. The National Cancer Institute will provide access to its knowledge and skill base, information regarding current processes and a test bed of technologies not subject to confidentiality obligations. The selected Collaborator will provide expertise in Technology Development, current processes and market awareness.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute, includes the following:

(1) demonstrate current technology development processes related to transactional research agreements.

(2) proof model/equations for logical structure.

(3) provide/input historical NCI–OTD data that are not subject to any confidentiality obligation(s) or where necessary ensure appropriate provisions of confidentiality are applied.

(4) input collaborator historical data.

(5) review model for logical structure.

(6) provide current examples that are not subject to confidentiality obligation(s) or where necessary ensure appropriate provisions of confidentiality are applied in order to further test model.

The role of the collaborator company, includes the following:

(1) program model of NCI current processes related to transactional research agreements.

(2) provide input and feedback regarding NCI processes related to transactional research agreements.

(3) amend model based on feedback from NCI and Collaborator.

(4) provide sufficient information about Collaborator technology development processes to elucidate and improve model.

(5) revise model as necessary.

(6) jointly test model using current NCI technology that is not subject to confidentiality obligation(s) as examples or where necessary ensure appropriate provisions of confidentiality are applied.

(7) develop commercial version of technology development information system.

(8) provide resources as necessary.

Dated: January 8, 1997.

Thomas D. Mays,

Director, Office of Technology Development, OIM, NCI.

[FR Doc. 97–1533 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–10–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting George H. Keller, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 246; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Hepatitis A Virus Receptor and Methods of Use

G Kaplan, SM Feinstone (FDA)

Serial No. 08/287,001 filed 05 Aug 94

This invention describes the discovery and isolation of HAVcr–1, a simian cellular receptor for the hepatitis A virus (HAV). Cells nonpermissive to HAV infection transfected with HAVcr–1 cDNA, a novel cell surface mucin-like glycoprotein, gain susceptibility to HAV infection. The invention claims nucleic acids encoding cellular receptors to HAV which hybridize with HAVcr–1 probes. The invention also claims peptides encoded by the above-mentioned HAV receptor nucleic acid.

Potential areas of application include use of HAVcr–1 receptors for diagnostics; use of HAVcr–1 receptors for treatment of patients infected with HAV; development of compounds capable of interacting with HAVcr–1 receptors which could inhibit HAV

infection and be used to treat HAV infected patients; development of transgenic animals for HAV vaccine production and testing.

HAVcr–1 has recently been molecularly cloned and its cDNA is available for further development. A Notice of Allowance has recently been issued on this case by the U.S. Patent and Trademark Office; foreign rights are also available. This invention is available for licensing on an exclusive or nonexclusive basis.

Dated: January 9, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–1532 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting the indicated licensing specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

2,2′-Bipyridyl, a Ferrous Chelator, Prevents Vasospasm in a Primate Model of Subarachnoid Hemorrhage

LL Horky (NINDS)

Serial No. 08/672,060 filed 26 Jun 96

Licensing Contact: Stephen Finley, Ph.D., 301/496–7735 ext 215

Subarachnoid hemorrhage (SAH) occurs in 28,000 people per year in North America. Symptomatic vasospasm occurs in the majority of individuals suffering SAH and is the most common cause of morbidity and mortality in patients reaching neurological care. Specifically, vasospasm causes cerebral ischemia or stroke, and the prevention of vasospasm could prevent stroke and death as well as allow physicians more freedom in scheduling surgery when the operative risks are lower.

Intravenous administration of 2,2′-bipyridyl successfully prevented vasospasm in a reliable primate model of subarachnoid hemorrhage. Bipyridyl may provide a safe, cost-effective and reliable therapy for vasospasm in the clinical setting. Additional ferrous chelates, which may also prove effective, are also embodied in the invention. (portfolio: Central Nervous System—Therapeutics, neurological, stroke)

Interleukin-4 Stimulated T-Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection

MJ Lenardo, SA Boehme, J Critchfield (NIAID)

Serial No. 08/348,286 filed 30 Nov 94

Licensing Contact: Jaconda Wagner, J.D., 301/496–7735 ext 284

The discovery that interleukin-4 (IL–4) predisposes T lymphocytes to programmed cell death (apoptosis) allows for a novel method of therapeutic intervention in diseases caused by the action of IL–4-responsive T cells. Specifically, the therapy induces the death of a subpopulation of T lymphocytes that are capable of causing disease. Current therapies may cause general death or suppression of immune responses involving T-cells, severely comprising a patient's immune system. This treatment affects only the subset of T cells that react with a specified antigen, thereby leaving a patients immune system uncompromised. This invention is useful in treating allergies and HIV complications. Both fields are available for licensing (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Interleukin-2 Stimulated T-Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection

MJ Lenardo (NIAID)

Serial No. 08/482,724 filed 07 Jun 95

Licensing Contact: Jaconda Wagner, J.D., 301/496–7735 ext 284

T-Cell apoptosis induced by administration of IL–2 and antigen offers an important new treatment for allergic disorders, which are due to the effects of antigen-activated T-cells. Antigen-activated T-cells cause the release of harmful lymphokines and the production of immunoglobulin E by B cells. Presently available methods for treating allergies have limitations because they are nonspecific in their action and have side effects and limited efficacy. IL–2 and antigen stimulates the programmed death of only antigen-specific T-cells while leaving the rest of the patient's T-cells and other immune cells intact. This invention is also useful in treating HIV. Both fields of use, allergies and HIV, are available for licensing. (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Dated: January 13, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–1534 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: January 20, 1997.

Time: 3:30 p.m.

Place: NIH, Rockledge 2, Room 5168 Telephone Conference.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: February 4, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6170 Telephone Conference.

Contact Person: Dr. Dennis Leszczyski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

Name of SEP: Multidisciplinary Sciences.

Date: February 24–26, 1997.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Clinical Sciences.

Date: February 24–26, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency, Bethesda, Maryland.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.

Date: February 26, 1997

Time: 6 p.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1780.

Name of SEP: Multidisciplinary Sciences.

Date: March 5–7, 1997

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

Name of SEP: Clinical Sciences.

Date: March 10–11, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott Hotel, Bethesda, MD.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Multidisciplinary Sciences.

Date: March 27–28, 1997.

Time: 6:00 p.m.

Place: Courtyard by Marriott, Rochester, New York.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: January 15, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1535 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–08]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: Comments due: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202)–708–1060, Ext. 334 (this is not a toll-free number), or Linda P. Hoyle, Bureau of the Census, Manufacturing and Construction Division, room 2105, FOB 4, Washington, DC 20233–6900, (301) 457–1321.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Manufactured (Mobile) Home Placements.

OMB Control Number: 2528–0029.

Description of the need for the information and proposed use: The Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report mobile home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability.

Data

Agency Form Numbers: C–MH–9A, C–MH–9B.

Members of affected public: Business firms or other for-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 4,000.

Estimate Responses per Respondent: 2.

Time per respondent: 30 minutes.

Total hours to respond: 4,000.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

Dated: January 10, 1997.

Lawrence I. Thompson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 97–1457 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4200–N–06]

Notice of Proposed Information; Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Certificate of Completion—Consolidated.

OMB Control Number: 2577–0021.

Description of the need for the information and proposed use: HUD needs the information on the Certificate of Completion—Consolidated because it transmits information from the PHAs to HUD concerning the completion of construction contracts; this information is needed so that HUD may authorize payment of funds due the contractor or developer. The information is supplied by the project architect, assembled and forwarded by the PHA.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: For the one form, on a once per project basis, 147 respondents, one response per project, 147 total responses, 1 hour average per response, 184 total burden hours.

Status of the proposed information collection: Reinstatement, with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 10, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Form of Certificate of Completion—Consolidated

(Not to be used if there are any incomplete or unsettled items outstanding)

Certificate of Completion—Consolidated

This is to certify that all work and materials have been carefully inspected by duly authorized representatives or agents of the (name of owner , hereinafter called the Public Housing Agency (PHA), , and that the (name of contractor), hereinafter called the Contractor, has furnished all labor materials, and services required for the (type of contract) of the (name and number of project), located in (city) (state) in accordance with the requirements of the Specifications and Drawings and Contract No. , dated between the Local PHA and the Contractor.

This is to certify:

1. That all work covered by this contract, originally required to be completed on (date), was actually completed on (date) ;

2. That all changes permitted or required to be made, except minor modifications and field adjustments, have been authorized by written and duly approved Change Orders, and all stop orders have been confirmed and listed in writing;

3. That all Proceed Orders have been supported by approved Change Orders equitably adjusting the contract price and/or time, where adjustment is indicated;

4. That Change Orders Nos. constitute the only amendments to the contract price and/or time, and that ALL Change Orders issued in connection with this contract are listed on the attached Schedule;

5. That all certificate, bonds, guaranties, warranties, insurance, and tests required under the contract have been furnished or performed;

6. That the PHA has obtained from the Contractor the attached Certificate and Release releasing the PHA in full from all further claims under this contract;

7. That all laborers and mechanics have been paid not less than the minimum wage rates as established in said contract, and that there have been no claims made for infringement of any patent;

8. That no claims of any nature by any laborer, mechanic, subcontractor, material man, or vendor are outstanding against the PHA; and

9. That:

Date for completion fixed in contract.
Date for completion as extended ..
Actual completion date of contract work.
Original contract price ..... $
Authorized additions .....
Subtotal ..... $
Authorized deductions excluding liquidated damages.
Adjusted Contract Price ..... $
Less:
Total payments to Contractor. $ .....
Total Amount of Liquidated Damages assessed. ..... $
Balance ..... $

and

10. That voucher for final payment in the amount of _____ (_____) is due and payable.

. . . . . (Signatures) . . . . . .

Form of Signatures for Certificate of Completion

. . . . . body of Certificate of Completion . . . . . .

(name of PHA)
By
Title
Date

Concurred in:
Chief, Architectural Staff
Date

(name of Architect)
By
Title
Date

Labor Relations Specialist
Date

Approved for HUD:
Date

[FR Doc. 97–1458 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–4200–N–07]

Notice of Proposed Information; Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection request described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due: March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding

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this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451—7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Judson James, 202–708–1336, x130 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collections to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Policy Development and Research—Business Establishment Survey for the Interim Outcomes Assessment of the Empowerment Zones and Enterprise Communities Program.

Description of the need for the information and proposed use: HUD is performing an evaluation study of the Empowerment Zones and Enterprise Communities Program, called the Interim Outcomes Assessment. As part of that study, a survey will be conducted in a sample of the Empowerment Zones and Enterprises Communities, and within the sample sites, with a sample of business establishments. It is HUD's intent that this survey establish a baseline measure of the use and awareness of zone program services and incentives by zone businesses. A second set of surveys will be conducted three years later. A single instrument will be used to collect information over the telephone. The information collected includes information about the firm's knowledge of the Empowerment Zone programs, their past and planned use of such programs, their perception of the zone as a place to do business, and some characteristics of firm (including number of employees and industry designation).

Members of affected public: Representatives of business establishments in the six Empowerment Zones (parts of Atlanta, Baltimore, Chicago, Detroit, New York, and Philadelphia/Camden.

Estimated Burden: 4,800 respondents (2,400 in each of two waves). 15 minutes per response on average, resulting in 1,200 hours of total reporting burden.

Status of proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Date: January 9, 1997.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 97–1459 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4200–N–09]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing & Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mr. Stacy Jordan, 202–708–0426 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: National LIHTC Data Collection and Analysis.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: This research will collect basic data on LIHTC project placed in service in the years 1995 and 1996. A previous LIHTC data collection collected similar data for the years 1987–1994. The 1987–1994 database is available at www.huduser.org/lihtc/. The proposed collection would update the database to aid analysis of LIHTC projects and serve as a sampling frame for further research by HUD and others. The Department anticipates using the same data collection instrument for projects placed in service in 1997, 1998, and 1999, as these data become available from state housing agencies.

Attached is the survey instrument OMB approved for the previous LIHTC data collection. The Department anticipates collecting the same information to the extent that the it is available from individual tax credit agencies. Agencies will be allowed to provide the information either on the form or on a computer file.

Agency form numbers, if applicable:

Members of affected public: 54 State and local housing agencies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Number of respondents, 54; number of responses per respondent, 1; total annual responses, 54; hours per response, 24; and total hours, 1,296.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 9, 1997.

Michael A. Stegman,

A/S Secretary for Policy, Development and Research.

BILLING CODE 4210-62-M

LIHTC DATA FORM
(With corresponding variable names)

State: STATE State Identifying Number: STATE_ID

Project Name: PROJECT

Project Street Address: PROJ_ADD (NUMBER) (STREET)

PROJ_CTY (CITY) PROJ_ST (STATE) PROJ_ZIP (ZIP)

Owner/Owner's Representative: CONTACT (FIRST NAME) (LAST NAME)

COMPANY (COMPANY NAME)

CO_ADD (NUMBER) (STREET)

CO_CTY (CITY) CO_STATE (STATE) CO_ZIP (ZIP)

CO_TEL (AREA CODE AND TELEPHONE NUMBER)

Number of *Total* Units: N_UNITS

Number of *Low-Income* Units: LI_UNITS

Number of Total Units *by Size*: N_0BR 0BR | N_1BR 1BR | N_2BR 2BR | N_3BR 3BR | N_4BR 4+BR

Year Placed In Service: 19 YR_PIS

Year Project Received Allocation or Bond Issued: 19 YR_ALLOC

Type *(check all that apply)*:
- TYPE_1 ☐ New Construction
- TYPE_2 ☐ Rehab (with or without acquisition)
- TYPE_3 ☐ Existing (for 1987-89 only)

Credit Percentage *(check one)*:
- CREDIT_9 ☐ 9% (70% present value)
- CREDIT_4 ☐ 4% (30% present value)
- ☐ Both

		Yes	No
Does project have a non-profit sponsor?	NON_PROF	☐	☐
Increased due to location in qualified tract or difficult development area?	BASIS	☐	☐
Does project use tax exempt bonds?	BOND	☐	☐
Does project use Farmers Home Section 515 loans?	FMHA	☐	☐

INSTRUCTIONS FOR LIHTC DATA FORM

State: *Enter the Postal Service two character abbreviation for your state.*

State Identifying Number: *Enter the number or code sequence that your agency uses to identify properties. This should be an identifier that will permit future identification of this project.*

Project Name: *Enter the name of the project, if one exists. Example: Westside Terrace Apartments. Do not enter a partnership name (e.g., Venture Limited II).*

Project Address: *Enter the complete street address of the property, including city, state, and (if available) zip code. Do not enter a P.O. box or multiple addresses (e.g., 52-58 Garden Street). If the project consists of more than one building with different street addresses, enter only one address, using the address for the building with the greatest number of units.*

Owner's Contact Name, Address and Phone Number: *Enter the name, address and phone number of the owner or owner's contact person. This will often be a representative of the general partner. This information will be used for future mail or telephone contacts regarding the development. As such, we need an individual and company name and address as opposed to the partnership name.*

Total Number of Units in Project: *Enter the total number of units in this project, summing across buildings if needed.*

Number of Low Income Units: *Enter the number of units in the development (summing across buildings if necessary) that were qualified to receive Low Income Housing Tax Credits at the time the buildings were placed in service.*

Number of Units by Size : *Enter the number of units in the development (summing across buildings if necessary) that have 0, 1, 2, 3 or 4 or more bedrooms.*

Year Placed In Service: *Enter the last 2 digits of the year the project was placed in service. If this is a multiple building project, with more than one placed in service date, enter the most recent date. Placement in service date is available from IRS Form 8609, Item 5.*

Year Project Received Allocation: *Enter the last 2 digits of the initial allocation year for the project. Allocation date is available from IRS Form 8609, Item 1a. If the project received multiple allocations, use the earliest allocation year.*

Type (New Construction or Acquisition/Rehab): *Enter the production type for which the project is receiving tax credits, i.e., a newly constructed project and/or one involving rehabilitation. For projects allocated in 1987-1989 only, an additional type -- acquisition only -- is also possible. If the project involves both New Construction and Rehab, check both boxes. (Construction type can be inferred from IRS Form 8609, Item 6. If box a or b is checked, the building is new construction. If box c and d or e is checked, the building is acquisition/rehab. If box c only is checked, the building is acquisition-only.)*

Credit Percentage: *This item indicates the type of credit provided: 9% credit (70% present value) or 4% (30 % present value). Maximum applicable credit percentage allowable is available from IRS Form 8609, Item 2. The entry on the 8609 is an exact percentage for the project and may include several decimal places (e.g., 8.89% or 4.2%). Please check the closest percentage -- either 9 or 4 percent. The box marked "Both" may be checked for where acquisition is covered at 4% and rehab at 9%*

Does project have a non-profit sponsor? *Check yes if the project sponsor is a 501-3-C non profit entity. Use the same criteria for determining projects to be included in the 10 percent non-profit set aside.*

Increased Basis Due to Location in a Qualified Census Tract or Difficult Development Area *Check yes if the project actually received increased basis due to its location in a qualified census tract or difficult development area. Increased basis can be determined from IRS Form 8609, Item 3b. (Note: projects may be located in a qualified tract without receiving the increase.)*

Does project use tax exempt bonds? *Check yes if financing was provided through tax exempt bonds. Use of tax exempt bonds can be determined from IRS Form 8609, Item 4, which shows the percentage of the basis financed from this source.*

Does project use Farmers Home Section 515 loans? *Check yes, if the project was financed with a Farmers Home Section 515 direct loan.*

[FR Doc. 97–1460 Filed 1–21–97; 8:45 am]
BILLING CODE 4210–62–C

[Docket No. FR–4200–N–10]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: Comments due: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact Ronald J. Sepanik at (202)–708–1060, Ext. 334 (this is not a toll-free number), or Edward D. Montfort, Bureau of the Census, HHES Division, Washington, DC 20233, (301)–763–8068 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 1997 American Housing Survey—National Survey.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 1997 American Housing Survey-National Sample (AHS–NS) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandate the collection of this information.

The 1997 survey is similar to previous AHS–NS surveys and collects data on subjects such as the amount and types of housing in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–22 and AHS–23.

Members of affected public: Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 55,000.

Estimate Responses per Respondent: 1 every two years.

Time per respondent: 34 minutes.

Total hours to respond: 31,733.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: January 10, 1997.

Lawrence L. Thompson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 97–1461 Filed 1–21–97; 8:45 am]
BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1430–01; CACA 37508]

Public Land Order No. 7238; Partial Revocation of Secretarial Order Dated November 11, 1929; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 6.50 acres of lands withdrawn for Power Site Classification No. 241. The lands are no longer needed for this purpose, and the revocation is necessary to facilitate a pending land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. The lands are temporarily closed to surface entry and mining due to a pending land exchange. The lands have been and continue to be open to mineral leasing. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated November 11, 1929, which established Power Site Classification No. 241, is hereby revoked insofar as its affects the following described lands:

All lands in the following described tracts lying within 20 feet of each side of the center line of the constructed transmission line of the Southern Sierras Power Company as shown on map in 30 sheets filed with its application, Independence 02165, and incorporated in its grant under the act of March 4, 1911 (36 Stat. 1235, 1253), issued by the Secretary of the Interior on May 6, 1919:

Mount Diablo Meridian

T. 7 S., R. 33 E.,

Sec. 30, S½ of lot 2 of NW¼, lot 1, and N½ of lot 2 of SW¼ (originally described as SW¼NW¼, N½SW¼, and SE¼SW¼);
Sec. 31, NW¼NE¼, SE¼NE¼, N½ of lot 1 of NW¼ (originally described as NE¼NW¼), and NE¼SE¼.
The areas described aggregate 6.50 acres in Inyo County.

2. The above described lands are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1988).

3. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1988). However, since this act applies only to lands withdrawn for power purposes, the provisions of the act are no longer applicable. The lands have been and continue to be open to mineral leasing.

4. The State of California has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988).

Dated: January 10, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–1473 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 11, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 6, 1997.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA
Los Angeles County: Farnsworth, Gen. Charles S., County Park, 568 E. Mt. Curve Ave., Altadena, 97000027
Modoc County: Adin Supply Company, W side of Main St. between Center and McDowell Sts., Adin, 97000028
COLORADO
Teller County: Twin Creek Ranch, 1465 Teller Co. Rd. 31, Florissant vicinity, 97000029
GEORGIA
Muscogee County: Green Island Ranch, 6551 Green Island Dr., Columbus, 97000030
ILLINOIS
Adams County: Coca-Cola Bottling Company Building, 616 N. 24th St., Quincy, 97000032
McLean County: Greenlee, Robert, House, 806 N. Evans St., Bloomington, 97000033
Stephenson County: Lena Water Tower, 201 Vernon St., Lena, 97000034
Winnebago County: Chick House, 119–123 S. Main St., Rockford, 97000031
MISSISSIPPI
Lee County: Tupelo Homesteads, Co. Rds. 665 and 657 and Co. Dr. 647, S of jct. with the Natchez Trace Parkway, Tupelo, 97000035
TENNESSEE
Tipton County: Canaan Baptist Church, 211 N. Main St., Covington, 97000036
Tipton County: Coca-Cola Bottling Plant, 126 US 51, S, Covington, 97000038
Tipton County: Old Trinity Episcopal Church, Charleston Rd., 4 mi. NE of Mason, Mason vicinity, 97000039
Tipton County: South College Street Historic District, 600, 700, and 800 Blocks of S. College St., Covington, 97000037
VERMONT
Bennington County: Dorset Village Historic District (Boundary Increase), Jct. of Church St. and West Rd., Dorset, 97000040

[FR Doc. 97–1529 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by February 21, 1997.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Marsha Prillwitz, Bureau of Reclamation, 2800 Cottage Way, MP–402 Sacramento CA 95825. To be placed on a mailing list for any subsequent information, please write Marsha Prillwitz or telephone at (916) 979–2397.

SUPPLEMENTARY INFORMATION:

Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria. For evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets, and projected results.
7. Review, evaluate, and adopt the water conservation plan.

8. Implement, monitor, and update the water conservation plan.

The MP contractor listed below has developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

• Pacheco Water District.

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plan listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plan, please contact Ms. Prillwitz to find the office nearest you.

Dated: January 10, 1997.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 97–1495 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 1–97]

Sunshine Act Meeting; Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tues., January 28, 1997, 10:00 a.m.

Subject Matter: 1. Consideration of Proposed Decisions on claims against Albania

2. Hearings on the record on objections to Proposed Decisions in the following claims against Albania:

ALB–032, ALB–034, ALB–035, and ALB–043—Cleopatra Karselas, Eftalia Maliou, George Karselas, and Olga Dntule

ALB–067—Zhaneta Faber

ALB–120—Hito Hitaj

ALB–217—Arthur Generalis

Status: Open

Subject matter not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, N.W., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 16, 1997.

David E. Bradley,

Chief Counsel.

[FR Doc. 97–1595 Filed 1–17–97; 10:51 am]

BILLING CODE 4410–01–P

[F.C.S.C. Meeting Notice No. 2–97]

Sunshine Act Meeting; Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tues., January 28, 1997, approximately 11:30 a.m.

Subject Matter: Consideration of Proposed Decisions on claims of Holocaust survivors against Germany

Status: Closed.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 16, 1997.

David E. Bradley,

Chief Counsel.

[FR Doc. 97–1596 Filed 1–17–97; 10:51 am]

BILLING CODE 4410–01–P

Office of Justice Programs

[OJP (NIJ) No. 1112]

RIN 1121–ZA59

National Institute of Justice "Operation Drug TEST Solicitation"

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice's "Operation Drug TEST Solicitation".

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadline for receipt of proposals is close of business on Thursday, February 20, 1997. Postmarked applications received after this date are not acceptable.

FOR FURTHER INFORMATION CONTACT: The National Criminal Justice Reference Service at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6771.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

Operation Drug TEST (Testing, Effective Sanctions, and Treatment) proposes using the lever of criminal justice supervision to break the cycle of drug abuse and crime among Federal arrestees. Under this cooperative testing and intervention program operated by the Administrative Office of the U.S. Courts, arrestees are tested for drug abuse. Test results are used to implement graduated sanctions and treatment to deter subsequent drug abuse, reducing the social costs of drug abuse among this population. Operation Drug TEST will be conducted initially in 25 urban, suburban, and rural districts.

The purpose of this solicitation is to provide funding for both implementation and impact evaluations of Operation Drug TEST.

Interested persons should call the National Criminal Justice Reference Service, at (800) 851–3420 to obtain a copy of "Operation Drug TEST Solicitation" (refer to SL #000191).

For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org, and click on Justice Grants. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Dated: January 15, 1997.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–1428 Filed 1–21–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, Room N–5426, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Job Training Partnership Act (JTPA), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to "eligible States" and "eligible high unemployment States", as set forth in section 303 (a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under Title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 48737 (December 2, 1988). The reallotment process for Program Year (PY) 1995 funds was described in Training and Employment Guidance Letter No. 3–95, dated February 5, 1996, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Formula-Allotted Funds.

NOO adjustments to the PY 1996 (July 1, 1996–June 30, 1997) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at Section 303 of JTPA. 29 U.S.C. 1653.

Excess funds are recaptued from PY 1996 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1996 allotment.

Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed and relative numbers of excess unemployed, were for the October 1995 through September 1996 period. Long-term unemployment data used were for calendar year 1995. The determination of "eligible high unemployment States" for the reallotment of excess unexpended funds were also based on unemployment data for the period October 1995 through September 1996, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1996 formula allotments.

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U.S. DEPARTMENT OF LABOR
Employment and Training Administration
PY 1996 JTPA Title III Reallotment to States

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	5.3	0	39,493	0	15,608	15,608
Alaska	7.5	212,429	0	0	0	-212,429
Arizona	5.0	0	28,608	0	11,306	11,306
Arkansas	5.0	0	15,635	0	6,179	6,179
California	7.5	0	608,805	608,805	240,614	849,419
Colorado	4.0	0	17,180	0	6,790	6,790
Connecticut	5.1	0	32,372	0	12,794	12,794
Delaware	4.8	0	5,173	0	2,044	2,044
District of Columbia	8.7	0	15,114	15,114	5,973	21,087
Florida	5.4	0	126,228	0	49,888	49,888
Georgia	4.6	0	40,509	0	16,010	16,010
Hawaii	5.9	0	14,380	14,380	5,683	20,063
Idaho	5.1	0	8,519	0	3,367	3,367
Illinois	5.3	0	110,632	0	43,724	43,724
Indiana	4.4	0	29,719	0	11,745	11,745
Iowa	3.3	0	11,004	0	4,349	4,349
Kansas	4.0	15,865	0	0	0	-15,865
Kentucky	5.2	0	31,555	0	12,471	12,471
Louisiana	6.6	0	61,548	61,548	24,325	85,873
Maine	5.3	0	12,327	0	4,872	4,872
Maryland	5.0	0	43,060	0	17,018	17,018
Massachusetts	4.8	0	48,535	0	19,182	19,182
Michigan	4.8	0	65,273	0	25,798	25,798
Minnesota	3.6	0	20,964	0	8,286	8,286
Mississippi	6.0	0	28,982	28,982	11,454	40,436
Missouri	4.1	0	28,380	0	11,216	11,216
Montana	5.7	0	9,414	9,414	3,721	13,135
Nebraska	2.8	37,163	0	0	0	-37,163
Nevada	5.1	0	12,277	0	4,852	4,852
New Hampshire	3.8	0	5,897	0	2,331	2,331
New Jersey	6.3	0	119,374	119,374	47,179	166,553
New Mexico	6.7	0	23,170	23,170	9,157	32,327
New York	6.3	0	245,481	245,481	97,020	342,501
North Carolina	4.4	0	34,126	0	13,488	13,488
North Dakota	3.0	0	2,381	0	941	941
Ohio	4.9	0	79,656	0	31,482	31,482
Oklahoma	4.4	0	16,019	0	6,331	6,331
Oregon	5.1	0	22,085	0	8,728	8,728
Pennsylvania	5.6	0	127,013	127,013	50,199	177,212
Puerto Rico	13.8	2,356,568	0	0	0	-2,356,568
Rhode Island	5.6	0	11,814	11,814	4,669	16,483
South Carolina	5.5	0	35,924	0	14,198	14,198
South Dakota	2.9	0	2,134	0	843	843
Tennessee	5.1	0	40,842	0	16,142	16,142
Texas	5.9	0	217,773	217,773	86,069	303,842
Utah	3.2	0	6,546	0	2,587	2,587
Vermont	4.2	0	2,773	0	1,096	1,096
Virginia	4.3	0	34,870	0	13,781	13,781
Washington	6.1	0	70,479	70,479	27,855	98,334
West Virginia	7.5	0	32,398	32,398	12,804	45,202
Wisconsin	3.6	0	22,968	0	9,077	9,077
Wyoming	4.5	0	2,616	0	1,034	1,034
NATIONAL TOTAL	5.5	2,622,025	2,622,025	1,585,745	1,036,280	0

COLUMN 1	Unemployment rate for 12 month period
COLUMN 2	Amount of funds subject to recapture
COLUMN 3	"Zero Excess": Total recaptured dollars distributed among all "eligible" States
COLUMN 4	Step 1: For "eligible high unemployment" States, amount equal to Column 3
COLUMN 5	Step 2: Remaining dollars distributed to all "eligible" States
COLUMN 6	Total: Column 4 (Step 1) + Column 5 (Step 2) less Column 2 (recaptured amount)

BILLING CODE 4510-30-C

Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending September 1996.

Column 2: This column shows the amount of excess funds which are subject to recapture. PY 1996 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

Column 3: This column shows total excess funds distributed among all "eligible States" by applying the regular Title III formula. "Eligible States" are those with unexpended PY 1995 funds at or below the level of 20 percent of their PY 1995 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 5.5 percent for the 12-month period, are "eligible high unemployment States." These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $1,585,745.

Column 5: The sum of the remaining shares of available funds ($1,036,280) is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1996 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303 (a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653 (a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302 (c) and (d) of the Act (29 U.S.C. 1652 (c) and (d)), and the JTPA regulation at 20 CFR 631.12(d).

Signed at Washington, D.C., this 9th day of January, 1997.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 97-1528 Filed 1-21-97; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

By letter dated August 17, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, the State submitted on its own initiative amendments comparable to 29 CFR 1910.1045, Acrylonitrile. The State repealed WAC 296-62-07341 and re-issued the standard as WAC 296-62-07336, adding four non-mandatory appendices identical to the Federal. The state amendments were adopted in Administrative Order 88-04 on May 11, 1988, effective June 10, 1988. The re-numbered standard retained the substantive amendments to made to WAC 296-62-07341 in 1986: fifteen day notification of a regulated area, twenty-four hour notification of an emergency release, weekly surveys, air supplied respirators, prohibition of the use of compressed air and dry sweeping, and provisions for lunchrooms. These substantive changes were adopted by the state in Administrative Order 86-28 on July 25, 1986, effective August 25, 1986. This standard was originally approved in the **Federal Register** (44 FR 65485) on November 13, 1979.

Also by letter dated August 17, 1990, the State on its own initiative submitted amendments comparable to 29 CFR 1910.1044, 1, 2-dibromo-3-chloropropane (DBCP). The state repealed WAC 296-62-07345 and re-issued the standard as WAC 296-62-07342, adding three non-mandatory appendices identical to the Federal. The state amendments were adopted in Administrative Order 88-04 on May 11, 1988, effective June 10, 1988. The re-numbered standard retained substantive amendments adopted in Administrative Order 86-28 on July 25, 1986. This standard was originally approved in the **Federal Register** (47 FR 26949) on June 22, 1982.

In response to Federal standards changes, and on its own initiative, the State submitted by letters from Mark O. Brown, Director, to James W. Lake, Regional Administrator, State standard amendments comparable to 29 CFR 1910.1027, 29 CFR 1915.1027 and 29 CFR 1926.1127, and 29 CFR 1928.1027, Occupational Exposure to Cadmium. The Federal initiated standards and corrections were published in the **Federal Register** on September 14, 1992, final rule (57 FR 42102); and April 23, 1993, corrections (58 FR 21778). A State initiated change omitted the printing of the entire Appendix F, "Nonmandatory Protocol for Biological Monitoring." Instead, Appendix F is available upon request. The changes and corrections were adopted in Administrative Order 93-01 on March 13, 1993, effective April 27, 1993; Administrative Order 93-06 on October 20, 1993, effective December 1, 1993; and Administrative Order 94-07 on July 20, 1994 effective September 20, 1994.

In response to Federal standard changes, and on its own initiative the state submitted by letter dated February 14, 1995 from Mark O. Brown, Director, to Richard Terrill, Acting Regional Administrator, state standard amendments comparable to 29 CFR 1910.146, Permit Required Confined Space. The Federal initiated standards and corrections were published in the **Federal Register** on January 14, 1993, Final Rule (58 FR 4462); June 29, 1993, Corrections (58 FR 34844); and May 19, 1994, Technical Amendments (59 FR 26114). The significant state initiated change expanded the scope and application of the OSHA General

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Industry Permit Required Confined Space standard to cover employees in all industries. The changes, corrections and technical amendments were adopted in Administrative Order 94–14 on January 18, 1995, effective March 1, 1995.

All of the administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. Decision

OSHA has determined that the State standard amendments for acrylonitrile, 1,2-dibromo-3-chloropropane, and confined space are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The acrylonitrile and DBCP amendments have been in effect since June 10, 1988, and the confined space amendments have been in effect since March 1, 1995. During this time OSHA has received no indication of significant objection to these different state standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different state standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA has also determined that the differences between the state and Federal amendments for cadmium are minimal and that the state amendments are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW., Washington, D.C. 20210. For electronic copies of this **Federal Register** notice, contact OSHA's Web Page at http://www.osha.gov/.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which were promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective January 22, 1997.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 26th day of November 1996 .

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 97–1280 Filed 1–21–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9:30 a.m.–12:00 p.m., on Friday, February 21, 1997.

STATUS: Open.

ADDRESSES: The Biscayne Bay Marriott Hotel and Marina, Loomis Room, 1633 N. Bayshore Drive, Miami, FL 33132.

FOR FURTHER INFORMATION CONTACT: Isa Bauerlein, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–8536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, February 21 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8536, TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

68th Meeting of the National Museum Services Board, The Biscayne Bay Marriott Hotel and Marina, Loomis Room, Friday, February 21, 1997, 9:30 am—12:00 pm

AGENDA

I. Chairman's welcome and approval of minutes
II. Guests
  A. Mary Sommerville, President of American Library Association
  B. Penny McFee Knight Foundation
III. Director's report
IV. Appropriations report
V. Legislative/public affairs report
VI. IMS programs report
VII. Board reports of blueprint for the future sessions

Dated: January 15, 1997.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 97–1590 Filed 1–17–97; 3:49 pm]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: February 12, 1997, 9:30 a.m.–12:00 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Anthony Centodocati, SBIR Program Manager, SBIR Office, (703) 306–1391; Gary Strong, Program Officer, Information, Robotics, and Intelligent Systems/CISE, (703) 306–1928, National

Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase II proposals, Topic 19: Information, Robotics, Intelligent Systems, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: January 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1467 Filed 1–21–97; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (#1173).

Date and Time: February 5–6, 1997, 9:00 a.m. to 5:00 p.m. and 9:00 a.m. to noon.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, VA 22230. Phone: (703) 306–1382.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda

1. To discuss and work on Committee's Report to Congress;
2. Follow up on development of a strategic plan for the Committee and other items from previous meetings; and
3. Briefing on the FY 1998 budget.

Dated: January 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1466 Filed 1–21–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Physiology and Ethology (#1160).

Date and Time: February 10–11, 1997, 8:30 a.m.–5:00 p.m.

Place: NSF, Rooms 310 and 320, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part Open.

Contact Persons: Dr. John A. Phillips, Program Director, Ecological and Evolutionary Physiology; Dr. George Uetz, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: *Open Session:* February 10, 1997; 4:00 p.m. to 5:00 p.m.—Discussion on research trends, opportunities and assessment procedures in integrative Biology and Neuroscience with Dr. May E. Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: February 10, 1997, 8:30 a.m.–4:00 p.m.; February 11, 1997, 8:30 a.m. to 5:00 p.m. To review and evaluate Ecological and Evolutionary Physiology and Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1468 Filed 1–21–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

Atlas Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Atlas Corporation to revise a site-reclamation milestone in License No. SUA–917 for the Moab, Utah facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 20, 1996, a request from Atlas Corporation (Atlas) to amend License Condition (LC) 55 A.(3) of Source Material License SUA–917 for the Moab, Utah facility. The license amendment request proposes to modify LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile. The date proposed by Atlas would extend completion of the final radon barrier by four years.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION: The portion of LC 55 A.(3) with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2/s above background—December 31, 2000.

Atlas' request to amend LC 55 A.(3) of Source Material License SUA–917, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Atlas Corporation, Republic Plaza, 370 Seventeenth Street, Suite 3050, Denver, Colorado 80202, Attention: Richard Blubaugh; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 14th day of January 1997.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Assistant Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–1485 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8903]

Homestake Mining Company; Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of licensee request to amend source material license.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated December 18, 1996, an application from Homestake Mining Company (HMC) to amend License Condition (LC) 36 of Source Material License No. SUA–1471 to change certain reclamation milestone dates.

The license amendment application proposes to modify LC 36 to change the completion dates for two site reclamation milestones. The new dates proposed by HMC would extend completion of (1) placement of final radon barrier on the Large Tailings Pile (LTP) by seven years, (2) placement of erosion protection on the LTP by five years, (3) placement of final radon barrier on the Small Tailings Pile (STP) by eleven years, and (4) shorten completion of placement of erosion protection on the STP by one year. The application cites technical infeasibility as precluding completion in accordance with the present license dates due to incomplete settlement of the LTP and evaporation ponds associated with the groundwater corrective action program located on the STP.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Hooks, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–7777.

SUPPLEMENTARY INFORMATION: HMC's application to amend Condition 36 of Source Material License SUA–1471, which describes the proposed changes to the license condition and the reason for the request is being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Homestake Mining Company, P.O. Box 98, Grants, New Mexico 87020; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 14th day of January 1997.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Assistant Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–1484 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 999–00004, General License Pursuant to Part 110, EA 96–342]

NDC Systems, Irwindale, California; Confirmatory Order Modifying License (Effective Immediately)

I

NDC Systems (NDC or Licensee) has been granted a General License pursuant to the provisions of 10 CFR 110.19, 110.20, and 110.23. The General License authorizes the Licensee to export licensed material in accordance with the provisions contained therein.

II

Based on the NRC's investigation conducted from April 12 through

August 28, 1996, at NDC's facility in Irwindale, California, and a predecisional enforcement conference held on October 23, 1996, the NRC has concluded that a violation of NRC requirements occurred. The violation involved the willful failure to comply with export requirements (10 CFR 110.50) in that packaging of certain gauging devices containing americium-241 (Am-241) was not in accordance with Department of Transportation (DOT) requirements.

The Commission's regulations in 10 CFR 110.50(a) and 10 CFR 71.5(a) require NDC, as a general licensee, to comply with the applicable DOT requirements in 49 CFR Parts 170 through 189. Prior to November 1, 1995, DOT requirements in 49 CFR Sections 171.11(d), 171.12(d), 173.422, 173.423, 173.431, and 173.475 required shippers to ensure that radioactive materials are packaged properly, with Type A packaging required for packages containing materials having total activity greater than 80 millicuries, and packages containing materials having total activity equal to or less than 80 millicuries being excepted from this requirement. Prior to November 1, 1995, however, NDC systems delivered gauging devices containing 150 millicuries of americium-241 sources for transport by air to foreign countries in excepted packaging, not in Type A packaging.

NDC representatives stated that the circumstances surrounding the failure to comply with DOT requirements began around 1989 with the practice of improperly labeling gauges that were going to certain countries. Gauges going to certain countries were purposefully mislabeled to reflect a lower activity of 25 mCi, even though NDC personnel knew that the gauges contained 150 mCi. (This occurred after Amersham, the manufacturer of the sources, began shipping to NDC 150 mCi cylinder sources rather than 25 mCi disk sources.) Since the lower activity was within the DOT limit for excepted packaging, NDC personnel improperly packaged the mislabeled gauges in excepted packaging rather than the required Type A packaging. Thus, NDC shipping personnel were packaging and sending gauges going to certain countries in excepted packaging, while the same model gauges, with the same sources, were shipped to other countries in Type A packaging. However, NDC personnel stated that they did not realize they were violating DOT requirements.

Some NDC personnel stated that they raised concerns about the practice of mislabeling the gauge to senior NDC management on a number of occasions. Although NDC senior management agreed the practice was improper, NDC personnel were instructed to continue the practice despite their concerns. At the conference, NDC senior management stated that it condoned this inappropriate practice with the rationalization that it would be a temporary practice until the devices were registered in those certain countries. All involved NDC personnel stated that there was no discussion of mispackaging the devices which was the natural consequence of the mislabeling. Due to NDC senior management's admitted "sloppy" practices and total lack of oversight, NDC senior management inadequately evaluated the mislabeling concern and did not consider that the mislabeling would result in mispackaging. Thus, the NRC has concluded that this violation was willful based, at least, on the careless disregard by senior NDC management of applicable requirements.

NDC stated that the root causes of the violation are: (1) a lack of management oversight of the NDC shipping program to ensure compliance with DOT regulations and (2) a lack of a thorough understanding of applicable DOT regulations.

During the October 23 predecisional enforcement conference, NDC proposed various corrective actions that it had taken and planned to take to preclude recurrence of this violation and future DOT violations. In later discussions with NDC, the corrective actions were enhanced to address specific NRC concerns.

III

By letter dated November 21, 1996, the NRC described to the Licensee the NRC's understanding of the Licensee's modified corrective actions. The Licensee subsequently consented to issuing this Order with the conditions, as described in Section IV below, in a letter signed on November 29, 1996. The Licensee further agreed that this Order be immediately effective and that its hearing rights be waived. The NRC has reviewed the above conditions and concludes that implementation of these actions would provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in its November 29, 1996, letter, be confirmed by this Order. Based on the above and on the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 110, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT NDC'S GENERAL LICENSE PURSUANT TO 10 CFR PART 110 IS MODIFIED AS FOLLOWS:

A. NDC shall retain the services of an independent individual or organization (consultant) to perform two audits of the Licensee's activities conducted under the general license, and shall provide the NRC with reports of the audits' findings as described in Provisions D and E below. The audits shall include, but are not limited to:

(1) Review of export activities, including NDC's compliance with Department of Transportation (DOT) regulations;

(2) discussion and interviews with NDC employees to verify that employees understand DOT regulations as they relate to NDC's shipping activities and to verify the effectiveness of NDC's corrective actions to the violation identified in the Order;

(3) discussion and interviews with NDC employees to verify that NDC employees have been adequately trained on and understand NDC's procedures and policies for raising safety concerns and for seeking guidance related to NRC-licensed activities; and

(4) discussion and interviews with NDC employees to determine whether employees have concerns about NDC's policies or procedures for raising safety issues and for seeking guidance.

B. Within 30 days of the date of the Order, NDC shall submit to the NRC, for NRC review and approval, the name and qualifications of the consultant it proposes to use in conducting these audits. The consultant shall be independent of the Licensee's organization and shall be experienced in performing evaluations of NRC or Agreement State licensee programs with respect to implementation of the Department of Transportation (DOT) regulations.

C. Prior to supervising or performing any shipping activities, and no later than 60 days after the date of the Order, NDC will provide formal classroom training consistent with the training requirements of 49 CFR Part 172 Subpart H. All individuals who are

involved in shipping activities, the Shipping Supervisor and Operations Manager, and the individual or individuals with responsibility for oversight of the radiation safety program, are subject to this commitment. For the purpose of the Order, shipping activities include tasks such as packaging, labeling, and completion of appropriate transportation documents.

D. Within 60 days of the date of NRC's approval of a consultant, NDC shall provide the NRC with a copy of the first audit report, including a description of actions taken and planned in response to any recommendations, comments, or findings in the audit report. Alternatively, if NDC does not believe any specific recommendation should be adopted or an audit finding should not be addressed, NDC will provide justification for its position to the NRC.

E. Within 12–18 months of the date of the Order, NDC shall provide the NRC with a copy of the second audit report, including a description of actions taken and planned in response to any recommendations, comments, or findings in the audit report. Alternatively, if NDC does not believe any specific recommendation should be adopted or an audit finding should not be addressed, NDC will provide justification for its position to the NRC. If NDC chooses to use a different auditor for this audit, NDC shall submit the qualifications of the auditor to the NRC for approval prior to conducting the audit.

F. For the purpose of the Order, NDC shall send the audits and its responses, and the qualifications of the auditor, to the Director, Division of Nuclear Material Safety, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and a copy to Chief, Materials Branch, NRC WCFO, 1450 Maria Lane, Walnut Creek, California 94596–5368.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 13th day of January 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement

[FR Doc. 97–1488 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al., Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption for Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic) for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire. North Atlantic is authorized to act as agent for the eleven owners of the facility.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment addresses the potential environmental issues related to the proposed issuance of a temporary exemption from certain requirements of 10 CFR 50.75(e)(2). Specifically, the proposed exemption would allow Great Bay Power Corporation (Great Bay) 6 months from the date of issue, to obtain a surety bond or other allowable decommissioning funding assurance mechanism for non-electric utilities. Great Bay holds an undivided 12.1324 percent ownership interest in Seabrook.

The Need for the Proposed Action

On May 8, 1996, North Atlantic submitted to the NRC a request on behalf of Great Bay for Commission consent to the indirect transfer of control of Great Bay's interest in the Seabrook Operating License through formation of a holding company. Additional information relating to this request was submitted on October 18, 1996, and December 9, 1996. Approval of the application would allow Great Bay, through the formation of several corporate entities and a merger, to become a wholly-owned subsidiary of a new holding company, Great Bay Holdings Corporation. Such a restructuring would expand Great Bay's opportunities, thereby potentially improving Great Bay's financial strength, benefiting public health and safety. The indirect transfer of control of Great Bay's share of Seabrook is subject to NRC approval pursuant to 10 CFR 50.80.

Great Bay was established in 1994 as a successor to EUA Power Company, which had filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code. When the NRC staff approved the plan for Great Bay's emergence from bankruptcy in 1993, it believed that Great Bay would continue to be an electric utility based upon its status as such prior to bankruptcy and upon the expectation that the reorganized entity would be successful in obtaining long-term contracts for the sale of most of its share of power from Seabrook. However, Great Bay has been marketing most of its share of electricity from Seabrook on the spot wholesale market. The staff has not yet completed its review of the proposed transfer of control, but it appears that Great Bay does not now meet the definition of "electric utility" as provided in 10 CFR 50.2, in that it does not appear to

recover the cost of the electricity it generates and/or distributes, either directly or indirectly, through rates established by a regulatory authority. If Great Bay is no longer an "electric utility," as defined in 10 CFR 50.2, it does not meet the requirements of 10 CFR 50.75(e)(2) in that it does not have a surety bond or other surety method in place to provide additional assurance for decommissioning funding.

Because of its status as an exempt wholesale generator, Great Bay is precluded from participating in opportunities in additional electricity markets under New Hampshire law. The proposed formation of a holding company would protect Great Bay's status as a wholesale electric generator and allow its management to develop opportunities in additional electricity markets through the holding company, thus potentially improving Great Bay's financial position, benefiting public health and safety.

To allow the staff to act upon Great Bay's request for approval of indirect transfer of control of Great Bay, without further delaying the potential benefits that may result therefrom, and at the same time to afford Great Bay a reasonable opportunity to implement a suitable decommissioning funding assurance method required of a non-electric utility, the staff proposes to grant Great Bay a 6 month exemption from compliance with the provisions of 10 CFR 50.75(e)(2) pertaining to the additional surety arrangements for decommissioning funding assurance for non-electric utility licensees.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the temporary exemption, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the temporary exemption would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the temporary exemption would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to not issue the temporary exemption and, thereby, delay completion of the staff's review of the request for approval for indirect transfer of control until the necessary surety arrangement is in place. Delay would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated March 1983.

Agencies and Persons Contacted

In accordance with its stated policy, on January 15, 1997, the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On January 15, 1997, the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated May 8, 1996, October 18, 1996, and December 9, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Local Public Document Room located at Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 15th day of January 1997.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1486 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443]

North Atlantic Energy Service Corporation et al.; Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the transfer of control of certain interests in Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (North Atlantic) and the eleven joint owners (the licensees) of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire. North Atlantic is authorized to act as agent for the eleven owners of the facility, and has exclusive authority to operate the plant. The transfer of control would be effected indirectly by the corporate restructuring of Great Bay Power Corporation, the owner of an undivided 12.1324 percent share of Seabrook.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent, under 10 CFR 50.80, to the transfer of control of Great Bay's interest in the Seabrook license that would result indirectly from the restructuring of Great Bay by the establishment of a holding company, Great Bay Holdings Corporation. Great Bay would become a wholly-owned subsidiary of Great Bay Holdings Corporation. Great Bay would remain the owner of an undivided 12.1324 percent share of Seabrook and continue to hold its interest in the Seabrook operating license. As a part of the restructuring, the current equity owners of Great Bay would exchange ownership of Great Bay for ownership of Great Bay Holdings Corporation on a share for share basis.

The Need for the Proposed Action

The proposed action is required to enable Great Bay to restructure as described above. Great Bay is an exempt wholesale generator as defined in the Energy Policy Act of 1992. Because of its status as an exempt wholesale

generator, Great Bay is precluded from opportunities in additional electricity markets. The proposed formation of a holding company would protect Great Bay's status as an exempt wholesale, electric generator and allow management to develop and participate in opportunities in additional electricity markets through the holding company.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to Seabrook. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as North Atlantic will continue to be responsible for the operation Seabrook.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the restructuring, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the corporate restructuring would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Seabrook Station, Unit No. 1, dated March 1983.

Agencies and Persons Consulted

In accordance with its stated policy, on January 15, 1997, the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On January 15, 1997, the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' letters dated May 8, 1996, October 18, 1996, and December 9, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Local Public Document Room located at Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 15th day of January 1997.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1487 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 20, 27, February 3, and 10, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 20

Wednesday, January 22

10:00 a.m. Briefing on Codes and Standards (Public meeting) (Contact: Gil Millman, 301–415–5843).

11:30 a.m. Affirmation Session (Public meeting) *(Please note: This item will be affirmed immediately following the conclusion of the preceding meeting.)

a. Final Rule to Amend 10 CFR Part 71 for Fissile Material Shipments and Exemptions (tentative).

b. Sequoyah Fuel Corporation and General Atomics; LBP–96–24. Approving=Settlement with General Atomics and Dismissing Proceedings (tentative) (Contact: Andrew Bates, 301–415–1963).

Week of January 27—Tentative

Monday, January 27

2:30 p.m. Briefing by DOE on Plutonium Disposition (Public meeting) (Contact: Vanice Perin, 301–415–8143).

Wednesday, January 29

10:00 a.m. Briefing on Operating Reactors and Fuel Facilities (Public meeting) (Contact: Victor McCree, 301–415–1711).

11:30 a.m. Affirmation Session (Public meeting) (if needed).

Thursday, January 30

10:00 a.m. Briefing on Millstone by Northeast Utilities and NRC (Public meeting) (Contact: Bill Travers, 301–415–8500).

Friday, January 31

10:00 a.m. Briefing on Integrated Materials Performance Evaluation Program (Public meeting) (Contact: Don Cool, 301–415–7197).

Week of February 3—Tentative

Tuesday, February 4

9:30 a.m. Briefing by Maine Yankee, NRR and Region I (Public meeting) (Contact: Daniel Dorman, 301–415–1429).

Wednesday, February 5

NOON Affirmation Session (Public meeting) (if needed).

Week of February 10—Tentative

Thursday, February 13

2:00 p.m. Briefing on Operating Reactor Oversight Program and Status of Improvements in NRC Inspection Program (Public meeting).

3:30 p.m. Affirmation Session (Public meeting)

* The Schedule for commission meetings is subject to change on short notice. to verify the status of meetings call (recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on January 13, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of Direct Final Rulemaking: Privatization Act—Conforming Changes and Revision to the NRC Enforcement Policy (NUREG–1600)" be held on January 13, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary. Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: January 17, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–1657 Filed 1–17–97; 2:22 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of Data Collection Forms

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of data collection forms. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by OPM and used by two lead agencies, the Department of Defense (DOD) and the Department of Veterans Affairs (VA). Data collectors survey 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of 75,800 hours. The lead agencies use this information to establish rates of pay for Federal Wage System employees. For copies of this proposal contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, 1900 E Street, NW, Room 6H31, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Angela Graham Humes, Wage Systems Division, (202) 606–2848.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1416 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

[OPM Form 1622]

Submission for OMB Review; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Final notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for clearance of a revised employment information collection. The form is used in conjunction with Project ABLE (ABLE BENEFICIARIES' LINK to EMPLOYERS). OPM Form 1622, "Project ABLE Enrollment Form," is used by authorized State Vocational Rehabilitation Counselors. Project ABLE is designed to enhance Federal job opportunities for people with disabilities who are job ready and want to work. The Social Security Administration identifies those persons who may complete the enrollment process. Information on eligible enrollees is stored in OPM's Automated Applicant Referral System (AARS).

It is estimated that no more than 1,000 enrollments will be processed annually. Each form takes approximately 5 minutes (.08 hours) to complete. The annual estimated burden is 80 hours. For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Armando E. Rodriguez, Director, Office of Diversity, Employment Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 6332, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory, Affairs, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: John Riedel-Alvarez, Office of Diversity, (202) 606–2409.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1418 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 20, 1997.

A closed meeting will be held on Friday, January 24, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

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The subject matter of the closed meeting scheduled for Friday, January 24, 1997, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 17, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1633 Filed 1–17–97; 12:24 pm]

BILLING CODE 8010–01–M

[Release No. 34–38170; File No. SR–CHX–96–28]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Clearing The Post

January 15, 1997.

On November 4, 1996, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 10, interpretations and policies .01 relating to clearing the post.

Notice of the proposal was published for comment and appeared in the **Federal Register** on November 25, 1996.[3] No comments were received on the Exchange proposal. This order approves the Exchange proposal.

I. Description

On May 30, 1996, the Commission approved the CHX's Minor Rule Violations Plan ("Plan").[4] The Exchange's clearing the post rule, Article XX, Rule 10 was included under the Plan, making violations of this rule subject to the summary fine procedures contained in the Plan. Pursuant to Article XX, Rule 10, interpretations and policies .01, violators of the Exchange's clearing the post rule are currently subject to automatic fines of a minimum of fifty dollars, to be assessed by the Exchange's Committee on Floor Procedure.

The purpose of the proposed rule change is to eliminate the authority of the Exchange's Committee on Floor Procedure with respect to assessing fines for violations of the clearing the post rule. The Exchange believes that minor violations of the clearing the post rule are better handled through the new summary fine procedures contained in the Plan rather than through the Committee on Floor Procedure. The Exchange further believes that using the Plan as the lone summary fine procedure will achieve a uniform procedure for imposing fines for violations of this Exchange rule.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes the proposal is consistent with the requirements of Section 6(b)(5) and Section 6(b)(6).[5] More specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[6]

An Exchange's ability to effectively enforce compliance by its members and member organizations with Exchange rules is central to its self-regulatory functions. The Exchange's earlier inclusion of the clearing the post rule under the Plan was intended to make the Exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of this rule, thereby furthering its mandates to protect investors and the public interest.[7] Under the Plan, the staff of the Exchange presents the facts supporting violative conduct to a Minor Rule Violation Panel ("Panel"), which consists of three floor members appointed by the President of the Exchange.[8] The Panel is then authorized to either impose the fine, reject the staff's recommendation, or recommend that the Exchange commence a formal disciplinary proceeding under Article XII of the CHX rules. If the staff decides not to recommend the commencement of a formal disciplinary proceeding, the Panel is required to impose a fine in accordance with the provisions of the procedure. The Exchange has made a reasonable determination that preserving a similar summary fine procedure vested in the Committee on Floor Procedure is unnecessary and redundant.

The Commission believes the proposal is consistent with the Section 6(b)(6) requirement that the members of an exchange be appropriately disciplined for violations of the rules of the exchange. Under the plan, minor violations of the clearing the post rule are punishable by a minimum fine of $100 (as opposed to a minimum $50 fine imposed by the Committee on Floor Procedure). Eliminating the authority of the Committee on Floor Procedure to fine violations of the clearing the post rule thereby serves to eliminate a potentially inconsistent fine amount and procedure, and ensures a uniform summary fine procedure for minor violations of the clearing the post rule.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–96–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1435 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38153; File No. SR–PTC–96–06]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Time for the Close of the Collateral Loan Facility and the Deadline for Participant Payment of Settlement Obligations

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 37964 (November 19, 1996), 61 FR 59918 (November 25, 1996).

[4] Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (approving File No. SR–CHX–95–25).

[5] 15 U.S.C. § 78f(b)(5) and 15 U.S.C. § 78f(b)(6).

[6] In approving this rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[7] The Minor Rule Violations Panel has the authority to recommend that the Exchange commence a formal disciplinary proceeding. See Securities Exchange Act Release No. 37255 supra note 4.

[8] A Minor Rule Violation Panel must consist of one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees. See Securities Exchange Act Release No. 37255 supra note 4.

[9] 15 U.S.C. § 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

("Act"),[1] notice is hereby given that on December 3, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–96–08) as described in Items I, II, and III below, which items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the close of the Collateral Loan Facility ("CLF") processing vs. payment from 3:30.59 p.m. to 4:00.59 p.m. and extends the deadline for participants to send settlement wire payments to PTC from 4:15 p.m. to 4:30 p.m., beginning on January 6, 1997.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), and (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the close of the CLF processing vs. payment from 3:30.59 p.m. to 4:00.59 p.m. To accommodate the processing extension, the deadline for participant settlement wire payments due PTC also will be extended from 4:15 p.m. to 4:30 p.m. to allow participants sufficient time to arrange for payment when the participant's settlement balance changes as a result of the additional one-half hour financing period. Current opening times and all other deadlines will remain unchanged.

Participants have requested that the extension of the close of the CLF for an additional one-half hour after the normal 3:30.59 p.m. close for regular transaction vs. payment processing be implemented as part of PTC's program to make Federal Home Loan Mortgage Corporation ("FHLMC") and Federal National Mortgage Association ("FNMA") securities eligible for PTC's book-entry system to allow participants additional time to finance their positions. PTC plans to implement the rule change on January 6, 1997, so that the new deadlines can be evaluated before the FHLMC and FNMA program is implemented.

PTC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder because it assures the safeguarding of securities and funds in PTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden of Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Participants have requested that PTC make the proposed rule change. PTC has not solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and pursuant to Rule 19b–4(e)(1)[5] promulgated thereunder because the proposal is concerned solely with the administration of PTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–96–08 and should be submitted by February 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1433 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(e)(1).

[Release No. 34–38168; File No. SR–Phlx–96–52]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Customized Foreign Currency Option Expiration Times

January 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 20, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Phlx has requested accelerated approval for the proposal. On January 10, 1997, Phlx submitted Amendment No. 1 to the proposal in order to clarify when certain classes of foreign currency options ("FCOs") expire.[1] This Order approves the Phlx proposal, as amended, on an accelerated basis and solicits comments from interested persons.

[6] 17 CFR 200.30–3(a)(12).

[1] See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, SEC, dated January 6, 1997.

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1000(b)(21)(iv) in order to clarify the transition process in regard to moving the expiration time for customized FCO contracts from an 11:59 p.m. expiration time to a 10:15 a.m. Eastern Time ("ET") expiration time for customized FCO contracts expiring on a regular mid-month or month-end expiration day.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 24, 1996, the Exchange received approval to change the expiration time for customized FCO contracts which expire on a regular mid-month or month-end expiration date from an 11:59 p.m. expiration ("11:59 p.m. expiration scheme") [2] to a 10:15 a.m. expiration scheme ("10:15 a.m. expiration scheme") [3] so that the expiration times for those options would conform to the expiration times for other customized FCO contracts which expire on all other business days (custom dated FCOs).[4] The filing also provided that for those contracts that would expire at 10:15 a.m., the cease trading time and the assignment methodology would also be changed so that the contracts would cease trading at 8:00 a.m. ET on their expiration date and would be subject to a pro-rata (rather than random) assignment process. These changes, however, were approved contingent upon subsequent Commission approval of a corresponding OCC filing.[5] Because OCC only recently received approval for its corresponding filing, Phlx has been unable to implement the new expiration times.[6]

Phlx's original filing, SR–Phlx–96–13, proposed that the earlier expiration time (*i.e.*, the 10:15 a.m. expiration scheme) would become applicable with respect to all newly opened customized FCOs with a few noted exceptions for existing open contracts ("exception dates"). Because Phlx has been unable to implement these changes, however, additional existing series have been opened. Accordingly, Phlx must amend the portion of Phlx Rule 1000(b)(21)(iv) which stated the original exception dates.

Currently, open interest exists in customized FCOs expiring on mid-month and/or month-end expiration Fridays for the months of March, April, July, September and October 1997. These existing series will be "grandfathered," *i.e.*, they will remain subject to an 11:59 pm. expiration scheme. The parties to these contracts (except for the contracts expiring in March),[7] will have the ability to change the expiration times from 11:59 p.m. to the 10:15 a.m. expiration scheme if they desire by notifying the OCC in writing. Phlx believes the ability to switch expiration schemes may be an attractive option to existing parties to the transaction, because the contracts which expire at 11:59 p.m. will not be fungible with those that expire at 10:15 a.m. Further, because the existing contracts may not expire for several months, having different expiration times may become confusing to investors as the expiration date approaches.

Accordingly, Phlx proposes to amend Rule 1000(b)(21) to clarify when customized FCO contracts expire. Specifically, for any customized FCO contract which will expire on a date prior to April 1, 1997, the contract will remain subject to an 11:59 p.m. expiration scheme. Customized FCO contractors opened prior to January 14, 1997 and which expire on or after April 1, 1997 will also remain subject to an 11:59 p.m. expiration scheme unless all parties to the transaction agree to switch to a 10:15 a.m. expiration scheme and notify OCC thereof in writing. Customized FCO contracts opened after January 14, 1997, which expire on or after April 1, 1997, will be subject to a 10:15 a.m. expiration scheme.[8]

The Phlx believes the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing for a transition procedure for changing the time of certain custom FCO contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[9] The purpose of the proposal is to clarify the transition process for customized FCOs as they switch from an 11:59 p.m. expiration scheme, as discussed above, to a 10:15 a.m. expiration scheme.[10] By establishing that any customized FCO contract opened on or after January 14, 1997 and which expires on or after April 1, 1997 will be subject to the 10:15 a.m. expiration scheme, the Phlx is able

[2] Under an 11:59 p.m. expiration scheme, customized FCOs cease trading at 2:30 p.m. on their expiration date and are subject to random assignment.

[3] Under a 10:15 a.m. expiration scheme, customized FCOs cease trading at 8:00 a.m. on their expiration date and are subject to pro-rata assignment.

[4] *See* Securities Exchange Act Release No. 37718 (September 4, 1996) (approving SR–Phlx–96–13 ("SR–PLX–96–13")) ("Release No. 37718"). The Commission notes, however, that the implementation of these changes was delayed pending approval of conforming changes to the rules of the Options Clearing Corporation ("OCC").

[5] Release No. 37718 did, however, provide for immediate effectiveness for that portion of the filing which changed the cease trading time from 9:00 a.m. to 8:00 a.m. for custom dated FCOs that currently expire at 10:15 a.m. because they expire on days other than regular mid-month and month-end expiration days.

[6] *See* Securities Exchange Act Release No. 38165 (January 14, 1997) (approving SR–OCC–96–19).

[7] This will not be available for the contract's expiring in March 1997 because the change will be implemented for contracts expiring on or after April 1, 1997. Any contracts expiring prior to April 1, 1997, will remain subject to an 11:59 p.m. expiration scheme.

[8] *See supra* note 3.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] *See supra* note 3.

to create a uniform expiration scheme for all customized FCOs. By allowing existing series of FCOs to remain subject to the 11:59 p.m. expiration scheme, Phlx has adequately ensured that existing parties to the transaction will not see the terms of their contracts unexpectedly changed prior to expiration. As such, the Commission believes the proposal is a reasonable attempt by the Phlx to balance the need to create uniform cease trading and expiration times for all customized FCOs with the need to protect the interests of existing customized FCO holders.

The Phlx proposal also allows holders and writers of existing series of customized FCOs to convert the terms of their "grandfathered" contracts to the 10:15 a.m. expiration scheme, as long as all parties to the transaction agree. Because contracts which expire at 11:59 p.m. will not be fungible with contracts that expire at 10:15 a.m., the Commission believes that the ability of holders to convert their contracts to a 10:15 a.m. expiration scheme (if all parties to the transaction agree) may increase the liquidity of their existing contracts. The ability to convert will also allow existing holders to more carefully tailor their customized FCO holdings to meet their investment objectives (*e.g.*, increased liquidity, known exercise exposure with pro-rata assignment).

By requiring that all parties to the transaction agree to change the expiration times of their contracts prior to such changes becoming effective also will ensure that writers and holders are not forced to change their contract terms at the desire of only one party to the transaction. Accordingly, the Commission believes the Phlx proposal, by allowing investors to convert their customized FCO contracts from an 11:59 p.m. expiration scheme to a 10:15 a.m. expiration scheme, will increase liquidity in the FCO market and help to facilitate transactions in securities.

The Commission finds good cause to approve the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal and Amendment No. 1, as discussed above, clarify the transition process as customized FCOs switch to a 10:15 a.m. expiration scheme. Specifically, the proposal, as amended, provides that existing holders of customized FCO contracts will not have the terms of their contracts changed unless all parties to the transaction specifically notify OCC in writing of their intent to change contract terms. As such, the Commission believes the proposed changes will foster investor protection and facilitate transactions in securities. Furthermore, the Commission notes that Release No. 37718, in which Phlx adopted the 10:15 a.m. expiration scheme, was subject to the full notice period and that no comments were received. Accordingly, the Commission believes it is consistent with the Act to approve the proposal, as amended, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–52 and should be submitted by February 12, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [11] that the proposed rule change (SR–Phlx–96–52) is hereby approved, as amended, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1434 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. § 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35).

DATES: Interested persons are invited to submit comments on or before February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration, (FAA)

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed form and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 1996 [FR 61, page 54833].

Title: Agricultural Aircraft Operations, FAR 137.

OMB Control Number: 2120–0049.

Type Request: Extension of a currently approved collection.

Form(s): FAA Form 8710–3.

Affected Public: Applicants applying for an agricultural aircraft operators certificate.

Abstract: Standards have been established for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA. 14 CFR Part 137 prescribes requirements for issuing agricultural aircraft operator certificates and for appropriate operating rules.

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Burden: Total estimated annual burden hours requested 14,037.

Addresses: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to the Office of Management and Budget, New Executive Office Building, Room 10202, Attention DOT/FAA Desk Officer, Washington, D.C. 20503.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on January 15, 1997.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 97–1513 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–P

Federal Highway Administration

Environmental Impact Statement: Salt Lake County and Davis County, Utah

AGENCY: Federal Highway Administration, (FHWA), UDOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the southern limit of the proposed interstate improvement project in Salt Lake County and Davis County has been changed from 500 North in Salt Lake City to 400 South in Salt Lake City. The southern limit has been changed in order to fully analyze all possible access schemes to downtown Salt Lake City. An environmental impact statement will be prepared for the proposed Interstate improvement project in Salt Lake County and Davis County, Utah.

FOR FURTHER INFORMATION CONTACT: Greg Puske, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Larry Kirby, Project Manager, Utah Department of Transportation, Region Two, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone: (801) 975–4826.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to address the existing and projected traffic needs in the Interstate (I–15) corridor from 400 South in Salt Lake City to 200 North in Kaysville. The Wasatch Front Regional Council has identified a need for improving the I–15 north corridor of Salt Lake City in previous studies. These studies are the I–15 Corridor Study (1991) and the 2015 Salt Lake Area Long Range Transportation Plan Year (1995).

Alternatives that will be considered based on these studies include (1) taking no action (no-build); (2) highway capacity improvements such as additional through lanes, auxiliary lanes, and interchange modifications; (3) transit improvements such as high occupancy vehicle lanes, express bus service, commuter rail, and light rail; (4) travel demand management strategies which create options designed to discourage the single occupant vehicle; (5) transportation system management strategies which improve the efficiency of the existing highway; (6) combinations of any of the above; and (7) other alternatives identified during the scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in the proposed project. An additional formal public scoping meeting will be held in Salt Lake City in January 1997. In addition, a public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the public scoping meetings and the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or UDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: January 14, 1997.

Michael G. Ritchie,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 97–1531 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Request For Treasury Notes or Bonds.

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Reinvestment Request For Treasury Notes or Bonds.

OMB Number: 1535–0086.

Form Number: PD F 5262.

Abstract: The information is requested to support a request to reinvest Treasury notes or bonds at maturity, or to cancel/change a reinvestment request.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 140,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 14,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–1471 Filed 1–21–97; 8:45 am]

BILLING CODE 4810–39–P

Customs Service

[Customs Form 7506]

Proposed Collection; Comment Request; Warehouse Withdrawal Conditionally Free of Duty and Permit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.

OMB Number: 1515–0007.

Form Number: Customs Form 7506.

Abstract: The Warehouse Withdrawal Conditionally Free of Duty and Permit is an application and permit to withdraw goods from a warehouse without paying duties or taxes. The form also covers several types of withdrawals from a Customs Bonded Warehouse subject to Customs controls.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 73.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 12,167.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1405 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

[Customs Form 3485]

Proposed Collection; Comment Request; Lien Notice

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1515–0046.

Form Number: Customs Form 3485.

Abstract: The Lien Notice, Customs Form 3485, enable the carriers, cartmen, and similar businesses to notify Customs that a lien exists against an individual/business for non-payment of freight charges, etc., so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 8,497.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1406 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Importers of Merchandise Subject to Actual Use Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1515–0091.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 12,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1407 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Proof of the Use for Rates of Duty Dependent on Actual Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and

included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Proof of the Use for Rates of Duty Dependent on Actual Use.

OMB Number: 1515–0109.

Form Number: None.

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1408 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration by Originating Artist, or Seller, or Shipper That Goods Imported Are Original Works of Art

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration by Originating Artist, or Seller, or Shipper that Goods Imported are Original Works of Art

OMB Number: 1515–0118.

Form Number: None.

Abstract: The Declaration by Originating Artist, or Seller, or Shipper that Goods Imported are Original Works of Art is needed to ensure that original works of art are in fact originals and therefore permitted free entry into the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, households, non-profit organizations.

Estimated Number of Respondents: 7,215.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2,405.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1409 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration of Person Who Performed Repairs

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue, NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for

Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1515–0137.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 10,236.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1410 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Manufacturing Drawback Entry and/or Certificate (Customs Form 331)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Manufacturing Drawback Entry and/or Certificate.

OMB Number: 1515–0148.

Form Number: Customs Form 331.

Abstract: The Manufacturing Drawback Entry and/or Certificate serves as an entry, a certificate of manufacture and delivery (or the combination), or a certificate of imported merchandise necessary in the filing of a claim for a refund of duty and/or internal revenue tax paid.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, households, Businesses.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 19,998.

Estimated Total Annualized Cost on the Public: $945,000.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1411 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

[Customs Form 339]

Proposed Collection; Comment Request; User Fees

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for

Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: User Fees.

OMB Number: 1515–0154.

Form Number: Customs Form 339.

Abstract: The User Fees, Customs Form 339, information is necessary for Customs to effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States and recipients of certain dutiable mail entries for certain official services.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1412 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers.

OMB Number: 1515–0155.

Form Number: None.

Abstract: The Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers are used by individuals or businesses desiring Customs approval to measure bulk products or analyze importations may apply to Customs by letter. This recognition is required of businesses wishing to perform such work on imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 85.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 85.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1413 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Exportation of Used Self-Propelled Vehicles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and

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purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles.

OMB Number: 1515–0157.

Form Number: None.

Abstract: The Exportation of Used-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 83,330.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1414 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Petroleum Refineries in Foreign Trade Subzones

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Petroleum Refineries in Foreign Trade Subzones.

OMB Number: 1515–0189.

Form Number: None.

Abstract: The Petroleum Refineries in Foreign Trade Subzones is a rule that amended the Customs Regulations by adding special procedures and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 52.

Estimated Time Per Respondent: 6.035.

Estimated Total Annual Burden Hours: 18,824.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1415 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–1 and Revenue Procedure 97–3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–1 and Revenue Procedure 97–3, 26 CFR 601.201—Rulings and determination letters.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.201—Rulings and determination letters.

OMB Number: 1545–1522.

Revenue Procedure Number: Revenue Procedure 97–1 and Revenue Procedure 97–3.

Abstract: The information requested in Revenue Procedure 97–1 and Revenue Procedure 97–3 is required to enable the Internal Revenue Service to give advice on filing letter ruling and determination letter requests and process such requests.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit

organizations, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 3,800.

Estimated Time Per Respondent: 80 hours, 16 minutes.

Estimated Total Annual Burden Hours: 304,990.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1515 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–U

[FI–104–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–104–90 (TD 8390), Tax Treatment of Salvage and Reinsurance (§ 1.832–4(d)).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Treatment of Salvage and Reinsurance.

OMB Number: 1545–1227.

Regulation Project Number: FI–104–90.

Abstract: Section 1.832–4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–15 6 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Revenue Procedure 97–4, Revenue Procedure 97–5, Revenue Procedure 97–6, and Revenue Procedure 97–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–4 (Letter Rulings), Revenue Procedure 97–5 (Technical Advice), Revenue Procedure 97–6 (Determination Letters), and Revenue Procedure 97–8 (User Fees).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue

Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 97–4 (Letter Rulings), Revenue Procedure 97–5 (Technical Advice), Revenue Procedure 97–6 (Determination Letters), and Revenue Procedure 97–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 97–4, Revenue Procedure 97–5, Revenue Procedure 97–6, and Revenue Procedure 97–8.

Abstract: The information requested in the revenue procedures is required to enable the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) of the Internal Revenue Service, to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time Per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,686.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1517 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 4684

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: Form 4684.

Abstract: This form is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 3 hr., 1 min.

Estimated Total Annual Burden Hours: 903,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1518 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time To File Corporation Income Tax Return.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File Corporation Income Tax Return.

OMB Number: 1545–0233.

Form Number: Form 7004.

Abstract: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 1,097,748.

Estimated Time Per Respondent: 8 hr., 22 min.

Estimated Total Annual Burden Hours: 9,177,173.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1519 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

[EE–28–78]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–28–78 (TD 7845), Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans (§§ 301.6104(a)–1, 301.6104(a)–5, 301.6104(a)–6, 301.6104(b)–1, 301.6104(c)–1, and 301.6104(d)–1).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78.

Abstract: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. The Internal Revenue Service needs the required information to comply with requests for public inspection.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 51,070.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 12,018.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

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of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1520 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

Submission for OMB Review; Comment Request

January 15, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Written comments should be received on or before February 21, 1997 to be assured of consideration.

OMB Number: 1550–0023.

Form Number: OTS Form 1393 and OTS Form 1568.

Type of Review: Revision.

Title: Thrift Financial Report.

Description: OTS collects financial data from OTS-regulated savings associations and their subsidiaries in order to assure their safety and soundness as depositories of personal monies of the general public. The OTS monitors the financial position and interest-rate risk so that adverse conditions can be remedied promptly.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1343.

Estimated Burden Hours Per Respondent: 11.38 average.

Frequency of Response: 12.

Estimated Total Reporting and Recordkeeping Burden: 183,343 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–1431 Filed 1–21–97; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 62, No. 14

Wednesday, January 22, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 961227373-6373-01; I.D. 122096B]

RIN 0648-XX78

Correction

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

Document 96--33402 was inadvertently published in the Proposed Rules section of Monday, January 6, 1997, beginning on page 700. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts, 8, 31, 71, 91, and 107

[GGD 85-010]

RIN 2115-AF11

Correction

In rule document 96-32801, beginning on page 68510, in the issue of Friday, December 27, 1996, make the following corrections.

1. On page 68510, in the first column, in the first line of the title, "Alternative" should read "Alternate".

2. On the same page, in the same column, in the second line of the **DATES:** section, "1997" should read "1996".

3. On the same page in the same column, in the last line of the **DATES:** section, "1997" should read "1996".

4. On page 68511, in the second column, in the fourth line under **Notice of Proposed Rulemaking**, "compliance" should read "Compliance".

5. On the same page, in the same column, in the fifth line from the bottom, "ABW" should read "ABS".

6. On page 68512, in the third column, in the thirteenth line, "deceived" should read "described".

7. On page 68513, in the first column, in the ninth line of the first paragraph, "Coats" should read "Coast".

§ 8.120 [Corrected]

8. On page 68518, in the second column, in the seventh line of § 8.120(b), "authorizes" should read "authorities".

§ 8.130 [Corrected]

9. On the same page, in the same column, in the ninth line of § 8.130(a)(4), "coast" should read "Coast".

10. On the same page, in the third column, in the first line of § 8.130(a)(5), "commandant" should read "Commandant".

§ 8.320 [Corrected]

11. On page 68520, in § 8.320(b)(9), "MORPOL" should read "MARPOL".

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Part II

Department of Labor

Employment Standards Administration

20 CFR Parts 718, et al.

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726 and 727

RIN 1215–AA99

Regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to amend the regulations implementing the Black Lung Benefits Act. Most of the affected regulations govern the processing and adjudication of individual claims filed by former coal miners and their surviving dependents, including the medical criteria used to adjudicate the entitlement of those who file claims and the criteria used to determine which of the miner's former employers will be liable for the payment of benefits. In addition, the Department proposes to eliminate outdated regulations setting forth criteria for approving state workers' compensation programs; to discontinue the annual publication, in the Code of Federal Regulations, of the interim criteria governing claims filed prior to April 1, 1980; and to revise the criteria governing the responsibility of coal mine operators to secure the payment of benefits to their employees.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 219–6692.

SUPPLEMENTARY INFORMATION: The Department last amended the regulations implementing the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, in 1983, more than thirteen years ago. Since then, litigation before the various U.S. courts of appeals and the Benefits Review Board has resulted in the clarification of many substantive areas. Moreover, the Office of Workers' Compensation Programs' experience in administering the program during this period has resulted in a variety of suggestions for change with the goal of helping to improve services, streamline the adjudication process and simplify the regulations' language. Thus, the Department proposes numerous changes in order to streamline, update and clarify these program regulations.

Summary of Noteworthy Proposed Changes

Evidentiary Development

The proposed regulations contain a limitation on the amount of documentary medical evidence parties may submit. The designated responsible coal mine operator or the Director, whichever party is liable, and the claimant are limited in their affirmative presentations to two complete pulmonary evaluations or consultative reports a piece. Documentary rebuttal evidence is limited to one interpretive opinion with respect to each part of the pulmonary evaluation submitted by a party's opponent. *See* proposed § 725.414.

The Department proposes these changes in order to ensure that eligibility determinations are based on the best quality evidence submitted rather than on the quantity of evidence submitted by each side. Currently, in establishing their eligibility to benefits, claimants must confront the vastly superior economic resources of their adversaries: coal mine operators and their insurance carriers. Often, these parties generate medical evidence in such volume that it overwhelms the evidence supporting entitlement that claimants can procure. The proposed changes limiting evidentiary development attempt to make more equitable the adjudication of black lung claims and reduce the costs associated with these cases.

The proposed regulation also fundamentally restructures the claims adjudication process by focusing evidentiary development at the district director level. The regulation requires all parties to develop their documentary medical evidence and submit it to the district director for consideration. Once a claim is referred for a hearing before the Office of Administrative Law Judges, additional documentary medical evidence will be admitted into the record only on a showing of extraordinary circumstances or if the claimant has not been provided with an adequate complete pulmonary evaluation by doctors of the Department's choosing. The administrative law judge who conducts the hearing may permit the parties to elicit testimony only from a limited group of witnesses, including any physician whose report was submitted to the district director. The judge will base his decision on a *de novo* review of the evidentiary record developed by the district director and the hearing testimony. *See* proposed §§ 725.414, 725.456 and 725.457.

This proposed procedure departs from current practice by excluding the admission of most additional documentary evidence while a claim is pending before an administrative law judge. Parties presently often reserve the active development of medical evidence until a claim is referred for hearing. Permitting additional evidentiary development before the administrative law judge was logical when significant delays occurred between the district director's decision and the hearing before the administrative law judge. Such delays no longer occur in a statistically significant percentage of claims. Consequently, the practical need for permitting evidentiary development at the hearing stage has disappeared.

The Department believes that these proposed procedural changes requiring evidentiary development before the district director will encourage prompt and complete evidentiary development at the earliest stages and will therefore allow the Department to conduct a thorough and meaningful initial adjudication of each claim. The Department believes that the fair, efficient and expeditious adjudication of claims is a desirable objective which can be promoted by limiting the amount of medical evidence developed and encouraging all parties to participate actively at the earliest stages of the process.

Identification of Responsible Operators

The proposed regulations provide that a district director may name one or more "potentially liable operators" from among a miner's former employers. The potentially liable operator that most recently employed the claimant will generally be the responsible operator liable for the payment of benefits. The proposed regulations afford the district director considerable flexibility, however, in notifying potentially liable operators; they may be notified *seriatim* after the district director evaluates the response from the miner's most recent employer or does not receive any response. If a potentially liable operator contests its identification, it must submit documentary evidence supporting its position to the district director. In cases involving difficult responsible operator identification issues, the district director may retain more than one potentially liable operator as a party to the case. *See* proposed §§ 725.407 and 725.408.

The district director will choose a responsible operator from among the

identified potentially liable operators and will notify the parties of this determination in his initial findings. The designated responsible operator must respond to the notice of initial findings within 30 days and must specifically indicate whether it agrees or disagrees with the initial finding of liability. *See* proposed §§ 725.410, 725.412. In the event further adjudication of the claim is required, the district director may retain as parties to the case other potentially liable operators in order to preserve the Department's right to compel the payment of benefits by the responsible operator ultimately determined to be liable for the claimant's benefits. *See* proposed § 725.413.

To ensure that the claimant is not overwhelmed by operator-developed medical evidence, however, the proposed regulations limit all potentially liable operators and the designated responsible operator to a total of two pulmonary evaluations or consultative reports as an affirmative case. Because all of the named operators have an identical interest with respect to the claimant's eligibility, the Department does not believe that unfairness will result from limiting the total evidence submitted. The designated responsible operator will have the responsibility and, indeed, the obligation, to develop the operators' case in chief on behalf of all named operators. Any named operator, other than the responsible operator, must request the district director's permission in order to schedule the claimant for a medical examination. This permission may be granted only upon a showing that the responsible operator has not undertaken a full development of the evidence. In no event will the claimant be required to undergo more than two pulmonary examinations by the parties opposing his eligibility. *See* proposed § 725.414.

The proposed responsible operator regulations also assign both the Office of Workers' Compensation Programs (OWCP) and the designated responsible operator burdens of proof. Under proposed § 725.495, the Department bears the burden of proof to identify the responsible operator initially found liable for the payment of benefits. In order to carry this burden of proof, OWCP must establish that the responsible operator is a "potentially liable operator," i.e., that it was an operator after June 30, 1973, that it employed the miner for at least one year, that at least one day of that employment occurred after December 31, 1969, and that the miner was exposed to coal mine dust while working for the operator. In addition, in any case in which the designated responsible operator is not the miner's most recent employer, the record must include a statement that OWCP has investigated its files and has determined that it has no record that a more recent employer insured its liability under the Act, or was authorized to self-insure such liability.

Once OWCP has met its burden of proof, the burden shifts to the designated responsible operator. The operator may avoid liability for the claim only if it establishes: (1) that it is not financially capable of assuming liability for the claim; or (2) that one of the miner's more recent employers meets all of the criteria for a potentially liable operator. The burden imposed on the designated responsible operator under this second alternative includes a showing that the more recent employer is financially capable of assuming liability. *See* proposed § 725.495.

If the designated responsible operator carries its burden of proof and establishes that it was incorrectly identified and OWCP has failed to name and retain as a party the coal mine operator ultimately found liable as the responsible operator, the Trust Fund will bear liability for the claim. In such a case, OWCP will make no attempt to name a new responsible operator and force the claimant once again to establish his entitlement to benefits. *See* proposed § 725.407(d) allowing the district director to identify and notify a responsible operator only before a case is referred to the Office of Administrative Law Judges.

Civil Money Penalty

The proposed regulations contain new provisions implementing the Act's civil money penalty provision, which directs the assessment of a penalty of up to $1,000 per day against operators that fail to secure the payment of benefits, either by purchasing commercial insurance or qualifying as a self-insurer. 30 U.S.C. 933(d). The proposed regulations establish criteria and streamlined procedures to be used in assessing penalties. They provide notice of the Department's intention to minimize the financial burden that uninsured operators currently place on those operators in compliance with the Act's security requirements and on the Black Lung Disability Trust Fund. *See* proposed 20 CFR part 726, subpart D, §§ 726.300–726.320.

The proposed regulations provide a graduated series of possible penalties based on a set of criteria, including the operator's size, its prior notice of the Act's insurance requirements and the operator's action, or inaction, following this notification. *See* proposed § 726.302. After receipt of a notice of penalty assessment and entry of a timely notice of contest, an operator may request a hearing before the Office of Administrative Law Judges. *See* proposed § 726.307. The ensuing decision will address whether the operator has violated the Act's insurance requirements, whether the individuals identified by the Director as potentially severally liable for the penalty were in fact the president, treasurer or secretary of the corporation during the relevant time period and, finally, the appropriateness of the penalty assessment. *See* proposed § 726.313. The Director or any party aggrieved by a decision of the administrative law judge may petition the Secretary for review, which will be conducted using a substantial evidence standard. *See* proposed §§ 726.314, 726.318.

The proposed regulations also impose an additional requirement on self-insured operators. They require that such operators continue to secure the payment of benefits to their employees even after the operator has ceased mining coal. This additional requirement is necessary given the limited amount of security typically required of operators who self-insure and the prolonged time periods after coal mine employment has ceased during which miners may file claims for benefits. *See* proposed § 726.114(c).

Treating Physicians' Opinions

The Department proposes a new paragraph (d) of 20 CFR 718.104, the regulation governing reports of physical examinations. The proposed paragraph would give certain treating physicians' opinions controlling weight in determining whether the miner is totally disabled or died due to pneumoconiosis. The proposed language would mandate that, when weighing a treating physician's opinion, the factfinder must consider the nature and duration of the relationship between the miner and the physician, the frequency and extent of the physician's treatment, and the credibility of the doctor's opinion in light of his reasoning and documentation. The factfinder must also consider the opinion's consistency with the other relevant evidence, and the doctor's training and specialization.

Waiver of Overpayments

The Department proposes amending § 725.547(a), which addresses the applicability of overpayment provisions to coal mine operators and their

insurance carriers. The proposed regulation would make available to all overpaid claimants the provisions governing waiver of recovery of an overpayment incorporated from the Social Security Act, 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b).

Currently, only a claimant who receives an overpayment from the Black Lung Disability Trust Fund may be relieved of his repayment obligation. Such a claimant is entitled to waiver of recovery of the overpayment if he can demonstrate that permitting recovery would "defeat the purpose of the Act" or "be against equity and good conscience." Only those individuals who were not "at fault" in creating the overpayment are eligible for waiver. The Department has concluded that these waiver provisions should be available to all claimants, including those who are overpaid by operators and insurance carriers. Thus, under the proposed language, any individual who has received an overpayment will have the opportunity to establish that the two-part test for waiver is met.

Establishing Total Disability and Total Disability Due to Pneumoconiosis

Proposed § 718.204 amends the definition of "total disability" and makes explicit the Department's position with regard to establishing total disability due to pneumoconiosis. Both of these changes reflect the decisions of numerous courts of appeals. In order to be found "totally disabled," a miner must have a respiratory or pulmonary impairment which, standing alone, prevents him from performing his usual coal mine employment. See proposed § 718.204(b). In order to establish entitlement, the miner must also demonstrate that his total disability is due to pneumoconiosis. This showing is made by establishing that pneumoconiosis is a substantially contributing cause of the totally disabling respiratory or pulmonary impairment. See proposed § 718.204(c). Finally, proposed § 718.204(a) also makes clear that a concurrent disability due to a nonrespiratory or nonpulmonary condition will not disqualify the miner from receipt of black lung benefits if the miner can also demonstrate total disability due to pneumoconiosis.

Additional or Subsequent Claims

The proposed regulations clarify claimants' right to file "additional" or "subsequent" claims, those claims filed more than one year after denial of a previous claim. See proposed § 725.309(d). Under this proposal, the claimant may escape automatic denial of an additional claim on the grounds of the prior denial, by demonstrating that a change in one of the applicable conditions of entitlement has occurred since the date upon which the order denying the prior claim became final. The changed regulatory language codifies the holdings of several courts of appeals.

The applicable conditions of entitlement are limited to those conditions upon which the prior denial was based. If the applicable conditions of entitlement relate to the miner's physical condition and the new evidence submitted with the additional claim establishes a change in at least one applicable condition, the proposed regulation contains a rebuttable presumption that the miner's physical condition has changed. Once a change in an applicable condition of entitlement is established, none of the findings made in connection with the prior claim, except those based on a party's failure to contest an issue, shall be binding in the adjudication of the subsequent claim, and the claim must be adjudicated on the merits.

Medical Benefits

Proposed § 725.701(e) provides that in any claim for compensation for treatment of a pulmonary disorder filed by a miner entitled to medical benefits, there shall be a rebuttable presumption that the treatment was for a disorder caused or aggravated by pneumoconiosis. This amended regulatory language codifies a decision of the United States Court of Appeals for the Fourth Circuit. The presumption may be rebutted only by evidence that the specific pulmonary disorder being treated is neither related to, nor aggravated by, the miner's pneumoconiosis. The proposed regulation also provides that evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment, i.e., evidence which challenges the miner's underlying entitlement to medical benefits, is insufficient to demonstrate that the specific treatment for which compensation is claimed is not compensable. *See* proposed § 725.701(f).

Explanation of Proposed Changes

The Department proposes to revise the regulations implementing the Black Lung Benefits Act, set forth at Chapter VI of Title 20 of the Code of Federal Regulations. In order to make all the proposed changes more easily understandable, the Department proposes to re-promulgate Parts 718, 722, 725, and 726 in their entirety. This action is intended to aid the readers of the **Federal Register**, and should not be construed as inviting comments on any regulation which has not been substantively revised. The regulations within these parts may be divided into three categories: (1) those which will be substantively revised; (2) those to which the Department is proposing only technical changes; and (3) those which will not be revised at all.

Substantive revisions

The following regulations are being substantively revised: § 718.3, § 718.101, § 718.102, § 718.103, § 718.104, § 718.105, § 718.106, § 718.107, § 718.201, § 718.202, § 718.204, § 718.205, § 718.301, § 718.307, § 718.401, § 718.402, § 718.403, § 718.404, Appendix B to part 718, Appendix C to Part 718, part 722 (entire), § 725.1, § 725.2, § 725.4, § 725.101, § 725.103, § 725.202, § 725.203, § 725.204, § 725.209, § 725.212, § 725.213, § 725.214, § 725.215, § 725.219, § 725.221, § 725.222, § 725.223, § 725.306, § 725.309, § 725.310, § 725.311, § 725.362, § 725.367, § 725.405, § 725.406, § 725.407, § 725.408, § 725.409, § 725.410, § 725.411, § 725.412, § 725.413, § 725.414, § 725.415, § 725.416, § 725.417, § 725.418, § 725.421, § 725.423, § 725.452, § 725.454, § 725.456, § 725.457, § 725.458, § 725.459, § 725.478, § 725.479, § 725.490, § 725.491, § 725.492, § 725.493, § 725.494, § 725.495, § 725.502, § 725.503, § 725.522, § 725.530, § 725.537, § 725.547, § 725.606, § 725.608, § 725.609, § 725.620, § 725.621, § 725.701, § 725.706, § 726.2, § 726.8, § 726.101, § 726.104, § 726.105, § 726.106, § 726.109, § 726.110, § 726.111, § 726.114, § 726.300, § 726.301, § 726.302, § 726.303, § 726.304, § 726.305, § 726.306, § 726.307, § 726.308, § 726.309, § 726.310, § 726.311, § 726.312, § 726.313, § 726.314, § 726.315, § 726.316, § 726.317, § 726.318, § 726.319, § 726.320, and part 727 (entire). The substantive revisions to these regulations are explained in further detail below.

Technical revisions

In addition, a number of regulations have been revised to make certain technical changes. The proposed regulations substitute the term "district director" for the term "deputy commissioner" wherever it appears. This change is explained in detail at 55 FR 28604–28607, July 12, 1990. The proposed regulations also add a cross-reference to § 725.4(d) to each regulation

which currently contains a cross-reference to part 727. Section 725.4(d) explains that although the Department is discontinuing publication of the interim criteria set forth in 20 CFR Part 727 in the Code of Federal Regulations, part 727 remains applicable to all claims filed prior to April 1, 1980. In addition, certain proposed regulations have been revised and/or renumbered in order to conform with the current requirements of the Office of the Federal Register. The text of § 725.453A has been incorporated into § 725.454 as paragraphs (a), (b) and (c) and § 725.454 has been retitled. The text of § 725.459A has been incorporated into § 725.455 as paragraph (d). Section 725.503A has been renumbered as § 725.504, and §§ 725.504–.506 have been renumbered §§ 725.505–.507. Section 725.701A has been renumbered § 725.702, and §§ 725.702–.707 have been renumbered §§ 725.703–.708. Finally, the proposed regulations correct minor typographical errors, revise cross references to subparts of part 725 which have been redesignated and regulations that have been renumbered, and conform the regulations to the current practices of the Office of the Federal Register. The Department has included technical changes to the following regulations: § 718.1, § 718.2, § 718.4, § 718.303, § 725.102, § 725.216, § 725.217, § 725.301, § 725.302, § 725.350, § 725.351, § 725.360, § 725.366, § 725.401, § 725.402, § 725.403, § 725.404, § 725.419, § 725.420, § 725.450, § 725.451, § 725.453A, § 725.455, § 725.459A, § 725.462, § 725.463, § 725.465, § 725.466, § 725.480, § 725.496, § 725.501, § 725.503A, § 725.504, § 725.505, § 725.506, § 725.507, § 725.510, § 725.513, § 725.514, § 725.521, § 725.532, § 725.533, § 725.543, § 725.603, § 725.604, § 725.605, § 725.607, § 725.701A, § 725.702, § 725.703, § 725.704, § 725.705, § 725.707, § 725.708, § 725.711, § 726.4, and § 726.203. Pursuant to the authority set forth in 5 U.S.C. 552(b)(3)(A), which allows federal agencies to alter "rules of agency organization, procedure, or practice" without notice and comment, the Department is not accepting comments on any of these regulations.

Unchanged Regulations

Certain regulations are merely being repromulgated without alteration and are also not open for public comment. To the extent appropriate, the Department's previous explanations of these regulations, set forth in the **Federal Register**, *see* 43 FR 36772–36831, Aug. 18, 1978; 48 FR 24272–24294, May 31, 1983, remain applicable. The same is true of those regulations to which the Department is making only technical changes. The following regulations are being repromulgated for the convenience of readers: § 718.203, § 718.206, § 718.302, § 718.304, § 718.305, § 718.306, Appendix A to Part 718, § 725.3, § 725.201, § 725.205, § 725.206, § 725.207, § 725.208, § 725.210, § 725.211, § 725.218, § 725.220, § 725.224, § 725.225, § 725.226, § 725.227, § 725.228, § 725.229, § 725.230, § 725.231, § 725.232, § 725.233, § 725.303, § 725.304, § 725.305, § 725.307, § 725.308, § 725.352, § 725.361, § 725.363, § 725.364, § 725.365, § 725.422, § 725.453, § 725.460, § 725.461, § 725.464, § 725.475, § 725.476, § 725.477, § 725.481, § 725.482, § 725.483, § 725.497, § 725.511, § 725.512, § 725.515, § 725.520, § 725.531, § 725.534, § 725.535, § 725.536, § 725.538, § 725.539, § 725.540, § 725.541, § 725.542, § 725.544, § 725.545, § 725.546, § 725.601, § 725.602, § 725.710, § 726.1, § 726.3, § 726.5, § 726.6, § 726.7, § 726.102, § 726.103, § 726.107, § 726.108, § 726.112, § 726.113, § 726.115, § 726.201, § 726.202, § 726.204, § 726.205, § 726.206, § 726.207, § 726.208, § 726.209, § 726.210, § 726.211, § 726.212, and § 726.213.

For purposes of this preamble, "he", "his", and "him" shall include "she", "hers", and "her".

20 CFR Part 718—Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis

Subpart A—General

20 CFR 718.3. We are specifically seeking comment on § 718.3. Paragraph (c) of § 718.3 was used to support the "true doubt" rule, which provides that an evidentiary issue will be resolved in favor of the claimant if the probative evidence for and against the claimant is in equipoise. The United States Supreme Court invalidated the "true doubt" rule in *Director, OWCP* v. *Greenwich Collieries*, 114 S.Ct. 2251 (1994). The Court concluded that paragraph (c) failed to define the "true doubt" rule effectively. It then held that the rule, as applied by the Benefits Review Board, contravenes the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, by relieving the claimant of the APA-imposed burden of proving his claim by a preponderance of the evidence. Paragraph (c) also appeared to conflict with § 718.403, which requires the party alleging any fact to bear the burden of proving that fact. Section 718.403 more accurately reflects the allocation of burdens of proof under the APA, and paragraph (c) of § 718.3 should therefore be deleted.

Subpart B—Criteria for the Development of Medical Evidence

20 CFR 718.101. The current text of § 718.101 should be redesignated as paragraph (a), without further amendment, and a new paragraph (b) should be added. The Department has consistently maintained the position that the "quality" standards addressing the administration of certain clinical tests and examinations apply to all evidence developed by any party in connection with a claim for black lung benefits filed after March 31, 1980. The Benefits Review Board has rejected this position, and held that the standards govern only the evidence developed by the Department; for all other parties, the standards are advisory. The Board has also held that evidence cannot be rejected by the adjudicator solely for noncompliance with the relevant standard. *See generally Gorzalka* v. *Big Horn Coal Co.*, 16 Black Lung Rep. (MB) 1–48, 1–51 (1990) and authorities cited. Only the Third Circuit has addressed this issue, and has agreed with the Department's position. *Director, OWCP* v. *Mangifest*, 826 F.2d 1318 (3d Cir. 1987). Although the existing regulations provide ample authority for making the quality standards generally applicable (see paragraphs 718.3(a), 725.406(b), 725.456(c)), § 718.101 should be amended to leave no doubt on this point.

The Department has also consistently maintained that the part 718 quality standards apply to part 727 claims if the test was conducted after March 31, 1980. *See* 20 CFR 727.203(c). The Sixth Circuit has accepted this interpretation of the regulations. *Wiley* v. *Consolidation Coal Co.*, 915 F.2d 1076, 1080 (6th Cir. 1990). Both the Board and the Seventh Circuit, however, have rejected the Department's position. *Coleman* v. *Ramey Coal Co.*, 18 Black Lung Rep. (MB) 1–9, 1–15 (1993); *Peabody Coal Co.* v. *Director, OWCP [Brinkley]*, 972 F.2d 880, 882 (7th Cir. 1992). Accordingly, the proposed paragraph (b) includes a reference to part 727 claims to clarify the applicability of the quality standards to such claims.

The individual quality standards address the compliance requirement in various ways. *See* 20 CFR 718.102 (x-ray) and 718.103 (pulmonary function study): substantial compliance; 718.104 (medical report) and 718.105 (blood gas study): no reference; 718.106 (autopsy/biopsy): compliance. In order to clarify

the criterion for compliance and place it in logical sequence in the regulations, language should be added to §718.101 requiring "substantial compliance" with all the standards. This regulation applies generally to all the quality standards, making it the rational provision to contain the compliance requirement. A single reference in one regulation also eliminates repetitive language from three other regulations while making explicit the applicability of the standard to the remaining two regulations. Finally, the phrase "[e]xcept as otherwise provided" recognizes the exemption from compliance for a deceased miner whose only X-ray is nonconforming, and autopsies or biopsies of miners who died before March 31, 1980.

The purpose of the quality standards is to ensure the utilization of reliable evidence in adjudicating claims. The effect of noncompliance in terms of proving or refuting entitlement should therefore be obvious. In order to emphasize the insufficiency of such evidence as proof, however, proposed paragraph (b) contains an affirmative prohibition.

20 CFR 718.102. Paragraph (e) should be reorganized in view of the proposed paragraph 718.101(b) general compliance standard. As noted with respect to proposed paragraph 718.101(b), codifying the "substantial compliance" standard in that regulation of general applicability eliminates the need to reiterate it in each specific quality standard. The proposed paragraph (e) also makes §718.102 consistent with §718.103 (pulmonary function studies) in presuming compliance with the technical criteria in the Appendix. Finally, the parenthetical citation to "§718.208" in the current regulation is a typographical error; no such provision exists. Reference to "§718.202" is therefore substituted as a correction inasmuch as that regulation contains definitions of Board-eligible and -certified radiologists and "B" readers. *See* 20 CFR 718.202(a)(1)(ii) (C)–(E).

20 CFR 718.103. The last two sentences of paragraph (a) should be removed, and the content of those sentences added to paragraph (c) to take into account the changes to §718.101. The explanation provided for eliminating the "substantial compliance" language in §718.102 applies with equal force to §718.103. Furthermore, the proposed paragraphs 718.102(e) and 718.103(c) operate in a functionally equivalent manner: both regulations (i) presume compliance with technical requirements contained in the appendices; (ii) permit rebuttal of that presumption with "contrary" evidence; and (iii) recognize an exception to compliance for claims involving deceased miners and limited evidence. Given the identity of purpose in the current regulations, proposed paragraph 718.103(c) mirrors proposed paragraph 718.102(c) to ensure similar interpretation and operation.

20 CFR 718.104. Section 718.104 should be amended to make clear that the enumerated data represents the minimum information and testing upon which a physician's report can be based if obtained in connection with a claim for benefits. This regulation also is the logical provision to implement guidelines for the weighing of medical reports from a miner's treating physician. Proposed paragraph (d) describes the relevant factors the adjudicator must consider in determining whether to accord "controlling weight" to the treating physician's opinion. The primary objective in changing the format of §718.104 is to clarify the requirement that any physician's report developed in connection with a claim must be based on certain enumerated information and data in order to establish or refute entitlement. Furthermore, the proposed regulation makes clear the necessity for utilizing at least an x-ray and a pulmonary function test which satisfy the quality standards as a clinical basis for a physician's pulmonary diagnosis. *See Director, OWCP* v. *Siwiec,* 894 F.2d 635, 639 (3d Cir. 1990) (holding that physician's report which was based on nonconforming pulmonary function study was insufficient to prove miner was disabled). Finally, proposed paragraph (c) parallels similar provisions in §§718.102, 718.103 and 718.106, which permit the utilization of nonconforming evidence to establish entitlement if the miner is deceased and complying evidence is unavailable. This provision adds the requirement that the physician must be unavailable; otherwise, in at least some instances, the physician could be requested to address, and cure, the deficiencies in his report.

With respect to paragraph (d), judicial precedent has long recognized that special weight may be given the opinion of a miner's treating physician, based on the doctor's opportunity to observe the miner over a period of time. *See, e.g., Thorn* v. *Itmann Coal Co.,* 3 F.3d 713, 717 n. 3 (4th Cir. 1993); *Tussey* v. *Island Creek Coal Co.,* 982 F.2d 1036, 1042 (6th Cir. 1993); *McClendon* v. *Drummond Coal Co.,* 861 F.2d 1512, 1514 (11th Cir. 1988); *Micheli* v. *Director, OWCP,* 846 F.2d 632, 636 (10th Cir. 1988); *Schaaf* v. *Matthews,* 574 F.2d 157, 160 (3d Cir. 1978). Such deference, however, is not an unqualified "blanket rule" which must be applied mechanically; the adjudicator must still determine whether the physician's opinion is reasoned, documented and credible before accepting it over contrary opinions. *Grizzle* v. *Pickands Mather and Co.,* 994 F.2d 1093, 1097 (4th Cir. 1993); *Peabody Coal Co.* v. *Helms,* 901 F.2d 571, 573 (7th Cir. 1990); *Halsey* v. *Richardson,* 441 F.2d 1230, 1236 (6th Cir. 1971); *Tedesco* v. *Director, OWCP,* 18 Black Lung Rep. (MB) 1–104, 1–105 (1994). The proposed changes to §718.104 codify the principles embodied in both lines of cases and draw on a similar regulation adopted by the Social Security Administration, 20 CFR 404.1527(d)(2).

A physician's status as the miner's treating physician can provide a legitimate basis for preferring that opinion over the reports of doctors who have examined the miner only once or reviewed only medical records and test data. Such status alone, however, is no substitute for a critical analysis of both the nature and extent of the patient-doctor relationship and the credibility of the opinion submitted by the physician. The proposed regulation enumerates the four basic factors in evaluating the physician's relationship with the miner: (i) nature of relationship (pulmonary versus non-pulmonary treatment); (ii) duration of relationship (length of time treating the miner); (iii) frequency of treatment (number of visits over time); and (iv) extent of treatment (types of tests and examinations conducted). Each factor will vary from claim to claim. Consequently, no "bright-line" rule can be utilized which defines when a treating physician's opinion should be given controlling weight.

Paragraph (d)(5) underscores the requirement that, status aside, the treating physician must provide a reasoned and documented opinion before his conclusions can be accorded controlling weight. Status cannot cure deficiencies in testing and explanation which would be fatal flaws in reports from a non-treating physician. Accordingly, this provision requires the adjudicator to consider the treating physician's opinion on its own merits and in the context of the remainder of the record to determine whether deference to the treating physician is appropriate.

20 CFR 718.105. Section 718.105 should be amended to address studies administered during the miner's terminal illness. During such an illness, arterial blood gas studies may produce qualifying results for reasons unrelated

to a chronic respiratory or pulmonary disease. In order to avoid reliance on "deathbed" qualifying data, proposed paragraph (d) should be added. This provision simply ensures the probative value of such tests as evidence of a chronic respiratory or pulmonary impairment by requiring the claimant to submit a physician's report attesting to the link between the qualifying scores and the miner's chronic pulmonary condition.

20 CFR 718.106. Paragraph (b) should be rewritten to account for the changes to § 718.101. Paragraph (b) is revised to utilize language similar to parallel provisions in the other quality standards provisions, which account for the general "substantial compliance" standard contained in the amended § 718.101. The word "noncomplying" is substituted for "nonconforming" to ensure consistent terminology in similar circumstances.

20 CFR 718.107. Section 718.107 should be amended to make explicit the burden of proof a party bears to demonstrate that the proffered test or procedure is "medically acceptable." Section 718.107 enables any party to submit medical evidence based on tests or procedures not covered by the other provisions of subpart B. This regulation permits flexibility in accommodating the use of developing or future medical diagnostic techniques beyond the traditional tests specifically covered by the quality standards. Proposed paragraph (b) emphasizes the requirement that the party proffering the evidence must establish both that the evidence is based on medically acceptable tests or procedures and that the evidence is relevant to determining the medical issues in a benefits claim.

Subpart C—Determining Entitlement to Benefits

20 CFR 718.201. We are specifically seeking comment on § 718.201. The regulatory definition of "pneumoconiosis" should be revised to clarify the Department's position that this disease is a progressive condition which, in some instances, may become detectable only after cessation of coal mine employment. The definition should also reflect the inclusive nature of the disease, such that no category of chronic lung disease can be categorically excluded from the ambit of the definition. Two important issues have emerged in recent litigation involving the definition of "pneumoconiosis": (i) whether the disease includes obstructive disorders; and (ii) whether pneumoconiosis is a latent disease which can progress after the cessation of dust exposure to the point of clinical manifestation. Heretofore, the Department has consistently taken the position in litigation and rulemaking that no specific lung disease could be categorically excluded from the definition of "pneumoconiosis"; thus, any disease which could be medically linked to occupational dust exposure in a particular case could be pneumoconiosis. *See* 43 FR 36825, Aug. 18, 1978, § 727.202 *Discussion and changes* (a); 45 FR 13685, Feb. 29, 1980, § 718.201 *Discussion and changes* (a); *Barber* v. *Director, OWCP*, 43 F.3d 899 (4th Cir. 1995). The Department has also argued that pneumoconiosis can progress absent exacerbating dust exposure, and may require many years to reach the point of detection. The Department has been largely successful in litigation involving these issues. The prevalence of the issues and the availabiiity of supportive medical research, however, warrant making explicit the current regulatory definition to codify both positions.

Scope of Definition

The statutory definition of "pneumoconiosis," as implemented by § 718.201, encompasses any chronic respiratory or pulmonary disease or impairment caused by the inhalation of coal mine dust. *See* 30 U.S.C. 902(b). Thus, any such disease or impairment which can be linked to occupational dust exposure by credible medical evidence may be considered "pneumoconiosis" for purposes of that particular claim. As such, the Act recognizes a far broader concept of the disease than does the medical community; the latter confines "coal workers' pneumoconiosis" to the pathologic reaction of lung tissue to dust inhalation, resulting in characteristic patterns or markings on chest X-rays. *See, e.g.*, "The Merck Manual of Diagnosis and Therapy" 681 (15th ed. 1987); "National Institute for Occupational Safety and Health, Occupational Exposure to Respirable Coal Mine Dust" § 4.1.2 (1995); *Freeman United Coal Mine Co.* v. *Director, OWCP*, 957 F.2d 302, 303 (7th Cir. 1992). Amending § 718.201 to acknowledge the distinction between the medical and legal definitions emphasizes the inclusive nature of "pneumoconiosis" for purposes of the black lung benefits program.

In the same vein, adding the phrase "any chronic restrictive or obstructive pulmonary disease" will foreclose litigation attempting to narrow the definition on a claim-by-claim basis with medical opinions which exclude obstructive lung disorders from occupationally-related pathologies. The NIOSH study on occupational dust exposure contains ample medical authority suggesting at least some relationship between coal mine dust exposure and the development of chronic obstructive lung disease. *See* "National Institute for Occupational Safety and Health, Occupational Exposure to Respirable Coal Mine Dust" § 4.2.2 *et seq*. Thus, leaving the issue to resolution in litigation risks inconsistent results; indeed, one court has invited such inconsistencies:

> The Act and its regulations define 'pneumoconiosis' broadly and do not establish that dust exposure from coal mine work can necessarily cause obstructive pulmonary disease or impairment. * * * Rather, the facts and medical opinions in each specific case answer this question.

Blakley v. *Amax Coal Co.*, 54 F.3d 1313, 1321 (7th Cir. 1995); *compare Warth* v. *Southern Ohio Coal Co.*, 60 F.3d 173, 175 (4th Cir. 1995) (stating that "[c]hronic obstructive lung disease thus is encompassed within the definition of pneumoconiosis for purposes of entitlement to Black Lung benefits[,]" and rejecting medical opinions based on "erroneous assumptions" to the contrary); *Eagle* v. *Armco, Inc.*, 943 F.2d 509, 511 n. 2 (4th Cir. 1991) (describing as "bizarre" a medical opinion which rejected occupational dust exposure as possible cause of chronic obstructive lung disease).

Progressive Nature

The Department has long maintained the view that simple pneumoconiosis is an irreversible disease, which may cause progressive deterioration of the lung even after the miner has ceased inhaling coal mine dust. Many court and Board decisions reflect acceptance of this characterization of the disease's pathology. *See, e.g., Mullins Coal Co.* v. *Director, OWCP*, 484 U.S. 135, 151 (1987); *LaBelle Processing Co.* v. *Swarrow*, 72 F.3d 308, 314–315 (3d Cir. 1995); *Adkins* v. *Director, OWCP*, 958 F.2d 49, 51 (4th Cir. 1992); *Lukman* v. *Director, OWCP*, 896 F.2d 1248, 1253 (10th Cir. 1990); *Orange* v. *Island Creek Coal Co.*, 786 F.2d 724, 727 (6th Cir. 1986); *Consolidation Coal Co.* v. *Chubb*, 741 F.2d 968, 973 (7th Cir. 1984); *Elkins* v. *Beth-Elkhorn Coal Co.*, 2 Black Lung Rep. (MB) 1–683, 1–686 (1979). *But see Zeigler Coal Co.* v. *Lemon*, 23 F.3d 1235, 1238 (7th Cir. 1994) (chastising an administrative law judge for assuming that pneumoconiosis is progressive without any medical evidence in the record to support the assumption). Indeed, the propensity for progressive deterioration provides the legal justification for permitting additional or

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subsequent claims, even for miners who do not return to coal mining after the first claim's denial. *See* 43 FR 36785, Aug. 18, 1978, § 725.309 *Discussion and changes (a)* ("The Department agrees that a miner whose claim has once been finally denied * * * should be allowed to file a new claim on the grounds of a progression to total disability."). The fact that the miner was unable to prove even the existence of the disease in his initial claim is no bar to a later claim since the disease may not have progressed to the point of clinical manifestation when he filed the application.

Current medical science supports the Department's position that pneumoconiosis may progress. In P. Francois *et al.*, "Pneumoconiosis of Delayed Apparition: Large Scaled Screening in a Population of Retired Coal Miners of the Northern Coal Fields of France," in Seventh International Pneumoconiosis Conference, Abstracts of Communications 979 (1988), 741 new cases of pneumoconiosis (out of 3070 miners, or 24%) were discovered in miners who did not have pneumoconiosis at retirement and who had not been exposed to dust for at least 3 years. Of these 741 new cases, only 10% had large opacities (complicated pneumoconiosis), 69% had category 1 simple pneumoconiosis, and 21% had category 2 simple pneumoconiosis. Indeed, the authors specifically recite one example of a 66 year old ex-miner who had retired 24 years earlier after 25 years of dust exposure. The x-ray at retirement showed no evidence of pneumoconiosis, but the one taken 20 years later showed obvious pneumoconiosis. Thus, the authors write:

> The coalworker's pneumoconiosis may appear a long time after the exposure to nocive [harmful] dust has ceased. This is a well established fact. What we don't know is the frequency of such forms of pneumoconiosis of long delayed apparition.

Francois at p. 979.

An earlier study from France provides additional support. In David V. Bates *et al.*, "A Longitudinal Study of Pulmonary Function in Coal Miners in Lorraine, France", 8 Am. J. Ind. Med. 21 (1985), the authors observed continued and accelerated rates of decline in lung function after retirement from mining in both smokers and nonsmokers. The authors suggest that pneumoconiosis at all stages progresses, based on "dust loading in the lung, and once this has reached some critical level, it is not much affected by removal from exposure." Bates at p. 29. The study includes several graphs depicting "radiologic category at retirement and 10 years later." Bates at p. 27. These graphs demonstrate a decrease in the percentage of miners with normal or 0/1 readings, and an increase in the percentage of miners with simple pneumoconiosis (category 1/2) as well as complicated pneumoconiosis. By way of explanation, Dr. Bates identified miners with normal or 0/1 readings as "o-p;" miners with 1/2 were "m, n, A, B," and miners with complicated pneumoconiosis were delineated as "C." Bates at p. 22. An x-ray showing opacity perfusion of 0/1 is considered negative for pneumoconiosis under the regulations. 20 CFR 718.102(b). Thus, the data clearly depicts a progression from normal, or negative, x-rays to positive x-rays, with the initial appearance of simple pneumoconiosis occurring some 10 years after the miners' last dust exposure.

Other studies and treatises inferentially document, or otherwise support, the progressivity of simple pneumoconiosis. *See*, Helen Dimich-Ward & David V. Bates, "Reanalysis of a Longitudinal Study of Pulmonary Function in Coal Miners in Lorraine, France," 25 Am. J. Ind. Med. 613, 621 (1994) (lung function loss and disability may progress after exposure ceases); Cockcroft *et al.*, "Prevalence and Relation to Underground Exposure of Radiological Irregular Opacities in South Wales Coal Workers with Pneumoconiosis," Br. J. Ind. Med. 40: 169, 172 (1983) (increase in irregular opacities without further dust exposure indicates continued tissue reaction to inhaled dust and progression of the disease after exposure, although increase in overall profusion of opacities not found); 4A Roscoe N. Gray, "Attorneys' Textbook Of Medicine," ¶ 205.71 (3d ed. 1982) (while only method of preventing progression of pneumoconiosis is removal from dusty environment, with some pneumoconioses progression will continue even after exposure ceases); "The Merck Manual of Diagnosis and Therapy" 704 (16th ed. 1992) (explaining that complicated pneumoconiosis may develop and progress without further dust exposure); David V. Bates, "Respiratory Function in Disease" 303 (3d ed. 1989) (silicosis commonly progresses after dust exposure ceases). The definition of "pneumoconiosis" includes silicosis. 20 CFR 718.202. Moreover, complicated pneumoconiosis normally develops on a background of category 2 or 3 simple pneumoconiosis. *See e.g.* "The Merck Manual of Diagnosis and Therapy" at p. 704. Thus, the development from simple to complicated pneumoconiosis without further dust exposure reveals progression of the disease.

In view of the ample scientific support for the Department's interpretation of the scope and nature of the definition of "pneumoconiosis," § 718.201 should reflect that interpretation with more specificity.

20 CFR 718.202. Paragraph (a)(2) should be amended to make clear that a finding of anthracotic pigment in a biopsy procedure, without more, is insufficient to establish the presence of pneumoconiosis. The current regulation imposes this limitation only with respect to an autopsy, but there is no reason to treat these two types of evidence differently.

20 CFR 718.204. The proposed changes to § 718.204 codify several of the positions which the Department has taken in litigation to clarify the meaning of "total disability." The regulation should explicitly reflect the Department's view that "total disability" means a totally disabling respiratory or pulmonary impairment. The proposed changes also provide guidance for establishing the degree to which pneumoconiosis must contribute to the miner's disabling impairment; to date, the quantification of disability contribution has been articulated solely through appellate decisions. In addition, the proposed changes make clear that a miner who is totally disabled by a compensable respiratory condition is entitled to black lung benefits regardless of any concurrent disability by non-respiratory impairments or diseases. Finally, the Department proposes to revise the regulation to separate disability and disability causation criteria, unify the various provisions dealing with lay evidence, and delete paragraph (f), which is unnecessary in view of corresponding material in 20 CFR 725.504.

Two significant changes have been made to the concept of "total disability." First, paragraph (a) makes clear that disabling nonrespiratory conditions are irrelevant to determining whether a miner is, or was, totally disabled by pneumoconiosis. This change makes clear the Department's disagreement with the holding in *Peabody Coal Co.* v. *Vigna*, 22 F.3d 1388 (7th Cir. 1994). In that case, the miner suffered a disabling stroke in 1971, and thereafter applied for benefits under part 727. He invoked the interim presumption with qualifying pulmonary function evidence from 1979. The Seventh Circuit held, however, that the operator rebutted the presumption because the miner's disability was caused by the stroke, which was

unrelated to coal mine dust exposure and occurred before the qualifying ventilatory study. *Compare Youghiogheny and Ohio Coal Co.* v. *McAngues*, 996 F.2d 130 (6th Cir. 1993), *cert. den.* 114 S. Ct. 683 (1994) (holding that miner's disabling injuries from automobile accident were irrelevant to determining whether he was totally disabled by pneumoconiosis). Although *Vigna* was decided under part 727, the proposed changes to paragraph 718.204(a) are designed to ensure that the Seventh Circuit's view will not be applied outside that circuit to cases arising under part 718.

The proposed paragraph (a) does recognize one exception to the irrelevancy of disabling nonrespiratory conditions in determining whether the miner is totally disabled by pneumoconiosis. Such conditions or diseases are relevant if they produce a chronic respiratory or pulmonary impairment. Some cardiac and neurological diseases, for example, may affect the respiratory musculature in such a way as to impair the individual's ability to breathe without actually affecting the lungs. *See, e.g., Panco* v. *Jeddo-Highland Coal Co.*, 5 Black Lung Rep. 1–37 (1982) (concerning respiratory impairment from amyotrophic lateral sclerosis, a neurological disease); *Maynard* v. *Central Coal Co.*, 2 Black Lung Rep. 1–985 (1980) (concerning respiratory impairment from heart disease); *Skursha* v. *U.S. Steel Corp.*, 2 Black Lung Rep. 1–518 (1980) (same). Similarly, a traumatic accident such as an injury to the spinal column may affect breathing but not the lungs. The effect of the disease or trauma, its relationship to the miner's ability to breathe, and the interplay with the miner's pneumoconiosis, all determine the contributing causes of the miner's disability.

The second change involves the definition of "total disability". The proposed change to paragraph (b)(1) expresses what the Department has always maintained: that the "disability" which the miner suffers is a totally disabling respiratory or pulmonary impairment, and not "whole person" disability. Although the two courts of appeals to consider the issue have accepted the Department's position, clarifying the definition will hopefully end litigation on this issue. *See Beatty* v. *Danri Corp. & Triangle Enterprises*, 49 F.3d 993 (3d Cir. 1995); *Jewell Smokeless Coal Corp.* v. *Street*, 42 F.3d 241 (4th Cir. 1994).

Another significant change is the addition of criteria defining "disability causation," or the degree to which pneumoconiosis must contribute to the miner's disability. Several courts have addressed the issue, and formulated various standards: *Robinson* v. *Pickands Mather & Co./Leslie Coal Co.*, 914 F.2d 35, 38 (4th Cir. 1990) ("contributing cause"); *Shelton* v. *Director, OWCP*, 899 F.2d 690, 693 (7th Cir. 1990) (necessary though not sufficient cause); *Lollar* v. *Alabama By-Products*, 893 F.2d 1258, 1265 (11th Cir. 1990) ("substantial contributing factor"); *Adams* v. *Director, OWCP*, 886 F.2d 818, 825 (6th Cir. 1989) (disability "due at least in part" to pneumoconiosis); *Bonessa* v. *United States Steel Corp.*, 884 F.2d 726, 733 (3d Cir. 1989) ("substantial contributor"); *Mangus* v. *Director, OWCP*, 882 F.2d 1527, 1531 (10th Cir. 1989) (at least a "contributing cause"). Few, if any, practical differences exist in the various expressions of the contribution standard.

The Department has concluded that a single standard should be articulated to eliminate needless confusion and litigation over the relationship between a miner's pneumoconiosis and his disability. The Department has selected the "substantially contributing cause" language because it ensures a tangible and actual contribution; a more demanding standard would be too harsh, especially when many miners suffer from a multiplicity of respiratory problems. Moreover, the "substantially contributing cause" standard mirrors the criteria for proving that pneumoconiosis contributed to the miner's death. *See* 20 CFR 718.205(c). The U.S. Court of Appeals for the Third Circuit found the contribution standard for death a persuasive basis for interpreting the disability standard: "We perceive no reason why the phrase 'total disability due to pneumoconiosis' should not track the phrase 'death due to pneumoconiosis.'" *Bonessa*, 884 F.2d at 733.

Proposed paragraph (c)(1) also defines disability causation in terms of worsening a totally disabling respiratory or pulmonary condition which is itself wholly caused by non-coal mine exposures. Thus, a miner whose pneumoconiosis further damages his lungs may establish the necessary causal link even if nonoccupational exposure is a self-sufficient cause of the respiratory disability. The proposed language reflects the Department's disagreement with the result reached by the U.S. Court of Appeals for the Fourth Circuit in *Dehue Coal Co.* v. *Ballard*, 65 F.3d 1189 (4th Cir. 1995) (holding that a miner who was totally disabled by lung cancer was not entitled to benefits because his pneumoconiosis could not, by definition, contribute to the disability).

The remaining changes are structural or editorial. Paragraph (c)(5) has been changed to paragraph (d) (i) and (ii); the remaining provisions addressing the use of lay evidence have been moved into paragraph (d) given the commonality of their purpose: establishing entitlement through lay evidence. The last sentence of current paragraph (c)(5) makes clear that proving disability through clinical tests or physicians' reports does not necessarily prove that pneumoconiosis caused the disability. This provision therefore underscores the difference between disability and disability causation as separate elements of entitlement. This point is sufficiently important to warrant placement in a separate paragraph as proposed paragraph (c)(2). Finally, current paragraph (f) is deleted because it simply duplicates 20 CFR 725.504 to the extent that both provisions preclude a working miner from receiving benefits unless the award is based on a finding of complicated pneumoconiosis.

20 CFR 718.205. The Department has taken the position that pneumoconiosis causes the miner's death if the disease is either the actual cause of death or hastens death to an appreciable extent. This interpretation of the phrase "death due to pneumoconiosis" should be made explicit in the regulation. Under the 1981 amendments to the BLBA, a deceased miner's survivor who filed a claim on or after January 1, 1982, is eligible for benefits only if pneumoconiosis caused, or contributed to, the miner's death. The Department added paragraph (c) to § 718.205 to implement congressional intent that pneumoconiosis must play a role in the miner's death in order to entitle a survivor to benefits. Based on the legislative history of the 1981 amendments, the Department concluded that the disease must be at least a "substantially contributing cause" of the miner's death. *See* 48 FR 24276—24277, May 31, 1983, § 718.205 *Discussion and changes* (h)–(n). In order to give practical meaning to that phrase, the Department has consistently argued in litigation that the medical evidence must at least prove that the miner's pneumoconiosis actually hastened his death. Four courts of appeals have deferred to the agency's interpretation of the regulation. *Brown* v. *Rock Creek Mining Co.*, 996 F.2d 812, 816 (6th Cir. 1993); *Peabody Coal Co.* v. *Director, OWCP*, 972 F.2d 178, 183 (7th Cir. 1992); *Shuff* v. *Cedar Creek Coal Co.*, 967 F.2d 977, 980 (4th Cir. 1992), *cert. den.* 113 S.Ct. 969 (1993); *Lukosevicz* v. *Director, OWCP*, 888 F.3d 1001, 1006

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(3d Cir. 1989). The Benefits Review Board has refused to adopt the Department's position, but has not articulated an alternative standard. *See, e.g., Tackett* v. *Armco, Inc.*, 16 Black Lung Rep. (MB) 1–88, 1–93 (1992), *vacated on remand* 17 Black Lung Rep. (MB) 1–103, 1–104 (1993). In order to ensure consistent application of a single legal standard, paragraph (c) of § 718.205 should be amended by adding proposed paragraph (c)(5), which codifies the Department's views.

Subpart D—Presumptions Applicable to Eligibility Determinations

20 CFR 718.301. Paragraph (b) should be removed because a new definition of "year" is added to 20 CFR 725.101(a). Paragraph (a) of § 718.301 should be amended to make reference to proposed § 725.101(a)(32) and its requirements. Section 718.301 is one of two regulations which currently define "year" for determining the length of a miner's occupational history; the other regulation is 20 CFR 725.493(b) (identifying responsible operator). The Department has concluded that a single regulatory definition with program-wide application should replace the two current regulations. Determining the length of a miner's occupational history is the same inquiry for establishing eligibility for presumptions as for identifying a responsible operator, and a single standard should apply in both cases.

20 CFR 718.307. Remove 20 CFR 718.307 (a) and (b) and add the contents of § 718.307(a) to 20 CFR 725.103. Paragraph (a) contains material which concerns any claim filed under the BLBA, and not just claims governed by the part 718 medical criteria. Accordingly, the contents of paragraph (a) will be removed from part 718 and placed in § 725.103. *See* proposed § 725.103. Paragraph (b) effectively duplicates new proposed § 725.103, which more broadly describes the burden of proof. This language should therefore be removed.

Subpart E—Miscellaneous Provisions

20 CFR 718.401. Remove § 718.401 because it duplicates proposed § 725.406. Current § 718.401 recognizes each miner's statutory right to a complete pulmonary evaluation at the Department's expense. *See* 30 U.S.C. 923(b). This regulation also authorizes both the miner and the district director to develop additional medical evidence. Section 718.401 duplicates material in the cross-referenced regulations, 20 CFR §§ –725.405 and 725.406; the part 725 regulations have program-wide applicability. Consequently, no need exists for including this regulation in part 718.

20 CFR 718.402. Remove the first sentence of § 718.402 and add the remainder of this provision to proposed § 725.414(a)(3)(iii). Section 718.402 describes the consequences of a claimant's failure to cooperate in the development of medical evidence needed to adjudicate the claim. This provision duplicates the substance of proposed § 725.414(a)(3)(iii), which deals with a claimant's unreasonable refusal to submit to medical examinations and testing. Section 718.402 also penalizes the claimant who refuses to provide a complete health history or permit access to medical records. This aspect of the regulation will be added to proposed § 725.414. Given the overlapping purposes of the two regulations, § 718.402 should be removed from part 718 in favor of proposed § 725.414, which has program-wide applicability.

20 CFR 718.403. Remove 20 CFR 718.403 from part 718 and add to part 725. Section 718.403 codifies the burden of proof imposed on any party alleging any fact in support of its position under part 718. The parties to a claim, however, are required to prove a variety of facts under part 725 which also bear on entitlement issues, *e.g.*, status as a miner (§ 725.202); dependency and relationship (§§ 725.204–725.223); liability as a responsible operator (subpart G); and entitlement to medical benefits (subpart J). Part 725 does not contain a counterpart to § 718.403. Accordingly, a single provision generally allocating the parties' burdens of proof under the BLBA logically should be placed in part 725, the regulations with program-wide applicability. *See* proposed § 725.103.

20 CFR 718.404. Remove 20 CFR 718.404 from part 718 and move to part 725. Section 718.404(a) makes explicit a miner's obligation to inform the Department and the responsible operator, if any, if he resumes work in a coal mine or comparable and gainful work. A return to such work requires the termination of benefits unless the miner's award is based on complicated pneumoconiosis. *See* 20 CFR 725.504(c). Paragraph (b) reiterates the Department's authority to reopen a finally approved claim during the lifetime of the miner and develop medical evidence if the particular circumstances so warrant. Both provisions are more logically placed in part 725 as regulations of program-wide applicability. *See* proposed § 725.203 (c) and (d).

Appendix B to Part 718

Appendix B to Part 718, 2(ii). The technical requirements for the administration of pulmonary function studies should be amended to preclude taking the initial inspiration from the open air. The quality standards currently permit an individual performing a pulmonary function study to take the initial inspiration from either the open air or the testing machine. The proposed regulation eliminates this choice. Open air inspiration is not recorded on the spirogram, which documents the performance of the test. Consequently, the validity of such an initial inspiration cannot be independently verified by a reviewing physician. Because less than optimum inspiration will produce a "false low" result, such tests may yield erroneously abnormal values. The open-air inspiration option therefore must be eliminated in order to ensure that the validity of every pulmonary function study can be independently ascertained.

The Department does not propose to change Tables B1–B6 in Appendix B, which are used to evaluate the results of pulmonary function tests (see proposed § 718.204(b)(2)(i)). Accordingly, the tables will not be republished in either the proposed or final versions of this rule in the **Federal Register**. The tables will continue to be published as part of Appendix B to part 718 in the Code of Federal Regulations once this rule becomes final, however. Parties interested in reviewing the tables may consult earlier editions of the Code of Federal Regulations or the **Federal Register** in which the tables were originally promulgated, 45 FR 13693–13710, Feb. 29, 1980.

Appendix C to Part 718. Appendix C should be amended to specify that arterial blood gas studies should not be conducted during, or shortly after, a miner's acute respiratory illness. Such studies are likely to produce spurious values which are not indicative of the miner's true condition.

20 CFR Part 722—Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Coverage for Pneumoconiosis and Listing of Approved State Laws

Section 421 of the Black Lung Benefits Act requires the Secretary of Labor to publish in the **Federal Register** a list of all states whose workers' compensation laws provide "adequate coverage" for occupational pneumoconiosis. 30 U.S.C. 931(a). The purpose of this provision was to allow states to assume responsibility for providing compensation to former coal

miners who were totally disabled due to pneumoconiosis and to their dependent survivors in the event of the miner's death due to pneumoconiosis. *See Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 8–9 (1976). The Secretary's certification that a state law provides adequate coverage prevents any claim for benefits arising in that state from being adjudicated under the Black Lung Benefits Act. To date, no state law has been approved.

The Act provides that a state may be included on the Secretary's list only if its provisions governing benefit amounts, entitlement standards, statute of limitations, and prior and successor operator liability are "substantially equivalent" to those contained in the Act. 30 U.S.C. 931(b)(2). In addition, the Secretary may promulgate additional regulations to ensure adequate compensation for total disability or death due to pneumoconiosis. 30 U.S.C. 931(b)(2)(F). The Secretary first promulgated regulations under this authority on March 12, 1971, and amended those regulations on March 30, 1973 in light of changes to the Longshore and Harbor Workers' Compensation Act in 1972. 38 FR 8238, March 30, 1973. These regulations, codified at 20 CFR part 722, have not been amended since 1973. In light of the subsequent statutory changes made by the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Amendments of 1981, the current regulations are obsolete.

The Department has recently concluded a review of all of the regulations implementing the Act, and has determined that the continued publication of these criteria in the Code of Federal Regulations is no longer required. Accordingly, rather than amend the regulations to reflect the current law, the Department intends to simply delete the specific criteria and replace them with a general statement that in the future, upon application of any state, the Department will review the state's workers' compensation law in light of the current Act to determine whether the state law provides adequate coverage. Guided by the criteria set forth in 30 U.S.C. 931(b)(2), the Department will approve such a state law only if it guarantees at least the same compensation, to the same individuals, as is provided by the Act. The Act requires that if the Department approves any state laws, it publish a list of the affected states in the **Federal Register**, 30 U.S.C. 931(b)(1).

Finally, the revised regulations substitute the gender neutral term "workers' compensation laws" for the term "workmen's compensation laws," used in the statute. No substantive alteration in the statutory term is intended.

20 CFR Part 725—Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, as Amended

Subpart A—General

20 CFR 725.1. Section 725.1 provides a broad overview of the various parts of the Black Lung Benefits Act (BLBA), the amendments thereto, and the incorporation of the Longshore and Harbor Workers' Compensation Act (LHWCA). The Department proposes to amend this regulation to include a comparable reference to the Social Security Act, 42 U.S.C. 301 *et seq.*, provisions of which are also incorporated into Parts A, B and C of the BLBA. The BLBA is actually three statutes in one. The Act itself is subchapter IV of the Mine Safety and Health Act, chapter 30 of the United States Code. Part C of the Act, which the Department administers, also incorporates many provisions of the LHWCA, 33 U.S.C. 901 *et seq.* Congress authorized the Department to vary the terms of the incorporated LHWCA provisions by regulation, and the Department has done so when the special requirements of the black lung benefits program dictated the variance. Congress also incorporated parts of the Social Security Act into Parts A and B of the BLBA. Congress once again authorized the Department to adopt and modify the Part B provisions "to the extent appropriate" for use in the administration of Part C. Accordingly, §725.1 should be amended to include a brief description of the Social Security Act incorporation comparable to the present discussion of the LHWCA incorporation.

20 CFR 725.2. For an explanation of the changes to paragraph (b), see the explanation of the changes to § 725.4. Paragraph (c) should be added to explain the applicability of these regulatory revisions to pending claims and to claims filed after the effective date of the revised regulations. The Department intends that the proposed revisions announced in this Notice will apply to the adjudication of all claims for benefits under the Black Lung Benefits Act pending with the Department on the date these revisions go into effect, to the extent that such application is consistent with the Department's authority under the Black Lung Benefits Act and with the efficient administration of the program. The Department considers a claim to be pending if the claim has not yet been finally denied, or less than one year has passed since the claim was finally denied. In addition, all of the proposed regulations will apply to any claim filed after the regulations become final.

The Supreme Court has held that a statutory grant of legislative rulemaking authority to an agency does not confer the power to issue retroactive rules unless Congress expressly provides such power. *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 208 (1988). The Black Lung Benefits Act does not contain such an express grant. Accordingly, the Department's ability to issue rules of retroactive application is circumscribed.

Determining whether a rule is one of retroactive application, however, is often difficult. In *Landgraf* v. *USI Film Products*, 114 S. Ct. 1483 (1994), the Court adopted the definition set forth by Justice Story in *Society for Propagation of the Gospel* v. *Wheeler*, 22 F.Cas. 756 (No. 13,156) (CCDNH 1814):

> [E]very statute, which takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective.
> * * *

114 S. Ct. at 1499. The Court observed, however, that "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law." *Ibid.* (citation omitted).

One example of an attempt to regulate retroactively was the Department of Health and Human Services regulation at issue in *Georgetown University Hospital*. In 1983, the U.S. District Court for the District of Columbia had invalidated a 1981 HHS regulation governing hospital reimbursement for failure to provide notice and an opportunity to comment. In 1984, HHS reissued the regulation following notice and comment, and attempted to make it retroactive to 1981. The Supreme Court invalidated the second regulation as an unauthorized attempt to promulgate a retroactive regulation. At the other end of the spectrum are procedural changes. As the Supreme Court noted in *Landgraf*, "[c]hanges in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity." 114 S. Ct. at 1502.

For purposes of retroactivity, the revisions to the Department's regulations implementing the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, may be divided into two groups. The first, consisting of revisions to part 726, have no effect on the adjudication of

claims filed under the Act. Those revisions, which establish procedures for enforcing the general obligation of coal mine operators to secure the payment of benefits under the Act, will be made effective immediately upon publication of the final rule, and will govern all subsequent penalty assessments.

The Department also proposes to revise various provisions in part 726 that address the requirements imposed on coal mine operators who seek the Department's authority to self-insure their liability. These revisions merely clarify the Department's existing interpretation of the Act. Accordingly, these regulations may apply to the evaluation of past conduct. In *Pope* v. *Shalala*, 998 F.2d 473, 483 (7th Cir. 1993), the court held that "[a] rule simply clarifying an unsettled or confusing area of the law * * * does not change the law, but restates what the law according to the agency is and has always been: 'It is no more retroactive in its operation than is a judicial determination construing and applying a statute to the case.' *Manhattan General Equip. Co.* v. *Commissioner*, 297 U.S. 129, 135 (1936)."

The second, and largest, group of revisions are those amending Parts 718 and 725, which govern the adjudication of claims for benefits filed by miners and their survivors, as well as the payment of benefits in approved claims. A number of the revisions alter the procedures to be used in adjudication, including those related to processing of claims by the district director, the adjudication of claims before the Office of Administrative Law Judges, responsible operator issues, and subsequent claims. These changes, however, significantly alter the parties' obligations and expectations, for example, by limiting evidence, creating presumptions, and establishing burdens of proof. Accordingly, despite the Department's authority under *Georgetown University Hospital* and *Landgraf* to issue procedural rules that take effect immediately, the Department proposes to apply the revised versions of the regulations governing those topics only to claims filed after the effective date of the amendments. Because the remaining revisions merely clarify the Department's interpretation of the current Act and regulations, the Department intends to apply them to all claims pending with the Department, and to the payment of all benefits that become due and payable, or that remain unpaid, after the effective date of these revisions.

20 CFR 725.4(d). In 1978, Congress required the Department of Labor to promulgate interim entitlement criteria that were "no more restrictive" than criteria used to adjudicate claims that had been filed with the Social Security Administration under Part B of the Black Lung Benefits Act. These interim criteria were to be used until the Department could develop permanent criteria. The interim part 727 regulations were published at 43 FR 36818, Aug. 18, 1978. Because the Department's permanent part 718 criteria took effect on April 1, 1980, *see* 20 CFR 718.2, the part 727 regulations apply only to claims filed before that date. The Department estimates that several hundred part 727 claims remain pending in various stages of adjudication. Because the parties to these claims are quite familiar with the standards for establishing eligibility under part 727, and no new claims will be adjudicated under these standards, the Department intends to discontinue the annual publication of part 727 in the Code of Federal Regulations. Those standards will remain in effect for all claims to which they apply. Parties interested in reviewing part 727 may consult earlier editions of the Code of Federal Regulations or the **Federal Register** in which the regulations were originally published.

20 CFR 725.101. The terms defined by § 725.101(a)(4) *et seq.* have been put in alphabetical order to assist the reader in finding the appropriate definitions. The explanations below refer to the renumbered paragraphs.

20 CFR 725.101(a)(6). Benefits. The regulation should be amended to make clear that the initial pulmonary evaluation obtained by the Department pursuant to 30 U.S.C. 923(b) is considered a "benefit" paid by the Trust Fund or the operator on the claimant's behalf. The clinical testing and medical examination required by § 413(b) of the BLBA confer a "benefit" on the miner to the extent that the Trust Fund pays for the miner's opportunity to substantiate his claim.

20 CFR 725.101(a)(13), Coal Preparation; (a)(19), Miner or Coal Miner. The regulation should be amended to reflect the Department's position that coke oven workers are not covered by the BLBA. The Department has long taken the position that the preparation activities undertaken at coke ovens are not covered by the BLBA. This position reflects Congress' understanding of the scope of coverage intended by the statutory definition of "miner." 30 U.S.C. 902(d). *See* S.Rep. No. 209, 95th Cong., 1st Sess. 21 (May 16, 1977) ("Nor does [the definition] include such individuals not directly related to the production of coal such as coke oven workers."); 123 Congressional Record 24,236 (1977) (Sen. Randolph: "* * * coke oven workers are not included in the definition."). *See also Fox* v. *Director, OWCP*, 889 F.2d 1037 (11th Cir. 1989); *Sexton* v. *Matthews*, 538 F.2d 88 (4th Cir. 1976). This clarifying language ensures that the definitions of "coal preparation" and "miner or coal miner" do not encompass activities involving the commercial production of coke, which is outside the extraction and transportation processes.

20 CFR 725.101(a)(16). *District Director.* The proposed change merely conforms the regulation to current administrative practice, and ensures that any action taken by, or in the name of, a district director shall be given full credit as the action of a deputy commissioner.

20 CFR 725.101(a)(17). Division or DCMWC. The proposed change specifies the agency within the Department which contains the Office of Workers' Compensation Programs and the Division of Coal Mine Workers' Compensation.

20 CFR 725.101(a)(31). Workers' Compensation Law. This definition should be amended to make clear that certain benefits paid from a state's general revenues are not workers' compensation payments for purposes of the BLBA. The BLBA requires the Department to offset a claimant's federal benefits by any benefits received from a state pursuant to a workers' compensation law for disability or death due to pneumoconiosis. 30 U.S.C. 932(g). Since the Act's inception, the Department has considered payments made to disabled miners by a state from general revenues to be excluded from benefits afforded by "workers' compensation laws." Both the Third Circuit and the Benefits Review Board, however, have rejected the Department's position. *O'Brockta* v. *Eastern Associated Coal Co.*, 18 Black Lung Rep. 1–72 (1994), *aff'd sub nom. Director, OWCP* v. *Eastern Associated Coal Co.*, 54 F.3d 141 (3d Cir. 1995). The Board held that § 932(g) clearly refers to "workers' compensation law" without regard to the source of funding for the payments. The Third Circuit rejected this reasoning but agreed that the Department's position was wrong. The Court held that § 932(g) is ambiguous, but that the Department's policy impermissibly implies limitations on current § 725.101(a)(4) which are inconsistent with the unequivocal language of the regulation. The Court suggested that the Department amend

the regulation to codify its policy. The proposed regulation makes clear the Department's longstanding policy that payments made from a state's general revenues are not workers' compensation benefits subject to offset under the Act.

20 CFR 725.101(a)(32). The BLBA does not define a "year" for purposes of computing the length of a miner's occupational history. In 1978 and 1980, the Department promulgated regulations which adopted the current 125-day rule. 20 CFR 725.493(b), 718.301(b). The rationale for this policy decision is explained in detail in the comments accompanying the final regulations. 43 FR 36804, Aug. 18, 1978, § 725.493, *Discussion and changes (b);* 45 FR 13691, Feb. 29, 1980, § 718.301, *Discussion and changes (b).* The regulations are substantially the same, but not identical. The proposed § 725.101(a)(32) consolidates provisions of the two existing regulations into a definitional term with program-wide application.

In addition, the regulation codifies the Department's current position with respect to absences, such as vacation and sick leave, that are approved by the miner's employer. In such cases, where the employer/employee relationship is uninterrupted, a miner is credited with having worked during the period of the approved absence. Other absences, such as the time during a strike or layoff, are not counted as working days. Finally, the proposed section permits the adjudication officer to use the Office's methodology for computing the length of the miner's employment history as a fallback. *See* "Coal Mine (BLBA) Procedure Manual," ch. 2–700 (1994). The Bureau of Labor Statistics (BLS) has compiled the average daily and annual wages for the coal mine industry. A table of this data appears in the Office's Manual. If the best available evidence consists of annual income statements, the amount of time the miner worked each year as a miner may be computed by dividing the reported income by the average daily income for that year. The miner may be credited with a year, or a fractional part of a year, based on the ratio of this data. If, however, the miner's annual income exceeded the average income for that year, he may not be credited with more than a year of employment for that income year.

20 CFR 725.103. Section 718.403 presently codifies the burden of proof imposed on any party alleging any fact in support of its position under part 718. The parties to a claim, however, are required to prove a variety of facts under part 725 which also bear on entitlement issues, e.g., status of a miner (§ 725.202); dependency and relationship (§§ 725.204–725.228); liability as a responsible operator (subpart G); and entitlement to medical benefits (subpart J). Part 725 does not contain a counterpart to § 718.403. Accordingly, a single provision generally allocating the parties' burdens of proof under the BLBA logically should be placed in part 725 since those regulations have program-wide applicability.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

20 CFR 725.202. The BLBA contains a broad definition of "miner" which the courts have liberally construed. *See Dowd* v. *Director, OWCP,* 846 F.2d 193 (3d Cir. 1988). In keeping with that liberal construction, this regulation should be amended to create a rebuttable presumption that any individual working at a coal mine or coal preparation facility is a miner. The presumption is grounded in common sense: the vast majority of persons working at a coal mine will ordinarily have duties related to the mining processes of coal extraction and/or preparation. This presumption can be rebutted by evidence that the individual is not actually performing work integral to the extraction or preparation of coal, or the individual's work involves only casual contact with the coal mine operation. The structure of the regulation should also be changed to distinguish special provisions relating to transportation and construction workers. Of special note is the fact that construction workers alone are relieved of the burden to prove that their work involves the extraction or preparation of coal; working at a coal mine site in construction activities which involve mine dust exposure is sufficient to make them miners. *See The Glem Company* v. *McKinney,* 33 F.3d 340 (4th Cir. 1994).

20 CFR 725.203. One of the elements of entitlement required by § 725.202 is that the miner file a claim. Section 725.203(a), as currently written, provides that all of the § 725.202 requirements must be satisfied for each month of entitlement. These criteria effectively mean that the first month in which the miner fulfills all the requirements for entitlement will never be earlier than the month in which he files an application for benefits. A miner, however, is entitled to benefits for all periods of compensable disability, including any period of disability occurring before the claim is filed. 20 CFR 725.503. To the extent that the cross-reference to § 725.202 improperly limits the miner's entitlement period (and conflicts with 20 CFR 725.503), the reference will be removed, and the language clarified to conform to § 725.503.

New paragraphs (c) and (d) incorporate material from 20 CFR 718.404, which has been deleted. Paragraph (c) makes explicit a miner's ineligibility for black lung disability benefits if the miner resumes his usual coal mine work or comparable and gainful work absent the presence of complicated pneumoconiosis. Paragraph (d) reiterates the Department's authority to reopen a finally approved claim during the lifetime of the miner and develop medical evidence if the particular circumstances warrant reopening. Both provisions are more logically placed in part 725 as regulations of program-wide applicability. *See* 20 CFR 725.2(b).

20 CFR 725.204, .214. Sections 725.204 and 725.214 should be amended to recognize the coexisting eligibility of both a qualified spouse and an individual who married the miner in ignorance of a legal impediment to that marriage. The BLBA incorporates § 416(h)(1) of the Social Security Act (SSA), which describes the requirements for establishing the marital relationship between the wage earner and the spouse for purposes of qualifying as a "wife, husband, widow or widower." 42 U.S.C. 416(h)(1), as incorporated by 30 U.S.C. 902(a)(2), (e). The Department has implemented § 416(h)(1) in the current §§ 725.204 (for spouses) and 725.214 (for surviving spouses). Recent amendments to the SSA require corresponding changes in the regulations.

Section 416(h)(1) recognizes that both the "legal" and "deemed" spouses may be entitled to benefits. An individual qualifies as the miner's "legal" spouse by proving the existence of a valid marriage under state law. A "deemed" spouse, however, must demonstrate that he lived with the miner either at the time of application or the time of the miner's death, and:

> in good faith went through a marriage with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage * * *.

42 U.S.C. 416(h)(1)(B)(i). The SSA defines a "legal impediment" as

> only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.

42 U.S.C. 416(h)(1)(B)(iv).

Before 1990, § 416(h)(1)(B) contained a provision preventing a "deemed"

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spouse from receiving benefits if a "legal" spouse existed and was receiving benefits on the wage earner's account:

> The [deemed spouse] provisions shall not apply if (i) another person is or has been entitled to [old age and survivor's insurance] benefit[s] * * * on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) [the legal spouse] * * * of such insured individual under subparagraph (A) at the time such applicant files the application * * *.

42 U.S.C. 416(h)(1)(B) (1989). The Department used this version of § 416(h)(1) in promulgating the current regulatory criteria for proving a relationship between the miner and spouse or surviving spouse.

In 1990, Congress amended § 416(h)(1)(B) by deleting the bar on entitlement for a deemed spouse even if a legal spouse existed and was receiving benefits. Omnibus Budget Reconciliation Act, § 5119, 104 Stat. 1388–278 to 1388–280 (1990). The express purpose of the amendment was to allow payment of concurrent benefits to both the legal and the deemed spouses. *See* H. Rep. No. 101–964, 1990 U.S.C.C.A.N. 2649, 2650 (conference report). Congress intended that "the existence of a legal spouse would no longer prevent a deemed spouse from receiving benefits on the worker's record or terminate the benefits of a deemed spouse who was already receiving benefits on the worker's record." *Id.* at 2650. Moreover, Congress expected that a deemed spouse would receive benefits "on the same basis as if * * * she were a legal spouse * * *." *Id.* The Social Security Administration amended its disability regulation to reflect the statutory changes (see 20 CFR 404.346); it has not yet amended the part 410 regulations, which govern its administration of Part B of the BLBA. *See* 20 CFR part 410, subpart C ("Relationship and Dependency").

The proposed changes to §§ 725.204 and 725.214 amend the dependent and surviving spouse relationship criteria to conform to changes in the SSA. Such changes are required for the regulations affecting surviving spouses, given the incorporation of the SSA statutory definitions of "dependent" and "widow". Moreover, Congress has previously evidenced the intent to harmonize the SSA and the BLBA statutory provisions which address marital status (*see* Explanation of proposed changes to § 725.212); eliminating the "deemed" spouse bar is consistent with this congressional policy.

20 CFR 725.209, .219, .221, .222. These provisions should reflect the age limit for a disabled dependent currently specified in 42 U.S.C. 402(d)(1)(B), as incorporated into the BLBA by 30 U.S.C. 902(g). Section 402(g)(ii) of the BLBA defines "child" to include an individual who is disabled by SSA standards, provided such disability "began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act * * *." Congress has raised the age for the onset of disability for the SSA program from 18 to 22 since § 725.209 was promulgated. Because the BLBA specifically incorporates its disability age limit from the SSA, the regulation should be changed to reflect the change in the SSA. Finally, the parenthetical cross-reference to 20 CFR 404.320(c) in § 725.209(b)(1) is corrected. The SSA regulations which concern full-time student criteria are 20 CFR 404.367 through 404.369.

20 CFR 725.212. Proposed paragraph (b) reflects the Department's position that the BLBA and pertinent legislative history require the payment of full monthly survivor's benefits to each surviving spouse and surviving divorced spouse who satisfies the entitlement criteria, regardless of the existence of any other spouse who also qualifies for benefits.

Prior to 1992, the Department's policy regarding the allocation of benefits between (or among) multiple surviving spouses of the same miner, as stated in the "Coal Mine (BLBA) Procedure Manual," limited each spouse to less than full monthly benefits:

> If more than one claimant is found entitled, no more than the maximum amount of benefits for the number of beneficiaries involved may be paid under Part C. (e.g., where a surviving spouse and a divorced spouse both qualify, no more than the claimant plus one dependent benefits may be paid). This maximum amount is divided equally between the eligible beneficiaries of equal status.

Ch. 2–900 para. 8(b) (February 1980). In 1992, the Department reconsidered this position and concluded that each surviving spouse who meets the criteria for eligibility is entitled to the payment of the full benefits due a surviving spouse. This change in position was the result of further reflection on pertinent provisions of the BLBA and their legislative history.

The BLBA's definition of "widow" must be considered in the context of the Social Security Act's (SSA) definition because SSA's definition is incorporated into the BLBA, and Congress has consistently attempted to harmonize the two provisions. Before 1965, the SSA awarded widow's benefits only to a surviving spouse. *See* Social Security Amendments of 1965, Pub. L. No. 89–97, § 308(b)(1), 79 Stat. 286 (1965). The legislative history to the 1965 amendment explicates the intended operation of the changed definition:

> Payment of a wife's or widow's benefit to a divorced woman would not reduce the benefit paid to any other person on the same social security account and such wife's or widow's benefit would not be reduced because of other benefits payable on the same account.

S. Rep. No. 404, 89th Cong., 1st Sess. (1965), *reprinted in* 1965 U.S.C.C. & A.N. 1943, 2047. *See* "Social Security Program Operations Manual (POMS)" RS 00615.682 (both surviving spouses and surviving divorced spouses awarded full [100 percent] benefits).

In 1972, Congress amended the BLBA's definition of a "widow" to permit the payment of benefits to a miner's surviving divorced spouse. That definition, as amended, now reads:

> Such term [widow] also includes a 'surviving divorced wife' as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

30 U.S.C. 902(e). The legislative history of the amendment indicates that Congress altered the definition of "widow" to make it comport with the SSA definition:

> The term 'widow' in section 402(e) is likewise redefined to conform to the Social Security Administration definition.

S. Rep. No. 743, 92nd Cong., 2d Sess. (1972) *reprinted in* 1972 U.S.C.C. & A.N. 2305, 2332. *See Wolfe Creek Collieries* v. *Robinson*, 872 F.2d 1264, 1266–67 (6th Cir. 1989). Consequently, by 1972 both statutes provided a full widow's benefit to a surviving spouse and a surviving divorced spouse. 42 U.S.C. 402(e).

Section 412 of the BLBA also supports the payment of full benefits to each qualified survivor. That provision states in pertinent part:

> In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

30 U.S.C. 922(a)(2). A miner, as the primary beneficiary on a claim, is

clearly entitled to a full basic benefit. 30 U.S.C. 922(a)(1); 20 CFR 725.520. Upon the miner's death, the "widow," as the primary beneficiary, must be compensated in like fashion. *Id.* Section 902(e) defines the term "widow" to include both a surviving spouse and a surviving divorced spouse. 30 U.S.C. 902(e). Nothing in §922 provides for an alternative payment amount if a miner is survived by two widows. Consequently, the plain language of the statutory payment provisions mandates that both spouses should receive a full (100 percent) basic benefit amount. 30 U.S.C. 922(a)(2). To utilize any other methodology would require payment to each "widow" at less than the statutorily prescribed "rate the deceased miner would receive if he were totally disabled". 30 U.S.C. 922(a)(2).

20 CFR 725.213. Section 725.213(b)(3) is no longer necessary in view of the changes made to §725.204 to confer equal status on the spouse and "deemed spouse". A new paragraph (c) clarifies administrative practice with respect to survivor beneficiaries who become ineligible for benefits, but later reestablish eligibility. The most common reason for losing eligibility (among surviving spouses) is remarriage; if the remarriage ends through death or divorce, the ex-beneficiary may apply for a return to entitlement. The individual need only notify the Office and provide such evidence as may be required to reestablish eligibility. The new paragraph also makes clear that the individual is not required to reprove the merits of entitlement.

20 CFR 725.215. Delete paragraph (g)(3)'s reference to "section" and replace with "paragraph". A miner's surviving spouse may meet the dependency requirement pursuant to paragraph (g) if the marriage lasted at least nine months. If the marriage lasted fewer than nine months, a spouse may nevertheless be deemed the miner's dependent if the miner dies in an accident or in the line of duty. The purpose of paragraph (g)(3) is to preclude a survivor's reliance on the exception to the nine-month marriage rule if the adjudication officer concludes that the miner would not have lived nine months in any event. Use of the technical word "section", however, makes the language of the entire regulation inapplicable. Consequently, the reference should be changed to confine paragraph (g)(3) to its proper context. This change is consistent with the structure and meaning of the Social Security Administration's parallel regulation for Part B beneficiaries, 20 CFR 410.360(b).

20 CFR 725.223. Section 725.223 should be changed to reflect the age limit for a disabled dependent currently specified in 42 U.S.C. 402(d)(1)(B), as incorporated into the BLBA by 30 U.S.C. 922(a)(5). A new paragraph (d) clarifies administrative practice with respect to sibling beneficiaries who become ineligible for benefits due to marriage, but later reestablish eligibility. *See* the Explanation accompanying proposed §725.209 for changing the onset date for a dependent beneficiary's disability. *See* the Explanation accompanying proposed §725.213(c) for explaining the procedures for the restoration of entitlement after termination due to marriage.

Subpart C—Filing of Claims

20 CFR 725.306(a). The proposed change is intended to ensure that another proposed change, in the definition of the term "benefits," 20 CFR 725.101(a)(6), does not produce unintended consequences in cases where a claimant seeks to withdraw a claim. Currently, §725.306(a)(3) prohibits a claimant from withdrawing a claim if he has received benefits, defined as payments "on account of disability or death due to pneumoconiosis," unless such benefits have been repaid. The Department has proposed amending the definition of the term "benefits" to include amounts paid from the Trust Fund to provide the claimant with a complete pulmonary evaluation as required by 30 U.S.C. 923(b). Section 725.306 must also be amended, however, to make clear that the Department will not require reimbursement of the amount spent on the claimant's complete pulmonary evaluation as a condition for withdrawing a claim. The proposed language is similar to language in 20 CFR 725.465(d), which provides an administrative law judge with the authority to dismiss claims for cause only if the Trust Fund is reimbursed for any payments made pursuant to 20 CFR 725.522.

20 CFR 725.309. The Department's current regulation governing the processing and adjudication of subsequent or additional claims for benefits has been a cause of much litigation. Subsequent claims for benefits, often misleadingly referred to as duplicate claims, are those applications filed by the same individual after final denial of a prior claim. Initially, the litigation dealt with procedural issues. For example, in *Lukman* v. *Director, OWCP*, 11 Black Lung Rep. (MB) 1–71 (Ben. Rev. Bd. 1988), *rev'd*, *Lukman* v. *Director, OWCP*, 896 F.2d 1248 (10th Cir. 1990), the Benefits Review Board held that a claimant was not entitled to a hearing before an administrative law judge on the issue of whether he had established a material change in conditions, a requirement under the current regulations for consideration of the merits of a subsequent claim.

After the Tenth Circuit reversed the Board's decision, subsequent claims litigation focused on substantive issues, particularly the type of evidence a claimant must submit to establish a "material change in conditions," and thereby escape denial of the subsequent claim on the grounds of the prior denial. The appellate courts are currently divided on this issue. The Seventh Circuit has rejected the Department's interpretation of the regulation, holding that the claimant must establish that his condition is substantially worse than at the time of the prior denial in order to avoid another denial, or that "even a slight worsening could be and was a material change in condition." *Sahara Coal Company* v. *Director, OWCP*, 946 F.2d 554, 558 (7th Cir. 1991). The Third, Fourth, and Sixth Circuits gave deference to the Department's interpretation, *Labelle Processing Co.* v. *Swarrow*, 72 F.3d 308 (3d Cir. 1995); *Lisa Lee Mines* v. *Director, OWCP*, 86 F.3d 1358 (4th Cir. 1996); *Sharondale Corporation* v. *Ross*, 42 F.3d 993 (6th Cir. 1994), and held that proof of a change in one of the necessary elements of entitlement, such as the existence of pneumoconiosis, demonstrates a material change in condition. The ALJ must thereafter weigh all of the evidence to determine whether the claimant is entitled to benefits. The Tenth Circuit recently fashioned yet another interpretation of the regulation. *Wyoming Fuel Co.* v. *Director OWCP*, ____ F.3d ____, No. 94–9576 (10th Cir. July 23, 1996).

This litigation is attributable, in substantial part, to the context in which the relevant language was drafted. First proposed on April 25, 1978 as part of an extensive revision of the regulations governing the processing and adjudication of claims under the Black Lung Benefits Act, §725.309 required that a subsequent claim for benefits be denied on the grounds of the prior denial. 43 FR 17743, Apr. 25, 1978. The Department received many comments objecting to the prohibition against filing a new claim by a miner "whose condition has worsened or progressed to total disability." 43 FR 36785, Aug. 18, 1978. The Department agreed, and, in an effort to remove the prohibition, added a clause allowing such claims if "the deputy commissioner determines that there has been a material change in

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conditions." *Id.* The Department did not foresee that this wording would cause such confusion.

At the heart of the current litigation is considerable misunderstanding about the extent to which the common law concepts of *res judicata*, or claim preclusion, and collateral estoppel, or issue preclusion, apply to the adjudication of black lung benefits claims. The proposed regulation is intended to resolve both questions. Initially, the Department acknowledges that the principles of claim preclusion are applicable to claims under the Act. *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 122–23 (1988). That applicability, however, is limited in two important respects. First, § 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 922, as incorporated into the Black Lung Benefits Act by 30 U.S.C. 932(a), permits the reopening and readjudication of a denied claim within one year of the order denying benefits, based on a showing of either a mistake in a determination of fact or a change in conditions. This reopening provision, commonly called the right to modification, is a Congressionally mandated exception to the application of *res judicata*. Second, and more important for purposes of the Department's treatment of subsequent claims, claim preclusion bars only an attempt to relitigate a cause of action that was previously resolved; it has no effect on the litigation of a cause of action which did not exist at the time of the initial adjudication. *Lawlor* v. *National Screen Serv. Corp.*, 349 U.S. 322, 328 (1955); "Restatement (Second) of Judgments" § 24 cmt. f (1982).

Nowhere is the applicability of this second exception more readily understood than in the context of workers' compensation. "It is almost too obvious for comment that *res judicata* does not apply if the issue is claimant's physical condition or degree of disability at two entirely different times, particularly in the case of occupational diseases." 3A Larson, "The Law of Workmen's Compensation" § 79.92(f) (1982). In light of the Department's longstanding belief in the progressive nature of pneumoconiosis (see Explanation accompanying § 718.201), the Department believes that the preclusive effect of a previous denial of benefits should be limited. Proposed paragraph (d)(5) reflects the most readily apparent application of claims preclusion. It provides that no benefits are payable, based on a subsequent claim, for the period of time which was at issue in the prior proceeding. The regulation thus gives full effect to § 22's one-year limitation for reopening prior claims based on an allegation of a mistake in a determination of fact or a change in conditions.

The Department's experience in administering the Black Lung Benefits Act suggests, however, that the long latency period which characterizes pneumoconiosis and the disease's progressive nature do provide cause for allowing a claimant to seek benefits by filing a new claim more than one year after the denial of a previous claim based on a change in conditions. Thus, where the evidence establishes a worsening in the miner's physical condition, the proposed regulation permits adjudication of a new cause of action based on that worsening. This adjudication will address the claimant's condition during a completely different, and later, time period.

The Department recognizes that securing proof of a change in the applicable conditions of entitlement may be difficult. As the Seventh Circuit recognized in *Sahara Coal*, "[t]o require proof that [the claimant] was not in fact totally disabled as a result of black lung disease, or that the extent of his disease or disability was unclear, would complicate the proceeding unduly." 946 F.2d at 558. Although the Seventh Circuit recognized this difficulty, it nonetheless required the claimant to bear a burden of proof that the Department believes is too high: "he should be required to go further and show that he had missed the disability threshold the first time so that even a slight worsening could be and was a material change in his condition." *Id.*

The proposed regulation addresses this evidentiary problem, but in a manner which recognizes the difficulty inherent in developing medical evidence documenting a claimant's medical condition at some time in the past. Paragraph (d)(3) thus creates a rebuttable presumption, based on a showing that the miner's physical condition has worsened. If the new evidence submitted by the parties establishes at least one of the applicable conditions of entitlement previously resolved against the miner, it is presumed that the miner's physical condition has changed since the denial of his earlier claim. For example, the miner may establish that his respiratory impairment is now totally disabling, or that he has now developed pneumoconiosis. Once invoked, the presumption may be rebutted if the party opposed to the claimant's entitlement demonstrates that the denial of the prior claim was erroneous as a matter of law.

The Department intends that an operator shall not be entitled to rebut the presumption by taking a position contrary to the position it adopted in the litigation of the prior claim. For example, where the operator argued in the prior claim that the miner was not totally disabled due to pneumoconiosis arising out of coal mine employment, it may not, in an attempt to rebut the presumption of a change in the miner's condition, argue that substantial evidence in the prior claim supported a benefit award.

If the presumption is properly rebutted, the claimant nevertheless will be entitled to benefits upon a showing that the miner's physical condition, albeit totally disabling earlier, has significantly deteriorated since the time of the prior denial. Under the Act, a totally disabling respiratory impairment is one which prevents the miner from performing his usual coal mine work. Where the miner's usual coal mine work required significant physical exertion, a relatively small respiratory impairment may be totally disabling. Accordingly, the miner's respiratory condition may continue to deteriorate even after it reaches the point where it would be considered totally disabling under the Act.

The operator or Fund may also use traditional principles of issue preclusion to rebut the presumption. Those principles prohibit the relitigation of issues where the party against whom the bar is asserted had a full and fair opportunity to litigate the issue in question, and resolution of the issue was necessary to the prior judgment. *Montana* v. *United States*, 440 U.S. 147, 153 (1979); "Restatement (Second) of Judgments" § 29 (1982). Thus, where the original claim was denied solely on the basis that the claimant was not a miner, and the claimant has not returned to work, relitigation of that issue will be barred. Because a claimant must establish that he worked as a miner in order to receive benefits, the subsequent claim must also be denied.

If the presumption is not rebutted, the fact-finder must consider all of the relevant evidence of record, including the old evidence, in order to determine whether the claimant is entitled to receive benefits. The regulation thus effectuates the position advanced by the Department and accepted by the Third Circuit in *Labelle Processing*, the Fourth Circuit in *Lisa Lee Mines*, and the Sixth Circuit in *Sharondale Corp.* Accordingly, paragraph (d)(1) authorizes the admission into the record of any evidence developed in connection with the earlier claim. To the extent that the earlier evidence remains relevant to an evaluation of the claimant's current

physical condition, it must be considered by the adjudication officer. In addition, both the claimant and the party opposing the claimant's entitlement will be able to submit two new pulmonary evaluations or consultative reports, in accordance with the limits set forth in proposed § 725.414.

Paragraph (d)(4) recognizes that, once a change in one of the applicable conditions has been established, the relitigation of issues previously decided is not precluded. The only exceptions are those issues to which the parties stipulated and those issues which were not contested pursuant to § 725.463. For example, assume that in a prior adjudication an administrative law judge found that the claimant was a miner but that he did not suffer from pneumoconiosis. The ALJ accordingly denied benefits, and the claimant did not appeal. In a subsequent claim, the claimant establishes that he now suffers from pneumoconiosis, and argues that the operator is precluded from relitigating his status as a miner. The claimant is incorrect. Because the operator was not aggrieved by the denial of benefits, it could not appeal the ALJ's decision to the Benefits Review Board to seek reversal of the finding that the claimant was a miner. The operator thus did not have a full and fair opportunity to litigate the claimant's status, and may not be bound by the prior finding. For the same reason, once a claimant establishes a change in an applicable condition of entitlement, such as the extent of disability, he is not precluded from relitigating any other condition of entitlement, such as the existence of pneumoconiosis.

Although the Department believes that parties must be allowed to relitigate issues decided against them in a prior claim as a matter of fairness, no such concerns underlie the treatment of uncontested issues (see § 725.463) and other stipulations into which the parties entered during the adjudication of the prior claim. Where a party's waiver of its right to litigate a particular issue represents a knowing relinquishment of that right, such waiver should be given the same force and effect in subsequent litigation of the same issue.

The proposed regulation also recognizes that a claimant whose claim has been denied may file a new application within one year of an earlier denial. Traditionally, such a filing has been considered a request for modification, *Consolidation Coal Co.* v. *Worrell*, 27 F.3d 227, 230 (6th Cir. 1994), and the proposed regulation codifies this practice. Treating a new application as a modification request is advantageous for several reasons. First, because it allows the earlier claim to be reopened, a modification request entitles the claimant to have his request adjudicated under the entitlement standards in effect at the time the original claim was filed. Second, if the claimant establishes a mistake in a determination of fact, modification entitles him to receive benefits from an earlier date, *i.e.*, either from the date on which the medical evidence establishes the onset of total disability due to pneumoconiosis, or, if the evidence does not establish that date, from the date the original application was filed. *Eifler* v. *Office of Workers' Compensation Programs*, 926 F.2d 663, 666 (7th Cir. 1991).

20 CFR 725.310. Paragraph (b) should be amended to reflect changes to the procedural regulations restricting the amount of evidence each party to a claim may submit. Proposed § 725.414 limits the parties to two pulmonary evaluations or consultative reports in the initial adjudication of the claim. This limitation would be easily avoided, however, if parties were free to submit whatever additional evidence they desired by filing a request for modification. Consequently, the proposed regulation places an additional restriction, of one pulmonary evaluation or consultative report, on the submission of evidence in modification proceedings. *See* explanation of changes § 725.414.

Proposed paragraph (c) attempts to reconcile a number of court of appeals cases which address the scope of the district director's authority to conduct modification proceedings under § 22 of the LHWCA, 33 U.S.C. 922, as incorporated by 30 U.S.C. 932(a). Four courts—the Seventh, Ninth, Tenth, and Eleventh Circuits—have held that a district director lacks the authority to modify a decision issued by an administrative law judge. *Director, OWCP* v. *Peabody Coal Co.*, 837 F.2d 295 (7th Cir. 1988); *Director, OWCP* v. *Palmer Coking Coal Co.*, 867 F.2d 552 (9th Cir. 1989); *Director, OWCP* v. *Kaiser Steel Corp.*, 860 F.2d 377 (10th Cir. 1988); *Director, OWCP* v. *Drummond Coal Co.*, 831 F.2d 240 (11th Cir. 1987). In all four cases, the district director had initiated modification proceedings in order to correct allegedly erroneous determinations imposing liability on the Black Lung Disability Trust Fund.

In contrast, the Fourth and Sixth Circuits have held that modification proceedings must be initiated before a district director. *Saginaw Mining Co.* v. *Mazzulli*, 818 F.2d 1278 (6th Cir. 1987); *Lee* v. *Consolidation Coal Co.*, 843 F.2d 159 (4th Cir. 1988). In both of these cases, claimants sought to modify denials of benefits by filing requests for modification. In its decision, the Sixth Circuit correctly compared the initial stages of modification proceedings to the initial stages of a new claims proceeding. 818 F.2d at 1282. During these stages the district director may resolve all of the relevant issues, provided he has the consent of the parties. Thus, the district director may issue a proposed decision and order pursuant to 20 CFR 725.418. If no party lodges a timely objection, the proposed decision and order will become effective and final. 20 CFR 725.419(d). Thus, where no party objects to the proposed action, and the modification proceedings were initiated by the claimant or the responsible operator, it is unnecessary as well as inefficient to refer the modification request for a hearing.

In reconciling the courts of appeals opinions, the proposed regulation distinguishes between cases in which the parties request modification, or in which the original adjudication of the claim did not proceed beyond the district director, and those in which the district director initiates modification proceedings *sua sponte* following an administrative law judge's order. In the first and second groups of cases, the district director may issue a proposed decision and order or deny the claim by reason of abandonment. Because under the proposed regulations a claimant or operator may not request a hearing until after issuance of a proposed decision and order, the second option contained in current paragraph (c)—forwarding the claim for a hearing—has been deleted. In cases in which the district director initiates modification proceedings after issuance of an ALJ's decision and order, the proposed regulation requires that the case be referred to the Office of Administrative Law Judges even if none of the parties requests a hearing. Although the Department views the proposed distinction as one with little significance, the proposed regulation is consistent with the four court of appeals decisions which require such a result.

Paragraph (c) has also been revised to ensure that any party that requests reconsideration receives a full and fair adjudication of its request. Thus, an administrative law judge may not deny modification on the grounds that the party requesting modification has not submitted any new evidence. *O'Keeffe* v. *Aerojet-General Shipyards, Inc.*, 404 U.S. 249, 256 (1971). In such a case, the administrative law judge is obligated to re-weigh all of the existing evidence of record to determine whether it establishes that the prior decision is

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based on a mistake in a determination of fact.

Finally, proposed paragraph (d) addresses the effect of a modification decision on previously paid benefits. The Department believes that a distinction should be made between awards which are overturned on appeal and awards which are modified. Any payments made pursuant to an award which is overturned on appeal may be subject to recoupment. See 20 CFR part 725, subpart H. Such an award has never become final and its tentative nature is therefore apparent to all parties. In contrast, the proposed regulation prohibits the recoupment of benefit payments made pursuant to an award which is thereafter modified. In the Department's view, claimants whose awards have become final are entitled to a heightened expectation that they will be able to keep the monthly benefits that they receive.

20 CFR 725.311. Paragraph (c) of current § 725.311 has created considerable confusion regarding the due dates for replies and responses under the regulations in part 725. The Department does not believe that seven additional days should be added to the time periods within which to respond to major events in the claims process, such as the notification of a potentially liable operator, the notice of initial determination, and the proposed decision and order awarding benefits. Many of these time periods, none of which is less than 30 days, may be extended for good cause shown. Consequently, the Department does not believe that the 7-day mail rule is necessary, and proposes to remove paragraph (c). Additionally, current paragraph (d), which the Department proposes to redesignate as paragraph (c), is amended to add the birthday of Martin Luther King, Jr., as a legal holiday.

Proposed paragraph (d) addresses an issue which has created a split between the Fourth and Tenth Circuits. In *Dominion Coal Corp.* v. *Honaker*, 33 F.3d 401 (4th Cir. 1994), the Fourth Circuit held that where an administrative law judge's decision was not served by certified mail as required by the statute, the time period for appealing that decision commenced on the date that the aggrieved party received actual notice of the decision. The court held that "[w]hen the record establishes actual notice, the purpose of the statutory certified mail requirement has been met." 33 F.3d at 404. In *Big Horn Coal Co.* v. *Director*, OWCP, 55 F.3d 545 (10th Cir. 1995), the Tenth Circuit reached a contrary conclusion. Although "[a]llowing the 30-day period to start with actual notice would have the salutary effect of encouraging finality of administrative judgments when the only defect was the procedural one of failing to use certified mail in serving th[e] order," the court held that there was no provision in the statute or regulations which permitted it to reach such a result. 55 F.3d at 550. In order to resolve this split, and to advance the policy considerations cited by both courts, proposed paragraph (d) provides that, where an adjudication officer has failed to comply with a statutory or regulatory certified mail requirement, but the party has received the document, the period for filing any responsive pleading shall commence as of the date of receipt.

Subpart D—Adjudication Officers; Parties and Representatives

20 CFR 725.360. Technical changes to the cross references in paragraphs (a)(3) and (c) conform with revisions to §§ 725.401–.422.

20 CFR 725.362. The proposed amendment to paragraph (a) makes the regulation conform with the requirements of 5 U.S.C. 500(b), which allows an attorney to appear on behalf of a party without submitting an authorization signed by the party. The requirements for representation by any individual who is not an attorney in good standing with his state bar remain unchanged. In such circumstances, the Department requires an authorization signed by the party. Finally, the requirement that any written declaration or notice identify the case by OWCP number will allow OWCP to ensure proper and timely filing of the appearance.

20 CFR 725.367. The current regulation governing an operator's payment of a claimant's attorney fee is taken nearly verbatim from § 28 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 928, without recognizing significant differences in the procedure for adjudicating claims under the Black Lung Benefits Act. Accordingly, its interpretation has caused considerable confusion, particularly with respect to the date on which an operator's liability for attorney's fees is triggered. *See, e.g., Bethenergy Mines* v. *Director, OWCP,* 854 F.2d 632 (3d Cir. 1988). In addition, the regulation originally sought to shield the Trust Fund from the payment of attorney's fees. A series of court decisions, however, held that the fund assumes all of the obligations of an operator, including liability for the claimant's attorney's fees, in cases where no operator can be held liable for the payment of benefits. *Director, OWCP* v. *Black Diamond Coal Mining Co.,* 598 F.2d 945 (5th Cir. 1979); *Director, OWCP* v. *South East Coal Co.,* 598 F.2d 1046 (6th Cir. 1979); *Republic Steel Corp.* v. *U.S. Dept. of Labor,* 590 F.2d 77 (3d Cir. 1978).

The proposed regulation seeks to clarify the application of § 28 of the LHWCA to adjudication under the Black Lung Benefits Act. It also provides a non-exclusive list of specific instances in which an operator is required to pay attorney's fees and the dates on which the operator's liability commences. The proposed regulation also recognizes the Trust Fund's liability for attorney's fees, and makes it coextensive with that of a liable operator. Specifically, in proposing paragraph (a)(2), the Department intends to change the result of the decision of the Benefits Review Board in *Yokley* v. *Director, OWCP,* 3 Black Lung Rep. (MB) 1–230 (1981). There, in the absence of a regulation specifically addressing the fund's liability for attorney's fees, the Board held that the fund became liable for the payment of such fees when the district director failed to award benefits within 30 days of the date on which he learned that there was no potentially liable responsible operator. *Yokley,* 3 Black Lung Rep. at 1–239. The Department believes that the event triggering the fund's liability for attorney's fees should be identical to the event that triggers an operator's liability, *i.e.,* a denial of the claimant's right to compensation within the time limits provided by the regulations, which creates the adversarial relationship requiring employment of an attorney. *See Director, OWCP* v. *Bivens,* 757 F.2d 781, 787 (6th Cir. 1985).

Subpart E—Adjudication of Claims by the District Director

20 CFR 725.405. The proposed change in paragraph (b) recognizes the Department's current practice of refusing to provide a complete pulmonary evaluation if the district director concludes, based on the initial evidence submitted by the claimant, that the claimant never worked as a miner.

20 CFR 725.406. Section 413(b) of the Act, 30 U.S.C. 923(b), guarantees each miner the opportunity to have a complete pulmonary evaluation performed, at no expense to the miner, in order to establish his entitlement to benefits. Although the existing regulation allows a claimant to have this evaluation performed by his own physician, it does not address the consequences of that selection. The adequacy of the § 413(b) examination and resulting report have been

frequently litigated. For example, if the report does not address all of the elements of entitlement, the Department has been required to remedy the deficiency, *see, e.g., Cline* v. *Director, OWCP*, 917 F.2d 9, 11 (8th Cir. 1990), even if the physician who authored the report was one of the claimant's choosing. Given the Department's proposal to place limits on the amount of evidence submitted by the parties, and the importance of the § 413(b) examination, which forms the evidentiary basis for the district director's initial finding, the Department wishes to explain in greater detail the manner in which it will provide the claimant with a complete pulmonary evaluation.

The proposed regulation clarifies the consequences of a claimant's decision to select an alternate physician or facility to conduct his complete pulmonary evaluation. First, the claimant must undergo all of the testing necessary to produce an examination that meets the requirements of § 718.104. If the physician or facility selected by the claimant cannot perform all of the tests needed, the Department will arrange for the claimant to undergo the additional testing before the miner undergoes his examination.

Second, the Department will determine whether each component of the evaluation, including the chest X-ray, the pulmonary function study, and the blood gas study, is in substantial compliance with the regulatory quality standards. The Department reserves the right to have each such test reviewed by a medical consultant in order to assist in this determination. However, the Department will only guarantee substantial compliance with the quality standards if the testing and the resulting report are prepared by a Department-selected physician or facility. It has long been the Department's position that, with the exception of deficiencies attributable to poor effort on the part of the miner, the Department has an affirmative obligation to ensure that each test substantially complies with the part 718 quality standards, and that the physician provides a documented and reasoned medical opinion on each element of entitlement. For example, where the miner's blood gas study is non-conforming, or the physician fails to address the issue of total disability, or the district director does not find the physician's report credible, the Department must either seek additional information from the physician or provide the miner with a wholly new examination.

The proposed regulation retains this rule with respect to physicians and facilities selected by the Department. With respect to physicians and facilities selected by the miner, the regulation requires the district director, after determining whether the testing complies with the quality standards, to inform the miner and the physician or facility of any deficiencies in the report, and allow sufficient time to correct such deficiencies. If the deficiencies are not corrected, however, the district director is not obligated to take any further action. The district director retains the authority to order another examination by a physician or medical facility selected by the district director.

Third, proposed § 725.406 specifies that if the miner selects the physician, that report will count as one of the two reports which a claimant is entitled to submit under the proposed evidentiary limitations in § 725.414. If the Department selects the physician, the claimant may submit two other reports.

Finally, the regulation, in combination with changes to 20 CFR 725.101(a)(6), clarifies the mechanism by which the Department may seek recoupment of the cost of the § 413(b) examination from a coal mine operator that has been finally determined to be liable for the claimant's benefits. Although the current regulation states that the Department is entitled to reimbursement, it fails to refer specifically to the most appropriate method for recouping amounts owed the Trust Fund, 30 U.S.C. 934. Consequently, a clarification is in order.

20 CFR 725.407. Paragraphs (a) and (c) of the current § 725.407 have been moved to § 725.406. Paragraph (b), which allowed claimants to develop additional evidence prior to the initial finding, has been eliminated. Instead, the development by the parties of evidence relevant to the miner's entitlement will be governed by §§ 725.413–.414. For an explanation of the proposed text, see the explanation of changes to § 725.408.

20 CFR 725.408. The current § 725.408 has been eliminated. The sanctions it provides for a claimant's failure to submit to medical examinations are contained in proposed §§ 725.409 and 725.414. Proposed §§ 725.407 and 725.408 replace the current regulations found at 20 CFR 725.412 and 725.413, governing the notification of, and response by, potential responsible operators. The proposed changes are part of an effort to deal with difficulties that the Department has encountered in effectuating Congress's mandate that liability for black lung benefits be borne by individual coal mine operators to the maximum extent feasible. *See Old Ben Coal Co.* v. *Luker*, 826 F.2d 688, 693 (7th Cir. 1987). Past difficulties in naming potential responsible operators have included: (1) the practice among operators of filing "blanket" controversions, denying every element of the liability issue, which generally are not supported by any evidence and are later withdrawn in substantial part; and (2) the tardy submission of evidence relevant to operator liability, often only when the claim is pending before the Office of Administrative Law Judges. These late evidentiary submissions have increased the likelihood of an incorrect responsible operator determination by the district director and have led to greater Trust Fund liability under the Board's decision in *Crabtree* v. *Bethlehem Steel Corp.*, 7 Black Lung Rep. 1–354 (1984).

The proposed regulations create a new subclass of operators. Out of all of the miner's former employers, one or more operators may be designated as "potentially liable operators." The potentially liable operator that most recently employed the claimant will generally be the responsible operator liable for the payment of benefits. The proposed regulation affords the district director considerable flexibility, however, in notifying potentially liable operators. If the miner was most recently employed for a substantial period of time by a fully insured operator, the district director need notify only that operator of its potential liability. If the miner's most recent employer had no insurance and appears to lack other assets, or employed the miner in a capacity which may not be considered coal mine employment, the district director may choose to notify more than one potentially liable operator. Moreover, the district director may notify such operators *seriatim;* after evaluating the response from the miner's most recent employer, or failing to receive any response, the district director may notify additional operators.

The district director's additional flexibility also imposes greater responsibility. Unlike the current version of § 725.412(c), the proposed standards do not allow a district director to name any additional operators after a case has been referred to the Office of Administrative Law Judges, in the absence of fraudulent concealment of the facts relevant to the identification of the responsible operator. Thus, the Department will essentially assume the risk of not notifying the "correct" responsible operator.

In order to offset this risk, the regulations require potentially liable operators to produce any exculpatory

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documentary evidence while the case is still pending before the district director, and thus in sufficient time to allow the district director to notify additional operators. Each operator must either admit or deny its status as a potentially liable operator, and support its denial with specific evidence. It is hoped that this requirement will increase the Department's ability to correctly identify the responsible operator liable for the payment of benefits. For a discussion of the effects of the BLBA and the Administrative Procedure Act on the Department's ability to impose time limits on the parties' submission of this evidence, see the explanation of changes to § 725.414.

20 CFR 725.409. The proposed revisions add a new basis for denying a claim by reason of abandonment and clarify the procedures to be used in denying a claim by reason of abandonment. The Department has interpreted current § 725.409(a)(3) to include failure to appear at an informal conference, and the Fourth Circuit recently confirmed the use of that paragraph in *Wellmore Coal Co.* v. *Stiltner*, 81 F.3d 490, 497 (4th Cir. 1996). The proposed addition of paragraph (a)(4) will make that authority explicit. A corresponding change has been made to § 725.416(c), to provide similar sanctions against a responsible operator for its unexcused failure to appear.

The proposed changes also clarify the procedures for denying claims by reason of abandonment. Currently, the regulations allow the claimant to undertake a variety of actions in response to an initial notice that the claim will be abandoned. The proposed regulation at paragraph (b) allows the claimant only two options following the district director's initial letter: (1) correct the problem identified by the district director; or (2) allow the district director to deny the claim by reason of abandonment, and then request a hearing, which will be limited to the issue of whether the district director properly initiated abandonment proceedings.

20 CFR 725.410–413. The proposed regulations governing the district director's initial adjudication of the claim, §§ 725.410–.413, differ from the current regulations in several respects. In general, they provide for a two-track investigation, allowing the district director to make a preliminary determination of entitlement while concurrently seeking a coal mine operator that may be held liable for the payment of the claimant's benefits. It is anticipated that these two investigations will culminate in a single document, the initial finding. That document will contain a preliminary finding as to the claimant's eligibility, based on the complete pulmonary evaluation developed in accordance with § 413(b) of the Act, and another finding with respect to the potentially liable responsible operator. The operator will then be required to accept or contest both findings within 30 days of the initial finding's issuance.

The most important change in these proposed regulations involves the claimant's response to a district director's initial finding that the claimant is not eligible for benefits. Currently, the claimant is allowed 60 days within which to request a hearing or submit new evidence. If he submits new evidence, he is given an additional 60 days within which to request a hearing. Often, however, the Department receives communications from claimants which do not fit neatly into either option. The result has been the litigation of various procedural issues. *See, e.g., Adkins* v. *Director, OWCP*, 878 F.2d 151 (4th Cir. 1989); *Plesh* v. *Director, OWCP*, 71 F.3d 103 (3d Cir. 1995). The Department hopes to eliminate such litigation through the proposed amendment.

The proposed regulations therefore address the problems that the Department has encountered in applying the current regulations. They narrow the claimant's options following an initial finding of non-eligibility to a single choice, but expand the time period within which this option may be exercised. Within one year of an initial finding of non-entitlement, the claimant may request further adjudication of the claim, but he may not request a hearing at this point. If the claimant fails to take any action during the one-year period following an initial finding which denies the claim, the denial of the claim will be considered effective and final as of the date of the initial finding. The one-year period, which incorporates the modification period of 33 U.S.C. 922 into the initial processing of the claim, reflects the Department's experience in administering the program. Miners who truly feel that they are disabled will typically request further processing of their claim within one month of an initial denial. Others, perhaps less sure of whether their condition actually meets the Department's total disability due to pneumoconiosis criteria, may wait to determine whether their condition worsens. Such miners are entitled to take advantage of the one-year period in LHWCA § 22, as incorporated by 30 U.S.C. 932(a). The proposed regulation accommodates both types of claimants, by allowing any response within the one-year period to trigger further adjudication of the claim.

After receiving responses from both parties (or after expiration of the time within which a response could be filed), the district director will proceed in accordance with those responses. Where a claimant's eligibility and the identity of the liable party are uncontested, the district director will issue a proposed decision and order. In other cases, the district director will issue a schedule for the submission of evidence by the parties. For a discussion of the effects of the BLBA and the Administrative Procedure Act on the Department's ability to impose time limits on the parties' submission of evidence, see the explanation of changes to § 725.414.

20 CFR 725.414. Proposed paragraph 725.414(a) reflects the Department's determination that the disparity in financial resources available to claimants, as compared to coal mine operators, has created an adverse impact on the fair adjudication of claims. Limitations on the amount of medical evidence which the parties may proffer are therefore necessary in order to restore some measure of balance to the process of determining a claimant's entitlement. Accordingly, a new regulation is proposed which defines the amount, and type, of medical evidence which each party may proffer in support of its position. We are specifically seeking comment on the proposed evidentiary limitations in § 725.414. This regulation also will require the parties to submit their written medical evidence to the district director. Generally, once a claim is referred for hearing before an administrative law judge, the parties may only elicit oral testimony.

The Department now has more than 20 years of experience in processing and adjudicating black lung benefits claims, and more than thirteen years of experience in adjudicating claims under the current program regulations. This long history demonstrates claimants' present difficulty in establishing their entitlement. Part of that difficulty can be attributed to changes in medical criteria and eligibility standards imposed by Congress in 1981. Also important, however, are the obstacles claimants face when confronted by coal mine operators and their insurance carriers as adversaries. Such parties possess economic resources far superior to most claimants, which enable them to generate medical evidence in such volume that it overwhelms the evidence supporting entitlement. The proposed changes to the program regulations governing claims adjudication attempt

to make more equitable the evidentiary development in black lung claims.

When Congress amended the BLBA in 1978 to permit the reopening of many thousands of denied claims, it required the claimants' entitlement to be judged using liberal interim medical criteria (20 CFR part 727). 30 U.S.C. 902(f)(2). As a result, claims reopened by the amendments enjoyed a 46.0 percent approval rate at the district level. (Statistical data reported in "OWCP FY94 Annual Report to Congress," Table B–1). Congress also required the Department, in conjunction with the National Institute for Occupational Safety and Health (NIOSH), to develop permanent "criteria for all appropriate medical tests * * * which accurately reflect total disability in coal miners * * * ." 30 U.S.C. 402(f)(1)(D). The Department thereafter promulgated the part 718 regulations; these criteria apply to all claims filed after March 31, 1980. For claims filed between the 1978 amendments and the effective date of the part 718 regulations, the Department still utilized the part 727 criteria. Consequently, the district level approval rate, at 34.0 percent, was generous. Once the more rigorous part 718 standards took effect, however, the approval rate dropped to 10.9 percent for all claims filed between April 1, 1980 and December 31, 1981, and adjudicated at the district level.

Congress again amended the BLBA to tighten eligibility requirements for claims filed after December 31, 1981. Statutory changes which reduced claims approvals included elimination of favorable entitlement presumptions and automatic survivor's entitlement upon the death of a miner whose claim had been awarded. *See* 20 CFR 725.1(a), (h). The district level approval rate for claims filed after December 1981 was 5.0 percent as of the end of the 1994 fiscal year. Claimants fared little better if they pursued their applications beyond the district level by requesting hearings before the Office of Administrative Law Judges; the approval rate for such claims during the same period rose only to 7.6 percent.

The dramatically lower approval rates reflect not only the statutory changes, but also the increasing percentage of claims in which coal mine operators or their insurers, rather than the Black Lung Disability Trust Fund, are potentially liable. Their superior economic resources simply permit evidentiary development which outweighs the evidence claimants can procure. The United States Court of Appeals for the Sixth Circuit has commented on this problem:

> This cumulative evidence inquiry also reveals certain policy flaws in the adjudication of claims that typically operate to disadvantage Black Lung Benefits Act claimants. First, experts hired exclusively by either party tend to obfuscate rather than facilitate a true evaluation of a claimant's case. Second, when one party is able to hire significantly more experts because it has infinitely more resources, the truth-seeking function of the administrative process is skewed and directly undermined. Third, hiring armies of experts often results in needless expense. If such a system continues unchecked, justice will not be served, while moneyed interests thrive.

Woodward v. *Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993). *See also* Timothy Cogan, "Is the Doctor Hostile? Obstructive Impairments and the Hostility Rule in Federal Black Lung Claims," 97 W. Va. L. Rev. 1003, 1004 fn. 3 (1995). As a possible solution, the Sixth Circuit suggested that the administrative law judge prevail upon the parties to accept negotiated evidentiary limitations and share the cost of hiring physicians.

The Department believes that the concerns expressed by the Court in *Woodward* are valid. Rather than address those concerns through an *ad hoc* resort to each adjudicator's discretion, however, a "bright-line" rule of uniform application is preferable. Such a rule imposes a known standard of conduct on the parties from the outset, which enables them to plan their litigation strategies accordingly. The proposed regulation therefore limits each side to two complete pulmonary examinations and one "interpretive" review (x-ray rereadings, clinical test validations, etc.) of each of its opponent's diagnostic studies and examinations. This amount of evidence should be sufficient to enable each party to advance or defend its position while satisfying the demands of "due process." The Commonwealth of Kentucky has imposed similar limitations on the evidence submitted in connection with claims for workers' compensation. Kentucky Revised Statutes Annotated §342.033 (Michie/Bobbs-Merrill 1993). Limiting evidence will also have the salutary effect of reducing the costs associated with litigating claims and the amount of repetitive evidence which often burdens the record without shedding light on the medical issues.

The proposed regulation also fundamentally restructures the claims adjudication process by focusing evidentiary development at the district director level. The regulation requires all parties to develop their documentary medical evidence and submit it to the district director for consideration. In general, once a claim is referred for a hearing before the Office of Administrative Law Judges, no further documentary medical evidence will be admitted into the record. Only if there are extraordinary circumstances or the pulmonary evaluation obtained by the Department is insufficient or incomplete may the Administrative Law Judge admit additional documentary medical evidence into the record. The Administrative Law Judge will conduct the hearing and permit the parties to elicit testimony from witnesses, including any physician whose report is in the record. The judge will base his decision on the evidentiary record developed by the district director and the hearing testimony.

The foregoing procedure departs from current practice by severely limiting the admission of new documentary medical evidence while a claim is pending before an Administrative Law Judge. Parties presently often reserve the active development of medical evidence until a claim is scheduled for hearing. Permitting additional evidentiary development before the Administrative Law Judge was logical when significant delays occurred between the district director's decision and the hearing before the Administrative Law Judge. Given the progressive nature of pneumoconiosis, additional evidence was usually necessary for the Administrative Law Judge to receive an accurate understanding of the miner's health. Such delays no longer occur in a statistically significant percentage of claims. Consequently, the practical need for permitting evidentiary development at the hearing stage has disappeared.

Litigation strategy, as well as delays, has also encouraged operators to defer active participation and evidentiary development until claims were referred for hearing. Over time, this practice has significantly eroded the ability of the Department to conduct a thorough and meaningful initial adjudication of each claim at the district level. Because delay is no longer a legitimate consideration, the proposed regulation requires full operator participation before the district director.

The Department believes that the fair, efficient and expeditious adjudication of claims is a desirable objective which can be promoted by limiting the amount of medical evidence developed and encouraging all parties to participate actively at the earliest stages of the process. The Secretary clearly has the statutory authority to issue regulations which achieve this goal. The BLBA provides that "[t]he Secretary of Labor * * * [is] authorized to issue such regulations as [he] deems appropriate to

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carry out the provisions of this title." 30 U.S.C. 936(a). The legislative history of this broad grant of authority "establishes that Congress intended to provide the Secretary adequate flexibility to assure the payment of benefits to eligible persons." *Director, OWCP* v. *National Mines Corp.*, 554 F.2d 1267, 1274 (4th Cir. 1977) (footnote omitted). The Secretary has already issued several regulations (discussed below) which address the submission or exclusion of evidence. This proposed regulation involves the same matter, and is a permissible exercise of the Secretary's statutory authority.

Moreover, Part C of the BLBA assimilates various provisions of Part B of the BLBA and the Social Security Act by means of a circuitous series of incorporations by reference. The BLBA states that "[t]he amendments made by the Black Lung Benefits Act of 1972, * * * to Part B of [title IV] shall, to the extent appropriate, also apply to part C of [title IV]." 30 U.S.C. 940. Section 923(b), in turn, incorporates various provisions of the Social Security Act into Part B. The 1972 amendments revised § 923(b) to make § 405 of the Social Security Act, 42 U.S.C. 405, applicable to Part B. Consequently, § 940 makes § 405 of the Social Security Act applicable to Part C via § 923(b). Among the incorporated SSA provisions is § 405(a), which states as follows:

> The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

42 U.S.C. 405(a) (1995 supp.). Section 405(a) contains "exceptionally broad" authority to prescribe standards for "proofs and evidence" in disability claims under the SSA. *Heckler* v. *Campbell*, 461 U.S. 458, 466 (1983); *see also Schweiker* v. *Gray Panthers*, 453 U.S. 34, 43 (1981). Under the aegis of this authority, the Supreme Court has upheld the Social Security Administration's use of broad medico-vocational guidelines to determine whether a claimant is disabled; the guidelines provided an acceptable substitute for resolving classes of issues instead of requiring individualized findings in each case concerning the claimant's ability to perform work in the national economy. *Heckler*, 461 U.S. at 467. Pursuant to § 405(a), the SSA has also validly promulgated a regulation prescribing criteria for weighing medical reports from treating physicians (20 CFR 404.1527). *Schisler* v. *Sullivan*, 3 F.3d 563, 568 (2d Cir. 1993). The proposed regulation is designed to regulate the "nature and extent of the proofs and evidence and the method of taking and furnishing" such evidence for adjudicating black lung benefits claims. Its promulgation therefore comes within the authority conferred on the Secretary by Congress through the incorporation of 42 U.S.C. 405(a) into the BLBA.

Both individually and together, §§ 936(a) and 405(a) authorize the Secretary to regulate evidentiary development under the BLBA. Whether the proposed procedures represent a valid exercise of that authority depends on their consistency with the BLBA and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (the APA). The BLBA is the organic statute; the regulation must therefore be consistent with its enabling authority. Hearings under the BLBA must be conducted in accordance with the APA. 33 U.S.C. 919(d), as incorporated by 30 U.S.C. 932(a); 20 CFR 725.452(a). Neither statute prohibits the Department from imposing reasonable limitations on evidence.

Section 923(b) of the BLBA provides that "all relevant evidence shall be considered." 30 U.S.C. 923(b). Like § 405 of the Social Security Act, this provision applies to Part C via the incorporation mechanism of § 940; Congress added the "all relevant evidence" language to § 923 in the 1972 amendments. Section 940, however, contains an important qualifier: the enumerated Part B amendments apply only "to the extent appropriate." This phrase confers on the Secretary the explicit authority to determine which aspects of Part B should be adopted, and to what extent. The proposed regulation represents the Secretary's judgment as to the appropriate extent to which "all relevant evidence" should be admitted for consideration by the factfinder. (The Department has not adopted all of the SSA provisions incorporated by the 1972 amendments and enumerated in § 923(b). For example, § 405(j) contains an elaborate and detailed procedure for certifying benefits payments to a representative payee rather than the beneficiary; the Department's regulations are less comprehensive than the statutory provisions. *Compare* 42 U.S.C. 405(j) *with* 20 CFR 725.510, 725.511. Furthermore, the Department has not promulgated regulations which implement the SSA attorney fee or criminal penalties provisions. *See* 42 U.S.C. 406, 408.)

Read literally and without regard to the remainder of the provision, the "all relevant evidence" language arguably requires the admission for consideration of any evidence which could be relevant to the adjudication of a claim. The phrase appears less than clear, however, when the remainder of § 923(b) is considered. A literal reading infringes on § 923(b)'s incorporation of broad agency authority from the Social Security Act to regulate "the nature and extent of the proofs and evidence and the method of taking and furnishing the same," discussed earlier. Such a reading would proscribe the agency from implementing procedures which impose any evidentiary controls unrelated to the sole criterion of relevance.

Section 923(b) itself contains an important limitation on the consideration of potentially "relevant" evidence by the adjudicator. For claims filed before January 1, 1982, the Department is required to accept a positive x-ray reading which meets certain requirements. For any claim, § 923(b) requires the Department to accept the results of an autopsy as to the presence and stage of pneumoconiosis unless fraud or accuracy are implicated. Consequently, the Department is precluded from submitting (or, as the adjudicator, considering) relevant evidence which contradicts the x-rays or autopsies subject to § 923(b). Thus, the actual scope of the phrase "all relevant evidence" is unclear when it is considered in relation to other parts of § 923(b).

If a literal reading of a statutory provision's language does not provide an unambiguous explanation of its intended operation, then resort to its legislative history is warranted. *See Burlington No. R. Co.* v. *Okla. Tax Comm'n*, 481 U.S. 454, 461 (1987). Congress added the "all relevant evidence" language when it amended the BLBA in 1972. The amendment represented a reaction to the Social Security Administration's heavy reliance on negative x-rays in denying claims, and its failure to develop other evidence which might support entitlement. *See* S. Rep. No. 92–743, 92nd Cong., 2nd Sess., at pp. 13–16 (1972), reprinted in "Legislative History of the Federal Coal Mine Health and Safety Act of 1969," Part II—Appendix, at pp. 1958–1961. "Every available medical tool should be used to assist a miner in successfully pursuing his claim for benefits." *Id.* at 15. Thus, the historical context of the language demonstrates that it is a statutory exhortation for the agency to explore every avenue which may prove the claimant's entitlement. Given the policy behind the provision, its apparent breadth should not act as a guarantor for

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the admission of any quantity of evidence an operator might obtain which refutes a claimant's entitlement.

Under the current program regulations, § 923(b) does not prohibit the exclusion of certain evidence despite its relevance. For example, an operator may not present evidence which conflicts with findings made by the district director if the operator fails to make certain responses in a timely manner. 20 CFR 725.413(b)(3) (response to notice of claim); 725.414(b) (response to initial finding). Any documentary evidence which is withheld from the district director must be excluded from all future proceedings unless submission is requested by another party or "extraordinary circumstances" exist. 20 CFR 725.414(e)(1), 725.456(d). Any party's failure to submit evidence within specified time frames, failure to provide proper notification of an expert witness' hearing appearance, or failure to appear at a hearing without permission, are also grounds for limiting or excluding evidence. 20 CFR 725.456(b)(2), 725.457(a), 725.461(b). None of these exclusionary regulations permits relevance to excuse the infraction.

Many of the foregoing procedures were "intended to expedite the claims process, eliminate surprise, and require the parties to undertake a timely development of their positions." 43 FR 36798, Aug. 18, 1978, § 725.456, *Discussion and changes (a)*. In promulgating these regulations in 1978, the Department concluded that "[n]either the act, nor the Administrative Procedure Act, to the extent that it is incorporated, prohibits the Department from designing rules which diminish the element of surprise from black lung claims procedures." 43 FR 36794, Aug. 18, 1978, § 725.414, *Discussion and changes (a)*. The proposed regulation also satisfies valid policy considerations by limiting evidentiary development in the interests of a fairer and more balanced adjudication process. It encourages the expeditious and timely development of the parties' positions by focusing much of that development at the district level. Consequently, the regulation promotes the same policy goals as some of the current regulations in excluding or limiting the admission of otherwise relevant evidence.

The proposed regulation also affects the conduct of formal hearings by administrative law judges, which are governed by the APA. 5 U.S.C. 554(a). Section 556(d) provides in pertinent part:

> * * * Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. * * * A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

5 U.S.C. 556(d). The proposed regulation obviously limits the literal language of § 556(d), which permits receipt of "any * * * documentary evidence." The documentary evidence which the ALJ generally may receive under this proposal would consist of the record compiled and transmitted by the district director; that record itself would be limited in quantity to a certain amount of documentary medical evidence submitted by each party. To the extent that the regulation departs from § 556(d), the Department believes that the Secretary has the authority to promulgate regulations which vary the APA's hearing requirements.

Section 956 of the Mine Safety and Health Act states that, "[e]xcept as otherwise provided in this chapter, the provisions of sections 551 to 559 * * * of Title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof." 30 U.S.C. 956. "This chapter" is a reference to chapter 22 of Title 30, United States Code, which codifies the Mine Safety and Health Act. The BLBA is subchapter IV of that Act. Section 956 therefore exempts application of the APA to the BLBA unless "otherwise provided in this chapter."

Section 932(a) of the BLBA incorporates by negative reference § 919 of the LHWCA, which in turn requires hearings to be conducted in accordance with the APA. Section 932(a), however, also provides the Secretary with the authority to depart from the terms of the incorporated provisions of the LHWCA. Specifically, portions of the LHWCA apply to Part C of the BLBA "except as otherwise provided * * * by regulations of the Secretary." 30 U.S.C. 932(a). Section 919 of the LHWCA is the vehicle by which the APA applies, since § 956 generally exempts title 30, United States Code, from the APA. By regulation, therefore, the Secretary can "otherwise provide" the extent to which the incorporated provision of the LHWCA makes the APA applicable. The proposed regulation provides the guidelines and limitations for developing evidence in connection with the adjudication of a claim for benefits before the administrative law judge. Consequently, to the extent the regulation departs from the APA, that departure is "otherwise provided" by part 725. The Department adopted this position in *Director, OWCP* v. *Greenwich Collieries, Inc.*, 114 S.Ct. 2251 (1994), as a basis for supporting the "true doubt" rule. The Court did not reach the merits of this argument because it held that the regulation at issue was too broad to overcome a presumption that the APA hearing procedures applied. 114 S.Ct. at 2254.

In any event, the proposed regulation is consistent with the objective behind the allowance for the receipt of "any" evidence. In "The Attorney General's Manual on the Administrative Procedure Act" at 76 (1947), reprinted in "Federal Administrative Procedure Sourcebook" 51, 125 (1985), the following discussion occurs:

> Under section [556(d)] it is clear that, as heretofore, the technical rules of evidence will not be applicable to administrative hearings. [Citation omitted.] Thus, it is stated that "the mere admission of evidence is not to be taken as prejudicial error (there being no lay jury to be protected from improper influence) although irrelevant, immaterial, and unduly repetitious evidence is useless and is to be excluded as a matter of efficiency and good practice." [Citation omitted.]

This gloss suggests that § 556(d) cannot be read as a literal directive to admit all evidence any party may proffer unless the evidence is "irrelevant, immaterial or unduly repetitious." Rather, the purpose of the admission/exclusion language is to eliminate technical evidentiary rules as grounds for assigning error to the liberal admission of evidence. A general policy favoring the admission of evidence over its exclusion on technical grounds does not thereby preclude an agency from determining in the first instance what evidence, and how much, may be admitted as "relevant" and "material". To interpret § 556(d) otherwise would effectively read out of the BLBA the broad authority contained in provisions like § 405(a) to regulate the evidence used to establish entitlement to benefits. The APA is modeled on the hearing procedures contained in § 205(b) of the Social Security Act, and "the social security administrative procedure does not vary from that prescribed by the APA." *Richardson* v. *Perales*, 402 U.S. 389, 409 (1971), citing "Final Report of the Attorney General's Committee on Administrative Procedure," contained in S. Doc. No. 8, 77th Cong., 1st Sess., 157 (1941).

Finally, no aspect of the proposed regulation impinges on any of the procedural rights afforded parties by § 556(d). "The matter comes down to the question of the procedure's integrity

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and fundamental fairness." *Richardson*, 402 U.S. at 410. The APA permits the submission of documentary evidence, but it does not prescribe the juncture in the process when that evidence must be developed. Consequently, requiring the parties to submit all medical evidence to the district director is consistent with the right to submit that evidence to the administrative law judge for *de novo* consideration. The regulation simply eliminates the bifurcated evidentiary development permitted by current practice.

The APA also affords the right to an oral hearing, the presentation of testimonial and rebuttal evidence, and the cross-examination of witnesses; the regulation preserves all of these rights.

Evidentiary limitations seem especially apt in the context of black lung claims litigation. The medical issues are clearly defined by statute and regulation, and limited in nature since they involve only the individual miner's condition. Each party should therefore be able to obtain a comprehensive review of the miner's respiratory condition which supports its position. As long as each party has the right to rebut the opposing party's case, to subpoena and cross-examine opposing medical witnesses, and present its case, upon request, to an administrative law judge, then the requirements of the APA and due process are satisfied.

As discussed above, the Black Lung Benefits Act vests the Secretary with broad authority to manage the adjudication of claims for black lung benefits. That management is particularly difficult, however, in cases which require adjudication of both the claimant's eligibility and the liability of one of the claimant's previous employers. The Department's goals are to: (1) provide a forum for the full and fair adjudication of both eligibility and liability; (2) ensure that potentially eligible claimants are put into interim pay status as quickly as possible; (3) limit the number of physically demanding and often invasive pulmonary evaluations that a claimant has to undergo in the evaluation of his entitlement; and (4) protect the Black Lung Disability Trust Fund by fulfilling Congress' intent that liability for black lung claims be borne by coal mine operators to the maximum extent feasible.

Reconciling these interests in cases involving multiple potentially liable responsible operators has not been easy. Such cases typically arise where there is a dispute over whether the miner's most recent employer: (a) is a coal mine operator; (b) employed the claimant as a miner; and (c) is financially capable of assuming liability. In *Crabtree* v. *Bethlehem Steel Corp.*, 7 Black Lung Rep. 1–354 (1984), the Benefits Review Board held that the Department was not entitled to a remand to name another responsible operator after the claimant had established his entitlement to benefits and the administrative law judge correctly dismissed the responsible operator initially designated by the Director. Such a remand, the Board held, would require the claimant to relitigate his entitlement. Instead, the Board instructed the Director to resolve the liability issue in a preliminary proceeding or proceed against all potential responsible operators at each stage of the adjudication. Although the Sixth Circuit has declined to apply *Crabtree* in a case in which the Director designated a new responsible operator before the claimant had to litigate his entitlement to benefits, *Director, OWCP* v. *Oglebay Norton Co.*, 877 F.2d 1300, 1304 (6th Cir. 1989), the Fourth Circuit has explicitly endorsed the Board's decision in the context where the claimant has already litigated and established his eligibility. *Director, OWCP* v. *Trace Fork Coal Co.*, 67 F.3d 503, 508 (4th Cir. 1995).

Absent statutory amendment, however, the Department cannot simply resolve a disputed responsible operator determination before adjudicating the claimant's entitlement. Even if an operator aggrieved by the Director's initial decision that if the responsible operator were able to litigate the issue before the Office of Administrative Law Judges and the Benefits Review Board, the federal courts of appeals will not hear appeals from liability decisions prior to adjudication of the merits of the claimant's entitlement. *Youghiogheny & Ohio Coal Co.* v. *Baker*, 815 F.2d 422, 424–5 (6th Cir. 1987).

In changing the current system, then, the Department has two basic choices: (a) name a single potentially liable responsible operator; or (b) name multiple responsible operators (either all of the miner's former employers or enough of them to ensure that one will likely be held liable). The risk of the first option falls solely on the Trust Fund. Since the district director has only one opportunity to designate a responsible operator, the Trust Fund assumes the risk that the district director's initial identification may be incorrect.

The second option, however, may have a considerable negative impact on claimants if each responsible operator is allowed to develop medical evidence with respect to the claimant's eligibility. Obviously, the claimant in such a case would be subject to multiple physical examinations. In addition, such a system would increase the chances that the claimant's eligibility will be decided based on the sheer mass of evidence which multiple operators are capable of developing. For example, in *Martinez* v. *Clayton Coal Co. et al.*, 10 Black Lung Rep. (MB) 1–24 (1987), the claimant faced three potentially liable responsible operators. The ALJ denied benefits and the claimant appealed, arguing that the ALJ erred in failing to resolve the liability issue prior to adjudicating the claimant's eligibility. The claimant also argued that the ALJ erred in admitting a medical opinion submitted by one of the three operators (presumably not the operator subsequently found liable for benefits). The Board rejected claimant's contention, holding that any potentially liable operator may submit evidence at the hearing bearing on the claimant's eligibility. If the Department were to apply this practice to all cases in which there was a legitimate liability dispute, it would widen the disparity in resources between the claimant and those with an interest in disproving the miner's eligibility.

Accordingly, the Department has selected a variant of this second method. Although the Department may have notified several potentially liable operators in a case pursuant to § 725.407, in most cases, the identity of the potential responsible operator will be clear. Thus, after the submission of responses to the district director's initial finding, the district director will dismiss all of the other potentially liable operators. In such cases, the potential risk to the Trust Fund of an incorrect responsible operator identification is small, and it is one that the Department is willing to assume, especially when weighed against the effect of multiple operator participation in the litigation of the claimant's eligibility.

In cases involving more difficult liability issues (*e.g.*, those involving successor operators, undercapitalized partnerships, atypical coal mine operators, etc.), however, the Department will continue to retain more than one potentially liable operator as parties to the case, in order to preserve its right to compel the payment of benefits by the responsible operator ultimately determined to be liable for benefit payments. To ensure that the claimant is not overwhelmed by operator-developed medical evidence, however, the proposed regulations limit all potentially liable operators to a cumulative total of two pulmonary evaluations or two consultative reports as an affirmative case. *See* discussion, above. Because all of the potentially

liable operators have an identical interest with respect to the eligibility issue, the Department does not believe that any unfairness will result from limiting the total evidence submitted. In effect, the responsible operator, as initially found by the district director, serves as "lead counsel," developing a single response on behalf of those opposed to the claimant's entitlement. The regulations further provide an escape clause, allowing a potentially liable operator who is not the responsible operator to request permission to obtain its own examination upon a showing that the responsible operator is not fully litigating the case.

20 CFR 725.415, .418. The proposed changes complement the Department's efforts to strengthen the integrity of adjudication at the district director level. Previously, parties were entitled to request hearings before the Office of Administrative Law Judges at any point during the initial processing of the claim. *See Plesh* v. *Director, OWCP,* 71 F.3d 103, 111 (3d Cir. 1995). The proposed regulations remove that option; instead, in each case the district director will issue a proposed decision and order awarding or denying benefits. Only after such a decision has been issued may a party request that the case be referred to the Office of Administrative Law Judges for a formal hearing. In accordance with that change, the proposed regulations also remove the district director's authority to forward the case to the Office of Administrative Law Judges prior to issuing a proposed decision and order.

20 CFR 725.416. As the Fourth Circuit has recently recognized, "informal conferences serve several useful purposes, all of which would be undermined if a party could refuse to participate." *Wellmore Coal Co.* v. *Stiltner,* 81 F.3d 490, 495–96 (1996). Those purposes include narrowing issues, achieving stipulations, and crystallizing positions. Consequently, the Department proposes to modify § 725.416 to clearly provide for the imposition of sanctions on any party that fails to appear at a scheduled informal conference and whose absence is not excused. A party's belief that the conference will serve no function does not justify the party's absence. The proposed regulation further puts all parties on notice that those attending the conference will be deemed to have authority to stipulate to issues and/or resolve the entire claim. The current regulations simply provide that those attending "must have" such authority.

20 CFR 725.417. Paragraph (b) of this regulation is revised to conform to the limitations on evidence established in proposed § 725.414.

20 CFR 725.421. The Department has determined that the maintenance of case files while a request for a hearing is pending is a function which the district offices should perform. Currently, once a request for hearing is received and the case is referred to the Office of Administrative Law Judges, the OWCP administrative file is sent to the national office of the Division of Coal Mine Workers' Compensation for Maintenance. The deletion of language in paragraph (a) indicates the Department's intention to alter current procedure.

20 CFR 725.423. The Department's current regulations allow many of the time limits applicable to the processing and adjudication of claims to be extended for good cause. The proposed regulations are intended to be similarly flexible. Proposed § 725.423 is intended to govern all such time periods, and to clarify when a party must request an extension. Two time periods are exempted from this general rule. No purpose would be served by including the one-year time limit for a claimant to respond to an initial finding of non-entitlement. Since the one-year period is long in any event and any response within that period is sufficient to trigger further adjudication of the claim, the Department sees no need to provide for an extension of that time.

In addition, the 30-day time period for responding to a proposed decision and order may not be extended. This time limit is jurisdictional, *see Freeman United Coal Mining Co.* v. *Benefits Review Board,* 942 F.2d 415, 422 (7th Cir. 1991), and is not subject to extension.

Subpart F—Hearings

20 CFR 725.451. A cross-reference to § 725.419 is included to emphasize that the hearing request must be timely in order to be honored.

20 CFR 725.452. A proposed paragraph (d) imposes on the administrative law judge the duty to inform parties in writing if he believes that a hearing is unnecessary, and afford a reasonable period for objections. A response by even one party requesting that an oral hearing be held in order to present testimonial evidence is sufficient to compel the hearing.

20 CFR 725.454. Proposed § 725.414(d), prohibits the introduction of any evidence after a claim is referred for a hearing except upon a showing of extraordinary circumstances or in the event a Department-obtained § 413(b) examination is not complete or fails to comply with the applicable quality standards. Section 725.454 should therefore be changed accordingly. Proposed § 725.414 imposes severe constraints upon the development of evidence at the hearing stage. For example, documentary medical evidence which has not been submitted to the district director cannot be made a part of the record before the administrative law judge except upon a showing of "extraordinary circumstances". Consequently, the authority to reopen the record for the receipt of additional evidence for "good cause" in the current regulation must be eliminated. The conditions under which an administrative law judge may receive additional documentary medical evidence are described in proposed § 725.456.

20 CFR 725.456. Proposed § 725.414 imposes significant constraints on the development of documentary evidence, and especially documentary medical evidence. The parties will be required to develop the documentary record at the district director level; no additional documentary evidence will be admitted at the hearing unless the proffering party establishes extraordinary circumstances or a Department-provided pulmonary evaluation is not complete or is of insufficient quality. Consequently, in most cases, the record which is transmitted to the administrative law judge pursuant to § 725.421 will be the record upon which the administrative law judge adjudicates the claim; the only additional evidence will be provided by hearing witnesses. Only if the administrative law judge concludes that extraordinary circumstances exist or that the record developed by the parties is incomplete or insufficient to decide the claim, may he remand the claim to the district director with instructions to obtain additional evidence on specific issues, or allow the parties to develop such additional evidence as is necessary.

The purpose of proposed §§ 725.414 and 725.456 is to force the parties to develop the documentary record at the district level, the earliest adjudicatory stage, and confine the hearing to the presentation of testimonial evidence. This procedure supplants the current system, which effectively bifurcates evidentiary development by permitting the parties to postpone obtaining evidence until the hearing. Currently, each party attempts to have the most recent medical opinions or tests admitted into the record, resulting in the last-minute submission of evidence. Consequently, the introduction of evidence often does not cease until after the hearing because the parties receive additional time in which to obtain

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rebuttal evidence. The proposed procedure eliminates this form of maneuvering, and its attendant delays, by eliminating the incentive and opportunity to delay evidentiary development. The right to a hearing will become the right to request *de novo* review of the record by the administrative law judge, as supplemented by whatever testimony the parties present. Even the medical testimony will be limited to doctors who have authored reports which are part of the record.

The proposed regulation also provides some flexibility in permitting additional documentary evidence to be offered at the hearing stage. If "extraordinary circumstances" occur, then a party may be permitted to submit additional evidence. We are specifically seeking comment on the "extraordinary circumstances" provision of proposed § 725.456. We do not contemplate, for example, that the worsening of a miner's physical condition, no matter how severe, would establish the existence of extraordinary circumstances, so as to warrant supplementing the evidentiary record. Such a change is properly addressed through the modification procedures set forth at § 725.310 which allow the submission of an additional pulmonary evaluation or consultative report. As another example, however, extraordinary circumstances might be found in the following case. Suppose that a miner with an eighth grade education attempts, without success, to retain counsel at the district director level and can document that he contacted at least 20 attorneys in his attempt. Proceeding without counsel before the district director, he submits into evidence only one medical report from his treating physician which does not address all of the elements of entitlement, but merely concludes that the miner is totally disabled. After the case is referred to the Office of Administrative Law Judges, claimant is finally successful in retaining counsel who requests that the claimant's evidence be supplemented with an additional and more detailed report from his treating physician.

Similarly, a potentially liable operator that neglects to undertake the timely development of evidence while the case is pending before the district director may not take advantage of the "extraordinary circumstances" exception, whether or not that neglect may be considered excusable. *See Doss* v. *Director, OWCP*, 53 F.3d 654, 658 (4th Cir. 1995) (holding that a party which inadvertently withholds evidence developed before the district director does not meet the "extraordinary circumstances" exception of the current version of § 725.456(d)). To take another example, however, assume that a potentially liable operator diligently attempts to develop evidence in order to demonstrate it is not the operator that most recently employed the miner. Due to fraudulent concealment on the part of the miner's most recent employer, however, the potentially liable operator is unsuccessful in obtaining such evidence until after the claim is referred to the Office of Administrative Law Judges. In such a case, the evidence may be admissible under the "extraordinary circumstances" provision of the proposed rule.

In other instances, the evidence may simply be incomplete or inadequate to permit a proper adjudication of the claim. Ordinarily, a party who fails to develop its evidence fully simply loses. The main exception is the Department's obligation to provide each miner with a complete pulmonary examination. *See* 30 U.S.C. 923(b); 20 CFR 725.406. A claim cannot be denied if the Department has failed to obtain such an examination and the remaining evidence, if any, does not credibly address all the entitlement issues. In such cases, the proposed regulation retains the current regulation's procedure for authorizing the administrative law judge to remand the case for additional development or allow the parties additional time to develop the evidence. Other than these two narrow exceptions, the proposed regulation does not contemplate the admission of additional documentary evidence once the claim has been referred to the Office of Administrative Law Judges.

20 CFR 725.457. Proposed § 725.414(c) requires the parties to notify the district director of the names and addresses of any potential hearing witnesses who have not prepared documentary evidence in the record. Proposed paragraph (c) conforms § 725.457 to this procedure. Paragraph (c)(3) addresses the possibility that the administrative law judge may admit additional documentary evidence pursuant to § 725.456. In that event, the person who prepared the evidence will be permitted to testify even though he had not previously been identified as a potential witness at the district level. Proposed paragraph (d) addresses the scope of a medical witness' testimony. If the witness prepared documentary medical evidence, he is restricted to testifying to the contents of that document. Although paragraph (c)(2) permits a party to identify potential witnesses for the hearing who have not prepared documentary evidence, paragraph (d) makes clear that a physician cannot be a witness unless he prepares a report in evidence. A physician is permitted to testify only as to the clinical testing, examination results and diagnoses contained in his report. This limitation is intended to foreclose the use of a physician at the hearing to review the reports and testing of all the other physicians in evidence, and thereby exceed the number of consultative reviews permitted by the regulations.

20 CFR 725.458. The proposed new language is intended to clarify that any physician who testifies by deposition is subject to the same limitations on the scope of his testimony as any physician who testifies at the hearing before the administrative law judge. This limitation ensures that a party cannot use a deposition to elicit testimony which would otherwise be barred if procured at the hearing.

20 CFR 725.459. Current paragraph (a) imposes the liability for the cost of compelling a witness to appear at a hearing on the party who desires to cross-examine the witness. The first sentence of current paragraph (b), however, effectively excuses the claimant from bearing the cost of compelling a witness to appear for the claimant to cross-examine. The conflict is resolved by deleting the first sentence of paragraph (b). Regardless of the party's affiliation or status, the party who compels another party to produce a witness for purposes of cross-examination must bear the cost of the witness' appearance. Obviously, if the witness will appear in any event to testify on behalf of a party, exercising the right of cross-examination will not shift the liability for costs from the proponent of the witness to the other party.

The remainder of the regulation is restructured and consolidated. References to the Black Lung Disability Trust Fund are included in recognition of the Fund's liability for fees and costs when no operator is liable.

20 CFR 725.466. The reference to § 725.477 in paragraph (a) is a typographical error. This paragraph directs the mode of service for an order of dismissal. Section 725.477, however, concerns the form and content of a decision and order, not its service on the parties. Section 725.478 is the correct regulation for purposes of setting criteria for service of an order.

20 CFR 725.478. To date, the Department has interpreted § 725.478 to make the date an administrative law judge issues a decision the date that it is filed in the office of the district director for purpose of §19(e) of the

Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 919(e), as incorporated by 30 U.S.C. 932(a). This position is based on the same-day linkage between issuance of the decision and return of the official record to the DCMWC, at which time it is "considered" filed. Three courts of appeals and the Benefits Review Board, however, have rejected this interpretation. *Director, OWCP* v. *Seals*, 942 F.2d 986 (6th Cir. 1991); *Daugherty* v. *Director, OWCP*, 897 F.2d 740 (4th Cir. 1990); *Trent Coal, Inc.* v. *Day*, 739 F.2d 116 (3d Cir. 1984); *Harris* v. *NAACO Mining*, 12 Black Lung Rep. 1–115 (1989). These decisions interpret § 725.478 as merely indicating where the official record should be housed once the administrative law judge issues a decision. They also hold that the 30-day period for challenging a decision does not commence until the decision is actually filed with the district director. The Department's interpretation has been rejected as improperly shortening a statutorily prescribed time period for appeal. Although the Department does not agree with the judicial gloss put on § 725.478, the regulation is amended to conform to the caselaw by making explicit that DCMWC's actual receipt of the record triggers the running of the 30 days.

In addition, the last two sentences of this regulation require the district director to compute all benefits payable by an operator following the issuance of an administrative law judge's decision and order. Because the same computations must be performed following any effective order awarding benefits, whether by the district director, administrative law judge, Benefits Review Board, or court, this requirement will be moved to §725.502, contained in subpart H, "Payment of Benefits."

20 CFR 725.479. Proposed paragraph (d) is added to make clear that improper or defective service will not stay the commencement of the 30-day period for appeal or reconsideration if the party has actually received the decision. Actual receipt imposes on the party a duty to act which cannot be mitigated by the error(s) in serving the decision. *See generally Dominion Coal Co.* v. *Honaker*, 33 F.3d 401 (4th Cir. 1994).

20 CFR 725.480. Delete "(a)" because section 725.480 contains only one provision.

Subpart G—Responsible Coal Mine Operators

20 CFR 725.490. The regulations governing the obligations of coal mine operators to secure the payment of benefits have been moved to part 726, Black Lung Benefits; Requirements for Coal Mine Operator's Insurance. Subpart G henceforth will govern only the adjudication of issues of operator liability.

20 CFR 725.491–.495. The material in current §725.494 will be moved to §725.606. The material in current §725.495 will be moved to part 726. Sections 725.491–.495 will be amended to effectuate Congress's intent that coal mine operators bear liability to the maximum extent feasible. The Black Lung Benefits Act contains three substantive provisions relevant to the potential liability of individual coal mine operators. Section 3(d) of the Federal Mine Safety and Health Act, 30 U.S.C. 802(d), provides that the term "'operator' means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." Section 422(b) of the Act, 30 U.S.C. 932(b), further provides that "an employer, other than an operator of a coal mine" shall be liable for benefits payable to "any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction." Finally, §422(i), 30 U.S.C. 932(i), provides criteria for assessing liability against successor operators.

Beyond these general rules, however, the Department's authority to impose liability on coal mine operators is extraordinarily broad. Section 422(h), 30 U.S.C. 932(h), directs the Secretary to promulgate regulations to "establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines," and to "establish standards for apportioning liability for benefits * * * among more than one operator, where such apportionment is appropriate." Since it began administering the black lung benefits program in 1973, the Department has consistently sought to impose liability on the operator that most recently employed the miner, provided certain other conditions are met. These other conditions currently include: (1) the operator employed the miner for at least one year; (2) at least one day of such employment took place after December 31, 1969; and (3) the operator is financially capable of assuming liability for the payment of the claimant's benefits. 20 CFR 725.493(a)(1), 725.492 (a)(3), (a)(4). These regulatory requirements for the imposition of liability have withstood constitutional scrutiny by a three-judge panel of the United States District Court for the District of Columbia and the Supreme Court. *National Independent Coal Operator's Association* v. *Brennan*, 372 F. Supp. 16 (D.D.C.), *aff'd*, 419 U.S. 955 (1974).

Although the Department does not intend to alter these fundamental requirements, some change is needed in order to address problems that have arisen in litigation. For example, and perhaps most importantly, the Fourth Circuit has recognized that "[t]he Black Lung Benefits Act and its accompanying regulations do not specifically address who has the burden of proving the responsible operator issue." *Director, OWCP* v. *Trace Fork Coal Co.*, 67 F.3d 503, 507 (1995).

The proposed regulations are intended to clarify and amplify the Department's method of identifying responsible operators and assign appropriate burdens of proof. Sections 725.491 and 725.492 are derived from the specific statutory provisions defining the terms "operator" and "successor operator," respectively. In effect, they identify the class of business entities that may be considered "operators" in any claim filed under the Act. The regulations construe the Act broadly, *see Donovan* v. *McKee*, 845 F.2d 70, 72 (4th Cir. 1988), in order both to recognize all of the various businesses which mine coal in the United States and to give full effect to Congress' intent that the coal mining industry bear liability for individual claims to the maximum extent feasible. S. Rep. 95–209, *reprinted in* Comm. on Education and Labor, House of Representatives, 96th Cong., "Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977" (Comm. Print) at 612.

Proposed paragraph (c) of § 725.491 broadly defines the term "independent contractor." An independent contractor will incur liability for black lung benefits, however, only if one of its employees is engaged in a function covered by the Act at a covered situs for a cumulative period of at least one year. See proposed §§ 725.495(a)(1), 725.494(c). Although this one-year requirement will generally ensure that the independent contractor will have had more than *de minimis* contact with coal mining, there may be cases in which an independent contractor's contacts with mining have been limited. For example, a maintenance worker employed by an independent contractor who visited a coal mine once a week for five years to repair machinery integral to the extraction of coal would be considered to have been a miner for a cumulative period of more than one year under the Department's

regulations. *See* proposed § 725.101(a)(32). In such a case, the regulations require that the independent contractor that employed the miner be considered an operator for purposes of black lung liability.

The Department thus agrees with the decision of the District of Columbia Circuit in *Otis Elevator Co.* v. *Secretary of Labor*, 921 F.2d 1285 (D.C. Cir. 1990). In *Otis Elevator*, a case involving the mine safety provisions of the Federal Mine Safety and Health Act, the court held that the statutory definition of the term "operator," 30 U.S.C. 802(d), was not limited to independent contractors with a continuing presence at a mine. The court noted that the statutory definition was clear and unambiguous, and contained no such requirement. The "continuing presence" test had been adopted by the Fourth Circuit in another FMSHA case, *Old Dominion Power Co.* v. *Donovan*, 772 F.2d 92 (4th Cir. 1985). To the extent that a black lung benefits claim presents this issue, the Department believes the "continuing presence" test should not be applied outside the Fourth Circuit.

Proposed § 725.492 largely tracks § 422(i) of the Act and provisions contained in current § 725.493. The proposed regulation is intended to clarify both the criteria for successor operator liability, and the priority for assigning liability in cases where there is more than one successor operator. As a general rule, the regulations impose liability on the operator that actually employed the miner most recently. Where that operator is no longer financially capable of assuming liability for the claimant's benefits, typically because the operator is no longer in existence and failed to purchase commercial insurance to secure the payment of benefits, liability follows the most recent purchaser of the employer's mining business. If neither the original employer nor any successor operator which bought the business can be held liable for benefits, the parent company of the original employer may be held liable. The proposed regulation also broadly defines the term "acquisition" to recognize any transfer of authority over a mine, no matter how it is effected. For example, the purchase of a coal mine operator's assets from a bankruptcy trustee, or the transfer of a coal mine from one member of a family to another, with or without consideration, will both be considered acquisitions for purposes of imposing successor operator liability.

The proposed regulations also define the entities which may engage the miner in an employment relationship. Only an operator that employed the miner for at least one year, and for at least one day after December 31, 1969, may be considered liable for that miner's benefits. Section 725.493 broadly defines the necessary relationship. It may be a traditional one, involving the payment of a wage or salary and actual day-to-day control over the work performed, or a deemed relationship, such as that involving a successor operator, lessor, or parent corporation.

Proposed § 725.494 uses the miner's employment relationships to define a subclass of operators called potentially liable operators, *i.e.*, those operators whose relationship with the miner was of sufficient duration and type to justify the imposition of liability against them, and whose financial capability allows them to assume such liability. All of the criteria for identifying a potentially liable operator are contained in the current regulations: proposed paragraphs (a), (b), (d), and (e) are found in current § 725.492; and proposed paragraph (c) is contained in current § 725.493.

Paragraph (e) has been altered to provide more specific standards for establishing an operator's financial capability to assume liability for the payment of a claimant's benefits. The financial capability criterion has always been of the utmost importance, but has been the subject of increasing litigation in recent years. *See, e.g., Director, OWCP* v. *Trace Fork Coal Co.*, 67 F.3d 503 (4th Cir. 1995). Like the current regulation, the proposed regulation recognizes three methods of establishing an operator's financial capability: (1) A commercial insurance policy covering the claim; (2) authorization to self-insure; and (3) the possession of assets sufficient to guarantee the payment of the claimant's benefits.

The proposed regulation makes only minor changes to the first two methods in order to guarantee that the commercial insurance or the security posted by a self-insured operator remain viable sources of benefit payments. Thus, where the operator purchased commercial insurance, the regulation requires that the insurance company must be solvent, or that a legally obligated successor must exist. Where the insurance company has been declared insolvent, and no successor (either another insurance company or a state guaranty association) is available to pay benefits, the operator's prior purchase of insurance is not sufficient to establish the operator's ability to assume liability. Instead, the operator itself must possess sufficient assets to secure the payment of benefits. Similarly, where the operator was authorized to self-insure, the operator itself must still be authorized to self-insure or the security posted by that operator must be sufficient to provide for the payment of benefits.

With respect to the third method, the current regulations contain a presumption that if an operator is in existence, it is presumed to be financially capable of assuming liability for benefits. On occasion, that presumption has required the assessment of liability against a coal mine operator that is in existence, but that, because of the small size of its assets, clearly cannot pay benefits to a miner, even where a financially capable operator is next in line to assume liability. In such a case, the award of benefits is effectively unenforceable against the operator, and the Trust Fund must assume liability.

The proposed regulation replaces the presumption with a more case-specific inquiry into the operator's actual financial status by tying a determination of financial capability based on the operator's assets to the requirements of proposed § 725.606. In the case of operators who are in violation of their statutory duty to secure the payment of benefits, § 725.606 requires a minimum deposit of $175,000 to secure the payment of benefits on a claim. In the case of coal mine construction or coal transportation employers, the regulation requires a more particularized assessment of the benefits payable in a given claim based on the life expectancies of the miner and his dependents.

The size of the pool of potentially liable operators in any given case will vary depending on the miner's employment history. If the miner spent the last thirty years working for a single coal company that either insured its liability under the Act or qualified as a self-insurer, that company will be designated the responsible operator. If the miner worked for a number of companies, some of which thereafter sold their coal mining business, the number of potentially liable operators will be larger.

Finally, § 725.495 concludes the identification process by setting forth criteria for determining which of the potentially liable operators will be the responsible operator. The proposed regulation also assigns burdens of proof to the respective parties to the claim, thereby addressing the problem the Fourth Circuit identified in *Trace Fork*. Proposed § 725.495 alters the current regulation (§ 725.493) in two important respects. First, it makes explicit OWCP's system for determining responsible operator liability. It provides that if more than one potentially liable

operator exists with respect to the miner's most recent employment, the miner's actual employer shall be primarily liable, followed, in order, by any potentially liable successor operator and any other operator that may be deemed to have employed the miner. Only if no potentially liable operator exists with respect to the miner's most recent employment does the regulation authorize looking to the miner's next most recent employment.

For example, assume that the miner was employed by Megalith Coal Company from 1968 through 1982, and then went to work for Bob's Steel Company (which operated its own coal mines) until 1985. At the time, Bob's was insured by Shaky Insurance Company. Bob's subsequently sold its mines to Bill's Coal Company and merged into Ace Steel Company. The regulation requires that the miner's most recent employer bear the liability if at all possible. The regulation would therefore prioritize liability as follows: (1) Bob's Steel Company (as insured by Shaky Insurance Company, provided the insurer is still solvent); (2) Bill's Coal Company; and (3) Ace Steel Company. If none of these companies has the financial capability to pay benefits, the regulation assigns liability to Megalith Coal Company.

Second, proposed § 725.495 allocates the parties' burdens of proof with respect to determining the responsible operator. Pursuant to paragraph (b), the Director bears the burden of establishing that the responsible operator named by the district director in the initial finding (the "designated responsible operator") meets all of the § 725.494 criteria for a potentially liable operator with the exception of financial capability, which is presumed. Where the operator failed to contest its designation as a potentially liable operator before the district director, see proposed § 725.408(a)(3), none of the § 725.494 requirements may be contested. Pursuant to paragraph (d) of proposed § 725.495, where the designated responsible operator is not the miner's most recent employer, the Director is required to place into the record a statement that OWCP has searched its insurance and self-insurance records, and has found no record that any more recent employer meets the conditions of paragraphs 725.494 (e)(1) or (e)(2).

Once the Director meets his burden, the burden shifts to the designated responsible operator. That operator must prove either that it does not have sufficient assets to secure its liability and therefore is not financially capable, or that a more recent employer meets all of the requirements for a potentially liable operator set forth in proposed § 725.494. As part of this burden, the designated responsible operator must demonstrate that the more recent employer, or its owners or officers, if appropriate, possesses assets sufficient to secure the payment of benefits in accordance with § 725.606. The Department must be able to reach those assets through the enforcement mechanisms provided by the Act. For example, proof that the owner of a sole proprietorship possesses assets that may not be divided, such as a jointly owned residence, will not meet the designated responsible operator's burden. If the designated responsible operator meets its burden, then the more recent employer, if it was notified of the claim pursuant to proposed § 725.407 and not thereafter dismissed, shall be considered the responsible operator. If the designated responsible operator meets its burden and the more recent employer is not a party to the claim, then liability will be borne by the Black Lung Disability Trust Fund.

Subpart H—Payment of Benefits

20 CFR 725.502, .522, .530.

Determining the point in time at which benefits become due under the Black Lung Benefits Act is important for several purposes. For example, once an administrative law judge issues a decision and order awarding benefits against a responsible coal mine operator, the Trust Fund may pay benefits on an interim basis only after the operator fails to pay benefits that become due and payable. *See* 26 U.S.C. 9501(d)(1)(A)(ii). In addition, a beneficiary will be entitled to additional compensation, equal to twenty percent of any unpaid benefits, only if the operator fails to make payments within 10 days of the date on which they become due. *See* 20 CFR 725.607. Finally, the date on which benefits become due determines the starting point for computing any interest owed the beneficiary. *See* 20 CFR 725.608. The current regulations, however, offer little help in determining this critical date.

The proposed changes, which are consistent with OWCP's current practice, generally reflect law developed under the Longshore and Harbor Workers' Compensation Act. Under the Longshore Act, benefits become due when the compensation order becomes effective. *See Tidelands Marine Serv.* v. *Patterson*, 719 F.2d 126, 127 n.1 (5th Cir. 1983); *Lazarus* v. *Chevron USA, Inc.*, 958 F.2d 1297, 1299 (5th Cir. 1992). Section 21(a) of the LHWCA, 33 U.S.C. 921(a), as incorporated into the BLBA by 30 U.S.C. 932(a), provides that a compensation order issued under § 19 of the LHWCA, whether by a district director or an administrative law judge, *see* 20 CFR 702.315, .349, .350, becomes effective when it is filed in the office of the district director. The Secretary's black lung regulation at 20 CFR 725.479 uses the same language with respect to orders issued by administrative law judges. The regulations also allow a district director to issue a compensation order, but provide that such an order will become effective only if no party requests a hearing within 30 days. 20 CFR 725.419(d); *see Freeman United Coal Mining Co.* v. *Benefits Review Board*, 942 F.2d 415 (7th Cir. 1991). Proposed § 725.502(a)(2) will provide all parties with notice as to these crucial dates. Although appellate tribunals such as the Benefits Review Board and the courts of appeals typically direct the entry of an award on remand rather than enter an award themselves, the proposed regulation also addresses those rare instances in which the Board or court does issue such an award.

With one exception, the Department's experience in administering the Black Lung Benefits Act does not justify altering the Longshore Act procedures with respect to when benefits are payable. Thus, once an effective order is issued, an operator must immediately commence the payment of monthly benefits that become due thereafter in accordance with the terms of the order. Failure to pay these benefits within 10 days of the date they become due will subject the operator to liability for additional compensation.

The exception to Longshore Act practice concerns retroactive benefits payable by an operator after an effective order is issued. Such benefits are typically payable in two cases: (1) in a case in which the claimant was receiving interim benefit payments from the Trust Fund, where the claimant is entitled to benefits for periods prior to the initial determination of the claimant's eligibility; and (2) where the claimant was not receiving any interim benefit payments prior to the effective order because the district director had initially determined that the claimant was not entitled to benefits.

Because the calculation of retroactive benefits often involves the consideration of factors that are not apparent in the record or the decision, such as the dates of previous interim payments by the Trust Fund, the Department believes that such a calculation is best performed by the district director. Under the current regulations, such calculations are made within 30 days of the date of the effective award, and the proposed

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regulation at § 725.502(b)(2) codifies that time period.

For example, an administrative law judge may issue an order on August 15, 1996, awarding benefits as of August, 1994. This decision is effective when correctly filed and served, and the operator must commence monthly benefit payments within 10 days of the next date upon which monthly benefits become due, *i.e.*, it must pay benefits due for the month of August by September 10, 1996. If the operator fails to make timely payment, it will incur liability for twenty percent additional compensation. Retroactive benefits, however, covering the period from August, 1994 through July, 1996, will not be due until the district director completes the computation of these amounts and notifies the parties, notification which will be completed within 30 days of August 15, 1996.

Currently, some operators and insurers pay monthly benefits following the issuance of an effective award, but few pay retroactive benefits while an appeal is pending. By clarifying the respective obligations of the district director and the operator in a case in which an award is issued, and by providing claimants with notice of the dates on which benefit payments may be expected and the consequences of an operator's failing to make those payments, the Department hopes to increase operator compliance with effective awards.

20 CFR 725.503. As currently written, § 725.503 does not provide any guidance for determining when benefits should commence if the claimant prevails in modification proceedings. A denied claim may be modified to an award if the claimant establishes either a factual mistake in the decision denying the claim, or a change in the miner's condition since that denial. 33 U.S.C. 922, as incorporated by 30 U.S.C. 932(a); as implemented by 20 CFR 725.310. *See generally O'Keeffe* v. *Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255–256 (1971); *Banks* v. *Chicago Grain Trimmers Assn., Inc.*, 390 U.S. 459, 465 (1968). A "mistake" determination requires the adjudicator to consider whether the original decision is premised on some significant factual error resulting in an improper denial of the claim. In order to prove a change in condition, the claimant must prove that his condition has deteriorated to the point of compensable disability since the prior denial of the claim; this inquiry effectively acknowledges the correctness of the earlier decision, and requires the claimant to proffer new evidence.

The differences in the two grounds for modification necessarily require different means for determining the commencement date for benefits.

> A change in condition—a worsening of the applicant's black lung disease to the point where it is now totally disabling—entitles him to benefits from the date of the change. The correction of a mistake of fact, showing that he had totally disabling black lung disease at the time of the original hearing, entitles him to benefits from the date—which might be long before that hearing—on which he became totally disabled.
>
> *Eifler* v. *Office of Workers' Compensation Programs*, 926 F.2d 663, 666 (7th Cir. 1991).

Proposed paragraph (d) implements the alternative modification grounds characterized by *Eifler*. If the basis for modifying the denial of benefits to an award is a mistake in that denial, a determination of the commencement date uses the same rules as apply to claims. The adjudicator must consider whether a miner (paragraph (b)) or a survivor (paragraph (c)) filed the claim, and weigh the evidence accordingly. If, however, the claimant has established a change in condition, a different method must be used. The Department has concluded that the most reasonable alternative is to use the earliest credible evidence supportive of an element of entitlement previously resolved against the claimant (or left unresolved), provided such evidence was obtained since the denial of the claim. Such evidence supports both the award and a finding of the date from which benefits are payable if the adjudicator has considered and rejected any later evidence refuting entitlement. *Cf. Rochester & Pittsburgh Coal Co.* v. *Krecota*, 868 F.2d 600, 603 (3d Cir. 1989) (holding that administrative law judge erroneously awarded benefits from 1977 filing date when all medical evidence until 1985 was negative).

Proposed § 725.503 is also amended to reduce the number of provisions dealing with part 727 awards. Section 727.302 provides the criteria for determining when benefits are payable under part 727, which makes most of the current references to part 727 in § 725.503 unnecessary. 20 CFR 727.302. The only exception is for "transition claims," filed between July 1, 1973, and December 31, 1973, under § 415 of the BLBA, 30 U.S.C. 925. Section 727.302(e), which governs the onset date for such claims, refers to § 725.503 for the applicable standards. Thus, proposed § 725.503(e) is necessary to supply applicable standards. No benefits on a § 415 claim can be awarded for any period of eligibility occurring prior to January 1, 1974. 20 CFR 727.303(a). Consequently, a cross-reference to § 727.303 is a necessary qualifier to making onset date determinations under § 725.503 for § 415 claims.

20 CFR 725.537. Proposed § 725.212(b) codifies the Department's position that full survivor's benefits must be paid to each surviving spouse or surviving divorced spouse who establishes eligibility. In order to eliminate any potential inconsistency between the proposed regulation and current § 725.537, the latter must be amended to cross-reference the new § 725.212(b).

20 CFR 725.547. The Black Lung Benefits Act incorporates by reference certain provisions of the Social Security Act which require a claimant who has received benefits to which he is not entitled (an "overpayment") to reimburse the benefits unless certain defined exceptions apply. 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b). The claimant is entitled to waiver of the overpayment recovery if he can demonstrate that permitting recovery would "defeat the purpose of the Act" or "be against equity and good conscience." Only those individuals who were not "at fault" in creating the overpayments are eligible for waiver.

Section 725.547(a) currently limits the availability of waiver to those individuals who received the overpayments from the Black Lung Disability Trust Fund. A claimant who received an overpayment from a responsible operator or an insurance carrier may not seek waiver. The Department has concluded that the waiver provisions should be available to all claimants. Deleting the second sentence of paragraph (a) will afford any individual who has received an overpayment the opportunity to establish that he is without fault in creating the overpayment, that he lacks the financial resources to repay the overpayment ("defeat the purpose of title IV of the Act") or that special circumstances exist which demand release from liability ("be against equity and good conscience"). *See* 20 CFR 725.542–725.543.

The Department recognizes that incorporated provisions from the Longshore and Harbor Workers' Compensation Act (LHWCA) permit recoupment only by withholding future benefits. *See* 33 U.S.C. 914(j), 922, as incorporated by 30 U.S.C. 932(a); *Ceres Gulf* v. *Cooper*, 957 F.2d 1199, 1206–07 (5th Cir. 1992); *Stevedoring Services of American, Inc.* v. *Eggert*, 953 F.2d 552, 557 (9th Cir. 1992). If no future benefits are due, then the overpayment cannot be recovered under that statutory

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scheme. The Department has concluded, however, that the LHWCA provisions should not be generally applied to black lung overpayments. The statutory authority incorporated from the Social Security Act imposes an affirmative duty on the Department to recover overpayments unless waiver is appropriate: "Whenever the Secretary finds that more * * * than the correct amount of payment has been made to any person * * *, proper adjustment or recovery shall be made * * *" 42 U.S.C. 404(a)(1). Since 1973, the Department has promulgated regulations consistent with the SSA provisions. *See* 38 FR 26042 *et seq.*, Sept. 17, 1973; 20 CFR 725.523, 725.524 (1978) (identical to present 725.542, 725.543). Those courts which have reviewed the Department's position have upheld its authority to collect overpayments even when no future benefits are due. *Napier* v. *Director, OWCP*, 999 F.2d 1032 (6th Cir. 1993); *McConnell* v. *Director, OWCP*, 993 F.2d 1454 (10th Cir. 1993); *compare Bracher* v. *Director, OWCP*, 14 F.3d 1157, 1160–61 (7th Cir. 1994) (acknowledging difference between SSA and LHWCA statutory schemes and the Secretary's authority to promulgate regulations which vary incorporated provisions from LHWCA). Departing from the current procedures obviously would result in adverse financial consequences for the debt-laden Trust Fund. Moreover, the current procedures ensure that recovery is made only from those individuals who were either at fault in creating the overpayment or possess the financial resources to repay the benefits. For these reasons, the Department has adopted the LHWCA limitations on overpayment recovery only for overpayments which occur as a result of modification proceedings. *See* 33 U.S.C. 922, as incorporated by 30 U.S.C. 932(a); 20 CFR 725.310(d). *See* explanation of changes to § 725.310.

Subpart I—Enforcement of Liability; Reports

20 CFR 725.606. The current regulation at § 725.494 implements § 422(b) of the Act, 30 U.S.C. 932(b), which provides that coal mine construction and transportation employers are not required to comply with the general requirement that coal mine operators secure their potential liability under the BLBA. Section 422(b) further provides, however, that the Secretary may require a coal mine construction or transportation employer to "secure a bond or otherwise guarantee the payment" of benefits to an employee that the Secretary has determined to be eligible for benefits. The current regulation at § 725.606 implements § 14(i) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 914(i), which generally gives the district director authority to require the deposit of money with the United States Treasurer whenever he deems it advisable.

The proposed changes consolidate the two current regulations into a single one dealing generally with post-award security. The new regulation will be located in subpart I, "Enforcement of Liability; Reports." The new regulation eliminates paragraph (a) of § 725.494, which simply repeats the security requirement of the Act and refers to 20 CFR part 726. Because this provision is discussed in considerable detail in part 726, no useful purpose is served by repeating it in part 725. The remainder of § 725.494 is integrated into § 725.606. The latter section now establishes a clear duty on the part of otherwise unsecured operators to secure individual claims following issuance of an effective award of benefits. The new regulation also provides a mechanism for enforcing the duty to secure these benefit payments. Finally, there is currently no mechanism by which the United States Treasurer can hold deposits that are to be used to pay monthly benefits. Accordingly, the Department has altered the incorporated Longshore Act provision to provide authority to require a deposit of negotiable securities with a Federal Reserve Bank. *See* 30 U.S.C. 932(a) (authorizing the Department to depart from incorporated Longshore Act provisions in order to facilitate the administration of the Black Lung Benefits Act).

The new regulation distinguishes between the obligations of coal mine operators that were required to secure the payment of benefits under the Act and failed to meet that obligation, and those coal mine construction and transportation employers that were not required to secure. The former are required to deposit at least $175,000 (the current average value of a claim) for each approved claim. This amount may be increased if OWCP believes that additional security is required because, for example, the miner is relatively young, or has a disabled child. In cases in which the miner's age and the number of his dependents would not justify the entire $175,000, that money will provide additional security for claims filed by other employees of the unsecured operator. On the other hand, because coal mine construction and transportation employers have not violated the Act's security requirement, they are entitled to a more precise calculation of their potential liability for the approved claim, and may not be required to secure other claims not yet awarded.

Consideration was given to imposing a mandatory duty on uninsured operators and coal mine construction or transportation employers to secure benefit payments immediately following the issuance of an effective award of benefits, without awaiting a specific directive from the district director. Section 725.494 currently provides that a coal mine construction or transportation employer "which may be liable for the payment of benefits under this part or Part 727 of this subchapter *shall* take such action as may be appropriate to guarantee the discharge of such liability." Determining the amount of security required in the case of a coal mine construction or transportation employer, however, requires an individualized calculation by OWCP. A coal mine construction or transportation employer cannot be expected to perform such a calculation without assistance. Accordingly, the regulation requires that OWCP request such an employer to secure the payment of benefits before an order can be issued. Such a request will also give the liable operator or other employer an opportunity to demonstrate its compliance with the security requirement.

The regulation places the initial burden on OWCP. Once an effective award is issued, the district office (which will receive a copy of all such awards) will contact the Responsible Operator section of OWCP's Branch of Standards, Regulations, and Procedures, to determine whether the liable party has secured its obligations. If it has not, the district director will inform the operator of its obligation to secure the claim. If the operator fails to comply, the district director may direct the deposit of appropriate securities or, if the claim was awarded by an administrative law judge, the Benefits Review Board, or a court of appeals, request the appropriate Regional Solicitor's office to file a motion with the administrative law judge. This system will encourage district offices to investigate an operator's existing security, request the posting of security in appropriate cases, and to take whatever steps are necessary to require the posting of such security, as quickly as possible.

Paragraph (g) represents the Department's interpretation of the interplay between § 432(b), which excuses coal mine construction and transportation employers from the Act's general security requirement, and

§ 433(d), which imposes personal liability for benefits on the president, secretary, and treasurer of an incorporated operator that fails to secure the payment of benefits. Paragraph (g) makes clear that the provisions of § 433(d) will apply to incorporated coal mine construction and transportation employers if they fail to comply with an order requiring post-award security.

20 CFR 725.608. The proposed changes are intended to simplify the regulation, and to allow all parties to a claim to ascertain their obligations and rights with respect to the payment of interest. In general, the purpose of interest is "to ensure that an injured party is fully compensated for its loss." *City of Milwaukee* v. *Cement Division, National Gypsum Co.*, 115 S. Ct. 2091, 2095 (1995). The Black Lung Benefits Amendments of 1981 amended the Act to provide that an operator that withholds the payment of retroactive benefits pending review of an initial determination of eligibility shall begin to accrue liability for interest 30 days after the initial determination. 30 U.S.C. 932(d). The initial determination serves as the first notice to an operator that it may have incurred a potential obligation to pay benefits, and the statute and regulations recognize that the computation of interest from an earlier point in time may not be equitable. *See Stapleton* v. *Westmoreland Coal Co.*, 785 F.2d 424, 438 n. 12 (4th Cir. 1986) (*en banc*), *rev'd on other grounds sub. nom. Mullins Coal Co.* v. *Director, OWCP*, 484 U.S. 135 (1987). Proposed paragraph (a)(3) applies the same rule governing liability for interest to medical benefits, an issue which the present regulation does not address.

Paragraph (b) of the current regulation is unchanged. As the courts have recognized, the language of this provision is broad enough to entitle the Department to interest on any benefits paid from the Trust Fund, including both monthly disability benefits and medical treatment expenses. *Reich* v. *Youghiogheny & Ohio Coal Co.*, 66 F.3d 111, 117 (6th Cir. 1995).

In proposed paragraph (c), the Department recognizes that delays in the payment of attorney's fees under the Act have contributed to the unwillingness of attorneys in many areas of the country to accept black lung benefits cases. Under an incorporated provision of the Longshore and Harbor Workers' Compensation Act, attorneys may receive compensation only if they are successful, and only after the award of the claimant's benefits becomes final. 33 U.S.C. 928, as incorporated by 30 U.S.C. 932(a). Because an award of benefits may not become final until years after the attorney's fee application has been approved by the adjudication officer, the value of the fee that the attorney ultimately receives will be reduced by intervening inflation. Although the BLDTF may not pay interest, *see* 26 U.S.C. 9501(d), the Department believes that awarding interest on fee awards in responsible operator cases, the majority of cases currently litigated, will encourage attorneys to represent black lung claimants by reducing the cost of adjudicatory delays. This position is also consistent with Supreme Court precedent, *Missouri* v. *Jenkins*, 491 U.S. 274 (1989).

20 CFR 725.609. Several of the Department's recent enforcement cases have involved responsible operators or insurers that became financially incapable of paying benefits after having fully litigated the merits of the claimant's entitlement. As a result, although the final award is directed against one entity, the Department must seek to enforce the award against another. The Act currently provides ample authority for such enforcement. *See, e.g.*, 30 U.S.C. 932(i). In *Donovan* v. *McKee*, 845 F.2d 70, 72 (4th Cir. 1988), the Fourth Circuit refused to sanction "a license for operators to avoid benefit payments by effecting convenient changes of the business form under which coal mining operations are conducted. There is no warrant in the statutory language or purpose for allowing operators to resort to such shell game maneuvers to avoid liability for paying black lung benefits." Obviously, requiring the Department and the award beneficiary to obtain a new order in accordance with the claims procedure outlined in part 725 would allow such operators to delay indefinitely the enforcement of their obligations by undergoing frequent changes in identity. In addition, such an approach would have the unfortunate result of requiring claimants to relitigate their entitlement to benefits.

Even if the change in the operator's identity is wholly unrelated to a desire to avoid liability for black lung benefits, the Act should be construed to effectuate Congress's stated intent to impose liability for benefits payable under Part C of the Act on individual coal mine operators. In recognizing the expansive scope of the Act's provisions relating to the industry's liability, and the broad authority vested in the Department to carry out the provisions of the Act, *see* 30 U.S.C. 932(a), (h), 936(a), the proposed regulation simply codifies the Department's existing interpretation of the Act with respect to the enforcement of benefits.

Paragraph (a) recognizes that the owners of sole proprietorships and the principals in partnerships are directly liable for the debts incurred by their companies. Moreover, as the Fourth Circuit noted in *McKee*, such individuals are "unquestionably operators." 845 F.2d at 72.

Paragraph (b) implements § 423(d) of the Act, 30 U.S.C. 933(d). That statutory section provides that where an operator is a corporation that has failed to secure its liability for benefits under the Act, the president, secretary, and treasurer of such corporation "shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section." Although such officers do not meet the definition of the term "operator" (§ 725.491), they may be held liable for the payment of benefits once the corporation has been determined to be the responsible operator. Paragraph (b) further recognizes the ongoing nature of the duty imposed on the named corporate officers by § 423. For example, § 423(a) provides that an operator is responsible for "insuring and keeping insured the payment of such benefits." The Department's proposed civil money penalty regulations (20 CFR part 726, subpart D) recognize a similar ongoing duty with respect to self-insured operators (*see* proposed § 726.302(b)). Thus, any person who becomes a corporate officer of the responsible operator after the miner ceases his employment may be held personally liable for the payment of the miner's benefits. The regulation allows such a corporate officer to limit his personal liability by ensuring that the corporation posts security for the claim under § 725.606.

Paragraph (c) implements the Act's successor operator provisions in cases where the prior operator becomes unable to pay an award of benefits. 30 U.S.C. 932(i). In such cases, the Act imposes liability on any operator that may be considered a "successor operator." For example, where one operator merges into another, the Department or any beneficiary of an award should be able to quickly and summarily enforce the pre-existing obligations of the first operator against the second. The regulation recognizes that the liability of successor operators in the enforcement context should be limited to those claims of which they have constructive notice at the time of the event which gave rise to the successor liability. For example, if one

company purchased the coal mining business of another on January 1, 1990, it will be deemed to have notice of all claims filed against the seller as of that date. If the seller subsequently becomes unable to pay any benefits due in those claims, those obligations may be enforced directly against the successor operator. Any claims filed after the date of sale may be enforced against the successor only if the successor is provided with an opportunity to litigate the miner's entitlement to benefits in the claims process set forth in Subparts E and F of this part.

Paragraph (d) deals with companies which mine coal through subsidiaries, joint ventures, or other business entities which they own or control. Such companies may be considered operators under the Act (*see* proposed § 725.491), and must ensure the payment of benefits by, and thus assume the risk of any failure on the part of, such subsidiaries, joint ventures, or other business entities. For example, a parent company may not avoid its existing liability by dissolving or liquidating a subsidiary company. Any pre-existing obligations of such subsidiary may be enforced against such parent company without further resort to the claims process.

Finally, paragraph (e) is a catch-all provision designed to put all parties on notice that the Department can take full advantage of any other applicable federal or state law. For example, the Department has encountered a number of cases in which the responsible operator has gone out of business and its insurer has been declared insolvent by the state in which it was established. In such a case, the Department and the award beneficiary may collect from a state insurance guaranty association where state law requires such an association to assume the insurer's liabilities.

20 CFR 725.620. Paragraph (a) must be amended to conform with revisions to § 725.495 and part 726. Section 725.495 is being amended and its contents moved to a more appropriate location, subpart D of part 726, the regulations governing enforcement of the obligation to insure and the assessment of a penalty for failure to secure benefit payments. Thus, § 725.620(a) must contain a cross-reference to the new location of the relevant material.

20 CFR 725.621. In accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, § 31001(s), 110 Stat. 1358), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), the maximum penalty amount for failing to file a report required by the Secretary's regulations, *see* 30 USC § 942(b), must be increased by ten percent with respect to violations that take place after these proposed regulations become effective.

Subpart J—Medical Benefits and Vocational Rehabilitation

20 CFR 725.701. Section 725.701 should be amended to codify the presumption of coverage created by the United States Court of Appeals for the Fourth Circuit in *Doris Coal Co.* v. *Director, OWCP*, 938 F.2d 492 (4th Cir. 1991). In *Doris Coal Co.*, the Fourth Circuit recognized that the broad definition of pneumoconiosis necessarily brought within its ambit most pulmonary disorders for which a miner might receive treatment. The Court therefore concluded that "when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis." 938 F.2d at 496. The Department endorses this approach, and accordingly amends § 725.701 to codify it. Although the decision does not describe the means of rebutting the presumption, the proposed regulation requires evidence which completely severs the presumed nexus between the pulmonary disorder and the miner's pneumoconiosis. The proposed regulation also prohibits use of evidence which challenges the miner's underlying entitlement to benefits as a means of showing that the treatment cannot be compensable. A final award of benefits establishing that the miner is totally disabled due to pneumoconiosis arising out of coal mine employment precludes reliance on any medical evidence that is inconsistent with that award. The proper forum for such evidence is modification (see § 725.310).

20 CFR 725.706. The historical rise in treatment costs warrants raising the no-approval dollar amount in paragraph (b) from $100.00 to $300.00.

20 CFR Part 726—Black Lung Benefits; Requirements for Coal Mine Operators' Insurance

Subpart A—General

20 CFR 726.2. Paragraph (e) is added to recognize the addition of subpart D of part 726, governing the assessment of civil money penalties.

20 CFR 726.8. Proposed § 726.8 is intended to define certain terms that are used in part 726. The terms "employ" and "employment" are important not only to the Department's enforcement of the Act's civil money penalty provisions, but also to the liability of insurance carriers and sureties. Thus, both the required insurance endorsement, set forth at § 726.203, and the standard surety bond form, use the term "employment." Paragraph (d), which is identical to proposed paragraph 725.493(a)(1), codifies the Department's position that these terms should be given the broadest possible interpretation.

Subpart B—Authorization of Self-Insurers

20 CFR 726.101, .104, .105, .109, .110, .111. The Department's existing self-insurance regulations do not contain a list of the factors that the Department currently considers in setting the amount of security required of an operator seeking authorization to self-insure its benefit obligations. The formula set forth in § 726.101(b)(4) was intended to be used only in 1974. *See* current 20 CFR 726.105. The revisions to § 726.101(b)(4) eliminate the 22-year old formula in favor of a non-exclusive list of factors, now set forth in § 726.105. These factors are a more accurate reflection of the Department's current method of setting a security amount. Language referring to the formula in § 726.101 has been deleted from § 726.105. In addition, § 726.104 has been revised to recognize two forms of security (letters of credit and tax-exempt trusts) that the Department did not allow in 1974, when these regulations were last amended, but that it does allow now. Paragraph (b)(4) reflects the Department's decision to allow self-insurers to use letters of credit only in combination with another form of security. Sections 726.101, 726.109, 726.110 and 726.111 have been revised to remove specific references to the earlier forms of security and to substitute more general references.

20 CFR 726.106. The reference in paragraph (c) to "31 CFR 203.7 and 203.8" is incorrect. The regulation is revised to reference "31 CFR Part 225," which contains the appropriate regulations governing deposits with the United States.

20 CFR 726.114. A new paragraph (c) has been added to codify the Department's position that coal mine operators authorized to self-insure their benefit liability under 30 U.S.C. 933(a) continue to be responsible for maintaining adequate security even after they have ceased mining coal. *See* the explanation to §§ 726.300–.320, below. Paragraph (b) is revised to eliminate the specific reference to the forms of security previously accepted by the Department in favor of a more general reference. *See* discussion of § 726.104, above.

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Subpart D—Civil Money Penalties

20 CFR 726.300–.320. Section 423 of the Black Lung Benefits Act requires each coal mine operator to secure its liability for benefits by qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or by insuring and keeping insured the payment of such benefits with a licensed workers' compensation insurer. 30 U.S.C. 933(a). Section 423 also provides that each coal mine operator failing to meet its insurance obligation shall be subject to a civil money penalty of up to $1,000 per day. 30 U.S.C. 933(d)(1). In accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, § 31001(s), 110 Stat. 1358), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), the maximum penalty amount must be increased by ten percent with respect to violations that take place after these proposed regulations become effective.

The proposed regulations are designed to enhance administration of the civil money penalty program. The Department intends to minimize the burden that uninsured operators place on those operators in compliance with the Act's requirements and on the Black Lung Disability Trust Fund. For example, in a case where the miner's most recent employer was not insured, potential liability for benefits will typically fall on an earlier employer which secured its benefits liability. This situation places an additional burden on an operator fully in compliance with the Act's insurance requirements. *See Director, OWCP* v. *Trace Fork Coal Co.*, 67 F.3d 503, 507 (4th Cir. 1995). Similarly, if no operator may be held liable for the payment of a miner's benefits, the Trust Fund must assume liability, 26 U.S.C. 9501(d)(1)(B), placing an additional financial burden on the indebted Fund.

Currently, the Department's procedural and substantive criteria for administering the Act's penalty provision are contained in a single regulation, 20 CFR 725.495, proposed in April, 1978 and promulgated, without comment, in August, 1978. The proposed changes, which significantly alter the existing regulation, are in accordance with the 1979 recommendations of the Administrative Conference of the United States, 1 CFR 305.79–3. In particular, the new regulations are intended to accomplish three goals: (1) establish criteria to be used in assessing penalties against coal mine operators; (2) provide affected parties with notice of those criteria; and (3) streamline the assessment process.

The current regulation provides only that an administrative law judge should impose "the maximum penalty allowed" in the absence of "mitigating" circumstances. 20 CFR 725.495(d). The regulation, however, does not define mitigating circumstances. By allowing each administrative law judge to determine penalty amounts in this manner, the regulation encourages subjective and inconsistent application of the statutory penalty. In *Kleppe* v. *Delta Mining, Inc.*, 423 U.S. 403 (1976), the Supreme Court noted that the Interior Department had only recently developed formulas to be used in determining penalty amounts under the Federal Mine Safety and Health Act. The Court noted that "[u]se of the current regulations is preferable to the *ad hoc* consideration given the [statutory] criteria in this case." 413 U.S. at 409 n.2.

The proposed regulations address this problem by presenting a graduated series of possible penalties based on a set of enumerated criteria. The regulations adjust the penalty based on an operator's size, its prior notice of the Act's insurance requirements, and the operator's action, or lack thereof, following notification of the insurance requirements. By publishing these regulations, the Department establishes penalty criteria and provides the public with notice of those criteria for the first time.

The proposed regulations also make two procedural changes designed to streamline the penalty assessment process. Unlike the current regulation, which requires the Office of Workers' Compensation Programs to refer any case to the Office of Administrative Law Judges, whether contested or not, the proposed regulations allow the Department's initial proposed penalty to become final if no party requests a hearing. This proposal recognizes the wisdom and applicability of the Supreme Court's observation in *National Independent Coal Operators' Association* v. *Kleppe*, 423 U.S. 388, 399 (1976), which also arose under the Federal Mine Health and Safety Act. In that decision, the Court observed that "[e]ffective enforcement of the Act would be weakened if the Secretary were required to make findings of fact for every penalty assessment including those cases in which the mine operator did not request a hearing and thereby indicated no disagreement with the Secretary's proposed determination." In addition, the proposed regulations provide for discretionary "appellate" review of administrative law judge decisions by the Secretary of Labor at the request of any party. Upon receipt of a timely petition for review, the Secretary will determine whether review is warranted. This change is designed to encourage the consistent application of the criteria used to assess a penalty. It is hoped that a uniform body of penalty decisions will result from allowing the Secretary of Labor to review the decisions of administrative law judges.

Substantively, the new regulations add a definition of the time period within which coal mine operators must comply with the security requirement. The proposed regulation, § 726.302(b), distinguishes between operators that purchase commercial insurance to secure their liability and those that self-insure. The obligations of the former are extinguished when they cease mining coal, while the latter group must continue to secure the payment of benefits. This distinction is based on important differences in the type of insurance coverage secured by each group.

Under the Act, commercial insurance issued to cover black lung liability has no upper monetary limit; in exchange for a premium, the carrier agrees to assume liability for all claims arising out of employment during the period covered by the premium. Thus, an operator that has purchased insurance for the duration of its operation of a mine does not leave behind any unsecured liability when it ceases coal mining.

In contrast, the Department typically does not require self-insured operators to post bonds or other security with a face value that would cover all of the operator's expected black lung liability. Indeed, requiring security for the full amount of expected benefits might well impose costs that many otherwise low-risk operators could not bear. Rather, the Department has been willing to rely in part on a company's size as a partial guarantor of future benefit payments. Accordingly, depending on the operator's assets, the Department usually requires security to cover only from three to fifteen years of the operator's payments on claims currently in award status.

This requirement, however, has left the Department vulnerable in several recent bankruptcies involving large self-insured operators, such as the LTV Corporation and CF&I Fabricators. In both cases, the companies had ceased mining coal several years before filing for bankruptcy protection, and had not purchased bonds that reflected their post-mining claims experience. The proposed regulations attempt to remedy this problem by requiring self-insured operators to continue to secure the

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payment of benefits to their employees even after the operator has ceased mining coal. A new paragraph (c) has been added to § 726.114 to provide notice of this duty to operators seeking authorization to self-insure their liabilities.

Finally, the proposed regulations will be moved from part 725, which governs the processing, adjudication, payment, and enforcement of claims for benefits under the Act, to part 726, which deals exclusively with issues of insurance and self-insurance. This move is intended to centralize the regulations implementing § 423 of the Act. The Department also hopes to eliminate any potential confusion about the applicability of certain incorporated provisions of the Longshore and Harbor Workers' Compensation Act. These provisions simply do not apply to penalty assessments.

20 CFR Part 727—Review of Pending and Denied Claims under the Black Lung Benefits Reform Act of 1977

In 1978, Congress required the Department of Labor to promulgate interim entitlement criteria that were "no more restrictive" than criteria used to adjudicate claims that had been filed with the Social Security Administration under Part B of the Black Lung Benefits Act. These interim criteria were to be used until the Department could develop permanent criteria. The part 727 interim regulations were published at 43 FR 36818, Aug. 18, 1978. Because the Department's permanent part 718 criteria took effect on April 1, 1980, *see* 20 CFR 718.2, the part 727 regulations only apply to claims filed before that date. The Department estimates that several hundred part 727 claims remain pending in various stages of adjudication. Because the parties to these claims are quite familiar with the standards for establishing eligibility under part 727, and no new claims will be adjudicated under these standards, the Department intends to discontinue the annual publication of part 727 in the Code of Federal Regulations. Those standards will remain in effect for all claims to which they apply. Parties interested in reviewing part 727 may consult earlier editions of the Code of Federal Regulations or the **Federal Register** in which the regulations were originally published.

Drafting Information

This document was prepared under the direction and supervision of Bernard Anderson, Assistant Secretary of Labor for Employment Standards.

The principal authors of this document are Rae Ellen James, Deputy Associate Solicitor; Richard Seid, Counsel for Administrative Litigation and Legal Advice; and Michael Denney, Counsel for Enforcement, Black Lung Benefits Division, Office of the Solicitor, U.S. Department of Labor. Personnel from the Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, assisted in the preparation of the document.

Executive Order 12866

The Department believes that the proposed regulatory changes will not have a significant economic impact upon the coal industry or significantly affect the approval rate for black lung claims. The proposed changes do not pose novel legal or policy issues within the meaning of the Executive Order since most of the proposed changes are codifications of appellate decisions or procedural in nature. The proposed changes are intended to encourage faster, fairer and cheaper benefit determinations as well as make it easier to enforce employers' and insurers' responsibilities to pay benefits. They are part of the Reinvention initiatives supported by the National Performance Review and have been reviewed by the Office of Management and Budget for consistency with its objectives.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The proposed changes would establish no new record keeping requirements. Moreover, they seek to reduce the volume of medical examination and consultants' reports which are currently created solely for the purpose of litigation by limiting the amount of such medical evidence which will be admissible in black lung proceedings.

Regulatory Flexibility Act, as Amended

The American coal industry has produced a billion tons of coal (anthracite, bituminous and lignite) each year since 1990. The industry's output is worth approximately $20 billion per year, with the precise total varying depending on market conditions. Major segments of the industry are highly mechanized and very capital intensive, especially surface mining operations and underground operations using long wall mining technology. More traditional segments of the industry which still rely on the older continuous miner technology are somewhat more labor intensive. Overall, however, labor costs in the industry equal less than one fourth of the value of its product output. Employment in the coal industry has been steadily declining as a result of increased mechanization. It peaked at three-quarters of a million men and boys in 1918 when total production reached nearly 700 million tons. That production record stood until the Second World War, when new highs were reached with a workforce which had declined by 250,000.

The 1995 workforce in the industry was only 97,380 according to the Mine Safety and Health Administration (MSHA). Bureau of Labor Statistics data reflects an average hourly pay rate in the coal industry for production or non-supervisory workers in 1995 of $18.44. Assuming full year round employment, but no overtime, the annual per employee wage costs would be $38,355 ($18.44 per hour times 2080 hours). Projecting that figure to the 1995 workforce yields an annual labor cost of approximately $3.7 billion.

Employers engaged in the extraction and preparation of coal are required by the Black Lung Benefits Act to "secure the payment" of any benefits to former employees for which they are found liable. They may either qualify with the Department of Labor as self-insurers or purchase insurance to satisfy that statutory obligation.

Self-insurer status is only granted to companies with a net worth of at least $10 million and at least three years' operating experience in the industry. Approximately ten percent of the companies now active in the industry are authorized self-insurers or subsidiaries of a corporate parent which is an authorized self-insurer which has guaranteed their liabilities under the Act. The remaining companies in the industry are dependent upon insurance to meet their obligations. This is normally done by purchasing a Federal Black Lung rider as an attachment to their state workers' compensation insurance policy. Premium rates for this insurance are established by the individual states and not by the Federal Government.

The Division of Coal Mine Workers' Compensation has published in its Annual Reports occupational disease insurance rates for eleven major coal producing states for the largest group of covered workers—underground bituminous coal miners—since the

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1970's. These rates are assessed per $100 of payroll. Because of the offset provisions, combined state and Federal occupational disease coverage rates were initially published. However, beginning with the 1986 report, the state and Federal rates are now shown separately, for those states which calculate them separately.

From 1986 through 1994 (the last year for which data has been published), the average Federal black lung insurance rates have been virtually constant for the nine states for which comparable data is available throughout the period. In 1986, the average rate was $4.23 per $100 of payroll; for 1994 it was $4.33, an increase of only 2.4%. During that period, Federal coverage rates increased in four states (Alabama, Illinois, Kentucky and Tennessee), declined in three states (Colorado, Indiana and Utah) and remained unchanged in two states (Virginia and West Virginia). When a weighted average rate is calculated based on the number of underground miners in each state, the rate becomes $3.65 per $100 of payroll.

Assuming a maximum impact scenario, the total coal industry cost for complying with the Act's insurance requirements would currently be $135 million ($3.7 billion of payroll times $3.65 per $100 of payroll). In fact, it is significantly less. Most larger employers opt for self-insurance not only because it provides direct control over claims made against them by their former employees but also because it is less expensive than the purchase of commercial coverage. Also, some job classifications, especially in surface mining, carry a lower premium rate than that which is applicable to underground bituminous miners. To produce an economic impact on the coal industry of $100 million per year or more, these insurance costs would have to increase by over 70%. Insurance rates are based largely on a combination of historical experience and actuarial projections of future liabilities.

The current insurance rates are based on the experience with eligibility criteria as they have existed since the 1981 Amendments to the Act became effective on January 1, 1982. Under those criteria only 7.5% of the persons who have applied for benefits have been awarded them. A 70% increase in approvals would be required to carry that approval rate up to 13%. However, there is nothing in the proposed regulatory changes which alters those eligibility criteria. Most of the changes reflect a codification of appellate decisions. Many of those decisions involve liberalizing constructions of the Act and regulations; however, the single most important decision reflected is one by the Supreme Court striking down the "true doubt" rule. This decision requires the claimant to prove each element of his case by a preponderance of the evidence and prohibits giving the claimant the benefit of the doubt when the evidence is evenly balanced for and against entitlement. Although these changes are expected to simplify, expedite and make more uniform the results of the claims development and decision processes, they are unlikely to significantly alter case outcomes.

The major changes proposed are procedural ones intended to level the playing field between the individual claimant and the employer or insurer by placing limits upon the amount of evidence which each party can submit. The shift from a focus on the quantity of evidence to the quality of the evidence is a significant one in terms of addressing past perceptions of unfairness in the present system.

However, the employer or insurer, who could previously overwhelm the miner by the quantity of consultant reports and x-ray re-readings it could submit because of its greater financial resources, will still have an inherent advantage through possession of superior access to the best credentialed medical experts in the field. Even the new regulation which codifies the circumstances under which controlling weight can be given to the opinion of the miner's treating physician is unlikely to alter outcomes in very many cases. Few general practitioners in rural coal field areas are likely to meet the combination of duration of treatment, specialty qualifications and ability to produce a reasoned narrative relating their conclusions to the objective medical data required to invoke this special status.

The Department projects that the approval rate will rise, but only from 7.5% to 8% or 9%. This increase in the approval rate by 20% or less would justify an increase in the premium rate of less than 75 cents per $100 of payroll for underground bituminous miners or, using the maximum impact calculations provided above, no more than $28 million industrywide per year. In fact, insurance rates may increase slightly more than this amount initially because actuarial projections used in the insurance ratemaking process tend to err on the high side in projecting possible future liabilities. A temporary increase in the number of claims filings will probably also occur in the first year after promulgation of the regulations. However, once a significant body of experience has been gained under the revised regulations, the rates will stabilize at the appropriate level. In no event does the Department anticipate an increase of as much as $40 million per year, even during the initial period prior to establishing a new base of experience under the revised procedures.

Approximately eighty percent of all coal mined in the United States is purchased by utilities for use in the generation of electricity. Over one-half of all electricity generated in the United States is produced by coal-burning plants. Approximately ten percent of all coal mined in the United States is exported.

The remaining ten percent of coal mined is consumed domestically for a variety of uses, including steelmaking, heating, *etc.* An increase of approximately $40 million per year in the costs of a $20 billion industry equates to only two-tenths of one percent, or four cents per ton of coal produced. It would not significantly adversely impact coal's competitive position vis-a-vis other fuel sources, such as petroleum, natural gas, or nuclear power.

This analysis has not attempted to apply definitions of small entities in the coal mining industry which have been developed by other agencies, such as MSHA or the Small Business Administration (SBA) for other purposes for two basic reasons. First, data on the number of miners employed or total annual volume of business done by individual companies is not routinely gathered by the Division of Coal Mine Workers' Compensation because it is not directly relevant to the administration of the Black Lung Benefits Act for employers who are covered by insurance. The second and more relevant reason is that the entities active in the industry are divided into the two classes of those eligible to self-insure and those which are not.

Because of the high threshold requirement of a net worth of $10 million, plus three years' operating experience in the industry, to qualify for the privilege of self-insurance, all entities which MSHA would classify as "small mines" are included in the commercially insured category, except those which are subsidiaries of qualified self-insurers. The SBA definition of a coal mining company as a small business if it has fewer than 500 employees is not particularly helpful. A highly mechanized and capitalized mining company, especially in the Western surface mining industry, may well qualify as a self-insurer because of its net worth and experience even though it has many fewer than 500 employees. It is nonetheless true that it is generally the smaller entities in the

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industry which are dependent upon commercial insurance coverage to meet their obligations under the Act.

The point of this analysis, however, is that all entities subject to the insurance requirement will be equally affected by any changes in insurance rates. Therefore, their relative competitive position vis-a-vis one another or vis-a-vis those companies eligible to self-insure will not be adversely impacted by any changes which may result from the implementation of these regulatory proposals. In summary, the Department estimates that the proposed changes in the regulations will impose a *maximum* cost on firms of less than one percent of payroll or two-tenths of one percent of total revenue industrywide. Small firms are not expected to be disproportionately affected by these changes. However, the Department welcomes comments on this economic analysis, especially concerning the impact of the proposed changes on small entities and self-insured employers. Comments are also solicited on the projected change in the approval rate and any other factors which may be relevant which are not currently included in the analysis. Our current assessment that the proposed regulations will have no more than an annual $40 million impact on the industry may be affected by the comments received.

Therefore, the Assistant Secretary hereby certifies that implementation of these proposed changes will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 20 CFR Parts 718, 722, 725, 726 and 727.

Black lung benefits, Lung disease, Miners, Mines, Reporting and recordkeeping requirements, Workers' Compensation, X-rays.

Signed at Washington, D.C., this 27th day of December, 1996.

Robert B. Reich,

Secretary of Labor.

Gene Karp,

Acting Assistant Secretary for Employment Standards.

For the reasons set forth in the preamble, 20 CFR Chapter VI is proposed to be amended as follows:

1. The authority citation for part 718 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

2. Part 718 is proposed to be amended by removing subpart E, revising subparts A through D, revising Appendices A and C, and revising the text of Appendix B (the tables, B1 through B6, in Appendix B remain unchanged):

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

Subpart A—General

Sec.
718.1 Statutory provisions.
718.2 Applicability of this part.
718.3 Scope and intent of this part.
718.4 Definitions and use of terms.

Subpart B—Criteria for the Development of Medical Evidence

718.101 General.
718.102 Chest roentgenograms (X-rays).
718.103 Pulmonary function tests.
718.104 Report of physical examinations.
718.105 Arterial blood-gas studies.
718.106 Autopsy; biopsy.
718.107 Other medical evidence.

Subpart C—Determining Entitlement to Benefits

718.201 Definition of pneumoconiosis.
718.202 Determining the existence of pneumoconiosis.
718.203 Establishing relationship of pneumoconiosis to coal mine employment.
718.204 Total disability and disability causation defined; criteria for determining total disability and total disability due to pneumoconiosis.
718.205 Death due to pneumoconiosis.
718.206 Effect of findings by persons or agencies.

Subpart D—Presumptions Applicable to Eligibility Determinations

718.301 Establishing length of employment as a miner.
718.302 Relationship of pneumoconiosis to coal mine employment.
718.303 Death from a respirable disease.
718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.
718.305 Presumption of pneumoconiosis.
718.306 Presumption of entitlement applicable to certain death claims.
Appendix A to Part 718–Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)
Appendix B to Part 718–Standards for Administration and Interpretation of Pulmonary Function Tests. Tables B1, B2, B3, B4, B5, B6
Appendix C to Part 718–Blood Gas Tables

Subpart A—General

§ 718.1 Statutory Provisions.

(a) Under title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Amendments Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Amendments of 1981, and the Black Lung Benefits Revenue Act of 1981, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally or partially disabled by pneumoconiosis. However, unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on or after January 1, 1982, only when the miner's death was due to pneumoconiosis, except where the survivor's entitlement is established pursuant to § 718.306 of this part on a claim filed prior to June 30, 1982. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligibility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in subpart D of part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor (see 20 CFR 718.2, 1978). Amendments made to section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under part C of title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977 provided that with respect to a claim filed prior to April 1, 1980, or reviewed under section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after March 31, 1980. All such claims shall be reviewed under the criteria set forth in part 727 of this title (see 20 CFR 725.4(d)).

§718.2 Applicability of this part.

This part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

§718.3 Scope and intent of this part.

(a) This part sets forth the standards to be applied in determining whether a coal miner is or was totally, or in the case of a claim subject to §718.306 partially, disabled due to pneumoconiosis or died due to pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

(b) This part is designed to interpret the presumptions contained in section 411(c) of the Act, evidentiary standards and criteria contained in section 413(b) of the Act and definitional requirements and standards contained in section 402(f) of the Act within a coherent framework for the adjudication of claims. It is intended that these enumerated provisions of the Act be construed as provided in this part.

§718.4 Definitions and use of terms.

Except as is otherwise provided by this part, the definitions and usages of terms contained in §725.101 of subpart A of part 725 of this title shall be applicable to this part.

Subpart B—Criteria for the Development of Medical Evidence

§718.101 General.

(a) The Office of Workers' Compensation Programs (hereinafter OWCP or the Office) shall develop the medical evidence necessary for a determination with respect to each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, but not limited to, a chest roentgenogram (X-ray), physical examination, pulmonary function tests and a blood-gas study.

(b) The standards for the administration of clinical tests and examinations contained in this subpart shall apply to all evidence developed by any party in connection with a claim governed by this part (see §§725.406(b), 725.414(a), 725.456(d)). These standards shall also apply to claims governed by part 727 (see 20 CFR 725.4(d)), but only for clinical tests or examinations conducted after March 31, 1980. Any clinical test or examination subject to these standards shall be in substantial compliance with the applicable standard in order to constitute evidence of the fact for which it is proffered. Unless otherwise provided, any evidence which is not in substantial compliance with the applicable standard is insufficient to establish the fact for which it is proffered.

§718.102 Chest roentgenograms (X-rays).

(a) A chest roentgenogram (X-ray) shall be of suitable quality for proper classification of pneumoconiosis and shall conform to the standards for administration and interpretation of chest X-rays as described in Appendix A to this part.

(b) A chest X-ray to establish the existence of pneumoconiosis shall be classified as Category 1, 2, 3, A, B, or C, according to the International Labour Organization Union Internationale Contra Cancer/Cincinnati (1971) International Classification of Radiographs of the Pneumoconioses (ILO–U/C 1971), or subsequent revisions thereof. A chest X-ray classified as Category Z under the ILO Classification (1958) or Short Form (1968) shall be reclassified as Category O or Category 1 as appropriate, and only the latter accepted as evidence of pneumoconiosis. A chest X-ray classified under any of the foregoing classifications as Category O, including sub-categories 0—, 0/0, or 0/1 under the UICC/Cincinnati (1968) Classification or the ILO–U/C 1971 Classification does not constitute evidence of pneumoconiosis.

(c) A description and interpretation of the findings in terms of the classifications described in paragraph (b) of this section shall be submitted by the examining physician along with the film. The report shall specify the name and qualifications of the person who took the film and the name and qualifications of the physician interpreting the film. If the physician interpreting the film is a Board-certified or Board-eligible radiologist or a certified "B" reader (see §718.202), he or she shall so indicate. The report shall further specify that the film was interpreted in compliance with this paragraph.

(d) The original film on which the X-ray report is based shall be supplied to the Office, unless prohibited by law, in which event the report shall be considered as evidence only if the original film is otherwise available to the Office and other parties. Where the chest X-ray of a deceased miner has been lost, destroyed or is otherwise unavailable, a report of a chest X-ray submitted by any party shall be considered in connection with the claim.

(e) No chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is conducted and reported in accordance with the requirements of this section and Appendix A. In the absence of evidence to the contrary, compliance with the requirements of Appendix A shall be presumed. In the case of a deceased miner where the only available X-ray does not substantially comply with this subpart, such X-ray shall be considered and shall be accorded appropriate weight in light of all relevant evidence if it is of sufficient quality for determining the presence or absence of pneumoconiosis and such X-ray was interpreted by a Board-certified or Board-eligible radiologist or a certified "B" reader (see §718.202).

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(Pub. L. No. 96–511)

§718.103 Pulmonary function tests.

(a) Any report of pulmonary function tests submitted in connection with a claim for benefits shall record the results of the forced expiratory volume in one second (FEV1) and either the forced vital capacity (FVC) or the maximum voluntary ventilation (MVV) or both. If the MVV is reported, the results of such test shall be obtained independently rather than calculated from the results of the FEV1.

(b) All pulmonary function test results submitted in connection with a claim for benefits shall be accompanied by three tracings of each test performed, unless the results of two tracings of the MVV are within 5% of each other, in which case two tracings for that test shall be sufficient. Pulmonary function test results submitted in connection with a claim for benefits shall also include a statement signed by the physician or technician conducting the test setting forth the following:

(1) Date and time of test;

(2) Name, DOL claim number, age, height, and weight of claimant at the time of the test;

(3) Name of technician;

(4) Name and signature of physician supervising the test;

(5) Claimant's ability to understand the instructions, ability to follow directions and degree of cooperation in performing the tests. If the claimant is unable to complete the test, the person executing the report shall set forth the reasons for such failure;

(6) Paper speed of the instrument used;

(7) Name of the instrument used;

(8) Whether a bronchodilator was administered. If a bronchodilator is administered, the physician's report must detail values obtained both before and after administration of the bronchodilator and explain the significance of the results obtained; and

(9) That the requirements of paragraphs (b) and (c) of this section have been complied with.

(c) No results of a pulmonary function study shall constitute evidence of the presence or absence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with the requirements of this section and Appendix B to this part. In the absence of evidence to the contrary, compliance with the requirements of Appendix B shall be presumed. In the case of a deceased miner, special consideration shall be given to noncomplying tests if, in the opinion of the adjudication officer, the only available tests demonstrate technically valid results obtained with good cooperation of the miner.

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§718.104 Report of physical examinations.

(a) A report of any physical examination conducted in connection with a claim shall be prepared on a medical report form supplied by the Office or in a manner containing substantially the same information. Any such report shall include the following information and test results:

(1) The miner's medical and employment history;

(2) All manifestations of chronic respiratory disease;

(3) Any pertinent findings not specifically listed on the form;

(4) If heart disease secondary to lung disease is found, all symptoms and significant findings;

(5) The results of a chest X-ray conducted and interpreted as required by §718.102; and

(6) The results of a pulmonary function test conducted and reported as required by §718.103.

(b) In addition to the requirements of paragraph (a), a report of physical examination may be based on any other procedures such as electrocardiogram, blood-gas studies conducted and reported as required by §718.105, and other blood analyses which, in the physician's opinion, aid in his or her evaluation of the miner.

(c) In the case of a deceased miner, a report prepared by a physician who is unavailable, which fails to meet the criteria of paragraph (a), may be given appropriate consideration and weight by the adjudicator in light of all relevant evidence provided no report which does comply with this section is available.

(d) *Treating physician.* The medical opinion of a miner's treating physician may be entitled to controlling weight in determining whether the miner is, or was, totally disabled by pneumoconiosis or died due to pneumoconiosis. The adjudication officer shall take into consideration the following factors in weighing the opinion of a treating physician:

(1) *Nature of relationship.* The opinion of a physician who has treated the miner for respiratory or pulmonary conditions is entitled to more weight than a physician who has treated the miner for non-respiratory conditions;

(2) *Duration of relationship.* The length of the treatment relationship demonstrates whether the physician has observed the miner long enough to obtain a superior understanding of his or her condition;

(3) *Frequency of treatment.* The frequency of physician-patient visits demonstrates whether the physician has observed the miner often enough to obtain a superior understanding of his or her condition; and

(4) *Extent of treatment.* The types of testing and examinations conducted during the treatment relationship demonstrate whether the physician has obtained superior and relevant information concerning the miner's condition.

(5) Whether controlling weight is given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.

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§718.105 Arterial blood-gas studies.

(a) Blood-gas studies are performed to detect an impairment in the process of alveolar gas exchange. This defect will manifest itself primarily as a fall in arterial oxygen tension either at rest or during exercise. No blood-gas study shall be performed if medically contraindicated.

(b) A blood-gas study shall initially be administered at rest and in a sitting position. If the results of the blood-gas test at rest do not satisfy the requirements of Appendix C to this part, an exercise blood-gas test shall be offered to the miner unless medically contraindicated. If an exercise blood-gas test is administered, blood shall be drawn during exercise.

(c) Any report of a blood-gas study submitted in connection with a claim shall specify:

(1) Date and time of test;

(2) Altitude and barometric pressure at which the test was conducted;

(3) Name and DOL claim number of the claimant;

(4) Name of technician;

(5) Name and signature of physician supervising the study;

(6) The recorded values for pCO_2, pO_2, and pH, which have been collected simultaneously (specify values at rest and, if performed, during exercise);

(7) Duration and type of exercise;

(8) Pulse rate at the time the blood sample was drawn;

(9) Time between drawing of sample and analysis of sample; and

(10) Whether equipment was calibrated before and after each test.

(d) If one or more blood-gas studies producing results which meet the appropriate table in Appendix C is administered during a hospitalization which ends in the miner's death, then any such study must be accompanied by a physician's report establishing that the test results were produced by a chronic respiratory or pulmonary condition related to coal mine dust exposure, and not by a disease unrelated to such exposure. Failure to produce such a report will prevent reliance on the blood-gas study as evidence that the miner was totally disabled at death.

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§718.106 Autopsy; biopsy.

(a) A report of an autopsy or biopsy submitted in connection with a claim shall include a detailed gross macroscopic and microscopic description of the lungs or visualized portion of a lung. If a surgical procedure has been performed to obtain a portion of a lung, the evidence shall include a copy of the surgical note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, a complete copy of the autopsy report shall be submitted to the Office.

(b) In the case of a miner who died prior to March 31, 1980, an autopsy or

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biopsy report shall be considered even when the report does not substantially comply with the requirements of this section. A noncomplying report concerning a miner who died prior to March 31, 1980, shall be accorded the appropriate weight in light of all relevant evidence.

§ 718.107 Other medical evidence.

(a) The results of any medically acceptable test or procedure reported by a physician and not addressed in this subpart, which tends to demonstrate the presence or absence of pneumoconiosis, the sequelae of pneumoconiosis or a respiratory impairment, may be submitted in connection with a claim and shall be given appropriate consideration.

(b) The party submitting the test or procedure pursuant to this section bears the burden to demonstrate that the test or procedure is medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits.

Subpart C—Determining Entitlement to Benefits

§ 718.201 Definition of pneumoconiosis.

(a) For the purpose of the Act, "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or "clinical," pneumoconiosis and statutory, or "legal," pneumoconiosis.

(1) *Clinical pneumoconiosis.* "Clinical pneumoconiosis" consists of those diseases, recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

(2) *Legal pneumoconiosis.* "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

(b) For purposes of this section, a disease "arising out of coal mine employment" includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

(c) For purposes of this definition, "pneumoconiosis" is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

§ 718.202 Determining the existence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis may be made as follows:

(1) A chest X-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. Except as otherwise provided in this section, where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays.

(i) In all claims filed before January 1, 1982, where there is other evidence of pulmonary or respiratory impairment, a Board-certified or Board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 718.102 and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented. However, these limitations shall not apply to any claim filed on or after January 1, 1982.

(ii) The following definitions shall apply when making a finding in accordance with this paragraph.

(A) The term *other evidence* means medical tests such as blood-gas studies, pulmonary function studies or physical examinations or medical histories which establish the presence of a chronic pulmonary, respiratory or cardio-pulmonary condition, and in the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition.

(B) *Pulmonary or respiratory impairment* means inability of the human respiratory apparatus to perform in a normal manner one or more of the three components of respiration, namely, ventilation, perfusion and diffusion.

(C) *Board-certified* means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association.

(D) *Board-eligible* means the successful completion of a formal accredited residency program in radiology or diagnostic roentgenology.

(E) *Certified 'B' reader* or *'B' reader* means a physician who has demonstrated proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO–U/C classification for interpreting chest roentgenograms for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of or by the Appalachian Laboratory for Occupational Safety and Health. See 42 CFR 37.51(b)(2).

(F) *Qualified radiologic technologist or technician* means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technologist by a state licensing board.

(2) A biopsy or autopsy conducted and reported in compliance with § 718.106 may be the basis for a finding of the existence of pneumoconiosis. A finding in an autopsy or biopsy of anthracotic pigmentation, however, shall not be sufficient, by itself, to establish the existence of pneumoconiosis. A report of autopsy shall be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented.

(3) If the presumptions described in §§ 718.304, 718.305 or 718.306 are applicable, it shall be presumed that the miner is or was suffering from pneumoconiosis.

(4) A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding shall be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

(b) No claim for benefits shall be denied solely on the basis of a negative chest X-ray.

(c) A determination of the existence of pneumoconiosis shall not be made solely on the basis of a living miner's statements or testimony. Nor shall such a determination be made upon a claim involving a deceased miner filed on or after January 1, 1982, solely based upon the affidavit(s) (or equivalent sworn testimony) of the claimant and/or his or

her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

§ 718.203 Establishing relationship of pneumoconiosis to coal mine employment.

(a) In order for a claimant to be found eligible for benefits under the Act, it must be determined that the miner's pneumoconiosis arose at least in part out of coal mine employment. The provisions in this section set forth the criteria to be applied in making such a determination.

(b) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

(c) If a miner who is suffering or suffered from pneumoconiosis was employed less than ten years in the nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent evidence establishes such a relationship.

§ 718.204 Total disability and disability causation defined; criteria for determining total disability and total disability due to pneumoconiosis.

(a) *General.* Benefits are provided under the Act for or on behalf of miners who are totally disabled due to pneumoconiosis, or who were totally disabled due to pneumoconiosis at the time of death. For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis. If, however, a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.

(b)(1) *Total disability defined.* A miner shall be considered totally disabled if the irrebuttable presumption described in § 718.304 applies. If that presumption does not apply, a miner shall be considered totally disabled if the miner has a pulmonary or respiratory impairment which, standing alone, prevents or prevented the miner:

(i) From performing his or her usual coal mine work; and

(ii) From engaging in gainful employment in the immediate area of his or her residence requiring the skills or abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity over a substantial period of time.

(2) *Medical criteria.* In the absence of contrary probative evidence, evidence which meets the standards of either paragraphs (b)(2) (i), (ii), (iii), or (iv) of this section shall establish a miner's total disability:

(i) Pulmonary function tests showing values equal to or less than those listed in Table B1 (Males) or Table B2 (Females) in Appendix B to this part for an individual of the miner's age, sex, and height for the FEV1 test; if, in addition, such tests also reveal the values specified in either paragraph (b)(2)(i) (A) or (B) or (C) of this section:

(A) Values equal to or less than those listed in Table B3 (Males) or Table B4 (Females) in Appendix B of this part, for an individual of the miner's age, sex, and height for the FVC test, or

(B) Values equal to or less than those listed in Table B5 (Males) or Table B6 (Females) in Appendix B to this part, for an individual of the miner's age, sex, and height for the MVV test, or

(C) A percentage of 55 or less when the results of the FEV1 test are divided by the results of the FVC test (FEV1/FVC equal to or less than 55%), or

(ii) Arterial blood-gas tests show the values listed in Appendix C to this part, or

(iii) The miner has pneumoconiosis and has been shown by the medical evidence to be suffering from cor pulmonale with right-sided congestive heart failure, or

(iv) A physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in employment as described in paragraph (b)(1) of this section.

(c)(1) *Total disability due to pneumoconiosis defined.* A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in § 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

(i) Has an adverse effect on the miner's respiratory or pulmonary condition; or

(ii) Worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

(2) Except as provided in § 718.305 and paragraph (b)(2)(iii) of this section, proof that the miner suffers or suffered from a totally disabling respiratory or pulmonary impairment as defined in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iv) and (d) of this section shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis. Except as provided in paragraph (d), the cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report.

(d) *Lay evidence.* In establishing total disability, lay evidence may be used in the following cases:

(1) In a case involving a deceased miner in which the claim was filed prior to January 1, 1982, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total (or under § 718.306 partial) disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition.

(2) In a case involving a survivor's claim filed on or after January 1, 1982, but prior to June 30, 1982, which is subject to § 718.306, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total or partial disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination shall not be based solely upon the affidavits or testimony of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

(3) In a case involving a deceased miner whose claim was filed on or after January 1, 1982, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination shall not be based solely upon the affidavits or testimony of any person who would be eligible for benefits (including augmented benefits) if the claim were approved.

(4) Statements made before death by a deceased miner about his or her physical condition are relevant and shall be considered in making a

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determination as to whether the miner was totally disabled at the time of death.

(5) In the case of a living miner's claim, a finding of total disability due to pneumoconiosis shall not be made solely on the miner's statements or testimony.

(e) In determining total disability to perform usual coal mine work, the following shall apply in evaluating the miner's employment activities:

(1) In the case of a deceased miner, employment in a mine at the time of death shall not be conclusive evidence that the miner was not totally disabled. To disprove total disability, it must be shown that at the time the miner died, there were no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(2) In the case of a living miner, proof of current employment in a coal mine shall not be conclusive evidence that the miner is not totally disabled unless it can be shown that there are no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(3) Changed circumstances of employment indicative of a miner's reduced ability to perform his or her usual coal mine work may include but are not limited to:

(i) The miner's reduced ability to perform his or her customary duties without help; or

(ii) The miner's reduced ability to perform his or her customary duties at his or her usual levels of rapidity, continuity or efficiency; or

(iii) The miner's transfer by request or assignment to less vigorous duties or to duties in a less dusty part of the mine.

§ 718.205 Death due to pneumoconiosis.

(a) Benefits are provided to eligible survivors of a miner whose death was due to pneumoconiosis. In order to receive benefits, the claimant must prove that:

(1) The miner had pneumoconiosis (see § 718.202);

(2) The miner's pneumoconiosis arose out of coal mine employment (see § 718.203); and

(3) The miner's death was due to pneumoconiosis as provided by this section.

(b) For the purpose of adjudicating survivors' claims filed prior to January 1, 1982, death will be considered due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where death was due to multiple causes including pneumoconiosis and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the cause of death, or

(3) Where the presumption set forth at § 718.304 is applicable, or

(4) Where either of the presumptions set forth at § 718.303 or § 718.305 is applicable and has not been rebutted.

(5) Where the cause of death is significantly related to or aggravated by pneumoconiosis.

(c) For the purpose of adjudicating survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at § 718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

(d) To minimize the hardships to potentially entitled survivors due to the disruption of benefits upon the miner's death, survivors' claims filed on or after January 1, 1982, shall be adjudicated on an expedited basis in accordance with the following procedures. The initial burden is upon the claimant, with the assistance of the district director, to develop evidence which meets the requirements of paragraph (c) of this section. Where the initial medical evidence appears to establish that death was due to pneumoconiosis, the survivor will receive benefits unless the weight of the evidence as subsequently developed by the Department or the responsible operator establishes that the miner's death was not due to pneumoconiosis as defined in paragraph (c). However, no such benefits shall be found payable before the party responsible for the payment of such benefits shall have had a reasonable opportunity for the development of rebuttal evidence. See § 725.414 concerning the operator's opportunity to develop evidence prior to an initial determination.

§ 718.206 Effect of findings by persons or agencies.

Decisions, statements, reports, opinions, or the like, of agencies, organizations, physicians or other individuals, about the existence, cause, and extent of a miner's disability, or the cause of a miner's death, are admissible. If properly submitted, such evidence shall be considered and given the weight to which it is entitled as evidence under all the facts before the adjudication officer in the claim.

Subpart D—Presumptions Applicable to Eligibility Determinations

§ 718.301 Establishing length of employment as a miner.

The presumptions set forth in §§ 718.302, 718.303, 718.305 and 718.306 apply only if a miner worked in one or more coal mines for the number of years required to invoke the presumption. The length of the miner's coal mine work history must be computed as provided by 20 CFR 725.101(a)(32).

§ 718.302 Relationship of pneumoconiosis to coal mine employment.

If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment. (See § 718.203.)

§ 718.303 Death from a respirable disease.

(a)(1) If a deceased miner was employed for ten or more years in one or more coal mines and died from a respirable disease, there shall be a rebuttable presumption that his or her death was due to pneumoconiosis.

(2) Under this presumption, death shall be found due to a respirable disease in any case in which the evidence establishes that death was due to multiple causes, including a respirable disease, and it is not medically feasible to distinguish which disease caused death or the extent to which the respirable disease contributed to the cause of death.

(b) The presumption of paragraph (a) of this section may be rebutted by a showing that the deceased miner did not have pneumoconiosis, that his or her death was not due to pneumoconiosis or that pneumoconiosis did not contribute to his or her death.

(c) This section is not applicable to any claim filed on or after January 1, 1982.

§ 718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, that a miner's death was due to pneumoconiosis or that a miner was totally disabled due to pneumoconiosis at the time of death, if such miner is suffering or suffered from a chronic dust disease of the lung which:

(a) When diagnosed by chest X-ray (see § 718.202 concerning the standards for X-rays and the effect of interpretations of X-rays by physicians) yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C in:

(1) The ILO–U/C International Classification of Radiographs of the Pneumoconioses, 1971, or subsequent revisions thereto; or

(2) The International Classification of the Radiographs of the Pneumoconioses of the International Labour Office, Extended Classification (1968) (which may be referred to as the "ILO Classification (1968)"); or

(3) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968) (which may be referred to as the "UICC/Cincinnati (1968) Classification"); or

(b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* That any diagnosis made under this paragraph shall accord with acceptable medical procedures.

§ 718.305 Presumption of pneumoconiosis.

(a) If a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest X-ray submitted in connection with such miner's or his or her survivor's claim and it is interpreted as negative with respect to the requirements of § 718.304, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that such miner's death was due to pneumoconiosis, or that at the time of death such miner was totally disabled by pneumoconiosis. In the case of a living miner's claim, a spouse's affidavit or testimony may not be used by itself to establish the applicability of the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where it is determined that conditions of the miner's employment in a coal mine were substantially similar to conditions in an underground mine. The presumption may be rebutted only by establishing that the miner does not, or did not, have pneumoconiosis, or that his or her respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(b) In the case of a deceased miner, where there is no medical or other relevant evidence, affidavits of persons having knowledge of the miner's condition shall be considered to be sufficient to establish the existence of a totally disabling respiratory or pulmonary impairment for purposes of this section.

(c) The determination of the existence of a totally disabling respiratory or pulmonary impairment, for purposes of applying the presumption described in this section, shall be made in accordance with § 718.204.

(d) Where the cause of death or total disability did not arise in whole or in part out of dust exposure in the miner's coal mine employment or the evidence establishes that the miner does not or did not have pneumoconiosis, the presumption will be considered rebutted. However, in no case shall the presumption be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling obstructive respiratory or pulmonary disease of unknown origin.

(e) This section is not applicable to any claim filed on or after January 1, 1982.

§ 718.306 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner whose claims have been filed prior to June 30, 1982, shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request, furnish such evidence as is available with respect to the health of the miner at the time of death, and the nature and duration of the miner's coal mine employment.

(b) For the purpose of this section, a miner will be considered to have been "partially disabled" if he or she had reduced ability to engage in work as defined in § 718.204(b).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform work as defined in § 718.204(b) was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) None of the following items, by itself, shall be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

Appendix A to Part 718–Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)

The following standards are established in accordance with sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health. These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in connection with a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician's report of an X-ray.

(1) Every chest roentgenogram shall be a single postero-anterior projection at full inspiration on a 14 by 17 inch film. Additional chest films or views shall be obtained if they are necessary for clarification and classification. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with minimum loss of costophrenic angle shall be made.

(2) Miners shall be disrobed from the waist up at the time the roentgenogram is given. The facility shall provide a dressing area and, for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(3) Roentgenograms shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(4) Except as provided in paragraph (5), roentgenograms shall be made with units having generators which comply with the following: (a) the generators of existing roentgenographic units acquired by the examining facility prior to July 27, 1973, shall have a minimum rating of 200 mA at

100 kVp; (b) generators of units acquired subsequent to that date shall have a minimum rating of 300 mA at 125 kVp.

Note: A generator with a rating of 150 kVp is recommended.

(5) Roentgenograms made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(6) Capacitor discharge, and field emission units may be used.

(7) Roentgenograms shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The use of such a device shall be discernible from an examination of the roentgenogram.

(8) To insure high quality chest roentgenograms:

(i) The maximum exposure time shall not exceed 1/20 of a second except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chest over 28 cm postero-anterior, the exposure may be increased to not more than 1/10 of a second;

(ii) The source or focal spot to film distance shall be at least 6 feet;

(iii) Only medium-speed film and medium-speed intensifying screens shall be used;

(iv) Film-screen contact shall be maintained and verified at 6-month or shorter intervals;

(v) Intensifying screens shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette shall be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation shall be used;

(viii) The geometry of the radiographic system shall insure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(9) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique shall be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality roentgenogram, a, suitable filter or purification system shall be used.

(10) Before the miner is advised that the examination is concluded, the roentgenogram shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard roentgenogram, another shall be made immediately.

(11) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(12) A densitometric test object may be required on each roentgenogram for an objective evaluation of film quality at the discretion of the Department of Labor.

(13) Each roentgenogram made hereunder shall be permanently and legibly marked with the name and address of the facility at which it is made, the miner's DOL claim number, the date of the roentgenogram, and left and right side of film. No other identifying markings shall be recorded on the roentgenogram.

Appendix B to Part 718—Standards for Administration and Interpretation of Pulmonary Function Tests

Tables B1, B2, B3, B4, B5, B6

The following standards are established in accordance with section 402(f)(1)(D) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting ventilatory function tests and that the best available medical evidence will be submitted in support of a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be given to the results of the ventilatory function tests.

(1) Instruments to be used for the administration of pulmonary function tests shall be approved by NIOSH and shall conform to the following criteria:

(i) The instrument shall be accurate within +/−50 ml or within +/−3 percent of reading, whichever is greater.

(ii) The instrument shall be capable of measuring vital capacity from 0 to 7 liters BTPS.

(iii) The instrument shall have a low inertia and offer low resistance to airflow such that the resistance to airflow at 12 liters per second must be less than 1.5 cm H2O/liter/sec.

(iv) The zero time point for the purpose of timing the FEV1 shall be determined by extrapolating the steepest portion of the volume-time curve back to the maximal inspiration volume or by an equivalent method.

(v) Instruments incorporating measurements of airflow to determine volume shall conform to the same volume accuracy stated in subparagraph (1)(i) of this Appendix B when presented with flow rates from at least 0 to 12 liters per second.

(vi) The instrument or user of the instrument must have a means of correcting volumes to body temperature saturated with water vapor (BTPS) under conditions of varying ambient spirometer temperatures and barometric pressures.

(vii) The instrument used shall provide a tracing of either flow versus volume or volume versus time during the entire forced expiration and volume versus time during the MVV maneuver. A tracing is necessary to determine whether the patient has performed the test properly. The tracing must be of sufficient size that hand measurements may be made within the requirement of subparagraph (1)(i) of this Appendix B. If a paper record is made it must have a paper speed of at least 2 cm/sec and a volume sensitivity of at least 10.0 mm of chart per liter of volume. The recorder tracing must display the entire FVC maneuver at a constant speed for at least 10 seconds after the onset of exhalation. This constant speed must be reached prior to the onset of exhalation.

(viii) The instrument shall be capable of accumulating volume for a minimum of 10 seconds after the onset of exhalation.

(ix) The forced expiratory volume in 1 sec (FEV1) measurement shall comply with the accuracy requirements stated in subparagraph (1)(i) of this Appendix B. That is, they shall be accurately measured to within ± 50 ml or with ± 3 percent of reading, whichever is greater.

(x) The instrument must be capable of being calibrated in the field with respect to the FEV1. This calibration of the FEV1 may be done either directly or indirectly through volume and time base measurements. The volume calibration source shall provide a volume displacement of at least 3 liters and shall be accurate to within ± 30 ml.

(xi) For measuring maximum voluntary ventilation (MVV) the instrument shall have a response which is flat within ± 10 percent up to 4 Hz at flow rates up to 12 liters per second over the volume range. The time for exhaled volume integration or recording shall be no less than 12 sec. and no more than 15 sec. The indicated time shall be accurate to within ± 3 percent.

A recording of the spirometer tracing is required, and the volume sensitivity shall be such that 10 mm or more deflection corresponds to 1 liter volume.

(2) The administration of pulmonary function tests shall conform to the following criteria:

(i) Tests shall not be performed during or soon after an acute respiratory illness.

(ii) For the FEV1 and FVC, use of a nose clip is required. The procedures shall be explained in simple terms to the patient who shall be instructed to loosen any tight clothing and stand in front of the apparatus. The subject may sit, or stand, but care should be taken on repeat testing that the same position be used. Particular attention shall be given to insure that the chin is slightly elevated with the neck slightly extended. The patient shall be instructed to make a full inspiration from the spirometer, using a normal breathing pattern and then blow into the apparatus, without interruption, as hard, fast, and completely as possible. At least three forced expirations shall be carried out. During the maneuvers, the patient shall be observed for compliance with instructions. The expirations shall be checked visually for reproducibility from the flow-volume or volume-time tracings. The effort shall be judged unacceptable when the patient:

(A) Has not reached full inspiration preceding the forced expiration; or

(B) Has not used maximal effort during the entire forced expiration; or

(C) Has not continued the expiration for at least 5 sec. or until an obvious plateau in the volume-time curve has occurred; or

(D) Has coughed or closed his glottis; or

(E) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(F) Has an unsatisfactory start of expiration, one characterized by excessive

hesitation (or false starts), and therefore not allowing back extrapolation of time 0 (extrapolated volume on the volume-time tracing must be less than 10 percent of the FVC); or

(G) Has an excessive variability between the three acceptable curves. The variation between the two largest FEV1's of the three acceptable tracings should not exceed 5 percent of the largest FEV1 or 100 ml, whichever is greater.

(iii) For the MVV, the subject shall be instructed before beginning the test that he or she will be asked to breathe as deeply and as rapidly as possible for approximately 15 seconds.

The test shall be performed with the subject in the standing position, if possible. Care shall be taken on repeat testing that the same position be used. The subject shall breathe normally into the mouthpiece of the apparatus for 10 to 15 seconds to become accustomed to the system. The subject shall then be instructed to breathe as deeply and as rapidly as possible, and shall be continually encouraged during the remainder of the maneuver. Subject shall continue the maneuver for 15 seconds. At least 5 minutes of rest shall be allowed between maneuvers. At least three MVV's shall be carried out. (But see § 718.103(b).) During the maneuvers the patient shall be observed for compliance with instructions. The effort shall be judged unacceptable when the patient:

(A) Has not maintained consistent effort for at least 12 to 15 seconds; or

(B) Has coughed or closed his glottis; or

(C) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(D) Has an excessive variability between the three acceptable curves. The variation between the two largest MVV's of the three satisfactory tracings shall not exceed 10 percent.

(iv) A calibration check shall be performed on the instrument each day before use, using a volume source of at least three liters, accurate to within ±1 percent of full scale. The room air in the syringe is introduced into the spirometer once with a flow rate of approximately 0.5 liters per second (six seconds emptying time with a 3-liter syringe) and once with a higher flow rate of approximately 3.0 liters per second (one second emptying time with a 3-liter syringe). The volume measured by the spirometer shall be between 2.90 and 3.10 liters for both trials. Accuracy of the time measurement used in determining the FEV1 shall be checked using the manufacturer's stated procedure and shall be within ±3 percent of actual. The procedure described herein shall be performed as well as any other procedures suggested by the manufacturer of the spirometer being used.

(v)(A) The first step in evaluating a spirogram for the FEV1 shall be to determine whether or not the patient has performed the test properly or as described in (2)(ii) above. From the three satisfactory tracings, the forced expiratory volume in one second (FEV1) shall be measured and recorded. The largest observed FEV1 shall be used in the analysis, corrected to BTPS.

(B) Only MVV maneuvers which demonstrate consistent effort for at least 12 seconds shall be considered acceptable. The largest accumulated volume for a 12 second period corrected to BTPS and multiplied by five is to be reported as the MVV.

* * * * *

Appendix C to Part 718—Blood-Gas Tables

The following tables set forth the values to be applied in determining whether total disability may be established in accordance with §§ 718.204(b)(2)(ii) and 718.305(a) and (c). The values contained in the tables are indicative of impairment only. They do not establish a degree of disability except as provided in §§ 718.204(b)(2)(ii) and 718.305 (a) and (c) of this subchapter, nor do they establish standards for determining normal alveolar gas exchange values for any particular individual. Tests shall not be performed during or soon after an acute respiratory or cardiac illness.

A miner who meets the following medical specifications shall be found to be totally disabled, in the absence of rebutting evidence, if the values specified in one of the following tables are met:

(1) For arterial blood-gas studies performed at test sites up to 2,999 feet above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	75
26	74
27	73
28	72
29	71
30	70
31	69
32	68
33	67
34	66
35	65
36	64
37	63
38	62
39	61
40–49	60
Above 50	(1)

(1) Any value.

(2) For arterial blood-gas studies performed at test sites 3,000 to 5,999 feet above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	70
26	69
27	68
28	67
29	66
30	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40–49	55
Above 50	(2)

(2) Any value.

(3) For arterial blood-gas studies performed at test sites 6,000 feet or more above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	65
26	64
27	63
28	62
29	61
30	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40–49	50
Above 50	(3)

(3) Any value.

3. Part 722 is proposed to be revised as follows.

PART 722—CRITERIA FOR DETERMINING WHETHER STATE WORKERS' COMPENSATION LAWS PROVIDE ADEQUATE COVERAGE FOR PNEUMOCONIOSIS AND LISTING OF APPROVED STATE LAWS

Sec.

722.1 Purpose.
722.2 Definitions.
722.3 General criteria; inclusion in and removal from the Secretary's list.
722.4 The Secretary's list.

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 921, 932, 936; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

§ 722.1 Purpose.

Section 421 of the Black Lung Benefits Act provides that a claim for benefits based on the total disability or death of a coal miner due to pneumoconiosis must be filed under a State workers' compensation law where such law provides adequate coverage for pneumoconiosis. A State workers' compensation law may be deemed to provide adequate coverage only when it is included on a list of such laws maintained by the Secretary. The purpose of this part is to set forth the

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procedures and criteria for inclusion on that list, and to provide that list.

§ 722.2 Definitions.

(a) The definitions and use of terms contained in subpart A of part 725 of this title shall be applicable to this part.

(b) For purposes of this part, the following definitions apply:

(1) *State agency* means, with respect to any State, the agency, department or officer designated by the workers' compensation law of the State to administer such law. In any case in which more than one agency participates in the administration of a State workers' compensation law, the Governor of the State may designate which of the agencies shall be the State agency for purposes of this part.

(2) *The Secretary's list* means the list published by the Secretary of Labor in the **Federal Register** (see § 722.4) containing the names of those States which have in effect a workers' compensation law which provides adequate coverage for death or total disability due to pneumoconiosis.

§ 722.3 General criteria; inclusion in and removal from the Secretary's list.

(a) The Governor of any State or any duly authorized State agency may, at any time, request that the Secretary include such State's workers' compensation law on his list of those State workers' compensation laws providing adequate coverage for total disability or death due to pneumoconiosis. Each such request shall include a copy of the State workers' compensation law and any other pertinent State laws, a copy of any regulations, either proposed or promulgated, implementing such laws; and a copy of any administrative or court decision interpreting such laws or regulations, or, if such decisions are published in a readily available report, a citation to such decision.

(b) Upon receipt of a request that a State be included on the Secretary's list, the Secretary shall include the State on the list if he finds that the State's workers' compensation law guarantees the payment of monthly and medical benefits to all persons who would be entitled to such benefits under the Black Lung Benefits Act at the time of the request, at a rate no less than that provided by the Black Lung Benefits Act. The criteria used by the Secretary in making such determination shall include, but shall not be limited to, the criteria set forth in section 421(b)(2) of the Act.

(c) The Secretary may require each State included on the list to submit reports detailing the extent to which the State's workers' compensation laws, as reflected by statute, regulation, or administrative or court decision, continues to meet the requirements of paragraph (b) of this section. If the Secretary concludes that the State's workers' compensation law does not provide adequate coverage at any time, either because of changes to the State workers' compensation law or the Black Lung Benefits Act, he shall remove the State from the Secretary's list after providing the State with notice of such removal and an opportunity to be heard.

§ 722.4 The Secretary's list.

(a) The Secretary has determined that publication of the Secretary's list in the Code of Federal Regulations is appropriate. Accordingly, in addition to its publication in the **Federal Register** as required by section 421 of the Black Lung Benefits Act, the list shall also appear in paragraph (b) of this section.

(b) Upon review of all requests filed with the Secretary under section 421 of the Black Lung Benefits Act and this part, and examination of the workers' compensation laws of the States making such requests, the Secretary has determined that the workers' compensation law of each of the following listed States, for the period from the date shown in the list until such date as the Secretary may make a contrary determination, provides adequate coverage for pneumoconiosis.

State	*Period commencing*
None	

4. Part 725 is proposed to be revised as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

Subpart A—General

Sec.

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725.2 Purpose and applicability of this part.
725.3 Contents of this part.
725.4 Applicability of other parts in this title.
725.101 Definitions and use of terms.
725.102 Disclosure of program information.
725.103 Burden of proof.

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725.202 Miner defined; conditions of entitlement, miner.
725.203 Duration and cessation of entitlement, miner.

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725.205 Determination of dependency; spouse.
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725.207 Determination of dependency; divorced spouse.
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725.210 Duration of augmented benefits.
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Conditions and Duration of Entitlement: Miner's Survivors

725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.
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725.214 Determination of relationship; surviving spouse.
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725.216 Determination of relationship; surviving divorced spouse.
725.217 Determination of dependency; surviving divorced spouse.
725.218 Conditions of entitlement; child.
725.219 Duration of entitlement; child.
725.220 Determination of relationship; child.
725.221 Determination of dependency; child.
725.222 Conditions of entitlement; parent, brother or sister.
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725.702 Claims for medical benefits only under section 11 of the Reform Act.
725.703 Physician defined.
725.704 Notification of right to medical benefits; authorization of treatment.
725.705 Arrangements for medical care.
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Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 921, 932, 936; 33 U.S.C. 901 et seq., 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

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Subpart A—General

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who dies due to pneumoconiosis. For claims filed prior to January 1, 1982, certain survivors could receive benefits if the miner was totally (or for claims filed prior to June 30, 1982, in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or if the miner died due to pneumoconiosis.

(b) *Part B.* Part B of title IV of the Act provided that all claims filed between December 30, 1969, and June 30, 1973, are to be filed with, processed, and paid by the Secretary of Health, Education, and Welfare through the Social Security Administration; claims filed by the survivor of a miner before January 1, 1974, or within 6 months of the miner's death if death occurred before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under part B of title IV of the Act at the time of death, if filed within 6 months of the miner's death, are also adjudicated and paid by the Social Security Administration.

(c) *Section 415.* Claims filed by a miner between July 1 and December 31, 1973, are adjudicated and paid under section 415. Section 415 provides that a claim filed between the appropriate dates shall be filed with and adjudicated by the Secretary of Labor under certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.). A claim approved under section 415 is paid under part B of title IV of the Act for periods of eligibility occurring between July 1 and December 31, 1973, by the Secretary of Labor and for periods of eligibility thereafter, is paid by a coal mine operator which is determined liable for the claim or the Black Lung Disability Trust Fund if no operator is identified or if the miner's last coal mine employment terminated prior to January 1, 1970. An operator which may be found liable for a section 415 claim is notified of the claim and allowed to participate fully in the adjudication of such claim. A claim filed under section 415 is for all purposes considered as if it were a part C claim (see paragraph (d) of this section) and the provisions of part C of title IV of the Act are fully applicable to a section 415 claim except as is otherwise provided in section 415.

(d) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974, are filed, adjudicated, and paid under the provisions of part C of title IV of the Act. Part C requires that a claim filed on or after January 1, 1974, shall be filed under an applicable approved State workers' compensation law, or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under section 422 of the Act. Claims filed with the Secretary of Labor under part C are processed and adjudicated by the Secretary and paid by a coal mine operator. If the miner's last coal mine employment terminated before January 1, 1970, or if no responsible operator can be identified, benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under part C are subject to certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(e) *Section 435.* Section 435 of the Act affords each person who filed a claim for benefits under part B, section 415, or part C, and whose claim had been denied or was still pending as of March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, the right to have his or her claim reviewed on the basis of the 1977 amendments to the Act, and under certain circumstances to submit new evidence in support of the claim.

(f) *Changes made by the Black Lung Benefits Reform Act of 1977.* In addition to those changes which are reflected in paragraphs (a) through (e) of this section, the Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are:

(1) A provision which clarifies the definition of "pneumoconiosis" to include any "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment";

(2) A provision which defines "miner" to include any person who works or has worked in or around a coal mine or coal preparation facility, and in coal mine construction or coal transportation under certain circumstances;

(3) A provision which limits the denial of a claim solely on the basis of employment in a coal mine;

(4) A provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a part C claim;

(5) A new presumption which requires the payment of benefits to the survivors of a miner who was employed for 25 or more years in the mines under certain conditions;

(6) Provisions relating to the treatment to be accorded a survivor's affidavit, certain X-ray interpretations, and certain autopsy reports in the development of a claim; and

(7) Other clarifying, procedural, and technical amendments.

(g) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under section 415, part C and section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Changes made by the Black Lung Benefits Amendments of 1981.* In addition to the change reflected in paragraph (a) of this section, the Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits. The following changes are all applicable to claims filed on or after January 1, 1982:

(1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a

means of auditing the validity of the claim;

(2) The rebuttable presumption that the death of a miner with ten or more years employment in the coal mines, who died of a respirable disease, was due to pneumoconiosis is no longer applicable;

(3) The rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable;

(4) In the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons not eligible to receive benefits as a result of the adjudication of the claim will be considered sufficient to establish entitlement to benefits;

(5) Unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on and after January 1, 1982, only when the miner's death was due to pneumoconiosis;

(6) Benefits payable under this part are subject to an offset on account of excess earnings by the miner; and

(7) Other technical amendments.

(i) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the fund shall have repaid all advances received from the United States Treasury and the interest on all such advances. The fund is also made liable for the payment of certain claims previously denied under the 1972 version of the Act and subsequently approved under section 435 and for the reimbursement of operators and insurers for benefits previously paid by them on such claims. With respect to claims filed on or after January 1, 1982, the fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the fund.

(j) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422 and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part or part 727 of this subchapter (see § 725.4(d)). No other departure from the incorporated provisions of the LHWCA is intended.

(k) *Social Security Act provisions.* Section 402 of the Act incorporates certain definitional provisions from the Social Security Act, 42 U.S.C. 301 et seq. Section 430 provides that the 1972, 1977 and 1981 amendments to part B of the Act shall also apply to part C "to the extent appropriate." Sections 412 and 413 incorporate various provisions of the Social Security Act into part B of the Act. To the extent appropriate, these provisions also apply to part C. In certain cases, the Department has varied the terms of the Social Security Act provisions to accommodate the unique needs of the black lung benefits program. Parts of the Longshore and Harbor Workers' Compensation Act are also incorporated into part C. Where the incorporated provisions of the two acts are inconsistent, the Department has exercised its broad regulatory powers to choose the extent to which incorporation is appropriate.

§ 725.2 Purpose and applicability of this part.

(a) It is the purpose of this part to set forth the procedures to be followed and standards to be applied in the filing, processing, adjudication, and payment of claims filed under part C of title IV of the Act.

(b) This part is applicable to all claims filed under part C of title IV of the Act on or after August 18, 1978 and shall also be applicable to claims that were pending on August 18, 1978.

(c) The provisions of this part reflect revisions that became effective on [the effective date of the final rule]. This part is applicable to all claims filed, and all benefits payments made, after [the effective date of the final rule]. With the exception of the following sections, this part shall also be applicable to the adjudication of claims that were pending on [the effective date of the final rule]: §§ 725.309, 725.310, 725.360, 725.406, 725.407, 725.408, 725.410, 725.411, 725.412, 725.413, 725.414, 725.415, 725.417, 725.418, 725.423, 725.454, 725.456, 725.457, 725.459, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547. The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1996, are applicable to the adjudications of claims that were pending on [the effective date of the final rule]. For purposes of construing the provisions of this section, a claim shall be considered pending on [the effective date of the final rule] if it was not finally denied more than one year prior to that date.

§ 725.3 Contents of this part.

(a) This subpart describes the statutory provisions which relate to claims considered under this part, the purpose and scope of this part, definitions and usages of terms applicable to this part, and matters relating to the availability of information collected by the Department of Labor in connection with the processing of claims.

(b) Subpart B contains criteria for determining who may be found entitled to benefits under this part and other provisions relating to the conditions and duration of eligibility of a particular individual.

(c) Subpart C describes the procedures to be followed and action to be taken in connection with the filing of a claim under this part.

(d) Subpart D sets forth the duties and powers of the persons designated by the Secretary of Labor to adjudicate claims and provisions relating to the rights of parties and representatives of parties.

(e) Subpart E contains the procedures for developing evidence and adjudicating entitlement and liability issues by the district director.

(f) Subpart F describes the procedures to be followed if a hearing before the Office of Administrative Law Judges is required.

(g) Subpart G contains provisions governing the identification of a coal mine operator which may be liable for the payment of a claim.

(h) Subpart H contains provisions governing the payment of benefits with respect to an approved claim.

(i) Subpart I describes the statutory mechanisms provided for the enforcement of a coal mine operator's liability, sets forth the penalties which may be applied in the case of a defaulting coal mine operator, and describes the obligation of coal

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operators and their insurance carriers to file certain reports.

(j) Subpart J describes the right of certain beneficiaries to receive medical treatment benefits and vocational rehabilitation under the Act.

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Claims filed after March 31, 1980, are subject to part 718 as promulgated by the Secretary in accordance with section 402(f)(1) of the Act on February 29, 1980 (see § 725.2(c)). The criteria contained in subpart C of part 727 of this subchapter are applicable in determining claims filed prior to April 1, 1980, under this part, and such criteria shall be applicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

(b) *Parts 715, 717, and 720.* Pertinent and significant provisions of Parts 715, 717, and 720 of this subchapter (formerly contained in 20 CFR, parts 500 to end, edition revised as of April 1, 1978), which established the procedures for the filing, processing, and payment of claims filed under section 415 of the Act, are included within this part as appropriate.

(c) *Part 726.* Part 726 of this subchapter, which sets forth the obligations imposed upon a coal operator to insure or self-insure its liability for the payment of benefits to certain eligible claimants, is applicable to this part as appropriate.

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable with respect to such claims. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits are applicable under this part with respect to all claims filed before April 1, 1980, and to all claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977. Because the part 727 regulations affect an increasingly smaller number of claims, however, the Department has discontinued publication of the criteria in the Code of Federal Regulations. The part 727 criteria may be found at 43 FR 36818, Aug. 18, 1978 or 20 CFR, parts 500 to end, edition revised as of April 1, 1996.

(e) *Part 410.* Part 410 of this title, which sets forth provisions relating to a claim for black lung benefits under part B of title IV of the Act, is inapplicable to this part except as is provided in this part, or in part 718 of this subchapter.

§ 725.101 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) The *Act* means the Federal Coal Mine Health and Safety Act, Public Law 91–173, 83 Stat. 742, 30 U.S.C. 801–960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981, and the Black Lung Benefits Amendments of 1981.

(2) The *Longshoremen's Act* or *LHWCA* means the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U.S.C. 901–950, as amended from time to time.

(3) The *Social Security Act* means the Social Security Act, Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C. 301–431, as amended from time to time.

(4) *Administrative law judge* means a person qualified under 5 U.S.C. 3105 to conduct hearings and adjudicate claims for benefits filed pursuant to section 415 and part C of the Act. Until March 1, 1979, it shall also mean an individual appointed to conduct such hearings and adjudicate such claims under Public Law 94–504.

(5) *Beneficiary* means a miner or any surviving spouse, divorced spouse, child, parent, brother or sister, who is entitled to benefits under either section 415 or part C of title IV of the Act.

(6) *Benefits* means all money or other benefits paid or payable under section 415 or part C of title IV of the Act on account of disability or death due to pneumoconiosis. The term also includes any expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406.

(7) *Benefits Review Board* or *Board* means the Benefits Review Board, U.S. Department of Labor, an appellate tribunal appointed by the Secretary of Labor pursuant to the provisions of section 21(b)(1) of the LHWCA. See parts 801 and 802 of this title.

(8) *Black Lung Disability Trust Fund* or the *fund* means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977, as amended by the Black Lung Benefits Revenue Act of 1981, for the payment of certain claims adjudicated under this part (see subpart G of this part).

(9) *Chief Administrative Law Judge* means the Chief Administrative Law Judge of the Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001–8002.

(10) *Claim* means a written assertion of entitlement to benefits under section 415 or part C of title IV of the Act, submitted in a form and manner authorized by the provisions of this subchapter.

(11) *Claimant* means an individual who files a claim for benefits under this part.

(12) *Coal mine* means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(13) *Coal preparation* means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine. For purposes of this definition, the term does not include coal preparation performed by coke oven workers.

(14) *Department* means the United States Department of Labor.

(15) *Director* means the Director, OWCP, or his or her designee.

(16) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350). The term District Director is substituted for the term Deputy Commissioner wherever that term appears in this subchapter. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute. Any action taken by a person under the authority of a district director will be considered the action of a deputy commissioner.

(17) *Division* or *DCMWC* means the Division of Coal Mine Workers' Compensation in the OWCP, Employment Standards Administration, United States Department of Labor.

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(18) *Insurer* or *carrier* means any private company, corporation, mutual association, reciprocal or interinsurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure employers' liability under workers' compensation laws. The term also includes the Secretary of Labor in the exercise of his or her authority under section 433 of the Act.

(19) *Miner* or *coal miner* means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see § 725.202). For purposes of this definition, the term does not include coke oven workers whose activities involve the preparation or use of coal for the coke manufacturing process.

(20) *The Nation's coal mines* means all coal mines located in any State.

(21) *Office* or *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor.

(22) *Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

(23) *Operator* means any owner, lessee, or other person who operates, controls or supervises a coal mine, including a prior or successor operator as defined in section 422 of the Act and certain transportation and construction employers (see subpart G of this part).

(24) *Person* means an individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity.

(25) *Pneumoconiosis* means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment (see part 718 of this subchapter).

(26) *Responsible operator* means an operator which has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under section 415 or part C of title IV of the Act or reviewed under section 435 of the Act.

(27) *Secretary* means the Secretary of Labor, United States Department of Labor, or a person, authorized by him or her to perform his or her functions under title IV of the Act.

(28) *State* includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(29) *Total disability* and *partial disability*, for purposes of this part, have the meaning given them as provided in part 718 of this subchapter.

(30) *Underground coal mine* means a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, appurtenant thereto.

(31) A *workers' compensation law* means a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury, including occupational disease, or death, suffered in connection with their employment. A payment funded wholly out of general revenues shall not be considered a payment under a workers' compensation law.

(32) *Year* means a period of one calendar year (365 days), or partial periods totalling one year, during which the miner worked in or around a coal mine or mines. A "working day" means any day or part of a day for which a miner received pay for work as a miner, including any day for which the miner received pay while on an approved absence, such as vacation or sick leave.

(i) If the evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totalling one year, then the miner has worked one year in coal mine employment for all purposes under the Act. If a miner worked fewer than 125 working days in a year, he or she has worked a fractional year based on the ratio of the actual number of days worked to 125. Proof that the miner worked more than 125 working days in a calendar year or partial periods totalling a year, shall not establish more than one year.

(ii) To the extent the evidence permits, the beginning and ending dates of all periods of coal mine employment shall be ascertained. The dates and length of employment may be established by any credible evidence including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony. If the evidence establishes that the miner's employment lasted for a calendar year, it shall be presumed, in the absence of evidence to the contrary, that the miner spent at least 125 working days in such employment.

(iii) If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). A copy of the BLS table shall be made a part of the record if the adjudication officer uses this method to establish the length of the miner's work history.

(iv) No periods of coal mine employment occurring outside the United States shall be considered in computing the miner's work history.

(b) *Statutory terms.* The definitions contained in this section shall not be construed in derogation of terms of the Act.

(c) *Dependents and survivors.* Dependents and survivors are those persons described in subpart B of this part.

§ 725.102 Disclosure of program information.

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office. The District Director shall be the official custodian of those records maintained at a district office.

(b) The official custodian of any record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR part 70). The original record in any such case shall not be removed from the Office of the custodian for such inspection. The custodian may, in his or her discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his or her opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see § 702.508 of this title.

(c) Any person may request copies of records he or she has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official

custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR part 70).

(d) Any party to a claim (§ 725.360) or his or her duly authorized representative shall be permitted upon request to inspect the file which has been compiled in connection with such claim. Any party to a claim or representative of such party shall upon request be provided with a copy of any or all material contained in such claim file. A request for information by a party or representative made under this paragraph shall be answered within a reasonable time after receipt by the Office. Internal documents prepared by the district director which do not constitute evidence of a fact which must be established in connection with a claim shall not be routinely provided or presented for inspection in accordance with a request made under this paragraph.

§ 725.103 Burden of proof.

Except as otherwise provided in this part and part 718, the burden of proving a fact alleged in connection with any provision shall rest with the party making such allegation.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) Section 415 and part C of the Act provide for the payment of periodic benefits in accordance with this part to:

(1) A miner (see § 725.202) who is determined to be totally disabled due to pneumoconiosis; or

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner:

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982, or;

(3) The child of a miner's surviving spouse who was receiving benefits under section 415 or part C of title IV of the Act at the time of such spouse's death; or

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, where the deceased miner;

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the miner's death occurred on or before March 1, 1978, and if the claim was filed prior to June 30, 1982, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term "total disability" shall mean partial disability with respect to a claim for which eligibility is established under section 411(c)(5) of the Act. See § 718.306 of part 718 which implements this provision of the Act.

(c) The provisions contained in this subpart describe the conditions of entitlement to benefits applicable to a miner, or a surviving spouse, child, parent, brother, or sister, and the events which establish or terminate entitlement to benefits.

(d) In order for an entitled miner or surviving spouse to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act. Such requirements are also set forth in this subpart.

Conditions and Duration of Entitlement: Miner

§ 725.202 Miner defined; condition of entitlement, miner.

(a) *Miner defined.* A "miner" for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. There shall be a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner. This presumption may be rebutted by proof that:

(1) The person was not engaged in the extraction, preparation or transportation of coal while working at the mine site, or in maintenance or construction of the mine site; or

(2) The individual was not regularly employed in or around a coal mine or coal preparation facility.

(b) *Coal mine construction and transportation workers; special provisions.* A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal mine dust as a result of employment in or around a coal mine or coal preparation facility. A transportation worker shall be considered a miner to the extent that his or her work is integral to the extraction or preparation of coal. A construction worker shall be considered a miner to the extent that his or her work is integral to the building of a coal or underground mine (see § 725.101(a) (12) and (30)).

(1) There shall be a rebuttable presumption that such individual was exposed to coal mine dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of:

(i) Determining whether such individual is or was a miner;

(ii) Establishing the applicability of any of the presumptions described in section 411(c) of the Act and part 718 of this subchapter; and

(iii) Determining the identity of a coal mine operator liable for the payment of benefits in accordance with § 725.495.

(2) The presumption may be rebutted by evidence which demonstrates that:

(i) The individual was not regularly exposed to coal mine dust during his or her work in or around a coal mine or coal preparation facility; or

(ii) The individual did not work regularly in or around a coal mine or coal preparation facility.

(c) A person who is or was a self-employed miner or independent contractor, and who otherwise meets the requirements of this paragraph, shall be considered a miner for the purposes of this part.

(d) *Conditions of entitlement; miner.* An individual is eligible for benefits under this subchapter if the individual:

(1) Is a miner as defined in this section; and

(2) Has met the requirements for entitlement to benefits by establishing that he or she:

(i) Has pneumoconiosis (see § 718.202); and

(ii) The pneumoconiosis arose out of coal mine employment (see § 718.203); and

(iii) Is totally disabled (see § 718.204(c)); and

(iv) The pneumoconiosis contributes to the total disability (see § 718.204(c)); and

(3) Has filed a claim for benefits in accordance with the provisions of this part.

§ 725.203 Duration and cessation of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month on or after January 1, 1974, in which the miner is totally disabled due to pneumoconiosis arising out of coal mine employment.

(b) The last month for which such individual is entitled to benefits is the month before the month during which either of the following events first occurs:

(1) The miner dies; or

(2) The miner's total disability ceases (see § 725.504).

(c) An individual who has been finally adjudged to be totally disabled due to pneumoconiosis and is receiving benefits under the Act shall promptly notify the Office and the responsible coal mine operator, if any, if he or she engages in his or her usual coal mine work or comparable and gainful work.

(d) Upon reasonable notice, an individual who has been finally adjudged entitled to benefits shall submit to any additional tests or examinations the Office deems appropriate if an issue arises pertaining to the validity of the original award.

Conditions and Duration of Entitlement: Miner's Dependents (Augmented Benefits)

§ 725.204 Determination of relationship; spouse.

(a) For the purpose of augmenting benefits, an individual will be considered to be the spouse of a miner if:

(1) The courts of the State in which the miner is domiciled would find that such individual and the miner validly married; or

(2) The courts of the State in which the miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's spouse; or

(3) Under State law, such individual would have the right of a spouse to share in the miner's intestate personal property; or

(4) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment, would have been a valid marriage, unless the individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which a request is filed that the miner's benefits be augmehted because such individual qualifies as the miner's spouse.

(b) The qualification of an individual for augmentation purposes under this section shall end with the month before the month in which:

(1) The individual dies, or

(2) The individual who previously qualified as a spouse for purposes of § 725.520(c), entered into a valid marriage without regard to this section, with a person other than the miner.

§ 725.205 Determination of dependency; spouse.

For the purposes of augmenting benefits, an individual who is the miner's spouse (see § 725.204) will be determined to be dependent upon the miner if:

(a) The individual is a member of the same household as the miner (see § 725.232); or

(b) The individual is receiving regular contributions from the miner for support (see § 725.233(c)); or

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(e)); or

(d) The individual is the natural parent of the son or daughter of the miner; or

(e) The individual was married to the miner (see § 725.204) for a period of not less than 1 year.

§ 725.206 Determination of relationship; divorced spouse.

For the purposes of augmenting benefits with respect to any claim considered or reviewed under this part or part 727 of this subchapter (see § 725.4(d)), an individual will be considered to be the divorced spouse of a miner if the individual's marriage to the miner has been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to the miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final.

§ 725.207 Determination of dependency; divorced spouse.

For the purpose of augmenting benefits, an individual who is the miner's divorced spouse (§ 725.206) will be determined to be dependent upon the miner if:

(a) The individual is receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (c) and (f)); or

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (e)).

§ 725.208 Determination of relationship; child.

As used in this section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of death (see § 725.212), or a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which the beneficiary is domiciled (see § 725.231) would find, under the law they would apply, that the individual is the beneficiary's child; or

(b) The individual is the legally adopted child of such beneficiary; or

(c) The individual is the stepchild of such beneficiary by reason of a valid marriage of the individual's parent or adopting parent to such beneficiary; or

(d) The individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section if the beneficiary and the mother or the father, as the case may be, of the individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to

be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of the beneficiary if:

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(e)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

§ 725.209 Determination of dependency; child.

(a) For purposes of augmenting the benefits of a miner or surviving spouse, the term "beneficiary" as used in this section means only a miner or surviving spouse entitled to benefits (see § 725.202 and § 725.212). An individual who is the beneficiary's child (§ 725.208) will be determined to be, or to have been dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or

(ii) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before the age of 22; or

(iii) Is 18 years of age or older and is a student.

(b)(1) The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see §§ 404.367 through 404.369 of this title), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if the student is enrolled in a noncorrespondence course of at least 13 weeks duration and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is considered not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and the child shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of study or training; or

(ii) During periods of reasonable duration in which, in the judgment of the Office, the child is prevented by factors beyond the child's control from pursuing his or her education.

(4) A student whose 23rd birthday occurs during a semester or the enrollment period in which such student is pursuing a full-time course of study or training shall continue to be considered a student until the end of such period, unless eligibility is otherwise terminated.

§ 725.210 Duration of augmented benefits.

Augmented benefits payable on behalf of a spouse or divorced spouse, or a child, shall begin with the first month in which the dependent satisfies the conditions of relationship and dependency set forth in this subpart. Augmentation of benefits on account of a dependent continues through the month before the month in which the dependent ceases to satisfy these conditions, except in the case of a child who qualifies as a dependent because such child is a student. In the latter case, benefits continue to be augmented through the month before the first month during no part of which such child qualifies as a student.

§ 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

With respect to the spouse or child of a miner entitled to benefits, and with respect to the child of a surviving spouse entitled to benefits, the determination as to whether an individual purporting to be a spouse or child is related to or dependent upon such miner or surviving spouse shall be based on the facts and circumstances present in each case, at the appropriate time.

Conditions and Duration of Entitlement: Miner's Surviviors

§ 725.212 Condition of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time; and

(3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving spouse or surviving divorced spouse of a miner whose claim is filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under §718.306 of part 718 on a claim filed prior to June 30, 1982.

(b) If more than one spouse meets the conditions of entitlement prescribed in paragraph (a), then each spouse will be considered a beneficiary for purposes of section 412(a)(2) of the Act without regard to the existence of any other entitled spouse or spouses.

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§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual is entitled to benefits as a surviving spouse, or as a surviving divorced spouse, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.212 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which either of the following events first occurs:

(1) The surviving spouse or surviving divorced spouse marries; or

(2) The surviving spouse or surviving divorced spouse dies.

(c) A surviving spouse or surviving divorced spouse whose entitlement to benefits has been terminated pursuant to § 725.213(b)(1) may thereafter again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after the marriage ends and such individual meets the requirements of § 725.212. The individual shall not be required to reestablish the miner's entitlement to benefits (§ 725.212(a)(3)(i)) or the miner's death due to pneumoconiosis (§ 725.212(a)(3)(ii)).

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§ 725.214 Determination of relationship; surviving spouse.

An individual shall be considered to be the surviving spouse of a miner if:

(a) The courts of the State in which the miner was domiciled (see § 725.231) at the time of his or her death would find that the individual and the miner were validly married; or

(b) The courts of the State in which the miner was domiciled (see § 725.231) at the time of the miner's death would find that the individual was the miner's surviving spouse; or

(c) Under State law, such individual would have the right of the spouse to share in the miner's interstate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.230) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death.

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§ 725.215 Determination of dependency; surviving spouse.

An individual who is the miner's surviving spouse (see § 725.214) shall be determined to have been dependent on the miner if, at the time of the miner's death:

(a) The individual was living with the miner (see § 725.232); or

(b) The individual was dependent upon the miner for support or the miner has been ordered by a court to contribute to such individual's support (see § 725.233); or

(c) The individual was living apart from the miner because of the miner's desertion or other reasonable cause; or

(d) The individual is the natural parent of the miner's son or daughter; or

(e) The individual had legally adopted the miner's son or daughter while the individual was married to the miner and while such son or daughter was under the age of 18; or

(f) The individual was married to the miner at the time both of them legally adopted a child under the age of 18; or

(g) (1) The individual was married to the miner for a period of not less than 9 months immediately before the day on which the miner died, unless the miner's death:

(i) Is accidental (as defined in paragraph (g)(2) of this section), or

(ii) Occurs in line of duty while the miner is a member of a uniformed service serving on active duty (as defined in § 404.1019 of this title), and the surviving spouse was married to the miner for a period of not less than 3 months immediately prior to the day on which such miner died.

(2) For purposes of paragraph (g)(l)(i) of this section, the death of a miner is accidental if such individual received bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, dies not later than 3 months after the day on which such miner receives such bodily injuries. The term "accident" means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the adjudication officer will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so incompetent as to be incapable of acting intentionally and voluntarily will be considered to be a death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) The provisions of paragraph (g) shall not apply if the adjudication officer determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

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§ 725.216 Determination of relationship; surviving divorced spouse.

An individual will be considered to be the surviving divorced spouse of a deceased miner in a claim considered under this part or reviewed under part 727 of this subchapter (see § 725.4(d)), if such individual's marriage to the miner had been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to such miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

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§ 725.217 Determination of dependency; surviving divorced spouse.

An individual who is the miner's surviving divorced spouse (see § 725.216) shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

(a) The individual was receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (c) and (f)); or

(c) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (e)).

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§ 725.218 Conditions of entitlement; child.

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982, or

(2) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. A surviving dependent child of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is

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established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

(b) A child is not entitled to benefits for any month for which a miner, or the surviving spouse or surviving divorced spouse of a miner, establishes entitlement to benefits.

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§ 725.219 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.218 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18; and

(i) Is not a student (as defined in § 725.209(b)) during any part of the month in which the child attains age 18; and

(ii) Is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(4) If the child's entitlement beyond age 18 is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the child is a student; or

(ii) The month in which the child attains age 23 and is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(5) If the child's entitlement beyond age 18 is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which the child attained age 18, or later, may thereafter (provided such individual is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after termination of benefits in which such individual is a student and has not attained the age of 23.

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§ 725.220 Determination of relationship; child.

For purposes of determining whether an individual may qualify for benefits as the child of a deceased miner, the provisions of § 725.208 shall be applicable. As used in this section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of such surviving spouse's death (see § 725.212), or a miner. For purposes of a survivor's claim, an individual will be considered to be a child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.231) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of such individual's parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father or mother of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(a)) because the individual is a son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

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§ 725.221 Determination of dependency; child.

For the purposes of determining whether a child was dependent upon a deceased miner, the provisions of § 725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as defined in section 223(d) of the Social Security Act, such disability must have begun before the child attained age 22, or in the case of a student, before the child ceased to be a student.

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§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) An individual is eligible for benefits as a surviving parent, brother or sister if all of the following requirements are met:

(1) The individual is the parent, brother, or sister of a deceased miner;

(2) The individual was dependent on the miner at the pertinent time;

(3) Proof of support is filed within 2 years after the miner's death, unless the time is extended for good cause (§ 725.226);

(4) In the case of a brother or sister, such individual also:

(i) Is under 18 years of age; or

(ii) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before such individual attained age 22, or in the case of a student, before the student ceased to be a student; or

(iii) Is a student (see § 725.209(b)); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving dependent parent, brother or sister of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a spouse or child at the time of such miner's death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a spouse, child, or parent at the time of such miner's death.

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§ 725.223 Duration of entitlement; parent, brother, or sister.

(a) A parent, sister, or brother is entitled to benefits beginning with the month all the conditions of entitlement described in § 725.222 are met.

(b) The last month for which such parent is entitled to benefits is the month in which the parent dies.

(c) The last month for which such brother or sister is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) The individual dies;

(2)(i) The individual marries or remarries; or

(ii) If already married, the individual received support in any amount from his or her spouse;

(3) The individual attains age 18; and

(i) Is not a student (as defined in § 725.209(b)) during any part of the month in which the individual attains age 18; and

(ii) Is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(4) If the individual's entitlement beyond age 18 is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the individual is a student; or

(ii) The month in which the individual attains age 23 and is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(5) If the individual's entitlement beyond age 18 is based on disability, the first month in no part of which such individual is under a disability.

(d) A brother or sister whose entitlement to benefits terminated pursuant to § 725.223(c)(2)(i) may thereafter again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after the marriage ends and such individual meets the requirements of § 725.222. The individual shall not be required to reestablish the miner's entitlement to benefits (§ 725.222(a)(5)(i)) or the miner's death due to pneumoconiosis (§ 725.222(a)(5)(ii)).

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§ 725.224 Determination of relationship; parent, brother, or sister.

(a) An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which the miner was domiciled (see § 225.231) at the time of death would find, under the law they would apply, that the individual is the miner's parent, brother, or sister.

(b) Where, under State law, the individual is not the miner's parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be considered to be the parent, brother, or sister as appropriate.

§ 725.225 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to the miner's death:

(a) The individual and the miner were living in the same household (see § 725.232); and

(b) The individual was totally dependent on the miner for support (see § 725.233(h)).

§ 725.226 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause."* "Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause."* "Good cause" for failure to file timely proof of support (see § 725.222(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he or she should file within the prescribed period and he or she failed to do so deliberately or through negligence.

§ 725.227 Time of determination of relationship and dependency of survivors.

The determination as to whether an individual purporting to be an entitled survivor of a miner or beneficiary was related to, or dependent upon, the miner is made after such individual files a claim for benefits as a survivor. Such determination is based on the facts and circumstances with respect to a reasonable period of time ending with the miner's death. A prior determination that such individual was, or was not, a dependent for the purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is a dependent survivor of such miner.

§ 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been convicted of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such person shall be considered nonexistent in determining the entitlement to benefits of other individuals.

Terms Used in this Subpart

§ 725.229 Intestate personal property.

References in this subpart to the "same right to share in the intestate personal property" of a deceased miner (or surviving spouse) refer to the right of an individual to share in such distribution in the individual's own right and not the right of representation.

§ 725.230 Legal impediment.

For purposes of this subpart, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.231 Domicile.

(a) For purposes of this subpart, the term "domicile" means the place of an individual's true, fixed, and permanent home.

(b) The domicile of a deceased miner or surviving spouse is determined as of the time of death.

(c) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied.

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§ 725.232 Member of the same household—"living with," "living in the same household," and "living in the miner's household," defined.

(a) *Defined.* (1) The term "member of the same household" as used in section 402(a)(2) of the Act (with respect to a spouse); the term "living with" as used in section 402(e) of the Act (with respect to a surviving spouse); and the term "living in the same household" as used in this subpart, means that a husband and wife were customarily living together as husband and wife in the same place.

(2) The term "living in the miner's household" as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or the miner's spouse, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household." The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together.

(c) *Relevant period of time.* (1) The determination as to whether a surviving spouse had been "living with" the miner shall be based upon the facts and circumstances as of the time of the death of the miner.

(2) The determination as to whether a spouse is a "member of the same household" as the miner shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was "living in the miner's household" shall take account of the 1-year period immediately prior to the miner's death.

§ 725.233 Support and contributions.

(a) *Support* defined. The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *Contributions* defined. The term "contributions" refers to contributions actually provided by the contributor from such individual's property, or the use thereof, or by the use of such individual's own credit.

(c) *Regular contributions* and *"substantial contributions"* defined. The terms "regular contributions" and "substantial contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a spouse receives and uses for his or her support income from services or property, and such income, under applicable State law, is the community property of the wife and her husband, no part of such income is a "contribution" by one spouse to the other's support regardless of the legal interest of the donor. However, when a spouse receives and uses for support, income from the services and the property of the other spouse and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the donor to the spouse's support.

(e) *Court order for support* defined. References to a support order in this subpart means any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *Written agreement* defined. The term "written agreement" in the phrase "substantial contributions pursuant to a written agreement", as used in this subpart means an agreement signed by the miner providing for substantial contributions by the miner for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *One-half support* defined. The term "one-half support" means that the miner made regular contributions, in cash or in kind, to the support of a divorced spouse at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *Totally dependent for support* defined. The term "totally dependent for support" as used in § 725.225(b) means that the miner made regular contributions to the support of the miner's parents, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual's support.

Subpart C—Filing of Claims

§ 725.301 Who may file a claim.

(a) Any person who believes he or she may be entitled to benefits under the Act may file a claim in accordance with this subpart.

(b) A claimant who has attained the age of 18, is mentally competent and physically able, may file a claim on his or her own behalf.

(c) If a claimant is unable to file a claim on his or her behalf because of a legal or physical impairment, the following rules shall apply:

(1) A claimant between the ages of 16 and 18 years who is mentally competent and not under the legal custody or care of another person, or a committee or institution, may upon filing a statement to the effect, file a claim on his or her own behalf. In any other case where the claimant is under 18 years of age, only a person, or the manager or principal officer of an institution having legal custody or care of the claimant may file a claim on his or her behalf.

(2) If a claimant over 18 years of age has a legally appointed guardian or committee, only the guardian or committee may file a claim on his or her behalf.

(3) If a claimant over 18 years of age is mentally incompetent or physically unable to file a claim and is under the care of another person, or an institution, only the person, or the manager or principal officer of the institution responsible for the care of the claimant, may file a claim on his or her behalf.

(4) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraphs (c) (2) or (3) of this section.

(d) Except as provided in § 725.305 of this part, in order for a claim to be considered, the claimant must be alive at the time the claim is filed.

§ 725.302 Evidence of authority to file a claim on behalf of another.

A person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter in accordance with the following:

(a) A legally appointed guardian or committee shall provide the Office with certification of appointment by a proper official of the court.

(b) Any other person shall provide a statement describing his or her

relationship to the claimant, the extent to which he or she has care of the claimant, or his or her position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.303 Date and place of filing of claims.

(a)(1) Claims for benefits shall be delivered, mailed to, or presented at, any of the various district offices of the Social Security Administration, or any of the various offices of the Department of Labor authorized to accept claims, or, in the case of a claim filed by or on behalf of a claimant residing outside the United States, mailed or presented to any office maintained by the Foreign Service of the United States. A claim shall be considered filed on the day it is received by the office in which it is first filed.

(2) A claim submitted to a Foreign Service Office or any other agency or subdivision of the U.S. Government shall be forwarded to the Office and considered filed as of the date it was received at the Foreign Service Office or other governmental agency or unit.

(b) A claim submitted by mail shall be considered filed as of the date of delivery unless a loss or impairment of benefit rights would result, in which case a claim shall be considered filed as of the date of its postmark. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

§ 725.304 Forms and initial processing.

(a) Claims shall be filed on forms prescribed and approved by the Office. The district office at which the claim is filed will assist claimants in completing their forms.

(b) If the place at which a claim is filed is an office of the Social Security Administration, such office shall forward the completed claim form to an office of the DCMWC, which is authorized to process the claim.

§ 725.305 When a written statement is considered a claim.

(a) The filing of a statement signed by an individual indicating an intention to claim benefits shall be considered to be the filing of a claim for the purposes of this part under the following circumstances:

(1) The claimant or a proper person on his or her behalf (see § 725.301) executes and files a prescribed claim form with the Office during the claimant's lifetime within the period specified in paragraph (b) of this section.

(2) Where the claimant dies within the period specified in paragraph (b) of this section without filing a prescribed claim form, and a person acting on behalf of the deceased claimant's estate executes and files a prescribed claim form within the period specified in paragraph (c) of this section.

(b) Upon receipt of a written statement indicating an intention to claim benefits, the Office shall notify the signer in writing that to be considered the claim must be executed by the claimant or a proper party on his or her behalf on the prescribed form and filed with the Office within six months from the date of mailing of the notice.

(c) If before the notice specified in paragraph (b) of this section is sent, or within six months after such notice is sent, the claimant dies without having executed and filed a prescribed form, or without having had one executed and filed in his or her behalf, the Office shall upon receipt of notice of the claimant's death advise his or her estate, or those living at his or her last known address, in writing that for the claim to be considered, a prescribed claim form must be executed and filed by a person authorized to do so on behalf of the claimant's estate within six months of the date of the later notice.

(d) Claims based upon written statements indicating an intention to claim benefits not perfected in accordance with this section shall not be processed.

§ 725.306 Withdrawal of a claim.

(a) A claimant or an individual authorized to execute a claim on a claimant's behalf or on behalf of claimant's estate under § 725.305, may withdraw a previously filed claim provided that:

(1) He or she files a written request with the appropriate adjudication officer indicating the reasons for seeking withdrawal of the claim;

(2) The appropriate adjudication officer approves the request for withdrawal on the grounds that it is in the best interests of the claimant or his or her estate, and;

(3) Any payments made to the claimant in accordance with § 725.522 are reimbursed.

(b) When a claim has been withdrawn under paragraph (a) of this section, the claim will be considered not to have been filed.

§ 725.307 Cancellation of a request for withdrawal.

At any time prior to approval, a request for withdrawal may be canceled by a written request of the claimant or a person authorized to act on the claimant's behalf or on behalf of the claimant's estate.

§ 725.308 Time limits for filing claims.

(a) A claim for benefits filed under this part by, or on behalf of, a miner shall be filed within three years after a medical determination of total disability due to pneumoconiosis which has been communicated to the miner or a person responsible for the care of the miner, or within three years after the date of enactment of the Black Lung Benefits Reform Act of 1977, whichever is later. There is no time limit on the filing of a claim by the survivor of a miner.

(b) A miner who is receiving benefits under part B of title IV of the Act and who is notified by HEW of the right to seek medical benefits may file a claim for medical benefits under part C of title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under part B of this right. Notwithstanding the provisions of paragraph (a) of this section, a miner notified of his or her rights under this paragraph may file a claim under this part on or before December 31, 1980. Any claim filed after that date shall be untimely unless the time for filing has been enlarged for good cause shown.

(c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, except as provided in paragraph (b) of this section, the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances.

§ 725.309 Additional claims; effect of a prior denial of benefits.

(a) A claimant whose claim for benefits was previously approved under part B of title IV of the Act may file a claim for benefits under this part as provided in §§ 725.308(b) and 725.702.

(b) If a claimant files a claim under this part while another claim filed by the claimant under this part is still pending, the later claim shall be merged with the earlier claim for all purposes. For purposes of this section, a claim shall be considered pending if it has not yet been finally denied.

(c) If a claimant files a claim under this part within one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim shall be considered a request for modification of the prior denial and shall be processed and adjudicated under § 725.310 of this part.

(d) If a claimant files a claim under this part more than one year after the effective date of a final order denying a

claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim shall be considered a subsequent claim for benefits. A subsequent claim shall be processed and adjudicated in accordance with the provisions of subparts E and F of this part, except that the claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement (see §§ 725.202(d) (miner), 725.212 (spouse), 725.218 (child), and 725.222 (parent, brother, or sister)) has changed since the date upon which the order denying the prior claim became final. The applicability of this paragraph may be waived by the operator or fund, as appropriate. The following additional rules shall apply to the adjudication of a subsequent claim:

(1) Any evidence submitted in connection with any prior claim shall be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim.

(2) For purposes of this section, the applicable conditions of entitlement shall be limited to those conditions upon which the prior denial was based. For example, if the claim was denied solely on the basis that the individual was not a miner, the subsequent claim must be denied unless the individual worked as a miner following the prior denial. Similarly, if the claim was denied because the miner did not meet one or more of the eligibility criteria contained in part 718 of this subchapter, the subsequent claim must be denied unless the miner meets at least one of the criteria that he or she did not meet previously.

(3) If the applicable condition(s) of entitlement relate to the miner's physical condition and the new evidence submitted in connection with the subsequent claim pursuant to § 725.413 of this part establishes at least one applicable condition of entitlement, there shall be a rebuttable presumption that the miner's physical condition has changed. The presumption may be rebutted only if an evaluation of the record compiled in the prior claim reveals that the order denying that claim is clearly erroneous and that the claim should have been approved as a matter of law. If the presumption is rebutted, the claimant shall bear the burden of proving that his pulmonary or respiratory condition has significantly deteriorated since the date upon which the order denying the prior claim became final. The provisions of paragraph (d)(3) shall not be applicable in the case of a claim filed by a surviving spouse, child, parent, brother, or sister.

(4) If the claimant demonstrates a change in one of the applicable conditions of entitlement, no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (see § 725.463), shall be binding on any party in the adjudication of the subsequent claim. However, any stipulation made by any party in connection with the prior claim shall be binding on that party in the adjudication of the subsequent claim.

(5) In any case in which a subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final.

(e) Notwithstanding any other provision of this part or part 727 of this subchapter (see § 725.4(d)), a person may exercise the right of review provided in paragraph (c) of § 727.103 at the same time such person is pursuing an appeal of a previously denied part B claim under the law as it existed prior to March 1, 1978. If the part B claim is ultimately approved as a result of the appeal, the claimant must immediately notify the Secretary of Labor and, where appropriate, the coal mine operator, and all duplicate payments made under part C shall be considered an overpayment and arrangements shall be made to insure the repayment of such overpayments to the fund or an operator, as appropriate.

(f) In any case involving more than one claim filed by the same claimant, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart H of this part.

§ 725.310 Modification of awards and denials.

(a) Upon his or her own initiative, or upon the request of any party on grounds of a change in conditions or because of a mistake in a determination of fact, the district director may, at any time before one year from the date of the last payment of benefits, or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits.

(b) Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate, except that the claimant and the operator, or group of operators or the fund, as appropriate, shall each be entitled to submit no more than one additional pulmonary evaluation or consultative report, in accordance with the provisions of § 725.414 of this part, along with such rebuttal evidence as may be required. Modification proceedings shall not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings before the district director, the district director may issue a proposed decision and order (§ 725.418) or, if appropriate, deny the claim by reason of abandonment (§ 725.409). In any case in which the district director has initiated modification proceedings on his own initiative to alter the terms of an award or denial of benefits issued by an administrative law judge, the district director shall, at the conclusion of modification proceedings, forward the claim for a hearing (§ 725.421). In any case forwarded for a hearing, the administrative law judge assigned to hear such case shall consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact.

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate, increase or decrease benefit payments or award benefits. Such order shall not affect any benefits previously paid, except that an order increasing the amount of benefits payable based on a finding of a mistake in a determination of fact may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is decreased, no payment made in excess of the decreased rate prior to the date upon which the party requested reconsideration under paragraph (a) or, in a case in which no request was made, the district director initiated modification proceedings, shall be subject to collection or offset under subpart H of this part. In the case of an award which is terminated, no payment made prior to the date upon which the party requested reconsideration under paragraph (a) or, in a case in which no request was made, the district director initiated modification proceedings, shall be subject to collection or offset under subpart H of this part.

§ 725.311 Communications with respect to claims; time computations.

(a) Unless otherwise specified by this part, all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement

submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. "Legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

(d) In any case in which a provision of this part requires a document to be sent to a person or party by certified mail, and the document is not sent by certified mail, but the person or party actually received the document, the document shall be deemed to have been sent in compliance with the provisions of this part. In such a case, any time period which commences upon the service of the document shall commence on the date the document was received.

Subpart D—Adjudication Officers; Parties and Representatives

§ 725.350 Who are the adjudication officers.

(a) *General.* The persons authorized by the Secretary of Labor to accept evidence and decide claims on the basis of such evidence are called "adjudication officers." This section describes the status of black lung claims adjudication officers.

(b) *District Director.* The district director is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing, and adjudication of claims in accordance with this part.

(c) *Administrative law judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Public Law 94–504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to, and adjudicate, claims in accordance with this part. A person appointed under Public Law 94–504 shall not be considered an administrative law judge for purposes of this part for any period after March 1, 1979.

§ 725.351 Powers of adjudication officers.

(a) *District Director.* The district director is authorized to:

(1) Make determinations with respect to claims as is provided in this part;

(2) Conduct conferences and informal discovery proceedings as provided in this part;

(3) Compel the production of documents by the issuance of a subpoena, with the written approval of the Director;

(4) Prepare documents for the signature of parties;

(5) Issue appropriate orders as provided in this part; and

(6) Do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Administrative Law Judge.* An administrative law judge is authorized to:

(1) Conduct formal hearings in accordance with the provisions of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses by the issuance of subpoenas;

(4) Issue decisions and orders with respect to claims as provided in this part; and

(5) Do all other things necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the district director with the approval of the Director, or the administrative law judge responsible for the adjudication of the claim, shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.352 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge, as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer. No adjudication officer shall be permitted at any time to appear or act as a representative in connection with any case or claim in which he or she was personally involved. No fee or reimbursement shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

§ 725.360 Parties to proceedings.

(a) Except as provided in § 725.361, no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part, unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

(1) The claimant;

(2) A person other than a claimant, authorized to execute a claim on such claimant's behalf under § 725.301;

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(3) Any coal mine operator notified under § 725.407 of its possible liability for the claim;

(4) Any insurance carrier of such operator; and

(5) The Director in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or the representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision of an adjudication officer, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified under § 725.407 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejudiced by a decision to be made.

§ 725.361 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a person or entity which is not a party may be allowed to participate amicus curiae in a formal hearing only as to an issue of law. A person may participate amicus curiae in a formal hearing upon written request submitted with supporting arguments prior to the hearing. If the request is granted, the administrative law judge hearing the case will inform the party of the extent to which participation will be permitted. The request may, however, be denied summarily and without explanation.

§ 725.362 Representation of parties.

(a) Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or his or her designee, each of the parties may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. An attorney qualified in accordance with § 725.363(a) shall file a written declaration that he or she is authorized to represent a party, or declare his or her representation on the record at a formal hearing. Any other person (see § 725.363(b)) shall file a written notice of appointment signed by the party or his or her legal guardian, or enter his or her appearance on the record at a formal hearing if the party he or she seeks to represent is present and consents to the representation. Any written declaration or notice required by this section shall include the OWCP number assigned by the Office and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case, such representative must be qualified under § 725.363. No authorization for representation or agreement between a claimant and representative as to the amount of a fee, filed with the Social Security Administration in connection with a claim under part B of title IV of the Act, shall be valid under this part. A claimant who has previously authorized a person to represent him or her in connection with a claim originally filed under part B of title IV may renew such authorization by filing a statement to such effect with the Office or appropriate adjudication officer.

(b) Any party may waive his or her right to be represented in the adjudication of a claim. If an adjudication officer determines, after an appropriate inquiry has been made, that a claimant who has been informed of his or her right to representation does not wish to obtain the services of a representative, such adjudication officer shall proceed to consider the claim in accordance with this part, unless it is apparent that the claimant is, for any reason, unable to continue without the help of a representative. However, it shall not be necessary for an adjudication officer to inquire as to the ability of a claimant to proceed without representation in any adjudication taking place without a hearing. The failure of a claimant to obtain representation in an adjudication taking place without a hearing shall be considered a waiver of the claimant's right to representation. However, at any time during the processing or adjudication of a claim, any claimant may revoke such waiver and obtain a representative.

§ 725.363 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative.

(b) *Other person.* With the approval of the adjudication officer, any other person may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.364 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.362 and 725.363, may make or give on behalf of the party he or she represents, any request or notice relative to any proceeding before an adjudication officer, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he or she is a person designated in § 725.301 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party represented and to obtain information with respect to the claim of such party to the same extent as such party. Notice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party and such notice or request shall have the same force and effect as if it had been sent to the party represented.

§ 725.365 Approval of representative's fees; lien against benefits.

No fee charged for representation services rendered to a claimant with respect to any claim under this part shall be valid unless approved under this subpart. No contract or prior agreement for a fee shall be valid. In cases where the obligation to pay the attorney's fee is upon the claimant, the amount of the fee awarded may be made a lien upon the benefits due under an award and the adjudication officer shall fix, in the award approving the fee, such lien and the manner of payment of the fee. Any representative who is not an attorney may be awarded a fee for services under this subpart, except that no lien may be imposed with respect to such representative's fee.

§ 725.366 Fees for representatives.

(a) A representative seeking a fee for services performed on behalf of a claimant shall make application therefor to the district director, administrative law judge, or appropriate appellate tribunal, as the case may be, before whom the services were performed. The application shall be filed and served upon the claimant and all other parties within the time limits allowed by the district director, administrative law judge, or appropriate appellate tribunal. The application shall be supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative or clerical) of the person performing such work, and

the customary billing rate for each such person. The application shall also include a listing of reasonable unreimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in establishing the claimant's case. Any fee requested under this paragraph shall also contain a description of any fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in connection with a related matter.

(b) Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested. No fee approved shall include payment for time spent in preparation of a fee application. No fee shall be approved for work done on claims filed between December 30, 1969, and June 30, 1973, under part B of title IV of the Act, except for services rendered on behalf of the claimant in regard to the review of the claim under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

(c) In awarding a fee, the appropriate adjudication officer shall consider, and shall add to the fee, the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. Reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 725.459(a). No reimbursement shall be permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee, such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Any party may request reconsideration of a fee awarded by the adjudication officer. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a district director is disputed, such award shall be appealable directly to the Benefits Review Board. In such a fee dispute case, the record before the Board shall consist of the order of the district director awarding or denying the fee, the application for a fee, any written statement in opposition to the fee and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

§ 725.367 Payment of a claimant's attorney's fee by responsible operator or fund.

(a) An attorney who represents a claimant in the successful prosecution of a claim for benefits may be entitled to collect a reasonable attorney's fee from the responsible operator that is ultimately found liable for the payment of benefits, or, in a case in which there is no operator who is liable for the payment of benefits, from the fund. Generally, an attorney who represents a successful claimant may obtain payment of his or her fee where the operator or fund, as appropriate, took action, or acquiesced in action, that created an adversarial relationship between itself and the claimant. Circumstances in which a successful attorney's fees shall be payable by the responsible operator or the fund include, but are not limited to, the following:

(1) If the responsible operator initially found to be liable for the payment of benefits by the district director (see § 725.410(a)) contests the claimant's eligibility for benefits, either by filing a response pursuant to § 725.411(b)(1), or, in a case in which the district director issues an initial finding that the claimant is not eligible for benefits, by failing to file a response. The operator that is ultimately determined to be liable for benefits shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney after the date of the responsible operator's response or the date on which it was due, whichever is earlier;

(2) If there is no operator that may be held liable for the payment of benefits, and the district director issues an initial finding that the claimant is not eligible for benefits. The fund shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney after the date on which the district director issued the initial finding;

(3) If the claimant submits a bill for medical treatment, and the party liable for the payment of benefits declines to pay the bill on the grounds that the treatment is unreasonable, or is for a condition that is not compensable. The responsible operator or fund, as appropriate, shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney after the date on which the liable party declined to pay;

(4) If a beneficiary seeks an increase in the amount of benefits payable, and the responsible operator or fund issues a notice of controversion contesting the claimant's right to that increase. If the beneficiary is successful in securing an increase in the amount of benefits payable, the operator or fund shall be liable for an attorney's fee with respect to all reasonable services performed by the beneficiary's attorney after the date on which the operator or fund contested the increase; and

(5) If the responsible operator or fund seeks a decrease in the amount of benefits payable. If the beneficiary is successful in resisting the request for a decrease in the amount of benefits payable, the operator or fund shall be liable for an attorney's fee with respect to all reasonable services performed by the beneficiary's attorney after the date of the request by the operator or fund. A request for information clarifying the amount of benefits payable shall not be considered a request to decrease that amount.

(b) In no event shall an operator or the fund be liable for the payment of attorney's fees with respect to any services performed prior to the dates specified in this section.

(c) Any fee awarded under this section shall be in addition to the award of benefits, and shall be awarded, in an order, by the district director, administrative law judge, Board or court, before whom the work was performed. The operator or fund shall pay such fee promptly and directly to the claimant's attorney in a lump sum after the award of benefits becomes final.

(d) Section 205(a) of the Black Lung Benefits Amendments of 1981, Public Law 97–119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the fund. The claims subject to this transfer of liability are described in § 725.496 of this part. On claims subject to the transfer of liability described in this paragraph the fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the Internal Revenue Code, which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the fund from reimbursing an

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operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

Subpart E—Adjudication of Claims by the District Director

§ 725.401 Claims development—general.

After a claim has been received by the district director, the district director shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

§ 725.402 Approved State workers' compensation law.

If a district director determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The district director shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

§ 725.403 Requirement to file under State workers' compensation law—section 415 claims.

(a) No benefits shall be payable to or on behalf of a claimant who has filed a claim under section 415 of part B of title IV of the Act, for any period of eligibility occurring between July 1, and December 31, 1973, unless the claimant has filed and diligently pursued a claim for benefits under an applicable State workers' compensation law. A State workers' compensation claim need not be filed where filing would be futile. It shall be determined that the filing of a State claim would be futile when:

(1) The period within which the claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in part 718 of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workers' compensation payments under applicable State law; or

(5) The claimant otherwise establishes to the satisfaction of the Office that the filing of a claim under State law would be futile.

(b) Where the Office determines that a claimant is required to file a State claim under this section, the Office shall so notify the claimant. Such notice shall instruct the claimant to file a State claim within 30 days of such notice. If no such State claim is filed within the 30-day period, no benefits shall be payable under this part to the claimant for any period between July 1, and December 31, 1973.

(c) The failure of a claimant to comply with paragraph (a) of this section shall not absolve any operator of its liability for the payment of benefits to a claimant for periods of eligibility occurring on or after January 1, 1974.

(d) The district director may determine that a claimant is ineligible for benefits under section 415 of part B of title IV of the Act without requiring the claimant to file a claim under a State workers' compensation law.

§ 725.404 Development of evidence—general.

(a) *Employment history.* Each claimant shall furnish the district director with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such proof to the district director upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the district director, the claimant shall submit either the original, a certified copy or a clear readable copy thereof. The district director or administrative law judge may require the submission of an original document or certified copy thereof, if necessary.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the district director shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request, be extended for good cause.

§ 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the district director shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202, and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eligible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the district director shall, where necessary, schedule the miner for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner, the district director shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) The district director shall, where appropriate, collect other evidence necessary to establish:

(1) The nature and duration of the miner's employment; and

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the district director, the evidence establishes that the claimant is not entitled to benefits under the Act, the district director may terminate evidentiary development of the claim and proceed as appropriate.

§ 725.406 Medical examinations and tests.

(a) The Act requires the Department to provide each miner who applies for benefits with the opportunity to undergo a complete pulmonary evaluation at no expense to the miner. A complete pulmonary evaluation includes a report of physical examination, a pulmonary function study, a chest roentgenogram and, unless medically contraindicated, a blood gas study.

(b) The district director will arrange for each miner to be given a complete pulmonary evaluation by a physician or medical facility selected by the Office. The evaluation shall be conducted, if possible, in the vicinity of the miner's residence. The district director will notify the miner of these arrangements, and inform the miner that he may select an alternate physician or facility. The district director will also inform the miner of the consequences of selecting an alternate physician or facility, as provided by paragraphs (c) and (d) of this section.

(c) If the miner selects an alternate physician or facility, the complete pulmonary evaluation performed under this section shall count as one of the two evaluations which the claimant may submit in support of his claim (see § 725.414). If the physician or facility selected by the miner cannot perform one or more of the tests which make up a complete pulmonary evaluation, the district director will arrange for the miner to have these tests performed at a facility selected by the Office prior to

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his examination by the physician or facility he has selected. A copy of any such tests shall be provided to the physician or facility selected by the miner.

(d) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director shall schedule the miner for further examination and testing where necessary and appropriate, provided that the deficiencies in the report are not the result of any lack of effort on the part of the miner. In order to determine whether any medical examination or test was administered and reported in substantial compliance with the provisions of part 718 of this subchapter, the district director may have any component of such examination or test reviewed by a physician selected by the district director. If the miner selected the physician or facility that performed the test, the district director shall notify the miner, and the physician or facility, of the reasons why the report is not in substantial compliance with the provisions of part 718, or does not provide sufficient information, and shall allow the miner reasonable additional time within which to correct any deficiency.

(e) If, at any time after the completion of the initial complete pulmonary evaluation, unresolved medical questions remain, the district director may cause the claimant to be examined by a physician or medical facility selected by the district director. If additional medical evidence is obtained in accordance with this paragraph, the district director may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of any other physician who has examined the miner.

(f) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, shall be paid by the fund. No reimbursement for overnight accommodations shall be authorized unless the district director determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund shall be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant. If an operator fails to repay such expenses, with interest, upon request of the Office, the entire amount may be collected in an action brought under section 424 of the Act and § 725.603 of this part.

§ 725.407 Identification and notification of responsible operator.

(a) Upon receipt of the miner's employment history, the district director shall investigate whether any operator may be held liable for the payment of benefits as a responsible operator in accordance with the criteria contained in subpart G of this part.

(b) Prior to issuing an initial finding pursuant to § 725.410, the district director may identify one or more operators potentially liable for the payment of benefits in accordance with the criteria set forth in § 725.495 of this part. The district director shall notify each such operator of the existence of the claim. Where the records maintained by the Office pursuant to part 726 of this subchapter indicate that the operator had obtained a policy of insurance, and the claim falls within such policy, the notice provided pursuant to this section shall also be sent to the operator's carrier. Any operator or carrier notified of the claim shall thereafter be considered a party to the claim in accordance with § 725.360 of this part unless it is dismissed by an adjudication officer and is not thereafter notified again of its potential liability.

(c) The notification issued pursuant to this section shall include a copy of the claimant's application and a copy of all evidence obtained by the district director relating to the miner's employment. The district director may request the operator to answer specific questions, including, but not limited to, questions related to the nature of its operations, its relationship with the miner, its financial status, including any insurance obtained to secure its obligations under the Act, and its relationship with other potentially liable operators. A copy of any notification issued pursuant to this section shall be sent to the claimant by regular mail.

(d) If at any time before a case is referred to the Office of Administrative Law Judges, the district director determines that an operator which may be liable for the payment of benefits has not been notified under this section or has been incorrectly dismissed pursuant to § 725.413(c)(1), the district director shall give such operator notice of its potential liability in accordance with this section. The adjudication officer shall then take such further action on the claim as may be appropriate. There shall be no time limit applicable to a later identification of an operator under this paragraph if the operator fraudulently concealed its identity as an employer of the miner.

§ 725.408 Operator's response to notification.

(a)(1) An operator which receives notification under § 725.407 shall, within 30 days of receipt, file a response, and shall indicate its intent to accept or contest its identification as a potentially liable operator. The operator's response shall also be sent to the claimant by regular mail.

(2) If the operator contests its identification, it shall, on a form supplied by the district director, state the precise nature of its disagreement by admitting or denying each of the following assertions. In answering these assertions, the term "operator" shall include any operator for which the identified operator may be considered a successor operator pursuant to § 725.492.

(i) That the named operator was an operator for any period after June 30, 1973;

(ii) That the operator employed the miner as a miner for a cumulative period of not less than one year;

(iii) That the miner was exposed to coal mine dust while working for the operator;

(iv) That the miner's employment with the operator included at least one working day after December 31, 1969; and

(v) That the operator is capable of assuming liability for the payment of benefits.

(3) An operator which receives notification under § 725.407, and which fails to file a response within the time limit provided by this section, shall not be allowed to contest its liability for the payment of benefits on the grounds set forth in paragraph (a)(2).

(b)(1) Within 60 days of the date on which it receives notification under § 725.407, an operator may submit documentary evidence in support of its position.

(2) No documentary evidence relevant to the grounds set forth in paragraph (a)(2) may be admitted in any further proceedings unless it is submitted within the time limits set forth in this section.

§ 725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the district director by reason of abandonment where the claimant fails:

(1) To undergo a required medical examination without good cause; or,

(2) To submit evidence sufficient to make a determination of the claim; or,

(3) To pursue the claim with reasonable diligence; or,

(4) To attend an informal conference without good cause.

(b) If the district director determines that a denial by reason of abandonment is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If the claimant completes the action requested within the time allowed, the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the district director, the district director shall notify the claimant that the claim has been denied by reason of abandonment. Any request for a hearing prior to the issuance of such notification shall be considered invalid and of no effect. Such notification shall be served on the claimant and all other parties to the claim by certified mail. The denial shall become effective and final unless, within 30 days after the denial is issued, the claimant requests a hearing. If the claimant timely requests a hearing, the district director shall refer the case to the Office of Administrative Law Judges in accordance with § 725.421. The hearing will be limited to the issue of whether the claim was properly denied by reason of abandonment. Following the expiration of the 30-day period, a new claim may be filed at any time pursuant to § 725.309.

§ 725.410 Initial findings by the district director.

(a) Based upon the evidence developed, the district director shall make an initial finding with respect to the claim. The initial finding shall include a determination with respect to the claimant's eligibility and a determination with respect to whether any of the operators notified of potential liability under § 725.407 of this part is the responsible operator in accordance with § 725.495 of this part.

(b) The district director shall serve the initial finding, together with a copy of all of the evidence developed, on the claimant, the responsible operator, and all other operators which received notification pursuant to § 725.407 of this part. The initial finding shall be served on each party by certified mail.

(c) If the evidence submitted does not support a finding of eligibility, the initial finding shall specify the reasons why the claim cannot be approved and the additional evidence necessary to establish entitlement. The initial finding shall notify the claimant that he has the right to obtain further adjudication of his eligibility in accordance with this subpart, that he has the right to submit additional evidence in accordance with this subpart, and that he has the right to obtain counsel, under the terms set forth in subpart D, in order to assist him. The initial finding shall further notify the claimant that, if he establishes his entitlement to benefits, the cost of obtaining additional evidence, along with a reasonable attorney's fee, shall be reimbursed by the responsible operator, or, if no operator can be held liable, the fund.

§ 725.411 Initial finding—eligibility.

(a) *Claimant response*—(1) *Finding that the claimant is not eligible for benefits.* (i) Within one year after the district director issues an initial finding that the claimant is not eligible for benefits, the claimant may request further adjudication of the claim. Any statement filed during the applicable time period demonstrating the claimant's intention to pursue his or her claim shall be considered a request for further adjudication in accordance with this section. The claimant may not request a hearing at this point. Any request for a hearing prior to the issuance of a proposed decision and order shall be considered invalid and of no effect.

(ii) If the claimant does not request further adjudication of the claim within the time limits set forth in this section, the claim shall be deemed to have been denied, effective as of the date of the issuance of the initial finding. Any submission by the claimant after the time limits set forth in this section will be treated as an intent to file a new claim for benefits in accordance with § 725.305. Such a claim may be approved only if it meets the conditions of § 725.309.

(2) *Finding that the claimant is eligible for benefits.* If the district director issues an initial finding that the evidence submitted supports a finding of eligibility, the claimant may, within 30 days of the issuance of the initial finding, request revision of any of the terms of the initial finding. If the claimant does not file a timely request pursuant to this paragraph, he shall be deemed to have accepted the district director's initial finding.

(b) *Operator response.* (1) Within 30 days of the issuance of an initial finding, the responsible operator initially found liable for the payment of benefits shall file a response with regard to the claimant's eligibility for benefits. The response shall specifically indicate whether the operator agrees or disagrees with the initial finding of eligibility. A response that the operator is not liable for benefits shall not be sufficient to contest the claimant's eligibility under this section. A response to the initial finding of eligibility shall be filed regardless of whether the district director finds the claimant eligible for benefits.

(2) If the operator initially found liable for the payment of benefits does not file a timely response, it shall be deemed to have accepted the district director's initial finding with respect to the claimant's eligibility, and shall not, except as provided in § 725.463, be permitted to raise issues or present evidence with respect to issues inconsistent with the initial findings in any further proceeding conducted with respect to the claim.

§ 725.412 Initial finding-liability.

(a) Within 30 days of the issuance of an initial finding, the responsible operator initially found liable for the payment of benefits shall file a response with regard to its liability for benefits. The response shall specifically indicate whether the operator agrees or disagrees with the initial finding of liability. A response that the operator is not liable for benefits under this section shall not be sufficient to contest the claimant's eligibility. A response to the initial finding of liability shall be filed regardless of whether or not the district director finds the claimant eligible for benefits.

(b) If the responsible operator initially found liable for the payment of benefits does not file a timely response, it shall be deemed to have accepted the district director's initial finding with respect to its liability, and to have waived its right to contest its liability in any further proceeding conducted with respect to the claim.

§ 725.413 Initial adjudication by the district director.

(a) If the district director issues an initial finding that the evidence submitted supports a finding of eligibility, and

(1) The responsible operator does not file a timely response under either § 725.411 or § 725.412, or

(2) There is no operator responsible for the payment of benefits, the district director shall, after considering any request filed by the claimant pursuant to § 725.411(a)(2), issue a proposed decision and order in accordance with § 725.418.

(b) If the district director issues an initial finding that the evidence submitted does not support a finding of eligibility, and the claimant does not file a timely response pursuant to § 725.411,

the claim shall be considered to have been denied, effective as of the date of the issuance of the initial finding. Any later submission by the claimant will be treated as an intent to file a claim for benefits in accordance with § 725.305. Such a claim may be approved only if it meets the conditions of § 725.309.

(c)(1) In all other cases, the district director shall, following the expiration of all applicable time periods for filing responses, or the receipt of responses, notify all parties of any responses received from the claimant and the responsible operator. The district director may, in his discretion, dismiss as parties any of the operators notified of their potential liability pursuant to § 725.407. If the district director thereafter determines that the participation of a party dismissed pursuant to this section is required, he may once again notify the operator in accordance with § 725.407(d).

(2) The district director shall notify the parties of a schedule for submitting documentary evidence. Such schedule shall allow the parties not less than 60 days within which to submit evidence in support of their contentions, and shall provide not less than an additional 30 days within which the parties may respond to evidence submitted by other parties. Any such evidence must meet the requirements set forth in § 725.414 in order to be admitted into the record.

§ 725.414 Development of evidence.

(a) *Medical evidence*—(1)(i) *Pulmonary evaluation.* For purposes of this section, a pulmonary evaluation shall consist of one chest roentgenogram, one pulmonary function study, one report of physical examination, and the results of such other testing, including arterial blood gas testing, as the physician who prepares the report of physical examination deems necessary to fully evaluate the claimant's respiratory and pulmonary condition. The tests need not be performed at the same facility, nor be administered or supervised by the same physician.

(ii) *Consultative report.* For purposes of this section, a consultative report shall consist of the opinion of a physician based on a review of any medical evidence relevant to the miner's respiratory or pulmonary condition.

(2) The claimant shall be entitled to submit the results of up to two pulmonary evaluations or consultative reports. If the claimant selected the physician who prepared the report of physical examination pursuant to § 725.406 of this part, the complete pulmonary evaluation obtained pursuant to that section shall be considered one of the two evaluations or reports that the claimant may submit.

(3) The Department intends that all parties to a claim, including all operators notified of their potential liability under § 725.407 that have not been dismissed, shall be bound by a final adjudication of the claimant's eligibility. Accordingly, any operator notified of its potential liability in accordance with § 725.407 shall not be entitled to require the claimant to re-adjudicate his eligibility in the event the district director's initial finding with respect to the responsible operator is determined to have been erroneous.

(i) The responsible operator and any other operators that remain parties to the case shall collectively be entitled to obtain and submit the results of no more than two pulmonary evaluations or consultative reports. In obtaining such evaluations, no miner shall be required to travel more than 100 miles from his or her place of residence for the purpose of submitting to a pulmonary evaluation requested by an operator, unless a trip of greater distance is authorized in writing by the district director. If a miner unreasonably refuses—

(A) To provide the Office or a coal mine operator with a complete statement of his or her medical history and/or to authorize access to his or her medical records, or

(B) To submit to an evaluation or test requested by the district director or a potentially liable operator, the miner's claim may be denied by reason of abandonment (See § 725.409 of this part).

(ii) In a case in which the district director has not identified any potentially liable operators, the district director shall be entitled to exercise the rights of a responsible operator under this section, except that in any case where the complete pulmonary evaluation performed pursuant to § 725.406 was performed by a physician selected by the district director, the evaluation shall be admitted into evidence, and shall be considered one of the two evaluations or reports that the district director may submit.

(iii) Except for the responsible operator, any operator notified of its potential liability pursuant to § 725.407, and which has not been dismissed as a party by the district director, must request permission of the district director to obtain an independent pulmonary evaluation of the miner, or to submit a consultative report. Such permission shall be granted only upon a showing that the responsible operator has not undertaken a full development of the evidence, and that without such permission, the potentially liable operator will be unable to secure a full and fair litigation of the claimant's eligibility. In granting such permission, the district director may take such action as is necessary to prevent the miner from undergoing unnecessary testing, and shall ensure that the record contains no more than two pulmonary evaluations or consultative reports submitted by the parties opposing the claimant's eligibility.

(4) Notwithstanding the limitations in paragraph (a)(3) of this section, any record of a miner's hospitalization for a pulmonary or related disease, medical treatment for a pulmonary or related disease, or a biopsy or autopsy may be received into evidence.

(5) A copy of any documentary evidence submitted by a party must be served on all other parties to the claim. If the claimant is not represented by an attorney, the district director shall mail a copy of all documentary evidence submitted by the claimant to all other parties to the claim. Following the development and submission of affirmative medical evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director. Such rebuttal evidence shall include no more than one interpretive opinion with respect to the results of each component of the pulmonary evaluations submitted by the opposing party, and may not include a third pulmonary evaluation of the miner.

(6) The district director shall admit into the record all evidence submitted in accordance with this section, and shall also admit the results of any medical evaluation or review conducted by a physician selected by the district director pursuant to § 725.406.

(b) *Evidence pertaining to liability.* (1) Except as provided by § 725.408(b)(2), the potential responsible operator may submit evidence to demonstrate that it is not the potentially liable operator that most recently employed the claimant. Failure to submit such evidence shall be deemed an acceptance of the district director's initial finding of liability.

(2) Any other party may submit evidence regarding the liability of the potential responsible operator or any other operator.

(3) A copy of any documentary evidence submitted under this paragraph must be mailed to all other parties to the claim. Following the submission of affirmative evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director.

(c) *Testimony.* The claimant, and any person who prepared documentary evidence submitted pursuant to this

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section, may testify at any formal hearing conducted in accordance with subpart F of this part with respect to the claim. In accordance with the schedule issued by the district director, all parties shall notify the district director of the name and current address of any other witness that the party intends to call at such hearing. No testimony by any witness who is not identified as a witness in accordance with this section shall be admitted in any hearing conducted with respect to the claim.

(d) Except to the extent permitted by § 725.456, no documentary evidence shall be admitted in any further proceeding conducted with respect to a claim unless it is submitted to the district director in accordance with this section.

§ 725.415 Action by the district director after development of operator's evidence.

(a) At the end of the period permitted under § 725.413(c)(2) for the submission of evidence, the district director shall review the claim on the basis of all evidence submitted in accordance with § 725.414.

(b) After review of all evidence submitted, the district director may schedule a conference in accordance with § 725.416, issue a proposed decision and order in accordance with § 725.418, or take such other action as the district director considers appropriate.

§ 725.416 Conferences.

(a) At the conclusion of the period permitted by § 725.413(c)(2) for the submission of evidence, the district director may conduct an informal conference in any claim where it appears that such conference will assist in the voluntary resolution of any issue raised with respect to the claim. The conference proceedings shall not be stenographically reported and sworn testimony shall not be taken.

(b) The district director shall notify the parties of a definite time and place for the conference and may in his or her discretion, or on the motion of any party, cancel or reschedule a conference.

(c) The unexcused failure of any party to appear at an informal conference shall be grounds for the imposition of sanctions. If the claimant fails to appear, the district director may take such steps as are authorized by § 725.409 to deny the claim by reason of abandonment. If the responsible operator fails to appear, it shall be deemed to have waived its right to contest its potential liability for an award of benefits and, in the discretion of the district director, its right to contest any issue related to the claimant's eligibility.

(d) Any representative of an operator, of an operator's insurance carrier, or of a claimant, authorized to represent such party in accordance with § 725.362, shall be deemed to have sufficient authority to stipulate facts or issues or agree to a final disposition of the claim.

(e) Procedures to be followed at a conference shall be within the discretion of the district director. In the case of a conference involving an unrepresented claimant, the district director shall fully inform the claimant of the consequences of any agreement the claimant is asked to sign. If it is apparent that the unrepresented claimant does not understand the nature or effect of the proceedings, the district director shall not permit the execution of any stipulation or agreement in the claim unless it is clear that the best interests of the claimant are served thereby.

§ 725.417 Action at the conclusion of conference.

(a) At the conclusion of a conference, the district director shall prepare a stipulation of contested and uncontested issues which shall be signed by the parties and the district director. If a hearing is conducted with respect to the claim, this stipulation shall be submitted to the Office of Administrative Law Judges and placed in the claim record.

(b) In any case, where appropriate, the district director may permit a reasonable time for the submission of additional evidence following a conference, provided that such evidence does not exceed the limits set forth in § 725.414.

(c) Within 20 days after the termination of all conference proceedings, the district director shall prepare and send to the parties by certified mail a memorandum of conference, on a form prescribed by the Office, summarizing the conference and including the following:

(1) Date, time and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representative, etc.);

(3) Issues discussed at conference;

(4) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(5) Issues resolved at conference; and

(6) District director's recommendation.

(d) Each party shall, in writing, either accept or reject, in whole or in part, the district director's recommendation, stating the reasons for such rejection. If no reply is received within 30 days from the date on which the recommendation was sent to parties, the recommendation shall be deemed accepted.

§ 725.418 Proposed decision and order.

(a) After evaluating the parties' responses to the district director's recommendation pursuant to § 725.417, or, if no informal conference is to be held, at the conclusion of the period permitted by § 725.413(c)(2) for the submission of evidence, the district director shall issue a proposed decision and order. A proposed decision and order is a document, issued by the district director after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the district director. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the district director in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The district director determines that its issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law and an appropriate order shall be served on all parties to the claim by certified mail.

§ 725.419 Response to proposed decision and order.

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. If a hearing is requested, the district director shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the district director and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the district director may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all parties or take such other action as is appropriate. If a revised proposed decision and order is issued, each party to the claim shall have 30 days from the date of issuance of that revised

proposed decision and order within which to request a hearing.

(d) If no response to a proposed decision and order is sent to the district director within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the district director within the period described in paragraph (c) of this section, the proposed decision and order shall become a final decision and order, which is effective upon the expiration of the applicable 30-day period. Once a proposed decision and order or revised proposed decision and order becomes final and effective, all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

§ 725.420 Initial determinations.

(a) Section 9501(d)(1)(A)(1) of the Internal Revenue Code provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary. For claims filed on or after January 1, 1982, the payment of such interim benefits from the fund is limited to benefits accruing after the date of such initial determination.

(b) Except as provided in § 725.415 of this subpart, after the district director has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the district director shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

(c) If a notified operator refuses to commence payment of a claim within 30 days from the date on which an initial determination is made under this section, benefits shall be paid by the fund to the claimant in accordance with § 725.522, and the operator shall be liable to the fund, if such operator is determined liable for the claim, for all benefits paid by the fund on behalf of such operator, and, in addition, such penalties and interest as are appropriate.

§ 725.421 Referral of a claim to the Office of Administrative Law Judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the district director has completed development and adjudication without having resolved all contested issues in the claim, the district director shall refer the claim to the Office of Administrative Law Judges for a hearing.

(b) In any case referred to the Office of Administrative Law Judges under this section, the district director shall transmit to that office the following documents, which shall be placed in the record at the hearing subject to the objection of any party:

(1) Copies of the claim form or forms;

(2) Any statement, document, or pleading submitted by a party to the claim;

(3) A copy of the notification to an operator of its possible liability for the claim;

(4) All evidence submitted to the district director under this part;

(5) Any written stipulation of law or fact or stipulation of contested and uncontested issues entered into by the parties;

(6) Any pertinent forms submitted to the district director;

(7) The statement by the district director of contested and uncontested issues in the claim; and

(8) The district director's initial determination of eligibility or other documents necessary to establish the right of the fund to reimbursement, if appropriate. Copies of the transmittal notice shall also be sent to all parties to the claim by regular mail.

(c) A party may at any time request and obtain from the district director copies of documents transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such documents, additional copies may be sent to the party upon the payment of a copying fee to be determined by the district director.

§ 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the black lung benefits program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the fund.

§ 725.423 Extensions of time.

Except for the one-year time limit set forth in § 725.411(a)(1)(i) and the 30-day time limit set forth in § 725.419, any of the time periods set forth in this subpart may be extended, for good cause shown, by filing a request for an extension with the district director prior to the expiration of the time period.

Subpart F—Hearings

§ 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the district director. There shall be no right to a hearing until the processing and adjudication of the claim by the district director has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the district director has become final and effective in accordance with this part.

§ 725.451 Request for hearing.

After the completion of proceedings before the district director, or as is otherwise indicated in this part, any party may in writing request a hearing on any contested issue of fact or law (see § 725.419). A district director may on his or her own initiative refer a case for hearing. If a hearing is requested, or if a district director determines that a hearing is necessary to the resolution of any issue, the claim shall be referred to the Chief Administrative Law Judge for a hearing under § 725.421.

§ 725.452 Type of hearing; parties.

(a) A hearing held under this part shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. Except as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 *et seq.*

(b) All parties to a claim shall be permitted to participate fully at a hearing held in connection with such claim.

(c) A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

(d) If the administrative law judge believes that an oral hearing is not necessary (for any reason other than on motion for summary judgment), the judge shall notify the parties by written order and allow at least 30 days for the parties to respond. The administrative law judge shall hold the oral hearing if any party makes a timely request in response to the order.

§ 725.453 Notice of hearing.

All parties shall be given at least 30 days written notice of the date and place of a hearing and the issues to be resolved at the hearing. Such notice shall be sent to each party or representative by certified mail.

§ 725.454 Time and place of hearing; transfer of cases.

(a) The Chief Administrative Law Judge shall assign a definite time and place for a formal hearing, and shall, where possible, schedule the hearing to be held at a place within 75 miles of the claimant's residence unless an alternate location is requested by the claimant.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his or her discretion, schedule the hearing in the country of the claimant's residence.

(c) The Chief Administrative Law Judge or the administrative law judge assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

(d) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing for good cause shown, at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(e) The Chief Administrative Law Judge may for good cause shown transfer a case from one administrative law judge to another.

§ 725.455 Hearing procedures; generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Except as provided in § 725.421(b)(8), any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the district director under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented shall be within the discretion of the administrative law judge and shall afford the parties an opportunity for a fair hearing.

(d) *Oral argument and written allegations.* The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

§ 725.456 Introduction of documentary evidence.

(a) All documents transmitted to the Office of Administrative Law Judges under § 725.421 shall be placed into evidence by the administrative law judge, subject to objection by any party.

(b) Documentary evidence which is obtained by any party either after the district director forwards the claim to the Office of Administrative Law Judges or in excess of the limitations contained in § 725.414 shall not be admitted into the hearing record in the absence of extraordinary circumstances (see § 725.414(d)).

(c) Subject to paragraph (b) of this section, documentary evidence which the district director excludes from the record, and the objections to such evidence, may be submitted by the parties to the administrative law judge, who shall independently determine whether the evidence shall be admitted.

(1) If the evidence is admitted, the administrative law judge may, in his or her discretion, remand the claim to the district director for further consideration.

(2) If the evidence is admitted, the administrative law judge shall afford the opposing party or parties the opportunity to develop such additional documentary evidence as is necessary to protect the right of cross-examination.

(d) All medical records and reports submitted by any party shall be considered by the administrative law judge in accordance with the quality standards contained in part 718 of this subchapter.

(e) If the administrative law judge concludes that the complete pulmonary evaluation provided pursuant to § 725.406, or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement (see § 725.202(d)(2) (i) through (iv)) in a manner which permits resolution of the claim, and such evaluation or part thereof was performed by a physician or facility selected by the Office, the administrative law judge shall, in his or her discretion, remand the claim to the district director with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

§ 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. Any party who intends to present the testimony of an expert witness at a hearing shall so notify all other parties to the claim at least 10 days before the hearing. The failure to give notice of the appearance of an expert witness in accordance with this paragraph, unless notice is waived by all parties, shall preclude the presentation of testimony by such expert witness.

(b) No person shall be required to appear as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless the lawful mileage and witness fee for 1 day's attendance is paid in advance of the hearing date.

(c) No person shall be permitted to testify as a witness at the hearing unless that person:

(1) Prepared documentary evidence which was submitted to the district director pursuant to § 725.414 (a) or (b), or

(2) Was identified as a potential hearing witness while the claim was pending before the district director in accordance with § 725.414(c), or

(3) Prepared documentary evidence which was admitted by the

administrative law judge pursuant to § 725.456.

(d) Notwithstanding paragraph (c)(2) of this section, no physician shall be permitted to testify as a witness at the hearing unless he has prepared a medical report which is entered into evidence. A physician shall be permitted to testify only with respect to the contents of the report or reports he has prepared.

§ 725.458 Depositions; interrogatories.

The testimony of any witness or party may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District or outside the United States), except that at least 30 days prior notice of any deposition shall be given to all parties unless such notice is waived. No post-hearing deposition or interrogatory shall be permitted unless authorized by the administrative law judge upon the motion of a party to the claim. The testimony of any physician which is taken by deposition shall be subject to the limitations on the scope of the testimony contained in § 725.457(d).

§ 725.459 Witness fees.

(a) A witness testifying at a hearing before an administrative law judge, or whose deposition is taken, shall receive the same fees and mileage as witnesses in courts of the United States. If the witness is an expert, he or she shall be entitled to an expert witness fee. Except as provided in paragraphs (b) and (c) of this section, such fees shall be paid by the proponent of the witness.

(b) If the witness' proponent does not intend to call the witness to appear at hearing or deposition, any other party may subpoena the witness for cross-examination. If such witness is required to attend the hearing, give a deposition or respond to interrogatories for cross-examination purposes, the subpoenaing party shall pay the witness' fee. If the witness' proponent does call the witness to testify as part of its case, then cross-examination of that witness by any other party will not shift liability for fees and costs from the proponent to the other party or parties.

(c) If a claimant is determined entitled to benefits, there may be assessed as costs against a responsible operator, if any, or the fund, fees and mileage for necessary witnesses attending the hearing at the request of the claimant. Both the necessity for the witness and the reasonableness of the fees of any expert witness shall be approved by the administrative law judge. The amounts awarded against a responsible operator or the fund as attorney's fees, or costs, fees and mileage for witnesses, shall not in any respect affect or diminish benefits payable under the Act.

§ 725.460 Consolidated hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one claim may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

§ 725.461 Waiver of right to appear and present evidence.

(a) If all parties waive their right to appear before the administrative law judge, it shall not be necessary for the administrative law judge to give notice of, or conduct, an oral hearing. A waiver of the right to appear shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge assigned to hear the case. Such waiver may be withdrawn by a party for good cause shown at any time prior to the mailing of the decision in the claim. Even though all of the parties have filed a waiver of the right to appear, the administrative law judge may, nevertheless, after giving notice of the time and place, conduct a hearing if he or she believes that the personal appearance and testimony of the party or parties would assist in ascertaining the facts in issue in the claim. Where a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant documentary evidence submitted in accordance with this part and any further written stipulations of the parties. Such documents and stipulations shall be considered the evidence of record in the case and the decision shall be based upon such evidence.

(b) Except as provided in § 725.456(a), the unexcused failure of any party to attend a hearing shall constitute a waiver of such party's right to present evidence at the hearing, and may result in a dismissal of the claim (see § 725.465).

§ 725.462 Withdrawal of controversion of issues set for formal hearing; effect.

A party may, on the record, withdraw his or her controversion of any or all issues set for hearing. If a party withdraws his or her controversion of all issues, the administrative law judge shall remand the case to the district director for the issuance of an appropriate order.

§ 725.463 Issues to be resolved at hearing; new issues.

(a) Except as otherwise provided in this section, the hearing shall be confined to those contested issues which have been identified by the district director (see § 725.421) or any other issue raised in writing before the district director.

(b) An administrative law judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the district director. Such new issue may be raised upon application of any party, or upon an administrative law judge's own motion, with notice to all parties, at any time after a claim has been transmitted by the district director to the Office of Administrative Law Judges and prior to decision by an administrative law judge. If a new issue is raised, the administrative law judge may, in his or her discretion, either remand the case to the district director with instructions for further proceedings, hear and resolve the new issue, or refuse to consider such new issue.

(c) If a new issue is to be considered by the administrative law judge, a party may, upon request, be granted an appropriate continuance.

§ 725.464 Record of hearing.

All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

§ 725.465 Dismissals for cause.

(a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

(1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;

(2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge; or

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(3) Where there has been a prior final adjudication of the claim or defense to the claim under the provisions of this subchapter and no new evidence is submitted (except as provided in part 727 of this subchapter; see § 725.4(d)).

(b) A party who is not a proper party to the claim (see § 725.360) shall be dismissed by the administrative law judge.

(c) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

(d) No claim shall be dismissed in a case with respect to which payments prior to final adjudication have been made to the claimant in accordance with § 725.522, except upon the motion or written agreement of the Director.

§ 725.466 Order of dismissal.

(a) An order dismissing a claim shall be served on the parties in accordance with § 725.478. The dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits, except as provided in paragraph (b) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board.

(b) Where the Chief Administrative Law Judge or the presiding administrative law judge issues a decision and order dismissing the claim after a show cause proceeding, the district director shall terminate any payments being made to the claimant under § 725.522, and the order of dismissal shall, if appropriate, order the claimant to reimburse the fund for all benefits paid to the claimant.

§ 725.475 Termination of hearings.

Hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§ 725.476 Issuance of decision and order.

Within 20 days after the official termination of the hearing (see § 725.475), the administrative law judge shall issue a decision and order with respect to the claim making an award to the claimant, rejecting the claim, or taking such other action as is appropriate.

§ 725.477 Form and contents of decision and order.

(a) Orders adjudicating claims for benefits shall be designated by the term "decision and order" or "supplemental decision and order" as appropriate, followed by a descriptive phrase designating the particular type of order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award."

(b) A decision and order shall contain a statement of the basis of the order, the names of the parties, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance. A decision and order shall be based upon the record made before the administrative law judge.

§ 725.478 Filing and service of decision and order.

On the date of issuance of a decision and order under § 725.477, the administrative law judge shall serve the decision and order on all parties to the claim by certified mail. On the same date, the original record of the claim shall be sent to the DCMWC in Washington, D.C. Upon receipt by the DCMWC, the decision and order shall be considered to be filed in the office of the district director, and shall become effective on that date.

§ 725.479 Finality of decisions and orders.

(a) A decision and order shall become effective when filed in the office of the district director (see § 725.478), and unless proceedings for suspension or setting aside of such order are instituted within 30 days of such filing, the order shall become final at the expiration of the 30th day after such filing (see § 725.481).

(b) Any party may, within 30 days after the filing of a decision and order under § 725.478, request a reconsideration of such decision and order by the administrative law judge. The procedures to be followed in the reconsideration of a decision and order shall be determined by the administrative law judge.

(c) The time for appeal to the Benefits Review Board shall be suspended during the consideration of a request for reconsideration. After the administrative law judge has issued and filed a denial of the request for reconsideration, or a revised decision and order in accordance with this part, any dissatisfied party shall have 30 days within which to institute proceedings to set aside the decision and order on reconsideration.

(d) Regardless of any defect in service, actual receipt of the decision is sufficient to commence the 30-day period for requesting reconsideration or appealing the decision.

§ 725.480 Modification of decisions and orders.

A party who is dissatisfied with a decision and order which has become final in accordance with § 725.479 may request a modification of the decision and order if the conditions set forth in § 725.310 are met.

§ 725.481 Right to appeal to the Benefits Review Board.

Any party dissatisfied with a decision and order issued by an administrative law judge may, before the decision and order becomes final (see § 725.479), appeal the decision and order to the Benefits Review Board. A notice of appeal shall be filed with the Board. Proceedings before the Board shall be conducted in accordance with part 802 of this title.

§ 725.482 Judicial review.

(a) Any person adversely affected or aggrieved by a final order of the Benefits Review Board may obtain a review of that order in the U.S. court of appeals for the circuit in which the injury occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

(b) The Director, Office of Workers' Compensation Program, as designee of the Secretary of Labor responsible for the administration and enforcement of the Act, shall be considered the proper party to appear and present argument on behalf of the Secretary of Labor in all review proceedings conducted pursuant to this part and the Act, either as petitioner or respondent.

§ 725.483 Costs in proceedings brought without reasonable grounds.

If a United States court having jurisdiction of proceedings regarding any claim or final decision and order, determines that the proceedings have been instituted or continued before such court without reasonable ground, the costs of such proceedings shall be assessed against the party who has so

instituted or continued such proceedings.

Subpart G—Responsible Coal Mine Operators

General Provisions

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 was to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to most claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. The 1981 amendments to the Act relieved individual coal mine operators from the liability for payment of certain special claims involving coal mine employment on or after January 1, 1970, where the claim was previously denied and subsequently approved under section 435 of the Act. See § 725.496 for a detailed description of these special claims. Where no such operator exists or the operator determined to be liable is in default in any case, the fund shall pay the benefits due and seek reimbursement as is appropriate. See also § 725.420 for the fund's role in the payment of interim benefits in certain contested cases. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

(b) The provisions of this subpart define the term "operator" and prescribe the manner in which the identity of an operator which may be liable for the payment of benefits—referred to herein as a "responsible operator"—will be determined.

§ 725.491 Operator defined.

(a) For purposes of this part, the term "operator" shall include:

(1) Any owner, lessee, or other person who operates, controls, or supervises a coal mine, or any independent contractor performing services or construction at such mine; or

(2) Any other person who:

(i) Employs an individual in the transportation of coal or in coal mine construction in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see § 725.202);

(ii) In accordance with the provisions of § 725.492, may be considered a successor operator; or

(iii) Paid wages or a salary, or provided other benefits, to an individual in exchange for work as a miner (see § 725.202).

(b) The terms "owner," "lessee," and "person" shall include any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization, as appropriate, except that an officer of a corporation shall not be considered an "operator" for purposes of this part. Following the issuance of an order awarding benefits against a corporation that has not secured its liability for benefits in accordance with section 423 of the Act and § 726.4, such order may be enforced against the president, secretary, or treasurer of the corporation in accordance with subpart I of this part.

(c) The term "independent contractor" shall include any person who contracts to perform services. Such contractor's status as an operator shall not be contingent upon the amount or percentage of its work or business related to activities in or around a mine, nor upon the number or percentage of its employees engaged in such activities.

(d) For the purposes of determining whether a person is or was an operator that may be found liable for the payment of benefits under this part, there shall be a rebuttable presumption that during the course of an individual's employment with such employer, such individual was regularly and continuously exposed to coal dust during the course of employment. The presumption may be rebutted by a showing that the employee was not exposed to coal dust for significant periods during such employment.

(e) The operation, control, or supervision referred to in paragraph (a)(1) of this section may be exercised directly or indirectly. Thus, for example, where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor may be considered an operator. Similarly, any parent entity or other controlling business entity may be considered an operator for purposes of this part, regardless of the nature of its business activities.

(f) Neither the United States, nor any State, nor any instrumentality or agency of the United States or any State, shall be considered an operator.

§ 725.492 Successor operator defined.

(a) Any person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof, shall be considered a "successor operator" with respect to any miners previously employed by such prior operator.

(b) The following transactions shall also be deemed to create successor operator liability:

(1) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected;

(2) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation; or

(3) If an operator ceases to exist by reason of a sale of substantially all its assets, or as a result of merger, consolidation, or division.

(c) In any case in which a transaction specified in paragraph (b), or substantially similar to a transaction specified in paragraph (b) took place, the resulting entity shall be considered a "successor operator" with respect to any miners previously employed by such prior operator.

(d) This section shall not be construed to relieve a prior operator of any liability if such prior operator meets the conditions set forth in § 725.494. If the prior operator does not meet the conditions set forth in § 725.494, the following provisions shall apply:

(1) In any case in which a prior operator transferred a mine or mines, or substantially all of the assets thereof, to a successor operator, or sold its coal mining business or substantially all of the assets thereof, to a successor operator, and then ceased to exist, within the terms of paragraph (b), the successor operator as identified in paragraph (a) shall be primarily liable for the payment of benefits to any miners previously employed by such prior operator.

(2) In any case in which a prior operator transferred mines, or substantially all of the assets thereof, to more than one successor operator, the successor operator that most recently acquired a mine or mines or assets from the prior operator shall be primarily liable for the payment of benefits to any

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miners previously employed by such prior operator.

(3) In any case in which a mine or mines, or substantially all the assets thereof, have been transferred more than once, the successor operator that most recently acquired such mine or mines or assets shall be primarily liable for the payment of benefits to any miners previously employed by the original prior operator. If the most recent successor operator does not meet the criteria for a potentially liable operator set forth in § 725.494, the next most recent successor operator shall be liable.

(e) An "acquisition," for purposes of this section, shall include any transaction by which title to the mine or mines, or substantially all of the assets thereof, or the right to extract or prepare coal at such mine or mines, becomes vested in a person other than the prior operator.

§ 725.493 Employment relationship defined.

(a)(1) In determining the identity of a responsible operator under this part, the terms "employ" and "employment" shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees.

(2) The payment of wages or salary shall be prima facie evidence of the right to direct, control, or supervise an individual's work, and the Department intends that where the operator who paid a miner's wages or salary meets the criteria for a potentially liable operator set forth in § 725.494, that operator shall be primarily liable for the payment of any benefits due the miner as a result of such employment. The absence of such payment, however, will not negate the existence of an employment relationship. Thus, the Department also intends that where the person who paid a miner's wages may not be considered a potentially liable operator, any other operator who retained the right to direct, control or supervise the work performed by the miner, or who benefitted from such work, may be considered a potentially liable operator.

(b) This paragraph contains examples of relationships that shall be considered employment relationships for purposes of this part. The list is not intended to be exclusive.

(1) In any case in which an operator may be considered a successor operator, as determined in accordance with § 725.492, any employment with a prior operator shall also be deemed to be employment with the successor operator. In a case in which the miner was not independently employed by the successor operator, the prior operator shall remain primarily liable for the payment of any benefits based on the miner's employment with the prior operator. In a case in which the miner was independently employed by the successor operator after the transaction giving rise to successor operator liability, the successor operator shall be primarily liable for the payment of any benefits.

(2) In any case in which the operator which directed, controlled or supervised the miner is no longer in business and such operator was a subsidiary of a parent company, a member of a joint venture, a partner in a partnership, or was substantially owned or controlled by another business entity, such parent entity or other member of a joint venture or partner or controlling business entity may be considered the employer of any employees of such operator.

(3) In any claim in which the operator which directed, controlled or supervised the miner is a lessee, the lessee shall be considered primarily liable for the claim. The liability of the lessor may be established only after it has been determined that the lessee is unable to provide for the payment of benefits to a successful claimant. In any case involving the liability of a lessor for a claim arising out of employment with a lessee, any determination of lessor liability shall be made on the basis of the facts present in the case in accordance with the following considerations:

(i) Where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor shall be considered the employer of any employees of the lessee.

(ii) Where a coal mine is leased to a self-employed operator, the lessor shall be considered the employer of such self-employed operator and its employees if the lease or agreement is executed or renewed after August 18, 1978 and such lease or agreement does not require the lessee to guarantee the payment of benefits which may be required under this part and part 726 of this subchapter.

(iii) Where a lessor previously operated a coal mine, it may be considered an operator with respect to employees of any lessee of such mine, particularly where the leasing arrangement was executed or renewed after August 18, 1978 and does not require the lessee to secure benefits provided by the Act.

(4) A self-employed operator, depending upon the facts of the case, may be considered an employee of any other operator, person, or business entity which substantially controls, supervises, or is financially responsible for the activities of the self-employed operator.

§ 725.494 Potentially liable operators.

An operator may be considered a "potentially liable operator" with respect to a claim for benefits under this part if each of the following conditions is met:

(a) The miner's disability or death shall have arisen at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, or by a person with respect to which the operator may be considered a successor operator. For purposes of this section, there shall be a rebuttable presumption that the miner's disability or death arose in whole or in part out of his or her employment with such operator. Unless this presumption is rebutted, the responsible operator shall be liable to pay benefits to the claimant on account of the disability or death of the miner in accordance with this part. A miner's pneumoconiosis, or disability or death therefrom, shall be considered to have arisen in whole or in part out of work in or around a mine if such work caused, contributed to or aggravated the progression or advancement of a miner's loss of ability to perform his or her regular coal mine employment or comparable employment.

(b) The operator, or any person with respect to which the operator may be considered a successor operator, shall have been an operator for any period after June 30, 1973.

(c) The miner shall have been employed by the operator, or any person with respect to which the operator may be considered a successor operator, for a cumulative period of not less than one year (§ 725.101(a)(32)).

(d) The miner's employment with the operator, or any person with respect to which the operator may be considered a successor operator, shall have included at least one working day

(§ 725.101(a)(32)) after December 31, 1969.

(e) The operator shall be capable of assuming its liability for the payment of continuing benefits under this part. An operator will be deemed capable of assuming its liability for a claim if one of the following three conditions is met:

(1) The operator obtained a policy or contract of insurance under section 423 of the Act and part 726 of this subchapter that covers the claim, except that such policy shall not be considered sufficient to establish the operator's capability of assuming liability if the insurance company has been declared insolvent and its obligations for the claim are not otherwise guaranteed;

(2) The operator qualified as a self-insurer under section 423 of the Act and part 726 of this subchapter during the period in which the miner was last employed by the operator, provided that the operator still qualifies as a self-insurer or the security given by the operator pursuant to § 726.104(b) is sufficient to secure the payment of benefits in the event the claim is awarded; or

(3) The operator possesses sufficient assets to secure the payment of benefits in the event the claim is awarded in accordance with § 725.606 of this part.

§ 725.495 Criteria for determining a responsible operator.

(a)(1) The operator responsible for the payment of benefits in a claim adjudicated under this part (the "responsible operator") shall be the potentially liable operator, as determined in accordance with § 725.494, that most recently employed the miner.

(2) If more than one potentially liable operator may be deemed to have employed the miner most recently, then the liability for any benefits payable as a result of such employment shall be assigned as follows:

(i) First, to the potentially liable operator that directed, controlled, or supervised the miner;

(ii) Second, to any potentially liable operator that may be considered a successor operator with respect to miners employed by the operator identified in paragraph (a)(2)(i); and

(iii) Third, to any other potentially liable operator which may be deemed to have been the miner's most recent employer pursuant to § 725.493 of this part.

(3) If the operator that most recently employed the miner may not be considered a potentially liable operator, as determined in accordance with § 725.494, the responsible operator shall be the potentially liable operator that next most recently employed the miner. Any potentially liable operator that employed the miner for at least one day after December 31, 1969 may be deemed the responsible operator if no more recent employer may be considered a potentially liable operator.

(b) Except as provided in this section and § 725.408(a)(3) of this part, with respect to the adjudication of the identity of a responsible operator, the Director shall bear the burden of proving that the responsible operator initially found liable for the payment of benefits pursuant to § 725.410 of this part (the "designated responsible operator") is a potentially liable operator. It shall be presumed, in the absence of evidence to the contrary, that the designated responsible operator is capable of assuming liability for the payment of benefits in accordance with § 725.494(e) of this part.

(c) The designated responsible operator shall bear the burden of proving either:

(1) that it does not possess sufficient assets to secure the payment of benefits in accordance with § 725.606 of this part; or

(2) that it is not the potentially liable operator that most recently employed the miner. Such proof must include evidence that the miner was employed as a miner after he or she stopped working for the designated responsible operator and that the person by whom he or she was employed is a potentially liable operator within the meaning of § 725.494. In order to establish that a more recent employer is a potentially liable operator, the designated responsible operator must demonstrate that the more recent employer possesses sufficient assets to secure the payment of benefits in accordance with § 725.606 of this part. The designated responsible operator may satisfy its burden by presenting evidence that the owner, if the more recent employer is a sole proprietorship; the partners, if the more recent employer is a partnership; or the president, secretary, and treasurer, if the more recent employer is a corporation that failed to secure the payment of benefits pursuant to part 726 of this subchapter, possess assets sufficient to secure the payment of benefits, provided such assets may be reached in a proceeding brought under subpart I of this part.

(d) In any case referred to the Office of Administrative Law Judges pursuant to § 725.421 in which the responsible operator initially found liable for the payment of benefits pursuant to § 725.410 is not the operator that most recently employed the miner, the record shall contain a statement from the district director explaining the reasons for such initial finding. If the reasons include the most recent employer's failure to meet the conditions of § 725.494(e), the record shall also contain a statement that the Office has searched the files it maintains pursuant to part 726, and that the Office has no record of insurance coverage for that employer, or of authorization to self-insure, that meets the conditions of § 725.494(e)(1) or (e)(2). Such a statement shall be prima facie evidence that the most recent employer is not financially capable of assuming its liability for a claim. In the absence of such a statement, it shall be presumed that the most recent employer is financially capable of assuming its liability for a claim.

§ 725.496 Special claims transferred to the fund.

(a) The 1981 amendments to the Act amended section 422 of the Act and transferred liability for payment of certain special claims from operators and carriers to the fund. These provisions apply to claims which were denied before March 1, 1978, and which have been or will be approved in accordance with section 435 of the Act.

(b) Section 402(i) of the Act defines three classes of denied claims subject to the transfer provisions:

(1) Claims filed with and denied by the Social Security Administration before March 1, 1978;

(2) Claims filed with the Department of Labor in which the claimant was notified by the Department of an administrative or informal denial before March 1, 1977, and in which the claimant did not within one year of such notification either:

(i) Request a hearing; or

(ii) Present additional evidence; or

(iii) Indicate an intention to present additional evidence; or

(iv) Request a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact.

(3) Claims filed with the Department of Labor and denied under the law in effect prior to the enactment of the Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving

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dependent of a miner, unless such claims were required to be merged by the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document with the Social Security Administration in accordance with section 435(a) and its implementing regulations at 20 CFR 410.700 through 410.707.

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

§ 725.497 Procedures in special claims transferred to the fund.

(a) *General.* It is the purpose of this section to define procedures to expedite the handling and disposition of claims affected by the benefit liability transfer provisions of Section 205 of the Black Lung Benefits Amendments of 1981.

(b) *Action by the Department.* The OWCP shall, in accordance with the criteria contained in § 725.496, review each claim which is or may be affected by the provisions of Section 205 of the Black Lung Benefits Amendments of 1981. Any party to a claim, adjudication officer, or adjudicative body may request that such a review be conducted and that the record be supplemented with any additional documentation necessary for an informed consideration of the transferability of the claim. Where the issue of the transferability of the claim can not be resolved by agreement of the parties and the evidence of record is not sufficient for a resolution of the issue, the hearing record may be reopened or the case remanded for the development of the additional evidence concerning the procedural history of the claim necessary to such resolution. Such determinations shall be made on an expedited basis.

(c) *Dismissal of operators.* If it is determined that a coal mine operator or insurance carrier which previously participated in the consideration or adjudication of any claim, may no longer be found liable for the payment of benefits to the claimant by reason of section 205 of the Black Lung Benefits Amendments of 1981, such operator or carrier shall be promptly dismissed as a party to the claim. The dismissal of an operator or carrier shall be concluded at the earliest possible time and in no event shall an operator or carrier participate as a necessary party in any claim for which only the fund may be liable.

(d) *Procedure following dismissal of an operator.* After it has been determined that an operator or carrier must be dismissed as a party in any claim in accordance with this section, the Director shall take such action as is authorized by the Act to bring about the proper and expeditious resolution of the claim in light of all relevant medical and other evidence. Action to be taken in this regard by the Director may include, but is not limited to, the assignment of the claim to the Black Lung Disability Trust Fund for the payment of benefits, the reimbursement of benefits previously paid by an operator or carrier if appropriate, the defense of the claim on behalf of the fund, or proceedings authorized by § 725.310.

(e) Any claimant whose claim has been subsequently denied in a modification proceeding will be entitled to expedited review of the modification decision. Where a formal hearing was previously held, the claimant may waive his right to a further hearing and ask that a decision be made on the record of the prior hearing, as supplemented by any additional documentary evidence which the parties wish to introduce and briefs of the parties, if desired. In any case in which the claimant waives his right to a second hearing, a decision and order must be issued within 30 days of the date upon which the parties agree the record has been completed.

Subpart H—Payment of Benefits

General Provisions

§ 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under section 415 and part C of title IV of the Act or approved after review under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

§ 725.502 When benefit payments are due; manner of payment.

(a)(1) Except with respect to benefits paid by the fund pursuant to an initial determination issued in accordance with § 725.418 (see § 725.522), benefits under the Act shall be paid when they become due. Benefits shall be considered due after the issuance of an effective order requiring the payment of benefits by a district director, administrative law judge, Benefits Review Board, or court, notwithstanding the pendency of a motion for reconsideration before an administrative law judge or an appeal to the Board or court, except that benefits shall not be considered due where the payment of such benefits has been stayed by the Benefits Review Board or appropriate court. An effective order shall remain in effect unless it is vacated by an administrative law judge on reconsideration, or, upon review under section 21 of the LHWCA, by the Benefits Review Board or an appropriate court, or is superseded by an effective order issued pursuant to § 725.310.

(2) A proposed order issued by a district director pursuant to § 725.418 becomes effective at the expiration of the thirtieth day thereafter if no party timely requests revision of the proposed decision and order or a hearing (see § 725.419). An order issued by an administrative law judge becomes effective when it is filed in the office of the district director (see § 725.479). An order issued by the Benefits Review Board shall become effective when it is issued. An order issued by a court shall become effective in accordance with the rules of the court.

(b)(1) While an effective order requiring the payment of benefits remains in effect, monthly benefits, at the rates set forth in § 725.520, shall be due on the first business day of the month following the month for which the benefits are payable. For example, benefits payable for the month of January shall be due on the first business day in February.

(2) Within 30 days after the issuance of an effective order requiring the payment of benefits, the district director shall compute the amount of benefits payable for periods prior to the effective date of the order, in addition to any interest payable for such periods (see § 725.608), and shall so notify the parties. Any computation made by the district director under this paragraph shall strictly observe the terms of the order. Benefits and interest payable for such periods shall be due on the thirtieth day following issuance of the district director's computation. A copy of the current table of applicable interest rates shall be attached.

(c) Benefits are payable for monthly periods and shall be paid directly to an eligible claimant or his or her representative payee (see § 725.510) beginning with the month during which eligibility begins. Benefit payments shall terminate with the month before the month during which eligibility terminates. If a claimant dies in the first month during which all requirements for eligibility are met, benefits shall be paid for that month.

§ 725.503 Date from which benefits are payable.

(a) In accordance with the provisions of section 6(a) of the Longshore Act as incorporated by section 422(a) of the Act, and except as provided in § 725.504, the provisions of this section shall be applicable in determining the date from which benefits are payable to an eligible claimant for any claim filed after March 31, 1980. Except as provided in paragraph (d), the date from which benefits are payable for any claim approved under part 727 shall be determined in accordance with § 727.302 (see § 725.4(d)).

(b) *Miner's claim.* In the case of a miner who is entitled to benefits, benefits are payable to such miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment. Where the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed. In the case of a miner who filed a claim before January 1, 1982, benefits shall be payable to the miner's eligible survivor (if any) beginning with the month in which the miner died.

(c) *Survivor's claim.* In the case of an eligible survivor, benefits shall be payable beginning with the month of the miner's death, or January 1, 1974, whichever is later.

(d) If a claim is awarded pursuant to section 22 of the Longshore Act and § 725.310, then the date from which benefits are payable shall be determined as follows:

(1) *Mistake in fact.* The provisions of paragraphs (b) or (c) of this section, as applicable, shall govern the determination of the date from which benefits are payable.

(2) *Change in conditions.* Benefits are payable to a miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment, provided that no benefits shall be payable for any month prior to the effective date of the most recent denial of the claim by a district director or administrative law judge. Where the evidence does not establish the month of onset, benefits shall be payable to such miner from the month of the earliest evidence the adjudication officer finds supportive of a condition of entitlement (see § 725.202(d)) not previously resolved in favor of the claimant in the denial of benefits the claimant seeks to modify, provided that such evidence was developed after the date upon which the most recent denial by a district director or administrative law judge became effective.

(e) In the case of a claim filed between July 1, 1973, and December 31, 1973, benefits shall be payable as provided by this section, except to the extent prohibited by § 727.303 (see § 725.4(d)).

(f) No benefits shall be payable with respect to a claim filed after December 31, 1973 (a part C claim), for any period of eligibility occurring before January 1, 1974.

(g) Each decision and order awarding benefits shall indicate the month from which benefits are payable to the eligible claimant.

§ 725.504 Payments to a claimant employed as a miner.

(a) In the case of a claimant who is employed as a miner (see § 725.202) at the time of a final determination of such miner's eligibility for benefits, no benefits shall be payable unless:

(1) The miner's eligibility is established under section 411(c)(3) of the Act; or

(2) The miner terminates his or her coal mine employment within 1 year from the date of the final determination of the claim.

(b) If the eligibility of a working miner is established under section 411(c)(3) of the Act, benefits shall be payable as is otherwise provided in this part. If eligibility cannot be established under section 411(c)(3), and the miner continues to be employed as a miner in any capacity for a period of less than 1 year after a final determination of the claim, benefits shall be payable beginning with the month during which the miner ends his or her coal mine employment. If the miner's employment continues for more than 1 year after a final determination of eligibility, such determination shall be considered a denial of benefits on the basis of the miner's continued employment, and the miner may seek benefits only as provided in § 725.310, if applicable, or by filing a new claim under this part. The provisions of Subparts E and F of this part shall be applicable to claims considered under this section as is appropriate.

(c) In any case where the miner returns to coal mine or comparable and gainful work, the payments to such miner shall be suspended and no benefits shall be payable (except as provided in section 411(c)(3) of the Act) for the period during which the miner continues to work. If the miner again terminates employment, the district director may require the miner to submit to further medical examination before authorizing the payment of benefits.

§ 725.505 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

§ 725.506 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary, his or her representative payee (see § 725.510) or his or her legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law to assume control of and responsibility for the care of the beneficiary, the management of his or her estate, or both.

§ 725.507 Guardian for minor or incompetent.

An adjudication officer may require that a legal guardian or representative be appointed to receive benefit payments payable to any person who is mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties otherwise required of such person under the Act.

§ 725.510 Representative payee.

(a) If the district director determines that the best interests of a beneficiary are served thereby, the district director may certify the payment of such beneficiary's benefits to a representative payee.

(b) Before any amount shall be certified for payment to any

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representative payee for or on behalf of a beneficiary, such representative payee shall submit to the district director such evidence as may be required of his or her relationship to, or his or her responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his or her authority to receive such a payment. The district director may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If a person requesting representative payee status fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him or her on behalf of the beneficiary unless the required evidence is thereafter submitted.

(c) All benefit payments made to a representative payee shall be available only for the use and benefit of the beneficiary, as defined in § 725.511.

§ 725.511 Use and benefit defined.

(a) Payments certified to a representative payee shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability of the beneficiary. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution and charges made for the current and foreseeable needs of the beneficiary which are not met by the institution.

(b) Payments certified to a representative payee which are not needed for the current maintenance of the beneficiary, except as they may be used under § 725.512, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds which shall be purchased in accordance with applicable regulations of the U.S. Treasury Department (31 CFR part 315). Surplus funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

Name of beneficiary _____
by (Name of representative payee)
representative payee,
or (Name of beneficiary)
by (Name of representative payee) trustee,

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows: (Name of beneficiary) (Social Security No.), for whom (Name of payee) is representative payee for black lung benefits.

§ 725.512 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 725.513 Accountability; transfer.

(a) The district director may require a representative payee to submit periodic reports including a full accounting of the use of all benefit payments certified to a representative payee. If a requested report or accounting is not submitted within the time allowed, the district director shall terminate the certification of the representative payee and thereafter payments shall be made directly to the beneficiary. A certification which is terminated under this section may be reinstated for good cause, provided that all required reports are supplied to the district director.

(b) A representative payee who has conserved or invested funds from payments under this part shall, upon the direction of the district director, transfer any such funds (including interest) to a successor payee appointed by the district director or, at the option of the district director, shall transfer such funds to the Office for recertification to a successor payee or the beneficiary.

§ 725.514 Certification to dependent of augmentation portion of benefit.

(a) If the basic benefit of a miner or of a surviving spouse is augmented because of one or more dependents, and it appears to the district director that the best interests of such dependent would be served thereby, or that the augmented benefit is not being used for the use and benefit (as defined in this subpart) of the augmentee, the district director may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly, or to a legal guardian or a representative payee for the use and benefit of such dependent.

(b) Any request to the district director to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) The district director shall specify the terms and conditions of any certification authorized under this section and may terminate any such certification where appropriate.

(d) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment, except that such payment shall not be construed to abridge the rights of any party to recoup any overpayment made.

§ 725.515 Assignment and exemption from claims of creditors.

Except as provided by the Act and this part, no assignment, release, or commutation of benefits due or payable under this part shall be valid, and all benefits shall be exempt from claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

Benefit Rates

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 37½ percent of the monthly pay rate for Federal employees in GS–2, step 1. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12; and

(3) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.375 (that is, by 37½ percent).

(b) *Basic benefit.* When a miner or surviving spouse is entitled to benefits for a month for which he or she has no dependents who qualify under this part and when a surviving child of a miner or spouse, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the

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amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next high multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or surviving spouse is entitled to benefits for a month for which he or she has one or more dependents who qualify under this part, the amount of benefits to which such miner or surviving spouse is entitled is increased. This increase is referred to as an "augmentation."

(2) The benefits of a miner or surviving spouse are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in this part, except in the case of a child who qualifies as a dependent because he or she is a student. In the latter case, such benefits continue to be augmented through the month before the first month during no part of which he or she qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefits.* As used in this section, "survivor" means a surviving child of a miner or surviving spouse, or a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under this part.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(3) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

(f) *Eligibility based on the coal mine employment of more than one miner.* Where an individual, for any month, is entitled (and/or qualifies as a dependent for purposes of augmentation of benefits) based on the disability or death due to pneumoconiosis arising out of the coal mine employment of more than one miner, the benefit payable to or on behalf of such individual shall be at a rate equal to the highest rate of benefits for which entitlement is established by reason of eligibility as a beneficiary, or by reason of his or her qualification as a dependent for augmentation of benefit purposes.

§ 725.521 Commutation of payments; lump sum awards.

(a) Whenever the district director determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the district director in the manner prescribed by the district director. If the district director determines that an award of a lump sum payment of such benefits would be in the interest of justice, he or she shall refer such application, together with the reasons in support of such determination, to the Director for consideration.

(c) The Director shall, in his or her discretion, grant or deny the application for commutation of payments. Such decision may be appealed to the Benefits Review Board.

(d) The computation of all commutations of such benefits shall be made by the OWCP. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he or she is entitled to benefits, shall be determined in accordance with the most current United States Life Tables, as developed by the Department of Health, Education, and Welfare, and the probability of the remarriage of a surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from its responsibility to make monthly benefit payments under the Act to the person who has requested such lump-sum award. In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall not be liable for any portion of a commuted or lump sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award is approved under this section, such award shall not operate to discharge an operator carrier, or the fund from any responsibility imposed by the Act for the payment of medical benefits to an eligible miner.

§ 725.522 Payments prior to final adjudication.

(a) If an operator or carrier fails or refuses to commence the payment of benefits within 30 days of issuance of an initial determination of eligibility by the district director (see § 725.420), or fails or refuses to commence the payment of any benefits due pursuant to an effective order by a district director, administrative law judge, Benefits Review Board, or court, the fund shall commence the payment of such benefits and shall continue such payments as appropriate. In the event that the fund undertakes the payment of benefits on behalf of an operator or carrier, the provisions of §§ 725.601 through 725.609 shall be applicable to such operator or carrier.

(b) If benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments pursuant to § 725.540 of this subpart and may be recovered in accordance with the provisions of this subpart.

Special Provisions for Operator Payments

§ 725.530 Operator payments; generally.

(a) Benefits payable by an operator or carrier pursuant to an effective order issued by a district director, administrative law judge, Benefits Review Board, or court, or by an operator that has agreed that it is liable for the payment of benefits to a claimant, shall be paid by the operator

or carrier immediately when they become due (see § 725.502(b)). An operator that fails to pay any benefits that are due, with interest, shall be considered in default with respect to those benefits, and the provisions of § 725.605 of this part shall be applicable. In addition, a claimant who does not receive any benefits within 10 days of the date they become due is entitled to additional compensation equal to twenty percent of those benefits (see § 725.607). Arrangements for the payment of medical costs shall be made by such operator or carrier in accordance with the provisions of subpart J of this part.

(b) Benefit payments made by an operator or carrier shall be made directly to the person entitled thereto or a representative payee if authorized by the district director. The payment of a claimant's attorney's fee, if any is awarded, shall be made directly to such attorney. Reimbursement of the fund, including interest, shall be paid directly to the Secretary on behalf of the fund.

§ 725.531 Receipt for payment.

Any individual receiving benefits under the Act in his or her own right, or as a representative payee, or as the duly appointed agent for the estate of a deceased beneficiary, shall execute receipts for benefits paid by any operator which shall be produced by such operator for inspection whenever the district director requires. A canceled check shall be considered adequate receipt of payment for purposes of this section. No operator or carrier shall be required to retain receipts for payments made for more than 5 years after the date on which such receipt was executed.

(Approved by the Office of Management and Budget under control number 1215–0124)

(Pub. L. No. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

§ 725.532 Suspension, reduction, or termination of payments.

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the district director, administrative law judge, Board, or court. No suspension, reduction, or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in subpart C of this part, §§ 725.306 and 725.310, or this subpart (see also §§ 725.533 through 725.546).

(b) Any unauthorized suspension in the payment of benefits by an operator or carrier shall be treated as provided in subpart I.

(c) Unless suspension, reduction, or termination of benefits payments is required by an administrative law judge, the Benefits Review Board or a court, the district director, after receiving notification of the occurrence of an event that would require the suspension, reduction, or termination of benefits, shall follow the procedures for the determination of claims set forth in subparts E and F.

Increases and Reductions of Benefits

§ 725.533 Modification of benefits amounts; general.

(a) Under certain circumstances the amount of monthly benefits as computed in § 725.520 or lump-sum award (§ 725.521) shall be modified to determine the amount actually to be paid to a beneficiary. With respect to any benefits payable for all periods of eligibility after January 1, 1974, a reduction of the amount of benefits payable shall be required on account of:

(1) Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal law including part B of title IV of the Act because of death or partial or total disability due to pneumoconiosis; or

(3) In the case of benefits to a parent, brother, or sister as a result of a claim filed at any time or benefits payable on a miner's claim which was filed on or after January 1, 1982, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, sister, or miner, respectively; or

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such claim is effective for a payment during the month of filing, or a dependent qualifies under this part for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) With respect to periods of eligibility occurring after June 30, 1973, but before January 1, 1974, benefits shall be reduced in months of eligibility occurring during such period only:

(1) By an amount equal to any payment received under the workers' compensation, unemployment compensation, or disability insurance laws of any State on account of the disability or death of the miner due to pneumoconiosis; and

(2) On account of excess earnings under section 203 (b) through (l) of the Social Security Act; and

(3) For failure to report earnings from work in employment and self-employment within the prescribed period of time; and

(4) By reason of the fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under this part or this chapter for an augmentation portion of a benefit of a miner or surviving spouse for a month for which another dependent has previously qualified for an augmentation.

(c) With respect to claims filed between July 1 and December 31, 1973, and paid for periods of eligibility occurring during such period, there shall be no retroactive adjustment of benefits paid in light of the amendments enacted by the Black Lung Benefits Reform Act of 1977 insofar as such amendments affect events which cause a reduction in benefits.

(d) An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 725.540 through 725.546).

(e) A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of excess earnings may reasonably be expected.

(f) Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents, a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(g) Any individual entitled to a benefit, who is aware of any circumstances which could affect entitlement to benefits, eligibility for payment, or the amount of benefits, or result in the termination, suspension, or reduction of benefits, shall promptly report these circumstances to the Office. The Office may at any time require an individual receiving, or claiming entitlement to, benefits, either on his or her own behalf or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure of an individual to submit any such report or statement, properly executed, to the Office shall

subject such benefit to reductions, suspension, or termination as the case may be.

§ 725.534 Reduction of State benefits.

No benefits under section 415 of part B of title IV of the Act shall be payable to the residents of a State which, after December 31, 1969, reduces the benefits payable to persons eligible to receive benefits under section 415 of the Act under State laws applicable to its general work force with regard to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

§ 725.535 Reductions; receipt of State or Federal benefit.

(a) As used in this section the term "State or Federal benefit" means a payment to an individual on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workers' compensation. With respect to a claim for which benefits are payable for any month between July 1 and December 31, 1973, "State benefit" means a payment to a beneficiary made on account of disability or death due to pneumoconiosis under State laws relating to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitution for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with this claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consistent with State or Federal Law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable. Such expenses shall not be excluded unless established by evidence as required by the Office.

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, whose claim was filed at any time, or of a miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428 through 404.456 of this title).

§ 725.537 Reductions; retroactive effect of an additional claim for benefits.

Except as provided in § 725.212(b), beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.

(a) Ordinarily, a written request that the benefits of a miner or surviving spouse be augmented on account of a qualified dependent is made as part of the claim for benefits. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or surviving spouse), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or surviving spouse, a dependent would have qualified for augmentation purposes for a prior month of such miner's or surviving spouse's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Office may not be changed. Rather the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between:

(1) The total amount of augmented benefits certified for payment for other dependents for that month, and

(2) The permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for the month for all dependents, including the dependent filing later.

§ 725.539 More than one reduction event.

If a reduction for receipt of State or Federal benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State or Federal benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

Overpayments; Underpayments

§ 725.540 Overpayments.

(a) *General.* As used in this subpart, the term "overpayment" includes:

(1) Payment where no amount is payable under this part;

(2) Payment in excess of the amount payable under this part;

(3) A payment under this part which has not been reduced by the amounts required by the Act (see § 725.533);

(4) A payment under this part made to a resident of a State whose residents are not entitled to benefits (see §§ 725.402 and 725.403);

(5) Payment resulting from failure to terminate benefits to an individual no longer entitled thereto;

(6) Duplicate benefits paid to a claimant on account of concurrent eligibility under this part and parts 410 or 727 (see § 725.4(d)) of this title or as provided in § 725.309.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is living at the time of a determination of such overpayment, is entitled to benefits at the time of the overpayment, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not unreasonably extend the period of adjustment.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.541 Notice of waiver of adjustment or recovery of overpayment.

Whenever a determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual, to any other individual against whom adjustment or recovery of the overpayment is to be effected, and to any operator or carrier which may be liable to such overpaid individual.

§ 725.542 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual:

(a) Who is without fault, and where

(b) Adjustment or recovery would either:

(1) Defeat the purpose of title IV of the Act, or

(2) Be against equity and good conscience.

§ 725.543 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 725.542 shall be the same as those applied by the Social Security Administration under §§ 410.561 through 410.561h of this title.

§ 725.544 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* In accordance with the Federal Claims Collection Act of 1966 and applicable regulations, claims by the Office against an individual for recovery of an overpayment under this part not exceeding the sum of $ 20,000, exclusive of interest, may be compromised, or collection suspended or terminated, where such individual or his or her estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.* (1) In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office, if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having any interest in the claim.

(2) In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of $5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual; and

(ii) A claim for overpayment, regardless of the amount, will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under this part, the Office shall consider the individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office shall consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under this part would not justify enforced collection proceedings for the full amount of the claim, or where there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount may be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under this part shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings, giving due consideration to the exemption available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under this part shall be made within the time and in the manner set by the Office. A claim for the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his or her estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

(Approved by the Office of Management and Budget under control number 1215–0144)

(Pub. L. No. 96–511)

§ 725.545 Underpayments.

(a) *General.* As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment was made is living, the deficit represented by such underpayment shall be paid to such individual either in a single payment (if he or she is not entitled to a monthly benefit or if a single payment is requested by the claimant in writing) or by increasing one or more monthly benefit payments to which such individual becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment was made dies before receiving payment of the deficit or negotiating the check or checks representing payment of the deficit, such payment shall be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death; or

(ii) In the case of a deceased miner, entitled for the month of death to black lung benefits as his or her surviving spouse or surviving divorced spouse.

(2) In the case of a deceased miner or spouse his or her child entitled to benefits as the surviving child of such miner or surviving spouse for the month in which such miner or spouse died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Deceased beneficiary.* In the event that a person, who is otherwise qualified to receive payments as the result of a deficit caused by an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his or her share of the underpayment shall be divided among the remaining living person(s) in the same order or priority. In the event that there is (are) no other such person(s), the underpayment shall be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying for receipt of an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority under applicable law to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance."* A person is considered to give the Office "good acquittance" when payment to that person will release the Office from further liability for such payment.

§ 725.546 Relation to provisions for reductions or increases.

The amount of an overpayment or an underpayment is the difference between the amount to which the beneficiary was actually entitled and the amount paid. Overpayment and underpayment simultaneously outstanding against the same beneficiary shall first be adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 725.547 Applicability of overpayment and underpayment provisions to operator or carrier.

(a) The provisions of this subpart relating to overpayments and underpayments shall be applicable to overpayments and underpayments made by responsible operators or their insurance carriers, as appropriate.

(b) No operator or carrier may recover, or make an adjustment of, an overpayment without prior application to, and approval by, the Office which shall exercise final supervisory authority over the recovery or adjustment of all overpayments.

(c) In any case involving either overpayments or underpayments, the Office may take any necessary action, and district directors may issue appropriate orders to protect the rights of the parties.

(d) Disputes arising out of orders so issued shall be resolved by the procedures set out in subpart F of this part.

Subpart I—Enforcement of Liability; Reports

§ 725.601 Enforcement generally.

(a) The Act, together with certain incorporated provisions from the Longshoremen's and Harbor Workers' Compensation Act, contains a number of provisions which subject an operator or other employer, claimants and others to penalties for failure to comply with certain provisions of the Act, or failure to commence and continue prompt periodic payments to a beneficiary.

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director shall invoke and execute the lien on the property of the operator as described in § 725.603. Enforcement of this lien shall be pursued in an appropriate U.S. district court. If the Director determines that the remedy provided by § 725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director shall in addition seek an injunction in the U.S. district court to prohibit future noncompliance by the operator and such other relief as the court considers appropriate (see § 725.604). If an operator unlawfully suspends or terminates the payment of benefits to a claimant, the district director shall declare the award in default and proceed in accordance with § 725.605. In all cases payments in

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addition to compensation (see § 725.607) and interest (see § 725.608) shall be sought by the Director or awarded by the district director.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more than one remedy might be appropriate in any given case. In such a case, the Director shall select the remedy or remedies appropriate for the enforcement action. In making this selection, the Director shall consider the best interests of the claimant as well as those of the fund.

§ 725.602 Reimbursement of the fund.

(a) In any case in which the fund has paid benefits, including medical benefits, on behalf of an operator or other employer which is determined liable therefore, or liable for a part thereof, such operator or other employer shall simultaneously with the first payment of benefits made to the beneficiary, reimburse the fund (with interest) for the full amount of all benefit payments made by the fund with respect to the claim.

(b) In any case where benefit payments have been made by the fund, the fund shall be subrogated to the rights of the beneficiary. The Secretary of Labor may, as appropriate, exercise such subrogation rights.

§ 725.603 Payments by the fund on behalf of an operator; liens.

(a) If an amount is paid out of the fund to an individual entitled to benefits under this part or part 727 of this subchapter (see § 725.4(d)) on behalf of an operator or other employer which is or was required to pay or secure the payment of all or a portion of such amount (see § 725.522), the operator or other employer shall be liable to the United States for repayment to the fund of the amount of benefits properly attributable to such operator or other employer.

(b) If an operator or other employer liable to the fund refuses to pay, after demand, the amount of such liability, there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator or other employer. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(c)(1) Except as otherwise provided under this section, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954.

(2) In the case of a bankruptcy or insolvency proceeding, the lien imposed under this section shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under this section and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of the section, notice of the lien imposed hereunder shall be filed in the same manner as under section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code of 1954.

(5) In any case where there has been a refusal or neglect to pay the liability imposed under this section, the Secretary of Labor may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which it has any right, title, or interest, to the payment of such liability.

(6) The liability imposed by this paragraph may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date upon which the liability was finally determined, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. This period of limitation shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

§ 725.604 Enforcement of final awards.

Notwithstanding the provisions of § 725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits that has become final, any beneficiary of such award or the district director may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the U.S. District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

§ 725.605 Defaults.

(a) Except as is otherwise provided in this part, no suspension, termination or other failure to pay benefits awarded to a claimant is permitted. If an employer found liable for the payment of such benefits fails to make such payments within 30 days after any date on which such benefits are due and payable, the person to whom such benefits are payable may, within one year after such default, make application to the district director for a supplementary order declaring the amount of the default.

(b) If after investigation, notice and hearing as provided in subparts E and F of this part, a default is found, the district director or the administrative law judge, if a hearing is requested, shall issue a supplementary order declaring the amount of the default, if any. In cases where a lump-sum award has been made, if the payment in default is an installment, the district director or administrative law judge, may, in his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has its principal place of business or maintains an office or for the judicial district in which the injury occurred. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the U.S. District Court for the District of Columbia. Such supplementary order shall be final and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(c) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the district director shall make payment from the fund, and in addition, provide any necessary medical, surgical, and other treatment required by subpart J of this part. A defaulting employer shall be liable to the fund for payment of the amounts paid by the fund under this section; and for the purpose of enforcing this liability, the fund shall be subrogated to all the rights of the person receiving such payments or benefits.

§ 725.606 Security for the payment of benefits.

(a) Following the issuance of an effective order by a district director (see § 725.418), administrative law judge (see § 725.479), Benefits Review Board, or court that requires the payment of benefits by an operator that has failed to secure the payment of benefits in accordance with section 423 of the Act and § 726.4 of this subchapter, or by a coal mine construction or transportation employer, the Director may request that the operator secure the payment of all benefits ultimately payable on the claim. Such operator or other employer shall thereafter immediately secure the payment of benefits in accordance with the provisions of this section, and provide proof of such security to the Director. Such security may take the form of an indemnity bond, a deposit of cash or negotiable securities in compliance with §§ 726.106(c) and 726.107 of this subchapter, or any other form acceptable to the Director.

(b) The amount of security initially required by this section shall be determined as follows:

(1) In a case involving an operator subject to section 423 of the Act and § 726.4 of this subchapter, the amount of the security shall not be less than $175,000, and may be a higher amount as determined by the Director, taking into account the life expectancies of the claimant and any dependents using the most recent life expectancy tables published by the Social Security Administration; or

(2) In a case involving a coal mine construction or transportation employer, the amount of the security shall be determined by the Director, taking into account the life expectancies of the claimant and any dependents using the most recent life expectancy tables published by the Social Security Administration.

(c) If the operator or other employer fails to provide proof of such security to the Director within 30 days of its receipt of the Director's request to secure the payment of benefits issued under paragraph (a), the appropriate adjudication officer shall issue an order requiring the operator or other employer to make a deposit of negotiable securities with a Federal Reserve Bank in the amount required by paragraph (a). Such securities shall comply with the requirements of §§ 726.106(c) and 726.107 of this subchapter. In a case in which the effective order was issued by a district director, the district director shall be considered the appropriate adjudication officer. In any other case, the administrative law judge who issued the most recent decision in the case, or such other administrative law judge as the Chief Administrative Law Judge shall designate, shall be considered the appropriate adjudication officer, and shall issue an order under this paragraph on motion of the Director. The administrative law judge shall have jurisdiction to issue an order under this paragraph notwithstanding the pendency of an appeal of the award of benefits with the Benefits Review Board or court.

(d) An order issued under this section shall be considered effective when issued. Disputes regarding such orders shall be resolved in accordance with subpart F of this part.

(e) Notwithstanding any further review of the order in accordance with subpart F of this part, if an operator or other employer subject to an order issued under this section fails to comply with such order, the appropriate adjudication officer shall certify such non-compliance to the appropriate United States district court in accordance with § 725.351(c).

(f) Security posted in accordance with this section may be used to make payment of benefits that become due with respect to the claim in accordance with § 725.502. In the event that either the order awarding compensation or the order issued under this section is vacated or reversed, the operator or other employer may apply to the appropriate adjudication officer for an order authorizing the return of any amounts deposited with the United States Treasurer and not yet disbursed, and such application shall be granted. If at any time the Director determines that additional security is required beyond that initially required by paragraph (b), he may request the operator or other employer to increase the amount. Such request shall be treated as if it were issued under paragraph (a) of this section.

(g) If a coal mine construction or transportation employer fails to comply with an order issued under paragraph (c), and such employer is a corporation, the provisions of § 725.609 shall be applicable to the president, secretary, and treasurer of such employer.

§ 725.607 Payments in addition to compensation.

(a) If any benefits payable under the terms of an award by a district director (§ 725.419(d)), a decision and order filed and served by an administrative law judge (§ 725.478), or a decision filed by the Board or a U.S. court of appeals, are not paid by an operator or other employer ordered to make such payments within 10 days after such payments become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid to the claimant at the same time as, but in addition to, such benefits, unless review of the order making such award is sought as provided in section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the fund, the eligible claimant shall nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a) of this section, with respect to all amounts paid by the fund on behalf of such operator or other employer.

(c) The fund shall not be liable for payments in addition to compensation under any circumstances.

§ 725.608 Interest.

(a)(1) In any case in which an operator fails to pay benefits that are due (§ 725.502), the beneficiary shall also be entitled to simple annual interest, computed from the date on which the benefits were due. The interest shall be computed through the date on which the operator paid the benefits, except that the beneficiary shall not be entitled to interest for any period following the date on which the beneficiary received payment of any benefits from the fund pursuant to § 725.522.

(2) In any case in which an operator is liable for the payment of retroactive benefits, the beneficiary shall also be entitled to simple annual interest on such benefits, computed from 30 days after the date of the first determination that such an award should be made. The first determination that such an award should be made may be a district director's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of entitlement made upon the claim.

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(3) In any case in which an operator is liable for the payment of additional compensation (§ 725.607), the beneficiary shall also be entitled to simple annual interest computed from the date upon which the beneficiary's right to additional compensation first arose.

(4) In any case in which an operator is liable for the payment of medical benefits, the beneficiary or medical provider to whom such benefits are owed shall also be entitled to simple annual interest, computed from the date upon which the services were rendered, or from 30 days after the date of the first determination that the miner is generally entitled to medical benefits, whichever is later. The first determination that the miner is generally entitled to medical benefits may be a district director's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of general entitlement made upon the claim. The interest shall be computed through the date on which the operator paid the benefits, except that the beneficiary shall not be entitled to interest for any period following the date on which the beneficiary received payment of any benefits from the fund pursuant to § 725.522 or subpart I of this part.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the district director and the fund undertakes such payments, such operator or other employer shall be liable to the fund for simple annual interest on all payments made by the fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the fund, in addition to such operator's liability to the fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the fund.

(c) In any case in which an operator is liable for the payment of an attorney's fee pursuant to § 725.367, and the attorney's fee is payable because the award of benefits has become final, the attorney shall also be entitled to simple annual interest, computed from the date on which the attorney's fee was awarded. The interest shall be computed through the date on which the operator paid the attorney's fee.

(d) The rates of interest applicable to paragraphs (a), (b), and (c) of this section shall be computed as follows:

(1) For all amounts outstanding prior to January 1, 1982, the rate shall be 6% simple annual interest;

(2) For all amounts outstanding for any period during calendar year 1982, the rate shall be 15% simple annual interest; and

(3) For all amounts outstanding during any period after calendar year 1982, the rate shall be simple annual interest at the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

(e) The fund shall not be liable for the payment of interest under any circumstances, other than the payment of interest on advances from the United States Treasury as provided by section 9501(c) of the Internal Revenue Code of 1954.

§ 725.609 Enforcement against other persons.

In any case in which an award of benefits creates obligations on the part of an operator or insurer that may be enforced under the provisions of this subpart, such obligations may also be enforced, in the discretion of the Secretary or district director, as follows:

(a) In a case in which the operator is a sole proprietorship or partnership, against any person who owned, or was a partner in, such operator during any period commencing on or after the date on which the miner was last employed by the operator;

(b) In a case in which the operator is a corporation that failed to secure its liability for benefits in accordance with section 423 of the Act and § 726.4, and the operator has not secured its liability for the claim in accordance with § 725.606, against any person who served as the president, secretary, or treasurer of such corporation during any period commencing on or after the date on which the miner was last employed by the operator;

(c) In a case in which the operator is no longer capable of assuming its liability for the payment of benefits (§ 725.494(e)), against any operator which became a successor operator with respect to the liable operator (§ 725.492) after the date on which the claim was filed, beginning with the most recent such successor operator;

(d) In a case in which the operator is no longer capable of assuming its liability for the payment of benefits (§ 725.494(e)), and such operator was a subsidiary of a parent company or a product of a joint venture, or was substantially owned or controlled by another business entity, against such parent entity, any member of such joint venture, or such controlling business entity; or

(e) Against any other person who has assumed or succeeded to the obligations of the operator or insurer by operation of any state or federal law, or by any other means.

§ 725.620 Failure to secure benefits; other penalties.

(a) If an operator fails to discharge its insurance obligations under the Act, the provisions of subpart D of part 726 shall apply.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after one of its employees has been injured within the purview of the Act, and with intent to avoid the payment of benefits under the Act to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such penalty or imprisonment as well as jointly liable with such corporation for such fine.

(c) No agreement by a miner to pay any portion of a premium paid to a carrier by such miner's employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing benefits or medical services and supplies as required by this part shall be valid; and any employer who makes a deduction for such purpose from the pay of a miner entitled to benefits under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

(d) No agreement by a miner to waive his or her right to benefits under the Act and the provisions of this part shall be valid.

(e) This section shall not affect any other liability of the employer under this part.

§ 725.621 Reports.

(a) Upon making the first payment of benefits and upon suspension, reduction, or increase of payments, the operator or other employer responsible for making payments shall immediately notify the district director of the action taken, in accordance with a form prescribed by the Office.

(b) Within 16 days after final payment of benefits has been made by an employer, such employer shall so notify the district director, in accordance with a form prescribed by the Office, stating

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that such final payment, has been made, the total amount of benefits paid, the name of the beneficiary, and such other information as the Office deems pertinent.

(c) The Director may from time to time prescribe such additional reports to be made by operators, other employers, or carriers as the Director may consider necessary for the efficient administration of the Act.

(d) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in subpart D of part 726, as appropriate. The maximum penalty applicable to any violation of this paragraph that takes place after [effective date of the final rule] shall be $550.

(e) No request for information or response to such request shall be considered a report for purposes of this section or the Act, unless it is so designated by the Director or by this section.

(Approved by the Office of Management and Budget under control number 1215–0064)

(Pub. L. No. 96–511)

Subpart J—Medical Benefits and Vocational Rehabilitation

§ 725.701 Availability of medical benefits.

(a) A miner who is determined to be eligible for benefits under this part or part 727 of this subchapter (see § 725.4(d)) is entitled to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. No medical benefits shall be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, other employer, or where there is neither, the fund, shall furnish a miner entitled to benefits under this part with such medical, surgical, and other attendance and treatment, nursing and hospital services, medicine and apparatus, and any other medical service or supply, for such periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section shall include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) The costs recoverable under this subpart shall include the reasonable cost of travel necessary for medical treatment (to be determined in accordance with prevailing United States government mileage rates) and the reasonable documented cost to the miner or medical provider incurred in communicating with the employer, carrier, or district director on matters connected with medical benefits.

(e) If a miner receives treatment, as described in this section, for any pulmonary disorder, there shall be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. The presumption may be rebutted by evidence that the specific disorder being treated is neither related to, nor aggravated by, the miner's pneumoconiosis. The party liable for the payment of benefits shall bear the burden to rebut the presumption (see § 725.103).

(f) Evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment is insufficient to establish any fact concerning a miner's entitlement to medical benefits under this subpart.

§ 725.702 Claims for medical benefits only under section 11 of the Reform Act.

(a) Section 11 of the Reform Act directs the Secretary of Health, Education and Welfare to notify each miner receiving benefits under part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) of this subpart provides that a claim for medical treatment benefits shall be filed on or before December 31, 1980, unless the period is enlarged for good cause shown. This section sets forth the rules governing the processing, adjudication, and payment of claims filed under section 11.

(b) (1) A claim filed pursuant to the notice described in paragraph (a) of this section shall be considered a claim for medical benefits only, and shall be filed, processed, and adjudicated in accordance with the provisions of this part, except as provided in this section. While a claim for medical benefits must be treated as any other claim filed under part C of title IV of the Act, the Department shall accept the Social Security Administration's finding of entitlement as its initial determination.

(2) In the case of a part B beneficiary whose coal mine employment terminated before January 1, 1970, the Secretary shall make an immediate award of medical benefits. Where the part B beneficiary's coal mine employment terminated on or after January 1, 1970, the Secretary shall immediately authorize the payment of medical benefits and thereafter inform the responsible operator, if any, of the operator's right to contest the claimant's entitlement for medical benefits.

(c) A miner on whose behalf a claim is filed under this section (see § 725.301) must have been alive on March 1, 1978, in order for the claim to be considered.

(d) The criteria contained in subpart C of part 727 of this subchapter (see § 725.4(d)) are applicable to claims for medical benefits filed under this section.

(e) No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

(f) If medical benefits are awarded under this section, such benefits shall be payable by a responsible coal mine operator (see subpart G of this part), if the miner's last employment occurred on or after January 1, 1970, and in all other cases by the fund. An operator which may be required to provide medical treatment benefits to a miner under this section shall have the right to participate in the adjudication of the claim as is otherwise provided in this part.

(g) Any miner whose coal mine employment terminated after January 1, 1970, may be required to submit to a medical examination requested by an identified operator. The unreasonable refusal to submit to such an examination shall have the same consequences as are provided under § 725.414.

(h) If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which are attributable to medical care required as a result of the miner's total disability due to pneumoconiosis. No reimbursement for health insurance premiums, taxes attributable to any public health insurance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section. If a miner seeks reimbursement for medical care costs personally incurred before the filing of a claim under this section, the district director shall require

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documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement for such cost may be awarded.

§ 725.703 Physician defined.

The term "physician" includes only doctors of medicine (MD) and osteopathic practitioners within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is authorized and supervised both by a physician as defined in this section and the district director.

§ 725.704 Notification of right to medical benefits; authorization of treatment.

(a) Upon notification to a miner of such miner's entitlement to benefits, the Office shall provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of the Office. Where emergency services are necessary and appropriate, authorization by the Office shall not be required.

(b) The Office may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities, but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of the Office.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, the Office may authorize the use of physicians or medical facilities outside such area as well as reimbursement for travel expenses and overnight accommodations.

§ 725.705 Arrangements for medical care.

(a) *Operator liability.* If an operator has been determined liable for the payment of benefits to a miner, the Office shall notify such operator or insurer of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and shall require the operator or insurer to:

(1) Notify the miner and the providers chosen that such operator will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decisionmaking authority with whom the Office, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify the Office, miner and providers of such designation;

(3) Make arrangements for the direct reimbursement of providers for their services.

(b) *Fund liability.* If there is no operator found liable for the payment of benefits, the Office shall make necessary arrangements to provide medical care to the miner, notify the miner and medical care facility selected of the liability of the fund, designate a person or persons with whom the miner or provider may communicate on matters relating to medical care, and make arrangements for the direct reimbursement of the medical provider.

§ 725.706 Authorization to provide medical services.

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 shall not require prior approval of the Office or the responsible operator.

(b) Except where emergency treatment is required, prior approval of the Office or the responsible operator shall be obtained before any hospitalization or surgery, or before ordering an apparatus for treatment where the purchase price exceeds $300. A request for approval of non-emergency hospitalization or surgery shall be acted upon expeditiously, and approval or disapproval will be given by telephone if a written response cannot be given within 7 days following the request. No employee of the Department of Labor, other than a district director or the Chief, Branch of Medical Analysis and Services, DCMWC, is authorized to approve a request for hospitalization or surgery by telephone.

(c) Payment for medical services, treatment, or an apparatus shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.

§ 725.707 Reports of physicians and supervision of medical care.

(a) Within 30 days following the first medical or surgical treatment provided under § 725.701, the treating physician or facility shall furnish to the Office and the responsible operator, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the treating physician, facility, employer or carrier shall provide such reports in addition to those required by paragraph (a) of this section as the Office may from time to time require. Within the discretion of the district director, payment may be refused to any medical provider who fails to submit any report required by this section.

§ 725.708 Disputes concerning medical benefits.

(a) Whenever a dispute develops concerning medical services under this part, the district director shall attempt to informally resolve such dispute. In this regard the district director may, on his or her own initiative or at the request of the responsible operator order the claimant to submit to an examination by a physician selected by the district director.

(b) If no informal resolution is accomplished, the district director shall refer the case to the Office of Administrative Law Judges for hearing in accordance with this part. Any such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing except for prior requests for hearing arising under this section and as provided by § 727.405 of this subchapter (see § 725.4(d)). During the pendency of such adjudication, the Director may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits, the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

§ 725.710 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.711 Requests for referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501 through 702.508 of this chapter as is appropriate.

5. Part 726 is proposed to be revised as follows:

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

Subpart A—General

Sec.
726.1 Statutory insurance requirements for coal mine operators.
726.2 Purpose and scope of this part.
726.3 Relationship of this part to other parts in this subchapter.
726.4 Who must obtain insurance coverage.
726.5 Effective date of insurance coverage.
726.6 The Office of Workers' Compensation Programs.
726.7 Forms, submission of information.
726.8 Definitions.

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Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 933, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

Subpart A—General

§ 726.1 Statutory insurance requirements for coal mine operators.

Section 423 of title IV of the Federal Coal Mine Health and Safety Act as amended (hereinafter the Act) requires each coal mine operator who is operating or has operated a coal mine in a State which is not included in the list published by the Secretary (see part 722 of this chapter) to secure the payment of benefits for which he may be found liable under section 422 of the Act and the provisions of this subchapter by either:

(a) Qualifying as a self-insurer, or

(b) By subscribing to and maintaining in force a commercial insurance contract (including a policy or contract procured from a State agency).

§ 726.2 Purpose and scope of this part.

(a) This part provides rules directing and controlling the circumstances under which a coal mine operator shall fulfill his insurance obligations under the Act.

(b) This subpart A sets forth the scope and purpose of this part and generally describes the statutory framework within which this part is operative.

(c) Subpart B of this part sets forth the criteria a coal mine operator must meet in order to qualify as a self-insurer.

(d) Subpart C of this part sets forth the rules and regulations of the Secretary governing contracts of insurance entered into by coal operators and commercial insurance sources for the payment of black lung benefits under part C of the Act.

(e) Subpart D of this part sets forth the rules governing the imposition of civil money penalties on coal mine operators that fail to secure their liability under the Act.

§ 726.3 Relationship of this part to other parts in this subchapter.

(a) This part 726 implements and effectuates responsibilities for the payment of black lung benefits placed upon coal operators by sections 415 and 422 of the Act and the regulations of the Secretary in this subchapter, particularly those set forth in part 725 of this subchapter. All definitions, usages, procedures, and other rules affecting the responsibilities of coal operators prescribed in parts 715, 720, and 725 of this subchapter are hereby made applicable, as appropriate, to this part 726.

(b) In the event that an apparent conflict arises between the interpretation of any provision in this part 726 and the interpretation of some provision appearing in a different part of this chapter, the conflicting provisions shall be read harmoniously to the fullest extent possible. In the event that a harmonious interpretation of the provisions is impossible, the provision or provisions of this part shall govern insofar as the question is one which arises out of a dispute over the responsibilities and obligations of coal mine operators to secure the payment of black lung benefits as prescribed by the Act. No provision of this part shall be operative as to matters falling outside the purview of this part.

§ 726.4 Who must obtain insurance coverage.

(a) Section 423 of part C of title IV of the Act requires each operator of a coal mine or former operator in any State

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which does meet the requirements prescribed by the Secretary pursuant to section 411 of part C of title IV of the Act to self-insure or obtain a policy or contract of insurance to guarantee the payment of benefits for which such operator may be adjudicated liable under section 422 of the Act. In enacting sections 422 and 423 of the Act Congress has unambiguously expressed its intent that coal mine operators bear the cost of providing the benefits established by part C of title IV of the Act. Section 3 of the Act defines an "operator" as any owner, lessee, or other person who operates, controls, or supervises a coal mine.

(b) Section 422(i) of the Act clearly recognizes that any individual or business entity who is or was a coal mine operator may be found liable for the payment of pneumoconiosis benefits after December 31, 1973. Within this framework it is clear that the Secretary has wide latitude for determining which operator shall be liable for the payment of part C benefits. Comprehensive standards have been promulgated in subpart G of part 725 of this subchapter for the purpose of guiding the Secretary in making such determination. It must be noted that pursuant to these standards any parent or subsidiary corporation, any individual or corporate partner, or partnership, any lessee or lessor of a coal mine, any joint venture or participant in a joint venture, any transferee or transferor of a corporation or other business entity, any former, current, or future operator or any other form of business entity which has had or will have a substantial and reasonably direct interest in the operation of a coal mine may be determined liable for the payment of pneumoconiosis benefits after December 31, 1973. The failure of any such business entity to self-insure or obtain a policy or contract of insurance shall in no way relieve such business entity of its obligation to pay pneumoconiosis benefits in respect of any case in which such business entity's responsibility for such payments has been properly adjudicated. Any business entity described in this section shall take appropriate steps to insure that any liability imposed by part C of the Act on such business entity shall be dischargeable.

§ 726.5 Effective date of insurance coverage.

Pursuant to section 422(c) of part C of title IV of the Act, no coal mine operator shall be responsible for the payment of any benefits whatsoever for any period prior to January 1, 1974. However, coal mine operators shall be liable as of January 1, 1974, for the payment of benefits in respect of claims which were filed under section 415 of part B of title IV of the Act after July 1, 1973. Section 415(a)(3) requires the Secretary to notify any operator who may be liable for the payment of benefits under part C of title IV beginning on January 1, 1974, of the pendency of a section 415 claim. Section 415(a)(5) declares that any operator who has been notified of the pendency of a section 415 claim shall be bound by the determination of the Secretary as to such operator's liability and as to the claimant's entitlement to benefits as if the claim were filed under part C of title IV of the Act and section 422 thereof had been applicable to such operator. Therefore, even though no benefit payments shall be required of an operator prior to January 1, 1974, the liability for these payments may be finally adjudicated at any time after July 1, 1973. Neither the failure of an operator to exercise his right to participate in the adjudication of such a claim nor the failure of an operator to obtain insurance coverage in respect of claims filed after June 30, 1973, but before January 1, 1974, shall excuse such operator from his liability for the payment of benefits to such claimants under part C of title IV of the Act.

§ 726.6 The Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs (hereinafter the Office or OWCP) is that subdivision of the Employment Standards Administration of the U.S. Department of Labor which has been empowered by the Secretary of Labor to carry out his functions under section 415 and part C of title IV of the Act. As noted throughout this part 726 the Office shall perform a number of functions with respect to the regulation of both the self-insurance and commercial insurance programs. All correspondence with or submissions to the Office should be addressed as follows:

Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210

§ 726.7 Forms, submission of information.

Any information required by this part 726 to be submitted to the Office of Workmen's Compensation Programs or any other office or official of the Department of Labor, shall be submitted on such forms or in such manner as the Secretary deems appropriate and has authorized from time to time for such purposes.

§ 726.8 Definitions.

In addition to the definitions provided in part 725 of this chapter, the following definitions apply to this part:

(a) *Director* means the Director, Office of Workers' Compensation Programs, and includes any official of the Office of Workers' Compensation Programs authorized by the Director to perform any of the functions of the Director under this part and part 725 of this chapter.

(b) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

(c) *Secretary* means the Secretary of Labor or such other official as the Secretary shall designate to carry out any responsibility under this part.

(d) The terms *employ* and *employment* shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees.

Subpart B—Authorization of Self-Insurers

§ 726.101 Who may be authorized to self-insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator shall be authorized as a self-insurer.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) Such operator must, at the time of application, have been in the business of mining coal for at least the 3 consecutive years prior to such application; and,

(2) Such operator must demonstrate the administrative capacity to fully service such claims as may be filed against him; and,

(3) Such operator's average current assets over the preceding 3 years (in computing average current assets such operator shall not include the amount of any negotiable securities which he may be required to deposit to secure his obligations under the Act) must exceed current liabilities by the sum of—

(i) The estimated aggregate amount of black lung benefits (including medical benefits) which such operator may expect to be required to pay during the ensuing year; and,

(ii) The annual premium cost for any indemnity bond purchased; and

(4) Such operator must obtain security, in a form approved by the Office (see § 726.104) and in an amount to be determined by the Office (see § 726.105); and

(5) No operator with fewer than 5 full-time employee-miners shall be permitted to self-insure.

(c) No operator who is unable to meet the requirements of this section should apply for authorization to self-insure and no application for self-insurance shall be approved by the Office until such time as the amount prescribed by the Office has been secured as prescribed in this subpart.

§ 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

(a) *How filed.* Application for authority to become a self-insurer shall be addressed to the Office and be made on a form provided by the Office. Such application shall be signed by the applicant over his typewritten name and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application over his typewritten name and official designation and shall be sworn to by him. If the applicant is a corporation, the corporate seal shall be affixed. The application shall be filed with the Office in Washington, D.C.

(b) *Information to be submitted.* Each application for authority to self-insure shall contain:

(1) A statement of the employer's payroll report for each of the preceding 3 years;

(2) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years;

(3) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed shall be described by name and reference shall be made to the Federal Identification Number assigned such mine by the Bureau of Mines, U.S. Department of the Interior;

(4) A certified itemized statement of the gross and net assets and liabilities of the operator for each of the 3 preceding years in such manner as prescribed by the Office;

(5) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims; and

(6) In addition to the aforementioned, the Office may in its discretion, require the applicant to submit such further information or such evidence as the Office may deem necessary to have in order to enable it to give adequate consideration to such application.

(c) *Who may file.* An application for authorization to self-insure may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture or joint venture, individual, or other business entity which may be determined liable for the payment of black lung benefits under part C of title IV of the Act, regardless of whether such applicant is directly engaged in the business of mining coal. However, in each case for which authorization to self-insure is granted, the agreement and undertaking filed pursuant to § 726.110 and the security deposit shall be respectively filed by and deposited in the name of the applicant only.

§ 726.103 Application for authority to self-insure; effect of regulations contained in this part.

As appropriate, each of the regulations, interpretations and requirements contained in this part 726 including those described in subpart C of this part shall be binding upon each applicant hereunder and the applicant's consent to be bound by all requirements of the said regulations shall be deemed to be included in and a part of the application, as fully as though written therein.

§ 726.104 Action by the Office upon application of operator.

(a) Upon receipt of a completed application for authorization to self-insure, the Office shall, after examination of the information contained in the application deny the applicant's request for authorization to self-insure or, determine the amount of security which must be given by the applicant to guarantee the payment of benefits and the discharge of all other obligations which may be required of such applicant under the Act.

(b) The applicant shall thereafter be notified that he may give security in the amount fixed by the Office (see § 726.105):

(1) In the form of an indemnity bond with sureties satisfactory to the Office;

(2) By a deposit of negotiable securities with a Federal Reserve Bank in compliance with §§ 726.106(c) and 726.107;

(3) In the form of a letter of credit issued by a financial institution satisfactory to the Office (except that a letter of credit shall not be sufficient by itself to satisfy a self-insurer's obligations under this part); or

(4) By funding a trust pursuant to section 501(c)(21) of title 26 of the United States Code.

(c) Any applicant who cannot meet the security deposit requirements imposed by the Office should proceed to obtain a commercial policy or contract of insurance. Any applicant for authorization to self-insure whose application has been rejected or who believes that the security deposit requirements imposed by the Office are excessive may, in writing, request that the Office review its determination. A request for review should contain such information as may be necessary to support the request that the amount of security required be reduced.

(d) Upon receipt of any such request the Office shall review its previous determination in light of any new or additional information submitted and inform the applicant whether or not a reduction in the amount of security initially required is warranted.

§ 726.105 Fixing the amount of security.

The amount of security to be fixed and required by the Office shall be such as the Office shall deem to be necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act. In determining the amount of security required, the factors that the Office will consider include, but are not limited to, the operator's net worth, the existence of a guarantee by a parent corporation, and the operator's existing liability for benefits. Other factors such as the Office may deem relevant to any particular case shall be considered. The amount of security which shall be required may be increased or decreased when experience or changed conditions so warrant.

§ 726.106 Type of security.

(a) The Office shall determine the type or types of security which an applicant shall or may procure. (See § 726.104(b).)

(b) In the event the indemnity bond option is selected such indemnity bond shall be in such form and contain such provisions as the Office may prescribe: *Provided,* That only corporations may act as sureties on such indemnity bonds. In each case in which the surety on any such bond is a surety company, such company must be one approved by the

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U.S. Treasury Department under the laws of the United States and the applicable rules and regulations governing bonding companies (see Department of Treasury's Circular–570).

(c) An applicant for authorization to self-insure authorized to deposit negotiable securities to secure his obligations under the Act in the amount fixed by the Office shall deposit any negotiable securities acceptable as security for the deposit of public moneys of the United States under regulations issued by the Secretary of the Treasury. (See 31 CFR part 225.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.

Deposits of securities provided for by the regulations in this part shall be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Office, or the Treasurer of the United States, and shall be held subject to the order of the Office with power in the Office, in its discretion in the event of default by the said self-insurer, to collect the interest as it may become due, to sell the securities or any of them as may be required to discharge the obligations of the self-insurer under the Act and to apply the proceeds to the payment of any benefits or medical expenses for which the self-insurer may be liable. The Office may, however, whenever it deems it unnecessary to resort to such securities for the payment of benefits, authorize the self-insurer to collect interest on the securities deposited by him.

§ 726.108 Withdrawal of negotiable securities.

No withdrawal of negotiable securities deposited by a self-insurer, shall be made except upon authorization by the Office. A self-insurer discontinuing business, or discontinuing operations within the purview of the Act, or providing security for the payment of benefits by commercial insurance under the provisions of the Act may apply to the Office for the withdrawal of securities deposited under the regulations in this part. With such application shall be filed a sworn statement setting forth:

(a) A list of all outstanding cases in which benefits are being paid, with the names of the miners and other beneficiaries, giving a statement of the amounts of benefits paid and the periods for which such benefits have been paid; and

(b) A similar list of all pending cases in which no benefits have as yet been paid. In such cases withdrawals may be authorized by the Office of such securities as in the opinion of the Office may not be necessary to provide adequate security for the payment of outstanding and potential liabilities of such self-insurer under the Act.

§ 726.109 Increase or reduction in the amount of security.

Whenever in the opinion of the Office the amount of security given by the self-insurer is insufficient to afford adequate security for the payment of benefits and medical expenses under the Act, the self-insurer shall, upon demand by the Office, file such additional security as the Office may require. At any time upon application of a self-insurer, or on the initiative of the Office, when in its opinion the facts warrant, the amount of security may be reduced. A self-insurer seeking such reduction shall furnish such information as the Office may request relative to his current affairs, the nature and hazard of the work of his employees, the amount of the payroll of his employees engaged in coal mine employment within the purview of the Act, his financial condition, and such other evidence as may be deemed material, including a record of payment of benefits made by him.

§ 726.110 Filing of agreement and undertaking.

(a) In addition to the requirement that adequate security be procured as set forth in this subpart, the applicant for the authorization to self-insure shall as a condition precedent to receiving authorization to act as a self-insurer, execute and file with the Office an agreement and undertaking in a form prescribed and provided by the Office in which the applicant shall agree:

(1) To pay when due, as required by the provisions of said Act, all benefits payable on account of total disability or death of any of its employee-miners within the purview of the Act;

(2) In such cases to furnish medical, surgical, hospital, and other attendance, treatment, and care as required by the provisions of the Act;

(3) To provide security in a form approved by the Office (see § 726.104) and in an amount established by the Office (see § 726.105), accordingly as elected in the application;

(4) To authorize the Office to sell any negotiable securities so deposited or any part thereof and from the proceeds thereof to pay such benefits, medical, and other expenses and any accrued penalties imposed by law as it may find to be due and payable.

(b) At such time when an applicant has provided the requisite security, such applicant shall send a completed agreement and undertaking together with satisfactory proof that his obligations and liabilities under the Act have been secured to the Office in Washington, D.C.

§ 726.111 Notice of authorization to self-insure.

Upon receipt of a completed agreement and undertaking and satisfactory proof that adequate security has been provided an applicant for authorization to self-insure shall be notified by the Office in writing, that he is authorized to self-insure to meet the obligations imposed upon such applicant by section 415 and part C of title IV of the Act.

§ 726.112 Reports required of self-insurer; examination of accounts of self-insurer.

(a) Each operator who has been authorized to self-insure under this part shall submit to the Office reports containing such information as the Office may from time to time require or prescribe.

(b) Whenever it deems it to be necessary, the Office may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to the Office by the self-insurer or verifying any information furnished to the Office in any report required by this section, or any other section of the regulations in this part, and such self-insurer shall permit the Office or its duly authorized representative to make such an inspection or examination as the Office shall require. In lieu of this requirement the Office may in its discretion accept an adequate report of a certified public accountant.

(c) Failure to submit or make available any report or information requested by the Office from an authorized self-insurer pursuant to this section may, in appropriate circumstances result in a revocation of the authorization to self-insure.

§ 726.113 Disclosure of confidential information.

Any financial information or records, or other information relating to the business of an authorized self-insurer or applicant for the authorization of self-insurance obtained by the Office shall be exempt from public disclosure to the extent provided in 5 U.S.C. 552(b) and the applicable regulations of the

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Department of Labor promulgated thereunder. (See 29 CFR part 70.)

§ 726.114 Period of authorization as self-insurer; reauthorization.

(a) No initial authorization as a self-insurer shall be granted for a period in excess of 18 months. A self-insurer who has made an adequate deposit of negotiable securities in compliance with §§ 726.106(c) and 726.107 will be reauthorized for the ensuing fiscal year without additional security if the Office finds that his experience as a self-insurer warrants such action. If it is determined that such self-insurer's experience indicates a need for the deposit of additional security, no reauthorization shall be issued for the ensuing fiscal year until such time as the Office receives satisfactory proof that the requisite amount of additional securities have been deposited. A self-insurer who currently has on file an indemnity bond, will receive from the Office each year a bond form for execution in contemplation of reauthorization, and the submission of such bond duly executed in the amount indicated by the Office will be deemed and treated as such self-insurer's application for reauthorization for the ensuing Federal fiscal year.

(b) In each case for which there is an approved change in the amount of security provided, a new agreement and undertaking shall be executed.

(c) Each operator authorized to self-insure under this part shall apply for reauthorization for any period during which it engages in the operation of a coal mine and for additional periods after it ceases operating a coal mine. Upon application by the operator, accompanied by proof that the security posted by the operator is sufficient to secure all benefits potentially payable to miners formerly employed by the operator, the Office shall issue a certification that the operator is exempt from the requirements of this part based on its prior operation of a coal mine. The provisions of subpart D of this part shall be applicable to any operator that fails to apply for reauthorization in accordance with the provisions of this section.

§ 726.115 Revocation of authorization to self-insure.

The Office may for good cause shown suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or communication of the Office, or the failure or insolvency of the surety on his indemnity bond, or impairment of financial responsibility of such self-insurer, may be deemed good cause for such suspension or revocation.

Subpart C—Insurance Contracts

§ 726.201 Insurance contracts—generally.

Each operator of a coal mine who has not obtained authorization as a self-insurer shall purchase a policy or enter into a contract with a commercial insurance carrier or State agency. Pursuant to authority contained in sections 422(a) and 423 (b) and (c) of part C of title IV of the Act, this subpart describes a number of provisions which are required to be incorporated in a policy or contract of insurance obtained by a coal mine operator for the purpose of meeting the responsibility imposed upon such operator by the Act in respect of the total disability or death of miners due to pneumoconiosis.

§ 726.202 Who may underwrite an operator's liability.

Each coal mine operator who is not authorized to self-insure shall insure and keep insured the payment of benefits as required by the Act with any stock company or mutual company or association, or with any other person, or fund, including any State fund while such company, association, person, or fund is authorized under the law of any State to insure workmen's compensation.

§ 726.203 Federal Coal Mine Health and Safety Act endorsement.

(a) The following form of endorsement shall be attached and applicable to the standard workmen's compensation and employer's liability policy prepared by the National Council on Compensation Insurance affording coverage under the Federal Coal Mine Health and Safety Act of 1969, as amended:

It is agreed that: (1) With respect to operations in a State designated in item 3 of the declarations, the unqualified term "workmen's compensation law" includes part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. section 931–936, and any laws amendatory thereto, or supplementary thereto, which may be or become effective while this policy is in force, and definition (a) of Insuring Agreement III is amended accordingly; (2) with respect to such insurance as is afforded by this endorsement, (a) the States, if any, named below, shall be deemed to be designated in item 3 of the declaration; (b) Insuring Agreement IV(2) is amended to read "by disease caused or aggravated by exposure of which the last day of the last exposure, in the employment of the insured, to conditions causing the disease occurs during the policy period, or occurred prior to (effective date) and claim based on such disease is first filed against the insured during the policy period."

(b) The term "effective date" as used in the enforcement provisions contained in paragraph (a) of this section shall be construed to mean the effective date of the first policy or contract of insurance procured by an operator for purposes of meeting the obligations imposed on such operator by section 423 of part C of title IV of the Act.

(c) The Act contains a number of provisions and imposes a number of requirements on operators which differ in varying degrees from traditional workmen's compensation concepts. To avoid unnecessary administrative delays and expense which might be occasioned by the drafting of an entirely new standard workmen's compensation policy specially tailored to the Act, the Office has determined that the existing standard workmen's compensation policy subject to the endorsement provisions contained in paragraph (a) of this section shall be acceptable for purposes of writing commercial insurance coverage under the Act. However, to avoid undue disputes over the meaning of certain policy provisions and in accordance with the authority contained in section 423(b)(3) of the Act, the Office has determined that the following requirements shall be applicable to all commercial insurance policies obtained by an operator for the purpose of insuring any liability incurred pursuant to the Act:

(1) *Operator liability.* (i) Section 415 and part C of title IV of the Act provide coverage for total disability or death due to pneumoconiosis to all claimants who meet the eligibility requirements imposed by the Act. Section 422 of the Act and the regulations duly promulgated thereunder (part 725 of this chapter) set forth the conditions under which a coal mine operator may be adjudicated liable for the payment of benefits to an eligible claimant for any period subsequent to December 31, 1973.

(ii) Section 422(c) of the Act prescribes that except as provided in 422(i) (see paragraph (c)(2) of this section) an operator may be adjudicated liable for the payment of benefits in any case if the total disability or death due to pneumoconiosis upon which the claim is predicated arose at least in part out of employment in a mine in any period during which it was operated by such operator. The Act does not require that such employment which contributed to or caused the total disability or death due to pneumoconiosis occur subsequent to

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any particular date in time. The Secretary in establishing a formula for determining the operator liable for the payment of benefits (see subpart D of part 725 of this chapter) in respect of any particular claim, must therefore, within the framework and intent of title IV of the Act find in appropriate cases that an operator is liable for the payment of benefits for some period after December 31, 1973, even though the employment upon which an operator's liability is based occurred prior to July 1, 1973, or prior to the effective date of the Act or the effective date of any amendments thereto, or prior to the effective date of any policy or contract of insurance obtained by such operator. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(2) *Successor liability.* Section 422(i) of part C of title IV of the Act requires that a coal mine operator who after December 30, 1969, acquired his mine or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, shall be liable for and shall secure the payment of benefits which would have been payable by the prior operator with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine. In the case of an operator who is determined liable for the payment of benefits under section 422(i) of the Act and part 725 of this subchapter, such liability shall accrue to such operator regardless of the fact that the miner on whose total disability or death the claim is predicated was never employed by such operator in any capacity. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate this requirement in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(3) *Medical eligibility.* Pursuant to section 422(h) of part C of title IV of the Act and the regulations described therein (see subpart D of part 410 of this title) benefits shall be paid to eligible claimants on account of total disability or death due to pneumoconiosis and in cases where the miner on whose death a claim is predicated was totally disabled by pneumoconiosis at the time of his death regardless of the cause of such death. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(4) *Payment of benefits, rates.* Section 422(c) of the Act by incorporating section 412(a) of the Act requires the payment of benefits at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS–2, who is totally disabled is entitled at the time of payment under Chapter 81 of title 5, United States Code. These benefits are augmented on account of eligible dependents as appropriate (see section 412(a) of part B of title IV of the Act). Since the dollar amount of benefits payable to any beneficiary is required to be computed at the time of payment such amounts may be expected to increase from time to time as changes in the GS–2 grade are enacted into law. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act, the requirement that the payment of benefits to eligible beneficiaries shall be made in such dollar amounts as are prescribed by section 412(a) of the Act computed at the time of payment.

(5) *Compromise and waiver of benefits.* Section 422(a) of part C of title IV of the Act by incorporating sections 15(b) and 16 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 915(b) and 916) prohibits the compromise and/or waiver of claims for benefits filed or benefits payable under section 415 and part C of title IV of the Act. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate these prohibitions in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(6) *Additional requirements.* In addition to the requirements described in paragraphs (c) (1) through (5) of this section, the enforcement provisions contained in paragraph (a) of this section shall, to the fullest extent possible, be construed to bring any policy or contract of insurance entered into by an operator for the purpose of insuring such operator's liability under part C of title IV of the Act into conformity with the legal requirements placed upon such operator by section 415 and part C of title IV of the Act and parts 720 and 725 of this subchapter.

(d) Nothing in this section shall relieve any operator or carrier of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this section.

§ 726.204 Statutory policy provisions.

Pursuant to section 423(b) of part C of title IV of the Act each policy or contract of insurance obtained to comply with the requirements of section 423(a) of the Act must contain or shall be construed to contain—

(a) A provision to pay benefits required under section 422 of the Act, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments; and,

(b) A provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments.

§ 726.205 Other forms of endorsement and policies.

Forms of endorsement or policies other than that described in § 726.203 may be entered into by operators to insure their liability under the Act. However, any form of endorsement or policy which materially alters or attempts to materially alter an operator's liability for the payment of any benefits under the Act shall be deemed insufficient to discharge such operator's duties and responsibilities as prescribed in part C of title IV of the Act. In any event, the failure of an operator to obtain an adequate policy or contract of insurance shall not affect such operator's liability for the payment of any benefits for which he is determined liable.

§ 726.206 Terms of policies.

A policy or contract of insurance shall be issued for the term of 1 year from the date that it becomes effective, but if such insurance be not needed except for a particular contract or operation, the term of the policy may be limited to the period of such contract or operation.

§ 726.207 Discharge by the carrier of obligations and duties of operator.

Every obligation and duty in respect of payment of benefits, the providing of medical and other treatment and care, the payment or furnishing of any other benefit required by the Act and in respect of the carrying out of the administrative procedure required or imposed by the Act or the regulations in this part or 20 CFR part 725 upon an operator shall be discharged and carried out by the carrier as appropriate. Notice to or knowledge of an operator of the occurrence of total disability or death

due to pneumoconiosis shall be notice to or knowledge of such carrier. Jurisdiction of the operator by a district director, administrative law judge, the Office, or appropriate appellate authority under the Act shall be jurisdiction of such carrier. Any requirement under any benefits order, finding, or decision shall be binding upon such carrier in the same manner and to the same extent as upon the operator.

Reports by Carrier

§ 726.208 Report by carrier of issuance of policy or endorsement.

Each carrier shall report to the Office each policy and endorsement issued, canceled, or renewed by it to an operator. The report shall be made in such manner and on such form as the Office may require.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.209 Report; by whom sent.

The report of issuance, cancellation, or renewal of a policy and endorsement provided for in § 726.208 shall be sent by the home office of the carrier, except that any carrier may authorize its agency or agencies to make such reports to the Office.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.210 Agreement to be bound by report.

Every carrier seeking to write insurance under the provisions of this Act shall be deemed to have agreed that the acceptance by the Office of a report of the issuance or renewal of a policy of insurance, as provided for by § 726.208 shall bind the carrier to full liability for the obligations under this Act of the operator named in said report. It shall be no defense to this agreement that the carrier failed or delayed to issue, cancel, or renew the policy to the operator covered by this report.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.211 Name of one employer only shall be given in each report.

A separate report of the issuance or renewal of a policy and endorsement, provided for by §726.208, shall be made for each operator covered by a policy. If a policy is issued or renewed insuring more than one operator, a separate report for each operator so covered shall be sent to the Office with the name of only one operator on each such report.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.212 Notice of cancellation.

Cancellation of a contract or policy of insurance issued under authority of the Act shall not become effective otherwise than as provided by 33 U.S.C. 936(b); and notice of a proposed cancellation shall be given to the Office and to the operator in accordance with the provisions of 33 U.S.C. 912(c), 30 days before such cancellation is intended to be effective (see sec. 422(a) of part C of title IV of the Act).

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.213 Reports by carriers concerning the payment of benefits.

Pursuant to 33 U.S.C. 914(c) as incorporated by section 422(a) of part C of title IV of the Act and §726.207 each carrier issuing a policy or contract of insurance under the Act shall upon making the first payment of benefits and upon the suspension of any payment in any case, immediately notify the Office in accordance with a form prescribed by the Office that payment of benefit has begun or has been suspended as the case may be. In addition, each such carrier shall at the request of the Office submit to the Office such additional information concerning policies or contracts of insurance issued to guarantee the payment of benefits under the Act and any benefits paid thereunder, as the Office may from time to time require to carry out its responsibilities under the Act.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

Subpart D—Civil Money Penalties

§ 726.300 Purpose and Scope.

Any operator which is required to secure the payment of benefits under section 423 of the Act and § 726.4 and which fails to secure such benefits shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs. If the operator is a corporation, the president, secretary, and treasurer of the operator shall also be severally liable for the penalty based on the operator's failure to secure the payment of benefits. This subpart defines those terms necessary for administration of the civil money penalty provisions, describes the criteria for determining the amount of penalty to be assessed, and sets forth applicable procedures for the assessment and contest of penalties.

§ 726.301 Definitions.

In addition to the definitions provided in part 725 of this chapter and § 726.8, the following definitions apply to this subpart:

(a) Division Director means the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, or such other official authorized by the Division Director to perform any of the functions of the Division Director under this subpart.

(b) President, secretary, or treasurer means the officers of a corporation as designated pursuant to the laws and regulations of the state in which the corporation is incorporated or, if that state does not require the designation of such officers, to the employees of a company who are performing the work usually performed by such officers in the state in which the corporation's principal place of business is located.

(c) Principal means any person who has an ownership interest in an operator that is not a corporation, and shall include, but is not limited to, partners, sole proprietors, and any other person who exercises control over the operation of a coal mine.

§ 726.302 Determination of penalty.

(a) The following method shall be used for determining the amount of any penalty assessed under this subpart.

(b) The penalty shall be determined by multiplying the daily base penalty amount or amounts, determined in accordance with the formula set forth in this section, by the number of days in the period during which the operator is subject to the security requirements of section 423 of the Act and § 726.4, and fails to secure its obligations under the Act. The period during which an operator is subject to liability for a penalty for failure to secure its obligations shall be deemed to commence on the first day on which the operator met the definition of the term "operator" as set forth in § 725.101 of this chapter. The period shall be deemed to continue even where the operator has ceased coal mining and any related activity, unless the operator secured its liability for all previous periods through a policy or policies of insurance obtained in accordance with subpart C of this part or has obtained a certification of exemption in accordance with the provisions of § 726.114.

(c)(1) A daily base penalty amount shall be determined for all periods up to and including the 10th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, during which the operator failed to

secure its obligations under section 423 of the Act and § 726.4.

(2)(i) The daily base penalty amount shall be determined based on the number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on each day of the period defined by this section, and shall be computed as follows:

Employees	Penalty (per day)
Less than 25	$100
25–50	200
51–100	300
More than 100	400

(ii) For any period after the operator has ceased coal mining and any related activity, the daily penalty amount shall be computed based on the largest number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on any day while the operator was engaged in coal mining or any related activity. For purposes of this section, it shall be presumed, in the absence of evidence to the contrary, that any person employed by an operator is employed in coal mine employment.

(3) In any case in which the operator had prior notice of the applicability of the Black Lung Benefits Act to its operations, the daily base penalty amounts set forth in paragraph (b) shall be doubled. Prior notice may be inferred where the operator, or an entity in which the operator or any of its principals had an ownership interest, or an entity in which the operator's president, secretary, or treasurer were employed:

(i) Previously complied with section 423 of the Act and § 726.4;

(ii) Was notified of its obligation to comply with section 423 of the Act and § 726.4; or

(iii) Was notified of its potential liability for a claim filed under the Black Lung Benefits Act pursuant to § 725.407 of this chapter.

(4) Commencing with the 11th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, the daily base penalty amounts set forth in paragraph (b) shall be increased by $100.

(5) In any case in which the operator, or any of its principals, or an entity in which the operator's president, secretary, or treasurer were employed, has been the subject of a previous penalty assessment under this part, the daily base penalty amounts shall be increased by $300, up to a maximum daily base penalty amount of $1,000. The maximum daily base penalty amount applicable to any violation of § 726.4 that takes place after [effective date of the final rule] shall be $1,100.

(d) The penalty shall be subject to reduction for any period during which the operator had a reasonable belief that it was not required to comply with section 423 of the Act and § 726.4 or a reasonable belief that it had obtained insurance coverage to comply with section 423 of the Act and § 726.4. A notice of contest filed in accordance with § 726.307 shall not be sufficient to establish a reasonable belief that the operator was not required to comply with the Act and regulations.

§ 726.303 Notification; investigation.

(a) If the Director determines that an operator has violated the provisions of section 423 of the Act and § 726.4, he or she shall notify the operator of its violation and request that the operator immediately secure the payment of benefits. Such notice shall be sent by certified mail.

(b) The Director shall also direct the operator to supply information relevant to the assessment of a penalty. Such information, which shall be supplied within 30 days of the Director's request, may include:

(1) The date on which the operator commenced its operation of a coal mine;

(2) The number of persons employed by the operator since it began operating a coal mine and the dates of their employment; and

(3) The identity and last known address:

(i) In the case of a corporation, of all persons who served as president, secretary, and treasurer of the operator since it began operating a coal mine; or

(ii) In the case of an operator which is not incorporated, of all persons who were principals of the operator since it began operating a coal mine;

(c) In conducting any investigation of an operator under this subpart, the Division Director shall have all of the powers of a district director, as set forth at § 725.351(a) of this chapter. For purposes of § 725.351(c) of this chapter, the Division Director shall be considered to sit in the District of Columbia.

§ 726.304 Notice of initial assessment.

(a) After an operator receives notification under § 726.303 and fails to secure its obligations for the period defined in § 726.302(b), and following the completion of any investigation, the Director may issue a notice of initial penalty assessment in accordance with the criteria set forth in § 726.302.

(b)(1) A copy of such notice shall be sent by certified mail to the operator. If the operator is a corporation, a copy shall also be sent by certified mail to each of the persons who served as president, secretary, or treasurer of the operator during any period in which the operator was in violation of section 423 of the Act and § 726.4.

(2) Where service by certified mail is not accepted by any person, the notice shall be deemed received by that person on the date of attempted delivery. Where service is not accepted, the Director may exercise discretion to serve the notice by regular mail.

§ 726.305 Contents of notice.

The notice required by § 726.304 shall:

(a) Identify the operator against whom the penalty is assessed as well as the name of any other person severally liable for such penalty;

(b) Set forth the determination of the Director as to the amount of the penalty and the reason or reasons therefor;

(c) Set forth the right of each person identified in paragraph (a) of this section to contest the notice and request a hearing before the Office of Administrative Law Judges;

(d) Set forth the method for each person identified in paragraph (a) to contest the notice and request a hearing before the Office of Administrative Law Judges; and

(e) Inform any affected person that in the absence of a timely contest and request for hearing received within 30 days of the date of receipt of the notice, the Director's assessment will become final and unappealable as to that person.

§ 726.306 Finality of administrative assessment.

Except as provided in § 726.307(c), if any person identified as potentially liable for the assessment does not, within 30 days after receipt of notice, contest the assessment, the Director's assessment shall be deemed final as to that person, and collection and recovery of the penalty may be instituted pursuant to § 726.320.

§ 726.307 Form of notice of contest and request for hearing.

(a) Any person desiring to contest the Director's notice of initial assessment shall request an administrative hearing pursuant to this part. The notice of contest shall be made in writing to the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, United States Department of Labor. The notice of contest must be received no later than 30 days after the date of receipt of the notice issued under

§ 726.304. No additional time shall be added where service of the notice is made by mail.

(b) The notice of contest shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific issues to be contested. In particular, the person must indicate his agreement or disagreement with:

(i) The Director's determination that the person against whom the penalty is assessed is an operator subject to the requirements of section 423 of the Act and § 726.4, or is the president, secretary, or treasurer of an operator, if the operator is a corporation.

(ii) The Director's determination that the operator violated section 423 of the Act and § 726.4 for the time period in question; and

(iii) The Director's determination of the amount of penalty owed.

(4) Be signed by the person making the request or an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) A notice of contest filed by the operator shall be deemed a notice of contest on behalf of all other persons to the Director's determinations that the operator is subject to section 423 of the Act and § 726.4 and that the operator violated those provisions for the time period in question, and to the Director's determination of the amount of penalty owed. An operator may not contest the Director's determination that a person against whom the penalty is assessed is the president, secretary, or treasurer of the operator.

(d) Failure to specifically identify an issue as contested pursuant to paragraph (b)(3) of this section shall be deemed a waiver of the right to contest that issue.

§ 726.308 Service and computation of time.

(a) Service of documents under this part shall be made by delivery to the person, an officer of a corporation, or attorney of record, or by mailing the document to the last known address of the person, officer, or attorney. If service is made by mail, it shall be considered complete upon mailing. Unless otherwise provided in this subpart, service need not be made by certified mail. If service is made by delivery, it shall be considered complete upon actual receipt by the person, officer, or attorney; upon leaving it at the person's, officer's or attorney's office with a clerk or person in charge; upon leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the person's or attorney's residence.

(b) If a complaint has been filed pursuant to § 726.309 of this part, two copies of all documents filed in any administrative proceeding under this subpart shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Black Lung Benefits Division, Room N–2605, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210, and one copy on the attorney representing the Department in the proceeding.

(c) The time allowed a party to file any response under this subpart shall be computed beginning with the day following the action requiring a response, and shall include the last day of the period, unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period shall include the next business day.

§ 726.309 Referral to the Office of Administrative Law Judges.

(a) Upon receipt of a timely notice of contest filed in accordance with § 726.307, the Director, by the Associate Solicitor for Black Lung Benefits or the Regional Solicitor for the Region in which the violation occurred, may file a complaint with the Office of Administrative Law Judges. The Director may, in the complaint, reduce the total penalty amount requested. A copy of the notice of initial assessment issued by the Director and all notices of contest filed in accordance with § 726.307 shall be attached. A notice of contest shall be given the effect of an answer to the complaint for purposes of the administrative proceeding, subject to any amendment that may be permitted under this subpart and 29 CFR part 18.

(b) A copy of the complaint and attachments thereto shall be served by counsel for the Director on the person who filed the notice of contest.

(c) The Director, by counsel, may withdraw a complaint filed under this section at any time prior to the date upon which the decision of the Department becomes final by filing a motion with the Office of Administrative Law Judges or the Secretary, as appropriate. If the Director makes such a motion prior to the date on which an administrative law judge renders a decision in accordance § 726.313, the dismissal shall be without prejudice to further assessment against the operator for the period in question.

§ 726.310 Appointment of Administrative Law Judge and notification of hearing date.

Upon receipt from the Director of a complaint filed pursuant to § 726.309, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall notify all interested parties of the time and place of the hearing.

§ 726.311 Evidence.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) Notwithstanding 29 CFR 18.1101(b)(2), subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges shall apply to administrative proceedings under this part, except that documents contained in Department of Labor files and offered on behalf of the Director shall be admissible in proceedings under this subpart without regard to their compliance with the Rules of Practice and Procedure.

§ 726.312 Burdens of proof.

(a) The Director shall bear the burden of proving the existence of a violation, and the time period for which the violation occurred. To prove a violation, the Director must establish:

(1) That the person against whom the penalty is assessed is an operator, or is the president, secretary, or treasurer of an operator, if such operator is a corporation.

(2) That the operator violated section 423 of the Act and § 726.4. The filing of a complaint shall be considered *prima facie* evidence that the Director has searched the records maintained by OWCP and has determined that the operator was not authorized to self-insure its liability under the Act for the time period in question, and that no insurance carrier reported coverage of the operator for the time period in question.

(b) The Director need not produce further evidence in support of his burden of proof with respect to the issues set forth in paragraph (a) if no party contested them pursuant to § 726.307(b)(3).

(c) The Director shall bear the burden of proving the size of the operator as required by § 726.302, except that if the Director has requested the operator to supply information with respect to its size under § 726.303 and the operator has not fully complied with that request, it shall be presumed that the

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operator has more than 100 employees engaged in coal mine employment. The person or persons liable for the assessment shall thereafter bear the burden of proving the actual number of employees engaged in coal mine employment.

(d) The Director shall bear the burden of proving the operator's receipt of the notification required by § 726.303, the operator's prior notice of the applicability of the Black Lung Benefits Act to its operations, and the existence of any previous assessment against the operator, the operator's principals, or the operator's officers.

(e) The person or persons liable for an assessment shall bear the burden of proving the applicability of the mitigating factors listed in § 726.302(d).

§ 726.313 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall render a decision on the issues referred by the Director.

(b) The decision of the Administrative Law Judge shall be limited to determining, where such issues are properly before him or her:

(1) Whether the operator has violated section 423 of the Act and § 726.4;

(2) Whether other persons identified by the Director as potentially severally liable for the penalty were the president, treasurer, or secretary of the corporation during the time period in question; and

(3) The appropriateness of the penalty assessed by the Director in light of the factors set forth in § 726.302. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, reverse, or modify, in whole or in part, the determination of the Director.

(d) The Administrative Law Judge shall serve copies of the decision on each of the parties by certified mail.

(e) The decision of the Administrative Law Judge shall be deemed to have been issued on the date that it is rendered, and shall constitute the final order of the Secretary unless there is a request for reconsideration by the Administrative Law Judge pursuant to paragraph (f) or a petition for review filed pursuant to § 726.314.

(f) Any party may request that the Administrative Law Judge reconsider his or her decision by filing a motion within 30 days of the date upon which the decision of the Administrative Law Judge is issued. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review pursuant to § 726.314.

(g) Following issuance of the decision and order, the Chief Administrative Law Judge shall promptly forward the complete hearing record to the Director.

§ 726.314 Review by the Secretary.

(a) The Director or any party aggrieved by a decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Any other party may file a cross-petition for review within 15 days of its receipt of a petition for review or within 30 days of the date on which the decision was issued, whichever is later. Copies of any petition or cross-petition shall be served on all parties and on the Chief Administrative Law Judge.

(b) A petition filed by one party shall not affect the finality of the decision with respect to other parties.

(c) If any party files a timely motion for reconsideration, any petition for review, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party shall commence upon issuance of a decision on reconsideration.

§ 726.315 Contents.

Any petition or cross-petition for review shall:

(a) Be dated;

(b) Be typewritten or legibly written;

(c) State the specific reason or reasons why the party petitioning for review believes the Administrative Law Judge's decision is in error;

(d) Be signed by the party filing the petition or an authorized representative of such party; and

(e) Attach copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge which would assist the Secretary in determining whether review is warranted.

§ 726.316 Filing and Service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210.

(b) *Number of copies.* An original and four copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) *Manner and proof of service.* A copy of each document filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 726.317 Discretionary Review.

(a) Following receipt of a timely petition for review, the Secretary shall determine whether the decision warrants review, and shall send a notice of such determination to the parties and the Chief Administrative Law Judge. If the Secretary declines to review the decision, the Administrative Law Judge's decision shall be considered the final decision of the agency. The Secretary's determination to review a decision by an Administrative Law Judge under this subpart is solely within the discretion of the Secretary.

(b) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed; and

(2) The schedule for submitting arguments, in the form of briefs or such other pleadings as the Secretary deems appropriate.

(c) Upon receipt of the Secretary's notice, the Director shall forward the record to the Secretary.

§ 726.318 Final decision of the Secretary.

The Secretary's review shall be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law shall be *de novo.* Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

§ 726.319 Retention of official record.

The official record of every completed administrative hearing held pursuant to this part shall be maintained and filed under the custody and control of the Director.

§ 726.320 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final, in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in, or following the decision of the Secretary, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor on behalf of the Black Lung Disability Trust Fund. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of U.S. Department of Labor, Black Lung Program. Such remittance shall be delivered or mailed to the Director.

(b) If such remittance is not received within 30 days after it becomes due and payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor.

PART 727—[REMOVED]

6. Under the authority of sections 932 and 936 of the Black Lung Benefits Act, part 727 is proposed to be removed.

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Part III

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Notice of January 21, 1997—Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

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Presidential Documents

Title 3—

The President

Notice of January 21, 1997

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. By Executive Order 12947 of January 23, 1995, I blocked the assets in the United States, or in the control of United States persons, of foreign terrorists who threaten to disrupt the Middle East peace process. I also prohibited transactions or dealings by United States persons in such property. Because terrorists activities continue to threaten the Middle East peace process and vital interests of the United States in the Middle East, the national emergency declared on January 23, 1995, and the measures that took effect on January 24, 1995, to deal with that emergency must continue in effect beyond January 23, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
January 21, 1997.

[FR Doc. 97–1742
Filed 1–21–97; 12:45 pm]
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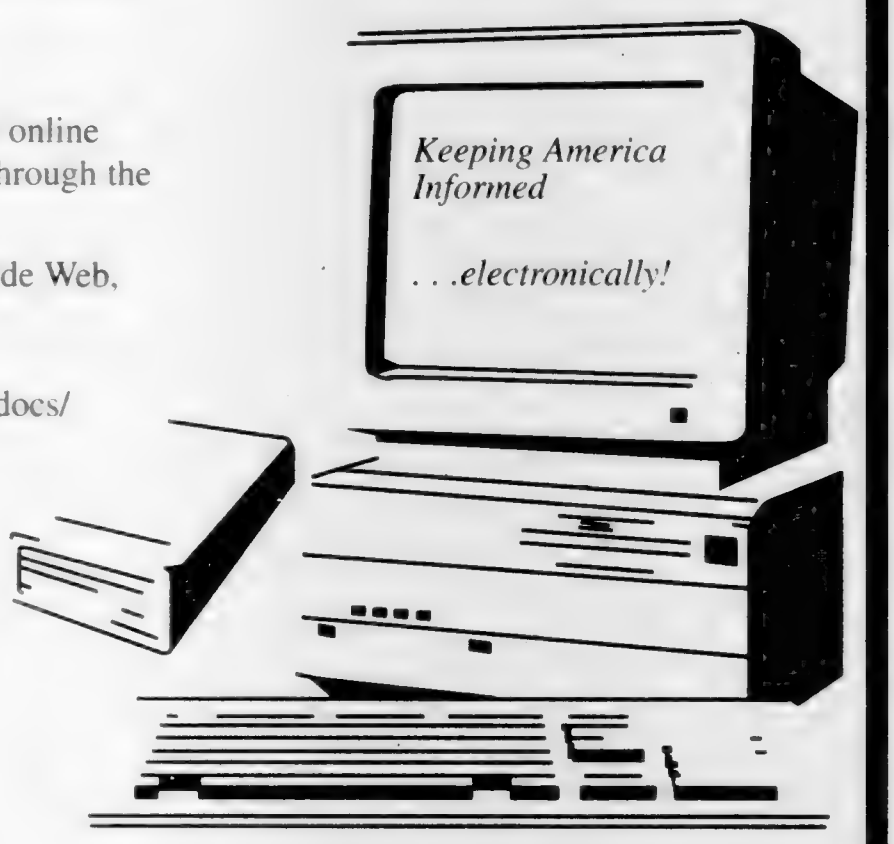

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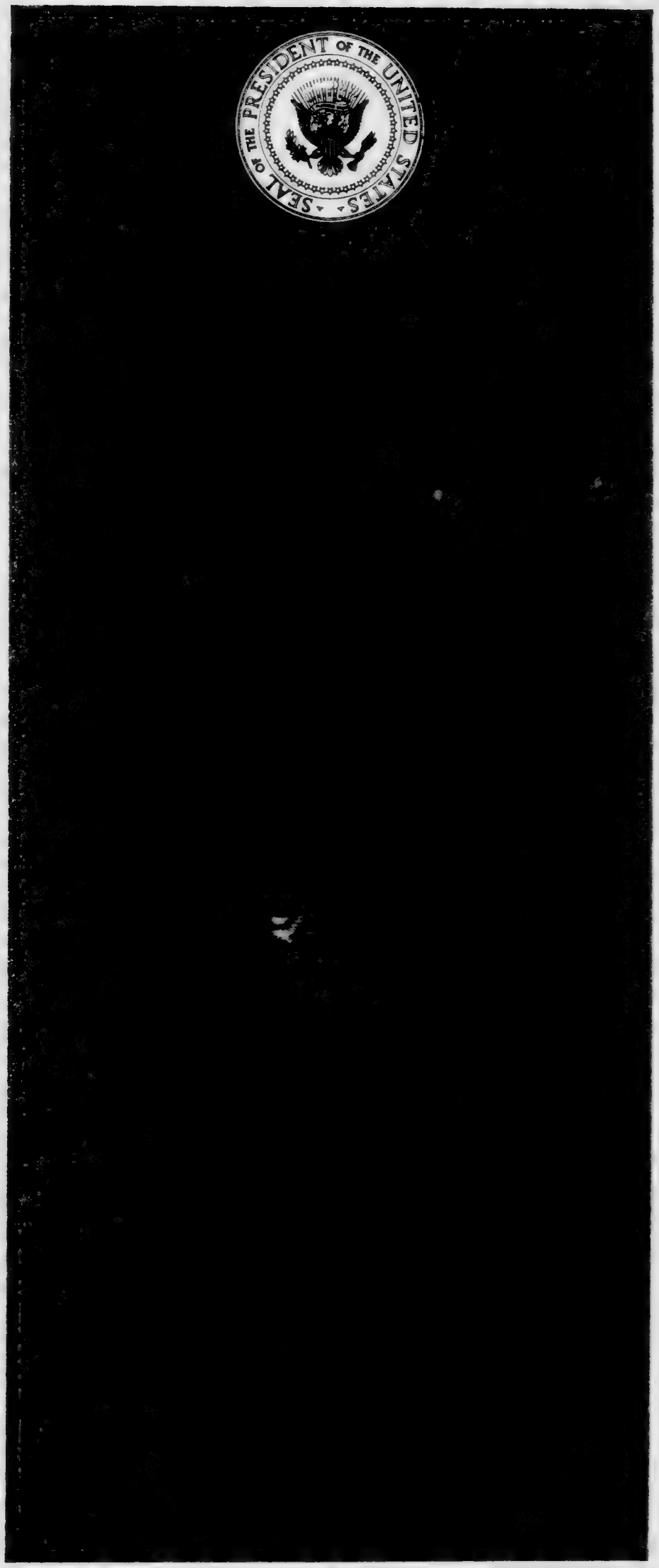

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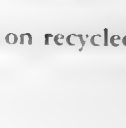

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Title 3—

The President

Proclamation 6967 of January 17, 1997

Martin Luther King, Jr., Federal Holiday, 1997

By the President of the United States of America

A Proclamation

People throughout the world celebrate the birthday of Dr. Martin Luther King, Jr., as a tribute to his shining example of love and justice.

Dr. King was a man of clear and powerful vision who offered an uncompromising message of brotherhood and hope at a time when violence and racial intolerance tore at the seams of our Nation. In addressing these ills, he often referred to what he called the "magnificent words" of the Declaration of Independence, which proclaimed that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." He declared these words to be "a promissory note to which every American was to fall heir," and upon which payment could no longer be delayed. Dr. King's struggle made it possible for all of us to move closer to the ideals set forth in the Declaration of Independence and in our Constitution.

Although ours is the most successful multiracial, multicultural society in human history, in the words of Dr. King, "our work is not yet done." We have not yet fully realized Dr. King's dream of a Nation of full opportunity, genuine equality, and consistent fair play for all.

Every citizen must rise to meet that challenge because America's promise of freedom and opportunity cannot truly be realized for any of us until it is realized for every one of us. We all have an obligation to reach out to one another—across the artificial barriers of race, gender, religion, class, and age—so that each member of our society shares fully in the promise of the American Dream.

In the spring of 1963, Dr. King was arrested in Birmingham, Alabama, while protesting discrimination in public accommodations and employment. From his jail cell, he wrote of his faith that ultimately what was good in America would prevail over fear and prejudice:

> We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with the destiny of America. . . . We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

As I begin my second term as the last President of the 20th century, I ask each American to work with me to usher in a new era of hope, reconciliation, and fellowship among all our people—rich and poor, young and old, and men and women of every race. I urge all Americans to put intolerance behind us, seek common ground, and strive for justice and community in our Nation.

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 20, 1997, as the Martin Luther King, Jr., Federal Holiday. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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Presidential Documents

Proclamation 6968 of January 20, 1997

National Day of Hope and Renewal, 1997

By the President of the United States of America

A Proclamation

Today as we celebrate the last Presidential Inauguration of the 20th century and raise our sights with hope and humility toward the challenges of a new age, let us together ask God's guidance and blessing.

This day marks not a personal or political victory but the triumph of a free people who have freely chosen the course our country will take as we prepare for the 21st century.

During the past 4 years, we have grown together as a people and as a Nation. Touched by tragedy, strengthened by achievement, exhilarated by the challenges and opportunities ahead, we have come a long way on our journey to change America's course for the better. We have always been a people of hope—hope that we can make tomorrow brighter than today, hope that we can fulfill our Nation's enduring promise of freedom and opportunity. And we have always known that, by the grace of God and our mutual labor, we can make our hopes reality.

Today, we live in an age of possibility—a moment of rich opportunity that brings with it a deep responsibility for the future and the generations to come. We must seize this special moment with a commitment to do right by those who will follow us in this blessed land.

Dr. Martin Luther King, Jr., whose life and vision we honor today, recognized that the destiny of each American is bound to the destiny of all Americans; that if we are to go forward, we must go forward together. So, let us pledge today to continue our national journey together. Let us reaffirm our commitment to our shared values of family and faith, work and opportunity. And let us resolve to work together, one Nation under God, to build a bridge of hope and renewal to a new American century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 20, 1997, a National Day of Hope and Renewal, and I call upon the citizens of this great Nation to observe this day by reflecting on their obligations to one another and to our beloved country and by facing the future with a spirit of hope and renewal.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 96–005–2]

Cattle Exportations; Tuberculosis and Brucellosis Test Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations by eliminating requirements for pre-export diagnostic tests for tuberculosis and brucellosis in certain cattle being exported from the United States directly to slaughter. As amended by this document, the rule eliminates the tuberculosis and brucellosis test requirements for slaughter cattle exported from States free of brucellosis or tuberculosis and those exported to countries that the Administrator has determined have an acceptable disease surveillance system and that agree to share with the United States any findings of brucellosis or tuberculosis in U.S. origin cattle. We believe that these test requirements can be eliminated without compromising the integrity of our brucellosis and tuberculosis surveillance systems. This rule facilitates the movement of U.S. slaughter cattle to foreign countries.

EFFECTIVE DATE: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.5 requires, among other things, that cattle intended for exportation be tested for tuberculosis and brucellosis.

In an interim rule effective on February 15, 1996, and published in the **Federal Register** on February 23, 1996 (61 FR 6917–6918, Docket No. 96–005–1), we amended the cattle exportation regulations in 9 CFR part 91 to remove the tuberculosis and brucellosis test requirements for cattle being exported for slaughter. We amended the regulations to remove these testing requirements for cattle exported directly to slaughter in a foreign country, if the receiving country has a disease surveillance system equivalent to that of the United States, as determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS), and if the receiving country agrees to share any findings of brucellosis or tuberculosis in U.S. origin cattle with APHIS. In addition, we amended the regulations to remove these testing requirements for any cattle moving directly to slaughter from a State designated as free of tuberculosis or brucellosis in 9 CFR 77.1 or 78.41, respectively. This action relieved restrictions and facilitated the movement of U.S. slaughter cattle to foreign countries.

We solicited comments concerning the interim rule for 60 days ending April 23, 1996. We received two comments by that date. Both comments were from State Departments of Agriculture. The comments are discussed below.

Both commenters agreed with the economic benefits of the rule and the actions taken by the interim rule. However, both commenters were concerned with the wording about Mexico having a tuberculosis surveillance system equivalent to that of the United States.

We understand and agree with the commenters' concerns. Federal slaughter plants in Mexico have a tuberculosis surveillance system in place. This rule deals with exports to Mexico of slaughter cattle but not other cattle. In the interim rule we should have specified that the slaughter plants in Mexico, to which the slaughter cattle are being exported, have tuberculosis surveillance systems that are acceptable to the United States. As a result of these comments, we are making changes in this final rule to revise two references to specify that the Administrator has determined that Canada and Mexico have acceptable tuberculosis surveillance systems at slaughter plants for the purposes of receiving cattle exported from the United States for slaughter.

For consistency, we are making the same changes for brucellosis testing. Therefore, two references will be changed to specify that the Administrator has determined that Canada has an acceptable brucellosis surveillance system at slaughter plants for the purposes of receiving cattle exported from the United States for slaughter.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

As stated in the interim rule published in the **Federal Register** on February 23, 1996, timely compliance with sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) was impracticable to make this rule effective in time for U.S. exporters of slaughter cattle to take advantage of a favorable marketing situation. This final rule includes the analysis of the economic impact of this regulatory change on small entities.

Our interim rule amended the regulations in § 91.5 to remove the tuberculosis and brucellosis testing requirements for cattle moving directly to slaughter in a foreign country. Cattle exported directly for slaughter no longer require tuberculosis or brucellosis tests

prior to exportation when the receiving country (1) has a disease surveillance system at slaughter plants that is acceptable to the United States and (2) agrees to share any findings of tuberculosis or brucellosis in U.S. origin cattle with APHIS. Cattle moving directly to slaughter present a negligible risk of transmitting either brucellosis or tuberculosis to other cattle. Monitoring of these cattle by the receiving country will provide information on the source of any affected cattle within the United States. The interim rule also removed these test requirements for cattle moving directly to slaughter when they originate from a Class Free State for brucellosis or an Accredited-Free State for tuberculosis. Cattle exported for slaughter from a State which is free of brucellosis or tuberculosis present a negligible risk of carrying brucellosis or tuberculosis, respectively.

The Regulatory Flexibility Act requires that we specifically consider the economic impact associated with rule changes on small entities. The Small Business Administration's definition of a small entity involved in cattle exportation is one whose total sales is less than $0.5 million annually. In 1992 there were 1,034,189 cattle and calf farms in the United States, of which 1,011,591, or 97.8 percent, would be considered small entities. The number of these entities exporting cattle for slaughter to Mexico and Canada or exporting cattle for slaughter from a brucellosis or tuberculosis free State is unknown.

There were 148,906 and 71,781 cattle, except breeding cattle, exported from the United States in 1994 and 1995, respectively. In both years, over 99 percent of the cattle were exported to Mexico and Canada. Approximately 50 percent of the cattle exported to Canada moved directly to slaughter and virtually all of the cattle exported to Mexico moved directly to slaughter.

To the extent that the elimination of testing requirements represents a reduction in operating costs, any entity bypassing this testing will benefit economically from the rule change. The degree to which an entity is affected depends on its market power or on the extent to which the cost reduction can be retained by the entity. Without information on either profit margins and operational expenses of the affected entities or the supply responsiveness of the affected industry, the affect cannot be precisely predicted. However, we expect that some exporters will experience a small economic benefit as a result of eliminating the test requirements and their associated costs.

The cost of these tests vary depending upon where and how the tests are performed. Brucellosis tests may be administered along with the tuberculosis test. Brucellosis and tuberculosis tests cost pennies per animal when performed at a market concentration center where a card test is used. At a farm the brucellosis and tuberculosis tests cost as much as $19.00 per animal including labor, laboratory costs, and miscellaneous charges. This cost would be only slightly lower for performing the tuberculosis test alone. With such a low cost per animal, we do not expect these changes to have a significant impact on any entity, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, and Transportation.

Accordingly, the interim rule amending 9 CFR part 91 which was published at 61 FR 6917–6918 on February 23, 1996, is adopted as a final rule with the following changes:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 91.5 is amended by revising paragraphs (a)(1)(i), (a)(2), (b)(1)(iv) and (b)(2) to read as set forth below.

§ 91.5 Cattle.

* * * * *

(a) * * *

(1) * * *

(i) Cattle exported directly to slaughter in a country that the Administrator has determined has an acceptable tuberculosis surveillance system at slaughter plants and that agrees to share any findings of tuberculosis in U.S. origin cattle with APHIS; or

* * * * *

(2) The Administrator has determined that the following countries have an acceptable tuberculosis surveillance system at slaughter plants: Canada and Mexico.

(b) * * *

(1) * * *

(iv) Cattle exported directly to slaughter in a country that the Administrator has determined has an acceptable brucellosis surveillance system at slaughter plants and that agrees to share any findings of brucellosis in U.S. origin cattle with APHIS; or

* * * * *

(2) The Administrator has determined that the following country has an acceptable brucellosis surveillance system at slaughter plants: Canada.

* * * * *

Done in Washington, DC, this 16th day of January 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–1634 Filed 1–22–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–70–AD; Amendment 39–9887; AD 97–02–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. It requires a one-time inspection to verify the correct routing and tension of the flight control lock cables and the elevator control cables, and rerouting or adjustment of the tension of these cables, if necessary. This amendment is prompted by a report indicating that an inspection for correct routing and tension of those cables may not have been accomplished during modification of the airplanes at the factory. The actions specified by this AD are intended to prevent incorrect routing and tension of the flight control lock cables and the elevator control cables, which could result in

inadvertent disconnection of those cables, and consequent reduced controllability of the airplane.

DATES: Effective February 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on September 30, 1996 (61 FR 51066). That action proposed to require a one-time visual inspection to verify the routing of the flight control lock cables and to verify the tension of the left and right elevator control cables, and rerouting of cables or adjustment, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 5 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,400, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–02–03 Fokker: Amendment 39–9887. Docket 96–NM–70–AD.

Applicability: Model F28 Mark 0100 series airplanes having serial numbers 11323 through 11326 inclusive, 11423, 11429, 11431, 11441, 11444, and 11445; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect routing and incorrect tension of the flight control lock cables and elevator control cables, which could result in inadvertent disconnection of those cables, and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to verify the correct routing and correct tension of the flight control lock cables and elevator control cables, in accordance with Fokker Service Bulletin SBF100–27–064, dated September 15, 1994.

(1) If the routing and tension of the flight control lock cables and elevator control cables are correct, as specified in the service bulletin, no further action is required by this AD.

(2) If the routing and/or tension of the flight control lock cables or the elevator control cables is not correct, as specified in the service bulletin, prior to further flight, reroute and/or adjust the tension of those cables, as necessary, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–27–064, dated September 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies

may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 27, 1997.

Issued in Renton, Washington, on January 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–811 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–79–AD; Amendment 39–9890; AD 97–02–06]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 and F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 and F28 Mark 0100 series airplanes, that requires installation of a bonding cable for the housing of the lavatory pump and filter assembly and the lavatory bowl. This amendment is prompted by a report indicating that the housing of the lavatory pump and filter assembly is not grounded properly. The actions specified by this AD are intended to prevent such improper grounding, which could result in an electrical fire and/or injury to passengers and crewmembers.

DATES: Effective February 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 050 and F28 Mark 0100 series airplanes was published in the **Federal Register** on October 1, 1996 (61 FR 51255). That action proposed to require installation of a bonding cable for the housing of the lavatory pump and filter assembly and the lavatory bowl.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 48 Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $209 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model F28 Mark 0100 series airplanes of U.S. registry is estimated to be $27,312, or $569 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Currently, there are no Model F27 Mark 050 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $88 per airplane. Based on these figures, the cost impact of this AD on Model F27 Mark 050 series airplanes would be $208 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–02–06 Fokker: Amendment 39–9890. Docket 96–NM–79–AD.

Applicability: Model F27 Mark 050 series airplanes, as listed in Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994; and Model F28 Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–25–069, dated July 13, 1994, as revised by Service Bulletin Change Notification (SBCN) SBF100–25–069/01, dated February 15, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper grounding of the housing of the lavatory pump and filter assembly, which could result in an electrical fire and/or injury to passengers and crewmembers, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a bonding cable for the housing of the lavatory pump and filter assembly and the lavatory bowl in accordance with Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994 (for Model F27 Mark 050 series airplanes); and Service Bulletin SBF100–25–069, dated July 13, 1994, as revised by Service Bulletin Change Notification (SBCN) SBF100–25–069/01, dated February 15, 1995 (for Model F28 Mark 0100 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994; and Fokker Service Bulletin SBF100–25–069, dated July 13, 1994, as revised by Service Bulletin Change Notification (SBCN) SBF100–25–069/01, dated February 15, 1995; as applicable. Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	August 5, 1994.
2–3	Original	August 1, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 27, 1997.

Issued in Renton, Washington, on January 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–882 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–243–AD; Amendment 39–9889; AD 97–02–05]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires, among other things, replacing certain yaw damper servos in the autopilot system, or rendering the servo inoperative. The actions specified by that AD are intended to prevent overheat failure of the Flight Control Computer (FCC), which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane. This new amendment requires installation of circuit breakers on the avionics relay panel, which, when accomplished, constitutes terminating action for the previous requirements of the AD.

DATES: Effective February 27, 1997.

The incorporation by reference of Jetstream Service Bulletin J41–22–006, dated July 1, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of February 27, 1997.

The incorporation by reference of Jetstream Alert Service Bulletin J41–22–005, dated July 1, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 1, 1996 (61 FR 48614, September 16, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–19–06, amendment 39–9754 (61 FR 48614, September 16, 1996), which is applicable to certain Jetstream Model 4101 airplanes, was published in the **Federal Register** on October 23, 1996 (61 FR 54967). The action proposed to supersede AD 96–19–06 to continue to require the actions currently specified in that AD:

1. A one-time inspection of the airplane records to determine:
—the serial number,
—the total number of hours time-in-service accumulated,
—the date of installation of the yaw damper servo in the autopilot system; and
—the date of installation of a particular kit, if installed.

2. Removal and replacement of certain yaw damper servos, or rendering the yaw damper servo inoperative.

The action also proposed to add a requirement to install circuit breakers on the avionics relay panel. When accomplished, this installation would constitute terminating action for the previous requirements of the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 55 Jetstream Model 4101 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–19–06 take approximately 2 to 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be between $6,600 and $16,500, or between $120 and $300 per airplane.

The new action (installation of circuit breakers) that is required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the installation requirement of this AD on U.S. operators is estimated to be $9,900, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9754 (61 FR 48614, September 16, 1996), and by adding a new airworthiness directive (AD), amendment 39–9889, to read as follows:

97–02–05 Jetstream Aircraft Limited: Amendment 39–9889. Docket 96–NM–243–AD. Supersedes AD 96–19–06, Amendment 39–9754.

Applicability: Model 4101 airplanes having serial numbers 41004 through 41092, inclusive; on which Jetstream Service Bulletin J41–22–006, dated July 1, 1996 (Kit JK42867), has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheat failure of the Flight Control Computer (FCC), which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane, accomplish the following:

(a) Within 14 days after October 1, 1996 (the effective date of AD 96–19–06), perform a one-time inspection of the airplane records to determine the serial number, the total number of hours time-in-service accumulated, and the date of installation of the yaw damper servo in the autopilot system; and to determine the date of installation of Kit JK42716 (reference Jetstream Service Bulletin J41–53–016 or J41–22–007), if installed. Accomplish the inspection in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A22–005, dated July 1, 1996. Thereafter, either remove and replace the yaw damper servo and install Kit JK42716 (if not installed previously), or render the yaw damper servo inoperative, in accordance with Part 2 or 3 of the alert service bulletin, respectively, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) If Kit JK42716 has not been installed: Prior to the accumulation of 1,000 hours total time-in-service on the yaw damper servo, or within 30 days after October 1, 1996, whichever occurs later.

(2) If Kit JK42716 has been installed and the yaw damper servo was installed prior to the installation of Kit JK42716: Prior to the accumulation of 1,000 hours total time-in-service on the yaw damper servo, or within 30 days after October 1, 1996, whichever occurs later.

(3) If Kit JK42716 has been installed and the yaw damper servo was installed after the installation of Kit JK42716: Prior to the accumulation of 3,000 total hours time-in-service on the yaw damper servo, or within 30 days after October 1, 1996, whichever occurs later.

(b) Within 90 days after the effective date of this AD, install circuit breakers on the avionics relay panel (Kit JK42867) in accordance with Jetstream Service Bulletin J41–22–006, dated July 1, 1996. Accomplishment of this installation constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A22–005, dated July 1, 1996; and Jetstream Service Bulletin J41–22–006, dated July 1, 1996. The incorporation by reference of Jetstream Alert Service Bulletin J41–A22–005, dated July 1, 1996, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 1, 1996 (61

FR 48614, September 16, 1996). The incorporation by reference of Jetstream Service Bulletin J41–22–006, dated July 1, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 23, 1997.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–881 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–21–AD; Amendment 39–9885; AD 97–02–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Model PA–31T2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft, Inc. (Piper) Model PA–31T2 airplanes that have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 installed in accordance with Supplemental Type Certificate (STC) SA599GL. This action requires rerouting the landing gear emergency extension line. This AD results from three incidents of the brake cylinder contacting the landing gear emergency extension air line on both wheel wells. The actions specified by this AD are intended to prevent the brake cylinder from chafing against the landing gearemergency extension air line when the gear is in the up and locked position, which could result in damage to the air line and subsequent loss of emergency gear extension capability.

DATES: Effective February 14, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 14, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from the Parker Hannifin Corporation, Aircraft Wheel & Brake, 1160 Center Road, P.O. Box 158, Avon, Ohio 44011; telephone (216) 937–6211; facsimile (216) 937–5409. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Miller, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7837; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Model PA–31T2 airplanes that have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 installed in accordance with STC SA599GL was published in the **Federal Register** on June 13, 1996 (61 FR 29992). The action proposed to require rerouting the landing gear emergency extension air line. Accomplishment of the proposed action as specified in the supplemental notice of proposed rulemaking (NPRM) would be in accordance with Parker Hannifin Service Bulletin SB7034, Revision B, dated December 19, 1995.

The supplemental NPRM results from three incidents of the brake cylinder contacting the landing gear emergency extension air line on both wheels.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 62 Piper Model PA31–T2 airplanes in the U.S. registry could incorporate Parker Hannifin Wheel and Brake Conversion Kit 199–111 (in accordance with STC SA599GL), that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators could be as much as $16,120 if all affected airplanes had the referenced conversion kit installed.

Parker Hannifin has informed the FAA that it has distributed 31 kits (shipped after March 28, 1994) to Piper Model PA31T2 airplane owners/operators. Kits shipped after March 28, 1994, included the replacement parts referenced in Parker Hannifin SB7034, Revision B, dated December 19, 1995. Based on each of the 31 kits being incorporated on an affected airplane, the cost impact of this AD on U.S. owners and operators is reduced 50 percent from $16,120 to $8,060. The reduction results from the difference between the 62 airplanes that are type certificated to have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 incorporated (in accordance with STC SA599GL) and the 31 kits that have already been distributed.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–02–01 The New Piper Aircraft, Inc.: Amendment 39–9885; Docket No. 95–CE–21–AD.

Applicability: Model PA31T2 airplanes (serial numbers31T–8166001 through 31T–8166062), certificated in any category, that have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 incorporated in accordance with Supplemental Type Certificate (STC) SA599GL.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the brake cylinder from chafing against the landing gear emergency extension air line when the gear is in the up and locked position, which could result in damage to the air line and subsequent loss of emergency gear extension capability, accomplish the following:

(a) Reroute the landing gear emergency extension air line in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Parker Hannifin Service Bulletin SB7034, Revision B, dated December 19, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(d) The rerouting required by this AD shall be done in accordance with Parker Hannifin Service Bulletin SB7034, Revision B, dated December 19, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Parker Hannifin Corporation, Aircraft Wheel & Brake, 1160 Center Road, P.O. Box 158, Avon, Ohio 44011. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9885) becomes effective on February 14, 1997.

Issued in Kansas City, Missouri, on January 6, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–880 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 97

[Docket No. 28777; Amdt. No. 1776]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 10, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97–STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER ISAPs, identified as follows:

...Effective January 30, 1997

Fayetteville, AR, Drake Field, LDA/DME RWY 34, Orig
Burlington, CO, Kit Carson County, LOC RWY 33, Orig
Suffolk, VA, Suffolk Muni, LOC RWY 4, Orig
Suffolk, VA, Suffolk Muni, NDB RWY 4, Orig

...Effective February 27, 1997

Unalakleet, AK, Unalakleet, MLS RWY 14, Orig
Frankfort, IL, Frankfort, VOR or GPS RWY 27, Amdt 4
Youngstown, OH, Youngstown Elser Metro, VOR or GPS–C, Amdt 1
Miller, SD, Miller Muni, NDB or GPS RWY 13, Amdt 2, CANCELLED
Miller, SD, Miller Muni, NDB RWY 15, Orig

...Effective March 27, 1997

Port Heiden, AK, Port Heiden, VOR/DME RWY 13, Orig
St Mary's, AK, St Mary's, LOC/DME RWY 16, Amdt 2
St Mary's, AK, St Mary's, NDB RWY 16, Amdt 1
Benton, AR, Saline County, GPS RWY 17, Orig
Benton, AR, Saline County, GPS RWY 35, Orig
Hope, AR, Hope Muni, VOR/DME RWY 4, Amdt 7
Hope, AR, Hope Muni, NDB RWY 16, Amdt 4
Hope, AR, Hope Muni, GPS RWY 4, Orig
Hope, AR, Hope Muni, GPS RWY 16, Orig
Grass Valley, CA, Nevada County Air Park, GPS RWY 7, Orig
Telluride, CO, Telluride Regional, GPS RWY 9, Amdt 1
Oxford, CT, Waterbury-Oxford, NDB RWY 36, Amdt 7
Oxford, CT, Waterbury-Oxford, GPS RWY 18, Orig
Oxford, CT, Waterbury-Oxford, GPS RWY 36, Orig
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 5
Brooksville, FL, Hernando County, GPS RWY 9, Orig
Brooksville, FL, Hernando County, GPS RWY 20, Orig
Claxton GA, Claxton-Evans County, NDB RWY 9, Orig, CANCELLED
Claxton, GA, Claxton-Evans County, NDB RWY 9, Orig
Muscatine, IA, Muscatine Muni, GPS RWY 23, Amdt 1
Frankfort, IN, Frankfort Muni, NDB or GPS RWY 9, Amdt 1
Frankfort, IN, Frankfort Muni, GPS RWY 27, Orig
Menominee, MI, Menominee-Marinette Twin County, GPS RWY 32, Orig
Ely, MN, Ely Muni, VOR/DME RWY 30, Amdt 4
ELY, MN, Ely Muni, VOR/DME RWY 12, Amdt 4
Ely, MN, Ely Muni, VOR or GPS RWY 30, Amdt 6
Ely, MN, Ely Muni, VOR or GPS RWY 12, Amdt 6
St Paul, MN, St Paul Downtown Holman Fld, GPS RWY 14, Orig
Sidney, MT, Sidney-Richland Muni, GPS RWY 1, Orig
Sidney, MT, Sidney-Richland Muni, GPS RWY 19, Orig
York, NE, York Muni, GPS RWY 17, Orig
York, NE, York Muni, GPS RWY 35, Orig
West Milford, NJ, Greenwood Lake, GPS RWY 6, Orig
Columbus, OH, Ohio State University, LORAN RNAV RWY 9R, Orig, CANCELLED
Columbus, OH, Ohio State University, LORAN RNAV RWY 27L, Orig, CANCELLED
Columbus, OH, Ohio State University, GPS RWY 9R, Orig
Columbus, OH, Ohio State University, GPS RWY 27L, Orig
Newberry, SC, Newberry Muni, GPS RWY 22, Orig
Houston, TX, Houston Intercontinental, GPS RWY 14L, Orig
Marfa, TX, Marfa Muni, GPS RWY 30, Orig
Galax/Hillsville, VA, Twin County, NDB OR GPS–A, Amdt 6
Galax/Hillsville, VA, Twin County, GPS RWY 36, Orig
Leesburg, VA Leesburg Muni/Godfrey Field, VOR OR GPS–A, Amdt 1
Leesburg, VA Leesburg Muni/Godfrey Field, LOC RWY 17, Amdt 2
Leesburg, VA Leesburg Muni/Godfrey Field, GPS RWY 17, Orig
Orange, VA, Orange County, GPS RWY 7, Orig
Portsmouth, VA, Hampton Roads, NDB OR GPS RWY 2, Amdt 6
Portsmouth, VA, Hampton Roads, GPS RWY 10, Orig

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Portsmouth, VA, Hampton Roads, GPS RWY 28, Orig
Richmond/Ashland, VA, Hanover County Muni, LOC RWY 16, Amdt 1
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Regional, GPS RWY 23, Orig
Charlotte Amalie, VI, Cyril E King, GPS RWY 10, Orig
Phillips, WI, Price County, GPS RWY 1, Orig
Phillips, WI, Price County, GPS RWY 19, Orig

Note: The FAA published two amendments of the Federal Aviation Regulations (Vol 61, No. 248, page 67704, dated Tuesday, December 24, 1996) under Sections 97.29 and 97.33 in Docket No. 28765, Amdt. No. 1770 to Part 97, with an effective publication date of January 30, 1997, which is hereby amended to read as follows:

Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 15L, Amdt 4
Wilmington, DE, New Castle County, VOR/DME RNAV OR GPS RWY 9, Orig

[FR Doc. 97–1579 Filed 1–22–97; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28778; Amdt. No. 1777]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which affected airport is located.

By Subcription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 10, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as read as follows:

§§ 97.23, 97.25, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPS, identified as follows:

** * * EFFECTIVE UPON PUBLICATION*

FDC date	State	City	Airport	FDC No.	SIAP
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0026	ILS RWY 22, AMDT 4...
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0027	ILS RWY 11L, AMDT 3...
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0028	ILS RWY 29R, AMDT 7...
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0029	NDB or GPS RWY 29R, AMDT 11...
01/03/97	AL	Auburn	Auburn-Opelika Robert G. Pitts	FDC 7/0042	VOR or GPS RWY 28 AMDT 9A...
01/03/97	FL	Gainesville	Gainesville Regional	FDC 7/0041	NDB RWY 28 AMDT 8...
01/03/97	FL	Gainesville	Gainesville Regional	FDC 7/0044	LOC BC RWY 10 AMDT 7...
01/03/97	FL	Gainesville	Gainesville Regional	FDC 7/0045	ILS RWY 28 AMDT 11...
01/05/97	IL	Moline	Quad City Airport	FDC 7/0066	ILS RWY 27 ORIG–A...
01/06/97	AR	Little Rock	Adams Field	FDC 7/0101	ILS RWY 22L, AMDT 1B...
01/06/97	PA	Perkasie	Pennridge	FDC 7/0102	VOR or GPS RWY 8 AMDT 1...
01/07/97	OR	Portland	Portland Intl	FDC 7/0119	ILS RWY 10R AMDT 30B...
01/07/97	SD	Rapid City	Rapid City Regional	FDC 7/0134	ILS RWY 32 AMDT 17...
01/07/97	SD	Rapid City	Rapid City Regional	FDC 7/0135	NDB RWY 32 AMDT 3...
01/07/97	SD	Rapid City	Rapid City Regional	FDC 7/0136	VOR or TACAN or GPS RWY 32 AMDT 24...
10/03/96	KS	Manhattan	Manhattan Muni	FDC 6/7604	VOR or GPS RWY 3, AMDT 17...
12/06/96	OH	Columbus	Port Columbus Intl	FDC 6/9115	NDB RWY 28R ORIG...
2/20/96	FL	St Augustine	St Augustine	FDC 6/9433	VOR or GPS RWY 13 AMDT 5...

[FR Doc. 97–1578 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28779; Amdt. No. 1778]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or

revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPS effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 10, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

** * * Effective January 30, 1997*

De Queen, AR, J. Lynn Helms Sevier County, NDB or GPS RWY 8, Amdt 4A CANCELLED
De Queen, AR, J. Lynn Helms Sevier County, NDB RWY 8, Amdt 4A
Holdenville, OK, Holdenville Muni, NDB or GPS RWY 17, Amdt 3 CANCELLED
Holdenville, OK, Holdenville Muni, NDB RWY 17, Amdt 3
Houston, TX, Ellington Field, VOR or TACAN or GPS RWY 22, Amdt 2 CANCELLED
Houston, TX, Ellington Field, VOR or TACAN RWY 22, Amdt 2

[FR Doc. 97–1577 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4192–N–01]

Manufactured Housing Construction and Safety Standards: Notice of Internal Guidance on Preemption

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of staff guidance.

SUMMARY: The Office of Consumer and Regulatory Affairs in HUD has developed guidelines to assist its staff in addressing preemption issues concerning the National Manufactured Housing Construction and Safety Standards Act of 1974. Because of the interest of outside persons in the subject generally, HUD has decided to publish these internal guidelines to assist regulated entities and consumers in understanding the guidelines under which HUD will be operating. These guidelines are not binding on either HUD or the public and are published for informational purposes only.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–6401, or on e-mail through Internet at David__R.__Williamson@hud.gov. For hearing and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The staff guidelines reproduced in this notice are internal guidance to assist the HUD office administering the manufactured housing program in answering questions from the public as to whether particular State or local laws or regulations are preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act). The guidelines are based upon the Act and its implementing regulations in 24 CFR parts 3280, 3282, and 3800 and do not provide new interpretations of the Act

or create new HUD policy. The guidelines were developed to assist HUD staff in giving uniform and timely responses to the public, including consumers and affected industries, and State and local governments on preemption issues.

HUD is publishing these guidelines because of the interest in preemption questions that has been expressed by members of these groups. HUD welcomes comments on these guidelines. Anyone wishing to comment on these guidelines may do so by submitting written comments to the attention of the person listed in the "For Further Information Contact" section of this notice.

The internal guidelines that were prepared are as follows:

Guidelines for Analyzing Situations Involving Preemption Under the Manufactured Home Construction and Safety Standards Act

I. Introduction

These guidelines have been prepared to assist in answering questions from the public as to whether particular State or local laws or regulations are preempted by the Act. These guidelines are based upon the National Manufactured Housing Construction and Safety Standards Act and its implementing regulations and are not intended to add new interpretations to the Act or to create new HUD policy.

II. Statutory And Regulatory Background

The Act establishes a national set of construction standards for manufactured housing. To ensure that State or local governments did not enact or allow to continue conflicting construction standards, Congress provided that no State or local government could establish a standard dealing with an aspect of performance that is not identical to those standards established under the Act (section 604(d)). However, where there is no Federal standard, the States are free to act (section 623(a)).

HUD has interpreted these statutory provisions in its regulations implementing the Act (24 CFR 3282.11). In accordance with the Act, the regulation bars States from imposing a manufactured home standard regarding construction and safety that covers the same aspects of performance governed by a Federal standard. More generally, States may not take any action that could interfere with the Federal superintendence of the industry as established by the Act (24 CFR 3282.11).

The Act does not impose a duty on HUD to make any determinations as to the applicability of the preemption provision, to investigate preemption issues, or to render advisory opinions regarding preemption questions. Further, a State is not specifically prohibited under section 610 of the Act from implementing a provision that is preempted, nor is there any requirement under the Act for the Secretary to enforce the preemption provision. Generally, enforcement of preemption requirements is left up to the Courts. Where an issue is unclear, it is appropriate for the Courts to decide whether a State or local requirement is preempted.

To the extent possible, HUD wishes to be responsive to inquiries of consumers, the industry, and State or local governments on the applicability of preemption. These responses should be considered as an effort by HUD to advise the public of its construction of the statute and the rules which it administers, and to give its opinion as to the applicable law and the particular facts.

III. Guidelines for Specific Situations

Most inquiries can be responded to merely by discerning if there is a specific Federal standard which addresses the same aspect of performance as the State standard. If so, the Federal law preempts the State law. In a significant number of cases, however, the determination is not as clear and requires either an engineering or legal analysis, or both. There are four general areas of inquiry which are frequently raised:

A. Installation

There is no specific Federal standard that deals with the installation of manufactured homes. As such, standards as to the installation of manufactured homes can be regulated by local or State governments and are not preempted under the Act.

It is possible, however, that a local installation rule may hinder the implementation of Federal standards. For example, the implementation of a local rule may conflict with a requirement of a Federal construction standard for plumbing or water hookup. In such cases, the local rule is preempted.

B. Zoning

Normally, zoning issues fall outside the scope of the preemption provisions of sections 604 of the Act. There may be limited instances, however, in which the Federal definition of "manufactured home" could fall within the broad definitions applied to prefabricated or factory built homes under the local zoning ordinance. Such homes are treated differently depending on the building code under which they are constructed.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Act because such enforcement rests on the locality's right to determine proper land use. In addition, a locality is free to adopt and enforce ordinances that regulate the appearance and dimensions of homes so long as the criteria established by such ordinances do not have the effect of excluding manufactured homes based on the construction and safety standards to which they were built. Such regulation of aesthetics protects property values, preserves the character and integrity of communities and neighborhoods, and assures architectural compatibility.

If a locality, however, is attempting to regulate, and even exclude, certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different from that prescribed by the Act, the locality lacks such authority. Thus, a locality cannot accept structures meeting the Federal definition of manufactured homes which comply with different standards, such as the local or State Building Code, and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal standards. By excluding or restricting only manufactured homes built to the Federal standards, and accepting manufactured homes built to other codes, the locality is establishing standards different than the Federal standards.

A locality is not in conflict with the preemptive provisions of the Act if, without regard to construction standards, it treats all structures that meet the Federal definition of Manufactured Homes the same under local zoning laws.

C. State Enforcement

A number of questions have arisen as to when a State's enforcement of manufactured housing standards are preempted by Federal law. HUD's regulations at 24 CFR 3282.11 (c) and (d) set forth a clear standard as to the appropriateness of State enforcement of its manufactured home standards. The Federal regulations prohibit a State from establishing a code enforcement system for manufactured homes which is outside, or goes beyond, those enforcement procedures specifically set forth in the Federal regulations. "The test of whether a State rule or action is

valid or must give way is whether the State rule can be enforced, or the action taken, without impairing the Federal superintendence of the manufactured home industry as established by the Act" (24 CFR 3282.11(d)). There are several specific situations:

1. A State, as a State Administrative Agency (SAA) under section 623 of the Act, can enforce the Federal standards. It may also enforce State standards which are identical to the Federal standards. Such actions would not be preempted. However, the State's system of enforcing these standards must be identical to the enforcement procedures in the Federal regulations. "No State may establish * * * procedures or requirements * * * which * * * require remedial actions which are not required by the Act and the regulations" (24 CFR 3282.11(c)).

2. A State may enforce its own consumer protection or warranty laws as to defects in individual homes. As such, a State may require a manufacturer to correct non-compliances and defects in response to individual consumer complaints. Such acts would not be preempted by Federal law (24 CFR 3282.11(d)).

3. Notwithstanding the above, however, there are limitations on a State's actions to correct individual homes. These are situations in which State action would interfere with Federal superintendence of the manufactured home industry.

(a) *Imminent safety hazards or serious defects.* Where it appears that there is an imminent safety hazard or a serious defect, the State is required to refer the matter to HUD for enforcement (24 CFR 3282.405(b) and 3282.407(a)).

(b) *Class of manufactured homes.* Where it appears that the same defect exists in a class of manufactured homes and the State is *not* the State in which the homes were produced, then the State is required to refer the matter to the SAA in the State in which the homes were produced or to HUD (if there is no SAA in the State of production) for enforcement. Further, if a class of defective homes is produced in more than one state, HUD is responsible for the enforcement actions. If the homes were all manufactured in the State, the State may take actions, consistent with the Federal regulations, with regard to the noncompliance and defects (24 CFR 3282.405(b) and 3282.407(a)(3)).

(c) *Prior HUD enforcement.* Where HUD has already taken action to have a class of serious defects corrected, then the State is preempted from taking corrective actions of its own pursuant to the Act (24 CFR 3282.404(e)).

D. Utility Companies

There have been a few utility companies which have attempted to impose their own construction or safety standards on manufactured homes as a requirement for connection to their services. The Act, by its express terms, prohibits only "State or political subdivisions of a State" from establishing standards that conflict with the Federal standards (section 604(d)). Accordingly, if the utility company is owned or controlled by a political subdivision, its standards are preempted by the Federal standards. If the utility is privately owned, its standards would not be preempted.

E. State Construction and Safety Standards

1. *Aspects of performance.* Additional questions arise in situations in which the State or locality attempts to apply its own building or safety code to the manufactured home. Under section 604 of the Act, State law is preempted whenever there is a State performance standard regarding construction and safety that is not identical to an established Federal standard. On the other hand, section 623 of the Act provides that Federal law does not preempt State construction or safety standards for which a Federal standard had not been established. Thus, for there to be Federal preemption, there must be a specific aspect of a Federal performance standard which duplicates a local standard.

Federal preemption cannot be based upon a general purpose of the Act, or the need for national uniformity in the manufactured housing industry. The courts have applied this "aspect of performance" standard in analogous situations by focusing not on the purpose or scope of the Act, but, rather, on the specific requirements of an established Federal standard. If the Federal standard is encompassed or impacted by the State requirement, the State law is preempted.

2. *Superintendence.* It is also possible that a State or local law may be preempted even though the local rule does not meet the differing aspect of performance standard. As stated above, 24 CFR 3282.11(d) sets forth an additional standard of preemption. A State rule must give way if it impairs the Federal superintendence of the manufactured home industry as established by the Act.

Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.

The scope of this regulatory provision is limited by the language "as established by the Act". This language limits the Federal superintendence of the industry, since section 604(d) of the Act limits the preemption of standards to only those issues dealing with the same aspects of performance.

Authority: 42 U.S.C. 3535(d) and 5401 et seq.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–1646 Filed 1–22–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8710]

RIN 1545–A073

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the consistency rules under section 338 of the Internal Revenue Code of 1986 that are applicable to certain cases involving controlled foreign corporations. The final regulations substantially revise and simplify the stock and asset consistency rules. The final regulations include the provisions of the consistency rules applicable to controlled foreign corporations contained in recent proposed and temporary regulations. The final regulations would affect taxpayers that own controlled foreign corporations.

EFFECTIVE DATE: These regulations are effective January 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 338 of the Internal Revenue Code.

On January 20, 1994, temporary regulations (TD 8516) were published in the **Federal Register** (59 FR 2956) under section 338 of the Internal Revenue Code. See 1994–1 C.B. 119. A notice of proposed rulemaking (INTL–0177–90) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (59 FR 3045). See 1994–1 C.B. 818. The temporary regulations provided rules to replace the asset and stock consistency rules of §§ 1.338–4T and 1.338–5T. The temporary regulations included consistency rules applicable to certain cases involving controlled foreign corporations (CFCs).

No written comments responding to the notice were received. No public hearing was requested or held. The proposed regulations under section 338 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

The preamble to the temporary and proposed regulations (1994–1 C.B. 119) contains a discussion of the provisions. Changes to the temporary and proposed regulations are noted below.

Section 1.338–4T(h)(3) of the temporary regulations is clarified by stating that the basis of the stock of a controlled foreign corporate target affiliate is not increased by section 1248 earnings attributable to the disposition of an asset in which a carryover basis is taken under this section.

Section 1.338–4T(h)(4) of the temporary regulations addresses a situation in which the income or gain from the disposition of a controlled foreign corporation target affiliate (CFC T affiliate) asset is not subject to the consistency rules of paragraph (h)(2). The regulation states that if a CFC T affiliate pays a dividend to a target (T) or a domestic T affiliate wholly or partially out of the earnings generated by the disposition of that asset, and the dividend increases the basis of the T stock under § 1.1502–32, then the basis of the stock of the CFC T affiliate is reduced by the amount of the dividend that was paid from the earnings and profits resulting from the asset disposition. This rule applies to any actual dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291) or amount included in income under section 951(a)(1)(B).

The final regulations retain this rule. The final regulations also add a special ordering rule, in § 1.338–4(h)(4)(ii), clarifying that any such dividend is first considered attributable to earnings and profits resulting from the disposition of the asset.

Section 1.338–4(h)(4)(ii) is clarified to state that the basis of the stock of a controlled foreign corporation may not be reduced below zero under the carryover basis rules of § 1.338–4.

Section 1.338–4(h)(2)(iv)(A) and § 1.338–4(h)(4)(iii)(A) are added to allow the purchasing group in certain instances to increase the basis of the CFC T stock by the amount of either the basis increase denied under § 1.338–4(h)(2)(ii) or the basis reduction required under § 1.338–4(h)(4)(ii). The rule applies when the purchasing group disposes of an asset acquired from CFC T that is subject to the consistency rules to an unrelated party in a taxable transaction and includes in U.S. gross income the greater of (i) the income or gain equal to the basis amount denied to the asset under either § 1.338–4(h)(2)(i) or § 1.338–4(g) and § 1.338–4(h)(4)(i), respectively, or (ii) the gain recognized on the asset.

Similarly, § 1.338–4(h)(2)(iv)(B) and § 1.338–4(h)(4)(iii)(B) are added to allow the purchasing group to increase the basis of an asset acquired from CFC T that is subject to the consistency rules by the basis amount denied to the asset under either § 1.338–4(h)(2)(i) or § 1.338–4(g) and § 1.338–4(h)(4)(i). The rule applies when the purchasing group disposes of the stock of CFC T to an unrelated party in a taxable transaction and includes in U.S. gross income the greater of (i) the gain equal to the basis increase denied under § 1.338–4(h)(2)(ii) or the basis reduction required under § 1.338–4(h)(4)(ii), respectively, or (ii) the gain recognized in the stock.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996 the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information: The principal author of these regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.338–4T(h) to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.338–0, the outline of topics is amended by revising the entry for § 1.338–4(h) and removing the entry for § 1.338–4T to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–4 Asset and stock consistency.

* * * * *

(h) Consistency for target affiliates that are controlled foreign corporations.

(1) In general.

(2) Income or gain resulting from asset dispositions.

(i) General rule.

(ii) Basis of controlled foreign corporation stock.

(iii) Operating rule.

(iv) Increase in asset or stock basis.

(3) Stock issued by target affiliate that is a controlled foreign corporation.

(4) Certain distributions.

(i) General rule.

(ii) Basis of controlled foreign corporation stock.

(iii) Increase in asset or stock basis.

(5) Examples.

* * * * *

Par. 3. Section 1.338–4 is amended as follows:

1. Paragraph (a)(5) is amended by removing the language "Section 1.338–4T(h)" and adding "Paragraph (h) of this section" in its place.

2. Paragraph (c)(4) is amended by removing the language "§ 1.338–4T(h)(2)" and adding "paragraph (h)(2) of this section" in its place.

3. Paragraph (d)(2)(iii) is amended by removing the language "§ 1.338–4T(h)(3)" and adding "paragraph (h)(3) of this section" in its place.

4. Paragraph (g)(2) is amended by removing the language "§ 1.338–4T(h)(4)" and adding "paragraph (h)(4) of this section" in its place.

5. Paragraph (h) is revised.

6. Paragraph (j)(3)(i)(A)(*2*) is amended by removing the language "§ 1.338–4T(h)" and adding "paragraph (h) of this section" in its place.

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The revision reads as follows:

§ 1.338–4 Asset and stock consistency.

* * * * *

(h) *Consistency for target affiliates that are controlled foreign corporations*—(1) *In general.* This paragraph (h) applies only if target is a domestic corporation. For additional rules that may apply with respect to controlled foreign corporations, see paragraph (g) of this section. The definitions and nomenclature of § 1.338–1 (b) and (c) and paragraph (e) of this section apply for purposes of this section.

(2) *Income or gain resulting from asset dispositions*—(i) *General rule.* Income or gain of a target affiliate that is a controlled foreign corporation from the disposition of an asset is not reflected in the basis of target stock under paragraph (c) of this section unless the income or gain results in an inclusion under section 951(a)(1)(A), 951(a)(1)(C), 1291 or 1293.

(ii) *Basis of controlled foreign corporation stock.* If, by reason of paragraph (h)(2)(i) of this section, the carryover basis rules of this section apply to an asset, no increase in basis in the stock of a controlled foreign corporation under section 961(a) or 1293(d)(1), or under regulations issued pursuant to section 1297(b)(5), is allowed to target or a target affiliate to the extent the increase is attributable to income or gain described in paragraph (h)(2)(i) of this section. A similar rule applies to the basis of any property by reason of which the stock of the controlled foreign corporation is considered owned under section 958(a)(2) or 1297(a).

(iii) *Operating rule.* For purposes of this paragraph (h)(2)—

(A) If there is an income inclusion under section 951 (a)(1) (A) or (C), the shareholder's income inclusion is first attributed to the income or gain of the controlled foreign corporation from the disposition of the asset to the extent of the shareholder's pro rata share of such income or gain; and

(B) Any income or gain under section 1293 is first attributed to the income or gain from the disposition of the asset to the extent of the shareholder's pro rata share of the income or gain.

(iv) *Increase in asset or stock basis*—(A) If the carryover basis rules under paragraph (h)(2)(i) of this section apply to an asset, and the purchasing corporation disposes of the asset to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the income or gain from the disposition of the asset by the selling controlled foreign corporation that was reflected in the basis of the target stock under paragraph (c) of this section, or the gain recognized on the asset by the purchasing corporation on the disposition of the asset, then the purchasing corporation or the target or a target affiliate, as appropriate, shall increase the basis of the selling controlled foreign corporation stock subject to paragraph (h)(2)(ii) of this section, as of the date of the disposition of the asset by the purchasing corporation, by the amount of the basis increase that was denied under paragraph (h)(2)(ii) of th section. The preceding sentence shal pply only to the extent that the cont led foreign corporation stock is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(B) If the carryover basis rules under paragraph (h)(2)(i) of this section apply to an asset, and the purchasing corporation or the target or a target affiliate, as appropriate, disposes of the stock of the selling controlled foreign corporation to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the gain equal to the basis increase that was denied under paragraph (h)(2)(ii) of this section, or the gain recognized in the stock by the purchasing corporation or by the target or a target affiliate, as appropriate, on the disposition of the stock, then the purchasing corporation shall increase the basis of the asset, as of the date of the disposition of the stock of the selling controlled foreign corporation by the purchasing corporation or by the target or a target affiliate, as appropriate, by the amount of the basis increase that was denied pursuant to paragraph (h)(2)(i) of this section. The preceding sentence shall apply only to the extent that the asset is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(3) *Stock issued by target affiliate that is a controlled foreign corporation.* The exception to the carryover basis rules of this section provided in paragraph (d)(2)(iii) of this section does not apply to stock issued by a target affiliate that is a controlled foreign corporation. After applying the carryover basis rules of this section to the stock, the basis in the stock is increased by the amount treated as a dividend under section 1248 on the disposition of the stock (or that would have been so treated but for section 1291), except to the extent the basis increase is attributable to the disposition of an asset in which a carryover basis is taken under this section.

(4) *Certain distributions*—(i) *General rule.* In the case of a target affiliate that is a controlled foreign corporation, paragraph (g) of this section applies with respect to the target affiliate by treating any reference to a dividend to which section 243(a)(3) applies as a reference to any amount taken into account under § 1.1502–32 in determining the basis of target stock that is—

(A) A dividend;

(B) An amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291); or

(C) An amount included in income under section 951(a)(1)(B).

(ii) *Basis of controlled foreign corporation stock.* If the carryover basis rules of this section apply to an asset, the basis in the stock of the controlled foreign corporation (or any property by reason of which the stock is considered owned under section 958(a)(2)) is reduced (but not below zero) by the sum of any amounts that are treated, solely by reason of the disposition of the asset, as a dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291), or amount included in income under section 951(a)(1)(B). For this purpose, any dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291), or amount included in income under section 951(a)(1)(B) is considered attributable first to earnings and profits resulting from the disposition of the asset.

(iii) *Increase in asset or stock basis*—(A) If the carryover basis rules under paragraphs (g) and (h)(4)(i) of this section apply to an asset, and the purchasing corporation disposes of the asset to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the gain equal to the basis increase denied in the asset pursuant to paragraphs (g) and (h)(4)(i) of this section, or the gain recognized on the asset by the purchasing corporation on the disposition of the asset, then the purchasing corporation or the target or a target affiliate, as appropriate, shall increase the basis of the selling controlled foreign corporation stock subject to paragraph (h)(4)(ii) of this section, as of the date of the disposition of the asset by the purchasing corporation, by the amount of the basis reduction under paragraph (h)(4)(ii) of this section. The preceding sentence shall apply only to the extent that the

controlled foreign corporation stock is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(B) If the carryover basis rules under paragraphs (g) and (h)(4)(i) of this section apply to an asset, and the purchasing corporation or the target or a target affiliate, as appropriate, disposes of the stock of the selling controlled foreign corporation to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the amount of the basis reduction under paragraph (h)(4)(ii) of this section, or the gain recognized in the stock by the purchasing corporation or by the target or a target affiliate, as appropriate, on the disposition of the stock, then the purchasing corporation shall increase the basis of the asset, as of the date of the disposition of the stock of the selling controlled foreign corporation by the purchasing corporation or by the target or a target affiliate, as appropriate, by the amount of the basis increase that was denied pursuant to paragraphs (g) and (h)(4)(i) of this section. The preceding sentence shall apply only to the extent that the asset is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(5) *Examples.* This paragraph (h) may be illustrated by the following examples:

Example 1. Stock of target affiliate that is a CFC. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T1 sells the T2 stock to P and recognizes gain. On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(1) of this section, paragraph (d) of this section applies to the T2 stock. Under paragraph (h)(3) of this section, paragraph (d)(2)(iii) of this section does not apply to the T2 stock. Consequently, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

Example 2. Stock of target affiliate CFC; inclusion under subpart F. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T2 sells an asset to P and recognizes subpart F income that results in an inclusion in T1's gross income under section 951(a)(1)(A). On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Because gain from the disposition of the asset results in an inclusion under section 951(a)(1)(A), the gain is reflected in the basis of the T stock as of T's acquisition date. See paragraph (h)(2)(i) of this section. Consequently, under paragraph (b)(1) of this section, paragraph (d)(1) of this section applies to the asset. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased under section 961(a) by the amount of the inclusion that is attributable to the sale of the asset.

(c) If, in addition to making a qualified stock purchase of T, P acquires the T2 stock from T1 on January 1 of Year 2, the results are the same for the asset sold by T2. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased by the amount of the inclusion that is attributable to the gain on the sale of the asset. Further, under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Finally, because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

(d) If P makes a qualified stock purchase of T2 from T1, rather than of T from S, and T1's gain on the sale of T2 is treated as a dividend under section 1248, under paragraph (h)(1) of this section, paragraphs (h)(2) and (3) of this section do not apply because there is no target that is a domestic corporation. Consequently, the carryover basis rules of paragraph do not apply to the asset sold by T2 or the T2 stock.

Example 3. Gain reflected by reason of section 1248 dividend; gain from non-subpart F asset. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. In Years 1 through 4, T2 does not pay any dividends to T1 and no amount is included in T1's income under section 951(a)(1)(B). On December 1 of Year 4, T2 sells an asset with a basis of $400,000 to P for $900,000. T2's gain of $500,000 is not subpart F income. On December 15 of Year 4, T1 sells T2, in which it has a basis of $600,000, to P for $1,600,000. Under section 1248, $800,000 of T1's gain of $1,000,000 is treated as a dividend. However, in the absence of the sale of the asset by T2 to P, only $300,000 would have been treated as a dividend under section 1248. On December 30 of Year 4, P makes a qualified stock purchase of T1 from T. No section 338 election is made for T1.

(b) Under paragraph (h)(4) of this section, paragraph (g)(2) of this section applies by reference to the amount treated as a dividend under section 1248 on the disposition of the T2 stock. Because the amount treated as a dividend is taken into account in determining T's basis in the T1 stock under § 1.1502–32, the sale of the T2 stock and the deemed dividend have the effect of a transaction described in paragraph (g)(1) of this section. Consequently, paragraph (d)(1) of this section applies to the asset sold by T2 to P and P's basis in the asset is $400,000 as of December 1 of Year 4.

(c) Under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock and P's basis in the T2 stock is $600,000 as of December 15 of Year 4. Under paragraphs (h)(3) and (4)(ii) of this section, however, P's basis in the T2 stock is increased by $300,000 (the amount of T1's gain treated as a dividend under section 1248 ($800,000), other than the amount treated as a dividend solely as a result of the sale of the asset by T2 to P ($500,000)) to $900,000.

* * * * *

§ 1.338–4T [Removed]

Par. 4. Section 1.338–4T is removed.

Par. 5. In § 1.338(i)–1, paragraphs (a) and (b) are revised to read as follows:

§ 1.338(i)–1 Effective dates.

(a) *In general.* Sections 1.338–1 through 1.338–5 (except § 1.338–4(h)), 1.338(b)–1, and 1.338(h)(10)–1 generally are applicable for targets with acquisition dates on or after January 20, 1994. Section 1.338–4(h) is applicable for targets with acquisition dates on or after January 20, 1997. Section 1.338–4T(h) (as contained in 26 CFR part 1 as revised April 1, 1996) is generally applicable for targets with acquisition dates on or after January 20, 1994, and before January 20, 1997.

(b) *Elective retroactive application.* A target with an acquisition date on or after January 14, 1992 and before January 20, 1994 may apply §§ 1.338–1 through 1.338–5, 1.338–4T(h) (as contained in 26 CFR part 1 as revised April 1, 1996), 1.338(b)–1, and 1.338(h)(10)–1 by including a statement with its return (including a timely filed amended return) for the period that includes the acquisition date to the effect that it is applying all of these sections pursuant to this paragraph (b). A target with an acquisition date on or after January 14, 1992, and before January 20, 1997, may choose to apply § 1.338–4(h) for the period that includes the acquisition date pursuant to paragraph (b) of this section.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: January 13, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–1521 Filed 1–22–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–96–069]

RIN 2115–AE47

Drawbridge Operation Regulations; St. Johns River, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

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SUMMARY: The Coast Guard is hereby providing notice that the Florida Department of Transportation (FDOT) has been granted permission to temporarily deviate from the regulations governing the operation of the Fuller Warren Drawbridge, mile 25.4, Highway I10/I95 over the St. Johns River, located in the City of Jacksonville from Friday November 8, 1996, through Friday, February 7, 1997, for the purpose of evaluating the reasonableness of possible changes to the permanent regulations. This deviation authorizes the draws of the Fuller Warren Bridge to remain closed for longer periods during the morning and afternoon weekday highway commuter periods. In addition, the Fuller Warren Bridge is allowed to open only once per hour from 9 a.m. to 4 p.m. on weekdays except Federal holidays. This test will help determine whether the revised opening schedule will improve the flow of highway traffic without unreasonably impacting navigation.

DATES: The deviation is effective from November 8, 1996 through February 7, 1997. Comments must be received on or before February 7, 1997.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Project Officer, Seventh Coast Guard District, Aids to Navigation, at (305) 536–7331.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing the Fuller Warren Drawbridge operated by the State of Florida by submitting written data, view or arguments to the address above. Persons submitting comments should include their names and addresses, identify this notice [CGD7–96–069] and give the specific provision to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and determine whether to initiate a rulemaking to propose a permanent change to the drawbridge operating schedule. Persons may submit comments by writing to the Commander Seventh Coast Guard District listed under **ADDRESSES**.

Background and Purpose

The Fuller Warren Drawbridge, mile 25.4, Highway I10/I95 over the St. Johns River, located in the City of Jacksonville, Florida has a vertical clearance, in the closed position, of 44 feet above mean high water and 45 feet above mean low water (MLW). On November 6, 1996 FDOT requested a deviation from the current operating schedule in 33 CFR 117.325 in order to reduce the number of drawbridge openings that would impact the heavy volumes of highway traffic being experienced on I95. The traffic volume has doubled on this interstate highway system since 1991, reducing the Level of Service (LOS) to LOS E during weekdays. This temporary deviation to the operating regulations for the Fuller Warren Drawbridge, owned and operated by the FDOT, increases the morning and afternoon closed periods and authorizes hourly openings from 9 a.m. to 4 p.m. on weekdays. This deviation is intended to reduce highway delays. However, due to strong river currents and difficult maneuvering characteristics, tugs with tows are exempted from these restrictions. Other vessels using this reach of the St. Johns River have adequate maneuvering room to wait the hourly openings and should not be unreasonably impacted by this deviation.

The Coast Guard has granted the Florida Department of Transportation a temporary deviation from the operating regulations outlined in Title 33, Code of Federal Regulations, § 117.325 governing the Fuller Warren Drawbridge located across the St. Johns River. This deviation from normal operating regulations is authorized in accordance with the provisions of Title 33, Code of Federal Regulations, § 117.43 for the purpose of evaluating a possible change to the permanent regulations. Under this deviation, the Fuller Warren Drawbridge operated by the FDOT shall open on signal; except that, Monday through Friday except Federal holidays from 7 a.m. to 6 p.m. the draw need not open except on the hour. However, the draw need not open between 7 a.m. and 9 a.m. and between 4 p.m. and 6 p.m. Monday through Friday except Federal holidays. Tugs with tows shall be passed at any time except during the authorized weekday closures from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. The bridge shall open at any time for vessels in a situation where a delay would endanger life or property.

This period of deviation is effective from November 8, 1996 through February 7, 1997.

Dated: December 27, 1996.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 97–1576 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD07–96–054]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulation governing the operation of the Coronado Beach bridge, mile 845 at New Smyrna Beach. This drawbridge has been replaced by a higher drawbridge and there is no longer a need for the regulation. Therefore, the Coast Guard is removing 33 CFR 117.261(h).

DATES: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Officer, Seventh Coast Guard District, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard finds that in accordance with 5 U.S.C. 553, good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that has been replaced. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the **Federal Register**.

Background and Purpose

The bridge regulation for the old Coronado Beach drawbridge, locally known as the north bridge, was published in the **Federal Register** on December 14, 1987 [52 FR 47391]. This regulation established draw times on the opening of the old Coronado Beach drawbridge. This drawbridge was replaced by a new higher bascule drawbridge which opened to auto traffic on August 26, 1996. Therefore, the regulations governing the operation of

the old drawbridge are no longer necessary and the Coast Guard is removing 33 CFR 117.261(h).

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge has been replaced with a new bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because the drawbridge has been replaced with a new bridge and is no longer necessary.

Collection of Information

This rule contains no collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to section 2.B.2. of Commandant Instruction M16475.1b (as revised by 59 FR 38654, July 29, 1994), that this rule is categorically excluded from further environmental documentation. Pursuant this instruction, specifically section 2.B.2e.(32)(e), a Categorical Exclusion checklist and determination has been prepared and are available for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 stat. 5039.

§ 117.261 [Amended]

2. Section 117.261(h) is removed and reserved.

Dated: December 19, 1996.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–1575 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 157

[CGD 91–045]

RIN 2115–AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Final rule; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on the under-keel clearance provisions contained in the operational measures final rulemaking to allow an additional 30 days for public comment.

DATES: Comments must be received on or before February 26, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 91–045], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2:00 p.m.; Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Project Development Division, at (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 27, 1996, the Coast Guard published a partial suspension of regulation with request for comments (61 FR 60189) delaying implementation of certain under-keel clearance requirements and opening a 60 day comment period limited to the provisions of 33 CFR 157.455(a). Since publication of the partial suspension notice, the Coast Guard received a request from a regulated entity for additional information on the under-keel clearance provisions. The information requested has been added to the docket. In light of this addition, the Coast Guard is extending the comment period to allow an additional 30 days to comment on the under-keel clearance provisions.

Dated: January 17, 1997.

G.F. Wright,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–1637 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[FRL–5678–1]

RIN 2060–AF48

Acid Rain Program; Nitrogen Oxides Emissions Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On December 19, 1996, the Environmental Protection Agency (EPA) promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. These emission limitations will reduce the serious adverse effects of NO_x emissions on human health, visibility, ecosystems, and materials. This action corrects the effective date and other inadvertent

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typographical and administrative errors in the December 19, 1996 final rule. The effective date of the December 19, 1996 rule is corrected from December 19, 1996 to February 17, 1997.

EFFECTIVE DATE: The effective date of the December 19, 1996 rule (61 FR 6711) is corrected from December 19, 1996 to February 17, 1997. The remaining corrections in this action are effective February 17, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (for technical matters) (202–233–9620); or Dwight C. Alpern (same address) (for legal matters) (202–233–9151).

SUPPLEMENTARY INFORMATION: On December 19, 1996 (61 FR 6711), EPA promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. Subsequent to publication of the December 19, 1996 rule, EPA identified several inadvertent typographical and administrative errors in the December 19, 1996 document. Today's action corrects those errors.

The December 19, 1996 document incorrectly stated that the effective date of the rule would be the date of publication. As stated elsewhere in the preamble of December 19, 1996 rule, EPA submitted the rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller of the General Accounting Office under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The effective date is being revised to February 17, 1997, which is 60 days after the December 19, 1996 publication date, as required by SBREFA.

The several other corrections made by today's action involve correcting the amendatory instructions in the December 19, 1996 rule. For example, the amendatory instruction adding defined terms to the definitions section (§ 76.2) included terms for which no definitions were actually provided or intended to be provided. The incorrectly listed terms are removed from the amendatory instructions.

The remaining corrections involve typographical or similar errors in the rule language itself. For example, the rule provisions establishing cutoffs for application of the emission limitations for cyclone and wet bottom boilers expressed the cutoffs in terms of Maximum Continuous Steam Flow at 100% of Load in lb/hr but the term, "Maximum Continuous Steam Flow at 100% Load", is defined as being expressed in thousands of lb/hr. The rule provisions are corrected to express the cutoffs in thousands of lb/hr.

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by SBREFA, EPA submitted a report containing this document and any other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this document in today's **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: January 13, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Accordingly, for the reasons set out above, the publication on December 19, 1996 of the final rule at 61 FR 67112 is corrected as follows:

1. On page 67112, in the first column, the **EFFECTIVE DATE** is corrected to read "February 17, 1997".

2. On page 67162, in the first and second columns, the amendatory instruction 2 is corrected to read "Section 76.2 is amended by revising the definitions of 'coal-fired utility unit' and 'wet bottom' and adding, in alphabetical order, definitions for 'arch-fired boiler', 'combustion controls', 'Maximum Continuous Steam Flow at 100% of Load', 'non-plug-in combustion controls', 'plug-in combustion controls', and 'vertically fired boiler', to read as follows:".

§ 76.5 [Corrected]

3. On page 67162, in the third column, the amendatory instruction 3 is corrected to read "Section 76.5 is amended by removing paragraph (g).".

§ 76.6 [Corrected]

4. On page 67163, in the first column, § 76.6(a)(2), line 5 is corrected to read "1060, in thousands of lb/hr. The NO_X emission control".

5. On page 67163, in the first column, § 76.6(a)(3), line 5 is corrected to read "than 450, in thousands of lb/hr. The NO_X emission".

6. On page 67163, in the first column, § 76.6(b), line 5 is corrected to end with the words "part 75 of this chapter.". The remainder of the line becomes the first line of the amendatory instruction 5.

§ 76.16 [Corrected]

7. On page 67163, in the third column, § 76.16(c)(1), line 2 is corrected to read "draft decision on:".

Appendix B to Part 76 [Corrected]

8. On page 67164, in the third column, the amendatory instruction 9, line 9 is corrected to read "effectiveness in each place that the words appear and adding, in their" and the amendatory instruction 9, line 20 is corrected to read "the heading of section 2 and the".

[FR Doc. 97–1641 Filed 1–22–97; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1852, and 1870

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: As part of the National Performance Review initiative to streamline and clarify regulations, NASA issued an interim rule (61 FR 52325–52347, October 7, 1996) as corrected (61 FR 56271, October 31, 1996) which revised part 1815, Contracting by Negotiation, and part 1816, Types of Contracts; made conforming changes to part 1852, Solicitation Provisions and Contract Clauses; and removed subpart 1870.3, NASA Source Evaluation. The interim rule is being adopted as a final rule with minor editorial revisions.

EFFECTIVE DATE: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

No comments were received by the closing date in response to the interim rule. Several comments were received after the closing date, primarily

addressing the changes in NASA's source selection process. Specifically, the comments requested NASA: Eliminate the competitive range numerical goal of three proposals (1815.609(a)); clarify that the restrictions of the Procurement Integrity Act apply before a blackout notice is issued (1815.408–70); clarify that the evaluation of relevant experience and past performance for new businesses may include an evaluation of the company's principals (1815.605–70(d)); clarify the definition of proposal weakness (1815.610(c)(2)(A)); and eliminate the requirement that source selection statements be publicly releasable (1815.611(d)(iii)). NASA considered these comments and believes the sections in question are both adequately stated and integral to the Agency's acquisition streamlining initiatives. Accordingly, no changes are made to the interim rule as a result of public comment.

However, the following editorial and administrative changes are made to ensure consistency among the rewritten and renumbered NFS parts:

1. In 1815.407–70(a), the reference to "issued pursuant to subpart 1870.1" is deleted.

2. In 1815.602(b) (ii) and (iii), the parenthetical cross references are corrected.

3. In 1815.708–70, the title is changed to "NASA contract clauses".

4. In 1815.902(a)(2)(G), the redundant language after "unsuitable" is deleted.

5. In 1816.404–270(b)(3), the reference to "CPAF" is a typographical error and is corrected to "cost-plus-fixed-fee (CPFF)."

6. In 1852.216–76, the NFS reference in the footnote is corrected to "1816.404–272(a)."

7. In 1852.216–77(c)(4), the phrase "cumulative provisional fee payments" in the second sentence is corrected to "cumulative interim (and provisional, if applicable) fee payments" to reflect the policy in 1816.404–2.

8. In 1852.216–88, footnote (5) is deleted and corrected to "(5) Insert the appropriate amount in accordance with 1816.402–270(e)."

In addition, other miscellaneous revisions are made to correct printing errors in the published interim rule.

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and upon completion of all parts, the NFS will be reissued in a new edition.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1816, 1852 and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1816, 1852, and 1870 are amended as follows:

1.–2. Part 1815 is revised to read as follows:

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

Sec.

1815.405 Solicitations for information or planning purposes.
1815.405–70 Draft requests for proposals.
1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).
1815.406–2 Part I—The Schedule.
1815.406–5 Part IV—Representations and instructions.
1815.406–70 Page limitations.
1815.406–71 Installation reviews.
1815.406–72 Headquarters reviews.
1815.407 Solicitation provisions.
1815.407–70 NASA solicitation provisions.
1815.408 Issuing solicitations.
1815.408–70 Blackout notices.
1815.412 Late proposals, modifications, and withdrawals of proposals.
1815.412–70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.
1815.413 Disclosure and use of information before award.
1815.413–2 Alternate II.
1815.413–270 Appointing non-Government evaluators as special Government employees.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.
1815.503 General.
1815.504 Advance guidance.
1815.506 Agency procedures.
1815.506–70 Relationship of unsolicited proposals to NRAs.
1815.508 Prohibitions.
1815.508–70 NASA prohibitions.
1815.509 Limited use of data.
1815.509–70 Limited use of proposals.
1815.570 Foreign proposals.

Subpart 1815.6—Source Selection

1815.601 Definitions.
1815.602 Applicability.
1815.605–70 Evaluation factors and subfactors.
1815.608 Proposal evaluation.
1815.608–70 Identification of unacceptable proposals.
1815.608–71 Evaluation of a single proposal.
1815.609 Competitive range.
1815.610 Written or oral discussions.
1815.611 Best and Final Offers.
1815.612–70 NASA formal source selection.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.
1815.706 Evaluation, negotiation, and agreement.
1815.708 Contract clause.
1815.708–70 NASA contract clause.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data and information other than cost or pricing data.
1815.804–1 Prohibition on obtaining cost or pricing data.
1815.804–170 Acquisitions with the Canadian Commercial Corporation (CCC).
1815.804–2 Requiring cost or pricing data.
1815.805–5 Field pricing support.
1815.807 Pre-negotiation objectives.
1815.807–70 Content of the pre-negotiation position memorandum.
1815.807–71 Installation reviews.
1815.807–72 Headquarters reviews.
1815.808 Price negotiation memorandum.

Subpart 1815.9—Profit

1815.902 Policy.
1815.903 Contracting officer responsibilities.
1815.970 NASA structured approach for profit or fee objective.
1815.970–1 General.
1815.970–2 Contractor effort.
1815.970–3 Other factors.
1815.970–4 Facilities capital cost of money.
1815.971 Payment of profit or fee under letter contracts.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Notification to successful offeror.
1815.1004–70 Debriefing of offerors—Major System acquisitions.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Synopses of solicitations and contracts.
1815.7003 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.

1815.405–70 Draft requests for proposals.

(a) Except for acquisitions described in 1815.602(b), contracting officers shall

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issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(b) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(c) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(d) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(e) The procurement officer may waive the requirement for a DFRP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1815.406–2 Part I—The Schedule.

(NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.406–5 Part IV—Representations and instructions.

(NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision. Although offerors should be provided the maximum flexibility in developing their proposals, contracting officers shall specify any information and standard formats required for the efficient and impartial evaluation of proposals.

1815.406–70 Page limitations.

(a) Technical and contracting personnel will mutually agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½″×11″, with at least one inch margins on all sides, using not smaller than 12 characters per inch or equivalent type. Foldouts count as an equivalent number of 8½″×11″ pages. The metric standard format most closely approximating the described standard 8½″×11″ size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will mutually agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of contents, and cost/price information, shall not exceed 500 pages using the page definition of 1815.406–70(a). Firm page limitations shall also be established for Best and Final Offers (BAFOs), if requested. The appropriate BAFO page limitations should be determined by considering the complexity of the acquisition and the extent of any written or oral discussions. The same BAFO page limitations shall apply to all offerors. Pages submitted in excess of the specified limitations for the initial proposal and BAFO will not be evaluated by the Government and will be returned to the offeror.

1815.406–71 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting, called a Solicitation Review Board (SRB), as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.612–70, the SEB shall review and approve the RFP prior to issuance.

1815.406–72 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology that are not included in the RFP itself should also be provided.

1815.407 Solicitation provisions.

(NASA supplements paragraphs (c) and (d))

(c)(6) The provision at FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals shall not be used in solicitations for the Small Business Innovation Research (SBIR) or Small Business Technology Transfer Programs, or for broad agency announcements listed in 1835.016. See instead 1815.407–70(a).

(d)(4) The contracting officer shall insert FAR 52.215–16 Alternate II in all competitive negotiated solicitations.

1815.407–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), in lieu of the provision at FAR 52.215–10 in Announcements of Opportunity and in Small Business Innovation Research (SBIR) and Small Business Technology Transfer solicitations. (See 1815.412.)

(b) The contracting officer shall insert a provision substantially as stated at 1852.215–74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government.

(c) The contracting officer shall insert the provision at 1852.215–75, Expenses Related to Offeror Submissions, in all requests for proposals.

(d) The contracting officer shall insert the provision at 1852.215–77, Pre-proposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a pre-proposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(e) The contracting officer shall insert the clause at 1852.214–71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(f) The Contracting Officer shall insert the clause at 1852.214–72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(g) The Contracting Officer shall insert the provision at 1852.214–81, Proposal Page Limitations, in all competitive requests for proposals.

(h) The Contracting Officer shall insert the provision at 1852.215–82, Offeror Oral Presentations, in competitive requests for proposals when the Government intends to allow offerors to make oral presentations prior to commencement of the Government's formal evaluation.

1815.408 Issuing solicitations.

1815.408.70 Blackout notices.

(a) Upon release of the formal RFP, the Contracting Officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the Contracting Officer or other authorized representative. This procedure is commonly known as a "blackout notice" and shall not be imposed prior to release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(b) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal offeror proprietary data.

1815.412 Late proposals, modifications, and withdrawals of proposals.

1815.412–70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.

For BAAs listed in 1835.016, SBIR Phase I and Phase II solicitations, and STTR solicitations—

(a) Proposals, or modifications to them, received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the submission of the late proposal or modification, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering the proposal.

(b) The selection official or a designee shall determine whether to consider the proposal.

(c) Offerors may withdraw proposals any time before award, provided the conditions in paragraph (b) of the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), are satisfied.

1815.413 Disclosure and use of information before award.

1815.413–2 Alternate II.

(NASA supplements paragraphs (a), (e), and (f))

The alternate procedures at FAR 15.413–2 shall be used for NASA acquisitions in lieu of those prescribed at FAR 15.413–1. These procedures, as implemented by this section, apply both before and after award.

(a) During evaluation proceedings, NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(e) The notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.402 regarding release of the names of firms submitting offers.)

(f)(i) Except as provided in paragraph (f)(ii) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. This authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(ii) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for overall conduct of the evaluation. The determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(A) NASA Announcements of Opportunity proposals;

(B) Unsolicited proposals;

(C) NASA Research Announcement proposals;

(D) SBIR and STTR proposals.

(iii) The written approvals required by paragraphs (f) (i) and (ii) of this section shall be provided to the contracting officer before the release of the proposal information. As a minimum, the approval shall:

(A) Identify the precise proposal information being released;

(B) Identify the person receiving the proposal information and evidence of their appointment as a special government employee or a statement of the applicable exception (see 1815.413–270);

(C) Provide a justification of the need for disclosure of the proposal information to the non-Government evaluator(s); and

(D) Provide a statement that a signed "Agreement and Conditions for Evaluation of Proposals," in accordance with paragraph (f)(2) of this section, will be obtained prior to release of the proposal to the evaluator.

(iv) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (f)(i) and (f)(ii) of this section.

(f)(2) The NASA official approving the disclosure of any proposal information to a non-Government evaluator, including employees of JPL, shall, prior to such disclosure, require each non-Government evaluator to sign the following "Agreement and Conditions for Evaluation of Proposals."

Agreement and Conditions for Evaluation of Proposals (October 1996)

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. This limitation does not apply to information that is otherwise available without restrictions to the Government, another competing contractor, or the public.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413–2(e) and NFS 1815.413–2(e)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information for evaluation.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. At any time the recipient

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becomes aware that he or she or a person with a close personal relationship (household family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

Signature: _____

Name typed or printed: _____

Date: _____

[End of agreement]

1815.413–270 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government participants in proposal evaluation proceedings, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a Special Government employee is a separate action from the approval required by paragraph 1815.413–2(f) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The Field Installation personnel office when the release of proposal information is to be made by the Field Installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) NASA Announcements of Opportunity proposals;

(2) Unsolicited proposals;

(3) NASA Research Announcement proposals; and

(4) SBIR and STTR proposals.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

(NASA supplements paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.503 General.

(NASA supplements paragraph (e))

(e) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

1815.504 Advance guidance.

(NASA supplements paragraph (b))

(b) The Headquarters Office of Procurement (Code HK) is responsible for preparing for public use a brochure titled "Guidance for the Preparation and Submission of Unsolicited Proposals," which shall be provided without charge by the Office of Procurement and other NASA officials in response to requests for proposal submission information. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. Code HK is responsible for internal distribution of the brochure.

1815.506 Agency procedures.

(NASA supplements paragraph (a))

(a)(i) NASA Headquarters and each NASA field installation shall designate an organizational entity as its unsolicited proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (larger business, small business, university, or nonprofit institution).

1815.506–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–70), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

1815.508 Prohibitions.

(NASA supplements paragraph (b))

(b) FAR 15.508(b) shall not apply to NASA; see instead 1815.508–70.

1815.508–70 NASA prohibitions.

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413–2 and 1815.413–2.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509–70.

1815.509–70 Limited use of proposals.

(a) The provision at FAR 52.215–12, Restriction on Disclosure and Use of Data, is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by paragraph (a) of this section, the procedures of FAR 15.413–2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413–2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413–2(f) and 1815.413–2.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413–2(g) apply.

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

Subpart 1815.6—Source Selection

1815.601 Definitions.

(NASA supplements paragraphs (1) and (2))

(1) The source selection authority (SSA) is the Agency official responsible

for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities:

(i) Approve the evaluation factors, subfactors, and elements, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104–2) prior to release of the RFP, or delegate this authority to appropriate management personnel;

(ii) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(iii) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(2) The SSA shall be established at the lowest reasonable level for each acquisition. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

1815.602 Applicability.

(NASA supplements paragraphs (a) and (b))

(a)(i) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(A) Acquisitions of $50 million or more—in accordance with FAR 15.6 and this subpart.

(B) Other acquisitions—in accordance with FAR 15.6 and this subpart except section 1815.612–70.

(ii) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.6 and this subpart are not applicable to acquisitions conducted under the following procedures:

(i) MidRange (see part 1871).

(ii) Announcements of Opportunity (see part 1872).

(iii) NASA Research Announcements (see 1835.016–70).

(iv) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(v) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

1815.605–70 Evaluation factors and subfactors

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Relevant Experience and Past Performance. Evaluation factors may be further defined by subfactors. Although discouraged, subfactors may be further defined by elements. Evaluation subfactors and any elements should be structured to identify significant discriminators, or "key swingers"—the essential information required to support a source selection decision. Too many subfactors and elements undermine effective proposal evaluation. All evaluation subfactors and any elements should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.608(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to four. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) Although discouraged, elements that further define the content of each subfactor may be identified. Elements, if used, shall not be numerically weighted and scored. The total number of elements is limited to eight. Any Mission Suitability elements shall be identified in the RFP.

(4) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Million Suitability scores.

(c) *Cost/Price factor.* This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs, prices. The Cost/Price factor is not numerically weighted or scored.

(d) *Relevant Experience and Past Performance factor.* (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition. The Relevant Experience and Past Performance factor is not numerically weighted or scored.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their relevant experience and past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems and terminations.

(3) The Contracting Officer may start collecting past performance data prior to proposal receipt. One method for initiating the past performance evaluation early is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

1815.608 Proposal evaluation.

(NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any failures to meet any terms and conditions of the RFP;

(ii) All strengths and weaknesses, classified as major or minor to further underscore discriminators among proposals;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactor and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The adjectival rating of the Relevant Experience and Past Performance evaluation factor; and

(vi) Any technical, schedule, and cost risk. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, etc., or as a result of the cost, schedule and performance impacts associated with these approaches. Risk evaluations must consider the probability of success, the impact of

failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths; weaknesses and numerical/adjectival ratings. Identified risk areas and the potential for cost impact shall be considered in the cost or price evaluation.

(1) Cost or price evaluation.

(A) In accordance with 1815.804–1, cost or pricing data shall not be requested in competitive acquisitions. Only the minimal information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested.

(B) When contracting on a firm fixed price basis, the contracting officer shall not request any cost information, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

(C) When contracting on a basis other than firm fixed price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(*a*) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from the offeror's proposal.

(*b*) The differences in business methods, operating procedures, and practices as they impact cost.

(*c*) A level of confidence in the probable cost assessment for each proposal.

(D) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.608(a)(3)(B).

(E) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(a)(2) Past performance evaluation.

(A) The Relevant Experience and Past Performance evaluation assesses the contractor's performance under previously awarded contracts. It should evaluate the company, not the individuals, involved with contract performance. Relevant Experience and Past Performance is not numerically scored, but is assigned an adjectival rating.

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) The evaluation may consider past performance data provided by offerors and data from other sources. Questionnaires and interviews may be used to solicit assessments of the offeror's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(2) (iii) Firms without relevant experience or a past performance record shall not be given a proposal deficiency or weakness (see 1815.610) and shall be given a neutral rating. If the adjectival rating system of 1815.608(a)(3)(A) is used for the Relevant Experience and Past Performance factor, a rating of "Good" shall be assigned in such cases.

(3) Technical Evaluation.

(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more major strengths. No weaknesses or only minor weaknesses exist.	91–100
Very Good	A proposal which demonstrates overall competence. One or more major strengths have been found, and strengths outbalance any weaknesses that exist.	71–90
Good	A proposal which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response.	51–70
Fair	A proposal that has one or more weaknesses. Weaknesses have been found that outbalance any strengths that exist.	31–50
Poor	A proposal that has one or more major weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to address..	0–30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(*a*) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty (i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(*b*) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(*c*) Affect a significant number of points in order to encourage realistic pricing.

(*d*) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardward development	Point adjustment
+/– 5 percent	+/– 30 percent ..	0
+/– 6 to 10 percent.	+/– 31 to 40 percent.	–50
+/– 11 to 15 percent.	+/– 41 to 50 percent.	–100
+/– 16 to 20 percent.	+/– 51 to 60 percent.	–150
+/– 21 to 30 percent.	+/– 61 to 70 percent.	–200
+/– more than 30 percent.	+/– more than 70 percent.	–300

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

§ 1815.608–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

1815.608–71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the Source Selection Authority shall direct the contracting officer to:

(1) Award without discussions provided the contracting officer determines that adequate price competition exists (see FAR 15.804–1(b)(1)(ii));

(2) Award after negotiating a mutually acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.804–1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.608–71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

1815.609 Competitive range.

(NASA supplements paragraphs (a))

(a) Proposals shall not be included in the competitive range when they do not have a reasonable chance of selection. To reduce unnecessary expense to both offerors and NASA, a total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

1815.610 Written or oral discussions.

(NASA supplements paragraph (c))

(c)(2)(A) The contracting officer shall identify, and give offerors a reasonable opportunity to address, all weaknesses that have an adverse impact on the evaluation. Weaknesses are defined as deficiencies (see FAR 15.601) and other proposal inadequacies. Weaknesses may include all proposal areas that are inadequate for evaluation, contain contradictory statements, or strain credibility. However, minor irregularities, informalities, or apparent clerical mistakes are not considered weaknesses. They may be identified to offerors through the clarification technique defined in FAR 15.601, rather than discussions as contemplated in this section.

(B) The contracting officer shall advise an offeror if, during written or oral discussions, an offeror introduces a new weakness. The offeror can be advised during the course of the discussions or as part of the request for BAFO.

(C)The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer should question inadequate, conflicting, unrealistic or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a "bottom line" is necessary.

(c)(3)(A) The contracting officer shall discuss contract terms and conditions so that a "model" contract can be sent to each offeror with the request for BAFO. Any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's "model" contract. These items are not to be discussed with, or proposed to, other offerors. If the offeror declines to include these strengths in its "model" contract, the Government evaluators should reconsider their characterization as strengths.

(B) In no case shall the contracting officer relax or amend RFP requirements for any offeror, without amending the RFG and permitting the other offerors an opportunity to propose against the relaxed requirements.

1815.611 Best and Final Offers.

(NASA supplements paragraphs (b), (c) and (d))

(b) The request for BAFOs shall also:

(i) Identify for any remaining weaknesses.

(ii) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(iii) Require offerors to complete and execute the "model" contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(iv) Caution offerors against unsubstantiated changes to their proposals; and

(v) Establish a page limit for BAFOs.

(c)(i) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of $50 million or more.

(ii) Approval of the procurement officer is required for all other acquisitions.

(d)(i) Proposals are rescored based on BAFO evaluations. Scoring changes between initial and BAFO proposals shall be clearly traceable.

(ii) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(iii) Prior to award, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: The acquisition; the SEB evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Relevant Experience and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions

(see 1815.1004–70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in debriefing unsuccessful offerors and shall be provided to debriefed offerors upon request.

(iv) Once the selection decision is made, the contracting officer shall, without post-selection negotiations, award the contract.

1815.612–70 NASA formal source selection.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.602(a)(i)(A).

(b) General. The SEB assists the SSA in decisionmaking by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) Designation. (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with NFS 1815.413–2.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) Organization. (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels/consultants (as described in 1815.612–70(d) (4) and (5)), to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors, subfactors, and elements, and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 20 people, unless approved in writing by the procurement officer.

(e) Voting members. (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of a NASA SEB.

(3) The SEB shall review the findings of committees, panels or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) Ex officio members.

(1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in 1815.612–70(f)(3) is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) Evaluation plan. (1) The SEB evaluation plan consists of general and specific evaluation guidelines (and special standards of responsibility, where applicable) established to assess each offeror's proposal against the RFP evaluation factors, subfactors, and elements. The evaluation guidelines are designed to focus the evaluators' assessment. They are not weighted and are not listed in the RFP. However, the substance of the guidelines may be included in a narrative description of the subfactors and elements. In addition, the plan includes the system used in conducting the evaluation and scoring of each offeror's proposal.

(2) The evaluation plan shall be approved by the SEB (and other personnel designated in accordance with installation procedures) before the formal RFP is issued.

(h) Evaluation. (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths or weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment, consistent with the approved evaluation plan. SEB minutes shall reflect this evaluation process.

(i) SEB presentation. (1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the major strengths and weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors, subfactors, and elements; the major strengths and weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, elements, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the Field Installation Director and to the Official-in-Charge of the cognizant headquarters Program Office.

(j) *Recommended SEB presentation format*—(1) *Identification of the acquisition.* Identifies the installation, the nature of the services or hardware to be procured, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background.* Identifies any earlier phases of a phased acquisition or, as in the case of the continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, subfactors, and elements.* Explains any special standards of responsibility and the evaluation factors, subfactors, and elements. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Relevant Experience and Past Performance evaluations.

(4) *Sources.* Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings.* Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed costs/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Strengths and weaknesses of offerors.* Summarizes the SEB's findings, using the following guidelines:

(i) Present only the major strengths and weaknesses of individual offerors.

(ii) Directly relate the strengths and weaknesses to the evaluation factors, subfactors, and elements.

(iii) Indicate the significance of major strengths and weaknesses.

(iv) Indicate the results and impact, if any, of written and/or oral discussions and BAFOs on ratings and scores.

(7) *Final mission suitability ratings and scores.* Summarizes the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation.* Summarizes proposed costs/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Relevant experience and past performance.* Reflects the summary conclusions, supported by specific case data, with particular emphasis on exemplary or inferior performance and its potential bearing on the instant acquisition.

(10) *Special interest.* Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could have an effect on the selection decision.

(k) A source selection statement shall be prepared in accordance with 1815.611(d)(iii). For installation selections, the Field Installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.706 Evaluation, negotiation, and agreement.

(NASA supplements paragraph (b))

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(b) The make-or-buy program review by the installation's small and disadvantaged business utilization specialist and the SBA representative should be concurrent with the contracting officer's review. When urgent circumstances preclude this or if the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit copies to the specialist and the representative.

1815.708 Contract clause.

1815.708–70 NASA contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215–21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data and information other than cost or pricing data.

1815.804–1 Prohibition on obtaining cost or pricing data.

(NASA supplements paragraph (b))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception. In such cases, information other than cost or pricing data may be requested to the extent necessary to ensure price reasonableness and assess cost realism.

(2)(iii) The contracting officer shall document the comparison of the item with the catalog or market priced commercial item, including the technical similarities and differences and the price justification methodology.

(5) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HC).

1815.804–170 Acquisitions with the Canadian Commercial Corporation (CCC).

NASA has waived the requirement for the submission of cost or pricing data when contracting with the CCC. This waiver applies through March 31, 1999. The CCC will provide assurance of the fairness and reasonableness of the proposed prices, and will also provide for follow-up audit activity to ensure that excess profits are found and refunded to NASA. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to permit any required Government cost/price analysis.

1815.804–2 Requiring cost or pricing data.

(NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of price agreement.

1815.805–5 Field pricing support.

(NASA supplements paragraph (a))

(a)(1)(A) The threshold for obtaining a field pricing report for cost reimbursement contracts is $1,000,000.

(B) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(C) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(D) When the threshold for requiring field pricing support is met and the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

1815.807 Prenegotiation objectives.

(NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under competitive negotiated procedures.

1815.807–70 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.808 and 1815.808). In addition to the information described in FAR 15.807 and, as appropriate, 15.808(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.808(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government); and

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) *Cost analysis.* For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the

contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective;

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.806–2(a), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, and unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, cost risk, and so forth, as applicable.

(e) *Negotiation approval sought.* The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

1815.807–71 Installation reviews.

Each contracting activity shall establish a formal system for the review of prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807–72 Headquarters reviews.

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

1815.808 Price negotiation memorandum.

(NASA supplements paragraphs (a) and (b))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.808 shall be reflected in the evaluation and selection documentation to the extent applicable.

(b) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, subcontractors; wage rate determinations; or the current status of the contractor's systems).

Subpart 1815.9—Profit

1815.902 Policy.

(NASA supplements paragraph (a)).

(a)(1) The NASA structured approach for determining profit or fee objectives, described in 1815.970, shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis, except as indicated in paragraph (a)(2) of this section.

(2) The use of the NASA structured approach for profit or fee is not required for:

(A) Architect-engineer contractors;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit/fee analysis as an aid in arriving at an appropriate fee arrangement); and

(G) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

1815.903 Contracting officer responsibilities.

(NASA supplements paragraph (d))

(d)(1)(ii) In architect-engineer contracts, the price or estimated cost and fee for services other than the production and delivery of designs, plans, drawings, and specifications, are not subject to the 6 percent limitation set forth in FAR 15.903(d)(1).

1815.970 NASA structured approach for profit or fee objective.

1815.970–1 General.

(a) The NASA structured approach for determining profit or fee objectives is a system of assigning weights to cost elements and other factors to calculate the objective. Contracting officers shall use NASA Form 634 to develop the profit or fee objective and shall use the weight ranges listed after each category and factor on the form after considering the factors in 1815.970–2 through 1815.970–4. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.807–70(d)(3).

(b)(1) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (b)(2) of this section. (It is NASA policy not to pay profit or fee on contracts with educational institutions.)

(2) For contracts with nonprofit organizations under which profits or

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fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits;

(ii) Granting of financing through letters of credit;

(iii) Facility requirements of the nonprofit organization; and

(iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970–2 Contractor effort.

(a) This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. The suggested cost categories under this factor are for reference purposes only. The format of individual proposals will vary, but these broad categories provide a sample structure for the evaluation of all categories of cost. Elements of cost shall be separately listed under the appropriate category and assigned a weight from the category range.

(b) Regardless of the categories of cost defined for a specific acquisition, neither the cost of facilities nor the amount calculated for the cost of money for facilities capital shall be included as part of the cost base in column 1. (a) in the computation of profit or fee.

(c) Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(1) Material acquisition (subcontracted items, purchased parts, and other material). (i) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard of near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(ii) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit/fee evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as a single element under the material acquisition category. For other intracompany transfers, the constituent elements of cost shall be identified and weighted under the appropriate cost category, i.e., material, labor, and overhead.

(2) Direct labor (engineering, service, manufacturing, and other labor). (i) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit/fee weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(ii) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(iii) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined in this section will be applied.

(3) Overhead and general management (G&A). (i) Analysis of overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for the rates proposed in future years.

(ii) Contracting officers should also consider the historical accuracy of the contractor's proposed overheads as well as the ability to control overhead pool expenses.

(iii) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(4) Other costs. Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

1815.970–3 Other factors.

(a) *Cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit/fee objectives.

(1) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profit/fee in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(2) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0-to-3 percent range for cost-reimbursement contracts and 3-to-7 percent range for fixed-price contracts.

(i) Within the ranges set forth in paragraph (a)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(3) The cost risk arising from contract type is not the only form of cost risk to consider.

(i) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weigh should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(ii) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit/fee weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(b) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(1) To evaluate how facilities contribute to the profit/fee objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit/fee. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a correspondingly lower profit/fee. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit/fee objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit/fee need not be adjusted.

(2) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(c) *Performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(d) *Subcontract program management.* Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee.

(e) *Federal socioeconomic programs.* In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

(f) *Special situations.* (1) Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit/fee objective.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

1815.970–4 Facilities capital cost of money.

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(b) CAS 417, Cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

1815.971 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Notification to successful offeror.

The reference to notice of award in FAR 15.1003 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed:

1815.1004–70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely

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disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contacting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

3. Part 1816 is revised to read as follows:

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.
1816.202 Firm-fixed-price contracts.
1816.202–70 NASA contract clause.
1816.203 Fixed-price contracts with economic price adjustment.
1816.203–4 Contract clauses.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.
1816.306 Cost-plus-fixed-fee contracts.
1816.307 Contract clauses.
1816.307–70 NASA contract clauses.

Subpart 1816.4—Incentive Contracts

1816.402 Application of pre-determined, formula-type incentives.
1816.402–2 Technical performance incentives.
1816.402–270 NASA technical performance incentives.
1816.404 Cost-reimbursement incentive contracts.
1816.404–2 Cost-plus-award-fee (CPAF) contracts.
1816.404–270 CPAF contracts.
1816.404–271 Base fee.
1816.404–272 Award fee evaluation periods.
1816.404–273 Award fee evaluations.
1816.404–274 Award fee evaluation factors.
1816.404–275 Award fee evaluation scoring.
1816.405 Contract clauses.
1816.405–70 NASA contract clauses.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.
1816.505 Ordering.
1816.505–70 Task Ordering.
1816.506–70 NASA contract clause.

Subpart 1816.6—Time-and-Materials, Labor-House, and Letter Contracts

1816.603 Letter contracts.
1816.603–370 Approvals.

Authority: 42 U.S.C. 2473(c)(1).

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses. (NASA supplements paragraphs (a) and (d)).

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2 through 52.216–4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216–2 through 52.216–4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HC, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Associate Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.306 Cost-plus-fixed-fee contracts. (NASA supplements paragraph (d)).

(d) *Completion and term forms.*

(4) Term form contracts are incompatible with performance base contracting (PBC) and should not be used with PBC requirements.

1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

(b) In solicitations and contracts containing the clause at FAR 52.216–8,

Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303–70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216–81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216–7, Allowable Cost and Payment, or FAR clause 52.216–13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

Subpart 1816.4—Incentive Contracts

1816.402 Application of pre-determined, formula-type incentives.

1816.402–2 Technical performance incentives.

1816.402–270 NASA technical performance incentives.

(a) A performance incentive shall be included in all contracts where the primary deliverable(s) is (are) hardware and where total estimated cost and fee is greater than $25 million unless it is determined that the nature of the acquisition (for example, commercial off-the-shelf computers) would not effectively lend itself to a performance incentive. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under $25 million at the discretion of the procurement officer. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor. The exclusion at FAR 16.405(e)(3) does not apply to decisions made as to the amount(s) of positive or negative incentive.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules.

(1) The sum of the maximum positive performance incentive and other fixed or earnable fees on the contract shall not exceed the limitations in FAR 15.903(c).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee (CPAF) contracts.

1816.404–270 CPAF contracts.

(a) For purposes of this subsection, "performance based contracting" means effort which can be contractually defined so that the results of the contractor's effort can be objectively measured in terms of technical and

quality achievement, schedule progress or cost performance. "Nonperformance based contracting" means contractor effort that cannot be objectively measured but is evaluated based on subjective, qualitative assessments (e.g., controlling changes or interfacing with other agencies, contractors and international organizations).

(b)(1) Normally, award fee incentives are not used when contract requirements can be defined in sufficient detail to allow for performance based contracting. If incentives are considered necessary, objectively measured incentives as described in FAR 16.402 are preferred.

(2) Award fee incentives may be used as follows:

(i) As a CPAF contract where a cost reimbursement contract is appropriate and none of the requirements can be defined to permit performance based contracting;

(ii) As a CPAF line item for nonperformance based requirements in conjunction with a non-CPAF line item(s) for performance based requirements. In this instance, fees for the performance based and nonperformance based requirements shall be developed separately IAW FAR 15–9 and 1815.9; and

(iii) Under a performance based contract when it is determined to be necessary to motivate the contractor toward exceptional performance (see FAR 16.404–2(b)(ii)) and the increased level of performance justifies the additional administrative expense. When an award fee incentive is used in this instance, the basic contract type shall be other than CPAF (e.g., CPIF or FPIF). The potential award fee should not exceed 10 percent of the total contract fee or profit and shall not be used to incentivize cost performance.

(3) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

(c) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should be used on contracts with a total estimated cost and fee greater than $2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

1816.404–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.404–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final product/results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with a performance based contract structure, such as an incentive fee arrangement.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.404–273 and 1816.404–275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "poor/unsatisfactory", all provisional base fee payments shall be refunded to the Government.

1816.404–272 Award fee evaluation periods.

(a) Award fee evaluation periods should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

1816.404–273 Award fee evaluations.

(a) Award fee evaluations are either interim or final. On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) On other contracts, such as those for end item deliverables where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition, interim evaluations are done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making interim award fee payments. These interim payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payment.

(c) Provisional award fee payments, i.e., payments made within evaluation periods, may be included in the contract and should be negotiated on a case-by-case basis. The amount of the provisional award fee payment is determined by applying the lesser of the prior period's interim evaluation score (see 1816.404–275) or 80 percent of the fee allocated to the current period. The provisional award fee payments are superseded by the fee determinations made at the conclusion of each award fee performance period.

(d) The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due to the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.404–274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an

individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors. Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater (see 1816.404–275). An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.404–274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) When an AF arrangement is used in conjunction with a performance based contract structure (see 1816.404–270(b)(2)(iii)), the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g., CPIF, FPIF).

(f) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(g) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

1816.404–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) *Excellent* (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) *Very good* (90–81): Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) *Good* (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) *Satisfactory* (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) *Poor/Unsatisfactory* (less than 61): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated "Excellent," the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0–100 according to the ratings defined in 1816.404–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.405 Contract clauses.

1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverable is the performance of a service. When provisional award fee payments are authorized, use Alternate I.

(b) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for End Item Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract.

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I.

(f) As provided at 1816.402–270, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts. (NASA supplements paragraph (a))

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

1816.505 Ordering. (NASA supplements paragraphs (a) and (b))

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(4) The Agency and installation ombudsmen designated in accordance with 1815.70 shall review complaints from contractors on task order contracts and delivery order contracts.

1816.505–70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.404–270(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216–80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843–70.

1816.506–70 NASA contract clause.

Insert the clause at 1852.216–80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NHB 9501.2), use the clause with its Alternate I.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603–370 Approvals.

(a) All requests for authority to issue a letter contract shall include the following:

(1) Proposed contractor's name and address.

(2) Location where contract is to be performed.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed.

(10) A statement that the definitive contract will contain all required clauses or identification of specific clause deviations that have been approved.

(11) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(12) The definitization schedule described in FAR 16.603–2(c) expected to be negotiated with the contractor.

(b) Requests for authority to issue letter contracts having an estimated definitive contract amount equal to or greater than the Master Buy Plan submission thresholds of 1807.7101 (or modifications thereto) shall be signed by the procurement officer and submitted to the Associate Administrator for Procurement (Code HS) for approval.

(c) Authority to approve the issuance of letter contracts below the Master Buy Plan submission thresholds specified in 1807.7101 is delegated to the procurement officer.

(d) Any modification of an undefinitized letter contract approved by a procurement officer in accordance with paragraph (c) of this section that increases the estimated definitized contract amount to or above the Master Buy Plan submission thresholds must have the prior approval of the Associate Administrator for Procurement (Code HS).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The authority citation for part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

1852.215–73, 1852.215–74, 1852.215–75 [Revised]

5–6. Sections 1852.215–73, 1852.215–74 and 1852.215–75 are revised to read as follows:

1852.215–73 Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs).

As prescribed in 1815.407–70(a), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs)

(October 1996)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice of telegram (Including mailgram) received at any time before award. Proposals maybe withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

1852.215–74 Alternate Proposals.

As prescribed in 1815.407–70(b), insert the following provision:

Alternate Proposals

(October 1996)

(A) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, it accepted, would result in a contract with terms varying in one or more material respects from those

contained in this solicitation, and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interest, the Government may modify its solicitation in a manner appropriate the incorporate the changes but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation.

(End of provision)

1852.215–75 Expenses Related to Offeror Submissions.

As prescribed in 1815.407–70(c), insert the following provision:

Expenses Related to Offeror Submissions

(December 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk.

(End of provision)

1852.215–77, 1852.215–78, 1852.215–79 [Revised]

7.–8. Sections 1852.215–77, 1852.215–78 and 1852.215–79 are revised to read as follows:

1852.215–77 Preproposal/Pre-bid Conference.

As prescribed in 1815.407–70(d), insert the following provision:

Preproposal/Pre-Bid Conference

(December 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

1852.215–78 Make or Buy Program Requirements.

As prescribed in 1815.708–70(a), insert the following provision:

Make or Buy Program Requirements

(December 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

1852.215–79 Price Adjustment for "Make-or-Buy" Changes.

As prescribed in 1815.708–70(b), insert the following clause:

Price Adjustment for "Make-or-Buy" Changes

(December 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

1852.215–81, 1852.215–82 [Revised]

9. Section 1852.215–81 and 1852–215–82 are revised to read as follows:

1852.215–81 Proposal Page Limitations.

As prescribed in 1815.407–70(g), insert the following provision:

Proposal Page Limitations

(January 1994)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)
_____	_____
_____	_____
_____	_____
_____	_____

(b) A page is defined as one side of sheet, 8½" x 11", with at least one inch margins on all sides, using not smaller than 12 characters per inch (or equivalent) type. Foldouts count as an equivalent number of 8½" x 11" pages. The metric standard format most closely approximating the described standard 8½" x 11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If Best and Final Offers (BAFOs) are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

1852.215–82 Offeror oral presentations.

As prescribed in 1815.407–70(h), insert the following provision:

Offeror Oral Presentations

(November 1993)

(a) Offerors are invited to give an oral presentation to the Government on the structure and general content of their proposals. These presentations are intended to assist Government evaluation by providing a "roadmap" to understanding proposals, i.e., an overview of the proposal organization and layout, and where required information and elements are located. Although the offeror's basic approach to satisfying solicitation requirements may be explained, it is to be done so only in general terms and only to expedite the Government's formal evaluation.

(b) The Government will not engage in any discussions during the oral presentation, and no proposal revisions will be accepted as part of the presentation. The Government's evaluation of offeror proposals will be based on the contents of the initial proposal, and any information not included in the initial proposal that is provided at the oral presentation will not be evaluated.

(c) Offerors should indicate in their proposals if they wish to give an oral presentation. These presentations are not mandatory, and electing not to give a presentation will not, in itself, affect proposal evaluation.

(d) Because the presentations are intended to assist the Government's evaluation, they will be scheduled to take place prior to commencement of the formal initial evaluation, normally within three days after proposal receipt. Offerors unable to accommodate this schedule forfeit their opportunity to provide a presentation.

(e) The presentations will consist of an offeror briefing not to exceed [*insert 1 or 2*] hours to be followed by a question and answer period. The order of offeror presentations will be determined at random. The exact time and place of the presentation, along with any other guidance, will be provided to the offeror by the contracting officer or his/her representative.

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(f) Presentation materials are not required, but if used, the Government will retain one copy in its official file as a historical record of the presentation even though these materials will not be used in the Government's evaluation process.

(End of provision)

1852.215–84 [Revised]

10.–11. Section 1852.215–84 is revised to read as follows:

1852.215–84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

Ombudsman

(October 1996)

An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution. If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, [Insert name], at _____ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Deputy Administrator for Procurement, at 202–358–2090. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(End of clause)

1852.216–73, 1852.216–74, 1852.216–75, 1852.216–76, 1852.216–77, 1852.216–78 [Revised]

12.–13. Sections 1852.216–73, 1852.216–74, 1852.216–75, 1852.216–76, 1852.216–77 and 1852.216–78 are revised to read as follows:

1852.216–73 Estimated Cost and Cost Sharing.

As prescribed in 1816.307–70(a), insert the following clause:

Estimated Cost and Cost Sharing

(December 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

1852.216–74 Estimated Cost and Fixed Fee.

As prescribed in 1816.307–70(b), insert the following clause:

Estimated Cost and Fixed Fee

(December 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____.

(End of clause)

1852.216–75 Payment of Fixed Fee.

As prescribed in 1816.307–70(c), insert the following clause:

Payment of Fixed Fee

(December 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216–76 Award Fee for Service Contracts.

As prescribed in 1816.405–70(a), insert the following clause:

Award Fee for Service Contracts

(October 1996)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with *[identify performance evaluation plan]*. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The *[insert payment office]* will make payment based on *[Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer]*.

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Office considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts]*. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).]

Alternate I

(October 1996)

As prescribed in 1816.405–70(a), insert the following paragraph (f) and reletter existing paragraph (f) to (g):

(f)(1) Pending a determination of the amount of award fee earned for an evaluation period, a portion of the available award fee for that period will be paid to the contractor on a *[Insert the frequency of provisional payments (not more often than monthly)]* basis. The portion paid will be _____ *[Insert percentage (not to exceed 80 percent)]* percent of the current period's available amount or the equivalent of the prior period's interim fee, whichever is lower; provided, however, that when the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(2) In the event the amount of award fee earned, as determined by the FDO, is less than the sum of the provisional payments made for that period, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) Provisional award fee payments will *[insert "not" if appropriate]* be made prior to

the first award fee determination by the Government.

(End of clause)

1852.216–77 Award Fee for End Item Contracts.

As prescribed in 1816.405–70(b), insert the following clause:

Award Fee for End Item Contracts

(Insert Month of Publication)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with *[identify performance evaluation plan]* to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in *[Insert "monthly", or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.*

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocation to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will *[insert "not" if applicable]* be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a *[insert the frequency of provisional payments (not more often than monthly)]* basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see *[insert applicable cite]*). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance). This determination is not subject to the Disputes clause.

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].*

(d) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).]

(End of clause)

1852.216–78 Firm Fixed Price.

As prescribed in 1816.202–70, insert the following clause:

Firm Fixed Price

(December 1988)

The total firm fixed price of this contract is $ [Insert the appropriate amount].

(End of clause)

1852.216–80, 1852.216–81 [Revised]

14.–15. Sections 1852.216–80 and 1852.216–81 are revised to read as follows:

1852.216–80 Task Ordering Procedure.

As prescribed in 1816.506–70, insert the following clause:

Task Ordering Procedures

(October 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within ____ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

Alternate I

(October 1996)

As prescribed in 1816.506–70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

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(2) Task ceiling price.
(3) Cost and hours incurred to date for each issued task.
(4) Costs and hours estimated to complete each issued task.
(5) Significant issues/problems associated with a task.
(6) Cost summary of the status of all tasks issued under the contract.

1852.216–81 Estimated Cost.

As prescribed in 1816.307–70(d), insert the following clause:

Estimated cost

(December 1988)

The total estimated cost for complete performance of this contract is $ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract.

(End of clause)

1852.216–83, 1852.216–84, 1852.216–85 [Revised]

16.–17. Sections 1852.216–83, 1852.216–84 and 1852.216–85 are revised to read as follows:

1852.216–83 Fixed Price Incentive.

As prescribed in 1816.405–70(c), insert the following clause:

Fixed Price Incentive

(October 1996)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.]
The cost sharing for target cost underruns is: Government _____percent; Contractor _____percent.
The cost sharing for target cost overruns is: Government _____percent; Contractor _____percent.

(End of clause)

1852.216–84 Estimated Cost and Incentive Fee.

As prescribed in 1816.405–70(d), insert the following clause:

Estimated Cost and Incentive Fee

(October 1996)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____.
The maximum fee is $_____.
The minimum fee is $_____.
The cost sharing for cost underruns is: Government _____percent; Contractor _____percent.
The cost sharing for cost overruns is: Government _____percent; Contractor _____percent.

(End of clause)

1852.216–85 Estimated Cost and Award Fee.

As prescribed in 1816.405–70(e), insert the following clause:

Estimated Cost and Award Fee

(September 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

(End of clause)

Alternate I

(September 1993)

As prescribed in 1816.405–70(e), insert the following sentence at the end of the clause:
The maximum positive performance incentive is $_____. The maximum negative performance incentive is (1).
(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$*total potential award fee amount, including any base fee*)].

(End of clause)

1852.216–87, 1852.216–88, 1852.216–89 [Revised]

18–19. Sections 1852.216–87, 1852.216–88 and 1852.216–89 are revised to read as follows:

1852.216–87 Submission of Vouchers for Payment.

As prescribed in 1816.307–70(e), insert the following clause:

Submission of Vouchers for Payment

(December 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract [Insert the contract *number*] and be forwarded to:
[Insert the mailing address for submission of cost vouchers.]
This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.
(b) The Contractor shall prepare vouchers as follows:
(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.
(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.
(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:
(i) Copy 1 NASA Contracting Officer;
(ii) Copy 2 Auditor;
(iii) Copy 3 Contractor;
(iv) Copy 4 Contract administration office; and
(v) Copy 5 Project management office.
(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to:
[Insert the mailing address for submission of fee vouchers.]
This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.
(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

1852.216–88 Performance Incentive.

As prescribed in 1816.405–70(f), insert the following clause:

Performance Incentive

(January 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).
The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.
(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) ____ is established as follows: (2).
(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ (3) ____ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).
(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ (5) ____. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).
(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.
(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.
(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.
(f) If performance cannot be demonstrated, through no fault of the Contractor, within

[insert number of months or years] after the date of hardware acceptance by the Government, the Contractor will be paid *[insert percentage]* of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402–270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402–270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

1852.216–89 Assignment and release forms.

As prescribed at 1816.307–70(f), insert the following clause:

Assignment and Release Forms

(October 1996)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR Clause 52.216–7, Allowable Cost and Payment, and FAR Clause 52.216–13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release
NASA Form 779, Assignee's Release
NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts

Computer generated forms are acceptable, provided that they comply with FAR Clause 52.253–1.

(End of clause)

[FR Doc. 97–1240 Filed 1–22–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 1)]

Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—1997 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board adopts its 1997 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1997 Government salary increases and increases in **Federal Register** publication costs.

EFFECTIVE DATE: These rule are effective on February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5249, or David T. Groves, (202) 927–6395. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

The Board's regulations at 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Because Board employees will receive a salary increase of 3.33% in January 1997, we are updating our user fees to recover our increased personnel cost. This update also reflects the increased **Federal Register** publication costs, which became effective on January 1, 1997. All fees will be updated based on our cost formula at 49 CFR 1002.3(d).

In *Central Power & Light Company* v. *Southern Pacific Transportation Company*, No. 41242 (STB served Dec. 31, 1996), the Board indicated that in certain cases "bottleneck" rate relief would be available in connection with the filing of a competitive access complaint. The Board is adding a new Fee Item 56(iv), Competitive access complaints, to cover that activity.

In *Class Exem. For The Construction of Connecting Track*, 1 S.T.B. 75 (1996), the Board adopted new regulations at 49 CFR 1150.36 that provide for a class exemption for the construction and operation of connecting railroad track. We are adding new Fee Item 12(ii), Notice of exemption under 49 CFR 1150.36, to cover that activity. Also, to conform with other fee items, we are providing a separate Fee Item 12(iii), Petition for exemption under 49 U.S.C. 10502 involving construction of rail lines.

Because the Board only recently revised the fees for formal complaints in Fee Items 56 (i)–(iii) in the *Regulations Governing Fees For Services Performed in Connection with Licensing and Related Services—1996 Update*, 61 FR 66229 (December 17, 1996), the fees for those items will remain at current levels.

The fee increases involved here result only from the mechanical application of the update formula at 49 CFR 1002.3(d), that was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update*, 4 I.C.C.2d 137 (1987). Therefore, we believe that good cause exists for finding that notice and comment is unnecessary for this proceeding. *See Regulations Governing Fees for Services—1990 Update*, 7 I.C.C.2d 3 (1990), *Regulations Governing Fees for Services—1991 Update*, 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees for Services—1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes, which are being adopted here, will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: January 13, 1997.

By the Board, Chairman Morgan and Vice-Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002 of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (a), (b), (c), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $10.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or

extracts therefrom at the rate of $25.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $17.00 per hour.

* * * * *

(e) * * *

(1) A fee of $44.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$7.37
GS–2	8.02
GS–3	9.04
GS–4	10.15
GS–5	11.35
GS–6	12.66
GS–7	14.06
GS–8	15.58
GS–9	17.20
GS–10	18.95
GS–11	20.82
GS–12	24.95
GS–13	29.67
GS–14	35.06
GS–15 and over	41.24

* * * * *

3. In § 1002.2, paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
Part I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic.	$2,600.
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$1,200.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13706.	$16,500.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$2,700.
(ii) Minor amendment	$60.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i).	$300.
(6)–(10) [Reserved]	
Part II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$4,300.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35.	$1,100.
(iii) Petition for exemption under 49 U.S.C. 10502.	$7,500.
(12) (i) An application involving the construction of a rail line.	$44,500.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36.	$1,100.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line.	$44,500.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii).	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$3,700.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45.	$1,100.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$3,900.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24.	$1,000.
(16)–(20) [Reserved]	
Part III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments.	$13,200.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50.	$2,200.
(iii) A petition for exemption under 49 U.S.C. 10502.	$3,800.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$250.
(23) Abandonments filed by bankrupt railroads.	$1,100.
(24) A request for waiver of filing requirements for abandonment application proceedings.	$1,000.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$900.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned.	$13,500.
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d).	$150.
(28)–(35) [Reserved]	
Part IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102.	$11,300.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322.	$6,100.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d).	$1,000.
(v) Responsive application	$4,700.
(vi) Petition for exemption under 49 U.S.C. 10502.	$5,600.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d).	$850.
(v) Responsive application	$4,700.
(vi) Petition for exemption under 49 U.S.C. 10502.	$5,600.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d).	$750.
(v) Responsive application	$4,700.

Type of proceeding	Fee
(vi) Petition for exemption under 49 U.S.C. 10502.	$5,600.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d).	$850.
(v) Responsive application	$4,700.
(vi) Petition for exemption under 49 U.S.C. 10502.	$3,900.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5).	$1,500.
(43) An application for approval of a rail rate association agreement 49 U.S.C. 10706.	$41,600.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$7,700.
(ii) Minor amendment	$60.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328.	$450.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$4,800.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562.	$150.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$150.
(49)–(55) [Reserved]	
Part V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of rail carriers, motor carriers of passengers or motor carriers of household goods:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) except a complaint filed by small shipper.	$23,300.
(ii) A formal complaint involving rail maximum rates filed by a small shipper.	$1,000.
(iii) All other formal complaints (except competitive access complaints).	$2,300.
(iv) Competitive access complaints.	$150.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$5,200.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order.	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	$4,200.
(60) Labor arbitration proceedings.	$150.
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$150.
(62) Motor carrier undercharge proceedings.	$150.
(63)–(75) [Reserved]	
Part VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$700.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements.	$70.
(78) (i) The filing of tariffs, including supplements, or contract summaries.	$1 per page. ($14 minimum charge.)
(ii) Tariffs transmitted by fax	$1 per page.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less.	$45.
(ii) Applications involving over $25,000.	$90.
(80) Informal complaint about rail rate applications.	$350.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less.	$45.
(ii) Petitions involving over $25,000.	$90.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$100.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c).	$24 per document.
(84) Informal opinions about rate applications (all modes).	$150.
(85) A railroad accounting interpretation.	$650.
(86) An operational interpretation	$850.
(87)–(95) [Reserved]	
Part VII: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	$19 per delivery.
(97) Request for service or pleading list for proceedings.	$14 per list.
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a FEDERAL REGISTER notice.	$150.
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a FEDERAL REGISTER notice.	$400.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam.	$100.
(ii) Practitioners' Exam Information Package.	$25.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual.	$50.
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor.	$10.
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board.	$20.
(iv) Public requests for *Source Codes* to the PC version URCS Phase III.	$500.
(v) PC version or mainframe version URCS Phase II.	$400.
(vi) PC version or mainframe version Updated Phase II databases.	$50.
(vii) Public requests for *Source Codes* to PC version URCS Phase II.	$1,500.
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year.	$450.
(ii) Requests for Public Use File on R–CD Each Additional Year.	$150.
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year.	$650.
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD.	$450.

Type of proceeding	Fee
(v) Waybill—Surface Transportation Board of State proceeding on R–CD—Second Year on different R-CD.	$500.
(vi) User Guide for latest available Carload Waybill Sample.	$50.

* * * * *

[FR Doc. 97–1613 Filed 1–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 011697B]

Atlantic Tuna Fisheries; Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) Incidental Other category has attained its 1997 annual quota. Therefore, the Incidental Other category for 1997 will be closed.

EFFECTIVE DATE: The closure of the Incidental Other category is effective 11:30 p.m. local time on January 17, 1997, until the effective date of a quota adjustment, if any, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Incidental Other Category Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 1 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the Incidental Other category quota over the period January 1 - December 31. Based on reported catch, NMFS has determined that this quota has been reached; reported landings as of January 16, 1997, total 1.23 mt. Therefore, retaining, possessing, or landing large medium or giant ABT under the Incidental Other category quota must cease at 11:30 p.m. local time on January 17, 1997, until the effective date of a quota adjustment, if any, which will be published in the **Federal Register**.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: January 16, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1588 Filed 1–17–97; 2:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–236–FOR]

Ohio Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio abandoned mine land reclamation plan (hereinafter the "Ohio plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment which was published April 17, 1996 (61 FR 16731) consists of changes to provisions of the Ohio plan pertaining to the acid mine drainage set-aside program, water quality improvement, project eligibility, and remining incentives. The amendment is intended to revise the Ohio plan to be consistent with SMCRA, as amended.

DATES: Written comments must be received by 4:00 p.m., [e.s.t.], February 7, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43224, Telephone: (614) 265–1076

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Plan

On August 10, 1982, the Secretary of the Interior approved the Ohio plan. Background information on the Ohio plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the April 15, 1994, **Federal Register** (59 FR 17930). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 935.25.

II. Description of the Proposed Amendment

By letter dated March 19, 1996, (Administrative Record No. OH–2163) Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The provisions of the Ohio plan that it proposes to amend are: Acid mine drainage set-aside program, water quality improvement, project eligibility, and remining incentives. The proposed amendment was announced in the April 17, 1996, **Federal Register** (61 FR 16731).

By letter dated December 6, 1996 (Administrative Record No. OH–2163–12), Ohio submitted revisions to the original amendment. At page 4–2, the following language is inserted, "to encourage reclamation in conjunction with active mining of abandoned areas causing acid mine drainage (AMD) within approved hydrologic units and in other areas causing AMD within approved hydrologic units and in other areas through the funding of AMD remediation projects and studies necessary to develop pollution plans." At page 4–17, Ohio clarifies that AMDAT funds are being used to collect and analyze data necessary to qualify watersheds as hydrologic units. At page 4–19, Ohio is revising Stage 5 of the project selection process to provide for the reclamation of abandoned mine areas causing AMD in conjunction with active mining. Federal abandoned mine lands funds may be used to fund reclamation of abandoned mine lands causing AMD under certain conditions.

By letter dated December 20, 1997 (Administrative Record No. OH–2163–13), Ohio submitted an additional revision. At page 4–19, Ohio proposes to delete the language identified as Stage 5 of the project selection process. The deletion is based on Ohio's understanding that such language is not necessary to fulfill its goals and objectives regarding the use of the acid mine drainage set-aside funds for the restoration of watersheds impacted by acid mine drainage from abandoned coal mines. Sufficient flexibility exists within its program to manage the funds in a manner that will achieve its objectives.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revisions to the State's Plan that were submitted on March 19, 1996, and revised on December 6 and 20, 1996. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans submitted by a State or Tribe must be based solely on a determination of whether the submittal is consistent with Title IV of SMCRA (30 U.S.C. 1231–1243) and whether the other requirements of 30 CFR Parts 884 and 888 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–1600 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Ch. XI

Negotiated Rulemaking Committee to Revise the Motor Carrier Financial and Operating Data Collection Program; Meeting and Extension of Comment Period on Proposed Establishment

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice of meeting; extension of comment period.

SUMMARY: The Bureau of Transportation Statistics (BTS) has proposed the establishment of a negotiated rulemaking advisory committee (the Committee) to examine the relevant issues and attempt to reach a consensus in developing regulations governing the collection of financial and operating data from motor carriers of property. Before making a final decision on formation of the Committee, BTS will hold a public meeting to help decide whether a negotiated rulemaking advisory committee is needed, and, if so, to help determine the appropriate Committee membership and issues for consideration. The meeting will be held Monday, February 10, 1997, 9:30 am to 3:00 pm, Eastern Standard Time. BTS is also extending the comment period on the proposal to establish the negotiated rulemaking committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. Persons are invited to submit applications or nominations for membership on the Committee. The comment period is extended to February 28, 1997.

DATES: *Meeting.* The meeting will be held Monday, February 10, 1997, 9:30 am to 3:00 pm, Eastern Standard Time.

Comment period. Interested parties may file comments and nominations for committee membership on or before February 28, 1997.

ADDRESSES: *Meeting.* The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C., in conference room 2230 of the Nassif Building. Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify David Mednick on (202) 366–8871 prior to February 7. Attendance is open to the interested public but limited to space available.

Comment period. When sending comments and/or nominations, send the original plus three copies. Mail to Docket Clerk, Docket No. BTS–96–1979, Department of Transportation, 400 Seventh Street, SW., Room PL–401,Washington, D.C. 20590. Commenters desiring notification of receipt of comments must include a stamped, self-addressed postcard. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: David Mednick, Bureau of Transportation Statistics, K–2, 400 Seventh Street, SW., Washington, D.C. 20590; by phone at (202) 366–8871; by e-mail at david.mednick@bts.gov; or by Fax at (202) 366–3640.

SUPPLEMENTARY INFORMATION:

Background

Under Section 103 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (to be codified at 49 U.S.C. 14123), the Secretary of Transportation has authority to establish regulations for the collection of certain data from motor carriers of property and others. On December 9, 1996, BTS published a notice in the **Federal Register** (the Notice) proposing to establish a negotiated rulemaking advisory committee (the Committee) under the Federal Advisory Committee Act and the Negotiated Rulemaking Act. 61 FR 64849. The Committee would consider the relevant issues and attempt to reach a consensus on regulations governing the collection of financial and operating data from motor carriers of property. This effort also is in response to the President's Regulatory Reinvention Initiative, which specifically directed agencies to increase use of regulatory negotiation in rulemaking proceedings. The Committee would be composed of people who represent the interests that would be substantially affected by the rule.

The Notice proposing establishment of the Committee listed potential topics

for the negotiated rulemaking process. It also listed entities identified as interested parties that should be included in the negotiated rulemaking process either directly as members of the Committee or as part of a broader caucus of similar or related interests. The Notice requested comments on the proposal to establish a negotiated rulemaking advisory committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. BTS has decided to supplement its request for comments by (1) holding a public meeting on this matter; and (2) extending the comment period until after the public meeting.

Announcement of BTS Public Meeting

To better determine the utility of negotiating a rule on this matter, BTS will hold a public meeting on February 10, 1997, 9:30 am to 3:00 pm, Eastern Standard Time. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C., in conference room 2230 of the Nassif Building. Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify David Mednick on (202) 366–8871 prior to February 7. Attendance is open to the interested public but limited to space available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mr. Mednick at (202) 366–8871 at least seven days prior to the meeting.

While negotiated rulemaking would attempt to resolve issues surrounding the motor carrier data collection program, several initial matters deserve attention. First, do we need to amend the existing rule and, if so, is negotiated rulemaking the best process for updating the motor carrier data collection program? Second, if so, what are the core issues in dispute and differing legitimate needs of the interested parties? Third, which organizations or interests should be represented on the Committee?

While comments received have been helpful, BTS does not have enough information to determine whether to pursue negotiated rulemaking. The public meeting will bring together the various interest groups. A facilitator will be on hand to help develop potential issues and promote open discussion. In addition to helping BTS decide whether to pursue the negotiated rulemaking, it should also help lay the groundwork for the proposed Committee.

All those interested in this rulemaking, including the potential participants listed in the Notice and those submitting applications or nominations for membership, are encouraged to attend.

Extension of Comment Period

Because BTS has not reached a final decision on whether to use a negotiated rulemaking process for this rule, it is extending the comment period on its proposal published December 19, 1996. 61 FR 64849. The comment period is extended to February 28, 1997. BTS is soliciting comments on the proposal to establish a negotiated rulemaking advisory committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. BTS is also accepting applications and nominations for membership on the Committee. Please refer to the original Notice for full details.

Issued in Washington, DC, on January 16, 1997.

Robert A. Knisely,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 97–1580 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AA98

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Reports and Other Data Pertaining to the Listing of the Bruneau Hot Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on reports and other data pertaining to the listing of the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) is reopened. A notice of availability that opened the original public comment period was published on September 12, 1995 (60 FR 47339). The Service extended the comment period until December 15, 1995, in a notice published on November 13, 1995 (60 FR 56976). The Service hereby reopens the comment period and solicits new information and public comment on all information and data received since the listing of the species in 1993.

DATES: The comment period is reopened until March 10, 1997. Any comments and materials received by the closing date will be considered in the final determination.

ADDRESSES: Comments and materials concerning the reports and other information pertaining to the listing of the Bruneau hot springsnail should be submitted to the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709. Reports and other data cited in this notice, and public comments and other materials received will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the address listed above (telephone 208/378–5243, facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1993, the Service published a final rule in the **Federal Register** determining the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) to be an endangered species (58 FR 5946). In its decision to list the springsnail the Service relied, in part, on a provisional draft of a U.S. Geological Survey (USGS) report (Berenbrock 1992) analyzing the hydrology of the geothermal aquifer in the Bruneau Valley area. The USGS provided the Service with the draft report, but did not release it to the public and requested that the Service not release the report to the public, pending agency review and approval.

On May 7, 1993, the Idaho Farm Bureau Federation, Owyhee County Farm Bureau, Idaho Cattleman's Association, and Owyhee County Board of Supervisors challenged the listing decision on several grounds in a lawsuit filed in United States District Court for the District of Idaho. The plaintiffs argued that the Service committed a number of procedural errors during the listing process, including not allowing the public to review the draft USGS report. On December 14, 1993 the district court determined that the Service committed several procedural errors and set aside the final rule listing the springsnail as an endangered species.

The district court decision was appealed to the United States Court of Appeals for the Ninth Circuit by two intervening conservation groups, the Idaho Conservation League and Committee for Idaho's High Desert. On June 29, 1995, the appellate court overturned the district court decision

and reinstated the Bruneau hot springsnail to the endangered species list. However, the appellate court concluded that the Service should have made the draft USGS report (i.e., Berenbrock 1992) available for public review, as the Service relied largely on this report to support the final listing rule. The appellate court directed the Service to provide an opportunity for public comment on the final USGS report and to reconsider its listing decision.

To comply with the court's direction, the Service announced that the Berenbrock (1992) report, and other reports and data pertaining to the listing of the springsnail were available for public comment until November 13, 1995, in a notice published on September 12, 1995 (60 FR 47339). Because of a request from Susan E. Buxton on behalf of her client (John B. Urquidi, J & J Ranches, Bruneau, Idaho), the Service extended the public comment period until December 15, 1996, in a notice published on November 13, 1995 (60 FR 56976). Nearly 400 comments were received from individuals and agencies during the public comment period.

Because of a moratorium on final listing actions from April 10, 1995, until April 26, 1996 (Pub. L. 104–6), the Service was unable to comply with the June 1995 court decision and issue its reconcideration listing decision. In anticipation of the end of the moratorium and after it was lifted, the Service issued interim guidance on March 11, 1996 (61 FR 9651), final guidance for fiscal year 1996 on May 16, 1996 (61 FR 24722), and final guidance for fiscal year 1997 on December 5, 1996 (61 FR 64475), regarding the setting of priorities for various listing actions. These guidance documents focused the Service's limited funding on emergency actions, and final rules for imminently and highly threatened species, and for multi-species packages. Consequently, the Service took no action on the springsnail during fiscal year 1996. Though listing priorities now allow the Service to take final action on this court decision, it has been over 1 year since the close of the last public comment period. Therefore, the Service is now soliciting additional comments and making available for public review new information and other data pertaining to the listing of the Bruneau hot springsnail received since the last comment period.

Available Reports and Data

In addition to the draft USGS report, which was finalized in August 1993 (i.e., Berenbrock 1993), the Service listed 13 additional reports and documents in its past notices (60 FR 47339 and 60 FR 56976) that are pertinent to the listing decision and were received since the original listing rule was published on January 25, 1993. Moreover, the Service received 5 additional reports or letters pertinent to this listing decision since the close of the public comment period on December 15, 1995. The following combined list of reports and letters contained in Service files, including other non-cited information, are available for public review and comment:

Berenbrock, C. 1992. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations, Boise, Idaho. Preliminary report.

Berenbrock, C. 1993. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations Report 93–4001, Boise, Idaho.

Bruneau Valley Coalition, Inc. 1995. Habitat maintenance and conservation plan for the Bruneau hot springsnail, January, 1995. Unpublished plan.

Bruneau Valley Coalition, Inc. 1995. Proposed amendment to the "Threatened and Endangered Species" section of the Interim Comprehensive Land Use Plan for the federally and state managed lands in Owyhee County. Unpublished amendment.

Idaho Water Resources Research Institute. 1994. Bruneau hot springs aquifer restoration report: A preproposal. Unpublished report, University of Idaho, Moscow, Idaho.

Lee, J.A. 1994. Summary report for the control survey of the Bruneau hot springsnail. Unpublished report, Bureau of Land Management, Boise District Office, Boise, Idaho.

Mladenka, G.C. 1993. Report on the 1993 Bruneau hot springsnail site survey. Unpublished report.

Mladenka, G.C. 1995. Bruneau hot springs invertebrate survey. Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Mladenka, G.C. and G.W. Minshall. 1996. Report on the 1996 Bruneau hot springsnail site survey. Unpublished report.

Royer, T.V. and G.W. Minshall. 1993. 1993 Annual Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

U.S. Geological Survey. 1993. Unpublished letter addressing error in estimating natural recharge to geothermal aquifer system, and status of Bruneau-area ground water-levels and spring discharges. Boise, Idaho.

U.S. Geological Survey. 1995a. Unpublished letter summarizing results of Bruneau-area ground water-level and spring discharge monitoring data through December 1994. Boise, Idaho.

U.S. Geological Survey. 1995b. Unpublished letter commenting on Idaho Water Resources Research Institute's report and summarizing provisional, spring discharge data collected from June 1994 through July 1995 from three hot springs above Hot Creek, Idaho.

U.S. Geological Survey. 1996a. Unpublished letter summarizing Bruneau-area ground water-level and spring discharge monitoring data collected through January 1996. Boise, Idaho.

U.S. Geological Survey. 1996b. Annual report summarizing results of Bruneau-area ground water-level and spring discharge monitoring through June 1996. Boise, Idaho.

U.S. Geological Survey. 1996c. Annual report summarizing results of Bruneau-area ground water-level and spring discharge monitoring through September 1996. Boise, Idaho.

Varricchione, J.T. and G.W. Minshall. 1995. 1994 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Technical Bulletin No. 95–14, Idaho Bureau of Land Management.

Varricchione, J.T. and G.W. Minshall. 1995. Gut content analysis of wild *Gambusia* and *Tilapia* in Hot Creek, Bruneau, Idaho. Unpublished report, Idaho State University, Pocatello, Idaho.

Varricchione, J.T. and G.W. Minshall. 1996. 1995 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Idaho Bureau of Land Management Technical Bulletin No. 96–8. Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531–1544.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Dated: January 14, 1997

H. Dale Hall,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–1602 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011397B]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, January 29, 1997, at 10 a.m., and on Thursday, January 30, 1997, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

January 29, 1997

After introductions, the January 29 session will begin with a report on the 23rd Stock Assessment Workshop presented by the staff of the Northeast Fisheries Science Center. Analyses will be reviewed for the following species/stocks: Atlantic sea scallops, monkfish, and bluefish.

At the afternoon session and on the following day, the Council will consider action on framework adjustments to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. This will be the final meeting to discuss and vote on Framework Adjustment 20 to the FMP (stock rebuilding measures for 1997). The range of options under consideration include area closures, gear modifications, and possible reductions in days-at-sea allocations. As part of this action, the Council will discuss effort reduction measures for gillnet vessels and alternatives to the current haddock trip limit. Measures to protect the 1992 year class of winter flounder also will be discussed and included in this action. Other adjustments included in Framework Adjustment 20 would allow operation of mussel dredges in Southern New England and would modify the bycatch allowances in the northern shrimp fishery.

January 30, 1997

The January 30 session will begin with reports from the Council Chairman, Executive Director, NMFS Northeast Regional Administrator (Regional Administrator), Northeast Fisheries Science Center, Mid-Atlantic Council Liaisons, representatives of the Atlantic States Marine Fisheries Commission and the U.S. Coast Guard. NMFS will follow with a briefing on the Magnuson-Stevens Fishery Conservation and Management Act requirements concerning essential fish habitat.

In the afternoon, the Council will hold the final meeting on a framework adjustment to consider measures that would restrict fixed gear in the Great South Channel area to protect right whales in critical habitat during high use periods.

There will be a review of the Monkfish Committee's discussions on the Draft Environmental Impact Statement and the Draft FMP Amendment dealing with monkfish.

The day will conclude with a discussion on the use of negotiated rulemaking to resolve gear conflicts in the highly migratory species fisheries. Any other outstanding business will also be discussed.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 16, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1655 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 17, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Use of Two Kinds of Poultry Without Label Change.

OMB Control Number: New Collection.

Summary: FSIS is proposing to amend the poultry products inspection regulations by adding a provision that would permit manufactures of poultry products to interchange the amounts and kinds of poultry present in a product without requiring new labels for each formulation.

Need and use of the Information: The information would be used to ensure that poultry products are properly labeled and packaged.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 125.

Farm Service Agency

Title: Farmer Program Loans.

OMB Control Number: 0560–0155.

Summary: The Secretary of Agriculture is authorized to make and service loans guaranteed by the Farm Service Agency (FSA) to eligible farmers and ranchers. The loans made and serviced under 7 CFR 1980 Subpart B include farm operating, farm ownership and soil and water loans. Also under this subpart are emergency loans and recreation loans, which are no longer guaranteed by FSA.

Need and use of the information: This collection of information is necessary to assure that the program is carried out in accordance with applicable laws and authorities.

Description of Respondents: Farms, Business or other for-profit.

Number of Respondents: 23,150.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 193,343.

Farm Service Agency

Title: Emergency Livestock Feed Assistance and Disaster Reserve Assistance Programs—7 CFR 1439.

OMB Control Number: 0560–0029.

Summary: Emergency livestock feed and disaster reserve assistance programs authorize the Secretary of Agriculture to assist in the preservation and maintenance of livestock in any area of the United States where the Secretary determines that a livestock feed emergency exists.

Need and use of the Information: These requirements are necessary for the proper performance of USDA's functions in administering provisions of the emergency livestock and disaster reserve assistance programs.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 60,000.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 81,832.

Emergency Processing of This Submission Has Been Requested by January 16, 1997.

Farm Service Agency

Title: 7 CFR 729 and 1446—Poundage Quota and Marketing Regulations for Peanuts—Addendum.

OMB Control Number: 0560–0006.

Summary: The Agriculture Adjustment Act of 1938 as amended, and the Agriculture Act of 1949, as amended, authorizes the peanut program. The Food Security Act of 1985 provides for a two-priced peanut program and permits growers to produce and market quota and additional peanuts. The law specifies exact quantities of quota that may be marketed from a farm and the level of support. It is required that tenants share in any increased quota due to the tenant's production of additional peanuts on the farm.

Need and Use of the Information: Data is used to monitor and control compliance with the peanut program.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 15,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 460,090.

Emergency Processing of This Submission Has Been Requested by *January 30, 1997.*

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97–1635 Filed 1–22–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85–6A018."

U.S. Shippers Association's ("USSA") original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and previously amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30, 1993); and on June 28, 1994 (59 FR 34411, July 5, 1994). A summary of the application for an amendment follows.

Summary of the Application

Applicant: U.S. Shippers Association ("USSA"), 1209 Orange Street, Wilmington, Delaware 19801.

Contact: Andrew J. Shapiro, Counsel, Telephone: (202) 662–5447.

Application No.: 85–6A018.

Date Deemed Submitted: January 10, 1997.

Proposed Amendment

USSA seeks to amend its Certificate to add the following companies as new "Members" of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): NOVA Chemicals Inc., Monaca, PA (Controlling Entity: NOVA Corporation, Calgary, Alberta, Canada); Pecten Chemicals Inc., Houston, TX (Controlling Entity: Royal Dutch Petroleum Company, The Hague, The Netherlands); and Phillips Petroleum Company, Bartlesville, OK.

Dated: January 11, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–1574 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

[Docket No. 960227052–6355–02]

RIN 0693–ZA06

Continuation of Fire Research Grants Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program.

DATES: Proposals must be received no later than the close of business September 30, 1997.

ADDRESSES: Applicants must submit one signed original and two (2) copies of the proposal along with the Application for Federal Assistance, Standard Form 424, (Rev. 4–92), as referenced under the provisions of OMB Circular A–110 to: Building and Fire Research Laboratory (BFRL), Attention: Sonya Parham, Building 226, Room B206 National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Fire Research Grants Program should be directed to Sonya Parham, (301) 975–6854. Administrative questions concerning the NIST Fire Research Grants Program may be directed to the NIST Grants Office at (301) 975–6329. Additional information can be found in the Extramural Fire Research Program: Program Announcement and Preparation Guide. Copies may be downloaded from the BFRL web site (http://www.bfrl.nist.gov) or obtained from Sonya Parham at the above address.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards; 11.609.

Authority: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program. The annual budget for the Fire Research Grants Program is approximately $1.4 million. Because of commitments for the support of multi-year programs, only a portion of the budget is available to initiate new programs in any one year. Most grants and cooperative agreements are in the $10,000 to $100,000 per year range. The Fire Research Program is limited to innovative ideas generated by the proposal writer, who chooses the topic and approach. The issuance of awards is contingent upon the availability of funding.

All grants proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

A. Fire Modeling and Applications

To perform research, develop, and demonstrate the application of analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: develop methods to assess fire hazard and risk; create advanced, usable models for the calculation of the effluent from building fires; model the ignition and burning of furniture, contents, and building elements such as walls; develop methods of evaluating and predicting the performance of building safety design features; develop a protocol for determining the accuracy of algorithms and comprehensive models; develop data bases to facilitate use of fire models, and develop methodologies to acquire, model, and display fire information.

B. Large Fire Research

To perform research on and develop techniques to measure, predict the behavior of, and mitigate large fire events. This includes: understanding the mechanisms of large fires that control gas phase combustion, burning rate, thermal and chemical emissions, transport processes; developing field measurement techniques to assess the near- and far-field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; and developing and operating the Fire Research Program ,arge-scale experimental facility.

C. Advanced Fire Measurements

Produces the scientific basis and robust measurement methods for characterizing fires and their effluents at full- and reduced-scales.

This includes discrete point, volume-integrated, and time- and space-resolved measurements for such properties as temperature, smoke density, chemical species and flow velocity. Laboratory and computational research is also performed to understand the underpinning fire phenomena to ensure the soundness of the developed measurement techniques.

D. Materials Fire Research

Performs research to enable the confident development by industry of new, less-flammable materials and products. This capability is based on understanding fundamentally the mechanisms that control the ignition, flame spread, and burning rate of materials and the chemical and physical characteristics that affect these aspects of flammability. This includes: Developing methods of measuring the response of a material to fire conditions that enable assured prediction of the full-scale performance of the final product; developing computational molecular dynamics and other mechanistic approaches to understand flame retardant mechanisms and the effect of polymer chemical structure on flammability; characterizing the burning rates of charring and non-charring polymers and composites; delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion.

E. Fire Sensing and Extinguishment

Develops understanding, metrology, and predictive methods to enable high-performance fire sensing and extinguishment systems; devises new approaches to minimizing the impact of unwanted fires and the suppression process. This includes: research for the identification and insitu measurement of the symptoms of pending and nascent fires and the consequences of suppression; devising or adapting monitors for these variables and the intelligence for timely interpretation of the data; developing methods to characterize the performance of new approaches to fire detection and suppression; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; and modeling the extinguishment process.

Award Period

Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, fit to the NIST Fire Research Program, and the availability of funds.

Matching Requirements

The Fire Research Grants Program does not involve the payment of any matching funds and does not directly affect any state or local government.

Eligibility

Academic institutions, non-Federal agencies, and independent and industrial laboratories and research organizations.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the five programs listed above. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Division Chief. Applicants should allow up to 90 days processing time. Proposals are evaluated for technical merit by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies and experts from the fire research community at large.

Evaluation Criteria

a. Technical quality of the research: 0–35.

b. Potential impact of the results: 0–25.

c. Staff and institution capability to do the work: 0–20.

d. Match of budget to proposed work: 0–20.

Selection Procedure

The results of these evaluations are transmitted to the group leader of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments, considers overall program balance and objective, and makes a recommendation to the Division Chief.

Paperwork Reduction Act

The Standard Forms 424, 424A, 424B, and LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act and have been approved by the Office of Management and Budget, (OMB), under Control Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Application Kit

An application kit, containing all required application forms and certifications is available by calling Sonya Parham, NIST Fire Research Grants Program (301) 975–6854. An application kit includes the following:

SF–424 (Rev. 4/92)—Application for Federal Assistance
SF–424A (Rev. 4/92)—Budget Information-Non-Construction Programs
SF–424B (Rev. 4/92)—Assurance-Non-Construction Programs
CD–511 (7/91)—Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying
CD–512 (7/91)—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions-Lower Tier Covered Transactions and Lobbying
SF–LLL—Disclosure of Lobbying Activities

Additional Requirements

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Applicants who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover preaward costs.

Primary Application Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F., "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F., "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater, and;

4. Anti-Lobbying Disclosure. Any applicant that has been paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

False Statements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received, or;

3. Other arrangements satisfactory to DoC are made.

No Obligation for Future Funding

If an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Federal Policies & Procedures

Recipients and subrecipients under the Fire Research Grants Program are subject to all applicable Federal laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. The Fire Research Grant Program does not directly affect any state or local government.

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

Executive Order Statement

This funding notice was determined to be "not significant" for purposes of E.O. 12866.

Dated: January 16, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–1653 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 011497A]

Atlantic Striped Bass Fishery; 1995 Survey of Atlantic Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability and summarizes the results of a survey of the Atlantic coast striped bass fisheries for 1995. The Atlantic Striped Bass Conservation Act (Act), requires NMFS to provide information on the status of the fisheries.

ADDRESSES: Copies of the survey results are available from Paul Perra, NOAA/NMFS/FX2, 8484 Georgia Avenue, Suite 245, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Paul Perra, (301) 427–2014.

SUPPLEMENTARY INFORMATION:

The Act requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. The following is a summary of the survey for 1995. Management measures that severely restricted the harvest of striped bass by commercial and recreational fisheries were moderately relaxed in 1995, as the stocks continue to rebuild.

The 1995 commercial harvest of striped bass was 3,810,608 lb (1,728.5 mt), an increase of 98 percent above the landings of 1,923,000 lb (872.3 mt) in

1994. The Chesapeake Bay area (Maryland, Virginia, and the Potomac River) accounted for 52 percent of the 1995 commercial landings, while Massachusetts and North Carolina accounted for 21 percent and 9 percent respectively.

The recreational catch in 1995 was an estimated 9.6 million striped bass, of which 1.1 million were harvested; the remaining 8.5 million were released. The estimated weight of the recreational harvest was 12.1 million lb (5,492.4 mt).

Juvenile production in 1995 was lower than in 1994 but remained at levels above the long term averages for New York, Maryland, North Carolina, and Virginia. The Delaware juvenile production index of 7.6 was the highest in the time series for that index, which began in 1980.

Information from sampling the population of striped bass shows an increased relative abundance from recent year classes. Copies of the survey are available upon request (see **ADDRESSES**).

Dated: January 16, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1654 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011797A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of an Environmental Assessment and the receipt of an application for a permit to allow an incidental take of threatened and endangered species by Weyerhaeuser Company on portions of its lands in Lane, Linn, Benton, and Douglas Counties, OR. This notice of availability supplements the notice of availability provided by the U.S. Fish and Wildlife Service published elsewhere in this **Federal Register** volume.

Authority: 16 U.S.C. 1531–1544, and 4201–4245.

Dated: January 17, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1652 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, January 30, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: January 21, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–1798 Filed 1–21–97; 2:33 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Learn and Serve America—School and Community-Based Programs; Notice

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds for new grants and notice of availability of fiscal year 1997 application guidelines.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of approximately $25,713,000 to support new Learn and Serve America—School and Community-Based Programs (CFDA #94.004). State educational agencies (for States and certain other jurisdictions, including U.S. territories), grantmaking entities, and Indian tribes are eligible to apply for school-based program funds. State Commissions and grantmaking entities are eligible to apply for community-based program funds. The application form and guidelines for completing the application are contained in the Learn & Serve America: School and Community-Based Programs 1997 Application Guidelines.

DATES: All applications must be received by 3:30 p.m., Eastern Standard Time, March 12, 1997.

ADDRESSES: Applications should be submitted to Box SCB at the Corporation for National and Community Service, 1201 New York Ave, NW., Washington, DC 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the Learn & Serve America: School and Community-Based Programs 1997 Application Guidelines, call (202) 606–5000 ext. 260. Any further inquiries may be directed to Calvin Dawson at ext. 136.

SUPPLEMENTARY INFORMATION: The Learn and Serve America—School and Community-Based Programs (CFDA #94.004) aim to increase the opportunities of students and school-age youth and allow them to develop their own capabilities through service-learning. In Fiscal Year 1997, approximately $25,713,000 will be available for new Learn and Serve America—School and Community-Based Programs.

I. School-Based Programs

Up to $19,842,000 will be provided for new grants to State educational agencies from funds allotted to States by formula. Local educational agencies in those States where the State educational agency elects not to apply for its formula allotment may apply directly to the Corporation. Contact your State educational agency with any questions.

Up to $2,488,000 will be provided on a competitive basis to support new grants to grantmaking entities. To be eligible for an award under this program, a grantmaking entity must (1) be a public or private nonprofit organization experienced in service-learning, (2) submit an application to make grants for school-based service-learning programs in two or more states, and (3) have been in existence at least one year prior to submitting its application. Grantmaking entities must make subgrants for the service-learning purposes described in the application guidelines.

For Indian tribes and U.S. territories, approximately $200,000 is available on a competitive basis for new grants. These grants may be used for the services-learning purposes described in the application guidelines.

II. Community-Based Programs

Up to $3,183,000 will be provided on a competitive basis to support new grants to State Commissions and grantmaking entities. State Commissions and grantmaking entities may use funds to make subgrants to qualified organizations for the service-learning purposes described in the application guidelines, and to provide training and technical assistance to those organizations. Qualified organizations

may use funds to implement, operate, expand, or replicate a community-based service program as described in the application guidelines.

Dated: January 16, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–1562 Filed 1–22–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement/ Environmental Impact Report (FEIS/ FEIR) for Proposed Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts Army National Guard Training Site, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The purpose of this project is to maximize training opportunities for military units that use Camp Roberts. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned missions.

This FEIS/EIR analyzes the proposed action, two alternatives, and the no-action alternative. The proposed action consists of three components: Combined-forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program.

The combined-forces training component would consist of increasing the intensity of training from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: The M1 Abrams series of tanks would replace the M60 series tanks; Bradley Fighting Vehicles would replace the M113 series armored personnel carriers; the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers; and the AH–64 series Apache helicopters would replace the Cobra helicopters. The range modernization program component would be composed of both upgrading existing ranges and constructing new ranges.

In addition to the proposed action, the FEIS/EIR evaluates three other alternatives: No-Action, New Equipment Utilization and Range Modernization Program, and the Peak Training Use of Camp Roberts/Fort Hunter Liggett.

A 45-day public review and comment period was provided for the Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR). Two public hearings were held in San Luis Obispo and Paso Robles, California, on the DEIS/EIR after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS/EIR to constitute the FEIS/EIR. After a 30-day waiting period on the FEIS/EIR, a Record of Decision will be published.

ADDRESSES: Copies of the FEIS/EIR will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel William Parsonage, EIS/EIR Project Officer, Camp Roberts Army National Guard Training Site, Camp Roberts, CA, 93451–5000; telephone (805) 238–8207.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 97–1597 Filed 1–22–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Board of Visitors to the United States Naval Academy; Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that a special subcommittee of the Board of Visitors to the United States Naval Academy will meet on 23 January 1997, at the United States Naval Academy, Annapolis, MD, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Secretary of the Navy has determined in writing that the special subcommittee meeting shall be closed to the public because they will be concerned with matters as outlined in section 552(b) (2), (5), (6), and (7) of title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant Commander Adam S. Levitt, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000 Telephone: (410) 293–1503.

Dated: January 14, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–1589 Filed 1–22–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.902B]

National Assessment of Educational Progress (NAEP), Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: NAEP provides information on the educational achievement of school children. The purpose of the NAEP Secondary Analysis program is to encourage eligible parties to apply new ideas or state-of-the-art techniques to the analysis and reporting of the information contained in NAEP and NAEP High School Transcript Studies.

Eligible Applicants: Public or private organizations and consortia of organizations.

Deadline for Transmittal of Applications: March 24, 1997.

Applications Available: January 29, 1997.

Available Funds: Up to $700,000.

Estimated Range of Awards: $15,000—$100,000.

Estimated Average Size of Awards: $85,000.

Estimated Number of Awards: 5–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR Part 700.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or both of the invitational priorities in this notice. However, an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects that address the instructional factors, family background factors, and school and teacher characteristics that the educational research literature suggests are correlates of academic performance.

Invitational Priority 2—Projects that include the development of statistical software that would allow more advanced analytic techniques to be readily applied to NAEP data.

Evaluation Criteria: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: For application send written request to Alex Sedlacek, U.S. Department of Education, National Center for Education Statistics, Office of Educational Research and Improvement, Room 404B, 555 New Jersey Avenue, NW., Washington, DC 20208–5653; Internet (alex__sedlacek@ed.gov); or FAX your request to (202) 219–2061 (include CFDA number listed above and the surface mail address to which the application should be sent). *For information* contact Alex Sedlacek at (202) 219–1734. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 9010.

Dated: January 16, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–1648 Filed 1–22–97; 8:45 am]

BILLING CODE 4000–01–P

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: February 4, 1997, beginning at 8:30 a.m. and ending at 4:30 p.m. but closed from approximately 4:30 p.m. to 6:30 p.m., and on February 5, 1997, beginning at 8:30 a.m. and ending at 2:00 p.m.

ADDRESSES: Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The proposed agenda includes (a) presentations and discussion sessions on reauthorization of the Higher Education Act; (b) an Advisory Committee regulatory update; and (c) a planning session on the Committee's agenda for the remainder of fiscal year 1997, and other Committee business (e.g., election of officers, budget report, etc). Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV__COMSFA@ED.gov or Tracy__Deanna__Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone number. If you are unable to register through Internet, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Thursday, January 30, 1997.

The Advisory Committee will meet in Washington, D.C. on February 4, 1997, from 8:30 a.m. to 4:30 p.m., and on February 5, from 8:30 a.m. to approximately 2:00 p.m. The meeting will be closed to the public on February 4, from approximately 4:30 p.m. to 6:30 p.m. to elect a new chairperson and discuss other personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays except Federal holidays.

Dated: January 16, 1997.

Brian K. Fitzgerald,

Staff Director Advisory Committee on Student Financial Assistance.

[FR Doc. 97–1538 Filed 1–22–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ97–4–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 16, 1997.

Take notice that on January 14, 1997, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain substitute revised tariff sheets in the above captioned docket, with a proposed effective date of February 1, 1997.

Eastern Shore states the substitute revised tariff sheets are being filed to correct its PS–1 Demand Charge. Such correction is required due to a clerical error found in Eastern Shore's workpapers which developed its PS–1 tracking adjustment and resulted in Eastern Shore overstating its PS–1 Demand Charge by $0.39.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1631 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–147–001]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 16, 1997.

Take notice that on January 7, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of February 1, 1997:

Third Revised Sheet No. 35
Third Revised Sheet No. 36
Second Revised Sheet No. 220
First Revised Sheet No. 220A
First Revised Sheet No. 220B
First Revised Sheet No. 220C
Third Revised Sheet No. 332

Equitrans states the proposed tariff sheets are submitted in compliance with "Order on Technical Conference" issued by the Commission on December 23, 1996 in Docket No. RP96–147. Equitrans states that the Commission required Equitrans to refile the tariff sheets to eliminate application of the proposed ratchets to Rate Schedule 115SS thereby limiting application of the ratchets to Rate Schedules 10SS, 30SS and 60SS and further required revision of the proposed tariff language to apply the ratchets on a pro rata basis across all three Rate Schedules based on each customer's individual storage level. Equitrans states that the proposed tariff sheets incorporate these revisions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commisson's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1627 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–108–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

January 16, 1997.

Take notice that on January 13, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1997:

Substitute Second Revised Sheet No. 28
Substitute Original Sheet No. 604
Substitute Original Sheet No. 605
Substitute Original Sheet No. 606
Original Sheet No. 607
Substitute Fourth Revised Sheet No. 1808
Substitute Fourth Revised Sheet No. 1809

Koch states that the purpose of this filing is to comply with a Commission "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions" requesting changes to Koch's Parking and Lending filing (PAL). The PAL filing was made to implement a new nominated interruptible gas parking and lending service under Rate Schedule PAL.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1628 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–5–16–002]

National Fuel Gas Supply Corporation; Notice of Correction to Tariff Filing

January 16, 1997.

Take notice that on January 10, 1997, National Fuel Gas Supply Corporation (National) tendered for filing, a correction to part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of January 1, 1997.

National states that on January 8, 1997, in Docket No. TM–97–5–16–001, National filed Fourth Revised Sheet No. 29. However, the plain version of Fourth Revised Sheet No. 29 contained an

error. Accordingly, National submitted Substitute Fourth Revised Sheet No. 29 to correct that error.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1630 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–190–000]

Northern Natural Gas Company; Notice of Application

January 16, 1997.

Take notice that on January 10, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed an Docket No. CP97–190–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission at its Sublette Compressor Station located in Seward County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the compressor units that it proposes to abandon, will not be required due to changes in the operating conditions, resulting from the installation of five new units that Northern is proposing to install and operate, in a companion application that Northern filed in Docket No. CP97–191–000. Northern further states that the new units proposed in Docket No. CP97–191–000 will eliminate the need for the ten old and near obsolete units. It is asserted that the abandonment of the units will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely effect capacity since this compression will be replaced with newer and more efficient technology.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1624 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2833–049]

Public Utility District No. 1 of Lewis County; Notice Granting Extension of Time

January 16, 1997.

On November 1, 1996, the Commission issued notice of Public Utility District No. 1 of Lewis County's (Lewis County) application for amendment of the license for its Cowlitz Falls Project No. 2833, located on the Cowlitz River in Lewis County, Washington. On December 19, 1996, American Whitewater Affiliation and Rivers Council of Washington (AWA) jointly filed a timely motion to intervene in opposition in the amendment proceeding. Pursuant to Rule 213(d) of the Commission's Rules of Practice and Procedure,[1] the deadline for answers to AWA's motion was January 3, 1997.

On December 31, 1996, because of its delayed receipt of AWA's motion, Lewis County filed a request for a 30-day extension of time to answer the motion. Pursuant to Rule 213(d), Lewis County is granted a 15-day extension of time to file an answer to AWA's intervention motion.[2] Accordingly, the answer must be filed within 15 days of the issuance of this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1625 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–226–000]

Questar Pipeline Company; Notice of Tariff Filing

January 16, 1997.

Take notice that on January 13, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 12, 1997, and May 1, 1997, the following tariff sheets tariff):

Effective February 12, 1997

Second Revised Sheet Nos. 163 and 170
Original Sheet No. 170A

Effective May 1, 1997

Second Revised Sheet No. 164
Original Sheet Nos. 164A and 164B
Third Revised Sheet Nos. 166 and 167

The Questar states that the proposed tariff sheets revise Part 3 of the General Terms and Conditions of Questar's tariff by (1) allowing a Rate Schedule FSS shipper in Questar's Clay Basin storage field (Clay basin firm shipper) to transfer any or all of its injection rights and Minimum Required Deliverability (MRD) (withdrawal) rights to another Clay Basin firm shipper, (2) clarifying Questar's administration requests for interruptible storage service and (3) assuring that information regarding operational flow orders can be logically discovered by its customers.

Questar explains further that it is requesting a May 1, 1997, effective date for tariff sheets implementing provisions regarding the transfer of injection and withdrawal rights for two

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[1] 18 CFR 385.213(d).

[2] Section 213(d) of the Commission's Regulations provides that, generally, any answer to a motion must be made within 15 days after the motion is filed. Furthermore, answers to intervention motions are to address only the standing to intervene and not the merits of the intervenor's position, and 15 days is an adequate amount of time in which to do so.

reasons. First, the date is consistent with the date Questar's injection period begins; and second, once the provisions are approved, Questar will need approximately two-months lead time to develop the computer programming changes that are needed to implement this concept.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1629 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–152–000]

Riverside Pipeline Company, L.P.; Notice of Technical Conference

January 16, 1997.

Take notice that the Commission Staff will convene a two-day technical conference in the above captioned docket on February 6, 1997, from 10:00 a.m. to 4:15 p.m. and on February 7, 1997 from 10:00 a.m. to 3:15 p.m. at the offices of the Federal Energy Regulatory Commission, 888 1st Street N.E., Washington, D.C 20426. Any party, as defined in 18 CFR 385.102(c), any person seeking intervenor status pursuant to 18 CFR 385.214 and any participant, as defined in 18 CFR 385.102(b), is invited to attend.

The purpose of the conference is to discuss the resolution of issues pertaining to the initial rates proposed in this proceeding and the underlying cost of service. In addition, the conference will provide an opportunity, as needed, for further discussion of other tariff-related issues which were addressed at previous technical conferences in this proceeding.

For further information, contact George Dornbusch (202) 208–0881, Office of Pipeline Regulation, Room 81–31.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1623 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–7–013, et al.]

PanEnergy Power Services, Inc., et al. Electric Rate and Corporate Regulation Filings

January 16, 1997.

Take notice that the following filings have been made with the Commission:

1. PanEnergy Power Services, Inc.

[Docket No. ER95–7–013]

Take notice that on December 13, 1996, PanEnergy Power Services, Inc. tendered for filing a Notification of Change in Status in the above-referenced docket.

2. C.C. Pace Energy Services, Power Exchange Corporation, Rig Gas Inc., SuperSystems, Inc., Energy Marketing Services, Inc., Alternate Power Source Inc., and Preferred Energy Services, Inc.

[Docket No. ER94–1181–010, Docket No. ER95–72–007, Docket No. ER95–480–007, Docket No. ER96–906–002, Docket No. ER96–734–001, Docket No. ER96–1145–001, and Docket No. ER96–2141–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 3, 1997, C.C. Pace Energy Services filed certain information as required by the Commission's July 25, 1995, order in Docket No. ER94–1181–000.

On December 17, 1996, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–72–000.

On December 3, 1996, Rig Gas, Inc. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–480–000.

On December 4, 1996, SuperSystems, Inc. filed certain information as required by the Commission's March 27, 1996, order in Docket No. ER96–906–000.

On December 23, 1996, Energy Marketing Services, Inc. filed certain information as required by the Commission's February 13, 1996, order in Docket No. ER96–734–000.

On December 23, 1996, Alternate Power Source Inc. filed certain information as required by the Commission's April 30, 1996, order in Docket No. ER96–1145–000.

On December 2, 1996, Preferred Energy Services, Inc. filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2141–000.

3. Howard Energy Marketing, Inc., Gateway Energy, Inc., and Petroleum Source & Systems Group, Inc.

[Docket No. ER95–252–007, Docket No. ER95–1049–005, and Docket No. ER96–266–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 10, 1996, Howard Energy Marketing, Inc. filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–252–000.

On December 3, 1996, Gateway Energy, Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On December 4, 1996, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

4. Duke/Louis Dreyfus L.L.C.

[Docket No. ER96–108–006]

Take notice that on December 20, 1996, Duke/Louis Dreyfus L.L.C. tendered for filing a change in status relating to the proposed combination of Duke Power Company and PanEnergy Corp.

5. Deseret Generation and Cooperative

[Docket No. ER97–137–000]

Take notice that on January 13, 1997, Deseret Generation and Transmission Cooperative, tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ER97–358–000]

Take notice that on December 23, 1996, Citizens Utilities Company tendered for filing an amendment in the above-referenced docket.

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Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Montana Power Company

[Docket No. ER97–523–000]

Take notice that on January 8, 1997, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER97–669–001]

Take notice that on December 26, 1996, South Carolina Electric & Gas Company tendered for filing its refund report in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northwest Natural Gas Company

[Docket No. ER97–683–000]

Take notice that on January 7, 1997, Northwest Natural Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER97–1026–000]

Take notice that on December 31, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated August 1, 1996, with Duquesne Light Company (Duquesne) for the sale of capacity and/or energy under PP&L's Short Term Capacity and/or Energy Sales Tariff. The Service Agreement adds Duquesne as an eligible customer under the Tariff.

PP&L requests an effective date of December 30, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Duquesne and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Company

[Docket No. ER97–1027–000]

Take notice that on December 31, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated September 23, 1996, with TransCanada Power Corp. (TC) for the sale of capacity and/or energy under PP&L's Short Term Capacity and/or energy Sales Tariff. The Service agreement adds TPC as an eligible customer under the tariff.

PP&L requests an effective date of December 30, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to TPC and to the Pennsylvania Public Utilities Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97–1035–000]

Take notice that on December 31, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Baltimore Gas & Electric Company pursuant to Ohio Edison's Power Sales Tariff. This Service Agreement will enable Ohio Edison and Pennsylvania Power Company to sell capacity and energy in accordance with the terms of the Tariff.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97–1036–000]

Take notice that on December 31, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Non-Firm Point-to-Point Transmission Service with Dayton Power & Light Company, AYP Energy, Inc., and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER97–1037–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Public Service Electric and Gas Company (PSE&G) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds PSE&G as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to PSE&G and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER97–1038–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Potomac Electric Power Company (PEPCO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PEPCO as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to PEPCO and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–1039–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Alabama Municipal Electric Authority (AMEA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds AMEA as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to AMEA and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER97–1040–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Orange & Rockland Utilities (O&R) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds O&R as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to O&R and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER97–1041–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Florida Power & Light Company (FPL) under PECO's FERC Electric tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds FPL as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to FPL and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER97–1042–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Cenerprise, Inc. (CENERPRISE) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds CENERPRISE as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to CENERPRISE and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Company

[Docket No. ER97–1043–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements, establishing Illinois Municipal Electric Agency (IMEA), and Central Illinois Light Company (CILCO), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 1, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IMEA, CILCO, and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER97–1044–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (ComEd), submitted three Service Agreements, variously dated, establishing Central Illinois Light Company (CILCO), Western Resources, Inc. (Western), NIPSCO Energy Services, Inc. (NESI), Toledo Edison Company (Toledo), and Cleveland Electric Illuminating Company (CEIC), as non-firm customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 31, 1996, for the three service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of the filing were served upon CLCO, Western, NESI, Toledo, CEIC and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER97–1045–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 8, dated December 5, 1996, to the Interconnection Agreement, dated March 1, 1975 (1975 Agreement), between Edison and Wisconsin Power and Light Company (Wisconsin Power), (hereinafter referred to collectively as Parties). The Commission has previously designated the 1975 Agreement as Edison Rate Schedule No. 16.

Edison requests an effective date of December 31, 1996, for Amendment No. 8, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Wisconsin Power and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER97–1046–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted a Notice of Cancellation for the Area Coordination Agreement between Edison, Centerior Energy Corporation (Centerior), Consumers Energy Company (Consumers), Detroit Edison Company (Detroit), Indiana Michigan Power Company (Indiana Michigan), and Northern Indiana Public Service Company (Northern Indiana). The Commission has previously designated the Area Coordination Agreement as Edison's FERC Rate Schedule No. 11.

Edison requests an effective date of January 1, 1997, for the Notice of Cancellation, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Centerior, Consumers, Detroit, Indiana Michigan, Northern Indiana, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, and Ohio Public Utilities Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Commonwealth Edison Company

[Docket No. ER97–1047–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 11 to the Interconnection Agreement between Edison and Central Illinois Public Service Company (Central Illinois). Amendment No. 11 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Central Illinois' unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 10.

Edison requests an effective date of December 31, 1996 for Amendment No. 11, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Central Illinois and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Edison Company

[Docket No. ER97–1048–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 6 to the Interconnection Agreement between Edison and Interstate Power Company (Interstate). Amendment No. 6 amends certain service schedules that provide services redundant to those obtained through Edison's and Interstate's unbundled power sales and open-access transmission tariff. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 7.

Edison requests an effective date of December 31, 1996, for Amendment No.

6, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Interstate and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Commonwealth Edison Company

[Docket No. ER97–1049–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 1 to the Interconnection Agreement between Edison and Central Illinois Light Company (Central Illinois). Amendment No. 1 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Central Illinois' unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 33.

Edison requests an effective date of December 31, 1996, for Amendment No. 1, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Central Illinois and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Commonwealth Edison Company

[Docket No. ER97–1050–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted a Notice of Cancellation, dated December 30, 1996, to cancel Edison's FERC Rate Schedule No. 38, effective date September 29, 1989. Edison's FERC Rate Schedule No. 38 is a Power Sales Agreement, dated December 31, 1988, between the Illinois Municipal Electric Agency (IMEA) and Edison which provided for IMEA to purchase power and energy from Edison. The Commission has previously designated the Power Sales Agreement as Edison's FERC Rate Schedule No. 38.

Edison requests an effective date of December 31, 1996, for the Notice of Cancellation, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IMEA and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1622 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2322–322]

Duke Power Company; Notice of Availability of Environmental Assessment

January 16, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed Duke Power Company's application requesting Commission authorization to: (1) Grant an easement to the City of Camden, South Carolina (Camden) to construct raw water withdrawal facilities on 1.47 acres of land within the boundary of the Catawba-Wateree Project, and (2) allow Camden to withdraw up to 12 million gallons per day (mgd) of water from Lake Wateree. The proposed raw water intake facility would be constructed near the Eagles Nest Subdivision on the southeast shore of Lake Wateree in Kershaw County, South Carolina.

The staff of OHL's Division of Licensing and Compliance has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the Commission's staff has analyzed the environmental impacts of the proposed project and has concluded that approval of the licensee's proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426 or by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1626 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5679–7]

Project XL Draft Final Project Agreement for HADCO Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice of opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) Regions I and II are announcing the availability of, and soliciting comments on, the draft Final Project Agreement developed for HADCO Corporation under EPA's Project XL initiative.

DATES: Comments must be submitted on or before February 24, 1997; public hearing, February 12, 1997, 12:30 p.m.; requests to attend the hearing must be received on or before February 11, 1997.

ADDRESSES: Written comments should be addressed or delivered to Mr. James Sullivan, U.S. EPA Region II, Mail Code DECA-RCB, 290 Broadway, New York, NY 10007–1866. A copy of any comments should also be sent to Regulatory Reinvention Pilot Projects, FRL–5197–9, Water Docket, Mail Code 4101, U.S. EPA, 401 M Street, S.W., Washington, DC 20460.

The public hearing will be held at HADCO Corporation, 1200 Taylor Road, Owego, New York 13827. Requests to attend the hearing should be made to Mr. James Sullivan, EPA Region 2, (212) 637–4138.

The FPA is available for review Monday through Friday, except legal holidays, at the following locations. (Hours of operation for each location can be obtained by calling the numbers provided).

1. Derry, NH Public Library, 64 East Broadway, Derry, NH, (603) 432–6140 (Cheryl Lynch, Reference Desk)
2. Aaron Cutler Memorial Library, 269 Charles Bancroft Highway, Hudson, NH, (603) 424–4044 (Claudia Danielson, Librarian)
3. Kelley Library, 234 Main St, Salem, NH (603) 898–7064, (Deborah Berlin, Reference Department)
4. Colburn Free Library, 275 Main St, Owego, NY (607) 687–3520, (Christine Burroughs, Librarian)

5. NYS DEC, 50 Wolf Road, Albany, NY, (518) 457–2553 (Mark Moroukian), or (518) 485–8988 (Larry Nadler)
6. NH DES, 6 Hazen Drive, Concord, NH (603) 271–2942, (Kenneth Marschner)
7. US EPA Region I Library, One Congress Street, 11th Floor, Boston, MA (888) 372–5427
8. US EPA Region II Library, 290 Broadway, 16th Floor, New York, NY, (212) 637–3185

FOR FURTHER INFORMATION CONTACT: Kenneth Rota, EPA Region I, (617) 565–3349; Jim Sullivan, EPA Region 2, (212) 637–4138; or Lisa Hunter, EPA Headquarters, (202) 260–4744.

SUPPLEMENTARY INFORMATION: HADCO is one of the first facilities accepted into EPA's Project XL program. EPA created Project XL in 1995 as an initiative providing regulatory flexibility for industry to achieve environmental performance that is superior to what would be achieved through compliance with existing and reasonably anticipated future regulations. The HADCO Final Project Agreement (FPA) was developed by EPA, the New Hampshire Department of Environmental Services (NH DES), the New York State Department of Environmental Conservation (NYS DEC), and HADCO Corporation ("the parties"). The FPA is the document that memorializes the parties" intentions concerning Project XL for the HADCO facilities in Owego, NY; Hudson, NH; Derry, NH and Salem, NH.

This XL project concerns the classification under RCRA Subtitle C of wastewater treatment (WWT) sludge generated from printed wire board manufacturing facilities (SIC 3672). This WWT sludge is presently classified as a listed hazardous waste, having the waste code F006, pursuant to regulations promulgated under the Resource Conservation and Recovery Act (40 CFR 261.31(a)). Because of this hazardous waste designation, HADCO, and others in the PWB industry, must currently ship this waste to a separate facility licensed to handle hazardous wastes before it can be reclaimed. The project seeks to demonstrate that (a) classifying HADCO's WWT sludge as an F006 waste pursuant to Subtitle C is not necessary to protect human health and the environment, (b) the WWT sludge can be safely reclaimed without all of the strict regulatory controls imposed by RCRA Subtitle C; and (c) a conditional delisting or solid waste variance will yield substantial economic and environmental benefits.

The HADCO FPA details a procedure through which HADCO will extensively test its sludge generated from the treatment of wastewater associated with circuit board manufacture. This data will be reviewed by EPA, NH DES and NYS DEC, in order to determine if such data supports removal of the sludge from regulation as a hazardous waste, as defined in the Resource Conservation and Recovery Act. Such a determination by EPA, NH DES, and NYS DEC is wholly contingent upon HADCO shipping the sludge off-site for reclamation of copper contained in the sludge. The four (4) HADCO facilities that are involved in this project collectively generate approximately 600 tons per year of this sludge.

HADCO has agreed to direct any cost savings realized towards the reclamation of non-hazardous copper containing dusts that are currently land filled. If no reclamation occurs, the project would be terminated. HADCO must also consider the installation of sludge driers to reduce sludge volume at its New Hampshire facilities, if feasible.

This draft FPA provides an overview of the parties' intentions under the XL agreement. The public hearing on February 12, 1997, is being held at HADCO's facility in Owego, New York, to provide additional opportunity for public comment at the HADCO facility included in this project that is most remote from the HADCO Corporation headquarters in New Hampshire. The parties to the agreement will consider any public comments received at the hearing and during this 30-day public comment period, modify the agreement if necessary, and determine whether to sign a final agreement. If a final agreement is reached, any legal mechanisms required to implement the agreement will be noticed publicly in accordance with all state and federal regulations.

In addition to the EPA contacts listed in the section entitled "For Further Information Contact," above, questions concerning Project XL and the HADCO project may also be directed to: Ken Marschner, NH DES, (603) 271–2943, Mark Moroukian, NYS DEC, (518) 457–2553, or Lee Wilmot, HADCO Corporation, (603) 896–2424. General information about Project XL may be obtained by accessing EPA's internet site for Project XL, at http://www.epa.gov/Project XL. A copy of the HADCO FPA is posted at this location.

Dated: January 16, 1997.

Jon Kessler,

Director, Emerging Sectors and Strategies Division, Office of Policy, Planning, and Evaluation.

[FR Doc. 97–1642 Filed 1–22–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5680–1]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a series of public meetings for purposes of information exchange on issues related to the development of regulations to control microbial pathogens and disinfection byproducts in drinking water, including an Interim Enhanced Surface Water Treatment Rule, a long-term Enhanced Surface Water Treatment Rule, a Stage 1 Disinfectants/Disinfection Byproducts Rule and a Stage 2 Disinfectants/Disinfection Byproducts Rule. The Agency is developing this set of rules to take into account risk trade-offs between microbial contaminants and chemical byproducts of disinfection processes.

This series of meetings is anticipated to continue through spring and may also include meetings at later dates during this year. EPA is hereby providing notice of and inviting interested members of the public to participate in the meetings. As with all previous meetings in this series, EPA is instituting an open door policy to allow members of the public to attend these meetings. To assist EPA in managing limitations on conference room seating, members of the public who are interested in attending meetings are requested to contact Elizabeth Corr of EPA's Office of Ground Water and Drinking Water. Ms. Corr's phone number and e-mail address are provided in the final paragraph of this Notice.

As part of this series, a public meeting is scheduled for January 28 and 29 at the office of RESOLVE, 2828 Pennsylvania Avenue, NW., Washington, DC, that will include a broad discussion of issues related to the development of the Interim Enhanced Surface Water Treatment Rule and the Stage 1 Disinfectants/Disinfection Byproducts Rule. This meeting will include a summary of technical discussions for purposes of providing information and analysis to stakeholders to allow them to reach individual conclusions as to their roles and positions regarding development of the rules. The meeting will also include discussion of EPA's schedule for development of the rules and options for proceeding. The January 28 and 29 meeting will be preceded by a public meeting on January 27 on technical issues related to drinking water treatment processes with emphasis on enhanced coagulation and predisinfection.

For additional information about these or other meetings in this series or to be included on the mailing list to receive notice of further meetings in this series, members of the public are requested to contact Elizabeth Corr of EPA's Office of Ground Water and Drinking Water at (202) 260–8907 or by e-mail at corr.elizabeth@epamail.epa.gov.

Dated: January 21, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–1755 Filed 1–22–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5680–2]

National Advisory Council for Environmental Policy and Technology-Total Maximum Daily Load Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDL and related water issues.

DATES: The three day public meeting will be held on Wednesday, February 19–21, 1997, in Galveston, Texas at the Galveston Island Hilton Hotel, 5400 Seawall Boulevard, Galveston, Texas. All sessions are scheduled for the Crystal Salon, Sections B and C. The meeting on Wednesday, February 19, 1997, begins at 1:00 p.m. with adjournment scheduled for 5:00 p.m. The meeting on Thursday, February 20, 1997, begins at 9:00 p.m. with adjournment scheduled for 3:00 p.m. The closing day of the meeting is Friday, February 21, 1997 from 9:00 a.m. until 5:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting in the same location. The first will occur on Wednesday, February 19, 1997, from 7:30–9:00 p.m. The second will occur on Thursday, February 20, 1997, from 3:30–5:00 p.m.

FUTURE MEETING DATES: The Committee has scheduled additional meetings for the following dates and locations:

June 11–13, 1997 in Wisconsin (Madison or Milwaukee)

September 3–5, 1997 in Portland, Oregon

January 21–23, 1998 in Salt Lake City, Utah

ADDRESSES: Materials or written comments may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Official, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Corinne S. Wellish, Designated Federal Official for the Total Maximum Daily Load Committee at 202–260–0740.

Dated: January 15, 1997.

Corinne S. Wellish,

Designated Federal Official.

[FR Doc. 97–1645 Filed 1–22 97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5679–8]

Science Advisory Board Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Health Committee (EHC) of the Science Advisory Board (SAB) will meet on February 13–14, 1997 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW, Washington D.C. 20007. The hotel telephone number is (202) 338–4600. The meeting will start at 9:00 a.m. and end no later than 5:00 p.m. (Eastern Time) each day. The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come basis.

PURPOSE OF THE MEETING: The main purpose of the meeting is to discuss and review the EPA's Proposed Guidelines for Carcinogen Risk Assessment (EPA/600/P–92/003C, April 1996). The Committee's review of the Guidelines will include the following issues: (a) hazard characterization; (b) information requirements necessary to depart from defaults; (c) dose response assessment; (d) margin of exposure (MoE) analysis; (e) human data; (f) NRC recommendations for tumor data analysis; and (g) susceptibility factors for human variability.

FOR FURTHER INFORMATION: PLEASE NOTE THAT THIS DOCUMENTATION IS NOT AVAILABLE FROM THE SAB. The Proposed Guidelines were published in their entirety in the **Federal Register** on April 23, 1996 [61(79):17960–18011]. Electronic, disk, and paper copies are being made available as follows: (a) An electronic version is available for download through EPA's Office of Research and Development home page on the Internet at http://www.epa.gov/ORD/WebPubs/carcinogen ; (b) An electronic version also is available for download from EPA's Technology Transfer Network (TTN)/National Air Toxic's Clearinghouse (NATICH). The TTN is a network of electronic bulletin boards developed and operated by EPA's Office of Air Quality Planning and Standards. The service is free except for the cost of the phone call. Dial 919–541–5742 for data transfer of up to 14,400 bits per second. The TTN also is available on the Internet at TELENET ttnbbs.rtpnc.epa.gov. For more information on the operation of the TTN, contact the systems operator at 919–541–5384; (c) To obtain a 3.5" disk in WordPerfect 5.1 format, contact ORD Publications Technology Transfer and Support Division, National Risk Management Laboratory, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268 (telephone: 513–569–7562; fax: 513–569–7566). Please provide your name, mailing address, document title, and the following EPA document number (EPA/600/P–92/003); (d) A paper copy is available for review at the EPA's Headquarters Library (ORD's Public Information Shelf), 401 M Street, S.W., Washington, DC 20460, between the hours of 10:00 a.m. and 2:00 p.m., Monday through Friday, except for Federal holidays, and at all EPA regional and laboratory libraries; and (e) Paper copies have been made available to the U.S. Government Depository Libraries. Through the Depository Library program, government publications are provided to over 50 regional depositories throughout the United States and its territories. An additional 1,350 depositories in the system choose to receive select publications of interest to meet local needs. Please check with the depository library closest to you; (f) Paper copies are available for purchase

from the National Technical Information Service (NTIS) 5285 Port Royal Road, Springfield, VA 22161 (telephone: 703–487–4650; fax: 703–321–8547). Please provide the following number when ordering (PB96–157599). The cost is $35.

Members of the public desiring additional technical information about the Proposed Guidelines should contact Dr. Jeanette Wiltse, US EPA (4304), 401 M Street, SW, Washington DC 20460, telephone (202) 260–7317, fax (202) 260–1036, or Internet at: wiltse.jeanette@epamail.epa.gov

Members of the public desiring additional information about the meeting, including a draft agenda, should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, telephone (202) 260–8114, fax (202) 260–7118, or Internet at: winston.mary@epamail.epa.gov Anyone wishing to make an oral presentation at the meeting must contact Mr. Samuel Rondberg, Designated Federal Official for the EHC, in writing at the above address no later than 4:00 p.m., February 5, 1997 via fax (202) 260–7118 or via Internet at: rondberg.sam@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Rondberg no later than the time of the presentation for distribution to the Committee and the interested public. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Mr. Rondberg may be contacted by telephone at (202) 260–2559.

Dated: January 13, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–1643 Filed 1–22 97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 97–88]

Federal-State Joint Board on Universal Service: Staff Workshops on Proxy Cost Models

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 14 and 15, 1997, the federal and state staff of the Federal-State Joint Board on Universal Service conducted workshops regarding the selection of a proxy cost model. The purpose of the notice is to allow interested parties to file comments on the discussions at the workshops or to supplement the record with regard to issues raised at the workshops.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau,at (202) 530–6023.

SUPPLEMENTARY INFORMATION:

1. On January 14 and 15, 1997, the staff of the Federal-State Joint Board on universal service conducted workshops relating to the selection of a proxy cost model for determining the cost of providing the service supported by the universal service support mechanism. The focus of the workshops was the three proxy cost models that have been submitted for consideration at the workshops: (1) The Benchmark Cost Proxy Model (BCPM), submitted by U S West, Sprint, and Pacific Bell; (2) the Hatfield Model, Version 2.2, Release 2, developed by Hatfield Associates, submitted by AT&T Corp. and MCI Telecommunications Corp.; and (3) the Telecom Economic Cost Model, developed by Ben Johnson Associates, Inc, submitted by the New Jersey Division of the Ratepayer Advocate.

2. Interested parties may wish to comment on the discussions in the workshops or to supplement the record with regard to issues raised at the workshops. Commenters are requested to provide, as a preface to their comments, a brief summary not to exceed three single-spaced pages in total. The comments and comment summary should be filed on or before January 24, 1997. Commenters must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Comments should reference CC Docket No. 96–45. Commenters must also serve comments on the Federal-State Joint Board and Joint Board staff in accordance with the attached service list. Commenters should also send four copies to Sheryl Todd, Universal Service Branch, Accounting an Audits Division, Common Carrier Bureau, 2100 M Street, NW., Room 8611, Washington, DC 20554. In addition, commenters should send one copy of their comments to the Commission's copy contractor, International Transcription Service, Inc., Room 140, 2100 M Street, NW., Washington, DC 20037. Comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

3. Parties are also asked to submit comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd, Universal Service Branch, Accounting an Audits Division, Common Carrier Bureau, 2100 M Street, NW., Room 8611, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 97–1606 Filed 1–22–97; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 90–571; DA 96–2158]

Telecommunications Relay Services; FCC Form 431

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in an Order on Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (Order), CC Docket No. 90–571, adopted December 17, 1996, and released December 20, 1996, the Commission calculated the contribution factor for the period April 26, 1997 through March 26, 1998 for the Telecommunications Relay Services (TRS) Fund, and approved the TRS payment formula for the 1997 calendar year. The Commission also directed the National Exchange Carrier Association (NECA), the TRS Fund Administrator, to take certain actions to remedy a projected shortfall in the 1996 TRS Fund. In addition, the Commission adopted the 1997 TRS Fund Worksheet, FCC Form 431, subject to approval by the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Andy Firth, Network Services Division, Common Carrier Bureau, (202) 418–1898 voice, (202) 418–2224 TTY, or

James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 418–0948.

SUPPLEMENTARY INFORMATION: 1. The above actions were taken pursuant to § 64.604(c)(4)(iii) of the Commission's Rules, 47 CFR 64.604(c)(4)(iii). Pursuant to the Order, and subject to approval by OMB, the 1997 TRS Fund Worksheet, FCC Form 431, shall be effective for the period April 26, 1997 through March 26, 1998. All subject carriers are required to file the form annually and contribute to the TRS Fund. The TRS Fund reimburses TRS providers for the costs of providing interstate TRS. The Commission's rules provide that the TRS Fund Worksheet shall be published in the **Federal Register**. See 47 CFR 64.604(c)(4)(iii)(B).

2. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project (3060–0536), Washington, D.C. 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, D.C. 20503.

Federal Communications Commission.

Geraldine Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–1607 Filed 1–22–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission, Billing Code: 6715–01–M.

* * * * *

DATE & TIME: Tuesday, January 28, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, January 30, 1997 at 10:00 a.m.
Meeting Open to the Public.
This Meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–1735 Filed 1–21–97; 11:43 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 232—011564.
Title: Concorde/Nordana Line Slot Charter and Sailing Agreement
Parties:
Concorde Line ("Concorde")
Nordana Line AS ("Nordana")

Snyopsis: The Proposed Agreement would permit Concorde to charter space to Nordana aboard Concorde's vessels in the trade between United States Gulf of Mexico ports, and inland U.S. points via such ports, and ports and inland points in Guatemala, Honduras, Nicaragua, and El Salvador. The parties may also agree upon Concorde's sailing schedule and ports to be served in the Agreement trade.

Agreement No.: 224–002550–003.
Title: Port of New Orleans/Sea-Land Terminal Lease Agreement.
Parties:
The Board of Commissioners of the Port of New Orleans ("Port")
Sea-Land Service, Inc.

Synposis: The proposed agreement modification establishes a procedure among the tenants who lease terminals along the waterway at France Road for allowing berthing of each others' vessels at different berths.

Agreement No.: 224–200983–001.
Title: Port of San Diego-Tenth Avenue Cold Storage Company Operating Contract.
Parties:
San Diego Unified Port District ("District")
Tenth Avenue Cold Storage Company.

Synopsis: Under the proposed agreement, the District retains Tenth Avenue Cold Storage Company as an independent contractor to operate and maintain the District's cool/cold storage facility at its Tenth Avenue Marine Terminal.

Dated January 17, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–1632 Filed 1–22–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Edwin and Mittis Bowers, Palacios, Texas; to acquire an additional .18 percent, for a total of 14.95 percent of the voting shares of City State Bancshares, Inc., Palacios, Texas, and thereby indirectly acquire City State Bank, Palacios, Texas.

Board of Governors of the Federal Reserve System, January 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1583 Filed 1–22–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Commercial Bancshares, Inc., West Liberty, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank, Warren, Pennsylvania.

2. Northwest Bancorp, MHC, Warren, Pennsylvania; to merge with Northwest Bancorp, Inc., Warren, Pennsylvania, and thereby indirectly acquire Northwest Savings Bank, Warren, Pennsylvania.

In connection with this application, Northwest Bancorp, Inc., has also applied to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Savings Bank, Warren, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Newnan Holdings, Inc., Newnan, Georgia; to merge with Tara Bankshares Corporation, Riverdale, Georgia, and thereby indirectly acquire Tara State Bank, Riverdale, Georgia.

Board of Governors of the Federal Reserve System, January 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1582 Filed 1–22–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 27, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1714 Filed 1–22–97; 4:58 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Advisory Committee Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of the following advisory committee scheduled to meet during the month of February 1997:

Name: Health Services Research Review Subcommittee.

Date and Time: February 19, 1997, 8:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Susquehanna/Severn Conference Room, Bethesda, Maryland 20814.

Open February 19, 1997, 8:00 a.m. to 8:15 a.m. Closed for remainder of meeting.

Purpose: This Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on February 19, from 8:00 a.m. to 8:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 13, 1997.

Clifton R. Gaus,

Administrator.

[FR Doc. 97–1599 Filed 1–22–97; 8:45 am]

BILLING CODE 4160–00–M

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.-3 p.m., February 7, 1997.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters To Be Discussed: Agenda items will include updates from CDC Director, David Satcher, M.D., Ph.D., followed by committee discussion on developing the next generation of public health professionals and on CDC's role in genetics and disease prevention.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Kay McGowan, Acting Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7080.

Dated: January 15, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1615 Filed 1–22–97; 8:45 am]

BILLING CODE 4163–18–P

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Times and Dates: 7 p.m.–9 p.m., February 6, 1997. 9 a.m.–5 p.m., February 7, 1997.

Place: Doubletree Suites, 16500 Southcenter Parkway, Seattle, Washington 98188, telephone 206/575–8220.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study.

The Committee will review development of the study protocol and recommend changes of scientific merit to CDC, and advise on the conduct of a full-scale epidemiologic study using the approved protocol. During the conduct of the full-scale epidemiologic study, the Committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters to be Discussed: The Committee will discuss the progress and updates on the status of various components of the Hanford Thyroid Disease Study being conducted by the Fred Hutchinson Cancer Research Center. Agenda items include: National Center for Environmental Health (NCEH) activities on the progress of current studies, an update on the Native American component, and public involvement activities. On February 6, at 7 p.m., a public session will be held to update the public on the status of the Hanford Thyroid Disease Study, and to allow those directly affected by the study to voice their opinions and concerns.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: January 15, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1614 Filed 1–22–97; 8:45 am]

BILLING CODE 4163–18–P

Health Care Financing Administration

Submitted for Collection of Public Comment: Submission for OMB Review

AGENCY: Health Care Financing Administration, HHS [HCFA–8003]

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Extension, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Home and Community-Based Services Waiver Requests; *Form No.:* HCFA–8003; *Use:* Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost & utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements; *Frequency:* Other—When a State requests a waiver or amendment to a waiver; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 140; *Total Annual Hours:* 8,200.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 15, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–1587 Filed 1–22–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted, as required by the Paperwork Reduction Act, to the Office of Management and Budget (OMB) for emergency review and approval by January 24, 1997. The Department is

soliciting public comments on the subject proposal.

DATES: The due date for comments is: January 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed "Native American Housing Block Grant Program—Notice of Transition Requirements and Negotiated Rulemaking" [Docket No. FR–4170–N–02]. HUD seeks to implement portions of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996), which requires HUD to publish a notice establishing any requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the provision of assistance in accordance with NAHASDA. The information collection requirements of the notice concern the submission of Indian housing plans (IHPs), a prerequisite to funding under the new program. The requirements of the notice are for transition purposes only, and thus, are temporary in nature. The final requirements will be contained in regulations that are under development.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 USC Chapter 35):

(1) Title of the information collection proposal:

Native American Housing Block Grant Program—Notice of Transition Requirements and Negotiated Rulemaking

(2) Summary of the collection of information:

The collection of information presents transition requirements for the preparation and submission by, or on behalf of, Indian tribes of Indian Housing Plans (IHPs), which are a prerequisite for any distribution of funds under NAHASDA. In general, the IHP must contain a description of the housing needs of the tribe, planned activities to address those needs, and a description of how the activities will be carried out. The IHP is required by statute to have two main components, a 5-year plan and a 1-year plan.

(3) Description of the need for the information and its proposed use:

NAHASDA eliminates several separate funding programs for Indian housing and establishes instead a single Indian Housing Block Grant Program, to be effective beginning with FY 1998. Section 106 of NAHASDA requires HUD to establish any requirements necessary to provide for the transition from the provision of assistance under the eliminated programs to the provision of assistance under the new law. In order to assure that assistance for Indian housing activities is not interrupted, IHPs must be prepared and submitted well before FY 1998 funds are made available, and this collection of information provides the temporary requirements necessary for the preparation of the first IHPs under the new program. Permanent requirements will be contained in regulations developed to implement NAHASDA.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be Indian tribes or tribally designated housing entities selected by tribal governments to act on their behalf.

The estimated number of likely respondents is 350. As to frequency of responses, there will only be one response submitted under these temporary, transitional requirements. Permanent requirements will be included in program regulations to be developed, for which a separate information approval will be obtained.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Number of respondents: 350.

Burden hours per response: 120.

Frequency of responses: 1.

Total Estimated Burden Hours: 42,000.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 17, 1997.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

[FR Doc. 97–1716 Filed 1–21–97; 9:58 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–824228

Applicant: Betty Jo Young, West Fork, AK.

The applicant requests a permit to reexport and reimport tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–822708

Applicant: Steven Gruber, Miramar, FL.

The applicant requests a permit to import 8 Jamaican boas (*Epicrates subflavus*) held in captivity in Jamaica for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 17, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–1669 Filed 1–22 97; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for a Permit To Allow Incidental Take of Threatened and Endangered Species by Weyerhaeuser Company on Portions of its Lands in Lane, Linn, Benton, and Douglas Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Weyerhaeuser Company has applied to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). They have also requested approval of an unlisted species agreement covering other species which may be found in the planning area. The application has been assigned U.S. Fish and Wildlife Service permit number PRT–823550 and National Marine Fisheries Service permit number P626. The Services also announce the availability of an Environmental Assessment (Assessment) for the proposed issuance of the incidental take permit. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, Assessment, and associated documents (see **ADDRESSES** below) should be received 60 days from the date of this publication.

ADDRESSES: Comments regarding the application, Assessment, and associated documents (a Habitat Conservation Plan [Plan] and Implementing Agreement) or requests for those documents, should be addressed to Curt Smitch, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C, Suite 101, Olympia, Washington 98501. Please refer to permit number PRT–823550 when submitting comments. Individuals seeking copies of the application package should immediately contact the above office.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Hirsh, U.S. Fish and Wildlife Service, or Mr. Steve Landino, National Marine Fisheries Service, at the above address; telephone (360) 534–9330.

SUPPLEMENTARY INFORMATION: Under section 9 of the Act and its implementing regulations, "taking" of threatened and endangered species is prohibited. However, the Services, under limited circumstances, may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are codified in 50 CFR 17.22 and 17.32 and 222.2.

The Weyerhaeuser Company has addressed, in its Plan, species conservation and ecosystem management on approximately 400,000 acres of land in the Willamette Valley and foothills of the Central Cascade Mountains and Coast Ranges of Oregon. The subject ownership occurs in two largely contiguous blocks with some portions in a "checkerboard" pattern with other Federal and non-Federal land. The proposed Plan would be implemented for 40 years with the Services retaining the option to extend the term for up to four additional ten-year periods.

The proposed Plan addresses, in three tiers, the species for which the Weyerhaeuser Company seeks coverage under section 10 of the Act. The first tier includes certain species currently listed or proposed for listing; those species are named below. The second tier includes presently unlisted species that are associated with habitats that are addressed through various measures in the proposed Plan. The third tier includes presently unlisted species that are associated with older, upland, interior forests. Tier 1 and 2 species would be covered upon approval of the Plan by the Services. Tier 3 species could become covered if the Weyerhaeuser Company can show that the proposed Plan benefits the species and those benefits have led to presence in the Plan area.

The Weyerhaeuser Company is requesting a permit for the incidental take of the northern spotted owl (*Strix occidentalis caurina*) which would occur as a result of timber harvest and related activities within the individual portions of the owl sites present on the subject property. There are currently more than 160 owl sites that impact Weyerhaeuser Company operations within the 400,000-acre planning area. The Weyerhaeuser Company plans to avoid the take of the marbled murrelet (*Brachyramphus marmoratus*), but has included murrelets in the permit application in case some unanticipated incidental take occurs. The Weyerhaeuser Company has also included the Umpqua cutthroat trout (*Oncorhyncus clarki clarki*), American peregrine falcon (*Falco peregrinus*), Columbian whitetailed deer (*Odocoileus virginianus leucurus*), bald eagle (*Haliaeetus leucocephalus*), Aleutian Canada goose (*Branta canadensis leucopareia*), and Oregon chub (*Oregonichthys crameri*) in the permit application to cover circumstances where these species may occur on the subject property and could at some point be subject to take.

The Plan is designed to complement measures being implemented on Federal lands under the Northwest Forest Plan, and includes various forms of minimization and mitigation measures which are integral parts of the Plan. It includes a schedule for early successional forest types to be provided across the landscape during the entire course of plan implementation. Mitigation for other presently listed species and species proposed for listing include specific management prescriptions for those species. For example, the strategy for the northern spotted owl was developed to facilitate connectivity between the Federal Late Successional Reserves in the Oregon Cascades and Coast Ranges. In addition to the specific measures for listed and proposed species, the Plan proposes a comprehensive riparian management strategy, the protection of special biotope areas such as forested wetlands, mineral springs, talus slopes, and caves (among others), supplemental habitat protection for selected species of concern such as pond habitat for the northwestern pond turtle, and reproductive habitat around known nest sites for golden eagles and osprey.

Minimum interim prescriptions are provided for riparian and wetland areas, and prescription development through Watershed Analysis processes according to Washington State regulations will also be completed. Specific prescriptions will also be implemented for the management of areas, such as roads and steep slopes, that are vulnerable to degrading events.

The Assessment considers four alternatives, including the proposed Plan and the no-action alternatives. Under Alternative A, the no-action alternative, the Weyerhaeuser Company would avoid the take of any and all Federally listed species and no permit would be issued. Under Alternative C, conservation of the northern spotted owl and marbled murrelet would be implemented to minimize and mitigate

for the effects of authorized take of only those two species. Under Alternative D, the applicant would manage the ownership based on standards and guidelines for Matrix land under the Northwest Forest Plan. Alternative B, the Proposed Habitat Conservation Plan Alternative, would provide minimizing and mitigating measures for proposed take of the listed and currently proposed species mentioned above. In addition, protection for unlisted species would be provided through the retention of habitat structures from harvested stands into the subsequent rotation, buffering of habitat biotopes, supplemental habitat management, and through overall landscape level management goals.

Authority: 16 U.S.C. 1531–1544, and 4201–4245.

Dated: January 16, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–1601 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–55–P

Availability of Amended Environmental Assessment and Receipt of Application for Amendment To Previously Issued Incidental Take Permit From Sage Development Company, LLC, Daphne, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sage Development Company, LLC, (Sage) seeks an amendment to their previously issued incidental take permit (ITP), PRT–811416, from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (Act), as amended. The ITP authorizes for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy a 25.7-acre tract of land owned by Sage on the Fort Morgan Peninsula, Baldwin County, Alabama. Sage proposes to expand the original project, known as The Dunes, by 9.6 acres to occupy a total project area of 35.3 acres, and expand construction to include a total of 4 condominium complexes, 50 single family/duplex lots, their associated landscaped grounds and parking areas, recreational amenities, and dune walkover structures. The originally permitted project included 3 condominium complexes, and 38 single family/duplex lots.

The Service also announces the availability of a supplement to the May 15, 1996, environmental assessment (EA) and an amended habitat conservation plan (HCP) for the revised incidental take. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that re-issuing the ITP with the requested amendment is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and amended HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the amended application, EA, and amended HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before February 24, 1997.

ADDRESSES: Persons wishing to review the amended application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jackson, Mississippi, Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit PRT–811416 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Will McDearman at the Jackson, Mississippi, Field Office (see **ADDRESSES** above), telephone: 601/965–4900.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge (BSNWR). The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the applicant's property reveal habitat occupied by ABM. The applicant's property contains designated critical habitat for the ABM. Expansion of the previously-permitted project may result in the death of, or injury to, ABM in excess of that previously expected. Habitat alterations due to expanded condominium placement and subsequent human habitation of the amended project may result in further reductions of available habitat for food, shelter, and reproduction.

The supplement to the May 15, 1996, EA considers the environmental consequences of several alternatives for the amended project. One action proposed is issuance of the amended ITP based upon submittal of the revised HCP as proposed. This alternative provides for restrictions that include placing no habitable structures seaward of the designated ABM critical habitat, establishment of walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the revised HCP proposes to increase, in relative proportion compared to the original project, an endowment to acquire ABM habitat off-site or otherwise perform some other conservation measure for the ABM. The revised HCP provides additional funding for these mitigation measures. Another alternative is consideration of different project designs that further minimize permanent loss of ABM habitat. A third

alternative is no-action, or deny either request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of an amended ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA, HCP, and appropriate amendments. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an amended ITP would not have significant effects on the human environment in the project area.

2. The additional proposed take is incidental to an otherwise lawful activity.

3. The applicant has ensured that adequate additional funding will be provided to implement the measures proposed in the submitted revisions to the HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the amended ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of his permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of the amended Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinions, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an amended ITP.

Dated: January 15, 1997.

Noreen K. Clough,

Regional Director.

[FR Doc. 97–1604 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Geospatial Positioning Accuracy Standards

ACTION: Notice; request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft Geospatial Positioning Accuracy Standards to be considered for adoption as FGDC standards. If adopted, the standards must be followed by all Federal agencies for geospatial data collected directly or indirectly, through grants, partnerships, or contracts.

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review, test, and evaluate the proposed standards. Comments are encouraged about the content, completeness, and usability of the proposed standard.

The FGDC anticipates that the proposed standards will be adopted as Federal Geographic Data Committee standards after updating or revision. The standards may be forwarded to voluntary standards bodies for adoption if interest warrants such actions.

DATES: Comments must be received on or before May 15, 1997.

CONTACT AND ADDRESSES: Requests for written copies of or review comments for the "Geospatial Positioning Accuracy Standards" should be addressed to Geospatial Positioning Accuracy Standards Review, FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; telephone 703–648–5514; facsimile 703–648–5755; or Internet "gdc@usgs.gov." The standard may be downloaded from this Internet address: ftp://www.fgdc.gov/pub/standards/Accuracy/.

SUPPLEMENTARY INFORMATION: The Geospatial Positioning Accuracy Standards provide a common methodology for reporting the horizontal and vertical accuracy of clearly defined features where the location is represented by a single point coordinate: examples are survey monuments; prominent landmarks, such as church spires, standpipes, radio towers, tall chimneys, and mountain peaks; and targeted photogrammetric control points. It facilitates the interoperability of spatial data by providing a consistent means for users to directly compare positional accuracies obtained by different methods for the same point. It addresses positional accuracy reporting and testing requirements for various spatial data applications. The document consists of the following parts:

Part 1, Reporting Methodology: The general accuracy reporting standard for the horizontal component is the radius of a circle of uncertainty, such that the true (theoretical) location of the point falls within the circle 95-percent of the time. The general accuracy reporting standard for the vertical component is a linear uncertainty value, such that the true (theoretical) location of the point falls within +/− of that linear uncertainty value 95-percent of the time. This reporting methodology is adopted in the subsequent parts of the draft standard.

Part 2, Standards for Geodetic Networks. Part 2 addresses accuracy reporting for geodetic surveys. Geodetic control surveys are usually performed to establish a basic control network from which supplemental surveying and mapping work are performed. Geodetic network surveys are distinguished by use of redundant, interconnected, permanently monumented control points that comprise the framework for the National Spatial Reference System (NSRS) or are often incorporated into the NSRS. This standard is intended to replace accuracy standards previously issued by the Federal Geodetic Data Subcommittee.

Part 3, National Standard for Spatial Data Accuracy. The National Standard for Spatial Data Accuracy (NSSDA) provides a common methodology for testing and reporting accuracy of maps and geospatial data derived from sources such as aerial photographs, satellite imagery, and maps. The NSSDA is intended to replace the United States National Map Accuracy Standards (U.S. Bureau of the Budget, 1947).

The NSRS may be used to reference mapping project control surveys to a common georeference system. The accuracy of geospatial data derived from project control surveys is expressed using the NSSDA. The NSSDA also may be related to the NSRS by using NSRS points as check points to test accuracy of geospatial data derived from aerial photographs, satellite imagery, maps, and other secondary sources.

Dated: January 14, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–1593 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[WO–300–1310–00]

Green River Basin Advisory Committee, Colorado and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Green River Basin Advisory Committee.

SUMMARY: This notice announces the date, time, and schedule and initial agenda for meeting of the Green River Basin Advisory Committee (GRBAC).

DATES: February 3, 1997, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: Holiday Inn, 1675 Sunset Drive, Rock Springs, WY.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, GRBAC Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone (307) 775–6020.

SUPPLEMENTARY INFORMATION: The topic for the meeting will be the GRBAC Final Report.

This meeting is open to the public. Persons interested in making oral comments or submitting written statements for the GRBAC's consideration should notify the GRBAC Coordinator at the above address by January 31. The GRBAC will hear oral comments beginning at 2:00 pm on February 3. The GRBAC may establish a time limit for oral statements.

Dated January 21, 1997.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 97–1781 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–84–M

[MT–067–06–1020–00]

Lewistown District Resource Advisory Council Meeting; Montana

AGENCY: Lewistown District Office, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Resource Advisory Council will meet February 4 and 5 1997, in the upstairs meeting room in the Megahertz Building at 223 West Main in Lewistown, Montana.

The February 4 portion of the meeting will begin at 1 p.m. Throughout the afternoon the RAC will address the election of officers for 1997; discuss various off-road vehicle designations available for resolving land use issues; review the status of their suggestions for rangeland standards and guidelines; and view a video titled *"Landscape"* which discusses the consensus process. The meeting will adjourn around 5 p.m.

The February 5 portion of the meeting will begin at 8 a.m. Throughout the day the RAC will discuss the use of range improvement funds; the Lewistown District's annual work plan; district fire policies; hear public comments; prioritize issues the RAC would like to address; review how the group is functioning; and select their next meeting date.

There will be a public comment period at 11 a.m. during the February 5 meeting.

DATES: February 4 and 5, 1997.

LOCATION: The Megahertz Building, 223 West Main, Lewistown, MT.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period as detailed above.

Dated: January 8, 1997.

David L. Mari,

District Manager.

[FR Doc. 97–1586 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–DN–M

[MT–070–97–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte District Office, Bureau of Land Management, D.O.I.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The council will convene at 9 a.m. Thursday, February 13, 1997. Issues that will be discussed include community based planning, review of abandoned mine priority list for the District, update on Upper Columbia River Basin Draft EIS and Law Enforcement Issues.

The meeting will be held at the District Office Conference Room, 106 North Parkmont, Butte, Montana.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 p.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388: telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: January 6, 1997.

James R. Owings,

District Manager.

[FR Doc. 97–1649 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–DN–M

[OR–958–0777–54; GP6–0135; OR–19053, OR–19158, OR–19175]

Public Land Order No. 7230; Revocation of Executive Order Dated January 22, 1912, and Secretarial Orders Dated March 29, 1932, and March 17, 1944; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in their entirety, one Executive order and two Secretarial orders which withdrew 17,557.20 acres of National Forest System lands for the Bureau of Land Management's Powersite Reserve No. 240, and Powersite Classification Nos. 263 and 348. The lands are no longer needed for the purposes for which they were withdrawn. The lands remain closed to surface entry, mining, and mineral leasing by other overlapping withdrawals.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated January 22, 1912, which established Powersite Reserve No. 240, is hereby revoked in its entirety:

Willamette Meridian

Wallowa National Forest

T. 4 N., R. 49 E.,
Sec. 21, lot 2.

The area described contains 33.20 acres in Wallowa County.

2. The Secretarial Order dated March 29, 1932, which established Powersite Classification No. 263, is hereby revoked in its entirety:

Willamette Meridian

Wallowa-Whitman National Forest

T. 2 N., R. 48 E.,
Sec. 2, lots 1, 2, and 4, and SW¼NE¼ and NE¼SW¼;
Sec. 3, SE¼NE¼;
Sec. 9, SW¼NE¼, E½SW¼, and SE¼;
Sec. 10, lots 3 and 4, and NW¼NE¼ and NE¼SW¼;
Sec. 16, SW¼NW¼.
T. 3 N., R. 48 E.,
Sec. 12, S½NE¼, SE¼SW¼, and NW¼SE¼;
Sec. 13, SW¼NE¼, W½NW¼, N½SW¼, and NW¼SE¼;
Sec. 14, SE¼SW¼ and SW¼SE¼;
Sec. 23, NW¼NE¼, E½NW¼, and SW¼SE¼;
Sec. 25, W½NW¼ and NW¼SW¼;
Sec. 35, NW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, and SW¼SE¼.
T. 4 N., R. 48 E.,
Sec. 24, lots 2 to 7, inclusive, E½SW¼, and S½SE¼ excluding Mineral Survey Nos. 507, 601, and 694;
Sec. 25, NE¼, E½NW¼, N½SE¼, and SE¼SE¼ excluding Mineral Survey Nos. 601, 723, 738, 747A, and 806.
T. 3 N., R. 49 E.,
Sec. 6, lots 1, 2, and 3, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, and N½SE¼ excluding Mineral Survey Nos. 746 and 750;
Sec. 7, lots 1 and 4, NW¼NE¼NW¼, S½SE¼NW¼, and E½SW¼.
T. 4 N., R. 49 E.,
Sec. 30, lots 2, 3, and 4, and SE¼SW¼ excluding Mineral Survey Nos. 723, 738, and 807;
Sec. 31, lots 1, 2, and 3, E½NW¼, and W½SE¼ excluding Mineral Survey No. 730.
T. 5 S., R. 45 E., unsurveyed,
Secs. 11 to 14, inclusive, and
Secs. 23 to 28, inclusive, all lands within ¼ mile of North Fork Imnaha River below Middle Fork, and all lands within ¼ mile of South Fork below Cliff River.
T. 5 S., R. 46 E., unsurveyed,
Secs. 19 to 29 inclusive, all lands within ¼ mile of Imnaha River and Forks.
T. 5 S., R. 47 E., unsurveyed,
Secs. 19 to 27 inclusive, all lands within ¼ mile of Imnaha River.
T. 5 S., R. 48 E., unsurveyed,
Secs. 19 to 22, inclusive, and
Secs. 25 to 30, inclusive;
Sec. 23, all, excluding 112 acres in HES No. 91;
Sec. 24, all, excluding 78 acres in HES No. 222.

The areas described aggregate approximately 16,884 acres in Wallowa County.

3. The Secretarial Order dated March 17, 1944, which established Powersite Classification No. 348, is hereby revoked in its entirety:

Willamette Meridian

Whitman National Forest

T. 5 S., R. 47 E., unsurveyed,
Sec. 25, all lands lying more than ¼ mile from Imnaha River.
T. 5 S., R. 48 E., unsurveyed,
Sec. 31, N½N½.

The areas described aggregate approximately 640 acres in Wallowa County.

4. The lands described in paragraphs 1, 2, and 3 are included in the Eagle Cap and Hells Canyon Wilderness Areas, the Hells Canyon National Recreation Area, and the Imnaha Wild and Scenic River withdrawals and remain closed to such forms of disposition as may by law be made of National Forest System lands, including the mining and mineral leasing laws.

Dated: December 6, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–1650 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–33–P

[UTO80–07–1610–00]

Resource Management Plan for the Book Cliffs Conservation Initiative Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Coordinated Resource Management Plan/Environmental Impact Statement and Notice of Intent to amend the Book Cliffs Resource Management Plan.

SUMMARY: This notice is intended to inform the public of an intent to prepare a Coordinated Resource Management Plan/Environmental Impact Statement (CRMP/EIS) that addresses future management of lands within the Book Cliffs planning area, including the lands acquired by the Bureau of Land Management, within the Book Cliffs area of the Vernal District for the purpose of amending the Book Cliffs Resource Management Plan (RMP). Public comment will be actively solicited throughout the CRMP/EIS and amendment development processes.

SUPPLEMENTARY INFORMATION: In 1993, a cooperative effort was undertaken by the Utah Division of Wildlife Resources (UDWR), The Nature Conservancy (TNC), the Rocky Mountain Elk Foundation (RMEF), and the Bureau of Land Management (BLM). The objective of this cooperative effort was to take advantage of existing opportunities to create a balanced approach to the management of unique natural resources within the upper portion of the East Tavaputs Plateau, in southeastern Uintah County, Utah. The cooperative effort dealt with that portion of the Book Cliffs within the area between the Uintah-Ouray Indian Reservation trust lands to the west and the Utah-Colorado state line to the east, an area encompassing roughly 455,000 acres.

In 1993 and 1994, two private ranches then on the market within the area, were acquired by The Nature Conservancy (TNC) and the Rocky Mountain Elk Foundation (RMEF) with the intent of vesting the title to either the State of Utah or the United States. In 1994, the BLM was vested with title to 5,129 acres, about 53%, of these acquired lands. As public lands administered by the Bureau of Land Management, future management of these lands must be developed and incorporated into the existing Book Cliffs RMP. The Coordinated Resource Management Plan (CRMP) will developed by the BLM in concert with the UDWR, other State and Federal agencies, stakeholders, key interest groups, local government entities, and the general public.

At this time general planning issues to be addressed and certain assumptions to be presented include:

Assumptions	Concerns
• There will be a continued demand and competition for available forage by livestock, wildlife, and in some areas, wild horses.	How should forage be allocated between livestock, wildlife, and wild horses while achieving watershed and riparian goals?
• Recreational use will continue to increase.	What mix and level of recreational use can occur while maintaining the area's "Frontier Mystique"?
• There is a need to improve the overall health of the land.	What will be the cumulative impact of resource uses (grazing, energy, and mineral development, recreation, related vehicle access, etc.) on desired condition of vegetative communities in critical habitats such as canyon bottoms, riparian areas, and crucial/critical big game ranges?
• Health, diverse wildlife populations desired.	What are the impacts upon current land uses such as livestock and mineral development as consideration is given for establishment of other native species such as Rocky Mountain bighorn sheep, moose, bison, sharptail grouse, wild turkey, and Colorado River Cutthroat Trout, and other fisheries?

Assumptions	Concerns
• Development and extraction of energy and mineral resources will continue, perhaps at an increased rate, depending on demand.	How best can mineral development continue, with the least amount of restrictions while restoring and maintaining fully functioning health ecosystems?
• The area is economically important to surrounding communities and the State of Utah.	How will future management prescriptions enhance or restrict economic development?
• There will continue to be a need for various degrees of access to accommodate public needs and demands.	What kind of public access should be provided to and on the area (Off Highway Vehicle travel, established roads, etc.)?
• Planning efforts will be consistent with the Governor's Open Space Policy.	How will Governor's Open Space Policy influence the planning process?

The CRMP, EIS and the RMP amendment will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act, and section 102 of the National Environmental Policy Act. This revision is necessary to update and expand the decisions in the existing land use plan. Decisions generated during this planning process will supersede affected land use planning decisions presented in the 1985 Book Cliffs RMP that affect lands within the CRMP area.

Public participation is being actively sought at this time to ensure the EIS addresses all issues, problems and concerns from those interested in the management of the public lands within the Book Cliffs area, including acquired lands. The development of the CRMP, EIS, and the RMP amendment is a public process and the public is invited and encouraged to assist in the identification of issues and the scope of the EIS and planning amendment. Public meetings will be held to discuss planning issues. The date, time, and location of these scoping meetings are: March 17, 1997, 7:00 p.m. to 9:00 p.m., in the John Wesley Powell Museum in Green River, Utah; March 18, 1997, 7:00 p.m. to 9:00 p.m., in the Department of Natural Resources Auditorium, Room 1040–1060, at 1594 West North Temple, Salt lake City, Utah; and March 26, 1997, 7:00 p.m. to 9:00 p.m. in the Western Park Conference Center 302 East 200 South in Vernal, Utah. These meetings also will be announced in local newspapers and through other local media.

Formal public participation will be requested for review of the preliminary and final CRMP, EIS, and RMP amendment during 1997. Notice of availability of these documents will be published at the appropriate times.

The documents will be prepared by an interdisciplinary team which includes specialists in rangeland, minerals, vegetation, riparian values, cultural resources, recreation, wildlife/fisheries habitats, realty, and special status animal and plant species. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Dean Evans, Resource Advisor, Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (801) 789–1362 or 781–4470, fax (801) 781–4410.

Dated: January 16, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–1603 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–956–96–1420–00]

Colorado: Filing of Plats of Survey

December 30, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., December 30, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat (in four sheets) representing the dependent resurvey of a portion of the subdivisional lines, a portion of Homestead Entry Survey Number's 43, 106, 215, and mineral claims in sections 3 and 10, T. 3 S., R. 73 W., Sixth Principal Meridian, Group 998, Colorado, was accepted November 4, 1996.

The plat representing the metes-and-bounds survey of Tracts 48 and 49 in unsurveyed T. 2 S., R. 75 W., Sixth Principal Meridian, Group 1149, Colorado, was accepted December 11, 1996.

These surveys were required for the administrative purposes of the Forest Service.

The plat representing the entire record of the dependent resurvey of M.S. No. 12572, Don Quixote Lode, section 31, T. 44 N., R. 4 W., New Mexico Principal Meridian, Group 736, Colorado, was accepted November 27, 1996.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision-of-section survey of section 35, T. 13 S., R. 74 W., Sixth Principal Meridian, Group 1045, Colorado, was accepted December 19, 1996.

The plat representing the entire record of the dependent resurvey between sections 25 and 36, T. 46 N., R. 4 W., New Mexico Principal Meridian, Group 1056, Colorado, was accepted November 7, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 9, T. 1 S., R. 80 W., Sixth Principal Meridian, Group 1123, Colorado, was accepted December 3, 1996.

The plat representing the dependent resurvey of a portion of the north and east boundaries, a portion of the boundary between Jefferson and Clear Creek Counties, M.S. No. 9730, a portion of the subdivisional lines, and the subdivision survey of section 1, T. 4 S., R. 72 W., Sixth Principal Meridian, Group 1136, Colorado, was accepted December 12, 1996.

The supplemental plat creating new lots 1 through 6 in section 32 and new lots 1 through 6 in section 33 of T. 1 N., R. 80 W., Sixth Principal Meridian, Colorado, was accepted December 5, 1996.

These surveys were required for the administrative purposes of this Bureau.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–1584 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–JB–P

National Park Service

Notice of Availability of the Final Development Concept Plan/ Environmental Impact Statement for South Side Denali, Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of availability of the Final Development Concept Plan/

Environmental Impact Statement for South Side Denali, Alaska.

SUMMARY: The National Park Service announces the availability of a Final Development Concept Plan/ Environmental Impact Statement (DCP/ EIS) for South Side Denali, Alaska. The document describes and analyzes the environmental impacts of a proposed action and two other action alternatives for providing opportunities for high quality, resource-based destination experiences on South Side Denali National Park and Preserve in Alaska, as well as information, orientation, and recreation services and facilities convenient to park visitors. A no action alternative also is evaluated.

DATES: A Record of Decision will be made no sooner than 30 days after the date of the **Federal Register** Notice issued by the Environmental Protection Agency accepting and announcing the availability of the final DCP/EIS. A Record of Decision is anticipated by late February 1997.

ADDRESSES: Copies of the Final South Side Denali DCP/EIS are available on request from: Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755.

Public reading copies of the final DCP/EIS will be available in the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street, Room 3424, Washington, DC 20240, telephone: (202) 208–6843.

Alaska System Support Office, National Park Service, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503–2892, telephone: (907) 257–2650.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, Park Planner, Denali National Park and Preserve. Telephone: (907) 257–2651 FAX: (907) 257–2485.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, as lead federal agency, in cooperation with the State of Alaska, Matanuska-Susistna Borough, and Denali Borough, has prepared a final DCP/EIS for proposed visitor facilities and services on the South Side of Denali National Park and Preserve in Alaska.

The final DCP/EIS represents a cooperative planning effort that builds on previous planning for the region, including a draft DCP/EIS issued in 1993 and a revised draft DCP/EIS issued in March 1996, recommendations for the south side made by the Denali Task Force and adopted by the National Park System Advisory Board in December 1994, and public comment. The south side refers to an area that includes Denali National Park and Preserve land, Denali State Park land, and other lands to the south of the national park and preserve boundaries.

A proposed action, two other action alternatives, and a no action alternative are described and evaluated in the final DCP/EIS. The final DCP/EIS also sets the stage for establishing working partnerships for more detailed decision-making, funding, and phasing of appropriate visitor facilities and services on the south side.

Purpose, Vision, and Goals

The purpose of the final DCP/EIS is to identify and evaluate options for the south side of Denali that serve the following vision:

- Provide opportunities for high quality, resource-based, destination experiences and provide information, orientation, and recreation services and facilities convenient to park visitors.
- Develop facilities and access in a location and manner that minimizes impacts on resources, local lifestyles, and communities.
- Establish working partnerships for funding and phasing development as outlined in the concept plan.

In addition, a number of more specific goals are identified:

- Provide access to and a location for interpretation of the special qualities found in Denali National Park and Preserve and Denali State Park, including access to the spectacular alpine landscape on the south side of the Alaska Range.
- Offer a range of experiences and opportunities to meet the diverse needs of the traveling public, including information and orientation to the region; new or improved recreation facilities; enhanced state and national park interpretation; and shelter in bad weather.
- Ensure that, viewed as a whole, facilities and services benefit all visitors, including Alaska residents, independent travelers, and package tour travelers.
- Design and develop facilities and access improvements to support public use and understanding of the south side and its outstanding resources.
- Establish a research program and identify management needs to guide facility and road development.
- Facilitate orderly economic development in the region consistent with resource protection.
- Minimize and mitigate adverse effects on fish and wildlife resources, habitat, cultural resources, local rural quality of life, and existing public land and resource uses, including subsistence uses.
- Establish methods, responsibilities, and necessary steps to control unwanted secondary impacts of tourism and to minimize conflicts between different visitor groups.

While the final DCP/EIS evaluates the impacts of the proposed action and a range of alternatives, including a no-action alternative, it also sets the stage for establishing working partnerships for more detailed decision-making, funding, and phasing of appropriate visitor facilities and services on the south side. The final DCP/EIS emphasizes the importance of coordinated implementation and describes the commitments being made by the planning partners, individually and collectively. Most implementation tasks would occur under any of the action alternatives, although a few are associated with the proposed action only.

Proposed Action and Alternatives

General Policies and Actions

Several general policies and actions would be implemented under each action alternative. (An asterisk * indicates those actions that also would apply under the no-action alternative.) The policies would call for locating commercial facilities primarily on private lands; protecting the wild character of the south side; minimizing impacts on existing uses; adhering to the Alaska National Interest Lands Conservation Act, sections 1306 and 1307; and phasing development.

The following actions would be taken:

- Developing up to two additional roadside exhibits along the George Parks Highway
- Identifying and establishing watchable wildlife areas
- Developing self-guiding interpretive brochures
- Managing state rights-of-way to maintain safety and protect scenic values, including selective brushing along the George Parks Highway
- Reviewing and revising the Matanuska-Susitna Borough's Special Land Use District in Denali State Park to improve implementation and enforcement*
- Completing borough corridor management plans for the Petersville Road and portions of the George Parks Highway*
- Working together, as appropriate, to manage recreational activities and other uses of public lands on the south side* (In the no-action alternative, such efforts would continue, but would be less comprehensive and lower priority.)

- Supporting the maintenance of mining activities and working with the mining industry and individual claim holders to address mining issues in the project area*
- Considering state scenic byway designation for portions of the George Parks Highway, including the section in Denali State Park*
- Conducting research on the natural and cultural resources and human uses in the area in advance of development, as appropriate, on the south side* (In the no-action alternative, general information gathering would continue, but not at the pace, depth, or level of funding that would be anticipated if the site-specific developments described for the action alternatives were to be implemented, especially those along the Petersville Road.)
- Formally establishing a Denali South Side Plan Implementation Partnership to continue the cooperative partnership approach in implementing the development concept plan.

Proposed Action (Regional Strategy)

To provide a broad range of visitor opportunities, major facilities would be in the Tokositna area at the end of an upgraded and extended Petersville Road and at a location near Byers Lake along the George Parks Highway. A visitor center (up to 5,000 square feet) would be built in the Tokositna area of Denali State Park. The Petersville Road would be upgraded and extended from the Forks Roadhouse (about mile 19) to access this new facility. Up to 50 primitive recreational vehicle (RV) or tent campsites, a picnic area, up to four public use cabins, and some short hiking/interpretive trails (some leading into Denali National Park and Preserve) would also be developed in the Tokositna area. In cooperation and, where desirable, a partnership between the National Park Service, local communities, Alaska Native Claims Settlement Act Native corporations, and the state of Alaska would develop visitor facilities and services in the central development zone of Denali State Park, at Talkeetna, and at Broad Pass when the need and opportunity to do so are established. Consultation and coordination with local communities to define need and determine appropriate courses of action would be essential. For the central development zone, developments would entail constructing a visitor center (up to 3,000 square feet). In addition, the Byers Lake campground would be expanded by up to 25 sites or a new campground of up to 50 sites would be built elsewhere in the central development zone. Up to five primitive fly-in only campsites would be constructed at Chelatna Lake, as would up to two public use cabins and a hiking/interpretive trail and trailhead sign. The Dunkle Hills road could provide new public access opportunities in the Dunkle Hills/Broad Pass area, including access into Denali National Park and Preserve, pending resolution of land status/access issues.

Development would occur under a logical and cost-effective phasing scenario developed by a Denali south side plan implementation partnership, in consultation with the public.

Alternative A (Large-Scale Visitor Facility along the George Parks Highway)

All facilities would be located in Denali State Park along the George Parks Highway. No facilities would be constructed in the Tokositna area, in the Dunkle Hills, or near Chelatna Lake. The Petersville Road would not be upgraded or extended beyond mile 19 under this alternative. One visitor center (up to 13,000 square feet) would be built in either the northern, central, or southern development zone of Denali State Park. The Byers Lake campground would be expanded by up to 25 sites or a new campground of up to 50 sites would be built elsewhere in the central development zone. Short hiking/interpretive trails would be developed around the visitor center. No public use cabins would be constructed.

Alternative B (Small-Scale Visitor Facility along the George Parks Highway)

Under alternative B, all facilities would be located in Denali State Park along the George Parks Highway. No facilities would be constructed in the Tokositna area, in the Dunkle Hills, or near Chelatna Lake. The Petersville Road would not be upgraded or extended beyond mile 19 under this alternative. One small visitor center (up to 1,500 square feet) would be built in either the northern, central, or southern development zone of Denali State Park. A small campground (up to 25 sites) would be constructed in the central development zone along the George Parks Highway. Short hiking/interpretive trails would be developed near the visitor center. No public use cabins would be constructed.

Alternative C (No Action)

Management activity and the current low level of backcountry visitation would continue. Under alternative C, all facilities would be located in Denali State Park along the George Parks Highway. No facilities would be constructed in the Tokositna area, in the Dunkle Hills, or near Chelatna Lake. The Petersville Road would not be upgraded or extended beyond mile 19 under this alternative. A 320-square-foot visitor contact station would be built by the state near the Alaska Veterans Memorial in the central development zone of Denali State Park. A short trail to the Chulitna River would be developed by the state in the southern development zone of the state park. The Matanuska-Susitna Borough would likely construct a snowmachine user parking area and associated sanitary facilities near the Forks Roadhouse along the Petersville Road. An existing privately built (trespass) cabin near Chelatna Lake would be converted to public use. In addition, four public use cabins may be developed by the state on the east side of the Chulitna River in Denali State Park. Development of campgrounds or other visitor facilities on the south side would not be anticipated by the state, the National Park Service, or the boroughs.

Changes Made Between the Revised Draft and Final DCP/EIS

In response to public comments and cooperative planning partner discussions, several changes were made between publication of the revised draft DCP/EIS (March 1996) and completion of the final DCP/EIS. The major changes are summarized as follows.

Purpose and Need

This section was updated to more explicitly describe the partners' vision for south side development and recreational opportunities and to state the need for visitor facilities and services more clearly.

Direction for the Plan

This section was modified to clearly state the vision, goals, and objectives that guide the plan.

Elements Common to All Action Alternatives

Additional detail is provided clarifying the general policies and actions that would be implemented under each action alternative and the no-action alternative. For example, additional text is included to emphasize partner support of continued mining in the study area.

Implementation of the Development Concept Plan

This section was revised to provide clarification and additional information about plan implementation, including collective and individual partner commitments to ensure continued partnership, continued and

strengthened public consultation and involvement, coordination on related plans, and appropriate measures to minimize or avoid adverse impacts.

Two key commitments added are as follows:

- Ensure that additional or revised land management plans and controls are in effect before major development occurs.
- Assess the progress of plan implementation after three years in light of funding availability, results of wildlife research, and progress on identified mitigation strategies, and adjust priorities or management emphasis as needed.

Alternatives, Including the Proposed Action

The proposed action was revised based on public input and cooperative planning partner discussions. Language was added to clarify the objectives for development in the Tokositna area and along the George Parks Highway. The size of the Tokositna visitor center was reduced from a maximum of 13,000 square feet to a maximum of 5,000 square feet, with associated changes in visitor center functions and reductions in visitor and administrative space, parking, and employee housing. The capacity of the picnic facility in the vicinity of the Tokositna visitor center was increased from 25 to 50 people and now includes uncovered as well as covered areas for tables.

The proposed action also now concentrates on an upgrade and extension of the Petersville Road only from the Forks Roadhouse (mile 19) to the Tokositna site, because the road is generally usable for recreation development in its current state to mile 19, and it is assumed that the first 19 miles would be maintained and upgraded by the state regardless of actions proposed by this DCP/EIS. The road would also now include appropriately sited bicycle and pedestrian enhancements (not included in the revised draft DCP/EIS).

Statements have been added noting that the visitor centers and public use cabins would be designed and built for year-round use (though, initially, only a portion of the Tokositna visitor center would be open to the public in the winter).

The need for phasing and funding strategies are reemphasized, but most details regarding phasing of proposed developments were removed from the text; these would be determined during subsequent implementation planning activities.

The no-action alternative (alternative C) was revised slightly in that the proposed Matanuska-Susitna Borough development of a snowmachine user facility near the Forks Roadhouse on the Petersville Road has been corrected to show only a parking area and sanitary facilities. The trail to the Chulitna River is described in more detail and the location changed from the central development zone to the southern development zone of Denali State Park. Construction of four public use cabins on the east side of the Chulitna River in Denali State Park also has been added to the list of actions.

The mitigating measure related to regulating motorized activities on the Curry-Kesugi Ridge and in the Troublesome Creek drainage of Denali State Park was deleted.

Affected Environment

This section was revised and updated to reflect new information received since the revised draft DCP/EIS was published and to better describe some resource conditions to address questions raised through public comments on the revised draft DCP/EIS.

Environmental Consequences

The impact sections for each of the development alternatives were revised to reflect changes made to the proposed action and no-action alternatives. Additionally, the impact analyses for all alternatives assume land use controls would be in place prior to major development; however, where it makes a difference in the analysis, a description of the impacts is provided given the situation that these controls are not implemented. Visitation predictions under all alternatives except alternative B have been reduced and relevant impact sections rewritten accordingly. Completion of visitor center facilities would not occur prior to year 2000 as assumed in the revised draft; this is now assumed to take place no sooner than 2002 in the final DCP/EIS.

The responsible official for the Record of Decision on the proposed actions is the National Park Service field director in Alaska.

Dated: January 14, 1997.

Judith Gottlieb,

Acting Field Director, Alaska Field Office.

[FR Doc. 97–1636 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757–759 (Preliminary)]

Collated Roofing Nails From China, Korea, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the U.S. International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Korea, and Taiwan of collated roofing nails,[2] provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Collated roofing nails are nails made of steel, having a length of 13/16 inch to 1–13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

or their representatives, who are parties to the investigations.

Background

On November 26, 1996, a petition was filed with the Commission and the Department of Commerce by the Paslode Division of Illinois Tool Works Inc., Vernon Hills, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of collated roofing nails from China, Korea, and Taiwan. Accordingly, effective November 26, 1996, the Commission instituted antidumping Investigations Nos. 731–TA–757–759 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 4, 1996 (61 FR 64364). The conference was held in Washington, DC, on December 17, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 10, 1997. The views of the Commission are contained in USITC Publication 3010 (January 1997) entitled "Collated Roofing Nails from China, Korea, and Taiwan: Investigations Nos. 731–TA–757–759 (Preliminary)."

Issued: January 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–1640 Filed 1–22–97; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–334]

Notice of Commission Determination to Review in Part an Initial Determination; Schedule for the Filing of Written Submissions on the Issue Under Review, and on Remedy, the Public Interest, and Bonding

In the Matter of certain condensers, parts thereof and products containing same, including air conditioners for automobiles.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the initial determination (ID) issued by the presiding administrative law judge (ALJ) on December 2, 1996, in the above-captioned investigation. The ID found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On December 12, 1991, Modine Manufacturing Co. filed a complaint with the Commission alleging a violation of section 337 by respondents Showa Aluminum Corporation, Showa Aluminum Corporation of America, Mitsubishi Motors Corporation, Mitsubishi Motors Sales of America, Mitsubishi Heavy Industries, Ltd., and Mitsubishi Heavy Industries America, Inc. (collectively referred to herein as respondents). Modine alleged that the respondents had infringed claims of Modine's patent, U.S. Letters Patent 4,998,580 (the '580 patent). The investigation was assigned an ALJ, who determined that there was no infringement, either literally or under the doctrine of equivalents, by the respondents. The ALJ further determined that the patent was invalid and unenforceable due to inequitable conduct. On July 30, 1993, the Commission reversed the ALJ's findings of invalidity and inequitable conduct, but adopted her findings and conclusions on the infringement issues.

Modine appealed the Commission's finding of no infringement, and thus no violation of section 337, to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). In the same appeal, the respondents challenged the Commission's findings upholding the validity and enforceability of the '580 patent. On February 5, 1996, the Federal Circuit reversed the Commission's claim interpretation and remanded the investigation to the Commission for redetermination of the issues of literal infringement and infringement under the doctrine of equivalents. *Modine Manufacturing Co.* v. *U.S.I.T.C.*, 75 F.3d 1545, 1549 (Fed. Cir. 1996). The court affirmed the Commission's determination in all other respects. *Id.*

On May 31, 1996, the Commission issued an order remanding the Condensers investigation to the Office of Administrative Law Judges. The order provided that the presiding ALJ conduct further proceedings in accordance with the Federal Circuit's decision in *Modine* and issue an ID on violation, preferably within six months. The Commission's order also directed the ALJ to issue a recommended determination (RD) on the issues of remedy and bonding two weeks after the ID issued. On December 2, 1996, the ALJ issued an ID finding a violation of section 337 by respondents. On December 12, 1996, respondents and the Commission investigative attorney (IA) filed separate petitions for review. Complainant Modine filed a petition for review contingent on the Commission's decision either to grant another party's petition for review or to review the ID on its own motion. All parties filed responses to each petition on December 19, 1996. The ALJ issued his RD on remedy and bonding on December 16, 1996.

Having examined the record in this investigation, including the ID, the Commission has determined to review the reasoning supporting the ALJ's finding that the proper estoppel point for the Cat condenser is 0.04822 inch. The Commission has determined not to review the ID in all other respects. On review, the Commission will consider whether the 0.04822 inch measurement is properly considered law of the case, given that the Commission's previous finding that the Cat condenser's hydraulic diameter was 0.04822 inch was affirmed by the Federal Circuit when it affirmed the Commission's findings on the scope and content of the prior art. *Modine*, 75 F. 3d at 1549.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion in In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are

subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issue under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including, where necessary, references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the December 16, 1996, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 30, 1997. Reply submissions must be filed no later than the close of business on February 6, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.45–.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.45–.51).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: January 16, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–1638 Filed 1–22 97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–749 (Final)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–749 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of persulfates provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of persulfates from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 11, 1996, by FMC Corporation, Chicago, IL.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO

[1] For purposes of this investigation, Commerce has defined the subject merchandise as persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$.

issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on May 1, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 14, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 6, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 8, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 8, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 22, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 22, 1997. On June 10, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 12, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–1639 Filed 1–22–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to the Rivers and Harbors Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Providence Harbour View Inc.*, Civil No. 97–008P (D.R.I.), was lodged with the United States District Court for the District of Rhode Island on January 7, 1997.

The Consent Decree concerns alleged violations of section 10 of the Rivers and Harbors Act ("RHA"), 33 U.S.C. 403, resulting from the defendant's discharge of fill material, performance of unauthorized work and placement of structures, including riprap, pilings, and floating docks, in the waters of the Providence Harbor, Rhode Island, navigable waters of the United States, without the required permits. As part of the Consent Decree, defendant will be required to pay $40,000 as disgorgement of economic benefit and to submit an after-the-fact permit application to the United States Army Corps of Engineers within 90 days of the entry of the Consent Decree. Defendant has also agreed to abide by regulations for the permit programs under the RHA and section 404 of the Clean Water Act, 33 U.S.C. 1344.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Michael P. Iannotti, Assistant U.S. Attorney, 10 Dorrance Street, Tenth Floor, Providence, Rhode Island 02903, and should refer to *United States* v. *Providence Harbour View, Inc.*, C.A. No. 97–008P (D.R.I.).

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the District of Rhode Island, Kennedy Plaza, Providence, Rhode Island 02903.

Michael P. Iannotti,

Assistant U.S. Attorney.

[FR Doc. 97–1591 Filed 1–22–97; 8:45 am]

BILLING CODE 4410–07–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed Consent Decree between the United States and Stratton Georgoulis was lodged on January 6, 1997, with the United States District Court for the Northern District of Iowa. The Consent Decree resolves *United States* v. *TIC Investment Corporation, et al*, No. 91–2065 (N.D. Iowa), a civil action filed by the United States against Stratton Georgoulis, TIC Investment Corporation and TIC United Corporation under Sections 104(e) and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9604(e) & 9607. The United States brought this action to recover $576,337.18 in unreimbursed response costs at the White Farm Equipment Dump Site ("the Site"), following the entry of a Consent Decree with Allied Products Corporation ("Allied") under which Allied voluntarily performed EPA's selected remedial action for the Site and reimbursed the United States for its costs of overseeing Allied's

completion of the remedy. The United States also sought a penalty from the defendants under Section 104(e) of CERCLA, 42 U.S.C. 9604(e), based on the defendants' alleged unreasonable failure to comply with written information requests served upon them by EPA.

Under the Consent Decree, Georgoulis will reimburse the United States for $530,000 of its unreimbursed costs at the Site, and pay a $100,000 civil penalty to resolve the United States' claims for the defendants' alleged violations of Section 104(e) of CERCLA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *TIC Investment Corporation, et al.*, DOJ Ref. #90–11–2–665a.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 400, Hach Building, 401 First Street, S.E., Cedar Rapids, Iowa 52401; the Region 7 Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 98105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–1592 Filed 1–22–97; 8:45 am]

BILLING CODE 4410–15–M

Federal Bureau of Investigation

Notice of Charter Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2), and Title 41, Code of Federal Regulations, Section 101–6.1015, the Director, FBI, with the concurrence of the Attorney General, has determined that the continuance of the Criminal Justice Information Services (CJIS) Advisory Policy Board is in the public interest, in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of the renewal of its charter, scheduled for December 15, 1996.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The Board includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of Federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations (i.e., the International Association of Chiefs of Police, the Major Cities Chiefs, the National Sheriffs' Association, the National District Attorneys Association, and the American Probation and Parole Association). All members of the Board will be appointed by the FBI Director.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

Dated: November 2, 1996.

Louis J. Freeh,

Director.

[FR Doc. 97–1594 Filed 1–22–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32, 709; NAFTA–01224]

Penn Mould Industries, Incorporated, Washington, Pennsylvania; Notice of Negative Determination on Reconsideration

On November 27, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner, American Flint Glass Workers Union, AFL–CIO, presented evidence that the Department's survey of the subject firm customers was incomplete. This notice was published in the **Federal Register** on December 13, 1996 (61 FR 65599).

The Department's initial denial of TAA for workers of Penn Mould Industries was because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that layoffs were attributable to a change in the manufacturing process of glass molds at the Washington, Pennsylvania plant.

The Department's initial denial of NAFTA–TAA for workers of Penn Mould Industries was because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act were not met. The subject firm did not import glass forming molds, or shift production to Mexico or Canada. The investigation revealed that layoffs were attributable to a process change in the manufacturing of glass forming molds.

The petitioner provided data on U.S. imports of glass containers to support their claim that workers producing glass forming molds are adversely affected by increased imports. The Department concurs that there is an aggregate increase in imports of glass containers from Mexico and Canada and other foreign sources. However, in order to determine worker eligibility for TAA or NAFTA–TAA, the Department must examine imports of products like or directly competitive with those articles produced at the Washington production facility. In this case, the products produced at Washington were glass forming molds. Glass containers cannot be considered like or directly competitive with the end products produced and sold at the Washington plant.

The petitioner claims that Penn Mould was a captive producer of glass forming molds for its parent company, Ball-Foster Glass Container, Inc. On July 1, 1996, Penn Mould was sold to Ross Mould, Inc. and the Washington, Pennsylvania facility became a commercial producer of glass forming molds. Consequently, the customer base expanded.

The Department conducted a survey of the major customer of Penn Mould Industries, Inc., formerly Penn Mould. Findings of the survey revealed that from 1994 through September 1996, the customer, accounting for the predominate proportion of sales, did not import glass forming molds from Canada, Mexico or other foreign sources.

The petitioner further alleges that workers of another domestic company producing glass forming molds was certified eligible to apply for NAFTA–TAA. Review of that case showed that the workers were certified based on increased company imports of the product.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and NAFTA–TAA for workers and former workers of Penn Mould Industries, Inc., Washington, Pennsylvania.

Signed at Washington, D.C., this 27th day of December 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1666 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,360]

AA Production, Incorporated; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 17, 1996, applicable to all workers of AA Production, Incorporated located in Lubbock, Texas. The notice was published in the **Federal Register** on August 6, 1996 (61 FR 40852).

At the request of the State agency, the Department reviewed the worker certification. New findings show that the Department inadvertently set the impact date at May 8, 1995. The workers at the subject firm were covered under an earlier certification, TA–W–29, 693, which expired April 29, 1996. The Department is amending the certification for workers of AA Production, Incorporated to set the impact date at April 29, 1996.

The amended notice applicable to TA–W–32,360 is hereby issued as follows:

"All workers of AA Production, Incorporated, Lubbock, Texas, who became totally or partially separated from employment on or after April 29, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1663 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,271, 271A & 271B]

Manhattan Shirt Company, A Division of Salant Corporation; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 27, 1996, applicable to all workers of Manhattan Shirt Company, a Division of Salant Corporation located in Americus, Georgia.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the sales offices of the subject firm in New York, New York and Clark, New Jersey. The workers at the New York and New Jersey locations provide sales and support services to the Manhattan Shirt Company production facility in Americus, Georgia.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the sales and support service staff of Manhattan Shirt Company, A Division of Salant Corporation, New York, New York and Clark, New Jersey.

The amended notice applicable to TA–W–32,271 is hereby issued as follows:

"All workers of Manhattan Shirt Company, a division of Salant Corporation, Americus, Georgia (TA–W–32,271); and sales and support service workers of Manhattan Shirt Company, a Division of Salant Corporation, New York, New York (TA–W–32,271A) and Clark, New Jersey (TA–W–32,271B) who became totally or partially separated from employment on or after April 16, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1662 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,739]

Mission Plastics of DeQueen; DeQueen, AR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Mission Plastics of DeQueen, DeQueen, Arkansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–32,739; Mission Plastics of DeQueen, DeQueen, Arkansas (January 10, 1997)

Signed at Washington, D.C. this 13th day of January, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1658 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,159]

Olympus America Inc.; Rio Rancho, NM; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 11, 1996, applicable to all workers of Olympus America Inc. located in Rio Rancho, New Mexico. The notice was published in the **Federal Register** on July 3, 1996 (61 FR 34875).

At the request of the State agency, the Department reviewed the worker certification. New findings show that all workers of the Rio Rancho production facility of Olympus America were separated from employment when the plant closed on September 30, 1996. Workers supporting the production of medical light sources at the subject firm were inadvertently excluded from the certification.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover all workers of Olympus America, Inc., Rio Rancho, New Mexico.

The amended notice applicable to TA–W–32,159 is hereby issued as follows:

"All workers of Olympus America, Inc., Rio Rancho, New Mexico, who became totally or partially separated from employment on or after March 22, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1661 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,791 and 791A]

River Heights Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on November 8, 1996, applicable to all workers of River Heights Inc. located in Crump, Tennessee. The notice was published in the **Federal Register** on November 27, 1996 (61 FR 60309).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The new findings show that when the determination was issued, the Department inadvertently omitted workers of the Selmer, Tennessee location of River Heights Inc. which closed May 1996. The workers were engaged in employment related to the production of knit shirts. Accordingly, the Department is amending the worker certification to include workers at River Heights Inc., Selmer, Tennessee.

The amended notice applicable to TA–W–32,791 is hereby issued as follows:

All workers of River Heights Inc., Crump, Tennessee (TA–W–32,791) and Selmer, Tennessee (TA–W–32,791A) who became totally or partially separated from employment on or after September 30, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1659 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,736]

Roxanne of Pennsylvania, Wilkes-Barre, Pennsylvania; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on November 22, 1996, applicable to all workers of Roxanne of Pennsylvania, located in Wilkes-Barre, Pennsylvania. The notice was published in the **Federal Register** on December 24, 1996 (61 FR 68758).

At the request of the State agency, the Department reviewed the worker certification. New findings show that the Department incorrectly set the impact date at August 27, 1995. The workers at the subject firm were covered under an earlier certification, TA–W–29,776A, which expired June 8, 1996. The Department is amending the certification for workers of Roxanne of Pennsylvania to set the impact date at June 8, 1996.

The amended notice applicable to TA–W–32, 736 is hereby issued as follows:

"All workers of Roxanne of Pennsylvania, Wilkes-Barre, Pennsylvania, who became totally or partially separated from employment on or after June 8, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 9th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1664 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than February 3, 1997.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than February 3, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 23rd day of December, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 12/23/96

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
33,036	S.D. Warren (Wkrs)	Westbrook, ME	12/04/96	Coated and Specialty Paper.
33,037	Blue Bird Fabrics Corp (Wkrs)	York, PA	12/04/96	Woven Fabrics.
33,038	Metra Health (Wkrs)	Milwaukee, WI	12/04/96	Claim Processing.
33,039	Brunswick Marine (Wkrs)	Nappenee, IN	12/02/96	Fishing and Recreational Boats.
33,040	CWS Fashions (Co.)	Lenoir, NC	12/05/96	Cut and Sew Children's Activewear.
33,041	Roederstein Electronics (Co.)	Statesville, NC	12/09/96	Plastic Film Capacitors.
33,042	Komatsu America (IAMAW)	Galion, OH	12/10/96	Spindles, Wheels.

PETITIONS INSTITUTED ON 12/23/96—Continued

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
33,043	United Technologies (IBEW)	Zanesville, OH	12/06/96	Automotive Wiring Harnesses.
33,044	Butler Sales Agency, Inc. (Co.)	Eau Claire, WI	12/04/96	Sales Organization for US Fluorescent.
33,045	Union City Body (UAW)	Union City, IN	12/09/96	Delivery Vans.
33,046	Kalina Sportswear, Inc. (Co.)	Hammonton, NJ	12/09/96	Ladies' Jackets.
33,047	Lance Garment (Co.)	Redbay, AL	12/12/96	Men's Casual Shirts.
33,048	Hamilton Beach (Co.)	Washington, NC	11/27/96	Electronic Houseware.
33,049	Washington Public Power (IBEW)	Richland, WA	11/22/96	Electricity.
33,050	Ithaca Industries (Co.)	Thomasville, GA	12/04/96	Ladies' Underwear.

[FR Doc. 97–1665 Filed 1–22–97; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–33,026]

Sportswear Associates, Incorporated, Clay Sportswear Division (AKA About Sportswear) Moss, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 16, 1996 in response to a worker petition which was filed on December 16, 1996 on behalf of workers at Sportswear Associates, Incorporated, Clay Sportswear Division, Moss, Tennessee.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–32,870). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 20th day of December, 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1667 Filed 1–22–97; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA—01258–01258A]

Amended Negative Determination Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Negative Determination for NAFTA-Transitional Adjustment Assistance on November 8, 1996, applicable to all workers of River Heights Inc. located in Crump, Tennessee. The negative determination was published in the **Federal Register** on November 27, 1996 (61 FR 60310).

At the request of the State agency, the Department reviewed the determination for workers of the subject firm. The new findings show that when the determination was issued, the Department inadvertently omitted workers of the Selmer, Tennessee location of River Heights Inc. which closed May 1996. The workers were engaged in employment related to the production of knit shirts. Accordingly, the Department is amending the negative determination to include workers at River Heights Inc., Selmer, Tennessee.

The amended notice applicable to NAFTA–01258 is hereby issued as follows:

"All workers of River Heights Inc., Crump, Tennessee (NAFTA–01258) and Selmer, Tennessee (NAFTA–01258A), are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, D.C., this 9th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1660 Filed 1–22–97; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two (2) information collections: the proposed extension of (1) Optional Use Payroll Form Under the Davis-Bacon Act, WH–347 and (2) Requests for Medical Reports, LS–158, LS–415, and LS–525. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 25, 1997. The Department of Labor is particularly interested in comments which:

*evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

*evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

*enhance the quality, utility and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: For the Davis-Bacon form submission, contact Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–6375.

For the Longshore medical reports submission, contact Ms. Margaret J.

Sherrill at the same office address above, telephone (202) 219–7601. (The telephone numbers are not toll-free; FAX 202–219–6592.)

SUPPLEMENTARY INFORMATION:

I. Background

The Copeland Act (40 U.S.C. 276c) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly, statement with respect to the wages paid each employee during the preceding week." Section 5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, provides that contractors submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project. Form WH–347, Optional Use Payroll Form, was developed for contractor use in meeting these payroll requirements. It is a report form requiring basic payroll information to be furnished by all covered employers each week that any work covered by the Davis-Bacon and Related Acts is performed. The completed form is submitted weekly to the contracting agency or copies of the contractor's payroll containing all the required information may be submitted instead.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to enable contractors and subcontractors (using optional form, WH–347) to certify their payrolls, attesting that proper wage rates and fringe benefits have been paid to their employees performing work on contracts covered by Davis-Bacon and Related Acts. If this information was not collected, contracting officials and Wage and Hour investigative staff would be unable to verify that legal rates have been paid and whether employees have been properly classified for the work they perform.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Optional Use Payroll Form Under the Davis-Bacon Act

OMB Number: 1215–0149

Affected Public: Business or other for-profit; individuals or households; Federal government; State, Local or Tribal government

Total Respondents: 113,022

Frequency: Weekly

Total Responses: 10,398,024

Average Time Per Response for Reporting: 56 minutes

Estimated Total Burden Hours: 9,700,000

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $363,931

I. Background

The Longshore and Harbor Workers' Compensation Act, as amended provides benefits to workers injured in maritime employment. In addition, several Acts extend Longshore Act coverage to certain other employees. The Secretary of labor is authorized, under the Act, to make rules and regulations to administer the Act and its extensions. Section 7(b) of the Act (20 CFR 702.408) requires supervision of the medical care rendered to injured employees, require periodic reports as to the medical care being rendered, and provides authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished to an injured worker.

Forms LS–158, LS–415, and LS–525 are used to request impartial medical examinations pursuant to the provisions of Section 7(a) and 7(e) of the Act. The LS–158 and LS–415 are used to request an impartial physical examination of the employee (LS–158), and for the repair of artificial limbs issued to beneficiaries (LS–415). The form LS–525 is used for examinations involving audiometric testing otologic evaluation, and is forwarded to the physician by the program. Completed forms are used to assist in evaluating workers' claims for benefits.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to provide the Office of Workers' Compensation Program with detailed medical evaluation to make decisions to award or continue compensation payments or benefits to Longshore workers. If the information was not collected, claimants would not be able to file for and receive Longshore benefits stipulated in the Act and amendments.

Type of Review: Extension

Agency: Employment Standards Administration

Titles: Request for Medical Examination and Report; Request for Artificial Limb or Repairs; and, Request for an Examination of Employee's Hearing Ability (form letter).

OMB Number: 1215–0106

Affected Public: Business or other for-profit; individuals or households

Total Respondents: 2,520

Frequency: On occasion

Total Responses: 2,520

Average Time per Response: 30 minutes

Estimated Burden Hours: 1,260

Form	Respondents	Responses	Burden hours
LS–158	1,000	1,000	500
LS–415	20	20	10
LS–525	1,500	1,500	750
Total	2,520	2,520	1,260

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $882.00

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they will also become a matter of public record.

Dated: January 17, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–1668 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Minnesota State Standards; Notice of Approval

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for

the Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On June 8, 1973, notice was published in the **Federal Register** (38 FR 15076) of the approval of the Minnesota plan and the adoption of Subpart N of Part 1952 containing the decision. The Minnesota plan provides for the adoption of Federal standards as State standards by reference after an opportunity for public comment and/or requests for public hearings. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By a letter dated December 13, 1993, the State submitted State Standards which are comparable to Occupational Exposure to 4,4'-Methylenedianiline (MDA); Approval of Information Collection Requirements, as published in the **Federal Register** (57 FR 49649) on November 3, 1992; Control of Hazardous Energy Sources (Lockout/Tagout); Supplemental Statement of Reasons, as published in the **Federal Register** (58 FR 16612) on March 30, 1993; Occupational Exposure to Cadmium; Corrections and Amendments to Final Rule, as published in the **Federal Register** (58 FR 21778) on April 23, 1993; and Lead Exposure in Construction; Interim Final Rule, as published in the **Federal Register** (58 FR 26590) on May 4, 1993. The order of adoption was published in the State Register (18 S.R. 1065) on October 11, 1993, pursuant to Minnesota Statute 182.655 (1992), and went into effect on October 16, 1993. By a letter dated August 4, 1994, the State submitted State Standards which are comparable to Safety Standards for General Industry and Construction; Technical Amendments, as published in the **Federal Register** (58 FR 35306) on June 30, 1993; Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment, as published in the **Federal Register** (59 FR 4320) on January 31, 1994; Occupational Safety and Health Standards for Cadmium in Shipyard Employment and Construction; Final Rule—Miscellaneous Corrections and Technical Amendments, as published in the **Federal Register** (59 FR 146) on January 3, 1994; and Occupational Exposure to Lead in Construction; Interim Final Rule—Approval of Information Collection Requirements, as published in the **Federal Register** (58 FR 34218) on June 24, 1993. The letter also served to incorporate into Minnesota Rules the redesignation of the regulatory text of the general industry standards that have been identified as applicable to construction work as published in the **Federal Register** (58 FR 35076) and corrected in the **Federal Register** (58 FR 40468) on July 28, 1993. The order of adoption was published in the State Register (19 S.R. 187) on July 25, 1994, pursuant to Minnesota Statute 182.655 (1992), and went into effect on July 30, 1994, with the exception of 1910.269(a)(2) which was effective January 31, 1995. By a letter dated November 17, 1994, the State submitted State Standards which are comparable to Grain Handling Facilities; Final Decision Statement, as published in the **Federal Register** (59 FR 15339) on April 1, 1994; Personal Protective Equipment for General Industry; Final Rule, as published in the **Federal Register** (59 FR 16334) on April 6, 1994; and Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Final Rule—Stay of Enforcement of Certain Provision and Correction, as published in the **Federal Register** (59 FR 33658) on June 30, 1994. The order of adoption was published in the State Register (19 S.R. 887) on October 24, 1994, pursuant to Minnesota Statute 182.655 (1992), and went into effect on October 29, 1994.

By a letter dated January 18, 1995, the State submitted State Standards which are comparable to Occupational Exposure to Asbestos in Construction (1926.1101), General Industry (1910.1001), and Shipyard Employment (1915.1001), as published in the **Federal Register** (59 FR 40964) on August 10, 1994; Retention of DOT Markings, Placards, and Labels (1910.1201, 1915.100, 1917.29, 1918.100, and 1926.61), as published in the **Federal Register** (59 FR 36695) on July 19, 1994; Safety Standard for Fall Protection in Construction (1926, Subpart M), as published in the **Federal Register** (59 FR 40672) on August 9, 1994; Amendments to the Hazardous Waste Operations and Emergency Response Standard (1910.120 and 1926.65), as published in the **Federal Register** (59 FR 43268) on August 22, 1994; and Confined and Enclosed Spaces and other Dangerous Atmospheres in Shipyard Employments, as published in the **Federal Register** (59 FR 37816) on July 25, 1994. The order of adoption was published in the State Register (19 S.R. 1459) on January 3, 1995, pursuant to Minnesota Statute 182.655 (1992), and went into effect on January 8, 1995, with the exception of the Fall Protection in Construction Standard which was effective February 6, 1995. By a letter dated March 27, 1995, the State submitted a State Standard which is comparable to Logging Operations, Final Rule, as published in the **Federal Register** (59 FR 51672) on October 12, 1994. The order of adoption was published in the State Register (19 S.R. 1900) on March 13, 1995, pursuant to Minnesota Statute 182.655 (1992), and went into effect on March 18, 1995. These standards, which are contained in the Minnesota Occupational Safety and Health Codes and Rules, were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings.

Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards and amendments are identical to the Federal standards and accordingly are approved.

Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, Room 3244, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 443 Lafayette Road, St. Paul, Minnesota 55155; and the Directorate of Federal-State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210. For electronic copies of this Federal Register notice, contact OSHA's Web Page at http://www.osha.gov/.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good

cause exists for not publishing the supplement to the Minnesota State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective January 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Chicago, Illinois this 4th day of November 1996.

Sandra J. Taylor,

Acting Regional Administrator.

[FR Doc. 97–1565 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–26–P

Washington State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to a Federal standard change, the State submitted by letter dated March 6, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, a State standard identical to the Federal standards 29 CFR 1910.1201, 29 CFR 1915.100, 29 CFR 1917.29, 29 CFR 1918.100 and 29 CFR 1926.61, Retention of DOT Markings, Placards and Labels, published in the **Federal Register** (59 FR 36695) on July 19, 1994. The State standard was adopted on January 18, 1995, effective March 10, 1995, under Washington Administrative Order 94–19.

In response to Federal and State initiated standard changes, the State submitted by a letter dated December 20, 1991, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, State standard amendments comparable to 1910.1025, Lead, published in the **Federal Register** (56 FR 24686) on May 31, 1991. The minor State initiated amendments included the incorporation of the appendices and a summary of employer responsibility regarding the lead standard provisions. The change was adopted in Administrative Order 91–07 on November 22, 1991, effective December 24, 1991.

In response to a new Federal standard, the State submitted by letter dated November 17, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard comparable to the Federal standard 29 CFR 1926.62, Lead Exposure in Construction; Interim Final Rule, published in the **Federal Register** (58 FR 26590) on May 4, 1993. The State standard was adopted on October 29, 1993, effective December 10, 1993, under Washington Administrative Order 93–07. The State requires each employer to protect his/her own employees rather than for contractors on multi-contractor worksites to make arrangements among themselves. Other minor differences include correction of errors and deletion of the word "interim".

On its own initiative, the State submitted by letter dated March 6, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, a State standard amendment comparable to 29 CFR 1910.1025, Lead. The amendments add a new non-mandatory Appendix E to the previously approved WAC 296–62–07521, Lead standard. The State amendments were adopted on January 30, 1995, effective March 3, 1995, under Washington Administrative Order 94–15.

On its own initiative, the State has submitted by letter dated June 20, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment which prohibits the use of 4x29 inch wire rope in any maritime "running rigging". The State standard is comparable to 29 CFR 1917.43, Miscellaneous Auxiliary Gear. The change was adopted in Administrative Order 91–01 on May 20, 1991, effective June 20, 1991.

On its own initiative, the State has submitted by letter dated February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, amendments to the previously approved General Safety and Health Standards, WAC 296–24, which incorporated some of the Washington Industrial Safety and Health Administration (WISHA) Regional Directives (WRD) into appropriate standards. The significant State standard amendments are: WAC 296–24–15001(7), guarding of food waste disposal equipment: WAC 296–24–16517 additional requirements for the guarding and labeling of radial saws; WAC 296–24–20503(5), specific conditions that are required to be followed when operating sewing machines; WAC 296–24–550, requires means of egress for all buildings to be in accordance with the 1985 National Fire Code, (NFPA); WAC 296–24–78007(6), specific construction requirements for Jacob's ladders; WAC 296–24–82503, additional requirements for swinging scaffolds, use of screw shackles, hooks on blocks and lifelines size. The State amendments were adopted on January 11, 1990, effective February 26, 1990, under Washington Administrative Order 89–20.

On its own initiative, the State submitted by letter dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, amendments to the previously approved WAC 296–155–950, Rollover Protective Structures for Material Handling Equipment. The significant state standard amendment, which incorporated a Washington Industrial Safety and Health Administration (WISHA) Regional Directive (WRD), references the 1980 Society of Automotive Engineers (SAE) test criteria. The State amendments were adopted on January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90–18.

On its own initiative, the State submitted by letter dated June 20, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.243(d)(1)(i) and 29 CFR 1910.243(d)(3)(iv), Guarding of Portable Powered Tools. The State standard was amended to adopt the 1985 edition of ANSI A10.3, Safety Requirements for Power Actuated Fastening Systems. The State amendments were adopted May

20, 1991, effective June 20, 1991, under Washington Administrative Order 91–01.

On its own initiative, the State submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910, General Safety and Health Standards. The State standard at WAC 296–24 was amended to add gender neutral language and make other housekeeping changes. The State amendments were adopted July 20, 1994, effective September 20, 1994, under Washington Administrative Order 94–07.

On its own initiative, the State submitted by letter dated January 4, 1993, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1926.201(a)(3) and 29 CFR 1926.210(a)(4), Signaling. The State standard was amended to adopt: current edition of ANSI D6.1, Uniform Traffic Control Devices; approved training every three years; and flaggers must have in their possession a certificate verifying required training. The State amendments were adopted December 11, 1992, effective January 15, 1993, under Washington Administrative Order 92–15.

On its own initiative, the State submitted by letter dated October 22, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1926.200(g)(2) and 29 CFR 1926.200(h)(1)(i), Accident Prevention Signs and Tags. The State standard was amended to not only require signs, but to clarify that all traffic control signs and devices used in construction must be made and installed according to the 1988 edition of ANSI D6.1, Uniform Traffic Control Devices for Street and Highways. The State amendments were adopted December 11, 1992, effective January 15, 1993, under Washington Administrative Order 92–15; and were adopted September 22, 1993, effective November 1, 1993, under Washington Administrative Order 93–04.

On its own initiative, the State submitted by letter dated October 26, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to the previously approved WAC 296–306–020, Serious Injury Reporting. The amendments were to incorporate the April 1, 1994 Federal reporting requirements in 29 CFR 1904.8, which reduced the reporting time from 24 to 8 hours, into the State of Washington's vertical Agriculture standard. The State amendments were adopted on September 30, 1994, effective November 20, 1994, under Washington Administrative Order 94–16.

On its own initiative, the State submitted by letter dated October 14, 1992, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to the previously approved State standard, WAC 296–78–515, Management's Responsibility. The amendments incorporated the April 1, 1994 Federal reporting requirements in 29 CFR 1904.8 into the State of Washington's Sawmills and Woodworking Operations standard. The State amendments were adopted on September 30, 1994, effective November 20, 1994, under Washington Administrative Order 94–16.

In response to Federal and State initiated standard changes, the State submitted by a letter dated June 20, 1991, from Joseph A. Dear, Director to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1926.100(c), Head Protection. In response to a U.S. Supreme Court decision, which denied relief to any individual from the obligation to comply with a neutral, generally applicable regulatory law, the State eliminated language that gave an exemption for wearing hard hats to Old Order Amish and Sikh Dharma Brotherhood. The amendment was adopted in Administrative Order 91–01 on May 20, 1991, effective June 20, 1991.

On its own initiative, the State submitted by letter dated June 20, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, State standard amendments to WAC 296–62–07540, Formaldehyde. This standard was originally approved in the **Federal Register** (57 FR 12947) on April 14, 1992. The State initiated amendments add WAC references comparable to those in the Federal Formaldehyde standard. The State standard amendments were adopted under Washington Administrative Order 91–01 on May 20, 1991, effective June 20, 1991.

In response to Federal standard changes, the State submitted by letter dated November 30, 1992, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, corrections to the State standard at WAC 296–62–07540 comparable to corrections to the Federal standard, 29 CFR 1910.1048, Formaldehyde, as published in the **Federal Register** (57 FR 22290) on May 27, 1992, (57 FR 24701) on June 10, 1992, and (57 FR 27160) on June 18, 1992. The State corrections are contained in Administratsive Order 92–13, adopted November 10, 1992, effective December 18, 1992.

All of the administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. These standards changes have been incorporated as part of the State plan.

2. Decision

OSHA has determined that the State standard amendments for Miscellaneous Auxiliary Gear, General Safety and Health Standards (1990), Rollover Protective Structures for Material Handling Equipment, Guarding of Portable Power Tools, Signaling, and Accident Prevention Signs and Tags are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. These amendments have been in effect since at least November, 1993. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA has also determined that the differences between the State and Federal amendments for Lead, Lead in Construction, General Safety and Health Standards (1994), Serious Injury Reporting, Management's Responsibility, Head Protection and Formaldehyde are minimal and that the State amendments are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. In addition, OSHA has determined that the State amendment for Retention of DOT Markings, Placards and Labels is identical to the comparable Federal standard, and therefore approves the amendment.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington

98101–3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which were promulgated in accordance with the Federal law, including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective January 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 10th day of December 1996.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 97–1564 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–006)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee.

DATES: February 11, 1997, 8 a.m. to 5 p.m.; February 12, 1997, 8 a.m. to 5 p.m.; February 13, 1997, 8 a.m. to 2 p.m.

ADDRESSES: Nassau Bay Hilton, 3000 NASA Road 1, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC, 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. the agenda for the meeting is as follows:

—Station program update
—Science and technology utilization plans and requirements
—Microgravity environment and vibration isolation
—Telescience requirements and communications capabilities
—Plans for the Office of Life and Microgravity Sciences and Applications Advisory Committee reorganization
—Other topics related to the scientific, technologies, and commercial utilization of the Space Station may be included in the meeting discussions.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 14, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–1621 Filed 1–22–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Unit No. 3 located in San Diego County, California.

The proposed amendment would replace Surveillance Requirements 3.8.1.14 and 3.8.1.15 until the SONGS Unit 3 Cycle 9 refueling outage (currently scheduled to begin on April 5, 1997), with surveillance requirements that were in force when these surveillances were last performed.

The exigent circumstances for this TS amendment request exist due to the recent discovery of the inappropriate crediting of previous test results to the post-Technical Specification Improvement Program SRs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would temporarily replace Surveillance Requirements (SRs) SR 3.8.1.14 and 3.8.1.15 with the SRs that had existed for this testing in the Technical Specifications (TSs) prior to the Technical Specification Improvement Program (TSIP).

Operation of the facility would remain unchanged as a result of the proposed changes and no assumptions or results of any accident analyses are affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would temporarily replace Surveillance Requirements (SRs) SR 3.8.1.14 and 3.8.1.15 with the SRs that had existed for this testing in the previous (pre-TSIP) TS.

Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would temporarily replace Surveillance Requirements (SRs) SR 3.8.1.14 and 3.8.1.15 with the SRs that had existed for this testing in the previous (pre-TSIP) TS. Acceptance of the pre-TSIP test, using higher generator output, would not deleteriously impact any margin of safety. The generator output of the Emergency Diesel Generator (EDG) is manually adjusted during the SRs by the operator conducting the test. Imposing the post-TSIP upper limit is less severe on the equipment since this ensures the generator output is at a lower level during the test. Similarly, operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 13, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of January 1997.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1611 Filed 1–22–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–286]

Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, Type C tests, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, to the extent that a one-time extension would be allowed for conducting Type C local leak rate tests (LLRTs) on containment isolation valves. Appendix J to 10 CFR Part 50 requires these tests to be performed at intervals no greater than 2 years. Indian Point 3 is operating under an existing exemption that allows Type C tests to be conducted at intervals of no greater than 30 months. The proposed amendment to this exemption would extend the current test interval by 4½ months.

The Need for the Proposed Action

The proposed action would allow the licensee to complete the current operating cycle without a shutdown to conduct a Type C LLRT. The licensee commenced operating on 24-month fuel cycles, as opposed to the previous 18-month fuel cycles, starting with fuel cycle 9 in August 1992. The requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, indicate that Type C LLRTs must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). In order to conform with this regulation, the licensee would have to shut down Indian Point Nuclear Generating Unit No. 3 and enter an outage before the scheduled end of each fuel cycle.

The NRC staff had previously recognized that certain regulations would not accommodate fuel cycles longer than 18-months. Consequently, the NRC staff issued Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle." This generic letter provides guidance to licensees on how to prepare requests for TS amendments and regulation exemptions which are needed to accommodate a 24-month fuel cycle. The licensee's letters of July 17, 1992, and December 23, 1992, which requested the existing exemption, followed the guidance of Generic Letter 91–04. An exemption allowing the licensee to extend the interval for Type C LLRTs was issued on February 19, 1993.

Type C testing for containment isolation valves was performed during the Restart and Continuous Improvement outage; however, due to the length of this outage the 30-month time interval will expire for some of the containment isolation valves prior to the next refueling outage scheduled for spring 1997. The requested amendment to the exemption provides for a one-time extension of up to 4 months so that valve testing may be done during the next refueling outage. Deferral of valve testing will not be used to extend plant operation beyond May 31, 1997.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed amendment to the existing exemption does not increase the probability or consequences of accidents previously analyzed and it does not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous LLRTs performed at Indian Point Nuclear Generating Unit No. 3, and has provided the methodology used in extrapolating the previous LLRT data to the proposed 34.5-month interval. The requested exemption is also based on increasing the margin to the allowed combined leakage rate limit by 25 percent. The licensee has provided a sound basis for concluding that the containment leakage rate would be maintained within acceptable limits with a maximum LLRT interval of 30 months. The NRC staff has determined the licensee's actions are consistent with the guidance provided in Generic Letter 91–04.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as

defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to the Operation of Indian Point Nuclear Generating Plant Unit No. 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on December 12, 1996, the staff consulted with the New York State official, Heidi Voelk, of the New York State Energy Research and Development Authority regarding the environmental impact of the proposed action. The state official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 1, 1996, as supplemented by letter dated December 5, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 16th day of January 1997.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1610 Filed 1–22–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 5–8, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, February 5, 1997

1:00 p.m.–1:15 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

1:15 p.m.–2:45 p.m.: Design-Bases Verification (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and of the industry regarding the acceptance criteria to be used by the staff in judging the adequacy of the design-bases information provided by the licensees in response to the 10 CFR 50.54(f) letter issued to all licensees in October 1996.

3:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. It will also discuss a proposed ACRS report to Congress on the NRC Safety Research Program, and a proposed report on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals.

Thursday, February 6, 1997

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:00 a.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal Hydraulic Phenomena Subcommittee regarding matters discussed during the December 18–19, 1996 Subcommittee meeting, and comments on the future scope and direction of the Subcommittee's review of the Westinghouse AP600 Test and Analysis Program.

9:00 a.m.–9:30 a.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Instrumentation and Control Systems and Computers Subcommittee regarding the ACRS review of the National Academy of Sciences/National Research Council Phase 2 study on digital instrumentation and control systems.

9:30 a.m.–10:15 a.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

10:30 a.m.–12:00 Noon: Shutdown Operations Risk (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding issues associated with shutdown operations risk.

Representatives of the nuclear industry will participate, as appropriate.

1:00 p.m.–1:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the December 19, 1996 EDO response to ACRS comments included in its November 22, 1996 letter regarding NRC programs for the Risk-Based Analysis of Reactor Operating Experience.

1:30 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It will also continue to discuss a proposed ACRS report to Congress on the NRC Safety Research Program, as well as proposed reports on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals, and Human Performance Program Plan.

Friday, February 7, 1997

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: Risk-Informed, Performance-Based Regulation and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Standard Review Plan Sections and Regulatory Guides for risk-informed, performance-based regulation, and related matters.

10:45 a.m.–12:15 p.m.: AEOD Spent Fuel Pool Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the Office for Analysis and Evaluation of Operational Data (AEOD) regarding the results of the study performed by AEOD on the adequacy of spent fuel pool designs.

Representatives of the nuclear industry will participate, as appropriate.

1:15 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It will also discuss a proposed ACRS report to Congress on the NRC Safety Research Program, as well as proposed reports on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals, and Human Performance Program Plan.

Saturday, February 8, 1997

8:30 a.m.–9:00 a.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:00 a.m.–1:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It will also continue to discuss a proposed report to Congress on the NRC Safety Research Program, as well as proposed reports on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals, and Human Performance Program Plan.

1:30 p.m.–2:00 p.m.: Strategic Planning (Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 1997.

[**Note:** The meeting could terminate earlier than scheduled, if the work of the Committee is completed.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public; electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. est.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC Main Menu." Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

The ACRS meeting dates for Calendar Year 1997 are provided below:

ACRS meeting No.	1997 ACRS meeting dates
439	March 6–8, 1997.
440	April 3–5, 1997.
441	May 1–3, 1997.
442	June 11–13, 1997.
443	July 9–11, 1997.
	No August meeting.
444	September 3–5, 1997.
445	October 2–4, 1997.
446	November 6–8, 1997.
447	December 4–6, 1997.

Dated: January 16, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–1605 Filed 1–22– 97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment; Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15g–3	SEC File No. 270–346	OMB Control No. 3235–0392
Rule 15g–4	SEC File No. 270–347	OMB Control No. 3235–0393
Rule 15g–5	SEC File No. 270–348	OMB Control No. 3235–0394
Rule 15g–6	SEC File No. 270–349	OMB Control No. 3235–0395
Rule 15g–7(a)	SEC File No. 270–350	OMB Control No. 3235–0396
Rule 17Ac2–1 and Form TA–1	SEC File No. 270–95	OMB Control No. 3235–0084

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summaries of collections for public comment.

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with

transactions in certain low-priced, over-the-counter securities. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rules 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rule 15g–6 requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. It is estimated that approximately 270 respondents incur an average burden of 90 hours annually to comply with the rule.

Rule 15g–7(a) would require brokers and dealers that effect transactions in penny stocks and are the only market makers with respect to such securities to disclose this fact in connection with such transactions. It is estimated that approximately 270 respondents would incur an average burden of 50 hours annually to comply with the rule.

Rule 17Ac2–1 and Form TA–1 is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that approximately 359 respondents will incur an average burden of 538.5 hours annually to comply with the rule and form.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: January 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1561 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22472; File No. 812–10402]

American Odyssey Funds, Inc., et al.

January 15, 1997.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Odyssey Funds, Inc. ("AOF"), American Odyssey Funds Management, Inc. ("AOFMI"), and certain life insurance companies and their separate accounts investing now or in the future in AOF.

Relevant 1940 Act Sections: Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek exemptive relief to the extent necessary to permit shares of AOF to be sold to and held by separate accounts ("Separate Accounts") funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") or qualified pension and retirement plans outside the separate account context ("Plans").

Filing Date: The application was filed on October 16, 1996.

Hearing and Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. or February 10, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Christopher E. Palmer, Esq., Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicant's Representations

1. AOF is a Maryland corporation registered pursuant to the 1940 Act as an open-end, management investment company. AOF currently consists of six separate investment portfolios and may in the future issue shares of additional portfolios and/or multiple classes of shares of each portfolios (such existing and future portfolios and/or classes of shares of each, "Funds").

2. AOFMI, the investment adviser for AOF, is a corporation organized pursuant to the laws of New Jersey and is registered as an investment adviser pursuant to the Investment Advisers Act of 1940. AOF has entered into agreements with subadviers who handle the day-to-day management of each individual Fund (the "Subadvisers").

3. Shares of the Funds are currently sold to separate accounts of The Travelers Insurance Company, which are registered as unit investment trusts pursuant to the 1940 Act in connection with the issuance of variable contracts.

4. AOF may offer shares of its existing and future Funds to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Travelers Group Inc. in order to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts ("Contracts").

5. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements

under the federal securities laws. The role of AOF with respect to the Separate Accounts and the Plans will be limited to that of offering its shares to the Separate Accounts and the Plans and fulfilling the conditions provided in the application.

6. AOF also offers shares to the trustees (or custodians) of Plans. The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws.

7. AOFMI will not act as an investment adviser to any of the Plans which will purchase shares of AOF. It is possible that any one of the Subadvisers may act as an investment adviser to the Plans which may invest in AOF. However, Applicants represent that none of the assets of any Plan advisory account managed by a Subadviser will be invested in AOF. The Subadvisers are not permitted to advise such Plans to invest in AOF.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and miles thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request that the Commission issue and order pursuant to Section 6(c) of the 1940 Act exemption them from Sections 9(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 63–3T(b)(15) thereunder to the extent necessary to permit shares of AOF to be offered and sold to, and held by: (1) Both variable annuity separate accounts and variable life insurance separate accounts of the same life insurance company or of affiliated life insurance companies ("mixed funding"); (2) separate accounts of unaffiliated life insurance separate accounts) "shared funding"); and (3) trustees of Plans

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 63–2(b)(15) under the 1940 Act provides partial exemptions from Section 9(a), 13(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 63–2(b)(15) and available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated or unaffiliated life insurance company. Also, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

4. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies.

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled premium variable life insurance contracts of flexible premium variable life insurance contracts, or both; or which also offer their share to variable annuity separate accounts of the life insurer of of an affiliated life insurance company" (emphasis added). Thus, Rule 6e–(T)(b)(15) grants an exemption if the underlying management investment company engages in mixed funding, but not if it engages in share funding or sells its shares to Plans.

6. Applicants state that the current tax law permits AOF to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code ("Code") imposes certain diversification requirements on the underlying assets of the Contracts invested in AOF. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirements, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Tres. Reg. § 1–817–5(f)(3)9iii).

7. The promulgation of Rules 63–2 and 63–3(T) preceded the issuance of these treasury regulations. Applicants state that, given the ten-current tax law, the sale of shares of the same investment company to both Separate Accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–3(b)(15) and 6e–3(T)(b)(15).

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These rules provide: (1) That the eligibility restrictions of Section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (2) that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants assert that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9, when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940

Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies

10. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and share funding and sales to Plans. Applicants submit that sales to those entities do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have not involvement in the underlying fund.

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and (15(b) of the 1940 Act to the extent that these sections have been deemed by the Commission to require pass-through voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(15)(b)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company, or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance may disregard the voting instructions of contract owners if the contract owners initiate any change is such insurance company's investment objectives, principal underwriter, or investment adviser provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

13. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment adviser or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemption necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of AOF shares to Plans will not have any impact on the relief requested in this regard. Shares of AOF sold to Plans will be held by the trustee(s) or custodian(s) of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") or applicable provisions of the Code. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions state in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA permits but does not require pass-through voting to the participants in Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

15. Some Plans, however may provide participants with the right to give voting instructions. However, Applicants note that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Therefore, Applicants submit that the purchase of AOF shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or greater problem.

17. Applicants submit that shared funding by unaffiliated insurers, in this respect, is not different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for difference in state regulatory requirements. In any event, the conditions proposed below (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in AOF. This requirement will be provided for in agreements that

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will be entered into by Participating Insurance Companies with respect to their participation in AOF.

18. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

19. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that Fund and no charge or penalty will be imposed as a result of such withdrawal.

20. Applicants submit that investment by the Plans in any of the Funds similarly will not increase the chance of conflict. Applicants assert that the likelihood that voting instructions of insurance company separate account holders will be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Funds. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans arises, the Plans may simply redeem their shares and make alternative investments.

21. Applicants state that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans, long-term investment, coincides with that of the Contracts and should not increase the potential for conflicts. Applicants state that each Fund will be managed to attempt to achieve the investment objective of the Fund, and not to favor or disfavor any particular Participating Insurance Company or type of Contract.

22. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of AOF. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Funds serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and insurance company separate accounts to share the same underlying investment company. Applicants assert that, therefore, neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder recognize any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

24. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem share of AOF at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that The Funds will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the respective Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement.

26. Applicants submit that the ability of the Funds to sell their respective share directly to Plans does not create a "senior security," as that term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans, or Contract owners under Contracts, the Plans and the Separate Accounts have rights only with respect to their respective share of AOF. They can redeem such shares only at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the Contract owners of the Separate Accounts and the participants under the Plans with respect to the state insurance commissioner's veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their Separate Accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Plans can make the decision quickly and implement the redemption of their shares from a Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Fund.

28. Applicants submit that mixed and shared funding should provide benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of AOFMI and the Subadvisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets

available for investment by AOF, thereby promoting economies of scale, by permitting increased safety through greater diversification or by making the addition of new Funds more feasible. Therefore, making AOF available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors ("Board") of the Funds shall consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended for: (a) A period of 45 days if the vacancy or vacancies may be filled by the remaining directors on the Board; (b) a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all the Separate Accounts investing in the Funds and the Plan participants investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, AOFMI (or any other investment adviser of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of a Fund (collectively, the "Participants") will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies investing in the Funds under their agreements governing participation therein, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of the disinterested directors of such Board, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from AOF or any Fund and reinvesting such assets in a different investment medium, which may include another Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, then that Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination that a material irreconcilable conflict exists and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing their participation in the Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants. For purposes of this Condition 4, a majority of the disinterested directors of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or AOFMI be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially and

adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by this Condition 4 to establish a new funding medium for such Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The determination by any Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from contract owners. Each Participating Insurance Company will also vote shares for which it has not received timely voting instructions from contract owners as well as shares which the Participating Insurance Company itself owns, in the same proportion as those shares for which voting instructions from contract owners are timely-received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Funds. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict of interest, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) AOF is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in AOF and the interests of Plans investing in AOF may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Fund) and, in particular, each Fund will either provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested by the application summarized in this notice, then the Funds and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent that such rules are applicable.

11. The Participants, at least annually, will submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may fully carry out the obligations imposed upon them by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participants to provide these reports, materials, and data upon the reasonable request of the Boards, shall be a contractual obligation of all Participants under their agreements governing their participation in the Funds.

12. If a Plan should ever become a holder of ten percent or more of the assets of a Fund, such Plan will execute a participation agreement with the applicable Fund. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1558 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 27, 1997.

A closed meeting will be held on Tuesday, January 28, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 28, 1997, at 10:00 a.m., will be:

Injunction of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 21, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1819 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38169; File No. SR–CBOE–96–72]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to RAES Order Size for Interest Rate Options

January 14, 1997.

On November 26, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 23.7, "RAES," to increase the maximum size of interest rate option orders eligible for entry into the CBOE's Retail Automated Execution System ("RAES") from 10 or fewer contracts to 100 or fewer contracts.

The proposed rule change was published for comment in the **Federal Register** on December 12, 1996.[3] No comments were received on the proposal.[4]

The CBOE proposed to amend CBOE Rule 23.7(ii) to increase the maximum size of orders in CBOE interest rate options which are eligible for execution through RAES from 10 or fewer contracts to 100 or fewer contracts. The proposed increase in the maximum size of RAES-eligible interest rate option orders will apply to all classes of interest rate options.[5]

The proposed rule change is designed to allow the Exchange to compete effectively with other markets that trade interest rate derivatives.[6] According to the CBOE, much of the trading in interest rate derivatives currently occurs in markets where transaction sizes are larger than are eligible for automatic execution through RAES at the CBOE.

Specifically, the CBOE notes that because the TYX interest rate contract offered to the CBOE represents approximately one-tenth (1/10th) of the value of the underlying government securities, the current eligible order limit of ten contracts is essentially equivalent in value to only one U.S. Treasury Bond option. The Exchange believes that the proposed increase in the maximum size of orders for CBOE interest rate options, such as the TYX, that are eligible for execution through RAES (essentially a "10-lot" in the Treasury Bonds themselves), will provide a more meaningful limit for institutional customers.

The CBOE believes that the proposed rule change will not impose any significant burdens on the operation and capacity of RAES, but instead will increase the efficiency of the Exchange's operations by expanding the number of orders that are eligible for automatic execution and by reducing manual processing. Finally, the CBOE believes that the rule change will not have a negative impact on the capacity, security or integrity of RAES.

By expanding the maximum size of orders in CBOE interest rate options which are eligible for execution through RAES from 10 or fewer contracts to 100 or fewer contracts, the Exchange believes that the proposed rule change will better serve the needs of the CBOE's public customers and the Exchange members who make a market for such customers. The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and Section 11A.[7] Specifically, the Commission finds that the CBOE's proposal will facilitate transaction in securities and protect investors and the public interest.[8] The Commission believes that providing for the automatic execution of larger customer orders in interest rate options will provide for more efficient handling and reporting of orders in interest rate options, thereby improving order processing and turnaround time.[9] In addition, the Commission believes that public customers may benefit from the proposal because their interest rate option orders for up to 100 contracts may be executed automatically at the displayed market quote. Public customers also will have the benefit of receiving nearly instantaneous executions and confirmations for interest rate option orders of up to 100 contracts.

The CBOE has stated that the proposal will allow the Exchange to compete more effectively with other markets that trade interest rate derivatives. Accordingly, the Commission believes that the proposal may help the CBOE to attract order flow, thereby increasing the depth and liquidity of the CBOE's market for interest rate options, to the benefit of all market participants. In addition, the proposal may benefit investors by providing them with additional financial products with which to implement their trading strategies.

The Commission notes that it has approved proposals by other options exchanges allowing comparable increases in the number of option contracts eligible for automatic execution.[10]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1996).

[3] See Securities Exchange Act Release No. 38022 (December 5, 1996), 61 FR 65422.

[4] The CBOE supplemented its proposals with a letter explaining that the proposed rule change is designed to encourage customer demand in interest rate options and to allow the CBOE to compete effectively with markets for other interest rate derivatives, which fill orders to a depth of 100 contracts. See Letter from Debora E. Barnes, Senior Attorney, CBOE, to Yvonne Fraticelli, Attorney, Options and Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated December 13, 1996 ("December 13 Letter").

[5] Currently, the CBOE offers four interest rate options, including the following: IRX (3-month Treasury Bill); FVX (5-year Treasury Note); TNX (10-year Treasury Note); and TYX (30-year Treasury Bond).

[6] See December 13 Letter, *supra* note 4.

[7] 15 U.S.C. 78f and 78k–1 (1988).

[8] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] The CBOE expects that, initially, the increased RAES order size eligibility will be utilized only for TYX options. Telephone conversation between Debora E. Barnes, Senior Attorney, CBOE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, on January 13, 1997.

[10] See *e.g.*, Securities Exchange Act Release Nos. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (order approving File No. SR–PHLX–95–39) (increasing the maximum automatic execution order size eligibility for public customer orders for all equity and index options to 50 contracts); 33476 (January 13, 1994), 59 FR 3140 (January 20, 1994) (order approving File No. SR–Amex–93–33) (increasing the size of Japan Index option orders eligible for automatic execution to 99 contracts); 30290 (January 27, 1992), 57 FR 4072 (February 3, 1992) (order approving File No. SR–Amex–91–27)

Continued

In addition, the Commission has approved a CBOE proposal to increase to 100 the firm quote contract size minimum applicable to Designated Primary Market Makers in classes of interest rate options for which Public Automated Routing System ("PAR") workstations are available.[11] The Commission believes that the CBOE's current proposal is consistent with the Exchange's earlier proposal to increase the firm quote contract size for classes of interest rate options for which PAR workstations are available.

Finally, based on representations from the CBOE, the Commission believes that increasing the size of the interest rate option orders eligible for execution through RAES will not expose the CBOE's options markets to risk of failure or operational breakdown. In particular, the CBOE represents that the proposal will not impose significant burdens on the operation and capacity of RAES, nor will it have a negative impact on the security or integrity of RAES.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–96–72) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1560 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38175; File No. SR–NASD–96–55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 of Proposed Rule Change Relating to Primary Market Maker Standards

January 15, 1997.

I. Introduction

On December 23, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder[2] a proposed rule change to waive the Nasdaq Primary Market Maker standards for the remainder of the current pilot period of the Nasdaq Short Sale Rule.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 38091 (December 27, 1996), 62 FR 778 (January 6, 1997) ("Notice of Proposed Rule Change").[4] On January 10, 1997, the NASD submitted Amendment No. 1 to waive the Nasdaq Primary Market Maker standards on a phase-in schedule.[5] This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The NASD has proposed to suspend the use of the Primary Nasdaq Market Maker ("PMM") qualification criteria found in Rule 4612 (a) and (b) of the Nasdaq market maker Requirements of the NASD Rules. Under existing Rule 4612, a registered Nasdaq market maker may be deemed to be a PMM in a National Market Security if the market maker meets two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify as a PMM if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock. The review period for meeting any of these criteria is one calendar month. The PMM qualification criteria is reviewed by Nasdaq to determine which Nasdaq market makers will receive the PMM designation. The PMM designation allows a Nasdaq market maker to avail itself of the short sale exemption under NASD Rule 3350(c)(1). The NASD has proposed, on a phase-in basis, to suspend the PMM qualification criteria for Nasdaq National Market ("NNM") securities and, accordingly, deem all registered market makers in such securities a PMM.

III. Discussion

In August 1996, the Commission adopted a new rule and amendments to an existing rule that are scheduled to go into effect on January 20, 1997.[6] Upon commencement of the Order Execution Rules, over-the-counter ("OTC") market makers will be representing certain customer limit orders in their quotations and frequently executing customer limit orders in a manner very different from today. Moreover, under an amendment to the Quote Rule, electronic communications networks ("ECNs") will be entering quotations and executions in the Nasdaq Stock Market in a manner which heretofore was reserved for registered market makers.[7] The Commission has acknowledged that the Order Execution Rules represent a major change in the way OTC market makers display and execute orders in the Nasdaq Stock Market.

While the Order Execution Rules are anticipated to contribute to more vigorous quotation competition, the additional quotations will alter the data used in determining the PMM designation. A quote reflecting a customer limit order will be indistinguishable from a proprietary quote of a market maker. Inclusion of customer limit orders in a market maker's quote can narrow the market maker's spread, as well as the number of quotation changes the market maker effects. The display of ECN prices into the Nasdaq montage, which also will

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(providing for automatic execution of public customer orders of up to 100 MidCap 400 Index option contracts); 25950 (July 28, 1988), 53 FR 29293 (August 3, 1988) (order approving File No. SR–Amex–87–20) (increasing the number of Institutional Index options eligible for automatic execution to 100 contracts).

[11] See Securities Exchange Act Release No. 34876 (October 21, 1994), 59 FR 54226 (October 28, 1994) (order approving File No. SR–CBOE–94–17).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 1, 1996, the Commission extended the pilot period of the NASD Short Sale Rule, Rule 3350, through October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996) 61 FR 57934 (November 8, 1996).

[4] The Nasdaq Board has unanimously approved the filing of the proposed rule change regarding the suspension of Primary Market Maker standards. See Letter to Holly Smith, Associate Director, Division of Market Regulation, SEC, from Eugene A. Lopez, the Nasdaq Stock Market, Inc., dated January 9, 1997.

[5] See Letter to Holly Smith, Associate Director, Division of Market Regulation, SEC, from Robert E. Aber, The Nasdaq Stock Market, Inc., dated January 14, 1997.

[6] See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) adopting Rule 11Ac1–4 ("Limit Order Display Rule") and amendments to Rule 11Ac1–1 ("Quote Rule") (collectively the "Order Execution Rules"). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (revising the effective date of the Order Execution Rules until January 20, 1997).

[7] Rule 11Ac1–1(c)(5) requires a market maker to display in its quote any better priced order the market maker places into an electronic communications network ("ECN Amendment"). Alternatively, the ECN Amendment provides an exception to the market maker's display obligation that depends upon the ECN itself displaying its best-priced orders, entered therein by a market maker or specialist, and allowing brokers and dealers to access such orders ("ECN Display Amendment").

include customer limit orders, will further influence the data that Nasdaq calculates in determining a market maker's status as a PMM.

As a result, the quote conditions on which the PMM standards are based will change significantly and will no longer reliably reflect the quality of the market provided by the market maker, making the current PMM standards unpredictable for market makers. Without such PMM designation, a Nasdaq market maker is not permitted to effect a short sale in a NNM Security at or below the current best bid when the current best bid displayed by Nasdaq is below the preceding best bid in the security.[8]

The inability of a market maker to predict and obtain the PMM designation, and therefore sell short as part of its bona fide market making activity, may cause the withdrawal of some market makers thereby reducing liquidity and continuity in the market. Moreover, the Commission believes that a market maker could be deterred from accepting customer limit orders by the risk of losing its PMM designation, which consequently could impede the effectiveness of the Limit Order Display Rule. The Commission further believes that the continued use of the PMM qualification criteria, when the data used is not an accurate assessment of the maket marker's own independent quotation, would be inequitable and cause an unintended burden on competition. The Commission concludes that the suspension of the current NASD PMM qualification criteria on a temporary basis is consistent with the Act, and for the smooth implementation of the Order Execution Rules.

The Order Execution Rules contain phase-in periods to ensure an orderly transition and to permit market participants an opportunity to obtain experience over a manageable set of securities.[9] Consequently, the suspension of PMM qualification criteria will also operate on a phase-in schedule that parallels the phase-in period of the ECN Amendment. On the first business day of the month following each phase-in period of the ECN amendment, the PMM qualification criteria will be suspended and all registered Nasdaq market makers in such securities will be designated a PMM. For example, on February 3, 1997 all Nasdaq registered market makers in the first fifty securities being phased-in under the ECN Amendment, effective January 20, 1997, will be a designated PMM.[10] The Commission expects the NASD to develop new standards as soon as practicable after the Order Execution Rules become effective. As a result, the Commission is approving the rule change on a pilot basis through July 1, 1997.

[8] See NASD Rule 3350.

[9] See Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996), 38110 (January 2, 1997); 62 FR 1279 (January 9, 1997); and 38139 (January 8, 1997) (outlining the phase-in dates for the Limit Order Display Rule and the ECN Amendment).

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–55 and should be submitted [insert date 21 days from date of publication].

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market. The Commission further believes that maintaining the existing PMM qualification criteria beyond January 20, 1997 will likely frustrate the operation of the Order Execution Rules. Accordingly, the Commission finds good cause for approving the proposed rule change and Amendment No. 1 to suspend the PMM qualification criteria prior to the thirtieth day after date of publication of notice of filing thereof in the **Federal Register**.

[10] See Letter from S. William Broka, Senior Vice President, Trading & Market Service, The Nasdaq Stock Market, Inc., dated December 23, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (NASD–96–55) be and hereby is approved, with the first phase-in effective February 1, 1997, until July 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1559 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 300.30–3(a)(12) (1996).

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1996, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Acting Agency Clearance Officer no later than March 24, 1997.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend a currently approved collection of information (OMB control number 3316–0100).

Title of Information Collection: Comparison of Factors Influencing Minority and Non-minority Representation in State and Federal Natural Resource Professions.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local

governments, Federal agencies or employees.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 500.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: TVA is cooperating with 22 other Federal and state agencies to investigate selected factors which may influence minority and non-minority representation in state and Federal agency natural resource professions. A survey of natural resource professions in the Southeastern United States will be conducted to determine (1) the diversity in the workforce and job responsibilities, (2) factors that promote or preclude job satisfaction, (3) educational backgrounds attained and needed by inservice professions, and (4) conceptual framework for career selection by and retention of minorities in natural resource professions. Results of the study may provide strategies for state and Federal agencies to refine minority recruitment and retention programs, personnel planning, and career counseling.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 97–1585 Filed 1–22–97; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 1996 [FR 61, page 54833].

DATES: Comments must be submitted on or before February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Suspected Unapproved Part Notification.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0552.

Form Number: FAA Form 8120–11.

Affected Public: Manufacturers, repair station operators, owner/operators.

Abstract: The information collected on the FAA Form 8120–11 will be reported by manufacturers, repair station operators, owner/operators, or the general public who wish to report suspected unapproved parts to the FAA. The notification information is collected, correlated, and used to determine if an unapproved part investigation is in fact warranted.

Estimated Annual Burden: The total annual burden is 60 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 16, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–1581 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

Maglev Study Advisory Committee; Notice of Second Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of second meeting of the Maglev Study Advisory Committee.

SUMMARY: As required by Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and 41 CFR 101–6.1015(b), the Federal Railroad Administration (FRA) gives notice of the second meeting of the Maglev Study Advisory Committee ("MSAC"). The purpose of the meeting is to advise DOT/FRA on the Congressionally mandated study of the near-term applications of maglev technology in the United States.

DATES: The second meeting of the MSAC is scheduled for 8:30 a.m. EST on Thursday, February 6, 1997. Adjournment is expected prior to 5:00 pm. Decisions with respect to future meetings will be made at this meeting, and from time to time thereafter. Notice of future meetings will be published in the **Federal Register**.

ADDRESSES: The second meeting of the MSAC will be held in the 7th floor Conference Room at FRA Headquarters, 1120 Vermont Avenue NW, Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Those with special needs should inform Mr. Mongini 5 days in advance of the meeting so that appropriate facilities can be provided.

FOR FURTHER INFORMATION CONTACT: Arrigo Mongini, Deputy Associate Administrator for Railroad Development, FRA RDV–2, 400 7th Street, S.W., Washington, D.C. 20590, (202)–632–3286.

Jolene M. Molitoris,

Administrator.

[FR Doc. 97–1555 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–06–P

Surface Transportation Board

[STB Finance Docket No. 33335]

Reading Blue Mountain and Northern Railroad Company; Corporate Family Transaction Exemption; East Mahanoy & Hazleton Railroad Company

Reading Blue Mountain and Northern Railroad Company (RBMN) and East Mahanoy & Hazleton Railroad Company (EMHR),[1] Class III railroads, have jointly filed a verified notice of exemption. The

[1] RBMN and EMHR are wholly owned by Andrew M. Muller, Jr. RBMN owns and operates approximately 235 miles of rail line in the Commonwealth of Pennsylvania. EMHR owns and operates approximately 10 miles of rail line in the Commonwealth of Pennsylvania. The lines of RBMN and EMHR connect through overhead trackage rights over lines owned by Consolidated Rail Corporation.

exempt transaction is a merger of EMHR into RBMN.

The earliest the transaction could be consummated was January 9, 1997, the effective date of the exemption (7 days after the exemption was filed).

EMHR is currently not handling any traffic. If traffic becomes available and operations are resumed on the EMHR lines, RBMN represents that it will be able to handle such operations. The merger will reduce administrative expenses associated with managing two corporate entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33335, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: January 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1612 Filed 1–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Data Management

OMB Number: 1505–0018.

Form Number: Treasury International Capital Form BL–2/BL–2(SA).

Type of Review: Extension.

Title: Custody Liabilities of Reporting Bank, Brokers and Dealers to Foreigners, Payable in Dollars.

Description: Form BL–2/BL–2(SA) is required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on international capital movements, including data on the custody liabilities of banks, dollar claims of U.S. banks, other depository institutions, brokers and dealers, *vis-a-vis* foreigners, payable in dollars.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 5 hours each.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 9,000 hours.

OMB Number: 1505–0020.

Form Number: Treasury International Capital Form BQ–2.

Type of Review: Extension.

Title: Treasury International Capital Form BQ–2, Part 1—Liabilities to, and Claims.

Description: Form BQ–2 is required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on U.S. international capital movements, including data on liabilities and claims, payable in foreign currencies, of banks, other depository institutions, brokers and dealers, and their domestic customers *vis-a-vis* foreigners.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 290.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 4,640 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1566 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–25–P

Submission for OMB Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Foreign Assets Control

OMB Number: 1505–0151.

Form Number: None.

Type of Review: Extension.

Title: UNITA (Angola) Sanctions Regulations.

Description: The UNITA (Angola) Sanctions Regulations implement the President's declaration of a national emergency, E.O. 12865, September 26, 1993, and imposition of sanctions against the National Union for the Total Independence of Angola.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 5.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1567 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–25–P

Submission for OMB Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0206.
Form Number: ATF F 5110.41.
Type of Review: Extension.
Title: Miscellaneous Requests and Notices for Distilled Spirits plants.
Description: The information provided by applicants assists ATF in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant operations. However, both statutes and regulations allow variances from regulations, and this information gives data to permit a variance.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 70,000.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,000 hours.

OMB Number: 1512–0523.
Form Number: ATF F 5300.27.
Type of Review: Extension.
Title: Certification of Compliance wit State and Local Law.
Description: Applicants for a Federal firearms license will submit a certification that they are in compliance with State and local laws and that they have provided notification of his intent to conduct a firearms business to the chief law enforcement officer in the locality of the business premises.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 70,000.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,000 hours.

OMB Number: 1512–0524.
Form Number: ATF F 5300.27.
Type of Review: Extension.
Title: Federal Firearms Licensee Theft/Loss Report.
Description: Thefts or losses of firearms from the inventory or collection of a Federal firearms licensee must be reported to the Secretary of Treasury and the appropriate local authorities within 48 hours of discovery. This form contains the minimum information necessary for ATF to initiate criminal investigations.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 24 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,600 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1568 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Submission to OMB for Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Announcement 96– Tip Reporting Alternative Commitment (Hairstyling Industry).
Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 3,200.
Estimated Burden Hours Per Respondent/Recordkeeper: 15 hours.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 47,733 hours.

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Announcement 96– Tip Rate Determination Agreement (Gaming Industry).
Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper: 43 hours.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 4,342 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1569 Filed 1–22–97; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0736.
Regulation Project Number: LR–274–81 Final.
Type of Review: Extension.
Title: Accounting for Long-Term Contracts.
Description: These recordkeeping requirements are necessary to determine whether the taxpayer properly allocates indirect contract costs to extended period long-term contracts under the regulations. The recordkeeping requirement is effective for taxable years beginning after 1982. The information will be used to verify the taxpayer's allocations of some indirect costs.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 10 hours, 1 minute.
Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 10,010 hours.
OMB Number: 1545–1049.
Regulation Project Number: IA–7–88 Final, T.D. 8379.
Type of Review: Extension.
Title: Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.
Description: The final regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 4.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–1570 Filed 1–22–97; 8:45 am]
BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

January 15, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0430.
Form Number: IRS Form 4810.
Type of Review: Extension.
Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Description: Form 4810 is used to request a prompt assessment under Internal Revenue Code (IRC) 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.
Respondents: Business or other for-profit, Individuals or households, Farms, Federal Government.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion, Other (as necessary).
Estimated Total Recordkeeping Burden: 2,000 hours.
OMB Number: 1545–1120.
Regulation Project Number: CO–18–90 Final.
Type of Review: Extension.
Title: Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.
Description: The final regulations provide rules for the treatment of options under Internal Revenue Code (IRC) section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 75,150.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours, 56 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 220,575 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–1571 Filed 1–22–97; 8:45 am]
BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

January 15, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1221.
Regulation Project Number: EE–147–87 Final.
Type of Review: Extension.
Title: Qualified Separate Lines of Business.
Description: The affected public includes employers who maintain qualified employee retirement plans. Where applicable, the employer must furnish notice to the IRS that the employer treats itself as operating qualified separate lines of business and some may request an IRS determination that such lines satisfy administrative scrutiny.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 685.
Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours, 55 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 2,443 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1572 Filed 1–22–97; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report.

DATES: Written comments should be received on or before March 24, 1977 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Annual Firearms Manufacturing and Exportation Report.
OMB Number: 1512–0030.
Form Number: ATF F 4483–A (5300.11).
Abstract: ATF collects this data for the purposes of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act (26 U.S.C. 5801–5872) are met.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,016.
Estimated Time Per Respondent: 45 minutes.
Estimated Total Annual Burden Hours: 762.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1539 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Licensed Firearms Dealers Records of Acquisition, Disposition, and Supporting Data.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Licensed Firearms Dealers Records of Acquisition, Disposition, and Supporting Data.
OMB Number: 1512–0490.
Form Number: ATF F 4473 LV Parts I & II (5300.24, 5300.25).
Recordkeeping Requirement ID Number: ATF REC 7570/2.
Abstract: This form is used by low volume firearms dealers to record acquisition and disposition of firearms and to determine the eligibility of transferees to receive firearms. It becomes part of a licensee's permanent record and may be used to trace firearms. The record retention requirement for this information collection is 3 years.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Individuals or households, business or other for-profit.
Estimated Number of Respondents: 92,750.
Estimated Time Per Respondent: 6 minutes per form and 5 minutes for the dealer to keep each record.
Estimated Total Annual Burden Hours: 171,588.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1540 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

OMB Number: 1512–0059.

Form Number: ATF F 5120.29.

Abstract: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions for the labeling and manufacturing. The form is also used to audit a product.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other-profit.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,200.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1541 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notices Relating To Payment of Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.

OMB Number: 1512–0512.

Abstract: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. The tax revenue will be protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1 hour.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1542 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Records and Monthly Report of Production Operations.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Records and Monthly Report of Production Operations.

OMB Number: 1512–0205.

Form Number: ATF F 5110.40.

Recordkeeping Requirement ID Number: ATF REC 5110.40.

Abstract: The information collected is used to account for the proprietor's tax liability, adequacy of the bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis. The record retention requirement for this information collection is 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,600.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1543 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants Warehousing Records and Reports.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Barry Fields, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants Warehousing Records and Reports.

OMB Number: 1512–0192.

Form Number: ATF F 5110.11.

Recordkeeping Requirement ID Number: ATF REC 5110/02.

Abstract: The information collected is used to account for proprietor's tax ability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis. The record retention requirement for this information collection is three years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 230.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,520.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1544 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Wines Exported.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION

Title: Drawback on Wines Exported.

OMB Number: 1512–0082.

Form Number: ATF F 1582–A (5120.24).

Abstract: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 900.

Estimated Time Per Respondent: 1 hour and 7 minutes.

Estimated Total Annual Burden Hours: 2025.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1545 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Make and Register a Firearm.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Elvenia A. Jones-Ard, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Application to Make and Register a Firearm.

OMB Number: 1512–0024.

Form Number: ATF F 1 (5320.1).

Abstract: The form is used by the public when applying to make a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility for approval of the request.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 1271.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 5084.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1546 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Authorization to Furnish Financial Information and Certificate of Compliance (Right to Financial Privacy Act of 1978).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION

Title: Authorization to Furnish Financial Information and Certificate of Compliance (Right to Financial Privacy Act of 1978).

OMB Number: 1512–0038.

Form Number: ATF F 5030.6.

Abstract: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other-profit.

Estimated Number of Respondents: 2000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1547 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Tax-Free Alcohol.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol.

OMB Number: 1512–0335.

Recordkeeping Requirement ID Number: ATF REC 5150/4.

Abstract: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4444.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2222.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1548 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Wine.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Relating to Wine

OMB Number: 1512–0292

Recordkeeping Requirement ID Number: ATF REC 5120/2

Abstract: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1650.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 825.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1549 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed Of.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8310.

SUPPLEMENTARY INFORMATION:

Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed Of

OMB Number: 1512–0247.

Recordkeeping Requirement ID Number: ATF REC 5000/2.

Abstract: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law. The record retention requirement for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1550 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Release and Receipt of Imported Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Scott Mendoza, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War

OMB Number: 1512–0019.

Form Number: ATF F 6A (5330.3C).

Abstract: The information collection is needed to verify importation of firearms, ammunition and implements of war. ATF F 6A (5330.3C) is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S. and aliens immigrating to the United States.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 8,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1551 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8320.

SUPPLEMENTARY INFORMATION:

Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

OMB Number: 1512–0006.

Form Number: ATF F 3310.4.

Abstract: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 8,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the qualilty, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1552 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

Applications—Volatile Fruit-Flavor Concentrate Plants.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

OMB Number: 1512–0046.

Form Number: ATF F 27–G.

Recordkeeping Requirement ID Number: ATF REC 5520/2.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. The record retention requirement for this information collection is 98 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 30.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1553 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Renewal of Explosives License or Permit.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Renewal of Explosives License or Permit.

OMB Number: 1512–0131.

Form Number: ATF F 5400.14/5400.15, Part III.

Abstract: This information collection is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 825.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1554 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Customs Service

[T.D. 97–4]

IRS Interest Rates Used To Calculate Interest on Overpayments and Underpayments of Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the Internal Revenue Service interest rates used, since July 1, 1975, to calculate interest on overdue accounts and refunds of Customs duties. This notice also advises the public that for the quarter beginning January 1, 1997, the interest rates will not change from the 8 percent for overpayments and 9 percent for underpayments established July 1, 1996. This notice is published for the convenience of the importing public and Customs personnel.

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EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harry Bunn, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1252.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter. The rates of interest for the second quarter of fiscal year (FY) 1997 (the period of January 1–March 31, 1997) will continue to remain the same as those that were published for the quarter beginning July 1, 1996: 8 percent for overpayments and 9 percent for underpayments. These rates will remain in effect through March 31, 1997, and are subject to change for the third quarter of FY–1997 (the period of April 1–June 30, 1997).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, since July 1, 1975 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)
070175	013176	9	9
020176	013178	7	7
020178	013180	6	6
020180	013182	12	12
020182	123182	20	20
010183	063083	16	16
070183	123184	11	11
010185	063085	13	13
070185	123185	11	11
010186	063086	10	10
070186	123186	9	9
010187	093087	9	8
100187	123187	10	9
010188	033188	11	10
040188	093088	10	9
100188	033189	11	10
040189	093089	12	11
100189	033191	11	10
040191	123191	10	9
010192	033192	9	8
040192	093092	8	7
100192	063094	7	6
070194	093094	8	7
100194	033195	9	8
040195	063095	10	9
070195	033196	9	8
040196	063096	8	7
070196	033197	9	8

Dated: January 15, 1997.

George J. Weise,

Commissioner of Customs.

[FR Doc. 97–1556 Filed 1–22–97; 8:45 am]

BILLING CODE 4820–02–P

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Corrections

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Chapter XXV

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

Health Insurance Portability

Correction

In proposed rule document 96–33293, beginning on page 68697, in the issue of Monday December 30, 1997, make the following correction.

On page 68697, in the second column, in the second line from the bottom, the HCFA e-mail address "iritf@fhcfa.gov" should read "iritf@hfca.gov".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

[Docket No. 96M–0311]

Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)

Correction

In notice document 96–24448 beginning on page 49920 in the issue of Monday, September 23, 1996 make the following corrections:

1. On page 49920, in the second column, under **SUPPLEMENTARY INFORMATION** in the third line, "germ" should read "term".

2. On page 49925, in the second column, in paragraph *3.5. Individual Source Animal Screening and Qualification*, in the first line, "indivudal" should read "individual".

3. On page 49931, in the first column, in the first line, "Macques" should read "Macaques".

4. On the same page, in the same column, in reference number 48, in the first line, "Phllips-Conroy", should read "Phillips-Conroy".

5. On the same page, in the second column, in reference number 56, in the fourth line, "Transplanation" should read "Transplantation".

BILLING CODE 1505–01–D

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federal register

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Part II

Department of Housing and Urban Development

Fiscal Year 1997 Portfolio Reengineering Demonstration Program Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4162–N–01]

Fiscal Year 1997 Portfolio Reengineering Demonstration Program Guidelines

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Demonstration Program and Initial Guidelines.

SUMMARY: This Notice provides initial guidelines to implement a Demonstration Program authorized by the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1997 (Pub. L. No 104–204, 110 Stat. 2874, approved September 26, 1996) ("HUD FY 1997 Appropriations Act"). The Demonstration Program is directed at FHA-insured multifamily projects that have project-based Section 8 contracts with above market rents. The Demonstration Program is intended to explore various approaches for restructuring mortgages and taking other related actions in order to reduce the risk to the FHA insurance fund and lower subsidy costs while preserving housing affordability and availability.

FOR FURTHER INFORMATION CONTACT: George C. Dipman, Demonstration Program Coordinator, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4000; Room 6106; Telephone (202) 708–3321. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY). Internet address: PRE@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The proposed information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The Department has requested emergency clearance of the collection of information described below:

(1) *Title of the Information collection proposal:* Fiscal Year 1997 Portfolio Reengineering Demonstration Program.

(2) *Summary of the collection of information:* Each owner would submit to HUD, the owner's request to participate. An owner that is not within the jurisdiction of a Designee also may submit a request to HUD to proceed under the alternative processing in Section VIII.

Thereafter, each owner would submit to HUD, a Designee, or a lender (under alternative processing), as appropriate, the following information: documents necessary to perform the underwriting; modifications to proposed Restructuring Commitments, and information relating to any appeal of a Restructuring Commitment, and evidence of having sent appropriate notices. The owner's must notify tenants, units of general local government, and, in certain cases, lenders at key points in the process.

Under Designee Processing, each prospective Designee would submit to HUD a letter of interest together with evidence of its ability to meet the selection criteria (see Section VII.A.). If selected the Designee would submit a management plan detailing how it will carry out restructurings. If the Designee operates under the fee for service approach, it must submit to HUD, for each project, a detailed Business Plan containing the information specified in Section VII.B.1.a.(1) STAGE I. For a Designee operating under the joint venture approach, submissions to HUD on specific projects, in general, will be certifications and representations.

Under Alternative Processing, each lender/servicer would submit to HUD a Business Plan detailing the terms of the restructuring proposal.

(3) *Description of the need for the information and its proposed use:* The owner's request to participate is needed to initiate processing and to provide information necessary to ensure that the project meets statutory eligibility requirements to participate in the Demonstration Program. Notices to tenants, to units of general local government, and to lenders are intended to comply with statutory requirement for such notification and to obtain information that may provide for more informed decision making.

(4) *Description of the likely respondents, and proposed frequency of the response to the collection of information:* Respondents will be (1) certain owners of FHA-insured projects that have expiring project-based Section 8 contracts; (2) State housing finance agencies, housing agencies and nonprofits; and (3) FHA-approved lenders and servicers. The estimated number of respondents and frequency of the response is set out in the table in paragraph (5), below.

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:*

Information Collection	Number of respondents	Responses per respondent	Total Annual responses	Hours per response	Total hours	Guideline reference
Owner's request to participate	275	1	275	.5	137	VI.A.
Owner's notice to tenants, local governments, and lenders of intent to participate.	275	3	725	1.0	725	VI.D.
Owner-supplied information relating to underwriting	275	3	725	2.0	1,450	VI.F.
Owner's summary to tenants, local governments, and lenders of Restructuring Commitment.	275	3	725	1.5	1,088	V.H.
Owner's request to modify Restructuring Commitment	100	1	100	1.0	100	VI.I.
Owner's summary to tenants, local governments, and lenders of substantial modifications to Restructuring Commitment.	100	3	300	2.75	825	VI.K.
Owner's notice to HUD of appeal of Restructuring Commitment.	100	1	100	1.0	100	V.L.
Owner's summary to tenants, local governments, and lenders of the appeal of Restructuring Commitment.	100	3	300	1.0	300	V.L.
Letter of interest to participate as a Designee	25	1	25	1.0	25	V.II.A.
Information to demonstrate qualification as Designee	25	1	25	2.0	50	V.II.A.
Designee Management Plan	25	1	25	8.0	200	VII.A.
Designee Business Plan	25	1	25	40.0	1,000	VII.B.I.
Lender/Servicer Business Plan	75	1	75	40.0	3,000	VIII.

Information Collection	Number of respondents	Responses per respondent	Total Annual responses	Hours per response	Total hours	Guideline reference
Total annual burden					9,000	

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within seven (7) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4162) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

II. Introduction

A. Background

Over 800,000 housing units in approximately 8,500 projects have been financed with FHA-insured loans and supported by project-based Section 8 housing assistance payment (HAP) contracts. In many cases, these HAP contracts currently provide for rents which substantially exceed the rents received by comparable unassisted units in the local market. Starting in Fiscal Year ("FY") 1996, those Section 8 contracts began to expire, and Congress and the Administration provided one-year extensions of expiring contracts at a cost of over $200 million. While annual HAP contract extensions for these projects maintain an important housing resource, they come at great expense. Every year more contracts expire, compounding the cost of annual extensions. In ten years, the annual cost of renewing Section 8 contracts rises to approximately $7 billion, about one-third of HUD's current budget. If, however, the Section 8 assistance is reduced or eliminated, there is an increased likelihood that these projects will be unable to continue to meet their financial obligations including operating expenses, debt service payments, current and future capital needs.

The FY 1997 renewal authority limits renewals of most Section 8 project-based assistance contracts expiring in FY 1997 to 120% of Fair Market Rents and authorizes participation in an optional Demonstration Program by owners with properties that have FHA-insured mortgages whose rents are subject to the required reduction. The Demonstration Program will explore approaches to restructuring the debt secured by these properties while minimizing adverse impacts on tenants, owners and communities.

These Program Guidelines describe the authority given to HUD under the Demonstration Program and explain how HUD plans to implement the Program. As the Department works with owners on restructuring project loans and as questions arise from affected parties, HUD may periodically provide additions and clarifications to these Guidelines.

B. Legislative Authority

The Section 8 Contract Renewal Authority and this Portfolio Reengineering Demonstration Program are authorized by sections 211 and 212, respectively, of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1996) ("HUD FY 1997 Appropriations Act").

Section 212 also repealed the demonstration program authorized by section 210 of Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) ("HUD FY 96 Appropriations Act"). Amounts made available under section 210, however, remain available through FY 1997 and the FY 1997 Demonstration Program does not nullify any agreements or proposals that have been considered under the FY 1996 Demonstration Program. Proposals submitted under the FY 1996 Demonstration Program that were received by the Department prior to September 25, 1996 will continue to be processed by HUD. The Department is implementing the FY 1996 Demonstration Program under notices published at 61 FR 34664, July 2, 1996 and 61 FR 28757, July 25, 1996.

C. Outline of Notice

The remaining sections of the Guidelines provide the following information:

Section III. explains section 211 of the HUD FY 1997 Appropriations Act regarding renewals of up to one year for Section 8 contracts expiring during FY 1997 as they relate to the Demonstration Program.

Section IV. provides an overview of the goals of the Demonstration Program provided for in section 212 of the HUD FY 1997 Appropriations Act, clarifies eligible and ineligible projects and gives specific substantive guidance on restructuring.

Section V. discusses additional Demonstration Matters, such as, required consents, additional restructuring tools, and others.

Section VI. sets forth the procedures which owners seeking to participate in the Demonstration Program will be required to follow and explains HUD processing.

Section VII. provides guidance relating to the anticipated use of Designees in the Demonstration Program.

Section VIII. provides guidance on Alternative Processing by lenders making new loans and by mortgagees or loan servicers where the existing FHA-insured loan is retained.

Section IX. addresses other provisions of the Demonstration Program legislation such as participation of projects with post-FY 1997 expirations and sunshine provisions.

Section X. contains HUD's findings and certifications.

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III. Section 8 Renewal Authority

A. Summary of Section 211 as It Relates to the Demonstration Program

The Section 8 renewal authority and its implementation are fully described in Housing Notice H 96–89, dated October 15, 1996. The renewal authority, as it relates to the Demonstration Program, is summarized below.

The FY 1997 renewal authority limits HAP contract renewals of most Section 8 project-based assistance contracts expiring in FY 1997 to 120% of Fair Market Rents and authorizes participation in an optional Demonstration Program by owners with properties that have FHA-insured mortgages whose rents are subject to the required reduction. The Demonstration Program will explore approaches to restructuring the debt secured by these properties while creating the least disruption to tenants, owners and communities.

B. Renewals of Section 8 Contracts With Rents Currently Above 120% of Fair Market Rents (FMR)

In general, owners of FHA-insured multifamily projects with Section 8 contracts that expire in FY 1997 and whose rents in the aggregate exceed 120% of FMR, have two options for continuing in the Section 8 program:

(1) They can request that the contract be renewed for one year at gross rents, in the aggregate, not to exceed 120% of FMR; or

(2) They can participate in the Demonstration Program.

"FMR" are the Fair Market Rents (FMR) for the Section 8 Housing Assistance Payments Program. They are provided for specific geographic areas of the country, for dwelling units of varying sizes and are published in the **Federal Register** at least annually.

"In the aggregate" means that the comparison of Section 8 rent to FMR is examined not unit-by-unit but for the Section 8-assisted units for the project as a whole. Specifically, the total rent revenue at 100% occupancy for the Section 8-assisted units in the project using current gross rents (contract rents plus the utility allowance, if applicable) must exceed the total rent revenue at 100% occupancy for the Section 8-assisted units in the project using 120% of the FMR for each unit.

Owners who choose Option (1) should refer to Housing Notice H 96–89 dated October 15, 1996, which describes in detail the terms under which HUD will provide one-year extensions for expiring Section 8 contracts and to the memorandum from Assistant Secretary

for Housing—Federal Housing Commissioner dated November 1, 1996, entitled "Clarifications of Procedures for Project-Based Section 8 Contracts Expiring in Fiscal Year 1997."

Owners who select Option (2) should refer to the discussion in Sections IV. to IX. for further guidance.

IV. Demonstration Program

A. Purpose/Goals

The purpose of the Demonstration Program is to test approaches that retain the critical affordable housing resource represented by the supply of FHA-insured Section 8 assisted housing and maintain it in good physical and financial condition, while at the same time reducing the cost of the ongoing Federal subsidy. In carrying out the Demonstration Program, HUD will work with willing owners and lenders to reduce both Section 8 rents and operating expenses to true market levels, and also provide for the project's capital improvement needs.

The Demonstration Program will attempt to minimize involuntary displacement of tenants, adverse tax consequences to owners, and adverse effects on neighborhoods and communities, to maintain existing affordable housing stock in a decent, safe, and sanitary condition, and to encourage responsible ownership and management of property, in the least costly fashion. In determining how best to restructure a project, HUD and the owner will look for ways to balance these competing goals.

B. Eligible Projects

1. General Eligibility

For a project to be eligible for the Demonstration Program, the owners must agree to participate. The projects must be subject to an FHA-insured mortgage and supported by project-based Section 8 HAP contracts with rent levels which, in the aggregate, exceed 120% of FMR. Preference will be given to projects with contracts expiring in FY 1997.

2. Projects with Mix of Assisted and Unassisted Units

A project will be eligible for the Demonstration Program regardless of whether all or only some of the units in the project are covered by a project-based Section 8 HAP contract.

3. Projects with Multiple Section 8 Contracts

A project with multiple Section 8 contracts, one or more of which expires in FY 1997 and meets the requirements for the Demonstration Program, is eligible to participate in the Demonstration Program, and will also be given preference over other projects whose contracts expire after FY 1997.

4. Projects with Public Financing

A project with primary financing that was provided by a public agency and is FHA-insured and that has a HAP contract expiring in FY 1997 is eligible to participate in the Demonstration Program with the consent of the appropriate Housing Finance Agency and the owner.

C. Ineligible Projects

1. Projects without FHA-Insured Loans

A project that does not have an FHA-insured loan will not be eligible to participate in the Demonstration Program. Some examples include: (i) A project whose FHA-insured loan has been assigned to HUD (ii) a project that is HUD-owned, (iii) a project financed solely with conventional financing, or (iv) a project with a direct HUD loan.

2. Projects that Fail to Meet HQS Standards

A project that is otherwise eligible to participate in the Demonstration Program will be deemed ineligible if the project contains units which fail to meet Housing Quality Standards (HQS) at contract expiration and the owner has received adequate notice thereof and has been given the opportunity to cure HQS deficiencies in accordance with Chapter 6 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing.

3. Disqualified Owners

HUD also will not permit the owner to participate in the Demonstration Program if HUD determines that the owner of the multifamily housing project has engaged in materially adverse financial or managerial actions or omissions with regard to the project (or with regard to other similar projects if HUD determines that such actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by HUD). Material adverse financial actions or omissions are any action or omission which lead to either owner default (monetary or technical), or a violation of one or more of the contractual obligations under the project's Regulatory Agreement or Section 8 HAP Contract. Violations may include, but are not limited to, submission of false statements or certifications to HUD, diversion of project funds, unauthorized distributions, and documented project mismanagement. HUD may renew the contract of a disqualified owner if the project is sold to a qualified purchaser.

D. Transfer of Projects Disqualified From the Demonstration Program

When an owner or purchaser that is ineligible for the Demonstration Program for reasons described in Section IV.C. 2. and 3. wishes to voluntarily sell or transfer the property, the procedures that should be followed to facilitate the voluntary sale or transfer are described in Section V.H. To facilitate a transfer to a qualified purchaser, HUD may renew and transfer assistance that has not been renewed in the case of disqualified projects.

E. Demonstration Approaches/ Underwriting

This section sets forth the approaches by which projects in the Demonstration Program will be restructured and describes the underwriting procedures to be employed.

1. Mandatory Demonstration Approaches

Under the Demonstration Program, HUD must utilize one or more of the following demonstration approaches (the "Mandatory Demonstration Approaches") with respect to each eligible project: (a) Mortgage Restructuring, (b) Debt Forgiveness, or (c) Budget-Based Rents. Other demonstration actions may be used with one or more of the Mandatory Demonstration Approaches.

HUD will determine which of the Mandatory Demonstration Approaches is appropriate based upon, among other things, a calculation of the adjusted, i.e., market-based, net operating income ("NOI") generated by the applicable project. In those cases in which the NOI is positive, the Mortgage Restructuring or Debt Forgiveness approaches generally will be used. If the NOI is negative, the Budget-Based Rents approach generally will be used.

Further, HUD will determine what constitutes the Supportable Debt by applying a 1.10 or greater debt service coverage ratio, at the interest rate and term approved by HUD, to the adjusted NOI. HUD may require that the term and/or interest rate on the first mortgage loan be modified, subject to the consent of the mortgagee.

The Supportable Debt may be adjusted, as necessary, to provide the minimum Owner's Distribution, as described in Sections IV.E.1.a.(3) and IV.E.1.b.(2), and/or to accommodate the payment of debt service on a rehabilitation loan. The Supportable Debt may, at HUD's option, also be adjusted if the security for the existing

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FHA-insured loan includes vacant land or other non-income producing assets with additional market value.

a. Mortgage Restructuring. Under the Mortgage Restructuring approach, the existing FHA-insured mortgage loan is divided into two parts: (i) A performing first mortgage loan, and (ii) a second mortgage loan payable out of Net Cash Flow.

In most instances, the Mortgage Restructuring shall be accomplished by a partial or full prepayment of the existing FHA-insured mortgage loan.

(1) Supportable First Mortgage Loan. The amount of the unpaid principal balance ("UPB") of the supportable first mortgage loan after restructuring shall equal the Supportable Debt. The term Restructured First Mortgage as defined in this section is meant to be used only as a means of sizing the Second Mortgage Loan. It is not to be confused with the Supportable Debt, which is the amount of the adjusted, performing first mortgage loan. The Restructured First Mortgage Loan shall equal the Supportable Debt *plus* (i) All contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (ii) all excess funds in the project's reserve for replacement account, and (iii) all funds in the project's residual receipts account and any other escrows and reserves, as determined by HUD, *minus* (ii) the rehabilitation costs approved by HUD, and (iii) the transaction costs approved by HUD.

(2) Second Mortgage Loan. Unless otherwise required by HUD, the initial unpaid principal balance of the second mortgage loan will equal:

(a) The outstanding balance of the existing FHA-insured mortgage loans(s); *minus*

(b) The amount of the Restructured First Mortgage. Unless otherwise required by HUD, the second mortgage loan will bear interest at a rate not to exceed the long term applicable Federal rate, as set forth pursuant to section 1274(d) of the Internal Revenue Code of 1986 (26 U.S.C. 1274(d)). Principal and interest on the second mortgage loan will be payable out of Net Cash Flow (discussed below), and unpaid interest will accrue. The second mortgage loan will be due upon the sale of the project or the refinancing of the first mortgage loan. Other terms and conditions of the second mortgage loan will be established in the restructuring process. HUD may, at its option, forgive, extend, or allow the assumption of all or a part of the second mortgage loan.

(3) Use of Net Cash Flow. For purposes of the Mortgage Restructuring approach, "Net Cash Flow" means that portion of the NOI that remains after the payment of all required debt service payments on the first mortgage loan. Net Cash Flow shall be applied as follows: *First*, to payment to the holder of the first mortgage loan of any past due principal or interest, and required escrows and reserves, on such mortgage loan; *second*, to the extent of the remaining Net Cash Flow and after the owner has met the maintenance standards required by HUD, to payment to the owner of an annual owner's distribution of up to $25 per unit per month (the "Owner's Distribution") and, if applicable, to payment of an additional equity distribution to the owner equal to a cumulative 10% on any new cash equity invested by the owner in the project (the "New Equity Distribution") (Note: the proceeds from the sale of low-income housing tax credits ("LIHTCs"), and the balances of any residual receipts accounts and capital reserves, are excluded from consideration for purposes of determining the amount of the New Equity Distribution); and *third*, to the extent of the remaining Net Cash Flow, to be distributed equally between the owner and HUD. In the event of new equity investment by the owner in connection with a restructuring, HUD may waive some or all of the distribution of cash flow to HUD.

(4) Funding Rehabilitation Costs. Rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the Mortgage Restructuring. (Use of excess funds in the reserve account will be determined by the Demonstration Manager and will be net of funds required for the initial deposit to that account.) If rehabilitation costs exceed the amount of such available funds, the rehabilitation costs may be funded by (1) a contribution of cash equity from the owner's partners/investors, (2) the proceeds of a non-FHA-insured rehabilitation loan, and/or (3) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

b. Debt Forgiveness. The Debt Forgiveness approach will be used, for good cause and upon request by the owner, to forgive a certain portion of the outstanding balance of an existing FHA-insured loan. This approach shall be accomplished through a partial or full prepayment of the existing FHA-insured mortgage loan. Under this approach, the owner may choose to keep the reduced FHA-insured mortgage loan in place, or refinance such loan with new debt and/or new equity. HUD will consider the owner's proposals that address how the forgiven debt shall be treated.

(1) Amount of Debt Forgiveness. The amount of the debt that will be forgiven pursuant to the Debt Forgiveness Approach is equal to the *lesser* of (a) the maximum amount of debt forgiveness authorized under the 1997 Appropriations Act, as described in Section IV.E.1.b.(1) (a), and (b) the amount of debt forgiveness computed under the formula described in paragraph (b), below, of this Section IV.E.1.b.(1).

(a) *Statutory Maximum Amount of Debt Forgiveness.* Under the HUD FY 1997 Appropriations Act, the maximum amount of debt forgiveness is limited to that portion of the existing FHA-insured debt that exceeds the "market value" of the applicable project. The project's "market value" will be determined based upon an appraisal of the project's as-is value prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal will take into consideration, among other factors, the current market rents for unsubsidized units in the local market area, the project's current operating expenses, any necessary reserves for long term capital replacements, any necessary rehabilitation costs (see Section IV.E.2.b.(1)(c)), and any anticipated costs relating to the transition of the project to market rents.

(b) *Formula for Computation of Debt Forgiveness Subject to Statutory Maximum.* (i) *If the FHA-insured mortgage loan will be refinanced with non-FHA-insured financing,* the amount of debt forgiveness under this formula, unless otherwise required by HUD, will be:

(1) The sum of (a) the outstanding balance of the existing FHA-insured mortgage loan(s), (b) the rehabilitation costs approved by HUD, and (c) the transaction costs approved by HUD; *minus.*

(2) The sum of (a) the UPB of any new financing(s) approved by HUD, (b) all contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (c) all excess funds in the project's reserve for replacement account, all funds in the project's residual receipts account, and any other escrows and reserves, as determined by HUD.

(ii) *If the FHA-insured mortgage loan is retained or refinanced with another FHA-insured loan,* the amount of debt forgiveness under this formula, unless otherwise required by HUD, will equal:

(1) The sum of (a) the outstanding balance of the existing FHA-insured mortgage loan(s), (b) the rehabilitation costs approved by HUD, and (c) the transaction costs approved by HUD; *minus*

(2) The sum of (a) the Supportable Debt (if the existing FHA-insured loan is retained) or the UPB of the new FHA-insured financing(s), (b) all contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (c) all excess funds in the project's reserve for replacement account, all funds in the project's residual receipts account, and any other escrows and reserves, as determined by HUD.

The formula for computing the amount of debt forgiveness may be further adjusted, at HUD's option, if the security for the existing FHA-insured loan includes vacant land or other non-income producing assets with additional market value.

(2) Use of Net Cash Flow. For purposes of the Debt Forgiveness approach, "Net Cash Flow" means that portion of the NOI that remains after the payment of all required debt service payments on the first mortgage loan and on the subordinate loan(s), if any. Net Cash Flow shall be applied as follows: *First*, to payment to the holder of the first mortgage loan and of any subordinate loans of any past due principal or interest, and required escrows and reserves, on such mortgage loan; *second*, to the extent of the remaining Net Cash Flow and after the owner has met the maintenance standards required by HUD, to payment to the owner of an annual owner's distribution of up to $25 per unit per month (the "Owner's Distribution") and, if applicable, to payment of an additional equity distribution to the owner equal to a cumulative 10% on any new cash equity invested by the owner in the project (the "New Equity Distribution") (Note: the proceeds from the sale of low-income housing tax credits ("LIHTCs"), and the balances of any residual receipts accounts and capital reserves, are excluded from consideration for purposes of determining the amount of the New Equity Distribution); and *third*, to the extent of the remaining Net Cash Flow, to be distributed equally between the owner and HUD. In the event of new equity investment by the owner in connection with a restructuring, HUD may waive some or all of the distribution of cash flow to HUD.

(3) Funding of Rehabilitation Costs. *If the FHA-insured mortgage loan will be refinanced with non-FHA-insured financing*, the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the Debt Forgiveness. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by (a) a contribution of cash equity from the owner's partners/investors, and/or (b) the proceeds of the non-FHA-insured refinancing loan, and (c) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

If the FHA-insured mortgage loan is retained or refinanced with another FHA-insured loan, the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the Debt Forgiveness. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by (1) a contribution of cash equity from the owner's partners/investors, (2) the proceeds of a non-FHA-insured rehabilitation loan, (3) the proceeds of an FHA-insured rehabilitation loan, and/or (4) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

For owners who want to refinance the original FHA-insured loan, mortgage insurance from the following FHA programs may be provided:

(a) Section 223(f), acquisition and refinance with limited renovations—loan to value limit of 85 percent; or

(b) Section 223(a)(7), refinance of an insured loan to lower the interest rate and to fund rehabilitation costs—loan limit is up to the original insured principal amount.

c. Budget-Based Rents. The Budget-Based Rents approach will be used, in limited circumstances, to renew HAP contracts expiring in FY 1997 for a period of up to one year at budget-based rents not to exceed the rent levels in the expiring HAP contract.

(1) Application of Budget-Basing. The Budget-Based Rents approach is intended for projects in which the application of Mortgage Restructuring or Debt Forgiveness alone is infeasible. It is anticipated that the Budget-Based Rents approach will be used for the following types of projects:

(a) If the project has a negative adjusted NOI, that is, the adjustment of rents to market levels would not enable the project to pay its reasonable and necessary operating expenses. Reasonable operating expenses, for these purposes, will not include the Owner's Distribution or New Equity Distribution.

(b) If the project's market rents are higher than both 120% of the applicable FMRs and the gross rents (HAP contract rents plus any applicable utility allowance amounts), and restructuring may result in the displacement of tenants.

(2) Preference for Unique Projects. HUD may give a preference to processing under the Budget-Based Rents approach to certain unique projects, such as those designated for occupancy by elderly families and those located in rural areas.

(3) Calculation of Budget-Based Rents. Under the Budget-Based Rents approach, rents will be set at a level sufficient to support the aggregate amount of the applicable project's reasonable operating expenses, provided that such rents do not exceed the rents under the expiring HAP contract.

For purposes of the Budget-Based Rents approach, a project's reasonable operating expenses shall include:

(a) Reasonable and necessary operating expenses, including adequate annual contributions to the reserve for replacements account;

(b) A reasonable return to the owner, based on the Owner's Distribution; and

(c) Debt service payments that remain on the existing FHA-insured mortgage loan after principal reduction, if any.

The amount of the reasonable operating expenses (and contributions to the reserve for replacements account) will be determined based upon an appraisal of the project prepared in accordance with the USPAP and a physical needs assessment.

The rents set under the Budget-Based Rents Approach will be reevaluated each year prior to any further renewal of the HAP contract. Each annual HAP contract renewal is subject to Congressional appropriations.

(4) Funding of Rehabilitation Costs. Under the Budget-Based Rents approach, the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date the Budget-Based Rents are implemented. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by a contribution of cash equity from the owner's partners/investors. For projects with a negative NOI at market rents, HUD may supplement the funds available for rehabilitation with a grant of up to $5,000 per unit, which amount may be

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increased in extraordinary circumstances.

2. Project Underwriting

a. Purpose. The purpose of demonstration project loan underwriting is to reduce annual section 8 contract renewal costs that result from subsidizing rents at above market levels. Projects in the Demonstration Program will be analyzed and restructured to bring their rents and expenses in line with the rents and expenses that are comparable to unassisted units in the local market area. The majority of projects will continue to receive project-based section 8 assistance *at those market levels* through one-year contract renewals, subject to annual appropriations. At the same time, FHA-insured first mortgages will be reduced to reflect changed project income.

b. Method. HUD will first estimate a project's net operating income (NOI) by deducting operating costs, including reserves for replacement, from market rents. The NOI will be used to determine the Supportable Debt; that debt may be adjusted downward to accommodate the cost of scheduled repairs and to provide the minimum Owner's Distribution. HUD will determine the amount of first mortgage principal reduction by subtracting the supportable mortgage and other sources of funds from the unpaid principal balance of the original mortgage.

For project loans restructured by HUD, project underwriting necessary for restructuring will be the responsibility of the Demonstration Manager, operating most often from selected HUD field offices and assisted by a Due Diligence Contractor. The Due Diligence Contractor will contract for appraisals, Physical Needs Assessments and any other reports as may be required by HUD.

Appraisals must meet the standards and procedures of the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Standards Board of The Appraisal Foundation, as modified by HUD. The appraisal will be the basis for determining market income and expenses.

(1) Determination of Adjusted Net Operating Income. The adjusted Net Operating Income (NOI) will be used to help determine which Demonstration Approach should be employed with respect to a particular project and to determine the size of the Supportable Debt. Computation of the adjusted Net Operating Income will require an analysis of the estimated income and expenses of each project after adjustment to market levels.

(a) Estimation of Income. To estimate the total income of a project, HUD will analyze: (a) The expected rental revenues to be generated from operation of the project at market rents; (b) the anticipated vacancy rate for the project; and (c) any other income (e.g., income from laundry and parking facilities) that is expected to be generated by the project. The determination of market rent will assume the project has been rehabilitated to meet the requirements of the Physical Needs Assessment as described in Section IV.E.2.b.(1)(c). Market rents, for the purpose of underwriting, are the rents achievable in the immediate vicinity for comparable unassisted units in good condition.

(b) Estimation of Expenses. For the purposes of project underwriting, total expenses will include: (1) Reasonable operating expenses; and (2) contributions to the reserve for replacement account.

(i) Operating Expenses. It is the intent of this Demonstration Program that project operations be reevaluated in order to reduce operating costs where possible. HUD will analyze ordinary and necessary operating expenses for the project. The analysis will consider, among other factors, historical operating statements, owner input, and standard expenses by type and market. Project expenses will be compared to FHA-insured mortgage portfolio averages, other market data and industry standards published regularly by entities, including, but not limited to, the Institute for Real Estate Management (IREM).

(ii) Reserves for Replacement. An allowance for scheduled contributions to the reserve for replacement account to fund ongoing capital needs will be included under gross expenses. The amount will be based on an inspection of the building and a schedule of improvements included in the Physical Needs Assessment.

(c) Determining the Level of Required Physical Improvements. In determining the level of physical improvements a property requires, HUD will direct a Due Diligence Contractor to inspect the project and complete a Physical Needs Assessment.

Participation in the Demonstration Program will not affect the responsibility of owners who undertake a rehabilitation program to comply with the accessibility requirements described at 24 CFR 8.23, Alterations of existing housing facilities, and 8.24, Existing housing programs, as applicable.

The Physical Needs Assessment will be done in accordance with the Fannie Mae (FNMA) Physical Needs Assessment Guidance to the Property Evaluator for the Delegated Underwriting and Servicing (DUS) Program, as may be modified by HUD. This guide instructs the property evaluator to examine the condition of the building, including all its systems and components, and provide (1) a description of significant repair and replacement needs, both immediate and long-term, and (2) a description of any significant issues affecting tenants' health and safety.

In addition, the Demonstration Manager will direct the Due Diligence Contractor to estimate the cost of any improvements necessary to enable the project to compete with similar but unsubsidized projects in its local market. The intent of physical improvement is not to reposition the property in the market place, but to create a product that is consistent with its original position in the market. In determining the amount of rehabilitation to be done, the Demonstration Manager will balance the need to enable the project to compete with similar but unassisted projects in its local market with the need to keep the rents as affordable as possible. The result should be a marketable project that competes on rents rather than on amenities.

(d) Determination of Net Operating Income. Net Operating Income (NOI) is the amount of project income that remains after all operating expenses, including the contribution to the replacement reserve, have been estimated. It is calculated by deducting total expenses from total income.

(2) Owner's Distribution from Net Cash Flow. In exchange for the payment it makes to reduce principal on the original mortgage, HUD will require owners to share Net Cash Flow dollar-for-dollar with HUD. As an incentive to maintain the property, however, the owner may receive an annual distribution of 100% of Net Cash Flow up to a ceiling equal to $25 per unit per month ("Owner's Distribution"); and also, where appropriate, a New Equity Distribution.

The Owner's Distribution, in all cases, will be subordinate to the first mortgage and will be paid only to the extent that the cash flow to pay it is available. Any unpaid distributions will not accrue. Further, the Owner's Distribution will be held in an escrow account and paid to the owner only after HUD or its representative inspects the project and finds that all units are in substantial compliance with maintenance standards set forth by HUD as part of the restructuring agreement. Any owner who fails to deposit all Net Cash Flow

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to the retention account will waive its rights to future distributions.

In sizing the amount of supportable debt, HUD will make an adjustment so that Net Cash Flow on a pro forma basis is not less than $25 per unit per month. The adjustment will be made as follows:

If Net Cash Flow is equal to or greater than or equal to $25 dollars per unit per month, the distribution will not be deducted from debt service for the purpose of sizing the mortgage.

If Net Cash Flow is less than the distribution of $25 per unit per month, the difference between the distribution and Net Cash Flow will be deducted from the amount of projected debt service, thus reducing the size of the supportable loan and insuring the availability of the Owner's Distribution.

The Owner's Distribution must be earned and maintained thorough efficient management. It is not a guarantee. Adjustments to debt service and cash flow will be made only at initial underwriting; future adjustments to Owner's Distribution to offset rising operating costs will not be allowed by HUD. HUD, however, may make future adjustments to the $25 per unit per month ceiling to respond to inflation.

V. Additional Demonstration Program Matters

A. Required Consents

The implementation of one or more of the Mandatory Demonstration Approaches shall be subject to receipt of all necessary third party consents. The owner and/or HUD as appropriate, shall be responsible for obtaining the consents from necessary parties. Guidance on projects with Ginnie Mae Mortgage Backed Securities will be provided in the future.

B. Additional Restructuring Tools

In addition to the mandatory demonstration approaches described above, HUD has authority to take any of the following actions with respect to each project in the Demonstration Program:

1. Full or Partial Prepayment

With the prior consent of the insured mortgagee, HUD may choose to make a full or partial prepayment to the holder of the FHA-insured loan prior to the date of any defaults.

2. Sale or Transfer of HUD's Economic Interest

HUD may enter into contracts either to purchase reinsurance or to transfer to third parties HUD's economic interest in contracts of insurance or insurance premiums paid. HUD may not elect to do this for more than 5,000 units in the Demonstration Program during FY 1997. Any contract HUD executes under this paragraph shall require that associated units be maintained as low-income units for the life of the mortgage(s), unless HUD has waived this provision for good cause.

3. Credit Enhancement

HUD may provide new FHA multifamily mortgage insurance, contract for reinsurance or provide other credit enhancement alternatives. HUD may also retain the existing FHA insurance on a restructured supportable first mortgage loan, or permit the use of the multifamily risk-sharing mortgage programs, as provided under section 542 (b) and (c) of the Housing and Community Development Act of 1992 (Pub. L. No. 102–550; 106 Stat. 3794; 12 U.S.C. 1707 note), to the extent that appropriations or housing units are available. Unless otherwise agreed to by the project owner, not more than 25% of the units with expiring Section 8 contracts, in the aggregate, may be restructured during FY 1997 without FHA insurance.

4. Tenant-Based Section 8

With the consent of the owner of the project, and after consulting with tenants, HUD may substitute tenant-based Section 8 assistance for some or all of the units covered by a project's Section 8 rental assistance contract. This Section 8 tenant-based assistance, however, can be provided only where HUD has determined and certified that there is adequate, available, and affordable housing within the local area and that tenants will be able to use the Section 8 tenant-based assistance successfully.

HUD may make this substitution for not more than 10% of the aggregate number of units in projects restructured during any one fiscal year.

5. Removal of Restrictions

HUD, with the owner's consent and other parties' consent, as necessary, and after consulting with the tenants, may remove, modify or agree to the removal of any mortgage, regulatory agreement, project-based assistance contract, use agreement, or restriction that had previously been imposed or required by HUD which would interfere with the ability of the project to operate without above-market rents. HUD may also remove any limitations previously imposed by HUD with respect to the distribution of a project's Net Cash Flow. It is HUD's intention after restructuring to eliminate the limited dividend distribution requirements, should they be currently required, and associated collection of residual receipts.

6. Use of Accumulated Residual Receipts

HUD may require the owner to apply any accumulated residual receipts towards effecting the purposes of the Demonstration Program.

7. Payments by HUD

HUD may enter into such agreements, provide such concessions, incur such costs, make such grants (including grants to finance approved rehabilitation costs) and other payments, and provide other valuable consideration, as HUD determines are reasonably necessary in order to enable owners, lenders, servicers, third parties and other entities to participate in the Demonstration Program.

C. Structures to Address Tax Liability

Owners of projects undergoing restructuring may be exposed to tax consequences associated with cancellation of debt, and taxation of capital gains or ordinary income. It is the expressed desire of Congress that the Demonstration Program minimize, if possible, tax consequences to owners. Absent specific legislative relief, HUD will accept proposals from owners which include any tax motivated structure deemed by the owner to be acceptable to the Department of the Treasury that will limit or defer tax liability and which will not adversely affect a project's financial integrity or management.

D. Sources and Uses of Funds Under the Demonstration Program

1. Sources of Funds

The funds which HUD anticipates using in connection with an owner's participation in the Demonstration Program may include the following:

a. Funds in the project's residual receipts account;

b. Excess funds in the project's reserve for replacements fund;

c. New project financing, either FHA-insured or non-FHA-insured obtained by the owner;

d. New equity to be contributed by new or existing owners and partners/investors (including additional capital contributions);

e. New equity raised from a proposed sale or other disposition of the project (100% of the purchase price relating to any sale or other disposition must be supported by a third party USPAP appraisal);

f. New equity raised from the sale of low-income housing tax credits;

g. To the extent other sources of funds are not available, full or partial mortgage prepayments from HUD;

h. To the extent required, as determined by HUD, direct loans or grants from HUD; and

i. With respect to projects with Section 8 contracts expiring after FY 1997, the capitalized value of Section 8 project-based assistance in excess of market rents.

2. Uses of Funds

Subject to the approval of HUD and, where required, to mortgagee approval, the permitted uses of such funds will include the following:

a. Reduction or cancellation of existing FHA-insured debt and, where appropriate, other debt on the property approved by HUD, including a payment to an escrow account to be used for such purposes;

b. Payment of delinquent taxes, insurance premiums and/or other amounts owing with respect to the project, including amounts necessary to remove liens or judgments;

c. Payment of reasonable rehabilitation, renovation, maintenance or construction expenses necessary to meet the requirements of the Physical Needs Assessment;

d. Payment of reasonable legal and other transactional costs (including title, survey, appraisals, etc.);

e. Payment of reasonable fees and costs associated with obtaining new financing (including prepayment penalties, discounts, etc.);

f. Payments of reasonable oversight fees for nonprofits to cover reasonable pre-development costs; and

g. Relocation costs.

E. Affordability Requirements

1. Projects with Renewed or New HAP Contracts

Unless otherwise waived by HUD for good cause, each project owner participating in the Demonstration Program that is provided with a new or renewed HAP contract (other than any temporary renewal provided during the Demonstration Program processing period) will be required for a period of up to 20 years from the date of closing of the Demonstration Restructuring, to accept each offer by HUD to renew the project's HAP contract. The terms and conditions of the HAP contract renewals shall be set forth in: (a) The Restructuring Commitment (as described in Section VI.G.) between HUD and the owner, and/or (b) an amendment to the renewed HAP contract. All such renewals shall be subject to annual Congressional appropriations.

2. Projects without Renewed or New HAP Contracts

Unless otherwise waived by HUD for good cause, with respect to any project participating in the Demonstration Program that is not provided with a new or renewed HAP contract, the owner and HUD shall execute a Use Agreement in the same form as that described in Section V.E.1.; *provided, however,* that such Use Agreement shall also require the owner to accept Section 8 tenant-based certificates or vouchers from the project's existing tenants, to the extent such tenants choose to remain in the project, for a period, in the aggregate, of up to 20 years after the Demonstration Restructuring closing for the project occurs.

3. Long-Term Project Affordability

When the Mortgage Restructuring or Debt Forgiveness approaches are used, the project will be required to comply with affordability requirements established by HUD. Unless otherwise agreed to by HUD, the affordability requirements shall remain in effect for a minimum of 20 years from the date the Mortgage Restructuring or Debt Forgiveness is made effective. Affordability requirements shall be incorporated into a recorded Use Agreement.

If statutorily permitted by the section of the National Housing Act under which the mortgage is insured, the affordability requirements will be the same as those of the Low-Income Housing Tax Credit program, namely, the project shall be required to maintain: (a) At least 20% of the units in the project with families whose adjusted income does not exceed 50% of the area median income, or (b) at least 40% of the units in the project with families whose adjusted income does not exceed 60% of the area median income. Affordability requirements may be waived by HUD for good cause.

4. Affordability Waiver Authority for Designees

None of the affordability requirements in this Section V.E. may be waived by a Designee, except with express prior written approval of HUD.

F. Tenant Protections

If the owner has provided the required notice, any eligible family residing in a project-based Section 8 assisted unit that is covered by an expiring contract that is not renewed will be offered tenant-based assistance as provided in Housing Notice H 96–89 prior to the date on which the project-based HAP contract expires. If the owner chooses not to request a renewal and if proper notice was not given, the owner must permit the tenants assisted by the expiring Demonstration Agreement to remain in their units for the full notice period without increasing the tenant portion of the rent under the Demonstration Agreement. Public housing authorities will be allocated additional HAP contract authority on an annual basis in order to assure that families so affected will be provided tenant-based Section 8 contracts. Public housing authorities will be responsible for administering the issuance of these tenant-based Section 8 contracts.

G. Funding and Unit Limitations

The funding limitation for the Demonstration Program is set at $40,000,000. This amount is comprised of $30,000,000 made available under section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996, appropriated to remain available through September 30, 1997 and $10,000,000 appropriated under section 212 of the FHA Multifamily Demonstration Authority HUD 1997 Appropriations Act, appropriated to remain available until September 30, 1998. Total funds available are net of commitments made in the implementation of the FY 1996 Portfolio Reengineering Demonstration Program.

The $40,000,000 shall include any credit subsidy costs associated with providing direct loans or mortgage insurance as well as costs of modifying and restructuring loans held or guaranteed by the Federal Housing Administration.

H. Transfer of Projects

When the owner of a project in the Demonstration Program voluntarily transfers the property, HUD shall facilitate the transfer to tenant organizations, tenant-endorsed nonprofit organizations or public agency purchasers which are qualified to own and manage multifamily properties. HUD will give final approval to the selected purchaser upon the completion of the following selection process by the owner, and certification by the owner that this process has been followed. To facilitate a transfer to a qualified purchaser, HUD may transfer existing Section 8 project-based assistance to the purchaser or transferee. In the transfer of physical assets, demonstration project owners must follow the process below:

1. The owner shall notify potential qualified tenant organizations and experienced tenant-endorsed nonprofit organizations or public agency

purchasers of the availability of the project for sale by:

a. Mailing notices to eligible organizations;

b. Placing notices in the major local newspaper(s) in the jurisdiction in which the project is located;

c. Mailing notices to clearinghouse networks; or

d. Using any other means of notification which HUD determines would be effective to notify potential qualified purchasers of the sale of the property.

2. For the 90-day period beginning on the date of receipt by HUD of a notice of intent to transfer physical assets, the owner may accept a bona fide offer only from:

a. A resident council intending to purchase the project and retain it as rental housing, certifying that it has the support of a majority of tenants;

b. A tax-exempt nonprofit organization that has a record of service over at least five years of providing quality low-income housing and which has the support of a majority of tenants; or

c. A qualified public agency.

3. During this 90-day period, although offers may be made by other prospective purchasers, these offers may not be accepted by the owner until the expiration of the 90-day period. If no bona fide offer to purchase the project is made by any of these groups and accepted by the owner at the end of the 90-day period, which period may be extended by HUD for good cause, the owner may accept an offer to purchase the project from any qualified purchaser.

VI. Demonstration Process

This section explains the Demonstration Program process that will be followed by HUD and project owners for eligible project loans. The Demonstration Program provides for both Designee Processing and Alternate Processing as well as direct HUD processing of Demonstration project loans.

In the case of Designee processing, initial intake and referral to the appropriate Designee is the responsibility of HUD and thereafter the Designee is responsible for project management. (See Section VII. for further information on Designee Processing.)

Owners seeking new first mortgage financing may bypass the majority of the HUD restructuring process and have the qualified lender perform the necessary underwriting and due diligence activities. In cases where the FHA loan is being retained, HUD may request the mortgagor or loan servicer to perform certain due diligence and underwriting of activities under certain conditions. (See Section VIII.)

The following describes the restructuring process to be implemented directly by HUD.

A. Owner's Request to Participate

To participate in the Demonstration Program, owners with Section 8 contracts due to expire in FY 1997 must complete, execute and return to HUD, no later than 45 days prior to the expiration of their Section 8 contract, a Request to Participate in the Demonstration Program (the Request to Participate). The Request to Participate should be in the form of a letter of interest which includes the name and address of the project and the date the Section 8 contract expires.

Owners with contracts expiring within 45 days of the date of publication of these Guidelines who, therefore, cannot provide the full 45 days of notice, must provide notice to HUD as soon as possible but not later than 45 days from the publication of these Guidelines. If the project has more than one Section 8 contract, the 45 days will be measured from the expiration date of the contract with the earliest expiration.

Owners who do not submit the above Request to Participate on or before the required deadlines will not be eligible to participate in the Demonstration Program, unless compliance with the deadlines is waived by HUD for good cause. This Request to Participate should be addressed to the Director of Multifamily Housing in the HUD field office with jurisdiction over the project.

B. Demonstration Agreement

Within ten business days of HUD's receipt of the owner's Request to Participate in the Demonstration Program, the field office Director of Multifamily Housing will prepare and send to the owner the following:

1. A Demonstration Agreement which: (a) Sets forth the Owner's obligation to proceed in good faith to negotiate a Restructuring Commitment with HUD within 180 calendar days after execution of the Demonstration Agreement; (b) sets forth the Owner's obligation to provide all documents and information reasonably requested by HUD in order to enable the project to participate in the Demonstration Program; and (c) requires the owner to certify that it has provided the notice to the tenants, the Affected Unit of Local Government and the lender(s), as required in Section VI.D.;

2. An Addendum to the Demonstration Agreement in the form of a Housing Assistance Payments Demonstration Renewal Contract, the form of which is included as Attachment 3(c) of the Housing Notice H 96–89 dated October 15, 1996 (the HAP Renewal Contract),

3. An attachment containing the name and address of the project, the Section 8 and FHA project numbers, the section of the National Housing Act under which the mortgage is insured, an owner or owner agent contact name, address and telephone and fax numbers, and unit type and rental information, consisting of contract rents, utility allowances, if any, and FMR's.

C. Execution of Demonstration Agreement

In order to participate in the Demonstration Program, the owner will be required to execute and deliver the Demonstration Agreement to the Director of Multifamily Housing in the HUD field office with jurisdiction, no later than 10 business days prior to the Section 8 contract expiration date. This deadline may be extended by the Demonstration Program Coordinator for good cause. HUD will execute the HAP Renewal Contract and Demonstration Agreement only after receipt of owner's evidence that proper notification to project tenants, the Affected Unit of Local Government and project lender(s) has been provided in accordance with Section VI.D.

HUD will assign a Demonstration Program Tracking Number to the project after execution of the Demonstration Agreement.

D. Delivery of Notice to Project Tenants, Affected Unit of Local Government and Lender(s)

Simultaneously with the delivery of the Request to Participate to HUD, the owner shall deliver notice of the owner's intention to participate in the Demonstration Program to: (a) The tenants residing in the project, (b) the chief official of the Affected Unit of Local Government having jurisdiction over the project, and (c) the mortgagee of the project's FHA-insured loan. The "Affected Unit of Local Government" is the smallest unit of general local government with jurisdiction in which the project is located.

Notification to project tenants must be accomplished by delivery of notices to each project tenant and by posting the notice in at least two conspicuous public places in each building for a minimum of three (3) consecutive calendar days. If a tenant organization of project tenants exists which officially represents all tenants, notice may be provided to the tenants' organization

rather than to each tenant individually, but notice must still be posted in all project buildings as described in this paragraph.

The notice to project tenants required under the Demonstration Program shall be in addition to the required one-year notice of Section 8 contract expiration required under the section 8(c)(9) of the United States Housing Act of 1937 and HUD Notice H 96–89.

The notice must also include:

1. A copy of the "Request to Participate" provided by the owner to HUD, including the date of the Section 8 contract expiration;

2. An explanation of tenant protections afforded.

3. A statement that project tenants, the Affected Unit of Local Government and lender(s) have the opportunity to provide written comment. They are particularly encouraged to provide written comments on the project's physical needs and property management.

4. A statement that comments should be sent to the Director of Multifamily Housing in the HUD field office with jurisdiction over the project and that written comments will be accepted for up to 45 days after the date of execution of the Demonstration Agreement.

5. A statement that prior to the start of preparation of the Physical Needs Assessment for the project by a Due Diligence Contractor, a preinspection meeting will be held on site and that up to 3 representatives each, of both project tenants and the Affected Unit of Local Government, and their technical consultants, if any, will be invited to this meeting. It should further indicate that the owner will provide a separate written 10 day notice of this meeting to the project lender(s), project tenants and to the chief official of the Affected Unit of Local Government. Any written comments received by the time of this meeting will be provided to the Due Diligence Contractor responsible for preparing the Physical Needs Assessment. The notice should advise that upon completion of the Physical Needs Assessment, one copy of the Assessment will be provided to the insured lender, project tenants and one copy to the chief official of the Affected Unit of Local Government.

6. A statement that the owner will provide the project lender(s), project tenants and the chief official of the Affected Unit of Local Government with a brief summary of HUD's Restructuring Commitment.

7. A statement that if the owner chooses to appeal the terms of a Restructuring Commitment, the owner will notify the project lender(s), project tenants and the chief official of the Affected Unit of Local Government in writing concurrently with its submission of the appeal to HUD. It will further advise these parties that they will have 20 days from the date of the appeal submission to provide written comments to HUD.

8. In instances where lender consent is needed, a request that the lender state its willingness to participate in the Demonstration Program.

9. A statement that the Affected Unit of Local Government is encouraged to apprise representatives of the local community and neighborhood of this notice.

Evidence that proper notice was provided must be sent to the Demonstration Manager.

E. Assignment of Restructuring Responsibility

Within 10 business days following HUD's receipt of the executed Demonstration Agreement from the owner, HUD will assign responsibility for the project either to a qualified Designee, whenever possible or, if there is no available Designee for the project location, to a HUD Demonstration Manager. (See Section VII. for Designee Processing.)

In the case of HUD processing, the Demonstration Manager will operate most often out of selected field offices and will be assisted by a Due Diligence Contractor who will contract for appraisals, Physical Needs Assessments and any other reports as may be required by HUD. The Demonstration Manager will be responsible for:

1. Working with the owner, a Due Diligence Contractor, project tenants, project Lender(s), the Affected Unit of Local Government, and others as necessary to accomplish the restructuring;

2. Determining which of the demonstration approaches are appropriate for restructuring the project loan;

3. Negotiating the terms and conditions of a Restructuring Commitment and related documents with the owner; and

4. Coordinating the preparation, processing and closing of the Restructuring Commitment and the related documents.

F. Due Diligence Period

Once the Demonstration Manager or the Designee is selected, the Due Diligence period will commence.

1. Pre-Restructuring Conference with Owner

Promptly following the execution of the Demonstration Agreement by HUD and the owner, the Demonstration Manager will meet with the owner to discuss the owner's views with respect to the appropriate level of debt, market rents, operating costs, capital needs, preference for debt forgiveness, any of the additional restructuring tools listed in Section V.B., and any other related matters. At this conference, the owner's restructuring proposal, if any, may be presented and given initial review.

2. Pre-Inspection Meeting at Project

Prior to the inspection of the property by a Due Diligence Contractor responsible for preparation of the Physical Needs Assessment, a pre-inspection meeting must be held on site. Participants will include, at a minimum, the HUD Demonstration Manager and Due Diligence Contractor, the owner or owner's representative, up to three representatives of the project tenants or their technical consultants, if any, and up to three representatives of the Affected Unit of Local Government. Local HUD field office representatives will also be invited to attend. The owner must provide a minimum of 10 days written notice of the meeting to project tenants, project lender(s), and the Affected Unit of Local Government.

3. Due Diligence/Underwriting

Promptly following the execution of the Demonstration Agreement by HUD, the Demonstration Manager and Due Diligence Contractor will work closely with the owner to obtain the required information and perform the underwriting necessary to negotiate a restructuring commitment. The Demonstration Manager and Due Diligence Contractor will analyze the project's market rents and expenses, determine Net Operating Income, estimate the project's market value, and obtain any other information regarding the financial, physical, environmental, or other condition of the property he/she needs to negotiate a restructuring commitment with the owner.

The owner must cooperate fully with the Demonstration Manager and Due Diligence Contractor during this process and must provide timely access to the property and to project documents as requested. In addition, within 14 calendar days of executing the Demonstration Agreement, the owner may submit to the Demonstration Manager a detailed estimate of project operating costs after restructuring is completed. Failure to cooperate is

grounds for terminating the Demonstration Agreement.

HUD intends to develop additional administrative guidance for determining market rents, operating expenses, the level of rehabilitation required, the use of replacement reserve account balances, and other such matters.

G. Preparation of HUD'S Restructuring Commitment

The Demonstration Manager, using the information produced during the Due Diligence phase of the Demonstration Process, will develop a Restructuring Commitment that utilizes one or more of the mortgage restructuring, forgiveness of debt, or budget-based rents approaches.

The Restructuring Commitment will be presented in writing to the owner and the owner will be provided 30 calendar days to accept the Commitment or to submit a counter proposal to the Demonstration Manager.

Any project rehabilitation or capital improvements financially supported or required by HUD must be processed in accordance with HUD's environmental review requirements in 24 CFR part 50, prior to HUD's presentation of the Restructuring Commitment. All projects must be in conformance with flood insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1).

H. Notification of Project Tenants, Affected Unit of Local Government and Project Lender(s)

Upon receipt of the Restructuring Commitment, the owner shall deliver by mail a brief summary of the document to project tenants, the chief official of the Affected Unit of Local Government, and the lender(s), and submit evidence to the Demonstration Manager that proper notification was provided. If an organization of project tenants exists, which officially represents all tenants, notice may be provided to the tenants' organization rather than to each tenant individually. The Affected Unit of Local Government shall be requested to provide this notification to any representatives of local communities and neighborhoods that it chooses to inform.

I. Owner Response to HUD'S Restructuring Commitment

Within 30 calendar days following the owner's receipt of HUD's Restructuring Commitment, the owner must either (i) execute the Restructuring Commitment (without modification) and return it to the Demonstration Manager; or (ii) notify the Demonstration Manager in writing of any modifications to the Restructuring Commitment that it requests prior to its execution. Should the owner accept the Restructuring Commitment, the execution of the commitment must be accompanied by any required third party consents. For example, these include the consent of the insured mortgagee and the consent of limited partners, if required under the terms of a limited partnership agreement.

J. Modification of Restructuring Commitment

The Demonstration Manager shall, promptly following its receipt from the owner of any modifications to the Restructuring Commitment, work closely with the owner to review and evaluate all such modifications, resolve any issues, and prepare and deliver to the owner a revised Restructuring Commitment which reflects those modifications acceptable to HUD. Final negotiation of a Restructuring Commitment shall occur during a period not to exceed 40 calendar days after the Demonstration Manager's receipt of the owner's modifications, unless extended by HUD for good cause.

K. Issuance of Restructuring Commitment After Modification

Upon receipt of the modified Restructuring Commitment, the owner, only if the changes are substantive and substantial, shall deliver a brief summary of the document to project tenants, the chief official of the Affected Unit of Local Government, and the lender(s) by mail and shall submit evidence to the Demonstration Manager that proper notification was provided. If a tenant organization of project tenants exists, which officially represents all tenants, notice may be provided to the tenants' organization rather than to each tenant individually. The Affected Unit of Local Government shall be requested to provide this notification to any representatives of local communities and neighborhoods that it chooses to inform.

The owner will have 30 days from the date the Restructuring Commitment is delivered by HUD in which to execute that document and return it to HUD. This 30 day period may be extended by the Department.

L. Owner Appeal of Restructuring Commitment (if applicable)

If, for any reason, an owner desires to appeal the modified Restructuring Commitment issued by HUD, an appeal must be submitted in writing to the Director of Multifamily Housing or Director of Housing, in the local field office, within 10 calendar days of the issuance date of the modified Restructuring Commitment.

The written notice of appeal shall specifically state, in reasonable detail, the issues and bases upon which the owner seeks review. The Department will issue a written determination within thirty (30) calendar days of the date of the appeal.

The owner must notify the project lender(s), project tenants and the chief official of the Affected Unit of Local Government in writing concurrently with its submission of the appeal to HUD. It will further advise that these parties will have 20 days from the date of the appeal submission to provide written comment to HUD. If an organization of project tenants exists, which officially represents all tenants, notice may be provided to the tenants' organization rather than to each tenant individually.

If the appeal process results in a mutually satisfactory conclusion, HUD and the owner will execute a final version of the revised Restructuring Commitment. If HUD denies the owner's appeal, HUD will so notify the owner in writing. Upon such notification, the owner may execute the Restructuring Commitment as last revised by HUD, or may choose not to participate in the Demonstration Program.

In cases where no restructuring agreement is reached and the Demonstration Agreement expires, the owner may request a one-year Contract renewal in accordance with section 211(b) of the HUD FY 1997 Appropriations Act, as implemented by Housing Notice H 96–89. In most cases, the rents under the one-year renewal Contract will be set at 120% of the applicable FMR. Section 211(b) (2) and (3) contain exemptions to the 120% limitation; if the project qualifies for one of these exemptions, rents would be maintained at current levels.

If the owner chooses not to request a renewal, and if the appropriate notice has been provided, HUD will provide tenant-based assistance to all eligible families in accordance with Housing Notice H 96–89.

If the owner chooses not to request a renewal and if proper notice was not given, the owner must permit the tenants assisted by the expiring Demonstration Agreement to remain in their units for the full notice period without increasing the tenant portion of the rent under the Demonstration Agreement.

M. Closing the Restructuring Transaction

Loan closing must occur within 60 days of execution of the Restructuring

Commitment. If necessary for closing, HUD will extend the HAP Renewal Contract by up to 60 calendar days. An additional extension period may be granted by HUD, if closing is delayed due to circumstances beyond the control of the owner. In no case may the HAP Contract be extended for more than 6 months if the Restructuring Commitment has not been executed.

The Demonstration Manager will be responsible for coordinating the closing. Where the restructuring involves new FHA-insured financing, the closing must be completed in accordance with FHA processing requirements.

VII. Designee Selection and Processing

HUD will provide qualified Designees the opportunity to enter into arrangements with HUD for restructuring Demonstration Program projects in their jurisdiction or service area. HUD will select qualified state housing finance agencies, housing agencies or nonprofit entities (Designees) to take responsibility for processing project restructuring under the Demonstration Program.

A. Selection Criteria to Determine Qualified Designees

HUD's selection of qualified Designees will be made based on the criteria listed in the following paragraph. Interested state and local housing participants must submit letters of interest to HUD on or before February 15, 1997, and should include the potential Designee's geographic area of jurisdiction and its qualifications. Applicants who are already approved as FHA risk sharing lenders are not required to submit qualifications. Letters of interest must be accompanied by a letter of support from the Chief Elected Official of the area(s) of jurisdiction. Credentials will be screened and applicants will be selected on or before April 1, 1997. HUD may resolicit public entity applicants on or about April 15, and make selections on or about May 31. HUD will accept late submissions only for areas that have not been assigned a Designee. However, for projects with Section 8 contracts that expire prior to February 15, 1997, on a case by case basis, HUD will assign these projects to Designees who have submitted Letters of Interest prior to February 15, 1997, for specific projects.

Nonprofit Designees will be selected through a formal Request for Qualification (RFQ) process. The RFQ will be published in early 1997.

The selection criteria on which the applicants will be rated are as follows:

1. Demonstrated experience with multifamily loan restructurings;

2. Demonstrated experience in multifamily financing, and asset/property management experience relating to affordable multifamily housing;

3. Demonstrated staff experience and capacity for managing a restructuring process for multifamily projects; and

4. A history of stable, financially sound, and responsible administrative performance.

These selection qualifications may be demonstrated either by the Designee applicant alone or in partnership with other entities with proven experience and capacity in this area. If a team approach is chosen, the Designee applicant must provide evidence of its ability to manage this type of team. Designee applicants are encouraged to develop partnerships with each other as well as with other private and public entities, including: (i) Financial institutions, (ii) mortgage servicers, (iii) the Federal National Mortgage Association, (iv) the Federal Home Loan Mortgage Corporation, (v) Federal Home Loan Banks, (vi) other state or local mortgage insurance companies or bank lending consortia, (vii) nonprofit and for-profit housing organizations.

In its selection, HUD will give preference to qualified Designees that have had positive previous association with specific projects that may seek restructuring.

Once a Designee is selected, it will then be responsible for processing all projects in the Demonstration Program in its area of jurisdiction, although in some circumstances, HUD and the Designee may agree to a more limited initial engagement. The Designee may choose to reject certain projects that represent extraordinary risk, which by mutual agreement can be retained by HUD. In the event the Designee rejects a project, responsibility for that project will be given to the Demonstration Manager. Until and unless a Designee is selected for an area, HUD will act as Designee.

The management plan setting forth the manner in which the Designee will carry out the restructuring must be approved by HUD and will be attached as a provision of the contract to be entered into by the Designee and HUD.

In the event that potential Designees with overlapping jurisdictions express interest and are determined to be qualified, they must first attempt to enter into an agreement as to how projects to be restructured will be allocated. This agreement must be executed by the Chief Elected Official of each jurisdiction. Until such time as agreement is reached, HUD will be responsible for processing demonstration projects in the affected service area.

In the event qualified nonprofit entities desire to operate in areas where state or local agencies are acting as Designees, the nonprofit will be required to enter into a cooperation agreement with the relevant Designee with jurisdiction prior to participating in restructuring in that jurisdiction. Where more than one nonprofit desires to operate in a single geographic area, HUD will allocate projects based on their qualifications and familiarity with the local market area.

Until such time as qualified Designees are selected for specific areas, HUD will be responsible for Demonstration Program implementation.

B. Alternative Approaches for Designee Participation in the Demonstration Program

Designees may contract with HUD under one of two approaches:

1. Fee for Service With Performance Incentive

a. Compensation Structure. Under this approach, the Designee will be paid on a uniform fee structure, to be established by HUD, which will include both a Base Fee and an incentive fee, called a Bonus Fee, as defined in the contract to be negotiated between HUD and the Designee.

(1) Base Fee. The Base Fee will be earned and paid based on achievement of certain stages of performance as indicated below.

Stages of Performance Criteria on which Base Fee will be earned:

Stage I: Submission of Detailed Business Plan

Submission to HUD of a detailed Business Plan to include:

(i) An outline of the ownership entity, loan documents (and bond documents, if applicable);

(ii) Required third party approvals;

(iii) A completed appraisal meeting the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Standards Board of the Appraisal Foundation, as modified by HUD, incorporating data on operating expenses available from FHA and entities such as IREM;

(iv) Underwriting analysis including assessment of market rents and operating expenses based on the appraisal, historical operating expenses, and determination of Net Operating Income, supportable financing, proposed principal reduction, rehabilitation financing, and owner input;

(v) Assessment of rehabilitation needs;

(vi) Description and rationale for the mandatory demonstration approach being selected;

(vii) Evidence of proper notification to tenants, Affected Unit of Local Government and lender(s);

(viii) Summary of comments received in the process and how they were addressed;

(ix) Environmental issues;

(x) Litigation issues;

(xi) Tax issues;

(xii) Public policy issues;

(xiii) Written record of inquiries from public officials regarding the restructuring; and

(xiv) Other issues as provided more specifically in further guidance to be provided by HUD. All information in the Business Plan is to be supported by the findings of the due diligence activities.

Stage II: Executed Restructuring Commitment

Reach agreement on a post-appeal Restructuring Commitment or aggregate Commitments in the case of multiple project restructurings, executed by the Designee and owner within 180 days of the date of the contract between HUD and the Designee that:

(i) Meets or exceeds net savings to government anticipated by the HUD cost saving model as adjusted and agreed to by HUD to accommodate project financing and public policy needs; and

(ii) Achieves HUD's public policy objectives to be defined jointly by the Designee and HUD.

Stage III: Closing of the Transaction

Close transaction based on a Restructuring Commitment within 60 days of the execution of the Restructuring Commitment.

(2) Bonus Fee. In addition to the Base Fee for Service, a Bonus Fee would be earned based on the following Bonus Objectives being achieved:

(a) Amount of Savings to the Federal Government, based on the HUD model for credit scoring;

(b) Timeliness. Closing the transaction in a period shorter than the projected 60 days after execution of the Restructuring Commitment; and

(c) Achieving HUD and local Public Policy Objectives. Providing an exceptional solution to meeting HUD's public policy objectives, in HUD's sole estimation.

b. Processing. Once a project in the Demonstration Program has been assigned by HUD to the Designee, the Designee will be responsible for accomplishing the restructuring of the project in a period of 180 days from the date of the Demonstration Agreement and closing in a period not to exceed 60 days from the execution of the Restructuring Commitment. The Designee's process for restructuring must be consistent with the authorizing legislation for the Demonstration Program and must meet mandatory Demonstration Program objectives including statutory notification requirements.

The Designee will be required to seek HUD approval and the approval of the insured mortgagee and other necessary third parties at the three Stages described above in Section VII.B.1.a.(1). The Business Plan and the Final Restructuring Commitment will require HUD approval.

As in direct HUD processing, the owner will have 10 calendar days from the issuance of the Restructuring Commitment to appeal, in writing, to the Director of Multifamily Housing in the HUD field office with jurisdiction, the terms Restructuring Commitment. The written notice of appeal shall specifically state, in reasonable detail, the issues and bases upon which the owner seeks review. Following the appeal, a modified Commitment may be issued by HUD. If needed, after signing a modified Commitment, the owner will qualify for an extension of the Demonstration HAP Contract. Failure to sign a Restructuring Commitment will result in the termination of the Demonstration Agreement and a reduction of project rents to 120% of FMR.

Any project rehabilitation or capital improvements supported or required by HUD must be processed in accordance with HUD's environmental review requirements in 24 CFR part 50, prior to HUD's approval of a Designee's Detailed Business Plan. All projects must be in conformance with flood insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1). HUD will also execute the closing documents. Where full or partial mortgage prepayment from the FHA Insurance Fund or new FHA-insured financing is included in the restructuring, new regulatory agreements must be entered into.

The Demonstration Program limits the number of units for which HUD may permit assignment of its insured position, enter into contracts to purchase reinsurance or otherwise transfer economic interest in the contracts of insurance to 5,000 units. HUD will approve requests from Designees to receive such assignment in the order in which they are received and subject to HUD's assessment of the benefit to the Federal Government and the timeliness of implementation. In the absence of designees for any geographic area, HUD may assume the role of designee and sub-contract the assignment of economic interest.

The Demonstration Program also limits the number of units for which HUD may substitute tenant-based Section 8 assistance for project-based assistance to 10% of the aggregate number of units in projects restructured in any one fiscal year. HUD will approve requests for tenant-based assistance for projects that demonstrate new and innovative approaches to restructuring, subject to availability, given the 10% limitation.

In the Designee's restructuring process, HUD will be the initial point of contact with owners and will be responsible for allocating projects to the selected Designee.

2. Joint Venture Approach

a. Compensation Structure. HUD seeks joint venture arrangements in which nonprofit or public entity Designees assume some or all of HUD's risk of restructuring in exchange for a share of the savings to the Federal Government resulting from restructuring. In most cases, savings to the Government will be measured by comparing the cost to the Government that would occur if the project were not restructured and the first mortgage defaulted with the cost to the Government of the restructuring by the joint venture.

The objective of the joint venture approach is to explore ways to significantly reduce HUD's administrative role while simultaneously advancing the interest of the Federal Government (taxpayers) in the restructurings. The risk of restructuring assumed by designees could include originating a new uninsured or partially insured loan, making a cash payment for the assignment of HUD's economic interest in insurance in force, or other form as designed and proposed by the Designee.

In joint venture arrangements, the Designee investment can take the form of money, time, or credit exposure. The investment may be made directly by the Designee or by a partner of the Designee, such as those public and private entities listed in Section VII.A. The freedom of the Designee to control the transaction will be commensurate with the level of investment. HUD seeks to transfer sufficient risk and reward to the Designee to insure that HUD's objectives will be met with substantially reduced HUD monitoring and involvement. Ideally, HUD would not review interim

stages of the restructuring process and would accept the Designees' warranties, certifications and representations. It is possible that HUD would delegate all its powers to the designees including the ability to authorize full or partial mortgage prepayment and would rely solely on a post-restructuring audit to verify that the interests of the Federal Government were fairly represented in the transaction.

Payments to Designees for fees, return on investment and, if applicable, administration of Section 8 will be funded from transaction proceeds, Section 8 appropriations and other funds as HUD may determine.

b. Process. The Joint Venture Designees will be responsible for all decision making. HUD approvals will be based on representations and certifications made by the Designee. The Designee's process for restructuring must be consistent with the authorizing legislation for the Demonstration Program and must meet mandatory Demonstration Program objectives including statutory notification requirements and affordability requirements.

Joint Venture Designees will indicate in their letter of interest or RFQ that they desire to handle, on a joint venture basis, some or all of the projects in their service areas whose owners opt to participate in the Demonstration Program. Once the joint venture is in place, HUD will assign the Designee demonstration projects. In its selection, HUD will give preference to qualified Designees that have had positive previous association with specific projects that may seek restructuring.

After being selected by HUD, the Designees will meet with the Demonstration Program Coordinator and HUD financial advisors to develop a joint venture approach that is mutually satisfactory to HUD and the Designees. The approach with each Designee will be formally described in a joint venture agreement that will set forth Designee risk and authority, HUD oversight, a cost to government calculation model and a method of sharing savings to government with HUD and the Designee. The joint venture agreement shall provide that HUD shall complete its environmental review requirements under 24 CFR part 50, as applicable, prior to the entry of any restructuring commitment by HUD or binding HUD. The agreement shall also provide that all projects must be in conformance with flood insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1).

The Demonstration Program limits the number of units for which HUD may permit assignment of its insured position, enter into contracts to purchase reinsurance or otherwise transfer economic interest in the contracts of insurance to 5,000 units. HUD will approve requests from Designees to receive such assignment in the order in which they are received and subject to HUD's assessment of the benefit to the Federal Government and the timeliness of implementation. In the absence of Designees for any geographic area, HUD may assume the role of Designee and sub-contract the assignment of economic interest.

The Demonstration Program also limits the number of units for which HUD may substitute tenant-based Section 8 assistance for project-based assistance to 10% of the aggregate number of units in projects restructured in any one fiscal year. HUD will approve requests for tenant-based assistance for projects that demonstrate new and innovative approaches to restructuring, subject to availability, given the 10% limitation.

VIII. Alternative Processing

The following alternative processing may also be used for projects that are not within the jurisdiction of a Designee.

Within 10 days of execution of the Demonstration Agreement in the case of FY 1997 contract expirations, or upon submission of a restructuring proposal in the case of post-1997 contract expirations, and where the FHA loan is refinanced by a new loan with or without FHA insurance, owners may elect to engage an FHA approved lender or servicer to undertake some or all of the due diligence and underwriting described in these guidelines, subject to review and approval by the Demonstration Manager or the field office Multifamily Director. The lender/servicer shall submit to HUD a detailed Business Plan signed by the owner to include:

A. An outline of the ownership entity and loan documents required for the restructuring proposal (and bond documents, if necessary);

B. Third party approvals required;

C. Completed appraisal meeting the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Standards Board of the Appraisal Foundation, as modified by HUD, incorporating data on operating expenses available from FHA and entities such as IREM;

D. Underwriting analysis including assessment of market rents and operating expenses based on the appraisal, proposed operating expenses, determination of NOI, supportable financing, proposed principal reduction, rehabilitation financing, owner input;

E. Assessment of rehabilitation needs;

F. Description and rationale for the mandatory demonstration approach to restructuring being selected;

G. Evidence and certification of proper notification of tenants, Affected Unit of Local Government and lender(s) of the owner's intent to participate in the Demonstration Program, and a summary of comments received in the process and how they were addressed. The same process that HUD requires owners to follow for notification, outlined in Section VI.D., must be followed;

H. Description of environmental issues, if any;

I. Description of litigation issues and tax issues;

J. Description of public policy issues;

K. Written record of inquiries from public officials regarding the restructuring; and

L. Other issues as provided more specifically in further guidance to be provided by HUD.

All information in the Business Plan is to be supported by the findings of the due diligence activities.

The restructuring Business Plan will be submitted to the Demonstration Manager and or Field Office Multifamily Director for approval. Any project rehabilitation or capital improvements supported or required by HUD must be processed in accordance with HUD environmental review requirements in 24 CFR part 50, prior to HUD's approval of the restructuring Business Plan. All projects must be in conformance with Flood Insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1). HUD will respond to the Business Plan in 30 days, after negotiating with the owner and lender, with a Restructuring Commitment. As in direct HUD processing, the owner will have 10 calendar days from the issuance of the Restructuring Commitment to appeal, in writing, to the Director of Multifamily Housing in the HUD field office with jurisdiction, the terms Restructuring Commitment. The written notice of appeal shall specifically state, in reasonable detail, the issues and bases upon which the owner seeks review. Following the appeal, a modified Commitment may be issued by HUD. If needed, after signing a modified Commitment, the owner will qualify for an extension of the Demonstration HAP Contract. Failure to sign a Restructuring Commitment will result in the termination of the Demonstration Agreement and a reduction of project rents to 120% of FMR.

In cases where the FHA loan is being retained, HUD may request the mortgagee or loan servicer to perform due diligence activities and underwriting, in coordination with the Demonstration Manager, as currently permitted for certain mortgagees and servicers under FHA policies.

IX. Other Provisions of Demonstration Program Legislation

A. Participation of Projects With Post-FY 1997 Expirations

In the allocation of Demonstration Program funding resources, priority will be given to projects with Section 8 contracts expiring in FY 1997. Demonstration projects with contracts expiring after FY 1997 will not be processed until (i) all projects with contracts expiring in FY 1997 have either closed on a Restructuring Commitment or the Demonstration Agreement has expired; or (ii) HUD determines that the proposed restructuring imposes no cost to the Federal Government as calculated using the rules established for implementation of the Budget Enforcement Act of 1990. In general, the determination of cost to government will compare the loss to the Government (cost to FHA) that would occur if the demonstration candidate were to have rents set in accordance with section 211(b) of the HUD FY 1997 Appropriations Act, to the cost to FHA of the proposed restructuring. If the restructuring of a project costs less, on a discounted basis, than the total costs if the project goes all the way through the default process (assuming project rents are reduced to 120% of FMR), then that project will be included in the Demonstration Program.

Post-FY 1997 project owners may enter the Demonstration Program by submitting a letter of interest to the Demonstration Program Coordinator. The letter of interest must include the following:

a. Project Name and Address;
b. FHA Project Number;
c. FHA Insurance Program;
d. Unit Rental Information: Gross rent (contract rent plus utility allowance, if applicable) by unit type, number of total units and assisted units by unit type, owner estimate of market rents by unit type, gross rent as a percentage of FMR;
e. HAP Expiration Date and a copy of the HAP contract and Section 8 Identification Number;
f. Loan Information: Unpaid Principal Balance of the FHA-insured mortgage(s), original principal amount, loan maturity date;
g. Owner contact name, address, telephone number and fax number; and
h. Management agent name, address, telephone number and fax number.

Within 30 calendar days after HUD's receipt of letters of interest, HUD will respond to the owner with a calculation of probable cost or savings to government, based on the comparison described above. If the proposed restructuring appears to generate savings, it will be referred to a Designee or to a HUD Demonstration Manager for processing. At the same time, project tenants, Lender(s) and the Affected Unit of Local Government will be notified in the same manner as required for projects with Section 8 contracts expiring in FY 1997. This notice must be coordinated with the Field Office having program jurisdiction. HUD's restructuring processing for projects with post-FY 1997 expirations follows the same process the projects with FY 1997 expirations. Designee processing is discussed in Section VII of these Guidelines and Alternate processing is discussed in Section VIII.

B. Sunshine Provision

In order that others may learn from the experience of the Demonstration Program, all proposals accepted by HUD to participate in the 1997 Demonstration Program may be posted on the Department's Web Page (www.hud.gov/fha/mfh/mfhsec8.html). The posted information will include, but not be limited to, the final restructuring commitment, detailed financial information regarding the asset and tenant issues. Owners will be requested to waive the provisions of the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905).

X. HUD Findings and Certifications

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this notice are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The notice implements a statutorily authorized demonstration program and is intended to find ways of reducing the impact on families that might otherwise be caused by the nonrenewal of Section 8 project-based rental assistance.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Oats and Coronary Heart Disease; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95P–0197]

RIN 0910–AA19

Food Labeling: Health Claims; Oats and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its decision to authorize the use, on food labels and in food labeling, of health claims on the association between soluble fiber from whole oats and a reduced risk of coronary heart disease (CHD). Based on its review of evidence submitted with comments to the proposal, as well as of the evidence described in the proposal, the agency has concluded that the type of soluble fiber found in whole oats, i.e., beta (β)-glucan soluble fiber, is primarily responsible for the association between consumption of whole oats, including oat bran, rolled oats, and whole oat flour, and an observed lowering of blood cholesterol levels. The agency has concluded that, based on the totality of the scientific evidence, there is significant scientific agreement among qualified experts to support the relationship between soluble fiber in whole oats and CHD. Therefore, FDA has decided to make the subject of the health claim "soluble fiber from whole oats" and has concluded that claims on foods relating the onsumption of soluble fiber from whole oats to reduced risk of heart disease are justified. FDA is announcing this action in response to a petition filed by the Quaker Oats Company (the petitioner).

DATES: The regulation is effective January 23, 1997. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 101.81(c)(2)(ii)(A), effective January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

SUPPLEMENTARY INFORMATION

I. Background

In the **Federal Register** of January 4, 1996 (61 FR 296), the agency proposed to authorize the use, on food labels and in food labeling, of health claims on the association between oat bran and oatmeal and reduced risk of CHD. The proposed rule was issued in response to a petition filed under section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall promulgate regulations authorizing health claims only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c)).

FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on oat bran and oatmeal, i.e., rolled oats, and heart disease. The agency summarized this evidence in the proposed rule (61 FR 296).

The proposed rule included qualifying and disqualifying criteria for the purpose of identifying foods eligible to bear the proposed health claim. The proposed qualifying criteria were that a food provide 13 grams (g) of oat bran or 20 g of oatmeal, and that the oat bran and oatmeal contain, without fortification, at least 1 g of β-glucan soluble fiber. The proposal also specified mandatory content and label information for health claim statements and provided model health claims.

As part of the requirements for the claim, the agency proposed to allow a shortened version of the claim describing the relationship between diets high in oat bran and oatmeal and risk of heart disease that included a referral statement to the location of the full claim. The proposed version of the full claim described the relationship between diets low in saturated fat and cholesterol and high in oat bran and oatmeal and heart disease. FDA requested data on whether permitting a shortened claim will affect whether consumers will also read the full claim.

The agency also proposed to make the phrase "depends on many factors" optional information. The agency agreed with the petitioner's arguments that, based on an ever increasing background of health information made available through various media, consumers already understand that foods are not drugs, and that health enhancement depends not only on consumption of a particular food but also on other dietary practices, exercise, heredity, lifestyle, and a host of other factors. The agency also agreed with the petitioner that the requirement that the claim use the term "may" or "might" to relate the ability of oat bran or oatmeal to reduce the risk of heart disease is intended to reflect the multifactorial nature of the disease. The agency requested written comments on the proposed rule, including comments on the agency's tentative decision to make the phrase "depends on many factors" optional information.

II. Summary of Comments and the Agency's Responses

In response to the proposal, the agency received approximately 1,450 letters, each containing one or more comments, from consumers, professional organizations, government agencies, industry, trade associations, and health care professionals.

The majority of the comments that the agency received agreed with one or more provisions of the proposed rule without providing grounds for this support other than those provided by FDA in the preamble to the proposal. Many of these comments also requested modification of one or more provisions of the proposed rule. A few comments disagreed with the proposed rule and provided specific support for their positions. The agency has summarized and addressed the relevant issues raised in all comments in the sections of this document that follow.

A. Food Substance Associated with Reduced Risk of CHD

Health claims have two essential elements: a food substance and a disease or health-related condition (§ 101.14). The agency proposed to authorize a health claim that diets high in oat bran and oatmeal and low in saturated fat and cholesterol may reduce the risk of CHD. Further, in the proposal, the agency tentatively agreed with the petitioner's position that, while current research may not demonstrate that β-glucan soluble fiber is the only component of oats that affects blood total- and low density lipoprotein (LDL)-cholesterol levels, potentially reducing the risk of CHD, β-glucan soluble fiber can serve as a marker for the food substance that is the subject of the claim. Therefore, FDA tentatively concluded that the relationship is based on a daily intake of not less than 40 g oat bran or 60 g oatmeal, without fortification, that provide 3 g or more per day β-glucan soluble fiber. The disease element of the claim is CHD, as

assessed by changes in serum total- and LDL-cholesterol levels in response to the consumption of specified levels of oatmeal or oat bran. A number of comments dealt with what should be the appropriate description of the food substance that is part of the health claim relationship.

1. Terminology

(Comment 1)

Some comments stated that the proposed claim seemed to be limited to hot cereals because the agency used the term "oatmeal" to describe one of the qualifying foods. A few comments suggested that the agency inappropriately used the term "oatmeal" for the more technically correct term "rolled oats," the dry form of the food before cooking or processing.

The agency did not intend to limit the proposed claim to hot cereals. As suggested by the comments, the agency was using the term "oatmeal" to be synonymous with the term "rolled oats," i.e., the dry oat product.

Likewise, the agency did not intend that use of the terms "oatmeal" and "oat bran" would mean that only hot, cooked cereals could bear the claim. The proposed claim was intended to describe the relationship between oat bran and rolled oats which can be used as single ingredients, such as in hot or ready-to-eat cereals, or as components of other foods that are served either hot or cold. Under the proposal, any oat product meeting the eligibility requirements for the claim could bear the claim. Because the term "rolled oats" is the technical term more commonly used to describe the dry form of the food, the agency has replaced the term "oatmeal" with "rolled oats" throughout this final rule.

2. Component of Oat Bran and Rolled Oats Responsible for the Effect

(Comment 2)

Some comments stated that the proposed claim inappropriately focused on oat bran and rolled oats as providing an effect on CHD risk. These comments suggested that it was the type of soluble fiber in oat products, specifically β-glucan, that was the primary component responsible for the relationship between the oat products and CHD. FDA had noted in its proposal that β-glucan soluble fiber was closely associated with the observed effect, but at the time, the agency tentatively concluded that β-glucan soluble fiber served as a marker for the food with potential to reduce the risk of CHD. Comments offered support for the view that β-glucan soluble fiber is more than just a marker in whole oats by referencing studies that demonstrated effects of β-glucan independent of the food. These comments cited references in FDA's proposed rule (Refs. 12, 15, 33, 35, 38) and also provided additional references (Refs. 60 through 74) in support of their argument. According to these comments, this evidence suggests that β-glucan soluble fiber can provide an independent and meaningful effect and, in turn, supports that β-glucan is the primary component in whole oat products responsible for that effect on CHD risk factors. A few comments also noted that studies suggest a dose-response relationship between β-glucan soluble fiber and the effect on blood total- and LDL-cholesterol levels because the degree of effect is linearly related to the amount of β-glucan consumed (Ref. 66). Conversely, some comments supported the agency's proposed treatment of β-glucan soluble fiber as a marker for identifying a useful food product rather than as the active component.

In addition, several comments cited references to demonstrate that processing of oat products in ways that alter the physical structure of the β-glucan soluble fiber component (e.g., alter molecular structure and hence viscosity) results in a loss of effect on blood total- and LDL-cholesterol levels (Refs. 63 through 64). Several comments also noted that FDA's proposal cited the Torrenen et al. study (Ref. 38), showing that a special processing technique, when used with oat bran concentrate, appeared to reduce its effect on serum lipid levels. These comments cited the loss of effect with changes in the physical structure of β-glucan soluble fiber as evidence that there is a direct effect attributable to the presence of β-glucan soluble fiber, and that this effect is dependent not only on the chemical characteristics of the β-glucan soluble fiber but also on the retention of important physical characteristics such as viscosity.

Moreover, several comments cited references to show that it is the presence of a highly viscous soluble fiber in the intestinal tract that is determinative of the desired effect on CHD risk factors, and that, holding all other factors constant, changes in viscosity of intestinal contents alone result in significant effects on blood total- and LDL-cholesterol levels (Refs. 72 through 74). These comments, which were submitted by fiber experts, suggested that the ability of β-glucan soluble fiber to produce viscosity in the intestinal contents, while not the only mechanism by which soluble fibers have an effect on CHD risk, can be a clinically meaningful and independent factor affecting CHD risk. Other comments cited studies that showed that oat β-glucan soluble fiber has viscous properties that are responsible for physiological effects on the glycemic response (i.e., changes in blood sugar levels following ingestion of foods) and suggested that the same viscous properties may also play a role in affecting blood total cholesterol levels (Refs. 60 and 69).

On the other hand, some comments stated that, while β-glucan soluble fiber is an important factor, other components in the oat products, including certain chemical characteristics and the tocotrienols that are part of the lipid fraction of whole oats, also contribute to the association with CHD risk reduction. Thus, according to these comments, specifying requirements for only β-glucan soluble fiber in the proposed regulation is not appropriate.

The agency has carefully reviewed the comments and evidence submitted on the issue of the significance of the β-glucan in the oat products and is persuaded that β-glucan soluble fiber is the primary, but not the only, component in whole oats that affects serum lipids. β-glucan thus plays a significant role in the relationship between whole grain oats and the risk of CHD. The agency reached this conclusion based on evidence that there is a dose response between the level of β-glucan soluble fiber from whole oats and the level of reduction in blood total- and LDL-cholesterol (Refs. 15 and 33), and that intakes of β-glucan soluble fiber at or above 3 g per day were more effective in lowering serum lipids than lower intake levels. These results are consistent with the results of the individual human studies reviewed in the proposal.

FDA, therefore, concludes that it is appropriate to change the food substance that is the subject of this authorization for claims from oat bran and rolled oats to β-glucan soluble fiber from whole oats.

3. Eligibility of Whole Oat Flour

(Comment 3)

A number of comments suggested that products containing whole oat flour made from 100 percent oat groats should be eligible to bear the health claim. The reasons given, some supported by data, included: (a) Evidence suggests that β-glucan soluble fiber is the primary contributor to the observed effect of oat bran and rolled oats, and whole oat flour contains β-glucan; (b) whole oat flour is derived from the same starting material as rolled oats (i.e., whole oat groats) and, other

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than the smaller particle size of whole oat flour, possesses a chemical and physical composition virtually identical to rolled oats (Ref. 57); (c) animal studies demonstrate that, like the β-glucan soluble fiber from oat bran and rolled oats, whole oat flour β-glucan soluble fiber retains important physical characteristics during digestion (Ref. 68); and (d) data from a human study (Ref. 70) and several animal studies (Refs. 57, 66, and 71) show a positive effect of ready-to-eat cereals made with whole oat flour on risk factors for CHD. One comment submitted a recent, unpublished human clinical trial in which a ready-to-eat cereal made from whole oat flour was used as the test product (Ref. 70). Results showed that consumption of the cereal had a significant effect on blood total- and LDL-cholesterol levels as compared to the placebo cereal.

In considering the comments concerning the inclusion of whole oat flour in this rulemaking, the agency has reviewed the evidence referenced in these comments, including the additional data submitted. The agency noted the similarity of whole oat flour to rolled oats in terms of chemical and physical properties and type of processing. After careful consideration of the scientific evidence and the nature of the proposed health claim, FDA has concluded that products made with whole oat flour from 100 percent oat groats should be eligible to bear a claim.

FDA originally proposed the health claim that is the subject of this rulemaking for oat bran and oatmeal (i.e, rolled oats) because this was the claim requested in the petition that began this proceeding, and because the submitted evidence supported the relationship between the consumption of these foods and a reduced risk of CHD. However, the agency did not conclude in its proposal that the effect was uniquely that of oat bran and rolled oats, but rather that the evidence submitted by the petitioner supported the relationship for these foods. The comments argued, and pointed to evidence in the record as well as to evidence that they submitted that supported their claim, that whole oat flour has a similar composition, and had similar effects on blood cholesterol levels, as oat bran and rolled oats. They argued that, given these facts, it was the logical outgrowth of the proposal to enlarge the substances that could be the subject of a claim as part of this final rule to include whole oat flour.

FDA notes that one study submitted with a comment examined the effect of whole oat flour-based cereal on serum lipids in mildly hypercholesterolemic subjects. Forty-three patients, aged 27 to 68 years, with mild to moderate hypercholesterolemia participated in this placebo-controlled study. The study consisted of three parts: a 4-week run-in on a Step 1 diet (i.e., a diet with less than 30 percent calories from fat, less than 10 percent calories from saturated fat, and less than 300 mg cholesterol), a 2-week baseline, and a 4-week treatment period. During the treatment period, subjects in the oat group continued to adhere to the Step I diet and consumed one prepackaged portion (1.5 oz.) of cereal twice a day, resulting in an estimated total daily intake of 3 g β-glucan from whole oat flour. Body weights were maintained at a constant level throughout the treatment period. Although there were differences in total-, high density lipoprotein (HDL)-, and LDL-cholesterol levels between the groups at baseline, the authors used an analysis of covariance to adjust data to a common baseline.

The results of the study showed that subjects consuming the whole grain oat cereal experienced a significant decrease in total cholesterol (4.4 percent or 10.0 milligrams (mg)/deciliter (dL)) and LDL-cholesterol (4.9 percent or 7.8 mg/dL), and no significant difference in HDL-cholesterol, compared to the placebo group. These results are consistent with the findings for oat bran and rolled oats, i.e., positive effects on blood total- and LDL-cholesterol levels in mildly hypercholesterolemic subjects adhering to a diet low in saturated fat and cholesterol. Therefore, this study, along with evidence submitted by comments showing compositional similarities between whole oat flour and rolled oats, provides sufficient evidence for the agency to conclude that whole oat flour has the same effects relative to reduced risk of CHD as do oat bran and rolled oats. Further, there is evidence that corroborates this conclusion that is provided by animal studies (Ref. 68). These animal studies addressed the issue of retention of viscosity characteristics during processing and digestion. Because viscosity of intestinal contents is known to be a critical factor in determining the ability of soluble fibers to reduce the risk of CHD (Refs. 56, 72, and 73), and because viscosity is known to be affected by food processing procedures or, following ingestion, by the digestive system in ways that are unpredictable (Refs. 56 and 65), evidence to demonstrate that the β-glucan soluble fiber from whole oat flour retains the same level of viscosity in the digestive tract as does that from rolled oats is crucial to the question of whether whole oat flour can provide the same benefits as rolled oats.

The animal studies cited by one comment (Ref. 68) demonstrate that there is bioequivalence relative to these important physical characteristics between whole oat flour and rolled oats. When taken together, the available evidence provides a basis for concluding that it is appropriate to make whole oat flour, as well as oat bran and rolled oats, the subject of the authorized substance-disease relationship.

Therefore, for the purposes of § 101.81, the term "whole oats" includes oat bran, rolled oats, and whole oat flour. Changes to the codified sections of this rule to reflect the inclusion of whole oat flour are discussed in section II.B. of this document.

While FDA has added whole oat flour as a subject of the health claim in this proceeding, it must caution that it has done so here only because of the close relationship of whole oat flour to the substances that were the subject of the proposal and the very narrow increment of evidence necessary to broaden the claim to include this substance. Given the very tight timeframes that are established by the statute, and the agency's interest in ensuring that scientifically valid claims are authorized as quickly as possible, the agency cautions that it will not frequently be in a position to authorize claims about additional substances during the comment period. Thus, interested people would be well advised, if they are aware of a substance that should be the subject of a health claim, to petition for authorization for a claim about the substance rather than relying on the comment process to achieve that end.

4. β-glucan Soluble Fiber From Other Sources

(Comment 4)

Some comments, in noting the evidence to suggest that β-glucan soluble fiber is the component in oat bran and rolled oats responsible for their effect, further noted that the evidence suggests that β-glucan soluble fiber from other sources, such as barley and oat gums, affects the risk of CHD in the same way as β-glucan from the oat bran and rolled oats (Refs. 61 through 65, and 67). These comments requested that the proposed health claim be extended to any food product containing a specified level of β-glucan soluble fiber from any source including processed or novel sources of β-glucan soluble fiber.

Several comments suggested that one type of evidence to demonstrate that β-glucan soluble fiber from other food sources can affect the risk of CHD is the studies showing similar effects on blood total- and LDL-cholesterol levels among different β-glucan containing foods, including barley and oats (Refs. 61 through 65, and 67). Another comment cited a study showing that variability in effects on serum cholesterol levels among different barley cultivars is associated with differences in amounts of β-glucan soluble fiber (Ref. 64).

While acknowledging that there is evidence suggesting that consumption of β-glucan soluble fiber from a variety of food sources may help to lower blood total- and LDL-cholesterol levels, and thus reduce the risk of CHD, the agency disagrees that the claim should be extended at this time to all foods that contain a specified amount of β-glucan soluble from any source. The agency's decision to limit eligibility to bear a claim to oat bran, rolled oats, and whole oat flour is based on several considerations.

First, the proposed subject of this rulemaking was oatmeal and oat bran and their effect on the risk of CHD. FDA has examined in detail only the evidence for these oat products and whole oat flour. Other food sources of β-glucan soluble fiber (oat and non-oat sources) have not been carefully reviewed by FDA, nor has the totality of the evidence on these other sources of the fiber been submitted to the agency for review. Thus, the basis for including a wider range of food sources of β-glucan beyond whole oats in the regulation authorizing health claims is not presented by the administrative record, and consideration of these other sources is beyond the scope of this rulemaking.

Nonetheless, the agency recognizes that it is likely that consumption of other sources of β-glucan soluble fiber in addition to those that are the subject of this rulemaking will affect blood cholesterol levels. For this reason, and for reasons described elsewhere in this document in response to related comments about other soluble fibers, FDA is adopting a final rule that is structured so that it can be amended to establish a framework that will accommodate claims for other sources and types of soluble fibers and the risk of CHD.

Second, there currently are no generally accepted or validated criteria for predicting which sources or processed forms of β-glucan soluble fiber, beyond oat bran, rolled oats, and whole oat flour, are capable of reducing blood total- and LDL-cholesterol levels. FDA, therefore, lacks criteria for differentiating among those sources that provide such effects and those that do not. This lack of evidence is of concern to the agency because, as discussed previously, certain types of processing may decrease the ability of the fiber to have the desired effect for reasons that are unpredictable and that vary from source to source. At the same time, it is known that certain physical characteristics related to the fiber's ability to maintain the viscosity of the intestinal contents must be present. However, the extent to which this capacity can be influenced by different food sources or by processing is unclear. Validated and accepted in vitro or animal methods for identifying this characteristic are not part of the administrative record for this rulemaking.

Human clinical trials can be used to resolve these issues. However, in the absence of clinical or other appropriate types of data in the administrative record, assumptions about the bioequivalence of all sources of β-glucan soluble fiber cannot be made at this time.

In authorizing the claim for whole oat flour as a result of comments to the proposal, FDA is relying on in vivo (animal) studies as evidence of the bioequivalence of whole oat flour relative to rolled oats. The agency feels comfortable in doing so because there is a human study to demonstrate the effectiveness of whole oat flour in reducing the risk of CHD, as well as information on the similarity in composition of whole oat flour to rolled oats. It is unclear to what extent such in vivo data from animal studies can be relied upon in the absence of corroborating human data. FDA will make decisions on this issue based on the totality of the available evidence. Thus, future petitions for other sources of β-glucan soluble fiber to be added as subjects of a health claim, which the agency anticipates receiving, should specifically address the appropriateness, the protocol used to develop, and the interpretation of, in vivo data from animal studies in demonstrating bioequivalence among soluble fibers.

5. Claims for Other Soluble Fibers (Comment 5)

Some comments stated that by proposing the oat bran and rolled oats health claim, the agency has acknowledged that soluble fibers themselves are an important functional component that affect serum lipid levels and thereby reduce the risk of CHD. These comments suggested that other soluble fibers have been shown to have the same effects as that of β-glucan soluble fiber from whole oats on the risk of CHD. One comment discussed the evidence for psyllium and its capacity to affect serum lipid levels and thereby reduce the risk of CHD. These comments stated that, because other soluble fibers and purified gums can demonstrate cholesterol-lowering effects, the agency should authorize a broad claim for soluble fibers and reduced risk of CHD.

Several comments suggested that consumers would benefit from a soluble fiber and CHD claim in that it would be consistent with dietary recommendations to consume diets high in fiber and low in fat. However, some of the comments noted that differences in the source and method of processing whole oat β-glucan result in varied and unpredictable effects on the physical characteristics of the fiber, and that these differences may apply to other types of soluble fibers as well. The comments stated that, therefore, a claim for soluble fiber and heart disease should only be extended to those soluble fibers that have been demonstrated to reduce the risk factors related to CHD.

Another comment noted that, from a regulatory standpoint, a single claim on the relationship between certain soluble fibers and heart disease would be more manageable for the agency than would be attempting to authorize individual health claims for all the different soluble fiber sources that might be eligible to bear a CHD claim. The comment explained that, as other soluble fibers are shown to qualify to bear a soluble fiber/CHD claim, the regulation could be amended to include the additional substance.

FDA agrees with the comments that stated that there is evidence to suggest that consumption of a number of soluble fibers, in addition to β-glucan, affect blood total- and LDL-cholesterol levels and thus affect the risk of CHD. The agency reviewed evidence to this effect in evaluating the relationship between total dietary fiber and CHD in the final regulation published in the January 6, 1993 **Federal Register** (58 FR 2552). The agency noted, however, that there was some evidence that soluble fiber from different foods has different effects, and that the analytical measure of soluble fiber may not be adequately predictive of its physiological effects (58 FR 2552 at 2562). Therefore, FDA encouraged manufacturers to petition for a claim for their soluble fiber product if there was evidence to demonstrate that the particular soluble fiber-containing product is effective in lowering serum lipid levels (58 FR 2552 at 2562).

Further, FDA agrees that its decision to authorize claims on the association between oat bran, rolled oats, and whole oat flour and CHD represents acceptance that one type of soluble fiber, i.e., β-glucan soluble fiber from whole oats, has been adequately shown scientifically to have this effect. However, while the agency agrees with the comments that there is considerable likelihood that a similar showing will be made for certain other soluble fibers, based on the record now before the agency, it cannot take the steps suggested by the comments and broaden this claim. As the agency explained in the 1993 dietary fiber final rule, the effect of individual soluble fibers needs to be documented on a case-by-case basis. A concern about the ability of particular soluble fibers to affect CHD risk was expressed in several comments to the oat bran and oatmeal proposal. As mentioned previously, those comments stated that only soluble fibers that have been demonstrated to reduce serum lipids should qualify to bear a claim. The agency notes that a petition for soluble fiber from psyllium and risk of CHD is currently under consideration by the agency.

As mentioned previously, in the 1993 dietary fiber final rule, the agency encouraged manufacturers to petition for a health claim if the manufacturer could present scientific evidence to support the relationship between its soluble fiber product and risk of CHD (58 FR 2552 at 2567). By encouraging manufacturers to petition for a more specific health claim, the agency implied that it would consider a new claim for those soluble fiber products that had been shown to affect the risk of CHD. However, the agency did not commit to any particular course for how it would authorize health claims about a specific fiber source should it find them to be justified.

One way of doing so would be a regulation about each particular ingredient source of soluble fiber. This model is essentially the one that the agency utilized in the proposal. An alternative approach would be to adopt an umbrella regulation authorizing a claim for diets containing soluble fiber from certain foods and CHD but authorize the use of the claim for specific food sources of soluble fiber only when consumption of those foods has been demonstrated to help reduce the risk of heart disease. FDA agrees with comments that this alternative mechanism would provide flexibility, and that this flexibility may ultimately provide efficiency. However, based on the fact that it was not the agency's charge, in responding to this petition to review the totality of evidence from other, non-oat sources of β-glucan soluble fiber or other types of soluble fiber, the agency finds that it is premature to authorize a broader claim for "soluble fiber from certain foods."

The agency may, at some point, decide to amend § 101.81 to cover types of soluble fiber other than β-glucan from whole oats. If a manufacturer can document, through appropriate studies, that a soluble fiber product has an effect on blood total- and LDL-cholesterol levels, and thereby the product can be useful in reducing the risk of CHD, the manufacturer may petition to amend § 101.81 to include that type of soluble fiber-containing product among the substances about which claims are authorized. This case-by-case approach is necessary because, as discussed in the oat bran and oatmeal proposal, soluble fiber is a family of very heterogeneous substances that vary greatly in their effect on the risk of CHD (61 FR 296).

In summary, in its proposal, the agency was responding to a specific petition to authorize claims about the relationship between oat bran and rolled oats and the reduced risk of CHD. In response to comments, however, FDA is now authorizing claims that describe the relationship between consumption of only a specific type of soluble fiber, β-glucan from whole oats, and reduced risk of CHD.

As suggested by comments, on-going research efforts are likely to build support for the relationship between CHD and consumption of other soluble fibers not addressed in this rulemaking. While the narrow focus of this rulemaking, and limitations on agency time and resources, preclude review of all such soluble fibers as part of this rulemaking, FDA will consider amending § 101.81 to establish a framework that will allow the agency to readily add the list of soluble fibers that can be the subject of a claim, as the evidence warrants.

Therefore, in this final rule, FDA has revised the title of § 101.81 to read: "Health claims; soluble fiber from whole oats and coronary heart disease." For this health claim, the statement "soluble fiber from whole oats" is intended to mean β-glucan soluble fiber from whole oats. Based on information provided in the petition and in some comments, the soluble fiber content of whole oats is predominantly (approximately 87 percent or more) β-glucan (Ref. 1, p. 22). Thus, the total soluble fiber content of whole oats significantly reflects the β-glucan present. Moreover, the term "soluble fiber" is more familiar to consumers than " β-glucan" because soluble fiber can be used on the nutrition label under § 101.9(c)(6)(i)(A). β-glucan is a technical term that presumably is not widely understood.

Further, the agency has modified the regulation to reflect its decision to describe specifically the food substance that is the focus of the claim and to list the sources of β-glucan soluble fiber that have been shown to affect the risk of CHD. Thus, the agency has replaced the discussion in proposed section (c)(2)(ii) on the presentation of the claim with a new discussion, "Nature of the substance: Eligible sources of soluble fiber." This provision describes those sources of β-glucan soluble fiber that qualify for this claim. This section will be discussed in detail in section II.B., of this document.

Given the change in focus from oat bran and rolled oats to soluble fiber from whole oats, the agency is revising several sections of the proposed regulation. First, the words "diets high in oatmeal and oat bran" has been deleted from § 101.81(c)(2)(i) and reference to soluble fiber from whole oats is being added, so that § 101.81(c)(2)(i) will read, relevant part, "diets low in saturated fat and cholesterol that include soluble fiber from whole oats." The agency notes that the statement "diets low in saturated fat and cholesterol and high in soluble fiber from * * *" cannot be used at this time because the term "high" and its synonyms have been defined under § 101.54(b) as meaning that the food contains 20 percent or more of the Daily Reference Value (DRV) per reference amount customarily consumed (RACC) for a particular substance. There is no DRV for soluble fiber. While the agency recognizes that it would be helpful to encourage consumption of a specific amount of soluble fiber from whole oats, it cannot do so in the absence of a DRV for this nutrient. Therefore, the agency is wording § 101.81(c)(2)(i) to state that the diet "include" soluble fiber from whole oats, until such time that a DRV for soluble fiber is established. The agency intends to propose to establish a DRV for soluble fiber, and, once that rulemaking is completed, assuming it results in a DRV, it plans to revisit the requirements in § 101.81 and propose appropriate changes in the requirements for the wording of the claim. Other sections of the regulation that are affected by these changes include § 101.81(a), (b), and (c)(2)(i)(D). Additionally, FDA has deleted the phrase "oat bran and oatmeal" in paragraphs (c)(2)(i)(A), (c)(2)(i)(E), (d)(2), (d)(3), and (e) and replaced it with the statement "diets low in

saturated fat and cholesterol that include soluble fiber from whole oats."

Other changes to the proposed regulation, in order of appearance, include the following: the second sentence of proposed § 101.81(a)(2) states "* * * These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in fiber-containing fruits, vegetables, and grain products, such as oatmeal and oat bran." The agency is revising the last part of that sentence to read "* * * but are also relatively high in fiber-containing fruits, vegetables, and grain products, such as whole oat products."

Proposed § 101.81(a)(3) described oat bran and rolled oats as good sources of soluble fiber and stated that scientific evidence demonstrates that these products are associated with reduced blood total- and LDL-cholesterol levels. In light of the changes in this final rule intended to focus on the relationship between soluble fiber from whole oats and CHD, FDA has deleted the first sentence in proposed § 101.81(a)(3) and revised the second sentence to state, "Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from whole oats to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD." Again, the agency notes that it realizes that information about the amount of soluble fiber from whole oats to consume would be helpful information for consumers, but until a DRV is established, such information cannot be provided. The agency has concluded that the statements in paragraph (a)(3) accurately represent the relationship between diets low in saturated fat and cholesterol and CHD and between soluble fiber from whole oats and CHD.

Proposed § 101.81(c)(2)(i)(C) described what the claim could state in terms of a diet high in oat bran and oatmeal (paragraph (c)(2)(i)(C)(*1*)), and that the effect of a dietary intake of oat bran and oatmeal on risk of CHD was particularly evident when consumed as part of a diet low in saturated fat and cholesterol (paragraph (c)(2)(i)(C)(*2*)). In light of the change to a claim for soluble fiber from whole oats and the risk of CHD, FDA is deleting paragraph (c)(2)(i)(C) and adding two new paragraphs, (c)(2)(i)(C) and (D). These new paragraphs list the terms for use in specifying the soluble fiber and fat components of the claim (paragraphs (c)(2)(i)(C) and (D), respectively) and are discussed further in this section of this document. With the addition of paragraphs (c)(2)(i)(C) and (D), FDA has redesignated proposed paragraphs (c)(2)(i)(D) and (E) as paragraphs (c)(2)(i)(E) and (F), respectively.

Section 101.81(d) contains optional information that may be included in the claim. In paragraph (d)(4) of the proposal, the agency proposed to permit manufacturers the option of describing oat bran and oatmeal as good sources of soluble fiber. For the reason given previously for the revision in paragraph (a)(3), the agency is deleting proposed paragraph (d)(4). FDA is replacing it with new paragraph (d)(4), which states "The claim may specify the name of the eligible soluble fiber." Thus, the manufacturer may refer to "beta-glucan soluble fiber" in the health claim. The use of a specific soluble fiber name is appropriate as optional information but is likely too technical to be of interest to many consumers, and thus to require its inclusion in the claim would be contrary to the agency's desire to provide for claims that are simple, concise, and easy for consumers to understand. The rationale for this change is discussed in more detail under section II.D.4. of this document.

6. Amounts of β-glucan Soluble Fiber Useful in Reducing the Risks of CHD

(Comment 6)

One comment reexamined the data from the Davidson et al., study (Ref. 15) concerning the level of β-glucan consumption per day that is needed to affect blood total cholesterol levels and thereby reduce the risk of CHD. The results of the Davidson et al. study suggested a dose-response relationship between the level of β-glucan intake and the amount of change in blood total cholesterol. The petitioner presented the data from this study in a linear regression model to show the change in blood total cholesterol as a function of soluble fiber intake (Ref. 1, p. 26). The linear regression model showed that an estimated intake of 3 g per day soluble fiber (i.e., β-glucan soluble fiber) is associated with a reduction in blood total cholesterol of about 5 percent. The petitioner submitted the results of its analysis as support for the conclusion that 3 g per day of β-glucan soluble fiber is useful in affecting risks for CHD.

The comment stated that a nonlinear model fits the data better than the simple linear regression model. The comment stated that, based on the nonlinear model, 2.5 g/d β-glucan soluble fiber is necessary to lower blood total cholesterol 5 percent.

The agency does not agree that there is sufficient evidence to conclude that 2.5 g per day is more appropriate than 3 g per day, or that the nonlinear model is a better statistical approach than is the linear model. The data available from the Davidson et al. study are insufficient to determine superiority of the linear model compared to the curvilinear model. The results of the studies that showed an effect of soluble fiber from oat bran, rolled oats, and whole oat flour, and the results of the meta-analysis demonstrate that intakes of 3 g or more β-glucan are more likely to be effective. Thus, to use 2.5 g would be speculative, at best, and not supported by actual data. In contrast, the use of 3 g per day is. Therefore, the agency has concluded that, without further data, there is no justification for concluding that 2.5 g per day is a more appropriate estimate of the amount of β-glucan useful in reducing the risk of CHD than is 3 g per day.

7. Issues Related to a Food-specific Health Claim

(Comment 7)

Some comments stated that the proposed claim for oat bran and oatmeal should not be authorized because it will portray specific foods, i.e., oat products, as "magic bullets." The comments suggested that the claim would mislead consumers in that it creates the impression that consumption of certain foods (oat bran and oatmeal) alone will protect against CHD, and in that it would not convey the concept that it is diets, not foods, that are important in risk reduction. The comments suggested that, as a result, consumers will be discouraged from making other important, and perhaps more effective, life-style changes to help reduce their risk of CHD. Some comments suggested that including reference to the diet in the claim will help prevent oat bran and rolled oats from appearing as "magic bullets." However, there were many comments that stated that consumers are aware that no one food is a "magic bullet" in reducing the risk of disease.

Other comments stated that a claim for an individual food, such as that proposed for oat bran and oatmeal, is appropriate and would also be helpful to consumers because it would identify products that contribute to healthy dietary practices. A few comments expressed concern that consumers would inappropriately extrapolate from the effects of consuming oat bran and rolled oats set out in the health claim and assume a similar effect for all foods containing oat products, whether the foods are consistent with a total dietary pattern for risk reduction of heart disease or not. The comments likened this situation to the one that developed before the passage of the 1990

amendments, when some high-fiber food products bore a message from the National Cancer Institute suggesting that there was a relationship between fiber and risk of cancer. There was a proliferation of ingredient claims on products with trivial amounts of fiber.

A few comments stated that the proposed claim for oat bran and oatmeal should be folded into the authorized claim for fruits, vegetables, and grain products and heart disease (i.e., § 101.77). The comments stated that § 101.77 could be modified to permit the terms "oat bran" and "oatmeal" in the health claim. The comments explained that § 101.77 already establishes the specific requirements for foods that contain soluble fiber. The comments added that this would help prevent individual foods, such as rolled oats, from appearing to be "magic bullets."

The agency disagrees with the comments that stated that it should incorporate this health claim into the authorization for claims on the relationship between fruits, vegetables, and grain products and CHD (§ 101.77). Under § 101.77, soluble fiber is a marker for identifying useful foods, but no specific effect is attributed to the fiber. The claim that FDA is authorizing in this proceeding is based on the demonstrated effect of a certain type of soluble fiber (β-glucan soluble fiber) from a specific food source (whole oats). Therefore, the eligibility criteria and the scientific criteria set forth in § 101.81 are different from those set out in § 101.77. The agency concludes, consequently, that the two claims should not be combined.

The agency notes that, in this final rule, the relationship of whole oats to reduced risk of heart disease is being described in terms of the total diet. As discussed in more detail in response to comment 13 in section II.D.1. of this document, diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk (Ref. 5). While soluble fiber from whole oats can contribute to this effect, its role is generally recognized as being of smaller magnitude (Refs. 4 and 5). Describing the relationship of a total diet low in saturated fat and cholesterol that includes whole oats to the risk of CHD will prevent the oat-containing foods eligible to bear the claim from appearing to be "magic bullets."

B. Specifications for the Nature of the Food Substance Eligible to Bear the Claim

In the proposal, the food substances that were the subject of the claim were oat bran and rolled oats and the products that contain them. The agency stated that the β-glucan soluble fiber content of these products is an appropriate marker for identifying the cholesterol-reducing potential of these products (61 FR 296 at 308) and established levels for β-glucan in foods that would qualify for the claim.

Based on its review of the comments, however, the agency has concluded that β-glucan is the primary component of whole oats that is responsible for the effect that consuming these foods has on the risk of CHD. Therefore, the agency has concluded that the substance-disease relationship that is appropriately the subject of a claim is that between β-glucan soluble fiber from whole oats and CHD. To reflect this judgment, the agency has modified the authorizing regulation to specify the sources of β-glucan that are appropriately the subject of a claim.

Section § 101.81(c)(2)(ii)(A) lists β-glucan soluble fiber and the whole oat sources of this substance. It also sets out the official Association of Official Analytical Chemists International (AOAC) method to be used to determine the β-glucan content of the food. Paragraph (c)(2)(ii)(A) states that the eligible source of β-glucan soluble fiber is from the whole oat sources specified in paragraphs (c)(2)(ii)(A)(1) through (3). Paragraph (c)(2)(ii)(A)(1) lists oat bran, paragraph (c)(2)(ii)(A)(2) lists rolled oats, and paragraph (c)(2)(ii)(A)(3) lists whole oat flour. The totality of the evidence establishes that consumption of these three sources of β-glucan soluble fiber as part of a diet that is low in saturated fat and cholesterol can reduce blood lipids and thus help reduce the risk of CHD.

1. Definition of Whole Oat Products

In the proposal, the agency set out a specific qualifying level of oat bran or rolled oats and β-glucan soluble fiber, i.e., 13 g of oat bran or 20 g or rolled oats that provide 1 g of β-glucan soluble fiber per RACC.

(Comment 8)

Some comments noted that the variability in β-glucan soluble fiber content of oat products may affect whether these products qualify to bear this claim. Several comments stated that to ensure that products contain the appropriate amount of β-glucan soluble fiber, FDA needs to define oat bran because β-glucan soluble fiber levels vary among cultivars. Most of these comments encouraged adoption of the existing American Association of Cereal Chemists' (AACC) definition for oat bran.

The comments pointed out that the AACC definition requires that for a product to be oat bran, it must have a total β-glucan content of at least 5.5 percent (dry weight basis (dwb)). As a result of processing oat groats to oat bran, β-glucan soluble fiber is more concentrated. Therefore, oat bran contains higher levels of this soluble fiber than rolled oats or oat flour.

Some comments explained that the level of β-glucan soluble fiber in rolled oats and oat flour more closely approximates the level of β-glucan in oat groats. This level may range from 3 to 5 percent, depending on the specific oat cultivar and on seasonal variation between crop years. One comment stated that the AACC had not adopted a definition of rolled oats because the product, oatmeal, has been on the market for over 100 years and is known to be a product made by rolling whole grain oats that have had 100 percent of the hull removed.

The agency is persuaded by the comments that, based on the variability in β-glucan soluble fiber content of oat cultivars, a definition of the eligible whole oat products that includes the β-glucan soluble fiber content will help ensure that a source of whole oats that bears a claim is consistent with those shown in clinical studies to lower blood lipids. In its review of studies in the proposal (61 FR 296 at 314), FDA observed that the results of most of the studies that failed to show a significant effect of oat bran on serum lipids used oat bran that provided less than 5.5 percent (dwb) of β-glucan soluble fiber (Refs. 13, 26, 27, 28, 36, and 41). For example, New Zealand oat bran was described to contain β-glucan soluble fiber within a range of 3.7 to 4.4 percent (Ref. 26). In the studies that showed an effect of oat bran on serum lipid levels, the oat bran provided more than 5.5 percent (the exact amount cannot be determined in all studies) β-glucan (Refs. 8, 11, 12, 15, 17, 20, 23 through 25, 29, 35, 39, and 42).

Thus, the agency agrees that adoption of the AACC definition of oat bran (Ref. 52), which requires that a product have a total β-glucan content of at least 5.5 percent (dwb) to qualify as oat bran, is appropriate. This definition was developed to respond to the confusion among oat processors, as well as others in industry and among home consumers, about a uniform identity of the product that was receiving widespread publicity with regards to its health benefits. Oat bran cannot be cleanly separated from the endosperm of oat groats (Ref. 52). Consequently, oat bran contains some flour and is rich in β-glucan soluble fiber, and debranned oat flour contains some bran but contains significantly less β-glucan.

Consequently, it became essential that the industry define what could be called "oat bran." It was the "rich" oat bran that has been used in clinical trials and that has been shown to lower serum lipids.

Therefore, FDA is adding the AACC definition of oat bran (Ref. 52) to § 101.81(c)(2)(ii)(A)(*1*). It states that oat bran is produced by grinding clean oat groats or rolled oats and separating the resulting oat flour by suitable means into fractions, such that the oat bran fraction is not more than 50 percent of the original starting material and provides at least 5.5 percent (dwb) β-glucan soluble fiber and a total dietary fiber content of 16 percent (dwb), and such that at least one-third of the total dietary fiber is soluble fiber.

As discussed previously, there have been no formally accepted definitions of the terms rolled oats and whole oat flour. However, based on data provided in comments from fiber experts (Refs. 55 through 58), data from the U.S. Department of Agriculture National Nutrient Data Base (Ref. 75), and data provided in the petition (Ref. 1, p. 22 and Appendix II), the agency is providing general definitions for these terms that reflect the type of whole oat products used in clinical trials. As part of each definition, the agency is specifying the β-glucan soluble fiber and total dietary fiber contents of rolled oats and whole oat flour that are required for a product to qualify for this claim.

In light of the evidence presented in the proposal that some oat groats naturally contain low levels of β-glucan soluble fiber and, as a result, may not have hypocholesterolemic properties, the agency finds it important to set a minimum β-glucan content to ensure the effectiveness of these oat products. In new § 101.81(c)(2)(ii)(A)(*2*), the agency defines rolled oats, also known as oatmeal, as a product produced from 100 percent dehulled clean oat groats by steaming, cutting, rolling, and flaking, and that provides at least 4 percent (dwb) of β-glucan soluble fiber with a total dietary fiber content of at least 10 percent (Refs. 1, 55 through 58, and 75).

In new § 101.81(c)(2)(ii)(*3*), the agency is defining whole oat flour as a product that is produced from 100 percent dehulled, clean oat groats by steaming and grinding, such that there is no significant loss of oat bran in the final product, and that provides at least 4 percent (dwb) of β-glucan soluble fiber and 10 percent (dwb) total dietary fiber.

FDA agrees with the comments that definitions to identify of the whole oat substances that have been shown in clinical studies to help reduce serum lipids are important in light of the fact that there are other whole oat substances, e.g., oat husks and fine oat flour, that have not been shown to provide this effect.

2. Testing of Oat Products to Ensure Retention of Characteristics

(Comment 9)

Some comments suggested that the effect on blood lipids from consumption of β-glucan soluble fiber from whole oat products is related to the molecular weight and the solution viscosity of the β-glucan. The comments stated that processing methods can alter the size and molecular weight of the β-glucan molecule and may cause it to lose its effect on blood cholesterol levels. The comments suggested that to ensure that the processed oat-containing food product will provide the effects associated with the β-glucan soluble fiber in the starting material, i.e., oat bran, rolled oats, and whole oat flour, the finished oat product should be tested to determine whether its β-glucan soluble fiber has retained the physical properties, such as molecular weight, that it had in the starting material.

The agency is not persuaded that there is a need for testing for the molecular weight and solution viscosity of the β-glucan in products that contain oat bran, rolled oat, or whole oat flour. Although processing can produce extensive depolymerization of the β-glucan, oat bran and rolled oats were fed to subjects in a variety of processed foods as part of the scientific studies that evaluated the effects of these ingredients on blood cholesterol levels (see Table 1, 61 FR 296). Regardless of whether the whole oats were processed into cereals, muffins, breads, or other foods, or whether they were consumed hot or cold, the majority of oat products significantly lowered blood lipids when consumed as part of an appropriate diet.

The agency noted that, in the few studies that did not demonstrate cholesterol-lowering effects from the consumption of oat bran or rolled oats, the authors attributed the lack of an effect to either the source of the oat cultivar, specifically a New Zealand cultivar that had a low content of soluble fiber (one case), or to an effect of processing to purify an extract of the β-glucan soluble fiber (one case) (61 FR 296 at 305). Thus, the lack of an effect in one of these cases was associated with an unusually low level of β-glucan in the oats. This problem is protected against by the β-glucan content requirement in § 101.81(c)(2)(ii)(A)(*1*), (*2*), and (*3*). In the other case, the lack of effect was associated with the use of a highly processed oat gum extract. This result does not represent a problem under § 101.81 because FDA is only authorizing claims on whole oat products.

Therefore, the agency finds that there is no need for testing the physical properties of the β-glucan soluble fiber in processed products containing whole grain oats.

C. Nature of the Food Eligible to Bear the Claim

Proposed section § 101.81(c)(2)(iii)(A) stated that for a food to be eligible to bear the claim, it must contain 13 g of oat bran or 20 g oatmeal, and that the oat bran or oatmeal must contain, without fortification, at least 1.0 g of β-glucan soluble fiber per RACC. The agency noted that consumption of 3 or more g of oat β-glucan soluble fiber per day was associated with significant reductions in blood total- and LDL-cholesterol levels. It tentatively concluded that it is reasonable to assume that a person could consume a total of at least 40 g oat bran, 60 g oatmeal, or a combination of the two, to provide 3 g β-glucan soluble fiber in the course of three eating occasions a day.

1. Qualifying Criteria for Foods

(Comment 10)

Some comments agreed with the proposal and emphasized that foods should contain a significant amount of oat bran or oatmeal in order to qualify for this claim. A few comments stated that the claim should be allowed only on foods for which a customary serving enables consumers to achieve the desired effect on the risk of disease (i.e., 3 g β-glucan per serving of food). However, a number of comments suggested that it is unrealistic to assume consumers will eat enough oat bran or oatmeal daily for the rest of their lives to lower their risk of cardiovascular disease.

Some comments suggested that the proposed qualifying levels of oatmeal, oat bran, and β-glucan were overly restrictive and prevented a number of important oat-containing foods from bearing the claim. These comments requested that the qualifying levels of oat bran, oatmeal, or β-glucan be lowered so that more products could qualify to bear the claim. Several suggested that Americans are more likely to increase their consumption of soluble fiber if they are presented with a wide variety of whole-grain oat-containing foods that may be eaten over the course of the day. The comments suggested various qualifying levels for a food to bear the claim, ranging from 6 to 15 g of oatmeal or from 4 to 11 g of oat bran.

Some comments recommended setting only a level of β-glucan soluble fiber that must be contained in the food to qualify for this claim, rather than a level of oat bran or oatmeal as well as a level of β-glucan soluble fiber. These comments argued that the level of the β-glucan soluble fiber in the product is a marker of the product's usefulness in reducing the risk of CHD, and that if a product contains the appropriate amount of β-glucan soluble fiber, it should qualify to bear the claim no matter how much oat bran or oatmeal it contains. The comments suggested a range of qualifying β-glucan levels from 0.5 g β-glucan to 3 g β-glucan per serving. A number of different rationales where presented in the comments to justify these varying qualifying levels of β-glucan per serving.

One comment recommended a level of 0.6 g β-glucan soluble fiber per serving as the qualifying level instead of the proposed 1 g β-glucan soluble fiber because 0.6 g is more readily achievable and thus would encourage the development of new soluble fiber-containing products. According to the comment, this level is at least twice the level of existing oatmeal-based bakery products such as cookies and crackers. Some comments suggested that a qualifying level of 0.6 g β-glucan per serving would make the qualifying criteria for this claim consistent with the authorized health claim for fruits, vegetables, and grain products and CHD.

Many comments stated that the qualifying level of β-glucan soluble fiber per serving should not be based on three servings of oat products per day but rather on FDA's usual basis of four eating occasions (three meals and a snack) a day. The comments stated that the agency did not adequately justify its reliance on three eating occasions per day, rather than on four. A few comments questioned whether consumers would consume oatmeal and other oat products three or four times a day. One comment asked for evidence that consumers will eat oat products three times a day every day.

As discussed earlier in this final rule, FDA has been persuaded that the subject of the claim is appropriately β-glucan soluble fiber from whole oats. Thus, to be eligible to bear the claim, a food must contain the requisite amount of β-glucan soluble fiber from whole oat sources, rather than a specified amount of oat bran or rolled oats that provide a specific amount of β-glucan soluble fiber.

Given the changed focus of the final regulation, the issues raised in the comments that addressed the levels of oat bran and oatmeal are moot. FDA has deleted the requirement in proposed § 101.81(c)(2)(iii)(A) that the food must contain no less than 20 g oatmeal or 13 g of oat bran that provides, without fortification, at least 1.0 g of β-glucan soluble fiber and replaced it with a requirement that focuses on the β-glucan level.

The agency has reviewed the discussions from the comments concerning the levels of β-glucan in a food. The agency disagrees with the comments that suggested that the qualifying level of β-glucan soluble fiber be low as 0.5 or 0.6 g per RACC to permit many more oat-containing products, e.g., crackers and cookies, to qualify to bear the claim. As discussed previously, an intake of 3 or more g of β-glucan soluble fiber from whole oat products is necessary to make a significant impact on serum lipid levels. Using the minimum levels of β-glucan soluble fiber for oat bran (5.5 percent) and rolled oats and whole oat flour (4 percent) that the agency now specifies in new § 101.81(c)(ii)(A)(*1*) through (*3*) (see comment 8 in section II.B.1. of this document), products that contain a minimum of 0.5 g β-glucan soluble fiber would contain about 9 g of oat bran or 12.5 g rolled oats or whole oat flour, or a level between 9 and 12 g if a blend of whole oats is used. To obtain a daily intake of 3 g β-glucan from whole oats, it would require the consumption of six or more servings. Similarly, if the oat products qualified with 0.6 g β-glucan soluble fiber, consumers would have to consume five or more servings of oat-containing products daily. The agency finds that these levels of consumption, five or six or more servings per day, highly unlikely. As mentioned in some of the comments, consumers should be able to consume a beneficial amount of the nutrient based on typical American eating patterns, i.e., four eating occasions per day.

In the proposal, the agency considered the number of eating occasions at which consumers might consume oat bran and rolled oats. The agency tentatively agreed with the petitioner's arguments that it was unlikely that consumers would eat oat bran or rolled oats 4 times a day, in order to consume a daily intake of about 40 g oat bran or 60 g rolled oats, but that consumers should be able to consume this amount over three eating occasions a day (61 FR 296 at 309). Based on the petitioner's submission, the agency considered that β-glucan soluble fiber would come from only two sources, oat bran and rolled oats, which would limit the number and types of products available.

In this final rule, however, the agency has expanded the sources of whole oats to include whole oat flour. Thus, many more whole oat-containing products will be available to qualify to bear this claim. This development increases the likelihood that whole oat products will be consumed at four, instead of three, eating occasions. Moreover, based on consumption data provided in a comment submitted by the petitioner, whole oat products (including all oat cereals, baked products, and snack foods) are consumed at four eating occasions a day, with breakfast being the most popular time to consume oat products (see Sup-1 to Docket No. 95P–0197). Therefore, based on the expanded focus of this final regulation (to include whole oat flour) and on the additional evidence from comments, the agency is persuaded that the determination of the qualifying level of β-glucan for a food to bear a claim should be based on four eating occasions a day (three meals plus a snack) rather than on the proposed three.

The agency proposed a qualifying level of 1 g β-glucan soluble fiber per serving based on the consumption of 3 g per day (see comment 6 in section II.A.6. of this document) distributed over three eating occasions per day. Based on the same approach as that used in the proposal, but adjusting it for the increase in the number of servings consumed per day, the intake of 3 g of β-glucan is distributed over four servings per day as part of four eating occasions (3 g divided by 4) and results in a criterion of 0.75 g per serving (i.e., RACC).

In providing for this qualifying level, the agency wishes to point out that the approach used to derive the qualifying level is somewhat different from that used in authorizing other health claims. Specifically, the guiding principle for other health claims is to use the established definitions for "good source" or for "high" which characterize the amount of a nutrient based on a percentage of the Daily Value (DV) for the nutrient in a serving of food. In this way, products that qualify to bear the claim contain a meaningful level of the substance per serving compared to the recommended intake of the substance from all food sources. In the case of this final rule, there is no DV for β-glucan soluble fiber or for soluble fiber.

FDA has revised § 101.81(c)(2)(iii)(A) to state "[T]he food shall contain at least 0.75-gram (g) per reference amount customarily consumed of whole oat soluble fiber from the eligible sources listed in paragraph (c)(2)(ii) of this section." The statement in proposed

§ 101.81(c)(2)(iii)(A) regarding the method for determining β-glucan soluble fiber has been deleted because it now appears under section new section § 101.81(c)(2)(ii)(A) of this final rule, as discussed previously.

No comments were received on proposed § 101.81(c)(2)(iii)(B) which requires that the food meet the nutrient content requirements of § 101.62 for a "low saturated fat," "low cholesterol," and "low fat" food. Therefore this paragraph is adopted without change, although it has been renumbered as § 101.81(c)(2)(iii)(C).

2. Mixtures of Oat Products

(Comment 11)

Some comments stated that the agency should allow a mixture of oat products that together within a single food product provide the total qualifying level of β-glucan soluble fiber to bear this claim. The comments stated that as long as the requisite amount of β-glucan soluble fiber is present, it should not matter if it is derived from a mixture.

The agency agrees with this suggestion and notes that it never intended not to allow a mixture of whole oats to qualify for the proposed claim. To clarify this fact, the agency has revised § 101.81(c)(2)(iii) (Nature of the food eligible to bear the claim) to state that the product must provide the required level of soluble fiber per RACC from the eligible sources of whole oat soluble fiber listed in § 101.81(c)(2)(ii). Therefore, a mixture of oat bran, rolled oats, and whole oat flour may be used in a product that bears a claim so long as the product contains the requisite amount of β-glucan soluble fiber per RACC.

3. Nutrient Declaration for Soluble Fiber and β-glucan Soluble Fiber

The agency proposed in § 101.81(d)(4) that if the claim uses the term "soluble fiber," which was to be optional, the total soluble fiber content must be declared in the nutrition label, consistent with § 101.9(c)(6)(i)(A).

(Comment 12)

One comment suggested that the final rule require that the soluble fiber and β-glucan contents of a food product bearing the health claim be declared in nutrition labeling. The comment stated that, because β-glucan is the marker nutrient in a qualifying product, it should be included in the nutrition label. The comment cited other health claim regulations specific to foods (rather than nutrients) (§§ 101.76 to 101.78) as precedents for requiring declaration of the amount of the marker nutrient in the nutrition label. In suggesting that β-glucan be declared as a subcomponent of soluble fiber, the comment also cited as precedent the regulation permitting β-carotene to be declared as a subcomponent of vitamin A (§ 101.9(c)(8)(vi)). In addition, the comment stated that the final regulation should also permit optional declaration of these nutrients elsewhere on the label, consistent with § 101.13(i)(3).

The agency has considered this comment in view of the previously discussed conclusions concerning the food substance that is the subject of this claim, specifically β-glucan soluble fiber from whole oats. The suggestion in the comment that soluble fiber be declared within the nutrition label is consistent with the change in focus of the claim from oat bran and oatmeal to β-glucan soluble fiber from whole oats. Since β-glucan is a soluble fiber, and the claim requires use of the term "soluble fiber," FDA is requiring the declaration of the amount of soluble fiber per RACC or labeled serving (which would include the declaration of the amount of β-glucan) in the nutrition label in accordance with § 101.9(c)(6)(i)(A). In this document, FDA is adding § 101.81(c)(2)(iii)(B), which reflects this requirement. As a result of this action, FDA, as stated previously, is redesignating proposed § 101.81(c)(2)(iii)(B) as § 101.81(c)(2)(iii)(C).

FDA does not agree with the comment that the specific amount of β-glucan should also be declared in the nutrition label. Declarations for β-carotene, which the comment uses as an analogy, are made in terms of a percentage of the DV for vitamin A. In this case, there is no DV for soluble fiber or for β-glucan soluble fiber. More importantly, use of the term "beta-glucan" as a subcategory of soluble fiber would likely be confusing to the consumer as "β-glucan" is primarily a technical term with which consumers are not familiar. Therefore, FDA is not providing for the declaration of β-glucan on the nutrition label.

It should be noted that the agency is making provision for optional label statements in the claim relative to the amount of β-glucan considered useful in reducing the risk of CHD (i.e., 3 g per day) and to the contribution that one serving of the food makes toward reaching the specified amount. As explained in section II.D.4. of this document, provision of this information is optional because of the agency's concerns about requiring long messages and the possibility of consumer information overload. Moreover, given the potential for the broad range of soluble fibers that may be eligible to bear the claim in the future, it is questionable whether requiring that the consumers' attention be drawn to a specific type of soluble fiber would be helpful. The comment provided no information on how consumers would use and interpret such a declaration for β-glucan. In the absence of such data, it is difficult to conclude that declaration of β-glucan soluble fiber in the nutrition label would assist consumers to any greater degree than the declaration of soluble fiber.

Further, FDA notes that, as suggested in the comment, declaration of soluble fiber and β-glucan soluble fiber on the label other than in the Nutrition Facts panel, is permitted by § 101.13(i)(3). No additional authorization is needed for such declarations.

D. Provisions for Abbreviated and Full Claims

In addition to providing for a full claim on the relationship between oat bran and rolled oats as part of a diet low in saturated fat and cholesterol and risk of CHD, the agency proposed an optional abbreviated claim. FDA proposed in § 101.81(c)(2)(ii), "Presentation of the claim," to provide that if a full statement of the claim appears on a label or in labeling, other presentations of the claim may appear on the label or in labeling that do not include the information required in proposed § 101.81(c)(2)(i)(C)(*2*) as long as there is a referral statement from the shortened to the full claim. The agency was concerned, however, about the possibility that consumers may not read the complete claim, and thus that they will not have all the facts necessary to fully understand the significance of the claim and to comprehend the claim in the context of the daily diet. FDA asked for data on whether the shortened claim will affect the extent to which consumers read the full claim (61 FR 296 at 307). The agency also requested comments on whether consumers will be misled if the multifactorial nature of CHD is not stated as part of the claim (61 FR 296 at 307). The agency proposed making optional the statement "a disease caused by many factors."

1. Appropriateness of Abbreviated Claim and Wording of Full Claim

(Comment 13)

Many comments expressed concern about the omission of reference to the diet in the proposed abbreviated claim. Some comments suggested that the proposed abbreviated claim, which stated that "Diets high in [oat bran/oatmeal] may reduce the risk of heart disease," will mislead consumers to think that the oat products will

compensate for a diet that is high in saturated fat and cholesterol. The comments stated that other authorized health claims reinforce that overall diets, not individual foods, can reduce the risk of disease. Many comments stated that the abbreviated claim is misleading without the reference to a total diet that is low in saturated fat and cholesterol. A few of the comments stated that the effects of oat bran or rolled oats on reducing the risk of CHD, in the absence of a low saturated fat and cholesterol diet, is modest, so the abbreviated claim may mislead consumers to think that eating oat products daily, without consuming a low saturated fat and cholesterol diet, will significantly effect their risk of CHD.

Some of the comments discussed diet as one of the more important modifiable risk factors for CHD. Many stated that a reference to the total diet should be a mandatory part of the abbreviated claim. The comments suggested that including reference to the diet in the claim will help prevent oat bran and rolled oats from appearing to be "magic bullets." However, there were comments that stated that consumers are aware that no one food is a "magic bullet" in reducing the risk of disease.

Some of the comments stated that the agency did not present any data to show that consumers will read the full claim, which includes the statement on the total diet, when it is located elsewhere on the food label relative to the abbreviated claim. They concluded that consumers would be misled by the limited information in the abbreviated claim. Several comments stated that by removing the qualifying portion of the health claim (i.e., information about total diet) from the most prominent location on the label, there was less likelihood this critical information would be read by consumers.

Some comments supported FDA's proposal to permit use of an abbreviated health claim because it provided flexibility and consumer-friendly language. Several comments in support of the shortened claim mentioned its advantages in communicating information to consumers because it was easily readable, compelling, and direct. The shortened claim was seen as playing the role of a reminder to consumers about the core diet-disease relationship that is the subject of the health claim. One comment cited findings from FDA health claims focus groups (Ref. 53), which reported that consumers perceived full health claims as "too wordy, too vague, too academic, and much too long." One comment stated the use of the abbreviated claim as a referral (see § 101.14(d)(2)(iv)) to the full claim would serve both consumer information nee and the motivational goals of the 19 0 amendments to encourage dustry to use health claims on appropriate food products.

The agency proposed the abbreviated claim because the petitioner requested it, and because the agency tentatively concluded that the information could be more effectively communicated with an abbreviated claim in a prominent place with a referral to the full claim. The agency did not intend for the abbreviated message to suggest to consumers that adding oats to the diet was the only dietary modification necessary to help them reduce the risk of CHD.

The agency agrees with the comments that the dietary component of this health claim is important for a complete understanding of the relationship between the type of soluble fiber from whole oats and reduced risk of heart disease. FDA has been persuaded that there is the possibility that consumers may be misled if reference to the total diet were to be omitted in an abbreviated version of this claim. Diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk (Ref. 5). While soluble fiber from whole oats can contribute to this effect, its role is generally recognized as being of smaller magnitude (Refs. 4 and 5). Selection of foods with soluble fiber from whole oats is seen as a useful adjunct to selection of diets low in saturated fat and cholesterol (Ref. 5). Therefore, the agency concludes that it would not be in the best interest of public health or consistent with the scientific evidence to imply that selecting diets with soluble fiber from whole oats is a substitute for consuming diets low in saturated fat and cholesterol, and has FDA revised § 101.81 to emphasize the importance of the diet.

Proposed § 110.81(b)(2) stated, "* * * Scientific evidence demonstrates that diets high in oat bran and oatmeal and low in saturated fat and cholesterol are associated with lower blood total- and LDL-cholesterol levels." FDA has revised that sentence to state:

* * * Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soluble fiber from whole oats, when added to a low saturated fat and cholesterol diet, also helps to lower these blood levels and thus the risk of CHD.

The revised statement emphasizes that consumption of a diet low in saturated fat and cholesterol is an important factor in reducing the risk of CHD and is consistent with FDA's conclusions in authorizing the health claim for dietary saturated fat and cholesterol and heart disease (58 FR 2739, January 6, 1993).

Relative to the concerns about the appropriateness of the abbreviated claim, the agency was mindful of those comments that focused on concerns about health claims being too wordy and too lengthy. This concern has been raised to the agency in various ways, including by a petition submitted by the National Food Processors Association (NFPA) (Docket No. 94P–0390). In response to the NFPA petition, the agency proposed several changes to the requirements for health claims in the **Federal Register** of December 21, 1995 (60 FR at 66206) (the 1995 proposal). At that time, FDA stated that it had no desire for its regulations to unnecessarily stand in the way of the use of health claims and the presentation of the important information contained therein. The agency stated that, while health claims are being used on the label and in labeling, they could be used more extensively. The agency, therefore, proposed to provide for shorter health claims by making optional some of the elements that are presently required. If FDA finalizes the 1995 proposal as it was proposed, many of the current full claims will be brief enough to permit their use on the principal display panel.

FDA is reviewing the comments received in response to the 1995 proposal on changing the requirements for health claims, but it has not completed its work on the final rule. Given that this proposal is pending, and given its relevance to many of the issues raised as a result of the proposal that is the subject of this rulemaking, FDA has decided to defer a decision on allowing for an abbreviated claim on β-glucan soluble fiber from whole oats and the risk of CHD. The agency intends to resolve this matter in the context of the rulemaking based on the NFPA petition. Thus, at this time, the agency is making provision only for a full claim. Thus, FDA has deleted proposed § 101.81(c)(2)(ii), "Presentation of the claim," which provided for an abbreviated claim, in this final rule.

2. Research Study on the Abbreviated Claim

(Comment 14)

A comment from the petitioner included results from a consumer research study that compared an abbreviated oatmeal claim ("A diet high in oatmeal may help reduce the risk of heart disease") with a full fiber-heart disease health claim ("Diets low in

saturated fat and cholesterol and high in grains, fruits and vegetables that contain fiber, particularly soluble fiber, may reduce the risk of heart disease, a condition associated with many factors.") The data were from a national shopping mall intercept study of 826 consumers. Participants saw one of three mocked-up cereal packages that contained either the abbreviated claim, the long claim, or no claim (control condition).

The comment suggested that results showed that the presence of either health claim, compared to the control condition, increased the number of participants who recognized that a diet high in oatmeal may help reduce the risk of heart disease. There were no significant differences in terms of the impact of the claims on consumers' perceptions of the product or their beliefs about the diet-disease relationship.

The data submitted by the petitioner address issues related to the interpretation of a specific abbreviated claim and are intended to provide support for an abbreviated claim on the relationship that is the subject of this rulemaking. Because the FDA rulemaking that responds to the NFPA petition is pending, the agency is deferring a final decision on whether to make provisions for an abbreviated claim to describe this relationship. FDA finds that there is nothing in this evidence that is sufficiently compelling to persuade the agency that it is not appropriate to defer this decision. Therefore, the agency is forwarding the petitioner's comment and supporting data as a comment to the 1995 proposal (i.e., to Docket No. 94P–0390) so that FDA can consider these results as part of that rulemaking.

3. Use of "Low Fat" to Replace "Low in Saturated Fat and Cholesterol"

(Comment 15)

Two comments suggested that the statement "low in saturated fat and cholesterol" might be shortened to "low fat" for the abbreviated claim only. These comments did not provide any data to show that consumers interpret the statement "low fat" to mean "low in saturated fat and cholesterol."

Another comment cautioned against referring to a "low fat" diet because the scientific evidence showed that a low fat diet was not associated with reduced blood total cholesterol levels and hence a reduced risk of CHD, while a diet low in saturated fat and cholesterol did affect cholesterol levels.

The agency finds that there is not sufficient evidence to support simplifying the term "low saturated fat and cholesterol" to the term "low fat." No data were submitted to show that consumers would not be misled by such a simplification, and, as pointed out by comments, there is evidence that low fat diets do not necessarily result in the benefits of low saturated fat diets. The term "low fat" is defined in § 101.62(b)(iii)(2) as low in total lipid fatty acids. It therefore takes into account not only saturated fat but also polyunsaturated and monounsaturated fat. Further, the term does not include cholesterol. Therefore, the term "low fat" is not be sufficiently specific.

4. Modifications of § 101.81

In light of the changes in this final rule to authorize a claim for diets low in saturated fat and cholesterol that include soluble fiber from whole oats, a number of additional modifications to the proposed requirement for the claim are required.

The agency is revising § 101.81(c)(2)(i)(A) to state that: "The claim states that diets low in saturated fat and cholesterol that include soluble fiber from whole oats 'may' or 'might' reduce the risk of heart disease."

New § 101.81(c)(2)(i)(C) states: "In specifying the substance, the claim uses the term 'soluble fiber' qualified by either the use of the name of the eligible source of whole oat soluble fiber (provided in (c)(2)(ii)) or the name of the food product." Examples of such statements are: "Soluble fiber from whole oats * * *" and "Soluble fiber from oatmeal * * *" In each case, the inclusion of information about the source or the product qualifies the term soluble fiber so that the consumer is not misled to believe that all soluble fiber may reduce the risk of CHD. The manufacturer may also clarify the information for those product names that do not indicate the name of the soluble fiber source, for instance: "Soluble fiber from the oat bran in this product * * *."

The agency is also adding new paragraph (c)(2)(i)(D), which states: "In specifying the fat component, the claim uses the terms 'saturated fat' and 'cholesterol'." This terminology is consistent with the authorized CHD health claims, §§ 101.75 and 101.77, regarding diets low in saturated fat and cholesterol and risk of disease.

After careful consideration of the comments about claim wording and in view of the change in focus of the claim in response to comments, FDA has modified the model health claim statements in § 101.81(e) to reflect the changes it is making. Thus, FDA has deleted proposed paragraph (e)(1), which provided an example of a full claim, and replaced it with the following model claim: "Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section or name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease." FDA has also deleted proposed § 101.81(e)(2) and (e)(2)(A) and (B), which provided examples of the shortened claim with the referral statement, and replaced it with new paragraph (e)(2), which gives another example of a full claim.

Section 101.81(d) provides for optional information that the manufacturer may use to elaborate on the substance-disease relationship. New § 101.81(d)(4) states that the manufacturer may identify the specific type of soluble fiber that is the subject of claim. For instance, the claim may state: "Beta-glucan soluble fiber from whole oats, as part of a diet low in saturated fat and cholesterol, may reduce the risk of coronary heart disease." The agency believes that the specification of β-glucan soluble fiber in the wording of the claim is appropriate as an option for the manufacturer but need not be a required component of the claim, because while scientifically correct, it may be information that is too technical for many consumers and thus contrary to the agency's desire to keep the claim simple, concise, and easy for consumers to understand.

Proposed § 101.81(b)(2) stated, "Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. Intakes of cholesterol are, on average, at or above recommended levels * * *." Based on recent data on cholesterol intakes reported in the "Third Report on Nutrition Monitoring in the United States" (Ref. 77), which shows a reduction in some cholesterol intake levels, the agency has reconsidered including of the second sentence and has decided to delete it.

5. Multifactorial Nature of Disease

(Comment 16)

Several comments responded to FDA's question as to whether consumers will be misled if the multifactorial nature of CHD is not stated in the claim. These comments supported the proposal to make optional the statement "a disease caused by many factors." Several comments cited FDA Health and Diet Survey data that showed "American consumers understand that serious diseases like cancer and heart disease have multiple causes, including factors such as diet, heredity, smoking and stress" (Ref. 54). One comment stated that consumers are

sufficiently knowledgeable to appreciate that many factors affect risk of CHD, and that a mandatory statement of this fact would detract from the communication of the core message because it would make the claim longer, which would in turn deter manufacturers from using the claim.

For the reasons set out in the proposal and in the absence of any objections to the agency doing so, FDA has concluded that the statement "a disease caused by many factors" should remain optional. FDA is adopting proposed paragraph (d)(1) without change.

6. Dietary "Context" of Claim

(Comment 17)

Some comments stated that the proposed claim would be misleading to consumers because it provided no indication of how much of the oat-containing food would have to be consumed to reduce the risk of CHD. One comment stressed the need for explicit information in the health claim about how much oat bran or oatmeal to eat daily to affect the risk of disease, for example in terms of number of servings. The comment emphasized the need to make it clear that the consumer should eat a certain amount every day in order to benefit from consumption of these foods.

The agency agrees that consumers may find "contextual" information, as well as additional information that specifies the nature of the relationship, helpful. However, in the absence of a DRV for soluble fiber, the agency cannot identify an amount of whole oat soluble fiber that represents a "good source" or that is "high" in soluble fiber. Until the agency takes action to establish a DRV for soluble fiber, it considers such information to be more appropriate as optional information.

The agency does not agree that consumers would be misled if such information were not provided, and the mandatory inclusion of such optional information would be inconsistent with the approach taken for other claims. For the other authorized health claims, §§ 101.72 through 101.80, the agency has not required the level of detail suggested by these comments in the wording of the claim. For example, the regulation authorizing health claims on the relationship between diets low in saturated fat and cholesterol and CHD does not require that the claim statement specify that saturated fat should be less than 10 percent of calories on a daily basis, or that cholesterol should be limited to less than 300 mg per day. FDA allows for the optional provision of this information.

FDA, therefore, concludes that the information described in proposed § 101.81(d)(8) be retained as optional information, but the agency is modifying the statement to reflect the change in the focus of the claim to β-glucan soluble fiber from whole oats. Proposed paragraph (d)(8) has been replaced with new § 101.81(d)(6), which states:

A claim based on β-glucan soluble fiber from whole oats may state that 3 g or more per day of β-glucan soluble fiber from whole oats may reduce the risk of CHD, provided that the claim also states the contribution one serving of the product makes to this specified intake level for β-glucan soluble fiber.

The amount of β-glucan per serving is required here because without it, consumers may be misled to believe that the food contributes 3 g of β-glucan soluble fiber per serving. In making this provision, FDA wishes to point out that if a variety of soluble fibers become eligible to make this claim, it may be necessary to review and revise the appropriateness of such "contextual."

As a result of this change, FDA has renumbered proposed paragraphs (d)(6) and (d)(7) in the final regulation as paragraphs (d)(7) and (d)(8), respectively. In the absence of comments on paragraphs (d)(7) and (d)(8), FDA has adopted these paragraphs without change.

Proposed paragraph (d)(5) states: "The claim may state that a diet low in saturated fat and cholesterol and high in oatmeal or oat bran is consistent with 'Nutrition and Your Health, Dietary Guidelines for Americans,' * * *." In light of the change in focus of this claim to soluble fiber from whole oats and in the absence of dietary guidelines specific for soluble fiber, the agency is revising this statement to keep it consistent with "Dietary Guidelines for Americans." Therefore, § 101.81(d)(5) now states "* * * a diet low in saturated fat and cholesterol that includes soluble fiber from whole oats" is consistent with the dietary guidelines.

E. Other Comments

1. Implied Claims

(Comment 18)

Some comments expressed concern that, if FDA authorizes a health claim that specifically mentions an oat ingredient, e.g., oat bran, oatmeal, or whole oats, these terms will imply, wherever they appear, that the food provides the effect described in the claim. One comment suggested specific limitations on how label statements about oat ingredients in a food could be used, depending on the nature and amount of soluble fiber in the food.

Another comment noted that in the regulation on implied nutrient content claims (§ 101.65(c)(3)) and FDA's discussion of implied claims in the January 6, 1993, final rule on nutrient content claims (58 FR at 2374), the agency had provided that in some contexts terms like "made with oat bran" or "oat bran muffins" would be considered to imply that the food was a good source of dietary fiber. This comment stated that once the health claim appears on food labels, consumers will interpret the terms as implying the presence of a significant amount of β-glucan soluble fiber consistent with the message of the claim. The comment stated that, therefore, any such oat ingredient implied nutrient content claim should be regulated as a claim about the amount of β-glucan soluble fiber rather than as a more general claim about dietary fiber.

Recognizing that current FDA regulations do not permit "good source" or "high in" claims about soluble fiber in general or about β-glucan in particular, the comment suggested that FDA provide advice in this final rule that such claims could be made using the soluble fiber intake recommendations cited in the regulation authorizing health claims about soluble-fiber containing fruits, vegetables, and grain products and CHD (§ 101.77). In the preamble to the final rule establishing § 101.77 (58 FR 2573 through 2574), FDA had explained that the 0.6 g soluble fiber eligibility criterion for bearing the claim derives from 10 percent of the Life Science Research Organization (LSRO) recommended daily intake of soluble fiber, i.e., about 6 g (Ref. 7).

Another comment disagreed with this suggestion, however, stating that it would require decisions that are outside the scope of this proposal. The comment stated that the proposal made no mention of the possibility of a nutrient content claim regulation arising from the proposed health claim rule. In addition, the comment stated that it would be speculative to conclude that any declaration (outside the ingredient list) on the label of the whole oat substance identified in the health claim regulation would constitute a nutrient content claim. The comment stated that the impact of label references to oats will depend on a variety of factors: The extent of the market penetration of the oats/CHD claim; the manner in which consumers who became aware of the claim perceive that claim; whether the claim leads consumers to become aware of β-glucan at all; and whether they consider it beyond its role as a marker for measuring the effectiveness of oats

in improving serum cholesterol levels. On the basis that this kind of information is not available at this time, the comment opined that FDA should not adopt any final rules until it has more information on these issues.

The agency agrees that a final regulation defining a nutrient content claim is outside the scope of the proposal. FDA also agrees with the comment that it would be premature for the agency to conclude that all declarations of relevant oat ingredients on a food label (other than in the ingredient list) are implied claims. The regulation establishing general principles for health claims states that implied health claims "include those statements, * * * that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition" (§ 101.14(a)(1)). In the preamble for that regulation (58 FR 2478 at 2483), FDA stated that it could not establish a bright line definition of implied health claims, and that labeling claims needed to be considered in their entirety and in context to determine whether the elements of a health claim are present. The agency took a similar position in the preamble of the final rule establishing regulations for nutrient content claims (58 FR 2370 through 2374). In that document, FDA stated that whether a label statement is a nutrient content claim will depend on the context in which it is presented, taking the entire label into consideration.

To change this position and find that terms such as "oat bran," "rolled oats," or "whole oat flour" are always in a context that constitutes a nutrient content or health claim, FDA would need information that it does not have. The agency would need data showing that consumers consistently interpret these terms as implying the presence of a significant amount of β-glucan, or that consumption of the food will affect the risk of CHD. The comments did not provide this or any other kind of information that FDA could use as a basis for the requested policy.

While FDA remains concerned that label statements not be misleading, it agrees with the comment that its policy of evaluating label statements on a case-by-case basis provides adequate control. The agency reviews the entire label to assess what emphasis is being placed on the specific ingredients named. However, if experience with label statements about oat ingredients or other information persuades FDA that additional regulatory controls are needed, the agency can take action to establish appropriate regulations.

In addition, FDA advises that, as discussed previously in response to comment 5 in section II.A.5. of this document, the agency intends to propose to establish a DRV for soluble fiber, which will provide the basis for nutrient content claims like "good source of soluble fiber" and "high in soluble fiber." The information in the comment recommending use of 6 g as the DV can be fully evaluated in the rulemaking to establish the DV for soluble fiber.

2. Reference to Authoritative Bodies

(Comment 19)

One comment suggested permitting reference to third party authoritative bodies, including FDA, as part of the health claim. It was noted that in the FDA health claims study (Ref. 53), consumers expressed skepticism about health claims on food packages, in large part because they did not realize health information on the front of the package was regulated.

The agency advises that issues related to making specific provision for reference to authoritative bodies as part of health claims statements is outside the scope of this rulemaking. Under the statute, FDA evaluates the relationship between a nutrient or food and a disease being advanced as the subject of a health claim. FDA authorization reflects a determination that there is significant scientific agreement that the relationship is supported by the totality of publicly available data. Once a health claim has been authorized by the agency, specific claims on labels are not subject to prior review or approval because the agency does not approve specific claims (see section 3(b)(1)(A)(vii) of the 1990 amendments). Therefore, the agency does not agree that citing FDA as an authoritative body is appropriate. Under the general principles for health claims, § 101.14(a)(1), the agency defines a health claim as including "third party" references, so it does not object to the use of other third party endorsements, provided the food complies with all requirements of the claim, and the statement of endorsement is not false or misleading.

3. RACC

(Comment 20)

One comment requested that FDA reevaluate its established RACC for flavored instant oat products. The comment suggested that the RACC for flavored sweetened hot cereals should be lowered from 55 g to 40 g which is the RACC for regular rolled oats.

This issue is outside the scope of this rulemaking. This rulemaking addresses the question of whether to authorize a claim regarding the association between oat bran and rolled oats and the risk of CHD. The process for amending a reference amount is set forth in § 101.12.

4. Oat Gum Product

(Comment 21)

One comment stated that, in the proposal, the agency incorrectly concluded that the oat gum product used in the study by Braaten et al. (Ref. 12), had not been characterized. The comment stated that the gum was thoroughly described and characterized in other studies that were cited in the Braaten et al. study, and requested that FDA correct this statement to make clear that the gum had in fact been characterized. The comment included a copy of the studies but made no other request relative to consideration of these data.

The agency acknowledges that the oat gum used in the study by Braaten and coworkers was characterized in the information and studies submitted with the comment (Refs. 56, 59, and 76). The agency notes, however, that this additional information was not submitted with the petition and was, therefore, not part of the administrative record available to the agency at the time of the proposal. The studies submitted with the comment do not alter the outcome of this final rulemaking because oat gum, a purified extract of oat bran, is not a whole grain oat product and was not one of the substances that was the subject of the petition. Although whole oat flour was not one of the substances in the petition, the agency has included it in this final rule because it is a whole grain oat product with similar nutritional properties to rolled oats, and there were sufficient data in the administrative record from which to evaluate its physiological effectiveness. This type of evidence for purified oat gum is not available in the administrative record. A manufacturer may petition to amend § 101.81 to include oat gum by submitting such data.

III. Decision to Authorize a Health Claim on the Relationship Between Soluble Fiber From Whole Oats and CHD

FDA has considered all of the comments that it received in response to its proposal to authorize a claim to describe the relationship between oat bran and rolled oats and the risk of CHD. The agency is authorizing this claim although, based on comments, FDA has been persuaded to make a

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number of changes in the proposed provisions for the health claim.

FDA concludes that, rather than oat bran and rolled oats, the food substance that is the subject of the claim is β-glucan soluble fiber from whole oats. FDA further determines that the relationship is scientifically valid in that there is significant scientific agreement based on the totality of publicly available scientific evidence that β-glucan soluble fiber from whole oats, as part of a diet low in saturated fat and cholesterol, may reduce the risk of CHD. Decisions relating to provisions for an abbreviated version of the claim have been deferred and will be handled in a separate rulemaking.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (61 FR 296). At that time, the agency determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities. FDA finds that this final rule is not a significant rule as defined by Executive Order 12866 and finds under the Regulatory Flexibility Act that the final rule will not have a significant impact on a substantial number of small entities.

The authorization of health claims about the relationship between β-glucan soluble fiber from whole oats and CHD results in benefits and in costs only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. This rule will not require that any labels be redesigned, or that any product be reformulated.

The benefit of authorizing this type of health claim is to provide for new information in the market in the form of a claim linking consumption of soluble fiber from whole oats to the risk of CHD.

Costs will be incurred by small entities only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a. m. and 4 p. m., Monday through Friday.

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 351, 352, 355, 371).

2. New § 101.81 is added to subpart E to read as follows:

§ 101.81 Health claims: Soluble fiber from whole oats and risk of coronary heart disease (CHD).

(a) *Relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and risk of coronary heart disease*—(1) Cardiovascular disease means diseases of the heart and circulatory system. Coronary heart disease (CHD) is one of the most common and serious forms of cardiovascular disease and refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL)-cholesterol levels are associated with increased risk of developing coronary heart disease. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 (mmol/L)) or above and LDL-cholesterol levels of 160 mg/dL (4.13 mmol/L) or above. Borderline high risk total cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/L) and 130 to 159 mg/dL (3.36 to 4.11 mmol/L) of LDL-cholesterol. The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total- and LDL-cholesterol and, thus, with increased risk of CHD.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL-cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in fiber-containing fruits, vegetables, and grain products, such as whole oat products.

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from whole oats to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and risk of CHD*—(1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL-cholesterol are major modifiable risk factors in the development of CHD.

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 milligrams (mg) or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soluble fiber from whole oats, when added to a low saturated fat and cholesterol diet, also helps to lower blood total and LDL-cholesterol levels.

(c) *Requirements*—(1) All requirements set forth in § 101.14 shall be met.

(2) Specific requirements—(i) Nature of the claim. A health claim associating diets low in saturated fat and cholesterol that include soluble fiber from whole oats with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets low in saturated fat and cholesterol that include soluble fiber from whole oats "may" or "might" reduce the risk of heart disease;

(B) In specifying the disease, the claim uses the following terms: "heart disease" or "coronary heart disease";

(C) In specifying the substance, the claim uses the term "soluble fiber" qualified by either the use of the name of the eligible source of whole oat

soluble fiber (provided in paragraph (c)(2)(ii)) of this section or the name of the food product;

(D) In specifying the fat component, the claim uses the terms "saturated fat" and "cholesterol";

(E) The claim does not attribute any degree of risk reduction for CHD to diets low in saturated fat and cholesterol that include soluble fiber from whole oats; and

(F) The claim does not imply that consumption of diets low in saturated fat and cholesterol that include soluble fiber from whole oats is the only recognized means of achieving a reduced risk of CHD.

(ii) Nature of the substance. Eligible sources of soluble fiber.

(A) Beta (β) glucan soluble fiber from the whole oat sources listed below. β-glucan soluble fiber will be determined by method No. 992.28 from the "Official Methods of Analysis of the Association of Official Analytical Chemists International," 16th ed. (1995), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877-2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(*1*) Oat bran. Oat bran is produced by grinding clean oat groats or rolled oats and separating the resulting oat flour by suitable means into fractions such that the oat bran fraction is not more than 50 percent of the original starting material and provides at least 5.5 percent (dry weight basis (dwb)) β-glucan soluble fiber and a total dietary fiber content of 16 percent (dwb), and such that at least one-third of the total dietary fiber is soluble fiber;

(*2*) Rolled oats. Rolled oats, also known as oatmeal, produced from 100 percent dehulled, clean oat groats by steaming, cutting, rolling, and flaking, and provides at least 4 percent (dwb) of β-glucan soluble fiber and a total dietary fiber content of at least 10 percent.

(*3*) Whole oat flour. Whole oat flour is produced from 100 percent dehulled, clean oat groats by steaming and grinding, such that there is no significant loss of oat bran in the final product, and provides at least 4 percent (dwb) of β-glucan soluble fiber and a total dietary fiber content of at least 10 percent (dwb).

(B) [Reserved]

(iii) Nature of the Food Eligible to Bear the Claim.

(A) The food shall contain at least 0.75 gram (g) per reference amount customarily consumed of whole oat soluble fiber from the eligible sources listed in paragraph (c)(2)(ii) of this section;

(B) The amount of soluble fiber shall be declared in the nutrition label, consistent with § 101.9(c)(6)(i)(A).

(C) The food shall meet the nutrient content requirements in § 101.62 for a "low saturated fat," "low cholesterol," and "low fat" food.

(d) *Optional information*—(1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD; elevated blood total and LDL-cholesterol; excess body weight; high blood pressure; cigarette smoking; diabetes; and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease;

(2) The claim may state that the relationship between intake of diets low in saturated fat and cholesterol that include soluble fiber from whole oats and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total- and LDL-cholesterol;"

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and coronary heart disease and the significance of the relationship;

(4) The claim may specify the name of the eligible soluble fiber;

(5) The claim may state that a diet low in saturated fat and cholesterol that includes soluble fiber from whole oats is consistent with "Nutrition and Your Health: Dietary Guidelines for Americans," U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO);

(6) A claim based on β-glucan soluble fiber from whole oats may state that an intake of 3 g or more per day of β-glucan soluble fiber from whole oats may help reduce the risk of CHD, provided that the claim also states the contribution one serving of the product makes to this specified intake level for β-glucan soluble fiber;

(7) The claim may state that individuals with elevated blood total- and LDL-cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total- and LDL-cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment;

(8) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or "Nutrition and Your Health: Dietary Guidelines for Americans," USDA and DHHS, GPO;

(e) *Model health claim*: The following model health claims may be used in food labeling to describe the relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and reduced risk of heart disease:

(1) Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section or name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.

(2) Diets low in saturated fat and cholesterol that include soluble fiber from [name of soluble fiber source from paragraph (c)(2)(ii) of this section or name of food product] may reduce the risk of heart disease.

Dated: January 9, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-1598 Filed 1-22-97; 8:45 am]

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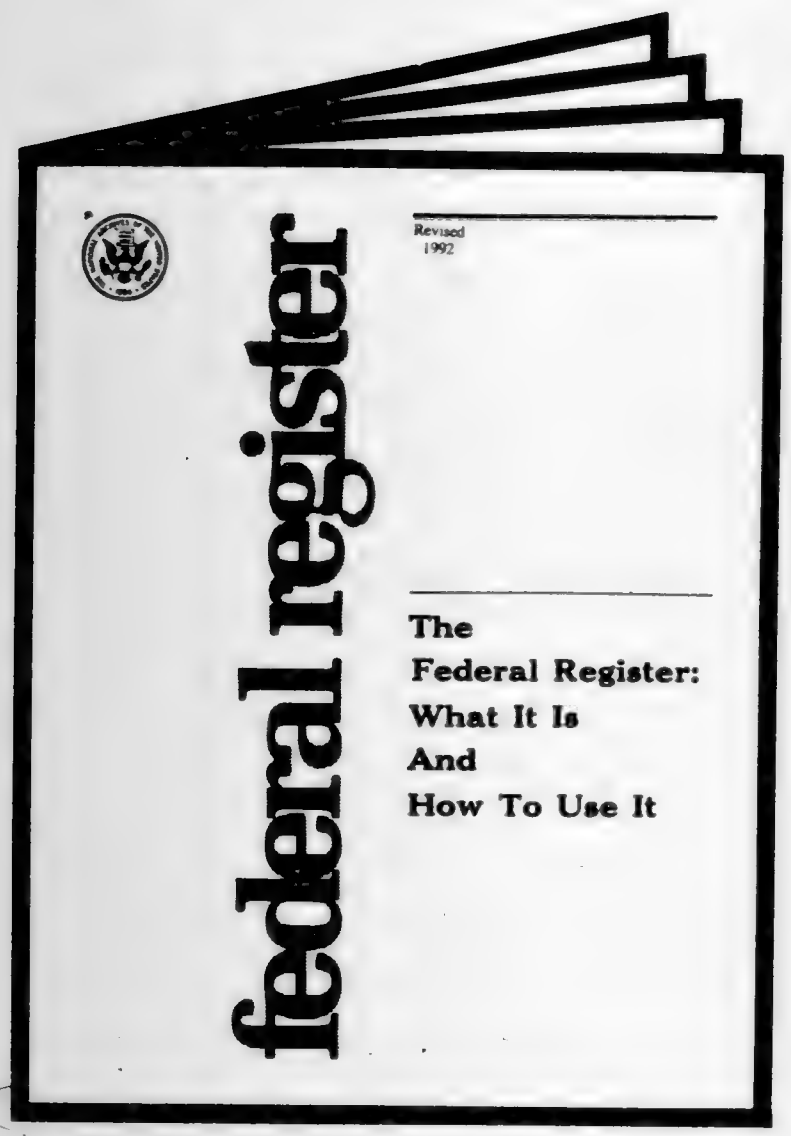

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Rules and Regulations

Federal Register
Vol. 62, No. 16
Friday, January 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96–906–2]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction of final rule.

SUMMARY: This document contains a correction to the final rule published on December 4, 1996 (FR Doc. 96–30859). The document concerned reporting requirements for Texas oranges and grapefruit.

EFFECTIVE DATE: December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, Fax # (210) 682–5942.

SUPPLEMENTARY INFORMATION:

Background

As published, the final rule contains errors that may be confusing and are in need of clarification.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 906 is corrected by making the following correcting amendments:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.151 [Corrected]

2. In § 906.151 paragraph (c) in the fourth sentence the words "green" and "blue" are revised to read "white" and "canary" respectively.

Dated: January 16, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1673 Filed 1–23–97; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0951]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule.

SUMMARY: The Board is publishing an interim rule that amends Regulation C (Home Mortgage Disclosure). The amendment increases the asset-size exemption threshold for depository institutions from $10 million to $28 million.

DATES: *Effective date:* February 1, 1997.

Applicability date: This rule applies to all data collection in 1997.

FOR FURTHER INFORMATION CONTACT: Manley Williams, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Amendments to the Home Mortgage Disclosure Act (HMDA) contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) increased the asset-size exemption threshold for depository institutions, which in the past were exempt from HMDA if they had assets of $10 million or less. The amendments adjust the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeds the CPIW for 1975—rounded to the nearest million. The new threshold is $28 million. Thus depository institutions with assets of $28 million or less as of December 31, 1996, are exempt from data collection in 1997.

In December, the Board published proposed amendments to Regulation C (61 FR 68168, December 27, 1996) to implement the new exemption threshold for depository institutions and other statutory changes. The comment period for those amendments ends February 25, 1997.

The Board is publishing an interim rule with respect to the new threshold, which is applicable as of January 1, 1997, so that institutions that are no longer covered can avoid collecting data unnecessarily. The Board expects to publish a final rule in March that will also address changes to the threshold in future years.

Regulatory Flexibility Analysis

This interim rule reduces the burden on small entities by increasing the exemption threshold for depository institutions. A final regulatory flexibility analysis of the final rule will be prepared after consideration of comments received during the comment period.

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget. No collection of information pursuant to the Paperwork Reduction Act is contained in the interim rule.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

§ 203.3 [Amended]

2. In section 203.3, paragraph (a)(1)(ii) is amended by revising the figure "$10 million" to read "$28 million".

Appendix A to Part 203 [Amended]

3. Appendix A to Part 203 is amended as follows:

a. Paragraph I.A.1. is amended by revising the figure "$10 million" to read "$28 million"; and

b. The undesignated paragraph EXAMPLE at the end of paragraph I.A. is amended by revising the figure "$10 million" to read "$28 million".

Supplement I to Part 203 [Amended]

4. In Supplement I to Part 203, under Section 203.3—Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home-purchase loans*, the second sentence of paragraph 1., *General* is amended by revising the figure "$10 million" to read "$28 million".

By order of the Board of Governors of the Federal Reserve System, January 16, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–1670 Filed 1–23–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–23]

Establishment of Class E2 Airspace; Somerset, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E2 airspace at Somerset, KY, for the Somerset-Pulaski County-J.T. Wilson Field Airport. An automated weather observing system has been installed at the airport, which transmits the required weather observations continuously to Indianapolis Center, the controlling facility for the airport. Therefore, the airport now meets the criteria for Class E2 surface area airspace.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On November 21, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E2 airspace at Somerset, KY (61 FR 59206). This action will provide adequate Class E airspace for IFR operations at Somerset-Pulaski County-J.T. Wilson Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in e Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace at Somerset, KY. An automated weather observing system has been installed at the Somerset-Pulaski County-J.T. Wilson Airport. This system transmits the required weather observations continuously to the Indianapolis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the airport now meets the criteria for Class E2 surface area airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO KY E2 Somerset, KY [New]

Somerset-Pulaski County-J.T. Wilson Field Airport, KY
(Lat. 37°03′17″ N, long. 84°36′52″ W)
Bowling Green VORTAC
(Lat. 36°55′43″ N, long. 86°26′36″ W)

Within a 4-mile radius of Somerset-Pulaski County-J.T. Wilson Field Airport.

* * * * *

Issued in College Park, Georgia, on January 14, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–1782 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AAL–25]

Establishment of Class E Airspace; Point Lay Long Range Radar Site (LRRS), AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Point Lay LRRS, AK. The development of non-directional beacon (NDB) and Global Positioning System (GPS) instrument approaches to runway (RWY) 05 at Point Lay LRRS, AK, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Point Lay LRRS Airport, AK.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E Airspace at Point Lay LRRS was published in the **Federal Register** (61 FR 53878). The development of GPS and NDB instrument approach procedures to RWY 05 at Point Lay LRRS, AK, have made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Point Lay LRRS, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Point Lay LRRS, AK [New]

Point Lay LRRS Airport, AK
(Lat. 69°43′43″ N, long. 163°01′02″ W)
Point Lay NDB
(Lat. 69°44′04″ N, long. 163°00′49″ W)
YAZGA Waypoint
(Lat. 69°14′27″ N, long. 159°47′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Point Lay LRRS Airport; and that airspace extending upward from the 1,200 feet above the surface within 5 miles north and 6 miles south of the 248° bearing from the Point Lay NDB extending from the 6.5-mile radius to 17 miles southwest, and 4 miles either side of a line from Point Lay NDB to YAZGA Waypoint.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1772 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–24]

Establishment of Class E Airspace; Klawock, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Klawock Airport, AK. The development of non-directional beacon (NDB) and Global Positioning System (GPS) instrument approaches to runway (RWY) 1 at Klawock, AK, have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Klawock Airport, AK.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Klawock was published in the **Federal Register** (61 FR 53887). The development of NDB and GPS instrument approach procedures to RWY 1 at Klawock Airport, AK, have made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200-foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Klawock, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

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Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Klawock, AK [New]

Klawock Airport, AK
(Lat. 55°34'45" N, long. 133°04'36" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Klawock Airport; and that airspace extending upward from the 1,200 feet above the surface within 6.5 miles northwest and 8 miles southeast of the 039° bearing from the airport extending from the airport to 6.5 miles northeast of the airport and within 6.5 miles northwest and 8 miles southeast of the 219° bearing from the airport extending from the airport to 25 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1771 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AAL–23]

Revision of Class E Airspace; Savoonga, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Savoonga Airport, AK. The development of a Global Positioning System (GPS) instrument approach to runway (RWY) 5 at Savoonga, AK, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Savoonga Airport, AK.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Savoonga was published in the **Federal Register** (61 FR 53876). The development of a GPS instrument approach procedure to RWY 5 at Savoonga Airport, AK, has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received. However, the proposal was published without the exclusion of the Gambell Class E airspace. The last portion of the airspace description has been corrected to read: "and 10 miles north and 10 miles south of the 110° bearing from the Gambell NDB/DME extending from 12 miles southeast of the Gambell NDB/DME to 33 miles southeast of the Gambell NDB/DME, excluding that airspace within Gambell, AK, Class E airspace area." The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive changes just discussed, the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Savoonga, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Savoonga, AK [Revised]

Savoonga Airport, AK
(Lat. 63°41'11" N, long. 170°29'33" W)
Kukuliak VOR/DME
(Lat. 63°41'32" N, long. 170°28'12" W)
Gambell NDB/DME
(Lat. 63°46'55" N, long. 171°44'12" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Savoonga Airport and within 3 miles each side of the 059° radial of the Kululiak VOR/DME extending from the 6.4-mile radius to 14.3 miles from the airport; and that airspace extending upward from 1,200 feet above the surface within 15 miles of the airport extending clockwise from the Kukuliak VOR/DME 298° radial to the 023° radial of the VOR/DME, and within 20 miles of the airport extending clockwise from the Kukuliak VOR/DME 023° radial to the 059° radial of the VOR/DME, and 4 miles each side of the 110° bearing from the Gambell NDB/DME extending from the NDB/DME to 12 miles southeast of the Gambell NDB/DME, and 10 miles north and 10 miles south of the 110° bearing from the Gambell NDB/DME extending from 12 miles southeast of the Gambell NDB/DME to 33 miles southeast of the Gambell NDB/DME, excluding that airspace within Gambell, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1770 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–22]

Revision of Class E Airspace; Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Ambler Airport, AK. The development of a Global Positioning System (GPS) instrument approach to runway (RWY) 36 at Ambler, AK, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ambler Airport, AK.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Ambler was published in the **Federal Register** (61 FR 53879). The development of a GPS instrument approach procedure to RWY 36 at Ambler Airport, AK, has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Ambler, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ambler, AK [Revised]

Ambler Airport, AK
(Lat. 67° 06' 22" N, long. 157° 51' 13" W)
Ambler NDB
(Lat. 67° 06' 24" N, long. 157° 51' 29" W)
DESOY
(Lat. 66° 20' 57" N, long. 158° 54' 51" W)
JELLE
(Lat. 66° 51' 40" N, long. 158° 55' 07" W)
PIKFE
(Lat. 66° 56' 52" N, long. 158° 01' 13" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ambler Airport and within 3.5 miles each side of the 193° bearing of the Ambler NDB extending from the 6.3-mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 4 miles west and 8 miles east of the Ambler NDB 193° bearing extending from the NDB to 16 miles southwest of the NDB, and 4 miles either side of a line from DESOY to PIKFE, and 4 miles either side of a line from JELLE to PIKFE.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1769 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AAL–21]

Establishment of Class E Airspace; Koyuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Koyuk Airport, AK. The development of non-directional beacon (NDB) instrument approach to runway (RWY) 36 at Koyuk, AK, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Koyuk Airport, AK.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Koyuk was published in the **Federal Register** (61 FR 53882). The development of a NDB instrument approach procedure to RWY 36 at Koyuk Airport, AK, has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Koyuk, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

The Federal Aviation Administration has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Koyuk, AK [New]

Koyuk Airport, AK
(Lat. 64° 56′ 02″ N, long. 161° 09′ 29″ W)
Koyuk NDB, AK
(Lat. 64° 55′ 55″ N, long. 161° 08′ 52″ W)
Norton Bay NDB, AK
(Lat. 64° 41′ 46″ N, long. 162° 03′ 47″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Koyuk Airport and 4 miles west and 8 miles east of the 210° bearing from the Koyuk NDB extending from the 9-mile radius to 17 miles southwest of the airport; and that airspace extending upward from the 1,200 feet above the surface within 5 miles eitherside of the Koyuk NDB 210° bearing extending from the NDB to 30 miles southwest of the NDB and 4.5 miles either side of the line between Norton Bay NDB and Koyuk NDB and within 20 miles of the Koyuk Airport extending clockwise from the 140° bearing to the 210° bearing of the NDB.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1768 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

Coast Guard

33 CFR Part 100

[CGD07–96–074]

RIN 2115–AE46

Special Local Regulations; Hillsborough Bay; Tampa, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Gasparilla Marine Parade in Hillsborough Bay, Tampa, Florida. This event will be held on Saturday, February 1, 1997, between 10 a.m. Eastern Standard Time (EST) and 1:30 p.m. EST. During the event, there will be approximately 750 participants and over 200 spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard. Therefore, these regulations are necessary to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 9 a.m. EST and terminate at 2:30 p.m. EST on February 1, 1997.

FOR FURTHER INFORMATION CONTACT: LTJG Tom Stuhlreyer, Project Officer. Coast Guard Group St. Petersburg, FL at (813) 824–7533.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. § 552, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received with sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

Temporary special local regulations are being established for the Gasparilla Marine Parade in Hillsborough Bay, Tampa, Florida. This event will be held on Saturday, February 1, 1997, between 10 a.m. Eastern Standard Time (EST) and 1:30 p.m. EST. These regulations are needed to provide for the safety of life, to protect vessels participating in the parade, and to protect marine mammals during the Gasparilla Marine Parade. There will be approximately 750 participants, afloat and ashore, participating in the marine parade. Also, 200–400 spectator craft are expected. The resulting congestion of navigable waters.

These regulations establish a regulated area in Hillsborough Bay, which consists of all waters east of a line drawn from Gadsen Point south to E.G. Simmons Park, at position 27–44.8 N, 082–28.3 W, then to the northern end of Hillsborough Bay. All coordinates referenced use Datum: NAD 1983. Additionally, the regulated area includes the following, in their entirely: Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the Cass Street Bridge.

Entry into the regulated area is closed to all commercial marine traffic from 10 a.m. EST to 2:30 p.m. EST on February 1, 1997. The regulated area is an idle speed, "no wake" zone. All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade. When within the marked channels of the parade route, vessels participating in the Gasparillas Marine Parade may not exceed the minimum speed necessary to maintain steerage. Jet skis and vessels without mechanical propulsion are prohibited from the parade route. Northbound vessels of length in excess of 80 feet and without mooring arrangements make prior to February 1, 1997 are prohibited from entering Seddon Channel, unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels, not officially entered in the Gasparilla Marine Parade, in excess of 80 feet without prior mooring arrangements must use the alternate route through Sparkman Channel.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses a limited area and entry into this area will be prohibited for only 5½ hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under 5 U.S.C. 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. The regulated area encompasses a limited area and will be in effect for only 5½ hours on the day of the event.

Collection of Information

These regulations contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction section 2.B.4.g. and 2.B.5., this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service, the Florida Department of Environmental Protection, and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species. As a condition to this permit, the applicant is required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

For reasons set out in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35 T96–074 is added to read as follows:

§ 100.35 T96–074 Hillsborough Bay; Tampa, FL.

(a) *Regulated Area.* A regulated area is established in Hillsborough Bay, which consists of all waters east of a line drawn from Gadsen Point south to E. G. Simmons Park, at position 27–44.8 N, 082–28.3 W, then to the northern end of Hillsborough Bay. All coordinates referenced use Datum: NAD 1983. Additionally, the regulated area includes the following, in their entirety: Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the Cass Street Bridge.

(b) *Special Local Regulations.*

(1) Entry into the regulated area is closed to all commercial marine traffic from 10 a.m. EST to 2:30 p.m. EST on February 1, 1997.

(2) The regulated area is an idle speed, "no wake" zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels of length in excess of 80 feet and without mooring arrangements made prior to February 1, 1997 are prohibited from entering Seddon Channel, unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels, not officially entered in the Gasparilla Marine Parade, in excess of 80 feet without prior mooring arrangements must use the alternate route through Sparkman Channel.

(c) *Effective Date.* This regulation becomes effective at 9 a.m. EST and terminates at 2:30 p.m. EST on February 1, 1997.

Dated: January 2, 1997.

R.C. Olsen, Jr.,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 97–1797 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 154 and 156

[CGD 93–056]

RIN 2115–AE59

Facilities Transferring Oil or Hazardous Materials in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: On August 8, 1996, the Coast Guard published a final rule revising the regulations covering facilities transferring oil or hazardous materials in bulk. Following issuance of the final rule, the Coast Guard received comments expressing confusion over the definition of "marine transfer area" in the final rule. Because the intent was to update and clarify the current regulations, and the public has concerns about the clarity of this definition, the Coast Guard is correcting the definition of "marine transfer area".

DATES: This regulation becomes effective on February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander John W. Farthing, Office of Compliance, (202) 267–0505.

SUPPLEMENTARY INFORMATION: Accordingly, page 41458 of the final rule published on August 8, 1996 (61 FR 41452), first column, in the text of § 154.105, in the definition of "Marine transfer area" line 8, the words "around the bulk storage tank" are deleted and at line 9, the words "or 49 CFR 195.264" are added immediately following the words "40 CFR 112.7" and immediately before the word "inland".

Dated: January 15, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–1750 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH90

Loan Guaranty: Limitation on Discount Points Financed in Connection With Interest Rate Reduction Refinancing Loans

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, an interim final rule that amends VA's loan guaranty regulations concerning points allowed to be included in Interest Rate Reduction Refinancing Loans. This rule limits to two the amount of discount points that may be included in the loan. This rule is necessary to help ensure that veterans are not overcharged with excessive points and to protect the Government against the danger of overinflated loans.

EFFECTIVE DATE: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: On February 28, 1996, VA published in the **Federal Register** (61 FR 7414) an interim final rule with request for comments. The rule amended VA's loan guaranty regulations by limiting to two the amount of points that may be included in VA-guaranteed Interest Rate Reduction Refinancing Loans (IRRRLs). We requested that comments on the interim final rule be submitted on or before April 29, 1996. We received 5 comments: from lenders, lender employees, and associations representing both veterans and lenders.

The first commenter, a lender trade organization, observed that while VA had appropriately responded to an abusive practice, the establishment of a point ceiling still introduced an artificial limitation in the marketplace. This commenter asserted that lenders must be able to react quickly to swings in mortgage interest rates. The commenter further asserted that one mechanism used to accomplish this is the use of points, especially in a scenario where interest rates are changing rapidly. The commenter suggested that VA establish a mechanism to increase the two-point ceiling in times of significant changes in the mortgage marketplace.

The second commenter, also a lender trade organization, noted that the rule would prohibit certain transactions that are beneficial to veterans, i.e., the practice of permitting a veteran to "buy down" the interest rate. The commenter further asserted that often the number of points charged in these cases is more than two and that allowing the veteran to take advantage of this option affords the veteran the fullest flexibility in the trade-off between interest rate and points. The commenter suggested that instead of limiting the number of points that can be financed, VA adopt an approach that limits the loan-to-value ratio (LTV) of the loan, noting that lenders routinely determine and consider LTVs as part of the underwriting process. The commenter suggested VA combine an LTV limit with a prohibition on increasing the monthly payment, and thereby limit the Government's risk in a less restrictive fashion.

The third commenter also thought that the rule was too restrictive, and suggested that VA allow lenders who set points in a responsible and competitive manner be allowed to continue to finance more than two points. The commenter asserted that VA should stop doing business with lenders found to be charging excessive discount points. This commenter also argued that lenders and borrowers need the availability of several pricing options, and that otherwise, when rates begin rising, lenders could be forced to charge a rate that was unacceptably high to the veteran and higher than it needed to be.

The fourth commenter, a lender employee, argued that a case could be made for a limit of one point financed in the loan. The fifth comment was from an organization representing veterans. The commenter asserted that many veterans needing to refinance their mortgages lack the cash that would be needed to pay excess points, and, therefore, by limiting their ability to finance points, we are effectively forcing them to take a higher rate than they would otherwise be able to obtain if they were permitted to finance a greater amount of points.

The suggestion that VA base its decision on how many points may be

added into the loan on the Loan to Value Ratio (LTV) does address the question of risk. However, in order to determine LTV an appraisal must be performed. One of the cornerstones of the IRRRL program is that an appraisal is not needed. If appraisals were required on IRRRLs the cost to veterans would increase, on average, by more than $300 per transaction (added into the loan) and the time needed to close the loan would be increased by up to three weeks. In light of the fact that we believe IRRRLs were intended to "streamline" refinances, we do not believe that the requirement of an appraisal is desirable or appropriate.

When the legislation which authorized the IRRRL program was considered by the Congress in 1980, interest rates had recently been as high as 14 percent. Prior to April 1979, interest rates on VA home loans had never reached 10 percent. The purpose of the IRRRL was, and is, to allow veterans to make better use of their home loan benefit by taking advantage of reduced market interest rates. The program was not designed to allow veterans to artificially buy down the interest rate by including increased points in the loan. Instead it was to assist veterans who obtained VA loans during periods of high interest rates to lower those rates, and consequently their monthly mortgage payments, when market rates returned to more reasonable levels. It has also been suggested that VA allow lenders who set points in a "responsible and competitive manner" to continue financing more than two points and stop doing business with lenders found to be charging excessive discount points. We do not believe it is feasible to attempt to administer such an imprecise standard, both for individual loans and for determining which lenders would be permitted to continue participating in the VA program.

Obviously, the fullest flexibility would allow for veterans to include any amount of points in the loan. However, the provisions of 38 U.S.C. 3710(e)(1)(C)(i) which allow VA to limit the points included in a loan indicate that other factors may be more important. We believe that a limit of two points in the loan amount provides the appropriate balance needed to provide flexibility with respect to amounts of points, to protect veterans against overcharging with excessive points, and to protect the Government against overinflated loans.

We understand and have considered the concerns of the commenters. However, we are not persuaded that any of the alternate approaches would be a satisfactory solution to the problem. None of the proposed alternatives offers a simpler alternative which affords the same degree of protection to veterans and the Government. The suggested alternative approaches would introduce new complications in the form of adjustable point ceilings, LTV ceilings, and new prohibitions on the size of the monthly payment. We prefer to retain the streamlined approach for these loans that made them so popular in the first place.

We would also like to clarify a point of possible confusion. A number of lenders contacted VA by telephone in response to this action to inquire whether the two-point limit included the origination fee as one of the two allowable points. The answer is no. Under 38 CFR 36.4312, a lender making a VA guaranteed loan is authorized to collect an "origination fee" of up to one percent of the loan amount as compensation for the miscellaneous cost of originating a loan. This fee is separate and apart from the charging of discount points, and can be included in the loan amount on an IRRRL as an allowable charge.

VA appreciates the interest of the commenters and thanks them for their thoughtful remarks.

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

Based on the rationale set forth in the interim rule document amending 38 CFR part 36 which was published at 61 FR 7414 on February 28, 1996, we are adopting the provisions of the interim rule as a final rule without change.

Approved: October 9, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–1656 Filed 1–23–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5677–5]

Alabama; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the State of Alabama's application for final approval.

SUMMARY: The State of Alabama has applied for approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Alabama's application and has reached a final determination that Alabama's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. Thus, EPA is granting final approval to the State of Alabama to operate its underground storage tank program for petroleum and hazardous substances.

EFFECTIVE DATE: Final approval for the State of Alabama shall be effective at 1:00 pm Eastern Standard Time on March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA, Region 4, Atlanta Federal Center, 100 Alabama Street S.W., Atlanta, Georgia 30303, phone number: (404) 562–9441.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to approve State underground storage tank programs to operate in the State in lieu of the federal underground storage tank (UST) program. To qualify for final authorization, a state's program must: (1) be "no less stringent" than the federal program for the seven elements set forth at RCRA Section 9004(a) (1) through (7); and (2) provide for adequate enforcement of compliance with UST standards of RCRA Section 9004(a).

On July 26, 1994, the State of Alabama submitted an official application to obtain final program approval to administer the underground storage tank program for petroleum and hazardous substances. On October 4, 1996, EPA published a tentative decision announcing its intent to grant Alabama final approval. Further background on the tentative decision to grant approval appears at 61 FR 51875, October 4, 1996.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing for lack of public interest. Since there was no public request, the public hearing was

cancelled. No public comments were received regarding EPA's approval of Alabama's underground storage tank program.

The following statutory and regulatory provisions are broader in scope than the federal program and are not part of the approved program: (1) Code of Alabama, 1975, Title 22, Chapter 36, Section 5, insofar as it refers to tank regulation fees; and, Section 7, insofar as it refers to rules and regulations to establish and protect wellhead areas from contaminants; and (2) Alabama Department of Environmental Management Administrative Code Section 335–6–15-.05, only insofar as it requires notification of all underground storage tank systems including those taken out of operation on or before January 1, 1974; Section 335–16–15-.45, insofar as it requires underground storage tank regulation fees; and Section 335–6–15-.47, insofar as it refers to financial responsibility for hazardous substance underground storage tank systems.

The State of Alabama is not approved to operate the underground storage tank program on Indian lands within the state's borders.

B. Decision

I conclude that the State of Alabama's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Alabama is granted final approval to operate its underground storage tank program for petroleum and hazardous substances. The State of Alabama now has the responsibility for managing all regulated underground storage tank facilities within its border and carrying out all aspects of the underground storage tank program except with regard to Indian lands where EPA will have regulatory authority. Alabama also has primacy enforcement responsibility, although EPA retains the right to conduct enforcement actions under section 9006 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget have exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any state, local or tribal governments or the private sector because the requirements of the State of Alabama's program are already imposed by the State and subject to state law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. Alabama's participation in an authorized UST program is voluntary.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of $100 million or more for state, local, and/or tribal governments in the aggregate, or the private sector. Costs to state, local and/or tribal governments already exist under the State of Alabama's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing State law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than result in a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves regulatory requirements under existing state law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority

This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: January 8, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–1762 Filed 1–23–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 282

[FRL–5677–6]

Underground Storage Tank Program: Approved State Program for Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the approval of Alabama's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective March 25, 1997, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of Alabama's underground storage tank program must be received by the close of business on February 24, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 25, 1997, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Underground Storage Tank Section, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303. Comments received by EPA may be inspected in the public docket, located in the Underground Storage Tank Section, Water Management Division, from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303. Phone: (404) 562–9441.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA is publishing a **Federal Register** document announcing its decision to grant approval to Alabama concurrently with this document. Approval will be effective March 25, 1997.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Alabama underground storage tank program. This codification reflects the state program in effect at the time EPA grants Alabama approval under section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Alabama program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Alabama program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Alabama, the status of federally approved requirements of the Alabama program will be readily discernible. Only those provisions of the Alabama underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Alabama's underground storage tank program, EPA has added section 282.50 to title 40 of the Code of Federal Regulation. Section 282.50 incorporates by reference for enforcement purposes the state's statutes and regulations. Section 282.50 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Alabama enforcement authorities will not be incorporated by reference. Section 282.50 lists those approved Alabama authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR section 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.50 of the codification simply lists for reference and clarity the Alabama statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to state, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no federal mandates for state, local, and tribal governments or the private section for

two reasons. First, today's action does not impose new or additional enforceable duties on any state, local, or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under state law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The requirements being codified today are the result of the State of Alabama's voluntary participation in accordance with RCRA Subtitle I.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of $100 million or more for state, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing state program that EPA is authorizing concurrently. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirement that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, this codification incorporates into the Code of Federal Regulations the State of Alabama's requirements which are being authorized concurrently by EPA under 40 CFR Part 281 and, thus small governments are not subject to any additional significant or unique requirements by virtue of this codification.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made to approve the Alabama underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: January 8, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR Part 282 is proposed to be amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.50 to read as follows:

§ 282.50 Alabama State-Administered Program.

(a) The State of Alabama is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Alabama Department of Environmental Management, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA published the notice for final determination on the approved Alabama underground storage tank program concurrently with this notice and it will be effective on March 25, 1997.

(b) Alabama has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Alabama must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Alabama obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Alabama will have final approval for the following elements submitted to EPA in Alabama's program application for final approval and to be published in the **Federal Register** concurrently with this notice, and to be effective on March 25, 1997. Copies of Alabama's underground storage tank program may be obtained from the Ground Water Branch, Alabama Department of Environmental Management, 1751 W.L. Dickinson Drive, Montgomery, Alabama 36130.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Alabama Statutory Requirements Applicable to the Underground Storage Tank Program, 1996.

(B) Alabama Regulatory Requirements Applicable to the Underground Storage Tank Program, 1996.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: Code of Alabama 1975, Title 22, Chapter 36, Section 9 and Code of Alabama 1975, Title 22, Chapter 22A, Section 5(19).

(B) The regulatory provisions include: none.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) Code of Alabama 1975, Title 22, Chapter 36, Section 5, insofar as it refers to underground storage tank regulation fees.

(B) Code of Alabama 1975, Title 22, Chapter 36, Section 7, insofar as it refers

to rules and regulations to establish and protect wellhead areas from contaminants.

(C) Alabama Department of Environmental Management Administrative Code Section 335–6–15–.05, insofar as it requires notification of underground storage tank systems taken out of operation on or before January 1, 1974.

(D) Alabama Department of Environmental Management Adminstrative Code Section 335–6–15–.45, insofar as it requires underground storage tank regulation fees.

(E) Alabama Department of Environmental Management Adminstrative Code R. 335–6–15–.47, insofar as it refers to financial responsibility for hazardous substance underground storage tank systems.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Alabama on June 8, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Alabama to EPA, June 8, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the final application in July 1994 and revised in March 1995, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the final application in July 1994 and revised in March 1995, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA, Region 4 and the Alabama Department of Environmental Management, signed by the EPA, Regional Administrator on August 2, 1996, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "Alabama" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Alabama

(a) The statutory provisions include Code of Alabama 1975, Title 22, Chapter 36, Underground Tank and Wellhead Protection Act:

Section 1
Short title.
Section 2
Definitions.
Section 3
Rules and regulations governing underground storage tanks.
Section 4
Information to be furnished by owner upon request of department; owner to permit access to records and entry and inspection of facilities.
Section 6
Expenditure of funds from leaking underground storage tank trust fund; investigative and corrective powers in regard to administration of funds; liability of owner or operator for costs.
Section 8
Availability to public of records, reports, or information obtained under chapter.
Section 10
Rules and regulations.

(b) The regulatory provisions include Alabama Department of Environmental Management, Administrative Code, Division 6, Water Quality Program, Volume II, revised effective: June 1, 1994, Chapter 335–6–15: Technical Standards, Corrective Action Requirements and Financial Responsibility for Owners and Operators of Underground Storage Tanks.

Section .01
Purpose.
Section .02
Definitions.
Section .03
Applicability.
Section .04
Interim Prohibition for Deferred UST Systems.
Section .05
Notification, except those USTs taken out of operation on or before January 1, 1974.
Section .06
Performance Standards for New UST Systems.
Section .07
Upgrading of Existing UST Systems.
Section .08
Plans and Specifications.
Section .09
Spill and Overfill Control.
Section .10
Operation and Maintenance of Corrosion Protection.
Section .11
Compatibility.
Section .12
Repairs Allowed.
Section .13
Reporting and Recordkeeping.
Section .14
General Release Detection Systems for all UST Systems.
Section .15
Release Detection Requirements for Petroleum UST Systems.
Section .16
Release Detection Requirements for Hazardous Substance UST Systems.
Section .17
Methods of Release Detection for Tanks.
Section .18
Methods of Release Detection for Pipes.
Section .19
Release Detection Recordkeeping.
Section .20
Reporting of Suspected Releases.
Section .21
Investigation Due to Environmental Impact.
Section .22
Release Investigation and Confirmation Steps.
Section .23
Reporting and Clean-up of Spills and Overfills.
Section .24
Initial Release Response.
Section .25
Initial Abatement Measures and Preliminary Investigation.
Section .26
Preliminary Investigation Requirements.
Section .27
Free Product Removal.
Section .28
Secondary Investigation Requirements.
Section .29
Corrective Action Plan.
Section .30
Corrective Action Limits for Soils.
Section .31
Corrective Action Limits for Ground Water.
Section .32
Alternative Corrective Action Limits.
Section .33
Risk Assessment.
Section .34
Public Participation.
Section .35
Analytical Requirements.
Section .36
Temporary Closure.
Section .37
Permanent Closure.
Section .38
Site Closure or Change-in-Service Assessments.
Section .39
Applicability to Previously Closed UST Systems.
Section .40
Closure Records.
Section .41
Alternate or Temporary Drinking Water Source.
Section .42
Availability to Public of Records, Reports or information.
Section .43
Access to Records.
Section .44

Entry and Inspection of Facilities.
Section .46
Financial Responsibility for Petroleum UST Owners and Operators.
Section .48
Severability.

[FR Doc. 97–1763 Filed 1–23–97; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC50

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Insects From the Santa Cruz Mountains of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mount Hermon June beetle (*Polyphylla barbata*) and Zayante band-winged grasshopper (*Trimerotropis infantilis*). These two insect species are restricted to the Zayante sand hills ecosystem endemic to inland marine sand deposits in the Santa Cruz Mountains of Santa Cruz County, California. The species are in danger of extinction principally because of ongoing and future habitat loss to sand mining and urban development. This rule implements Federal protection and recovery provisions afforded by the Act for each of these animals. The proposal to list the Santa Cruz rain beetle (*Pleocoma conjungens conjungens*) as an endangered species is being withdrawn and will appear in a separate section of this publication.

EFFECTIVE DATE: February 24, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor (see **ADDRESSES** section, telephone 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

The Mount Hermon June beetle (*Polyphylla barbata*) and Zayante band-winged grasshopper (*Trimerotropis infantilis*) are endemic to the unique Zayante sand hills ecosystem associated with isolated sandstone deposits in the Santa Cruz Mountains, Santa Cruz County, California.

The Santa Cruz Mountains are a geologically young range composed of igneous and metamorphic rocks overlaid by thick layers of sedimentary material uplifted from the ocean floor and ancient shoreline zone (Caughman and Ginsberg 1987). These Miocene marine terraces, called the Santa Margarita formation (Clark 1981; Marangio 1985), persist as pockets of sandstones and limestones geologically distinct from the volcanic origins of the Santa Cruz Mountains. Soils that formed from these sandstone deposits occur in scattered pockets covering approximately 3,400 hectares (ha) (8,400 acres (ac)), and are called the Zayante soil series (USDA Soil Conservation Service 1980). Zayante soils are endemic to Santa Cruz County and occur in three primary clusters. The largest cluster is in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Olympia, and Scotts Valley. A second cluster is located in the Bonny Doon area. The third, and smallest, cluster is found near the community of Corralitos. Zayante soils are deep, coarse-textured, poorly developed, and well drained (USDA Soil Conservation Service 1980).

Predominant vegetation of the Santa Cruz Mountains consists of coast redwood forest (Zinke 1988) and mixed evergreen forest (Sawyer *et al.* 1988). However, the coarse, sandy, Zayante soils create a warmer and drier microclimate that supports a uniquely adapted flora distinctly different from the surrounding forest and chaparral communities (Marangio 1985; Davilla 1990). The Zayante soils in the Ben Lomond-Mount Hermon-Scotts Valley and Bonny Doon regions harbor a complex vegetation mosaic dominated by maritime coast range ponderosa pine forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of northern maritime chaparral and maritime coast range ponderosa pine forest overlap to form a complex and intergrading mosaic of communities variously referred to as "ponderosa sand parkland," "ponderosa pine sandhills," and "silver-leafed manzanita mixed chaparral." These habitats will be collectively referred to as "Zayante sand hills habitat" or the "Zayante sand hills ecosystem." The Corralitos cluster of Zayante soils is distant and does not support similar vegetation. Therefore, that cluster is not included in the Zayante sand hills ecosystem.

The occurrence of ponderosa pine (*Pinus ponderosa*) in this region represents a disjunct, remnant occurrence of the species in the Santa Cruz Mountains, reflective of the unique edaphic conditions on Zayante soils. Here, maritime coast range ponderosa pine forest occurs as open, park-like stands with low densities of ponderosa pines occasionally interspersed with knobcone pines (*Pinus attenuata*) and, at some sites, the federally endangered Santa Cruz cypress (*Cupressus abramsiana*). The presence of knobcone pines and Santa Cruz cypress, which require periodic fires for reproduction (Vogl *et al.* 1988), suggests that fire may play an important role in the maintenance of the Zayante sand hills habitat mosaic (Griffin 1964; Marangio 1985; Holland 1986).

Northern maritime chaparral on Zayante soils is dominated by the silver-leafed manzanita (*Arctostaphylos silvicola*), a candidate for Federal listing endemic to the region. It may occur as monotypic stands or be mixed with *Ceanothus* sp., *Adenostoma* sp., *Eriodictyon* sp., and other shrub species. Knobcone pine may occasionally be present (Morgan 1983; Marangio 1985; Lee 1994).

The Zayante sand hills ecosystem harbors a diversity of rare and endemic plant species and disjunct populations (Thomas 1961; Griffin 1964; Morgan 1983). In addition to the endemic silver-leafed manzanita and the disjunct population of ponderosa pine, Zayante soils support the federally endangered *Erysimum teretifolium* (Ben Lomond wallflower), *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Because of the unique flora found there, the Zayante sand hills are considered to be "biological islands" (Marangio 1985).

A unique habitat within the Zayante sand hills ecosystem is sand parkland characterized by sparsely vegetated, sandstone-dominated ridges and saddles that support a wide array of annual and perennial herbs and grasses. Scattered ponderosa pine trees are often present. Although overall vegetation cover is generally less than 20 percent, sand parkland supports over 90 specifically adapted plant species (Morgan 1983; Davilla 1990).

The ranges of the Mount Hermon June beetle and Zayante band-winged grasshopper are highly restricted within the Santa Cruz Mountains. The Mount Hermon June beetle is limited to the Zayante sand hills ecosystem. It is found in sand parkland and other sandy

areas within chaparral and ponderosa pine stands. The Zayante band-winged grasshopper is more narrowly distributed, known only from seven patches of sand parkland.

The Mount Hermon June beetle was first described by Cazier (1938) from Mount Hermon, Santa Cruz County, California. The adult male is a cryptic small scarab beetle with a black head, dark blackish-brown elytra (thick leathery forewings) clothed with scattered long brown hair, and a striped body. Elytral vittae (stripes) are broken, often reduced to discontinuous clumps of scales, but still form identifiable lines (Cazier 1938; Young 1988). Females are larger, with a black head, chestnut-colored clypeus (plate on lower part of face) and elytra, and golden hairs on the head, thorax, and legs (Young 1988). The single adult female described was 22 by 11 millimeters (mm) (0.87 by 0.43 inches (in.)), while the holotype male was 20 by 9.7 mm (0.79 by 0.39 in.) (Young 1988).

The Mount Hermon June beetle is 1 of 28 species of *Polyphylla* in North America north of Mexico, and 1 of 15 species of the *diffracta* complex within the genus *Polyphylla* (Young 1988). The status of *P. barbata* as a full species was supported by Cazier (1940) and again by Young (1988), who recently made several nomenclatural adjustments to the genus *Polyphylla* but retained *P. barbata*. Three other wide-ranging species of *Polyphylla* occur in the Ben Lomond-Mount Hermon-Scotts Valley area—*P. crinita*, *P. nigra*, and *P. decemlineata*. The Mount Hermon June beetle is distinguished from other species of *Polyphylla* by the presence of relatively dense, long, erect hairs scattered randomly over the elytra and short erect hairs on the pygidium (abdominal segment) (Young 1988).

Like other *Polyphylla* species, the Mount Hermon June beetle is believed to require about 2 to 3 years to mature from an egg through the adult form. However, the rate of growth of laboratory-reared larvae suggests that the Mount Hermon June beetle may complete its life cycle within 1 year (W. Hazeltine, *in litt.* 1994). Most of the life cycle is spent in larval stages. The larvae are subterranean and feed on plant roots. While *Polyphylla* larvae are generally considered to be grass and pine root feeders (F. Andrews, California Department of Food and Agriculture, pers. comm. 1993; A. Evans, Los Angeles Museum of Natural History, pers. comm. 1993), the Mount Hermon June beetle also may feed on the roots of monkeyflower, oak, fern, and other plants found in the Zayante sand hills ecosystem (W. Hazeltine, *in litt.* 1993).

During summer, Mount Hermon June beetles emerge as imagos (adult forms) to reproduce. Males are strong fliers, emerging from their burrows to fly low to the ground in search of females (W. Hazeltine, *in litt.* 1994). Females are thought to be fossorial, remaining just below the surface in burrows. Females may not fly due to their large body size (A. Evans, pers. comm. 1993; A. Hardy, California Department of Food and Agriculture, pers. comm. 1993). Like other *Polyphylla* species, males are believed to locate females by tracking female pheromone signals (Fowler and Whitford 1981; Hazeltine 1993); such a mechanism would ensure reproductive success within the limited time period for mating (Lilly and Shorthouse 1971). The flight season generally extends from mid-June to late July. The flight time of males appears restricted to evening, being observed only between 8:45 and 9:30 pm; flights may occur later during the latter part of the flight season (Hazeltine 1993).

The small mouthparts and limited flight period of Mount Hermon June beetles suggest that adults of this species do not feed (W. Hazeltine, *in litt.* 1993). Adults of the related *Polyphylla decemlineata* are known to feed on the leaves of trees (Johnson 1954). At the end of the flight period each evening, males burrow back into the soil, emerging repeatedly on subsequent evenings to search for mates until their nutrient reserves expire (Hazeltine 1993). Females are believed to lay eggs at the bottom of their burrows and die a short time later. The life cycle continues as newly hatched larvae tunnel from the burrow in search of roots.

Habitat of the Mount Hermon June beetle is described as ponderosa pine-chaparral habitat with sandy soil and open, sparsely vegetated areas (Hazeltine 1993; W. Hazeltine, pers. comm. 1994; J. Hoekstra, U.S. Fish and Wildlife Service, pers. obs. 1994). Mount Hermon June beetles also may occur in more vegetated areas of chaparral (D. Russell, Miami University, Ohio, pers. comm. 1994). Common vegetation found in these open areas includes bracken fern (*Pteridium aquilinum*), monkeyflower (*Diplacus* sp.; *Mimulus* sp.), grasses, and small annual forbs (J. Hoekstra, pers. obs. 1994). While not always present, silver-leafed manzanita seems to be a good indicator of suitable habitat (Hazeltine 1993; J. Hoekstra, pers. obs. 1994) All of these descriptions are consistent with those of Zayante sand hills habitat.

Most *Polyphylla* species have narrow distributions. Of 28 North American species, 20 have restricted ranges; 15 of these are endemic to isolated sand deposits (Young 1988). The restricted distributions of these species are likely due to various factors including substrate and food preferences, edaphic tolerances, and the low mobility of fossorial larvae and females. Most *Polyphylla* species seem to prefer sand and grass or sand, grass, and conifer associations similar to those found in the Zayante sand hills ecosystem (Borror *et al.* 1976; Young 1988; A. Hardy, pers. comm. 1993).

The range of the Mount Hermon June beetle is restricted to the Zayante sand hills habitat of the Ben Lomond-Mount Hermon-Scotts Valley area. Historically, specimens were known only from "sandhills" at the type locality of Mount Hermon in Santa Cruz County, California (Cazier 1938, 1940; Young 1988). A single historic specimen collected in 1968 and labeled only "Santa Cruz" has been reported (S. McCabe, California Native Plant Society, *in litt.* 1991). This specimen was not helpful in the Service's range analysis because of its non-specific location label.

Between 1989 and 1994, Mount Hermon June beetles were collected at 28 of 43 sites surveyed. Records include results of a regional survey and incidental collections (S. McCabe 1991; Hazeltine 1993; W. Hazeltine, pers. comm. 1994; D. Russell, pers. comm. 1994). Twenty six of the 28 collection locations were on mapped Zayante soils in the primary cluster of the Ben Lomond-Mount Hermon-Scotts Valley area. The other two collection records were within the same area, in proximity to mapped Zayante soils (Hoekstra 1994). All sites were similarly characterized by sparsely vegetated sandy substrate with silver-leafed manzanita or ponderosa pine (Hazeltine 1993; J. Hoekstra, pers. obs. 1994). Mount Hermon June beetles were not found in surveys of suitable Zayante sand hills habitat outside the Ben Lomond-Mount Hermon-Scotts Valley area; nor were they found at locations with habitat not characteristic of the Zayante sand hills ecosystem (Hoekstra 1994).

Over 40 percent of Zayante sand hills habitat is estimated to have been lost to, or altered by, human activities including—sand mining, urban development, recreational activities, and agriculture. Historically, Zayante sand hills habitat was estimated to have covered 2533 ha (6265 ac) (Lee 1994). Currently, 1459 ha (3608 ac) remain in a natural state (Lee 1994). Portions of

the Zayante sand hills ecosystem are protected under public ownership in only three locations—the Quail Hollow Ranch, owned by the County of Santa Cruz; Bonny Doon Ecological Preserve, managed by the California Department of Fish and Game; and Henry Cowell Redwoods State Park (Marangio 1985; Lee 1994). However, the Mount Hermon June beetle is not known to occur in either the Bonny Doon Ecological Preserve or Henry Cowell Redwoods State Park. The majority of Zayante sand hills habitat is on privately owned properties and is susceptible to continued sand mining and urban development. No Federal land is located in the region.

The Zayante band-winged grasshopper was first described from a sand parkland area near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California (Rentz and Weissman 1984). The body and forewings are pale gray to light brown with dark crossbands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue-gray and the eye is banded. It is one of the smallest species in the genus. Males range in length from 13.7 to 17.2 mm (0.54 to 0.68 in.); females are larger, ranging in length from 19.7 to 21.6 mm (0.78 to 0.85 in.) (Otte 1984; Rentz and Weissman 1984).

The Zayante band-winged grasshopper is 1 of 56 species in the genus *Trimerotropis* (Rentz and Weissman 1984). This species is similar in appearance to *Trimerotropis occulans* and *Trimerotropis koebelei*; neither of these species is known from the Zayante sand hills region (Otte 1984; Rentz and Weissman 1984). *Trimerotropis thalassica* and *Trimerotropis pallidipennis pallidipennis* have been caught nearby but are not considered sympatric (Rentz and Weissman 1984).

The flight season of the Zayante band-winged grasshopper extends from late May through August with peak activity during July and August (White 1993; R. Morgan, *in litt.* 1994). Specimens have been collected as late as November 1 (White 1993). When flushed, individuals generally fly 1 to 2 meters (m) (3 to 7 feet (ft)), stridulating (producing a buzzing sound) in flight (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground, and are conspicuous in flight because of the color of the hind wings and the crackling sound made by the wings (Borror *et al.* 1976). No additional information on the life cycle of this species is available.

Habitat of the Zayante band-winged grasshopper was originally described as "sandy substrate sparsely covered with *Lotus* and grasses at the base of pines" (Rentz and Weissman 1984). Subsequent reports describe habitat as open sandy areas with sparse, low annual and perennial herbs on high ridges with sparse ponderosa pine. Such descriptions are consistent with those of sand parkland. Surveys also report that the Zayante band-winged grasshopper co-occurs with *Erysimum teretifolium* (Ben Lomond wallflower), a federally endangered plant (White 1993; R. Morgan, *in litt.* 1994). The significance of such an association is unknown.

The Zayante band-winged grasshopper is narrowly restricted to sand parkland habitat found on ridges and hills within the Zayante sand hills ecosystem. The species was described from specimens collected in 1977 on sparsely vegetated sandy soil above the Olympia sand quarry. Other historic specimens were labeled only "Santa Cruz Mts., no date"; "Alma, 1928"; "Felton, 1959"; and "Santa Cruz, 1941" (Rentz and Weissman 1984). Because no specific location or habitat descriptions accompanied the historic specimens, they were not considered in the assessment of current range and status of the species. The "Alma 1928" record may suggest distributional outliers, but no subsequent collections have been recorded to substantiate the current existence of such a population. Furthermore, the town of Alma currently is inundated by a reservoir, and the cited specimens cannot be located in the listed depository for verification (W. Hazeltine, *in litt.* 1994; D. Weissman, California Academy of Sciences, pers. comm. 1994).

Between 1989 and 1994, Zayante band-winged grasshoppers were found at 10 of 39 sites sampled during two independent regional surveys (White 1993; R. Morgan, *in litt.* 1994). All 10 collection locations were on Zayante series soils (Hoekstra 1994). The habitat at these sites was consistently described as a sparsely vegetated sandy substrate or sand parkland (White 1993; R. Morgan, *in litt.* 1994). The association and restriction of the Zayante band-winged grasshopper to sand parkland was further corroborated by an overlay of collection locations on maps delineating sand parkland habitat (Marangio 1985; R. Morgan, *in litt.* 1994; Lee 1994). All 10 collection locations fell within 7 discrete areas of sand parkland habitat (Hoekstra 1994).

Over 60 percent of sand parkland is estimated to have been lost to, or altered by, human activities including sand mining, urban development, recreation, and agriculture (Marangio and Morgan 1987; R. Morgan, pers. comm. 1992; Lee 1994). Approximately 200 to 240 ha (500 to 600 ac) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (R. Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac) because of identification and inclusion of additional lower quality sand parkland (Lee 1994). Evaluation of sand parkland quality was based upon vegetation structure and species composition. Only 20 ha (49 ac) of sand parkland habitat are publicly owned—1.2 ha (3 ac) of high quality and 2.4 ha (6 ac) low quality habitat are protected within the Quail Hollow Ranch, owned by the County of Santa Cruz; 8 ha (20 ac) of low quality sand parkland are protected in the Bonny Doon Ecological Preserve, managed by the California Department of Fish and Game (Lee 1994); and approximately 8 ha (20 ac) of low quality habitat occur in Henry Cowell Redwoods State Park (S. Steinmetz, Henry Cowell Redwoods State Park, pers. comm. 1993). The Zayante band-winged grasshopper does not occur in the Bonny Doon Ecological Preserve or Henry Cowell Redwoods State Park. The remaining 58 ha (143 ac) of sand parkland are privately owned and at risk of loss to sand mining and urban development (D. Hillyard, California Department of Fish and Game, pers. comm. 1993; Lee 1994).

Previous Federal Action

The Service included the Mount Hermon June beetle as a category 2 candidate species in the January 6, 1989 (54 FR 554) and November 21, 1991 (56 FR 58804) Animal Notices of Review. Category 2 species were those for which information in the Service's possession indicated that listing was possibly appropriate, but for which substantive data on biological vulnerability and threats were not available to support proposed rules.

On February 11, 1991, the Service was petitioned by Mr. Stephen McCabe, California Native Plant Society, to emergency list the Mount Hermon June beetle as an endangered species. The Service made a 90-day finding on June 10, 1991, that although an emergency situation did not exist, substantial information had been presented indicating that listing may be warranted, and announced this decision in the August 19, 1992, **Federal Register** (57 FR 37513). The Service initiated a status review of the Mount Hermon June beetle at that time.

The Service was petitioned on July 16, 1992, by Dr. David Weissman, California Academy of Sciences, to list the Zayante band-winged grasshopper as an endangered species. No separate 90-day finding was published for this species; final finding for the petitioned action was contained in a proposed rule, which included listing the Zayante band-winged grasshopper as endangered (59 FR 24112).

The Service learned of the status of, and threats to, the Santa Cruz rain beetle (*Pleocoma conjungens conjungens*) during status reviews of the Mount Hermon June beetle and Zayante band-winged grasshopper. During the status reviews of the three taxa, the Service examined the available literature and data on life history, ecology, locality records, and species' ranges. Sources of status and threat information for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle included reports and plans supplied by proponents of the listing and reviewing agencies' plans for development projects within the range of these three species, and reviewing published and unpublished data from scientists with expertise on these taxa and their habitat needs.

On May 10, 1994, the Service published a proposed rule in the **Federal Register** (59 FR 24112) to list the three insects as endangered. The proposed rule constituted the final finding for the petitioned actions for the Mount Hermon June beetle and Zayante band-winged grasshopper, in accordance with section 4(b)(3)(B)(ii) of the Act. The proposed rule opened a public comment period through July 11, 1994, to allow submission of new and additional information on the species and written comments from the public. A public hearing was requested by Dr. William Hazeltine of Oroville, California on May 30, 1994. A Notice of Public Hearing and Extension of Public Comment Period was published on June 29, 1994 (59 FR 33484). This notice extended the public comment period through August 1, 1994. The public hearing was held on July 18, 1994, in Santa Cruz, California and allowed presentation of both oral testimony and written comments. A notice reopening the public comment period through October 31, 1994, was published on September 1, 1994 (59 FR 45254). The comment period was reopened to allow submission of additional comments and information concerning the proposed rule.

Based upon information received during the cited public comment periods, the proposed listing of the Santa Cruz rain beetle has been withdrawn by the Service. A notice withdrawing the proposal is published in the **Federal Register** concurrently with this final rule.

Summary of Comments and Recommendations

In the May 10, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, County and local governments, scientific organizations, and other interested parties were contacted and requested to comment. The initial 60-day comment period was extended through August 1, 1994 (59 FR 33484), and reopened from September 1, 1994, through October 31, 1994, to allow submission of additional comments (59 FR 45254). Newspaper notices were published in the Santa Cruz Sentinel on September 22, 1994, and in the San Jose Mercury News on September 30, 1994, inviting general public comment.

The Service received a written request from Dr. William Hazeltine of Oroville, California for a public hearing. The public hearing was held on July 18, 1994, at the Santa Cruz County Government Building in Santa Cruz, California. Each speaker was provided 5 minutes to present oral testimony concerning the proposed rule; written comments also were accepted at the public hearing. Approximately 40 individuals attended the public hearing; 17 presented statements.

Seventy three comments, including those of 1 Federal agency, 1 State agency, 3 local government officials, and 50 private groups and individuals, were received during the comment periods and public hearing. Several people submitted more than one comment to the Service. Forty one comments supported, 27 expressed concerns, and 5 were neutral on the proposed action. Several comments contained significant data and information concerning the biology, ecology, range, and distribution of the subject species. This information was evaluated and incorporated into the final determination as appropriate.

Written comments and oral statements presented at the public hearing and received during the comment periods are addressed in the following summary. Written and oral comments were given full and equal consideration. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: Numerous respondents concluded that listing the three insect species would have adverse economic and social effects. Several commenters felt that residential and commercial development would be stopped or hindered. Other commenters were concerned about effects to local mining and railroad businesses. Three commenters requested that the Service consider and analyze possible socioeconomic impacts. A representative of the Department of the Interior Bureau of Mines (Bureau) offered the Bureau's assistance with such analysis. Another commenter concluded that the Service failed to include Regulatory Flexibility Act analysis. Some commenters stated that the listing would turn public opinion against preservation of endangered species, and discredit conservation organizations, the Act, and other environmental organizations. Several commenters charged that the Act was being subverted by proponents of the listing and the Service for political purposes, including habitat protection, land use control, and development restriction. On the other hand, several respondents asserted that the economic effects of the listing were being exaggerated by opponents. They argued that individual property and homeowners would not be significantly affected since most of the known occurrences were on a small number of large properties. Proponents also cited the uniqueness of the ecosystem and its flora and fauna as a reason to list the species.

Service Response: These comments address a diversity of economic, social, and political issues. However, section 4(b)(1)(A) of the Act requires that a listing determination be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological criteria from effecting such decisions" (H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982)). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species." Because the Service is specifically precluded from considering economic impacts in a final determination on a proposed listing, possible economic consequences of listing the insects were not considered.

Issue 2: One commenter concluded that listing the Mount Hermon June beetle and Zayante band-winged grasshopper would usurp local land use planning authorities.

Service Response: The Act does not empower the Service or any other Federal agency with land use planning authorities. Therefore, local planning responsibilities would remain intact.

Issue 3: One commenter concluded that land owners would be required to prove a species not to be endangered as a condition of take permits.

Service Response: Section 10 of the Act describes procedures for permitting exemption from take prohibitions. Such permission may only be granted if the activity does not preclude the continued existence and eventual recovery of the listed species. Permit applicants are not required to demonstrate species' lack of endangerment.

Issue 4: Three commenters concluded that prohibitions against "take" of listed species, as defined in the Act, would violate constitutional prohibitions against take of private property without compensation. Two commenters requested that the Service conduct a takings implication analysis.

Service Response: If an action would not harass, harm, kill, or otherwise "take" a listed species, the prohibitions described in section 9 of the Act are not applicable. If an action would take a listed species, procedures for permitting exemptions from the Act's take prohibitions are established in section 10. The Attorney General of the U.S. has issued guidelines to the Department of the Interior (Department) regarding Taking Implications Assessments (TIAs). The Attorney General's guidelines state that TIAs used to analyze the potential for Fifth Amendment taking claims are to be prepared after, rather than before, an agency makes a restricted discretionary decision. In enacting the Act, Congress required the Department to list a species based solely upon scientific and commercial data indicating whether or not the species is in danger of extinction. The Service may not withhold a listing based upon economic concerns. Therefore, even though a TIA may be required, a TIA for a listing action is finalized only after the final determination whether to list a species is made.

Issue 5: One commenter concluded that recovery plans require coerced mitigation.

Service Response: Although recovery plans identify objectives, strategies, and specific actions necessary for the recovery of a species, the plans are guidance documents. Implementation of recovery plans is not mandatory under law.

Issue 6: Two commenters concluded that the Act was not intended for insects and that the species did not qualify under the definitions of the Act.

Service Response: The definition of "fish and wildlife" in the Act includes "any member of the animal kingdom, including without limitation any mammal, fish, bird * * *, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate." The Phylum Arthropoda (arthropods) includes insects. Because the Mount Hermon June beetle and Zayante band-winged grasshopper are recognized as distinct species, both taxa qualify for listing consideration under the Act.

Issue 7: One commenter questioned the Service's ability to protect endangered species. Two commenters did not believe that funds would be available to monitor the species, enforce the Act, or develop a recovery plan for insect species.

Service Response: Measures by which the Service can protect endangered species are described in the Available Conservation Measures section of this document.

Issue 8: One commenter asserted that the use of consultation under section 7 of the Act was equivalent to *ad hoc* administration for listed species, and that it avoided National Environmental Policy Act (NEPA) review and taking issues.

Service Response: Consultation processes defined in section 7 of the Act provide for coordination between the Service and other Federal agencies to ensure that Federal actions do not jeopardize the continued existence of listed species. Recovery plan guidance helps ensure that proposed actions are consistent with and support the recovery goals and objectives for listed species. The consultation process in no way exempts Federal agencies from compliance with NEPA or consideration of taking issues if required for a proposed action.

Issue 9: A number of respondents urged the Service to base any listing decisions on sound science using expert data and opinions. Another concluded that the data and analyses used in the proposed rule did not meet scientific standards of review. Several commenters requested that the data undergo peer review to evaluate additional information and to reconcile an expert's disagreement with the Service's proposed rule. Two commenters requested that the Service delay a final determination to allow for adequate evaluation and review of data.

Service Response: To ensure that listing decisions are based on sound scientific data, principles, and analyses, and in accordance with Service policies, expert opinions of independent and appropriate specialists were solicited regarding pertinent data and assumptions used to make this final determination. All available data and assumptions concerning the biology and distribution of the species were provided to the reviewers. Their comments are summarized in the "Peer Review" section of this rule and have been incorporated as appropriate. As required by the listing regulations promulgated in 50 CFR part 424, the Service has evaluated the available information and presented the data and assumptions for independent scientific review.

Issue 10: Several respondents were concerned with the credibility of available data. Individual collectors were criticized by various commenters for lacking expertise or verifiable records. These collectors defended their credibility by citing professional qualifications and acceptance of data within the scientific community. Other commenters disputed the value of published versus unpublished data and documents.

Service Response: In making a listing determination, the Service is obligated to use the best available information. The quality and reliability of data used were evaluated against the following criteria—demonstrated experience or credentials of collectors, consistency with acceptable methodologies, and verifiability of data. If the quality or reliability of particular data was deemed to be inadequate, an appropriate explanation is provided. Similar standards were maintained for evaluation of published and unpublished material.

Issue 11: Three commenters cited unpublished reports that contained substantial information on the biology and range of the Mount Hermon June beetle and Santa Cruz rain beetle not included in the proposed rule. One commenter concluded that the Service ignored the reports and comments because the data refuted the proposed rule.

Service Response: Pertinent information contained in these reports has been incorporated into this final determination.

Issue 12: Several commenters felt that the proposed listing was based on erroneous assumptions and lack of collection. Two commenters contended that failure to collect specimens did not indicate absence of the species. Three commenters recommended that more thorough studies be conducted prior to a final determination.

Service Response: In preparing this final determination, the Service had available substantial collection data for

the two species, including data from the petition to list the Mount Hermon June beetle, incidental collection records of this species, and the results of a 1993 regional survey. In addition, the Service reviewed the results of two independent regional surveys for the Zayante band-winged grasshopper. These data were sufficient to determine the range and to evaluate the threats to the species. Peer reviewers concurred that assumptions were reasonable and appropriate.

Issue 13: Numerous commenters concluded that the proposed listing of the Mount Hermon June beetle was not supported by data and conclusions contained in survey reports and comments submitted by Dr. William Hazeltine, who studied the beetle from 1946 to 1952 and again from 1992 to 1994. These commenters, including Dr. Hazeltine, cited collections of Mount Hermon June beetles across a larger geographic range and in different habitat than the Zayante soils and sand parkland described in the proposed rule.

Service Response: The data contained in Dr. Hazeltine's 1993 survey report significantly expanded the known range of the Mount Hermon June beetle with 26 collection records reported from Ben Lomond to Scotts Valley. Hazeltine's data also showed the beetle to occur in chaparral habitats as well as sand parkland. However, Service analysis showed that the distribution of successful collection sites corresponded with the distribution of Zayante soils on which Zayante sand hills habitats are found. In addition, habitat on successful collection sites was described as sparsely vegetated sandy areas among chaparral and ponderosa pine. Service personnel visited the collection sites with Dr. Hazeltine and verified the habitats were consistent with descriptions of Zayante sand hills habitat. Thus, the Service concluded that the Mount Hermon June beetle is limited to Zayante sand hills habitat in the Ben Lomond-Mount Hermon-Scotts Valley area. Although this range is indeed larger than previously described and extends beyond sand parkland, the Mount Hermon June beetle remains endangered throughout all or a significant portion of its range to the extent that listing is appropriate.

Issue 14: Several commenters concluded that the proposal to list the Mount Hermon June beetle and Zayante band-winged grasshopper as endangered species lacked scientific evidence and was not supported by entomological information.

Service Response: All available data and information concerning the biology and status of these species was reviewed and evaluated by a Service entomologist, as well as independent peer reviewers. This material was considered to be sufficient for making a final determination on the proposed rule. The assumptions, data, analyses, and evidence used are presented throughout this document.

Issue 15: Several commenters criticized the proposed rule's dismissal of outlying specimens as scientifically irresponsible. Particularly cited were two Zayante band-winged grasshopper specimens reported from Alma which, according to the commenters, demonstrated the Zayante band-winged grasshopper had a much larger range and occupied additional habitats not acknowledged in the proposed rule. One commenter further asserted the Alma grasshopper specimens were collected by a reputable collector such that the label should be considered accurate. The same commenter noted a 1968 Mount Hermon June beetle specimen from "Santa Cruz" was dismissed in the proposed rule, and cited the existence of appropriate habitat in a location considered to be Santa Cruz.

Service Response: The Alma grasshopper specimens were collected in 1928 from an unknown specific location or habitat. Although the collector was reputable, the reliability of this record is questioned for the following reasons—the location label is non-specific and unverifiable such that the specimens may have been collected anywhere within several miles of Alma including the Ben Lomond-Mount Hermon-Scotts Valley area; collection attempts have not verified the existence of Zayante band-winged grasshoppers in areas of this region other than the Ben Lomond-Mount Hermon-Scotts Valley area; the specimens cannot be located in the listed depository for verification. The town of Alma is presently inundated by a reservoir; and the species has been found exclusively in sand parkland habitat. These specimens were used in the Service's analysis of the species' current range and after surveying all remaining sites that may have been potential habitat for this specimen in the "Alma area," the Service concludes that no evidence exists that confirms the species may occur in this region other than currently known location records.

The Mount Hermon June beetle specimen was not helpful in the range analysis because of a nonspecific location label. The Service agrees that suitable Zayante sand hills habitat occurs within areas considered to be "Santa Cruz," as stated on the specimen's label rendering it of little use in determining other areas to be included in the extensive surveys.

Issue 16: Many commenters felt population sizes and trends were an important consideration in evaluating the status of a species, and the proposed rule failed to demonstrate any historic population decline or loss. One commenter claimed current abundances of Mount Hermon June beetle were comparable to those observed 45 years ago, thus, refuting the proposal to list the species as endangered. Another argued the Service was trying to list a habitat since an assessment of population trends did not exist.

Service Response: The only available information on historic population levels is the number of specimens preserved in collections and the reports of Dr. William Hazeltine. Dr. Hazeltine reported 20 to 30 males per night could be collected near his house in Mount Hermon in the years 1946 through 1952. At that same site in 1993, only eight males were captured at light traps. While this might suggest a decline in numbers, historic population trends are not one of the five factors to be considered in determining whether a species is endangered or threatened. Population trends of insect species are not useful for determining endangered status because their abundances can fluctuate substantially from year to year. Furthermore, some insect species, like the Mount Hermon June beetle and Zayante band-winged grasshopper, may be very abundant in localized populations, yet susceptible to extirpation by a single action or event. Therefore, threats must be evaluated irrespective of population estimates.

Issue 17: A number of commenters concluded that the proposed rule did not provide evidence that habitat loss threatened the Mount Hermon June beetle and Zayante band-winged grasshopper. Two commenters cited the collection of Mount Hermon June beetles near houses. Other commenters concluded that the effects of pesticides and vegetation changes were not sufficiently evidenced. One commenter suggested that vegetation changes would not affect the Mount Hermon June beetle because larvae have been observed to feed on a variety of roots.

Service Response: The effects of habitat loss and alteration are well documented and recognized as the principal factor in declines of insect species as well as most other taxa (See Pyle 1981 for relevant bibliographic references). Insects are particularly vulnerable because of their high degree of evolutionary specialization and subsequent dependence on specific edaphic conditions, microclimate,

vegetation, and cohabitants of particular habitats. Indirect evidence of the effects of habitat loss on the Mount Hermon June beetle and Zayante band-winged grasshopper is seen in the failure to collect specimens within mined areas, even when both species were observed on adjacent undisturbed habitat at the same time. Documented links between habitat loss and alteration, and the decline or extinction of other species provide additional evidence of the significance of this threat. The collection of Mount Hermon June beetles near houses does not refute the negative effects of habitat loss because the beetles may simply have been attracted to lights from nearby suitable habitat, or may occur in remnant patches of undisturbed soil and vegetation. Populations that do persist among developments remain at risk of naturally occurring extinction because of potentially low numbers and isolation from other populations.

The effects of pesticides on insects and other taxa are similarly recognized and documented. While most pesticide application may not penetrate the soil and affect fossorial Mount Hermon June beetle larvae and females, the Zayante band-winged grasshopper is susceptible to pesticide effects. The current significance of these effects is not known.

The impact of vegetation changes also is unknown at this time. Some related species are known to feed on the roots of exotic plant species and orchard trees. However, no evidence establishes whether Mount Hermon June beetle larvae will feed on plants not naturally found in Zayante sand hills ecosystem. Therefore, the Service recognizes vegetation change as a potential threat of unknown significance. Habitat loss remains the primary threat to the Mount Hermon June beetle and Zayante band-winged grasshopper.

Issue 18: One commenter stated that the limited distribution of a species was not sufficient evidence for making a determination to list a species.

Service Response: The determination to list a species as endangered is based upon the evaluation of the current and future threats to the species from the five factors listed in section 4(a) of the Act. The range of a species is only considered when determining whether the species is threatened throughout all or a significant portion of its range. Species with limited distributions are more susceptible to extirpation because a given threat would affect a greater proportion of the species' range.

Issue 19: Two commenters challenged estimates that sand parkland habitat is limited to about 40.5 ha (100 ac) and requested that the sand parkland habitat be mapped. Another requested that historic habitat loss be documented in maps.

Service Response: A description of sand parkland habitat is provided in the Background section of this rule. The 40 ha (100 ac) estimates of sand parkland were made during studies delineating the habitat in the mid-1980s. A more recent study completed in 1994 revised the estimate upward to 78 ha (193 ac) of sand parkland (Lee 1994). The Service used the more recent data in this final determination. Maps showing the distribution and extent of existing sand parkland habitat are included in a report entitled "Preservation study: sand hills biotic communities of Santa Cruz County, California" (Marangio 1985) and in a forthcoming report from the California Department of Fish and Game (Lee 1994). Production of maps documenting historic habitat loss would be speculative since no records were kept. Furthermore, such documentation is unnecessary for the listing determination since the listing factors address only current and projected status and threats. Discussions and estimates of historic habitat losses are intended only to provide a historical context to the Zayante sand hills ecosystem.

Issue 20: One commenter concluded that the generic name *Polyphylla* was invalid for the Mount Hermon June beetle because *Polyphylla* did not conform to the International Rules of Zoological Nomenclature.

Service Response: Based upon consistent use in historic and recent taxonomic literature (Cazier 1938, 1940; Young 1967, 1988), *Polyphylla* is considered a valid genus. In addition, throughout this literature, the rank of *Polyphylla barbata* as a species has been retained such that a change in the generic label would represent only a nomenclatural shift.

Issue 21: One commenter suggested that revegetation of sandy areas coupled with reintroduction of female Mount Hermon June beetles could remediate any population losses, thus eliminating the need to list the species. The commenter also concluded that listing of the Zayante band-winged grasshopper could be precluded by revegetation of areas which individuals could colonize. Contrary opinions noted that no restoration efforts of sand parkland have been successful and at least one large revegetation effort at a quarry has been abandoned.

Service Response: The Service supports the development and implementation of habitat restoration efforts. However, no successful demonstrations of restoration of Zayante sand hills habitat are known. The Service has received depositions from experts stating that the technical feasibility of such restoration is uncertain. Therefore, continued existence of the Mount Hermon June beetle and Zayante band-winged grasshopper cannot be assured through these attempts.

Issue 22: One commenter concluded that collectors did not threaten the species because there are few collectors and the species' activity periods would likely discourage all but the most dedicated. Furthermore, the loss of some male Mount Hermon June beetles was unlikely to affect the reproductive capacity of populations because males could mate with several females. Collection was also limited by permit requirements on public lands and restricted access to private property.

Service Response: The Service concurs that collection of the species currently poses little if any threat to the Mount Hermon June beetle and Zayante band-winged grasshopper.

Issue 23: One commenter concluded that the Mount Hermon June beetle could adapt to altered habitat. As evidence, the commenter cited the large number of insect species known, and the short life cycles and life history traits which would enable more rapid evolution and adaptation.

Service Response: The great diversity of insects is reflective of extraordinary adaptive speciations and specializations. However, such evolutionary changes rarely occur at a rate comparable to that of human environmental alteration. Consequently, neither the Mount Hermon June beetle nor the Zayante band-winged grasshopper would likely evolve adaptations with the rapid changes of habitat.

Issue 24: One commenter concluded that the reported 50 percent loss of sand parkland habitat would only fractionally reduce the population of the species, citing a "rule of thumb" that a 90 percent reduction in habitat would result in a 50 percent reduction in the number of species present.

Service Response: The "rule of thumb," publicized by E.O. Wilson and Peter Raven, noted proponents of conservation of biological diversity, refers to species loss, not population loss. If the Zayante sand hills habitat were to be reduced to 10 percent of its original extent, one half of all the species found there would be expected to go extinct (Wilson 1992). Which species would be lost cannot be predicted. Because this logarithmic relationship predicts extinction of some

species following even partial habitat loss, it supports, rather than refutes, the Service's determination that the Mount Hermon June beetle and Zayante band-winged grasshopper are threatened with extinction.

Issue 25: Several respondents stated that the Service should designate critical habitat since the habitat of the species is known and because habitat loss is the primary threat. Others concluded that the Service did not designate critical habitat to avoid review of the proposed listing under NEPA.

Service Response: Although the habitats and ranges of the species are known and described in this rule, designation of critical habitat as defined in the Act was determined to be not prudent at this time because no benefit to the species would result. For reasons discussed in the NEPA section of this document, rules issued pursuant to section 4(a) of the Act do not require preparation of an Environmental Impact Statement (EIS). The courts held in Pacific Legal Foundation v. Andrus, 657 F2d. 829 (6th Circuit 1981) that an EIS is not required for listing under the Act. The decision noted that EISs on listing actions do not further the goals of NEPA or the Act. Thus, this listing action is exempted from NEPA review, regardless of critical habitat designation.

Issue 26: One commenter suggested that the species be listed as threatened to allow greater regulatory flexibility and the implementation of special rules under section 4(d) of the Act.

Service Response: Based upon evaluation of the status and threats to the species, the Service has determined that the Mount Hermon June beetle and Zayante band-winged grasshopper are in danger of extinction throughout all or a significant portion of their ranges and therefore qualify for endangered status. Listing the species as threatened to provide for regulatory flexibility would ignore requirements of the Act to base determinations solely on the best scientific and commercial data.

Issue 27: One commenter suggested that the species could be exempted from protection under the Endangered Species Act if they were shown to be pest species.

Service Response: While some related species are known to be agricultural pests, no evidence exists that indicates either the Mount Hermon June beetle or the Zayante band-winged grasshopper are pest species. The Zayante sand hills habitat does not support significant agricultural crops on which either species feed. In addition, the two species are not considered as pests in backyard gardens.

Issue 28: One commenter asserted that existing parks were sufficient to guarantee the continued existence of the insects. Two others cited a recent stipulation agreement between a private quarry, the County of Santa Cruz, and local conservation groups, which would provide for the preservation of Zayante sand hills habitat. One commenter noted, though, that the preservation of the habitat is contingent upon the $3.5 million acquisition of the South Ridge parcel, and that funds have not yet been committed.

Service Response: The Mount Hermon June beetle and Zayante band-winged grasshopper are known to occur in only one of the three publicly owned properties in the region. Although the Quail Hollow Ranch affords protection to Zayante sand hills habitat, the park does not have specific mandates to manage for these species, and protection from adverse impacts of habitat degradation from illegal activities is not assured. Both species also occur within the areas to be preserved under the cited stipulation. However, preservation of these populations is uncertain pending acquisition of the South Ridge property.

Issue 29: Several commenters concluded that State and local legislation and regulations, such as the mitigation requirements of the California Environmental Quality Act (CEQA), provide sufficient protection for the two insect species. Commenters cited revegetation efforts at local quarries, the above-mentioned stipulation agreement, and protection of sand parkland habitat in a development project by the City of Scotts Valley as examples of successful protection. Contrary views were expressed by commenters citing past failures of city governments to enforce protection of rare species, and the abandonment of revegetation plans at a sand quarry.

Service Response: While existing legislation and regulations may require mitigation or other compensation for impacts to sensitive or rare species, they do not ensure the continued existence of the Mount Hermon June beetle and Zayante band-winged grasshopper. For example, CEQA provides for "Statements of Overriding Consideration" which allow projects to proceed despite unmitigated adverse impacts.

Issue 30: Three commenters requested that all data, information, and results of investigations be available for review by interested parties.

Service Response: All documents, records, and correspondence relating to this listing, including data, survey results, analyses, supporting information, and public comments are included in the administrative record available for review by the public by appointment, during normal business hours, at the Ventura Field Office. Appointments can be made by contacting the Field Supervisor. See **ADDRESSES** section.

Issue 31: One commenter asked if this listing was in response to a lawsuit settlement with the Sierra Club.

Service Response: This listing is not in response to a lawsuit settlement with the Sierra Club. The listing of the Mount Hermon June beetle and Zayante band-winged grasshopper is in response to petitions submitted by private citizens.

Issue 32: One commenter suggested that the Service conduct field work to assess the status of the species.

Service Response: The Service's responsibility under the Act is to compile and review the "best available information" concerning the biology, status, and threats to species. During the listing process the Service makes efforts to verify information through field visits and surveys. Primary data collection, however, is generally conducted by individuals outside the Service.

Issue 33: One commenter asserted that proponents of the listing should be responsible for demonstrating that a species is endangered.

Service Response: Petitioners and listing proponents are expected to provide the Service with pertinent data concerning the biology and threats to a species to demonstrate that listing may be warranted. After that time, the Service solicits and reviews all available information to make decisions regarding proposed rules and final determinations.

Issue 34: One commenter concluded that a conflict of interest existed for commenters who were involved in a court settlement regarding preservation of sand parkland habitat.

Service Response: Any member of the public, regardless of affiliation or position, is invited to submit comments on a proposed rule during the open comment period.

Issue 35: Three commenters stated that the Service's notification of the public regarding the proposed rule was inadequate. One commenter requested that all landowners be directly notified, and that notices be published in newspapers.

Service Response: The Service provided notification of the proposed rule to the public through processes required in the Act, including publication of findings and rules in the **Federal Register**, publication of notices in local newspapers, and letters to government officials, planning offices, regulatory agencies, and other interested

parties as described at the beginning of this section. Direct notification of all landowners was attempted by the Service to the extent practical.

Issue 36: One commenter stated that the Service failed to publish a 90-day finding that the petition to list the Zayante band-winged grasshopper may be warranted, and failed to make a 12-month determination following the August 19, 1992, notice for the Mount Hermon June beetle. Disputing the Service's inclusion of such notices in the proposed rule, the commenter stated such failures prevented the submission of information and comment, and recommended the proposed listing be invalidated.

Service Response: The Service's 90-day finding regarding the Zayante band-winged grasshopper was made on September 25, 1992 but was not published in the **Federal Register** prior to publication of the proposed rule. The proposed rule constituted the required 12-month determinations regarding both the Zayante band-winged grasshopper and the Mount Hermon June beetle. At that time, extensive comment periods and a public hearing allowed all interested parties to provide comments and information concerning the proposed action. All input was considered in preparation of the final determination.

Peer Review

In accordance with policy promulgated July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

The data and assumptions regarding the Mount Hermon June beetle and Zayante band-winged grasshopper were each reviewed by three specialists. Peer reviewers were identified through inquiries to research institutions, universities, and museums for individuals with recognized expertise with the subject taxa. The reviewers were asked to comment upon specific assumptions and conclusions regarding the species. Their comments have been incorporated into the final rule as appropriate and are summarized below.

Reviewers of the Mount Hermon June beetle information agreed that, although estimates were speculative, the flight range of male beetles may be limited. Male beetles were attracted to lights, but the maximum distance traveled was unknown, dependent upon the visibility and relative strength of the light compared to other attractive stimuli such as female pheromone or moonlight. All reviewers emphasized the dependence of fossorial larvae and females on the specific conditions of the soil. The reviewers also concurred with the Service's conclusion that the Mount Hermon June beetle was limited to the Zayante sand hills habitat. One reviewer commented that males may occasionally be trapped in adjacent habitats, but they probably represent artifacts of random dispersal and not colonization of different habitat communities. The same reviewer also suggested the beetle may occur in more densely vegetated areas of chaparral as well as open sandy areas.

Excavation, soil compaction, and vegetation removal within Mount Hermon June beetle habitat are recognized as activities expected to adversely affect the species. Landscaping may have some impact. The reviewers anticipate the application of some pesticides, such as soil permeants, could have a negative effect. Adjacent light sources should not be detrimental to the species, although male Mount Hermon June beetles may be attracted away from their habitat. Collection was not considered to significantly threaten the species. One reviewer suggested additional investigations to assess specific life history, distributional, and other ecological information before proceeding with the listing. Another reviewer commented that the survey reports and other information submitted to the Service concerning the biology of the beetle were based upon erroneous and unfounded assumptions, poor methodology, and hearsay. Nonetheless, the Service's comparison of collection records and independent soil and habitat data was considered a sufficiently rigorous analysis for concluding the species to be of limited range and associated with the Zayante sand hills ecosystem.

The reviewers of the Zayante band-winged grasshopper information agreed that substrate was an important, but not a sole, determining factor for grasshopper distributions. An assumption that exchange of individuals between isolated populations would be infrequent because of short observed flight distances was questioned by one reviewer but supported by another's experience with other *Trimerotropis* species. Two reviewers agreed with the dismissal of non-specifically labeled historic specimens, but cautioned that additional investigation of the outlying areas may be warranted if suitable habitat exists. The third reviewer felt that information should be considered reliable unless shown otherwise. In the absence of sand parkland habitat elsewhere, all reviewers concurred with the Service's conclusion that the Zayante band-winged grasshopper was restricted to sand parkland habitat. The grasshopper would unlikely occur in adjacent habitats such as redwood forest, chaparral, grasslands, or coastal habitats. Excavation, soil compaction, vegetation removal, landscaping, and pesticides were all recognized as adverse activities affecting the grasshopper. One reviewer noted that collection of specimens from areas adjacent to mining operations suggests the species is not particularly impacted by nearby activities. One reviewer also questioned the distinctiveness of the grasshopper as a separate species, but deferred final judgment to others more familiar with the specimens. A reviewer familiar with the specimens and the genus *Trimerotropis* confidently defended the Zayante band-winged grasshopper as a full species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Mount Hermon June beetle (*Polyphylla barbata*) and the Zayante band-winged grasshopper (*Trimerotropis infantilis*) should be classified as endangered species. Procedures found at section 4 of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mount Hermon June beetle and the Zayante band-winged grasshopper are as follows:

A. The present or threatened destruction, modification, or curtailment of their habitat or range. Habitat destruction and modification are recognized as the primary threats to insect species (Pyle 1981) because of their narrow distributions and dependence on specific food plants or edaphic conditions. Both the Mount Hermon June beetle and Zayante band-winged grasshopper are restricted to portions of the Zayante sand hills ecosystem in the Ben Lomond-Mount Hermon-Scotts Valley area of Santa Cruz County, California. The Mount Hermon June beetle occurs in sand parkland and other sparsely vegetated sandy areas

within the Zayante sand hills ecosystem. The Zayante band-winged grasshopper is narrowly restricted to sand parkland on ridgetops and saddles. Both species are imminently endangered by ongoing and threatened destruction and adverse modification of their habitats by one or more of the following activities—sand mining, urban development, recreational use of habitat, and agriculture.

The ranges of both species are limited by the substrate found in the Zayante soils, and the availability of suitable food plants within the Zayante sand hills and sand parkland habitats. The Mount Hermon June beetle is threatened by excavation and construction activities that crush or expose fossorial larvae and females, resulting in mortalities and elimination of reproductive populations (W. Hazeltine, *in litt.* 1994). Clearance of native Zayante sand hills vegetation and cultivation of non-native plant species in landscaping also may adversely affect the Mount Hermon June beetle by eliminating food plants and disrupting the soil. The Zayante band-winged grasshopper is similarly threatened by removal and alteration of the sand parkland habitat.

Historically, approximately 2533 ha (6265 ac) of Zayante sand hills habitat occurred in Santa Cruz County. Over 40 percent of this habitat has disappeared, primarily due to urban development and mining; 1459 ha (3608 ac) currently remain in a natural state (Lee 1994). Sand parkland habitat has been more dramatically reduced; over 60 percent of this habitat has been lost, mostly to sand mining. An estimated 200 to 240 ha (500 to 600 ac) existed historically (Marangio and Morgan 1987; Lee 1994). By 1986, only 100 ha (250 ac) remained intact (Marangio and Morgan 1987). Currently, sand parkland is limited to approximately 78 ha (193 ac) (Lee 1994).

Sand mining and urban development are the most significant causes of habitat loss in the Ben Lomond-Mount Hermon-Scotts Valley region. Sand deposits within the Zayante sand hills habitat have been actively mined for construction purposes for at least five decades (Storie *et al.* 1944 in Griffin 1964). Three sand mines in the area are in operation and have permits to mine areas of sand parkland and Zayante sand hills habitat that are currently undisturbed (S. Smith, County of Santa Cruz Planning Department, pers. comm. 1994). Two of the three mines support little undisturbed habitat (S. Smith, pers. comm. 1996). The Service has been participating in the development of a multi-species habitat conservation plan (HCP) for the third mine, Quail Hollow Quarry, within the San Lorenzo Valley in Santa Cruz County, California. The County of Santa Cruz, the owner and operator of the Quarry (respectively Granite Rock Company and Santa Cruz Aggregates), and intervenors (South Ridge Watershed Association, Sierra Club, and California Native Plant Society) entered into a Settlement Agreement in June of 1994 that resolved longstanding litigation regarding Granite Rock's right to continue mining at the site. As part of that Agreement, Granite Rock is permitted to continue mining in designated areas of the quarry site, subject to obtaining the necessary mining approvals, and portions of the site containing extremely significant biological resources, including the two insects, will be preserved in perpetuity through purchase of the South Ridge and through dedication of a conservation easement for the areas on the North and West Ridges containing sand parkland habitat. A fourth mine is closed at this time, but may reopen if funds become available (S. Smith, pers. comm. 1994). Seventeen of the 28 Mount Hermon June beetle collection locations, and 9 of the 10 Zayante band-winged grasshopper collection sites are adjacent to areas used for sand mining.

Mining of sand from undisturbed areas would result in the destruction of habitat for the Mount Hermon June beetle and Zayante band-winged grasshopper. Permits held by the mining companies require revegetation efforts in mined areas as part of reclamation plans. However, such revegetation plans are considered inadequate to successfully restore the biological integrity of sand parkland and Zayante sand hills habitats; the technical feasibility of such restoration is questioned because of the diversity of the ecosystem's flora and fauna and the complexity of the soil facies and edaphic conditions (Davilla 1990; Gilchrist 1990; Murphy 1990).

Urban development also has resulted in significant alteration and loss of habitat. Construction of private homes, roads, and businesses has removed vegetation and modified soils through excavation, compaction, and disruption of soil horizons. More than 480 ha (1200 ac) of Zayante sand hills habitat have been developed for these purposes. Recent expansion of juvenile hall facilities near Mount Hermon eliminated portions of an area known to support Mount Hermon June beetles (W. Hazeltine, pers. comm. 1994). One site where Zayante band-winged grasshoppers were previously collected is now a parking lot (D. Weissman, pers. comm. 1993). Fourteen collection sites for Mount Hermon June beetles and two known locations of Zayante band-winged grasshoppers are adjacent to residential, commercial and public developments. The County of Santa Cruz and the City of Scotts Valley have existing plans, zoning designations, and approved permits for continued development in these areas (Marangio 1985; Lee 1994), thereby further reducing and fragmenting Zayante sand hills habitat.

Recreational uses of Zayante sand hills habitats may adversely affect the Mount Hermon June beetle and Zayante band-winged grasshopper through habitat disturbance and degradation. Recreational uses include off-road vehicles (ORVs), equestrian activities, hiking, bicycling, and camping. These activities crush and remove vegetation, cause compaction of soils, promote soil erosion, and occasionally result in oil and gasoline spills. Off-road motorcycle events (200+ people) occur on sand parkland (A. Haynes, San Lorenzo Water District, pers. comm. 1993). Off-road vehicle damage also is noted at the Geyer Quarry and on the South Ridge of the Quail Hollow Quarry, a site considered to be the highest quality patch of intact sand parkland habitat (Lee 1994). Disturbance from equestrian use is reported from five sand parkland areas (Lee 1994). A campground encompasses approximately half of the sand parkland habitat within Henry Cowell Redwoods State Park (D. Hillyard, pers. comm. 1993; S. Steinmetz, pers. comm. 1993), and foot and ORV traffic are recognized as causes of erosion damage at the Quail Hollow Ranch County Park (County of Santa Cruz 1990).

Limited agricultural activities have also contributed to habitat fragmentation and degradation in the Zayante sand hills ecosystem. While the Zayante soils are generally of little agricultural value, Zayante sand hills habitat has been, and may continue to be, used for agricultural purposes. Currently, portions of two sand parkland areas are zoned for timber harvest (Lee 1994). Other areas of Zayante sand hills habitat have been proposed for conversion to vineyards (Davilla 1980).

The Service has reviewed a notice of preparation for the development of an educational park within the City of Scotts Valley on a site where Mount Hermon June beetles and Zayante band-winged grasshoppers have been sighted. The Scotts Valley Unified School District evaluated numerous alternative sites before choosing the current location for the proposed facility. Recently, the Service was informed that

an alternative site for the proposed park may be selected.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Amateur collecting for the Mount Hermon June beetle occurs on a limited basis during the narrow flight periods of the species. As this species becomes more difficult to find, the interest of collectors may increase; however, overutilization by collection is not known to occur at this time.

Collection of the Zayante band-winged grasshopper has occurred during surveys for this and other invertebrate species; however, overutilization of this species by collection is not known to occur at this time.

C. Disease or predation. Mount Hermon June beetles may be preyed upon by some bird species. However, the early evening flight time of the Mount Hermon June beetle is thought to reflect an evolutionary adaptation for predator avoidance, coinciding with the cessation of bird activity (W. Hazeltine, *in litt.* 1994). Based upon laboratory observations, larvae may be susceptible to fungal infestations if soil conditions are too moist (W. Hazeltine, *in litt.* 1993). However, the significance of such mortality sources is unknown.

One Zayante band-winged grasshopper specimen was observed to be parasitized by a tachinid fly (White 1993). However, the significance of parasitization on populations of this species is unknown.

D. The inadequacy of existing regulatory mechanisms. Regulatory mechanisms currently in effect do not provide adequate protection for the Mount Hermon June beetle and Zayante band-winged grasshopper and their habitats. Federal agencies are not legally required to consider and manage for these species during project design and implementation, although some Federal agencies have policies that encourage consideration of candidate species in the design and implementation of Federal projects.

At the State and local levels, regulatory mechanisms also are limited. The Mount Hermon June beetle and Zayante band-winged grasshopper are not listed by the State of California under the California Endangered Species Act. State and local agencies may consider these taxa when evaluating certain activities for compliance with the CEQA and local zoning regulations. If an activity is identified as having a potential impact on these species, mitigation measures may be required by State and local regulating agencies to offset these impacts. However, these regulations do not provide specific protection measures to ensure the continued existence of these species. In addition, CEQA provisions for "Statements of Overriding Considerations" can allow projects to proceed despite unmitigated adverse impacts. The County of Santa Cruz requires that proposed projects comply with both general zoning requirements and environmental designations. However, properties within Zayante sand hills habitats are zoned for special use, timber production, mining, and residential development. Special use zoning allows for residential-agricultural, residential, commercial, and industrial development (Lee 1994).

Public ownership of lands with Zayante sand hills and sand parkland habitats suitable for the Mount Hermon June beetle and Zayante band-winged grasshopper is limited to the Quail Hollow Ranch, Bonny Doon Ecological Preserve, and Henry Cowell Redwoods State Park. The Mount Hermon June beetle and Zayante band-winged grasshopper are only known to occur in Quail Hollow Ranch. None of these properties currently has a management plan that specifically provides protection for the two species or their habitats. In addition, Zayante sand hills habitat on Quail Hollow Ranch is reported to be degraded by off-trail equestrian activities and other illegal access (Lee 1994; S. McCabe, pers. comm. 1994).

A settlement agreement between local conservation groups and one of the sand mining companies resulted in action to preserve three parcels of sand parkland and Zayante sand hills habitat. All three of these parcels support the Mount Hermon June beetle and Zayante band-winged grasshopper. However, preservation of the parcels is contingent upon acquisition of the "South Ridge," a parcel recognized as the highest quality sand parkland habitat. Funds necessary for the $3.5 million settlement purchase have not yet been committed (C. Scott, pers. comm. 1994; Ken Hart, pers. comm. 1996).

E. Other natural or manmade factors affecting its continued existence. Pesticides could pose a threat to the Zayante band-winged grasshopper. Pesticide application is expected at existing and planned golf courses and may occur on a limited basis at vineyards in the area. Local landowners may use pesticides to control targeted invertebrate species around homes and businesses. These pesticides may drift and kill non-targeted species such as the Zayante band-winged grasshopper.

Because the Mount Hermon June beetle is fossorial, air-borne pesticides would not likely reach and affect the species. However, application of soil permeant pesticides could pose a threat (W. Hazeltine, *in litt.*, 1994). During the flight season males of this species also may be subject to mortality from attraction to electric "bug zappers" (W. Hazeltine, *in litt.* 1994). The significance of such mortality is unknown, however.

The quality of remaining habitat for the Mount Hermon June beetle and Zayante band-winged grasshopper may decline because of fire suppression in the Zayante sand hills habitat. Periodic wildfire is thought to be critical to maintenance of the Zayante sand hills habitat mosaic. The presence of fire-dependent species such as knobcone pine and Santa Cruz cypress suggests that fire is important for resetting vegetational succession within the chaparral communities, and for maintaining the open characteristics of ponderosa pine stands and sand parkland. Fire also may prevent the invasion of species from the surrounding mixed evergreen forest; encroachments by madrone (*Arbutus menziesii*) and other species from surrounding mixed evergreen forest into Zayante sand hills habitat have been attributed to reduced fire frequency (Marangio 1985).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mount Hermon June beetle and Zayante band-winged grasshopper in determining to make this rule final. Based on this evaluation, the preferred action is to list the Mount Hermon June beetle (*Polyphylla barbata*) and Zayante band-winged grasshopper (*Trimerotropis infantilis*) as endangered. This status was determined because these species are "in danger of extinction throughout all or a significant portion of [their] range" (section 3(6) of the Act) because of threats from one or more of the following factors—sand mining, urban development, recreational use of habitat, increased vulnerability to naturally occurring extirpation, and habitat restriction and decline. Critical habitat is not being designated for these species for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or

protection and; (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Mount Hermon June beetle and Zayante band-winged grasshopper at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Designation of critical habitat would not benefit the Mount Hermon June beetle and Zayante band-winged grasshopper because all populations of the two species occur on non-Federal lands where Federal involvement in land-use activities does not generally occur. Prohibitions of adverse modification to critical habitat apply only to Federal actions. Therefore, additional protection afforded to designated critical habitat would only be realized if a Federal nexus existed. Possible nexuses on non-Federal lands include 404 permits from the U.S. Army Corps of Engineers and funds from Federal housing or highway programs. However, no such nexuses are known or anticipated within the habitat and range of these species.

Furthermore, in the case of the Mount Hermon June beetle, the determination of critical habitat would be detrimental to the conservation of the species. Determination of the location and extent of reproductive populations and evaluation of edaphic requirements would require excavation and consequent destruction of habitat occupied by larvae and females.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Under section 4 of the Act, listing the Mount Hermon June beetle and Zayante band-winged grasshopper provides for the development of a recovery plan, which will bring together Federal, State, local government, and private agencies and individuals to develop conservation strategies for these species. The recovery plan would develop a framework of recovery activities, priorities, and funding requirements to accomplish conservation objectives and ensure the survival and recovery of the Mount Hermon June beetle and Zayante band-winged grasshopper.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Because no Federal lands exist within the range of these two species, consultations would only occur if a Federal agency had discretion over permit issuance or funding of projects. Such Federal involvement is neither known, nor anticipated, within the habitat and range of the Mount Hermon June beetle and Zayante band-winged grasshopper.

Section 9 of the Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. The definition of "take" includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. During the public comment period the Service received inquiries about the effect listing would have on the sand mining industry, commercial and residential development and maintenance activities, and recreational activities. Based on the best available information, the following actions would not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements—removal of the two insect species from swimming pools, birdbaths, window screens, and the like with immediate and safe replacement in more suitable habitat; normal lighting around residences and commercial buildings; normal maintenance of backyard gardens; reasonable recreational use of existing maintained trails within Zayante sand hills habitat; use of existing roadways and railroads; and continued sand mining within existing excavated areas.

Activities that could result in the take of the Mount Hermon June beetle or Zayante band-winged grasshopper include, but are not limited to, unauthorized collection or capture of the species, except as noted above to relocate individuals out of danger; destruction or alteration of the species' habitat (e.g. excavating, compacting, grading, or discing of soil, vegetation removal); violations of grading, mining, or construction permits that affect occupied habitat; off-road vehicle use on occupied habitat; and application of pesticides beyond the boundaries of maintained lawns and gardens or in violation of label restrictions.

Other unauthorized activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may have occurred. The Service does not consider these lists to be exhaustive and provides them for the information of the public. Questions regarding whether specific activities will constitute a

violation of section 9 should be directed to the Field Supervisor of the Service's Ventura Field Office (see **ADDRESSES** section).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Ventura Field Office (see **ADDRESSES** section).

Author

The primary authors of this document are Carl Benz and Jonathan Hoekstra, Ventura Field Office (see **ADDRESSES** section, telephone 805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
INSECTS (Class Insecta)							
•	•	•	•	•	•	•	•
GRASSHOPPERS AND ALLIES (Insects, Order Orthoptera)							
•	•	•	•	•	•	•	•
Grasshopper, Zayante band-winged.	*Trimerotropis infantilis.*	U.S.A. (CA)	NA	E	605	NA	NA
•	•	•	•	•	•	•	•
BEETLES (Insects, Order Coleoptera)							
•	•	•	•	•	•	•	•
Beetle, Mount Hermon June.	*Polyphylla barbata*	U.S.A. (CA)	NA	E	605	NA	NA
•	•	•	•	•	•	•	•

Dated: January 6, 1997.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 97–1674 Filed 1–23–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 16
Friday, January 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–29]

Proposed Establishment of Class E Airspace; Thomson, GA, and Proposed Amendment of Class E Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on a notice of proposed rulemaking which proposes to establish Class E airspace at Thomson, GA, for the Thomson-McDuffie Airport, and amend the Augusta, GA, Class E airspace area by removing the airspace previously required for the Thomson-McDuffie Airport. This action is being taken because potential commentors lacked sufficient time to review the proposal prior to the end of the comment period.

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–29, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, GA 30320.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 96–ASO–29, published on November 29, 1996 (61 FR 60660) proposed to establish Class E airspace at Thomson, GA, for the Thomson-McDuffie Airport, and amend the Augusta, GA, Class E airspace area by removing the airspace previously required for the Thomson-McDuffie Airport. This action will extend the comment period closing date from January 7, 1997 to March 10, 1997.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (AIR).

Extension of Comment Period

The comment period closing date on Airspace Docket No. 96–ASO–29 is hereby extended to March 10, 1997.

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in College Park, Georgia, on January 14, 1997.

Wade T. Carpenter,

Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–1783 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AAL–29]

Proposed Establishment of Class E Airspace; Atqasuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Atqasuk, AK. The development of Global Positioning System (GPS) instrument approaches to runway (RWY) 6 and RWY 24 have made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Atqasuk, AK.

DATES: Comments must be received on or before March 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–29, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should

also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace for GPS instrument approach procedures to RWY 6 and RWY 24 at Atqasuk, AK. The status of Atqasuk Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Atqasuk, AK [New]

Atqasuk Airport, AK
(Lat. 70°28'02" N, long. 157°26'08" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Atqasuk Airport.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1776 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–28]

Proposed Revision of Class E Airspace; Selawik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Selawik, AK. The development of a Global Positioning System (GPS) instrument approach to runway (RWY) 27 and recomputation of the Selawik Airport Reference Point (ARP) have made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Selawik, AK.

DATES: Comments must be received on or before March 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–28, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–28." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Selawik, AK, due to the creation of a GPS instrument approach to RWY 27 and recomputation of the Selawik ARP. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Selawik, AK [Revised]

Selawik Airport, AK

(Lat. 66°35'58" N, long. 159°59'49" W)

Selawik VOR/DME, AK

(Lat. 66°36'00" N, long. 159°59'30" W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of the Selawik Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles north and 4 miles south of the 231° radial of the Selawik VOR/DME extending from the 8-mile radius to 16 miles southwest, and 6 miles north of the 058° radial extending from the 8-mile radius to 16 miles northeast, and 10 miles either side of the Selawik VOR/DME 120° radial to 50 miles southeast.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1775 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–27]

Proposed Revision of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Nuiqsut, AK. The modification of the Global Positioning System (GPS) instrument approach to runway (RWY) 4 and RWY 22 has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Nuiqsut, AK.

DATES: Comments must be received on or before March 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–27,Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–27." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a

mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Nuiqsut, AK, due to the modification of the GPS approaches to RWY 4 and RWY 22. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nuiqsut, AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12'36" N, long. 151°00'20" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nuiqsut Airport, and that airspace extending upward from 1,200 feet above the surface 5 miles north and 8 miles south of the 249° bearing from the airport to 29 miles southwest.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1774 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–26]

Proposed Establishment of Class E Airspace; Kake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Kake, AK. The development of Global Positioning System (GPS) and non-directional beacon (NDB) instrument approaches to runway (RWY) 10 have made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Kake, AK.

DATES: Comments must be received on or before March 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–26, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace for GPS and

NDB instrument approach procedures at Kake, AK. The status of Kake Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kake, AK [New]

Kake Airport
(Lat. 56°57'41" N; long. 133°54'37" W)
Kake NDB/DME
(Lat. 56°57'50" N; long. 133°54'43" W)
Sumner Strait NDB
(Lat. 56°27'53" N; long. 133°05'50" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kake Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles north and 9 miles south of the 286° bearing from the Kake NDB/DME extending from the NDB/DME to 22 miles west of the airport and within 4 miles each side of the 138° bearing from the Kake NDB/DME extending from the 6.5-mile radius to Sumner Strait NDB.

* * * * *

Issued in Anchorage, AK, on January 15, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–1773 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD86

Deeming in the Supplemental Security Income (SSI) Program When an Ineligible Spouse or Parent Is Absent From the Household Due Solely to Active Military Service

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: We are proposing to add a rule on how the income and resources of ineligible spouses or parents affect the eligibility and benefit amounts of Supplemental Security Income (SSI) claimants and recipients when those spouses or parents are absent from their households due solely to a duty assignment as a member of the Armed Forces on active duty. We are proposing to add this rule because the current rules do not reflect the provision of the Social Security Act (the Act), as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), that addresses this situation.

DATES: To be sure that your comments are considered, we must receive them no later than March 25, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about this rule.

SUPPLEMENTARY INFORMATION:

Regulations at 20 CFR 416.1167(a) state that a "temporary" absence, for SSI deeming purposes, occurs when an SSI claimant/recipient, an ineligible spouse or parent, or an ineligible child leaves the household but intends to, and does, return in the same month or the month immediately following. If the absence is temporary, we continue to consider the person a member of the household for deeming purposes.

Under our policy prior to October 1, 1993, an ineligible spouse or parent who was absent from an SSI claimant's or recipient's household for any reason, including active duty military service, and whose absence was not temporary (20 CFR 416.1167(a)), was not considered to be a member of the household for deeming purposes effective with the first day of the month following the month the spouse or parent left the household.

Section 13733(a) of OBRA 1993 (Public Law 103–66) changed SSI policy, effective October 1, 1993, on the treatment of ineligible spouses and parents who are absent from deeming households solely because of active duty military assignments. Under this legislation, which added paragraph (4) to section 1614(f) of the Act, the service member continues to be considered a member of the household, absent evidence to the contrary, for income and resources deeming purposes. Current regulations do not specifically address this situation.

The change in the deeming rules made by section 13733(a) of Public Law 103–66 was intended to prevent an absent deemor's active military service from adversely affecting an SSI claimant's or recipient's benefits. Prior to the change in the deeming rules, and

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under certain circumstances, it was possible for an individual to receive a smaller SSI benefit—or no benefit at all—as a result of a spouse's or parent's absence from the household due to military service.

For SSI purposes, the treatment of an ineligible spouse's or parent's earnings differs depending on whether the spouse or parent is considered to be living in the same household as the SSI recipient. If the spouse or parent is considered to be living in the same household as the SSI recipient, the earnings are treated as earned income. If the spouse or parent is not considered to be living in the same household, any earnings that are made available to the household are treated as unearned income. In the SSI program, more generous exclusions apply to earned income than to unearned income.

For example, under prior policy, if an absent military member whose income and resources were no longer deemed sent wages home, or his or her wages were directly deposited into a bank account held jointly with other family members, income so received by household members was considered to be *unearned* for SSI eligibility and payment computation purposes. In contrast, wages received while the military deemor resided in the household were considered to be *earned* income for program purposes. Accordingly, prior policy had the effect of disadvantaging certain SSI claimants and recipients.

As a result of section 13733(a) of OBRA 1993, a military spouse's or parent's absence from the SSI household because of an active duty assignment is generally not considered for program purposes; the same deeming rules that apply to "at home" spouses and parents will generally apply to spouses and parents who are temporarily absent from the household due to active duty military service. We propose to amend our regulations at 20 CFR 416.1167 to reflect section 13733(a) of OBRA 1993.

However, the proposed regulation recognizes that circumstances may change and an absent service member who originally intended to continue to live in the deeming household may decide not to do so. Under the proposed regulation, if an absent service member's intent to continue to live in the household changes, deeming stops beginning with the month following the month in which the intent changed.

We assume, absent evidence to the contrary, that the absent service member intends to return to the deeming household upon conclusion of the military assignment. "Evidence to the contrary" is evidence indicating that the service member does not intend to return to the deeming household upon conclusion of the military assignment. Evidence to the contrary includes (but is not limited to) a signed statement by the "at home" spouse or parent, or by the absent service member, indicating that the service member does not intend to return to the deeming household. Other examples of evidence to the contrary are evidence of divorce or legal separation that will result in the service member not returning to the deeming household. Also, diminished support from the absent service member to the household—e.g., an absent spouse who no longer makes his or her military wages available to the deeming household—may be evidence that the absent service member no longer intends to return to the deeming household.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities since this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping Requirements, Supplemental Security Income (SSI).

Approved: January 7, 1997.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211 of Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Section 416.1167 is amended by adding new paragraph (c) to read as follows:

§ 416.1167 Temporary absences and deeming rules.

* * * * *

(c) *Active duty military service.* If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

Example. Tom is a child who receives SSI. In January 1996, Tom's father leaves the household due solely to an active duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom's father is still on an active duty assignment, Tom's parents file for divorce. As a result, Tom's father will not be returning to live in Tom's household. Therefore, Tom's father should no longer be considered to be living in the same household with Tom. Beginning July 1, 1996, deeming from Tom's father will cease.

[FR Doc. 97–1734 Filed 1–23–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 94P–0390 and 95P–0241]

Food Labeling: Health Claims; Availability of FDA Report of Effects of Food Label Health Claim Statements; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Consumer Impacts of Health Claims: An Experimental Study" (the FDA Study). The FDA Study is relevant to issues under consideration in the rulemaking that FDA instituted on December 21, 1995, with a proposal to amend its regulations on nutrient content and health claims to provide greater flexibility in the use of these claims on food products. FDA is adding this report and two related studies on abbreviated health claim statements to the administrative record of that rulemaking. In addition, FDA is reopening the comment period for the December 21, 1995, proposed rule (60 FR 66206) to provide interested persons with an opportunity to obtain the FDA Study and to submit comments.

DATES: Written comments by March 10, 1997.

ADDRESSES: Submit written requests for single copies of the FDA Study "Consumer Impacts of Health Claims: An Experimental Study" and the studies submitted by The Quaker Oats Co. to the contact person listed below. Send two self-addressed adhesive labels to assist in processing your request. A copy of the FDA Study and received comments are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA Study may also be viewed on the FDA World Wide Web site (http://www.fda.gov) by selecting Foods, then Food Labeling from the menus presented. Submit written comments to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Alan S. Levy, Center for Food Safety and Applied Nutrition (HFS–727), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9448.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 21, 1995 (60 FR 66206), FDA published a proposed rule, entitled "Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims" (the December 1995 proposal), to amend its regulations on nutrient content and health claims to provide greater flexibility in the use of these claims on food products. The agency proposed to permit the use of shortened versions of authorized health claims and to eliminate some of the required elements of these claims. The proposed rule provided a 90-day period for public comment. The agency extended the comment period for an additional 120 days on March 22, 1996. The comment period closed on July 18, 1996.

FDA has recently completed research on the effects of food label health claim statements on consumers. This research bears directly on the issues involving health claims that were raised in the December 1995 proposal. FDA believes that it may be appropriate to consider that research in developing a final rule in the subject rulemaking. Therefore, FDA is placing the FDA Study on this research in the docket for the December 1995 proposal and is reopening the comment period on the proposal to provide an opportunity for interested parties to comment on the FDA Study. FDA is providing 45 days so that interested parties have sufficient time to obtain the study and submit comments on it.

Shortly after publication of the December 1995 proposal, FDA published a proposed rule to authorize a health claim on the association between oat bran and oatmeal and the risk of coronary heart disease (61 FR 296, January 4, 1996). In response to that proposal, FDA received a comment from The Quaker Oats Co. that included two studies on the use of abbreviated health claims. Inasmuch as shortened health claims were a primary focus of the December 1995 proposal, the agency has submitted these studies to Docket Number 94P–0390 for consideration in the rulemaking on the December 1995 proposal. Interested parties may submit comments on these studies during the reopened comment period.

I. The FDA Study

A. Background

The final report of the Keystone National Policy Dialogue on Food, Nutrition, and Health (Ref. 1) reviewed several issues raised by the food labeling regulations that FDA adopted in response to the Nutrition Labeling and Education Act of 1990. This report identified issues related to health claims as among those most in need of study. The report also noted the lack of research about how consumers respond to health claims on food labels and raised a number of specific questions about the relative effectiveness of specific language contained in FDA model health claim statements. The report strongly recommended that consumer research be conducted to evaluate the impact of alternate forms of health claim statements on food labels.

The goal of the regulations governing health claims, to help consumers achieve a healthier diet, is one with which virtually everyone agrees, but there are many viewpoints, and no small controversy, about how to best achieve it. Uncertainty about how best to structure health claims arises from the lack of experience with this type of claim, but it also reflects the diversity of opinion about how health claims will affect consumer behavior.

The Department of Health and Human Services provided funds to FDA to conduct research on the effect of health claims on consumer understanding and behavior, so that the agency would have a firm empirical basis to evaluate the requirements that it has adopted and any revisions that it may contemplate. The agency designed a study to investigate the effects of different versions of health claim statements on a range of variables chosen to represent some of the different possible effects of health claims.

A preliminary focus group study evaluated a number of proposed health claim statements developed by the Keystone Dialogue as alternatives to FDA's model health claim statements (Ref. 1, pp. 141 to 150). The results suggested that FDA's model claims could be improved, and it highlighted some basic issues underlying consumer reactions. Central to consumer reactions to health claims was the credibility and authoritativeness of the claims. The brevity of a claim was seen by consumers as a significant element of the effectiveness of health claims, but preferences for brevity seemed to depend on the degree of familiarity (i.e., amount of prior knowledge) with the given diet/disease relationship. The focus group results also emphasized the importance of looking at several different kinds of health claims, because consumer reactions were noticeably different depending on familiarity with the claim. FDA used the results from the

focus groups to identify the independent variables for a larger study.

B. Study Design

The FDA Study was a shopping mall intercept study. Subjects were primary food shoppers recruited at a mall with central interviewing facilities at eight sites around the country. The sample size was approximately 175 persons per site (total sample size was 1,403 persons), with quotas for age and education to ensure that the full range of population characteristics were represented in the sample. Subjects were randomly assigned to an experimental condition. In the central interviewing facility, an interviewer administered the experimental protocol in a 20 to 25 minute session. Subjects were presented, one at a time, with realistic product packages. The packages were of typical size and organization for the particular type of product, including front and back label information appropriate for the product category. The product types and health claims represented included: Cheese lasagna/saturated fat and cholesterol and risk of coronary heart disease; yogurt/calcium and osteoporosis; and breakfast cereal/folic acid and risk of neural tube defects.

The presentation style, authority, and brevity of the health claim were experimentally manipulated. Each product label seen represented a cell in the experimental design. The order of presentation of the products and the type of health claim were counterbalanced to avoid confounding effects. A series of questions about each product measured purchase intentions and communication effectiveness of the product label (e.g., perceived health benefits, compellingness), as well as personal and household characteristics. Information search behavior was observed and recorded.

C. Conclusions

The results of the FDA Study (Ref. 2) show that shorter claims are more effective than longer claims, that endorsed health claims have liabilities compared to nonendorsed claims, and that splitting claims between the front and back label makes little difference. The results also show that the ability of health claims to accurately communicate health information about a product appears to be fairly limited and involves tradeoffs between different kinds of valid health information.

II. The Quaker Oats Co. Studies

The Quaker Oats Co. submitted reports of two studies pertaining to the use of abbreviated health claim statements as a comment to Docket No. 95P–0197 (61 FR 296). The consumer research in the first report, entitled "Quaker Oatmeal On-Pack Health Claim Survey," provided data on the question of whether consumers would read the full claim if only an abbreviated claim appeared on the front of the label (Ref. 3). The data were based on a national telephone survey of 301 consumers. The respondents were asked about four types of new highlighted messages on the front of a package of breakfast cereal (health or nutrition; improvements to the product; price; special offers or rebates). The key questions concerned how likely respondents would be to read each of the four types of messages on the front of a package, and, if they noticed a new highlighted message on the front of the package that was about health benefits and that stated that additional information could be found on the back of the package, how likely they were to read the additional information.

The second report, entitled "Consumer Perception Study of a Statement Related to Heart Disease on the Label of Quaker Oats," presented consumer research comparing an abbreviated oatmeal claim ("A diet high in oatmeal may help reduce the risk of heart disease.") with a full fiber-heart disease health claim ("Diets low in saturated fat and cholesterol and high in grains, fruits and vegetables that contain fiber, particularly soluble fiber, may reduce the risk of heart disease, a condition associated with many factors.") (Ref. 4). The data were from a national shopping mall intercept study of 826 consumers. Participants saw one of three mocked-up cereal packages that contained the abbreviated claim, the long claim, or no claim (control condition).

The report stated that the presence of either health claim, compared to the control condition, increased the number of participants who recognized that a diet high in oatmeal may help reduce the risk of heart disease. There were no significant differences in terms of the impact of the claims on consumers' perceptions of the product or their beliefs about the diet-disease relationship.

III. Comments

Interested persons may by March 10, 1997, submit to the Dockets Management Branch (address above) written comments regarding the studies being added to this docket. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The Keystone Center, "The Final Report of The Keystone National Policy Dialogue on Food, Nutrition, and Health," Keystone, CO and Washington, DC, March 1996.

2. Food and Drug Administration, U.S. Department of Health and Human Services, "Consumer Impacts of Health Claims: An Experimental Study," Washington, DC, December 1996.

3. The Quaker Oats Co., "Quaker Oatmeal On-Pack Health Claim Survey," Chicago, IL, March 1996.

4. The Quaker Oats Co., "Consumer Perception Study of a Statement Related to Heart Disease on the Label of Quaker Oats," Chicago, IL, November 1995.

Dated: January 17, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–1785 Filed 1–23–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–96–002]

RIN 2115–AE47

Drawbridge Operation Regulations: Mystic River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for the S99 Alford Street Bridge over the Mystic River in Boston, Massachusetts. Additionally, the regulations governing the Boston and Maine Bridge and the General Lawrence Bridge will be removed because both bridges have been replaced with fixed bridges. The owner of the S99 Alford Street Bridge has requested that an 8 hour notice for openings be provided from November 1 through March 31, between 11 p.m. and 7 a.m. This change is expected to provide for the needs of navigation and relieve the bridge owner of the burden of crewing the bridge at night during the winter months.

DATES: Comments must be received on or before March 25, 1997.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg 135A, Governors Island, New York, New York 10004–5073. The telephone number is (212) 668–7165. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–96–002) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The S99 Alford Street Bridge at mile 1.4 over the Mystic River is a bascule bridge operated by the City of Boston. The Boston and Maine Bridge, mile 1.8, was operated by the Massachusetts Bay Transportation Authority until it was removed in 1989: The General Lawrence Bridge, mile 3.6, was owned and operated by the Metropolitan District Commission (MDC) until it was removed in 1990.

The existing rules at 33 CFR 117.609(a) require the S99 Alford Street Bridge and the Boston and Maine Bridge to open on signal, except during the designated rush hour periods when the draw need not open for vessels with a draft of less than 18 feet. Paragraph (b) of that section states the General Lawrence Bridge need not be opened for vessels.

In November, 1995, the Coast Guard received a request from the City of Boston to change the operating rules for the S99 Alford Street Bridge. This proposed change removes the requirement for the bridge to open on signal between 11 p.m. and 7 a.m. during the winter months of November through March. The city provided information which indicated that there have been few requests for openings during this time. In 1989, the Boston and Maine Bridge and the General Lawrence Bridge were replaced with fixed bridges. Accordingly, operating rules are no longer required for these bridges.

Discussion of Proposed Amendments

This proposal will amend 33 CFR 117.609(a) to require, from November 1 to March 31 each year, at least an 8 hour advance notice be given to the bridge owner for openings of the S99 Alford Street Bridge between 11 p.m. and 7 a.m. The exemption in the existing rule for vessels with a draft greater than 18 feet will be removed because commercial vessels to which this applied no longer use the Mystic River. The requirement to provide an 8 hour advance notice for the S99 Alford Street Bridge for night openings from November to March should not significantly affect the recreational boaters who infrequently use the river in winter months. The requirement that public vessels be passed as soon as possible will be removed from 117.609(a) since it is now a requirement under 117.31 of the general operating regulations. This proposal will further amend 117.609(a) and (b) by eliminating references to the Boston and Maine Bridge and the General Lawrence Bridge which have been replaced by fixed bridges.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that information from the bridge owner indicates that there have been few requests for openings during these times. Mariners can still pass through the S99 Alford Street Bridge from 11 p.m. to 7 a.m. from November to March so long as they provide advance notice.

Small Entities

The Coast Guard has considered the economic impact of this rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons discussed in the Regulatory Evaluation above, the Coast Guard has determined that this rule will not affect a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, (as revised by 60 FR 32197, July 20, 1995), this rule promulgates operating regulations for draw bridges and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.609 is revised to read as follows:

§ 117.609 Mystic River.

(a) The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m. and 5 p.m. to 6 p.m., except Sundays and holidays, the draw need not open for the passage of vessels. From November 1 through March 31, between 11 p.m. and 7 a.m., at least an 8 hour advance notice is required for bridge openings by calling the number posted at the bridge.

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(b) The draw of the Wellington Bridge, mile 2.5, need not be opened for vessels.

Dated: January 3, 1997.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 97–1800 Filed 1–23–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–254; FCC 96–472]

Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking (NPRM) to initiate a proceeding concerning the Bell Operating Companies' (BOCs') manufacture of telecommunications equipment and customer premises equipment (CPE) pursuant to Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In general, under Section 273, a BOC may provide telecommunications equipment and may manufacture both telecommunications equipment and CPE once the Commission authorizes the BOC to provide in-region, interLATA services pursuant to Section 271. The Commission seeks comment on procedures governing collaboration, research and royalty agreements, nondiscrimination standards, and the reporting and disclosure of protocols and other technical requirements for connecting to the BOC's network. Section 273 also limits the manufacturing activities of Bellcore and other entities that develop industry-wide standards or generic requirements, or conduct certification activities. The Commission seeks comment on proposed measures to implement these provisions of Section 273. In addition, the Commission seeks comment on the effects of the BOCs' proposed sale of Bellcore on its implementation of Section 273.

DATES: Comments are due on or before February 24, 1997 and Reply Comments are due on or before March 26, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 25, 1997.

ADDRESSES: To file formally in this proceeding, interested parties must file an original and six copies of all comments, reply comments, and supporting comments, with the reference number "CC Docket 96–254" on each document. Those parties wishing each Commissioner to receive a personal copy of their comments must file an original plus eleven copies. Parties must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Parties must also provide four copies to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Parties must also provide one copy of any documents filed in this docket to the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2351. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway, (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted December 10, 1996, and released December 11, 1996. (FCC 96–472). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, D.C. and is also available from the FCC's World Wide Web site, http://www.fcc.gov. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington D.C. 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due March 25, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: New collection.

Information collection	No. of respondents (approx.)	Estimated time per response (hours)	Frequency (per year)	Total annual burden (hours)	Total annual cost to respondents [1]	Total annual capital and startup costs and total annual operation and maintenance and purchase of services
Proposed Provision of Information on Protocols and Technical Requirements (Section 273(c)(1))	[2]7	8	25	1,400	$140,000	$77,000
Access By:						
Competitors to Information (Section 273(c)(3))	[2]7	2	25	350	35,000	77,000
Proposed Provision of Planning Information to Interconnecting Carriers (Section 273(c)(4))	[2]7	2	75	1,050	105,000	77,000
Proposed Requirements for Standard-Setting Entities (Section 273(d)(4)(A))	50	5	10	2,500	250,000	0
Sunset of Manufacturing Safeguards and Procedural Requirements (Section 273(d)(6))	50	20	1	1,000	100,000	0

[1] Assuming cost of preparation to be $100/hr.
[2] Regional Holding Companies ("RHCs"). These seven RHCs control all of the Bell Operating Companies ("BOCs"). Each RHCs typically files information with the Commission on behalf of all of the BOCs under its control.

Total Annual Burden: 6300 hours.
Respondents: Businesses or others for profit, including small businesses.
Needs and Uses: The NPRM seeks comments on a number of issues, the resolution of which may lead to the imposition of information collections subject to the Paperwork Reduction Act. The information collections proposed are required under the Telecommunications Act of 1996, Public Law No. 104–104. These information collections will also be used to ensure that the BOCs, standards-setting organizations, equipment manufacturers, and certification entities fulfill their obligations under Section 273. The NPRM seeks comment on potential overlap between existing information collections and the information collections required under Section 273 and proposed in the NPRM.

Synopsis of Notice of Proposed Rulemaking

1. Introduction and Background: On February 8, 1996, the Telecommunications Act of 1996 ("1996 Act") became law.[3] Through this legislation, Congress sought to establish a "pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[4] The 1996 Act includes provisions that are intended to promote competition in markets that are already open to new competitors. Congress entrusted to this Agency the responsibility for establishing the rules that will implement most quickly and effectively the national telecommunications policy embodied in the 1996 Act.[5]

2. Section 273 seeks to facilitate BOC entry into manufacturing while preserving the competitive nature of these markets by permitting a BOC to manufacture telecommunications equipment and CPE only after the BOC: (1) has been authorized to provide inter-LATA service pursuant to Section 271(d) (which, *inter alia*, requires the BOC to have demonstrated that it has implemented certain network access provisions contained in Section 271(c)(2)(B) and that BOC provision of interLATA service is in the public interest);[6] (2) has established a separate subsidiary that complies with Section 272 (which contains certain structural safeguards and other provisions to facilitate detection of prohibited acts as well as to prevent discrimination and cross-subsidization);[7] and (3) has met the requirements of Section 273 (which, *inter alia*, requires BOC disclosure of certain technical information, prohibits discriminatory equipment procurement decisions, and imposes constraints on certain standards-setting, and certification, entities).[8]

3. Section 273(a): Authorization. Section 273(a) explicitly authorizes BOCs and BOC affiliates[9] to "manufacture and provide" telecommunications equipment,[10] and "manufacture" customer premises equipment[11] once they obtain authority to offer in-region, interLATA service

[3] The Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 96 (1996) (codified at 47 U.S.C. §§ 151 et seq.).
[4] *Jt. Statement of Managers*, S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996) ("Joint Explanatory Statement").
[5] According to Representative Fields, "[Congress] is decompartmentalizing segments of the telecommunications industry, opening the floodgates of competition through deregulation, and most importantly, giving consumers choice * * * and from these choices, the benefits of competition flow to all of us as consumers—new and better technologies, new applications for existing technologies, and most importantly * * * lower consumer price." 142 Cong. Rec. H1149 (Feb. 1, 1996) (statement of Rep. Fields).
[6] 47 U.S.C. § 273(a).
[7] 47 U.S.C. § 272(a)(2)(A).
[8] 47 U.S.C. § 273(a).
[9] The term "Bell operating company" is defined in the 1996 Act, and includes the successors and assigns of Bell operating companies that provide "wireline telephone exchange service," but does not include an "affiliate" of a Bell operating company, other than another Bell operating company or its successor or assigns. 47 U.S.C. § 153(4). "Affiliate" is defined in the 1996 Act, 47 U.S.C. § 153(1), to mean a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For the purpose of determining affiliate status under Section 153(1), "owned" means an equity interest of more than ten percent. 47 U.S.C. § 153(1). For Bellcore, however, the equity interest creating an affiliate relationship with a BOC is significantly less. Section 273(d)(1)(B) precludes Bellcore from becoming a BOC manufacturing affiliate, but allows for limited BOC ownership of Bellcore under Section 273(d)(8)(A). The latter paragraph states "[t]he term 'affiliate' shall have the same meaning as in Section 3 of this Act, except that, for purposes of paragraph (1)(B)—(i) an aggregate voting equity interest in Bell Communications Research, Inc., of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and (ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1% of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph."
[10] "Telecommunications equipment" means "equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)." 47 U.S.C. § 153(45).
[11] "Customer premises equipment" means "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." 47 U.S.C. § 153(14).

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under Section 271(d) and comply with any other rules and regulations that result from this proceeding. We tentatively conclude that Section 273(a) allows a BOC to manufacture and provide telecommunications equipment and to manufacture CPE, in compliance with the rules we adopt in this proceeding, once that BOC has obtained authority to offer interLATA service in any of its in-region states. We seek comment on this tentative conclusion.

4. Section 273(a) also states that "neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates." [12] BOCs under the ownership or control of a common Regional Holding Company ("RHC") would appear to meet the statutory definition of "affiliates;" therefore, we tentatively conclude that this provision prevents joint manufacturing between or among (1) unaffiliated RHCs; (2) unaffiliated BOCs that are not under the ownership or control of a common RHC; and (3) an RHC and a BOC that is not affiliated with that RHC. We seek comment on this tentative conclusion.

5. Section 273(h) defines the term "manufacturing" to have "the same meaning as such term has under the AT&T Consent Decree." The U.S. District Court for the District of Columbia, which supervised the Decree, determined that the terms "manufacture" and "manufacturing" extend to the "design, development and fabrication" [13] of telecommunications equipment, CPE, and the "software integral to [this] equipment hardware, also known as firmware." [14] Although Section 273 defines only the gerund "manufacturing," we tentatively conclude that we should also accord the verb "manufacture" a meaning that extends to include the activities identified by the District Court and that is consistent with the definition of "manufacturing" provided in the statute. We seek comment on this interpretation.

6. Section 273(b): BOC Collaboration and Research and Royalty Agreements. Notwithstanding the restrictions on BOC entry into manufacturing imposed by Section 273(a), Section 273(b) explicitly permits BOCs to collaborate with manufacturers, engage in research activities related to manufacturing, and enter into royalty agreements with manufacturers. Specifically, Section 273(b)(1) permits a BOC to engage "in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment." We seek comment on the types of activities that would constitute "close collaboration" permissible under this section. We tentatively conclude that the broad language of Section 273(b)(1) does not permit close collaboration in either of the following two situations: (1) between a BOC or an RHC and the manufacturing affiliate of another unaffiliated BOC or RHC; or (2) between the manufacturing affiliates of two unaffiliated BOCs or RHCs. Conversely, we tentatively conclude that Section 273(b)(1) does permit joint collaboration between a BOC-affiliated manufacturer and a non-BOC affiliated manufacturer. We request comment on these tentative conclusions.

7. Section 273(b)(2) also permits BOCs, notwithstanding the conditions imposed by Section 273(a), to "(A) engage[] in research activities related to manufacturing; and (B) enter[] into royalty agreements with manufacturers or telecommunications equipment." We seek appropriate definitions for the terms "research activities" and "royalty agreements" that will preserve BOC incentives to research and develop innovative products, solutions and technologies, consistent with the language of Section 273(b)(2), while minimizing potentially anticompetitive incentives. We also seek comment on other ways to protect against potential anticompetitive abuses and seek comment on the relationship between Section 273(b)(2) and other sections of the Act which may require disclosure of information, including, but not limited to, Sections 251(c)(5), 251(e)(2), or 273(c)(1).

8. Section 273(c): BOC Information Requirements. Information with respect to the technical characteristics of a network is essential for manufacturers of telecommunications equipment and CPE. Telecommunications equipment and CPE manufacturers' products cannot be used in or with a network unless they comply with the technical specifications and protocols necessary for incorporation in or interoperation with that network.[15] Changes in technical specifications, protocols or both can foreclose competition or render potential competition less likely if an affiliated manufacturer can learn of such changes and then modify, or create new, products to be compatible with those changes in advance of the rest of the market.[16]

9. Our *Computer Inquiry III* rules recognize some of these concerns by, *inter alia*, requiring carriers offering enhanced services or providing customer premises equipment to disclose to the public "all information relating to network design and technical standards and information affecting changes to the telecommunications network which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network prior to implementation and with reasonable advance notification." [17] In addition, the Commission's "all carrier" rule obligates "all carriers owning basic transmission facilities [to release] all information relating to network design * * * to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected [customer-premises equipment]

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[12] Section 273(d)(1)(B) precludes Bellcore from becoming a BOC manufacturing affiliate, but allows for limited BOC ownership of Bellcore under Section 273(d)(8)(A). The latter paragraph states "[t]he term 'affiliate' shall have the same meaning as in Section 3 of this Act, except that, for purposes of paragraph (1)(B)—(i) an aggregate voting equity interest in Bell Communications Research, Inc., of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and (ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1% of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph."

[13] *United States* v. *Western Elec. Co.*, 675 F. Supp. at 662.

[14] *Id.* at 667 n.54.

[15] *United States* v. *AT&T*, 552 F. Supp. at 190–91; *Computer and Business Equip. Mfrs. Assoc. Petition for Declaratory Ruling Regarding Section 64.702(d)(2) of the Commission's Rules and the Policies of the Second Computer Inquiry*, Report and Order, 93 F.C.C.2d 1226, 1236–37 (1983).

[16] *See generally*, Carl Shapiro, Antitrust in Network Industries, Address before the American Bar Association (March 27, 1996). We will place a copy of this address in the docket file of this proceeding.

[17] 47 CFR § 64.702(d)(2). *See, e.g., Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorizations Thereof*, Report and Order, 2 FCC Rcd 3072, 3087 (1987), 52 FR 20714, June 3, 1987 ("*Phase II Order*"), *recon.*, 3 FCC Rcd 1150 (1988), 53 FR 8629, March 16, 1988 ("*Phase II Reconsideration Order*"), *further recon.*, 4 FCC Rcd 5927 (1989), 55 FR 29022, July 17, 1990 ("*Phase II Further Reconsideration Order*"); *Phase II Order vacated sub. nom. California* v. *FCC*, 905 F.2d 1217 (9th Cir. 1990) ("*California I*"); *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990), 56 FR 964, January 10, 1991 ("*ONA Remand Order*"), *recon.*, 7 FCC Rcd 909 (1992), 57 FR 5391, February 14, 1992, *pets. for review denied sub. nom. California* v. *FCC*, 4 F.3d 1505 (9th Cir. 1993) ("*California II*"); *BOC Safeguards Order*, 6 FCC Rcd 7571 (1991), 57 FR 4373, February 5, 1992, *vacated in part and remanded sub. nom. California* v. *FCC*, 39 F.3d 919 (9th Cir. 1994) ("*California III*"), *cert. denied*, 115 S. Ct. 1427 (1995).

operates." [18] The Commission's rules also require carriers to disclose network changes to customers "[i]f such changes can be reasonably expected to render any customer's terminal equipment incompatible with telephone company communications facilities, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance" [19] Common carriers have also filed network specifications as part of their tariffs so that customers may select from among features offered with a package of services. To the extent that the notice and filing requirements imposed on carriers by the 1996 Act (including, especially, Sections 273(c)(1) and 273(c)(4)) may duplicate these or other existing Commission notice and filing requirements related to network interconnection, we seek comment on suggestions to consolidate those requirements and the proposed text of rules that would achieve that objective.

10. The legislative safeguards of Section 273(c) reduce the potential for anticompetitive conduct that might otherwise accompany the information advantage enjoyed by a network owner that also manufactures network equipment.[20] Section 273(c) requires the BOCs to disclose certain information relating to their network standards. Disclosure of that information may promote competition by facilitating interconnectivity [21] and interoperability,[22] alerting competitors and others to changes in standards, and preventing the imposition of unreasonable licensing fees by the BOCs.[23]

11. Although the information disclosure requirements of Section 273(c) apply on their face to all BOCs, Section 273(c) is contained within a statute that otherwise addresses BOC obligations in the manufacturing context. We seek comment on whether Section 273(c) applies to all BOCs or only to BOCs that are authorized to manufacture under Section 273(a).

12. *Section 273(c)(1):* Section 273(c)(1) requires a BOC, "in accordance with regulations prescribed by the Commission, [to] maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities." [24] A BOC also is required to "report promptly to the Commission any material changes or planned changes to protocols and technical requirements for connection with and use of its telephone exchange service." We seek comment on how each of the terms in this subsection that are not defined by the 1996 Act (such as "protocols" and "technical requirements") should be defined. Because our current rules regarding network information, discussed above, address the needs of other carriers, information service providers ("ISPs"), enhanced service providers ("ESPs"), and other members of the public for information about network capabilities,[25] and not the specific needs of manufacturers who wish to develop new network products, we tentatively conclude that our existing rules do not satisfy the filing requirements of Section 273(c)(1). We seek comment on the need for specific disclosure rules to implement Section 273(c) in light of this tentative conclusion, as well as the specific language that commenters may conclude should appear in them.

13. Although Section 273(c)(1) mandates full disclosure of the protocols and technical requirements used for network connection, in network markets, the announcement of the impending availability of a product prior to its actual availability also may have anticompetitive effects.[26] While the potential harm associated with early disclosure in this context may not be as great as those associated with excessive secrecy, we seek comment on the potential effects of early disclosure of products, protocols or technical requirements. Specifically, we request that commenters address: (1) whether early disclosure or late disclosure of information has a greater potential to damage the operations of carriers, manufacturers, and other market participants; (2) the extent to which early disclosure of planned products, technical specifications, or protocols could stifle the development of competing products, technical specifications, or protocols; (3) whether any provision of the Communications Act fully addresses the potential problems associated with early disclosure; and (4) whether we should exempt *bona fide* equipment trials from Section 273(c)(1)'s disclosure requirements, as we did in the context of carriers' Section 251(c)(5) network disclosure obligations.[27]

14. The BOCs are required to "maintain" the information described in Section 273(c)(1) in addition to filing it with the Commission. We tentatively conclude that, in fulfilling their obligation to "maintain" this information, the BOCs must keep it "full and complete," accurate, and up-to-date. In addition, because the BOCs' obligation to "maintain" this information is contained within a section of a statute otherwise addressing public disclosure requirements through Commission filings, we tentatively conclude that each BOC must keep the relevant information within its service area in a form that is available for inspection by the public upon reasonable request. By doing so, the BOCs would: (1) maintain the information in a form that is available at a location physically close to those parties that are most likely to need it; and (2) promote competition by making the information more widely available than it would be if the Commission were the sole source. We seek comment on this tentative conclusion. We also seek comment on how long we should

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[18] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Memorandum Opinion and Order on Reconsideration, 84 F.C.C.2d 50, 82–83 (1980), 46 FR 5984, January 21, 1981, *further recon.*, 88 FCC 2d 512 (1981), 46 FR 59976, December 8, 1981, *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[19] 47 CFR § 68.110(b). Certain past references to this rule also use the term "all carrier rule." In this proceeding, we use that term to refer to our part 64 rule, above, and refer to 47 CFR § 68.110(b) specifically by number, if necessary.

[20] *See* Joint Explanatory Statement at 154.

[21] The 1996 Act defines "public telecommunications network interconnectivity" as "the ability of two or more public telecommunications networks used to provide telecommunications service to communicate and exchange information without degeneration, and to interact in concert with one another." 47 U.S.C. § 256(d).

[22] In the context of Section 251(c)(5), we recently defined "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, FCC 96–333, 61 FR 47284, September 6, 1996, at ¶ 178 (*citing IEEE Standard Dictionary of Electrical and Electronics Terms* 461 (J. Frank ed. 1984)).

[23] *Cf.* 47 U.S.C. § 251(c), which imposes specific interconnection obligations on incumbent LECs. *Inter alia*, Section 251 obligates incumbent LECs to negotiate interconnection agreements in good faith (Section 251(c)(1)), requires that interconnection be provided "on rates, terms, and conditions that are just, reasonable and nondiscriminatory" (Section 251(c)(2)(D)), and requires that incumbent LECs provide reasonable public notice of changes in necessary information (Section 251(c)(5)). Accordingly, Sections 251(c) and 273(c) appear to overlap to some extent.

[24] 47 U.S.C. § 273(c)(1) (emphasis supplied). *Compare* this provision with the all carrier rule and 47 CFR § 68.110(b), above.

[25] *See, e.g.*, 47 CFR §§ 64.702(d)(2), 68.110(b).

[26] *See, e.g., id.* at 123–24; Farrell, Joseph, and Garth Saloner, *Installed Base and Compatibility: Innovation, Product Preannouncements, and Predation*, Amer. Econ. Rev., Vol. 76, No. 5 at 940–55 (Dec. 1986).

[27] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, FCC 96–333, at ¶ 260.

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require the BOCs to "maintain" this information.

15. All of the BOCs now have sites on the Internet that are easily accessible to millions of users around the world. We tentatively conclude that one method by which the BOCs could satisfy their obligation to "maintain" information in accordance with Section 273(c)(1) would be by placing the information on their publicly-accessible World Wide Web sites or by making files available through other Internet protocols, such as FTP, Gopher, or electronic mail. We seek comment on this tentative conclusion, including comment on (1) whether we should impose requirements on BOCs choosing to use such Internet postings concerning the format and location of material to ensure that competitors can access the necessary files easily; and (2) whether information that cannot be made available as plain ASCII text could be posted using cross-platform formats such as Postscript or PDF (Adobe Acrobat), allowing users to view or print materials with freely-available "reader" software.

16. Section 273(c)(1) also requires the BOCs to "report promptly to the Commission any material changes or planned changes" to the information described in that section. We seek comment both on when and how such reports must be filed. For instance, we have recently concluded that network changes in the context of Section 251(c)(5) should be disclosed at the "make/buy" point because, at that point, carriers' plans are sufficiently developed to provide adequate and useful guidance to competing service providers.[28] Disclosure of changes at the "make/buy" point, however, may not fully address the information needs of manufacturers. Information provided at the "make/buy" point may come too late for a rival manufacturer that might otherwise attempt to offer a competing product that can serve a similar function to the product the BOC has chosen to manufacture or purchase. In addition, unlike Section 251(c)(5), which mandates the disclosure of certain network "changes," Section 273(c)(1) requires disclosure of "planned changes." We seek comment, therefore, on whether a different disclosure standard would be appropriate in the context of Section 273(c)(1). We also seek comment on the potential use by the BOCs of alternative methods of reporting to the Commission changes in protocols or technical requirements, such as the use of electronic mail.

17. We request that commenters submit draft rules implementing the information filing, maintenance, and disclosure requirements contained in Section 273(c)(1) including, for those parties advocating the use of Internet capabilities in the context of Section 273(c)(1), specific language that we should adopt to implement this option. In addition, we request comment on whether the FCC should provide information on its own Internet site, in the form of actual files and/or hypertext links to BOC Internet sites, to create a central on-line point of contact for materials describing technical requirements and protocols.

18. Section 251(c)(5) requires all incumbent local exchange carriers, including all BOCs, "to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks." We have recently adopted rules implementing this provision and describing incumbent LECs' network disclosure obligations under Section 251(c)(5).[29] In light of these obligations, we seek comment on the relationship between the filing and information disclosure requirements of Section 273(c)(1), Section 251(c)(5), and our existing disclosure requirements under the rules discussed above. Specifically, we seek comment on (1) the degree of specificity of information that we should require the BOCs to disclose and the timing of that disclosure; (2) whether compliance with the network disclosure obligations of Section 251(c)(5), as implemented by the Commission, would satisfy the information disclosure requirements of Section 273(c)(1); and (3) the text of proposed rules that would govern disclosure of this information.

19. *Section 273(c)(2):* Section 273(c)(2) bars BOCs from disclosing "any information required to be filed under [Section 273(c)(1)] unless "that information has been filed promptly, as required by regulation by the Commission." We interpret this requirement to mean that BOCs may not disclose information described in Section 273(c)(1) until the BOC has made that information publicly available by filing it with this Commission. We request comment on this interpretation.

20. We note that Section 273(b)(1) permits the BOCs to engage in "close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, and combinations thereof related to such equipment." Under Section 273(c)(1), however, each "Bell Operating Company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange facilities." To ensure compliance with Section 273(c)(1), we seek to prevent "close collaboration" from resulting in the communication of technical information and protocols in advance of the disclosure requirement that is contained in Section 273(c)(2).[30] Section 273(g) provides that this Commission "may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of this section, and otherwise prevent discrimination and cross-subsidization in a Bell operating company's dealing with its affiliate and with third parties."[31] We seek comment as to how sections 273(b)(1) and 273(g) may be made to work together in a manner that is both efficient and effective, and ask commenting parties to propose any rules necessary to harmonize those sections. In addition, commenters should provide data with respect to the measurement of costs and benefits that can be ascribed to specific rules that are proposed by parties to this proceeding.

21. *Section 273(c)(3):* Under Section 273(c)(3) "[t]he Commission may prescribe such additional regulations" as may be needed to ensure that "manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer." As noted above in the context of Section 273(c)(1), our existing network disclosure rules address the information needs of other carriers, ISPs, ESPs, and other members of the public. Our rules have not, until now, focussed specifically on the needs of manufacturers for information affecting the design of end user equipment. We request comment on whether

[28] *Id.* at ¶ 223.

[29] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, FCC 96–333, at ¶¶ 165–260.

[30] 47 U.S.C. § 273(c)(2).

[31] 47 U.S.C. § 273(g).

regulations in addition to those already in place, or adopted under Section 273(c)(1), are needed to assure that manufacturers have access to the necessary information and, if so, what those regulations should be.

22. *Section 273(c)(4):* Section 273(c)(4) requires the BOCs to provide "to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment." While the 1996 Act does not define "interconnecting carrier," we interpret this subparagraph to mean that a BOC must provide adequate notice to all *telecommunications* carriers providing local exchange service with whom the BOC has an interconnection arrangement.[32] We request comment on this tentative conclusion. We also request comment on (1) the level of information this section requires BOCs to disclose; and (2) how far in advance a BOC needs to disclose this information for the disclosure to be considered "timely."

23. We seek comment on the relationship between the type of information required by Section 251(c)(5) and that required by Section 273(c)(4). We also seek comment as to whether a BOC's Section 273(c)(4) filing could satisfy its obligation under Section 251(c)(5). In addition, we seek specific comment on whether the disclosure timetable we recently adopted to govern network disclosure under section 251(c)(5) is either necessary or sufficient to meet the "timely" standard of section 273(c)(4). We seek comment as to how the Commission might minimize the administrative burden of the notice and filing requirements while still achieving Congress' objectives in establishing these reporting and notice requirements. We also seek comment on whether information filed to meet Section 64.702 or 68.110 requirements or filed as part of carrier exchange access tariffs could or should satisfy the requirements of Section 273(c)(4).

24. Section 273(d): General Manufacturing Safeguards. Section 273(d) limits the manufacturing activities of standard-setting organizations. Section 273(d) addresses three types of activities: standards development; industry-wide generic requirements development; and certification of telecommunications equipment and customer premises equipment. Section 273(d)(8) defines "certification,"[33] "generic requirements"[34] and "industry-wide."[35] We tentatively conclude that these and the other definitions contained in Section 273(d)(8) are complete and self-explanatory, but seek comment as to whether any clarifications are required.

25. While Section 273(d)(8) defines "accredited standards development organization,"[36] neither Section 273(d)(8), nor any other section of the Act defines "standards." We seek comment on how "standards" should be defined for purposes of implementation of the 1996 Act to ensure that standards processes are open and accessible to the public. By establishing a clear definition of the term "standard," we seek (1) to clarify for manufacturers, BOCs, Bellcore and other interested parties the scope of those sections of the 1996 Act that address standards development; and (2) to facilitate compliance with standards development regulations. We also seek to understand better the possible ways that we may distinguish among different types of activities that might be characterized as standards setting activities under Section 273(d). We request comment as to the generic and conceptual distinctions among different types of standards. For example, generic distinctions might be based on the type of entity creating the standard. Thus, it might be possible to distinguish between accredited standards (*i.e.*, those standards developed by an accredited standards development organization, such as Committee T1) and "de facto" standards (*i.e.*, those standards not developed by an accredited standards development organization). "De facto" standards might further be separated into "de facto" standards (1) created by a group of interested parties seeking to promote interoperability; (2) imposed upon an industry by a dominant entity or dominant entities; or (3) adopted without any explicit coordination by market participants that independently select the same or similar standards. On a conceptual level, we seek to understand the role of these different types of standards within the industry and their relative impact on manufacturing competition. We seek comment as to the meaning of the term "industry" as used in this section. Comments that address the conceptual issues associated with "standards" development will assist us in developing precise rules for standards setting entities.

26. *Section 273(d)(1): Application to Bell Communications Research or Manufacturers.* Bell Communications Research, Inc., ("Bellcore") was established on January 1, 1984, under the Plan of Reorganization as part of the divestiture of AT&T. Originally, called the Central Services Organization and consisting primarily of former Bell Laboratories employees, Bellcore was established to give support to the newly formed regional Bell Operating Companies in a manner similar to that which had been provided to AT&T by Bell Laboratories.[37] Today, Bellcore is the predominant source of industry-wide generic requirements; it conducts extensive technical certification of telecommunications equipment and it is a leading contributor and participant in standards developed by accredited standards development organizations.[38] Since its creation, Bellcore has been owned and controlled jointly by the RHCs. The RHCs, however, have recently announced their agreement to sell Bellcore to Science Applications

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[32] "Telecommunications carrier" includes "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. § 153(44).

[33] "The term 'certification' means any technical process whereby a party determines whether a product, for use by more than one Local Exchange Carrier, conforms with the specified requirements pertaining to such product." 47 U.S.C. § 273(d)(8)(D). Certification here pertains to the private sector process of determining that equipment is in compliance with voluntary standards.

[34] "The term 'generic requirement' means a description of acceptable product attributes for use by local exchange carriers in establishing product specifications for the purchase of telecommunications equipment, customer premises equipment and software integral thereto." 47 U.S.C. § 273(d)(8)(B).

[35] "The term 'industry-wide' means activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 273(d)(8)(C).

[36] "The term 'accredited standards development organization' means an entity composed of industry members which has been accredited by an institution vested with the responsibility for standards accreditation by the industry." 47 U.S.C. § 273(d)(8)(E).

[37] *United States* v. *Western Electric Co.*, Civil Action No. 82–0192, Plan of Reorganization, filed December 16, 1982, at 336; *see United States* v. *Western Electric*, 569 F. Supp. 1057, 1113–1118 (D.D.C. 1983) (approving creation of Central Services Organization proposed in Plan of Reorganization), *aff'd sub nom. California* v. *United States*, 464 U.S. 1013 (1983).

[38] Bellcore indicates that, in 1996, its budget exceeds $1 billion and it employs nearly 6,000 people. Over 4000 of these employees were "highly trained and experienced engineers and scientists who provide a critical mass of telecommunications expertise and resources." These employees make Bellcore "unique[] in its ability to provide end-to-end solutions for its customers." In addition, Bellcore's patent portfolio contains more than 680 domestic and foreign patents. See Bellcore Ownership in Transition, undated briefing materials received Dec. 4, 1996. We will place a copy of these briefing materials in the docket file of this proceeding.

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International Corporation ("SAIC"), a large defense contractor.[39]

27. Section 273(d) limits the circumstances under which Bellcore or any successor entity or affiliate may manufacture telecommunications equipment or CPE. Section 273(d)(1)(B) prohibits Bellcore from "manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated Bell operating company or successor or assign of any such company."[40] BOCs that are commonly owned or controlled by a single RHC would appear to meet the 1996 Act's definition of affiliates. Accordingly, we tentatively conclude that Section 273(d)(1)(B) prohibits Bellcore from manufacturing telecommunications equipment or CPE only as long as it is (1) affiliated with two or more otherwise unaffiliated RHCs; (2) affiliated with two or more BOCs that are not under the ownership or control of the same RHC, and are not otherwise affiliated; or (3) affiliated with an RHC and a BOC that is not otherwise affiliated with that RHC. We seek comment on this tentative conclusion.

28. Section 273(d)(1)(A) provides that Bellcore "shall not be considered a [BOC] or a successor or assign of a BOC at such time as it is no longer an affiliate of any [BOC]."[41] Based on the limited information before us,[42] we tentatively conclude that, if the announced sale of Bellcore to SAIC were eventually to be consummated, under Section 273(d)(1)(A), Bellcore would no longer be considered a BOC, a BOC affiliate, or a BOC successor or assign. As such, we tentatively conclude that it would be permitted to begin manufacturing telecommunications equipment and CPE in accordance with Sections 273(d)(1)(B) and 273(d)(3). We seek comment on these tentative conclusions, including specific comment on these and other implications of Bellcore's sale.

29. *Section 273(d)(2): Proprietary Information.* Section 273(d)(2) provides that: "[a]ny entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment shall be prohibited from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information, even after such entity ceases to be so engaged."[43]

30. We seek to clarify to which entities this section should apply, how Section 273(d)(2) should be enforced, and what impact this section may have on accredited standards development organizations and industry forums and accordingly seek comment on these issues. While Section 273(d)(4) sets procedures for use by "any entity that is not an accredited standards development organization and that establishes industry-wide standards," Section 273(d)(2), on its face applies to "any entity that establishes standards." A comparison of the two provisions suggests that the term "any entity that establishes standards" encompasses a broader range of entities than does Section 273(d)(4). Specifically, we tentatively conclude that Section 273(d)(2) applies to all entities that develop standards, and includes entities that create "de facto" standards. We seek comment on the extent to which Section 273(d)(2) also applies to ISO 9000 certification[44] or interoperability testing in general. We also seek comment on the extent to which this section applies to BOCs' or other carriers' development of internal interfaces and protocols that might or might not be adopted more widely.[45] We also tentatively conclude that, because Section 273(d)(2) uses the terms "standards" or "generic requirements" rather than "industry-wide standards," or "industry-wide generic requirements," this section applies to the establishment of any standard or requirement, not just those that are industry-wide. We seek comment on the validity of these tentative conclusions. Similarly, we seek comment on the types of certification activities that are encompassed by Sections 273(d)(2), Section 273(d)(3), and Section 273(d)(4), including comment on possible differences in the scope of certification activities encompassed by each.

31. In addition, we seek specific comment as to whether, and if so, how, Section 273(d) applies to the activities of industry forums such as the ATM Forum[46] or the National ISDN User's Forum.[47] The work of these forums can be characterized in a variety of ways. For example, the ATM Forum maintains a World Wide Web page in which it describes its work product as "specifications." The Telecommunications Industry Association (TIA) characterizes the ATM Forum as a "standards development organization,"[48] while the Network Reliability Council states that industry forums, like the ATM Forum, "use and influence standards to create user application profiles of standards and implementation agreements based on options approved in standards."[49] We seek comment on whether the work product of these types of industry forums constitutes either a "standard" or a "generic requirement." Additionally, we seek comment as to whether these forums, if they have some relationship with "accredited standards

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[39] *Bellcore Owners Sell Business to Defense Contractor*, Communications Daily, Nov. 22, 1996, at 1.

[40] Section 273(d)(1)(B) (emphasis supplied). This subsection further states that "[n]othing in this subsection prohibits Bell Communications Research, Inc., or any successor entity, from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 273(d)(1).

[41] 47 U.S.C. § 273(d)(1)(A).

[42] *Bellcore Owners Sell Business to Defense Contractor*, Communications Daily, Nov. 22, 1996, at 1.

[43] 47 U.S.C. § 273(d)(2).

[44] The ISO 9000 Series, published by the International Standards Organization, is a set of three generic standards (ISO 9001, ISO 9002, and ISO 9003) that "provide quality assurance requirements and quality management guidance." ISO 9001 is a quality assurance standard for companies involved in the design, testing, manufacture, delivery, or service of products. ISO 9002 covers manufacturing and installation. ISO 9003 addresses product testing. Newton, Harry, Newton's Telecom Dictionary 328 (11th Ed. 1996).

[45] In this case, by "internal interfaces and protocols," we intend to include both (1) those standards that are used only internally by the BOCs and are otherwise transparent to network interconnectors and/or users, at least in the absence of the unbundling or sale of individual network elements; and (2) those standards that are adopted by the BOCs on an "individual" basis, but which may nevertheless have the effect of foreclosing other alternative standards by virtue of the BOCs' substantial size and market share.

[46] The ATM Forum is an international non-profit organization formed with the objective of accelerating the use of ATM products and services through a rapid convergence of interoperability specifications. In addition, the Forum promotes industry cooperation and awareness. The ATM Forum consists of over 700 member companies, and it remains open to any organization that is interested in accelerating the availability of ATM-based solutions.

[47] The North American ISDN Users' Forum (NIUF) objectives are to provide users the opportunity to influence developing ISDN technology to reflect their needs; to identify ISDN applications, develop implementation requirements and facilitate their timely, harmonized, and interoperable introduction; and to solicit user, product provider, and service provider participation in the process. In 1988, the National Institute of Standards and Technology (NIST) collaborated with industry to establish the NIUF. Members of NIST's Computer Systems Laboratory have served as the chair of the forum and have hosted the NIUF Secretariat. Over 300 organizations participate in the NIUF. The NIUF is open to all interested parties, product providers, and service providers.

[48] TIA Standards and Technology Annual Report 1995. We will place a copy of this document in the docket file of this proceeding.

[49] Network Reliability Council Increased Interconnection Task Group II Report (Dec. 1, 1995) at 57.

development organizations" should themselves be considered "accredited standards development organizations" for the purpose of this section of the Act. We also seek comment as to what type of relationship, if any, should lead to these industry forums being classified as "accredited" for the purposes of Section 273(d), and how "accredited" should be defined for the purpose of administering Section 273. We encourage commenters to address the advantages and disadvantages of interpreting this section to include industry forums as standards setting entities within the meaning of Section 273(d) of the Act, and further encourage commenters to address the impact on members of these groups of a finding that they are covered by Section 273(d).

32. We also seek comment on the extent to which the preceding interpretations would require accredited standards organizations and industry forums to alter their existing practices and procedures for protecting proprietary information to comply with this provision of the Act, and the projected costs and benefits of such alterations. We recognize that the protection of proprietary information is vital to continued development of new technology and innovative network advances. Assuming accredited standards development organizations and industry forums must comply with Section 273(d)(2), we seek comment on and draft language for any rules that a commenting party asserts we should establish to mitigate any adverse effects of improper disclosure.

33. *Section 273(d)(3): Manufacturing Safeguards.* Section 273(d)(3) has three parts. In general, Section 273(d)(3)(A) restricts the ability of an entity to manufacture and certify any particular class of telecommunications equipment or CPE and requires that such manufacturing be performed only through an affiliate separate from the certifying entity. Sections 273(d)(3)(B) and 273(d)(3)(C) impose specific separation requirements on the manufacturing affiliate and the certifying entity, respectively. Under Section 273(d)(3)(B), the entity's manufacturing affiliate must maintain books, records and accounts separate from those of the certifying affiliate, must not engage in joint manufacturing activities with the certifying entity, and must have segregated facilities and separate employees. Under Section 273(d)(3)(C), a certifying entity must not discriminate in favor of its manufacturing affiliate, must not disclose unaffiliated manufacturers' proprietary information without authorization, and must not permit any employee engaged in certification activities to participate in joint equipment sales or marketing activities with the certifying entity's manufacturing affiliate. We tentatively conclude that, if the sale of Bellcore to SAIC were to be consummated, Bellcore would be permitted to engage in manufacturing activities, but would need to comply with the structural and accounting safeguards of Section 273(d)(3). We seek comment on this tentative conclusion.

34. Section 273(d)(3)(A) states that "any entity which certifies telecommunications equipment and customer premises equipment manufactured by an unaffiliated entity shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous 18 months, certification activity for such class of equipment through a separate affiliate."[50] While the terms "telecommunications equipment" and "customer premises equipment" are defined in the Act, "class" is not defined by the Act. We tentatively conclude that we should define specific classes of equipment and that these classes should be based on existing industry classifications to the extent that they exist. We request comment that describes classifications currently used within the industry and proposed definitions for each class of equipment. We also seek comment on the practical effects of defining "classes" broadly, versus narrowly.

35. The breadth of the term "class" may also affect how quickly the sunset provision contained in Section 273(d)(6) becomes effective. If classes are defined more narrowly, it may be easier for the Commission to make a determination that the requirements of Section 273(d)(3) should be terminated with respect to a specific class, but it would have many such determinations to make. Conversely, if the Commission defined "class" broadly, it would be more difficult for the Commission to make a determination that the requirements of Section 273(d)(3) should be terminated, but there would be a much smaller number of determinations needed.

36. We also seek comment on how to interpret the phrase "during the previous 18 months" in Section 273(d)(3)(A).[51] One interpretation of the italicized phrase is that if, at the date on which an entity seeks to manufacture equipment, that entity is currently certifying equipment, or has within the previous 18 months certified equipment within a particular class, it may manufacture equipment within that class only through a separate affiliate. If an entity that certifies equipment seeks to manufacture equipment within a particular class of equipment and within the previous 18 months that entity has not certified equipment within that same class, it may manufacture equipment directly. A second possible interpretation of the phrase is that if the certification entity was certifying equipment and manufacturing equipment within the same class within 18 months prior to the effective date of the 1996 Act, the entity may continue to do so without creating a separate affiliate. We seek comment on the proper interpretation of this phrase.

37. Section 273(d)(3)(B) specifies particular separate affiliate requirements, such as the maintenance of separate books, records and accounts. The Commission has issued a separate NPRM addressing affiliate transactions that fall within the scope of that section.[52] In addition to these accounting safeguards, however, Section 273(d)(3)(C) states that the certification entity, *inter alia*, shall "not discriminate in favor of its manufacturing affiliate in the establishment of standards, generic requirements, or product certification." We tentatively conclude that our existing nondiscrimination rules are inadequate in the context of Section 273(d)(3)(C) because these rules do not address the ability of a certification entity to discriminate in favor of its manufacturing affiliate. Unlike Section 202, which prohibits "unjust or unreasonable discrimination," Section 273(d)(3)(C) uses no adjectives to modify the meaning of the verb "discriminate." We seek comment, therefore, on whether Congress intended to impose a stricter standard for compliance with Section 273(d)(3)(C) by enacting a flat prohibition on all discrimination.[53] The verb, "to discriminate" means to "make a clear distinction" or to "act on the basis of

[50] 47 U.S.C. § 273(d)(3)(A).

[51] 47 U.S.C. § 273(d)(3)(A).

[52] *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 9054, 9099–9102 (1996), 61 FR 40161, August 1, 1996, *corrected* 61 FR 41208, August 7, 1996.

[53] We sought comment on a similar issue in *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96–149, Notice of Proposed Rulemaking, FCC 96–308, ¶ 72 (released July 18, 1996), 61 FR 39397, July 29, 1996.

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prejudice."[54] We tentatively conclude, therefore, that Section 273(d)(3)(C) requires the certification entity to provide its services to its manufacturing affiliate on terms, conditions or rates that are at least as good as those it provides to unaffiliated manufacturers. We seek comment on this tentative conclusion, including comment on (1) any specific concerns that we should address in this proceeding; (2) the language of proposed rules, if any, that a party asserts we should adopt to address these dangers; and (3) the relationship, if any, between Section 273(d)(3)(C) and Section 272(c)(1), which prohibits a BOC from discriminating between an affiliate and any other entity in, *inter alia*, the establishment of standards. We tentatively conclude that the other prohibitions that are contained in Section 273(d)(3)(C)(ii–iii) are clear and that no clarification or additional rules appear to be necessary to implement this section.

38. *Section 273(d)(4): Manufacturing Limitations for Standards-Setting Organizations.* Section 273(d)(4) prescribes procedures that are intended to be open to all interested parties in the process for setting and establishing industry-wide standards and generic requirements for telecommunications equipment and CPE.[55] These procedures apply to standards-setting activities by "any entity that is not an accredited standards development organization and that establishes industry-wide standards for telecommunications equipment or customer premises equipment, or industry-wide generic network requirements for such equipment, or that certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity." Additionally, this section imposes requirements to assure fair, even-handed certification processes,[56] and prohibits anticompetitive behavior.[57]

39. Section 273(d)(4) potentially could encompass a wide range of entities or alliances of entities. Bellcore would appear to fall squarely within the ambit of Section 273(d)(4); we seek comment, however, on whether the sale of Bellcore to SAIC or another entity unaffiliated with the BOCs could affect the applicability of this section to Bellcore. We also seek comment on the potential additional scope of this section, including the extent to which it could apply to research, development, or adoption of standards, specifications, or generic requirements by large carriers, other entities, or alliances. In addition, we seek comment on these specific issues: (1) the ability of the RHCs, Bellcore or other carriers to circumvent the requirements of 273(d)(4) by designating standards or generic requirements as, for example, "internal," "non industry-wide," "optional," company-specific "specifications," etc.; (2) the appropriate definition, and treatment, of such *de facto* standards or requirements that may not be adopted through the 273(d)(4) processes, including the relationship between these standards and the definition of "industry-wide" standards contained in 273(d)(8)(C); and (3) the adequacy of 273(d)(5) and our recently-adopted default dispute resolution processes[58] to address the anti-competitive harms that may result from the establishment of such standards or requirements. Furthermore, we seek comment on the appropriate treatment of standards developed or adopted by large entities or alliances (*e.g.*, individual RHCs, GTE, or alliances) (a) in the event the entity or alliance were to control at least 30% of the deployed access lines in the United States, as defined in 273(d)(8)(C); and (b) in the event that the entity or alliance were to control fewer than 30% of such lines.

40. Section 273(d)(4)(A) specifies procedures to be followed by any entity subject to Section 273(d)(4) in establishing and publishing any industry-wide standard, industry-wide generic requirement, or "substantial modification" thereto for telecommunications equipment or customer premises equipment. We seek comment on what should be deemed to constitute a "substantial modification." Specifically, we ask commenters to address whether the Commission should define "substantial modification" precisely or whether we should establish factors that should be considered in determining what constitutes a "substantial modification." With regard to factors to be considered, we request comment on what factors, such as impact on network reliability, performance, security, and interoperability, might be established to assess what constitutes a "substantial modification." Furthermore, we seek comment on the appropriate weight that should be given to each individual factor proposed.

41. Section 273(d)(4)(A) imposes five duties upon any entity, "that is not an accredited standards development organization" and that establishes an industry-wide standard or generic requirement. Section 273(d)(4)(A)(i) requires any such entity to "issue a public notice of its consideration of a proposed industry-wide standard or industry-wide generic requirement." The 1996 Act does not specify what constitutes adequate "public notice." We seek comment on the means of publication most likely to ensure broad knowledge of the impending activity.

42. We tentatively conclude that publications such as the Bellcore *Digest of Technical Information*[59] and publications on the World Wide Web similar to that of the ATM Forum would constitute adequate public notice because these forms of notice are available to the public at reasonable expense, provide a summary of the proposed work, provide contact information, and set tentative dates for when the requirement or specification will be available. We seek comment on this tentative conclusion and on any additional factors that should be considered in determining generally what should constitute adequate "public notice." We also seek comments listing other publications or means of providing "public notice" that would meet the public notice requirement. To the extent that public notice can be provided by placing material on World Wide Web sites, we seek comment on whether and how the public could reasonably be informed of the location of this information. We also seek comment on whether public notice could be provided by posting information through the Internet on relevant Usenet newsgroups, or on a new newsgroup established for this purpose. In addition, we seek comment as to whether public notice should be provided by electronic mail, either by sending information directly to interested parties or by posting information on relevant Internet "mailing lists." Finally, we seek comment on the role that the ATIS industry forums and TIA groups might play in ensuring interested parties have access to industry-wide generic requirement and standard development processes.

43. Section 273(d)(4)(A)(ii)–(v) states

[54] *Webster's II New Riverside University Dictionary*, Riverside Publishing Co., at 385 (1994).

[55] 47 U.S.C. § 273(d)(4)(A).

[56] 47 U.S.C. § 273(d)(4)(B).

[57] 47 U.S.C. § 273(d)(4)(C)–(D).

[58] *Implementation of Section 273(d)(5) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996—Dispute Resolution Regarding Equipment Standards*, Report and Order, 11 FCC Rcd 12955 (1996), 61 FR 24897, May 17, 1996.

[59] The annual subscription fee is $110. Bellcore, *Digest of Technical Information*, Jan. 1996. We are concerned that fees for "publications" that satisfy this "public notice" requirement remain inexpensive.

"(ii) Such entity shall issue a public invitation to interested parties to fund and participate in such efforts on a reasonable and nondiscriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party;

(iii) Such entity shall publish a text for comment by such parties as have agreed to participate in the process pursuant to clause (ii), provide such parties a full opportunity to submit comments, and respond to comments from such parties;

(iv) Such entity shall publish a final text of the industry-wide standard or industry-wide generic requirement, including the comments in their entirety, of any funding party which requests to have its comments so published; and

(v) Such entity shall attempt, prior to publishing a text for comment, to agree with the funding parties as a group on a mutually satisfactory dispute resolution process which such parties shall utilize as their sole recourse in the event of a dispute on technical issues as to which there is disagreement between any funding party and the entity conducting such activities, except that if no dispute resolution process is agreed to by all parties, a funding party may utilize the dispute resolution procedures established pursuant to paragraph (5) of this subsection."

We have recently limited the definition of a "funding party" in the context of Section 273(d)(5)'s dispute resolution processes to include only parties that "provide actual funding to support the standards-setting process," specifically excluding parties that merely post a "performance bond" or provide "in-kind" support.[60] We tentatively conclude that this definition should apply in the context of Section 273(d)(4)(A) as well, and that the remainder of the requirements imposed by Section 273(d)(4)(A) (ii)–(v) are self-explanatory. We request comment on these tentative conclusions.

44. Section 273(d)(4)(B) sets forth procedures that an entity must follow when it "engages in product certification for telecommunications equipment or customer premises equipment manufactured by unaffiliated entities." Such activity must be performed pursuant to "published" and "auditable" criteria, and must use "available industry-accepted testing methods and standards." We tentatively construe the phrase "auditable criteria" to mean criteria that, when applied in a certification process, are sufficiently precise that a neutral third party would be able to replicate each certification and determine whether each certification had, or had not, been performed in an unbiased manner. We request comment on the validity of this construction, and also request comment as to whether the "Generally Accepted Auditing Standards" that have been propounded by the American Institute of Certified Public Accountants are adequate for this purpose.[61] We seek comment on what should constitute publication and how we should determine if the criteria used to perform the product certification are auditable. In addition, we seek comment as to how the term "industry accepted testing methods" should be defined; whether such testing methods currently exist and, if so, what they are; and what constitutes "industry accepted." We also request comment as to how we should determine whether a testing method is "industry accepted." More narrowly, in this context, we seek comment on whether the term "industry" includes all telecommunications service providers, or those providers and all manufacturers, or subsets of these or additional categories. We request that commenters address whether any particular types of entities specifically should be included in, or excluded from, the term "industry?"

45. Section 273(d)(4)(C) prohibits any entity that is not an accredited standards development organization and that establishes industry-wide standards from undertaking "any actions to monopolize or attempt to monopolize the market for such services." We seek comment on how best to implement this provision.

46. Section 273(d)(4)(D) states that any entity that is not an accredited standard development organization shall not "preferentially treat its own telecommunications equipment or customer premises equipment or that of its affiliate, over that of any other entity in establishing and publishing industry-wide standards or industry-wide generic requirements for, and in certification of telecommunications equipment and customer premises equipment." We seek comment on how best to implement this provision. We suggest that parties interested in commenting on these issues propose rules that they believe would most efficiently, and effectively, enforce these provisions of the 1996 Act. For example, one form of "preferential treatment" we can identify at this time would be preferential licensing of proprietary technology. We seek comment as to whether the Commission should require, as do the International Organization for Standardization ("ISO") and the American National Standard Institute ("ANSI"), that participants agree to license proprietary technology on "reasonable" terms before that technology is incorporated into an official standard. We request that commenters advocating such Commission action define terms that should be considered "reasonable," and that commenters opposing such Commission action discuss other possible approaches to this potential problem. In addition, we seek comment on whether we should use existing ANSI, ISO, or other rule structures as a model for developing Commission rules in this area, including specific comment on the features of existing rule structures that work well, and potential gaps that should be addressed.

47. Section 273(d)(5) requires that the Commission prescribe a dispute resolution process to be used if all parties cannot agree on a dispute resolution process when establishing and publishing any industry-wide standard or generic requirement. Because this Commission has already issued a Report and Order addressing Section 273(d)(5), that section will not be addressed further here.[62]

48. *Section 273(d)(6): Sunset.* Section 273(d)(6) defines the circumstances under which the Commission must lift the manufacturing safeguards of Section 273(d)(3) and the procedural safeguards of Section 273(d)(4), providing that:

> The requirements of paragraphs (3) and (4) shall terminate for the particular relevant activity when the Commission determines that there are alternative sources of the industry-wide standards, industry-wide generic requirements or product certification for a particular class of telecommunications equipment or [CPE] available in the United States. Alternative sources shall be deemed to exist when such sources provide commercially viable alternatives that are providing services to customers. The Commission shall act on any application for such a determination within 90 days after receipt of such application, and shall receive public comment on such application.[63]

We seek to identify those factors that the Commission should use in making the determination required by Section 273(d)(6). We tentatively conclude that factors that should be addressed include the number of entities developing standards, developing generic requirements or conducting certification work; the ability of these entities to

[60] *Implementation of Section 273(d)(5) of the Communications Act of 1934 as amended by Telecommunications Act of 1996—Dispute Resolution Regarding Equipment Standards*, Report and Order, 11 FCC Rcd at 12969.

[61] *See e.g.*, AICPA Codification of Statements on Auditing Standards, AU 320.32, 320.36, 320.37 (1996).

[62] *See Implementation of Section 273(d)(5) of the Communications Act of 1934 as amended by Telecommunications Act of 1996—Dispute Resolution Regarding Equipment Standards*, Report and Order, 11 FCC Rcd 12955.

[63] 47 U.S.C. § 273(d)(6).

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compete with each other; and the length of time during which those entities have been conducting the relevant activity. We also seek comment as to what factual record the Commission should compile in making the determination required by Section 273(d)(6), including specific procurement documents or other information the Commission should require applicants to submit under this section. We ask that commenters addressing this issue provide specific comments on appropriate ways in which the Commission can balance its need to develop an adequate factual record on such applications against its statutory obligation to act within 90 days.

49. In addition, we seek comment on how we should define two phrases within Section 273(d)(6). The first, "class of telecommunications equipment or CPE," was examined in our earlier discussion of Section 273(d)(3). We request comment as to whether that analysis should apply to this phrase as used in Section 273(d)(6) and whether other considerations inherent in the implementation of Section 273(d)(6) should require a different interpretation or rule. The second phrase we seek to define is "commercially viable alternatives that are providing services to customers." The term "alternatives" in this phrase suggests that the number of entities conducting a relevant activity is a factor we should consider, and that a minimum of two entities must be conducting a relevant activity. We seek comment as to whether the existence of two entities conducting a relevant activity is both a necessary and sufficient condition for termination of the Section 273(d) (3) and (4) safeguards. In addition, it appears that, to assess the viability of entities, it is necessary to determine if the alternative entities are competitive and to examine the duration of their existences. We believe that such as analysis is necessary to ensure that we keep in place the manufacturing safeguards set by statute until they are no longer necessary. Finally, we seek comment on the relationship among (1) the phrase "commercially viable alternatives that are providing services to customers;" (2) the phrase "alternative sources of industry-wide standards, industry-wide generic requirements, or product certification;" and (3) the definition of the term "industry-wide" contained in Section 273(d)(8)(C).

50. While we do not want to lift statutory safeguards prematurely, we also would seek to eliminate them as promptly as possible once they are not needed. With this in mind, we tentatively conclude that the regulations developed to implement Section 273(d) (3) and (4) should not apply to certification pursuant to Part 15 (Radio Frequency Devices) or registration pursuant to Part 68 (Connection of Terminal Equipment to the Telephone Network) of the Commission's rules.[64] We seek comment on this tentative conclusion.

51. Section 273(d)(7) states that in administering Section 273(d), the Commission "shall have the same remedial authority as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act." Finally, Section 273(d)(8) defines several terms used in Section 273(d). We tentatively conclude that the language of these paragraphs requires no further clarification at this time. We seek comment on this tentative conclusion.

52. Section 273(E): BOC Equipment Procurement and Sales. Section 273(e) governs BOC practices in procuring and selling telecommunications equipment. With the exception of Section 273(e)(4), the provisions of Section 273(e) apply on their face to all BOCs. Section 273(e), however, is contained within a statute that otherwise addresses BOC obligations in the manufacturing context. We seek comment therefore, on whether the requirements of Section 273(e) applies to all BOCs or only to BOCs that are authorized to manufacture under Section 273(a).

53. To prevent Bell Operating Companies from favoring entities with whom they have a telecommunications equipment manufacturing relationship, Section 273(e)(1) requires that "[i]n the procurement or awarding of supply contracts for telecommunications equipment, a Bell operating company, or any entity acting on its behalf, for the duration of the requirement for a separate subsidiary including manufacturing under this Act—(A) shall consider such equipment, produced or supplied by unrelated persons; and (B) may not discriminate in favor of equipment produced or supplied by an affiliate or related person."

54. The Act provides no definition of the word "consider." As a consequence, we first look to the ordinary meaning of that word. "Consider" means to "think about seriously" or "bear in mind."[65] This definition suggests that Section 273(e)(1)(A) would be satisfied if a BOC merely opened its procurement and sales processes to entities other than itself or its affiliate(s). We request comment as to (1) whether this definition of "consider" is sufficient, or whether some other definition would be more consistent with the intent of Congress; and (2) any specific actions that a BOC must take in fulfilling this statutory obligation.

55. In contrast, Section 273(e)(1)(B) unequivocally prohibits BOCs from discriminating in favor of equipment produced or supplied by an affiliate or related person. Accordingly, the language of Section 273(e)(1)(B) seems to make it clear that the procurement decision may not rest solely on the BOC's relationship with the supplying entity and that, in addition to opening its procurement and sales processes, a BOC may need to take affirmative steps to ensure that it does not favor proposals from "affiliates or related persons" for reasons other than merit. Section 272(a)(2)(A) requires a BOC to engage in manufacturing only through a separate affiliate and Section 272(c)(1) provides that the BOC "may not discriminate between that . . . affiliate and any other entity in the provision or procurement of goods, services, facilities and information, or in the establishment of standards." With respect to this Section 272(c)(1) prohibition, we tentatively concluded that, "at minimum, that BOCs must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, facilities and information to and from these other entities under the same terms, conditions, and rates."[66] We seek comment on: (1) whether the word "discriminate" has any different import in the context of Section 273(e)(1)(B) than it does in Section 272(c)(1); (2) what specific actions or types of actions by or on behalf of a BOC would be considered discriminatory in this context; and (3) what affirmative steps, if any, a BOC would need to take to ensure that it does not discriminate, in violation of Section 273(e)(1)(B).

56. While the prohibition contained in Section 272(c)(1) applies to affiliates, the prohibition contained in Section 273(e)(1)(B) applies to "affiliates and related persons." This use of the term "related persons" suggests that the discrimination prohibition in Section 273(e)(1)(B) may apply to a larger class of entities than that contained in

[64] 47 CFR Parts 15 and 68.

[65] *Webster's II New Riverside University Dictionary*, Riverside Publishing Co., at 301 (1994).

[66] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96–149, Notice of Proposed Rulemaking, FCC 96–308, ¶ 73 (released July 18, 1996).

Section 272(c)(1) and corresponds with the use in Section 273(e)(1)(A) of the term "unrelated persons." We seek comment on the meaning of the terms "unrelated persons" and "related persons." These terms suggest that the BOCs not be permitted to discriminate in favor of parties with whom they have some type of relationship.[67] We seek comment as to specific types of relationships that would make an entity a "related person" for purposes of Section 273(e). We note that Section 273(d)(8)(A) defines "affiliate" as having the same meaning as in Section 3 except that, for purposes of Section 273(d)(1)(B) an "aggregate voting interest in [Bellcore] of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated [BOC], shall constitute an affiliate relationship." In contrast, no such specificity is provided with regard to the meaning of "related person.' We request that commenters provide the language of any rules that they assert would be needed to ensure that a BOC does not discriminate in favor of either affiliates or related persons, in violation of Section 273(e)(1)(B).

57. Section 273(e)(2) requires that "[e]ach Bell operating company or any entity acting on its behalf shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors." We seek comment on the scope of, and request appropriate definitions for, each of the terms "equipment," "services," and "software." For example, we seek comment on: (1) whether the scope of the term "equipment," in this context, should be limited to telecommunications equipment and CPE; (2) what types of services the mandate of Section 273(e)(2) encompasses; and (3) whether the requirements of Section 273(e)(2) apply to the procurement of all software, only the software "essential to [the] design and development of" telecommunications equipment or CPE,[68] or some other subset. We tentatively conclude that the remainder of this provision is self-explanatory and that no further elaboration of this requirement is necessary in our rules. We seek comment on this tentative conclusion and request that parties that disagree with this tentative conclusion propose the language for rules to address their concerns.

58. We recognize that traditional, complaint-based enforcement techniques may be inadequate for the effective enforcement of Sections 273(e)(1) and 273(e)(2). Even when confronted with clear violations of the strictures of these sections, a manufacturer may be reluctant to complain publicly because, in doing so, it might risk alienating one or more customers that represent a significant source of potential future sales. Accordingly, we request comment, including the text of proposed rules, on whether we need to develop additional enforcement mechanisms, such as mandatory auditing or reporting requirements, for use in enforcing Sections 273(e)(1) and 273(e)(2).

59. Section 273(e)(3) provides that "[a] Bell operating company shall, to the extent consistent with the antitrust laws, engage in joint network planning and design with local exchange carriers operating in the same area of interest. No participant in such planning shall be allowed to delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment."[69] We seek comment on the extent to which current antitrust laws allow joint network planning and design and on appropriate definitions of the terms "area of interest" and "network planning and design." We also request comment on the need for, and the proposed text of, any rules that the Commission should adopt (1) to facilitate permissible, or bar impermissible, joint network planning and design; and (2) otherwise to ensure that the requirements of Section 273(e)(3) are achieved.

60. The Commission recently issued a *Notice of Proposed Rulemaking* in CC Docket No. 96–237 to implement Section 259, entitled "Infrastructure Sharing."[70] Section 259 requires incumbent LECs[71] to make certain "public switched network infrastructure, technology, information, and telecommunications facilities and functions" available to defined "qualifying carriers" in the service areas where such qualifying carriers have requested and obtained designation as an eligible carrier under Section 214(e).[72] Some potential definitions of a BOC's "area of interest," as that phrase is used in Section 273(e)(3), might subject a BOC and a Section 259-defined qualifying carrier to obligations under both Section 259 and Section 273(e)(3). We believe, however, that the obligations imposed by Section 273(e)(3) are separate from, and consistent with, those imposed by Section 259. Because Section 273(e)(3) requires joint network planning and design among BOCs and LECs operating in the same "area of interest," we believe that Section 273(e)(3) specifically contemplates joint network planning and design between a BOC and other LECs that may be the BOC's competitors, to the extent that such activities are consistent with the antitrust laws. In contrast, Section 259(b)(6) specifically provides that an incumbent LEC shall not be required to "engage in any [Section 259-derived] infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such [LEC's] telephone exchange area."[73] In other words, apparently unlike Section 273(e)(3), Section 259 appears to apply only in instances where the qualifying carrier does not seek to offer certain services within the incumbent LEC's exchange area.[74] Accordingly, we

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[67] *Webster's II New Riverside University Dictionary* at 992 (defining "related" as "connected" or "associated").

[68] *See United States* v. *Western Elec. Co.*, 675 F. Supp. at 667 n.54

[69] 47 U.S.C. § 273(e)(3).

[70] We will address issues relating to Section 259 in a separate proceeding. *See Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket No. 96–237, Notice of Proposed Rulemaking, FCC 96–456 (released Nov. 22, 1996), 61 FR 63774, December 2, 1996 ("*Infrastructure Sharing NPRM*"). Section 259(a) requires the Commission to prescribe implementing regulations within one year of the date of enactment of the 1996 Act, *i.e.*, by February 8, 1997.

[71] The term "incumbent LEC" is defined, for purposes of Section 259, in Section 251(h), which states:

(1) DEFINITION—For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) On the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B) (i) On such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or

(ii) Is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

47 U.S.C. § 251(h).

[72] 47 U.S.C. § 259. Section 259(d) defines a "qualifying carrier" as a telecommunications carrier that:

(1) Lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section; and

(2) Offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under Section 214(e).

47 U.S.C. § 259(d).

[73] 47 U.S.C. § 259(b)(6).

[74] *Infrastructure Sharing NPRM*, at ¶ 11.

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believe that the specific obligations imposed by Section 259 do not conflict with Section 273(e)(3)'s mandates. We seek comment on this interpretation, including comment on other possible implications for carriers that may be subject to obligations under both Section 259, as interpreted by the Commission in CC Docket No. 96–237, and Section 273(e)(3).

61. Section 256, entitled "Coordination for Interconnectivity," requires, *inter alia*, that the Commission establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications services for the effective and efficient interconnection of telecommunications networks used to provide telecommunications service.[75] We seek comment on the relationship between the BOCs' obligations under Section 273(e)(3) and the obligations Section 256(b)(1) imposes on all telecommunications carriers and other providers of telecommunications service. The newly revised charter for the Commission's Federal Advisory Committee, the Network Reliability and Interoperability Council ("NRIC"), asks the NRIC to provide recommendations on the implementation of Section 256, including specifically how the Commission can most efficiently conduct effective oversight of coordinated telecommunications network planning and design.[76] We seek comment on the relationship between the NRIC's responsibility under Section 256 and the BOCs' obligations under Section 273(e)(3).

62. Section 273(e)(4) states that "[n]either a Bell operating company engaged in manufacturing nor a manufacturing affiliate of such a company shall restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades." We tentatively conclude that this language is unambiguous and we seek comment on the validity of this conclusion. We also seek comment with respect to establishing criteria for determining when sales have been restricted. Commenters may address, for example, whether restriction should be measured by the volume of sales per unit of time, or by the type of equipment sold, or both, or by some other measure. We also request that commenters address: (1) Whether the Commission should require or perform periodic audits of BOC sales; (2) whether the Commission should collect information on procurement practices to enable us to detect anomalous behavior that might trigger an audit or investigation; and (3) whether the Commission should adopt other additional rules to implement this provision of the 1996 Act.

63. Section 273(e)(5) states that "[a] Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information." We tentatively conclude that this language is unambiguous and self-executing because it corresponds to the customary use of common legal instruments such as non-disclosure agreements and license agreements. We seek comment on this tentative conclusion.

64. Section 273(F): Administration and Enforcement Authority. Section 273(f) provides that for "the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act."[77] We tentatively conclude that the Commission has broad authority to regulate all matters contemplated by Section 273 under Sections 1,[78] 2(a),[79] 3,[80] and 4(i)[81] of the Communications Act and seek comment on this tentative conclusion.

65. Section 273 addresses standards development, joint network planning, research and development, and collaboration with respect to entities that are not common carriers. While Sections 206 to 209 of the Communications Act provide statutory mechanisms for addressing complaints regarding common carrier matters,[82] additional regulations may be needed to address violations of Section 273 by entities that are not common carriers. We seek comment on, and the proposed text of, any additional rules that may be necessary, or desirable, to enforce Section 273, in addition to those that presently exist to implement Sections 206 to 209, and 501 to 503 of the Communications Act, as amended.

66. Although Section 273(d)(5) requires the Commission to prescribe a default process for use in resolving standards-setting disputes,[83] it does not contain any specific directives to govern the resolution of complaints filed under other provisions of Section 273. Particularly with respect to Sections 273(d)(2) through 273(d)(4), however, we recognize that accurate, efficient, and rapid resolution of alleged violations of Section 273 will be essential to the proper operation of this statutory section. We may find it beneficial to both the Commission and industry to amend our rules in order to increase the speed and efficiency of our complaint resolution processes and to meet better the demands of this and other sections of the 1996 Act. We are addressing potential means of accomplishing this goal in a separate proceeding[84] and we encourage commenters in that proceeding to address specific enforcement concerns relating to section 273 in particular and other sections of the 1996 Act in general.

67. Section 273(G): Additional Rules and Regulations. Section 273(g) states that "[t]he Commission may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of [Section 273], and otherwise to prevent discrimination and cross-subsidization in a Bell operating company's dealings with its affiliate and with third parties."[85] We seek comment on what, if any, additional rules should be adopted under this provision "to prevent discrimination and cross-subsidization in a Bell operating company's dealings with its affiliate and with third parties," and we request that commenters proposing such rules do so in their initial comments, so that other parties may respond to the proposals during the reply comment period. We seek additional specific comment on whether the sale of Bellcore, as announced, creates a need for additional rules under this section.

68. Conclusion. Section 273 establishes the conditions under which

[75] 47 U.S.C. § 256(b)(1).

[76] FCC Amends Charter of Network Reliability and Interoperability Council, 61 FR 26516, May 28, 1996. We will place a copy of the text of the Network Reliability and Interoperability Council Charter in the docket file of this proceeding.

[77] 47 U.S.C. § 273(f) (emphasis added).

[78] 47 U.S.C. § 151.

[79] 47 U.S.C. § 152(a), which states that the Communications Act "applies to all interstate and foreign communications by wire or radio * * *."

[80] 47 U.S.C. §§ 153 (51) and (33), defines communications by wire and radio in a manner that incorporates all technologies and methods of operating.

[81] 47 U.S.C. § 154(i) permits the Commission to perform "any and all acts * * * which may be necessary in the execution of its functions."

[82] 47 U.S.C. §§ 206–209.

[83] 47 U.S.C. § 273(d)(5).

[84] *Implementation of the Telecommunications Act of 1996, Amendment of Rules to Be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 96–238, Notice of Proposed Rulemaking, FCC 96–460, (released November 27, 1996), 61 FR 67978, December 26, 1996.

[85] 47 U.S.C. § 273(g) (emphasis supplied).

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Bell Operating Companies may manufacture and provide telecommunications equipment, and manufacture customer premises equipment. It also sets forth safeguards against anticompetitive behavior in manufacturing markets by entities other than BOCs. With this NPRM, we seek to ensure that the safeguards that Congress enacted are effectively and efficiently administered. Our further objectives in this proceeding are to develop regulations that will foster technological innovation and competition in both the customer premises equipment and telecommunication equipment markets. We encourage commenters to propose innovative and administratively simple rules that will enable us to meet these objectives, and request that interested parties propose the text of any rules that they may deem appropriate to implement Section 273. We further request that, in general, those commenters proposing such rules do so in their initial comments so that other parties may reply to them in their reply comments.

Procedural Issues

A. Ex Parte Presentations

69. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

B. Regulatory Flexibility Act

70. We certify that the Regulatory Flexibility Act does apply to this rulemaking proceeding because there may be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[86] The Secretary shall send a copy of this Notice of Proposed Rulemaking including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.[87]

71. Pursuant to Section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the remainder of the NPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the NPRM, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

72. *Reason for Action:* The Commission, in compliance with Section 273 of the Communications Act of 1934 ("Communications Act"), as amended by the Telecommunications Act of 1996 ("1996 Act"), proposes rules and procedures intended to ensure the prompt adoption of regulations to administer and enforce Section 273 provisions with minimum regulatory and administrative burden on telecommunications carriers. The rules proposed in the NPRM are necessary to implement Section 273, in which Congress imposes requirements affecting Bell Operation Companies (BOCs), Bellcore, and entities that develop standards, develop generic requirements and conduct certification activity. This NPRM proposes rules and seeks comment to implement Section 273 in a manner that is consistent with Congress's intent.

73. *Objectives and Legal Basis for Proposed Rules:* The Commission's objective in issuing the NPRM is to propose and seek comment on rules enabling the Commission to administer and enforce Section 273 effectively and efficiently, and in a manner that is consistent with the intent of Congress. The proposed action is authorized under Sections 1, 3, 4, 7, 201–209, 218, 251, 273, and 403 of the Communications Act, as amended, 47 U.S.C. Sections 151, 153, 154, 157, 201–209, 218, 251, 273, and 403.

74. *Description and Estimated Number of Small Entities Affected:* Section 273 authorizes the Commission to impose standards on the BOCs, Bellcore, and entities that develop standards, develop generic requirements and conduct certification activity. Neither BOCs nor Bellcore qualify as small business entities; for they are dominant in their field of operation. See RFA, Section 601(3). Conversely, the size of the entities that develop standards, develop generic requirements, and conduct certification activity is unknown and may include small business entities. Accordingly, we certify that the Regulatory Flexibility Act of 1980, as amended, does not apply to this rulemaking proceeding insofar as it pertains to BOCs or Bellcore since our rules are not likely to have a significant economic impact on a substantial number of small entities, as defined by section 601(3) of the Regulatory Flexibility Act.

75. Our rules, however, may have a significant economic impact on a substantial number of small businesses insofar as they apply to entities that develop standards, develop generic requirements and conduct certification activity. We request comment on the number of possible small business entities that would fall under entities that develop standards, develop generic requirements, and conduct certification activity in addition to comment as to how to develop requirements that would effectively assist and not unduly burden qualifying small business entities.

76. *Reporting, Recordkeeping and Other Compliance Requirements:* The NPRM requests comment on reasonable reporting requirements for BOCs as to network planning, design, and interconnection arrangements. Similarly, this IRFA seeks comment on measures that could be taken by the Commission to limit any burdensome requirements upon small business entities. It seeks comment on reasonable notice requirements for BOCs as to communicating planned deployment of telecommunications equipment to their interconnecting carriers.

77. The Commission's action in this proceeding is in direct response to Congress's passage of the 1996, in particular Section 273. This NPRM only sets forth tentative conclusions as to Congress's intentions within Section 273. For an exhaustive recitation of the Commission's tentative conclusions, see the NPRM at paragraphs 8–11, 18, 20–21, 26, 29, 37–38, 40, 43, 48, 50, 52–55, 59–62, 68, 71, 73–75.

78. This NPRM also seeks comment on rules proposed to administer end enforce manufacturing safeguards potentially impacting entities that develop standards, develop generic requirements and conduct certification activities. Rules adopted in this proceeding may require reporting, recordkeeping, and may impose other procedural requirements. There are no other reporting requirements contemplated by the NPRM.

79. *Federal Rules which Overlap, Duplicate or Conflict with these Rules:* The Commission seeks comment as to what overlap, if any, exists or may exist among the requirements that this Commission may adopt to implement Section 273 and the Commission's existing rules. For example, the Commission has identified two sources

[86] 5 U.S.C. § 601(3).

[87] 5 U.S.C. § 603(a) (as amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847, 866 (1996)).

of potential overlap in 47 CFR § 64.702 and 47 CFR § 68.110, and seeks comment as to how the procedures required in these existing rules may be adapted to minimize additional regulatory burdens.

80. With respect to rules that may potentially affect BOCs, Bellcore, and entities that develop standards, develop generic requirements, or conduct certification activities, the Commission tentatively concludes that no overlap, duplication, or conflict with existing rules exists. The Commission seeks comment on this conclusion.

81. *Significant Alternatives to the Proposed Rules which Accomplish the Stated Objectives of Applicable Statutes and which Minimize any Significant Economic Impact of the Proposed Rules on Small Entities:* As mentioned in paragraphs four and five of this IRFA, the Commission believes that our rules may have a significant economic impact on a substantial number of small businesses insofar as they apply to entities that develop standards, develop generic requirements and conduct certification activity. We request comment from the industry in regards to significant alternatives to the proposed rules which accomplish the stated objective of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities.

82. We advance that our tentative conclusions were reached with the interests and concerns of small businesses in mind. Although tentatively there will be no differing compliance or reporting requirements or timetables that take into account the resources available to small entities, the Commission finds this to be unnecessary. The Commission seeks comment on this tentative conclusion.

83. Additionally, the Commission tentatively concludes that the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities will not be necessary. The Commission seeks comment on this tentative conclusion. Lastly, neither the use of performance rather than design standards by the Commission nor an exemption from coverage of the rule, or any part thereof, for such small entities is believed to be required as a result of actions taken by the Commission in the impending Report and Order. The Commission seeks comment on this finding.

C. Initial Paperwork Reduction Act of 1995 Analysis

84. This NPRM contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections identified in this NPRM, as required by the Paperwork Reduction Act of 1995.[88] Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Notice and Comment Provision

85. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before February 24, 1997, and reply comments on or before March 26, 1997. To file formally in this proceeding, interested parties must file an original and six copies of all comments, reply comments, and supporting comments, with the reference number "CC Docket 96–254" on each document. Those parties wishing each Commissioner to receive a personal copy of their comments must file an original plus eleven copies. Parties must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Parties must also provide four copies to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Parties must also provide one copy of any documents filed in this docket to the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

86. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of comments and reply comments will also be available through the Commission's copy contractor: International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202–857–3800).

87. In order to facilitate review of comments and reply comments, both by parties and Commission staff, we require that comments not exceed sixty (60) pages, including all appendices and attachments (except the text of proposed rules), and that reply comments not exceed thirty (30) pages. We can foresee no circumstances in which these page limits would be waived. Comments and reply comments must also include a short, concise summary of each substantive argument raised in the pleading, regardless of length. The summary may be paginated separately from the rest of the pleading and will not count toward the page limitations established above.[89]

88. Written comments by the public on the proposed and/or modified information collections are due thirty days after publication of this Notice in the **Federal Register** and must have a separate and distinct heading designating the comments as responses to the regulatory flexibility analysis. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

E. Ordering Clauses

89. Accordingly, *it is ordered* that pursuant to Sections 1, 3, 4, 7, 201–209, 218, 251, 273 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 157, 201–209, 218, 251, 273, and 403 that this *notice of proposed rulemaking* is hereby *adopted*.

90. *It is further ordered* that the Secretary *shall send* a copy of this *notice of proposed rulemaking*, including the regulatory flexibility certification to the Chief Counsel for

[88] Public Law No. 104–13, *codified at* 44 U.S.C. §§ 3501–3520.

[89] *See* 47 CFR § 1.49.

Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–1676 Filed 1–23–97; 8:45 am]

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47 CFR Part 73

[MM Docket No. 97–2; RM–8955]

Radio Broadcasting Services; Naches, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sela Valley Broadcasting proposing the allotment of Channel 257A at Naches, Washington, as the community's second local FM transmission service. Channel 257A can be allotted to Naches in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) northwest to avoid short-spacings to the licensed sites of Station KAYO-FM, Channel 257C1, Aberdeen, Washington, and Station KHHK(FM), Channel 259C3, Yakima, Washington. The coordinates for Channel 257A at Naches are North Latitude 46–49–09 and West Longitude 120–47–55. Since Naches is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–2, adopted January 10, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1678 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 97–14, RM–8916]

Radio Broadcasting Services; Idaho Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of IF Broadcasting of Idaho requesting the allotment of Channel 296A to Idaho Falls, Idaho, as that community's fifth local FM service. Coordinates used for Channel 296A at Idaho Falls are 43–27–21 and 112–04–03.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–14, adopted January 10, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1696 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 97–7; RM–8947]

Radio Broadcasting Services; Chehalis, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by C.C. Broadcasting Company proposing the allotment of Channel 282A at Chehalis, Washington, as the community's first local commercial FM transmission service. Channel 282A can be allotted to Chehalis in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) south to avoid a short-spacing to the

licensed site of Station KAFE(FM), Channel 282C, Bellingham,Washington. The coordinates for Channel 282A at Chehalis are North Latitude 46–38–57 and West Longitude 122–57–58. Since Chehalis is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before March 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–7, adopted January 10, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1697 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 97–10; RM–8984]

Radio Broadcasting Services; Mount Horeb, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by First Congregational Services proposing the allotment of Channel 294A to Mount Horeb, Wisconsin, as that community's first local broadcast service. There is a site restriction 9.6 kilometers (6 miles) west of the community. The coordinates for Channel 294A are 42–59–22 and 89–51–12.

DATES: Comments must be filed on or before Mach 10, 1997, and reply comments on or before March 25, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–10, adopted January 10, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1698 Filed 1–23–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC 50

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Santa Cruz Rain Beetle (Pleocoma conjungens conjungens) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal list the Santa Cruz rain beetle (*Pleocoma conjungens conjungens*) as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). Additional information provided to the Service since the publication of the proposed rule indicates the Santa Cruz rain beetle is more widespread than previously known, and the species' range may extend beyond the Zayante sand hills ecosystem into surrounding coast redwood forests. The Service has considered the additional information and determined that listing of the Santa Cruz rain beetle is not warranted at this time. However, continued urban development and sand mining throughout significant portions of the species' range, if not accompanied by appropriate conservation measures, may necessitate its listing in the foreseeable future.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Ventura Field Office, (see **ADDRESSES** section, telephone 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1994, the Service published a proposal to list three species of insects from the Santa Cruz Mountains in California as endangered

species (59 FR 24112). The Santa Cruz rain beetle was included in this proposal. During the comment period on the proposal, additional information was received regarding the Santa Cruz rain beetle indicating the populations were more widespread throughout the Zayante sand hills ecosystem than previously known, and that specimens also were collected in adjacent coast redwood forest (Hazeltine 1993; J. Hoekstra, U.S. Fish and Wildlife Service, pers. obs. 1994). Furthermore, the Service learned of currently undescribed specimens collected from both north and south of the Zayante sand hills region that may be *Pleocoma conjungens conjungens* or, at least, closely related subspecies (F. Hovore, pers. comm. 1994). This new information and evidence from a historic specimen collected in an area dominated by coastal redwood forest, known as Waddell Creek, suggest that the range of the beetle may extend beyond the Zayante sand hills ecosystem.

The Service has considered the new information and determined listing the Santa Cruz rain beetle is not warranted at this time. Information now in the possession of the Service indicates the species is more abundant or widespread than previously believed. The Service removes this species from candidate status. If further research establishes the full extent of the beetle's range and assesses its status therein; and if urban development, sand mining, and other activities continue to alter its habitat throughout all or significant portion of its range; or if other factors threaten the continued existence of this species, the Santa Cruz rain beetle may be reevaluated for possible inclusion as a candidate species. A final rule listing the other two insect species included in the proposal, the Mount Hermon June beetle (*Polyphylla barbata*) and the Zayante band-winged grasshopper (*Trimerotropis infantilis*), is published in the **Federal Register** concurrently with this notice of withdrawal of the Santa Cruz rain beetle.

References Cited

Hazeltine, W. 1993. Report on the flights and distribution of the scarab beetle *Pleocoma conjungens* in the Santa Cruz County California area during 1993. Unpublished report, Oroville, California.

Author

The primary authors of this notice are Carl Benz and Jonathan Hoekstra, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 6, 1997.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 97–1675 Filed 1–23–97; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 62, No. 16
Friday, January 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver Creek Ecosystem Management Project; Kootenai National Forest, Sanders County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Beaver Creek Ecosystem Management Project to disclose the effects of timber harvest, prescribed fire, road management and construction, noxious weed control, trailhead restoration, and lookout facility renovation in the Big Beaver and Little Beaver Creek drainages located approximately 8 air miles from Trout Creek, Montana. The purpose and need for this project was documented in the Beaver Creek Physiographic Area Landscape Assessment. The purposes are to provide for long-term sustainability of forest resources (i.e. vegetation resource, protection and enhancement of habitat for wildlife and fish species, recreation resources etc.), while contributing to natural recovery processes (which reduce impacts to resources) and enhancing recreational facilities for public use. The DEIS is expected to be filed with the EPA and available for public review by March 31, 1997.

DATES: Written comments and suggestions should be received on or before March 25, 1997.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to James I. Mershon, District Ranger, Cabinet Ranger District, 2693 Hwy 200, Trout Creek, Montana, 59874.

FOR FURTHER INFORMATION CONTACT: John Head, Interdisciplinary Team Leader, Cabinet Ranger District. Phone: (406) 882–4451.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 55,000 acres within the Kootenai National Forest in Sanders County, Montana. All of the proposed projects are located in the Big Beaver and Little Beaver Creek drainages,which are tributary to the Clark Fork River, near Trout Creek, Montana. The legal location of the decision area is as follows: Sections 6–7, 17–19, and N ½ Section 20, T22N,R30W; Sections 1–30 T22N,R31W; Sections 1–5, 8–12, 13–17, 20–24, 25–29, 34–35, T22N, R32W;; Section 31, T23N,R30W; Sections 25–30, 31–36, T23N, R31W; Sections 25–26, 32–36, T23N,R31W, Principal Montana Meridian.

The Forest Service proposes to harvest approximately 19 million board feet of timber through application of a variety of harvest methods on approximately 5400 acres of forest land. An estimated 12 miles of temporary road and 120 miles of road reconstruction would be needed to access timber harvest areas. All temporary roads would be obliterated following completion of sale activities. The proposal also includes prescribed burning on approximately 3000 acres to enhance wildlife habitat. An estimated 38 miles of road would be treated by rehabilitation of stream crossings, recontouring, ripping and seeding etc. The type of treatment would be based on site specific conditions. To help provide habitat and food for wildlife associated with the alpine and subalpine ecosystem, white bark pine seedlings would be planted in high elevation communities on approximately 20 acres. The Forest Service also proposes to conduct channel rehabilitation on approximately one mile of stream. The methods used to restore the channel sections would include placement of channel stabilizing structures such as revetments, rock weirs, and sediment traps as needed. In addition, to help improve fish habitat large woody debris will be recruited on approximately 5 miles of stream. Some of the recruitment may include limited timber felling within the riparian areas. A lookout structure that is rented out to the public on a nightly basis is scheduled for renovation. Renovations may include painting, structural support and reroofing. Three trailheads, and numerous dispersed camping sites are propose for rehabilitation. This rehabilitation would be based on site specific conditions and include such things as creating barriers (eg rock) for vehicle restriction where necessary. Trailhead work would include providing suitable parking and signing In addition, the proposed action includes a noxious weed control program designed to slow the spread of knapweed (*Centauria maculosa*) and stop any new infestations of other noxious plant species.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The proposed projects encompass several management areas (MAs): 2,5,10,11,12,13,15,16,18 and 19. This proposal includes openings greater than 40 acres, to emulate historic disturbance patterns, and project specific Forest Plan amendments for: (1) Open road density in MA 12 (big game summer range); (2) removal of snag habitat in MA 10 (big game winter range); and (3) timber harvest in MA 13 (old growth). Project specific amendments are allowed when it is determined during project design that the best way to meet the goals of the Forest Plan conflicts with a Forest plan standard (Forest Plan Volume (II-20).

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Preliminary Issues

Tentatively, several preliminary issues of concern have been identified. There issues are briefly described below:

• Water and Fisheries Resources—Rivers and streams are complex and dynamic natural systems. The physical, chemical and biological conditions in

them are a result of all the natural and human-caused events within the watershed. There are three main concerns related to the water and fisheries resources and the effects of the proposed action. (1) Amount of large woody debris; (2) streamflow regime; and (3) sediment sources.

• Big Game wildlife—open road densities are currently over the recommended amount for big game habitat effectiveness and security. There is concern regarding the effect of the proposed action on big game security and habitat.

Other issues commonly associated with such activities include: effects on soils, air quality, sensitive plants, and old growth. This list may be verified, expanded, or modified based on public scoping for this proposal.

Decisions To Be Made

The Kootenai Forest Supervisor will decide the following:

• Whether or not to harvest timber and, if so, identify the selection of, and site-specific location of, appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, riparian habitat conservation areas and reforestation), road construction/reconstruction necessary to provide access and to achieve other resource objectives, and appropriate mitigation measures.

• Whether water and fish rehabilitation projects (including road obliteration) and other project area improvements (including work on trailheads, dispersed campsites, noxious weeds etc) should be implemented and, if so, to what extent.

• Whether or not wildlife enhancement projects (including white bark pine planting and prescribed burning) should be implemented and, if so, to what extent.

• Whether road access restrictions or other actions are necessary to meet big game wildlife needs.

• Whether project specific Forest Plan amendments are necessary to meet goals and objectives of the Forest Plan.

• What, if any, specific project monitoring requirements would be needed to assure mitigation measures are implemented and effective.

Public Involvement and Scoping

Public participation is an important part of the analysis process, commencing with the initial scoping process (40 CFR 1501.7) which will begin with the publication of this notice. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

• Identifying potential issues.

• Identifying major issues to be analyzed in depth.

• Identify alternatives to the proposed action.

• Explore additional alternatives which will be derived from issues recognized during scoping activities.

• Identify potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

While public participation in this analysis is welcome at any time, comments received within 60 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 31, 1997. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by June 15, 1997. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 US Highway 2 West, Libby, MT 59923 is the Responsible Official. As the Responsible Official I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility to prepare the EIS to James I. Mershon, District Ranger, Cabinet Ranger District.

Dated: January 16, 1977.

Lawrence R. Cron,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 97–1728 Filed 1–23–97; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on February 6, 1997, at the Red Lion Hotel, Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon 97217. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be discussed include, but are not limited to: future IAC meeting topics and locations; relationship with Provincial Advisory Committees; review of Adaptive Management Area plans; FY 1996 implementation monitoring results; and the status of the Riparian reserve module.

The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are

available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: January 16, 1997.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 97–1724 Filed 1–23–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 24, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.
3. The action will result in authorizing small entities to furnish the commodities and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Fort Stewart, Georgia)
NPA: Lions Club Industries, Inc.,
Durham, North Carolina

Service

Janitorial/Custodial
Basewide
Keesler Air Force Base, Mississippi
NPA: Goodwill Industries of South Mississippi, Inc., Gulfport, Mississippi

Deletions

I Certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities and service.
3. The action will result in authorizing small entities to furnish the commodities and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Harness, Carrying

1660–00–571–2239

Bag, Soiled Clothes

8465–00–122–0362
8465–00–122–0363
8465–00–122–0364

Service

Janitorial/Custodial
Federal Center
Moses Lake, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–1793 Filed 1–23–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 24, 1997.

ADDRESSES Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 30, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 45935) of proposed additions to the Procurement List. Comments were received from the current contractor for the coat. The contractor noted that its Government sales of the coat had been reduced by the entry of Federal Prison Industries (FPI) into the market, which caused layoffs and lower levels of plant operation. The contractor indicated that its sales of the coat make up over half its sales, and claimed that any further reduction in Government orders will cause a plant closure and jeopardize the company's ability to meet future Government surge requirements.

The Committee is only proposing to add a limited portion of the

Government's requirements for the coat to the Procurement List. This portion is less than a tenth of the value of the contractor's estimate of its sales of this coat, and an even smaller percentage of the contractor's total sales. Consequently, the Committee does not believe that this addition to the Procurement List will have a severe adverse impact on the contractor. With respect to FPI's re-entry into the market, the Committee noted that the layoffs and lower levels of plant operation cited by the current contractor appeared to have occurred prior to FPI's involvement. At most, FPI's participation will prevent the current contractor from regaining some of the coat sales it had prior to the advent of reduced requirements several years ago. The Committee also noted that, within the past year, the current contractor has taken steps to diversify its product line, which enhances its long-term economic prospects.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Coat, Combat, Woodland Camouflage

8415–01–390–8537
8415–01–390–8538
8415–01–390–8539
8415–01–390–8540
8415–01–390–8541
8415–01–390–8542
8415–01–390–8543
8415–01–390–8544
8415–01–390–8545
8415–01–390–8546
8415–01–390–8547
8415–01–390–8548
8415–01–390–8549
8415–01–390–8551
8415–01–390–8552
8415–01–390–8553
8415–01–390–8555
8415–01–390–8557
8415–01–390–9641
8415–01–390–9646
8415–01–390–9648
8415–01–390–8550
(100,000 units annually)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman
Executive Director

[FR Doc. 97–1794 Filed 1–23–97; 8:45 am]
BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 24, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 11, November 22 and December 2, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 53349, 59401 and 63820) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies
(Requirements for Davis-Monthan Air Force Base, Arizona)
Office and Miscellaneous Supplies
(Requirements for Shaw Air Force Base, South Carolina)

Services

Grounds Maintenance
U.S. Army Reserve Center
Greenwood, South Carolina
Storage and Distribution of Uniform Accessories
(Vendor Park Accessories)
Defense Personnel Support Center
Philadelphia, Pennsylvania

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–1795 Filed 1–23–97; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–97]

Foreign-Trade Zone 100; Dayton, Ohio; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Dayton Foreign Trade Zone, Inc., grantee of FTZ 100, requesting authority to expand its

zone in the Dayton, Ohio area, within the Dayton Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 3, 1997.

FTZ 100 was approved on May 1, 1984 (Board Order 249, 49 FR 19688, 5/9/84) and expanded on July 7, 1988 (Board Order 388, 53 FR 27184, 7/19/88). The zone project currently consists of the following sites: *Site 1* (3 parcels, 453 acres)—within the Dayton International Airport complex (5,000 acres); *Site 2* (39 acres)—warehouse facility, 2300 block of McCall Avenue, Dayton; and a temporary site (expires 12/31/98, 3 acres)—108 McDonough Street, Dayton.

This application is requesting authority to expand Site 1 and to add four new sites to the zone project (proposed Sites 3 through 6) in the Dayton area: proposed *Site 1* expansion—(775 acres) within the Dayton International Airport complex (expanding Site 1 to 1,228 acres, on 4 parcels); proposed *Site 3* (6 acres)—Lewis and Michael Woodman warehouse facility, 1827 Woodman Drive, Dayton; proposed *Site 4* (5 acres)—Shoup Mill Farms industrial park, 4966 Riverton Drive, Dayton; proposed *Site 5* (117 acres)—South Tech Business Park, Interstate 75 and Miamisburg-Springboro Road, Montgomery County, south of Dayton; and proposed *Site 6* (3 acres)—Gosiger warehouse facility, 108 McDonough Street, Dayton. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 25, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 9, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 3575 Concord Drive, Vandalia, Ohio 45377

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 15, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–1759 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–802]

3.5" Microdisks and Coated Media Thereof From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On May 24, 1996 (61 FR 26158), in response to a request from Fuji Photo Film Co., Ltd., Tokyo, Japan, and Fuji Photo Film U.S.A., Inc., collectively referred to as Fuji, and the respondents in the above-mentioned case, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on 3.5" microdisks and coated media thereof from Japan. In accordance with 19 CFR 353.22(a)(5) of our regulations, the Department is now terminating this review because Fuji has withdrawn its request for review.

EFFECTIVE DATE: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1996, the Department received a request for an administrative review of this antidumping duty order from Fuji for the period April 1, 1995, through March 31, 1996. No other interested party requested a review of the antidumping duty order. On May 24, 1996, the Department published in the **Federal Register** (61 FR 26158) a notice of "Initiation of Antidumping Duty Administrative Review" initiating the administrative review of Fuji for that period. On January 9, 1997, Fuji withdrew its request for review.

Section 353.22(a)(5) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90-days after the date of publication of notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so. Because no significant work has been completed on this review, the aforementioned request for withdrawal does not unduly burden the Department. Therefore, under the circumstances presented in this review, we are waiving the 90-day requirement in § 353.22(a)(5). Accordingly, we are terminating this review.

This notice is published in accordance with 19 CFR 353.22(a)(5).

Dated: January 17, 1997.

Jeffery P. Bialos,

Principal Deputy Assistant Secretary, for Import Administration.

[FR Doc. 97–1757 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–791–802]

Furfuryl Alcohol From the Republic of South Africa: Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa (RSA), covering the period December 16, 1994, through May 31, 1996, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A).

EFFECTIVE DATE: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Scott Oudkirk or William Crow, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2336 or 482–0116, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made

to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1996, the Department initiated an administrative review of the antidumping duty order on furfuryl alcohol from the RSA, covering the period December 16, 1994, through May 31, 1996 (61 FR 41374). In our notice of initiation, we stated that we intended to issue the final results of this review no later than June 30, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because there are complex legal and methodological issues to address, such as duty reimbursement and fictitious market allegations, in this first review of this antidumping duty order under the new law.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than June 30, 1997. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 1997.

Barbara R. Stafford,

Deputy Assistant Secretary, Import Administration

[FR Doc. 97–1761 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–802]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Gray Portland Cement From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary and final results of the administrative review for the antidumping order on Gray Portland Cement from Mexico, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

EFFECTIVE DATE: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kristen Smith, Kristen Stevens, Steven Presing, or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit.

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date *
Gray Portland Cement (A–201–802)	Mexico	08/1/95–07/31/96	9/17/96	8/11/97	12/09/97

*The Department shall issue the final determination 120 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

Dated: January 17, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary For Enforcement III.

[FR Doc. 97–1758 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–031]

Large Power Transformers From Italy; Final Results of Antidumping Finding Administrative Review and Revocation of Antidumping Finding in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping finding administrative review and revocation of antidumping finding in part.

SUMMARY: On August 6, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping finding on large power transformers (LPTs) from Italy (61 FR 40815). This review covers exports of subject merchandise by Tamini Costruzioni Elettromeccaniche S.r.l. (Tamini) to the United States during the period from June 1, 1994, through May 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments from interested parties. We have determined a weighted-average margin of zero percent for Tamini, which remains unchanged from the preliminary results. We have also determined that Tamini has met the requirements for revocation.

EFFECTIVE DATE: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On June 6, 1995, the Department published a notice of "Opportunity to Request Administrative Review" (60 FR 29821) of the antidumping finding on LPTs from Italy (37 FR 11772, June 14, 1972.) Petitioner, ABB Power T&D Co., Inc. (ABB), and Tamini both requested an administrative review on June 30, 1995. Tamini also requested, pursuant to 19 CFR 353.25(b), revocation of the order with respect to its sales of the subject merchandise and submitted the certification required by 19 CFR 353.25(b)(1). Tamini was not required to provide the certification required by 19 CFR 353.25(b)(2) (a statement in writing agreeing to its immediate reinstatement in the order if the Department concludes, subsequent to revocation, that the respondent sold merchandise at less than normal value) because the Department has not previously determined that Tamini sold subject merchandise in the United States at less than normal value. We published a notice of initiation of the review on August 16, 1995 (60 FR 42500), covering the period June 1, 1994 through May 31, 1995. Based on the preliminary results in this review and the two preceding reviews (*see Large Power Transformers from Italy; Final Results of Antidumping Duty Administrative Review*, 59 FR 48851 (September 23, 1994), and *Large Power Transformers from Italy; Final Results of Antidumping Duty Administrative Review*, 61 FR 37443 (July 18, 1996), we preliminarily determined that Tamini has demonstrated three consecutive years of sales at not less than normal value and, therefore, qualifies for revocation. We published, on August 6, 1996, the preliminary results of administrative review of the antidumping finding on LPTs from Italy and the intent to revoke the finding in part (61 FR 40815). The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of large power transformers (LPTs); that is, all types of transformers rated 10,000 kVA (Kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers shipments of transformers by Tamini during the period June 1, 1994, through May 31, 1995.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results and preliminary notice of intent to revoke the finding in part. We did not receive any comments from interested parties, and we did not make any adjustments to our calculations for these final results. Accordingly, the weighted-average margin for these final results remains zero percent.

Final Results of Review

We determine that, for the period June 1, 1994, through May 31, 1995, Tamini had a weighted-average antidumping duty margin of zero percent. We further determine that Tamini has demonstrated three consecutive review periods of sales at not less than normal value. Our record presents no evidence that Tamini has sold the subject merchandise at less than normal value in the past, and we received no comments from any interested parties contesting the revocation. On the basis of no sales at less than normal value for three consecutive years and the lack of any indication that such sales are likely in the future, we have concluded that it is not likely that Tamini will in the future sell the subject merchandise at less than normal value. Accordingly, we are revoking the order on large power transformers from Italy with respect to Tamini in accordance with section 751(d) of the Act and 19 CFR 353.25(a).

This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1995. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct Customs to refund with interest any cash deposits on post-June 1, 1994 entries.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review, revocation, and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5) and 353.25(a).

Dated: January 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1756 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–601]

Certain Stainless Steel Cooking Ware From the Republic of Korea: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order.

SUMMARY: On December 20, 1996, the Department published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke, in part, the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. We are now revoking this order in part, with regard to stainless steel camping cooking ware, as described in the *Scope of Review*, based on the fact that domestic parties have expressed no interest in the importation or sale of this stainless steel camping cooking ware imported from the Republic of Korea.

EFFECTIVE DATE: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of

AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 9, 1996, Peregrine Outfitters, Inc., (Peregrine) requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to imports of stainless steel camping cooking ware from the Republic of Korea. The order with regard to imports of other types of stainless steel cooking ware is not affected by this request. In addition, on December 9, 1996, Revere Ware Corp. (petitioner) informed the Department in writing that it did not object to the changed circumstances review and had no interest in the importation or sale of stainless steel camping cooking ware produced in the Republic of Korea, as described by Peregrine.

We preliminarily determined that petitioner's affirmative statement of no interest constituted changed circumstances sufficient to warrant a partial revocation of this order. Consequently, on December 20, 1996, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke this order in part (61 FR 67320). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The merchandise covered by this changed circumstances review is stainless steel camping cooking ware from the Republic of Korea. This changed circumstances administrative review covers all manufacturers/exporters of stainless steel cooking ware meeting the following specifications of stainless steel camping cooking ware: (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consists of 1.0, 1.5, and 2.0 quart saucepans without handles and 2.5, 4.0, and 5.0 quart saucepans with folding bail handles and with lids that also serve as fry pans. These camping cooking ware items can be nested inside each other in order to save space when packing for camping or backpacking. The order with regard to imports of other stainless steel cooking ware is not affected by this request.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners in stainless steel camping cooking ware from the Republic of Korea constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking the order on certain stainless steel cooking ware from the Republic of Korea with regard to cooking ware which meets the specifications of stainless steel camping cooking ware from the Republic of Korea, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 353.25(d)(1).

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of stainless steel camping cooking ware from the Republic of Korea that are not subject to final results of administrative review. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of stainless steel camping cooking ware from the Republic of Korea that are not subject to final results of administrative review.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and §§ 353.22(f) and 353.25(d) of the Department's regulations.

Dated: January 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1760 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 95–A0005."

The Connell Company ("TCC") original Certificate was issued on November 13, 1995 (60 FR 61682,

December 1, 1995). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Connell Company ("TCC"), 45 Cardinal Drive, Westfield, New Jersey 07090–1099.

Contact: Grover Connell, President.

Telephone: (908) 233–0700.

Application No.: 95–A0005.

Date Deemed Submitted: January 15, 1997.

Proposed Amendment: TCC seeks to amend its Certificate to expand the covered Products to include all "Japonica rice." The Product Category would be in its entirety "Japonica rice (including rough/paddy, brown, and milled Japonica rice)."

Dated: January 17, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–1672 Filed 1–23–97; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 97–C0004]

NuTone, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with NuTone, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 10, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 21, 1997.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between NuTone, Inc., a corporation (hereinafter, "NuTone"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The "Staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency of the United States Government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), as amended, 15 U.S.C. 2053.

3. Respondent NuTone is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located in Cincinnati, Ohio.

II. Jurisdiction

4. Between December 1989 and October 1993, NuTone manufactured and sold certain Model ST–1000, Stereo Cassette Players (hereinafter, "ST–1000" or the "Stereo(s)") to retail stores, electrical distributors, and home construction companies nationwide. The ST–1000 is a "consumer product", and NuTone is a "manufacturer" of a "consumer product" which is "distributed in commerce", as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

III. The Product

5. The ST–1000 is a wall mounted AM/FM stereo receiver and cassette tape player. It consists of a master unit and additional speakers which can be installed in various rooms of a house.

IV. Staff Allegations

6. The Stereo contains a defect which could create a substantial product hazard and creates an unreasonable risk of serious injury in that components in the unit's power supply board may overheat, thereby creating a potential fire hazard.

7. On or about March 23, 1993, NuTone first became aware of a report of a fire incident involving the Stereo.

8. Between March 23, 1993 and June 6, 1995, the date NuTone reported to the Commission, NuTone learned of approximately twelve fire or smoke damage incidents involving the ST–1000.

9. Although NuTone obtained sufficient information to reasonably support the conclusion that the Stereo, described in paragraph 5 above, contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). This failure to furnish information required by section 15(b) of the CPSA is a knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), and subjects NuTone to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

V. Response of NuTone

10. There have been no allegations or claims of injury associated with this product. NuTone denies that its ST–1000 contains a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), or creates an unreasonable risk of serious injury or death, and further denies an obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the Stereo.

VI. Agreement of the Parties

11. The Commission has jurisdiction in this matter for proposes of entry and enforcement of this Settlement Agreement and Order.

12. This Agreement is in settlement of the Staff's allegations and does not constitute an admission by NuTone or a determination by the Commission that the ST–1000 contains a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA or that NuTone violated the reporting provisions of section 15(b) of the CPSA.

13. NuTone knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a

civil penalty, and (5) to any claims under the Equal Access to Justice Act.

14. This Agreement becomes effective upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

16. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order.

17. The provisions of this Settlement Agreement and Order shall apply to NuTone and its successors and assigns.

18. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

19. NuTone agrees to inform the Commission if it learns of any additional reports of fire or smoke damage involving the ST–1000.

20. This Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations not contained in this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: January 17, 1997.

NuTone, Inc., a Corporation

Glen L. Bowler,

Treasurer, NuTone, Inc.

The Consumer Product Safety Commission

David Schmeltzer,

Associate Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: December 17, 1996.

Ronald G. Yelenik,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent NuTone, Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and NuTone, Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below, and it is

Further Ordered, that within ten days of the service of the Final Order upon Respondent, NuTone, Inc. shall pay to the order of the U.S. Treasury a civil penalty in the amount of one hundred and ten thousand dollars ($110,000).

Provisionally accepted and Provisional Order issued on the 21st day of January, 1997.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–1799 Filed 1–23–97; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DOD.

ACTION: Notice.

SUMMARY: In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 13, 1997.

ADDRESSES: Written comments and recommendations on the information collection should be sent to The Ohio State University, College of Nursing, Military Nursing Research Center, 1585 Neil Avenue, Columbus, OH 43210.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call Ranie Cropper, Graduate Research Associate, at (614) 688–3216.

SUPPLEMENTARY INFORMATION:

Title Associated Form, and OMB Number: Military Women's Survey.

Needs and Uses: This information collection requirement is used by The Ohio State University, College of Nursing, Military Nursing Research Center (MNRC) to determine the scope of the problem of gynecologic infections experienced by military women and to demonstrate the need for self-care alternatives to current health care resources for women in austere military environments such as field duty, deployment to a second or third world country, combat/combat support situations, or sea duty. There are no existing databases that can provide this type of information, but it is an extremely important issue for many military women. The beneficiaries of the results of this research study will be military women who serve in the active and reserve components of the armed forces.

Affected Public: Individuals and households.

Annual Burden Hours: 62.5.

Number of Respondents: Approximately 250.

Responses Per Respondent: 1

Average Burden Per Response: 15 minutes.

Frequency: Once.

Summary of Information Collection

This collection is for use by the research project directors and the primary investigators for this research study (at The Ohio State University, College of Nursing, MNRC) for the purposes of determining the scope of gynecological problems experienced by military women in austere environments and to guide the development of a self-care/diagnostic and management kit. The specific aims for this study are:

1. To describe the typical health care provider that is available to military women at their normal duty station and in austere environments.

2. To identify the barriers that military women perceive or have experienced in the diagnosis and treatment of gynecologic infections at their normal duty stations and in austere environments.

3. To describe the frequency with which military women experience risk factors for gynecological infections at their normal duty station and in austere environments.

4. To describe the frequency of symptoms of gynecologic infections

experienced by military women at their normal duty station and in austere environments.

5. To measure military women's level of interest in using a gynecologic infection self-diagnosis and management kit when in austere environments.

Dated: January 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–1537 Filed 1–23–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Notice of Availability for the Draft Baltimore Harbor and Anchorages, Maryland and Virginia Feasibility Study and Environmental Impact Statement (EIS)—Project Location is Baltimore City, Baltimore County, and Anne Arundel County, Maryland

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Baltimore District, has prepared a Draft Feasibility Study and Environmental Impact Statement for maritime improvements for Baltimore Harbor and Anchorages, Maryland and Virginia. In accordance with the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act, the District is conducting public coordination and distributing the documents for public review and comment.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed actions, Feasibility Study, and EIS can be addressed to Study Manager, Baltimore Harbor Anchorages and Channels, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PL-P, P.O. 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–6139. E-mail: daniel.m.bierly@ccmail.nab.usace.army.mil.

SUPPLEMENTARY INFORMATION: The Port of Baltimore is located on a 32 square mile area of the Patapsco River and its tributaries, approximately 12 miles northwest of the Chesapeake Bay. From its central location on the Chesapeake Bay nearly 150 miles inland from the Atlantic Ocean, Baltimore can easily provide service to America's Midwestern markets as well as other ports along the Atlantic coast. Since 1980, over one-half billion dollars have been spent on maritime improvements in the Port of Baltimore in efforts to meet the needs of the diverse commercial shipping market.

1. Continuing with the Port of Baltimore's commitment to ongoing maritime improvement this study recommends: widening the West Dundalk and Seagirt-Connecting Channels to 500 feet; widening the East Dundalk Channel to 400 feet; establishing a channel 36 feet deep and 400 feet wide in the area of the old Produce Wharf Channel at South Locust Point; deepening a portion of Anchorage #3 to 42 feet deep and 2,200 feet wide by 2,200 feet long; deepening of Anchorage #4 to 42 feet deep and 1,800 feet wide by 1,800 feet long; constructing a turning basin at the head of the Fort McHenry Channel, 1,200 feet wide by 1,200 feet long, and 50 feet deep; Federal assumption of maintenance of the existing Seagirt Marine Terminal, Dundalk Marine Terminal and South Locust Point Marine Terminal channels, exclusive of berthing areas, and Federal maintenance of a 42-foot depth in the area between the Connecting Channel and the proposed Seagirt Marine Terminal Berth 4 upon completion of dredging to that depth by the State of Maryland; and deauthorization of Anchorage #1. The proposed improvements are expected to require the placement of approximately 4.4 million cubic yards of dredged material at the Hart-Miller Island placement site.

2. The decision to implement this action is being based on an evaluation of the probable impact of the proposed activities on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposed project are being balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal, including the cumulative effects thereof, are being considered; among these factors are economics, aesthetics, general environmental concerns, wetlands, cultural values, flood hazards, fish and wildlife values, flood plain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and the general needs and welfare of the people.

3. The Draft Environmental Impact Statement (EIS) describes the impacts of the proposed projects on environmental and cultural resources in the study area. The EIS also applies guidelines issued by the Environmental Protection Agency, under authority of the Clean Water Act of 1977 (Pub. L. 95–217). An evaluation of the proposed actions on the waters of the United States was performed pursuant to the guidelines of the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. The proposed dredging, construction, and placement of dredged material is in compliance with Section 404(b)(1) guidelines.

4. In accordance with the National Environmental Policy Act and the Clean Water Act, the Corps of Engineers is soliciting comments from the public, Federal, state and local agencies and officials, and other interested parties. Any comments received will be considered by the Corps of Engineers in the decision to implement the project. To make this decision, comments are considered to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments regarding the proposed project will be incorporated into the Final Environmental Impact Statement as required by NEPA. Public comments will also be used to determine the overall public interest. Notice of a public meeting will be published at a later date. Informal meetings have been held in order to present information to citizen interest groups, officials, and regional planners. The public review and comment period for the draft feasibility study and draft EIS will begin on 24 January 1997 and close on 9 March 1997. Comments received will be incorporated into the final EIS.

5. This Notice of Availability is being sent to organizations and individuals known to have an interest in the proposed maritime improvements. Please bring this notice to the attention of any other individuals with an interest in this matter. Copies of the Draft EIS are available for review at the following locations:

- Baltimore County Public Library, North Point Branch, 1716 Merritt Boulevard, Baltimore MD.
- Anne Arundel County Public Library, North County Branch, 1010 Eastway Dr. Glen Burnie MD.
- Enoch Pratt Free Library, 400 Cathedral St., Baltimore, MD.

6. Requests for copies of the EIS may be mailed to the following address: District Engineer, Attn: CENAB-PL, U.S. Army Corps of Engineers, Baltimore

District, P.O. Box 1715, Baltimore, MD 21203–1715.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–1717 Filed 1–23–97; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, February 5, 1997, 6:00 p.m.–9:30 p.m.

ADDRESSES: Comfort Inn, 433 South Rutgers Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

February Meeting Topics

Presentations regarding the Toxic Release Inventory will be presented by a representative of the U.S. Environmental Protection Agency.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of this meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on January 21, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–1733 Filed 1–23–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2100–074]

California Department of Water Resources; Notice Rejecting Rehearing

January 17, 1997.

By order issued December 11, 1996,[1] the Director, Division of Licensing and Compliance (Division Director) approved a request filed by the California Department of Water Resources (CDWR) to amend the requirements of ordering paragraph (K) of the Commission's Order on Revised Recreation Plan, issued September 22, 1994, for CDWR's Feather River Project No. 2100, on the Feather River in Butte County, California.[2] The Division Director approved CDWR's request by extending the filing date for CDWR's biannual report providing recreational use data from November 1, 1996 to April 1, 1997, and making subsequent reports due every two years thereafter on April 1, instead of November 1.

On December 23, 1996, the Lake Oroville Fish Enhancement Committee (LOFEC) and the California Sportfishing Protection Alliance (CSPA) filed a request for rehearing of the Division Director's order. LOFEC and CSPA contend that they have been denied due process by the Division Director's order.

Rehearing does not lie in this matter. CDWR's request for a change in the due date for its recreation reports does not entail any material change in the plan of project development or in the terms and conditions of the license, nor does it adversely affect the rights of property-holders in a manner not contemplated by the license, such that the Commission should have issued notice of the filing or entertained intervention petitions thereon.[3] Accordingly, the request for rehearing is rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1691 Filed 1–23–97; 845 am]

BILLING CODE 6717–01–M

[Docket No. CP97–194–000]

Columbia Gas Transmission Corporation; Notice of Application

January 17, 1997.

Take notice that on January 14, 1997, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for the following:

(1) Section 7(c) certificate authorization for the construction and operation of approximately 1.60 miles of 24-inch pipeline and appurtenances designated as Columbia's Line 1361 located in Washington County, Pennsylvania and,

(2) Section 7(b) authorization for the abandonment, both in-place and by removal, of approximately 1.60 miles of 20-inch Line 1361 and 1.60 miles of 12-inch Line 1429 and appurtenances located in Washington County, Pennsylvania.

The proposed construction is estimated to cost $2,393,000 and the associated estimated net debit to accumulated provision for depreciation for the abandoned facilities is $549,451.

[1] 77 FERC ¶ 62,147.

[2] *See* 68 FERC ¶ 61,358 (1994).

[3] *See, e.g.*, Sayles Hydro Associates, 48 FERC ¶ 61,049 (1989), and Kings River Conservation District, 36 FERC ¶ 61,881 (1986).

Columbia states that, due to age and condition, sections of the existing Line 1361 and Line 1429 have become physically deteriorated to the extent that replacement is required in order to maintain safe, reliable operation and service to Columbia's existing customers at current levels. Due to a failure in 1990, Line 1361 is operated at a reduced operating pressure of 408 psig compared to its certificated maximum allowable operating pressure of 600 psig. The reduction in operating pressures causes difficulty in meeting existing market demand during peak periods.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1687 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–382–000]

Exact Power Co., Inc.; Notice of Issuance of Order

January 17, 1997.

Exact Power Co., Inc. (Exact Power) submitted for filing a rate schedule under which Exact Power will engage in wholesale electric power and energy transactions as a marketer. Exact Power also requested waiver of various Commission regulations. In particular, Exact Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Exact Power.

On January 14, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Exact Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Exact Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Exact Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 13, 1997.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1689 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–196–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

January 17, 1997.

Take notice that on January 15, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP97–196–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point and approximately 400 feet of 12-inch pipeline in Volusia County, Florida for delivery of natural gas to Florida Power Corporation (FPC) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct a new tap, valve, approximately 400 feet of 12-inch connecting lateral and electronic flow measurement equipment and any other necessary appurtenant facilities to accommodate the measurement of gas, up to 4,400 MMBtu per hour at line pressure. FGT states that the natural gas volumes delivered to this new delivery point will be interruptible volumes and that initial deliveries will be approximately 2,200 MMBtu per hour.

FGT states that FPC would reimburse it for all construction costs, estimated to be $150,000. FGT states that FPC proposes to construct own and operate the meter station and approximately 3.3 miles of 12-inch non-jurisdictional pipeline connecting the meter station to the power plant.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1688 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–189–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 17, 1997.

Take notice that on January 10, 1997 and supplement January 15, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–189–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205, 157.211, 157.216(b) for authorization to upgrade a town border station serving the City of Madisonville (Madisonville) in St. Tammany Parish, Louisiana under Koch Gateway's NNS–SCO Rate Schedule, and to abandon certain facilities in Madisonville. Koch Gateway makes such request, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Koch Gateway proposes to upgrade an existing 2-inch meter station and abandon by removal the facilities being replaced. Koch Gateway further proposes to install the new metering and regulating facilities at an existing town border station on its lateral line, designated as Index 301 in St. Tammany Parish, Louisiana to satisfy Madisonville's request for increased pressure. Koch Gateway states that the volumes proposed to be delivered to Madisonville would be pursuant to Koch Gateway's blanket transportation certificate authorized in Docket No. CP88–6–000 and under Koch Gateway's NNS–SCO Rate Schedule.

Koch Gateway states that the revised meter station would allow Koch Gateway to increase delivery pressure by approximately 30 psig which will help Madisonville better operate its distribution system. It is stated that the estimated cost of construction is $33,000, and Madisonville has agreed to reimburse Koch Gateway the cost of installing the new facilities.

Koch Gateway further states the proposed activities, being no notice in nature, will not affect Koch Gateway's ability to serve its other existing customers. No change in the service level is proposed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1685 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–672–002]

Natural Gas Pipeline Company of America; Notice of Application To Amend Abandonment Authority

January 17, 1997.

On January 13, 1997, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, applied under Section 7(b) for authorization to amend the abandonment authority granted in Docket No. CP93–672–001 by order issued on June 15, 1995. That order, authorized the abandonment in place, by removal of 308 miles of Applicant's Amarillo No. 1 Line.

Applicant now requests amendment of that authority to provide for the abandonment by transfer to MidCon Gas Products Corp. (MidCon) of the southernmost 28 miles of the abandoned line. MidCon is a non-jurisdictional gathering affiliate of Natural. The 28 miles of line proposed for transfer to MidCon starts at a point near the Hooker Lateral in Beaver County, Oklahoma and ends in Meade County, Kansas, 29.5 miles south of Natural's Compressor Station 103.

Applicant also requests that the Commission state that the 28 miles of line transferred to MidCon is a non-jurisdictional gathering facility under Section 1(b) of the NGA. Applicant states that the transferred line will be connected with 102.67 miles of pipe previously transferred to MidCon in June, 1996, by Commission order issued in Docket No. CP95–191–000 on August 24, 1995 (72 FERC ¶ 61,183). The 28 miles of line will be operated as part of a low pressure, high Btu gathering system.

Any person desiring to be heard or to make any protest with reference to this amended application should on or before February 7, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (28 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who has previously intervened in Docket No. CP93–672–000 or CP93–672–001 does not need to intervene again.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience or necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1684 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–192–000]

New York State Electric & Gas Corporation; Notice of Application

January 17, 1997.

Take notice that on January 10, 1997, New York State Electric & Gas Corporation (NYSEG), 4500 Vestal Parkway East, Binghamton, New York 13902–3607, filed in Docket No. CP97–

192–000, an application pursuant to Section 7 of the Natural Gas Act, as amended, and § 284.224 of the Commission's Regulations, for a limited-jurisdiction blanket certificate of public convenience and necessity authorizing NYSEG to provide firm and interruptible storage services at market-based rates at its Seneca Lake storage field located in Schuyler County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.[1]

NYSEG states that the storage it intends to perform in interstate commerce will be made possible through the use of compression already installed at its Seneca Lake storage field, combined with two additional compressors, rated at 2,587 horsepower each, which it plans to install. NYSEG avers that it filed an application on December 16, 1996 with the State of New York Public Service Commission seeking authority to install these additional compressor units. According to NYSEG, the additional compression will enable NYSEG to: (1) Inject up to 72.5 MMcfd of natural gas into storage during a 20-day injection cycle; and (2) deliver up to 145 MMcfd of natural gas from storage during the 10-day withdrawal period.

As part of its request, NYSEG asks the Commission to make a determination under § 284.123(b)(2) of the regulations that the rates and charges proposed in the application are fair and equitable.

Any person desiring to be heard or make any protest with reference to said application should on or before February 7, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and grant of certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NYSEG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1686 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[1] NYSEG is a Hinshaw pipeline which is exempt from the Commission's jurisdiction under Section 1(c) of the NGA.

[Docket No. CP93–98–002]

PNM Gas Services, a Division of Public Service Company of New Mexico; Notice of Redesignation of Proceeding

January 17, 1997.

Take notice that on November 25, 1996, PNM Gas Services filed an amendment pursuant to section 3 of the NGA and Part 153 of the Commission's Regulations under the NGA, seeking to amend the Presidential Permit issued August 6, 1993,[1] to reflect the new name of the company holding the Presidential Permit. Specifically, the Presidential Permit was issued in Docket No. CP93–98–000 to Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Gas Company of New Mexico). The amendment sought herein would simply reflect the name change from Gas Company of New Mexico to PNM Gas Services. PNM Gas Services states that the change reflects only a change in the name of the division conducting business; no change of ownership has occurred.

On December 5, 1996, the Commission issued a Notice of Amendment. The notice was published in the **Federal Register** on December 12, 1996 (61 *Fed. Reg.* 65038). No adverse comments were received prior to the December 26, 1996 response date. The redesignation is unopposed. Accordingly, pursuant to section 375.302(r) of the Commission's Rules and Regulations, notice is hereby given that this proceeding is being redesignated to reflect the permit holder's new name.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1683 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Gas Company of New Mexico, a Division of Public Service Company of New Mexico, 64 FERC ¶ 61,226 (1993).

[Docket No. ER97–452–000, et al.]

Northern Indiana Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

January 17, 1997.

Take notice that the following filings have been made with the Commission:

1. Northern Indiana Public Service Company

[Docket No. ER97–452–000]

Take notice that on December 19, 1996, Northern Indiana Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket Nos. EC97–5–000 and ER97–413–000]

Take notice that on December 23, 1996, Ohio Edison Company (OE), Pennsylvania Power Company (Penn Power), OE's wholly-owned subsidiary, The Cleveland Electric Illuminating Company (CEI) and The Toledo Edison Company (TE) (collectively "Applicants" or "FirstEnergy") filed, a supplement to Exhibit G to their November 8, 1996, merger application, three filings with the Nuclear Regulatory Commission (NRC) in connection with the FirstEnergy merger.

Each NRC application requested the NRC's consent to the indirect transfers of control of the NRC license rights held by the individual applicants to FirstEnergy following consummation of the FirstEnergy merger. The NRC-licensed facilities that are the subject of the three applications are: Beaver Valley Power Plant, Davis-Besse Nuclear Power Station and Perry Nuclear Power Plant.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Howard Energy Marketing, Inc. Gateway Energy, Inc., Petroleum Source & Systems Group, Inc.

[Docket Nos. ER95–252–007, ER95–1049–005, and No. ER95–266–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 10, 1996, Howard Energy Marketing, Inc. filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–252–000.

On December 3, 1996, Gateway Energy, Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On December 4, 1996, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

4. Commonwealth Edison Company

[Docket No. ER97–1051–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted a Notice of Cancellation, dated December 17, 1996, to cancel Edison's FERC Rate Schedule No. 23, effective date October 1, 1985. Edison's FERC Rate Schedule No. 23 is an Agreement, dated August 15, 1985, between and among Consumers Power Company (Consumers), Detroit Edison Company (Detroit), and Edison which provided for Consumers and Detroit to purchase energy from Edison. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 23.

Edison requests an effective date of December 31, 1996, for the Notice of Cancellation, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon consumers, Detroit, the Illinois Commerce Commission, and the Michigan Public Service Commission.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER97–1052–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 1, dated December 5, 1996, to the Interconnection Agreement, dated August 1, 1991 (1991 Agreement), between Edison and Indiana Michigan Power Company (I&M) (hereinafter referred to collectively as Parties). The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 16.

Edison requests an effective date of December 31, 1996 for Amendment No. 1, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon I&M, the Illinois Commerce Commission, and the Indiana Utility Regulatory Commission.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Indiana Gas and Electric Company

[Docket No. ER97–1053–000]

Take notice that on December 31, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing six (6) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Coastal Electric Services Company
2. LG&E Power Marketing, Inc.
3. Wisconsin Electric Power Company
4. American Electric Power
5. Illinois Power Company
6. Sonat Power Marketing, L.L.P.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER97–1054–000]

Take notice that on December 31, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing five (5) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. LG&E Power Marketing, Inc.
2. Wisconsin Electric Power Company
3. American Electric Power
4. Illinois Power Company
5. Sonat Power Marketing, L.P.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER97–1055–000]

Take notice that on December 31, 1996, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy) filed amendments to GPU Energy's Power Pooling Agreement, in compliance with the Commission's Order 888.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Texas Utilities Electric Company, Texas Utilities Electric Company v. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER97–1056–000]

Take notice that on December 31, 1996, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU), tendered for filing an agreement by which CPL, WTU, Texas Utilities Electric Company and Houston Lighting & Power Company have agreed that the ten-year limitation on seeking changes from the positive megawatt mile rate design method contained in the Offer of Settlement accepted for filing in Docket Nos. ER82–545–000, *et al.* will end as of midnight, December 31, 1996. CPL and WTU request that the filing be accepted to become effective as of January 1, 1997.

CPL and WTU state that copies of the filing were served on Texas Utilities Electric Company, Houston Lighting & Power Company and the Public Utility Commission of Texas.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Company

[Docket No. ER97–1057–000]

Take notice that on December 31, 1996, Montaup Electric Company (Montaup), filed a service agreement for nonfirm transmission service which Montaup provides to itself. Montaup requests that the service agreement be allowed to become effective January 1, 1997.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER97–1059–000]

Take notice that on December 31, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), tendered for filing a Notice of Cancellation for certain service

schedules under the Interchange Agreement between Entergy Arkansas, Entergy Louisiana, Entergy Mississippi, Entergy New Orleans, and Entergy Services and Oglethorpe Power Corporation (Oglethorpe). Entergy Services states that no service has ever been provided to Oglethorpe under this agreement and that Oglethorpe has indicated that it will take any prospective transmission service under Entergy Services' open access transmission tariff.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Power and Light Company

[Docket No. ER97–1060–000]

Take notice that on December 31, 1996, Central Power and Light Company (CPL), tendered for filing an addendum to its Rate Schedule No. 70 and its coordination sales tariff service agreement with the City of Robstown, Texas (Robstown). The addendum adds an additional delivery point to the existing agreements with Robstown.

CPL states that a copy of the filing has been served on Robstown and on the Public Utility Commission of Texas.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER97–1061–000 Company]

Take notice that on December 31, 1996, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule for service to El Paso Electric Company (EPE).

The proposed amendment reflects Southwestern's lowering of EPE's minimum firm power purchase commitment to 35,000 Kw.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Western Systems Power Pool

[Docket No. ER97–1063–000]

Take notice that on December 31, 1996, The Power Company of America, L.P. filed a supplement to the Western Systems Power Pool Agreement reflecting the acceptance of its membership application in the Western Systems Power Pool.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. West Texas Utilities Company

[Docket No. ER97–1067–000]

Take notice that on December 31, 1996, West Texas Utilities Company (WTU), filed an Interconnection and Power Interchange Agreement between WTU and Brazos Electric Power Cooperative, Inc. (Brazos), dated December 12, 1996 (the Interconnection Agreement). The Interconnection Agreement is necessary for WTU to serve the City of Weatherford, Texas (Weatherford) under the new Power Supply Agreement between WTU and Weatherford that WTU filed with the Commission on November 1, 1996, in Docket No. ER97–326–000.

WTU requests an effective date for the Interconnection Agreement of January 1, 1997. Accordingly, WTU requests waiver of the Commission's notice requirements. A copy of this filing has been served on Brazos, Weatherford, and the Public Utility Commission of Texas.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Electric Company; Cambridge Electric Light Company

[Docket No. ER97–1068–000]

Take notice that on December 31, 1996, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission Market-Based Power Sales Tariff, FERC Electric Tariff, (Tariff)s. Pursuant to their respective Tariffs, the Companies may enter into the sale of energy and/or capacity at fully-negotiated, market-based rates. The Companies also propose, on a compensated or uncompensated basis, to facilitate the sale and purchase of electric energy at wholesale in transactions in which the Companies do not take title to the electric energy (i.e., brokering). The Companies request expedited action on this filing so that transactions under this tariff can commence as quickly as possible. The Companies request that the proposed Tariffs become effective within 60 day of this filing or any earlier Commission approval date hereof.

Comment date: January 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER97–1069–000]

Take notice that on December 31, 1996, New England Power Company (NEP), submitted for filing an All Requirements Bulk Power Supply Contract and Service Agreement between NEP and Vermont Electric Cooperative, Inc.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Baltimore Gas and Electric Company

[Docket No. ER97–1070–000]

Take notice that on December 31, 1996, Baltimore Gas and Electric Company (BGE) filed a Service Agreement clarifying that, when Baltimore Gas and Electric Company utilizes transmission and ancillary services from its system for applicable wholesale transactions, it will do so pursuant to the provisions of its own Transmission Service Tariff filed in the captioned docket. BGE requests an effective date of December 31, 1996 for the Service Agreement.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Sierra Pacific Power Company

[Docket No. ER97–1071–000]

Take notice that on December 31, 1996, Sierra Pacific Power Company (Sierra), tendered for filing in compliance with the unbundling requirement of Order No. 888, its proposed Rate Schedule RT, Sale of Non Firm Energy for Regional Resale (including new form of service agreement) to supersede and replace existing Rate Schedule RT, Sale of Non Firm Energy for Regional Resale and Transmission Service.

Sierra asserts that the filing has been served on the regulatory commissions of Nevada and California.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. South Carolina Electric & Gas Company

[Docket No. ER97–1072–000]

Take notice that on December 31, 1996, South Carolina Electric & Gas Company (SCE&G), Provider), submitted service agreements, dated December 20, 1996, establishing South Carolina Electric & Gas Company, Customer (SCE&G, Customer) and dated December 23, 1996 establishing Duke/Louis Dreyfuss, L.L.C. (DLD) as customers under the terms of SCE&G, Provider's Open Access Transmission Tariff.

SCE&G, Provider requests an effective date of November 15, 1996 for the DLD agreement. Accordingly, SCE&G, Provider requests waiver of the Commission's notice requirements. Copies of this filing were served upon SCE&G, Customer, DLD, and the South Carolina Public Service Commission.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Idaho Power Company

[Docket No. ER97–1073–000]

Take notice that on December 31, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission exhibit revisions relating to monthly contract and energy requirements under the following jurisdictional agreements between IPC and various entities:

1. Transmission Service Agreement, dated June 27, 1988, Seattle City Light;
2. Agreement for Supply of Power and Energy, dated February 10, 1988, Utah Associated Municipal Power Systems;
3. Agreement for Supply of Power and Energy, dated July 6, 1987, Washington City, Utah;
4. Agreement for Supply of Power and Energy, dated February 23, 1989, Sierra Pacific Power Company;
5. Transmission Service Agreement, dated December 21, 1990, Bonneville Power Administration;
6. Transmission Service Agreement, dated June 6, 1989, Bonneville Power Administration.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER97–1074–000]

Take notice that on December 31, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Heartland Energy Services will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 30, 1996.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Kentucky Utilities Company

[Docket No. ER97–1075–000]

Take notice that on December 31, 1996, Kentucky Utilities Company (KU), tendered for filing a series of contracts with its wholesale customers under which the customers are to receive the benefit of power made available to them from the South Eastern Power Administration.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Power Source LLC

[Docket No. ER97–1076–000]

Take notice that on December 31, 1996, Power Source L.L.C. (Power Source), tendered for filing its Notice of termination and Withdrawal from business effective September 1, 1996, pertaining to its FERC Electric Rate Schedule No. 1 heretofore filed with the Commission.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Central Louisiana Electric Company, Inc.)

[Docket No. ER97–1077–000]

Take notice that on December 31, 1996, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which Central Louisiana Electric Company, Inc., Transmission Services (CLECO-TS) as transmission provider for CLECO, will provide non-firm point-to-point transmission service to Central Louisiana Electric Company, Inc., Wholesale Merchant Operations (CLECO-WMO) under it's point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on CLECO-WMO.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Portland General Electric Company

[Docket No. ER97–1078–000]

Take notice that on December 31, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) an executed Service Agreement for Firm Point-to-Point Transmission Service with the Bonneville Power Administration.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective December 27, 1996.

A copy of this filing was caused to be served upon the Bonneville Power Administration as noted in the filing letter.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Portland General Electric Company

[Docket No. ER97–1112–000]

Take notice that on January 2, 1997, Portland General Electric Company tendered for filing under FERC Electric Tariff, Original Volume No. 9, an experimental state retail access pilot program entitled Power Delivery Service (PDS).

PGE respectfully requests that the Commission grant a one day waiver of the notice requirements of 18 CFR 35.3 to allow the retail access pilot program (PDS) to become effective March 1, 1997 (or the date PDS is accepted and approved by the Oregon Public Utility Commission, if earlier than March 1, 1997).

A copy of this filing was caused to be served upon the Oregon Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Exxon Chemical Company and Exxon Company, U.S.A.

[Docket No. QF89–41–002]

On January 8, 1997, Exxon Chemical Company and Exxon Company, U.S.A. (Applicant) submitted for filing an amendment to its filing in this Docket.

The amendment provides additional information pertaining to the technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: January 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Eastman Chemical Company

[Docket No. QF92–13–002]

On January 10, 1997, Eastman Chemical Company, of 100 North Eastman Road, Kingsport, Tennessee 37660, submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility, which is located in Sullivan, Tennessee, was previously certified as a qualifying cogeneration facility in *Eastman Chemical Co.*, 59 FERC ¶ 62,058 (1982), and recertified in *Eastman Chemical Co.*, 66 FERC ¶ 62,151 (1994). According to the applicant, the instant recertification is requested to reflect the change in ownership and the addition of new facilities.

Comment date: 15 days after the date of publication of the notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1682 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10819–002 Idaho]

Idaho Water Resources Board; Notice of Availability of Draft Environmental Assessment

January 17, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original, major license for the Dworshak Small Hydroelectric Project No. 10819–002, located on the existing water conveyance system providing water from the Corps of Engineers' Dworshak dam to two fish hatcheries. The Dworshak dam is located on the North Fork Clearwater River in Clearwater County, Idaho. The Commission has prepared a Draft Environmental Assessment (DEA) for the project. The DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Surender M. Yepuri, Environmental Coordinator, at (202) 219–2847.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1693 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11214–001 Illinois]

Southwestern Electric Cooperative, Inc.; Notice of Availability of Draft Environmental Assessment

January 17, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Carlyle Project located on the Kaskaskia River in Clinton County, near the City of Carlyle, Illinois, and has prepared a Draft Environmental Assessment (DEA) for the proposed project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 11214–001 to all comments. For further information, please contact Monte J. TerHaar, Environmental Assessment Coordinator, at (202) 219–2768.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1695 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Feather River Hatchery Expansion Plan

January 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Feather River Hatchery Expansion Plan (September 22, 1994 FERC Order).

b. *Project No:* 2100–067.

c. *Date Filed:* February 12, 1996; supplemented January 15, 1997.

d. *Licensee:* California Department of Water Resources.

e. *Name of Project:* Feather River, Project.

f. *Location:* Feather River, Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rolland Williams, Sr., Chief, Department of Water Resources, Oroville Field Division, Division of Operations and Maintenance, 460 Glen Drive—P.O. Box 1191, Oroville, CA 95965, (916) 534–2323.

i. *FERC Contact:* Sue Cielinski, (202) 219–2942.

j. *Comment Date:* March 7, 1997.

k. *Description of Project:* The California Department of Water Resources, California, licensee for the Feather River Project, has filed the hatchery expansion plan required by the September 22, 1994 FERC Order. The hatchery expansion plan includes provisions for 2,-40ft x 200ft rearing ponds, a hatching/incubation facility and a UV treatment system to the existing Feather River Fish Hatchery. The expansion plan will allow space for grow-out of 390,000 fingerlings and reduce stress and disease occurring from the transport of fish to other hatchery facilities. A supplemental filing proposes further expansion of the 100ft long rearing ponds to 300ft to increase hatchery capacity to 720,000 fingerlings.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Document—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as

applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1690 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Request for Extension of Time To Commence Project Construction

January 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Filing: Request for Extension of Time To Commence Project Construction.

b. Applicant: City of Marion, Kentucky and Smithland Hydroelectric Partners, Inc.

c. Project No.: The proposed Smithland Lock and Dam Hydroelectric Project, FERC No. 6641–026, is to be located at the United States Army Corps of Engineers' Smithland Lock and Dam on the Ohio River in Livingston County, Kentucky.

d. Date Filed: December 16, 1996.

e. Pursuant to: Public Law 104–258.

f. Applicants Contact: Donald H. Clarke, Counsel for licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, D.C. 20006, (202) 783–4141.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: February 28, 1997.

i. Description of the Request: The licensee for the subject project has requested that the deadline for commencement of construction at its project be extended. The deadline to commence project construction for FERC Project No. 6641 would be extended to June 15, 1998. The deadline for completion of construction would be extended to June 15, 2000.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1692 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

Request for Extension of Time to Commence Project Construction

January 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Filing: Request for Extension of Time to Commence Project Construction.

b. Applicant: Cannelton Hydroelectric Project, L.P.

c. Project No.: The proposed Cannelton Hydroelectric Project, FERC No. 10228–009, is to be located on the Ohio River in Hancock County, Kentucky.

d. Date Filed: December 4, 1996.

e. Pursuant to: Public Law 104–249.

f. Applicant Contact: Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, D.C. 20006, (202) 783–4141.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: February 28, 1997.

i. Description of the Request: The licensee for the subject project has requested that the deadline for commencement of construction at its project be extended. The deadline to commence project construction for FERC Project No. 10228 would be extended to June 20, 1999. The deadline for completion of construction would be extended to June 20, 2001.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to

intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1694 Filed 1–23–97; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 28 Through November 1, 1996

During the week of October 28 through November 1, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 16, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 5—Week of October 28 Through November 1, 1996

Appeals

Action and Associates, Inc., 10/28/96, VFA–0224

Action and Associates, Inc. (Action) filed an Appeal from a determination issued to it by the DOE's Savannah River Operations Office (DOE/SR). In its Appeal, Action asserted that DOE/SR did not conduct an adequate search for records that Action had requested pursuant to the FOIA. Action also challenged the amount it was charged for the documents it obtained pursuant to its FOIA Request. The DOE determined that DOE/SR had conducted an adequate search for records and that its assessment of fees was appropriate and reasonable. Consequently, Action's Appeal was denied.

Harold Bibeau, 10/28/96, VFA–0223

Harold Bibeau filed an Appeal from a denial issued to him by the DOE's Office of Human Radiation Experiments (OHRE) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that OHRE had conducted a search reasonably calculated to find the requested information, and that all responsive documents had been released to Mr. Bibeau. However, in his Appeal, Mr. Bibeau expanded his original request. OHRE agreed to do a new search for the newly-requested documents. Therefore, the Appeal was denied.

Malcolm Parvey, 11/1/96, VFA–0225

Malcolm Parvey filed a Motion for Reconsideration of a Decision and Order which denied his Appeal of two determinations by the Western Area Power Administration (WAPA) under the Freedom of Information Act (FOIA). In those determinations, WAPA released some information to Mr. Parvey and charged him a total fee of $96.25. Mr. Parvey's Motion reiterates the arguments made in his original Appeal. Because Mr. Parvey did not present any new evidence or arguments, the DOE denied his Motion for Reconsideration.

Personnel Security Review

Oakland Operations Office, 10/28/96, VSA–0088

The DOE's Office of Safeguards and Security (OSS) filed a Request for Review of a DOE Hearing Officer's recommendation to restore the access authorization of an individual. The individual's access authorization was suspended upon receipt of information indicating the individual had tested positive for the presence of marijuana. The Hearing Officer found that the individual had mitigated DOE security concerns through his explanation that his marijuana use was limited and through his participation in a drug rehabilitation program. In considering the OSS Request for Review, the Director of the Office of Hearings and Appeals found that the Hearing Officer did not have sufficient evidence before him to support the finding that the individual's use of marijuana was limited. The Director noted that the individual failed to provide any evidence to corroborate the circumstances surrounding his marijuana use. The Director found that since the Hearing Officer's conclusions concerning rehabilitation were premised on limited marijuana use, these conclusions could not be sustained. Accordingly, the Director recommended that the individual's access authorization not be restored.

Refund Applications

Good Hope Refineries/Ashland Company, 10/30/96, RF339–6

Ashland Petroleum Company filed an Application for Refund in the Good Hope Refineries II Refund Proceeding. The DOE denied Ashland's application after finding that Ashland had failed to establish injury by rebutting the spot purchaser presumption.

Tajon, Inc., 11/01/96, RR272–229

The DOE considered a Motion for Reconsideration filed by Tajon, Inc. in the crude oil overcharge refund proceeding. In that Motion, Tajon argued that the DOE had improperly rescinded a prior crude oil overcharge refund granted to the firm. The prior refund was rescinded because Tajon had submitted a waiver of its rights to receive such a refund in connection with filing a refund claim in the Surface Transporters refund proceeding. In the Motion, Tajon contended that the waiver should not be considered valid because (a) gallonage information accompanying the claim was incomplete and (b) the required notarization was not made. However, in reviewing the waiver, the DOE found that the specification of gallonage was adequate, even if not fully corroborated, and that an affirmation by the firm's attorney had been substituted for the notarization. In view of these findings the DOE determined that the waiver should be considered effective, and that the Motion for Reconsideration should be denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ASPHALT PRODUCTS CORP	RF272–69293	11/1/96

ASPHALT PRODUCTS CORP	RD272–69293	
CENTRAL PETROLEUM CO	RF272–95128	10/31/96
FARMERS UNION CO-OP GIN	RF272–95146	
CRUDE OIL SUPPLE REF DIST	RB272–00090	10/30/96
CRUDE OIL SUPPLE REF DIST	RB272–00091	10/30/96
KENNY LARSON OIL/D&A PUMP & SUPPLY	RF356–1	10/31/96
PORTLAND GENERAL ELECTRIC	RF356–3	
SCHULZ SAMITARY SERVICE	RF356–2	
MUELLER INDUSTRIES, INC	RC272–00352	10/30/96
REIMER EXPRESS LINES, LTD. ET AL	RG272–00500	11/1/96
SOUTHWEST COCA-COLA BOTTLING, INC	RF272–95148	10/28/96
STROH BREWERY CO	RK272–03550	10/30/96
F & M SCHAEFER BREWING CO	RC272–00357	
F & M SCHAEFER BREWING CO	RK272–03551	
JOS. SCCHLITZ BREWING CO	RK272–03552	
TRANS-MEDITERRANEAN AIR WAYS	RG272–616	11/1/96
ROGERS TEXACO SVC. STA	RF272–89303	
UNION DE TRANSPORTS AERIENS ET AL	RK272–03493	10/28/96
WALTER RAMSEY ET AL	RK272–01546	10/30/96

Dismissals

The following submissions were dismissed.

Name	Case No.
ALLIED TOWING CORPORATION	RF272–91917
APEA GAS STATION	RF300–15288
DIVERSIFIED AMSRIEA, INC.	RK272–03254
FAIRMONT COOPERATIVE ASSOCIATION	RG272–496
FOIA GROUP, INC.	VFA–0234
FOOTE & DAVIES TRANSPORT	RK272–03537
KAREN COLEMAN WILTSHIRE	VFA–0225
OIL CHEM, INC.	RF272–97444
ZOGLEMAN ENTERPRISES	RF272–95108

[FR Doc. 97–1729 Filed 1–23–97; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of December 2 Through December 6, 1996

During the week of December 2 through December 6, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 16, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 10—Week of December 2 Through December 6, 1996

Appeals

Bechtel National, Inc., 12/6/96, VFA–0241

The Department of Energy considered an appeal filed by Bechtel National, Inc., under the Freedom of Information Act (FOIA). Bechtel had sought copies of a contract from the Department's Richland Operations Office. Richland released part of the contract, but withheld part under Exemption 4 of the FOIA on the basis that the information withheld was "proprietary" to the contractor. On appeal, the Department found that a mere description of information as "proprietary" is insufficient justification for withholding information under Exemption 4. Accordingly, the Department remanded the matter to Richland to either release the information or to provide an adequate justification for withholding it.

Burns Concrete, Inc., 12/6/96, VFA–0182

The DOE granted in part an appeal of the withholding of documents submitted by a third party in connection with a construction project at a DOE laboratory. The DOE found that some of the information was properly withheld under Exemption 4, but remanded the request for release of non-exempt information.

Future Technology intelligence Report, 12/4/96, VFA–0232

The Department of Energy (DOE) denied a Freedom of Information Act (FOIA) Appeal that was filed by Future Technology Intelligence Report (FTIR). In its Appeal, FTIR challenged the adequacy of a search for responsive documents that was conducted by the Oakland Operations Office. Specifically, FTIR claimed that it should have been provided with the notes upon which a report that it requested was based. The DOE found that the search for responsive documents was adequate. The DOE found that FTIR was provided a copy of the only document that it requested, i.e., the report itself. Furthermore, the OHA concluded that even if FTIR's initial request was broad enough to cover the notes, those notes, if they exist, are not in the possession of the DOE.

Personnel Security Hearing

Personnel Security Hearing, 12/3/96, VSO–0108

An OHA Hearing Officer issued an opinion concerning the eligibility of an individual for access authorization

under 10 CFR Part 710. The DOE office responsible for determining such eligibility had issued a Notification Letter finding security concerns arising from a 10 year pattern of excessive indebtedness and delinquencies and from inaccuracies on DOE forms and in a Personnel Security Interview. The Hearing Officer found the individual had not mitigated the security concerns. Accordingly, the Hearing Officer did not recommend a grant of access authorization.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

APPLIED INDUSTRIALS MATERIALS CORP.	RF272–92329	12/6/96
GULF OIL CORPORATION/BUFFALO AREO. CORP./MILLER TABEK	RR300–00275	12/6/96
GULF OIL CORPORATION/D.L. CHEAVES	RR300–00288	12/6/96
MONTGOMERY CNTY BOARD OF EDUCA.	RC272–322	12/6/96
MONTGOMERY CNTY BOARD OF EDUCA.	RJ272–4	.....
MONTGOMERY CNTY BOARD OF EDUCA.	RK272–1105	.....
NEW YORK HOSPITAL	RJ272–00032	12/3/96

Dismissals

The following submissions were dismissed.

Name	Case No.
BALAIR/CTA	RG272–533
IMPERIAL AIRLINES, INC.	RG272–428
INDIANA DEPT. OF TRANSPORTATION	RG272–1017
LIMESTONE CO.	RG272–541
LORAIN COUNTY LANDMARK, INC.	RG272–1021
M C TRUCKING	RG272–540
MELVIN STONE CO.	RG272–539
MUTUAL MATERIALS CO.	RG272–578
PEORIA COUNTY SERVICE CO.	RG272–1022
POWER RIG DRILLING CO.	RG272–501
SAN LUIS HILLS FARMS	RG272–1005
SUNRISE COOPERATIVE INC.	RG272–1020

[FR Doc. 97–1730 Filed 1–23–97; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of December 9 Through December 13, 1996

During the week of December 9 through December 13, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 16, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 11—Week of December 9 Through December 13, 1996

Refund Application

Shell Oil Co./Atchison, Topeka & Santa Fe Railway Co., 12/13/96, RR–315–11

The Atchison, Topeka & Santa Fe Railway Company, Inc. (Santa Fe) filed a motion for reconsideration of a denial by the Department of Energy's (DOE) Office of Hearings and Appeal of an application for an above-volumetric refund claim in the DOE's Subpart V Shell Oil Company refund proceeding. In considering the Motion for reconsideration, OHA found that Santa Fe's contention that Shell should use a different May 15, 1973 price to calculate the Maximum Legal Selling Price for diesel fuel at two of Shell's refineries was without merit. The DOE also applied the doctrine of res judicata in finding that Santa Fe's above-volumetric claim was barred by its prior settlement of a lawsuit concerning the same issues.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

J.W. MASSENGILL ESTATE ET AL	RK272–01365	12/13/96
OLIVE SPRINGS QUARRY ET AL	RG272–18	12/11/96
PAGE CO–OP. FARM BUREAU ET AL	RG272–00875	12/12/96

Dismissals

The following submissions were dismissed.

Name	Case No.
BEN LINE STEAMERS LTD	RG272–402
BUFKOR, INC	RG272–905
CHINESE MARITIME TRANSPORT, LTD	RG272–400
FARMERS UNION CO–OP OIL CO	RF272–94747
HAROLD M. CLARK EXCAVATING, INC	RK272–3248
SEATTLE SNOHOMISH MILL CO., INC	RG272–960
TRANS-WORLD TIRE CORP	RG272–800

[FR Doc. 97–1731 Filed 1–23–97; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of December 16 Through December 20, 1996

During the week of December 16 through December 20, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 16, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 12—Week of December 16 Through December 20, 1996

Appeals

Benton County, Washington, 12/19/96, LPA–0001

The Office of Hearings and Appeals (OHA) issued a decision on an appeal that Benton County, Washington filed on November 4, 1993, under the Notice of Interpretation and Procedures (NOIP) implementing the "payments-equal-to-taxes" (PETT) provisions of the Nuclear Waste Policy Act of 1982, as amended (NWPA), 42 U.S.C. § 10101 et seq. Under the NOIP, the Department of Energy (DOE) will grant, to a county in which a candidate site for a high-level nuclear waste repository is located, a payment equal to the amount that county would receive if it were authorized to tax site characterization activities at that site. See 56 Fed. Reg. 42314 (August 27, 1991). The payment authorized by the NWPA is known as a "PETT grant." Benton County submitted to DOE's Richland Operations Office (DOE/RL) an estimate of $45.7 million as the PETT grant amount it should receive for site characterization activities at the Basalt Waste Isolation Project (BWIP) on the Hanford Nuclear Reservation. DOE/RL issued an initial DOE determination which denied Benton County's PETT claim, except for approximately $440,000. In its appeal, Benton County challenged the amount of the PETT grant awarded to it by DOE/RL. During the course of the appeal, OHA permitted the parties detailed pre-hearing discovery, a four-day evidentiary hearing held in Seattle, Washington in January 1995, extensive briefing, post hearing depositions, and an oral argument held in Washington, DC in October 1995.

The OHA addressed the following issues in its decision on the Benton County appeal: (1) the starting date for Benton County's PETT eligibility under the NWPA; (2) the authority of the County under the NWPA to assess interest penalties against the DOE for late payment of the PETT amounts for the tax years involved; (3) the authority of the County to collect personal property taxes for the 1986 tax year; (4) when the BWIP should have been appraised; (5) the DOE Nevada Operations Office's (DOE/NV) approach to its PETT obligation vis-'a-vis Nye County, Nevada, specifically, whether DOE/NV properly considered the appraised value of the Yucca Mountain real estate at the beginning of the PETT eligibility period; (6) generally-accepted principles of real estate appraisal relevant to the Benton County appeal; (7) the highest and best use of the BWIP site; (8) the proper appraisal of one portion of the bare land on the BWIP site; and (9) the proper appraisal of the improvements to real estate on the BWIP site.

In resolving these issues, the OHA made the following determinations: (1) DOE/RL was correct in beginning with May 28, 1986 in calculating the amount of Benton County's PETT grant; (2) DOE/RL was correct in excluding statutory interest penalties calculated under Washington State law from the amount of Benton County's PETT grant; (3) DOE/RL was correct in excluding personal property taxes for 1986 from the amount of Benton County's PETT grant; (4) DOE/RL erred in basing its PETT determination on an appraisal of the BWIP through hindsight as it existed in 1993, rather than on a retrospective appraisal of the BWIP as it existed during the period of PETT eligibility (May 28, 1986 through March 21, 1988); (5) DOE/RL erred in determining that the highest and best use of the BWIP was other than "industrial use" for site characterization as a potential high level nuclear waste repository; (6) DOE/RL correctly determined that the purported "Maximum Potential Underground Facility" was only a theoretical concept during the PETT eligibility period, and should not have been appraised on the basis of properties sold for landfills and related uses in nearby areas of the Pacific Northwest; (7) DOE/RL erred in failing to measure properly the residual value of improvements to the BWIP under the cost approach to real estate appraisal as of the beginning of the period of PETT eligibility; and (8) DOE/RL erred in failing to treat the determination of Benton County's PETT amount for the BWIP site characterization in the same general manner as DOE's Nevada Operations Office treated the determination of Nye County's PETT amount for the Yucca Mountain site characterization. Accordingly, the Benton County appeal was denied in part, and granted in part.

OHA concluded the decision by directing DOE/RL to confer in good faith with Benton County and apply the approach used to negotiate the Nye County PETT settlement to resolve this case within a specified time period, according to principles of alternative dispute resolution applicable to government agencies. The parties are

directed to submit a detailed report to the OHA appeal panel at the expiration of the remand period, if they are unable to reach a resolution by that time. In the event that the parties fail to resolve the case through a negotiated settlement on remand, the OHA will issue a supplemental order fixing the amount of Benton County's PETT grant.

William H. Payne, 12/16/96, VFA–0243

William H. Payne filed an Appeal from a FOIA and Privacy Act determination in which the Office of the Inspector General refused to confirm or deny the existence of records which would reflect whether a named individual was the target of an OIG investigation. In considering the Appeal, the DOE found that the refusal to confirm or deny the existence of these records was proper because the records, if they exist, would be exempt from disclosure under FOIA Exemption 7(C) and the confirmation of the existence of such records would itself involve the disclosure of exempt information. DOE also remanded the matter to the Headquarters' FOIA Office to conduct an additional search for records.

Whistleblower Hearings

C. Lawrence Cornett Maria Elena Torano Associates, Inc., 12/19/96, VWA–0007, VWA–0008

C. Lawrence Cornett (Complainant), an employee of a DOE/Argonne National Laboratory (ANL) subcontractor, Maria Elena Torano Associates, Inc. (META), filed a request for a hearing under the DOE's Contractor Employee Protection Program, 10 CFR Part 708. Complainant claimed that he suffered from various forms of reprisal culminating in his layoff from his job as a result of his raising issues with his superiors regarding public health and safety issues pertaining to the DOE's Waste Management Programmatic Environmental Impact Statement. A hearing was held in which witnesses for Complainant and META testified before an Office of Hearings and Appeals Hearing Officer. On the basis of the testimony and other evidence in the record, the Hearing Officer concluded that Complainant proved by a preponderance of the evidence that he had made disclosures protected by Part 708 and that these activities were a contributing factor in the decision of META to lay him off. In his Decision, the Hearing Officer further concluded that META had failed to prove by clear and convincing evidence that it would have taken this action were it not for Complainant's disclosures. The Hearing Officer therefore determined that META's actions violated the whistleblower regulations in 10 CFR Part 708. Complainant was awarded back pay, attorneys fees and costs, the amount of which will be determined in a supplemental decision. Complainant's request for front pay and compensation for Individual Retirement Account tax penalties and lost interest were denied. META has the right to appeal the Hearing Officer's Decision to the Secretary of Energy or her designee.

Ronny J. Escamilla, 12/20/96, VWA–0012

Ronny J. Escamilla filed a whistleblower complaint against Systems Engineering & Management Associates, Inc. (SEMA), a DOE subcontractor, at DOE's Rocky Flats Plant (Rocky Flats). Escamilla alleged that he made disclosures of waste and mismanagement to various managers at Rocky Flats. He also alleged that he made a protected disclosure that he filed a complaint to management at Rocky Flats. Escamilla asserted that these disclosures resulted in his being harassed in the workplace and ultimately terminated. After investigating the Complaint, the Office of Contractor Employee Protection found that Escamilla had not met his regulatory burden as required by 10 CFR Part 708 and, as a consequence, was entitled to no relief. The OHA Hearing Officer found that: (1) Escamilla failed to show by a preponderance of evidence that he disclosed information which he, in good faith, believed evidenced mismanagement or waste associated with the computer system he was hired to support; (2) Escamilla proved by a preponderance of evidence that he disclosed to SEMA the fact he had filed a complaint with DOE and he also proved that the disclosure relating to the filing of his complaint was a contributing factor to his termination; and (3) SEMA proved by clear and convincing evidence that it would have terminated Escamilla absent his disclosure. Accordingly, the OHA Hearing Officer found that Escamilla failed to establish the existence of any violations of the DOE's Contractor Employee Protection Program for which relief is warranted under 10 CFR Part 708.10.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

AMKOTA COOP ET AL	RF272–94715	12/19/96
BERMAN'S MOTOR EXPRESS	RR272–195	
BLACKDUCK CO–OP AG SERVICES, INC. ET AL	RG272–603	12/17/96
BULK TRANSPORT, INC.	RF272–97377	12/19/96
CRUDE OIL SUPPLE REF DIST	RB272–00095	12/17/96
CYRUS TRUCK LINES, INC.	RF272–99112	12/17/96
KHS AIR FREIGHT, INC.	RF272–99114	
GOOD HOPE REFINERIES/AMERADA HESS CORPORATION	RF339–1	12/17/96
MOHAVE VALLEY SCHOOL DISTRICT ET AL	RF272–79157	12/17/96
STAVOLA ASPHALT CO., INC. ET AL	RG272–00802	12/19/96

Dismissals

The following submissions were dismissed.

Name	Case No.
ARAWAK PAVING CO., INC	RG272–991
BOUNDS OIL COMPANY	RF300–16969
COFFEE CONSTRUCTION CO	RG272–993
HAROLD & J.E. LAYTON	RG272–994
HOLMES TRANSPORTATION INC.	RR272–196
J&S SERVICES	RG272–265
LAS VEGAS PAVING CORP.	RG272–376
LAUREL COUNTY FISCAL COURT	RF272–95282

Name	Case No.
POE ASPHALT PAVING, INC	RG272–990
SANKEY CONSTRUCTION, INC	RG272–992

[FR Doc. 97–1732 Filed 1–23–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5680–5]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of the 1997 EPA SO_2 allowance auctions.

SUMMARY: Pursuant to Title IV of the Clean Air Act and 40 CFR Part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, EPA is directed under Section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Acid Rain Division is giving notice of the fifth annual SO_2 allowance auctions. The regulations governing the auctions and sales were promulgated on December 17, 1991 (40 CFR Part 73, Subpart E).

EPA has delegated the administration of the EPA allowance auctions to the Chicago Board of Trade (CBOT). The auctions will be conducted under the regulations cited above. Anyone can participate in the EPA auctions and bidders are not restricted as to the quantity or price of their bid. Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1997 auctions will consist of one "spot" auction and two "advance" auctions. Allowances sold in the spot auction are useable for compliance beginning in 1997. Allowances sold in the 6-year advance auction are useable for compliance beginning in 2003; allowances sold in the 7-year advance auction are useable for compliance beginning in 2004. 25,000 allowances—the unsold allowances from the 1996 direct sale—will be sold in the 6-year advance auction, 150,000 allowances will be sold in the spot auction and 125,000 allowances will be sold in the 7-year advance auction. Bid Forms for the 1997 auctions must be received by the CBOT by the close of business on March 18, 1997. The auctions themselves will be conducted on March 24, 1997, with the results announced on March 26.

CBOT will also sell in the 1997 auctions any spot, 6-year advance, or 7-year advance allowances that are offered by others holding allowances in EPA's Allowance Tracking System. However, offered allowances will be sold after the allowances that were withheld from the utilities, so offered allowances will consequently be sold at a lower price than the withheld allowances. Owners of offered allowances may set a minimum price for their allowances. However, under 40 CFR 73.70, such offered allowances must have a minimum price in whole dollars. To offer allowances in the EPA auctions, owners of allowances must submit a SO_2 Allowance Offer Form to EPA by the close of business on March 3, 1997. The auction and sale regulations require that offer forms be received by EPA no later than 15 business days prior to the date of the auctions.

ADDRESSES: U.S. EPA Acid Rain Division (6204J), Attn: Auctions and Sales, 401 M St., S.W., Washington, DC 20460.

Chicago Board of Trade, Attn: EPA Auctions, 141 W. Jackson Blvd., Suite 2240, Chicago, IL 60604.

Forms needed to participate in the EPA auctions are available from the Acid Rain Division. To obtain forms, call the Acid Rain Hotline at (202) 233–9620.

FOR FURTHER INFORMATION: Information on bidding in the 1997 EPA auctions can be found in the brochure "How to Bid in the EPA SO_2 Allowance Auctions, Fifth Annual Auctions—March 24, 1997;" general information on the EPA auctions can be found in the "Acid Rain Program Allowance Auctions and Direct Sales" fact sheet. These publications can be obtained by calling the Acid Rain Hotline, by writing to EPA at the address listed above, or by accessing the Acid Rain Program home page on the Internet at http://www.epa.gov/acidrain/ardhome.html where additional information on the Acid Rain Program is also available.

Dated: January 13, 1997.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 97–1764 Filed 1–23–97; 8:45 am]
BILLING CODE 6560–50–P

[ER–FRL–5476–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed January 13, 1997 Through January 17, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970009, Final EIS, FHW, NC, US–220 Connecting the Star/Biscoe/Candor Bypass, Improvement, Funding, Right-of-Way, Possible COE Permit, Montgomery and Richmond County, NC, *Due:* February 24, 1997, *Contact:* Nicholas L. Graf (919) 856–4346.

EIS No. 970010, Final EIS, COE, CA, San Diego County Water Authority Emergency Water Storage Project, Construction and Operation, COE Section 404 Permit and Permit Application, San Diego County, CA, *Due:* February 24, 1997, *Contact:* David Zoutendyk (619) 674–5384.

EIS No. 970011, Final EIS, AFS, AK, Lab Bay Project Area Timber Harvest, Implementation, COE Section 404, EPA NPDES and Coast Guard Bridge Permits Issuance, Thorne Bay Ranger District, Ketchikan Administrative Area, Tongass National Forest, Prince of Wales Island, AK, *Due:* February 24, 1997, *Contact:* Dave Arrasmith (907) 225–3101.

EIS No. 970012, Final EIS, AFS, PA, Allegheny National Wild and Scenic River Management Plan, Implementation, Allegheny National Forest, Venango, Warren and Forest Counties, PA, *Due:* February 24, 1997, *Contact:* Lionel Lemery (814) 723–5150.

EIS No. 970013, Draft EIS,, FHW, WA, I–5 Toutle Park Road to Maytown,

Transportation Improvements, Funding, COE Section 404 Permit, US Coast Guard and NPDES Permits, Cowlitz, Lewis and Thurston Counties, WA, *Due:* March 10, 1997, *Contact:* Gene Fong (360) 753–9480.

EIS No. 970014, Draft EIS,, AFS, WA, Long Draw Salvage Sale, Implementation, Okanogan National Forest, Tonasket Ranger District, Okanogan County, WA, *Due:* March 10, 1997, *Contact:* John Townsley (509) 826–3568.

EIS No. 970015, Final EIS, COE, VA, Lower Virginia Peninsula Regional Raw Water Supply Plan, Permit Approval, Cohoke Mill Creek, King William County, VA, *Due:* February 24, 1997, *Contact:* Pamela K. Painter (757) 441–7654.

EIS No. 970016, Final EIS, BLM, CA, Eagle Mountain Landfill and Recycling Center Project, Land Exchange, Right-of-Way Grants and COE Section 404 Permit Issuance, Riverside County, CA, *Due:* February 24, 1997, *Contact:* Douglas Romoli (909) 697–5237.

EIS No. 970017, Final Supplement, AFS, OR, Mount Hood Meadows Ski Area Additional Development and Expansion to the Skiing and Summer Areas, Construction to Forest Road 3555, Special Use Permit and NPDES Permit, Hood River Ranger District, Mount Hood National Forest, Hood River County, OR, *Due:* February 24, 1997, *Contact:* Ken Davis (541) 352–6002.

EIS No. 970018, Final EIS, NPS, AK, Denali (South Slope) National Park and Preserve Development Concept Plan, Implementation, Mantanuska-Susitna Borough, AK, *Due:* February 24, 1997, *Contact:* Nancy Swanton (907) 257–2651.

EIS No. 970019, Draft EIS,, AFS, CA, Desolation Wilderness Management Guidelines Revisions for the Eldorado National Forest and the Lake Tahoe Basin Management Unit (LTBMU), Limits of Acceptable Change (LAC), Eldorado County, CA, *Due:* April 04, 1997, *Contact:* Diana Erickson (916) 622–5061.

EIS No. 970020, Draft EIS,, FHW, CA, CA–84—Realignment Project, Transportation Improvement between CA–84 from I–880 to CA–2389/Mission Blvd, Funding and COE Section 404 Permit, in the Cities of Fremont, Hayward and Union, Alameda County, CA, *Due:* March 21, 1997, *Contact:* John R. Schultz (916) 498–5041.

EIS No. 970021, Draft EIS,, GSA, FL, 9300–9499 NW 41st Street Immigration and Naturalization Service Facility Consolidation, Development, Construction and Operation, Leasing, Dade County, FL, *Due:* March 10, 1997, *Contact:* Philip Youngberg (404) 331–4540.

EIS No. 970022, Final EIS, USA, CA, Camp Roberts Army National Guard Training Site, Implementation, Combined-Forces Training Activities, New Equipment Utilization and Range Modernization Program, Monterey and San Luis Obispo Counties, CA, *Due:* February 24, 1997, *Contact:* Major Brad Jorgensen (703) 607–7986.

EIS No. 970023, Draft EIS, FHW, NC, Wilmington Bypass Transportation Improvements, US 17 to US 421, Funding, COE Section 10 and 404 Permits and US Coast Guard Bridge Permit Issuance, Brunswick and New Hanover Counties, NC, *Due:* March 14, 1997, *Contact:* Nicholas L. Graf (919) 856–4346.

EIS No. 970024, Draft EIS, COE, MD, Baltimore Harbor Anchorages and Channels Feasibility Study, Maritime Improvements, Port of Baltimore, Baltimore City, Baltimore County, and Anne Arundel County, MD, *Due:* March 10, 1997, *Contact:* Wes Coleman (410) 962–4713.

Dated: January 21, 1997

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–1813 Filed 1–23–97; 8:45 am]

BILLING CODE 6560–50–P

[PF–660; FRL–5380–2]

DeKalb Genetics Corporation; Pesticide Tolerance Petitions Filings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of pesticide petitions proposing regulations establishing exemptions from the requirement of a tolerance for residues of the active ingredient plant-pesticide *Bacillus thuringiensis* subsp. *kurstaki* CrylA(c) protein and the genetic material necessary for the production of this protein in or on all raw agricultural commodities and the inert ingredient plant-pesticide phosphinothricin acetyltransferase protein and the genetic material necessary for the production of this protein in or on all raw agricultural commodities. This notice includes a summary of the petition that was prepared by the petitioner, DeKalb Genetics Corporation.

DATES: Comments, identified by the docket number PF–660, must be received on or before February 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A record has been established for this notice document under docket number PF–660 (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov or by submitting disks. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by the docket number PF–660. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The official record for this rulemaking, as well as the public version described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record, which will also include all comments submitted directly in writing.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS B1, 2805 Jefferson Davis Hwy., Arlington, VA, 703-308-8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) 6E4710 and 6F4711 from DeKalb Genetics Corporation (Dekalb), 3100 Sycamore Road, DeKalb, IL 60115. The petitions propose, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish exemptions from the requirement of a tolerance for the plant-pesticides *Bacillus thuringiensis* subsp. *kurstaki* CrylA(c) protein and the genetic material necessary for the production of this protein in or on all raw agricultural commodities and phosphinothricin acetyltransferase protein and the genetic material necessary for the production of this protein in or on all raw agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

Dekalb has stated that analytical methods for the detection and measurement of the CryIA(c) and PAT proteins are not needed since they are petitioning for exemptions from the requirement of a tolerance on the basis of mammalian safety.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Dekalb included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Dekalb; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary for PP 6F4711

This unit summarizes information cited by DeKalb to support the proposed tolerance exemption for *Bacillus thuringiensis* subsp. *kurstaki* CryIA(c) protein and the genetic material necessary for the production of this protein in or on all raw agricultural commodities when used as a plant-pesticide active ingredient.

A. Bacillus thuringiensis subsp. kurstaki CryIA(c) Protein Uses

Corn, Zea mays L., has been genetically engineered to be resistant to Lepidopteran insect pests. Insect protection was accomplished by insertion of the cryIA(c) gene from *Bacillus thuringiensis* subsp. *kurstaki* which encodes a protein that is specifically insecticidal to Lepidopteran insect larvae but Dekalb believes is safe to nontarget organisms such as mammals, birds, fish, and nontarget insects. CrylA(c) protein is used as a "plant-pesticide" in transgenic corn plants to control Lepidopteran insects including European corn borer. CryIA(c) corn will be deployed in situations where Lepidopteran insect control is important.

B. Product Identity and Chemistry

Product analysis data demonstrated that microbially expressed and purified CryIA(c) delta endotoxin used for mammalian toxicological testing purposes is not significantly different than the delta endotoxin expressed in the plant. The following assays were used to determine the similarity of the microbially expressed and purified CryIA(c) delta endotoxin and that produced in corn: SDS-PAGE, Western blots, amino acid sequencing, testing for post translational modification, and insect bioactivity. These assays demonstrated that the truncated CryIA(c) delta endotoxin expressed in corn and the tryptic core of the microbially-produced CryIA(c) endotoxin are similar.

C. Mammalian Toxicological Profile

The CryIA(c) protein produced in transgenic corn is the tryptic core of CryIA(c) found in nature and used in *Bacillus thuringiensis* susp. *kurstaki* microbial formulations that have been registered with the EPA and have been commercially available for over 30 years. To be active against the target insect, CryIA(c) protein must be ingested. In the insect gut, the protein binds to specific receptors in the insect mid-gut, inserts into the membrane and forms ion-specific pores. These events disrupt the digestive processes and cause the death of the insect. There are no receptors for the protein delta endotoxins of *Bacillus thuringiensis* subspecies on the surface of mammalian intestinal cells; therefore humans are not susceptible to these proteins.

The mammalian toxicological data submitted in support of the exemption from the requirement for a tolerance include an acute oral toxicity study with mice and a test for digestibility under simulated gastric conditions. The results of these studies demonstrate that CryIA(c) protein has an acute LD_{50} greater than 3,325 mg/kg. In tests for digestibility in simulated gastric fluid, CryIA(c) protein was found to degrade to below detectable levels within a few seconds when exposed to full strength gastric fluid. When exposed to simulated gastric fluid that had been diluted 100-fold, CryIA(c) protein degraded to below detectable levels in five minutes. Given the rapid digestibility of CryIA(c) delta endotoxin, no chronic effects are expected. CryIA(c) delta endotoxin, or metabolites of the endotoxin are not known to, or expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the CryIA(c) protein.

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases and are glycosylated and present at high concentrations in food. CryIA(c) delta endotoxin is rapidly degraded by simulated gastric fluid, is not present as a major component in food, and is apparently nonglycosylated or otherwise post-translationally modified when produced in plants. Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions to the delta endotoxins despite significant oral, dermal, and inhalation exposure to microbial products containing the delta endotoxins.

The genetic material necessary for the production of *Bacillus thruringiensis* CryIA(c) delta endotoxin are nucleic acids (DNA) which comprise the genetic material encoding the CryIA(c) delta endotoxin and the regulatory regions associated with the gene. Regulatory regions are the genetic material that control the expression of the genetic material encoding the CryIA(c) delta endotoxin, such as promoters, terminators, introns, and enhancers. DNA is common to all forms of plant and animal life, and there are no known instances of where nucleic acids have been associated with toxic effects related to their consumption. The nucleic acids introduced into CryIA(c) corn have been characterized. No mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of the

Bacillus thuringiensis CryIA(c) endotoxin in corn.

D. Aggregate Exposure

Exposure via dermal exposure or inhalation is unlikely given that the delta endotoxin is contained in plant cells. Transfer of the pesticide to drinking water is highly unlikely given that CryIA(c) protein has been shown to degrade in senescing corn plants and Bt proteins are known to rapidly degrade in the soil. Oral exposure, at very low levels, may occur from ingestion of processed corn products however the lack of mammalian toxicity, and the digestibility of the protein have been demonstrated.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate given that there is no indication of mammalian toxicity of CryIA(c) protein and no information that indicates that toxic effects would be cumulative with any other compounds.

F. Safety Determination

1. *U.S. population in general.* The lack of acute toxicity and the rapid digestibility of CryIA(c) delta endotoxin provides evidence for the lack of toxicity and allergenicty and Dekalb believes support an exemption from the requirement for a tolerance for *Bacillus thuringiensis* subsp. *kurstaki* CryIA(c) protein. *Bacillus thuringiensis* subsp. *kurstaki* delta endotoxins have been used in microbial insecticide formulations that have been registered by the EPA and commercially available since the early 1960s.

2. *Infants and children.* The use sites for CryIA(c) delta endotoxin are all agricultural for control of Lepidopteran insects. Therefore, nondietary exposure to infants and children is not expected. Dekalb believes that the lack of toxicity of CryIA(c) delta endotoxin and history of safe use of *Bacillus thruringiensis* subsp. *kurstaki* delta endotoxins provides reasonable certainty that no harm will result to infants and children from aggregate dietary exposure to residues of CryIA(c).

G. Existing Tolerances or Tolerance Exemptions

An exemption from the requirement for a tolerance was granted by the EPA for "Plant-pesticide *Bacillus thuringiensis* CryIA(c) Delta-Endotoxin and the Genetic Material Necessary for Its Production in Cotton," **Federal Register**: September 15, 1995, (60 FR 47871; FRL–4976–9).

II. Petition Summary for PP 6E4710

This unit summarizes information cited by DeKalb to support the proposed tolerance exemption for phosphinothricin acetyltransferase protein and the genetic material necessary for the production of this protein in or on all raw agricultural commodities when used as a plant-pesticide inert ingredient.

A. Phosphinothricin Acetyltransferase Protein Uses

Phosphinothricin acetyltransferase or PAT protein, is used as "plant-pesticide inert ingredient" in transgenic, insect protected corn plants. PAT functions as a selectable marker and as well as a source of resistance to glufosinate herbicides. PAT protein is encoded by the bar gene, originally cloned from a common soil bacterium, *Streptomyces hygroscopicus.* Insect protected corn will be deployed in situations where Lepidopteran insect control is important.

B. Product Identity and Chemistry

Product analysis data demonstrated that microbially expressed and purified PAT protein used for mammalian toxicological testing purposes is not significantly different than the PAT protein expressed in the plant. The following assays were used to determine the similarity of the microbially expressed and purified PAT protein and that produced in corn: SDS-PAGE,Western blots, amino acid sequencing and testing for post translational modification. These assays demonstrated that the PAT protein expressed in corn and PAT protein produced in and purified from a microbial source are similar.

C. Mammalian Toxicological Profile

The PAT enzyme catalyzes the transfer of an acetyl group from acetyl CoA to the amino group of phosphinothricin (also known as glufosinate). The enzyme is highly substrate specific. Dekalb believes it is therefore highly unlikely that PAT will acetylate any naturally occurring compound in maize cells.

The mammalian toxicological data submitted in support of the exemption from the requirement for a tolerance include an acute oral toxicity study with mice and a test for digestibility under simulated gastric conditions. The results of these studies demonstrate that PAT protein has an acute LD_{50} greater than 2,500 mg/kg. In tests for digestibility in simulated gastric fluid, PAT protein was found to degrade to below detectable levels within 2 minutes when exposed to full strength gastric fluid. When exposed to simulated gastric fluid that had been diluted 100-fold, PAT protein degraded to below detectable levels in 5 minutes. Given the rapid digestibility of PAT protein, no chronic effects are expected. PAT protein or metabolites protein are not known to, or expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the PAT protein.

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases and are glycosylated and present at high concentrations in food. PAT protein is rapidly degraded by simulated gastric fluid, is not present as a major component in food, and is apparently nonglycosylated or otherwise post-translationally modified when produced in plants.

The genetic material necessary for the production of PAT protein are nucleic acids (DNA) which comprise the genetic material encoding the PAT protein and the regulatory regions associated with the gene. Regulatory regions are the genetic material that control the expression of the genetic material encoding the PAT protein, such as promoters, terminators, introns, and enhancers. DNA is common to all forms of plant and animal life, and there are no known instances of where nucleic acids have been associated with toxic effects related to their consumption. The nucleic acids introduced into insect protected corn have been characterized. No mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of the PAT protein in corn.

D. Aggregate Exposure

Exposure via dermal exposure or inhalation is unlikely given that the PAT protein is contained in plant cells. Transfer of the pesticide to drinking water is highly unlikely given that PAT protein is undetectable in pollen, has been shown to degrade in senescing corn plants. Oral exposure, at very low levels, may occur from ingestion of processed corn products; however, Dekalb believes that the lack of mammalian toxicity, and the digestibility of the protein have been demonstrated.

E. Cumulative Exposure

Dekalb believes that consideration of a common mode of toxicity is not appropriate given that there is no indication of mammalian toxicity of PAT protein and no information that indicates that toxic effects would be cumulative with any other compounds.

F. Safety Determination

1. *U.S. population in general.* Dekalb believes that the lack of acute toxicity and the rapid digestibility of PAT protein provide evidence for the lack of toxicity and allergenicty and support an exemption from the requirement for a tolerance for PAT protein.

2. *Infants and children.* The use sites for insect protected corn containing PAT protein are all agricultural for control of Lepidopteran insects. Therefore, nondietary exposure to infants and children is not expected. Dekalb believes that the lack of toxicity of PAT protein provides reasonable certainty that no harm will result to infants and children from aggregate dietary exposure to residues of PAT.

G. Existing Tolerances or Tolerance Exemptions

An exemption from the requirement for a tolerance was granted by the EPA for "Plant-pesticide Inert Ingredient Phosphinothricin Acetyltransferase (PAT) and the Genetic Material Necessary for Its Production (Plasmid Vector pCIBP3064) in Corn," **Federal Register**: August 16, 1995, (60 FR 42450; FRL–4971–2).

III. Administrative Matters

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the document control number [PF–660]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Fridy, except legal holidays.

A record has been established for this notice under docket number [PF–660] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Dated: January 17, 1997.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–1754 Filed 1–23–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–693; FRL–5583–8]

Drexel Chemical Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a tolerance for residues of diuron in or on the edible portions of catfish. The summary was prepared by the petitioner, Drexel Chemical Company.

DATES: Comments, identified by the docket number [PF–693], must be received on or before, February 24, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments should be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–693]. Electronic comments on this proposed rule may be filed online at many Federal Depositary Libraries. Additional information on electronic submissions may be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phillip V. Errico, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6027; e-mail: errico.phillip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petition (PP) 6F4680 from Drexel Chemical Company, POB 13327, Memphis, TN 38133-0237, proposing to amend 40 CFR 180.106 by establishing a tolerance for residues of the herbicide diuron [3-(3,4-dichlorophenyl)-1,1-dimethylurea] in or on the raw agricultural commodity catfish at 1 part per million (ppm). The proposed analytical method is gas chromatography (GC) with a nitrogen-phosphorous detector.

Pursuant to section 408(d)(A)(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended, Drexel Chemical Company has submitted the following summary of information, data and arguments in support of their pesticide petition. The summary was prepared by Drexel Chemical Company and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not

necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

A. Residue Chemistry

1. *Analytical method.* An analytical method is available, a modified form of DuPont Agricultural Products method #5470. The principle of the determination is the hydrolysis of diuron and its metabolites by alkaline reflux to 3,4-dichloroanaline (3,4-DCA), followed by a distillation of the aniline into an acid solution. The acid distillate is made alkaline with concentrated base and subsequently extracted into an organic solvent (hexane) and analyzed by gas chromatography. With the modified method, recoveries exceeded 70% and the limit of quantitation (LOQ) is 0.01 µg/g.

2. *Magnitude of the residues.* Residue trials were conducted in contained catfish ponds on a 30, 60 and 90–day treatment schedule. In the 30–day treatment schedule pond, diuron residues in catfish fillet were between 0.8 and 0.9 ppm after the first week post treatment, and declined to 0.2 ppm after 8 weeks post treatment. Due to mortality from Proliferative Gill Disease (PGD), no catfish were available after the last treatment day for residue determination from the 60–day treatment schedule pond. Diuron residues in catfish fillet from the 90–day treatment schedule pond were 1.2 ppm on the last treatment day, rose slightly to 1.4 ppm by day 7 post treatment, and declined to 1.1 ppm by day 28 post treatment.

Using data from the magnitude of the residue study, a pharmacokinetic model was developed that allowed the prediction of diuron residues in catfish fillet using a treatment schedule of applying 0.01 ppm diuron to the pond every 7 days for 56 days. Based on the model, the maximum mean fillet residue from this treatment schedule is predicted to be 0.75 ppm.

The pharmacokinetic model was validated using data from an efficacy study. Catfish were grown in ponds treated with 0.01 ppm diuron every 7 days. Diuron residues in catfish fillet were determined after 113 days of treatment. The analysis found mean fillet residues of 0.92 ppm. The pharmacokinetic model predicted day 113 diuron residues in catfish fillet of 0.89 ppm. This excellent agreement between prediction and found values demonstrates the utility of the model.

B. Toxicological Profile

1. *Acute toxicity.* The rat acute oral single dose LD_{50} is 3.5 g/kg. The rabbit acute dermal single dose LD_{50} is greater than 2 g/kg of bodyweight. The rat acute inhalation LD_{50} is less than 2.5 mg per liter. A primary eye irritation study in the rabbit shows that diuron is moderately irritating to the unwashed eye when instilled undiluted. A primary dermal irritation showed that diuron is not a skin irritant when applied undiluted. A skin sensitization study (Buehler) in the guinea pig shows that diuron is not a skin sensitizer when applied undiluted.

2. *Genotoxicity.* In the CHO/HGBRT assay the results for diuron are negative up to cytotoxic levels in the presence of S9 activation (0.75 mm) and in the absence of S9 metabolic activation (1.25 mm).

For the *in vivo* cytogenic study in rats, diuron is clastogenic at 5,000 mg/kg, the highest dose level tested.

For the *in vitro* unscheduled DNA synthesis assay in primary rat hepatocytes, diuron is negative up to 20 mm, the highest concentration tested.

Diuron was not considered to be mutagenic to TA97, TA98, TA100 and TA1535 strains of *Salmonella typhimurium* (Ames *Salmonella* plate assay) either with or without metabolic activation at the concentrations tested (-S9, 0.5, 1, 2.5, 5 and 10 µg/plate; S9, 10, 25, 100 and 250 µg/plate).

3. *Developmental and reproductive toxicity.* In a reproductive toxicity study in the rat, the no-observed effect level/lowest observed effect level (NOEL/LOEL) for parental/offspring systemic toxicity and developmental toxicity were determined to be 250 and 1,750 ppm (16.9 and 120 mg/kg/day for males and 20.3 and 144 mg/kg/day for females), respectively, based on decreased body weight gain and food consumption in both sexes and generations. There was no evidence that diuron affected reproductive performance in the rat.

In a developmental toxicity study in the rat, the maternal toxicity NOEL/LOEL were considered to be 16 and 80 mg/kg/day, respectively, based on reduction in body weight and food consumption. The developmental toxicity NOEL/LOEL were considered to be 80 and 400 mg/kg/day, respectively, based on statistically significant increases in delayed ossification of the vertebrae and sternebrae and decreased fetal weights.

In a developmental toxicity study in rabbits, the NOEL/LOEL maternal toxicity were considered to be 10 and 50 mg/kg/day, respectively, based on decreased body weight and food consumption. There was no evidence of developmental effects in the study.

4. *Subchronic toxicity.* In a non-guideline subchronic (6-month) oral toxicity study in rats, the systemic NOEL of technical diuron was sought. The scope of the study was primarily restricted to parameters affecting the erythrocytes. Based on the study findings, the systemic NOEL of diuron could not be determined, since some findings were judged to be equivocal.

5. *Chronic toxicity/oncogenicity.* The chronic rat oral toxicity study was acceptable as supplementary data. However, deficiencies exist in the study because several organs were not examined, such as the mammary glands. No NOEL was determined. The LOEL was considered to be 25 ppm (1.02 and 1.69 mg/kg/day for males and females, respectively), the lowest dose level tested in this study based on increased erythrocyte count in females, increased hemosiderin in the spleen, increased spleen weight, bone marrow activation, increased hematopoietic marrow, decreased fat marrow, and thickened urinary bladder wall in males.

The chronic oral toxicity study in dogs was acceptable. The NOEL/LOEL in the study were considered to be 25 and 125 ppm (1.88 and 9.33 mg/kg/day, respectively, for both males and females) based on abnormal blood pigments in the blood.

The oncogenicity phase of the combined chronic toxicity/oncogenicity study in rats was considered to be supplementary. However, deficiencies exist in the study because several organs were not examined, such as the mammary glands.

The oncogenicity study in mice was considered to be acceptable. The NOEL/LOEL for systemic toxicity were considered to be 250 ppm (50.8 and 77.5 mg/kg/day for males and females, respectively) based on decreased body weight gain, and increased spleen and liver weight in males, elevated leucocyte and reticulocyte counts, mean corpuscular volume and mean corpuscular hemoglobin, and bilirubin values in both sexes; increased incidence of intracellular pigments in renal tubules in females and in the spleen of males and females; increased incidence of hemosiderin deposits in liver cells in males; increased incidence of liver single cell necrosis and cell mitosis in both sexes; increased incidence of enlarged degenerative cells in females and of hepatopathy and Kupffer cells in males; increased incidence of urinary bladder edema and epithelial hyperplasia, thickened mucosa and enlarged uterine horn in females. In the study, a statistically significant increase (14%, ≤ 0.01) of ovarian luteoma was noted in mice of the 2,500 ppm group as compared to the concurrent controls (6%). This value

was higher than the historical control incidence of 1.7% for ovarian luteoma tumor. Combined ovarian sex cord tumors were also increased. Mammary gland tumors (adenocarcinoma type A and B) in the 2,500 ppm group were statistically significantly higher than the concurrent control (12%, $p \leq 0.05$ vs. 4% in the concurrent control) and higher than the historical control of 3.3%.

C. Aggregate Exposure

1. *Dietary exposure.*—a. *Food.* A Registration Eligibility Document (RED) for diuron is not scheduled for completion until outstanding data requirements requested by the EPA's Office of Pesticide Programs Environmental Fate and Effects Division are completed. Therefore, a dietary exposure assessment using anticipated residues is not available. In the absence of a dietary exposure assessment, the petitioners conducted a very conservative exposure assessment with proposed tolerance level residues (maximum residues permitted) for all crops for which the technical registrants intend to provide supporting data. The food, "freshwater finfish" was included with an anticipated residue level of 0.75 ppm, to represent catfish consumption.

Since freshwater finfish can come from a number of sources, including sport fishing, commercial catch, and aquaculture, and could be other popular finfish species, such as trout or tilapia, the consumption estimate is extremely conservative. In addition, diuron is applied to contained ponds used in commercial catfish production during a 2 to 4–month period in the summer and fall. However, the fish are harvested from the ponds the year round. Residue estimates for other foods were adjusted to reflect the percent of crop treated, based on USDA data.

Exposure estimates were compared to a Reference Dose (RfD) of 0.003 mg/kg bwt/day (mkd), which was recommended by the RfD Review Committee at their September 26, 1996, meeting.

The maximum total exposure to the U. S. population for all uses of diuron, including the use in catfish ponds, is 0.000593 mkd, which represents 19.8% of the RfD. The most highly exposed subgroup of the U. S. population was non-hispanic other than black or white (e.g., asians), which had a total exposure of 0.000787 mkd, representing 26.6% of the RfD.

Exposure to all infants was 0.001537 mkd (51.2% of the RfD), and exposure to non-nursing infants less than a year old was 0.000675 mkd (63.3% of the RfD). Exposure to children from 1 to 6 years old was 0.001386 (46.2% of the RfD), and exposure to children 7 to 12 years old was 0.000795 mkd (26.5% of the RfD). Exposure to females of childbearing age (13 to 50 years of age) was 0.000435 mkd (14.5% of the RfD).

b. *Drinking water.* Data concerning potential exposure through drinking water is not available. The proposed use in catfish ponds is not expected to add potential exposure to drinking water. Contained catfish ponds are drained for levee repair every 5 to 10 years. The water is returned to the pond to the greatest extent possible after the repair. In some cases, the water may be released to a ditch or a stream. Because market catfish are harvested from the ponds year round as the catfish in a pond reach marketable size, the repair work is not seasonal, but completed on a staggered basis, and does not necessarily occur during the time of year when diuron may be applied to the pond waters. Diuron is moderately toxic, there have been detections in groundwater, and it has low to intermediate mobility in fine to coarse textured soils and freshwater sediment (according to the Diuron Environmental Fate Profile completed for the U.S. EPA by Dynamac, dated June 10, 1982, pp 37–49). Based on these three factors, a conservative 10% of exposure has been reserved for drinking water.

2. *Non-dietary exposure.* Diuron is not expected to be used in residential settings. However, some registered product labels include uses, while not intended for residential use, could conceivably result in residential exposure. These uses include application to ornamentals, use as a wood preservative (algicide in boat paints), or application to turf. A conservative 5% of the total exposure has been reserved to account for the uses which could potentially result in residential or lawn use.

D. Cumulative Effects

Linuron is the only chemical, registered in the United States as a pesticide, which is chemically similar to diuron. Despite the structural similarity, based on publicly available information, some of their toxicological activities differ significantly. In the carcinogenicity studies, mice treated with 2,500 ppm diuron developed mammary adenocarcinomas and ovarian luteomas. Rats treated with 2,500 ppm diuron developed urinary bladder carcinomas. Mammary glands were not evaluated in this study. For linuron, mice in the carcinogenicity study developed hepatocellular adenomas. Rats developed testicular carcinomas which were not hormone dependant. The carcinogen classification of diuron is currently under review. Linuron is considered a Group C carcinogen (without Q*) Non-tumor lesions in rats administered diuron included anemia and an increased reticulocyte count. In the chronic linuron study, there was a decrease in the reticulocyte count.

Based on these considerations, there is insufficient evidence to determine if cumulative toxicity will occur.

E. Safety Determination

1. *U. S. population.* Maximum exposure to the U. S. population resulting from the use of diuron, including the use in catfish ponds, is not expected to exceed 0.000593 mkd, representing 19.8% of the RfD. After adding 10% for potential drinking water and 5% for potential residential/lawn exposure, the total exposure represents only 34.8% of the RfD. Therefore, there is a reasonable certainty of no harm resulting from aggregate exposure of diuron to the general population.

2. *Infants and children.* Maximum exposure to the most highly exposed infants and children subgroup, non-nursing infants less than a year old, is not expected to exceed 0.001900 mkd, which represents 63.3% of the RfD. After adding 10% for potential drinking water exposure, and 5% for potential residential/lawn exposure, the total exposure to this subgroup represents only 78.3% of the RfD. Therefore, there is a reasonable certainty of no harm resulting from aggregate exposure of diuron to infants and children.

These results represent very conservative consumption and residue levels. An exposure estimate based on anticipated residues for all foods, and consumption of farm-raised catfish only, would result in a greatly diminished risk.

F. International Tolerances

A maximum residue level has not been established for diuron by the Codex Alimentarius Commission.

II. Public Record

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number, [PF–693].

A record has been established for this notice of filing under docket control number [PF–693] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically to printed, paper form as they are received and will place the paper copies in the official notice record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 16, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–1751 Filed 1–23–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–685; FRL–5579–3]

Mycogen Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing a regulation establishing an exemption from the requirement of a tolerance for residues of the pesticide pelargonic acid on all raw agricultural commodities. This notice includes a summary of the petition that was prepared by the petitioner, Mycogen Corporation.

DATES: Comments, identified by the docket control number [PF–685], must be received by EPA on or before February 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–685]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice of filing may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS #1, 2805 Jefferson Davis Highway, Arlington, VA, 703–308–8715; e-mail: mendelsohn.michael@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petition (PP) 6F4625 from Mycogen Corporation, 4980 Carroll Canyon Road, San Diego, CA 92121. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of pelargonic acid on all raw agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

Mycogen has stated that an analytical method for the detection and measurement of pelargonic acid residues is not necessary to protect the public health and environment. They state that the natural occurrence of pelargonic acid in our food supply and environment, and the rapid metabolism and degradation of pelargonic acid to background levels in humans, plants and soil, eliminate the need to quantify pelargonic acid residues.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Mycogen included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Mycogen; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

This unit summarizes information cited by Mycogen to support the proposed tolerance.

A. Pelargonic Acid Uses

Pelargonic acid is currently used as the active ingredient in two unique pesticide products. First, it is used as a contact, non-selective, broadspectrum, foliar-applied herbicide. As the active ingredient in Scythe® Herbicide (EPA Reg. No. 53219–7), registered by EPA for non-crop uses on April 7, 1994, pelargonic acid will only control actively growing emerged green vegetation. Pelargonic acid provides burndown of both annual and perennial broadleaf and grass weeds, as well as most mosses and other cryptogams. The spray quickly penetrates plant tissue and disrupts normal cell membrane permeability and cellular physiology. The disruption of the cell membrane results in cell leakage and death of all contacted tissue. The product does not translocate, and it will burn only those plant parts that make contact with spray solution. Scythe provides no residual

weed control; therefore, repeat treatments may be necessary for new plants emerging from seed or regrowth of treated vegetation.

Scythe Herbicide contains as the active ingredient 57 percent pelargonic acid and 3 percent related fatty acids (C_6 – C_{12}). One gallon of Scythe contains 4.2 pounds (lbs) of pelargonic acid. The application rate will range from 3 percent to 10 percent v/v delivered at 75 to 200 gallons of spray solution per acre through boom, hand-held, or high volume equipment. Therefore, the rate of use of pelargonic acid will be 9.45 lbs to 84 lbs per acre. Combinations with selected products may further reduce the application rate to a low 0.78 lbs to 2.1 lbs per acre (0.25 percent solution in 75 or 200 gallons spray per acre).

Second, pelargonic acid is used as a fruit blossom thinner that promotes return bloom (annual bearing) and increased fruit size and quality in apple and pear. Thinex® Blossom Thinner (EPA Reg. No. 53219–11) was registered as a biochemical pesticide due to the natural occurrence of pelargonic acid, the low use rates and the unique non-toxic mode of action. Thinex works on contact by damaging the stigma or female flower part of the blossom, thus preventing pollination of a certain percentage of flowers. A blossom that has already been fertilized at the time of application will be undamaged by Thinex. No more than 2 applications per year are made. On February 14, 1996, pelargonic acid was exempt under 40 CFR 180.1159 from the requirement of a tolerance when used as a blossom thinning agent on apple and pear.

Thinex Blossom Thinner contains as the active ingredient 57 percent pelargonic acid and 3 percent related fatty acids (C_6 – C_{12}). The application rate as a blossom thinner ranges from 0.5 pints to 4 pints of product to make 100 gallons of spray solution. One hundred to 400 gallons of spray solution per acre may be used. Therefore, the rate of use of pelargonic acid as a blossom thinning agent ranges from a low 0.26 lbs to a high 8.4 lbs per acre.

B. Product Identity/Chemistry

Pelargonic acid ($C_8H_{17}COOH$), a nine-carbon straight-chain fatty acid commonly referred to as nonanoic acid, is a naturally-occurring fatty acid found in the environment and in our food supply.

Pelargonic acid has been found to occur naturally in low concentrations in soil. The degradation of pelargonic acid applied to soil occurs very rapidly by microbial means, not through hydrolysis or photolysis. Degradation occurs under aerobic conditions with beta-oxidation being the principal pathway of metabolism.

Pelargonic acid has been shown to occur naturally in our food supply. For example, it has been identified in grapes, cheese and milk at levels from 10 parts per million (ppm) to 400 ppm. Some literature references cite its natural occurrence in soybeans (trace levels), oranges (130 ppm), beans (trace levels), tobacco (0.27 ppm) and potatoes (1.18 ppm). In a cross-section of apple varieties analyzed by Mycogen, pelargonic acid was found at levels from 20 parts per billion (ppb) to 320 ppb.

Fatty acids, including pelargonic acid, are metabolized in mammalian systems to produce energy. The oxidative degradation of fatty acids is a central metabolic pathway in humans, animals and plants. Fatty acids of varying chain lengths are metabolized into two-carbon fragments through a sequence of enzyme-catalyzed reactions. The metabolic products are then incorporated into fats, carbohydrates and amino acids.

The magnitude of pelargonic acid residues from applications of Scythe Herbicide anticipated at time of harvest will be insignificant beyond naturally-occurring levels and to normal dietary exposure. Applications of Scythe Herbicide will not directly contact desirable food commodities since exposure will be intentionally avoided by the grower because crop damage may result. Any residues of pelargonic acid on food commodities will only occur as a result of spray drift, thus minimizing residues of pelargonic acid on the food commodity.

An analytical method for detecting and measuring the levels of pelargonic acid residue is not necessary to protect the public health and environment. The natural occurrence of pelargonic acid in our food supply and environment, and the rapid metabolism and degradation of pelargonic acid to background levels in humans, plants and soil, eliminate the need to quantify pelargonic acid residue from applications as a herbicide or a blossom thinner.

C. Mammalian Toxicological Profile

Mycogen has submitted to EPA a comprehensive toxicology data package and referenced several published articles concluding that residues of pelargonic acid will be safe to human health.

Although a significant concentration of pelargonic acid can be irritating to eyes and skin, toxicology data confirms that exposure to residues of pelargonic acid beyond naturally occurring background levels will be practically non-toxic to human health. The following mammalian toxicity studies have been conducted to support the tolerance exemption for residues of pelargonic acid:

Acute Oral LD_{50}: >5000 mg/kg
Acute Dermal LD_{50}: >2000 mg/kg
Acute Inhalation LC_{50}: >1.244 mg/L
Dermal Irritation (Rat): Severely Irritating
Eye Irritation (Rabbit): Severely Irritating
Skin Sensitization (Guinea Pig): Not sensitizing

A range finding test to determine dosing concentrations for a 90–Day Rat Oral Toxicity study produced no adverse effects from pelargonic acid at any dose level for 3 weeks, including the highest dose of 20,000 ppm (2 percent), or 1,834 mg/kg/day, for a period of 2 weeks.

A developmental toxicity screen study in rats produced a NOEL of 1,500 mg/kg/day (only dose tested). Pelargonic acid was tested at one dose administered by gavage in corn oil to 22 CD rats (20 pregnant) on days 6 through 15 of gestation. No evidence of maternal or developmental toxicity was seen.

A chronic dermal toxicity study in mice resulted in no evidence of severe dermal or systemic toxicity. Fifty mice were treated twice-weekly with 50 mg doses of undiluted pelargonic acid for 80 weeks. Histopathology revealed no tumors of the skin or the internal organs.

A gene mutation assay in mouse lymphoma cells (L5178Y TK <plus-minus>) concluded that pelargonic acid was negative for inducing mutations without metabolic activation, and was considered weakly positive for inducing mutations at the TK locus of culture mouse (L5178Y TK <plus-minus>) cells in the presence of S9-induced metabolic activation. Mutations were induced at levels greater than or equal to 50 mg/ml. However, this occurred in the presence of increasing moderate-to-severe cytotoxicity and small colony development and may reflect gross chromosomal changes or damage rather than actual mutational changes within the TK gene locus.

In an *in-vivo* mouse micronucleus assay, groups of ICR mice (15/sex/dose) were administered single oral doses of 1,250, 2,500, or 5,000 mg/kg pelargonic acid. The bone marrow cells were harvested 24, 48, and 72 hours post-treatment. No significant increases in the frequency of micronucleated polychromatic erythrocytes (PCEs) were observed in either sex at any dose; thus, pelargonic acid was negative in the micronucleus assay.

A reverse gene mutation assay (Ames Test) concluded that pelargonic acid was not mutagenic under the conditions of the study.

D. Aggregate Exposure

Pelargonic acid is a naturally-occurring fatty acid found in our food supply. Mycogen Corporation has estimated the potential worst case dietary exposure of pelargonic acid beyond existing natural background levels after an application of Scythe Herbicide between grape vine rows. The commodity grape was selected because the use of Scythe Herbicide between grape vine rows is a representative and major use pattern intended for the product. In an effort to make a worst case scenario for residue calculations, Mycogen has suggested a 10 percent deposition on the crop, even though such a drift rate will be intentionally avoided by the grower because crop damage may result. Drift deposition would likely be less than 1 percent of applied spray volume.

The worst case human daily consumption level of pelargonic acid from treated grapes has been estimated to be 0.397 mg/kg/day. This exposure dose after applications of Scythe Herbicide must be compared to the highest dose level tested in the dietary range-finding toxicology study. In this study, a daily feeding dose of 1,834 mg/kg/day (20,000 ppm) did not produce any signs of toxicity or abnormalities for a period of 2 weeks.

Exposure to drinking water will be minimal. Scythe Herbicide will not be applied directly to water. The proposed label includes applications to dry ditches, dry canals, ditch banks, and for use above the water line or after draw-down of agricultural irrigation water and ditch systems, industrial ponds and disposal systems, and impounded water areas. Taking potential spray drift into consideration, the rapid degradation of pelargonic acid to naturally-occurring background levels in our environment will mitigate the exposure of residues to drinking water to insignificant amounts. In addition, the degradation of pelargonic acid will ensure that no contamination to groundwater will occur.

If residues of pelargonic acid do occur in food or in drinking water, information on the metabolism of fatty acids in the body confirms that residues of pelargonic acid would present minimal risk to humans. Fatty acids are digested in mammalian systems through normal metabolic pathways. While pelargonic acid is not as widespread in our diet as other fatty acids, the only difference is that most dietary fatty acids have even-numbered carbon chains and are ingested initially in the form of triglycerides. It is likely that pelargonic acid, when it is absorbed from the gastrointestinal tract into the blood, would be treated little differently from the free fatty acids released from adipose tissue.

Non-dietary exposure of pelargonic acid will be mitigated through the use of proper personal protective equipment. For non-occupational uses or exposure to sites not associated with food or drinking water, data on the natural occurrence and rapid microbiological degradation of pelargonic acid in the environment confirms that exposure will be minimal. EPA has waived all environmental fate data requirements for the current registration of Scythe Herbicide.

E. Cumulative Exposure

No cumulative exposure through other pesticides and substances with common mode of toxicity is expected. Pelargonic acid has a unique mode of action. Residues will not increase or sustain as a result of exposure to other materials. Pelargonic acid will degrade by microbial action to background levels over a period of 24 - 48 hours regardless of contact with substances either through pesticide tank mixing or exposure to other chemical residues in the environment. Normal use patterns will not lead to accumulation of pelargonic acid in the environment.

F. Safety Determination

Mycogen believes that the use of pelargonic acid as a naturally-occurring, lower toxicity, environmentally compatible material fits with EPA's objective to register reduced risk pesticides. The common dietary intake of the U.S. population includes low concentrations of naturally-occurring fatty acids, including pelargonic acid. The rapid environmental breakdown of pelargonic acid will significantly decrease any residues as a result of applications from Scythe Herbicide. Mycogen believes that under worst case exposure calculations, and based on established toxicology data, any increased levels of pelargonic acid will present no adverse effects to the consumer.

Mycogen believes that a determination of safety for infants and children can be made due to the insignificant exposure expected beyond naturally-occurring background levels, the fact that fatty acids are digested in mammalian systems through normal metabolic pathways, and the toxicology data base concludes that pelargonic acid is practically non-toxic when administered orally. The developmental toxicity screen study in rats produced a NOEL of 1,500 mg/kg/day (only dose tested), and no evidence of maternal or developmental toxicity was seen.

G. Existing Tolerances

Pelargonic acid is exempt under 40 CFR 180.1159 from the requirement of a tolerance when used as a blossom thinning agent on apple and pear. Pelargonic acid has been added to the Food and Drug Administration's list of approved chemicals that may be safely used in washing or to assist in the lye peeling of fruits and vegetables in concentrations of up to 1 percent (21 CFR 173.315). The same use is cleared by the United States Department of Agriculture under the USDA List of Authorized Substances, 1990, 7 CFR 5.14, Fruit & Vegetable Washing Compounds. In addition, pelargonic acid is cleared by the Food and Drug Administration as a sanitizer solution to be used on food-contact articles [21 CFR 178.1010(b) (42)], or as a synthetic food flavoring agent and adjuvant (21 CFR 172.515).

II. Administrative Matters

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the document control number, [PF–685]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice of filing under docket number [PF–685] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:

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Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all

comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 16, 1997.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–1753 Filed 1–23–97; 8:45 am]
BILLING CODE 6560–50–F

[PF-689; FRL-5582-7]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the extension of the temporary tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] (CAS Number 36734-19-7, PC Code 109801) in or on the raw agricultural commodities tangerines and tangelos at 3.0 ppm. The notice includes a summary of the petition prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket control number [PF-689], must be received on or before, February 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa. gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF-689]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). The CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 227, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6226, e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 3G4210) from Rhone-Poulenc Ag Company (Rhone-Poulenc), P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDC), 21 U.S.C. 346(d), to extend the temporary tolerances for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the raw agricultural commodities tangerines and tangelos at 3.0 ppm. The current temporary tolerances expire on April 15, 1997. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDC; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. As required by section 408(d) of the FFDC, as recently amended by the Food Quality Protection Act (FQPA), Pub. L. 104-170), Rhone-Poulenc included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Rhone-Poulenc. EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDC, EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

There is an extensive data base supporting the registration of iprodione. All the studies required under the reregistration process mandated by FIFRA 88 have been submitted. Most of these studies have been reviewed by the Agency and accepted.

The temporary tolerances for iprodione on tangelos and tangerines at 3.0 ppm are considered adequate to cover residues resulting from the limited use of iprodione in the proposed experimental use program. The tolerance level is based on field trial data with an overall mean residue of 1.19 ppm for tangelos and tangerines. The nature of the residue in plants is adequately defined. Plant metabolism studies have been reviewed in connection with previous petitions for tolerances. The residues of concern are iprodione, its isomer RP 30228, and its metabolite RP 32490. The Phase IV Review concluded that additional plant metabolism studies are not needed.

The nature of the residue in animals is adequately understood considering the limited use of iprodione on tangerines and tangelos as proposed in the experimental use permit (EUP). The residues of concern in animals are iprodione, its isomer RP 30228, its metabolites RP 32490 and RP 36114. The established tolerances for iprodione and its metabolites in meat, milk, poultry, and eggs are adequate to cover secondary residues in animal commodities resulting from the experimental use on tangerines and tangelos. Citrus feedstuff theoretically accounts only for a maximum of 20% of beef and dairy cattle diet. Citrus

feedstuff is not fed to poultry and swine. Since the EUP covers only a maximum of 4,000 acres which represents less than 0.4% of total U.S. bearing citrus fruit production for 1996, the actual iprodione contribution to the diet of livestock is not significant.

An adequate analytical method, gas liquid chromatography using an electron-capture detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes. In the Phase IV Review, EPA requested that a substitute for benzene be used in the method of analysis used in new crop field trials. In response to this request, Rhone-Poulenc developed a common moiety GC method with a 0.05 ppm limit of quantitation (LOQ). An Independent Laboratory Validation for this method was submitted.

Iprodione is an important product for growers of several minor crops. These include garlic, ginseng, chinese mustard, broccoli, caneberries (blackberries, loganberries, and raspberries), and bushberries (blueberries, currant, elderberries, gooseberries, and huckleberries).

There are no Codex tolerances for iprodione on citrus commodities.

The following mammalian toxicity studies have been conducted to support the extension of the temporary tolerances for iprodione on tangerines and tangelos.

A. Toxicological Profile

1. *Acute toxicity.* A complete battery of acute toxicity studies for iprodione were completed. Iprodione has low acute toxicity. The acute oral toxicity study in the rat resulted in LD_{50}s of 3,629 mg/kg and 4,468 mg/kg for females and the combined sexes, respectively. The acute dermal LD_{50} in both rats and rabbits is >2,000 mg/kg. The acute inhalation LC_{50} for a 4–hour exposure to rats is >5.16 mg/L. No skin or eye irritation or dermal sensitization are produced by iprodione. Based on the results of these studies, iprodione was placed in toxicity category III.

Conclusion. Based on the acute toxicity data cited above, Rhone-Poulenc believes that iprodione does not pose any acute dietary risks.

2. *Mutagenicity.* Mutagenicity studies completed include *Salmonella typhimurium* and *Escherichia coli* reverse mutation (all negative), induction tests with *Escherichia coli* (all negative), DNA repair test in *Escherichia coli* (negative), DNA damage in *Bacillus subtilis* (positive), Rec assay in *Bacillus subtilis* (negative), mutagenicity in *Saccharomyces cerevisiae* D7 (negative), forward mutation in CHO/HGPRT assay (negative), chromosome aberrations in CHO cells (negative), sister chromatid exchange in CHO cells (negative), *in vivo* micronucleus test (negative), *in vivo* host mediated assay with *Salmonella typhimurium* G46 (negative) and dominant lethal test in male mice (negative).

Conclusion. Based on the data cited above, Rhone-Poulenc believes that the weight of evidence indicates that iprodione does not pose a mutagenic hazard to humans.

3. *Rat metabolism.* ^{14}C-Iprodione was absorbed readily from the gastrointestinal tract, metabolized, and excreted by rats of both sexes following single low [50 mg/kg] and high [900 mg/kg] oral doses and 14 repeated low [50 mg/kg] doses. Peak blood levels were observed at 4 and 2 hours, respectively, in low-dose males and females and at 6 hours in high-dose rats of both sexes. The elimination of ^{14}C from the blood was slower in males than females. There were both dose and sex-related differences noted in absorption: males absorbed a greater percentage of the low and repeated doses than females. Although levels of ^{14}C were found in most tissues monitored, the levels were ≤0.5% of the total amount administered. It is to be noted that the testes of the low-dose [50 mg/kg] males showed no detectable amount of ^{14}C; the high dose in the rat chronic toxicity/carcinogenicity study where testicular tumors were observed was 69 mg/kg. The primary route of elimination of ^{14}C following single and repeat low-dose exposure was the urine, and the feces was the primary route following high-dose exposure. Dealkylation and cleavage of the hydantoin ring were the two primary steps in the metabolism of iprodione. Hydroxylation of the phenyl ring and oxidation of the alkyl chain also occurred. The primary metabolites recovered from the urine [both sexes] included a dealkylated derivative of iprodione and two polar but unidentified compounds. Males produced larger amounts of a hydantoin ring-opened metabolite than females, and the urine of the females contained a higher proportion of unchanged parent compound than that of the males. Several urinary metabolites were not identified. The feces contained much larger amounts of unchanged parent compound than the urine, which the authors suggested was unabsorbed iprodione and metabolites or hydrolyzed conjugates of absorbed material.

In another single oral administration study in rats using 50 mg/kg, no sex differences were apparent in the excretion profile, and both urinary elimination [37%M/28%F] and fecal excretion [56%M/50%F] are major routes of excretion. The metabolism of iprodione was extensive and characterized by the large number of metabolites formed. In the urine, RP 36115, RP 32490, RP 36112, RP 36119, and RP 30228 were either confirmed or indicated. The feces contained a large proportion of parent compound; the major fecal metabolites were RP 36115, RP 36114, RP 32490, and RP 30228. A general metabolic pathway for iprodione in the rat indicates that biotransformation results in hydroxylation of the aromatic ring, degradation of the isopropylcarbamoyl chain and rearrangement followed by cleavage of the hydantoin moiety. Additionally, structural isomers of iprodione resulting from molecular rearrangement, as well as intermediates in the pathway were detected.

4. *Chronic effect.* The chronic toxicity of iprodione has been extensively studied in three species, i.e. dog, rat, and mouse:

a. *Dog*—i. In the first study, conducted at dose levels of 100, 600, and 3,600 ppm a clear no observed effect level (NOEL) was established at 100 ppm (4.2 mg/kg/day). The lowest effect level (LEL) was set at 600 ppm based on equivocal effects such as decreased prostate weight and an increased incidence of Heinz bodies in erythrocytes in males.

ii. A second study (MRID 00144391, 41327001, 42211101), conducted at dose levels of 200, 300, 400, and 600 ppm, was performed as a bridging study for EPA in order to establish a higher NOEL. In this study no clear indications of any toxicological effects were noted. From the results of the two complementary studies, a conservative NOEL of 400 ppm (17.5 mg/kg/day in males and 18.4 mg/kg/day in females) and a LEL of 600 ppm (24.6 mg/kg/day in males and 26.4 mg/kg/day in females) based on depressed blood cell parameters were established.

b. *Rat*—i. In an initial study, Charles River outbred CD albino rats were fed diets containing 125, 250, or 1,000 ppm (6.25, 12.5, and 50 mg/kg/day) of iprodione technical for 24 months. In this study, the NOEL of iprodione in rats was observed to be greater than 1,000 ppm (i.e. >50 mg/kg/day).

ii. In a repeat study, Sprague Dawley rats were administered 150, 300, or 1,600 ppm iprodione technical in the diet for 24 months. The NOEL for chronic toxicity was set at 150 ppm (mean intake of males and females was 7.25 mg/kg/day) and the LEL was 300 ppm (12.4 mg/kg/day for males and 16.5 mg/kg/day for females).

c. *Mouse*—i. In an initial study, Carworth CF-1 outbred albino mice were fed diets containing 200, 500, 1,250 ppm (28.6, 71.4, and 178.6 mg/kg/day) of iprodione technical for 18 months. In this study, the NOEL of iprodione in mice was greater than 1,250 ppm (i.e. >178.6 mg/kg/day).

ii. In a repeat study, iprodione technical was administered at dietary concentrations of 160, 800, or 4,000 ppm to CD-1 mice for 99 weeks. The NOEL for chronic toxicity was set at 160 ppm (23 mg/kg/day for males and 27 mg/kg/day for the females), and the LEL at 800 ppm (115 mg/kg/day for males and 138 mg/kg/day for females).

Conclusion. The chronic reference dose (RfD) for iprodione is 0.0725 mg/kg/day. This RfD is based on the NOEL of 7.25 mg/kg/day determined from the rat combined chronic toxicity and carcinogenicity study. An uncertainty factor of 100 has been included in the RfD value to account for inter and intra-species variations.

5. *Carcinogenicity*—a. *Rat*—i. In the initial 2-year combined toxicity/carcinogenicity study, Charles River outbred CD albino rats were fed diets containing 125, 250, or 1,000 ppm of iprodione technical. In this study, no increase in neoplastic lesions were observed at any of the treatment levels. The NOEL for oncogenicity in rats was observed to be greater than 1,000 ppm (>50 mg/kg/day).

ii. In the repeat study conducted with Sprague Dawley rats administered 150, 300, or 1,600 ppm iprodione technical in the diet, no increase in tumor incidence was noted at interim sacrifice. Microscopic examination of animals found dead, sacrificed in extremis, or killed at termination after 104 weeks revealed an increased incidence of benign interstitial cell tumors in rats treated with 1,600 ppm (29/60 animals) compared with controls (3/60). No increased incidence of any other tumor type was recorded. No treatment-related neoplastic lesions were observed in the 150 or 300 ppm treatment groups. The NOEL for oncogenicity in males in this study was 300 ppm (12.4 mg/kg/day) and the LEL 1,600 ppm (69 mg/kg/day). There was no indications of oncogenicity in females at any dose level.

b. *Mouse*—i. In the initial study, Carworth CF-1 outbred albino mice were fed diets containing 200, 500, 1,250 ppm of iprodione technical for 18 months. In this study, no increase in neoplastic lesions were observed at any of the treatment levels. The NOEL for oncogenicity in mice was observed to be greater than 1,250 ppm (>178.6 mg/kg/day).

ii. In the repeat mouse oncogenicity study, iprodione technical was administered at dietary concentrations of 0, 160, 800, or 4,000 ppm to CD-1 mice for 99 weeks. Microscopic examination of animals found dead, sacrificed in extremis, or killed at termination after 99 weeks revealed an increased incidence of benign and malignant liver cell tumors in both sexes. A slight increase in the incidence of luteomas in the ovaries of females was also noted at 4,000 ppm. No increased incidence of any other tumor type was recorded. No treatment-related neoplastic lesions were observed in the 160 or 800 ppm treatment groups. The NOEL for oncogenicity in this study was 800 ppm (115 mg/kg/day in males and 138 mg/kg/day in females) and the LEL was 4,000 ppm (604 mg/kg/day in males and 793 mg/kg/day in females).

Discussion. A number of mechanistic studies have been conducted in order to elucidate the mechanism of testicular toxicity and carcinogenicity in the rat and hepatic toxicity and carcinogenicity in the mouse.

c. *Testicular toxicity and carcinogenicity in the rat.* The results of recently completed mechanistic studies have further elucidated the mechanism of iprodione testicular toxicity. The available evidence suggests that the primary mode of action of iprodione in the testes is via a disruption of testosterone biosynthesis in the interstitial cells. The resulting reduction in testosterone secretion may lead to a compensatory hyperplasia in order to maintain normal hormonal homeostasis. Tumors may then develop in sensitive species, such as the rat, due to the persistent hyperplasia. The evidence supporting such a mechanism of action can be summarized as follows:

• Iprodione and certain metabolites (RP 36112 and RP 36115) have been shown to inhibit testosterone secretion from cultures of porcine Leydig cells. Recently, it has been demonstrated that iprodione inhibits testosterone synthesis and release from rat testicular sections *in vitro.*

• The site of action whereby iprodione and its metabolites (RP 36112 and RP 36115) appear to modulate Leydig cell steroidogenesis has recently been identified using porcine Leydig cell cultures. Iprodione appears to act through a rapid, reversible, interaction with cholesterol and/or steroid hormones at the level of some transport proteins and/or steroidogenic enzymes.

• Hormonal perturbation has been observed in a rat *in vivo* study with iprodione. These were however limited to increases in LH and FSH levels following 15 days of iprodione treatment and slight differences in the secretion pattern of LH and testosterone following 30-days of treatment. In the same study, decreases in absolute and relative weights of total accessory sex organs and seminal vesicles (but not the prostate or epididymides) were noted at final sacrifice. By contrast, treatment with flutamide induced marked and persistent increases in plasma levels of testosterone, estradiol, LH and FSH and these were associated with marked decreases in the epididymides and accessory sex organs weights (ventral prostate and seminal vesicles).

• Data from subchronic and chronic toxicity studies show that several major target organs (adrenals, testicular and ovarian interstitial cells) are tissues which secrete steroid hormones.

• No clear evidence of competitive binding to the androgen receptor was found for iprodione or its major metabolites (RP 32490, RP 36114, RP 36118, and RP 36119). Several minor metabolites did exhibit a binding activity close to the reference compound flutamide. However, it is generally accepted that the anti-androgenic activity of flutamide is due to its major metabolite hydroxyflutamide, which binds to the androgen receptor with a greater affinity than flutamide (Simard *et al*, 1986).

It is well established that a threshold can be expected for hormonally mediated oncogenic mechanisms. In the rat chronic/oncogenicity study, Leydig cell tumors were only observed at highly toxic dose levels which were at or above the MTD (mean body weight gains were reduced from 13.7% to 16.4% between weeks 0 to 12, 12 to 22, and 0 to 104 of the study in high dose males) and clear thresholds exist for both non-neoplastic lesions and tumors. In addition, the cellular effects of iprodione have been demonstrated to be reversible since the inhibition of testosterone biosynthesis in porcine Leydig cells was removed following removal of the iprodione from the cell culture. It can also be noted that the rat appears to be one of the most sensitive species to benign interstitial cell tumors. They are, however, a very uncommon tumor type in humans. It is evident that the rat is much more sensitive to chemical insult of the Leydig cells than is man and, consequently, that humans are at less risk for Leydig cell testicular tumors than rats. This implies that the threshold dose for humans would be greater than for rats (See C. C. Capen, *Leydig Cell Tumors: Pathology, Physiology, and Mechanistic Considerations in Rats*, The Toxicology Forum, 1994 Annual Summer Meeting, p. 110).

d. *Hepatotoxicity and carcinogenicity in male and female mice.* In the mouse oncogenicity study, the development of hepatocellular tumors in mice appeared secondary to hepatic toxicity at a dose level at which body weight gain was severely reduced indicating that the MTD was probably exceeded (over the duration of the study, weight gain was reduced 14% and 11% in high dose males and females respectively. During weeks 18 to 45, weight gain was reduced 44% and 47%, respectively. This severity of the weight gain decrement is compounded by the fact that the livers in these animals weighed more than double their respective controls, i.e., the weight gain decrement is even more serious than the body weights alone would indicate). The animals at the highest dose level, and to a lesser extent, the mid-dose group, exhibited signs of liver toxicity, including increased liver weights, hepatocytic hypertrophy, enlarged eosinophilic hepatocytes, pigmented macrophages, centrilobular necrosis, amyloid deposits, and statistically significant increases in levels of the liver enzymes GPT and GOT. Clear NOELs exist for these effects. In a recently completed 14-day toxicity study in male mice, dose levels similar to those at which tumors were observed in the mouse carcinogenicity study induced a number of hepatic changes including the induction of Cytochrome P450 isoenzymes and cellular proliferation.

The HED Carcinogenicity Peer Review Committee (CPRC) met in 1994 and determined that iprodione should be classified a group B2 carcinogen. The CPRC recommended that a low dose quantitative risk assessment for iprodione be estimated from the benign rat interstitial cell tumors of the testes, and also from the mouse male and female liver tumors separately. It is the opinion of Rhone-Poulenc that the B2 classification as well as the use of low dose quantitative risk assessment for iprodione is inappropriate.

The male interstitial cell tumors seen only at the high dose in the lifetime rat study with iprodione were due to a mode of action with a clear threshold. This conclusion is based on the following rationale: (i) The tumors were benign and only observed at a dose level at or above the MTD, (ii) the mechanistic toxicological research designed to elucidate the biochemical mode of action, and (iii) the consensus of scientific experts that benign Leydig cell tumors in the rat are not useful predictors of human disease. Thus, because the mechanism of action shows a clear threshold, and because the potential toxicological hazard has no direct relevance for human health, Rhone-Poulenc believes that the dose response assessment for the benign interstitial cell effects in the rat testes should rely on threshold, non-linear, margin of exposure procedures and not on linear low dose extrapolations.

The mouse liver tumors also arose from a toxicological mechanism having a clear threshold. A study conducted to elucidate the mode of action of the mouse liver tumorigenesis has been described above. The relationship between hormonally active compounds and the etiology of mouse liver cancer is well established. Rhone-Poulenc therefore contends that a complete evaluation of the carcinogenicity issue indicates that iprodione is a threshold carcinogen acting through a non-genotoxic mechanism of toxicity. The application of a low dose quantitative risk assessment for iprodione is inappropriate. Rhone-Poulenc therefore recommends the use of an uncertainty factor approach and a RfD of 0.0725 mg/kg/day.

6. *Teratology rat*—a. The embryo/fetal toxicity and teratogenicity of iprodione were evaluated in Sprague-Dawley rats at oral (gavage) dose levels of 40, 90, or 200 mg/kg/day. Iprodione showed no embryotoxicity or teratogenicity at any of the dose levels examined. Although no maternal effects were detected at any treatment level in the definitive study, dose selection was justified from the pilot study in which maternal toxicity was noted at 120 and 240 mg/kg/day. In addition, an increase in the average number of late resorptions per litter was observed at 240 mg/kg/day. A clear and conservative developmental and maternal NOEL was observed at 90 mg/kg/day.

b. *Rabbit.* The embryo/fetal toxicity and teratogenicity of iprodione were evaluated in rabbits at oral (gavage) dose levels of 20, 60, or 200 mg/kg/day. No treatment-related embryotoxicity or teratogenicity was noted at doses of 20 or 60 mg/kg/day. Even though iprodione at 200 mg/kg/day was too maternally toxic for a complete teratologic evaluation, no malformations were observed in the fetuses examined from this group. The developmental NOEL was 60 mg/kg/day and the maternal NOEL was 20 mg/kg/day based decreases in maternal body weight gain.

Conclusion. Based on the studies cited above, iprodione is not a developmental toxicant.

7. *Reproductive effects.* In a multi-generation study, iprodione was administered to male and female Sprague-Dawley rats via dietary admixture at dose levels of 300, 1,000, or 2,000/3,000 ppm (for males 18.5, 61.4, and 154.8 mg/kg/day and for females 22.49, 76.2, and 201.2 mg/kg/day, respectively). It was necessary to reduce the high dose from 3,000 to 2,000 ppm following the first mating period of the F1 parents owing to excessive toxicity. No effects on reproductive performance were observed at any of the treatment levels. Parental toxicity, as evidenced by reduced body weight, body weight gain and food consumption was observed at dietary levels of 1,000 ppm and higher. Effects on pup viability and pup weight were noted at 2,000/3,000 ppm. The NOELs for parental and offspring toxicity were 300 ppm and 1,000 ppm, respectively.

Conclusion. Based on the study cited above, Rhone-Poulenc believes that iprodione is not a reproductive toxicant.

8. *Neurotoxicity.* Iprodione does not have a chemical function associated with neurotoxicity. No neurotoxic symptoms have been recorded in any toxicity study conducted with iprodione. Iprodione is therefore not considered to be a neurotoxin.

B. Aggregate Exposure

In addition to dietary exposure, the FQPA lists three potential sources of exposure to the general population that must be addressed. These are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action.

1. *Drinking water.* Iprodione, applied according to labeled use and good agricultural management practices, is predicted and demonstrated to present no significant, if any, concentrations in drinking water sources. Iprodione's physical-chemical properties and actual measured environmental concentrations in field dissipation/monitoring studies provides support for this conclusion. There is no established Maximum Concentration Level or Health Advisory Level for iprodione under the Safe Drinking Water Act.

2. *Non-occupational exposure discussion.* Iprodione is included in a number of formulations used for professional treatment of golf-courses and turf. Posting and notification procedures ensure that there is no exposure to the general public either during or following treatment.

A single granular formulation containing low quantities of iprodione (1.02%) is available to the homeowner for use on residential ornamentals and lawns. Treatment rates (1.25 oz a.i./2,500 - 5,000 sq. ft.) and the number of treatments allowed per year (2-3 max.) are low. Rhone-Poulenc believes that

this minor use will not impact significantly on the aggregate exposure to iprodione since it represents less than 4% of total iprodione use. Two formulations are registered for home and garden use but they have not been commercialized. They therefore do not need to be included in the aggregate exposure risk estimate for iprodione.

Conclusion. Rhone-Poulenc does not expect that the ornamental and turf uses add significantly to the aggregate exposure for iprodione; thus, dietary exposure is the main consideration for risk assessment purposes.

3. *Common mechanism of action discussion.* Risk assessment based on exposure to multiple chemicals is not appropriate for the following reasons:

- Similar toxicological end-points may be induced by a number of different mechanisms of action that are unlikely to be additive.
- Toxicological end-points for RfD setting may be different even between chemicals acting via a common mechanism.
- Margins between NOELs and LELs may be large and variable from chemical to chemical.
- Multiple chemical dietary exposures are low and infrequent.
- For a majority of chemicals insufficient or incomplete data is available to identify a common mechanism of action.

However, the Agency has previously noted both structural and toxicological similarities between iprodione, procymidone, and vinclozolin. There are clear differences in both the type and magnitude of effects observed after exposure to iprodione in contrast to vinclozolin and procymidone. In multi-generation studies, iprodione had no adverse effects on reproductive performance, fertility, fecundity, or sex ratio, even at dose levels that induced dramatic parental toxicity. However in similar types of studies, procymidone induced adverse effects on fertility and abnormalities of male sex organs and vinclozolin induced infertility, genital and reproductive tract malformations and pseudohermaphroditism in male rats.

Vinclozolin and procymidone are known to exert their endocrine effects via a blockage of the androgen receptor in a similar way to the potent anti-androgen flutamide (Hosokawa *et al*, 1993a and 1993b, Kelce *et al*, 1994). By contrast, iprodione has poor binding affinity to the androgen receptor and the primary lesion appears to be a blockage of testosterone biosynthesis and secretion in a similar manner to ketoconazole; a therapeutic agent that also has no effects on fertility or fecundity (Heckman *et al*, 1992). Subsequently, iprodione only appears to induce transient changes in plasma hormone levels until compensatory mechanisms take effect. Consequently, iprodione does not possess the potent anti-androgenic activity of flutamide (or its structural analogs).

Conclusion. Therefore, Rhone-Poulenc believes that consideration of a common mechanism of toxicity is not appropriate at this time since there are no reliable data to indicate that the toxic effects caused by iprodione would be cumulative with those of any other compound. Based on this point, Rhone-Poulenc has considered only the potential risks of iprodione in its exposure assessment.

C. Safety Determination

1. *DRES–U.S. population–infants–children (1-6 yrs old).* According to EPA's Dietary Risk Evaluation System (DRES) chronic analysis, the % RfD falls within a safe margin even when considering tolerance levels and 100% crop treated. For the overall U.S. population, dietary exposure to iprodione uses 0.353% of the RfD when using Anticipated Residue Contribution (ARC) or 54.22 % of the RfD when using tolerance levels. Exposure to iprodione resulting from the use of the product on tangelos and tangerines is negligible considering the low residues and limited acreage covered in the EUP (maximum of 4,000 acres). Dietary contribution from tangerines and tangelos accounts for less than 1% of total exposure and the cancer risk for these uses is estimated to be less than 5×10^{-8}.

A DRES detailed acute exposure analysis was performed by EPA using conservative values. The resulting high end Margin of Exposure value of 100 for the DRES subgroup of concern (females 13 + years) is above the acceptable level and demonstrates no acute dietary concern.

For the reasons stated earlier (see Unit A.5.) Rhone-Poulenc considers the use of a low dose quantitative risk assessment for iprodione to be inappropriate. As previously indicated Rhone-Poulenc recommends the use of a safety factor approach and a RfD of 0.0725 mg/kg/day. The use the Q* (Q star) value of 0.0439 $(mg/kg/day)^{-1}$ previously calculated by EPA represents a very conservative estimate of the lifetime cancer risk from potential residues of iprodione.

Nevertheless, an assessment of the lifetime cancer risk from iprodione residues in food using a Q* value of 0.0439 $(mg/kg/day)^{-1}$ has been conducted. This assessment indicates the total cancer risk to be in the *de minimus* range of 10^{-6}, even with a very conservative Q* value. Based on results of the analyses, iprodione residues in currently registered foods would not be expected to result in significant levels of chronic toxicity to any segment of the U.S. population. The upper bound cancer risk attributed to the use of iprodione on tangerines and tangelos is calculated to be negligible. Therefore, the added use will not measurably increase the cancer risk estimate for any population subgroup.

2. *Infants and children–adequate margin of safety.* In assessing the potential for additional sensitivity of infants and children to residues of iprodione the available teratology and reproductive toxicity studies and the potential for endocrine modulation by iprodione were considered.

Developmental studies in two species indicate that iprodione has no teratogenic potential, even at maternally toxic dose levels. Maternal and developmental NOELs and lowest observed effect levels (LOELs) were generally comparable indicating no increased susceptibility of developing organisms. Multi-generation rodent reproduction studies indicated that iprodione has no adverse effects on reproductive performance, fertility, fecundity, or sex ratio. Effects on pup weight and viability were only noted in the presence of severe parental toxicity.

The mechanism of endocrine modulation associated with iprodione (inhibition of testosterone biosynthesis) appears to be distinct from that of anti-androgens acting at the level of the androgen receptor and may help to explain the lack of adverse effects on reproductive function observed with iprodione.

Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, Rhone-Poulenc believes that there is a reasonable certainty that no harm will result to infants and children from exposure to residues of iprodione and no additional uncertainty factor is warranted.

3. *Endocrine discussion and conclusion.* As indicated in unit A. 5., the primary lesion at the level of the target organs (testes, ovaries, and adrenals) is likely to be related to an inhibition of steroid/androgen biosynthesis. The resulting endocrine toxic effect due to iprodione is fairly moderate compared to that produced by potent endocrine disruptors such as flutamide (and other structural analogs) and is insufficiently potent to produce effects on reproduction or development.

The increased incidence in tumors in both rats and mice was only observed when animals were treated at or above the MTD. For all three tumor sites (testes, liver, ovary) tumors only develop on pre-existing non-neoplastic lesions (cell hypertrophy/vacuolation, hyperplasia) and a clear threshold level exist for both non-neoplastic lesions and tumors. Those thresholds are far in excess of those levels of iprodione that the general public would be exposed to.

Conclusion. Rhone-Poulenc believes that iprodione would not be expected to induce any adverse effects related to endocrine disruption in members of the general population via the consumption of food crops containing residues of this compound.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number, [PF-689].

A record has been established for this notice of filing under docket control number [PF-689] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 15, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–1752 Filed 1–23–97; 8:45 am]
BILLING CODE 6560–50–F

[PF-691; FRL-5583-6]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the extension of the time-limited tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] (CAS Number 36734-19-7, PC Code 109801) in or on the raw agricultural commodity (RAC) cottonseed at 0.10 parts per million (ppm). The notice includes a summary of the petition prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket number [PF-691], must be received on or before February 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-691]. Electronic comments on this notice of filing may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM 21), Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 227, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6226, e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 2F4111) from Rhone-Poulenc Ag Company (Rhone-Poulenc), P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346(d), to amend 40 CFR part 180 by extending the time-limited tolerance for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the RAC cottonseed at 0.10 ppm. The current time-limited tolerance was established under pesticide petition (PP) 2F4111 and expires on March 15, 1997. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Rhone-Poulenc included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Rhone-Poulenc. EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

There is an extensive data base supporting the registration of iprodione. All the studies required under the reregistration process mandated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 88 have been submitted. Most of these studies have been reviewed by the Agency and accepted.

The time-limited tolerance for iprodione on cottonseed at 0.10 ppm is considered adequate to cover residues resulting from the use of iprodione on cotton. No residues were detected in cottonseed field trial studies. A processing study conducted at 12x the label rate showed no detectable residues. The nature of the residue in plants is adequately defined. Plant metabolism studies have been reviewed in connection with previous petitions for tolerances. The residues of concern are iprodione, its isomer RP30228, and its metabolite RP32490. The Phase IV Review concluded that additional plant metabolism studies are not needed.

The nature of the residue in animals is adequately understood for the proposed use of iprodione on cotton. Dietary contribution for animals from cottonseed as a result of the proposed use will be very small and secondary residues in animal commodities (ruminant and poultry) are expected to be nondetectable (i.e. <0.01 ppm in milk and <0.05 ppm in other animal commodities). A restriction is included in the use directions for cotton prohibiting grazing and feeding of cotton forage to livestock. Furthermore, based on market share information, only approximately 3% of the cotton crop is expected to be treated with iprodione in 1997. The established tolerances for iprodione and its metabolites in meat, milk, poultry, and eggs are therefore adequate to cover secondary residues in animal commodities resulting from the use on cotton.

An adequate analytical method, gas liquid chromatography using an electron-capture detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes. In the Phase IV Review, EPA requested that a substitute for benzene be used in the method of analysis used in new crop field trials. In response to this request, Rhone-Poulenc developed a common moiety GC method with a 0.05 ppm limit of quantitation (LOQ). An independent laboratory validation for this method was submitted.

Iprodione is an important product for growers of several minor crops. These include garlic, ginseng, chinese mustard, broccoli, caneberries (blackberries, loganberries, and raspberries), and bushberries (blueberries, currant, elderberries, gooseberries, and huckleberries).

Iprodione is also an important tool for cotton growers in controlling *Rhizoctonia solani*, a seedling disease. The Cotton Disease Loss Estimate Committee of the National Cotton Council ranks seedling diseases as the most important cotton disease. Furthermore, based on the cotton use directions for iprodione products, the maximum amount of product applied would be 0.2 lb active ingredient/acre on a 40 inch row and 13,000 linear row ft. This is a five- to six-fold decrease in active ingredient concentration compared to that required for competitive soil applied cotton fungicides which control *Rhizoctonia solani*. This allows for reduction of total pesticide usage in cotton production and thus reduces pesticide exposure in the environment. Another benefit is that iprodione is efficacious against all five anastomosis groups of *Rhizoctonia solani*. Currently, there are no registered products which possess this characteristic.

There are no Codex tolerances for iprodione on cottonseed.

The following mammalian toxicity studies have been conducted to support the extension of the tolerance for iprodione on cotton.

A. Toxicological Profile

Rhone-Poulenc's explanation of the toxicological profile of iprodione is being published elsewhere in today's issue of the **Federal Register** in another notice of filing [PF-689] for a tolerance for iprodione.

B. Aggregate Exposure

Rhone-Poulenc's explanation concerning aggregate exposure to residues of iprodione is being published elsewhere in today's issue of the **Federal Register** in another notice of filing [PF-689] for a tolerance.

C. Safety Determination

1. DRES—US population—infants—children (1-6 yrs old). According to EPA's Dietary Risk Evaluation System (DRES) chronic analysis, the percent RfD falls within a safe margin even when considering tolerance levels and 100% crop treated. For the overall U.S. population, dietary exposure to iprodione uses 0.353% of the RfD when using Anticipated Residue Contribution (ARC) or 54.22 % of the RfD when using tolerance levels. These figures remain the same when cotton is included in the analysis. Exposure to iprodione resulting from the use of the product on cotton is negligible considering that:

i. Residues above the LOQ (0.05 ppm) were not observed in cotton field trial studies.

ii. A processing study conducted at 12x the label rate showed no detectable residues.

iii. Only 3% of the cotton crop is expected to be treated with iprodione.

A DRES detailed acute exposure analysis was performed by EPA using conservative values. The resulting high end margin of exposure value of 100 for the DRES subgroup of concern (females 13 + years) is above the acceptable level and demonstrates no acute dietary concern.

For the reasons stated in Unit I.A.5. in a notice of filing for iprodione published elsewhere in this issue of the **Federal Register**, Rhone-Poulenc considers the use of a low dose quantitative risk assessment for iprodione to be inappropriate. As previously indicated Rhone-Poulenc recommends the use of a safety factor approach and a RfD of 0.0725—mg/kg/day. The use of the Q^* (Q star) value of 0.0439 $(mg/kg/day)^{-1}$ previously calculated by EPA represents a very conservative estimate of the lifetime cancer risk from potential residues of iprodione.

Nevertheless, an assessment of the lifetime cancer risk from iprodione residues in food using a Q^* value of 0.0439 $(mg/kg/day)^{-1}$ has been conducted to specifically demonstrate that the use of iprodione on cotton does not measurably increase exposure above that estimated for current uses. The upper bound cancer risk attributed to the use of iprodione on cotton is calculated to be 1.8×10^{-8}. This assessment also indicates the total cancer risk to be in the *de minimus* range of 10^{-6}, even with a very conservative Q^* value.

Based on results of the analyses, Rhone-Poulenc concludes that the added use on cotton will not measurably increase the cancer risk

estimate for any population subgroup, and iprodione residues in currently registered foods would not be expected to result in significant levels of chronic toxicity to any segment of the U.S. population.

2. Infants and children—adequate margin of safety. In assessing the potential for additional sensitivity of infants and children to residues of iprodione, the available teratology and reproductive toxicity studies and the potential for endocrine modulation by iprodione were considered.

Developmental studies in two species indicate that iprodione has no teratogenic potential, even at maternally toxic dose levels. Maternal and developmental no observed effect levels and lowest observed effect levels were generally comparable indicating no increased susceptibility of developing organisms. Multigeneration rodent reproduction studies indicated that iprodione has no adverse effects on reproductive performance, fertility, fecundity or sex ratio. Effects on pup weight and viability were only noted in the presence of severe parental toxicity.

The mechanism of endocrine modulation associated with iprodione (inhibition of testosterone biosynthesis) appears to be distinct from that of anti-androgens acting at the level of the androgen receptor and may help to explain the lack of adverse effects on reproductive function observed with iprodione.

Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, Rhone-Poulenc believes that there is a reasonable certainty that no harm will result to infants and children from exposure to residues of iprodione and no additional uncertainty factor is warranted.

3. Endocrine discussion and conclusion. As indicated in Unit I.A.5. in a notice of filing for iprodione published elsewhere in this issue of the **Federal Register**, the primary lesion at the level of the target organs (testes, ovaries adrenals) is likely to be related to an inhibition of steroid/androgen biosynthesis. The resulting endocrine toxic effect due to iprodione is fairly moderate compared to that produced by potent endocrine disruptors such as flutamide (and other structural analogs) and is insufficiently potent to produce effects on reproduction or development.

The increased incidence in tumors in both rats and mice was only observed when animals were treated at or above the MTD. For all three tumor sites (testis, liver, ovary) tumors only develop on pre-existing non-neoplastic lesions (cell hypertrophy/vacuolation, hyperplasia) and a clear threshold level exist for both non-neoplastic lesions and tumors. Those thresholds are far in excess of those levels of iprodione that the general public would be exposed to.

Conclusion. Rhone-Poulenc believes that iprodione would not be expected to induce any adverse effects related to endocrine disruption in members of the general population via the consumption of food crops containing residues of this compound.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notation indicating the docket number, [PF-691].

A record has been established for this notice of filing under docket number [PF-691] including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 15, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97-1765 Filed 1-23-97; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1997.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Affiliated Community Bancorp, Inc., Waltham, Massachusetts; to acquire 100 percent of the voting shares of Middlesex Bank & Trust Company, Newton, Massachusetts a *de novo* bank (in organization).

Board of Governors of the Federal Reserve System, January 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1706 Filed 1–23–97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 6, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:-0001

1. Norwest Corporation, Minneapolis, Minnesota, and Norwest Financial Services, Inc., Des Moines, Iowa (collectively, "Applicants"), to acquire Reliable Financial Services, Inc., San Juan, Puerto Rico ("Reliable"), and thereby engage in the following activities: (1) the purchase, origination, sale, and servicing of automobile loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; and (2) the sale of credit life, credit accident, and credit health insurance related to these loans, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

In addition, Applicants propose to fulfill the commitments and obligations of Reliable relating to the securitization of automobile loan receivables through an existing grantor trust. As servicer for the grantor trust, Applicants would receive a fee for servicing, managing and collecting the receivables that are transferred to the trust.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:-0001

1. BOK Financial Corporation, Tulso, Oklahoma; to engage *de novo* through its wholly-owned subsidiary, Alliance Securities Corporation, Tulsa, Oklahoma, in underwriting and dealing, to a limited extent, in certain municipal revenue bonds (including certain unrated revenue bonds), 1-4 family mortgage-related securities, consumer receivable-related securities, and commercial paper that a state member bank may not underwrite and deal in bank-ineligible securities, *see, e.g., Citicorp*, 73 Fed. Res. Bull. 473 (1987); *Letter Interpreting Section 20 Orders*, 81 Fed. Res. Bull. 198 (1995); in acting as agent in the private placement of all types of securities, *see Bankers Trust New York Corp.*, 75 Fed. Res. Bull. 829 (1989); in providing investment advisory services *see 12 CFR 225.25(b)(4)*; in underwriting and dealing in government obligations and money market instruments in which state member banks may underwrite and deal under 12 U.S.C. §§ 24(7) and 335 (bank-eligible securities) *see 12 CFR 225.25(b)(16)*; and in providing full-service securities brokerage services *see 12 CFR 225.25(b)(15)*.

Board of Governors of the Federal Reserve System, January 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1707 Filed 1-23-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 29, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1861 Filed 1–22–97; 10:46 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Availability, Draft Environmental Impact Statement for the Lease Construction and Consolidation of the Immigration and Naturalization Service (INS), Miami, Dade County, Florida

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4B, GSA announces the availability of the Draft Environmental Impact Statement (EIS) for the lease construction to consolidate the Immigration and Naturalization (INS).

The DEIS is available for 45 days of public comment. The DEIS examined

the short and long term impacts on the natural and built environments of developing and operating a consolidated INS facility at 9300–9499 NW 41st Street, Miami, FL 33172. Potential impact assessment included impacts to public facilities and infrastructure, parking, traffic, and community and economic issues.

The DEIS also examined measures to mitigate unavoidable adverse impacts of the proposed action. Concurrent with NEPA implementation, GSA also implemented its consultation requirements under Section 106 of the National Historic Preservation Act to identify potential impacts to any existing historic or cultural resources.

The proposed action is to and lease a newly constructed building for the INS consolidation on the vacant parcel of land consisting of approximately 7.31 acres at 9300–9499 NW 41st Street, Miami, FL 33172. The proposed facility will consist of an office building containing a total occupiable area of approximately 214,600 square feet, along with supporting site improvements and 885 parking spaces. The subject site fronts for 390 feet along NW 41st Street and spans to the back to Dressels Canal (approximately 1150 feet south from 41st Street at the deepest point). The proposed facility would accommodate the INS by consolidating the District Office, the Asylum Office, and the Executive Office of Immigration Review (EOIR). The Krome Detention Center is a high-security containment facility located in Western Dade county and its location, function, and purpose will be unchanged as a result of the proposed action.

GSA has identified and screened from consideration, over 20 alternatives to the proposed action since 1993. GSA has identified the following alternatives to be examined by the EIS:

- "No Action," that is, take no action and continue to house the INS at its current locations.
- Lease construction of a consolidated facility of 214,600 occupiable square feet (osf) at the proposed site at 9300–9499 NW 41st Street, Miami, Florida 33172. This is the GSA preferred alternative.

The 45-day comment period will close on March 10, 1997. Comments should be provided in writing to the address below. Copies of the DEIS were distributed on Friday January 17. A copy of the DEIS and one copy of all of the public comments are available for inspection at the Metro-Date Public Library Fairlawn Branch located at 6869 SW 8th Street, Miami, FL 33144.

Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW., Suite 3010, Atlanta, GA 30365

Fax: Mr. Phil Youngberg at 404–331–4540. Comments should be received no later than Monday, March 10, 1997. All comments must be in writing.

Dated: January 15, 1997.

Phil Youngberg,

Regional Environmental Officer (PT).

[FR Doc. 97–1536 Filed 1–23–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–117]

Quarterly Public Health Assessments and Addendum Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice is a quarterly announcement of sites for which ATSDR has completed a public health assessment or issued an addendum to a public health assessment during the period July–September 1996. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL), and a site for which an assessment was prepared in response to a request from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments and public health assessments with addenda was published in the **Federal Register** on November 25, 1996 [61 FR 59888]. The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addendum are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments and Addendum Completed or Issued

Between July 1, 1996, and September 30, 1996, public health assessments and one addendum were issued for the sites listed below:

NPL Sites

Alaska

Fort Richardson (U.S. Army—Fort Richardson—(PB96–195417)

California

Fort Ord—Marina—(PB97–103592)

Colorado

Rocky Mountain Arsenal—Commerce City—(PB97–104145)

Connecticut

Raymark Industries—Stratford—(PB97–104152)

Iowa

Waterloo Coal Gasification Plant—Waterloo—(PB97–104244)

Maryland

Spectron Incorporated (a/k/a Galaxy Incorporated)—Elkton—(PB97–104194)

Michigan

Bay City Middlegrounds (a/k/a Bay City Middlegrounds Landfill)—Bay City—(PB96–203096)

Bofors Nobel Incorporated—Egelston Township—(PB96–202056)

Thermo Chem Incorporated—Muskegon—(PB96–203088)

Willow Run Lagoon—Ypsilanti—(PB96–203112)

Missouri

Big River Mine Tailings Desloge (a/k/a St. Joe Minerals)—Desloge—(PB96–202379)

New York

Griffiss Air Force Base—Rome—(PB96–209861)

South Carolina

USMC Marine Corps Recruit Depot (a/k/a Parris Island Marine Corps Recruit Depot)—Parris Island—(PB96–214796)

Utah

Kennecott (North Zone)—Magna—(PB96–203260)

Virginia

Fort Eustis (US Army)—Newport News—(PB96–193362)

Petitioned Sites

Georgia

Basket Creek Surface Impoundment—Douglasville—(PB96–210125)
Basket Creek Drum Disposal—Douglasville—(PB96–210125)

Dated: January 17, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–1725 Filed 1–23–97; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement 123: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Grants for Education Programs in Occupational Safety and Health, Program Announcement 123.

Times and Dates: 3–5:30 p.m., 7:30–10 p.m., March 2, 1997. 7:30 a.m.–6 p.m., March 3, 1997. 7:30 a.m.–5 p.m., March 4, 1997.

Place: Commonwealth Hilton Hotel, I–75 and Turfway Road, Florence, Kentucky 45275.

Status: Closed.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 123.

The meeting will be closed to the public in accordance with provisions set forth in 5 U.S.C. Section 552b(c)(4) and (6), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, Mailstop D40, Atlanta, Georgia 30333, telephone 404/639–3342.

Dated: January 17, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1726 Filed 1–23–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96N–0287]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information regarding investigational new drug application (IND) regulations has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1996 (61 FR 56240), the agency announced that the proposed collection of information on IND regulations (21 CFR part 312) had been submitted to OMB for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the information collection and assigned OMB control number 0910–0014. The approval expires on December 31, 1999. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: January 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1786 Filed 1–23–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–253V]

Cigarettes and Smokeless Tobacco; Notice of Public Video Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public video conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is sponsoring a national video conference to promote understanding of, and to encourage compliance with, FDA's regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. The video conference will focus on those provisions of the final rule that take effect on February 28, 1997, when retailers will be prohibited from selling cigarettes, cigarette tobacco, or smokeless tobacco to persons under the age of 18, and will be required to check the photographic identification of persons under the age of 27 to verify their age. FDA officials will attend the conference, explain the new regulations, and be available to answer questions. The purpose of the national video conference is to advance the agency's mission to promote and protect the public health.

DATES: The video conference will be held on Tuesday, February 18, 1997, from 1 p.m. to 2:30 p.m., e.s.t. The deadline for registration is Tuesday, February 11, 1997. Persons will be registered in the order in which their call is received. Late registration will be accepted if space is available.

ADDRESSES: See Table 1 in the "**Supplementary Information**" section of this document.

FOR FURTHER INFORMATION CONTACT: See Table 1 in the "**Supplementary Information**" section of this document.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA published a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents. These regulations will address the serious public health problem caused by cigarettes and smokeless tobacco products. They will

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reduce children's and adolescents' easy access to cigarettes and smokeless tobacco and will significantly decrease the amount of positive imagery that makes these products so appealing to children.

Certain provisions in the rule have different effective dates. Starting February 28, 1997, the rule requires that retailers must not sell cigarettes, cigarette tobacco, or smokeless tobacco to any person under the age of 18, and retailers must check the photographic identification of every person under the age of 27 who wishes to buy such a product to verify that the purchaser is at least 18 years old. Starting August 28, 1997, the remaining provisions of the rule will become effective, except for the sponsorship provision, which will become effective starting August 28, 1998.

The video conference will focus on the provisions that will be effective starting February 28, 1997. The purpose of the conference is to educate retailers and the public about the new provisions and the agency's enforcement strategy. The conference format will include: Video segments providing background to the new regulations; filmed depictions of legal and illegal sales; live interviews with senior public officials; and a segment during which FDA officials responsible for implementing the rule will take questions from persons attending in the studio and around the country.

Interested persons may attend the video conference on Tuesday, February 18, 1997, between 1 p.m. and 2:30 p.m. (e.s.t.), at the locations listed in Table 1.

There is no charge to attend the video conference; however, advance registration is required because seating is limited. The deadline for registering is Tuesday, February 11, 1997. Persons will be registered in the order in which their call is received. Registration will be accepted so long as space is available. Late registration will be accepted only if space is available. Persons interested in attending should telephone their name, organization, address, and telephone number to the FDA contact person listed in Table 1.

TABLE 1

Metropolitan Area	Conference Address	FDA Contact Person
Buffalo, NY	University Cinema, 4100 Maple Rd., Amherst, NY	Diana Monaco, 716–551–4461
Burlington, VT	Sheraton-Burlington, 870 Williston Rd., Burlington, VT	Paula Fairfield, 617–279–1675
Charleston, SC	Aviation Avenue Cinemas, 2390 West Aviation Ave., North Charleston, SC	Sheila Bayne Lisby, 404–347–4001
Charleston, WV	Kanawha Cinemas, 601 57th St., Charleston, WV	Ruth Weisheit, 216–273–1038
Cincinnati, OH	Showcase Cincinnati, 1701 Showcase Dr., Cincinnati, OH	Marilyn Zipkes, 513–684–3501, ext. 110
Dallas/Fort Worth, TX	United Artists Bedford 10, 2000 Forum Pkwy., Bedford, TX	Juan Tijerina, 210–229–4531, ext. 13
Denver, CO	Greenwood Plaza, 8141 East Arapahoe Rd., Englewood, CO	Virlie Walker, 303–236–3018
Indianapolis IN	United Artists Circle Center Theatre, 49 West Maryland St., Indianapolis, IN	Janet LeClair, 317–226–6500
Jackson, MS	Parkway Place 10, 1075 Parkway Blvd., Flowood, MS	Darlene Tollestrup, 504–589–2420, ext. 121
Kansas City, MO	Bannister Mall 5, 5600 East Bannister Rd., #268, Kansas City, MO	Tywanna Paul, 913–752–2141
Little Rock, AR	Park Plaza 7, 6320 "C" St., Little Rock, AR	Gilbert Meza, 602–379–4595
Minneapolis, MN	Woodbury Theatre, 1470 Queens Dr., Woodbury, MN	Steve Davis, 414–771–7167
New Orleans, LA	Kenner 8, 1000 West Esplanade Ave., Kenner, LA	Darlene Tollestrup, 504–589–2420
New York, NY	Criterion Center Theatre, 1514 Broadway, New York, NY	Herman Janiger, 718–965–5300, ext. 5754
Norfolk, VA	Movies at Kempsriver, 1220 Fordham Rd., Virginia Beach, VA	Leonard Geneva, 410–962–3731
Orlando, FL	Movies at Florida Mall, 1001 Florida Mall Ln., Orlando, FL	Lynne Isaacs, 407–648–6922, ext. 202
Philadelphia, PA	Riverview Plaza, 1400 South Delaware Ave., Philadelphia, PA	Theresa Holmes, 215–597–4390, ext. 4202

TABLE 1—Continued

Metropolitan Area	Conference Address	FDA Contact Person
Phoenix, AZ	United Artists Christown Mall, 1546 West Montebello, Phoenix, AZ	Gil Meza, 602–379–4595
Portland, OR	Westgate 5, 3950 SW. Cedar Hills Blvd., Beaverton, OR	Alan Bennett, 503–671–9332
Raleigh, NC	Mission Valley Cinemas, 2109 Advent Ferry Rd., Raleigh, NC	JoAnn Pittman, 404–347–4001, ext. 5340
Saint Louis, MO	Westport Cinema, 910 Westport Plaza St., Louis, MO	Mary-Margaret Richardson, 314–645–1167, ext. 123
Salt Lake City, UT	Broadway Center Cinema, 111 East Broadway, Salt Lake City, UT	Virlie Walker, 303–236–3018
San Diego, CA	United Artists Horton Plaza, 475 Horton Plaza, San Diego, CA	Rosario Vior, 714–798–7607
San Francisco, CA	UA Emery Bay 10, 6330 Christie Ave., Emeryville, CA	Janet McDonald, 510–337–6845
San Juan, PR	United Artists Cinema, 150 Laguna Garden Shopping Ctr., San Juan, PR	Ruth Marcano, 787–729–6842

Dated: January 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1719 Filed 1–21–97; 3:06 pm]

BILLING CODE 4160–01–F

[Docket No. 96N–0061]

Gary D. Mays; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Mr. Gary D. Mays, 5304 John Thomas Dr. NE., Albuquerque, NM 87111, for a period of 5 years from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biological product license application or an establishment license application. FDA bases this order on a finding that Mr. Mays was convicted of conspiracy to commit a felony under Federal law for conduct relating to the regulation of a drug product under the act while he was employed as responsible head of El Paseo Plasma, Inc., located at 1595 El Paseo, Las Cruces, NM. After being given notice of his proposed debarment and opportunity to request a hearing, Mr. Mays has failed to request a hearing. Therefore, Mr. Mays has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: January 24, 1997

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gloria Hicks, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1989, the United States District Court for the District of New Mexico accepted a plea of guilty and entered judgment against Mr. Gary D. Mays for one count of a conspiracy to provide false statements in a matter within the jurisdiction of a Federal agency, a Federal felony offense under 18 U.S.C. 371. The basis for this conviction was Mr. Mays' act of falsification of whole blood logs, donor record files, quality control logs, destruction logs, records concerning the infusion of red blood cells to the wrong donor, and concealing and covering up by false statements at least two incidents of misconnecting for infusion, but not infusing, one donor with the red blood cells of another donor.

In order for FDA to regulate the blood plasma supply adequately and effectively, FDA requires that blood plasma facilities maintain accurate and complete records containing information regarding whole blood logs, donor record files, quality control logs, and destruction logs. Such records are crucial for FDA to assure that plasma products are safe, pure, and potent, and that the health of donors is protected in order to assure a continued healthy donor population. Because of Mr. Mays' omissions and falsifications in such records, FDA was prevented from obtaining accurate and complete information necessary to regulate the human blood plasma supply, and, therefore, FDA's process for the regulation of drug products was undermined.

As a result of his conviction, FDA delivered a letter, dated December 5, 1994, to Mr. Mays which provided notice of FDA's proposal to debar him for a period of 5 years from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biological product license application or an establishment license application, and offered him an opportunity for a hearing on the proposal in accordance with 21 U.S.C. 335a and 21 CFR part 12. FDA based the proposal on its finding under section 306(b)(2)(B)(i)(II) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II)) that Mr. Mays was convicted of conspiracy to commit a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Mays did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(b) of the act, and under authority delegated

by 21 CFR 5.20, finds that Mr. Gary D. Mays has been convicted of conspiracy to commit a felony under Federal law for conduct relating to the regulation of a drug product under the act and that the type of conduct which served as the basis for his conviction undermines the process for the regulation of drugs (21 U.S.C. 335a(b)(2)(B)(i)(II)).

As a result of the foregoing finding, and due to the nature and seriousness of his offense, Mr. Gary D. Mays is debarred for a period of 5 years from providing services in any capacity to a person that has an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or biological product license application or establishment license application under section 351 of the Public Health Service Act (42 U.S.C. 262), effective January 24, 1997 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Mays during his period of debarment (21 U.S.C. 335a(c)(1)(B)). Any person with an approved or pending drug product application including, but not limited to, a biological product license application or an establishment license application, who knowingly uses the services of Mr. Mays in any capacity during his period of debarment will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Mr. Mays during his period of debarment provides services in any capacity to a person with an approved or pending drug product application including, but not limited to, a biological product license application or an establishment license application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)).

Any application by Mr. Mays for termination of debarment under section 306(d)(4) of the act should be identified with the docket number found in brackets in the heading of this notice and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 7, 1997.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–1784 Filed 1–23–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–253M]

Cigarettes and Smokeless Tobacco; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it will hold 10 public meetings to promote understanding of, and encourage proper compliance with, FDA's final regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. The meetings will focus on those provisions of the final rule that will take effect February 28, 1997 (see the "**SUPPLEMENTARY INFORMATION**" section in this document). FDA officials will be present at these meetings to explain the new regulations, and will be available to answer questions.

DATES: See Table 1 in the "**SUPPLEMENTARY INFORMATION**" section of this document.

ADDRESSES: See Table 1 in the "**SUPPLEMENTARY INFORMATION**" section of this document.

FOR FURTHER INFORMATION CONTACT: See Table 1 in the "**SUPPLEMENTARY INFORMATION**" section of this document.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA published a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents. These regulations address the serious public health problem caused by cigarettes and smokeless tobacco products. The goal of the final rule is to reduce children's and adolescents' easy access to cigarettes and smokeless tobacco and to decrease significantly the amount of positive imagery that makes these products so appealing to children.

The provisions in the final rule have different effective dates. Starting February 28, 1997, Federal regulations will prohibit retailers from selling cigarettes, cigarette tobacco, or smokeless tobacco to any person under the age of 18, and will require retailers to check the photographic identification of every person under the age of 27 who wishes to purchase such a product to verify that the purchaser is at least 18 years old. Under the current schedule, starting August 28, 1997, the remaining provisions of the rule will become effective, except for the sponsorship provision, which will become effective on August 28, 1998.

The meetings will be held at the addresses and on the dates listed in Table 1 and are scheduled to last 1 hour.

There is no charge to attend these meetings. Advance registration is requested because seating is limited. The deadline for registering is 1 week before each meeting. Registration will be accepted so long as space is available. Late registration will be accepted only if space is available. Persons interested in attending should mail or telephone their name, organization, address, and telephone number to FDA's contact persons listed in Table 1 for each meeting location.

TABLE 1

Meeting Address	Date and Local Time	FDA Contact Person
BALTIMORE: Baltimore Sheraton Inner Harbor Hotel, 300 South Charles St., Baltimore, MD.	February 11, 1997, Tuesday 11 a.m. to 12 m.	Leonard Genova, 900 Madison Ave., Baltimore, MD, 21201, 410–962–3731
BOSTON: Park Plaza Hotel, Plaza Ballroom, 64 Arlington St., Boston, MA.	February 11, 1997, Tuesday 10 a.m. to 11 a.m.	Paula Fairfield, One Montvale Ave., Stoneham, MA, 02810, 617–279–1675, ext. 184
DETROIT: Harper Hospital, 3990 John Rd., Detroit, MI.	February 12, 1997, Wednesday 1:30 p.m. to 2:30 p.m.	Evelyn DeNike, 1560 East Jefferson, Detroit, MI, 48207, 313–226–6158

TABLE 1—Continued

Meeting Address	Date and Local Time	FDA Contact Person
CHICAGO: Marriott Hotel, 8535 West Higgins Rd., Chicago, IL.	February 13, 1997, Thursday 1 p.m. to 2 p.m.	Darlene Bailey, 300 South Riverside Plaza, suite 550 South, Chicago, IL, 60606, 312–353–7126
BOULDER: National Institute of Standards and Technology, 325 Broadway, Boulder, CO.	February 19, 1997, Wednesday 10 a.m. to 11 a.m.	Virlie Walker, P.O. Box 25087, Denver Federal Center, Denver, CO, 80225–0087, 303–236–3018
MIAMI: Crown Plaza Miami, 1601 Biscayne Blvd., Miami, FL.	February 19, 1997, Wednesday 10:30 a.m. to 11:30 a.m.	Estela Niella-Brown, P.O. Box 59–2256, Miami, FL, 33159–2256, 305–526–2800, ext. 937
ATLANTA: Sheraton Colony Square, 188 14th St. NE., Atlanta, GA.	February 20, 1997, Thursday 10 a.m. to 11 a.m.	Sheila Bayne-Lisby (ext. 5231) and Jo Ann Pittman (ext. 5340) 60 Eighth St. NE., Atlanta, GA, 30309, 404–347–4001
HOUSTON: Holiday Inn/Hobby Airport, 9100 Gulf Freeway, Houston, TX.	February 20, 1997, Thursday 10:30 a.m. to 11:30 a.m.	Sheryl Lunnon Baylor, 1445 North Loop West, suite 420, Houston, TX, 77008, 713–802–9095, ext. 15
LOS ANGELES: Omni Los Angeles Hotel, 930 Wilshire Blvd., Los Angeles, CA.	February 25, 1997, Tuesday 11 a.m. to 12 m.	Rosario Vior, 19900 MacArthur Blvd., suite 300, Irvine, CA, 92612–2445, 714–798–7607
SEATTLE: Lopez Room at Seattle Center, 305 Harrison St., Seattle, WA.	February 26, 1997, Wednesday 11 a.m. to 12 m.	Susan Hutchcroft, 22201 23rd Dr. SE., Bothell, WA, 98041, 206–486–8788

Dated: January 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1718 Filed 1–21–97; 3:06 pm]

BILLING CODE 4160–01–F

National Institutes of Health

Proposed Collection; Comment Request; Case-Control Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Case-Control Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* A case-control study will examine the relationship between exposure to benzene and the risk of lymphohematopoietic malignancies and related disorders and lung cancer in Chinese workers. Cases and controls will be selected from participants in a recent cohort study of benzene-exposed workers in China. The data will be used by the NCI to examine risk among workers exposed to low levels of benzene, and to characterize the dose and time-specific relationship between benzene exposure and disease risk. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Workers. The annual reporting burden is a follows: *Estimated Number of Respondents:* 1,545; *Estimated Number of Responses per Respondent:* One; *Average burden hours per Response:* 0.75; and *Estimated Total Annual Burden Hours Requested:* 386.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection or information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Richard Hayes, Project Officer, National Cancer Institute, Executive Plaza North, Room 418, Rockville, Maryland 20892–7364, or call non-toll-free number (301) 496–9093, or FAX your request to (301) 402–1819, or E-mail your request, including your address, to HayesR@epndce.nci.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 16, 1997.

Nancy L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 97–1709 Filed 1–23–97; 8:45 am]

BILLING CODE 4140–01–M

Office of the Director; Notice of Meeting

Pursuant to sec. 10(d) of the Federal Advisory Committee Act (FACA), as amended (Title 5, U.S.C. Appendix 2) notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on February 10, 1997 from 8:30 a.m. to 5 p.m. and on

February 11, 1997 from 8:30 to 1 p.m. at the Versailles I Conference Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public. The purpose of the meeting will be to update the Council on the progress of the Office of Alternative Medicine and obtain Council's advice on research. There will also be a presentation by James S. Gordon, M.D., outgoing chair of AMPAC, as well as presentation on dietary supplement research at the NIH by Bernadette Marriott, Ph.D., Director, Office of Dietary Supplements, NIH and a presentation on research in the use of hypericum (St. John's Wort) in the treatment of depression by Jerry Cott, Ph.D., Program Officer, National Institute of Mental Health, NIH. Attendance by the public will be limited to space available.

Ms. Elizabeth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 9000 Rockville Pike, Building 31, Room 5B35, MSC 2182 Bethesda, MD 20892, phone (301) 594–1990, fax (301) 402–4741, E-Mail: bethclay@helix.nih.gov, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than February 1, 1997.

Dated: January 15, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1708 Filed 1–23–97; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, February 20 and 21, 1997, National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD.

This meeting will be open to the public on Thursday, February 20, 8:30 a.m. to 1:00 pm to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on February 21 from 1:00 pm to recess and on February 21 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 31, Room 4B09, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and needs special assistance, such as language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 594–1929, two weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: January 16, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1712 Filed 1–23–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: March 6–7, 1997.

Time: 8:30 a.m. until adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Mary Stephens-Frazier, Ph. D., Building 45, Room 3AN–18, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: January 16, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1711 Filed 1–23–97; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 5–6, 1997, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 5 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on March 5 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on March 6 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: January 16, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1710 Filed 1–23–97; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Interventions To Prevent HIV Risk Behaviors

Notice is hereby given of the NIH Consensus Development Conference on "Interventions to Prevent HIV Risk Behaviors," which will be held February 11–13, 1997, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on February 11, at 8:30 a.m. on February 12, and at 9 a.m. on February 13.

One in 250 people in the United States is infected with the human immunodeficiency virus (HIV), which causes AIDS; AIDS is the leading cause of death among men and women between the ages of 25 and 44. Every year, an additional 40,000 to 80,000 Americans become infected with HIV, mostly through behaviors that are preventable.

In the United States, unsafe sexual behavior and drug abuse among gay men and men who have sex with men still account for the largest number of cases, but women are becoming infected at a rate higher than that of men. The percentage of AIDS cases caused by unsafe heterosexual contact increased by 21 percent from 1990 to 1991 and continues to escalate. In nearly one-third of Americans infected with HIV, injection drug use is a risk factor.

The purpose of this conference is to examine what is known about behavioral interventions for the three modes of transmission—sexual behavior, substance abuse, and transmission from mother to child—that are effective with different populations in different settings. Experts will also discuss the international and national epidemiology of HIV and the history of AIDS prevention efforts.

Research has led to significant progress in understanding how to help individuals change their AIDS-related risk behaviors. These interventions are based on a variety of models of behavior change, including social learning theory and related health and substance abuse models; they begin with AIDS and substance abuse education, but also include skill acquisition, assertiveness training, and behavioral reinforcement components. Recent research indicates that aggressive promotion of safer sexual behavior and prevention of substance abuse could avert tens of thousands of new HIV infections and potentially save millions of dollars in health care costs. To date, however, there has not been widespread agreement among health professionals as to which interventions are most effective in which settings and among which populations.

Behavioral interventions are currently the only effective way of slowing the spread of HIV infection. Vaccines selected for future trials may have modest or unknown efficacy, and therefore the trials will need to include behavioral interventions. Recommendations coming from this conference will have immediate implications for service delivery in health care settings, including substance abuse treatment programs; sexually transmitted disease clinics; inner-city health programs reaching disenfranchised high-risk women, men, and adolescents; and mental health programs that serve high-risk, chronically mentally ill people. Knowing which behavior change interventions are most effective will assist public health personnel in allocating energy and resources.

The conference will bring together behavioral and social scientists, prevention researchers, statisticians and research methodologists, clinicians, physicians, nurses, social workers, mental health professionals, other health care professionals, patients, and members of the public.

Following 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft consensus statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

—How can we identify the behaviors and contexts that place individuals/communities at risk for HIV?
—What individual-, group-, or community-based methods of intervention reduce behavioral risks?
—What are the benefits and risks of these procedures?
—Does a reduction in these behavioral risks lead to a reduction in HIV?
—How can risk-reduction procedures be implemented effectively?
—What research is most urgently needed?

In addition, the panel will consider how the conference recommendations can influence implementation of prevention programs throughout the public health system.

The primary sponsors for this conference are the National Institute of Mental Health and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Child Health and Human Development, the National Institute of Allergy and Infectious Diseases, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Aging, the National Institute on Drug Abuse, the National Institute of Nursing Research, the NIH Office of AIDS Research, the Centers for Disease Control and Prevention, and the Health Services Research Administration.

Advance information on the conference program and conference registration materials may be obtained from Hope Levy Kott, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, or by sending e-mail to confidept@tech-res.com.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning February 13, 1997, from the NIH Consensus Program Information Center, P.O. Box 2577, Kensington, Maryland 20891, phone 1–888–NIH–CONSENSUS (1–888–644–2667) and from the NIH Consensus Development Program site on the World Wide Web at http://consensus.nih.gov.

Dated: January 15, 1997.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–1713 Filed 1–23–97; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1997 Funding Opportunities for Knowledge Development and Application Cooperative Agreements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration s (SAMHSA) Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT) announce the availability of FY 1997 funds for Knowledge Development and Application cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice.

Activity	Application deadline	Estimated funds available (in millions)	Estimated No. of awards	Project period (years)
HIV/AIDS High-Risk Behavior	03/28/97	$2.0	9	4
Cannabis Youth Treat-ments	03/28/97	1.4	3	3
Housing Initiative	03/28/97	2.4	12	3

Note: It is anticipated that additional notices of available funding opportunities in FY 1997 will be published by SAMHSA in the coming weeks.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1997 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 104–208. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

GENERAL INSTRUCTIONS: Applicants for cooperative agreements must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the Guidance for Applicants (GFA) (complete programmatic guidance and instructions for preparing and submitting applications) and the PHS 5161–1 which includes Standard Form 424 (Face Page). Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 is also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov). Click on SAMHSA Funding Opportunities for instructions. You can also click on the address of the forms distribution Web Page for direct access.

The full text of each of the activities (i.e., the GFA) described in Section 4 is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov) and SAMHSA's Bulletin Board (800–424–2294 or 301–443–0040).

APPLICATION SUBMISSION: Applications must be submitted to: SAMHSA Programs, Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.* (*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual categories of cooperative agreements.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Cooperative Agreements/Amounts
- Catalog of Federal Domestic Assistance Number
- Program Contact
- Grants Management Contact
- Application Kits

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and

activities. As a result of that process, SAMHSA is moving assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

The agency has transformed its demonstration grant programs from service-delivery projects to knowledge acquisition and application. For FY 1997, SAMHSA has developed an agenda of new programs designed to answer specific important policy-relevant questions. These questions, specified in this and subsequent Notices of Funding Availability, are designed to provide critical information to improve the Nation's mental health and substance abuse treatment and prevention services.

The agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1997 programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

2. Special Concerns

SAMHSA's FY 1997 Knowledge Development and Application activities discussed below do not provide funds for mental health and substance abuse treatment and prevention services except for costs required by the particular activity's study design. Applicants are required to propose true knowledge acquisition studies. Applications seeking funding for services projects will be considered nonresponsive. Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Approved Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include;

Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1997 Substance Abuse and Mental Health Services Activities

4.1 Cooperative Agreements

Three major activities for SAMHSA cooperative agreement programs are discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.1.1 Cooperative Agreements for an HIV/AIDS High-Risk Behavior Prevention/Intervention Model for Young Adults/Adolescents and Women

Application Deadline: March 28, 1997

Purpose: Cooperative agreements will be awarded to support study sites and a coordinating center that will develop and test, through a series of pilot studies, a model prevention/intervention approach to encourage and enable (1) adolescents/young adults (ages 15–24) (hereafter referred to as adolescents) or (2) women (age 25 and older), who engage in high-risk behaviors associated with human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) transmission, to change these behaviors.

The primary goal of this program is to identify the key elements/factors/determinants that are both necessary and sufficient conditions in implementing and evaluating a community-focused prevention/intervention protocol to encourage and enable individuals, specifically, adolescents and women, who are at risk for HIV/AIDS, to reduce the incidence of high-risk behaviors.

A second goal is to develop and test reliable and valid outcome measures, at both the individual and community level, to assess the effectiveness of the intervention in the target/subgroup population(s).

Priorities: Applicants for study sites must propose to study one, and only one, of the two primary target populations, i.e., adolescents or women. Applicants who wish to study more than one of the two primary target populations must submit a separate complete application for each primary

target population group to be studied. Applicants must also be willing to follow the common intervention, implementation, and evaluation/research protocols developed jointly by the study sites and coordinating center.

Eligible Applicants: Applications may be submitted by units of State or local government, and by private domestic nonprofit and for-profit organizations such as community-based organizations, universities, colleges, hospitals, and family and/or consumer operated organizations.

Cooperative Agreements/Amounts: Approximately $1.6 million will be available to support approximately 8 to 10 study site awards and $400,000 for one (1) coordinating center award under this GFA in FY 1997. Actual funding levels will depend upon the availability of appropriated funds.

Catalog of Federal Domestic Assistance Number: 93.230

Program Contact: For programmatic or technical assistance contact: Barbara J. Silver, Ph.D., Director, HIV/AIDS Provider Education Program, Center for Mental Health Services, Substance Abuse and Mental Health Services, Administration, Parklawn Building, Room 15–81, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7817.

Grants Management Contact: For business management assistance, contact: LouEllen Rice, Grants Management Officer, Substance Abuse and Mental Health Services, Administration, Parklawn Building, Room Number 15C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4456.

Application Kits: Application kits are available from: National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, D.C. 20015, Voice: (800) 789–2647, TTY: (301) 443–9006, FAX: (301) 984–8796.

The full text of the GFA only is available electronically via KEN's Bulletin Board: (800) 790–2647 or its Web Site: http://www.mentalhealth.org/

4.1.2 Cooperative Agreements For A Multisite Study Of The Effectiveness Of Treatment For Cannabis (Marijuana) Dependent Youth

Application Deadline: March 28, 1997.

Purpose: The purpose of this program is to compare the effectiveness of a variety of interventions and treatments for adolescents (ages 12–18) meeting the criteria for cannabis dependence as currently defined by DSM–IV. It is likely that while some of the young people will seek treatment on their own, others will do so only under pressure from parents, schools or other agencies (e.g., juvenile justice agencies).

Applications are solicited for treatment sites and a coordinating center.

This cooperative agreement program is intended to provide answers to the following questions:

1. Are there existing interventions for cannabis abusing adolescents that produce good outcomes both during treatment and for significant periods of time post-treatment?

2. Are there differential levels of effectiveness (in terms of post-treatment outcomes) among the models of intervention? If so, for which sub-populations of adolescents do the intervention models appear to be most effective? In particular, do adolescent girls respond differently to specific intervention models than do adolescent boys?

3. Are successful interventions, (in terms of decreased drug use) associated with better cognition/academic performance, or social functioning?

4. What are the costs and cost-effectiveness associated with treatments and outcomes?

5. Is there a relationship between types and costs of treatment services and outcome?

Priorities: The target population for this GFA is adolescents between the ages of 12 and 18 years old who meet DSM–IV criteria for cannabis abuse or dependence, but do not meet criteria for heroin, amphetamine or cocaine dependence. Appropriate interventions for marijuana dependent adolescents are not well researched. To advance knowledge in this area, CSAT will consider funding experimental and quasi-experimental designs. While CSAT prefers to sponsor clinically and ethically justifiable studies using random assignment to compare two or more treatment approaches, carefully conceived quasi-experimental studies comparing distinct treatment approaches will be considered. Minimum requirements for quasi-experimental studies are standard assessments at treatment entry, treatment exit, and six and twelve month follow-up, and a comparison across two or more distinct treatments, with statistical adjustments for between-group differences at treatment entry. No studies sponsored through this GFA will employ assignment to no-treatment or deferred-treatment control groups. Applicants must pay particular attention to both the *gender* and *ethnicity* of the proposed participant pool, so that treatment effects related to these dimensions may be determined.

Eligible Applicants: Applications may be submitted by organizations, such as units of State or local governments and by domestic private for-profit and not-for-profit organizations such as community-based organizations, universities, colleges, and hospitals.

Cooperative Agreements/Amounts: It is estimated that approximately $1.4 million will be available to support up to two treatment sites at approximately $425,000 each and a coordinating center at approximately $550,000 under this GFA in FY 1997. Actual funding levels will depend upon the availability of appropriated funds.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For programmatic or technical assistance, contact: Ms. Jean Donaldson, Division of Practice and Systems Development, Clinical Interventions Branch, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services, Administration, Rockwall II, 9th Floor, (301) 443–6259.

Grants Management Contact: For business management assistance, contact: Mrs. Peggy Jones, Grants Management Specialist, Substance Abuse and Mental Health Services, Administration, Rockwall II, 9th Floor, (301) 443–9666.

The mailing address for both of the individuals listed above is: 5600 Fishers Lane, Rockville, Maryland 20857.

Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information, P. O. Box 2345, Rockville, Maryland 20847–2345, (800) 729–6686.

4.1.3 Cooperative Agreements to Evaluate Housing Approaches for Persons with Serious Mental Illness

Application Deadline: March 28, 1997.

Purpose: Cooperative agreements will be awarded to conduct an evaluation study that examines the effectiveness of different housing approaches for persons with serious mental illness. The program is divided into two phases. During Phase 1, study site grantees will be required to conduct a process evaluation of at least two distinctly different and fully operational housing approaches and to design an outcome evaluation that will compare the effectiveness of the different housing approaches. In addition, both study site and coordinating center grantees will collaborate in designing a cross-site study that includes developing a common data protocol that will permit an assessment of the different housing approaches that will be evaluated by the individual study sites during the second

phase. Continuation of study site grantees for Phase 2 will be based on an assessment of the product from their Phase 1 process evaluation and their plan for implementation of their individual site outcome evaluation. The coordinating center will not be subject to a competitive review at the end of Phase 1.

During Phase 2, study site grantees will implement an outcome evaluation of the housing approaches described during Phase 1 and participate with the coordinating center in conducting the cross-site study.

The primary goal of this program is: to describe the major components of different housing approaches that include provision of treatment and supports to individuals with serious mental illness; to develop a common data collection protocol across individual study sites so as to evaluate the effectiveness of different housing approaches; and to conduct both cross-site and individual-site evaluations that assess the impact of the housing approaches on residential tenure, level of functioning, quality of life, satisfaction, service utilization, consumer perception of service quality, independence, and cost.

The major questions to be addressed by this program are the following:

1. What are the major differences and similarities between and across housing approaches for individuals with serious mental illnesses in their organizational structure, implementation, staffing, consumer characteristics, array and intensity of services and supports provided, quality of services and housing, cost, and relationships to the larger housing and service systems?

2. Is a supported housing approach more effective than a housing approach that is based on the linear residential continuum, in helping people with serious mental illness achieve residential tenure, improved level of functioning, quality of life and independence?

Priorities: Study site applicants are required to submit study designs for a process and outcome evaluation of two or more housing approaches that have been fully operational for at least 2 years. One of the housing approaches under study must be a supported housing approach. Applicants must also be willing to follow a common protocol for implementing a cross-site study.

Eligible Applicants: Applications to be a study site or the coordinating center may be submitted by public organizations, such as units of State or local governments and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals, and family and/or consumer operated organizations. Applicants may apply to be either a study site or a coordinating center, but not both.

Cooperative Agreements/Amounts: It is estimated that approximately $2.0 million will be available to support approximately eleven (11) study site awards under this GFA in FY 1997, and that approximately $2.0 million will be available to support up to eight (8) competing continuation awards under this GFA in FY 1998 and 1999. It is anticipated that up to $180,000 will be available to support each study site in year one. It is anticipated that up to $250,000 will be available to support each study site approved for continuation in years two and three.

It is anticipated that up to $400,000 per year will be available in years one through three to support the coordinating center and up to $250,000 will be available in year four to support the coordinating center.

Actual funding levels will depend upon the availability of appropriated funds.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For programmatic or technical assistance contact: Lynn Aronson, M.S.

For evaluation issues contact: Frances L. Randolph, Dr. P.H.

The mailing address for these individuals is: Homeless Programs Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 11C–05, Rockville, MD 20857, (301) 443–3706.

Grants Management Contact: For business management assistance, contact: Stephen J. Hudak, Grants Management Specialist, Substance Abuse and Mental Health Services, Administration, 5600 Fishers Lane, Room 15C–05, Rockville, MD 20857, (301) 443–4456

Application Kits: Application kits are available from: National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, D.C. 20015, Voice: (800) 789–2647, TTY: (301) 443–9006, FAX: (301) 984–8796.

The full text of the GFA only is available electronically via KEN's Bulletin Board: (800) 790–2647 or its Web Site: http://www.mentalhealth.org/

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1997 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how a Center will implement SAMHSA's policy on promoting the non-use of tobacco.

7. Executive Order 12372

Applications submitted in response to all FY 1997 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance.

Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: January 20, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–1721 Filed 1–23–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–22]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATES: January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 16, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–1563 Filed 1–23–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–00–5440–00–ZBBB; CACA–30070; CACA–25594; CACA–31926]

Notice of Availability of Final Eagle Mountain Landfill and Recycling Center Project Environmental Impact Statement/Environmental Impact Report, Riverside County, California

AGENCY: Bureau of land Management, Interior.

ACTION: Notice of availability of the final Eagle Mountain Landfill and Recycling Center Project Environmental Impact Statement/Environmetal Impact Report.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, a Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) has been prepared for the Eagle Mountain Landfill and Recycling Center Project by the Bureau of Land Management (BLM) and County of Riverside. Mine Reclamation Corporation and Kaiser Eagle Mountain, Inc. Have proposed to develop a Class III nonhazardous municipal solid waste landfill, primarily a waste-by-rail facility, on a portion of the Kaiser Eagle Mountain Mine, Riverside County, California. The proposed project also includes the renovation and repopulation of Eagle Mountain Townsite and a Specific Plan, General Plan Amendment, Change of Zone, Development Agreement, Revised Permit to Reclamation Plan, and Tentative Tract Map with the County. The proposed project includes a land exchange, involving about 3,481 acres of public land, and application for two rights-of-way with the Bureau of Land Management. The EIS/EIR analyzes the effects of the proposed action and alternatives on such environmental issues as desert tortoise, air and water quality, and wilderness The EIS/EIR describes and analyzes six alternatives in addition to the proposed project. The BLM's preferred alternative is the proposed action. Statements concerning the proposed action will be considered in preparation of the Record of Decision.

DATES: Written statements on the Final EIS/EIR must be submitted or postmarked no later than February 22, 1997.

ADDRESSES: Written comments on the document should be mailed to: Eagle Mountain Landfill and Recycling Center Project, Bureau of Land Management, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli, California Desert District, 6221 Box Springs Boulevard, California 92507; phone (909) 697–5237.

SUPPLEMENTARY INFORMATION: Copies of the EIS/EIR are available for review at the following libraries:

Desert Hot Springs Public Library, 1691 West Drive, Desert Hot Springs, CA
Los Angeles Public Library, Documents Dept., 433 Spring Street, Los Angeles, CA
Palo Verde Valley District Library, 125 W. Chanslor Way, Blythe, CA
San Bernardino County Library, Yucca Valley Branch, 57098 Twentynine Palms Highway, Yucca Valley, CA
University of California, Riverside Library, Government Publications, Riverside, CA
California State Library, Sacramento, CA
Indio Branch Library, 200 Civic Center Mall, Indio, CA
Palm Desert Public Library, 4480 Portola, Palm Desert, CA Riverside Central Library, Government Documents, 381 Mission Inn Avenue, Riverside, CA
College of the Desert Library, 43–500 Monterey Avenue, Palm Desert, CA
Coachella Branch Library, Coachella, CA
Lake Tamarisk Branch Public Library, 43880 Lake Tamarisk Drive, Desert Center, CA
Palm Springs Library, 300 S. Sunrise Way, Palm Springs, CA
San Bernardino County Library, Joshua Tree Branch, 6465 Park Boulevard, Joshua Tree, CA
San Bernardino Public Library, Feldheym Central Library, W. 6 Street, San Bernardino, CA
Riverside Community College, Martin Luther King Library, 4800 Magnolia Avenue, Riverside, CA
Rancho Mirage Public Library, 42520 Bob Hope Drive, Rancho Mirage, CA
Cathedral City, 33520 Date Palm Drive, Cathedral City, CA

Copies will also be available at the following BLM and County offices:

BLM Desert District Office, 6221 Box Springs Boulevard, Riverside, CA

BLM Palm Springs-South Coast Resource Area, 690 W. Garnet, North Palm Springs, CA

County of Riverside, Planning Department 4080 Lemon Street, 9th Floor, Riverside, CA

County of Riverside, Transportation and Land Management Agency, 46–209 Oasis Street, Room 209, Indio, CA

Dated: January 14, 1997.

Molly S. Brady,

Assistant District Manager, Planning & Renewable Resources.

[FR Doc. 97–1474 Filed 1–23–97; 8:45 am]

BILLING CODE 4310–40–M

[ID–016–1430–01;IDI–15438–02]

Notice of Realty Action: Classification and Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose conveyance.

SUMMARY: We are proposing to offer for sale two existing sewage treatment facilities under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). IDI–15438–02 is a facility near the city of Kuna, in Ada County, Idaho. It has been examined and found suitable for conveyance. IDI–4616–02 is a facility near the city of Grand View, in Elmore County, Idaho. It is being classified suitable for subsequent sale.

City of Grand View (IDI–4616–02)

Boise Meridian, Idaho

T. 5 S., R. 3 E., section 9, Lot 10.

Containing 15.52 acres, more or less.

City of Kuna (IDI–15438–02)

Boise Meridian, Idaho

T. 1 N., R. 1 W., section 1, SW¼, section 2, Lot 1.

Containing 203.26 acres, more or less.

The land is not required for any Federal purpose. The conveyances are consistent with current Bureau planning for this area and would be in the public interest. The patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

Reservations

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

For IDI–4616–02 only

3. A right-of-way reservation to the Bureau of Land Management for access to other lands as noted by right-of-way IDI–31928.

Subject to:

IDI–4616–02

1. Those rights for highway purposes granted to Elmore County Road and Bridge, its successors or assigns by right-of-way IDI–29426 pursuant to the Act of October 21, 1976, (43 U.S.C. 1761).

IDI–15438–02

1. Those rights for power line purposes granted to Idaho Power, its successors or assigns by right-of-way IDI–334 pursuant to the Act of October 21, 1976, (43 U.S.C. 1761).

2. Those rights for telephone purposes granted to Mountain States Telephone and Telegraph, its successors or assigns by right-of-way IDI–28090 pursuant to the Act of October 21, 1976, (43 U.S.C. 1761).

3. Those rights to a road right-of-way claimed by Ada County, its successors or assigns, pursuant to the Act of July 26, 1866, (43 U.S.C. 932). (Casefile IDI–20038).

Detailed information concerning these actions is available for review at the office of the Bureau of Land Management, Lower Snake River District, Bruneau Resource Area, 3948 Development Avenue, Boise, Idaho 83705. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance and classification of the lands.

ADDRESSES: Comments as outlined below should be sent to Signe Sather-Blair, Bruneau Area Manager, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Del Bale, Realty Specialist, at the above address, or telephone (208) 384–3450.

SUPPLEMENTARY INFORMATION:

Classification Comments

(IDI–4616–02 only)

Interested parties may submit comments involving the suitability of the land for a sewage treatment facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Conveyance Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sewage treatment facility. Any adverse comments will be reviewed by the District Manager. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: January 13, 1997.

Signe Sather-Blair,

Bruneau Resource Area Manager.

[FR Doc. 97–1671 Filed 1–23–97; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council. The meeting will be held February 25, 1997, beginning at 8:30 a.m. in the 1A Conference Room at the Bureau of Land Management Arizona State Office, 222 North Central Avenue, Phoenix, Arizona. The agenda items to be covered at the one-day business meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning

efforts; progress report on Standards and Guidelines Statewide Plan Amendment; reports by the Recreation and Public Relations Working Groups; and a report on BLM Law Enforcement Program and BLM Field Presence. A public comment period will take place at 11:30 a.m. February 25, 1997 for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens or Ken Mahoney, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9512.

Michael A. Ferguson,

Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 97–1723 Filed 1–23–97; 8:45 am]

BILLING CODE 4310–32–M

[CA–042–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 23 N., R. 14 E.—Dependent resurvey, and subdivision of section 15 (Group 1085), accepted December 9, 1996, to meet certain administrative needs of the BLM, Surprise Resource Area.

T. 45 N., R. 7 W.—Supplemental plat of portions of sections 11 and 14, accepted December 9, 1996, to meet certain administrative needs of the BLM, Redding Resource Area.

T. 17 N., R. 7 W.—Dependent resurvey and corrective dependent resurvey, subdivision of sections 31, 33, and 34 (Group 1195), accepted December 17, 1996, to meet certain administrative needs of the US Forest Service, Mendocino National Forest.

T. 16 N., R. 9 W.—Dependent resurvey and metes-and-bounds survey of Tracts 37 through 42 (Group 935), accepted December 24, 1996, to meet certain administrative needs of the US Forest Service, Mendocino National Forest.

San Bernardino Meridian, California

T. 17 S., R. 4 W.—Metes-and-bounds survey of Tract 39 (Group 1249), accepted December 9, 1996, to meet certain administrative needs of the BLM, California Desert District, Palm Springs/South Coast Resource Area.

T. 8 N., R. 2 W.—Supplemental plat of section 4, accepted December 16, 1996, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: January 13, 1997.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 97–1715 Filed 1–23–97; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Discretionary Authority for Royalty Relief on Nonproducing Leases on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The Outer Continental Shelf (OCS) Deep Water Royalty Relief Act of 1995 (Act) granted the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalties in order to promote development, increase production, or encourage the production of marginal resources on producing and nonproducing leases in any water depth in certain areas of the Gulf of Mexico. This Notice seeks public input on whether and how MMS should implement this new authority for nonproducing leases.

DATES: We will consider all comments we receive by March 25, 1997. We will begin review of comments at that time and may not fully consider comments we receive after March 25, 1997.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4230; 1849 C Street, NW; Washington, D.C. 20240; Attention: Chief, Washington Division, Office of Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Dr. Walter Cruickshank, Washington Division, at the above address or by telephone: (202) 208–3822.

SUPPLEMENTARY INFORMATION:

Legislative Background

The Act (Pub. L. 104–58) authorizes the Secretary to modify the royalty terms of certain existing leases and to offer new leases subject to royalty suspension volumes in water depths of 200 meters or more in parts of the Gulf of Mexico. Most of the Act addresses mandatory royalty relief programs for leases in water depths of 200 meters or more. These provisions have been implemented in interim rules covering new leases (61 FR 12022, March 25, 1996) and existing leases (61 FR 27263, May 31, 1996).

We are now considering whether and how to implement new authority provided by the Act for a discretionary royalty relief program. In part, section 302 of the Act amends section 8(a) of the OCS Lands Act by adding subparagraph (3)(B), which applies to all leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude (i.e., the Central and Western Gulf of Mexico Planning Areas and the portion of the Eastern Gulf of Mexico Planning Area lying offshore Alabama). In this area, the Secretary may reduce or eliminate any royalty or net profit share in order to promote development, increase production, or encourage production of marginal resources on producing or nonproducing leases. With the lessee's consent, the Secretary may make other modifications to the royalty or net profit share terms of leases in order to achieve these purposes. This provision applies to active leases, not to the terms under which new leases are offered.

We already have a royalty relief program in place for producing leases, as well as the mandated program for nonproducing leases in at least 200 meters of water in the specified areas of the Gulf of Mexico. This Notice seeks input on whether and how we should consider royalty relief for nonproducing leases in any water depth.

We welcome comments and recommendations on all issues relevant to this Notice. In particular, please address the issues and questions raised below.

Issues

I. Should MMS Consider Royalty Relief on Nonproducing Leases?

(1) Currently, the Gulf of Mexico OCS program is very healthy, with record setting lease sales in 1996 and vigorous drilling and development activities.

What additional net benefits would an expanded royalty relief program create?

(2) We have established royalty relief programs for producing lessons throughout the OCS and for nonproducing leases in greater than 200 meters of water in the Gulf of Mexico, west of 87 degrees, 30 minutes West longitude. What types of situations warranting royalty relief arise which cannot be addressed through these programs? Please be as specific as possible; MMS will protect any confidential information that you submit.

(3) Under the OCS Lands Act, we have an obligation to insure a fair and equitable return on the resources of the OCS. Important components of meeting this mandate are our lease sale and bid adequacy review processes.

a. Will these processes still insure a fair return where the least-stipulated royalty rate may be modified prior to production?

b. How should we incorporate the potential for royalty relief on future production in determining whether a high bid for a lease is adequate?

c. Should such royalty relief be available to current leases, where an expectation of royalty relief prior to production did not exist at the time of the lease sale and bid adequacy review?

d. Would such a royalty relief program be fair to companies that submitted losing bids but which might have been willing to produce at the lease stipulated royalty rate?

(4) Many companies, especially some smaller companies, rely on the turnover of undeveloped leases for a significant portion of their offshore activities. This turnover takes the form of bidding on previously relinquished tracts in lease sales or acquiring an interest in leases through the lease assignment process. How would the availability of royalty relief on nonproducing leases affect the rate at which leases change hands?

II. Under What Circumstances Should MMS Consider Relief for Nonproducing Leases?

(1) If the Secretary chooses to establish a royalty relief program for nonproducing leases, what criteria should we use in evaluating applications? Are there special circumstances that warrant relief, such as costs substantially higher than normal or the introduction of a new technology? Please be as specific as possible.

(2) How should we define "marginal resources"?

(3) At present, when a lease is relinquished, we offer the tract for lease in the next round of scheduled sales, which are held annually in the Central and Western Gulf of Mexico. Tracts that have undeveloped discoveries are usually acquired by another company in a subsequent sale. Granting royalty relief to the initial lessee could preclude the Treasury from receiving the additional bonus and a subsequent lessee from testing alternative concepts and possibly producing at the lease-stipulated royalty rate. How should we consider this tradeoff in evaluating a request for royalty relief?

(4) Prospect economics in the Gulf of Mexico change very rapidly along with changes in technologies, availability of infrastructure, costs, and geologic information. How could we structure a royalty relief program to ensure that a decision to grant relief isn't rapidly overtaken by such changes?

III. Design of a Royalty Relief Program for Nonproducing Leases

Our only experience with royalty relief on nonproducing leases is in the deep water Gulf of Mexico. However, many of the elements of that program arise from the specific mandates of the Act for such leases. These mandates, and thus the design elements of the deep water program, do not necessarily apply to a more generally applicable program. Please comment on how and why an additional royalty relief program might vary from current programs, including the following questions:

(1) Current OCS programs provide royalty relief in the form of royalty suspension volumes for deep water leases in the Gulf of Mexico and in the form of net revenue sharing for producing leases elsewhere. What form of royalty relief should we use for nonproducing leases not subject to the deep water royalty relief programs?

(2) For nonproducing leases in deep water, we require a discovery capable of producing in paying quantities and design of the engineering concept as minimum precursors to an application.

a. When during the exploration and development process should a lessee be allowed to apply for relief?

b. When in this process would sufficient data be available to allow us to evaluate the need for royalty relief?

c. How would we assure that projections of the amount and timing of production, costs, and revenues are reasonable?

(3) What type of information is needed, and how should it be evaluated, to ensure that royalty relief is necessary to promote development, increase production, or encourage production of marginal resources on nonproducing leases?

(4) Should we establish safeguards to remove or modify relief when the factors on which relief was granted change significantly before production starts? If so, what types of safeguards are appropriate?

IV. General Issues

(1) For any particular royalty relief program you recommend, please provide specific information on its anticipated effects, including any effects on the levels and costs of exploration, development, and production, and the volume of additional resources that may be recovered.

(2) The current royalty relief regulation at 30 CFR 203.51(b) restates the statutory authority for granting royalty relief for nonproducing leases in the Gulf of Mexico, but the regulations provide no additional guidance on how to apply or how MMS will evaluate applications. Are additional regulations needed to provide this detail, or should MMS operate the program under the existing regulation? Is the existing regulation adequate until such time as we become more familiar with the types of situations that will lead to applications and the accompanying evaluation issues?

(3) In addition to authority to grant royalty relief for nonproducing leases, the Act gives the Secretary the authority to grant relief to categories of producing and nonproducing leases, rather than just on a case-by-case basis. Given that prospect economics change rapidly and depend on site-specific characteristics, we were unable to identify any additional categories of leases that warrant across-the-board relief. However, we welcome comments on categories deserving relief, the type of relief that's appropriate, and what criteria we should use to determine when across-the-broad relief is preferable to case-specific relief.

Dated: January 16, 1997.

Cynthia Quarterman,

Director.

[FR Doc. 97–1705 Filed 1–24–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are

based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good causes is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the pubic interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever, is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY960010 (March 15, 1996)

Volume II

Pennsylvania
- PA960004 (March 15, 1996)
- PA960042 (March 15, 1996)

Volume III

Florida
- FL960015 (March 15, 1996)
- FL960017 (March 15, 1996)
- FL960049 (March 15, 1996)
- FL960053 (March 15, 1996)
- FL960055 (March 15, 1996)

Georgia
- GA960003 (March 15, 1996)
- GA960022 (March 15, 1996)
- GA960073 (March 15, 1996)
- GA960085 (March 15, 1996)
- GA960086 (March 15, 1996)
- GA960087 (March 15, 1996)
- GA960088 (March 15, 1996)

Tennessee
- TN960002 (March 15, 1996)
- TN960018 (March 15, 1996)

Volume IV

Indiana
- IN960001 (May 17, 1996)
- IN960002 (March 15, 1996)
- IN960003 (March 15, 1996)
- IN960004 (March 15, 1996)
- IN960005 (March 15, 1996)
- IN960006 (March 15, 1996)

Volume V

Iowa
- IA960003 (March 15, 1996)
- IA960005 (March 15, 1996)
- IA960006 (March 15, 1996)
- IA960010 (March 15, 1996)
- IA960012 (March 15, 1996)
- IA960016 (March 15, 1996)
- IA960032 (March 15, 1996)
- IA960067 (March 15, 1996)

Kansas
- KS960008 (March 15, 1996)
- KS960009 (March 15, 1996)
- KS960012 (March 15, 1996)
- KS960013 (March 15, 1996)
- KS960015 (March 15, 1996)
- KS960016 (March 15, 1996)
- KS960017 (March 15, 1996)
- KS960022 (March 15, 1996)
- KS960025 (March 15, 1996)
- KS960026 (March 15, 1996)
- KS960029 (March 15, 1996)

New Mexico
- NM960001 (March 15, 1996)

Texas
- TX960001 (March 15, 1996)
- TX960005 (March 15, 1996)
- TX960010 (March 15, 1996)
- TX960014 (March 15, 1996)
- TX960054 (March 15, 1996)
- TX960081 (March 15, 1996)
- TX960100 (March 15, 1996)
- TX960114 (March 15, 1996)

Volume VI

California
- CA960002 (March 15, 1996)
- CA960028 (March 15, 1996)
- CA960029 (March 15, 1996)
- CA960031 (March 15, 1996)
- CA960032 (March 15, 1996)
- CA960033 (March 15, 1996)
- CA960034 (March 15, 1996)
- CA960035 (March 15, 1996)
- CA960036 (March 15, 1996)
- CA960037 (March 15, 1996)
- CA960038 (March 15, 1996)
- CA960039 (March 15, 1996)
- CA960040 (March 15, 1996)
- CA960041 (March 15, 1996)
- CA960042 (March 15, 1996)
- CA960043 (March 15, 1996)
- CA960044 (March 15, 1996)
- CA960045 (March 15, 1996)
- CA960047 (March 15, 1996)
- CA960048 (March 15, 1996)
- CA960051 (April 12, 1996)
- CA960054 (April 12, 1996)
- CA960060 (April 12, 1996)
- CA960064 (April 12, 1996)
- CA960070 (April 12, 1996)
- CA960074 (April 12, 1996)
- CA960075 (April 12, 1996)
- CA960076 (April 12, 1996)
- CA960077 (April 12, 1996)
- CA960078 (April 12, 1996)
- CA960079 (April 12, 1996)
- CA960080 (April 12, 1996)
- CA960084 (April 12, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-

Bacon and Related Act". This publication is available at each of the 50 Regional Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 16th Day of January 1997.

Terry Sullivan,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–1500 Filed 1–23–97; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

RIN 1219–AA81

Response to Recommendations of the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Response to Advisory Committee recommendations.

SUMMARY: On November 14, 1996, the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Advisory Committee) issued its report to the Secretary of Labor. The Advisory Committee identified a number of issues, developed findings, and made recommendations on how to eliminate coal workers" pneumoconiosis and silicosis. The Federal Mine Safety and Health Act of 1977 requires the Secretary of Labor to issue a public response to the Advisory Committee's recommendations. Accordingly, the Secretary, through the Mine Safety and Health Administration (MSHA), is responding in this Notice to the recommendations contained in the Advisory Committee report.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone 703–235–1910.

SUPPLEMENTARY INFORMATION:

A. Background

The Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Advisory Committee) was established by the Secretary of Labor (Secretary) on January 31, 1995, in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and the Federal Mine Safety and Health Act of 1977 (Mine Act) 30 U.S.C. 801 (1977). The Secretary charged the Advisory Committee to make recommendations for improved standards, or other appropriate actions, on permissible exposure limits to eliminate coal workers pneumoconiosis and silicosis (commonly referred to as "Black Lung"); the means to control respirable coal mine dust levels; improved monitoring of respirable coal mine dust levels and the role of the miner in that monitoring; and the adequacy of the current sampling program to determine the actual levels of dust concentrations to which miners are exposed.

On November 14, 1996, the Advisory Committee submitted its report to the Secretary. The report contained numerous recommendations directed toward elimination of coal workers" pneumoconiosis and silicosis. The report concluded that:

* * * although progress towards making mines safer from the health hazards of respirable coal mine dust is substantial, it is not sufficient to achieve the intent of the Coal Act [the predecessor to the Mine Act]. The Committee believes that the elimination of coal workers" pneumoconiosis and silicosis requires a systematic approach incorporating simultaneously:

(1) greater reduction of dust generation and entrainment; (2) greater reduction of ambient concentrations through better dust control plans; (3) improved continuous monitoring and dust sampling programs; (4) greater reduction of personal exposures; (5) enhanced training of miners and mine officials on relevant aspects of coal mine dust control; (6) upgraded medical surveillance programs; (7) more rapid intervention programs; (8) enhanced research on continuing vexing scientific, engineering, and medical issues; and (9) continuous critical evaluation of the coal mine respirable dust standard of 2.0 mg/m^3 and the silica standard of 100 $\mu g/m^3$.

Recommendations of the Advisory Committee address each of these areas in detail.

B. Agency Determination

Section 101(a)(2) of the Mine Act (30 U.S.C. 811(a)(2)) provides that if the Secretary of Labor determines that a rule should be proposed and has appointed an Advisory Committee to provide recommendations regarding the rule, then the Secretary shall publish a proposed rule, or the reasons for his determination not to publish such a rule, within 60 days following the Advisory Committee's recommendations. Accordingly, MSHA, on behalf of the Secretary of Labor, is responding in this Notice to the recommendations of the Advisory Committee.

MSHA has completed a preliminary review of the Advisory Committee's recommendations. There are 20 principal recommendations set out in the Advisory Committee report, which are further subdivided into a total of approximately 100 distinct action items. The recommendations are both extensive and significant, and warrant thorough consideration by the Agency. MSHA is consequently proceeding with an in-depth evaluation of the recommendations, and will respond to them in an orderly fashion. The Agency anticipates that a comprehensive MSHA review of the recommendations will result in a variety of Agency actions. Based on its initial review, MSHA anticipates that a number of the recommendations may be implemented through internal MSHA administrative or policy changes; action on other recommendations may require rulemaking. In some cases, both regulatory and administrative action may be necessary. Many of the recommendations are general in nature and would require further development by MSHA to be suitable for publication as a proposed rule.

MSHA is considering both rulemaking and actions other than rulemaking. MSHA will notify the mining community as it makes determinations regarding implementation of Advisory Committee recommendations.

Dated: January 17, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–1677 Filed 1–23–97; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of Meeting.

SUMMARY: Notice is hereby given that the Maritime Advisory Committee for Occupational Safety and Health, established under section 7(a) of the Occupational Safety and health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States will meet February 19 and 20, 1997, at the Francis Perkins Department of Labor Building, 200 Constitution Ave., NW, Washington, DC 20210.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue, N.W., Washington, DC 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234, extension 141.

SUPPLEMENTARY INFORMATION: The Maritime Advisory Committee on Occupational Safety and health meeting will be held February 19 from 1:00 to approximately 5:00, and February 20 from 9:00 to approximately 5:00 at Conference Room S5515 of the Francis Perkins Labor Building. At this meeting, the Committee will: continue its efforts to develop a Maritime Safety and Health Program standard; discuss training/mentoring opportunities for OSHA compliance officers; assist OSHA in developing outreach materials to address the soon to be published final rule for Longshore and Marine Terminals; and discuss the status of OSHA health standards that effect Shipyard employment.

All interested persons are invited to attend the public meetings of MACOSH, including this one at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at 202–219–8061, no later than February 7, 1997, to obtain appropriate accommodations.

MACOSH will meet as a whole and also in small focus groups. Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received by February 10 will be provided to the members of the Committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Signed at Washington, D.C. this 17th day of January, 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–1766 Filed 1–23–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used in applying for grants from the National Historical Publications and Records Commission (NHPRC). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 25, 1997 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: NHPRC Budget Form and Instructions.

OMB number: 3095–0004.

Agency form number: NA Form 17001.

Type of review: Regular.

Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 174.

Estimated time per response: 3 hours.

Frequency of response: On occasion (when respondent wishes to apply for an NHPRC grant). Respondents generally submit no more than 1 application per year.

Estimated total annual burden hours: 552 hours.

Abstract: The information collection is prescribed by 36 CFR 1207.58. The collection is prepared by prospective grantees. The budget form is used by the NHPRC staff, reviewers, and the Commission to determine whether the proposed project is methodologically

sound and suitable for support and as a basis for determining the amount of support to be provided.

Dated: January 21, 1997.

Lynn L. Bellardo,

Director, Information Resources Policy and Projects Division.

[FR Doc. 97–1909 Filed 1–23–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power and Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant (Brunswick, BSEP, BNP), Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendments, requested by the licensee in a letter dated November 1, 1996, would represent a full conversion from the current Technical Specifications (TSs) to a set of TS based on NUREG–1433, Revision 1, "Standard Technical Specifications for General Electric Plants, BWR/4," dated April 1995. NUREG–1433 has been developed through working groups composed of both NRC staff members and the BWR/4 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (final policy statement)," published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current Brunswick TSs, and, using NUREG–1433 as a basis, developed a proposed set of improved TSs for BSEP. The criteria in the final policy statement were subsequently added to 10 CFR 50.36, "Technical Specifications," in a rule change which was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the existing TSs into four general groupings. These groupings are characterized as administrative changes, relocated changes, technical changes—more restrictive, and technical changes—less restrictive.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an existing requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and does not involve technical changes to the existing TSs. The proposed changes include: (a) providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components or variables that do not meet the criteria for inclusion in the TSs. Relocated changes are those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in that portion of their November 1, 1996, application titled "Application of Selection Criteria to the BNP Technical Specifications," in Volume 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents such as the Updated Final Safety Analysis Report (UFSAR), the BASES, the Technical Requirements Manual (TRM), plant procedures, the Inservice Testing (IST) Program, the Inservice Inspection (ISI) Program, the Offsite Dose Calculation Manual (ODCM) or the Process Control Program. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements and adequate control of the information will be maintained.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems and components described in the safety analyses. For each requirement in the current BSEP TSs that is more restrictive than the corresponding requirement in NUREG–1433 which the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facilities because of specific design features of the plant.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the improved Standard Technical Specifications. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1433 and thus provides a basis for these revised TSs or if relaxation of the requirements in the current TSs is warranted based on the justification provided by the licensee.

In addition to the above changes related to conversion of the current TSs to be similar to the ISTSs in NUREG–1433, the licensee has proposed to change the surveillance frequency from 18 to 24 months for all surveillances that are normally performed at refueling outages. The proposed amendments would extend the required frequency of

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selected surveillance requirements to 24 months to support the adoption of a 24-month fuel cycle.

In the application of November 1, 1996, CP&L is also requesting changes to the Unit 2 Operating License to allow single loop operation. By letter dated November 1, 1996, the licensee submitted amendment applications for Brunswick Units 1 and 2 to revise the TSs to allow full implementation of the Boiling Water Reactor Owners Group (BWROG) Enhanced Option 1–A (EIA) Reactor Stability Long Term Solution. Approval of these proposed amendments would permit single loop operation for both Brunswick units. CP&L is proposing to implement the long-term resolution of the thermal hydraulic instability concerns concurrent with implementation of the ITS. The TS changes to permit single loop operation have been incorporated in the ITS. However, the Unit 2 License has a condition (2.C.(5)) that does not allow single loop operation for more than 24 hours. The license condition was added to permit the licensee to conduct a natural circulation test as part of the startup test program but to preclude extended operation without both recirculation loops in operation.

By February 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mark Reinhart, Acting Director, Project Directorate II–1: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated November 1, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall

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Dated at R
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Library, 601 S. College Road, Wilmington, North Carolina 27602.

Dated at Rockville, Maryland, this 15th day of January 1997.

For the Nuclear Regulatory Commission.

Mark Reinhart,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1722 Filed 1–23–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

TIME AND DATES: 1:00 p.m., Monday, February 3, 1997; and 9:00 a.m., Tuesday, February 4, 1997.

PLACE: Albuquerque, New Mexico, at the Wyatt Regency Hotel, 330 Tijeras N.W. Avenue, in Pavilion VI.

STATUS: February 3 (Closed); February 4 (Open).

MATTERS TO BE CONSIDERED:

Monday, February 3—1:00 p.m. (closed)
1. FY 1997 Variable Pay Program.
2. Inspector General Functions and Compensation.
3. Postal Rate Commission Docket No. C96–1, Pack & Send.
4. Changes to FY 1997 Advertising Budget.

Tuesday, February 4—9:00 a.m. (Open)
1. Minutes of the Previous Meeting, January 6–7, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Appointment of Members to Board Committees.
4. Fiscal Year 1996 Comprehensive Statement on Postal Operations.
5. Quarterly Report on Service Performance.
6. Quarterly Report on Financial Performance.
7. Report on the Albuquerque District.
8. Tentative Agenda for the March 3–4, 1997, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800..

Thomas J. Koerber,

Secretary.

[FR Doc. 97–1895 Filed 1–22–97; 2:20 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–8, SEC File No. 270–225, OMB Control No. 3235–0235

Form N–8F, SEC File No. 270–136, OMB Control No. 3235–0157

Form N–23C–1, SEC File No. 270–230, OMB Control No. 3235–0230

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing for public comment the following summaries of previously approved information collection requirements.

Rule 17a–8 exempts certain mergers and similar business combinations ("mergers") of affiliated registered investment companies ("funds") from section 17(a)'s prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The average annual burden of meeting the requirements of Rule 17a–8 is estimated to be 1.5 hours for each fund. The Commission estimates that about seventeen funds rely each year on the rule. The total average annual burden for all respondents is therefore twenty-six hours.

For N–8F is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that they have ceased to be investment companies. The form takes approximately 6 hours to complete. It is estimated that approximately 160 investment companies file Form N–8F annually, for a total annual burden of 960 hours.

For N–23C–1 assists the Commission and the public in monitoring repurchases by closed-end investment companies ("closed-end funds") of their own securities under Rule 23c–1, which permits such repurchases in limited circumstances subject to certain safeguards. The form, which must be filed within the first 10 days of the calendar month following any month in which securities are repurchased, requires the closed-end fund to report certain information including the date, amount, and price of repurchases and other information. It is estimated that four closed-end funds are affected by the rule each year, and that they file approximately 23 reports in total each year (based on the average of 0 to 12 reports filed annually by each fund) requiring one hour per report, for a total of 23 annual burden hours.

Written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 16, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1679 Filed 1–23–97; 8:45 am]

BILLING CODE 0010–01–M

[Investment Company Act Release No. 22473; 812–10470]

Cityfed Financial Corp.; Notice of Application

January 17, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Cityfed Financial Corp.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, until the earlier of two years from the date of the requested order or such time as applicant would no longer be required to register as an investment company under the Act. The requested exemption would extend an exemption granted until February 21, 1997.

FILING DATE: The application was filed on December 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Staff Attorney, at (202) 942–0552, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). During the five year period ending December 31, 1988, City Federal was the source of substantially all of applicant's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (the "OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation (the "RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, applicant no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. As of September 30, 1996, applicant held cash and securities of approximately $8.8 million. Because of its asset composition, applicant may be deemed to be an investment company under the Act. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against applicant and certain of its officers and directors, applicant could not acquire an operating company within the one year safe harbor. In 1996, applicant was granted an exemption from all provisions of the Act until the earlier of February 21, 1997 or such time as it would no longer be required to register as an investment company.[1]

3. While applicant's board of directors has considered from time to time whether to engage in an operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against applicant, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On June 2, 1994, the OTS issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice of Charges") against applicant and certain current or former directors and, in some cases, officers of applicant and City Federal. The Notice of Charges requests that an order be entered by the Director of the OTS requiring applicant to make restitution, reimburse, indemnify or guarantee the OTS against loss in an amount not less than $118.4 million, which the OTS alleges represents the regulatory capital deficiency reported by City Federal in the fall of 1989. On November 30, 1995, the OTS issued an Amended Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Amended Notice of Charges") that is identical to the Notice of Charges, except that the Amended Notice of Charges includes a reference to a federal statutory provision not referred to in the Notice of Charges that the OTS asserts provides an additional basis for the issuance of a Cease and Desist Order against applicant and certain current or former directors and, in some cases, officers of applicant and of City Federal ("Respondents"). On February 1, 1996, an administrative law judge ("ALJ") issued a prehearing order ("Prehearing Order") granting the OTS's motion for partial summary disposition with respect to applicant and denying both applicant's motion for partial summary disposition of the OTS's assessment of civil money penalties and its cross-motion for summary adjudication. On June 12, 1996, applicant moved for interlocutory review by the acting director of the OTS of the conclusions in the Prehearing Order and, if necessary, will seek appellate review of any adverse decision. If the conclusions in the Prehearing Order are not ultimately reversed, applicant may be required to turn over to the OTS all or substantially all of its assets.

5. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist ("Temporary Order") against applicant. The Temporary Order required applicant to post $9.0 million as security for the payment of the amount sought by the OTS in its Notice of Charges. Applicant unsuccessfully petitioned the district court for an injunction against the Temporary Order. Applicant and the Respondents filed notices of appeal from the D.C. Court's Order to the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), and the Respondents filed a motion in the D.C. Circuit for an expedited appeal and an order enjoining the enforcement of the Temporary Order during the pendency of the appeal. The D.C. Circuit denied the Respondents' motion for injunction on October 21, 1994. On July 11, 1995, the D.C. Circuit affirmed the denial by the D.C. Court of the motions by applicant and the Respondents for a temporary restraining order and an injunction against the Temporary Order. On October 26, 1994, applicant and the OTS entered into an Escrow Agreement ("Escrow Agreement") with CoreStates Bank, N.A. ("CoreStates") pursuant to which applicant transferred substantially all of its assets to CoreStates for deposit into an escrow account to be maintained by CoreStates. Applicant's assets in the escrow account continue to be invested in money market instruments with a maturity of one year or less and money market mutual funds. Withdrawals or disbursements from the escrow account are not permitted without the written authorization of the OTS, other than for (a) monthly transfers to applicant in the amount of $15,000 for operating expenses, (b) the disbursement of funds on account of purchases of securities by applicant, and (c) the payment of the escrow fee and expenses to CoreStates. The Escrow Agreement also provides that CoreStates will restrict the escrow account in such a manner as to implement the terms of the Escrow Agreement and to prevent a change in

[1] *Cityfed Financial Corp.*, Investment Company Act Release Nos. 21710 (January 26, 1996) (notice) and 21761 (February 21, 1996) (order).

status or function of the escrow account unless authorized by applicant and the OTS in writing.

6. On December 7, 1992, the RTC filed suit against applicant and two former officers of City Federal seeking damages of $12 million for failure to maintain the net worth of City Federal ("First RTC Action"). In light of the filing by the OTS of the Notice of Charges on June 2, 1994, the RTC and applicant agreed to dismiss without prejudice the RTC's claim against applicant in the First RTC Action.

7. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans ("Second RTC Action"). The RTC seeks in excess of $200 million in damages. Under its bylaws, applicant may be obligated to indemnify these former officers and directors and advance their legal expenses. Applicant generally has agreed to advance expenses in connection with these requests. Because of the Temporary Order and the Escrow Agreement, however, applicant is not continuing to advance expenses in connection with these requests. Applicant is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

8. On August 7, 1995, applicant, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims seeking damages for loss of "supervisory goodwill." Applicant's goodwill suit is presently pending in that court.

9. Currently, applicant's stock is traded sporadically in the over-the-counter market. Applicant has one employee who is president, chief executive officer, and treasurer. Applicant's secretary does not receive any compensation for her service.

Applicant's Legal Analysis

1. Section 3(a)(1) defines an investment company as any issuer of a security who "is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(3) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the Commission may exempt any person from any provision of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest." Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. Applicant acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, applicant requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. Applicant requests an exemption until the earlier of two years from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. Applicant believes that it meets these criteria.

5. Applicant believes that its failure to become primarily engaged in a non-investment business by February 21, 1997 is due to factors beyond its control. Applicant asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If applicant is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. Applicant also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, applicant states that its circumstances are unlikely to change over the requested two-year period in light of the number of claims currently pending against it and because of the existence of the Escrow Agreement. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, applicant has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, applicant will comply with sections 9, 17(a) and (d) (subject to the exception below and the modifications described in condition 3, below), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder. With respect to section 17(d), applicant represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of City Federal have existing rights under the plan. Applicant believes that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d–1 thereunder. Because the plan was adopted when applicant was an operating company and to the extent there are existing rights under the plan, applicant seeks an exemption to the extent necessary from section 17(d).

Applicant's Conditions

Applicant agrees that the requested exemption will be subject to the following conditions, each of which will apply to applicant from the date of the requested order until it no longer meets the definition of an investment company or during the period of time that it is exempt from registration under the Act:

1. Applicant will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization, or, if unrated, deemed to be of comparable quality under guidelines approved by applicant's board of directors, subject to two exceptions:

a. Applicant may make an equity investment in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by applicant's board of directors; and

b. Applicant may invest in one or more money market mutual funds that limit their investments to "Eligible Securities" within the meaning of rule 2a–7(a)(5) promulgated under the Act.

2. Applicant's Form 10–KSB, Form 10–QSB and annual reports to

shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that applicant and other persons, in their transactions and relations with applicant, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if applicant were a registered investment company, except insofar as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of applicant may engage in a transaction that otherwise would be prohibited by these sections with applicant:

(a) if such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to applicant, and (ii) the participation of applicant in the proposed transaction will not be on a basis less advantageous to applicant than that of other participants; and

(b) in connection with each such transaction, applicant shall inform the bankruptcy court of (i) of the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction;

(ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1737 Filed 1–23–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38181; File No. SR–CSE–97–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to Limit Order Exposure Requirements

January 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on January 10, 1997, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On January 15, 1997, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend Rule 12.10 to delete Interpretation .01 concerning customer limit order exposure. The Exchange believes that recently enacted Commission order handling rules have rendered this interpretation obsolete.

The text of the proposed rule change is available at the CSE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its order approving the Exchange's preferencing program, on March 29, 1996, the Commission approved Exchange Rule 12.10, Interpretation .01, which sets forth the Exchange's limit order exposure policy. On September 6, 1996, the Commission approved new order handling rules, including new Rule 11Ac1–4, the Limit Order Display Rule.[2] As a result, the CSE believes that its limit order exposure requirements are now obsolete. The Exchange proposes to delete these obsolete requirements from its Rules, and to insert a reference to the Commission's new limit Order Display Rule. The Exchange believes this reference will assist CSE members in complying with the Commission's new limit order display requirements.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–97–02 and should be submitted by February 14, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

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[1] See letter from Adam W. Gurwitz, Director of Legal Affairs, CSE, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated January 15, 1997. Amendment No. 1 clarifies that Interpretation .01 of Rule 12.10 applies to customer *limit* orders.

[2] See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules Adopting Release").

requirements of Section 6(b).[3] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[4]

On September 6, 1996, the Commission adopted new Rule 11Ac1–4 ("Display Rule"), which requires OTC market makers and specialists to display the price and full size of customer limit orders when these orders represent buying and selling interest that is at a better price than a specialist's or OTC market maker's public quote. Moreover, the Display Rule requires OTC market makers and specialists to increase the size of the quote for a particular security to reflect a limit order of greater than *de minimis* size when the limit order is priced equal to the specialist's or OTC market maker's disseminated quote and that quote is equal to the national best bid or offer.[5]

Currently, the Exchange has its own limit order exposure policy, which is set forth in Interpretation .01, Rule 12.10 of the CSE's rules. The Exchange believes that with the adoption of the Display Rule, the requirements in CSE's limit order exposure policy have become obsolete. The Exchange, therefore, proposes to delete these requirements and insert a reference to the Display Rule. The Commission finds that eliminating the current Exchange requirements for exposure of limit orders and referencing the Commission's rule is appropriate and will assist CSE members to comply with the new obligations for handling limit orders under the federal securities laws.

Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the proposed rule change prior to the 30th day of the publication of this notice in the **Federal Register**. Moreover, the Commission believes that it is appropriate to accelerate approval of the proposed rule change so that the Exchange may accurately reflect in its rules by January 20, 1997, the effective date of the Order Handling Rules, the new obligations of its members.

[3] 15 U.S.C. § 78f(b).

[4] In approving these rules, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[5] *See supra* note 2.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CSE–97–020 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1680 Filed 1–23–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38180; File No. SR–NASD–96–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Temporary Approval and Notice of Filing and Accelerated Approval of Amendment No. 1 of Proposed Rule Change Relating to Amendments to the NASD's Excess Spread Rule Applicable to Market Maker Quotations Through July 1, 1997

January 16, 1997.

I. Introduction

On December 16, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder.[2] The NASD proposed to amend NASD Rule 4613(d) on a pilot basis through January 31, 1998, to provide that a registered market maker in a security listed on The Nasdaq Stock Market ("Nasdaq") shall be precluded from being a registered market maker in that issue for twenty business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month.[3]

Notice of the proposed rule change was published in the **Federal Register**.[4] No comments have been received in response to the Commission release.

Subsequent to publication of the NASD filing, on January 9, 1997, the NASD filed with the Commission Amendment No. 1, which proposes to shorten the length of the pilot period from January 31, 1998, to July 1, 1997.[5] This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

[6] 15 U.S.C. § 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD requested accelerated approval of its proposed rule change.

[4] Securities Exchange Act Release No. 38089 (December 27, 1996), 62 FR 436 (January 3, 1997).

II. Description

NASD Rule 4613(d), which is commonly known as the NASD's "excess spread rule," presently provides that registered market makers in Nasdaq securities shall not enter quotations that exceed the NASD's parameter for maximum allowable spreads. Specifically, the rule provides that the maximum allowable spread for any Nasdaq security is 125 percent of the average of the three narrowest market maker spreads in that issue ("125 percent test"), provided, however, that the maximum allowable spread shall never be less than ¼ of a point.[6]

In its filing with the Commission, the NASD stated that the proposed rule change is an attempt to strike a reasonable balance between the need to eliminate any disincentive that the excess spread rule places on firms to improve their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of market maker status. Under the amendment, a registered market maker will be required to maintain an average spread over the course of any full calendar month equal to or less than 150 percent of the average spread of all market makers in the issue over the course of the month ("150 percent test"). If a market maker fails to satisfy this standard with respect to a particular Nasdaq security, it will be forced to withdraw from market making in that issue for at least 20 business days.

Amended Rule 4613(d) will afford market makers that opportunity to request reconsideration of their withdrawal notices. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions will be final and

[5] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to David Oestreicher, Esq., Division of Market Regulation, SEC, dated January 8, 1997. A copy of this amendment is available for inspection and copying in the Commission's Public Reference Room.

[6] Unrelated to the excess spread rule, there is also a dealer spread test that is part of the NASD's Primary Market Maker ("PMM") standards that are used to determine the eligibility of market makers for an exemption from the NASD's short sale rule for short sales effected during the course of bona fide market making activity. Specifically, the market maker spread component of the PMM standards provides that a market maker must maintain a spread no greater than 102 percent of the average dealer spread. The NASD recently filed a proposed rule change related to the PMM standards. *See* Securities Exchange Act Release No. 38091 (December 27, 1996), 62 FR 778 (January 6, 1997).

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binding on the members. The grounds for reconsideration will be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

This rule change will be operational for a pilot period beginning on January 20, 1997, and ending at the close of business on July 1, 1997.

III. Discussion

In its filing, the NASD stated that the excess spread rule was originally designed to enhance the quality of the Nasdaq market by preventing firms from holding themselves out as market makers without having a meaningful quote in the system. Despite the regulatory objectives underlying the excess spread rule, however, many market participants believe the rule has produced a variety of unintended consequences that have undermined the quality of Nasdaq quotations.[7] Indeed, the Commission during its investigation of the NASD found that the NASD's excess spread rule had undesirable effects.[8] In particular, the rule created disincentives for any given market maker to narrow its spread because to do so would reduce the maximum allowable spreads for all market makers. The Commission concluded that the rule interferes with the free flow of prices in the market and impedes attempts by the market to reach the optimal competitive spread.[9] The Commission also noted that the rule may create incentives for market makers to collaborate or harass each other to dissuade a market maker from changing its quote if such a change would narrow one of the three smallest spreads in the stock.[10] As part of its settlement with the Commission, the NASD agreed to modify the excess spread rule to eliminate its undesirable effects, or to eliminate the rule in its entirely, within one year of the Commission's Order.[11]

The NASD submitted its proposal to amend the current excess spread rule as an initial step to comply with the Commission's Order. The NASD also believes that the proposed rule change is necessary in light of changes to the Nasdaq market that will be brought about by implementation of the SEC's new limit order display on January 20, 1997.[12] In particular, because spreads in Nasdaq securities likely will narrow due to the display of customer limit orders, the average of the three narrowest market maker spreads also will narrow. As a result, the Commission's concerns with the current excess spreads rule will be exacerbated; application of the current rule under these circumstances may increase the incentive for market maker collaboration. Application of the current excess spread rule after the effective date of the order Execution Rules could have other consequences. For example, the current rule may lead market makers to decide not to accept customer limit orders or only accept those limit orders priced at the inside bid or offer so as not to narrow the maximum allowable spread parameters.

The NASD has tried to reduce the anticompetitive effects of the excess spread rule by broadening the calculations used to determine the maximum allowable spread. The NASD recognizes that its proposal is only an interim step. Consequently, the NASD has proposed that the rule operate on a temporary basis while it studies the effects of the rule and examines other alternatives.

The Commission has determined to approve the proposed rule change on a pilot basis through July 1, 1997. The amended rule may reduce, to some degree, the Commission's concerns regarding the current excess spread rule. For example, the new spread parameters are based on the average of all market makers in an issue, rather than only the three market makers quoting the narrowest spreads. Moreover, this average will be based on a full calendar month. Further, the NASD has increased the current 125 percent test to a 150 percent test. These changes limit the effect that one market maker's quote change will have on the obligations of other market makers, and thereby will limit the incentives toward improper behavior or harassment.

Although the amended excess spread rule may reduce some of the anticompetitive concerns outlined in the 21(a) Report, the Commission believes that the amendment approved today may not completely satisfy the NASD's obligations under the Commission's Order with regard to the excess spread rule. Specifically, it may not remove completely the anticompetitive incentives for market makers to refrain from narrowing quotes because the market makers' quotation obligation continues to be dependent to some extent upon quotations of other market makers in the stock. Nonetheless, the Commission recognizes that the NASD needs to amend its excess spread rule quickly in light of the implementation of the Commission's Order Execution Rules. Although the proposal does not present a permanent solution, it is preferable to the current rule. As a result, the Commission has approved the amendment on a pilot basis only through July 1, 1997.[13] During this time period, the NASD should monitor the effects of the pilot, as well as study alternative methods that would enhance market making performance while completely fulfilling the NASD's obligation regarding the excess spread rule before the August 8, 1997 deadline contained in the Commission's Order.[14]

Accordingly, the Commission finds that the rule change is consistent with the Exchange Act and the rules thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the Order Execution Rules become effective on January 20, 1997. These rules will likely result in a more order driven environment in which market makers' quotes frequently reflect customer limit orders. This could make compliance with the current excess spread rule difficult and thus exacerbate the concerns outlined by the Commission in its 21(a) Report

[7] Some market participants claim that one such consequence is an increase in locked and crossed markets during periods of market turbulence because of the constraints on quote movements created by the rule.

[8] *See* Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD, the Nasdaq Market, and Nasdaq Market Makers, Securities Exchange Act Release No. 37542 (August 8, 1996) ("21(a) Report"), and Appendix thereto.

[9] *Id.*

[10] *Id.*

[11] Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996) ("Order").

[12] SEC Rule 11Acl–4 requires the display of customer limit orders that are placed better than a market maker's quote or that add to the size associated with a market maker's quote when the market maker is at the best price in the market. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Execution Rules Adopting Release").

[13] In the Securities Acts Amendments of 1975, Congress directed the Commission to use its authority under the Exchange Act, including its authority to approve self-regulatory organization ("SRO") rule changes, to foster the establishment of a national market system and promote the goals of fair competition and best execution. *See* S. Rep. No. 75, 94th Cong., 1st Sess. (1975) ("Senate Report"). Congress granted the Commission broad discretionary authority and maximum flexibility to carry out the objectives outlined in the 1975 Amendments. *Id.*

[14] The Commission notes that one possible approach is to delete entirely the excess spread methodology and instead develop alternative measures to ensure adequate market maker performance.

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regarding the current excess spread rule's effect on price competition in the Nasdaq market.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–96–50 and should be submitted by February 14, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change SR–NASD–96–50 be, and hereby is, approved effective January 20, 1997 through July 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1681 Filed 1–23–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2925]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 4, 1997, and amendments thereto on January 7, 9, and 13, I find that Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Mateo, San Joaquin, San Benito, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties in the State of California constitute a disaster area due to damages caused by severe storms, flooding, and mud and land slides beginning on December 28, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on March 5, 1997, and for loans for economic injury until the close of business on October 6, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alamed, Inyo, Kern, Kings, San Francisco, and San Luis Obispo Counties in California; Esmeralda County, Nevada; and Curry, Jackson, Josephine and Klamath Counties in Oregon. Any counties contiguous to the above-named counties and not listed herein have been covered in a previous declaration for the same occurrence.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 292511. For economic injury the numbers are 933600 for California, 933700 for Nevada, and 933800 for Oregon.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–1739 Filed 1–23–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2924]

Idaho; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 4, 1997, and an amendment thereto on January 10, I find that Adams, Boise, Bonner, Boundary, Clearwater, Elmore, Gem, Idaho, Latah, Nez Perce, Payette, Shoshone, Valley and Washington Counties in the State of Idaho constitute a disaster area due to damages caused by severe storms, flooding, and mud and land slides beginning on December 27, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on March 5, 1997, and for loans for economic injury until the close of business on October 6, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Ada, Benewah, Blaine, Camas, Canyon, Custer, Gooding, Kootenai, Lemhi, Lewis, Nez Perce, Owynee, and Twin Falls Counties in Idaho; Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties in Montana; Baker, Malheur, and Wallowa Counties in Oregon; and Asotin, Pend Oreille, Spokane, and Whitman Counties in Washington.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 292411. For economic injury the numbers are 933200 for Idaho, 933300 for Montana, 933400 for Oregon, and 933500 for Washington.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

[15] 17 CFR 200.30–3(a)(12).

Dated: January 15, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–1740 Filed 1–23–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2923]

Nevada; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 3, 1997, I find that Douglas, Lyon, Storey and Washoe Counties, and the Independent City of Carson City in the State of Nevada constitute a disaster area due to damages caused by severe storms, flooding, and mud and land slides beginning on December 20, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on March 4, 1997, and for loans for economic injury until the close of business on October 3, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Churchill, Humboldt, Mineral, and Pershing Counties in Nevada, and Harney and Lake Counties in Oregon. Any counties contiguous to the above-named counties and not listed herein have been covered under a separate declaration for the same occurrence.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 292311. For economic injury the numbers are 933000 for Nevada and 933100 for Oregon.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–1738 Filed 1–23–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below requires extension of the current OMB approval(s):

0960–0030—Statement of Employer. The information collected on form SSA–7011 is used by the Social Security Administration to substantiate allegations of wages paid to workers when those wages do not appear in SSA's records of earnings and the worker does not have proof that they were paid. This information is used to process claims for social security benefits and to resolve discrepancies in earnings records. The respondents are certain employers who can verify allegations of wages made by the wage earner.

Number of Respondents: 925,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 308,333.

To receive a copy of the form(s) or clearance packages (s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below, which were published in the **Federal Register** on November 1 and November 20, 1996, have been submitted to OMB.

1. *Statement of Funds You Provided to Another; Statement of Funds You Received—0960–0481.* The information collected on forms SSA–2854 and SSA–2855 is used by the Social Security Administration to determine if money borrowed on an informal basis from a noncommercial lender (friend or relative) is income to the borrower/claimant. The information is needed to insure that an individual is properly eligible for Supplemental Security Income (SSI) payments. The respondents are applicants for and recipients of SSI payments.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

2. Employer Classification Update—0960–0262. The information on form SSA–L378 is needed by the Social Security Administration in situations where an employer submits an SS–4, Employer Identification Form, with incomplete or missing information. The data from the SSA–L378 is used, in conjunction with tax return data, for program planning, revenue estimates and employment studies. The respondents are employers with 11 or more employees.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 3,750 hours.

3. Certificate of Election for Reduced Spouse's Benefits—0960–0398. A qualified spouse, age 62 to 64, can elect to receive a reduced Social Security benefit by completing a form SSA–25. The information collected on the form is used by the Social Security Administration to pay a reduced Social Security benefit. The respondents are qualified spouses of Social Security beneficiaries who are entitled to reduced Social Security benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 1,000 hours.

4. Reporting Events—SSI; 0960–0128. The information collected on form SSA–8150–EV by the Social Security Administration is used to determine eligibility and correct payment amounts for SSI payments. The respondents are SSI applicants and recipients.

Number of Respondents: 43,600.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 3,633 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 30 days of the date of this publication. Comments may be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: January 14, 1997.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–1608 Filed 1–23–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2505]

Advisory Committee on Private International Law; Meeting of Study Group on Electronic Commerce

The Study Group on Electronic Commerce of the Advisory Committee on Private International Law (ACPIL) will hold its next meeting from 9:30 to 4:30 on Monday, February 10 in Washington, DC. The meeting will review legal issues involved in new or proposed commercial and governmental "digital signature" services, laws or regulations enacted or proposed covering such services, as well as the relationship of domestic initiatives on digital signatures to international activities in this field.

The meeting will also focus on documents prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL), which will be discussed at an upcoming UNCITRAL Working Group meeting at the UN in late February 1997. The Working Group will consider whether the Commission should undertake work on international legal standards for digital signatures, which can take the form of a United Nations study of legal issues, model national laws, multilateral treaty, or other types of international legal work. Recommendations will be sought on the views the United States should set forth at the Working Group meeting.

Topics to be discussed at the February 10th Advisory Committee meeting will include the legal aspects and functions of digital signatures, including various forms of electronic and computer-based means of identifying and/or indicating authorizing sources for computer messages; public key-private key and other infrastructure methods to support digital signatures; verification methods and their legal import; attribution, revocation, liability, etc. The meeting will also focus on concepts of "certifying authorities" and other third-party service providers, and the legal role of possible certifications of signatures in digital form. Current developments in several States of the United States, as well as foreign jurisdictions, will be considered. Other issues will be considered as time permits.

The principal UN documents may be requested from the Office of the Legal Adviser as indicated below, which include a report by the Secretariat on "Planning Future Work on Electronic Commerce: Digital signatures, Certification authorities and related legal issues", UN Doc. A/CN.9/WP.71, Dec. 31, 1996, and the recently completed UNCITRAL Model Law on Electronic Commerce, UN Doc. A/51/Supp.17, Annex I, Sept. 1996. The Model Law covers the legal effect and validity of computer messages in commercial transactions, attribution of messages, time and place where communications are deemed to have taken place and other general matters, as well as special rules on electronic bills of lading.

The meeting of the Advisory Committee Study Group is open to the public up to the capacity of the meeting room. Members of the public who cannot attend are welcome to comment on the referenced documents, including any recommendations for possible U.S. positions on these matters. The meeting will take place at the International Law Institute (ILI), 1615 New Hampshire Avenue, NW, Washington, DC. Persons who expect to attend should advise either the Office of the Legal Adviser (L/PIL) at Suite 357 South Building, 2430 E Street, NW, Washington, DC 20037–2800, fax (202) 776–8482, or Stuart Kerr at ILI, (202) 483–3036, fax 483–3029. Documents can be requested from the Office of the Legal Adviser indicated above or from the UN. For further information please contact Harold S. Burman, Advisory Committee Executive Director, at (202) 776–8421.

Peter H. Pfund,

Advisory Committee Vice-Chair.

[FR Doc. 97–1741 Filed 1–23–97; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 28, 1996 [FR 61, page 44385].

DATES: Comments must be submitted on or before (30 days from date of publication).

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Financial Responsibility for Motor Carriers of Passengers.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Control Number: 2125–0518.

Form Number: MCS–90B, MCS–82B.

Affected Public: Insurance and surety companies of motor carriers of property.

Abstract: Sections 18 of the Bus Regulatory Reform Act of 1982 (codified at 49 U.S.C. 31138) requires the Secretary of Transportation to establish regulations to require minimal levels of financial responsibility for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Form MCS–90B) and the Motor Carrier Public Liability Surety Bond (Form MCS–82B) contain the minimum amount of information necessary to document that a motor carrier of passengers has obtained and has in effect the minimum levels of financial responsibility as set forth in 49 CFR 387.33. The information within these documents is used by the FHWA and the public to verify that a motor carrier of passengers has obtained and has in effect the required minimum levels of financial responsibility.

Estimated Annual Burden: The total annual burden is 105 hours.

Address: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention FHWA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 17, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–1748 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary; White House Commission on Aviation Safety and Security; Open Meeting

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security will hold its final meeting to discuss aviation safety and security issues. Part of the meeting is open to the public and part is not.

DATES: The meeting will be held on Tuesday, January 28, 1997, from 9:00 AM–12:00 noon and 2:00 PM to 5:00 PM.

ADDRESSES: The meeting will take place in the Commerce Department Auditorium, 14th Street, between Constitution and Pennsylvania Avenues, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW, Washington, DC 20405; telephone 202–501–3863; telecopier 202–501–6160.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 USC Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security ("Commission"). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on January 28 is to formulate the Commission's final recommendations to the President.

The portion of the meeting from 9:00 AM–12:00 noon, during which the Commissioners will formulate their recommendations on measures to improve aviation security, will be closed to the public pursuant to the following exemptions in the Government in the Sunshine Act, which apply to public meetings under the Federal Advisory Committee Act:

Exemption 1: Classified information. In order properly to formulate their recommendations, the Commissioners may need to discuss or refer to information properly classified in the interest of national security, which may not be done in public.

Exemption 3: Information exempted from public disclosure by some other statute. Under 49 USC 40119(b), the Administrator of the Federal Aviation Administration (FAA) may prohibit public disclosure of certain categories of information relating to aviation security, if disclosure would constitute an unwarranted invasion of personal privacy, reveal company confidential information, or create a risk to the safety of individuals traveling in inter- or intra-state air transportation. These categories are described at 14 CFR Part 191. Such information will be discussed or referred to at the meeting.

Exemption 4: Company confidential information. There is competition in the aviation industry in many forms: among carriers, among equipment manufacturers, and among software manufacturers, among others. Public discussion of some of these matters could violate 18 USC 1905, which makes it a crime to reveal improperly company confidential information that has come into the possession of the Government.

Exemption 9: Premature disclosure would lead to frustration of proposed agency action. The final recommendations of the Commission have not been formulated; it is possible, however, that public knowledge of some of the security recommendations may frustrate their acceptance and implementation by the FAA and other agencies. The Commission is authorized to protect against this possibility.

Limited seating for the public portion of the meeting is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC on January 21, 1997.

Nancy E. McFadden,

General Counsel, Department of Transportation.

[FR Doc. 97–1749 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Training and Qualification Issues—New Tasks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of three new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Toula, Assistant Executive Director for Training and Qualification Issues, Flight Standards Service (AFS–210), FAA, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–5229; fax: (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with

respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations and practices with its trading partners in Europe and Canada.

One area ARAC deals with is training and qualification issues. These issues involve training and qualification of air carrier crewmembers and other air transport employees.

As part of the Federal Aviation Reauthorization Act of 1996, the Administrator was directed to appoint a task force consisting of appropriate representatives of the aviation industry to conduct certain studies. The Act directed that the FAA conduct: (1) A two-part study directed at (a) identifying standards and criteria for pre-employment testing for air carrier pilot applicants and (b) standards and criteria for pilot training facilities that would incorporate this pre-employment screening; (2) a study to determine if the practice of some employers requiring individuals to pay for training is in the public interest; and (3) a study to determine whether current minimum flight time requirements applicable to an individual seeking employment as an air carrier pilot is sufficient to ensure public safety.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to conduct the following studies:

1. Identify standards and criteria for pre-employment screening of air carrier pilot applicants that would measure the psychomotor coordination, general intellectual capacity, instrument and mechanical comprehension, and overall physical and mental fitness of pilots applying for employment with air carriers. The second half of this study would be directed toward addressing training facilities that could be licensed by the Administrator to ensure the incorporation of pre-employment screening standards and criteria;

2. Determine if the practice of some air carriers to require employees or prospective employees to pay for their own training or obtain experience is in the public interest; and

3. Determine whether current minimum flight time requirements applicable to an individual seeking employment as a pilot with an air carrier are sufficient to ensure public safety.

The FAA has asked that ARAC provide the findings of the studies, including background, economic analysis, other related guidance material, and collateral documents. In addition, the reports should be submitted in a format suitable for presentation to Congress. The final report on the findings of the task numbered 1 is due to the FAA by January 1999. The final reports on the findings of the tasks numbered 2 and 3 are due to the FAA by August 1997.

ARAC Acceptance of Tasks

ARAC has accepted the tasks and has chosen to establish three working groups: The Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group, the Air Carrier Pilot Pay for Training Working Group, and the Air Carrier Minimum Flight Time Requirement Working Group. The Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group has been assigned task number 1, the Air Carrier Minimum Flight Time Requirement Working Group has been assigned task number 2, and the Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group has been assigned task number 3.

The working groups will serve as staff to ARAC to assist ARAC in the analysis of the assigned tasks. Working group recommendations and reports must be reviewed and approved by ARAC. If ARAC accepts the working groups' recommendations and reports, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The working groups are expected to comply with the procedures adopted by ARAC. As part of the procedures, the working groups are expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the Training and Qualifications issues meeting held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed studies, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate.

4. Provide a status report at each Training and Qualifications issues meeting.

Participation in the Working Groups

The aforementioned working groups will be comprised of individuals having an interest and expertise in the assigned task areas. Working group members will be selected by the ARAC assistant chair, ARAC assistant executive director, and working group chair(s).

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the working groups will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 10, 1997.

Thomas Toula,

Assistant Executive Director for Training and Qualifications Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–1767 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–5]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 13, 1997.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket No. (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 21, 1997.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 132CE.
Petitioner: Raytheon Aircraft Company.
Sections of the FAR Affected: 14 CFR 23.25, 23.29, 23.235, 23.471, 23.473, 23.477, 23.479, 23.481, 23.483, 23.485, 23.493, 23.499, 23.723, 23.725, 23.726, 23.727, 23.959, 23.1583(C)(1) and (2), Appendix C23.1, Appendix D23.1, through Amendment 23–52
Description of Relief Sought: To permit the petitioner to modify the Raytheon Model 390 airplane landing gear loads and associated airframe loads required by 14 CFR Part 23. *GRANT, December 12, 1996, Exemption No. 6558.*

Docket No.: 18324.
Petitioner: American Airlines, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a) and 121.709(b)(3).
Description of Relief Sought: To permit American Airlines, Inc. to allow its properly trained and certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make the appropriate entry in the aircraft maintenance logbook. *GRANT, November 21, 1996, Exemption No. 2678J.*

Docket No.: 24800.
Petitioner: Tennessee Air Cooperative, Inc.
Sections of the FAR Affected: 14 CFR 103.1(e)(1).
Description of Relief Sought: To permit Tennessee Air Cooperative, Inc. to operate powered ultralight vehicles with an empty weight of up to 350 pounds to accommodate physically disabled persons. *GRANT, November 29, 1996, Exemption No. 5001D.*

Docket No.: 25636.
Petitioner: IAE International Aero Engines AG.
Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3).
Description of Relief Sought: To amend Exemption No. 4991, to permit export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom (UK), and for Class II and III products manufactured in the IAE consortium countries of Italy, Germany, Japan, and the UK. *GRANT, November 26, 1996, Exemption No. 4991D.*

Docket No.: 26649.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 25.562.
Description of Relief Sought: To amend Exemption 5436, which gives relief from the floor warpage testing requirements for flight deck seats in the Boeing 777–300 airplanes, to limit that exemption to Boeing 777 series airplanes only and apply only to crew seats on the flight deck. Flight attendant or passenger seats are not exempted. *GRANT, January 3, 1997, Exemption No. 5436A.*

Docket No.: 26821.
Petitioner: MCI Telecommunications.
Sections of the FAR Affected: 14 CFR 61.57(d).
Description of Relief Sought: To allow MCI Telecommunications pilots in command (PICs) who hold an airline transport pilot (ATP) certificate to maintain night takeoff and landing recency of experience requirements through a combination of training in Level C and Level D flight simulators, actual aircraft landings, and periodic night training, subject to certain conditions and limitations. *DENIAL, December 11, 1996, Exemption No. 6560.*

Docket No.: 26845.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To permit University of North Dakota to continue to recommend graduates of its approved certification courses for flight instructor certificates and ratings without those graduates taking the FAA practical test. *GRANT, November 22, 1996, Exemption No. 5546B.*

Docket No.: 26855.
Petitioner: Academics of Flight.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To permit Academics of Flight to recommend graduates of its approved certification courses for airline transport pilot (ATP) certificates and ratings without those graduates taking the FAA written test. *GRANT, November 22, 1996, Exemption No. 6553.*

Docket No.: 26914.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.583(a).
Description of Relief Sought: To permit Air Transport Association of America member airlines and other similarly situated part 121 certificate holders to carry FAA air traffic controllers and certain technical representatives in the cockpit observer's seat of all-cargo aircraft without meeting the passenger-carrying requirements of part 121. *GRANT, November 27, 1996, Exemption No. 5562B.*

Docket No.: 26966.
Petitioner: Airman Flight School, Inc.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To permit Airman Flight School, Inc. to recommend graduates of its approved certification course for flight instructor certificates and ratings without those graduates having to take the FAA written or practical tests. *GRANT, November 22, 1996, Exemption No. 5559B.*

Docket No.: 27001.
Petitioner: Jetstream Aircraft Limited.
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a).
Description of Relief Sought: To allow relief from compliance with the Head Injury Criterion of part 25 for the front row passenger seats of the Jetstream Model 4100 airplane until December 31, 1997. *GRANT, December 23, 1996, Exemption No. 5587D.*

Docket No.: 27155.
Petitioner: Saab Aircraft AB.
Sections of the FAR Affected: 14 CFR 25.562(c)(5).
Description of Relief Sought/ Disposition: To allow relief from compliance with the Head Injury Criterion of part 25 for the front row seats of the SAAB 200 airplane until September 30, 1997. *GRANT, December 23, 1996, Exemption No. 5623D.*

Docket No.: 27193.
Petitioner: Rocky Mountain Holdings, L.L.C.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *GRANT, December 18, 1996, Exemption No. 5774B.*

Docket No.: 27196.

Petitioner: Stephen L. Gelband.
Sections of the FAR Affected: 14 CFR 121.434(e).
Description of Relief Sought/ Disposition: To permit Tower Air, Inc. to use flight attendants who were formerly employed by Garuda Indonesia Airlines (Garuda) to act as required flight attendants on Hadj flights without each of those flight attendants having received 5 hours of supervised operating experience as required by part 121. *GRANT, November 22, 1996, Exemption No. 5628B.*

Docket No.: 27227.
Petitioner: Zuckert, Scoutt & Rasenberger, LLP.
Sections of the FAR Affected: 14 CFR 121.434(e).
Description of Relief Sought/ Disposition: To permit World Airways, Inc. to use flight attendants who were formerly employed by Garuda Indonesian Airlines (Garuda) and Malaysian Airlines (MAS) to act as required flight attendants on certain flight operations, limited to Hadj flights only, without each of those flight attendants having received 5 hours of supervised operating experience required by part 121. *GRANT, November 22, 1996 Exemption No. 5640B.*

Docket No.: 27294.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.3099f)(2).
Description of relief Sought/ Disposition: To permit Air Transport Association of America member airlines to locate the aft megaphone at door 4-left on their Boeing 747 aircraft. *GRANT, December 3, 1996 Exemption No. 6140A.*

Docket No.: 27911.
Petitioner: Lider Taxi Aereo S.A.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit the petitioner to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 21, 1996 Exemption No. 6549.*

Docket No.: 28058
Petitioner: Blackhawk International Airways.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Blackhawk International Airways to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *GRANT, December 3, 1996 Exemption No. 6022A.*

Docket No.: 28220.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.571(a)(1)(i) and 121.585(i)(1), (2) (3), and (4).
Description of Relief Sought/ Disposition: To permit part 121 certificate holders to omit certain smoking and exit seating announcements from their passenger safety briefings. *DENIAL, December 12, 1996, Exemption No. 6559.*

Docket No.: 28440.
Petitioner: Companhia Eletromecanica Celma.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Companhia Eletromecanica Celma to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 22, 1996, Exemption No. 6546.*

Docket No.: 28470.
Petitioner: Compoende Aeronautica LTDA.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Compoende Aeronautica LTDA to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 21, 1996, Exemption No. 6550.*

Docket No.: 28492.
Petitioner: Varig S.A.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Varig S.A. to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 21, 1996, Exemption No. 6552.*

Docket No.: 28576.
Petitioner: Taxi Aereo Marilia S.A.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Taxi Aereo Marilia S.A. to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 22, 1996, Exemption No. 6548.*

Docket No.: 28593.
Petitioner: Empresa De Aerotaxi E Manutencao Pampulha LTDA.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Empresa De Aerotaxi E Manutencao Pampulha LTDA to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 21, 1996, Exemption No. 6551.*

Docket No.: 28649.
Petitioner: Motores Rolls-Royce Limitada.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Motores Rolls-Royce to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 22, 1996, Exemption No. 6545.*

Docket No.: 28663.
Petitioner: Goodyear Do Brasil Produtos De Borracha LTDA.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Goodyear De

Brasil Produtos De Borracha LTDA to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizaco e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *GRANT, November 21, 1996, Exemption No. 6547.*

Docket No.: 28670.
Petitioner: Joseph W. Frederick.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching his 60 birthday. *DENIAL, December 3, 1996, Exemption No. 6556.*

Docket No.: 28682.
Petitioner: Michael Thomas McQuillen.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *DENIAL, December 3, 1996, Exemption No. 6555.*

[FR Doc. 97–1779 Filed 1–23–97; 8:45 am]
BILLING CODE 4910–13–M

[Special Committee 172]

RTCA, Inc.; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held February 12–14, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Wednesday, February 12: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS; Report on ICAO AMCP Activity; and Continue Refinement of Upper Layers. Thursday, February 13: (5) WG–2 Continues; (6) WG–3, Review of Activities in VHF Digital Radio MOPS Document Program. Friday, February 14: (7) Plenary Reconvenes at 9:00 a.m.: (8) Review and Approval of the Minutes of the Previous Meeting; (9) EUROCAE WG–47 Report; (10) Reports from WG's 2 & 3 Activities; (11) Reports on CSMA Validation and FAA Vocoder Activity; (12) Review Issues List and Address Future Work; (13) Other Business; (14 Dates and Places of Next Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 16, 1997.

Janice L. Peters,
Designated Official.

[FR Doc. 97–1778 Filed 1–23–97; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc.; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 162 meeting to be held February 12–13, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Approval of the Minutes of the Previous Meeting; (4) Reports of Related Activities Being Conducted by Other Organizations; (5) Final Review of "ATN Avionics MOPS"; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 16, 1997.

Janice L. Peters,
Designated Official.

[FR Doc. 97–1780 Filed 1–23–97; 8:45 am]
BILLING CODE 4810–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cleveland Hopkins International Airport, Cleveland, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cleveland Hopkins International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (15 CFR Part 158).

DATES: Comments must be received on or before February 24, 1997.

Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William F. Cunningham Jr. A.A.E., Director of the Department of Port Control at the following address: Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Department of Port Control under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Conrad, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7295). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cleveland Hopkins International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 23, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Cleveland was substantially complete within the

requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 4, 1997.

The following is a brief overview of the application.

PFC Application No.: 97–05–C–00–CLE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1997.

Proposed charge expiration date: July 31, 2000.

Total estimated PFC revenue: $41,268,570.00.

Brief description of proposed project(s): Insulate Residences, Land Acquisition/Resident Relocation, Environmental Assessment/ Environmental Impact Statement, Terminal Passenger Flow/Security Enhancement Study, Airport Roadway System/Vehicular Ingress-Egress Study, Feasibility Study of Improvements to Customs and Immigration Facilities, Update CLE–F.A.R. Part 150 Noise Compatibility Program. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Department of Port Control, Cleveland Hopkins International Airport.

Issued in Des Plaines, Illinois, on January 17, 1997.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–1777 Filed 1–23–97; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[STB Finance Docket No. 33334]

Dallas Area Rapid Transit—Acquisition Exemption—Missouri Pacific Railroad Company

Dallas Area Rapid Transit (DART), has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 1.0 miles of rail line owned by Missouri Pacific Railroad Company (MP) [1] between milepost 750.75 and milepost 749.75 in the vicinity of Garland, TX. Consummation was expected to occur on January 3, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33334, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

Decided: January 17, 1997.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1747 Filed 1–23–97; 8:45 am]

BILLING CODE 4915–00–P

[1] On January 1, 1997, MP merged into Union Pacific Railroad Company (UPRR); any reference to MP in this order shall be understood to refer to UPRR.

[STB Finance Docket No. 33332]

Summit View Incorporated—Continuance in Control Exemption—The Youngstown Belt Railroad Company

Summit View Incorporated (Summit) has filed a notice of exemption to continue in control of The Youngstown Belt Railroad Company (YBRR), upon YBRR's becoming a Class III rail carrier. The transaction was to have been consummated shortly after December 31, 1996, the effective date of the exemption.

YBRR, a noncarrier, has concurrently filed a notice of exemption in *The Youngstown Belt Railroad Company—Lease and Operation Exemption—Warren & Trumbull Railroad Company,* STB Finance Docket No. 33333, to lease and operate approximately 12.9 miles of rail line, together with incidental trackage rights, owned by The Warren and Trumbull Railroad Company (WTRC); and (2) to acquire and operate 2.4 miles of connected rail line owned by CSX Transportation, Inc. (CSXT) via simultaneous assignment of WTRC's rights under a Track Lease/Operating Agreement with CSXT, a total of 15.3 miles of rail line, exclusive of the incidental trackage rights, located in Mahoning and Trumbull Counties, OH.

Summit controls four other nonconnecting Class III rail carriers: the Ohio & Pennsylvania Railroad Company; the Ohio Central Railroad, Inc.; the Ohio Southern Railroad, Inc.; and the Youngstown & Austintown Railroad, Inc.

Summit states that: (1) YBRR will not connect with SKO; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33332, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Decided: January 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1746 Filed 1–23–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33333]

The Youngstown Belt Railroad Company—Lease and Operation Exemption—The Warren & Trumbull Railroad Company

The Youngstown Belt Railroad Company (YBRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31: (1) to lease and operate approximately 12.9 miles of rail line, together with incidental trackage rights, owned by The Warren and Trumbull Railroad Company (WTRC); and (2) to acquire and operate 2.4 miles of connected rail line owned by CSX Transportation, Inc. (CSXT) via simultaneous assignment of WTRC's rights under a Track Lease/Operating

Agreement with CSXT, a total of 15.3 miles of rail line, exclusive of the incidental trackage rights, located in Mahoning and Trumbull Counties, OH. YBRR will become a Classs III rail carrier.[1] The proposed transaction was to have been consummated shortly after December 31, 1996, the effective date of the exemption.

The lines involved in the lease and operation, together with incidental trackage rights, are described as follows: between milepost 15.5 and milepost 17.3 in Warren; between milepost 17.3 in Warren and milepost 20.0 in North Warren; between milepost 57.0 and milepost 58.5 at Niles; between milepost 62.1 at Niles and milepost 66.4 at Youngstown; between milepost 0.0 at Brier Hill and milepost 0.7 at Leadville; and between milepost 4.1 at Ohio Works Junction and milepost 6.0 at Girard (the Lordstown Cluster Lines).

The lines involved in WTRC's assignment of trackage rights are over a segment of track between milepost 79.6 and milepost 82.0 at Girard (the Girard Line).[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33333, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Decided: January 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1745 Filed 1–23–97; 8:45 am]

BILLING CODE 4915–00–P

[1] This proceeding is related to STB Finance Docket No. 33332, wherein Summit View Incorporated, a noncarrier, has filed a notice of exemption to continue in control of YBRR upon YBRR's becoming a Class III rail carrier.

[2] In addition to the Lordstown Cluster Lines and Girard Lines, WTRC also presently operates over a total of 9.28 miles of rail line between Deforest Junction and North Warren, in Warren and Holland Townships, OH. These lines are not affected by the subject transaction.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–7–94; FI–36–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing regulations, FI–7–94 notice of proposed rulemaking, temporary and final (TD 8538), and FI–36–92 final (TD 8476), Arbitrage Restriction on Tax-Exempt Bonds (§§ 1.148–2, 1.148–3, 1.148–4, 1.148–4T, 1.148–7, 1.148–11).

DATES: Written comments should be received on or before March 25, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation Project Number: FI–36–92; FI–7–94.

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI–36–92, issuers are required to file a Form 8038–T and remit the rebate. Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI–7–94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 14 hours.

Estimated Total Annual Burden Hours: 42,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1787 Filed 1–23–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Revenue Procedure 97–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Revenue Procedure 97–15, Section 103—Remedial Payment Closing Agreement Program.

DATES: Written comments should be received on or before March 25, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Section 103—Remedial Payment Closing Agreement Program.

OMB Number: 1545–1528.

Revenue Procedure Number: Revenue Procedure 97–15.

Abstract: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer to establish the closing agreement amount.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal government, and not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1788 Filed 1–23–97; 8:45 am]

BILLING CODE 4830–01–U

[INTL–116–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking,INTL–116–90, Allocation of Charitable Contributions (§ 1.861–8).

DATES: Written comments should be received on or before March 25, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW.,Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal RevenueService, room 5569, 1111 Constitution Avenue NW., Washington, DC20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Charitable Contributions.

OMB Number: 1545–1240.

Regulation Project Number: INTL–116–90.

Abstract: Section 1.861–8(e) of the regulation provides guidance concerning the allocation and apportionment of deductions for charitable contributions. It would require a taxpayer to allocate a deduction for charitable contributions solely to UnitedStates source gross income or solely to foreign source gross income in certain cases. The required records will be used on audit to verify the United States allocation of these deductions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

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agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 97–1789 Filed 1–23–97; 8:45 am]

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Corrections

Federal Register

Vol. 62, No. 16

Friday, January 24, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Notice of January 21, 1997

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

Correction

In the **Notice of January 21, 1997**, in the issue of January 22, 1997, on page 3439, the issue date "January 23, 1997" appearing in the heading, should read "January 22, 1997".

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

RIN 0720-AA29

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of the CHAMPUS Exclusion of Unproven Drugs, Devices, and Medical Treatments and Procedures

Correction

In rule document 97–101, beginning on page 625, in the issue of Monday, January 6, 1997, make the following correction:

On page 625, in the third column, in the **DATES:** section, "February 5, 1996" should read "February 5, 1997".

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

Correction

In notice document 96–31410 appearing on page 65224 in the issue of Wednesday, December 11, 1996 make the following correction:

In the second column, **DATES:**,"January 10, 1997" should read "February 10, 1997".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-145-AD; Amendment 39-9881; AD 97-01-10]

Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes

Correction

In rule document 97–537 beginning on page 2007 in the issue of Wednesday, January 15, 1997, make the following correction:

§ 39.13 [Corrected]

1. On page 2009, in the first column, in § 39.13(a)(1), in the fourth line, "II" should read "I".

2. On the same page, in the same column, in the same section, in the sixth line, after "bulletin." add "Or".

3. On the same page, in the same column, in the same section, paragraph (2) was inadvertently omitted and should read as printed below:

"(2) Rework the existing aileron control transfer mechanism, P/N 65-54200-4 or -5, in accordance with Procedure II of the Accomplishment Instructions of the service bulletin."

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28471; Amendment No. 121-257, 135-64]

RIN 2120-AF08

Training and Qualification Requirements for Check Airmen and Flight Instructors

Correction

In rule document 96–14084 beginning on page 30734 in the issue of Monday, June 17, 1996 make the following corrections:

PART 121-[CORRECTED]

§121.412 [Corrected]

1. On page 30742, third column, §121.412 (c)(1), line six,"February 19, 1997" should read "March 19, 1997".

§121.413 [Corrected]

2. On page 30743, first column, §121.413 (a)(2), line eleven, "February 19, 1997" should read "March 19, 1997".

§121.414 [Corrected]

3. On the same page, third column, §121.414 (a)(2), line eight, "February 19, 1997" should read "March 19, 1997".

PART 135-[CORRECTED]

§135.338 [Corrected]

4. On page 30745, first column, §135.338 (c)(1), line five, "February 19, 1997" should read "March 19, 1997".

§135.339 [Corrected]

5. On the same page, second column, §135.339 (a)(2), lines ten and eleven, "February 19, 1997" should read "March 19, 1997".

§135.340 [Corrected]

6. On the same page, third column, §135.340 (a)(2), line eleven, "February 19, 1997" should read "March 19, 1997".

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Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 206 and 208
Oil Value Establishment; Federal Royalty and Federal Leases Royalty Oil Sales; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206 and 208

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases, and on Sale of Federal Royalty Oil

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule will modify the valuation procedures for both arm's-length and non-arm's-length crude oil transactions, establish a new MMS form for collecting value differential data, and amend the valuation procedure for the sale of Federal royalty oil. These changes will decrease reliance on oil posted prices and assign a value to crude oil that better reflects market value.

DATES: Comments must be submitted on or before March 25, 1997.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165, courier address is Building 85, Denver Federal Center, Denver, Colorado 80225, or e:Mail David_Guzy@smtp.mms.gov. MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432, FAX (303) 231–3194, e:Mail David_Guzy@smtp.mms.gov, Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are David A. Hubbard of RMP and Peter Schaumberg of the Office of the Solicitor in Washington, D.C.

I. Introduction

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking about possible changes to the rules for royalty valuation of oil from Federal and Indian leases (60 FR 65610). The intent was to decrease reliance on oil posted prices and to develop valuation rules that better reflect market value.

MMS used various sources of information to develop the proposed rule. In addition to comments received on the Advance Notice of Proposed Rulemaking, MMS attended a number of presentations by: crude oil brokers and refiners, commercial oil price reporting services, companies that market oil directly, and private consultants knowledgeable in crude oil marketing. MMS' deliberations were aided greatly by a wide range of expert advice.

The Department of the Interior's (Department) practice is to give the public an opportunity to participate in the rulemaking process. Anyone interested may send written comments, suggestions, or objections regarding this proposed rule to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov or contact David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432, FAX (303) 231–3194.

Because of the different terms of Indian leases and the Federal government's Indian trust responsibility, MMS decided to develop separate rules for Indian oil valuation. MMS will publish those proposed regulations separately.

Finally, the Department's Royalty Policy Committee (RPC) recommended that RMP "establish a study group to review the Federal oil RIK program and explore all options for improving the reporting, billing, and MMS administration of the program." The proposed amendment to 30 CFR Part 208 is responsive to this recommendation.

II. General Description of the Proposed Rule

The proposed rulemaking would add more certainty to valuation of oil produced from Federal lands and eliminate any direct reliance on posted prices. It retains the concept that for arm's-length sales, gross proceeds generally would be royalty value, but its application would be limited. Because of the frequency of oil exchange agreements, reciprocal deals between crude oil buyers and sellers, and other factors where the real consideration for the transaction could be hidden, arm's-length contract prices would be used as royalty value only by producers who do not also purchase crude oil.

MMS expects a large portion of Federal oil production to be valued as if not sold under an arm's-length contract because most Federal oil is disposed of under exchange agreements or sales to affiliated refiners. For oil the lessee does not sell under an arm's-length contract, but sells or transfers oil to an affiliate who later sells it at arm's-length, this proposal provides the lessee the following options to value the oil for a 2 year period:

(1) the arm's-length resale price (provided that, as described above, neither the lessee nor its affiliate also purchases oil), or

(2) depending on location of production, the monthly average of the New York Mercantile Exchange (NYMEX) or Alaska North Slope (ANS) prices with appropriate adjustments for location and/or quality (hereafter location/quality) differentials.

For all other non-California or non-Alaska oil production, if the lessee or its affiliate refines or otherwise disposes of the oil non-arm's-length, the lessee would apply a monthly average NYMEX price adjusted for location and/or quality. For oil production, in California and Alaska, if the lessee or its affiliate refines or otherwise disposes of the oil non-arm's-length, the lessee would apply a monthly average of spot prices for Alaska North Slope oil delivered in California, adjusted for location quality (For purposes of the preamble and the proposed regulatory changes, oil produced from Federal leases in California refers to oil produced from Federal leases either onshore or offshore California. Oil produced from Federal leases in Alaska refers to oil produced from Federal leases either onshore or offshore Alaska).

Adjustments for location quality against the index values are limited to these components:

(1) A location and/or quality differential between the index pricing point (for example, West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, Light Louisiana Sweet at St. James, Louisiana, or Wyoming Sweet at Guernsey, Wyoming), calculated as the difference between the average monthly spot prices published in an MMS-approved publication for the respective locations;

(2) A rate either published by MMS or contained in the lessee's arm's-length exchange agreement representing location quality differentials between the market center and major aggregation points for oil from various sources; and

(3) As determined under the existing allowance rules, the actual transportation costs from the aggregation point to the lease. However, if oil flows to the market center, the actual transportation costs from the market center to the lease.

Calculation of differentials could vary if the lessee takes its production directly to its own refinery and the movement in no way approximates movement

through an aggregation point to a market center.

MMS would calculate and publish the rate from the market center to major aggregation points based on specific information it would collect on a new form: Form MMS–4415, Oil Location Differential Report. This form is attached to this notice of proposed rulemaking as Appendix A. MMS requests commenters to provide comments on this form according to the information under the Paperwork Reduction Act in part IV, Procedural Matters, of this notice.

MMS may publish an Interim Final Rule while it further evaluates the methodology in this proposed rule. This approach would provide the flexibility to do a revision after the first year without a new rulemaking. We are asking for your comments on this approach to implementing the new oil valuation regulations. MMS will also during the first six months after the effective date of this rule verify that the values determined by this rule are replicating actual market prices. Comments on how best to perform this analysis are also requested.

In the next section, we describe the major regulatory changes proposed in this rulemaking. The proposed changes for valuing production are substantive. But some sections, particularly those involving transportation allowances, remain mostly the same. Also, to clarify and simplify the rules, MMS is incorporating many changes that are not substantive but are an effort to implement concepts of *plain English*.

III. Section-by-Section Analysis

30 CFR Part 206

MMS proposes to amend part 206, Subpart C—Federal Oil as described below. Some of the provisions would be largely the same as in the existing rules, but would be rewritten for clarity.

Section 206.100 Purpose and Scope

This section's contents would remain the same except for clarifications. MMS rewrote it in plain English to improve clarity.

Section 206.101 Definitions

MMS would retain most of the definitions in § 206.101, many of those retained were rewritten to reflect *plain English*. New definitions to support the revised valuation procedures are proposed for: *Aggregation point, Crude oil call, Designee, Exchange agreement, Index pricing, Index pricing point, Location differential, Market center, MMS-approved publication, NYMEX, Quality differential,* and *Sale*. The definition of *Allowance* would be amended. We will discuss the new and amended definitions below where they appear in the regulatory text.

The proposed rule would remove the definitions of *Marketing affiliate, Net-back method, Oil shale, Posted price, Processing, Selling arrangement* and *Tar sands* because they no longer relate to how most crude oil is marketed and to the structure of the proposed rules. The definition of *Lessee* would be revised to reflect the new definition in the *Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA)*, H.R. 1975, Public Law No. 104–185, 110 Stat. 1700. The new definition of *Lessee* is: any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned. The definition of *Like-quality lease products* also would be revised under a new definition of *Like-quality oil* to support the new valuation procedures. We will discuss this definition below where it appears in the regulatory text.

Section 206.102 How do I calculate royalty value for oil?

This section would explain how lessees must calculate the value of oil production for royalty purposes. It is the principal valuation section of the proposed rules.

The proposal states that *lessees and designees*, defined terms, must use these valuation provisions. Under the *Federal Oil and Gas Royalty Management Act of 1982*, 30 U.S.C. 1701 *et seq.*, as recently amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub L. 104–185, only *lessees* are liable to MMS for royalties. *Lessee* includes record title owners and operating rights owners. The Royalty Simplification and Fairness Act also provides that lessees may designate a *designee* to report and pay royalties on their behalf. Therefore, these proposed valuation rules apply to lessees and designees.

We propose to revise this section to reflect major changes in valuing oil not sold under an arm's-length contract. Valuation of production sold under arm's-length contracts would essentially stay the same, but the number of transactions considered to be actual sales at arm's-length would be limited, as explained further below.

Paragraph (a) How do I value oil sold under an arm's-length sales contract? Proposed paragraph (a) would replace existing paragraph (b) and retain the concept that if you sell oil under an arm's-length contract, the royalty value is the gross proceeds accruing to you. But several limitations would apply:

First, if the oil sales contract doesn't reflect all actual consideration you receive directly or indirectly, MMS could require royalty valuation under the non-arm's-length index pricing provisions discussed below, or the total consideration you received, whichever is greater.

Second, if MMS finds that your gross proceeds under the arm's-length contract don't reflect the reasonable value of production because of misconduct by or between the contracting parties, or because you otherwise breached your duty to market to the mutual benefit of yourself and the lessor, MMS would require you to value your oil under the index pricing provisions discussed below.

However, MMS is proposing to limit applicability of the provision allowing you to pay royalty based on your gross proceeds from an arm's-length sale. Even if you sell at arm's-length, MMS would require you to value your oil production under the index pricing provisions discussed below if you or your affiliate also purchased *any* crude oil from an unaffiliated third party in the United States during the two years preceding the production month. If your only oil purchases were from your affiliate, this provision is not triggered. However, such purchases are not at arm's-length, thus they cannot be valued under this section.

MMS is proposing this limitation because of concerns that multiple dealings between the same participants, while apparently at arm's-length, may be suspect concerning the contractual price terms. Just as with exchange agreements (discussed later), a producer may have less incentive to capture full market value in its sales contracts if it knows it will have reciprocal dealings where it may be able to buy oil at less than market value. Several MMS consultants reinforced the notion that as long as the two parties maintain *relative* parity in value of oil production traded, the *absolute* contract price in any particular transaction has little meaning.

MMS would also like comments on an alternative proposal. Under this alternative, MMS would accept your arm's-length contract price paid by your purchaser or its affiliates as value unless during the two years preceding the production month you or your affiliate bought oil, gas, or any other goods or services from that same purchaser. MMS did not make this the principal proposal because there was a concern that it would be too difficult for a company to determine whether it bought from the same party (or its affiliates) during the two years preceding the production month. Commenters should address the

alternative proposal and MMS's concerns about the difficulty of application.

Due to the widespread use of exchange agreements and frequent reciprocal sales among companies—particularly major integrated firms—MMS expects that a relatively small volume of Federal oil production would be valued using the arm's-length gross proceeds method. In fact, MMS considered requiring all production to be valued as if not sold at arm's length. But the presence of true arm's-length sales, especially by independent producers with no reciprocal purchases or trades, convinced MMS to propose that the gross proceeds provision be kept for such circumstances.

Also, MMS would state clearly that you may not use gross proceeds to value oil you dispose of under an exchange agreement. The limitation applies even if the exchange otherwise is arm's-length. Therefore, you must use the index pricing provisions to value the oil.

An *Exchange agreement* is defined in the proposed rules as an agreement by one person to deliver oil to another person at a specified location in exchange for reciprocal oil deliveries at another location. Such agreements may be made because each party has crude oil production closer to the other's refinery or transportation facilities than to its own, so each may gain locational advantages. Exchange agreements may or may not specify prices for the oil involved and frequently specify dollar amounts reflecting location, quality, or other differentials. Buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement, are considered exchange agreements. Transportation agreements are purely to accomplish transportation. They specify a location differential for moving oil from one point to the other, with redelivery to the first party at the second exchange point. They are not considered exchange agreements.

The reason MMS would not accept the contract price for oil subject to an exchange agreement is that the prices stated in an exchange agreement may not reflect actual value. For example, if the market value of oil were $20 per barrel (bbl), the two parties to the exchange each could price their oil at $18 bbl. The parties can insure that each remains whole by using a location/quality differential in the agreement. MMS' consultants also supported this view.

Also, this paragraph would provide that if your oil production is subject to a crude oil call, even if you sell it under an arm's-length sales contract, you must value it under the index pricing provisions.

A Crude oil call is defined as the right of one person to buy all or part of a second person's oil production from an oil and gas property, where that right is a condition of sale or farmout of that property from the first person to the second, or results from other transactions between them. The price basis may be specified in advance. As with multiple dealings between two parties, MMS would presume that the price of oil sold under arm's-length contracts subject to crude oil calls is suspect. This is because the sale terms may be liberal to the property buyer in return for a favorable product purchase price by the property seller.

MMS also is proposing to add a paragraph (5) to clarify how pre-payments made to reduce or buy down the purchase price of oil to be produced in later periods would be treated under the gross proceeds provisions. In such a circumstance, you must allocate the pre-payment over the production whose price the payment reduces and account for the payment as part of the proceeds for that production when the production occurs.

By way of illustration, assume that purchaser and seller agree to renegotiate a sales contract and reduce the price for future production of one million bbl. As part of the renegotiation, Purchaser makes a payment of $1 million. Seller would be required to attribute one dollar to each barrel produced thereafter and include the additional dollar in the gross proceeds at the time each bbl is produced until the one million bbl. threshold is reached.

Paragraph (b) What else must I do if I value oil under an arm's-length contract? Proposed paragraph (b) includes several of the provisions of the existing rules, but rewritten and reordered for clarity. These provisions replace part or all of current paragraphs (b)(1)(i), (b)(2), and (j), and state that:

(1) You must be able to show that your contract is at arm's length, and is a *Sale* (defined term);

(2) MMS may require certification that the arm's-length contract provisions include all consideration to be paid by the buyer; and

(3) Value determined by contract terms will be based on the highest price a prudent lessee may legally receive. If you don't take proper or timely action to get your entitled prices/benefits, you must pay royalties on the entitled amounts. But if you make timely, reasonably documented application for a price increase or benefit allowed under your contract and the purchaser refuses, you will not owe additional royalties until or unless you receive the additional monies or consideration. This provision would not permit you to avoid royalty obligations where a purchaser doesn't pay, or pay timely, for a quantity of oil.

Paragraph (c) How do I value oil not sold under an arm's-length contract? Proposed paragraph (c) would replace the ordered benchmarks under existing paragraph (c). The current benchmarks rely heavily on posted and contract prices. Since many contract prices are tied to postings, the influence of posted prices is magnified. MMS is proposing a different valuation approach because market conditions have changed. Moreover, the widespread use of exchange agreements and reciprocal sales as well as difficulties with relying on posted price, cast additional doubt on the usefulness of many apparent arm's-length sales prices as a good measure of market value. Given the mounting evidence that posted prices frequently do not reflect value in today's marketplace, the proposed valuation standards do not rely at all on postings. Instead, after consulting various crude oil pricing experts and considerable deliberation, MMS proposes the following procedures:

Under paragraph (c)(1), if you sell or transfer your oil to an affiliate and either the affiliate or another affiliate disposes of oil under an arm's-length sales contract, you have a choice of valuation methods. The first choice would be to value it like an arm's-lengths sale under paragraph (a) and use gross proceeds for your affiliate's arms-length sales. However, the limitations in paragraph (a) apply as well. For example, if you or your affiliate purchased oil from an unaffiliated third party in the United States during the two year period preceding the production month, you cannot use the gross proceeds valuation method.

The second choice would be to use the index pricing method in paragraph (c)(2), which is the method that applies to all other non-arm's-length transactions. We explain the details of that method below.

When you make your election to use either the gross proceeds methods or the index pricing method, you would be required to apply the same election to value all oil that is produced from all your Federal leases that is subject to paragraph (c)(1) (*i.e.* where your affiliate sells the oil at arm's length). You may not use gross proceeds for some leases and index pricing for others. This is intended to prevent lessees and designees from choosing the method

that would be to their advantage on a lease-by-lease basis.

The election to use gross proceeds or index pricing could be changed. You may change your election on January 1 of the second year after the rule is effective and on January 1 of each second year thereafter. If new sales arrangements are made during the election period that would come under paragraph (c)(1) for valuation purposes, your existing election would apply. If you had not previously made an election, because you did not have any production subject to valuation under paragraph (c)(1), you could make the election when you start reporting the new sales arrangement.

If neither you nor your affiliate disposes of the oil under an arm's-length sales contract, then you would be required to value your oil under paragraph (c)(2). This would include situations where you or your affiliate refines or otherwise disposes of the oil. It also would include all exchange transactions, even if the exchange is arm's length.

The index pricing method you would use under paragraph (c)(2) would depend upon whether your leases are in California or Alaska. For leases not in California or Alaska, the royalty value would be the average of the daily NYMEX futures settle prices for the Domestic Sweet Crude Oil contract for the prompt month. The prompt month is the earliest month for which futures are traded on the first day of the production month. You would adjust the NYMEX price for location/quality differentials and transportation costs, which are addressed later in § 206.105(c).

Attached Appendix B is an example of the NYMEX-based index pricing method. Assume that the production month is September 1996. The prompt month would then be October 1996, the prompt month in effect on September 1. In this instance, October 1996 oil futures are traded on the NYMEX from August 21, 1996, through September 20, 1996. The average of the daily NYMEX futures settle prices for the October 1996 prompt month (determined by averaging the daily prices for 8/21 to 9/20) is $23.13 per bbl. This price would be adjusted for location/quality differentials and transportation (discussed later) to determine the proper oil value for September production.

MMS searched for indicators to best reflect current market prices and settled on NYMEX for several reasons. It represents the price for a widely traded domestic crude oil (West Texas Intermediate at Cushing Oklahoma), and there is little likelihood that any particular participant in NYMEX trading could impact the price. Also, NYMEX prices were regarded by many of the experts MMS consulted to be the best available measure of oil market value. The most difficult problem, as will be discussed in more detail below, would be to make appropriate location and quality adjustments when comparing the NYMEX crude with the crude produced. Other indicators MMS considered included spot prices as tabulated by various publications and the *P-plus* market. The P-plus assesses premiums over posted prices to reflect oil market value on any given day. Spot prices offer the advantage that they are published for several different locations and might involve somewhat less difficult location and quality adjustments. MMS is proposing NYMEX prices primarily because they are perceived to best reflect current domestic crude market value on any given day and the minimal likelihood that any one party could influence them.

MMS also considered timing of NYMEX application. Since the prompt month changes around the 21st of any given production month, two different prompt months exist during the production month. MMS decided to use the prompt month in effect on the first day of the production month. This would result in the current month's production being valued at the nearest month's futures price. Although it is a futures price, it would reflect the market's assessment of value during the production month. MMS found this preferable to using a one-month-earlier futures price, where the price would apply to deliveries in the production month but would be determined in an earlier time period. The daily closing NYMEX prices are widely available in most major newspapers and various other publications.

MMS requests comments on each of the following, and any other related issues you may want to address:

- Use of market indicators (indices) to determine royalty value under paragraph (c)(2),
- Use of NYMEX as the index value, and possible alternatives, and
- Selection of the proper prompt month.

MMS is proposing a different procedure for California and Alaska production largely because of the geographical isolation of these markets. The distance from the mid-continent markets would lead to great difficulties in making meaningful adjustments from the NYMEX price. MMS believes that a more localized market indicator would better represent royalty value. Several spot prices are published for different types of California crude oil at different locations, as well as *P-plus* prices. But none of these prices attaches to large enough volumes for MMS to recommend that they apply as royalty value. The ANS spot prices, on the other hand, represent large volumes of oil delivered into the California market and used as refinery feedstock. Also, several of the experts who gave presentations to MMS recommended use of adjusted ANS spot prices as the best indicator of value for California and Alaska production. You would adjust these ANS prices for location/quality differentials or transportation costs under § 206.105(c).

Attached as Appendix C is an example of the index pricing method utilizing ANS spot prices for California production. Assume that the production month is September 1996 and that *Platt's Oilgram* is an MMS-approved publication. For the October 1996 spot sales delivery month, spot sales prices are assessed from August 26, 1996, through September 25, 1996. The daily mean spot price assessments for the month are averaged to arrive at the ANS price basis, in this case $21.25 per bbl. This price would be adjusted for location/quality differentials and transportation (discussed later) to determine the proper value for your oil.

MMS requests comments on each of the following, and any other related issues you may want to address:

- Use of a different market indicator for California and Alaska than for the rest of the country,
- Use of ANS spot prices as the indicator of oil market value, and
- Possible alternative market indicators for California and Alaska.

MMS recognizes that markets change and that the NYMEX prices or the ANS spot prices may either become unavailable or no longer represent a reasonable basis for royalty value. For example, the lifting of export restrictions on ANS production and the decline of that production may substantially reduce the impact of ANS crude on the California market.

Under paragraph (c)(3), if MMS determines that an index no longer is available or that it no longer represents a reasonable value, MMS will, by rule, amend paragraph (c)(2) to establish a substitute method.

Proposed paragraph (c)(4) states that MMS periodically would publish in the **Federal Register** a listing of MMS-approved publications for determining the appropriate NYMEX or ANS prices. *MMS-approved publication* is a defined term that would mean any publication on this list (or those on the list

discussed later for determining location differentials). The criteria MMS would consider in determining acceptability would include, but not be limited to, whether the publications:

- are frequently used by buyers and sellers,
- are frequently referenced in purchase or sales contracts,
- use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS crude oil, and
- are independent from MMS, other lessors, and lessees.

The first two criteria reflect the importance of publications used in ongoing oil marketing. The third reflects the importance of the publication's survey procedures in assessing spot price levels, because the proposed California and Alaska valuation procedure depends on ANS spot prices. The last factor requires that the publication be unbiased by the interests of anyone involved. MMS requests comments on specific publications that should be approved for use in applying these rules.

Proposed paragraph (c)(5) would provide that publications could petition MMS to become an acceptable publication.

Proposed paragraph (c)(6) would provide that MMS will specify which tables in the publications must be used to determine index prices.

In addition to comments on the index-based valuation procedures discussed above, MMS requests specific comments on alternative valuation techniques based on local market indicators. MMS believes that today's oil marketing is driven largely by the NYMEX market. Also, the proposed rules should promote certainty for all involved. But the location/quality adjustments needed to derive lease value using NYMEX would involve considerable administrative effort for all involved. MMS requests suggestions on ways to value Federal oil production based on market indicators in the vicinity of the lease, with the following in mind:

(1) The methods should not rely on posted prices unless they account for the difference between postings and market value.

(2) The methods must account for value differences related to quality and location.

(3) The methods must be widely applicable and flexible enough to apply nationwide.

(4) Most importantly, the methods must reflect the general concepts of fair market value—the agreed-upon cash price between willing and knowledgeable buyers and sellers if neither were under undue pressure.

Paragraph (d)—What else must I do if I value oil under paragraph (c)? Proposed paragraph (d) includes the same content as existing paragraph (e)(1), but rewritten for clarity. We did modify the paragraph on your obligation to place oil in marketable condition at no cost to the Federal Government to clarify that it includes a duty to market the oil. This is consistent with several Interior Board of Land Appeals decisions construing this rule. *See Walter Oil and Gas Corporation*, 111 IBLA 260 (1989).

Paragraph (e)—What other general responsibilities do I have under this section? Proposed paragraphs (e)(1), (e)(2), and (e)(3) include the same content as existing paragraphs (i), (d), and (f), respectively, but are rewritten for clarity and rearranged for a more logical grouping.

Paragraph (f) May I ask MMS to determine value? Proposed paragraph (f) includes the same content as existing paragraph (g), but is rewritten for clarity.

Paragraph (g) How do value redeterminations relate to audit periods? Proposed paragraph (g) includes the content of existing paragraph (k), but is rewritten for clarity.

Paragraph (h) Does MMS protect information I provide? Proposed paragraph (h) includes the content of existing paragraph (l), but is rewritten for clarity.

Deletion of existing paragraphs (e)(2) and (h). MMS proposes to delete existing paragraph (e)(2), which requires lessees to notify MMS if they determine value under existing paragraphs (c)(4) or (c)(5). Since MMS proposes to delete those paragraphs, paragraph (e)(2) no longer would apply.

MMS also proposes to delete paragraph (h), which says royalty value will not be less than the lessee's gross proceeds, less applicable allowances. This clause would have little meaning given the proposed royalty valuation revisions. For those arm's-length situations where the lessee is not required to value its production at an index price, value would already be the lessee's gross proceeds. And under either proposed index valuation procedure—California/Alaska or rest-of-country—the derived value would be a proxy for gross proceeds. MMS requests specific comments on deletion of paragraph (h).

Section 206.103 Point of royalty settlement

This section would not be changed.

Section 206.104 Transportation allowances and other adjustments—general

Paragraph (a) What transportation allowances are permitted when I value production based on my gross proceeds? Proposed paragraph (a) is similar to paragraph (a) of the present rule, but would apply only when you value your production based on gross proceeds. The proposed paragraph would be rewritten to reflect clarity.

Paragraph (b) What transportation allowances and other adjustments apply when I value production based on index pricing? Proposed new paragraph (b) would state that if you value oil based on index pricing (NYMEX or ANS spot pricing) under Section 206.102(c)(2), MMS will allow certain transportation costs and other adjustments to value. We discuss those costs and adjustments below under § 206.105(c).

Paragraph (c) Are there limits on my transportation allowance? Proposed paragraphs (c)(1) and (c)(2) include the substance of existing paragraphs (b)(1) and (b)(2) respectively, but rewritten for clarity and to reflect plain English. The proposed paragraphs also would specify the point where the 50-percent-of-value limitation would be calculated if you value oil based on index pricing.

Paragraph (d) How must I allocate transportation costs? Proposed paragraph (d) is essentially the same as existing paragraph (c).

Paragraph (e) What additional payments may I be liable for? Proposed paragraph (e) is existing paragraph (d) rewritten for clarity.

Section 206.105 Determination of transportation allowances

Paragraph (a) would not be changed.

Paragraph (b) would be changed by deleting paragraph (b)(5). The existing paragraph (b)(5) allows a lessee to apply for an exception from the requirements that it compute actual costs of transportation and use a Federal Energy Regulatory Commission (FERC) or State approved tariffs. MMS believes that the use of actual costs is fair to lessees and that the existing requirement to use a FERC approved tariff is no longer a viable alternative since FERC ruled that it lacks jurisdiction to enforce the Interstate Commerce Act with respect to oil pipelines located wholly on the Offshore Continental Shelf. See Oxy Pipeline, Inc., 61 FERC ¶ 61,051 (1992) and Bonito Pipe Line Company, 61 FERC ¶ 61,050 (1992).

Paragraph (c) What adjustments and transportation allowances apply when I use index pricing? Proposed paragraph (c)(1) describes allowable transportation

cost deductions and mandatory adjustments to index prices where you value your oil based on index pricing under § 206.102(c)(2). The allowable adjustments and deductions would reflect the location/quality differentials and transportation costs associated with value differences between oil produced at the lease and oil at the index pricing point. Although location differentials would reflect differences in value of oil at different locations, they are not transportation cost allowances. In fact they may increase a value rather than decreasing it as do transportation allowances. Quality differentials would reflect differences in the value of oil due to different API gravities, sulfur content, etc. Location differentials generally also encompass quality differentials. Proposed paragraph (c)(1) identifies the specific adjustments and allowances that may apply to your production. Proposed paragraphs (c)(2) and (c)(3) identify which of those adjustments and allowances would apply to you in different circumstances. The possible adjustments and allowances are:

(1) A location/quality differential to reflect the difference in value between crude oils at the index pricing point (for example, West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, Light Louisiana Sweet at St. James, Louisiana) (proposed paragraph (c)(1)(i)). *Index pricing point* is the physical location where a given price index such as NYMEX or ANS spot prices is established. For NYMEX, that location is Cushing, Oklahoma. For ANS, that location is either Los Angeles or San Francisco. *Market center* would be defined as a major destination point for crude oil sales, refining, or transshipment. As used here, market centers are locations where trade publications provide crude oil spot price estimates. The market center that you would use is the point where oil produced from your lease or unit ordinarily would flow if not disposed of at an earlier point.

For any given production month, the market center-index pricing point location/quality differential would be the difference between the average spot prices for the respective locations as published in an MMS-approved publication. (MMS-approved publications as used here are discussed below.) The purpose of this differential is to derive a NYMEX price at the market center by adjusting the NYMEX price at the index pricing point to the general quality of crude typically traded at the market center, and otherwise to reflect location/quality value differences at the appropriate market center.

Attached as Appendices D and E are examples of how the average of the daily spot prices are calculated for the index pricing point (Cushing, OK) and an OCS market center (St. James, LA), respectively. The value difference between the two spot price averages is the location differential between the index pricing point and the market center.

Assume that *Platt's Oilgram* is an MMS-approved publication. For the October 1996 delivery month, spot sales prices are assessed from August 26, 1996, through September 25, 1996. The average of the daily (mean) spot price assessments for the month is utilized to calculate the location differential. In this instance, the average price for Cushing is $23.46 per bbl. and the average price for St. James is $23.68 per bbl. Since the St. James price is $.22 per bbl. higher than the Cushing price, the $.22 per bbl. would be added to the NYMEX-based price (or a deduction would be made if the St. James price were lower than the Cushing price).

(2) An express location/quality differential under your arm's-length exchange agreement that includes a clearly identifiable location/quality differential for the crude oil value difference between the market center and the aggregation point (proposed paragraph (c)(1)(ii)).

Aggregation point would mean a central point where production from various leases or fields is aggregated for shipment to market centers or refineries—including, but not limited to, blending and storage facilities and connections where pipelines join. The aggregation point to which oil produced from your lease or unit ordinarily flows would be the aggregation point involved in this differential. In the many cases that MMS expects will involve such agreements, the differential stated in the agreement should reflect actual value differences resulting from differences in location and quality between crude oils at the aggregation point and the associated market center.

(3) A location/quality differential that MMS would publish annually that you would use if you do not dispose of production under an arm's-length exchange agreement that contains an express differential as described above (proposed paragraph (c)(1)(iii)). MMS would publish this differential for each aggregation point and an associated market center. MMS would also classify pipeline terminations at refining centers as aggregation points. An aggregation point may be associated with more than one market center. As discussed in more detail below, MMS periodically will publish in the **Federal Register** a list of market centers and associated aggregation points. The differential would represent crude oil value differences due to location and quality factors. MMS would acquire the information needed to calculate these differentials specific from exchange agreement data provided by lessees and their affiliates on a new reporting form (Form MMS–4415) discussed below. You would apply the differential on a calendar production year basis. This means you would apply it for the *reporting* months of February through the following January.

(4) Either your actual transportation costs from the lease to the aggregation point as determined under § 206.105 (proposed paragraph (c)(1)(iv)) or actual transportation costs from the lease to the market center (proposed paragraph (c)(1)(v)). MMS is not proposing to change the existing methods to calculate transportation allowances. The allowance would terminate at the aggregation or market center point whichever is applicable to your situation as part of the total adjustment to derive an index price based value at the lease.

The purpose of these adjustments and allowances is to reflect value differences for crude oil production of different qualities and at different locations to derive value at the lease. The location differentials between the index pricing point and the market center, and between the market center and the aggregation point, would not necessarily reflect transportation alone. They would represent the overall market assessment of the different relative values of similar crude oil delivered at different locations. Only the actual transportation costs from the lease to the aggregation point or market center would represent pure transportation costs.

Alternatives for methods other than location/quality differentials include using index values with no location adjustments to picking a specific percentage deduction from the index value to generically reflect location differentials. A variation of the latter would be to develop percentage or absolute dollar deductions for different geographical zones. In addition to specific comments on the proposed method of adjusting index values, MMS requests suggestions on alternative methods.

Proposed paragraph (c)(2) specifies which of the adjustments and allowances described above apply to you in various situations if your lease is not located in California or Alaska. If you dispose of your production under an arm's-length exchange agreement and the agreement has an express location/

quality differential to reflect the difference in value between the aggregation point for your lease and an associated market center, then you would use three of the four possible adjustments and allowances. Specifically, you would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i), the aggregation point-market center differential specified in your exchange agreement under paragraph (c)(1)(ii), and the actual transportation costs from the lease to the aggregation point under paragraph (c)(1)(iv).

Attached as Appendix F is an example of a NYMEX-based royalty computation for OCS Louisiana production. The procedures for calculating the NYMEX price and index pricing point/market center location differential have been discussed above and are illustrated at Appendices B, D, and E.

The deduction to the NYMEX-based price for the location/quality differential between the market center and aggregation point will be the actual exchange agreement differential or an MMS-published differential. (For the purposes of this example, (Appendix F) we used $.40 per bbl.)

The transportation allowance deduction from the NYMEX-based price will be the cost of transport between the lease and aggregation point. (For the purposes of this example, (Appendix F) we used $.90 per bbl.).

If you do not move lease production through a MMS-identified aggregation point to a MMS-identified market center, but instead move it directly to an alternate disposal point (for example, your own refinery), then you would use only two of the adjustments and allowances. You would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the actual transportation costs from the lease to the alternate disposals point under paragraph (c)(1)(iv). In this event, the alternate disposal point is the aggregation point for purposes of that paragraph. The market center for purposes of paragraph (c)(1)(iv) is the market center nearest the lease where there is a published spot price for crude oil of like quality to your oil. *Like-quality oil* would mean oil with similar chemical, physical, and legal characteristics. For example, West Texas Sour and Wyoming Sour would be like-quality, as would West Texas Intermediate and Light Louisiana Sweet.

For example, a Wyoming Sour crude producer might transport its oil directly to a refinery in Salt Lake City without accessing any defined aggregation points or market centers. In this case West Texas Sour crude at Midland, Texas, might represent the crude oil/market center combination nearest to the oil produced. The market center-index pricing point location/quality differential under paragraph (c)(1)(i) would then be the difference in the spot price between West Texas Intermediate at Cushing, Oklahoma, and West Texas Sour at Midland, Texas as published in an MMS-approved publication. In addition to that adjustment, the producer would be entitled to an allowance for the actual transportation costs from the lease in Wyoming to Salt Lake City. MMS has determined that this method is the best way to calculate the differences in value between the lease and the index pricing point due to location, quality, and transportation when the production is not actually moved to a market center.

In all other situations, you would use the market center-index pricing point location/quality differential (paragraph (c)(1)(i)), the MMS-published aggregation point-market center location/quality differential under paragraph (c)(1)(iii), and the actual transportation costs from the lease to the aggregation point (paragraph (c)(1)(iv)). These adjustments and allowances cover all location, quality, and transportation differences in value between the lease and the index pricing point.

Proposed paragraph (c)(3) specifies which of the adjustments and allowances apply to you in various situations if your lease is located in California or Alaska. In this context, the index pricing point (where ANS crude is delivered in Los Angeles or San Francisco) would be synonymous with the market center. The allowable adjustments would still be the reasonable location/quality differentials and transportation allowances associated with value differences between production at the lease and the index pricing point. But since the index pricing point and market center would coincide, there would be no differential applicable between those two points. Thus, if you dispose of your production under an arm's-length exchange agreement and the agreement has an express location/quality differential to reflect the difference in value between the aggregation point for your lease and an associated market center, then you would use the aggregation point-market center differential specified in your exchange agreement under paragraph (c)(1)(ii), and the actual transportation costs from the lease to the aggregation point under paragraph (c)(1)(iv). If you move your oil directly to a market center then you would use the actual transportation costs from the lease to the market center under paragraph (c)(1)(v).

Attached as Appendix G is an example of an ANS-based royalty computation for onshore California production. The procedure for calculating the ANS price has been discussed above and is illustrated at Appendix C.

The deduction to the ANS-based price for the location/quality differential between the market center (Los Angeles using ANS spot prices) and aggregation point will be the actual exchange agreement differential or an MMS-published differential. (For the purposes of this example, (Appendix G) we used $4.78 per bbl.)

The transportation allowance deduction from the ANS-based price will be the cost of transport between the lease and aggregation point. (For the purposes of this example (Appendix G) we used $.20 per bbl.)

If you do not move lease production through a MMS-identified aggregation point to a MMS-identified market center, but instead move it directly to an alternate disposal point (for example, your own refinery), then you would use the actual transportation costs from the lease to the alternate disposal point under paragraph (c)(1)(iv). (Again, the alternate disposal point is the aggregation point for purposes of that paragraph.) In addition, you would use a location/quality differential calculated as the difference between the average spot prices for the production month in a MMS-approved publication at the aggregation point nearest the lease for which spot prices for like-quality crude oil are published and the published spot prices or ANS crude oil at the associated market center/index pricing point. For example, for Midway-Sunset production, the nearest location/quality combination might be Kern River crude. Then the difference between the ANS and Kern River spot prices as published in an MMS-approved publication would be the differential. For leases in California or Alaska, this represents the most accurate calculation of the differences in value between the lease and the index pricing point due to location, quality, and transportation when the production is not actually moved to a market center/index pricing point.

In all other situations in California or Alaska, you would use the MMS-published aggregation point-market center/index pricing point location/quality differential under paragraph (c)(1)(iii), and the actual transportation costs from the lease to the aggregation point (paragraph (c)(1)(iv)). These adjustments and allowances cover all

location, quality, and transportation differences in value between the lease and the index pricing point for leases in California.

Proposed paragraph (c)(4) states that if a MMS calculated differential does not apply to a lessee's oil due to location and quality differentials, the lessee must request MMS in writing to calculate a location and quality differential that applies to its oil. Conditions for an exception would include:

(1) The lessee must deliver to MMS its written request for an MMS calculated differential within 30 days after MMS publishes its annual listing of location differentials;

(2) The lessee must provide clear evidence demonstrating why the published differential(s) does not adequately reflect its circumstances;

(3) If the lessee does not request an exception within 30 days after MMS publishes its annual listing of location differentials, MMS will calculate such a differential when it receives the lessee request or when it determines that the MMS-calculated differential does not apply to the lessee's oil. MMS will then bill for additional royalties and interest due. MMS will not refund any overpayments made due to failure to timely request MMS to calculate a differential; and

(4) MMS cannot unilaterally change any of its calculated differentials after it has published them in the **Federal Register**.

MMS would insert paragraph (c)(5) to note that it would periodically publish a list of MMS-acceptable publications in the **Federal Register**. This paragraph would also specify the criteria for acceptability; they are very similar to the criteria listed at 206.102(c)(5) for publications used in index pricing.

Proposed paragraph (c)(6) would allow any publication to petition MMS to add them to the list of acceptable publications.

Proposed paragraph (c)(7) would state that MMS would reference the specific tables in individual publications that lessees must use to determine location differentials.

Proposed paragraph (c)(8) states that MMS would periodically publish in the **Federal Register** a list of aggregation points and market centers. MMS would monitor market activity and, if necessary, add or modify market centers or aggregation points. MMS would consider the following factors and conditions in specifying market centers and aggregation points:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

MMS would initially consider the following as Market Centers:

Cushing, OK
Empire, LA
Guernsey, WY
Los Angeles/San Francisco, CA
Midland, TX
St. James, LA

Where Cushing, Oklahoma is used as a market center, the index pricing point and market center would coincide. Los Angeles and San Francisco are two other market centers that also represent index pricing points. In those two cases, there would be no differential between the index pricing point and market center. Los Angeles and San Francisco are listed together because MMS believes the ANS spot price generally is identical at both locations.

Appendix H is a list of aggregation points MMS has initially selected to publish differentials under (3) above. MMS requests specific comments on the initial list of market centers and aggregation points, including suggested additions, deletions and other modifications.

(d) Reporting requirements. MMS would redesignate existing paragraph (c) as (d). Existing paragraphs (c)(1) and (c)(2) (i), (ii), and (iii) would otherwise remain the same. MMS would delete paragraph (d)(2)(iv) consistent with the previous change to delete the use of FERC or State approved tariffs.

(3) What information must I provide to support index pricing deductions, and how are they used? Proposed paragraph (d)(3) would be added to require lessees and their affiliates to submit a new form to MMS annually. Proposed Form MMS–4415, Oil Location Differential Report, would capture location differentials in all exchange agreements or other oil disposal contracts. MMS would use these data to calculate location differentials between market centers and aggregation points. MMS would publish these differentials annually for lessees to use in royalty reporting. MMS has included a copy of proposed Form MMS–4415 as Attachment A to these proposed regulations.

Information submitted on the new form would cover all of the lessee's and its affiliate's crude oil production, and not just information related to Federal or Indian lease production. Reporting duplicate information would not be required (e.g. identical locational/quality differential between the same point). All Federal and Indian lessees (or their affiliates as appropriate) would initially submit Form MMS–4415 no later than two months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year. However, if October 31 of the year this regulation takes effect is less than six months after the effective date of this reporting requirement, the second submission of the Form MMS–4415 would be by October 31 of the succeeding year. The reporting requirement would take effect before the effective date of the rule. Early submittal of this information would allow MMS to publish the representative market center-aggregation point location differentials in the **Federal Register** by the effective date of the final regulation. Then MMS would publish location differentials by January 31 of all subsequent years. MMS would publish differentials for different qualities/grades of crude oil if the data are sufficient and if multiple differentials are appropriate for the area. Each year following the year this regulation became effective, lessees would use the new published differentials beginning with January production royalties reported in February.

MMS requests comments on Form MMS–4415 (See Appendix A), including:

- Its layout and information requested,
- Frequency and timing of submittal, frequency and timing of MMS's calculations and publication of differentials, and
- All other relevant comments.

Remainder of Section 206.105

MMS proposes no changes to existing paragraphs (d) and (e) except to redesignate them as paragraphs (e) and (f).

In addition to redesignating paragraph (f) as (g), MMS proposes to remove the reference to FERC or State approved tariffs to be consistent with the proposed deletion of paragraph 206.105(b). MMS proposes no change to existing paragraph (g) except to redesignate it as paragraph (h).

Section 206.106 Operating allowances.

MMS proposes no changes to Section 206.106.

Proposed change to 30 CFR 208.4(b)(2).

MMS currently sells RIK crude oil to small refiners under the provisions of 30 CFR 208. The RIK program is popular,

but has been criticized for several of its procedures. Much of the criticism stems from the fact that MMS prices the crude oil sold to small refiners at the values reported by the entities providing the in-kind crude oil (producers). These values are reported on Form MMS–2014, and are subject to later adjustments. This method is onerous to the producers and creates risk for the small refiners.

The Royalty Policy Committee (RPC) provided three possible improvement options for the oil RIK program, as follows:

- Eliminate reporting on the Form MMS–2014;
- Establish product value in the RIK contract; and
- Bill entitled volumes from the Form MMS–3160, Monthly Report of Operations.

The RPC gave the following reason for its recommendations: The current method of administering the Federal oil RIK program is time-consuming and burdensome on producers, small refiners, and MMS. The administrative burden includes reconciling what volumes the small refiner actually took, what value to assign the small refiner volumes, who is to pay for what volumes, and who owes for what volumes.

MMS' proposal would tie RIK valuation to the index pricing provisions of 30 CFR 206.102(c)(2). MMS believes that changing the oil RIK valuation procedure as proposed would provide a cornerstone for a revised oil RIK program. In particular, the changes would provide certainty in pricing and would simplify reporting for producers. However, MMS realizes that the proposed change is significant, and requests comments on the proposal. In particular, MMS requests comments from crude oil producers and small refiners as to the impacts of the proposal on them. In addition, MMS requests comments from interested parties as to whether this proposed method of valuation would meet the fair market value definition of the Outer Continental Shelf (OCS) Lands Act.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). This proposed rule would amend regulations governing the valuation for royalty purposes of crude oil produced from Federal leases. These changes would modify the valuation methods in the existing regulations. Small entities are encouraged to comment on this proposed rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. § 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, Tribal, or State governments, or the private sector.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under this Executive Order 12866 Section 3(f)(4). Which states: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." The Department's analysis of these proposed revisions to the oil valuation regulations indicate these changes will not have a significant economic effect, as defined by Section 3(f)(4) of this Executive Order.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@smtp.mms.gov.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The information collection is titled Oil Location Differential Report. Part of the valuation of oil not sold under arm's-length contracts rely on price indices that lessees may adjust for location differences between the index pricing point and the lease. Federal lessees and their affiliates would be required to give MMS information on the location differentials included in their various oil exchange agreements and sales contracts. From these data MMS would calculate and publish representative location differentials for lessees use in reporting royalties in different areas. This process would introduce certainty into royalty reporting.

Rules establishing the use of Form MMS–4415 to report oil location differentials are at proposed 30 CFR 206.105(d)(3). Information provided on the forms may be used by MMS auditors and the Valuation and Standards Division (VSD).

MMS estimates the annual reporting burden to be approximately 32,000 hours. There are approximately 2,000 royalty payors on Federal and Indian leases. The MMS subject matter experts estimate that on average, these payors would have about 64 exchange agreements and sales contracts from which data would need to be extracted. This annual filing as required by 30 CFR 206.105(d)(3) could require about one-quarter hour per report to extract the data from individual exchange agreements and sales contracts. Only a minimal recordkeeping burden would be imposed by this collection of information. Based on $25 per hour, the annual industry cost is estimated to be $800,000.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, MMS is providing notice and otherwise consulting with members of the public and affected agencies concerning collection of information in order to solicit comment to: (a) evaluate whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

List of Subjects in 30 CFR Parts 206 and 208

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: December 30, 1996.

Bob Armstrong,

Assistant Secretary—Land, Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 206 and 208 are proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 *et seq.*; 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart C—Federal Oil

2. Sections 206.100 through 206.102 are revised to read as follows:

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how lessees and designees must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) This subpart does *not* apply in three situations. The statute, settlement agreement, or lease provision will govern, if the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; or

(3) An express provision of an oil and gas lease subject to this subpart.

(c) MMS may audit and adjust all royalty payments.

§ 206.101 Definitions.

The following definitions apply to this subpart:

Aggregation point means a central point where production is aggregated for shipment to market centers or refineries. It includes, but is not limited to, blending and storage facilities and connections where pipelines join. Pipeline terminations at refining centers also are classified as aggregation points. MMS periodically will publish in the **Federal Register** a list of aggregation points and associated market centers.

Area means a geographic region at least as large as the limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent, nonaffiliated persons with opposing economic interests regarding that contract. Two persons are affiliated if one person controls, is controlled by, or is under common control with another person. Based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership over 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol. MMS may rebut this presumption if it demonstrates actual or legal control, as through interlocking directorates. MMS may require the lessee to certify the percentage of ownership or control. Aside from the percentage ownership criteria, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Crude oil call means the right of one person to buy, at its option, all or a part of the second person's oil production from an oil and gas property. This right generally arises as a condition of the sale or farmout of that property from the first person to the second, or as a result of other transactions between them. The price basis may be specified when the property is sold or farmed out.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include "buy/sell" agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Exchange agreements do not include "transportation" agreements, whose principal purpose is transportation.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or

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communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds includes, but is not limited to the examples discussed in this definition. Gross proceeds include payments for services such as dehydration, measurement, and/or gathering which the lessee must perform at no cost to the Federal Government. It also includes the value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf. Gross proceeds also includes, but is not limited to, reimbursements for harboring or terminaling fees. Tax reimbursements are part of the gross proceeds even though the Federal royalty interest may be exempt from taxation. Monies and all other consideration a seller is contractually or legally entitled to, but does not seek to collect through reasonable efforts, are also part of gross proceeds.

Index pricing means using NYMEX futures prices or Alaska North Slope (ANS) crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas products—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Like-quality oil means oil with similar chemical, physical, and legal characteristics.

Load oil means any oil used in the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Location differential means the value difference for oil at two different points.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

Minimum royalty means that minimum amount of annual royalty the lessee must pay as specified in the lease or in applicable leasing regulations.

MMS-approved publication means a publication MMS approves for determining NYMEX or ANS prices, or determining location differentials.

Net profit share (for applicable Federal leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

NYMEX means the New York Mercantile Exchange.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means the value difference between two oils due to differences in their API gravity, sulfur content, viscosity, metals content, and other quality factors.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer. The seller may not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Section 6 lease means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil?

This section explains how lessees and designees must calculate the value of oil production for royalty purposes. The value of oil produced from leases subject to this subpart is the value calculated under this section less applicable allowances determined under this subpart.

(a) *How do I value oil sold under an arm's-length sales contract?* If you have an arm's-length contract for the sale of your oil, the value is the gross proceeds accruing to you.

(1) Paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6) of this section contain exceptions to this section.

(2) The royalty value you report is subject to MMS' monitoring, review, and audit. MMS may examine whether your oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you. If it does not, then MMS may require that you value the oil sold under that contract under paragraph (c)(2) of this section or the total consideration, whichever is greater.

(3)(i) MMS will provide you an opportunity to submit written information justifying the royalty value, if MMS determines that the value under this paragraph (a) does not reflect the reasonable value of the production due to either:

(A) Misconduct by or between you and the other contracting party; or

(B) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(ii) If you cannot justify the value to MMS' satisfaction, MMS will require that you value the oil under paragraph (c)(2) of this section.

(4) You may not use this paragraph (a) to value oil disposed of under an exchange agreement or for production that is subject to crude oil calls. Use paragraph (c)(2) of this section to value this oil production.

(5) Your gross proceeds include payments made to reduce or *buy down* the purchase price of oil to be produced in later periods. You must allocate such payments over the production whose price the payment reduces and account for the payment as proceeds for the production as it occurs.

(6) Even if you have an arm's-length contract for the sale of your oil, you must value your oil under paragraph (c)(2) of this section instead of this paragraph if you or any of your affiliates purchased crude oil from an unaffiliated third party in the United States in the 2-year period preceding the production month.

(b) *What else must I do if I value oil under an arm's-length sales contract?* (1) You must be able to demonstrate that your contract is an arm's-length sales contract.

(2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(3) You must base value on the highest price you can receive through legally enforceable claims under your contract. If you fail to take proper or timely action to receive prices or benefits you are entitled to, you must pay royalty at a value based upon that obtainable price or benefit. If you make timely application for a price increase or benefit allowed under your contract but the purchaser refuses, and you take reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until you receive monies or consideration resulting from the price increase or additional benefits. This paragraph (b) will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which you are entitled must be in writing and signed by all parties to your arm's-length contract.

(c) *How do I value oil not sold under an arm's-length sales contract?* This paragraph (c) explains how to value oil not sold under an arm's-length sales contract, or any other oil production you may not value under paragraph (a) of this section. Use the first of paragraphs (c)(1), (c)(2), or (c)(3) of this section that applies to you:

(1) If you sell or transfer your oil production to an affiliate and either that affiliate or another affiliate disposes of the oil under an arm's-length sales contract, value is either:

(i) The gross proceeds accruing to your affiliate under its arm's-length sales contract using the same rules as paragraph (a) of this section; or

(ii) The value according to paragraph (c)(2) of this section. If you elect to use this paragraph (c)(1)(ii) to value your oil, you must make the same election to value all oil that is produced from all your leases and is subject to this paragraph (c)(1). You may not use paragraph (c)(1)(i) of this section for some leases and this paragraph (c)(1)(ii) for other leases. However, you may change your election on January 1 the second year after the effective date of the final rule and January 1 every 2 years after that.

(2) If neither you nor your affiliate disposes of the oil under an arm's-length sales contract, use this paragraph (c)(2) to value the oil:

(i) For production from leases not in California or Alaska, value is the average of the daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month. The prompt month is the earliest month for which futures are traded on the first day of the month of production. You must adjust the NYMEX prices for applicable location and quality differentials and you may adjust it for transportation costs under § 206.105(c) of this subpart.

(ii) For production from leases in California or Alaska, value is the average of the daily mean Alaska North Slope (ANS) spot prices for the month of production published in an MMS-approved publication (see paragraph (c)(4) of this section). You must adjust the spot prices for applicable location and quality differentials and you may adjust it for transportation costs under § 206.105(c) of this subpart.

(3) MMS will monitor the index prices in paragraph (c)(2) of this section. If MMS determines that NYMEX or ANS spot prices are unavailable or no longer represent reasonable royalty value, MMS will, by rule, amend paragraph (c)(2) of this section to establish a substitute valuation method.

(4) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including but not limited to:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently mentioned in purchase or sales contracts;

(iii) Publications which use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS crude oil; or

(iv) Publications independent from MMS, other lessors, and lessees.

(5) Any publication may petition MMS to be added to the list of acceptable publications.

(6) MMS will reference the tables you must use in the publications to determine the associated index prices.

(d) *What else must I do if I value oil under paragraph (c) of this section?* If you determine the value of your oil production under paragraph (c) of this section, you must retain all data relevant to the determination of royalty value. Recordkeeping requirements are found at 30 CFR 207.5. MMS may review and audit such data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this section.

(e) *What other general responsibilities do I have under this section?* (1) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless otherwise provided in the lease agreement or this section. If you establish value under this section as your gross proceeds, then you must increase value to the extent your gross proceeds are reduced because the purchaser, or any other person, provides certain services you normally would be responsible to perform to place the oil in marketable condition or to market the oil.

(2) If MMS determines that you have not properly determined value, you must pay the difference, if any, between the royalty payments you made and those that are due based upon the value MMS establishes. You must also pay interest on the difference computed under 30 CFR 218.54. If you are entitled to a credit, MMS will provide instructions for taking that credit.

(f) *May I ask MMS to determine value?* You may ask MMS to determine value. Propose a value determination method to MMS and use that value for royalty payments until MMS issues a value determination. You must submit all available data relevant to your proposal. MMS will promptly determine the proper procedure based upon your proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria this subpart authorizes. In its determination letter, MMS will tell you the period for which the determination applies. After MMS issues its determination, you must make any needed adjustments under paragraph (e)(2) of this section.

(g) *How do value redeterminations relate to audit periods?* No review, reconciliation, monitoring, or other like process that results in MMS

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redetermining your oil royalty value will be considered final or binding on the Federal Government until MMS formally closes the audit period. However, if MMS directs you to compute royalties in a manner inconsistent with applicable lease terms or regulations, closing of the audit period does not forclose MMS from correcting the error and collecting any royalties due.

(h) *Does MMS protect information I provide?* Certain information you submit to MMS to support valuation proposals, including transportation allowances, is exempt from disclosure under Federal law. MMS will keep confidential, under applicable laws and regulations, any data you submit that is privileged, confidential, or otherwise exempt. All requests for information about determinations made under this part must be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

3. Section 206.104 is revised to read as follows:

§ 206.104 Transportation allowances and other adjustments—general.

(a) *What transportation allowances are permitted when I value production based on my gross proceeds?* Where you value oil under § 206.102 of this subpart based on gross proceeds from a sale at a point off the lease, unit, or communitized area, and the movement of the oil is not gathering, MMS will allow a deduction for your reasonable, actual costs to:

(1) Transport oil from an onshore lease to the point off the lease under § 206.105 (a) or (b), as applicable. However, for onshore leases, you may not take a transportation allowance for transporting oil taken as Royalty-In-Kind (RIK); or

(2) Transport oil from an offshore lease to the point off the lease under § 206.105 (a) or (b), as applicable. For oil taken as RIK, you may take a transportation allowance for your reasonable, actual costs to transport that oil to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government.

(b) *What transportation allowances and other adjustments apply when I value production based on index pricing?* If you value oil under § 206.102(c)(2) of this subpart, MMS will allow a deduction for certain costs associated with transporting oil as provided under § 206.105(c).

(c) *Are there limits on my transportation allowance?* (1) Except as provided in paragraph (c)(2) of this section, your transportation allowance deduction may not exceed 50 percent of the value of the oil at the point of sale or aggregation point, as applicable, as determined under § 206.102 of this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production on which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393–Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(d) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in § 206.105 of this subpart. You must express transportation allowances for oil as dollars per barrel.

(e) *What additional payments may I be liable for?* If MMS determines that you underpaid royalties because you took an excessive transportation allowance, then you must pay any additional royalties, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.105(d) of this subpart.

4. Section 206.105 is amended by revising the section heading, removing paragraph (b)(5), by redesignating paragraphs (c) through (g) as paragraphs (d) through (h), adding a new paragraph (c), and by revising newly redesignated paragraphs (d)(3) and (g) to read as follows:

§ 206.105 Determination of transportation allowances and other adjustments.

* * * * *

(c) *What adjustments and transportation allowance apply when I use index pricing?* (1) When you use index pricing to calculate the value of production, under § 206.102(c)(2), you must adjust the index price for the reasonable location/quality differentials (mandatory) and transportation costs (optional) to reflect value differences between the lease and the index pricing point. The adjustments and transportation allowances that might apply to your production are listed in paragraphs (c)(1)(i) through (v) of this section. See paragraphs (c)(2) through (c)(3) of this section to determine which adjustments and transportation allowances you must use based on how you dispose of your production and where your leases are located. These adjustments and transportation allowances are:

(i) A location differential to reflect the difference in value of crude oils at the index pricing point and the appropriate market center. For any production month, the location differential is the difference between the average spot prices for that month for the respective crude oils at the index pricing point and at the market center. Use MMS-approved publications to determine average spot prices.

(ii) An express location/quality differential under your arm's-length exchange agreement that reflects the difference in value of crude oil at the aggregation point and the market center.

(iii) A location/quality differential that MMS will publish annually based on data MMS collects on Form MMS–4415. MMS will calculate that differential using a volume-weighted average of the differentials reported on Form MMS–4415 for the previous reporting year. MMS may publish separate rates for various crude oil qualities that are identified separately on Form MMS–4415 (e.g. sweet vs. sour or gravity ranges). MMS will publish differentials that reflect both a location differential based on the market center/aggregation point pairs and a quality differential based on the type of crude oil. MMS will publish these differentials in the **Federal Register** by the effective date of the final regulation and by January 31 of all subsequent years. You must use MMS-published rates on a calendar year basis—apply them to January through December production reported February through the following January.

(iv) Actual transportation costs from the aggregation point to the lease determined under this section.

(v) Actual transportation costs from the market center to the lease determined under this section.

(2) If your lease is not located in California or Alaska, use the applicable paragraph of paragraphs (c)(2)(i) through (iv) of this section to determine which adjustments and transportation allowances apply to your production:

(i) If you dispose of your production under an arm's-length exchange agreement and that exchange agreement

has an express location differential to reflect the difference in value between the aggregation point for your lease and the associated market center, use paragraphs (c)(1)(i), (ii), and (iv) of this section to determine your adjustments and transportation allowance.

(ii) If you do not move lease production through a MMS-identified aggregation point to a MMS-identified market center, but move it directly to an alternate disposal point (for example, your own refinery), use paragraphs (c)(1) (i) and (iv) of this section. In this situation, the market center for purposes of paragraph (c)(1)(i) of this section is MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to your oil. You must use the spot price for the like-quality oil. The aggregation point for purposes of paragraph (c)(1)(iv) of this section is the alternate disposal point.

(iii) If you move your oil directly to a MMS-identified market center index pricing point, deduct the actual transportation costs to that market center under (c)(1)(v) of this section.

(iv) In all other situations, use paragraphs (c)(1) (i), (iii), and (iv) of this section.

(3) If your lease is located in California or Alaska, the index pricing point (Los Angeles or San Francisco) is the same as the market center. Use the applicable paragraphs of paragraphs (c)(3) (i) through (iv) of this section to determine which adjustments and transportation allowances apply to your production.

(i) If you dispose of your production under an arm's-length exchange agreement and that agreement has an express location differential to reflect the difference in value between the aggregation point for your lease and the associated market center, use paragraphs (c)(1) (ii) and (iv) of this section to determine your adjustments and transportation allowances.

(ii) If you do not move lease production through a MMS-identified aggregation point to a MMS-identified market center, but move it directly to an alternate disposal point (for example, your own refinery), use paragraph (c)(1)(iv) of this section. For purposes of paragraph (c)(1)(iv) of this section only, the aggregation point is the alternate disposal point. In addition, use a location/quality differential calculated as the difference between the average of the published spot price for the production month in a MMS-approved publication at the aggregation point nearest the lease for which spot prices for like-quality crude oil are published and the published spot prices for ANS crude oil at the associated market center/index pricing point.

(iii) If you move your oil directly to a MMS-identified market center, deduct the actual transportation costs to that market center under paragraph (c)(1)(v) of this section.

(iv) In all other situations, use paragraphs (c)(1) (iii) and (iv) of this section.

(4) If an MMS-calculated differential under paragraph (c)(1)(iii) of this section does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you.

(i) After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential.

(ii) You must provide clear evidence demonstrating why the published differential does not adequately reflect your circumstances.

(iii) If you do not file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location differentials, MMS will calculate such a differential when it receives your request or when it discovers that the MMS-calculated differential under paragraph (c)(1)(iii) of this section does not apply to your oil. MMS will bill you for any additional royalties and interest due. MMS will not refund any overpayments you made due to your failure to timely request MMS to calculate a differential for you.

(iv) File your request at the following address: Minerals Management Service, Royalty Management Program, Valuation and Standards Division, P.O. Box 25165, Mail Stop 3150, Denver, CO 80225–0165.

(5) For the differentials referenced in paragraphs (c)(1)(i) and (c)(3)(ii) of this section, periodically MMS will publish in the **Federal Register** a list of acceptable publications. MMS' acceptance decision will be based on criteria which include but are not limited to:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently mentioned in purchase or sales contracts;

(iii) Publications which use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; or

(iv) Publications independent from MMS, other lessors, and lessees.

(6) Any publication may petition MMS to be added to the list of acceptable publications.

(7) MMS will specify the tables you must use in the publications to determine the associated location differentials.

(8) Periodically, MMS will publish in the **Federal Register** a list of aggregation points and the associated market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and aggregation points and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers and aggregation points:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

(d) *Reporting requirements—(1) Arm's-length contracts.*

* * * * *

(3) *What information must I provide to support index pricing adjustments, and how are they used?* You must submit information on Form MMS–4415 related to all your and your affiliates' crude oil production, and not just information related to Federal lease production. All Federal lessees (or their affiliates, as appropriate) must initially submit Form MMS–4415 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year.

* * * * *

(g) *Actual or theoretical losses.* Notwithstanding any other provision of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

* * * * *

PART 208—SALE OF FEDERAL ROYALTY OIL

5. The authority citation for Part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

6. Section 208.4(b)(2) is revised to read as follows:

§ 208.4 Royalty oil sales to eligible refiners.

* * * * *

(b) * * *

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(2) Effective with sales of royalty oil for the first full production month after the effective date of this rule, the sales price of all royalty oil from onshore and OCS leases will be the value determined under 30 CFR 206.102 (c)(2), regardless of whether oil produced from the lease is or would be valued for royalty purposes on that basis. MMS will calculate and provide that value to the buyer. For royalty oil from OCS leases only, the price will include associated transportation costs to the designated delivery point, if applicable.

* * * * *

Note: The following Appendices will not appear in the Code of Federal Regulations.

BILLING CODE 4310-MR-P

Appendix A to Peamble of Oil Valuation Rule

OMB 1010-
Expires

Oil Location Differential Report

Payor Name: _____ Payor Code |_|_|_|_|_|

Address: _____ Reporting Period: _____ 19___ to

City, State _____ Zip _____ _____ 19___

1. Contract Party Name	_____ MMS Payor Code (if available) |_|_|_|_|_|
2. Contract Type and I.D.	☐ Buy/Sell, ☐ Non-Cash Exchange, ☐ Sale subject to balancing, Contract Number _____
3. Contract Term	Effective Date: ____/____/____ (MM/DD/YY) Initial Term: _____ (Months) Expiration Terms: ☐ month-to-month extensions, ☐ fixed duration

	Oil You Sold or Transferred	Oil You Received
4. Title Transfer Location	☐ MMS Lease Number |_|_|_|-|_|_|_|_|_|_|-|_| ☐ Market Center _____ ☐ Aggregation Point _____ ☐ Other _____ Cost of transporting from lease to title transfer point _____.____ $/bbl. Describe cost _____	☐ MMS Lease Number |_|_|_|-|_|_|_|_|_|_|-|_| ☐ Market Center _____ ☐ Aggregation Point _____ ☐ Other _____ Cost of transporting from lease to title transfer point _____.____ $/bbl. Describe cost _____
5. Volume Terms	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)
6. Crude Quality	API Gravity: _____ API Sulfur Content _____ %	API Gravity: _____ API Sulfur Content _____ %
7. Pricing Terms	☐ **Posted Price** Posting Company Name(s) _____ Poster's Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ **Formula Price (Describe)** _____ ☐ **Fixed Price** _____ $BBL ☐ **Other (Describe)** _____	☐ **Posted Price** Posting Company Name(s) _____ Poster's Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ **Formula Price (Describe)** _____ ☐ **Fixed Price** _____ $BBL ☐ **Other (Describe)** _____
8. Quality Adjustments	API Gravity Adjustments: ☐ No Deductions ☐ Deemed _____ °API, _____ $/BBL ☐ Actual _____ °API, _____ $/BBL Sulfur or other Quality Adjustments: Description: _____ Adjustments: _____ $/BBL	API Gravity Adjustments: ☐ No Deductions ☐ Deemed _____ °API, _____ $/BBL ☐ Actual _____ °API, _____ $/BBL Sulfur or other Quality Adjustments: Description: _____ Adjustments: _____ $/BBL

Have you received any other consideration, in any form, for the sale or purchase of this crude oil, either at this location or at any other location? (☐ Yes, ☐ No). If Yes, Explain: _____

Authorized Signature _____ **and Date** _____

Form MMS-4415 (12/96)

BILLING CODE 4310-MR-C

Instructions for Completing Form MMS–4415 Oil Location Differential Report

This form's purpose is to collect value differential data for exchanged oil, whether the exchange takes place at the lease or downstream of the lease. These differentials may be related to quality, volume, or location. MMS will use this information to value Federal oil—see 30 CFR 206.105(d)(3). For each contract where oil is exchanged between non-affiliated parties, fill out the requested information on a separate Form MMS–4415. Attach additional sheets if necessary. Do not include production subject to call rights where another party has the right to purchase oil at some redefined price basis or to match other purchase offers.

Company (Payor) Information

Fill out your company name (whether lessee or affiliate), address, and zip code. If additional forms are needed to provide the required information, the address may be omitted from subsequent forms provided that the cover form containing the address is attached.

Write in your MMS payor code on each form submitted.

Write in the reporting period this form covers.

1. Contract Party Name: Write the name of the party you contracted with to transfer your oil. If that party has an MMS payor code, write it in the space provided (if known).

2. Contract Type: Check the appropriate box to indicate the contract type. [Buy/Sell is an exchange where monetary value is assigned to settle both transactions in the exchange. Non-Cash Exchange is a transaction where no monetary value is assigned to either transaction in the exchange; instead, a dollar amount is assigned to the difference between the two values. Sales Subject to Balancing are transactions tied to an overall exchange agreement (either expressed or implied) where volumes purchased and sold by each party are in balance.] Also, fill in the Contract Number that would allow a third party to clearly identify the document.

3. Contract Term: Fill in the date the contract started and its initial term in months. Check the expiration term that applies.

4. Title Transfer Location: Check the appropriate box to indicate where you transferred title to your oil and where you took title to oil you received under the exchange. If title transferred at an MMS lease, write in the 10-digit MMS lease number. If the contract applies to production from multiple Federal leases, attach a separate sheet identifying them. Otherwise, check the appropriate box and enter the location that title transferred.

Fill in the cost ($/barrel) of transporting oil you produced from the production location to the point where title transfers. If the contract so specifies (or this information is known to you) fill in this information for oil you receive or sell. Describe the terms (i.e. starting location, ending location) involved in the transportation of the oil. Use MMS aggregation points (if available) or State, Section/Township/Range if not an MMS aggregation point. Where oil traverses more than one aggregation point be sure to include all segments of the transportation route. Do not include the cost of gathering. Attach a separate sheet, if needed, to adequately describe the transportation.

5. Volume Terms: Fill in the volume in barrels per day of oil sold or transferred. If the contract states that all available oil will be purchased, write in the estimated barrels per day of oil (sold/received). Otherwise, write in the fixed volume (sold/received) specified in the contract.

6. Crude Quality: Fill in the API Gravity of the oil you sold and the oil you received to the nearest tenth of a degree. Fill in the Sulfur Content of the oil you sold or transferred to the nearest tenth of a percent.

7. Pricing Terms:

Posted Price Basis: If the contract references a posted price, write in the name(s) of the company or companies posting(s) and the crude oil referenced in the posting(s). List any premium (+) or deduction (−) to the referenced price(s).

Formula Price: If the contract uses a formula to determine price, completely describe the method used.

Fixed Price: If the price is set through the duration of the contract, list the price per barrel.

Other: Fully describe the method used if it is not covered under any of the above pricing provisions.

8. Quality Adjustments:

API Gravity: Check the appropriate box. If the gravity is deemed, write the deemed API gravity to the nearest tenth of a degree and any corresponding price adjustment from the contract. If an actual reference gravity is used to make an adjustment, write the gravity to the nearest tenth of a degree and the corresponding price adjustment from the contract.

Sulfur or Other Adjustment: Write any other adjustment(s) specified in the contract and the $/barrel adjustment(s).

The Paperwork Reduction Act of 1995 requires us to inform you of the following: (a) this information is being collected to aid the Minerals Management Service in its efforts at determining a fair value of oil for royalty calculation purposes from which location differentials can be calculated and published for lessees' use in reporting loyalties; (b) the burden to complete this report is estimated at one-quarter hour; (c) comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the ICCO, MS 2053, MMS, 381 Elden Street, Herndon, VA 20170–4817; (d) this collection of information is mandatory and responses are considered proprietary (5 U.S.C. 552); and (e) an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Appendix B to Preamble of Oil Valuation Rule

NYMEX Index Price Basis, Non-California Oil Production, September 1996 Production and Sale.

NYMEX trade date	NYMEX delivery (Prompt) month	NYMEX daily close
Aug–21–96	Oct. 1996	$21.72
Aug–22–96	Oct. 1996	22.30
Aug–23–96	Oct. 1996	21.96
Aug–26–96	Oct. 1996	21.62
Aug–27–96	Oct. 1996	21.56
Aug–28–96	Oct. 1996	21.71
Aug–29–96	Oct. 1996	22.15
Aug–30–96	Oct. 1996	22.25
Sept–03–96	Oct. 1996	23.40
Sept–04–96	Oct. 1996	23.24
Sept–05–96	Oct. 1996	23.44
Sept–06–96	Oct. 1996	23.85
Sept–09–96	Oct. 1996	23.73
Sept–10–96	Oct. 1996	24.12
Sept–11–96	Oct. 1996	24.75
Sept–12–96	Oct. 1996	25.00
Sept–13–96	Oct. 1996	24.51
Sept–16–96	Oct. 1996	23.19
Sept–17–96	Oct. 1996	23.31
Sept–18–96	Oct. 1996	23.89
Sept–19–96	Oct. 1996	23.54
Sept–20–96	Oct. 1996	23.63

NYMEX Average Price for September 1996 Prod.—$23.13.

Appendix C to Preamble of Oil Valuation Rule

ANS Spot Index Price Basis, California Oil Production, September 1996 Production and Sale.

ANS spot trade date	ANS spot delivery month	Final ANS spot assess. (mean)
Aug–26–96	Oct. 1996	$19.55
Aug–27–96	Oct. 1996	19.49
Aug–28–96	Oct. 1996	19.68
Aug–29–96	Oct. 1996	20.16
Aug–30–96	Oct. 1996	20.23
Sept–03–96	Oct. 1996	21.43
Sept–04–96	Oct. 1996	21.19
Sept–05–96	Oct. 1996	21.39
Sept–06–96	Oct. 1996	21.70
Sept–09–96	Oct. 1996	21.57
Sept–10–96	Oct. 1996	21.95
Sept–11–96	Oct. 1996	22.45
Sept–12–96	Oct. 1996	22.88
Sept–13–96	Oct. 1996	22.21
Sept–16–96	Oct. 1996	20.85
Sept–17–96	Oct. 1996	20.99
Sept–18–96	Oct. 1996	21.54
Sept–19–96	Oct. 1996	21.24
Sept–20–96	Oct. 1996	21.42
Sept–23–96	Oct. 1996	21.55
Sept–24–96	Oct. 1996	21.81
Sept–25–96	Oct. 1996	22.16

ANS Average Spot Price for September 1996 Prod.—$21.25.

Appendix D to Preamble of Oil Valuation Rule

WTI Spot Price, Market Center: Cushing, OK, September 1996 Production and Sale.

Cushing WTI spot trade date	Cushing WTI spot delivery month	Final cushing WTI spot assess. (mean)
Aug–26–96	Oct. 1996	$21.60
Aug–27–96	Oct. 1996	21.54
Aug–28–96	Oct. 1996	21.73
Aug–29–96	Oct. 1996	22.21
Aug–30–96	Oct. 1996	22.28
Sept–03–96	Oct. 1996	23.48
Sept–04–96	Oct. 1996	23.24
Sept–05–96	Oct. 1996	23.44
Sept–06–96	Oct. 1996	23.85
Sept–09–96	Oct. 1996	23.72
Sept–10–96	Oct. 1996	24.10
Sept–11–96	Oct. 1996	24.70
Sept–12–96	Oct. 1996	25.15
Sept–13–96	Oct. 1996	24.51
Sept–16–96	Oct. 1996	23.15
Sept–17–96	Oct. 1996	23.29
Sept–18–96	Oct. 1996	23.84
Sept–19–96	Oct. 1996	23.54
Sept–20–96	Oct. 1996	23.72
Sept–23–96	Oct. 1996	23.85
Sept–24–96	Oct. 1996	24.50
Sept–25–96	Oct. 1996	24.71

Cushing WTI Avg Spot Price for September 1996—$23.46.

Appendix E to Preamble of Oil Valuation Rule

Light Louisiana Sweet (LLS) Spot Price, Market Center: St. James, LA, September 1996 Production and Sale.

LLS spot trade date	LLS spot delivery month	Final LLS spot assess. (mean)
Aug–26–96	Oct. 1996	$21.88
Aug–27–96	Oct. 1996	21.84
Aug–28–96	Oct. 1996	22.01
Aug–29–96	Oct. 1996	22.51
Aug–30–96	Oct. 1996	22.57
Sept–03–96	Oct. 1996	23.82
Sept–04–96	Oct. 1996	23.55
Sept–05–96	Oct. 1996	23.79
Sept–06–96	Oct. 1996	24.22
Sept–09–96	Oct. 1996	24.10
Sept–10–96	Oct. 1996	24.47
Sept–11–96	Oct. 1996	25.06
Sept–12–96	Oct. 1996	25.48
Sept–13–96	Oct. 1996	24.82
Sept–16–96	Oct. 1996	23.42
Sept–17–96	Oct. 1996	23.57
Sept–18–96	Oct. 1996	24.06
Sept–19–96	Oct. 1996	23.50
Sept–20–96	Oct. 1996	23.67
Sept–23–96	Oct. 1996	23.66
Sept–24–96	Oct. 1996	24.29
Sept–25–96	Oct. 1996	24.61

St. James LLS Avg Spot Price for September 1996—$23.68.

Appendix F to Preamble of Oil Valuation Rule

NYMEX-based Oil Royalty Computation, Non-California Oil Production, OCS-Louisiana, Market Center: St. James, LA, September 1996 Production and Sale.

NYMEX Average Close Price		$23.13
Cushing/Market Center Location Differential:		
WTI Cushing Average Spot Price	$23.46	
St. James Average Spot Price	23.68	
St. James over (under) WTI Cushing		.22
Market Center/Aggregation Point Location and Quality Differential (Exchange Agreement):		
Transportation and Quality Differential from OCS Aggregation Point to St. James		(.40)
Transportation Allowance:		
Transportation costs from OCS lease to Aggregation Point		(.90)
Royalty Value per barrel		22.05

Appendix G to Preamble of Oil Valuation Rule

ANS-based Oil Royalty Computation, California Oil Production, Onshore

California: Midway-Sunset, Market Center: Los Angeles, CA, September 1996 Production and Sale.

ANS Average Spot Price	$21.25
ANS/Aggregation Point Location and Quality Differential (Exchange Agreement):	
Transportation and Quality Differential from Onshore Aggregation Point—Midway-Sunset to Los Angeles	(4.78)
Transportation Allowance:	
Transportation costs from CA lease to Aggregation Point—Midway-Sunset	(.20)
Royalty Value per barrel	16.27

Appendix H to Preamble of Oil Valuation Rule

State	Station location	County/Offshore location
AL	Marion Corp. Connection	Mobile.
AL	Mobile	Mobile.
AL	Saraland Terminal	Mobile.
AL	Ten Mile Point Terminal	Mobile.
CA	Coalinga	Fresno.
CA	Belridge	Kern.
CA	Fellows	Kern.
CA	Kelley	Kern.
CA	Leutholtz Jct.	Kern.
CA	Pentland	Kern.
CA	Midway	Kern.
CA	Station 36-Kern River	Kern.
CA	Newhall	Los Angeles.
CA	Sunset	Los Angeles.
CA	Cadiz	San Bernadino.
CA	Avila	San Luis Obispo.
CA	Gaviota Terminal	Santa Barbara.
CA	Lompoc	Santa Barbara.

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State	Station location	County/Offshore location
CA	Sisquoc Jct.	Santa Barbara.
CA	Filmore	Ventura.
CA	Rincon	Ventura.
CA	Ventura	Ventura.
CA	Junction	(County Unknown).
CA	Lake	(County Unknown).
CA	Rio Bravo	(County Unknown).
CA	Santa Paula	(County Unknown).
CA	Signa	(County Unknown).
CA	Stewart	(County Unknown).
CO	Denver	Adams.
CO	Cheyenne Wells Station	Cheyenne.
CO	Iles	(County Unknown).
CO	Sterling	Logan.
CO	Fruita	Mesa.
CO	Rangley	Rio Blanca.
KS	Humbolt-Williams P.L.	Allen.
KS	Augusta	Butler.
KS	Eldorado	Butler.
KS	Harper's Ranch	Clark.
KS	Arkansas City	Cowley.
KS	McPherson Sta.	McPherson.
KS	Caney	Montgomery.
KS	Laton Sta.	Osborne.
KS	Herndon Station	Rawlings.
KS	Rawlings Sta.	Rice.
KS	Lyons Station	Sedgwick.
KS	Valley Center	Thomas.
KS	Bemis St.	(County Unknown).
KS	Broome St.	(County Unknown).
KS	Towlanda	(County Unknown).
LA	Brown Sta.	Caddo.
LA	Clifton Ridge	Calcasieu.
LA	Conoco Jct.	Calcasieu.
LA	Lake Charles	Calcasieu.
LA	Pecan Grove	Calcasieu.
LA	Rose Bluff	Calcasieu.
LA	Texaco Jct.	Calcasieu.
LA	Grand Chenier Term.	Cameron.
LA	Hainesville Sta.	Claiborne.
LA	Maryland	East Baton Rouge.
LA	Bayou Fifi	Jefferson.
LA	Grand Isle	Jefferson.
LA	Bay Marchand Term.	Lafourche.
LA	Bayou Fourchon	Lafourche.
LA	Clovelly	Lafourche.
LA	Clovelly Storage Dome	Lafourche.
LA	Elmers Jct.	Lafourche.
LA	Fourchon Terminal	Lafourche.
LA	Golden Meadow	Lafourche.
LA	Larose Barge Terminal	Lafourche.
LA	Pass Fourchon P.L.	Lafourche.
LA	Blk. 28 Tie-in	Offshore East Cameron.
LA	Blk. 23	Offshore Eugene Island.
LA	Blk. 51 B Platform	Offshore Eugene Island.
LA	Blk. 188 A Structure	Offshore Eugene Island.
LA	Blk. 259	Offshore Eugene Island.
LA	Blk. 316	Offshore Eugene Island.
LA	Blk. 337 Subsea Tie-in	Offshore Eugene Island.
LA	Blk. 361	Offshore Eugene Island.
LA	Texas P.L. Subsea Tie-in	Offshore Eugene Island.
LA	Blk. 17	Offshore Grand Isle.
LA	Blk. 42—Chevron P.L.	Offshore Main Pass.
LA	Blk. 42L	Offshore Main Pass.
LA	Blk. 69 B Plat.	Offshore Main Pass.
LA	Blk. 77 (Pompano P.L. Jct.)	Offshore Main Pass.
LA	Blk. 144 Structure A	Offshore Main Pass.
LA	Blk. 298 Plat. A	Offshore Main Pass.
LA	Blk. 299 Platform	Offshore Main Pass.
LA	Blk. 28	Offshore Ship Shoal.
LA	Blk. 154	Offshore Ship Shoal.
LA	Blk. 169	Offshore Ship Shoal.
LA	Blk. 203 Subsea Tie-in	Offshore Ship Shoal.
LA	Blk. 208	Offshore Ship Shoal.

State	Station location	County/Offshore location
LA	Blk. 208 B Structure	Offshore Ship Shoal.
LA	Blk. 208 F	Offshore Ship Shoal.
LA	Ship Shoal Area	Offshore Ship Shoal.
LA	Blk. 6	Offshore South Marsh Island.
LA	Blk. 10—Structure A	Offshore South Marsh Island.
LA	Blk. 58A	Offshore South Marsh Island.
LA	Blk. 139	Offshore South Marsh Island.
LA	Blk. 139 Subsea Tap Valve Connect	Offshore South Marsh Island.
LA	Blk. 207—Light House Point A	Offshore South Marsh Island.
LA	Blk. 268—Platform A	Offshore South Marsh Island.
LA	Blk. 55	Offshore—South Pass.
LA	Blk. 13 (Wesco P.L. Subsea Tie-in)	Offshore—South Pelto.
LA	Blk. 35 Platform D	Offshore—S. Timbalier.
LA	Blk. 52 Plat. A	Offshore—S. Timbalier.
LA	Blk. 172 Plat. D	Offshore—S. Timbalier.
LA	Blk. 196 Exxon P.L. System Tie-in	Offshore—S. Timbalier.
LA	Blk. 300	Offshore—S. Timbalier.
LA	Blk. 255	Offshore Vermilion.
LA	Blk. 265 Platform A	Offshore Vermilion.
LA	Blk. 350	Offshore Vermilion.
LA	Blk. 30	Offshore—West Delta.
LA	Blk. 53	Offshore—West Delta.
LA	Blk. 53 Plat. B	Offshore—West Delta.
LA	Blk. 53B—Chevron P.L.	Offshore—West Delta.
LA	Blk. 53B Plat. Gulf Refining Co.	Offshore—West Delta.
LA	Blk. 83	Offshore—West Delta.
LA	Alliance Refinery	Plaquemines.
LA	Empire Terminal	Plaquemines.
LA	Main Pass	Plaquemines.
LA	Main Pass Blk. 69	Plaquemines.
LA	Ostrica Term.	Plaquemines.
LA	Pelican Island	Plaquemines.
LA	Pilottown	Plaquemines.
LA	Romere Pass	Plaquemines.
LA	South Pass Blk. 60A	Plaquemines.
LA	South Pass Blk. 27	Plaquemines.
LA	Onshore facil.	Plaquemines.
LA	South Pass Blk. 24	Plaquemines.
LA	South Pass Blk. 24 Onshore Plat.	Plaquemines.
LA	Southwest Pass Sta.	Plaquemines.
LA	West Delta Blk. 53	Plaquemines.
LA	West Delta Rec'vg Sta.—Onshore	Plaquemines.
LA	Dehli	Richland.
LA	Chalmette	St. Bernard.
LA	Norco (Shell Refinery)	St. Charles.
LA	St. James	St. James.
LA	Bayou Sale	St. Mary.
LA	Burns Term.	St. Mary.
LA	Charenton	St. Mary.
LA	South Bend	St. Mary.
LA	Caillou Island	Terrebonne.
LA	Caillou Island Fld.	Terrebonne.
LA	Gibson Term.	Terrebonne.
LA	Erath	Vermilion.
LA	Forked Island	Vermilion.
LA	Mermentau River Station	Vermilion.
LA	Anchorage	West Baton Rouge.
LA	Grand Lake Terminal	(County Unknown).
LA	Twin Island Terminal	(County Unknown).
LA	Lakeside Terminal	(County Unknown).
LA	Bayou Penchant Terminal	(County Unknown).
LA	Gibbstown Terminal	(County Unknown).
LA	Bluewater Terminal	(County Unknown).
LA	Cocodrie Terminal	(County Unknown).
MI	Bay City	Bay.
MI	Montcalm	Carson City.
MI	Lewiston	Crawford.
MI	Kalamazoo	Fulton Takeoff.
MI	Alma	Gratiot.
MI	St. Clair	Marysville.
MI	Monroe	Samaria Sta.
MI	Ingham	Stockbridge.
MI	Detroit	Wayne.
MI	Ogemaw	West Branch.

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State	Station location	County/Offshore location
MS	Liberty	Amite.
MS	Mayersville	Issaquena.
MS	Pascogoula	Jackson.
MS	Soso	Jones.
MS	Lumberton	Lamar.
MS	Purvis	Lamar.
MS	Collierville Station	Marshall.
MT	Silver Tip Station	Carbon.
MT	Alzada	Carter.
MT	Richey Station	Dawson.
MT	Baker	Fallon.
MT	Cut Bank Station	Glacier.
MT	Bell Creek Station	Powder River.
MT	Poplar Station	Roosevelt.
MT	Billings	Yellowstone.
MT	Laurel	Yellowstone.
MT	Clear Lake Sta.	(County Unknown).
ND	Fryburg Station	Billings.
ND	Tree Top Station	Billings.
ND	Lignite	Burke.
ND	Alexander	McKenzie.
ND	Keene	McKenzie.
ND	Killdear	Dunn.
ND	Mandan	Morton.
ND	Tioga	Ramberg.
ND	Ramberg	Williams.
ND	Thunderbird Refinery	Williams.
ND	Tioga	Williams.
ND	Trenton	Williams.
NM	Jal	Lea.
NM	Lovington	Lea.
NM	Ciniza	McKinley.
NM	Bisti Jct.	San Juan.
NM	Navajo Jct.	San Juan.
TX	Carson Station	Archer.
TX	Holliday	Archer.
TX	Fullerton	Andrews.
TX	Buccaneer Term.	Brazoria.
TX	Sweeney Sta.	Brazoria.
TX	Mont Belvieu	Chambers.
TX	Crane	Crane.
TX	Ranger	Eastland.
TX	Caproch Jct.	Ector.
TX	Odessa	Ector.
TX	North Cowden	Ector.
TX	Wheeler	Ector.
TX	El Paso	El Paso.
TX	Missouri City Jct.	Fort Bend.
TX	Winnsboro	Franklin.
TX	Worthham	Freestone.
TX	Pearsall Sta.	Frio.
TX	Texas City	Galveston.
TX	Roberts	Glasscock.
TX	Covey Station	Grayson.
TX	Bumpus Sta.	Gregg.
TX	Kilgore St.	Gregg.
TX	Longview	Gregg.
TX	Longview Mid-Valley	Gregg.
TX	Sabine Sta. Amoco P.L.	Gregg.
TX	Mobil Jct.	Hardin.
TX	Sour Lake	Hardin.
TX	Baytown	Harris.
TX	Exxon Jct.	Harris.
TX	Genoa Jct.	Harris.
TX	Houston	Harris.
TX	Pasadena	Harris.
TX	Webster	Harris.
TX	Hillsboro	Hill.
TX	Big Spring	Howard.
TX	Phillips Hutchinson	Howard.
TX	Jacksboro Sta.	Jack.
TX	Beaumont	Jefferson.
TX	Lucas	Jefferson.
TX	Nederland	Jefferson.

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State	Station location	County/Offshore location
TX	Port Arthur	Jefferson.
TX	Port Neches	Jefferson.
TX	Sabine Pass	Jefferson.
TX	Mexia Jct.	Limestone.
TX	Midland	Midland.
TX	Colorado City Station	Mitchell.
TX	McKee	Moore.
TX	Corsicanna	Navarro.
TX	American Petrofina	Nueces.
TX	Corpus Christi	Nueces.
TX	Harbor Island	Nueces.
TX	Beaver Station	Ochiltree
TX	Blk. 474—Inters. Seg. III, III–7	Offshore—High Island.
TX	Blk. A–571	Offshore—High Island.
TX	End Segment II	Offshore—High Island.
TX	End Segment III—10	Offshore—High Island.
TX	End Segment III—10 (Blk. 547)	Offshore—High Island.
TX	End Segment III—6	Offshore—High Island.
TX	Irran Sta.	Pecos.
TX	Kemper	Reagan.
TX	Mason Jct.	Reeves.
TX	Rufugio Sta.	Rufugio.
TX	Midway	San Patricio.
TX	Eldorado	Scheicher.
TX	Basin Station	Scurry.
TX	Colorado City	Scurry.
TX	Ft. Worth	Tarrant.
TX	Merkel	Taylor.
TX	Tye	Taylor.
TX	McCamey	Upton.
TX	Mesa Sta.	Upton.
TX	Burkburnett	Wichita.
TX	KMA—Total P.L.	Wichita.
TX	Wichita Falls	Wichita.
TX	Halley	Winkler.
TX	Hendrick/Hendrick-Wink	Winkler.
TX	Keystone	Winkler.
TX	Wink	Winkler.
TX	South Bend	Young.
TX	Channel View Jct.	(County Unknown).
TX	Clear Creek Sta.	(County Unknown).
TX	Oyster Lake Term.	(County Unknown).
TX	Queens Jct.	(County Unknown).
TX	Spacek Sta.	(County Unknown).
TX	Jolly Jct.	(County Unknown).
TX	Nettleton Sta.	(County Unknown).
TX	Trent Sta.	(County Unknown).

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Friday
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Part III

Department of Housing and Urban Development

24 CFR Part 291
Sale of HUD-Held Single Family Mortgages; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–3814–F–04]

RIN 2502–AG42

Sale of HUD-Held Single Family Mortgages; Final Rule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This document represents the final rulemaking for an interim rule that HUD published in the **Federal Register** on August 31, 1995 regarding the sale of HUD-held single family mortgage loans. This rule adopts the interim rule as final, and makes certain changes to the rule's provisions.

EFFECTIVE DATE: March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Office of Housing, Room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1672. (This telephone number is not toll-free.) Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

HUD established its policies and procedures for the sale of HUD-held single family mortgage loans through an interim rule published in the **Federal Register** on August 31, 1995 (60 FR 45331), and corrected on October 6, 1995 (60 FR 52296).[1] As described in the preamble to the August 31, 1995 interim rule, HUD is conducting a program of regular sales of all HUD-owned single family mortgage loans in order to decrease HUD's inventory of assigned mortgage loans and to reduce further losses to the Federal Housing Administration (FHA) mortgage insurance funds. The sale of both single family and multifamily mortgage loans is a key component of President Clinton's initiative to reinvent HUD.

In the August 31, 1995 interim rule, HUD invited the public to comment on these policies and procedures. HUD has not, however, received any comments on the interim rule.

[1] HUD extended the effectiveness of the interim rule through a notice published in the **Federal Register** on August 27, 1996 (61 FR 43966). That notice provided that the provisions of the interim rule will be effective until the final rule is published and becomes effective.

Success of the Sales Program

In conducting the single family mortgage loan sale program, HUD is promoting the National Housing Goals established in section 2 of the Housing Act of 1949 (42 U.S.C. 1441) by helping to provide a "decent home and a suitable living environment for every American family." One of the policies behind the National Housing Goals is that private enterprise must be encouraged to serve the nation's housing needs. HUD has determined that transferring servicing functions to private entities greatly improves the servicing of these mortgages. In addition, HUD has emphasized the protection of the mortgagors' rights to foreclosure avoidance relief, both in the regulations and the Loan Sale Agreement.

HUD's first three sales under the single family mortgage loan sale program were very successful. In the first sale, conducted on October 25, 1995, HUD sold 9,870 single family mortgage loans in an auction, and an additional 3,111 loans in a competitive re-offering held a week later. These loans carried an aggregate unpaid principal balance (UPB) of approximately $522 million, and the winning bids averaged 75 percent of the mortgage loans' UPB and generated approximately $8.3 million in Federal budget savings.

In the second sale, conducted on March 20, 1996, HUD auctioned 16,231 single family mortgage loans, carrying a UPB of approximately $743 million. The winning bid was 83.57 percent of UPB. This sale generated $140 million in budget savings, according to the calculations of the Office of Management and Budget (OMB).

In the third sale, conducted on September 4, 1996, HUD auctioned 16,996 single family mortgage loans, carrying a UPB of approximately $804.5 million. The winning bid averaged 90.759 percent of UPB. The third sale generated approximately $164 million in budget savings.

Changes in this Final Rule

Due to the successful results of HUD's first three sales of single family mortgage loans, and to the fact that HUD has received no public comments on the August 31, 1995 interim rule (60 FR 45331), this final rule contains only the following changes to the interim rule:

1. The final rule deletes § 291.300, which provided that the provisions of the interim rule would be effective until September 30, 1996, unless HUD adopted the interim provisions as final (with or without changes) or published a notice in the **Federal Register** extending the effectiveness. With the publication of this final rule, which adopts the interim provisions as final with changes, § 291.300 is obsolete.

2. The final rule includes in § 291.301 a definition of "*Bid package,*" which did not appear in the interim rule. HUD determined that including this definition, which describes the contents of the bid package, will make the regulations clearer.

This final rule also includes in § 291.301 a new definition of "*Payment plan agreement.*" For the purposes of certain assigned mortgage loans, this term represents a forbearance agreement between the purchaser and the mortgagor for payments after the expiration of an initial 36-month forbearance period. Paragraph 11 of this preamble, below, further describes the use of this term.

3. The final rule provides parenthetical information regarding mortgage loans assigned to HUD under section 230(b) of the National Housing Act. Since the publication of the August 31, 1995 interim rule, the Balanced Budget Downpayment Act, I (Pub. L. 104–99; approved January 26, 1996) replaced the language of section 230 of the National Housing Act. Section 230(b) of the National Housing Act had previously authorized the Secretary to take assignment of a defaulted mortgage loan and provide assistance to the defaulted borrower. The new language in section 230 authorizes the Secretary to pay partial claims and to facilitate mortgage modifications by taking assignment of performing mortgage loans after they have been modified to cure the default. Congress provided that the "old" section 230(b) assignment program requirements (those that appeared in section 230(b) prior to the January 26, 1996 amendment) would continue to govern with regard to mortgage loans for which the borrower applied for assignment prior to April 26, 1996 (the date of enactment of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134; approved April 26, 1996)). While the Secretary can no longer accept assignments of mortgage loans under the old section 230(b) assignment program (unless the application for assignment was made before April 26, 1996), HUD still has such mortgage loans in its inventory that it wishes to sell. Therefore, this final rule adds parenthetical information throughout the rule to clarify that HUD is referring to the old section 230(b) assignment program, and to mortgage loans assigned under that program, in these mortgage sale regulations, rather than to the

newly enacted section 230 modification and assignment process enacted January 26, 1996 (see, e.g., the definition of "*Single family mortgage loan*" in § 291.301).

HUD may also decide to sell the mortgage loans that it acquires in the future through the newly enacted section 230 modification and assignment process. HUD has determined that the provisions of this final rule would accommodate this decision, since the definition of "*Single family mortgage loan*" in § 291.301 would include such mortgage loans.

4. This final rule uses the term "Loan Sale Agreement" throughout, rather than the term "Mortgage Loan Sale Agreement." "Loan Sale Agreement" is the term actually used in the agreement between HUD and the purchaser. This final rule simply conforms the regulations to the correct terminology.

5. This final rule provides that individuals or entities that are suspended from doing business with HUD, in addition to those that are debarred, will not be eligible to bid in a sale under this sales program. As provided in the August 31, 1995 interim rule (60 FR 45331), HUD initially determined that an individual or entity would be ineligible to bid if they were on HUD's most recent "Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees," if they were on probation or under a limited denial of participation, or if they were subject to a withdrawal of approval or other sanctions. While HUD amended the interim rule on October 6, 1995 (60 FR 52296) to exclude only those individuals or entities that had been debarred, HUD has determined through its experience in the initial sales that it is also necessary to exclude individuals and entities that have been suspended. Since HUD protects the interests of homeowners with mortgages that it previously insured, owned, and serviced, HUD will ensure that bidders are not otherwise suspended from doing business with the agency.

6. This final rule simplifies § 291.304(d)(1)(i) of the interim rule (§ 291.304(f)(1) of this final rule) regarding the circumstances under which HUD can reject a bid. Section 291.304(a) of both the interim rule and this final rule requires that all bids must be submitted in accordance with the bid package instructions. However, the interim rule mentioned in § 291.304(d)(1)(i) one circumstance under which a bidder would not be in compliance with the instructions—if the bidder changes the documents prescribed in the bid package. This final rule amends that provision simply to track the clearer language in § 291.304(a).

7. This final rule reorganizes the provisions in § 291.306 of the interim rule. That section of the interim rule, with the heading "Closing requirements," described the requirements for earnest money deposits, the execution of the Loan Sale Agreement, and HUD's withdrawal of loans from a bidding pool. However, earnest money deposits are submitted during the bidding process, rather than the closing process. Similarly, the bidder submits an executed copy of the Loan Sale Agreement with its bid; HUD then executes the Loan Sale Agreement when it accepts the successful bid. Therefore, this rule will move these requirements to §§ 291.304 and 291.305, and will provide appropriate information regarding the closing process in § 291.306.

8. This final rule clarifies § 291.307(a) by providing that all mortgage loans purchased through the mortgage loan sale program must be serviced by a mortgagee that has servicing approval by HUD. Although the Loan Sale Agreement already contains this specification, HUD has determined that including it in the regulations will avoid confusion.

9. This final rule clarifies § 291.307(b) of the interim rule regarding the continuation of the mortgagor's rights, in order to avoid any confusion about the purchaser's right to foreclose. The interim rule provided that the purchaser and servicer will be fully bound by the Loan Sale Agreement, including any mortgagor rights to forbearance. However, this final rule will clarify that the purchaser and the servicer must service these loans in accordance with the servicing requirements in the Loan Sale Agreement in order to preserve the mortgagors' rights under the assignment program, and must ensure that these requirements have been followed prior to initiating foreclosure.

10. This final rule streamlines § 291.307(c)(1) regarding the servicing requirements for assigned mortgage loans within the initial 36-month forbearance period. This final rule provides generally that the purchaser must service these mortgage loans in essentially the same manner as HUD serviced the loans while HUD held them. Specific servicing requirements will be set forth in the Loan Sale Agreement for each sale.

The purpose of the assignment program is to enable the homeowner to avoid foreclosure and retain ownership of the property. Therefore, the assignment program provides certain rights to the mortgagor regarding such forms of relief as forbearance. Even if HUD sells the mortgage loans, HUD and the purchaser must guarantee that the mortgagors' rights under the assignment program will be protected during the first 36 months of assignment. While the regulations must therefore provide the purchaser's general responsibility in servicing these mortgage loans, it is unnecessary to specify all aspects of HUD's servicing policies in the regulations. Specific servicing requirements are set forth in the Loan Sale Agreement, which will primarily reflect the provisions of HUD Handbook 4330.2 REV–1, Mortgage Assignment Processing and Secretary-Held Servicing (March 1991).

11. This final rule clarifies § 291.307(c)(2) regarding the servicing requirements for assigned mortgage loans after the expiration of the 36-month forbearance period. First, this final rule uses the term "Payment plan agreement" (in §§ 291.301 and 291.307(c)(2)) to represent a forbearance agreement between the purchaser and the mortgagor for payments after the expiration of the initial 36-month forbearance period. The interim rule used the terms "new forbearance agreement" and "outstanding forbearance agreement," which could be confused with the initial forbearance agreement in effect during the 36-month period after assignment. This clarifying change should help avoid confusion.

Second, this final rule clarifies that the purchaser must renew payment plan agreements upon their expiration at least through and including the expiration of the original term of the mortgage loan, so long as the mortgagor has complied with the prior agreement. Furthermore, a purchaser may only foreclose if a mortgagor defaults in making payments required under the most recent payment plan agreement and cannot or will not reinstate. This requirement has been in the Loan Sale Agreement. HUD has decided to include the provision in the final rule, as well, in order to clarify and emphasize the requirement.

Third, this final rule removes a sentence from § 291.307(c)(2) that is redundant and potentially confusing. This rule removes the sentence providing that a purchaser may take any lawful action to ensure that arrearages do not continue to increase. HUD has determined that § 291.307(c)(2) of this final rule accurately and clearly presents the servicing requirements without this sentence.

12. This final rule revises § 291.307(c)(3) of the interim rule regarding the servicing requirements for mortgages assigned to HUD under

section 221(g)(4) of the National Housing Act. Section 291.307(c)(3) of the interim rule provided that a purchaser of such mortgages must provide a defaulting mortgagor "foreclosure avoidance relief that is substantially equivalent to that which the mortgagor could have otherwise sought under section 230 of the National Housing Act" (60 FR 45334). While HUD was under no legal obligation to provide such relief, due to administrative and recordkeeping concerns, HUD at its discretion provided foreclosure avoidance relief analogous to section 230 for loans assigned to HUD under 221(g)(4). However, with the recent amendment to section 230 of the National Housing Act (described above in paragraph 3 of this preamble), the foreclosure avoidance relief under the old section 230 assignment program is no longer available. Therefore, HUD will not require purchasers to provide forbearance for 221(g)(4) mortgage loans that are current, and this final rule removes that obsolete reference. This final rule also removes a similar reference in § 291.307(b).

Section 291.307(c)(3) of this final rule will provide, however, that 221(g)(4) mortgage loans that are not current are subject to forbearance agreements and the servicing requirements in § 291.307(c)(1) and (c)(2).

13. This final rule removes § 291.307(c)(4) of the interim rule regarding purchase money mortgages (PMMs) that were not part of the settlements resulting from the *Ferrell* litigation actions.[2] As a result of the *Ferrell* litigation, HUD agreed to provide certain foreclosure avoidance relief to mortgagors with FHA insured mortgages. Section 291.307(c)(4) of the interim rule provided only that a purchaser of non-*Ferrell* PMMs does not have to provide relief under section 230 of the National Housing Act. This paragraph is unnecessary, since it does not contain any regulatory requirements.

14. For mortgages subsidized under section 235 of the National Housing Act, this final rule clarifies the status of assistance payment contracts. Furthermore, this final rule provides the Secretary with essential flexibility when reducing the interest rates on the loans. As described in the interim rule, when HUD sells these loans, the assistance payments contracts will terminate. To minimize the effect of this termination on the mortgagors, this final rule removes the complex formula provided in § 291.307(d) of the interim rule, and it allows the Secretary to reduce the interest rate to that which will adequately compensate the mortgagors for the termination of assistance.

[2] The history of the *Ferrell* litigation is described in *Brown* v. *Lynn*, 385 F. Supp. 986 (N.D. Ill., 1974). The litigation resulted in a 1976 stipulation and consent decree, *Ferrell* v. *Hills*, (N.D. Ill., E.D., July 29, 1976), which was then replaced by the Amended Stipulation in August 1979.

Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order. Any changes made to this rule as a result of that review are clearly identified in the docket file. The docket file and the Economic Analysis prepared for this rule are available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Environmental Impact

The policies and procedures contained in this rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy, within the meaning of 24 CFR 50.19(c)(1). Therefore they are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule relate to the sale of certain HUD assets, and do not impinge upon the relationship between the Federal Government and State and local governments. As a result, this rule is not subject to review under the order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. This rule will protect mortgagors' rights relative to forbearance, assistance, or reinstatement. Since this rule will not significantly change the rights of mortgagors or their families, no further review under the order is necessary.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in doing so certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule contains only the minimum requirements necessary to operate the single family mortgage loan sale program, and it will not affect the ability of small entities, relative to larger entities, to bid for and acquire HUD-held mortgages.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; approved March 22, 1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Congressional Review of Major Final Rules

This rule is a "major rule" as defined in the Administrative Procedure Act (5 U.S.C. 804(2)).

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, 24 CFR part 291, subpart D is amended as follows:

a. The interim rule published August 31, 1995 (60 FR 45331); corrected on October 6, 1995 (60 FR 52296); and extended on August 27, 1996 (61 FR 43966), is adopted as final; and

b. Is further amended as follows:

1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. Subpart D is revised to read as follows:

Subpart D—Sale of HUD-Held Single Family Mortgage Loans

Sec.
291.301 Definitions.
291.302 Purpose and general policy.
291.303 Eligible bidders.
291.304 Bidding process.
291.305 Selection of bids and execution of Loan Sale Agreement.
291.306 Closing requirements.
291.307 Servicing requirements.

Subpart D—Sale of HUD-Held Single Family Mortgage Loans

§ 291.301 Definitions.

For purposes of this subpart, the following definitions apply:

Bid package means the documents prepared for bidders in a mortgage loan sale, and includes the following: An Executive Summary containing information on FHA single family mortgage loan sales and background on HUD programs; a description of post-sale servicing requirements; due diligence information and reports; mortgage loan information; a copy of the Loan Sale Agreement and its exhibits; bidding and closing information; and such other information and requirements as the Secretary may determine necessary.

Payment plan agreement, for purposes of § 291.307(c)(2), means an agreement between the purchaser and the mortgagor for payments after the 36-month period of statutorily authorized forbearance relief has expired.

Single family mortgage loan means a mortgage loan on a single family property assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996) (12 U.S.C. 1715u), a mortgage loan on a single family property insured by HUD under section 221 of the National Housing Act (12 U.S.C. 1715l), a mortgage loan on a single family property issued in connection with the settlement of the *Ferrell* litigation, a purchase money mortgage loan issued by HUD on a single family property sold from HUD's inventory that was not connected with the settlement of the *Ferrell* litigation, or any other single family mortgage loan owned by HUD and representing an asset to HUD's Title II mortgage insurance funds.

Single family property means a residence with one to four dwelling units.

§ 291.302 Purpose and general policy.

This subpart sets forth HUD's policy and procedures for the sale of HUD-held single family mortgage loans. In general, HUD will sell both performing and nonperforming HUD-held single family mortgage loans. HUD will sell all mortgage loans without recourse and without FHA insurance. HUD will package pools of single family mortgage loans for sale to the general public on a competitive basis; however, HUD may sell mortgage loans to government-sponsored enterprises (GSEs) on a negotiated basis. Nothing in this subpart shall be construed to prevent HUD from packaging single family mortgage loans with other types of HUD assets for sale. The Secretary retains full discretion to offer any qualifying pool of mortgage loans for sale and to withhold or withdraw any offered pool of mortgage loans from sale. However, when HUD offers a qualifying mortgage loan for sale, the procedures set out in this subpart and in the bid package will govern the sale of HUD-held single family mortgage loans.

§ 291.303 Eligible bidders.

HUD will provide information on the eligibility of bidders in the bid package, a notice in the **Federal Register**, or other means, at the Secretary's full discretion. However, an individual, partnership, corporation, or other legal entity will not be eligible to bid for any loan pool, either as an individual or a participant, if at the time of the sale, that individual or entity is debarred or suspended from doing business with HUD under 24 CFR part 24.

§ 291.304 Bidding process.

(a) *Submission of bids.* All bids must be submitted to HUD in accordance with instructions in the bid package for a particular sale.

(b) *Effect of bid.* By submitting a bid, the bidder is making an offer to purchase single family mortgage loans as presented in the bid package. Submission of a bid constitutes acceptance of the terms and conditions set forth in the bid package. Along with the bid, the bidder must submit an executed copy of the Loan Sale Agreement, which is included in the bid package.

(c) *Earnest money deposits.* The bidder must submit to HUD, along with its bid, an earnest money deposit in an amount to be determined by HUD. The earnest money deposit is nonrefundable to the winning bidder and will be credited toward the purchase price.

(d) *Termination of offering.* HUD reserves the right to terminate an offering in whole or in part at any time before the bid date.

(e) *Withdrawal of loans.* HUD reserves the right, in its sole discretion and for any reason whatsoever, to withdraw loan assets from a pool prior to the bid date. Any earnest money deposits relating to withdrawn loan assets will be retained by HUD and credited toward the total purchase price of the remaining loan assets in the pool, in accordance with the Loan Sale Agreement. After the bid date, HUD can withdraw mortgage loans in accordance with the Loan Sale Agreement.

(f) *Rejection of bids.* (1) HUD may, in its sole discretion, reject any bid under the following circumstances:

(i) If the bid does not conform with the instructions in the bid package; or

(ii) If, in HUD's sole discretion, it determines that such action would be in the best interests of the U.S. Government.

(2) HUD can also issue a conditional rejection that will become an acceptance upon fulfillment of HUD's requests.

(g) *Withdrawal of bids.* A bidder may withdraw a previously submitted bid in accordance with the instructions in the bid package for a particular sale.

(h) *Bids by brokers or agents.* Any bid by a broker or agent for a principal must be in the name of the principal and signed by the broker/agent as the attorney-in-fact for the principal. All such bid documents must be executed so as to bind the principal by the broker/agent as the attorney-in-fact. A power of attorney satisfactory to HUD as to form and content must be submitted with each bid.

§ 291.305 Selection of bids and execution of Loan Sale Agreement.

HUD will evaluate bids, select successful bids, and notify the successful bidder in a manner set forth in the bid package. HUD will complete the execution of the Loan Sale Agreement when it accepts the successful bid.

§ 291.306 Closing requirements.

(a) *Closing date payment.* On the closing date, the purchaser must pay to HUD the closing date payment, consisting of the balance of the amount due on the bid price, as adjusted in accordance with the Loan Sale Agreement.

(b) *Closing documents.* HUD will execute and deliver to the purchaser a bill of sale transferring title to the mortgage loans sold in the sale. The purchaser must deliver to HUD the documents required at closing, in addition to the closing date payment.

§ 291.307 Servicing requirements.

(a) *Use of HUD-approved servicing mortgagees.* All mortgage loans must be serviced by HUD-approved servicing mortgagees for the remaining life of the mortgage loans. A purchaser that is not

a HUD-approved servicing mortgagee must retain a HUD-approved servicing mortgagee to service the mortgage loans.

(b) *Continuation of mortgagor rights.* The purchaser may take all lawful steps to collect the amounts due under the mortgage loans. These steps may include foreclosure, but only after the servicer has provided all required forms of relief for the mortgagor in accordance with paragraph (c) of this section. The purchaser and its servicer, and any subsequent transferee of or servicer for the mortgage loan, will be fully bound by the terms of the Loan Sale Agreement, including those terms that provide the mortgagor with any rights regarding forbearance, assistance, or reinstatement of the mortgage loan.

(c) *Purchaser's protection of mortgagor's rights.* (1) *Assigned mortgage loans during forbearance period.* This paragraph (c)(1) explains how a purchaser (or a servicer of a purchased mortgage loan) must service a mortgage loan that was assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996), for which not more than 36 months has expired since the mortgage loan assignment was accepted by the Secretary. Such a purchaser must service these mortgage loans in essentially the same manner as HUD was required to service the loans while HUD held them. Specific servicing requirements will be set forth in the Loan Sale Agreement for each sale.

(2) *Assigned mortgage loans after the initial 36-month forbearance period.* This paragraph (c)(2) explains how a purchaser (or a servicer of a purchased mortgage loan) must service a mortgage loan that was assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996), for which more than 36 months has expired since the mortgage loan assignment was accepted by the Secretary.

(i) Such purchaser may require the mortgagor to pay at least the full monthly payment due under the mortgage loan. A purchaser may also require a mortgagor to pay increased monthly mortgage loan payments under a renewed payment plan agreement to reduce the amount in arrears if the mortgagor's available income (as calculated according to the Loan Sale Agreement) can support the increased payments. A purchaser must renew payment plan agreements at least through and including the expiration of the original term of the mortgage loan, so long as the mortgagor complies with the prior payment plan agreement.

(ii) If the mortgagor defaults under a payment plan agreement established by the purchaser, the mortgagor shall have the right to reinstate the most recent payment plan agreement if the mortgagor makes a lump sum payment in an amount necessary to cure the default. If the mortgagor defaults under the most recent payment plan agreement and does not reinstate, the purchaser may terminate the payment plan agreement and take such action as may be permitted under the terms of the mortgage.

(iii) The purchaser's right to demand payment of a reinstatement amount from the mortgagor may be limited by the terms of the Loan Sale Agreement.

(3) *Section 221 Mortgages.* This paragraph (c)(3) explains how a purchaser (or a servicer of a purchased mortgage) must service a mortgage assigned to HUD under section 221(g)(4) of the National Housing Act.

(i) *Current section 221(g)(4) mortgage loans.* Section 221(g)(4) mortgage loans that are current as of the closing date are not subject to the servicing requirements set forth in paragraphs (c)(1) and (c)(2) of this section.

(ii) *Defaulted section 221(g)(4) mortgage loans.* With respect to any section 221(g)(4) mortgage loan as to which a payment default has occurred, and as to which HUD, as of the closing date, was providing or had agreed to provide forbearance relief, the purchaser must continue to provide forbearance relief and must service such mortgage loans as set forth in paragraphs (c)(1) and (c)(2) of this section.

(d) *Section 235 mortgage loans*—(1) *Assistance payments contract.* If, prior to the mortgage loan sale, the assistance payments contract has not been previously terminated under 24 CFR 235.375(a), the contract will terminate as to each mortgage loan upon the sale of the mortgage loan. The purchasing mortgagee will therefore not receive any assistance payments on behalf of the mortgagor for any Section 235 mortgage loan sold.

(2) *Reduction in interest rates.* For a Section 235 mortgage loan that was accompanied by an assistance payments contract that was still in effect on the date of the sale, the Secretary will reduce the interest rate on the mortgage loan to a rate to be determined by the Secretary.

Dated: December 17, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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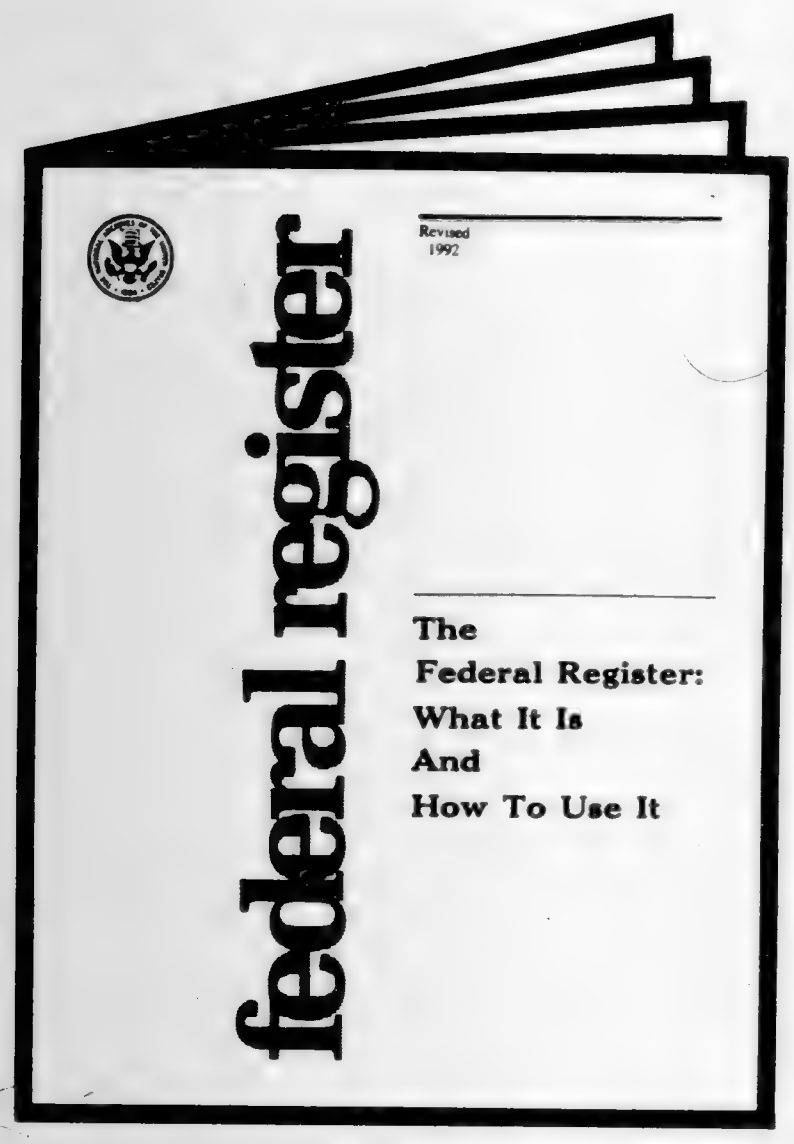

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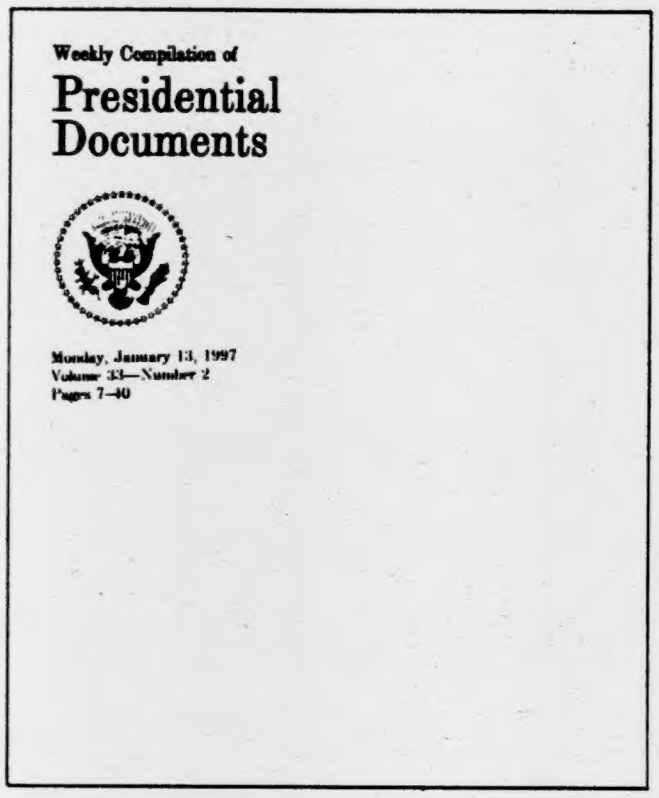

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